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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.

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
DAVID L. COHN, CLERK

FEB 24 2023

BY: PAOLA INCEDE, Deputy

Case No. CIVSB2129167

[Hon. David Cohn, Department S-26]

**DECLARATION OF SIMON L. YANG IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: May 10, 2023
Time: 8:30 a.m.
Department: S-26

Complaint Filed: November 24, 2021

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 November 24, 2021, Plaintiff, Kalum Vaughns, initiated this class action. Upon the
8 initiation of the Action, Plaintiff met and conferred about the alleged claims with Defendant, Berry
9 Global, Inc. Defendant provided Plaintiff with information about various defenses, including those
10 based on prior class actions in *Marco Rendon v. AEP Industries, Inc., et al.*, San Bernardino County
11 Superior Court Case No. CIVDS1621981; *Huy Trinh, et al. v. Berry Plastics Corporation*, Orange
12 County Superior Court Case No. 30-2015-00809744-CUOE-CXC; *Gonsales v. Berry Global Films,*
13 *LLC*, San Bernardino Superior Court Case No. CIVDS1928987; and *Miller v. Berry Global, Inc., et al.*,
14 San Joaquin Superior Court Case No. STK-CV-UOE-2020-6547.

15 3. Class Counsel continued investigating the alleged claims and also analyzed any defenses
16 raised by Defendant. The Parties also continued to exchange information and documentation pursuant to
17 informal methods to assist them in exploring the possibility of a mediated resolution. Defendants
18 provided the relevant numbers of individuals, workweeks, shifts of varying lengths, and premiums paid,
19 for example, among other things. Defendant's willingness to provide informal discovery on a classwide
20 basis enabled Plaintiff to evaluate the full scope of Defendant's potential liability. Ultimately, the Parties
21 agreed to schedule a mediation.

22 4. On August 24, 2022, the Parties attended mediation with Tripper Ortman, an experienced
23 mediator knowledgeable of both the wage and hour laws and class and representative action claims at
24 issue. With the mediator's assistance and based on a mediator's proposal, the Parties were able to
25 negotiate the settlement terms in the Stipulation re: Settlement of Class Action (the "Agreement"), a true
26 and correct copy of which is attached as **Exhibit 1**.

27 5. Based on data available at mediation, it was estimated that there would be approximately
28 1,238 Class Members. The Agreement requires Defendants to pay \$1,665,000.00—or approximately

1 \$1,297.74, on average, per Class Member. Based on Plaintiff's investigation, while some allegations had
2 more merit than others, Plaintiff contended that Defendant's practices would result in class recoveries
3 for failures to pay all wages owed, failures to timely pay all owing wages, and failures to provide
4 accurate wage statements. Although actual underpayments of wages, overtime, missed meal and rest
5 break premiums, sick pay amounted to comparatively smaller sums, Plaintiff argued that underpaid
6 wages resulted in Labor Code section 203 penalties of up to 30 days wages. Lab. Code § 203.¹ With
7 respect to wage statement violations, Plaintiff contended that Defendant were liable for up to \$100 in
8 penalties per wage statement under Section 226(e)—and an additional \$250 in PAGA penalties per wage
9 statement under Section 226.3. Also under PAGA, Plaintiff contended that Defendant also would be
10 liable for an additional \$100 per pay period under either Sections 210 and 2699(f).

11 6. Defendant contested the merits and denied it was liable at all. Moreover, even if Plaintiff
12 prevailed on the merits, Defendant contested the extent of liability. For example, with respect to wage
13 statement liability, Defendant contended that (i) liability under Section 226(e) would be subject to
14 additional defenses requiring proof of injuries resulting from knowing and intentional violations.
15 Likewise, with respect to PAGA liability, Defendant contended that PAGA penalties would be subject to
16 discretionary reductions and that wage statement violations in any event would permit a maximum
17 recovery of \$100 per wage statement only. With respect to liability from underpaid wages, Defendant
18 contended that they would not be subject to Section 203 penalties, based on a good faith defense. With
19 respect to meal and rest break violations, Defendant also contended that (i) there were no violations, (ii)
20 if there were, they were individualized issues not amenable to a representative proceeding, and (iii)
21 employees in any event were already paid premiums.

22 7. While the Parties disagree on the application of the law to the facts, each Party
23 recognized in negotiations that, if taken to trial, the other Party would at least have reasonable
24 arguments, such that the Gross Settlement Amount to which the Parties agreed was reasonable.
25 Ultimately, based on data at mediation, Plaintiff argued that a representative trial would result in total
26 potential class recovery of at least \$6,495,229.72—which included \$2,722,079.72 in penalties under
27

28

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

1 Section 203, \$419,100.00 in penalties under Section 226(e), \$1,047.750.00 in penalties under Section
2 226.3, and \$2,306,300.00 in penalties under Section 210 or 2699(f). Plaintiff contends that the Gross
3 Settlement Amount of \$1,665,000.00—or 25.63% of the total potential recovery—is an excellent result.
4 As the lowest settlement administration bid obtained was a quote not to exceed \$14,500.00, it is
5 expected that, on average, each Class Member would be allocated \$764.22 in settlement payments (*after*
6 all requested payments from the Gross Settlement Amount).²

7 8. Although I am confident that litigation of the claims would result in a classwide judgment
8 against Defendant, I recognize the inherent risks in litigation, including the specific risks that class
9 certification could be denied, liability could not be established at trial, or the applicable law could
10 change. I recognize that the settlement resulting from extensive arm’s length negotiations between the
11 Parties is fair, reasonable, and adequate for each participating Class Member, given the inherent risks of
12 litigation, as well as the potential for appeals and the costs of pursuing litigation.

