

Exhibit 1

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT

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

Plaintiff,

v.

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

Defendants.

Case No. 20STCV18030

Assigned for all purposes to:
Hon. Yvette M. Palazuelos, Dept. 09

Complaint Filed: May 8, 2020
Trial Date: None Yet Set

PAGA SETTLEMENT AGREEMENT

This PAGA Settlement Agreement is made by and between Plaintiff Ashanti Berry (“Plaintiff”), on behalf herself and on behalf of the State of California and all Private Attorneys General Act (“PAGA”) Settlement Group Members, on the one hand, and Defendant PDS TECH, INC., on behalf of itself and all of its current and former owners, parents, subsidiaries, members, representatives, agents, insurers, officers, directors, and employees (“Defendant”), on the other hand (Plaintiff and Defendant are collectively referred herein as, the “Parties”, and individually as a “Party”), subject to the approval of the Court in accordance with California Labor Code section 2699(1)(2), upon and subject to the following terms and conditions.

I. DEFINITIONS

Unless otherwise defined herein, the following terms used in this Agreement shall have the meanings ascribed to them as set forth below:

- A. “Action” means the civil action titled *Ashanti Berry, as an individual and on behalf of others similarly situated v. PDS Tech, Inc., a Washington corporation, and DOES 1 through 100*, Case No. 20STCV18030 (the “Action”), pending before Superior Court of the State of California, for the County of Los Angeles (the “Court”).
- B. “Agreement” or “Settlement Agreement” means this PAGA Settlement Agreement.
- C. “Complaints” mean the Complaint filed by Plaintiff on May 8, 2020, in the Action, and the First Amended Complaint filed on July 27, 2020 and the Second Amended Complaint filed on November 10, 2020.
- D. “Court” means the Superior Court for the State of California, County of Los Angeles.
- E. “Covered Period” means the period of time from May 8, 2019 to September 30, 2019.
- F. “Defendant” means the Defendant in this Action, PDS TECH, INC.
- G. “Effective Date” means the date upon full funding of the Settlement.
- H. “Defendant’s Counsel” means Brandon R. McKelvey and Timothy B. Nelson of Medina McKelvey LLP.
- I. “Judgment” means the Order Granting Approval of Settlement and Entering Final Judgment entered by the Court in substantially the same form evidenced by Exhibit A to this Agreement and incorporated by reference into this Agreement.

- J. “LWDA” means the California Labor and Workforce Development Agency.
- K. “LWDA Payment” means the portion of the payment from the Total Settlement Amount to be paid to the LWDA under the Settlement Agreement.
- L. “Net Settlement Amount” means the amount from the Total Settlement Amount that is available for distribution as Settlement Shares to PAGA Settlement Group Members and the LWDA Payment after deduction for (i) the Representative Plaintiff’s Payment, (ii) the Plaintiff’s Counsel Fees and Expenses Payment, and (iii) the Settlement Administrator’s fees and expenses. If any Settlement Share check is not timely cashed by a Settlement Group Member, that share will be sent to the California State Controllers’ Office Unclaimed Property Fund in the name of the Settlement Group Member.
- M. “PAGA” means the Private Attorneys General Act of 2004, California Labor Code section 2698 *et seq.*
- N. “PAGA Notice” means a notice of proposed settlement pursuant to PAGA, substantially in the form evidenced by **Exhibit B** to this Agreement.
- O. “PAGA Released Claims” means any and all claims under PAGA that are pled in Plaintiffs’ Representative Action Second Amended Complaint, or which could have been pled under the PAGA based on the factual allegations in Plaintiff’s Representative Action Second Amended Complaint, that arose during the Covered Period.
- P. “PAGA Settlement Group Members” means, based upon Defendant’s representation to Plaintiff, the allotted for approximately ninety five (95) current and former non-exempt employees of Defendant in California at any time during the period from May 8, 2019 to September 30, 2019 and who were assigned to work at the Toyota warehouse in Ontario, California.
- Q. “Plaintiff” means the Plaintiff in this Action, Ashanti Berry.
- R. “Plaintiff’s’ Counsel” means Paul Haines, Esq., and Fletcher Schmidt, Esq., and Alexandra McIntosh, Esq. of Haines Law Group, APC.
- S. “Released Parties” means Defendant and all of its current and former owners, parents, subsidiaries, members, representatives, agents, insurers, officers, directors, managers, employees, and related entities, including, but not limited to the Toyota Entities and APC Workforce Solutions II, LLC, currently doing business as Workforce Logiq (and their predecessors and related entities).

The term “Toyota Entities” shall mean Toyota Motor North America, Inc. and all parent, subsidiary, and related entities of Toyota Motor North America, Inc., including but not limited to Toyota Motor Sales, USA, Inc., Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing, North America, Inc., Toyota Connected North America, Inc., Toyota Motor Credit Corporation, Toyota Financial Services Corporation, Toyota Financial Services International Corporation, Toyota Financial Savings Bank, Toyota Research Institute, Inc.,

Toyota Motor Manufacturing, Kentucky, Inc., Toyota Motor Manufacturing, Indiana, Inc., Toyota Motor Manufacturing, Alabama, Inc., Toyota Motor Manufacturing, West Virginia, Inc., Toyota Motor Manufacturing, Mississippi, Inc., Toyota Motor Manufacturing, Missouri, Inc. (also dba Toyota Motor Manufacturing, Tennessee), Toyota Motor Manufacturing, Texas, Inc., AirFlite, Inc., Calt Design Research, Inc., TABC, Inc., Toyota Logistics Services, Inc., Toyota de Puerto Rico, Corp., and TRD U.S.A., Inc.

