

DIVERSITY LAW GROUP, P.C.
Larry W. Lee, State Bar No. 228175
E-mail: lwlee@diversitylaw.com
Mai Tulyathan, State Bar No. 316704)
E-mail: ktulyathan@diversitylaw.com
515 S. Figueroa St., Suite 1250
Los Angeles, California 90071
Telephone: (213) 488-6555
Facsimile: (213) 488-6554

Attorneys for Plaintiff and the Class

(Additional Counsel on Next Page)

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE - COMPLEX

JOHN SCHWENK, individually and on behalf
of all those similarly situated,

Plaintiff,

vs.

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

Defendants.

Case No. 30-2020-01162829-CU-OE-CXC

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

**(1) VIOLATION OF LABOR CODE §
226; AND**

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

Assigned for all purposes to: Judge Randall J. Sherman

Dept: CX105

1 **POLARIS LAW GROUP LLP**

William L. Marder, State Bar No. 170131

2 E-mail: bill@polarislawgroup.com

501 San Benito Street, Suite 200

3 Hollister, California 95023

Telephone: (831) 531-4214

4 Facsimile: (831) 634-0333

5 Dennis S. Hyun (State Bar No. 224240)

6 E-mail: dhyun@hyunlegal.com

HYUN LEGAL, APC

7 515 S. Figueroa St., Suite 1250

8 Los Angeles, California 90071

(213) 488-6555

9 (213) 488-6554 facsimile

10 Edward W. Choi, Esq. SBN 211334

LAW OFFICES OF CHOI & ASSOCIATES

11 515 S. Figueroa St., Suite 1250

Los Angeles, CA 90071

12 Telephone: (213) 381-1515

Facsimile: (213) 465-4885

13 edward.choi@choiandassociates.com

14 Attorneys for Plaintiff and the Class

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 California Labor Code §§ 226 and
6 2698, *et seq.*

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

9 **PARTIES**

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

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

15 **DOE DEFENDANTS**

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

23 **AGENCY STATUS OF EACH DEFENDANT**

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

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

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

9. At all times herein mentioned, the acts and omissions of various Defendants, and each of them, concurred and contributed to the various acts and omissions of each and all of the other Defendants in proximately causing the injuries and damages as herein alleged. At all times herein mentioned, Defendants, and each of them, ratified each and every act or omission complained of herein. At all times herein mentioned, the Defendants, and each of them, aided and abetted the acts and omissions of each and all of the other Defendants in proximately causing the damages as herein alleged.

CLASS ALLEGATIONS

10. **Class Definition:** The named individual Plaintiff brings this action individually and on behalf of the Class pursuant to Code of Civil Procedure § 382. Plaintiff proposes the following class definition:

a. All current and former non-exempt California employees of Defendants who were paid “Bonus-OT Adj” wages at any time from April 6, 2019, through the present (this group of individuals shall hereinafter be collectively referred to as the “Class” or “Class Members”).

11. **Numerosity:** The members of the Class are so numerous that joinder of all members would be impractical, if not impossible. The identity of the members of the Class is readily ascertainable by review of Defendant's records, including payroll records. Plaintiff is informed and believe, and based thereon alleges, that Defendant failed to provide proper payroll records in violation of Labor Code § 226.

1 12. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
2 necessary steps to represent fairly and adequately the interests of the Class defined above. Plaintiff's
3 attorneys are ready, willing and able to fully and adequately represent the Class and individual Plaintiff.
4 Plaintiff's attorneys have prosecuted and settled wage-and-hour class actions in the past and currently
5 have a number of wage-and-hour class actions pending in California courts.

6 13. **Common Question of Law and Fact:** There are predominant common questions of law
7 and fact and a community of interest amongst Plaintiff and the claims of the Class concerning
8 Defendants failing to provide accurate, itemized wage statements in violation of Labor Code § 226.

9 14. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class.
10 Plaintiff is a member of the Class and has suffered the alleged violations of California Labor Code §
11 226. As with other non-exempt California employees, Plaintiff was not provided proper and accurate
12 itemized wage statements. Specifically, Defendants violated Labor Code§ 226(a) as to Plaintiff and
13 Class Members by failing to identify the applicable rate of pay and hours worked for "Bonus-OT Adj"
14 wages on wage statements furnished to Plaintiff and Class Members. Plaintiff is informed and believes
15 and based thereon alleges that the "Bonus-OT Adj" wages are paid based on an hourly rate of pay.
16 However, whenever such wages were paid, the wage statements do not show what rate was used and
17 what hours were applied to the calculation of such wages. Therefore, Plaintiff is a member of the Class
18 and has suffered the alleged violations of California Labor Code § 226.

19 15. The Labor Code and regulations upon which Plaintiff base these claims are broadly
20 remedial in nature. These laws and labor standards serve an important public interest in establishing
21 minimum working conditions and standards in California. These laws and labor standards protect the
22 average working employee from exploitation by employers who may seek to take advantage of superior
23 economic and bargaining power in setting onerous terms and conditions of employment.

