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Clerk of the Superior Court
By C. Drakes ,Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION
(*UNLIMITED JURISDICTION*)

JONATHAN GUILLEN, Plaintiff, vs. FASHION FURNITURE RENTAL, INC.; and DOES 1 to 25, inclusive, Defendants.	CASE NO.: 25CU015941C **COMPLAINT FOR VIOLATIONS OF THE LABOR CODE AND CIVIL PENALTIES UNDER THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004, LABOR CODE §§ 2698, ET SEQ.**

COMES NOW Plaintiff, JONATHAN GUILLEN (hereinafter “Plaintiff”), and alleges as follows:

PARTIES, JURISDICTION, and VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of San Diego in this judicial district because Defendants FASHION FURNITURE RENTAL, INC. and KENNY COX.; and DOES 1 to 25, inclusive (hereinafter collectively “FASHION FURNITURE” or “Defendant(s)”) do business in the County of San Diego, and because Defendants’ obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of San Diego is the subject of this action. Moreover, Plaintiff’s damages sought herein exceed $25,000.

2. Plaintiff is a male resident of the County of San Diego, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant FASHION FURNITURE RENTAL, INC., is a California corporation, doing business in the County of San Diego, State of California, and which employed Plaintiff.

4. Plaintiff is informed and believes that at all times herein mentioned, Defendant KENNY COX is a male resident of the State of California, and the owner, managing agent, and/or director of FASHION FURNITURE RENTAL, INC., and is being included in this lawsuit pursuant to Labor Code Section 558.1 as he controlled the hours, wages, and/or working conditions of Plaintiff and other hourly, non-exempt employees. Defendants FASHION FURNITURE RENTAL, INC. and KENNY COX are collectively referred to herein as “Defendant(s)” (unless otherwise noted) or “FASHION FURNITURE”.

5. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues them by these fictitious names. Plaintiff is informed and believes that each of the DOE defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible for the conduct alleged herein. Upon discovering the true names and capacities of these fictitiously named defendants, Plaintiff will amend this complaint to show the true names and capacities of these fictitiously named defendants.

6. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of that information and belief, alleges that at all times herein mentioned, each of the remaining codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and under the authority of their agency, employment, or representative capacity, with the consent of his/her codefendants.

GENERAL ALLEGATIONS

7. Plaintiff started working for FASHION FURNITURE on or around June 2024 as a driver. Plaintiff was classified as an hourly, non-exempt employee. Plaintiff's pay rate was approximately $22.00 per hour, and he generally worked 5 days per week from 6:30 a.m. to 3:00 p.m., but generally stayed until 6:00 p.m. or 7:00 p.m. Plaintiff's employment ended on or around September 5, 2024.

8. It is Plaintiff's position that due to personally suffering the below violations, Plaintiff can equivocally bring the following labor code violations on behalf of all other employees, including ALL hourly, non-exempt employees who worked for FASHION FURNITURE anywhere in the state of California (at all different locations) during the relevant PAGA period.

9. It is Plaintiff's position that FASHION FURNITURE has violated the following Labor Code Sections against Plaintiff and other similarly situated aggrieved employees, who include all non-exempt, hourly employees who worked for FASHION FURNITURE at their various locations in the State of California during the relevant PAGA period.

10. FASHION FURNITURE violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to pay Plaintiff and other similarly situated aggrieved employees for all hours worked, including the statutory minimum wage for all hours worked and for "off the clock" work. This is so because FASHION FURNITURE had a company policy wherein they would disproportionately round down the number of hours worked, resulting in "time shaving" and further resulting in aggrieved employees not being paid for all hours worked. Moreover, FASHION FURNITURE failed to provide its employees with proper and accurate reporting time pay. In addition, and because Plaintiff's and others' meal breaks were auto deducted by the company and his time records reflected that Plaintiff took a meal break at a specific time when he did not, the latter would also be a minimum wage violation since Plaintiff was working "off

the clock" and was not compensated for all hours worked.

11. Due to the above "off the clock" and rounding violations, FASHION FURNITURE also violated Labor Code §510 because it failed to pay Plaintiff and other aggrieved employees overtime compensation, even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their employment. Plaintiff's and other aggrieved employees' actual work hours entitled them to overtime compensation, however, FASHION FURNITURE did not compensate its hourly, non-exempt employees with the correct amount of overtime due to the "off the clock" work and time shaving as described above. This is especially true because Plaintiff generally worked a minimum 8.5-hour shift and usually worked over 11-12 hours per shift. Furthermore, FASHION FURNITURE failed to include bonuses/incentive payments/shift differential payments in calculating employees' regular rate of pay for use in deciphering the correct overtime rate of pay. Additionally, the incentive, shift differential, and bonus payments were also not factored into employees' regular rate for purposes of receiving meal and rest break premiums per the Ferra v. Loews case.

