

FILED/ENDORSED
Clerk of the Superior Court

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By J. Abueg
DEPUTY CLERK

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7 DAVID PINARD, and all others similarly situated

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF SOLANO
(UNLIMITED JURISDICTION)

10 DAVID PINARD, on behalf of himself, the
11 State of California, and as an "aggrieved
12 employee" on behalf of other "aggrieved
13 employees" under the Labor Code Private
Attorneys General Act of 2004,

14 *Plaintiff(s),*

15 vs.

16 PRIMAL PET FOODS, INC., a California
corporation; and DOES 1 through 50, inclusive,

17 *Defendant(s).*

Case No.: **FCS055165**

CLASS ACTION

COMPLAINT FOR:

1. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, and 1198);
2. Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and 1198);
3. Wage Statement Penalties (Lab. Code § 226);
4. Unfair Competition (Bus. & Prof. Code §§ 17200, *et seq.*); and
5. Civil Penalties (Lab. Code §§ 2968, *et seq.*).

JURY TRIAL DEMANDED

21 ASSIGNED TO
22 JUDGE Wendy G. Getty
23 FOR ALL PURPOSES
24
25
26
27
28

By Fax



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1 Plaintiff DAVID PINARD (hereafter “Plaintiff”), on behalf of himself and all others
2 similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class and representative action based on alleged violations of
5 the California Labor Code, Industrial Welfare Commission Order No. 1-2001 (hereafter “the
6 Wage Order”) and the Business and Professions Code against defendant PRIMAL PET
7 FOODS, INC., a California corporation; and DOES 1 through 50, inclusive (collectively
8 “Defendants”).

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
10 him, the State of California, and other similarly situated current and former employees in
11 California for unpaid wages and other related relief. These claims are based on Defendants’
12 alleged failures to (1) pay all wages for all hours worked, (2) provide all meal periods; (3)
13 provide accurate written wage statements, and (4) fairly compete. Additionally, Plaintiff seeks
14 civil penalties under the California Labor Code Private Attorneys General Act, Labor Code §§
15 2698, *et seq.* (“PAGA”). Accordingly, Plaintiff now seeks to recover unpaid wages, civil
16 penalties, and related relief through this class and representative action.

17 **JURISDICTION AND VENUE**

18 3. This Court has subject matter jurisdiction because the aggregate claims of
19 Plaintiff and Class Members, inclusive of all relief, place more than \$25,000 in controversy.

20 4. There is no basis for federal question subject matter jurisdiction in this case.
21 Specifically, Plaintiff asserts claims on behalf of himself and Class Members that solely arise
22 under California law, rather than federal law.

23 5. Venue is proper in Solano County pursuant to California Code of Civil
24 Procedure § 395(a) and § 395.5 in that liability arose in Solano County because at least some of
25 the transactions that are the subject matter of this Complaint occurred therein and/or because
26 each defendant is found, maintains offices, transacts business, and/or has an agent therein.

27 **PARTIES**

28 6. Plaintiff DAVID PINARD is a natural person and resident of the State of
California. At all relevant times, Plaintiff was an “employee” within the meaning of Title 8 of
the California Code of Regulations Section 11040 and an “aggrieved employee” within the
meaning of Labor Code Section 2699(c).



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7. Defendant PRIMAL PET FOODS, INC. is a California corporation and is doing business in the State of California.

8. Plaintiff is ignorant of the true names, capacities, relationships, and extents of participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive, but is informed and believes and thereon alleges that said defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by such fictitious names. Plaintiff will amend the complaint to allege the true names and capacities of the DOE defendants when ascertained.

9. Plaintiff is informed and believes and thereon alleges that, at all relevant times herein, all Defendants were the agents, employees and/or servants, masters or employers of the remaining Defendants, and in doing the things hereinafter alleged, were acting within the course and scope of such agency or employment, and with the approval and ratification of each of the other Defendants.

