



Court to impose coercive monetary sanctions on AFR, Ms. Fuartado, and Ms. Austin until they have fully complied with the CID. In support of its motion, the Commission submits the Second Declaration of Michael E. Tankersley (Contempt Exh. 1) to verify the factual allegations herein.

### **Procedural History**

1. On July 29, 2016, the FTC filed a petition for an order enforcing AFR's compliance with an FTC CID. ECF No. 1. The CID was issued in the course of a nonpublic investigation concerning possible violations of Section 5 of the FTC Act, 15 U.S.C § 45(a), and provisions of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. §§ 1692-1692p. The CID, issued March 23, 2016, seeks documents and information concerning (1) AFR's acquisition of debt portfolios containing loans serviced by AMG Services, Inc. (AMG) or made under the name 500 Fast Cash; (2) AFR's attempts to collect on those loans; (3) its practices for resolving consumer disputes and verifying the validity of debt acquired from others; and (4) its corporate structure, management, and revenues. ECF No. 1-5 at 11-13.

2. The due date for complying with the CID was April 8, 2016. AFR did not comply and did not respond to the repeated attempts of FTC staff to secure its compliance. On July 29, 2016, the FTC sought enforcement of the CID. ECF No. 1.

3. On August 4, 2016, Magistrate Judge James R. Klindt issued an Order to Show Cause requiring AFR to file a written response by September 15, 2016, "stating why it should not be compelled to comply with the CID." ECF No. 2. The Order to Show Cause directed the FTC to serve copies of the order, the FTC's petition for

enforcement of the CID, and related papers on AFR. *Id.* at 2. However, the FTC’s process server was unable to serve the papers at AFR’s registered address, discovering that the premises were no longer in use. ECF No. 3-1. The FTC ultimately served AFR by delivering copies to its managing members, Ms. Fuartado and Ms. Austin, at their respective residential addresses. ECF Nos. 3, 3-1 & 3-2 (Proof of Service).<sup>1</sup> AFR did not enter an appearance or respond to the Order to Show Cause.

4. On September 30, 2016, Magistrate Judge Klindt issued a Report and Recommendation finding that the FTC’s petition for enforcement of the CID was “due to be granted.” ECF No. 4 at 1. AFR did not object to the Report and Recommendation.

5. On November 2, 2016, this Court adopted Magistrate Judge Klindt’s legal and factual conclusions and enforced the CID. ECF No. 5. The order decreed that “Respondent AFR Financial LLC shall have up to and including November 17, 2016, or at such later date as may be established by the Federal Trade Commission, to fully comply with the CID issued by Petitioner.” *Id.* at 2. The order directed the clerk to serve copies on AFR through its counsel and through Ms. Fuartado and Ms. Austin at their residential addresses. *Id.* at 3.<sup>2</sup>

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<sup>1</sup> Ms. Fuartado and Ms. Austin have served as AFR’s managing members since the company was organized in June 2015. See Contempt Exhs. 2 (Articles of Organization) & 3 (Articles of Amendment). Ms. Fuartado is also listed as AFR’s registered agent. Contempt Exh. 2.

<sup>2</sup> We understand that, consistent with the Court’s ordinary procedures, the copies were sent to Ms. Fuartado and Ms. Austin through U.S. Mail.

**AFR's Noncompliance With The November 2 Order**

6. Four months have passed since the Court's November 17 compliance deadline, yet AFR still has not produced any responsive documents or information or certified under oath that it is unable to comply. On November 2, shortly after the Court entered its order, FTC staff sent a courtesy copy of the order to AFR's counsel, Donald E. Pinaud, Jr. Contempt Exh. 5 at 4-5; Contempt Exh. 1 ¶ 5. On November 6, FTC staff received a package of documents from Mr. Pinaud. Contempt Exh. 4 (cover letter); Contempt Exh. 1 ¶ 6. However, none of the documents in the package appeared to be responsive to the CID. *See* Contempt Exh. 1 ¶ 7; *see also* ¶ 1, *supra* (describing scope of CID). Instead, AFR produced documents regarding consumer loans unrelated to the AMG or 500 Fast Cash loans under investigation. *See* Contempt Exh. 1 ¶ 7(a)-(c). The CID did not request those documents.<sup>3</sup> *Id.* The package also did not include any of the requested answers to interrogatories. *Id.* ¶ 6.<sup>4</sup>

7. On November 7, 2016, FTC staff acknowledged receipt of the package, but explained that the enclosed documents were not clearly responsive to the CID and that the package failed to include answers to the interrogatories. Contempt Exh. 5 at 3-4;

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<sup>3</sup> The CID's four document requests seek (1) all records referring to debts marketed under the name "500 Fast Cash," issued by Red Cedar Services, Inc., or serviced by AMG Services, Inc.; (2) corporate records, such as articles of organization and organizational charts; (3) documents sufficient to determine the company's revenues; and (4) documents describing the company's policies, procedures, and practices for resolving consumer disputes or verifying the validity of debts. ECF No. 1-5 at 11-12.

<sup>4</sup> Mr. Pinaud's cover letter incorrectly stated that "[o]ur answers to your inter[r]ogatories were provided to you previously." Contempt Exh. 4. To date, no one has provided any interrogatory responses on behalf of AFR. Contempt Exh. 1 ¶ 6.

Contempt Exh. 1 ¶ 8. FTC staff further explained that AFR had not completed the CID's "Form of Certificate of Compliance" (*see* ECF No. 1-5 at 3), which requires a corporate representative to certify under oath that the company has complied with the CID.

