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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF SAN FRANCISCO**

14 AMBER ROGOWICZ, in her representative
15 capacity on behalf of other aggrieved employees,

16 Plaintiff,

17 vs.

18 SMART ECOSYSTEM, INC. D/B/A OUTLIER,
19 a Delaware corporation, SCALE AI, INC., and
20 DOES 1 through 50, inclusive,

21 Defendants.

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

01/03/2025
Clerk of the Court
BY: SAHAR ENAYATI
Deputy Clerk

Case No.: **CGC-25-621144**

INITIAL COMPLAINT

Representative Action-

**Violation of the Labor Code Private
Attorneys General Act of 2004, California
Labor Code § 2698 et seq.**

1 **I. PRELIMINARY STATEMENT**

2 1. This is a representative action pursuant to the Labor Code Private Attorneys General Act of
3 2004, California Labor Code § 2698, *et seq.* (“PAGA”), brought by Plaintiff Amber Rogowicz on
4 behalf of the State of California, on her own behalf, and on behalf of all aggrieved employees
5 described below. Plaintiff and other aggrieved employees are or were employed by Scale AI, Inc.,
6 and/or its subsidiary Smart Ecosystem, Inc. d/b/a Outlier. Scale AI is a privately held corporation,
7 headquartered in San Francisco and doing business throughout California, that provides labeled data
8 used to train generative artificial intelligence (“AI”) applications.

9 2. Plaintiff and the workers who perform generative AI data labeling duties, which includes
10 “Generative AI Annotators,” “Prompt Engineers,” “Generalists,” and “Subject Matter Experts”
11 (together, “Annotators”), are and were non-exempt employees under California wage-and-hour law
12 and are entitled to the protection of the California Labor Code.

13 3. The Labor Code requires employers to provide to their employees accurate itemized wage
14 statements, meal and rest periods, paid sick leave, compensation for all hours worked, minimum
15 wages, overtime wages, and the prompt payment of all wages due upon termination. Defendants
16 failed to comply with these Labor Code requirements because they willfully misclassified Plaintiff
17 and other Annotators as independent contractors rather than employees.

18 4. Plaintiff seeks civil penalties for the above acts, which violate the California Labor Code,
19 under PAGA, California Labor Code § 2698, *et seq.*

20 **II. THE PARTIES**

21 5. Plaintiff Amber Rogowicz worked for Defendants as an Annotator between March 6, 2024
22 and June 11, 2024. She was classified as an “independent contractor” by Defendants. She performed
23 her services in San Diego, California.

24 6. Plaintiff brings her claims in her representative capacity and on behalf of other aggrieved
25 employees.

26 7. Defendant Scale AI, Inc. is a privately held corporation headquartered in San Francisco. It
27 provides labeled data used to train generative AI applications. In May 2024, its valuation reached
28 \$14 billion dollars.

1 8. Defendant Smart Ecosystem, Inc. d/b/a Outlier is a subsidiary of Scale AI. Outlier is a
2 platform through which Annotators perform the work of data labeling.

3 9. Defendants Does 1-50, inclusive, are sued herein under fictitious names. Their true names
4 and capacities are unknown to Plaintiff. When their true names and capacities are ascertained,
5 Plaintiff will amend this complaint by inserting their true names and capacities herein. Plaintiff is
6 informed and believes and thereon alleges that each of the fictitiously named Defendants are
7 responsible in some manner for the occurrences herein alleged, and that the damages of Plaintiff
8 and other Annotators herein alleged were proximately caused by such Defendants.

9 10. Plaintiff is informed, believes, and thereon alleges that each Defendant herein was at all
10 times relevant to this action the agent, employee, representative partner, and/or joint venturer of the
11 remaining Defendants and was acting within the course and scope of this relationship. Plaintiff is
12 further informed, believes, and thereon alleges that each of the Defendants herein gave consent to,
13 ratified, and authorized the acts alleged herein to the remaining Defendants.

14 **III. VENUE**

15 11. Venue is proper in San Francisco County under California Code of Civil Procedure sections
16 395(a) and 395.5, because the principal place of business of Defendant Scale AI, Inc. is situated in
17 San Francisco County.

18 **IV. ALLEGATIONS**

19 12. Plaintiff and other Annotators performed the work of generative AI data labeling through
20 Defendants' virtual platforms, including the Outlier website.

