

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

BRISTOL FARMS,

Respondent

and

Case 21-CA-103030

KONNY RENTERIA,

Charging Party

JOINT MOTION TO ISSUE ORDER APPROVING PARTIES' SETTLEMENT

Respondent Bristol Farms and Region 21 of the National Labor Relations Board jointly move the Board to issue an Order approving the parties' settlement in the above captioned case and incorporating the terms of the parties' settlement. In support of their motion, the parties state as follows.

1. On October 7, 2014, Administrative Law Judge Lisa Thompson issued a decision finding that Bristol Farms violated Section 8(a)(1) of the Act by maintaining and enforcing a mutual agreement to arbitrate (MAA), and enforcing that agreement by moving to compel individual arbitration of the Charging Party's class-action lawsuit.
2. Thereafter, Bristol Farms filed with the Board a motion to approve unilateral settlement based on a proposed MAA that made it clear that entering into the MAA was entirely voluntary. On November 25, 2015, the Board issued a decision denying Bristol Farms' motion and holding that an arbitration agreement that precludes collective action in all forums is unlawful even if entered into

voluntarily, because it requires employees to prospectively waive their Section 7 right to engage in concerted activity.

3. On July 6, 2016, the Board issued a decision holding that Bristol Farms' MAA was unlawful because employees reasonably would construe the policy to restrict their access to the Board's processes. A divided Board panel also held that the MAA was unlawful because it requires employees to waive their rights to pursue class or collective actions involving employment-related claims.
4. On July 21, 2016, Bristol Farms filed a petition for review of the Board's decision with the United States Court of Appeals for the District of Columbia, and the Board filed a cross-application for enforcement. Thereafter the Board filed a motion with the Court of Appeals to stay the proceeding pending the Supreme Court's resolution of three cases that presented the issue of whether employer-employee agreements that contain class- and collective-action waivers requiring individualized arbitration violate Section 8(a)(1). The Court of Appeals granted the motion.
5. On May 21, 2018, the Supreme Court issued decisions in the three cases, including *Epic Systems Corp. v. Lewis*, No. 16-285, 2018 WL 2292444, holding that employers may lawfully maintain arbitration agreements that bar employees from concertedly pursuing work-related legal claims. On July 5, 2018, the Court of Appeals for D.C. Circuit granted the Board's motion to remove the instant case from abeyance, grant Bristol Farms' petition for review, deny the Board's cross-application for enforcement, and remand the case to the Board for further

proceedings. On July 13, 2018, the Board accepted the Court of Appeals' remand.

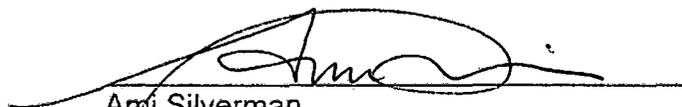
6. Thereafter, the case was placed in the Board's ADR program, through which the parties have now reached a full resolution of the case. Pursuant to the Settlement Agreement (attached), Bristol Farms has amended its MAA (Attachment A to Settlement Agreement) to more clearly state that it does not preclude employees from participating in Board processes. The MAA now provides, in relevant part, as follows: "Nothing herein shall prevent, prohibit, or discourage you from filing a charge or participating in an investigation of the National Labor Relations Board (NLRB), the Equal Employment Opportunity Commission (EEOC), or any other state or federal agency. Nothing in this Agreement interferes with your rights under the National Labor Relations Act."
7. Pursuant to the Settlement Agreement, Bristol Farms has agreed to post at its stores, and mail to all current employees and all former employees employed within 6 months of the signing of the Settlement Agreement, a copy of the revised MAA, a cover letter (Attachment B to Settlement Agreement) stating that the MAA has been amended to make clear that it does not prevent, prohibit, or discourage employees from filing charges with or participating in an investigation by the NLRB, and a Board Notice (Attachment C to Settlement Agreement) that states, among other things, that Bristol Farms will ensure that any future wording of the MAA will not cause employees reasonably to believe that the MAA restricts the right to file charges with the Board.

