

**01/04/2023** at 12:08:00 PM  
Clerk of the Superior Court  
By Vanessa Bahena, Deputy Clerk

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WIND N SEA INVESTMENTS, INC.,  
13 And RAFID S. MOSHY

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 FOR THE COUNTY OF SAN DIEGO  
16

17 RAFI STEPHANA, an Individual;  
18 VICTOR HARVEY, an Individual; on  
behalf of themselves and all other  
19 aggrieved employees of Defendants in  
the State of California,

20 Plaintiffs,

21 vs.

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23 WIND N SEA INVESTMENTS, INC., a  
California Corporation; RAFID S.  
24 MOSHY, an Individual; and DOES 1-100,  
Inclusive,  
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26 Defendants.  
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Case No. 37-2021-00003458-CU-OE-CTL

**UNLIMITED CIVIL CASE**

**JOINT STIPULATION FOR COURT  
APPROVAL OF PAGA SETTLEMENT;  
[PROPOSED] ORDER**

**Hon. John S. Meyer**

Action filed: January 25, 2021

1 By and through their respective counsel of record, named plaintiffs RAFI STEPHANA  
2 and VICTOR HARVEY (“Plaintiffs”), and defendants WIND N SEA INVESTMENTS, INC.  
3 and RAFID S. MOSHY (“Defendants”) (collectively “Parties”), submit this Joint Stipulation  
4 (“Stipulation”) together with a Proposed Order for this Court’s review and approval of their  
5 “Settlement Agreement of Representative Action and Request for Court Approval” (“PAGA  
6 Settlement”) (Exhibit 1 hereto).

7 Through this Stipulation, Plaintiffs respectfully request the Court grant the Proposed  
8 Order, which provides for granting of approval of a total settlement of \$125,000, apportioning  
9 40,000 to penalties pursuant to the Private Attorneys’ General Act (Labor Code §2698 *et seq.*),  
10 as well as attorneys’ fees, costs, administration, and individual settlements.

11 Pursuant to Labor Code section 2699(1)(2), the proposed PAGA settlement requires the  
12 Court to approve the settlement.

### 13 **RECITALS**

14 1. Plaintiffs worked for Defendants as non-exempt, hourly employees during the  
15 relevant period.

16 2. On January 25, 2021, Stephana filed an individual complaint for wage and  
17 hour violations. On April 15, 2021, Stephana filed a first amended complaint against  
18 Defendants, on behalf of himself and all other aggrieved employees in California who worked  
19 as tow service drivers, for the following claims: unpaid regular and minimum wages; unpaid  
20 overtime; noncompliant meal and rest periods; wage statements that were inaccurate,  
21 untimely, and/or not provided at all; illegal offsets against wages; unreimbursed necessary,  
22 work-related expenses; and final pay violations. Finally, per the Court’s order following two  
23 *ex parte* hearings on June 15, 2022, a second amended complaint was filed on September 12,  
24 2022 to formally include plaintiff HARVEY. (Complaint, ¶2, Exhibit 2)

25 3. Plaintiff STEPHANA provided the requisite notice to the Labor and  
26 Workforce Development Agency (“LWDA”) detailing the claims and factual bases on  
27 February 10, 2021. (Exhibit 3) The LWDA did not take any action.

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1           4.       The Parties agree, for purposes of this PAGA Settlement only, that the  
2 Plaintiffs have standing to prosecute the claims alleged in the Complaint.

3           5.       Plaintiffs prepared formal discovery to propound to Defendants, which was  
4 informally served while the Parties decided to begin potential settlement discussions. After  
5 months of exchanging relevant information responsive to discovery requests, including  
6 supporting and/or negating evidence regarding claims, solvency, and the number of  
7 aggrieved employees, the Parties were able to reach a resolution of this matter, expressed in  
8 Exhibit 1.

9           6.       The PAGA Settlement provides for a global settlement of \$125,000, with  
10 approximately 40% attributable to attorneys' fees, costs, and third-party administration. The  
11 settlement is structured, payable over 13 months, with the LWDA receiving its portion (75%  
12 of \$40,000) first, and the aggrieved employees to be paid second, with the remaining  
13 payments to be distributed to fees, costs, administration, and individual plaintiff settlements  
14 after that.

15           7.       Pursuant to Labor Code section 2699(l), "the superior court shall review and  
16 approve any settlement of any civil action filed pursuant to this part."

17           8.       PAGA penalties are in the nature of a law enforcement penalty and are  
18 designed to penalize an employer for its failure to comply with California's wage and hour  
19 laws and regulations and are not designed to compensate employees. *Ochoa-Hernandez v.*  
20 *CJADERS Foods, Inc.*, 2010 WL 1340777, \*1, \*5 (E.D.Cal. Apr. 2, 2010) ("Unnamed  
21 employees need not be given notice of the PAGA claim, nor do they have the ability to opt-  
22 out of the representative PAGA claim. There is no indication that the unnamed plaintiffs can  
23 contest a settlement, if any, reached between the parties.").

24           9.       The settlement of a private plaintiff's PAGA claim is binding on all other  
25 purportedly aggrieved employees on behalf of whom it was asserted as to recovery of PAGA  
26 penalties. *Arias v. Superior Court*, 46 Cal.4<sup>th</sup> 969, 986 (2009) (because a private plaintiff's  
27 PAGA action "functions as a substitute for an action brought by the government itself, a  
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1 judgment in that action binds all those, including nonparty aggrieved employees, who would  
2 be bound by a judgment in an action brought by the government.”).

3 10. The Parties recognize and agree that there is a genuine, good faith dispute as to  
4 the merits and scope of the PAGA claims. As stated in the PAGA Settlement, Defendants  
5 dispute all allegations of purported wrongdoing that Plaintiffs set forth in the LWDA notice  
6 and as alleged in this action.

7 11. In negotiating the settlement, Plaintiffs have considered the expense and length  
8 of continued proceedings necessary to litigate their case through trial and through any  
9 possible appeals, and the burdens of proof necessary to establish liability for the claims  
10 asserted in the action, both generally and in response to Defendants’ defenses. Plaintiffs have  
11 also taken into account the uncertainty and risk of the outcome of further litigation, and the  
12 difficulties and delays inherent in such litigation. Based on the foregoing, Plaintiffs have  
13 determined that the settlement is fair and promotes PAGA’s objectives.

14 12. Plaintiffs and their counsel have also considered that Defendants may  
15 persuasively argue that the Court should exercise its discretion under PAGA to significantly  
16 reduce or altogether waive any penalties under PAGA. *Carrington v. Starbucks*, 30 Cal.App.5<sup>th</sup>  
17 504, 527, 529 (2018)(court awarded only \$5 per pay period in PAGA penalties, despite  
18 finding that Starbucks was liable for meal break violations on a representative basis, and  
19 Starbucks’ liability was established based on Starbucks’ corporate policies, with the aid of  
20 employee time records). Defendants may also argue that solvency issues militate in favor of  
21 substantial reduction in any penalties which may be proved, but uncollectible. Recent case  
22 law also suggests that penalties may be severely limited, because there was no “subsequent  
23 violation”. *Gunther v. Alaska Airlines, Inc.*, 72 Cal.App.5<sup>th</sup> 334, 356 (2021) (holding  
24 “subsequent violation” under PAGA not triggered unless plaintiff demonstrates the Labor  
25 Commission or a court first notified employer that it was in violation of the Labor Code).

26 13. The Parties and their counsel recognize the expense and length of continued  
27 proceedings necessary to litigate the disputes and through trial and through any possible  
28 appeals, and have also taken into account the uncertainty and risk of the outcome of further

1 litigation, and the difficulties and delays inherent in such litigation. The Parties and their  
2 counsel are also aware of the burdens of proof necessary to establish liability for the claims  
3 alleged, and the affirmative defenses asserted. Thus, reaching this Settlement now has the  
4 potential for having a higher value today than it might have later if this litigation were to  
5 continue.

6 14. The Parties submit that the PAGA Settlement provides fair and reasonable  
7 payment penalties for the benefit of the LWDA and the approximate 30 employees who  
8 qualify as PAGA aggrieved employees.

9 15. Contingent on this Court's approval of the Parties' settlement of the PAGA  
10 claims, the Parties have fully and finally settled all PAGA claims that were or could have  
11 been asserted against Defendants by Plaintiffs and Plaintiffs now seek court approval of the  
12 Settlement pursuant to Labor Code sections 2698, *et seq.*

13 16. The Parties agree that Defendants will provide the last known contact  
14 information for the PAGA aggrieved employees to the Claims Administrator, which the  
15 Parties have agreed will be Phoenix Administrators, in the form(s) requested by the  
16 Administrator within 7 calendar days of the Court's order approving the PAGA Settlement.  
17 The administrator will run an address verification for all aggrieved employees via the USPS  
18 National Change of Address database, perform all necessary calculations to determine the  
19 pro rata individual settlement share, and then remit payment to each aggrieved employee  
20 consistent with the plan of distribution described in the following stipulated terms, with the  
21 form of Notice attached as Exhibit 4.

22 17. On April 1, 2022, Plaintiffs submitted the fully executed settlement agreement  
23 to the LWDA for consideration. On April 21, 2022, the Parties executed an addendum  
24 regarding apportionment of the funds, and served the settlement and addendum on the  
25 LWDA, shown on the proof of service filed at Register of Actions (ROA) 39. On January 4,  
26 2023, the Parties executed a second addendum regarding apportionment of the funds, and  
27 Plaintiffs served the settlement and addendum on the LWDA.

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18. The LWDA did not exercise its right to prosecute this action in response to Plaintiff's PAGA letter dated February 10, 2021. (Exhibit 3)

20. Plaintiffs therefore request that the Court approve all terms and the plan of distribution described in this Stipulation, of the PAGA Settlement.

22. The Parties agree that Plaintiffs' counsel is entitled to request up to 40% of the gross settlement amount, *inclusive of* costs, and administration fees. Costs are approximately \$500-plus, and administration will be approximately \$5,000, for a total disbursement to

1 Plaintiffs' counsel of \$50,500 maximum. (See Second Addendum to PAGA Settlement in  
2 Exhibit 1)

3 23. Plaintiffs request that plaintiff Stephana will receive \$25,000 for his individual  
4 claims, and plaintiff Harvey will receive \$10,000 for his individual claims, and Defendants  
5 will not oppose this request. Plaintiffs will execute (have executed) general releases, as  
6 described in the PAGA Settlement. (Exhibit 1)

7 24. The Parties will mutually agree to retain a third-party settlement administrator  
8 (Phoenix), the costs for which, including those associated with the mailing of the Notice of  
9 PAGA Settlement described (Exhibit 4), will be borne by Plaintiffs' counsel as described  
10 above.

11 25. Distribution Plan. The settlement amount will be paid in 13 installments  
12 (Exhibit 1). Each month, as described in the Settlement Agreement, Defendants will pay  
13 \$10,000, and the thirteenth month, the remaining \$5,000 will be paid. The distribution plan  
14 is as follows: the first three months, the \$10,000 will be paid to the administrator, with  
15 \$30,000 in the settlement amount. At that time, the administrator will remit the entire  
16 LWDA share of 75% of \$40,000, or \$30,000, to the LWDA, extinguishing the obligation to  
17 the LWDA first. The fourth month, after another \$10,000 is paid to the administrator, the  
18 administrator will remit all checks to all aggrieved employees for the 25% remaining of the  
19 \$40,000, or \$10,000. This will amount to a pro rata distribution to all aggrieved  
20 (approximately 30) employees, of \$333.33. At that time, the administrator will close this  
21 matter (and prepare the tax documents included within the administration), as its duties will  
22 have terminated. The remaining months, all payments will be remitted directly to Plaintiffs'  
23 counsel, to be distributed to the individual plaintiff payments, and attorneys' fees and costs,  
24 in the amounts memorialized in the PAGA Settlement Agreement.

25 26. Pursuant to Plaintiffs' request, the Court has entered default as to individual  
26 defendant RAFID S. MOSHY. Plaintiffs agree to dismiss defendant MOSHY without  
27 prejudice in connection with this Stipulation.

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1           27. Pursuant to Code of Civil Procedure section 664.6, the Parties agree that this  
2 Court shall retain jurisdiction over the parties to enforce the PAGA settlement until full and  
3 final performance of all of its terms and conditions have been satisfied.

4           28. Plaintiff's counsel will file a request for dismissal with prejudice with the Court  
5 after the final payment of the settlement amount.

6  
7 Dated: Jan 4, 2023

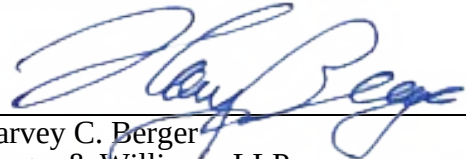
KASED LAW GROUP APC

8  
9  
10 By: 

Nathan N. Kased  
Janine R. Menhennet  
Attorneys for Plaintiff  
RAFI STEPHANA, VICTOR HARVEY,  
and all other aggrieved employees of  
Defendants in the State of California

11  
12  
13  
14 Dated: Jan 4, 2023

BERGER & WILLIAMS LLP

15  
16  
17 By: 

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

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1. The PAGA Settlement Agreement attached to the Stipulation filed jointly by the Parties is APPROVED as fair, adequate and reasonable and is entered as an Order of the Court.
2. The amounts payable to PAGA aggrieved employees as set forth in the PAGA Settlement Agreement are APPROVED as fair, adequate and reasonable and the Parties are Ordered to carry out the Notice and payment procedures as set forth in the PAGA Settlement Agreement and the plan of distribution described in the stipulation filed with the ex parte application for approval.
3. The amounts payable to the LWDA as set forth in the PAGA Settlement Agreement are APPROVED as fair, adequate and reasonable and the Parties are Ordered to carry out payment to the LWDA as set forth in the PAGA Settlement Agreement.
4. The amounts requested as payable to Plaintiffs' counsel for attorneys' fees, costs, and administration, are APPROVED as fair, adequate and reasonable. Plaintiffs' counsel shall be entitled to payment of 40% of the gross settlement amount, inclusive of costs, and administration fees. Costs are approximately \$500-plus, and administration will be approximately \$5,000, for a total disbursement to Plaintiffs' counsel of \$50,500 maximum.
5. The structured settlement, described in the distribution plan, is APPROVED. The LWDA shall be paid in entirety after the first three payments, and the aggrieved employees shall be paid in entirety after the fourth payment. The remaining payments shall be remitted directly to Plaintiffs' counsel, to be distributed in amounts consistent with the PAGA Settlement Agreement, with the end result being \$25,000 to plaintiff Stephana and \$10,000 to Harvey, and the remaining amount consisting of attorneys' fees and costs.

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6. Defendant RAFID S. MOSHY is dismissed without prejudice.
7. The Court shall retain jurisdiction of this settlement until Plaintiffs' counsel files a request for dismissal with prejudice, after the final payment has been made, in approximately 13 months.

IT IS SO ORDERED.

