

**JOINT STIPULATION OF PAGA SETTLEMENT AGREEMENT AND
RELEASE**

Plaintiff Elidet Bordon (“Plaintiff”), on her own behalf and on behalf of all Covered Employees, as defined below, and on behalf of the State of California, on the one hand, and Defendant AFR Group, LLC (“Defendant”) on the other hand (collectively, the “Parties”), hereby stipulate and agree to the following binding settlement pursuant to the terms and conditions set forth below. Once approved by the Court (as defined below), this settlement shall be binding under the terms stated herein.

I. DEFINITIONS

A. Administrative Costs. All administrative costs of settlement, including cost of notice to the Covered Employees, claims administration, settlement administration and any fees and costs incurred or charged by the Settlement Administrator in connection with the execution of its duties under this Joint Stipulation of PAGA Settlement Agreement and Release. The Parties agree that the Administrative Costs shall not exceed \$2,500.00.

B. Agreement. The terms “Agreement”, “Settlement” or “Settlement Agreement” are used synonymously herein to mean this Joint Stipulation of PAGA Settlement Agreement and Release.

C. Court. The term “Court” as used herein means the Superior Court of the State of California for the County of Los Angeles.

D. Covered Employees. The term “Covered Employees” or “Aggrieved Employees” as used herein means all current and former non-exempt employees of Defendant (including, but not limited to, Plaintiff), who were employed by Defendant in California at any time during the Covered Period. The Parties estimate that there were approximately 32 Covered Employees as of April 28, 2022. It is estimated that these Covered Employees worked approximately 640 Pay Periods (as defined below) during the Covered Period as of April 28, 2022 (as non-exempt employees).

E. Covered Period. The term “Covered Period” or “PAGA Period” as used herein means the time period from June 3, 2020 to the date the Court grants approval of this Settlement.

F. Defendant. The term “Defendant” as used herein shall mean Defendant AFR Group, LLC

G. Defense Counsel. The term “Defense Counsel” shall mean and refer to Karla J. Kraft and John M. Wicker from Stradling Yocca Carlson & Rauth, A Professional Corporation. Defense Counsel’s address is 660 Newport Center Drive, Suite 1600, Newport Beach, CA 92660.

H. Effective Date. The date that the Court grants approval of this Agreement will be the Effective Date.

I. Gross Settlement Amount. The term “Gross Settlement Amount” as used herein means the total amount to be paid by Defendant pursuant to this Agreement, which, subject only to the potential Escalation Requirement (as defined below, and to the extent triggered, if at all), shall equal no more than Forty-Two Thousand Eight-Hundred Dollars and Zero Cents (\$42,800.00) under any circumstances. All payments associated with this Agreement shall be paid from the Gross Settlement Amount, including all of the following: all civil penalty payments to the Covered Employees and the California Labor and Workforce Development Agency (“LWDA”) pursuant to the California Labor Code Private Attorneys General Act of 2004, including all amendments thereto, California Labor Code § 2698 et seq. (the “PAGA”), all Court-approved attorneys’ fees and Litigation costs, all Administrative Costs, all expenses, all statutory penalties, all interest, and all employment taxes if any are owed.

J. Lawsuit. The term “PAGA Claim”, “Lawsuit”, “Litigation”, or “Action” as used herein means the Private Attorneys General Act cause of action contained in the First Amended Complaint in the action filed in the Los Angeles County Superior Court entitled *Elidet Bordon v. AFR Group LLC, et al.*, (Case No. 21STCV20152) and the allegations of Plaintiff’s LWDA Notice (as defined below). A copy of the First Amended Complaint is attached hereto as Exhibit A.

K. LWDA Notice. The term “LWDA Notice” as used herein shall mean Plaintiff’s Notice to the California Labor and Workforce Development Agency dated June 3, 2021, and sent to Defendant by U.S. Certified Mail on the same date, a copy of which is attached hereto as Exhibit B.

L. Net Settlement Amount. The term “Net Settlement Amount” or “NSA” as used herein means the Gross Settlement Amount minus any award of attorneys’ fees and Litigation costs, and Administrative Costs.

M. PAGA Violations. The term “PAGA Violations” means the alleged violations of Labor Code sections 2802, 510, 1194, 204, 1198, 226(a), 1174(d), 1102.5 and 1174.5 including the civil penalties for those violations as well as penalties available from sections 558, 210, 226.3 and 1174.5.

N. Pay Period. The term “Pay Period” as used herein means a semi-monthly period occurring during the Covered Period, running from either the first of a particular month to the 15th of a month during the Covered Period, or from the 16th of a particular month to the last day of a month during the Covered Period, in which a Covered Employee worked for Defendant as a non-exempt employee.

O. Plaintiff. The term “Plaintiff” as used herein means Elidet Bordon.

P. Plaintiff’s Counsel. The term “Plaintiff’s Counsel” as used herein shall mean Matthew Gutierrez of Gutierrez Derham Law Firm LLP. Plaintiff’s counsel’s address is 6077 Coffee Rd., Suite 4, Bakersfield, CA 93308.

Q. Released Persons. The term “Released Persons” shall mean Defendant, and each of its parent, subsidiary, related and/or affiliate entities, and each of their predecessors, successors, and assigns, and each of their respective past and present members, shareholders, owners, partners, directors, officers, employees, attorneys, insurers, servants, investors, joint employers, founders, managers, managing agents, lenders, representatives and agents, and as to any individual their marital community, community property, trustees, executors, heirs, guardians and registered

representatives. Without in any way limiting the foregoing, “Released Persons” expressly includes any person, individual or entity which could be jointly and/or severally liable with Defendant as to any of the claims or matters released by or in this Agreement.

R. Settlement Administrator. The term “Settlement Administrator” as used herein means Phoenix Settlement Administrators, which will be responsible for the administration of the Gross Settlement Amount, as defined below, and all related matters, including all matters regarding settlement administration.

II. BACKGROUND

From approximately July 2, 2019 to June 4, 2020, Plaintiff was employed by Defendant to work in its marketing department. Plaintiff claims that she and the Covered Employees suffered various violations of the California Labor Code due to Defendant’s allegedly unlawful labor policies and practices, as alleged in the Litigation. Specifically, Plaintiff alleges in the Litigation that Defendant committed various labor violations, as set forth in the LWDA Notice and First Amended Complaint, against the Covered Employees, including herself. Defendant denies and disputes all of Plaintiff’s alleged claims and allegations.

Before reaching the proposed Settlement, the Parties litigated this action. On April 28, 2022, the Parties attended a full-day mediation with mediator Justice David Thompson (Ret.), a retired Justice for the California Court of Appeal and experienced jurist and employment law mediator, during which the Parties discussed and mediated all of the claims asserted in the Litigation. Prior to and in connection with the Parties’ mediation, Defense Counsel provided Plaintiff’s Counsel with the information requested by Plaintiff’s Counsel to evaluate Plaintiff’s asserted claims and allegations, as outlined in the Litigation. Specifically, Defense Counsel provided Plaintiff’s Counsel with information regarding the Covered Employees, including information regarding the number of Covered Employees, their rates of pay, and dates of

employment, as well as time card and payroll records for the Covered Employees. Defendant also produced its wage and hour policy and procedure related documents, including relevant portions of its employee handbooks and standalone policies. During the mediation, the Parties engaged in extensive good-faith arms-length negotiations for a full business day concerning possible resolution of the Litigation. However, the mediation did not yield an immediate resolution, and subsequent to the mediation the Parties continued to discuss a potential resolution with Justice Thompson, who ultimately made a mediator's proposal that was accepted by the Parties several days following the mediation. The Parties, however, did not agree on all the terms and continued to mediate via phone calls, emails, and Zoom sessions with Justice Thompson for an additional three months. In August 2022, the Parties were ultimately able to reach an agreement on the terms of a settlement to resolve the Litigation in accordance with the terms set forth in this Agreement.

Plaintiff's Counsel has conducted an investigation of the law and facts relating to the claims asserted in the Litigation and has concluded, taking into account the sharply contested issues involved, the defenses asserted by Defendant, the expense and time necessary to pursue the Litigation through trial and any appeals, the risks and costs of further prosecution of the Litigation, the risk of an adverse outcome, the uncertainties of complex litigation, and the substantial benefits to be received by the Plaintiff and Covered Employees pursuant to this Agreement, that a settlement with Defendant on the terms and conditions set forth herein is fair, reasonable, and adequate. Plaintiff, on her own behalf and on behalf of Covered Employees, has agreed to settle the Litigation with Defendant on the terms set forth herein.

Defendant denies each of the allegations and claims asserted against it in the Litigation, and denies any liability to the Covered Employees including Plaintiff. However, Defendant nevertheless desires to settle the Litigation for the purpose of avoiding the burden, expense and uncertainty of continuing litigation and for the purpose of putting to rest the controversies engendered by the Litigation.

This Agreement is intended to and does effectuate the full, final and complete resolution of all claims for civil penalties that were asserted, or could have been asserted, based on the facts stated in the Litigation, LWDA Notice and/or Plaintiff's State Court Complaint, as well as all claims for civil penalties, arising from, related to or attributable to the facts and/or claims stated in the Litigation, LWDA Notice and/or Plaintiff's State Court Complaint, whether known or unknown, suspected or unsuspected, by Plaintiff and other Covered Employees and the State of California as outlined in Section II herein above.

Under California Law, the State may assess and collect civil penalties from employers for violation of certain provisions of the Labor Code. Cal. Lab. Code §§ 2698 *et seq.* Under PAGA, however, if an "aggrieved employee" "give[s] written notice by online filing [to] the Labor and Workforce Development Agency and by certified mail to the employer of the specific provisions of [the Labor Code] alleged to have been violated, including the facts and theories to support the alleged violation," and the Labor and Workforce Development Agency thereafter decides not to investigate, as was the case here, or does investigate and determines that a citation against the employer should not issue, the employee may, "as an alternative" to enforcement by the State, act as a proxy or agent of the state's labor law enforcement agencies and bring a civil action under PAGA to recover civil penalties "on behalf of himself or herself and other current or former employees." "[C]ivil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the Labor and Workforce Development Agency...and 25 percent to the aggrieved employees."

California Labor Code § 2699(1)(2) provides that "The superior court shall review and approve any settlement of any civil action filed pursuant to this part. The proposed settlement shall be submitted to the agency at the same time that it is submitted to the court."

In consideration of the promises and agreements contained herein, the Parties agree and covenant as follows:

III. TERMS OF THE SETTLEMENT

Subject to submission of this Settlement Agreement to the LWDA by Plaintiff and no objection or disapproval by the LWDA, and subject to the Court's approval of the Settlement pursuant to Labor Code section 2699(1)(2), which Defense Counsel, Plaintiff's Counsel and the Parties agree to recommend in good faith to the Court, the Parties agree to the following binding settlement and disposal of the entire PAGA Claim, with prejudice.

A. Consideration. In exchange for the promises and the release of the PAGA Claim of the Covered Employees and State of California contained in this Settlement Agreement, Defendant agrees to pay the Settlement Administrator the Gross Settlement Amount in full settlement of the PAGA Claim within thirty (30) calendar days after the Effective Date. However, in no event shall Defendant be required to fund the Gross Settlement Amount before the judgment of the Court granting approval of this Settlement is final and no longer subject to appeal. The Gross Settlement Amount includes all payments associated with this Agreement, including all civil penalty payments to the Covered Employees and the California Labor and Workforce Development Agency ("LWDA") pursuant to the California Labor Code Private Attorneys General Act of 2004, including all amendments thereto, California Labor Code § 2698 et seq. (the "PAGA"), all Court-approved attorneys' fees and Litigation costs, all Administrative Costs, all expenses, all statutory penalties, all interest, and all employment taxes. The payments to be made from the Gross Settlement Amount, including the amounts of such payments, are subject to Court approval. The Settlement is non-reversionary and no claim forms need to be submitted. The Net Settlement Amount shall be distributed twenty-five percent (25%) to the Covered Employees, and seventy-five percent (75%) to the LWDA. The amount paid to the Covered Employees will be paid out based proportionally on the total number of Pay Periods during the Covered Period in which they worked, as discussed in further detail herein below.

Notwithstanding the foregoing, Defendant estimates that the Covered Employees worked a total of approximately 640 Pay Periods from the start of the Covered Period through and

including April 28, 2022 (e.g., from June 3, 2020 through and including April 28, 2022). Should the Covered Employees List (as defined below), upon delivery to the Settlement Administrator, include more than a ten percent (10%) increase in the total number of Pay Periods worked by Covered Employees from the start of the Covered Period through and including April 28, 2022 (e.g., more than 10% greater than 640 Pay Periods worked by Covered Employees as of and including April 28, 2022, for a total of 705 or more Pay Periods worked by Covered Employees as of and including April 28, 2022), then there shall be a pro rata adjustment to the Gross Settlement Amount, which shall automatically increase by the same percentage that the actual Pay Periods worked by Covered Employees from the start of the Covered Period through and including April 28, 2022 exceeds 705 (the “Escalation Requirement”).

B. Release of PAGA Claims by All Covered Employees (including Plaintiff) and the State of California. As of the Effective Date, regardless of whether they actually receive notice of the Settlement or any payment pursuant to the Settlement, Plaintiff, the Covered Employees, and the State of California hereby release the Released Persons from all claims, liabilities and/or causes of action for civil penalties for violations allegedly occurring during the Covered Period that Plaintiff, the Covered Employees, and/or the State of California may have under the California Labor Code, IWC Wage Orders, state regulations, and/or any other provisions of state law, whether known or unknown, suspected or unsuspected, as to any allegations that Plaintiff and/or the Covered Employees suffered Labor Code and/or other violations based on and/or arising from any of the causes of action, statutes, liabilities, allegations and/or claims asserted in the PAGA Claim and/or LWDA Notice, or that could have been alleged in the PAGA Claim based on the facts alleged in the PAGA Claim and/or LWDA Notice (the “Released PAGA Claims”). Without in any way limiting the foregoing, and for the avoidance of doubt, Plaintiff, the Covered Employees and the State of California release the Released Persons from all of the Released PAGA Claims on behalf of themselves and their heirs, executors, representatives, administrators, agents, insurers, successors and assigns. Further, without in any way limiting the

foregoing, and for the avoidance of doubt, Plaintiff, the Covered Employees and the State of California also release the Released Persons from any and all claims for attorneys' fees and/or Litigation costs incurred in connection with the PAGA Claim or otherwise, including, but not limited to, in connection with prosecuting the Released PAGA Claims, other than those attorneys' fees and Litigation costs set forth in this Agreement that are to be paid from the Gross Settlement Amount to the extent they are approved by the Court.

1542 Waiver of PAGA Claim

Further, without in any way limiting the foregoing, Plaintiff, the Covered Employees and the State of California understand that this Agreement extends to all claims of every nature and kind, known or unknown, suspected or unsuspected, as to the Released PAGA Claims (as defined in Section III(B) above) only. Plaintiff, the Covered Employees and the State of California hereby expressly waive and relinquish any and all claims, rights or benefits that they may have under California Civil Code § 1542 as to the Released PAGA Claims only, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT 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, the Covered Employees and/or the State of California may hereafter discover claims or facts in addition to, or different from, those which they know or believe to exist, but Plaintiff, the Covered Employees and the State of California expressly agree to fully, finally and forever settle and release any and all claims against the Released Persons, known or unknown, suspected or unsuspected, which exist or may exist, as to the Released PAGA Claims (as defined in Section III(B) above) only. Plaintiff, the Covered Employees and the State of California further acknowledge, understand and agree that this Agreement would not have been entered into were it not for this representation and commitment.

C. Statement of No Admission. Defendant denies liability to Plaintiff and to the Covered Employees on any and all claims, theories, and/or causes of action asserted or that could have been asserted.

This Agreement does not constitute, and is not intended to constitute, an admission by Defendant as to the merits, validity, or accuracy of any of the allegations or claims made against it in the Litigation.

Nothing in this Agreement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of the negotiations leading to this Agreement or the Settlement, is intended by the Parties to constitute, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in this case or any other judicial, arbitral, administrative, investigative or other forum or proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. The Parties themselves agree not to introduce, use, or admit this Agreement, directly or indirectly, in this case or any other judicial, arbitral, administrative, investigative or other forum or proceeding, as purported evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity, or for any other purpose. Notwithstanding the foregoing, this Agreement may be used in any proceeding before the Court that has as its purpose the approval, interpretation, implementation, or enforcement of this Agreement or any orders or judgments of the Court entered in connection with the Settlement. The Parties may also submit the Motion for Approval (as defined below) and the Agreement to the LWDA for the purposes of securing approval of the Settlement.

None of the documents produced or created by Plaintiff or the Covered Employees in connection with the claims procedures or claims resolution procedures constitute, and they are not intended to constitute, an admission by Defendant of any violation of any federal, state, or local

law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity.

D. Tax Treatment of PAGA Payments. For withholding tax characterization purposes and payment of taxes, the settlement payments to the Covered Employees shall be deemed and are allocated by the Parties as one-hundred percent penalties, or miscellaneous income, and shall not be subject to withholdings. Forms 1099 will be distributed at times and in the manner required by the Internal Revenue Code of 1986 (the “Code”) and consistent with this Agreement by the Settlement Administrator. If the Code, the regulations promulgated thereunder, or other applicable tax law is changed after the date of this Agreement, the processes set forth in this Section may be modified in a manner for compliance with any such changes.

E. Settlement Administrator. Plaintiff, through her counsel, has selected Phoenix Settlement Administrators as the Settlement Administrator to administer the Settlement, which includes but is not limited to distributing and responding to inquiries about the Notice of PAGA Settlement and Release of PAGA Claims. The Settlement Administrator shall also be responsible for distributing all payments pursuant to this Agreement, including the payment to the LWDA and all individual payments to the Covered Employees, as well as any and all tax reporting and related matters. The Settlement Administrator shall also be responsible for any other tasks that the Parties mutually agree or the Court orders the Settlement Administrator to perform.

The charges and expenses of the Settlement Administrator shall be paid from the Gross Settlement Amount and shall not exceed \$2,500.

