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AUGUSTINE BARRY, ON BEHALF OF HIMSELF,
AND ALL OTHERS SIMILARLY SITUATED

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

AUGUSTINE BARRY, an individual, on
behalf of himself, and all others similarly
situated;

Plaintiff,

vs.

PARETO INC. d/b/a PARETO AI., a Delaware
corporation; PHOEBE YAO, an individual, and
DOES 1 through 50, inclusive;

Defendants.

Case No. **25CV117381**

PAGA REPRESENTATIVE ACTION

COMPLAINT FOR:

- 1. CIVIL PENALTIES PURSUANT TO
LABOR CODE PRIVATE
ATTORNEY GENERAL ACT
(LABOR CODE §2699, ET. SEQ.)**

DEMAND FOR JURY TRIAL

Plaintiff Augustine Barry (“**Barry**” or “**Plaintiff**”), on behalf of himself, and all others
similarly situated (the “**Aggrieved Employees**”), hereby alleges the following Complaint against
Pareto, Inc. d/b/a Pareto AI (“**Pareto AI**”), Phoebe Yao (“**Yao**”) and DOES 1 through 50 (collectively
as “**Defendants**”) as follows:

THE PARTIES

- Barry is and at all times relevant hereto was a resident of the State of California.
- During his tenure with Defendants, Barry was employed by and performed services
for Defendants in California.
- Plaintiff is informed and believes that Defendant Pareto AI is presently a Delaware

1 Corporation and that it does business in and employs individuals, including Aggrieved Employees,
2 throughout California in various counties, including, but not limited to, in the Counties of Alameda,
3 San Francisco and Santa Clara.

4 4. Plaintiff is informed and believes that Defendant Pareto AI operates out of various
5 locations in California, including Alameda County, and maintains their headquarters in Stanford,
6 California.

7 5. Plaintiff is informed and believes that Defendant Yao is and at all times relevant hereto
8 was a resident of the State of California, County of Santa Clara.

9 6. Defendants were Plaintiff's and the Aggrieved Employees' employer within the
10 meaning of Government Code §§ 12926(d), 12940 (a), (h), (l), (h) (3) (A) and (i), and 12950, and the
11 Labor Code, and regularly employ five (5) or more persons and are therefore subject to the jurisdiction
12 of this Court.

13 7. The true names and capacities, whether individual, corporate, associate, or otherwise
14 of the Defendants named herein as DOES 1-50, inclusive, are unknown to Plaintiff at this time and
15 therefore said Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this
16 Complaint to insert the true names and capacities of said Defendants when the same become known
17 to Plaintiff. Plaintiff is informed and believes and thereupon alleges that each of the fictitiously
18 named Defendants is responsible for the wrongful acts alleged herein and is therefore liable to
19 Plaintiff and the Aggrieved Employees as alleged hereinafter.

20 8. Plaintiff is informed and believes, and based thereupon alleges, that at all times
21 relevant hereto, Defendants, and each of them, were the agents, employees, managing agents,
22 supervisors, conspirators, parent corporation, joint employers, alter ego, and/or joint ventures of the
23 other Defendants, and each of them, and in doing the things alleged herein, were acting at least in part
24 within the course and scope of said agency, employment, conspiracy, joint employment, alter ego
25 status, and/or joint venture and with the permission and consent of each of the other Defendants.

26 9. Plaintiff is informed and believes, and based thereupon alleges, that Defendants, and
27 each of them, including those Defendants named DOES 1-50, acted in concert with one another to
28 commit the wrongful acts alleged therein, and aided, abetted, incited, compelled, and/or coerced one

1 another in the wrongful acts alleged herein, and/or attempted to do so. Plaintiff is further informed
2 and believes, and based thereupon alleges, that the Defendants, and each of them, including those
3 Defendants named as DOES 1-50, formed and executed a conspiracy or common plan pursuant to
4 which they would commit the unlawful acts alleged herein, with all such acts alleged herein done as
5 part of and pursuant to said conspiracy, intended to and actually causing Plaintiff and the Aggrieved
6 Employees' harm.

7 10. Whenever and wherever reference is made in this Complaint to any act or failure to
8 act by a Defendant or co-Defendant, such allegations and references shall also be deemed to mean
9 the acts and/or failures to act by each Defendant acting individually, jointly, and severally.

10 **JURISDICTION AND VENUE**

11 11. The monetary value of Plaintiff's claim exceeds \$25,000.

12 12. The amount in controversy herein is within the jurisdiction of this Court.

13 13. The acts, omissions, damages, and injury that form the basis of this lawsuit were
14 sustained, at least in part, in the County of Alameda.

15 14. Defendants maintain their headquarters in California in the County of Santa Clara and
16 transacts business as well as employes people in the County of Alameda.

17 15. Defendants are qualified to do business in California and regularly conduct business
18 in Alameda County, California.

19 16. This Court is the proper Court, and this action is properly filed in the County of San
20 Mateo pursuant to Code of Civil Procedure §395 because Defendants employ numerous Aggrieved
21 Employees in the County of Alameda, at least some of Defendants' obligations and liability arise in
22 the County of Alameda, and because at least some of the work that is the subject of this action was
23 performed by numerous Aggrieved Employees in the County of Alameda.

