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Assigned for all Purposes

Judge William Claster

CX-104

Attorneys for Plaintiff

(Additional Counsel on Next Page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE - COMPLEX

JOHN SCHWENK, as a proxy for the State of
California and on behalf of all similarly
aggrieved employees,

Plaintiff,

vs.

BRISTOL FARMS, a California corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No. **30-2021-01228170-CU-OE-CXC**

**PLAINTIFF'S REPRESENTATIVE
ACTION COMPLAINT FOR:**

**(1) VIOLATION OF LABOR CODE §
2698, *ET SEQ.***

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1 Comes now Plaintiff John Schwenk ("Plaintiff"), individually and on behalf of all similarly
2 situated current and former employees hereby alleges and complains against Defendant Bristol Farms
3 ("Defendant" or the "Company"), and Does 1 through 50 (collectively, "Defendants") as follows:

4 **JURISDICTION AND VENUE**

5 1. This Court has jurisdiction over the violations of the Private Attorneys General Act (the
6 "PAGA"), Labor Code § 2698, *et seq.* As alleged herein, Plaintiff has exhausted his administrative
7 remedies to proceed under the PAGA.

8 2. Venue is proper in this Court because Plaintiff worked for Defendant in Newport Beach,
9 California, which is located in this County.

10 **PARTIES**

11 3. Bristol Farms is a supermarket chain with locations throughout the United States,
12 including without limitation, in Orange County, California.

13 4. In or around 1999, Plaintiff began employment with the Company as a non-exempt
14 employee. Plaintiff currently works for Defendant as a non-exempt produce manager at Defendant's
15 supermarket located in Newport Beach, California.

16 **DOE DEFENDANTS**

17 5. Plaintiff does not know the true names or capacities, whether individual, partner or
18 corporate, of the Defendants sued herein as Does 1 through 50, inclusive, and for that reason, said
19 Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this complaint
20 when the true names and capacities are known. Plaintiff is informed and believes and, based thereon
21 alleges, that each of said fictitious Defendants was responsible in some way for the matters alleged
22 herein and proximately caused Plaintiff to be subject to the illegal employment practices, wrongs and
23 violations complained of herein.

24 **AGENCY STATUS OF EACH DEFENDANT**

25 6. At all times herein mentioned, each of said Defendants participated in the doing of the
26 acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants,
27 and each of them, were the agents, servants and employees of each of the other Defendants, as well as
28 the agents of all Defendants, and at all times herein mentioned, were acting within the course and scope

1 of said agency and employment.

2 7. Plaintiff is informed and believes and, based thereon alleges, that at all times material
3 hereto, each of the Defendants named herein was the agent, employee, alter ego and/or joint venturer of,
4 or working in concert with each of the other co-Defendants and was acting within the course and scope
5 of such agency, employment, joint venture, or concerted activity. To the extent said acts, conduct, and
6 omissions were perpetrated by certain Defendants, each of the remaining Defendants confirmed and
7 ratified said acts, conduct, and omissions of the acting Defendants.

8 8. At all times herein mentioned, Defendants, and each of them, were members of, and
9 engaged in, a joint venture, partnership and common enterprise, and acting within the course and scope
10 of, and in pursuance of, said joint venture, partnership and common enterprise.

11 9. At all times herein mentioned, the acts and omissions of various Defendants, and each of
12 them, concurred and contributed to the various acts and omissions of each and all of the other
13 Defendants in proximately causing the violations as herein alleged. At all times herein mentioned,
14 Defendants, and each of them, ratified each and every act or omission complained of herein. At all
15 times herein mentioned, the Defendants, and each of them, aided and abetted the acts and omissions of
16 each and all of the other Defendants in proximately causing the violations as herein alleged.

17 **FIRST CAUSE OF ACTION**

18 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

19 **(BY PLAINTIFF AS PROXY FOR STATE OF CALIFORNIA**

20 **AGAINST ALL DEFENDANTS)**

21 10. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though
22 fully set forth herein.

23 11. Plaintiff brings this cause of action as a proxy for the State of California and all similarly
24 aggrieved employees pursuant to the Private Attorneys General Act (the “PAGA”), Labor Code § 2698,
25 *et seq.* In this capacity, Plaintiff seeks penalties on behalf of the State and all similarly aggrieved
26 employees for Defendants’ violations of Labor Code §§ 201-204, 226, 226.7 and 512, as alleged herein
27 for the time period of July 26, 2020, through the present. Specifically, Plaintiff seeks penalties on behalf
28 of the State and all similarly aggrieved employees for Defendants’ violations of Labor Code §§ 201-204,

226, 226.7 and 512 for the time period of July 26, 2020, through the present, arising from Defendant's failure to pay meal and rest period premium based on the regular rate of pay during pay periods in which Plaintiff and aggrieved employees were paid meal and rest period premium pay. Plaintiff earned non-discretionary incentive pay, including bonuses, which was not factored into the regular rate of pay for purposes of paying meal and rest period premium pay. Instead, during pay periods in which Plaintiff earned non-discretionary remuneration covering time periods in which Plaintiff was paid meal and rest period premium pay, Defendants improperly paid the meal premium pay at the base rate of pay.

12. On or about July 26, 2021, Plaintiff submitted written notice to the Labor Workforce Development Agency (the "LWDA") and via certified mail, return-receipt requested to Defendants, regarding Defendants' violations of 201-204, 226, 226.7 and 512. As of the date of this filing, the LWDA has not informed Plaintiff whether it intends to investigate the claims. Therefore, Plaintiff may proceed in this Court and seek penalties on behalf of the State and all similarly aggrieved employees, as well as attorneys' fees and costs pursuant to Labor Code §§ 226.3 and 2699.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment to be entered in Plaintiff's favor and against Defendants, and each of them, as follows:

5. Upon the First Cause of Action, for penalties, attorneys' fees, costs, and interest pursuant to Labor Code §§ 226.3 and 2699;

6. On all causes of action, for prejudgment interest at the prevailing legal rate;

7. On all causes of action, for attorney's fees and costs as provided by California Labor Code § 2699 and Code of Civil Procedure § 1021.5 and for such other and further relief the Court may deem just and proper.

8. Costs of suit; and

9. Such other and further relief as the Court may deem proper.

DATED: October 22, 2021

DIVERSITY LAW GROUP, P.C.

By: 

Larry W. Lee

Attorneys for Plaintiff