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Attorneys for Plaintiff JOSEPH MONTGOMERY,
on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

JOSEPH MONTGOMERY, individually and
on behalf of himself and all others similarly
situated,

Plaintiff,

vs.

COPART, INC., a Delaware Corporation, and
DOES 1-50, inclusive,

Defendants.

Case No. 34-2020-00280733-CU-OE-GDS

Reservation #: 2644065

**DECLARATION OF JAMES R. HAWKINS
IN SUPPORT OF PLAINTIFF'S MOTION
TO APPROVE PAGA SETTLEMENT**

Date: July 2, 2022
Time: 9:00 a.m.
Dept. 25

Judge: Jill H. Talley
Dept: 25

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1. I am an attorney licensed to practice before all courts in the State of California. I am the owner and principal of James Hawkins APLC, counsel for Plaintiff Joseph Montgomery (“Plaintiff”) in the above-captioned action. Unless indicated otherwise, I have personal knowledge of the following facts set forth in this declaration and, if called as a witness, I could and would testify to these facts under oath in

3. The terms of the Settlement are set forth in the Stipulation of Private Attorneys General Act Settlement and Release, attached hereto as **Exhibit 1**.

Plaintiff mailed Defendant Copart, Inc. (“Defendant”) and the
 y notice of the alleged Labor Code and IWC Wage Order(s)
 nt to penalties under PAGA.

6. Having received no response from the LWDA after 65 days, on June 15, 2020, Plaintiff filed an action in the Superior Court of California, County of Sacramento, entitled *Joseph Montgomery, on behalf of himself and all others similarly situated v. Copart, Inc., a Delaware Corporation, and DOES 1-50, inclusive*, Case No. 34-2020-00280733-CU-OE-GDS, and alleging a single cause of action for civil penalties under PAGA. (the “Action”).

1 for Defendant's alleged: (1) failure to pay all wages owed for all hours worked, including minimum
2 wages and overtime; (2) failure to provide lawful, timely meal periods; (3) failure to pay one hour of
3 premium pay when timely, lawful meal periods were not provided or timely, lawful rest periods were not
4 authorized and permitted; (4) failure to authorize and permit rest periods; (5) failure to timely pay all
5 owed wages at the time of termination; (6) failure to provide accurate, itemized wage statements; and (7)
6 failure to keep accurate records. Plaintiff sought to recover penalties for Defendant's violations of Labor
7 Code sections 201, 202, 203, 204, 210, 216, 225.5, 226, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2,
8 1197, 1198, 2802, Wage Order 7 and 9. Attached hereto as **Exhibit 2** is a true and correct copy of the
9 original PAGA letter and complaint sent to the LWDA.

10 8. Defendant timely filed an answer including a general denial and affirmative
11 defenses.

12 9. In connection with effectuating the Settlement, Plaintiff sent an
13 amended/supplemental PAGA letter to the LWDA and filed an amended complaint. Attached
14 hereto as **Exhibit 3** is a true and correct copy of the amended/supplemental PAGA letter and the
15 amended complaint sent to the LWDA. The amended complaint is the operative complaint in
16 this action.

17 **Plaintiff's Counsel Thoroughly Investigated the Factual and Legal Issues in the Action**
18 **Allowing Them To Objectively Assess the Settlement's Reasonableness.**

19 10. Since the filing of the Action and through execution of the Settlement, Plaintiff's
20 Counsel conducted a thorough investigation into the factual and legal issues implicated by
21 Plaintiff's claims, and were able to objectively assess the settlement's reasonableness. Indeed,
22 prior to filing the Action, Plaintiff provided to Plaintiff's Counsel the factual bases for pursuing
23 his claims against Defendant for Labor Code violations. Plaintiff was intimately familiar with
24 Defendant's labor policies and practices, and over the course of multiple interviews,
25 knowledgeably summarized those policies and practices. Plaintiff explained how the policies and
26 practices were instituted and provided valuable insight into how they gave rise to the alleged
27 Labor Code violations. Based on these interviews, Plaintiff's Counsel determined that there were
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1 legally sufficient grounds for pursuing this Action against Defendant. Additionally, in preparation
2 for drafting the LWDA notice and the civil complaint for the Action, Plaintiff's Counsel
3 conducted their own independent preliminary investigations into the factual bases for Plaintiff's
4 claims, which entailed, inter alia, a careful examination of Plaintiff's personnel files and
5 associated records.

6 11. During litigation, Plaintiff propounded form interrogatories, employment
7 interrogatories, special interrogatories, requests for production, and requests for admission. In
8 response to Plaintiff's formal discovery requests, Copart provided Plaintiff with verified
9 discovery responses that included information and documents pertaining to Plaintiff and other
10 Aggrieved Employees. The Parties also met and conferred regarding the need for additional
11 responses. Rather, than engaging in motion practice, the Parties agreed to hold additional formal
12 discovery in abeyance and preserve any disputes while they pursued private mediation.

13 12. Plaintiff's counsel received a considerable amount of documents and data which
14 allowed Plaintiff's counsel to assess the claims. Defendant produced sufficient information and
15 documents relating to Plaintiff and other Aggrieved Employees to allow Plaintiff's Counsel to
16 investigate Plaintiff's allegations and value the claims of the Aggrieved Group. In preparation
17 for the mediation, Defendant's counsel provided sample time and payroll data for the purported
18 aggrieved employees, the employee handbook, exemplars of wage statements and time sheets,
19 premium request forms, all relevant policies and procedures, job descriptions, certain relevant
20 communications, termination checklists, Plaintiff's personnel file, time records, and wage
21 statements, the number of purported aggrieved employees, and the estimated number of pay
22 periods during the PAGA period of April 9, 2019 to September 10, 2021. The document and data
23 exchanges allowed Plaintiff's Counsel to fully assess the nature and magnitude of the claims being
24 settled, as well as the impediments to recovery, and ultimately enabled Plaintiff and his Counsel
25 to make an independent assessment of the reasonableness of the settlement's terms.

