

**AEGIS LAW FIRM, PC**

KASHIF HAQUE, State Bar No. 218672  
SAMUEL A. WONG, State Bar No. 217104  
JESSICA L. CAMPBELL, State Bar No. 280626  
CAROLYN M. BELL, State Bar No. 313435  
cbell@aegislawfirm.com  
9811 Irvine Center Drive, Suite 100  
Irvine, California 92618  
Telephone: (949) 379-6250  
Facsimile: (949) 379-6251

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Attorneys for Plaintiff Frank Ayon,  
individually and on behalf of all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SANTA CLARA**

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

Plaintiff,

vs.

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

Defendants.

Case No. 20CV365255

**[Amended as a matter of right, pursuant to  
Labor Code section 2699.3(a)(2)(C)]**

**FIRST 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 Provide Accurate Itemized Wage Statements;
6. Failure to Pay All Wages Due Upon Separation of Employment; and
7. Violation of Business and Professions Code §§ 17200, *et seq.*
8. Enforcement of Labor Code § 2698 *et seq.* (“PAGA”)

1 Plaintiff Frank Ayon, individually and on behalf of others similarly situated, alleges as  
2 follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Frank Ayon (“Plaintiff”) brings this putative class and representative  
5 action pursuant to the Private Attorneys General Act of 2004, Cal. Lab. Code. § 2698 *et seq.*,  
6 against defendants Red Collar Pet Foods, Inc.; and DOES 1 through 20, inclusive (collectively,  
7 “Defendants”), on behalf of himself individually and on behalf of non-exempt employees  
8 employed by Defendants throughout California.

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

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

14 4. Plaintiff is informed and believes, and thereon alleges, that Defendants have  
15 increased their profits by violating state wage and hour laws by, among other things:

- 16 (a) Failing to pay minimum wages for all hours worked;  
17 (b) Failing to pay overtime wages at the proper rates;  
18 (c) Failing to provide meal periods or compensation in lieu thereof;  
19 (d) Failing to authorize or permit rest breaks or provide compensation in lieu thereof;  
20 (e) Failing to provide accurate itemized wage statements; and  
21 (f) Failing to pay all wages due upon separation of employment.

22 5. Plaintiff brings this lawsuit seeking monetary relief against Defendants on  
23 behalf of himself and all others similarly situated in California to recover, among other things,  
24 unpaid wages and benefits, interest, attorneys’ fees, costs and expenses and penalties pursuant  
25 to Labor Code §§ 201-204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194,  
26 1194.2, 1197, 1198, and 2698, *et seq.*

27 **JURISDICTION AND VENUE**

28 6. This is a class action, pursuant to California Code of Civil Procedure § 382. The

1 monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdictional limits  
2 of the Superior Court and will be established according to proof at trial.

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

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

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

### 15 **THE PARTIES**

16 10. Plaintiff is a citizen of California. Plaintiff was employed by Defendants during  
17 the Class Period in California.

18 11. Plaintiff is informed and believes, and thereon alleges, that Defendants at all  
19 times hereinafter mentioned, were and are employers as defined in and subject to the Labor  
20 Code and IWC Wage Orders, whose employees were and are engaged throughout this county  
21 and the State of California.

22 12. Plaintiff is unaware of the true names or capacities of the defendants sued herein  
23 under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this  
24 Complaint and serve such fictitiously named defendants once their names and capacities  
25 become known.

26 13. Plaintiff is informed and believes, and thereon alleges, that each defendant acted  
27 in all respects pertinent to this action as the agent of the other defendant, carried out a joint  
28 scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant

are legally attributable to the other defendant. Furthermore, defendants in all respects acted as the employer and/or joint employer of Plaintiff and the class members.

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

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

16. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is in some manner intentionally, negligently or otherwise responsible for the acts, omissions, occurrences and transactions alleged herein.

#### **CLASS ACTION ALLEGATIONS**

17. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of himself and all others similarly situated who were affected by Defendants' Labor Code, Business and Professions Code §§ 17200 and IWC Wage Order violations.

18. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

19. Plaintiff's 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. Plaintiff also seeks 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

1 to as “class members.” Plaintiff reserves the right to establish other or additional subclasses, or  
2 modify any Class or Subclass definition, as appropriate based on investigation, discovery and  
3 specific theories of liability.

