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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

FRANK AYON and GREGORY
SPENCER, individually and on behalf of
all others similarly situated

Plaintiffs,

vs.

RED COLLAR PET FOODS, INC.; and
DOES 1 through 20, inclusive,

Defendants.

Case No. CIVDS2019018

Assigned for all purposes to:

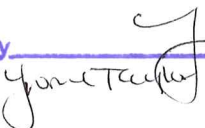
Hon. David Cohn, Dept. S-26

**THIRD AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Provide Meal Periods;
4. Failure to Permit Rest Breaks;
5. Failure to Maintain Accurate Required Records;
6. Failure to Provide Accurate Itemized Wage Statements;
7. Failure to Provide One Day's Rest in Seven;
8. Failure to Reimburse for Business Expenses;
9. Failure to Pay Wages Timely During Employment;
10. Failure to Pay All Wages Due Upon Separation of Employment;
11. Failure to Compensate for Mandatory Physical Examinations;
12. Failing to Provide Written Notice of Information Material to Employment;
13. Violation of Business and Professions Code §§ 17200, *et seq.*; and,
14. Enforcement of Labor Code § 2698 *et seq.* ("PAGA")

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

AUG 31 2022

By  Deputy

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1 Plaintiffs Frank Ayon, Gregory Spencer, and Enrique Martinez-Salgado individually and
2 on behalf of others similarly situated, allege as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiffs Frank Ayon, Gregory Spencer, and Enrique Martinez-Salgado
5 (collectively, “Plaintiffs”) bring this putative class and representative action pursuant to the
6 Private Attorneys General Act of 2004, Cal. Lab. Code. § 2698 *et seq.*, against defendants Red
7 Collar Pet Foods, Inc.; Mars Petcare US, Inc. and Mars, Incorporated; and DOES 1 through 20,
8 inclusive (collectively, “Defendants”), on behalf of themselves individually and on behalf of non-
9 exempt employees employed by Defendants throughout California.

10 2. Defendants are in the business of manufacturing pet foods.

11 3. Through this action, Plaintiffs allege that Defendants have engaged in a
12 systematic pattern of wage and hour violations under the California Labor Code and Industrial
13 Welfare Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate
14 unfair competition.

15 4. Plaintiffs are informed and believe, and thereon allege, that Defendants have
16 increased their profits by violating state wage and hour laws by, among other things:

- 17 (a) Failing to pay minimum wages for all hours worked;
- 18 (b) Failing to pay overtime wages at the proper rates;
- 19 (c) Failing to provide meal periods or compensation in lieu thereof;
- 20 (d) Failing to authorize or permit rest breaks or provide compensation in lieu thereof;
- 21 (e) Failing to maintain accurate required records;
- 22 (f) Failing to provide accurate itemized wage statements;
- 23 (g) Failing to timely pay wages during employment;
- 24 (h) Failing to provide one days rest in seven;
- 25 (i) Failing to reimburse for business expenses;
- 26 (j) Failing to compensate for mandatory physical examinations;
- 27 (k) Failing to provide written notice of information material to other non-party
28 aggrieved employees’ employment;

1 (l) Failing to pay all wages due upon separation of employment.

2 5. Plaintiffs bring this lawsuit seeking monetary relief against Defendants on behalf
3 of themselves and all others similarly situated in California to recover, among other things,
4 unpaid wages and benefits, interest, attorneys' fees, costs and expenses and penalties pursuant to
5 Labor Code §§ 201-204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194,
6 1194.2, 1197, 1198, and 2698, *et seq.*

7 **JURISDICTION AND VENUE**

8 6. This is a class action, pursuant to California Code of Civil Procedure § 382. The
9 monetary damages and restitution sought by Plaintiffs exceed the minimal jurisdictional limits
10 of the Superior Court and will be established according to proof at trial.

11 7. This Court has jurisdiction over this action pursuant to the California Constitution,
12 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those
13 given by statutes to other courts. The statutes under which this action is brought do not specify
14 any other basis for jurisdiction.

15 8. This Court has jurisdiction over all Defendants because, upon information and
16 belief, they are citizens of California, have sufficient minimum contacts in California or
17 otherwise intentionally avail themselves of the California market so as to render the exercise of
18 jurisdiction over them by the California courts consistent with traditional notions of fair play and
19 substantial justice.

20 9. Venue is proper in this Court because, upon information and belief, Defendants
21 reside, transact business or have offices in this county or the acts and omissions alleged herein
22 took place in this county.

23 **THE PARTIES**

24 10. Plaintiffs are citizens of California. Plaintiffs were employed by Defendants
25 during the Class Period in California.

26 11. Plaintiffs are informed and believe, and thereon allege, that Defendants at all
27 times hereinafter mentioned, were and are employers as defined in and subject to the Labor Code
28 and IWC Wage Orders, whose employees were and are engaged throughout this county and the

1 State of California.

2 12. Plaintiffs are unaware of the true names or capacities of the defendants sued herein
3 under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this
4 Complaint and serve such fictitiously named defendants once their names and capacities become
5 known.

6 13. Plaintiffs are informed and believe, and thereon allege, that each defendant acted
7 in all respects pertinent to this action as the agent of the other defendant, carried out a joint
8 scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant
9 are legally attributable to the other defendant. Furthermore, defendants in all respects acted as
10 the employer and/or joint employer of Plaintiffs and the class members.

11 14. Plaintiffs are informed and believe, and thereon allege, that each and all of the
12 acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or
13 DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on
14 the other's behalf. The acts of any and all Defendants were in accordance with, and represent,
15 the official policy of Defendants.

16 15. At all relevant times, Defendants, and each of them, acted within the scope of such
17 agency or employment, or ratified each and every act or omission complained of herein. At all
18 relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each
19 and all the other Defendants in proximately causing the damages herein alleged.

20 16. Plaintiffs are informed and believe, and thereon allege, that each of said
21 Defendants is in some manner intentionally, negligently or otherwise responsible for the acts,
22 omissions, occurrences and transactions alleged herein.

23 **CLASS ACTION ALLEGATIONS**

24 17. Plaintiffs bring this action under Code of Civil Procedure § 382 on behalf of
25 themselves and all others similarly situated who were affected by Defendants' Labor Code,
26 Business and Professions Code §§ 17200 and IWC Wage Order violations.

27 18. All claims alleged herein arise under California law for which Plaintiffs seek relief
28 authorized by California law.

