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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

[Hon. David Cohn, Department S-26]

**[PROPOSED] ORDER GRANTING
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

Plaintiff's motion for an Order Granting Preliminary Approval of Class Action Settlement was filed with the Court on February 24, 2023, and a hearing was held before this Court on May 10, 2023.

I. RECITALS

1. On November 24, 2021, Plaintiff initiated this class and Labor Code Private Attorneys General Act of 2004 ("PAGA") action. The operative complaint alleges 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.

2. On August 24, 2022, the Parties attended mediation with Tripper Ortman. With the mediator's assistance and based on a mediator's proposal, the Parties were able to negotiate the settlement terms in the Stipulation re: Settlement of Class Action (the "Agreement").

II. FINDINGS

3. The Court conditionally certifies the following Class: any and 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 (the "Class Period"), 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.

4. The Court hereby approves the terms and conditions provided for in the Agreement. The Court finds that on a preliminary basis the Agreement falls within the range of reasonableness of a settlement and appears to be presumptively valid, subject to any objections that may be raised at the final fairness hearing and subject to final approval by the Court. It appears to the Court on a preliminary basis that the settlement is fair, adequate, and reasonable as to all potential Class Members when balanced against the uncertain outcome of further litigation relating to liability and damages issues. It also appears that investigation, research, and proceedings have been conducted so that counsel for the Parties are able to reasonably evaluate their respective positions. It appears to the Court that settlement at this time will avoid substantial additional costs by all Parties, as well as avoid the delay and risks that

would be presented by the further prosecution of the action. It also appears that settlement has been reached as a result of intensive, serious, and non-collusive arms-length negotiations.

III. ORDERS

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

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

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

7. A final fairness hearing on the question of whether the proposed Agreement, the allocation of payments to Class Members, attorneys' fees and costs to Class Counsel, the payment to the Labor Workforce & Development Agency, the Settlement Administration Costs, and the Service Award should be finally approved as fair, reasonable, and adequate as to the members of the Class is set for _____, 2023, at _____ in this Court.

8. The Court hereby approves, as to form and content, the Notice to Class Members re: Pendency of a Class Action and Notice of Hearing on Proposed Settlement ("Class Notice"), which is attached as Exhibit A to the Agreement. The Court finds that distribution of the Class Notice to Class Members substantially in the manner and form set forth in the Agreement and this Order meets the requirements of due process and shall constitute due and sufficient notice to all parties entitled thereto.

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

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

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

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

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

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

20 **IT IS SO ORDERED.**

21 DATED: _____, 2023

THE HONORABLE DAVID COHN