Dated: 01/24/2023



Judge John S. Meyer

JUDGE OF THE SUPERIOR COURT

# **EXHIBIT 1**

**SETTLEMENT AGREEMENT OF REPRESENTATIVE ACTION  
AND REQUEST FOR COURT APPROVAL**

**A. Introductory Recitals; Identification of the Parties**

1. RAFI STEPHANA (“Plaintiff”) was employed by WIND N SEA INVESTMENTS, INC. and RAFID S. MOSHY (collectively, “Defendants”). After Plaintiff’s employment with Defendants ended, Plaintiff filed a notice with the California Labor & Workforce Development Agency (“LWDA”) regarding allegations of wage-and-hour violations, and seeking the right to pursue a representative action to recover penalties under the Private Attorneys General Act of 2004 (“PAGA”), Labor Code § 2698, *et seq.* On April 27, 2021, Plaintiff filed a wage-and-hour PAGA representative lawsuit, Superior Court of the State of California, County of San Diego, Case No. 37-2021-00003458-CU-OE-CTL (“Complaint”), individually, on behalf of all other similarly aggrieved employees, and for real party in interest, the State of California (the “Representative Action”) against Defendants. Defendants deny the allegations in Plaintiff’s Complaint, and deny that they have any liability to Plaintiff; deny that a representative action is appropriate; and deny that they have any liability to any other persons in the alleged representative group.

2. Plaintiff and Defendants engaged in communications and an exchange of information toward settlement of the Representative Action. The Parties now desire to terminate the Representative Action and settle their respective differences, controversies, and misunderstandings (Claims”), and have agreed to resolve the Representative Action, and individual claims by Plaintiff and claimant Victor Harvey, on terms and conditions which must be reviewed and approved by the Court, and submitted to the LWDA, as provided by California Labor Code Section 2699(l)(2) (“Settlement”).

3. The Parties’ Settlement contemplates that Defendants will pay certain amounts for civil penalties and associated attorney’s fees and costs to settle the claims of Plaintiff and others within the scope of Plaintiff’s Complaint and the Representative Action as the “PAGA Group,” further defined in Paragraph B.2., below, in exchange for releases of civil penalty claims and controversies by Plaintiff, the PAGA Group, and the State of California, as well as individual claims of Plaintiff and Victor Harvey. This Agreement constitutes the terms and conditions upon which the Parties have agreed to settle, and for which they will seek Court and LWDA approval. The Parties acknowledge that each of them denies any wrongdoing whatsoever in connection with one another, and that this Agreement is made solely for the purpose of compromising disputed claims and avoiding the time, expense and uncertainty of litigation. It is understood and agreed that nothing contained in this Agreement shall constitute or be treated as an admission of wrongdoing or liability on the part of Defendants.

**B. The PAGA Group**

1. Plaintiff’s Representative Action includes, but is not limited to, causes of action to recover penalties alleged to be owed to himself and others similarly aggrieved, whom Plaintiff alleges from February 10, 2020 and continuing: (1) were not paid all earned wages; (2) were not paid minimum wages; (3) were not paid overtime wages; (4) were not provided or paid for meal periods; (5) were not provided or paid for rest breaks; (6) were not provided legally compliant wage statements; (7) were not indemnified

for all necessary expenditures; and (8) were not paid all wages due upon termination.

2. The Parties agree, for purposes of this Settlement Agreement only, that the “PAGA Period” for which the claims of the PAGA Group will be settled will be from February 10, 2020 to the Final Effective Date of this Agreement, as defined in subsection D.1.C., below. This Settlement Agreement is by and between, and binds and includes Plaintiff; Defendants; and each member of the “PAGA Group,” limited to Defendants’ employees, including Plaintiff, who worked for Defendants during the PAGA Period and fall within the Plaintiff’s definition of similarly aggrieved employees as alleged in Plaintiff’s Complaint. The Parties further agree that this Agreement settles and resolves all civil penalty claims that Plaintiff and the PAGA Group and the LWDA have or may have against Defendants, which arose within the PAGA Period, as to all causes of action and requests for relief asserted and could have been asserted in the Representative Action.

### **C. Settlement Amount**

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, and 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; and any and all other claims for relief alleged in the Complaint that are or may be alleged to be owed to the Plaintiff, Victor Harvey, 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 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.

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

### **D. Court Approval, Notice to LWDA, and Payment Terms**

1. As provided below, this Agreement is conditional upon both: (a) final approval by the Court pursuant to California Labor Code Section 2699(l)(2), and (b) the LWDA taking no action to intervene or object to the Agreement.

1.A. Plaintiff and his counsel will timely seek approval of this Agreement from the Court. Defendants will not object to nor oppose efforts to obtain the Court’s approval, so long as Plaintiff’s and his counsel’s efforts are consistent with the terms and conditions of this Agreement.

1.B. As required by California Labor Code Section 2699(l)(2), Plaintiff and his counsel will submit a copy of this Agreement to the LWDA at the time it is filed with the Court, and provide Defendants with a Proof of Service. As required by California Labor Code Section 2699(l)(3), within 10 days after the Court's order and/or judgment approving the payment of civil penalties to the PAGA Group and to the LWDA, Plaintiff's counsel will serve such order and judgment to the LWDA, and provide Defendants with a Proof of Service.

1.C. This Agreement will become fully effective and enforceable only after the Court enters an order and judgment approving of this Agreement, and (b) sixty (60) calendar days have elapsed since the LWDA was served by Plaintiff's counsel with the Court's order and/or judgment approving the payment of civil penalties to the PAGA Group and to the LWDA, and the LWDA (itself, or through the Office of the Labor Commissioner) has taken no action to intervene, object to, or appeal the settlement as detailed in this Agreement; and (c) seventy (70) calendar days have elapsed since entry of the Court's order and/or judgment, and no other person or entity has filed a Notice of Appeal. At that time and that condition having been met, this Agreement will become effective (the "Final Effective Date") and trigger Defendants' payment obligations, below. However, any payments made until sixty (60) calendar days elapsed from when the LWDA was served by Plaintiff's counsel with the Court's order and/or judgment approving the payment of civil penalties to the PAGA Group and to the LWDA, and the LWDA (itself, or through the Office of the Labor Commissioner) has taken no action to intervene, object to, or appeal the settlement as detailed in this Agreement; and (c) seventy (70) calendar days have elapsed since entry of the Court's order and/or judgment, and no other person or entity has filed a Notice of Appeal, shall be immediately returned to Defendant upon such an objection or appeal, pending the outcome of such proceedings.

2. Defendants will distribute the Settlement Amount beginning on the 1<sup>st</sup> day of the month following the Final Effective Date in compliance with the Court's order and/or judgment as follows:

2.A. Defendants will pay the Settlement Amount in thirteen (13) installments, including twelve (12) initial installments equal to \$10,000.00 and one (1) final installment equal to \$5,000. The installment payments will begin on the 1<sup>st</sup> day of the month following the later of the Final Effective Date of this Agreement or Plaintiff's counsel providing forms W-9 for Plaintiff, Victor Harvey and Plaintiff's counsel, and will continue on the 1<sup>st</sup> day of every month thereafter, until the full Settlement Amount has been paid. The Settlement Amount will be paid by checks mailed to Kased Law Group APC, 2535 Kettner Boulevard, Suite 2A2, San Diego, California 92101 and delivered in a manner reasonably calculated to reach Plaintiff's counsel on or before the 1<sup>st</sup> of the month in which payment is due. If the outstanding installment does not reach Plaintiff's counsel on or before the 5<sup>th</sup> of the month in which payment is due, the installment will be deemed late until received by Plaintiff's counsel. The payee on each installment check shall be "Kased Law Group APC Client Trust Account", taxpayer ID 45-2419507. As a further condition of the Settlement Payment, Plaintiff's counsel shall provide a written breakdown of amounts paid to Plaintiff and to Victor Harvey within five (5) days of receipt of the court order approving the settlement to allow Defendants to properly allocate monies on required tax filings (forms 1099).

SETTLEMENT AGREEMENT OF REPRESENTATIVE ACTION  
AND REQUEST FOR COURT APPROVAL

*Stephana v. Wind N Sea Investments, et al.*

2.B. Plaintiff and his counsel will seek Court approval for a payment of attorney's fees and reasonable litigation costs incurred in the Representative Action from the Settlement Amount. The allowance or disallowance by the Court of any such award of attorney's fees and costs is not conditional to this Settlement Agreement, and will be considered by the Court separately from its consideration of the fairness, reasonableness, adequacy and good faith of this settlement to the PAGA Group and LWDA. Should the Court award less to Plaintiff's counsel than requested, it shall not operate to terminate or cancel this Agreement nor increase Defendants' payment obligation, and the difference between the amount requested and the amount ultimately awarded (if less) will be allocated to the settlement fund to be distributed to the LWDA and the PAGA Group members as provided below.

2.C. Of the amount of money remaining in the Settlement Amount after the Court award as outlined in Paragraph D.2.A., above, the remainder, defined as the "PAGA Penalty Allocation," shall be divided as 75% to the LWDA and 25% to the PAGA Group, as provided by Labor Code Section 2699(i) for the settlement of the PAGA claims as stated in Plaintiff's Complaint. Payment to the LWDA in satisfaction of all PAGA civil penalties asserted in Plaintiff's Complaint shall be paid to the State of California (LWDA). In accordance with the claims alleged in the Representative Action and based on the Parties settlement dialogue, payments to the PAGA Group members will be distributed as 1099 income to: (1) former employees of Defendants, who will be mailed a check by Defendants; (2) current employees of Defendants, who will be paid separate off-cycle checks not subject to tax withholdings. Defendants will provide a declaration to Plaintiff's counsel attesting that they have issued payments to the Represented Employees in compliance with this paragraph within thirty (30) calendar days after paying the Settlement Amount; within seven (7) calendar days of receipt of such declaration, Plaintiff's counsel will file and serve a Notice and Acknowledgement of Satisfaction of Judgment. The amounts allocated as 1099 penalties paid to each PAGA Group member shall be paid without deduction or offset to reflect payment of penalties, and other non-wage amounts, although Defendants may issue PAGA Group members an IRS Form 1099-Misc and/or IRS Form 1099-Int to reflect these payments for penalties and other non-wage amounts made. "Claim Share" means the portion of the settlement monies distributed to each PAGA Group member, which will be calculated by using the PAGA Group members' "Pay Periods with Potential Wage Issues Implicated" as a percentage of all such pay periods worked by all PAGA Group members within the PAGA Period, and assigning each PAGA Group member a proportionate share of the total, all as shown on **Exhibit 1**. The amount for distribution to the PAGA Group shall be multiplied by each PAGA Group member's percentage share, the result of which will be each PAGA Group member's individual Claim Share, which shall be paid as 1099 penalty income.

2.D. The Parties jointly agree that the "Notice of Settlement of Representative Action and Payment of Settlement Share" ("Notice"), attached as **Exhibit 2**, will be distributed to the PAGA Group members at the time each PAGA Group member receives payment for their Claim Share of the Settlement Amount.

2.E. In the event of cash flow difficulties, pandemic-related shut downs, or other disaster, Defendants shall have the right, exercisable in their sole discretion, to elect to defer making certain

settlement payments due to cash flow considerations or similar business necessity (“Payment Deferral Election”). Defendant may exercise a Payment Deferral Election not more than two times during the term of this Agreement; not to exceed two months (“Payment Deferral Period”). A Payment Deferral option may not be elected until at least three installment payments have been made. Defendants may only exercise a Payment Deferral Election solely in accordance with the following terms and conditions:

1. Defendant shall give Plaintiff and Plaintiff’s counsel written notice that Defendant intends to exercise a Payment Deferral Election, at least ten (10) calendar days before the first settlement payment to be deferred is owed.
2. As a fee for Defendants exercising a Payment Deferral Election, an administrative fee of six percent (6%) shall be assessed, and interest shall accrue on the amount of any settlement payment deferred pursuant to a Payment Deferral Election (“Deferred Settlement Payment”) at the rate of ten percent (10%) per annum, commencing on the date upon which such Deferred Settlement Payment becomes due and continuing through and including the date upon which such Deferred Settlement Payment is paid in full (“Deferral Fee”). Any Deferral Fee shall be in addition to the Settlement Amount and shall not be applied against any settlement payment.
3. Defendants shall resume making required settlement payments after the expiration of any Payment Deferral Period.

2.F. If any required installment payment is not received by Plaintiff’s counsel within the time prescribed in this Agreement, Plaintiff, through his counsel, shall send written notice to Defendants’ counsel, Harvey Berger, Esq., Berger, Williams & Reynolds, LLP, 401 B Street, Suite 2000, San Diego, California 92102 and to Rafid Moshey of the missed or untimely payment. Notice via email to [berger@bwrlp.com](mailto:berger@bwrlp.com) and to Wind N Sea Towing <windnseatowing@hotmail.com> shall be sufficient. After such notice by email, Defendants shall have three (3) days from the due date of the installment in which to cure any such missed or untimely payment. **If Defendants do not timely cure any such missed or untimely payment within three (3) days of the due date of the installment, Defendants shall each be deemed in default of this Agreement.** Accordingly, default will be effective on the fourth calendar day after which payment is originally due. If Defendants default on any installment payment, the Settlement Amount less any installment payments previously made, and the entirety thereof, shall, at the election of Plaintiff, become due and payable immediately.

2.G. The Parties, as part of this Agreement and attached as **Exhibit 3**, agree to execute a Stipulation for Entry of Judgment in the sum of One Hundred Twenty-Five Thousand Dollars and 00/100 Cents (\$125,000), to be satisfied in accordance with Section D.2. of this Agreement, which Stipulation will be held by Plaintiff’s counsel, and not entered, unless Defendants’ default, as prescribed in this Agreement. Such stipulation for judgment shall be returned to Defendants; counsel once all payments have been made.

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3. It is understood and agreed that this is a “no reversion” settlement; that is, Defendants will pay the Settlement Amount without further condition and without reimbursement of any amounts to Defendants, other than in the event this Agreement is not approved by the Court, approval is reversed on appeal, or is voided by the LWDA.

4. Defendants’ owners, officers, directors and management will not, in any way, make any efforts to dissuade PAGA Group members from participating in the Settlement. As to the PAGA Group members who make inquiries directly to Defendants about the settlement, Defendants will instruct its management and supervisory employees to generally respond as follows:

The company has agreed to settle claims for civil penalties related to issues of how certain employees were compensated since February 2020. These claims are disputed, and the settlement does not mean that the company has admitted it has done anything improper. If you have any questions about the nature of the case or the settlement, you may contact the Plaintiff’s lawyers via email at [nathan@kasedlegal.com](mailto:nathan@kasedlegal.com).

5. Neither Party has made, nor are making any representations to the other Party concerning the taxable status of the exchange of consideration described in this Agreement. Further, each of the Parties acknowledge and agree that no such representations have been made, and that they have not relied on any such potential representations. The Parties understand and agree that Plaintiff and the PAGA Group members is/are and will remain solely responsible for the payment of any taxes, attorney’s fees, deficiencies, levies, penalties, fines, fees, assessments and interest (collectively, “Tax Consequences”) with respect to the exchange of consideration described in this Agreement, and will not seek to impose responsibility for any Tax Consequences on Defendants. To that end, Plaintiff and the PAGA Group members agree to hold harmless and indemnify Defendants from and against any and all Tax Consequences that may be imposed against either Party by any taxing authority or any court as a result of the payments made.

6. In the event the Parties’ settlement is not approved by the Court, is reversed on appeal, or is voided by the LWDA, then Defendants shall have no obligation to make payment to any person or party, or the LWDA. If this Agreement is voided by the LWDA, not approved by the Court or approval is reversed on appeal, it shall have no force or effect and no Party shall be bound by its terms except to the extent: (a) the Court reserves any authority to issue any appropriate orders when denying approval; and/or (b) there are any terms and conditions in this Agreement specifically stated to survive the Agreement being voided or not approved, and which control in such an event, and Plaintiff’s counsel shall return all funds to Defendants.

