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individually and on behalf of all others similarly situated

IN THE SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

SHAWN TORRANCE JACKMAN,
individually and on behalf of all others similarly
situated,

Plaintiff(s),

v.

MOVE CENTRAL INC.; and DOES 1 through
100,

Defendant(s).

Case No. 37-2024-00022506-CU-OE-CTL

COMPLAINT

- 1. Failure to Provide Compliant Meal Periods**
- 2. Failure to Provide Compliant Rest Periods**
- 3. Failure to Pay for All Hours Worked**
- 4. Failure to Pay All Overtime Owed**
- 5. Failure To Reimburse Work-Related Expenses**
- 6. Wage Statement Penalties**
- 7. Violation of Unfair Competition Law**
- 8. Private Attorneys General Act**

RELEVANT PARTIES

1. Plaintiff SHAWN TORRANCE JACKMAN ("Plaintiff") is an adult resident of San Diego County, California and was at all times relevant residing in San Diego County, California.
2. Defendant MOVE CENTRAL INC. ("Defendant") is a California corporation with its principal place of business located in San Diego County, California. Defendant is registered to and does conduct business in the State of California and is subject to the laws of the State of California.

1 All acts and omissions of Defendant employees as alleged herein occurred while they were acting
2 within the course and scope of their employment.

3 3. Plaintiff is unaware of the true names or capacities of the Defendants sued herein as DOES 1
4 through 100, inclusive (“Doe Defendants”), and therefore sues said Doe Defendants by such
5 fictitious names. Plaintiff will seek leave of this Court to amend this Complaint to insert the true
6 names and capacities of such Doe Defendants when such information has been obtained. Plaintiff is
7 informed and believes, and based on such information and belief alleges, that each of the fictitiously
8 named Doe Defendants has participated in some way in the wrongful acts and omissions alleged
9 below, and is liable to Plaintiff for damages and other relief to which Plaintiff is entitled. Defendant
10 and Doe Defendants are collectively referred to as “Defendants”.

11 **JURISDICTION AND VENUE**

12 4. This action is properly filed in San Diego County because the acts and omissions that give
13 rise to Plaintiff’s claims took place in San Diego County, and Defendants transact substantial
14 business in this County.

15 5. This Court has jurisdiction over Defendants because Defendants’ unlawful conduct as
16 alleged herein occurred in San Diego County, California and Plaintiff suffered damages from such
17 conduct within San Diego County, California.

18 **FACTUAL ALLEGATIONS**

19 6. At all times relevant, Plaintiff was Defendants’ employee.

20 7. Plaintiff was employed by Defendants from 2/15/15 to present.

21 8. Defendants failed to provide Plaintiff with compliant meal breaks because meal breaks were
22 regularly missed, late or short.

23 9. In addition, Plaintiff was required to remain on call and on duty, expected to respond to
24 work related communications throughout their shift on their personal phones.

25 10. Despite not being provided with compliant meal breaks, Defendant did not pay premium pay
26 for these missed breaks at Plaintiff’s regular rate of pay.

27 11. Defendant failed to provide Plaintiff with compliant rest breaks because rest breaks were
28 regularly missed or short.

1 12. Plaintiff was required to remain on call and on duty, expected to respond to work related
2 communications throughout their rest breaks on their personal phones.

3 13. Despite not being provided with compliant rest breaks, Defendant did not pay premium pay
4 for these missed breaks at Plaintiff's regular rate of pay.

5 14. Defendants failed to pay Plaintiff for all hours worked because he had to drive for work
6 related purposes off the clock and was not paid for that time. In addition, Employer automatically
7 deducted 1 hour of pay per shift for lunch and 2 rest breaks regardless of whether or not the meal
8 and rest breaks were actually taken. Most of the time they were not.

9 15. Defendants failed to pay Plaintiff all overtime owed because Plaintiff regularly worked in
10 excess of eight hours in a day and 40 hours in a workweek. Since the Plaintiff was required to
11 perform work off the clock, it follows that this time was often overtime.

12 16. Defendants failed to correctly calculate Plaintiff's regular rate of pay, and as a result,
13 underpaid Plaintiff's overtime. Specifically, Defendants did not include all non-discretionary pay
14 that Plaintiff earned when calculating Plaintiff's regular rate of pay.