21 13. Plaintiff and other Annotators received "Tasks" through these virtual platforms. Each Task
22 was associated with a particular "Project," and all the Projects were part and parcel of Defendants'
23 core business of delivering training data for AI applications. Defendants had complete control over
24 Annotators' work: Annotators could perform only the Tasks assigned to them, only at the times
25 Tasks became available. Annotators were compensated at an hourly rate for successfully completing
26 Tasks according to specifications provided by Defendants.

27 14. Tasks performed by Annotators fall into two main categories: "Attempter" and "Reviewer."
28 As Attempters, Annotators would read the responses of AI models to certain prompts. Using

specific quality criteria and rubrics provided by Defendants, as detailed in the Project instructions, they would rate these responses, e.g., from one to ten. They would then type brief justifications for their ratings, again using Defendants' specific criteria.

15. As Reviewers, Annotators would rate and edit the work of Attempters strictly according to Defendants' specifications.

16. Annotators could be removed from Projects or have their accounts deactivated for failing to follow Defendants' specifications to the letter.

17. Plaintiff and Annotators were not free from the control and direction of Defendants in connection with the performance of their data labeling and/or reviewing work.

18. Defendant Scale AI provides generative AI companies with data that improves their generative AI models, a technique known as Reinforcement Learning with Human Feedback ("RLHF"). Specifically, Defendants supply human labor to affix labels to data, following Defendants' strict instructions. Defendant Outlier is one of the platforms that Scale AI uses to produce this RLHF data-labeling product using the Annotators. As such, the work performed by Plaintiff and Annotators is squarely within the usual course of Defendants' business.

19. Plaintiff is not customarily engaged in an independently established trade, occupation, or business of the same nature as the work she performed for Defendants. She did not label RLHF data sold to generative AI companies outside of her work for Defendants.

20. Plaintiff and Annotators did not have the power to hire and fire, did not manage others, did not set policy for Defendants, nor otherwise direct Defendants' business operations.

21. Plaintiff and Annotators also worked extensive time for Defendants' benefit off the clock, without any compensation, as described in the examples below:

Review of Instructions

Each Project had a set of detailed instructions and guidelines, provided by Defendants. To complete Tasks, Annotators were required to thoroughly review these instructions. Because instructions for a given Project were often modified over the course of the Project, Annotators would have to review the instructions regularly to ensure that they completed their Tasks exactly in accordance with the latest specifications. Yet, Plaintiff and Annotators were not compensated for the time they spent

1 reviewing Project instructions. This work was performed primarily for the benefit of Defendants,
2 and Defendants suffered or permitted it to occur.

3 **Training with Project Leaders**

4 For some Projects, “Project Leaders” held training meetings where they provided Annotators with
5 additional rules and requirements, beyond the written instructions for the given Project. Through
6 communication platforms such as Slack channels, Project Leaders would notify Annotators about
7 upcoming training meetings. Often, Project Leaders held these training meetings at irregular times,
8 requiring Annotators to periodically monitor their Slack channels for “popup” meetings.

9 Plaintiff and Annotators were not compensated for the time they spent attending Project Leader
10 training meetings or monitoring their communication platforms for “popup” meetings. Again, this
11 work was performed primarily for the benefit of Defendants, and Defendants suffered or permitted
12 it to occur.

13 **Training with Pod Leaders**

14 In some cases, Defendants assigned an Annotator to a “Pod” of about 20 other Annotators, with one
15 “Pod Leader.” Through communication platforms such as Slack channels, Pod Leaders would
16 notify Annotators when Tasks became available and held daily virtual training meetings.

17 Plaintiff and Annotators were not compensated for the time they spent attending Pod training
18 meetings. Yet again, this work was performed primarily for the benefit of Defendants, and
19 Defendants suffered or permitted it to occur.

20 **Incomplete Tasks**

21 When an Annotator would begin a Task, the Annotator would be required to complete it
22 successfully within an allotted time. If Annotators failed to do so, they would not be compensated
23 for the time spent working on the Task, even though their work on the Task was entirely for
24 Defendants’ benefit.

25 **Other Preliminary Tasks**

26 Additionally, Annotators sometimes had to type the prompts to be used for a Task, following
27 Defendants’ detailed specifications, prior to formally beginning the Task. Plaintiff and Annotators
28

1 were not compensated for this time, even though the work was performed primarily for the benefit
2 of Defendants, and Defendants suffered or permitted it to occur.

