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13 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

14 **COUNTY OF RIVERSIDE**

15 GERRY DANIEL and BRYCE MONSON,  
16 individually and on behalf of all others  
17 similarly situated,

18 Plaintiffs,

19 vs.

20 MARS WRIGLEY CONFECTIONERY US,  
21 LLC, a Delaware Limited Liability Company,

22 Defendant.

CASE NO. CVRI2204632

**SECOND AMENDED CLASS, COLLECTIVE,  
AND REPRESENTATIVE ACTION  
COMPLAINT FOR:**

- (1) **Failure to Pay Overtime Wages (Cal. Lab. Code §§ 510, 1194; IWC Wage Order No. 7-2001, § 3);**
- (2) **Failure to Authorize and Permit Paid Rest Breaks, and Pay Missed Break Premium Pay (Cal. Lab. Code § 226.7; IWC Wage Order No. 7-2001, § 12);**
- (3) **Failure to Provide Off-Duty Meal Breaks, and Pay Missed Break Premium Pay (Cal. Lab. Code §§ 226.7, 512; IWC Wage Order No. 7-2001, § 11);**
- (4) **Failure to Issue Accurate Itemized Wage Statements (Cal. Lab. Code § 226);**
- (5) **Failure to Pay Compensation Due Upon Discharge or Separation from Employment (Cal. Lab. Code §§ 201-203);**
- (6) **Unfair, Unlawful, or Fraudulent Business Practices (Cal. Bus. & Prof. Code §§ 17200 et seq.); and**
- (7) **Civil Penalties Pursuant to Private Attorneys General Act (Cal. Lab. Code §§ 2698 et seq.).**
- (8) **Failure to Pay Overtime Wages (Fair Labor Standards Act, 29 U.S.C. § 201 et seq.**

**DEMAND FOR JURY TRIAL**

1 Plaintiffs Gerry Daniel and Bryce Monson (“Plaintiffs”), on behalf of themselves and all others  
2 similarly situated, complains and alleges the following:

3 **INTRODUCTION**

4 1. This is a class action under California Code of Civil Procedure § 382 seeking damages  
5 for unpaid overtime wages, unpaid premium pay, statutory penalties, interest, restitution, and attorneys’  
6 fees and costs under California Labor Code (“Labor Code”) §§ 201-203, 226, 226.7, 510, 512, 1194,  
7 Industrial Welfare Commission Wage Order (“Wage Order”) No. 7-2001, §§ 3, 11, 12, California Civil  
8 Procedure Code § 1021.5, and restitution under California’s Unfair Competition Law (“UCL”),  
9 Business & Professions Code §§ 17200 *et seq.* on behalf of Plaintiff and all other similarly situated  
10 individuals currently and formerly employed by Mars Wrigley Confectionery US, LLC (“Mars” or  
11 “Defendant”) in California as Territory Sales Managers (“TSMs” or “Class Members”) from April 30,  
12 2018 through to the trial date (“Class Period”). Defendant’s violations of California’s wage-and-hour  
13 and unfair competition laws, as described herein, have been ongoing throughout the California Class  
14 Period.<sup>1</sup>

15 2. Plaintiff Daniel alleges that he and other TSMs in California (a) were misclassified as  
16 exempt from protections of the Labor Code and Wage Order No. 7-2001; (b) were entitled to unpaid  
17 overtime wages for work in excess of 8 hours per day or 40 hours per week under Labor Code §§ 510,  
18 1194 and Wage Order No. 7-2001, § 3; (c) were entitled to unpaid rest and meal break premiums under  
19 Labor Code §§ 226.7, 512 and Wage Order No. 7-2001, §§ 11, 12; (d) are entitled to statutory damages  
20 for failure to provide accurate itemized wage statements under Labor Code § 226; (e) are entitled to  
21 waiting time penalties under Labor Code §§ 201-203 for Defendant’s failure to pay all compensation  
22 due and owing upon separation or separation from employment; and (f) are entitled to restitution under  
23 the UCL Business & Professions Code §§ 17200 *et seq.*, as a result of Defendant’s violations of Labor  
24 Code §§ 226.7, 510, 512, 1194.

25  
26  
27 <sup>1</sup> The California Class Period and Waiting Time Penalty Subclass Period pleaded herein reflect tolling  
28 under the Judicial Council of California’s Emergency Rule 9, under which the statutes of limitations  
“for civil causes of action that exceed 180 days [were] tolled from April 6, 2020, until October 1, 2020.”

1           3.       Plaintiffs also bring this action as a Collective Action under the Fair Labor Standards  
2 Act. Plaintiffs bring this action on behalf of themselves and all other similarly situated individuals  
3 pursuant to 29 U.S.C. § 216(b) anywhere in the United States. The proposed collective under the FLSA  
4 is defined as follows: All persons who worked as Territory Sales Managers (or in positions with similar  
5 job titles or job duties) for Defendant at any time from February 10, 2020 to the filing of this Complaint  
6 through the entry of judgment (the “FLSA Collective Period”) anywhere in the United States (the  
7 “FLSA Collective”). On behalf of the FLSA Collective, Plaintiffs seek unpaid overtime wages under 29  
8 U.S.C. § 207.

9           4.       Plaintiff Daniel also brings this action as a representative action under the California  
10 Labor Code’s Private Attorneys General Act (“PAGA”), Labor Code §§ 2698 *et seq.*, for civil penalties  
11 on behalf of himself and all other current and former Territory Sales Managers employed by Defendant  
12 in California during the PAGA Period (“Aggrieved Employees”), for the Labor Code and Wage Order  
13 violations alleged herein, specifically Labor Code §§ 201-203, 226, 226.7, 510, 512, 1194 and Wage  
14 Order No. 7-2001, §§ 3, 11, 12.

15           5.       The “PAGA Period” is from October 25, 2021 through to the trial date.

### **PARTIES**

16  
17           6.       Plaintiff Daniel currently resides in Grand Terrace, California in San Bernardino County.  
18 Mr. Daniel was employed by Defendant as a Territory Sales Manager in California from March 2016 to  
19 January 2022. From 2016 until June 2021, Mr. Daniel was a resident of Riverside County. Throughout  
20 his employment, Mr. Daniel was subject to Defendant’s unlawful conduct described herein.

21           7.       Plaintiff Monson currently resides in Norwalk, Iowa. Mr. Monson was employed by  
22 Defendant as a Territory Sales Manager in Iowa from prior to the start of the FLSA Collective Period to  
23 July 2021.

24           8.       Mars is a Delaware limited liability company. Mars’s current filings with the California  
25 Secretary of State state that its principal address is in Chicago, Illinois. Mars’s headquarters is in  
26 Hackettstown, New Jersey.

1 **JURISDICTION**

2 9. This Court has jurisdiction over Class Members’ claims for failure to pay overtime  
3 wages pursuant to Labor Code §§ 510, 1194 and Wage Order No. 7-2001, § 3.

4 10. This Court has jurisdiction over Class Members’ claims for failure to permit and  
5 authorize timely paid off-duty rest breaks and for failure to pay premium pay for missed rest breaks,  
6 pursuant to Labor Code § 226.7 and Wage Order No. 7-2001, § 12.

