

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

This Settlement Agreement and Release of All Claims (“Agreement”), is entered into by and between Franz Affentranger (“Plaintiff”), and Allied Restoration Services, Inc. (“Defendant”). Plaintiff and Defendant are collectively referred to herein as the “Parties.” Certain disputes, claims and alleged causes of action have existed by and between the Parties and arose out of and are related to Plaintiff’s employment relationship with Defendant.

RECITALS

A. THE ACTION

Plaintiff filed a civil action against Defendant on June 3, 2020, for various claims arising under the California Labor Code, for which penalties were sought under the Private Attorneys General Act (“PAGA”) entitled *Franz Affentranger v. Allied Restoration Services, Inc.*, Los Angeles County Superior Court Case No. 21STCV20804 (the “Action”).

Via the Action, Plaintiff, on behalf of the State of California, seeks relief for all other hourly, non-exempt similarly situated current and former aggrieved employees of Defendant who worked for Defendant or was terminated at any time from September 29, 2019, through the resolution of this action (the “Aggrieved Employees”).

B. DENIAL OF LIABILITY

Defendant denies Plaintiff’s allegations in the Action and any liability arising from his allegations. Nevertheless, the Parties desire to avoid further litigation and settle all differences now existing between them related to allegations in the Action.

C. SETTLEMENT

The Parties, through their counsel, have engaged in good faith settlement discussions and agreed that, in exchange for the payment of a certain sum, Plaintiff shall execute a full release of all claims relating to the allegations in the Action. The terms and conditions of the settlement are set forth below in this Agreement.

TERMS AND CONDITIONS OF AGREEMENT

In consideration of the terms and conditions of this Agreement as set forth below, the adequacy of which is hereby acknowledged, and in light of the circumstances outlined in the Recitals, which are incorporated fully herein by this reference, and in order to fully settle all claims between the Parties, it is agreed as follows:

1.0 SETTLEMENT PAYMENT AND CONSIDERATION

1.1 In consideration for the settlement and dismissal of the claims asserted in the Action, and other representations by Plaintiff herein, Defendant will pay to Plaintiff, the LWDA and the other aggrieved employees the total aggregate sum of Five Thousand Dollars (\$5,000.00) (hereinafter the “Total Settlement Amount”). The Total Settlement Amount shall be allocated as follows:

(1) Three Thousand Seven Hundred Fifty Dollars and Zero Cents (\$3,750.00) shall be allocated to the California Labor Workforce and Development Agency (the “LWDA Payment”).

(2) One Thousand Two Hundred Fifty Dollars and Zero Cents (\$1,250.00) shall be allocated to the Settlement Group Members (the “Settlement Group Payment”), divided equally among the alleged aggrieved.

1.2 Defendant agrees that these payments are intended to compensate Plaintiff and all aggrieved employees for civil penalties, costs and fees under PAGA. A form 1099 will be issued in accordance with IRS regulations.

1.3 Within five (5) days of Defendant’s payment in full of the Total Settlement Amount referenced in Section 1.1, Plaintiff will file a Request for Dismissal of the entire action with prejudice and release Defendant and all Releases.

1.4 Plaintiff acknowledges and agrees that Defendant has made no representations regarding the tax consequences of the monies paid pursuant to this Agreement.

2.0 RELEASED CLAIMS

2.1 The Agreement covers and fully resolves, for the Aggrieved Employees, for the period of September 29, 2019 through and including the date of the Court’s Approval, claims brought under the PAGA, including but not limited to: Labor Code sections 98.6, 203, 210, 226, 226.3, 226.7, 226.8, 246, 510, 512, 558, 1102.5, 1194, 1197, 1197.1, and 2802, and the relevant Industrial Welfare Commissions Wage Order (hereinafter “the Released Claims”).

2.2 Released Claims include all claims plead or which could have been plead in the Action arising from any of the facts alleged therein, including but not limited to claims of any and every nature based on any of the statutory provisions identified therein, and all penalty claims, no matter how alleged.

2.3 The Parties agree that Plaintiff is not releasing any other aggrieved employee’s claims for wages or damages or for statutory penalties that could have been sought by the Labor Commissioner for the violations identified in Plaintiff’s pre-filing letter to the LWDA.

2.4 The Parties agree that the Action will be disposed of by entry of a final judgment by the Court, ending the case without any further payment or action by Defendant, after final approval is granted.

2.5 The terms of this Agreement, and the Court’s approval of this settlement, are binding on Plaintiff, the State of California, and all Aggrieved Employees, as well as their heirs, executors and administrators, successors and assigns, and those terms shall have *res judicata*, collateral estoppel and other preclusive effect in all pending and future claims, lawsuits or other proceedings maintained by or on behalf of any such persons, to the extent those claims, lawsuits or other proceedings constitute Released Claims as set forth in this Agreement. Notwithstanding any other provision in this Agreement, this Agreement, the approval order, and the judgment in

the Action may be filed in any action against or by Defendant or the Released Parties to support a defense of *res judicata*, collateral estoppel, release, waiver, good-faith settlement, judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion or similar defense or counterclaim.