7. The Parties agree that the Superior Court of the State of California, County of San Diego, and the Judge who approves this Settlement Agreement shall retain jurisdiction over the Representative Action and this Agreement in order to enforce its terms and conditions, and to resolve any dispute regarding this Agreement. To the extent otherwise provided by law, and subject to Court approval following approval of settlement and any exhaustion of appeals, this Agreement is intended to be enforceable pursuant to Code of Civil Procedure Section 664.6.

## **E. Releases of Settled Claims**

1. This Agreement is intended to fully and finally settle and resolve all civil penalty claims alleged by and between Plaintiff, Victor Harvey, the PAGA Group, the LWDA, and Defendants, encompassing the claims and causes of action asserted in Plaintiff's Representative Action within the PAGA Period, including but not limited to all claims for attorney's fees and costs arising from and related to those claims (collectively, the "PAGA Group Claims"). Specifically, the released PAGA Group Claims means and includes: any and all liabilities, demands, claims, causes of action, complaints and obligations for civil penalties which are alleged in Plaintiff's Complaint, which arose during the PAGA Period, as well as any and all derivative liabilities, demands, claims, causes of action, complaints and obligations for civil penalties which arose during the PAGA Period that could have been alleged in the Representative Action based on the facts and claims alleged therein, whether any of these claims are known or unknown, suspected or unanticipated, and which any of the PAGA Group members or LWDA has, or had, during the PAGA Period against Defendants, only excluding any rights that as a matter of law cannot be waived by this Agreement.

2. Upon the date the Agreement is approved by the Court and for the valuable consideration as provided in this Agreement, all PAGA Group members, including Plaintiff, Victor Harvey, and the LWDA, all agree for themselves, and their spouses, heirs, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, personal representatives, successors-in-interest, principals, agents, representatives, employees, attorneys, successors and assigns, and other persons or entities acting on their behalf, that they forever discharge, waive, and release Defendants, their past, present, and future parents, affiliates, subsidiaries, divisions, predecessors, successors, partners, joint venturers, affiliated organizations, insurers, past, present and future officers, directors, trustees, agents, employees, attorneys, contractors, representatives, partners, joint venturers, benefit plans, divisions, units, branches and other persons or entities acting on Defendants' behalf, from any and all claims, demands, obligations, actions, causes of action for civil penalties, which are alleged in Plaintiff's Representative Action which arose during the PAGA Period as well as any and all derivative liabilities, demands, claims, causes of action, complaints and obligations for civil penalties which arose during the PAGA Period which could have been alleged in the Representative Action based on the facts and claims alleged in the Representative Action, whether any of these claims are known or unknown, suspected or unanticipated, which any of the PAGA Group members has, or had, during the PAGA Period against Defendants. Nothing in this Settlement Agreement shall affect any unemployment insurance or workers' compensation insurance claims, individual wage claims, or other claims or rights of any PAGA Group member not arising from the PAGA Group Claims within the PAGA Period. It is understood and agreed between the Parties that the above waiver and release of claims is a material term of, and inducement for Defendants to enter into this Agreement.

3. Except as provided elsewhere in this Agreement as to rights and remedies caused by a breach of this Agreement, it is understood and agreed this Agreement, if approved and not voided by the LWDA shall act as a full and final accord and satisfaction, and as a bar to all PAGA Group Claims by any PAGA Group members and the LWDA that arose during the PAGA Period, regardless of whether such claims are now known. The Parties further acknowledge they understand and agree to waive the provisions with

Section 1542 of the California Civil Code, which provides as follows:

**CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE.**

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

Plaintiff, himself, Victor Harvey, and on behalf of the PAGA Group members and the LWDA, expressly waives and relinquishes any and all rights and benefits which they may have under, or which may be conferred upon them by the provisions of, Section 1542 of the California Civil Code, as well as under any other similar state or federal statute, to the fullest extent they may lawfully waive such rights or benefits pertaining to the released claims. Such waivers inure as against any and all claims released by PAGA Group members and the LWDA in this Agreement.

**F. Release of Individual Claims**

1. Plaintiff and Victor Harvey acknowledge they will receive an amount in excess of the amount other members of the PAGA Group shall receive as consideration for their participation in the Representative Action and for their individual claims.

2. Separate from and in addition to the releases by the Plaintiff and the PAGA Group for the PAGA Group Claims (i.e., sections E.1. and E.2. above) and in consideration of the promises set forth in this Agreement, Plaintiff and Victor Harvey — for themselves and for their heirs, family members, representatives, attorneys, executors, administrators, successors, and assigns — do unconditionally and irrevocably release, acquit, and forever discharge Defendants, all related companies, parent or subsidiary corporations or entities, and their affiliates, directors, officers, managers, members, employees, former employees, agents, attorneys, stockholders, insurers, representatives, owners, successors and/or assigns, past or present (collectively “Released Parties”) from any and all actions, loss, liability, claims, demands, causes of action, costs, expenses, damages (including attorneys’ fees and costs), or suits of any type, of whatever character, whether in law and/or in equity, known or unknown, suspected or unsuspected, of any kind or nature whatsoever, now existing or arising in the future, based on any act, omission, event, occurrence, or nonoccurrence through the date of execution, including but not limited to any claims or causes of action arising out of or in any way relating to Plaintiff’s and/or Victor Harvey’s claims.

3. The Parties agree that this release of claims includes, but is not limited to, claims for wage and hour violations, including but not limited to minimum wages, overtime wages, vacation pay, meal periods, rest breaks, unpaid hours worked, unpaid commissions, improper pay check stubs, or related damages or penalties; breach of implied or express contract or covenant, promissory estoppel, entitlement to any pay, quantum meruit (reasonable value of services), wrongful termination, retaliatory discharge or public

policy violations of whatever kind or nature, defamation, invasion of privacy, fraud, misrepresentation, emotional distress or other common law or tort matters; claims of harassment, retaliation or discrimination based in age, race, color, religion, sex, sexual orientation, national origin, ancestry, physical or mental disability, medical condition, marital status, genetic condition, veteran status; claims under the California Labor Code, any applicable Industrial Wage Orders, The California Private Attorney General Act (PAGA - Labor Code Section 2699 et seq.), Government, Business and Professions, and Health and Safety Codes, the California Constitution, any federal, state or other governmental statute, regulation or ordinance, including without limitation, the California Employment Development Department, the California Fair Employment and Housing Act, the California Unfair Business Practice Act, the California Family Rights Act, as amended, the Americans with Disabilities Act, the Labor Management Relations Act, the Plaintiff Retirement Income Security Act, the Family Medical Leave Act, the Americans with Disabilities Act, the Equal Pay Act, the Fair Labor Standards Act, and any other statutory or common law provision relating to or affecting Plaintiff's or Victor Harvey's relationship with Defendants. This provision is intended to constitute a general release of all of Plaintiff's and Victor Harvey's claims against Defendants, to the maximum extent permitted by law. This release, however, shall not affect or bar any claims that Plaintiff or Victor Harvey have or may have that are not waivable by law.

4. If any claim is not subject to this release, to the extent permitted by law, Plaintiff and Victor Harvey waive any right or ability to participate in a class or collective or representative action, or to otherwise participate in any putative or certified class, collective, or multi-party action or proceeding based on such a claim in which Defendants, or any of the other Released Parties identified in this Agreement, is a party. In any such action, Plaintiff and Victor Harvey: (1) must affirmatively "opt out" from having contact information provided to a plaintiff or plaintiff's counsel; (2) must exclude themselves if requested to join or remain as a member in any action; and (3) must refuse to participate or cooperate with a plaintiff and a plaintiff's counsel in any such action; further, by entering into this Agreement Plaintiff and Victor Harvey are not eligible for any recovery or benefit from any such action, if any.

#### **G. Other Terms of Settlement**

1. The purpose of this Settlement Agreement is to accomplish the compromise and settlement of disputed and contested claims and to avoid the cost of litigation. Nothing in this Agreement shall be construed as an admission of any violation of any federal or California statute or wage regulation or of any other non-compliance with or violation of law, statute or regulation by any Party. Nothing about this Settlement shall be offered or construed as an admission of liability, wrongdoing, impropriety, responsibility, or fault whatsoever by Defendants, who expressly deny any liability, wrongdoing, impropriety, responsibility, or fault whatsoever.

2. The Parties agree not to make or issue any statements that would tend to disparage the other related to the Representative Action or the settlement thereof. Plaintiff's counsel will not issue any press releases publicizing the Agreement and will not identify Defendants in any marketing material or on their websites. Plaintiff's counsel may report the name of the Plaintiff in the case and general terms of the settlement on their web-site or in marketing material—without any mention of the Defendants—but otherwise agree not to publish details with any media outlet. If contacted by any media outlet, Plaintiff's counsel will only refer the media outlet to the appropriate court files or records.

#### **SETTLEMENT AGREEMENT OF REPRESENTATIVE ACTION AND REQUEST FOR COURT APPROVAL**

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3. Plaintiff and Victor Harvey shall not disclose the fact or the terms of this Agreement, the facts and circumstances giving rise to the Agreement, or the existence of any claim that they have, or may have, that is subject to the release of claims contained in the Agreement, to anyone other than their spouses, registered domestic partners, immediate family members, attorneys and/or tax and financial advisors, or pursuant to court order or subpoena or as otherwise required by law. Should Plaintiff or Victor Harvey disclose information about the Agreement to their spouses, registered domestic partners, immediate family members, attorneys and/or tax and financial advisors, Plaintiff and Victory Harvey shall advise such persons that they must maintain the strict confidentiality of such information and must not disclose it unless otherwise required by law. Defendants shall not disclose the fact of the Agreement, the terms of the Agreement, the facts and circumstances giving rise to the Agreement that is subject to the release of claims contained in the Agreement, other than to its officers, directors, accountants, and attorneys, and as required on a need-to-know basis to any other individuals. Plaintiff and Victor Harvey acknowledge no claim of sexual harassment or sexual assault has been made. Plaintiff and Victor Harvey agree not to return to Defendants' offices.

4. The Parties agree, on behalf of each of them and their respective principals, agents, representatives, employees, attorneys, successors and assigns that they will abide by this Agreement, which terms are meant to be contractual, and further agree they will do such acts and prepare, execute and deliver such documents as may be required in order to carry out the purposes and intent of this Agreement.

5. The purpose of this Agreement is to accomplish the compromise and settlement of disputed and contested claims for civil penalties and to avoid the cost of litigation. Nothing in this Agreement shall be construed as an admission of any violation of any federal or California statute or wage regulation or of any other non-compliance with or violation of law, statute or regulation by any Party.

6. This Agreement constitutes the complete and entire written settlement and compromise and release by and among the Parties regarding Plaintiff's Complaint, and constitutes the complete expression of the terms of the Agreement for which Court approval will be sought, and notice to the LWDA will be given. All previous agreements, representations and negotiations regarding the matters resolved are superseded.

7. Each of the Parties acknowledges no other person, nor any attorney of any other person, has made any promise, representation or warranty whatsoever, express or implied, not contained in this Agreement, concerning the subject matters discussed, to induce any Party to execute or authorize the execution of this Agreement, and this Agreement contains the entire agreement between the Parties, and each Party acknowledges he or it has not executed or authorized the execution of this Agreement in reliance upon any such promise, representation or warranty not contained in this Agreement.

8. Each individual signing this Agreement warrants he/she/it has been given, and has received and accepted, authority to sign and execute the documents on behalf of the Party for whom it is indicated he/she/it has signed, and further, has been given, and received and accepted, authority to enter into a binding agreement on behalf of such Party, with respect to the matters contained in this Agreement.

SETTLEMENT AGREEMENT OF REPRESENTATIVE ACTION  
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9. The terms of this Agreement can only be amended or modified in writing, signed by duly authorized representatives of all of the Parties, stating such modification or amendment is intended. Any such modifications and/or amendments are subject to Court approval and the right of the LWDA to object or intervene.

10. If any provision of this Agreement is found to be illegal or unenforceable, then any such provision shall be deemed stricken and the remaining provisions shall, nevertheless, remain in full force and effect. In the event of a breach, this Settlement Agreement may be specifically enforced.

11. Waiver of any one breach of any provision of this Agreement shall not be deemed a waiver of any other breach of any provision of this Agreement.

12. Each of the Parties and their counsel have reviewed and revised this Agreement, and the normal rule of construction to the effect that any ambiguities in an agreement are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement. Each of the Parties represents and warrants the attorney approving this Agreement as to form on his or her or its behalf is the attorney employed by him or it to represent him or it with respect to this Agreement, and all matters related to them, and he or it has been fully advised by said attorneys with respect to his or its rights and obligations as to the execution of this Agreement. The Parties declare they know and understand the contents of this Agreement, and they have executed the same voluntarily.

13. Each of the Parties shall be responsible for his or its own attorney's fees, costs and other legal expenses incurred in connection with the Representative Action and this Agreement, and all related matters, except: as otherwise specifically provided in this Settlement Agreement; in the event any Party defaults in any duty or obligation required by this Agreement; or in the event any proceeding arises regarding the enforcement or interpretation of this Agreement, in which such events the prevailing Party(ies) shall be entitled to collect reasonable attorney's fees and costs.

14. All Parties executing this Agreement agree that any signatures by fax, electronic signatures, and/or copies of signatures shall be deemed valid and binding. This Agreement may also be executed in counterparts.

15. Time is of the essence in this Agreement.

16. By their signatures below, Plaintiff's counsel is entering into this Agreement on behalf of the Plaintiff and on behalf of the individual PAGA Group members and the LWDA, all subject to the Court's and LWDA's approval of the Agreement.

17. This Agreement will survive the entry of the final judgment approving the settlement of the Representative Action and releasing the claims of all PAGA Group members.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the dates indicated below:

SETTLEMENT AGREEMENT OF REPRESENTATIVE ACTION  
AND REQUEST FOR COURT APPROVAL  
*Stephana v. Wind N Sea Investments, et al.*

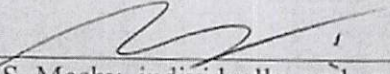
Dated: Feb 16, 2022

By:   
Rafi Stephana

Dated: Feb 15, 2022

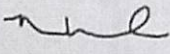
By:   
Victor Harvey

Dated: Feb 16, 2022

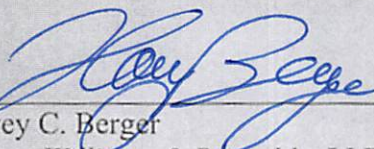
By:   
Rafid S. Moshy, individually, and on behalf of Wind N Sea Investments, Inc.

Approved as to Form:

Dated: Feb 15, 2022

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.

# **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: \_\_\_\_\_

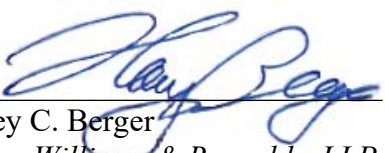
By: \_\_\_\_\_  
Rafid S. Moshy, individually, and on behalf of Wind  
N Sea Investments, Inc.

**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:

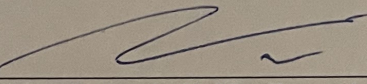
Dated: \_\_\_\_\_

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.

