

1 NATHAN N. KASED (STATE BAR NO. 251400)
Email: nathan@kasedlegal.com
2 JANINE R. MENHENNET (State Bar No. 163501)
Email: 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.
23
24
25
26
27
28

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.

///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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;

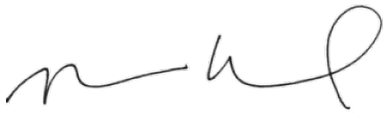
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 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