F. Notice to Covered Employees and Funding of Settlement. Plaintiff and Defendant, through their respective attorneys, have jointly prepared a Notice of PAGA Settlement and Release of PAGA Claims (the “Notice”), which is attached as Exhibit C hereto (and which will also be provided in Spanish). In substance, the Notice will be provided to the Covered Employees as follows:

No later than thirty (30) calendar days after the Effective Date, Defendant shall provide the Settlement Administrator with a list of all Covered Employees ("Covered Employees List"). The Covered Employees List will include each Covered Employee's: (1) name; (2) last known address; (3) number of Pay Periods worked as a Covered Employee during the Covered Period; and (4) social security number. The Covered Employee List and information contained therein shall be treated as and remain confidential, shall be used solely by the Settlement Administrator to manage the notice and payment process described herein, and shall not be disclosed to anyone other than the Settlement Administrator, except to applicable taxing authorities, or pursuant to express written authorization of Defendant or the individual in question, or by order of the Court. In the event that the Settlement Administrator receives a subpoena for the production of documents or information reflecting the information provided by Defendant pursuant to this paragraph, the Settlement Administrator shall promptly notify Defendant and provide a copy of any such subpoena. The Settlement Administrator shall run all the addresses provided through the United States Postal Service NCOA database (which provides updated addresses for any individual who has moved in the previous four years who has notified the U.S. Postal Service of a forwarding address) to obtain current address information.

In the same period, no later than thirty (30) calendar days after the Effective Date, Defendant shall deposit the Gross Settlement Amount into a qualified settlement account (to be established by the Settlement Administrator).

No later than ten (10) calendar days after the receipt of the Covered Employees List and the deposit of the full Gross Settlement Amount, the Settlement Administrator shall mail the Notice (attached hereto as Exhibit C) together with settlement payments to all Covered Employees (pursuant to the formula in part G below) by first-class United States mail, postage prepaid, to the last known address of each recipient. The Settlement Administrator shall direct the Postmaster to forward any undeliverable Notices and settlement payment to the Settlement Administrator. For each Notice and settlement payment that is returned as undeliverable, the Settlement Administrator

shall promptly attempt to locate the Covered Employee by using an address refresher database. At the same time, no later than ten (10) calendar days after the receipt of the Covered Employees List and deposit of the full Gross Settlement Amount, the Settlement Administrator shall disburse seventy-five percent of the Net Settlement Amount to the LWDA and Plaintiff will provide notice to the LWDA of the fact that the settlement has been approved by the Court along with a copy of the Settlement Agreement and the Court order and judgment confirming the approval of the settlement. To be clear, Plaintiff will and hereby agrees to comply with the requirements of Labor Code section 2699(1), including, but not limited to, 2699(1)(3).

G. Payment of PAGA Penalties. Covered Employees will receive a lump sum payment in an amount determined by the Settlement Administrator in accordance with the provisions of this Agreement. The Net Settlement Amount (“NSA”) is computed by subtracting from the Gross Settlement Amount the court approved amounts of: the attorney’s fees and Litigation costs awarded to counsel for Plaintiff (if any), and the Administrative Costs.

Seventy-five percent (75%) of the NSA shall be paid to the LWDA; the remaining twenty-five percent (25%) of the NSA shall be paid to Covered Employees based on the following formula:

The Covered Employee portion of the NSA (25%) (estimated to be \$6,369.00) shall be divided amongst the Covered Employees based on their number of Pay Periods worked during the Covered Period as reflected in Defendant’s records. Specifically, the Covered Employee portion of the NSA (25%) shall be divided by the total Pay Periods worked by all Covered Employees during the Covered Period as reflected in Defendant’s records to yield the “Employee Settlement Share Value.” Each Covered Employee shall be paid an amount equal to the number of total Pay Periods they worked for Defendants during the Covered Period multiplied by the Employee Settlement Share Value.

The settlement checks issued to each Covered Employee shall remain valid for one hundred eighty (180) days from the date of issuance. Funds represented by settlement checks returned as

undeliverable and those settlement checks remaining uncashed for more than one hundred eighty days after issuance shall be voided and then shall be transmitted to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Code of Civil Procedure section 1500, *et seq.* in the names of those Covered Employees who did not cash their settlement checks until such time they claim their property. Defendant will not be required to pay any interest on any settlement funds distributed to the Settlement Administrator.

If a check is returned to the Settlement Administrator as undeliverable, the Settlement Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace search and, if another address is identified, shall mail the check to the newly identified address. If the Settlement Administrator is unable to obtain a valid mailing address through this process, the monies represented by the check shall be turned over according to the above procedures.

H. Attorneys' Fees and Litigation Costs. Defendant shall not oppose an application by Plaintiff's Counsel for, and Plaintiff's Counsel shall not seek or receive an amount in excess of \$14,124.00, which represents approximately one-third of the Gross Settlement Amount, for all past and future attorneys' fees necessary to prosecute, settle and administer the Litigation and this Settlement. Additionally, Defendant shall not oppose an application by Plaintiff's Counsel for, and Plaintiff's Counsel shall not seek or receive an amount in excess of \$700.00, which represents all past and future Litigation costs and expenses necessary to prosecute, settle and administer the Litigation and this Settlement. Any attorneys' fees or Litigation costs awarded to Plaintiff's Counsel by the Court shall be deducted from the Gross Settlement Amount for the purpose of determining the Net Settlement Amount. The "future" aspect of these amounts includes, without limitation, all time and expenses expended by Plaintiff's Counsel in defending the Settlement and securing approval. There will be no additional charge of any kind to either the Covered Employees or request for additional consideration from Defendant for such work. This amount shall include all attorneys' fees, Litigation costs and expenses for which Plaintiff and Plaintiff's Counsel could claim under any legal theory whatsoever. No later than forty (40) calendar days following the

Effective Date, the Settlement Administrator shall disburse payment from the Gross Settlement Amount for the amount of attorneys' fees and Litigation costs approved by the Court to Plaintiff's Counsel. Should the Court approve a lesser percentage or amount of attorneys' fees and/or Litigation costs than the amount that Plaintiff's Counsel ultimately seeks, then the unapproved portion or portions shall revert into the Net Settlement Amount and the lower award amounts will not reduce or impact the enforceability of this Agreement in any way.

I. Court Approval. Plaintiff will bring a motion before the Court at Plaintiff's expense for an order approving the Settlement, including the Released PAGA Claims, Plaintiff's Counsel's attorneys' fees and Litigation costs, and Settlement Administrator costs (the "Motion for Approval"). The Motion for Approval shall also, among other things, request that the Court enter judgment approving the Settlement and this Agreement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions. Plaintiff's Counsel will prepare the Motion for Approval, and will provide Defense Counsel with copies of the Motion for Approval and all supporting documents (including, but not limited to, the Court order and judgment confirming and/or entering the approval of the Settlement) in a finalized form substantially ready to be filed with the Court. Specifically, Plaintiff's Counsel shall provide Defense Counsel with a copy of the Motion for Approval and its supporting documents, all in final form; Defense Counsel shall have five (5) full business days to review and provide comments/suggested revisions; Plaintiff's Counsel shall have five (5) full business days to consider the comments and revisions and provide an updated Motion for Approval and its supporting documents to Defense Counsel for further review, and Defense Counsel shall have five (5) full business days to provide comments/suggested revisions; if Defense Counsel has additional comments or revisions, Plaintiff's Counsel shall have five (5) full business days to provide a final version of the Motion for Approval and its supporting papers to Defense Counsel, and Defense Counsel shall have five (5) business days to approve the final version of the documents or state to Plaintiff's Counsel what the remaining objections or concerns are. Plaintiff and Plaintiff's Counsel

on the one hand, and Defendant and Defense Counsel on the other hand, agree to work together in good faith to attempt to resolve any objections or concerns the other might have, if any, before the Motion for Approval and its supporting papers are filed with the Court. If Plaintiff files the Motion for Approval and/or any of its supporting documents with any pending objection(s) by Defense Counsel, Defense Counsel may file an opposition or other challenge to the Motion for Approval and/or any of its supporting documents, limited to the same pending objection(s) only, including filing such response on an *ex parte* basis.

With respect to the proposed final Order and Judgment only, Defense Counsel shall have the right to approve the contents of the Order and Judgment, and Plaintiff's Counsel shall not file these documents until the parties have agreed regarding their content. On the same date on which the Motion for Approval is filed with the Court, Plaintiff's Counsel shall concurrently submit the Motion for Approval and supporting papers to the LWDA in compliance with Labor Code section 2698 *et seq.* This Agreement and the Settlement is contingent upon approval by the Court and the entry of judgment. Plaintiff agrees to take all steps as may be reasonably necessary to secure approval of the Settlement, to the extent not inconsistent with the terms of this Agreement, and will not take any action adverse to Defendant in obtaining court approval, and, if necessary, appellate approval, of the Settlement in all respects.

Plaintiff and Plaintiff's counsel expressly agree that they will not file any objection to the terms of the Settlement or assist or encourage any person or entity to file any such objection. Defendant and Defendant's counsel reserve the right to object to the Motion for Approval, and/or any documents related thereto, including on an *ex parte* basis, and Plaintiff waives the right to argue any such *ex parte* motion or objection, if any, fails due to a lack of showing of irreparable harm, immediate danger, or other exigent circumstances or statutory bases for granting *ex parte* relief by Defendant, including pursuant to California Rules of Court, Rule 3.1202(c). Except as otherwise set forth in this Agreement, Defendant and Defendant's counsel expressly agree that they will not file any objection to the terms of the Settlement or assist or encourage any person or

entity to file any such objection. Except as otherwise set forth in this Agreement, The Parties and their counsel expressly agree that they will not appeal any judgment entered in conformance with this Agreement. Further, upon completion of all distributions in accordance with the terms of the judgment entered in conformance with the terms of this Agreement, Plaintiff's Counsel shall prepare, file and serve on Defense Counsel an Acknowledgment of Satisfaction of the judgment in full.

As of the Effective Date, Plaintiff will: (i) be bound by the terms and conditions of this Agreement and the releases set forth therein; and (ii) be deemed to have waived all objections and oppositions to the fairness, reasonableness and adequacy of the Settlement and the Court's order granting approval. As of the Effective Date, Defendant will be bound by the terms and conditions of this Agreement and be deemed to have waived all objections and oppositions to the fairness, reasonableness and adequacy of the Settlement..

If the Court should, for any reason, decline to approve the Settlement as set forth in this Agreement, the Parties agree to use their best efforts and to negotiate in good faith in an effort to resolve and/or address the Court's reason(s) for denying approval by amending this Agreement or otherwise. If, after exhausting their best efforts to do so, they are unable to reach agreement and/or to obtain Court approval, this Agreement shall be considered null and void, and all Parties to this Settlement shall stand in the same position, without prejudice, as if the Settlement Agreement had been neither entered into nor filed with the Court.

J. Jurisdiction. The Court has jurisdiction over the Parties and the subject matter of this Litigation. The Litigation includes claims that, while Defendant denies them in their entirety, would, if proven, authorize the Court to grant relief pursuant to the applicable statutes. After the Court has approved the Settlement and after the Court has ordered the entry of judgment, pursuant to California Code of Civil Procedure section 664.6 the Court shall retain jurisdiction of this action solely for the purpose of interpreting, implementing, and enforcing this Settlement consistent with the terms set forth herein.

K. Severability. The Parties agree that if any provision(s) of this Settlement Agreement is determined to be invalid or unenforceable, then to the maximum extent permitted by law, any such provision(s) shall be deemed severed and the remaining provisions of this Agreement shall remain in full force and effect unless the effect of the severing of any such provision(s) adversely and materially affects the overall purpose of the Agreement, to wit: the full, final and complete release and resolution of the Litigation and all claims for civil penalties that were asserted, or could have been asserted, based on the facts stated in the Litigation, LWDA Notice and/or Plaintiff's State Court Complaint, as well as all claims for civil penalties, arising from, related to or attributable to the facts and/or claims stated in the Litigation, LWDA Notice and/or Plaintiff's State Court Complaint, whether known or unknown, suspected or unsuspected, by Plaintiff and other Covered Employees and the State of California. In the event of a breach, this Agreement may be specifically enforced.

L. Publicity. Defendant, Plaintiff, and Plaintiff's Counsel agree to limit public comment on this Settlement, the Litigation, and Plaintiff's claims to stating that the matter has been resolved to the satisfaction of the Parties. Neither the Parties nor their counsel will initiate public comment, including but not limited to press inquiries or website, blog, or social media postings and represent that they will not post anything on a website or social media regarding this Settlement, or respond to inquiries from, or otherwise communicate with third parties, including the press, regarding this Settlement, other than to state that this matter has been resolved.

IV. MISCELLANEOUS PROVISIONS

A. Stay of the Litigation. Plaintiff and Defendant agree to a stay of this Litigation including Plaintiff's State Court Case and all pending deadlines immediately, pending approval of the Settlement by the Court. In the event that Plaintiff's Motion for Approval is denied, Defendant shall have thirty (30) calendar days from the date of the Order denying Plaintiff's Motion for Approval to serve objections and responses to Plaintiff's first sets of outstanding written discovery, consisting of Plaintiff first sets of propounded Special Interrogatories, Requests for Production,

Requests for Admissions, Form Interrogatories—General, and Form Interrogatories—Employment law.

B. Interpretation of the Agreement. This Agreement constitutes the entire agreement between Plaintiff and Defendant with respect to the subject matter hereof; notwithstanding the foregoing, Plaintiff has entered or will enter into a settlement agreement resolving her individual claims against Defendant and other related and affiliated persons and entities, which is documented in a separate agreement entitled CASE NO. 21STCV20152 INDIVIDUAL CLAIMS SETTLEMENT AGREEMENT AND GENERAL RELEASE that shall survive this agreement and be separately enforceable, as discussed further below. Except as expressly provided herein, this Agreement has not been executed in reliance upon any other written or oral representations or terms, and no such extrinsic oral or written representations or terms shall modify, vary or contradict its terms. In entering into this Agreement, the Parties agree that this Agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and enforced under the laws of the State of California, both in its procedural and substantive aspects, without regard to its conflict of laws provisions. Any claim arising out of or relating to the Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior Court of the State of California for the County of Los Angeles, and Plaintiff and Defendant hereby consent to the personal jurisdiction of the Court over them solely in connection therewith. The foregoing is only limited to disputes concerning this Agreement and in no way limits or negates the enforceability and effect of any arbitration agreements signed by employees of Defendant obligating them to arbitrate any and all claims on an individual (and not on a class, collective, or representative) basis. Plaintiff, on her own behalf and on behalf of the Covered Employees, as well as Defendant participated in the negotiation and drafting of this Agreement and each had available to them the advice and assistance of independent counsel such that the language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent. As such, in the event that

any language in this Agreement is held to be uncertain or ambiguous, any such language shall not be interpreted against any Party based on authorship of such language. Each of the Parties and their counsel have reviewed and revised this Agreement, and the normal rule of construction to the effect of 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 that the attorney approving this Agreement as to form on their behalf is the attorney employed to represent them with respect to this Agreement, and all matters covered by and related to it, and they have been fully advised by those attorneys with respect to their rights and obligations as to this Agreement. The Parties declare that they know and understand the contents of this Agreement, and they have executed it voluntarily. Further, this Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument or any portion thereof to be drafted, or in favor of the party receiving a particular benefit under this Agreement.

The terms and conditions of this Agreement constitute the exclusive and final understanding and expression of all agreements between Plaintiff and Defendant with respect to the Settlement of the Litigation. Notwithstanding the foregoing, in connection with the Settlement of the Litigation Plaintiff is required to and shall sign or has already signed a separate individual settlement agreement entitled CASE NO. 21STCV20152 INDIVIDUAL CLAIMS SETTLEMENT AGREEMENT AND GENERAL RELEASE that includes a full general release of all claims she has or may have ever had against Defendant and other related and affiliated persons and entities specified in that agreement, including a full waiver of Civil Code section 1542. This Agreement in no way alters, modifies, supersedes or amends the separate individual settlement agreement Plaintiff shall sign or has already signed in connection with the Settlement of the Litigation and, likewise, nothing in Plaintiff's separate individual settlement agreement shall alter, modify, supersede or amend this Agreement.

C. Further Cooperation. Plaintiff and Defendant and their respective attorneys shall proceed diligently to prepare and execute all documents, to seek the necessary approvals from the Court, and to do all things reasonably necessary or convenient to consummate the Agreement as expeditiously as possible.

D. Confidentiality and Destruction of Documents. The Parties and their counsel agree to delete and destroy any and all documents and Electronically Stored Information, and any other forms or items of information received from each other in this Litigation, consistent with the terms of the “Stipulation and Protective Order – Confidential and Highly Confidential Designations” between the Parties, a copy of which is attached hereto as Exhibit D (the “Stipulated Protective Order”). By this paragraph, Defendant hereby requests that Plaintiff delete and destroy any and all such documents pursuant to paragraph 23 of the Stipulated Protective Order, and Plaintiff and Defendant agree that all such documents shall be destroyed pursuant to subsection “b” of paragraph 23. Plaintiff shall destroy such documents within 15 days of Defendant’s payment of the Gross Settlement Amount to the Settlement Administrator, and this timing requirement overrides any inconsistent timing requirements in paragraph 23 of the Stipulated Protective Order. Plaintiff and Plaintiff’s Counsel shall provide written verification that all such documents and information have been deleted and/or destroyed within 10 days of the deadline for the deletion and destruction of documents and information. By this paragraph, Plaintiff hereby requests that Defendant delete and destroy any and all such documents pursuant to paragraph 23 of the Stipulated Protective Order, and Plaintiff and Defendant agree that all such documents shall be destroyed pursuant to subsection “b” of paragraph 23. Defendant shall destroy such documents within 15 days of Defendant’s payment of the Gross Settlement Amount to the Settlement Administrator, and this timing requirement overrides any inconsistent timing requirements in paragraph 23 of the Stipulated Protective Order. Defendant and Defense Counsel shall provide written verification that all such documents and information have been deleted and/or destroyed within 10 days of the deadline for the deletion and destruction of documents and information.

E. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and may be sent by email. Signatures sent by fax, email or as an electronic image are agreed to be binding as if they were originals.

F. Authority. Each individual signing below warrants that they have the authority to execute this Agreement on behalf of the party for whom or which that individual signs.

