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8 and on behalf of all others similarly situated.

9 *[Additional counsel listed on following page]*

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN BERNARDINO**

13 FRANK AYON, individually and on behalf of all
14 others similarly situated

15 Plaintiffs,

16 vs.

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

19 Defendants.
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24
25
26
27
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Case No. CIVDS2019018

Assigned for all purposes to:
Hon. David Cohn
Dept. S26

JOINT STIPULATION OF SETTLEMENT

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15 Attorneys for Defendant Red Collar Pet Foods, Inc

1 It is stipulated and agreed by and among the undersigned Parties, subject to the approval of
2 the Court pursuant to the California Rules of Court, that the Settlement of this Action shall be
3 effectuated upon and subject to the following terms and conditions. Capitalized terms used herein
4 shall have the meanings set forth in Article I or as defined elsewhere in this Joint Stipulation of
5 Settlement (“Agreement” or “Settlement”).

6 This Agreement is made by and between Named Plaintiffs Frank Ayon, Gregory Spencer and
7 Enrique Martinez-Salgado (“Named Plaintiffs”) and the Class Members, on the one hand, and
8 Defendant Red Collar Ped Foods, Inc. (“Red Collar” or “Defendant”), on the other hand. Named
9 Plaintiffs and Defendant collectively are referred to in this Agreement as “the Parties.”

10 The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and
11 concluded by agreement of Defendant to pay the settlement amount of One Million Dollars
12 (\$1,000,000.00) as provided in Section 3.06(a) below (“Gross Settlement Amount”) pursuant to the
13 terms and conditions of this Agreement and for the consideration set forth herein, including but not
14 limited to, a release of all claims by Named Plaintiffs and the Class Members as set forth herein.

15 **ARTICLE I**

16 **DEFINITIONS**

17 Unless otherwise defined herein, the following terms used in this Agreement shall have the
18 meanings ascribed to them as set forth below:

19 a. “Action” means *Frank Ayon, et al. v. Red Collar Pet Foods, Inc.* Case No.
20 CIVDS2019018, in the Superior Court of the State of California for the County of San Bernardino.

21 b. “Agreement” means this Joint Stipulation of Settlement, including the attached
22 Exhibit(s).

23 c. “Class” means all non-exempt employees who are or were employed by Defendant
24 in California at any time during the Class Period.

25 d. “Class Counsel” means the attorneys for the Class and the Class Members, who are:

26 AEGIS LAW FIRM, PC
27 Kashif Haque
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e. “Class List” means a list based on Defendant’s business records that identifies each Class Member’s name, last known home or mailing address, Social Security number or, as applicable, other taxpayer identification number, dates of employment, and the number of Qualifying Workweeks worked during the Class Period.

f. “Class Member(s)” means all members of the Class.

g. “Class Period” means December 3, 2018 through August 6, 2022.

h. “Court” means the California Superior Court for the County of San Bernardino, where the Action is currently pending.

i. “Date of Finality” means the later of the following: (1) the date the Final Order is signed if no objections are filed to the Settlement; (2) if objections are filed and overruled, and no appeal is taken of the Final Order, sixty-five (65) days after the Final Order; or (3) if an appeal or other judicial review is taken from the Court’s overruling of objections to the settlement, ten (10) days after the appeal is withdrawn or after an appellate decision affirming the Final Order becomes final.

j. “Defendant” means Defendant Red Collar Pet Foods, Inc.

k. “Defense Counsel” means counsel for Defendant:

HARMON & DAVIES, P.C.
Thomas R. Davies, Pro Hac Vice
Laura Bailey Gallagher, Pro Hac Vice
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Lancaster, PA 17603
Telephone: (717) 291-2236
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1 l. "Disposition" means the method by which the Court approves the terms of the
2 Settlement and retains jurisdiction over its enforcement, implementation, construction,
3 administration, and interpretation.

4 m. "Final Order Approving Settlement of Class Action" or "Final Order" means the final
5 formal court order signed by the Court following the Final Fairness and Approval Hearing in
6 accordance with the terms herein, approving this Agreement.

7 n. "Gross Settlement Amount" means One Million Dollars and Zero Cents
8 (\$1,000,000.00) to be paid by Defendant as provided by this Agreement to settle this Action. All
9 payments to the Class, administration costs, attorney's fees and costs, and Incentive Awards,
10 pursuant to Section 3.06(a) below, shall be paid out of the Gross Settlement Amount. The employer's
11 share of payroll taxes arising from the payments made under this settlement shall be paid by
12 Defendant separate from and in addition to the Gross Settlement Amount. The Gross Settlement
13 Amount is subject to a pro rata increase pursuant to Section 3.04(e) below. No part of the Gross
14 Settlement Amount shall revert to Defendant.

15 o. "Incentive Awards" means a monetary amount of up to Ten Thousand Dollars
16 (\$10,000.00) for each of the Named Plaintiffs, subject to Court approval, in recognition of their effort
17 and work in prosecuting the Action on behalf of Class Members, and for their general release of
18 claims.

19 p. "Individual Settlement Payment(s)" means each Participating Class Member's
20 respective share of the Net Settlement Amount. Individual Settlement Payments will be determined
21 by the calculations provided in this Agreement.

22 q. "LWDA" means The State of California Labor and Workforce Development Agency.

23 r. "LWDA Payment" means 75% of the \$60,000 allocated to the settlement of PAGA
24 claims which, subject to Court approval, will be paid to the LWDA pursuant to Section 3.06(e) of
25 this Agreement, as provided for below.

26 s. "Motion for Final Approval" means Plaintiffs' submission of a written motion,
27 including any evidence as may be required for the Court to conduct an inquiry into the fairness of
28

1 the Settlement as set forth in this Agreement, to conduct a Final Fairness and Approval Hearing, and
2 to enter a Final Order in this Action.