7 11. This Court has jurisdiction over Class Members’ claims for failure to provide timely off-  
8 duty meal breaks and for failure to pay premium pay for missed meal breaks, pursuant to Labor Code  
9 §§ 512, 226.7 and Wage Order No. 7-2001, § 11.

10 12. This Court has jurisdiction over Wage Statement Subclass Members’ claims for failure to  
11 issue accurate itemized wage statements under Labor Code § 226.

12 13. This Court has jurisdiction over Waiting Time Penalty Subclass Members’ claims for  
13 waiting time penalties as a result of Defendant’s failure to pay compensation due upon discharge or  
14 separation from employment under Labor Code §§ 201-203.

15 14. This Court has jurisdiction over the claims for restitution arising from Defendant’s  
16 violations of Labor Code §§ 226.7, 510, 512, 1194, Wage Order No. 7-2001, §§ 3, 11, 12, and under the  
17 UCL, Bus. & Prof. Code §§ 17203 and 17204.

18 15. This Court has jurisdiction over claims for attorneys’ fees and costs, including pursuant  
19 to Labor Code §§ 226(e), 1194 and Cal. Civ. Proc. Code § 1021.5.

20 16. This Court has jurisdiction over Plaintiff Daniel’s claims for civil penalties under Labor  
21 Code §§ 2698 *et seq.* On October 25, 2022, Plaintiff provided PAGA Notice pursuant to Labor Code  
22 § 2699.3 to the California Labor & Workforce Development Agency (“LWDA”) and Defendant. The  
23 LWDA has provided no notice to Plaintiff within the period specified in Labor Code § 2699.3 regarding  
24 its intention to investigate or not investigate any of the claims alleged in the PAGA Notice. Plaintiff has  
25 therefore fully complied with the PAGA procedural requirements and may commence this  
26 representative action pursuant to Labor Code §§ 2698 *et seq.*

27 17. As a court of general jurisdiction, this Court has jurisdiction over Plaintiffs’ claims under  
28 the Fair Labor Standards Act. Alleged violations of that act occurred in this County. This Court has

1 jurisdiction over TSMs who choose to opt into this case under 28 U.S.C. § 216(b), including Plaintiffs  
2 Daniel and Monson whose consents to be plaintiffs in this case are attached as Exhibits A and B.

3 18. The amount in controversy for Plaintiff Daniel and Plaintiff Monson, including pro rata  
4 share of attorneys' fees, is less than seventy-five thousand dollars (\$75,000).

5 **VENUE**

6 19. Venue is proper in the County of Riverside pursuant to Cal. Civ. Proc. Code §§ 395(a)  
7 and 395.5. Defendant is a Delaware Corporation and has not designated a principal place of business in  
8 California pursuant to Cal. Corp. Code § 2105(a)(3). Defendant employs Class Members throughout  
9 California. The unlawful acts alleged herein had a direct effect on Class Members throughout the State  
10 of California, some of whom including Plaintiff incurred unpaid overtime wages, unpaid premium pay,  
11 statutory penalties for inaccurate wage statements, and waiting time penalties, while conducting  
12 Defendant's business within Riverside County. Venue is therefore proper in Riverside County.

13 **FACTUAL ALLEGATIONS COMMON TO ALL CLASS MEMBERS AND FLSA**  
14 **COLLECTIVE MEMBERS**

15 ***A. Defendant's Business and Class Members' Role in Business Operations***

16 20. Mars is a manufacturer of confectionary products. Its brands include, among many  
17 others, M&M's, Skittles, Starburst, and Altoids. Mars's parent company, Mars, Inc., is one of the  
18 largest privately held companies in the United States.

19 21. Mars employs TSMs throughout California and the United States to carry out inventory  
20 management and merchandising at retail stores that sell Mars products, such as gas stations and  
21 convenience stores. Mars assigns each TSM a geographic region, and TSMs travel to the retail stores  
22 located within that region. TSMs' working time consists of in-store visits, travel time, and other  
23 administrative tasks performed remotely.

24 22. Mars pays TSMs a salary plus an annual bonus of up to 10% of the salary. The bonus  
25 amount is based on the entire Company's performance and on whether the TSM's regional team as a  
26 whole meets certain targets, such as visiting a certain percentage of stores. The bonus is not based on  
27 sales metrics individual to the TSM. Mars does not pay TSMs commission.

1           23.     The principal job duties of TSMs are to make sure Mars products are neatly organized  
2 and displayed at each of the TSM’s assigned stores, to set up displays about Mars products, and to  
3 provide stores with information about inventory levels in the hope that stores will order more Mars  
4 products from whatever third-party suppliers the stores obtain Mars products from. Mars itself does not  
5 sell products to the stores at all. Rather, stores buy Mars products either from “cash and carry” stores,  
6 such as Costco, or from national distributors, such as Core-Mark International (“Core-Mark”) or  
7 McLane Company (“McLane”). Some stores, such as large grocery chains, have a purchasing  
8 department that buys directly from Mars account managers (not TSMs) specific to that chain. TSMs do  
9 not make sales and have no authority or mechanism to place orders for stores to buy Mars products.

10           24.     At the stores, TSMs carry out merchandising of all of Mars’s products in the store. They  
11 straighten up the Mars products, rearrange boxes to group like products together, and consolidate the  
12 products from partly empty boxes. TSMs wipe down or dust dirty shelves or dirty Mars products.  
13 Plaintiff carried a feather duster on his route. TSMs also check the store’s back-stock to see if any Mars  
14 products are waiting to be stocked, and if so, TSMs stock the shelves. TSMs in grocery stores do a  
15 large amount of stocking. The purpose of this work is to make Mars’s products look neatly organized  
16 and more appealing to shoppers, and to make sure Mars product makes it from the back-stock to the  
17 shelf.

18           25.     Mars sends TSMs a range of promotional materials to drive out to and place in the stores.  
19 These include free samples of certain products Mars wants to promote, point of sale (POS) material,  
20 large cardboard countertop or floor displays, suction-racks that can be placed inside coolers to hold cold  
21 candy samples, coin dishes to place next to the register, dangling signs to hang from shelves, and other  
22 promotional display materials. The volume of these items is so significant that Mars pays for TSMs to  
23 have storage spaces where they store these materials. When materials arrive from Mars, TSMs must  
24 unpack them, organize them, and make a plan for distributing them to hundreds of stores. At the stores,  
25 TSMs offer to the store personnel to set up sample bins and/or cardboard displays promoting the  
26 products. TSMs attempt to place the materials near the register or near “secondary hot-spots,” like the  
27 beverage fountain drink bar. TSMs are also tasked with “selling in” displays of Mars products, but this  
28 does not mean “selling” anything – it means persuading the store owner to allow a free rack of Mars

1 products to be placed near the register. All of the foregoing samples and marketing materials are  
2 provided to stores free of charge.

3 26. TSMs also check the store's inventory, generally by scanning the barcode of one of each  
4 Mars product the store carries. This syncs with the TSM's tablet and allows the TSM view the products  
5 that Mars offers but that the store does not currently have in stock. TSMs also make a note of products  
6 that are low in stock.