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

- 8 (a) Whether Defendants paid Plaintiff and class members at least the minimum wage  
9 for all hours worked;
- 10 (b) Whether Defendants paid Plaintiff and class members proper overtime  
11 compensation for all overtime hours worked;
- 12 (c) Whether Defendants deprived Plaintiff and class members of timely meal periods;
- 13 (d) Whether Defendants deprived Plaintiff and class members of rest breaks;
- 14 (e) Whether Defendants failed to timely pay Plaintiff and former class members all  
15 wages due upon termination or within 72 hours of resignation;
- 16 (f) Whether Defendants failed to furnish Plaintiff and class members with accurate,  
17 itemized wage statements; and
- 18 (g) Whether Defendants engaged in unfair business practices in violation of Business  
19 & Professions Code §§ 17200, *et seq.*

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

- 22 (a) Numerosity: The members of the Class are so numerous that joinder of all  
23 members is impractical. Although the members of the Class are unknown  
24 to Plaintiff at this time, on information and belief, the Class is estimated to  
25 be greater than 100 individuals. The identity of the class members are  
26 readily ascertainable by inspection of Defendants’ employment and payroll  
27 records.
- 28 (b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of the

1 claims (or defenses, if any) of the Class because Defendants' failure to  
2 comply with the provisions of California wage and hour laws entitled each  
3 class member to similar pay, benefits and other relief. The injuries  
4 sustained by Plaintiff are also typical of the injuries sustained by the Class  
5 because they arise out of and are caused by Defendants' common course of  
6 conduct as alleged herein.

7 (c) Adequacy: Plaintiff is qualified to, and will fairly and adequately represent  
8 and protect the interests of all members of the Class because it is in his best  
9 interest to prosecute the claims alleged herein to obtain full compensation  
10 and penalties due to him and the Class. Plaintiff's attorneys, as proposed  
11 class counsel, are competent and experienced in litigating large  
12 employment class actions and are versed in the rules governing class action  
13 discovery, certification and settlement. Plaintiff has incurred and,  
14 throughout the duration of this action, will continue to incur attorneys' fees  
15 and costs that have been and will be necessarily expended for the  
16 prosecution of this action for the substantial benefit of each class member.

17 (d) Superiority: The nature of this action makes the use of class action  
18 adjudication superior to other methods. A class action will achieve  
19 economies of time, effort and expense as compared with separate lawsuits,  
20 and will avoid inconsistent outcomes because the same issues can be  
21 adjudicated in the same manner and at the same time for each Class. If  
22 appropriate this Court can, and is empowered to, fashion methods to  
23 efficiently manage this case as a class action.

24 (e) Public Policy Considerations: Employers in the State of California and  
25 other states violate employment and labor laws every day. Current  
26 employees are often afraid to assert their rights out of fear of direct or  
27 indirect retaliation. Former employees are fearful of bringing actions  
28 because they believe their former employers might damage their future

endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights at the same time as affording them privacy protections.

### **GENERAL ALLEGATIONS**

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

25. Plaintiff was employed in a non-exempt position at Defendants' California business location(s).

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

27. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants were advised by skilled lawyers, employees and other professionals who were knowledgeable about California's wage and hour laws, employment and personnel practices and the requirements of California law.

28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and Class Members were entitled to receive wages for all time worked (including minimum wages and overtime wages) and that they were not receiving all wages earned for work that was required to be performed. In violation of the Labor Code and IWC Wage Orders, Plaintiff and Class Members were not paid all wages (including minimum wages and overtime wages) for all hours worked and were not paid overtime wages at the proper rate of pay.

29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to receive all required meal periods or payment of one (1) additional hour of pay at Plaintiff and class members' regular rate of pay when they did not receive a timely meal period. In violation of the Labor Code and IWC Wage Orders, Plaintiff and class members did not receive all timely meal periods or payment of one (1) additional hour of pay at Plaintiff and class members' regular rate of pay when they did not receive a timely meal period.

