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7 RAFI STEPHANA
and Aggrieved Employees

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

11 RAFI STEPHANA, an Individual, on
12 behalf of himself and all other aggrieved
13 employees of Defendants in the State of
California,
14
Plaintiff,
15
16 vs.
17 WIND N SEA INVESTMENTS, INC., a
18 California Corporation; RAFID S.
MOSHY, an Individual; and DOES 1-100,
19 Inclusive,
20
Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

04/27/2021 at 11:48:00 AM
Clerk of the Superior Court
By Shameka Simpson, Deputy Clerk

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

UNLIMITED CIVIL CASE

FIRST 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

Plaintiff RAFI STEPHANA (“STEPHANA” or “Plaintiff”), on behalf of himself 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 STEPHANA, to recover unpaid wages and related penalties and compensation owed to him and his 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 meal and rest periods; wage statements that were inaccurate, untimely, and/or not provided at all; illegal offsets against wages; unreimbursed necessary, work-related expenses; final**

1 pay violations; and the like (the “PAGA Aggrieved Employees”) in the State of California
2 from August 17, 2020 to the final judgment (the “PAGA Period”).

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

6 Jurisdiction and Venue

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

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

13 The Parties

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

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

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

21 9. On information and belief, MOSHY, at all relevant times, was a director, officer,
22 and/or managing agent of Defendant WIND N SEA within the meaning of California Labor
23 Code section 558.1 and California Civil Code section 3294. On information and belief,
24 MOSHY, at all relevant times, exercised substantial discretion in his decision-making such that
25 his decisions ultimately determined company policy of the Company. In addition, MOSHY is
26 sued individually pursuant to Labor Code sections 558, 1197.1, and 2698 *et seq.* (the PAGA) as
27 an employer or person acting on behalf of an employer, who violated or causes to be violated,
28 a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours

1 and days of work in any order of the Industrial Welfare Commission, and as an employer or
2 other person acting either individually or as an officer, agent, or employee of another person,
3 who pays or causes to be paid to any employee a wage less than the minimum fixed by an
4 applicable state or local law, or by an order of the Industrial Welfare Commission.

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

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

12 **General Allegations**

13 12. Defendants: (1) failed to pay Plaintiff and the PAGA Aggrieved Employees the
14 required minimum wage; (2) failed to pay Plaintiff and the PAGA Aggrieved Employees the
15 required overtime compensation; (3) employed Plaintiff and the PAGA Aggrieved Employees
16 for more than five hours without timely, uninterrupted meal periods of not less than 30 minutes
17 and failed to compensate them for the missed meal periods; (4) employed Plaintiff and the
18 PAGA Aggrieved Employees for work periods of four hours or major fraction thereof without
19 rest periods of ten minutes net rest time and failed to compensate them rest period
20 compensation for the missed rest periods; (5) failed to provide Plaintiff and the PAGA
21 Aggrieved Employees with timely and accurate wage and hour statements; (6) took illegal
22 deductions from the wages of Plaintiff and the PAGA Aggrieved Employees; (7) took illegal
23 offsets from the wages of Plaintiff and the PAGA Aggrieved Employees; (8) failed to indemnify
24 Plaintiff and the PAGA Aggrieved Employees for all necessary expenditures they incurred in
25 connection with their employment therewith; (9) failed to pay Plaintiff and the PAGA
26 Aggrieved Employees their earned wages in a timely manner upon separation; and (10)
27 engaged in unlawful and unfair business practices through the various Labor Code violations.
28 The foregoing acts and other acts by the Defendant violated provisions of the Labor Code,

1 including §§ 201, 202, 203, 204, 208, 221, 224, 226, 226.7, 510, 512, 1182.12, 1174, 1194,
2 1194.2, 1197, 1198, and 2802; violated the applicable Wage Orders issued by the IWC of the
3 State of California (the “Wage Order(s)”), and violated the rights of Plaintiff and the PAGA
4 Aggrieved Employees.