19. Plaintiffs' proposed Class consists of and is defined as follows:

Class

All California citizens currently or formerly employed as non-exempt employees by Defendants in the State of California within four years prior to the filing of this action to the date of class certification.

20. Plaintiffs also seek to certify the following Subclass of employees:

Waiting Time Subclass

All members of the Class who separated their employment from Defendants within three years prior to the filing of this action to the date of class certification.

21. Members of the Class and Subclass described above will be collectively referred to as "class members." Plaintiffs reserve the right to establish other or additional subclasses, or modify any Class or Subclass definition, as appropriate based on investigation, discovery and specific theories of liability.

22. This action has been brought and may properly be maintained as a class action under the California Code of Civil Procedure § 382 because there are common questions of law and fact as to the Class that predominate over questions affecting only individual members including, but not limited to:

- (a) Whether Defendants paid Plaintiffs and class members at least the minimum wage for all hours worked;
- (b) Whether Defendants paid Plaintiffs and class members proper overtime compensation for all overtime hours worked;
- (c) Whether Defendants deprived Plaintiffs and class members of timely meal periods;
- (d) Whether Defendants deprived Plaintiffs and class members of rest breaks;
- (e) Whether Defendants failed to timely pay Plaintiffs and former class members all wages due upon termination or within 72 hours of resignation;
- (f) Whether Defendants failed to furnish Plaintiffs and class members with accurate, itemized wage statements;
- (g) Whether Defendants failed to compensate Plaintiffs and class members for the cost of mandatory physical examinations and/or drug tests;
- (h) Whether Defendants failed to provide written notice of information material to

1 Plaintiffs' and class members' employment with Defendants; and

2 (i) Whether Defendants engaged in unfair business practices in violation of Business
3 & Professions Code §§ 17200, *et seq.*

4 23. There is a well-defined community of interest in this litigation and the Class is
5 readily ascertainable:

6 (a) Numerosity: The members of the Class are so numerous that joinder of all
7 members is impractical. Although the members of the Class are unknown to
8 Plaintiffs at this time, on information and belief, the Class is estimated to be
9 greater than 100 individuals. The identity of the class members are readily
10 ascertainable by inspection of Defendants' employment and payroll records.

11 (b) Typicality: The claims (or defenses, if any) of Plaintiffs are typical of the
12 claims (or defenses, if any) of the Class because Defendants' failure to
13 comply with the provisions of California wage and hour laws entitled each
14 class member to similar pay, benefits and other relief. The injuries sustained
15 by Plaintiffs are also typical of the injuries sustained by the Class because
16 they arise out of and are caused by Defendants' common course of conduct
17 as alleged herein.

18 (c) Adequacy: Plaintiffs are qualified to, and will fairly and adequately represent
19 and protect the interests of all members of the Class because it is in their best
20 interest to prosecute the claims alleged herein to obtain full compensation
21 and penalties due to them and the Class. Plaintiffs' attorneys, as proposed
22 class counsel, are competent and experienced in litigating large employment
23 class actions and are versed in the rules governing class action discovery,
24 certification and settlement. Plaintiffs have incurred and, throughout the
25 duration of this action, will continue to incur attorneys' fees and costs that
26 have been and will be necessarily expended for the prosecution of this action
27 for the substantial benefit of each class member.

28 (d) Superiority: The nature of this action makes the use of class action

1 adjudication superior to other methods. A class action will achieve
2 economies of time, effort and expense as compared with separate lawsuits,
3 and will avoid inconsistent outcomes because the same issues can be
4 adjudicated in the same manner and at the same time for each Class. If
5 appropriate this Court can, and is empowered to, fashion methods to
6 efficiently manage this case as a class action.

7 (e) Public Policy Considerations: Employers in the State of California and
8 other states violate employment and labor laws every day. Current
9 employees are often afraid to assert their rights out of fear of direct or
10 indirect retaliation. Former employees are fearful of bringing actions
11 because they believe their former employers might damage their future
12 endeavors through negative references and/or other means. Class actions
13 provide the class members who are not named in the complaint with a type
14 of anonymity that allows for the vindication of their rights at the same time
15 as affording them privacy protections.

16 **GENERAL ALLEGATIONS**

17 24. At all relevant times mentioned herein, Defendants employed Plaintiffs and other
18 persons as non-exempt employees.

19 25. Plaintiffs were employed in a non-exempt position at Defendants' California
20 business location(s).

21 26. Defendants continue to employ non-exempt employees within California.

22 27. Plaintiffs are informed and believe, and thereon allege, that at all times herein
23 mentioned, Defendants were advised by skilled lawyers, employees and other professionals who
24 were knowledgeable about California's wage and hour laws, employment and personnel
25 practices and the requirements of California law.

26 28. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
27 should have known that Plaintiffs and Class Members were entitled to receive wages for all time
28 worked (including minimum wages and overtime wages) and that they were not receiving all

1 wages earned for work that was required to be performed. In violation of the Labor Code and
2 IWC Wage Orders, Plaintiffs and Class Members were not paid all wages (including minimum
3 wages and overtime wages) for all hours worked and were not paid overtime wages at the proper
4 rate of pay.

5 29. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
6 should have known that Plaintiffs and class members were entitled to receive all required meal
7 periods or payment of one (1) additional hour of pay at Plaintiffs and class members' regular rate
8 of pay when they did not receive a timely meal period. In violation of the Labor Code and IWC
9 Wage Orders, Plaintiffs and class members did not receive all timely meal periods or payment of
10 one (1) additional hour of pay at Plaintiffs and class members' regular rate of pay when they did
11 not receive a timely meal period.

12 30. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
13 should have known that Plaintiffs and class members were entitled to receive all rest breaks or
14 payment of one (1) additional hour of pay at Plaintiffs and class members' regular rate of pay
15 when a rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiffs
16 and class members did not receive all rest breaks or payment of one (1) additional hour of pay at
17 Plaintiffs and class members' regular rate of pay when a rest break was missed.

18 31. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
19 should have known that Plaintiffs and class members were entitled to receive itemized wage
20 statements that accurately showed their gross and net wages earned, inclusive dates of pay
21 periods, employer name and address, total hours worked and all applicable hourly rates in effect
22 and the number of hours worked at each hourly rate in accordance with California law. In
23 violation of the Labor Code, Plaintiffs and class members were not provided with accurate
24 itemized wage statements.

25 32. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
26 should have known that Plaintiffs and Waiting Time Subclass members were entitled to timely
27 payment of wages due upon separation of employment. In violation of the Labor Code, Plaintiffs
28 and Waiting Time Subclass members did not receive payment of all wages within permissible

1 time periods.