3 22. Plaintiff and Annotators were compensated for only about half of their compensable time.

4 On a typical day, Plaintiff worked about ten (10) hours. However, Plaintiff was compensated
5 for only about five (5) of these hours per day.

6 23. Prior to April 23, 2024, Plaintiff was paid at a rate of thirty-four dollars (\$34) per hour.
7 However, beginning on or around April 23, 2024, Plaintiff and other Annotators were demoted to a
8 rate of thirty dollars (\$30) per hour.

9 24. Because Plaintiff was compensated for only about half of her compensable time, Plaintiff
10 was effectively paid at a rate of fifteen dollars (\$15) per hour beginning on or around April 23,
11 2024. Upon information and belief, other Annotators were paid at the same or a lower rate within
12 the past year.

13 25. Defendants have willfully and knowingly failed to pay premium overtime compensation to
14 Plaintiff and Annotators for hours worked in excess of eight hours per day.

15 26. Upon information and belief, Defendants have never properly paid reimbursements to
16 Plaintiff and Annotators for job-related expenses, such as internet and phone charges and computer
17 software and hardware.

18 27. Defendants implemented no policy to provide an uninterrupted, thirty-minute meal period to
19 Plaintiff and Annotators who worked more than five hours in a day.

20 28. Defendants implemented no policy to provide a second thirty-minute meal period to Plaintiff
21 and Annotators who worked more than ten hours in a day.

22 29. Defendants implemented no policy to make available a ten-minute rest period to Plaintiff
23 and Annotators who worked more than 3.5 hours, or a second ten-minute break after six hours.

24 30. Defendants failed to separately pay Plaintiff and Annotators for ten-minute rest periods. *See*
25 *Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal. App. 5th 98.

26 31. Upon information and belief, Defendants have never paid a single meal or rest period
27 premium for missed meal or rest periods to Plaintiff and Annotators, as required under California
28 Labor Code § 226.7 and Industrial Welfare Commission (“IWC”) Wage Orders.

32. Upon information and belief, Plaintiff and Annotators never signed valid meal period waivers.

33. Plaintiff and Annotators who worked for Defendants for 30 or more days did not accrue paid sick leave, as required under California Labor Code § 246.

34. Defendants have willfully and knowingly failed to pay Plaintiff and Annotators, upon termination or resignation of employment, all accrued compensation, including payment of missed meal/rest period compensation, separate compensation for ten-minute paid rest periods, and payment of unpaid overtime and minimum wage compensation.

35. Defendants have failed to itemize the total hours worked, overtime hours, and missed meal and rest periods on wage statements furnished to Plaintiff and Annotators.

V. ADMINISTRATIVE EXHAUSTION

36. Plaintiff has provided notice pursuant to California Labor Code § 2699.3, and on October 29, 2024, asked the California LWDA if it intended to investigate alleged Labor Code violations, as set forth in the letter attached hereto as Exhibit A (“PAGA Notice”).

37. Over sixty-five days have passed since the electronic filing date of Plaintiff’s notice to the California LWDA, and the Agency has not provided notice to Plaintiff regarding its intention to investigate the alleged violations. As such, pursuant to California Labor Code § 2699.3(a)(2)(A), Plaintiff has exhausted her notice requirements and seeks penalties under California Labor Code § 2698, *et seq.*

VI. CAUSE OF ACTION

VIOLATION OF THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT

(“PAGA”) (California Labor Code § 2698 *et seq.*)

**(ON BEHALF OF THE STATE OF CALIFORNIA, PLAINTIFF, AND OTHER
AGGRIEVED EMPLOYEES)**

38. Plaintiff, on behalf of the State of California, herself, and other aggrieved employees, incorporates by reference in this cause of action each allegation of the preceding paragraphs as though fully set forth herein.

1 39. PAGA, California Labor Code § 2698, *et seq.*, enables a Court to award civil penalties for
2 violations of the Labor Code that, prior to the Act, could be assessed and collected only by the
3 Labor and Workforce Development Agency (“LWDA”).

4 40. Plaintiff exhausted her notice requirements under §2699.3.

