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Electronically FILED by Superior Court of California, County of Los Angeles on 11/23/2022 03:02 PM Sherri R. Carter, Executive Officer/Clerk of Court, by G. Carini, Deputy Clerk

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 Private Attorney General Representative*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES**

Alex Fischer, on behalf of himself and others
 similarly situated as a Private Attorney
 General Representative,

Plaintiff,

vs.

Blacklane North America, Inc., a Delaware
 corporation and DOES 1-20, inclusive,

Defendants.

CASE NO.: **22STCV37198**

[REPRESENTATIVE AND CLASS ACTION]

**COMPLAINT FOR CIVIL PENALTIES UNDER
 THE PRIVATE ATTORNEYS GENERAL ACT
 OF 2004, CALIFORNIA LABOR CODE § 2698 et
 seq. ("PAGA")**

1. Violation of California Labor Code §§ 510, 1194 (Failure to Pay Overtime);
2. Violation of California Labor Code §§ 1194, 1194.2, 1197, 1197.1 (Failure to Pay Minimum Wage);
3. Violation of California Labor Code §§ 512, 226.7 (Failure to Provide Meal & Breaks);
4. Violation of California Labor Code § 226 (Inaccurate Wage Statements);
5. Violation of California Labor Code § 203 (Waiting Time);
6. Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
7. Violation of Local and Municipal Ordinances;
8. California Business and Professions Code § 17200 et seq.

[JURY TRIAL DEMANDED]

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1 headquartered in Santa Monica, California.

2 9. Plaintiff started working for Defendants in 2013 as one of their first Drivers in the Los
3 Angeles area.

4 10. Other than the manner in which Defendants are presently identified, Defendants by the
5 name of DOES 1 through 20, are legally responsible for the wrongful conduct alleged herein. Plaintiff
6 is unaware of these Defendants' true names, capacities, relationships, and extent of participation in the
7 conduct alleged herein, and therefore sues these Defendants by such fictitious names. Plaintiff will
8 amend this Complaint when their true names and capacities are ascertained.

9 11. Plaintiff alleges that each Defendant, directly or indirectly, or through agents, affiliates,
10 or other persons, employed Plaintiff and other similarly situated aggrieved Workers, and exercised
11 control over their wages, hours, and working conditions. Each Defendant acted in all respects pertinent
12 to this action as the agent of the other Defendants, to willfully operate and participate in a joint scheme,
13 producing a business model allowing for the unlawful conduct alleged; thus, the acts of each Defendant
14 are legally attributable to the other Defendants.

15 12. At all times relevant, the policies and practices that are complained of in this Complaint
16 have occurred throughout the class period and are currently applied by Defendants throughout
17 California.

18 JURISDICTION AND VENUE

19 13. This Court has jurisdiction over Plaintiff's claims for civil penalties under the Private
20 Attorneys General Act ("PAGA"), Cal. Labor Code § 2699 *et seq.*

21 14. This Court has personal jurisdiction over Defendants because at all relevant times,
22 Defendants have conducted business in the State of California and have committed the alleged acts and
23 omissions within the State of California, and Defendant Blacklane has a principal place of business in
24 Santa Monica, California.

25 15. Venue is proper under California Code of Civil Procedure § 395 and under California
26 Government Code § 12965(b), in that Plaintiff resides within the County of Los Angeles.

1 **STATEMENT OF FACTS**

2 16. Blacklane is a ride service provider, offering professional chauffer services in major
3 cities across the globe. Blacklane partners with licensed Drivers in order to provide these ride services.

4 17. Plaintiff was hired by Defendants as a Driver to complete jobs all throughout Los
5 Angeles County, California.

6 18. During the entire period of Plaintiff's employment with Defendants, Plaintiff was a
7 dedicated and exemplary employee. Plaintiff performed his duties as a driver for Defendants in a
8 diligent and thorough manner.

9 19. Plaintiff was one of the first Drivers hired by Defendants in the Los Angeles market and
10 has completed over 7,000 rides.

11 20. Plaintiff would use the Defendants' app to receive jobs. In the app Workers used, jobs
12 would show up in a portal for the Drivers to submit a bid to receive a job. When Plaintiff initially started
13 working for Defendants, the app worked as a bidding system for the Workers. Defendants then
14 introduced a flat rate pay system for the Drivers. Since the flat rate pay system was introduced, the
15 Drivers that elected to stay on the bidding system stopped receiving jobs.

16 21. Defendants also promised Plaintiff bonuses, which became unattainable once the ride
17 ordering system moved from a bidding system to a flat rate system because the Plaintiff stopped
18 receiving jobs and could not come close to the required bonus requirements.

19 22. Plaintiff does not want to move from the bidding system to the flat rate system because
20 the flat rate pay system does not pay a living wage.

