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MIGUEL CHAVEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO
UNLIMITED JURISDICTION

MIGUEL CHAVEZ, an individual;

Plaintiff;

vs.

OUTCO LABS, INC., a California corporation;
NUTRITIONAL HIGH LLC, a Nevada limited
liability company; MANNY TREJO, an
individual; and DOES 1 through 100, inclusive;

Defendants.

Case No.: 37-2023-00015204-CU-OE-CTL

COMPLAINT

[IMAGED FILE]

Plaintiff MIGUEL CHAVEZ hereby alleges the following:

PARTIES

1. Plaintiff MIGUEL CHAVEZ ("Plaintiff") is, and at all times mentioned herein, an individual residing in San Diego, CA.

2. Defendant OUTCO LABS, INC. ("Outco") is, and at all times mentioned herein, a California corporation. Its registered address is 8157 Wing Avenue, El Cajon, CA 92020.

3. NUTRITIONAL HIGH LLC, ("N-High") is, and at all times mentioned herein, a Nevada limited liability company. Plaintiff is informed and believes and thereon alleges that N-High has purposefully availed itself of California's market and therefore has sufficient contacts with the state.

4. Defendant MANNY TREJO (“Trejo”) is, and at all times mentioned herein, an individual residing in San Diego, CA. Plaintiff is informed and believe and thereon alleges that King is a person acting on behalf of Outco, as understood under Labor Code section 558.1.

5. Plaintiff is ignorant of the true names and capacities of defendants sued herein as DOES 1 through 100 (the “DOE Defendants”) and therefore, sues these defendants by such fictitious names. Plaintiff will amend the Complaint to insert DOE Defendants’ true names and capacities when ascertained. Plaintiff is informed and believes and therefore alleges that each of these fictitiously named defendants is legally responsible for the events and happenings referred to herein, and legally hereinafter alleged were proximately caused by the acts of such defendants, and each of them.

6. Outco, N-High, King, Dalton, Trejo, and DOE Defendants, will be collectively referred to as “Defendants” hereafter.

7. Plaintiff is informed and believes and on that basis alleges that at all times mentioned herein, each of the defendants was the agent and employee of the remaining defendants, and was acting within the scope and purpose of such agency and employment in doing the acts herein alleged.

JURISDICTION

8. This Court has personal jurisdiction over Defendants because Defendants are domiciled in California and/or have sufficient minimum contacts with California.

9. This Court has subject matter jurisdiction over this Complaint as the action arises under the California Labor Code and associated provision. This Court has original jurisdiction over the matter. (Cal. Const., art VI § 10.)

10. Venue is proper in this Court because Defendants employed Plaintiff in the County of San Diego. Defendants' obligations and liability to Plaintiff therefore arose in San Diego County.

11. This is an unlimited jurisdiction matter as the amount in controversy is over \$25,000 as understood under Code of Civil Procedure section 85.

GENERAL ALLEGATIONS

12. Plaintiff was an employee of Defendant

13. Defendants employed over 25 employees during the time Plaintiff worked for Defendants.

1 14. Plaintiff was hired by Defendants on or about October 28, 2021, as an independent
2 contractor. Plaintiff was paid \$18.00 an hour. Plaintiff's primary job duties involved the trimming and
3 packaging of medical marijuana to be sold by Defendants. Since he was an independent contractor,
4 Plaintiff was not allowed to take meal breaks, take rest breaks, or claim overtime pay.

5 15. In early 2022, Defendants recategorized Plaintiff as a non-exempt employee. Plaintiff
6 began clocking in and out for work and for his meal breaks. Plaintiff was thereafter allowed to take rest
7 breaks, and Defendants began paying him overtime rates when applicable. Instead of receiving
8 independent contractor invoices, Defendants provided Plaintiff with paystubs. At the same time,
9 Defendants changed Plaintiff's pay to \$17.00 an hour. Plaintiff's primary job duties after reclassification
10 from a contractor to employee did not change.

11 16. Plaintiff is informed and believes and thereon alleges that his classification of an
12 independent contractor was not the result of an isolated or unintentional payroll error. Rather, Plaintiff
13 is informed and believes and thereon alleges that Defendants specifically adopted a policy that
14 deliberately and unfairly benefited Defendants.

15 17. After being classified as an employee, Plaintiff's work turned into a very hostile place.
16 Plaintiff direct supervisor was Trejo. Trejo would play media in the workplace that were very critical of
17 Christians and Catholics. Plaintiff, being Catholic himself, asked if it was possible to not play the media
18 during work hours and instead play music.

