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September 29, 2025

<u>Via Online Filing</u>
California Labor & Workforce Development Agency
Attn: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, California 94102

Re: ***Michael Cox v. Mercor.io Corporation and OpenAI, Inc.***

Dear PAGA Administrator:

We represent Michael Cox ("Claimant") in connection with his employment by Mercor.io Corporation and OpenAI, Inc. ("Respondents"). Pursuant to Labor Code § 2699.3(a), we are providing written notice that Respondents are in violation of various provisions of the California Labor Code. Claimant intends on filing a complaint against Respondents in the Santa Barbara County Superior Court pursuant to California Labor Code §2699 on behalf of himself and all misclassified employees who worked for Respondents in California during the statutory period ("Aggrieved Employees"). Respondents are involved in the staffing and artificial intelligence business.

Respondent Mercor.io ("Mercor") is essentially a staffing company that places "experts" with prominent technology firms, such as OpenAI, Meta and Google. For example, Claimant was hired as a "Finance Expert" and "Senior Domain Expert." As a Finance Expert, Claimant was responsible for training, testing and calibrating AI agents on complex financial tasks, such as budgeting, forecasting, variance analysis, cash flow modeling and strategic financial planning. He was training artificial intelligence to fill in gaps in knowledge in certain areas as a way of refining the quality of future responses.

OpenAI is using Mercor to launder illegal practices, creating an underground economy of workers who are misclassified as independent contractors even though they are extensively controlled and directed by both Mercor and OpenAI. By using an intermediary that is willing to engage in obvious and extensive illegal conduct, OpenAI is able to substantially reduce the costs of its labor, eliminating basic protections of the Labor Code, health insurance obligations, 401K contributions, worker's compensation expenses, regulatory requirements and tax obligations. This scheme results in OpenAI and Mercor completely avoiding exposure for payroll tax, resulting in a windfall of savings that are disingenuously passed on to the misclassified "contractors."

The scheme is so clumsy and so apparent to anyone with sophistication in these matters, that the only logical inference to be drawn is that OpenAI is aware of Mercor's business model, which is premised on illegality, misclassification, tax avoidance, and comprehensive lack of compliance with the California Labor Code.

Claimant's initial assignment with Mercor was on or about November 22, 2024. He was hired as a "Finance Hiring Expert (Contractor)". The assignment was expected to continue through April 4, 2025. The job description was as follows: "As a contractor at Mercor, you will be responsible for reviewing and engaging with AI outputs for a Mercor client."

In connection with the hiring, Mercor required Claimant to sign a "Worker Agreement," which brazenly described Claimant as an "independent contractor."[1] This designation was in bad faith and willfully violated the Labor Code. Specifically, Labor Code §2775, which codifies the "ABC Test" for determining worker status, provides as follows:

"For purposes of this code and the Unemployment Insurance Code, and for the purposes of wage orders of the Industrial Welfare Commission, a person providing labor services for renumeration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that ***all*** of the following conditions are satisfied:

A) The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.
B) The person performs work that is outside the usual course of the hiring entity's business.
C) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

These requirements present substantial problems for Mercor and OpenAI. For example, the contract falsely indicates that Mercor will not supervise the "contractor's" services, but almost all of the contractors are initially novices when they perform these initial assignments. That is, the aggrieved employees may have expertise in accounting, or finance or some other discipline, but the art of teaching artificial intelligence to improve is a very discrete skill set that required Mercor and/or OpenAI to train these individuals how to do the job in the first place. Open AI provides workers with extensive instructions to direct how the work should be accomplished.

Moreover, Mercor and OpenAI exerted extraordinary control over the aggrieved employees. The "independent contractor" arrangement was rendered farcical as soon as the aggrieved employees learned that they were required to install an application on their personal computers that was so intrusive it would literally alert the worker if a few minutes went by without any typing, scrolling or clicking—querying whether the worker was still engaged. If the worker tried to source information for the assignment through a website, then he or she was prompted to explain why that particular website was related to the assignment. Claimant was once chided for being on YouTube and had to explain that it was work-related research. Even so, the level of surveillance was so intrusive as to trivialize the notion that this was a legitimate independent contractor relationship.

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[1] All of Claimant's assignments with Mercor, including those with OpenAI were subject to the same independent contractor agreement.

Mountains of evidence from slack communications and electronic mail establish that Mercor and OpenAI directed workers on a daily basis—and frequently with urgency. The manner of the work was coached, the workers were trained in what amounted to a new discipline, non-negotiable deadlines were implemented and mandatory meetings at specific times were frequent. Significantly, Mercor even elevated some workers to training positions, where they would direct and counsel lower level Mercor employees on their work product, effectively formalizing a supervisory arrangement.

