

Kane Moon (SBN 249834)
E-mail: kmoon@moonlawgroup.com
Allen Feghali (SBN 301080)
E-mail: afeghali@moonlawgroup.com
Edwin Kamarzarian (SBN 327830)
E-mail: ekamarzarian@moonlawgroup.com

MOON LAW GROUP, PC
725 S. Figueroa Street, 31st Floor
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125

Attorneys for Plaintiff Jordan Andrew Pitt

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

JORDAN ANDREW PITT, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

THE BRIGANTINE, INC., a California
corporation; and DOES 1 through 10, inclusive,

Defendants

Case No.: 37-2021-00035830-CU-OE-CTL

**SECOND AMENDED PAGA
REPRESENTATIVE ACTION
COMPLAINT:**

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

DEMAND FOR JURY TRIAL

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

4 **INTRODUCTION & PRELIMINARY STATEMENT**

5 1. Plaintiff brings this action against Defendants The Brigantine, 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’ underlying California Labor Code violations and unfair business practices,
9 including Defendants’ failure to pay minimum and regular rate wages, failure to pay overtime
10 wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to
11 maintain accurate records of hours worked and meal periods, failure to timely pay all wages to
12 terminated employees, and 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
16 or her family, it is essential to the public welfare that employers obey the wage-and-hour laws so
17 that employees are promptly paid the minimum/overtime wages that the Legislature has required
18 for 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
22 individual to bring an action on behalf of herself and on behalf of others for PAGA penalties
23 only, which is the precise and sole nature of this action.

24 3. All California employees during the relevant statutes of limitations who are or
25 were harmed by Defendant’s illegal practices are “Aggrieved Employees.”

26 4. Plaintiff brings this action against Defendants seeking only to recover penalties for
27 himself, on behalf of all Aggrieved Employees that worked for Defendants, and on behalf of the
28 State of California. Plaintiff does not seek to recover anything other than penalties as permitted

1 by California Labor Code Section 2699 at this time. To the extent that statutory violations are
2 mentioned for wage violations, Plaintiff does not seek underlying general and/or special damages
3 for those violations, but simply penalties as permitted by California Labor Code Section 2699,
4 declaratory relief, and injunctive relief for himself and all aggrieved employees as permitted by
5 the PAGA.

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

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

- 13 (a) Failing to pay employees for all hours worked, including all minimum
14 wages, overtime wages, in compliance with the California Labor Code and
15 IWC Wage Orders;
- 16 (b) Failing to maintain accurate records of the hours employees worked;
- 17 (c) Failing to provide employees with timely and duty-free meal periods in
18 compliance with the California Labor Code and IWC Wage Orders, failing
19 to maintain accurate records of all meal periods taken or missed, and
20 failing to pay an additional hour's pay for each workday a meal period
21 violation occurred;
- 22 (d) Failing to authorize and permit employees to take timely and duty-free rest
23 periods in compliance with the California Labor Code and IWC Wage
24 Orders, and failing to pay an additional hour's pay for each workday a rest
25 period violation occurred;
- 26 (e) Willfully failing to pay employees all minimum wages, overtime wages,
27 meal period premium wages, and rest period premium wages due within
28

the time period specified by California law when employment terminates;
and

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

7. 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.

8. 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

9. Plaintiff is a California resident who worked for Defendants in San Diego County, California as a server and busser, from approximately November 2020 to June 2021.

B. Defendants

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

- (a) A California corporation with its principal place of business in San Diego, California;
- (b) A business entity conducting businesses in numerous counties throughout the State of California, including in San Diego County; and
- (c) The former employer of Plaintiff, and the current and/or former employers of the Aggrieved Employees. The Brigantine, Inc. suffered and permitted Plaintiff and the Aggrieved Employees to work, and/or controlled their

wages, hours, or working conditions.

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

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

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

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

14. Plaintiff worked for Defendants in San Diego County, California as a server and busser from approximately November 2020 to June 2021. At all times Defendants classified Plaintiff as non-exempt from California's overtime requirements. During the statutory time

1 period, Plaintiff was typically scheduled to work at least 5 days in a workweek, and occasionally
2 in excess of 8 hours in a single workday.

