

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Robert Draper

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JASON MCCLURE AND PAGA EMPLOYEES

**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

CIVIL UNLIMITED

**COMPLAINT FOR DAMAGES &
EQUITABLE REMEDIES:**

1. FAILURE TO REASONABLY ACCOMMODATE;
2. FAILURE TO ENGAGE IN A GOOD-FAITH INTERACTIVE PROCESS;
3. DISABILITY DISCRIMINATION;
4. FAILURE TO PREVENT DISCRIMINATION;
5. WRONGFUL TERMINATION;
6. FAILURE TO PAY WAGES AND/OR OVERTIME;
7. FAILURE TO PROVIDE MEAL AND/OR REST BREAKS;
8. FAILURE TO REIMBURSE BUSINESS EXPENSES;
9. VIOLATION OF LABOR CODE § 226;
10. VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200;
11. WAITING TIME PENALTIES PURSUANT TO LABOR CODE § 203;
12. LABOR CODE RETALIATION; AND
13. PRIVATE ATTORNEY GENERAL ACTION FOR PENALTIES (LAB. CODE § 2699).

DEMAND FOR JURY TRIAL

Plaintiff Jason McClure alleges on behalf of himself and other employees:

I. INTRODUCTION

1. Plaintiff Jason McClure began working for Defendant Cal-Quake Construction, Inc. ("Cal-Quake") on or about November 2018. On or about June 2019, Mr. McClure was involved in a motorcycle accident where he fractured his foot and ankle. Following evaluation by his doctor, he submitted a medical note requesting accommodation, which Cal-Quake ignored. Cal-Quake also ignored his request for medical care in response to work-related injuries. Mr. McClure also questioned the company's policies pertaining to proper rest breaks, uninterrupted meal breaks and reimbursements for mileage and tool purchases. After months of requesting accommodation and complaining about ongoing wage and hour violations, Cal-Quake retaliated against Mr. McClure by wrongfully terminating him under the false pretense that there was no more work available for him, though the company continued normal operation.

II. PARTIES/VENUE

2. Plaintiff Jason McClure was at all relevant times an employee of Defendant Cal-Quake.

3. Plaintiff is informed and believes, and upon that basis alleges, Defendant Cal-Quake is a California corporation authorized to and regularly and customarily doing business in California. At all relevant times, Cal-Quake employed Plaintiff Jason McClure.

4. Plaintiff brings this action pursuant to Labor Code §§ 98.6, 201, 202, 203, 204, 221, 224, 225.5, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1199, 2802 seeking wages, penalties, injunctive, declaratory, and other equitable relief, and reasonable attorneys' fees and costs.

5. For at least one year prior to the filing of this action continuing to the present, Defendants have had a consistent policy of failing to pay wages for all hours worked.

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6. For at least one year prior to the filing of this action continuing to the present, Defendants have had a consistent policy of failing to provide employees meal and rest breaks.

7. For at least one year prior to the filing of this action continuing to the present, Defendants have had a consistent policy of failing to provide employees with accurate itemized wage statements.

8. Plaintiff, pursuant to Business and Professions Code §§ 17200 – 17208, also seeks injunctive relief, restitution and disgorgement of all benefits Defendants enjoyed from their unlawful policies and practices.

9. The true names and capacities of defendants DOES 1 through 100 are unknown to Plaintiff, who therefore sues these Defendants by such fictitious names. Plaintiff will seek leave to amend his complaint to allege such names and capacities as soon as they are ascertained. Plaintiff is informed and believes, and upon that basis alleges, that each of the fictitiously named Defendants is in some manner responsible, liable, and/or obligated to Plaintiff in connection with the acts alleged herein.

10. Plaintiff is informed and believes and upon that basis alleges that DOES 1 through 100 are the controlling entities and/or alter egos of the other Defendants, and of each other, and ratified, authorized, and/or directed the conduct of Defendant Cal-Quake Construction, Inc. In doing the things hereinafter alleged, the Defendants, and each of them, acted as the agents, servants and employees of their co-defendants, who acted within the course and scope of their agency and employment, and with the knowledge, consent and approval of their co-defendants whereby their conduct was ratified by their co-defendants.

11. Pursuant to California Code of Civil Procedure Sections 393, 395.5 and Government Code Section 12965(b), jurisdiction and venue are proper in the Superior Court, State of California, County of Los Angeles.

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III. EXHAUSTION OF ADMINISTRATIVE REMEDIES

12. All legal prerequisites for proceeding with the claims contained in this complaint have been met.

13. Plaintiff filed with the California Department of Fair Employment and Housing a complaint against each Defendant which is attached here as Exhibit A.

14. Plaintiff received from the California Department of Fair Employment and Housing a "right-to-sue" letter against each Defendant which is attached here as Exhibit B.

