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7 MOVE, INC.

8
9 **UNITED STATES DISTRICT COURT**
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
11 **WESTERN DIVISION**

12 ACTIVERAIN CORP., a Washington
corporation,

13 Plaintiff,

14 vs.

15 MOVE, INC., a Delaware corporation,

16 Defendant.

CASE NO.: CV07-5037 DDP (CTx)
Assigned to: Hon. Dean D. Pregerson

**ANSWER OF DEFENDANT MOVE,
INC.**

JURY TRIAL DEMANDED

Action Filed: August 2, 2007

19
20 MOVE, INC. ("answering defendant") answers the complaint, as follows:

21 **I. JURISDICTION AND VENUE**

22 1. Answering Paragraph 1 of the complaint, answering defendant is
23 without knowledge or information sufficient to form a belief as to the truth of the
24 matters alleged and therefore denies them on this ground.

25 2. Answering Paragraph 2 of the complaint, answering defendant admits
26 that venue of this action lies in the United States District Court for the Central
27 District of California and admits that plaintiff alleges claims arising in part from a
28 contract. Answering defendant is without knowledge or information sufficient to

1 form a belief as to the remainder of Paragraph 2 and therefore denies them on that
2 ground.

3 **II. PARTIES**

4 3. Answering Paragraph 3 of the complaint, answering defendant is
5 without knowledge or information sufficient to form a belief as to the truth of the
6 matters alleged and therefore denies them on this ground.

7 4. Answering Paragraph 4 of the complaint, answering defendant admits
8 the allegations.

9 **III. STATEMENT OF FACTS**

10 5. Answering Paragraph 5 of the complaint, answering defendant admits
11 the first two sentences of this paragraph. Answering defendant is without
12 knowledge or information sufficient to form a belief as to the truth of the matters
13 alleged in the remaining allegations of this paragraph and therefore denies them on
14 this ground.

15 6. Answering Paragraph 6 of the complaint, answering defendant is
16 without knowledge or information sufficient to form a belief as to the truth of the
17 matters alleged and therefore denies them on this ground.

18 7. Answering Paragraph 7 of the complaint, answering defendant is
19 without knowledge or information sufficient to form a belief as to the truth of the
20 matters alleged and therefore denies them on this ground.

21 8. Answering Paragraph 8 of the complaint, answering defendant is
22 without knowledge or information sufficient to form a belief as to the truth of the
23 matters alleged in the first sentence of this paragraph and therefore denies them on
24 this ground. Answering defendant denies that ActiveRain's "Confidential
25 Information" has value. Answering defendant further denies that plaintiff's
26 "Confidential Information" is not generally known to the public, nor [sic] to those in
27 the trade or business or other persons who could obtain economic value from it."
28

1 9. Answering Paragraph 9 of the complaint, answering defendant is
2 without knowledge or information sufficient to form a belief as to the truth of the
3 matters alleged and therefore denies them on this ground.

4 10. Answering Paragraph 10 of the complaint, answering defendant admits
5 that "Move and its subsidiaries and/or affiliates provided, among other things,
6 website-based real estate content and decision support tools to consumers to utilize
7 before, during and after a move." Answering defendant denies that Move, Inc. did
8 not provide "an established or focused social network and online blogging
9 community for real estate professionals."

10 11. Answering Paragraph 11 of the complaint, answering defendant denies
11 that "Move had not been able to successfully develop, launch or market a social
12 network and blogging community or platform for real estate professionals equivalent
13 to that provided by the Active Rain Real Estate Network."

14 12. Answering Paragraph 12 of the complaint, answering defendant is
15 without knowledge or information sufficient to form a belief as to the truth of the
16 matters alleged and therefore denies them on this ground.

17 13. Answering Paragraph 13 of the complaint, answering defendant is
18 without knowledge or information sufficient to form a belief as to the truth of the
19 matters alleged and therefore denies them on this ground.

20 14. Answering Paragraph 14 of the complaint, answering defendant denies
21 the allegations in this paragraph

22 15. Answering Paragraph 15 of the complaint, answering defendant admits
23 the allegation in this paragraph.

24 16. Answering Paragraph 16 of the complaint, answering defendant denies
25 the allegations in this paragraph.