G. Deadlines Falling on Weekends or Holidays. To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday, or legal holiday, that deadline shall be continued until the following business day.

H. No Prior Assignments. The Parties hereto represent, covenant and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights released and discharged by this Settlement Agreement. Each Party shall defend and indemnify the other Parties from and against an breach of the representation in this section.

I. Attorneys' Fees in Enforcement Actions: Except as otherwise provided in this Settlement Agreement, in the event that any Party to this Settlement Agreement institutes any legal action or other proceeding against any other Party to enforce the provisions of this Settlement Agreement, to interpret this Settlement Agreement, and/or to declare rights and/or obligations under this Settlement Agreement, the successful Party shall be entitled to recover from the unsuccessful Party reasonable attorneys' fees and costs incurred in connection with any such action(s), including attorneys' fees and costs on appeal.

J. Captions: Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.

K. Modification: This Settlement Agreement may not be changed, altered, or modified, except in a writing signed by the Parties hereto which expresses, by its terms, an intention to modify this Agreement, and which is approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by all of the Parties hereto.

L. No Unintended Waivers. No waiver by any Party of any provision of this Agreement shall be deemed a waiver of any other provision of this Agreement or any subsequent breach of the same or any other provision of this Agreement.

M. No Tax Advice. Defendant does not intend anything contained in this Agreement to constitute legal advice regarding the taxability of any amount paid hereunder, and Plaintiff and the Covered Employees agree that they are not relying upon Defendant, the Released Persons, or any of them, for tax advice. The tax issues for each Covered Employee may be unique, and each Covered Employee is advised to obtain tax advice from their own tax advisor with respect to any payment made pursuant to this Agreement.

N. Headings. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience or reference only and do not constitute a part of this Agreement.

O. Admissibility. The Parties hereby agree that this Agreement is admissible or subject to disclosure and waive any confidentiality protections for this Agreement under California Evidence Code section 1123.

P. Successors: This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and to their respective heirs, executors, personal representatives, trustees, executors, administrators, successors and assigns.

THE ABOVE TERMS AND CONDITIONS ARE HEREBY VOLUNTARILY AGREED TO BY
THE UNDERSIGNED PARTIES.

Date: _____, 2022

08 / 12 / 2022



Plaintiff Elidet Bordon, on behalf of herself,
the Covered Employees and the State of
California

Date: 8/11, 2022



Defendant AFR Group, LLC
By: Carl Renezedet, Managing Member

EXHIBIT A

MATTHEW GUTIERREZ, SBN 271206
mg@gutierrezderham.com
GUTIERREZ DERHAM LAW FIRM LLP
26459 Rancho Parkway S, Suite 1
Lake Forest, CA 92630
Telephone: (323) 676-6676

Attorneys for Plaintiff, ELIDET BORDON,
individually and as a proxy for the State of California

FILED
Superior Court of California
County of Los Angeles

08/09/2021

Sherril R. Carter, Executive Officer / Clerk of Court

By: S. Tresvami Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
[UNLIMITED CIVIL]

ELIDET BORDON, an individual,

Plaintiff,

vs.

AFR GROUP, LLC, a limited liability company;
CAREER STRATEGIES TEMPORARY, INC.
a corporation; and DOES 1 through 5, inclusive,

Defendants.

Case No.: 21STCV20152

*Assigned for All Purposes to the Honorable
Judge Patricia D. Nieto in Dept. 24*

FIRST AMENDED COMPLAINT FOR:

1. Failure to Pay Overtime Wages in Violation of Labor Code § 510
2. FLSA Unpaid Overtime Wages
3. Unpaid Overtime Wages Unpaid Wages and Failure to Pay Minimum Wages
4. Labor Code § 203 Waiting Time Penalty
5. Failure to Provide Compliant Itemized Wage Statements
6. Failure to Reimburse and Indemnify for Expenditures
7. Labor Code § 1102.5 Retaliation
8. Wrongful Discharge in Violation of Public Policy
9. Private Attorneys General Act

Complaint Filed: May 28, 2021

DEMAND FOR JURY TRIAL

Plaintiff, ELIDET BORDON, alleges as follows:

JURISDICTION AND VENUE

PARTIES

3. Plaintiff is an individual who at, all relevant times, has resided in California.

4. Defendant AFR GROUP, LLC (“AFR”) is a limited liability company that conducted, and is conducting, business in the State of California. AFR registered the address 64 Maxwell, Irvine, CA 92618 with California Secretary of State as its principal place of business in California.

5. Defendant CAREER STRATEGIES TEMPORARY, INC. ("CST"), a corporation that conducted, and is conducting, business in the State of California. CST registered the address 719 N. Victory Blvd. Burbank, CA 91502 with California Secretary of State as its principal place of business in California.

6. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as DOES 1-5, inclusive, and therefore sues these defendants by such fictitious names and capacities. Plaintiff will seek leave to amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes and, on that basis, alleges that each fictitiously named Defendants are responsible in some manner for the occurrences herein alleged, and that Plaintiff's injuries were proximately caused by the conduct of such defendant.

GENERAL ALLEGATIONS

7. On or about August 7, 2018, CST, an employment agency, whose main office was 21031 Ventura Blvd, Suite 1005 Woodland Hills, CA 91364, hired Plaintiff.

8. At some point after August 7, 2018, CST placed Plaintiff to work for AFR in Oxnard California until about July 26, 2019. During this timeframe, there were occasions when Defendants did not pay Plaintiff for all hours worked. During this timeframe, there were occasions when Defendants did not pay Plaintiff for all overtime hours worked.

9. On or about July 26, 2019, Plaintiff became a permanent employee of AFR. Her employment with AFR continued until her termination date of June 4, 2020. During her employment

1 with AFR, AFR regularly required Plaintiff to work without being paid for all hours worked and for all
2 overtime hours worked. During her employment with AFR, AFR did not pay for all of Plaintiff's
3 reasonable business expenses of which it knew she was incurring, including internet usage regarding
4 work related purposes. During her employment with AFR, AFR did not provide accurate itemized wage
5 statement showing all the accurate hours worked by Plaintiff. At the end of her employment with AFR,
6 AFR did not pay for all her final wages owed because AFR had not previously paid for all of her regular
7 and overtime hours worked. Because AFR did these things to Plaintiff as part of its regular business
8 practice, she believes that AFR did the same things to its other employees and is continuing this practice
9 as to its other employees. The allegations below for each statutory violation affecting other employees
10 is based on that belief.

11 10. Plaintiff believes that, as a company-wide practice, AFR regularly required other
12 employees to work without being paid for all hours worked and for all overtime hours worked. Plaintiff
13 believes that, as a company-wide practice, AFR did not pay for all its other employees' reasonable
14 business expenses of which it knew they were incurring, including internet usage regarding work related
15 purposes. Plaintiff believes that, as a company-wide practice, AFR did not provide accurate itemized
16 wage statement showing all the accurate hours worked by other employees.

17 11. In or about May 2020, Plaintiff informed Mandy Hall, AFR's HR Manager, that AFR
18 was not complying with the law because it was not providing legal notices regarding tenants' rights
19 about Coronavirus-19.

20 12. Mandy Hall had authority to investigate what Plaintiff had reported. In response, AFR
21 terminated Plaintiff's employment effective June 4, 2020.

22 13. On June 3, 2020, Sean Sparks called Plaintiff to the office to go over the time lapse
23 camera. This was her day off and AFR should have paid her for the work time she spent with Sean
24 Sparks.

25 14. On June 4, 2020, Lisa Jack called Plaintiff into Sean Sparks' office to talk. No one else
26 was there, just Plaintiff and Ms. Jack. Ms. Jack said it was not working out and provided Plaintiff with:
27 a severance offer; paperwork for filing for unemployment; paperwork for COBRA; and paperwork for
28

1 Plaintiff's investments. Plaintiff signed the termination form. Ms. Jack also had Plaintiff's intended
2 final paycheck ready.

3 15. In or about late June 2021, Plaintiff signed up for unemployment benefits with the EDD,
4 and one of the interviews asked her if her termination from AFT was voluntary or involuntary. For
5 Plaintiff to qualify, the interviewer needed to verify with AFR that they had involuntarily terminated her
6 employment. The EDD subsequently provided Plaintiff with unemployment benefits, which means the
7 EDD confirmed that AFR had terminated her employment.

8 **FIRST CAUSE OF ACTION**

9 **FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF LABOR CODE § 510**

10 **(AGAINST ALL DEFENDANTS AND DOES 1-5)**

11 16. Plaintiff incorporates each allegation set forth in all the preceding paragraphs as though set
12 forth herein in full again.

13 17. Any employee receiving less than the California legal overtime compensation applicable
14 to the employee is entitled to recover in a civil action the unpaid balance of the full amount of overtime
15 compensation including interest and reasonable attorney's fees. Lab. Code § 1194(a).

16 18. "Any work in excess of eight hours in one workday and any work in excess of 40 hours
17 in any one workweek and the first eight hours worked on the seventh day of work in any one workweek
18 shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an
19 employee." Lab. Code § 510(a).

20 19. On numerous occasions during Plaintiff's employment, he worked more than eight hours
21 per workday and more than 40 hours per workweek and was not compensated for those overtime hours
22 worked more than eight per day and 40 per week. As such, Defendant violated Labor Code Sections
23 510 and 1198 because it violated the above-referenced as Industrial Welfare Commission Orders, as
24 applicable.

25 20. Any "person acting on behalf of an employer, who violates, or causes to be violated, any
26 provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare
27 Commission, or violates, or causes to be violated, Sections . . . 1194 . . . may be held liable as the
28 employer for such violation." Lab. Code § 558.1(a).

21. If the defendant does not keep accurate records of the hours worked by the plaintiff, then the plaintiff may prove the number of overtime hours worked by making a reasonable estimate of those hours. CACI 2703. As a direct and proximate result of the violations of law by Defendant, Plaintiff has worked a substantial number of hours without receiving overtime compensation, at the applicable rate, from Defendants, in accordance with California law.

22. Plaintiff has been damaged in an amount equal to the compensation to which he was entitled but was unlawfully deprived by Defendants, subject to proof at trial.

23. Pursuant to California Labor Code section 1194(a) Plaintiff is entitled to interest at the legal rate on the overtime wages owed to Plaintiff by Defendants.

24. Pursuant to California Labor Code section 1194(a), Plaintiff is entitled to an award of attorneys' fees, and costs.

SECOND CAUSE OF ACTION

UNPAID OVERTIME WAGES

(AGAINST ALL DEFENDANTS AND DOES 1-5)

25. Plaintiff incorporates each allegation set forth in all the preceding paragraphs as though set forth herein in full again.

26. Any employee receiving less than the legal overtime compensation, pursuant to the Fair Labor Standards Act at 29 United States Code section 201, *et seq.*, applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of overtime compensation including liquidated damages and reasonable *attorney's fees*. 29 U.S.C. § 216(b). Thus, Plaintiff is also entitled to liquidated damages in amount equal to unpaid overtime wages.

THIRD CAUSE OF ACTION

UNPAID WAGES AND FAILURE TO PAY MINIMUM WAGES

(AGAINST ALL DEFENDANTS AND DOES 1-5)

27. "Wages" includes all amounts for labor performed by employees of every description, including commission basis. Lab. Code § 200(a).

1 28. “All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2,
2 earned by any person in any employment are due and payable twice during each calendar month, on
3 days designated in advance by the employer as the regular paydays.” Lab. Code § 204(a).

4 29. “Notwithstanding any agreement to work for a lesser wage, any employee receiving less
5 than the legal minimum wage . . . applicable to the employee is entitled to recover in a civil action the
6 unpaid balance of the full amount of this minimum wage . . ., including interest thereon, reasonable
7 attorney’s fees, and costs of suit.” Lab. Code § 1194(a).

8 30. Defendant failed to pay Plaintiff’s wages for all time worked. As a result, Defendants
9 failed to pay Plaintiff the legal minimum wage.

10 31. Plaintiff has been harmed by Defendants’ failure to minimum wages due in an amount
11 according to proof at trial.

12 32. An employee receiving less than the legal minimum wage or legal overtime
13 compensation “is entitled to recover in a civil action the unpaid balance of the full amount of this
14 minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and
15 costs of suit.” Lab. Code § 1194.

16 33. An employee receiving less than the minimum wage set by an IWC order “shall be
17 entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest
18 thereon.” Lab. Code § 1194.2.

19 34. Plaintiff is entitled to the unpaid balance of the full wages due, minimum wages due,
20 liquidated damages, interest, and attorneys’ fees.

21 35. “Any employer or other person acting on behalf of an employer, who violates, or causes
22 to be violated, any provision regulating minimum wages or hours and days of work in any order of the
23 Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6,
24 1194, or 2802, may be held liable as the employer for such violation.” Lab. Code § 558.1(a).

25 **FOURTH CAUSE OF ACTION**

26 **LABOR CODE § 203 WAITING TIME PENALTY**

27 **(AGAINST AFR AND DOES 1-5)**

1 36. Plaintiff incorporates each allegation set forth in all the preceding paragraphs as though set
2 forth herein in full again.

3 37. "If an employer willfully fails to pay, without abatement or reduction, in accordance
4 with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or
5 who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same
6 rate until paid or until an action therefor is commenced." Lab. Code § 203(a).

7 38. Defendant failed to timely pay Plaintiff her wages on her last date of work, in violation of
8 Labor Code § 201, and failed to pay her the additional continuing wages as a penalty from the original
9 due date, in violation of Labor Code § 203.

10 39. Plaintiff has been harmed by Defendant's conduct and is entitled to a statutory waiting
11 time penalty, in an amount according to proof at trial, interest thereon, and an award of attorneys' fees,
12 and costs.

13 **FIFTH CAUSE OF ACTION**

14 **FAILURE TO PROVIDE COMPLIANT ITEMIZED WAGE STATEMENTS**

15 **(AGAINST AFR AND DOES 1-5)**

16 40. Plaintiff incorporates each allegation set forth in all the preceding paragraphs as though set
17 forth herein in full again.

18 41. "An employer, semimonthly or at the time of each payment of wages, shall furnish to his
19 or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages,
20 or separately if wages are paid by personal check or cash, an accurate itemized statement in writing
21 showing . . . (7) the name of the employee and only the last four digits of his or her social security number
22 or an employee identification number other than a social security number" Lab. Code § 226(a).

23 42. "Any employer or other person acting on behalf of an employer, who violates, or causes
24 to be violated, any provision regulating minimum wages or hours and days of work in any order of the
25 IWC, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held
26 liable as the employer for such violation." Lab. Code § 558.1(a).

27 ///

28 ///

43. On or about June 3, 2020, Defendant knowingly and intentionally failed to provide an itemized statement in writing showing accurate total hours worked by Plaintiff for the current pay period.

44. “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” Lab. Code § 226(e)(1).

45. An employee is deemed to suffer injury for purposes of section 226(e) if the employer fails to provide an itemized wage statement showing accurate total hours worked by Plaintiff and the employee cannot promptly and easily determine from the wage statement alone the accurate total hours worked. Lab. Code § 226(e)(2)(B)(i).

46. As a result of the knowing and intentional failure to provide compliant wage statements, Plaintiff has suffered an injury pursuant to section 226(e). As a result, Defendant is liable to Plaintiff for the amounts provided by California Labor Code § 226(e).

47. Pursuant to California Labor Code § 226(e), Plaintiff is also entitled to an award of reasonable attorneys’ fees and costs.

SIXTH CAUSE OF ACTION

FAILURE TO REIMBURSE AND INDEMNIFY FOR EXPENDITURES

(AGAINST AFR AND DOES 1-5)

48. Plaintiff incorporates each allegation set forth in all the preceding paragraphs as though set forth herein in full again.

49. California Labor Code § 2802(a) provides that “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties”

50. Labor Code “Section 2802 is designed to prevent employers from passing their operating expenses on to their employees.” *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal. 4th 554, 562 (2007).

1 51. Defendant violated Labor Code Section 2802 by passing on their operating expenses to
2 Plaintiff, in violation of Labor Code § 2802(a).

3 52. Plaintiff has been damaged by Defendant's failure to pay or reimburse work expenses in
4 an amount according to proof at trial.

5 53. Pursuant to California Labor Code § 2802, and other applicable statutes, Plaintiff is
6 entitled to payment or reimbursement of expenditures, in an amount according to proof at trial, interest
7 thereon, and an award of attorneys' fees, and costs.

8 **SEVENTH CAUSE OF ACTION**

9 **LABOR CODE § 1102.5 RETALIATION**

10 **(AGAINST AFR AND DOES 1-5)**

11 54. Plaintiff incorporates each allegation set forth in all the preceding paragraphs as though
12 set forth herein in full again.

13 55. An employer, or any person acting on behalf of the employer, shall not retaliate against an
14 employee for disclosing information, or because the employer believes that the employee disclosed or
15 may disclose information, to a person with authority over the employee or another employee who has the
16 authority to investigate, discover, or correct the violation or noncompliance, if the employee has
17 reasonable cause to believe that the information discloses a violation of state or federal statute, or a
18 violation of or noncompliance with a local, state, or federal rule or regulation.

19 56. Plaintiff disclosed information that she reasonably believed a violation of state or federal
20 statute, or a violation of or noncompliance with a local, state, or federal rule or regulation.

21 57. Plaintiff disclosed that information to a person with authority over her and to another
22 employee who has the authority to investigate, discover, or correct the violation or noncompliance.

23 58. Defendant believed that Plaintiff disclosed information to a person with authority over her
24 or another employee who has the authority to investigate, discover, or correct the violation or
25 noncompliance, that Plaintiff reasonably believed disclosed a violation of state or federal statute, or a
26 violation of or noncompliance with a local, state, or federal rule or regulation.

27 59. Defendant terminated Plaintiff's employment.

28 ///

1 60. Plaintiff's disclosures were a substantial motivating factor in Defendant's decision to
2 discharge Plaintiff.

3 61. Plaintiff was harmed.

4 62. Defendant's conduct was a substantial factor in causing her harm.

5 63. An aggrieved employee may bring a civil action for damages for violations of Labor
6 Code section 1102.5. Lab. Code §§ 1102.6, 1105.