24 **ALTER EGO, AGENCY, AND JOINT EMPLOYER**

25 17. Plaintiff is informed and believes, and based thereon alleges, that there exists such a
26 unity of interest and ownership between Defendants and DOES 1-50 that the individuality and
27 separateness of Defendants have ceased to exist.

28 18. Plaintiff is informed and believes, and based thereon alleges, that despite the formation

1 of purported corporate existence, DOES 1-50 are, in reality, one and the same as Defendants,
2 including, but not limited to because:

3 a. Defendants are completely dominated and controlled by DOES 1-50, who
4 personally violated the laws as set forth in this complaint, and who have hidden and currently hid
5 behind Defendants to circumvent statutes or accomplish some other wrongful or inequitable purpose.

6 b. DOES 1-50 derive actual and significant monetary benefits by and through
7 Defendants' unlawful conduct, and by using Defendants as the funding source for their own personal
8 expenditures.

9 c. Plaintiff is informed and believes that Defendants and DOES 1-50, while really
10 one and the same, were segregated to appear as though separate and distinct for purposes of
11 circumventing a statute or accomplishing some other wrongful or inequitable purpose.

12 d. Plaintiff is informed and believes that Defendants do not comply with all
13 requisite corporate formalities to maintain a legal and separate corporate existence.

14 e. Plaintiff is informed and believes, and based thereon alleges, that the business
15 affairs of Defendants and DOES 1-50 are, and at all times relevant were, so mixed and intermingled
16 that the same cannot reasonably be segregated, and the same are in inextricable confusion.
17 Defendants are, and at all times relevant hereto were, used by DOES 1-50 as a mere shell and conduit
18 for the conduct of certain of Defendants' affairs, and are, and were, the alter ego of DOES 1-50. The
19 recognition of the separate existence of Defendants would not promote justice, in that it would permit
20 Defendants to insulate themselves from liability to Plaintiff for violations of the Government Code,
21 Labor Code, and other statutory violations. The corporate existence of Defendants and DOES 1-50
22 should be disregarded in equity and for the ends of justice because such disregard is necessary to
23 avoid fraud and injustice to Plaintiff herein.

24 19. Accordingly, Defendants constitute the alter ego of DOES 1-50, and the fiction of their
25 separate corporate existence must be disregarded.

26 20. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
27 thereon alleges that Defendants and DOES 1-50 are Plaintiff's joint employers by virtue of a joint
28 enterprise, and that Plaintiff was an employee of Defendants and DOES 1-50. Plaintiff performed

1 services for each and every one of Defendants, and to the mutual benefit of all Defendants, and all
2 Defendants shared control of Plaintiff as an employee, either directly or indirectly, in the manner in
3 which Defendants' business was and is conducted.

4 **RELATION BACK / INAPPROPRIATE DISMISSAL BY DAVID MARA, ESQ.**

5 21. David Mara, Esq. ("MARA") previously filed Barry's original Private Attorneys
6 General Act of 2004 ("PAGA") Complaint in this Court on March 14, 2025 (Case Number
7 25CV114922) (the "**Original PAGA Complaint**").

8 22. On March 24, 2025, Mr. MARA dismissed the Original PAGA Complaint without
9 prejudice. As a result, Mr. Barry has been forced to refile his PAGA Complaint because of Mr.
10 MARA dismissing the Original PAGA Complaint.

11 **FACTUAL ALLEGATIONS**

12 23. Defendants have consistently maintained and enforced against Barry and Aggrieved
13 Employees unlawful employment practices and policies which violate the Labor Code and IWC Wage
14 Orders.

15 ***Defendants Misclassify Its Employees as Independent Contractors***

16 24. Defendants advertises themselves as an AI training company that develops and trains
17 customer AI platforms. Therefore, Defendant's usual core business involves using AI Trainers/AI
18 Labelers ("**AI Trainers**") to develop and training its customers' AI platforms.

19 25. In order to develop these AI platforms and perform this core service for their
20 customers, Defendants hire AI Trainers.

21 26. Despite performing services squarely within the usual course of Defendants' business
22 of developing and training AI platforms, Defendants misclassify their AI Trainers in the state of
23 California (the "**California AI Trainers**" who are also Aggrieved Employees) as independent
24 contractors.

25 27. However, the California AI Trainers cannot be classified as independent contractors
26 as they do not meet the requirements of Labor Code §2750.3 as they train and develop customer AI
27 systems, which is work that is squarely within Defendants usual course of business as that term is
28 understood under Labor Code §2750.3.

1 28. Therefore, Defendants' California AI Trainers, including Barry, were misclassified as
2 independent contractors under Labor Code §2775 as the work that they performed was in the usual
3 course of Defendants' business.

4 29. In fact, California AI Trainers, including Barry fail all of the prongs of California's
5 ABC test as, in addition to performing work that is squarely in Defendants' business:

6 i. Defendants control the manner and means of work Barry and similarly situated
7 California AI Trainers misclassified as independent contractors perform. Thus, California AI
8 Trainers, including Barry, were not free from the control and direction of Defendants in connection
9 with the performance of the work, but under the contract for the performance of the work and in fact.

