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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

*[Assigned for all purposes to the Hon. Yvette
M. Palazuelos; Dept. SSC-9]*

**DECLARATION OF FLETCHER W.
SCHMIDT IN SUPPORT OF PLAINTIFF'S
MOTION FOR SETTLEMENT
APPROVAL OF CLAIMS BROUGHT
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT, AND REASONABLE
ATTORNEYS' FEES AND COSTS**

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

Complaint Filed: May 8, 2021
Trial Date: None Set

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DECLARATION OF FLETCHER W. SCHMIDT

I, FLETCHER W. SCHMIDT, declare as follows:

1. I am a Partner at the Haines Law Group, APC, and counsel for the named Plaintiff Ashanti Berry (“Plaintiff”) in the above-captioned matter. I am a member in good standing of the bar of the State of California and am admitted to practice in this Court. I have personal knowledge of the facts stated in this declaration and could testify competently to them if called upon to do so.

2. I am a 2012 graduate of Loyola Law School, Los Angeles, where I graduated *cum laude* and was awarded membership in the Order of the Coif. From August 2013 to March 2016, I worked as an associate attorney at Boren, Osher & Luftman LLP. Since March 2016 I have worked at my current firm, Haines Law Group, APC, where, in 2018, I became a Partner.

3. During my time with Boren, Osher & Luftman LLP and Haines Law Group, APC, my practice has been solely devoted to litigating plaintiff-side wage and hour class actions in California state and federal court. I am currently responsible for managing a caseload of over seventy-five (75) active wage and hour class actions in which I am integrally involved in all aspects of the litigation.

4. The following is a non-exhaustive list of class action settlements in which I have been named as Class Counsel, and which have been granted final approval:

- *Julio v. Anthony, Inc.*, Case No. CV14-03172 AB (SHx), United States District Court, Central District of California, Honorable Judge Andre Birotte, Jr. presiding (approving an hourly rate of \$350 for work performed in 2014 and 2015);
- *Litt v. Western Stone & Metal Corp.*, Case No. 3:14-cv-02804-PJH, United States District Court, Northern District of California, Honorable Judge Phyllis J. Hamilton presiding (approving an hourly rate of \$350 for work performed in 2014 and 2015);
- *Rubalcava v. United Towing and Transport Burbank, et al.*, Case No. BC518468, California Superior Court, County of Los Angeles, Honorable Judge Kenneth

Freeman presiding (approving an hourly rate of \$350 for work performed in 2013, 2014 and 2015);

- *Rivera Regalado v. Jaguar Farm Labor Contracting*, Case No. CV 130569, California Superior Court, County of San Luis Obispo, Honorable Martin J. Tangeman presiding (approving an hourly rate of \$350 for work performed in 2014 and 2015);
- *Sanchez v. Res-Care, Inc.*, Case No. BC526175, California Superior Court, County of Los Angeles, Honorable John S. Wiley presiding (approving an hourly rate of \$350 for work performed in 2013, 2014 and 2015);
- *Rodas v. Gateways Hospital and Mental Health Center*, Case No. BC503179, California Superior Court, County of Los Angeles, Honorable Judge Amy D. Hogue presiding (approving an hourly rate of \$350 for work performed in 2014 and 2015);
- *Prado v. Warehouse Demo Services, Inc.*, Case No. CV14-3170 JFW (Ex), United States District Court, Central District of California, Honorable Judge John F. Walter presiding (approving an hourly rate of \$350 for work performed in 2014 and 2015);
- *Shaw v. Conant Auto Retail, San Diego*, Case No. 37-2014-00044052-CU-OE-CTL, California Superior Court, County of San Diego, Honorable Judge Joan M. Lewis presiding (approving an hourly rate of \$375 for work performed in 2014, 2015, and 2016);
- *Tirado v. Ricon Corp.*, Case No BC537042, California Superior Court, County of Los Angeles, Honorable Judge John Shepard Wiley, Jr. presiding (approving an hourly rate of \$375 for work performed in 2014, 2015, and 2016);
- *Tesla Motors Wage and Hour Litigation*, JCCP 4792, California Superior Court, County of Santa Clara, Honorable Peter H. Kirwan presiding (approving an hourly rate of \$375 for work performed in 2013, 2014, 2015, and 2016);
- *Lopez v. RMHQ LLC, et al.*, Case No. BC525592, California Superior Court, County of Los Angeles, Honorable Elihu M. Berle presiding (approving an hourly rate of \$375 for work performed in 2013, 2014, 2015, and 2016);

- *Horta v. Searles Valley Minerals, Inc.*, Case No. CIVDS 1507615, California Superior Court, County of San Bernardino, Honorable Donald Alvarez presiding (approving an hourly rate of \$375 for work performed in 2015 and 2016);
- *Mansilla v. Haeco Americas Line Services, LLC, et al*, Case No. BC615310, Superior Court of California, County of Los Angeles, Honorable Judge Elihu M. Berle presiding (approved at an hourly rate of \$425 for work performed in 2016 and 2017);
- *Khosravi v. Enterprise Rent-A-Car Company of Los Angeles, LLC, et al.*, Case No. 30-2016-00829923-CU-OE-CXC, Superior Court of California, County of Orange, Honorable Judge Thierry Patrick Colaw presiding (approved at an hourly rate of \$425 for work performed in 2016 and 2017);
- *Nieves v. Ta Chen International, Inc.*, Case No. BC609005, Superior Court of California, County of Los Angeles, Honorable Judge Kenneth R. Freeman presiding (approved at an hourly rate of \$425 for work performed in 2016 and 2017);
- *Berkel v. Pride Bakeries, LLC*, Case No. 30-2017-00923148-CU-OE-CXC, Superior Court of California, County of Orange, Honorable Judge William Claster presiding;
- *Ruvalcaba Quiroz v. Circle M Contractors, Inc.*, Case No. 30-2016-00885065-CU-OE-CXC, Superior Court of California, County of Orange, Honorable William D. Claster presiding;
- *Armenta, et al., v. California Friends Homes d/b/a Quaker Gardens*, Case No. 30-2016-00883282-CU-OE-CXC, Superior Court of California, County of Orange, Honorable Randall J. Sherman presiding (approving an hourly rate of \$425 for work performed in 2016, 2017 and 2018);
- *Sandra Zinnerman v. Tumbleweed Educational Enterprises, Inc.*, Case No. BC673708, Superior Court of California, County of Los Angeles, Honorable Maren E. Nelson presiding (approving an hourly rate of \$425 for work performed in 2016, 2017, and 2018);

- *Tina Arellano v. Williams Sonoma Stores, Inc.*, Case No. BC693760, Los Angeles County Superior Court, Honorable Daniel J. Buckley, presiding (approving an hourly rate of \$475 for work performed in 2018 and 2019);
- *William Cuellar v. UMA Enterprises, Inc.*, Case No. BC657146, Los Angeles County Superior Court, Honorable Maren E. Nelson, presiding (approving an hourly rate of \$475 for work performed in 2017, 2018 and 2019);
- *Maria C. Garcia, et al. v. Simplified Labor Staffing Solutions, Inc.*, Case No. BC696898, Los Angeles County Superior Court, Honorable Elihu M. Berle, presiding (approving an hourly rate of \$475 for work performed in 2018 and 2019);
- *Arturo Delgado v. Spears Manufacturing Co.*, Case No. BC709665, Los Angeles County Superior Court, Honorable Maren E. Nelson, presiding (approving an hourly rate of \$595 for work performed in 2018, 2019 and 2020); and
- *Soto v. L I Metal Systems*, Case No. 37-2017-00009607-CU-OE-CTL, San Diego County Superior Court, Honorable Timothy Taylor, presiding (approving an hourly rate of \$595 for work performed in 2017-2020).

5. I have also moved to certify and have received an order certifying a class action and/or conditionally certifying a collective action as Class Counsel in the following cases:

- *Medeiros v. Vortex Financial Management Inc.*, Case No. 30-2013-00644741-CU-OE-CXC, California Superior Court, County of Orange, Honorable Judge Gail A. Andler presiding (certifying a class of employees who were misclassified as independent contractors);
- *Javine v. San Luis Ambulance Service, Inc.*, Case No. CV13-07480 BRO (SSx), United States District Court, Central District of California, Honorable Judge Beverly Reid O'Connell presiding (conditionally certifying an unpaid FLSA overtime wage class);
- *Prado v. Warehouse Demo Services, Inc.*, Case No. CV14-3170 JFW (Ex), United States District Court, Central District of California, Honorable Judge John F. Walter

1 presiding (certifying a rest period violation class and conditionally certifying a FLSA
2 unpaid overtime wage class);

- 3 • *Bower v. Cycle Gear, Inc.*, Case No. CV14-2712 HSG, United States District Court,
4 Northern District of California, Honorable Judge Haywood S. Gilliam, Jr. presiding
5 (conditionally certifying an unpaid FLSA overtime wage class);
- 6 • *Vega v. Weatherford U.S., Limited Partnership*, Case No. CV14-1790-JLT, United
7 States District Court, Eastern District of California, Honorable Judge Jennifer L.
8 Thurston presiding (conditionally certifying an unpaid FLSA overtime wage class);
- 9 • *Galvan v. AMVAC Chemical Corporation*, Case No. 30-2014-00716103-CU-OE-
10 CXC, California Superior Court, County of Orange, Honorable Judge William
11 Claster presiding (certifying unpaid overtime wage class and waiting time penalty
12 class);
- 13 • *Camacho v. Residential Fire Systems, Inc.*, Case No. 30-2015-00775372-CU-OE-
14 CXC, California Superior Court, County of Orange, Honorable Judge Glenda
15 Sanders presiding (certifying five separate classes for claims for unpaid wages,
16 unreimbursed expenses, failure to authorize and permit rest periods, and derivative
17 claims);
- 18 • *Ontiveros v. Safelite Fulfillment, Inc., et al*, Case No. CV 15-7118-DMG (RAOx),
19 United States District Court, Central District of California, Honorable Dolly M. Gee
20 presiding (certifying six classes of employees for rest period violations, wage
21 statement violations, meal period violations, and overtime and double-time
22 violations); and
- 23 • *Staublein v. Wells Fargo Bank, National Association*, Case No. CIVDS1712267, San
24 Bernardino Superior Court, Honorable David Cohn presiding (certifying a wage
25 statement class).

26 6. In 2018, 2019 and 2020, Thomson Reuters and Los Angeles Magazine
27 recognized me as a Top Young Attorney in Southern California in the annual Rising Star Edition
28

1 of Super Lawyers. This is an honor awarded to no more than two-and-a-half percent (2.5%) of
2 attorneys under the age of forty in Southern California each year.

3 7. As counsel for Plaintiff, I have been intimately involved in all aspects of this
4 litigation from its inception, and believe that the proposed Settlement is a fair and reasonable
5 result for the aggrieved employees and the State of California.

