

Anthony S. Khoury, Of Counsel (State Bar No. 236326)

ACCESS LAWYERS GROUP

257 S. Lake Ave., Suite 200

Pasadena, CA 91101

Tel: 877-360-3383

Fax: 866-686-5590

Email: ask@accesslg.com

Attorneys for Plaintiff,
Franz Affentranger

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

FRANZ AFFENTRANGER, an Individual,

PLAINTIFF,

v.

ALLIED RESTORATION SERVICES, INC.,
a California Corporation, and DOES 1-25,
Inclusive.

DEFENDANTS.

Case No.:

COMPLAINT FOR:

1. Failure to Pay Wages (Labor Code §§ 510, 1194, 1197)
2. Wage Statement Violations (Labor Code § 226, 226.3, 1174, 1174.5)
3. Failure to Provide Meal Breaks (Labor Code §§ 226.7, 512)
4. Failure to Provide Paid Sick Leave (Labor Code § 246)
5. Failure to Timely Pay Wages at Separation (Labor Code §§ 201-203)
6. Failure to Reimburse Necessary Business Expenses (Labor Code § 2802)
7. Whistleblower Retaliation (Labor Code § 98.6)
8. Whistleblower Retaliation (Labor Code § 1102.5)
9. Private Attorneys General Act (Labor Code § 2698, *et seq.*)
10. Wrongful Termination in Violation of Public Policy
11. Unfair Business Practices (Business and Professions Code § 17200 *et seq.*)

[DEMAND FOR JURY TRIAL]

1 Plaintiff FRANZ AFFENTRANGER alleges against Defendant ALLIED
2 RESTORATION SERVICES, INC. (“Defendant” or “ALLIED”), and DOES 1-25, Inclusive,
3 upon information and belief, as follows:
4

5 **JURISDICTION AND VENUE**

6 1. This Court has jurisdiction over this action because Defendant Allied Restoration
7 Services, Inc. does business in the State of California, and the controversy arises under the laws of
8 the State of California.
9

10 2. Venue is proper in Los Angeles County pursuant to California Code of Civil
11 Procedure section 395 *et seq.* because a substantial part of the acts, events, or omissions giving
12 rise to the actions alleged herein took place in Los Angeles County, California.
13

14 **PARTIES**

15 3. Plaintiff FRANZ AFFENTRANGER is a male adult individual who was employed
16 by ALLIED from in or about March 2019 until on or about August 30, 2020, and he served as a a
17 videographer for ALLIED’s in-house marketing team.

18 4. Defendant ALLIED RESTORATION SERVICES, INC., is, and at all times
19 relevant to this action, was a California corporation that specializes in providing damage
20 restoration services to both residential and commercial customers. At all material times alleged
21 herein, ALLIED was Plaintiff’s “employer,” and Plaintiff was its “employee” as defined by
22 California law.
23

24 5. Plaintiff is ignorant of the true names of the defendants sued herein as DOES 1-25,
25 inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will amend this
26 complaint to insert the true names and capacities of the doe defendants when they are ascertained.
27 Plaintiff believes and thereon alleges that DOES 1-25, inclusive, and each of them, are responsible
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1 in some manner for the occurrences alleged in this complaint, and the things complained about in
2 this complaint were proximately caused by the conduct alleged herein.

3 6. At all material times alleged herein, DOES 1-25, and each of them, were the agents,
4 employees, partners, joint venturers, shareholders, officers, directors, members, co-conspirators,
5 co-tortfeasors, and/or representatives of each of the defendants and were acting within the course
6 and scope of said agency and representative capacities in committing the acts alleged in this
7 complaint.
8

9 **GENERAL ALLEGATIONS**

10 7. Plaintiff was misclassified by Defendant ALLIED as an independent contractor, as
11 opposed to a non-exempt employee, pursuant to the provisions of the California Labor Code, and
12 the orders and standards promulgated by the California Department of Industrial Relations,
13 Industrial Welfare Commission, and Division of Labor Standards. As a non-exempt employee,
14 Plaintiff was entitled to certain benefits, including minimum wage compensation for all hours
15 worked, premium compensation for overtime hours worked, paid sick leave, and mandated meal
16 breaks. In addition, said statutory provisions, wage orders, regulations and standards obligate the
17 employer to maintain accurate records of the hours worked by employees.
18
19

20 ***Defendant's Failure to Pay Minimum Wages***

21 8. IWC Wage Order 4-2001 defines "hours worked" to mean "the time during which
22 an employee is subject to the control of an employer, and includes all the time the employee is
23 suffered or permitted to work, whether or not required to do so."
24

25 9. As of January 1, 2017, IWC Wage Order 4-2001, and the California Minimum
26 Wage Order (MW-2017) required employers with 26 or more employees, such as Defendant, to
27 pay their employees a minimum wage of ten dollars and fifty cents (\$10.50) per hour, and as of
28

1 January 1, 2018, eleven dollars (\$11.00) per hour. As of January 1, 2019, California Minimum
2 Wage Order (MW-2019) required employers with 26 or more employees, to pay their employees
3 a minimum wage of twelve dollars (\$12.00) per hour. As of January 1, 2020, California Minimum
4 Wage Order (MW-2019) required employers with 26 or more employees, to pay their employees
5 a minimum wage of thirteen dollars (\$13.00) per hour.
6