15. Plaintiff sent a letter to the Labor Workforce Development Agency and to Defendants on June 10, 2020, pursuant to Labor Code section 2699. At least sixty-five (65) days have passed since the postmark date of that notice and the LWDA has not indicated that it intends to investigate the alleged violations. Therefore, pursuant to Labor Code section 2699.3(a)(2)(A), Plaintiff may commence a civil action.

IV. FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

16. Jason McClure began his tenure with Cal-Quake as a foreman on or about November 2018.

17. On or about May 2019, Mr. McClure was involved in a motorcycle accident and suffered an injury that qualified as a disability. Mr. McClure saw a doctor who advised him of the severity of his injuries and provided work restrictions. As such, Mr. McClure informed his employer and provided a doctor's notes to his supervisors advising them of his condition and the need for reasonable accommodations. Although Cal-Quake was aware of his medical condition and his restrictions, they failed to engage in the interactive process and provide reasonable accommodations. The failure by defendant Cal-Quake to accommodate and follow doctor's restrictions only further injured plaintiff McClure's ongoing disabilities.

18. Plaintiff McClure also reported ongoing physical injuries he had suffered throughout his tenure with defendant Cal-Quake and requested workers' compensation medical benefits. Defendant Cal-Quake ignored his request and failed to provide Mr.

1 McClure with the proper documentation to submit his claims to Defendants' insurance
2 carrier.

3 19. Additionally, throughout Mr. McClure's employment, Cal-Quake failed to
4 pay wages for all time worked, and failed to pay an overtime premium wage for time
5 worked in excess of 8 hours per day or 40 hours per week, which resulted in minimum
6 and overtime premium wage violations.

7 20. Employees, including Mr. McClure, were consistently required to report to
8 work approximately thirty minutes before their scheduled start time to unload materials
9 and prepare the site. Employees, including Mr. McClure, were not paid for that pre-shift
10 work.

11 21. Further, Mr. McClure alleges that he, as well as other employees, were not
12 provided with compliant duty-free meal periods for each day that they worked over 5
13 hours in a shift. Mr. McClure and other employees were often not provided with meal
14 periods as Defendants maintained strict guidelines regarding the completion of job
15 assignments. Therefore, Mr. McClure and other employees had to forgo meal and rest
16 periods so that the job could be completed according to Defendants' specifications. If
17 Mr. McClure and other employees were provided with meal periods, they were often
18 interrupted and/or they would have to continue working while eating and/or meal rest
19 periods were taken while on duty, during travel time between job assignments.

20 Defendants also failed to authorize and permit rest periods for each four hours worked or
21 major fraction thereof. Notwithstanding the fact that meal and rest periods were not
22 authorized or permitted, Defendants failed to pay employees for the time worked and
23 meal and rest period premium wages.

24 22. At the end of their work shift, Mr. McClure and other employees were also
25 required to clean the work area, load material and tools back into their truck or trailer
26 after they had ended their shift. Mr. McClure and other employees were not paid for the
27 time it took to perform those work duties (i.e. post-shift work).
28

23. Mr. McClure and other employees were also required to purchase and use their own tools, but Cal-Quake failed to fully reimburse Mr. McClure and other employees for use of these items in the course of their employment and in direct discharge of their duties. Defendant Cal-Quake also failed to reimburse Mr. McClure and other employees for the mileage they incurred for the use of their own vehicles at work. After raising the numerous Labor Code violations with his supervisor and other members of management Mr. McClure faced retaliation and discrimination for complaining about owed wages and expense reimbursements, as well as reporting his injuries. Plaintiff McClure was wrongfully terminated on or about January 2020.

FIRST CAUSE OF ACTION
FOR FAILURE TO REASONABLY ACCOMMODATE
AGAINST DEFENDANT CAL-QUAKE CONSTRUCTION, INC.
AND DOES 1 THROUGH 100
(Violation of Government Code Section 12940(m))

24. The allegations set forth in paragraphs 1 through 23 are realleged and incorporated by reference as though fully set forth herein.

25. At all relevant times, Plaintiff Jason McClure was an employee of Defendant Cal-Quake, an employer subject to the provisions of the California Fair Employment & Housing Act.

26. On or about May 2019, Mr. McClure suffered an injury that qualified as a disability. Mr. McClure saw a doctor and was advised that he would need to take a brief amount of time off work. Plaintiff notified his employer of the injury and provided doctors' notes which indicated his need for a brief leave and work restrictions.

27. Plaintiff McClure was suffering an injury that qualifies as a disability under the Fair Employment & Housing Act.

28. Defendant Cal-Quake was aware Mr. McClure was suffering an injury that qualifies as a disability. Mr. McClure informed his employer of the disability/medical condition months prior to his wrongful termination. Mr. McClure provided medical

1 documentation concerning the disability/medical condition and his need to be
2 accommodated.