26 17. Answering Paragraph 17 of the complaint, answering defendant denies
27 the allegations in this paragraph.
28

1 18. Answering Paragraph 18 of the complaint, answering defendant denies
2 the allegations in this paragraph.

3 19. Answering Paragraph 19 of the complaint, answering defendant denies
4 the allegations in this paragraph.

5 20. Answering Paragraph 20 of the complaint, answering defendant is
6 without knowledge or information sufficient to form a belief as to the allegations in
7 this paragraph and denies these allegations on this ground.

8 21. Answering Paragraph 21 of the complaint, answering defendant is
9 without knowledge or information sufficient to form a belief as to the allegations in
10 this paragraph, and denies them on this basis.

11 22. Answering Paragraph 22 of the complaint, answering defendant denies
12 the allegations in this paragraph.

13 23. Answering Paragraph 23 of the complaint, answering defendant admits
14 that it “asked ActiveRain to extend its no shop agreement.” Answering defendant
15 denies that the information requested was “Confidential Information,” and denies
16 that the request was made “ostensibly” to the extent that allegation implies that
17 Move made the request other than in good faith. Answering defendant is without
18 knowledge or information sufficient to form a belief as to the remaining allegations
19 in this paragraph and denies these allegations on that basis.

20 24. Answering Paragraph 24 of the complaint, answering defendant admits
21 that ActiveRain extended the no shop agreement and provided Move with more
22 information. Answering defendant denies that the information provided by
23 ActiveRain was “Confidential Information”. Answering defendant is without
24 knowledge or information sufficient to form a belief as to the remaining allegations
25 and denies these allegations on this basis.

26 25. Answering Paragraph 25 of the complaint, answering defendant denies
27 the allegations in this paragraph.

28

1 26. Answering Paragraph 26 of the complaint, answering defendant denies
2 the allegations in this paragraph.

3 27. Answering Paragraph 27 of the complaint, answering defendant admits
4 that ActiveRain provided Move with material about its members in electronic format
5 and denies all other allegations in this paragraph.

6 28. Answering Paragraph 28 of the complaint, answering defendant denies
7 the allegations in this paragraph.

8 29. Answering Paragraph 29 of the complaint, answering defendant denies
9 the allegations in this paragraph.

10 30. Answering Paragraph 30 of the complaint, answering defendant denies
11 all allegations in this paragraph.

12 31. Answering Paragraph 31 of the complaint, answering defendant denies
13 the allegations in this paragraph.

14 32. Answering Paragraph 32 of the complaint, answering defendant denies
15 all allegations in this paragraph.

16 33. Answering Paragraph 33 of the complaint, answering defendant denies
17 all allegations in this paragraph.

18 **IV. STATEMENT OF DAMAGES**

19 34. Answering Paragraph 34 of the complaint, answering defendant denies
20 all allegations in this paragraph.

21 35. Answering Paragraph 35 of the complaint, answering defendant denies
22 all allegations in this paragraph.

23 36. Answering Paragraph 36 of the complaint, answering defendant denies
24 that any alleged damages to ActiveRain were the result of acts and/or omissions of
25 answering defendant. Answering defendants are without knowledge or information
26 sufficient to form a belief as to the truth of the remaining allegations in this
27 paragraph, and on that basis denies them.

28

1 37. Answering Paragraph 37 of the complaint, answering defendant denies
2 that any alleged damages to ActiveRain were the result of acts and/or omissions of
3 answering defendant. Answering defendants are without knowledge or information
4 sufficient to form a belief as to the truth of the remaining allegations in this
5 paragraph, and on that basis denies them.

6 38. Answering Paragraph 38 of the complaint, answering defendant denies
7 all allegations in this paragraph.

8 39. Answering Paragraph 39 of the complaint, answering defendant admits
9 that ActiveRain has retained counsel in this matter and denies all remaining
10 allegations in this paragraph.

11 **V. CAUSES OF ACTION**

12 **1. FIRST CAUSE OF ACTION**

13 **Violation of California Uniform Trade Secrets Act**

14 40. Answering Paragraph 40 of the complaint, answering defendant
15 incorporates by reference as though fully set forth herein all prior paragraphs in this
16 Answer.