6 8. Defendant PDS Tech, Inc. (“PDS Tech”) operates a staffing agency, which
7 places its employees at companies throughout California. Plaintiff worked for PDS Tech as a
8 non-exempt employee from approximately June 18, 2019 until she began a medical leave of
9 absence on approximately July 19, 2019. Throughout the entirety of Plaintiff’s employment,
10 PDS Tech staffed Plaintiff at Toyota’s North American Parts Center (“Toyota”) as a “Material
11 Handler”. According to PDS Tech, it ceased all operations at Toyota’s warehouse in Ontario,
12 California on September 30, 2019.

13 9. On May 8, 2020, Plaintiff, through my office, filed a class action complaint
14 asserting multiple claims against PDS Tech under the California Labor Code on a classwide
15 basis.

16 10. On May 8, 2020, Plaintiff, through my office, sent an initial letter by certified
17 mail to PDS Tech and online to the Labor Workforce Development Agency (“LWDA”),
18 describing PDS Tech’s alleged Labor Code violations, as required by Labor Code § 2699.3.
19 Attached hereto as **Exhibit 2** are true and correct copies of Plaintiff’s PAGA letters and
20 corresponding, LWDA confirmation of receipts.

21 11. On May 18, 2020, Plaintiff submitted a first amended PAGA notice to notify the
22 LWDA and PDS Tech of additional alleged violations of the California Labor Code, including
23 violations of Labor Code section 226(a) for failure to list the inclusive dates of the pay period
24 on wage statements.

25 12. On June 10, 2020, PDS Tech submitted a response to Plaintiff’s initial and first
26 amended PAGA notices, notifying the LWDA that it was taking advantage of the cure provision
27 contained in Labor Code §§ 2699(d) and 2699.3(c)(2)(A) to cure the alleged violations of Labor
28 Code 226(a) by reissuing corrected wage statements to all employees in California for the time

1 period from May 8, 2017 to the present. Plaintiff did not dispute that PDS Tech had therefore
2 validly cured the violations of Section 226(a). Attached hereto as **Exhibit 3** is a true and correct
3 copy of PDS Tech's cure letter.

4 13. On July 10, 2020, Plaintiff submitted a second amended PAGA notice to notify
5 the LWDA and PDS Tech of additional alleged violations of the California Labor Code,
6 including violations of California Labor Code sections 226.7, 516, and 558 as a result of PDS
7 Tech's alleged failure to authorize and permit off-duty rest breaks.

8 14. On July 27, 2020, after exhausting her pre-filing requirements as to her initial,
9 and first amended PAGA notices, Plaintiff filed a First Amended Complaint adding a cause of
10 action for civil penalties under the PAGA based on the same underlying Labor Code violations
11 as those contained in her first two PAGA notices. Shortly thereafter, PDS Tech produced an
12 arbitration agreement that Plaintiff had signed and, as a result, Plaintiff dismissed her class-wide
13 claims without prejudice. On November 10, 2020, Plaintiff filed the operative Second Amended
14 Complaint alleging a single cause of action for civil penalties under the PAGA based on the
15 underlying Labor Code violations identified in all three PAGA notices.

16 15. On November 16, 2020, the parties attended a full-day mediation session with
17 mediator Francis "Tripper" Ortman, Esq., an experienced wage and hour mediator. Prior to
18 attending mediation, PDS Tech provided Plaintiff with timekeeping and payroll records for all
19 of PDS Tech's non-exempt employees staffed at Toyota during the Covered Period. PDS Tech
20 also produced employee handbooks, relevant policy documents, and data points regarding the
21 number of employees and number of workweeks worked during the relevant PAGA period.
22 Using the data, Plaintiff's counsel conducted a comprehensive exposure analysis for the claims
23 at issue.

24 16. During mediation, the parties debated the legal bases for their claims and
25 defenses, their respective data analyses, and their respective positions regarding the extent to
26 which the Court would likely reduce any PAGA penalties recovered. Although the parties did
27 not resolve the matter at mediation, they continued their settlement negotiations over the
28 following months and ultimately reached an agreement to resolve Plaintiff's PAGA claims by

1 way of a mediator's proposal. After further months of negotiations, the parties executed the
2 Settlement Agreement now before the Court for approval.

3 17. A true and correct copy of the fully-executed Settlement Agreement is attached
4 hereto as **Exhibit 1**. The proposed PAGA Notice that will be mailed to PAGA Settlement Group
5 Members with their settlement payments is attached as Exhibit B to the Settlement Agreement.
6 The Settlement provides for PDS Tech to pay a Total Settlement Amount ("TSA") of
7 \$315,000.00. After deducting amounts for requested attorneys' fees, attorneys' costs, Plaintiff's
8 enhancement payment, and settlement administration costs, the Settlement provides for the Net
9 Settlement Amount ("NSA") to be distributed 75% to the LWDA and 25% to PAGA Settlement
10 Group Members, pursuant to Lab. Code § 2699(i). All portions distributed to Aggrieved
11 Employees shall be distributed pro rata based on the number of pay periods each Aggrieved
12 Employee worked for PDS Tech during the PAGA Period. This settlement is non-reversionary,
13 and does not require PAGA Settlement Group Members to submit claim forms to reap financial
14 benefit from the Settlement. Based on a TSA of \$315,000, the total amount paid to PAGA
15 Settlement Group Members is estimated at \$47,55.96, with approximately \$142,607.88 paid to
16 the LWDA. According to information provided by PDS Tech, the number of PAGA Settlement
17 Group Members is approximately 95. Thus, the average payment to Aggrieved Employees is
18 estimated at \$500.38.

19 18. Although she steadfastly maintains her claims are meritorious, Plaintiff
20 acknowledges her position included real risks and uncertainty. For example, with respect to
21 Plaintiff's claim that PDS Tech engaged in unlawful time-rounding, PDS Tech maintains that
22 its timekeeping practices are lawful and that it does not round employees' hours worked.
23 Instead, PDS Tech contends that Plaintiff and other PAGA Settlement Group Members
24 manually recorded their hours worked by inputting their hours into PDS Tech's third-party
25 timekeeping system. PDS Tech then used the hours recorded by the PAGA Settlement Group
26 Members for the purposes of payroll and although PDS Tech acknowledged that Toyota utilized
27 a timeclock, PDS Tech maintained that Toyota's timeclock was used by Toyota solely to track
28 who was inside the facility and did not have any connection to payroll. PDS Tech further argued

1 that any discrepancy between the timekeeping systems was minimal and that just because an
2 employee had punched in on Toyota's system, did not mean they were actually performing
3 compensable work; for example, PDS Tech obtained declarations from employees who contend
4 that they punched in on Toyota's system upon arrival a few minutes before their shift and
5 engaged in purely personal activities, such as talking to their co-workers in the break room, and
6 didn't begin working until the start of their shift. Finally, PDS Tech maintains this claim would
7 not be manageable on a representative basis, since it would require individualized inquiries to
8 determine whether an employee was actually performing compensable work in any specific
9 instance, rendering the claim unmanageable.

10 19. As for Plaintiff's claim that PDS Tech failed to pay employees for time spent
11 undergoing pre- and post-shift security checks, PDS Tech alleges that it did not assert control
12 over Plaintiff and other PAGA Settlement Group Members until they actually clocked in, and
13 therefore this time is not compensable. PDS Tech further argues that because the "security
14 checks" consisted of only recording your name with a guard, any off-the-clock work was
15 minimal (under 2 minutes per day, on average), and was thus de minimis and not compensable.
16 While Plaintiff pointed to *Troester v. Starbucks Corp.*, 5 Cal.5th 829 (2018), where the
17 California Supreme Court held California's labor laws generally do not recognize a de minimis
18 defense, PDS Tech argued *Troester* should be limited to its facts.

19 20. With respect to Plaintiff's claims that PDS Tech failed to provide employees
20 with compliant meal periods, PDS Tech contends it has always maintained compliant written
21 meal period policies, including provision of both first and second meal periods where applicable.
22 Furthermore, PDS Tech asserts that its employees staffed at Toyota were always scheduled to
23 take a 45-minute meal periods within the first 5 hours of employee shifts, and thus any late or
24 short meal periods were the result of employee choice rather than any policy or practice of PDS
25 Tech. PDS Tech further argues that under *Brinker* it is only required to "provide" the opportunity
26 to take meal periods, not "ensure" meal periods are taken, which PDS Tech contends it has
27 always done.
28

1 21. As for Plaintiff’s rest period claim, which was based largely on PDS Tech’s
2 alleged on-premises rest period policy, PDS Tech contends that employees are always allowed
3 to leave the premises during rest periods, and that, in any event, the California Supreme Court
4 rejected Plaintiff’s theory in *Augustus v. ABM Security Svcs., Inc.*, 2 Cal.5th 257, 270 (2016),
5 where it stated that “during a rest period an employee generally can travel at most five minutes
6 from a work post before returning to make it back on time. Thus, one would expect that
7 employees will ordinarily have to remain on site or nearby. This constraint, which is of course
8 common to all rest periods, is not sufficient to establish employer control.” PDS Tech further
9 contends that it has always maintained lawful written rest period policies, including regarding
10 the number, duration, and frequency of rest periods, and that it has always authorized and
11 permitted rest periods in accordance with those policies.

12 22. PDS Tech also maintains Plaintiff’s meal and rest period claims would not be
13 manageable on a representative basis, as individual inquiries would be required to establish
14 which employees missed meal or rest periods, how many each missed, and why a particular
15 employee missed a particular meal or rest period on a particular shift. This is particularly true
16 given that PDS Tech is a staffing agency, and therefore places employees in a wide variety of
17 locations and industries, each with their own unique settings and supervisors.

18 23. As for Plaintiff’s derivative claims that PDS Tech violated its wage statement
19 and final payment obligations in violation of Labor Code §§ 226 and 203, respectively, PDS
20 Tech asserts it has strong, good-faith defenses to Plaintiff’s underlying claims, precluding a
21 finding of a failure to pay all final wages that would otherwise result in waiting time penalties.
22 PDS Tech further contends Plaintiff’s meal and rest period claims cannot support a claim for
23 violations of Labor Code §§ 226 or 203, as Courts of Appeal recently held in *Naranjo v.*
24 *Spectrum Security Svcs., Inc.*, 40 Cal.App.5th 444, 473-75 (2019) (*review granted* Jan. 2, 2020)
25 and *Betancourt v. OS Rest. Svcs., LLC*, 49 Cal.App.5th 240, 248 (2020) (*review granted* Aug.
26 19, 2020). PDS Tech further contends that wage statements always accurately reflected amounts
27 paid to employees, and thus PDS Tech could not be found liable for wage statement violations
28 under *Maldonado v. Epsilon Plastics, Inc.*, 22 Cal.App.5th 1308, 1336 (2018) (“The purpose

1 of section 226 is to *document the paid wages* to ensure the employee is fully informed regarding
2 the calculation of those wages.”) (italics in original).

3 24. PDS Tech further maintains that even if the Court awarded PAGA penalties for
4 any of the alleged violations, the Court would substantially reduce the penalties based on the
5 discretionary factors in Labor Code § 2699(e)(2) (authorizing reduction in PAGA penalties “if,
6 based on the facts and circumstances of the particular case, to do otherwise would result in an
7 award that is unjust, arbitrary and oppressive, or confiscatory.”). Indeed, PDS Tech argues,
8 many courts have reduced PAGA penalties drastically where, as here, the employer presented
9 good-faith defenses and attempted to comply with the law.

