

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ROBBIN LACEY, on behalf of herself)	
and all similarly situated individuals,)	Civil Action
)	File No.
Plaintiff,)	
v.)	JURY TRIAL DEMANDED
)	
PRIVATE LABEL)	
NUTRACEUTICALS, LLC,)	
)	
Defendant.)	

COMPLAINT FOR DAMAGES

COMES NOW Plaintiff Robbin Lacey (hereinafter “Plaintiff” or “Lacey”), by and through undersigned counsel, on behalf of herself and all similarly situated individuals, and files this Complaint against Defendant Private Label Nutraceuticals, LLC (“Defendant” or “Defendant PLN”) and shows the following:

I. Nature of Complaint

1.

Plaintiff brings this action to obtain full and complete relief and to redress the unlawful employment practices described herein. Plaintiff brings this action as the representative party for all similarly situated employees of Defendant.

2.

This action seeks declaratory relief, along with liquidated and actual damages for Defendant's failure to pay federally mandated overtime wages to Plaintiff and similarly situated individuals in violation of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §201 *et seq.* (hereinafter the "FLSA").

II. Jurisdiction and Venue

3.

The jurisdiction of this Court is invoked pursuant to 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.

4.

Defendant is a Georgia limited liability company, and resides in this district. Defendant does business in and is engaged in commerce in the State of Georgia. Venue is proper in this district pursuant to 29 U.S.C. § 1391(b) because Defendant resides in this district.

III. Parties and Facts

5.

Plaintiff is a resident of the State of Georgia.

6.

From January 21, 2015 to December 6, 2016, Plaintiff was employed by Defendant as an inside sales representative at Defendant's Atlanta, Georgia office located at 1900 Beaver Ridge Circle, Norcross, Georgia 30071.

7.

Plaintiff's primary duty throughout her employment was non-exempt inside sales work, specifically working in a call center environment selling nutritional supplements to Defendant's commercial customers.

8.

At any given time during Plaintiff's employment with Defendant, the company employed approximately 15-20 other inside sales representatives in the Atlanta office where Plaintiff worked.

9.

Defendant's inside sales representatives, including Plaintiff, were required to attend weekly sales meetings led by the Vice President of Operations and Sales Manager. These mandatory meetings were set to discuss, *inter alia*, weekly sales numbers, procedures for making sales calls, and pricing of products.

10.

Throughout Plaintiff's employment with Defendant, Plaintiff worked alongside the other inside sales representatives throughout the work week in a call center environment.

11.

Defendant's inside sales representatives all performed the same job duties, specifically inside sales of nutritional supplements to commercial customers.

12.

Plaintiff and the other inside sales representatives were not regularly and customarily engaged in work away from the employer's place of business, as that term has been defined by the FLSA.

13.

All of Defendant's inside sales representatives in the Atlanta, Georgia office reported to the same supervisor.

14.

When Plaintiff began her employment, Paul Marotta, Vice President of Operations, was the supervisor for the insides sales representatives.

15.

In approximately September 2015, Nathan Coleman became the supervisor of the inside sales representatives. In approximately March 2016, Kai Kalfahs became the supervisor of the inside sales representatives.

16.

Defendant's inside sales representatives received the same Employee Handbook and Job Description.

17.

Plaintiff's and Defendant's other inside sales representatives' primary and virtually only function was to sell dietary supplements to Defendant's business customers.

18.

Defendants' inside sales representatives, including Plaintiff, dealt exclusively with small businesses and commercial accounts.

19.

Defendant's inside sales representatives, including Plaintiff, did not sell to non-business customers or the general public.

20.

The products Defendant's inside sales representatives, including Plaintiff, sold to Defendant's customers were sold in bulk to be resold again by Defendant's customers.

21.

Defendant provided its inside sales representatives, including Plaintiff, with a script that governed the manner for selling product to customers.

22.

In performing their job duties, including their primary duty of inside sales, Defendant's inside sales representatives, including Plaintiff, did not exercise discretion or independent judgment with respect to matters of significance.

23.

The primary duty of Defendant's inside sales representatives, including Plaintiff was non-exempt inside sales work that was not directly related to the management or general business operations of Defendant or its customers.

24.

Most, if not all of Defendant's inside sales representatives, including Plaintiff, regularly worked in excess of 40 hours in given workweeks.