2 33. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
3 should have known they had a duty to compensate Plaintiffs and class members, and Defendants
4 had the financial ability to pay such compensation but willfully, knowingly and intentionally
5 failed to do so all in order to increase Defendants' profits.

6 34. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
7 should have known that they had a duty to compensate Plaintiffs and class members for the costs
8 of mandatory physical examinations and/or drug tests, but failed to do so.

9 35. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
10 should have known that they had a duty to provide written notice of information material to
11 Plaintiffs' and class members' employment with Defendants, but failed to do so.

12 **FIRST CAUSE OF ACTION**

13 **FAILURE TO PAY MINIMUM WAGES**

14 **(Violation of Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198; Violation of**
15 **Wage Order)**

16 *Against all Defendants*

17 36. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
18 though fully set forth herein.

19 37. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees
20 fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser
21 wage than the minimum so fixed is unlawful.

22 38. During the relevant time period, Defendants paid Plaintiffs and Class Members
23 less than minimum wages when they failed to pay proper compensation for all hours worked. To
24 the extent these hours do not qualify for the payment of overtime, Plaintiffs and Class Members
25 were not being paid at least the lawful minimum wage for their work.

26 39. During the relevant time period, Defendants regularly failed to pay at least
27 minimum wage to Plaintiffs and Class Members for all hours worked pursuant to Labor Code
28 §§ 1194 and 1197.

1 40. Defendants' failure to pay Plaintiffs and Class Members the required minimum
2 wage violates Labor Code §§ 1194, 1197, 1197.1, and 1198. Pursuant to these sections, Plaintiffs
3 and Class Members are entitled to recover the unpaid balance of their minimum wage
4 compensation as well as interest, costs, and attorneys' fees.

5 41. Pursuant to Labor Code § 1194.2, Plaintiffs and Class Members are entitled to
6 recover liquidated damages in an amount equal to the wages unlawfully unpaid and the accrued
7 interest thereon.

8 **SECOND CAUSE OF ACTION**

9 **FAILURE TO PAY OVERTIME WAGES**

10 **(Violation of Labor Code §§ 510, 1194 and 1198; Violation of IWC Wage Order § 3)**

11 *Against all Defendants*

12 42. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
13 though fully set forth herein.

14 43. Labor Code § 1198 and the applicable IWC Wage Order provide that it is unlawful
15 to employ persons without compensating them at a rate of pay either one and one-half or two
16 times the person's regular rate of pay, depending on the number of hours worked by the person
17 on a daily or weekly basis.

18 44. Pursuant to California Labor Code §§ 510 and 1194, during the relevant time
19 period, Defendants were required to compensate Plaintiffs and class members for all overtime
20 hours worked, calculated at one and one-half (1½) times the regular rate of pay for hours worked
21 in excess of eight (8) hours per day and/or forty (40) hours per week and for the first eight (8)
22 hours of the seventh consecutive work day, with double time after eight (8) hours on the seventh
23 day of any work week, or after twelve (12) hours in any work day.

24 45. Plaintiffs and class members were non-exempt employees entitled to the
25 protections of California Labor Code §§ 510 and 1194.

26 46. During the relevant time period, Defendants required Plaintiffs and Class
27 Members to work in excess of eight (8) hours in a day, forty (40) hours in a week, and/or for a
28 seventh consecutive day in a workweek without paying Plaintiffs and Class Members overtime

1 wages for their work.

2 47. During the relevant time period, Defendants failed to pay Plaintiffs and Class
3 Members overtime wages for all overtime hours worked when Plaintiffs and Class Members
4 worked in excess of eight (8) hours in a day, forty (40) hours in a week and/or for a seventh
5 consecutive day of work in a workweek, or when Plaintiffs and Class Members worked in excess
6 of twelve (12) hours in a day and/or in excess of eight (8) hours on the seventh day of work in a
7 work week.

8 48. In violation of state law, Defendants have knowingly and willfully refused to
9 perform their obligations and compensate Plaintiffs and class members for all wages earned as
10 alleged above.

11 49. Defendants' failure to pay Plaintiffs and class members the unpaid balance of
12 overtime compensation, as required by California law, violates the provisions of Labor Code §§
13 510 and 1198, and is therefore unlawful.

14 50. Pursuant to Labor Code § 1194, Plaintiffs and class members are entitled to
15 recover their unpaid overtime compensation as well as interest, costs and attorneys' fees.

16 **THIRD CAUSE OF ACTION**

17 **FAILURE TO PROVIDE MEAL PERIODS**

18 **(Violation of Labor Code §§ 226.7, 510, 512, 516, 1194, 1197, and 1198; Violation of IWC**

19 **Wage Order § 11)**

20 *Against all Defendants*

21 51. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
22 though fully set forth herein.

23 52. Labor Code § 226.7 provides that no employer shall require an employee to work
24 during any meal period mandated by the IWC Wage Orders.

25 53. Section 11 of the applicable IWC Wage Order states, "no employer shall employ
26 any person for a work period of more than five (5) hours without a meal period of not less than
27 30 minutes, except that when a work period of not more than six (6) hours will complete the day's
28 work the meal period may be waived by mutual consent of the employer and the employee."

1 54. Labor Code § 512(a) provides that an employer may not require, cause or permit
2 an employee to work for a period of more than five (5) hours per day without providing the
3 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the
4 total work period per day of the employee is not more than six (6) hours, the meal period may be
5 waived by mutual consent of both the employer and the employee.

6 55. Labor Code § 512(a) also provides that an employer may not employ an employee
7 for a work period of more than ten (10) hours per day without providing the employee with a
8 second meal period of not less than thirty (30) minutes, except that if the total hours worked is no
9 more than twelve (12) hours, the second meal period may be waived by mutual consent of the
10 employer and the employee only if the first meal period was not waived.

11 56. During the relevant time period, Plaintiffs and class members did not receive
12 compliant meal periods for each five hours worked per day.

13 57. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order require
14 an employer to pay an employee one additional hour of pay at the employee's regular rate of
15 compensation for each work day that a meal period is not provided.

16 58. At all relevant times, Defendants failed to pay Plaintiffs and class members meal
17 period premiums for meal period violations pursuant to Labor Code §§ 226.7(b), 510, 512, 516,
18 1194, 1197, and 1198 and section 11 of the applicable IWC Wage Order.

19 59. As a result of Defendants' failure to pay Plaintiffs and class members an additional
20 hour of pay for each day a meal period was not provided, Plaintiffs and class members suffered
21 and continue to suffer a loss of wages and compensation.