7 64. Plaintiff is informed, believes, and thereon alleges that Defendant, by and through its
8 respective corporate officers, directors, and managing agents, ordered, authorized, approved, and/or
9 ratified the conduct herein alleged with intent to interfere with, restrain or deny the exercise of, or the
10 attempt to exercise, Plaintiff's rights under the Labor Code.

11 65. Plaintiff is informed, believes, and thereon alleges that in doing, ordering, authorizing,
12 approving, and ratifying the acts, policies, and practices alleged herein, Defendant, by and through its
13 officers, directors and managing agents acted in conscious and intentional disregard for the rights,
14 health, and welfare of Plaintiff.

15 66. Defendant acted with oppression, as such term is defined in Civil Code section
16 3294(c)(2), in that it engaged in despicable conduct that subjected Plaintiff to cruel and unjust hardship
17 in conscious disregard of her Labor Code rights.

18 67. Defendant acted with malice, as such term is defined in Civil Code section 3294(c)(1), in
19 that it engaged in despicable conduct carried out with a willful and conscious disregard for Plaintiff's
20 Labor Code rights.

21 68. Pursuant to Civil Code section 3294, as a consequence of Defendant, by and through its
22 owners, officers, directors and managing agents' promulgation and enforcement of the oppressive and
23 malicious workplace policies and practices described hereinabove, Plaintiff is entitled to recover her
24 actual damages, as well as exemplary damages against Defendant, in an amount deemed by the trier of
25 fact sufficient to punish, deter, and make an example of said Defendant.

26 **EIGHTH CAUSE OF ACTION**

27 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

28 **(AGAINST AFR AND DOES 1-5)**

1 69. Plaintiff incorporates each allegation set forth in all the preceding paragraphs as though
2 set forth herein in full again.

3 70. Plaintiff incorporates each allegation set forth in all the preceding paragraphs as though
4 set forth herein in full again.

5 71. Defendant's discharge of Plaintiff's employment violated fundamental public policies
6 articulated in the state statutes, regulations, local ordinances, and applicable case law.

7 72. The following factors played substantial or motivating roles in Defendant's decision to
8 discharge Plaintiff: Plaintiff's protected activity.

9 73. Plaintiff was harmed by Defendant's conduct. As a direct and proximate result of the
10 actions of Defendant, Plaintiff suffered losses in earnings and benefits. The exact amount of such losses
11 is presently unknown, and Plaintiff will seek leave of Court to amend this Complaint to set forth the
12 exact amount when it is ascertained.

13 74. As a direct, proximate and foreseeable result of Defendant's conduct, Plaintiff has
14 suffered, and continues to suffer, general damages and emotional distress, and other incidental and
15 consequential damages and expenses in an amount according to proof at trial, and in excess of this
16 Court's minimal jurisdiction.

17 75. The conduct of Defendant, and their managing agents and employees, constituted
18 oppression, fraud, malice and was motivated by hostility and ill will, thereby entitling Plaintiff to an
19 award of punitive damages against Defendant in an amount appropriate to punish and make an example
20 of said Defendant.

21 76. Plaintiff is informed, believes, and thereon alleges that Defendant, by and through its
22 respective corporate officers, directors, and managing agents, ordered, authorized, approved, and/or
23 ratified the conduct herein alleged with intent to discriminate against his in violation of fundamental
24 public policies.

25 77. Plaintiff is informed, believes, and thereon alleges that in doing, ordering, authorizing,
26 approving, and ratifying the acts, policies, and practices alleged herein, Defendant, by and through its
27 officers, directors and managing agents acted in conscious and intentional disregard for the rights,
28 health, and welfare of Plaintiff.

1 78. Defendant acted with oppression, as such term is defined in Civil Code section
2 3294(c)(2), in that they engaged in despicable conduct that subjected Plaintiff to cruel and unjust
3 hardship in conscious disregard of her rights.

4 79. Defendant acted with malice, as such term is defined in Civil Code section 3294(c)(1), in
5 that they engaged in despicable conduct carried out with a willful and conscious disregard for Plaintiff's
6 rights.

7 80. Pursuant to Civil Code section 3294, as a consequence of Defendant, by and through its
8 owners, officers, directors and managing agents' promulgation and enforcement of the oppressive and
9 malicious workplace policies and practices described hereinabove, Plaintiff is entitled to recover his
10 actual damages, as well as exemplary damages against Defendant, in an amount deemed by the trier of
11 fact sufficient to punish, deter, and make an example of said Defendant.

12 **NINTH CAUSE OF ACTION**

13 **PRIVATE ATTORNEYS GENERAL ACT**

14 **(AGAINST AFR AND DOES 1-5)**

15 81. Plaintiff incorporates each allegation set forth in all the preceding paragraphs as though set
16 forth herein in full again.

17 82. Pursuant to the California Labor Code Private Attorneys General Act ("PAGA"),
18 "Notwithstanding any other provision of law, any provision of [the California Labor Code] that provides
19 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any
20 of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code,
21 may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
22 himself or herself and other current or former employees pursuant to the procedures specified in Section
23 2699.3." Lab. Code § 2699(a). "For all provisions of [the California Labor Code] except those for which
24 a civil penalty is specifically provided, there is established a civil penalty for a violation of these
25 provisions." Lab. Code § 2699(f).

26 83. This PAGA suit "is fundamentally a law enforcement action." *Arias v. Super. Ct.*, 46
27 Cal. 4th 969, 986 (2009); *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348, 386-387
28 (2014) ("[E]very PAGA action, whether seeking penalties for Labor Code violations as to only one

1 aggrieved employee—the plaintiff bringing the action—or as to other employees as well, is a
2 representative action on behalf of the state.”); *Williams v. Super. Ct.*, 3 Cal. 5th 531, 538 (2017) (“a
3 PAGA suit, essentially a qui tam action filed on behalf of the state to assist it with labor law
4 enforcement”).

5 84. A PAGA “violation” includes, and is used in these allegations to mean, a failure to comply
6 with any requirement of the Labor Code. Lab. Code § 22. Under the PAGA, an “aggrieved employee”
7 means any person who was employed by the alleged violator and against whom only one of the alleged
8 violations was committed. Lab. Code § 2699(c). Plaintiff is an “aggrieved employee.” The relevant
9 period of the below allegations is from one year preceding the PAGA Notice, to present and ongoing.

10 ***Labor Code Violations §§ 2802, 510, 1194, 204, 1198, 226(a), 1174(d), 1102.5, 558, 210, 226.3,***
11 ***and 1174.5***

12 ***Labor Code § 2802***

13 85. “An employer shall indemnify his or her employee for all necessary expenditures or losses
14 incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her
15 obedience to the directions of the employer.” Lab. Code § 2802(a). In *Cochran v. Schwan’s*, the court
16 held:

17 If an employee is required to make work-related calls on a personal cell phone,
18 then he or she is incurring an expense for purposes of section 2802. It does not
19 matter whether the phone bill is paid for by a third person, or at all. In other
20 words, it is no concern to the employer that the employee may pass on the
21 expense to a family member or friend, or to a carrier that has to then write off a
22 loss. It is irrelevant whether the employee changed plans to accommodate
23 work-related cell phone usage. Also, the details of the employee’s cell phone
24 plan do not factor into the liability analysis. Not only does our interpretation
25 prevent employers from passing on operating expenses, it also prevents them
26 from digging into the private lives of their employees to unearth how they
27 handle their finances vis-à-vis family, friends and creditors. To show liability
28 under section 2802, an employee need only show that he or she was required to
use a personal cell phone to make work-related calls, and he or she was not
reimbursed.

Cochran v. Schwan’s Home Serv., Inc., 228 Cal. App. 4th 1137, 1144–45 (2014), review denied (Nov.
25, 2014).

1 86. Here, like in *Cochran*, if an employee is required to do work-related activities on a personal
2 cell phone, then she is incurring an expense for purposes of section 2802. Here, as in *Cochran*, to show
3 liability under section 2802, an employee need only show that she was required or directed to use a
4 personal cell phone to do work-related activities and was not reimbursed.

5 87. Defendant did not reimburse or pay Plaintiff or the other aggrieved employees for any
6 portion of their internet expenses, in violation of Labor Code § 2802(a).

7 88. Labor Code § 2802 does not have a civil penalty specifically provided. Thus, Labor Code
8 § 2699(f) is applicable to impose civil penalties of one hundred dollars (\$100) for each aggrieved
9 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
10 employee per pay period for each subsequent violation.

11 ***Labor Code § 510***

12 89. “Any work in excess of eight hours in one workday and any work in excess of 40 hours in
13 any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall
14 be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.”
15 Lab. Code § 510(a).

16 90. On numerous occasions Defendant did not pay Plaintiff overtime wages. Plaintiff and her
17 co-workers regularly worked more than eight hours per workday and more than 40 hours per workweek.
18 On numerous occasions they were not compensated for those overtime hours worked more than eight per
19 day and 40 per week. As such, Defendant violated Labor Code § 510.

20 91. California Labor Code section 510 does not provide for its own self-contained “civil
21 penalty” within the statute. Thus, California Labor Code section 2699(f)(2) applies to provide a civil
22 penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each
23 aggrieved employee per pay period for each subsequent violation.

24 ***Labor Code § 1194***

25 92. “Notwithstanding any agreement to work for a lesser wage, any employee receiving less
26 than the legal minimum wage . . . applicable to the employee is entitled to recover in a civil action the
27 unpaid balance of the full amount of this minimum wage . . ., including interest thereon, reasonable
28 attorney’s fees, and costs of suit.” Lab. Code § 1194(a).

1 93. On numerous occasions Defendant did not pay Plaintiff overtime wages. Plaintiff and her
2 co-workers regularly worked more than eight hours per workday and more than 40 hours per workweek.
3 On numerous occasions they were not compensated for those overtime hours worked more than eight per
4 day and 40 per week. This resulted in Plaintiff and the aggrieved employees working without being paid
5 a minimum wage. Therefore, Defendant violated IWC Wage Orders and consequently violated Labor
6 Code § 1194. California Labor Code section 1194 does not provide for its own self-contained “civil
7 penalty” within the statute. Thus, California Labor Code section 2699(f)(2) applies to provide a civil
8 penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each
9 aggrieved employee per pay period for each subsequent violation.

10 ***Labor Code § 204***

11 94. Labor Code Section 204(b)(1) provides that “all wages earned for labor in excess of the
12 normal work period shall be paid no later than the payday for the next regular payroll period.”

13 95. On numerous occasions Defendant did not pay Plaintiff overtime wages. Plaintiff and her
14 co-workers regularly worked more than eight hours per workday and more than 40 hours per workweek.
15 On numerous occasions they were not compensated for those overtime hours worked more than eight per
16 day and 40 per week. As a result, they worked in excess of 40 hours per week but were not paid overtime
17 compensation for the hours over 40 per workweek worked. As such, Defendant violated Labor Code
18 Section 204(b)(1) by failing to pay her for all the overtime wages that they earned which were in excess
19 of the normal work period, by the next payday which followed the overtime work. Labor Code Section
20 204 does not provide for its own self-contained civil penalty within the statute. Thus, Labor Code Section
21 2699(f)(2) applies to provide a civil penalty of \$100 for each aggrieved employee per pay period for the
22 initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

23 ***Labor Code § 1198***

24 96. California Labor Code section 1198 provides that the maximum hours of work and the
25 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
26 standard conditions of labor for employees. California Labor Code section 1173 defines commission as
27 the IWC. Further, the “employment of any employee for longer hours than those fixed by the order or
28 under conditions of labor prohibited by the order is unlawful.” Lab. Code § 1198.

1 97. Sections 3(A)(1) of IWC Order Nos. 1-2001, 2-2001, 3-2001, 4-2001, 5-2001, 6-2001, 7-
2 2001, 8-2001, 9-2001, 10-2001, 11-2001, 12-2001, 13-2001, 16-200, Section 3(C) of IWC Order No. 15-
3 2001, and Section 4 of IWC Order No. 17-2001, provide that “employees shall not be employed more
4 than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and
5 one half (1 1/2) times such employee’s regular rate of pay for all hours worked over 40 hours in the
6 workweek.” Section 7(A) requires every employer to keep accurate time records showing when the
7 employee begins and ends each work period and the total hours worked in the payroll period.

8 98. As set forth above, on numerous occasions, on numerous occasions Defendant did not pay
9 Plaintiff overtime wages. Plaintiff and her co-workers regularly worked more than eight hours per
10 workday and more than 40 hours per workweek. On numerous occasions they were not compensated for
11 those overtime hours worked more than eight per day and 40 per week.

12 99. Sections 4(B) of relevant IWC orders, such as No. 15-2001, provide that “Every employer
13 shall pay to each employee, on the established payday for the period involved, not less than the applicable
14 minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time,
15 piece, commission, or otherwise.”

16 100. Based on the foregoing, Defendant violated California Labor Code section 1198 by
17 violating the above-referenced sections of relevant Wage Orders of the IWC.

18 101. California Labor Code section 1198 does not provide for its own self-contained “civil
19 penalty” within the statute. Thus, California Labor Code section 2699(f)(2) applies to provide a civil
20 penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each
21 aggrieved employee per pay period for each subsequent violation.

22 ***Labor Code § 226(a)***

23 102. “An employer, semimonthly or at the time of each payment of wages, shall furnish to his
24 or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages,
25 or separately if wages are paid by personal check or cash, an accurate itemized statement in writing
26 showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision
27 (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
28 piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee

1 may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for
2 which the employee is paid, (7) the name of the employee and only the last four digits of his or her social
3 security number or an employee identification number other than a social security number, (8) the name
4 and address of the legal entity that is the employer . . . , and (9) all applicable hourly rates in effect during
5 the pay period and the corresponding number of hours worked at each hourly rate by the employee.” Lab.
6 Code § 226(a).

7 103. Due to Defendant’s failure to account for the time worked, Plaintiff and other aggrieved
8 employees’ itemized wage records did not show: (1) the accurate total hours worked; (2) all applicable
9 hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly
10 rate; (3) the accurate gross wages earned; and (4) the accurate net wages earned. As such, Defendant
11 violated Labor Code Section 226(a)(1)(2)(5)(9). Defendant also failed to keep itemized wage statement
12 records of the foregoing.

13 104. Labor Code Section 226 does not provide for its own self-contained “civil” penalty within
14 the statute. Thus, Labor Code Section 2699(f)(2) applies to provide a civil penalty of \$100 for each
15 aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay
16 period for each subsequent violation.

17 ***Labor Code § 1174(d)***

18 105. Labor Code Section 1174(d) provides that every person employing labor in this state shall
19 keep payroll records showing the hours worked daily by and the wages paid to employees employed for
20 not less than three years. "Person" means any person, association, organization, partnership, business
21 trust, limited liability company, or corporation. Lab. Code § 18.

22 106. Defendant failed to maintain records showing the actual and accurate hours worked by
23 Plaintiff’s co-workers, aggrieved employees, in violation of Labor Code Section 1174. Labor Code
24 Section 1174 does not provide for its own self-contained civil penalty within the statute. Thus, Labor
25 Code Section 2699(f)(2) applies to provide a civil penalty of \$100 for each aggrieved employee per pay
26 period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent
27 violation.

28 ***Labor Code 1102.5***

1 107. An employer, or any person acting on behalf of the employer, shall not retaliate against
2 an employee for disclosing information, or because the employer believes that the employee disclosed or
3 may disclose information, to a person with authority over the employee or another employee who has
4 the authority to investigate, discover, or correct the violation or noncompliance, if the employee has
5 reasonable cause to believe that the information discloses a violation of state or federal statute, or a
6 violation of or noncompliance with a local, state, or federal rule or regulation. Lab. Code § 1102.5(b).

7 108. Plaintiff disclosed information that she reasonably believed a violation of state or federal
8 statute, or a violation of or noncompliance with a local, state, or federal rule or regulation. The
9 information was disclosed to a person with authority over her and to another employee who has the
10 authority to investigate, discover, or correct the violation or noncompliance.

11 109. Defendant believed that Plaintiff disclosed information to a person with authority over
12 her or another employee who has the authority to investigate, discover, or correct the violation or
13 noncompliance, that Plaintiff reasonably believed disclosed a violation of state or federal statute, or a
14 violation of or noncompliance with a local, state, or federal rule or regulation.

15 110. Defendant terminated Plaintiff's employment in retaliation with Plaintiff's disclosures
16 being a substantial motivating factor in Defendant's decision to discharge Plaintiff.

17 111. Plaintiff is entitled to a \$10,000 civil penalty for the retaliation. Lab. Code § 1102.5(f).

18 ***Labor Code § 558***

19 112. Pursuant to Labor Code section 558(a) any employer or other person acting on behalf of
20 an employer who violates, or causes to be violated, [Labor Code sections 510] or any provision regulating
21 hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil
22 penalty in a PAGA action as follows:

23 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay
24 period for which the employee was underpaid . . .

25 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
26 each pay period for which the employee was underpaid . . .
27
28

113. As discussed above, Defendant violated Labor Code sections 510, 512, and the above-referenced provisions of IWC Wage Orders as applicable. As such, Defendant is subject to pay the pre-determined amount of civil penalties for the initial and subsequent violations.

Labor Code § 210

114. Pursuant to Labor Code § 210(a), in addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Section 204 shall be subject to a civil penalty as follows:

(1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.

(2) For each subsequent violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

115. As discussed above, Defendant violated Labor Code § 204. As such, Defendant is subject to pay a pre-determined amount of civil penalties for the initial and subsequent violations “plus 25 percent of the amount unlawfully withheld,” as indivisible civil penalties pursuant to Section 210(a).

Labor Code § 226.3

116. “Any employer who violates subdivision (a) of section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.” Lab. Code § 226.3. This section “sets out a civil penalty for *all* violations of section 226.” *Raines v. Coastal Pacific Food Distribs., Inc.*, 23 Cal. App. 5th 667, 675 (2018). Because Defendant violated California Labor Code section 226(a), Defendant is subject to civil penalties under section 226.3 applicable to Plaintiff and other current and former aggrieved employees.