15 17. Plaintiff received \$200 to \$250 for driving overnight routes of 8 hours or more, however,
16 these shift differentials were not included in the Plaintiff's regular rate of pay for purposes of
17 calculating their overtime rate of pay. This resulted in the underpayment of overtime.

18 18. Defendants failed to reimburse Plaintiff for all work-related expenses because Plaintiff was
19 required to purchase tools and pay for their cell phone in order to perform their work duties, but
20 Defendants did not reimburse Plaintiff for these expenses.

21 19. Defendants failed to provide Plaintiff with accurate wage statements because the wage
22 statements issued to Plaintiff did not accurately list total wages owed and hours worked, among
23 other things.

24 **PAGA ALLEGATIONS**

25 20. Pursuant to Labor Code section 2699(a), any provision of the Labor Code which provides
26 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
27 ("LWDA") for violations of the Labor Code may, as an alternative, be recovered through a civil
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1 action brought by an aggrieved employee on behalf of himself or herself and other current or former
2 employees pursuant to the procedures outlined in Labor Code section 2699.3.

3 21. Pursuant to Labor Code section 2699.3, an aggrieved employee may pursue a civil action
4 under PAGA after the following requirement have been met:

5 22. The aggrieved employee has provided written notice by online filing to the LWDA and by
6 certified mail to the employer (hereinafter "Employee's Notice") of the specific provisions of the
7 Labor Code alleged to have been violated, including the facts and theories to support the alleged
8 violations; and

9 23. The LWDA has provided notice (hereinafter "LWDA's Notice") to the employer and the
10 aggrieved employee by certified mail that it does not intend to investigate the aggrieved employee's
11 claims. Upon receipt of the LWDA's Notice, or if the LWDA does not provide such Notice within
12 65 calendar days of the postmark date of the Employee's Notice, the aggrieved employee may
13 commence a civil action pursuant to Labor Code section 2699 to recover civil penalties in addition
14 to any other penalties to which the employee may be entitled.

15 24. On 3/4/24, Plaintiff provided written notice by online filing to the LWDA and by certified
16 mail to Defendants of specific provisions of the Labor Code alleged to have been violated by
17 Defendants, including the facts and theories to support the alleged violations.

18 25. The 65-day notice period has elapsed, and the LWDA did not provide Plaintiff with written
19 notice that it intends to investigate the alleged violations of the Labor Code. Thus, Plaintiff seeks
20 PAGA Penalties on behalf of all Aggrieved Employees.

21 26. The Aggrieved Employees are defined as "All other nonexempt, hourly employees, current
22 and former, who were employed by Defendants within one year prior to 3/4/24, through final
23 disposition of this action."

24 **FIRST CAUSE OF ACTION**

25 **Failure to Provide Compliant Meal Periods**

26 **By Plaintiff Against All Defendants**

27 27. Plaintiff incorporates by reference the paragraphs above.

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1 28. Labor Code section 512 and the Wage Orders provide that “an employer shall not employ an
2 employee for a work period of more than five hours per day without providing the employee with a
3 meal period of not less than 30 minutes” or “for a work period of more than 10 hours per day
4 without providing the employee with a second meal period of not less than 30 minutes”.

5 29. An employer provides compliant meal breaks to its employees “if it relieves its employees
6 of all duty, relinquishes control over their activities and permits them a reasonable opportunity to
7 take an uninterrupted 30-minute break.” (*Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th
8 1004, 1040 (2012)).

9 30. Not only must an employer affirmatively relieve its employees of all duty during their meal
10 breaks, it also must not “impede or discourage” its employees from taking compliant meal breaks.
11 (*Brinker*, supra).

12 31. Defendants failed to provide Plaintiff with compliant meal breaks as alleged herein.

13 32. For each day that Defendants failed to provide Plaintiff with a compliant meal break,
14 Defendants were required to remit premium pay pursuant to Labor Code section 226.7(c), which is
15 one additional hour of pay at Plaintiff’s regular rate of pay. (*Ferra v. Loews Hollywood Hotel, LLC*,
16 11 Cal. 5th 858 (2021)).

17 33. Defendants failed to pay premium pay at Plaintiff’s regular rate of pay for each day a meal
18 break was missed.

19 34. Plaintiff is therefore entitled to recover premium pay for missed meal breaks, interest,
20 penalties, attorney fees, and costs.

21 **SECOND CAUSE OF ACTION**

22 **Failure to Provide Compliant Rest Periods**

23 **By Plaintiff Against All Defendants**

24 35. Plaintiff incorporates by reference the paragraphs above.