25.

All of Defendant's inside sales representatives were classified as exempt from overtime and did not receive overtime compensation for hours worked in excess of 40 in workweeks.

26.

At any given time, Defendant's inside sales representatives, including Plaintiff were compensated in the same manner. In particular, during part of Plaintiff's employment Defendant paid its sales representatives with commissions and bonus compensation, sometimes including a weekly advance draw on future commissions, for example, when employees earned commissions were below a certain threshold for the week. Later in Plaintiff's employment, Defendant paid its inside sales representatives, including Plaintiff with a salary, plus commissions and bonus compensation.

27.

Throughout Plaintiff's employment, Defendant pay overtime compensation to its inside sales representatives, including Plaintiff.

28.

Plaintiff was an "employee" of Defendant, as that term has been defined by the FLSA, 29 U.S.C.S. § 201 et seq., 29 U.S.C. § 203(e).

29.

Defendant is a private employer engaged in interstate commerce, and its gross revenues exceed \$500,000.00 per year.

30.

Defendant is an “employer” within the definition of the FLSA, § 29 U.S.C. §203(d).

31.

Defendant is governed by and subject to the FLSA, 29 U.S.C. §§ 204 and §207.

IV. Collective Action Allegations

32.

Plaintiff repeats the allegations above, as if set forth fully herein. Plaintiff brings Count I of this Complaint on behalf of herself and other similarly situated individuals pursuant to 29 U.S.C. § 216(b). Plaintiff and the similarly situated individuals are individuals who currently or formerly have been employed by Defendant, at any time during the last three (3) years, as inside sales representatives (hereinafter the “Collective Class”).

33.

At all relevant times, Defendant has employed numerous inside sales representatives in the Atlanta, Georgia office where Plaintiff worked.

34.

Throughout Plaintiff's employment, Defendant's inside sales representatives worked alongside each other in the Atlanta office throughout the work week, performing the same job duties. In particular, Defendant's inside sales representatives worked alongside each other in a call center environment performing the same primary duty of non-exempt inside sales work.

35.

Within the last three years ("the applicable statutory period"), Plaintiff and members of the Collective Class routinely worked in excess of (40) hours per workweek without receiving overtime compensation for all overtime hours worked over 40 hours while performing the duties of inside sales representatives.

36.

Defendant was aware that Plaintiff and members of the Collective Class were working overtime hours without receiving overtime compensation.

37.

During the applicable statutory period, Defendant failed to keep accurate time records for all hours worked by Plaintiff and the Collective Class.

38.

During the applicable statutory period, Defendant closely supervised and controlled the work of Plaintiff and the Collective Class.

39.

During the applicable statutory period, Plaintiff and members of the Collective Class were paid in the same manner.

40.

During the applicable statutory period, Plaintiff the Collective Class did not exercise discretion and independent judgment with respect to matters of significance in the performance of their job duties.

41.

During the applicable statutory period, Defendant misclassified Plaintiff and the Collective Class as exempt from the overtime requirements of the FLSA.

42.

Plaintiff and the Collective Class are entitled to overtime pay for the hours they worked over (40) in given workweeks. Defendant's practices violate the

provisions of the FLSA, 29 U.S.C. § 201, et seq. including but not limited to 29 U.S.C. § 207. As a result of Defendant's unlawful practices, Plaintiff and the Collective Class have suffered lost wages.

Count I

**Violation of the Overtime Wage Requirement of
the Fair Labor Standards Act**

43.

Plaintiff repeats and re-alleges each and every allegation contained in the preceding paragraphs of this Complaint with the same force and effect as if set forth herein.

44.

Defendant has violated the FLSA, 29 U.S.C. § 201, et seq. including but not limited to 29 U.S.C. § 207, by failing to pay overtime wages for hours Plaintiff and the Collective Class worked in excess of (40) hours in given workweeks.

45.

The FLSA, 29 U.S.C. § 207, requires employers to pay employees one and one-half times the regular rate of pay for all hours worked in excess of (40) hours in a workweek.

46.

Defendant suffered and permitted Plaintiff and members of the Collective Class to routinely work more than (40) hours per week without overtime compensation.

47.