10. At all relevant times, in perpetrating the acts and omissions alleged herein, Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack of a practice which resulted in Defendants not paying Plaintiff and other members of the below-described class in accordance with applicable California labor laws as alleged herein.

11. Plaintiff is informed and believes and thereon alleges that each and every one of the acts and omissions alleged herein were performed by, and/or attributable to, all Defendants, each acting as agents and/or employees, and/or under the direction and control of each of the other Defendants, and that said acts and failures to act were within the course and scope of said agency, employment and/or direction and control.

CLASS ACTION ALLEGATIONS

12. This action has been brought and may be maintained as a class action pursuant to California Code of Civil Procedure § 382 because there is a well-defined community of interest among the persons who comprise the readily ascertainable class defined below and because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class action.

13. **Class Definition:** The class is defined as follows: All persons Defendants currently and formerly employed in California as hourly employees, including but not limited to production line workers, and other hourly employees in comparable positions (individually,



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1 “Class Members”), at any time during the period beginning four years prior to the filing of this
2 action and ending on the date that final judgment is entered in this action.

3 14. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
4 right to amend or modify the class definition with greater specificity, by further division into
5 subclasses and/or by limitation to particular issues.

6 15. **Numerosity:** The Class Members are so numerous that the individual joinder of
7 each individual Class Member is impractical. While Plaintiff does not currently know the exact
8 number of Class Members, Plaintiff is informed and believes that the actual number exceeds the
9 minimum required for numerosity under California law.

10 16. **Commonality and Predominance:** Common questions of law and fact exist as
11 to all Class Members and predominate over any questions which affect only individual Class
12 Members. These questions include, but are not limited to:

13 A. Whether Defendants failed to provide the Class Members with all meal
14 periods as required by section 11 of the Wage Order;

15 B. Whether Defendants failed to pay all wages earned to Class Members for
16 all hours worked;

17 C. Whether Defendants knowingly and intentionally failed to provide the
18 Class Members with accurate wage statements;

19 D. Whether Defendants engaged in unfair competition within the meaning of
20 Business and Professions Code §§ 17200, *et seq.*, with respect to the Class Members.

21 17. **Typicality:** Plaintiff’s claims are typical of the other Class Members’ claims.
22 Plaintiff is informed and believes and thereon alleges that Defendants have a policy, practice or
23 a lack of a policy which resulted in Defendants failing to comply with the California Labor
24 Code, the Wage Order, and the Business and Professions Code as alleged herein.

25 18. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
26 in that he has no interests that are adverse to, or otherwise in conflict with, the interests of
27 absent Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of
28 Class Members. Plaintiff will fairly and adequately represent and protect the interests of Class
Members.

19. **Adequacy of Class Counsel:** Plaintiff’s counsel are adequate class counsel in
that they have no known conflicts of interest with Plaintiff or absent Class Members, are



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1 experienced in wage and hour class action litigation and are dedicated to vigorously prosecuting
2 this action on behalf of Plaintiff and absent Class Members.

3 20. **Superiority:** A class action is vastly superior to other available means for fair
4 and efficient adjudication of Class Members' claims and would be beneficial to the parties and
5 the Court. Class action treatment will allow a number of similarly situated persons to
6 simultaneously and efficiently prosecute their common claims in a single forum without the
7 unnecessary duplication of effort and expense that numerous individual actions would entail. In
8 addition, the monetary amounts due to many individual Class Members are likely to be
9 relatively small and would thus make it difficult, if not impossible, for individual Class
10 Members to both seek and obtain relief. Moreover, a class action will serve an important public
11 interest by permitting Class Members to effectively pursue the recovery of monies owed to
12 them. Further, a class action will prevent the potential for inconsistent or contradictory
13 judgments inherent in individual litigation.

14 **STATEMENT OF FACTS**

15 21. Defendants first employed Plaintiff as a non-exempt production line worker on
16 the "grind" line at its facilities located in Fairfield, California, on or about January 8, 2020 and
17 continuously employed him in this capacity until on or about June 8, 2020, when his
18 employment ended.