8. Bristol Farms' revisions to the MAA make explicit that it does not restrict access to the Board and its processes, and brings the MAA into full compliance with current Board law involving employer arbitration policies, as most recently set forth in *Prime Healthcare Paradise Valley*, 368 NLRB No. 10 (June 18, 2019).
9. Bristol Farms and Region 21 have agreed to be bound by the settlement, and although the Charging Party takes no position regarding the settlement, the settlement provides a full remedy under current Board law. The settlement is reasonable in light of the nature of the violations alleged, the risks inherent in litigation, and the stage of the litigation. None of the parties have engaged in fraud, coercion, or duress in reaching the settlement. Bristol Farms does not have a history of unfair labor practices, and it has not previously breached any settlements resolving unfair labor practice allegations. Therefore, approval of the parties' settlement is appropriate. See *Independent Stave*, 287 NLRB 740, 790 (1987). Accordingly, the parties request that the Board issue an Order approving the parties' Settlement Agreement and incorporating its terms, which provide for, among other things, court enforcement of the Board's Order as a final resolution of the case.

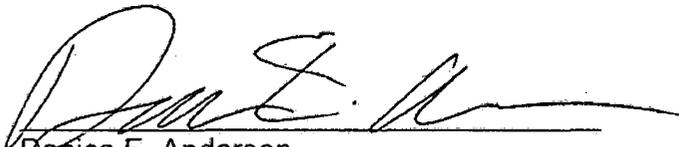
WHEREFORE, for the foregoing reasons, the Respondent and Region 21 respectfully request that the Board grant this motion and issue and Order approving the Settlement Agreement and incorporating its terms.

DATED at Los Angeles, California this 15th day of August 2019.

Respectfully submitted,



Ami Silverman
Counsel for the General Counsel
Region 21, National Labor Relations Board



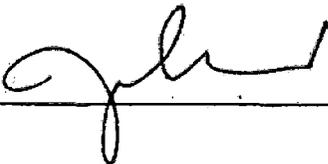
Denica E. Anderson
Constangy, Brooks, Smith & Prophete LLP
Attorneys for Bristol Farms

SETTLEMENT AGREEMENT

Bristol Farms and Region 21 of the National Labor Relations Board agree to settle all pending issues in Case No. 21-CA-103030 pursuant to the following terms:

1. Within thirty days of the Board's approval of this Settlement Agreement, Bristol Farms will mail copies of the revised Mutual Agreement to Arbitrate (Attachment A), accompanying letter (Attachment B), and signed Board Notice (Attachment C) to all current employees and all former employees employed within six months of the date of the signing of the Settlement Agreement. Within fourteen days of the mailing, Bristol Farms will provide Region 21 with the names and mailing addresses of the employees to whom those documents were mailed.
2. Within thirty days of the Board's approval of the Settlement Agreement, Bristol Farms will post at each of its stores copies of the revised Mutual Agreement to Arbitrate, accompanying letter, and signed Board Notice. The document posting will be maintained for sixty consecutive days in all places where notices to employees are customarily posted. Reasonable steps shall be taken by Bristol Farms to ensure that the posted documents are not altered, defaced, or covered by any other material.
3. Bristol Farms agrees that it will ensure that any future wording of its arbitration policy will not cause employees reasonably to believe that the policy restricts employees' right to file unfair labor practice charges with the Board, participate in an investigation by the Board, or to participate in other Board processes.
4. Upon signing of the Settlement Agreement, Bristol Farms and Region 21 will file a joint motion with the Board requesting that the Board issue an unpublished Order approving the parties' Settlement Agreement and incorporating its terms. Upon issuance of the Board's Order, the United States Court of Appeals for any appropriate circuit may, on application of the Board, enter its judgment enforcing the Order of the Board as the resolution of the case.

Bristol Farms

By:  8/13/2019
DATE

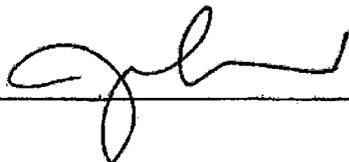
Region 21, National Labor Relations Board

