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David W. Slayton,
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Attorneys for Plaintiff DIOR KIBRIEEV,
Aggrieved Employees, and the Putative Class

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

DIOR KIBRIEEV, on behalf of himself and
all others similarly situated;

Plaintiff,

v.

DIVA FAM, INC.; IVAN TSVILIK; ANTON
DZIKUSAR; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: **25STCV21057**

CLASS AND REPRESENTATIVE ACTION

COMPLAINT

- 1. FAILURE TO FURNISH ADEQUATE WAGE STATEMENTS (LABOR CODE § 226; WAGE ORDER NO. 9);**
- 2. FAILURE TO PAY OVERTIME (LABOR CODE §§ 510 AND 1194; WAGE ORDER NO. 9);**
- 3. FAILURE TO PAY MINIMUM WAGES (LABOR CODE §§ 1182.11-1182.13, 1194, 1194.2, 1197, 1198; WAGE ORDER NO. 9);**
- 4. FAILURE TO PROVIDE ALL WAGES DUE UPON TERMINATION (LABOR CODE §§ 201-203);**
- 5. FAILURE TO PROVIDE MEAL PERIODS (LABOR CODE §§ 226.7, 512; WAGE ORDER NO. 9);**
- 6. FAILURE TO AUTHORIZE AND PERMIT REST BREAKS (LABOR CODE § 226.7; WAGE ORDER NO. 9);**
- 7. FAILURE TO REIMBURSE BUSINESS EXPENSES (LABOR CODE § 2802);**
- 8. VIOLATION OF CALIFORNIA'S UNFAIR BUSINESS PRACTICES ACT (BUSINESS AND PROFESSIONS CODE §§ 17200, *ET SEQ.*); AND**

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**9. VIOLATIONS OF THE LABOR CODE
PRIVATE ATTORNEYS GENERAL ACT
OF 2004 (LABOR CODE §§ 2698, *ET SEQ.*)**

DEMAND FOR JURY TRIAL

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I. INTRODUCTION

1. Defendants DEFENDANT DIVA FAM, INC. (“Defendant DIVA FAM”), Ivan Tsvilik (“Defendant TSVILIK”), Anton Dzikusar (“Defendant DZIKUSAR”) and DOES 1 through 10 (collectively, “Defendants”) employed DIOR KIBRIEEV (“Plaintiff”).

2. The class period in this case is the time period from April 30, 2021, to the date that the Court certifies a class or classes in this case (“Class Period”).

3. Plaintiff seeks to represent a class comprised of all individuals performed work for Defendants in California and who were classified as an independent contractor at any time during the Class Period (“Class Members”).

4. Defendants operates a warehouse facility in San Dimas, California.

5. Sea moss from Vietnam is shipped to the warehouse. Defendants process the sea moss to create their products. Class Members then label Defendants’ products, stack them on pallets, and put them in trucks for shipment all over the United States and to other countries such as Canada.

6. Plaintiff and Class Members do not meet the requirements of California’s ABC Test so as to be lawfully classified as independent contractors rather than employees. Furthermore, Defendants cannot prove each of the elements for any of the exceptions to California’s ABC Test.

7. Alternatively, Plaintiff and Class Members were not properly classified as independent contractors based on the factors described in *S. G. Borello & Sons, Inc. v. Dep’t of Indus. Relations* (1989) 48 Cal.3d 341.

8. Defendants’ misclassification policy has been in effect during the Class Period.

9. Plaintiff therefore challenges Defendants’ policy of willfully and unlawfully misclassifying Class Members as “independent contractors” in violation of California’s Unfair Competition Law, Business & Professions Code sections 17200, *et seq.* (the “UCL”), the California Labor Code (the “Labor Code”), the Industrial Welfare Commission’s Wage Order No. 9 (“Wage Order No. 9”), and the General Minimum Wage Order (“Minimum Wage Order”).

10. Plaintiff brings class claims under California law for damages and statutory penalties for failure to furnish adequate wage statements, unpaid overtime and double time wages, unpaid

1 minimum wages and liquidated damages, unpaid wages at the proper contract rate of pay, penalties
2 for failure to provide all wages due upon termination, premium pay for missed meal periods, premium
3 pay for missed and unpaid rest periods, unreimbursed business expenses, restitution, interest,
4 penalties, and attorneys' fees and costs.

5 11. Plaintiff also brings claims under California's Private Attorneys General Act
6 ("PAGA") law for civil penalties for failure to furnish adequate wage statements, unpaid overtime and
7 double time wages, unpaid minimum wages, failure to provide all wages due upon termination, failure
8 to provide meal periods, failure to authorize and permit rest periods, and unreimbursed business
9 expenses.

10 II. VENUE AND JURISDICTION

11 12. Venue is proper in this judicial district, pursuant to California Code of Civil Procedure
12 section 395(a). Defendants employ or have employed Plaintiff and Class Members throughout
13 California, including in the city of Los Angeles, which is located within the County of Los Angeles,
14 California. The unlawful acts alleged herein have occurred in and have a direct effect on Plaintiff and
15 those similarly situated within the State of California and the County of Los Angeles.

16 13. This Court has jurisdiction over this class action pursuant to Article 6, section 10 of the
17 California Constitution and California Code of Civil Procedure section 410.10.

18 III. PARTIES

19 A. PLAINTIFF

20 14. Plaintiff was at all times relevant hereto a competent adult residing in the State of
21 California.

22 15. Plaintiff worked for Defendants in Los Angeles County pursuant to a Services
23 Agreement during the Class Period.

24 16. Defendants misclassified Plaintiff as an independent contractor and, as a result,
25 Plaintiff suffered each of the damages alleged herein.