5 **Specific Allegations**

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

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

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

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

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

27 18. Despite the driver compensation scheme set by MOSHY and STEPHANA’s
28 typical work schedule in which he averaged 60 hours worked per week and 120 per pay period,

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

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

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

26 21. During his employment with the Company, STEPHANA, unintentionally and
27 inadvertently allowed a customer vehicle to strike through the back window of a Company
28 vehicle during the fulfillment of a service call. MOSHY required STEPHANA to repair the

1 glass damage to the Company vehicle out of pocket and without reimbursement. On
2 information and belief, during the relevant liability periods, the Company has required other
3 tow and service drivers to reimburse the Company for inadvertent damage the drivers caused
4 to Company or customer vehicles during their shift or the Company deducted from the drivers'
5 compensation for such damage, in violation of the California Labor Code.

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

10 Court Closure and Tolling Period

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

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

17 PAGA Exhaustion

18 25. On or about February 10, 2020, STEPHANA notified the California Labor &
19 Workforce Development Agency (the "LWDA") of the Labor Code violations to which he and
20 his aggrieved peers were subjected, and on information and belief, continue to be subjected.
21 Thereafter, he timely served this PAGA notice on Defendants by certified mail, in compliance
22 with the PAGA statute.

23 **First Cause of Action**

24 **For Failure to Pay Earned Wages**

25 **(California Labor Code § 204)**

26 **By Plaintiff Against All Defendants**

27 26. Plaintiff incorporates the preceding paragraphs.

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1 compensation. Under Labor Code § 1194, Plaintiff is entitled to recover such amounts, plus
2 interest thereon, reasonable attorney's fees, and costs.

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

5 **Third Cause of Action**

6 **For Failure to Pay Minimum Wages**

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

8 **By Plaintiff Against All Defendants**

9 37. Plaintiff incorporates the preceding paragraphs.

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

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

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

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

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

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

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

6 **Fourth Cause of Action**

7 **For Failure to Pay Overtime Compensation**

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

9 **By Plaintiff Against All Defendants**

10 45. Plaintiff incorporates the preceding paragraphs.

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

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

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

23 **Fifth Cause of Action**

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

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

26 **By Plaintiff Against All Defendants**

27 49. Plaintiff incorporates the preceding paragraphs.

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1 50. 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 51. 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 52. 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 53. 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 54. 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 55. Plaintiff incorporates the preceding paragraphs.

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

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

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

59. 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.

60. 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

61. Plaintiff incorporates the preceding paragraphs.

62. 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.

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

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

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Eighth Cause of Action
For Illegal Offset Against Wages
(California Labor Code §§ 221, 224; IWC Wage Order No. 9-2001)
By Plaintiff Against All Defendants

- 65. Plaintiff incorporates the preceding paragraphs.
- 66. Code § 221 provides: “It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.”
- 67. STEPHANA was required to pay out of pocket to repair damage to a Company vehicle caused by his inadvertent mistake, in violation of Code §§ 221, 224.
- 68. 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.

Ninth Cause of Action
For Failure to Indemnify for All Necessary Expenditures or Losses
(California Labor Code § 2802; IWC Wage Order No. 9-2001)
By Plaintiff Against All Defendants

- 69. Plaintiff incorporates the preceding paragraphs.
- 70. Code § 2802(a) provides:

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.
- 71. STEPHANA was required to pay out of pocket to repair damage to a Company vehicle caused by his inadvertent mistake, in violation of Code §§ 221, 224. To date, Defendants have failed to indemnify Plaintiff for these out-of-pocket expenses.
- 72. Under Code § 2802(c), Plaintiff is entitled to recover all reasonable costs, including attorney’s fees, incurred in enforcing his rights granted by § 2802.

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Tenth Cause of Action
For Waiting Time Penalties
(California Labor Code §§ 201, 202 and 203)
By Plaintiff Against All Defendants

73. Plaintiff incorporates the preceding paragraphs.

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

75. Based on Defendants’ conduct as alleged herein, Defendants are liable for statutory penalties pursuant to Labor Code § 203.

