

Louis Benowitz (SBN 262300)
louis@benowitzlaw.com
BENOWITZ LAW CORPORATION
8605 Santa Monica Boulevard
PMB 79183
West Hollywood, California 90069
Telephone: (818) 839-9610

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David W. Slayton,
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Perrin F. Disner (SBN 257586)
pdisner@disnerlaw.com
LAW OFFICES OF PERRIN F. DISNER
4630 Sepulveda Blvd Apt 105
Sherman Oaks, California 91403
Telephone: (310) 742-7944

Attorneys for Plaintiff
DONELLA NICHOLSON

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

DONELLA NICHOLSON,

Plaintiff,

vs.

WEDRIVEU, INC., a California corporation;
and DOES 1–50, inclusive,

Defendants.

Case No. **23STCV08801**

COMPLAINT FOR:

1. Retaliation in Violation of Labor Code § 98.6;
2. Wrongful Termination in Violation of Public Policy;
3. Failure to Pay Minimum & Overtime Wages;
4. Failure to Provide Meal Periods;
5. Failure to Provide Rest Periods;
6. Waiting Time Penalties;
7. Unfair Competition; and
8. Civil Penalties.

JURY TRIAL DEMANDED

1 Plaintiff Donella Nicholson ("Plaintiff"), by and through her attorneys, complains and
2 alleges as follows:

3 **PRELIMINARY STATEMENT**

4 1. Plaintiff brings this action against Defendants WeDriveU, Inc. and Does 1-50,
5 inclusive, (collectively, "Defendants") for unlawfully retaliating against her for using paid sick
6 leave afforded to her under the Labor Code, for failing to provide her with compliant meal and rest
7 periods, for failing to pay her for all time worked, and for failing to timely pay her all of her earned
8 and unpaid wages.

9 **PARTIES**

10 2. Plaintiff Donella Nicholson is a former employee of Defendants who worked as an
11 hourly shuttle driver from approximately 2018 until approximately February 14, 2022 in Los
12 Angeles County, California.

13 3. Defendant WeDriveU, Inc. is a corporation organized under the laws of California.

14 4. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
15 participation in the conduct alleged herein, of the defendants sued as Does 1–50, inclusive, but is
16 informed and believes and thereon alleges that said defendants are legally responsible for the
17 wrongful conduct alleged herein and therefore sues these defendants by such fictitious names.

18 5. Plaintiff is informed and believes and thereon alleges that each of the Defendants
19 acted in all respects pertinent to this action as the agent or employee of the other Defendants, carried
20 out a joint scheme, business plan, or policy in all respects hereto, and therefore the acts of each of
21 the Defendants are legally attributable to the other defendants.

22 6. Plaintiff will amend this Complaint to allege the true names and capacities of the
23 Doe Defendants when ascertained.

24 **JURISDICTION AND VENUE**

25 7. Jurisdiction is conferred on this Court because Defendants named herein are
26 residents of the State of California and/or conduct business in the State of California. Jurisdiction
27 is conferred on this Court as to all causes of action because they arise under state statutory or
28 common law.

1 8. Venue is proper in this Court because Defendants reside in this County, or conduct
2 business herein, and maintain records relevant to Plaintiff's claims herein, and because a substantial
3 part of the events and omissions giving rise to Plaintiff's claims occurred in this County.

4 **FIRST CAUSE OF ACTION**

5 **RETALIATION IN VIOLATION OF LABOR CODE § 98.6**

6 **(By Plaintiff, Against All Defendants)**

7 9. Plaintiff realleges and incorporates each of the preceding paragraphs of this
8 Complaint by reference as if fully set forth herein.

9 10. Labor Code § 98.6(a) states,

10 A person shall not discharge an employee or in any manner discriminate,
11 retaliate, or take any adverse action against any employee or applicant for
12 employment because the employee or applicant engaged in any conduct
13 delineated in this chapter, including the conduct described in subdivision (k)
14 of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of
15 Division 2, or because the employee or applicant for employment has filed
16 a bona fide complaint or claim or instituted or caused to be instituted any
17 proceeding under or relating to his or her rights that are under the jurisdiction
18 of the Labor Commissioner, made a written or oral complaint that he or she
19 is owed unpaid wages, or because the employee has initiated any action or
20 notice pursuant to Section 2699, or has testified or is about to testify in a
21 proceeding pursuant to that section, or because of the exercise by the
22 employee or applicant for employment on behalf of himself, herself, or
23 others of any rights afforded him or her.