3 15. Throughout the statutory period, Defendants failed to pay Plaintiff for all hours
4 worked (including minimum wages and overtime compensation), failed to provide Plaintiff with
5 uninterrupted meal periods, failed to authorize and permit Plaintiff to take uninterrupted rest
6 periods, failed to maintain accurate records of the hours Plaintiff worked, failed to timely pay all
7 final wages to Plaintiff when Defendants terminated Plaintiff's employment, and failed to furnish
8 accurate wage statements to Plaintiff. As discussed below, Plaintiff's experience working for
9 Defendants was typical and illustrative.

10 16. Throughout the statutory period, Defendants maintained a policy and practice of
11 not paying Plaintiff and the Aggrieved Employees for all hours worked, including all overtime
12 wages. Plaintiff and the Aggrieved Employees regularly worked off the clock, without
13 compensation. For example, Plaintiff and the Aggrieved Employees were required to perform
14 pre-clock-in activities, which included waiting in line in order to clock into work. Specifically,
15 Plaintiff and the Aggrieved Employees logging into work by using the same cash register that
16 was used to take customer orders, and therefore Plaintiff and the Aggrieved Employees regularly
17 had to wait until the register was available in order to clock in, which often required waiting,
18 uncompensated. Also, Plaintiff and the Aggrieved Employees were required to undergo COVID
19 screening which included temperature checks and a questionnaire, all off-the-clock and
20 uncompensated. Also throughout the statutory period, Plaintiff and the Aggrieved Employees
21 earned non-discretionary compensation such as services charges. However, Defendants failed to
22 incorporate all remuneration when determining the correct overtime rate of pay, leading to
23 underpayment of wages to Plaintiff and the Aggrieved Employees. In maintaining a practice of
24 not paying all wages owed, Defendants failed to maintain accurate records of the hours Plaintiff
25 and the Aggrieved Employees worked.

26 17. Throughout the statutory period, Defendants have wrongfully failed to provide
27 Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendants
28 regularly, but not always, required Plaintiff and the Aggrieved Employees to work in excess of

1 five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-
2 free meal period for every five hours of work, or without compensating Plaintiff and the
3 Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of
4 work or tenth hour of work. Defendants did not adequately inform Plaintiff and the Aggrieved
5 Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts
6 greater than 10 hours, by the end of the tenth hour of work. Defendants also did not have
7 adequate policies or practices to document and verify whether Plaintiff and the Aggrieved
8 Employees were taking their required meal periods. Accordingly, Defendants' policy and
9 practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance
10 with California law.

11 18. Throughout the statutory period, Defendants have wrongfully failed to authorize
12 and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods.
13 Defendants regularly, but not always, required Plaintiff and the Aggrieved Employees to work in
14 excess of four consecutive hours a day without Defendants authorizing and permitting them to
15 take a 10-minute, continuous and uninterrupted, rest period for every four hours of work (or
16 major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees
17 for rest periods that were not authorized or permitted. Also, Plaintiff and the Aggrieved
18 Employees were unable to leave the premises during their rest breaks. Accordingly, Defendants'
19 policy and practice was to not authorize and permit Plaintiff and the Aggrieved Employees to
20 take rest periods in compliance with California law.

21 19. Throughout the statutory period, Defendants willfully failed and refused to timely
22 pay Plaintiff and the Aggrieved Employees at the conclusion of their employment all wages,
23 including overtime wages, meal period premium wages, and rest period premium wages.

24 20. Upon information and belief, Defendant also denied, disciplined, retaliated,
25 and discharged Aggrieved Employees when they attempted to make use of available sick
26 leave in violation of Labor Code §§ 98.6, 233 and 234. Furthermore, Defendant failed to pay
27 the Aggrieved Employees all wages and entitlements due under the Labor Code, including
28

1 but not limited to properly compensating its employees for use of their sick leave pursuant to
2 the correct rate mandated by city of San Diego and under Sections 246 and 246(l).