- T. “Representative Plaintiff’s Payment” means the special payment made to Plaintiff to compensate her for initiating and pursuing the Action, undertaking the risk of liability for attorneys’ fees and expenses in the event that she was unsuccessful in the prosecution of the Action.
- U. “Settlement” means this PAGA Settlement Agreement.
- V. “Settlement Administrator” means the administrator proposed by the Parties and appointed by the Court to administer the Settlement. The Parties have agreed to propose Phoenix Settlement Administrators to serve in this capacity.
- W. “Settlement Share” means the portion of the Net Settlement Amount allocable to each PAGA Settlement Group Member as provided by this Agreement.
- X. “Total Settlement Amount” means the total amount to be paid by Defendant as provided by this Agreement. The Total Settlement Amount is three hundred fifteen thousand dollars and no cents (\$315,000.00). The Total Settlement Amount will cover (i) all Settlement Shares to PAGA Settlement Group Members, (ii) the LWDA Payment, (iii) the Representative Plaintiff’s Payment, (iv) the Plaintiff’s Counsel Fees and Expenses Payment, and (v) the Settlement Administrator’s fees and expenses.

II. FACTUAL BACKGROUND

- A. On May 8, 2020, Plaintiff served a letter to the LWDA and Defendant in accordance with the requirements of Labor Code section 2699.3, to notify the LWDA of alleged violations by Defendant of California Labor Code sections 201, 201.3, 202, 203, 204, 204.1, 204.2, 226, 226.7, 510, 512, 558, 1174, 1182.12, 1194, 1194.2, 1197, 1198, 2698, 2699.3, and 2699.5, for the following alleged failures: (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to maintain accurate records of employee hours worked; (5) failure to provide accurate wage statements; and (6) failure to timely pay all wages due during employment and upon termination. To date, the LWDA has declined to investigate the alleged violations.
- B. On May 18, 2020, Plaintiff served another letter to the LWDA and Defendant in accordance with the requirements of Labor Code section 2699.3, to notify the LWDA of additional alleged violations of the California Labor Code. This May 18, 2020 letter alleged additional violations by Defendant of California Labor Code section 226. To date, the LWDA has declined to investigate these additional alleged violations.

- 1 C. On May 8, 2020, Plaintiff commenced this Action. Plaintiff's Complaint alleged
2 the following causes of action: (1) minimum wage violations (Labor Code sections
3 1182.12, 1194, 1194.2, and 1197); (2) failure to pay all overtime wages (Labor
4 Code sections 204, 510, 558, 1194, and 1198); (3) meal period violations (Labor
5 Code sections 226.7, 512, and 558); (4) wage statement violations (Labor Code
6 sections 226 *et seq.*); (5) unfair competition (Business and Professions Code
7 sections 17200 *et seq.*). Plaintiff's Complaint sought damages on Plaintiff's behalf
8 and on behalf of a proposed class of all current and former non-exempt employees
9 in California.
- 10 D. On July 10, 2020, Plaintiff served another letter to the LWDA and Defendant in
11 accordance with the requirements of Labor Code section 2699.3, to notify the
12 LWDA of additional alleged violations of the California Labor Code. This July 10,
13 2020 letter alleged violations by Defendant of California Labor Code sections
14 226.7, 516, and 558, for the alleged failure to provide employees with compliant
15 rest breaks. To date, the LWDA has declined to investigate these additional alleged
16 violations.
- 17 E. On July 27, 2020, Plaintiff filed a First Amended Complaint. The First Amended
18 Complaint alleged the following causes of action: (1) minimum wage violations
19 (Labor Code sections 1182.12, 1194, 1194.2, and 1197); (2) failure to pay all
20 overtime wages (Labor Code sections 204, 510, 558, 1194, and 1198); (3) meal
21 period violations (Labor Code sections 226.7, 512, and 558); (4) rest period
22 violations (Labor Code sections 226.7 and 516); (5) wage statement violations
23 (Labor Code sections 226 *et seq.*); (6) unfair competition (Business and Professions
24 Code sections 17200 *et seq.*); and (7) civil penalties under the Private Attorneys
25 General Act (Labor Code sections 2698 *et seq.*). The First Amended Complaint
26 sought damages on Plaintiff's behalf and on behalf of a proposed class of all current
27 and former non-exempt employees in California. The First Amended Complaint
28 also sought civil penalties on behalf of the State of California and all "aggrieved
employees."
- F. On or about August 3, 2020, Plaintiff filed a request for dismissal of her individual
claims and her class claims. The Court signed an order on August 11, 2020, which
dismissed Plaintiff's individual and class claims against Defendant without
prejudice.
- G. On November 10, 2020, Plaintiff filed a Second Amended Complaint. The Second
Amended Complaint did not contain any class allegations. The Second Amended
Complaint sought civil penalties under the PAGA for the following alleged
violations of the California Labor Code: (1) (1) minimum wage violations (Labor
Code sections 1182.12, 1194, 1194.2, and 1197); (2) failure to pay all overtime
wages (Labor Code sections 204, 510, 558, 1194, and 1198); (3) meal period
violations (Labor Code sections 226.7, 512, and 558); (4) rest period violations
(Labor Code sections 226.7 and 516); and (5) wage statement violations (Labor
Code sections 226 *et seq.*).
- H. In the Action, Plaintiff sought penalties under PAGA on behalf of herself and the
PAGA Settlement Group Members for the alleged violations of California's Labor
Code.