Defendant's actions, policies and/or practices as described above violate the FLSA's overtime requirement by regularly and repeatedly failing to compensate Plaintiff and the Collective Class at the required overtime rate.

48.

Defendant knew, or showed reckless disregard for the fact that it failed to pay Plaintiff and the Collective Class overtime compensation in violation of the FLSA.

49.

Defendant failed to accurately report, record and/or preserve records of hours worked by Plaintiff and the Collective Class, and thus has failed to make, keep and preserve records with respect to each of their employees sufficient to determine their wages, hours and other conditions and practices of employment, in violation of the FLSA.

50.

Plaintiff and the Collective Class were subject to the same unlawful policy of Defendant, i.e. Defendant's misclassification of inside sales representatives as "exempt" from the overtime requirements of the FLSA.

51.

Defendant's violations of the FLSA were willful and in bad faith.

52.

Pursuant to the FLSA, 29 U.S.C. § 216, Plaintiff and the Collective Class are entitled to recover the unpaid overtime wage differential, liquidated damages in an equal amount to unpaid overtime, attorneys' fees, and the costs of this litigation incurred in connection with these claims.

Prayer for Relief

WHEREFORE, Plaintiff respectfully requests that this Court:

- (A) Grant Plaintiff a trial by jury as to all triable issues of fact;
- (B) Enter judgment awarding Plaintiff unpaid wages pursuant to the FLSA, 29 U.S.C. §§ 206(d), 207, and 216, liquidated damages as provided by 29 U.S.C. § 216, pre-judgment interest on unpaid wages, court costs, expert witness fees, and reasonable attorneys' fees

pursuant to 29 U.S.C. § 216, and all other remedies allowed under the FLSA; and,

- (C) Grant declaratory judgment declaring that Plaintiff's rights have been violated;
- (D) Grant conditional certification and provide notice of this action to all similarly situated individuals;
- (E) Grant leave to add state law claims if necessary; and
- (F) Award Plaintiff such further and additional relief as may be just and appropriate.

Respectfully submitted,

This 13th day of January, 2017.

BARRETT & FARAHANY

/s/ V. Severin Roberts

V. Severin Roberts

Georgia Bar No. 940504

Attorney for Plaintiff Robbin Lacey

1100 Peachtree Street, Suite 500
Atlanta, Georgia 30309
Telephone: (404) 214-0120
Facsimile: (404) 214-0125
vsroberts@justsiceatwork.com

CIVIL COVER SHEET

The JS44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form is required for the use of the Clerk of Court for the purpose of initiating the civil docket record. (SEE INSTRUCTIONS ATTACHED)

I. (a) PLAINTIFF(S)

ROBBIN LACEY, on behalf of herself and all similarly situated individuals

DEFENDANT(S)

PRIVATE LABEL NUTRACEUTICALS, LLC

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF (EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL ADDRESS)

V. Severin Roberts
Barrett & Farahany
1100 Peachtree Street NE, Suite 500
Atlanta, GA 30309
404.214.0120, severin@justiceatwork.com

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- 1 U.S. GOVERNMENT PLAINTIFF
2 U.S. GOVERNMENT DEFENDANT
3 FEDERAL QUESTION (U.S. GOVERNMENT NOT A PARTY)
4 DIVERSITY (INDICATE CITIZENSHIP OF PARTIES IN ITEM III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) (FOR DIVERSITY CASES ONLY)

- PLF DEF
1 1 CITIZEN OF THIS STATE
2 2 CITIZEN OF ANOTHER STATE
3 3 CITIZEN OR SUBJECT OF A FOREIGN COUNTRY
PLF DEF
4 4 INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE
5 5 INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE
6 6 FOREIGN NATION

IV. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- 1 ORIGINAL PROCEEDING
2 REMOVED FROM STATE COURT
3 REMANDED FROM APPELLATE COURT
4 REINSTATED OR REOPENED
5 TRANSFERRED FROM ANOTHER DISTRICT (Specify District)
6 MULTIDISTRICT LITIGATION - TRANSFER
7 APPEAL TO DISTRICT JUDGE FROM MAGISTRATE JUDGE JUDGMENT
8 MULTIDISTRICT LITIGATION - DIRECT FILE

V. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE - DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

This action is brought for violation of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §201 et seq.