3 21. Throughout the statutory period, Defendants failed to furnish Plaintiff and the
4 Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly
5 rates, and all gross and net wages earned (including correct hours worked, correct wages earned
6 for hours worked, correct overtime hours worked, correct wages for meal periods that were not
7 provided in accordance with California law, and correct wages for rest periods that were not
8 authorized and permitted to take in accordance with California law). As a result of these
9 violations of California Labor Code § 226(a), Plaintiff and the Aggrieved Employees suffered
10 injury because, among other things:

- 11 (a) the violations led them to believe that they were not entitled to be paid
12 minimum wages, overtime wages, meal period premium wages, and rest
13 period premium wages to which they were entitled, even though they were
14 entitled;
- 15 (b) the violations led them to believe that they had been paid the minimum,
16 overtime, meal period premium, and rest period premium wages to which
17 they were entitled, even though they had not been;
- 18 (c) the violations led them to believe they were not entitled to be paid
19 minimum, overtime, meal period premium, and rest period premium wages
20 at the correct California rate even though they were;
- 21 (d) the violations led them to believe they had been paid minimum, overtime,
22 meal period premium, and rest period premium wages at the correct
23 California rate even though they had not been;
- 24 (e) the violations hindered them from determining the amounts of minimum,
25 overtime, meal period premium, and rest period premium owed to them;
- 26 (f) in connection with their employment before and during this action, and in
27 connection with prosecuting this action, the violations caused them to have
28 to perform mathematical computations to determine the amounts of wages

owed to them, computations they would not have to make if the wage statements contained the required accurate information;

- (g) by understating the wages truly due them, the violations caused them to lose entitlement and/or accrual of the full amount of Social Security, disability, unemployment, and other governmental benefits;
- (h) the wage statements inaccurately understated the wages, hours, and wage rates to which Plaintiff and the Aggrieved Employees were entitled, and Plaintiff and the Aggrieved Employees were paid less than the wages and wage rates to which they were entitled.

FIRST CAUSE OF ACTION

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

22. Plaintiff incorporates by reference and re-alleges all preceding paragraphs as though fully set forth herein.

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

24. California Labor Code § 2699(a) specifically provides for a private right of action to recover penalties for violations of the Labor Code: “Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of herself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.”

25. Plaintiff has exhausted his administrative remedies pursuant to California Labor Code § 2699.3. On August 18, 2021, he gave written notice by online filing to the Labor and Workforce Development Agency and by certified mail to Defendants of the specific provisions

1 of the Labor Code that Defendants have violated against Plaintiff and current and former
2 aggrieved employees, including the facts and theories to support the violations. Plaintiff also
3 paid the filing fee shortly after August 18, 2021. Plaintiff's PAGA case number is LWDA-CM-
4 841878-21.

5 26. The statute of limitations is tolled while a plaintiff exhausts his/her administrative
6 remedies with California's Labor and Workforce Development Agency (LWDA) prior to suit,
7 which is required by the statute. (*See* Cal. Lab. Code § 2699.3(d).)

8 27. More than 65 days has elapsed since Plaintiff provided notice, but the Labor and
9 Workforce Development Agency has not indicated that it intends to investigate Defendants'
10 Labor Code violations discussed in the notice. Accordingly, Plaintiff may commence a civil
11 action to recover penalties under Labor Code § 2699 pursuant to § 2699.3 for the violations of
12 the Labor Code described in this Complaint. These penalties include, but are not limited to,
13 penalties under California Labor Code §§ 210, 226.3, 1197.1, and 2699(f)(2).

