

12:39pm

COURT FILE NUMBER 2101-04409
COURT Court of Queen's Bench of Alberta
JUDICIAL CENTRE CALGARY
PLAINTIFF DANIEL SAEZ
DEFENDANT OGEN LTD.
DOCUMENT STATEMENT OF DEFENCE

PARTY FILING THIS DOCUMENT: OGEN LTD.

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
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Attention: Catherine A. Crang, Q.C.
File No.: 29415.004

Note: State below only facts and not evidence (Rule 13.6)

Statement of facts relied on:

1. Save and except as expressly admitted herein, the Defendant, Ogen Ltd. ("Ogen"), denies each and every allegation set forth in the Statement of Claim filed by the Plaintiff, Daniel Saez ("Saez"), on April 9, 2021.
2. Ogen admits paragraph 2 of the Statement of Claim.
3. Ogen is a relatively new business operating in the cannabis industry. Ogen was incorporated in 2017 under the name Bloom Cultivation Ltd., and in 2020 changed its name to Ogen. Ogen grows small-batch, craft cannabis, at its facility in Calgary, Alberta.
4. Saez commenced employment with Ogen on October 5, 2019 as "Head Grower" in Ogen's Calgary facility. Saez's employment with Ogen was terminated less than 16 months later on January 25, 2021 (the "Termination Date").
5. As Head Grower, Saez's employment duties included the following:
 - (a) Training employees on plant breeding, nutrition, disease, pest control, etc.
 - (b) Developing cannabinoid and terpene extraction procedures;
 - (c) Introducing a breeding program;
 - (d) Building relationships between the company and industry experts;
 - (e) Additional tasks as required to ensure the health of the plants and the progression of the company's cultivation practices; and

- (f) Other such duties as were consistent with and/or ancillary to the position of Head Grower, including those described in paragraph 3 of the Statement of Claim.
6. As of the Termination Date, Saez had been employed by Ogen for 1 year, 3 months and 21 days (less than 16 months in total).
 7. Insofar as is known to Ogen, as of the Termination Date Saez was 33 years of age.
 8. As of the Termination Date, Saez earned a base salary of \$105,000 per annum and was entitled to 10 days of paid vacation per annum. He also participated in Ogen's group benefits plan.
 9. Upon the termination of his employment with Ogen, Ogen provided Saez with the following:
 - (a) All of Saez's regular compensation and benefits up to the Termination Date;
 - (b) All of Saez's accrued and outstanding vacation pay;
 - (c) An additional and gratuitous payment equivalent to one (1) week of Saez's regular salary in relation to a "COVID bonus" implemented by Ogen as a result of the COVID-19 pandemic; and
 - (d) One (1) week of termination pay in accordance with the statutory requirements set out in Alberta's *Employment Standards Code*.
 10. In addition to the foregoing, on the Termination Date Ogen also extended to Saez an offer of settlement in exchange for Saez executing a release, which Saez did not accept.
 11. Ogen denies that Saez is owed any further compensation arising from the termination of his employment.
 12. At all material times, Ogen conducted itself with the utmost good faith both during Saez's employment with Ogen and in the context of the termination of Saez's employment. Ogen specifically denies that it breached its duty of good faith in terminating Saez's employment, as alleged in the Statement of Claim or at all.
 13. Ogen further denies that it engaged in any "egregious", "high-handed", or "insensitive" behaviour in terminating Saez's employment, including the behaviour alleged in paragraph 13 of the Statement of Claim, and puts Saez to the strict proof of these allegations.
 14. Ogen further denies that it has conducted itself in "bad faith" and in such a "public", "egregious" and "deplorable" manner that it "warrants condemnation of this Court", as alleged in paragraphs 14 and 15 of the Statement of Claim and puts Saez to the strict proof of these allegations. Ogen has done no such thing. Ogen has consistently conducted itself in with honour and integrity.
 15. Ogen seeks costs from Saez on a solicitor and its own client, full indemnity, basis with respect to having to defend Saez's allegation referred to above, or costs on some other escalated basis as this honourable Court may consider just.

