

Kane Moon (SBN 249834)
Allen Feghali (SBN 301080)
Julie Sohyun Oh (SBN 341157)
MOON LAW GROUP, PC
725 South Figueroa Street, 31st Floor
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125
E-mail: kmoon@moonlawgroup.com
E-mail: afeghali@moonlawgroup.com
E-mail: joh@moonlawgroup.com

Attorneys for Plaintiff Alex Portillo

ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
1/10/2025 10:50 AM
By: Stephanie Paniagua, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

ALEX PORTILLO, individually, and on behalf
of all others similarly situated,

Plaintiff,

vs.

ACT FULFILLMENT, INC., a California
corporation; and DOES 1 through 10, inclusive,

Defendants

Case No.: CIVSB2203773

**SECOND AMENDED PAGA
REPRESENTATIVE ACTION
COMPLAINT:**

1. Civil Penalties Under PAGA [Cal. Lab.
Code § 2699, et seq.].

DEMAND FOR JURY TRIAL

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1 Plaintiff Alex Portillo (“Plaintiff”), based upon facts that either have evidentiary support
2 or are likely to have evidentiary support after a reasonable opportunity for further investigation
3 and discovery, alleges as follows:

4 **INTRODUCTION & PRELIMINARY STATEMENT**

5 1. Plaintiff brings this action against Defendants Act Fulfillment, Inc., and Does 1
6 through 10 (collectively referred to as “Defendants”) for civil penalties under the Private
7 Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.* (“PAGA”) stemming
8 from Defendants’ failure to pay minimum wages, failure to pay overtime wages, failure to
9 provide meal periods, failure to authorize and permit rest periods, failure to provide paid sick
10 leave, failure to maintain accurate records of hours worked and meal periods, failure to timely
11 pay all wages to terminated employees, failure to indemnify necessary business expenses, and
12 failure to furnish accurate wage statements.

13 2. For over 50 years, California’s courts and legislature have recognized that this
14 State’s wage-and-hour laws serve a compelling public interest of fostering a stable job market.
15 Wages are not ordinary debts. Because of the economic position of the average worker and his or
16 her family, it is essential to the public welfare that employers obey the wage-and-hour laws so that
17 employees are promptly paid the minimum/overtime wages that the Legislature has required for
18 employees. So fundamental are California’s wage-and-hour laws that the Legislature has
19 criminalized certain types of violations. In extending extra protection to deter violations of these
20 underlying statutes—since Plaintiff is not seeking general and/or special damages, restitution or
21 other damages other than civil penalties—California has enacted the PAGA to permit an individual
22 to bring an action on behalf of himself and on behalf of others for PAGA penalties only, which is
23 the precise and sole nature of this action.

24 3. Plaintiff brings this action against Defendants as a representative action under
25 PAGA to recover civil penalties that are owed to Plaintiff, the State of California, and past and
26 present non-exempt employees of Defendants employed at any time within the applicable
27 statutory period (hereinafter referred to as the “Aggrieved Employees”).
28

1 4. Defendants own/owned and operate/operated an industry, business, and
2 establishment within the State of California, including San Bernardino County. As such, and
3 based upon all the facts and circumstances incident to Defendants' business in California,
4 Defendants are subject to the California Labor Code, Wage Orders issued by the Industrial
5 Welfare Commission ("IWC"), and the California Business & Professions Code.

6 5. Despite these requirements, throughout the statutory period Defendants
7 maintained a systematic, company-wide policy and practice of:

- 8 (a) Failing to pay employees for all hours worked, including all minimum
9 wages, and overtime wages in compliance with the California Labor Code
10 and IWC Wage Orders;
- 11 (b) Failing to provide employees with timely and duty-free meal periods in
12 compliance with the California Labor Code and IWC Wage Orders, failing
13 to maintain accurate records of all meal periods taken or missed, and
14 failing to pay an additional hour's pay for each workday a meal period
15 violation occurred;
- 16 (c) Failing to authorize and permit employees to take timely and duty-free rest
17 periods in compliance with the California Labor Code and IWC Wage
18 Orders, and failing to pay an additional hour's pay for each workday a rest
19 period violation occurred;
- 20 (d) Failing to comply with California's paid sick leave law;
- 21 (e) Failing to indemnify employees for necessary business expenses incurred;
- 22 (f) Willfully failing to pay employees all minimum wages, overtime wages,
23 meal period premium wages, and rest period premium wages due within
24 the time period specified by California law when employment terminates;
25 and
- 26 (g) Failing to maintain accurate records of the hours that employees worked.