With regard to Part "B" of the "ABC Test," Claimant clearly performed work that was part and parcel of OpenAI's usual course of business. That is, OpenAI is an artificial intelligence company that seeks to improve its processes to make its services more useful and valuable. That process includes refining ChatGPT through some human instruction and testing as a way of refining the application's ability to provide the best information possible in a variety of different disciplines. The work that Claimant and other experts did in this connection was central to the company's mission and a core need. These were not individuals who were performing work unrelated to AI, such as providing plumbing services or janitorial services for the company; rather these were individuals providing AI services to an AI company. There is no coherent defense to Part B of the Test.

The same problem exists to an even greater degree with Part "C". Claimant was not customarily engaged as an AI Trainer prior to his relationship with Mercor. Indeed, this was an entirely new kind of work. This was true with regard to virtually every aggrieved employee, who were recruited due to expertise in another discipline—not as AI Training Experts. Further, Claimant had no independently established business or trade as an AI Trainer. Again, there is no coherent defense to Part "C".

It's clear that Mercor, collaboration with OpenAI, deliberately misclassified Claimant and perhaps hundreds of California workers. In doing so, they skirted their obligations to pay employer payroll tax contributions, shifting that burden to the workers. There was a deliberate effort to evade social security tax, as well as payments to the Employment Development Department and the California Franchise Tax Board. This has real life implications, because when these contractors are discarded after Chat GPT swallows up the information provided they become potentially expendable and are let go. However, since they were misclassified, they are ghosts in the EDD system and cannot make claims for unemployment benefits or disability benefits. In the aggregate, this likely cost the workforce several million dollars in benefits.

The same is true for worker's compensation benefits. Labor Code §3700 states the following:

"Every employer except the state shall secure the payment of compensation in one or more of the following ways: . .. (a) by being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state."

This is no trivial matter, as the aggrieved employees are typing and sitting down for long periods, which make them vulnerable to carpal tunnel, orthopedic complaints and other injuries associated with sedentary work. The Labor Code emphasizes how serious a violation this is through the severity of the penalty for non-compliance:

"The failure to secure payment of compensation required by this article . . . is a misdemeanor punishable by imprisonment in the county jail for up to one year. . . a second or subsequent conviction shall be punished by imprisonment in the county jail for a period not to exceed one year, by a fine of double the amount of premium."

The failure to provide worker's compensation insurance to hundreds of aggrieved employees, however, is only the tip of the iceberg. The State of California has very strong disincentives that are designed to encourage employers to conduct legal operations rather than race to the bottom in an effort to make profits. Labor Code §226.8 lays out the consequences in stark terms:

(a) It is unlawful for any person or employer to engage in any of the following activities:

(1) Willful misclassification of an individual as an independent contractor.

"If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars ($10,000) and not more than twenty-five thousand dollars($25,000) ***for each violation***, in addition to any other penalties or fines permitted by law."

Here, the misclassification is so brazen as to almost, by definition, constitute willful misclassification. And Claimant is not a "one off" anomaly. Rather, there are hundreds more like him, all of whom have been misclassified. As a result, there is a "pattern and practice" of misclassification, and the $25,000 per violation comes into play. The math on this is daunting. For example, 500 misclassifications translate to a potential penalty of $12,500,000. Even the minimum penalty would amount to $5,000,000.

The State goes further, however, in describing how seriously it takes misclassifications:

"If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has violated subdivision (a), the agency or court, in addition to any other remedy that has been ordered **shall order the person or employer to display prominently on its internet website, in an area which is accessible to all employees and the general public, or, if the person or employer does not have an internet website, to display prominently in an area that is accessible to all employees and the general public** at each location where a violation of subdivision (a) occurred, a notice that sets forth all of the following:

(1) That the Labor and Workforce Development Agency or a court, as applicable, has found that the person or employer has committed a serious violation of the law by engaging in the willful misclassification of employees.

(2) That the person or employer has changed its business practices in order to avoid committing further violations of this section.

(3) That any employee who believes that they are being misclassified as an independent contractor may contact the Labor and Workforce Development Agency. The notice shall include the mailing address, email address, and telephone number of the agency.

(4) That the notice is being posted pursuant to a state order.

(f) In addition to including the information specified in subdivision (e), a person or employer also shall satisfy the following requirements in preparing the notice:

(1) An officer shall sign the notice.

Compounding matters, the Respondents required Claimant and hundreds of other aggrieved employees to subsidize its business by using their home offices, internet connectivity, data plans and cell phones to conduct company business, with no reimbursement. This is a violation of Labor Code §2802 and subjects the Respondents to liability of $100 per employee per pay period.

The Respondents fail to track working hours and meal periods, which is a violation of Labor Code §1174, subjecting the Respondents to a civil penalty of $500 for each employee per pay period. The aggrieved employees are hourly, but don't receive paystubs with hours worked, rates of pay, overtime rates, sick time accrual and other required information, in violation of Labor Code §226(a), 226.3 and 246. Indeed, no sick pay is offered at all, in flagrant violation of California's sick leave protections.

The aggrieved employees are not advised of their meal and rest period rights, and thus there is no guarantee to either, resulting in repeated violations under Labor Code §226.7 and 512.

The aggrieved employees are paid at a straight time rate, even for overtime hours, in violation of the basic overtime protections set forth in Labor Code §510 and 1194. As a result of these incomplete payments, there is the derivative effect of failing to pay employees on time. This occurs with regularity during the pay cycle, where the timing requirements of Labor Code §204 are ignored, as are the penalty provisions of 25% of the late wages, as set forth in Labor Code §210. The immediate payment requirements at termination are also flaunted, which results in penalties pursuant to Labor Code §201-203. The statutory penalties for the waiting time penalties, which amount to the daily rate of pay multiplied by 30 days, are staggering. By and large the aggrieved employees are being paid at least $500 per day, so the associated penalty is $15,000 per termination. And there are apparently many terminations *per employee* because these assignments are constantly ending and start up again at some other undefined time. If there are hundreds of terminations, then it would mean there are millions of dollars in waiting time penalties. While the civil penalties are limited, the statutory penalties could amount to $20,000,000 or more in the aggregate given the repeated terminations that occur.

As indicated earlier in this brief, Mercor was not the only bad actor—this is part of a cooperative plan that was only made possible by OpenAI's endorsement an active participation in this illegal scheme. OpenAI directed Claimant's work and as a joint employer is responsible for all of the Labor Code violations described in this letter. OpenAI is deliberately laundering illegal wage and hour practices through Mercor, and in so doing is obtaining an unfair competitive advantage over other companies who are playing by the rules. Essentially, by cutting out taxes, worker's compensation insurance, the entire California Labor Code, remote working expenses and a host of related costs, OpenAI is able to obtain labor at a much lower rate than would be possible in a legitimate open market search for appropriately classified employees. Open AI knows this is an issue and there are other pending class actions in the AI industry regarding this same phenomenon that could not possibly have escaped OpenAI's attention, and yet it persists in running a large scale underground economy.

OpenAI and Mercor also conspire to engage in anti-competitive practices. Mercor directly prevents free competition in its contact with Claimant and other aggrieved employees, and OpenAI prevents employees who have worked on its projects from working for competitors through the leverage it exerts over Mercor.

As a condition of his employment, Claimant and hundreds of aggrieved employees were required to enter into "Protective Covenant Agreements" which contained blatantly illegal non-compete terms. Compounding matters, the Agreement placed affirmative obligations on Claimant to notify competitors of the non-compete and to seek Respondent's permission to work for a competitor. This contract is in stark violation of Business & Professions Code §16600

Under Labor Code §432.5, "no employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof, to be prohibited by law."

The Respondent required its employees, including Claimant, to enter into illegal non-compete agreements as a condition of employment, in violation of Labor Code §432.5. Then, the Respondent violated the law by failing to timely notify all of its California employees, including formers employed after January 1, 2022, that the non-compete agreements were void. This constituted a violation of Business & Professions Code §16600.1. There is a violation of the Labor Code for each employee who was asked to enter into non-compete agreements. Moreover, there is, in the aggregate, large scale damages for the Respondents' efforts to illegally restrict competition, which harmed all employees who were subject to the terms.

Claimant gives this notice as required by law. Employer and/or the LWDA may take corrective action and/or the Agency may initiate an investigation. In the event that the LWDA declines to investigate in the proscribed time, Claimant will initiate a Cause of Action seeking penalties under the PAGA. Pursuant to Labor Code § 2699.3(a)(1), Claimant will serve the same written notice to Respondents' agents for service of process by certified mail.

Very truly yours,
Law Offices of Buchsbaum & Haag, LLP

Brent S. Buchsbaum
Attorney

CC: VIA CERTIFIED MAIL

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