3 29. Defendant Cal-Quake failed to accommodate Mr. McClure's injury. The
4 accommodation Mr. McClure required consisted of work restrictions involving heavy
5 lifting.

6 30. With reasonable accommodation from Defendant Cal-Quake, Mr. McClure
7 was able to perform the essential duties of his position.

8 31. Defendant Cal-Quake failed to provide reasonable accommodation for
9 Plaintiff McClure's temporary disability.

10 32. Plaintiff McClure has been damaged.

11 33. Plaintiff's damages include, but are not limited to, lost earnings and other
12 employment benefits. He has also suffered and continues to suffer humiliation,
13 emotional distress, mental and physical pain, anguish, pain and suffering, loss of sleep,
14 loss of appetite, headaches, panic attacks, loss of enjoyment of life, depression, all to his
15 damage in a sum according to proof at trial.

16 34. Defendant Cal-Quake's failure to provide reasonable accommodation was a
17 substantial factor in causing Plaintiff McClure's harm.

18 35. Defendant Cal-Quake's failure to accommodate Plaintiff's physical
19 condition was willful, knowing, and/or intentional and otherwise constitutes oppressive
20 conduct entitling Mr. McClure to an award of punitive and exemplary damages in an
21 amount according to proof at trial.

22 36. Plaintiff McClure has incurred and continues to incur legal expenses and
23 attorneys' fees. Plaintiff will seek recovery of his attorneys' fees and costs at the
24 conclusion of this lawsuit.

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SECOND CAUSE OF ACTION
FOR FAILURE TO ENGAGE IN A GOOD-FAITH INTERACTIVE PROCESS
AGAINST DEFENDANT CAL-QUAKE CONSTRUCTION, INC.
AND DOES 1 THROUGH 100
(Violation of Government Code Section 12940(n))

37. The allegations set forth in paragraphs 1 through 36 are realleged and incorporated by reference as though fully set forth herein.

38. At all relevant times, Plaintiff McClure was an employee of Defendant Cal-Quake, an employer subject to the provisions of the California Fair Employment & Housing Act. Plaintiff McClure had physical disabilities and a medical condition that was known to Defendant Cal-Quake.

39. Defendant Cal-Quake failed to engage in a good-faith interactive process with Mr. McClure to determine whether it would be possible to implement effective reasonable accommodation so that Mr. McClure could continue to work for Cal-Quake.

40. Mr. McClure was temporarily disabled and required reasonable accommodations.

41. Mr. McClure requested reasonable accommodation.

42. Mr. McClure was willing to participate in an interactive process to determine whether reasonable accommodation could be made so that he would be able to perform his essential job requirements.

43. Defendant Cal-Quake failed to participate in a timely good-faith interactive process with Mr. McClure to determine whether reasonable accommodation could be made.

44. Mr. McClure has been damaged.

45. Mr. McClure's damages include, but are not limited to, lost earnings and other employment benefits. Mr. McClure also suffered and continues to suffer humiliation, emotional distress, mental and physical pain, anguish, pain and suffering,

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1 loss of sleep, loss of appetite, headaches, panic attacks, loss of enjoyment of life,
2 depression, all to his damage in a sum according to proof at trial.

3 46. Defendant Cal-Quake's failure to engage in a timely good-faith interactive
4 process was a substantial factor in causing Mr. McClure's harm.

5 47. Defendant Cal-Quake's failure to engage in an interactive process was
6 willful, knowing, and/or intentional and otherwise constitutes oppressive conduct
7 entitling Plaintiff to an award of punitive and exemplary damages in an amount according
8 to proof at trial.

9 48. Plaintiff has incurred and continues to incur legal expenses and attorneys'
10 fees and will seek to recover those expenses and costs at the conclusion of this lawsuit.

11 **THIRD CAUSE OF ACTION**
12 **FOR DISABILITY DISCRIMINATION (DISPARATE TREATMENT)**
13 **AGAINST DEFENDANT CAL-QUAKE CONSTRUCTION, INC.**

14 **AND DOES 1 THROUGH 100**
15 **(Violation of Government Code Section 12940(a))**

16 49. The allegations set forth in paragraphs 1 through 48 are realleged and
17 incorporated by reference as though fully set forth herein.

18 50. At all relevant times, Plaintiff McClure was an employee of Defendant Cal-
19 Quake. Defendant Cal-Quake is an employer subject to the provisions of the California
20 Fair Employment & Housing Act.

21 51. Plaintiff suffered disparate treatment on account of his actual and/or
22 perceived disability and/or medical condition. Defendant Cal-Quake took adverse
23 employment actions against Plaintiff such as terminating him on account of his actual
24 and/or perceived disability and/or medical condition. The terms, conditions and/or
25 privileges of Plaintiff's employment with Defendant was adversely impacted on account
26 of his actual and/or perceived disability and/or medical condition.