13 9. I am one of the primary attorneys on this matter. My qualifications are as follows: After
14 completing my undergraduate education at The Wharton School at the University of Pennsylvania in
15 2004 with concentrations in Management and Human Resources, I continued studying labor and
16 employment issues by enrolling in post-graduate education at the School of Labor and Employment
17 Relations at the University of Illinois. I determined before enrolling in law school that I wanted to
18 practice labor and employment law in California. I thus received my J.D. from UCLA School of Law in
19 2008. During law school, I spent the summer of 2006 with the National Labor Relations Board, Region
20 21, and the summer of 2007 with the law firm of Seyfarth Shaw LLP in 2007.

21 10. Upon graduating from law school in 2008, I practiced labor and employment law at
22 Seyfarth Shaw LLP, a well-regarded labor and employment firm. I was elevated to partner in 2019. My
23 practice focused on wage and hour class, collective, and representative actions, with a particular
24 emphasis on matters involving the Labor Code Private Attorneys General Act of 2004 (“PAGA”).
25 During my time with Seyfarth Shaw LLP, I was a primary attorney on numerous wage and hour class,
26

27 ² The amount paid on average to each Class Member may increase, depending on how many Class
28 Members opt out of the class action settlement. The amount actually paid to any Class Member may
increase or decrease depending on his or her number of relevant pay periods during the Class Period.

collective, and representative actions that resulted in published opinions, including for example, *Ehret v. WinCo Foods, LLC*, 26 Cal. App. 6th 1 (2018) (affirming summary judgment in PAGA action based on absence of meal period violations in light of collectively bargained waiver of meal periods on shifts of not more than six hours), and *Ruelas v. Costco Wholesale Corporation*, 67 F. Supp. 3d 1137 (C.D. Cal. Sept. 8, 2014) (obtaining dismissal of wage statement allegations in PAGA representative action). I was also able to obtain experience litigating representative claims or wage and hour matters through trial and appeal. *E.g.*, *Velazquez v. Costco Wholesale Corporation*, 603 Fed. App'x 584 (9th Cir. Mar. 25, 2015) (reversing award of waiting-time penalties based on lack of evidence supporting any willful failure to pay wages); *Ward v. Costco Wholesale Corporation*, 552 Fed. App'x 631 (9th Cir. Jan. 9, 2014) (affirming bench-trial judgment in favor of defendant against named plaintiff and 18 opt-in plaintiffs in collective action with involving deductions from final paychecks). I also litigated class certification on numerous matters. *E.g.*, *Martinez v. Guess?, Inc.*, Los Angeles Superior Court Case No. BC 498326 (denial of class certification on behalf of retail employees alleging off-the-clock work).

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

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

13. My co-counsel and I will adequately represent the Class Members in this action.

Plaintiff's Counsel have and will zealously represent Plaintiff and the Class and pursue this lawsuit to its conclusion.

14. Along with the filing of the motion for preliminary approval of the settlement in this matter, I have directed my office staff to simultaneously upload a copy of the motion papers to the Labor and Workforce Development Agency (“LWDA”) in compliance with Section 2699(1)(2) and (4). Similarly, upon approval of a settlement in this matter, my regular practice would be to direct my office staff to upload a copy of the Court’s judgment, papers, or other orders awarding civil penalties under PAGA.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 24th day of February 2023, at Pasadena, California.


Simon L. Yang

EXHIBIT 1

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Attorneys for Plaintiff Kalum Vaughns and the Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

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

Plaintiff,

v.

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

Defendants.

Case No. CIV SB 2129167

**STIPULATION RE: SETTLEMENT OF
CLASS ACTION**

ASSIGNED FOR ALL PURPOSES TO
JUDGE David S. Cohn, Dept. S26

1 IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff Kalum
2 Vaughns (as Class Representative) ("Plaintiff"), on behalf of himself and all others similarly situated
3 to him and as defined below, on the one hand, and Defendant Berry Global, Inc. (herein "Berry
4 Global"), (Plaintiff and Berry Global are herein jointly referred to as "Parties") on the other hand, as
5 set forth 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 and representative Labor Code Private
11 Attorneys General Act of 2004 ("PAGA") action, this settlement must receive final approval from the
12 Court. Accordingly, the Parties enter into this Stipulation and associated settlement on a conditional
13 basis. In the event that the Court does not execute and file the Order Granting Final Approval of
14 Settlement consistent with the material terms of this Stipulation, or in the event that the Court does
15 not enter the Judgment, or in the event that the associated Judgment does not become Final for any
16 reason, this Stipulation and any payments required herein shall be deemed null and void *ab initio*, it
17 shall be of no force or effect whatsoever, it shall not be referred to or utilized for any purpose
18 whatsoever, and the negotiation, terms and entry of it shall remain subject to the provisions of
19 California Evidence Code sections 1119 and 1152.

20 Berry Global denies all of the claims as to liability, damages, penalties and restitution
21 as well as the class and/or representative allegations asserted in the Litigation. Berry Global has agreed
22 to resolve this Litigation via this Stipulation, but to the extent this Stipulation is deemed void or does
23 not take effect, Berry Global does not waive, but rather expressly reserves, all rights to challenge all
24 such claims and allegations in the Litigation upon all procedural and factual grounds, including
25 without limitation the ability to challenge class or representative treatment on any grounds or to assert
26 any and all defenses or privileges. In such event, Plaintiff and Class Counsel agree that Berry Global
27 maintains all applicable defenses to claims, even to the extent that they would be inconsistent with the
28 terms of this Stipulation. Plaintiff and Class Counsel agree that Berry Global retains and reserves these

1 rights, and agree not to take a position to the contrary; specifically, the Class Representative and Class
2 Counsel waive, and agree not to argue or present, any argument that Berry Global could not contest
3 class certification or representative status on the grounds that Berry Global entered into this Stipulation
4 should this Litigation proceed. In particular, Plaintiff and Class Counsel waive, and agree not to argue
5 or present, any argument that Berry Global would be estopped from asserting that Plaintiff's claims
6 must be litigated on an individual basis or in any other way contesting class certification because it
7 has entered this Stipulation. In addition, the Settling Parties recognize and agree that under California
8 law (which is applicable here), courts impose a lesser burden for certification for settlement classes
9 than they do for contested or litigated classes, and the Settling Parties have agreed to certification for
10 settlement purposes only.