17 41. Answering Paragraph 41 of the complaint, answering defendant denies
18 all allegations in this paragraph.

19 42. Answering Paragraph 42 of the complaint, answering defendant admits
20 that "At all times relevant hereto, the California Uniform Trade Secrets Act, Cal. Civ.
21 Code § 3426.1 et seq. was in full force and effect and binding upon defendant."
22 Answering defendant denies all other allegations in this paragraph.

23 43. Answering Paragraph 43 of the complaint, answering defendant denies
24 that any alleged damages to ActiveRain were the result of acts and/or omissions of
25 answering defendant. Answering defendant is without knowledge or information
26 sufficient to form a belief as to the truth of the remaining allegations in this
27 paragraph, and on that basis denies them.

1 **2. SECOND AND ALTERNATIVE CAUSE OF ACTION**

2 **Breach of Contract Under California Law**

3 44. Answering Paragraph 44 of the complaint, answering defendant
4 incorporates by reference as though fully set forth herein all prior paragraphs in this
5 Answer.

6 45. Answering Paragraph 45 of the complaint, answering defendant admits
7 that ActiveRain and Move entered into a contract under California contract law
8 titled Mutual Nondisclosure Agreement, and denies all other allegations in this
9 paragraph.

10 46. Answering Paragraph 46 of the complaint, answering defendant denies
11 all allegations in this paragraph.

12 47. Answering Paragraph 47 of the complaint, answering defendant denies
13 all allegations in this paragraph.

14 **3. THIRD AND ALTERNATIVE CAUSE OF ACTION**

15 **Violation of California Common Law of Unjust Enrichment**

16 48. Answering Paragraph 48 of the complaint, answering defendant
17 incorporates by reference as though fully set forth herein all prior paragraphs in this
18 Answer.

19 49. Answering Paragraph 49 of the complaint, answering defendant denies
20 all allegations in this paragraph.

21 50. Answering Paragraph 50 of the complaint, answering defendant denies
22 all allegations in this paragraph.

23 51. Answering Paragraph 51 of the complaint, answering defendant denies
24 all allegations in this paragraph.

1 **4. FOURTH AND ALTERNATIVE CAUSE OF ACTION**

2 **Violation of California Common Law of Promissory and/or Equitable Estoppel**

3 52. Answering Paragraph 52 of the complaint, answering defendant
4 incorporates by reference as though fully set forth herein all prior paragraphs in this
5 Answer.

6 53. Answering Paragraph 53 of the complaint, answering defendant is
7 without knowledge or information sufficient to form a belief as to the truth of the
8 allegations in this paragraph, and on that basis denies them.

9 54. Answering Paragraph 54 of the complaint, answering defendant is
10 without knowledge or information sufficient to form a belief as to the truth of the
11 allegations in this paragraph, and on that basis denies them.

12 55. Answering Paragraph 55 of the complaint, answering defendant is
13 without knowledge or information sufficient to form a belief as to the truth of the
14 allegations in this paragraph, and on that basis denies them.

15 56. Answering Paragraph 56 of the complaint, answering defendant denies
16 that any of its statements or conduct was unjust or inequitable. Answering defendant
17 is without knowledge or information sufficient to form a belief as to the truth of the
18 remaining allegations in this paragraph, and on that basis denies them.

19 57. Answering Paragraph 57 of the complaint, answering defendant denies
20 all allegations in this paragraph.

21 58. Answering Paragraph 58 of the complaint, answering defendant denies
22 all allegations in this paragraph.

23 **5. FIFTH AND ALTERNATIVE CAUSE OF ACTION**

24 **Violation of California Common Law of Unfair Competition**

25 **(Breach of Confidential Relationship and Common Law Misappropriation)**

26 59. Answering Paragraph 59 of the complaint, answering defendant
27 incorporates by reference as though fully set forth herein all prior paragraphs in this
28 Answer.

1 60. Answering Paragraph 60 of the complaint, answering defendant is
2 without knowledge or information sufficient to form a belief as to the truth of the
3 allegations in this paragraph, and on that basis denies them.