27 52. Plaintiff was able to perform the essential duties of his job with reasonable
28 accommodation.

1 53. Plaintiff's actual and/or perceived disability and/or medical condition were
2 substantial motivating reasons for discriminating against him.

3 54. Plaintiff has been damaged. Plaintiff's damages include, but are not limited
4 to, lost earnings and other employment benefits. He has also suffered and continues to
5 suffer humiliation, emotional distress, mental and physical pain, anguish, pain and
6 suffering, loss of sleep, loss of appetite, headaches, panic attacks, loss of enjoyment of
7 life, depression, all to his damage in a sum according to proof at trial.

8 55. Defendant Cal-Quake's disability discrimination was a substantial factor
9 causing Plaintiff's harm.

10 56. Defendant Cal-Quake's disability discrimination was willful, knowing,
11 and/or intentional discrimination and otherwise constitutes oppressive conduct entitling
12 Plaintiff to an award of punitive and exemplary damages in an amount according to proof
13 at trial.

14 57. Plaintiff has incurred and continues to incur legal expenses and attorneys'
15 fees. Plaintiff will seek recovery of his attorneys' fees and costs at the conclusion of this
16 lawsuit.

17 **FOURTH CAUSE OF ACTION**
18 **FOR FAILURE TO PREVENT DISCRIMINATION**
19 **AGAINST DEFENDANT CAL-QUAKE CONSTRUCTION, INC.**
20 **AND DOES 1 THROUGH 100**
21 **(Violation of Government Code Section 12940(k))**

22 58. The allegations set forth in paragraphs 1 through 57 are realleged and
23 incorporated by reference as though fully set forth herein.

24 59. At all relevant times, Plaintiff was an employee of Defendant Cal-Quake,
25 which was subject to the provisions of the California Fair Employment & Housing Act.

26 60. Plaintiff was subjected to discrimination in violation of the California Fair
27 Employment & Housing Act.

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61. Defendant Cal-Quake Construction, Inc. failed to take reasonable steps to prevent the discrimination.

62. Plaintiff has been damaged. His damages include, but are not limited to, lost earnings and other employment benefits. He has also suffered and continues to suffer humiliation, emotional distress, mental and physical pain and anguish, pain and suffering, loss of sleep, loss of appetite, headaches, panic attacks, loss of enjoyment of life, and depression, all to his damage in a sum according to proof.

63. Defendant Cal-Quake's failure to take reasonable steps to prevent discrimination in the workplace was a substantial factor in causing Plaintiff's harm.

64. Defendant Cal-Quake's failure to prevent discrimination was willful, knowing, and/or intentional and otherwise constitutes oppressive conduct entitling Plaintiff to an award of punitive and exemplary damages in an amount according to proof at trial.

65. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees. Plaintiff will seek recovery of his attorneys' fees and costs at the conclusion of this lawsuit.

**FIFTH CAUSE OF ACTION
FOR WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY
AGAINST DEFENDANT CAL-QUAKE CONSTRUCTION, INC.
AND DOES 1 THROUGH 100**

66. The allegations set forth in paragraphs 1 through 65 are realleged and incorporated by reference as though fully set forth herein.

67. At all relevant times, Defendant Cal-Quake employed Plaintiff.

68. Defendant Cal-Quake wrongfully discharged Plaintiff on or about July 2019.

69. Pursuant to the California Fair Employment and Housing Act Section 12920, it is contrary to public policy to terminate an employee based on his or her perceived and/or actual disability and/or medical condition.

70. Plaintiff was wrongfully terminated from his employment on or about January 2020, due to his actual/perceived disabilities and/or medical condition, need for accommodation, requesting and/or exercising medical leave, and/or for asserting his legal rights.

71. Plaintiff was discharged from his employment for reasons that violate public policies contained in the Fair Employment & Housing Act.

72. Plaintiff has been damaged.

66. As a proximate result of Defendant Cal-Quake's wrongful termination, Plaintiff has sustained and continues to sustain losses in earnings and other employment benefits. As a proximate result of Defendant's wrongful termination against Plaintiff, he has suffered and continues to suffer humiliation, emotional distress, mental and physical pain and anguish, pain and suffering, loss of sleep, loss of appetite, headaches, loss of enjoyment of life, anxiety, depression and shame, all to his damage in a sum according to proof at trial.

67. Defendant Cal-Quake's termination was a substantial factor in causing Plaintiff's harm.

68. Defendant Cal-Quake's termination was willful, knowing, and/or intentional and otherwise constitutes oppressive conduct entitling Plaintiff to an award of punitive and exemplary damages in an amount according to proof at trial.

69. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees and will seek to recovery those expenses and costs at the conclusion of this lawsuit.

SIXTH CAUSE OF ACTION

FOR FAILURE TO PAY WAGES AND/OR OVERTIME WAGES AGAINST DEFENDANT CAL-QUAKE CONSTRUCTION, INC.

AND DOES 1 THROUGH 100

70. The allegations set forth in paragraphs 1 through 69 are realleged and incorporated by reference as though fully set forth herein.

71. At all times relevant herein, Defendant Cal-Quake was required to

1 compensate Plaintiff for all regular hours worked, and overtime compensation when he
2 worked over eight (8) hours per day and/or forty (40) hours per week, and double time
3 when he worked over twelve (12) hours per day.

4 72. As a pattern and practice, Defendant regularly required Plaintiff to work
5 more hours and different hours than were scheduled and recorded on his time sheets
6 without payment of wages, which resulted in Defendant failing to pay Plaintiff at least
7 the required wages for all hours worked.

8 73. Plaintiff was required to work on a regular and consistent basis without
9 receiving compensation for all hours worked at his regular rate or if more than eight (8)
10 hours a day and/or forty (40) hours per week and/or seven days a week, at the applicable
11 overtime rate. Plaintiff has not been compensated for this time. Defendant also had a
12 consistent policy of failing to pay Plaintiff for all hours worked.

13 74. By their policy of requiring Plaintiff to work without receiving
14 compensation for all hours worked at their regular rate, or if in excess of eight (8) hours
15 in a workday and/or forty (40) hours in a workweek and/or seven days a week, without
16 compensating Plaintiff at the rate of time and one-half (1 ½), Defendant willfully violated
17 the provisions of Labor Code § 1194.

18 75. As a result of the unlawful acts of Defendant, Plaintiff has been deprived of
19 wages and/or overtime in amounts to be determined at trial, and is entitled to recovery of
20 such amounts, plus liquidated damages, interest and penalties thereon, and attorneys' fees
21 and costs pursuant to Labor Code § 1194.

22 **SEVENTH CAUSE OF ACTION**

23 **FOR FAILURE TO PROVIDE MEAL AND/OR REST BREAKS**

24 **AGAINST DEFENDANT CAL-QUAKE CONSTRUCTION, INC.**

25 **AND DOES 1 THROUGH 100**

26 76. The allegations set forth in paragraphs 1 through 75 are realleged and
27 incorporated by reference as though fully set forth herein.

28 77. Employees are entitled to a meal period of at least thirty (30) minutes per

1 five (5) hour work period.

2 78. Employers must authorize and permit rest breaks. Employees are entitled
3 to a paid ten (10) minute rest break for every four (4) hours worked.

4 79. Defendant Cal-Quake failed to provide Plaintiff and others with timely
5 meal breaks of not less than thirty (30) minutes as required by the Labor Code during
6 their employment. Defendant failed to authorize and permit Plaintiff and others to take
7 rest breaks of not less than ten (10) minutes as required by the Labor Code during their
8 employment.

9 80. Pursuant to Labor Code § 226.7, Plaintiff is entitled to damages in an
10 amount equal to one (1) hour of wages per missed meal break, in a sum to be proven at
11 trial. Plaintiff is also entitled to damages in an amount equal to one (1) hour of wages per
12 missed rest break, in a sum to be proven at trial.

13 **EIGHTH CAUSE OF ACTION**
14 **FOR FAILURE TO REIMBURSE BUSINESS EXPENSES**
15 **AGAINST DEFENDANT CAL-QUAKE CONSTRUCTION, INC.**
16 **AND DOES 1 THROUGH 100**

17 81. The allegations set forth in paragraphs 1 through 80 are realleged and
18 incorporated by reference as though fully set forth herein.

19 82. Pursuant to California Labor Code § 2802, Defendant is required to
20 reimburse Plaintiff for expenses incurred during the performance of job duties. Pursuant
21 to Labor Code § 221, employers are prohibited from causing the repayment of wages to
22 the employer and withholding of wages.

23 83. Plaintiff alleges Defendant did not reimburse Plaintiff for expenses incurred
24 as a condition of the discharge of his employment duties. Plaintiff further alleges that
25 Defendant violated Labor Code Section 2802 by deducting wages from employees'
26 paychecks, including withholding wages to cover the expense of tools that the company
27 purchased for their employees.

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84. As a proximate result of this violation, Plaintiff has been damages in an amount according to proof at the time of trial, including interest thereon and reasonable attorneys' fees and costs.

**NINTH CAUSE OF ACTION
FOR VIOLATION OF LABOR CODE § 226
AGAINST DEFENDANT CAL-QUAKE CONSTRUCTION, INC.
AND DOES 1 THROUGH 100**

85. The allegations set forth in paragraphs 1 through 84 are realleged and incorporated by reference as though fully set forth herein.