24 11. Plaintiff is informed and believes and thereon alleges that Defendants discharged her
25 on or around February 14, 2022 based on her missing work for illness in February 2022. This not
26 only caused points to be assessed against her under Defendants' performance and attendance policies,
27 but also caused the termination of her employment under Defendants' policies. This conduct violates
28 Labor Code §§ 98.6, 233, 234, 246.5, and 248.5 in that Nicholson was discharged for exercising her
rights to sick pay under the Labor Code, had sick pay counted against her pursuant to an unlawful
absence policy, and had her employment terminated because she exercised her rights to sick pay.

 12. As a proximate result of Defendants' conduct, Plaintiff has suffered and will continue
to suffer damages in terms of lost wages, and other pecuniary loss according to proof. Plaintiff has
also suffered and will continue to suffer physical and emotional injuries, including nervousness,
humiliation, depression, anguish, embarrassment, fright, shock, pain, discomfort, fatigue, and

1 anxiety. The amount of Plaintiff's damages will be ascertained at trial.

2 13. In committing the foregoing acts, Defendants have been guilty of oppression, fraud,
3 and/or malice under Civil Code § 3294, thereby entitling Plaintiff to punitive damages in a sum
4 appropriate to punish the foregoing Defendants.

5 14. The acts of oppression, fraud, and/or malice were engaged in by Defendants and their
6 respective employees, representatives, agents, partners and/or owners. Defendants had advance
7 knowledge of the unfitness of each employee who acted with oppression, fraud, and/or malice, and/or
8 authorized or ratified the wrongful conduct for which an award of punitive damages is sought, and/or
9 was personally guilty of oppression, fraud, and/or malice. The advance knowledge and conscious
10 disregard, authorization, ratification, or acts of oppression, fraud, and/or malice were committed by
11 or on the part of an officer, director, or managing agent of Defendants, thereby entitling Plaintiff to
12 punitive and exemplary damages against Defendants in accordance with California Civil Code
13 section 3294 in a sum appropriate to punish Defendants.

14 15. Plaintiff also seeks a civil penalty of \$10,000, and awards of attorneys' fees and costs,
15 pursuant to Labor Code § 98.6(b)(3).

16 **SECOND CAUSE OF ACTION**

17 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

18 **(By Plaintiff, Against All Defendants)**

19 16. Plaintiff incorporates each of the preceding paragraphs of this Complaint by
20 reference as if fully set forth herein.

21 17. Under California law, no employee, whether an at-will employee or employee
22 under a written or other employment contract, can be terminated for a reason that is in violation
23 of a fundamental public policy. In recent years, the California courts have interpreted a
24 fundamental public policy to be any particularly constitutional or statutory provision, or regulation
25 that is concerned with a manner affecting society at large rather than a purely personal or
26 proprietary interest of the employee or employer.

27 18. The sick pay and anti-retaliation provisions of Labor Code §§ 98.6, 233, 234,
28 246.5, and 248.5 embody fundamental public policies of the State of California.

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19. By causing the termination of Plaintiff's employment under the circumstances set forth above, Defendants violated the fundamental public policies of the State of California as embodied in the Labor Cod.

20. As a proximate result of Defendants' willful, knowing, and intentional wrongful termination of Plaintiff's employment, Plaintiff has sustained and continues to sustain substantial losses of earnings and other employment benefits.

21. As a proximate result of Defendants' willful, knowing, and intentional wrongful termination of Plaintiff's employment, Plaintiff has suffered and continues to suffer humiliation, emotional distress, and physical and mental pain and anguish, all to her damage in a sum according to proof.

22. In doing the things alleged herein, Defendants' conduct was despicable, and Defendants acted toward Plaintiff with malice willful and conscious disregard of Plaintiff's rights, entitling Plaintiff to an award of punitive damages. Defendants' conduct described herein was engaged in by managing agents for Defendants and/or ratified by managing agents.

THIRD CAUSE OF ACTION

FAILURE TO PAY MINIMUM AND OVERTIME WAGES

(Lab. Code § 1194)

(By Plaintiff, Against All Defendants)

23. Plaintiff realleges and incorporates each of the preceding paragraphs of this Complaint by reference as if fully set forth herein.

24. At all relevant times during her employment with Defendants, Plaintiff was a non-exempt employee entitled to the full benefits and protections of the Labor Code and the Wage Order.

