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Attorneys for Plaintiff and the Class

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]

**DECLARATION OF SIMON L. YANG IN
SUPPORT OF PLAINTIFF'S 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 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

1 I, Simon L. Yang, declare as follows:

2 1. I am an attorney admitted to practice in the State of California and, with the law firm
3 Diversity Law Group, P.C., am counsel of record for Plaintiff. I make this declaration on the basis of my
4 own personal knowledge, except as to those matters stated on information and belief and, as to those
5 matters, I believe them to be true. If called as a witness, I could testify competently as to the facts stated
6 in this declaration.

7 2. On August 10, 2020, Plaintiff initiated this class and representative Labor Code Private
8 Attorneys General Act of 2004 (“PAGA”) action alleging violations of Section 226(a).¹ On behalf of
9 current and former non-exempt employees in California who were paid overtime wages or shift
10 differential wages, and as a proxy for the State of California, the Complaint alleges that Defendant
11 violates Section 226(a) in at least two ways: *First*, whenever Plaintiff and the Class are paid overtime,
12 Defendant issues wage statements that do not accurately itemize and show the overtime rate as 1.5 times
13 the regular rate of pay. *Second*, whenever Plaintiff and the Class are paid either overtime or shift
14 differentials, Defendant issues wage statements that do not accurately itemize and show the total hours
15 worked.

16 3. From the outset of the litigation, the Parties thoroughly investigated the facts relating to
17 the claims alleged in the Complaint and engaged in a thorough study of the legal principles applicable to
18 the claims Plaintiff alleged and defenses Defendant asserted. Plaintiff served formal discovery, and
19 Defendant provided information related to defenses that Defendant alleged would apply to Plaintiff’s
20 claims, including information relating to a class action settlement in *Gonsales v. Berry Global Films,*
21 *LLC*. After approximately six months of litigation, Defendant agreed to schedule a mediation. Defendant
22 provided Plaintiff the numbers of non-exempt employees and wage statements for a substantial portion
23 of the period relevant to Plaintiff’s allegations and Defendant’s defenses, among other things.

24 4. On July 14, 2021, the Parties commenced settlement negotiations through a well-
25 respected mediator, Tripper Ortman. Following the mediation, the Parties were ultimately able to
26 negotiate the settlement terms in the Stipulation re: Settlement of Class Action (the “Agreement”), a true
27

28

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

1 and correct copy of which is attached as **Exhibit 1**. Pursuant to the Agreement's terms, Defendant
2 reserved the option to resolve claims from April 9, 2022, through either July 14, 2021, or a later date. On
3 April 12, 2022, Defendant informed Plaintiff that it would extend the Class Period through April 1,
4 2022, to resolve claims for approximately 9,003 additional wage statements. I thus am informed and
5 believe that Defendant has elected to augment the Agreement's minimum Gross Settlement Amount of
6 \$682,724.00 by an additional \$333,111 (for an additional 9,003 wage statements at \$37.00 per wage
7 statement) and that there are approximately 1,000 class members.

8 5. Although I am confident that litigation of the claims would result in a classwide judgment
9 against Defendant, I recognize the inherent risks in litigation, including the specific risks that class
10 certification could be denied, liability could not be established at trial, or the applicable law could
11 change. I recognize that the settlement resulting from extensive arm's length negotiations between the
12 Parties is fair, reasonable, and adequate for each participating Class Member, given the inherent risks of
13 litigation, as well as the potential for appeals and the costs of pursuing litigation. The Parties engaged in
14 a thorough study of the legal principles and facts applicable to the claims Plaintiff alleged and defenses
15 Defendant might assert. Defendant contested the merits and denied it was liable for any penalties.
16 Moreover, even if Defendant violated Section 226(a), Defendant contested the extent of liability. For
17 example, Defendant contended that PAGA penalties would be subject to discretionary reductions and
18 that liability under Section 226(e) would be subject to additional defenses requiring proof of injuries
19 resulting from knowing and intentional violations. While the Parties disagree on the application of the
20 law to the facts, each Party recognized in negotiations that, if taken to trial, the other Party would at least
21 have reasonable arguments, such that the Gross Settlement Amount to which the Parties ultimately
22 agreed was reasonable.

23 6. The Gross Settlement Amount secures approximately \$37 per wage statement—more
24 than one third of Defendant's potential liability for penalties not subject to discretionary reductions.
25 Based on the requested payments contemplated by the Agreement, it is expected that more than
26 \$590,000 would be available for distribution to Class Members (*after* accounting for all requested
27 payments from the Gross Settlement Amount). Based on the anticipated 1,000 Class Members, **each**
28 **Class Member, on average, would receive almost \$600 (or \$590.29)** pursuant to the settlement's

1 terms. The amount paid on average to each Class Member may increase, depending on how many Class
2 Members opt out of the class action settlement. The amount actually paid to any Class Member may
3 increase or decrease depending on his or her number of relevant wage statements during the Class
4 Period.

5 7. Contrary to the Agreement's terms regarding the principal for any uncashed checks that
6 expire, the Class Notice informs Class Members that the principal for any uncashed checks (upon the
7 expiration date) would escheat to the State Controller Unclaimed Property Fund in the name of the
8 Settlement Class Member. Any inconsistency in the Agreement is inadvertent, and the Parties intend for
9 the principal to escheat as the Class Notice describes.

10 8. I am one of the primary attorneys on this matter. My qualifications are as follows: After
11 completing my undergraduate education at The Wharton School at the University of Pennsylvania in
12 2004 with concentrations in Management and Human Resources, I continued studying labor and
13 employment issues by enrolling in post-graduate education at the School of Labor and Employment
14 Relations at the University of Illinois. I determined before enrolling in law school that I wanted to
15 practice labor and employment law in California. I thus received my J.D. from UCLA School of Law in
16 2008. During law school, I spent the summer of 2006 with the National Labor Relations Board, Region
17 21, and the summer of 2007 with the law firm of Seyfarth Shaw LLP in 2007.

18 9. Upon graduating from law school in 2008, I practiced labor and employment law at
19 Seyfarth Shaw LLP, a well-regarded labor and employment firm. I was elevated to partner in 2019. My
20 practice focused on wage and hour class, collective, and representative actions, with a particular
21 emphasis on PAGA matters. During my time with Seyfarth Shaw LLP, I was a primary attorney on
22 numerous wage and hour class, collective, and representative actions that resulted in published opinions,
23 including for example, *Ehret v. WinCo Foods, LLC*, 26 Cal. App. 6th 1 (2018) (affirming summary
24 judgment in PAGA action based on absence of meal period violations in light of collectively bargained
25 waiver of meal periods on shifts of not more than six hours), and *Ruelas v. Costco Wholesale*
26 *Corporation*, 67 F. Supp. 3d 1137 (C.D. Cal. Sept. 8, 2014) (obtaining dismissal of wage statement
27 allegations in PAGA representative action). I was also able to obtain experience litigating representative
28 claims or wage and hour matters through trial and appeal. *E.g., Velazquez v. Costco Wholesale*

1 *Corporation*, 603 Fed. App'x 584 (9th Cir. Mar. 25, 2015) (reversing award of waiting-time penalties
2 based on lack of evidence supporting any willful failure to pay wages); *Ward v. Costco Wholesale*
3 *Corporation*, 552 Fed. App'x 631 (9th Cir. Jan. 9, 2014) (affirming bench-trial judgment in favor of
4 defendant against named plaintiff and 18 opt-in plaintiffs in collective action with involving deductions
5 from final paychecks). I also litigated class certification on numerous matters. *E.g.*, *Martinez v. Guess?*,
6 *Inc.*, Los Angeles Superior Court Case No. BC 498326 (denial of class certification on behalf of retail
7 employees alleging off-the-clock work).

8 10. Based on my experience in wage and hour class, collective, and representative actions, I
9 have been interviewed and quoted in articles published in the Northern California Record about
10 legislative efforts to reform PAGA. I also have published articles on myriad topics relevant to wage and
11 hour class and representative action litigation, including for example articles on California kin care
12 requirements in *Employee Relations Law Journal* (Vol. 36, No. 2), the extraterritorial application of
13 California employment laws in *The Recorder* (134RD Year No. 28), and California meal and rest break
14 laws in *California Transportation News*, a publication of the California Construction Trucking
15 Association.

