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ATTORNEYS FOR DEFENDANTS

CAL-QUAKE CONSTRUCTION, INC., YOSEF

GOLDBERGER AND SHELDON PERLUSS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JASON MCCLURE, an individual, on behalf of)
himself and other employees and on behalf of)
the State of California and the Labor and)
Workforce Development Agency,)

Plaintiffs,

v.

CAL-QUAKE CONSTRUCTION, INC., a)
California corporation, and DOES 1 through)
100, INCLUSIVE,)

Defendants.)

Case No.: 21STCV15323

(Assigned for all purposes to the
Hon. Robert S. Draper in Dept. 78)

**NON-CONFIDENTIAL SETTLEMENT OF
PAGA REPRESENTATIVE ACTION AND
RELEASE**

COMPLAINT FILED: APRIL 22, 2021

PAGA SETTLEMENT AND RELEASE

This PAGA Representative Action Settlement and Release ("Settlement Agreement") is made and entered into by and between Plaintiff Jason McClure ("PAGA Plaintiff"), individually and on behalf of all other "aggrieved employees," and Defendants Cal-Quake Construction, Inc., Yosef

Goldberger and Sheldon Perluss (collectively the “Defendants”) (Defendants and Plaintiffs are collectively referred to as the “Parties”).

I. RECITALS

1. On April 22, 2021 PAGA Plaintiff John McClure filed a Private Attorney General Act Representative Action (“PAGA”) Complaint under Labor Code § 2699, designated as Case No. 21STCV15323, in Los Angeles Superior Court (the “Action”), on behalf of himself and all other aggrieved workers (laborers and forepersons) (the “Representative Group”) seeking PAGA penalties for Defendants’ alleged: 1) failure to pay wages; 2) failure to reimburse business expenses in violation of Labor Code § 2802; 3) failure to maintain accurate time keeping records in violation of Labor Codes § 226(a); 4) failure to pay all wages due at termination in violation of Labor Code § 203; and 5) failure to pay employees for missed rest and meal periods. Plaintiff also alleged a claim for unfair business practices in violation of California Business and Professions Code § 17200, as well as individual claims against Defendants.

2. Counsel for PAGA Plaintiff, T. Joshua Ritz and Associates, Inc. (“Representative Group Counsel”) has diligently pursued an investigation of the proposed Representative Group’s claims against Defendants, any and all applicable defenses, and the applicable law. The investigation included, *inter alia*, the exchange of information pursuant to discovery methods, including hundreds of pages of documents, numerous conferences and correspondence between Representative Group Counsel and Defendants’ counsel. Based on the foregoing investigation and evaluation, Representative Group Counsel and Defendants’ counsel are of the opinion that this settlement for the consideration and terms set forth in this Settlement Agreement is fair, reasonable and adequate as to all Parties, and is in the best interests of the Representative Group. This Settlement Agreement was reached after an extensive arms-length negotiation with MSC Judge, the Honorable James Dunn, presiding and was negotiated in light of all known facts and circumstances, including a review of the records in this case, the risk of significant delay and uncertainty associated with litigation, various respective financial resources and conditions, and the factual and legal defenses asserted by Defendants. Defendants expressly deny any liability, and this Settlement Agreement does not constitute an admission of liability or the accuracy of any allegation made by PAGA Plaintiff or the Representative Group Counsel.

1 3. This Settlement Agreement is subject to the terms and conditions hereof, and the
2 Court's Approval. The Parties expressly acknowledge that this Settlement Agreement is entered
3 into solely for the purpose of compromising disputed claims and that nothing herein is an
4 admission of liability or wrongdoing by Defendant.

5 4. The Parties acknowledge that PAGA penalties are discretionary, and if the PAGA
6 action were decided by the Court, the Court would have the discretion to "award a lesser amount
7 than the maximum civil penalty amount" based on the facts and circumstances of the case. *See*
8 Labor Code § 2699(e)(2) ("[i]n action by an aggrieved employee..., a court may award a lesser
9 amount than the maximum civil penalty amount specified by this part if, based on the facts and
10 circumstances of the particular case, to do otherwise would result in an award that is unjust,
11 arbitrary and oppressive, or confiscatory.")