19 18. Trejo spoke of his dislike of Christianity and Catholics, and he called himself a demon to
20 Plaintiff. His conversations with Plaintiff and other coworkers turned more violent as he would boast
21 about choking out his opponents in jujitsu. When approached of the appropriateness of his comments,
22 Trejo would gaslight Plaintiff and other coworkers by denying he ever made such statements.

23 19. While working for Defendants, Plaintiff was join other employees during their meal
24 breaks. Trejo drank in excess before returning to work for the rest of the day. Trejo offered Plaintiff beer
25 and shots of liquor as well, but Plaintiff does not drink. Plaintiff would take the beer bottles and throw
26 the bottles away later.

27 20. On March 7, 2022, Plaintiff was at work, working with his headphones in his ears. Trejo
28 arrived to work and demanded that the entire team join him in another room for an unplanned meeting.

1 Plaintiff did not hear Trejo because of the headphones in his ears. Trejo grew angry, got in Plaintiff's
2 face, and began cursing and yelling at him to get into the other room for the meeting.

3 21. Plaintiff was quite shaken by Trejo's behavior, but he nevertheless joined the supervisor
4 in the other room for the meeting. Later that same day when Plaintiff returned to his work, Trejo yelled
5 at Plaintiff and grabbed Plaintiff by his shoulders. With both hands on Plaintiff's shoulders, Trejo
6 violently shook Plaintiff and yelled at him for not listening to Trejo. Plaintiff felt threatened by this
7 especially because Trejo often spoke of participating in jujitsu and in fights.

8 22. Approximately a week after the incidents with Trejo, Plaintiff met with his Human
9 Resources supervisor, Dalton. Despite Plaintiff explaining to Dalton his nervousness around Trejo,
10 Dalton brought Trejo into the meeting with Plaintiff. At that time, Trejo admitted to grabbing and
11 shaking Plaintiff. Plaintiff left that meeting feeling just as nervous as before, while Trejo stayed and
12 spoke further with Dalton.

13 23. Later Plaintiff met again with Dalton and another Human Resources professional, Kae
14 King, to discuss Trejo further. Plaintiff mentioned his concerns with Trejo's comments regarding
15 Plaintiff's faith. King and Dalton were dismissive during that meeting. During this meeting, Plaintiff
16 brought up Trejo's drinking. Dalton and King were alarmed when Plaintiff stated Trejo had offered him
17 shots of liquor during the day. Dalton and King stated they would address this issue with him. Plaintiff
18 further explained that he was afraid of Trejo especially when he was intoxicated and boasting about his
19 jujitsu accomplishments and fighting prowess.

20 24. Plaintiff cited a workplace injury to his wrist as the primary reason for his resignation on
21 May 10, 2022. At that time, Plaintiff told Dalton that he would be seeking therapy to address how the
22 hostile work environment affected him.

23 **FIRST CAUSE OF ACTION**

24 **Failure to Pay Overtime Wages**

25 **(Against all Defendants)**

26 25. Plaintiff realleges all paragraphs alleged above as though fully set forth here.

27 26. Labor Code section 510 and Wage Order 7 requires an employee be paid overtime (i.e.,
28 one and a half (1.5) times their regular rate of pay) if the employee works (a) more than eight (8) hours

1 in one workday, (b) more than of forty (40) hours in any one workweek, and (c) and the first eight (8)
2 hours worked on the seventh day of work in a workweek.

3 27. California law also requires an employee be paid double time (*i.e.*, two (2) times their
4 regular rate of pay) if the employee works (a) more than twelve (12) hours in one workday, or (b) more
5 than eight (8) hours on the seventh day of a workweek. This overtime must be calculated to include
6 unpaid on-duty mealtime and work performed off-the-clock when employees' hours exceeded eight in a
7 day or forty in a week.

8 28. Labor Code section 1198 states:

9 Notwithstanding any agreement to work for a lesser wage, any employee
10 receiving less than the legal minimum wage or the legal overtime
11 compensation applicable to the employee is entitled to recover in a civil
12 action the unpaid balance of the full amount of this minimum wage or
overtime compensation, including interest thereon, reasonable attorney's
fees, and costs of suit.

13 29. As explained above, Defendants have unlawfully denied Plaintiff the payment of earned
14 overtime compensation in violation of Labor Code sections 510, 558, 1194, 1198, and Wage Order 7.
15 Defendants therefore are liable to Plaintiff and the Class for unpaid overtime compensation.