22 **FOURTH CAUSE OF ACTION**

23 **FAILURE TO PERMIT REST BREAKS**

24 **(Violation of Labor Code §§ 226.7, 512, 516, and 1198; Violation of IWC Wage Order § 12)**

25 *Against all Defendants*

26 60. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
27 though fully set forth herein.

28 61. Labor Code § 226.7(a) provides that no employer shall require an employee to

1 work during any rest period mandated by the IWC Wage Orders.

2 62. Section 12 of the applicable IWC Wage Order states “every employer shall
3 authorize and permit all employees to take rest periods, which insofar as practicable shall be in
4 the middle of each work period” and the “authorized rest period time shall be based on the total
5 hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
6 thereof” unless the total daily work time is less than three and one-half (3½) hours.

7 63. During the relevant time period, Plaintiffs and class members did not receive a ten
8 (10) minute rest period for every four (4) hours or major fraction thereof worked.

9 64. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order requires
10 an employer to pay an employee one additional hour of pay at the employee’s regular rate of
11 compensation for each work day that the rest period is not provided.

12 65. At all relevant times, Defendants failed to pay Plaintiffs and class members rest
13 period premiums for rest period violations pursuant to Labor Code §§ 226.7(b), 512, 516, and
14 1198 ; and section 12 of the applicable IWC Wage Order.

15 66. As a result of Defendants’ failure to pay Plaintiffs and class members an additional
16 hour of pay for each day a rest period was not provided, Plaintiffs and class members suffered
17 and continue to suffer a loss of wages and compensation.

18 **FIFTH CAUSE OF ACTION**

19 **FAILURE TO MAINTAIN ACCURATE REQUIRED RECORDS**

20 **(Violation of Labor Code § 1174, 1174.5, and 1198)**

21 *Against all Defendants*

22 67. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
23 though fully set forth herein.

24 68. Labor Code § 1174(d) requires an employer to keep, at a central location in the
25 state or the plants or establishments at which employees are employed, payroll records showing
26 the hours worked daily by, the wages paid to, and the number of piece-rate units earned by and
27 any applicable piece-rate paid to, employees employed at the respective plants or establishments.
28 These records shall be kept in accordance with rules established for this purpose by the

1 commission, but in any case, shall be kept on file for not less than two years.

2 69. Defendants have intentionally and willfully failed to keep accurate and complete
3 payroll records showing the hours worked daily and the wages paid to Plaintiff and other class
4 members.

5 70. As a result of Defendants' violation of California Labor Code § 1174(d) Plaintiffs
6 and class members have suffered injury and damage to their statutorily protected rights.
7 Specifically, Plaintiffs and class members have been injured by Defendants' intentional violation
8 of California Labor Code §§ 1174(d) and 1198 because they were denied both their legal right to
9 receive, and their protected interest in having available, accurate and complete payroll records.

10 **SIXTH CAUSE OF ACTION**

11 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

12 **(Violation of Labor Code § 226)**

13 *Against all Defendants*

14 71. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
15 though fully set forth herein.

16 72. Labor Code § 226(a) requires Defendants to provide each employee with an
17 accurate wage statement in writing showing nine pieces of information, including: (1) gross
18 wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned
19 and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,
20 provided that all deductions made on written orders of the employee may be aggregated and
21 shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the
22 employee is paid, (7) the name of the employee and the last four digits of his or her social security
23 number or an employee identification number other than a social security number, (8) the name
24 and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect
25 during the pay period and the corresponding number of hours worked at each hourly rate by the
26 employee.

27 73. During the relevant time period, Defendants have knowingly and intentionally
28 failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiffs

1 and class members. The deficiencies include, among other things, the failure to correctly state
2 the gross and net wages earned, accurate inclusive dates of the pay period, and all applicable
3 hourly rates in effect and the number of hours worked at each hourly rate by Plaintiffs and class
4 members.

5 74. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiffs
6 and class members have suffered injury and damage to their statutorily protected rights.
7 Specifically, Plaintiffs and class members have been injured by Defendants' intentional violation
8 of California Labor Code § 226(a) because they were denied both their legal right to receive, and
9 their protected interest in receiving, accurate itemized wage statements under California Labor
10 Code § 226(a). Plaintiffs have had to file this lawsuit in order to determine the extent of the
11 underpayment of wages, thereby causing Plaintiffs to incur expenses and lost time. Plaintiffs
12 would not have had to engage in these efforts and incur these costs had Defendants provided the
13 accurate wages earned. This has also delayed Plaintiffs' ability to demand and recover the
14 underpayment of wages from Defendants.

15 75. California Labor Code § 226(a) requires an employer to pay the greater of all
16 actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurred,
17 and one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods,
18 plus attorney's fees and costs, to each employee who was injured by the employer's failure to
19 comply with California Labor Code § 226(a).

20 76. Defendants' violations of California Labor Code § 226(a) prevented Plaintiffs and
21 class members from knowing, understanding and disputing the wages paid to them, and resulted
22 in an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and
23 intentional failure to comply with California Labor Code § 226(a), Plaintiffs and class members
24 have suffered an injury, and the exact amount of damages and/or penalties is all in an amount to
25 be shown according to proof at trial.

26 77. Plaintiffs and class members are also entitled to injunctive relief under California
27 Labor Code § 226(h), compelling Defendants to comply with California Labor Code § 226, and
28 seek the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

SEVENTH CAUSE OF ACTION
FAILURE TO PROVIDE ONE DAY'S REST IN SEVEN
(Violation of Labor Code §§ 551, 552 AND 558)

Against all Defendants

78. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as though fully set forth herein.

79. At all relevant times herein, California Labor Code section 551 provides that every person employed in any occupation of labor is entitled to one day's rest in seven. Additionally, California Labor Code section 552 prohibits employers from requiring employees to work more than six consecutive days without a day of rest.

80. At all relevant times herein set forth, California Labor Code section 556 exempts an employer from the day-of-rest requirement when the total hours worked by an employee do not exceed 30 hours in any week or six hours in any one day thereof.

81. Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages." Labor Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law."

82. During the relevant time period, Defendants scheduled Plaintiffs and class members to work six (6) or more hours per day and seven (7) or more consecutive days in a workweek. Because Plaintiff and class members worked over 30 hours per week and over six (6) hours per day in a workweek, they were not exempt from the day-of-rest requirement. To the extent that Plaintiff and class members may have signed purported waivers of their right to a

1 day's rest in seven, such waivers are invalid.