Contempt Exh. 5 at 4; Contempt Exh. 1 ¶ 8. Mr. Pinaud responded to FTC staff's email, requested another copy of the interrogatories and the certification form, and stated, "On the documents[,] I sent everything we have. If I didn't send it, it doesn't exist."

Contempt Exh. 5 at 3; Contempt Exh. 1 ¶ 8.

8. On November 8, 2016, FTC staff emailed Mr. Pinaud an additional copy of the interrogatories and informed Mr. Pinaud that the certification form could be found on the second page of the CID. Contempt Exh. 5 at 2; Contempt Exh. 1 ¶ 9.

9. To date, however, AFR has not produced any documents or information responsive to the CID and has not certified under oath that its production is complete. Contempt Exh. 1 ¶¶ 9-10.

10. On September 23, 2016, the State of Florida administratively dissolved AFR for failing to file a required annual report. *See* Contempt Exh. 6 (Florida Division of Corporations Website); Fla. Stat. § 605.0714.<sup>5</sup>

11. Nevertheless, the FTC still needs the materials requested by the CID. An AFR managing member, Ms. Fuartado, previously told FTC staff that the company had responsive material, that she was familiar with the 500 Fast Cash loans, and that she believed that AFR had made calls to collect on those loans. ECF No. 1 ¶ 13 (citation

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<sup>5</sup> Although the company was administratively dissolved *after* the FTC initiated CID enforcement proceedings, such dissolution does not "[a]bate or suspend a proceeding pending by or against the limited liability company on the effective date of dissolution." Fla. Stat. § 605.0717.

omitted); ECF No. 1-1 (Tankersley First Decl.) ¶ 9. The FTC seeks AFR's compliance with the CID to determine (1) whether AFR violated the law when acquiring and attempting to collect on the 500 Fast Cash and other AMG-serviced loans; (2) whether the company sufficiently verified the validity of consumer loans and resolved consumer disputes; and (3) whether monetary relief for injured consumers would be feasible and appropriate.

### **Memorandum Of Law**

Civil contempt requires a showing, by clear and convincing evidence, that the alleged contemnors had violated a specific and definite court order. The Court's November 2, 2016 order required AFR to comply with the FTC's CID in full by November 17. Yet four months after that deadline, AFR has not produced *any* of the required documents or information. AFR's managing members, Ms. Fuartado and Ms. Austin, have also failed to bring the company into compliance. Having received personal notice of this Court's order, they are in contempt.

The Court should therefore direct AFR, Ms. Fuartado, and Ms. Austin to comply forthwith and levy daily monetary sanctions on them until the company purges its contempt. Their failure to comply with this Court's order and the Commission's duly issued CID is an affront to the Court and seriously impedes the Commission's investigation.

#### **I. AFR Is In Contempt Of The Court's November 2 Order.**

This Court has inherent and statutory authority to enforce compliance with its lawful orders through civil contempt. *Citronelle-Mobile Gathering, Inc. v. Watkins*, 943

F.2d 1297, 1301 (11th Cir. 1991). Under Section 20(h) of the FTC Act, “[a]ny disobedience” of a final court order enforcing a CID “shall be punished as a contempt of such court.” 15 U.S.C. § 57b-1(h). The FTC, as the moving party, must show, by clear and convincing evidence, that (1) the alleged contemnors violated a valid and lawful court order; (2) the order was clear and unambiguous; and (3) the alleged contemnors had the ability to comply. *FTC v. Alcoholism Cure Corp.*, No. 3:10-CV-266-J-34JRK, 2015 WL 5897679, at \*7 (M.D. Fla. Oct. 7, 2015) (citing *FTC v. Leshin*, 618 F.3d 1221, 1232 (11th Cir. 2010); *McGregor v. Chierico*, 206 F.3d 1378, 1383 (11th Cir. 2000)).

The FTC meets that standard here. First, the order is clear and definite. It directed AFR to “fully comply with the CID” by November 17, 2016, or a later date set by the Commission. ECF No. 5 at 2. Second, as explained in the accompanying declaration, AFR has not produced any responsive documents, answered any of the interrogatories, or certified its compliance, as required by the CID. Contempt Exh. 1 ¶¶ 6-10. Finally, there is no reason to doubt that AFR is able to comply with the CID, which seeks records and information regarding the company’s debt collection and acquisition practices, corporate structure and management, and revenues (*see* ¶ 1, *supra*)—the sort of information that any debt collection firm would generate in the ordinary course of business. In fact, managing member Fuartado has informed FTC staff that the company had in its possession responsive documents concerning the 500 Fast Cash debts. *See* ¶ 11, *supra*. The company, however, has never produced them.

The burden thus shifts to AFR to demonstrate that it “made in good faith *all reasonable efforts* to comply,” *Citronelle-Mobile*, 943 F.2d at 1301 (emphasis added,

quotation omitted), a requirement that courts construe “strictly,” *Combs v. Ryan’s Coal Co.*, 785 F.2d 970, 984 (11th Cir. 1986). AFR, however, has not provided any information to show that it has taken *any*—let alone “all”—reasonable steps to comply with the November 2 order. Instead, AFR’s counsel has simply proclaimed that the company produced “everything” in its possession and that “[i]f I didn’t send it, it doesn’t exist.” See ¶ 7, *supra*. Of course, these assertions do not address AFR’s utter failure to respond to the interrogatories or certify under oath its full compliance with the CID. In addition, it is now too late for AFR to argue that the CID sought nonexistent information. “[A] person who seeks to avoid a finding of contempt for failure to produce records as directed by [a compulsory process] enforcement order cannot raise for the first time in contempt proceedings the nonexistence of these records.” *United States v. Goehring*, 742 F.2d 1323, 1324 (11th Cir. 1984) (citing *United States v. Rylander*, 460 U.S. 752, 757 (1983)). That argument is “foreclosed by the court’s enforcement order itself, which remains *res judicata*.” *United States v. Roberts*, 858 F.2d 698, 701 (11th Cir. 1988) (citing *Maggio v. Zeitz*, 333 U.S. 56, 75 (1948)).

