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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF SAN MATEO**

14 PRECIOUS CHATMAN, on behalf of the
15 State of California, as a private attorney
16 general,

17 Plaintiff,

18 vs.

19 WEDRIVEU, INC., a California Corporation;
20 and DOES 1 through 50, inclusive,

21 Defendants.

Case No. 22-CIV-02810

REPRESENTATIVE ACTION
COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code § 2699, *et seq.* for violations of Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s).

Electronically
FILED

by Superior Court of California, County of San Mateo
ON 7/11/2022

By /s/ Marcela Enriquez
Deputy Clerk

1 Plaintiff Precious Chatman (“PLAINTIFF”), on behalf of the people of the State of
2 California and as an “aggrieved employee” acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on
4 information and belief, except for her own acts and knowledge which are based on personal
5 knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against Defendant WeDriveU, Inc. (referred to as
8 “DEFENDANT”) seeking only to recover PAGA civil penalties for herself, and on behalf of
9 all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFF does
10 **not seek to recover anything other than penalties as permitted by California Labor Code**
11 **§ 2699**. To the extent that statutory violations are mentioned for wage violations, PLAINTIFF
12 does not seek underlying general and/or special damages for those violations, but simply the
13 civil penalties permitted by California Labor Code § 2699.

14 2. California has enacted the PAGA to permit an individual to bring an action on
15 behalf of herself and on behalf of others for PAGA penalties *only*, which is the precise and sole
16 nature of this action.

17 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
18 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
19 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
20 complaint should be construed as attempting to obtain any relief that would not be available in
21 a PAGA-only action.

22 **THE PARTIES**

23 4. Defendant WeDriveU, Inc. is a California corporation that at all relevant times
24 mentioned herein conducted and continues to conduct substantial business in the state of
25 California.
26

27 5. DEFENDANT provides shuttle transportation services.

28 6. PLAINTIFF has been employed by DEFENDANT in California since April of

1 2018 and has been at all times classified by DEFENDANT as a non-exempt employee, paid on
2 an hourly basis, and entitled to the legally required meal and rest periods and payment of
3 minimum and overtime wages due for all time worked.

4 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
5 the requirements and exhaust the administrative procedures under the Private Attorney General
6 Act, brings this Representative Action on behalf of the State of California with respect to herself
7 and all individuals who are or previously were employed by DEFENDANT in California
8 and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time
9 period of February 11, 2021 until a date as determined by the Court (the "PAGA PERIOD").

10 8. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES presently
11 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
12 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
13 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3,
14 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title
15 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s). Based upon the
16 foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within
17 the meaning of Labor Code § 2699, *et seq.*

18 9. The true names and capacities, whether individual, corporate, subsidiary,
19 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
20 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
21 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
22 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
23 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
24 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
25 responsible in some manner for one or more of the events and happenings that proximately
26 caused the injuries and damages hereinafter alleged.

27 10. The agents, servants and/or employees of the Defendants and each of them acting
28 on behalf of the Defendants acted within the course and scope of his, her or its authority as the

1 agent, servant and/or employee of the Defendants, and personally participated in the conduct
2 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
3 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
4 all Defendants are jointly and severally liable to PLAINTIFF and the AGGRIEVED
5 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants'
6 agents, servants and/or employees.

7 THE CONDUCT

8 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
9 required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time worked,
10 meaning the time during which an employee is subject to the control of an employer, including
11 all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF
12 and the AGGRIEVED EMPLOYEES to work without paying them for all the time they are
13 under DEFENDANT's control. PLAINTIFF and the AGGRIEVED EMPLOYEES also
14 worked off the clock with respect to time spent undergoing mandatory drug testing or any other
15 testing and/or examination required as a condition of employment. Additionally, DEFENDANT,
16 as a matter of established company policy and procedure, administers a uniform practice of
17 rounding the actual time worked and recorded by PLAINTIFF and the AGGRIEVED
18 EMPLOYEES, always to the benefit of DEFENDANT, so that during the course of their
19 employment, PLAINTIFF and the AGGRIEVED EMPLOYEES are paid less than they would
20 have been paid had they been paid for actual recorded time rather than "rounded" time.
21 Additionally, DEFENDANT engages in the practice of requiring PLAINTIFF and the
22 AGGRIEVED EMPLOYEES to perform work off the clock in that DEFENDANT, as a
23 condition of employment, required these employees to submit to mandatory temperature checks
24 and symptom questionnaires for COVID-19 screening prior to clocking into DEFENDANT's
25 timekeeping system for the workday. As a result, PLAINTIFF and the AGGRIEVED
26 EMPLOYEES forfeit minimum wage, overtime wage compensation, and off-duty meal breaks
27 by working without their time being correctly recorded and without compensation at the
28 applicable rates. DEFENDANT's policy and practice not to pay PLAINTIFF and the