4 61. Answering Paragraph 61 of the complaint, answering defendant is
5 without knowledge or information sufficient to form a belief as to the truth of the
6 allegations in this paragraph, and on that basis denies them.

7 62. Answering Paragraph 62 of the complaint, answering defendant denies
8 all allegations in this paragraph.

9 63. Answering Paragraph 63 of the complaint, answering defendant denies
10 all allegations in this paragraph.

11 64. Answering Paragraph 64 of the complaint, answering defendant denies
12 all allegations in this paragraph.

13 65. Answering Paragraph 65 of the complaint, answering defendant denies
14 all allegations in this paragraph.

15 66. Answering Paragraph 66 of the complaint, answering defendant denies
16 all allegations in this paragraph.

17 **6. SIXTH AND ALTERNATIVE CAUSE OF ACTION**

18 **Violation of Washington Unfair Business Practices Act**

19 67. Answering Paragraph 67 of the complaint, answering defendant
20 incorporates by reference as though fully set forth herein all prior paragraphs in this
21 Answer.

22 68. Answering Paragraph 68 of the complaint, answering defendant is
23 without knowledge or information sufficient to form a belief as to the truth of the
24 allegations in this paragraph, and on that basis denies them.

25 69. Answering Paragraph 69 of the complaint, answering defendant denies
26 all allegations in this paragraph.

27 70. Answering Paragraph 70 of the complaint, answering defendant denies
28 all allegations in this paragraph.

1 71. Answering Paragraph 71 of the complaint, answering defendant admits
2 that Defendant advertises to the realtor market, and to the public in general;
3 Defendant solicited ActiveRain for investment and/or acquisition by Move;
4 ActiveRain is a private company; and Move is a publicly-traded company.
5 Answering defendant denies all remaining allegations in this paragraph.

6 72. Answering Paragraph 72 of the complaint, answering defendant admits
7 that Move is the same company formerly known as Homestore, Inc. and on its
8 website, Move has referred to itself as "the new Homestore." Answering
9 defendant objects to the remaining allegations as irrelevant and subject to a
10 motion to strike.

11 73. Answering Paragraph 73 of the complaint, answering defendant denies
12 all allegations in this paragraph.

13 74. Answering Paragraph 74 of the complaint, answering defendant denies
14 all allegations in this paragraph.

15 **7. SEVENTH AND ALTERNATIVE CAUSE OF ACTION**

16 **Violation of California Common Law of Fraud/Deceit**

17 75. Answering Paragraph 75 of the complaint, answering defendant
18 incorporates by reference as though fully set forth herein all prior paragraphs in this
19 Answer.

20 76. Answering Paragraph 76 of the complaint, answering defendant denies
21 all allegations in this paragraph.

22 77. Answering Paragraph 77 of the complaint, answering defendant denies
23 all allegations in this paragraph.

24 78. Answering Paragraph 78 of the complaint, answering defendant denies
25 all allegations in this paragraph.

26 79. Answering Paragraph 79 of the complaint, answering defendant denies
27 all allegations in this paragraph.

1 80. Answering Paragraph 80 of the complaint, answering defendant denies
2 all allegations in this paragraph.

3 81. Answering Paragraph 81 of the complaint, answering defendant denies
4 all allegations in this paragraph.

5 82. Answering Paragraph 82 of the complaint, answering defendant denies
6 all allegations in this paragraph.

7 **VI. RESERVATION OF RIGHTS**

8 83. Answering Paragraph 83 of the complaint, answering defendant is
9 without knowledge or information sufficient to form a belief as to the truth of the
10 allegations in this paragraph, and on that basis denies them.

11 **VII. PRAYER FOR RELIEF**

12 84. Answering the Prayer for Relief, Paragraphs 1 through 9, answering
13 defendant denies that plaintiff is entitled to damages, interest, costs, or any other
14 form of relief.

15 **FIRST AFFIRMATIVE DEFENSE**

16 **(Failure to State a Claim)**

17 85. Neither the complaint nor any purported cause of action contained
18 therein states facts sufficient to constitute a cause of action against answering
19 defendant, or at all.