21 23. Not only does the flat rate system not pay a living wage, but the flat rate jobs are being
22 taken by undisclosed Drivers that Defendants are designating as a bulk purchaser/provider of services,
23 as opposed to a neutral platform that allowed customers to post jobs and Drivers to bid for them.

24 24. Plaintiff incurred costs for necessary cell phone service, required to complete the job.
25 These necessary expenses went uncompensated by Defendants.

26 25. While working for Defendants, Plaintiff incurred business-related expenses on items
27 such as fuel and insurance, which were not reimbursed by Defendants.

28 26. Plaintiff and Class Members purchased new vehicles at the urging of Defendants in

1 order to obtain more rides and bonuses. However, the Drivers who stayed on the bidding system rather
2 than opting into the flat rate system stopped receiving jobs.

3 27. Defendants have a required black-tie uniform for their Drivers and were not consistent
4 with the way they enforced the requirement. For example, some Drivers did not dress in the required
5 uniform and did not get reprimanded. Meanwhile, other Drivers were reprimanded if they were wearing
6 a non-black tie instead of a black tie.

7 28. Defendants told their customers that driver tips were included. Defendants paid a lump
8 sum amount to Drivers and did not itemize what tips were actually received or paid.

9 29. When Plaintiff and Class Members needed to contact managers or support, they were
10 given e-mail addresses of managers, who almost never responded to any questions or concerns the
11 Drivers had.

12 30. While employed by Defendant, Plaintiff and Class Members were regularly required to
13 work shifts in excess of eight hours a day and 40 hours a week.

14 31. Defendants have consistently failed to pay for overtime hours after 8 hours of work in a
15 workday or 40 hours in a week, in violation of California law.

16 32. Moreover, Defendants provided wage statements that listed incorrect earnings because
17 of their failure to pay overtime after 8 hours of work in a workday or 40 hours in a week. Therefore,
18 the total gross and net earnings, as well as regular time and overtime hours listed on the employee's
19 pay stubs, are incorrect as they do not pay overtime after 8 hours in a workday or 40 hours in a week
20 even though employees were regularly scheduled and encouraged to work longer shifts.

21 33. Plaintiff and Class Members seek compensation for all sustained damages, including
22 loss of earnings for all hours of overtime worked; all penalties pursuant to Cal. Lab. Code § 510,
23 liquidated damages, or other damages permitted by law; restitution or disgorgement of all benefits
24 obtained by Defendant from their unlawful business practices; injunctive and declaratory relief; all
25 forms of equitable relief permitted by law; prejudgment interest and reasonable attorneys' fees and
26 costs.

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1 other current and former aggrieved employees of Defendant who have worked in California, the civil
2 penalties provided by PAGA, plus reasonable attorneys' fees and costs.

3 40. Plaintiff and all similarly situated aggrieved Workers are entitled to penalties under
4 PAGA for Defendant's following violations:

5 **CLASS ACTION ALLEGATIONS**

6 41. Plaintiff brings this action on behalf of themselves, and all others similarly situated as a
7 class action pursuant to Section 382 of the California Code of Civil Procedure.

8 42. Plaintiff seeks to represent Classes composed of and defined as follows:

9 **Failure to Pay Overtime Class.** All persons who are employed or have
10 been employed by Defendants in California in a non-exempt position who
11 are or were not paid overtime for all work after 8 hours in a workday or 40
12 hours in a workweek.

12 **Failure to Provide Adequate Meal and Rest Breaks Class.** All persons
13 who are or were employed by Defendants in California in a non-exempt
14 position who did not receive adequate meal breaks for work in excess of
15 five hours and did not receive rest breaks after working in excess of four
16 hours.

15 **Waiting Time Penalties Class.** All persons who are employed or were
16 employed by Defendants in California in a non-exempt position who did
17 not receive all wages owed to them at the time of their termination.

17 **Itemized Wage Statement Class.** All persons who are employed or have
18 been employed by Defendants in California in a non-exempt position who
19 did not receive an itemized wage statement that listed the correct straight
20 and overtime hours that the employee worked in the pay period or the
21 correct gross and net wages earned.

20 43. This action has been brought and may be properly maintained as a class action under the
21 provisions of Section 382 of the California Code of Civil Procedure because there is a well-defined
22 community of interest in the litigation and the proposed Classes are easily ascertainable.

23 **A. Numerosity**

24 44. The potential members of the Classes as defined are so numerous that joinder of all the
25 members of the Classes is impracticable. While the precise number of class members for each Class has
26 not been determined at this time, Plaintiff is informed and believes that Defendants currently employ,
27 and during the relevant period employed, hundreds of employees in the State of California, in non-
28 exempt positions who are or have been affected by Defendants' unlawful and uniform policies of: (1)

1 failing to pay for all overtime worked after 8 hours in a workday or over 40 hours in a week; (2) failing
2 to provide adequate meal breaks for work in excess of 5 hours and rest breaks for work in excess of 4
3 hours; (3) failing to pay all wages owed at termination; and (4) failure to provide accurate itemized wage
4 statements.