(h) Failing to provide employees with accurate, itemized wage statements containing all the information required by the California Labor Code and IWC Wage Orders.

6. On information and belief, Defendants, and each of them were on actual and constructive notice of the improprieties alleged herein and intentionally refused to rectify their unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were willful and deliberate.

7. At all relevant times, Defendants were and are legally responsible for all of the unlawful conduct, policies, practices, acts and omissions as described in each and all of the foregoing paragraphs as the employer of Plaintiff and the Aggrieved Employees. Further, Defendants are responsible for each of the unlawful acts or omissions complained of herein under the doctrine of "respondeat superior".

THE PARTIES

A. Plaintiff

8. Plaintiff is a California resident that worked for Defendants in the County of San Bernardino, State of California, as a forklift driver from 2017 to September 2021.

9. Plaintiff reserves the right to seek leave to amend this complaint to add new plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v. American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law.

B. Defendants

10. Plaintiff is informed and believes, and based upon that information and belief alleges, that Defendant Act Fulfillment, Inc. is:

(a) A California corporation with its principal place of business in San Bernardino, California.

(b) A business entity conducting business in numerous counties throughout the State of California, including in San Bernardino County; and

(c) The former employer of Plaintiff, and the current and/or former employer of the Aggrieved Employees. Defendants suffered and permitted Plaintiff

1 and the Aggrieved Employees to work, and/or controlled their wages,
2 hours, or working conditions.

3 11. Plaintiff does not currently know the true names or capacities of the persons or
4 entities sued herein as Does 1-10, inclusive, and therefore sues said Defendants by such fictitious
5 names. Each of the Doe Defendants was in some manner legally responsible for the damages
6 suffered by Plaintiff and the Aggrieved Employees as alleged herein. Plaintiff will amend this
7 complaint to set forth the true names and capacities of these Defendants when they have been
8 ascertained, together with appropriate charging allegations, as may be necessary.

9 12. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and
10 each of them, were residents of, doing business in, availed themselves of the jurisdiction of,
11 and/or injured a significant number of the Plaintiff and the Aggrieved Employees in the State of
12 California.

13 13. Plaintiff is informed and believes and thereon alleges that at all relevant times
14 each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and
15 the other employees described in the class definitions below, and exercised control over their
16 wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges
17 that, at all relevant times, each Defendant was the principal, agent, partner, joint venturer, officer,
18 director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest
19 and/or predecessor in interest of some or all of the other Defendants, and was engaged with some
20 or all of the other Defendants in a joint enterprise for profit, and bore such other relationships to
21 some or all of the other Defendants so as to be liable for their conduct with respect to the matters
22 alleged below. Plaintiff is informed and believes and thereon alleges that each Defendant acted
23 pursuant to and within the scope of the relationships alleged above, that each Defendant knew or
24 should have known about, and authorized, ratified, adopted, approved, controlled, aided and
25 abetted the conduct of all other Defendants.

26 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

27 14. Plaintiff is a California resident who worked for Defendants in the County of San
28 Bernardino, State of California, as a forklift driver from approximately 2017 to September 2021.

1 During the statutory period, Defendants classified Plaintiff as non-exempt from California's
2 overtime requirements, and paid Plaintiff an hourly wage. During the statutory period, Plaintiff
3 was typically scheduled to work five days in a workweek and in excess of eight hours in a single
4 workday.

