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Superior Court of California
County of Los Angeles

JUL 27, 2020

Sherri R. Carter, Executive Officer/Clerk
By Paul R. Cruz, Deputy

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF LOS ANGELES**

15 ASHANTI BERRY, as an individual and on
16 behalf of all others similarly situated,

17 Plaintiff,

18 vs.

19 PDS TECH, INC, a Washington corporation;
20 and DOES 1 through 100,

21 Defendants.

Case No.: 20STCV18030

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- 22 (1) **MINIMUM WAGE VIOLATIONS**
(LABOR CODE §§ 1182.12, 1194,
1194.2, 1197);
- 23 (2) **FAILURE TO PAY ALL OVERTIME**
WAGES (LABOR CODE §§ 204, 510,
558, 1194, AND 1198);
- 24 (3) **MEAL PERIOD VIOLATIONS**
(LABOR CODE §§ 226.7, 512, 558);
- 25 (4) **REST PERIOD VIOLATIONS**
(LABOR CODE §§ 226.7 and 516);
- 26 (5) **WAGE STATEMENT VIOLATIONS**
(LABOR CODE § 226 *et seq.*);
- 27 (6) **UNFAIR COMPETITION (BUS &**
PROF CODE § 17200 *et seq.*) AND
- 28 (7) **CIVIL PENALTIES UNDER THE**
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*).

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Ashanti Berry (“Plaintiff”) on behalf of herself and all others similarly situated,
2 hereby brings this First Amended Class and Representative Action Complaint against Defendants
3 PDS Tech, Inc, a Washington corporation; and DOES 1 to 100, inclusive (collectively
4 “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of herself and all others similarly situated, hereby brings this
7 action for recovery of unpaid wages and penalties under California Labor Code sections §§ 204,
8 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, and 2698 *et seq.*, and
9 Business and Professions Code section 17200 *et. seq.*, and Industrial Welfare Commission Wage
10 Order 1 (“Wage Order 1”), in addition to seeking declaratory relief and restitution. This action is
11 brought pursuant to California Code of Civil Procedure section 382. This Court has jurisdiction
12 over Defendants’ violations of the California Labor Code because the amount in controversy
13 exceeds this Court’s jurisdictional minimum.

14 **VENUE**

15 2. Venue is proper in this judicial district pursuant to California Code of Civil
16 Procedure sections 395(a) and 395.5 in that liability arose in this county because at least some of
17 the transactions that are the subject of this Complaint occurred therein and/or each defendant is
18 found, maintains offices, transacts business, or has an agent therein.

19 3. Venue is proper in Los Angeles County because Defendants are a foreign
20 corporation with a principal place of business in Texas, and have not filed a statement with the
21 California Secretary of State designating a principal office in California. As such, venue is proper
22 in any county in the state of California. *See Easton v. Sup. Ct.*, (1970) 12 Cal.App.3d 243, 246-
23 47 (“[Defendant’s] status is that of a foreign corporation only. As such, it may be sued in any
24 county in the state.”).

25 **PARTIES**

26 4. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
27 Plaintiff was and currently is, a California resident. During the four years immediately preceding
28 the filing of this action and within the statute of limitations periods applicable to each cause of

1 action pled herein, Plaintiff was employed by Defendants as a non-exempt employee, and
2 performed work for Defendants within California. Plaintiff was, and is, a victim of Defendants'
3 policies and/or practices complained of herein, lost money and/or property, and has been deprived
4 of the rights guaranteed by Labor Code sections §§ 204, 226 *et seq.*, 226.7, 510, 512, 516, 558,
5 1182.12, 1194, 1194.2, 1197, 1198 and 2698 *et seq.*, and California Business and Professions
6 Code section 17200 *et seq.* ("Unfair Competition Law"), and Wage Order 1, which sets
7 employment standards for employees in the manufacturing industry.