10 ii. Defendants exert control over the manner and means by which Barry and
11 similarly situated California AI Trainers carry out their duties for Defendants. .

12 iii. Barry and similarly situated California AI Trainers were also not normally or
13 customarily engaged in an independently established trade, occupation, or business of the same nature
14 as that involved in the work performed for Defendants. Moreover, Barry and similarly situated
15 California AI Trainers did not independently make the decision to go into business for themselves
16 nor did they take the usual steps to establish and promote themselves as independent businesspeople,
17 such as through incorporating a business and advertising to the public or to potential customers,

18 30. Even if Defendants had not blatantly violated California's ABC test as codified in
19 Labor Code §2775, because Defendants retain the right to control the manner and means of Barry's
20 and similarly situated California AI Trainers' work, they are still employees under the right-to-control
21 test and are entitled to all protections afforded employees under the Wage Order and Labor Code.

22 31. As a California AI Trainer, Barry was subject to the aforementioned practice.
23 Specifically, Barry was hired as an AI Trainer by Defendants on or about June 18, 2024. At all times
24 during his employment, Barry was classified by Defendants as an independent contractor.

25 32. Throughout the time period that includes the one (1) year prior to the date Barry sent
26 his Notice to the State of California Labor and Workforce Development Agency ("LWDA") to the
27 present (the "**Statutory Period**"), Defendants have maintained uniform policies that violate the wage
28 and hour rights of Plaintiff and similarly situated misclassified California AI Trainers in the manner

1 stated herein below.

2 33. By misclassifying Barry and similarly situated California AI Trainers as independent
3 contractors, Defendants have sought to avoid their legal obligations as an “employer” of Barry and
4 the California AI Trainers under the California Labor Code. Pursuant to their misclassification of
5 Barry and similarly situated California AI Trainers, Defendants have sought to avoid and have
6 violated, among other things, their duty to provide meal and rest periods, pay all wages owed for all
7 hours worked, provide reimbursements for business related expenses, provide itemized wage
8 statements, and sick pay as discussed herein below. Defendants may not lawfully avoid these legal
9 obligations by labeling workers like Barry and other California AI Trainers as “independent
10 contractors,” when the nature of that engagement is an employment one.

11 34. Defendants’ misclassification of Barry and the California AI Trainers has at all times
12 been willful within the meaning of Labor Code §226.8. Defendants knew that California AI Trainers
13 performed work within their usual and customary business of developing customer AI platforms, but,
14 for purposes of avoiding their obligations under the Labor Code and state and federal tax authorities,
15 willfully and deliberately chose to misclassify Barry and similarly situated California AI Trainers as
16 independent contractors.

17 ***Defendants Forces All California AI Trainers to Execute Illegal Employment Agreements***

18 35. Defendants require their California AI Trainers to enter into employment agreements,
19 which Defendants deem independent contractor agreements, as a condition of their employment with
20 Defendants (the “**Employment Agreement**”).

21 36. The Employment Agreement is a boiler plate contract that Defendants unilaterally
22 prepares and requires all of its California IP Trainers to execute upon their hiring.

23 37. The Employment Agreement expressly classifies the California IP Trainers as
24 independent contractors, and all California IP Trainers are required to agree to this classification as a
25 condition of their employment with Defendants.

26 38. Contrary to California law, which prohibits the use of contract provisions that apply
27 another state’s law or require adjudication of disputes in another state as a condition of the
28 employment of an individual who primarily resides and works in California after January 1, 2017, the

1 Employment Agreement requires that the California AI Trainers be governed by Delaware law.

2 39. Defendants knew that the provisions of its Employment Agreement violated California
3 law and still required California IP Trainers to execute the Employment Agreement.

4 ***Defendants Fail to Pay Straight and Overtime to Their Misclassified AI Trainers***

5 40. Barry, like other California AI Trainers, worked on a piece-rate compensation system.
6 For each task performed, California AI Trainers would receive a set amount of compensation. That
7 compensation usually came in the form of a certain metric of time, i.e., one hour or some fraction of
8 an hour, multiplied by an hourly rate. To be clear, the compensation did not change based on the
9 amount of time each task took to complete.

10 41. Barry, like other California AI Trainers, routinely took longer to complete the tasks
11 than the hours/fractional hours they were compensated for the completion of all tasks.

12 42. In addition, the task-based pay did not pay for all tasks, such as drafting and responding
13 to messages on Defendants' discord platform. Also, although promising to pay a set amount for the
14 completion of AI training tasks, Defendants did not pay for all completed tasks. For instance, if
15 Defendants determined that the work was not what it felt the customer desired, the task would be
16 rejected, and the California AI Trainer would not be paid for it unless they submitted a task that
17 satisfied Defendants.

18 43. California AI Trainers, including Barry, also regularly worked and work in excess of
19 forty (40) hours in a week, eight (8) hours in a day, and often twelve (12) hours in a day as well as
20 seven (7) consecutive days in a week; however, they are not paid overtime for these hours in
21 accordance with California law.