If in fact AFR *no longer* has the responsive documents (such that compliance would be impossible), the company bears the burden of “rebut[ing] the presumption of continuing possession arising from the enforcement order by introducing some evidence to the contrary.” *Roberts*, 858 F.2d at 701; *see Rylander*, 460 U.S. at 757 (describing nonmovant’s “burden of production” on this issue). AFR would need to explain why it no longer has the records despite the CID’s express instruction to preserve all documents



“in any way relevant to this investigation.” ECF No. 1-5 at 8 (Instruction F).<sup>6</sup> To date, however, the company has relied exclusively on its “own denials”—which are unsworn and lack credibility in this context. *See Roberts*, 858 F.2d at 701 (quoting *Maggio*, 333 U.S. at 76). This Court should not permit AFR’s unexplained and contemptuous defiance of the November 2 order to continue. It should find the company in contempt of its specific command to comply with the FTC’s duly issued CID.

**II. AFR’s Managing Members Are Also In Contempt Because They Have Failed To Ensure the Company’s Compliance.**

An order binds “persons who receive actual notice of it,” including not only the parties but also their “officers, agents, servants, employees, and attorneys,” and others “who are in active concert or participation” with them. Fed. R. Civ. P. 65(d); *see United States v. Fleischman*, 339 U.S. 349, 357 (1950) (“A command to a corporation is in effect a command to those who are officially responsible for the conduct of its affairs.”) (quoting *Wilson v. United States*, 221 U.S. 361, 376 (1911)).<sup>7</sup> Thus, corporate officers and other “individuals responsible for the affairs of a corporation can be individually held in contempt for disobeying a known injunctive order.” *FTC v. Leshin*, 618 F.3d 1221,

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<sup>6</sup> Specifically, the CID directed AFR to “suspend any routine procedures for document destruction and take other measures to prevent the destruction of documents that are in any way relevant to this investigation during its pendency, irrespective of whether you believe such documents are protected from discovery by privilege or otherwise.” ECF No. 1-5 at 8 (Instruction F).

<sup>7</sup> This principle “is derived from the common law doctrine that a decree of injunction not only binds the parties defendant but also those identified with them in interest, in ‘privity’ with them, represented by them or subject to their control. In essence it is that defendants may not nullify a decree by carrying out prohibited acts through aiders and abettors, although they were not parties to the original proceeding.” *Regal Knitwear Co. v. NLRB*, 324 U.S. 9, 14 (1945).

1236 (11th Cir. 2010). When such persons receive notice of a court order and “prevent compliance or fail to take appropriate action within their power for the performance of the corporate duty, they, no less than the corporation itself, are guilty of disobedience and may be punished for contempt.” *Fleischman*, 339 U.S. at 357-58 (quoting *Wilson*, 221 U.S. at 376).

These principles apply when, as here, corporate officers fail to take suitable measures to ensure that the company complies with a known order to produce documents or information. When a court order “unequivocally directs an organization to produce records,” the court may hold in contempt any individuals “who have knowledge of the court’s action who fail to take appropriate action within their power to comply.” *United States v. Voss*, 82 F.3d 1521, 1526 (10th Cir. 1996) (quotation omitted). *See also Williamson v. Recovery Ltd. P’ship*, 467 F. App’x 382, 399-401 (6th Cir. 2012) (affirming contempt sanctions against directors who had “ultimate control over the disputed documents” and the “ability to . . . monitor . . . and ensure” the company’s compliance); *Heinhold Hog Market, Inc. v. McCoy*, 700 F.2d 611, 614-17 (10th Cir. 1983) (upholding contempt order against association’s director who failed to provide “concrete, specific evidence” that he lacked control over records at issue); *NLRB v. Trans Ocean Export Packing, Inc.*, 473 F.2d 612, 614-18 (9th Cir. 1973) (affirming contempt order against president and sole stockholder who “exercised dominant control” over the company and was “responsible for the failure to comply” with order compelling production of documents to NLRB).

AFR's managing members, Ms. Fuartado and Ms. Austin, control the company's affairs and were served with copies of the FTC's enforcement petition, the Court's Order to Show Cause, and its November 2 order enforcing the CID. *See* ¶¶ 3, 5, *supra*. As managing members, Ms. Fuartado and Ms. Austin direct "the management and conduct of the company," *see* Fla. Stat. § 605.0407(b)(2), and are the only two individuals with voting rights over the company's "activities and affairs," *see* Fla. Stat. § 605.04073(1). Ms. Fuartado and Ms. Austin were thus bound by the November 2 order, *see* Fed. R. Civ. P. 65(d), and they violated that order by failing to produce the required documents and information or to ensure that a company representative did so.<sup>8</sup> Although AFR has been administratively dissolved (*see* ¶ 10, *supra*), Ms. Fuartado and Ms. Austin are not relieved of their corporate responsibilities, including their duty to comply with the Court's order. *See* Fla. Stat. §§ 605.0407(6); 605.0714(5); 605.0717(1). Ms. Fuartado and Ms. Austin should therefore be sanctioned personally for AFR's noncompliance.

### **III. The Court Should Impose Coercive Fines Against AFR, Ms. Fuartado, And Ms. Austin.**

The Court has "wide discretion" in fashioning an equitable remedy to coerce the contemnor to comply with the Court's order or to compensate a party for losses resulting from the contemnor's noncompliance. *Alcoholism Cure*, 2015 WL 5897679, at \*10.