## **SECOND AMENDMENT TO SETTLEMENT AGREEMENT OF REPRESENTATIVE ACTION AND REQUEST FOR COURT APPROVAL**

This Second Amendment to the Settlement Agreement of Representative Action and Request for Court Approval (“Second Amendment”) is entered into by and between Rafi Stephana (“Stephana”) 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 “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 (“Agreement”);

B. WHEREAS, the Parties entered into a written Amendment to the Settlement Agreement of Representative Action and Request for Court Approval in or around April 14, 2022 (“First Amendment”);

C. WHEREAS, the Parties desire to enter into this Second Amendment to modify and clarify various material terms regarding the PAGA settlement, 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 Plaintiffs’ anticipated revised stipulation for approval of settlement of civil action and negotiated penalties pursuant to PAGA, which the Parties plan to file in December 2022;

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

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 Second Amendment is intended to modify and add additional provisions to the Agreement and First Amendment, 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 and First Amendment, 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 Plaintiffs, Rafi Stephana and 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 Plaintiffs’ 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 Plaintiffs and/or the PAGA Group, and 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 Thousand Dollars (\$50,000.00) 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 Plaintiffs' 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. Plaintiffs' 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, twenty-five thousand dollars (\$25,000.00) will be paid to Stephana as consideration for his Individual claims, and ten thousand dollars (\$10,000.00) 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 Stephana 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 estimated \$40,000.00 as the Net PAGA Settlement Amount, subject to Court Approval, with \$30,000.00 of the Net Settlement Amount to be paid by the Claims Administrator to the LWDA and the remaining \$10,000.00 for payment of Aggrieved Employee penalties. The Aggrieved Employee Penalty Payment for each PAGA Settlement Group Member shall be calculated as 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, Employee Claimants' 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 (of the Agreement). 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.

The Parties have executed this First Amendment as of the dates indicated below:

Dated: Jan 2, 2023

By:   
Rafi Stephana

Dated: Jan 2, 2023

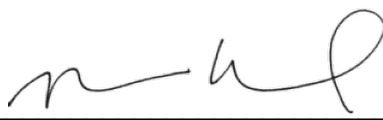
By:   
Victor Harvey

Dated: \_\_\_\_\_

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

**Approved as to Form:**

Dated: Jan 4, 2023

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

Dated: \_\_\_\_\_

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

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, Employee Claimants' 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 (of the Agreement). 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.

The Parties have executed this First Amendment as of the dates indicated below:

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Rafi Stephana

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Victor Harvey

Dated: 12/19/22

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: 12/19/2022

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

## **EXHIBIT 2**

1 NATHAN N. KASED (STATE BAR NO. 251400)  
Email: [nathan@kasedlegal.com](mailto:nathan@kasedlegal.com)  
2 JANINE R. MENHENNET (State Bar No. 163501)  
Email: [janine@kasedlegal.com](mailto:janine@kasedlegal.com)  
3 **KASED LAW GROUP APC**  
4 2535 KETTNER BOULEVARD, SUITE 2A2  
SAN DIEGO, CALIFORNIA 92101  
5 PHONE: 619.333.6373  
6 FAX: 619.399.3040

7 Attorneys for Plaintiffs,  
8 RAFI STEPHANA, VICTOR HARVEY,  
and Aggrieved Employees

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR THE COUNTY OF SAN DIEGO  
11

12 RAFI STEPHANA, an Individual;  
13 VICTOR HARVEY, an Individual; on  
14 behalf of themselves and all other aggrieved  
15 employees of Defendants in the State of  
California,

16 Plaintiffs,

17 vs.

18  
19 WIND N SEA INVESTMENTS, INC., a  
California Corporation; RAFID S.  
20 MOSHY, an Individual; and DOES 1-100,  
21 Inclusive,

22 Defendants.  
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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**09/12/2022** at 03:20:00 PM  
Clerk of the Superior Court  
By Vanessa Sezenol, Deputy Clerk

Case No. 37-2021-00003458-CU-OE-CTL

**UNLIMITED CIVIL CASE**

**SECOND AMENDED COMPLAINT FOR:**

1. **Failure to Pay Earned Wages (Cal. Lab. Code § 204);**
2. **Failure to Pay Minimum Wages (Cal. Labor Code §§ 1182.12, 1194, 1197, 1198; IWC Wage Order No. 9-2001);**
3. **Failure to Pay Minimum Wages (San Diego Municipal Code §§ 39.0107, 39.0112);**
4. **Failure to Pay Overtime Compensation (Cal. Lab. Code §§ 510, 1194, 1198; IWC Wage Order No. 9-2001);**
5. **Failure to Pay Meal Period Compensation (Cal. Lab. Code §§ 226.7, 512, 1198; IWC Wage Order No. 9-2001);**
6. **Failure to Pay Rest Period Compensation (Cal. Lab. Code §§ 226.7, 1198; IWC Wage Order No. 9-2001);**

7. Failure to Furnish Accurate Wage and Hour Statements (Cal. Lab. Code § 226);
8. Illegal Offset Against Wages (Cal. Lab. Code §§ 221, 224; IWC Wage Order No. 9-2001);
9. Failure to Indemnify for All Necessary Expenditures (Cal. Lab. Code § 2802; IWC Wage Order No. 9-2001);
10. Waiting Time Penalties (Cal. Lab. Code §§ 201, 203);
11. Unfair and Deceptive Business Practices in Violation of Cal. Bus. & Prof. Code §17200, *et seq.*; and
12. Civil Penalties for Violations of the Labor Code (Cal. Lab. Code, § 2698, *et seq.*).

**Demand for Jury Trial**

Plaintiffs RAFI STEPHANA and VICTOR HARVEY (“STEPHANA” and “HARVEY” or “Plaintiffs”), on behalf of themselves and all other California aggrieved employees of defendants WIND N SEA INVESTMENTS, INC. (“WIND N SEA,” “Defendant,” or “Company”) and RAFID S. MOSHY (“MOSHY”), alleges as follows:

**Nature of the Action**

1. This is an individual and representative action for wage and hour violations by Plaintiffs, to recover unpaid wages and related penalties and compensation owed to them and their aggrieved peers by defendants WIND N SEA and MOSHY. This representative action is brought in accordance with California’s Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (the “PAGA”).

2. **The class of aggrieved workers under the PAGA is composed of all individuals who work for or have worked for WIND N SEA and/or MOSHY as tow and service drivers, as well as those whom Defendants have otherwise subjected to Labor Code violations, including unpaid regular and minimum wages; unpaid overtime; noncompliant**

1 meal and rest periods; wage statements that were inaccurate, untimely, and/or not provided  
2 at all; illegal offsets against wages; unreimbursed necessary, work-related expenses; final  
3 pay violations; and the like (the “PAGA Aggrieved Employees”) in the State of California  
4 from August 17, 2020 to the final judgment (the “PAGA Period”).

5 3. Plaintiffs, by this action, seek damages, injunctive relief, penalties, unpaid  
6 wages, and any other remedies the Court deems just due to the illegal conduct of Defendants,  
7 as alleged herein.

#### 8 Jurisdiction and Venue

9 4. Pursuant to Article VI, § 10 of the California Constitution, subject matter  
10 jurisdiction is proper in the Superior Court of California, County of San Diego, State of  
11 California.

12 5. Venue is proper in this Court because Defendants are headquartered in, and did  
13 substantial business in San Diego County, California, and employed Plaintiffs and the PAGA  
14 Aggrieved Employees in San Diego County, California at all relevant times.

#### 15 The Parties

16 6. Plaintiff STEPHANA is, and at all relevant times was, a competent adult  
17 residing in San Diego County, California.

18 7. Plaintiff HARVEY is, and at all relevant times was, a competent adult residing  
19 in San Diego County, California.

20 8. On information and belief, Defendant WIND N SEA is, and at all relevant times  
21 was, a California corporation headquartered in, and doing business and operating in San Diego  
22 County, California.

23 9. On information and belief, Defendant MOSHY is, and at all relevant times was,  
24 a competent adult residing in San Diego County, California.

25 10. On information and belief, MOSHY, at all relevant times, was a director, officer,  
26 and/or managing agent of Defendant WIND N SEA within the meaning of California Labor  
27 Code section 558.1 and California Civil Code section 3294. On information and belief,  
28 MOSHY, at all relevant times, exercised substantial discretion in his decision-making such that

1 his decisions ultimately determined company policy of the Company. In addition, MOSHY is  
2 sued individually pursuant to Labor Code sections 558, 1197.1, and 2698 *et seq.* (the PAGA) as  
3 an employer or person acting on behalf of an employer, who violated or causes to be violated,  
4 a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours  
5 and days of work in any order of the Industrial Welfare Commission, and as an employer or  
6 other person acting either individually or as an officer, agent, or employee of another person,  
7 who pays or causes to be paid to any employee a wage less than the minimum fixed by an  
8 applicable state or local law, or by an order of the Industrial Welfare Commission.

9 11. At all relevant times, every defendant was the agent, representative, employee,  
10 servant, or affiliated entity of every other defendant and, in doing the acts herein alleged, each  
11 defendant is liable and responsible to Plaintiff for the acts of every other defendant.

12 12. Plaintiffs are ignorant of the true names and capacities of defendants sued herein  
13 as DOES 1 through 100, inclusive, and therefore sue said defendants by such fictitious names.  
14 Plaintiffs will amend this Complaint to allege the true names and capacities of such fictitiously  
15 named defendants when they are ascertained.

### 16 **General Allegations**

17 13. Defendants: (1) failed to pay Plaintiffs and the PAGA Aggrieved Employees the  
18 required minimum wage; (2) failed to pay Plaintiffs and the PAGA Aggrieved Employees the  
19 required overtime compensation; (3) employed Plaintiffs and the PAGA Aggrieved Employees  
20 for more than five hours without timely, uninterrupted meal periods of not less than 30 minutes  
21 and failed to compensate them for the missed meal periods; (4) employed Plaintiffs and the  
22 PAGA Aggrieved Employees for work periods of four hours or major fraction thereof without  
23 rest periods of ten minutes net rest time and failed to compensate them rest period  
24 compensation for the missed rest periods; (5) failed to provide Plaintiffs and the PAGA  
25 Aggrieved Employees with timely and accurate wage and hour statements; (6) took illegal  
26 deductions from the wages of Plaintiffs and the PAGA Aggrieved Employees; (7) took illegal  
27 offsets from the wages of Plaintiffs and the PAGA Aggrieved Employees; (8) failed to  
28 indemnify Plaintiffs and the PAGA Aggrieved Employees for all necessary expenditures they

1 incurred in connection with their employment therewith; (9) failed to pay Plaintiffs and the  
2 PAGA Aggrieved Employees their earned wages in a timely manner upon separation; and (10)  
3 engaged in unlawful and unfair business practices through the various Labor Code violations.  
4 The foregoing acts and other acts by the Defendant violated provisions of the Labor Code,  
5 including §§ 201, 202, 203, 204, 208, 221, 224, 226, 226.7, 510, 512, 1182.12, 1174, 1194,  
6 1194.2, 1197, 1198, and 2802; violated the applicable Wage Orders issued by the IWC of the  
7 State of California (the “Wage Order(s)”), and violated the rights of Plaintiffs and the PAGA  
8 Aggrieved Employees.

9  
**Specific Allegations**

10 14. WIND N SEA is an auto towing service company that has operated in San Diego  
11 County throughout the relevant liability periods. On information and belief, the Company has  
12 employed approximately 30-plus workers, 24 of whom as tow and service drivers. Throughout  
13 the relevant liability periods, MOSHY, the Company’s principal executive and shareholder,  
14 was the primary decision maker regarding terms and conditions of employment for all  
15 employees, including tow and service drivers.

16 15. STEPHANA worked continuously as a tow and service driver for the Company  
17 from on or about July 27, 2020 through mid-January 2021. He fulfilled tow and service calls  
18 dispatched to him daily and performed other duties and responsibilities typical of tow and  
19 service drivers. Throughout his employment, STEPHANA performed the duties and  
20 responsibilities entrusted to him in a fully satisfactory manner.

21 16. HARVEY also worked as a tow and service driver for the Company during the  
22 same relevant time period, in San Diego County, and experienced the same working conditions  
23 as STEPHANA.

24 17. Throughout the relevant liability periods, MOSHY, either directly or through his  
25 operations manager, has set tow and service driver compensation based on a daily flat rate  
26 and/or some fixed percentage of a service call. On information and belief, MOSHY paid  
27 drivers a higher fixed percentage of service calls involving tows that were more complicated,  
28 extraordinary in distance to fulfill, non-insurance or “cash”-based, and the like.

1           18.     Throughout the relevant liability periods, employees have typically received pay  
2 checks on at least a semimonthly basis.

3           19.     Throughout his employment with the Company, STEPHANA typically worked  
4 12-hour shifts, between 7 a.m. and 7 p.m. each workday, five days per week, usually taking off  
5 Wednesdays and Thursdays. HARVEY's working conditions were similar.

6           20.     Despite the driver compensation scheme set by MOSHY and STEPHANA's  
7 typical work schedule in which he averaged 60 hours worked per week and 120 per pay period,  
8 STEPHANA's semimonthly paychecks typically reflected a \$13.00 hourly rate and just 50  
9 hours worked *for the entire pay period*. To make up for the hours that STEPHANA was not paid  
10 on his payroll check, MOSHY typically issued to STEPHANA a separate check bearing the  
11 Company name for an amount that varied every pay period. MOSHY typically gave  
12 STEPHANA a separate check such as this in a lump sum and without any tax withholdings.  
13 On information and belief, MOSHY has maintained the same unlawful compensation practice  
14 with all the other tow and service drivers throughout the relevant liability periods. As a result  
15 of such practice, WIND N SEA has routinely failed to pay STEPHANA and his aggrieved  
16 driver peers the proper minimum wage and overtime compensation and failed to issue to them  
17 timely and accurate wage and hour statements.

18           21.     HARVEY experienced similar working conditions as STEPHANA, applicable  
19 to allegations both *supra* and *infra*, and accordingly joins in all allegations made by  
20 STEPHANA.

21           22.     In terms of recording his time worked, STEPHANA, throughout his  
22 employment with the Company, was required to clock in just once per day at the beginning of  
23 his shift, at the Company office located at 3540 Kurtz Street, San Diego, California 92110. He  
24 was not required to later clock out for any required lunch breaks or at the end of his shift. On  
25 information and belief, the Company has subjected all other tow and service drivers to this  
26 timekeeping practice throughout the relevant liability periods.

27           23.     Throughout his employment with the Company, STEPHANA was never  
28 authorized or permitted to take a duty-free first lunch and never authorized or permitted to take

1 a second lunch whatsoever. The Company permitted STEPHANA time to eat only when  
2 dispatch calls slowed, but STEPHANA was otherwise required to remain on duty and ready  
3 to fulfill a service call promptly on dispatch. Similarly, STEPHANA was never permitted at  
4 least three paid rest breaks of 10 consecutive minutes per shift; STEPHANA was required to  
5 remain vigilant for dispatch calls, always. As such, STEPHANA was always on duty for  
6 purported rest breaks. On information and belief, the Company has subjected all tow and  
7 service drivers to these same unlawful break practices throughout the relevant liability periods.

8         24. During his employment with the Company, STEPHANA, unintentionally and  
9 inadvertently allowed a customer vehicle to strike through the back window of a Company  
10 vehicle during the fulfillment of a service call. MOSHY required STEPHANA to repair the  
11 glass damage to the Company vehicle out of pocket and without reimbursement. On  
12 information and belief, during the relevant liability periods, the Company has required other  
13 tow and service drivers to reimburse the Company for inadvertent damage the drivers caused  
14 to Company or customer vehicles during their shift or the Company deducted from the drivers'  
15 compensation for such damage, in violation of the California Labor Code.