12 5. The Parties acknowledge that as explained by the California Supreme Court in
13 *Arias v. Superior Court* (2009) 46 Cal.4th 969 (2009), the parties are not obligated to follow class
14 action procedural rules for approval of the PAGA Representative Group Settlement. *See also*
15 *Baumann v. Chase Investment Services* (9th Cir. 2014) 747 F.3d 1117, 1122 ("Unlike Rule
16 23(c)(2), PAGA has no notice requirements for unnamed aggrieved employees, nor may such
17 employees opt out of a PAGA action. In a PAGA action, the court does not inquire into the named
18 plaintiff's and class counsel's ability to fairly and adequately represent unnamed employees...");
19 *Ochoa-Hernandez v. Cjaders Foods, Inc.* (N.D. Cal. April 2, 2010) No. C 08-2073 MHP, 2010
20 WL 1340777, at *5 ("[u]nnamed employees need not be given notice of the PAGA claim, nor do
21 they have the ability to opt-out of the representative PAGA claim. There is no indication that the
unnamed plaintiffs can contest a settlement, if any, reached between the parties.")

22 6. Summary of Settlement Payments: Defendant shall pay the sum of TEN
23 THOUSAND DOLLARS (\$10,000), following court approval of this Settlement Agreement, as
24 allocated as follows:

- 25 a. FIVE THOUSAND SIX HUNDRED FIFTY FIVE DOLLARS AND FORTY NINE
26 CENTS \$5,655.49 shall be paid to the Labor Workforce and Development Agency
27 ("LWDA"). Within 15 calendar days of entry of the Court Order approving the
28 PAGA Settlement, Defendant shall distribute to the LWDA a cashier's check made

1 payable to the LWDA. Within 20 calendar days of the Court Order approving the
2 PAGA Settlement, Defendant shall file a declaration with the Court stating it has
3 done so and attach a copy of the cashier's check made payable to the LWDA.

4 b. ONE THOUSAND EIGHT HUNDRED EIGHTY FIVE DOLLARS AND
5 SEVENTEEN CENTS \$1,885.17 shall be distributed to the PAGA Employees
6 comprised of all current and former laborers and forepersons of Defendants
7 employed between September 17, 2019 and the date of this Court's Order approving
8 the PAGA Settlement. Within 15 calendar days of entry of the Court Order
9 approving the PAGA Settlement, Defendants shall distribute to each PAGA
10 Employee a proportionate share of \$1,885.17 in accordance with the number of
11 work weeks the employee was employed. Within 20 calendar days of the Court
12 Order approving the PAGA Settlement, Defendant shall file a declaration with the
13 Court stating it has done so.

14 c. TWO THOUSAND DOLLARS \$2,000.00 dollars of the settlement shall be
15 allocated as PAGA-related attorneys' fees. ("Any employee who prevails in any
16 action shall be entitled to an award of reasonable attorney's fees and costs..."
17 Labor Code §2699(g). Within 15 calendar days of entry of the Court Order
18 approving the PAGA Settlement, Defendant shall deliver to PAGA Counsel a check
19 in the amount of \$2,000 made payable to "T. Joshua Ritz & Associates, Inc."

20 d. FOUR HUNDRED FIFTY NINE COLLARS AND THIRTY FOUR CENTS
21 \$459.34 dollars of the settlement shall be allocated as PAGA-related attorneys
22 costs. The PAGA related costs consists of \$384.34 paid to CPT Group, Inc. to
23 administer and mail Belaire-West Notices and \$75 paid to the LWDA. Within 15
24 calendar days of entry of the Court Order approving the PAGA Settlement,
25 Defendant shall deliver to PAGA Counsel a check in the amount of \$459.34 made
26 payable to "T. Joshua Ritz & Associates, Inc."

27 e. Any settlement checks distributed to the PAGA Employees that are deemed
28 undeliverable, or that are uncashed after a period of 180 days shall be sent to the
State Unclaimed Property Fund in the employees' names.

1 7. Within 20 calendar days after entry of the Court Order approving the PAGA
2 settlement, Defendant Cal-Qquake Construction, Inc. shall file with the Court a declaration
3 affirming the mailing and distribution of the funds to the PAGA Employees. Within 210 calendar
4 days after entry of the Court Order approving the PAGA Settlement, Defendant Cal-Qquake
5 Construction, Inc. shall file a declaration that any settlement checks distributed to the PAGA
6 Employees that were deemed undeliverable, or that were uncashed after a period of 180 days, were
7 sent to the State Unclaimed Property Fund in the employees' names.

8 8. Plaintiff shall file a request for dismissal of this Lawsuit, with prejudice, within ten
9 calendar days after receiving the last non-PAGA individual settlement payment, provided that the
10 Court has approved the PAGA settlement. The Parties agree that Court shall retain jurisdiction of
11 this action to enforce the terms of the settlement pursuant to California Code of Civil Procedure §
12 664.6, including specifically enforcing the terms of this PAGA settlement. At such time as a
13 declaration is filed that all monetary relief terms of the PAGA and individual settlement to
14 Plaintiff has been effectuated, the Parties agree that the Court's jurisdiction shall be deemed
15 terminated as a final matter for all purposes.