16. On the contrary, and as further described below, it is Saez who has conducted himself in a manner that is high-handed, spiteful, and vindictive.
17. Prior to joining Ogen in October of 2019, Saez was a resident of Spain and met the President of Ogen at a number of trade shows and other industry events. During a series of conversations leading up to Ogen offering Saez an employment position with Ogen, Saez represented to Ogen that, among other things, he was a highly experienced cannabis grower and businessman. Based on, and in reliance on, these representations, Ogen offered Saez the Head Grower position and assisted with his move to Canada. Ogen's assistance in this regard included the following:
 - (a) Paying Saez's moving and travel expenses in relation to his move to Canada, which amounted to approximately \$10,000;
 - (b) Facilitating and paying for Saez and his common law partner to obtain all necessary Canadian permits to allow them to move to and work in Canada, including paying for all legal expenses incurred in connection therewith, which amounted to approximately \$15,000;
 - (c) Inviting Saez to stay at the personal residence of Ogen's President upon his arrival in Canada, as Saez was unfamiliar with his surroundings and needed help on a personal level to get himself set up to live and work in Canada, which help was provided by the President;
 - (d) Acting as a sponsor for Saez in relation to his work in Canada; and
 - (e) Such further and other particulars as shall be proven at the trial of this Action.
18. Furthermore, during the course of Saez's employment with Ogen, Ogen facilitated and paid for various extensions of Canadian work and residence permits for Saez and his common law partner, including all legal expenses in relation thereto.
19. Ogen's decision to terminate Saez's employment was made in good faith and for Ogen's own legitimate business reasons, and Ogen denies any and all allegations to the contrary.
20. During Saez' employment with Ogen, Ogen began to lose faith and trust in Saez and his ability to properly perform his job duties and work effectively and in a collegial manner with his co-workers. While Ogen considered terminating Saez's employment for just cause, it ultimately decided to avoid making such an allegation. However, Ogen nevertheless had valid business reasons to end the employment relationship and did not act in bad faith in doing so as alleged by Saez. Among other things, Ogen's decision to terminate Saez's employment included the following reasons:
 - (a) There were at least six (6) other employees who voluntarily left Ogen's employ as a result of Saez's poor management skills, poor communication skills, aggressive behaviour, and because they were not willing to work with him any longer. In particular, shortly before Saez's employment was terminated, Ogen lost six (6) employees over the span of only a few weeks, one of whom was a key employee who was intimately involved with Ogen's cultivation team and who subsequently became employed by one of Ogen's competitors. During the exit interviews with

these employees, several of them broke into tears and made very alarming comments about Saez which could not be ignored by Ogen;

- (b) Saez's poor management style and people skills led to very low morale among the Ogen staff members and the cultivation team in particular;
 - (c) On a number of occasions Saez told other Ogen employees, including the President and numerous members of his team, that he had several other opportunities to become employed with other cannabis businesses, which he was considering, which was extremely disruptive to Ogen's business and employee morale;
 - (d) Saez made a number of poor decisions relating to plant health which his team disagreed with. He was unwilling to accept responsibility for his poor decisions and lost the faith of his team. The decisions made by Saez led to a deterioration of the quality of the plants to the point where changes needed to be made in the cultivation department;
 - (e) Ogen had become very concerned about the representations that Saez made about his expertise in the industry and felt that Saez had misrepresented both his skill level and expertise and his ability to motivate and work with a team; and
 - (f) Such further and other particulars as shall be proven at the trial of this Action.
21. Furthermore, after the Termination Date Ogen learned about several other troubling matters concerning Saez, both during his employment and after the Termination Date, including the following:
- (a) After the Termination Date, several employees reported to Ogen that Saez was verbally abusive to his subordinates during his employment with Ogen;
 - (b) After the Termination Date, Saez told a number of current and former employees of Ogen of his plans to sue Ogen and has encouraged others to sue Ogen. In this context, Saez has made false, defamatory, negative and/or derogatory statements about Ogen;
 - (c) Notwithstanding Saez's obligation to return all of Ogen's property to Ogen upon his dismissal, approximately two (2) months after the Termination Date Ogen learned that Saez had in his possession a particularly expensive piece of equipment that belonged to Ogen (namely, a "rosin press" worth approximately \$6,000). Only after this was brought to the attention of Saez's counsel did Saez return the rosin press to Ogen;
 - (d) In approximately mid-May, Ogen learned that Saez was involved in a social media campaign about Ogen, during which he made false, defamatory, negative and/or derogatory statements about Ogen which were clearly designed to tarnish Ogen's reputation in the cannabis industry;
 - (e) The deterioration of the quality of the plants, over which Saez had responsibility, became more apparent following the Termination Date. The decisions which led to the visible plant deterioration weeks prior to Saez's departure from Ogen

resulted in lower quality cannabis, which was subsequently confirmed by independent third-party laboratory testing; and