8 5. Plaintiff is informed and believes, and based thereon alleges, that during the four
9 years preceding the filing this action and continuing to the present, Defendants did (and continue
10 to do) business within the County of Los Angeles and the State of California by operating a
11 staffing agency that places employees at businesses across the United States, including businesses
12 located in Los Angeles County, and therefore, were (and are) doing business in the County of Los
13 Angeles and the State of California.

14 6. Plaintiff does not know the true names or capacities, whether individual, partner,
15 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
16 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
17 further amend this Complaint when such true names and capacities are discovered. Plaintiff is
18 informed, and believes, and based thereon alleges, that each of said fictitious defendants, whether
19 individual, partners, or corporate, were responsible in some manner for the acts and omissions
20 alleged herein, and proximately caused Plaintiff and the Classes (as defined herein) to be subject
21 to the unlawful employment practices, wrongs, injuries and damages complained of herein.

22 7. Plaintiff is informed and believes, and based thereon alleges, that at all times
23 mentioned herein, Defendants were and are the employers of Plaintiff and all members of the
24 Classes.

25 8. At all times herein mentioned, each of said Defendants participated in the doing
26 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
27 Defendants, and each of them, were the agents, servants, and employees of each and every one of
28 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned

1 were acting within the course and scope of said agency and employment. Defendants, and each
2 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
3 omissions complained of herein.

4 9. At all times mentioned herein, Defendants, and each of them, were members of
5 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
6 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
7 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
8 members of the Classes.

9 **GENERAL FACTUAL ALLEGATIONS**

10 10. Defendants are a staffing agency. Plaintiff was employed by Defendants as a non-
11 exempt employee from approximately June 18, 2019 until the present. Since approximately July
12 19, 2019, Plaintiff has been on a medical leave of absence. During the entirety of Plaintiff's
13 employment with Defendants, Plaintiff was staffed at Toyota's North American Parts Center, as
14 a "Material Handler."

15 11. Throughout Plaintiff's employment with Defendants, Defendants utilized a
16 timekeeping system, which upon information and belief, resulted in Plaintiff not being
17 compensated for all hours actually worked, whether by rounding, time-shaving, or otherwise.
18 Specifically, Defendants utilized a timeclock system that recorded employees' time to the minute,
19 but did not pay employees based on their actual clock in and clock out times, which resulted in
20 these employees not being paid for all hours worked, as this timekeeping mechanism is not even-
21 handed over time. Additionally, Defendants deducted 45 minutes from each employee's daily
22 time to account for a purported meal period, regardless of whether a meal period was actually
23 taken by the employee, and regardless of whether the employee actually took exactly 45 minutes
24 for the meal period. As a result of Defendants' timekeeping policies/practices, Plaintiff and non-
25 exempt employees were not paid all minimum and overtime wages owed to them.

26 12. In addition to failing to compensate Plaintiff and other non-exempt employees for
27 all hours on the clock, Defendants also failed to compensate Plaintiff and other non-exempt
28 employees for additional hours worked prior to clocking in and after clocking out. Prior to

1 clocking in for their shift, Plaintiff and other non-exempt employees were required to sign in with
2 a security guard at the front of the warehouse. Only after Plaintiff signed in with the security
3 guard, was Plaintiff allowed to enter the warehouse and clock-in for her shift. As there was only
4 one timeclock for temporary employees located at the back of the warehouse, Plaintiff estimates
5 it took her at least five minutes to clock in each morning. This time was even longer when Plaintiff
6 was required to wait in line to both sign in with the security guard and clock-in for her shift. As
7 this time was off-the-clock, Defendant did not compensate Plaintiff and other non-exempt
8 employees for this time. Similarly, at the end of Plaintiff's shift, Plaintiff and other non-exempt
9 employees were required to first clock out and then walk to the front of the warehouse to sign out
10 with the security guard. As Plaintiff and other employees often ended their shift at the same time,
11 and there was only one timeclock for all temporary employees, Plaintiff and other temporary
12 employees, would have to wait in line in order to clock out for their shift at the back of the store
13 and then wait in another line to sign out with the security guard at the front of the store. Plaintiff
14 estimates this process could take anywhere from 5 to 30 minutes off-the-clock. As a result of
15 these policies/practices, Plaintiff and non-exempt employees were not paid all minimum and
16 overtime wages owed to them