7 27. After TSMs take inventory and merchandize, their tablet generates a list of Mars  
8 products that the store does not currently have in stock. TSMs then write these items on a hypothetical  
9 order form and hand it to the store personnel. For stores that purchase from a national distributor (Core-  
10 Mark or McLane), TSMs may fill out an order form specific to that distributor. Theoretically, a store  
11 owner could use the form to order those products from the distributor. Some convenience stores do not  
12 order from a distributor but rather from "cash-and-carries," such as Costco. For these stores, TSMs fill  
13 out a generic "order form" (that cannot actually be used anywhere) with a list of suggested products. In  
14 providing the suggested order form to whoever is working in the store, the TSM may also provide basic  
15 education about the products, such as which products are new to market and which are selling well. It is  
16 then up to the individual store to decide whether to follow through and place an order with whatever  
17 third party it buys its products from. TSMs generally would never know what, if anything, the store  
18 ordered after the TSM's visit or where the store purchased those products. The TSM would be back at  
19 the store during their next regular visit, and would simply repeat the process.

20 28. Mars dictates, to the minute, the amount of time TSMs must spend at each store. The  
21 amount of time depends on the type or size of the store. Mars monitors TSMs to make sure they comply  
22 with this requirement by means of their tablets: TSMs log in via tablet upon arriving at the store and log  
23 out upon leaving.

24 29. Mars assesses TSMs' performance based on a set of metrics, none of which involves  
25 sales. The metrics include: spending the required amount of time in the store, visiting the required  
26 percentage of stores in the region, installing a certain number of POS materials within three feet of the  
27 register, putting up a certain number of displays during each store visit, "selling in" free racks of  
28 samples, and putting free samples in the store. To track many of these metrics, Mars requires TSMs to

1 answer a series of questions on their tablet when leaving each store – questions about the number and  
2 type of POS materials and samples the TSM placed in the store.

3 30. During the Class Period and FLSA Collective Period, distributors such as Core-Mark and  
4 McLane employed sales representatives who would visit some of these same stores that TSMs would  
5 visit, and who would actually take orders from the stores for Mars products.

6 31. If a store obtains its Mars products from a “cash and carry” supplier or through certain  
7 wholesalers, Mars has no way of learning what products the store ordered or where it obtained them.  
8 For a minority of stores, such as those that use Core-Mark, Mars is able to find out how much Mars  
9 product the store has ordered, but this information is not necessarily complete because stores that use  
10 Core-Mark often also purchase products from cash-and-carries. The data concerning how much a  
11 TSM’s stores order from Core-Mark, for example, has no impact on how TSMs are paid or evaluated.

12 32. On a typical day, Plaintiffs drove to between six and ten stores to perform the above  
13 tasks. On a typical day, the process of visiting the stores took about 8-12 hours, five days per week.  
14 However, when TSMs take time off work, such as for sick leave, vacation time, or mandatory Mars  
15 trainings, TSMs still must maintain their required numbers for store visits (*e.g.*, approximately 90% of  
16 stores in region covered every 2 months). This means that whenever they take time off work, TSMs  
17 have to make up for the missed time by increasing the number of stores on their route. If a TSM wanted  
18 to take a week off for the holidays to visit family, that TSM might have to visit as many as 15 stores per  
19 day during the rest of that 2-month period to make up the missed days.

20 33. In addition to store visits, TSMs are required to perform the following administrative and  
21 other tasks: planning their driving route each day to ensure that they eventually visit approximately  
22 90% of the stores in their territory every two months; loading into their tablet the stores they will visit  
23 each day; identifying and printing out product-related information from Mars’s intranet that they were  
24 required to bring to stores; sending and responding to emails from supervisors; participating in Zoom  
25 meetings, and other similar house-keeping tasks. Plaintiffs spent hours of work per week on these tasks.

26 34. Additionally, TSMs must travel to and from their Mars-provided storage units. For  
27 example, Plaintiff Daniel went to his storage unit a couple times per week, which added approximately  
28 two hours per week to his typical working time.



1           35.     The need to complete administrative tasks and visit their storage unit often required  
2 Plaintiffs to work on the weekend.

3           36.     Other than tracking TSMs' time spent in-store by requiring them to log in and out on a  
4 tablet, Mars does not track TSMs' hours worked, including for time spent traveling to and from stores  
5 and time on the additional work just described.

6 ***B.     The California Class Members Are Non-Exempt Employees***

7           37.     Defendant misclassifies TSMs as “non-exempt” employees. Wage Order No. 7-2001,  
8 § 1 sets forth the exemptions that, if met, would allow Mars to classify TSMs as exempt from certain  
9 wage and hour protections under California law. None of these exemptions applies to TSMs.

10          38.     The Wage Order provides that it does not apply to “outside salespersons.” Wage Order  
11 No. 7-2001, § 1(C). “Outside salesperson” is defined as a person “who customarily and regularly works  
12 more than half the working time away from the employer’s place of business selling tangible or  
13 intangible items or obtaining orders or contracts for products, services or use of facilities.” Wage Order  
14 No. 7-2001, § 2(J).

15          39.     As described in the preceding paragraphs, TSMs do not make sales or obtain orders for  
16 Mars products. Rather, their duties are to merchandize, distribute and set up promotional materials, and  
17 take inventory that they pass along to the store personnel, after which the stores may purchase Mars  
18 products on their own from whatever third parties the store buys products from. Thus, TSMs are non-  
19 exempt employees who were entitled to but denied a range of protections under the California Labor  
20 Code and Wage Order.

21          40.     During the Class Period, Mars willfully and deliberately misclassified TSMs as exempt  
22 employees. Mars was fully aware of the nature of TSMs' duties, and was fully aware that Mars was  
23 paying TSMs as if they were exempt employees. Among other things, Mars supervisors engaged in  
24 “ride-alongs” with TSMs approximately quarterly.

25 ***C.     Defendant’s Compensation Practices Applicable to California Class Members Violated***  
26 ***California Laws Requiring Overtime Pay, Rest Breaks, and Meal Breaks***

27          41.     During the Class Period, as non-exempt employees, California Class Members were  
28 entitled to overtime pay when they worked more than 8 hours per day and/or more than 40 hours per

1 week. Defendant knew or should have known that Class Members worked more than 8 hours per day  
2 and/or more than 40 hours per week, yet Defendant failed to pay Class Members overtime wages in  
3 violation of Labor Code §§ 510, 1194 and Wage Order No. 7-2001, § 3.

4 42. During the Class Period, as non-exempt employees California Class Members were  
5 entitled to a 10-minute paid rest break for every 3.5 hours of work and entitled to premium pay for  
6 missed rest breaks, pursuant to Labor Code § 226.7 and Wage Order No. 7-2001, § 12.