86. Section 226(a) of the California Labor Code requires Defendant to itemize in wage statements all deductions from payment of wages and to accurately report total hours worked by Plaintiff. Defendant has knowingly and intentionally failed to comply with Labor Code § 226(a) on each and every wage statement that should have been provided to Plaintiff. By failing to keep adequate records as required by §§ 226 and 1174 (d) of the Labor Code, Defendant has injured Plaintiff and made it difficult to calculate the unpaid wages earned, failure to reimburse business expenses, and losses and expenditures not indemnified by Defendant (including wages, interest, and penalties thereon) due to Plaintiff.

87. Section 1174 of the California Labor Code requires Defendant to maintain and preserve, in a centralized location, among other items, records showing the names and addresses of all employees employed, payroll records showing the hours worked daily by and the wages paid to its employees. Defendant has knowingly and intentionally failed to comply with Labor Code § 1174. Defendant's failure to comply with Labor Code § 1174 is unlawful pursuant to Labor Code § 1175.

88. IWC Wage Orders 4-2001(7), 4-2000(7), require Defendant to maintain time records showing, among other things, when the employee begins and ends each work period, meal periods, split shift intervals and total daily hours worked in itemized wage statements, and must show all deductions and reimbursements from payment of

wages, and accurately report total hours worked by Plaintiff.

89. Plaintiff requests relief as described herein and below.

**TENTH CAUSE OF ACTION
FOR UNFAIR BUSINESS PRACTICES IN VIOLATION OF
BUSINESS & PROFESSIONS CODE § 17200
AGAINST DEFENDANT CAL-QUAKE CONSTRUCTION, INC.
AND DOES 1 THROUGH 100**

90. The allegations set forth in paragraphs 1 through 89 are realleged and incorporated by reference as though fully set forth herein.

91. Defendant engaged in unfair, unlawful, fraudulent, deceptive, untrue, and/or misleading business practices through the following, among others:

- (a) Defendant failed to reimburse Plaintiff for expenses incurred during the performance of his job duties as required by California law in violation of Labor Code §§ 2808 and 221.
- (b) Defendant failed to compensate Plaintiff with the true and/or correct and/or full amount of his earned hours and overtime pay, in violation of Labor Code § 510 and IWC Wage Order No. 4 §§ 11, 12.
- (c) Defendant failed to provide Plaintiff with all of his mandatory meal and/or rest periods as required by California law in violation of Labor Code §§ 226.7 and 512 and IWC Wage Order No. 4 §§ 11, 12.

92. Defendant engaged in unfair, unlawful, fraudulent, deceptive, untrue, and/or misleading business practices in direct violation of California Bus. & Prof. Code § 17200 *et seq.*

93. Defendant's willful and/or reckless conduct constituted unfair business practices and acts because the harm to the general public outweighed any utility that its conduct may have produced.

94. As a direct result of the conduct, act and omissions of Defendant and DOES 1 through 100, and each of them, Plaintiff has been harmed and damaged in an amount to

1 be shown at the time of trial, together with prejudgment interest thereon from the time
2 owed until paid, all within an amount within the jurisdictional limits of this Court.

3 95. Plaintiff is also entitled to all penalties provided by Cal. Bus. & Prof. Code
4 § 17206.

5 96. Cal. Bus. & Prof. Code § 17205 declares, unless otherwise expressly
6 provided, the remedies or penalties provided by this chapter are cumulative to each other
7 and to the remedies or penalties available under all other laws of this state.

8 97. The acts of Defendant and DOES 1 through 100, and each of them, were
9 willful, wanton, malicious, intentional, oppressive and/or despicable and were done in
10 willful and conscious disregard of the rights, welfare and safety of Plaintiff, thereby
11 justifying the award of punitive and exemplary damages in an amount to be determined at
12 the time of trial pursuant to California Civil Code § 3294(a) and (b).

13 98. Plaintiff has been damages in an amount within the jurisdictional limits of
14 this Court.

15 **ELEVENTH CAUSE OF ACTION**
16 **FOR WAITING TIME PENALTIES PURSUANT TO LABOR CODE § 203**
17 **AGAINST DEFENDANT CAL-QUAKE CONSTRUCTION, INC.**
18 **AND DOES 1 THROUGH 100**

19 99. The allegations set forth in paragraphs 1 through 98 are realleged and
20 incorporated by reference as though fully set forth herein.

21 100. Plaintiff McClure is no longer employed by Defendant Cal-Quake and has
22 not been employed by Defendant for more than 30 days.