3 t. “Motion for Preliminary Approval” means Plaintiffs’ submission of a written motion,
4 including any evidence as may be required for the Court to grant preliminary approval of the
5 Settlement as required by Rule 3.769 of the California Rules of Court.

6 u. “Named Plaintiffs” means Frank Ayon, Gregory Spencer, and Enrique Martinez-
7 Salgado.

8 v. “Net Settlement Amount” means the Gross Settlement Amount less Court-approved
9 administration costs, Class Counsels’ attorneys’ fees and costs, Incentive Awards, and PAGA
10 Settlement Amount, pursuant to Section 3.06(a)-(f) below.

11 w. “Non-Participating Class Member(s)” means any Class Member(s) who submit to the
12 Settlement Administrator a valid and timely written request to be excluded from the Class pursuant
13 to Section 3.04(b) below.

14 x. “Notice Packet” means the Notice of Proposed Class Action Settlement in a form
15 substantially similar to the Notice Packet attached hereto as **Exhibit A**, subject to Court approval.

16 y. “PAGA” means the California Private Attorneys General Act of 2004, which is
17 codified in California Labor Code §§ 2698 *et seq.*

18 z. “PAGA Settlement Amount” means the portion of the Gross Settlement Amount
19 allocated to the resolution of PAGA Group Members’ claims arising under PAGA. The Parties have
20 agreed that the PAGA Settlement Amount is Sixty Thousand Dollars (\$60,000), subject to Court
21 approval. Of the PAGA Settlement Amount, 75% will be considered the LWDA Payment, and the
22 remaining 25% will be added to the Net Settlement Amount and distributed to PAGA Group
23 Members.

24 aa. “PAGA Group Members” means all Class Members employed by Defendant at any
25 time between March 19, 2020 through August 6, 2022 (“PAGA Period”).

26 bb. “PAGA Group Payment” means 25% of the \$60,000 allocated to the settlement of
27 PAGA claims which, subject to Court approval, will be paid to the PAGA Group Members pursuant
28 to Section 3.06(e) of this Agreement, as provided for below.

1 cc. "Participating Class Member(s)" is defined as a Class Member who does not timely
2 exclude himself or herself from the Settlement and will therefore receive his or her share of the Net
3 Settlement Amount automatically without the need to return a claim form. Each Participating Class
4 Member will be paid his/her Individual Settlement Payment.

5 dd. "Preliminary Approval Date" means the date the Court preliminarily approves the
6 Settlement embodied in this Agreement.

7 ee. "Qualified Settlement Fund" or "QSF" means a fund within the meaning of Treasury
8 Regulation § 1.468B-1, 26 CFR § 1.468B-1 *et seq.*, that is established by the Settlement
9 Administrator for the benefit of Participating Class Members.

10 ff. "Qualifying Workweeks" means the number of weeks that Class Members worked
11 for Defendant as non-exempt employees during the Class Period.

12 gg. "Released Parties" means Defendant.

13 hh. "Response Deadline" means the deadline by which Class Members must postmark or
14 fax to the Settlement Administrator requests for exclusion or written notices of objection. The
15 Response Deadline will be sixty (60) calendar days after the initial mailing of the Notice Packet by
16 the Settlement Administrator, unless the sixtieth (60th) calendar day falls on a Sunday or federal
17 holiday, in which case the Response Deadline will be extended to the next day on which the U.S.
18 Postal Service is open. The Response Deadline will be extended as set forth herein if there is a re-
19 mailing.

20 ii. "Settlement Administration Costs" means all costs incurred by the Settlement
21 Administrator in administration of the Settlement, including, but not limited to, mailing of notice to
22 the class, calculation of Individual Settlement Payments, generation of Individual Settlement
23 Payment checks and related tax reporting forms, administration of unclaimed checks, and generation
24 of checks to Class Counsel for attorneys' fees and costs, to Named Plaintiffs for their Incentive
25 Awards, and to the LWDA. The Settlement Administration Costs shall be paid from the Gross
26 Settlement Amount.

jj. “Settlement Administrator” means ILYM Group, Inc., which the Parties have agreed will be responsible for the administration of the Individual Settlement Payments to be made by Defendant from the Gross Settlement Amount and related matters under this Agreement.

ARTICLE II

CONTINGENT NATURE OF THE AGREEMENT

Section 2.01: Stipulation of Class Certification for Settlement Purposes

Because the Parties have stipulated to the certification of the Class with respect to all causes of action alleged in the Action for settlement purposes only, this Agreement requires preliminary and final approval by the Court. Accordingly, the Parties enter into this Agreement on a conditional basis. This Agreement is contingent upon the approval and certification by the Court. If the Date of Finality does not occur, the fact that the Parties were willing to stipulate for the purposes of this Agreement to a Class shall have no bearing on, nor be admissible in connection with, the issue of certification of the Class with respect to all causes of action alleged in the Action. Defendant does not consent to certification of the Class for any purpose other than to effectuate settlement of the Action. If the Date of Finality does not occur, or if Disposition of this Action is not effectuated, any certification of the Class as to Defendant will be vacated and Named Plaintiffs, Defendant, and the Class will be returned to their positions with respect to the Action as if the Agreement had not been entered into. In the event that the Date of Finality does not occur: (a) any Court orders preliminarily or finally approving certification of any class contemplated by this Agreement shall be null, void, and vacated, and shall not be used or cited thereafter by any person or entity; and (b) the fact of the settlement reflected in this Agreement, the fact that Defendant did not oppose the certification of a Class under this Agreement, or that the Court preliminarily approved the certification of the Class, shall not be used or cited thereafter by any person or entity, including in any manner whatsoever, including without limitation any contested proceeding relating to the certification of any class. If the Date of Finality does not occur, this Agreement shall be deemed null and void, shall be of no force or effect whatsoever, and shall not be referred to or used for any purpose whatsoever. Defendant expressly reserves the right to challenge the propriety of class certification in the Action for any purpose, if the Date of Finality does not occur.