16 11. In 2020 I left Seyfarth Shaw LLP and joined my current firm, Diversity Law Group, P.C.,
17 which also focuses primarily on employment law. I have handled a number of wage and hour class and
18 representative actions and continue litigating such matters in numerous Superior Courts and District
19 Courts. From matters with both Seyfarth Shaw LLP and Diversity Law Group, P.C., I have successfully
20 mediated the resolution of dozens of wage and hour class, collective, and representative actions. I have
21 obtained class certification and been appointed class counsel. No court has ever found me to be
22 inadequate class counsel.

23 12. My co-counsel and I will adequately represent the Class Members in this action.
24 Plaintiff's Counsel have and will zealously represent Plaintiff and the Class and pursue this lawsuit to its
25 conclusion.

26 13. Along with the filing of the motion for preliminary approval of the settlement in this
27 matter, my regular practice would be to direct my office staff to similarly upload a copy of the motion
28 papers to the Labor and Workforce Development Agency ("LWDA") in compliance with Section

1 2699(1)(2) and (4). Similarly, upon approval of a settlement in this matter, my regular practice would be
2 to direct my office staff to similarly upload a copy of the Court's judgment, papers, or other orders
3 awarding civil penalties under PAGA.

4 2. I understand that the attorneys' fees awarded in this action will be split 65% to Diversity
5 Law Group, P.C. and 35% to Polaris Law Group.

6 I declare under penalty of perjury under the laws of the State of California that the foregoing is
7 true and correct. Executed this 19th day of April 2022, at Pasadena, California.

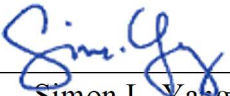
8
9 
Simon L. Yang

EXHIBIT 1

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Attorneys for Plaintiffs and the Class

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN JOAQUIN

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

Plaintiffs,

v.

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

Defendants.

Case No. STK-CV-UOE-2020-6547

ASSIGNED FOR ALL PURPOSES TO JUDGE
JAYNE LEE, DEPT 10C

**STIPULATION RE: SETTLEMENT OF
CLASS ACTION**

Trial Date: Not Set
Complaint Filed: August 10, 2020

1 IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff Steven Miller
2 (as Class Representative) ("Plaintiff"), on behalf of himself and all others similarly situated to him
3 and as defined below, on the one hand, and Defendant Berry Global, Inc. (herein "Berry Global"),
4 (Plaintiff and Berry Global are herein jointly referred to as "Parties") on the other hand, as set forth
5 below:

6 **I. THE CONDITIONAL NATURE OF THIS STIPULATION.**

7 This Stipulation re: Settlement of Class Action, including all associated exhibits or
8 attachments (herein "Stipulation"), is made for the sole purpose of attempting to consummate
9 settlement of this action on a class-wide basis. This Stipulation and the settlement it evidences are
10 made in compromise of disputed claims. Because this is a class action, this settlement must receive
11 preliminary and final approval from the Court. Accordingly, the Parties enter into this Stipulation and
12 associated settlement on a conditional basis. In the event that the Court does not execute and file the
13 Order Granting Final Approval of Settlement, or in the event that the Court does not enter the
14 Judgment, or in the event that the associated Judgment does not become Final for any reason, this
15 Stipulation shall be deemed null and void *ab initio*, it shall be of no force or effect whatsoever, it shall
16 not be referred to or utilized for any purpose whatsoever, and the negotiation, terms and entry of it
17 shall remain subject to the provisions of California Evidence Code sections 1119 and 1152.

18 Berry Global denies all of the claims as to liability, damages, penalties and restitution
19 as well as the class and/or representative allegations asserted in the Litigation. Berry Global has agreed
20 to resolve this Litigation via this Stipulation, but to the extent this Stipulation is deemed void or does
21 not take effect, Berry Global does not waive, but rather expressly reserves, all rights to challenge all
22 such claims and allegations in the Litigation upon all procedural and factual grounds, including
23 without limitation the ability to challenge class or representative treatment on any grounds or to assert
24 any and all defenses or privileges. Plaintiff and Class Counsel agree that Berry Global retains and
25 reserves these rights, and agree not to take a position to the contrary; specifically, the Class
26 Representative and Class Counsel waive, and agree not to argue or present, any argument that Berry
27 Global could not contest class certification or representative status on the grounds that Berry Global
28 entered into this Stipulation should this Litigation proceed. In particular, Plaintiff and Class Counsel

1 waive, and agree not to argue or present, any argument that Berry Global would be estopped from
2 asserting that Plaintiff's claims must be litigated on an individual basis or in any other way contesting
3 class certification because it has entered this Stipulation. In addition, the Settling Parties recognize
4 and agree that under California law (which is applicable here), courts impose a lesser burden for
5 certification for settlement classes than they do for contested or litigated classes, and the Settling
6 Parties have agreed to certification for settlement purposes only.

7 **II. THE PARTIES TO THIS STIPULATION.**

8 This Stipulation (with the associated exhibits) is made and entered into by and among
9 the following Settling Parties: (i) Plaintiff Steven Miller (on behalf of himself and each of the Class
10 Members), with the assistance and approval of Class Counsel; and (ii) Berry Global, with the
11 assistance of its counsel of record in the Litigation. The Stipulation is intended by the Settling Parties
12 to result in the final resolution with prejudice of the Litigation pursuant to the Judgment and to fully,
13 finally and forever resolve, discharge and settle the Released Claims upon and subject to the terms and
14 conditions herein.

15 **III. THE LITIGATION.**

16 Plaintiff Steven Miller filed an action against Berry Global on August 10, 2020 in the
17 Superior Court of California, County of San Joaquin alleging claims under Labor Code section 226(a)
18 and Labor Code section 2698 *et seq.* ("PAGA"). Plaintiff is represented by Diversity Law Group, P.C.
19 and Polaris Law Group. On behalf of himself and others similarly situated to him, Plaintiff has alleged
20 in the Lawsuit that certain formats of wage statements which were issued by Berry Global to a Class
21 Member during the Class Period did not contain all of the elements required by California law.

22 Counsel for the parties attended a mediation session before professional mediator
23 Tripper Ortman on July 14, 2021. As a result of that mediation session, the parties have now reached
24 a class-wide settlement agreement.

25 Berry Global maintains that at all times relevant, it provided employees with accurate
26 and legally compliant wage statements and all other records as mandated by law, and has otherwise
27 complied with federal and California law in all aspects.

28 In connection with the Litigation, Berry Global provided Plaintiff and his counsel with

1 relevant documents, in addition to data relating to the number of allegedly deficient pay stubs and
2 number of putative class members. In sum, Plaintiff and his counsel had more than sufficient
3 information to assess this matter.

4 **IV. DEFENDANT'S DENIAL OF WRONGDOING OR LIABILITY.**

5 Berry Global Releasees deny all of the claims and contentions alleged by the Class
6 Representative in the Litigation. Nonetheless, Berry Global has concluded that further conduct of the
7 Litigation would be protracted and expensive, and that it is desirable that the Litigation be fully and
8 finally settled in the manner and upon the terms and conditions set forth in this Stipulation. Berry
9 Global has also taken into account the uncertainty and risks inherent in any litigation, especially in
10 putative class actions like this Litigation. Berry Global has therefore determined that it is desirable
11 and beneficial to Berry Global that the Litigation be settled in the manner and upon the terms and
12 conditions set forth in this Stipulation.

13 **V. CLAIMS OF PLAINTIFF AND BENEFITS OF SETTLEMENT.**

14 Plaintiff believes that the claims asserted in the Litigation have merit and that evidence
15 developed to date supports the claims. Nonetheless, Plaintiff and Class Counsel recognize and
16 acknowledge the expense and length of the type of continued proceedings necessary to prosecute the
17 Litigation against Berry Global through trial and through appeals. Plaintiff and Class Counsel have
18 also taken into account the uncertain outcome and the risk of any litigation, especially in putative class
19 actions such as this Litigation, as well as the difficulties and delays inherent in such litigation. Plaintiff
20 and Class Counsel believe that the settlement set forth in the Stipulation confers substantial benefits
21 upon the Class. Based upon their evaluation, Plaintiff and Class Counsel have determined that the
22 settlement set forth in the Stipulation is in the best interests of Plaintiff and the Class.