1 AGGRIEVED EMPLOYEES for all time worked, is evidenced by DEFENDANT's business
2 records.

3 12. State law provides that employees must be paid overtime and meal and rest break
4 premiums at one-and-one-half times their "regular rate of pay." PLAINTIFF and the
5 AGGRIEVED EMPLOYEES are compensated at an hourly rate plus incentive pay that is tied
6 to specific elements of an employee's performance.

7 13. The second component of PLAINTIFF's and the AGGRIEVED EMPLOYEES'
8 compensation is DEFENDANT's non-discretionary incentive program that paid PLAINTIFF
9 and the AGGRIEVED EMPLOYEES incentive wages based on their performance for
10 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
11 hourly basis with incentive compensation when the employees met the various performance
12 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
13 overtime and meal and rest break premiums to PLAINTIFF and the AGGRIEVED
14 EMPLOYEES, DEFENDANT failed to include the incentive compensation as part of the
15 employees' "regular rate of pay" for purposes of calculating overtime pay and meal and rest
16 break premium pay. Management and supervisors described the incentive program to potential
17 and new employees as part of the compensation package. As a matter of law, the incentive
18 compensation received by PLAINTIFF and the AGGRIEVED EMPLOYEES must be included
19 in the "regular rate of pay." The failure to do so has resulted in a underpayment of overtime
20 compensation and meal and rest break premiums to PLAINTIFF and the AGGRIEVED
21 EMPLOYEES by DEFENDANT.

22 14. As a result of their rigorous work schedules, PLAINTIFF and the AGGRIEVED
23 EMPLOYEES are from time to time unable to take thirty (30) minute off duty meal breaks and
24 are not fully relieved of duty for their meal periods. PLAINTIFF and the AGGRIEVED
25 EMPLOYEES are required from time to time to perform work as ordered by DEFENDANT for
26 more than five (5) hours during some shifts without receiving a meal break. Further,
27 DEFENDANT from time to time fails to provide PLAINTIFF and the AGGRIEVED
28 EMPLOYEES with a second off-duty meal period for some workdays in which these employees

1 are required by DEFENDANT to work ten (10) hours of work. DEFENDANT also engages in
2 the practice of rounding the meal period times to avoid paying penalties to PLAINTIFF and the
3 AGGRIEVED EMPLOYEES. PLAINTIFF and the AGGRIEVED EMPLOYEES therefore
4 forfeit meal breaks without additional compensation and in accordance with DEFENDANT's
5 corporate policy and practice.

6 15. During the PAGA PERIOD, PLAINTIFF and the AGGRIEVED EMPLOYEES
7 are also required from time to time to work in excess of four (4) hours without being provided
8 ten (10) minute rest periods. Further, these employees are denied their first rest periods of at
9 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
10 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
11 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
12 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
13 PLAINTIFF and the AGGRIEVED EMPLOYEES are also not provided with one hour wages
14 in lieu thereof. Additionally, the applicable California Wage Order requires employers to
15 provide employees with off-duty rest periods, which the California Supreme Court defined as
16 time during which an employee is relieved from all work related duties and free from employer
17 control. In so doing, the Court held that the requirement under California law that employers
18 authorize and permit all employees to take rest period means that employers must relieve
19 employees of all duties and relinquish control over how employees spend their time which
20 includes control over the locations where employees may take their rest period. Employers
21 cannot impose controls that prohibit an employee from taking a brief walk - five minutes out,
22 five minutes back. Here, DEFENDANT's policy restricts PLAINTIFF and the AGGRIEVED
23 EMPLOYEES from unconstrained walks and is unlawful based on DEFENDANT's rule which
24 states PLAINTIFF and the AGGRIEVED EMPLOYEES cannot leave the work premises during
25 their rest period.