7 10. As of July 1, 2017, Los Angeles County Code Chapter 8.100 required employers
8 with 26 or more employees in Los Angeles County, such as Defendant, to pay their employees a
9 minimum wage of twelve dollars (\$12.00) per hour, and as of July 1, 2018, thirteen dollars and
10 twenty-five cents (\$13.25) per hour. As of July 1, 2019, Los Angeles County Code Chapter 8.100
11 required employers with 26 or more employees, to pay their employees a minimum wage of
12 fourteen dollars and twenty-five cents (\$14.25) per hour.
13

14 11. Labor Code § 1194(a) provides in relevant part: “Notwithstanding any agreement
15 to work for a lesser wage, any employee receiving less than the legal minimum wage [] is entitled
16 to recover in a civil action the unpaid balance of the full amount of this minimum wage [],
17 including interest thereon, reasonable attorney’s fees, and costs of suit.”
18

19 12. Labor Code § 1194.2(a) provides in relevant part: “In any action under Section
20 1193.6 or Section 1194 to recover wages because of the payment of a wage less than the minimum
21 wage fixed by an order of the commission, an employee shall be entitled to recover liquidated
22 damages in an amount equal to the wages unlawfully unpaid and interest thereon.”
23

24 13. Labor Code § 1197 provides: “The minimum wage for employees fixed by the
25 commission is the minimum wage to be paid to employees, and the payment of a less wage than
26 the minimum so fixed is unlawful.”
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1 14. Defendant classified Plaintiff as non-exempt and paid him on an hourly basis for
2 his work. Hours worked include, but are not limited to, all hours that an employee is permitted or
3 suffered to work including, but not limited to, off-the-clock work that an employer either knew or
4 should have known that an employee was performing.
5

6 15. As a matter of policy and/or practice, ALLIED routinely suffered or permitted
7 Plaintiff to work portions of the day during which he was subject to Defendant's control, but
8 Defendant failed to compensate him at all or at the applicable minimum wage rate, such as during
9 mandated meal breaks and rest periods that were not waived, or during time worked after business
10 hours.
11

12 16. Additionally, Defendant did not maintain adequate records of all wages earned,
13 hours worked, and meal breaks and rest periods taken.
14

15 ***Defendant's Failure to Pay Overtime Compensation***

16 17. Labor Code § 1194 provides that an employee receiving less than the legal overtime
17 compensation is entitled to recover in a civil action the unpaid balance of the full amount of this
18 minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees,
19 and costs of suit.
20

21 18. Labor Code § 510(a) states: "Any work in excess of eight hours in one workday
22 and any work in excess of 40 hours in any one workweek and the first eight hours worked on the
23 seventh day of work in any one workweek shall be compensated at the rate of no less than one and
24 one-half times the regular rate of pay for an employee." Labor Code § 510(a) further states: "Any
25 work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the
26 regular rate of pay for an employee." Labor Code § 510(a) further states: "[A]ny work in excess
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1 of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than
2 twice the regular rate of pay of an employee.”

3 19. Throughout the relevant time period, Wage Order No. 4-2001 provided for payment
4 of overtime wages equal to one and one-half (1 1/2) times an employee’s regular rate of pay for
5 all hours worked over eight (8) hours per day and/or forty (40) hours in a workweek, and/or for
6 payment of overtime wages equal to double the employee’s regular rate of pay for all hours worked
7 in excess of twelve (12) hours in any workday and/or for all hours worked in excess of eight (8)
8 hours on the seventh (7th) day of work in any one workweek.
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11 20. Defendant classified Plaintiff as non-exempt, therefore he was entitled to overtime
12 compensation for all hours worked in excess of the hours and time specified in the applicable Wage
13 Order, statutes and regulations identified herein.
14

15 21. As a matter of policy and/or practice, Defendant routinely suffered or permitted
16 Plaintiff to work portions of the day during which he was subject to Defendant’s control, and failed
17 to compensate him. Accordingly, Defendant failed to properly record the actual hours worked by
18 Plaintiff, and thus failed to pay overtime wages for the actual amount of overtime hours worked.
19

20 ***Defendant’s Failure to Provide Meal Breaks***

21 22. Plaintiff did not waive his meal breaks, by mutual consent with Defendant or
22 otherwise.

23 23. At all times relevant hereto, Labor Code § 512 and IWC Wage Order 4-2001,
24 Section 11, required employers to authorize, permit, and provide a thirty (30) minute meal break
25 for each five (5) hours of work, during which employees are relieved of all duty. Plaintiff is
26 informed and believes, and based thereon alleges, that Defendant failed to effectively
27 communicate these California meal break requirements to Plaintiff.
28

1 24. At all times relevant hereto, Labor Code § 226.7(c) and IWC Wage Order 4-2001,
2 Section 11 required employers to pay one hour of additional pay at the regular rate of compensation
3 for each employee and each workday that a proper meal break is not provided.
4

5 25. Plaintiff is further informed and believes, and based thereon alleges, that as a matter
6 of policy and/or practice, Defendant routinely failed to provide Plaintiff, with meal breaks during
7 which he was relieved of all duties by requiring him to remain on duty.

8 26. Specifically, throughout the relevant time period, Defendant regularly:
9

10 a. Failed to provide Plaintiff with a first meal break of not less than thirty (30)
11 minutes during which he was relieved of all duty before working more than
12 five (5) hours;

13 b. Failed to provide Plaintiff with a second meal break of not less than thirty
14 (30) minutes during which he was relieved of all duty before working more
15 than ten (10) hours per day;

16 c. Failed to pay Plaintiff one hour of pay at his regular rate of compensation
17 for each workday that a meal break was not provided; and
18

19 d. Failed to accurately record all meal breaks.
20

21 ***Defendant's Failure to Provide Paid Sick Leave***

22 27. Beginning on or about July 1, 2015, Labor Code § 246 required employers to
23 provide paid sick leave to all employees who work 30 or more days per calendar year, at the rate
24 of one hour for every 30 hours worked.