2 83. Thus, during the relevant time period, and in violation of Labor Code section 551
3 and 552, Defendants willfully caused Plaintiffs and class members to work more than six days
4 in seven. Plaintiff and class members are therefore entitled to recover civil penalties pursuant to
5 Labor Code section 558.

6 **EIGHTH CAUSE OF ACTION**
7 **FAILURE TO REIMBURSE BUSINESS EXPENSE**

8 **(Violation of Labor Code §§ 2800, 2802)**

9 *Against all Defendants*

10 84. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
11 though fully set forth herein.

12 85. Labor Code § 2800 states that “[a]n employer shall in all cases indemnify his
13 employee for losses caused by the employer’s want of ordinary care.”

14 86. Labor Code § 2802(a) states that “[a]n employer shall indemnify his or her employee
15 for all necessary expenditures or losses incurred by the employee in direct consequence of the
16 discharge of his or her duties, or of his or her obedience to the directions of the employer . . .”

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

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

24 89. During the relevant time period, Plaintiff and Class Members incurred necessary
25 business-related costs that were not fully reimbursed by Defendants.

26 90. In violation of Labor Code §§ 2800 and 2802, Defendants failed to reimburse or
27 indemnify Plaintiff and Class Members for their expenses due to Defendants’ knowing and
28

1 intentional failure to reimburse necessary business expenditures in connection with Plaintiff's and
2 Class Members' work and job duties.

3 91. As a direct result, Plaintiff and Class Members have suffered and continue to suffer
4 losses, and therefore seek complete reimbursement and indemnification of necessary business
5 expenditures or losses, interest thereon at the required rate, and all reasonable costs in enforcing the
6 rights under Labor Code § 2802, including, but not limited to attorneys' fees.

7 **NINTH CAUSE OF ACTION**

8 **FAILURE TO PAY TIMELY DURING EMPLOYMENT**

9 **(Violation of Labor Code §§ 204, 210)**

10 *Against all Defendants*

11 92. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
12 though fully set forth herein.

13 93. Pursuant to California Labor Code § 204, employees must be paid within seven days
14 of the close of the pay period.

15 94. During the relevant time period, Defendants paid Plaintiffs and Class Members more
16 than seven days after the close of the pay period.

17 95. Such a pattern, practice and uniform administration of corporate policy regarding
18 timely payment of wages as described herein is unlawful and creates an entitlement to recovery by
19 Plaintiff in a civil action, for the unpaid balance of the full amount of damages owed, including
20 interest thereon, penalties, attorneys' fees, and costs of suit according to the mandate of California
21 Labor Code §§ 203, and 210.

22 96. As a direct and proximate cause of these violations, Class Members have been
23 damaged, in an amount to be determined at trial.

24 **TENTH CAUSE OF ACTION**

25 **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT AND**

26 **WITHIN THE REQUIRED TIME**

27 **(Violation of Labor Code §§ 201, 202 and 203)**

28 *Against all Defendants*

1 97. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
2 though fully set forth herein.

3 98. California Labor Code §§ 201 and 202 provide that if an employer discharges an
4 employee, the wages earned and unpaid at the time of discharge are due and payable immediately,
5 and that if an employee voluntarily leaves his or her employment, his or her wages shall become
6 due and payable not later than seventy-two (72) hours thereafter, unless the employee has given
7 seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee
8 is entitled to his or her wages at the time of quitting.

9 99. During the relevant time period, Defendants willfully failed to pay Plaintiffs and
10 Waiting Time Subclass members all their earned wages upon termination including, but not
11 limited to, proper minimum wages and overtime compensation, either at the time of discharge or
12 within seventy-two (72) hours of their leaving Defendants' employ.

13 100. Defendants' failure to pay Plaintiffs and Waiting Time Subclass members all their
14 earned wages at the time of discharge or within seventy-two (72) hours of their leaving
15 Defendants' employ is in violation of Labor Code §§ 201 and 202.

16 101. California Labor Code § 203 provides that if an employer willfully fails to pay
17 wages owed immediately upon discharge or resignation in accordance with Labor Code §§ 201
18 and 202, then the wages of the employee shall continue as a penalty from the due date at the same
19 rate until paid or until an action is commenced; but the wages shall not continue for more than
20 thirty (30) days.

21 102. Plaintiffs and Waiting Time Subclass members are entitled to recover from
22 Defendants the statutory penalty which is defined as Plaintiffs' and Waiting Time Subclass
23 members' regular daily wages for each day they were not paid, at their regular hourly rate of pay,
24 up to a thirty (30) day maximum pursuant to Labor Code § 203.

25 **ELEVENTH CAUSE OF ACTION**

26 **VIOLATION OF LABOR CODE SECTION 222.5**

27 *Against Defendants Mars Petcare US, Inc. and Mars, Incorporated*

28 103. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as

1 though fully set forth herein.

2 104. At all relevant times herein, California Labor Code section 222.5 requires
3 employers to pay for the costs an employee incurs for obtaining any medical or physical
4 examination taken pursuant to any law or regulation.

5 105. At all relevant times herein, Defendants implemented, on a company-wide basis,
6 an employer-imposed requirement that Plaintiffs and other aggrieved employees undergo a
7 mandatory physical examination and/or drug test, but required them to do so at their own
8 expense. As stated, Defendants had a company-wide policy requiring that all employees,
9 including Plaintiffs and other class members, travel to a specified medical clinic on their own
10 time and use their own personal vehicles to undergo physical examinations and/or drug testing.
11 At all times, Defendants were in control of scheduling the date and time for the examination
12 and/or testing, selecting the provider/clinic where the examination and/or testing was to take
13 place, and determining the scope of the examination and/or testing.

14 106. However, Defendants did not compensate Plaintiffs and other class members for
15 the time they spent traveling to and from the medical clinics, for the time they spent undergoing
16 the physical examinations and/or drug testing, or reimburse them for the travel expenses they
17 incurred getting to and from the medical clinics. Defendants' policy and/or not paying for all
18 costs Plaintiffs and other class members incurred obtaining mandatory physical examinations
19 and/or drug testing is in violation of California Labor Code section 222.5.

20 107. As a result of the violations of California law herein described, Defendants
21 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members have
22 suffered pecuniary loss by Defendants' unlawful business acts and practices alleged herein.