12. FASHION FURNITURE also violated Labor Code § 226.7 and the appropriate Industrial Welfare Commission Wage Order no. 4/7 because it failed to provide Plaintiff and other similarly situated aggrieved employees with uninterrupted 10-minute rest periods for every four hours of work, or majority portion thereof, throughout their employment.

13. FASHION FURNITURE did not completely relieve Plaintiff and others of all duty during said rest periods. FASHION FURNITURE did not pay to Plaintiff and others one additional hour of pay at Plaintiff's regular rate of compensation for each workday that one or more statutory rest periods was not provided or was interrupted. If Plaintiff was able to take a rest break, it would only be one rest break as Plaintiff would generally not receive a second or even third rest break. Plaintiff and others were not able to take multiple rest breaks in a day due to having timing obligations with respect to pick up and delivery of furniture. As such, the culture as well as the policies and procedures of FASHION FURNITURE did not lend itself to the employees receiving all and timely statutory rest breaks wherein they were relieved of all work duties. The environment at FASHION FURNITURE was not conducive to receiving statutory rest breaks under California law and timely, statutory rest breaks were not authorized or

enforced.

14. FASHION FURNITURE violated Labor Code §§ 512 and 226.7 and the appropriate Industrial Welfare Commission Wage Order no. 4/7 because it failed to provide hourly, non-exempt employees, including Plaintiff and others, the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their employment. FASHION FURNITURE did not completely relieve Plaintiff and other employees of all duty during said meal periods. FASHION FURNITURE did not pay to Plaintiff and its hourly, non-exempt employees one additional hour of pay at their regular rate of compensation for each workday that one or more statutory meal periods was not provided. Plaintiff did not receive timely meal periods before the 5th hour that were uninterrupted.

15. In fact, as mentioned above, the company had a policy and practice of auto-deducting meal breaks from Plaintiff and others. This would mean that the company's timekeeping system would automatically deduct 30 minutes for a meal period around 11am, even though Plaintiff did not take a meal period at 11am and was still working. Plaintiff would try to take his lunch hours later, but the meal breaks were certainly not taken at 11am and per the time records as those time records are false and manufactured by the company due to the auto-deduct policy. Furthermore, Plaintiff did not himself punch in or out for any meal periods as that was completely controlled by the company. The latter should be very telling in and of itself.

16. If Plaintiff signed a meal period waiver, it would not be valid and enforceable. Under California law, however, employees must make an affirmative decision every day regarding whether to waive their meal periods. August 13, 2003 DLSE Opinion Letter ("The decision to forego a meal period may not, therefore, be based on a specific requirement of the employer or on a policy or practice which could reasonably be perceived to be a condition of employment. Therefore, blanket "waivers" of meal periods …whether written or oral, will not be considered valid."). Moreover, Plaintiff's shifts were at least approximately 8.5 hours long, if not longer. As such, there would be no waiver since his shifts were always over 6 hours long. If FASHION FURNITURE had Plaintiff sign an on-duty meal period agreement wherein Plaintiff agreed to work through the meal periods, it would be invalid and unenforceable because the nature of Plaintiff's job does not and did not prevent him from taking a meal period and the company

could have hired "breakers" to relieve Plaintiff of his job duties so that he can actually take a timely, uninterrupted meal period. Moreover, any such "on duty" meal period agreement did not allow for Plaintiff to revoke such an agreement even if it was signed. As such, Plaintiff and others did not consistently receive statutory, timely meal periods during their employment. To the extent that FASHION FURNITURE argues that employees receive meal break premium pay for missed meal periods, that argument is inconsequential for PAGA penalty purposes since the PAGA penalties are for the violations themselves, irrespective of whether an employee received the premium payment for a missed, short, or interrupted meal period. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated, "section 226.7 does not give employers a lawful choice between providing *either* meal and rest breaks *or* an additional hour of pay." *See Kirby v. Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of pay does not excuse the violation; the employer has still committed a violation even if the remedy for the violation has been paid. *See Wert v. U.S. Bancorp,* (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As such, the work environment and culture at FASHION FURNITURE was not conducive to receiving consistent, timely, statutory meal breaks under California law. Moreover, any meal or rest break premiums paid were not compensated at the weighted average regular rate, inclusive of bonuses and/or incentive payments as well as overtime compensation.

17. Furthermore, during the relevant time period, and due to the above labor code violations, FASHION FURNITURE failed to pay Plaintiff and other similarly situated aggrieved employees all wages due to them within any time period specified by California Labor Code section 204. Furthermore, since Plaintiff was not compensated for his "off the clock" work and since Plaintiff did not receive proper meal and rest break premiums, Plaintiff would still be owed wages pursuant to Labor Code Section 204. FASHION FURNITURE was also in violation of California Labor Code section 226(a) by failing to include pertinent information on the wage statements, including but not limited to, the correct hourly rate, all hours worked, overtime hours worked, correct overtime pay, gross wages earned, net wages earned, premium pay for missed meal and rest breaks, all deductions, the correct start and end of the pay period, all employee identifying information, the correct and complete name and address of the legal employer, tips,

and reimbursement for business expenses, among others. As such, FASHION FURNITURE did not provide Plaintiff and other similarly situated aggrieved employees with complete, accurate itemized wage statements.