16 30. Under Labor Code section 1194, Plaintiff and the Class and are entitled to recover such
17 unpaid overtime compensation, interest, attorney's fees, and costs.

18 **SECOND CAUSE OF ACTION**

19 **Failure to Provide Meal Breaks**

20 **(Against all Defendants)**

21 31. Plaintiff realleges all paragraphs alleged above as though fully set forth here.

22 32. Labor Code section 512 states an employer shall not employ an employee for a work
23 period of more than five (5) hours per day without providing the employee with a meal period of not less
24 than thirty (30) minutes. The employee must be completely free from work during this meal break.
25 Failing to provide a meal break entitles the employee to one (1) additional hour of pay at the employee's
26 regular rate of compensation for each workday that the break was not provided. (Lab. Code § 226.7; see
27 also 8 Cal. Code. Regs. §11070, subsec. 11.)
28

1 33. Defendants failed to provide Plaintiff an opportunity to take a meal break as described
2 above.

3 34. The extra pay for missed breaks constitutes wages under California law. (*Betancourt v.*
4 *OS Restaurant Services, LLC* (2022) 83 Cal.App.5th 132, 134.)

5 35. Defendants are liable to Plaintiff for one additional hour of pay at Plaintiff's regular rate
6 of pay for each day that a meal break was not provided, along with costs and attorney's fees.

7 **THIRD CAUSE OF ACTION**

8 **Failure to Provide Rest Breaks**

9 **(Against all Defendants)**

10 36. Plaintiff realleges all paragraphs alleged above as though fully set forth here.

11 37. Wage Order 7, section 12, provides:

12 Every employer shall authorize and permit all employees to take rest
13 periods, which insofar as practicable shall be in the middle of each work
14 period. The authorized rest period time shall be based on the total hours
15 worked daily at the rate of ten (10) minutes net rest time per four (4) hours
16 or major fraction thereof . . . Authorized rest period time shall be counted
as hours worked for which there shall be no deduction from wages. (8 Cal.
Code. Regs. §11070, subsec. 12.)

17 38. Failure to provide a rest break entitles the employee to a rest premium equal to one hour
18 of their regular pay rate in addition to the time they already worked. (Lab. Code § 226.7.)

19 39. Defendants failed to provide Plaintiff an opportunity to take a rest break as required by
20 California law.

21 40. The extra pay for missed breaks constitutes wages under California law. (*Betancourt v.*
22 *OS Restaurant Services, LLC* (2022) 83 Cal.App.5th 132, 134.)

23 41. Defendants are liable to Plaintiff for one additional hour of pay at Plaintiff's regular rate
24 of pay for each day that a rest break was not provided, along with costs and attorney's fees.

25 **FOURTH CAUSE OF ACTION**

26 **Waiting Time Penalties pursuant to Labor Code section 203(a)**

27 **(Against all Defendants)**

28 42. Plaintiff realleges all paragraphs alleged above as though fully set forth here.

1 43. Plaintiff resigned from their employment with Defendants. Pursuant to Labor Code
2 section 201, Plaintiff's final wages were due and payable no later than 72 hours after providing notice of
3 Plaintiff's resignation.

4 44. Defendants had failed to pay all wages due to Plaintiff upon resignation.

5 45. Labor Code section 203 provides:

6 If an employer willfully fails to pay, without abatement or reduction, in
7 accordance with Sections 201 , 201.3 , 201.5 , 201.9 , 202 , and 205.5 , any
8 wages of an employee who is discharged or who quits, the wages of the
9 employee shall continue as a penalty from the due date thereof at the same
rate until paid or until an action therefor is commenced; but the wages shall
not continue for more than 30 days.

10 46. In violation of California law, Defendants have knowingly and willfully refused to
11 perform their obligations to compensate Plaintiff for all wages earned and all hours worked upon the end
12 of Plaintiff's employment.

13 47. Pursuant to Labor Code section 203, Plaintiff is entitled to continuing wages for up to
14 thirty days.

15 **FIFTH CAUSE OF ACTION**

16 **Failure to Accurate Wage Statements**

17 **(Against all Defendants)**

18 48. Plaintiff realleges all paragraphs alleged above as though fully set forth here.

19 49. An employer in California must provide an itemized wage statement to their employees
20 as prescribed by Labor Code section 226(a)

21 50. Plaintiff has suffered an injury pursuant to Labor Code section 226(e)(2) by Defendant's
22 willful failure to pay rest break premiums, meal break premiums, and overtime wages owed to Plaintiff.