By:  8/7/2019
DATE

CONFIDENTIALITY AGREEMENT

1. Pursuant to the Settlement Agreement between Bristol Farms and Region 21 of the National Labor Relations Board in Case No. 21-CA-103030, Bristol Farms has agreed to mail to all current employees and all former employees employed within six months of the date of the signing of the Settlement Agreement copies of Bristol Farm's revised Mutual Agreement to Arbitrate, accompanying letter, and signed Board Notice (Attachments A, B, and C to the Settlement Agreement, respectively). Bristol Farms has also agreed, pursuant to the Settlement Agreement, to provide Region 21 with the names and mailing addresses of those employees to whom those documents were mailed so that Region 21 can confirm that Bristol Farms has met its mailing obligation.
2. The Compliance Officer for Region 21 will retain custody of the documents provided by Bristol Farms containing the employees' names and addresses, and Region 21 will take reasonable steps to ensure that access to such documents and any copies of such documents is limited to Agency personnel involved in reviewing Bristol Farm's compliance with its mailing obligation.
3. To the extent authorized by the Federal Records Act, 44 U.S.C. 3101 et seq., and other applicable federal laws and regulations, all documents provided by Bristol Farms containing employee names and addresses and any copies thereof will be returned to Bristol Farms or destroyed upon the completion of Region 21's investigation of whether Bristol Farms has met its mailing obligation.
4. Region 21 will not voluntarily provide to any person outside the Agency, any law firm, or any other entity documents provided by Bristol Farms containing employee names and addresses or copies of any such documents.
5. Region 21 will promptly notify Bristol Farms if a motion or other action is filed in court seeking disclosure from Region 21 of documents provided by Bristol Farms containing employee names and addresses, so that Bristol Farms can file an appropriate pleading to defeat the motion or action or seek a protective order.

Bristol Farms

By:  _____ 9/13/2019
DATE

Region 21, National Labor Relations Board

By:  _____ 8/7/2019
DATE



Mutual Agreement To Arbitrate

Equal Opportunity Employer

It is in the interest of Bristol Farms and its employees that, whenever possible, disputes relating to employment matters be resolved quickly and fairly. Should any matter remain unresolved, and in consideration of the promises below and your employment with Bristol Farms, you and Bristol Farms agree as follows:

You and Bristol Farms agree that final and binding arbitration shall be the exclusive remedy for any dispute between you and Bristol Farms, except for claims for Workers' Compensation, Unemployment Compensation, or any other claim that is non-arbitrable under applicable state or federal law. Thus, except for the claims carved out above, this Agreement includes all common-law and statutory claims, including, but not limited to, any claim for breach of contract, unpaid wages, wrongful termination, and for violation of laws forbidding discrimination, harassment, and retaliation on the basis of race, color, religion, gender, age, national origin, disability, and any other protected status. Nothing herein shall prevent, prohibit, or discourage you from filing a charge with or participating in an investigation of the National Labor Relations Board (NLRB), the Equal Employment Opportunity Commission (EEOC), or any other state or federal agency. Nothing in this Agreement interferes with your rights under the National Labor Relations Act. You understand that you are giving up no substantive rights, and this Agreement simply governs forum.

Arbitration under this Agreement shall be before a single arbitrator in the county in which the dispute arose and will be administered in accordance with the applicable arbitration rules and procedures of the American Arbitration Association (AAA) (except where the AAA rules are contrary to applicable state or federal law) and California Code of Civil Procedure § 1280 *et seq.* Bristol Farms shall pay all costs uniquely attributable to arbitration, including the administrative fees and costs of the arbitrator (unless you voluntarily opt to pay up to one-half of those fees and expenses yourself). Each party shall pay their own costs and attorneys' fees, if any, unless the arbitrator rules otherwise. If the law applicable to the claim(s) being arbitrated, or any agreement, affords the prevailing party attorneys' fees and costs, then the arbitrator shall apply the same standards a court would apply to award such attorneys' fees and/or costs. You shall not be required to pay any fee or cost that you would not be required to pay in a state or federal court action.

If the parties cannot agree on an arbitrator, then the AAA rules will govern selection. The arbitrator's award is to be in writing, with reasons given and evidence cited for the award. Any court of competent jurisdiction may enter judgment upon the award, either by (i) confirming the award or (ii) vacating, modifying, or correcting the award on any ground referred to in the Federal Arbitration Act or California Code of Civil Procedure § 1286 *et seq.*

This Agreement shall not be construed to create a contract of continued employment and in no way alters your status as an employee at will, permitting either you or Bristol Farms to terminate your employment at any time, with or without cause or advance notice. This Agreement can be modified only by a writing signed by you and the Chief Executive Officer of Bristol Farms, referencing this Agreement and stating an intent to

revoke or modify it. The provisions of this Agreement are severable, and if any provision is determined to be unenforceable, then the remaining provisions shall remain in full effect.