26 16. During the PAGA PERIOD, DEFENDANT fails to accurately record and pay
27 PLAINTIFF and the AGGRIEVED EMPLOYEES for the actual amount of time these
28 employees work. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT

1 is required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all time worked,
2 meaning the time during which an employee was subject to the control of an employer,
3 including all the time the employee was permitted or suffered to permit this work.
4 DEFENDANT requires these employees to work off the clock without paying them for all the
5 time they are under DEFENDANT's control. As such, DEFENDANT knew or should have
6 known that PLAINTIFF and the AGGRIEVED EMPLOYEES are under compensated for all
7 time worked. As a result, PLAINTIFF and the AGGRIEVED EMPLOYEES forfeit time
8 worked by working without their time being accurately recorded and without compensation at
9 the applicable minimum wage and overtime wage rates. To the extent that the time worked off
10 the clock does not qualify for overtime premium payment, DEFENDANT fails to pay minimum
11 wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and
12 1197.1.

13 17. From time to time, DEFENDANT also fails to provide PLAINTIFF and the
14 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to
15 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
16 provides that every employer shall furnish each of his or her employees with an accurate
17 itemized wage statement in writing showing, among other things, gross wages earned and all
18 applicable hourly rates in effect during the pay period and the corresponding amount of time
19 worked at each hourly rate. Additionally, DEFENDANT violates Cal. Lab. Code 226(a)(8) by
20 failing to list the correct name of the legal entity that employs PLAINTIFF and the
21 AGGRIEVED EMPLOYEES. Aside, from the violations listed above in this paragraph,
22 DEFENDANT fails to issue to PLAINTIFF an itemized wage statement that lists all the
23 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to
24 time provides PLAINTIFF and the AGGRIEVED EMPLOYEES with wage statements which
25 violated Cal. Lab. Code § 226.

26 18. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be
27 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the
28 wages are paid not more than seven calendar days following the close of the payroll period.

1 Cal. Lab. Code § 210 provides:

2 [I]n addition to, and entirely independent and apart from, any other penalty provided in
3 this article, every person who fails to pay the wages of each employee as provided in
4 Sections. . . .204. . .shall be subject to a civil penalty as follows: (1) For any initial
5 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
6 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)
7 for each failure to pay each employee, plus 25 percent of the amount unlawfully
8 withheld.

9 19. DEFENDANT from time to time fails to pay PLAINTIFF and the AGGRIEVED
10 EMPLOYEES within seven (7) days of the close of the payroll period in accordance with Cal.
11 Lab. Code § 204(d).

12 20. DEFENDANT underpays sick pay wages to PLAINTIFF and the AGGRIEVED
13 EMPLOYEES by failing to pay such wages at the regular rate of pay in violation of Cal. Lab.
14 Code Section 246. Specifically, PLAINTIFF and other non-exempt employees earn non-
15 discretionary remuneration, including but not limited to, incentives, shift differential pay, and
16 bonuses. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpays sick pay
17 to PLAINTIFF and the AGGRIEVED EMPLOYEES at their base rates of pay.

18 21. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
19 employees be calculated by dividing the employee's total wages, not including overtime
20 premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days
21 of employment.

22 22. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at
23 the regular rate of pay. PLAINTIFF and the AGGRIEVED EMPLOYEES routinely earned non-
24 discretionary incentive wages which increased their regular rate of pay. However, when sick pay
25 was paid, it was paid at the base rate of pay for PLAINTIFF and the AGGRIEVED
26 EMPLOYEES, as opposed to the correct, higher regular rate of pay, as required under Cal. Lab.
27 Code Section 246.

28 23. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and
the AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time
penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and believes
and based thereon alleges that such failure to pay sick pay at regular rate was willful, such that

1 PLAINTIFF and the AGGRIEVED EMPLOYEES whose employment has separated are
2 entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

3 24. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
4 to collect or receive from an employee any part of wages theretofore paid by said employer to
5 said employee." DEFENDANT fails to pay all compensation due to PLAINTIFF and the
6 AGGRIEVED EMPLOYEES, makes unlawful deductions from compensation payable to
7 PLAINTIFF and the AGGRIEVED EMPLOYEES, fails to disclose all aspects of the deductions
8 from compensation payable to PLAINTIFF and the AGGRIEVED EMPLOYEES, and thereby
9 fails to pay these employees all wages due at each applicable pay period and upon termination.