(IF COMPLEX, CHECK REASON BELOW)

- 1. Unusually large number of parties.
2. Unusually large number of claims or defenses.
3. Factual issues are exceptionally complex.
4. Greater than normal volume of evidence.
5. Extended discovery period is needed.
6. Problems locating or preserving evidence.
7. Pending parallel investigations or actions by government.
8. Multiple use of experts.
9. Need for discovery outside United States boundaries.
10. Existence of highly technical issues and proof.

CONTINUED ON REVERSE

FOR OFFICE USE ONLY

RECEIPT # AMOUNT \$ APPLYING IFP MAG. JUDGE (IFP)
JUDGE MAG. JUDGE (Referral) NATURE OF SUIT CAUSE OF ACTION

VI. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT - "0" MONTHS DISCOVERY TRACK

- 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
- 152 RECOVERY OF DEFAULTED STUDENT LOANS (Excl. Veterans)
- 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS

CONTRACT - "4" MONTHS DISCOVERY TRACK

- 110 INSURANCE
- 120 MARINE
- 130 MILLER ACT
- 140 NEGOTIABLE INSTRUMENT
- 151 MEDICARE ACT
- 160 STOCKHOLDERS' SUITS
- 190 OTHER CONTRACT
- 195 CONTRACT PRODUCT LIABILITY
- 196 FRANCHISE

REAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 210 LAND CONDEMNATION
- 220 FORECLOSURE
- 230 RENT LEASE & EJECTMENT
- 240 TORTS TO LAND
- 245 TORT PRODUCT LIABILITY
- 290 ALL OTHER REAL PROPERTY

TORTS - PERSONAL INJURY - "4" MONTHS DISCOVERY TRACK

- 310 AIRPLANE
- 315 AIRPLANE PRODUCT LIABILITY
- 320 ASSAULT, LIBEL & SLANDER
- 330 FEDERAL EMPLOYERS' LIABILITY
- 340 MARINE
- 345 MARINE PRODUCT LIABILITY
- 350 MOTOR VEHICLE
- 355 MOTOR VEHICLE PRODUCT LIABILITY
- 360 OTHER PERSONAL INJURY
- 362 PERSONAL INJURY - MEDICAL MALPRACTICE
- 365 PERSONAL INJURY - PRODUCT LIABILITY
- 367 PERSONAL INJURY - HEALTH CARE/ PHARMACEUTICAL PRODUCT LIABILITY
- 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

TORTS - PERSONAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 370 OTHER FRAUD
- 371 TRUTH IN LENDING
- 380 OTHER PERSONAL PROPERTY DAMAGE
- 385 PROPERTY DAMAGE PRODUCT LIABILITY

BANKRUPTCY - "0" MONTHS DISCOVERY TRACK

- 422 APPEAL 28 USC 158
- 423 WITHDRAWAL 28 USC 157

CIVIL RIGHTS - "4" MONTHS DISCOVERY TRACK

- 440 OTHER CIVIL RIGHTS
- 441 VOTING
- 442 EMPLOYMENT
- 443 HOUSING/ ACCOMMODATIONS
- 445 AMERICANS with DISABILITIES - Employment
- 446 AMERICANS with DISABILITIES - Other
- 448 EDUCATION

IMMIGRATION - "0" MONTHS DISCOVERY TRACK

- 462 NATURALIZATION APPLICATION
- 465 OTHER IMMIGRATION ACTIONS

PRISONER PETITIONS - "0" MONTHS DISCOVERY TRACK

- 463 HABEAS CORPUS- Alien Detainee
- 510 MOTIONS TO VACATE SENTENCE
- 530 HABEAS CORPUS
- 535 HABEAS CORPUS DEATH PENALTY
- 540 MANDAMUS & OTHER
- 550 CIVIL RIGHTS - Filed Pro se
- 555 PRISON CONDITION(S) - Filed Pro se
- 560 CIVIL DETAINEE: CONDITIONS OF CONFINEMENT

PRISONER PETITIONS - "4" MONTHS DISCOVERY TRACK

- 550 CIVIL RIGHTS - Filed by Counsel
- 555 PRISON CONDITION(S) - Filed by Counsel