5 41. Under California Labor Code § 2699(g)(1), Defendants are liable for attorneys’ fees and
6 costs with respect to the violations alleged herein.

7 42. Accordingly, on behalf of herself and all other aggrieved employees, who have worked for
8 Defendants at any time since one year prior to the filing of the PAGA Notice to the trial in this
9 action, Plaintiff alleges as follows:

10 **A. Willful Misclassification**

11 43. By willfully misclassifying Plaintiff and other aggrieved employees as independent
12 contractors as alleged above, Defendants have, as a pattern or practice, violated California Labor
13 Code § 226.8(a)(1).

14 44. Under California Labor Code § 226.8(c), Defendants are subject to a civil penalty of not less
15 than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for
16 each aggrieved employee Defendants misclassified as an independent contract in violation of Labor
17 Code § 226.8(a), in addition to any other penalties or fines permitted by law.

18 **B. Failure to Provide Compensation for All Hours Worked**

19 45. The IWC Wage Orders define “hours worked” to include all time an employee is suffered or
20 permitted to work, whether or not required to do so.

21 46. By failing to compensate Plaintiff and other Annotators for all hours worked as alleged
22 above, Defendants violated the IWC Wage Orders.

23 47. California Labor Code § 558 imposes civil penalties, in addition to any other civil or
24 criminal penalties provided by law, upon any employer or other person acting on behalf an
25 employer who violates a section of Division 2, Part 2, Chapter 1 of the Labor Code or any provision
26 regulating hours and days of work in any IWC Wage Order. Under California Labor Code § 558,
27 Defendants are subject to a penalty of: (1) for an initial violation, fifty dollars (\$50) for Plaintiff and
28 each aggrieved employee for each pay period for which the employee was not compensated for all

1 hours worked; (2) for each subsequent violation, one hundred dollars (\$100) for Plaintiff and each
2 aggrieved employee for each pay period for which the employee was not compensated for all hours
3 worked.

4 **C. Failure to Pay Minimum Wages**

5 48. Under the IWC Wage Orders, all employers, regardless of the number of employees, are
6 required to pay each employee: (a) Sixteen dollars and fifty cents (\$16.50) per hour for all hours
7 worked, effective January 1, 2025; (b) Sixteen dollars (\$16.00) per hour for all hours worked,
8 effective January 1, 2024; and (c) Fifteen dollars and fifty cents (\$15.50) per hour for all hours
9 worked, effective January 1, 2023.

10 49. By failing to pay minimum wages to Plaintiff and Annotators as alleged above, Defendants
11 violated the IWC Wage Orders.

12 50. Under California Labor Code § 11971.1(a), Defendants are subject to a penalty of: (1) for an
13 initial violation, one hundred dollars (\$100) for Plaintiff and each aggrieved employee for each pay
14 period in which the employee was not provided minimum wages; (2) for each subsequent violation,
15 two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the
16 employee was not provided minimum wages.

17 51. Under California Labor Code § 558, described above, Defendants are subject to a penalty of:
18 (1) for an initial violation, fifty dollars (\$50) for Plaintiff and each aggrieved employee for each pay
19 period for which the employee was not provided minimum wages; (2) for each subsequent
20 violation, one hundred dollars (\$100) for Plaintiff and each aggrieved employee for each pay period
21 for which the employee was not provided minimum wages.

22 **D. Failure to Pay Overtime Wages**

23 52. By failing to pay overtime compensation to Plaintiff and Annotators as alleged above,
24 Defendants have violated California Labor Code § 1194 and the IWC Wage Orders, which require
25 overtime compensation for non-exempt employees.

26 53. Under California Labor Code § 2699(a), any provision of the Labor Code that provides a
27 penalty to be assessed and collected by the LWDA may be recovered through a civil action. Under
28 California Labor Code § 2699(f)(2), which provides a civil penalty for those violations of the Labor

1 Code which lack a corresponding statutory penalty, Defendants are subject to a civil penalty of one
2 hundred dollars (\$100) for Plaintiff and each aggrieved employee per pay period for the initial
3 violation of Labor Code § 1194 for failing to pay all overtime due, and two hundred dollars (\$200)
4 for Plaintiff and each aggrieved employee per pay period for each subsequent violation of Labor
5 Code § 1194 for failing to pay all overtime due.