18. During the relevant time period, FASHION FURNITURE also failed to keep accurate and complete payroll records showing the actual hours worked per day and the wages paid to Plaintiff and others pursuant to California Labor Code sections 1174(d).

19. FASHION FURNITURE also violated Labor Code § 203 because it willfully failed to pay Plaintiff and other similarly situated aggrieved employees earned and due wages upon separation of employment, either immediately upon involuntary termination, or within 72 hours of resignation. These earned but unpaid wages include compensation for all hours worked, including minimum wages, overtime compensation, and premium pay for missed meal and rest breaks.

20. During the relevant time period, Plaintiff and other aggrieved employees incurred necessary, business-related expenses and costs that were not reimbursed by FASHION FURNITURE. These costs include but are not limited to, use of personal cell phone for work purposes to communicate with management, and uniforms. In fact, Plaintiff would use his personal cell phone to take photos of his deliveries and the locations of his deliveries and would text those photos to management. Plaintiff and others were not compensated for use of their personal cell phones or uniforms. Accordingly, FASHION FURNITURE was in violation of California Labor Code sections 2800 and 2802.

21. Furthermore, FASHION FURNITURE did not provide proper and correct/accurate sick pay (inclusive of all bonuses/shift differentials/incentive payments) that was also delineated on employee pay stubs and also failed to provide proper sick leave in violation of Labor Code sections 233 and 246. Moreover, there were no suitable seating/rest break facilities for the employees pursuant to Wage Order no. 4-2001/7-2001.

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FIRST (AND ONLY) CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

Representative Claim for PAGA penalties under California Labor Code sections 201, 202, 203, 204 and/or 204b, 226, 226.3, 226.7, 233, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698, 2699, 2800, 2802, and the applicable Industrial Welfare Commission Wage Order No. 4-2001/7-2001

(Against All Named Defendants and all DOE Defendants)

22. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 21, inclusive, of this Complaint as though fully set forth herein.

23. Pursuant to law, on September 11, 2024, Plaintiff provided the required written notice to the California Labor & Workforce Development Agency (LWDA) and Defendants of the specific violations of the California Labor Code that Defendants and DOE defendants have violated and continue to violate.

24. Pursuant to California Labor code section 2699.3, no response was received from the LWDA within 65 days of the postmark date of the above-alleged letter.

25. Plaintiff therefore has exhausted all administrative remedies required of him under California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this cause of action and pursue penalties in a representative action for Defendants' violations of the Labor Code.

26. Pursuant to California Labor Code section 2699, any provisions of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies, or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in California Labor Code section 2699.3.

27. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged violator and had one or more of the alleged violations committed against him, and therefore is properly suited to represent the interests of all current and former non-exempt or hourly paid employees who worked for Defendants at any of their California locations during the relevant

time period.

28. Based on the acts alleged above, Plaintiff, on behalf of himself and others, seeks penalties under California Labor Code sections 2698 and 2699 because of Defendants' violations of numerous provisions of the California Labor Code as alleged in this Complaint.

29. Plaintiff therefore has exhausted all administrative remedies required of him under California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this cause of action and pursue penalties in a representative action for Defendants' violations of the Labor Code.

30. California Labor Code section 2699 et seq. imposes penalties upon culpable Defendants for violating the Labor Code.

31. California Labor Code section 558 establishes a civil penalty as follows: Any employer or other person action on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission (including the "Hours and Days of Work" section of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid …; (2) for each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid …;

32. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by law, <u>but only those penalties that are required to be shared with the LWDA as Plaintiff is not seeking individual/victim specific relief or underpaid wages under this particular cause of action</u>.

33. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for the following:

> Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 226, 226.3, 226.7, 233, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802 via 2698 and 2699, and any other Labor Codes and Wage Order nos. 4/7 violated on the facts alleged in this Complaint.

34. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees, costs, and civil penalties on behalf of Plaintiff and other current and former Aggrieved

Employees as alleged herein in an amount to be shown according to proof at trial and within the jurisdictional limits of this Court.

WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as follows:

1. For the imposition of civil penalties;
2. For maximum civil penalties available under Labor Code Section 2699 against Defendants in a manner and amount authorized by that statute, as described more particularly in the Complaint and representative PAGA claims;
3. For all costs and disbursements incurred in this suit;
4. Reasonable attorney's fees where available by law, including but not limited to, pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5, and/or other applicable laws; and
5. For such other and further relief as this Court may deem proper.

Respectfully submitted,

MESSRELIAN LAW INC.

Dated: March 25, 2025

By Maralle Messrelian ____________________
Harout Messrelian, Esq.
Maralle Messrelian, Esq., Of Counsel
Attorneys for Plaintiff, JONATHAN GUILLEN