25 28. Plaintiff routinely worked at least 30 days per calendar year for ALLIED, but did
26 not receive paid sick leave at the rate of one hour for every 30 hours worked.
27

28 29. Moreover, Defendant did not maintain adequate records of all accrued sick leave.

1 ***Defendant's Failure to Provide Accurate, Itemized Wage Statements***

2 30. At all times relevant hereto, Labor Code § 226 and IWC Wage Order 4-2001,
3 Section 7 required employers to maintain adequate employment records and provide employees
4 with accurate itemized wage statements showing gross wages, total hours worked, all applicable
5 hourly rates worked during each pay period, the corresponding number of hours worked at each
6 hourly rate, and meal breaks taken.
7

8 31. Wage statements provided to Plaintiff by Defendant do not show all wages earned,
9 all hours worked, or all applicable rates, in violation of Labor Code § 226 and IWC Wage Order
10 4-2001, Section 7.
11

12 32. Moreover, Defendant did not maintain adequate records of all wages earned, hours
13 worked and breaks taken.
14

15 ***Defendant's Failure to Pay All Wages Due at Termination of Employment***

16 33. At all times relevant hereto, Labor Code § 201 required an employer that discharges
17 an employee to pay compensation due and owing to said employee immediately upon discharge.
18 Labor Code § 202 requires an employer to pay an employee who quits any compensation due and
19 owing to said employee within seventy-two (72) hours of an employee's resignation. Labor Code
20 § 203 provides that if an employer willfully fails to pay compensation promptly upon discharge or
21 resignation, as required under sections 201 and 202, then the employer is liable for waiting time
22 penalties in the form of continued compensation for up to thirty (30) work days.
23

24 34. Defendant willfully and knowingly failed to pay Plaintiff, upon termination of
25 employment, all accrued compensation including payment of minimum wage compensation,
26 agreed wages, overtime, and/or premium wages.
27

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1 ***Defendant's Failure to Reimburse All Necessary Business Expenses***

2 35. At all times relevant hereto, Labor Code § 2802 provided that, “[a]n employer shall
3 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
4 in direct consequence of the discharge of his or her duties.”
5

6 36. Defendant willfully and knowingly failed to reimburse Plaintiff for necessary
7 business expenses incurred in the scope of his duties, such as for use of his personal cellular
8 phones, and/or using his personal vehicle for travel to any job site(s).
9

10 ***Facts Regarding Willfulness***

11 37. Plaintiff is informed and believes and based thereon alleges that Defendant is and
12 was advised by skilled lawyers, other professionals, employees with human resources background
13 and advisors with knowledge of the requirements of California wage and hour laws.
14

15 38. Plaintiff is informed and believes and based thereon alleges that at all relevant
16 times, Defendant had a consistent policy or practice of failing to compensate Plaintiff for all hours
17 worked, including minimum wages, designated rate wages, overtime, and premium wages.
18

19 39. Plaintiff is informed and believes and based thereon alleges that at all relevant
20 times, Defendant knew or should have known that Plaintiff was entitled to receive duty-free meal
21 breaks within the first five (5) hours of any shift of six (6) or more hours worked, and that any
22 failure to do so requires Defendant to pay Plaintiff one (1) hour of wages per day for untimely,
23 missed, or on-duty meal breaks.
24

25 40. Plaintiff is informed and believes and based thereon alleges that at all relevant
26 times, Defendant ALLIED also had a consistent policy or practice of routinely failing to provide
27 Plaintiff with paid sick leave, accurate, itemized wage statements, and reimbursements for
28 necessary business expenses.

1 ***Private Attorneys General Act (“PAGA”)***

2 41. Plaintiff has complied with the procedures for bringing suit specified in California
3 Labor Code § 2699.3. By letter dated March 29, 2021, Plaintiff FRANZ AFFENTRANGER, on
4 behalf of himself and all other aggrieved employees of Defendant ALLIED, gave the required
5 notice (and paid the required \$75.00 fee) to the Labor and Workforce Development Agency
6 (“LWDA”) and Defendant ALLIED (by certified mail) of the specific provisions of the California
7 Labor Code alleged to have been violated, including the facts and theories to support the alleged
8 violations. On March 29, 2021, Plaintiff also electronically filed the required claim notice with the
9 LWDA. Sixty-five (65) days have passed since the postmark date of the notice that was mailed to
10 Defendant and the LWDA, and the LWDA chose not to investigate the allegations herein. Attached
11 as **Exhibit A** is a true and correct copy of the letter dated March 29, 2021, giving notice pursuant
12 to California Labor Code § 2699.3.

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16 **FIRST CAUSE OF ACTION**

17 **(Failure to Pay Wages – California Labor Code §§ 226.2, 510, 1182.12, 1194, 1197)**

18 42. Plaintiff incorporates by reference, as though set forth in full herein, each and every
19 allegation of paragraphs 1 through 41 above.

20 43. California Labor Code § 1197 provides, “The minimum wage for employees fixed
21 by the commission is the minimum wage to be paid to employees, and the payment of a less wage
22 than the minimum so fixed is unlawful.”