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1 **B. DEFENDANTS**

2 17. Defendant DIVA FAM is a California Corporation and does business in California and
3 Los Angeles County.

4 18. Defendant TSVILIK, an individual, is, on information and belief, an adult resident of
5 California. Defendant TSVILIK was, during the relevant time period, the Chief Executive Officer and
6 Chief Financial Officer of Defendant DIVA FAM. At all times relevant herein Defendant TSVILIK
7 was Plaintiff's and Class Members' employer and governed by the Labor Code, Wage Order No. 9,
8 and the Minimum Wage Order.

9 19. Plaintiff is informed and believes that Defendant TSVILIK is also a joint employer,
10 working as a joint enterprise with Defendant DIVA FAM. Defendant TSVILIK controls and is
11 intimately involved in the day-to-day operations of Defendant DIVA FAM and both determined and
12 instituted the unlawful wage and hour violations alleged herein.

13 20. Defendant TSVILIK has also violated or caused to be violated the provisions of Wage
14 Order No. 9 regulating minimum wages and/or hours and days of work as well as Labor Code
15 sections 203, 226, 226.7, 1194, 2802. As such, he is personally liable for the Wage Order No. 9 and
16 Labor Code violations cited herein pursuant to Labor Code section 558.1.

17 21. Defendant DZIKUSAR an individual, is, on information and belief, an adult resident of
18 California. Defendant DZIKUSAR was, during the relevant time period, the Secretary of Defendant
19 DIVA FAM.

20 22. At all times relevant herein Defendant DZIKUSAR was Plaintiff's and Class
21 Members' employer covered by the Labor Code, Wage Order No. 9, and the Minimum Wage Order.
22 Plaintiff is informed and believes that Defendant DZIKUSAR is a joint employer, working as a joint
23 enterprise with Defendant DIVA FAM. Defendant DZIKUSAR controls and is intimately involved in
24 the day-to-day operations of Defendant DIVA FAM and both determined and instituted the unlawful
25 wage and hour violations alleged herein.

26 23. Defendant DZIKUSAR has also violated or caused to be violated the provisions of
27 Wage Order No. 9 regulating minimum wages and/or hours and days of work as well as Labor Code
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1 sections 203, 226, 226.7, 1194, 2802. As such, he is personally liable for the Wage Order No. 9 and
2 Labor Code violations cited herein pursuant to Labor Code section 558.1.

3 24. The true names and capacities, whether individual, corporate, associate, or otherwise,
4 of the defendants sued herein as Defendants DOES 1 through 10, inclusive, are currently unknown to
5 Plaintiff, who therefore sues those defendants by such fictitious names under Code of Civil Procedure
6 section 474. Plaintiff is informed and believes, and based thereon alleges, that each of the defendants
7 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to
8 herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
9 capacities of the defendants designated hereinafter as DOES when such identities become known.

10 25. Plaintiff is informed and believes, and based thereupon alleges, that at all times
11 relevant hereto, Defendants owned and operated a supplement and vitamin company in California.

12 26. At all times relevant herein, Defendants were the employers and/or joint employers of
13 Plaintiff and Class Members within the meaning of the Labor Code and Wage Order No. 9.

14 27. Plaintiff is informed and believe, and based thereon alleges, that at all times herein
15 mentioned each of the defendants are and were the agent, employee and/or servant of each of the
16 remaining defendants, and in doing the things hereinafter alleged was acting within the scope of such
17 agency, employment, and servitude, with the knowledge and consent of each of the defendants.
18 Whenever this Complaint makes reference to a defendant, such allegations shall be deemed to mean
19 the acts of all defendants acting individually, jointly and/or severally.

20 28. As employers of Plaintiff and Class Members throughout the Class Period, Defendants
21 are liable for the economic damages, including statutory penalties, owed to Plaintiff and Class
22 Members under common law and by statute.

23 IV. STATEMENT OF FACTS

24 29. Defendant DIVA FAM sells premium sea moss products such as supplements and
25 vitamins both wholesale to distributors and directly to consumers under its True Sea Moss brand.

1 30. Defendant DIVA FAM and its subsidiaries deliver supplements and vitamins to
2 customers throughout the United States, Canada, and Australia, including via the website
3 “trueseamoss.com.”

4 31. Plaintiff was hired as a warehouse laborer and began working for Defendant DIVA
5 FAM on January 19, 2025 at its San Dimas warehouse. Defendant DIVA FAM employed Plaintiff
6 from about January 19, 2025 to about May 6, 2025.

7 32. Throughout his employment with Defendant DIVA FAM, Plaintiff’s responsibilities
8 consisted mainly of placing customers’ orders on pallets to be picked up by the United States Postal
9 Service or another delivery entity in order that they could be shipped outside of California.

10 33. Upon information and belief, Defendants hire Class Members in a substantially similar
11 fashion and Class Members completed substantially similar work.

12 34. Warehouse laborers are integral to Defendants’ business because preparing packages
13 for delivery is necessary and fundamental to selling their goods. Consumer sales is Defendants’
14 primary source of revenue.

15 35. Plaintiff and Class Members worked under the control and direction of Defendants and
16 used tools, products, and equipment supplied by Defendants. For example, Defendants required Class
17 Members to arrive for their shift each day by 8:00 a.m. and scheduled which days Class Members
18 were required to work. Plaintiff and Class Members also regularly reported to supervising managers.
19 Furthermore, the consumer orders were delivered via Defendants’ software and hardware, and all of
20 the boxes, tape, and other packaging supplies were provided by Defendants.