19 22. At all relevant times, Defendants compensated Plaintiff and other Class
20 Members at an hourly rate and paid their wages on a bi-weekly basis.

21 23. At all relevant times, Defendants required Plaintiff and the Class to perform
22 work while clocked out. Defendants required Plaintiff and the Class on a daily basis to wait in
23 line to pass through a checkpoint prior to clocking in at the beginning of their shifts. This
24 checkpoint procedure consisted of a fingerprint scan and a temperature check, followed by a
25 series of questions, including the employee's ID number and whether the employee had
26 traveled out of state recently or been in contact with any individuals who had tested positive for
27 COVID-19. This check-in procedure typically took between five to fifteen minutes to complete
28 per employee. Defendants instructed Plaintiff and the Class to arrive at work early so that they
could complete the procedure and clock in at their scheduled start times

24. Plaintiff and the Class frequently worked shifts of ten or more hours. At relevant
times within the applicable limitations period, Defendants failed to provide Plaintiff and the



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1 Class with a second, off-duty, 30-minute meal period on such workdays. Defendants further
2 failed to pay Plaintiff and the Class premium wages for these unprovided second meal periods.

3 25. For the reasons stated herein, Plaintiff alleges the following violations of the
4 California Labor Code and the Wage Order on behalf of himself and the Class Members:

5 a) Defendants failed to pay Plaintiff and the Class Members for all hours
6 worked at the correct rates of pay, including, but not limited to, all regular and overtime wages;

7 b) Defendants failed to provide Plaintiff and the Class Members with all
8 meal periods;

9 c) Defendants failed to pay Plaintiff and the Class Members one hour's pay
10 for each workday in which they failed to provide them with one or more meal periods required
11 by law; and

12 d) Defendants failed to provide Plaintiff and the Class Members with
13 accurate wage statements.

14 **FIRST CAUSE OF ACTION**

15 **FAILURE TO PROVIDE MEAL PERIODS**

16 **(Lab. Code §§ 226.7, 512, and 1198)**

17 **(By Plaintiff and the Class against all Defendants)**

18 26. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

19 27. At all relevant times during the applicable limitations period, Plaintiff and the
20 Class Members have been non-exempt employees of Defendants and entitled to the benefits
21 and protections of California Labor Code §§ 226.7, 512, 1198, and the Wage Order.

22 28. In relevant part, California Labor Code § 1198 states:

23 The maximum hours of work and the standard conditions of labor
24 fixed by the commission shall be the maximum hours of work
25 and the standard conditions of labor for employees. The
26 employment of any employee for longer hours than those fixed
27 by the order or under conditions of labor prohibited by the order
28 is unlawful.

29. In relevant part, California Labor Code § 512 states:

30 An employer shall not employ an employee for a work period of
31 more than five hours per day without providing the employee
32 with a meal period of not less than 30 minutes, except that if the
33 total work period per day of the employee is no more than six



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hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

30. In relevant part, Section 11 of the Wage Order states:

Meal Periods

(A) “No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.

(B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the meal period is not provided.

(C) Unless the employee is relieved of all duty during a 30 minute meal period the meal period shall be considered an “on duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.”

31. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the



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Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

32. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

33. Defendants intentionally failed to provide Plaintiff and the Class Members with all required 30-minute duty free meal periods in accordance with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the Class with all off-duty meal periods required by California law.

34. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have suffered damages in an amount, subject to proof, to the extent they were not paid the full amount of wages earned during each pay period during the applicable limitations period.

35. By reason of the above, pursuant to California Labor Code section 226.7, Plaintiff and the Class Members are entitled to premium wages for workdays in which one or more off-duty meal periods were not provided to them.

SECOND CAUSE OF ACTION

FAILURE TO PAY EMPLOYEES ALL WAGES FOR ALL HOURS WORKED AT CORRECT RATES OF PAY

(Lab. Code §§ 510, 1194, 1197, and 1198)

(By Plaintiff and the Class against all Defendants)

36. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

37. At all relevant times, Plaintiff and the Class Members have been employees of Defendants and entitled to the benefits and protections of the California Labor Code §§ 510, 1194, 1197, and 1198 and the Wage Order.