Potential remedies include coercive and compensatory fines, attorney's fees and expenses, and coercive incarceration. *Id.* The FTC asks the Court to invoke its authority

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<sup>8</sup> Although Ms. Fuartado told FTC staff that AFR engaged in the debt collection activity at issue and had responsive documents, she nevertheless failed to comply with the order and did not even come forward to offer an explanation why compliance would not be possible. *See* ¶ 11, *supra*.

here to “coerce [respondents] into compliance with the court’s order.” *Leshin*, 618 F.3d at 1239 (quoting *Int’l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 829 (1994)). When fashioning a coercive remedy, the court must consider (1) the “character and magnitude of the harm threatened” by the contemptuous behavior; (2) the “probable effectiveness” of the suggested sanction; and (3) the defendant’s resources and any resulting burden to the defendant. *EEOC v. Guardian Pools, Inc.*, 828 F.2d 1507, 1515 (11th Cir. 1987) (quoting *United States v. United Mine Workers of Am.*, 330 U.S. 258, 304 (1947)).

Applying these factors here, the record establishes the need for coercive daily fines. AFR’s noncompliance has impeded the FTC’s investigation into potentially unlawful debt collection practices and any resulting consumer injury. Given that AFR is now inactive, *see* ¶¶ 3, 10, *supra*, sanctioning the company alone would likely be insufficient to induce compliance. *See also* Contempt. Exh. 1 ¶ 11. Given these circumstances, daily fines against Ms. Fuartado and Ms. Austin are far more likely to achieve success in producing the documents and information requested by the FTC’s CID.<sup>9</sup> Such relief is important to ensure that the FTC can complete its investigation into

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<sup>9</sup> We note that courts in this district have also regularly imposed “conditional order[s] of incarceration” against contemnors that become effective after a sustained period of noncompliance. *See, e.g., Alcoholism Cure*, 2015 WL 5897679, at \*11 (collecting cases and observing that courts may hold a “recalcitrant person . . . in civil contempt, and then imprison[] him until he complies”) (quotation marks omitted); *United States v. Erickson*, No. 8:12-MC-121-T-33-EAJ, 2015 WL 413316, at \*4-5 (M.D. Fla. Jan. 30, 2015) (issuing conditional order of incarceration against taxpayer who violated order enforcing IRS summons). The FTC does not request incarceration of Ms. Fuartado and Ms. Austin at this time.

AFR's debt collection practices and determine whether further action is necessary to protect consumers.

**Prayer for Relief**

WHEREFORE, the Commission invokes the aid of this Court and prays for:

1. Immediate issuance of an order directing AFR, Kimona Fuartado, and Carla Austin to show cause why they should not be held in civil contempt; and
2. A prompt determination of this matter and the entry of a Contempt Order imposing the following sanctions:
  - a. That AFR, Ms. Fuartado, and Ms. Austin be directed to comply with the November 2 Order and provide the documents and information specified in the March 23 CID forthwith; and
  - b. That AFR, Ms. Fuartado, and Ms. Austin pay daily monetary sanctions, to be set by the Court, for each day between the date of service of the Contempt Order and the date that they certify under oath full compliance with the March 23 CID using the Form of Certificate of Compliance included therein; and
  - c. Such other relief as the Court deems just and proper.

Respectfully submitted,

DAVID C. SHONKA  
Acting General Counsel

LESLIE RICE MELMAN  
Assistant General Counsel for Litigation

s/ Bradley Grossman  
BRADLEY GROSSMAN  
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bgrossman@ftc.gov

Of Counsel:

MICHAEL E. TANKERSLEY  
Division of Financial Practices

Dated: March 17, 2017

**CERTIFICATE OF SERVICE**

I certify that on March 17, 2017, I sent copies of the above-captioned motion to AFR Financial LLC and its managing members, Kimona Fuartado and Carla Austin, by FedEx overnight delivery service at the addresses listed below:

Donald E. Pinaud, Jr.  
Kattman & Pinaud, P.A.  
4069 Atlantic Blvd.  
Jacksonville, FL 32207  
*Counsel, AFR Financial LLC*

Kimona Fuartado  
8018 Foxdale Dr.  
Jacksonville, FL 32210  
*Managing Member, AFR Financial LLC*

Carla Austin  
905 Rising Mist Ct.  
Jacksonville, FL 32221  
*Managing Member, AFR Financial LLC*

Kimona Fuartado  
3781 Maddie Lane  
Jacksonville FL, 32210  
*Managing Member, AFR Financial LLC*

s/ Bradley Grossman  
BRADLEY GROSSMAN  
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(202) 326-2994  
(202) 326-2477 (fax)  
bgrossman@ftc.gov

# **CONTEMPT EXHIBIT 1**

Second Declaration of Michael E. Tankersley

March 17, 2017





3. The FTC filed this proceeding to enforce a Civil Investigative Demand (CID) that the Commission issued to AFR Financial LLC (AFR). *See* ECF No. 1-5. The CID, issued March 23, 2016, required AFR to respond to 14 interrogatories and four document requests no later than April 8, 2016. AFR did not respond to the CID.
4. On July 29, 2016, the FTC filed a petition for an order enforcing the CID (ECF No. 1), which the Court granted on November 2, 2016 (ECF No. 5). The Order required AFR to comply with the CID in full by November 17, 2016, or a later date set by the Commission.
5. Within a few hours after the Court issued the November 2 Order, I emailed a courtesy copy of the Order to AFR's counsel, Donald E. Pinaud, Jr. Contempt Exh. 5. Mr. Pinaud responded, "I mailed you yesterday eve[r]ything I had." *Id.*
6. On November 6, I received an envelope from Mr. Pinaud, delivered by the United States Postal Service. The envelope contained a cover letter signed by Mr. Pinaud, dated November 1, 2016, and attached as Contempt Exh. 4. It also contained printed documents that appear to be raw business records. The envelope did not contain any document that purported to provide any answers to the 14 interrogatories in the Commission's CID. The cover letter states that, "[o]ur answers to your inter[r]ogatories were provided to you previously," when, in fact, no one has provided any interrogatory responses on behalf of AFR Financial LLC.