5 45. Plaintiff alleges that Defendant's employment records will provide information as to the
6 number and location of all members of the Classes. Joinder of all members of the proposed Classes is
7 not practicable.

8 **B. Commonality**

9 46. There are questions of law and fact common to the Classes that predominate over any
10 questions affecting only individual Class Members. These common questions of law and fact include,
11 without limitation:

- 12 a. Whether Defendants violated California Labor Code §§ 510, 1194, 1198 and
13 1199 by failing to pay proper overtime wages to the putative Class Members;
- 14 b. Whether Defendants violated California Labor Code § 226.7 in failing to provide
15 adequate meal and rest breaks to the putative Class Members;
- 16 c. Whether Defendants violated California Labor Code § 226 for failure to furnish
17 its employees with a complete and accurate itemized wage statement; and
- 18 d. Whether Defendants violated California Labor Code § 203 by failing to pay
19 overtime wages due and owing at the time of termination of employment for the
20 putative Class Members.

21 **C. Typicality**

22 47. The claims of the Plaintiff are typical of the claims of the Classes. Plaintiff and all
23 members of the Classes sustained injuries and damages arising out of and caused by Defendants'
24 common course of conduct in violation of the law as alleged therein.

25 **D. Adequacy of Representation**

26 48. Plaintiff will fairly and adequately represent and protect the interests of the members of
27 the Classes. Counsel who represents the Plaintiff are competent and experienced class action litigators.
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1 **E. Superiority of Class Action**

2 49. A class action is superior to other available means for the fair and efficient adjudication
3 of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and
4 fact common to the Classes predominate over any questions affecting only individual members of the
5 Classes. Each member of each Class has been damaged and is entitled to recovery by reason of
6 Defendants' illegal policy and practice of failing to properly compensate Class Members as alleged
7 above.

8 50. Class action treatment will allow those similarly situated persons to litigate their claims
9 in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is
10 unaware of any difficulties that are likely to be encountered in the management of this action that would
11 preclude its maintenance as a class action.

12 **FIRST CAUSE OF ACTION**

13 **Failure to Pay Overtime**

14 **Violation of Cal. Lab. Code §§ 510, 1194**

15 51. Plaintiff re-alleges and incorporates all previous paragraphs herein.

16 52. During the relevant employment period, Defendants were required to pay all non-exempt
17 employees overtime compensation for all hours worked over eight (8) hours per day, for more than 40
18 hours worked per week, or for hours worked on the seventh consecutive workday. *See, e.g.*, California
19 Labor Code §§ 510, 1194, and 1197, as well as §§ 200 *et seq.*, 1174, and 1174.5. Defendants failed to
20 do so.

21 53. Plaintiff is a non-exempt employee.

22 54. Even when Drivers were working longer than eight (8) hours in a day, forty (40) hours a
23 week, or on the seventh (7th) consecutive workday, Defendants failed to pay overtime wages.

24 55. Defendants' conduct described herein violates IWC Wage Order No. 4-2001 of the
25 California Industrial Welfare Commission and the California Labor Code §§ 510, 1194, and 1197, as
26 well as §§ 200 *et seq.*, 1174, and 1174.5.

27 56. As a result of Defendants' conduct, Plaintiff and the Class have suffered damages and
28 were deprived of overtime wages. Plaintiff and the Class seek these wages, attorneys' fees and costs,

1 and interest under Cal. Lab. Code § 1194.

2 **SECOND CAUSE OF ACTION**

3 **Failure to Pay Minimum Wages**

4 **Violation of Cal. Lab. Code §§ 1194, 1194.2, 1197, 1197.1**

5 57. Plaintiff re-alleges and incorporates all previous paragraphs herein.

6 58. Defendants did not pay Plaintiff and the Class the California minimum wage for all hours
7 worked. During the relevant employment period, Defendants required Plaintiff and the Class to work at
8 rates that fell below the mandated minimum wage. *See, e.g.*, IWC Minimum Wage Order No. M-2014;
9 Labor Code §§ 1182.12, 1194, 1197.

10 59. Plaintiff and the Class were not exempt from the state's Minimum Wage Orders as
11 employees. Defendants were aware of their obligation to pay minimum wages but failed to do so.

12 60. When one accounts for uncompensated time checking for and waiting for ride
13 assignments, for uncompensated time waiting to pick up passengers, for time spent driving back after a
14 drop-off of a client, and expenses improperly imposed on Drivers, the amount of money Defendants
15 provided Drivers fell below minimum wage requirements.