21 36. Defendant DIVA FAM’s Services Agreement with Class Members states that
22 “[Defendants] will have exclusive control over the manner and means of performing the Services,
23 including the choice, place, time, and whether to engage parties to assist.” Elsewhere, DIVA FAM’s
24 Services Agreement with Class Members states that Plaintiff and Class Members will “perform tasks
25 and responsibilities...as directed by [Defendants and] in a manner that ensures flexibility in fulfilling
26 [Defendants’] operational needs.”

1 37. In performing their job duties, Plaintiff and Class Members regularly worked more
2 than eight hours in a day, more than forty hours in a workweek, and for seven consecutive days.

3 38. Due to its misclassification of Plaintiff and Class Members as independent contractors,
4 Defendants did not pay Plaintiff and Class Members minimum and overtime wages as required by
5 law. Specifically, Plaintiff and Class Members were not compensated for all hours worked.
6 Furthermore, Plaintiff and Class Members frequently worked more than eight hours in a day and more
7 than forty hours in a week. However, Defendants did not pay them overtime wages.

8 39. Defendants also did not provide Plaintiff and Class Members with meal periods or
9 authorize and permit them to take rest periods as required by California law. Nor did Defendants pay
10 Plaintiff and Class Members premium pay for missed meal and rest periods.

11 40. During the Class Period, Plaintiff and Class Members frequently worked shifts that
12 were longer than five hours in length and shifts that were longer than ten hours in length.

13 41. During the Class Period, Plaintiff and Class Members were instructed to clock and
14 clock out of each shift by scanning a QR code. However, Defendants regularly required Plaintiff and
15 Class Members to perform work off-the clock for substantial amounts of time for which they were not
16 compensated. This included work both before clocking in and after clocking out.

17 42. As a result of these practices and other facts stated herein, Defendants failed to
18 compensate Plaintiff and Class Members for all hours worked.

19 43. During the Class Period, Defendants paid Plaintiff and Class Members via weekly
20 check. Plaintiff and Class Members did not receive wage statements that included their total hours
21 worked, the applicable hourly rates, or the pay period dates.

22 44. Furthermore, at times Defendants failed to pay Plaintiff and Class Members on time,
23 and Defendants' payments did not include the overtime and double-time Plaintiff and Class Members
24 earned.

25 45. During the Class Period, Defendants required employees, including Plaintiff and Class
26 Members, to use smart phone apps such as Telegram in order to communicate about work
27 assignments and schedules. Plaintiff and Class Members were required to communicate with
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1 coworkers in a Telegram group chat, often outside of working hours. However, Defendants did not
2 reimburse Plaintiff or Class Members for the purchase or maintenance of the smart phones required to
3 do so, nor for service provider fees to keep those phones in service.

4 46. The potential for individual recovery in this case is relatively modest, especially for
5 short-term Class Members. As a result, most Class Members are unlikely to proceed against
6 Defendants on an individual basis.

7 47. Defendants have already retaliated against Plaintiff for sending his PAGA notice letter.
8 For example, Plaintiff's manager publicly accused him of betraying Defendant DIVA FAM and
9 stated, "that's why we fired him." Accordingly, the potential for retaliation against Class Members is
10 significant.

11 48. Upon information and belief, many Class Members are immigrants. Therefore, they are
12 probably more vulnerable than other residents of California, ill-informed about their rights under
13 California law, and unlikely to be able to afford litigation against Defendants.

14 V. CLASS ACTION ALLEGATIONS

15 49. Plaintiff brings this action on behalf of himself and all other similarly situated
16 individuals as a class action pursuant to California Code of Civil Procedure section 382.

17 50. Plaintiff is informed and believes, and on that basis, alleges Defendants knowingly and
18 intentionally misclassified Plaintiff and Class Members as independent contractors to avoid other
19 requirements of employers under the California Labor Code and Wage Order No 9.

20 51. At all times mentioned herein, the common policies and practices of Defendants were a
21 direct cause of Defendants' failure to comply with California's wage and hour laws, as set forth more
22 fully within.

23 52. Defendants had a consistent policy and/or practice of willfully failing to provide to
24 Plaintiff and Class Members accurate itemized employee wage statements.

25 53. Defendants had a consistent policy and/or practice of requiring Plaintiff and Class
26 Members to work overtime and double time and failing to properly compensate them for the overtime
27 and double time hours they worked.

1 54. Defendants failed to pay Plaintiff and Class Members for all hours that they worked.

2 55. Defendants required Plaintiff and Class Members to perform off-the-clock work for
3 which they were not compensated.

4 56. Plaintiff and Class Members regularly reported to work, and Defendants would change
5 their schedules without proper compensation.

6 57. Defendants had a consistent policy and/or practice of willfully failing to timely pay
7 wages owed to Plaintiff and Class Members who left Defendants' employ or who were terminated.

8 58. Defendants have not provided Plaintiff and Class Members with meal periods as
9 required by California law. Defendants have not paid Plaintiff and Class Members one hour of pay at
10 each their regular rate of pay for each day Defendants did not provide a meal period in accordance
11 with California law.

12 59. Defendants have not authorized or permitted Plaintiff and Class Members to take rest
13 breaks as required by California law. Defendants did not pay Plaintiff and Class Members one hour of
14 pay at each their regular rate of pay for each day Defendants did not provide a rest break in
15 accordance with California law.

16 60. Defendants had a consistent policy and/or practice requiring Plaintiff and Class
17 Members to use their own equipment, including personal cell phones, to discharge their duties to
18 Defendants. Defendants failed to properly reimburse Plaintiff and Class Members for business
19 expenses.

