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individually and as a proxy for the State of California

FILED
Superior Court of California
County of Los Angeles

08/09/2021

Sherri R. Carter, Executive Officer / Clerk of Court

By: S. Tresvamt 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

3 2. Venue is proper in this Court because of one the defendants have its principal place of
4 business in this county.

5 PARTIES

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

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

10 5. Defendant CAREER STRATEGIES TEMPORARY, INC. (“CST”), a corporation that
11 conducted, and is conducting, business in the State of California. CST registered the address 719 N.
12 Victory Blvd. Burbank, CA 91502 with California Secretary of State as its principal place of business in
13 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.

20 **GENERAL ALLEGATIONS**

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

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

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

29. “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).

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

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

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

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

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

35. “Any employer or other 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(a).

FOURTH CAUSE OF ACTION

LABOR CODE § 203 WAITING TIME PENALTY

(AGAINST AFR AND DOES 1-5)

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

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

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

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

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE COMPLIANT ITEMIZED WAGE STATEMENTS

(AGAINST AFR AND DOES 1-5)

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

41. “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 . . . (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 . . .” Lab. Code § 226(a).

42. “Any employer or other 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 IWC, 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(a).

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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).

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

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

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

SEVENTH CAUSE OF ACTION

LABOR CODE § 1102.5 RETALIATION

(AGAINST AFR AND DOES 1-5)

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

55. 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.

56. 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.

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

58. 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.

59. Defendant terminated Plaintiff's employment.

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

61. Plaintiff was harmed.

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

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

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

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

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

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

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

EIGHTH CAUSE OF ACTION

WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

(AGAINST AFR AND DOES 1-5)

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

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

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

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

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

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

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

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

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

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

86. 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.

87. Defendant 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).

88. 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

89. “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).

90. 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, Defendant violated Labor Code § 510.

91. 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

92. “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).

93. 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, Defendant 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

94. 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.”

95. 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, Defendant 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

96. 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.

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***

107. 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).

108. 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.

109. 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.

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

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

Labor Code § 558

112. 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 . . .

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 of fact to punish, deter, and make an example of the Defendant, in an amount according to proof at the time of trial.

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

9. For costs of suit including expert witness fees.

10. For prejudgment interest.

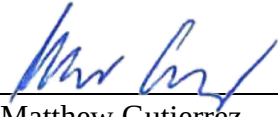
11. For such other and further relief as the Court may deem proper.

DEMAND FOR JURY TRIAL

Plaintiff ELIDET BORDON hereby demands a trial by jury.

Dated: August 9, 2021

GUTIERREZ DERHAM LAW FIRM LLP

By: 

Matthew Gutierrez

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