6 54. Under California Labor Code § 558, described above, Defendants are subject to a penalty of:
7 (1) for an initial violation, fifty dollars (\$50) for Plaintiff and each aggrieved employee for each pay
8 period for which the employee was not paid appropriate overtime compensation under California
9 Labor Code § 510; (2) for each subsequent violation, one hundred dollars (\$100) for Plaintiff and
10 each aggrieved employee for each pay period for which the employee was not paid appropriate
11 overtime compensation under California Labor Code § 510.

12 **E. Failure to Provide Reimbursement of Business Expenses**

13 55. While acting on the instructions of Defendants and discharging their duties for them,
14 Plaintiff and Annotators have incurred work-related expenses. Such expenses include, but are not
15 limited to, internet plans, phone charges, and use of computer software and hardware. Plaintiff and
16 Annotators incurred these substantial expenses and losses as a direct result of performing their job
17 duties for Defendants.

18 56. Defendants have failed to properly indemnify Plaintiff and other Annotators for these
19 expenditures and losses. By requiring these employees to pay expenses and cover losses that they
20 incurred in direct consequence of the discharge of their duties for Defendants and/or in obedience of
21 Defendants' direction without properly indemnifying for these losses, Defendants have violated
22 California Labor Code § 2802.

23 57. By unlawfully failing to properly indemnify Plaintiff and other aggrieved employees for
24 these expenditures and losses, Defendants are also liable for reasonable attorneys' fees and costs
25 under Labor Code § 2802(c).

26 58. As a direct and proximate result of Defendant's conduct, Plaintiff and other aggrieved
27 employees have suffered substantial losses according to proof, as well as pre-judgment interest,
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1 costs, and attorneys' fees for the prosecution of this action under California Code of Civil Procedure
2 § 1021.5, *inter alia*.

3 **F. Failure to Provide or Authorize Off-Duty Meal Periods**

4 59. Plaintiff and Annotators regularly worked in excess of five (5) hours a day without being
5 afforded at least a 30-minute uninterrupted meal period in which they were relieved of all duties, as
6 required by California Labor Code §§ 226.7 and 512 and the IWC Wage Orders.

7 60. Plaintiff and Annotators regularly worked in excess of ten (10) hours a day without being
8 afforded a second 30-minute uninterrupted meal period in which they were relieved of all duties, as
9 required by California Labor Code §§ 226.7 and 512 and the IWC Wage Orders.

10 61. Under California Labor Code § 2699(f)(2), described above, Defendants are subject to a
11 civil penalty of one hundred dollars (\$100) for Plaintiff and each aggrieved employee per pay
12 period for the initial violation of Labor Code § 226.7 for failing to provide meal periods, and two
13 hundred dollars (\$200) for Plaintiff and each aggrieved employee per pay period for each
14 subsequent violation of Labor Code § 226.7 for failing to provide meal periods.

15 62. Under California Labor Code § 558, described above, Defendants are subject to a civil
16 penalty of: (1) for an initial violation, fifty dollars (\$50) for Plaintiff and each aggrieved employee
17 for each pay period for which the employee was not provided a meal period under California Labor
18 Code § 512; (2) for each subsequent violation, one hundred dollars (\$100) for Plaintiff and each
19 aggrieved employee for each pay period for which the employee was not provided a meal period
20 under California Labor Code § 512.

21 **G. Failure to Make Available Off-Duty Rest Periods**

22 63. Plaintiff and Annotators regularly worked more than 3.5 hours in a day without being
23 authorized and permitted to take a paid, 10-minute rest period in which they were relieved of all
24 duties, and regularly worked more than six (6) hours in a day without being authorized and
25 permitted to take two, paid, 10-minute rest periods in which they were relieved of all duties per four
26 (4) hours or major fraction thereof, as required under California Labor Code § 226.7 and the IWC
27 Wage Orders. Plaintiff and aggrieved employees have regularly worked in excess of ten (10) hours
28

1 without being authorized and permitted to take additional paid, 10-minute rest periods in which they
2 were relieved of all duties.

3 64. Under California Labor Code § 2699(f)(2), described above, Defendants are subject to a
4 civil penalty of one hundred dollars (\$100) for Plaintiff and each aggrieved employee for failing to
5 provide rest periods, and two hundred dollars (\$200) for Plaintiff and each aggrieved employee per
6 pay period for each subsequent violation of Labor Code § 226.7 for failing to provide rest periods.