38. Section 3 of the applicable Wage Order states:

(A) Daily Overtime - General Provisions



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(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 1/2) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

39. Labor Code section 510 states:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

40. California Labor Code § 1194 invalidates any agreement between an employer



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1 and an employee to work for less than the minimum wage required under the applicable Wage
2 Order.

3 41. California Labor Code § 1197 makes it unlawful for an employer to pay an
4 employee less than the minimum wage required under the applicable Wage Order for all hours
5 worked during a payroll period.

6 42. California Labor Code § 1198 makes it unlawful for an employer to employ an
7 employee under conditions that violate the Wage Order.

8 43. In conjunction, these provisions of the California Labor Code require employers
9 to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates
10 for all hours worked, including unrecorded hours when the employer know or reasonably
11 should have known that employees were working during these hours. (See *Morillion v. Royal
Packing Co.* (2000) 22 Cal.4th 575, 585).

12 44. Defendants are required to pay overtime compensation to all employees, unless
13 they are made exempt from the overtime pay requirements by the Legislature or the IWC.
14 Plaintiff and Class Members have not qualified for any exemption at any time relevant to this
15 action. Therefore, Plaintiff and Class Members have at all times relevant to this action been
16 entitled to be paid overtime compensation for all overtime hours worked.

17 45. With respect to overtime wages, the regular rate of pay under California law
18 must include “all remuneration for employment paid to, on behalf of, the employee.” O.L.
19 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited, to, non-
20 discretionary bonuses. See, e.g., *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal.
21 App. 4th 893, 904–05. Commissions and bonuses must be included in the regular rate whether
22 they are the sole source of the employee’s compensation or are in addition to a guaranteed
23 salary or hourly rate. 29 C.F.R. §§778.117, 778.208. See *Oliver v. Mercy Med. Ctr., Inc.* (9th
24 Cir 1982) 695 F.2d 379.

25 46. Plaintiff is informed and believes that, at all relevant times, Defendants have
26 applied centrally devised policies and practices to him and the Class Members with respect to
27 working conditions and compensation arrangements.

28 47. At all relevant times, Defendants compensated Plaintiff and the Class Members
with an hourly rate of pay on a bi-weekly basis.

48. At all relevant times, Defendants failed to pay Plaintiff and the Class Members



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1 for all hours worked at the correct rates of pay, including but not limited to all regular and
2 overtime wages for the work they performed before clocking in at the beginning of their shifts.

3 49. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
4 Defendants have maintained a policy, practice, or a lack of a policy which resulted in
5 Defendants' failure to compensate the Class Members for all hours worked as required by
6 California law.

7 50. As a result of Defendants' unlawful conduct, Plaintiff and the other Class
8 Members have suffered damages in an amount, subject to proof, to the extent they were not
9 paid the full amount of wages earned during each pay period during the applicable limitations
10 period, including regular and overtime wages.

11 51. Pursuant to Labor Code section 1194, Plaintiff, on behalf of himself and Class
12 Members, seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts
13 of unpaid wages, interest thereon, and awards of reasonable costs and attorneys' fees, including
14 interest thereon, as permitted by law, all in amounts subject to proof.

15 **THIRD CAUSE OF ACTION**

16 **FAILURE TO PROVIDE ACCURATE, WRITTEN WAGE STATEMENTS**

17 **(Lab. Code § 226)**

18 **(By Plaintiff and the Class Members against all Defendants)**

19 52. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

20 53. At all relevant times during the applicable limitations period, Plaintiff and the
21 Class Members have been employees of Defendants and entitled to the benefits and protections
22 of California Labor Code § 226.

