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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

KALUM VAUGHNS, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

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

Defendants.

Case No. CIVSB2129167

**[PROPOSED] ORDER GRANTING
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND
FINAL JUDGMENT**

Date: September 20, 2023
Time: 9:00 a.m.
Department: S-26

Complaint Filed: November 24, 2021

On August 28, 2023, Plaintiff, Kalum Vaughns, filed a motion for an Order Granting Final Approval of Class Action Settlement, and on September 20, 2023, a hearing was held on this matter.

The Court has considered the papers and evidence, including the Stipulation re: Settlement of Class Action (the “Agreement”), the arguments of counsel, and all other matters presented to the Court regarding final approval of the settlement, approval of requested allocations from the settlement fund, and entry of final judgment.

I. Recital

On November 24, 2021, Plaintiff, Kalum Vaughns, initiated this class and Labor Code Private Attorneys General Act of 2004 (“PAGA”) action against Defendant, Berry Global, Inc. On behalf of a putative class of current and former non-exempt employees of Defendant in the State of California, and as a proxy for the State, Plaintiff pursues class action and PAGA claims under Labor Code sections 201-204, 218, 221-224, 226(a), 226.7, 246, 510, 512, 1174, 1182.12, 1197, 1198, 1198.5, and 2698 et seq., as well as Business and Professions Code sections 17200 et seq. Defendant denies the allegations.

A. Class Members

The Class is defined to include all persons who are or have been employed by Defendant, Berry Global, Inc., in non-exempt positions in the state of California from April 2, 2018, through September 30, 2022, except for those who worked only “Excluded Workweeks”—i.e., workweeks that were already subject to settlement in (i) *Marco Rendon v. AEP Industries, Inc., et al.*, San Bernardino County Superior Court Case No. CIVDS1621981, prior to May 8, 2018, (ii) *Huy Trinh, et al. v. Berry Plastics Corporation*, Orange County Superior Court Case No. 30-2015-00809744-CUOE-CXC, prior to April 1, 2018, and (iii) *Gonsales v. Berry Global Films, LLC*, San Bernardino Superior Court Case No. CIVDS1928987, prior to December 20, 2020. Excluding three opt outs, there are 1,045 individuals that comprise the Settlement Class.¹

B. Operation of the Settlement

Pursuant to the Court’s May 11, 2023 Preliminary Approval Order, the Court conditionally certified the Class and granted preliminary approval to the settlement. The Preliminary Approval Order

¹ There also are 894 PAGA Employees.

1 also approved of the proposed forms of notice to the Class. The Court entered the Preliminary Approval
2 Order after review and consideration of all of the pleadings filed in connection herewith, and the oral
3 presentations made by counsel at the hearing. In compliance with the Preliminary Approval Order, the
4 Notice of Class Action Settlement (“Class Notice”) was sent to all Class Members via first class mail.
5 The notice process was timely completed.

6 **II. Finding**

7 This Court finds that the Agreement appears to be the product of serious, informed, non-
8 collusive negotiations, has no obvious deficiencies, and does not improperly grant preferential treatment
9 to any individuals. The Court further finds that the Agreement is fair, adequate, and reasonable and that
10 Plaintiff has satisfied the standards for final approval of a class action settlement under California law.
11 Under the provisions of California Code of Civil Procedure section 382 and Rule 23 of the Federal
12 Rules of Civil Procedure, as approved for use in *Vasquez v. Superior Court*, 4 Cal. 3d 800, 821 (1971),
13 the trial court has discretion to certify a class where:

14 [Q]uestions of law or fact common to the members of the class predominate over any questions
15 affecting only individual members, and that a class action is superior to the available methods for
the fair and efficient adjudication of the controversy

16 FED. R. CIV. PROC. 23.

17 Certification of a settlement class is the appropriate judicial device under these circumstances.

18 **III. Order**

19 Good cause appearing **IT IS HEREBY ORDERED AND ADJUDICATED** as follows:

20 1. For purposes of this Order, the Court adopts all defined terms as set forth in the
21 Agreement.

22 2. The Court has jurisdiction over the subject matter of the litigation, the Class
23 Representative, Settlement Class Members, and Defendants.