26 13. On September 10, 2021, the Parties participated in a full day mediation with
27 Mediator Lisa Klerman, an experienced mediator. The action did not resolve that day but the
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1 Parties engaged in continued negotiations with the assistance of Ms. Klerman, and the case was
2 resolved as a result of a mediator's proposal. Accordingly, with Ms. Klerman's assistance, and
3 after extensive, arms' length negotiations, the Parties agreed to fully and finally resolve the Action
4 and the PAGA Released Claims as to Plaintiff, the State of California, and the Aggrieved
5 Employees in accordance with the terms set forth in the Settlement Agreement that is now
6 presented to this Court. Attached hereto as **Exhibit 1** is a true and correct copy of the Settlement
7 Agreement that the Parties request that the Court approve on this Motion. At all times, the Parties'
8 negotiations were adversarial and non-collusive. The Settlement therefore constitutes a fair,
9 adequate, and reasonable compromise of the claims at issue.

10 14. The Parties provided detailed briefing and analysis in connection with the
11 mediation. The document and data exchanges allowed Plaintiff's Counsel to fully assess the
12 nature and magnitude of the claims being settled, as well as the impediments to recovery, and
13 ultimately enabled Plaintiff's Counsel to make an independent assessment of the reasonableness
14 of the settlement's terms.

15 15. Based on information and evidence produced by Defendant during discovery, the
16 Parties determined that Aggrieved Employees (members of the PAGA group) worked during a
17 total of approximately 30,533 pay periods during the PAGA Period.

18 16. While Plaintiff alleged that Defendant was liable for over \$56 million in penalties
19 due to multiple violations of the Labor Code (Labor Code sections 201, 202, 203, 204, 210, 216,
20 225.5, 226, 226.7, 226.3, 510, 1182.12, 1194, 1197, 1198, 2802, and the Wage Order) each pay
21 period at \$100 for the initial violation and \$200 for the subsequent violation (and that stacking is
22 allowed), and enhanced penalties under Labor Code 226.3 (\$250 initial violations/ \$1,000
23 subsequent violations) Plaintiff's Counsel is cognizant that there is an argument that Defendant's
24 exposure would be approximately $\$3,053,300 = 30,533 \text{ violative pay periods} \times \100 . Thus,
25 the negotiated settlement is approximately 42.2% of this estimated amount.

26 17. After calculating Defendant's maximum exposure under PAGA, Plaintiff then
27 discounted that exposure for settlement purposes to account for the risks of continued litigation,
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1 including: (i) the strength of Defendant's defenses on the merits; (ii) the risk of losing at trial; (iii)
2 the risk that the Court would exercise its discretion under PAGA to significantly reduce the
3 maximum civil penalties available by statute; (iv) the chances of a favorable verdict being
4 reversed on appeal; and (v) the difficulties attendant to collecting on a judgment. Taking into
5 account the above contingencies, Plaintiff determined that a \$1,290,000 settlement was warranted
6 by the circumstances of the case, and is fair and reasonable.

7 18. In summary, Plaintiff's Counsel performed a thorough investigation into the
8 claims at issue, which included: (1) determining Plaintiff's suitability as a private attorney general
9 through interviews, investigations, and analyses of her employment files and related records; (2)
10 evaluating all of Plaintiff's potential representative claims; (3) researching similar PAGA actions
11 as to the claims brought, the nature of the positions, and the type of employer; (4) analyzing time
12 and wage records; (5) reviewing Defendant's employment policies and practices; (6) reviewing
13 all written discovery responses; (7) researching settlements in similar cases; (8) evaluating
14 Plaintiff's claims and estimating Defendant's liability for purposes of settlement; (9) reviewing
15 and refining the scope of the claims; and (10) participating in extensive arm's length negotiations
16 with defense counsel.

17 19. By engaging in such a thorough investigation and evaluation of Plaintiff's claims,
18 Plaintiff's Counsel can opine that the Settlement, for the consideration and on the terms set forth
19 in the Settlement Agreement, is fair, reasonable, and adequate, and is in the best interests of the
20 State, the Plaintiff, and the Aggrieved Employees in light of all known facts and circumstances,
21 including the risk of significant delay and uncertainty associated with litigation, and various
22 defenses asserted by Defendant.

23 **The Terms of the Settlement**

24 20. The Settlement Agreement negotiated by the parties provides for Defendant to pay
25 \$1,290,000.00 as the "Gross Settlement Amount." (Settlement, ¶ 26.)

26 21. The "Net Settlement Amount" ("NSA") is the amount remaining of the GSA after
27 deduction of Plaintiff's enhancement payment, Plaintiff's Counsel's attorneys' fees and costs,
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1 and administration costs. From the Gross Settlement Amount, Plaintiff will apply for the
2 following allocations: (1) up to \$430,000.00 shall be paid to Plaintiff's Counsel for payment of
3 attorneys' fees (Id., ¶ 27(a)); (2) up to \$13,000.00 shall be paid to Plaintiff's Counsel for litigation
4 costs incurred in prosecuting the PAGA claims (Id., ¶ 27(a)); (3) up to \$10,000.00 shall be paid
5 to Plaintiff as a service award for his work in prosecuting the action and securing the Settlement
6 and general release (Id. ¶ 27(b)); (4) up to the amount of \$7,000.00 shall be paid for Settlement
7 Administration Costs to the Settlement Administrator (Id., ¶ 27(c)); and (5) the PAGA Settlement
8 Amount of \$830,000.00 (of which 75%, or \$622,500.00, will be paid to the LWDA, and 25%, or
9 \$207,500.00, will be paid to the Aggrieved Employees). (Id., ¶ 28). Any difference from these
10 maximum amounts will be added to the PAGA Settlement Amount. (Id. ¶ 27.)

11 22. The Settlement is subject to Court approval consistent with Labor Code § 2699.
12 Upon approval, the PAGA Settlement Amount shall be allocated 75% to the LWDA and 25%
13 among Affected Employees. Payments to Aggrieved Employees of their share of the employee
14 PAGA Portion shall be referred to as "PAGA Penalty Payment(s)". (Settlement, ¶ 28.) The
15 amount of each Affected Employee's PAGA Penalty Payment will be divided among the
16 Aggrieved Employees on a pro rata basis, based on their respective number of pay periods worked
17 for Copart during the PAGA Period. (Settlement, ¶ 28.) All payments made to the Affected
18 Employees will be allocated 100% as non-wages and interest. (Id., ¶ 38.)

19 23. Within ten (10) business days of the Effective Date, Defendant shall transmit the
20 list of Aggrieved Employees to the Settlement Administrator (Settlement, ¶ 38.)

21 24. Copart shall deposit the Gross Settlement Amount into an account established by
22 the Settlement Administrator and agrees to fund the settlement on the sixty-first (61st) day
23 following the Effective Date. (Id., ¶ 26.) Within twenty-one (21) calendar days after the
24 Settlement has been fully funded and after receiving approval from Plaintiff's Counsel and
25 Defendant's counsel of the payment calculations, the Settlement Administrator shall mail copies
26 of the explanatory letter, which has been mutually approved by the Parties, along with Individual
27 PAGA Payments to all Aggrieved Employees via regular First-Class U.S. Mail.. (Settlement, ¶
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39.). The Notice of PAGA Settlement that the Parties request that the Court approve and order the Administrator to send out is attached to **Exhibit 1 hereto as Exhibit A.**

25. Settlement checks shall remain valid and negotiable for one hundred eighty (180) calendar days from the date of their issuance. (Settlement, ¶ 39.) If there are uncashed checks following this period, the uncashed funds shall be distributed to the Controller for the State of California to be held for the benefit of the Aggrieved Employee. (Id. ¶ 40.)

26. Upon approval by the Court, Plaintiff and each Aggrieved Employee will release Defendant and each Released Party of the Released Claims set forth in the PAGA Release. (Settlement, ¶ 30.)

27. The “PAGA Period,” including the period of the release, is the time period from April 9, 2019 to November 10, 2021 (Settlement, ¶ 16.)

28. The term “PAGA Released Claims” refers to:
any and all claims for civil penalties under PAGA based on the factual allegations alleged in the notice letters Plaintiff sent to the LWDA on April 9, 2020 and October 13, 2021 and the Complaint, including failure to pay for all hours worked, including overtime and minimum wage; failure to provide meal periods; failure to pay one hour of premium pay when lawful meal periods were not provided; failure to provide rest periods; failure to pay one hour of premium pay when lawful rest periods were not provided; failure to maintain accurate records of hours worked; failure to timely pay all wages at termination; failure to furnish accurate itemized wage statements; failure to pay all earned wages twice per month; Labor Code sections 201, 202, 203, 204, 210, 216, 218.5, 218.6, 221-224, 225.5, 226, 226.3, 226.7, 510, 512, 516, 558, 1174, 1174.5, 1194, 1194.2, 1195, 1197, 1198, 2698, et seq., 2699(a), 2802; Business and Professions Code sections 17200-17208; and applicable IWC Wage Orders.

(Settlement, ¶ 17.)

29. The “Released Parties” are defined as means Copart, Inc. and its affiliated companies and its respective parent companies, subsidiaries, affiliates, shareholders, members, agents (including, without limitation, any investment bankers, accountants, insurers, reinsurers, attorneys and any past, present or future officers, directors and employees) predecessors, successors, and assigns. (Agreement, ¶ 18.)

30. The Parties agree that the Released Claims are limited to claims for civil penalties under the PAGA and related attorneys’ fees and costs. (Settlement, ¶ 25.) In addition, Plaintiff shall

1 grant Defendant and each Released Party a general release. (*Id.* at ¶ 24.). Further, apart from the
2 PAGA action and Settlement, Plaintiff has also executed an Individual Settlement Agreement,
3 which includes a release of Plaintiff's individual claims.

4 31. Per the PAGA Release:

5 In consideration of payment under the settlement, and upon the Effective Date and payment
6 of all funds due under this Settlement, Plaintiff shall be deemed to release the Released
7 Parties from any and all PAGA Released Claims and any other claims that he may have
8 against the Released Parties, including and not limited to, all complaints, claims, liabilities,
9 obligations, promises, agreements, controversies, damages, actions, causes of action, suits,
10 rights, demands, costs, losses, debts, and expenses (including attorneys' fees and costs
11 actually incurred, other than as otherwise provided herein) of any nature whatsoever,
12 known or unknown, suspected or unsuspected, including, but not limited to, any claim for
13 damages related to Plaintiff's employment with Defendant, the separation of his
14 employment, rights arising out of alleged violations of any contracts, express or implied,
15 any covenant of good faith and fair dealing, express or implied, or any tort including
16 defamation, any claim of wrongful termination, retaliation, or wage and hour violations, or
17 any legal restrictions of Defendant's right to terminate employees, or any federal, state or
18 other governmental statute, regulation or ordinance, including, without limitation: (1) the
19 Civil Rights Act of 1964, as amended; (2) 42 U.S.C. § 1981; (3) the California Government
20 Code; (4) section 503 of the Rehabilitation Act of 1973; (5) the Americans with Disabilities
21 Act; (6) the Fair Labor Standards Act (including the Equal Pay Act); (7) the California
22 Constitution; and (8) the California Labor Code, which Plaintiff now has, owns or holds,
23 or claims to have, own or hold, or which Plaintiff at any time heretofore had, owned or
24 held, or claimed to have owned or held against any of the Released Parties relating to any
25 conduct occurring prior to and including the date of execution of this Settlement Agreement
(collectively, "Plaintiff's Released Claims"). Plaintiff represents that he is not aware of any
26 claims he may have against the Released Parties other than the PAGA Released Claims.
27 As a material inducement for Copart to enter into this settlement, Plaintiff waives any and
28 all rights and benefits conferred by the provisions of section 1542 of the California Civil
Code and any similar law of any state or territory of the United States or other jurisdiction.

(Settlement, ¶ 29.)

32. The LWDA is being served with a copy of this motion with the Settlement
Agreement through the online process as required by Labor Code § 2699(1), and therefore the
LWDA has been provided notice of this PAGA settlement and this motion. This service on the
LWDA is verified in the accompanying proof of service.

ATTORNEY'S FEES AND COSTS

33. Counsel's representation of Plaintiff, the State, and the Aggrieved Group was

1 entirely contingent on winning their wage and hour claims and collecting an award of attorneys'
2 fees. Plaintiff was not able and is not responsible for paying our fees, and my firm would only
3 collect attorneys' fees if we were successful in prosecuting the claims on their behalf. To date,
4 Counsel has invested hundreds of attorney hours litigating this matter.

5 34. Counsel's skill and experience support their hourly rates ranging from \$525
6 to \$900, which are well within the rates typically approved in wage and hour class action
7 litigation in California and have been approved by numerous state and federal courts in
8 California.

9 35. In 1993, I graduated from the University of California, Los Angeles with a
10 Bachelor of Arts Degree. Following graduation, I attended Whittier Law School. In 1996,
11 while a full-time law student, I was also a full-time Judicial Extern for the Honorable Consuelo
12 B. Marshall, United States District Court for the Central District of California. After
13 approximately five months of service for Judge Marshall, I became a full-time extern for the
14 United States Attorney's Office, Central District of California. My externship lasted for
15 approximately five months. Thereafter, in 1997, I graduated from Whittier Law School. The
16 same year, I was admitted to practice law in the State of California.

17 36. From 1997-2007, I was a named partner at Hawkins & Sofonio, a law firm based
18 out of Irvine, California. At Hawkins & Sofonio, I pioneered the employment department
19 litigating plaintiff related employment issues such as: Wrongful Termination, Age
20 Discrimination, Disability, Wage and Hour and Sexual Harassment claims. Through the
21 success and experience I obtained litigating employment related matters, I commenced the
22 Wage and Hour division of our employment department in 2002. Since then, I have spent the
23 vast majority of my practice litigating Wage and Hour Class Actions.

24 37. In 2007, I incorporated my wage and hour class action practice as James
25 Hawkins APLC. Since its inception, this law firm has been exclusively involved in class action
26 and complex litigation. In 2009, I opened an additional office in Miami, Florida, prosecuting
27 wage and hour class actions.

38. I have a great deal of experience in wage and hour class action and representative action litigation. I have obtained certification of numerous classes and have obtained resolutions of numerous other class actions and representative actions. I have also been approved as class counsel in many other wage/hour class actions, and I am currently litigating numerous others. Although not an all-inclusive list, over the years I have prosecuted the following class action matters as lead and/or co-lead counsel, all of which implicated similar law and facts to those associated with this action:

a. *Aguilar v. 7-Eleven, Inc.*, et. al., Orange County Superior Court- Case No.: 30-2009-00268714-CU-OE-CXC. Certified Wage and Hour Class action seeking premium wages for meal period and rest periods and resultant penalties. Class Notice pending.

b. *Carey, et. al. v. Arthur J. Gallagher, et. al.*, USDC, SOUTHERN DISTRICT- Case No.: 09-cv-0168. Wage and Hour Class action seeking past wages of overtime for misclassification of insurance claims adjusters employed by Gallagher Bassett, a third party administrator (TPA) in the State of California. Certification granted. Plaintiffs' counsel co-lead counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

c. *Dao v. 3M Company*, et al. USDC, CENTRAL DISTRICT, Case No. CV-08-04554. Wage and Hour Class Action case seeking past wages for “off the clock”, overtime and meal and rest break violations for production workers in the State of California. Plaintiffs’ Counsel appointed as Lead Counsel. Case settled, Final Approval granted, no objections and funds fully distributed.

d. *Ortiz v. Kmart*, USDC, CENTRAL DISTRICT, Case No. SACV 06-638 ODW. Wage and Hour Class Action case seeking past wages for meal and rest period violations for non-exempt employees in the State of California. Plaintiffs' counsel appointed co-lead counsel. Case settled, Final Approval granted, no objections and

1 funds fully distributed.

2 e. *Morgan v. Aramark Campus, LLC*, USDC, CENTRAL DISTRICT, Case No.
3 SACV08-00412. Wage and Hour Class Action case seeking past wages for meal and
4 rest period violations for non-exempt employees in the State of California. Plaintiffs'
5 Counsel appointed as Lead Counsel. Case settled, Final Approval granted, no
6 objections and funds fully distributed.

7 f. *West v Iron Mountain Information Management, Inc, et. al.*; Los Angeles County
8 Superior Court, Case No. BC393709. Wage and Hour Class Action seeking past wages
9 for overtime, meal and rest break violations for driver employees in the State of
10 California. Settlement for "binding arbitration." Arbitration Award for Plaintiff Class.
11 Arbitration Award confirmed. Plaintiffs' counsel, lead trial counsel and class counsel.

12 g. *Gonzalez v. Superior Industries Inter, Inc., et al.*, Los Angeles County Superior
13 Court, Case No. BC 357912. Wage and Hour Class Action seeking past wages for
14 overtime, meal and rest breaks violations for production employees in the State of
15 California. Plaintiffs' counsel appointed as lead counsel. Case settled, Final Approval
16 granted, no objections and funds fully distributed.

17 h. *Acosta v. Fleetwood Travel Trailers of California, Inc., et al.*, Riverside County
18 Superior Court, Case No. RIC 440630. Wage and Hour Class Action seeking past
19 wages for overtime, meal and rest break violations for production employees in the
20 State of California. Plaintiffs' counsel appointed as co-lead counsel. Case settled,
21 Final Approval granted, no objections and funds fully distributed.

22 i. *Walker v. Sharkeez, et al.*, Orange County Superior Court, Case No. 05CC00293.
23 Wage and Hour Class Action seeking past wages for unlawful deductions, meal and
24 rest break violations for restaurant employees in the State of California. Plaintiffs'
25 counsel appointed as lead counsel. Case settled, Final Approval granted and funds
26 fully distributed.
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1 j. *Padron v. Universal Protection Service, et al*, Orange County Superior Court,
2 Case No. 05CC00013. Wage and Hour Class Action seeking past wages for overtime,
3 meal and rest break violations for security officers in the State of California. Plaintiffs'
4 counsel appointed as co-lead counsel. Case settled, Final Approval granted, no
5 objections and funds fully distributed.

6 k. *Martinez v. Securitas Security Services USA, et al.*, Santa Clara Superior Court,
7 Case No. 105-CV047499, et al. J.C.C.P. No. 4460. Wage and Hour Class Action
8 seeking past wages for meal and rest break violations for security officers employed
9 by Defendants in the State of California. Plaintiffs' counsel and co-counsel. Case
10 settled, Final Approval granted and funds fully distributed.

11 l. *Velasquez-Lopez v. Hotel Cleaning Services, Inc. et al.*, Riverside Superior Court,
12 Case No. RIC 420909. Wage and Hour Class Action seeking past wages for overtime,
13 meal and rest break violations for housekeepers employed by Defendants in the State
14 of California. Plaintiffs' counsel appointed as lead counsel. Case settled, Final
15 Approval granted, no objections and funds fully distributed.

16 m. *Ruiz, et al. v. Unisource Worldwide, Inc., et al.*, USDC, CENTRAL DISTRICT,
17 Case No. CV09-05848. Wage and Hour Class Action seeking past wages for meal and
18 rest period violations for non-exempt employees employed by Defendants in the state
19 of California. Case settled. Awaiting Preliminary Approval hearing. Plaintiff has
20 petitioned the Court for Lead Counsel.

21 n. *Herrador v. Culligan International Company, et al.*, USDC, CENTRAL
22 DISTRICT, Case No. SACV 08-680. Wage and Hour Class Action seeking past wages
23 for field and branch employees of Defendants in the State of California. Plaintiffs'
24 counsel appointed as lead counsel. Case settled and awaiting Final Approval.

25 o. *Defries v. Domain Restaurants, et al.*, Orange County Superior Court, Case No.
26 05CC00128. Wage and Hour Class Action seeking past wages for restaurant
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1 employees of Defendants in the State of California. Plaintiffs' counsel appointed as
2 lead counsel. Case settled, Final Approval granted, no objections and funds fully
3 distributed.

4 p. *Denton v. BLB Enterprises, Inc., et al.*, Orange County Superior Court, Case No.
5 07CC01292. Wage and Hour Class Action seeking unpaid overtime, meal and rest
6 break violations for security guards employed by Defendants in the State of California.
7 Plaintiffs' counsel appointed as lead counsel. Case settled, Final Approval granted, no
8 objections and funds fully distributed.

9 q. *Rios v. Sandberg Furniture Manufacturing Co., Inc, et al.*, Los Angeles Superior
10 Court, Case No. BC411477. Wage and Hour Class Action seeking unpaid meal and
11 rest break violations for production employees employed by Defendants in the State
12 of California. Plaintiff counsel appointed as lead counsel. Case settled, Final Approval
13 granted, no objections and funds fully distributed.

14 r. *McMurray v. Dave and Busters, Inc., et al.*, Orange County Superior Court, Case
15 No. 06CC00099. Wage and Hour Class Action seeking past wages for meal and rest
16 break violations for restaurant employees employed by Defendants in the State of
17 California. Plaintiffs' counsel appointed as co-lead counsel. Case settled, Final
18 Approval granted, no objections and funds fully distributed.

19 s. *Osuna v. DFG Restaurants, Inc., et al.*, Los Angeles Superior Court, Case No. BC
20 330145. Wage and Hour Class Action seeking past wages of overtime for mis-
21 classification of managers employed by Defendant, DBA Carl's Jrs. in the State of
22 California. Plaintiffs' counsel appointed as co-lead counsel. Case settled, Final
23 Approval granted, no objections and funds fully distributed.

24 t. *Burns v. Gymboree Operations, Inc., et al.*, San Francisco Superior Court, Case
25 No. CGC-07-461612. Wage and Hour Class Action seeking past wages for meal and
26 rest break violations for non-exempt employees employed by Defendants in the State
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1 of California. Plaintiffs' counsel appointed lead counsel. Case settled, Final Approval
2 granted, no objections and funds fully distributed.

3 u. *Willems v. Diedrich Coffee, Inc., et al.*, Orange County Superior Court, Case No.
4 07CC00015. Wage and Hour Class Action seeking past wages of overtime for mis-
5 classification of managers employed by Defendants in the State of California.
6 Plaintiffs' counsel appointed lead counsel. Case settled, Final Approval granted, no
7 objections and funds fully distributed.

8 v. *Davila, et al. v. Beckman Coulter, Inc., et al.*, Orange County Superior Court, Case
9 No. 07CC01347. Wage and Hour Class Action seeking past wages for overtime, meal
10 and rest break violations for production workers employed by Defendants in the State
11 of California. Plaintiffs' counsel appointed lead counsel. Case settled; final approval
12 granted; no objections and funds fully distributed.

13 w. *Perez v. Naked Juice Company of Glendora, Inc.*, Los Angeles Superior Court,
14 Case No. BC387088. Wage and Hour Class Action seeking past wages for overtime,
15 meal and rest period violations for production employees employed by Defendants in
16 the State of California. Plaintiff counsel appointed as lead counsel. Case settled, Final
17 Approval granted, no objections and funds fully distributed.

18 39. Here, the Parties' agreement to pay Plaintiff's Counsel fees of up to \$430,000.00
19 (or approximately 1/3 of the Gross Settlement Amount) is reasonable. My firm and I have been
20 the only counsel to represent Plaintiff in connection with the claims asserted on behalf of the State
21 and the Aggrieved Employees in this matter. We have borne the entire risk and cost of this
22 litigation on a pure contingency fee basis. The legal issues raised drew significantly upon our
23 experience and the extensive review and analysis of documents and information by me and others
24 at my firm. In a complex action such as this, the proposed attorneys' fees of 1/3 of the common
25 fund or Gross Settlement Amount are on the low side of the market rate for contingency fees as
26 we have invested hundreds of hours and thousands in costs into the litigation of this matter over
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1 the last nearly two years. We have also incurred or will incur approximately \$10,470.77 in costs
2 through the completion of this matter. See, **Exhibit 4**. Thus, Plaintiff respectfully submits that
3 the requested fee and cost awards are fair and reasonable terms of the Settlement, and should be
4 approved. Plaintiff's counsel will submit additional detail if the Court should determine it
5 necessary.

6 40. In sum, despite the complexity of the case, Counsel has, through the investment of
7 substantial effort and the resources of my law firm, been able to secure an outstanding settlement
8 on behalf of the State and the Aggrieved Group. Defendants have vigorously contested liability,
9 the amount of claimed penalties, manageability of the claims asserted, , and would have continued
10 to do so through trial. Counsel's prior experiences allowed us to competently evaluate the claims,
11 settlement versus trial on a fully informed basis, and the viability of Defendants' defenses. As
12 such, we respectfully submit the Court approve the Settlement, including the Attorneys' Fees,
13 Costs and Enhancement Award/General Release Fee as requested.

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15 **THE CLASS REPRESENTATIVE ENHANCEMENT PAYMENT AND**
16 **GENERAL RELEASE FEE IS JUSTIFIED**

17 41. I strongly support the enhancement award and general release fee to Plaintiff
18 Montgomery and Defendant does not oppose the amounts requested. Such amounts were reached
19 as the product of arm's length negotiations. I believe that the requested enhancement award and
20 release fee to Plaintiff is justified, extremely fair and warranted. Plaintiff's assistance to Counsel
21 and services in prosecuting this matter have been invaluable.

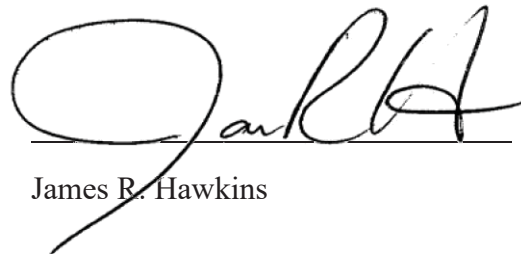
22 42. By coming forward and pursuing this representative action lawsuit that, in this
23 information age, can easily be discovered by prospective employers demonstrates that Plaintiff
24 has placed the interests of the State and the group above his own. Plaintiff took on significant
25 risks, including the potential that the lawsuit may affect his ability to obtain future employment
26 as well as the risk of paying an award of costs to Defendants if he was not successful in litigating
27 his claims. He has been committed to pursuing this representative action suit and has been a
28 crucial participant in the prosecution of this litigation. Plaintiff worked closely with my firm in

1 all aspects of the litigation in this case. He provided an extraordinary amount of factual
2 information, and evidence, necessary for the prosecution and settlement of the claims. This
3 information proved invaluable in our settlement discussions. Plaintiff actively participated in this
4 litigation during all stages including being available during mediation for negotiation of the
5 Settlement, and the settlement approval process. Indeed, Plaintiff contributed considerable time
6 and effort to the litigation of this case in order to enforce the California Labor Code on behalf of
7 the State of California and for the benefit of other Aggrieved Employees

8 43. Plaintiff also agreed to enter into a broader release of his individual claims against
9 Defendants as opposed to the release of penalties only applicable to the Aggrieved Employees.
10 For this alone, Plaintiff is entitled to the payment requested.

11 I declare under penalty of perjury under the laws of the State of California that the foregoing is
12 true and correct. Executed on May 6, 2022 in Irvine, California.

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James R. Hawkins

EXHIBIT 1

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement” or “Settlement”) is made and entered into between Plaintiff Joseph Montgomery (“Plaintiff”), acting in a private attorney general capacity, and Defendant Copart, Inc. (“Defendant” or “Copart”) (collectively, the Parties”).

DEFINITIONS

The following terms, when used in this Settlement Agreement, shall have the following meanings:

1. “Action” means the matter titled JOSEPH MONTGOMERY, individually and on behalf of the general public as private attorney general, Plaintiff v. COPART, INC., a Delaware Corporation, and DOES 1-50, inclusive, Defendants, Sacramento County Superior Court, Case No. 34-2020-00280733, and as set forth in Plaintiff’s correspondences to the California Labor and Workforce Development Agency (“LWDA Letter”) dated April 9, 2020 and October 13, 2021.

2. “Aggrieved Employees” includes all current and former non-exempt employees of Copart, Inc. in California at any time during the PAGA Period.

3. “Copart” or “Defendant” means Copart, Inc.

4. “Complaint” means the operative complaint filed by Plaintiff in the Sacramento County Superior Court in Case No. 34-2020-00280733 on June 15, 2020, as amended pursuant to stipulation on or about February 24, 2022.

5. “Court” or “Sacramento County Superior Court” means the Superior Court of California for the County of Sacramento.

6. “Defense Counsel” or “Counsel for Defendant” are Jeffrey S. Ranen, Esq., William C. Sung, Esq., and Casey N. Engstrom, Esq. of Lewis Brisbois Bisgaard & Smith, LLP, 633 West 5th Street, Suite 4000, Los Angeles, California 90071.

7. “Employee PAGA Portion” is the amount to be distributed to the Aggrieved Employees, which shall consist of 25% of the PAGA Penalties Amount, as provided in Paragraph 28 herein.

8. “Employee PAGA Payments” refers to the PAGA Penalty Payments that will be distributed to Aggrieved Employees, as provided in Paragraph 28 herein.

9. “Gross Settlement Amount” is the common fund, non-reversionary sum of One Million Two Hundred Ninety Thousand Dollars and Zero Cents (\$1,290,000.00), which represents the total amount payable under this Settlement Agreement by Copart (subject to the Escalator Clause described below), including, without limitation, the Employee PAGA Portion payable to Aggrieved Employees, LWDA Payment payable to the LWDA, Court-awarded Attorneys’ Fees (not to exceed one-third of the PAGA Fund) to Plaintiff’s Counsel, Court-

awarded Litigation Costs (not to exceed \$13,000.00) to Plaintiff's Counsel, Court-awarded General Release Fee (not to exceed \$10,000.00) to Plaintiff, and a Court-awarded payment to the Settlement Administrator for Settlement Administration Costs (not to exceed \$7,000.00), payable within 60 days after the Effective Date.

10. "Effective Date" means (i) in the event that the Settlement has received approval by the Court and there were no timely objections filed, or that any timely objections have been withdrawn, then the date the Court's order of approval of the Settlement; (ii) in the event that one or more timely objections has/have been filed and not withdrawn, then upon the passage of the applicable date for an objector to seek appellate review of the trial court's order of approval of the Settlement, without a timely appeal having been filed; or, (iii) in the event that a timely appeal of the Court's order of approval has been filed, then the Settlement shall be final when the applicable appellate court has rendered a final decision or opinion affirming the trial court's approval without material modification, and the applicable date for seeking further appellate review has passed, or the date that any such appeal has been either dismissed or withdrawn by the appellant.