17 13. Defendants failed to keep accurate records of employee hours worked, including
18 time records showing when employees were provided with meal periods. During Plaintiff's
19 employment with Defendants, Defendants did not require Plaintiff and other non-exempt
20 employees to clock in and out for their meal periods, and maintained no other records of employee
21 meal periods. Defendants also did not cease operations during meal periods. As a result of
22 Defendants failure to accurately record employee meal periods, Defendants failed to compensate
23 their employees with the required meal period premium for each workday in which employees
24 experienced a meal period violation as mandated by Labor Code § 226.7.

25 14. During Plaintiff's employment with Defendants, Plaintiff was not authorized and
26 permitted to take legally required rest periods due to Defendant's unlawful rest period policies
27 and practices. Specifically, during Plaintiff's employment, Defendants maintained a facially
28 invalid rest period policy which prohibits employees from leaving the facility premises for their

rest periods. Despite Defendants' written rest period policy expressly prohibiting Plaintiff and other non-exempt employees from taking off-duty rest periods, Defendants did not pay Plaintiff any missed rest period premium payments as required by Labor Code § 226.7. Upon information and belief, during at least a portion of the putative class period, Defendants maintained no payroll code or other mechanism for paying rest period premiums when Defendants failed to provide a legally compliant rest period

15. As a result of Defendants' failure to accurately record their employees' hours worked and compensate Plaintiff and other non-exempt employees for all minimum wages, overtime wages, and meal and rest period premium wages earned, Defendants maintained inaccurate payroll records and issued inaccurate wage statements. Defendants' wage statements are also facially deficient due to a failure to include the complete name of the legal entity that is the employer in violation of Labor Code § 226.

CLASS ACTION ALLEGATIONS

16. **Class Definitions:** Plaintiff brings this action on behalf of herself and the following Classes pursuant to section 382 of the Code of Civil Procedure:

- a. The Minimum Wage Class consists of all of Defendants' current and former non-exempt employees in California who (i) were subject to Defendants' timekeeping policies and/or practices for non-exempt employees and/or (ii) were required to sign in and out with a security guard before clocking in and after clocking out for their shift, during the four years immediately preceding the filing of this action through the present.
- b. The Overtime Class consists of all of Defendants' current and former non-exempt employees in California who worked more than 8 hours in a workday and/or more than 40 hours in a workweeks and were (i) subject to Defendants' timekeeping policies and/or practices for non-exempt employees and/or (ii) were required to sign in and out with a security guard before clocking in and after clocking out for their shift, during the four years immediately preceding the filing of this action through the present.

c. The Meal Period Class consists of all Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 5.0 hours and were subject to Defendants' record keeping policies and/or practices, during the four years immediately preceding the filing of this action through the present.

d. The Rest Period Class consists of all Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 3.5 hours, during the four years immediately preceding the filing of this action through the present.

e. The Wage Statement Class consists of: (i) all members of the Minimum Wage Class, Overtime Class, Meal Period Class, and/or Rest Period Class who have received a wage statement from Defendants during the one year immediately preceding the filing of this action through the present; and/or (ii) all of Defendants' current and former employees who received a wage statement from Defendants during the one year immediately preceding the filing of this action through the present.

17. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

18. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated non-exempt employees, which predominate over questions affecting only individual members including, without limitation to:

i. Whether Defendants paid all minimum wages owed to members of the Minimum Wage Class for all hours worked pursuant to Labor Code sections 1182.12, 1194, 1194.2 and 1197;

ii. Whether Defendants violated the applicable Labor Code provisions, including, but

not limited to, sections 510 and 1194 by requiring members of the Overtime Class to perform overtime work and not paying for said work in accordance with the overtime laws of the State of California;

- iii. Whether Defendants' timekeeping policies/practices resulted in the failure to properly compensate members of the Overtime Class, Minimum Wage Class, and/or Meal Period Class;
- iv. Whether Defendants provided legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code sections 226.7 and 512;
- v. Whether Defendants correctly paid meal period premium payments for non-compliant meal periods pursuant to Labor Code section 226.7;
- vi. Whether Defendants provided legally compliant rest periods to members of the Rest Period Class pursuant to Labor Code sections 226.7 and 516;
- vii. Whether Defendants correctly paid rest period premium payments for non-compliant meal periods pursuant to Labor Code section 226.7; and
- viii. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code section 226.

19. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, Defendants' uniform timekeeping policies/practices, and meal period policies/practices. As such, common questions predominate over individual questions concerning each individual class member's showing as to their eligibility for recovery or as to the amount of their damages.

20. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitations period applicable to each cause of action pled in the action. As alleged herein, Plaintiff, like the members of the Classes, was deprived of all overtime and minimum wages owed, was not provided all required meal periods, and was not provided with accurate,

1 itemized wage statements.

2 21. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps
3 to represent fairly and adequately the interests of the members of the Classes. Moreover,
4 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of
5 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-
6 and-hour class actions in state and federal courts in the past and are committed to vigorously
7 prosecuting this action on behalf of the members of the Classes.

8 22. **Superiority:** The California Labor Code is broadly remedial in nature and serves
9 an important public interest in establishing minimum working conditions and standards in
10 California. These laws and labor standards protect the average working employee from
11 exploitation by employers who have the responsibility to follow the laws and who may seek to
12 take advantage of superior economic and bargaining power in setting onerous terms and
13 conditions of employment. The nature of this action and the format of laws available to Plaintiff
14 and members of the Classes make the class action format a particularly efficient and appropriate
15 procedure to redress the violations alleged herein. If each employee were required to file an
16 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
17 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
18 their vastly superior financial and legal resources. Moreover, requiring each member of the
19 Classes to pursue an individual remedy would also discourage the assertion of lawful claims by
20 employees who would be disinclined to file an action against their former and/or current employer
21 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
22 employment. Further, the prosecution of separate actions by the individual class members, even
23 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
24 with respect to the individual class members against Defendants herein; and which would
25 establish potentially incompatible standards of conduct for Defendants; and/or legal
26 determinations with respect to individual class members which would, as a practical matter, be
27 dispositive of the interest of the other class members not parties to adjudications or which would
28 substantially impair or impede the ability of the class members to protect their interests. Further,

1 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
2 individual prosecution considering all of the concomitant costs and expenses attending thereto.
3 As such, the Classes identified herein are maintainable as a Class under section 382 of the Code
4 of Civil Procedure.

5 **FIRST CAUSE OF ACTION**
6 **MINIMUM WAGE VIOLATIONS**
7 **(AGAINST ALL DEFENDANTS)**

8 23. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

9 24. Wage Order 1, § 4 and California Labor Code §§ 1197 and 1182.12 establish the
10 right of employees to be paid minimum wages for all hours worked, in amounts set by state law.
11 Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal
12 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with
13 attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
14 wages and interest accrued thereon.

15 25. At all relevant times herein, Defendants failed to conform their pay practices to
16 the requirements of the law by failing to pay Plaintiff and members of the Minimum Wage Class
17 for all hours worked including, but not limited to, all hours they were subject to the control of
18 Defendants and/or suffered or permitted to work under the California Labor Code and Wage
19 Order 1.

20 26. California Labor Code § 1198 makes unlawful the employment of an employee
21 under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide
22 that an employer who has failed to pay its employees the legal minimum wage is liable to pay
23 those employees the unpaid balance of the unpaid wages as well as liquidated damages in an
24 amount equal to the wages due and interest thereon.

25 27. As a direct and proximate result of Defendants' unlawful conduct as alleged
26 herein, Plaintiff and the Minimum Wage Class have sustained economic damages including, but
27 not limited to, unpaid wages and lost interest, in an amount to be established at trial, and are
28 entitled to recover economic and statutory damages and penalties and other appropriate relief as

1 a result of Defendants' violations of the California Labor Code and Wage Order 1.

