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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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TARIRO CHINYANGANYA,

Plaintiff,

-against-

SPANISH DANCE ARTS COMPANY, INC.,  
*doing business as* FLAMENCO VIVO CARLOTA  
SANTANA, *and* HANAAH FRECHETTE BATES,  
*and* CARLOTA SANTANA, *individually,*

Defendants.

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Case No.: 23 CV 8557

**COMPLAINT**

ECF CASE

Jury Trial Demand

Plaintiff, Tariro Chinyanganya (“Plaintiff”), by and through her undersigned attorneys, Cilenti & Cooper, PLLC and Baker, Braverman & Barbadoro, P.C., respectfully files this Complaint 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, individually (all defendants collectively referred to herein as the “Defendants”), and states as follows:

## **INTRODUCTION**

1. Plaintiff, Tariro Chinyanganya, 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. In addition, Plaintiff alleges that that the Defendants, jointly and individually, created a hostile, discriminatory environment that discriminated against Plaintiff in violation of 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**

2. The District Court has diversity jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a)(1), (c)(1).

3. The amount in controversy exceeds seventy-five thousand dollars (\$75,000.00).

4. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391 because the conduct making up the basis of the complaint took place in this judicial district.

## **PARTIES**

5. Plaintiff is an adult citizen of the State of Florida.

6. Plaintiff was employed by Spanish Dance Arts continuously beginning in August 2019 and ending on or about October 16, 2020. Initially hired as a Studio Manager, Plaintiff was also given the role and duties of Marketing Coordinator beginning in late 2019, through the end of her employment.

7. Plaintiff worked out of Spanish Dance Arts’ offices in Midtown Manhattan. During the height of the COVID-19 pandemic, Plaintiff continued to worked remotely as she researched

and guided the organization regarding COVID protocols and re-opening procedures of the organization's studios, in addition to her other daily duties and responsibilities.

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 Spanish Dance Arts, Hanaah Frechette Bates, and Carlota Santana, in New York, New York (New York County).

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

11. Upon information and belief, Defendant, Spanish Dance Arts was and is a not-for-profit corporation, formed and existing 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.

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

13. Defendant, Hanaah Frechette Bates, is the Executive Director of Spanish Dance Arts.

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

15. 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.

16. 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.

17. Defendant, Hanaah Frechette Bates, participated and continues to participate 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.

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

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

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

21. Defendant, Carlota Santana, participated and continues to participate 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.

22. 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.

23. 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.

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

25. The individual Defendants 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' employment.

26. 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.

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

**STATEMENT OF FACTS  
WAGE AND HOUR CLAIMS**

28. In or about August 2019, Plaintiff was hired by Defendants to work first as a Studio Manager, then in late 2019 her role was expanded to Marketing Coordinator in addition to Studio Manager, for Spanish Dance Arts, known as "Flamenco Vivo Carlota Santana".

29. At all times relevant to this action, Plaintiff's primary duties were administrative in nature. She booked studios, ordered supplies, answered the phones, worked with general contractors to renovate the facilities and she herself was tasked with painting duties. She also organized and implemented the organization's social media marketing strategies and was the person in charge of researching and developing and guiding the company's COVID-19 response and protocol for re-opening the organization's studios. She was also required to work company events.

30. During Plaintiff's employment by Defendants, she consistently worked over forty (40) hours per week. Although her "official" hours were 10:00 a.m. to 6:00 p.m., she often worked until 8:00 p.m. or later. She worked more than ten (10) hours per day at least once per week. She often worked late into the evening and on Saturdays.

31. Plaintiff often worked fifty (50), or more, hours per week, each week.

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

33. During Plaintiff's employment, she was paid by check. Work performed above forty (40) hours per week was never paid to Plaintiff at a rate of time and one-half Plaintiff's regular rate, as required by law.

34. Initially Plaintiff was paid an hourly rate of \$20.00 per hour but she was not paid for all hours worked and she was not paid time and a half for hours worked in excess of forty (40) per week.

35. In early 2020 Plaintiff was improperly converted to a "salaried" employee, at a salary which was below the threshold for exempt, salaried employees in New York.

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

37. At the times relevant to this lawsuit when she was paid on a salary basis, Plaintiff was paid two (2) times per month, regardless of hours worked.

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

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

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

41. In 2020, Plaintiff’s annual salary was approximately thirty-nine thousand dollars (\$39,000) per year, or seven hundred fifty dollars (\$750) per week.

42. Plaintiff was paid less than the New York City and State salary threshold for exempt employees.

43. When Plaintiff was paid a fixed salary, not based on her working hours, she was not paid additional compensation for hours worked beyond forty (40), each week.

44. Defendants never paid Plaintiff the spread of hours premium for days she worked a spread greater than ten (10) hours.

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

46. Defendants knowingly and willfully operated their business with a policy of not paying wages to 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.