23 Pursuant to California Business & Professions Code sections 17200 *et seq.*,
24 Plaintiff and class members are entitled to restitution of the wages withheld and
25 retained by Defendants during a period that commences four years prior to the
26 filing of the Complaint; a permanent injunction requiring Defendants to pay all
27 outstanding wages due to Plaintiff and class members; and an award of attorneys'
28 fees pursuant to California Code of Civil Procedure section 1021.5 and other

1 applicable laws; and an award of costs.

2 **TWELFTH CAUSE OF ACTION**

3 **VIOLATION OF LABOR CODE SECTION 2810.5**

4 *Against Defendants Mars Petcare US, Inc. and Mars, Incorporated*

5 108. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as
6 though fully set forth herein.

7 109. At all relevant times herein, California's Wage Theft Prevention Act was enacted
8 to ensure that employers provide employees with basic information material to their employment
9 relationship at the time of hiring, and to ensure that employees are given written and timely notice
10 of any changes to basic information material to their employment. Codified at California Labor
11 Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an
12 employer must provide written notice to employees containing basic and material payroll
13 information, including, among other things, the rate(s) of pay and basis thereof, whether paid by
14 the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for
15 overtime, the regular payday designated by the employer, and any allowances claims as part of
16 the minimum wage, including meal or lodging allowances. Labor Code section 2810.5(a)(1)(A)-
17 (C).

18 110. Defendants failed to provide Plaintiff and other class members written notice that
19 lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C) on a company-
20 wide basis.

21 111. As a result of the violations of California law herein described, Defendants
22 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members have
23 suffered pecuniary loss by Defendants' unlawful business acts and practices alleged herein.

24 112. Pursuant to California Business & Professions Code sections 17200 et seq.,
25 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
26 Defendants during a period that commences four years prior to the filing of the Complaint; a
27 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and class
28 members; and an award of attorneys' fees pursuant to California Code of Civil Procedure section

1021.5 and other applicable laws; and an award of costs.

THIRTEENTH CAUSE OF ACTION

VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.

Against all Defendants

1. Plaintiffs hereby re-allege and incorporate by reference all paragraphs above as though fully set forth herein.

2. Defendants' conduct, as alleged herein, has been and continues to be unfair, unlawful and harmful to Plaintiffs and class members. Plaintiffs seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

3. Defendants' activities, as alleged herein, violate California law and constitute unlawful business acts or practices in violation of California Business and Professions Code §§ 17200, *et seq.*

4. A violation of Business and Professions Code §§ 17200, *et seq.* may be predicated on the violation of any state or federal law.

5. Defendants' policies and practices have violated state law in at least the following respects:

- (a) Failing to pay at least the minimum wage to Plaintiffs and class members in violation of Labor Code §§ 1182.12, 1194, 1194.2, and 1197;
- (b) Failing to pay all overtime wages at the proper rate to Plaintiffs and class members in violation of Labor Code §§ 510, 1194 and 1198;
- (c) Failing to provide timely meal periods without paying Plaintiffs and class members premium wages for every day said meal periods were not provided in violation of Labor Code §§ 226.7 and 512;
- (d) Failing to authorize or permit rest breaks without paying Plaintiffs and class members premium wages for every day said rest breaks were not authorized or permitted in violation of Labor Code § 226.7;
- (e) Failing to provide Plaintiffs and class members with accurate itemized wage statements in violation of Labor Code § 226;

- 1 (f) Failing to timely pay all earned wages to Plaintiffs and Waiting Time
2 Subclass members upon separation of employment in violation of Labor
3 Code §§ 201, 202 and 203;
- 4 (g) Failing to provide written notice of information material to Plaintiffs' and
5 class members' employment with Defendants in violation of Labor Code
6 section 2810.5(a)(1)(A)-(C), as set forth herein; and
- 7 (h) Failing to pay Plaintiffs and class members the costs of mandatory
8 physical examinations and/or drug testing in violation of California Labor
9 Code section 222.5, as set forth below;

10 6. California's Wage Theft Prevention Act was enacted to ensure that employers
11 provide employees with basic information material to their employment relationship at the time
12 of hiring, and to ensure that employees are given written and timely notice of any changes to
13 basic information material to their employment. Codified at California Labor Code section
14 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must
15 provide written notice to employees containing basic and material payroll information, including,
16 among other things, the rate(s) of pay and basis thereof, whether paid by the hour, shift, day,
17 week, salary, piece, commission, or otherwise, including any rates for overtime, the regular
18 payday designated by the employer, and any allowances claims as part of the minimum wage,
19 including meal or lodging allowances. Labor Code section 2810.5(a)(1)(A)-(C).

20 7. Defendants failed to provide Plaintiff and class members written notice that lists
21 all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants'
22 failure to provide Plaintiff and class members with written notice of basic information regarding
23 their employment with Defendants is in violation of Labor Code section 2810.5.

24 8. At all relevant times herein, California Labor Code section 222.5 requires
25 employers to pay for the costs an employee incurs for obtaining any medical or physical
26 examination taken pursuant to any law or regulation.

27 9. At all times relevant herein, Defendants implemented, on a company-wide basis,
28 an employer-imposed requirement that Plaintiff and class members undergo a mandatory

1 physical examination and/or drug test, but required them to do so at their own expense. As stated,
2 Defendants had a company-wide policy requiring that all employees including Plaintiff and class
3 members, travel to a specified medical clinic on their own time and using their own personal
4 vehicles to undergo physical examinations and/or drug testing. At all times, Defendants were in
5 control of scheduling the date and time for the examination and/or testing, selecting the
6 provider/clinic where the examination and/or testing was to take place, and determining the scope
7 of the examination and/or testing.

8 10. However, Defendants did not compensate Plaintiff and class members for the time
9 they spent traveling to and from the medical clinics, for the time they spent undergoing the
10 physical examinations and/or drug testing, or reimburse them for the travel expenses they
11 incurred getting to and from the medical clinics. Defendants' policy and/or not paying for all
12 costs Plaintiff and class members incurred obtaining mandatory physical examinations and/or
13 drug testing is in violation of California Labor Code section 222.5.

14 11. Defendants intentionally avoided paying Plaintiffs and class members' wages and
15 monies, thereby creating for Defendants an artificially lower cost of doing business in order to
16 undercut their competitors and establish and gain a greater foothold in the marketplace.

17 12. Pursuant to Business and Professions Code §§ 17200, *et seq.* Plaintiffs and class
18 members are entitled to restitution of the wages unlawfully withheld and retained by Defendants
19 during a period that commences four years prior to the filing of the Complaint; an
20 award of attorneys' fees pursuant to Code of Civil Procedure § 1021.5 and other applicable laws;
21 and an award of costs.