7 43. Defendant did not maintain a rest break policy applicable to Class Members and did not  
8 track their hours in a way that could have been used to ensure compliant rest breaks. Defendant knew or  
9 should have known that Class Members worked multiple 3.5 hour stretches each workday. Yet  
10 Defendant failed to authorize and permit Class Members to take paid off-duty rest breaks and failed to  
11 pay premium pay for missed rest breaks, in violation of Labor Code § 226.7 and Wage Order No. 7-  
12 2001, § 12. Class Members do not take rest breaks: they are instructed to spend a specified amount of  
13 time at each store, and in order to make it to all of their stores and to minimize the already long duration  
14 of their days, TSMs have a strong incentive not to take rest breaks, but rather to continue straight to  
15 their next store and keep working. Class Members are also incentivized to continue working without a  
16 rest break because a TSM's bonus is based, in part, on the number of stores visited by the TSM's  
17 regional team as a whole. Thus, Class Members are entitled to recover 1 hour of pay at their regular rate  
18 of compensation for each workday that a rest break was not provided.

19 44. During the Class Period, as non-exempt employees, California Class Members were  
20 entitled to an off-duty meal break of at least 30 minutes at the end of their fifth hour of continuous work  
21 and were entitled to premium pay for missed meal breaks, under Labor Code §§ 226.7, 512 and Wage  
22 Order No. 7-2001, § 11.

23 45. Defendant did not maintain a meal break policy applicable to Class Members and did not  
24 track their hours in a way that could have been used to ensure compliant meal breaks. Defendant knew  
25 or should have known that Class Members worked more than 5 continuous hours each workday. Yet,  
26 Defendant failed to provide Class Members with timely off-duty meal breaks and failed to pay premium  
27 pay for missed meal breaks, in violation of Labor Code §§ 226.7, 512 and Wage Order No. 7-2001,  
28 § 11. Class Members do not take 30-minute uninterrupted meal breaks: they are instructed to spend a

1 specified amount of time at each store, and in order to make it to all of their stores and to minimize the  
2 already long duration of their days, TSMs have a strong incentive not to take a thirty-minute meal break,  
3 but rather to continue straight to their next store and keep working, often eating lunch in their cars as  
4 they drive. Plaintiff's usual practice was to pack a lunch and eat in his car; otherwise, his 12-hour days  
5 would have become 12.5-hour days with no additional pay. Class Members are also incentivized to  
6 continue working without a meal break because a TSM's bonus is based, in part, on the number of  
7 stores visited by the TSM's regional team as a whole. Thus, Class Members are entitled to recover 1  
8 hour of pay at their regular rate of compensation for each workday that a meal break was not provided.

9 ***D. Defendant's Compensation Practices Resulted in Failure to Issue Accurate Itemized Wage***  
10 ***Statements to California TSMs***

11 46. This action is also brought on behalf of a subclass comprised of Plaintiff Daniel and  
12 California Class Members who are or have been employed by Defendant during the one year prior to the  
13 filing of this Complaint through to the trial date ("Wage Statement Subclass Period") for statutory  
14 penalties and reasonable attorneys' fees and costs pursuant to Labor Code § 226(a) and (e) ("Wage  
15 Statement Subclass").

16 47. Under Labor Code § 226(a), Defendant was required but failed to furnish Wage  
17 Statement Subclass Members with wage statements containing total hours worked by the employee, all  
18 applicable hourly rates in effect during the pay period, and the corresponding number of hours worked  
19 by the employee at each hourly rate. Rather, TSMs' wage statements state that they worked "40.0000"  
20 hours, even though Defendant does not track their hours worked and knows that TSMs do not work  
21 exactly 40 hours each week.

22 48. Additionally, Defendant issues Wage Statement Subclass Members inaccurate wage  
23 statements that do not include an itemized break-down of number of hours worked at each applicable  
24 hourly rate in effect during the pay period. Because Mars pays TSMs a salary without tracking their  
25 time, Mars does not know TSMs' actual hourly rate, and therefore cannot provide it on their wage  
26 statements. Likewise, even though TSMs work overtime, their wage statements do not include an  
27 hourly rate for overtime.  
28

1           49. Defendant’s practice of furnishing Wage Statement Subclass Members incomplete and  
2 inaccurate wage statements in violation of Labor Code § 226(a) is not an isolated and unintentional  
3 payroll error due to a clerical or inadvertent mistake, but rather is willful and intentional and the result  
4 of Defendant’s regular pay policies and misclassification of Subclass Members as exempt employees.

5           50. Wage Statement Subclass Members cannot promptly and easily determine from their  
6 wage statements alone, without reference to other documents or information, their total hours worked,  
7 all applicable hourly rates in effect during the pay period, and corresponding hours worked at each  
8 applicable hourly rate. As a result, Wage Statement Subclass Members suffered injury under Labor  
9 Code § 226(e).

10 ***E. Defendant’s Compensation Practices Resulted in Failure to Pay All Compensation Due Upon***  
11 ***Discharge or Separation from Employment to California TSMs***

12           51. This action is brought on behalf of a subclass comprised of Plaintiff Daniel and  
13 California Class Members discharged by or separated from employment with Defendant (“Waiting  
14 Time Penalty Subclass Members”). During the “Waiting Time Penalty Subclass Period” – April 30,  
15 2019 through to the trial date – Defendant failed to pay all compensation due and owing to Waiting  
16 Time Penalty Subclass Members at the time of their discharge or separation from employment, in  
17 violation of Labor Code §§ 201-203, as a further consequence of failing to pay overtime wages and  
18 missed break premiums.

19           52. During the Waiting Time Penalty Subclass Period, the Waiting Time Penalty Subclass  
20 Members did not receive all compensation due at the time of discharge or separation from employment,  
21 nor did they receive this compensation within 30 days of discharge or separation from employment.  
22 Thus, Defendant is liable to Waiting Time Penalty Subclass Members for waiting time penalties under  
23 Labor Code § 203.

24 ***F. Defendant’s California Labor Code Violations Were Unfair Business Practices***

25           53. During the Class Period, Defendant has adopted and used unfair and/or unlawful  
26 business practices to reduce Class Members’ compensation and increase profits. These practices  
27 include failing to pay Class Members overtime wages, failing to authorize and permit off-duty paid rest  
28

1 breaks, failing to provide Class Members compliant meal breaks, and failing to pay Class Members  
2 premiums for missed rest and meal breaks.

3 ***G. The FLSA Collective Members Are Non-Exempt Employees Owed Overtime Wages under***  
4 ***Federal Law***

5 54. 29 U.S.C. § 213 sets forth the exemptions that, if met, would allow Mars to classify  
6 TSMs as exempt from the FLSA’s overtime requirement. None of these exemptions applies to TSMs.

7 55. 29 U.S.C. § 213(a)(1) exempts from the FLSA’s overtime provision any employee who  
8 is employed “in the capacity of outside salesman” as defined by the applicable regulations.

9 56. Under 29 C.F.R. § 541.500(a), an “employee employed in the capacity of outside  
10 salesman” is defined as any employee whose “primary duty” is “making sales . . . or obtaining orders or  
11 contract for services or for the use of facilities for which a consideration will be paid by the client or  
12 customer” and “who is customarily and regularly engaged away from the employer’s place of business  
13 or places of business in performing such primary duty.”

14 57. 29 C.F.R. § 541.700 defines “primary duty” as “the principal, main, major or most  
15 important duty that the employee performs.”