7. The envelope also did not contain any documents addressing the CID's four document requests, and the cover letter merely states that the enclosed documents "are, or could be, relevant to your request for information."<sup>1</sup> The envelope included the following documents, none of which appear to be responsive to the CID:

- a. The largest document was a printed table that lists the names of hundreds of individuals along with loan amounts and other details. The table does not contain a caption or other identifying information describing its contents. In the column for "lender," each entry in the table lists a business name unknown to the FTC. The Commission's CID does not request any documents regarding a lender by that name or any variation of such name.
- b. The envelope also contained an agreement by AFR to purchase consumer loan accounts from a third party. This agreement has no apparent relationship to the document requests in the Commission's CID.
- c. The remaining documents in the envelope were monthly bank statements for an AFR Financial LLC checking account; two contracts between AFR and a debt seller; and emails between representatives of AFR and that debt

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<sup>1</sup> The four document requests seek (1) all records referring to debts marketed under the name "500 Fast Cash," issued by Red Cedar Services, Inc., or serviced by AMG Services, Inc.; (2) corporate records, such as articles of organization and organizational charts; (3) documents sufficient to determine the company's revenues; and (4) documents describing the company's policies, procedures, and practices for resolving consumer disputes or verifying the validity of debts. ECF No. 1-5 at 11-12.

seller concerning collection activities. As with the other records in the envelope, there is no indication on the face of these records that they are responsive to the document requests in the CID.

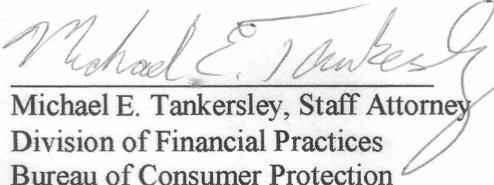
8. On November 7, I emailed Mr. Pinaud and pointed out that his package did not include answers to interrogatories and the documents he had produced did not appear to be responsive to the CID. Contempt Exh. 5. I also noted that AFR had not completed the CID's "Form of Certificate of Compliance" (*see* ECF No.1-5 at 3), which requires a corporate representative to certify under oath that the company has complied with the CID. Mr. Pinaud responded to my email later on November 7. Contempt Exh. 5. He requested another copy of the interrogatories and certification form and asserted, "On the documents[,] I sent everything we have. If I didn't send it, it doesn't exist." *Id.*
9. On November 8, I sent Mr. Pinaud an email with another copy of the interrogatories and I told Mr. Pinaud that the certification form could be found on the second page of the CID. *Id.* I have not received any further communication from Mr. Pinaud since I sent this email. Neither Mr. Pinaud nor anyone else representing AFR contacted me to request an extension to the November 17 compliance deadline.
10. The FTC has never received any interrogatory responses from AFR, and has not received any documents apart from the envelope from Mr. Pinaud that I have described above. Nor has AFR certified under oath that it has provided a

complete response to the CID. AFR has not provided any information to show that it cannot comply with the Court's Order or that it has taken steps to comply.

11. To date, it is not clear whether AFR is still operating, or whether it has assets it could use to satisfy a contempt fine. The company has been administratively dissolved by the State of Florida. *See* Contempt Exh. 6 (Florida Division of Corporations website).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 17, 2017

  
Michael E. Tankersley, Staff Attorney  
Division of Financial Practices  
Bureau of Consumer Protection  
Federal Trade Commission

# **CONTEMPT EXHIBIT 2**

Articles of Organization for AFR Financial LLC

June 24, 2015

**Electronic Articles of Organization  
For  
Florida Limited Liability Company**

L15000109648  
FILED 8:00 AM  
June 24, 2015  
Sec. Of State  
tbrown

**Article I**

The name of the Limited Liability Company is:

AFR FINANCIAL LLC

**Article II**

The street address of the principal office of the Limited Liability Company is:

8028 LONE STAR RD  
JACKSONVILLE, FL. 32211

The mailing address of the Limited Liability Company is:

8028 LONE STAR RD  
JACKSONVILLE, FL. 32211

**Article III**

Other provisions, if any:

ANY AND ALL LAWFUL BUSINESS

**Article IV**

The name and Florida street address of the registered agent is:

KIMONA FUARTADO  
8028 LONE STAR RD  
JACKSONVILLE, FL. 32211

Having been named as registered agent and to accept service of process for the above stated limited liability company at the place designated in this certificate, I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relating to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent.

Registered Agent Signature: KIMONA FUARTADO

### **Article V**

**L15000109648  
FILED 8:00 AM  
June 24, 2015  
Sec. Of State  
tbrown**

The name and address of person(s) authorized to manage LLC:

Title: MGRM  
KIMONA FUARTADO  
8018 FOXDALE DR  
JACKSONVILLE, FL. 32210

Title: MGRM  
CARLA AUSTIN  
905 RISING MIST COURT  
JACKSONVILLE, FL. 32221

Title: MGRM  
RYAN R RICHO  
3601 FITZGERALD ST  
JACKSONVILLE, FL. 32255

### **Article VI**

The effective date for this Limited Liability Company shall be:

06/24/2015

Signature of member or an authorized representative

Electronic Signature: KIMONA FUARTADO

I am the member or authorized representative submitting these Articles of Organization and affirm that the facts stated herein are true. I am aware that false information submitted in a document to the Department of State constitutes a third degree felony as provided for in s.817.155, F.S. I understand the requirement to file an annual report between January 1st and May 1st in the calendar year following formation of the LLC and every year thereafter to maintain "active" status.