23 44. Labor Code § 1194 provides that an employee receiving less than the legal overtime
24 compensation is entitled to recover in a civil action the unpaid balance of the full amount of this
25 minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees,
26 and costs of suit.
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1 45. Labor Code § 510(a) states: “Any work in excess of eight hours in one workday
2 and any work in excess of 40 hours in any one workweek and the first eight hours worked on the
3 seventh day of work in any one workweek shall be compensated at the rate of no less than one and
4 one-half times the regular rate of pay for an employee.” Labor Code § 510(a) further states: “Any
5 work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the
6 regular rate of pay for an employee.” Labor Code § 510(a) further states: “[A]ny work in excess
7 of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than
8 twice the regular rate of pay of an employee.”
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11 46. Plaintiff is informed and believes, and thereon alleges, that as a result of ALLIED’s
12 pay practices, ALLIED failed to pay Plaintiff both the minimum wage, and overtime wages (when
13 applicable), for a significant amount of hours worked as required by Labor Code §§ 1182.12, 510,
14 1197, 226.2 (for work performed after January 1, 2016), and the Industrial Welfare Commission
15 (“IWC”) Wage Orders, including for time spent performing services for ALLIED when he was
16 under the control of ALLIED.
17

18 47. As a direct and proximate result of ALLIED’s conduct, Plaintiff has suffered losses
19 related to the use and enjoyment of the unpaid wages and lost interest on such wages. Accordingly,
20 pursuant to Labor Code § 1194, Plaintiff is entitled to recover the unpaid balance of the minimum
21 wages and any overtime wages (when applicable), including interest thereon, reasonable attorney’s
22 fees, and costs of suit, in amounts according to proof at trial.
23

24 48. As a further direct and proximate result of ALLIED’s conduct, Plaintiff is entitled
25 to recover liquidated damages pursuant to Labor Code § 1194.2, in an amount equal to the unpaid
26 minimum wages according to proof at trial. Plaintiff is informed and believes, and thereon alleges
27
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thereon, that Defendant is liable for civil penalties under Labor Code §§ 210, 558, and 1197.1 in amounts according to proof at trial.

SECOND CAUSE OF ACTION

(Wage Statement Violations – California Labor Code § 226, 226.3, 1174, 1174.5)

49. Plaintiff incorporates by reference, as though set forth in full herein, each and every allegation of paragraphs 1 through 48 above.

50. Labor Code § 226 requires employers to provide employees an accurate itemized statement showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece units and rates if applicable, (4) all deductions, (5) net wages earned, (6) the inclusive date of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect and the corresponding number of hours worked.

51. At all times relevant herein, ALLIED failed to provide Plaintiff with accurate, timely, itemized wage statements and records in accordance with the law. ALLIED also failed to maintain all proper payroll records in accordance with Labor Code § 1174.

52. Pursuant to Labor Code § 226(e), employees are entitled to the following penalties (up to a maximum of \$4,000.00 per employee):

- a. Fifty dollars (\$50.00) per employee for the initial pay period in which a violation occurs; and
- b. One hundred dollars (\$100.00) per employee for each violation in a subsequent pay period.

53. As a direct and proximate result of the ALLIED's unlawful conduct as set forth above, Plaintiff is informed and believes, and thereon alleges, that he is entitled to such penalties

1 for failure to maintain and provide itemized statements of employees pay and payroll records, in
2 violation of California Labor Code §§ 226(e), 226.3, 1174, 1174.5, in amounts according to proof
3 at trial.
4

5 **THIRD CAUSE OF ACTION**

6 **(Failure to Provide Meal Breaks - California Labor Code §§ 226.7, 512)**

7 54. Plaintiff incorporates by reference, as though set forth in full herein, each and
8 every allegation of paragraphs 1 through 53 above.
9

10 55. IWC Wage Order 4-2001, Section 11 provides in part:

11 “No employer shall employ any person for a work period of more
12 than five (5) hours without a meal period of not less than 30
13 minutes.... Unless the employee is relieved of all duty during a 30
14 minute meal period, the meal period shall be considered an ‘on duty’
15 meal period and counted as time worked. An ‘on duty’ meal period
16 shall be permitted only when the nature of the work prevents an
employee from being relieved of all duty and when by written
agreement between the parties an on-the-job paid meal period is
agreed to.”

17 56. At all times relevant herein, Plaintiff was denied proper meal breaks in accordance
18 with the law. He was not relieved of all duties during his meal breaks, and they were not “on duty”
19 meal breaks because Plaintiff did not sign or execute a written agreement authorizing on-the-job
20 meal breaks.
21

22 57. According to Labor Code §§ 226.7, 512, and IWC Wage Order 4-2001, Section 11,
23 Plaintiff is informed and believes, and thereon alleges, that he is entitled to recover from ALLIED
24 damages equal to one hour of pay at his regular rate of pay for each workday that a meal break
25 was not provided according to proof at trial.
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(Failure to Provide Paid Sick Leave - California Labor Code § 246)

59. Labor Code § 246 provides that, “[a]n employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days.”

61. At all times relevant herein, ALLIED did not provide Plaintiff with accrued, paid sick leave, as required by California law.

62. As a direct and proximate result of the Defendant's unlawful conduct as set forth above, Plaintiff is informed and believes, and thereon alleges, that he is entitled to penalties, pursuant to Labor Code § 248.5, in amounts according to proof at trial.

(Failure to Timely Pay Wages Due Upon Separation - California Labor Code §§ 202, 203)

64. Labor Code § 202 provides, “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

65. Plaintiff is informed and believes, and thereon alleges, that his employment was terminated on or about August 30, 2020, and that ALLIED failed to pay Plaintiff all of his owed wages upon termination, as required by law. Defendant is therefore liable for the full waiting time penalty allowable under Labor Code § 203 in the amount of one day's worth of Plaintiff's wages at his regular rate of pay, multiplied by 30, according to proof at trial.