- (f) Such further and other particulars as shall be proven at the trial of this Action.
22. Ogen denies that the contract of employment between Ogen was a fixed term contract as alleged in the Statement of Claim or at all and puts Saez to the strict proof of such allegation.
23. Furthermore, when Ogen and Saez agreed to extend his employment, the main purpose was to satisfy the Canadian authorities that Saez continued to be employed in Canada. There was never any intent, express or implied, to enter into a fixed term employment contract with Saez.
24. Ogen denies that Saez has suffered any damages relating to any psychological injuries, as alleged or at all, and puts Saez to the strict proof thereof. Further, or in the alternative, any such injuries are not recoverable by Saez because there has been no breach of a duty of good faith or fair dealing by Ogen through which such damages may arise.
25. On several occasions during Saez's employment with Ogen, and particularly during the fall of 2020 and leading up to the Termination Date, Saez made a number of comments to his co-workers, including the President of Ogen, that he was being highly sought after by other businesses in the cannabis industry to leave Ogen and go work for them, and that he had multiple offers of employment to consider.
26. Even further, on the Termination Date, after he was advised that his employment would be terminated, he advised Ogen that he would find a new position "instantly".
27. Ogen denies that Saez suffered any losses or damages, as alleged in the Statement of Claim or at all and puts Saez to the strict proof thereof.
28. In the alternative, if Saez has suffered any of the losses or damages claimed in the Statement of Claim, which is not admitted but denied, Ogen states, and the fact is, that Saez has:
- (a) Failed to make reasonable and diligent efforts to seek new employment or other work or sources of income following the Termination Date;
 - (b) Failed to accept reasonable employment or other work or sources of income that would have resulted in no lost income;
 - (c) Partially or fully mitigated his alleged losses by obtaining new employment or such other type of work resulting in income to him following the Termination Date; and
 - (d) Such further and other particulars as shall be proven at the trial of this Action.
29. Further, and in the alternative, if Saez has suffered damages as a consequence of the termination of his employment, then he has fully or partially mitigated his damages by obtaining replacement employment or some other type of income replacement (including, but not limited to, receiving employment insurance benefits or other governmental assistance or other income from legal or illegal means). Any

compensation or income replacement, howsoever earned by Saez during his notice period (including income earned by illegal means), must be set off against any and all damages claimed.

30. Further, Ogen states that any income that Saez could have earned through reasonable alternative employment or contractor work, or the like, in mitigation of his damages needs to be accounted for in assessing any damages sustained by Saez, which damages are not admitted by denied by Ogen.
31. In response to the whole of the Statement of Claim, by providing Saez with the payments in lieu of reasonable notice as described herein, Ogen fully satisfied all of its obligations to Saez for the termination of his employment. As such, Saez has no basis for a claim for compensation in lieu of reasonable notice.
32. Further, Ogen states that the offer it made to Saez on the Termination Date was reasonable and ought to have been accepted, and Ogen seeks costs from Saez in relation to this Action as a result of Saez failing to accept Ogen's offer.
33. In the further alternative, if Saez has suffered the losses or damages alleged, which is denied, the reasonable notice period and amounts claimed in the Statement of Claim are excessive and unreasonable in the circumstances.

Remedy sought:

34. Ogen seeks the following relief:
 - (a) Dismissal of the claim advanced by Saez;
 - (b) Costs on a solicitor and its own client, full indemnity, basis with respect Saez's unfounded allegations that Ogen's conduct was in bad faith, high-handed, insensitive, egregious, and deplorable, or costs on some other escalated basis as this honourable Court may consider just;
 - (c) Costs of this action; and
 - (d) Such further and other relief as this Honourable Court deems just and appropriate.

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COURT COURT OF QUEEN'S BENCH OF ALBERTA
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PLAINTIFF DANIEL SAEZ
DEFENDANT OGEN LTD.
DOCUMENT **STATEMENT OF CLAIM**
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NOTICE TO DEFENDANT(S)

You are being sued. You are a defendant.