# **CONTEMPT EXHIBIT 3**

Articles of Amendment for AFR Financial LLC

October 23, 2015

L15000109645

(Requestor's Name)

(Address)

(Address)

(City/State/Zip/Phone #)

PICK-UP  WAIT  MAIL

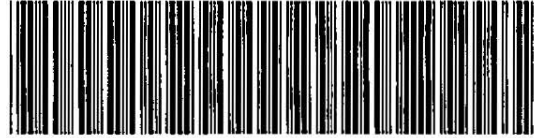
(Business Entity Name)

(Document Number)

Certified Copies \_\_\_\_\_ Certificates of Status \_\_\_\_\_

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TALLAHASSEE, FLORIDA

OCT 26 2015  
SERVICE

### COVER LETTER

**TO:** Registration Section  
Division of Corporations

**SUBJECT:** AFR Financial LLC  
Name of Limited Liability Company

The enclosed Articles of Amendment and fee(s) are submitted for filing.

Please return all correspondence concerning this matter to the following:

Kimona Fuartado  
Name of Person

AFR Financial, LLC  
Firm/Company

8028 Lone Star Road  
Address

Jacksonville Florida 32211  
City/State and Zip Code

E-mail address: (to be used for future annual report notification)

For further information concerning this matter, please call:

Kimona Fuartado at (904) 502-9230  
Name of Person Area Code Daytime Telephone Number

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 TALLAHASSEE, FLORIDA

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Enclosed is a check for the following amount:

- \$25.00 Filing Fee
- \$30.00 Filing Fee & Certificate of Status
- \$55.00 Filing Fee & Certified Copy (additional copy is enclosed)
- \$60.00 Filing Fee, Certificate of Status & Certified Copy (additional copy is enclosed)

**MAILING ADDRESS:**  
 Registration Section  
 Division of Corporations  
 P.O. Box 6327  
 Tallahassee, FL 32314

**STREET/COURIER ADDRESS:**  
 Registration Section  
 Division of Corporations  
 Clifton Building  
 2661 Executive Center Circle  
 Tallahassee, FL 32301

**ARTICLES OF AMENDMENT  
TO  
ARTICLES OF ORGANIZATION  
OF**

AFR Financial, LLC

(Name of the Limited Liability Company as it now appears on our records.)  
(A Florida Limited Liability Company)

The Articles of Organization for this Limited Liability Company were filed on June 24 2015 and assigned Florida document number L15000109648.

This amendment is submitted to amend the following:

**A. If amending name, enter the new name of the limited liability company here:**

N/A

The new name must be distinguishable and contain the words "Limited Liability Company," the designation "LLC" or the abbreviation "L.L.C."

**Enter new principal offices address, if applicable:**

N/A

(Principal office address MUST BE A STREET ADDRESS)

**Enter new mailing address, if applicable:**

N/A

(Mailing address MAY BE A POST OFFICE BOX)

**B. If amending the registered agent and/or registered office address on our records, enter the name of the new registered agent and/or the new registered office address here:**

Name of New Registered Agent:

N/A

New Registered Office Address:

Enter Florida street address

Florida

City

Zip Code

**New Registered Agent's Signature, if changing Registered Agent:**

*I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relative to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent as provided for in Chapter 605, F.S. Or, if this document is being filed to merely reflect a change in the registered office address, I hereby confirm that the limited liability company has been notified in writing of this change.*

*DIA*

If Changing Registered Agent, Signature of New Registered Agent

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TALLAHASSEE FLORIDA

**If amending Authorized Person(s) authorized to manage, enter the title, name, and address of each person being added or removed from our records:**

**MGR = Manager**

**AMBR = Authorized Member**

<u>Title</u>	<u>Name</u>	<u>Address</u>	<u>Type of Action</u>
MGRM	Kimona Fuartado <i>[Signature]</i>	8028 Lone Star Road	<input type="checkbox"/> Add
		Jacksonville, Florida 32211	<input type="checkbox"/> Remove
		*REMAIN THE SAME*	<input type="checkbox"/> Change
MGRM	Carla Austin <i>[Signature]</i>	905 Rising Mist Court	<input type="checkbox"/> Add
		Jacksonville, Florida 32221	<input type="checkbox"/> Remove
		*REMAIN THE SAME*	<input type="checkbox"/> Change
* MGRM	Ryan R. Richo-REMOVING	3601 Fitzgerald ST	<input type="checkbox"/> Add
		Jacksonville, Florida 32255	<input checked="" type="checkbox"/> Remove
			<input type="checkbox"/> Change
			<input type="checkbox"/> Add
			<input type="checkbox"/> Remove
			<input type="checkbox"/> Change
			<input type="checkbox"/> Add
			<input type="checkbox"/> Remove
			<input type="checkbox"/> Change

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 2016 OCT 29 P. 12:00  
 SECRETARY OF STATE  
 TALLAHASSEE, FLORIDA

**D. If amending any other information, enter change(s) here: (Attach additional sheets, if necessary.)**

NOW REMOVING MGRM

Ryan R. Richo 3601 Fitzgerald St Jacksonville, Florida 32255

Multiple horizontal lines for additional information or amendments.