22 **FOURTEENTH CAUSE OF ACTION**

23 **ENFORCEMENT OF LABOR CODE §§ 2698 ET SEQ. ("PAGA")**

24 *Against Defendant Red Collar*

25 1. Plaintiffs hereby re-allege and incorporate by reference the previous paragraphs as
26 though fully set forth herein.

27 2. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
28 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency

1 (“LWDA”) or any of its departments, divisions, commissions, boards, agencies, or employees for
2 violation of the Labor Code may, as an alternative, be recovered through a civil action brought by
3 an aggrieved employee on behalf of himself or herself and other current or former employees
4 pursuant to the procedures specified in Labor Code § 2699.3.

5 3. For all provisions of the Labor Code except those for which a civil penalty is
6 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
7 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
8 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
9 period in which Defendants violated these provisions of the Labor Code.

10 4. Defendants’ conduct violates numerous Wage Order and Labor Code sections,
11 including, but not limited to, the following:

- 12 a. violation of Labor Code §§ 201-203, 204, 210, 510, 1182.12, 1194, 1194.2,
13 1197, 1197.1, 1197.2, and 1198 for failure to timely pay all earned wages
14 (including minimum wage and overtime wages) owed to Plaintiffs and other
15 aggrieved employees during employment and upon separation of
16 employment as herein alleged;
- 17 b. violation of Labor Code §§ 226.7, 512, and 516 for failure to provide meal
18 periods to Plaintiffs and other aggrieved employees and failure to pay
19 premium wages for missed meal periods as herein alleged;
- 20 c. violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiffs
21 and other aggrieved employees and failure to pay premium wages for
22 missed rest periods as herein alleged;
- 23 d. violation of Labor Code § 226 for failure to provide accurate itemized wage
24 statements to Plaintiffs and other aggrieved employees as herein alleged;
25 and
- 26 e. violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate
27 and complete records showing, among other things, the hours worked daily
28 by and the wages paid to aggrieved employees.

5. Plaintiffs are “aggrieved employees” because they were employed by the alleged violator and had one or more of the violations committed against them, and therefore is properly suited to represent the interests of all other aggrieved employees.

6. Plaintiffs have exhausted the procedural requirements under Labor Code § 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of themselves and all other aggrieved employees under PAGA.

7. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiffs are entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

8. For bringing this action, Plaintiffs are entitled to attorney's fees and costs incurred herein.

FIFTEENTH CAUSE OF ACTION

ENFORCEMENT OF LABOR CODE §§ 2698 ET SEQ. (“PAGA”)

Against Defendants Mars Petcare US, Inc. and Mars, Incorporated

9. Plaintiffs hereby re-allege and incorporate by reference the previous paragraphs as though fully set forth herein.

10. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (“LWDA”) or any of its departments, divisions, commissions, boards, agencies, or employees for violation of the Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3.

11. For all provisions of the Labor Code except those for which a civil penalty is specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay period in which Defendants violated these provisions of the Labor Code.

1 12. Defendants' conduct violates numerous Wage Order and Labor Code sections,
2 including, but not limited to, the following:

- 3 f. violation of Labor Code §§ 201-203, 204, 210, 510, 558, 1102.5, 1182.12,
4 1194, 1194.2, 1197, 1197.1 and 1198 for failure to timely pay all earned
5 wages (including minimum wage and overtime wages) owed to Plaintiffs
6 and other aggrieved employees during employment and upon separation of
7 employment as herein alleged;
- 8 g. violation of Labor Code §§ 226.7 and 512 for failure to provide meal
9 periods to Plaintiffs and other aggrieved employees and failure to pay
10 premium wages for missed meal periods as herein alleged;
- 11 h. violation of Labor Code §§ 226.7 and 226.2 for failure to permit rest breaks
12 to Plaintiffs and other aggrieved employees and failure to pay premium
13 wages for missed rest periods as herein alleged;
- 14 i. violation of Labor Code §§ 551 and 552 for failing to provide Plaintiffs and
15 aggrieved employees with one day's rest in seven;
- 16 j. violation of Labor Code §§ 226 and 226.3 for failure to provide accurate
17 itemized wage statements to Plaintiffs and other aggrieved employees as
18 herein alleged;
- 19 k. violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate
20 and complete records showing, among other things, the hours worked daily
21 by and the wages paid to aggrieved employees;
- 22 l. violation of Labor Code §2802 for failing to reimburse Plaintiffs and
23 aggrieved employees for all business-related expenses;
- 24 m. violation of Labor Code § 201-204, 210, and 256 for failing to pay all wages
25 earned to Plaintiff and aggrieved employees at the end of employment;
- 26 n. violation of Labor Code § 222.5 for failure to compensate Plaintiffs and
27 other aggrieved employees for mandatory physical examinations and/or
28 drug testing as set forth below; and

1 o. violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to provide
2 written notice of information material to Plaintiffs' and other aggrieved
3 employees' employment as set forth herein.

4 13. At all relevant times herein, California Labor Code section 222.5 requires
5 employers to pay for the costs an employee incurs for obtaining any medical or physical
6 examination taken pursuant to any law or regulation.

7 14. At all relevant times herein, Defendants implemented, on a company-wide basis,
8 an employer-imposed requirement that Plaintiffs and other aggrieved employees undergo a
9 mandatory physical examination and/or drug test, but required them to do so at their own expense.
10 As stated, Defendants had a company-wide policy requiring that all employees, including Plaintiffs
11 and other aggrieved employees, travel to a specified medical clinic on their own time and use their
12 own personal vehicles to undergo physical examinations and/or drug testing. At all times,
13 Defendants were in control of scheduling the date and time for the examination and/or testing,
14 selecting the provider/clinic where the examination and/or testing was to take place, and
15 determining the scope of the examination and/or testing.

16 15. However, Defendants did not compensate Plaintiffs and other aggrieved employees
17 for the time they spent traveling to and from the medical clinics, for the time they spent undergoing
18 the physical examinations and/or drug testing, or reimburse them for the travel expenses they
19 incurred getting to and from the medical clinics. Defendants' policy and/or not paying for all costs
20 Plaintiffs and other aggrieved employees incurred obtaining mandatory physical examinations
21 and/or drug testing is in violation of California Labor Code section 222.5. Plaintiff and other
22 aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code
23 sections 2699(a), (f), and (g).