16 61. Plaintiff and the Class seek these wages, liquidated damages, penalties, attorneys' fees
17 and costs, and interest under Cal. Lab. Code §§ 1194, 1194.2, 1197, 1197.1.

18 **THIRD CAUSE OF ACTION**

19 **Failure to Provide Adequate Meal and Rest Breaks**

20 **Violation of Cal. Lab. Code §§ 512, 226.7**

21 62. Plaintiff re-alleges and incorporates all previous paragraphs herein.

22 63. During the relevant employment period, Plaintiff regularly worked in excess of five (5)
23 hours per day without being afforded a meal period of not less than 30 minutes as required by Labor
24 Code § 226.7.

25 64. California Labor Code § 512 provides that an employer may not employ an employee for
26 a work period of more than five (5) hours per day without providing the employee with a meal period
27 of not less than 30 minutes.

28 65. Further, California Labor Code § 226.7 (b)-(c) provides:

1 (b) An employer shall not require an employee to work during a meal or rest or recovery
2 period mandated pursuant to an applicable statute, or applicable regulation, standard, or
3 order of the Industrial Welfare Commission, the Occupational Safety and Health
Standards Board, or the Division of Occupational Safety and Health.

4 (c) If an employer fails to provide an employee a meal or rest or recovery period in
5 accordance with a state law, including, but not limited to, an applicable statute or
6 applicable regulation, standard, or order of the Industrial Welfare Commission, the
Occupational Safety and Health Standards Board, or the Division of Occupational Safety
7 and Health, the employer shall pay the employee one additional hour of pay at the
employee's regular rate of compensation for each workday that the meal or rest or
recovery period is not provided.

8 66. Despite working more than five hours a day, Drivers like Plaintiff were not provided with
9 meal and rest breaks as required.

10 67. As a result of Defendants' conduct in not providing for adequate meal periods, Plaintiff
11 and the Class are entitled to one additional hour of pay at their regular rate as a penalty under Labor
12 Code § 226.7 for each day in which the proper meal period was not provided. In addition, Plaintiff and
13 the Class are entitled to interest, penalties, attorneys' fees and costs pursuant to Labor Code §§ 218.5
14 and 218.6.

15 **FOURTH CAUSE OF ACTION**

16 **Failure to Provide Itemized Wage Statements**

17 **Violation of Cal. Lab. Code § 226**

18 68. Plaintiff re-alleges and incorporates all previous paragraphs herein.

19 69. California Labor Code § 226 provides:

20 Every employer shall, semimonthly or at the time of each payment of wages, furnish each
21 of his or her employees, either as a detachable part of the check, draft, or voucher paying
the employee's wages, or separately when wages are paid by personal check or cash, an
22 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by
the employee, except for any employee whose compensation is solely based on a salary
23 and who is exempt from payment of overtime under subdivision (a) of Section 515 or
any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate
24 units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
(4) all deductions, provided, that all deductions made on written orders of the employee
25 may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates
of the period for which the employee is paid, (7) the name of the employee and his or her
26 social security number, (8) the name and address of the legal entity that is the employer,
and (9) all applicable hourly rates in effect during the pay period and the corresponding
27 number of hours worked at each hourly rate by the employee.

28 70. In this case, Defendants have failed to provide such wage statements to Plaintiff and the

1 Class in that their wage statements do not include, without limitation, the accurate gross wages earned,
2 all overtime hours worked, net wages earned, itemized compensation for rest periods, all applicable
3 hourly rates in effect during the pay period, or the corresponding number of hours worked at each hourly
4 rate by the employee.

5 71. Defendants have intentionally failed to put the information required by section 226(a) on
6 the paycheck stubs. Defendants violated section 226(a) and Wage Order 4 by failing to maintain accurate
7 records and by failing to furnish each employee with accurate itemized wage statements either
8 semimonthly or for each pay period that reflected all time spent waiting for shifts to become available,
9 time spent undergoing waiting periods while waiting for customers, times spent driving back after the
10 completion of a drop-off of a customer, and expenses improperly imposed on Workers. Defendants'
11 refusal to properly record these times and expenses, to include it in its itemized wage statements, or to
12 properly pay its employees for this time, was willful and intentional. As a result of these violations,
13 Plaintiff and the Class suffered injury because they were not paid for all hours worked.

14 72. Cal. Lab. Code § 226(b) provides that if an employer knowingly and intentionally fails
15 to provide a statement itemizing, among other things, the total hours worked by the employee, then the
16 employee is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial
17 violation of one hundred dollars (\$100) for each subsequent violation, up to four thousand dollars
18 (\$4,000).