23 **VI. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT.**

24 NOW, THEREFORE, IT IS HEREBY FURTHER STIPULATED AND AGREED by
25 and between Plaintiff (for himself and the Class Members) and Berry Global, with the assistance of
26 their respective counsel of record, that, as among the Settling Parties, including all Settlement Class
27 Members, the Litigation and the Released Claims shall be finally and fully compromised, settled and
28 released, and the Litigation shall be resolved with prejudice, as to all Settling Parties, upon and subject

1 to the terms and conditions of the Stipulation and the Judgment.

2 **1. Definitions.**

3 As used in all parts of this Stipulation (including the exhibits which are part of the
4 Stipulation), the following terms have the meanings specified below:

5 1.1 “Berry Global” means Berry Global, Inc., a Delaware corporation and
6 the defendant in the Litigation, *i.e.*, the employer of the present and former employees who comprise
7 the Class.

8 1.2 “Berry Global Releasees” or “The Berry Global Releasees” means
9 Berry Global and each of its members and affiliates (including without limitation parents and
10 subsidiaries), predecessors, successors, divisions, investors, joint ventures and assigns, any benefit
11 plan maintained by any of them and the trustees, fiduciaries, and administrators of any such plan, and
12 each and all of these entities’ past or present directors, officers, employees, agents, partners, members,
13 principals, insurers, co-insurers, re-insurers, shareholders, attorneys, advisors, associates, and legal
14 representatives.

15 1.3 “Administrator” means the third-party settlement administration firm of
16 Phoenix Settlement Administrators.

17 1.4 “Class” means the collective group of all current and former non-
18 exempt employees of Berry Global in the State of California who were paid overtime wages or shift
19 differential wages at any time during the Class Period, except for *Gonsales v. Berry Global Films,*
20 *LLC* Settlement Class Members who exclusively received overtime wages or shift differential wages
21 from Berry Global before December 21, 2020.

22 1.5 “Class Counsel” or “Plaintiffs’ Counsel” means Diversity Law Group
23 and Polaris Law Group.

24 1.6 “Class Member” means a person who is a member of the Class.

25 1.7 “Class Period” means the period from April 9, 2019 through July 14,
26 2021, unless Berry Global elects to extend the Class Period pursuant to Paragraph 1.11 below. If
27 Berry Global elects to Extend the Class Period, Berry Global shall choose a date after July 14, 2021,
28 up to the Preliminary Approval Date, as the date the Class Period ends.

1.8 “Class Representative” or “The Class Representative” means Steven Miller in his capacity as the representative of the Class.

1.9 “Court” means the Superior Court of the State of California for the County of San Joaquin.

1.10 “Effective Date” means the date on which the Judgment becomes Final.

1.11 “Extend the Class Period” means Defendant’s sole option, in its discretion, to set the end of the Class Period to a date after July 14, 2021, up to the Preliminary Approval Date. If Defendant does so, Defendant shall pay an additional thirty-seven dollars (\$37.00) for each Relevant Wage Statement included in the Class Period between July 14, 2021 and the end of the Class Period.

1.12 “Final” means the latest of the following dates: (a) if no objections to the settlement are filed, the date the Final Approval Order is signed by the Court; (b) if objections to the settlement are filed, the day following the expiration of the time for the filing of an appeal of the Final Approval Order; or (c) if any appeals of the Final Approval Order are filed, the day following the expiration of time to further appeal an order affirming the Final Approval Order.. No payment will be made by Berry Global prior to ten business days after the Effective Date.

1.13 “*Gonsales v. Berry Global Films, LLC* Settlement Class Members” means members of the Class who were also members of the settlement class in *Gonsales v. Berry Global Films, LLC*, San Bernardino County Superior Court Case No. CIVDS1928987, which released claims asserted herein for certain Class Members through December 21, 2020. All claims or liability released in *Gonsales v. Berry Global Films, LLC* shall be excluded from the settlement of this Litigation.

1.14 “Gross Settlement Amount” shall mean the maximum total amount that can be paid by Berry Global pursuant to this Stipulation. It is agreed that the Gross Settlement Amount is \$682,724.00 (six hundred eighty-two thousand seven hundred twenty-four United States dollars and zero cents), subject to the following: If the actual total number of Relevant Wage Statements worked by Class Members between April 9, 2019 and July 14, 2021, exceeds the estimated number of Relevant Wage Statements (18,452) by more than 5%, the Gross Settlement Amount with respect to that time

period will increase proportionally on a pro rata basis to cover the number of Relevant Wage Statements exceeding 18,452 by more than 5% (i.e., if the number of Relevant Wage Statements between April 9, 2019, and July 14, 2021, exceeds 19,375, then the Gross Settlement Amount would be proportionally increased by the same percentage). Except as here stated, it is further agreed that pursuant to the terms of this Stipulation, Berry Global will not pay more than the Gross Settlement Amount unless it elects to Extend the Class Period, in which case the Gross Settlement Amount will increase by thirty-seven dollars (\$37.00) for each additional Relevant Wage Statement after July 14, 2021. Under no other circumstances shall Defendant be liable for more than the Gross Settlement Amount, which shall cover all expenses associated with the settlement, which shall be only the following items: (1) the Payments to Class Members, which is the maximum amount that Berry Global will pay (subject to the occurrence of the Effective Date and the minimum payment provision in Paragraph 1.38) to Class Members; (2) the maximum total gross amount Berry Global will pay (subject to the occurrence of the Effective Date) to Class Counsel for attorneys' fees, which is up to a maximum of 35% of the Gross Settlement Amount; (3) up to \$20,000.00 in Class Counsel litigation costs and expenses; (4) the maximum total gross amount Berry Global will pay (subject to the occurrence of the Effective Date) to Steven Miller as a plaintiff enhancement, which is up to a maximum of \$10,000.00; (5) the fees Berry Global will pay the Administrator for the settlement administration, which are estimated to be approximately \$10,000.00; and (6) the maximum total gross amount Berry Global will pay (subject to the occurrence of the Effective Date) for resolution of claims under California Labor Code section 2698 et seq. which shall be \$40,000.00, with 75% of said amount to be paid to the California Labor and Workforce Development Agency and 25% of said amount to be reallocated into the Net Settlement Amount.

1.15 "Judgment" means the judgment to be rendered by the Court pursuant to this Stipulation. This Judgment shall be a judgment for purposes of California Rule of Court 3.771(a).

1.16 "Last Known Address" means the most recently recorded mailing address for a Class Member as contained in the personnel records maintained by Berry Global.

1.17 The "Litigation" or the "Lawsuit" shall mean the lawsuit entitled *Steven*

1 *Miller v. Berry Global, Inc., et al.*, Case No. STK-CV-UOE-2020-6547, Superior Court of the State
2 of California, County of San Joaquin.

3 1.18 “Net Settlement Amount” shall mean the Gross Settlement Amount
4 minus the amounts awarded by the Court for attorneys’ fees and costs, the enhancement to Steven
5 Miller, the awarded administration costs, and the payment to the California Labor and Workforce
6 Development Agency.

7 1.19 “Notice re: Pendency of Class Action” or “Notice To Class Members
8 Re: Pendency of a Class Action and Notice of Hearing On Proposed Settlement” or “Class Notice”
9 means a notice and associated forms entitled “Notice To Class Members Re: Pendency of a Class
10 Action and Notice of Hearing On Proposed Settlement” to be approved by the Court, substantially in
11 the form attached hereto as Exhibit A. This Notice Re: Pendency of Class Action shall constitute the
12 class notice pursuant to California Rule of Court 3.769(f) and once approved by the Court shall be
13 deemed compliant with California Rule of Court 3.766(d).

14 1.20 “Notice Mailing Deadline” means the deadline for the Administrator to
15 mail the Class Notice, which shall be fifteen (15) calendar days after Berry Global provides the
16 Administrator with the information identified in section 2.4.3.

17 1.21 “Notice Response Deadline” means the deadline for all Class Members
18 to respond to the Class Notice, which shall be forty-five (45) days after the Class Notice is mailed.

19 1.22 “Opt Out” or “Opt Outs” means written and signed requests by Class
20 Members to be excluded from the Settlement Class, which are submitted in the manner specified in
21 the Class Notice, postmarked no later than the Notice Response Deadline.

22 1.23 “Final Approval Order” or “Order Granting Final Approval of
23 Settlement” shall mean an order to be entered by the Court granting final approval of this Settlement.

24 1.24 “Preliminary Approval Date” shall mean the date on which the Court
25 grants preliminary approval of this settlement.