30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to receive all rest breaks or payment of one (1) additional hour of pay at Plaintiff and class members' regular rate of pay when a rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiff and class members did not receive all rest breaks or payment of one (1) additional hour of pay at Plaintiff and class members' regular rate of pay when a rest break was missed.

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

32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and Waiting Time Subclass members were entitled to timely payment of wages due upon separation of employment. In violation of the Labor Code, Plaintiff and Waiting Time Subclass members did not receive payment of all wages within permissible time periods.

33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known they had a duty to compensate Plaintiff and class members, and Defendants had the financial ability to pay such compensation but willfully, knowingly and intentionally failed to do so all in order to increase Defendants' profits.

### FIRST CAUSE OF ACTION

## FAILURE TO PAY MINIMUM WAGES

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

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

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

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

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

38. Defendants' failure to pay Plaintiff and Class Members the required minimum wage violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiff and Class Members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs, and attorneys' fees.

39. Pursuant to Labor Code § 1194.2, Plaintiff and Class Members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and the accrued interest thereon.

## SECOND CAUSE OF ACTION

## FAILURE TO PAY OVERTIME WAGES

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

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

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

42. Pursuant to California Labor Code §§ 510 and 1194, during the relevant time period, Defendants were required to compensate Plaintiff and class members for all overtime

1 hours worked, calculated at one and one-half (1½) times the regular rate of pay for hours  
2 worked in excess of eight (8) hours per day and/or forty (40) hours per week and for the first  
3 eight (8) hours of the seventh consecutive work day, with double time after eight (8) hours on  
4 the seventh day of any work week, or after twelve (12) hours in any work day.

5 43. Plaintiff and class members were non-exempt employees entitled to the  
6 protections of California Labor Code §§ 510 and 1194.

7 44. During the relevant time period, Defendants required Plaintiff and Class  
8 Members to work in excess of eight (8) hours in a day, forty (40) hours in a week, and/or for a  
9 seventh consecutive day in a workweek without paying Plaintiff and Class Members overtime  
10 wages for their work.

11 45. During the relevant time period, Defendants failed to pay Plaintiff and Class  
12 Members overtime wages for all overtime hours worked when Plaintiff and Class Members  
13 worked in excess of eight (8) hours in a day, forty (40) hours in a week and/or for a seventh  
14 consecutive day of work in a workweek, or when Plaintiff and Class Members worked in  
15 excess of twelve (12) hours in a day and/or in excess of eight (8) hours on the seventh day of  
16 work in a work week.

17 46. In violation of state law, Defendants have knowingly and willfully refused to  
18 perform their obligations and compensate Plaintiff and class members for all wages earned as  
19 alleged above.

20 47. Defendants' failure to pay Plaintiff and class members the unpaid balance of  
21 overtime compensation, as required by California law, violates the provisions of Labor Code §§  
22 510 and 1198, and is therefore unlawful.

23 48. Pursuant to Labor Code § 1194, Plaintiff and class members are entitled to  
24 recover their unpaid overtime compensation as well as interest, costs and attorneys' fees.

25 **THIRD CAUSE OF ACTION**

26 **FAILURE TO PROVIDE MEAL PERIODS**

27 **(Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order § 11)**

28 49. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as

1 though fully set forth herein.

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

4 51. Section 11 of the applicable IWC Wage Order states, “no employer shall employ  
5 any person for a work period of more than five (5) hours without a meal period of not less than  
6 30 minutes, except that when a work period of not more than six (6) hours will complete the  
7 day’s work the meal period may be waived by mutual consent of the employer and the  
8 employee.”

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

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

19 54. During the relevant time period, Plaintiff and class members did not receive  
20 compliant meal periods for each five hours worked per day.

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

24 56. At all relevant times, Defendants failed to pay Plaintiff and class members meal  
25 period premiums for meal period violations pursuant to Labor Code § 226.7(b) and section 11  
26 of the applicable IWC Wage Order.

27 57. As a result of Defendants’ failure to pay Plaintiff and class members an  
28 additional hour of pay for each day a meal period was not provided, Plaintiff and class members

1 suffered and continue to suffer a loss of wages and compensation.

2 **FOURTH CAUSE OF ACTION**

3 **FAILURE TO PERMIT REST BREAKS**

4 **(Violation of Labor Code §§ 226.7; Violation of IWC Wage Order § 12)**

5 58. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as  
6 though fully set forth herein.