2 28. The foregoing practices and policies are unlawful and create an entitlement to
3 recovery by Plaintiff and the members of the Minimum Wage Class in a civil action for the unpaid
4 amount of minimum wages owing, including interest thereon, liquidated damages, statutory and
5 civil penalties, attorney's fees, and costs of suit according to California Labor Code §§ 204, 558,
6 1194, 1197, and 1198, Wage Order 1, and Code of Civil Procedure § 1021.5.

7 **SECOND CAUSE OF ACTION**

8 **FAILURE TO PAY ALL OVERTIME WAGES**

9 **(AGAINST ALL DEFENDANTS)**

10 29. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

11 30. This cause of action is brought pursuant to Labor Code §§ 204, 510, 1194, and
12 1198, which provide that non-exempt employees are entitled to all overtime wages and
13 compensation for all overtime hours worked and provide a private right of action for the failure
14 to pay all overtime compensation for overtime work performed.

15 31. At all times relevant herein, Defendants were required to properly compensate
16 non-exempt employees, including Plaintiff and members of the Overtime Class, for all overtime
17 hours worked pursuant to California Labor Code § 1194 and Wage Order 1. Defendants caused
18 Plaintiff to work overtime and hours but did not credit Plaintiff or members of the Overtime Pay
19 Class with all overtime hours actually worked, and did not compensate Plaintiff or members of
20 the Overtime Pay Class at one and one-half times their regular rate of pay for such hours or at
21 double the regular rate of pay for hours worked for such hours.

22 32. The foregoing policies and practices are unlawful and create entitlement to
23 recovery by Plaintiff and the Overtime Class Members in a civil action for the unpaid amount of
24 overtime premiums owing, including interest thereon, statutory penalties, attorneys' fees, and
25 costs of suit according to California Labor Code §§ 204, 210, 216, 510, 1194, and 1198; and Code
26 of Civil Procedure § 1021.5.

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THIRD CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(AGAINST ALL DEFENDANTS)

33. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

34. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all of their non-exempt employees in California, including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods in accordance with the mandates of the California Labor Code and Wage Order 1, § 11, for the reasons set forth in the factual allegations and class definitions sections of this Complaint. Despite Defendants' violations, Defendants did not pay an additional hour of premium pay to Plaintiff and members of the Meal Period Class for each violation in accordance with California Labor Code §§ 226.7 and 512.

35. As a result, Defendants are responsible for paying premium compensation for meal period violations, including interest thereon, statutory penalties, civil penalties, and costs of suit, pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 1, and Code of Civil Procedure § 1021.5.

FOURTH CAUSE OF ACTION
REST PERIOD VIOLATIONS
(AGAINST ALL DEFENDANTS)

36. Plaintiffs re-allege and incorporate by reference all previous paragraphs.

37. Wage Order 1, § 12 and California Labor Code §§ 226.7 and 516 establish the right of employees to be provided with a duty free rest period of at least ten (10) minutes for each four (4) hour period worked or major fraction thereof.

38. Due to their unlawful rest period policies and/or practices, Defendants did not authorize and permit members of the Rest Period Class to take all duty free rest periods to which they were legally entitled. Despite Defendants' violations, Defendants have not paid an additional hour of pay to Plaintiffs and the Rest Period Class at their respective regular rates of pay for each violation in accordance with California Labor Code § 226.7.

1 39. The foregoing violations create an entitlement to recovery by Plaintiffs and
2 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
3 owing, including interest thereon, statutory penalties, and costs of suit pursuant to Wage Order 5,
4 California Labor Code §§ 226.7 and 516, and Civil Code §§ 3287(b) and 3289.