SIXTH CAUSE OF ACTION

(Failure to Reimburse Necessary Business Expenses - California Labor Code § 2802)

66. Plaintiff incorporates by reference, as though set forth in full herein, each and every allegation of paragraphs 1 through 65 above.

67. Labor Code § 2802 provides that, “[a]n 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,” and “the term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

68. In order to fulfill his duties on behalf of ALLIED, Plaintiff incurred necessary business expenses, including but not limited to use of a personal cell phone and ALLIED never reimbursed Plaintiff for said expenses.

69. As a direct and proximate result of ALLIED's unlawful conduct as set forth above, Plaintiff is informed and believes, and thereon alleges, that he is entitled to reimbursement for these necessary business expenditures, and any other necessary expenditures incurred on behalf of ALLIED, in amounts according to proof at trial, and he is also entitled to all reasonable costs, including, but not limited to, attorney's fees incurred in enforcing his rights.

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1 75. Labor Code § 1102.5(b) makes it unlawful for an employer to “retaliate against an
2 employee for disclosing information...to a person with authority over the employee or another
3 employee who has the authority to investigate...if the employee has reasonable cause to believe
4 that the information discloses a violation of state or federal statute, or a violation of or
5 noncompliance with a local, state, or federal rule or regulation.”
6

7 76. After Plaintiff expressed his concerns to Defendant ALLIED on several occasions
8 between about April or May 2020 and August 2020, about not being paid wages for all of the hours
9 he had been working (which Plaintiff reasonably believed to be violations of California law), he
10 received a telephone call on or about August 30, 2020 from ALLIED’s Chief Executive Officer,
11 OP Almaraz, notifying him that his employment was being terminated. Defendant had clearly
12 grown tired of Plaintiff’s wage and hour complaints and accordingly chose to terminate his
13 employment.
14

15 77. As a direct and proximate result of Defendants’ unlawful conduct as set forth above,
16 Plaintiff has been directly and legally caused to suffer damages, including, but not limited to,
17 substantial losses in earnings, other employment benefits, and other pecuniary loss not presently
18 ascertained, in amounts according to proof at trial.
19

20 **NINTH CAUSE OF ACTION**

21 **(Private Attorneys General Act - Cal. Labor Code § 2698 *et seq.*)**

22 78. Plaintiff incorporates by reference, as though set forth in full herein, each and every
23 allegation of paragraphs 1 through 77 above.
24

25 79. Pursuant to California Labor Code § 2698 *et seq.*, Plaintiff is entitled to act as a
26 private attorney general to assess and recover civil penalties against ALLIED on behalf of Plaintiff
27 and any other current or former employees of ALLIED for violations of the California Labor Code.
28

80. Plaintiff, and many other California employees of ALLIED, have been affected by, among other things, ALLIED's misclassification of aggrieved employees, failure to pay minimum wage and overtime wages, failure to provide accurate wage statements, failure to provide meal breaks, failure to reimburse necessary business expenses, failure to provide sick leave, and failure to pay all wages due upon separation. Plaintiff has complied with all the pre-lawsuit notice requirements outlined under California Labor Code § 2698 *et seq.* The LWDA has not investigated Plaintiff's allegations within the statutory timeframe pursuant to Labor Code § 2699.3. A true and correct copy of said notice and letter is attached hereto as **Exhibit A**.

81. Plaintiff, and other aggrieved employees, are entitled to recover 25% of any civil penalties assessed against ALLIED for such violations, with the remaining 75% of the recovery being paid to the LWDA.

82. Accordingly, Plaintiff seeks to recover any and all civil penalties otherwise capable of being collected under the law, including, but in no way limited to, any statutes applicable under § 2699.5, and any penalty provisions provided for by §§ 210, 226.3, 558, and 1197.1.

83. Labor Code § 2699(g) also provides for the payment of reasonable attorney's fees and costs to a prevailing party seeking recovery under the Private Attorneys General Act. Accordingly, Plaintiff seeks to recover civil penalties, attorney's fees, and costs in an amount to be proven at trial pursuant to any applicable provisions of the law.

TENTH CAUSE OF ACTION

(Wrongful Termination in Violation of Public Policy)

84. Plaintiff incorporates by reference, as though set forth in full herein, each and every allegation of paragraphs 1 through 83 above.

85. As alleged herein and in violation of public policy, ALLIED terminated

1 Plaintiff's employment because he made numerous complaints between about April or May 2020
2 and August 2020, about not being paid wages for all of the hours he had been working. By doing
3 so, Defendant violated the fundamental public policies of the State of California, as embodied in
4 California Government Code § 12940 *et. seq.* and other California statute and regulations.
5

6 86. By the aforesaid acts and omissions of ALLIED, Plaintiff has been directly and
7 legally caused to suffer actual damages including, but not limited to, loss of earnings and future
8 earning capacity, attorney's fees, costs of suit, and other pecuniary loss not presently ascertained.
9

10 87. As a further direct and legal result of the acts and conduct of Defendant, as
11 aforesaid, Plaintiff has been caused to and did suffer, and continues to suffer, severe emotional
12 and mental distress, anguish, humiliation, embarrassment, fright, shock, discomfort, anxiety, and
13 related symptoms. The exact nature and extent of said injuries is presently unknown to Plaintiff.
14 Plaintiff does not know at this time the exact duration or permanence of said injuries, but is
15 informed and believes, and thereon alleges, that some if not all of the injuries are reasonably
16 certain to be permanent in character.
17