20 **SECOND AFFIRMATIVE DEFENSE**

21 **(Plaintiff's Own Conduct Proximately Caused Alleged Damage)**

22 86. Any injury, damage and/or loss sustained by plaintiff was proximately
23 caused by or contributed to by plaintiff's own negligent, willful and/or other
24 misconduct or fault, and plaintiff's claims are barred or diminished in the proportion
25 that the conduct of plaintiff proximately caused such injury, damage and/or loss.

1 **THIRD AFFIRMATIVE DEFENSE**

2 **(No Substantial Factor/Superseding Act/Omission)**

3 87. No act or omission of answering defendant was a substantial factor in
4 causing any injury, damage and/or loss to plaintiff nor was any act or omission of
5 answering defendant a contributing cause thereof, and any acts or omissions of
6 answering defendant were superseded by acts or omissions of others including,
7 without limitation, plaintiff.

8 **FOURTH AFFIRMATIVE DEFENSE**

9 **(Acts/Omissions of Third Parties)**

10 88. Answering defendants allege that plaintiffs' injuries, damages and/or
11 losses, if any, if not caused solely by plaintiffs' own acts, omissions or negligence,
12 were proximately caused or contributed to by the acts, omissions, negligence and/or
13 other tortious acts of persons and/or parties other than answering defendants,
14 including, but not limited to, third parties. Any damages recoverable by plaintiffs
15 must be diminished in proportion to the amount of fault attributable to plaintiffs
16 and/or third parties, and then apportioned among all actors whose conduct
17 contributed to plaintiffs' alleged injuries, damages and/or losses such that each actor
18 should be liable only for that proportion of plaintiffs' injuries, damages and/or
19 losses, if any, caused by such conduct.

20 **FIFTH AFFIRMATIVE DEFENSE**

21 **(Statute of Limitations)**

22 89. The complaint, and each purported cause of action contained therein, is
23 barred by the applicable statutes of limitation including, but not limited to,
24 California Code of Civil Procedure §§ 335 through 349.4.

1 **SIXTH AFFIRMATIVE DEFENSE**

2 **(Failure to Mitigate)**

3 90. The complaint, and each purported cause of action contained therein, is
4 barred, in whole or in part, to the extent plaintiff failed to mitigate, minimize or
5 avoid any damage allegedly sustained.

6 **SEVENTH AFFIRMATIVE DEFENSE**

7 **(No Proximate Cause)**

8 91. The complaint, and each purported cause of action contained therein, is
9 barred by the absence of proximate causation between any alleged act or omission of
10 answering defendant.

11 **EIGHTH AFFIRMATIVE DEFENSE**

12 **(Proportionate Share of Non-Economic Damages)**

13 92. Answering defendants allege that there are other persons, parties, and/or
14 third parties who are at fault and who proximately caused plaintiffs' injuries and/or
15 damages, if any, and that pursuant to California Civil Code Section 1431.2
16 answering defendants may only be liable for their proportionate share of non-
17 economic damages, if any, as set forth in the statute, if it should be found that
18 answering defendants were at fault, which is expressly denied.

19 **NINTH AFFIRMATIVE DEFENSE**

20 **(Spoliation)**

21 93. To the extent that any of the physical evidence has been changed,
22 modified, altered, lost or destroyed, the complaint, and each purported cause of
23 action contained therein, is barred by the doctrines of intentional and/or negligent
24 spoliation of evidence.

25 **TENTH AFFIRMATIVE DEFENSE**

26 **(Failure to Satisfy Conditions Precedent)**

27 94. The complaint and each cause of action therein are barred because
28 plaintiff failed to satisfy conditions precedent.

1 **ELEVENTH AFFIRMATIVE DEFENSE**

2 **(Conditions Subsequent)**

3 95. The complaint and each cause of action therein are barred because
4 answering defendant's obligations, if any, were contingent on conditions subsequent.

5 **TWELFTH AFFIRMATIVE DEFENSE**

6 **(Performance Excused)**

7 96. The complaint and each cause of action therein are barred because
8 answering defendant's performance was excused.

9 **THIRTEENTH AFFIRMATIVE DEFENSE**

10 **(Waiver)**

11 97. The complaint and each cause of action therein are barred by the
12 equitable doctrine of waiver.