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

**STATEMENT OF FACTS  
DISCRIMINATION AND CONSTRUCTIVE TERMINATION CLAIMS**

48. Plaintiff is an African American woman and was the only African American person who worked as an administrative employee for the Defendants at all times relevant to the discrimination and constructive termination claims hereto.

49. Plaintiff performed her job at a satisfactory level at all times, receiving increased job duties and positive feedback from her supervisors.

50. In May, 2020, following the death of George Floyd, Plaintiff and others began developing materials related to diversity, equity and inclusion for the company.

51. Shortly thereafter, Defendant Hanaah Bates went on maternity leave beginning on or about June 4, 2020.

52. Defendant Hanaah Bates hired Robert Dorf as interim executive director during her maternity leave.

53. At all times relevant hereto, the company typically held a weekly "state of the union" zoom meeting on Tuesdays.

54. From June to October 2020, the state of the union zoom calls became a source of overwhelming pain and anxiety for Plaintiff.

55. In these zoom meetings, Defendant Carlota Santana, together with Mr. Dorf, would single out Plaintiff as the sole African American person on the zoom calls, expecting Plaintiff to speak and provide answers to any questions about race, equity and inclusion. Subsequently, Defendant Carlota Santana and Mr. Dorf would criticize Plaintiff's responses.



56. Plaintiff would be asked to share her experience as a black woman on these calls, after which Defendant Carlota Santana and Mr. Dorf would respond by discrediting Plaintiff, making statements such as “not all black people are affected by what is happening” or that the company shouldn’t “insult all black people by offering support that they have not asked for.”

57. Defendant Carlota Santana would often call Plaintiff on her personal cell phone after a company-wide zoom call to further discuss Defendant Carlota Santana’s views on race and to ask Plaintiff to justify her statements and opinions as a black person.

58. As Defendant Carlota Santana was Plaintiff’s supervisor and the head of the organization, Plaintiff felt she had no choice but to answer her calls and try to answer her questions.

59. During the course of her employment, Plaintiff witnessed multiple times where Defendant Carlota Santana either refused to hire or belittled Flamenco dancers of color.

60. Defendant Carlota Santana acknowledged her unwillingness to hire black Flamenco dancers in comments she made to the company’s diversity, equity and inclusion documents, in which she wrote “I have heard I am criticized for using white artists from Spain only (there are to my knowledge no black artists of the caliber needed that are black) ... am [I] expected to use less professional artists just to fill the diversity issue?”

61. However, in the same document Defendant Carlota Santana acknowledged that the company had a black Flamenco artist of the requisite caliber available on its roster, but that she uses her “on and off” and that she is “criticized for not using this person more consistently.”

62. In early July, 2020, following another company zoom call during which the diversity, equity and inclusion initiatives were discussed, Defendant Carlota Santana called Plaintiff directly on her cell phone.

63. During this call, Defendant Carlota Santana asked Plaintiff to explain what was wrong about how Defendant Carlota Santana “felt about black people.” Plaintiff answered that Defendant Carlota Santana was holding on to racism or racist thoughts, and that it was keeping her from making changes at the company for the better. Defendant Carlota Santana compared racism to carrying a blue bottle and stated “you get used to carrying it, you don’t even realize you carry it. It even begins to comfort you. And you always have that same bottle, you want it around. You want to drink from it.” Plaintiff replied to Defendant Carlota Santana that the blue bottle she wanted to keep was “carrying poison, and that poison is racism.”

64. In another state of the union zoom meeting, on or about July 14, 2020, Plaintiff was once again singled out, with Mr. Dorf asking her to respond to questions such as: “why should we support black people?” and “what risk would it place on Flamenco Vivo?” Mr. Dorf and Defendant Carlota Santana continued to bully Plaintiff as she tried to answer and defend herself and black Americans. Rather than listen to and consider Plaintiff’s responses, Defendant Carlota Santana and Mr. Dorf would interrupt Plaintiff, cut her off while she was speaking to challenge her response, and otherwise took a hostile position in regard to Plaintiff’s responses to their questions when the responses did not align with their personal beliefs. Defendant Carlota Santana and Mr. Dorf were relentless, resulting in Plaintiff eventually breaking down in tears and turning off her camera.

65. No other employee was singled out and questioned about their race in this manner on the state of the union zoom calls.

66. Multiple employees and consultants reached out to Plaintiff following the July 14, 2020 meeting, expressing how upset they were with the way in which Plaintiff was singled out and treated by Defendants.

67. Plaintiff was extremely upset and felt she had no means of recourse while Mr. Dorf and Defendant Carlota Santana were in charge of the company.

68. Defendant Hanaah Bates returned from maternity leave on or about September 14, 2020.

69. Plaintiff met with Defendant Hanaah Bates on or about September 30, 2020. In this meeting, Plaintiff relayed the environment of toxic racism that she had experienced over the last several months in hopes that Defendant Hanaah Bates, as Executive Director, would take appropriate action, investigate and make necessary changes.