20 61. Defendants are and were aware that Plaintiff and Class Members were neither paid all
21 minimum, overtime and double time wages owed, nor paid all wages at the proper contract rate of
22 pay, nor provided meal and rest periods. Defendants' denial of wages and other compensation due to
23 Plaintiff and Class Members was therefore willful and deliberate.

24 62. Defendants, by failing to lawfully pay Plaintiff and Class Members all wages they are
25 owed, engaged in false, unfair, fraudulent and deceptive business practices within the meaning of the
26 California Business and Professions Code sections 17200, *et seq.*

27 63. Plaintiff therefore seeks to represent a Class composed of and defined as follows:
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1 All individuals who performed work for Defendants in California and who were classified as
2 independent contractors at any time during the Class Period.

3 64. Plaintiff reserves the right under California Code of Civil Procedure sections 472 and
4 382 to amend or modify the Class definitions set forth above with greater specificity or further
5 division into subclasses or limitation to particular issues.

6 65. This action has been brought and may properly be maintained as a class action under
7 the provisions of California Code of Civil Procedure section 382.

8 66. Ascertainability and Numerosity: The potential members of the Class as defined are so
9 numerous that joinder of all their members is impracticable. While the precise number of Class
10 Members have not been determined at this time, Plaintiff is informed and believes that Defendants
11 contracted with over one hundred (100) Class Members during the Class Period. Upon information
12 and belief, Defendants' records will provide information as to the number and location of all Class
13 Members. Joinder of all members of the proposed Class is not practicable.

14 67. Commonality: There are questions of law and fact common to Plaintiff and Class
15 Members that predominate over any questions affecting only individual Class Members. These
16 common questions of law and fact include, without limitation:

- 17 i. Whether Class Members have been misclassified as independent contractors as
18 opposed to employees;
- 19 ii. Whether Defendants failed to provide adequate wage statements to Class Members;
- 20 iii. Whether Defendants failed to pay Class Members all earned minimum, overtime, and
21 double time wages for all hours worked;
- 22 iv. Whether Defendants failed to timely pay all wages owed to Class Members all wages
23 at the time of termination;
- 24 v. Whether Defendant failed to provide Class Members compliant meal periods.
- 25 vi. Whether Defendants failed to authorize, permit, and/or provide compliant rest periods
26 to Class Members.
- 27 vii. Whether Defendants failed to reimburse Class Members for necessary business
28 expenses they incurred; and

1 viii. Other questions of law and fact

2 68. Typicality: Plaintiff's claims are typical of the claims of the proposed Class that he
3 seeks to represent. Plaintiff and all members of the proposed Class sustained injuries and damages
4 arising out of and caused by Defendants' common course of conduct in violation of laws and
5 regulations that have the force and effect of law and statutes as alleged.

6 69. Plaintiff was subjected to the same uniform policies and/or practices complained of
7 herein that affected all Class Members. Thus, because Plaintiff was subjected to the same unlawful
8 policies and practices as all Class Members, his claims are typical of the Class he seeks to represent
9 for the claims alleged herein.

10 70. Adequacy of Representation: Plaintiff will fairly and adequately represent and protect
11 the interests of the members of the Class. Plaintiff is ready and willing to take the time necessary to
12 help litigate this case. Plaintiff has no conflicts that will prevent him from fairly and adequately
13 representing and protecting the interests of the members of the Class.

14 71. Counsel who represent Plaintiff are competent and experienced in litigating large
15 employment class actions. Hunter Pyle and Katie Fiester of Hunter Pyle Law, PC are California
16 lawyers in good standing and experienced in litigating wage and hour class actions such as this. Mr.
17 Pyle and Ms. Fiester have been appointed class counsel in numerous California wage and hour class
18 actions such as this. Furthermore, Hunter Pyle Law, PC has the resources to litigate this case
19 thoroughly and to take this case to trial and judgment if necessary.

20 72. Superiority of Class Action: A class action is superior to other available means for the
21 fair and efficient adjudication of this controversy. Individual joinder of all Class and Members is not
22 practicable, and questions of law and fact common to the Class and predominate over any questions
23 affecting only individual members. Each member of the Class and has been damaged and is entitled to
24 recovery by reason of Defendants' illegal policies and/or practices described herein. Class action
25 treatment will allow those similarly situated persons to litigate their claims in the manner that is most
26 efficient and economical for the parties and the judicial system. Plaintiff is unaware of any
27 difficulties that are likely to be encountered in the management of this action that would preclude its
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1 maintenance as a class action. Because such common questions predominate over any individualized
2 issues and/or questions affecting only individual members, class resolution is superior to other
3 methods for fair and efficient adjudication.

4 **VI. CAUSES OF ACTION**

5 **FIRST CAUSE OF ACTION**
6 **Failure to Furnish Adequate Wage Statements**
7 **[Cal. Labor Code §§ 226]**
8 **(Against All Defendants)**

9 73. The allegations of each of the preceding paragraphs are realleged and incorporated
10 herein by reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the
11 above-described Class.

12 74. Defendants knowingly and intentionally failed to provide Plaintiff and Class Members
13 with timely and accurate wage statements as required by Labor Code sections 226(a).

14 75. Plaintiff and Class Members suffered injuries as a result of Defendants' knowing and
15 intentional violation of Labor Code section 226(a), thereby entitling Plaintiff to recover on behalf of
16 Class Members the greater of all actual damages or statutory penalties, plus an award of costs and
17 reasonable, attorneys' fees, pursuant to Labor Code section 226(e).

18 76. Defendant TSVILIK and Defendant DZIKUSAR are individually liable for this cause
19 of action pursuant to Labor Code section 558.1, among other statutes, because they are owners,
20 directors, officers, and/or managing agents of Defendant DIVA FAM.