7 **H. Failure to Track and Make Available Paid Sick Days**

8 65. Under California Labor Code § 246, an employee who works for the same employer for
9 more than thirty (30) days is entitled to paid sick days, which accrue at a rate of not less than one
10 hour per every thirty (30) hours worked.

11 66. Defendants failed to track and make available paid sick days in accordance with Labor Code
12 § 246 to Plaintiff and Annotators who worked for Defendants for more than thirty (30) days.

13 67. Under California Labor Code § 248.5(b)(2), Defendants are subject to a penalty equal to the
14 dollar amount of paid sick days withheld from the employee multiplied by three, or two hundred
15 fifty dollars (\$250), whichever amount is greater, but not to exceed an aggregate penalty of four
16 thousand dollars (\$4,000) for Plaintiff and each aggrieved employee.

17 **I. Failure to Pay All Wages Due upon Termination**

18 68. California Labor Code §§ 201 and 202 require an employer to pay its employees all wages
19 due within the time specified by law. Labor Code § 203 provides that if an employer willfully fails
20 to pay such wages, the employer must continue to pay the subject employees' wages until the back
21 wages are paid in full or an action is commenced, up to a maximum of thirty (30) days of wages.

22 69. Plaintiff and Annotators who ceased employment with Defendants are entitled to unpaid
23 compensation, but to date have not received such compensation, more than seventy-two (72) hours
24 after the cessation of their employment.

25 70. Defendants failed to pay the earned and unpaid wages of Plaintiff and Annotators within 30
26 days from the time such wages should have been paid under Labor Code §§ 201 and 202.

27 71. Defendants willfully failed to pay Plaintiff and Annotators overtime wages and any meal or
28 rest period premiums upon termination.

1 72. Under California Labor Code § 2699(f)(2), described above, Defendants are subject to a
2 civil penalty of one hundred dollars (\$100) for Plaintiff and each aggrieved employee whose
3 employment with Defendants terminated per pay period for the initial violation of Labor Code §§
4 201-203 for failing to pay earned wages upon discharge, and two hundred dollars (\$200) for
5 Plaintiff and each aggrieved employee per pay period for each subsequent violation of Labor Code
6 §§ 201-203.

7 73. Pursuant to Labor Code § 2699(a), for violations of California Labor Code §§ 200-204,
8 Defendants are subject to a civil penalty of: (1) one hundred dollars (\$100) for Plaintiff and each
9 aggrieved employee per pay period for the initial violation by failing to pay the employee's wages
10 timely; and (2) two hundred dollars (\$200) for Plaintiff and each aggrieved employee per pay period
11 for each subsequent violation for failing to pay the employee's wages timely, plus 25 percent of the
12 amount unlawfully withheld. The penalty amounts are established by California Labor Code § 210.

13 **J. Failure to Provide Timely, Accurate, Itemized Wage Statements**

14 74. California Labor Code § 226(a) and IWC Wage Orders require employers semi-monthly or
15 at the time of each payment of wages to furnish each California employee with a statement
16 itemizing, among other things, the total hours worked by the employee. California Labor Code §
17 226(e) provides that if an employer knowingly and intentionally fails to provide a statement
18 itemizing, among other things, the total hours worked by the employee, then the employee is
19 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial violation and
20 one hundred dollars (\$100) for each subsequent violation, up to four thousand dollars (\$4,000).

21 75. Defendants knowingly and intentionally failed to furnish Plaintiff and Annotators with
22 timely, itemized statements showing the total hours worked, as required by California Labor Code §
23 226(e) and IWC Wage Orders.

24 76. As a direct and proximate result of Defendants' failure to maintain payroll records, Plaintiff
25 and Annotators have suffered actual economic harm as they have been precluded from accurately
26 monitoring the number of hours worked and thus seeking all accrued overtime pay and meal and
27 rest period premiums.

1 77. Under California Labor Code § 226.3, which provides for civil penalties for violations of
2 California Labor Code § 226(a) in addition to any other penalty provided by law, Defendants are
3 subject to a civil penalty of two hundred fifty dollars (\$250) for Plaintiff and each aggrieved
4 employee for the first violation, and one thousand dollars (\$1,000) for Plaintiff and each aggrieved
5 employee for each subsequent violation of Labor Code § 226(a) for failure to provide timely,
6 accurate, itemized wage statements.

