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Superior Court of California
County of Los Angeles

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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

**SECOND AMENDED
REPRESENTATIVE ACTION
COMPLAINT:**

**CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL ACT
(LABOR CODE § 2698 et seq.).**

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1 Plaintiff Ashanti Berry (“Plaintiff”) on behalf of herself, the State of California, and all
2 other aggrieved employees, hereby brings this Second Amended Representative Action
3 Complaint against Defendants PDS Tech, Inc, a Washington corporation; and DOES 1 to 100,
4 inclusive (collectively “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of herself, the State of California, and all other aggrieved
7 employees, hereby brings this representative action Complaint for recovery of civil penalties
8 under the Labor Code Private Attorneys General Act (“PAGA”), Labor Code § 2698 *et seq.* This
9 Court has jurisdiction over Defendants’ violations of the California Labor Code because the
10 amount in controversy exceeds this Court’s jurisdictional minimum.

11 **VENUE**

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

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

22 **PARTIES**

23 4. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
24 Plaintiff was and currently is, a California resident. During the four years immediately preceding
25 the filing of this action and within the statute of limitations periods applicable to each cause of
26 action pled herein, Plaintiff was employed by Defendants as a non-exempt employee, and
27 performed work for Defendants within California. Plaintiff was, and is, a victim of Defendants’
28 policies and/or practices complained of herein, lost money and/or property, and has been deprived

1 of the rights guaranteed by Labor Code sections §§ 204, 226 *et seq.*, 226.7, 510, 512, 516, 558,
2 1182.12, 1194, 1194.2, 1197, 1198 and 2698 *et seq.*, and California Business and Professions
3 Code section 17200 *et seq.* (“Unfair Competition Law”), and Wage Order 1, which sets
4 employment standards for employees in the manufacturing industry.

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

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

19 7. Plaintiff is informed and believes, and based thereon alleges, that at all times
20 mentioned herein, Defendants were and are the employers of Plaintiff and all other aggrieved
21 employees.

22 8. At all times herein mentioned, each of said Defendants participated in the doing
23 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
24 Defendants, and each of them, were the agents, servants, and employees of each and every one of
25 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
26 were acting within the course and scope of said agency and employment. Defendants, and each
27 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
28 omissions complained of herein.

1 9. At all times mentioned herein, Defendants, and each of them, were members of
2 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
3 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
4 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all other
5 aggrieved employees.

6 **GENERAL FACTUAL ALLEGATIONS**

7 10. Defendants are a staffing agency. Plaintiff was employed by Defendants as a non-
8 exempt employee from approximately June 18, 2019 until the present. Since approximately July
9 19, 2019, Plaintiff has been on a medical leave of absence. During the entirety of Plaintiff's
10 employment with Defendants, Plaintiff was staffed at Toyota's North American Parts Center, as
11 a "Material Handler."

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

23 12. In addition to failing to compensate Plaintiff and other non-exempt employees for
24 all hours on the clock, Defendants also failed to compensate Plaintiff and other non-exempt
25 employees for additional hours worked prior to clocking in and after clocking out. Prior to
26 clocking in for their shift, Plaintiff and other non-exempt employees were required to sign in with
27 a security guard at the front of the warehouse. Only after Plaintiff signed in with the security
28 guard, was Plaintiff allowed to enter the warehouse and clock-in for her shift. As there was only

one timeclock for temporary employees located at the back of the warehouse, Plaintiff estimates it took her at least five minutes to clock in each morning. This time was even longer when Plaintiff was required to wait in line to both sign in with the security guard and clock-in for her shift. As this time was off-the-clock, Defendant did not compensate Plaintiff and other non-exempt employees for this time. Similarly, at the end of Plaintiff's shift, Plaintiff and other non-exempt employees were required to first clock out and then walk to the front of the warehouse to sign out with the security guard. As Plaintiff and other employees often ended their shift at the same time, and there was only one timeclock for all temporary employees, Plaintiff and other temporary 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. Plaintiff estimates this process could take anywhere from 5 to 30 minutes off-the-clock. As a result of these policies/practices, Plaintiff and non-exempt employees were not paid all minimum and overtime wages owed to them

13. Defendants failed to keep accurate records of employee hours worked, including time records showing when employees were provided with meal periods. During Plaintiff's employment with Defendants, Defendants did not require Plaintiff and other non-exempt 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.