25 36. Labor Code section 226.7 and the Wage Orders requires employers to authorize and permit
26 its employees to take rest periods based on the total hours worked daily at the rate of 10 minutes net
27 per four hours or major fraction thereof.

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1 37. Furthermore, “[d]uring rest periods employers must relieve employees of all duties and
2 relinquish control over how employees spend their time.” (*Augustus v. ABM Sec. Servs., Inc.*, 2 Cal.
3 5th 257, 269 (2016)).

4 38. Defendants failed to provide Plaintiff with compliant rest breaks as alleged herein.

5 39. For each day that Defendants failed to provide Plaintiff with a compliant rest break,
6 Defendants were required to remit premium pay pursuant to Labor Code section 226.7(c), which is
7 one additional hour of pay at Plaintiff’s regular rate of pay. (*Ferra v. Loews Hollywood Hotel, LLC*,
8 11 Cal. 5th 858 (2021)).

9 40. Defendants failed to pay premium pay at Plaintiff’s regular rate of pay for each day a rest
10 break was missed.

11 41. Plaintiff is therefore entitled to recover premium pay for missed rest breaks, interest,
12 penalties, attorney fees, and costs.

13 **THIRD CAUSE OF ACTION**

14 **Failure to Pay for All Hours Worked**

15 **By Plaintiff Against All Defendants**

16 42. Plaintiff incorporates by reference the paragraphs above.

17 43. Labor Code sections 558 and 1194 and the Wage Orders require an employer to pay
18 employees minimum wages for all hours worked fewer than eight hours in a day and/or fewer than
19 40 hours in a workweek.

20 44. Defendants failed to pay Plaintiff for all hours worked as alleged herein.

21 45. Plaintiff is therefore entitled to recover all unpaid wages, liquidated damages, interest,
22 penalties, attorney fees, and costs.

23 **FOURTH CAUSE OF ACTION**

24 **Failure to Pay All Overtime Owed**

25 **By Plaintiff Against All Defendants**

26 46. Plaintiff incorporates by reference the paragraphs above.

27 47. Labor Code section 510 provides that “[a]ny work in excess of eight hours in one workday
28 and any work in excess of 40 hours in any one workweek and the first eight hours worked on the

1 seventh day of work in any one workweek shall be compensated at the rate of no less than one and
2 one-half times the regular rate of pay for an employee.”

3 48. Defendants failed to pay Plaintiff all overtime wages owed as alleged herein.

4 49. Plaintiff is therefore entitled to recover all unpaid overtime wages, liquidated damages,
5 interest, penalties, attorney fees, and costs.

6 **FIFTH CAUSE OF ACTION**

7 **Failure To Reimburse Work-Related Expenses**

8 **By Plaintiff Against All Defendants**

9 50. Plaintiff incorporates by reference the paragraphs above.

10 51. Pursuant to Labor Code section 2802, an employer shall indemnify his or her employee for
11 all necessary expenditures or losses incurred by the employee in direct consequence of the
12 employee's discharge of his or her duties.

13 52. Defendants failed to reimburse Plaintiff for all work-related expenses as alleged herein.

14 53. Plaintiff is therefore entitled to reimbursement for all work-related expenses, penalties,
15 attorney fees, and costs.

16 **SIXTH CAUSE OF ACTION**

17 **Wage Statement Penalties**

18 **By Plaintiff Against All Defendants**

19 54. Plaintiff incorporates by reference the paragraphs above.

20 55. Labor Code section 226(a) requires employers to provide itemized wage statements to its
21 employees that identify accurate information regarding their compensation. Defendants, as a matter
22 of policy and practice, failed in its affirmative obligation to provide accurate itemized wage
23 statements to Plaintiff in violation of Labor Code section 226(a).

24 56. As alleged herein, the wage statements that Defendants issued to Plaintiff were inaccurate
25 and incomplete.

26 57. Defendants knowingly and intentionally issued wage statements that were inaccurate and
27 incomplete, and the issuance of inaccurate and incomplete wage statements caused injury to
28 Plaintiff in that Plaintiff was unable to accurately verify and/or calculate their wages.

1 58. Plaintiff is therefore entitled to the recovery of wage statement penalties, attorney fees, and
2 costs.

3 **SEVENTH CAUSE OF ACTION**

4 **Violation of Unfair Competition Law**

5 **By Plaintiff Against All Defendants**

6 59. Plaintiff incorporates by reference the paragraphs above.