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2015 OCT 23 P 12:00  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

**E. Effective date, if other than the date of filing: \_\_\_\_\_ (optional)**

(If an effective date is listed, the date must be specific and cannot be prior to date of filing or more than 90 days after filing.) Pursuant to 605.0207 (3)(b)

**Note:** If the date inserted in this block does not meet the applicable statutory filing requirements, this date will not be listed as the document's effective date on the Department of State's records.

If the record specifies a delayed effective date, but not an effective time, at 12:01 a.m. on the earlier of:

(b) The 90th day after the record is filed.

Dated October 21, 2015

Signature of a member or authorized representative of a member

Kimona Fuartado-MGRM

Typed or printed name of signee

# **CONTEMPT EXHIBIT 4**

Letter from Donald E. Pinaud, Jr. to Michael Tankersley

November 1, 2016

# KATTMAN & PINAUD

PROFESSIONAL ASSOCIATION  
ATTORNEYS AT LAW

4069 Atlantic Boulevard Jacksonville, Florida 32207

Telephone (904) 398-1229

Fax (904) 398-1568

John F. Kattman  
Donald E. Pinaud, Jr.



Beatrix B. Trado  
Certified Legal Assistant

November 1, 2016

Michael Tankersley  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Mail Stop: CC-10232  
Washington, DC 20580

**Re: Our Clients: AFR Financial L.L.C., and Kimona Fuartado**

Dear Mr. Tankersley:

Enclosed please find all documents that my client was able to locate that are, or could be, relevant to your request for information. Our answers to your interrogatories were provided to you previously, and I believe this response satisfies all you were looking for, at least inasmuch as the Civil Investigative Demand goes. My client has never met with me regarding the lawsuit you filed seeking discovery, and as I advised you, I was not even aware it was ever served. I think, however, that the information you sought in both regards was the same.

Please let me know anything else you may need.

With warmest regards, I remain

Very truly yours,

Donald E. Pinaud, Jr.

DEP/cpd



# **CONTEMPT EXHIBIT 5**

Email Exchange between Donald E. Pinaud, Jr. and  
Michael Tankersley

November 2016

**From:** [Tankersley, Michael](#)  
**To:** ["Don Pinaud"](#)  
**Cc:** [Grossman, Bradley D.](#)  
**Subject:** RE: AFR Financial, FTC Civil Investigative Demand  
**Date:** Tuesday, November 08, 2016 9:13:16 AM

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Dear Mr. Pinaud:

The certification form is the second page of the CID. A copy is attached to my prior email.

The interrogatories are the same interrogatories that appear at the end of the CID. There are no separate court-ordered interrogatories. The interrogatories are also set forth below.

1. Identify the owners and officers of the Company.
2. Describe the size, general organization and business operations of the Company.
3. Identify any affiliated business organizations involved in the Company's debt collection, debt buying or debt selling activities, and describe the role of these business organizations.
4. For each fiscal quarter of the applicable time period during which the Company operated, state the number of individuals employed by the Company: (a) full-time in any position; (b) full-time as collection agents; (c) part-time in any position; and (d) part-time as collection agents.
5. Identify any Person to which the Company sold or transmitted information concerning Fast Cash Debt.
6. Identify each Person that communicated with the Company concerning the proposed or consummated purchase of Fast Cash Debt.
7. Describe the Company's business relationship with any Person that provided or proposed to provide Fast Cash Debt to the Company for any purpose.
8. Describe any information that was given to or acquired by the Company about the source and chain of title of Fast Cash Debt, and identify the source of the information.
9. State the amount that the Company collected to repay Fast Cash Debt.
10. State the date that the Company began efforts to collect on Fast Cash Debt.
11. State the date that the Company ceased efforts to collect on Fast Cash Debt.
12. For calendar year 2014 and calendar year 2015, state the Company's revenue in the following categories: (i) gross revenue; (ii) gross revenue from third-party debt collection; and (iii) revenue from debt collection net of amounts, if any, paid to creditors that provided debts for collection; and (iv) revenue from debt collection net of compensation paid to collection agents.
13. Describe any unwritten policies, procedures or practices that the Company used during any part of the applicable period for:
  - (a) responding when a consumer indicates, orally or in writing, that he or she disputes a debt or any portion of the debt, disputes the accuracy or completeness of any information provided in validation of the debt, or otherwise questions the validity of a debt for which the Company has

requested payment; and  
(b) investigating questions regarding debts or verifying the validity of purchased debt acquired from others.  
14. For each document responsive to Request for Production 4 and each policy, procedure or practice responsive to Interrogatory 13, state the period during which the Company used the document or policy, procedure or practice.

Michael Tankersley  
Federal Trade Commission  
Bureau of Consumer Protection  
600 Pennsylvania Ave., NW  
CC-10232  
Washington, DC 20580  
(202) 326-2991

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**From:** Don Pinaud [mailto:dp@jaxjustice.com]  
**Sent:** Monday, November 07, 2016 10:34 AM  
**To:** Tankersley, Michael  
**Subject:** Re: AFR Financial, FTC Civil Investigative Demand

Please send me the court ordered interrogatories. I don't have them.

On the documents I sent everything we have. If I didn't sent it, it doesn't exist. Send me whatever certification form to this effect you require.

Thanks  
Don

Don Pinaud  
Kattman & Pinaud, P.A.  
4069 Atlantic Blvd.  
Jacksonville, Florida 32207  
(904)398-1229  
[JaxJustice.com](http://JaxJustice.com)

On Nov 7, 2016, at 10:30 AM, Tankersley, Michael <[MTANKERSLEY@ftc.gov](mailto:MTANKERSLEY@ftc.gov)> wrote:

Dear Mr. Pinaud,

I have received the package of documents that you sent. It does not provide the responses required by the Court's order and I am not certain that any of the documents that you sent are responsive to the CID. Please be sure that your clients are aware that we do not consider this package of documents to be a satisfactory response to the CID or compliance with the Court's order.