25. Collectively, Labor Code §§ 226(a), 510, 1174, 1194, 1197, and 1198, and Sections 3, 4, and 7 of the Wage Order require an employer to pay a non-exempt employee no less than minimum wage for each hour worked (see *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314), no less than one and one-half times the employee's regular rate of pay for all hours worked in excess of 8 hours in one workday, in excess of 40 hours in one workweek, and for the first 8 hours worked on a seventh consecutive workday, and at no less than twice the employee's regular rate of pay for all hours worked in excess of 12 hours in a workday and/or in excess of 8 hours on a

1 seventh consecutive workday, as well as to maintain accurate records of all hours worked by the
2 employee.

3 26. At relevant times during her employment, with Defendants' actual and/or
4 constructive knowledge, Plaintiff worked during time for which she was not paid including, but
5 not necessarily limited to, time spent performing pre-trip inspections and time spent under
6 Defendants' control while clocked out during purported meal periods. This included, but is not
7 limited to, time worked in excess of eight hours in one workday and/or in excess of forty hours in
8 one workweek.

9 27. Pursuant to Labor Code §§ 1194(a) and 1194.2, Plaintiff seeks to recover earned
10 and unpaid minimum and overtime wages, liquidated damages, interest thereon, as well as awards
11 of reasonable costs and attorneys' fees, all in amounts subject to proof.

12 **FOURTH CAUSE OF ACTION**

13 **FAILURE TO PROVIDE MEAL PERIODS**

14 **(Lab. Code §§ 226.7 and 1198)**

15 **(By Plaintiff, Against All Defendants)**

16 28. Plaintiff realleges and incorporates each of the preceding paragraphs of this
17 Complaint by reference as if fully set forth herein.

18 29. At all relevant times during her employment with Defendants, Plaintiff was a non-
19 exempt employee entitled to the full benefits and protections of the Labor Code and the Wage
20 Order.

21 30. Labor Code § 1198 makes it unlawful for an employer to employ any person under
22 conditions of employment that violate the Wage Order.

23 31. Labor Code § 512 and Section 11 of the Wage Order require employers to provide
24 their non-exempt employees who work five or more hours in a workday with a first uninterrupted
25 off-duty meal period of at least thirty minutes before the end of the employee's fifth hour of work.

26 32. Labor Code § 512 and Section 11 of the Wage Order require employers to provide
27 their non-exempt employees who work more than ten hours in a workday with a second
28 uninterrupted off-duty meal period of at least thirty minutes before the end of the employee's tenth
hour of work.

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1 33. Labor Code § 226.7 and Section 11 of the Wage Order require employers to pay
2 non-exempt employees an additional hour of premium wages at the employee's regular rate of
3 compensation on each workday that the employee is not provided with a meal period in accordance
4 with the Wage Order.

5 34. At relevant times during her employment, Defendants employed Plaintiff for work
6 periods in excess of five hours without relieving her of all duty for a first meal period of at least
7 thirty uninterrupted minutes during the first five hours of work and without paying her premium
8 wages on those workdays when they did not provide her with first meal periods.

9 35. At relevant times during her employment, Defendants employed Plaintiff for work
10 periods in excess of ten hours without relieving her of all duty for a second meal period of at least
11 thirty uninterrupted minutes before the end of the tenth hour of work and without paying her
12 premium wages on those workdays when they did not provide her with second meal periods.

13 36. Pursuant to Labor Code §§ 218.6 and 226.7, Plaintiff seeks to recover unpaid
14 premium wages, interest thereon, and costs of suit, all in amounts subject to proof at trial.

15 **FIFTH CAUSE OF ACTION**

16 **FAILURE TO PROVIDE REST PERIODS**

17 **(Lab. Code §§ 226.7 and 1198)**

18 **(By Plaintiff, Against All Defendants)**

19 37. Plaintiff incorporates each of the preceding paragraphs of this Complaint by
20 reference as if fully set forth herein.

21 38. At all relevant times during her employment with Defendants, Plaintiff was a non-
22 exempt employee entitled to the full benefits and protections of the Labor Code and the Wage
23 Order.

24 39. Labor Code § 1198 makes it unlawful for an employer to employ any person under
25 conditions of employment that violate the Wage Order.