16 9. The PAGA claims released in this settlement are the PAGA claims asserted in the
17 Complaint, including claims for PAGA penalties related to: failure to pay wages owed; failure to
18 reimburse business expenses in violation of Labor Code § 2802; failure to maintain accurate time
19 keeping records in violation of Labor Codes § 226(a); failure to pay all wages due at termination
20 in violation of Labor Code § 203; failure to pay employees for rest and meal periods. These
21 claims shall be released as to Defendant, its parents or subsidiaries, and each of their owners,
22 officers, directors, employees, attorneys, insurers, successors, predecessors, and agents. The
23 release shall include all the above claims from the period beginning September 17, 2019 through
24 the date of this Court's Order approving the PAGA settlement.

25 10. All Representative Group Members shall be bound by the terms of this settlement as
26 it pertains to the release of the PAGA claims (*See Arias v. Superior Court* (2009) 46 Cal. 4th 969,
27 987) after the Court grants approval of the Settlement.

28 11. Tax Treatment of Individual PAGA Payments: One hundred percent (100%) of
each Individual PAGA Payment shall be allocated as civil penalties and shall not be subject to

1 withholding. Defendant shall be responsible for timely issuing an appropriate Form 1099 to each
2 PAGA Employee where necessary to comply with tax regulations.

3 12. Nullification of Settlement Agreement: In the event: (i) the Court does not approve
4 the Settlement as provided herein; or (ii) the Settlement does not become final for any other
5 reason, this Settlement Agreement shall be null and void and any order or judgment entered by the
6 Court in furtherance of this Settlement shall be treated as void from the beginning. In such a case,
7 the Parties shall be returned to their respective statuses as of the date and time immediately prior to
8 the execution of this Settlement Agreement, and the Parties shall proceed in all respects as if this
9 Settlement Agreement had not been executed.

10 13. Amendment or Modification: Unless otherwise provided herein, this Settlement
11 Agreement may be amended or modified only by a written instrument signed by counsel for all
12 Parties or their successors-in-interest.

13 14. Authorization to Enter Into Settlement Agreement: Counsel for all Parties warrant
14 and represent they are expressly authorized by the Parties whom they represent to negotiate this
15 Settlement Agreement and to take all appropriate action required or permitted to be taken by such
16 Parties pursuant to this Settlement Agreement to effectuate its terms, and to execute any other
17 documents required to effectuate the terms of this Settlement Agreement. The Parties and their
18 counsel will cooperate with each other and use their best efforts to effect the implementation of the
19 Settlement. In the event the Parties are unable to reach agreement on the form or content of any
20 document needed to implement the Settlement, or on any supplemental provisions that may
21 become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of
22 the Court to resolve such disagreement. The persons signing this Agreement on behalf of
23 Defendant represent and warrant that they are authorized to sign this Agreement on behalf of
24 Defendant.

25 15. Binding on Successors and Assigns: This Settlement Agreement shall be binding
26 upon and inure to the benefit of the successors or assigns of the Parties hereto, as previously
27 defined.

28 16. California Law Governs: All terms of this Settlement Agreement and the Exhibits
hereto shall be governed by and interpreted according to the laws of the State of California.

17. Counterparts: This Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument.

Dated: May 9, 2023

By: 
PLAINTIFF JASON MCCLURE

Dated: May 9, 2023

By: Yosef Goldberger
DEFENDANT YOSEF GOLDBERGER

Dated: May 9, 2023

By: Sheldon Perluss
DEFENDANT SHELDON PERLUSS

DEFENDANT CAL-QUAKE CONSTRUCTION, INC.

Dated: May 9, 2023

Yosef Goldberger

By: Yosef Goldberger

Title: manager

1 Dated: May 9, 2023

T. JOSHUA RITZ & ASSOCIATES, INC.

2
3 By:


T. JOSHUA RITZ
ATTORNEYS FOR PLAINTIFF JASON
MCCLURE AND PAGA EMPLOYEES

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5
6
7
8 Dated: May 9, 2023

LAW OFFICE OF ARYEH KAUFMAN

9
10 By:

Aryeh Kaufman
ARYEH KAUFMAN
ATTORNEYS FOR DEFENDANTS
CAL-QUAKE CONSTRUCTION, INC., YOSEF
GOLDBERGER AND SHELDON PERLUSS