5 15. Throughout the statutory period, Defendants failed to pay Plaintiff for all hours
6 worked (including minimum wages and overtime wages), failed to provide Plaintiff with
7 uninterrupted meal periods, failed to authorize and permit Plaintiff to take uninterrupted rest
8 periods, failed to provide paid sick leave, failed to indemnify Plaintiff for necessary business
9 expenses, failed to timely pay all final wages to Plaintiff when Defendants terminated Plaintiff's
10 employment, and failed to furnish accurate wage statements to Plaintiff. As discussed below,
11 Plaintiff's experience working for Defendants was typical and illustrative.

12 16. Throughout the statutory period, Defendants maintained a policy and practice of
13 not paying Plaintiff and the Aggrieved Employees for all hours worked, including all overtime
14 wages. Plaintiff and the Aggrieved Employees were required to work "off the clock" and
15 uncompensated. For example, Plaintiff and the Aggrieved Employees were required to wait in
16 line in order to undergo a COVID screening prior to clocking into work each workday, off the
17 clock and uncompensated. After undergoing the COVID screening, Plaintiff and the Aggrieved
18 Employees were required to wait in line in order to clock into work each workday, and when
19 returning from meal periods, off the clock and uncompensated. Also throughout the statutory
20 period, Plaintiff and the Aggrieved Employees received non-discretionary bonuses, hazard pay,
21 and other remuneration. However, Defendants failed to incorporate all remuneration when
22 calculating the correct overtime rate of pay and meal premium rate of pay, leading to
23 underpayment. In maintaining a practice of not paying all wages owed, Defendants failed to
24 maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

25 17. Throughout the statutory period, Defendants have wrongfully failed to provide
26 Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendants
27 sometimes, but not always, required Plaintiff and the Aggrieved Employees to work in excess of
28 five consecutive hours a day without providing 30-minute, continuous and uninterrupted, duty-

1 free meal period for every five hours of work, or without compensating Plaintiff and the
2 Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of
3 work or tenth hour of work. Defendants also did not adequately inform Plaintiff and the
4 Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or,
5 for shifts greater than 10 hours, by the end of the tenth hour of work. Defendants also failed to
6 accurately record meal periods. Accordingly, Defendants' policy and practice was to not provide
7 meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

8 18. Throughout the statutory period, Defendants have wrongfully failed to authorize
9 and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods.
10 Defendants sometimes, but not always, required Plaintiff and the Aggrieved Employees to work
11 in excess of four consecutive hours a day without Defendants authorizing and permitting them to
12 take a 10-minute, continuous and uninterrupted, rest period for every four hours of work (or
13 major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees
14 for rest periods that were not authorized or permitted. Defendants also did not adequately inform
15 Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendants
16 did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and
17 the Aggrieved Employees, nor did Defendants have adequate policies or practices regarding the
18 timing of rest periods. Defendants also did not have adequate policies or practices to verify
19 whether Plaintiff and the Aggrieved Employees were taking their required rest periods. Further,
20 Defendants did not maintain accurate records of employee work periods, and therefore
21 Defendants cannot demonstrate that Plaintiff and the Aggrieved Employees took rest periods
22 during the middle of each work period. Accordingly, Defendants' policy and practice was to not
23 authorize and permit Plaintiff and the Aggrieved Employees to take rest periods in compliance
24 with California law.

25 19. Throughout the statutory period, Defendants violated Plaintiff's and the Aggrieved
26 Employees' right to paid sick leave by failing to provide paid sick days, failing to pay the correct
27 amount of sick pay, and failing to provide written notice of paid sick leave, as required by
28 California law, including Labor Code § 246.

1 20. Throughout the statutory period, Defendants wrongfully required Plaintiff and the
2 Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for
3 Defendants without reimbursement, such as the purchase of masks. Plaintiff and the Aggrieved
4 Employees were also required to use their own personal cellular telephones for work purposes,
5 without reimbursement.

6 21. Throughout the statutory period, Defendants willfully failed and refused to timely
7 pay Plaintiff and the Aggrieved Employees at the conclusion of their employment all wages for
8 all minimum wages, overtime wages, meal period premium wages, and rest period premium
9 wages.

