

FIRST AMENDMENT TO SETTLEMENT AGREEMENT OF REPRESENTATIVE ACTION AND REQUEST FOR COURT APPROVAL

This First Amendment to the Settlement Agreement of Representative Action and Request for Court Approval (“First Amendment”) is entered into by and between Rafi Stephana (“Plaintiff”) and Victor Harvey (“Harvey”) on the one hand (collectively, “Employee Claimants”) and Wind N Sea Investments, Inc. and Rafid S. Moshy on the other hand (“Defendants”). (Employee Claimants and the Defendants are collectively referred to as the “Parties”).

RECITALS

A. WHEREAS, the Parties entered into a written Settlement Agreement of Representative Action and Request for Court Approval in or around February 16, 2022 (the “Agreement”);

B. WHEREAS, the Parties desire to enter into this First Amendment to modify and clarify various material terms regarding PAGA, including the amount from the Settlement Sum that the Parties wish to allocate toward PAGA, the scope of the release regarding PAGA as it relates to unnamed employees potentially aggrieved by the Defendants, and other terms in support of the Parties’ anticipated motion and/or stipulation for approval of settlement of civil action and negotiated penalties pursuant to PAGA, which the Parties plan to file in April 2022;

NOW, THEREFORE, in consideration of the promises and mutual agreements set forth, the Parties agree as follows:

1. Recitals. The Parties acknowledge that the “WHEREAS” clauses preceding Paragraph 1 are true and correct and are incorporated as material parts to this Agreement.
2. Effect of First Amendment. This First Amendment is intended to modify and add additional provisions to the Agreement, and shall not otherwise affect, modify or remove any provisions of the Agreement, unless explicitly provided.
3. Section C of the Agreement. Section C of the Agreement, shall be superseded in its entirety as follows:

1. In exchange for the releases set forth below, Defendants will pay One Hundred Twenty-Five Thousand Dollars (\$125,000.00) as a “Settlement Amount,” without refund or reversion. The Settlement Amount shall be in satisfaction of all requests for relief and payments to Plaintiff, Victor Harvey, the PAGA Group, and the LWDA arising from and related to the Representative Action and Settlement, including but not limited to: all civil penalties and requests for relief and claims for civil penalties under the causes of action alleged in Plaintiff’s Complaint; all attorney’s fees; all of the costs and expenses of litigation of the Representative Action; PAGA civil penalties; employer’s share of payroll taxes, and any and all other claims for relief alleged in the Complaint that are or may be alleged to be owed to the Plaintiff and/or the PAGA Group, and his or their representatives or agents. Other than Defendants’ obligation to pay the Settlement Amount, Defendants have no other obligation to provide any payment to the PAGA Group as a result of this Settlement.

2. The Parties agree that the settlement proceeds shall be allocated as follows:

(a) Attorneys' Fees and Costs: Plaintiff's Counsel may apply to the Court for up to Fifty-Five Thousand Dollars (\$55,500.00) of the total Settlement Sum ("Fees and Costs Combined Amount") as the combined total of both attorneys' fees and actual costs available pursuant to PAGA, which provides for the recovery of attorneys' fees and costs, and in accordance with Plaintiff's Counsel's fee agreement with Employee Claimants. The Fees and Costs Combined Amount shall be deducted from the Settlement Amount. Any modification of such application by the Court shall not (i) affect the enforceability of the Settlement Agreement, (ii) provide any of the Parties with the right to terminate the Settlement Agreement, or (iii) impose any obligation on the Defendants to increase the Settlement Sum or otherwise increase the consideration paid in connection with the Settlement. Plaintiff's Counsel's entitlement to attorneys' fees and costs is a material condition of this Settlement but the Fee Amount awarded is not.

(b) Claims Administration Fees: All Claims Administration expenses shall be paid from the Fees and Costs Combined Amount described *supra* and shall not exceed Five Thousand Dollars and No Cents ("\$5,000.00"). Claims Administration expenses paid to an outside Claims Administration service must come out of the Fees and Costs Combined Amount. The Parties agree to retain Phoenix Settlement Administrators to serve as the Claims Administrator in this matter. In the event the Settlement is not approved, Plaintiff and Defendants will each pay half of the Settlement Administrator's reasonable fees incurred as of that time.