7 **VII. PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff, on behalf of herself and other aggrieved employees, requests judgment
9 and the following specific relief against Defendants as follows:

- 10 A. That Defendants are found to have misclassified the Annotators and violated (among
11 others) the minimum wage, overtime, meal/rest period, itemized wage statement, waiting
12 time, business expense reimbursement, and sick leave penalty provisions cited above as
13 to Plaintiff and other aggrieved employees;
- 14 B. That Defendants' violations as described above are found to be willful;
- 15 C. An award of civil penalties pursuant to PAGA;
- 16 D. An award of reasonable attorneys' fees and costs pursuant to PAGA, California Labor
17 Code § 2699(g)(1), California Code of Civil Procedure § 1021.5, and/or other applicable
18 state laws;
- 19 E. That Defendants further be enjoined to cease and desist from unlawful activities in
20 violation of the state laws cited above, including reclassification of Annotators as non-
21 exempt;
- 22 F. For such other and further relief, in law or equity, as this Court may deem appropriate
23 and just.

24 DATED: January 3, 2025

BRYAN SCHWARTZ LAW, P.C.

25 */s/ Bryan Schwartz*

26 Bryan Schwartz (SBN 209903)

27 Sam Goity (SBN pending)

*Attorneys for Plaintiff in Her Representative
Capacity*

EXHIBIT A

October 29, 2024

VIA CERTIFIED MAIL AND ONLINE UPLOAD

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

RE: *Rogowicz v. Smart Ecosystem, Inc., d/b/a Outlier*

Dear PAGA Administrator:

Our office represents Plaintiff Amber Rogowicz in the above-captioned matter concerning putative class claims under California law for unpaid overtime compensation, unpaid minimum wage compensation, unpaid meal period pay, denied meal and rest breaks, failure to provide timely, accurate, itemized wage statements, failure to keep adequate payroll records, failure to pay reimbursements, willful independent contractor misclassification, statutory penalties, interest, and attorney's fees and costs¹ against Smart Ecosystem, Inc., d/b/a Outlier; Scale AI, Inc.; and Doe defendants (collectively, "Defendants").

I am writing this letter to the LWDA pursuant to the exhaustion requirements of California Labor Code §§ 2699 and 2699.3, because my client intends to file suit very soon and intends to add claims under the Private Attorney General Act ("PAGA"). The purpose of my letter is to find out whether the LWDA intends to investigate my client's allegations of violations of California Labor Code §§ 201-204, 223, 226, 226.3, 226.7, 226.8, 246, 510, 512, 558, 1174, 1182.11, 1182.12, 1194, 1197, 1197.1, 1198, 2802; Industrial Welfare Commission Wage Order No. 4; and Business and Professions Code § 17200 *et seq.* The following is a brief summary of my client's allegations against Defendants.

This is an action for relief from Defendants' unlawful misclassification of its "Generative AI Annotators," "Prompt Engineers," "Subject Experts," and any workers with similar data labelling, collection, and/or analysis duties (collectively, "Annotators") as independent contractors exempt from daily overtime and minimum wage compensation, lawful meal or rest breaks, full reimbursement for necessary business expenses (including internet, computer hardware, software, and other expenses), and other obligations provided for employers of non-exempt employees under the California Labor Code.

¹ Plaintiff intends to seek attorneys' fees and costs pursuant to but not limited by Labor Code sections 218.5, 1194(a), 2699(g), 2802(c), and Civil Code section 1021.5.

Independent Contractor Misclassification

Defendants willfully classified its Annotators as independent contractors. Under the ABC test set forth in *Dynamex Operations W. v. Superior Court* and codified in Assembly Bill 5, to prove a worker is an independent contractor, a hiring entity must establish:

- (A) that the worker 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) that the worker performs work that is outside the usual course of the hiring entity's business, and
- (C) that the worker is customarily engaged in an independently established trade, occupation, or business.

4 Cal. 5th 903, 964 (2018), *reh 'g denied* (June 20, 2018); Cal. Lab. Code § 2775. If a hiring entity fails to meet one or more of these requirements, then the worker should be classified as an employee.

Here, Defendants cannot meet any of these elements as to its Annotators.