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

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

19 **III. THE LITIGATION.**

20 Plaintiff Kalum Vaughns filed an action against Berry Global on November 23, 2021
21 in the Superior Court of California, County of San Bernardino. The operative complaint alleges claims
22 under California Labor Code sections 201-204, 218, 221-224, 226(a), 226.7, 246, 510, 512, 1174,
23 1182.12, 1197, 1198, 1198.5, and 2698 *et seq.*, as well as Business and Professions Code sections
24 17200 *et seq.* Plaintiff is represented by David Lee Law APC and Diversity Law Group, P.C. On
25 behalf of himself and others similarly situated to him, Plaintiff has alleged in the Lawsuit that Berry
26 Global violated Class Members' (as defined herein) rights to meal periods, rest periods, minimum
27 wages, overtime pay, sick pay wages, accurate itemized wage statements, reimbursement of business
28 expenses, deductions from wages, and maintenance of employment records during the Class Period

1 (as defined herein).

2 Counsel for the parties attended a mediation session before professional mediator
3 Tripper Ortman on August 24, 2022. As a result of that mediation session, the parties have now
4 reached a class-wide settlement agreement.

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

8 In connection with the Litigation, Berry Global provided Plaintiff and his counsel with
9 relevant documents, in addition to data relating to the number of relevant pay periods and the number
10 of putative class members. In sum, Plaintiff and his counsel had more than sufficient information to
11 assess this matter.

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

13 Berry Global Releasees deny all of the claims and contentions alleged by the Class
14 Representative in the Litigation. Nonetheless, Berry Global has concluded that further conduct of the
15 Litigation would be protracted and expensive, and that it is desirable that the Litigation be fully and
16 finally settled in the manner and upon the terms and conditions set forth in this Stipulation. Berry
17 Global has also taken into account the uncertainty and risks inherent in any litigation, especially in
18 putative class actions like this Litigation. Berry Global has therefore determined that it is desirable
19 and beneficial to Berry Global that the Litigation be settled in the manner and upon the terms and
20 conditions set forth in this Stipulation.

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

22 Plaintiff believes that the claims asserted in the Litigation have merit and that evidence
23 developed to date supports the claims. Nonetheless, Plaintiff and Class Counsel recognize and
24 acknowledge the expense and length of the type of continued proceedings necessary to prosecute the
25 Litigation against Berry Global through trial and through appeals. Plaintiff and Class Counsel have
26 also taken into account the uncertain outcome and the risk of any litigation, especially in putative class
27 actions such as this Litigation, as well as the difficulties and delays inherent in such litigation. Plaintiff
28 and Class Counsel believe that the settlement set forth in the Stipulation confers substantial benefits

upon the Class. Based upon their evaluation, Plaintiff and Class Counsel have determined that the settlement set forth in the Stipulation is in the best interests of Plaintiff and the Class.

VI. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT.

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

1. Definitions.

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

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

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

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

1.4 “Class” means the collective group of any and all persons who are or have been employed by Berry Global 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.

1.5 “Class Counsel” or “Plaintiffs’ Counsel” means Diversity Law Group

1 and David Lee Law, APC.

2 1.6 “Class Member” means a person who is a member of the Class.

3 1.7 “Class Period” means the period from April 2, 2018 through September
4 30, 2022.

5 1.8 “Class Representative” or “The Class Representative” means Kalum
6 Vaughns in his capacity as the representative of the Class.

7 1.9 “Court” means the Superior Court of the State of California for the
8 County of San Bernardino.

9 1.10 “Effective Date” means the date on which the Judgment becomes Final.

10 1.11 “Excluded Workweeks” means workweeks that were already subject to
11 settlement, including settled workweeks in (i) *Marco Rendon v. AEP Industries, Inc., et al.*, San
12 Bernardino County Superior Court Case No. CIV DS1621981, prior to May 8, 2018, (ii) *Huy Trinh,*
13 *et al. v. Berry Plastics Corporation*, Orange County Superior Court Case No. 30-2015-00809744-CU-
14 OE-CXC, prior to April 1, 2018, and (iii) *Gonsales v. Berry Global Films, LLC*, San Bernardino
15 Superior Court Case No. CIVDS1928987, prior to December 20, 2020.

16 1.11 “Final” means the latest of the following dates: (a) if no objections to
17 the settlement are filed, the date the Final Approval Order is signed by the Court; (b) if objections to
18 the settlement are filed, the day following the expiration of the time for the filing of an appeal of the
19 Final Approval Order; or (c) if any appeals of the Final Approval Order are filed, the day following
20 the expiration of time to further appeal an order affirming the Final Approval Order. No payment will
21 be made by Berry Global prior to ten business days after the Effective Date.

22 1.12 “Gonsales Settlement Class Members” means members of the Class
23 who were also members of the settlement class in *Gonsales v. Berry Global Films, LLC*, San
24 Bernardino County Superior Court Case No. CIVDS1928987, which a portion of the claims asserted
25 herein for certain Class Members through December 21, 2020.

