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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-UOE-2020-0006547

[Assigned for all purposes to Department 10C,
Hon. Jayne Lee]

**[PROPOSED] ORDER GRANTING
MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

*[Filed concurrently with Notice of Motion and
Motion for Preliminary Approval of Class Action
Settlement; Declaration of Larry W. Lee;
Declaration of Simon L. Yang; Declaration of
William L. Marder; Declaration of Steve Miller;
[Proposed] Order]*

Date: May 17, 2022, May 18, 2022,
May 19, 2022, May 20, 2022,
or May 24, 2022

Time: 9:00 a.m.
Department: 10C

Complaint Filed: August 10, 2020

Plaintiff's motion for an Order Granting Preliminary Approval of Class Action Settlement was filed with the Court on or about April 19, 2022, and a hearing was held before this Court on May , 2022. Simon L. Yang of Diversity Law Group, P.C. appeared on behalf of Plaintiff, Steve Miller, and Rebecca Aragon of Littler Mendelson, P.C. appeared for Defendant, Berry Global, Inc.

I. RECITALS

1. On or about August 10, 2020, Plaintiff initiated this class and representative Labor Code Private Attorneys General Act of 2004 ("PAGA") action alleging violations of Labor Code section 226(a).¹ On behalf of current and former non-exempt employees in California who were paid overtime wages or shift differential wages, and as a proxy for the State of California, the Complaint alleges that Defendant violates Section 226(a) by issuing wage statements that do not accurately itemize and show (i) the overtime rate as 1.5 times the regular rate of pay and (ii) the total hours worked whenever employees are paid either overtime or shift differentials.

2. On July 14, 2021, the Parties commenced settlement negotiations through a mediator, Tripper Ortman. The Parties were able to negotiate the settlement terms in the Stipulation re: Settlement of Class Action (the "Agreement").

II. FINDINGS

3. The Court conditionally certifies the following Class: all current or former non-exempt employees of Defendant, Berry Global, Inc., in the State of California who were paid overtime wages or shift differential wages at any time during the Class Period, except for *Gonsales v. Berry Global Films, LLC* settlement class members, who exclusively received such payments before December 21, 2020. The Class Period is from April 9, 2019, through April 1, 2022.

4. The Court hereby approves the terms and conditions provided for in the Agreement. The Court finds that on a preliminary basis the Agreement falls within the range of reasonableness of a settlement and appears to be presumptively valid, subject to any objections that may be raised at the final fairness hearing and subject to final approval by the Court. It appears to the Court on a preliminary basis that the settlement is fair, adequate, and reasonable as to all potential Class Members when

¹ Except as otherwise noted, all "Section" references are to the Labor Code.

1 balanced against the uncertain outcome of further litigation relating to liability and damages issues. It
2 also appears that investigation, research, and proceedings have been conducted so that counsel for the
3 Parties are able to reasonably evaluate their respective positions. It appears to the Court that settlement
4 at this time will avoid substantial additional costs by all Parties, as well as avoid the delay and risks that
5 would be presented by the further prosecution of the action. It also appears that settlement has been
6 reached as a result of intensive, serious, and non-collusive arms-length negotiations.

7 **III. ORDERS**

8 After considering the papers and evidence, arguments of counsel, and all other matters presented
9 to the Court, and having taken the matter under submission, **IT IS HEREBY ORDERED** as follows:

10 5. The Court grants preliminary approval of the Agreement submitted by the Parties. The
11 Agreement appears to be fair, adequate, and reasonable to the Class.

12 6. The Court appoints and designates: (a) Plaintiff, Steve Miller, as Class Representative,
13 and (b) Larry W. Lee and Simon L. Yang of Diversity Law Group, P.C., and William L. Marder of
14 Polaris Law Group as Class Counsel for the Class. Class Counsel is authorized to act on behalf of the
15 Class with respect to all acts or consents required by, or which may be given, pursuant to the
16 Agreement, and such other acts reasonably necessary to finalize the Agreement and its terms. Any Class
17 Member may enter an appearance through his or her own counsel at such Class Member's own expense.
18 Any Class Member who does not enter an appearance or appear on his or her own behalf will be
19 represented by Class Counsel.

20 7. A final fairness hearing on the question of whether the proposed Agreement, the
21 allocation of payments to Class Members, attorneys' fees and costs to Class Counsel, the payment to the
22 Labor & Workforce Development Agency, and the Class Representative Award should be finally
23 approved as fair, reasonable, and adequate as to the members of the Class is set for
24 _____, 2022, at _____ in this Court.

25 8. The Court hereby approves, as to form and content, the Notice of Class Action Settlement
26 ("Class Notice"), which is attached as Exhibit A to the Agreement and this Order. The Court finds that
27 distribution of the Class Notice to Class Members substantially in the manner and form set forth in the
28

1 Agreement and this Order meets the requirements of due process and shall constitute due and sufficient
2 notice to all parties entitled thereto.

3 9. The Court appoints and designates Phoenix Settlement Administrators as the
4 Administrator. The Court hereby directs the Administrator to provide the approved Class Notice to Class
5 Members using the procedures set forth in the Agreement.

6 10. Any Class Member may choose to opt out of and be excluded from the settlement as
7 provided in the Agreement and Class Notice and by following the instructions for requesting exclusion.
8 Any person who timely and properly opts out of the settlement will not be bound by the Agreement or
9 have any right to object, appeal, or comment thereon. Any request for exclusion must be in writing and
10 signed by each such Class Member opting out and must otherwise comply with the requirements
11 delineated in the Class Notice. Class Members who have not requested exclusion by submitting a valid
12 and timely request for exclusion shall be bound by all determinations of the Court, the Agreement, and
13 Judgment.

14 11. Any Class Member may object to the Agreement or express his or her views regarding
15 the Agreement. Any Class Member may present evidence and file briefs or other papers relevant to the
16 issues to be heard and determined by the Court as provided in the Class Notice.

17 12. A Motion for Final Approval shall be filed by the Class Representatives no later than
18 sixteen (16) court days before the final fairness hearing.

19 13. The Court reserves the right to adjourn or continue the date of the final fairness hearing
20 and all dates provided for in the Agreement without further notice to the Class. The Court retains
21 jurisdiction to consider all further applications arising out of or connected with the Agreement.

22 14. Should for whatever reason final approval is not granted, the fact that the Parties were
23 willing to stipulate to certification of a class as part of the settlement shall have no bearing on the issue
24 of whether a class should be certified in a non-settlement context.

25 **IT IS SO ORDERED.**

26 DATED: _____, 2022

27 _____
THE HONORABLE JAYNE LEE