10 25. Plaintiff asserts that PAGA penalties would be recoverable for each of the 1,391
11 pay periods based on a failure to pay all wages owed (which was present in every pay period
12 since employees were always required to go through security checks off-the-clock and PDS
13 Tech rounded employee time records on every shift) or a rest period violation (which also was
14 present in every pay period since any shift in excess of 3.5 hours triggered potential liability
15 under Plaintiff’s theory that *all* rest periods were invalid because they were not duty-free).
16 Plaintiff therefore calculates PDS Tech’s maximum possible PAGA exposure at \$268,700 ((95
17 initial violations x \$100 per violation) + (1,296 subsequent violations x \$200 per violation)).
18 The proposed Settlement of \$315,000 represents approximately 117% of Plaintiff’s maximum
19 recovery, with no discounts applied, while avoiding the risks of proceeding through trial. The
20 Net Settlement Amount of \$190,143.84 represents approximately 70.76% of Plaintiff’s
21 maximum recovery.

22 26. My office is requesting attorneys’ fees of one-third of the Total Settlement
23 Amount (i.e., \$105,000.00). Based on my experience in similar wage and hour class and
24 representative actions in California state courts, fee awards in matters such as this one generally
25 equal about one-third of the gross recovery. In addition, and as explained below and in the
26 accompanying Motion, the requested fee is fair compensation for undertaking complex, risky,
27 expensive, and time-consuming litigation on a purely contingent basis. This case also involved
28 nuanced legal issues, including the legality of PDS Tech’s rounding practice, PDS Tech’s

obligations to “provide” meal periods and “authorize and permit” rest periods, as well as the availability and amount of PAGA civil penalties for the alleged Labor Code violations. PDS Tech was also represented by experienced wage-and-hour litigation counsel. Thus, the requested fee award is fair, reasonable and adequate and should be approved.

27. The requested fee award is also supported by counsel’s lodestar. Including expected future hours incurred in connection with the hearing on this Motion and overseeing settlement distribution, my firm has a lodestar of approximately \$98,944.50, which results in a nominal multiplier of 1.06 when compared with the \$105,000 fee request. A general summary showing the number of hours of work performed by each attorney and the paralegals from my firm is set forth below:

Name	Rate	Hours	Pre-Multiplier Lodestar
Paul K. Haines (15th Year Attorney)	\$650	38.2	\$24,830.00
Fletcher W. Schmidt (8th Year Attorney)	\$595	69.6	\$41,412.00
Alexandra R. McIntosh (3rd Year Attorney)	\$375	83.1	\$31,162.50
Firm Paralegals	\$175	8.8	\$1,540.00
Total Lodestar			\$98,944.50

28. I believe the proposed hourly rates are reasonable in light of my firm’s skills, wage and hour litigation experience (including significant experience litigating PAGA actions), as well as fee awards to other attorneys of similar experience in California, and are in line with rates at which I and/or other attorneys in my firm have been approved in other matters. In addition, the respective hourly rates requested by the attorneys at my firm are in line with the current *Laffey* Matrix, a true and correct copy of which is attached hereto as **Exhibit 4**. The *Laffey* Matrix has been recognized by California courts as “a widely recognized compilation of attorney and paralegal rates based on various levels of experience.” *Theme Promotions, Inc. v. News America Mktg. FSI, Inc.*, 731 F.Supp.2d 937, 948 (N.D. Cal. 2010); *see also Reed v. 1-800 Contacts, Inc.*, No. 12-cv-02359 JM (BGS), 2014 WL 29011 at **8-9 (S.D. Cal. Jan. 2, 2014) (cross-checking requested hourly rates against the *Laffey* Matrix and finding that “the *Laffey* matrix lends further credibility” to counsel’s requested hourly rates).

1 29. My office has expended significant time and effort in this case, including but not
2 limited to: conducting pre-filing investigation, legal research and analysis regarding the merits
3 of Plaintiff's claims, Plaintiff's ability to recover penalties under the PAGA, and Defendant's
4 potential defenses, drafting pleading and law and motion papers, drafting informal discovery
5 requests, reviewing Defendant's purported cure of Plaintiff's facial wage statement violation
6 allegations, reviewing documents and data provided by Defendant prior to mediation, building
7 a comprehensive damages model, drafting a mediation brief, preparing for and attending
8 mediation, communicating and meeting with the parties and counsel, negotiating and drafting
9 the long-form Settlement Agreement and Notice documents, preparing this Motion for
10 settlement approval and supporting declarations, and otherwise litigating the case. My office
11 will also oversee the settlement administration process and work with the administrator to
12 prepare a post-disbursement declaration.

13 30. Since undertaking representation of Plaintiff, my firm has dedicated substantial
14 resources to this litigation without receiving any compensation to date. My office is requesting
15 reimbursement of \$13,006.16 in total costs. A summary of the costs incurred by my office in
16 connection with this case is attached hereto as **Exhibit 5**. These costs include filing fees,
17 copying costs, mediation fees, and other expenses that were all reasonably incurred in the
18 prosecution of this litigation on behalf of Plaintiff and the PAGA Settlement Group Members.

19 31. I believe the requested \$5,000 enhancement payment to Plaintiff is reasonable
20 given Plaintiff's efforts in this case and the risks she undertook on behalf of the PAGA
21 Settlement Group Members. and the State of California. Plaintiff devoted significant effort to
22 searching for employment-related documents, provided substantial factual information and
23 documents to my office, and had multiple in-depth discussions with myself and others from my
24 office to discuss the facts, legal theories at issue, and general case strategy. Attached hereto as
25 **Exhibit 6** are true and correct copies of Orders granting Incentive Payments in PAGA-Only
26 settlements.

27 32. The parties have agreed to engage Phoenix Settlement Administrators
28 ("Phoenix") as the third-party settlement administrator. Plaintiff requests \$1,850 in

1 administration fees to be approved for Phoenix. This will cover all costs incurred by Phoenix in
2 connection with the settlement of this matter. Jodey Lawrence of Phoenix has executed a
3 declaration, submitted concurrently herewith, which describes Phoenix's extensive experience
4 as settlement administrator and includes a copy of the settlement administration bid that Phoenix
5 provided in this matter.

6 33. Concurrently with the filing of this motion, Plaintiff provided notice of the
7 proposed Settlement to the LWDA. Attached hereto as **Exhibit 7** are true and correct copies of
8 Plaintiff's Settlement submission and the LWDA's confirmation of receipt.

9 I declare under penalty of perjury under the laws of the state of California that the
10 foregoing is true and correct. Executed on March 25, 2021, at El Segundo, California.

11 

12 _____
Fletcher W. Schmidt

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. **Vacating, Reversal, or Material Modification of Judgment on Appeal or Review.** If, after a notice of appeal or a petition for *certiorari* or review, or any other motion, petition, or application, the reviewing court vacates, reverses, or modifies the Judgment such that there is a material change to the Settlement, and that court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher court, then either Plaintiff or Defendant will have the right to void the Settlement, which the Party must do by giving written notice to the other Parties, the reviewing court, and the Court not later than thirty (30) days after the reviewing court's 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.
7. **Timing of Settlement Payments.** The settlement payment provided for in Paragraph III.B. shall be made within twenty-one (21) days after the Court Order is signed approving the Settlement.
8. Within seven (7) days after the Court Order is signed approving the Settlement, the Settlement Administrator will provide Defendant with wire transfer information. Within fourteen (14) days after the Court Order is signed approving the Settlement, Defendant will transfer the Total Settlement Amount to the Settlement Administrator via wire transfer. Upon fully funding the Settlement, within five (5) business days thereafter, the Settlement Administrator will make the following payments from the Total Settlement Amount: distribution as Settlement Shares to PAGA Settlement Group Members; the LWDA Payment paid to the LWDA; the Representative Plaintiff's Payment to Plaintiff; Plaintiff's Counsel Fees and 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

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.

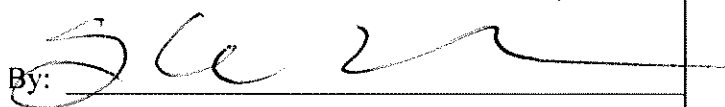
IV. EXECUTION BY PARTIES

The Parties hereby execute this Agreement.

Dated: March __, 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
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
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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 (l)(2) and (l)(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

Exhibit 2

HAINES LAW GROUP
EMPLOYMENT ATTORNEYS

July 10, 2020

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Ashanti Berry v. PDS Tech, Inc*

To Whom It May Concern:

Please be advised that this law firm represents Ashanti Berry (“Ms. Berry”) in claims arising from her employment with PDS Tech, Inc, and Does 1 through 100 (collectively “Defendants” or “PDS Tech”). Ms. Berry is an “aggrieved employee” as defined by Labor Code Section 2698 *et seq.*, due to Defendants’ numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code Sections 2699.3, which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, “aggrieved employees” includes all of Defendants’ non-exempt employees who worked for Defendants in California during the one year immediately preceding the date of this letter through the present.

This letter is a second amendment to Ms. Berry’s original correspondence of May 8, 2020 regarding PDS Tech’s Labor Code violations alleged by Ms. Berry. Ms. Berry’s original May 8, 2020 letter as well as her first amended letter which was submitted on May 18, 2020 are attached hereto for your reference.

In addition to the alleged Labor Code violations identified in her May 8, 2020 and May 18, 2020 correspondence to the LWDA, Ms. Berry also alleges that Defendants maintained a facially-invalid written rest period policy which states that employees “must remain on the facility premises” during rest periods, in violation of established California Supreme Court precedent. *See Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257, 260 (2016) (“[D]uring required rest periods, employers must relieve their employees of all duties and *relinquish any control over how employees spend their break time.*”) (emphasis added).

On those occasions where Ms. Berry and other aggrieved employees were not provided with all legally-compliant rest periods to which they were entitled, Defendants failed to compensate Ms. Berry and other aggrieved employees with the required rest period premium for each workday in which they experienced a rest period violation as mandated by Labor Code § 226.7.

As described above, Defendants committed the following violations of the Labor Code, and Industrial Welfare Commission Wage Order 1 ("Wage Order 1"):

Rest Period Violations

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. While Defendants have maintained a written rest period policy during the relevant time period, such a policy is facially unlawful, as it instructs employees that they "must remain on the facility premises," in violation of *Augustus, supra*, 2 Cal.5th at 260. Despite Defendants' violations, Defendants have not, and do not, pay an additional hour of premium pay to Ms. Berry and aggrieved employees at their respective regular rates of pay for each workday with a violation in accordance with Labor Code section 226.7.

As an "aggrieved employee," Ms. Berry will initiate a civil action on behalf of herself and other similarly aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein, as well as those identified in her May 8, 2020 and May 18, 2020 correspondence. Based on Ms. Berry's own investigation, Defendants committed the following Labor Code violations, in addition to the Labor Code violations identified in her May 8, 2020 and May 18, 2020 correspondence:

- a. Defendants have violated and continue to violate Labor Code §§ 226.7, 516, and 558, by failing to authorize and permit Ms. Berry and other aggrieved employees all required lawful rest periods and failing to pay rest period premiums to Ms. Berry and aggrieved employees at these employees' respective regular rates of compensation for rest period violations.