- I. Prior to mediation, Defendant by and through its counsel supplied Plaintiff's counsel with employee and payroll data, policy documents, and additional information regarding Defendant's non-exempt, hourly employees in California, which Plaintiff's Counsel reviewed and analyzed.
- J. On November 16, 2020, the Parties participated in a mediation presided over by well-respected employment law mediator Francis "Tripper" Ortman. During the mediation, each side, represented by its respective counsel, recognized the risk of an adverse result in the Action. Although the Parties did not reach a resolution, the mediator provided the Parties with a mediator's proposal. The Parties both agreed to the mediator's proposal. The Parties, by accepting the mediator's proposal, have agreed to settle the Action pursuant to the terms and conditions of this Agreement. This Agreement replaces and supersedes the Mediator's Proposal agreed to after the Mediation.
- K. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendant that Plaintiff's claims in the Action have merit or that Defendant has any liability to Plaintiff or the PAGA Settlement Group on those claims, or as an admission by Plaintiff that Defendant's defenses in the Action have merit.

III. SETTLEMENT TERMS AND CONDITIONS

- A. **Non-Admission.** Nothing in this Settlement nor the acts to be performed or judgments to be entered pursuant to the terms of the Settlement shall be construed to be an admission by Plaintiff that her claims do not have merit or by Defendant of any liability or wrongdoing as to Plaintiff, Aggrieved Employees or any other person. Defendant specifically disclaims any such liability or wrongdoing. Defendant denies the allegations in the Action and specifically denies that it has committed any misconduct, statutory or regulatory violation, wrongdoing, or any other actionable conduct of any kind. The Parties have entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses and risks. This Settlement and any related court documents or orders are not and may not be cited or admitted as evidence of liability.
- B. **Total Settlement Amount.** Subject to the terms and conditions of this Agreement and court approval, the Total Settlement Amount is three hundred fifteen thousand five hundred dollars and no cents (\$315,000.00.) The Total Settlement Amount will cover (i) all Settlement Shares to PAGA Settlement Group Members, (ii) the LWDA Payment, (iii) the Representative Plaintiff's Payment, (iv) the Plaintiff's Counsel Fees and Expenses Payment, and (v) the Settlement Administrator's fees and expenses. The settlement is non-reversionary, such that the entire Total Settlement Amount will be disbursed.
- C. **Net Settlement Amount.** The Parties agree that the following amounts should be subtracted from the Total Settlement Amount, if approved by the Court, resulting in a Net Settlement Amount to distribute to the LWDA and Aggrieved Employees: (1) Payment to the Settlement Administrator; (2) Payment to Plaintiff's Counsel for attorney's fees and costs; and (3) Representative Plaintiff's Payment.

- 1 D. **Payments to Settlement Administrator.** The Settlement Administrator will pay
2 to itself out of the Total Settlement Amount its reasonable fees and expenses as
3 approved by the Court, and not to exceed one thousand eight hundred and fifty
4 dollars (\$1,850.00).
- 5 E. **Payments to LWDA.** The Settlement Administrator shall pay to the LWDA 75%
6 of the Net Settlement Amount.
- 7 F. **Payment to Plaintiff's Counsel.** Defendant will not oppose Plaintiff's Counsel's
8 request for a Fees and Expenses Payment in the total, maximum amount of one
9 hundred and five thousand dollars and no cents (\$105,000.00) for attorneys' fees
10 (up to thirty three and one third percent (33 1/3%) of the Total Settlement Amount)
11 and expenses not to exceed twenty thousand dollars (\$20,000.00). The Settlement
12 Administrator will issue to Plaintiff's Counsel a Form 1099 with respect to the
13 awarded attorneys' fees and costs.
- 14 G. **Payment to Plaintiff.** In addition to her Settlement Share, Plaintiff will
15 collectively apply to the Superior Court for a Representative Plaintiff's Payment of
16 not more than five thousand dollars and no cents (\$5,000.00). Defendant will not
17 oppose a Representative Plaintiff's Payment of up to five thousand dollars and no
18 cents (\$5,000.00). The Settlement Administrator will pay the Representative
19 Plaintiff Payment approved by the Superior Court out of the Total Settlement
20 Amount. If the Superior Court approves a Representative Plaintiff's Payment of
21 less than five thousand dollars and no cents (\$5,000.00), the remainder will be
22 retained in the Net Settlement Amount. Tax deductions and withholdings will not
23 be taken from the Representative Plaintiff's Payment, and instead a Form 1099 will
24 be issued to Plaintiff with respect to this payment.
- 25 H. **Settlement Share to PAGA Settlement Group Members.** Subject to the terms
26 and conditions of this Agreement, the Settlement Administrator will allocate
27 Settlement Shares from the Net Settlement Amount to the PAGA Settlement Group
28 Members in proportion to the number of weeks worked for Defendant during the
 Covered Period. A Form 1099 will be issued to each Settlement Group Member
 for his/her Settlement Share because the Action sought civil penalties.
- I. **Appointment of Settlement Administrator.** The Parties have agreed to propose
 Phoenix Settlement Administrators as an acceptable Settlement Administrator to
 resolve disputes in connection with the calculation of Settlement Shares in
 accordance with the Settlement; distribute Settlement Shares and other payments
 due under the Settlement; and otherwise administer the Settlement. The Settlement
 Administrator's duties will include preparing, printing, and mailing the Notice
 Packet to the PAGA Settlement Group Members; conducting a National Change of
 Address search and using Accurant and other reasonable and cost-effective skip
 trace methods to locate any PAGA Settlement Group Member whose Notice Packet
 was returned by the U.S. Postal Service as non-deliverable, and re-mailing the
 Notice Packet to the PAGA Settlement Group Member's new address; issuing the
 checks to effectuate the payments due under the Settlement; and otherwise
 administering the Settlement pursuant to this Agreement. The Settlement
 Administrator will have the final authority to resolve all disputes concerning the
 calculation of a PAGA Settlement Group Member's Settlement Share, subject to

the dollar limitations set forth in this Agreement. The Settlement Administrator's reasonable fees and expenses, including the cost of printing and mailing the Notice Packet, will be paid out of the Total Settlement Amount.