1 The Parties and their respective counsel shall take all steps that may be requested by the Court
2 relating to the approval and implementation of this Agreement and shall otherwise use their
3 respective best efforts to obtain Court approval and implement this Agreement. If the Court does not
4 grant the Motion for Preliminary Approval and/or the Motion for Final Approval, the Parties agree
5 to meet and confer to address the Court's concerns. If the Parties are unable to agree upon a
6 resolution, the Parties agree to seek the assistance of mediator Lynn Frank to resolve the dispute.

7 **ARTICLE III**

8 **PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF THE SETTLEMENT**

9 The procedure for obtaining Court approval of and implementing this Agreement shall be as
10 follows:

11 **Section 3.01: Motion for Conditional Class Certification and Preliminary Approval**

12 Named Plaintiffs will bring a motion before the Court for an order conditionally certifying
13 the Class to include all claims pled in the Action based on the preliminary approval of this
14 Agreement. The date that the Court grants preliminary approval of this Agreement will be the
15 "Preliminary Approval Date."

16 **Section 3.02: The Settlement Administrator**

17 The Parties have chosen ILYM Group, Inc. to administer this Settlement and to act as the
18 Settlement Administrator, including but not limited to distributing and responding to inquiries about
19 the Notice Packet, determining the validity of exclusions/opt-outs, calculating the Net Settlement
20 Amount and the Individual Settlement Payments, issuing the Individual Settlement Payment and
21 PAGA Group Payment checks and distributing them to Participating Class Members and PAGA
22 Group Members, establishing and maintaining the QSF, and issuing the payment to Class Counsel
23 for attorneys' fees and costs, the Incentive Award checks to Named Plaintiffs, and the employer
24 payroll taxes to the appropriate taxing authorities. The Settlement Administrator shall expressly agree
25 to all of the terms and conditions of this Agreement.

26 All costs of administering the Settlement, including but not limited to all costs and fees
27 associated with preparing, issuing and mailing any and all notices to Class Members and/or
28 Participating Class Members, all costs and fees associated with computing, processing, reviewing,

1 and mailing the Individual Settlement Payments and PAGA Group Payment, all costs and fees
2 associated with preparing any tax returns and any other filings required by any governmental taxing
3 authority or agency, all costs and fees associated with preparing any other checks, notices, reports,
4 or filings to be prepared in the course of administering disbursements from the Net Settlement
5 Amount, and any other costs and fees incurred and/or charged by the Settlement Administrator in
6 connection with the execution of its duties under this Agreement (“Settlement Administration
7 Costs”), shall be paid to the Settlement Administrator from the Gross Settlement Amount.

8 **Section 3.03: Notice to Class Members**

9 No later than five (5) business days after the Preliminary Approval Date, Defendant will
10 provide the Settlement Administrator with a “Class List” in electronic format based on its business
11 records, identifying the names of the Class Members, their last known home addresses, Social
12 Security numbers or, as applicable, other taxpayer identification number, their dates of employment
13 and weeks worked during the Class Period.

14 Within ten (10) business days of receiving a Class List from Defendant, the Settlement
15 Administrator will send Class Members, by first-class mail, at their last known address, the Court
16 approved Notice Packet, including notice of this Settlement and of the opportunity to opt out of the
17 Settlement Class. The Notice Packet will include a calculation of the Class Member’s approximate
18 share of the Net Settlement Amount. Class Members will have sixty (60) days from the date of
19 mailing in which to postmark objections or requests for exclusion. Prior to the initial mailing, the
20 Settlement Administrator will check all Class Member addresses against the National Change of
21 Address database and shall update any addresses before mailing. The Settlement Administrator will
22 skip trace and re-mail all returned, undelivered mail within five (5) days of receiving notice that a
23 Notice Packet was undeliverable. If a Class Member’s notice is re-mailed, the Class Member shall
24 have fifteen (15) calendar days from the re-mailing, or sixty (60) calendar days from the date of the
25 initial mailing, whichever is later, in which to postmark objections or requests for exclusion. Class
26 Members shall not be required to submit claim forms in order to receive a proportional share of the
27 Net Settlement Amount.

1 If the Notice Packet is returned with a forwarding address, the Settlement Administrator shall
2 re-mail the Notice Packet to the forwarding address. With respect to those Class Members whose
3 Notice Packet is returned to the Settlement Administrator as undeliverable, the Settlement
4 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or
5 mass search on LexisNexis or comparable databases based on set criteria and, if another address is
6 identified, shall mail the Notice Packet to the newly identified address. It is the intent of the Parties
7 that reasonable means be used to locate Class Members and that the Settlement Administrator be
8 given discretion to take steps in order to facilitate notice of the Settlement and delivery of the
9 Individual Settlement Payments to all Participating Class Members and the PAGA Group Payment
10 to PAGA Group Members.

11 If the Notice Packet is re-mailed, the Settlement Administrator will note for its own records
12 and notify Class Counsel and Defense Counsel of the date of each such re-mailing as part of a weekly
13 status report provided to the Parties.

14 In the event a Class Member's Notice Packet remains undeliverable sixty (60) calendar days
15 after the Notice Packet was initially mailed, the Settlement Administrator will not mail the Class
16 Member's Individual Settlement Payment. The Settlement Administrator will hold the Class
17 Member's Individual Settlement Payment during the check cashing period on behalf of the Class
18 Member. If at the conclusion of the check cashing period the Class Member's Notice Packet and
19 Individual Settlement Payment remain undeliverable and/or unclaimed and uncashed, the Settlement
20 Administrator will distribute the funds from unclaimed/uncashed checks in accordance with the
21 procedures set forth in Section 3.06(g) below.