21 77. As a direct and proximate result of Defendants' conduct, Plaintiff and Class Members
22 have suffered damages according to proof.

23 78. WHEREFORE, Plaintiff, on behalf of himself and the Class, requests relief as
24 hereinafter provided.

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SECOND CAUSE OF ACTION
Failure to Pay Overtime
[Labor Code §§ 510 and 1194; Wage Order No. 9]
(Against All Defendants)

79. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the above-described Class.

80. It is unlawful under California law for an employer to require, suffer, or permit an employee to work in excess of eight hours per workday or 40 hours per workweek or seven consecutive days of work during a workweek without paying overtime and double time wages under Labor Code section 510 and Wage Order No. 9.

81. Pursuant to Labor Code section 510, “any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours 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 the employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee ...”

82. Pursuant to Wage Order No. 9, section 3, “Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than: (a) One and one-half (1 1/2) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek. Throughout the Class Period, Defendants have required, suffered, or permitted Plaintiff and Class Members to routinely work in excess of eight hours per day and 40 hours per week.

83. Defendants failed to pay Plaintiff and Class Members overtime and double time compensation as required by law.

84. Labor Code section 1194(a) provides that an employee who has not been paid overtime and double time wages may recover the unpaid balance of the full amount of such wages, interest thereon, attorneys' fees and the costs of suit.

85. By failing to pay overtime and double time compensation to Plaintiff and Class Members, Defendants has violated Labor Code section 510 and Wage Order No. 9, section 3.

86. Defendant TSVILIK and Defendant DZIKUSAR are individually liable for this cause of action pursuant to Labor Code section 558.1, among other statutes, because they are owners, directors, officers, and/or managing agents of Defendant DIVA FAM.

87. As a direct and proximate result of Defendants' conduct, Plaintiff and Class Members have suffered damages according to proof.

88. WHEREFORE, Plaintiff, on behalf of himself and the Class , requests relief as hereinafter provided.

THIRD CAUSE OF ACTION
Failure to Pay Minimum Wage for All Hours Worked
[Cal. Labor Code §§ 1182.11-1182.13, 1194, 1194.2, 1197, 1198; Wage Order No. 9; Minimum
Wage Order]
(Against All Defendants)

89. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the above-described Class.

90. Throughout the Class Period, Labor Code sections 1182.11-1182.13, 1194, 1194.2, 1197, 1198, Wage Order No. 9, and the Minimum Wage Order were in full force and effect and required Defendants to pay non-exempt employees at least the applicable minimum wage for all hours worked.

91. Throughout the Class Period, as a result of the policies and practices set forth herein, Defendants failed to pay Plaintiff and Class and Members, and continually fail to pay them, minimum wages as required by law for all of their hours worked.

1 92. Labor Code section 1194(a) provides that an employee who has not been paid
2 minimum wages as required by Labor Code section 1197 may recover the unpaid balance of the full
3 amount of such wages, interest thereon, attorneys' fees and the costs of suit.

4 93. Labor Code section 1194.2 provides that employees who have not been paid at least
5 minimum wages for their hours worked are entitled to recover liquidated damages in an amount equal
6 to the minimum wages that a defendant unlawfully failed to pay them in amounts according to proof
7 at the time of trial.

8 94. As a direct and proximate result of Defendants' conduct, Plaintiff and Class and
9 Members have suffered damages according to proof.

10 95. Defendant TSVILIK and Defendant DZIKUSAR are individually liable for this cause
11 of action pursuant to Labor Code section 558.1, among other statutes, because they are owners,
12 directors, officers, and/or managing agents of Defendant DIVA FAM.

13 96. WHEREFORE, Plaintiff, on behalf of himself and the Class, requests relief as
14 hereinafter provided.

15 **FIFTH CAUSE OF ACTION**
16 **Waiting Time Penalties**
17 **[Labor Code §§ 201 through 203]**
18 **(Against All Defendants)**

19 97. The allegations of each of the preceding paragraphs are realleged and incorporated
20 herein by reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the
21 above-described Class.

22 98. Labor Code section 201 requires an employer who discharges an employee to pay all
23 compensation due and owing to said employee immediately upon discharge. Labor Code section 202
24 requires an employer to promptly pay compensation due and owing to said employee within seventy-
25 two hours of that employee's termination of employment by resignation. Labor Code section 203
26 provides that if an employer willfully fails to pay compensation promptly upon discharge or
27 resignation, as required under sections 201 and 202, then the employer is liable for waiting time
28 penalties in the form of continued compensation for up to 30 days.

99. Plaintiff's last day of employment was May 6, 2025. At the time of filing this complaint, Plaintiff has yet to receive all wages earned.

100. Many Class Members are also no longer employed by Defendants. They were either fired or quit Defendants' employ. Defendants did not timely pay all wages owed at the time of their termination.

101. Defendants willfully failed and refused, and continues to fail and refuse, to timely pay compensation and wages as set forth above-including but not limited to Defendants' failure to properly pay Plaintiff and Class Members wages for all hours worked when due, overtime and double time wages, minimum wages, and additional wages for non-compliant meal periods and rest breaks, to Plaintiff and Class Members who are no longer employed by Defendants as required by Labor Code sections 201-202. As a result, Defendants are liable to Plaintiff and Class Members whose are no longer employed by Defendants for waiting time penalties.

102. Defendant TSVILIK and Defendant DZIKUSAR are individually liable for this cause of action pursuant to Labor Code section 558.1, among other statutes, because they are owners, directors, officers, and/or managing agents of Defendant DIVA FAM.