J. Procedure for Approving Settlement.

1. Motion for an Order Approving the Settlement.

a. The Parties will cooperate in seeking approval of the Settlement, including filing a Joint Motion for an Order Approving the Settlement Agreement (the "Joint Motion").

b. Pursuant to PAGA, on the date the Parties file the Joint Motion, Plaintiff will submit to the LWDA the PAGA Notice substantially evidenced by **Exhibit B** to this Agreement, enclosing this Agreement. The Parties intend and believe that providing notice of this Settlement to the LWDA pursuant to the procedures described in this section complies with the requirements of PAGA.

c. At the hearing on the Joint Motion, the Parties will jointly appear, support the granting of the motion, and submit an order granting the motion in the form evidenced by **Exhibit A** to this Agreement.

d. Should the Court decline to approve all material aspects of the Settlement, or order material changes to the Settlement to which the Parties do not agree, the Parties will meet and confer to address the Court's concerns and determine whether resolution of the Action can be obtained in a manner consistent with the Court's concerns. If no agreement can be reached, the Settlement will be null and void and the Parties will have no further obligations under it. However, an award by the Court of lesser amounts than sought for the Representative Plaintiff's Payment and/or Counsel Fees and Expenses Payment will not be considered a material change to the Settlement.

2. No Right to Opt Out or Object. The Parties agree there is no statutory right for any PAGA Settlement Group Member to object, opt out or otherwise exclude himself or herself from the Settlement. The Parties further agree there is no right or opportunity for any PAGA Settlement Group Member to appeal the approval of the Settlement by the Court. The Parties further agree that an Aggrieved Employees' recovery under this Settlement does not act to preclude claims not encompassed within the release of claims in Section III.K.1.

3. Notice to PAGA Settlement Group Members. After the Court enters its order granting the Joint Motion, every PAGA Settlement Group Member will be provided with the Notice of their Settlement Share.

a. Within fourteen (14) days after the Court Order is signed, approving the Settlement, Defendant will provide to the Settlement Administrator the names, last known addresses and telephone numbers, Social Security

1 numbers, and Covered Pay Periods of all PAGA Settlement Group
2 Members. The Settlement Administrator shall keep this information
3 confidential and not disclose it to Plaintiff's Counsel or any third parties. If
4 any or all of the PAGA Settlement Group Members' data is unavailable to
5 Defendant, Defendant will use best efforts to deduce or reconstruct the data
6 prior to when it must be submitted to the Settlement Administrator.

7 b. Within five business (5) days after receiving the PAGA Settlement
8 Group Members' data from Defendant, the Settlement Administrator will
9 send a Notice to each PAGA Settlement Group Member. The Settlement
10 Administrator will mail this information to all identified PAGA Settlement
11 Group Members, using the mailing address information provided by
12 Defendant, unless modified by any updated address information that the
13 Settlement Administrator obtains in the course of administration of the
14 Settlement. In the event of returned or non-deliverable notices, the
15 Settlement Administrator will make reasonable efforts to locate PAGA
16 Settlement Group Members and re-send the notices.

17 c. If a Notice Packet is returned because of an incorrect address, the
18 Settlement Administrator will promptly, and not later than ten (10) days
19 from receipt of the returned packet, search for a more current address for
20 the PAGA Settlement Group Member using Accurant and/or other
21 reasonable and cost-effective skip trace methods, and re-mail the Notice
22 Packet to the PAGA Settlement Group Member. The Settlement
23 Administrator will use the PAGA Settlement Group Members' data and
24 otherwise work with Defendant to find a more current address. The
25 Settlement Administrator will be responsible for taking reasonable steps,
26 consistent with its agreed-upon job parameters, court orders, and fees, as
27 agreed to with Plaintiff's Counsels and according to the following
28 deadlines, to trace the mailing address of any PAGA Settlement Group
Member for whom a Notice Packet is returned by the U.S. Postal Service as
undeliverable. These reasonable steps will include, at a minimum, the
tracking of all undelivered mail; performing address searches for all mail
returned without a forwarding address; and promptly re-mailing to PAGA
Settlement Group Members for whom new addresses are found.

4. **Submission of Judgment.** Plaintiff shall submit a copy of the Judgment in
this Action and a copy of any other order providing for or denying an award
of civil penalties within ten (10) days after entry of the Judgment and/or
order, in compliance with Section 2699(1)(3) of the California Labor Code.
The Judgment will be made available to the LWDA and Aggrieved
Employees through the Settlement Administrator's website for a period of
two (2) years following entry of judgment.

5. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with
the material terms of this Agreement, Plaintiff, Defendant, and their
respective counsel hereby waive any and all rights to appeal from the
Judgment, including all rights to any post-judgment proceeding and
appellate proceeding, such as a motion to vacate judgment, a motion for
new trial, and any extraordinary writ, and the Judgment therefore will

1 become non-appealable at the time it is entered. The waiver of appeal does
2 not include any waiver of the right to oppose any appeal, appellate
3 proceedings or post-judgment proceedings. This paragraph does not
4 preclude Plaintiff or Plaintiff's Counsel from appealing from a refusal by
5 the Court to award the Plaintiff's attorneys' fees and/or costs sought by
6 them. If an appeal is taken, the time for consummating the Settlement
(including making payments under the Settlement) will be suspended until
such time as their appeal is finally resolved and the Judgment becomes
Final, as defined in this Agreement.

- 6 **6. Vacating, Reversal, or Material Modification of Judgment on Appeal
7 or Review.** If, after a notice of appeal or a petition for *certiorari* or review,
8 or any other motion, petition, or application, the reviewing court vacates,
9 reverses, or modifies the Judgment such that there is a material change to
10 the Settlement, and that court's decision is not completely reversed and the
11 Judgment is not fully affirmed on review by a higher court, then either
12 Plaintiff or Defendant will have the right to void the Settlement, which the
13 Party must do by giving written notice to the other Parties, the reviewing
14 court, and the Court not later than thirty (30) days after the reviewing court's
15 decision vacating, reversing, or materially modifying the Judgment
becomes Final. A vacation, reversal, or modification of the Court's award
of the Representative Plaintiff's Payment and/or Plaintiff's attorneys' fees
and/or costs will not constitute a vacating, reversal, or material modification
of the Judgment within the meaning of this paragraph, although Plaintiff or
Plaintiff's Counsel have the right to appeal from any refusal by the Court to
award the Plaintiff's Counsel's attorneys' fees and/or costs sought by them.
- 16 **7. Timing of Settlement Payments.** The settlement payment provided for in
17 Paragraph III.B. shall be made within twenty-one (21) days after the Court
Order is signed approving the Settlement.
- 18 **8.** Within seven (7) days after the Court Order is signed approving the
19 Settlement, the Settlement Administrator will provide Defendant with wire
20 transfer information. Within fourteen (14) days after the Court Order is
21 signed approving the Settlement, Defendant will transfer the Total
22 Settlement Amount to the Settlement Administrator via wire transfer. Upon
23 fully funding the Settlement, within five (5) business days thereafter, the
24 Settlement Administrator will make the following payments from the Total
25 Settlement Amount: distribution as Settlement Shares to PAGA Settlement
26 Group Members; the LWDA Payment paid to the LWDA; the
27 Representative Plaintiff's Payment to Plaintiff; Plaintiff's Counsel Fees and
28 Expenses Payment paid to Plaintiff's Counsel; and the Settlement
Administrator's fees and expenses.
- 9. Uncashed Settlement Share Checks.** A PAGA Settlement Group Member
must receive or cash his or her Settlement Share payment or check within
180 calendar days after it is mailed to him or her. If a check is returned to
the Settlement Administrator, the Settlement Administrator will make all
reasonable efforts to re-mail it to the PAGA Settlement Group Member at
his or her correct address. If any PAGA Settlement Group Member's

1 Settlement Share check is not cashed within 120 days after its last mailing
2 to the PAGA Settlement Group Member, the Settlement Administrator will
3 send the PAGA Settlement Group Member a letter or postcard informing
4 him or her that unless the check is cashed in the next 60 days, it will expire
5 and become non-negotiable, and offer to replace the check if it was lost or
6 misplaced but not cashed. If a PAGA Settlement Group Member fails to
7 cash the check for his or her Settlement Share within 180 days after it is
8 mailed to him or her, the funds shall be distributed by the Settlement
9 Administrator to the State Controller's Unclaimed Property Fund in the
10 Settlement Group Member's name.

11 **K. Release and Waiver of Claims.**

12 1. **PAGA Settlement Group Members.** Upon the full funding of the
13 Settlement, Plaintiff, acting on behalf of the State of California, and all
14 PAGA Settlement Group Members release Defendant and the Released
15 Parties from any and all claims based on the Private Attorneys General Act
16 (2004), as pleaded in Plaintiff's Second Amended Complaint or that could
17 have been pleaded on the facts as alleged in the Second Amended
18 Complaint and Plaintiff's notice letters to LWDA, arising during the
19 Covered Period, including but not limited to claims under Labor Code
20 sections 201, 201.3, 202, 203, 204, 204.1, 204.2, 226, 226.7, 510, 512, 516,
21 558, 1174, 1182.12, 1194, 1194.2, 1197, 1198, 2698, 2699.3, and 2699.5,
22 the Industrial Welfare Commission Wage Orders, and any resulting claim
23 for attorneys' fees and costs (the "Released Claims").

24 L. **No Effect on Other Benefits.** The payment to PAGA Settlement Group Members
25 will not result in any additional benefit payments (such as 401(k) or bonus) beyond
26 those provided by this Agreement to Plaintiff or the PAGA Settlement Group
27 Members, and they will be deemed to have waived all such claims, whether known
28 or unknown by them, as part of their release of claims under this Agreement.

19 M. **Confidentiality Preceding Approval.** Prior to filing of the Motion for Settlement
20 Approval, Plaintiff will not issue any press or other media releases or have any
21 communication with the press or media or anyone other than financial advisors,
22 retained experts, the LWDA and vendors related to settlement administration,
23 regarding the Settlement. If, before the filing of the Motion for Settlement
24 Approval, Plaintiff or her attorneys disclose to any unauthorized party (a) that a
25 settlement has been reached or (b) any of the terms of the Settlement except as
26 required by law or to effect the Settlement, Defendant may rescind the Settlement,
27 rendering it null and void. Plaintiff further agrees that she will instruct her attorneys
28 not to disclose the terms of this Agreement other than as necessary in connection
with the Motion for Settlement Approval. This section does not bar Plaintiff's
counsel from carrying out their duties as counsel to Representative Plaintiff for the
LWDA.