22 No later than twenty (20) court days prior to the Final Fairness and Approval Hearing, the
23 Settlement Administrator shall provide Defense Counsel and Class Counsel with a declaration
24 attesting to completion of the notice process, including any attempts to obtain valid mailing addresses
25 for and re-sending of any returned Notice Packets, as well as the number of valid requests for
26 exclusion and objections that the Settlement Administrator received.

1 **Section 3.04: Responses to Notice**

2 **a. Class Member Disputes**

3 If any Class Member disagrees with Defendant's records as to his or her Qualifying
4 Workweeks during the Class Period as reflected in the Notice Packet, the Class Member shall set
5 forth in writing the Qualifying Workweeks he/she claims to have worked during the Class Period
6 and submit such writing to the Settlement Administrator by the Response Deadline, along with any
7 supporting documentation. The Notice will also provide a method for the Class Member to challenge
8 the employment data on which his or her Individual Settlement Payment is based. The Settlement
9 Administrator shall contact the Parties regarding the dispute and the Parties will work in good faith
10 to resolve it. If the Parties are unable to resolve the dispute, the Settlement Administrator will be the
11 final arbiter of the Qualifying Workweeks for each Class Member during the Class Period based on
12 the information provided to it.

13 **b. Requests for Exclusion from Class**

14 In order for any Class Member to validly exclude himself or herself from the Class and this
15 Settlement, with respect to the class action allegations (*i.e.*, to validly opt out), a written request for
16 exclusion must be signed by the Class Member or his or her authorized representative, and must be
17 sent to the Settlement Administrator, postmarked no later than the Response Deadline (or fifteen (15)
18 days after the Settlement Administrator re-mails the Notice to the Class Member, whichever is later).
19 The Notice Packet shall contain instructions on how to validly exclude himself or herself from the
20 Class and this Settlement, with respect to the class action (*i.e.*, opt out), including the language to be
21 used in a request for exclusion. The date of the initial mailing of the Notice Packet, and the date the
22 signed request for exclusion was postmarked, shall be conclusively determined according to the
23 records of the Settlement Administrator. Any Class Member who timely and validly requests
24 exclusion from the Class and this Settlement, with respect to the class action, will not be entitled to
25 any Individual Settlement Payment, will not be bound by the terms and conditions of this Agreement,
26 and will not have any right to object, appeal, or comment thereon.

27 Any Class Member who fails to timely submit a request for exclusion shall automatically be
28 deemed a Class Member whose rights and claims with respect to the issues raised in the Action are

1 determined by the Court's Final Order Approving Settlement of Class Action, and by the other
2 rulings in the Action. Thus, said Class Member's rights to pursue any claims covered by the Action
3 and/or released in this Agreement will be extinguished.

4 **c. Objections to Settlement**

5 For any Class Member to object to this Agreement, or any term of it, the person making the
6 objection must not submit a request for exclusion (*i.e.*, must not opt out), and should send to the
7 Settlement Administrator, postmarked or faxed no later than the Response Deadline (or fifteen (15)
8 days after the Settlement Administrator re-mails the Notice to the Class Member, whichever is later),
9 a written statement of the grounds of objection, signed by the objecting Class Member or his or her
10 attorney, along with all supporting papers. The date of the initial mailing of the Notice Packet, and
11 the date the signed objection was postmarked, shall be conclusively determined according to the
12 records of the Settlement Administrator. The Settlement Administrator shall send any objections it
13 receives to Defense Counsel and Class Counsel within three (3) business days of receipt. Class
14 Members may also appear at the final approval hearing to object. The Court retains final authority
15 with respect to the consideration and admissibility of any Class Member objections.

16 **d. Encouragement of Class Members**

17 The Parties to this Agreement and the counsel representing such Parties shall not, directly or
18 indirectly, through any person, encourage or solicit any Class Member to exclude him or herself from
19 this Settlement (opt out), or to object to it. However, Class Counsel may respond to inquiries from
20 Class Members.

21 **e. Right of Plaintiff to Adjust Gross Settlement Amount**

22 Defendant has estimated the number of Class Members as 135 and the number of workweeks
23 as 10,500. If the number of Class Members or the number of workweeks increases by more than 10%
24 (which is more than 149 Class Members or more than 11,550 workweeks) as of the end of the Class
25 Period, there will be a pro rata adjustment to the Gross Settlement Amount per additional class
26 member or additional workweek, whichever is greater.

1 **Section 3.05: Final Fairness and Approval Hearing**

2 On the date set forth in the Order for Preliminary Approval and Notice Packet, a Final
3 Fairness and Approval Hearing shall be held before the Court in order to (1) review this Agreement
4 and determine whether the Court should give it final approval, and (2) consider any objections made
5 and all responses by the Parties to such objections. At the Final Fairness and Approval Hearing, the
6 Parties shall ask the Court to grant final approval to this Agreement and shall submit to the Court a
7 Proposed Final Order Approving Settlement of Class Action.

8 **Section 3.06: Settlement Payment Procedures**

9 **a. Settlement Amount**

10 In exchange for the Released Claims set forth in this Agreement, Defendant agrees to pay the
11 Gross Settlement Amount in the amount of One Million Dollars (\$1,000,000.00), subject to a pro
12 rata increase under the condition set forth in Section 3.04(e). The Gross Settlement Amount includes
13 all Individual Settlement Amounts to Participating Class Members, all administration costs, Class
14 Counsel's attorney's fees and costs, PAGA Settlement Amount, and the Incentive Payments.

