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Attorneys for Plaintiff and the Class

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

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

Date: September 20, 2023
Time: 9:00 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. After preliminary approval was granted, the Parties recognized that the Stipulation re:
8 Settlement of Class Action (the "Agreement") does not specify how the employer's share of payroll
9 taxes for wage allocations is to be funded. After meeting and conferring, the Parties request that the
10 Court approve the payment of employer-side payroll taxes from the gross settlement amount. If the
11 Court does not approve the payment of employer-side payroll taxes from the gross settlement amount,
12 Defendant, Berry Global, Inc., would be required to separately fund the employer-side payroll taxes.

13 3. Because the Agreement does not specify how the employer's share of payroll taxes is to
14 be funded, the Class Notice sent to Class Members cautiously advised Class Members of estimated
15 settlement payment amounts that presumed the employer's share of payroll taxes would be funded from
16 the gross settlement amount. That way, if the Court were not to approve the payment of the employer's
17 share of payroll taxes from the gross settlement amount, then Class Members ultimately would be
18 allocated more beneficial settlement payments that estimated in the Class Notice. Likewise, if the Court
19 does approve the payment of the employer's share of payroll taxes from the gross settlement amount,
20 then Class Members' estimated settlement payments would have already reflected such allocation.

21 4. Although the Agreement specifies an equal allocation of the 25% of PAGA penalties to
22 be distributed to PAGA Employees, the Class Notice sent to Class Members stated: "The remainder of
23 the PAGA Penalty Fund, or \$25,000, will be allocated to aggrieved employees on a pro rata basis."
24 After meeting and conferring, the Parties jointly agree that the proper distribution of the 25% of PAGA
25 penalties to be distributed to PAGA Employees would be a pro rata distribution based on the number of
26 relevant pay periods worked.

27 5. Although I am confident that litigation of the claims would result in a classwide judgment
28 against Defendant, I recognize the inherent risks in litigation, including the specific risks that class

1 certification could be denied, liability could not be established at trial, or the applicable law could
2 change. I believe the settlement for each Class Member is fair, reasonable, and adequate, as well as in
3 their best interests, given the inherent risks of litigation, as well as the potential for appeals and the costs
4 of pursuing litigation. The settlement is the result of extensive arms' length negotiations between the
5 Parties and their counsel.

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

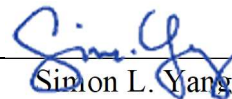
14 7. Upon graduating from law school in 2008, I practiced labor and employment law at
15 Seyfarth Shaw LLP, a well-regarded labor and employment firm. I was elevated to partner in 2019. My
16 practice focused on wage and hour class, collective, and representative actions, with a particular
17 emphasis on matters involving the Labor Code Private Attorneys General Act of 2004 ("PAGA").
18 During my time with Seyfarth Shaw LLP, I was a primary attorney on numerous wage and hour class,
19 collective, and representative actions that resulted in published opinions, including for example, *Ehret v.*
20 *WinCo Foods, LLC*, 26 Cal. App. 6th 1 (2018) (affirming summary judgment in PAGA action based on
21 absence of meal period violations in light of collectively bargained waiver of meal periods on shifts of
22 not more than six hours), and *Ruelas v. Costco Wholesale Corp.*, 67 F. Supp. 3d 1137 (C.D. Cal. Sept. 8,
23 2014) (obtaining dismissal of wage statement allegations in PAGA representative action). I was also
24 able to obtain experience litigating representative claims or wage and hour matters through trial and
25 appeal. *E.g., Velazquez v. Costco Wholesale Corp.*, 603 Fed. App'x 584 (9th Cir. Mar. 25, 2015)
26 (reversing award of waiting-time penalties based on lack of evidence supporting any willful failure to
27 pay wages); *Ward v. Costco Wholesale Corp.*, 552 Fed. App'x 631 (9th Cir. Jan. 9, 2014) (affirming
28 bench-trial judgment in favor of defendant against named plaintiff and 18 opt-in plaintiffs in collective

1 action with involving deductions from final paychecks). I also litigated class certification on numerous
2 matters. *E.g., Martinez v. Guess?, Inc.*, Los Angeles Superior Court Case No. BC 498326 (obtaining
3 denial of class certification on behalf of retail employees alleging bag check claims).

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

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

18 I declare under penalty of perjury under the laws of the State of California that the foregoing is
19 true and correct. Executed this 28th day of August 2023, at Pasadena, California.

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