Labor Code § 1174.5

117. Pursuant to Labor Code Section 1174.5, any person employing labor who willfully fails to maintain accurate and complete records required by subdivision (d) of Section 1174 shall be subject to a civil penalty of five hundred dollars (\$500). As discussed above, Defendant violated Labor Code Labor Code Section 1174(d). Defendant willfully failed to maintain records showing the accurate hours worked daily by Plaintiff and the aggrieved employees. Thus, Defendant is subject to civil penalties.

Exhaustion of Administrative Remedies

118. On June 3, 2021, Plaintiff provided notice to the California Labor and Workforce Development Agency ("LWDA"), pursuant to Labor Code § 2699.3, detailing the specific provisions of the foregoing Labor Code sections that have been violated, including the facts and theories to support the violations. The LWDA file number is LWDA-CM-833971-21. The notice was sent by certified mail on or about June 3, 2021, to AFR (7019 0140 0000 7526 8903). Plaintiff submitted a \$75.00 fee to the LWDA.

119. The LWDA has not, within 65 days of Plaintiff's Notice of violations of the Labor Code, sent Plaintiff notice that it intends to investigate the violations. Thus, Plaintiff has exhausted Plaintiff's administrative remedies, pursuant to Labor Code section 2699.3(a), as a prerequisite to assert a civil action, for civil penalties pursuant to Labor Code section 2699. Defendant has not sent any notice to the LWDA attempting to cure the alleged violations of Labor Code statutes not enumerated in Labor Code section 2699.5. Thus, Plaintiff has exhausted Plaintiff's administrative remedies, pursuant to Labor Code section 2699.3(c), as a prerequisite to assert a civil action, for civil penalties pursuant to Labor Code section 2699.

PRAYER

WHEREFORE, Plaintiff prays:

1. For civil penalties pursuant to the California Labor Code §§ 2698 *et seq.*
2. For compensatory special damages, in an amount according to proof at the time of trial.
3. For compensatory general damages, in an amount according to proof at the time of trial.
4. For statutory penalties pursuant to California Labor Code.
5. For reimbursement and indemnification for all work-related expenditures, in an amount according to proof at the time of trial.
6. For liquidated damages pursuant to the Fair Labor Standards Act and California Labor Code.
7. For exemplary and punitive damages in an amount deemed sufficient by trier or fact to punish, deter, and make an example of the Defendant, in an amount according to proof at the time of trial.

1 8. For reasonable attorneys' fees pursuant to the California Labor Code and Code of Civil
2 Procedure.

3 9. For costs of suit including expert witness fees.

4 10. For prejudgment interest.

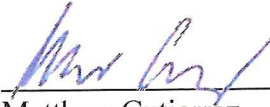
5 11. For such other and further relief as the Court may deem proper.

6 **DEMAND FOR JURY TRIAL**

7 Plaintiff ELIDET BORDON hereby demands a trial by jury.

8
9 Dated: August 9, 2021

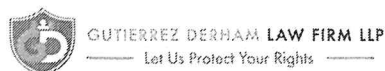
GUTIERREZ DERHAM LAW FIRM LLP

10
11 By: 

12 Matthew Gutierrez

13 Attorneys for Plaintiff, ELIDET BORDON,
14 individually and as a proxy for the State of California
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT B



26459 Rancho Parkway S, Ste 1
Lake Forest, CA 92630
Phone 323.676.6676
www.GutierrezDerham.com

Matthew Gutierrez⁺
Amber B. Derham^{+~}

⁺Admitted in California
⁺Admitted in New York
[~]Admitted in Tennessee

June 3, 2021

VIA LWDA ONLINE PORTAL
<https://dir.tfaforms.net/308>

Labor and Workforce Dev. Agency
Attn: PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Bordon v. AFR Group, LLC et al.

Our Client: Elidet Bordon

Our File No.: 4-098

Subject: Private Attorneys General Act Notice of Labor Code Violations

To Whom It May Concern:

We are writing on behalf of our client, Elidet Bordon (“Plaintiff”), regarding AFR Group LLC’s (“AFR”) (“Employer(s)” or “Defendant(s)”) violations of the California Labor Code, for which Plaintiff intends to seek “civil penalties” in a civil action under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”) on behalf of Plaintiff, other current or former aggrieved employees, and the State of California. This notice is sent to the employer pursuant to the PAGA. As used in this PAGA notice, the term “violation” applied to Labor Code statutes has the same meaning as Labor Code § 22.

Nature of PAGA

The California Supreme Court has identified a number of the legal characteristics of a PAGA representative action. First, an employee plaintiff suing under the PAGA does so as the proxy or agent of the state's labor law enforcement agencies, not other employees. *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348, 380 (2014). Second, the employee plaintiff represents the same legal right and interest as those agencies—namely, the recovery of civil penalties that otherwise would have been assessed and collected by the Labor and Workforce Development Agency. (*Id.*) Thus, a PAGA claim “is fundamentally a law enforcement action.” *Arias v. Super. Ct.*, 46 Cal. 4th at 986 (2009); *Williams v. Super. Ct.*, 3 Cal. 5th 531, 538 (2017) (“a PAGA suit, essentially a qui tam action filed on behalf of the state to assist it with labor law enforcement”).

As a law enforcement action, the issue is the employer's conduct, not whether the employees suffered injury or harm. This is because the "harm" or "injury" at issue in a PAGA action is the harm to the public interest in "maximum compliance with the state labor laws." *Arias*, 46 Cal. 4th at 980. PAGA's purpose includes "deputizing private citizens to pursue violators." *Huff v. Securitas Sec. Servs. USA, Inc.*, 23 Cal. App. 5th 745, 756 (2018).

The PAGA statute only requires the PAGA representative to be an employee "against whom one or more of the alleged violations was committed," meaning a PAGA plaintiff need only have experienced just one of the alleged violations, not all of them. *Huff*, 23 Cal. App. 5th at 753; *Jeske v. Maxim Healthcare Servs.*, 2012 WL 78242, *13 (E.D. Cal. Jan. 10, 2012); *Holak v. K Mart Corp.*, No. 1:12-CV-00304-AWI-MJ) 2015 WL 2384895, at *5 (E.D. Cal. May 19, 2015) ("By the plain language of the statute, an aggrieved employee need only suffer one of the Labor Code violations alleged against his or her employer to be able to bring a PAGA claim on behalf of himself or herself and current or former employees who suffered any Labor Code violation at the hands of the employer. Plaintiff need not have actually suffered all of the Labor Code violations that she alleges to have taken place for purposes of seeking PAGA penalties."). And "every PAGA action, whether seeking penalties for Labor Code violations as to only one aggrieved employee—the plaintiff bringing the action—or as to other employees as well, is a representative action on behalf of the state." *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348, 386-387 (2014).

PAGA conforms to the traditional criteria of qui tam actions, "except that a portion of the penalty goes not only to the citizen bringing the suit but to all employees affected by the Labor Code violation." *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th at 382. "Moreover, civil penalties recovered on the state's behalf are intended to 'remediate present violations and deter future ones,' not to redress employees' injuries." *Kim v. Reins Int'l Cal., Inc.*, 9 Cal. 5th 73, 86 (2020).

A corporate employer's owner, president, secretary, and directors are liable for civil penalties as an "other person" who caused violations of the Labor Code, even if there is no allegation that the alter ego doctrine applies or that there is any other basis on which to pierce the corporate veil. *Atempa v. Pedrazzani*, 27 Cal. App. 5th 809 (2018). A "person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation." Lab. Code § 558.1. Even if Defendant's manager, Carl Renezedder, did not cause past violations, any continued violations of statutes or provisions, which are explained below, that are not promptly remedied will be caused by that person.

Factual Background

On or about July 26, 2019, Plaintiff became a permanent employee of AFR. Her employment with AFR continued until her termination date of June 4, 2020.

As a company-wide practice, Defendant regularly required Plaintiff to work without being paid for all hours worked and for all overtime hours worked. During her employment with AFR, Defendant did not pay for all of Plaintiff's reasonable business expenses of which it knew they were incurring, including internet usage regarding work related purposes. During her



employment with AFR, Defendant did not provide accurate itemized wage statement showing all the accurate hours worked by Plaintiff. At the end of her employment with AFR, Defendant did not pay for all over her final wages owed because Defendant had not previously paid for all of her regular and overtime hours worked. Because Defendant did these things to Plaintiff as part of its regular business practice, she believes that Defendant did the same things to its other employees and is continuing this practice as to its other employees. The allegations below for each statutory violation affecting other employees is based off that belief.

In or about May 2020, Plaintiff informed Mandy Hall, AFR's HR Manager, that AFR was not complying with the law because it was not providing legal notices regarding tenants' rights about Coronavirus-19.

Mandy Hall had authority to investigate what Plaintiff had reported. In response, AFR terminated Plaintiff's employment effective June 4, 2020.

The relevant period of the below allegations for this notice is from one year preceding this letter, to present and ongoing.

Labor Code § 2802

"An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer." Lab. Code § 2802(a). In *Cochran v. Schwan's*, the court held:

If an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for purposes of section 2802. It does not matter whether the phone bill is paid for by a third person, or at all. In other words, it is no concern to the employer that the employee may pass on the expense to a family member or friend, or to a carrier that has to then write off a loss. It is irrelevant whether the employee changed plans to accommodate work-related cell phone usage. Also, the details of the employee's cell phone plan do not factor into the liability analysis. Not only does our interpretation prevent employers from passing on operating expenses, it also prevents them from digging into the private lives of their employees to unearth how they handle their finances vis-à-vis family, friends and creditors. To show liability under section 2802, an employee need only show that he or she was required to use a personal cell phone to make work-related calls, and he or she was not reimbursed.

Cochran v. Schwan's Home Serv., Inc., 228 Cal. App. 4th 1137, 1144–45 (2014), review denied (Nov. 25, 2014).

Here, like in *Cochran*, if an employee is required to do work-related activities on a personal cell phone, then she is incurring an expense for purposes of section 2802. Here, as in *Cochran*, to show liability under section 2802, an employee need only show that she was required or directed to use a personal cell phone to do work-related activities and was not reimbursed.

Defendants did not reimburse or pay Plaintiff or the other aggrieved employees for any



portion of their internet expenses, in violation of Labor Code § 2802(a).

Labor Code § 2802 does not have a civil penalty specifically provided. Thus, Labor Code § 2699(f) is applicable to impose civil penalties of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

Labor Code § 510

“Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.” Lab. Code § 510(a).

On numerous occasions Defendant did not pay Plaintiff overtime wages. Plaintiff and her co-workers regularly worked more than eight hours per workday and more than 40 hours per workweek. On numerous occasions they were not compensated for those overtime hours worked more than eight per day and 40 per week. As such, Defendants violated Labor Code § 510.

California Labor Code section 510 does not provide for its own self-contained “civil penalty” within the statute. Thus, California Labor Code section 2699(f)(2) applies to provide a civil penalty of \$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.

Labor Code § 1194

“Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage . . . applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage . . ., including interest thereon, reasonable attorney’s fees, and costs of suit.” Lab. Code § 1194(a).

On numerous occasions Defendant did not pay Plaintiff overtime wages. Plaintiff and her co-workers regularly worked more than eight hours per workday and more than 40 hours per workweek. On numerous occasions they were not compensated for those overtime hours worked more than eight per day and 40 per week. This resulted in Plaintiff and the aggrieved employees working without being paid a minimum wage. Therefore, Defendants violated IWC Wage Orders and consequently violated Labor Code § 1194. California Labor Code section 1194 does not provide for its own self-contained “civil penalty” within the statute. Thus, California Labor Code section 2699(f)(2) applies to provide a civil penalty of \$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.

Labor Code § 204

Labor Code Section 204(b)(1) provides that “all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.”



On numerous occasions Defendant did not pay Plaintiff overtime wages. Plaintiff and her co-workers regularly worked more than eight hours per workday and more than 40 hours per workweek. On numerous occasions they were not compensated for those overtime hours worked more than eight per day and 40 per week. As a result, they worked in excess of 40 hours per week but were not paid overtime compensation for the hours over 40 per workweek worked. As such, Defendants violated Labor Code Section 204(b)(1) by failing to pay her for all the overtime wages that they earned which were in excess of the normal work period, by the next payday which followed the overtime work. Labor Code Section 204 does not provide for its own self-contained civil penalty within the statute. Thus, Labor Code Section 2699(f)(2) applies to provide a civil penalty of \$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.

Labor Code § 1198

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. California Labor Code section 1173 defines commission as the IWC. Further, the “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Lab. Code § 1198.

Sections 3(A)(1) of IWC Order Nos. 1-2001, 2-2001, 3-2001, 4-2001, 5-2001, 6-2001, 7-2001, 8-2001, 9-2001, 10-2001, 11-2001, 12-2001, 13-2001, 16-200, Section 3(C) of IWC Order No. 15-2001, and Section 4 of IWC Order No. 17-2001, provide that “employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1 1/2) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek.” Section 7(A) requires every employer to keep accurate time records showing when the employee begins and ends each work period and the total hours worked in the payroll period.

As set forth above, on numerous occasions, On numerous occasions Defendant did not pay Plaintiff overtime wages. Plaintiff and her co-workers regularly worked more than eight hours per workday and more than 40 hours per workweek. On numerous occasions they were not compensated for those overtime hours worked more than eight per day and 40 per week.

Sections 4(B) of relevant IWC orders, such as No. 15-2001, provide that “Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

Based on the foregoing, Defendants violated California Labor Code section 1198 by violating the above-referenced sections of relevant Wage Orders of the IWC.

California Labor Code section 1198 does not provide for its own self-contained “civil penalty” within the statute. Thus, California Labor Code section 2699(f)(2) applies to provide a civil penalty of \$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.



Labor Code § 226(a)

“An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer . . . , and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.” Lab. Code § 226(a).

Due to Defendant’s failure to account for the time worked, Plaintiff and other aggrieved employees’ itemized wage records did not show: (1) the accurate total hours worked; (2) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate; (3) the accurate gross wages earned; and (4) the accurate net wages earned. As such, Defendants violated Labor Code Section 226(a)(1)(2)(5)(9). Defendant also failed to keep itemized wage statement records of the foregoing.

Labor Code Section 226 does not provide for its own self-contained “civil” penalty within the statute. Thus, Labor Code Section 2699(f)(2) applies to provide a civil penalty of \$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.

Labor Code § 1174(d)

Labor Code Section 1174(d) provides that every person employing labor in this state shall keep payroll records showing the hours worked daily by and the wages paid to employees employed for not less than three years. "Person" means any person, association, organization, partnership, business trust, limited liability company, or corporation. Lab. Code § 18.

Defendants failed to maintain records showing the actual and accurate hours worked by Plaintiff’s co-workers, aggrieved employees, in violation of Labor Code Section 1174. Labor Code Section 1174 does not provide for its own self-contained civil penalty within the statute. Thus, Labor Code Section 2699(f)(2) applies to provide a civil penalty of \$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.

Labor Code 1102.5

An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, if the employee has reasonable cause to believe that the information discloses a violation of state or



federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation. Lab. Code § 1102.5(b).

Plaintiff disclosed information that she reasonably believed a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation. The information was disclosed to a person with authority over her and to another employee who has the authority to investigate, discover, or correct the violation or noncompliance.

Defendant believed that Plaintiff disclosed information to a person with authority over her or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, that Plaintiff reasonably believed disclosed a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation.

Defendant terminated Plaintiff's employment in retaliation with Plaintiff's disclosures being a substantial motivating factor in Defendant's decision to discharge Plaintiff.

Plaintiff is entitled to a \$10,000 civil penalty for the retaliation. Lab. Code § 1102.5(f).

Labor Code § 558

Pursuant to Labor Code section 558(a) any employer or other person acting on behalf of an employer who violates, or causes to be violated, [Labor Code sections 510] or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty in a PAGA action as follows:

- (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid . . .
- (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid . . .

As discussed above, Defendants violated Labor Code sections 510, 512, and the above-referenced provisions of IWC Wage Orders as applicable. As such, Defendants are subject to pay the pre-determined amount of civil penalties for the initial and subsequent violations.

Labor Code § 210

Pursuant to Labor Code § 210(a), in addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Section 204 shall be subject to a civil penalty as follows:

- (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.
- (2) For each subsequent violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

As discussed above, Defendants violated Labor Code § 204. As such, Defendants are subject to pay a pre-determined amount of civil penalties for the initial and subsequent violations



“plus 25 percent of the amount unlawfully withheld,” as indivisible civil penalties pursuant to Section 210(a).

Labor Code § 226.3

“Any employer who violates subdivision (a) of section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.” Lab. Code § 226.3. This section “sets out a civil penalty for *all* violations of section 226.” *Raines v. Coastal Pacific Food Distribs., Inc.*, 23 Cal. App. 5th 667, 675 (2018). Because Defendant violated California Labor Code section 226(a), Defendant is subject to civil penalties under section 226.3 applicable to Plaintiff and other current and former aggrieved employees.

Labor Code § 1174.5

Pursuant to Labor Code Section 1174.5, any person employing labor who willfully fails to maintain accurate and complete records required by subdivision (d) of Section 1174 shall be subject to a civil penalty of five hundred dollars (\$500). As discussed above, Defendant violated Labor Code Labor Code Section 1174(d). Defendant willfully failed to maintain records showing the accurate hours worked daily by Plaintiff and the aggrieved employees. Thus, Defendants are subject to civil penalties.

Civil Action

Plaintiff demands that Defendant take immediate measures to redress the above-referenced violations. Plaintiff intends to amend her civil action to add a cause of action, on behalf of the State of California to seek civil penalties in a cause of action under the PAGA for every violation that affected Plaintiff and other aggrieved employees. If Defendant, or its attorneys if it is represented in this matter, have any questions about the aggrieved employees or the extent of the violations, please see above details and feel free to contact the undersigned, in writing, for any clarification.

The civil action will be a representative action and, as held by the California Supreme Court in *Arias*, need not meet the requirements for class certification. Moreover, the PAGA has no notice requirements for unnamed aggrieved employees in federal courts, unlike Rule 23 of the Federal Rules of Civil Procedure, nor may such employees opt out of a PAGA action. *Baumann v. Chase Inv. Services Corp.*, 747 F.3d 1117 (9th Cir. Mar. 13, 2014). Further, in a PAGA action, the court does not inquire into the named plaintiff’s and class counsel’s ability to fairly and adequately represent unnamed employees. *Id.*



Based on the foregoing, Plaintiff requests an immediate notification from the Labor and Workforce Development Agency, so Plaintiff may pursue civil penalties on behalf of the State of California.