16 58. Under 29 C.F.R. § 541.503(a), “[p]romotion work is one type of activity often performed  
17 by persons who make sales, which may or may not be exempt outside sales work, depending on the  
18 circumstances under which it is performed. . . . [P]romotional work that is incidental to sales made, or to  
19 be made, by someone else is not exempt outside sales work.” Under 29 C.F.R. § 541.503(c), an  
20 “example is a company representative who visits chain stores, arranges the merchandise on shelves,  
21 replenishes stock by replacing old with new merchandise, sets up displays and consults with the store  
22 manager when inventory runs low, but does not obtain a commitment for additional purchases. The  
23 arrangement of merchandise on the shelves or the replenishing of stock is not exempt work unless it is  
24 incidental to and in conjunction with the employee’s own outside sales. Because the employee in this  
25 instance does not consummate the sale nor direct efforts toward the consummation of a sale, the work is  
26 not exempt outside sales work.”

27 59. TSMs do not make sales or obtain orders for Mars products because Mars does not sell  
28 products to the stores TSMs visit. Rather, TSMs’ duties are to merchandize, stock shelves, distribute

1 and set up promotional materials, and take inventory that they pass along to the store personnel, after  
2 which the stores may purchase Mars products from whatever third parties the store buys products from.  
3 Although TSMs' activities are meant to "drive" sales by third parties, TSMs do not actually sell. Thus,  
4 TSMs are non-exempt employees who were entitled to but denied overtime compensation under the  
5 FLSA.

6 60. Mars willfully and deliberately misclassified TSMs as exempt employees. Mars was  
7 aware of the nature of TSMs' duties, and was aware that Mars was paying TSMs as if they were exempt  
8 employees. Upon information and belief, in 2021, Mars laid off its TSMs who serviced convenience  
9 stores in the Eastern half of the country and replaced them with contract employees, who performed the  
10 same work as TSMs but were classified as hourly employees (employed by a third-party company).  
11 Upon information and belief, those employees perform the same duties as TSMs, but their hours are  
12 tracked and they are paid overtime when they work more than forty hours per week.

13 61. As non-exempt employees, Plaintiffs and the FLSA Collective were entitled to overtime  
14 pay when they worked more than forty (40) hours per week. Defendant did not maintain policies and/or  
15 procedures applicable to Plaintiffs and the FLSA Collective to ensure accurate tracking of hours worked  
16 for the purpose of paying lawful overtime compensation under the FLSA. Defendant knew or should  
17 have known that Plaintiffs and the FLSA Collective worked more than forty (40) hours per week, yet  
18 Defendant failed to pay them overtime wages in violation of the FLSA, 29 U.S.C. § 207.

19 62. Plaintiffs have consented in writing to be a part of this action pursuant to 29 U.S.C.  
20 § 216(b). *See* Exhibits A, B. As this case proceeds, it is likely that additional individuals will file  
21 consent forms to join as "opt-in" plaintiffs.

22 63. As TSMs, Plaintiffs and the FLSA Collective are or were employed by Defendant within  
23 the meaning of the FLSA.

24 64. Plaintiffs and the FLSA Collective routinely worked over forty (40) hours in a workweek  
25 and were not compensated by Defendant for the overtime hours they worked.

26 65. Plaintiffs and the FLSA Collective were subject to Defendant's policy and/or practice of  
27 not properly and accurately tracking their hours worked and not paying lawful overtime compensation.  
28



1           74.     Plaintiff Daniel will fairly and adequately represent the interests of the Class and  
2 Subclasses. Plaintiff Daniel has no conflict of interest with any member of the Class or Subclasses.  
3 Plaintiff Daniel has retained competent counsel experienced in complex class action litigation.  
4 Plaintiff's counsel has the expertise and financial resources to adequately represent the interests of the  
5 Class and Subclasses.

6           75.     Common questions of law and fact exist as to all members of the California Class and  
7 Subclasses and predominate over any questions solely affecting individual members of the Class and  
8 Subclasses. Among the questions of law and fact common to Plaintiff, the Class, and the Subclasses are  
9 the following:

- 10           a.     Whether Class Members are non-exempt employees under Wage Order No. 7-2001;
- 11           b.     Whether Defendant failed to establish and/or implement policies applicable to Class  
12 Members for properly tracking hours worked;
- 13           c.     Whether Defendant violated Labor Code §§ 510, 1194 and Wage Order No. 7-2001, § 3  
14 by failing to pay Class Members overtime wages;
- 15           d.     Whether Class Members are entitled to paid off-duty rest breaks under Labor Code  
16 § 226.7 and Wage Order No. 7-2001, § 12;
- 17           e.     Whether Defendant violated Labor Code § 226.7 and Wage Order No. 7-2001, § 12 by  
18 failing to pay one hour of premium pay to each Class Member for each day that a compliant rest period was  
19 not provided;
- 20           f.     Whether Defendant violated Labor Code §§ 226.7, 512 and Wage Order No. 7-2001,  
21 § 11 by failing to provide meal breaks to Class Members;
- 22           g.     Whether Defendant violated Labor Code § 226.7 and Wage Order No. 7-2001, § 11 by  
23 failing to pay one hour of premium pay to each Class Member for each day that an off-duty meal break was  
24 not provided;
- 25           h.     Whether Defendant violated Labor Code § 226(a) by failing to issue accurate itemized  
26 wage statements to Wage Statement Subclass Members;
- 27           i.     Whether Defendant's violations of Labor Code § 226(a) was knowing and intentional;
- 28           j.     Whether Wage Statement Subclass Members suffered injury under Labor Code § 226(e);



1 k. Whether Defendant violated Labor Code §§ 201-203 by failing to pay the Waiting Time  
2 Penalty Subclass all compensation due upon discharge or separation from employment, including  
3 unpaid overtime wages and unpaid premiums for missed rest and meal breaks;

4 l. Whether Waiting Time Penalty Subclass Members are entitled to waiting time penalties  
5 in the form of continued compensation up to 30 work days under Labor Code § 203;

6 m. Whether these violations constitute unfair, unlawful, and fraudulent business practices, in  
7 violation of the UCL, Bus. & Prof. Code §§ 17200 *et seq.*;

8 n. Whether Class Members are entitled to restitution under Bus. & Prof. Code §§ 17200 *et*  
9 *seq.* for unpaid overtime wages and unpaid premiums for missed rest and meal breaks; and

10 o. The proper formula(s) for calculating damages, penalties, interest, and restitution owed to  
11 the Class and the Subclasses.

12 76. Class action treatment is superior to any alternative to ensure the fair and efficient  
13 adjudication of the controversy alleged herein. Such treatment will permit a large number of similarly  
14 situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and  
15 without duplication of effort and expense that numerous individual actions would entail. No difficulties  
16 are likely to be encountered in the management of this class action that would preclude its maintenance  
17 as a class action, and no superior alternative exists for the fair and efficient adjudication of this  
18 controversy. Class Members are readily identifiable from Defendant's employee rosters and/or payroll  
19 records.