23 51. Plaintiff is informed and believes and thereon allege that the violations of Labor Code
24 section 226 were not isolated and unintentional payroll errors due to a clerical or inadvertent mistake.

25 52. Because of the injury suffered by Plaintiff, Plaintiff is entitled to statutory damages set
26 forth in Labor Code section 226(e), along with costs and attorney's fees.

27 **SIXTH CAUSE OF ACTION**

28 **Willful Misclassification of Non-Exempt Employees**

1 **(Against all Defendants)**

2 53. Plaintiff realleges all paragraphs alleged above as though fully set forth here.

3 54. Under Labor Code section 226.8, the willful misclassification of individuals as
4 independent contractors is strictly prohibited.

5 55. Defendants intentionally and willfully classified Plaintiff and others as independent
6 contractors to circumvent California Labor Code regulations.

7 56. Despite exercising complete control and giving specific direction to Plaintiff during his
8 time working for Defendants

9 57. While Plaintiff was classified as an independent contractor, Plaintiff still performed work
10 that was in the usual course of Defendant's business

11 58. Plaintiff was never engaged in an independently established trade or occupation. Rather,
12 he was just hired by Defendants and simply classified as an independent contractor.

13 59. As explained above, Defendants have unlawfully and willfully classified Plaintiff as an
14 independent contractor in violation of Labor Code section 226.8. Defendants therefore are liable to
15 Plaintiff for civil penalties.

16 **SEVENTH CAUSE OF ACTION**

17 **Private Attorney General Act (PAGA) Claims**

18 **(Against all Defendants)**

19 60. Plaintiff realleges all paragraphs alleged above as though fully set forth here.

20 61. Under PAGA, Plaintiff is permitted to seek civil penalties for violations of the Labor
21 Code through a civil action brought by Plaintiff and other current or former employees.

22 62. Labor Code section 558 states:

23 Any employer or other person acting on behalf of an employer who violates, or causes to
24 be violated, a section of this chapter or any provision regulating hours and days of work
25 in any order of the Industrial Welfare Commission shall be subject to a civil penalty as
26 follows:(1) For any initial violation, fifty dollars (\$50) for each underpaid employee for
27 each pay period for which the employee was underpaid in addition to an amount
28 sufficient to recover underpaid wages.(2) For each subsequent violation, one hundred
dollars (\$100) for each underpaid employee for each pay period for which the employee
was underpaid in addition to an amount sufficient to recover underpaid wages.

63. Labor Code section 2699(f) states:

For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows:

(1) If, at the time of the alleged violation, the person does not employ one or more employees, the civil penalty is five hundred dollars (\$500).

(2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

(3) If the alleged violation is a failure to act by the Labor and Workplace Development Agency, or any of its departments, divisions, commissions, boards, agencies, or employees, there shall be no civil penalty.

64. As a result of Defendants' conduct alleged above, Plaintiff seeks penalties under PAGA on behalf of Plaintiff and all other aggrieved employees. Plaintiff also seeks reasonable attorney's fees and costs pursuant to Labor Code section 2699(g)(1).

65. Specifically, Plaintiff seeks civil penalties under PAGA on behalf of herself and all other aggrieved employees for Willful Misclassification under Labor Code section 226.8(a)(1), Unpaid Rest Breaks under Labor Code section 226.7 and 8 Cal. Code. Regs. §11070, Unpaid Overtime Pay under Labor Code section 226.7, Failure to Provide Accurate Wage Statements under Labor Code section 226, and Waiting Time Penalties and/or Delay in Payments under Labor Code sections 203 and 204.

66. On or about October 19, 2022, Plaintiff provided written notice to the Labor and Workforce Development Agency through the agency's online system. Plaintiff also sent a copy of this notice to Defendants via certified mail.

67. No response was provided from the LWDA to Plaintiff's letter. Plaintiff therefore has exhausted all administrative procedures required under Labor Code section 2698 *et seq.* Plaintiff may bring a claim for civil penalties cause of action under PAGA.

EIGHTH CAUSE OF ACTION

Fair Employment and Harassment Claims

(Against all Defendants)

68. Plaintiff realleges all paragraphs alleged above as though fully set forth here.

69. Defendants harassed Plaintiff based on Plaintiff's religious beliefs. The harassment created a work environment that was hostile, intimidating, offensive, oppressive, and abusive.