22 44. For those shifts where California AI Trainers, including Barry, worked more than eight
23 (8) hours in a day or forty (40) hours in a week, the compensation owed should have been at the
24 overtime rate of time and a half and double time when California AI Trainers, including Barry,
25 worked over twelve (12) hours a day and/or worked over eight (8) hours on the seventh (7th) day of a
26 workweek. However, Defendants did not pay California AI Trainers, including Barry, the statutorily
27 required overtime for these hours and have a continuous policy of not paying California AI Trainers,
28 including Barry for all hours worked, including overtime.

1 45. In fact, Defendants' piece-rate compensation outright fails to compensate California
2 AI Trainers, including Barry, for all hours worked regardless of whether the hours are overtime or
3 straight time, by failing to account for all hours worked to complete tasks, failing to pay for all non-
4 piece-rate related tasks, and failing to pay as promised for piece-rate tasks.

5 46. Defendants also fail to keep accurate time records of California AI Trainers', including
6 Barry's, time as a result of its continuous policies or practices of not paying them for all hours worked
7 as discussed above. Defendants do not have any record of these hours worked

8 ***Defendants Fail to Provide Meal and Rest Breaks to Their Sales Employees***

9 47. Defendants do not have a written, actively enforced policy of providing meal breaks
10 and/or authorizing and permitting rest periods to its California AI Trainers.

11 48. Rather, Defendants have a continuous policy and practice that fails to provide meal
12 periods in accordance with Labor Code §512 or rest periods "at the rate of ten (10) minutes net rest
13 time per four (4) hours or major fraction thereof."

14 49. In fact, Defendants do not provide meal periods at all, because they rely on their
15 unlawful misclassification of Barry and the California AI Trainers as independent contractors to avoid
16 providing meal periods to them. Defendants turn a blind eye on whether California AI Trainers
17 actually take meal periods in accordance with Labor Code §512 and Wage Order 4-2001, §11, as well
18 as fail to perform their obligation to relieve California AI Trainers of all duty and control during meal
19 periods as well as fail to actively provide or offer meal periods of not less than 30-minutes to
20 California AI Trainers.

21 50. Additionally, Defendants do not provide or even authorize and permit California AI
22 Trainers, including Barry, with rest periods consisting of ten (10) minutes net rest time at all, nor do
23 they provide them with a rest period per four (4) hours worked or major fraction thereof. Again,
24 Defendants simply rely on their misclassification and do not authorize and permit rest periods in
25 accordance with the Labor Code and Wage Order 4-2001, §12.

26 51. California AI Trainers schedules also regularly prevent them from being able to take
27 an uninterrupted thirty (30) minute lunch break anyway as well as prevent them from being permitted
28 to take their ten (10) minute rest breaks.

1 52. Specifically, California AI Trainers are regularly prevented from taking an
2 uninterrupted thirty (30) minute off duty lunch period before the end of their fifth hour of work or a
3 second uninterrupted thirty (30) minute off duty lunch period before the end of their tenth hour of
4 work as they often have to (i) attend work related tasks during their meal breaks that interrupt their
5 meal breaks or are not relieved of all of their duties, (ii) take less than thirty (30) minutes for their
6 lunch breaks, (iii) take them after their fifth hour or tenth hour of work as appropriate, (iv) miss their
7 meal breaks in their entirety, or are (v) prevented from leaving the premises for their meal breaks.

8 53. Moreover, Defendants also instituted a consistent policy and practice of not providing
9 second meal periods to California AI Trainers or providing compensation in lieu thereof. Specifically,
10 California AI Trainers, including Barry, are required to work shifts greater than ten (10) hours long
11 but never received second meal periods in shifts over ten (10) hours long.

12 54. California AI Trainers also do not sign or execute any written agreement to take “on-
13 duty” meal periods within the meaning of Wage Order 4-2001, §11, nor do they sign any agreements
14 waiving their statutory meal periods.

15 55. Furthermore, Defendants fail to keep accurate records of meal periods for California
16 AI Trainers, including Barry.

17 56. Additionally, the nature of the work performed by California AI Trainers prevent them
18 from taking their ten (10) minute rest breaks and Defendants also do not schedule any breaks into
19 California AI Trainers’ workday since it misclassifies them as independent contractors. In fact,
20 Defendants impose a continuous and consistent policy of requiring California AI Trainers, including
21 Barry, to work through their rest periods to satisfy the demanding workload duties imposed by
22 Defendants, thereby denying California AI Trainers, including Barry, of the right to be completely
23 free from employer control under California law.

24 57. As a California AI Trainer, Barry was subject to the aforementioned practices and
25 regularly denied and prevented the ability to take his uninterrupted thirty (30) minute off duty lunch
26 periods as required by law. When Barry did take her lunch breaks, he was often and routinely (i)
27 interrupted for work matters, (ii) forced to work through his lunch breaks and missed his meal break
28 in its entirety or take less than thirty (30) minutes, (iii) take his lunch periods after his fifth hour or

1 tenth hour of work as appropriate, or (iv) prevented from leaving the premises for his meal breaks by
2 his work obligations.