26 1.13 “Gross Settlement Amount” shall mean the maximum total amount that
27 can be paid by Berry Global pursuant to this Stipulation. It is agreed that the Gross Settlement Amount
28 is One Million Six Hundred Sixty-Five Thousand Dollars (\$1,665,000.00), subject to the following: if the

1 actual total number of weeks worked by Class Members between April 2, 2018 to September 30, 2022,
2 exceeds the estimated number of workweeks for that period (75,516) by more than 8%, the Gross
3 Settlement Amount will increase proportionally on a pro rata basis to cover the number of workweeks
4 exceeding 75,516 by more than 8% (i.e., if the actual number were 10% greater than 75,516, then the
5 Gross Settlement Amount would be increased by 2.0%). Except as stated within this Stipulation, it is
6 further agreed that pursuant to the terms of this Stipulation, Berry Global will not pay more than the
7 Gross Settlement Amount. Under no other circumstances shall Defendant be liable for more than the
8 Gross Settlement Amount, which shall cover all expenses associated with the settlement, which shall
9 be only the following items: (1) the Payments to Class Members, which is the maximum amount that
10 Berry Global will pay (subject to the occurrence of the Effective Date and the minimum payment
11 provision in Paragraph 1.38) to Class Members; (2) the maximum total gross amount Berry Global
12 will pay (subject to the occurrence of the Effective Date) to Class Counsel for attorneys' fees, which
13 is up to a maximum of 33.33% of the Gross Settlement Amount; (3) up to \$30,000.00 in Class Counsel
14 litigation costs and expenses; (4) the maximum total gross amount Berry Global will pay (subject to
15 the occurrence of the Effective Date) to Kalum Vaughns as a plaintiff enhancement, which is up to a
16 maximum of \$10,000.00; (5) the fees Berry Global will pay the Administrator for the settlement
17 administration, which are estimated to be approximately \$10,000.00; and (6) the maximum total gross
18 amount Berry Global will pay (subject to the occurrence of the Effective Date) for resolution of claims
19 under California Labor Code section 2698 et seq. which shall be \$100,000.00, with 75% of said
20 amount to be paid to the California Labor and Workforce Development Agency and 25% of said
21 amount to be reallocated into the Net Settlement Amount.

22 1.14 "Judgment" means the judgment to be rendered by the Court pursuant
23 to this Stipulation. This Judgment shall be a judgment for purposes of California Rule of Court
24 3.771(a).

25 1.15 "Last Known Address" means the most recently recorded mailing
26 address for a Class Member as contained in the personnel records maintained by Berry Global.

27 1.16 The "Litigation" or the "Lawsuit" shall mean the lawsuit entitled *Kalum*
28 *Vaughns v. Berry Global, Inc., et al.*, Case No. CIVSB2129167, Superior Court of the State of

1 California, County of San Bernardino.

2 1.17 “Miller Settlement Class Members” means members of the Class who
3 are members of the settlement class in *Steven Miller v. Berry Global, Inc., et al.*, San Joaquin Superior
4 Court Case No. STK-CV-UOE-2020-6547, which a portion of the claims asserted herein for certain
5 Class Members through April 1, 2022.

6 1.18 “Net Settlement Amount” shall mean the Gross Settlement Amount
7 minus the amounts awarded by the Court for attorneys’ fees and costs, the enhancement to Kalum
8 Vaughns, the awarded administration costs, and the payment to the California Labor and Workforce
9 Development Agency.

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

17 1.20 “Notice Mailing Deadline” means the deadline for the Administrator to
18 mail the Class Notice, which shall be fifteen (15) calendar days after Berry Global provides the
19 Administrator with the information identified in section 2.4.3.

20 1.21 “Notice Response Deadline” means the deadline for all Class Members
21 to respond to the Class Notice, which shall be forty-five (45) days after the Class Notice is mailed.

22 1.22 “Opt Out” or “Opt Outs” means written and signed requests by Class
23 Members to be excluded from the Settlement Class, which are submitted in the manner specified in
24 the Class Notice, postmarked no later than the Notice Response Deadline.

25 1.23 “Final Approval Order” or “Order Granting Final Approval of
26 Settlement” shall mean an order to be entered by the Court granting final approval of this Settlement.

27 1.24 “Preliminary Approval Date” shall mean the date on which the Court
28 grants preliminary approval of this settlement.

1 1.25 “Preliminary Approval Order” or “Order Granting Preliminary
2 Approval for the Settlement and Setting a Settlement Hearing” shall mean an order to be executed and
3 filed by the Court granting preliminary approval of this Settlement.

4 1.26 “Reasonable Address Verification Measure” shall mean the utilization
5 of the National Change of Address Database maintained by the United States Postal Service to review
6 the accuracy of and, if possible, update a mailing address.

7 1.27 “Released Claims” shall collectively mean any and all claims that were
8 or could have been asserted in the Lawsuit against Berry Global Releasees (as defined above), whether
9 known or unknown, including those in the original and amended Complaint and LWDA Letters, based
10 on the facts alleged therein, as broadly as permitted by law, specifically including without limiting the
11 generality thereof: claims for missed or unpaid meal periods or rest periods; failure to pay all wages
12 owed (including without limitation, failure to pay minimum wages, the regular rate of pay, overtime
13 pay, double time pay, premium pay and/or otherwise properly calculate overtime); any claim for
14 failure to properly pay sick pay; any claim for failure to provide accurate itemized wage statements or
15 to keep accurate records; any claim for failure to timely pay all wages during employment or upon
16 termination; paystub claims; waiting time penalties; any claim for failure to reimburse expenses; and
17 PAGA penalties, and/or unfair competition claims based on the foregoing. The release of the foregoing
18 claims, extends to all theories of relief regardless of whether the claim is, was or could have been
19 alleged as separate claims, causes of action, lawsuits or based on other theories of relief, whether under
20 federal law, state law or common law (including, without limitation, as violations of the California
21 Labor Code, the Wage Orders, applicable regulations, California’s Business and Professions Code
22 section 17200 or under California’s Private Attorney General Act). This release includes all types of
23 relief available for the above-referenced claims, including, without limitation, any claims for damages,
24 restitution, losses, penalties, fines, liens, attorneys’ fees, costs, expenses, debts, interest, injunctive
25 relief, declaratory relief, or liquidated damages.