23 101. Defendant Cal-Quake's failure to pay wages, as alleged above, was willful
24 in that Defendant knew wages were due but failed to pay them, thus entitling Plaintiff to
25 penalties under Labor Code § 203, which provides that an employee's wages shall
26 continue as a penalty until paid for a period of up to thirty days from the time they were
27 due. Defendant has failed to pay Plaintiff a sum certain at the time of termination or
28 within seventy-two hours of resignation, and have failed to pay those sums for thirty days

thereafter. Pursuant to the provisions of Labor Code § 203, Plaintiff is entitled to penalties in the amount of his daily wage multiplied by thirty (30) days.

TWELFTH CAUSE OF ACTION
FOR RETALIATION (Labor Code § 98.6)
AGAINST DEFENDANT CAL-QUAKE CONSTRUCTION, INC.
AND DOES 1 THROUGH 100

102. The allegations set forth in paragraphs 1 through 101 are realleged and incorporated by reference as though fully set forth herein.

103. Labor Code Section 98.6 protects an employee from, inter alia, retaliation, discrimination or any adverse action when the employee makes a “written or oral complaint that he or she is owed unpaid wages, or because the employee has initiated any action or notice pursuant to Section 2699 . . . or . . . because of the exercise by the employee or applicant for employment on behalf of himself, herself, or others of any rights afforded him or her.”

104. “Any employee who is discharged, threatened with discharge, demoted, suspended, retaliated against, subjected to an adverse action, or in any other manner discriminated against in the terms and conditions of his or her employment” because the employee engaged in any conduct delineated in *inter alia*, Labor Code Section 98.6 or “because the employee has made a bona fide complaint or claim to the division pursuant to this part, or because the employee has initiated any action or notice pursuant to Section 2699 shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by those acts of the employer.”

105. An employer who willfully refuses to hire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law, is guilty of a misdemeanor. In addition to other remedies available, a civil penalty of up to \$10,000 may be awarded to an employee for each violation of Labor Code Section 98.6.

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1 106. Throughout Plaintiff's employment with Defendant Cal-Quake, he
2 complained about: (a) not getting paid for all hours worked, (b) not receiving his proper
3 meal and rest breaks, and (c) not being fully reimbursed for business expenses.

4 107. Upon making complaints, Defendant Cal-Quake retaliated, discriminated
5 against and subjected Plaintiff to adverse actions that included termination.

6 108. Defendant Cal-Quake engaged in conduct that, taken as a whole, materially
7 and adversely affected the terms and conditions of Plaintiff's employment.

8 109. Plaintiff's complaints were a motivating reason for Defendant's retaliatory
9 conduct and ultimate termination.

10 110. Plaintiff McClure has been harmed. Defendant's retaliation is a substantial
11 factor in causing that harm.

12 111. As a proximate result of Defendant's retaliatory conduct, Plaintiff has
13 sustained losses in earnings and other employment benefits. As a proximate result of
14 Defendant's retaliation, Plaintiff has suffered and continues to suffer humiliation,
15 emotional distress, mental and physical pain and anguish, pain and suffering, loss of
16 sleep, anxiety, depression and shame.

17 112. In light of Defendant's willful, knowing and intentional retaliation, Mr.
18 McClure seeks an award of punitive and exemplary damages in an amount according to
19 proof at trial.

20 113. Plaintiff has incurred and continues to incur legal expenses and attorneys'
21 fees. Plaintiff will seek recovery of his attorneys' fees and costs at the conclusion of this
22 lawsuit.

23 **THIRTEENTH CAUSE OF ACTION**
24 **FOR PENALTIES PURSUANT TO LABOR CODE SECTION 2699**
25 **AGAINST DEFENDANT CAL-QUAKE CONSTRUCTION, INC.**
26 **AND DOES 1 THROUGH 100**

27 114. The allegations set forth in paragraphs 1 through 113 are realleged and
28 incorporated by reference as though fully set forth herein.

115. Plaintiff, an aggrieved employee, hereby seeks recovery of civil penalties as prescribed by the *Labor Code* Private Attorneys General Act of 2004 on behalf of himself and other aggrieved employees against whom one or more of the violations of the *Labor Code* were committed.

116. On June 10, 2020, Plaintiff sent a certified letter to the Labor Workforce and Development Agency ("LWDA") and Defendant Cal-Quake Construction, Inc., as prescribed by *Labor Code* § 2699.3 regarding Plaintiff's claims for penalties pursuant to Labor Code section 226.8, Labor Code § 203, Labor Code § 558, rest and recovery periods, itemized wage statements, unauthorized withholdings/deductions, and failure to reimburse expenses. At least sixty-five (65) days have passed since the postmark date of that notice and the LWDA has not indicated that it intends to investigate the alleged violations. Therefore, pursuant to *Labor Code* § 2699.3(a)(2)(A), Plaintiff may commence a civil action.