10 22. Throughout the statutory period, Defendants failed to furnish Plaintiff and the
11 Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly
12 rates, and all gross and net wages earned (including correct hours worked, correct wages earned
13 for hours worked, correct overtime hours worked, correct wages for meal periods that were not
14 provided in accordance with California law, correct wages for rest periods that were not
15 authorized and permitted to take in accordance with California law, and Defendant's address).
16 Further, the wage statements do not show Defendant's address as required by California law. As
17 a result of these violations of California Labor Code § 226(a), the Plaintiff and the Aggrieved
18 Employees suffered injury because, among other things:

- 19 (a) the violations led them to believe that they were not entitled to be paid
20 minimum wages, overtime wages, meal period premium wages, rest period
21 premium wages, and sick pay to which they were entitled, even though
22 they were entitled;
- 23 (b) the violations led them to believe that they had been paid the minimum,
24 overtime, meal period premium, rest period premium wages, and sick pay,
25 even though they had not been;
- 26 (c) the violations led them to believe they were not entitled to be paid
27 minimum, overtime, meal period premium, rest period premium wages,
28 and sick pay at the correct California rate even though they were;

- 1 (d) the violations led them to believe they had been paid minimum, overtime,
2 meal period premium, rest period premium wages, and sick pay at the
3 correct California rate even though they had not been;
- 4 (e) the violations hindered them from determining the amounts of minimum,
5 overtime, meal period premium, rest period premium, and sick pay owed to
6 them;
- 7 (f) in connection with their employment before and during this action, and in
8 connection with prosecuting this action, the violations caused them to have
9 to perform mathematical computations to determine the amounts of wages
10 owed to them, computations they would not have to make if the wage
11 statements contained the required accurate information;
- 12 (g) by understating the wages truly due them, the violations caused them to
13 lose entitlement and/or accrual of the full amount of Social Security,
14 disability, unemployment, and other governmental benefits; and
- 15 (h) the wage statements inaccurately understated the wages, hours, and wages
16 rates to which Plaintiff and the Aggrieved Employees were entitled, and
17 Plaintiff and the Aggrieved Employees were paid less than the wages and
18 wage rates to which they were entitled.

19 Thus, Defendants are subject to civil penalties provided for in California Labor Code § 226.3.

20 **FIRST CAUSE OF ACTION**

21 **(Against all Defendants for Civil Penalties Under the Private Attorneys General Act of**
22 **2004, Cal. Lab. Code §§ 2698, *et seq.*)**

23 23. Plaintiff incorporates by reference and re-alleges as if fully stated herein
24 paragraphs 1 through 22 in this Second Amended Complaint.

25 24. At all times herein mentioned, Defendants were subject to the Labor Code of the
26 State of California and the applicable Industrial Welfare Commission Orders.

27 25. California Labor Code § 2699(a) specifically provides for a private right of action
28 to recover penalties for violations of the Labor Code: “Notwithstanding any other provision of

1 law, any provision of this code that provides for a civil penalty to be assessed and collected by
2 the Labor and Workforce Development Agency or any of its departments, divisions,
3 commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative,
4 be recovered through a civil action brought by an aggrieved employee on behalf of himself or
5 herself and other current or former employees pursuant to the procedures specified in Section
6 2699.3.”

7 26. Plaintiff has exhausted his administrative remedies pursuant to California Labor
8 Code § 2699.3. On February 19, 2022, Plaintiff gave written notice by online filing to the Labor
9 and Workforce Development Agency and by certified mail to Defendants of the specific
10 provisions of the Labor Code that Defendants have violated against Plaintiff and current and
11 former aggrieved employees, including the facts and theories to support the violations. On
12 October 30, 2024, Plaintiff submitted an amended PAGA notice letter to the Labor and Workforce
13 Development Agency and sent the same to Defendants via certified mail. Plaintiff’s PAGA case
14 number is No. LWDA-CM-869189-22.