23 54. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members
24 were entitled to receive, semimonthly or at the time of each payment of wages, an accurate
25 itemized statement showing among other things: a) gross wages earned; b) total hours worked;
26 c) net wages earned; d) all deductions; e) the inclusive dates of the period for which the
27 employee is paid; e) the name of the employee and only the last four digits of his or her social
28 security number or an employee identification number; f) the name and address of the legal
entity that is the employer; g) all applicable hourly rates in effect during the pay period and the
corresponding number of hours worked at each hourly rate by the employee.

55. Pursuant to California Labor Code § 226(e), an employee suffering injury as a



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1 result of a knowing and intentional failure by an employer to comply with subdivision (a) is
2 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay
3 period in which a violation occurs and one hundred dollars (\$100) per employee for each
4 violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand
dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

5 56. Pursuant to California Labor Code § 226(e), an employee is deemed to suffer
6 injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer
7 injury if the employer fails to provide accurate and complete information as required by
8 California Labor Code § 226(a) and the employee cannot "promptly and easily determine"
9 from the wage statement alone one or more of the following:

10 A. The amount of the gross wages or net wages paid to the employee during
11 the pay period or any of the other information required to be provided on the itemized wage
12 statement pursuant to California Labor Code § 226(a);

13 B. Which deductions the employer made from gross wages to determine the
14 net wages paid to the employee during the pay period;

15 C. The name and address of the employer and, if the employer is a farm
16 labor contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the
17 name and address of the legal entity that secured the services of the employer during the pay
period; and

18 D. The name of the employee and only the last four digits of his or her social
19 security number or an employee identification number other than a social security number.

20 57. "Promptly and easily determine," as stated in California Labor Code § 226(e),
21 means a reasonable person would be able to readily ascertain the information without reference
22 to other documents or information.

23 58. As alleged herein, Defendants failed to provide Plaintiff and the Class Members
24 all wages owed, including but not limited to regular and overtime wages for work performed
25 off-the-clock. As a result, Defendants have failed to properly and accurately itemize each
26 employee's gross wages earned, net wages earned, the total hours worked, the corresponding
27 number of hours worked by employees and other requirements of California Labor Code § 226.
As a result, Defendants have violated California Labor Code § 226.

28 59. Defendants' failure to provide Plaintiff and the Class Members with accurate



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1 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff
2 and the Class Members with accurate wage statements but intentionally provided wage
3 statements that Defendants knew were not accurate.

4 60. As a result of being provided with inaccurate wage statements by Defendants,
5 Plaintiff and the Class Members have suffered injury. Their legal rights to receive accurate
6 wage statements were violated and they were misled about the amount of wages they had
7 actually earned and were owed. In addition, the absence of accurate information on their wage
8 statements prevented immediate challenges to Defendants' unlawful pay practices, has required
9 discovery and mathematical computations to determine the amounts of wages owed, has caused
10 difficulty and expense in attempting to reconstruct time and pay records and/or has led to the
11 submission of inaccurate information about wages to state and federal government agencies.
12 Further, Plaintiff and the Class Members were not able to ascertain from the wage statements
13 whether Defendants complied with their obligations under California Labor Code § 226(a).

14 **FOURTH CAUSE OF ACTION**

15 **UNFAIR COMPETITION**

16 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

17 **(By Plaintiff and the Class against all Defendants)**

18 61. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

19 62. At all relevant times during the applicable limitations period, Plaintiff and the
20 Class Members have been employees of Defendants and entitled to the benefits and protections
21 of the Business and Professions Code §§ 17200, *et seq.*

22 63. The unlawful conduct of Defendants alleged herein amount to and constitutes
23 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
24 *seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have
25 unfairly gained a competitive advantage over other comparable companies doing business in
26 California that comply with their legal obligations to compensate employees for all earned
27 wages.

28 64. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the
Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class
Members were deprived of wages for all hours worked and for all meal periods not provided to
them.



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65. Pursuant to California Business & Professions Code § 17203, Plaintiff and the Class Members are entitled to restitution of all monies rightfully belonging to them that Defendants did not pay them or otherwise retained by means of their unlawful and unfair business practices.

66. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in connection with their unfair competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

FIFTH CAUSE OF ACTION

CIVIL PENALTIES

(By Plaintiff and the Class against all Defendants)

67. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

68. The “Aggrieved Employees” are all members of the above-defined Class whom Defendants employed during the period beginning June 1, 2019 and ending on the date that final judgment is entered in this action.

69. Labor Code § 204 states

(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its

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initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

70. Defendants paid wages to employees on regular intervals. Defendants failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information and belief, Plaintiff alleges that Defendants also failed to pay the aggrieved employees on such intervals for all wages earned and all hours worked.

71. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, and 1198.

72. California Labor Code §§2699(a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

73. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, and 1198 during the applicable limitations period in the following amounts:

A. For violations of California Labor Code § 204, one hundred dollars (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 210).

B. For violations of California Labor Code § 226(a), two hundred fifty dollars (\$250.00) for each aggrieved employee for each initial violation and one thousand dollars (\$1,000.00) for each aggrieved employee for each subsequent violation (penalty amounts established by California Labor Code § 226.3)

C. For violations of California Labor Code §§ 510 and 512, fifty dollars (\$50.00) for each aggrieved employee for each initial violation and one hundred dollars (\$100.00) for each aggrieved employee for each subsequent violation per pay period (penalty



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amounts established by California Labor Code § 558).

D. For violations of California Labor Code § 1174, five hundred dollars (\$500.00) for each aggrieved employee for each violation (penalty amounts established by California Labor Code § 1174.5).

E. For violations of California Labor Code § 1197, one hundred dollars (\$100.00) for each aggrieved employee for each initial and intentional violation and two hundred fifty dollars (\$250.00) for each aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed) (penalty amounts established by California Labor Code § 1197.1).

F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194, and 1198, one hundred dollars (\$100.00) for each aggrieved employee per pay period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).

74. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letter dated June 1, 2020, Plaintiff filed written notice online with the Labor and Workforce Development Agency (“LWDA”) and gave written notice by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. Plaintiff accompanied his LWDA notice with a fee in the amount of \$75.00. A true and correct copy of Plaintiff’s letter to the LWDA dated June 1, 2020 is attached hereto as **Exhibit A**. The LWDA has not responded to Plaintiff’s letter.

75. Pursuant to California Labor Code § 2699(g), Plaintiff and the aggrieved employees are entitled to an award of civil penalties and reasonable attorneys’ fees and costs in connection with their claims for civil penalties.

PRAYER FOR RELIEF

76. WHEREFORE, Plaintiff, on behalf of himself and the Class Members, prays for relief and judgment against Defendants as follows:

A. An order that the action be certified as a class action with respect to Plaintiff’s claims for violations of California law;

B. An order that Plaintiff be appointed class representative;



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- C. An order that counsel for Plaintiff be appointed class counsel;
- D. Unpaid wages;
- E. Premium wages;
- F. Statutory penalties;
- G. Civil Penalties;
- H. Declaratory relief;
- I. Actual damages;
- J. Liquidated damages;
- K. Restitution;
- L. Pre-judgment interest and post-judgment interest;
- M. Costs of suit;
- N. Interest;
- O. Reasonable attorneys' fees; and
- P. Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial on all issues so triable.

Respectfully submitted,
THE SPIVAK LAW FIRM

Dated: 8/5/2020

By _____
DAVID SPIVAK
CARL KAPLAN
Attorneys for Plaintiff, DAVID PINARD and
all others similarly situated



EXHIBIT A



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SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

June 1, 2020

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

RE: *David Pinard / Primal Pet Foods, Inc.*

To Whom It May Concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.*, David Pinard (hereafter "Pinard") provides notice on behalf of himself and all individuals currently and formerly employed in California as non-exempt hourly employees, including but not limited to production line workers, and workers employed in comparable positions (hereafter "Aggrieved Employees") by Primal Pet Foods, Inc., a California corporation (hereafter "Primal"), of violations of Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, and 1198.