3 58. Furthermore, Barry was also required to work though his rest periods and regularly
4 prevented from taking at least one ten (10) minute rest break for every four (4) hours or major fraction
5 thereof worked.

6 59. Additionally, Barry never signed nor executed any written agreement with Defendants
7 to take “on-duty” meal periods nor did he waive his statutory meal periods

8 ***Defendants Fails to Properly Reimburse AI Trainers for Their Business Expenses***

9 60. Defendants have an express policy and practice of providing no reimbursement to any
10 California AI Trainers, including Barry, for their business expenses (including, but not limited to,
11 business use of their personal home internet, cell phone, or any other expenses that they incur in the
12 course and scope of their employment), supplies, or for the mileage that they incur as a result of their
13 employment with Defendants.

14 61. As a result of Defendants’ policy, California AI Trainers, including Barry, incurred
15 business expenses, such as supplies, mileage, cell phone costs, internet costs, etc., that have never
16 been reimbursed by Defendants.

17 62. As a result of the foregoing policy, California AI Trainers, including Barry, were
18 forced to pay for these items and have never been reimbursed by Defendants.

19 ***Defendants Fails to Provide or Pay Sick Time to its California AI Trainers***

20 63. As articulated above, Defendants misclassifies its California AI Trainers, including
21 Barry, as independent contractors and, as such, did not provide California AI Trainers, including
22 Barry, with their earned sick time or notice of their accrued sick time either on their paystub or
23 otherwise.

24 64. In fact, Defendants have a policy and practice of specifically not providing California
25 AI Trainers, including Barry, with accrued sick time. As such, Defendants’ policy and practice denies
26 California AI Trainers, including Barry, the right to accrue and use their sick leave

27 65. Defendants have a policy and practice of not providing or paying its California AI
28 Trainers, including Barry, for any sick time hours that they record in order to deny them their regular

1 rate of pay for such hours in violation of Labor Code §246(l).

2 66. As a California AI Trainer, Barry was subject to the aforementioned practices.

3 ***Defendants Fails to provide workers compensation insurance***

4 67. As articulated above, Defendants misclassify its California AI Trainers, including
5 Barry, as independent contractors and, as such, did not purchase workers compensation insurance for
6 its California AI Trainers, including Barry.

7 ***Defendants have an illegal NDA and Non-Disparagement Clause***

8 68. Government Code §12964.5 prohibits Defendants, as a condition of employment or
9 continued employment, from requiring an employee to sign a non-disparagement agreement or other
10 document to the extent it has the purpose or effect of denying the employee the right to disclose
11 information about unlawful acts in the workplace.

12 69. In fact, Government Code §12964.5 requires that any agreement that purports to
13 restricts an employee's ability to disclose information related to conditions in the workplace must
14 include the following language: "[n]othing in this agreement prevents you from discussing or
15 disclosing information about unlawful acts in the workplace, such as harassment or discrimination or
16 any other conduct that you have reason to believe is unlawful."

17 70. Section 7 of the National Labor Relations Act ("NLRA") permits California AI
18 Trainers, including Barry, to discuss the terms and conditions of their employment, including their
19 wages.

20 71. Labor Code §232.5 prohibits Defendants from requiring an employee sign a waiver or
21 other document denying the employee the right to discuss or disclose information about the
22 employer's working conditions or otherwise require that an employee refrain from disclosing
23 information about the employer's working conditions.

24 72. Moreover, Labor Code §432.5, prohibits any employer from requiring an employee to
25 agree to a term or condition that it knew or should have known was illegal.

26 73. Defendants require all California AI Trainers, including Barry, to sign a Non-
27 Disclosure Agreement ("**NDA Agreement**"), specifically prohibits employees from discussing or
28 disclosing "*confidential information*" to anyone. In fact, the NDA classifies every piece of

1 information as “*confidential information*” without making any exceptions for legally protected rights
2 or communications.

3 74. Defendants NDA Agreement makes no excepts for employees who are disclosing
4 information about unlawful acts in the workplace, nor does it make any exceptions for employees
5 discussing the terms and conditions of their employment or their wages as permitted by Section 7 of
6 the NLRA.

7 75. Moreover, Defendants require California AI Trainers, including Barry, to sign, as a
8 condition of their employment, a non-disparagement agreement without any exceptions for
9 disclosures about unlawful acts in the workplace or for communications protected by Section 7 of the
10 NLRA.

11 76. As an employer in California, Defendants knew, or should have known, that these
12 terms and conditions are illegal in the state of California but forces their California employees to
13 agree to these illegal terms and conditions as a condition of their employment with Defendants

14 ***Defendants Do Not Timely Pay Their Employee’s Upon Their Separation of Employment***

15 77. When a California AI Trainers separates from Defendants, regardless of whether they
16 are terminated by Defendants or they resign, Defendants refuse to pay the California AI Trainers with
17 all of their earned wages at the time of their departure.

18 78. In fact, Defendants have a pattern and practice of refusing to pay their California AI
19 Trainers all of their earned wages immediately at the time of their separation of employment as
20 required by Labor Code §§201 and 202.