26 40. Section 12 of the Wage Order imposes an affirmative obligation on employers to
27 permit and authorize their non-exempt employees to take required rest periods at a rate of no less
28 than ten minutes of net rest time for each four-hour work period, or major portion thereof, that
must be in the middle of each work period insofar as is practicable.

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1 41. Labor Code § 226.7 and Section 12 of the Wage Order require employers to pay
2 non-exempt employees an additional hour of premium wages at the employee's regular rate of
3 compensation on each workday that the employee is not provided with a rest period.

4 42. At relevant times during her employment, Defendants failed to authorize and
5 permit Plaintiff to take net rest periods of at least ten minutes for each four-hour work period, or
6 major fraction thereof, and failed to pay her premium wages on workdays when required rest
7 periods were not provided to her.

8 43. Pursuant to Labor Code §§ 218.6 and 226.7, Plaintiff seeks to recover unpaid
9 premium wages, interest thereon, and costs of suit, all in amounts subject to proof at trial.

10 **SIXTH CAUSE OF ACTION**

11 **WAITING TIME PENALTIES**

12 **(Lab. Code § 203)**

13 **(By Plaintiff, Against All Defendants)**

14 44. Plaintiff incorporates each of the preceding paragraphs of this Complaint by
15 reference as if fully set forth herein.

16 45. Labor Code § 201 makes all of the earned and unpaid wages of a discharged
17 employee immediately due and payable at the time of discharge.

18 46. Labor Code § 203 entitles an employee to an additional day of wages as a penalty
19 for each day that wages remain unpaid, for up to a maximum of thirty days, where the employer
20 willfully fails to pay timely earned wages in compliance with § 201 or § 202.

21 47. Defendants failed to pay Plaintiff all of her earned wages within the times set forth
22 in Labor Code § 201 both as a result of failing to issue her a timely final paycheck and as a result
23 of failing to pay her all of her earned and unpaid minimum, overtime, and premium wages.

24 48. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
25 Defendants' failures to timely pay Plaintiff have been willful in that, at all relevant times,
26 Defendants have had the ability to comply with the above-referenced laws concerning payments
27 of minimum, overtime, and premium wages, and the timing of wage payments but have
28 deliberately maintained policies and practices in violation of the requirements of the Labor Code
and the Wage Order.

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1 49. Pursuant to Labor Code § 203, Plaintiff seeks thirty days of waiting time penalties,
2 interest thereon, attorneys' fees and costs of suit, in amounts subject to proof.

3 **SEVENTH CAUSE OF ACTION**

4 **UNFAIR COMPETITION**

5 **(Bus. & Prof. Code § 17200 *et seq.*)**

6 **(By Plaintiff, Against All Defendants)**

7 50. Plaintiff incorporates each of the preceding paragraphs of this Complaint by
8 reference as if fully set forth herein.

9 51. Business and Professions Code § 17200 defines "unfair competition" to include
10 any unlawful, unfair, and/or fraudulent business act or practice.

11 52. Business and Professions Code §§ 17203-17204 allow a person who has lost money
12 or property as a result of unfair competition to bring a class action in accordance with Code of
13 Civil Procedure § 382 to recover money or property that may have been acquired from similarly
14 situated persons by means of unfair competition.

15 53. As a result of Defendants' violations of the Labor Code and the Wage Order set
16 forth above, Plaintiff has lost money or property by means of unfair competition in the forms of
17 earned and unpaid minimum, overtime, and premium wages.

18 54. Pursuant to Business and Professions Code §§ 17203-17204, Plaintiff seeks an
19 order awarding restitution of all earned and unpaid wages and gratuities that Defendants acquired
20 by means of unfair competition in amounts subject to proof.

21 **EIGHTH CAUSE OF ACTION**

22 **CIVIL PENALTIES**

23 **(Lab. Code § 2698 *et seq.*)**

24 **(By Plaintiff, Against All Defendants)**

25 55. Plaintiff incorporates each of the preceding paragraphs of this Complaint by
26 reference as if fully set forth herein.

27 56. During the applicable time period, Defendants violated Labor Code §§ 98.6, 201,
28 203, 204, 226, 226.7, 233, 234, 246.5, 248.5, 510, 512, 1194, 1197, and 1198 .

 57. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of
themselves and other current or former employees, to bring a civil action to recover civil penalties

1 pursuant to the procedures specified in California Labor Code § 2699.3.