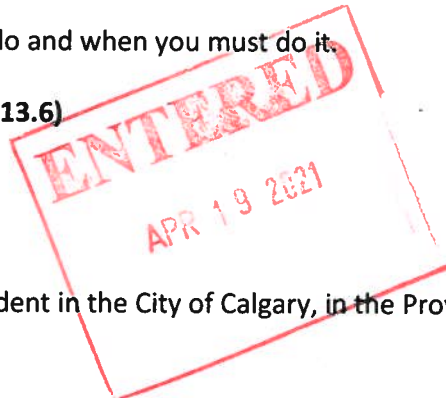
Go to the end of this document to see what you can do and when you must do it.

Note: State below only facts and not evidence (Rule 13.6)

Statement of facts relied on:

The Parties

1. The Plaintiff, DANIEL SAEZ is an individual resident in the City of Calgary, in the Province of Alberta.
2. The Defendant, OGEN LTD. ("OGEN") is a body corporate duly registered pursuant to the *Business Corporations Act* (Alberta) that at all material times hereto carried on business in the field of legal cannabis production in the City of Calgary, in the Province of Alberta.



The Employment Contract

3. On or about July 29, 2019, the Plaintiff, DANIEL SAEZ was hired by the Defendant, OGEN as "Head Grower". As part of his position, the Plaintiff's duties included without limitation:

- a. Planning, organizing, controlling, scheduling and coordinating tasks to Grower Assistants in areas including cloning, planting, fertilizing, watering, crop monitoring, propagation, pest control, plant disease, nutrients, lighting, grow room maintenance, cleaning and sanitizing all production areas;
- b. Assessing and identifying plant disease and fungus and implement an Integrated Pest Management (IPM) system;
- c. Operating, monitoring and optimizing plant growing systems to maintain exceptional quality standards and maximize production;
- d. Interpreting, complying, optimizing and regularly reporting to Standard Operating Procedures (SOP's), FORM's and Work Instructions;
- e. Adhering to strict protocols outlined in Bloom's Quality Management System (QMS) and Good Production Practices (GPP);
- f. Ensuring production staff abide by Occupational Health and Safety (OHS) protocols and procedures and are using Personal Protective Equipment;
- g. Educating and training production staff to adhere to strict security protocols; and
- h. Encouraging a successful team development through leadership, communication, training and support.

(the "Employment")

4. The Plaintiff, DANIEL SAEZ originally agreed to a term of the Employment with the Defendant, OGEN for a period of one year. On or about September 15, 2020, the Defendant made an offer to the Plaintiff to extend the Employment until on or about October 22, 2022, which he accepted.
5. The Plaintiff, DANIEL SAEZ relocated to Canada from Spain in pursuit of the Employment and lawfully obtained a visa to lawfully work in Canada.

6. The Plaintiff, DANIEL SAEZ diligently performed his duties on behalf of the Defendant, OGEN and provided to be a valuable, reliable, and exemplary employee and was a “key employee” with senior responsibilities.
7. At the material time, the Plaintiff, DANIEL SAEZ received compensation from the Defendant, OGEN in respect of the Employment in the following amounts on an annual basis (plus benefits and vacation time):

Base salary:	\$105,000.00;
TOTAL:	<u>\$105,000.00;</u> and

such further and other particulars of compensation as to be proven at the trial of this action, including without limitation pay for benefits and vacation.

8. The Employment between the Plaintiff, DANIEL SAEZ and the Defendant, OGEN included expressed or, in the alternative, implied terms to the following effect:
- a. The Plaintiff, DANIEL SAEZ’s employment would continue at a minimum until October 22, 2022;
 - b. The Defendant, OGEN would not, without reasonable cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between itself and the Plaintiff, DANIEL SAEZ;
 - c. The Plaintiff, DANIEL SAEZ’s employment could be terminated for just cause immediately and without notice, with reasonable notice, or with pay in lieu of reasonable notice;
 - d. Just cause was contractually agreed to mean “criminal or financial misconduct or malfeasance as determined by a Court of Law and specifically does NOT apply in situations of dissatisfaction with employee job performance, or general frustration or discontent with the CAO/ Council relationship”;

- e. The Defendant, OGEN would conduct its dealings with the Plaintiff, DANIEL SAEZ fairly and in good faith; and
- f. Such further and other expressed or implied terms as to be proven at the trial of this action.