7 60. Defendants' conduct described herein constitutes unfair competition.

8 61. Specifically, Defendants have gained an unfair advantage over other similarly situated
9 businesses by unlawfully reducing their overhead costs by not paying their employees what they are
10 owed.

11 62. Pursuant to Business and Professions Code 17203, Plaintiff is entitled to restitution of all
12 wrongfully withheld wages.

13 63. Plaintiff may recover attorney fees pursuant to Code of Civil Procedure section 1021.5.

14 **EIGHTH CAUSE OF ACTION**

15 **Private Attorneys General Act**

16 **By Plaintiff and the Aggrieved Employees Against All Defendants**

17 64. Plaintiff incorporates by reference the paragraphs above.

18 65. PAGA permits Plaintiff and the Aggrieved Employees to recover civil penalties for the
19 violation(s) of the Labor Code.

20 66. As alleged herein, Defendants' conduct violates numerous sections of the Labor Code.

21 67. With respect to violations of Labor Code sections 226.7 and 558 for Defendants' failure to
22 provide Plaintiff and the Aggrieved Employees with compliant meal periods or compensation in
23 lieu thereof, the penalties in Labor Code sections 558 and 2699 apply.

24 68. With respect to violations of Labor Code section 226.7 for Defendants' failure to provide
25 Plaintiff and the Aggrieved Employees with compliant rest periods or compensation in lieu thereof,
26 the penalties in Labor Code section 2699 apply.

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69. With respect to violations of Labor Code section 1197 for Defendants' failure to compensate Plaintiff and the Aggrieved Employees for all minimum wages earned, the penalties in Labor Code sections 1197.1 and 2699 apply.

70. With respect to violations of Labor Code section 510 for Defendants' failure to compensate Plaintiff and the Aggrieved Employees for all overtime wages earned, the penalties in Labor Code sections 558, 1197.1, and 2699 apply.

71. With respect to violations of Labor Code section 226(a) for failure to provide accurate wage statements to Plaintiff and the Aggrieved Employees, the penalties in Labor Code sections 226.3 and 2699 apply.

72. With respect to violations of Labor Code section 2802 for failure to reimburse Plaintiff and the Aggrieved Employees for all work-related expenses, the penalties in Labor Code section 2699 apply.

73. Additionally, Plaintiff and the Aggrieved Employees are entitled to attorney's fees pursuant to Labor Code section 2699(g).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1ST Cause of Action

1. Damages and/or penalties pursuant to Labor Code section 226.7
2. Interest
3. Attorneys' fees
4. Costs
5. Other relief the court deems proper

2ND Cause of Action

1. Damages and/or penalties pursuant to Labor Code section 226.7
2. Interest
3. Attorneys' fees
4. Costs
5. Other relief the court deems proper

1 3RD Cause of Action

- 2 1. Damages and/or penalties pursuant to Labor Code sections 558, 1194, 1197, and 1197.1
3 2. Liquidated damages
4 3. Interest
5 4. Attorneys' fees
6 5. Costs
7 6. Other relief the court deems proper

8 4TH Cause of Action

- 9 1. Damages and/or penalties pursuant to Labor Code sections 510, 558, and 1194
10 2. Interest
11 3. Attorneys' fees
12 4. Costs
13 5. Other relief the court deems proper

14 5TH Cause of Action

- 15 1. Reimbursement of all work-related expenses
16 2. Attorneys' fees
17 3. Costs
18 4. Other relief the court deems proper

19 6TH Cause of Action

- 20 1. Penalties pursuant to Labor Code section 226
21 2. Attorneys' fees
22 3. Costs
23 4. Other relief the court deems proper

24 7TH Cause of Action

- 25 1. Restitution of all wrongfully withheld wages
26 2. Attorneys' fees
27 3. Costs
28 4. Other relief the court deems proper

1 8TH Cause of Action

- 2 1. All applicable civil penalties available pursuant to Labor Code section 2698, et seq.
- 3 2. Attorneys' fees
- 4 3. Costs
- 5 4. Other relief the court deems proper

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7 DATED: May 15, 2024

FRONTIER LAW CENTER

8 /s/ Daniel Ginzburg

DANIEL GINZBURG

9

10 Attorneys for Plaintiff

11 SHAWN TORRANCE JACKMAN,

12 individually and on behalf of all others

13 similarly situated

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