26 1.25 “Preliminary Approval Order” or “Order Granting Preliminary
27 Approval for the Settlement and Setting a Settlement Hearing” shall mean an order to be executed and
28 filed by the Court granting preliminary approval of this Settlement.

1 1.26 “Reasonable Address Verification Measure” shall mean the utilization
2 of the National Change of Address Database maintained by the United States Postal Service to review
3 the accuracy of and, if possible, update a mailing address.

4 1.27 “Released Claims” shall collectively mean all claims, including without
5 limitations “Unknown Claims” as defined in Paragraph 1.39 hereof, for statutory and civil penalties,
6 fees and costs, actions or causes of action, and all other forms of legal or equitable relief based on
7 federal, state, or local law, that were alleged or could have been alleged, whether such forms of relief
8 are known or unknown, based upon the factual allegations in the operative Complaint in the Action
9 and in Plaintiff’s LWDA Letter, during the Class Period, including, but not limited to, all claims
10 asserted in Action for: (1) Violation of Cal. Labor Code § 226 and §226.3, and all recoverable statutory
11 penalties related thereto, whether based on federal, state or local law; and (2) Violation of Labor Code
12 §§ 2698, et seq. (PAGA) premised upon the claims for violation of § 226 and §226.3 against Berry
13 Global, Inc. and with respect to the penalties claimed in the Action, any source of obligation as a basis
14 for claiming such penalties during the Class Period, (the “Released Claims”), against Defendant and
15 each and all of its past and present parent, subsidiary, and affiliated corporations, entities, divisions,
16 general and limited partners, joint venturers and affiliates, and each of their respective current and
17 former directors, officers, managers, employees, principals, members, agents, insurers, reinsurers,
18 shareholders, attorneys, advisors, representatives, general partners, limited partners, joint venturers,
19 and affiliated companies, and each of their respective executors, predecessors, successors, assigns and
20 legal representatives (collectively, “Released Parties”).

21 1.28 “Relevant Wage Statement” means a wage statement received by a
22 Class Member during the Class Period reflecting payment of overtime or shift differentials, except for
23 wage statements before December 21, 2020, for *Gonsales v. Berry Global Films, LLC* Settlement
24 Class Members. There shall be no duplicate counting of pay stubs which include both overtime and
25 shift differential pay.

26 1.29 “Settlement Class” means the collective group of all of the Class
27 Members who do not opt out of the Class by submitting Opt Outs pursuant to Paragraph 2.5.3, and
28 thus do not object to becoming bound by the Judgment.

1.30 “Settlement Class Member” or “Member of the Settlement Class” means any person who is a member of the Settlement Class.

1.31 “Settlement Hearing” or “Final Approval Hearing” means a hearing set by the Court to take place on or about the Settlement Hearing Date for the purpose of: (i) determining the fairness, adequacy and reasonableness of the Stipulation and associated settlement pursuant to class action procedures and requirements; (ii) determining the good faith of the Stipulation and associated settlement; and (iii) entering Judgment. The “Approval Date” means the date on which the Court enters the Judgment. This Settlement Hearing is intended to be the settlement hearing or final approval hearing required under California Rule of Court 3.769(a).

1.32 “Settlement Hearing Motion Date” is the date that is on or near a date that is 40 days after the Notice Response Deadline.

1.33 “Settlement Hearing Date” is the date that is on or near the date that is 16 court days after the Settlement Hearing Motion Date.

1.34 “Individual Settlement Sum” means the gross, total amount due to an individual Class Member, which shall be the total payment received by a Class Member.

1.35 “Settlement Sum Variable” or “The Settlement Sum Variable” shall be the number which is the quotient of the Net Settlement Amount, divided by the total number of Relevant Wage Statements received during the Class Period by all Settlement Class Members.

1.36 “Settling Parties” means Berry Global and Class Representative Steven Miller, on behalf of himself and all Members of the Settlement Class.

1.37 “Steven Miller” or “Plaintiff Steven Miller” means Steven Miller, an individual and named plaintiff in the Litigation.

1.38 “Stipulation” means this agreement, the Stipulation Re: Settlement of Class Action and all of its attachments and exhibits, which the Settling Parties understand and agree sets forth all material terms and conditions of the Settlement between them, and which is subject to Court approval. It is understood and agreed that Berry Global’s obligations for payment under this Stipulation is conditioned on, *inter alia*, the occurrence of the Effective Date.

1.39 “Unknown Claims” means any Released Claims which the Class

Representative or any Settlement Class Member does not know or suspect to exist in his or her favor at the time of the entry of the Judgment, and which, if known by him or her might have affected his or her settlement with and release of the Berry Global Releasees or might have affected his or her decision not to object to this settlement. With respect to the Released Claims only, the Settling Parties stipulate and agree that, upon the Effective Date, the Class Representative shall expressly and each of the Settlement Class Members shall be deemed to have, and by operation of the Judgment shall have, waived the provisions, rights and benefits of California Civil Code section 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The Class Representative and each Settlement Class Member may hereafter discover facts in addition to or different from those which he or she now knows or believes to be true with respect to the subject matter of the Released Claims, but the Class Representative and each Settlement Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which then exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Class Representative acknowledges, and the Settlement Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the settlement of which this release is a part.

1.40 "Updated Address" means a mailing address that was updated via a Reasonable Address Verification Measure, or via an updated mailing address provided by the United States Postal Service or a Class Member.

2. The Settlement.

2.1 *Payment and Other Obligations of Berry Global.*

2.1.1 Berry Global, through the Administrator, and according to the terms, conditions and procedures set forth in this Stipulation, shall pay the Gross Settlement Amount to be distributed as set forth herein.

2.1.2 As further detailed in Paragraphs 2.2.1, 2.2.2 and 2.2.3, and for each payment made pursuant to this Stipulation, Berry Global, itself or through the Administrator, will report each payment to government authorities including the Internal Revenue Service as required by law with all required deductions and/or withholdings. Berry Global will not, unless otherwise required by law, make any additional deductions, withholdings or payments, including without limitation, medical or other insurance payments or premiums, employee 401(k) contributions or matching employer contributions, wage garnishments, or charity withholdings. Payments made pursuant to this Stipulation shall not be deemed wages earned or other compensation for purposes of any Berry Global employment benefits or other benefits that accrue or are determined on the basis of wages or compensation paid.

2.2 *Taxes.*

2.2.1 The entirety of each Individual Settlement Sum shall be deemed a payment for penalties or interest, and as such shall not be subject to withholdings or deductions.

2.2.2 Each Class Member shall be issued any applicable IRS Form 1099 in connection with the payment of the Individual Settlement Sum.

2.2.3 Other than the withholding and reporting requirements set forth in Paragraphs 2.1.2, 2.2.1, 2.2.2, 2.8.1, 2.8.2, and 2.8.3, Settlement Class Members shall be responsible for the reporting and payment of any federal, state and/or local income or other tax or any other withholdings, if any, with respect to their share of the Settlement Sum. Berry Global makes no representations, and it is understood and agreed that Berry Global has made no representations, as to the taxability of any portions of the settlement payments to any Settlement Class Members, the payment of any costs or an award of attorney fees, or any payments to the Class Representative.

2.3 *Approval of Notice to the Class and Scheduling of a Settlement Hearing.*

2.3.1 The Class Representative and Berry Global, through their counsel of record, shall file this Stipulation with the Court and the Class Representative shall move for

1 preliminary approval of this Stipulation pursuant to California Rule of Court 3.769(c), providing
2 counsel for Berry Global with an advance copy and chance to comment prior to filing. Via this
3 submission, and a supporting motion, the Class Representative shall request that the Court enter the
4 Preliminary Approval Order thereby scheduling the Settlement Hearing (pursuant to California Rule
5 of Court 3.769(e)) for the purposes of determining the good faith of the settlement, granting final
6 approval of the settlement, granting final approval of this Stipulation and obtaining entry of Judgment.

7 2.3.2 If the Court enters the Preliminary Approval Order, then at the resulting
8 Settlement Hearing, the Class Representative through Class Counsel, and Berry Global, through its
9 counsel of record, shall address any written objections from Class Members or any concerns from
10 Class Members who attend the Settlement Hearing as well as any concerns of the Court, and shall and
11 hereby do, unless provided otherwise in this Stipulation, stipulate to final approval of this Stipulation
12 and entry of the Judgment by the Court.

