SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LYLE E. FRANK** **PART** **11M**

Justice

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WHEAT, THOMAS

Plaintiff,

- v -

VICHIE, TRENT

Defendant.

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INDEX NO. 158627/2024

MOTION DATE 08/22/2025

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82

were read on this motion to/for DISMISS.

Upon the foregoing documents, the motion is granted in part.

Background

According to Plaintiff's allegations, he was employed in Defendant's Manhattan residence as a domestic household worker beginning in August of 2022, as well as in a Chief of Staff role for Defendant's company. Plaintiff alleges that he was "directed and pressured" by Defendant's wife to produce prescription-only controlled substances for Defendant's consumption and that he complied due to fear of termination. He continued to obtain controlled substances for Defendant for most of his employment. Plaintiff alleges that when he eventually decided to no longer procure prescription drugs for Defendant and his wife, Defendant responded by "openly displaying" Nazi-themed materials in the house and by making "demeaning remarks." Defendant argues that the material is academic, related to his wife's degree in Holocaust studies, and that some of the alleged Nazi material is not even related to the Nazis but rather material originating from late twentieth-century Germany.

In March of 2024, Plaintiff was terminated from his role in the company Globalization Partners U.S., Inc., and in conjunction with that termination Plaintiff signed a release (the "Release"). Then in June of 2024, Defendant terminated Plaintiff's employment as a domestic household worker. Plaintiff filed a summons with notice in September of 2024. The original complaint was filed in August of 2025, and Defendant responded with a motion to dismiss. This motion was mooted by the filing of an amended complaint shortly thereafter, which Plaintiff filed now proceeding pro se. The present pre-answer motion to dismiss is brought against the amended complaint.

Standard of Review

It is well settled that when considering a motion to dismiss pursuant to CPLR § 3211, "the pleading is to be liberally construed, accepting all the facts alleged in the pleading to be true and according the plaintiff the benefit of every possible inference." *Avgush v. Town of Yorktown*, 303 A.D.2d 340, 341 [2d Dept. 2003]. Dismissal of the complaint is warranted "if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery." *Connaughton v. Chipotle Mexican Grill, Inc*, 29 N.Y.3d 137, 142 [2017].

CPLR § 3211(a)(5) allows for a complaint to be dismissed because of a valid release. While a valid release generally "constitutes a complete bar", for a signed release the burden shifts to the plaintiff to "show that there has been fraud, duress, or some other fact which will be sufficient to void the release." *Centro Empesarial Cempresa S.A. v. América Móvil, S.A.B. de C.V.*, 17 N.Y.3d 269, 276 [2011].

A party may move for a judgment from the court dismissing causes of action asserted against them based on the fact that the pleading fails to state a cause of action. CPLR

§ 3211(a)(7). For motions to dismiss under this provision, "[i]nitially, the sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law." *Guggenheimer v. Ginzburg*, 43 N.Y. 2d 268, 275 [1977].

Discussion

As an initial matter, the Court notes that the pro se Plaintiff's papers at several times misstate the holdings of cases cited to and include two citations to what appears to be entirely fictional cases – *Sosnovska v. Belle World Beauty, Inc.*, which case name is cited as both a First Department and a Second Department case. Whether the result of reliance on AI or otherwise, the Court cautions Plaintiff to refrain from making false representations to a court. Further citations to non-existent cases or misrepresentations of case holdings will result in sanctions.

Defendant moves to dismiss the amended complaint both on the grounds that the causes of action fail to state a claim, and that the claims are barred by the Release. The amended complaint pleads claims for discrimination and hostile work environment under both the New York State and the New York City Human Rights Law (NYSHRL and NYCHRL), retaliation under NYCHRL, unpaid overtime, failure to provide wage notice, untimely wage payments, and whistleblower retaliation, under the New York Labor Law, and Intentional Infliction of Emotional Distress. Plaintiff opposes the motion. For the reasons that follow, the motion to dismiss is granted as to all claims except for unpaid overtime and failure to provide wage notice.

Defendant's Wife Was Not His Agent

As an initial matter, the majority of the factual allegations in the complaint relate to actions taken by or to Defendant's wife, a non-party. Plaintiff makes a few conclusory statements that Defendant's wife must have been acting on Defendant's behalf but provides nothing more

than mere conclusory statements to that effect. Similarly, the lengthy statements Plaintiff makes that he was able to divine from the wife's "body language" that she had been coerced into saying and doing certain things by the Defendant are, quite frankly, irrelevant to the claims asserted, conclusory, and incredulous (even on the favorable standard of a motion to dismiss). Defendant's wife is not a party to this action by Plaintiff's choice, and Plaintiff has provided nothing more than her status as Defendant's spouse in support of his argument that she was Defendant's agent. This is insufficient to impose liability on Defendant for her actions. *See, e.g., Russell v. New York Univ.*, 42 N.Y.3d 377, 401 [2024] (holding that "in order to hold an individual defendant liable for creating a hostile work environment under NYCHRL, evidence must show that the claim relates directly to the conduct and behavior of the individual"). When analyzing whether Plaintiff has stated a claim, the Court will consider the actions that can be directly imputed to Defendant.