103. As a direct and proximate result of Defendants' conduct, Plaintiff and Class and Members have suffered damages according to proof.

104. WHEREFORE, Plaintiff, on behalf of himself and the Class, requests relief as hereinafter provided.

SIXTH CAUSE OF ACTION
Failure to Provide Meal Periods
[Labor Code §§ 226.7, 512]
(Against All Defendants)

105. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the above-described Class and Subclass.

106. At all times during their employment with Defendants, Plaintiff and Class and Members were hourly paid non-exempt employees under California law.

1 107. Throughout the Class Period, California Labor Code sections 226.7 and 512, and Wage
2 Order No. 9 required Defendants to provide employees who worked in excess of five (5) hours a day
3 without being provided at least a thirty (30) minute meal period in which they were relieved of all
4 duties, and a second thirty (30) minute meal period to employees who worked in excess of ten (10)
5 hours a day, and to pay one (1) hour of additional pay at the regular rate of compensation for each
6 workday that the proper meal periods were not provided.

7 108. Plaintiff and Class and Members have regularly worked in excess of five (5) hours a
8 day and ten (10) hours a day, without being provided at least a thirty (30) minute meal period in
9 which they were relieved of all duties, as required by Labor Code sections 226.7 and 512, and Wage
10 Order No. 9.

11 109. Because Defendants failed to provide meal periods, Defendants are liable to Plaintiff
12 and other Class and Members for one (1) hour of additional pay at the regular rate of compensation
13 for each workday that the proper meal periods were not provided, pursuant to Labor Code section
14 226.7(b) and Wage Order No. 9.

15 110. By violating Labor Code sections 226.7 and 512 and Wage Order No. 9, section 11,
16 Defendants are also liable for interest under California Civil Code section 3287, and attorneys' fees
17 pursuant to Labor Code § 218.5.

18 111. Defendant TSVILIK and Defendant DZIKUSAR are individually liable for this cause
19 of action pursuant to Labor Code section 558.1, among other statutes, because they are owners,
20 directors, officers, and/or managing agents of Defendant DIVA FAM.

21 112. As a direct and proximate result of Defendants' conduct, Plaintiff and Class and
22 Subclass Members have suffered damages according to proof.

23 113. WHEREFORE, Plaintiff, on behalf of himself and the Class, requests relief as
24 hereinafter provided.

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SEVENTH CAUSE OF ACTION
Failure to Authorize and Permit Rest Breaks
[Labor Code § 226.7]
(Against All Defendants)

114. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the above-described Class.

115. At all times during their employment with Defendants, Plaintiff and Class Members were hourly paid non-exempt employees under California law.

116. Plaintiff and other Class Members have regularly worked in excess of three and one-half (3½) hours a day without being permitted to take at least a ten (10) minute rest period for every four (4) hours worked, or major fraction thereof, as required by Wage Order No. 9, and Labor Code section 226.7.

117. Because Defendants failed to permit proper rest periods, Defendants are liable to Plaintiff and other Class Members for one hour of additional pay at the regular rate of compensation for each workday that the proper rest periods were not authorized, pursuant to Labor Code section 226.7(b) and Wage Order No. 9.

118. By violating Labor Code § 226.7 and Wage Order No. 9, section 12, Defendants are also liable for interest under California Civil Code section 3287, and attorneys' fees pursuant to Labor Code section 218.5.

119. Defendant TSVILIK and Defendant DZIKUSAR are individually liable for this cause of action pursuant to Labor Code section 558.1, among other statutes, because they are owners, directors, officers, and/or managing agents of Defendant DIVA FAM.

120. As a direct and proximate result of Defendants' conduct, Plaintiff and Class and Subclass Members have suffered damages according to proof.

121. WHEREFORE, Plaintiff, on behalf of himself and the Class, requests relief as hereinafter provided.

EIGHTH CAUSE OF ACTION
Failure to Reimburse Business Reimburse Business Expenses
[Labor Code § 2802]
(Against All Defendants)

122. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the above-described Class

123. At all times during their employment with Defendants, Plaintiff and Class Members were hourly paid non-exempt employees under California law.

124. Labor Code section 2802 (a) provides: An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

125. Labor Code section 2802(b) states that “[a]ll awards made by a court . . . for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.”

126. Labor Code section 2802(c) states that “[f]or purposes of this section, the term “necessary expenditures or losses” shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

127. Defendants did not reimburse Plaintiff and Class Members for necessary expenditures, including but not limited to the cost of personal cell phone use, personal laptop use, home internet use, home printer use, and other expenses.

128. As a direct and proximate result of Defendants’ willful failure to reimburse Plaintiff and Class Members, they have been injured in an amount to be proven at trial.

129. Plaintiff is entitled to recover reimbursement for these necessary expenditures, on behalf of Class Members and to recover costs, interest, and attorneys’ fees, as permitted under California law.

130. Defendant TSVILIK and Defendant DZIKUSAR are individually liable for this cause of action pursuant to Labor Code section 558.1, among other statutes, because they are owners, directors, officers, and/or managing agents of Defendant DIVA FAM.

131. As a direct and proximate result of Defendants' conduct, Plaintiff and Class and Members have suffered damages according to proof.

132. WHEREFORE, Plaintiff, on behalf of himself and the Class s, requests relief as hereinafter provided.

NINTH CAUSE OF ACTION
Unfair, Unlawful, or Fraudulent Business Practices
[Cal. Business & Professions Code § 17200, *et seq.*]
(Against All Defendants)

133. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiff alleges as follows a cause of action on behalf of himself and the above-described Class.

134. Defendants are “person[s]” as defined by California Business & Professions Code section 17201, as they are people, an LLC, or a corporation.