13 2.4 *Notice to Class Members.*

14 2.4.1 If, by entering the Preliminary Approval Order, the Court provides
15 authorization to send the Notice Re: Pendency of Class Action to Class Members, Berry Global,
16 through the Administrator, will facilitate the mailing to all Class Members at their Last Known
17 Addresses of the Notice Re: Pendency of Class Action via first class mail through the United States
18 Postal Service, postage pre-paid.

19 2.4.2 This Notice Re: Pendency of Class Action and its envelope or covering
20 shall be marked to denote the return address of the Administrator stated on the Notice.

21 2.4.3 Berry Global shall prepare the name and Last Known Address, Social
22 Security Number, and number of Relevant Wage Statements received by each Class Member for the
23 Administrator only so that the Administrator can engage in the processing and mailing of each Notice
24 Re: Pendency of Class Action and the associated claims process. This list shall be provided to the
25 Administrator within twenty-one (21) days after the Court grants Preliminary Approval of the
26 Settlement. This list shall not be provided to Class Counsel.

27 2.4.4 Prior to mailing the Notice Re: Pendency of Class Action to each Class
28 member, the Administrator shall undertake a Reasonable Address Verification Measure to ascertain

1 the current accuracy of the Last Known Address of each Class Member. To the extent this process
2 yields an Updated Address, that Updated Address shall replace the Last Known Address and be treated
3 as the new Last Known Address for purposes of this Stipulation and for subsequent mailings in
4 particular.

5 2.4.5 Each of the Notices shall be mailed to the Last Known Addresses of the
6 Class Members no later than the Notice Mailing Deadline.

7 2.4.6 The Notice Re: Pendency of Class Action shall be deemed mailed and
8 received by the Class Member to whom it was sent as of the postmarked date of mailing. In the event
9 that subsequent to the first mailing of a Notice Re: Pendency of Class Action and on or after the Notice
10 Response Deadline, that Notice is returned to the Administrator by the United States Postal Service
11 because the address of the recipient is no longer valid, *i.e.*, the envelope is marked "Return to Sender,"
12 the Administrator shall be required to take no further action with that Class Notice and it shall be
13 deemed to have been delivered. In the event that subsequent to the first mailing of a Notice Re:
14 Pendency of Class Action and prior to the Notice Response Deadline, that Notice is returned to the
15 Administrator by the United States Postal Service with a forwarding address for the recipient, the
16 Administrator shall promptly re-mail the notice to that address, and the forwarding address shall be
17 deemed the Updated Address for that Class Member. In the event that subsequent to the first mailing
18 of a Notice Re: Pendency of Class Action and prior to the Notice Response Deadline, that Notice is
19 returned to the Administrator by the United States Postal Service because the address of the recipient
20 is no longer valid, *i.e.*, the envelope is marked "Return to Sender," the Administrator shall undertake
21 another Reasonable Address Verification Measure to attempt to ascertain the current address of the
22 particular Class Member in question and, if such an address is ascertained, the Administrator will re-
23 send the Notice within three (3) days of receiving such information; if no Updated Address is obtained
24 for that Class Member, the Notice Re: Pendency of Class Action shall be sent again to the Last Known
25 Address. In either event, the Notice Re: Pendency of Class Action shall be deemed received once it
26 is mailed for the second time. If the Notice Re: Pendency of Class Action is re-mailed due to a
27 previously defective address, the respective Class Member's Notice Response Deadline shall be
28 extended by fifteen (15) days.

2.5 *Responses to the Notice Re: Pendency of Class Action; Motion for Final Approval.*

2.5.1 Pursuant to California Rule of Court 3.766(d)(5), Class Members have the option to, but are not required to, participate in this Lawsuit at their own expense by obtaining their own attorney(s). Class Members who choose this option will be responsible for any attorney fees or costs incurred as a result of this election. The Notice Re: Pendency of Class Action will advise Class Members of this option.

2.5.2 Class Members may also object to the Stipulation by submitting written objections to the Administrator no later than the Notice Response Deadline. The Notice Re: Pendency of Class Action will advise Class Members of this option. The Administrator shall provide any such objections to the Settling Parties to submit to the Court, if necessary.

2.5.3 Class Members may elect to “opt out” of the Settlement Class and thus exclude themselves from the Lawsuit and the Settlement Class. Class Members who wish to exercise this option must submit a letter to the Administrator postmarked on or before the Notice Response Deadline. The letter shall state the Class Member’s name, telephone number, mailing address, last four digits of his or her Social Security Number [or employee identification number], and statement that he or she wishes to exclude himself or herself from the Settlement Class. Class Members who do not properly submit Opt Outs shall be Members of the Settlement Class. Class Members who do properly submit Opt Outs shall have no further role in the Litigation, and for all purposes they shall be regarded as if they never were a party to this Litigation, and thus they shall not be entitled to any benefit as a result of this Litigation, including without limitation any tolling of any pertinent statute of limitations, nor be allowed to object to this Stipulation.

2.5.4 Class Members who do not opt out of the Settlement Class pursuant to Paragraph 2.5.3 shall become Settlement Class Members. As long as they do not properly submit Opt Outs, Class Members shall be deemed Members of the Settlement Class and shall be subject to the Judgment. If the Administrator receives an incomplete or defective Opt Out from a Class Member postmarked prior to the Notice Response Deadline, then the Administrator shall send that Class Member a cure letter advising that person of the missing information or other defect, and that Class

1 Member shall have fifteen (15) days from the date the cure letter is mailed to provide a proper Opt
2 Out, even if this extra fifteen day period extends beyond the Notice Response Deadline.

3 2.5.5 Prior to the Settlement Hearing and by the Settlement Hearing Motion
4 Date, if feasible, the Class Representative shall move the Court for entry of the Order of Final
5 Approval and entry of Judgment. The Settling Parties shall take all reasonable efforts to secure entry
6 of the Order of Final Approval and Judgment. If the Court rejects the Stipulation, fails to approve the
7 Notice of Final Approval, or fails to enter the Order of Final Approval, or if the Court fails to enter
8 the Judgment, this Stipulation shall be void *ab initio*, and Berry Global shall have no obligation to
9 make any payments under the Stipulation, except for an equal share of any Administrator costs
10 incurred to date.

11 2.6 *Timing of Payment to Settlement Class Members and Notice of Final Approval.*

12 2.6.1 Within ten (10) business days of and only after the Effective Date, Berry
13 Global shall transfer the funds necessary to satisfy its payment obligations pursuant to this Stipulation
14 and the Judgment to the Administrator.

15 2.6.2 Within ten (10) days after receipt of the funds identified in section 2.6.1,
16 the Administrator will mail all payments pursuant to the Stipulation to recipients' Last Known
17 Address, or Updated Address if obtained. Checks issued pursuant to this Agreement shall remain
18 negotiable for a period of at least one-hundred twenty (120) days from the date of mailing. Any funds
19 associated with any checks which are not properly or timely negotiated shall escheat to the Department
20 of Industrial Relations' Unclaimed Wage Fund in the name of the Settlement Class Member.
21 Settlement Class Members who fail to negotiate their settlement checks in a timely fashion shall
22 remain subject to the terms of the Judgment.

23 2.6.3 Following the mailing of the payments to Settlement Class Members
24 discussed in Paragraph 2.6.2, the Administrator shall provide counsel for the Settling Parties with a
25 written confirmation of this mailing.

26 2.7 *Releases.*

27 2.7.1 Upon the Effective Date, the Class Representative and each of the
28 Settlement Class Members shall be deemed to have, and by operation of the Judgment shall have,

1 fully, finally, and forever released, relinquished and discharged all Released Claims.