The Release Does Not Bar Plaintiff's Claims

Defendant argues that the Release serves to bar Plaintiff's claims here because in the Release, Plaintiff agreed to waive all claims against any of Everwind Fuels Company's officers. Defendant is the CEO of Everwind Fuels and argues that the Release encompasses the present claims asserted against him. Plaintiff argues that the release was only for claims asserted against Defendant in his capacity as an officer of Everwind, and not in his personal capacity. While Defendant argues that the Release did not necessarily arise only from the context of Plaintiff's employment with Globalization Partners, this is not enough to meet their burden. On a motion to dismiss, the non-movant is afforded every favorable inference. The plain language of the Release refers to claims asserted against "EverWind Fuels Company and any of their past or present officers." Plaintiff's claims asserted here are in relation to his employment as a domestic worker

in Mr. Vichie's residence and are not asserted against Defendant in relation to his role as an officer for EverWind. The language of the Release does not refer to all claims asserted against "Trent Vichie", but all claims asserted against EverWind's officers. Because Defendant has not established at this point that the release encompasses all claims that the Plaintiff has against individuals who happen to be officers in a company covered under the Release, the amended complaint cannot be dismissed on this basis.

The Human Rights Law Discrimination Claims Fail to Allege Unequal Treatment

Plaintiff has asserted various claims under both the New York State and City Human Rights Laws. Because the NYCHRL is "construed more liberally than the NYSHRL, if the plaintiff's claims fail[] under the former, they would necessarily fail under the latter." *Goolsby v. City of New York*, 236 A.D.3d 404, 405 [1st Dept. 2025]. This is because the City HRL has "uniquely broad and remedial purposes, which go beyond those of counterpart State or federal civil rights laws." *Russell v. New York Univ.*, 204 A.D.3d 577, 578 [1st Dept. 2022]. Turning first to the claims for discrimination, Plaintiff argues that he was discriminated against for his membership in the protected class of gay men. Much of the allegations by Plaintiff do not, even taken for true and interpreted with every favorable inference, lend themselves to a discrimination claim. For instance, it is difficult to see how the claim that Defendant unduly pressured Plaintiff to obtain controlled substances for Defendant's personal use can possibly be related to discrimination against Plaintiff on the basis of his orientation.

The only allegations Plaintiff makes that would go towards a discrimination claim based on orientation are that Defendant 1) once commented that he did not "agree with the gay lifestyle"; and 2) displayed Nazi-related books and objects that made Plaintiff uncomfortable, given the treatment of LGBTQ+ individuals in the Nazi regime. There are factual disputes here,

as Defendant argues that the hat Plaintiff viewed as a Nazi hat is simply a German hat from the 1970s, and that the books Plaintiff refer to are academic in nature. On a motion to dismiss, the facts pled by Plaintiff are taken to be true and factual disputes typically requires that the motion be denied.

But a claim for discrimination under the Human Rights Laws cannot succeed if "the offending actions are no more than petty slights or trivial inconveniences." *Franco v. Hyatt Corp.*, 189 A.D.3d 569, 570 [1st Dept. 2020]. The first allegation is no more than a petty slight, and Plaintiff himself characterizes the single comment as "casual." The present case is distinguishable from other validly pled discrimination claims, such as *Doe*. There, the plaintiff endured years of "constant homophobic slurs" among other discriminatory actions. *Doe v. New York City Police Dept.*, 190 A.D.3d 411, 412 [1st Dept. 2021]. Here, there was a single "casual" comment made that Defendant did not "agree with the gay lifestyle." This is not sufficient to sustain a discrimination claim under even the broad NYCHRL. *See also Sandiford v. City of New York Dept. of Educ.*, 94 A.D.3d 593, 595 [1st Dept. 2012] (holding that "repeated derogatory remarks regarding gays and lesbians" was sufficient to raise a question of fact for a discrimination claim).