14. During Plaintiff's employment with Defendants, Plaintiff was not authorized and permitted to take legally required rest periods due to Defendant's unlawful rest period policies and practices. Specifically, during Plaintiff's employment, Defendants maintained a facially invalid rest period policy which prohibits employees from leaving the facility premises for their rest periods. Despite Defendants' written rest period policy expressly prohibiting Plaintiff and other non-exempt employees from taking off-duty rest periods, Defendants did not pay Plaintiff any missed rest period premium payments as required by Labor Code § 226.7. Upon information

1 and belief, during at least a portion of the relevant time period, Defendants maintained no payroll
2 code or other mechanism for paying rest period premiums when Defendants failed to provide a
3 legally compliant rest period

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

10 **FIRST CAUSE OF ACTION**

11 **PRIVATE ATTORNEYS GENERAL ACT**

12 **(AGAINST ALL DEFENDANTS)**

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

14 17. Defendants have committed several Labor Code violations against Plaintiff, and
15 other aggrieved employees. Plaintiff, is an "aggrieved employee" within the meaning of Labor
16 Code § 2698 *et seq.*, acting on behalf of herself and other aggrieved employees, brings this
17 representative action against Defendants to recover the civil penalties due to Plaintiff, other
18 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
19 558 and 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
20 each failure to pay each employee and \$200.00 for each subsequent violation or willful or
21 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus
22 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each
23 subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for
24 each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1
25 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each
26 subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5)
27 \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay
28 period for those violations of the Labor Code for which no civil penalty is specifically provided,

1 based on the following Labor Code violations:

- 2 a. Failing to pay Plaintiff and other aggrieved employees the statutory minimum
3 wage for all hours worked in violation of Labor Code §§ 1182.12, 1194,
4 1194.2, 1197;
- 5 b. Failing to pay Plaintiff and other aggrieved employees all overtime
6 compensation earned in violation of Labor Code §§ 204, 510, 558, 1194, and
7 1198;
- 8 c. Failing to provide meal periods as required by law and failing to pay meal
9 period premiums to Plaintiff and other aggrieved employees at the employees'
10 respective regular rates of compensation for meal period violations in violation
11 of Labor Code §§ 226.7, 512, and 558;
- 12 d. Failing to furnish Plaintiff and other aggrieved employees with accurate and
13 compliant itemized wage statements in violation of Labor Code § 226;
- 14 e. Failing to pay Plaintiff and other aggrieved employees all wages earned at least
15 twice during each calendar month in violation of Labor Code § 204,
- 16 f. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved
17 employees in violation of Labor Code §§ 1174 and 1198, and
- 18 g. Failing to timely pay all final wages due to the aggrieved employees in
19 violation of Labor Code §§ 201, 202, and 203.
- 20 h. Defendants have violated and continue to violate Labor Code §§ 226.7, 516,
21 and 558, by failing to authorize and permit Plaintiff and other aggrieved
22 employees all required lawful rest periods and failing to pay rest period
23 premiums to Plaintiff and aggrieved employees at these employees' respective
24 regular rates of compensation for rest period violations.

25 18. On or around May 8, 2020, May 18, 2020 and July 10, 2020, Plaintiff notified
26 Defendants via certified mail, and notified the California Labor and Workforce Development
27 Agency ("LWDA") via its website, of Defendants' violations of the California Labor Code and
28 Plaintiff's intent to bring a claim for civil penalties under California Labor Code § 2698 et seq.

1 with respect to the violations of the California Labor Code identified in Paragraph 51 (a)-(h). Now
2 that sixty-five days have passed from Plaintiff notifying Defendants and the LWDA of these
3 violations, and the LWDA has not provided notice that it intends to investigate the violations,
4 Plaintiff has exhausted his administrative requirements for bringing a claim under the Private
5 Attorneys General Act with respect to these violations.

6 19. Based on the foregoing, Plaintiff seeks to represent herself and all Aggrieved
7 Employees, as defined by Labor Code § 2699(c), which includes all current and former non-
8 exempt employees who worked for Defendants in California between May 8, 2019 and the
9 present.

10 20. Plaintiff was compelled to retain the services of counsel to file this court action to
11 protect her interests and the interests of other aggrieved employees, and to assess and collect the
12 civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which
13 she is entitled to recover under California Labor Code § 2699.

14 **PRAYER**

15 WHEREFORE, Plaintiff prays for judgment for herself, the State of California, and for
16 all others on whose behalf this suit is brought against Defendants, as follows:

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

1 the violations of Labor Code sections identified in Paragraph 51 (a)-(h) above.

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

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

5
6 Dated: September 18, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

7
8 By:



Fletcher W. Schmidt
Attorneys for Plaintiff

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Los Angeles County Superior Court Case No. 20STCV18030

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

On November 10, 2020, I served the foregoing document(s) described as:

SECOND AMENDED REPRESENTATIVE ACTION COMPLAINT

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

Brandon R. McKelvey, Esq.
Email: brandon@medinamckelvey.com
Timothy B. Nelson, Esq.
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MEDINA McKELVEY LLP
983 Reserve Drive
Roseville, California 95678 Attorneys for Defendant PDS TECH, INC.

[X] (VIA ELECTRONIC MAIL) I caused a true and correct copy of the document(s) described above to be electronically served on counsel of record at the electronic service addresses listed above by transmission to CASE ANYWHERE

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

Executed on November 10, 2020, at El Segundo, California.

fornia.


Jonathan Ramirez