At all relevant times, Primal has employed persons, conducted business in, and engaged in illegal payroll practices and policies in California. Pinard and the Aggrieved Employees are "employees" within the meaning of Wage Order 1-2001 (hereafter "the Wage Order") § 2, subdivision (E) and "Aggrieved Employees" within the meaning of Labor Code § 2699, subdivision (c).

Statement of Facts

On or about January 8, 2020, Primal first employed Pinard to work in California as a production line worker on the "grind" line at its facilities located in Fairfield, California. As of the time of this writing, Pinard remains employed by Primal in this capacity.

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At all relevant times, Primal employed Pinard and the other Aggrieved Employees at an hourly rate of pay and issued their paychecks on a bi-weekly basis. At all relevant times, Primal classified Pinard and the other Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

At all relevant times, Primal required Pinard and the Aggrieved Employees to perform work while clocked out. Primal required Pinard and the Aggrieved Employees on a daily basis to wait in line to pass through a checkpoint prior to clocking in at the beginning of their shifts. This checkpoint procedure consisted of a fingerprint scan and a temperature check, followed by a series of questions, including the employee's ID number and whether the employee had traveled out of state recently or been in contact with any individuals who had tested positive for COVID-19. This check-in procedure typically took between five to fifteen minutes to complete per employee. Primal instructed Pinard and the Aggrieved Employees to arrive at work early so that they could complete the procedure and clock in at their scheduled start times.

Pinard and the Aggrieved Employees frequently worked shifts of ten or more hours. At all relevant times, Primal failed to provide Pinard and the Aggrieved Employees with a second off-duty, 30-minute meal period on such workdays. Primal further failed to pay Pinard and the Aggrieved Employees premium wages for unprovided second meal periods.

For the reasons stated herein, Pinard alleges the following violations of the California Labor Code and the Wage Order on behalf of himself and the Aggrieved Employees:

- a) Primal failed to provide Pinard and the Aggrieved Employees with all meal periods as required by law;
- b) Primal failed to compensate Pinard and the Aggrieved Employees at one hour's pay on days when Primal failed to provide them with one or more meal periods in a workday;

- c) Primal failed to pay Pinard and the Aggrieved Employees for all hours worked at the correct rates of pay including, but not limited to, minimum and overtime pay due to off-the-clock work; and
- d) Primal failed to timely pay Pinard and the Aggrieved Employees all earned and unpaid wages during employment.

Accordingly, Pinard now seeks civil penalties on behalf of himself and the other Aggrieved Employees based on Primal's violations of the California Labor Code.

The Wage Order

The Wage Order applies to "all persons employed in the manufacturing industry whether paid on a time, piece rate, commission, or other basis[.]" § 1. The Wage Order defines "Manufacturing Industry" to include:

"any industry, business, or establishment operated for the purpose of preparing, producing, making, altering, repairing, finishing, processing, inspecting, handling, assembling, wrapping, bottling, or packing goods, articles, or commodities, in whole or in part; EXCEPT when such activities are covered by Orders in the: Canning, Preserving, and Freezing Industry; Industries Handling Products After Harvest, Industries Preparing Agricultural Products for Market, on the Farm; or Motion Picture Industry."

§ 2(H).

At all relevant times during the applicable limitations period, Pinard and the Aggrieved Employees were employed by Primal to process foodstuffs for sale as pet food. Accordingly, Pinard and the Aggrieved Employees are entitled to the protections afforded by the Wage Order.

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

In relevant part, California Labor Code § 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, Section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the

meal period may be waived by mutual consent of the employer and the employee.

...

- (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

California Labor Code § 226.7 states:

- (a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.
- (b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.