The question is then whether the alleged open display of Nazi memorabilia constitutes discrimination under either the City or the State Human Rights Law. While there are clear questions of fact and credibility in this matter, taking the Plaintiff's allegations as true Defendant displayed material that was sympathetic to the Nazis. Under the uniquely broad interpretation required by NYCHRL, the display of pro-Nazi material in the workplace could be considered to be more than a trivial inconvenience. But fundamental to a claim for discrimination under either statute is the allegation of unequal treatment. A plaintiff must allege to have been "treated

differently or worse than other employees." *Harrington v. City of New York*, 157 A.D.3d 582, 584 [1st Dept. 2018]. Here, Plaintiff does not allege that he treated differently from any other employees, nor does the display of memorabilia in the workplace, open to any and all employees, lend itself to such an inference. Therefore, the first and fourth causes of action fail to state a claim.

The Hostile Work Environment Causes of Action Fail to State a Claim

Plaintiff's second and fifth causes of action assert claims for a hostile work environment under both the NYSHRL and the NYCHRL. Much of the allegations Plaintiff makes in support of these claims center around claims that Defendant became less friendly with him after Plaintiff (who seems to be laboring under a severe misapprehension of what the Fifth Amendment and the right against self-incrimination means) began to be reluctant to continue to engage in illegal drug activities. Additionally, there is repeated reference to a somewhat confusing incident with two strange men who at some point looked around Plaintiff's apartment for reasons that are unclear. As best as the Court is able to determine, whatever occurred in that incident has no connection to Defendant and the claims asserted other than wild speculation and conclusory statements. The other allegations are the same Nazi memorabilia display allegations that formed the basis of the discrimination claim.

The determination of whether a workplace was hostile requires "looking at all the circumstances, including the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance." *Forrest v. Jewish Guild for the Blind*, 3 N.Y.3d 295, 310 [2004]. In order to forestall the merging of discrimination and hostile workplace claims, the First Department has drawn attention to the differences between the two claims, noting that a discrimination claim involves unequal treatment. *Williams v. New*

York City Hous. Auth., 61 A.D.3d 62, 78 – 79 [1st Dept. 2009]. While the display of pro-Nazi memorabilia, if true, would be objectionable, it falls short of what the Court of Appeals referred to as creating "an objectively hostile or abusive environment." *Forrest*, at 311. Furthermore, the Court of Appeals has held that "to prove a hostile work environment [under the NYCHRL], the burden is on the employee to show that they were treated less well on the basis of a protected classification." *Russell v. New York Univ.* 42 N.Y.3d 377, 401 [2024]. As with the discrimination claims, Plaintiff has not alleged that they were treated differently from any other employee. They even allege that, to the extent that Defendant and not his wife was responsible for the display of the objectionable material, it was done for private reasons unrelated to Plaintiff. Therefore, Plaintiff has failed to allege facts that support a claim for hostile work environment under either the NYSHRL or the NYCHRL. Dismissal of the second and fifth causes of action is proper.

The Retaliation Causes of Action Fail to State a Claim

Plaintiff's third and sixth causes of action are for retaliation under the NYSHRL and the NYCHRL. A prima facie case under the State HRL requires a showing by the plaintiff that "(1) he/she has engaged in a protected activity, (2) his/her employer was aware of such activity, (3) he/she suffered an adverse employment action based upon the activity, and (4) a causal connection exists between the protected activity and the adverse action." *Harrington v. City of New York*, 157 A.D.3d 582, 585 [1st Dept. 2018]. Under the City HRL, instead of an adverse action the plaintiff must only show "that the defendant took an action that disadvantaged him or her." *Id*. Here, Plaintiff alleges that he expressed "concerns" over the alleged requests to procure controlled substances but that he repeatedly continued to obtain the substances. He claims that it was as he started to be less willing to participate in an illegal drugs scheme that Defendant began to be rude to him in the workplace. Plaintiff alleges that while he was ostensibly terminated due

to performance issues, it was really motivated by Plaintiff's growing reluctance to continue to illegally procure controlled substances for Defendant.

As addressed above, claims under both Human Rights Laws must start with the plaintiff having engaged in a protected activity. Under both sets of law, protected activity consists of "opposing any practice forbidden" by the relevant statute. *Fletcher v. Dakota, Inc.*, 99 A.D.3d 43, 51 [1st Dept. 2012]. Plaintiff has not shown, and the Court is not aware of, any provision in either statute that makes "being less willing to continue to engage in illegal actions" a protected activity. Furthermore, even assuming that Plaintiff was fired for not being willing to freely procure controlled substances for Defendant, it is unclear how that would reasonably deter others from engaging in a protected activity. Finally, it is unclear from the amended complaint to what extent it was Defendant or a non-party to this action that actually directed Plaintiff to illegally procure the substances in question. Plaintiff has failed to state a valid claim for retaliation under either the NYCHRL or the NYSHRL, and therefore dismissal of the third and sixth causes of action is proper.