BY SIGNING THIS AGREEMENT, YOU AND THE COMPANY ACKNOWLEDGE THAT THE RIGHT TO A COURT TRIAL AND TRIAL BY JURY IS OF VALUE, AND KNOWINGLY AND VOLUNTARILY WAIVE SUCH RIGHT FOR ANY DISPUTE SUBJECT TO THE TERMS OF THIS AGREEMENT.

Date _____

Employee Signature

Company Signature

Name (Print)

Name and Title

ATTACHMENT B

Date

E C

Employee Address

Re: *Mutual Agreement to Arbitrate*

Dear Current/Former Employee:

During your orientation, you were presented with a Mutual Agreement to Arbitrate (“MAA”) that offered you the option of submitting any disputes between you and Bristol Farms/Lazy Acres Natural Markets (the “Company”) to binding arbitration, with certain exceptions. If you signed the MAA, this letter pertains to you.

The Company would like to make it clearer to you that the MAA you signed does not prevent, prohibit, or discourage you from filing charges with or participating in an investigation of the National Labor Relations Board (“NLRB”). The Company has also revised the MAA to make it even clearer to employees signing it now and in the future that it does not prevent, prohibit, or discourage them from filing charges with or participating in an investigation of the NLRB. A copy of the revised MAA is enclosed for your review.

Please note, you are not required to take any action with respect to the enclosed mutual agreement to arbitrate.

If you have any questions relating to this matter, please do not hesitate to contact me at (310) 233-4747.

Sincerely,

Joseph Reichard
Vice President of Human Resources

Enclosure



NOTICE TO EMPLOYEES



POSTED PURSUANT TO A SETTLEMENT BETWEEN BRISTOL FARMS AND THE NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

The National Labor Relations Board and Bristol Farms have entered into a settlement agreement resolving unfair labor practice charges filed with the Board. This Notice is posted pursuant to that agreement.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT and have not maintained an arbitration agreement that is intended to bar or restrict employees' right to file charges with the National Labor Relations Board.

WE WILL NOT interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE HAVE revised the arbitration agreement to make it clearer that the agreement does not bar or restrict your right to file charges with the National Labor Relations Board, and will ensure that any future wording of the agreement would not cause employees reasonably to believe that the agreement bars or restricts the right to file charges.

WE WILL notify all current employees and former employees employed during the 6 months prior to the signing of the aforementioned settlement agreement that the arbitration agreement has been revised, and **WE WILL** provide them with a copy of the revised agreement.

BRISTOL FARMS/LAZY ACRES NATURAL MARKET
Employer

Dated _____

By: _____
(Representative) (Title)

Si quiere, puede hablar con un agente de la Junta Nacional de Relaciones del Trabajo en confianza. [A Board agent who speaks Spanish can be made available to speak with you in confidence.]
La página electrónica de red de la Junta Nacional de Relaciones del Trabajo también tiene información en español: www.nlr.gov [Information in Spanish is also available on the Board's website: www.nlr.gov]

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov and the toll-free number (844) 762-NLRB (6572).

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer,

National Labor Relations Board
312 North Spring Street, 10th Floor
Los Angeles, CA 90012

Telephone: (213) 894-5254
Hours of Operation: 8:30 a.m. to 5:00 p.m.

STATEMENT OF SERVICE

I hereby certify that a copy of **Joint Motion to Issue Order Approving Parties' Settlement** has been submitted by E-filing to the Executive Secretary of the National Labor Relations Board, on August 15, 2019.

The following parties were served with a copy of said document by e-mail, on August 15, 2019.

Denica E. Anderson, Senior Counsel
Constangy, Brooks, Smith & Prophete, LLP
danderson@constangy.com

Matthew W. Gordon, Attorney at Law
Matern Law Group
mgordon@maternlawgroup.com

Respectfully submitted,



Aide Carretero
Secretary to the Regional Director
National Labor Relations Board, Region 21