10 25. DEFENDANT intentionally and knowingly fails to reimburse and indemnify
11 PLAINTIFF and the AGGRIEVED EMPLOYEES for required business expenses incurred by
12 the PLAINTIFF and the AGGRIEVED EMPLOYEES in direct consequence of discharging
13 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers
14 are required to indemnify employees for all expenses incurred in the course and scope of their
15 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or
16 her employee for all necessary expenditures or losses incurred by the employee in direct
17 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
18 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
19 believed them to be unlawful."

20 26. In the course of their employment PLAINTIFF and the AGGRIEVED
21 EMPLOYEES as a business expense, are required by DEFENDANT to use their own personal
22 cellular phones as a result of and in furtherance of their job duties as employees for
23 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost associated
24 with the use of their personal cellular phones for DEFENDANT's benefit. Specifically,
25 PLAINTIFF and the AGGRIEVED EMPLOYEES are required by DEFENDANT to use their
26 personal cellular phones. As a result, in the course of their employment with DEFENDANT,
27 PLAINTIFF and the AGGRIEVED EMPLOYEES incurred unreimbursed business expenses
28 which included, but were not limited to, costs related to the use of their personal cellular phones

1 all on behalf of and for the benefit of DEFENDANT.

2 27. All of the conduct and violations alleged herein occurred during the PAGA
3 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
4 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
5 affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
6 AJDAR 12157 (Certified for Publication 12/19/18).

7
8 **JURISDICTION AND VENUE**

9 28. This Court has jurisdiction over this Action pursuant to California Code of Civil
10 Procedure, Section 410.10.

11 29. Venue is proper in this Court pursuant to California Code of Civil Procedure,
12 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
13 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities
14 in this County and/or conducts substantial business in this County, and (ii) committed the
15 wrongful conduct herein alleged in this County against PLAINTIFF and the AGGRIEVED
16 EMPLOYEES.

17 **FIRST CAUSE OF ACTION**

18 **For Violation of the Private Attorneys General Act**

19 **[Cal. Lab. Code §§ 2698, *et seq.*]**

20 **(By PLAINTIFF and Against All Defendants)**

21 30. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
22 herein, the prior paragraphs of this Complaint.

23 31. PAGA is a mechanism by which the State of California itself can enforce state
24 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
25 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
26 fundamentally a law enforcement action designed to protect the public and not to benefit private
27 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
28

1 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
2 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
3 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
4 Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be
5 subject to arbitration.

6 32. PLAINTIFF, and such persons that may be added from time to time who satisfy
7 the requirements and exhaust the administrative procedures under the Private Attorney General
8 Act, brings this Representative Action on behalf of the State of California with respect to herself
9 and all individuals who are or previously were employed by DEFENDANT in California
10 and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time
11 period of February 11, 2021 until a date as determined by the Court (the "PAGA PERIOD").

12 33. On February 11, 2022, PLAINTIFF gave written notice by electronic mail to the
13 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
14 employer of the specific provisions of this code alleged to have been violated as required by
15 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations to
16 the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
17 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of
18 the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

19 34. The policies, acts and practices heretofore described were and are an unlawful
20 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
21 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
22 and provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed
23 to pay overtime wages and sick pay wages, and (e) failed to reimburse employees for required
24 expenses, all in violation of the applicable Labor Code sections listed in Labor Code §§ 201,
25 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197,
26 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-
27 (B), and the applicable Wage Order(s), and thereby gives rise to civil penalties as a result of
28

1 such conduct.¹ PLAINTIFF hereby seeks recovery of only civil penalties as prescribed by the
2 Labor Code Private Attorney General Act of 2004 as the representative of the State of
3 California for the illegal conduct perpetrated on PLAINTIFF and the AGGRIEVED
4 EMPLOYEES.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
7 severally, as follows:

8 1. On behalf of the State of California and with respect to all AGGRIEVED
9 EMPLOYEES:

10 A) Recovery of civil penalties as prescribed by the Labor Code Private
11 Attorneys General Act of 2004; and,

12 B) An award of attorneys' fees and cost of suit, as allowable under the
13 law, including, but not limited to, pursuant to Labor Code §2699.

14 Dated: July 11, 2022 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
15

16 By: /s/ Nicholas De Blouw

17 Norman B. Blumenthal
18 Kyle R. Nordrehaug
19 Nicholas J. De Blouw

20 *Attorneys for Plaintiff*
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27 _____
28 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
Code §558(a)(3).