5 **FIFTH CAUSE OF ACTION**

6 **WAGE STATEMENT VIOLATIONS**

7 **(AGAINST ALL DEFENDANTS)**

8 40. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

9 41. Plaintiff is informed and believes, and based thereon alleges, that Defendants
10 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
11 and members of the Wage Statement Class with complete and accurate wage statements that
12 included, among other requirements, all hours worked, total gross wages earned, all rates of pay
13 and corresponding number of hours worked (including for overtime pay), total net wages earned,
14 and the correct name of the legal entity that is the employer in violation of Labor Code § 226 *et*
15 *seq.*

16 42. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class
17 with complete and accurate itemized wage statements resulted in actual injury, as said failures led
18 to, among other things, the non-payment of all overtime and minimum wages owed, and deprived
19 them of the information necessary to identify the discrepancies in Defendants' reported data.

20 43. Defendants' failures create an entitlement to recovery by Plaintiff and members of
21 the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor
22 Code § 226 *et seq.*, including statutory penalties, civil penalties, reasonable attorneys' fees, and
23 costs of suit according to California Labor Code § 226 *et seq.*

24 **SIXTH CAUSE OF ACTION**

25 **UNFAIR COMPETITION**

26 **(AGAINST ALL DEFENDANTS)**

27 44. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

28 45. Defendants have engaged and continue to engage in unfair and/or unlawful

business practices in California in violation of California Business and Professions Code § 17200 *et seq.* by, amongst other things, failing to pay Plaintiff and the Classes all overtime and minimum wages owed; failing to pay all required meal and rest period premium payments; and knowingly failing to furnish accurate and complete itemized wage statements in violation of Labor Code § 226.

46. Defendants' utilization of these unfair and/or unlawful business practices deprived Plaintiff, and continues to deprive members of the Classes, of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

47. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff, for herself and on behalf of the members of the Classes, seeks full restitution of monies as necessary and according to proof to restore any and all monies withheld, acquired and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

48. The acts complained of herein occurred within the last four years immediately preceding the filing this action.

49. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants' current non-exempt employees, and to enforce important rights affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which she is entitled to recover under Code of Civil Procedure § 1021.5.

SEVENTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

50. Plaintiff re-allege and incorporate by reference all previous paragraphs.

51. Defendants have committed several Labor Code violations against Plaintiff, members of the Classes, and other aggrieved employees. Plaintiffs, are an "aggrieved employee" within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of themselves and other

aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiffs, the members of the Classes, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to pay Plaintiff and other aggrieved employees the statutory minimum wage for all hours worked in violation of Labor Code §§ 1182.12, 1194, 1194.2, 1197;
- b. Failing to pay Plaintiff and other aggrieved employees all overtime compensation earned in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- c. Failing to provide meal periods as required by law and failing to pay meal period premiums to Plaintiff and other aggrieved employees at the employees' respective regular rates of compensation for meal period violations in violation of Labor Code §§ 226.7, 512, and 558;
- d. Failing to furnish Plaintiff and other aggrieved employees with accurate and compliant itemized wage statements in violation of Labor Code § 226;
- e. Failing to pay Plaintiff and other aggrieved employees all wages earned at least twice during each calendar month in violation of Labor Code § 204,

- 1 f. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved
2 employees in violation of Labor Code §§ 1174 and 1198, and
3 g. Failing to timely pay all final wages due to the aggrieved employees in
4 violation of Labor Code §§ 201, 202, and 203.

5 52. On or around May 18, 2020 and July 10, 2020, Plaintiff notified Defendants via
6 certified mail, and notified the California Labor and Workforce Development Agency (“LWDA”)
7 via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to
8 bring a claim for civil penalties under California Labor Code § 2698 et seq. with respect to the
9 violations of the California Labor Code identified in Paragraph 51 (a)-(g). Now that sixty-five
10 days have passed from Plaintiff notifying Defendants and the LWDA of these violations, and the
11 LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted
12 his administrative requirements for bringing a claim under the Private Attorneys General Act with
13 respect to these violations.

14 53. Based on the foregoing, Plaintiff seeks to represent herself and all Aggrieved
15 Employees, as defined by Labor Code § 2699(c), which includes all current and former non-
16 exempt employees who worked for Defendants in California between May 18, 2019 and the
17 present.