2 58. Pursuant to Labor Code §§ 2699(a) and (f), Plaintiff and aggrieved employees are
3 entitled to recover civil penalties for each of the Defendants' violations of Labor Code §§ 98.6,
4 201, 203, 204, 226, 226.7, 233, 234, 246.5, 248.5, 510, 512, 1194, 1197, and 1198 during the
5 applicable limitations period in the following amounts:

6 A. For violations of Labor Code § 98.6, ten thousand dollars (\$10,000.00) for
7 each aggrieved employee (penalty established by Labor Code § 98.6(b)(3));

8 B. For violations of Labor Code § 226(a), two hundred fifty dollars (\$250.00)
9 for each aggrieved employee for initial violation and one thousand dollars (\$1,000.00) for each
10 aggrieved employee for each subsequent violation (penalty amounts established by Labor Code §
11 226.3).

12 C. For violations of Labor Code §§ 510 and 512, fifty dollars (\$50.00) for each
13 aggrieved employee for initial violation and one hundred dollars (\$100.00) for each aggrieved
14 employee for each subsequent violation, per pay period in addition to an amount sufficient to
15 recover underpaid wages (penalty amounts established by Labor Code § 558).

16 D. For violations of Labor Code § 1197, one hundred dollars (\$100.00) for
17 each aggrieved employee per pay period for each initial violation and two hundred fifty dollars
18 (\$250.00) for each aggrieved employee per pay period for each subsequent violation (penalty
19 amounts established by Labor Code § 1197.1).

20 E. For violations of Labor Code §§ 201, 202, 203, 226.7, 233, 234, 246.5,
21 248.5, 1194, and 1198, one hundred dollars (\$100.00) for each aggrieved employee per pay period
22 for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay
23 period for each subsequent violation (penalty amounts established by Labor Code § 2699(f)(2)).

24 59. Plaintiff has complied with the procedures for bringing suit specified in California
25 Labor Code § 2699.3. By letter dated February 13, 2022, Plaintiff filed written notice online with
26 the Labor and Workforce Development Agency ("LWDA") and gave written notice by certified
27 mail to Defendants of the specific provisions of the Labor Code alleged to have been violated,
28 including the facts and theories to support the alleged violations. Plaintiff accompanied her LWDA
notice with a fee in the amount of \$75.00. The LWDA has failed to take action in response within
65 calendar days of the date of Plaintiff's notice, but Plaintiff anticipates that the LWDA will
provide written notice to Plaintiff informing her that it does not intend to investigate these

1 allegations.

2 60. Pursuant to Labor Code § 2699(g), Plaintiff is entitled to an award of civil penalties,
3 reasonable attorney's fees and costs in connection with her claims for civil penalties.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff prays that the Court enter judgment in her favor and against
6 Defendants, containing the following relief:

7 A. An award of damages, in a sum in excess of the jurisdictional minimum of the
8 Superior Court, to be determined at trial, plus prejudgment interest, to compensate Plaintiff for all
9 monetary and/or economic harm, including, but not limited to, the loss of past and future income,
10 wages, compensation, and other benefits of employment;

11 B. An award of damages, in a sum in excess of the jurisdictional minimum of the
12 Superior Court, to be determined at trial, plus prejudgment interest, to compensate Plaintiff for all
13 non-monetary and compensatory harm, including, but not limited to, compensation for her
14 depression, humiliation, embarrassment, stress and anxiety, loss of self-esteem and self-
15 confidence, and emotional pain and suffering;

16 C. An award of damages for any and all other monetary and/or non-monetary losses
17 suffered by Plaintiff in an amount to be determined at trial, plus prejudgment interest;

18 D. An award of punitive damages;

19 E. An award of costs that Plaintiff has incurred in this action, as well as Plaintiff's
20 reasonable attorneys' fees and costs of prosecuting this action to the fullest extent permitted by
21 law;

22 F. Restitutionary injunctive relief;

23 G. Declaratory relief;

24 H. Unpaid minimum, overtime, and premium wages;

25 I. Statutory penalties;

26 J. Civil penalties;

27 K. Such other and further relief as the Court may deem just and proper.
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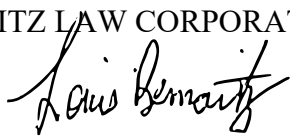
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JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues of fact and damages stated herein.

Respectfully submitted,
BENOWITZ LAW CORPORATION

Dated: April 20, 2023

BY 

LOUIS BENOWITZ
Attorneys for Plaintiff
DONELLA NICHOLSON