First, the CID (attached) sets forth 14 interrogatory questions (pp. 8-9). Your package did not include responses to any of these interrogatories. Furthermore, we have not previously received any interrogatory responses from AFR or from you.

Second, your letter was accompanied by a collection of documents, but these documents do not appear to be responsive to the four requests for documents in the CID. The CID seeks documents concerning "Fast Cash Debt," but none of these documents references that debt. The CID requests documents describing the organization of AFR, but none of the documents is responsive to that request. The CID requests documents sufficient to determine gross and net revenue for AFR's activities, but no financial statements have been produced. Finally, the CID requests policies, procedures or practices concerning debt disputes and verification, but the production does not include any documents describing AFR policies, procedures or practices.

Finally, the CID requires that the respondent provide a certificate of compliance from an officer or manager (see "Form of Certificate of Compliance." The package that you sent contains no such certificate.

Accordingly, we are still seeking the answers and materials requested by the CID. If there is something that we can do to facilitate a timely production, please let me know.

Michael Tankersley  
Federal Trade Commission  
Bureau of Consumer Protection  
600 Pennsylvania Ave., NW  
CC-10232  
Washington, DC 20580  
(202) 326-2991

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**From:** Don Pinaud [<mailto:dp@jaxjustice.com>]  
**Sent:** Wednesday, November 02, 2016 5:50 PM  
**To:** Tankersley, Michael  
**Subject:** RE: AFR Financial, FTC Civil Investigative Demand

I mailed you yesterday everything i had.

Don Pinaud  
Kattman & Pinaud, P.A.  
4069 Atlantic Blvd.  
Jacksonville, Florida 32207  
904-398-1229  
[JaxJustice.com](http://JaxJustice.com)

Sent from [TypeApp](#)  
On Nov 2, 2016, at 5:29 PM, "Tankersley, Michael"  
<[MTANKERSLEY@ftc.gov](mailto:MTANKERSLEY@ftc.gov)> wrote:  
Dear Mr. Pinaud:

The district court has granted the FTC's motion to enforce the CID and ordered AFR Financial to respond by November 17. A copy of the order is attached.

Please let me know if we can do anything to facilitate a timely production.

Michael Tankersley  
Federal Trade Commission  
Bureau of Consumer Protection  
600 Pennsylvania Ave., NW  
CC-10232  
Washington, DC 20580  
(202) 326-2991

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**From:** dp [<mailto:dp@jaxjustice.com>]  
**Sent:** Friday, July 15, 2016 10:37 AM  
**To:** Tankersley, Michael  
**Subject:** RE: AFR Financial, FTC Civil Investigative Demand

I have an appointment with her the week of August 1. That was the earliest our calendars could accomodate. I apologize for the delay.

Best

Don

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

**From:** "Tankersley, Michael" <[MTANKERSLEY@ftc.gov](mailto:MTANKERSLEY@ftc.gov)>  
**Date:** 7/15/16 10:30 AM (GMT-05:00)  
**To:** 'Don Pinaud' <[dp@jaxjustice.com](mailto:dp@jaxjustice.com)>  
**Subject:** RE: AFR Financial, FTC Civil Investigative Demand

Dear Mr. Pinaud:

We still have received no response to this long overdue response to this Civil Investigative Demand. This matter has now been referred to the FTC's Office of General Counsel to initiate an enforcement action in federal district court.

A copy of a recent ruling from the Middle District of Florida regarding an FTC petition for enforcement is attached.

Michael Tankersley  
Federal Trade Commission  
Bureau of Consumer Protection  
600 Pennsylvania Ave., NW  
CC-10232  
Washington, DC 20580  
(202) 326-2991

<FTC v AFR, 316mc000451 Pet Exhibit5 CID.pdf>

# **CONTEMPT EXHIBIT 6**

AFR Financial LLC Corporate Information from  
Florida Division of Corporations Website

March 10, 2017



[Department of State](#) / [Division of Corporations](#) / [Search Records](#) / [Detail By Document Number](#) /

## Detail by Entity Name

Florida Limited Liability Company  
AFR FINANCIAL LLC

### Filing Information

**Document Number** L15000109648  
**FEI/EIN Number** NONE  
**Date Filed** 06/24/2015  
**Effective Date** 06/24/2015  
**State** FL  
**Status** INACTIVE  
**Last Event** ADMIN DISSOLUTION FOR  
 ANNUAL REPORT  
**Event Date Filed** 09/23/2016  
**Event Effective Date** NONE

### Principal Address

8028 LONE STAR RD  
JACKSONVILLE, FL 32211

### Mailing Address

8028 LONE STAR RD  
JACKSONVILLE, FL 32211

### Registered Agent Name & Address

FUARTADO, KIMONA  
8028 LONE STAR ROAD  
JACKSONVILLE, FL 32211

### Authorized Person(s) Detail

#### **Name & Address**

Title MGRM

AUSTIN, CARLA  
905 RISING MIST COURT  
JACKSONVILLE, FL 32221

Title MGRM

FUARTADO, KIMONA  
8028 LONE STAR ROAD  
JACKSONVILLE, FL 32211

### Annual Reports

**No Annual Reports Filed**

### Document Images

[10/23/2015 -- LC Amendment](#)

[View image in PDF format](#)

[06/24/2015 -- Florida Limited Liability](#)

[View image in PDF format](#)