19 **FIFTH CAUSE OF ACTION**

20 **Failure to Pay Waiting Time Penalties**

21 **Violation of Cal. Lab. Code § 203**

22 73. Plaintiff re-alleges and incorporates all previous paragraphs herein.

23 74. California Labor Code § 201 requires an employer who discharges an employee to pay
24 all compensation due and owing to that employee immediately upon discharge.

25 75. California Labor Code § 203 provides that if an employer willfully fails to pay
26 compensation promptly upon separation from employment, as required by either section 201 or 202,
27 then the employer is liable for waiting time penalties in the form of continued compensation for up to
28 thirty (30) workdays.

76. Defendants willfully failed and refused to timely pay overtime compensation to putative Class Members whose employment terminated. Therefore, Defendants are liable to these putative Class Members for waiting time penalties, together with costs, under California Labor Code § 203.

77. As a result of Defendants' unlawful conduct, Plaintiff and the Class have suffered damages, as they were not paid all wages due. The precise amount of unpaid wages is not presently known to Plaintiff but can be determined directly from Defendants' records.

SIXTH CAUSE OF ACTION

Failure to Pay Reimbursed Business Expenses

Violation of Cal. Lab. Code §§ 2800 and 2802

78. Plaintiff re-alleges and incorporates all previous paragraphs herein.

79. Cal. Lab. Code § 2802 provides that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer”

80. During the relevant employment period, Plaintiff and the Class were required to maintain smart phones with data plans to work for Defendants and pay for all expenses related to the business use of their phones and related business expenses during the discharge of their duties for Defendants. However, Defendants failed to reimburse Plaintiff for these expenditures. Plaintiff and the Class were also required to provide their own vehicles to transport passengers and were solely responsible to pay for tolls while driving, maintain the vehicle's upkeep, pay for fuel, and insure the vehicle.

81. Defendants willfully failed and refused to timely reimburse Plaintiff and putative Class Members for necessary expenses related to the employment. Therefore, Defendants are liable to the Plaintiff and putative Class Members for failure to reimburse business expenses, under California Labor Code §§ 2800 and 2802.

SEVENTH CAUSE OF ACTION

Violation of Local and Municipal Ordinances

82. Plaintiff and the Class re-allege and incorporate all previous paragraphs herein.

83. The foregoing conduct violates of the following local ordinances because Plaintiff were not paid the applicable minimum wage and/or provided healthcare benefits: (a) Berkely Municipal Code

1 Chs. 13.99 & 13.100; (b) Cupertino Municipal Code Ch. 6.95; (c) El Cerrito Municipal Code Ch. 6.95;
2 (d) Emeryville Municipal Code Ch. 37; (e) Los Altos Municipal Code Ch. 3.50; (f) Los Angeles
3 Municipal Code Ch. XVIII; (g) Los Angeles County Code Chs. 8.100, 8.101; (h) Mountain View City
4 Code Ch. 42; (i) Oakland Municipal Code Ch. 5.92; (j) Palo Alto Municipal Code Ch. 4.62; (k) Pasadena
5 Code of Ordinances Ch. 5.02; (l) Richmond Municipal Code Ch. 7.108; (m) San Diego Municipal Code
6 Ch. 3, Art. 9; (n) San Francisco Administrative Code Chs. 12R, 12W; (o) San Jose Municipal Code Ch.
7 4.100; (p) San Leandro Municipal Code Ch. 4-35; (q) San Mateo Municipal Code Ch. 5.92; (r) Santa
8 Clara City Code Ch. 3.20; (s) Santa Monica Municipal Code Ch. 4.62; and (t) Sunnyvale Municipal
9 Code Ch. 3.80.

10 84. Plaintiff and the Class are entitled to all available remedies for these claims including
11 damages, liquidated damages (including where cumulative under local ordinances), punitive damages,
12 civil and statutory penalties (including where cumulative under local ordinances), prejudgment interest,
13 injunctive relief, and attorneys' fees and costs.

14 **EIGHTH CAUSE OF ACTION**

15 **Violation of the Unfair Competition Law**

16 **Bus. & Prof. Code § 17200 *et. seq.***

17 85. Plaintiff re-alleges and incorporates all previous paragraphs herein.

18 86. Cal. Bus. & Prof. Code § 17204 prohibits unfair competition, defined as “any unlawful,
19 unfair or fraudulent business act or practice.” Plaintiff seeks compensation for the loss of property and
20 the personal financial impacts they have suffered as a result of Defendants’ unfair business practices.
21 Defendants’ conduct, as described above, has been and continues to be deleterious to Plaintiff and the
22 Class. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of
23 California Code of Civil Procedure § 1021.5.