26 1.28 “Workweek” or “week worked” means a week during which a Class
27 Member performed work as an employee of Berry Global in the state of California during the Class
28 Period, excepting those dates/times taken for vacations and leaves of absences.

1.29 “*Rendon* Settlement Class Members” means members of the Class who were also members of the settlement class in *Rendon v. AEP Industries, Inc., et al.*, San Bernardino County Superior Court Case No. CIVDS1621981, which a portion of the claims asserted herein for certain Class Members through May 8, 2018.

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

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

1.32 “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).

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

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

1.35 “Individual Settlement Sum” means the total amount due to an individual Class Member, which shall be the Settlement Sum Variable times the individual class members’ applicable workweeks, subject to (i) exclusion of Excluded Workweeks for *Trinh* Settlement Class Members, *Rendon* Settlement Class Members, and *Gonsales* Settlement Class Members and (ii) half-weight (i.e., multiplied by 0.5) for workweeks from April 9, 2019, through April 1, 2022, for *Miller* Settlement Class Members.

1.36 “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

1 applicable workweeks for all Settlement Class Members.

2 1.37 “Settling Parties” means Berry Global and Class Representative Kalum
3 Vaughns, on behalf of himself and all Members of the Settlement Class.

4 1.38 “Kalum Vaughns” or “Plaintiff Kalum Vaughns” means Kalum
5 Vaughns, an individual and named plaintiff in the Litigation.

6 1.39 “Stipulation” means this agreement, the Stipulation Re: Settlement of
7 Class Action and all of its attachments and exhibits, which the Settling Parties understand and agree
8 sets forth all material terms and conditions of the Settlement between them, and which is subject to
9 Court approval. It is understood and agreed that Berry Global’s obligations for payment under this
10 Stipulation is conditioned on, *inter alia*, the occurrence of the Effective Date.

11 1.40 “*Trinh* Settlement Class Members” means members of the Class who
12 were also members of the settlement class in *Huy Trinh, et al. v. Berry Plastics Corporation*, Orange
13 County Superior Court Case No. 30-2015-00809744-CU-OE-CXC, which a portion of the claims
14 asserted herein for certain Class Members through April 1, 2018.

15 1.41 “Updated Address” means a mailing address that was updated via a
16 Reasonable Address Verification Measure, or via an updated mailing address provided by the United
17 States Postal Service or a Class Member.

18 2. The Settlement.

19 2.1 *Payment and Other Obligations of Berry Global.*

20 2.1.1 Berry Global, through the Administrator, and according to the terms,
21 conditions and procedures set forth in this Stipulation, shall pay the Gross Settlement Amount to be
22 distributed as set forth herein.

23 2.1.2 As further detailed in Paragraphs 2.2.1, 2.2.2 and 2.2.3, and for each
24 payment made pursuant to this Stipulation, Berry Global, itself or through the Administrator, will
25 report each payment to government authorities including the Internal Revenue Service as required by
26 law with all required deductions and/or withholdings. Berry Global will not, unless otherwise required
27 by law, make any additional deductions, withholdings or payments, including without limitation,
28 medical or other insurance payments or premiums, employee 401(k) contributions or matching

1 employer contributions, wage garnishments, or charity withholdings. Payments made pursuant to this
2 Stipulation shall not be deemed wages earned or other compensation for purposes of any Berry Global
3 employment benefits or other benefits that accrue or are determined on the basis of wages or
4 compensation paid.

5 2.2 *Taxes.*

6 2.2.1 85% shall be deemed a payment for penalties or interest, and as such
7 shall not be subject to withholdings or deductions, and 15% shall be deemed a payment for wages, and
8 subject to tax withholdings.

9 2.2.2 Each Class Member shall be issued any applicable IRS Form 1099 in
10 connection with the payment of the penalty portion, and W-2 in connection with the payment of the
11 wage portion.

12 2.2.3 Other than the withholding and reporting requirements set forth in
13 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
14 for the reporting and payment of any federal, state and/or local income or other tax or any other
15 withholdings, if any, with respect to their share of the Settlement Sum. Berry Global makes no
16 representations, and it is understood and agreed that Berry Global has made no representations, as to
17 the taxability of any portions of the settlement payments to any Settlement Class Members, the
18 payment of any costs or an award of attorney fees, or any payments to the Class Representative.

19 2.3 *Approval of Notice to the Class and Scheduling of a Settlement Hearing.*

20 2.3.1 The Class Representative and Berry Global, through their counsel of
21 record, shall file this Stipulation with the Court and the Class Representative shall move for
22 preliminary approval of this Stipulation pursuant to California Rule of Court 3.769(c), providing
23 counsel for Berry Global with an advance copy and chance to comment prior to filing. Via this
24 submission, and a supporting motion, the Class Representative shall request that the Court enter the
25 Preliminary Approval Order thereby scheduling the Settlement Hearing (pursuant to California Rule
26 of Court 3.769(e)) for the purposes of determining the good faith of the settlement, granting final
27 approval of the settlement, granting final approval of this Stipulation and obtaining entry of Judgment.

28 2.3.2 If the Court enters the Preliminary Approval Order, then at the resulting

1 Settlement Hearing, the Class Representative through Class Counsel, and Berry Global, through its
2 counsel of record, shall address any written objections from Class Members or any concerns from
3 Class Members who attend the Settlement Hearing as well as any concerns of the Court, and shall and
4 hereby do, unless provided otherwise in this Stipulation, stipulate to final approval of this Stipulation
5 and entry of the Judgment by the Court.

6 2.4 *Notice to Class Members.*

7 2.4.1 If, by entering the Preliminary Approval Order, the Court provides
8 authorization to send the Notice Re: Pendency of Class Action to Class Members, Berry Global,
9 through the Administrator, will facilitate the mailing to all Class Members at their Last Known
10 Addresses of the Notice Re: Pendency of Class Action via first class mail through the United States
11 Postal Service, postage pre-paid.

