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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN**

STEVE MILLER, as a private attorney
general and as an individual and on behalf
of all others similarly situated,

Plaintiffs,

vs.

BERRY GLOBAL, INC., a Delaware
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: **STK-CV-00E-2020-0547**

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR:**

- (1) **VIOLATION OF LABOR CODE
§ 226(a); AND**
- (2) **VIOLATION OF LABOR CODE
§§ 2698 *ET SEQ.***

DEMAND OVER \$25,000.00

On behalf of himself and other similarly situated current and former employees of Defendants, and as a proxy for the State of California, Plaintiff, Steve Miller, submits this Class and Representative Action Complaint against Defendant, Berry Global, Inc., and Does 1 through 50 (collectively, “Defendants”).

INTRODUCTION

1. This class and representative action challenges systemic illegal employment practices resulting in violations of the California Labor Code against individuals who worked for Defendants. The Complaint seeks penalties and other relief for Defendants’ violations of California Labor Code section 226(a).¹

2. Plaintiff is informed and believes that Defendants have jointly and severally acted intentionally and with deliberate indifference and conscious disregard to the rights of employees by failing to provide accurate itemized wage statements.

3. Specifically, Defendants fail to provide accurate itemized wage statements to Plaintiff and other employees who were paid overtime and/or shift differential wages. Whenever overtime wages were paid, the wage statements issued to Plaintiff and other employees did not identify the overtime rate as 1.5 times the regular rate of pay. Rather, the overtime rates appeared as the regular hourly rate of pay or less.

4. In addition, Defendants fail to list the accurate total hours worked for wage statements furnished to Plaintiff and other employees whenever overtime and/or shift differential wages were paid. Whenever overtime and/or shift differential wages were paid, the wage statements issued by Defendants did not identify the accurate total hours worked. Rather, when the hours shown on the wage statements are added up, they do not appear to add up to the actual total hours worked.

5. Plaintiff is informed and believes that Defendants have engaged in, among other things, a system of willful violations of the Labor Code by creating and maintaining policies, practices, and customs that knowingly deny employees the above stated rights and benefits.

¹ All “Section” references are to the Labor Code.

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7. Venue is proper. Defendants operate in San Joaquin County. Plaintiff worked for Defendants in Lathrop, California.

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

13. Plaintiff is informed and believes that at all times material hereto, Defendants, and each of them, (i) aided and abetted the acts and omissions of each of the other Defendants in proximately causing the harms as herein alleged, or (ii) were members of, engaged in, and acting within the course and scope of, and in pursuance of, a joint venture, partnership, or common enterprise.

CLASS ACTION ALLEGATIONS

14. **Definition:** Pursuant to California Code of Civil Procedure section 382. Plaintiff seeks class certification of the following classes: (a) all current and former non-exempt employees of Defendants in the State of California who were paid overtime wages at any time since April 6, 2019 (the “Overtime Class”); and (b) all current and former non-exempt employees of Defendants in the State of California who were paid shift differential wages at any time since April 6, 2019 (the “Shift Differential Class”). The Overtime and Shift Differential Classes shall be collectively referred to as the “Class.”

15. **Numerosity and Ascertainability:** Plaintiff is informed and believes that Defendants uniformly failed to provide accurate itemized wage statements to Plaintiff and the Class in violation of Section 226(a). The members of the Class are so numerous that joinder of all members would be impractical, if not impossible. The identities of the members of the Class are readily ascertainable by review of Defendants' records, including payroll records.

16. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the Class defined above. Plaintiff's attorneys are ready, willing, and able to fully and adequately represent Plaintiff and the Class. Plaintiff's attorneys have prosecuted and settled wage-and-hour class actions in the past and

1 continue to litigate numerous wage-and-hour class actions currently pending in California state
2 and federal courts.

3 17. **Common Question of Law and Fact:** There are predominant common questions
4 of law and fact and a community of interest amongst the claims of Plaintiff and of the Class
5 concerning Defendants' policy and practice of failing to provide accurate itemized wage
6 statements to its employees. Plaintiff is informed and believes that Defendants uniformly
7 administer a corporate policy and practice of failing to provide accurate itemized wage
8 statements in violation of Section 226(a). Plaintiff is informed and believes that this corporate
9 conduct is willful and accomplished with Defendants' advance knowledge and intent.

10 18. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
11 Class in that Plaintiff suffered the alleged harms in a similar and typical manner as other
12 members of the Class suffered. As with other members of the Class, Plaintiff was a non-exempt
13 employee paid on an hourly basis. Whenever overtime wages were paid, the wage statements
14 issued to Plaintiff did not identify the overtime rate as 1.5 times the regular rate of pay. Rather,
15 the overtime rates appeared as the regular hourly rate of pay or less. Whenever overtime and/or
16 shift differential wages were paid, the wage statements issued by Defendants did not identify the
17 accurate total hours worked. Rather, when the hours shown on the wage statements are added up,
18 they do not appear to add up to the actual total hours worked. Plaintiff thus is a member of the
19 Class and has suffered the alleged violations of Section 226(a).

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

26 20. The nature of this action and the format of laws available to Plaintiff and
27 members of the Class identified herein make the class action format a particularly efficient and
28 appropriate procedure to redress the wrongs alleged herein. If each employee were required to

1 file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable
2 advantage since they would be able to exploit and overwhelm the limited resources of each
3 individual plaintiff with their vastly superior financial and legal resources. Requiring each
4 member of the Class to pursue an individual remedy would also discourage the assertion of
5 lawful claims by employees who would be disinclined to file an action against their former or
6 current employer for real and justifiable fear of retaliation and permanent damage to their careers
7 at their current or subsequent employment.