18 54. Plaintiff was compelled to retain the services of counsel to file this court action to
19 protect their interests and the interests of other aggrieved piece rate employees, and to assess and
20 collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and
21 costs, which she is entitled to recover under California Labor Code § 2699.

22 **PRAYER**

23 WHEREFORE, Plaintiff prays for judgment for herself and for all others on whose behalf
24 this suit is brought against Defendants, as follows:

- 25 1. For an order certifying the proposed Classes;
26 2. For an order appointing Plaintiff as representative of the Classes;
27 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
28 4. Upon the First Cause of Action, for payment of minimum wages, liquidated

1 damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and
2 1197;

3 5. For the Second Cause of Action, for compensatory, consequential, general, and
4 special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198

5 6. Upon the Third Cause of Action, for compensatory, consequential, general and
6 special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;

7 7. Upon the Fourth Cause of Action, for compensatory, consequential, general, and
8 special damages according to proof pursuant to Labor Code §§ 226., 516, and 558;

9 8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code §
10 226 *et. seq.*;

11 9. Upon the Sixth Cause of Action, for restitution to Plaintiff and members of the
12 Class of all money and/or property unlawfully acquired by Defendants by means of any acts or
13 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et*
14 *seq.*;

15 10. Upon the Seventh Cause of Action, for civil penalties due to Plaintiff, other
16 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
17 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
18 each failure to pay each employee and \$200.00 for each subsequent violation or willful or
19 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus
20 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each
21 subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for
22 each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1
23 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each
24 subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5)
25 \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay
26 period for those violations of the Labor Code for which no civil penalty is specifically provided,
27 based on the violations of Labor Code sections identified in Paragraph 51 (a)-(g) above.

28 11. Prejudgment interest on all due and unpaid wages pursuant to California Labor

1 Code § 218.6 and Civil Code §§ 3287 and 3289;

2 12. On all causes of action, for attorneys' fees and costs as provided by Labor Code
3 §§ 218.5, 1194 *et seq.*, and 2698 *et seq.*, and Code of Civil Procedure § 1021.5; and

4 13. For such other and further relief the Court may deem just and proper.

5
6 Dated: July 27, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

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8 By:


Fletcher W. Schmidt
Attorneys for Plaintiff

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11
12 **DEMAND FOR JURY TRIAL**

13 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

14
15 Dated: July 27, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

16
17 By:


Fletcher W. Schmidt
Attorneys for Plaintiff

1
2
3 **PROOF OF SERVICE**

4 *Ashanti Berry v. PDS Tech, Inc.*

5 Los Angeles County Superior Court Case No. 20STCV18030

6 STATE OF CALIFORNIA)
7) ss.
8 COUNTY OF LOS ANGELES)

9 I am employed in the County of Los Angeles, State of California. I am over the age of
10 18 and not a party to the within action; my business address is [X] 2155 Campus Drive, Suite
11 180, El Segundo, California 90245.

12 On July 27, 2020, I served the foregoing document(s) described as:

13 **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT**

14 on the interested party(ies) in this action as follows:

15 Tim Nelson, Esq.
16 Brandon McKelvey, Esq.
17 Alex Medina, Esq.
18 **MEDINA MCKELVEY LLP**
19 983 Reserve Drive
20 Roseville, CA 95678
21 Attorneys for Defendant PDS TECH, INC.

22 [X] (BY MAIL) I am "readily familiar" with Haines Law Group, APC's practice of collection
23 and processing correspondence for mailing. I enclosed the document(s) in a sealed envelope or
24 package addressed to the persons at the address(es) listed above. Under the practice the
25 correspondence would be deposited with the U.S. postal service on the same day with postage
26 thereof fully prepaid at El Segundo, California in the ordinary course of business. I am aware
27 that on motion of the party served, service is presumed invalid if postage cancellation date or
28 postage date is more than one day after date of deposit for mailing in affidavit.

[X] (STATE) I declare under penalty of perjury under the laws of the State of California that the
above is true and correct.

Executed on July 27, 2020, at El Segundo, California.

Jonathan Ramirez