20 77. Defendant's actions are generally applicable to the entire Class. Prosecution of separate  
21 actions by individual members of each Class creates the risk of inconsistent or varying adjudications of  
22 the issues presented herein, which, in turn, would establish incompatible standards of conduct for  
23 Defendant.

24 78. Because joinder of all Class Members is impractical, a class action is superior to other  
25 available methods for the fair and efficient adjudication of this controversy. Furthermore, the amounts  
26 at stake for many members of each Class, while substantial, may not be sufficient to enable them to  
27 maintain separate suits against Defendant.

28 **FIRST CAUSE OF ACTION**

**Failure to Pay Overtime Wages**  
**[Labor Code §§ 510, 1194; Wage Order No. 7-2001, § 3]**

1  
2 79. Plaintiff Daniel re-alleges and incorporates by reference each and every allegation set  
3 forth in the preceding paragraphs.

4 80. Labor Code § 510 and Wage Order No. 7-2001, § 3 require that employers compensate  
5 all work performed by an employee in excess of 8 hours per day or 40 hours per week, as well as the  
6 first 8 hours worked on the seventh consecutive day of work in any week, at a rate of one and one-half  
7 times the employee's regular rate of pay.

8 81. Labor Code § 1194 states that any employee receiving less than the legal overtime  
9 compensation is entitled to recover in a civil action the unpaid balance of the full amount of his or her  
10 overtime compensation, including interest thereon and reasonable attorneys' fees and costs.

11 82. As alleged herein, during the Class Period, Class Members worked more than 8 hours in  
12 a day and/or more than 40 hours in a week, entitling them to overtime pay. However, Defendant  
13 knowingly and willfully failed to pay overtime wages to Class Members, in violation of Labor Code  
14 §§ 510, 1194 and Wage Order No. 7-2001, § 3.

15 83. Plaintiff Daniel, on behalf of himself and all other California Class Members, requests  
16 relief as described below.

**SECOND CAUSE OF ACTION**

**Failure to Authorize and Permit Paid Rest Breaks, and Failure to Pay Premium Pay**  
**[Labor Code § 226.7; Wage Order No. 7-2001, § 12]**

17  
18  
19 84. Plaintiff Daniel re-alleges and incorporates by reference each and every allegation set  
20 forth in the preceding paragraphs.

21 85. Wage Order No. 7-2001, § 12(A) provides:

22 "Every employer shall authorize and permit all employees to take rest periods, which  
23 insofar as practicable shall be in the middle of each work period. The authorized rest period  
24 time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest  
25 time per four (4) hours or major fraction thereof. However, a rest period need not be  
26 authorized for employees whose total daily work time is less than three and one-half (3  
27 1/2) hours. Authorized rest period time shall be counted as hours worked for which there  
28 shall be no deduction from wages."



1           94.     Wage Order No. 7-2001, § 11(B) provides: “An employer may not employ an  
2 employee for a work period of more than ten (10) hours per day without providing the employee with a  
3 second meal period of not less than 30 minutes . . . .”

4           95.     Labor Code § 512(a) provides: “An employer shall not employ an employee for a work  
5 period of more than five hours per day without providing the employee with a meal period of not less  
6 than 30 minutes . . . .”

7           96.     Labor Code § 226.7(b) provides: “An employer shall not require an employee to work  
8 during a meal . . . period mandated pursuant to an applicable statute . . . or order of the Industrial  
9 Welfare Commission . . . .”

10          97.     Wage Order No. 7-2001, § 11(D) provides: “If an employer fails to provide an employee  
11 a meal period in accordance with the applicable provisions of this order, the employer shall pay the  
12 employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the  
13 meal period is not provided.”

14          98.     Labor Code § 226.7(c) provides: “If an employer fails to provide an employee a  
15 meal . . . period in accordance with . . . an applicable statute . . . or order of the Industrial Welfare  
16 Commission, . . . the employer shall pay the employee one additional hour of pay at the employee’s  
17 regular rate of compensation for each workday that the meal . . . period is not provided.”

18          99.     As alleged herein, Class Members worked 5 hours or more in a row without being  
19 provided an off-duty 30-minute meal break in which they were relieved of all duties, in violation of  
20 Labor Code §§ 226.7, 512 and Wage Order No. 7-2001, § 11.

21          100.    As a result, Class Members are entitled to recovery under Labor Code § 226.7(c) and  
22 Wage Order No. 7-2001, § 11(D), in the amount of one additional hour of pay at the Class Member’s  
23 regular rate of compensation for each day in which Defendant failed to provide Class Members with  
24 compliant meal breaks.

25          101.    Plaintiff Daniel, on behalf of himself and all other California Class Members, requests  
26 relief as described below.

1 **FOURTH CAUSE OF ACTION**

2 **Failure to Issue Accurate Itemized Wage Statements**  
3 **[Labor Code § 226]**

4 102. Plaintiff Daniel re-alleges and incorporates by reference each and every allegation set  
5 forth in the preceding paragraphs.

6 103. During the Wage Statement Subclass Period, as a result of misclassifying TSMs as  
7 exempt employees and failing to track their hours worked, Defendant failed to provide Wage Statement  
8 Subclass Members with accurate itemized wage statements containing total hours worked by the  
9 employee, all applicable hourly rates in effect during the pay period, and the corresponding number of  
10 hours worked at each applicable hourly rate, in violation of Labor Code § 226(a).

11 104. As a result of Defendant's failure to provide accurate itemized wage statements, Wage  
12 Statement Subclass Members suffered injury under Labor Code § 226(e)(2)(B) because they could not  
13 promptly and easily determine from the wage statement alone their total hours worked, all applicable  
14 hourly rates in effect during the pay period, and the corresponding number of hours worked at each  
15 applicable hourly rate.

16 105. Defendant's failure to furnish accurate itemized wage statements to Wage Statement  
17 Subclass Members was knowing and intentional under Labor Code § 226(e), and Wage Statement  
18 Subclass Members suffered injury because of Defendant's knowing and intentional failure to comply  
19 with Labor Code § 226(a).

20 106. Under Labor Code § 226(e)(1), Wage Statement Subclass Members are entitled to  
21 recover \$50 per employee for the initial pay period in which a violation occurred and \$100 per  
22 employee for each violation in a subsequent pay period, not to exceed a total penalty of \$4,000 for each  
23 Subclass Member, in addition to reasonable attorneys' fees and costs.

24 107. Plaintiff Daniel, on behalf of himself and all other Wage Statement Subclass Members,  
25 requests relief as described below.

26 **FIFTH CAUSE OF ACTION**

27 **Failure to Pay Compensation Due Upon Discharge or Separation from Employment**  
28 **[Labor Code §§ 201-203]**

108. Plaintiff Daniel re-alleges and incorporates by reference each and every allegation set forth  
in the preceding paragraphs.

1 109. Labor Code §§ 201 and 202 require employers to pay all compensation due and owing to  
2 employees promptly upon their discharge or separation from employment.

3 110. Labor Code § 203 provides that if an employer willfully fails to pay compensation  
4 promptly upon discharge or separation, as required by Labor Code §§ 201 and 202, then the employer is  
5 liable for penalties in the form of continued compensation up to 30 workdays.