Sincerely,



Matthew Gutierrez, Esq.

MG:gd

cc:

Carl Renezeder, Manager

AFR Group, LLC

64 Maxwell

Irvine, CA 92618

[Via Certified Mail 7019 0140 0000 7526 8903]



EXHIBIT C

NOTICE OF PAGA SETTLEMENT AND RELEASE OF CLAIMS

Elidet Bordon v. AFR Group, LLC, et al.

Los Angeles County Superior Court, Case No. 21STCV20152

TO: [Name of Current or Former Employee]

DATE: [Date of Mailing]

I. INTRODUCTION

This Notice relates to the settlement of a lawsuit brought pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code section 2698, *et seq.* ("PAGA"). On May 28, 2021, a former employee of AFR Group, LLC ("AFR"), Elidet Bordon ("Plaintiff"), filed the current lawsuit against AFR and Career Strategies Temporary, Inc. (subsequently dismissed in September 2021) in the Los Angeles County Superior Court (the "Court") on behalf of herself, all other allegedly aggrieved employees and the State of California against defendant AFR, which is entitled *Elidet Bordon v. AFR Group, LLC, et al.*, Case No. 21STCV20152. The allegedly aggrieved employees who have released their claims for penalties through this settlement, and who are therefore entitled to receive a settlement payment, consist of all current and former non-exempt employees of AFR (including, but not limited to, Plaintiff), who were employed by AFR in California at any time during the period of June 3, 2020 through [INSERT DATE COURT GRANTS APPROVAL OF THE SETTLEMENT]. You have received this notice because AFR's records indicate that you are one of the allegedly aggrieved employees covered by this settlement.

II. DESCRIPTION OF THE CLAIM

Plaintiff brought the lawsuit as a representative action under PAGA on behalf of the State of California, herself and all other allegedly aggrieved employees. Plaintiff's lawsuit asserts AFR allegedly committed various violations of the California Labor Code against herself and the other allegedly aggrieved employees, as set forth in Plaintiff's First Amended Complaint and notice to the California Labor Workforce and Development Agency dated June 3, 2021. By law, a PAGA action is an action for civil penalties in which the State of California receives seventy-five percent of any net settlement, and twenty-five percent of the net settlement is distributed to the aggrieved employees.

AFR vigorously denies and disputes all of Plaintiff's alleged claims and allegations, contends that it has acted in compliance with all legal requirements, and contends that no penalties are due to Plaintiff, other allegedly aggrieved employees or the State of California.

The Court has made no determination on the merits of Plaintiff's claims, and there has been no finding of any wrongdoing by AFR, but Plaintiff and AFR have decided to resolve the case through settlement, with the approval of the Court.

III. SETTLEMENT

Plaintiff and Defendant have reached a settlement that has been approved by the Court, as memorialized in the Joint Stipulation of PAGA Settlement Agreement and Release (“Agreement”), and which binds you, all other aggrieved employees (including Plaintiff) as well as the State of California. The Court’s judgment approving the settlement and Agreement is attached hereto as Exhibit A.

IV. SETTLEMENT PAYMENT

The enclosed check represents your portion of the net settlement payment, which is a pro-rata distribution based on the number of pay periods you worked for AFR during the period of June 3, 2020 through [INSERT DATE COURT GRANTS APPROVAL OF THE SETTLEMENT]. You may deposit or cash the check without any further obligation on your part and there is no need for you to contact the settlement administrator, the parties, or the Court.

V. ATTORNEYS OF RECORD

If you have any questions, please contact the settlement administrator, Phoenix Settlement Administrators, at [INSERT CONTACT INFORMATION]. PLEASE DO NOT CALL OR CONTACT THE COURT REGARDING THIS CASE.

To the extent there are any conflicts or inconsistencies between this notice and the terms of the Agreement, the terms of the Agreement will control and govern.

EXHIBIT D

KARLA J. KRAFT, State Bar No. 205530
kkraft@stradlinglaw.com
JOHN M. WICKER, State Bar No. 292023
jwicker@stradlinglaw.com
STRADLING YOCCA CARLSON & RAUTH
A Professional Corporation
660 Newport Center Drive, Suite 1600
Newport Beach, CA 92660-6422
Telephone: 949 725 4000
Facsimile: 949 725 4100

Attorneys for Defendant
AFR GROUP, LLC

MATTHEW GUTIERREZ, State Bar No. 271206
mg@gutierrezderham.com
GUTIERREZ DERHAM LAW FIRM LLP
6077 Coffee Rd., Ste 4
Bakersfield, CA 93308
Telephone: (323) 676-6676

Attorneys for Plaintiff, ELIDET BORDON
Individually and as a proxy for the State of California

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

ELIDET BORDON, an individual,

Plaintiff,

vs.

AFR GROUP, LLC, a limited liability
company; CAREER STRATEGIES
TEMPORARY, INC. a corporation; and DOES
1 through 5, inclusive,

Defendants.

CASE NO. 21STCV20152
Hon. Kristin S. Escalante
Dept. 24

**STIPULATION AND PROTECTIVE
ORDER – CONFIDENTIAL AND
HIGHLY CONFIDENTIAL
DESIGNATIONS**

Complaint Filed: May 28, 2021
First Amended Complaint Filed:
August 9, 2021

1 **IT IS HEREBY STIPULATED** by and between the parties to the above captioned
2 matter, plaintiff Elidet Bordon (“Plaintiff”), and defendant AFR Group, LLC (“Defendant”)
3 (Plaintiff and Defendant shall hereafter collectively be referred to as the “Parties”), by and
4 through their respective counsel of record, that in order to facilitate the exchange of information
5 and documents which may be subject to confidentiality limitations on disclosure due to federal
6 laws, state laws, and privacy rights, the Parties stipulate as follows:

7 1. In this Stipulation and Protective Order, the words set forth below shall have the
8 following meanings:

9 a. “Proceeding” means the above-entitled proceeding Los Angeles County Superior Court
10 Case No. 21STCV20152.

11 b. “Court” means the Hon. Kristin S. Escalante, or any other judge to which this Proceeding
12 may be assigned, including Court staff participating in such proceedings.

13 c. “Confidential” means any Documents, Testimony, or Information which is in the
14 possession of a Designating Party who believes in good faith that such Documents, Testimony,
15 or Information is entitled to confidential treatment under applicable law.

16 d. “Confidential Materials” means any Documents, Testimony, or Information as defined
17 below designated as “Confidential” pursuant to the provisions of this Stipulation and Protective
18 Order.

19 e. “Highly Confidential Materials” means any Documents, Testimony, or Information, as
20 defined below, designated as “Highly Confidential” pursuant to the provisions of this
21 Stipulation and Protective Order.

22 f. “Designating Party” means the Party that designates Documents, Testimony, or
23 Information, as defined below, as “Confidential” or “Highly Confidential.”

24 g. “Disclose” or “Disclosed” or “Disclosure” means to reveal, divulge, give, or make
25 available Materials, or any part thereof, or any information contained therein.

26 h. “Documents” means (i) any “Writing,” “Original,” and “Duplicate” as those terms are
27 defined by California Evidence Code Sections 250, 255, and 260, which have been produced
28 in discovery in this Proceeding by any person or entity, and (ii) any copies, reproductions, or

summaries of all or any part of the foregoing.

i. “Information” means the content of Documents or Testimony.

j. “Testimony” means all depositions, declarations, or other testimony taken or used in this Proceeding.

2. Given the nature of the claims asserted and defenses likely to be presented, the parties believe certain Documents, Testimony or Information may be disclosed in this Proceeding that constitute trade secrets, proprietary information, or other confidential information of a sensitive nature that is not generally known or readily accessible to the general public and that may cause harm to one or more of the Parties or non-parties if such Documents, Testimony or Information are disclosed to the general public.

3. The Designating Party shall have the right to designate as “Highly Confidential” only the non-public Documents, Testimony, or Information that the Designating Party in good faith believes would create a substantial risk of serious financial or other injury, if Disclosed to another Party or non-Party, and that such risk cannot be avoided by less restrictive means.

4. The entry of this Stipulation and Protective Order does not alter, waive, modify, or abridge any right, privilege, or protection otherwise available to any Party with respect to the discovery of matters, including but not limited to any Party’s right to assert the attorney-client privilege, the attorney work product doctrine, or other privileges, or any Party’s right to contest any such assertion.

5. Any Documents, Testimony, or Information to be designated as “Confidential” or “Highly Confidential” must be clearly so designated before the Document, Testimony, or Information is Disclosed or produced. The parties may agree that a case name and number are to be part of the “Highly Confidential” designation. The “Confidential” or “Highly Confidential” designation should not obscure or interfere with the legibility of the designated Information.

a. For Documents (apart from transcripts of depositions or other pretrial or trial proceedings), the Designating Party must affix the legend “Confidential” or “Highly Confidential” on each page of any Document containing such designated material.

- b. For Testimony given in depositions the Designating Party may either:
- i. identify on the record, before the close of the deposition, all “Confidential” or “Highly Confidential” Testimony, by specifying all portions of the Testimony that qualify as “Confidential” or “Highly Confidential;” or
 - ii. designate the entirety of the Testimony at the deposition as “Confidential” or “Highly Confidential” (before the deposition is concluded) with the right to identify more specific portions of the Testimony as to which protection is sought within 30 days following receipt of the deposition transcript. In circumstances where portions of the deposition Testimony are designated for protection, the transcript pages containing “Confidential” or “Highly Confidential” Information may be separately bound by the court reporter, who must affix to the top of each page the legend “Confidential” or “Highly Confidential,” as instructed by the Designating Party.
- c. For Information produced in some form other than Documents, and for any other tangible items, including, without limitation, compact discs or DVDs, the Designating Party must affix in a prominent place on the exterior of the container or containers in which the Information or item is stored the legend “Confidential” or “Highly Confidential.” If only portions of the Information or item warrant protection, the Designating Party, to the extent practicable, shall identify the “Confidential” or “Highly Confidential” portions.
6. The inadvertent production by any of the undersigned Parties or non-Parties to the Proceedings of any Document, Testimony, or Information during discovery in this Proceeding without a “Confidential” or “Highly Confidential” designation, shall be without prejudice to any claim that such item is “Confidential” or “Highly Confidential” and such Party shall not be held to have waived any rights by such inadvertent production. In the event that any Document, Testimony, or Information that is subject to a “Confidential” or “Highly Confidential” designation is inadvertently produced without such designation, the Party that inadvertently produced the document shall give written notice of such inadvertent production within twenty (20) days of discovery of the inadvertent production, together with a further copy of the subject

1 Document, Testimony, or Information designated as “Confidential” or “Highly Confidential”
2 (the “Inadvertent Production Notice”). Upon receipt of such Inadvertent Production Notice, the
3 Party that received the inadvertently produced Document, Testimony, or Information shall
4 promptly destroy the inadvertently produced Document, Testimony, or Information and all
5 copies thereof, or, at the expense of the producing Party, return such together with all copies of
6 such Document, Testimony or Information to counsel for the producing Party and shall retain
7 only the “Confidential” or “Highly Confidential” materials. Should the receiving Party choose
8 to destroy such inadvertently produced Document, Testimony, or Information, the receiving
9 Party shall notify the producing Party in writing of such destruction within ten (10) days of
10 receipt of written notice of the inadvertent production. This provision is not intended to apply
11 to any inadvertent production of any Document, Testimony, or Information protected by
12 attorney-client or work product privileges. In the event that this provision conflicts with any
13 applicable law regarding waiver of confidentiality through the inadvertent production of
14 Documents, Testimony or Information, such law shall govern.

15 7. In the event that counsel for a Party receiving Documents, Testimony or Information in
16 discovery designated as “Confidential” or “Highly Confidential” objects to such designation
17 with respect to any or all of such items, said counsel shall advise counsel for the Designating
18 Party, in writing, of such objections, the specific Documents, Testimony or Information to
19 which each objection pertains, and the specific reasons and support for such objections (the
20 “Designation Objections”). Counsel for the Designating Party shall have thirty (30) days from
21 receipt of the written Designation Objections to either (a) agree in writing to de-designate
22 Documents, Testimony, or Information pursuant to any or all of the Designation Objections
23 and/or (b) file a motion with the Court seeking to uphold any or all designations on Documents,
24 Testimony, or Information addressed by the Designation Objections (the “Designation
25 Motion”). Pending a resolution of the Designation Motion by the Court, any and all existing
26 designations on the Documents, Testimony, or Information at issue in such Motion shall remain
27 in place. The Designating Party shall have the burden on any Designation Motion of
28 establishing the applicability of its “Confidential” or “Highly Confidential” designation. In the

1 event that the Designation Objections are neither timely agreed to nor timely addressed in the
2 Designation Motion, then such Documents, Testimony, or Information shall be de-designated
3 in accordance with the Designation Objection applicable to such material.

4 8. Access to and/or Disclosure of Confidential Materials shall be permitted only to the
5 following persons or entities:

6 a. the Court;

7 b. (1) Attorneys of record in the Proceeding and their affiliated attorneys,
8 paralegals, clerical and secretarial staff employed by such attorneys who are actively involved
9 in the Proceeding and are not employees of any Party; (2) In-house counsel to the undersigned
10 Parties and the paralegal, clerical and secretarial staff employed by such counsel. Provided,
11 however, that each non-lawyer given access to Confidential Materials shall be advised that such
12 materials are being Disclosed pursuant to, and are subject to, the terms of this Stipulation and
13 Protective Order and that they may not be Disclosed other than pursuant to its terms;

14 c. those officers, directors, partners, members, employees and agents of all
15 non-designating Parties that counsel for such Parties deems necessary to aid counsel in the
16 prosecution and defense of this Proceeding; provided, however, that prior to the Disclosure of
17 Confidential Materials to any such officer, director, partner, member, employee or agent,
18 counsel for the Party making the Disclosure shall deliver a copy of this Stipulation and
19 Protective Order to such person, shall explain that such person is bound to follow the terms of
20 such Order, and shall secure the signature of such person on a statement in the form attached
21 hereto as Exhibit A;

22 d. court reporters in this Proceeding (whether at depositions, hearings, or any
23 other proceeding);

24 e. any deposition, trial, or hearing witness in the Proceeding who previously
25 has had access to the Confidential Materials, or who is currently or was previously an officer,
26 director, partner, member, employee or agent of an entity that has had access to the Confidential
27 Materials;

1 f. any deposition or non-trial hearing witness in the Proceeding who
2 previously did not have access to the Confidential Materials; provided, however, that each such
3 witness given access to Confidential Materials shall be advised that such materials are being
4 Disclosed pursuant to, and are subject to, the terms of this Stipulation and Protective Order and
5 that they may not be Disclosed other than pursuant to its terms;

6 g. mock jury participants, provided, however, that prior to the Disclosure of
7 Confidential Materials to any such mock jury participant, counsel for the Party making the
8 Disclosure shall deliver a copy of this Stipulation and Protective Order to such person, shall
9 explain that such person is bound to follow the terms of such Order, and shall secure the
10 signature of such person on a statement in the form attached hereto as Exhibit A.

11 h. outside experts or expert consultants consulted by the undersigned Parties
12 or their counsel in connection with the Proceeding, whether or not retained to testify at any oral
13 hearing; provided, however, that prior to the Disclosure of Confidential Materials to any such
14 expert or expert consultant, counsel for the Party making the Disclosure shall deliver a copy of
15 this Stipulation and Protective Order to such person, shall explain its terms to such person, and
16 shall secure the signature of such person on a statement in the form attached hereto as Exhibit
17 A. It shall be the obligation of counsel, upon learning of any breach or threatened breach of this
18 Stipulation and Protective Order by any such expert or expert consultant, to promptly notify
19 counsel for the Designating Party of such breach or threatened breach; and

20 i. any other person or entity that the Designating Party agrees to in
21 writing.

22 9. Access to and/or Disclosure of Highly Confidential Materials shall be permitted only to
23 the following persons or entities:

24 a. Trial Counsel for the Parties, their partners and associates, and staff and supporting
25 personnel of such attorneys, such as paralegal assistants, secretarial, stenographic and clerical
26 employees and contractors, and outside copying services, who are working on this Proceeding
27 (or any further proceedings herein) under the direction of such attorneys and to whom it is
28 necessary that the Highly Confidential Materials be Disclosed for purposes of this Proceeding.

1 Such employees, assistants, contractors and agents to whom such access is permitted and/or
2 Disclosure is made shall, prior to such access or Disclosure, be advised of, and become subject
3 to, the provisions of this Protective Order. "Trial Counsel," for purposes of this Paragraph, shall
4 mean outside retained counsel and shall not include in-house counsel to the undersigned Parties
5 and the paralegal, clerical and secretarial staff employed by such in-house counsel;

6 b. outside experts or expert consultants consulted by the undersigned Parties or their counsel
7 in connection with the Proceeding, whether or not retained to testify at any oral hearing;
8 provided, however, that prior to the Disclosure of Highly Confidential Materials to any such
9 expert or expert consultant, counsel for the Party making the Disclosure shall deliver a copy of
10 this Stipulation and Protective Order to such person, shall explain its terms to such person, and
11 shall secure the signature of such person on a statement in the form attached hereto as Exhibit
12 A prior to the Disclosure of Highly Confidential Materials. It shall be the obligation of Trial
13 Counsel, upon learning of any breach or threatened breach of this Stipulation and Protective
14 Order by any such expert or expert consultant, to promptly notify Trial Counsel for the
15 Designating Party of such breach or threatened breach;

16 c. any person who authored, received, saw or was otherwise familiar with Documents,
17 Testimony, or Information or thing designated "Highly Confidential," including any person
18 otherwise familiar with the Highly Confidential Information contained therein, but only to the
19 extent of that person's prior familiarity with the Highly Confidential Information;

20 d. court reporters in this Proceeding (whether at depositions, hearings, or any other
21 proceeding); and

22 e. the Court.