FORFEITURE/PENALTY - "4" MONTHS DISCOVERY TRACK

- 625 DRUG RELATED SEIZURE OF PROPERTY 21 USC 881
- 690 OTHER

LABOR - "4" MONTHS DISCOVERY TRACK

- 710 FAIR LABOR STANDARDS ACT
- 720 LABOR/MGMT. RELATIONS
- 740 RAILWAY LABOR ACT
- 751 FAMILY and MEDICAL LEAVE ACT
- 790 OTHER LABOR LITIGATION
- 791 EML. RET. INC. SECURITY ACT

PROPERTY RIGHTS - "4" MONTHS DISCOVERY TRACK

- 820 COPYRIGHTS
- 840 TRADEMARK

PROPERTY RIGHTS - "8" MONTHS DISCOVERY TRACK

- 830 PATENT

SOCIAL SECURITY - "0" MONTHS DISCOVERY TRACK

- 861 HIA (1395f)
- 862 BLACK LUNG (923)
- 863 DIWC (405(g))
- 863 DIWW (405(g))
- 864 SSID TITLE XVI
- 865 RSI (405(g))

FEDERAL TAX SUITS - "4" MONTHS DISCOVERY TRACK

- 870 TAXES (U.S. Plaintiff or Defendant)
- 871 IRS - THIRD PARTY 26 USC 7609

OTHER STATUTES - "4" MONTHS DISCOVERY TRACK

- 375 FALSE CLAIMS ACT
- 376 Qui Tam 31 USC 3729(a)
- 400 STATE REAPPORTIONMENT
- 430 BANKS AND BANKING
- 450 COMMERCE/ICC RATES/ETC.
- 460 DEPORTATION
- 470 RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS
- 480 CONSUMER CREDIT
- 490 CABLE/SATELLITE TV
- 890 OTHER STATUTORY ACTIONS
- 891 AGRICULTURAL ACTS
- 893 ENVIRONMENTAL MATTERS
- 895 FREEDOM OF INFORMATION ACT
- 899 ADMINISTRATIVE PROCEDURES ACT / REVIEW OR APPEAL OF AGENCY DECISION
- 950 CONSTITUTIONALITY OF STATE STATUTES

OTHER STATUTES - "8" MONTHS DISCOVERY TRACK

- 410 ANTI-TRUST
- 850 SECURITIES / COMMODITIES / EXCHANGE

OTHER STATUTES - "0" MONTHS DISCOVERY TRACK

- 896 ARBITRATION (Confirm / Vacate / Order / Modify)

*** PLEASE NOTE DISCOVERY TRACK FOR EACH CASE TYPE. SEE LOCAL RULE 26.3**

VII. REQUESTED IN COMPLAINT:

- CHECK IF CLASS ACTION UNDER F.R.Civ.P. 23 DEMAND \$ _____
- JURY DEMAND YES NO (CHECK YES ONLY IF DEMANDED IN COMPLAINT)

VIII. RELATED/REFILED CASE(S) IF ANY

JUDGE _____ DOCKET NO. _____

CIVIL CASES ARE DEEMED RELATED IF THE PENDING CASE INVOLVES: (CHECK APPROPRIATE BOX)

- 1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 2. SAME ISSUE OF FACT OR ARISES OUT OF THE SAME EVENT OR TRANSACTION INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT, COPYRIGHT OR TRADEMARK INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 4. APPEALS ARISING OUT OF THE SAME BANKRUPTCY CASE AND ANY CASE RELATED THERETO WHICH HAVE BEEN DECIDED BY THE SAME BANKRUPTCY JUDGE.
- 5. REPETITIVE CASES FILED BY PRO SE LITIGANTS.
- 6. COMPANION OR RELATED CASE TO CASE(S) BEING SIMULTANEOUSLY FILED (INCLUDE ABBREVIATED STYLE OF OTHER CASE(S)):

- 7. EITHER SAME OR ALL OF THE PARTIES AND ISSUES IN THIS CASE WERE PREVIOUSLY INVOLVED IN CASE NO. _____, WHICH WAS DISMISSED. This case IS IS NOT (check one box) SUBSTANTIALLY THE SAME CASE.

s/ V. Severin Roberts

1/13/2017

SIGNATURE OF ATTORNEY OF RECORD

DATE

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Unpaid Overtime Lawsuit Filed Against Private Label Nutraceuticals](#)
