

**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 1st 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 1st 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 1st 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 1st of the month in which payment is due. If the outstanding installment does not reach Plaintiff's counsel on or before the 5th 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 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.

SETTLEMENT AGREEMENT OF REPRESENTATIVE ACTION
AND REQUEST FOR COURT APPROVAL

Stephana v. Wind N Sea Investments, et al.

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.

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.

SETTLEMENT AGREEMENT OF REPRESENTATIVE ACTION
AND REQUEST FOR COURT APPROVAL

Stephana v. Wind N Sea Investments, et al.

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

Stephana v. Wind N Sea Investments, et al.

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.

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.

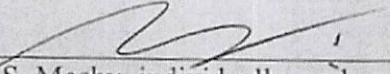
Dated: Feb 16, 2022

By: 
Rafi Stephana

Dated: Feb 15, 2022

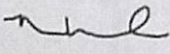
By: 
Victor Harvey

Dated: Feb 16, 2022

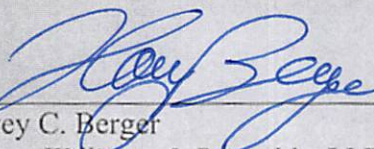
By: 
Rafid S. Moshy, individually, and on behalf of Wind N Sea Investments, Inc.

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.