7 59. Labor Code § 226.7(a) provides that no employer shall require an employee to  
8 work during any rest period mandated by the IWC Wage Orders.

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

14 61. During the relevant time period, Plaintiff and class members did not receive a ten  
15 (10) minute rest period for every four (4) hours or major fraction thereof worked.

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

19 63. At all relevant times, Defendants failed to pay Plaintiff and class members rest  
20 period premiums for rest period violations pursuant to Labor Code § 226.7(b) and section 12 of  
21 the applicable IWC Wage Order.

22 64. As a result of Defendants’ failure to pay Plaintiff and class members an  
23 additional hour of pay for each day a rest period was not provided, Plaintiff and class members  
24 suffered and continue to suffer a loss of wages and compensation.

25 **FIFTH CAUSE OF ACTION**

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

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

28 65. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as

1 though fully set forth herein.

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

13         67. During the relevant time period, Defendants have knowingly and intentionally  
14 failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiff  
15 and class members. The deficiencies include, among other things, the failure to correctly state  
16 the gross and net wages earned, accurate inclusive dates of the pay period, and all applicable  
17 hourly rates in effect and the number of hours worked at each hourly rate by Plaintiff and class  
18 members.

19         68. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiff  
20 and class members have suffered injury and damage to their statutorily protected rights.  
21 Specifically, Plaintiff and class members have been injured by Defendants' intentional  
22 violation of California Labor Code § 226(a) because they were denied both their legal right to  
23 receive, and their protected interest in receiving, accurate itemized wage statements under  
24 California Labor Code § 226(a). Plaintiff has had to file this lawsuit in order to determine the  
25 extent of the underpayment of wages, thereby causing Plaintiff to incur expenses and lost time.  
26 Plaintiff would not have had to engage in these efforts and incur these costs had Defendants  
27 provided the accurate wages earned. This has also delayed Plaintiff's ability to demand and  
28 recover the underpayment of wages from Defendants.

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

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

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

## SIXTH CAUSE OF ACTION

## FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT AND

**WITHIN THE REQUIRED TIME**

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

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

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

74. During the relevant time period, Defendants willfully failed to pay Plaintiff and Waiting Time Subclass members all their earned wages upon termination including, but not

1 limited to, proper minimum wages and overtime compensation, either at the time of discharge  
2 or within seventy-two (72) hours of their leaving Defendants' employ.

3 75. Defendants' failure to pay Plaintiff and Waiting Time Subclass members all  
4 their earned wages at the time of discharge or within seventy-two (72) hours of their leaving  
5 Defendants' employ is in violation of Labor Code §§ 201 and 202.

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

11 77. Plaintiff and Waiting Time Subclass members are entitled to recover from  
12 Defendants the statutory penalty which is defined as Plaintiff's and Waiting Time Subclass  
13 members' regular daily wages for each day they were not paid, at their regular hourly rate of  
14 pay, up to a thirty (30) day maximum pursuant to Labor Code § 203.

#### 15 SEVENTH CAUSE OF ACTION

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

17 78. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as  
18 though fully set forth herein.

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

22 80. Defendants' activities, as alleged herein, violate California law and constitute  
23 unlawful business acts or practices in violation of California Business and Professions Code  
24 §§ 17200, *et seq.*

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

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

- 1 (a) Failing to pay at least the minimum wage to Plaintiff and class members  
2 in violation of Labor Code §§ 1182.12, 1194, 1194.2, and 1197;
- 3 (b) Failing to pay all overtime wages at the proper rate to Plaintiff and class  
4 members in violation of Labor Code §§ 510, 1194 and 1198;
- 5 (c) Failing to provide timely meal periods without paying Plaintiff and class  
6 members premium wages for every day said meal periods were not  
7 provided in violation of Labor Code §§ 226.7 and 512;
- 8 (d) Failing to authorize or permit rest breaks without paying Plaintiff and  
9 class members premium wages for every day said rest breaks were not  
10 authorized or permitted in violation of Labor Code § 226.7;
- 11 (e) Failing to provide Plaintiff and class members with accurate itemized  
12 wage statements in violation of Labor Code § 226; and
- 13 (e) Failing to timely pay all earned wages to Plaintiff and Waiting Time  
14 Subclass members upon separation of employment in violation of Labor  
15 Code §§ 201, 202 and 203.