135. California Business and Professions Code section 17200, *et seq.*, (the “UCL”) prohibits unfair competition, including but not limited to any unlawful, unfair, or fraudulent business practices.

136. Labor Code section 90.5(a) provides that it is the public policy of the state of California to vigorously enforce labor standards in order to ensure that employees are not required to work under substandard unlawful conditions, and to protect employers who comply with the law from those (such as Defendants) who attempt to gain a competitive advantage at the expense of their workers by failing to comply with minimum labor standards.

137. Pursuant to Business and Professions Code section 17203, this Court may order Defendants to pay the full amounts wrongfully withheld.

138. Plaintiff's success in this action on behalf of Class Members will enforce important rights affecting the public interest and therefore Plaintiff sues both individually and on behalf of the public.

1 139. Defendants' policies and practices, as set forth above, violated the UCL. Defendants'
2 practices described in this Complaint are unlawful. Defendants' practices are also unfair, in that they
3 are unethical, unscrupulous, and substantially injurious to consumers such as Plaintiff and Class
4 Members and members of the general public to the extent that the harm caused outweighs any extant
5 utility.

6 140. Plaintiff and Class are entitled to equitable restitution of monies due and owing as a
7 result of Defendants' unlawful and unfair conduct (including interest thereon), and to injunctive relief,
8 as well as all other equitable relief required to remedy Defendants' unlawful and unfair conduct.

9 141. The unlawful and unfair business practices engaged in by Defendants present a
10 continuing threat to the public, in that consumers throughout California have suffered and continue to
11 suffer harm, including unpaid wages due. Defendants have been unjustly enriched as a result of their
12 conduct. Plaintiff and Class Members and members of the general public have no other adequate legal
13 remedy in the absence of equitable relief from the Court. Defendants are likely to continue to injure
14 consumers, reap unjust enrichment, and harm the public interest if their conduct is not halted; thereby
15 engendering a multiplicity of judicial proceedings. Pursuant to California Code of Civil Procedure §
16 1021.5, Plaintiff's enforcement of important rights on behalf of Class Members affecting the public
17 interest through this action entitles Plaintiff to an award of attorneys' fees, and, in the interest of
18 justice, such fees should not be paid out of Plaintiff's recovery.

19 142. Plaintiff requests that this Court issue a preliminary and permanent injunction
20 prohibiting Defendants from engaging in the practices described above and prohibiting Defendants
21 from violating the California Labor Code and Wage Orders now and in the future.

22 143. As a direct and proximate result of Defendants' conduct, Plaintiff and Class and
23 Members have suffered damages according to proof.

24 WHEREFORE, Plaintiff, on behalf of himself and the Class, requests relief as hereinafter
25 provided.

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TENTH CAUSE OF ACTION
Civil Penalties Under the Private Attorneys General Act
Against All Defendants
[Labor Code § 2698, *et seq.*]
(Against All Defendants)

144. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference, and Plaintiff alleges as follows a cause of action on behalf of herself himself and the above-described Class.

145. Per Labor Code section 2699.3(a), on April 30, 2025, Plaintiff gave notice by electronic filing and certified mail to Defendant DIVA FAM, Defendant TSVILIK, Defendant DZIKUSAR, and the Labor and Workforce Development Agency (“LWDA”) of the factual and legal bases for the labor law violations alleged in this complaint. The LWDA has not provided notice per Labor Code section 2699.3(a)(2)(A), and sixty-five calendar days have passed since the postmark date of Plaintiff’s notice. Therefore, Plaintiff is entitled to commence a civil action under Labor Code section 2699.

146. Labor Code section 2699(f) provides: “For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: . . . If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is 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.”

147. Labor Code section 2699(g)(1) provides: “[A]n aggrieved employee may recover the civil penalty described in subdivision (f) in a civil action . . . filed on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. Any employee who prevails in any action shall be entitled to an award of reasonable attorney’s fees and costs.”

148. Plaintiff is an aggrieved employee as defined by Labor Code section 2699(a).

149. Plaintiff’s cause of action under Labor Code section 2698 *et seq.* is based on the following allegations:

- 1 a. Violations of Labor Code section 558 for failing to pay minimum wages due.
2 Defendant DIVA FAM has not paid minimum wages to Plaintiff and other aggrieved
3 employees for all hours worked during the Class Period as required by Labor Code
4 sections 1182.11–1182.13, 1194, 1194.2, 1197, and 1198.
- 5 b. Violations of Labor Code section 558 for failing to pay overtime wages due. Defendant
6 DIVA FAM has not paid overtime wages to Plaintiff and other aggrieved employees
7 for hours worked during the Class Period in excess of eight per day, in excess of forty
8 per workweek, or for hours worked on a seventh consecutive workday as required by
9 Labor Code sections 510 and 1194.
- 10 c. Violations of Labor Code section 558 for failing to pay wages due, including those for
11 missed meal and rest periods, as required by Labor Code sections 226.7 and 512.
12 Defendant DIVA FAM has not provided Plaintiff and Class Members with off-duty
13 meal periods and has not paid one additional hour of pay at their regular rate of
14 compensation for each missed meal period during the Class Period. Defendant DIVA
15 FAM also has not authorized and permitted Plaintiff and other aggrieved employees to
16 take off-duty rest periods. Nor has it paid one additional hour of pay at the regular rate
17 of compensation for each missed rest period.
- 18 d. Violations of Labor Code section 2802, which requires employers to indemnify
19 employees for all work-related expenditures. Defendant DIVA FAM did not indemnify
20 Plaintiff and Class Members for business-related expenses they incur in the discharge
21 of their work duties, including but not limited to: driving-related costs, including fuel,
22 maintenance, tolls, and insurance; the use of personal cell phones; and acquiring
23 necessary tools.
- 24 e. Violations of Labor Code section 226, which requires employers to provide specific
25 information on employees’ itemized wage statements. Defendant DIVA FAM did not
26 provide statements to Plaintiff and Class Members that include their total hours
27 worked, the applicable hourly rates, or the pay period dates.
28