18 88. Plaintiff is informed and believes, and thereon alleges, that ALLIED, by engaging
19 in the aforementioned acts and/or in authorizing and/or ratifying such acts, engaged in willful,
20 malicious, intentional, oppressive, and despicable conduct, and acted with willful and conscious
21 disregard of the rights, welfare, and safety of Plaintiff, thereby justifying the award of punitive and
22 exemplary damages in an amount to be determined at trial.
23

24 **ELEVENTH CAUSE OF ACTION**

25 **(Unfair Business Practices - Business and Professions Code § 17200 *et seq.*)**

26 89. Plaintiff incorporates by reference, as though set forth in full herein, each and every
27 allegation of paragraphs 1 through 88 above.
28

1 90. Plaintiff alleges that ALLIED engaged in unfair, unlawful and fraudulent business
2 practices by, among other things: (1) failing and refusing to pay Plaintiff minimum wages for all
3 hours worked and/or overtime wages for all overtime hours worked; (2) intentionally failing to
4 provide accurate itemized statements to Plaintiff; (3) willfully failing to provide Plaintiff with
5 required meal breaks; (4) willfully failing to provide Plaintiff with accrued, paid sick leave; (5)
6 intentionally failing to reimburse Plaintiff for necessary business expenses, and (6) failing to pay
7 all wages due upon separation to Plaintiff.
8

9 91. Accordingly, Plaintiff seeks injunctive relief including, but not limited to, an order
10 that ALLIED account for, disgorge, and restore to Plaintiff the compensation unlawfully withheld
11 in amounts according to proof at trial.
12

13
14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 16 1. For compensatory, consequential, and punitive damages;
17
18 2. For nominal damages;
19
20 3. For equitable relief in the nature of declaratory relief, restitution of all monies due
21 to Plaintiff, and disgorgement of profits from the unlawful business practices of Defendants, and
22 accounting;
23
24 4. For penalties as permitted by the California Labor Code, and the regulations,
25 standards and applicable wage orders promulgated thereunder, specifically including, but not
26 limited to, Labor Code §§ 210, 225.5, 226, 226.3, 226.7, 226.8, 246, 248.5, 558, 1174.5, 1194,
27 1194.2, 1197.1, and 2802;
28
 5. For interest as permitted by statute, including Labor Code § 218.6;

1 6. For costs of suit and expenses incurred herein as permitted by statute, including
2 Labor Code §§ 226, 1194, and 2698, *et seq.*;

3 7. For attorney's fees as permitted by statute, including Labor Code §§ 226, 1194,
4 2698, *et seq.*, and 2802; and
5

6 8. For all such other and further relief that the Court may deem just and proper.
7

8 Respectfully submitted,

9
10 Date: June 3, 2021

11 By: 

12 Anthony S. Khoury, Of Counsel
13 **ACCESS LAWYERS GROUP**
14 Attorneys for Plaintiff, Franz Affentranger

15 **JURY DEMAND**

16 Plaintiff demands a trial by jury on all issues so triable as a matter of right.
17

18 Respectfully submitted,

19 Date: June 3, 2021

20 By: 

21 Anthony S. Khoury, Of Counsel
22 **ACCESS LAWYERS GROUP**
23 Attorneys for Plaintiff, Franz Affentranger
24
25
26
27
28

EXHIBIT “A”



527 S. Lake Ave, Suite 200, Pasadena, CA 91101
Tel: 877.360.3383 | Fax: 866.686.5590
www.access.law

March 29, 2021

Sent Via U.S. Certified Mail Only

Allied Restoration Services, Inc.

Attn: Legal Counsel

22632 Golden Springs Dr., Ste. 270

Diamond Bar, CA 91765

**Re: Written Notice – Private Attorneys General Act (“PAGA”) –
California Labor Code § 2698 et seq**

Dear Legal Counsel:

As you may already be aware, our firm represents Franz Affentranger, with respect to his employment law claims against Allied Restoration Services, Inc. (“Allied” or the “Company”), and specifically, violations of California Labor Code §§ 98.6, 203, 226, 226.7, 226.8, 246, 510, 512, 1102.5, 1194, 1197, and 2802, and the applicable Industrial Welfare Commission Wage Order(s).

In accordance with the required notice under Labor Code § 2699.3 of the Private Attorneys General Act (“PAGA”), this letter shall serve as formal written notice to the Labor and Workforce Development Agency (“LWDA”) and the employer of the above Labor Code violations for all aggrieved employees of Allied. As also required by Labor Code § 2699.3, this notice is contemporaneously being filed online, and the required \$75.00 filing fee is being paid online.

California law permits individuals to sue their respective employers on behalf of the Labor and Workforce Development Agency to eradicate violations of the Labor Code by allowing private plaintiffs to seek and recover the civil penalties associated with each Labor Code violation. Labor Code § 2698 et seq. Not only does a so-called “PAGA” action authorize a plaintiff to recover the penalties for violations that harm the plaintiff, it also authorizes the recovery of penalties for violations affecting all of the other employees of the plaintiff’s employer.

Under PAGA, plaintiffs are entitled to recover the civil penalties provided by statute for the violations alleged, or, if no civil penalties are provided by statute, plaintiffs are entitled to \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation. Below please find the relevant facts and legal theories to support the aforementioned violations.

Factual Background

Mr. Affentranger was first hired by Allied in March 2019 to serve as a videographer for the Company's in-house marketing team, earning \$1,125.00 per week. Mr. Affentranger, like other aggrieved employees of Allied, regularly worked more than 40 hours per week, but was not paid for all hours worked. Specifically, Mr. Affentranger worked a set daily schedule Monday through Friday between 9 a.m. and 6 p.m., and which was later changed to 8 a.m. to 5 p.m., with an expected one-hour meal break during the day. He typically worked every day in the Company's office except on Wednesdays, when he worked from home. In addition to his set daily schedule, however, Mr. Affentranger was required to attend a weekly marketing meeting every Monday at 6:30 a.m., and he was required to attend daily Zoom meetings at 7:30 a.m. During the term of his employment, Mr. Affentranger estimates that he worked an average of 50-60 hours per week.