Pursuant to Labor Code Section § 2699.3(a)(2)(A), please notify us and Defendants if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
HAINES LAW GROUP, APC



Fletcher W. Schmidt

cc: PDS Tech, Inc (via certified mail)
Tim Nelson, Medina McKelvey, counsel for Defendant PDS Tech, Inc (via certified mail)

From: [FormAssembly](#) on behalf of [DIR PAGA Unit](#)
To: [Jonathan Ramirez](#)
Subject: Thank you for your Amended PAGA Claim Notice Submission
Date: Friday, July 10, 2020 1:06:59 PM

07/10/2020 01:06:48 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Amended PAGA Claim Notice

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

HAINES LAW GROUP
EMPLOYMENT ATTORNEYS

May 18, 2020

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Ashanti Berry v. PDS Tech, Inc*

To Whom It May Concern:

Please be advised that this law firm represents Ashanti Berry (“Ms. Berry”) in claims arising from her employment with PDS Tech, Inc, and Does 1 through 100 (collectively “Defendants” or “PDS Tech”). Ms. Berry is an “aggrieved employee” as defined by Labor Code Section 2698 *et seq.*, due to Defendants’ numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code Sections 2699.3, which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, “aggrieved employees” includes all of Defendants’ non-exempt employees who worked for Defendants in California during the one year immediately preceding the date of this letter through the present.

This letter is an amendment to Ms. Berry’s original correspondence of May 8, 2020 regarding PDS Tech’s Labor Code violations alleged by Ms. Berry, which is attached hereto for your reference. In addition to the alleged Labor Code violations identified in her May 8, 2020 correspondence to the LWDA, Ms. Berry also alleges that Defendants issued facially deficient wage statements to Ms. Berry and other aggrieved employees due to a failure to include the inclusive dates of the period for which the employee is paid in violation of Labor Code § 226. On information and belief, Defendants either completely failed to list the period beginning date on the wage statements or listed the employees’ first date of employment as the period beginning date on all wage statements.

As described above, Defendants committed the following additional violations of the Labor Code, and Industrial Welfare Commission Wage Order 1 (“Wage Order 1”):

Wage Statement Violations

Defendants were required to furnish Ms. Berry and other aggrieved employees with complete and accurate itemized wage statements that showed, among other things, the inclusive dates of the period for which the employee is paid. See Labor Code §§ 226(a). Defendants failure to furnish Ms. Berry and other aggrieved employees with complete and

accurate, itemized wage statements resulted in actual injury, and said failures led to, among other things, the non-payment of all wages earned, and deprived them of the information necessary to identify discrepancies in Defendants' reported data. Defendants' failure to comply with its wage statement obligations was knowing and intentional, and Ms. Berry and other aggrieved employees have suffered injury as a result.

As an "aggrieved employee," Ms. Berry will initiate a civil action on behalf of herself and other similarly aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein, as well as those identified in her May 8, 2020 correspondence. Based on Ms. Berry's own investigation, and on information and belief, Defendants committed the following Labor Code violations, in addition to the Labor Code violations identified in her May 8, 2020 correspondence:

- a. Defendants violated Labor Code § 226 by failing to furnish Ms. Berry and other aggrieved employees with accurate and compliant itemized wage statements.

Pursuant to Labor Code Section § 2699.3(a)(2)(A), please notify us and Defendants if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
HAINES LAW GROUP, APC



Fletcher W. Schmidt

cc: PDS Tech, Inc (via certified mail)

From: [FormAssembly](#) on behalf of [DIR PAGA Unit](#)
To: [Jonathan Ramirez](#)
Subject: Thank you for your Amended PAGA Claim Notice Submission
Date: Monday, May 18, 2020 11:21:58 AM

05/18/2020 11:21:46 AM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Amended PAGA Claim Notice

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

HAINES LAW GROUP
EMPLOYMENT ATTORNEYS

May 8, 2020

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Ashanti Berry v. PDS Tech, Inc*

To Whom It May Concern:

Please be advised that this law firm represents Ashanti Berry (“Ms. Berry”) in claims arising from her employment with PDS Tech, Inc, and Does 1 through 100 (collectively “Defendants”). Ms. Berry is an “aggrieved employee” as defined by Labor Code Section 2698 *et seq.*, due to Defendants’ numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code Sections 2699.3, which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, “aggrieved employees” includes all of Defendants’ non-exempt employees who worked for Defendants in California during the one year immediately preceding the date of this letter through the present.

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

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

In addition to failing to compensate Ms. Berry and other aggrieved employees for all hours on the clock, Defendants also failed to compensate Ms. Berry and other aggrieved employees for additional hours worked prior to clocking in and after clocking out. Prior to clocking in for their shift, Ms. Berry and other aggrieved employees were required to sign in with a security guard at the front of the warehouse. Only after Ms. Berry and other aggrieved employees signed in with the security guard, were Ms. Berry and other aggrieved employees allowed to enter the warehouse and clock-in for their shift. As there was only one timeclock for temporary employees located at the back of the warehouse, Ms. Berry estimates it took her and other aggrieved employees at least five minutes to clock in each morning. This time was even longer when Ms. Berry and other aggrieved employees were required to wait in line to both sign in with the security guard and clock-in for their shift. As this time was off-the-clock, Defendants did not compensate Ms. Berry and other aggrieved employees for this time. Similarly, at the end of Ms. Berry's and other aggrieved employees' shift, Ms. Berry and other aggrieved employees were required to first clock out and then walk to the front of the warehouse to sign out with the security guard. As Ms. Berry and other aggrieved employees often ended their shift at the same time, and there was only one timeclock for all temporary employees, Ms. Berry and other aggrieved employees, would have to wait in line in order to clock out for their shift at the back of the store and then wait in another line to sign out with the security guard at the front of the store. Ms. Berry estimates this process took anywhere from 5 to 30 minutes off-the-clock. As a result of these policies/practices, Ms. Berry and other aggrieved employees were not paid all minimum and overtime wages owed to them.

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

As a result of Defendants' failure to compensate Ms. Berry and other aggrieved employees for all minimum wages, overtime wages, and meal 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.

Additionally, Defendants' payroll practices fail to conform to the requirements of Labor Code § 204(a), which requires that employees be paid at least twice per month. Defendants have a policy and practice of paying Plaintiff and other aggrieved employees every four weeks in violation of Labor Code § 204(a).

Further, as a result of Defendants' failure to compensate its non-exempt employees for all minimum wages, overtime wages, and meal period premium wages earned, Defendants also failed to pay all final wages owed to aggrieved employees upon their respective separations of employment.

As described above, Defendants committed the following violations of the Labor Code, and Industrial Welfare Commission Wage Order 1 ("Wage Order 1"):

Minimum Wage Violations

Defendants failed to conform their pay practices to the requirements of the law. This unlawful conduct includes Defendants' failure to pay Ms. Berry and other aggrieved employees for all hours worked including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and Wage Order 1. Wage Order 1, § 4 and California Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. California Labor Code § 1198 makes unlawful the employment of an employee under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide that an employer who has failed to pay its employees the legal minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due and interest thereon.

Overtime Wage Violations

Defendants were required to pay Ms. Berry and other aggrieved employees overtime wages for all overtime hours worked, as defined in Wage Order 1, § 3. *See* Labor Code §§ 1194(a) and 1198; Wage Order 1, § 3. As alleged above, Defendants caused Ms. Berry and other aggrieved employees to work overtime hours but did not properly compensate Ms. Berry and other aggrieved employees for such hours.

Meal Period Violations

As alleged above, Defendants failed to provide Ms. Berry and other aggrieved employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 1, § 11. As a result, Ms. Berry and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.").

Record Keeping Violations

Defendants were required to keep accurate records of employee hours worked, including when employees begin and end each meal period. *See* Labor Code § 1174; Wage Order 1, § 7 (“Every employer shall keep accurate information with respect to each employee including ... Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded.”). As alleged above, Defendants failed to maintain accurate hours of employee hours worked by failing to keep any records of Plaintiff’s and other aggrieved employees’ meal periods.

Wage Statement Violations

Defendants were required to furnish Ms. Berry and other aggrieved employees with complete and accurate itemized wage statements that showed, among other things, all minimum and overtime wages earned, and all meal and rest period premium wages earned, and the correct name of the legal entity that is the employer. *See* Labor Code §§ 226(a). Defendants failure to furnish Ms. Berry and other aggrieved employees with complete and accurate, itemized wage statements resulted in actual injury, and said failures led to, among other things, the non-payment of all wages earned, and deprived them of the information necessary to identify discrepancies in Defendants’ reported data. Defendants’ failure to comply with its wage statement obligations was knowing and intentional, and Ms. Berry and other aggrieved employees have suffered injury as a result.

Pay Period Violations

Defendants failed to conform their pay practices to the requirements of the law by failing to pay Ms. Berry and other aggrieved employees their wages earned at least semi-monthly. *See* California Labor Code § 204(a) (“All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.”)

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. Defendants failed to timely pay aggrieved employees all of their final wages at the time of separation. Pursuant to Labor Code § 203, Defendants failure to pay all final wages due to aggrieved employees was willful and, consequently, entitles aggrieved employees to waiting time penalties equal to one day of wages at their standard rate for each day Defendants failed to pay their final wages after their separation, up to a maximum of thirty days.¹

¹ As Ms. Berry is still employed by Defendants, Ms. Berry does not seek to recover waiting time penalties on behalf of herself, but rather only on behalf of Defendants’ other aggrieved employees under the precedent of *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 754 (“any Labor

As an “aggrieved employee,” Ms. Berry will initiate a civil action on behalf of herself and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Ms. Berry’s own investigation, and on information and belief, Defendants committed and continue to commit the following Labor Code violations:

- a. Defendants violated Labor Code §§ 1182.12, 1194, 1194.2, 1197 by failing to pay Ms. Berry and other aggrieved employees the statutory minimum wage for all hours worked;
- b. Defendants violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Ms. Berry and other aggrieved employees all overtime compensation earned;
- c. Defendants violated Labor Code §§ 226.7, 512, and 558 by failing to provide meal periods as required by law and failing to pay meal period premiums to Ms. Berry and other aggrieved employees at the employees’ respective regular rates of compensation for meal period violations;
- d. Defendants violated Labor Code § 226 by failing to furnish Ms. Berry and other aggrieved employees with accurate and compliant itemized wage statements;
- e. Defendants violated Labor Code § 204 by failing to pay Ms. Berry and other aggrieved employees all wages earned at least twice during each calendar month; and
- f. Defendants violated Labor Code §§ 1174 and 1198 by failing to maintain accurate records on behalf of Ms. Berry and other aggrieved employees.