24 87. The conduct of Defendants, as described above, constituted unlawful, unfair,
25 unconscionable, fraudulent business acts or practices, or a combination of such statutory violations,
26 which injured Plaintiff and caused him loss of money. Defendants’ misconduct, as alleged herein, gave
27 Defendants an unfair competitive advantage over their competitors, who did not engage in such
28 practices, such as failing to pay wages due, ignoring compensable waiting periods, failing to pay

1 business expenses, and failing to provide sufficient wage statements. The misconduct, as alleged herein
2 also violated established law and public policies that seek to regulate the employer-employee
3 relationship in California. Failing to pay couriers the minimum wage and adhere to standard labor
4 practices is against the goals and policies of the State of California.

5 88. Defendants have engaged and continue to engage in unfair and unlawful business
6 practices alleged in the preceding counts in California by practicing, employing, and utilizing the
7 employment practices outlined above, inclusive, to wit, by: (a) failing to pay to Plaintiff minimum wage
8 as required by California law; (b) failing to compensate Plaintiff for time spent waiting for passengers
9 and returning to and spending time at pick up sites; (c) failing to furnish accurate wage statements
10 pursuant to Labor Code § 226; and (d) failing to maintain accurate timesheet and payroll records
11 pursuant to 29 C.F.R. § 516.1.

12 89. The acts complained of herein, and each of them, constitute unfair, unlawful,
13 unconscionable, fraudulent business practices, or a combination of such statutory violations, in violation
14 of Cal. Bus. & Prof. Code § 17200 *et seq.* Defendants' acts and practices described herein offend
15 established public policies, including those set forth in applicable wage and hour laws, and involve
16 business practices that are immoral, unethical, oppressive, or unscrupulous.

17 90. The unfair business practices set forth above have and continue to injure Plaintiff and the
18 general public and cause injury and the loss of money, as described above. These violations have
19 unjustly enriched Defendants at the expense of Plaintiff, the Class, and the general public. Defendants'
20 actions deprived Plaintiff of expenses and full pay; consequently, Plaintiff and the Class have lost money
21 and property, and they are entitled to restitution in the amount of the wages and expenses that Defendants
22 withheld. As a result, Plaintiff and the Class are entitled to restitution and an injunction.

23 91. Plaintiff seeks full restitution of monies, as necessary and according to proof, to restore
24 any and all monies withheld, acquired, or converted by the Defendants by means of the unfair practices
25 complained of herein within the last four years preceding the filing of the complaint in this action.

26 92. Plaintiff is informed and believes, and, on that basis, alleges that at all times mentioned
27 Defendants have engaged in unlawful, deceptive, and unfair business practices, as proscribed by
28 California Business and Professions Code § 17200 *et seq.*, including those set forth above, thereby

1 depriving Plaintiff of the minimum working condition standards and conditions due under the California
2 laws and Industrial Welfare Commission wage orders as specifically described therein. Violations of
3 the California Labor Code are unlawful acts which are independently actionable under the UCL. *See*
4 *Farmers Ins. Exchange v. Superior Court*, 2 Cal. 4th 377, 383, 826 P.2d 730 (Cal. 1992).

5 **APPLICABLE CIVIL PENALTIES**

6 93. Plaintiff seeks an award for the for the failure to reimburse Workers for all necessary
7 expenses incurred in performing their duties for Defendant, including but not limited to vehicle fuel and
8 cell phone expenses, in violation of California Labor Code § 2802.

9 94. Plaintiff seeks an award for the failure to ensure that all Workers received the appropriate
10 overtime premium pay for all overtime hours worked in excess of 40 per week or eight per day in
11 violation of California Labor Code §§ 510, 554, 1194, and 1198.

12 95. California Labor Code § 2699(f) provides for civil penalties for Labor Code violations
13 for which no civil penalty is specifically provided. There is no specified civil penalty for violations of
14 California Labor Code § 2802.

15 96. Plaintiff seeks an award for the failure of overtime pay violations under California Labor
16 Code §§ 510 and 558, a statutory civil penalty in addition to any other penalty provided by law of fifty
17 dollars (\$50) for initial violations (per employee per pay period in which that employee is underpaid),
18 in addition to an amount sufficient to recover the balance of unpaid wages. The statute orders an
19 additional penalty of one hundred dollars (\$100) for subsequent violations for each underpaid employee
20 for each pay period in which the employee was underpaid, in addition to an amount sufficient to recover
21 the balance of unpaid wages.

22 97. Plaintiff seeks an award for violations of California Labor Code § 226.8. California Labor
23 Code § 226.8(b) imposes a civil penalty of a minimum of \$5,000 and not more than \$15,000 per
24 violation.

25 98. Plaintiff seeks an award for violations of California Labor Code §§ 201-204. California
26 Labor Code § 210 imposes a civil penalty in addition to any other penalty provided by law of one
27 hundred dollars (\$100) per aggrieved employee for the first violation and two hundred dollars (\$200)
28 per aggrieved employee plus twenty-five percent (25%) of the amount unlawfully withheld for

subsequent violations.