2 2.7.2 In addition to discharging the Released Claims as set forth in Paragraph
3 2.7.1, as of the date the Final Approval Order is entered by the Court and except as to such rights or
4 claims as may be created by this Settlement, to the maximum extent allowed by law, the Class
5 Representative will be deemed to have released claims as follows:

6 The Class Representative hereby fully and finally releases and discharges Berry Global,
7 Inc., its subsidiaries, owners, affiliated or related entities and their owners, and its officers, directors,
8 shareholders, partners, employees, agents, insurers, attorneys, successors and assigns from any and all
9 claims, charges, complaints, liens, demands, causes of action, obligations, damages and liabilities,
10 known or unknown, suspected or unsuspected, that the Class Representative had, now has, or may
11 hereafter claim to have against the Berry Global Releasees arising out of, or relating in any way to,
12 the Class Representative's hiring by, employment with, or otherwise relating to the Berry Global
13 Releasees ("Class Representative's Released Claims"), arising or accruing from the beginning of time
14 up through the date of the Final Approval Hearing. The Class Representative's Released Claims
15 include, but are not limited to, claims arising from or dependent on the California Labor Code, the
16 Wage Orders of the California Industrial Welfare Commission, California Business and Professions
17 Code Section 17200, *et. seq.*, California Labor Code Private Attorneys General Act of 2004, Labor
18 Code § 2699, *et seq.*, the California Fair Employment and Housing Act, Cal. Gov't Code Section
19 12900 *et seq.*, the California common law of contract and tort, Title VII of the Civil Rights Act of
20 1964, the Americans with Disabilities Act, 42 U.S.C. Section 12101 *et seq.*, the Employee Retirement
21 Income Security Act of 1974, 29 U.S.C. Section 1001 *et seq.*, the Fair Labor Standards Act, 29 U.S.C.
22 Section 201 *et seq.* and the Portal to Portal Act, 29 U.S.C. Section 251, *et seq.*, except for such claims
23 that cannot be released by law.

24 In this regard, the Class Representative waives California Civil Code Section 1542,
25 which provides:

26 **A general release does not extend to claims which the**
27 **creditor does not know or suspect to exist in his or her**
28 **favor at the time of executing the release, which if known**
 by him or her must have materially affected his or her
 settlement with the debtor.

1 2.8 *Costs, Attorneys' Fees, and Class Representative Enhancement.*

2 2.8.1 Class Counsel shall be entitled, subject to the approval of the Court and
3 the occurrence of the Effective Date, to recover their reasonable litigation costs, associated expenses
4 and attorney fees from Berry Global pursuant to California law. Subject to Court approval and the
5 occurrence of the Effective Date, Class Counsel can obtain up to 35% of the Gross Settlement Amount
6 for attorneys' fees, and up to \$20,000.00 in litigation costs. Class Counsel and the Class
7 Representative will not seek to recover any other fees, costs or expenses incurred in this Litigation.
8 Berry Global will not oppose an award that is consistent with this Paragraph 2.8.1. Class Counsel
9 shall be responsible for the reporting and payment of any federal, state and/or local income or other
10 form of tax on any payment made pursuant to this paragraph. The payment awarded and made
11 pursuant to this paragraph shall constitute full satisfaction of any claim for fees or costs or any other
12 expenses, and the Class Representative and Class Counsel, on behalf of himself and all Settlement
13 Class Members, agree that they shall neither seek nor be entitled to any additional attorney's fees or
14 costs under any theory nor shall they seek an award in excess of the amount specified herein. Not
15 more than ten (10) business days after the Effective Date, and only in the event that the Effective Date
16 occurs, Berry Global shall provide funds equivalent to the total amount of attorney's fees and costs to
17 the Administrator, who shall issue payment for the fee and cost awards approved by the Court pursuant
18 to this Paragraph 2.8.1 directly to Class Counsel. Other than as provided in this Paragraph 2.8.1 for
19 the limited purpose discussed herein, no party shall be deemed the prevailing party for any other
20 purposes of the Litigation, and all parties shall bear their own costs. The attorneys' fees and costs to
21 Class Counsel shall be reported to the Internal Revenue Service as non-wage income in the year of
22 payment. This reporting shall be done via a Form 1099, and Class Counsel agrees to take full
23 responsibility for the payment of any outstanding taxes due.

24 2.8.2 Not more than ten (10) business days after the Effective Date, and only
25 in the event that the Effective Date occurs, Berry Global shall provide funds equivalent to the total
26 amount of the enhancement awards approved by the Court to the Administrator, who shall issue
27 payment directly to Class Representative Steven Miller. Berry Global agrees not to oppose an
28 enhancement award request of up to ten thousand dollars (\$10,000.00) for the Class Representative

1 for his services as Class Representative and for his execution of the general release as described herein.
2 The enhancement payments to the Class Representative shall be reported to the Internal Revenue
3 Service as non-wage income to the Class Representative in the year of payment. This reporting shall
4 be done via a Form 1099, and the Class Representative will agree to take full responsibility for the
5 payment of any outstanding taxes due.

6 2.8.3 Unless otherwise expressly provided, Berry Global shall have no
7 responsibility for, and no liability whatsoever with respect to, the allocation among the Class
8 Representative, Class Counsel and/or any other Person who may assert some claim thereto, of any
9 award or payment issued or made in the Litigation or pursuant to this Stipulation.

10 2.9 *Administrator.*

11 2.9.1 Based on current estimates and for purposes of setting the Gross
12 Settlement Amount, the Settling Parties anticipate that the total fees and expenses incurred by the
13 Administrator will be approximately \$10,000.00 but the Settling Parties understand and agree that this
14 figure represents just an estimate, and the sum charged by the Administrator may be different. To the
15 extent that the costs of administration exceed \$10,000.00, the shortfall will be taken from the Gross
16 Settlement Amount. To the extent the cost of administration is less than \$10,000.00, the excess shall
17 remain part of the Gross Settlement Amount.

18 2.9.2 The actions of the Administrator shall be governed by the terms of this
19 Stipulation. Berry Global may provide relevant information needed by the Administrator pursuant to
20 this Stipulation and engage in related communications with the Administrator without notice or copies
21 to Class Counsel, any Class Members or the Court. Berry Global may provide logistical instructions
22 to the Administrator with regard to actions required by this Stipulation and engage in related
23 communications with the Administrator without notice or copies to Class Counsel, any Class Members
24 or the Court. This provision shall not be read to preclude Class Counsel from communicating with
25 the Administrator.

26 2.9.3 In the event that any of the Settling Parties take the position that the
27 Administrator has not acted in accordance with the terms of the Stipulation, that Party's counsel shall
28 meet and confer with counsel for the other Settling Parties prior to raising any such issue with the

1 Court.

2 2.10 *Termination of Settlement.*

3 2.10.1 In the event that five (5) percent or more of the Class Members opt out
4 of the Settlement Class by submitting Opt Outs pursuant to Paragraph 2.5.3, Berry Global shall have
5 the option to terminate and void this settlement and Stipulation. However, if Berry Global elects to
6 terminate this settlement and Stipulation pursuant to this Paragraph, Berry Global shall be responsible
7 for all Administration costs incurred. If the settlement and Stipulation is terminated for any other
8 reason, the Parties shall be equally responsible for all Administration costs incurred on 50/50 basis.

9 2.11 *Miscellaneous Provisions.*

10 2.11.1 No Person shall have any claim against Class Counsel, the
11 Administrator, or any of the Berry Global Releasees based on the payments made or other actions
12 taken substantially in accordance with the Stipulation and the settlement contained therein or further
13 orders of the Court.

14 2.11.2 In the event that the Stipulation is not substantially approved by the
15 Court or the settlement set forth in the Stipulation is terminated, cancelled, declared void or fails to
16 become effective in accordance with its terms, or if the Judgment does not become Final, or to the
17 extent cancellation is otherwise provided for in this Stipulation, the Settling Parties shall resume the
18 Litigation at that time as if no Stipulation had been entered. In such event, the terms and provisions
19 of the Stipulation shall have no further force and effect with respect to the Settling Parties and shall
20 not be used in this Litigation or in any other proceeding for any purpose, and any Judgment or order
21 entered by the Court in accordance with the terms of the Stipulation shall be treated as vacated, *nunc*
22 *pro tunc*.

23 2.11.3 Unless otherwise ordered by the Court, in the event the Stipulation shall
24 be terminated, cancelled, declared void or fails to become effective in accordance with its terms, or if
25 the Judgment is reversed on appeal, within twenty (20) business days after written notification of such
26 event, Berry Global and Class Counsel shall notify each other of this event in writing.

27 2.11.4 The Settling Parties: (a) acknowledge that it is their intent to
28 consummate this agreement; (b) agree to cooperate to effectuate and implement all terms and

1 conditions of the Stipulation and to exercise their best efforts to accomplish the foregoing terms and
2 conditions of the Stipulation; and (c) agree to seek and to attempt to obtain Court approval for the
3 Stipulation.