21 79. If Defendants do pay the wages due to the former employees, they will wait days,
22 weeks, and sometimes months to pay their former California AI Trainers’ earned wages to them.

23 ***Defendants Fails to Provide Their Misclassified Sales Employees One Day of Rest in Seven***

24 80. The requirements of the California Sales Employees’ jobs require them to often work
25 on weekends such that they are often and regularly required to work seven straight days.

26 81. Barry, like other California AI Trainers, was subject to these practices and would was
27 regularly forced to work seven consecutive days without a day off.

28 ***Defendants Refuse to Provide California AI Trainers with Written Notice of Employment-Related***

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1 as Plaintiff has been employed by Defendants during the applicable statutory period and suffered one
2 or more of the Labor Code violations herein. As such, Plaintiff seeks to recover, on behalf of himself
3 and all other current and former Aggrieved Employees of Defendants, the civil penalties provided by
4 PAGA, plus reasonable attorney's fees and costs.

5 89. Plaintiff seeks to recover the PAGA civil penalties through a representative action
6 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th
7 969. Therefore, class certification of the PAGA claims is not required.

8 90. On January 6, 2025, Plaintiff gave written notice of Defendants' violations of various
9 provisions of the California Labor Code as alleged in this Complaint to the LWDA via the online
10 filing system required by the PAGA statute and with a copy via certified mail to Defendants. No
11 notice of cure by Defendants and the LWDA did not provide notice of its intention to investigate
12 Defendants' alleged violations within sixty-five (65) calendar days of the January 6, 2025, postmark
13 date of the notice sent by Plaintiff. *See* Cal. Lab. Code § 2699.3.

14 91. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor
15 Code provisions:

- 16 i. Labor Code §925 for requiring all of its California AI Trainers to sign
17 agreements that contain a Delaware state choice of law provision;
- 18 ii. Labor Code §432.5 for requiring California AI Trainers to agree, in writing,
19 to any term or condition which is known or should have been known by
20 Defendants to be prohibited by law;
- 21 iii. Labor Code §§1182.12, 1197, 1197.1, and 1194 for failing to pay at least
22 the minimum wage fixed by the commission for all hours worked and/or
23 the legal overtime compensation applicable to the California AI Trainers;
- 24 iv. Labor Code §226.8 for willfully misclassifying California AI Trainers as
25 independent contractor;
- 26 v. Labor Code §§2750.3 and 2775 for misclassifying California AI Trainers
27 as independent contractors s
- 28 vi. Labor Code §§510 and 558 for failing to pay overtime to the California AI

Trainers;

- vii. Labor Code §§551 and 552 for cause their California AI Trainers to work more than six days in seven and not providing one day's rest in each seven (7) day period;
- viii. Labor Code §§233, 234, 246, 246(c), 246(l), 246(k), 246.5, and 248.5 for failing to comply with California's sick leave laws or provide sick leave as well as for denying sick leave and failing to pay California AI Trainers as required by Labor Code §246(l);
- ix. Labor Code §246(h) for failing to provide employees with written notice that sets forth the amount of paid sick leave available, or paid time off leave the employer provides in lieu of sick leave
- x. Labor Code §246(i) for limiting an employee's rights to accrue, and use paid sick leave other than as allowed under Labor Code §246;
- xi. Labor Code §§1198 and 1199 for employing California AI Trainers for longer hours than those fixed by under conditions of labor prohibited the labor commission's wage order, which for Defendants' employees are listed in Wage Order 4;
- xii. Labor Code §226.7 as well as paragraph 12 of Wage Order 4-2001 for failing to authorize and/or permit required rest periods to Plaintiff and other misclassified California AI Trainers;
- xiii. Labor Code §226.7(b) and paragraph 11 of Wage Order 4-2001 failing to pay Plaintiff and other misclassified California AI Trainers the additional hour of compensation earned for every shift that a mandated rest period was denied;
- xiv. Labor Code §§226.7 and 512 and paragraph 11 of Wage Order 4-2001 for failing to provide required meal periods to Plaintiff and other misclassified California AI Trainers;
- xv. Labor Code §226.7(b) and paragraph 11 of Wage Order 4-2001 failing to

1 pay Plaintiff and other misclassified California AI Trainers the additional
2 hour of compensation earned for every shift that a mandated meal period
3 was denied;

4 xvi. Labor Code §§2800 and 2802 for failing to indemnify their California AI
5 Trainers for losses caused by Defendants want of ordinary care and failing
6 to indemnify the California AI Trainers for all necessary expenditures or
7 losses incurred by the California AI Trainers in direct consequence of the
8 discharge of their duties, or of their obedience to the directions of
9 Defendants;

10 xvii. Labor Code §§201, 202, 203 and 204 for failing to pay all wages
11 immediately at the time of separation of employment, or to a California AI
12 Trainer who provides at least 72 hours of notice of their intent to quit as
13 well as failing to provide waiting time penalties for those violations;

14 xviii. Labor Code §204(a) for failing to pay all wages earned by any California
15 AI Trainer between the 1st and 15th days of any calendar month by no later
16 than the 26th day of the month during which the labor was performed, and
17 all wages earned between the 16th and last day of the month to be paid by
18 the 10th day of the following month;