11 **N. Miscellaneous Terms.**

12 1. **No Admission of Liability.**

1 a. Defendant denies that it has engaged in any unlawful activity, has
2 failed to comply with the law in any respect, or has any liability to
3 anyone under the claims asserted in the Action. This Agreement is
4 entered into solely for the purpose of compromising highly disputed
5 claims. Nothing in this Agreement is intended or will be construed
6 as an admission of liability or wrongdoing by Defendant, or an
7 admission by Plaintiff that any of her claims were non-meritorious
8 or any defense asserted by Defendant was meritorious. This
9 Settlement and the fact that Plaintiff and Defendant were willing to
10 settle the Action will have no bearing on, and will not be admissible
11 in connection with, any litigation (other than solely in connection
12 with the Settlement).

13 b. Whether or not the Judgment becomes Final, nothing in the
14 Settlement, this Agreement, any document, statement, proceeding
15 or conduct related to the Settlement or the Agreement, or any reports
16 or accounting of those matters, will be (i) construed as, offered or
17 admitted in evidence as, received as, or deemed to be evidence for
18 any purpose adverse to Defendant or any other Released Parties,
19 including, but not limited to, evidence of a presumption, concession,
20 indication or admission by any of the Released Parties of any
21 liability, fault, wrongdoing, omission, concession or damage; or (ii)
22 disclosed, referred to or offered in evidence against any of the
23 Released Parties, in any further proceeding in the Action, or any
24 other civil, criminal or administrative action or proceeding except
25 for purposes of effectuating the Settlement pursuant to this
26 Agreement.

27 c. This section and all other provisions of this Agreement
28 notwithstanding, any and all provisions of this Agreement may be
admitted in evidence and otherwise used in any and all proceedings
to enforce any or all terms of this Agreement, or in defense of any
claims released or barred by this Agreement.

20 2. **Integrated Agreement.** After this Agreement is signed and delivered by
21 all Parties and their counsel, this Agreement and its exhibits will constitute
22 the entire agreement between the Parties relating to the Settlement, and it
23 will then be deemed that no oral representations, warranties, covenants, or
24 inducements have been made to any Party concerning this Agreement or its
25 exhibits other than the representations, warranties, covenants, and
26 inducements expressly stated in this Agreement and its exhibits.

27 3. **Attorney Authorization.** Plaintiff's Counsel and Defendant's Counsel
28 each warrant and represent that they are authorized by their respective
clients to take all appropriate action required or permitted to be taken by
such Parties pursuant to this Agreement to effectuate its terms, and to
execute any other documents required to effectuate the terms of this
Agreement. The Parties and their counsel will cooperate with each other
and use their best efforts to affect the implementation of the Settlement. In
the event the Parties are unable to reach agreement on the form or content

of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court or mediator, and in all cases all such documents, supplemental provisions and assistance of the court will be consistent with this Agreement. No attorney for any party is a party to this agreement and will not be liable for any Party's breach of any of the terms of this Agreement.

4. **Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their successors-in-interest.
5. **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
6. **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.
7. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
8. **Fair Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.
9. **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
10. **Notice.** All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, addressed as follows:

To Plaintiff and the Settlement Group:

HAINES LAW GROUP, APC
Paul K. Haines, Esq. (SBN 248226)
phaines@haineslawgroup.com
Fletcher W. Schmidt, Esq. (SBN 286462)
fschmidt@haineslawgroup.com
Alexandra R. McIntosh, Esq. (SBN 320904)
amcintosh@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Telephone: (424) 292-2350

Facsimile: (424) 292-2355

To Defendant:

Brandon R. McKelvey (SBN 217002)

brandon@medinamckelvey.com

Timothy B. Nelson (SBN 235279)

tim@medinamckelvey.com

Medina McKelvey LLP

983 Reserve Drive

Roseville, California 95678

Telephone: (916) 960-2211

11. **Execution in Counterpart.** This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile signatures will be accepted if the original signature is provided within seven days. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

IV. EXECUTION BY PARTIES

The Parties hereby execute this Agreement.

Dated: March 8, 2021

Ashanti Berry


Ashanti Berry (Mar 8, 2021 16:41 PST)

Dated: March __, 2021

PDS Tech, Inc.

By: _____

[NAME]

[TITLE]

APPROVED AS TO FORM:

Facsimile: (424) 292-2355

To Defendant:

Brandon R. McKelvey (SBN 217002)
brandon@medinamckelvey.com
Timothy B. Nelson (SBN 235279)
tim@medinamckelvey.com
Medina McKelvey LLP
983 Reserve Drive
Roseville, California 95678
Telephone: (916) 960-2211

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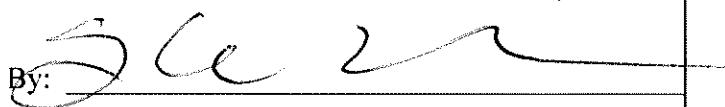
IV. EXECUTION BY PARTIES

The Parties hereby execute this Agreement.

Dated: March __, 2021 Ashanti Berry

Dated: March 17 2021

PDS Tech, Inc.

By: 

S. Cash Nickerson
CEO

APPROVED AS TO FORM:

1 Dated: March 10, 2021

2 HAINES LAW GROUP

3
4 By: 

5 Paul Haines

6 Fletcher Schmidt

7 Alexandra McIntosh

8 Attorneys for Plaintiff ASHANTI BERRY

9
10
11 Dated: March 17, 2021

12 MEDINA McKELVEY, LLP

13
14 By: 

15 Brandon R. McKelvey

16 Timothy B. Nelson

17 Attorneys for Defendant PDS TECH, INC.

EXHIBIT A

HAINES LAW GROUP, APC
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Attorneys for Plaintiff

MEDINA McKELVEY LLP
Brandon R. McKelvey (SBN 217002)
Email: brandon@medinamckelvey.com
Timothy B. Nelson (SBN 235279)
E-mail: tim@medinamckelvey.com
983 Reserve Drive
Roseville, California 95678
Telephone: (916) 960-2211
Facsimile: (916) 742-5488

Attorneys for Defendant

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

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

Plaintiff,

vs.

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

Defendants.

CASE NO. 20STCV18030

*[Case assigned for all purposes to the Hon.
Yvette M. Palazuelos, Dept. 09]*

**[PROPOSED] JUDGMENT AND
ORDER GRANTING PLAINTIFF'S
MOTION FOR SETTLEMENT
APPROVAL OF CLAIMS
BROUGHT UNDER THE PAGA,
REASONABLE ATTORNEY'S
FEES AND COSTS, AND
ENHANCEMENT AWARD**

Date: June 21, 2021
Time: 10:00 a.m.
Dept.: 09

Action Filed: May 8, 2020
Trial Date: None Set

1 On June 21, 2021, a hearing was held on Plaintiff Ashanti Berry's motion for approval of
2 a settlement agreement pursuant to California's Private Attorneys General Act (the "PAGA")
3 (the "Settlement"). The Court having considered all the papers filed and proceedings herein and
4 otherwise being fully informed, and having made this Judgment which constitutes a final
5 adjudication of this matter on the merits, and good cause appearing,

6 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

- 7 1. All terms used for purposes of this Order and Judgment, not otherwise defined, shall
8 have the same meaning as given in the PAGA Settlement Agreement ("Settlement")
9 executed between the Parties on _____, 2021.
- 10 2. Pursuant to the PAGA, Labor Code section 2699, subdivisions (1)(2) and (1)(4), the
11 Labor and Workforce Development Agency ("LWDA") has been given notice of the
12 Settlement. Pursuant to the PAGA, on the date the Parties filed the motion seeking
13 approval of the Settlement with the Court, Plaintiff submitted to the LWDA a notice
14 of the Settlement enclosing a copy of the Settlement. The Court finds and determines
15 that Plaintiff's notice of the Settlement complied with the statutory requirements of
16 the PAGA.
- 17 3. The Court confirms approval of the Settlement as to the following group of
18 individuals, collectively referred to as the "PAGA Settlement Group Members":
19 All non-exempt, hourly employees who worked for Defendant in California and were
20 assigned to the Toyota warehouse in Ontario, California from May 8, 2019 to
21 September 30, 2019.
- 22 4. This Court has jurisdiction over the subject matter of this litigation, over all PAGA
23 Settlement Group Members, and over those persons and entities undertaking
24 affirmative obligations under the Settlement.
- 25 5. The Court finds that the Settlement is, in all respects, fair, reasonable, and adequate.
26 Accordingly, the Court hereby finally and unconditionally approves the Settlement.
- 27 6. The Court approves the Notice to PAGA Settlement Group Members, Exhibit B to
28 the Settlement Agreement.

- 1 7. The Court finds that each PAGA Settlement Group Member, in accordance with the
2 Settlement, releases the following “Released Claims” against the Released Parties:
3 “Any and all claims based on the Private Attorneys General Act (2004), as pleaded in
4 Plaintiff’s Second Amended Complaint or that could have been pleaded on the facts
5 as alleged in the Second Amended Complaint, during the Covered Period.”
- 6 8. The Court finds that the Total Settlement Amount, Net Settlement Amount, and the
7 methodology used to calculate and pay each Settlement Share, in accordance with the
8 Settlement, are fair and reasonable.
- 9 9. The Court authorizes Phoenix Settlement Administrators to act as the Settlement
10 Administrator.
- 11 10. The Court authorizes the Settlement Administrator to calculate and pay the Settlement
12 Shares, in accordance with the terms of the Settlement.
- 13 11. The Court awards the Settlement Administrator in this Action its fees and costs of up
14 to one thousand eight hundred and fifty dollars and zero cents (\$1,850.00) in
15 accordance with the terms of the Settlement Agreement.
- 16 12. The Court awards to Representative Plaintiff a payment of five thousand dollars and
17 zero cents (\$5,000.00), which shall be paid to Representative Plaintiff as a PAGA
18 Representative Enhancement award.
- 19 13. The Court awards to Plaintiff’s Counsel in this Action its fees of one hundred and five
20 thousand dollars and zero cents (\$105,000.00) and actual costs of \$13,006.16, in
21 accordance with the terms of the Settlement Agreement.
- 22 14. The Court approves the allocations and payment of Three Hundred Fifteen Thousand
23 Dollars (\$315,000.00) for the compromise of claims brought under the PAGA, to be
24 paid in accordance with the terms of the Settlement. Under the terms of the
25 Settlement, seventy-five percent (75%) of the Net Settlement Amount will be paid to
26 the State of California Labor and Workforce Development Agency (“LWDA
27 Payment”), and the remaining amount of the Net Settlement Amount shall be
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- distributed to the PAGA Settlement Group Members in accordance with the terms of the Settlement.
15. Checks for Settlement Shares sent to PAGA Settlement Group Members shall be valid for one hundred eighty (180) days after issuance. Funds remaining from any checks for Settlement Shares uncashed after one hundred eighty (180) days will be disbursed to the California State Controller’s Office Unclaimed Property Fund.
16. The Court retains exclusive and continuing jurisdiction over this Action for purposes of supervising, administering, implementing, interpreting, and enforcing this Judgment and Order, as well as the Settlement.
17. Nothing in this Order and Judgment or the Settlement shall be construed as an admission or concession by any party. The Settlement and this resulting Judgment and Order simply represent a compromise of disputed allegations.
18. Plaintiff is directed to submit a copy of this Order to the LWDA within ten (10) days of the date of this Order.
19. Within _____ days of the date of this Order, the Parties are directed to file a joint status report regarding the status of the distribution of settlement proceeds. Upon satisfaction that the appropriate payments have been made, the Court will then close this case.