24 3. The Court finds that the dissemination of the Class Notice to the Class Members by the
25 appointed Settlement Administrator, Phoenix Settlement Administrators, constituted the best notice
26 practicable under the circumstances to all Class Members, and fully met the requirements of California
27 law and due process under the State and Federal Constitutions.
28

1 4. The Court approves the settlement of the above-captioned action, as set forth in the
2 Agreement, as fair, adequate, and reasonable to the Parties and Class Members. Except as modified by
3 this Order, the Parties are directed to perform in accordance with the terms set forth in the Agreement.

4 5. Except as otherwise provided in the Agreement, the Parties are to bear their own costs
5 and attorneys' fees.

6 6. The Court hereby certifies the following Class of all persons who are or have been
7 employed by Defendant, Berry Global, Inc., in non-exempt positions in the state of California from
8 April 2, 2018, through September 30, 2022, except for those who worked only "Excluded
9 Workweeks"—i.e., workweeks that were already subject to settlement in (i) *Marco Rendon v. AEP*
10 *Industries, Inc., et al.*, San Bernardino County Superior Court Case No. CIVDS1621981, prior to May 8,
11 2018, (ii) *Huy Trinh, et al. v. Berry Plastics Corporation*, Orange County Superior Court Case No. 30-
12 2015-00809744-CUOE-CXC, prior to April 1, 2018, and (iii) *Gonsales v. Berry Global Films, LLC*, San
13 Bernardino Superior Court Case No. CIVDS1928987, prior to December 20, 2020.

14 7. With respect to the Class and for purposes of approving the settlement only and for no
15 other purpose, this Court finds and concludes that: (a) the members of the Class are ascertainable and so
16 numerous that joinder of all members is impracticable; (b) there are questions of law or fact common to
17 the Class, and there is a well-defined community of interest among members of the Class with respect to
18 the subject matter of the non-exempt claims in the Action; (c) the claims of Class Representative are
19 typical of the claims of the members of the Class; (d) the Class Representative has fairly and adequately
20 protected the interests of the members of the Class; (e) a class action is superior to other available
21 methods for an efficient adjudication of this controversy; and (f) the counsel of record for the Class
22 Representative, i.e., Class Counsel, are qualified to serve as counsel for Plaintiff in his individual and
23 representative capacities and for the Class.

24 8. Within 20 days of this Order, Defendants shall deposit the Gross Settlement Amount of
25 \$1,665,000.00 with the Administrator.

26 9. From the Gross Settlement Amount, the Administrator shall pay:

- 27 • to Class Counsel attorneys' fees in the amount of \$550,000.00 and reimbursement of
28 costs in the amount of \$15,698.35;

- to Class Representative Kalum Vaughns for his unique services to the Class, and as consideration for the execution of a general release apart from pending claims, the amount of \$10,000.00;
- to the California Labor and Workforce Development Agency the amount of \$75,000.00 for its 75% share of PAGA Penalties;
- to PAGA Employees the amount of \$25,000.00 for their 25% share of PAGA Penalties, which shall be distributed by the Administrator pro rata based on the number of relevant pay periods worked by each PAGA Employees; and
- to Phoenix Settlement Administrators the amount of \$14,500.00 for its fees and costs in administering the settlement.

10. The Court finds that these amounts are fair and reasonable. The Administrator is directed to make such payments in accordance with the terms of the Agreement.

11. The Court approves the Individual Settlement Payment, which shall be distributed by the Administrator pursuant to the terms of the Agreement, after allocation of the amounts set forth in Paragraph 9 and after funding the employer share of payroll taxes for such payments.

12. The Court hereby orders the parties to implement the terms of the Agreement, including distributing the funds from any uncashed settlement checks to the State Unclaimed Property Fund in the name of the recipient.

13. All Class Members, the LWDA, and Plaintiff shall be bound by the applicable releases provided in the Agreement.

IV. Judgment

The Court hereby enters final judgment in this case in accordance with the terms of the Settlement, Preliminary Approval Order, and this Order. Pursuant to Rule 3.769(h) of the California Rules of Court, and without affecting the finality of the Settlement or Judgment entered, this Court shall retain exclusive and continuing jurisdiction over the action and the Parties, including all Settlement Class Members, for purposes of enforcing this Judgment.

Pursuant to Code of Civil Procedure section 668.5, judgment shall be entered as of the filing of this judgment. This judgment makes no finding of any violation of the Labor Code, liability, or other

wrongdoing. None of the settlement or any of its terms, the order approving the settlement, or this judgment are an admission of any liability or finding of any violation of the Labor Code.

IT IS SO ORDERED AND ADJUDGED.

DATED: _____, 2023

JUDGE OF THE SUPERIOR COURT