Pursuant to Labor Code Section § 2699.3(a)(2)(A), please notify us and Defendants if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
HAINES LAW GROUP, APC



Fletcher W. Schmidt

cc: PDS Tech, Inc (via certified mail)

Code penalties recoverable by state authorities may be recovered in a PAGA action by a person who was employed by the alleged violator and affected by at least *one* of the violations alleged in the complaint.”)(emphasis added).

From: noreply@salesforce.com on behalf of [LWDA DO NOT REPLY](#)
To: [Jonathan Ramirez](#)
Subject: Thank you for submission of your PAGA Case.
Date: Friday, May 08, 2020 4:18:49 PM

5/8/2020

LWDA Case No. LWDA-CM-786054-20
Law Firm : Haines Law Group, APC
Plaintiff Name : Ashanti Berry
Employer: PDS Tech, Inc

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

Exhibit 3

June 10, 2020

VIA ELECTRONIC FILING

Labor and Workforce Development Agency

Attn: PAGA Administrator

<https://dir.tfaforms.net/260>

VIA U.S. CERTIFIED MAIL

Paul K. Haines, Esq.

Fletcher W. Schmidt, Esq.

Alexandra R. McIntosh, Esq.

Haines Law Group, APC

222 N. Sepulveda Boulevard, Suite 1550

El Segundo, California 90245

Re: *Ashanti Berry v. PDS Tech, Inc.*
 LWDA-CM-786054-20

To: California Labor and Workforce Development Agency and Counsel for Ashanti Berry

From: PDS Tech, Inc.

This letter is to notify the Labor and Workforce Development Agency (the "LWDA") and Ashanti Berry that PDS Tech, Inc. has cured alleged Labor Code violations contained in the (1) Notice of Labor Code Violations Pursuant to Labor Code Section § 2698 et seq., submitted by Ashanti Berry on May 8, 2020; and (2) the Amended Notice of Labor Code Violations Pursuant to Labor Code Section § 2698 et seq., submitted by Ashanti Berry on May 18, 2020. PDS Tech submits this letter pursuant to Labor Code sections 2699(d) and 2699.3(c)(2)(A).

Ashanti Berry's May 8, 2020 and May 18, 2020 notices to the LWDA alleged that PDS Tech violated Labor Code section 226(a) by providing employees with wage statements that did not list (1) the proper legal entity that was the employer, (2) the physical address for the employer, and (3) the start date for the pay period for which the employee was being paid. PDS Tech denies that it violated Labor Code section 226. Nevertheless, PDS Tech cured these alleged potential Labor Code violations, pursuant to its cure rights in Labor Code sections 2699(d) and 2699.3(c)(2)(A), by reissuing and providing employees with revised wage statements for all allegedly aggrieved employees from May 8, 2017 to the present.

The revised wage statements list the name of the legal entity that is the employer, list the physical address of the employer, and also list the inclusive dates of the pay period. PDS Tech has reissued and provided revised wage statements electronically and/or via certified mail to all employees who worked for PDS

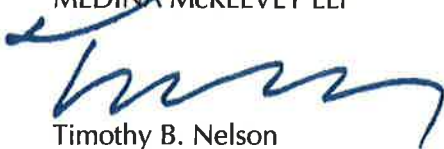
www.medinamckelvey.com

Tech in California from May 8, 2017 to the present, for every pay period each employee worked. PDS Tech also mailed notices via certified mail to each employee that notified them of the revisions. This notice also provided instructions about how to access the revised wage statements through an online portal. The notices and revised wage statements were mailed by certified mail on June 9, 2020. Samples of the notices that were sent to employees are attached as **Exhibit A** and **B**, with employees' names and contact information redacted.

Therefore, based on PDS Tech's efforts to cure the alleged violations of Labor Code section 226(a), Ashanti Berry may not commence a civil action against PDS Tech for alleged violations of Labor Code section 226(a).

Sincerely,

MEDINA MCKELVEY LLP



Timothy B. Nelson
Attorney for PDS Tech, Inc.

Enclosure

Exhibit A



June 9, 2020

Dear [REDACTED]:

PDS Tech, Inc. has updated and reissued all of the wage statements you received between May 8, 2017 and the date of this letter. The updates have no impact on the wages you earned during this time period. The wage statements (your paystubs) were simply updated to provide some additional information including: (1) the most up to date name and physical address of the particular PDS legal entity that has employed you; (2) a specific reference to the date the pay period began for each wage statement; and (3) a row that totals up all of the hours that you worked during that particular pay period.

Please find your updated wage statements enclosed with this letter.

If you have any questions about this communication or your wage statements, please contact the PDS Payroll Department at payroll@pdstech.com. Thank you very much.

Exhibit B



June 2, 2020

Dear [REDACTED]:

PDS Tech, Inc. has updated and reissued all of the wage statements you received between May 8, 2017 and the date of this letter. The updates have no impact on the wages you earned during this time period. The wage statements (your paystubs) were simply updated to provide some additional information including: (1) the most up to date name and physical address of the particular PDS legal entity that has employed you; (2) a specific reference to the date the pay period began for each wage statement; (3) a row that totals up all of the hours that you worked during that particular pay period; and (4) the amount of sick leave that was available to you in each pay period.

To save paper and to provide you with the easiest and most efficient method of reviewing your past wage statements, we are providing you with an easy way to access the paystubs online. To access the updated wage statements, you may log into your account via the Equifax Paperless Pay platform ("Paperless Pay") at: <https://epayroll.theworknumber.com/pds>. Detailed instructions for gaining access to Paperless Pay are noted below for your convenience:

- If requested, enter the PDS Employer code: **11615**.
- Your username is your **social security number (SSN)** (no dashes).
- Your PIN is:
 - If you have never logged in, **the last four (4) digits** of your SSN.
 - If you have previously logged in, the last PIN you set up.
 - If you do not remember your PIN, you can click on "forgot password" to reset your PIN.
- In order to properly view and/or print payroll information, you will need:
 - Access to a computer with computer access;
 - A web browser with functionality equivalent to: Microsoft Edge, Internet Explorer 11, or the current version of Firefox, Safari, or Chrome;
 - A printer connected that is capable of printing Adobe Acrobat files from Adobe Acrobat Reader version 7.0 or higher.

Note: You may need to validate your identity before logging on. Equifax manages our website and will ask you basic questions, and you will get a one-time passcode (OTP). Once you enter your OTP, you will create a new numerical pin for your password.

We have provided access to your updated wage statements from May 8, 2017 to the present through the Equifax Paperless Pay platform because you have elected to receive your wages through Direct Deposit and have previously received your wage statements electronically. If you don't have the ability to access your wage statements electronically or if you would prefer paper copies of your wage statements, please let us know and we will be happy to provide them to you.

If you have any questions about this communication or your wage statements, please contact the PDS Payroll Department at payroll@pdstech.com.

Exhibit 4

LAFFEY MATRIX

History

Case Law

Expert Opinions

See the Matrix

Contact us

Home

Links

			Years Out of Law School *				
Year	Adjustmt Factor**	Paralegal/ Law Clerk	1-3	4-7	8-10	11-19	20 +
6/01/20- 5/31/21	1.015894	\$206	\$378	\$465	\$672	\$759	\$914
6/01/19- 5/31/20	1.0049	\$203	\$372	\$458	\$661	\$747	\$899
6/01/18- 5/31/19	1.0350	\$202	\$371	\$455	\$658	\$742	\$894
6/01/17- 5/31/18	1.0463	\$196	\$359	\$440	\$636	\$717	\$864
6/01/16- 5/31/17	1.0369	\$187	\$343	\$421	\$608	\$685	\$826
6/01/15- 5/31/16	1.0089	\$180	\$331	\$406	\$586	\$661	\$796
6/01/14- 5/31/15	1.0235	\$179	\$328	\$402	\$581	\$655	\$789
6/01/13- 5/31/14	1.0244	\$175	\$320	\$393	\$567	\$640	\$771
6/01/12- 5/31/13	1.0258	\$170	\$312	\$383	\$554	\$625	\$753
6/01/11- 5/31/12	1.0352	\$166	\$305	\$374	\$540	\$609	\$734
6/01/10- 5/31/11	1.0337	\$161	\$294	\$361	\$522	\$589	\$709
6/01/09- 5/31/10	1.0220	\$155	\$285	\$349	\$505	\$569	\$686
6/01/08- 5/31/09	1.0399	\$152	\$279	\$342	\$494	\$557	\$671
6/01/07-5/31/08	1.0516	\$146	\$268	\$329	\$475	\$536	\$645
6/01/06-5/31/07	1.0256	\$139	\$255	\$313	\$452	\$509	\$614
6/1/05-5/31/06	1.0427	\$136	\$249	\$305	\$441	\$497	\$598
6/1/04-5/31/05	1.0455	\$130	\$239	\$293	\$423	\$476	\$574
6/1/03-6/1/04	1.0507	\$124	\$228	\$280	\$405	\$456	\$549
6/1/02-5/31/03	1.0727	\$118	\$217	\$267	\$385	\$434	\$522
6/1/01-5/31/02	1.0407	\$110	\$203	\$249	\$359	\$404	\$487
6/1/00-5/31/01	1.0529	\$106	\$195	\$239	\$345	\$388	\$468
6/1/99-5/31/00	1.0491	\$101	\$185	\$227	\$328	\$369	\$444
6/1/98-5/31/99	1.0439	\$96	\$176	\$216	\$312	\$352	\$424
6/1/97-5/31/98	1.0419	\$92	\$169	\$207	\$299	\$337	\$406

6/1/96-5/31/97	1.0396	\$88	\$162	\$198	\$287	\$323	\$389
6/1/95-5/31/96	1.032	\$85	\$155	\$191	\$276	\$311	\$375
6/1/94-5/31/95	1.0237	\$82	\$151	\$185	\$267	\$301	\$363

The methodology of calculation and benchmarking for this Updated Laffey Matrix has been approved in a number of cases. See, e.g., *McDowell v. District of Columbia*, Civ. A. No. 00-594 (RCL), LEXSEE 2001 U.S. Dist. LEXIS 8114 (D.D.C. June 4, 2001); *Salazar v. Dist. of Col.*, 123 F.Supp.2d 8 (D.D.C. 2000).

* “Years Out of Law School” is calculated from June 1 of each year, when most law students graduate. “1-3” includes an attorney in his 1st, 2nd and 3rd years of practice, measured from date of graduation (June 1). “4-7” applies to attorneys in their 4th, 5th, 6th and 7th years of practice. An attorney who graduated in May 1996 would be in tier “1-3” from June 1, 1996 until May 31, 1999, would move into tier “4-7” on June 1, 1999, and tier “8-10” on June 1, 2003.

** The Adjustment Factor refers to the nation-wide Legal Services Component of the Consumer Price Index produced by the Bureau of Labor Statistics of the United States Department of Labor.

Exhibit 5

Haines Law Group, APC

Expense Summary
Ashanti Berry v. PDS Tech, Inc.