While Mr. Affentranger was able to take his daily rest periods, he was not always able to take his 30-minute uninterrupted meal break, as was the case with other aggrieved employees of Allied. The Company also never provided accurate, itemized wage statements to Mr. Affentranger or other aggrieved employees, and despite Mr. Affentranger and other aggrieved employees having worked 30 or more days per year, respectively, they were not provided with sick leave. Mr. Affentranger and other aggrieved employees also regularly incurred necessary business expenditures in the course of their respective work duties, such as using a personal cell phone for the Company's benefit, but they were never reimbursed for those expenses.

Finally, after Mr. Affentranger expressed his concerns to the Company on several occasions between about April or May 2020 and August 2020, about not being paid wages for all the hours he had been working, he received a telephone call on or about August 30, 2020 from the Company's Chief Executive Officer, OP Almaraz, notifying him that his employment was being terminated. Upon being terminated, Mr. Affentranger did not receive all of the wages due to him within 30 days.

Misclassification

Pursuant to § 226.8 of the California Labor Code, it is unlawful for employers willfully misclassify employees as independent contractors. A first-time penalty can range anywhere from \$5,000 to \$15,000. If, however, the LWDA, or a court, finds that the employer engaged in a "pattern or practice" of misclassifying employees, a first-time penalty can range anywhere from \$10,000 to \$20,000.

In the landmark case of *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal. 5th 903, the California Supreme Court established an "ABC test" for the determination of whether or not a worker is properly classified as an employee or an independent contractor. Specifically, in order for an employer to classify a worker as an independent contractor, the employer must prove that: "(A) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact; (B) The person performs work that is outside the usual course of the hiring entity's business; and (C) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed."

This standard was later codified in Labor Code § 2750.3 by Assembly Bill No. 5, effective January 1, 2020, and is now codified in Labor Code § 2775. On January 14, 2021, the California Supreme Court also declared in the case of *Vazquez v. Jan-Pro Franchising Internet* (2021) 10 Cal. 5th 944, that the ABC test applies retroactively.

Here, there is no doubt that Mr. Affentranger, along with any other aggrieved employees who were also misclassified as independent contractors, was an employee of Allied rather than an independent contractor because the Company, among other things, retained and exercised a significant amount of control and direction over him. For instance, Mr. Affentranger was: required to work a set schedule out of the Company's office at least four days a week, required to attend daily meetings at 7:30 a.m. and every Monday at 6:30 a.m., issued a Company e-mail address, and required to wear a Company shirt in the office and/or when working in the field.

Unpaid Minimum and Overtime Wages

The California Minimum Wage Order (MW-2017) required employers to pay their employees a minimum wage of \$10.50 for companies with 26 or more employees, as of January 1, 2017, and \$11.00 for companies with 26 or more employees, as of January 1, 2018. As of January 1, 2019, the California Minimum Wage Order (MW-2019) required employers to pay their employees a minimum wage of \$12.00 for companies with 26 or more employees, and \$13.00 for companies with 26 or more employees, as of January 1, 2020.

Pursuant to Labor Code § 510, and the applicable wage order, employees are entitled to overtime compensation at a rate of one and one-half (1 1/2) times their regular rate of pay for all hours worked in excess of 40 per work-week. All hours worked beyond 12 in a workday and eight on the seventh consecutive workday in a workweek are to be paid at no less than two times the normal rate of pay.

Moreover, according to Labor Code § 1194.2 (a), "In any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon."

Here, Mr. Affentranger, and all other aggrieved employees of Allied were regularly deprived of minimum wage compensation for all hours worked in any given week. Mr. Affentranger, and other aggrieved employees, also regularly worked more than eight hours per day and/or 40 hours per week, but did not receive proper overtime wages. These aggrieved employees were also not exempt from California's overtime law. Therefore, Allied is not only liable for unpaid minimum and overtime wages, but also for penalties to Mr. Affentranger, and other aggrieved employees, for minimum wages not paid as well as unpaid overtime pay.

Meal Break Violations

Pursuant to Labor Code § 512 and Industrial Welfare Commission ("IWC") Order 7-2001, Section 11, employers are required to provide employees a meal period of at least 30 minutes when the work period is more than five hours and a second meal period of at least 30 minutes when the work period is more than 10 hours. The employee must be relieved of all duties during this meal

period. Similarly, IWC Order 7-2001, Section 12 requires employers to “authorize and permit” employees to take a 10-minute rest break every four hours of work, during which they must be relieved of all duties. See *Augustus v. ABM Security Services* (2016) 2 Cal. 5th 257; see also *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. If an employer fails to comply with the meal or rest period requirements, it must pay the employee a premium of one hour’s worth of pay at the employee’s regular rate for each day that the employer failed to provide a meal or period. Labor Code § 226.7(c).

It is undisputed that state law entitled Mr. Affentranger to one 30-minute meal period and at least one ten-minute rest period for each day on which he worked more than five hours, an additional ten-minute rest period for each day on which he worked eight hours, and an additional 30-minute meal period for each day on which he worked over ten hours. Mr. Affentranger was specifically entitled to take all of these breaks uninterrupted. As explained above, while Mr. Affentranger was regularly able to take his mandated rest periods, he was not always able to take his requisite meal breaks, just as was the case with other aggrieved employees of Allied. Therefore, Allied is not only liable for the premium pay owed to Mr. Affentranger because the Company did not “authorize and permit” him to take all of his meal breaks as required by California law, but the Company is also liable for penalties to him and to all aggrieved employees for said violations.