19 xix. Labor Code §204(b) for failing to pay all wages earned for labor in excess
20 of the normal work period by no later than the payday for the next regular
21 payroll period;

22 xx. Labor Code §§226(a) and 226.3 for failing to provide accurate and
23 complete wage statements for each pay period;

24 xxi. Labor Code §§226(b) for failing to keep the information required by Labor
25 Code §§226(a) for each pay period;

26 xxii. Labor Code §§1174 and 1174.5 for failing to keep required payroll records;

27 xxiii. Labor Code §221 for illegally collecting and receiving from its California
28 AI Trainers any part of wages theretofore paid by Defendants to said

1 employees;

2 xxiv. Labor Code §222 for illegally withholding part of its California AI Trainers
3 wages;

4 xxv. Labor Code §§224 for making illegal deductions from California AI
5 Trainers wages;

6 xxvi. Labor Code §300 for illegally assigning California AI Trainers wages
7 without the assignment being contained in a separate written instrument
8 signed by the individual whom the wages or salary has been earned by and
9 identifying specifically the transaction to which the assignment relates and
10 where the employees is married, failure to obtain written consent of the
11 employee's spouse;

12 xxvii. Labor Code §223 for failing to provide California AI Trainers with their
13 wages according to their contracts; and

14 xxviii. Labor Code §§3700 and 3700.5 for failing to purchase workers
15 compensation insurance for their employees; and

16 xxix. Labor Code §2810.5 for failing to provide California AI Trainers with
17 written notice, at the time they were hired, with all of the information
18 required by Labor Code §2810.5(a)(1).

19 92. With respect to violations of Labor Code § 226.8, Labor Code § 226.8(b) imposes a
20 civil penalty of not less than \$5,000 and not more than \$15,000 for each violation, in addition to any
21 other penalties or fines permitted by law. Labor Code § 226.8(c) imposes a civil penalty of not less
22 than \$10,000 and not more than \$25,000 for each violation if the court determines that the employer
23 engaged in a pattern or practice of violations, in addition to any other penalties or fines permitted by
24 law;

25 93. With respect to violations of Labor Code §§1194, 1197 and 1197.1, Labor Code
26 §1197.1 imposes a civil penalty in addition to any other penalty provided by law of one hundred
27 dollars (\$100) for initial violations for each underpaid employee for each pay period for which the
28 aggrieved employee was underpaid in addition to an amount sufficient to recover underpaid wages,

1 and two hundred and fifty dollars (\$250) for subsequent violations for each underpaid employee for
2 each pay period for which the aggrieved employee was underpaid in addition to an amount sufficient
3 to recover underpaid wages. Moreover, Plaintiff seeks civil penalties in the amount of unpaid wages
4 owed to aggrieved employees pursuant to Labor Code §1197.1(a)(3). Plaintiff also seeks liquidated
5 damages in an amount equal to the unpaid wages owed to aggrieved employees and interest thereon
6 pursuant to Labor Code §1194.2(a).

7 94. With respect to violations of Labor Code §§510 and 1198, Labor Code §558 imposes
8 a civil penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial
9 violations for each underpaid employee for each pay period for which the aggrieved employee was
10 underpaid in addition to an amount sufficient to recover underpaid wages, and one hundred dollars
11 (\$100) for subsequent violations for each underpaid employee for each pay period for which the
12 aggrieved employee was underpaid in addition to an amount sufficient to recover underpaid wages.
13 Moreover, Plaintiff seeks civil penalties in the amount of unpaid wages owed to aggrieved employees
14 pursuant to Labor Code § 558(a)(3).

15 95. With respect to violations of Labor Code §§226.7 and 512, Plaintiff seeks, in addition
16 to any other penalty provided by law, civil penalties in the amount of one additional hour of pay at
17 the aggrieved employee's regular rate of compensation for each work day that the meal or rest period
18 is not provided to Labor Code § 226.7(b).

19 96. With respect to violations of Labor Code §§201 to 204, Plaintiff seeks, in addition to
20 any other penalty provided by law, civil penalties in the amount of one day of each aggrieved
21 employee's wages for each calendar day that they remain unpaid, up to a maximum of thirty (30)
22 days, pursuant to Labor Code §203.

23 97. With respect to violations of Labor Code §§204(a) and 204(b), Labor Code §210
24 imposes a civil penalty in addition to any other penalty provided by law of one hundred dollars (\$100)
25 for each initial failure to pay each aggrieved employee, and two hundred dollars (\$200) for each
26 failure to pay each aggrieved employee, plus 25% of the amount unlawfully withheld.

27 98. With respect to violations of Labor Code § 226(a), Labor Code §226.3 imposes a civil
28 penalty, in addition to any other penalty provided by law, of two hundred fifty dollars (\$250) per

1 aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved employee
2 for each subsequent violation of Labor Code § 226(a).

3 99. With respect to violations of Labor Code §1174, Labor Code §1174.5 imposes a civil
4 penalty of \$500.