EXPENSE	AMOUNT
Copying, Postage, and FedEx Costs	\$270.22
Filing, Service, Jury and Messenger Fees	\$2,679.95
Mediation Costs	\$10,000.00
Westlaw Charges	\$55.99
TOTAL:	\$13,006.16

Exhibit 6

ORIGINAL

FILED
Superior Court of California
County of Los Angeles

RECEIVED

JUN 19 2020

Filing Window

Sherri R. Carter, Executive Officer/Clerk of Court
By *[Signature]*, Deputy

FILED
Superior Court of California
County of Los Angeles

SEP 24 2020

Sherri R. Carter, Executive Officer/Clerk of Court
By *[Signature]*, Deputy
Lori M. Greene

FAXED

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
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Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff
and Aggrieved Employees

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

HELEN CATALINA VARGAS, as an
individual and on behalf of all others similarly
situated,

Plaintiff,

vs.

GRUMA CORPORATION, a Nevada
Corporation; and DOES 1 through 100,

Defendants.

Case No. BC707897

[Assigned for all purposes to the Carolyn B.
Kuhl, Dept. SSC-12]

~~PROPOSED~~ JUDGMENT AND ORDER
GRANTING PLAINTIFF'S MOTION
FOR APPROVAL OF SETTLEMENT OF
CLAIMS BROUGHT UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT, REASONABLE ATTORNEYS'
FEES, COSTS, AND SERVICE AWARD

Date: July 21, 2020

Time: 1:45 p.m.

Dept.: SSC-12

Complaint Filed: June 5, 2018

Trial Date: None Set

RECEIVED
LOS ANGELES SUPERIOR COURT
JUN 19 2020
I. LOVO

09/25/2020

1 This matter came on regularly for hearing before this Court on *Sept. 24, 2020 at 10:00 am* ~~July 21, 2020 at 1:45 p.m.~~

2 Having considered the parties' Stipulation for PAGA Settlement ("Settlement");¹ the documents
3 and evidence presented in support thereof; and recognizing the outcome of Plaintiff's
4 investigation of her claims and allegations, the disputed factual and legal issues involved in this
5 case, the risks of further prosecution, the substantial benefits to be received by the State of
6 California and the Allegedly Aggrieved Employees pursuant to the Settlement, and the fair,
7 reasonable, and adequate nature of the settlement obtained as a result of good faith arm's-length
8 negotiations between the parties; and the absence of any objection or comment from the California
9 Labor and Workforce Development Agency ("LWDA") after having received notice of the
10 parties' Settlement and Plaintiff's motion; the Court hereby makes a final ruling that the
11 Settlement is approved pursuant to Labor Code section 2699(l). Good cause appearing therefor,
12 the Court hereby GRANTS Plaintiff's Motion for PAGA Settlement Approval of Claims and
13 ORDERS as follows:

- 14 1. The "Allegedly Aggrieved Employees" shall be defined as:
15 All individuals who worked for Defendant Gruma Corporation as
16 nonexempt employees within the State of California at any time from
17 June 11, 2017 through the date the Court Order granting approval of the
18 PAGA Settlement Agreement.
- 19 2. The "PAGA Period" means June 11, 2017 through the date the Court Order
20 granting approval of the Settlement.
- 21 3. The Court hereby approves the settlement set forth in the Settlement as fair,
22 reasonable, and adequate, and directs the parties to effectuate the Settlement according to its
23 terms.
- 24 4. The Court orders that Defendant Gruma Corporation ("Defendant") shall pay the
25 Settlement Fund of \$1,917,500 to the Settlement Administrator within thirty (30) days after the
26 Court's order granting final approval of the PAGA Settlement Agreement and is no longer subject
27 to appeal.

28 ¹ All terms used in this Order shall have the same meaning as that assigned to them in the
Settlement, attached as Exhibit A to the Declaration of Paul K. Haines submitted concurrently
with the Motion for Approval of PAGA Settlement.

1 5. The Court hereby approves, as to form and content, the explanatory Notice
2 submitted by the parties and included as Exhibit A to the Settlement.

3 6. The Court hereby appoints Phoenix Settlement Administrators as the Settlement
4 Administrator.

5 7. Within fourteen (14) business days of the Effective Date, Defendant shall provide
6 the Settlement Administrator with a list containing the Allegedly Aggrieved Employees' names,
7 last known addresses, social security numbers, and dates of employment and/or number of pay
8 periods worked during the PAGA Period.

9 8. The Settlement Administrator is directed to mail the individual PAGA payments
10 and the Notice to the Allegedly Aggrieved Employees within five (5) business days after
11 Defendant provides the Settlement Fund to the Settlement Administrator.

12 9. The Court finds that attorneys' fees in the amount of \$639,166.67 for Plaintiff's
13 counsel, and reimbursement of litigation costs of \$29,396.60 to Plaintiff's counsel, are fair,
14 *in light of the benefit obtained for the state and the class* reasonable, and adequate, and orders the Settlement Administrator to distribute these payments
15 to Plaintiff's counsel as provided for in the Settlement.

16 10. The Court orders that Phoenix Settlement Administrators shall be paid \$11,000 for
17 all of its work done and to be done until the completion of this matter, and finds that sum
18 appropriate.

19 11. The Court finds that the Representative Plaintiff Service Award of \$5,000.00 to
20 Plaintiff Helen Catalina Vargas, is fair and reasonable in recognition of the unique contributions
21 she has made and the risks she undertook in representing the State of California and the LWDA
22 in this action, on behalf of the Allegedly Aggrieved Employees and the State, and orders that the
23 Settlement Administrator distribute this payment to Plaintiff as provided for in the Settlement.

24 12. The Court finds that the distribution of the PAGA Fund to the LWDA and to
25 Allegedly Aggrieved Employees as provided for in the Settlement, is fair, adequate, and
26 reasonable, and orders that payment be made to the LWDA and Allegedly Aggrieved Employees
27 in accordance with the terms of the Settlement.

28 13. The court approves the scope of the release set forth in the Settlement. Following

1 entry of this Judgment and Order and upon the Effective Date, the State of California, Plaintiff
2 and Allegedly Aggrieved Employees, on behalf of themselves and each of their heirs,
3 representatives, successors, assigns, and attorneys, hereby release, and settle any and all claims
4 against the Released Parties for civil penalties they and the State of California may have under
5 the California Labor Code, Wage Orders, regulations, and/or any other provisions of state law
6 arising from allegations that the Allegedly Aggrieved Employees (including Plaintiff) suffered
7 California Labor Code Violations based on (1) non-compliant rest breaks, (2) non-compliant meal
8 periods, (3) non-compliant meal and rest period premium payments, (4) unpaid minimum and
9 overtime wages, (5) failure to pay all wages at the agreed-upon rate and/or without discount, (6)
10 untimely payment of earned wages during employment and at separation of employment, (7) non-
11 compliant wage statements, (8) failure to maintain complete and accurate records, and (9) any
12 other Labor Code violations that were alleged in the Complaint, or that could have been alleged
13 in the Complaint based on the facts alleged in the Complaint, which includes alleged violations
14 of Labor Code sections 201-204, 210, 221-223, 226, 226.3, 226.7, 510, 512, 516, 558, 1174,
15 1174.1, 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198 (collectively, the "Released Claims").
16 "Released Parties" means Defendant and each and all of its present, former and future controlling
17 persons, parents, affiliates, business partners, subsidiaries, successors-in-interest, benefit plans
18 sponsored by such companies, shareholders, owners, officers, directors, principals, employees,
19 agents, attorneys, insurers, managers, trustees, fiduciaries, representatives, divisions,
20 predecessors, successors, and assigns.

21 */// This release in no way*
22 */// affects any claim an Allegedly Aggrieved*
23 */// Employee may have against the Released*
24 */// Parties for unpaid wages.*

25 *///*
26 *///*
27 *///*
28 *///*

Cik

14. ~~Upon entry of this Final Order and Judgment and upon the Effective Date, the~~ *(Upon payment being made in accordance with paragraph 4 hereof,*

2 Court permanently enjoins and forever bars the Plaintiff or the Allegedly Aggrieved Employees
3 from instituting or prosecuting any of the "Released Claims" against the "Released Parties,"
4 which were fully and completely resolved as part of the Settlement. Without affecting the finality
5 of this Final Order and Judgment in any way, the Court retains jurisdiction to enforce the terms
6 of the Settlement.

7 15. The Settlement Administrator shall make a final report confirming the final
8 distribution of funds on or before Aug. 4, 2021. A Non-Appearance
9 Case Review Re: Submission of the Final Report of Disbursement is scheduled for
10 Aug. 11, 2021 at 4:30 a.m./p.m.

Cik

11 **IT IS SO ORDERED.**

12
13 Dated: Sept. 24, 2020 By: Carolyn B. Kuhl
14 Honorable Carolyn B. Kuhl
15 Judge of the Superior Court
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09/25/2020

PAUL K. HAINES (Cal. State Bar No. 248226)
FLETCHER W. SCHMIDT (Cal. State Bar No. 286462)
MATTHEW K. MOEN (Cal. State Bar No. 305956)
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phaines@haineslawgroup.com
fschmidt@haineslawgroup.com
mmon@haineslawgroup.com

Attorneys for Plaintiff
Rachael Buhl

(Additional counsel of record on next page)

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

RACHAEL BUHL, as an individual and on
behalf of all others similarly situated,

Plaintiff,

v.

SDX HOME CARE OPERATIONS, LLC, a
California Limited Liability Company; and
DOES 1 through 100,

Defendants.

No. 19STCV23623

**~~[PROPOSED]~~ ORDER GRANTING
JOINT MOTION FOR APPROVAL OF
PAGA SETTLEMENT (Cal. Lab. Code
§ 2699(1)(2)) AND PLAINTIFF'S
MOTION FOR APPROVAL OF
REASONABLE ATTORNEYS' FEES
AND COSTS AND ENHANCEMENT
AWARD**

Date: July 29, 2020
Time: 8:30 a.m.
Dept.: 20, 111 North Hill St., 3rd Flr.,
Los Angeles, CA
Judge: Hon. David J. Cowan

Complaint filed: July 1, 2019
Trial date: None set

1 ASAF AGAZANOF (Cal. State Bar No. 285043)
ASAF LAW, APC
2 2330 Westwood Boulevard, Second Floor
Los Angeles, California 90064
3 Telephone: (424) 254-8870
Facsimile: (888) 254-0651
4 asaf@lawasaf.com

5 Attorneys for Plaintiff
Rachael Buhl

6 JEFFREY D. WOHL (Cal. State Bar No. 096838)
7 PAUL A. HOLTON (Cal. State Bar No. 313047)
PAUL HASTINGS LLP
8 101 California Street, 48th Floor
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9 Telephone: (415) 856-7000
Facsimile: (415) 856-7100
10 jeffwohl@paulhastings.com
paulholton@paulhastings.com

11 Attorneys for Defendant
12 SDX Home Care Operations, LLC
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1 On July 29, 2020, a hearing was held on the joint motion of plaintiff Rachael Buhl and
2 defendant SDX Home Care Operations, LLC, for approval of the settlement of this action under
3 the California Labor Code Private Attorneys General Act (“PAGA”), Cal. Lab. Code §§ 2698 *et*
4 *seq.*, and on plaintiff’s motion for reasonable attorneys’ fees and costs and enhancement award.