Failure to Provide Itemized Statements

California Labor Code § 226 requires every employer, semi-monthly or at the time of each payment of wages, to furnish each of its employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing, among other things, (1) gross wages earned, (2) total hours worked by the employee, (3) all deductions, (4) net wages earned, and (5) all applicable hourly rates in effect during each respective pay period and the corresponding number of hours worked at each hourly rate by each respective individual. Employees are entitled to \$50 for the first pay period in which a violation occurs and \$100 for any subsequent pay period in which violations occur, per employee, up to a maximum penalty of \$4,000.

Here, Allied knowingly and intentionally failed to provide timely and accurate itemized wage statements including this required information to Mr. Affentranger. In fact, the Company never gave him any type of wage statements. Therefore, Allied is not only liable for the statutory penalty in Labor Code § 226 to Mr. Affentranger, but is also liable for penalties for said violations to all aggrieved employees.

Failure to Provide Sick Leave

California Labor Code § 246 requires every employer to provide paid sick leave to all employees who work 30 or more days per calendar year (beginning on or after July 1, 2015). In this case, Mr. Affentranger, and other aggrieved employees, worked for Allied 30 or more days per calendar year beginning on or after July 1, 2015, and were entitled to accrue paid sick leave at the rate of one hour for every 30 hours worked. The Company failed to provide Mr. Affentranger and other aggrieved employees with any paid sick leave, and accordingly, the Company is liable to Mr. Affentranger, and all other aggrieved employees, for penalties for said violations.

Failure to Reimburse Necessary Business Expenses

Mr. Affentranger is also entitled to reimbursement, interest, and attorney's fees because he was never reimbursed for using his personal cell phone within the scope of his employment, pursuant to California Labor Code § 2802.

Mr. Affentranger, like other aggrieved employees, regularly used his personal cell phone to make and receive calls, as well as to exchange e-mails with Allied's clients, potential clients, and vendors. Mr. Affentranger is therefore entitled to reimbursement for the use of his cell phone, plus interest and attorney's fees. Allied is also liable for penalties for failing to reimburse all aggrieved employees for necessary business expenses.

Waiting Time Penalty

Labor Code § 203 imposes a waiting time penalty on an employer that willfully fails to pay any earned but unpaid wages of an employee who is discharged or quits at a rate of one normal day's worth of pay up to a maximum of 30 days.

Throughout his employment with Allied, Mr. Affentranger did not receive all of his earned wages from the Company. At the time of his separation from the Company, Mr. Affentranger did not receive all outstanding wages due (nor did he ever receive all outstanding wages due). Accordingly, Mr. Affentranger is entitled to daily wages for 30 days after separation from the Company, as well as other aggrieved employees who did not receive all wages due within 30 days of separation. Allied is also liable for penalties for said violations.

Retaliation

Labor Code § 98.6 prohibits retaliation against an employee for, among other things, making a complaint about unpaid wages, and Labor Code § 1102.5 prohibits retaliation against an employee for, among other things, reporting to his or her employer what the employee has reasonable cause to believe is a violation of law. Here, after Mr. Affentranger expressed his concerns to the Company on several occasions between about April or May 2020 and August 2020, about not being paid wages for all the hours he had been working, he received a telephone call on or about August 30, 2020 from the Company's Chief Executive Officer, OP Almaraz, notifying him that his employment was being terminated. The Company clearly grew tired of Mr. Affentranger's wage and hour complaints and accordingly chose to terminate his employment. Not only is Allied liable to Mr. Affentranger for retaliation, but the Company is also liable for penalties under PAGA for same, as well as for any like retaliation against other aggrieved employees of the Company.

Reasonable Attorney's Fees and Costs

Labor Code § 1194 provides in pertinent part that an "employee is entitled to recover in a civil action the unpaid balance of the full amount of ... overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suits." Labor Code § 218.5(a) provides in relevant part that, "in any action brought for the nonpayment of wages... the court shall award reasonable attorney's fees and cost to the prevailing party..." Under Labor Code § 2802, an employee is entitled to interest and attorney's fees for recovering unpaid reimbursements, and the employer

can be subject to citations for failure to comply with that statute. Finally, under Labor Code § 2699(g)(1), any aggrieved employee who prevails in a PAGA action is entitled to recover “reasonable attorney’s fees and costs.” In this case, Mr. Affentranger will be entitled to reasonable attorney’s fees and costs for his individual wage and hour claims against Allied.

If you wish to remedy these violations and resolve this matter at this juncture, please have someone contact my office no later than April 16, 2021. If I do not receive any response by said date, we will promptly be moving forward with our litigation efforts.

Sincerely,

A handwritten signature in black ink, appearing to be 'A. Khoury', with a stylized, cursive flourish.

Anthony S. Khoury, Of Counsel
Access Lawyers Group

cc: Scott W. Monroe, Esq. (scott.monroe@ropers.com)



Anthony Khoury <ask@access.law>

Thank you for submission of your PAGA Case.

LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>

Mon, Mar 29, 2021 at 3:36 PM

To: "ask@access.law" <ask@access.law>

3/29/2021

LWDA Case No. LWDA-CM-827433-21
Law Firm : Access Lawyers Group
Plaintiff Name : Franz Affentranger
Employer: Allied Restoration Services, Inc.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm