

**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 9/29/2021 4:52 PM
Reviewed By: R. Walker
Case #21CV386225
Envelope: 7368109**

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ELLEN INEZ YOUNG, and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

(UNLIMITED JURISDICTION)

ELLEN INEZ YOUNG, on behalf of herself, all
others similarly situated, and as an “aggrieved
employee” on behalf of other “aggrieved
employees” under the Labor Code Private
Attorneys General Act of 2004,

Plaintiff,

vs.

AUTOTHINK, INC., a Delaware corporation;
and DOES 1–50, inclusive,

Defendants.

Case No.: 21CV386225

FIRST AMENDED CLASS ACTION

COMPLAINT FOR:

1. Failure to Provide Meal and Rest Periods (Lab. Code §§ 226.7, 512 and 1198);
2. Failure to Pay All Wages Earned for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
3. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
4. Wage Statement Penalties (Lab. Code § 226);
5. Waiting Time Penalties (Lab. Code §§ 201, 202, and 203);
6. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.); and
7. Civil Penalties (Lab. Code §§ 2698, et seq.).

JURY TRIAL DEMANDED



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1 Plaintiff, ELLEN INEZ YOUNG (hereafter "Plaintiff"), on behalf of herself and all others
2 similarly situated, complains and alleges as follows:

3 INTRODUCTION

4 1. Plaintiff brings this class and representative action against Defendant
5 AUTOTHINK, INC., a Delaware corporation, and DOES 1–50, inclusive (collectively
6 "Defendants") for alleged violations of the California Labor Code, Industrial Welfare
7 Commission Order No. 9–2001 (hereafter "the Wage Order"), and the Business and Professions
8 Code.

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to her
10 and other similarly situated current and former employees in California for unpaid wages and
11 other related relief. These claims are based on Defendants' alleged failures to: (1) Provide all
12 meal and rest periods in compliance with California law, (2) Pay all wages earned for all hours
13 worked at the correct rates of pay, (3) Indemnify Plaintiff and the below-described Class for
14 reasonable expenses incurred while performing their duties, (4) Provide accurate and complete
15 itemized written wage statements, (5) Timely pay all final wages upon termination of
16 employment, and (6) Fairly compete. Accordingly, Plaintiff now seeks to recover unpaid wages
and related relief through this class action.

17 PARTIES

18 3. Plaintiff ELLEN INEZ YOUNG is a resident of California. In approximately
19 November 2020, Defendants began to employ Plaintiff as a non-exempt hourly driver. Defendants
20 continuously employed Plaintiff from the time of her hire until January 4, 2021, when her
21 employment ended.

22 4. At all relevant times, Plaintiff was an "employee" within the meaning of Title 8
23 California Code of Regulations § 11050 and an "aggrieved employee" within the meaning of
Labor Code § 2699(c).

24 5. Defendant AUTOTHINK, INC., is a corporation organized and existing under the
25 laws of Delaware and a citizen of California based on Plaintiff's information and belief.

26 6. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
27 participation in the conduct alleged herein of the Defendants sued as DOES 1–50, inclusive, but
28 is informed and believes and thereon alleges that said Defendants are legally responsible for the



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1 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
2 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
3 when ascertained.

4 7. Plaintiff is informed and believes and thereon alleges that, at all relevant times
5 herein, all Defendants were the agents, employees, servants, masters, and/or employers of the
6 remaining Defendants, and, in doing the things hereinafter alleged, were acting within the course
7 and scope of such agency or employment and with the approval and ratification of each of the
8 other Defendants.

9 8. At all relevant times, in perpetrating the acts and omissions alleged herein,
10 Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or
11 lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-
12 described class in accordance with applicable laws as alleged herein.

13 9. Plaintiff is informed and believes and thereon alleges that each and every one of
14 the acts and omissions alleged herein was performed by, and/or attributable to, all Defendants,
15 each acting as agents and/or employees, and/or under the direction and control of each of the other
16 Defendants, and that said acts and failures to act were within the course and scope of said agency,
17 employment, and/or direction and control.

18 **CLASS ALLEGATIONS**

19 10. This action has been brought and may be maintained as a class action pursuant to
20 California Code of Civil Procedure § 382 because there is a well-defined community of interest
21 among the persons who comprise the readily ascertainable class defined below and because
22 Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class
23 action.

24 11. **Class Definition:** The Class is defined as follows: All individuals currently and
25 formerly employed in California as non-exempt, hourly employees by Defendants, including but
26 not limited to drivers and persons in similar positions at any time during the period beginning
27 four years prior to the filing of this action and ending on the date that final judgment is entered in
28 this action (“Class” or “Class Members”).

12. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
right to amend or modify the class definition with greater specificity, by further division into
subclasses and/or by limitation to particular issues.



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1 13. **Numerosity:** The Class Members are so numerous that the individual joinder of
2 each individual Class Member is impractical. While Plaintiff does not currently know the exact
3 number of Class Members, Plaintiff is informed and believes that the actual number exceeds the
4 minimum required for numerosity under California laws.

5 14. **Commonality and Predominance:** Common questions of law and fact exist as to
6 all Class Members and predominate over any questions which affect only individual Class
7 Members. These questions include, but are not limited to:

8 A. Whether Defendants failed to pay the Class Members all minimum,
9 regular, overtime and doubletime wages;

10 B. Whether Defendants failed to provide the Class Members with all meal and
11 rest periods in compliance with California law;

12 C. Whether Defendants failed to pay all wages earned to the Class Members
13 for all hours worked at the correct rates of pay;

14 D. Whether Defendants failed to indemnify the Class Members for the
15 reasonable expenses they incurred during the course of performing their duties;

16 E. Whether Defendants knowingly and intentionally failed to provide the
17 Class Members with accurate written wage statements;

18 F. Whether Defendants willfully failed to provide the Class Members with
19 timely final wages upon termination of employment;

20 G. Whether Defendants engaged in unfair competition within the meaning of
21 Business and Professions Code §§ 17200, et seq., with respect to the Class Members; and

22 H. Whether Class Members are entitled to restitution of money or property
23 that Defendants may have acquired from them through alleged Labor Code violations.

24 15. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims.
25 Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
26 practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor
27 Code, the Wage Order, and the Business and Professions Code.

28 16. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
in that she has no interests that are adverse to, or otherwise in conflict with, the interests of absent
Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class
Members. Plaintiff will fairly and adequately represent and protect the interests of Class



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Members.

17. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of Plaintiff and absent Class Members.

18. **Superiority:** A class action is vastly superior to other available means for fair and efficient adjudication of Class Members' claims and would be beneficial to the parties and the Court. Class action treatment will allow a number of similarly situated persons to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. In addition, the monetary amounts due to many individual Class Members are likely to be relatively small and would thus make it difficult, if not impossible, for individual Class Members to both seek and obtain relief. Moreover, a class action will serve an important public interest by permitting Class Members to effectively pursue the recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

STATEMENT OF FACTS

19. In approximately November 2020, Defendants began to employ Plaintiff as a non-exempt hourly driver. Defendants continuously employed Plaintiff from the time of her hire until January 4, 2021, when her employment ended.

20. At all relevant times, Defendants employed Plaintiff and the Class Members at an hourly rate of pay and issued their paychecks on a bi-weekly basis. At all relevant times, Defendants classified Plaintiff and the Class Members as non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

21. At all relevant times, Plaintiff and the Class Members worked over 8 hours in one workday and over 40 hours in one workweek. Despite this, Defendants failed to provide Plaintiff and the Class Members with all timely rest and meal periods pursuant to California law, including, but not limited to, two timely 30-minute uninterrupted meal periods and three 10-minute rest periods on workdays they worked more than 10 hours. Further, due to the workload and low staffing levels, Defendants denied Plaintiff and the Class Members their 30-minute duty-free meal period within the first 5 hours of work. Defendants frequently forced Plaintiff and the Class Members to forgo timely, duty-free 30-minute meal periods by assigning them more time-



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1 sensitive work than they could reasonably expect them to complete within their first five hours of
2 work. On those seldom occasions when Plaintiff and the Class Members did attempt to take their
3 30-minute meal period, they were not off-duty and were always interrupted because Defendants
4 required Plaintiff and the Class Members to monitor their Slack application (work application for
time-keeping, distribution of tasks and schedules) at all times, even during lunch periods.

5 22. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
6 Class Members to take rest periods in violation of California law. Due to high workload and low
7 staffing levels, Defendants failed to authorize and permit Plaintiff and the Class Members to take
8 10-minute, paid, duty-free rest breaks every 4 hours worked or major fraction thereof. Defendants
9 did not seek an exemption from the rest period protections of the Wage Order from the California
10 Divisions of Labor Standards Enforcement. Furthermore, Defendants failed to pay premium
11 wages for days on which they failed to provide Plaintiff and the Class Members with timely rest
12 breaks and/or meal periods in compliance with California law.

13 23. At all relevant times, Defendants required Plaintiff and the Class Members to work
14 on-call shifts. Defendants often required Plaintiff and the Class Members to remain on-call 24
15 hours a day, up to 5 days a week. However, Defendants did not pay Plaintiff and the Class
16 Members minimum, regular, overtime, and double-time wages for such on call periods. During
17 such on-call shifts, Defendants restricted Plaintiff and the Class Members in the types of activities
18 they could perform and required them to stay available at all times. Defendants required Plaintiff
19 and the Class Members to monitor their phones for work-related calls at all times. Defendants
20 instructed Plaintiff and the Class Members to show up to the assigned pick-up locations (client's
21 homes) within 15 minutes of such assignments. Defendants, however, required Plaintiff and the
22 Class Members to clock-out while waiting, after they dropped-off the cars at dealerships or
23 automotive shops. Consequently, Defendants failed to compensate Plaintiff and the Class
Members for all hours worked and for all hours spent on-call.

24 24. Moreover, at all relevant times, Defendants assigned Plaintiff and the Class
25 Members to work "split shifts." For instance, Defendants would require Plaintiff and the Class
26 Members to clock-out at the end of their shifts but continue to monitor their Slack application in
27 case they were called back to work. Often, Defendants requested Plaintiff and the Class Members
28 to return to work in the same day between one and four hours of the first shift creating split shifts
several times a week. However, Defendants failed to pay Plaintiff and the Class Members a split



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1 shift premium as required by the Wage Order.

2 25. At all relevant times, Defendants required Plaintiff and the Class Members to incur
3 certain business expenses in the course of performing their duties. Defendants required Plaintiff
4 and the Class Members to use their personal cell phones in the course of performing their duties,
5 including downloading and monitoring the Slack application for all communications, work
6 instructions, scheduling and timekeeping. Defendants forced Plaintiff and other Class Members
7 who did not have mobile phones compatible with the Slack Application to buy new mobile phones
8 specifically for that purpose. Defendants did not provide mobile phones or an alternative to them
9 for this purpose. Further, Defendants required Plaintiff and the Class Members to monitor their
10 personal cellphones at all times when working on-call shifts. Defendants did not reimburse
11 Plaintiff and the Class Members for their cellphone expenses.

12 26. Moreover, Defendants failed to pay Plaintiff her final wages at the time they
13 terminated her employment. Defendants only paid Plaintiff her final compensation three weeks
14 after her employment was terminated.

15 27. As a result of these aforementioned violations, Defendants failed to provide
16 Plaintiff and the Class Members with accurate written wage statements; failed to pay them all
17 wages earned during employment; and failed to maintain accurate employee records with respect
18 to Plaintiff and the Class Members as required under California law.

19 **FIRST CAUSE OF ACTION**

20 **FAILURE TO PROVIDE REST BREAKS AND MEAL PERIODS**

21 **(Lab. Code §§ 226.7, 512, and 1198)**

22 **(By Plaintiff and the Class against all Defendants)**

23 28. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

24 29. At all relevant times during the applicable limitations period, Plaintiff and the
25 Class Members have been employees of Defendants and entitled to the benefits and protections
26 of California Labor Code §§ 226.7, 512, 1198, and the Wage Order.

27 30. In relevant part, California Labor Code § 1198 states:

28 The maximum hours of work and the standard conditions of labor
fixed by the commission shall be the maximum hours of work and
the standard conditions of labor for employees. The employment
of any employee for longer hours than those fixed by the order or
under conditions of labor prohibited by the order is unlawful.



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1 31. In relevant part, California Labor Code § 512 states:

2 An employer shall not employ an employee for a work period of
3 more than five hours per day without providing the employee with
4 a meal period of not less than 30 minutes, except that if the total
5 work period per day of the employee is no more than six hours, the
6 meal period may be waived by mutual consent of both the
7 employer and employee.

8 An employer shall not employ an employee for a work period of
9 more than 10 hours per day without providing the employee with
10 a second meal period of not less than 30 minutes, except that if the
11 total hours worked is no more than 12 hours, the second meal
12 period may be waived by mutual consent of the employer and the
13 employee only if the first meal period was not waived.

14 32. In relevant part, § 12 of the Wage Order states:

15 **Rest Periods**

16 (A) “Every employer shall authorize and permit all employees
17 to take rest periods, which insofar as practicable shall be in the
18 middle of each work period. The authorized rest period time shall
19 be based on the total hours worked daily at the rate of ten (10)
20 minutes net rest time per four (4) hours or major fraction thereof.
21 However, a rest period need not be authorized for employees
22 whose total daily work time is less than three and one-half (3 1/2)
23 hours. Authorized rest period time shall be counted as hours
24 worked for which there shall be no deduction from wages.”

25 (B) If an employer fails to provide an employee a rest period in
26 accordance with the applicable provisions of this Order, the
27 employer shall pay the employee one (1) hour of pay at the
28 employee’s regular rate of compensation for each work day that
the rest period is not provided.”

33. In relevant part, § 11 of the Wage Order states:

Meal Periods

(A) “No employer shall employ any person for a work period
of more than five (5) hours without a meal period of not less than
30 minutes, except that when a work period of not more than six
(6) hours will complete the day’s work the meal period may be
waived by mutual consent of the employee and the employee.
Unless the employee is relieved of all duty during a 30-minute
meal period, the meal period shall be considered an ‘on duty’ meal



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period and counted as time worked. An ‘on duty’ meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.”

(B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the meal period is not provided.”

34. In relevant part, California Labor Code § 226.7 states:

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

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

35. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

36. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be provided with net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

37. Defendants intentionally failed to provide Plaintiff and the Class Members with all required 30-minute duty-free meal periods and 10-minute rest periods free from any work duties in accordance with the Wage Order.

1 38. At all relevant times, Defendants failed to provide Plaintiff and the Class Members
2 with all timely rest and meal periods pursuant to California law, including, but not limited to, two
3 timely 30-minute uninterrupted meal periods and three 10-minute rest periods on workdays they
4 worked more than 10 hours. Further, due to the workload and low staffing levels, Defendants
5 denied Plaintiff and the Class Members their 30-minute duty-free meal period within the first 5
6 hours of work. Defendants frequently forced Plaintiff and the Class Members to forgo timely,
7 duty-free 30-minute meal periods by assigning them more time-sensitive work than they could
8 reasonably expect them to complete within their first five hours of work. On those seldom
9 occasions when Plaintiff and the Class Members did attempt to take their 30-minute meal period,
10 they were not off-duty and were always interrupted because Defendants required Plaintiff and the
11 Class Members to monitor their Slack application (work application for time-keeping, distribution
of tasks and schedules) at all times, even during lunch periods.

12 39. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
13 Class Members with rest periods in violation of California law. Due to high workload and low
14 staffing levels, Defendants failed to authorize and permit Plaintiff and the Class Members to take
15 10-minute, paid, duty-free rest breaks every 4 hours worked or major fraction thereof. Defendants
16 did not seek an exemption from the rest period protections of the Wage Order from the California
17 Divisions of Labor Standards Enforcement. Furthermore, Defendants failed to pay premium
18 wages for days on which they failed to provide Plaintiff and the Class Members with timely rest
breaks and/or meal periods in compliance with California law.

19 40. Plaintiff is informed and believes and thereon alleges that, at all relevant times
20 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
21 which resulted in Defendants not providing the Class with all off-duty meal periods and rest
22 breaks required by California law.

23 41. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members
24 have suffered damages in an amount, subject to proof, to the extent they were not paid additional
wages owed for all meal periods and rest breaks not provided to them.

25 42. By reason of the above, pursuant to California Labor Code § 226.7, Plaintiff and
26 the Class Members are entitled to premium wages for workdays in which one or more off-duty
27 meal periods were not provided to them, and for workdays in which one or more rest breaks were
28 not provided to them.



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1 (c) The overtime rate of compensation required to be paid to a nonexempt full-
2 time salaried employee shall be computed by using the employee's regular hourly
3 salary as one-fortieth (1/40) of the employee's weekly salary.

4 48. § 4(B) of the Wage Order requires an employer to pay non-exempt employees at
5 least the minimum wage set forth therein for all hours worked, which consists of all hours that an
6 employer has actual or constructive knowledge that employees are working.

7 49. § 4(C) of the Wage Order requires an employer to pay an employee who works a
8 split shift, one (1) hour's pay at the minimum wage in addition to the minimum wage for that
9 workday, except when the employee resides at the place of employment.

10 50. Labor Code § 510 states:

11 Eight hours of labor constitutes a day's work. Any work in excess of eight hours
12 in one workday and any work in excess of 40 hours in any one workweek and the
13 first eight hours worked on the seventh day of work in any one workweek shall
14 be compensated at the rate of no less than one and one-half times the regular rate
15 of pay for an employee. Any work in excess of 12 hours in one day shall be
16 compensated at the rate of no less than twice the regular rate of pay for an
17 employee. In addition, any work in excess of eight hours on any seventh day of a
18 workweek shall be compensated at the rate of no less than twice the regular rate
19 of pay of an employee. Nothing in this § requires an employer to combine more
20 than one rate of overtime compensation in order to calculate the amount to be paid
21 to an employee for any hour of overtime work.

22 51. Labor Code § 1194 invalidates any agreement between an employer and an
23 employee to work for less than the minimum wage required under the applicable Wage Order.

24 52. Labor Code § 1197 makes it unlawful for an employer to pay an employee less
25 than the minimum wage required under the applicable Wage Order for all hours worked during a
26 payroll period.

27 53. Labor Code § 1198 makes it unlawful for an employer to employ an employee
28 under conditions that violate the Wage Order.

54. In conjunction, these provisions of the Labor Code require employers to pay non-
exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
worked, including unrecorded hours when the employer knew or reasonably should have known
that employees were working during those hours. (*See Morillion v. Royal Packing Co.* (2000) 22
Cal.4th 575, 585.)

55. At all relevant times during the applicable limitations period, Defendants failed to



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1 compensate Plaintiff and the Class Members for all hours worked, including, but not limited to
2 overtime premium wages during on-call shifts for all overtime hours they worked at the correct
3 rates of pay.

4 56. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
5 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
6 failure to compensate Plaintiff and the other Class Members for all hours worked as required by
7 California law.

8 57. As a result of Defendants' unlawful conduct, Plaintiff and the other Class
9 Members have suffered damages, in an amount subject to proof, to the extent they were not paid
10 the full amount of wages earned during each pay period during the applicable limitations period,
11 including minimum and overtime wages.

12 58. Pursuant to Labor Code § 1194, Plaintiff, on behalf of herself and Class Members,
13 seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts of unpaid
14 wages, interest thereon, and awards of reasonable costs and attorneys' fees, all in amounts subject
15 to proof.

16 **THIRD CAUSE OF ACTION**

17 **FAILURE TO INDEMNIFY**

18 **(Lab. Code §§ 1198 & 2802)**

19 **(By Plaintiff and the Class against all Defendants)**

20 59. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

21 60. At all relevant times, Plaintiff and the Class Members have been non-exempt
22 employees of Defendants and entitled to the benefits and protections of the California Labor Code
23 §§ 1198 and 2802 and the Wage Order.

24 61. In pertinent part, California Labor Code § 2802(a) states:

25 "An employer shall indemnify his or her employee[s] for all
26 necessary expenditures incurred by the employee in direct
27 consequence of the discharge of his or her duties."

28 62. California Labor Code § 1198 prohibits employers from employing their
employees under conditions prohibited by the Wage Order.



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1 63. At all relevant times during the applicable limitations period, Defendants required
2 Plaintiff and the Class Members to use their personal cellphones for work-related activities.
3 Defendants did not reimburse Plaintiff and the Class Members for such expenses.

4 64. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
5 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
6 failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred
7 during the course of performing their duties.

8 65. Therefore, pursuant to California Labor Code § 2802(b), Plaintiff and the Class
9 Members are entitled to reimbursement for all necessary expenditures and losses and interest
10 thereon, due and owing to them within four years of the date of the filing of the Complaint until
11 the entry of judgment.

12 66. Accordingly, with respect to this cause of action, on behalf of herself and the Class
13 Members, Plaintiff prays for the above stated relief, costs, and all reasonable attorneys' fees
14 pursuant to Labor Code § 2802(c) and as otherwise permitted by law.

15 **FOURTH CAUSE OF ACTION**

16 **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

17 **(Lab. Code § 226)**

18 **(By Plaintiff and the Class against all Defendants)**

19 67. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

20 68. At all relevant times during the applicable limitations period, Plaintiff and the
21 other Class Members have been employees of Defendants and entitled to the benefits and
22 protections of California Labor Code § 226.

23 69. Pursuant to California Labor Code § 226(a), Plaintiff and the other Class Members
24 were entitled to receive, bi-weekly or at the time of each payment of wages, an accurate itemized
25 statement showing:

26 (1) Gross wages earned,

27 (2) Total hours worked by the employee, except for any employee whose
28 compensation is solely based on a salary and who is exempt from payment of overtime under
subdivision (a) of § 515 or any applicable order of the Industrial Welfare Commission,

(3) The number of piece rate units earned and any applicable piece rate if the
employee is paid on a piece-rate basis,



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1 (4) All deductions, provided that all deductions made on written orders of the
2 employee may be aggregated and shown as one item,

3 (5) Net wages earned,

4 (6) The inclusive dates of the period for which the employee is paid,

5 (7) The name of the employee and his or her social security number, except
6 that by January 1, 2008, only the last four digits of his or her social security number or an
7 employee identification number other than a social security number may be shown on the itemized
8 statement,

9 (8) The name and address of the legal entity that is the employer, and

10 (9) All applicable hourly rates in effect during the pay period and the
11 corresponding number of hours worked at each hourly rate by the employee.

12 70. Pursuant to California Labor Code § 226(e), an employee suffering injury as a
13 result of a knowing and intentional failure by an employer to comply with subdivision (a) is
14 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period
15 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
16 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and
17 is entitled to an award of costs and reasonable attorneys' fees.

18 71. Pursuant to California Labor Code § 226(e), an employee is deemed to suffer
19 injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer
20 injury if the employer fails to provide accurate and complete information as required by California
21 Labor Code § 226(a) and the employee cannot "promptly and easily determine" from the wage
22 statement alone one or more of the following:

23 A. The amount of the gross wages or net wages paid to the employee during
24 the pay period or any of the other information required to be provided on the itemized wage
25 statement pursuant to California Labor Code § 226(a);

26 B. Which deductions the employer made from gross wages to determine the
27 net wages paid to the employee during the pay period;

28 C. The name and address of the employer and, if the employer is a farm labor
contractor, as defined in subdivision (b) of § 1682 of the California Labor Code, the name and
address of the legal entity that secured the services of the employer during the pay period; and

D. The name of the employee and only the last four digits of his or her social



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1 security number or an employee identification number other than a social security number.

2 72. "Promptly and easily determine," as stated in California Labor Code § 226(e),
3 means a reasonable person would be able to readily ascertain the information without reference
4 to other documents or information.

5 73. As alleged herein, Defendants failed to provide Plaintiff and the other Class
6 Members with all meal and rest periods in compliance with California law. They also failed to
7 provide them with premium wages on workdays they failed to provide them with one or more
8 meal and/or rest periods in compliance with California law. Further, Defendants failed to
9 compensate Plaintiff and the other Class Members for all hours worked. Defendants failed to state
10 the wages earned and hours worked, described above, on the wage statements they issued to
11 Plaintiff and Class Members. As a result, Defendants have failed to properly itemize Plaintiff and
12 the other Class Members' gross and net wages earned, total hours worked, hourly rate of pay, the
13 corresponding number of hours worked at each hourly rate, and other requirements of California
14 Labor Code § 226. As a result, Defendants have violated California Labor Code § 226.

15 74. Defendants' failure to provide Plaintiff and the other Class Members with accurate
16 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
17 the other Class Members with accurate wage statements but intentionally provided wage
18 statements that Defendants knew were not accurate.

19 75. As a result of being provided with inaccurate wage statements by Defendants,
20 Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate
21 wage statements were violated and they were misled about the amount of wages they had actually
22 earned and were owed. In addition, the absence of accurate information on their wage statements
23 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
24 and mathematical computations to determine the amounts of wages owed, has caused difficulty
25 and expense in attempting to reconstruct time and pay records and/or has led to the submission of
26 inaccurate information about wages to state and federal government agencies. Further, Plaintiff
27 and the other Class Members were not able to ascertain from the wage statements whether
28 Defendants complied with their obligations under California Labor Code § 226(a).

76. Pursuant to California Labor Code § 226(e), Plaintiff and the other Class Members
are entitled to recover the greater of actual damages, or penalties of fifty dollars (\$50) for the
initial pay period in which a violation of California Labor Code § 226(a) occurred and one



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1 hundred dollars for each violation of California Labor Code § 226(a) in a subsequent pay period,
2 not to exceed an aggregate penalty of four thousand dollars (\$4,000) per Class Member, and are
3 also entitled to an award of costs and reasonable attorneys' fees.

4 77. Accordingly, with respect to this cause of action, on behalf of herself and the other
5 Class Members, Plaintiff prays for the herein stated relief and for an award of all reasonable costs
6 and attorneys' fees, including interest thereon, as permitted by law, all in amounts subject to
7 proof.

8 **FIFTH CAUSE OF ACTION**

9 **WAITING TIME PENALTIES**

10 **(Lab. Code §§ 201, 202, and 203)**

11 **(By Plaintiff and the Class against all Defendants)**

12 78. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

13 79. At all relevant times during the applicable limitations period, Plaintiff and the
14 Class have been non-exempt employees of Defendants and entitled to the benefits and
15 protections of California Labor Code §§ 201–203, and the Wage Order.

16 80. Labor Code § 201 provides that all earned and unpaid wages of an employee who
17 is discharged are due and payable immediately at the time of discharge.

18 81. Labor Code § 202 provides that all earned and unpaid wages of an employee who
19 quits after providing at least 72-hours notice before quitting are due and payable at the time of
20 quitting and that all earned and unpaid wages of an employee who quits without providing at
21 least 72-hours notice before quitting are due and payable within 72 hours.

22 82. By failing to pay earned minimum and premium wages to Plaintiff and the Class,
23 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code
24 § 201 or § 202.

25 83. Plaintiff is informed and believes that Defendants' failures to timely pay all final
26 wages to her and the Class Members have been willful in that Defendants have the ability to pay
27 final wages in accordance with Labor Code §§ 201, and 202 but have intentionally adopted
28 policies or practice that are incompatible with those requirements.

84. Labor Code § 203 provides that the wages of an employee continue on a daily
basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and
unpaid wages to the employee in accordance with Labor Code § 201, or § 202.



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1 85. Defendants failed to pay Plaintiff and the Class Members whose employment
2 ended all of the earned, but unpaid wages described above by the conclusion of their employment.

3 86. Plaintiff is informed and believes that Defendants' failures to weekly and timely
4 pay Plaintiff and the Class all of their earned and unpaid wages have been willful in that, at all
5 relevant times, Defendants have deliberately maintained policies and practices that violate the
6 requirements of the Labor Code and the Wage Order, even though at all relevant times, they have
7 had the ability to comply with those legal requirements.

8 87. Pursuant to Labor Code § 203, Plaintiff seeks waiting time penalties on behalf of
9 herself and the Class, in amounts subject to proof not to exceed 30 days of waiting time penalties
10 for each Class Member.

11 **SIXTH CAUSE OF ACTION**

12 **UNFAIR COMPETITION**

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

14 **(By Plaintiff and the Class against all Defendants)**

15 88. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

16 89. At all relevant times during the applicable limitations period, Plaintiff and the
17 other Class Members have been employees of Defendants and entitled to the benefits and
18 protections of the Business and Professions Code §§ 17200, et seq.

19 90. The unlawful conduct of Defendants alleged herein amounts to and constitutes
20 unfair competition within the meaning of California Business & Professions Code §§ 17200, et
21 seq. Due to their unfair and unlawful business practices as alleged herein, Defendants have
22 unfairly gained a competitive advantage over other comparable companies doing business in
23 California that comply with their legal obligations to, among other things, pay their employees
24 premium wages for workdays in which they did not provide employees with one or more meal
25 and rest periods, reimburse their employees for reasonable expenses incurred during the course
26 of performing their duties, and pay them all earned wages for all regular and overtime hours
27 worked.

28 91. As a result of Defendants' unfair competition as herein alleged, Plaintiff and the
other Class Members have suffered injuries in fact and lost money or property. Defendants
deprived Plaintiff and the other Class Members of minimum, overtime, off-the-clock, and
premium wages and reimbursement for expenses that Plaintiff and the other Class Members



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1 incurred during the course of performing their duties.

2 92. Pursuant to California Business & Professions Code § 17203, Plaintiff and the
3 other Class Members are entitled to restitution of all monies rightfully belonging to them that
4 Defendants did not pay them, or that Defendants otherwise retained by means of their unlawful
5 and unfair business practices.

6 93. Plaintiff and the other Class Members are entitled to reasonable attorneys' fees in
7 connection with their unfair competition claims pursuant to California Code of Civil Procedure
8 § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

9 **SEVENTH CAUSE OF ACTION**

10 **CIVIL PENALTIES**

11 **(By Plaintiff and the Class against all Defendants)**

12 94. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

13 95. The "Aggrieved Employees" are all members of the Class defined above who
14 Defendants employed during the period beginning July 9, 2020 and ending on the date that final
15 judgment is entered in this action.

16 96. Labor Code § 204 states

17 (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1,
18 or 204.2, earned by any person in any employment are due and payable twice
19 during each calendar month, on days designated in advance by the employer as
20 the regular paydays. Labor performed between the 1st and 15th days, inclusive,
21 of any calendar month shall be paid for between the 16th and the 26th day of the
22 month during which the labor was performed, and labor performed between the
23 16th and the last day, inclusive, of any calendar month, shall be paid for between
24 the 1st and 10th day of the following month. ...

25 (b) (1) Notwithstanding any other provision of this section, all wages
26 earned for labor in excess of the normal work period shall be paid no later than
27 the payday for the next regular payroll period.

28 (2) An employer is in compliance with the requirements of subdivision (a) of
Section 226 relating to total hours worked by the employee, if hours worked in
excess of the normal work period during the current pay period are itemized as
corrections on the paystub for the next regular pay period. Any corrections set
out in a subsequently issued paystub shall state the inclusive dates of the pay
period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining
agreement that provides different pay arrangements, those arrangements shall



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1 apply to the covered employees.

2 (d) The requirements of this section shall be deemed satisfied by the payment
3 of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
4 more than seven calendar days following the close of the payroll period.

5 97. Defendants paid wages to employees on regular intervals. Defendants, however,
6 failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On
7 information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved
8 Employees on such intervals for all wages earned and all hours worked.

9 98. During the applicable time period, Defendants violated California Labor Code §§
10 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

11 99. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
12 behalf of themselves and other current or former employees, to bring a civil action to recover
13 civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

14 100. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are
15 entitled to recover civil penalties for each of the Defendants' violations of California Labor Code
16 §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802 during the
17 applicable limitations period in the following amounts:

18 A. For violations of California Labor Code § 204, one hundred dollars
19 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
20 (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation
21 (penalty amounts established by California Labor Code § 210).

22 B. For violations of California Labor Code § 226(a), two hundred fifty
23 dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars
24 (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
25 established by California Labor Code § 226.3).

26 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
27 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00)
28 for each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts
established by California Labor Code § 558).

D. For violations of California Labor Code § 1174, five hundred dollars
(\$500.00) for each Aggrieved Employee for each initial violation (penalty amounts established



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1 by Labor Code § 1174.5).

2 E. For violations of California Labor Code § 1197, one hundred dollars
3 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two
4 hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per
5 pay period (regardless of whether the initial violations were intentionally committed) (penalty
6 amounts established by California Labor Code § 1197.1).

7 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
8 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for
9 each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay
10 period for each subsequent violation (penalty amounts established by California Labor Code §
11 2699(f)(2)).

12 101. Plaintiff has complied with the procedures for bringing suit specified in
13 California Labor Code § 2699.3. By letter dated July 9, 2021, Plaintiff filed written notice online
14 with the Labor and Workforce Development Agency (“LWDA”) and gave written notice by
15 certified mail to Defendants of the specific provisions of the California Labor Code alleged to
16 have been violated, including the facts and theories to support the alleged violations. A true and
17 correct copy of the notice to the LWDA dated July 9, 2021 is attached as Exhibit A. Plaintiff
18 accompanied her LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to
19 take action in response within 65 calendar days of the date of Plaintiff’s notice, but Plaintiff
20 anticipates that the LWDA will provide written notice to Plaintiff informing her that it does not
21 intend to investigate these allegations.

22 102. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
23 Employees are entitled to an award of civil penalties, reasonable attorney’s fees and costs in
24 connection with their claims for civil penalties.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated, prays for
27 relief and judgment against Defendants as follows:

- 28 A. An order that the action be certified as a class action;
B. An order that Plaintiff be appointed class representative;
C. An order that counsel for Plaintiff be appointed class counsel;



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- D. Unpaid Wages;
- E. Actual Damages;
- F. Statutory Damages;
- G. Civil Penalties;
- H. Liquidated Damages;
- I. Restitution;
- J. Declaratory and injunctive relief;
- K. Equitable relief;
- L. Pre-judgment interest;
- M. Statutory penalties;
- N. Costs of suit;
- O. Interest;
- P. Reasonable attorneys' fees; and
- Q. Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and all others similarly situated, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: September 29, 2021

By 

DAVID SPIVAK
MARALLE MESSRELIAN
MAYA CHEAITANI, Attorneys for Plaintiff,
ELLEN INEZ YOUNG, and all others similarly
situated



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EXHIBIT A



SPIVAK LAW

***SENT BY ELECTRONIC SUBMISSION AND CERTIFIED U.S. MAIL**

July 9, 2021

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

RE: *Ellen Inez Young / Autothink*

To Whom It May Concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.*, Ellen Inez Young (hereafter “Young”) provides notice on behalf of herself and all individuals currently and formerly employed in California as hourly employees, including but not limited to drivers (“Aggrieved Employees”), by Autothink Inc., a Delaware corporation (hereafter “Autothink”), of violations of Labor Code §§ 201-203, 204, 226, 226.7, 510, 512, 1194, 1174, 1197, 1198, and 2802.

At all relevant times, Autothink has employed persons, conducted business in and engaged in illegal payroll practices and policies throughout California. Young and the Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Wage Order No. 9-2001 (hereafter the “Wage Order”) § 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code § 2699, subdivision (c).

Statement of Facts

In approximately November 2020, Autothink began to employ Young as a non-exempt hourly driver. Autothink continuously employed Young from the time of her hire until January 4, 2021, when her employment ended.

At all relevant times, Autothink employed Young and the Aggrieved Employees at an hourly rate of pay and issued their paychecks on a bi-weekly basis. At all relevant times, Autothink classified Young and the Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

At all relevant times, Young and the Aggrieved Employees worked over 8 hours in one workday and over 40 hours in one workweek. Despite this, Autothink failed to provide Young and the Aggrieved Employees with all timely rest and meal periods pursuant to California law, including, but not limited to, two timely 30-minute uninterrupted meal periods and three 10-minute rest periods on workdays they worked more than 10 hours. Further, due to the workload and low staffing levels, Autothink denied Young and the Aggrieved Employees their 30-minute duty-free meal period within the first 5 hours of work. Autothink frequently forced Young and the Aggrieved Employees to forgo timely, duty-free 30-minute meal periods by assigning them more time-sensitive work than it could reasonably expect them to complete within their first five hours of work. On those seldom occasions when Young and the Aggrieved Employees did attempt to take their 30-minute meal period, they were not off-duty and were always interrupted because Autothink required Young and the Aggrieved Employees to monitor their Slack application (work application for time-keeping, distribution of tasks and schedules) at all times, even during lunch periods.

At all relevant times, Autothink failed to authorize and permit Young and the Aggrieved Employees with rest periods in violation of California law. Due to high workload and low staffing levels, Autothink failed to authorize and permit Young and the Aggrieved Employees to take 10-minute, paid, duty-free rest

breaks every 4 hours worked or major fraction thereof. Autothink did not seek an exemption from the rest period protections of the Wage Order from the California Divisions of Labor Standards Enforcement. Furthermore, Autothink failed to pay premium wages for days on which it failed to provide Young and the Aggrieved Employees with timely rest breaks and/or meal periods in compliance with California law.

At all relevant times, Autothink required Young and the Aggrieved Employees to work on-call shifts. Autothink often required Young and the Aggrieved Employees to remain on-call 24 hours a day, up to 5 days a week. However, Autothink did not pay Young and the Aggrieved Employees minimum, overtime, and double-time wages for such calls. During such on-call shifts, Autothink restricted Young and the Aggrieved Employees in the types of activities they could perform and required them to stay available at all times. Autothink required Young and the Aggrieved Employees to monitor their phones for work-related calls at all times. Autothink instructed Young and the Aggrieved Employees to show up to the assigned pick-up locations (client's homes) within 15 minutes of such assignments. Autothink, however, required the employees to clock-out while waiting to drop-off the cars at dealerships or automotive shops. Consequently, Autothink failed to compensate Young and the Aggrieved Employees for all hours worked and for all hours spent on-call.

Moreover, at all relevant times, Autothink assigned Young and the Aggrieved Employees to work "split shifts." For instance, Autothink would require Young and the Aggrieved Employees to clock-out at the end of their shifts but continue to monitor their Slack application in case they were called back to work. Often, Autothink requested Young and the Aggrieved Employees to return to work in the same day, creating split shifts several times a week. However, Autothink failed to pay Young and the Aggrieved Employees a split shift premium as required by the Wage Order.

At all relevant times, Autothink required Young and the Aggrieved Employees to incur certain business expenses in the course of performing their duties. Autothink required Young and the Aggrieved Employees to use their personal

cell phones in the course of performing their duties, including downloading and monitoring the Slack application for all communications, work instructions, scheduling and timekeeping. Autothink forced Young and other Aggrieved Employees who did not have mobile phones compatible with the Slack Application to buy new mobile phones specifically for that purpose. Autothink did not provide mobile phones or an alternative to them for this purpose. Further, Autothink required Young and the Aggrieved Employees to monitor their personal cellphones at all times when working on-call shifts. Autothink did not reimburse Young and the Aggrieved Employees for their cellphone expenses.

Moreover, Autothink failed to pay Young her final wages at the time it terminated her employment. Autothink only paid Young her final compensation three weeks after her employment was terminated.

As a result of these aforementioned violations, Autothink failed to provide Young and the Aggrieved Employees with accurate written wage statements; failed to pay them all wages earned during employment; and failed to maintain accurate employee records with respect to Young and the Aggrieved Employees as required under California law.

For the reasons herein, on behalf of herself and the Aggrieved Employees, Young alleges that Autothink committed the following violations of the California Labor Code and the Wage Order:

- (a) Autothink failed to timely provide Young and the Aggrieved Employees with all meal and rest periods as required by California law;
- (b) Autothink failed to compensate Young and the Aggrieved Employees at one hour's pay for each day in which it failed to provide them with all meal and rest periods as required by California law;

- (c) Autothink failed to pay Young and the Aggrieved Employees for all hours worked at the correct rates of pay;
- (d) Autothink failed to pay Young and the Aggrieved Employees with split shift premiums as required by the Wage Order;
- (e) Autothink failed to indemnify Young and the Aggrieved Employees for all expenses it required them to incur in the discharge of their duties;
- (f) Autothink failed to provide Young and the Aggrieved Employees with accurate itemized wage statements;
- (g) Autothink failed to timely pay Young and the Aggrieved Employees all earned and unpaid wages during their employment at Autothink and at the time such employment ended; and
- (h) Autothink failed to maintain accurate employment records.

Accordingly, Young now seeks civil penalties on behalf of herself and the Aggrieved Employees based on Autothink' alleged violations of the California Labor Code and the Wage Order.

The Wage Order 9

The Wage Order applies to:

“all persons employed in the transportation industry whether paid on a time, piece rate, commission, or other basis...” (§1). Per §2 (P): “Transportation Industry” means any industry, business or establishment operated for the **purpose of conveying persons or property from one place to another** whether by rail, highway, air or water and all operations and services in connection therewith; and also includes storing or

warehousing of goods or property and the repairing, parking, rental, maintenance or cleaning of vehicles.” (emphasis added).

At all relevant times during the applicable limitations period, Autothink operated a concierge service employing drivers to deliver customer vehicles to dealerships for service. Accordingly, Young and the Aggrieved Employees are entitled to the protections provided by the Wage Order.

Failure To Provide Meal Periods
(Lab. Code §§ 512 and 1198)

In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

In relevant part, California Labor Code § 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was no waived.

In relevant part, Section 11 of the Wage Order states:

Meal Periods:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.

(B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

...

(D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

California Labor Code § 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the

Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety 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.

As described above, at all relevant times during the applicable limitations period, Autothink failed to provide Young and the Aggrieved Employees with all timely meal periods, including, but not limited to, two timely 30-minute uninterrupted meal periods and three 10-minute rest periods on workdays they worked more than 10 hours. Due to the workload and low staffing levels, Autothink denied Young and the Aggrieved Employees their 30-minute duty-free meal period within the first 5 hours of work. Autothink frequently forced Young and the Aggrieved Employees to forgo timely, duty-free 30-minute meal periods by assigning them more time-sensitive work than it could reasonably expect them to complete within their first five hours of work. On those seldom occasions when Young and the Aggrieved Employees did attempt to take their 30-minute meal period, they were not off-duty and were always interrupted because Autothink required Young and the Aggrieved Employees to monitor their Slack application (work application for time-keeping, distribution of tasks and schedules) at all times, even during lunch periods. Furthermore, Autothink failed to pay premium wages for days on which it failed to provide Young and the Aggrieved Employees with timely meal periods in compliance with California law.

Accordingly, on behalf of herself and the Aggrieved Employees, Young seeks against Autothink civil penalties as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.7, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
2. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 512, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558); and
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure To Provide Rest Periods
(Lab. Code §§ 226.7 and 1198)

In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

In relevant part, Section 12 of the Wage Order states:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate often (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

In relevant part, California Labor Code § 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety 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.

As described above, at all relevant times during the applicable limitations period, Autothink failed to authorize and permit Young and the Aggrieved Employees with rest periods in violation of California law. Due to high workload and low staffing levels, Autothink failed to authorize and permit Young and the Aggrieved Employees to take 10-minute, paid, duty-free rest breaks every 4 hours worked or major fraction thereof. Autothink did not seek an exemption from the rest period protections of the Wage Order from the California Divisions of Labor Standards Enforcement. Furthermore, Autothink failed to pay premium wages for days on which it failed to provide Young and the Aggrieved Employees with timely rest breaks in compliance with California law.

Accordingly, on behalf of herself and the Aggrieved Employees, Young seeks against Autothink civil penalties as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.7, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

**Failure To Pay All Wages Earned For All Hours Worked At the Correct
Rates of Pay**
(Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code § 1197, "The minimum wage for employees fixed by the [Industrial Welfare] commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful."

In relevant part, Section 4(B) of Wage Order states,

“Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

In relevant part, Section 2(H) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, California Labor Code § 1194 states,

(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.

Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

In relevant part, Section 3 of the Wage Order states,

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in

the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.

Employers must compensate nonexempt employees for "off-the-clock" work (before punching in or after punching out on a time clock) if the employers knew or should have known that the employees were working those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

In relevant part, California Labor Code § 510 states,

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

At all relevant times during the applicable limitations period, Autothink failed to compensate Young and other Aggrieved Employees for all hours worked, including, but not limited to overtime wages during on-call shifts for all overtime hours they worked at the correct rates of pay.

Accordingly, on behalf of herself and the Aggrieved Employees, Young seeks against Autothink civil penalties as follows:

1. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558);
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
4. \$100 for each underpaid hourly employee for each initial violation of California Labor Code § 1197, and \$250 for each underpaid employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1).

Failure to Pay Split Shift Premiums

(Lab. Code §§ 1197, 1198)

Wage Order § 2 (M) defines a “Shift” as “designated hours of work by an employee, with a designated beginning time and quitting time.” A “Split shift” is defined by § 2 (N) as “a work schedule which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods.”

Wage Order § 4 (C) pertaining to “Minimum Wages” states: “When an employee works a split shift, one (1) hour’s pay at the minimum wage shall be paid in addition to the minimum wage for that workday, except when the employee resides at the place of employment.”

Under Labor Code § 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

Autothink directed Young and the Aggrieved Employees to regularly work split shifts. However, Autothink intentionally failed to pay them the equivalent of a sum greater than one hour’s pay at the minimum wage in addition to the minimum wage for a workday. In so doing, Autothink violated Labor Code §§ 1197 and 1198.

Accordingly, on behalf of herself and the Aggrieved Employees, Young seeks against Autothink civil penalties as follows:

1. \$100 for each underpaid hourly employee for each initial violation of California Labor Code § 1197, and \$250 for each underpaid employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to

Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1).

2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure to Indemnify
(Lab. Code §§ 1198 & 2802)

In pertinent part, Labor Code § 2802(a), states: “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

As described above, during the applicable limitations period, Autothink required Young and the Aggrieved Employees to use their personal cellphones for work related activities. Autothink did not reimburse Young and the Aggrieved Employees for such expenses.

Accordingly, Young seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 2802, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved

Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure To Provide Accurate Wage Statements
(Lab. Code § 226)

California Labor Code § 226(a) requires employers to furnish employees with accurate itemized written wage statements showing:

1. gross wages earned,
2. total hours worked by the employee, except for any employee whose compensation is solely based on a salary 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 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 his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
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 number of hours worked at each hourly rate by the employee.

At relevant times during the applicable limitations period, Autothink violated California Labor Code § 226, in that it failed to properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total

hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of California Labor Code § 226.

Accordingly, Young seeks civil penalties on behalf of herself and the Aggrieved Employees as follows: \$250 for each Aggrieved Employee for each initial violation of California Labor Code § 226(a), and \$1,000 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code § 226.3).

Failures to Timely Pay Wages During Employment
(Lab. Code § 204)

California Labor Code § 204 states all wages (other than those mentioned in Labor Code sections 201–202) 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. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

As a result of the above described violations, Autothink failed to pay Young and the Aggrieved Employees within the time periods set by California Labor Code § 204 in that it failed to pay them for all hours worked at the correct rates of pay and failed to pay them premium wages for days on which it failed to provide them with one or more rest and/or meal periods.

Accordingly, on behalf of herself and Aggrieved Employees, Young seeks against Autothink civil penalties as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 204, and \$200 for each Aggrieved Employee, plus 25% of the amount unlawfully withheld from each Aggrieved Employee, for each subsequent violation (penalties set by Labor Code § 210).

Failure to Timely Pay Wages Upon Termination
(Lab. Code §§ 201-203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. (See *ibid.*) The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. (See *ibid.*)

Under Labor Code § 203, if an employer willfully fails to pay, without abatement or reduction, in accordance §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

As a result of the above described violations, including Autothink' failure to pay premium wages, failure to provide meal and rest breaks, and failure to pay Young and the Aggrieved Employees for all hours worked at the correct rates of pay, Autothink is liable to Young and the Aggrieved Employees for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and other Aggrieved Employees, Young seeks civil penalties from Autothink as follows:

1. For violations of Labor Code § 201, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));

2. For violations of Labor Code § 202, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174, 1198)

Labor Code § 1174, which pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (a) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a

personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code § 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order 9 states:

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

Autothink has willfully failed to maintain the records required by § 1174 and the Wage Order, including, but not limited to, the total premium wages earned for missed or untimely meal and rest periods, and records pertaining to all unpaid hours worked by Young and the Aggrieved Employees. Accordingly, Young seeks civil penalties from Autothink on behalf of herself and other Aggrieved Employees as follows:

1. \$500 for each Aggrieved Employee for each violation of California Labor Code § 1174 (penalties set by Labor Code § 1174.5); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code § 2699, subdivision (g)(1) in a civil action should the LWDA decline to pursue this

matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure § 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

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cc: Ellen Inez Young
Walter Haines, Esq.

Autothink, Inc.

c/o Legalink Registered Agents, Inc. (C4249296)

Agent for Service of Process

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