23 10. Confidential Materials and Highly Confidential Materials shall be used by the persons or
24 entities receiving them only for the purposes of preparing for, conducting, participating in the
25 conduct of, and/or prosecuting and/or defending the Proceeding, and not for any business or
26 other purpose whatsoever.

11. Any Party to the Proceeding (or other person subject to the terms of this Stipulation and Protective Order) may ask the Court, after appropriate notice to the other Parties to the Proceeding, to modify or grant relief from any provision of this Stipulation and Protective Order.

12. Entering into, agreeing to, and/or complying with the terms of this Stipulation and Protective Order shall not:

a. operate as an admission by any person that any particular Document, Testimony, or Information marked “Confidential” or “Highly Confidential” contains or reflects trade secrets, proprietary, confidential or competitively sensitive business, commercial, financial or personal information; or

b. prejudice in any way the right of any Party (or any other person subject to the terms of this Stipulation and Protective Order):

i. to seek a determination by the Court of whether any particular Confidential Materials or Highly Confidential Materials should be subject to protection under the terms of this Stipulation and Protective Order; or

ii. to seek relief from the Court on appropriate notice to all other Parties to the Proceeding from any provision(s) of this Stipulation and Protective Order, either generally or as to any particular Document, Material or Information.

13. Any Party to the Proceeding who has not executed this Stipulation and Protective Order as of the time it is presented to the Court for signature may thereafter become a Party to this Stipulation and Protective Order by its counsel’s signing and dating a copy thereof and filing the same with the Court, and serving copies of such signed and dated copy upon the other Parties to this Stipulation and Protective Order.

14. Any Information that may be produced by a non-Party witness in discovery in the Proceeding pursuant to subpoena or otherwise may be designated by such non-Party as “Confidential” or “Highly Confidential” under the terms of this Stipulation and Protective

1 Order, and any such designation by a non-Party shall have the same force and effect, and create
2 the same duties and obligations, as if made by one of the undersigned Parties hereto. Any such
3 designation shall also function as consent by such producing non-Party to the authority of the
4 Court in the Proceeding to resolve and conclusively determine any motion or other application
5 made by any person or Party with respect to such designation, or any other matter otherwise
6 arising under this Stipulation and Protective Order.

7 15. If any person subject to this Stipulation and Protective Order who has custody of any
8 Confidential Materials or Highly Confidential Materials receives a subpoena or other process
9 (“Subpoena”) from any government or other person or entity demanding production of such
10 materials, the recipient of the Subpoena shall promptly give notice of the same by electronic
11 mail transmission, followed by either express mail or overnight delivery to counsel of record
12 for the Designating Party, and shall furnish such counsel with a copy of the Subpoena. Upon
13 receipt of this notice, the Designating Party may, in its sole discretion and at its own cost, move
14 to quash or limit the Subpoena, otherwise oppose production of the Confidential Materials or
15 Highly Confidential Materials, and/or seek to obtain confidential treatment of such materials
16 from the subpoenaing person or entity to the fullest extent available under law. The recipient of
17 the Subpoena may not produce any Confidential Materials or Highly Confidential Materials
18 pursuant to the Subpoena prior to the date specified for production on the Subpoena.

19 16. Nothing in this Stipulation and Protective Order shall be construed to preclude either
20 Party from asserting in good faith that certain Confidential Materials or Highly Confidential
21 Materials require additional protection. The Parties shall meet and confer to agree upon the
22 terms of such additional protection.

23 17. If, after execution of this Stipulation and Protective Order, any Confidential Materials or
24 Highly Confidential Materials submitted by a Designating Party under the terms of this
25 Stipulation and Protective Order is Disclosed by a non-Designating Party to any person other
26 than in the manner authorized by this Stipulation and Protective Order, the non-Designating
27 Party responsible for the Disclosure shall bring all pertinent facts relating to the Disclosure of
28

1 such Confidential Materials or Highly Confidential Materials to the immediate attention of the
2 Designating Party.

3 18. This Stipulation and Protective Order is entered into without prejudice to the right of any
4 Party to knowingly waive the applicability of this Stipulation and Protective Order to any
5 Confidential Materials or Highly Confidential Materials designated by that Party. If the
6 Designating Party uses Confidential Materials or Highly Confidential Materials in a non-
7 Confidential manner, then the Designating Party shall advise that the designation no longer
8 applies.

9 19. Where any Confidential Materials or Highly Confidential Materials, or Information
10 derived therefrom, is included in any motion or other proceeding governed by California Rules
11 of Court, Rules 2.550 and 2.551, the Parties and any involved non-party shall follow those rules.
12 With respect to discovery motions or other proceedings not governed by California Rules of
13 Court, Rules 2.550 and 2.551, the following shall apply: If Confidential Materials, Highly
14 Confidential Materials, or Information derived therefrom are submitted to or otherwise
15 disclosed to the Court in connection with discovery motions and proceedings, the same shall be
16 separately filed under seal with the clerk of the Court in an envelope marked:
17 "CONFIDENTIAL – FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER AND
18 WITHOUT ANY FURTHER SEALING ORDER REQUIRED."

19 20. The Parties shall meet and confer regarding the procedures for use of any Confidential
20 Materials or Highly Confidential Materials at trial and shall move the Court for entry of an
21 appropriate order.

22 21. Nothing in this Stipulation and Protective Order shall affect the admissibility into
23 evidence of Confidential Materials or Highly Confidential Materials, or abridge the rights of
24 any person to seek judicial review or to pursue other appropriate judicial action with respect to
25 any ruling made by the Court concerning the issue of the status of any Confidential Materials
26 or Highly Confidential Materials.

27 22. This Stipulation and Protective Order shall continue to be binding after the conclusion of
28 this Proceeding and all subsequent proceedings arising from this Proceeding, except that a Party

1 may seek the written permission of the Designating Party or may move the Court for relief from
2 the provisions of this Stipulation and Protective Order. To the extent permitted by law, the
3 Court shall retain jurisdiction to enforce, modify, or reconsider this Stipulation and Protective
4 Order, even after the Proceeding is terminated.

5 23. Upon written request made within thirty (30) days after the settlement or other
6 termination of the Proceeding, the undersigned Parties shall have thirty (30) days to either (a)
7 promptly return to counsel for each Designating Party all Confidential Materials and Highly
8 Confidential Materials, and all copies thereof (except that counsel for each Party may maintain
9 in its files, in continuing compliance with the terms of this Stipulation and Protective Order, all
10 work product, and one copy of each pleading filed with the Court, (b) agree with counsel for
11 the Designating Party upon appropriate methods and certification of destruction or other
12 disposition of such materials, or (c) as to any Documents, Testimony, or other Information not
13 addressed by sub-paragraphs (a) and (b), file a motion seeking a Court order regarding proper
14 preservation of such Materials. To the extent permitted by law the Court shall retain continuing
15 jurisdiction to review and rule upon the motion referred to in sub-paragraph (c) herein.

16 24. After this Stipulation and Protective Order has been signed by counsel for all Parties, it
17 shall be presented to the Court for entry. Counsel agree to be bound by the terms set forth herein
18 with regard to any Confidential Materials or Highly Confidential Materials that have been
19 produced before the Court signs this Stipulation and Protective Order.

20 25. The Parties and all signatories to the Certification attached hereto as Exhibit A agree to
21 be bound by this Stipulation and Protective Order pending its approval and entry by the Court.
22 In the event that the Court modifies this Stipulation and Protective Order, or in the event that
23 the Court enters a different Protective Order, the Parties agree to be bound by this Stipulation
24 and Protective Order until such time as the Court may enter such a different Order. It is the
25 Parties' intent to be bound by the terms of this Stipulation and Protective Order pending its
26 entry so as to allow for immediate production of Confidential Materials and Highly Confidential
27 Materials under the terms herein.

1 26. A true and correct redlined version of this Stipulation and Protective Order, which shows
2 all modifications made to the Superior Court of California for Los Angeles County Model
3 Stipulation and Protective Order, is attached hereto to facilitate the Court's review.

4 This Stipulation and Protective Order may be executed in counterparts.
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 DATED: March 7, 2022

STRADLING YOCCA CARLSON & RAUTH
A Professional Corporation

2
3 By: 

Karla J. Kraft,
John M. Wicker
Attorneys for Defendant
AFR GROUP, LLC

4
5
6 DATED: 3/2/2022

GUTIERREZ DERHAM LAW FIRM LLP

7
8 By: 

Matthew Gutierrez
Attorney for Plaintiff
ELIDET BORDON

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

ORDER

GOOD CAUSE APPEARING, the Court hereby approves this Stipulation and Protective Order.

IT IS SO ORDERED.

Dated: _____
THE HONORABLE KRISTIN S. ESCALANTE

EXHIBIT A

CERTIFICATION RE CONFIDENTIAL DISCOVERY MATERIALS

I hereby acknowledge that I, _____[NAME],
_____[POSITION AND EMPLOYER],
am about to receive Confidential Materials and/or Highly Confidential Materials supplied in
connection with the Proceeding, Los Angeles Superior Court Case No. 21STCV20152 . I certify
that I understand that the Confidential Materials and/or Highly Confidential Materials are
provided to me subject to the terms and restrictions of the Stipulation and Protective Order filed
in this Proceeding. I have been given a copy of the Stipulation and Protective Order; I have read
it, and I agree to be bound by its terms.

I understand that the Confidential Materials and Highly Confidential Materials, as
defined in the Stipulation and Protective Order, including any notes or other records that may
be made regarding any such materials, shall not be Disclosed to anyone except as expressly
permitted by the Stipulation and Protective Order. I will not copy or use, except solely for the
purposes of this Proceeding, any Confidential Materials or Highly Confidential Materials
obtained pursuant to this Stipulation and Protective Order, except as provided therein or
otherwise ordered by the Court in the Proceeding.

I further understand that I am to retain all copies of all Confidential Materials and
Highly Confidential Materials provided to me in the Proceeding in a secure manner, and that
all copies of such materials are to remain in my personal custody until termination of my
participation in this Proceeding, whereupon the copies of such materials will be returned to
counsel who provided me with such materials.

Signature Page to Follow

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

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed this ____ day of ____, 20__, at _____.

DATED: _____ BY: _____
Signature

Title

Address

City, State, Zip

Telephone

Exhibit A

KARLA J. KRAFT, State Bar No. 205530
kkraft@stradlinglaw.com
JOHN M. WICKER, State Bar No. 292023
jwicker@stradlinglaw.com
STRADLING YOCCA CARLSON & RAUTH
A Professional Corporation
660 Newport Center Drive, Suite 1600
Newport Beach, CA 92660-6422
Telephone: 949 725 4000
Facsimile: 949 725 4100

Attorneys for Defendant
AFR GROUP, LLC

MATTHEW GUTIERREZ, State Bar No. 271206
mg@gutierrezderham.com
GUTIERREZ DERHAM LAW FIRM LLP
26459 Rancho Parkway S, Suite 1
Lake Forest, CA 92630
Telephone: (323) 676-6676

Attorneys for Plaintiff, ELIDET BORDON
Individually and as a proxy for the State of California

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

ELIDET BORDON, an individual,

Plaintiff,

vs.

AFR GROUP, LLC, a limited liability
company; CAREER STRATEGIES
TEMPORARY, INC. a corporation; and DOES
1 through 5, inclusive,

Defendants.

CASE NO. 21STCV20152
Hon. Kristin S. Escalante
Dept. 24

**STIPULATION AND PROTECTIVE
ORDER – CONFIDENTIAL AND
HIGHLY CONFIDENTIAL
DESIGNATIONS**

Complaint Filed: May 28, 2021
First Amended Complaint Filed:
August 9, 2021

1 **IT IS HEREBY STIPULATED** by and between the parties to the above captioned
2 matter, plaintiff Elidet Bordon (“Plaintiff”), and defendant AFR Group, LLC (“Defendant”)
3 (Plaintiff and Defendant shall hereafter collectively be referred to as the “Parties”) ~~Plaintiffs v.~~
4 ~~Defendants, (list names of Plaintiffs and Defendants) (“Parties”)~~, by and through their
5 respective counsel of record, that in order to facilitate the exchange of information and
6 documents which may be subject to confidentiality limitations on disclosure due to federal laws,
7 state laws, and privacy rights, the Parties stipulate as follows:

8 1. In this Stipulation and Protective Order, the words set forth below shall have the
9 following meanings:

10 a. “Proceeding” means the above-entitled proceeding Los Angeles County
11 Superior Court Case No. 21STCV20152 ~~(specify case number).~~

12 b. “Court” means the Hon. Kristin S. Escalante ~~(list name of judge)~~, or any
13 other judge to which this Proceeding may be assigned, including Court staff participating in
14 such proceedings.

15 c. “Confidential” means any Documents, Testimony, or Information which
16 is in the possession of a Designating Party who believes in good faith that such Documents,
17 Testimony, or Information is entitled to confidential treatment under applicable law.

18 d. “Confidential Materials” means any Documents, Testimony, or
19 Information as defined below designated as “Confidential” pursuant to the provisions of this
20 Stipulation and Protective Order.

21 e. — ~~[This provision is only to be used when a legitimate basis, tailored to the~~
22 ~~case, has been explained.] “Highly Confidential” means any information which belongs to a~~
23 ~~Designating Party who believes in good faith that the Disclosure of such information to another~~
24 ~~Party or non-Party would create a substantial risk of serious financial or other injury that cannot~~
25 ~~be avoided by less restrictive means.~~

26 f.e. “Highly Confidential Materials” means any Documents, Testimony, or
27 Information, as defined below, designated as “Highly Confidential” pursuant to the provisions
28 of this Stipulation and Protective Order.

~~g.f.~~ “Designating Party” means the Party that designates Documents, Testimony, or Information, as defined below, as “Confidential” or “Highly Confidential.”

~~h.g.~~ “Disclose” or “Disclosed” or “Disclosure” means to reveal, divulge, give, or make available Materials, or any part thereof, or any information contained therein.

~~i.h.~~ “Documents” means (i) any “Writing,” “Original,” and “Duplicate” as those terms are defined by California Evidence Code Sections 250, 255, and 260, which have been produced in discovery in this Proceeding by any person or entity, and (ii) any copies, reproductions, or summaries of all or any part of the foregoing.

~~j.i.~~ “Information” means the content of Documents or Testimony.

~~k.j.~~ “Testimony” means all depositions, declarations, or other testimony taken or used in this Proceeding.

2. Given the nature of the claims asserted and defenses likely to be presented, the parties believe certain Documents, Testimony or Information may be disclosed in this Proceeding that constitute trade secrets, proprietary information, or other confidential information of a sensitive nature that is not generally known or readily accessible to the general public and that may cause harm to one or more of the Parties or non-parties if such Documents, Testimony or Information are disclosed to the general public.

~~2.3.~~ The Designating Party shall have the right to designate as “Highly Confidential” only the non-public Documents, Testimony, or Information that the Designating Party in good faith believes would create a substantial risk of serious financial or other injury, if Disclosed to another Party or non-Party, and that such risk cannot be avoided by less restrictive means.

~~3.4.~~ The entry of this Stipulation and Protective Order does not alter, waive, modify, or abridge any right, privilege, or protection otherwise available to any Party with respect to the discovery of matters, including but not limited to any Party’s right to assert the attorney-client privilege, the attorney work product doctrine, or other privileges, or any Party’s right to contest any such assertion.

~~4.5.~~ Any Documents, Testimony, or Information to be designated as “Confidential” or “Highly Confidential” must be clearly so designated before the Document, Testimony, or

1 Information is Disclosed or produced. The parties may agree that a case name and number are
2 to be part of the “Highly Confidential” designation. The “Confidential” or “Highly
3 Confidential” designation should not obscure or interfere with the legibility of the designated
4 Information.

5 a. For Documents (apart from transcripts of depositions or other pretrial or
6 trial proceedings), the Designating Party must affix the legend “Confidential” or “Highly
7 Confidential” on each page of any Document containing such designated material.

8 b. For Testimony given in depositions the Designating Party may either:

9 i. identify on the record, before the close of the deposition, all
10 “Confidential” or “Highly Confidential” Testimony, by specifying all portions of the Testimony
11 that qualify as “Confidential” or “Highly Confidential;” or

12 ii. designate the entirety of the Testimony at the deposition as
13 “Confidential” or “Highly Confidential” (before the deposition is concluded) with the right to
14 identify more specific portions of the Testimony as to which protection is sought within 30 days
15 following receipt of the deposition transcript. In circumstances where portions of the deposition
16 Testimony are designated for protection, the transcript pages containing “Confidential” or
17 “Highly Confidential” Information may be separately bound by the court reporter, who must
18 affix to the top of each page the legend “Confidential” or “Highly Confidential,” as instructed
19 by the Designating Party.

20 c. For Information produced in some form other than Documents, and for
21 any other tangible items, including, without limitation, compact discs or DVDs, the Designating
22 Party must affix in a prominent place on the exterior of the container or containers in which the
23 Information or item is stored the legend “Confidential” or “Highly Confidential.” If only
24 portions of the Information or item warrant protection, the Designating Party, to the extent
25 practicable, shall identify the “Confidential” or “Highly Confidential” portions.

26 ~~5.6.~~ 6. The inadvertent production by any of the undersigned Parties or non-Parties to
27 the Proceedings of any Document, Testimony, or Information during discovery in this
28

1 Proceeding without a “Confidential” or “Highly Confidential” designation, shall be without
2 prejudice to any claim that such item is “Confidential” or “Highly Confidential” and such Party
3 shall not be held to have waived any rights by such inadvertent production. In the event that
4 any Document, Testimony, or Information that is subject to a “Confidential” or “Highly
5 Confidential” designation is inadvertently produced without such designation, the Party that
6 inadvertently produced the document shall give written notice of such inadvertent production
7 within twenty (20) days of discovery of the inadvertent production, together with a further copy
8 of the subject Document, Testimony, or Information designated as “Confidential” or “Highly
9 Confidential” (the “Inadvertent Production Notice”). Upon receipt of such Inadvertent
10 Production Notice, the Party that received the inadvertently produced Document, Testimony,
11 or Information shall promptly destroy the inadvertently produced Document, Testimony, or
12 Information and all copies thereof, or, at the expense of the producing Party, return such
13 together with all copies of such Document, Testimony or Information to counsel for the
14 producing Party and shall retain only the “Confidential” or “Highly Confidential” materials.
15 Should the receiving Party choose to destroy such inadvertently produced Document,
16 Testimony, or Information, the receiving Party shall notify the producing Party in writing of
17 such destruction within ten (10) days of receipt of written notice of the inadvertent production.
18 This provision is not intended to apply to any inadvertent production of any Document,
19 Testimony, or Information protected by attorney-client or work product privileges. In the event
20 that this provision conflicts with any applicable law regarding waiver of confidentiality through
21 the inadvertent production of Documents, Testimony or Information, such law shall govern.

22 ~~6.7.~~ 6.7. In the event that counsel for a Party receiving Documents, Testimony or
23 Information in discovery designated as “Confidential” or “Highly Confidential” objects to such
24 designation with respect to any or all of such items, said counsel shall advise counsel for the
25 Designating Party, in writing, of such objections, the specific Documents, Testimony or
26 Information to which each objection pertains, and the specific reasons and support for such
27 objections (the “Designation Objections”). Counsel for the Designating Party shall have thirty
28 (30) days from receipt of the written Designation Objections to either (a) agree in writing to de-

1 designate Documents, Testimony, or Information pursuant to any or all of the Designation
2 Objections and/or (b) file a motion with the Court seeking to uphold any or all designations on
3 Documents, Testimony, or Information addressed by the Designation Objections (the
4 “Designation Motion”). Pending a resolution of the Designation Motion by the Court, any and
5 all existing designations on the Documents, Testimony, or Information at issue in such Motion
6 shall remain in place. The Designating Party shall have the burden on any Designation Motion
7 of establishing the applicability of its “Confidential” or “Highly Confidential” designation. In
8 the event that the Designation Objections are neither timely agreed to nor timely addressed in
9 the Designation Motion, then such Documents, Testimony, or Information shall be de-
10 designated in accordance with the Designation Objection applicable to such material.

11 ~~7.8.~~ 8. Access to and/or Disclosure of Confidential Materials shall be permitted only to
12 the following persons or entities:

- 13 a. the Court;
- 14 b. (1) Attorneys of record in the Proceeding and their affiliated attorneys,
15 paralegals, clerical and secretarial staff employed by such attorneys who are actively involved
16 in the Proceeding and are not employees of any Party; (2) In-house counsel to the undersigned
17 Parties and the paralegal, clerical and secretarial staff employed by such counsel. Provided,
18 however, that each non-lawyer given access to Confidential Materials shall be advised that such
19 materials are being Disclosed pursuant to, and are subject to, the terms of this Stipulation and
20 Protective Order and that they may not be Disclosed other than pursuant to its terms;
- 21 c. those officers, directors, partners, members, employees and agents of all
22 non-designating Parties that counsel for such Parties deems necessary to aid counsel in the
23 prosecution and defense of this Proceeding; provided, however, that prior to the Disclosure of
24 Confidential Materials to any such officer, director, partner, member, employee or agent,
25 counsel for the Party making the Disclosure shall deliver a copy of this Stipulation and
26 Protective Order to such person, shall explain that such person is bound to follow the terms of
27 such Order, and shall secure the signature of such person on a statement in the form attached
28 hereto as Exhibit A;

1 d. court reporters in this Proceeding (whether at depositions, hearings, or any
2 other proceeding);

3 e. any deposition, trial, or hearing witness in the Proceeding who previously
4 has had access to the Confidential Materials, or who is currently or was previously an officer,
5 director, partner, member, employee or agent of an entity that has had access to the Confidential
6 Materials;

7 f. any deposition or non-trial hearing witness in the Proceeding who
8 previously did not have access to the Confidential Materials; provided, however, that each such
9 witness given access to Confidential Materials shall be advised that such materials are being
10 Disclosed pursuant to, and are subject to, the terms of this Stipulation and Protective Order and
11 that they may not be Disclosed other than pursuant to its terms;

12 g. mock jury participants, provided, however, that prior to the Disclosure of
13 Confidential Materials to any such mock jury participant, counsel for the Party making the
14 Disclosure shall deliver a copy of this Stipulation and Protective Order to such person, shall
15 explain that such person is bound to follow the terms of such Order, and shall secure the
16 signature of such person on a statement in the form attached hereto as Exhibit A.

17 h. outside experts or expert consultants consulted by the undersigned Parties
18 or their counsel in connection with the Proceeding, whether or not retained to testify at any oral
19 hearing; provided, however, that prior to the Disclosure of Confidential Materials to any such
20 expert or expert consultant, counsel for the Party making the Disclosure shall deliver a copy of
21 this Stipulation and Protective Order to such person, shall explain its terms to such person, and
22 shall secure the signature of such person on a statement in the form attached hereto as Exhibit
23 A. It shall be the obligation of counsel, upon learning of any breach or threatened breach of this
24 Stipulation and Protective Order by any such expert or expert consultant, to promptly notify
25 counsel for the Designating Party of such breach or threatened breach; and

26 i. any other person or entity that the Designating Party agrees to in
27 writing.

1 ~~8.~~9. Access to and/or Disclosure of Highly Confidential Materials shall be permitted
2 only to the following persons or entities:

3 a. Trial Counsel for the Parties, their partners and associates, and staff and
4 supporting personnel of such attorneys, such as paralegal assistants, secretarial, stenographic
5 and clerical employees and contractors, and outside copying services, who are working on this
6 Proceeding (or any further proceedings herein) under the direction of such attorneys and to
7 whom it is necessary that the Highly Confidential Materials be Disclosed for purposes of this
8 Proceeding. Such employees, assistants, contractors and agents to whom such access is
9 permitted and/or Disclosure is made shall, prior to such access or Disclosure, be advised of, and
10 become subject to, the provisions of this Protective Order. "Trial Counsel," for purposes of this
11 Paragraph, shall mean outside retained counsel and shall not include in-house counsel to the
12 undersigned Parties and the paralegal, clerical and secretarial staff employed by such in-house
13 counsel;

14 b. outside experts or expert consultants consulted by the undersigned Parties
15 or their counsel in connection with the Proceeding, whether or not retained to testify at any oral
16 hearing; provided, however, that prior to the Disclosure of Highly Confidential Materials to any
17 such expert or expert consultant, counsel for the Party making the Disclosure shall deliver a
18 copy of this Stipulation and Protective Order to such person, shall explain its terms to such
19 person, and shall secure the signature of such person on a statement in the form attached hereto
20 as Exhibit A prior to the Disclosure of Highly Confidential Materials. It shall be the obligation
21 of Trial Counsel, upon learning of any breach or threatened breach of this Stipulation and
22 Protective Order by any such expert or expert consultant, to promptly notify Trial Counsel for
23 the Designating Party of such breach or threatened breach;

24 c. any person who authored, received, saw or was otherwise familiar with
25 Documents, Testimony, or Information or thing designated "Highly Confidential," including
26 any person otherwise familiar with the Highly Confidential Information contained therein, but
27 only to the extent of that person's prior familiarity with the Highly Confidential Information;

28 d. court reporters in this Proceeding (whether at depositions, hearings, or any

1 other proceeding); and

2 e. the Court.

3 ~~9.10.~~ Confidential Materials and Highly Confidential Materials shall be used by the
4 persons or entities receiving them only for the purposes of preparing for, conducting,
5 participating in the conduct of, and/or prosecuting and/or defending the Proceeding, and not for
6 any business or other purpose whatsoever.

7 ~~10.11.~~ Any Party to the Proceeding (or other person subject to the terms of this
8 Stipulation and Protective Order) may ask the Court, after appropriate notice to the other Parties
9 to the Proceeding, to modify or grant relief from any provision of this Stipulation and Protective
10 Order.

11 ~~11.12.~~ Entering into, agreeing to, and/or complying with the terms of this Stipulation
12 and Protective Order shall not:

13 a. operate as an admission by any person that any particular Document,
14 Testimony, or Information marked “Confidential” or “Highly Confidential” contains or reflects
15 trade secrets, proprietary, confidential or competitively sensitive business, commercial,
16 financial or personal information; or

17 b. prejudice in any way the right of any Party (or any other person subject to
18 the terms of this Stipulation and Protective Order):

19 i. to seek a determination by the Court of whether any particular
20 Confidential Materials or Highly Confidential Materials should be subject to protection under
21 the terms of this Stipulation and Protective Order; or

22 ii. to seek relief from the Court on appropriate notice to all other
23 Parties to the Proceeding from any provision(s) of this Stipulation and Protective Order, either
24 generally or as to any particular Document, Material or Information.

25 ~~12.13.~~ Any Party to the Proceeding who has not executed this Stipulation and Protective
26 Order as of the time it is presented to the Court for signature may thereafter become a Party to
27

1 this Stipulation and Protective Order by its counsel's signing and dating a copy thereof and
2 filing the same with the Court, and serving copies of such signed and dated copy upon the other
3 Parties to this Stipulation and Protective Order.

4 ~~13.~~14.Any Information that may be produced by a non-Party witness in discovery in the
5 Proceeding pursuant to subpoena or otherwise may be designated by such non-Party as
6 "Confidential" or "Highly Confidential" under the terms of this Stipulation and Protective
7 Order, and any such designation by a non-Party shall have the same force and effect, and create
8 the same duties and obligations, as if made by one of the undersigned Parties hereto. Any such
9 designation shall also function as consent by such producing non-Party to the authority of the
10 Court in the Proceeding to resolve and conclusively determine any motion or other application
11 made by any person or Party with respect to such designation, or any other matter otherwise
12 arising under this Stipulation and Protective Order.

13 ~~14.~~15.If any person subject to this Stipulation and Protective Order who has custody of
14 any Confidential Materials or Highly Confidential Materials receives a subpoena or other
15 process ("Subpoena") from any government or other person or entity demanding production of
16 such materials, the recipient of the Subpoena shall promptly give notice of the same by
17 electronic mail transmission, followed by either express mail or overnight delivery to counsel
18 of record for the Designating Party, and shall furnish such counsel with a copy of the Subpoena.
19 Upon receipt of this notice, the Designating Party may, in its sole discretion and at its own cost,
20 move to quash or limit the Subpoena, otherwise oppose production of the Confidential Materials
21 or Highly Confidential Materials, and/or seek to obtain confidential treatment of such materials
22 from the subpoenaing person or entity to the fullest extent available under law. The recipient of
23 the Subpoena may not produce any Confidential Materials or Highly Confidential Materials
24 pursuant to the Subpoena prior to the date specified for production on the Subpoena.

25 ~~15.~~16.Nothing in this Stipulation and Protective Order shall be construed to preclude
26 either Party from asserting in good faith that certain Confidential Materials or Highly
27 Confidential Materials require additional protection. The Parties shall meet and confer to agree
28 upon the terms of such additional protection.

1 ~~16.~~17.If, after execution of this Stipulation and Protective Order, any Confidential
2 Materials or Highly Confidential Materials submitted by a Designating Party under the terms
3 of this Stipulation and Protective Order is Disclosed by a non-Designating Party to any person
4 other than in the manner authorized by this Stipulation and Protective Order, the non-
5 Designating Party responsible for the Disclosure shall bring all pertinent facts relating to the
6 Disclosure of such Confidential Materials or Highly Confidential Materials to the immediate
7 attention of the Designating Party.

8 ~~17.~~18.This Stipulation and Protective Order is entered into without prejudice to the right
9 of any Party to knowingly waive the applicability of this Stipulation and Protective Order to
10 any Confidential Materials or Highly Confidential Materials designated by that Party. If the
11 Designating Party uses Confidential Materials or Highly Confidential Materials in a non-
12 Confidential manner, then the Designating Party shall advise that the designation no longer
13 applies.

14 ~~18.~~19.Where any Confidential Materials or Highly Confidential Materials, or
15 Information derived therefrom, is included in any motion or other proceeding governed by
16 California Rules of Court, Rules 2.550 and 2.551, the Parties and any involved non-party shall
17 follow those rules. With respect to discovery motions or other proceedings not governed by
18 California Rules of Court, Rules 2.550 and 2.551, the following shall apply: If Confidential
19 Materials, Highly Confidential Materials, or Information derived therefrom are submitted to or
20 otherwise disclosed to the Court in connection with discovery motions and proceedings, the
21 same shall be separately filed under seal with the clerk of the Court in an envelope marked:
22 “CONFIDENTIAL – FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER AND
23 WITHOUT ANY FURTHER SEALING ORDER REQUIRED.”

24 ~~19.~~20.The Parties shall meet and confer regarding the procedures for use of any
25 Confidential Materials or Highly Confidential Materials at trial and shall move the Court for
26 entry of an appropriate order.

27 ~~20.~~21.Nothing in this Stipulation and Protective Order shall affect the admissibility into
28 evidence of Confidential Materials or Highly Confidential Materials, or abridge the rights of

1 any person to seek judicial review or to pursue other appropriate judicial action with respect to
2 any ruling made by the Court concerning the issue of the status of any Confidential Materials
3 or Highly Confidential Materials.

4 ~~21.~~22. This Stipulation and Protective Order shall continue to be binding after the
5 conclusion of this Proceeding and all subsequent proceedings arising from this Proceeding,
6 except that a Party may seek the written permission of the Designating Party or may move the
7 Court for relief from the provisions of this Stipulation and Protective Order. To the extent
8 permitted by law, the Court shall retain jurisdiction to enforce, modify, or reconsider this
9 Stipulation and Protective Order, even after the Proceeding is terminated.

10 ~~22.~~23. Upon written request made within thirty (30) days after the settlement or other
11 termination of the Proceeding, the undersigned Parties shall have thirty (30) days to either (a)
12 promptly return to counsel for each Designating Party all Confidential Materials and Highly
13 Confidential Materials, and all copies thereof (except that counsel for each Party may maintain
14 in its files, in continuing compliance with the terms of this Stipulation and Protective Order, all
15 work product, and one copy of each pleading filed with the Court ~~[and one copy of each~~
16 ~~deposition together with the exhibits marked at the deposition)]~~*, (b) agree with counsel for the
17 Designating Party upon appropriate methods and certification of destruction or other disposition
18 of such materials, or (c) as to any Documents, Testimony, or other Information not addressed
19 by sub-paragraphs (a) and (b), file a motion seeking a Court order regarding proper preservation
20 of such Materials. To the extent permitted by law the Court shall retain continuing jurisdiction
21 to review and rule upon the motion referred to in sub-paragraph (c) herein. ~~*[The bracketed~~
22 ~~portion of this provision shall be subject to agreement between counsel for the Parties in each~~
23 ~~case.]~~

24 ~~23.~~24. After this Stipulation and Protective Order has been signed by counsel for all
25 Parties, it shall be presented to the Court for entry. Counsel agree to be bound by the terms set
26 forth herein with regard to any Confidential Materials or Highly Confidential Materials that
27 have been produced before the Court signs this Stipulation and Protective Order.

1 ~~24.~~25. The Parties and all signatories to the Certification attached hereto as Exhibit A
2 agree to be bound by this Stipulation and Protective Order pending its approval and entry by
3 the Court. In the event that the Court modifies this Stipulation and Protective Order, or in the
4 event that the Court enters a different Protective Order, the Parties agree to be bound by this
5 Stipulation and Protective Order until such time as the Court may enter such a different Order.
6 It is the Parties' intent to be bound by the terms of this Stipulation and Protective Order pending
7 its entry so as to allow for immediate production of Confidential Materials and Highly
8 Confidential Materials under the terms herein.

9 ~~25.~~26. A true and correct redlined version of this Stipulation and Protective Order, which
10 shows all modifications made to the Superior Court of California for Los Angeles County
11 Model Stipulation and Protective Order, is attached hereto to facilitate the Court's review.

12 This Stipulation and Protective Order may be executed in counterparts.
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

DATED: STRADLING YOCCA CARLSON & RAUTH
A Professional Corporation

By: _____
Karla J. Kraft,
John M. Wicker
Attorneys for Defendant
AFR GROUP, LLC
GUTIERREZ DERHAM LAW FIRM LLP

DATED: _____
By: _____
Matthew Gutierrez
Attorney for Plaintiff
ELIDET BORDON

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

ORDER

GOOD CAUSE APPEARING, the Court hereby approves this Stipulation and Protective Order.

IT IS SO ORDERED.

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

Dated: _____

THE HONORABLE KRISTIN S. ESCALANTE

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

EXHIBIT A

CERTIFICATION RE CONFIDENTIAL DISCOVERY MATERIALS

I hereby acknowledge that I, _____[NAME],
_____[POSITION AND EMPLOYER],
am about to receive Confidential Materials and/or Highly Confidential Materials supplied in
connection with the Proceeding, [Los Angeles Superior Court Case No. 21STCV20152](#)
~~(INSERT CASE NO.)~~. I certify that I understand that the Confidential Materials and/or Highly

1 Confidential Materials are provided to me subject to the terms and restrictions of the Stipulation
2 and Protective Order filed in this Proceeding. I have been given a copy of the Stipulation and
3 Protective Order; I have read it, and I agree to be bound by its terms.

4 I understand that the Confidential Materials and Highly Confidential Materials, as
5 defined in the Stipulation and Protective Order, including any notes or other records that may
6 be made regarding any such materials, shall not be Disclosed to anyone except as expressly
7 permitted by the Stipulation and Protective Order. I will not copy or use, except solely for the
8 purposes of this Proceeding, any Confidential Materials or Highly Confidential Materials
9 obtained pursuant to this Stipulation and Protective Order, except as provided therein or
10 otherwise ordered by the Court in the Proceeding.

11 I further understand that I am to retain all copies of all Confidential Materials and
12 Highly Confidential Materials provided to me in the Proceeding in a secure manner, and that
13 all copies of such materials are to remain in my personal custody until termination of my
14 participation in this Proceeding, whereupon the copies of such materials will be returned to
15 counsel who provided me with such materials.

16 //

17 //

18 //

19 //

20 //

21 Signature Page to Follow

22 I declare under penalty of perjury, under the laws of the State of California, that the
23 foregoing is true and correct. Executed this ____ day of ____, 20__, at
24 _____.

25
26 DATED: _____ BY: _____
Signature

27
28 _____
Title

-18-

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

Address

City, State, Zip

Telephone