11. "LWDA" means the California Labor and Workforce Development Agency.

12. "Plaintiff's Counsel" means James R. Hawkins, Esq. and Christina M. Lucio, Esq. of James Hawkins APLC, 9880 Research Drive, Suite 200, Irvine, California 92618.

13. "Net Settlement Amount" is the amount remaining to distribute to the LWDA and Aggrieved Employees after the following amounts, if approved by the Court, are subtracted from the Gross Settlement Amount: (a) Plaintiff's attorneys' fees up to one third of the Gross Settlement Amount; (b) Plaintiff's costs to Plaintiff's Counsel up to \$13,000.00; (c) Plaintiff's enhancement payment up to \$10,000; and (d) Settlement Administration Costs to Settlement Administrator up to \$7,000.00.

14. "PAGA" means the California Labor Code Private Attorneys General Act, California Labor Code § 2698, et seq.

15. "LWDA Payment" means the amount to be paid to the LWDA, which is seventy-five percent (75%) of the PAGA Penalties Amount as set forth in Paragraph 28 herein.

16. "PAGA Period" means the time period from April 9, 2019 to November 10, 2021.

17. "PAGA Released Claims" means any and all claims for civil penalties under PAGA based on the factual allegations alleged in the notice letters Plaintiff sent to the LWDA on April 9, 2020 and October 13, 2021 and the Complaint, including failure to pay for all hours worked, including overtime and minimum wage; failure to provide meal periods; failure to pay one hour of premium pay when lawful meal periods were not provided; failure to provide rest periods; failure to pay one hour of premium pay when lawful rest periods were not provided; failure to maintain accurate records of hours worked; failure to timely pay all wages at termination; failure to furnish accurate itemized wage statements; failure to pay all earned wages twice per month; Labor Code sections 201, 202, 203, 204, 210, 216, 218.5, 218.6, 221-224, 225.5, 226, 226.3, 226.7, 510, 512, 516, 558, 1174, 1174.5, 1194, 1194.2, 1195, 1197, 1198, ,

2698, et seq., 2699(a), 2802; Business and Professions Code sections 17200-17208; and applicable IWC Wage Orders.

18. “Released Parties” means Copart, Inc. and its affiliated companies and its respective parent companies, subsidiaries, affiliates, shareholders, members, agents (including, without limitation, any investment bankers, accountants, insurers, reinsurers, attorneys and any past, present or future officers, directors and employees) predecessors, successors, and assigns.

19. “Settlement Administrator” means ILYM Group, Inc., a third-party administrator who shall administer the settlement, subject to approval by the Court, in accordance with this Settlement Agreement, and whose costs and expenses to administer the settlement are currently estimated not to exceed \$7,000.00 (“Settlement Administration Costs”).

RECITALS

20. Plaintiff performed work for Copart as a non-exempt employee in California during the PAGA Period and is therefore an Aggrieved Employee.

21. On April 9, 2020, Plaintiff provided written notice to the LWDA and Copart asserting claims for civil penalties pursuant to PAGA stemming from alleged violations of California Labor Code sections 201, 202, 203, 204, 218.5, 218.6, 221, 223, 224, 226, 226.3, 226.7, 510, 512, 516, 558, 1174, 1194, 1194.2, 1195, 1197, 1198, 2698 *et seq.*, and 2802.

22. On June 15, 2020, Plaintiff filed a representative action complaint titled JOSEPH MONTGOMERY, individually and on behalf of the general public as private attorney general, Plaintiff v. COPART, INC., a Delaware Corporation, and DOES 1-50, inclusive, Defendants, Sacramento County Superior Court, Case No. 34-2020-00280733, asserting a single cause of action for civil penalties against Copart on a representative basis pursuant to the PAGA, alleging violations of the Labor Code for (1) failure to pay all wages owed for all hours worked, including minimum wages and overtime; (2) failure to provide lawful, timely meal periods; (3) failure to pay one hour of premium pay when timely, lawful meal periods were not provided; (4) failure to timely pay all wages owed at the time of termination; (5) failure to provide accurate itemized wage statements; and (6) failure to keep accurate records.

23. In response to Plaintiff’s formal discovery requests, Copart provided Plaintiff with verified discovery responses that included information and documents pertaining to Plaintiff and other Aggrieved Employees, and which allowed Plaintiff’s Counsel to investigate Plaintiff’s allegations and value his claims.

24. On September 10, 2021 the Parties participated in a day-long mediation with mediator Lisa Klerman, Esq. In preparation for the mediation, Plaintiff’s counsel requested and Defendant’s counsel provided sample time and payroll data for the purported aggrieved employees, all relevant policies and procedures, the number of purported aggrieved employees, and the estimated number of pay periods during the PAGA period of April 9, 2019 to September 10, 2021. With Ms. Klerman’s assistance, the Parties agreed to fully and finally resolve the Action and the PAGA Released Claims as to Plaintiff, the State of California, and the Aggrieved Employees.

OPERATIVE TERMS OF SETTLEMENT AGREEMENT

The Parties agree as follows:

25. **Non-Admission.** Nothing in this Settlement Agreement nor action taken in implementation thereof shall be construed to be an admission or concession by Plaintiff that his claims do not have merit or by Copart of any liability or wrongdoing as to Plaintiff, Aggrieved Employees, or any other person, and Copart specifically disclaims any such liability or wrongdoing. Nor will any of the foregoing be used in any way in any other judicial, arbitral, administrative, investigative or other forum or proceeding, as evidence of any violation of any federal, state or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this Settlement Agreement may be used in any court proceeding that has as its purpose the interpretation, implementation, or enforcement of the settlement or any orders or judgments of the Court entered into in connection therewith. The Parties have entered into this Settlement Agreement with the intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and risks. This Settlement Agreement and any related Court documents or orders are not and may not be cited or admitted as evidence of liability. If the Court does not grant approval of this settlement, then the Parties revert to their previous positions and Copart will contend that a representative action is not appropriate.