15 Within ten (10) calendar days after the Court signs the Final Order, Defendant shall transfer
16 the Gross Settlement Amount plus Defendant's share of employer-side payroll taxes, as set forth
17 herein, into a QSF established by the Settlement Administrator either directly or by sending the funds
18 to the Settlement Administer to be deposited and distributed. The Settlement Administrator will use
19 these funds to fund payment of the Individual Settlement Payments to Participating Class Members,
20 Class Counsel's attorneys' fees and costs, the Incentive Awards, the LWDA Payment, and the
21 Settlement Administration Costs.

22 Within ten (10) court days after receiving Defendants' final payment, funding the Gross
23 Settlement Amount in full, the Settlement Administrator will pay the Individual Settlement Payments
24 to Participating Class Members, Class Counsel's attorneys' fees and costs, LWDA Payment, the
25 PAGA Group Payment, the Incentive Awards, and employer and employee tax withholdings
26 applicable to the Net Settlement Amount allocated to wages. Prior to this distribution, the Settlement
27 Administrator will perform a search based on the National Change of Address Database to update
28 and correct for any known or identifiable address changes.

b. Payment of Attorneys' Fees and Costs

Class Counsel shall submit an application for an award of attorneys' fees of up to one-third of the Gross Settlement Amount, which, based on the current Gross Settlement Amount, is Three Hundred Thirty Three Thousand Three Hundred and Thirty-Three Dollars and Thirty-Three Cents (\$333,333.33). Class Counsel shall submit an application for an award of costs not to exceed Twenty Thousand Dollars (\$20,000.00). Such application for attorneys' fees and costs shall be heard by the Court at the Final Fairness and Approval Hearing. Defendant shall not object to or oppose any such application in these amounts. Class Counsel shall serve Defendant with copies of all documents submitted in support of their application for an award of attorneys' fees and costs.

Any attorneys' fees and costs awarded to Class Counsel by the Court shall be paid from the Gross Settlement Amount and shall not constitute payment to any Class Member(s). The attorneys' fees and costs for Class Counsel approved by the Court shall encompass all work performed, costs, and expenses related to the investigation, prosecution, and settlement of the Action incurred through the Date of Finality. To the extent that the Court approves less than the amount of attorney's fees and/or costs that Class Counsel requests, the difference between the requested and awarded amounts will be reallocated to the Net Settlement Amount.

c. Payment of Settlement Administration Costs

The Settlement Administration Costs shall be paid out of the Gross Settlement Amount and shall not constitute payment to any Participating Class Member(s). The amount shall not exceed Twelve Thousand Dollars (\$12,000.00).

d. Payment of Incentive Award to Named Plaintiffs

Subject to Court approval, the Named Plaintiffs shall each receive an Incentive Award of up to Ten Thousand Dollars (\$10,000.00) each, the request for which Defendant will not object to or oppose. The Incentive Awards shall be paid out of the Gross Settlement Amount and shall not constitute payment to any Participating Class Member(s) other than Named Plaintiffs. To the extent that the Court approves less than the amount of incentive award that Class Counsel request, the difference between the requested and awarded amounts will be reallocated to the Net Settlement Amount.

1 Because it is the intent of the Parties that the Incentive Awards represent payment to Named
2 Plaintiffs for their service to the Class Members, and not wages, the Settlement Administrator will
3 not withhold any taxes from the Incentive Awards. The Incentive Awards will be reported on a Form
4 1099, which the Settlement Administrator will provide to Named Plaintiffs and to the pertinent taxing
5 authorities as required by law.

6 **e. Payment to the Labor and Workforce Development Agency and the PAGA**
7 **Group Members**

8 In consideration of claims made under PAGA, Class Counsel will request that the Court
9 approve allocation of Sixty Thousand Dollars (\$60,000) of the Gross Settlement Amount to these
10 claims. Seventy-five percent (75%) of this payment will be paid to the California Labor and
11 Workforce Development Agency (“LWDA Payment”), and twenty-five percent (25%) will be paid
12 to the PAGA Group Members. Defendant will not oppose this request. The entire PAGA Settlement
13 Amount will be paid out of the Gross Settlement Amount. PAGA Group Members will receive a pro-
14 rate payment based on the number of pay periods they worked during the PAGA Period. The Court’s
15 adjustment, if any, of the amount allocated to Named Plaintiffs’ PAGA claim in the Action, will not
16 invalidate this Agreement.

17 **f. Payment of Individual Settlement Payments to Participating Class Members**

18 The Parties agree that the Net Settlement Amount shall be used to fund Individual Settlement
19 Payments. The Parties agree that the Net Settlement Amount shall be divided between all
20 Participating Class Members in proportion to the number of individual Qualifying Workweeks for
21 each Class Member. To calculate the minimum amount each Class Member will receive based on
22 their individual Qualifying Workweeks, the Net Settlement Amount will be divided by the total
23 number of Qualifying Workweeks by all Class Members during the Class Period and then allocated
24 on a pro rata basis. Qualifying Workweeks will be rounded up to the next whole integer. Each Class
25 Member’s approximate Individual Settlement Payment amount will be included in his or her Notice
26 Packet. After final approval by the Court, the Net Settlement Amount will be dispersed to
27 Participating Class Members (those who did not exclude themselves) on a pro rata basis based on the
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1 individual Qualifying Workweeks worked during the Class Period by each Participating Class
2 Member.

3 Each Individual Settlement Payment will represent wages and penalties allocated using the
4 following formula: 20% allocated to wages; 10% allocated to interest, and 70% allocated to penalties.
5 The amounts paid as wages shall be subject to all tax withholdings customarily made from an
6 employee's wages and all other authorized and required withholdings and shall be reported by W-2
7 forms. The employer-side taxes will be paid separate from and in addition to the Gross Settlement
8 Amount. The amounts paid as penalties and interest shall be subject to all authorized and required
9 withholdings other than the tax withholdings customarily made from employees' wages and shall be
10 reported by IRS 1099 forms.