IT IS SO ORDERED AND ADJUDGED.

Dated: _____

Honorable Yvette M. Palazuelos
Judge of the Superior Court

EXHIBIT B

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

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

Plaintiff,)

vs.)

PDS TECH, INC., a Washington corporation; and)
DOES 1 through 100, inclusive,)

Defendants.)

Case No. 20STCV18030

**NOTICE OF PRIVATE ATTORNEYS GENERAL
ACT SETTLEMENT PAYMENT**

TO: All of Defendant's non-exempt, hourly employees who were assigned to work at the Toyota warehouse in Ontario, California at any time between May 8, 2019 to September 30, 2019.

This Notice is being provided to you to inform you of a Private Attorneys General Act ("PAGA") Settlement and your proportional share of this settlement payment. The payment is a result of a Court-approved PAGA Settlement in the case of *Ashanti Berry v. PDS Tech, Inc., et al.*, Los Angeles County Superior Court Case No. 20STCV18030 (the "Litigation"). This Notice is not intended to be, and should not be construed as, an expression of any opinion by the Court with respect to the truth of the allegations in the Litigation or the merits of the claims or defenses asserted. Defendant PDS Tech, Inc. ("Defendant") denies that Defendant has engaged in any unlawful conduct in any respect and further deny all of Plaintiff Ashanti Berry's ("Plaintiff")'s allegations in the Litigation. By entering into the PAGA Settlement, Defendant does not admit any liability to Plaintiff or to any other current or former employees who worked for Defendants, and does not admit that Defendant has violated the rights of Plaintiff, any other current or former employee, or any other person(s).

Plaintiff filed a notice with the California Labor and Workforce Development Agency ("LWDA") to exhaust administrative remedies and pursue claims under PAGA for alleged violations of California Labor Code sections 201, 201.3, 202, 203, 204, 204.1, 204.2, 226, 226.7, 510, 512, 516, 558, 1174, 1182.12, 1194, 1194.2, 1197, 1198, 2698, 2699.3, and 2699.5. The scope of the PAGA Settlement includes all of Defendant's non-exempt, hourly employees who worked for Defendant and were assigned to work at the Toyota warehouse in Ontario, California from May 8, 2019 to September 30, 2019 (the "PAGA Time Period"). In exchange for the PAGA Settlement, Plaintiff has agreed to waive any and all liability for violations of the PAGA based on violation of Labor Code sections 201, 201.3, 202, 203, 204, 204.1, 204.2, 226, 226.7, 510, 512, 516, 558, 1174, 1182.12, 1194, 1194.2, 1197, 1198, 2698, 2699.3, and 2699.5, as alleged in the Litigation, and in particular Plaintiff's right to participate in or bring a claim under the PAGA for said violations of these Labor Code sections that occurred during the PAGA Time Period. This waiver shall apply to all members within the PAGA group, including you, and extends to any PAGA claims asserted in the Litigation and arising during the PAGA Time Period.

The total PAGA Settlement is \$315,000.00. After deducting amounts for the Court-approved attorney's fees (\$105,000.00) and actual litigation costs (\$13,006.16) to Plaintiff's counsel, and costs of administering this settlement to Phoenix Settlement Administrators (\$1,850.00), the remaining amount of \$190,143.84 is being paid as follows, as required by law: 75% to the LWDA, and 25% distributed to the affected employees employed by Defendant during the PAGA Time Period. The allocation of the 25% sum is as follows: Each employee will be receive a share of the settlement based on the number of weeks that the employee worked for Defendant and was assigned to the Toyota warehouse in Ontario, California during the PAGA Time Period in proportion to the total number of weeks all of Defendant's employees worked for Defendant and were assigned to the Toyota warehouse in Ontario, California during the PAGA Time Period. The weeks you and other employees worked was determined by Defendant's records. Enclosed in this mailing, you will find a check containing your share of the PAGA Settlement based on this allocation. The allocations to each individual employee are non-appealable. If you have any questions or concerns, you may contact counsel for Plaintiff or Defendant.

Paul Haines
Fletcher Schmidt
Haines Law Group, APC
2155 Campus Drive, Suite 180
El Segundo, California 90245
On behalf of Plaintiff

Brandon R. McKelvey
Timothy B. Nelson
Medina McKelvey LLP
983 Reserve Drive
Roseville, CA 95678
On behalf of Defendant