- 1 f. Violations of Labor Code section 226.3, based on Defendant DIVA FAM's failure to
2 provide Plaintiff and Class Members with the itemized wage statements required by
3 Labor Code section 226(a).
- 4 g. Violations of Labor Code section 201 through 203, which require the timely payment
5 of wages, based on Defendant DIVA FAM's failure to timely pay those aggrieved
6 employees who are no longer employed by Defendant DIVA FAM all wages owed and
7 due after termination of employment.
- 8 h. Violations of Labor Code sections 204 and 210, based on Defendant DIVA FAM's
9 failure to pay Plaintiff and Class Members all wages owed on their regular pay day.
- 10 i. Violations of Labor Code section 226.8, based on Defendant DIVA FAM's pattern or
11 practice of: (1) willfully misclassifying aggrieved employees as independent
12 contractors; and (2) charging willfully misclassified aggrieved employees a fee or
13 deduction for purposes that include, but are not limited to, goods, materials, space
14 rental, services, government licenses, repairs, equipment maintenance, or fines arising
15 from the aggrieved employees' employment where any of the acts described would
16 have violated the law if the individual was not misclassified.
- 17 j. Violations of Labor Code section 245 through 249, based on Defendant DIVA FAM's
18 pattern or practice of: (1) willfully misclassifying aggrieved employees as independent
19 contractors; and (2) charging willfully misclassified aggrieved employees a fee or
20 deduction for purposes that include, but are not limited to, goods, materials, space
21 rental, services, government licenses, repairs, equipment maintenance, or fines arising
22 from the aggrieved employees' employment where any of the acts described would
23 have violated the law if the individual was not misclassified.

24 150. Defendant TSVILIK and Defendant DZIKUSAR are individually liable for this cause
25 of action pursuant to Labor Code section 558, among other statutes, because they are employers
26 and/or a person acting on behalf of Defendant DIVA FAM.

151. Pursuant to California Labor Code sections 558(a) and 1197.1(a), Defendant TSVILIK and Defendant DZIKUSAR are individually liable for this cause of action because they are employers and/or a person acting on behalf of Defendant DIVA FAM and an employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission. Furthermore, Defendant TSVILIK and Defendant DZIKUSAR had and have oversight over Defendant DIVA FAM's operations and are responsible for the corporate policies challenged herein that resulted in Labor Code violations.

152. Plaintiff, on behalf of himself and other aggrieved employees, requests civil penalties against Defendants for violations of the Labor Code, as provided under Labor Code section 2699(f), plus reasonable attorneys' fees and costs, as provided under Labor Code section 2699(g)(1), in amounts to be proven at trial.

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiff on behalf of himself, the Putative Class, and all other Aggrieved Employees, requests relief as follows:

- a. Certification of the above-described Class as a class action, pursuant to Code of Civil Procedure section 382;
- b. Certification of the above-described Class as a representative class under Business and Professions Code section 17200;
- c. Provision of Class Notice to all Class Members;
- d. A declaratory judgment that Defendants have knowingly and intentionally violated Business and Professions Code sections 17200–17208, by the conduct set forth above.
- e. A declaratory judgment that Defendants’ violations as described above were willful;
- f. An equitable accounting to identify, locate, and restore to all current and former Class Members the wages that are due;

- 1 g. An award to Plaintiff and the Class Members of damages in the amount of unpaid
2 wages, liquidated damages, and meal and rest period premium pay, including interest
3 thereon, subject to proof at trial;
- 4 h. An award to Plaintiff and the Class Members of statutory penalties, subject to proof at
5 trial;
- 6 i. An award to Plaintiff and the Class Members of compensatory damages with interest
7 thereon, subject to proof at trial;
- 8 j. An award to Plaintiff and the Class Members of economic damages with interest
9 thereon, subject to proof at trial;
- 10 k. An award of civil penalties under Labor Code section 2698, *et seq.*
- 11 l. An order requiring Defendants to pay restitution of all amounts owed to Plaintiff and
12 the Class Members for Defendants' failure to pay legally required wages, and meal and
13 rest period pay, and interest thereon, in an amount according to proof, pursuant to
14 Business & Professions Code section 17203;
- 15 m. An award to Plaintiff and the Class Members of reasonable attorneys' fees and costs,
16 pursuant to Code of Civil Procedure section 1021.5 and Labor Code sections 218.5,
17 218.6, 226(e), 226.7, 512, 558, 1194, 2699, and/or other applicable law; and
- 18 n. An award to Plaintiff, the Class Members and other aggrieved employees of such other
19 and further relief as this Court deems just and proper.

20
21 DATED: July 15, 2025

HUNTER PYLE LAW, PC

22
23 By: 

Hunter Pyle
Katie Fiester

24
25 Attorneys for Plaintiff DIOR KIBRIEEV,
26 Aggrieved Employees, and the Putative Class
27
28

DEMAND FOR JURY TRIAL

Plaintiff DIOR KIBRIEEV hereby demands a jury trial of this matter on all triable claims.

DATED: July 15, 2025

HUNTER PYLE LAW, PC

By: 
Hunter Pyle
Katie Fiester

Attorneys for Plaintiff DIOR KIBRIEEV,
Aggrieved Employees, and the Putative Class