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

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

24 **EIGHTH CAUSE OF ACTION**

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

26 85. Plaintiff hereby re-alleges and incorporate by reference the previous paragraphs as  
27 though fully set forth herein.

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

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

12           88. Defendants’ conduct violates numerous Wage Order and Labor Code sections,  
13 including, but not limited to, the following:

- 14           a. violation of Labor Code §§ 201-203, 204, 210, 510, 1182.12, 1194, 1197,  
15 and 1198 for failure to timely pay all earned wages (including minimum  
16 wage and overtime wages) owed to Plaintiff and other aggrieved  
17 employees during employment and upon separation of employment as  
18 herein alleged;
- 19           b. violation of Labor Code §§ 226.7 and 512 for failure to provide meal  
20 periods to Plaintiff and other aggrieved employees and failure to pay  
21 premium wages for missed meal periods as herein alleged;
- 22           c. violation of Labor Code § 226.7 for failure to permit rest breaks to  
23 Plaintiff and other aggrieved employees and failure to pay premium wages  
24 for missed rest periods as herein alleged;
- 25           d. violation of Labor Code § 226 for failure to provide accurate itemized  
26 wage statements to Plaintiff and other aggrieved employees as herein  
27 alleged; and  
28

1 e. violation of Labor Code §§ 1174 and 1174.5 for failure to maintain  
2 accurate and complete records showing, among other things, the hours  
3 worked daily by and the wages paid to aggrieved employees.

4 89. Plaintiff is an “aggrieved employee” because he was employed by the alleged  
5 violator and had one or more of the violations committed against him, and therefore is properly  
6 suited to represent the interests of all other aggrieved employees.

7 90. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3 as  
8 to Defendants and is therefore able to pursue a claim for penalties on behalf of himself and all  
9 other aggrieved employees under PAGA.

10 91. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to  
11 recover civil penalties, in addition to other remedies, for violations of the Labor Code sections  
12 cited above.

13 92. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred  
14 herein.

15 **PRAYER FOR RELIEF**

16 Plaintiff, on his own behalf and on behalf of all others similarly situated, pray for relief  
17 and judgment against Defendants, jointly and severally, as follows:

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

20 2. For appointment of Frank Ayon as the class representatives;

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

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

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

26 6. For reasonable attorneys’ fees, costs of suit and interest to the extent permitted  
27 by law, including pursuant to Code of Civil Procedure § 1021.5, Labor Code §§ 226(e), 1194,  
28 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: July 10, 2020

**AEGIS LAW FIRM, PC**

By: /s/ Carolyn M. Bell

Carolyn M. Bell  
Attorneys for Plaintiff

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  
4 my business address is 9811 Irvine Center Drive, Suite 100, Irvine, California 92618.

On July 10, 2020, I served the foregoing document entitled:

5 • **FIRST AMENDED 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, esq.  
8 HARMON & DAVIES, P.C.  
9 2306 Columbia Avenue  
10 Lancaster, PA 17603  
11 Telephone: 717.291.2236  
12 Facsimile: 717.291.5739  
13 [lgallagher@h-dlaw.com](mailto:lgallagher@h-dlaw.com)

14 *Attorneys For Defendant:*  
15 RED COLLAR PET FOODS, INC.

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

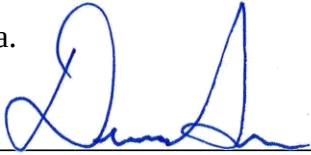
23 ☐ **(BY OVERNIGHT MAIL)** I am personally and readily familiar with the business  
24 practice of Aegis Law Firm PC for collection and processing correspondence for  
25 overnight delivery, and I caused such document(s) described herein to be deposited for  
26 delivery to a facility regularly maintained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

28 ☐ **(BY ELECTRONIC TRANSMISSION)** I caused said document(s) to be served via  
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 July 10, 2020, at Irvine, California.

  
Delaney Graves

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Lancaster PA 17603-4108