4 2.11.5 The Stipulation compromises claims which were contested and the
5 subject of a good faith dispute, and it shall not be deemed an admission by any of the Settling Parties
6 as to the merits of any claim or defense. The Settling Parties agree that the amounts paid in Settlement
7 and the other terms of the settlement were negotiated at arm's-length and in good faith with sufficient
8 information by the Settling Parties and reflect a settlement that was reached voluntarily after
9 consultation with competent legal counsel.

10 2.11.6 Neither the Stipulation nor the settlement, nor any act performed or
11 document executed pursuant to, or in furtherance of, the Stipulation or the settlement: (a) is or may
12 be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim,
13 or of any wrongdoing or liability of the Berry Global Releasees, or any of them; or (b) is or may be
14 deemed to be or may be used as an admission of, or evidence of, any fault or omission of the Berry
15 Global Releasees, or any of them, in any civil, criminal or administrative proceeding in any court,
16 administrative agency or other tribunal.

17 2.11.7 All of the exhibits to the Stipulation are material and integral parts
18 hereof and are fully incorporated herein by this reference.

19 2.11.8 The Stipulation may be amended or modified only by a written
20 instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest.

21 2.11.9 The Stipulation constitutes the entire agreement among the Settling
22 Parties hereto and no representations, warranties or inducements have been made to any party
23 concerning the Stipulation or its exhibits other than the representations, warranties and covenants
24 contained and memorialized in such documents. Except as otherwise provided herein, each party shall
25 bear its own costs.

26 2.11.10 Class Counsel, on behalf of the Class, are expressly authorized by the Class
27 Representative to take all appropriate action required or permitted to be taken by the Class pursuant
28 to the Stipulation to effect its terms and also are expressly authorized to enter into any modifications

1 or amendments to the Stipulation on behalf of the Class which they deem appropriate.

2 2.11.11 Each counsel or other Person executing the Stipulation or any of its
3 exhibits on behalf of any party hereto hereby warrants that such Person has full and express authority
4 to do so.

5 2.11.12 The Stipulation may be executed in one or more counterparts. All
6 executed counterparts and each of them shall be deemed to be one and the same instrument. A
7 complete set of executed counterparts shall be filed with the Court.

8 2.11.13 The Stipulation shall be binding upon, and inure to the benefit of, the
9 successors and assigns of the parties hereto, however, this Stipulation is not designed to and does not
10 create any third party beneficiaries unless otherwise specifically provided herein.

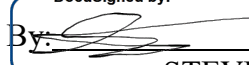
11 2.11.14 The Court shall retain jurisdiction with respect to implementation and
12 enforcement of the terms of the Stipulation, and all parties hereto submit to the jurisdiction of the
13 Court for purposes of implementing and enforcing the settlement embodied in the Stipulation. To the
14 extent either Party seeks to enforce the terms of this Stipulation, the prevailing party to any such
15 enforcement action shall be entitled to seek all reasonable attorneys' fees and costs incurred in
16 connection with any such enforcement action.

17 2.11.15 The Stipulation and the exhibits hereto shall be considered to have been
18 negotiated, executed and delivered, and to have been wholly performed, in the State of California, and
19 the rights and obligations of the parties to the Stipulation shall be construed and enforced in accordance
20 with, and governed by, the internal, substantive laws of the State of California without giving effect
21 to that State's choice of law principles.

22 2.11.16 The language of all parts of this Stipulation shall in all cases be
23 construed as a whole, according to its fair meaning, and not strictly for or against either party. No
24 party shall be deemed the drafter of this Stipulation. The parties acknowledge that the terms of the
25 Stipulation are contractual and are the product of negotiations between the parties and their counsel.
26 Each party and his/its counsel cooperated in the drafting and preparation of the Stipulation. In any
27 construction to be made of the Stipulation, the Stipulation shall not be construed against any party and
28 the canon of contract interpretation set forth in California Civil Code section 1654 shall not be applied.

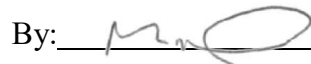
1 IN WITNESS WHEREOF, the parties hereto have caused the Stipulation to be
2 executed, and this Stipulation is AGREED TO.

3
4 Dated: 02/28, 2022

DocuSigned by:
By: 
BC8C451C492051 STEVEN MILLER

5
6 Dated: February 24, 2022

BERRY GLOBAL, INC.

7
8 By: 
9 Mark W. Miles
10 EVP and CFO

11 APPROVED AS TO FORM:

12 Dated: February 25, 2022

13
14 
15 REBECCA ARAGON
16 EVERETT C. MARTIN
17 LITTLER MENDELSON, P.C.
Attorneys for Defendant
BERRY GLOBAL, INC.

18 Dated: March 1, 2022

19
20 
21 LARRY W. LEE
22 DIVERSITY LAW GROUP, P.C.
Attorneys for Plaintiffs
STEVEN MILLER

EXHIBIT A

This notice is being sent pursuant to court order. This is not a solicitation from a lawyer.

NOTICE OF CLASS ACTION SETTLEMENT

Steven Miller v. Berry Global, Inc.,

Superior Court of the State of California for the County of San Joaquin Case No. STK-CV-UOE-2020-6547

If you were employed by Berry Global, Inc. in California as a non-exempt employee and were paid overtime or shift differentials at any time between April 9, 2019, and April 1, 2022, you could receive a payment from a class action settlement.* **If you were a Gonsales v. Berry Global Films, LLC settlement class member and not paid overtime or shift differentials since December 21, 2020, you would not be eligible.*

You are not being sued. Read this notice carefully, as your legal rights could be affected whether you act or not.

The Superior Court of the State of California for the County of San Joaquin (the “Court”) has preliminarily approved a class action settlement that may affect your legal rights. The proposed settlement resolves a class and representative action lawsuit filed by Plaintiff, Steven Miller, against Defendant, Berry Global, Inc.—*Steven Miller v. Berry Global, Inc.*, San Joaquin Superior Court Case No. STK-CV-UOE-2020-6547 (the “Lawsuit”).

- This Lawsuit alleges Berry Global failed to issue wage statements that accurately itemize and show (i) the overtime rate and (ii) the total hours worked. On that basis, the Lawsuit pursues class action claims as well as representative action claims under the Labor Code Private Attorneys General Act of 2004 (“PAGA”).
- Berry Global denies Plaintiff’s allegations and maintains it has fully complied with the law. By entering into this settlement, Berry Global in no way admits any violation of law or any liability whatsoever to Plaintiff or Class Members, individually or collectively, and expressly denies all such liability.
- Plaintiff and Berry Global have reached this settlement in light of all known facts and circumstances—including the risks of significant delay and uncertainty associated with litigation, various defenses asserted by Berry Global, and numerous potential appellate issues—with the assistance of an experienced mediator knowledgeable of both the wage and hour laws and class and representative action claims at issue.
- The settlement provides payments to Settlement Class Members, based on the number of Relevant Wage Statements received by a Class Member reflecting payment of overtime or shift differentials between April 9, 2019, and April 1, 2022 (the “Class Period”), except for wage statements before December 21, 2020, for settlement class members from a prior litigation, *Gonsales v. Berry Global Films, LLC*.
- Based on Berry Global’s records, you received XXX Relevant Wage Statements, and an estimate of the amount that could be allocated to you is \$XXX. Whether you receive a payment depends on whether you opt out and whether the Court grants final approval. The actual amount you could receive depends on the terms the Court finally approves.

THE COURT HAS NOT EXPRESSED ANY OPINION AS TO THE MERITS OF THE CLAIMS ASSERTED BY PLAINTIFF OR DEFENSES ASSERTED BY BERRY GLOBAL.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
DO NOTHING	You do not have to do anything in response to this notice. If you do nothing, you remain eligible to receive a payment if the Court grants final approval of the settlement and will be bound by the release provisions of the settlement.
OPT OUT	You may opt out of the settlement by submitting a Request for Exclusion. If you opt out, you may not object to the settlement, will not be eligible to receive a payment, and will not be bound by the release provisions of the settlement.
OBJECT	You may object to the settlement by submitting a written objection. If the Court grants final approval of the settlement despite your objection, you will remain eligible to automatically receive a payment if the Court grants final approval of the settlement and will be bound by the release provisions of the settlement.

NOTICE OF CLASS ACTION SETTLEMENT

Questions? Please contact the Administrator at (800) 523-5773.