70. Defendants Hanaah Bates confirmed that she was aware of the situation but felt that she couldn't do anything about it. Defendants Hanaah Bates declined to investigate Plaintiff's claims of discrimination, stating that she "trusted" that Mr. Dorf had made the best decisions for the company in her absence.

71. No actions were taken by Defendant Hanaah Bates to rectify the hostile, discriminatory environment that Plaintiff experienced. There was no investigation done, no plan offered to make any improvements and no disciplinary action taken against those that created the hostile conditions.

72. Plaintiff, faced with intolerable working conditions, had no choice but to resign; a constructive termination that was a reasonable, foreseeable consequence of Defendants' discriminatory actions.

73. Plaintiff told Defendant Hanaah Bates of her intent to resign on or about October 2, 2020.

74. In her exit interview prior to her last day of employment, Plaintiff told Defendant Hanaah Bates that her resignation was a direct result of the hostile, racist environment she endured

that was perpetuated by Defendant Carlota Santana and Mr. Dorf and allowed to continue by Defendant Hanaah Bates' failure to take any action to investigate or to stop it.

75. Plaintiff's last day was on October 16, 2020.

### **STATEMENT OF CLAIM**

#### **COUNT I**

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

76. Plaintiff re-alleges and re-avers each and every allegation and statement contained in paragraphs "1" through "75" of this Complaint as if fully set forth herein.

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

78. 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.

79. At 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.

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

81. 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.

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

83. Due to the Defendants' New York Labor Law violations, 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]**

84. Plaintiff re-alleges and re-avers each and every allegation and statement contained in paragraphs "1" through "83" of this Complaint as if fully set forth herein.

85. 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).

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

87. 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 City Human Rights Law]**

88. Plaintiff re-alleges and re-avers each and every allegation and statement contained in paragraphs "1" through "87" of this Complaint as if fully set forth herein.

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

90. 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.

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

92. At all times material hereto, as a black woman, Plaintiff is a member of a protected class under the New York City Administrative Code, Chapter 1, §8-102.

93. As set forth herein the Plaintiff performed her job duties at a satisfactory level at all times, receiving increased job duties and positive feedback from her supervisors.

94. As set forth herein Plaintiff endured a pattern of discriminatory conduct by Defendant Carlota Santana and Robert Dorf, including but not limited to the creation of a hostile work environment targeted at Plaintiff because of her race.

95. On September 30, 2020 Plaintiff reported the environment of toxic racism that she had been experiencing at the hands of Defendant Santana and Robert Dorf to Defendant Hanaah Bates, the Executive Director of Defendant Spanish Dance Arts.

96. On September 30, 2020 Defendant Bates acknowledged to Plaintiff that she was aware of the situation that Plaintiff described but told Plaintiff that there was nothing she could do about it.

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

98. 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.

99. 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).

100. 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]**

101. Plaintiff re-alleges and re-avers each and every allegation and statement contained in paragraphs "1" through "100" of this Complaint as if fully set forth herein.

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

103. 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)

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

105. At all times material hereto, as a black woman, Plaintiff is a member of a protected class under the New York State Executive Law, Article 15, §296.

106. As set forth herein the Plaintiff performed her job duties at a satisfactory level at all times, receiving increased job duties and positive feedback from her supervisors.

107. As set forth herein Plaintiff endured a pattern of discriminatory conduct by Defendant Carlota Santana and Robert Dorf, including but not limited to the creation of a hostile work environment targeted at Plaintiff because of her race.

108. On September 30, 2020 Plaintiff reported the environment of toxic racism that she had been experiencing at the hands of Defendant Santana and Robert Dorf to Defendant Hanaah Bates, the Executive Director of Defendant Spanish Dance Arts.

109. On September 30, 2020 Defendant Bates acknowledged to Plaintiff that she was aware of the situation that Plaintiff described but told Plaintiff that there was nothing she could do about it.

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

111. Faced with intolerable working conditions in which she was marginalized based on her race, Plaintiff had no choice but to, and indeed did, resign, and as such, she was constructively terminated.

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

113. 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.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, Tariro Chinyanganya, 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 City Administrative Code, Chapter 1, §8-107(a)(3);
- (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 State Executive Law, Article 15, §296(1)(a) and (h);
- (f) 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);
- (g) An award of prejudgment and post-judgment interest;
- (h) An award of costs and expenses of this action with reasonable attorneys' fees; and,
- (i) Such other and further relief as this Court determines to be just and proper under the circumstances.

**JURY DEMAND**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury on all issues.

Dated: New York, New York  
September 28, 2023

Respectfully submitted,

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*/s/ Peter Hans Cooper*

By: \_\_\_\_\_

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*/s/ Theresa Barbadoro*

By:

\_\_\_\_\_  
Theresa Barbadoro, Esq.