Eleventh Cause of Action
Violation of Business & Professions Code §17200 *et seq.*
By Plaintiff Against WIND N SEA

76. Plaintiff incorporates the preceding paragraphs.

77. Defendant has engaged, and continues to engage, in unfair and unlawful business practices in California by practicing, employing and utilizing the employment 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 statements; and (d) pay all earned compensation at time of separation, as described hereinabove.

78. Defendant’s use of such unfair and unlawful business practices constitutes unfair, unlawful competition and provides an unfair advantage over Defendant’s competitors.

79. 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.

80. 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

1 conditions and standards due him under California law and Industrial Commission wage
2 orders as described herein.

3 **Twelfth Cause of Action**

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

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

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

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

8 81. Plaintiff incorporates the preceding paragraphs.

9 82. Throughout the PAGA Period, Defendants have violated and, on information
10 and belief, continue to violate provisions of the Labor Code, including §§ 201, 202, 203, 204,
11 208, 221, 224, 226, 226.7, 510, 512, 1182.12, 1174, 1194, 1194.2, 1197, 1198, and 2802.

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

15 84. Plaintiff has complied with the procedures for bringing suit specified in Labor
16 Code § 2699.3. By letter dated February 10, 2021, Plaintiff gave written notice by online filing
17 with the LWDA and by certified mail to defendants WIND N SEA and MOSHY of Plaintiff's
18 allegations of Defendants' violations of the Labor Code. The LWDA failed to notify this
19 representative Plaintiff by certified mail that it does not intend to investigate the alleged
20 violations within 60 calendar days of the postmark date of the notice filing and failed to send
21 any notice within 65 days of Plaintiff's filing of the notice of its intention to investigate
22 Plaintiff's claimed violations.

23 85. Pursuant to Labor Code § 2699.3, subdivision (a)(2), Plaintiff may seek civil
24 penalties under the PAGA, codified at Labor Code §§ 2698, *et seq.*

25 86. Pursuant to Labor Code § 2699, subdivisions (a) and (f), Plaintiff is entitled to
26 recover civil penalties for Defendants' violations of Labor Code §§ 201, 202, 203, 204, 208, 221,
27 224, 226, 226.7, 510, 512, 1182.12, 1174, 1194, 1194.2, 1197, 1198, and 2802, in the following
28 amounts:

- 1 a. For violation of Labor Code § 201, one hundred dollars (\$100) for each
2 underpaid employee for each pay period the employee was underpaid,
3 and two hundred dollars (\$200) for each subsequent violation for each
4 underpaid employee for each pay period (penalty amounts established by
5 Labor Code Section 2699(f)(2));
- 6 b. For violation of Labor Code § 204, one hundred dollars (\$100) for each
7 underpaid employee for each pay period the employee was underpaid,
8 and two hundred dollars (\$200) for each subsequent violation or any
9 willful or intentional violation, for each underpaid employee for each pay
10 period, plus 25 percent of the amount unlawfully withheld (penalty
11 amounts established by Labor Code Section 210);
- 12 c. For violation of Labor Code § 208, one hundred dollars (\$100) for each
13 aggrieved employee per pay period for the initial violation and two
14 hundred dollars (\$200) for each aggrieved employee per pay period for
15 each subsequent violation (penalty amounts established by Labor Code
16 Section 2699(f)(2));
- 17 d. For violation of Labor Code § 221, one hundred dollars (\$100) for each
18 aggrieved employee per pay period for the initial violation and two
19 hundred dollars (\$200) for each aggrieved employee per pay period for
20 each subsequent violation, plus 25 percent of the amount unlawfully
21 withheld (penalty amounts established by Labor Code Section 225.5);
- 22 e. For violation of Labor Code § 224, one hundred dollars (\$100) for each
23 aggrieved employee per pay period for the initial violation and two
24 hundred dollars (\$200) for each aggrieved employee per pay period for
25 each subsequent violation (penalty amounts established by Labor Code
26 Section 2699(f)(2));
- 27 f. For violation of Labor Code § 226(a), two hundred fifty dollars (\$250) for
28 each employee per pay period for the initial violation and one thousand