15 27. More than 65 days has elapsed since Plaintiff provided notice, but the Labor and
16 Workforce Development Agency has not indicated that it intends to investigate Defendants’ Labor
17 Code violations discussed in the notice. Accordingly, Plaintiff may commence a civil action to
18 recover penalties under Labor Code § 2699 pursuant to § 2699.3 for the violations of the Labor
19 Code described in this Complaint. These penalties include, but are not limited to, penalties under
20 California Labor Code §§ 210, 226.3, 248.5, 558, 1197.1, 2699(f)(2), and 2802.

21 28. In addition, Plaintiff seeks penalties for Defendants’ violation of California Labor
22 Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity,
23 employing labor who willfully fails to maintain accurate and complete records required by
24 California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable
25 IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins
26 and ends each work period. Meal periods, and total hours worked daily shall also be recorded.
27 Additionally, pursuant to the applicable IWC Order § 7(A)(5), every employer shall keep total
28 hours worked in the payroll period and applicable rates of pay.

29. During the time period of employment for Plaintiff and the Aggrieved Employees, Defendants failed to maintain records pursuant to the Labor Code and IWC Orders by failing to maintain accurate records showing meal periods, and accurate records showing when employees begin and end each work period. Defendants' failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendants' records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendants. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. Because of Defendants' knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiffs and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

30. Based on the conduct described in this Second Amended Complaint, Plaintiff is entitled to an award of civil penalties on behalf of themselves, the State of California, and similarly Aggrieved Employees of Defendants. The exact amount of the applicable penalties, in all, is in an amount to be shown according to proof at trial. These penalties are in addition to all other remedies permitted by law.

104. In addition, Plaintiffs seek an award of reasonable attorney’s fees and costs pursuant to California Labor Code § 2699(g)(1), which states, “Any employee who prevails in any action shall be entitled to an award of reasonable attorney’s fees and costs.”

PRAYER FOR RELIEF

Plaintiff, individually, and on behalf of all Aggrieved Employees, prays for relief and judgment against Defendants, jointly and severally, as follows:

1 1. That the Court declare, adjudge and decree that Defendants violated the California
2 Labor Code by failing to pay minimum wages, failure to pay overtime wages, failure to
3 provide meal periods, failure to authorize and permit rest periods, failure to provide paid sick
4 leave, failure to maintain accurate records of hours worked and meal periods, failure to timely
5 pay all wages to terminated employees, failure to indemnify necessary business expenses, and
6 failure to furnish accurate wage statements;

7 2. That the Court award civil penalties on behalf of all Aggrieved Employees,
8 pursuant to PAGA;

9 3. That the Court award pre-judgment and post-judgment interest at the maximum
10 rate allowed;

11 4. That the Court award attorneys' fees and costs reasonably incurred;

12 5. That the Court award injunctive and declaratory relief to the extent allowed by
13 PAGA; and

14 6. For such other and further relief as the Court may deem equitable and appropriate.
15

16 Dated: January 10, 2025

Respectfully submitted,

MOON LAW GROUP, PC

18
19 By: 

Kane Moon

Allen Feghali

Julie Sohyun Oh

Attorneys for Plaintiff Alex Portillo
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DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury as to all causes of action triable by jury.

Dated: January 10, 2025

MOON LAW GROUP, PC

By: 

Kane Moon
Allen Feghali
Julie Sohyun Oh
Attorneys for Plaintiff Alex Portillo

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I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 725 S. Figueroa St., 31st Floor, Los Angeles, California 90017. On **January 10, 2025**, I served the foregoing document described as:

X by placing ____ the original X a true copy thereof enclosed in sealed envelope(s)
addressed as follows:

Bret Martin (SBN 304658)
FISHER & PHILLIPS LLP
 4747 Executive Drive Suite 1000
 San Diego, CA 92121
 Telephone: (858) 597-9600
 Facsimile: (858) 597-960]
 E—mail: bmartin@fisherphillips.com

[✓] **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

Executed on **January 10, 2025**, at Los Angeles, California.

/s/ Jessica Partida
Signature