24 16. The nature of this action and the format of laws available to Plaintiff and members of the
25 Class identified herein make the class action format a particularly efficient and appropriate procedure to
26 redress the wrongs alleged herein. If each employee were required to file an individual lawsuit, the
27 corporate Defendant would necessarily gain an unconscionable advantage since it would be able to
28 exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior

1 financial and legal resources. Requiring each Class member to pursue and individual remedy would also
2 discourage the assertion of lawful claims by employees who would be disinclined to file an action
3 against their former and/or current employer for real and justifiable fear of retaliation and permanent
4 damage to their careers at subsequent employment.

5 17. The prosecution of separate actions by the individual Class members, even if possible,
6 would create a substantial risk of (a) inconsistent or varying adjudications with respect to individual
7 Class members against the Defendant and which would establish potentially incompatible standards of
8 conduct for the Defendant, and/or (b) adjudications with respect to individual Class members which
9 would, as a practical matter, be dispositive of the interest of the other Class members not parties to the
10 adjudications or which would substantially impair or impede the ability of the Class members to protect
11 their interests. Further, the claims of the individual members of the Class are not sufficiently large to
12 warrant vigorous individual prosecution considering all of the concomitant costs and expenses.

13 18. Such a pattern, practice and uniform administration of corporate policy regarding illegal
14 employee compensation described herein is unlawful and creates an entitlement to recovery by the
15 Plaintiff and the Class identified herein, in a civil action for all damages and or penalties pursuant to
16 Labor Code § 226 including interest thereon, applicable penalties, reasonable attorney's fees, and costs
17 of suit according to the mandate of California Labor Code § 226 and Code of Civil Procedure § 1021.5.

18 19. Proof of a common business practice or factual pattern, which the named Plaintiff
19 experienced and is a representative of, will establish the right of each of the members of the Class to
20 recovery on the causes of action alleged herein. This action is brought for the benefit of the entire Class
21 and will result in the creation of a common fund.

22 **FIRST CAUSE OF ACTION**

23 **VIOLATION OF LABOR CODE § 226**

24 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

25 20. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 19 as though fully
26 set forth herein.

27 21. Defendants failed in their affirmative obligation to provide accurate itemized wage
28 statements. Specifically, Defendants violated Labor Code§ 226(a) as to Plaintiff and Class Members by

1 failing to identify the applicable rate of pay and hours worked for “Bonus-OT Adj” wages on wage
2 statements furnished to Plaintiff and Class Members. Plaintiff is informed and believes and based
3 thereon alleges that the “Bonus-OT Adj” wages are paid based on an hourly rate of pay. However,
4 whenever such wages were paid, the wage statements do not show what rate was used and what hours
5 were applied to the calculation of such wages. Therefore, Defendants violated Labor Code § 226 by not
6 providing the requisite itemized wage statements to Plaintiff and Class Members.

7 22. Such a pattern, practice and uniform administration of corporate policy as described
8 herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Class identified herein,
9 in a civil action, for all damages or penalties pursuant to Labor Code § 226, including interest thereon,
10 attorneys’ fees, and costs of suit according to the mandate of California Labor Code § 226.

11 **SECOND CAUSE OF ACTION**

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

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

14 **AGAINST ALL DEFENDANTS)**

15 23. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 22 as though fully
16 set forth herein.

17 24. Plaintiff brings this cause of action as a proxy for the State of California and all similarly
18 aggrieved employees pursuant to the Private Attorneys General Act (the “PAGA”), Labor Code § 2698,
19 *et seq.* In this capacity, Plaintiff seeks penalties on behalf of the State and all similarly aggrieved
20 employees for Defendants’ violations of Labor Code § 226(a) as alleged herein for the time period of
21 April 6, 2019, through the present. Defendants violated Labor Code § 226(a) as to Plaintiff and
22 aggrieved employees by failing to identify the applicable rate of pay and hours worked for “Bonus-OT
23 Adj” wages on wage statements furnished to Plaintiff and aggrieved employees. Plaintiff is informed
24 and believes and based thereon alleges that the “Bonus-OT Adj” wages are paid based on an hourly rate
25 of pay. However, whenever such wages were paid, the wage statements do not show what rate was used
26 and what hours were applied to the calculation of such wages. Therefore, Defendants violated Labor
27 Code § 226 by not providing the requisite itemized wage statements to Plaintiff and aggrieved
28 employees.

25. On or about September 30, 2020, 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 Labor Code § 226(a). 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:

1. For an order certifying the proposed Class;
2. For an order appointing Plaintiff as the representative of the Class;
3. For an order appointing Counsel for Plaintiff as Class counsel;
5. Upon the First Cause of Action, for penalties and/or damages pursuant to Labor Code § 226, *et seq.*, for interest, costs, and for attorney's fees;
6. Upon the Second Cause of Action, for penalties, attorneys' fees, costs, and interest pursuant to Labor Code §§ 226.3 and 2699;
7. On all causes of action, for prejudgment interest at the prevailing legal rate;
8. On all causes of action, for attorney's fees and costs as provided by California Labor Code §§ 226 and 2699 and Code of Civil Procedure § 1021.5 and for such other and further relief the Court may deem just and proper.
9. Costs of suit; and
10. Such other and further relief as the Court may deem proper.

DATED: September 30, 2020

DIVERSITY LAW GROUP, P.C.

By: _____



Larry W. Lee
Attorneys for Plaintiff and the Class