(c) Payments to Plaintiff and Harvey for Individual Claims. Of the Settlement Sum, thirty-thousand dollars (\$30,000.00) will be paid to Plaintiff as consideration for his Individual claims, and fifteen-thousand dollars (\$15,000.00) will be paid to Harvey as consideration for his Individual claims.

(d) Payment of PAGA Penalties: The total sum available for payment of PAGA penalties shall be calculated by deducting the Fees and Costs Combined Amount including the Claims Administration Fees and the Payments to Plaintiff and Harvey for Individual Claims from the \$125,000.00 Settlement Sum. (This will yield the "Net Settlement Amount"). Of the Net Settlement Amount, seventy-five percent (75%) shall be distributed to the LWDA ("LWDA Penalty Payment"); and the remaining twenty-five percent (25%) shall be distributed to the PAGA Settlement Group Members ("Putative Aggrieved Employee Penalty Payment"). The Parties have earmarked \$25,000.00 as the Net Settlement Amount, subject to Court Approval, with \$18,750.00 of the Net Settlement Amount to be paid by the Claims Administrator to the LWDA and the remaining \$6,250.00 for payment of Aggrieved Employee penalties. The Aggrieved Employee Penalty Payment for each PAGA Settlement Group Member shall be calculated so as to arrive at equal payments for each PAGA Settlement Group Member (i.e., by dividing the remaining 25% of the Net Settlement Amount into equal portions, based on the number of claimants listed on the Aggrieved Employee List). Because Defendants have agreed to pay the Settlement Amount over the course of 13 monthly installments, Plaintiff's Counsel will determine, subject to court approval, which installment payments will be used to issue payment to the LWDA and PAGA Settlement Group Members.

3. The Settlement Amount will be paid by Defendants in accordance with the terms outlined in Paragraph D.2., below. If a payment due date, as outlined in Paragraph D.2., below, falls on a Saturday, Sunday or Court holiday, it shall be due on the next day that is not a Saturday, Sunday or Court holiday.

4. Except as provide for by this Agreement, under no circumstances shall Defendants' total obligation in this Agreement exceed the Settlement Amount.

IN WITNESS WHEREOF, the Parties have executed this First Amendment as of the dates indicated below:

Dated: Apr 13, 2022

By: 
Rafi Stephana

Dated: Apr 13, 2022

By: 
Victor Harvey

Dated: _____

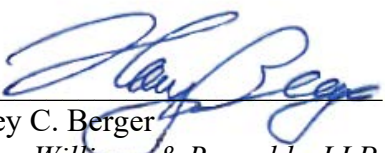
By: _____
Rafid S. Moshy, individually, and on behalf of Wind
N Sea Investments, Inc.

Approved as to Form:

Dated: April 13, 2022

By: 
Nathan Kased, Esq.
Kased Law Group APC
Attorneys for Plaintiff RAFI STEPHANA

Dated: April 14, 2022

By: 
Harvey C. Berger
Berger, Williams & Reynolds, LLP
Attorneys for Defendants RAFID S. MOSHY and
WIND N SEA INVESTMENTS, INC.

3. The Settlement Amount will be paid by Defendants in accordance with the terms outlined in Paragraph D.2., below. If a payment due date, as outlined in Paragraph D.2., below, falls on a Saturday, Sunday or Court holiday, it shall be due on the next day that is not a Saturday, Sunday or Court holiday.

4. Except as provide for by this Agreement, under no circumstances shall Defendants' total obligation in this Agreement exceed the Settlement Amount.

IN WITNESS WHEREOF, the Parties have executed this First Amendment as of the dates indicated below:

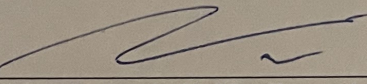
Dated: _____

By: _____
Rafi Stephana

Dated: _____

By: _____
Victor Harvey

Dated: 4/14/22

By: 
Rafid S. Moshy, individually, and on behalf of Wind
N Sea Investments, Inc.

Approved as to Form:

Dated: _____

By: _____
Nathan Kased, Esq.
Kased Law Group APC
Attorneys for Plaintiff RAFI STEPHANA

Dated: _____

By: _____
Harvey C. Berger
Berger, Williams & Reynolds, LLP
Attorneys for Defendants RAFID S. MOSHY and
WIND N SEA INVESTMENTS, INC.