First, upon information and belief, Defendants control and direct Annotators' performance of their job duties in various ways, including:

- holding Annotators to Defendants' detailed written standards regarding the performance of their work;²
- requiring Annotators to use Defendants' website, software, and other platforms and technologies to perform their work;³
- assigning Annotators to work on specific projects;⁴
- reviewing Annotators' work to ensure compliance with Defendants' standards;⁵ and
- disciplining Annotators for failure to comply with Defendants' standards.⁶

² For examples of such standards, see Standard Eval Coding - Task Attempter Guide v3.14, <https://docs.google.com/document/d/1GJ23WBW38oFpzE12To2PAO3jkKAUTagBW0QizFfOTKA/edit?tab=t.0>; Flamingo Instructions, <https://docs.google.com/document/d/1fEoVywBT9cy8nloiADSF5IOsHXkdIP36n0dyIdHYB7Q/edit?tab=t.0>

³ See section 6(a) of Outlier's Terms of Use.

⁴ See The Relational Democracy Project, *Scale-AI's Predatory Labor Practices*, MEDIUM (May 20, 2024), <https://relationaldemocracy.medium.com/an-authoritarian-workplace-culture-4ba5f3666f9f>.

⁵ See section 6(b) of the Terms of Use.

⁶ *Id.*

Second, upon information and belief, the work that Annotators perform is squarely within the usual course of Defendants' business. Outlier's parent company, Scale AI, provides generative AI companies with human labor to label the data used to train generative AI models.⁷ Outlier is one of the platforms that Scale AI uses to supply this labor.⁸ Annotators perform this labor, the foundation of Defendants' business.

Third, upon information and belief, Annotators typically do not engage in data labelling as a trade, occupation, or business distinct from their work for Defendants.

Accordingly, Defendants will not be able to establish that Annotators are independent contractors under the *Dynamex* ABC test. Simply put, Plaintiffs and others similarly situated are non-exempt employees under California law. Based on the foregoing, Plaintiff Rogowicz alleges the following willful violations of California law by Defendants:

1. Defendants willfully misclassified Plaintiff and other Annotators as independent contractors in violation of Labor Code § 226.8, and did so as a pattern or practice under § 226.8(c).
2. Defendants suffered or permitted Plaintiff and other Annotators to work in excess of eight hours per workday and unlawfully failed to pay these employees proper minimum wage and overtime compensation, in violation of IWC Wage Order No. 4, and California Labor Code §§ 510, 558, 1194, 1197, 1197.1, and 1198;
3. Defendants failed to provide to Plaintiff and other Annotators timely, accurate, itemized wage statements including, *inter alia*, of hours worked, in violation of California Labor Code §§ 226 and 226.3;
4. Defendants failed to reimburse Plaintiff and other Annotators for all necessary business expenses in violation of Labor Code § 2802;
5. Defendants failed to pay timely Plaintiff and other Annotators all wages due each month, at the time such employees left the employment of Defendants, and the time of discharge in violation of Labor Code §§ 201-204;
6. Defendants failed to track and make available paid sick leave in violation of Labor Code § 246;
7. Defendants failed to provide Plaintiff and other Annotators with lawful meal or rest periods, to pay meal and rest break premiums, or to pay for rest periods

⁷ *Scale AI*, FORBES, <https://www.forbes.com/companies/scale-ai/>.

⁸ The Relational Democracy Project, *Scale-AI's Predatory Labor Practices*, MEDIUM (May 20, 2024), <https://relationaldemocracy.medium.com/an-authoritarian-workplace-culture-4ba5f3666f9f>. Scale AI previously used a similar platform called Remotasks for this purpose, in addition to Outlier, but Scale AI later merged the two platforms into one. *See id.*

- separately (*see Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98 (2017)) in violation of IWC Wage Order No. 4, and California Labor Code §§ 226.7, 512, and 558;
8. Defendants failed to compensate Plaintiff and other Annotators for all hours worked, in violation of IWC Wage Order No. 4, and California Labor Code § 223;
 9. The foregoing conduct by Defendants further constitutes unlawful business actions and practices in violation of California Business and Professions Code § 17200 *et seq.*

Thank you for your assistance and cooperation in this matter. Please contact the undersigned if you have any questions. We look forward to your response at your earliest convenience.

Sincerely,

Bryan Schwartz, Esq.

cc: (by certified mail)

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