11 No later than ten (10) business days after receiving the Gross Settlement Amount from
12 Defendant, the Settlement Administrator shall prepare and mail the checks for the Individual
13 Settlement Payments to Participating Class Members. Individual Settlement Payments paid from the
14 Net Settlement Amount allocated to wages will be reduced by applicable employer and employee
15 tax withholdings, and the Settlement Administrator will issue a Form W-2 for the wage portion of
16 the Individual Settlement Payments. The Settlement Administrator will issue a Form 1099 to the
17 extent required by law for the interest and penalty portions of the Individual Settlement Payments.
18 Participating Class Members shall have 180 days from the date their Individual Settlement Payment
19 checks are dated to cash their Settlement checks. Any checks that are not cashed upon the expiration
20 of that 180-day time period will be void, and the uncashed funds shall be paid to the State Controller
21 Unclaimed Property Fund in the name of the Class Member for whom the funds are designated.

22 If a check is returned to the Settlement Administrator as undeliverable, the Settlement
23 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace or
24 a mass search on LexisNexis or a comparable databases based on set criteria and, if another address
25 is identified, the Settlement Administrator shall mail the check to the newly identified address. If the
26 Settlement Administrator is unable to obtain a valid mailing address through this process, the
27 Settlement Administrator will tender the funds from the undeliverable checks to the State Controller
28 Unclaimed Property Fund in the name of the Class Member for whom the funds are designated.

1 **g. Default on Payment.**

2 Defendant's failure to fund the Gross Settlement Amount within ten (10) calendar days after
3 the date that the Court grants final approval of the Settlement shall be considered a default. In the
4 event Defendant fails to timely fund the Gross Settlement Amount, the Settlement Administrator will
5 provide notice to Class Counsel and Defendant's counsel within three (3) business days of the missed
6 payment. Thereafter, Defendant will have seven (7) days to cure the default and tender payment to
7 the Settlement Administrator. In the event Defendant fails to cure the default within the times set
8 forth herein, Named Plaintiffs may elect to enter judgment against Defendant, on an ex parte basis,
9 for the balance of the unpaid Gross Settlement Amount to date, and Named Plaintiffs will be entitled
10 to recover interest at ten percent (10%) per year from the due date for such payment and reasonable
11 attorneys' fees and costs.

12 **h. No Credit Toward Benefit Plans.**

13 The Individual Settlement Payments made to Participating Class Members under this
14 Agreement, as well as any other payments made pursuant to this Agreement, will not be utilized to
15 calculate any additional benefits under any benefit plans to which any Class Members may be
16 eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase
17 plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties'
18 intention that this Agreement will not affect any rights, contributions, or amounts to which any Class
19 Members may be entitled under any benefit plans.

20 **ARTICLE IV**

21 **LIMITATIONS ON USE OF THIS SETTLEMENT**

22 **Section 4.01: No Admission**

23 Defendant disputes the allegations in the Action and disputes that, but for this Settlement, a
24 Class should not have been certified in the Action. This Agreement is entered into solely for the
25 purpose of settling highly disputed claims. Nothing in this Agreement is intended nor will be
26 construed as an admission of liability or wrongdoing by Defendant.

1 **Section 4.02: Non-Evidentiary Use**

2 Whether or not the Date of Finality occurs, neither this Agreement, nor any of its terms, nor
3 the Settlement itself, will be: (a) construed as, offered, or admitted in evidence as, received as, or
4 deemed to be evidence for any purpose adverse to Defendant or any other of the Released Parties,
5 including but not limited to, evidence of a presumption, concession, indication, or admission by any
6 of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or
7 (b) disclosed, referred to, or offered in evidence against any of the Released Parties in any further
8 proceeding in the Action, except for the purposes of effectuating the Settlement pursuant to this
9 Agreement or for Defendant to establish that a Class Member has resolved any of his or her claims
10 released through this Agreement.

11 **Section 4.03: Nullification**

12 The Parties have agreed to the certification of the Class encompassing all claims alleged in
13 the Action for the sole purpose of effectuating this Agreement. If (a) the Court should for any reason
14 fail to certify this Class for settlement, or (b) the Court should for any reason fail to approve this
15 Settlement, or (c) the Court should for any reason fail to enter the Final Order, or (d) the Final Order
16 is reversed, or declared or rendered void, or (e) the Court should for any reason fail to dispose of the
17 Action in its entirety, then (i) this Agreement shall be considered null and void; (ii) neither this
18 Agreement nor any of the related negotiations or proceedings shall be of any force or effect; (iii) all
19 Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had
20 been neither entered into nor filed with the Court; and (iv) the fact that the Parties were willing to
21 stipulate to class certification of all causes of action pled in the Action as part of the Settlement will
22 have no bearing on, and will not be admissible in connection with, the issue of whether the Class
23 should be certified by the Court in a non-settlement context in this Action or any other action, and in
24 any of those events, Defendant expressly reserves the right to oppose certification of the Class.

25 In the event of a timely appeal from the Final Order, the Final Order shall be stayed and the
26 Gross Settlement Amount shall not be distributed pending the completion of the appeal.

1 **ARTICLE V**

2 **RELEASES**

3 **Section 5.01: Released Claims by Class Members**

4 Upon the date Defendant transfers the Gross Settlement Amount, Named Plaintiffs and
5 Participating Class Members who do not opt out of the Settlement, release the Released Parties from
6 all claims that were alleged or could have been alleged based on the facts alleged in the operative
7 complaint, which arose during the Class Period (“Released Claims”).

8 **Section 5.02: Released Claims by PAGA Group Members**

9 Upon the date of funding the GSA, the State of California and PAGA Group Members release
10 the Released Parties from all claims exhausted in Plaintiff’s notice(s) sent to the LWDA and alleged
11 in the operative complaint, which arose during the PAGA Period, regardless of whether PAGA Group
12 Members opt out of the Class Settlement.