6 111. As alleged herein, during the Waiting Time Penalty Subclass Period, Defendant willfully  
7 failed to pay Waiting Time Penalty Subclass Members overtime wages and premium pay for missed rest  
8 and meal breaks. As a result, Defendant failed to pay all compensation due to Waiting Time Penalty  
9 Subclass Members upon their discharge or separation from employment, in violation of Labor Code  
10 §§ 201 and 202.

11 112. Given the clear law entitling non-exempt employees to overtime wages and premium pay  
12 for missed rest and meal breaks, and the clear law requiring Defendant to pay all wages promptly upon  
13 separation or discharge from employment, Defendant's failure to pay such wages was willful.

14 113. As a result, Defendant is liable to Waiting Time Penalty Subclass Members for waiting  
15 time penalties in the form of continued compensation for up to 30 workdays, under Labor Code § 203.

16 114. Plaintiff Daniel, on behalf of himself and all other Waiting Time Penalty Subclass  
17 Members, requests relief as described below.

18 **SIXTH CAUSE OF ACTION**  
19 **Violation of Unfair Competition Laws**  
20 **[Cal. Bus. & Prof. Code §§ 17200 *et seq.*]**

21 115. Plaintiff Daniel re-alleges and incorporates by reference each and every allegation set  
22 forth in the preceding paragraphs.

23 116. The UCL prohibits any unlawful, unfair, or fraudulent business practices. Labor Code  
24 § 90.5(a) states that it is the public policy of California to vigorously enforce minimum labor standards  
25 to ensure employees are not required to work under substandard and unlawful conditions, and to protect  
26 employers who comply with the law from those who attempt to gain competitive advantage at the  
27 expense of their workers by failing to comply with minimum labor standards. Through its actions  
28

1 alleged herein, Defendant has engaged in unfair competition within the meaning of the UCL because  
2 Defendant's conduct has violated state wage and hour laws as herein described.

3 117. During the Class Period, Defendant committed acts of unfair competition, as defined in  
4 the UCL by failing to pay overtime wages, failing to authorize and permit off-duty paid rest breaks,  
5 failing to provide compliant off-duty meal breaks, and failing to pay premium pay for missed rest and  
6 meal breaks, in violation of Labor Code §§ 226.7, 510, 512, 1194 and Wage Order No. 7-2001, §§ 3, 11,  
7 12.

8 118. By its actions and omissions, Defendant has substantially injured Plaintiff Daniel and the  
9 California Class Members. Defendant's conduct as herein alleged has damaged Plaintiff Daniel and the  
10 California Class Members and was substantially injurious to them.

11 119. The harm to Plaintiff Daniel and the California Class Members resulting from  
12 Defendant's Labor Code violations outweighs the utility, if any, of Defendant's policies and practices.  
13 Therefore, Defendant's actions described herein constitute an unfair business practice or act within the  
14 meaning of the UCL.

15 120. Plaintiff Daniel, on behalf of himself and all other California Class Members, requests  
16 relief as described below.

17 **SEVENTH CAUSE OF ACTION**

18 **Civil Penalties**

19 **[Labor Code §§ 2698 *et seq.*]**

20 121. Plaintiff Daniel re-alleges and incorporates by reference each and every allegation set  
21 forth in the preceding paragraphs.

22 122. Plaintiff is an "Aggrieved Employee" under the PAGA because he was employed by  
23 Defendant during the applicable statutory period and suffered one or more of the Labor Code violations  
24 alleged herein. As such, Plaintiff seeks to recover, on behalf of himself and all current and former  
25 Territory Sales Managers employed by Defendant in California during the PAGA Period ("Aggrieved  
26 Employees"), civil penalties under the PAGA, plus reasonable attorneys' fees and costs.

27 123. Plaintiff seeks to recover PAGA penalties through a representative action as permitted by  
28 the PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th 969.

1 Therefore, class certification of the PAGA claims is not required, but Plaintiff may choose to seek  
2 certification of the PAGA claims.

3 124. Plaintiff seeks PAGA penalties on behalf of himself and Aggrieved Employees against  
4 Defendant for the following violations:

5 ***Overtime Claims***

6 125. During the PAGA Period, Defendant failed to pay Aggrieved Employees overtime wages  
7 when they worked more than 8 hours in a day and/or more than 40 hours in a week, in violation of  
8 Labor Code §§ 510, 1194 and Wage Order No. 7-2001, § 3.

9 126. As a result, under Labor Code § 2699(f)(2), Aggrieved Employees are entitled to one  
10 hundred dollars (\$100) per employee per pay period for each initial violation and two hundred dollars  
11 (\$200) per employee per pay period for each subsequent violation.

12 ***Rest Break Claims***

13 127. During the PAGA Period, Defendant failed to authorize and permit paid rest breaks and  
14 pay premiums for missed rest breaks when Aggrieved Employees worked at least 3.5 hours or more in a  
15 row, in violation of Labor Code § 226.7 and Wage Order No. 7-2001, § 12.

16 128. As a result, under Labor Code § 2699(f)(2), Aggrieved Employees are entitled to one  
17 hundred dollars (\$100) per employee per pay period for each initial violation and two hundred dollars  
18 (\$200) per employee per pay period for each subsequent violation.

19 ***Meal Break Claims***

20 129. During the PAGA Period, Defendant failed to provide compliant meal breaks and pay  
21 premiums for missed meal breaks when Aggrieved Employees worked at least 5 hours or more in a row,  
22 in violation of Labor Code § 512 and Wage Order No. 7-2001, § 11.

23 130. As a result, under Labor Code § 2699(f)(2), Aggrieved Employees are entitled to one  
24 hundred dollars (\$100) per employee per pay period for each initial violation and two hundred dollars  
25 (\$200) per employee per pay period for each subsequent violation.

26 ***Failure to Issue Accurate Itemized Wage Statements***

27 131. During the PAGA Period, Defendant was required but failed to furnish Aggrieved  
28 Employees with wage statements containing total hours worked by the employee, all applicable hourly



1 rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate,  
2 in violation of Labor Code § 226(a).

3 132. As a result, under Labor Code § 2699(a), (f), Aggrieved Employees are entitled to two  
4 hundred fifty dollars (\$250) per employee per initial violation and one thousand dollars (\$1,000) per  
5 employee per subsequent violation, in accordance with Labor Code § 226.3.

6 133. Alternatively, Aggrieved Employees are entitled to the default PAGA penalty under  
7 Labor Code § 2699(f)(2) of one hundred dollars (\$100) per employee per pay period for each initial  
8 violation and two hundred dollars (\$200) per employee per pay period for each subsequent violation.

9 ***Failure to Pay Compensation Due Upon Discharge or Separation from Employment***

10 134. During the PAGA Period, as a further consequence of Defendant's failure to pay  
11 overtime wages and missed rest and meal break premiums, Aggrieved Employees did not receive all  
12 compensation due and owing to them at the time of their discharge or separation from employment, in  
13 violation of Labor Code §§ 201-202.

14 135. As a result, under Labor Code § 2699(f)(2), Aggrieved Employees are entitled to one  
15 hundred dollars (\$100) per employee per pay period for each initial violation and two hundred dollars  
16 (\$200) per employee per pay period for each subsequent violation.