12 2.4.2 This Notice Re: Pendency of Class Action and its envelope or covering
13 shall be marked to denote the return address of the Administrator stated on the Notice.

14 2.4.3 Berry Global shall prepare the name and Last Known Address, Social
15 Security Number, and number of weeks worked by each Class Member for the Administrator only so
16 that the Administrator can engage in the processing and mailing of each Notice Re: Pendency of Class
17 Action and the associated claims process. This list shall be provided to the Administrator within
18 twenty-one (21) days after the Court grants Preliminary Approval of the Settlement. This list shall not
19 be provided to Class Counsel.

20 2.4.4 Prior to mailing the Notice Re: Pendency of Class Action to each Class
21 member, the Administrator shall undertake a Reasonable Address Verification Measure to ascertain
22 the current accuracy of the Last Known Address of each Class Member. To the extent this process
23 yields an Updated Address, that Updated Address shall replace the Last Known Address and be treated
24 as the new Last Known Address for purposes of this Stipulation and for subsequent mailings in
25 particular.

26 2.4.5 Each of the Notices shall be mailed to the Last Known Addresses of the
27 Class Members no later than the Notice Mailing Deadline.

28 2.4.6 The Notice Re: Pendency of Class Action shall be deemed mailed and

received by the Class Member to whom it was sent as of the postmarked date of mailing. In the event that subsequent to the first mailing of a Notice Re: Pendency of Class Action and on or after the Notice Response Deadline, that Notice is returned to the Administrator by the United States Postal Service because the address of the recipient is no longer valid, *i.e.*, the envelope is marked “Return to Sender,” the Administrator shall be required to take no further action with that Class Notice and it shall be deemed to have been delivered. In the event that subsequent to the first mailing of a Notice Re: Pendency of Class Action and prior to the Notice Response Deadline, that Notice is returned to the Administrator by the United States Postal Service with a forwarding address for the recipient, the Administrator shall promptly re-mail the notice to that address, and the forwarding address shall be deemed the Updated Address for that Class Member. In the event that subsequent to the first mailing of a Notice Re: Pendency of Class Action and prior to the Notice Response Deadline, that Notice is returned to the Claims Administrator by the United States Postal Service because the address of the recipient is no longer valid, *i.e.*, the envelope is marked “Return to Sender,” the Claims Administrator shall undertake another Reasonable Address Verification Measure to attempt to ascertain the current address of the particular Class Member in question and, if such an address is ascertained, the Claims Administrator will re-send the Notice within three (3) days of receiving such information; if no Updated Address is obtained for that Class Member, the Notice Re: Pendency of Class Action shall be sent again to the Last Known Address. In either event, the Notice Re: Pendency of Class Action shall be deemed received once it is mailed for the second time. If the Notice Re: Pendency of Class Action is re-mailed due to a previously defective address, the respective Class Member’s Notice Response Deadline shall be 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 pursuant to the procedures in the Class Notice. 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 pursuant to the procedures in the Class Notice, Class Members shall be deemed Members of the Settlement Class and shall be subject to the Judgment.

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

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

2.6.1 Within fourteen (14) days of and only after the Effective Date, Berry Global shall transfer the funds necessary to satisfy its payment obligations pursuant to this Stipulation

1 and the Judgment to the Administrator.

2 2.6.2 Within ten (10) days after receipt of the funds identified in section 2.6.1,
3 the Administrator will mail all payments pursuant to the Stipulation to recipients' Last Known
4 Address, or Updated Address if obtained. Checks issued pursuant to this Agreement shall remain
5 negotiable for a period of at least one-hundred eighty (180) days from the date of mailing. Any funds
6 associated with any checks which are not properly or timely negotiated shall escheat to the State
7 Controller's unclaimed property fund in the name of the Settlement Class Member. Settlement Class
8 Members who fail to negotiate their settlement checks in a timely fashion shall remain subject to the
9 terms of the Judgment.

10 2.6.3 Following the mailing of the payments to Settlement Class Members
11 discussed in Paragraph 2.6.2, the Administrator shall provide counsel for the Settling Parties with a
12 written confirmation of this mailing.

13 2.7 *Releases.*

14 2.7.1 Upon the Effective Date, the Class Representative and each of the
15 Settlement Class Members shall be deemed to have, and by operation of the Judgment shall have,
16 fully, finally, and forever released, relinquished and discharged all Released Claims.

17 2.7.2 The release of the Released Claims is a material term to this Agreement.
18 In addition to discharging the Released Claims as set forth in Paragraph 2.7.1, as of the date the Final
19 Approval Order is entered by the Court and except as to such rights or claims as may be created by
20 this Settlement, to the maximum extent allowed by law, the Class Representative will be deemed to
21 have released claims as follows:

22 The Class Representative hereby fully and finally releases and discharges Berry Global,
23 Inc., its subsidiaries, owners, affiliated or related entities and their owners, and its officers, directors,
24 shareholders, partners, employees, agents, insurers, attorneys, successors and assigns from any and all
25 claims, charges, complaints, liens, demands, causes of action, obligations, damages and liabilities,
26 known or unknown, suspected or unsuspected, that the Class Representative had, now has, or may
27 hereafter claim to have against the Berry Global Releasees arising out of, or relating in any way to,
28 the Class Representative's hiring by, employment with, or otherwise relating to the Berry Global

1 Releasees (“Class Representative’s Released Claims”), arising or accruing from the beginning of time
2 up through the date of the Final Approval Hearing. The Class Representative’s Released Claims
3 include, but are not limited to, claims arising from or dependent on the California Labor Code, the
4 Wage Orders of the California Industrial Welfare Commission, California Business and Professions
5 Code Section 17200, *et. seq.*, California Labor Code Private Attorneys General Act of 2004, Labor
6 Code § 2699, *et seq.*, the California Fair Employment and Housing Act, Cal. Gov’t Code Section
7 12900 *et seq.*, the California common law of contract and tort, Title VII of the Civil Rights Act of
8 1964, the Americans with Disabilities Act, 42 U.S.C. Section 12101 *et seq.*, the Employee Retirement
9 Income Security Act of 1974, 29 U.S.C. Section 1001 *et seq.*, the Fair Labor Standards Act, 29 U.S.C.
10 Section 201 *et seq.* and the Portal to Portal Act, 29 U.S.C. Section 251, *et seq.*, except for such claims
11 that cannot be released by law.