1 dollars (\$1,000) per employee in a subsequent violation (penalty amounts
2 established by Labor Code Section 226.3) *or* one hundred dollars (\$100)
3 for each aggrieved employee per pay period for the initial violation and
4 two hundred dollars (\$200) for each aggrieved employee per pay period
5 for each subsequent violation;

6 g. For violation of Labor Code § 226(b), 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 h. For violation of Labor Code § 226.7, one hundred dollars (\$100) for each
12 aggrieved employee per pay period for the initial violation and two
13 hundred dollars (\$200) for each aggrieved employee per pay period for
14 each subsequent violation (penalty amounts established by Labor Code
15 Section 2699(f)(2));

16 i. For violation of Labor Code § 510, fifty dollars (\$50) for each underpaid
17 employee for each pay period the employee was underpaid in addition to
18 an amount sufficient to recover underpaid wages, and one hundred
19 dollars (\$100) for each subsequent violation for each underpaid employee
20 for each pay period in addition to an amount sufficient to recover
21 underpaid wages (penalty amounts established by Labor Code Section
22 558);

23 j. For violation of Labor Code § 512, fifty dollars (\$50) for each underpaid
24 employee for each pay period the employee was underpaid in addition to
25 an amount sufficient to recover underpaid wages, and one hundred
26 dollars (\$100) for each subsequent violation for each underpaid employee
27 for each pay period in addition to an amount sufficient to recover
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1 underpaid wages (penalty amounts established by Labor Code Section
2 558);

3 k. For violation of Labor Code § 1174, five hundred dollars (\$500) for any
4 person employing labor who willfully fails to maintain the records
5 required by subdivision (c) of Section 1174 or accurate and complete
6 records required by subdivision (d) of Section 1174 (penalty amounts
7 established by Labor Code Section 1174.5);

8 l. For violation of Labor Code § 1194(a), one hundred dollars (\$100) for
9 each aggrieved employee per pay period for the initial violation and two
10 hundred dollars (\$200) for each aggrieved employee per pay period for
11 each subsequent violation (penalty amounts established by Labor Code
12 Section 2699(f)(2));

13 m. For violation of Labor Code § 1197, one hundred dollars (\$100) for each
14 underpaid employee for each pay period the employee was underpaid,
15 and two hundred dollars (\$250) for each subsequent violation for each
16 underpaid employee for each pay period (penalty amounts established by
17 Labor Code Section 1197.1);

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

23 o. For violation of Labor Code § 2802, 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)).

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

3 **Prayer for Relief**

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

- 6 1. For unpaid wages in an amount according to proof;
- 7 2. For minimum wages in an amount according to proof;
- 8 3. For overtime compensation in an amount according to proof;
- 9 4. For meal period compensation in an amount according to proof;
- 10 5. For rest period compensation in an amount according to proof;
- 11 6. For Labor Code § 226(e) statutory penalties in an amount according to proof;
- 12 7. For Labor Code § 203 penalties in an amount according to proof;
- 13 8. For civil penalties in accordance with Labor Code § 2698, *et seq.*;
- 14 9. For indemnification of all necessary expenditures incurred according to proof;
- 15 10. For restitution of all unpaid wages in an amount according to proof;
- 16 11. For prejudgment interest on the foregoing at the legal rate;
- 17 12. For reasonable attorney fees as allowed by law;
- 18 13. For costs of suit incurred herein;
- 19 14. For such further relief as the Court may deem appropriate.

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

21 Dated: April 27, 2021

KASED LAW GROUP APC

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24 By: 

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Janine R. Menhennet
Attorneys for Plaintiff
RAFI STEPHANA