16         25. To date, WIND N SEA has not paid STEPHANA all wages that he is still owed  
17 in violation of California's final pay laws. On information and belief, the Company has not  
18 paid all final wages due to other aggrieved tow and service drivers that have separated from the  
19 Company during the relevant liability periods.

20 Court Closure and Tolling Period

21         26. The Judicial Council Emergency Rule 9, as amended May 29, 2020, suspended  
22 from April 6, 2020 to October 1, 2020 the statutes of limitations and repose for civil causes of  
23 action that exceed 180 days. The statute of limitations for each of Plaintiff's causes of action  
24 exceeds 180 days.

25         27. As such, for purposes of Plaintiffs' individual claims, the statutory periods relate  
26 back from on or about July 31, 2020.

27 ///

28 ///

1 PAGA Exhaustion

2       28. On or about February 10, 2020, STEPHANA notified the California Labor &  
3 Workforce Development Agency (the “LWDA”) of the Labor Code violations to which he and  
4 his aggrieved peers were subjected, and on information and belief, continue to be subjected.  
5 Thereafter, he timely served this PAGA notice on Defendants by certified mail, in compliance  
6 with the PAGA statute.

7 **First Cause of Action**

8 **For Failure to Pay Earned Wages**

9 **(California Labor Code § 204)**

10 **By Plaintiffs Against All Defendants**

11       29. Plaintiffs incorporate the preceding paragraphs.

12       30. Defendants failed to pay Plaintiffs the wages that they earned, as required by the  
13 Code and the Wage Order.

14       31. Plaintiffs have been deprived of their rightfully earned wages as a direct and  
15 proximate result of Defendants’ failure to pay said compensation. Plaintiffs are entitled to  
16 recover such amounts, plus interest thereon, attorney’s fees and costs.

17 **Second Cause of Action**

18 **For Failure to Pay Minimum Wages**

19 **(California Labor Code §§ 1182.12, 1194 *et seq.*, 1197, 1198; IWC Wage Order No. 9-2001)**

20 **By Plaintiffs Against All Defendants**

21       32. Plaintiffs incorporate the preceding paragraphs.

22       33. Plaintiffs are entitled to minimum wage as provided under the Code and the  
23 Wage Orders.

24       34. The Labor Code and Wage Order 9-2001, which governs the transportation  
25 industry, provide that an employer must pay a minimum wage to an employee, which is \$10.00  
26 per hour for all hours worked effective January 1, 2016 through December 31, 2016, \$10.50 per  
27 hour beginning January 1, 2017, \$11.00 per hour beginning January 1, 2018, \$12.00 per hour  
28

1 beginning January 1, 2019, \$13.00 per hour beginning January 1, 2020, and \$14.00 per hour  
2 beginning January 1, 2021. Section 4(A)(1).

3 35. Defendants paid Plaintiffs fixed rates irrespective of hours worked, as described  
4 in this Complaint, in violation of California's minimum wage laws, among other provisions of  
5 the Labor Code.

6 36. As a result, Defendants failed to pay Plaintiffs minimum wage for his work, as  
7 required by the Code and the Wage Orders.

8 37. Defendants thus required Plaintiffs to work under conditions prohibited by order  
9 of the IWC, in violation of those orders.

10 38. Defendants deprived Plaintiffs of their rightfully earned minimum wage  
11 compensation, as a direct and proximate result of Defendant's failure to pay said  
12 compensation. Under Labor Code § 1194, Plaintiffs are entitled to recover such amounts, plus  
13 interest thereon, reasonable attorney's fees, and costs.

14 39. In addition, under Labor Code § 1194.2, Plaintiffs are entitled to recover  
15 liquidated damages in an amount equal to the minimum wages unlawfully unpaid, and interest  
16 thereon.

17 **Third Cause of Action**

18 **For Failure to Pay Minimum Wages**

19 **(San Diego Municipal Code §§ 39.0107, 39.0112)**

20 **By Plaintiffs Against All Defendants**

21 40. Plaintiffs incorporate the preceding paragraphs.

22 41. Plaintiffs are entitled to minimum wage as provided under the San Diego  
23 Municipal Code.

24 42. Plaintiffs routinely worked for Defendants within the city limits of San Diego,  
25 California during the relevant liability periods.

26 43. The San Diego Municipal Code sets minimum wage levels for employers at  
27 \$10.50 per hour for all hours worked effective July 11, 2016; \$11.50 per hour for all hours  
28 worked effective January 1, 2017; \$12.00 per hour for all hours worked effective January 1,

1 2019; \$13.00 per hour for all hours worked effective January 1, 2020; and \$14.00 per hour for  
2 all hours worked effective January 1, 2021.

3 44. Defendants paid Plaintiffs a flat rate irrespective of the number of hours worked,  
4 as described in this Complaint, in violation of the San Diego Municipal Code.

5 45. As a result, Defendants failed to pay Plaintiffs the minimum wage for work, as  
6 required by the San Diego Municipal Code.

7 46. Per San Diego Municipal Code § 39.0112, an employer who violates Municipal  
8 Code § 39.0107 shall be liable to the employee whose rights were violated for any and all relief,  
9 including, but not limited to, the payment to each affected employee of wages unlawfully  
10 withheld, prevailing employee attorneys' fees and costs, and liquidated damages equal to  
11 double the back wages withheld.

12 47. Furthermore, per subdivision (c) of Municipal Code § 39.0112, employers in  
13 violation of the local minimum wage law are subject to a civil penalty of no less than \$500 and  
14 no more than \$1,000 per violation. "Each and every day that an Employer fails to pay an  
15 Employee Minimum Wage...constitutes a separate and distinct violation." To date,  
16 STEPHANA is still owed minimum wages.

17 **Fourth Cause of Action**

18 **For Failure to Pay Overtime Compensation**

19 **(California Labor Code §§ 510, 1194, 1198; IWC Wage Order No. 9-2001)**

20 **By Plaintiffs Against All Defendants**

21 48. Plaintiffs incorporate the preceding paragraphs.

22 49. The Code and the Wage Order provide that a workday consists of eight hours, a  
23 workweek consists of 40 hours, and an employer must compensate an employee who works  
24 overtime hours with either one-and-one-half times or double the employee's regular rate of  
25 compensation. Defendant employed Plaintiffs for more than eight hours per day and more than  
26 40 hours per workweek, but Defendant failed to pay Plaintiffs the overtime compensation  
27 required by the California Labor Code and the Wage Order.

50. Defendants thus required Plaintiffs to work for longer hours than those fixed, or under conditions prohibited, by order of the IWC, in violation of those orders.

51. Defendants deprived Plaintiffs of their rightfully earned overtime compensation as a direct and proximate result of Defendants' failure to pay said compensation. Under Labor Code § 1194, Plaintiffs are entitled to recover such amounts, plus interest thereon, attorney's fees, and costs.

### **Fifth Cause of Action**

### For Failure to Pay Meal Period Compensation

**(California Labor Code §§ 226.7, 512, 1198; IWC Wage Order No. 9-2001)**

**By Plaintiffs Against All Defendants**

52. Plaintiffs incorporate the preceding paragraphs.

53. The Code and the Wage Order provide that an employee is entitled to an uninterrupted, off-the-clock meal period of not less than 30 minutes for every five hours worked. The Code and the Wage Order also require the employer to pay the employee one hour at the employee's regular rate of compensation for each day that the employer does not provide at least one required meal period.

54. Defendants employed Plaintiffs for work periods of more than five (5) hours without a timely meal period of not less than 30 minutes and failed to compensate Plaintiffs for such meal periods, as required by Labor Code § 226.7 and the Wage Order.

55. Defendants deprived Plaintiffs of their rightfully earned compensation for meal periods as a direct and proximate result of Defendant's failure to pay said compensation.

56. The remedy provided for in Code § 226.7 constitutes a wage, and Plaintiffs are entitled to interest thereon. *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1099-1100.

57. Defendants thus required Plaintiffs to work for longer hours than those fixed, or under conditions prohibited, by order of the IWC, in violation of those orders.

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**Sixth Cause of Action**  
**For Failure to Pay Rest Period Compensation**  
**(California Labor Code §§ 226.7, 1198; IWC Wage Order No. 9-2001)**  
**By Plaintiffs Against All Defendants**

58. Plaintiffs incorporate the preceding paragraphs.

59. The Code and the Wage Order provide that an employee is entitled to an uninterrupted rest period of not less than 10 net minutes for every four hours worked or major fraction thereof. The Code and the Wage Order require the employer to pay the employee one hour at the employee’s regular rate of compensation for each day that the employer does not provide at least one required rest period.

60. Defendant employed Plaintiffs for work periods of four hours or major fraction thereof without rest periods of ten minutes’ net rest time and failed to compensate Plaintiffs for such rest periods, as required by Code § 226.7 and the Wage Order.

61. Defendant deprived Plaintiffs of their rightfully earned compensation for rest periods as a direct and proximate result of Defendants’ failure to pay said compensation.

62. The remedy provided for in Code § 226.7 constitutes a wage, and Plaintiffs are entitled to interest thereon. *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1099-1100.

63. Defendant thus required Plaintiffs to work for longer hours than those fixed, or under conditions prohibited, by order of the IWC, in violation of those orders.

**Seventh Cause of Action**  
**For Failure to Furnish Accurate Wage and Hour Statements**  
**(California Labor Code § 226)**  
**By Plaintiffs Against All Defendants**

64. Plaintiffs incorporate the preceding paragraphs.

65. Labor Code § 226(a) required Defendants, “semimonthly or at the time of each payment of wages,” to furnish Plaintiffs “an accurate itemized statement in writing” showing gross and net wages earned, total hours worked by the employee/employees, rates of pay, and

1 other information. Defendants knowingly and intentionally failed to provide Plaintiffs with  
2 such accurate wage and hour statements, as they had failed to pay all earned compensation in  
3 a timely manner.

4 66. Plaintiffs suffered injury as a result of Defendants' knowing and intentional  
5 failure to provide them with the wage and hour statements required by law.

6 67. Under Labor Code § 226, subsections (e) and (f), and based on Defendants'  
7 conduct as alleged herein, Plaintiffs are entitled to: (a) fifty dollars (\$50) for the initial pay  
8 period in which a wage and hour statement violation occurred, and one hundred dollars (\$100)  
9 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty  
10 of four thousand dollars (\$4,000); (b) injunctive relief to ensure Defendants' compliance with  
11 Labor Code § 226; and (c) an award of costs and reasonable attorney's fees.

12 **Eighth Cause of Action**

13 **For Illegal Offset Against Wages**

14 **(California Labor Code §§ 221, 224; IWC Wage Order No. 9-2001)**

15 **By STEPHANA Against All Defendants**

16 68. Plaintiff incorporates the preceding paragraphs.

17 69. Code § 221 provides: "It shall be unlawful for any employer to collect or receive  
18 from an employee any part of wages theretofore paid by said employer to said employee."

19 70. STEPHANA was required to pay out of pocket to repair damage to a Company  
20 vehicle caused by his inadvertent mistake, in violation of Code §§ 221, 224.

21 71. STEPHANA has been deprived of his rightfully earned wages as a direct and  
22 proximate result of Defendants' failure to pay said compensation. STEPHANA is entitled to  
23 recover such amounts, plus interest thereon, attorney's fees and costs.

24 **Ninth Cause of Action**

25 **For Failure to Indemnify for All Necessary Expenditures or Losses**

26 **(California Labor Code § 2802; IWC Wage Order No. 9-2001)**

27 **By Plaintiff Against All Defendants**

28 72. Plaintiff incorporates the preceding paragraphs.

1           73.     Code § 2802(a) provides:

2                     An employer shall indemnify his or her employee for all necessary  
3                     expenditures or losses incurred by the employee in direct consequence  
4                     of the discharge of his or her duties, or of his or her obedience to the  
5                     directions of the employer, even though unlawful, unless the  
6                     employee, at the time of obeying the directions, believed them to be  
7                     unlawful.

8           74.     STEPHANA was required to pay out of pocket to repair damage to a Company  
9                     vehicle caused by his inadvertent mistake, in violation of Code §§ 221, 224. To date,  
10                    Defendants have failed to indemnify STEPHANA for these out-of-pocket expenses.

11           75.     Under Code § 2802(c), STEPHANA is entitled to recover all reasonable costs,  
12                     including attorney's fees, incurred in enforcing his rights granted by § 2802.

13                                     **Tenth Cause of Action**

14                                     **For Waiting Time Penalties**

15                                     **(California Labor Code §§ 201, 202 and 203)**

16                                     **By Plaintiffs Against All Defendants**

17           76.     Plaintiffs incorporate the preceding paragraphs.

18           77.     Defendants willfully failed to pay Plaintiffs accrued wages due to them promptly  
19                     upon separation, as required by California Labor Code §§ 201 and 202.

20           78.     Based on Defendants' conduct as alleged herein, Defendants are liable for  
21                     statutory penalties pursuant to Labor Code § 203.

22                                     **Eleventh Cause of Action**

23                                     **Violation of Business & Professions Code §17200 *et seq.***

24                                     **By Plaintiffs Against WIND N SEA**

25           79.     Plaintiffs incorporate the preceding paragraphs.

26           80.     Defendant has engaged, and continues to engage, in unfair and unlawful  
27                     business practices in California by practicing, employing and utilizing the employment  
28                     practices outlined above, including, i.e., failing to (a) pay all minimum and overtime wages;  
                     (b) provide mandatory meal and rest periods; (c) provide proper and accurate itemized wage

1 statements; and (d) pay all earned compensation at time of separation, as described  
2 hereinabove.

3 81. Defendant's use of such unfair and unlawful business practices constitutes  
4 unfair, unlawful competition and provides an unfair advantage over Defendant's competitors.

5 82. Plaintiffs seek full restitution of monies, as necessary and according to proof, to  
6 restore all monies withheld, acquired and/or converted by Defendant by means of the unfair  
7 practices complained of herein.

8 83. During the limitations period, Defendant has engaged in unlawful, deceptive,  
9 and unfair business practices, proscribed by Business & Professions Code § 17200 *et seq.*,  
10 including those described herein, thereby depriving Plaintiffs of the minimum working  
11 conditions and standards due him under California law and Industrial Commission wage  
12 orders as described herein.

13 **Twelfth Cause of Action**

14 **For Civil Penalties for Violations of the Labor Code**

15 **(California Labor Code Section 2698, *et seq.*)**

16 **By STEPHANA Individually, On Behalf of All Aggrieved Employees, and**

17 **On Behalf of the Public Against All Defendants**

18 84. Plaintiff incorporates the preceding paragraphs.

19 85. Throughout the PAGA Period, Defendants have violated and, on information  
20 and belief, continue to violate provisions of the Labor Code, including §§ 201, 202, 203, 204,  
21 208, 221, 224, 226, 226.7, 510, 512, 1182.12, 1174, 1194, 1194.2, 1197, 1198, and 2802.

22 86. Labor Code sections 2699(a) and (g) authorize an aggrieved employee, on behalf  
23 of himself or herself and other current or former employees, to bring a civil action to recover  
24 civil penalties pursuant to the procedures specified in Labor Code § 2699.3.