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

17 22. Such a pattern, practice, and uniform administration of corporate policy regarding
18 illegal employee compensation described herein is unlawful and creates an entitlement to
19 recovery by Plaintiff and the Class in a civil action, for applicable penalties, reasonable
20 attorneys' fees, and costs of suit according to the mandate of Section 226 and Code of Civil
21 Procedure section 1021.5

22 23. Proof of a common business practice or factual pattern, which the named Plaintiff
23 experienced and is a representative of, will establish the right of each of the members of the
24 Class to recovery on the causes of action alleged herein.

1 **FIRST CAUSE OF ACTION**

2 **Violation of Labor Code § 226(a)**

3 **(By Plaintiff and the Class Against All Defendants)**

4 24. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
5 though fully set forth herein.

6 25. Labor Code § 226(a) requires employers to provide itemized wage statements to
7 its employees that show accurate information, including without limitation, all applicable hourly
8 rates and the total number of hours worked during each pay period. Defendants failed in their
9 affirmative obligation to provide accurate itemized wage statements to Plaintiff and the Class in
10 violation of Labor Code § 226(a).

11 26. As with other members of the Class, Plaintiff was paid on an hourly basis.
12 Pursuant to Section 226(a), wage statements should have reflected all applicable hourly rates and
13 the total hours worked. The wage statements provided to Plaintiff and the Class fail to identify
14 such information. More specifically, Defendants fail to provide accurate itemized wage
15 statements to Plaintiff and other employees who were paid overtime and/or shift differential
16 wages. Whenever overtime wages were paid, the wage statements issued to Plaintiff and other
17 employees did not identify the overtime rate as 1.5 times the regular rate of pay. Rather, the
18 overtime rates appeared as the regular hourly rate of pay or less. In addition, Defendants fail to
19 list the accurate total hours worked for wage statements furnished to Plaintiff and other
20 employees whenever overtime and/or shift differential wages were paid. Whenever overtime
21 and/or shift differential wages were paid, the wage statements issued by Defendants did not
22 identify the accurate total hours worked. Rather, when the hours shown on the wage statements
23 are added up, they do not appear to add up to the actual total hours worked.

24 27. Such a pattern, practice, and uniform administration of corporate policy as
25 described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class
26 identified herein, in a civil action, for applicable penalties pursuant to Section 226, attorneys'
27 fees, and costs of suit.

1 **SECOND CAUSE OF ACTION**

2 **Violation of Labor Code §§ 2698 *Et Seq.***

3 **(By Plaintiff and Aggrieved Employees Against All Defendants)**

4 28. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
5 though fully set forth herein.

6 29. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code
7 §§ 2698 *et seq.* (“PAGA”), Plaintiff brings this cause of action as a proxy for the State of
8 California. In this capacity, Plaintiff seeks applicable penalties for Defendants’ violations of
9 Section 226(a) committed since April 6, 2019, against all aggrieved employees. Under Section
10 2699(c), Plaintiff is an “aggrieved employee,” as one or more of the alleged violations was
11 committed against Plaintiff as an employee of Defendants.

12 30. As stated herein, Defendants violate Section 226(a) by failing to provide accurate
13 itemized wage statements to Plaintiff and other aggrieved employees. More specifically,
14 Defendants fail to provide accurate itemized wage statements to Plaintiff and other employees
15 who were paid overtime and/or shift differential wages. Whenever overtime wages were paid,
16 the wage statements issued to Plaintiff and other employees did not identify the overtime rate as
17 1.5 times the regular rate of pay. Rather, the overtime rates appeared as the regular hourly rate of
18 pay or less. In addition, Defendants fail to list the accurate total hours worked for wage
19 statements furnished to Plaintiff and other employees whenever overtime and/or shift differential
20 wages were paid. Whenever overtime and/or shift differential wages were paid, the wage
21 statements issued by Defendants did not identify the accurate total hours worked. Rather, when
22 the hours shown on the wage statements are added up, they do not appear to add up to the actual
23 total hours worked.

24 31. On or about August 7, 2020, Plaintiff sent written notice to the California Labor
25 & Workforce Development Agency (“LWDA”) of specific facts and theories for Defendants’
26 violations of Section 226(a). Plaintiff simultaneously sent written notice to Defendants via
27 certified mail. As of the date of the filing of this Complaint, the LWDA has neither responded
28 nor indicated that it intends to investigate the allegations in the written notice.

32. As such, pursuant to Section 2699(a) and (f), Plaintiff seeks recovery of all applicable civil penalties for Defendants' violations of Section 226(a) against all aggrieved employees for the time period described above.

PRAAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment for himself and all others on whose behalf this suit is brought against Defendants, jointly and severally, 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;
4. Upon the First Cause of Action, for penalties pursuant to Section 226, and for costs and attorneys' fees;
5. Upon the Second Cause of Action, for penalties according to proof pursuant to Sections 226.3 and 2698 *et seq.*, and for costs and attorneys' fees;
6. On all causes of action for attorneys' fees and costs as provided by Sections 226 and 2698 *et seq.* and Code of Civil Procedure section 1021.5; and
7. For such other and further relief that the Court may deem just and proper.

DATED: August 10, 2020

DIVERSITY LAW GROUP, P.C.

By:

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