24 16. At all relevant times herein, California's Wage Theft Prevention Act was enacted
25 to ensure that employers provide employees with basic information material to their employment
26 relationship at the time of hiring, and to ensure that employees are given written and timely notice
27 of any changes to basic information material to their employment. Codified at California Labor
28 Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an

1 employer must provide written notice to employees containing basic and material payroll
2 information, including, among other things, the rate(s) of pay and basis thereof, whether paid by
3 the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for
4 overtime, the regular payday designated by the employer, and any allowances claims as part of the
5 minimum wage, including meal or lodging allowances. Labor Code section 2810.5(a)(1)(A)-(C).

6 17. Defendants failed to provide Plaintiff and other aggrieved employees written notice
7 that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C) on a
8 company-wide basis.

9 18. Defendants' failure to provide Plaintiffs and other aggrieved employees with
10 written notice of basic information regarding their employment with Defendants is in violation of
11 Labor Code section 2810.5. Plaintiffs and other aggrieved employees are therefore entitled to
12 recover civil penalties pursuant to Labor Code section 2699(a), (f), and (g).

13 19. Plaintiffs are "aggrieved employees" because they were employed by the alleged
14 violator and had one or more of the violations committed against them, and therefore is properly
15 suited to represent the interests of all other aggrieved employees.

16 20. Plaintiffs have exhausted the procedural requirements under Labor Code § 2699.3
17 as to Defendants and is therefore able to pursue a claim for penalties on behalf of themselves and
18 all other aggrieved employees under PAGA.

19 21. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiffs are entitled to
20 recover civil penalties, in addition to other remedies, for violations of the Labor Code sections
21 cited above.

22 22. For bringing this action, Plaintiffs are entitled to attorney's fees and costs incurred
23 herein.

24 **PRAYER FOR RELIEF**

25 Plaintiffs, on their own behalf and on behalf of all others similarly situated, pray for relief
26 and judgment against Defendants, jointly and severally, as follows:

27 1. For certification of this action as a class action, including certifying the Class and
28 Subclass alleged by Plaintiff;

2. For appointment of Frank Ayon, Gregory Spencer and Enrique Martinez-Salgado as the class representatives;

3. For appointment of Aegis Law Firm, PC as class counsel for all purposes;

4. For compensatory damages in an amount according to proof with interest thereon;

5. For economic and/or special damages in an amount according to proof with interest thereon;

6. For reasonable attorneys' fees, costs of suit and interest to the extent permitted by law, including pursuant to Code of Civil Procedure § 1021.5, Labor Code §§ 226(e), 1194, and 2698 *et seq.*;

7. For statutory penalties to the extent permitted by law, including those pursuant to the Labor Code and IWC Wage Orders;

8. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;

9. For an order requiring Defendants to restore and disgorge all funds to each employee acquired by means of any act or practice declared by this Court to be unlawful, unfair or fraudulent and, therefore, constituting unfair competition under Business and Professions Code §§ 17200, *et seq.*;

10. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, benefits and penalties, including interest thereon;

11. For pre-judgment interest;

12. For civil penalties; and

13. For such other relief as the Court deems just and proper.

Dated: August 31, 2022

AEGIS LAW FIRM, PC

By: _____



Carolyn M. Bell
Attorneys for Plaintiffs

1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, am employed in the County of Orange, State of California. I am over
3 the age of 18 and not a party to the within action; am employed with Aegis Law Firm PC and
my business address is 9811 Irvine Center Drive, Suite 100, Irvine, California 92618.

4 On August 31, 2022, I served the foregoing document entitled:

5 • **THIRD AMENDED CLASS ACTION COMPLAINT**

6 on all the appearing and/or interested parties in this action by delivering ☐ the original ☒ a true
copy thereof on the party(ies) addressed below as follows:

7 Laura Bailey Gallagher
8 Thomas R. Davies,
HARMON & DAVIES, P.C.
2306 Columbia Avenue
9 Lancaster, PA 17603
Telephone: 717.291.2236
10 Facsimile: 717.291.5739
lgallagher@h-dlaw.com
11 tdavies@h-dlaw.com

David King, Esq.
KING CHENG MILLER & JIN, LLP
3675 E. Huntington Drive, Suite 200
Pasadena, CA 91107
Telephone: (626) 304-9001
Facsimile: (626) 304-9002
dpk@kcmlaw.net

Attorneys for Defendant:
RED COLLAR PET FOODS, INC.

13 Shoham J. Solouki, Esq.
14 **SOLOUKI | SAVOY, LLP**
316 W. 2nd Street, Suite 1200
15 Los Angeles, California 90012
Telephone: (213) 814-4940
16 Facsimile: (213) 814-2550
shoham@soloukisavoy.com

17 Attorneys for Plaintiff:
18 ENRIQUE MARTINEZ-SALGADO

19 ☐ **(BY MAIL)** I am readily familiar with the firm's practice of collection and processing
20 correspondence for mailing. Under that practice it would be deposited with the U.S.
21 Postal Service on that same day with postage thereon fully prepaid at Irvine, California
22 in the ordinary course of business. I am aware that on motion of the party served, service
is presumed invalid if postage cancellation date or postage meter date is more than one
day after date of deposit for mailing this affidavit. (*Cal Code Civ. Proc.* § 1013(a); *Fed.*
R. Civ. Proc. 5(a); *Fed. R. Civ. Proc.* 5(c).)

23 ☐ **(BY OVERNIGHT MAIL)** I am personally and readily familiar with the business
24 practice of Aegis Law Firm PC for collection and processing correspondence for
overnight delivery, and I caused such document(s) described herein to be deposited for
25 delivery to a facility regularly maintained Federal Express for overnight delivery. (*Cal*
Code Civ. Proc. § 1013(c); *Fed. R. Civ. Proc.* 5(c).)

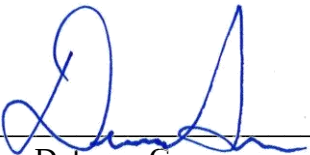
26 ☒ **(BY ELECTRONIC TRANSMISSION)** I caused said document(s) to be served via
27 electronic transmission via the above listed email addresses on the date below. (*Cal.*
Code Civ. Proc. § 1010.6(6); *Fed. R. Civ. Proc.* 5(b)(2)(E); *Fed. R. Civ. Proc.* 5(b)(3).)

☐

(BY PERSONAL SERVICE) I delivered the foregoing document by hand delivery to the addressed named above. (*Cal Code Civ. Proc. § 1011; Fed. R. Civ. Proc. 5(b)(2)(A).*)

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

Executed on August 31, 2022, at Irvine, California.



Delaney Graves