5 The Court having read and considered the parties’ Settlement Agreement (the “Settlement
6 Agreement” or “Settlement”), the papers on the motions, the arguments of counsel, the parties’
7 joint supplemental brief in support of the joint motion, and the law, and recognizing the disputed
8 factual and legal issues involved in this case, the risks of further prosecution, the substantial
9 benefits to be received by the State of California and the alleged aggrieved employees pursuant to
10 the Settlement, the Court hereby makes a final ruling pursuant to California Labor Code section
11 2699(*l*) that the Settlement is fair, reasonable, and adequate, and is the product of good faith, arm’s
12 length negotiations between the parties. Good cause appearing therefor, the Court hereby
13 GRANTS the parties’ joint motion and plaintiff’s motion and HEREBY ORDERS as follows:

14 1. All terms used for purposes of this order, not otherwise defined, will have the same
15 meaning as given in the Settlement. A copy of the Settlement Agreement executed between the
16 Parties is attached as Exhibit A to this order.

17 2. Pursuant to PAGA, Cal. Lab. Code § 2699(*l*)(2), the California Labor and
18 Workforce Development Agency (the “LWDA”) has been given notice of the Settlement and the
19 joint motion for approval of the Settlement and plaintiff’s motion; on April 15, 2020, plaintiff
20 submitted to the LWDA a notice of the Settlement enclosing a copy of the Settlement Agreement.
21 The Court finds and determines that this notice of the Settlement complied with the statutory
22 requirements of PAGA.

23 3. The Court confirms approval of the Settlement with respect to the following group
24 of individuals (“Settlement Group Members”):

25 All non-exempt employees employed by defendant SDX Home Care Operations,
26 LLC, in California as “Caregivers” or “Home Health Assistants” from April 24,
2018, through June 30, 2020.

27 ///

1 4. The Court finds that the Settlement is, in all respects, fair, reasonable, and adequate.
2 Accordingly, the Court hereby approves the Settlement, and directs the parties to effectuate the
3 Settlement according to its terms.

4 5. The Court finds that the form of Letter Enclosing Settlement Share Checks (the
5 “Cover Letter”), attached as Exhibit A to the Settlement Agreement, fairly and adequately
6 describes the Action, the approved Settlement, and the manner in which Settlement Group
7 Members may ask questions regarding their Settlement Shares, and orders that the Cover Letter
8 be mailed via first-class U.S. mail to the Settlement Group Members in English and Spanish, along
9 with the Settlement Share checks.

10 6. The Court finds that the Total Settlement Amount, Net Settlement Amount, and the
11 methodology used to calculate and pay each Settlement Share, in accordance with the Settlement,
12 are fair and reasonable.

13 7. Phoenix Settlement Administrators is appointed to act as the Settlement
14 Administrator, pursuant to the terms of the Settlement Agreement.

15 8. The Court finds that attorneys’ fees in the amount of 35% of the Total Settlement
16 Amount (\$280,000.00) for plaintiff’s counsel, and reimbursement of litigation costs of \$25,534.58
17 to plaintiff’s counsel are fair, reasonable, and adequate, and orders that the Settlement
18 Administrator distribute these payments to plaintiff’s counsel as provided for in the Settlement.

19 9. The Court orders that the Settlement Administrator shall be paid \$3,500.00 for all
20 of its work done and to be done until the completion of this matter, and finds that sum appropriate.

21 10. The Court finds that a Representative Plaintiff’s Payment of \$5,000.00 to plaintiff
22 is fair and reasonable in recognition of the contributions she has made and the risks she undertook
23 on behalf of the Settlement Group Members and the State of California, and orders that the
24 Settlement Administrator distribute this payment to plaintiff as provided for in the Settlement.

25 11. The Court finds that the amount of \$364,474.06 (representing 75% of the PAGA
26 civil penalties under California Labor Code section 2699(i)) payable to the LWDA as provided
27 for by the Settlement, is fair, adequate, and reasonable, and orders that payment be made to the
28 LWDA in accordance with the terms of the Settlement.

1 12. The Court authorizes the Settlement Administrator to calculate and pay the
2 Settlement Shares, in accordance with the terms of the Settlement, and to pay the LWDA Payment,
3 the Representative Plaintiff's Payment, and the Plaintiff's Counsel Fees and Expenses Payment at
4 the same time as the Settlement Shares.

5 13. Defendant is ordered to provide to the Settlement Administrator not later than 14
6 days after this order becomes Final the names, last known mailing addresses and telephone
7 numbers, Social Security numbers, and Covered Workweeks of all Settlement Group Members.
8 This information will not be disclosed to plaintiff or her counsel, and may be used solely for
9 purposes of administering the Settlement.

10 14. All payments due under the Settlement will be made pursuant to the Settlement.

11 15. If a Settlement Share check comes back to the Settlement Administrator as non-
12 deliverable, the Settlement Administrator will make reasonable efforts to find a current address
13 for the Settlement Group Member and re-mail the check.

14 16. If a Settlement Group Member fails to cash the check for his or her Settlement
15 Shares within 180 days after it is mailed to the Settlement Group Member (or, in the case where
16 the check was returned as non-deliverable, within 180 days after the initial mailing or within 90
17 days after it is mailed to the new address for the Settlement Group Member, whichever is later),
18 the Settlement Administrator will transfer the money represented by the check to the California
19 State Controller's Office Unclaimed Property Fund with an accounting of the amounts being
20 transferred.

21 17. The Court retains exclusive and continuing jurisdiction over this Action under
22 California Code of Civil Procedure section 664.6 for purposes of supervising, administering,
23 implementing, interpreting, and enforcing this order, as well as the Settlement Agreement.

24 18. Nothing in this order or the Settlement Agreement will be construed as an
25 admission or concession by any party, including an admission or concession that defendant bears
26 any liability to the Settlement Group Members or that they were owed the amounts being paid or
27 any amounts. The Settlement Agreement and this resulting order simply represent a compromise
28 of disputed allegations.

1 19. Plaintiff is directed to submit a copy of this order to the LWDA within 10 days of
2 the date of this order.

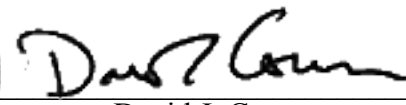
3 20. Upon entry of this order, plaintiff and the Settlement Group Members will waive
4 and release all claims against the Released Parties that were pled or could have been pled under
5 PAGA under the California Labor Code, Wage Orders, regulations, and/or other provisions of law
6 alleged in the Action to have been violated with respect to herself and the Settlement Group
7 Members during the Covered Period.

8 21. Based on the foregoing, and in accordance with the Settlement Agreement, this
9 action is DISMISSED WITH PREJUDICE, each side to bear its own costs and attorneys' fees
10 except as provided by the Settlement Agreement.

11 IT IS SO ORDERED.

12 Dated: July 30, 2020.



A handwritten signature in black ink, appearing to read "David J. Cowan".

David J. Cowan
Judge of the Superior Court
David J. Cowan / Judge

13
14 Counsel for plaintiff is ordered to give notice.

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On July 29, 2020, I served the foregoing document(s) described as:

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

Executed on July 29, 2020, at El Segundo, California.

Jonathan Ramirez

09/19/2019

Sherri R. Carter, Executive Officer / Clerk of Court

By: O. Chavez Deputy

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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JORGE GUTIERREZ, as an individual and on
behalf of all other aggrieved employees,

Plaintiff,

vs.

SEIDNER & CO., INC., a California
Corporation; and DOES 1 through 100,

Defendants.

Case No.: BC724132

*[Assigned for all purposes to the Hon. Holly
J. Fujie; Dept. 56]*

**[PROPOSED] ORDER AND
JUDGMENT GRANTING PLAINTIFF'S
MOTION FOR APPROVAL OF PAGA
SETTLEMENT AND REASONABLE
ATTORNEYS' FEES, COSTS, AND
ENHANCEMENT AWARD**

Date: September 16, 2019

Time: 8:30 a.m.

Dept.: 56

Reservation No.: 122557984660

Action Filed: October 3, 2018

Trial Date: None Set

1 This matter came on regularly for hearing before this Court on September 16, 2019 at
2 8:30 a.m. Having considered the parties' Settlement Agreement, the documents and evidence
3 presented in support thereof, and recognizing the disputed factual and legal issues involved in
4 this case, the risks of further prosecution, the substantial benefits to be received by the State of
5 California and the Aggrieved Employees pursuant to the Settlement, the fair, reasonable, and
6 adequate nature of the settlement obtained as a result of good faith arm's-length negotiations
7 between the parties, the Court hereby makes a final ruling that the settlement is approved pursuant
8 to Labor Code § 2699(l). Good cause appearing therefor, the Court hereby GRANTS Plaintiff's
9 Motion for Approval of PAGA Settlement and Reasonable Attorneys' Fees, Costs, and
10 Enhancement Award and ORDERS as follows:

11 1. The "Aggrieved Employees" shall be defined as:

12 All current and former non-exempt employees of Defendant
13 in California from October 3, 2017, until the date that the
14 Court approves this settlement or September 16, 2019,
15 whichever comes earlier ("PAGA Period").

16 2. The Court hereby approves the Settlement as set forth in the Settlement
17 Agreement as fair, reasonable, and adequate, and directs the parties to effectuate the Settlement
18 according to the terms of the Settlement Agreement.

19 3. The Court orders that Defendant Seidner & Co., Inc. shall deposit the Maximum
20 Settlement Amount of \$325,000.00 to the Settlement Administrator within fourteen (14) business
21 days of the Court's approval of the Settlement Agreement.

22 4. The Court hereby approves, as to form and content, the Notice of PAGA
23 Settlement and Release of Claims, submitted by the parties.

24 5. The Court hereby appoints CPT Group, Inc. as Settlement Administrator.

25 6. Within fourteen (14) business days of Court approval, Defendant Seidner & Co,
26 Inc. ("Seidner") will provide CPT with a list containing the Aggrieved Employees' full name,
27 last known mailing address, last known telephone number, start date(s) of employment, end
28 date(s) of employment, total pay periods worked, and Social Security numbers. The list will also
contain the total of all pay periods worked by Aggrieved Employees during the PAGA Period.

1 Within ten (10) business days of receipt of this information, the Settlement Administrator will
2 circulate to counsel for Plaintiff and Defendant an anonymized spreadsheet containing the
3 Individual PAGA Payments to each Aggrieved Employee and the data used to calculate said
4 payments.

5 7. CPT Group, Inc. is directed to mail the individual settlement payments (which
6 will include the Aggrieved Employees' 25% share of civil penalties paid under Labor Code §
7 2699(i) and their share of civil penalties under Underpaid Wages and Civil Penalty) and Notice
8 of PAGA Settlement and Release of Claims to the Aggrieved Employees after approval of the
9 anonymized spreadsheet containing the individual settlement payments to each Aggrieved
10 Employee and the data used to calculate said payments from the parties.