25 87. Plaintiff STEPHANA has complied with the procedures for bringing suit  
26 specified in Labor Code § 2699.3. By letter dated February 10, 2021, Plaintiff STEPHANA  
27 gave written notice by online filing with the LWDA and by certified mail to defendants WIND  
28 N SEA and MOSHY of Plaintiff STEPHANA's allegations of Defendants' violations of the

1 Labor Code. The LWDA failed to notify this representative Plaintiff STEPHANA by certified  
2 mail that it does not intend to investigate the alleged violations within 60 calendar days of the  
3 postmark date of the notice filing and failed to send any notice within 65 days of Plaintiff  
4 STEPHANA's filing of the notice of its intention to investigate Plaintiff STEPHANA's claimed  
5 violations.

6 88. Pursuant to Labor Code § 2699.3, subdivision (a)(2), Plaintiff STEPHANA may  
7 seek civil penalties under the PAGA, codified at Labor Code §§ 2698, *et seq.*

8 89. Pursuant to Labor Code § 2699, subdivisions (a) and (f), Plaintiff STEPHANA  
9 is entitled to recover civil penalties for Defendants' violations of Labor Code §§ 201, 202, 203,  
10 204, 208, 221, 224, 226, 226.7, 510, 512, 1182.12, 1174, 1194, 1194.2, 1197, 1198, and 2802,  
11 in the following amounts:

- 12 a. For violation of Labor Code § 201, one hundred dollars (\$100) for each  
13 underpaid employee for each pay period the employee was underpaid,  
14 and two hundred dollars (\$200) for each subsequent violation for each  
15 underpaid employee for each pay period (penalty amounts established by  
16 Labor Code Section 2699(f)(2));
- 17 b. For violation of Labor Code § 204, one hundred dollars (\$100) for each  
18 underpaid employee for each pay period the employee was underpaid,  
19 and two hundred dollars (\$200) for each subsequent violation or any  
20 willful or intentional violation, for each underpaid employee for each pay  
21 period, plus 25 percent of the amount unlawfully withheld (penalty  
22 amounts established by Labor Code Section 210);
- 23 c. For violation of Labor Code § 208, one hundred dollars (\$100) for each  
24 aggrieved employee per pay period for the initial violation and two  
25 hundred dollars (\$200) for each aggrieved employee per pay period for  
26 each subsequent violation (penalty amounts established by Labor Code  
27 Section 2699(f)(2));
- 28

- 1           d.     For violation of Labor Code § 221, one hundred dollars (\$100) for each  
2                 aggrieved employee per pay period for the initial violation and two  
3                 hundred dollars (\$200) for each aggrieved employee per pay period for  
4                 each subsequent violation, plus 25 percent of the amount unlawfully  
5                 withheld (penalty amounts established by Labor Code Section 225.5);
- 6           e.     For violation of Labor Code § 224, one hundred dollars (\$100) for each  
7                 aggrieved employee per pay period for the initial violation and two  
8                 hundred dollars (\$200) for each aggrieved employee per pay period for  
9                 each subsequent violation (penalty amounts established by Labor Code  
10                Section 2699(f)(2));
- 11          f.     For violation of Labor Code § 226(a), two hundred fifty dollars (\$250) for  
12                 each employee per pay period for the initial violation and one thousand  
13                 dollars (\$1,000) per employee in a subsequent violation (penalty amounts  
14                 established by Labor Code Section 226.3) *or* one hundred dollars (\$100)  
15                 for each aggrieved employee per pay period for the initial violation and  
16                 two hundred dollars (\$200) for each aggrieved employee per pay period  
17                 for each subsequent violation;
- 18          g.     For violation of Labor Code § 226(b), one hundred dollars (\$100) for each  
19                 aggrieved employee per pay period for the initial violation and two  
20                 hundred dollars (\$200) for each aggrieved employee per pay period for  
21                 each subsequent violation (penalty amounts established by Labor Code  
22                 Section 2699(f)(2));
- 23          h.     For violation of Labor Code § 226.7, one hundred dollars (\$100) for each  
24                 aggrieved employee per pay period for the initial violation and two  
25                 hundred dollars (\$200) for each aggrieved employee per pay period for  
26                 each subsequent violation (penalty amounts established by Labor Code  
27                 Section 2699(f)(2));
- 28

- 1           i.     For violation of Labor Code § 510, fifty dollars (\$50) for each underpaid  
2           employee for each pay period the employee was underpaid in addition to  
3           an amount sufficient to recover underpaid wages, and one hundred  
4           dollars (\$100) for each subsequent violation for each underpaid employee  
5           for each pay period in addition to an amount sufficient to recover  
6           underpaid wages (penalty amounts established by Labor Code Section  
7           558);
- 8           j.     For violation of Labor Code § 512, fifty dollars (\$50) for each underpaid  
9           employee for each pay period the employee was underpaid in addition to  
10          an amount sufficient to recover underpaid wages, and one hundred  
11          dollars (\$100) for each subsequent violation for each underpaid employee  
12          for each pay period in addition to an amount sufficient to recover  
13          underpaid wages (penalty amounts established by Labor Code Section  
14          558);
- 15          k.     For violation of Labor Code § 1174, five hundred dollars (\$500) for any  
16          person employing labor who willfully fails to maintain the records  
17          required by subdivision (c) of Section 1174 or accurate and complete  
18          records required by subdivision (d) of Section 1174 (penalty amounts  
19          established by Labor Code Section 1174.5);
- 20          l.     For violation of Labor Code § 1194(a), one hundred dollars (\$100) for  
21          each aggrieved employee per pay period for the initial violation and two  
22          hundred dollars (\$200) for each aggrieved employee per pay period for  
23          each subsequent violation (penalty amounts established by Labor Code  
24          Section 2699(f)(2));
- 25          m.     For violation of Labor Code § 1197, one hundred dollars (\$100) for each  
26          underpaid employee for each pay period the employee was underpaid,  
27          and two hundred dollars (\$250) for each subsequent violation for each  
28

underpaid employee for each pay period (penalty amounts established by Labor Code Section 1197.1);

n. For violation of Labor Code § 1198, one hundred dollars (\$100) for each underpaid employee for each pay period the employee was underpaid, and two hundred dollars (\$200) for each subsequent violation for each underpaid employee for each pay period (penalty amounts established by Labor Code Section 2699(f)(2)); and

o. For violation of Labor Code § 2802, one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation (penalty amounts established by Labor Code Section 2699(f)(2)).

90. Plaintiff further demands reasonable attorney's fees, costs of suit, and interest pursuant to California Labor Code §§ 2699(g)(1).

### **Prayer for Relief**

WHEREFORE, Plaintiffs hereby pray that the Court enter judgment in their favor and against Defendant and Does 1 through 100, Inclusive, and each of them, as follows:

1. For unpaid wages in an amount according to proof;
2. For minimum wages in an amount according to proof;
3. For overtime compensation in an amount according to proof;
4. For meal period compensation in an amount according to proof;
5. For rest period compensation in an amount according to proof;
6. For Labor Code § 226(e) statutory penalties in an amount according to proof;
7. For Labor Code § 203 penalties in an amount according to proof;
8. For civil penalties in accordance with Labor Code § 2698, *et seq.*;
9. For indemnification of all necessary expenditures incurred according to proof;
10. For restitution of all unpaid wages in an amount according to proof;
11. For prejudgment interest on the foregoing at the legal rate;

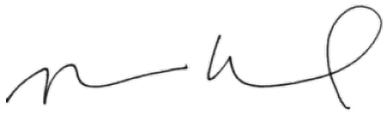
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- 12. For reasonable attorney fees as allowed by law;
- 13. For costs of suit incurred herein;
- 14. For such further relief as the Court may deem appropriate.

**Plaintiffs hereby demand jury trial of this matter.**

Dated: September 12, 2022

KASED LAW GROUP APC

By:   
Nathan N. Kased  
Janine R. Menhennet  
Attorneys for Plaintiffs  
RAFI STEPHANA, VICTOR HARVEY,  
and all other aggrieved employees

## **EXHIBIT 3**



Reply to:  
2535 Kettner Boulevard, Suite 2A2  
San Diego, CA 92101

February 10, 2021

**VIA ONLINE SUBMISSION**  
[PAGAFilings@dir.ca.gov](mailto:PAGAFilings@dir.ca.gov)

**VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED**

Rafid Moshy  
Chief Executive Officer  
Agent for Service of Process  
Wind N Sea Investments, Inc.  
3540 Kurtz St  
San Diego, CA 92110

Rafid Moshy  
Wind N Sea Investments, Inc.  
3540 Kurtz St  
San Diego, CA 92110  
(Served In Individual Capacity)

**Re: Notice Pursuant to Labor Code § 2699.3(a) re: Rafi Stephana and all Aggrieved Employees**

To Whom It May Concern:

This letter serves as notice to the Labor & Workforce Development Agency ("LWDA") of the Labor Code violations of Rafid Moshy and Wind N Sea Investments, Inc. (individually, "Mr. Moshy," and "Wind N Sea," or collectively, "Employers"). We submit this notice in accordance with Labor Code § 2699.3(a).

Employers formerly employed our client, Rafi Stephana ("Mr. Stephana"). We submit this notice on behalf of our client and all other aggrieved employees that were employed by Rafid Moshy and/or Wind N Sea Investments, Inc. In compliance with Labor Code § 2699.3(a)(1), Mr. Stephana furnished Employers with a copy of this notice by certified mail. Unless the LWDA proceeds against Employers, Mr. Stephana intends to pursue a representative civil action against Employers, in accordance with Labor Code § 2698, *et seq.*

Mr. Stephana has already filed a civil complaint for his individual claims and will amend his complaint to include claims under the Private Attorneys General Act ("PAGA") if the LWDA does not intend to investigate Mr. Stephana's claims. A true and correct copy of the complaint on file in San Diego Superior Court is attached hereto as **Exhibit A**, incorporated by reference herein.

**I. Statutes of Limitations Tolling**

Pertinent to the instant matter, the Judicial Council Emergency Rule 9, as amended May 29, 2020, suspended from April 6, 2020 to October 1, 2020 the statutes of limitations for civil causes of action that exceed 180 days. Thus, the statute of limitations on Mr. Stephana's representative claims under PAGA, typically a one-year period, were tolled between April 6, 2020 and October 1, 2020.

San Diego  
2535 Kettner Boulevard, Suite 2A2  
San Diego, CA 92101  
P: +1 619.333.6373 | F: +1 619.399.3040

Los Angeles  
400 Continental Boulevard, 6th Floor  
El Segundo, CA 90245  
P: +1 310.697.3200

As such, for purposes of Mr. Stephana's representative claims on behalf of himself, the aggrieved, and the State of California, the statutory period relates back one year from on or about August 17, 2020.

## II. Labor Code Violations

Employers have violated at least the following specifically enumerated Labor Code sections, in addition to any other Labor Code sections implicated by the actions described in the Facts & Theories and Liability & Damages portions of this notice letter: §§ 201, 202, 203, 204, 221, 224, 226, 226.7, 510, 512, 1182.12, 1174, 1194, 1194.2, 1197, 1198, and 2802.

## III. Facts & Theories

Wind N Sea is an auto towing service company operating out of a single facility located at 3540 Kurtz Street, San Diego, California 92110. Its services include towing, battery service, lockout service, tire changes, gas delivery, jump starts, and winch out/extractions. Wind N Sea operates 24 hours a day, seven days a week. On information and belief, Wind N sea has operated continuously from this location throughout the relevant liability periods.

Wind N Sea has employed approximately 30-plus workers, most of whom as tow and service drivers. Throughout the relevant liability periods, Mr. Moshy, the Company's principal executive and shareholder, was the primary decision maker regarding terms and conditions of employment for all employees, including tow and service drivers.

Mr. Stephana has worked continuously as a as a tow and service driver for the Company from on or about July 27, 2020 through mid-January 2021. He fulfilled tow and service calls dispatched to him daily and performed other duties and responsibilities typical of tow and service drivers. He performed the duties and responsibilities entrusted to him in a fully satisfactory manner throughout his employment with the Company.

Throughout the relevant liability periods, despite having W-2 classified employees, Mr. Moshy has set tow and service driver compensation based on a daily flat rate and/or some fixed percentage of a service call. On information and belief, Mr. Moshy paid drivers a higher fixed percentage of service calls involving tows that were more complicated, extraordinary in distance to fulfill, non-insurance or "cash"-based, and the like.

Mr. Stephana typically worked 12-hour shifts, between 7 a.m. and 7 p.m. each workday, five days per week, usually taking off Wednesdays and Thursdays. Mr. Stephana's typical work schedule averaged **60 hours per week and 120 per pay period**, but due to Mr. Moshy's individualized compensation ruse, Mr. Stephana's semimonthly paychecks typically reflected a \$13.00 hourly rate and **just 50 hours worked for the entire pay period**. To make up for the hours that Mr. Stephana was not paid on his payroll check, Mr. Moshy typically furnished a separate, Company issued check for an amount that varied every pay period. Mr. Moshy typically issued a separate check such as this in a lump sum and without any tax withholdings. On information and belief, Mr. Moshy subjected all other tow and service drivers to the same unlawful compensation scheme described herein.

Additionally, Mr. Stephana was required to clock in just once per day at the beginning of his shift. He was not required to later clock out for any required lunch breaks or at the end of his shift. Despite working 12-hour shifts, Mr. Stephana was never authorized or permitted to take a duty-free first lunch or a second lunch whatsoever. The Company permitted Mr. Stephana time to eat only when dispatch calls slowed but was otherwise required to remain on duty and ready to fulfill a service call promptly on dispatch. Similarly, Mr. Stephana was never permitted at least three paid rest breaks of 10 consecutive minutes per shift; he was required to remain vigilant for dispatch calls, always. As such, Mr. Stephana was always on duty for purported rest breaks. On information and belief, the Company subjected all other tow and service drivers to the same unlawful working conditions described herein.

Throughout the relevant liability periods, Mr. Moshy routinely required tow and service drivers to reimburse the Company for inadvertent damage the drivers caused to Company or customer vehicles during their shift or the Company deducted from the drivers' compensation for such damage, in violation of the California Labor Code. In one instance specifically, during his employment with the Company, Mr. Stephana unintentionally and inadvertently allowed a customer vehicle to strike through the back window of a Company vehicle during the fulfillment of a service call. Mr. Moshy required Mr. Stephana to repair the glass damage to the Company vehicle out of pocket and without reimbursement.

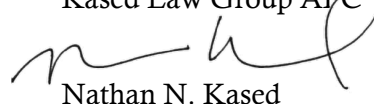
On information and belief, Mr. Moshy and Wind N Sea has maintained the unlawful compensation, timekeeping, meal and rest break, and reimbursement practices described above with all the other tow and service drivers throughout the relevant liability periods. As a result of such practices, Wind N Sea has routinely failed to pay Mr. Stephana and his aggrieved driver peers their earned contractual wages; their proper minimum wage and overtime compensation; and premium wages for missed breaks. The Company has also failed to issue to Mr. Stephana and his aggrieved driver peers timely and accurate wage and hour statements.

To date, Wind N Sea has not paid Mr. Stephana all wages that he is still owed, in plain violation of California's final pay laws. On information and belief, the Company has not paid all final wages due to other aggrieved tow and service drivers that have separated from the Company during the relevant liability periods. Based on the Employers' conduct as alleged herein, Employers are liable for substantial waiting time and statutory penalties in addition to the accrued wages lawfully owed to Mr. Stephana and his aggrieved driver peers.

#### **IV. Conclusion**

The facts articulated above violate provisions of the Labor Code identified in this writing. By virtue of this letter, we hereby notify the LWDA of Employers' violations. In accordance with Labor Code § 2699.3(a)(2)(A), please notify us within 60 days, at our San Diego office address, whether you will investigate this matter.