13 **Section 5.03: Named Plaintiffs’ Release of Unknown Claims**

14 Upon the date of funding the GSA, Named Plaintiffs, waive, release, acquit, and forever
15 discharge the Released Parties from any and all claims, actions, charges, complaints, grievances, and
16 causes of action, of any nature arising from Named Plaintiffs’ employment with Defendant, whether
17 known or unknown, which exist or may exist as of the Parties’ execution of this Agreement.

18 Section 1542 of the California Civil Code provides as follows:

19 ***“A general release does not extend to claims that the creditor or releasing***
20 ***party does not know or suspect to exist in his or her favor at the time of***
21 ***executing the release and that, if known by him or her, would have***
22 ***materially affected his or her settlement with the debtor or released party.”***

23 Plaintiff’s general release provided herein is made with an express waiver and relinquishment
24 of any claim, right, or benefit under California Civil Code § 1542.

1 **ARTICLE VI**

2 **MISCELLANEOUS PROVISIONS**

3 **Section 6.01: Amendments or Modification**

4 The terms and provisions of this Agreement may be amended or modified only by an express
5 written agreement that is signed by all the Parties (or their successors-in-interest) and their counsel,
6 and approved by the Court.

7 **Section 6.02: Assignment**

8 None of the rights, commitments, or obligations recognized under this Agreement may be
9 assigned by any Party, Class Member, Class Counsel, or Defense Counsel without the express written
10 consent of each other Party and their respective counsel. The representations, warranties, covenants,
11 and agreements contained in this Agreement are for the sole benefit of the Parties under this
12 Agreement and shall not be construed to confer any right or to avail any remedy to any other person.

13 **Section 6.03: Governing Law**

14 This Agreement shall be governed, construed, and interpreted, and the rights of the Parties
15 shall be determined, in accordance with the laws of the State of California, without regard to conflicts
16 of laws.

17 **Section 6.04: Entire Agreement**

18 This Agreement, including the Exhibits referred to herein, which form an integral part hereof,
19 contains the entire understanding of the Parties with respect to the subject matter contained herein.
20 In case of any conflict between text contained in Articles I through VI of this Agreement and text
21 contained in the Exhibits to this Agreement, the former (*i.e.*, Articles I through VI) shall be
22 controlling, unless the Exhibits are changed by or in response to a Court order. There are no
23 restrictions, promises, representations, warranties, covenants, or undertakings governing the subject
24 matter of this Agreement other than those expressly set forth or referred to herein. This Agreement
25 supersedes all prior agreements and understandings among the Parties with respect to the settlement
26 of the Action, including correspondence between Class Counsel and Defense Counsel and drafts of
27 prior agreements or proposals.
28

1 **Section 6.05: Waiver of Compliance**

2 Any failure of any Party, Defense Counsel, or Class Counsel hereto to comply with any
3 obligation, covenant, agreement, or condition set forth in this Agreement may be expressly waived
4 in writing, to the extent permitted under applicable law, by the Party or Parties and their respective
5 counsel entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or
6 failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or
7 condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

8 **Section 6.06: Counterparts and Fax/PDF Signatures**

9 This Agreement, and any amendments hereto, may be executed in any number of counterparts
10 and any Party and/or their respective counsel may execute any such counterpart, each of which when
11 executed and delivered shall be deemed to be an original. All counterparts taken together shall
12 constitute one instrument. A fax or PDF signature on this Agreement shall be as valid as an original
13 signature.

14 **Section 6.07: Meet and Confer Regarding Disputes**

15 Should any dispute arise among the Parties or their respective counsel regarding the
16 implementation or interpretation of this Agreement, a representative of Class Counsel and a
17 representative of Defense Counsel shall meet and confer in an attempt to resolve such disputes prior
18 to submitting such disputes to the Court.

19 **Section 6.08: Agreement Binding on Successors**

20 This Agreement will be binding upon, and inure to the benefit of, the successors in interest
21 of each of the Parties.

22 **Section 6.09: Cooperation in Drafting**

23 The Parties have cooperated in the negotiation and preparation of this Agreement. This
24 Agreement will not be construed against any Party on the basis that the Party, or the Party's counsel,
25 was the drafter or participated in the drafting of this Agreement.

26 **Section 6.10: Fair and Reasonable Settlement**

27 The Parties believe that this Agreement reflects a fair, reasonable, and adequate settlement of
28 the Action and have arrived at this Agreement through arm's-length negotiation and in the context

1 of adversarial litigation, taking into account all relevant factors, current and potential. The Parties
2 further believe that the Settlement is and is consistent with public policy, and fully complies with
3 applicable law.

4 **Section 6.11: Headings**

5 The descriptive heading of any section or paragraph of this Agreement is inserted for
6 convenience of reference only and does not constitute a part of this Agreement and shall not be
7 considered in interpreting this Agreement.