5 100. With respect to violations of Labor Code §246, Labor Code §248.5 imposes a civil
6 penalty, in addition to any other penalty provided by law, the dollar amount of paid sick days withheld
7 from the aggrieved employee multiplied by three, or two hundred fifty dollars (\$250), whichever
8 amount is greater, but not to exceed an aggregate penalty of four thousand dollars (\$4,000) per
9 aggrieved employee. Additionally, Labor Code §248.5(e) provides that any person or entity enforcing
10 this article on behalf of the public as provided for under applicable state law shall be entitled to recover
11 “equitable, injunctive, or restitutionary relief, and reasonable attorney’s fees and costs,” which are all
12 sought by Plaintiff on behalf of himself and other similarly aggrieved employees.

13 101. With respect to violations of Labor Code §223, Labor Code §225.5 imposes a civil
14 penalty of one hundred dollars (\$100) for each failure to pay each employee and for each subsequent
15 violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay
16 each employee, plus 25 percent of the amount unlawfully withheld.

17 102. With respect to violations of Labor Code §3700, Labor Code §3700.5 provides for a
18 penalty of double the amount of premium, as determined by the court, that would otherwise have been
19 due to secure the payment of compensation during the time compensation was not secured, but not
20 less than ten thousand dollars (\$10,000);

21 103. Labor Code § 2699 et seq. imposes a civil penalty of one hundred dollars (\$100) per
22 pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) pay period,
23 per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil
24 penalty is not specifically provided, including, but not limited to, Labor Code §§ 221, 233,234, 300,
25 432.5, 551, 552, 558, 925, 1174, 1182.12, 2750.3, 2800, 2802, and 2810.5.

26 104. Plaintiff reserves his right to allege any additional and all other violations of the Labor
27 Code and the Wage Order as may be disclosed in discovery and as a result of additional investigation
28 that may be pursued in this action.

105. Plaintiff was compelled to retain the services of counsel to file this court action to protect their interests and those of Defendants' other former and current California AI Trainers, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which he is entitled to recover under Labor Code §2699.

(California Labor Code §§233 and 234)

(Against All Defendants)

106. Labor Code §233(c) prohibits an employer from denying an employee the right to use sick leave or discharging, threatening to discharge, demoting, suspending, or in any manner discriminating against an employee for using, or attempting to exercise the right to use, sick leave.”

107. Labor Code §234 further forbids employers from adopting an “absence control policy that counts sick leave taken pursuant to Section 233 as an absence that may lead to or result in discipline, discharge, demotion, or suspension is a per se violation of Section 233.

108. An employee who is aggrieved by an employer's violation of Labor Code §233(c) or §234, is entitled to reinstatement and actual damages or one day's pay, whichever is greater, and to appropriate equitable relief under Labor Code section 233(d).

109. Business & Professions Code §17200,

110. Business & Professions Code §16600.1(c), a violation of Business & Professions Code §16600. constitutes an act of unfair competition within the meaning of Business & Professions Code §17200, *et. seq.*

111. As Defendants have violated Business & Professions Code §16600.1 by failing to provide notice to all California Employees and Former Class Members by February 14, 2024, Defendants have violated Business & Professions Code §17200, *et. seq.*

112. As a result, the Class Members have no other legal remedy but to seek equitable relief under Business & Professions Code §17200, *et. seq.* for a violation of Business & Professions Code §16600 (as specifically stated in Business & Professions Code §16600.1) as there is no other legal remedy available to Class Members for Defendant's violation of Business & Professions Code §16600.1 other than Business & Professions Code §17200, *et. seq.* See Business & Professions Code §16600.1(c).

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff seeks judgment against Defendants, and each of them, in an amount
3 according to proof, as follows:

4 1. For an order declaring that Defendants' conduct violate the statutes and laws
5 referenced herein;

6 2. For an order finding in favor of Plaintiff and all Aggrieved Employees on all counts
7 asserted herein;

8 3. For all liquidated damages and statutory penalties authorized or required by law;

9 4. For an award to Plaintiff and the Aggrieved Employees of their reasonable costs of
10 suit, attorneys' fees, and expert witness fees under all applicable statutory basis, including, but not
11 limited to, Labor Code §2699(g)(1); and

12 5. For such other and further relief as this Court may deem just and proper.
13

14 DATED: April 1, 2025

Respectfully submitted,

15 **VALLES LAW, P.C.**

16 

17 By: _____

18 Daniel Valles
Kayla Rathjen

19 Attorneys for Plaintiff
20 AUGUSTINE BARRY, ON BEHALF OF
21 HIMSELF, AND ALL OTHERS SIMILARLY
22 SITUATED
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DEMAND FOR JURY TRIAL

Plaintiff Augustine Barry, on behalf of himself, the Class Members, and all others similar situated, hereby demands a jury trial on all issues so triable.

DATED: April 1, 2025

Respectfully submitted,

VALLES LAW, P.C.

By: 

Daniel Valles
Kayla Rathjen

Attorneys for Plaintiff
AUGUSTINE BARRY, ON BEHALF OF
HIMSELF, AND ALL OTHERS SIMILARLY
SITUATED