The Labor Law Claims for Unpaid Overtime and Failure to Provide Wage Notice Are Sufficiently Pled

The seventh cause of action is for unpaid overtime under "New York Labor Law §§ 190 and 650" [sic]. Plaintiff alleges that he "regularly worked in excess of 40 hours per week" but was not paid overtime. Defendant moves to dismiss, arguing that the amended complaint fails to allege any facts supporting this claim. A claim for unpaid overtime under Labor Law §§ 191 and 663 is sufficiently pled when it is alleged that the plaintiff worked more than 40 hours in a week and was not paid for overtime. *Kirby v. Carlo's Bakery 42nd & 8th LLC*, 212 A.D.3d 441, 442 [1st Dept. 2023]. It is not required, at this stage, to recite the particular dates or weeks for which

the plaintiff was allegedly underpaid. *Rosario v. Hallen Constr. Co., Inc.*, 214 A.D.3d 544, 544 [1st Dept. 2023]. Therefore, the seventh cause of action validly states a claim and should not be dismissed. The eight cause of action alleges that Plaintiff was not provided with a wage notice pursuant to NYLL § 195. This allegation is sufficient to state a valid claim. *Kirby*., at 442. Therefore, dismissal of this claim at this stage would be improper.

The Labor Law Claims for Untimely Wage Payments and Whistleblower Retaliation Do Not State Valid Claims

The ninth cause of action is for untimely wage payments pursuant to NYLL § 191. Plaintiff alleges that he qualified as a manual worker and therefore was entitled to weekly and not monthly wage payments. But "employees serving in an executive, managerial or administrative capacity do not fall under section 191 of the Labor Law." *Pachter v. Bernard Hodes Group, Inc.*, 10 N.Y.3d 609, 616 [2008]. Here, Plaintiff himself characterizes his role as administrative, performing "household and family assistant duties" and "domestic", "household management tasks." Labor Law § 190 defines a manual worker as "a mechanic, workingman, or laborer." The allegations that Plaintiff at times conducted errands do not qualify him as a manual laborer under the Labor Law. Because the ninth cause of action fails to state a cause of action, dismissal is proper.

The tenth cause of action is for whistleblower retaliation under Labor Law § 740. Plaintiff alleges that Defendant retaliated against him by terminating him shortly after he expressed concerns about "potential arrest and reduced compliance" relating to the illegal activity that Plaintiff repeatedly and freely admits to committing. Under Section 740(2)(c), an employer cannot take retaliatory action against an employee for objecting to or refusing to participate in illegal activity. The Court of Appeals has held that this section is "triggered only

by a violation of a law, rule or regulation that creates and presents a substantial and specific danger to public health and safety." *Remba v. Federation Employment & Guidance Serv.*, 76 N.Y.2d 801, 802 [1990]. Furthermore, while there only need be a threat to a single member of the public, the public danger must be shown to be "based on more than mere speculation" and Labor Law § 740 "envisions a certain quantum of dangerous activity before its remedies are implicated." *Villarin v. Rabbit Haskel Lookstein School*, 96 A.D.3d 1, 7 [1st Dept. 2012]. According to Plaintiff's allegations, the controlled substances that he obtained illegally were intended for "the sole use and consumption of Defendant." By his own allegations, Plaintiff was not asked to break a law that presented a threat to any member of the public, and therefore the remedies of Labor Law § 740 are by law unavailable to him. The tenth cause of action is dismissed.

Plaintiff Fails to State a Claim for IIED

In the final cause of action, Plaintiff pleads a claim for intentional infliction of emotional distress. This claim is based on the allegations that Defendant placed Nazi books and objects in plain view in the house while Plaintiff was working. A claim for IIED has an "exceedingly high legal standard", and even conduct that is "abhorrent", "offensive and insulting" fails to meet the high bar. *Russell v. New York Univ.*, 204 A.D.3d 577, 581 [1st Dept. 2022]. At most, Plaintiff here has alleged that Defendant displayed books and other materials that were sympathetic to the Nazir regime. While if true, such behavior would be abhorrent, offensive, and insulting, it would not meet the IIED requirement of behavior that is "beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Id*. Therefore, the eleventh cause of action fails to state a valid claim and must be dismissed. Accordingly, it is hereby

ADJUDGED that the motion to dismiss the complaint is granted except as to the seventh and eighth causes of action; and it is further

ORDERED defendant is directed to serve an answer to the complaint within 20 days after the date of this order.

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11/3/2025
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:		**CASE DISPOSED**			X	**NON-FINAL DISPOSITION**	
		GRANTED		**DENIED**	X	**GRANTED IN PART**	**OTHER**
APPLICATION:		**SETTLE ORDER**				**SUBMIT ORDER**	
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**				**FIDUCIARY APPOINTMENT**	**REFERENCE**