By failing to provide all 30 minute, duty-free meal periods, Primal has intentionally and improperly failed to provide all meal periods free from any work or duties to Pinard and the Aggrieved Employees as required by law. In failing to do so, Primal violated the provisions of California Labor Code §§ 226.7, 512, and 1198. Accordingly, Pinard seeks civil penalties on behalf of himself and the Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));

2. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558); and
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure to Pay All Wages for All Hours Worked at the Correct Rates of Pay

(Lab Code §§ 510, 1194, 1197, and 1198)

Under California Labor Code § 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, California Labor Code § 1194 states,

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the [...] legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of [...] overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

In relevant part, Section 3 of the Wage Order states,

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in a workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

In relevant part, California Labor Code § 510 states,

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the

rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

With respect to overtime wages, the regular rate of pay under California law must include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited, to, non-discretionary bonuses. See, e.g., *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05. Commissions and bonuses must be included in the regular rate whether they are the sole source of the employee’s compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§778.117, 778.208. See *Oliver v. Mercy Med. Ctr., Inc.* (9th Cir 1982) 695 F.2d 379.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

Employers must compensate non-exempt employees for “off-the-clock” work (before punching in or after punching out on a time clock) if the employers knew or should have known that the employees were working those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

At all relevant times during the applicable limitations period, Primal knowingly failed to pay Pinard and the Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, all regular and overtime wages for the work they performed before clocking in at the beginning of their shifts.

Accordingly, Pinard seeks civil penalties on behalf of himself and the other Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each

subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));

2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California labor Code § 2699(f)(2)); and
3. \$100 for each Aggrieved Employee for each initial and intentional violation of California Labor Code § 1197, and \$250 for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover unpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by California Labor Code § 1197.1).

Failure to Provide Accurate Written Wage Statements
(Lab. Code § 226)

California Labor Code § 226 requires employers to furnish employees with accurate itemized written wage statements showing:

- 1) Gross wages earned
- 2) Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
- 3) The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
- 4) All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;

- 5) Net wages earned;
- 6) The inclusive dates of the period for which the employee is paid;
- 7) The name of the employee and only the last four digits of his or her social security number or an employee identification number;
- 8) The name and address of the legal entity that is the employer; and
- 9) All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At relevant times during the applicable limitations period, Primal violated California Labor Code § 226 because it did not properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code § 226. Primal failed to state in the wage statements it issued to Pinard and the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock prior to clocking in at the beginning of their shifts.

Accordingly, Pinard now seeks civil penalties for the Labor Code violations that Primal has committed against him and the other Aggrieved Employees as follows: \$250 for each Aggrieved Employee for each initial violation of California Labor Code § 226(a), and \$1,000 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code § 226.3).

Failure to Timely Pay Wages
(Lab. Code § 204)

California Labor Code § 204 states all wages (other than those mentioned in Labor Code sections 201–202) earned by any person in any employment are due

and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

Because of Primal's failure to pay Pinard and the Aggrieved Employees wages for off-the-clock work and premium wages for unprovided meal periods within the time periods set by California Labor Code § 204, Primal failed to timely pay all wages due during employment. Accordingly, Pinard seeks civil penalties on behalf of himself and Aggrieved Employees as follows:

- (1) \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 204; and
- (2) \$200 for each Aggrieved Employee (penalties set by Labor Code § 210).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174, 1198)

Labor Code § 1174, which pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (a) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code § 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order 1 states:

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.

- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

Primal has willfully failed to maintain the records required by § 1174 and the Wage Order, including, but not limited to, the total premium wages earned for missed second meal periods, and records pertaining to all unpaid hours worked by Pinard and the Aggrieved Employees. Accordingly, Pinard seeks civil penalties from Primal on behalf of himself and other Aggrieved Employees as follows:

- 1. \$500 for each Aggrieved Employee for each violation of California Labor Code § 1174 (penalties set by Labor Code § 1174.5); and
- 2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will

seek both reasonable attorneys' fees and costs under Labor Code § 2699, subdivision (g) (1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure §1021.5 to resolve this matter before litigation.

Sincerely,

A handwritten signature in black ink, appearing to read "David Spivak".

David Spivak, Esq.

david@spivaklaw.com

cc: David Pinard
Walter Haines, Esq.

Primal Pet Foods, Inc.
c/o Agent for Service of Process
Matthew Koss
535 Watt Drive, Suite B
Fairfield, CA 94534