99. Plaintiff seeks an award for violations of California Labor Code § 1174(d). California Labor Code § 117.5 imposes a civil penalty of \$500 per aggrieved employee for each willful failure to maintain proper records.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

1. An award of civil penalties under PAGA;
2. An award for unpaid wages, pursuant to the California Labor Code as set forth above;
3. A declaratory judgment that the policies and practices complained of herein are unlawful under the laws of California;
4. An award of appropriate equitable and injunctive relief to remedy Defendants' violations of the laws of California, including but not limited to an order enjoining Defendants from continuing their unlawful policies and practices;
5. An award of damages, liquidated damages, statutory penalties, and restitution to be paid by Defendants according to proof pursuant to the California Labor Code, including the Private Attorney General Act ("PAGA"), Labor Code § 2698 *et seq.*, as set forth above;
6. An award of general damages according to proof;
7. An award of reasonable attorneys' fees and costs incurred by Plaintiff and the Class in this action pursuant to state law;
8. An award of pre- and post-judgement interest to Plaintiff and the Class in this action pursuant to state law; and
9. Such further relief as this Court deems equitable, just, and proper.

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DEMAND FOR JURY TRIAL

Plaintiff seeks a trial by jury for all appropriate issues on each and every claim for relief in this Complaint.

ZIMMERMAN REED LLP



Dated: November 23, 2022

By: _____
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Attorneys for Plaintiff and aggrieved employees

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[Exhibit A] – LWDA Notice Letter

April 14, 2022

Via Electronic Submission

REPLY TO LOS ANGELES

Labor and Workforce Development Agency
320 W. Fourth Street, Suite 450
Los Angeles, CA 90013

RE: *Notice of Violations of the California Labor Code Pursuant to the
Private Attorneys General Act, Labor Code § 2698 et seq*

To Whom It May Concern:

Please be advised that Zimmerman Reed LLP represents Alex Fischer ("Employee"), an employee of Blacklane North America Inc. ("Company"). Employee intends to file claims for violations of Labor Code Private Attorneys General Act ("PAGA"), Labor Code § 2698 *et seq.* against Company.

Employee's claims include numerous violations of the California Labor Code, including those under the Labor Code Private Attorneys General Act ("PAGA"), Labor Code § 2698 *et seq.* PAGA authorizes aggrieved employees to file lawsuits to recover civil penalties on behalf of themselves, other employees, and the State of California for Labor Code violations. Please consider this communication as notice of the claims detailed below pursuant to PAGA. PAGA requires that new claim notices, responses, and certain court documents be filed with the Labor and Workforce Development Agency (LWDA) prior to filing suit.

Claim Background

Employee worked for Blacklane North America Inc. as a driver from when Blacklane North America started operating in California to present day. During that time, Employee worked more 8 hours in a 24-hour period and was not paid overtime wages in violation of California Labor Code § 1194(a) and §2699(a). In the event, Employee is subject to an Alternative Workweek Schedule authorized under California Labor Code § 511, Employee and the other employees did not vote to implement such a schedule and were required to work different hours other than those outlined under the Alternative Workweek Schedule. As a result, Employee seeks to recover unpaid wages, damages, interest, penalties, and attorneys' fees as permitted by the Labor Code.

Notice of Labor Code Violations

Employee seeks the maximum civil penalties available under the following sections of the Labor Code:

§ 1194

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

§204

- (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.

§210

- (a) In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows:
 - (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.
 - (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.
 - (3) The penalty shall be recovered by the Labor Commissioner as part of a hearing held to recover unpaid wages and penalties pursuant to this chapter or in an independent civil action. The action shall be brought in the name of the people of the State of California and the Labor Commissioner and the attorneys thereof may proceed and act for and on behalf of the people in bringing these actions. Twelve and one-half percent of the penalty recovered shall be paid into a fund within the Labor and Workforce Development Agency dedicated to educating employers about state labor laws, and the remainder shall be paid into the State Treasury to the credit of the General Fund.

§ 221

It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.

§ 225.5

In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty as follows:

- (a) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.
- (b) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

§ 226

- (a) An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee

and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. For purposes of this subdivision, "copy" includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision.

§ 226.2

This section shall apply for employees who are compensated on a piece-rate basis for any work performed during a pay period. This section shall not be construed to limit or alter minimum wage or overtime compensation requirements, or the obligation to compensate employees for all hours worked under any other statute or local ordinance. For the purposes of this section, "applicable minimum wage" means the highest of the federal, state, or local minimum wage that is applicable to the employment, and "other nonproductive time" means time under the employer's control, exclusive of rest and recovery periods, that is not directly related to the activity being compensated on a piece-rate basis.