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

14 **A general release does not extend to claims that the**
15 **creditor or releasing party does not know or suspect to**
16 **exist in his or her favor at the time of executing the release**
17 **and that, if known by him or her, would have materially**
affected his or her settlement with the debtor or released
party.

18 2.8 *Costs, Attorneys’ Fees, and Class Representative Enhancement.*

19 2.8.1 Class Counsel shall be entitled, subject to the approval of the Court and
20 the occurrence of the Effective Date, to recover their reasonable litigation costs, associated expenses
21 and attorney fees from Berry Global pursuant to California law. Subject to Court approval and the
22 occurrence of the Effective Date, Class Counsel can obtain up to 33.33% of the Gross Settlement
23 Amount for attorneys’ fees, and up to \$30,000.00 in litigation costs. Class Counsel and the Class
24 Representative will not seek to recover any other fees, costs or expenses incurred in this Litigation.
25 Berry Global will not oppose an award that is consistent with this Paragraph 2.8.1. Class Counsel
26 shall be responsible for the reporting and payment of any federal, state and/or local income or other
27 form of tax on any payment made pursuant to this paragraph. The payment awarded and made
28 pursuant to this paragraph shall constitute full satisfaction of any claim for fees or costs or any other

1 expenses, and the Class Representative and Class Counsel, on behalf of himself and all Settlement
2 Class Members, agree that they shall neither seek nor be entitled to any additional attorney's fees or
3 costs under any theory nor shall they seek an award in excess of the amount specified herein. Other
4 than as provided in this Paragraph 2.8.1 for the limited purpose discussed herein, no party shall be
5 deemed the prevailing party for any other purposes of the Litigation, and all parties shall bear their
6 own costs. The attorneys' fees and costs to Class Counsel shall be reported to the Internal Revenue
7 Service as non-wage income in the year of payment. This reporting shall be done via a Form 1099,
8 and Class Counsel agrees to take full responsibility for the payment of any outstanding taxes due.

9 2.8.2 Berry Global agrees not to oppose an enhancement award request of up
10 to ten thousand dollars (\$10,000.00) for the Class Representative for his services as Class
11 Representative and for his execution of the general release as described herein. The enhancement
12 payments to the Class Representative shall be reported to the Internal Revenue Service as non-wage
13 income to the Class Representative in the year of payment. This reporting shall be done via a Form
14 1099, and the Class Representative will agree to take full responsibility for the payment of any
15 outstanding taxes due.

16 2.8.3 Unless otherwise expressly provided, Berry Global shall have no
17 responsibility for, and no liability whatsoever with respect to, the allocation among the Class
18 Representative, Class Counsel and/or any other Person who may assert some claim thereto, of any
19 award or payment issued or made in the Litigation or pursuant to this Stipulation.

20 2.9 *Administrator.*

21 2.9.1 Based on current estimates and for purposes of setting the Gross
22 Settlement Amount, the Settling Parties anticipate that the total fees and expenses incurred by the
23 Administrator will be approximately \$10,000.00 but the Settling Parties understand and agree that this
24 figure represents just an estimate, and the sum charged by the Administrator may be different. To the
25 extent that the costs of administration exceed \$10,000.00, the shortfall will be taken from the Gross
26 Settlement Amount. To the extent the cost of administration is less than \$10,000.00, the excess shall
27 remain part of the Gross Settlement Amount.

28 2.9.2 The actions of the Administrator shall be governed by the terms of this

1 Stipulation. Berry Global may provide relevant information needed by the Administrator pursuant to
2 this Stipulation and engage in related communications with the Administrator without notice or copies
3 to Class Counsel, any Class Members or the Court. Berry Global may provide logistical instructions
4 to the Administrator with regard to actions required by this Stipulation and engage in related
5 communications with the Administrator without notice or copies to Class Counsel, any Class Members
6 or the Court. This provision shall not be read to preclude Class Counsel from communicating with
7 the Administrator.

8 2.9.3 In the event that any of the Settling Parties take the position that the
9 Administrator has not acted in accordance with the terms of the Stipulation, that Party's counsel shall
10 meet and confer with counsel for the other Settling Parties prior to raising any such issue with the
11 Court.

12 2.10 *Termination of Settlement.*

13 2.10.1 In the event that five (5) percent or more of the Class Members opt out
14 of the Settlement Class by submitting Opt Outs pursuant to Paragraph 2.5.3, Berry Global shall have
15 the option to terminate and void this settlement and Stipulation. However, if Berry Global elects to
16 terminate this settlement and Stipulation pursuant to this Paragraph, Berry Global shall be responsible
17 for all Administration costs incurred. If the settlement and Stipulation is terminated for any other
18 reason, the Parties shall be equally responsible for all Administration costs incurred on 50/50 basis.

19 2.10.2 The release of the Released Claims is a material term to this Agreement.
20 In the event that the Stipulation and the Released Claims are not approved, Berry Global shall have no
21 obligation to proceed with the Stipulation, settlement, or any payments described herein.

22 2.11 *Miscellaneous Provisions.*

23 2.11.1 No Person shall have any claim against Class Counsel, the
24 Administrator, or any of the Berry Global Releasees based on the payments made or other actions
25 taken substantially in accordance with the Stipulation and the settlement contained therein or further
26 orders of the Court.