13 **FOURTEENTH AFFIRMATIVE DEFENSE**

14 **(Estoppel)**

15 98. The complaint and each cause of action therein are barred by the
16 equitable doctrine of estoppel.

17 **FIFTEENTH AFFIRMATIVE DEFENSE**

18 **(Unclean Hands)**

19 99. The complaint and each cause of action therein are barred by the
20 equitable doctrine of unclean hands.

21 **SIXTEENTH AFFIRMATIVE DEFENSE**

22 **(Accord and Satisfaction)**

23 100. The complaint and each cause of action therein are barred by an accord
24 and satisfaction.

25 **SEVENTEENTH AFFIRMATIVE DEFENSE**

26 **(Consent)**

27 101. The complaint and each cause of action therein are barred by consent of
28 plaintiff in the alleged acts or omissions.

1 **EIGHTEENTH AFFIRMATIVE DEFENSE**

2 **(Competition Privilege)**

3 102. The complaint, and each purported cause of action set forth therein, is
4 barred by the competition privilege.

5 **NINETEENTH AFFIRMATIVE DEFENSE**

6 **(No Irreparable Harm)**

7 103. Plaintiff is not entitled to any injunctive or equitable relief because it
8 will not suffer irreparable harm.

9 **TWENTIETH AFFIRMATIVE DEFENSE**

10 **(Adequate Remedy at Law)**

11 104. Plaintiff is not entitled to any injunctive or equitable relief because it
12 has an adequate remedy at law.

13 **TWENTY FIRST AFFIRMATIVE DEFENSE**

14 **(No Fraud, Oppression, or Malice)**

15 105. All of defendant's actions with regard to plaintiff were conducted in
16 good faith and without fraud, oppression or malice towards plaintiff or its legal
17 rights, thereby precluding any and all claims for special, exemplary, or punitive
18 damages.

19 **TWENTY SECOND AFFIRMATIVE DEFENSE**

20 **(No Ratification of Fraud, Oppression, or Malice)**

21 106. Defendant did not ratify or authorize any conduct alleged to constitute
22 fraud, malice or oppression.

23 **TWENTY THIRD AFFIRMATIVE DEFENSE**

24 **(Preemption)**

25 107. Defendant contends that plaintiff's claims, including without limitation
26 the third, fourth, fifth, sixth, and seventh claims, are preempted under California's
27 trade secret statute. California Civil Code Section 3426.7.

1 **TWENTY FOURTH AFFIRMATIVE DEFENSE**

2 **(Due Process and Equal Protection)**

3 108. Defendant denies that plaintiff is entitled to recover punitive damages
4 in this action. Further, any award of punitive damages against defendant in this
5 action would be barred to the extent that it violates the due process and equal
6 protection provisions of the United States and California Constitutions.

7 WHEREFORE, answering defendant prays for judgment as follows:

8 1. That plaintiff take nothing by reason of its complaint in this action;

9 2. That answering defendant recover judgment against plaintiff for
10 answering defendants costs of suit herein, including reasonable attorneys' fees as
11 authorized by law (including without limitation California Civil Code Section
12 3426.4); and

13 3. For such other and further relief as the Court deems just and proper.

14
15 **JURY DEMAND**

16 Defendant demands a trial by jury.

17
18 DATED: September 7, 2007

HENNELLY & GROSSFELD LLP

19
20
21 By: 

22 MICHAEL G. KING
23 THOMAS H. CASE
24 Attorneys for Defendant,
25 MOVE, INC.
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On September 7, 2007, I served the following document(s):

JURY TRIAL DEMANDED

See Attached Service List

(X) (By E-Mail) I caused the above-referenced document(s) to be transmitted by e-mail transmission to the interested parties at the appropriate e-mail addresses as listed above or on the attached service list. I did not receive, with a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. A true and correct copy of the e-mail printout showing the date and time in which it was sent, is attached hereto and incorporated herein by this reference.

I declare under penalty of perjury that foregoing is true and correct.

CYNTHIA FALL

Service List

ACTIVERAIN CORP. v. MOVE, INC.
U.S. District Court, Central District – Case No.: CV07-5037 DDP

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