117. Plaintiff and other aggrieved employees are entitled to penalties for the herein alleged violations, to be proven at the time of trial, allocated 75% to the LWDA and 25% to the affected employees, subject to the following formula:

- a. \$100.00 for the initial violation per employee per pay period; and
- b. \$200.00 for each subsequent violation per employee per pay period.

118. The remedies provided under PAGA are intended to be cumulative of other available remedies. *Lab. Code* § 2699(g)(1).

119. Under Labor Code section 226.8, the Court shall require payment of a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation.

120. Plaintiff and the aggrieved employees are also entitled to any and all unpaid wages from Defendant for violating or causing the violations set forth in Plaintiff's PAGA letter pursuant to *Labor Code* § 558, which are payable directly to the affected employees.

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REQUEST FOR JURY TRIAL

121. Plaintiff requests a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Jason McClure prays for judgment, including joint and several liability, against each Defendant as follows:

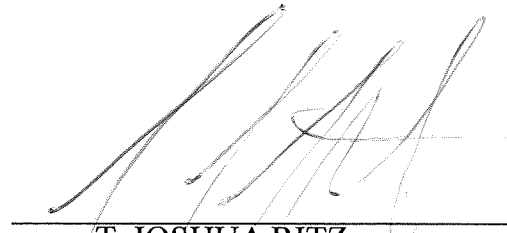
1. For compensatory damages, including past, present and prospective lost wages, employment benefits and medical expenses;
2. For mental and emotional distress damages on all non-wage claims;
3. For penalties pursuant to the Labor Code including but not limited to:
 - (a) Pursuant to Labor Code Section 558, a \$10,350 penalty;
 - (b) Pursuant to Labor Code Section 98.6, a \$10,000 penalty per violation;
 - (c) Pursuant to Labor Code Section 203, thirty days of wages;
 - (d) Pursuant to Labor Code Section 226, a \$4,000 penalty;
 - and
 - (e) Pursuant to Labor Code Section 1198.5, a \$750 penalty;
4. For liquidated damages for minimum wage claims;
5. For general unpaid wages at regular wage rates and overtime at overtime wage rates and such general and special damages as may be appropriate;
6. For liquidated damages, pursuant to *California Labor Code* § 1194.2;
7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;
8. That the Court make an award to Plaintiff of one (1) hour of pay at his regular rate of compensation for each workday that a meal period was not provided;
9. That the Court make an award to Plaintiff of one (1) hour of pay at his regular rate of compensation for each workday that a rest period was not provided;

10. For premiums pursuant to *California Labor Code* § 226.7(b);
11. That the Court declare, adjudge, and decree that Defendants violated the record-keeping provisions of *California Labor Code* § 226(a) as to Plaintiff and willfully failed to provide accurate itemized wage statements thereto;
12. For statutory penalties pursuant to *California Labor Code* § 226(e);
13. For civil penalties pursuant to *California Labor Code* §§ 226(a) and 226.3;
14. That the Court declare, adjudge, and decree that Defendant and DOES 1-100 violated *California Business and Professions Code* §§ 17200, *et seq.* by failing to provide Plaintiff all regular wages, overtime compensation and at least minimum wage for all hours worked, failing to failing to provide meal and rest breaks, failing to provide accurate itemized wage statements, and failing to pay Plaintiff's wages timely as required by *California Labor Code* §§ 201, 202 and 203;
15. For restitution of unpaid wages to Plaintiff and prejudgment interest from the day such amounts were due and payable;
16. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from Defendant and determined to have been wrongfully acquired by Defendant as a result of violations of *California Business and Professions Code* §§ 17200, *et seq.*;
17. That the Court declare, adjudge, and decree that Defendant violated *California Labor Code* §§ 201, 202 and 203 by willfully failing to pay all compensation owed at the time of termination of the employment of Plaintiff;
18. For statutory wage penalties pursuant to *California Labor Code* § 203 for Plaintiff;
19. That the Court declare, adjudge, and decree that Defendant's employment practices violated one or more sections of the *Labor Code*;

20. For civil penalties pursuant to *Labor Code* §§ 226, 1199, 2699;
21. For any and all unpaid wages due to Plaintiff;
22. For penalties pursuant to Cal. Bus. & Prof. Code § 17206;
23. For liquidated damages for wage claims;
24. For disgorgement of ill-gotten gains;
25. For reimbursement of all business expenses owed;
26. For injunctive relief;
27. For punitive damages on all non-wage claims;
28. For an award of attorneys' fees;
29. For an award of interest, including prejudgment interest, at the legal rate;
30. For costs of suit incurred; and
31. For such other and further relief as the Court deems just and appropriate.

DATE: April 22, 2021

T. JOSHUA RITZ & ASSOCIATES, INC.



T. JOSHUA RITZ
LALEH B. SHOKOHI
ATTORNEYS FOR PLAINTIFF
JASON MCCLURE