11 8. The Court finds that attorneys' fees in the amount of \$108,333.33 for Plaintiff's
12 Counsel, and reimbursement of litigation costs of \$10,357.93 to Plaintiff's Counsel are fair,
13 reasonable, and adequate, and orders that the Settlement Administrator distribute these payments
14 to Plaintiff's Counsel as provided for in the Settlement Agreement.

15 9. The Court orders that the Settlement Administrator shall be paid \$7,750.00 for all
16 of its work done and to be done until the completion of this matter and finds that sum appropriate.

17 10. The Court finds that an enhancement award of \$5,000.00 to Plaintiff is fair and
18 reasonable in recognition of the unique contributions he has made and the risks he undertook on
19 behalf of the Aggrieved Employees and the State of California, and orders that the Settlement
20 Administrator distribute this payment to Plaintiff as provided for in the Settlement Agreement.

21 11. The Court finds that the amount of \$15,000.00 (representing 75% of the
22 \$20,000.00 set aside for PAGA civil penalties under Labor Code § 2699(i)) shall to be paid to
23 the California Labor and Workforce Development Agency ("LWDA") as provided for by the
24 Settlement, is fair, adequate, and reasonable, and orders that payment be made to the LWDA in
25 accordance with the terms of the Settlement Agreement.

26 12. The court approves the limited scope of the release. Following entry of this Order
27 and Final Judgment, all Aggrieved Employees will release Defendant Seidner & Co., Inc. and its
28 respective heirs, executors, administrators, successors, assignees, parents, subsidiaries and

1 related entities, officers, directors, shareholders, employees, agents, servants, representatives,
2 members, attorneys, insurers, re-insurers, assigns, and affiliates, and any and all other entities
3 with whom they have been, are now, or may hereafter be affiliated, and any of their affiliated
4 companies, predecessors, successors and assigns, as well as their past or present officers,
5 directors, agents, representatives, attorneys, insurers, re-insurers, assigns, or employees
6 (collectively, the "Released Parties") from any and all claims under PAGA that are pled in
7 Plaintiff's Complaint (including Labor Code § 558), or which could have been pled under the
8 PAGA based on the factual allegations in Plaintiff's Complaint, that arose during the PAGA
9 Period.

10 13. Upon entry of this Order and Judgment, the Court permanently enjoins and
11 forever bars Plaintiff and the Aggrieved Employees from instituting or prosecuting any action
12 against the Released Persons which was released as part of the Settlement Agreement. Without
13 affecting the finality of this Order and Judgment in any way, the Court retains jurisdiction to
14 enforce the terms of the Settlement.

15 14. Plaintiff shall file a declaration confirming the final distribution of funds on or
16 before June 5, 2020.

17
18 **IT IS SO ORDERED.**

19 09/19/2019

20 Dated: _____



Holly J. Fujie

Holly J. Fujie / Judge

Honorable Holly J. Fujie
Judge of the Superior Court

NOV 19 2018

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Attorneys for Plaintiff Silva and Aggrieved Employees

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

JORGE GONZALEZ, individually and on
behalf of himself and other persons similarly
situated,

Plaintiff,

vs.

CITISTAFF SOLUTIONS, INC., a California
corporation; and DOES 1 through 30,
inclusive,

Defendants.

LUIS SILVA, an individual, on behalf of
himself and all others similarly situated,

Plaintiff,

vs.

CITISTAFF SOLUTIONS, INC., a California
Corporation, and DOES 1 through 100,

Defendants.

Case No. BC620115 (Lead Case)
Case No. BC622512

*[Assigned for all purposes to the Honorable
David S. Cunningham III, Dept. 37]*

**[PROPOSED] ORDER AND JUDGMENT
GRANTING PLAINTIFF'S MOTION
FOR APPROVAL OF SETTLEMENT
CLAIMS BROUGHT UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT, REASONABLE ATTORNEYS'
FEES, COSTS, ENHANCEMENT
PAYMENT, AND SETTLEMENT
ADMINISTRATION EXPENSES**

Date: September 27, 2018
Time: 8:30 a.m.
Dept.: 37
Reservation ID: 180409304435

Complaint Filed [Lead Case]: May 10, 2016
FSC: October 22, 2018
Trial Date: October 30, 2018

NOVEMBER 19, 2018

This matter came on regularly for hearing before this Court on ~~September 27, 2018~~ at 8:30 a.m. Having considered the parties' Joint Stipulation of Settlement and Release ("Settlement Agreement" or "Settlement"),¹ the documents and evidence presented in support thereof, and recognizing the disputed factual and legal issues involved in this case, the risks of further prosecution, the substantial benefits to be received by the State of California and the Aggrieved Employees pursuant to the Settlement, the fair, reasonable, and adequate nature of the settlement obtained as a result of good faith arm's-length negotiations between the parties, the Court hereby makes a final ruling that the settlement is approved pursuant to Labor Code section 2699(1). Good cause appearing therefor, the Court hereby GRANTS Plaintiffs' Motion for Approval of Settlement of Claims and ORDERS as follows:

1. The "Aggrieved Employees" shall be defined as:

All persons who, at any time during the Settlement and Release Period were employed by Defendant in non-exempt hourly positions in the State of California who were provided with at least one wage statement.

2. "Defendant" means CitiStaff Solutions, Inc.

3. The "Settlement and Release Period" means from May 10, 2015 to September 12, 2016.

4. The Court hereby approves the Settlement as set forth in the Settlement Agreement as fair, reasonable, and adequate, and directs the parties to effectuate the Settlement according to the terms of the Settlement Agreement.

5. The Court orders that Defendant shall pay the Gross Settlement Amount of \$275,000.00 to the Settlement Administrator on the following schedule, as provided for in the Settlement Agreement: Payment 1: \$15,000.00, to be paid within five (5) business days from an Order from the Court approving this Settlement or June 1, 2018, whichever is later, representing Representative Plaintiffs' Enhancement Payments; Payment 2: \$12,146.04 to be paid on July 1, 2018 representing Aggrieved Employees' Counsel Costs; Payment 3: \$30,555.55 to be paid on August 1, 2018, representing the first 1/3 of the Aggrieved Employees' Counsel Fees; Payment 4: \$30,555.55 to be paid on October 1, 2018, representing the second 1/3 of the Aggrieved

¹ All terms used in this Order shall have the same meaning as that assigned to them in the Settlement Agreement.

1 Employees' Counsel Fees; Payment 5: \$30,555.55 to be paid on December 1, 2018,
2 representing the third 1/3 of the Aggrieved Employees' Counsel Fees; Payment 6: \$15,630.78
3 to be paid on January 1, 2019 representing the amounts distributable to the LWDA, Aggrieved
4 Employees and Settlement Administration Costs; Payments 7 through 18: \$12,777.78 to be
5 paid monthly, commencing on February 1, 2019 through December 1, 2019, to be paid on the
6 first date of each month, representing the amounts distributable to the LWDA, Aggrieved
7 Employees and Settlement Administration Costs.² See Settlement, § III.H.2.

8 6. The Court hereby approves, as to form and content, the Notice of Settlement submitted
9 by the parties.

10 7. The Court hereby appoints CPT Group, Inc. as Settlement Administrator.

11 8. Within fifteen (15) business days of settlement approval, CitiStaff will provide CPT
12 with a list containing the Aggrieved Employees' names, last known addresses, last known
13 telephone numbers, and social security numbers.

14 9. CPT Group, Inc. is directed to mail the individual settlement payments and Notice of
15 Settlement to the Aggrieved Employees within ten (10) days of receipt of the Defendant's final
16 payment of the Gross Settlement Amount.

17 10. The Court finds that attorneys' fees in the amount of \$91,666.66 for Plaintiffs' counsel,
18 and reimbursement of litigation costs of ~~\$12,147.00~~ ^{\$11,842.95} to Plaintiffs' counsel, are fair, reasonable,
19 and adequate, and orders that the Settlement Administrator distribute these payments to
20 Plaintiffs' Counsel as provided for in the Settlement Agreement.

21 11. The Court orders that the Settlement Administrator shall be paid up to \$65,000.00 for
22 all of its work done and to be done until the completion of this matter, and finds that sum
23 appropriate.

24 12. The Court finds that Representative Plaintiff Enhancement Payments of \$5,000.00 each
25 to Plaintiffs Jorge Gonzalez, Teresa Nieto, and Luis Silva for a total amount of \$15,000.00, is
26

27 ² The parties have agreed and this Court approves that to the extent that any of the payment
28 deadlines fall prior to the date that this Court issues its approval order, CitiStaff will make any
payments on the due dates with the Settlement Administrator holding the funds in escrow.

1 fair and reasonable in recognition of the unique contributions they have made and the risks they
2 undertook, on behalf of the Aggrieved Employees and the State of California, and orders that
3 the Settlement Administrator distribute this payment to Plaintiffs as provided for in the
4 Settlement Agreement.

5 13. The Court finds that the amount of \$68,389.75, representing 75% of the \$91,186.34
6 allocated as PAGA penalties in this action, to be paid to the California Labor and Workforce
7 Development Agency ("LWDA") as provided for by the Settlement, is fair, adequate, and
8 reasonable, and orders that payment be made to the LWDA in accordance with the terms of the
9 Settlement Agreement.

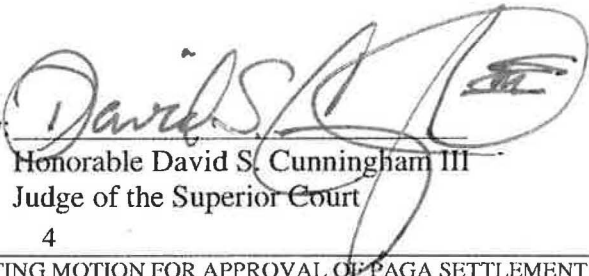
10 14. The court approves the limited scope of the release. Following entry of this Order and
11 Final Judgment, Representative Plaintiffs and Aggrieved Employees will have released all
12 Released Claims against Released Persons, meaning that PAGA civil penalties recoverable
13 under any theory of liability upon which such civil penalties under the PAGA could have been
14 recovered based upon the allegations in the operative Complaint, including specifically any and
15 all claims, causes of action, damages, wages, benefits, expenses, penalties, interest, debts,
16 liabilities, demands, obligations, attorneys' fees, costs, and any other form of relief or remedy
17 in law, equity, or whatever kind or nature that were asserted or could have been asserted
18 pursuant to Labor Code §§ 558 or 2698 et seq. for violation of Labor Code Section 226.

19 15. Upon entry of this Final Order and Judgment, the Court permanently enjoins and
20 forever bars the Representative Plaintiffs, Aggrieved Employees' Counsel, or the Aggrieved
21 Employees from instituting or prosecuting any action against the Released Persons which was
22 resolved as part of the Settlement. Without affecting the finality of this Final Order and
23 Judgment in any way, the Court retains jurisdiction to enforce the terms of the Settlement.
24 Plaintiffs shall file a declaration confirming the final distribution of funds on or before

25 JANUARY 21, ²⁰²⁰~~2019~~.

26 **IT IS SO ORDERED.**

27 Dated: 11-19-2018

28 By: 
Honorable David S. Cunningham III
Judge of the Superior Court