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

22 29. During the time period of employment for Plaintiff and the Aggrieved Employees,
23 Defendants failed to maintain records pursuant to the Labor Code and IWC Orders by failing to
24 maintain accurate records showing meal periods, and accurate records showing when employees
25 begin and end each work period. Defendants' failure to provide and maintain records required by
26 the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to
27 know, understand and question the accuracy and frequency of meal periods, and the accuracy of
28 their hours worked stated in Defendants' records. Therefore, Plaintiff and the Aggrieved

1 Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an
2 unjustified economic enrichment to Defendants. As a direct result, Plaintiff and the Aggrieved
3 Employees have suffered and continue to suffer, substantial losses related to the use and
4 enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking
5 to compel Defendants to fully perform its obligation under state law, all to their respective
6 damage in amounts according to proof at trial. Because of Defendants' knowing failure to
7 comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved
8 Employees have also suffered an injury in that they were prevented from knowing,
9 understanding, and disputing the wage payments paid to them.

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

15 31. In addition, Plaintiff seeks an award of reasonable attorney's fees and costs
16 pursuant to Labor Code § 2699(g)(1), which states, "Any employee who prevails in any action
17 shall be entitled to an award of reasonable attorney's fees and costs."
18

19 **PRAYER FOR RELIEF**

20 Plaintiff, on behalf of all similarly aggrieved employees, prays for relief and judgment
21 against Defendants, jointly and severally, as follows:

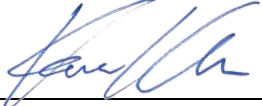
22 1. That the Court declare, adjudge and decree that Defendants violated the California
23 Labor Code by failing to pay wages for all hours worked (including minimum, straight time, and
24 overtime wages), failing to provide meal periods, failing to authorize and permit rest periods,
25 failing to furnish accurate wage statements, failing to reimburse for necessary business expenses
26 incurred by Plaintiff and the Aggrieved Employees, and failing to maintain accurate records of
27 all hours worked and meal periods;
28

- 1 2. An award of civil penalties on behalf of himself and all similarly aggrieved
2 employees pursuant to PAGA;
3 3. Pre-judgment and post-judgment interest at the maximum rate allowed;
4 4. Attorneys' fees and costs reasonably incurred;
5 5. Injunctive and declaratory relief to the extent allowed by PAGA; and
6 6. Such other and further relief that the Court deems proper.

7
8 Dated: December 02, 2024

Respectfully submitted,

9 **MOON LAW GROUP, PC**

10
11 By: 

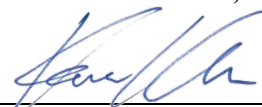
Kane Moon
Allen Feghali
Edwin Kamarzarian
Attorneys for Plaintiff

12
13
14
15 **DEMAND FOR JURY TRIAL**

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

17
18 Dated: December 02, 2024

MOON LAW GROUP, PC

19
20 By: 

Kane Moon
Allen Feghali
Edwin Kamarzarian
Attorneys for Plaintiff

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3) ss
4 COUNTY OF LOS ANGELES)

5 I am employed in the county of Los Angeles, State of California. I am over the age of 18
6 and not a party to the within action; my business address is 725 S. Figueroa St., 31st Floor, Los
7 Angeles, California 90017. On **December 2, 2024**, I served the foregoing document described
8 as:

9 **SECOND AMENDED PAGA REPRESENTATIVE ACTION COMPLAINT**

10 X by E-mailing ___ the original X a true copy to the following:

11 James C. Fessenden
12 Jason A. Fischbein
13 Jasmine M. Samuels
14 **FISHER & PHILLIPS LLP**
15 4747 Executive Drive, Suite 1000
16 San Diego, California 92121
17 Telephone: (858) 597-9600
18 Facsimile: (858) 597-9601
19 jfessenden@fisherphillips.com
20 jfischbein@fisherphillips.com
21 jsamuels@fisherphillips.com
22 meleria-perez@fisherphillips.com
23 svalle@fisherphillips.com
24 kchavez@fisherphillips.com

25 *Attorneys for Defendant The Brigantine, Inc.*

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

29 X (State) I declare under penalty of perjury under the laws of the State of California
30 that the above is true and correct.

31 Executed on **December 2, 2024**, at Los Angeles, California.

32 Jill Eaton
33 Name

34 /s/ Jill Eaton

35 Signature