Breach of Employment Contract

- 9. The Plaintiff, DANIEL SAEZ faithfully and dutifully performed his duties in respect of his obligations as an employee of the Defendant, OGEN until on or about January 15, 2021 when, notwithstanding the foregoing, the Defendant dismissed the Plaintiff without just cause or reason, in breach of the Employment, acting in bad faith toward the Plaintiff (the "Wrongful Dismissal").
- 10. The Plaintiff, DANIEL SAEZ advances that due to the fixed term of the Employment with the Defendant, OGEN, the Defendant is obliged to pay any and all remuneration due under the term of the employment contract. The sum of the amount owing in employee wages under his employment contract, for which the Plaintiff claims is equal to \$183,750.00.
- 11. The Plaintiff, DANIEL SAEZ further claims payment for unused accrued vacation pay and benefits, the particulars of which to be proven at the trial of this action.

The Defendant's Bad Faith

- 12. At all material times hereto, the Defendant, OGEN owed the Plaintiff, DANIEL SAEZ a positive duty to act in good faith in its dealings with the Plaintiff throughout the Employment, and especially in the course of the Plaintiff's termination.

13. The Plaintiff, DANIEL SAEZ states that the Defendant, OGEN breached its duty of good faith as it engaged in egregious, high-handed, and insensitive behavior in the course of the Plaintiff's termination and resulting failure to honor its terms pursuant to the Employment and the resulting Wrongful Dismissal, including without limitation failure to pay the Plaintiff adequate pay in lieu of notice, the particulars of which to be proven at the trial of this action.
14. The Plaintiff, DANIEL SAEZ advances that, in requiring him to relocate to Canada from Spain, he has incurred and will continue to incur additional losses and damages in attempting to mitigate his losses, including travel and potential relocation costs for which the Defendant, OGEN, acting in bad faith, is liable. The particulars of this head of damage will be proven at the trial of this action.
15. In the particulars of bad faith pled, the Plaintiff, DANIEL SAEZ states that the conduct of the Defendant, OGEN has been so public, egregious, and deplorable that it warrants the condemnation of this Court. The Plaintiff claims additional damages as against the Defendant in respect of this bad faith, as aggravated, punitive, and exemplary damages.

Further Damages and Particulars

16. The Plaintiff, DANIEL SAEZ has attempted to mitigate his loss by seeking alternate similar employment and starting his own business, but as of this date has been wholly or, in the alternative, partially unsuccessful in securing same.
17. As a result of the Defendant, OGEN's conduct in the course of the Plaintiff, DANIEL SAEZ's termination and consequent breach of its duty of good faith, the Plaintiff has suffered and will continue to suffer psychological damage, the particulars of which to be proven at the trial of this action.

18. The Plaintiff, DANIEL SAEZ has incurred and will continue to incur numerous and various out-of-pocket expenses (“special damages”) due to the Wrongful Dismissal, the particulars of which to be proven at the trial of this action.

Remedy Sought

The Plaintiff, DANIEL SAEZ claims against the Defendant, OGEN as follows:

- a. A declaration that the Defendant has breached a contract as between itself and the Plaintiff or, in the alternative, a declaration that the Plaintiff has been wrongfully dismissed by the Defendant;
- b. Damages for breach of contract or for pay in lieu of notice in the amount of \$183,750.00;
- c. Damages for unpaid vacation pay and benefits, the particulars of which to be proven at the trial of this action;
- d. Damages for travel and relocation costs, the particulars of which to be proven at the trial of this action;
- e. Damages for psychological issues as a result of the Wrongful Dismissal, the particulars of which to be proven at the trial of this action;
- f. Aggravated, punitive, and exemplary damages for bad faith in the amount of \$10,000.00 or, in the alternative, such other amount as this Court deems just and proper;
- g. Special damages in an amount to be proven at the trial of this action;
- h. Judgment interest pursuant to the *Judgment Interest Act* (Alberta);
- i. All goods and services tax payable on any judgment amounts, including costs pursuant to the *Excise Tax Act*, R.S.C. 1985 c.E-15, as amended;
- j. Costs of this action on a solicitor and his/her own client basis; and
- k. Such further and other relief as this Court deems just and proper.

NOTICE TO THE DEFENDANT(S)

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.