3.0 VOLUNTARY AND INFORMED EXECUTION

Plaintiff represents that: he has relied upon the advice of his attorney, who is the attorney of his own choice, concerning the legal and tax consequences of this Agreement; the terms of this Agreement have been completely read and explained to him by his attorneys; the terms of this Agreement are fully understood and voluntarily accepted by him; he knowingly and voluntarily intends to be legally bound by the same.

The Parties agree that the discovery completed prior to the settlement of the Action shall constitute satisfactory confirmatory discovery.

4.0 WARRANTY OF CAPACITY TO EXECUTE AGREEMENT

Plaintiff represents and warrants that: (1) no other person or entity has, or has had, any interest in the claims, demands, obligations or causes of action referred to in this Agreement, except as otherwise set forth herein; (2) Plaintiff has the sole right and exclusive authority to execute this Agreement and receive the sums specified in it; and (3) Plaintiff has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Agreement to any other person or entity.

5.0 ATTORNEYS' FEES

Except as provides for in the Total Settlement Amount in section 1.1, Parties to this Agreement shall bear their own attorneys' fees and costs arising from the actions of their own counsel in connection with this Agreement, the matters and documents referred to herein, including the Action and all related matters.

6.0 GOVERNING LAW

The Parties understand and agree that the laws of the State of California govern the terms and enforceability of this Agreement.

7.0 NO ADMISSION

The Parties understand and agree that nothing in this Agreement is intended, or should be construed, as an admission of any liability, misconduct or wrongdoing by Defendant, or as an admission of any violation of the rights of Plaintiff or any other person.

8.0 APPLICABLE LAW AND RETENTION OF JURISDICTION

This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of California, without regard to principles of conflicts of law otherwise applicable to such determination; provided, however, this in no way shall prevent the application of the benefits of federal law where applicable. The Los Angeles County Superior Court shall retain jurisdiction to enforce the terms of this Agreement pursuant to California Code of Civil Procedure section 664.6. This Agreement shall be admissible in any proceeding to enforce the terms thereof, if necessary, and the prevailing party in any such proceeding shall be entitled to recover costs, including reasonable attorneys' fees, incurred thereby. By virtue of the foregoing language and pursuant to Evidence Code section 1123(b), this written Agreement is intended to be binding and enforceable.

9.0 ENTIRE AGREEMENT

The Parties understand and agree that this Agreement constitutes the entire Agreement between the Parties concerning the scope of the settlement of the Action and the related release of claims and that this Agreement supersedes any and all prior oral or written agreements and understandings on such issues. No warranty, representation, condition, understanding or agreement of any kind with respect to the subject hereof shall be relied upon by the Parties unless incorporated herein. Notwithstanding any other provision contained herein, this Agreement may be pled as a thorough and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding that may be instituted, prosecuted or attempted in breach of the provisions contained herein.

10.0 INTERPRETATION OF THE AGREEMENT

Whenever the context requires, any gender referenced includes the other, and the singular number includes the plural, and vice-versa.

Any captions in this Agreement are inserted for convenience of reference and do not define, describe or limit the scope or intent of this Agreement or any of their terms.

No inference, assumption or presumption shall be drawn from the fact that a Party or his or its attorney prepared and/or drafted this Agreement.

Should any provision of this Agreement be declared or be determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining parts, terms or provisions shall not be affected, and the illegal, unenforceable or invalid part, term or provision shall be deemed not part of this Agreement.

11.0 NULLIFICATION OF SETTLEMENT AGREEMENT

In the event the Court refuses to approve the settlement as set forth herein, this Agreement shall be null and void and any order or judgment entered by the Court in furtherance of this Agreement shall be treated as void from the beginning. In such a case, the Parties and any funds

to be awarded under this Settlement Agreement shall be returned to their respective statuses as of the date and time immediately prior to the execution of this Agreement, the Parties shall proceed in all respects as if this Agreement had not been executed.

12.0 COUNTERPARTS

This Agreement may be executed in counterparts, each of which may be comprised of original signatures, or copies or facsimiles thereof, but all of which shall taken together constitute the same Agreement and, in pleading or proving any provision of the Agreement, it shall not be necessary to produce more than one such counterpart.

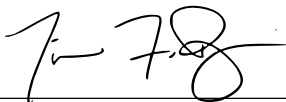
FRANZ AFFENTRANGER

Dated: 10 / 15 / 2021



ALLIED RESTORATION SERVICES, INC.

Dated: 10-15-2021

By 

Tim Bauer, Senior Vice President

Name & Position