Very truly yours,  
Kased Law Group APC



Nathan N. Kased

NK:mm  
cc: Mr. Stephana

EXHIBIT A

1 NATHAN N. KASED (STATE BAR NO. 251400)  
Email: [nathan@kasedlegal.com](mailto:nathan@kasedlegal.com)  
2 JANINE R. MENHENNET (State Bar No. 163501)  
Email: [janine@kasedlegal.com](mailto:janine@kasedlegal.com)  
3 **KASED LAW GROUP APC**  
2535 KETTNER BOULEVARD, SUITE 2A2  
4 SAN DIEGO, CALIFORNIA 92101  
PHONE: 619.333.6373  
5 FAX: 619.399.3040

6 Attorneys for Plaintiff,  
7 RAFI STEPHANA

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**01/25/2021** at 04:34:21 PM  
Clerk of the Superior Court  
By Yvette Mapula, Deputy Clerk

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

11 RAFI STEPHANA, an Individual,  
12  
13 Plaintiff,

14 vs.

15 WIND N SEA INVESTMENTS, INC., a  
16 California Corporation; RAFID S.  
17 MOSHY, an Individual; and DOES 1-100,  
18 Inclusive,  
19 Defendants.

Case No. 37-2021-00003458-CU-0E-CTL

UNLIMITED CIVIL CASE

COMPLAINT FOR:

1. Failure to Pay Earned Wages (Cal. Lab. Code § 204);
2. Failure to Pay Minimum Wages (Cal. Labor Code §§ 1182.12, 1194, 1197, 1198; IWC Wage Order No. 9-2001);
3. Failure to Pay Minimum Wages (San Diego Municipal Code §§ 39.0107, 39.0112);
4. Failure to Pay Overtime Compensation (Cal. Lab. Code §§ 510, 1194, 1198; IWC Wage Order No. 9-2001);
5. Failure to Pay Meal Period Compensation (Cal. Lab. Code §§ 226.7, 512, 1198; IWC Wage Order No. 9-2001);
6. Failure to Pay Rest Period Compensation (Cal. Lab. Code §§ 226.7, 1198; IWC Wage Order No. 9-2001);
7. Failure to Furnish Accurate Wage and Hour Statements (Cal. Lab. Code § 226);

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8. Illegal Offset Against Wages (Cal. Lab. Code §§ 221, 224; IWC Wage Order No. 9-2001);
9. Failure to Indemnify for All Necessary Expenditures (Cal. Lab. Code § 2802; IWC Wage Order No. 9-2001);
10. Waiting Time Penalties (Cal. Lab. Code §§ 201, 203); and
11. Unfair and Deceptive Business Practices in Violation of Cal. Bus. & Prof. Code §17200, *et seq.*

**Demand for Jury Trial**

Plaintiff RAFI STEPHANA (“STEPHANA” or “Plaintiff”), alleges as against defendants WIND N SEA INVESTMENTS, INC. (“WIND N SEA,” “Defendant,” or “Company”) and RAFID S. MOSHY (“MOSHY”) follows:

**Nature of the Action**

1. This is an individual action for wage and hour violations by STEPHANA, to recover unpaid wages and related penalties and compensation owed to him by defendants WIND N SEA and MOSHY.

**Jurisdiction and Venue**

2. Pursuant to Article VI, § 10 of the California Constitution, subject matter jurisdiction is proper in the Superior Court of California, County of San Diego, State of California.

3. Venue is proper in this Court because Defendants are headquartered in, and did substantial business in San Diego County, California, and employed Plaintiff in San Diego County, California at all relevant times.

**The Parties**

4. Plaintiff STEPHANA is, and at all relevant times was, a competent adult residing in San Diego County, California.

///

5. On information and belief, Defendant WIND N SEA is, and at all relevant times was, a California corporation headquartered in, and doing business and operating in San Diego County, California.

6. On information and belief, Defendant MOSHY is, and at all relevant times was, a competent adult residing in San Diego County, California.

7. On information and belief, MOSHY, at all relevant times, was a director, officer, and/or managing agent of Defendant WIND N SEA within the meaning of California Labor Code section 558.1 and California Civil Code section 3294. On information and belief, MOSHY, at all relevant times, exercised substantial discretion in his decision-making such that his decisions ultimately determined company policy of the Company.

8. At all relevant times, every defendant was the agent, representative, employee, servant, or affiliated entity of every other defendant and, in doing the acts herein alleged, each defendant is liable and responsible to Plaintiff for the acts of every other defendant.

9. Plaintiff is ignorant of the true names and capacities of defendants sued herein as DOES 1 through 100, inclusive, and therefore sue said defendants by such fictitious names. Plaintiff will amend this Complaint to allege the true names and capacities of such fictitiously named defendants when they are ascertained.

## General Allegations

10. Defendants: (1) failed to pay Plaintiff the required minimum wage; (2) failed to pay Plaintiff the required overtime compensation; (3) employed Plaintiff for more than five hours without timely, uninterrupted meal periods of not less than 30 minutes and failed to compensate Plaintiff for the missed meal periods; (4) employed Plaintiff for work periods of four hours or major fraction thereof without rest periods of ten minutes net rest time and failed to compensate Plaintiff rest period compensation for the missed rest periods; (5) failed to provide Plaintiff with timely and accurate wage and hour statements; (6) took illegal deductions from the wages of Plaintiff; (7) failed to indemnify Plaintiff for all necessary expenditures he incurred in connection with his employment therewith; (8) failed to pay Plaintiff his earned wages in a timely manner upon separation; and (9) engaged in unlawful and unfair business

1 practices through the various Labor Code violations. The foregoing acts and other acts by the  
2 Defendant violated provisions of the Labor Code, including §§ 201, 202, 203, 204, 221, 224,  
3 226, 226.7, 510, 512, 1182.12, 1174, 1194, 1194.2, 1197, 1198, and 2802; violated the applicable  
4 Wage Orders issued by the IWC of the State of California (the “Wage Order(s)”), and violated  
5 the rights of Plaintiff.

6 **Specific Allegations**

7 11. WIND N SEA is an auto towing service company that has operated in San Diego  
8 County throughout the relevant liability periods. On information and belief, the Company has  
9 employed approximately 30-plus workers, 24 of whom as tow and service drivers. Throughout  
10 the relevant liability periods, MOSHY, the Company’s principal executive and shareholder,  
11 was the primary decision maker regarding terms and conditions of employment for all  
12 employees, including tow and service drivers.

13 12. STEPHANA worked continuously as a tow and service driver for the Company  
14 from on or about July 27, 2020 through mid-January 2021. He fulfilled tow and service calls  
15 dispatched to him daily and performed other duties and responsibilities typical of tow and  
16 service drivers. Throughout his employment, STEPHANA performed the duties and  
17 responsibilities entrusted to him in a fully satisfactory manner.

18 13. Throughout the relevant liability periods, MOSHY, either directly or through his  
19 operations manager, has set tow and service driver compensation based on a daily flat rate  
20 and/or some fixed percentage of a service call. On information and belief, MOSHY paid  
21 drivers a higher fixed percentage of service calls involving tows that were more complicated,  
22 extraordinary in distance to fulfill, non-insurance or “cash”-based, and the like.

23 14. Throughout the relevant liability periods, employees have typically received pay  
24 checks on at least a semimonthly basis.

25 15. Throughout his employment with the Company, STEPHANA typically worked  
26 12-hour shifts, between 7 a.m. and 7 p.m. each workday, five days per week, usually taking off  
27 Wednesdays and Thursdays.

28 ///

1           16.     Despite the driver compensation scheme set by MOSHY and STEPHANA's  
2 typical work schedule in which he averaged 60 hours worked per week and 120 per pay period,  
3 STEPHANA's semimonthly paychecks typically reflected a \$13.00 hourly rate and just 50  
4 hours worked *for the entire pay period*. To make up for the hours that STEPHANA was not paid  
5 on his payroll check, MOSHY typically issued to STEPHANA a separate check bearing the  
6 Company name for an amount that varied every pay period. MOSHY typically gave  
7 STEPHANA a separate check such as this in a lump sum and without any tax withholdings.  
8 On information and belief, MOSHY has maintained the same unlawful compensation practice  
9 with all the other tow and service drivers throughout the relevant liability periods. As a result  
10 of such practice, WIND N SEA has routinely failed to pay STEPHANA and his aggrieved  
11 driver peers the proper minimum wage and overtime compensation and failed to issue to them  
12 timely and accurate wage and hour statements.

13           17.     In terms of recording his time worked, STEPHANA, throughout his  
14 employment with the Company, was required to clock in just once per day at the beginning of  
15 his shift, at the Company office located at 3540 Kurtz Street, San Diego, California 92110. He  
16 was not required to later clock out for any required lunch breaks or at the end of his shift. On  
17 information and belief, the Company has subjected all other tow and service drivers to this  
18 timekeeping practice throughout the relevant liability periods.

19           18.     Throughout his employment with the Company, STEPHANA was never  
20 authorized or permitted to take a duty-free first lunch and never authorized or permitted to take  
21 a second lunch whatsoever. The Company permitted STEPHANA time to eat only when  
22 dispatch calls slowed, but STEPHANA was otherwise required to remain on duty and ready  
23 to fulfill a service call promptly on dispatch. Similarly, STEPHANA was never permitted at  
24 least three paid rest breaks of 10 consecutive minutes per shift; STEPHANA was required to  
25 remain vigilant for dispatch calls, always. As such, STEPHANA was always on duty for  
26 purported rest breaks. On information and belief, the Company has subjected all tow and  
27 service drivers to these same unlawful break practices throughout the relevant liability periods.

28     ///

1           19.     During his employment with the Company, STEPHANA, unintentionally and  
2 inadvertently allowed a customer vehicle to strike through the back window of a Company  
3 vehicle during the fulfillment of a service call. MOSHY required STEPHANA to repair the  
4 glass damage to the Company vehicle out of pocket and without reimbursement. On  
5 information and belief, during the relevant liability periods, the Company has required other  
6 tow and service drivers to reimburse the Company for inadvertent damage the drivers caused  
7 to Company or customer vehicles during their shift or the Company deducted from the drivers'  
8 compensation for such damage, in violation of the California Labor Code.

9           20.     To date, WIND N SEA has not paid STEPHANA all wages that he is still owed  
10 in violation of California's final pay laws. On information and belief, the Company has not  
11 paid all final wages due to other aggrieved tow and service drivers that have separated from the  
12 Company during the relevant liability periods.

13 Court Closure and Tolling Period

14           21.     The Judicial Council Emergency Rule 9, as amended May 29, 2020, suspended  
15 from April 6, 2020 to October 1, 2020 the statutes of limitations and repose for civil causes of  
16 action that exceed 180 days. The statute of limitations for each of Plaintiff's causes of action  
17 exceeds 180 days.

18           22.     As such, for purposes of Plaintiff's individual claims, the statutory periods relate  
19 back from on or about July 31, 2020.

20 **First Cause of Action**

21 **For Failure to Pay Earned Wages**

22 **(California Labor Code § 204)**

23 **By Plaintiff Against All Defendants**

24           23.     Plaintiff hereby incorporates by reference and re-alleges paragraphs 1 through  
25 22, inclusive, as though set forth fully herein.

26           24.     Defendants failed to pay Plaintiff the wages that he earned, as required by the  
27 Code and the Wage Order.

28 ///

25. Plaintiff has been deprived of his rightfully earned wages as a direct and proximate result of Defendants' failure to pay said compensation. Plaintiff is entitled to recover such amounts, plus interest thereon, attorney's fees and costs.

## Second Cause of Action

## For Failure to Pay Minimum Wages

(California Labor Code §§ 1182.12, 1194 *et seq.*, 1197, 1198; IWC Wage Order No. 9-2001)

**By Plaintiff Against All Defendants**

26. Plaintiff hereby incorporates by reference and re-alleges paragraphs 1 through 22, inclusive, as though set forth fully herein.

27. Plaintiff is entitled to minimum wage as provided under the Code and the Wage Orders.

28. The Labor Code and Wage Order 9-2001, which governs the transportation industry, provide that an employer must pay a minimum wage to an employee, which is \$10.00 per hour for all hours worked effective January 1, 2016 through December 31, 2016, \$10.50 per hour beginning January 1, 2017, \$11.00 per hour beginning January 1, 2018, \$12.00 per hour beginning January 1, 2019, \$13.00 per hour beginning January 1, 2020, and \$14.00 per hour beginning January 1, 2021. Section 4(A)(1).

29. Defendants paid STEPHANA fixed rates irrespective of hours worked, as described in this Complaint, in violation of California's minimum wage laws, among other provisions of the Labor Code.

30. As a result, Defendants failed to pay Plaintiff minimum wage for his work, as required by the Code and the Wage Orders.

31. Defendants thus required Plaintiff to work under conditions prohibited by order of the IWC, in violation of those orders.

32. Defendants deprived Plaintiff of his rightfully earned minimum wage compensation, as a direct and proximate result of Defendant's failure to pay said compensation. Under Labor Code § 1194, Plaintiff is entitled to recover such amounts, plus interest thereon, reasonable attorney's fees, and costs.

1           33.     In addition, under Labor Code § 1194.2, Plaintiff is entitled to recover liquidated  
2 damages in an amount equal to the minimum wages unlawfully unpaid, and interest thereon.

3                               **Third Cause of Action**

4                               **For Failure to Pay Minimum Wages**

5                               **(San Diego Municipal Code §§ 39.0107, 39.0112)**

6                               **By Plaintiff Against All Defendants**

7           34.     Plaintiff hereby incorporates by reference and re-alleges paragraphs 1 through  
8 22, inclusive, as though set forth fully herein.

9           35.     Plaintiff is entitled to minimum wage as provided under the San Diego  
10 Municipal Code.

11          36.     Plaintiff routinely worked for Defendants within the city limits of San Diego,  
12 California during the relevant liability periods.

13          37.     The San Diego Municipal Code sets minimum wage levels for employers at  
14 \$10.50 per hour for all hours worked effective July 11, 2016; \$11.50 per hour for all hours  
15 worked effective January 1, 2017; \$12.00 per hour for all hours worked effective January 1,  
16 2019; \$13.00 per hour for all hours worked effective January 1, 2020; and \$14.00 per hour for  
17 all hours worked effective January 1, 2021.

18          38.     Defendants paid STEPHANA a flat rate irrespective of the number of hours  
19 worked, as described in this Complaint, in violation of the San Diego Municipal Code.

20          39.     As a result, Defendants failed to pay Plaintiff the minimum wage for his work,  
21 as required by the San Diego Municipal Code.

22          40.     Per San Diego Municipal Code § 39.0112, an employer who violates Municipal  
23 Code § 39.0107 shall be liable to the employee whose rights were violated for any and all relief,  
24 including, but not limited to, the payment to each affected employee of wages unlawfully  
25 withheld, prevailing employee attorneys' fees and costs, and liquidated damages equal to  
26 double the back wages withheld.

27          41.     Furthermore, per subdivision (c) of Municipal Code § 39.0112, employers in  
28 violation of the local minimum wage law are subject to a civil penalty of no less than \$500 and

1 no more than \$1,000 per violation. "Each and every day that an Employer fails to pay an  
2 Employee Minimum Wage...constitutes a separate and distinct violation." To date,  
3 STEPHANA is still owed minimum wages.