(a) For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:

- (1) Employees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.
- (2) The itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items specified in that subdivision, separately state the following, to which the provisions of Section 226 shall also be applicable:
 - (A) The total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period.
 - (B) Except for employers paying compensation for other nonproductive time in accordance with paragraph (7), the total hours of other nonproductive time, as determined under paragraph (5), the rate of compensation, and the gross wages paid for that time during the pay period.
- (3) (A) Employees shall be compensated for rest and recovery periods at a regular hourly rate that is no less than the higher of:
 - (i) An average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods.
 - (ii) The applicable minimum wage.

Non-Spoliation Notice

Please be advised that Company is under a legal duty to maintain, preserve, retain, protect, and not destroy any and all documents and data, both electronic and hard copy, which may be relevant to Employee's claims as set forth herein. The failure to preserve and retain the electronic data and evidence outlined in this notice may constitute spoliation of evidence which may subject you to legal claims for damages and/or evidentiary and monetary sanctions. For purposes of this notice, electronic data or electronic evidence shall include, but not be limited to, all text files (including word-processing documents), presentation files (such as PowerPoint), financial data, spreadsheets, e-mail files and information concerning e-mail files (including logs of e-mail history and usage, header information, and deleted files), internet history files and preferences, graphical files in any format, databases, calendar and scheduling information, task lists, voice mail, instant messaging and other electronic communications, telephone logs, contact managers, computer system activity logs, and all file fragments, internet usage files, offline storage or information stored on removable media or storage media, information contained on laptops, or other portable devices, network access information and backup files containing electronic data or electronic evidence, SMS messages, any other electronic communications, including, but not limited to Google Apps, Google Mail, Confide, WhatsApp, and Telegram. Specifically, you are instructed not to destroy, disable, erase, encrypt, alter, or otherwise make unavailable any electronic data and/or evidence relevant to the Employee's claims, and you are further instructed to take reasonable efforts to preserve such data and/or evidence.

To meet this burden, you are instructed by way of example and not limitation, to:

- Preserve all data storage backup files (i.e., not overwrite any previously existing backups);
- Preserve and retain all electronic data generated or received by employees who may have personal knowledge of the facts involved in the claims against the Defendant as set forth herein;
- Refrain from operating, removing or altering, fixed or external drives and media attached to any workstations or laptops, voice mail systems, and cell phones, copy machines that are reasonably thought to have data related to the claims, including but not limited to the workstations and/or laptops used by any employee or contractor;
- Preserve and retain all data from servers and networking equipment logging network access activity and system authentication;
- Preserve and retain all electronic data in any format, media, or location relating to the claims, including data on hard drives, hard disks, floppy disks, zip drives, CD-ROMs, CD-RWs, DVDs, backup tapes, PDAs, cell phones, smart phones, memory cards/sticks, or digital copiers or facsimile machines;
- Prevent employees from deleting or overwriting any electronic data related to the Employees claims including data stored on social-media websites and services such as Facebook, Instagram, Snapchat detailing purchases made with payments from Defendant; and
- Take such other security measures, including, but not limited to, restricting physical and electronic access to all electronically stored data directly or indirectly related to the Employee's claims.

April 14, 2022

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In addition, you are required to instruct all current and former employees and contractors to preserve the following for all electronic devices in their possession including but not limited to a cell phone, smartphone, tablet, iPad, laptop, and GPS:

- Maintain and preserve the actual electronic device(s) that were used and/or owned during the time they worked for Defendant;
- Maintain their cell phone and/or data usage records during the time they worked for Defendant; and
- Preserve all calls, voicemails, text messages, emails, instant messages, social-media messages, social- media posts, internet searches, GPS data, and other electronic communication or data during the time they worked for Defendant.

You are instructed not to alter, delete, destroy or discharge any of your electronic devices and/or the above-requested data until we have had an opportunity to have them inspected by an expert. To facilitate the retrieval of said data, be advised that a forensic accounting firm may be retained to forensically acquire the hard drives and other media that may contain electronic data related to the action. Please be advised that failure to preserve evidence may be considered spoliation of evidence and could result in penalties assigned by the Court.

Conclusion

Employee is entitled to recover unpaid wages, damages, interest, penalties, and attorneys' fees as permitted by the Labor Code. They intend to bring an action against Blacklane North America Inc. pursuant to the Private Attorneys General Act ("PAGA") and other state laws to recover wages, damages, restitution, interest, penalties, and attorneys' fees and costs. If permitted, Employee will seek any and all amounts capable of being collected by the Commission pursuant to Labor Code Section 2699.3 *et seq.*

If you have any questions or concerns, please feel free to contact me.

Sincerely,



Caleb Marker

Partner | 877.500.8780 | caleb.marker@zimmreed.com