8 **Section 6.12: Notice**

9 Except as otherwise expressly provided in the Agreement, all notices, demands, and other
10 communications under this Agreement must be in writing and addressed as follows:

11 *To Named Plaintiffs and the Class:*

12 Kashif Haque
13 Samuel A. Wong
14 Jessica L. Campbell
Carolyn M. Bell
15 AEGIS LAW FIRM, PC
9811 Irvine Center Drive, Suite 100
16 Irvine, California 92618
Telephone: (949) 379-6250
17 Facsimile: (949) 379-6251

18 Shoham J. Solouki, Esq. (SBN 278538)
SOLOUKI SAVOY, LLP
19 316 W. 2nd Street, Suite 1200
Los Angeles, California 90012
20 Phone: (213) 814-4940
21 Facsimile: (213) 814-2550

22 And

23 *To Defendant:*

24 Thomas R. Davies, Pro Hac Vice
Laura Bailey Gallagher, Pro Hac Vice
25 HARMON & DAVIES, P.C.
2306 Columbia Avenue
26 Lancaster, PA 17603
Telephone: (717) 291-2236
27 Facsimile: (717) 291-5739
28

1 **Section 6.13: Enforcement of Settlement and Continuing Court Jurisdiction**

2 To the extent consistent with class action procedure, this Agreement shall be enforceable by
3 the Court pursuant to California Code of Civil Procedure section 664.6 and California Rule of Court
4 3.769(h). The Final Order entered by the Court will not adjudicate the merits of the Action or the
5 liability of the Parties resulting from the allegations of the Action. Its sole purpose is to adopt the
6 terms of the Settlement and to retain jurisdiction over its enforcement. To that end, the Court shall
7 retain continuing jurisdiction over this Action and over all Parties and Class Members, to the fullest
8 extent to enforce and effectuate the terms and intent of this Agreement. In the event that one or more
9 of the Parties institutes any legal action or other proceeding against any other Party or Parties to
10 enforce the provisions of this Settlement, the successful Party or Parties will be entitled to recover
11 from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness
12 fees incurred in connection with any enforcement actions.

13 **Section 6.14: Mutual Full Cooperation**

14 The Parties agree fully to cooperate with each other to accomplish the terms of this
15 Agreement, including but not limited to the execution of such documents, and the taking of such
16 other action, as may reasonably be necessary to implement the terms of this Agreement. The Parties
17 to this Agreement shall use their best efforts, to effectuate and implement this Agreement and its
18 terms. In the event the Parties are unable to reach agreement on the form or content of any document
19 needed to implement the Settlement, or on any supplemental provisions that may become necessary
20 to effectuate the terms of the Settlement, the Parties agree to seek the assistance of the Court.

21 **Section 6.15: Authorization to Act**

22 Class Counsel warrants and represents that they are authorized by Named Plaintiffs, and
23 Defense Counsel warrants that they are authorized by Defendant, to take all appropriate action
24 required to effectuate the terms of this Agreement, except for signing documents, including but not
25 limited to this Agreement, that are required to be signed by the Parties themselves. Defendant
26 represents and warrants that the individual executing this Agreement on its behalf has the full right,
27 power, and authority to enter into this Agreement and to carry out the transactions contemplated
28 herein.

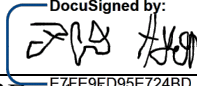
Section 6.16: No Reliance on Representations

The Parties have made such investigation of the facts and the law pertaining to the matters described herein and to this Agreement as they deem necessary, and have not relied, and do not rely, on any statement, promise, or representation of fact or law, made by any of the other parties, or any of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted rights, or with regard to the advisability of entering into and executing this Agreement, or with respect to any other matters. No representations, warranties, or inducements, except as expressly set forth herein, have been made to any party concerning this Agreement.

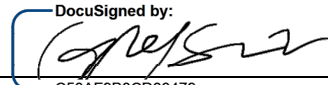
EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: 8/17/2022

By: 
Plaintiff Frank Ayon

Dated: 8/20/2022

By: 
Plaintiff Gregory Spencer

Dated: _____

By: _____
Plaintiff Enrique Martinez-Salgado

Dated: _____

RED COLLAR PET FOODS, INC.
By: _____
James Cohen

1 **Section 6.16: No Reliance on Representations**

2 The Parties have made such investigation of the facts and the law pertaining to the matters
3 described herein and to this Agreement as they deem necessary, and have not relied, and do not rely,
4 on any statement, promise, or representation of fact or law, made by any of the other parties, or any
5 of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted
6 rights, or with regard to the advisability of entering into and executing this Agreement, or with respect
7 to any other matters. No representations, warranties, or inducements, except as expressly set forth
8 herein, have been made to any party concerning this Agreement.

9 **EXECUTION BY PARTIES AND COUNSEL**

10 The Parties and their counsel hereby execute this Agreement.

11
12
13 Dated: _____

14
15 By: _____
 Plaintiff Frank Ayon

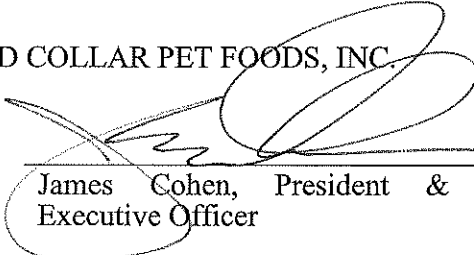
16
17 Dated: _____

18
19 By: _____
 Plaintiff Gregory Spencer

20 Dated: August 24, 2022
21 _____

22 By: Enrique Martinez-Salgado
 Plaintiff Enrique Martinez-Salgado

23
24
25 Dated: 8/18/22
26 _____

27 By: 
 James Cohen, President & Chief
 Executive Officer

1
2 **APPROVED AS TO FORM ONLY:**
3

4 Dated: 8/17/2022
5

AEGIS LAW FIRM, PC

6 By: *Carolyn Bell*
7 Kashif H. Hogue
8 Jessica L. Campbell
9 Carolyn M. Bell

10 Attorneys for Plaintiffs Frank Ayon and Gregory
11 Spencer

12 Dated: 8/26/2022
13

SOLOUKI SAVOY, LLP

14 By: *Shoham Solouki*
15 Shoham J. Solouki

16 Attorneys for Plaintiff Enrique Martinez-
17 Salgado

18 Dated: 8/23/22
19

HARMON & DAVIES

20 By: *VB*
21 Laura Bailey Gallagher

22 Attorneys for Defendant Red Collar Pet Foods
23
24
25
26
27
28