27 2.11.2 In the event that the Stipulation is not substantially approved by the
28 Court or the settlement set forth in the Stipulation is terminated, cancelled, declared void or fails to

1 become effective in accordance with its terms, or if the Judgment does not become Final, or to the
2 extent cancellation is otherwise provided for in this Stipulation, the Settling Parties shall resume the
3 Litigation at that time as if no Stipulation had been entered. In such event, the terms and provisions
4 of the Stipulation shall have no further force and effect with respect to the Settling Parties and shall
5 not be used in this Litigation or in any other proceeding for any purpose, and any Judgment or order
6 entered by the Court in accordance with the terms of the Stipulation shall be treated as vacated, *nunc*
7 *pro tunc*.

8 2.11.3 Unless otherwise ordered by the Court, in the event the Stipulation shall
9 be terminated, cancelled, declared void or fails to become effective in accordance with its terms, or if
10 the Judgment is reversed on appeal, within twenty (20) business days after written notification of such
11 event, Berry Global and Class Counsel shall notify each other of this event in writing.

12 2.11.4 The Settling Parties: (a) acknowledge that it is their intent to
13 consummate this agreement; (b) agree to cooperate to effectuate and implement all terms and
14 conditions of the Stipulation and to exercise their best efforts to accomplish the foregoing terms and
15 conditions of the Stipulation; and (c) agree to seek and to attempt to obtain Court approval for the
16 Stipulation.

17 2.11.5 The Stipulation compromises claims which were contested and the
18 subject of a good faith dispute, and it shall not be deemed an admission by any of the Settling Parties
19 as to the merits of any claim or defense. The Settling Parties agree that the amounts paid in Settlement
20 and the other terms of the settlement were negotiated at arm's-length and in good faith with sufficient
21 information by the Settling Parties and reflect a settlement that was reached voluntarily after
22 consultation with competent legal counsel.

23 2.11.6 Neither the Stipulation nor the settlement, nor any act performed or
24 document executed pursuant to, or in furtherance of, the Stipulation or the settlement: (a) is or may
25 be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim,
26 or of any wrongdoing or liability of the Berry Global Releasees, or any of them; or (b) is or may be
27 deemed to be or may be used as an admission of, or evidence of, any fault or omission of the Berry
28 Global Releasees, or any of them, in any civil, criminal or administrative proceeding in any court,

1 administrative agency or other tribunal.

2 2.11.7 All of the exhibits to the Stipulation are material and integral parts
3 hereof and are fully incorporated herein by this reference.

4 2.11.8 The Stipulation may be amended or modified only by a written
5 instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest.

6 2.11.9 The Stipulation constitutes the entire agreement among the Settling
7 Parties hereto and no representations, warranties or inducements have been made to any party
8 concerning the Stipulation or its exhibits other than the representations, warranties and covenants
9 contained and memorialized in such documents. Except as otherwise provided herein, each party shall
10 bear its own costs.

11 2.11.10 Class Counsel, on behalf of the Class, are expressly authorized by the
12 Class Representative to take all appropriate action required or permitted to be taken by the Class
13 pursuant to the Stipulation to effect its terms and also are expressly authorized to enter into any
14 modifications or amendments to the Stipulation on behalf of the Class which they deem appropriate.

15 2.11.11 Each counsel or other Person executing the Stipulation or any of its
16 exhibits on behalf of any party hereto hereby warrants that such Person has full and express authority
17 to do so.

18 2.11.12 The Stipulation may be executed in one or more counterparts. All
19 executed counterparts and each of them shall be deemed to be one and the same instrument. A
20 complete set of executed counterparts shall be filed with the Court.

21 2.11.13 The Stipulation shall be binding upon, and inure to the benefit of, the
22 successors and assigns of the parties hereto, however, this Stipulation is not designed to and does not
23 create any third-party beneficiaries unless otherwise specifically provided herein.

24 2.11.14 The Court shall retain jurisdiction with respect to implementation and
25 enforcement of the terms of the Stipulation, and all parties hereto submit to the jurisdiction of the
26 Court for purposes of implementing and enforcing the settlement embodied in the Stipulation. To the
27 extent either Party seeks to enforce the terms of this Stipulation, the prevailing party to any such
28 enforcement action shall be entitled to seek all reasonable attorneys' fees and costs incurred in

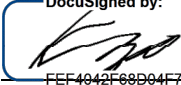
1 connection with any such enforcement action.

2 2.11.15 The Stipulation and the exhibits hereto shall be considered to have been
3 negotiated, executed and delivered, and to have been wholly performed, in the State of California, and
4 the rights and obligations of the parties to the Stipulation shall be construed and enforced in accordance
5 with, and governed by, the internal, substantive laws of the State of California without giving effect
6 to that State's choice of law principles.

7 2.11.16 The language of all parts of this Stipulation shall in all cases be
8 construed as a whole, according to its fair meaning, and not strictly for or against either party. No
9 party shall be deemed the drafter of this Stipulation. The parties acknowledge that the terms of the
10 Stipulation are contractual and are the product of negotiations between the parties and their counsel.
11 Each party and his/its counsel cooperated in the drafting and preparation of the Stipulation. In any
12 construction to be made of the Stipulation, the Stipulation shall not be construed against any party and
13 the canon of contract interpretation set forth in California Civil Code section 1654 shall not be applied.

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

16 Dated: Kalun Vaughns
17 February 17, 2023

DocuSigned by:
By: 
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KALUM VAUGHNS

18
19 Dated: _____, 2023

BERRY GLOBAL, INC.

20
21 By: _____

22
23
24 APPROVED AS TO FORM:
25
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1 Dated: _____, 2023

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Dated: February 23 _____, 2023

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9

REBECCA ARAGON
EVERETT C. MARTIN
LITTLER MENDELSON, P.C.
Attorneys for Defendant
BERRY GLOBAL, INC.

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