4 **Fourth Cause of Action**

5 **For Failure to Pay Overtime Compensation**

6 **(California Labor Code §§ 510, 1194, 1198; IWC Wage Order No. 9-2001)**

7 **By Plaintiff Against All Defendants**

8 42. Plaintiff hereby incorporates by reference and re-alleges paragraphs 1 through  
9 22, inclusive, as though set forth fully herein.

10 43. The Code and the Wage Order provide that a workday consists of eight hours, a  
11 workweek consists of 40 hours, and an employer must compensate an employee who works  
12 overtime hours with either one-and-one-half times or double the employee's regular rate of  
13 compensation. Defendant employed Plaintiff for more than eight hours per day and more than  
14 40 hours per workweek, but Defendant failed to pay Plaintiff the overtime compensation  
15 required by the California Labor Code and the Wage Order.

16 44. Defendants thus required Plaintiff to work for longer hours than those fixed, or  
17 under conditions prohibited, by order of the IWC, in violation of those orders.

18 45. Defendants deprived Plaintiff of his rightfully earned overtime compensation as  
19 a direct and proximate result of Defendants' failure to pay said compensation. Under Labor  
20 Code § 1194, Plaintiff is entitled to recover such amounts, plus interest thereon, attorney's fees,  
21 and costs.

22 **Fifth Cause of Action**

23 **For Failure to Pay Meal Period Compensation**

24 **(California Labor Code §§ 226.7, 512, 1198; IWC Wage Order No. 9-2001)**

25 **By Plaintiff Against All Defendants**

26 46. Plaintiff hereby incorporates by reference and re-alleges paragraphs 1 through  
27 22, inclusive, as though set forth fully herein.

28 ///

1           47.     The Code and the Wage Order provide that an employee is entitled to an  
2 uninterrupted, off-the-clock meal period of not less than 30 minutes for every five hours  
3 worked. The Code and the Wage Order also require the employer to pay the employee one  
4 hour at the employee's regular rate of compensation for each day that the employer does not  
5 provide at least one required meal period.

6           48.     Defendants employed Plaintiff for work periods of more than five (5) hours  
7 without a timely meal period of not less than 30 minutes and failed to compensate Plaintiff for  
8 such meal periods, as required by Labor Code § 226.7 and the Wage Order.

9           49.     Defendants deprived Plaintiff of his rightfully earned compensation for meal  
10 periods as a direct and proximate result of Defendant's failure to pay said compensation.

11           50.     The remedy provided for in Code § 226.7 constitutes a wage, and Plaintiff is  
12 entitled to interest thereon. *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094,  
13 1099-1100.

14           51.     Defendants thus required Plaintiff to work for longer hours than those fixed, or  
15 under conditions prohibited, by order of the IWC, in violation of those orders.

16                               **Sixth Cause of Action**

17                               **For Failure to Pay Rest Period Compensation**

18                               **(California Labor Code §§ 226.7, 1198; IWC Wage Order No. 9-2001)**

19                               **By Plaintiff Against All Defendants**

20           52.     Plaintiff hereby incorporates by reference and re-alleges paragraphs 1 through  
21 22, inclusive, as though set forth fully herein.

22           53.     The Code and the Wage Order provide that an employee is entitled to an  
23 uninterrupted rest period of not less than 10 net minutes for every four hours worked or major  
24 fraction thereof. The Code and the Wage Order require the employer to pay the employee one  
25 hour at the employee's regular rate of compensation for each day that the employer does not  
26 provide at least one required rest period.

27     ///

28     ///

54. Defendant employed Plaintiff for work periods of four hours or major fraction thereof without rest periods of ten minutes' net rest time and failed to compensate Plaintiff for such rest periods, as required by Code § 226.7 and the Wage Order.

55. Defendant deprived Plaintiff of his rightfully earned compensation for rest periods as a direct and proximate result of Defendants' failure to pay said compensation.

56. The remedy provided for in Code § 226.7 constitutes a wage, and Plaintiff is entitled to interest thereon. *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1099-1100.

57. Defendant thus required Plaintiff to work for longer hours than those fixed, or under conditions prohibited, by order of the IWC, in violation of those orders.

### Seventh Cause of Action

### For Failure to Furnish Accurate Wage and Hour Statements

**(California Labor Code § 226)**

**By Plaintiff Against All Defendants**

58. Plaintiff hereby incorporates by reference and re-alleges paragraphs 1 through 22, inclusive, as though set forth fully herein.

59. Labor Code § 226(a) required Defendants, “semimonthly or at the time of each payment of wages,” to furnish Plaintiff “an accurate itemized statement in writing” showing gross and net wages earned, total hours worked by the employee/employees, rates of pay, and other information. Defendants knowingly and intentionally failed to provide Plaintiff with such accurate wage and hour statements, as they had failed to pay all earned compensation in a timely manner.

60. Plaintiff suffered injury as a result of Defendants' knowing and intentional failure to provide them with the wage and hour statements required by law.

61. Under Labor Code § 226, subsections (e) and (f), and based on Defendants' conduct as alleged herein, Plaintiff is entitled to: (a) fifty dollars (\$50) for the initial pay period in which a wage and hour statement violation occurred, and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of

1 four thousand dollars (\$4,000); (b) injunctive relief to ensure Defendants' compliance with  
2 Labor Code § 226; and (c) an award of costs and reasonable attorney's fees.

3 **Eighth Cause of Action**

4 **For Illegal Offset Against Wages**

5 **(California Labor Code §§ 221, 224; IWC Wage Order No. 9-2001)**

6 **By Plaintiff Against All Defendants**

7 62. Plaintiff hereby incorporates by reference and re-alleges paragraphs 1 through  
8 22, inclusive, as though set forth fully herein.

9 63. Code § 221 provides: "It shall be unlawful for any employer to collect or receive  
10 from an employee any part of wages theretofore paid by said employer to said employee."

11 64. STEPHANA was required to pay out of pocket to repair damage to a Company  
12 vehicle caused by his inadvertent mistake, in violation of Code §§ 221, 224.

13 65. Plaintiff has been deprived of his rightfully earned wages as a direct and  
14 proximate result of Defendants' failure to pay said compensation. Plaintiff is entitled to  
15 recover such amounts, plus interest thereon, attorney's fees and costs.

16 **Ninth Cause of Action**

17 **For Failure to Indemnify for All Necessary Expenditures or Losses**

18 **(California Labor Code § 2802; IWC Wage Order No. 9-2001)**

19 **By Plaintiff Against All Defendants**

20 66. Plaintiff hereby incorporates by reference and re-alleges paragraphs 1 through  
21 22, inclusive, as though set forth fully herein.

22 67. Code § 2802(a) provides:

23 An employer shall indemnify his or her employee for all necessary  
24 expenditures or losses incurred by the employee in direct consequence  
25 of the discharge of his or her duties, or of his or her obedience to the  
26 directions of the employer, even though unlawful, unless the  
employee, at the time of obeying the directions, believed them to be  
unlawful.

27 ///

28 ///

1           68.     STEPHANA was required to pay out of pocket to repair damage to a Company  
2 vehicle caused by his inadvertent mistake, in violation of Code §§ 221, 224. To date,  
3 Defendants have failed to indemnify Plaintiff for these out-of-pocket expenses.

4           69.     Under Code § 2802(c), Plaintiff is entitled to recover all reasonable costs,  
5 including attorney's fees, incurred in enforcing his rights granted by § 2802.

6                           **Tenth Cause of Action**

7                           **For Waiting Time Penalties**

8                           **(California Labor Code §§ 201, 202 and 203)**

9                           **By Plaintiff Against All Defendants**

10          70.     Plaintiff hereby incorporates by reference and re-alleges paragraphs 1 through  
11 22, inclusive, as though set forth fully herein.

12          71.     Defendants willfully failed to pay Plaintiff accrued wages due to him promptly  
13 upon separation, as required by California Labor Code §§ 201 and 202.

14          72.     Based on Defendants' conduct as alleged herein, Defendants are liable for  
15 statutory penalties pursuant to Labor Code § 203.

16                           **Eleventh Cause of Action**

17                           **Violation of Business & Professions Code §17200 *et seq.***

18                           **By Plaintiff Against WIND N SEA**

19          73.     Plaintiff hereby incorporates by reference and re-alleges paragraphs 1 through  
20 22, inclusive, as though set forth fully herein.

21          74.     Defendant has engaged, and continues to engage, in unfair and unlawful  
22 business practices in California by practicing, employing and utilizing the employment  
23 practices outlined above, including, i.e., failing to (a) pay all minimum and overtime wages;  
24 (b) provide mandatory meal and rest periods; (c) provide proper and accurate itemized wage  
25 statements; and (d) pay all earned compensation at time of separation, as described  
26 hereinabove.

27          75.     Defendant's use of such unfair and unlawful business practices constitutes  
28 unfair, unlawful competition and provides an unfair advantage over Defendant's competitors.

76. Plaintiff seeks full restitution of monies, as necessary and according to proof, to restore all monies withheld, acquired and/or converted by Defendant by means of the unfair practices complained of herein.

77. During the limitations period, Defendant has engaged in unlawful, deceptive, and unfair business practices, proscribed by Business & Professions Code § 17200 *et seq.*, including those described herein, thereby depriving Plaintiff of the minimum working conditions and standards due him under California law and Industrial Commission wage orders as described herein.

### Prayer for Relief

WHEREFORE, Plaintiff hereby prays that the Court enter judgment in his favor and against Defendant and Does 1 through 100, Inclusive, and each of them, as follows:

1. For unpaid wages in an amount according to proof;
2. For minimum wages in an amount according to proof;
3. For overtime compensation in an amount according to proof;
4. For meal period compensation in an amount according to proof;
5. For rest period compensation in an amount according to proof;
6. For Labor Code § 226(e) statutory penalties in an amount according to proof;
7. For Labor Code § 203 penalties in an amount according to proof;
8. For indemnification of all necessary expenditures incurred according to proof;
9. For restitution of all unpaid wages in an amount according to proof;
10. For prejudgment interest on the foregoing at the legal rate;
11. For reasonable attorney fees as allowed by law;
12. For costs of suit incurred herein;

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13. For such further relief as the Court may deem appropriate.

**Plaintiff hereby demands jury trial of this matter.**

Dated: January 25, 2021

KASED LAW GROUP APC



By: \_\_\_\_\_

Nathan N. Kased  
Janine R. Menhennet  
Attorneys for Plaintiff  
RAFI STEPHANA

## **EXHIBIT 4**



#### CASE ASSUMPTIONS

|                       |            |
|-----------------------|------------|
| Class Members         | 25         |
| Opt Out Rate          | N/A        |
| Opt Outs Received     |            |
| Total Class Claimants | 25         |
| Subtotal Admin Only   | \$2,200.00 |

**Not-to-Exceed Total \$2,200.00**

**For 25 Class Members**

**Pricing Good for Scope of Estimate Only**

**All Aspects of Escheating to the State of CA Included**

**April 7, 2022**

### Case: Stephana v. Wind N Sea PAGA-Individual Settlement Administration

Phoenix Contact: Jodey Lawrence

Contact Number: 949.566.1455

Email: Jodey@phoenixclassaction.com

Requesting Attorney: Nathan Kased

Firm: Kased Law Group

Contact Number: 619-333-6373

Email: nathan@kasedlegal.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly.

Estimate is based on 25 Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

#### Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

| Administrative Tasks:        | Rate     | Hours/Units | Line Item Estimate |
|------------------------------|----------|-------------|--------------------|
| Programming Manager          | \$100.00 | 1           | \$100.00           |
| Programming Database & Setup | \$100.00 | 1           | \$100.00           |
| Toll Free Setup*             | \$20.02  | 1           | \$20.02            |
| Call Center & Long Distance  | \$2.00   | 6           | \$12.50            |
| NCOA (USPS)                  | \$10.00  | 1           | \$10.00            |
| <b>Total</b>                 |          |             | <b>\$242.52</b>    |

\* Up to 120 days after disbursement

#### Data Merger & Scrub / Notice Packet, Check & Postage

| Project Action                   | Rate     | Hours/Units | Line Item Estimate |
|----------------------------------|----------|-------------|--------------------|
| Notice Packet Formatting         | \$125.00 | 1           | \$125.00           |
| Data Merge & Duplication Scrub   | \$0.25   | 25          | \$6.25             |
| Notice and Check Packet          | \$1.70   | 25          | \$42.50            |
| Estimated Postage (up to 1 oz.)* | \$0.58   | 25          | \$14.50            |
| <b>Total</b>                     |          |             | <b>\$188.25</b>    |

\* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



# PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

## Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

| Project Action:             | Rate     | Hours/Units | Line Item Estimate |
|-----------------------------|----------|-------------|--------------------|
| Case Associate              | \$125.00 | 1           | \$125.00           |
| Skip Tracing Undeliverables | \$2.00   | 4           | \$7.50             |
| Remail Notice Packets       | \$2.00   | 4           | \$7.50             |
| Estimated Postage           | \$0.56   | 4           | \$2.10             |
| Programming Undeliverables  | \$50.00  | 1           | \$50.00            |
| Total                       |          |             | \$192.10           |

## Database Programming

| Project Action:             | Rate     | Hours/Units | Line Item Estimate |
|-----------------------------|----------|-------------|--------------------|
| Programming Claims Database | \$125.00 | 1           | \$125.00           |
| Case Manager                | \$100.00 | 1           | \$100.00           |
| Total                       |          |             | \$225.00           |

## Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

| Project Action:            | Rate     | Hours/Units | Line Item Estimate |
|----------------------------|----------|-------------|--------------------|
| Programming Calculations   | \$125.00 | 1           | \$125.00           |
| Disbursement Review        | \$100.00 | 1           | \$100.00           |
| Programming Manager        | \$125.00 | 1           | \$125.00           |
| QSF Bank Account & EIN     | \$35.00  | 2           | \$70.00            |
| Check Run Setup & Printing | \$125.00 | 1           | \$125.00           |
| Total                      |          |             | \$545.00           |

\* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



# PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

| Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations        |          |             |                    |
|-----------------------------------------------------------------------------------------------------|----------|-------------|--------------------|
| Project Action:                                                                                     | Rate     | Hours/Units | Line Item Estimate |
| Case Supervisor                                                                                     | \$125.00 | 1           | \$125.00           |
| Remail Undeliverable Checks<br>(Postage Included)                                                   | \$1.50   | 5           | \$7.13             |
| Case Associate                                                                                      | \$75.00  | 1           | \$75.00            |
| Reconcile Uncashed Checks                                                                           | \$25.00  | 1           | \$25.00            |
| Conclusion Reports                                                                                  | \$125.00 | 1           | \$125.00           |
| Case Manager Conclusion                                                                             | \$75.00  | 1           | \$75.00            |
| Final Reporting & Declarations                                                                      | \$75.00  | 1           | \$75.00            |
| QSF Annual Tax Reporting *<br>(State Tax Reporting Included)                                        | \$200.00 | 1           | \$200.00           |
| Check to Cy-Pres                                                                                    | \$150.00 | 1           | Included           |
| Uncashed Checks to the State of<br>California Controllers Office<br>Estimated 1 Total Class Members | \$100.00 | 1           | \$100.00           |
| Total                                                                                               |          |             | \$807.13           |

\* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

**Estimate Total: \$2,200.00**



## **TERMS AND CONDITIONS**

**Provisions:** The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

**Data Conversion and Mailing:** The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

**Claims:** PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality.

**Payment Terms:** All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

### **Tax Reporting Requirements**

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.