1. Why Did I Receive This Notice?

You are receiving this Notice of Class Action Settlement (the “Notice”) because Berry Global’s records show that you were (i) a settlement class member in *Gonsales v. Berry Global Films, LLC* and paid overtime or shift differentials between December 21, 2020, and April 1, 2022, or (ii) employed by Berry Global in California as a non-exempt employee and paid overtime or shift differentials between April 9, 2019, and April 1, 2022 (a “Class Member”). As a Class Member, you may be entitled to share in the funds to be made available for settlement of the Lawsuit.

Because the settlement preliminarily approved by the Court would affect Class Members’ legal rights, the Court ordered that this Notice be sent to you. This Notice provides a brief description of the Lawsuit, informs you of the settlement terms preliminarily approved by the Court, and advises you of your legal rights with respect to the settlement. If finally approved by the Court, the settlement will fully resolve the Lawsuit and your legal rights may be affected by the settlement.

The terms of the settlement are set forth in detail in the Stipulation re: Settlement of Class Action (“Agreement”). You may obtain a copy of the Agreement from Phoenix Settlement Administrators, the neutral third-party appointed by the Court to administer the settlement (the “Administrator”). Details about how to get additional information about the Agreement are provided at the end of this Notice.

2. What Is the Lawsuit About?

On August 10, 2020, Plaintiff, on behalf of himself and all others similarly situated, and as a proxy for the State of California, filed a complaint in San Joaquin Superior Court. The complaint alleges two causes of action based on the alleged failure to provide lawful wage statements.

Berry Global denied and continues to deny (i) all of the allegations made by Plaintiff, (ii) that it violated any applicable laws, or (iii) that it is liable or owes damages, penalties, or other compensation or remedies to anyone with respect to the alleged facts or claims asserted in the Lawsuit. Nonetheless, without admitting or conceding any liability or wrongdoing whatsoever, Berry Global has agreed to settle the Lawsuit, to avoid the burden, expense, and uncertainty of continuing the Lawsuit.

The Court has preliminarily approved Larry W. Lee and Simon L. Yang of Diversity Law Group, P.C., and William L. Marder of Polaris Law Group as Class Counsel. Based on their investigation and evaluation, they believe that the terms of settlement are fair, reasonable, adequate, and in the best interests of Class Members.

3. What Are the Payments Under the Settlement?

Berry Global agrees to pay a settlement amount of \$1,015,835.00 (the “Gross Settlement Amount”). The Gross Settlement Amount is inclusive of any payments that must be approved by the Court (i) to Class Counsel for attorneys’ fees and costs associated with the litigation and resolution of the Lawsuit (the “Fees and Costs Award”), (ii) to Plaintiff for his effort and work in prosecuting the Lawsuit on behalf of Class Members (the “Class Representative Award”), (iii) to the Administrator for costs for administering the settlement, including, but not limited to, printing, distributing, or tracking Notices, processing any required tax payments or reportings, providing any required tax forms, depositing settlement funds in an interest bearing account, distributing the settlement payments, or providing necessary reports and declarations (“Administration Costs”), and (iv) to the State of California Labor & Workforce Development Agency as required by the Labor Code (the “LWDA Payment”).

The remaining portion of the Gross Settlement Amount available for allocation to Class Members is the Net Settlement Amount.

a. Individual Settlement Payments

The Net Settlement Amount shall be distributed to each Settlement Class Member without the need to submit a claim. The Net Settlement Amount shall be allocated among Settlement Class Members on a pro rata basis based on the number of Relevant Wage Statements that each Settlement Class Member received.

Each Settlement Class Member's Individual Settlement Sum shall be characterized as penalties and interest. By participating in the settlement, each Settlement Class Member shall agree to be solely and legally responsible for paying applicable taxes on their respective Individual Settlement Sums and shall indemnify and hold harmless the Parties from any claim or liability for taxes, penalties, or interest arising as a result of the payments.

All uncashed or undeliverable settlement checks will expire after 120 calendar days after the postmarked date of their initial mailing. After 120 calendar days, the sum value of all expired checks will be tallied by the Administrator. The Administrator shall direct the principal for any expired checks in accordance with the Final Approval Order. The Parties shall request that the Court order that the principal for any expired checks be distributed to the State Controller Unclaimed Property Fund in the name of the Settlement Class Member.

b. Attorneys' Fees and Costs Award

You do not need to pay individually any portion of Class Counsel's attorneys' fees and costs. Any payments for those attorneys' fees and costs will be deducted from the Gross Settlement Amount. Class Counsel intends to request that the Court approve an Attorneys' Fees and Costs Award in the amount of (a) 35% of the Gross Settlement Amount and (b) up to \$20,000 in litigation costs.

c. Class Representative Award

Class Counsel intends to request that the Court approve a Class Representative Award of \$10,000. Any Class Representative Award is supplemental to Plaintiff's Individual Settlement Sum.

d. Settlement Administration Costs

Class Counsel intends to request that the Court approve Administration Costs of up to \$10,000, payable to the Administrator for administering the settlement, including, but not limited to, printing, distributing, or tracking Notices, providing any required tax forms, processing any required tax payments, or reporting, and calculating and distributing Individual Settlement Sums.

e. LWDA Payment

Class Counsel intends to request that the Court approve allocation of \$40,000 as PAGA penalties, to be distributed pursuant to statute with 75% payable as an LWDA Payment and 25% payable to employees as part of the Net Settlement Amount.

f. All Payments Subject to Court Approval

All of the payments listed above will be made if and only if the Court grants final approval of the settlement and concludes it is reasonable, fair, and adequate for the Class. The Court may adjust the amounts of payments.

4. What Do I Release Under the Settlement?

If the Court grants final approval of the settlement and concludes it is reasonable, fair, and adequate for Class Members, Settlement Class Members would release all claims for statutory and civil penalties, fees and costs, actions or causes of action, and all other forms of legal or equitable relief based on federal, state, or local law, that were alleged or could have been alleged, whether such forms of relief are known or unknown, based upon the factual allegations in the operative Complaint in the Action and in Plaintiff's LWDA Letter, during the Class Period, including, but not limited to, all claims asserted in the Lawsuit for: (1) Violation of Cal. Labor Code § 226 and §226.3, and all recoverable statutory penalties related thereto, whether based on federal, state or local law; and (2) Violation of Labor Code §§ 2698, et seq. (PAGA) premised upon the claims for violation of § 226 and §226.3 against Berry Global, Inc. and with respect to the penalties claimed in the Action, any source of obligation as a basis for claiming such penalties during the Class Period (the "Released Claims") against Berry Global and Released Parties.

5. How Do I Object to the Settlement?

If you want to participate in the settlement, you do not have to do anything and do not have to appear at the final approval hearing before the Court. You will receive your Individual Settlement Sum automatically if the Court grants final approval of the settlement. If you want to object to the settlement, you must take the steps below:

- (1) You must mail a written statement to the Administrator listed below.
- (2) The written statement must include: your name, address, telephone number, last four digits of your Social Security number, and the basis for your objection.
- (3) The written statement must be postmarked by **[45 calendar days from mailing of Class Notice]**.

If you submit an objection, you will remain bound by the settlement if finally approved. If you do not want to be bound by the settlement if finally approved, you must opt out of the settlement.

6. How Do I Opt Out of the Settlement?

If you do not want to participate in the settlement, you may opt out of the settlement. If you opt out of the settlement, you may not object to the settlement, shall not receive any Individual Settlement Payments, and shall not be bound by the release provisions of the settlement.

In order to opt out, you MUST express your desire to be excluded from the settlement by mailing to the Administrator a "Request for Exclusion," which must state "Request for Inclusion," include your name, address, telephone number, and last four digits of your social security number. Any such Request for Exclusion must be postmarked by **[45 calendar days from mailing of Class Notice]**.

Any Request for Exclusion that does not include all required information or that is not submitted on a timely basis will be deemed null, void, and ineffective. A Request for Exclusion shall be deemed to be submitted as of the postmarked date. If you submit both a Request for Exclusion and an objection, your Request for Exclusion will be valid and be deemed to invalidate the objection.

7. Where Can I Get Additional Information?

This notice summarizes the Lawsuit, settlement, and related matters. For more information, you may contact the Administrator or Class Counsel:

Administrator:

Phoenix Settlement Administrators
P.O. Box 7208
Orange, California 92863
Telephone: (800) 523-5773

Class Counsel:

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PLEASE DO NOT CONTACT THE COURT FOR INFORMATION REGARDING THE SETTLEMENT