17 **EIGHTH CAUSE OF ACTION**

18 **Failure to Pay Overtime Pay in Violation of the FLSA**  
19 **[29 U.S.C. § 201 *et seq.*]**

20 136. Plaintiffs Daniel and Monson re-allege and incorporates by reference each and every  
21 allegation set forth in the preceding paragraphs.

22 137. The FLSA, 29 U.S.C. § 207, requires employers to pay all non-exempt employees one  
23 and one-half times the regular rate of pay for all hours worked over forty (40) hours per workweek.

24 138. Plaintiffs and the FLSA Collective are non-exempt employees entitled to FLSA overtime  
25 compensation for all hours worked in excess of forty (40) hours per workweek.

26 139. Defendant failed to accurately and completely record actual hours worked by Plaintiffs  
27 and the FLSA Collective.

28 140. Plaintiffs and the FLSA Collective work(ed) in excess of forty (40) hours per week, but  
did not receive overtime compensation from Defendant.

1 141. By failing to pay overtime compensation, Defendant violated the FLSA.

2 142. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA, within the  
3 meaning of 29 U.S.C. § 255(a).

4 143. As a direct and proximate result of Defendant's unlawful conduct, Plaintiffs and the  
5 FLSA Collective have suffered and will continue to suffer a loss of income and other damages.  
6 Plaintiffs and the FLSA Collective are entitled to liquidated damages and attorneys' fees and costs  
7 incurred in connection with this claim.

8 **PRAYER FOR RELIEF**

9 **WHEREFORE**, Plaintiffs, on behalf of themselves and the Class, pray for the following  
10 relief:

11 A. An Order that this action may proceed and be maintained as a class action, with the  
12 California Class and Subclasses as designated and defined in this Complaint, and that Plaintiff Daniel  
13 and his counsel be certified as representative and counsel for the California Class and Subclasses.

14 B. An Order that this action may proceed and be maintained as a collective action on behalf  
15 of Plaintiffs and the FLSA Collective under 29 U.S.C. § 216(b).

16 C. On the First Cause of Action: That the Court find and declare that Defendant violated  
17 Labor Code §§ 510, 1194 and Wage Order No. 7-2001, § 3 by failing to pay California Class Members  
18 overtime compensation, and award California Class Members the amount of their unpaid overtime  
19 wages.

20 D. On the Second Cause of Action: That the Court find and declare that Defendant violated  
21 Labor Code § 226.7 and Wage Order No. 7-2001, § 12 by failing to authorize and permit timely off-  
22 duty paid rest breaks, and award California Class Members unpaid premium pay for each workday a rest  
23 period was not provided.

24 E. On the Third Cause of Action: That the Court find and declare that Defendant violated  
25 Labor Code §§ 226.7, 512 and Wage Order No. 7-2001, § 11 by failing to provide compliant meal  
26 breaks, and award California Class Members unpaid premium pay for each workday a meal break was  
27 not provided.

1 F. On the Fourth Cause of Action: That the Court find and declare that Defendant violated  
2 Labor Code § 226(a), (e); award Wage Statement Subclass Members statutory penalties under Labor  
3 Code § 226(e); and award reasonable attorneys' fees and costs under Labor Code § 226(e).

4 G. On the Fifth Cause of Action: That the Court find and declare that Defendant violated  
5 Labor Code §§ 201-203, and award Waiting Time Penalty Subclass Members waiting time penalties in  
6 the form of continued compensation for up to 30 workdays.

7 H. On the Sixth Cause of Action: That the Court find and declare that Defendant violated  
8 the UCL by failing to pay overtime wages, failing to authorize and permit compliant rest breaks, failing  
9 to provide compliant meal breaks, and failing to pay premiums for missed rest and meal breaks; and  
10 award restitution to California Class Members in the amount of unpaid overtime wages and unpaid  
11 premium pay.

12 I. On the Seventh Cause of Action: That the Court award PAGA civil penalties, as well as  
13 attorneys' fees and costs, as provided under Labor Code § 2699.

14 J. On the Eighth Cause of Action: That the Court enter:

- 15 i. Judgment against Defendant for violation of the overtime provisions of the  
16 FLSA;
- 17 ii. Judgment that Defendant's violations, as described above, were willful;
- 18 iii. Judgment that Defendant failed to maintain accurate time records of all the hours  
19 worked by Plaintiff and the FLSA Collective, in violation of the FLSA;
- 20 iv. An award in an amount equal to Plaintiff and the FLSA Collective's unpaid back  
21 wages at the applicable overtime rate;
- 22 v. An award to Plaintiff and the FLSA Collective for the amount of unpaid wages  
23 owed, liquidated damages and penalties where provided by law, and interest thereon, subject to proof at  
24 trial;
- 25 vi. An award of prejudgment interest to the extent liquidated damages are not  
26 awarded;
- 27 vii. Leave to add additional plaintiffs by motion, the filing of written consent forms,  
28 or any other method approved by the Court; and

1 K. That the Court award attorneys' fees and costs of suit to the extent permitted by law,  
2 including, but not limited to, Labor Code §§ 226(e), 1194 and Cal. Civ. Proc. Code § 1021.5, and 29  
3 U.S.C. § 216.

4 L. All other relief as this Court deems proper.

5 Dated: April 18, 2024

6 Respectfully submitted,

7 THE JHAVERI-WEEKS FIRM, P.C.

8 

9 \_\_\_\_\_  
10 William Jhaveri-Weeks

11 Ally Girouard

12 Sarah Abraham

13 *Attorneys for Plaintiffs and the Putative Class and*  
14 *FLSA Collective*

1 **JURY DEMAND**

2 Plaintiff hereby demands trial by jury of all claims against Defendant alleged herein.

3 Dated: April 18, 2024

4 Respectfully submitted,

5 THE JHAVERI-WEEKS FIRM, P.C.

6 

7 \_\_\_\_\_  
8 William Jhaveri-Weeks  
9 Ally Girouard  
10 Sarah Abraham

11 *Attorneys for Plaintiffs and the Putative Class and*  
12 *FLSA Collective*

# EXHIBIT A

---

**MARS WRIGLEY CONFECTIONERY US, LLC  
PLAINTIFF CONSENT FORM**

---

1. I consent to make a claim under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* against Mars Wrigley Confectionery US, LLC (“Defendant”) and any other related entities or affiliates, to recover overtime pay.
2. During the past three years, there were times when I worked over 40 hours per week for Defendant as a Territory Sales Manager, or in a similar job title, and did not receive overtime compensation for the overtime hours I worked.
3. If this case does not proceed collectively, then I also consent to join any subsequent action to assert these claims against Defendant, and any other related entities or affiliates.

Date: 10/04/24

  
Gerry Daniel (Apr 10, 2024 06:46 PDT)

Signature

Gerry W. Daniel Jr.

Print Name

---

**Information below will be redacted in filings with the court.**

Address: ████████████████████

City, State Zip: ████████████████████

Best Phone Number(s): ████████████████████

Email: ████████████████████

# EXHIBIT B