26. **Gross Settlement Amount.** Copart shall pay \$1,290,000.00 as the non-reversionary Gross Settlement Amount ("GSA"). Copart will not pay more than the Gross Settlement Amount. Notwithstanding anything to the contrary herein, in the event that the pay periods from April 9, 2019 to September 10, 2021 are more than 10% greater than 30,533 (i.e., if there are more than 33,586 pay periods from April 9, 2019 to September 10, 2021), Copart shall increase the GSA in proportion to the increase in pay periods over 10% (e.g., if the number of pay periods is 12% greater than 30,533, Copart will increase the GSA by 12%). ("Escalator Clause"). In the event that the escalator clause is triggered, the Parties shall cooperate to obtain an amended judgment which reflects the increased Gross Settlement Amount.

Copart shall deposit the Gross Settlement Amount into an account established by the Settlement Administrator and agrees to fund the settlement on the sixty-first (61st) day following the Effective Date.

The Gross Settlement Amount shall be used to pay: (1) Amounts distributable to the LWDA and Aggrieved Employees; (2) Plaintiff's attorneys fees and costs; (3) Plaintiff's enhancement payment; and (4) Settlement administration costs.

27. **Net Settlement Amount.** The Parties agree that the following amounts should be subtracted from the Gross Settlement Amount, if approved by the Court, resulting in a Net Settlement Amount to distribute to the LWDA and Aggrieved Employees:

a. **Plaintiff's Attorneys' Fees and Costs.** Copart will not oppose Plaintiff's request for attorneys' fees in the amount up to one third of the Gross Settlement Amount (currently estimated to be \$430,000.00) and costs up to \$13,000.00 incurred in prosecuting this Action. In the event the Court approves less than these amounts, the difference will be added to

the Net Settlement Amount (although Plaintiff may appeal an order granting less than the full amount sought for attorneys' fees and costs). Copart, via the Settlement Administrator, will report these payments on IRS Form 1099 issued to Plaintiff's Counsel. Except as set forth in this Paragraph, the Parties shall each bear their own attorneys' fees and costs.

b. Plaintiff's Enhancement Payment and General Release Fee. Copart will not oppose Plaintiff's request for an enhancement payment of up to \$10,000.00 as a general release fee in connection with the release and waivers provided by Plaintiff, in his individual capacity ("General Release Fee") and for serving as the representative plaintiff in this Action. In the event the Court approves a payment of less than the requested amount, the difference will be added to the Net Settlement Amount (although Plaintiff may appeal an order granting less than the full amount sought for Plaintiff's enhancement payment). The General Release Fee will be reported on an IRS Form 1099 issued to Plaintiff.

c. Administration Costs. Copart will not oppose the Settlement Administrator's costs in the amount up to \$7,000 for administering the settlement. In the event the Court approves a payment of less than this amount, the difference will be added to the Net Settlement Amount. Copart, via the Settlement Administrator, will report this payment on IRS Form 1099 issued to the Settlement Administrator.

28. Allocation of Net Settlement Amount. The Parties agree that one hundred percent (100%) of the Net Settlement Amount shall be designated as "civil penalties" and shall be distributed to the LWDA (i.e., the LWDA Payment) and twenty-five percent (25%) of the Net Settlement Amount shall be distributed to the Aggrieved Employees (i.e. the Employee PAGA Portion) on a *pro rata* basis, based on their respective number of pay periods worked for Copart during the PAGA Period. Payments to Aggrieved Employees of their share of the Employee PAGA Portion shall be referred to as "PAGA Penalty Payment(s)." Each Aggrieved Employee will be paid a non-wage check for the PAGA Penalty Payment, and will receive an IRS Form 1099 for said payment.

29. Plaintiff's Release of Claims and Waiver of California Civil Code section 1542. In consideration of payment under the settlement, and upon the Effective Date and payment of all funds due under this Settlement, Plaintiff shall be deemed to release the Released Parties from any and all PAGA Released Claims and any other claims that he may have against the Released Parties, including and not limited to, all complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and expenses (including attorneys' fees and costs actually incurred, other than as otherwise provided herein) of any nature whatsoever, known or unknown, suspected or unsuspected, including, but not limited to, any claim for damages related to Plaintiff's employment with Defendant, the separation of his employment, rights arising out of alleged violations of any contracts, express or implied, any covenant of good faith and fair dealing, express or implied, or any tort including defamation, any claim of wrongful termination, retaliation, or wage and hour violations, or any legal restrictions of Defendant's right to terminate employees, or any federal, state or other governmental statute, regulation or ordinance, including, without limitation: (1) the Civil Rights Act of 1964, as amended; (2) 42 U.S.C. § 1981; (3) the California Government Code; (4) section 503 of the Rehabilitation Act of 1973; (5) the Americans with Disabilities Act; (6) the Fair Labor Standards Act (including the Equal Pay

Act); (7) the California Constitution; and (8) the California Labor Code, which Plaintiff now has, owns or holds, or claims to have, own or hold, or which Plaintiff at any time heretofore had, owned or held, or claimed to have owned or held against any of the Released Parties relating to any conduct occurring prior to and including the date of execution of this Settlement Agreement (collectively, "Plaintiff's Released Claims"). Plaintiff represents that he is not aware of any claims he may have against the Released Parties other than the PAGA Released Claims. As a material inducement for Copart to enter into this settlement, Plaintiff waives any and all rights and benefits conferred by the provisions of section 1542 of the California Civil Code and any similar law of any state or territory of the United States or other jurisdiction. Section 1542 of the California Civil Code provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Plaintiff understands and acknowledges that this Settlement Agreement is meant to include, to the fullest extent, all PAGA Released Claims and other claims which Plaintiff does not know or suspect to exist in his favor against the Released Parties.

30. **PAGA Released Claims.** Upon the Effective Date and payment of all funds due under this Settlement, Plaintiff, Aggrieved Employees, and the State of California will be forever barred from pursuing any and all PAGA Released Claims defined in Paragraph 17. Upon entry of the Order approving the settlement and judgment entered thereon, Plaintiff, the State of California, and all Aggrieved Employees will be forever barred from pursuing any and all of the PAGA Released Claims that arose during the PAGA Period against the Released Parties. This release of claims only covers those civil penalties which are recoverable under PAGA, and does not otherwise cover individual, underlying claims or causes of action that Aggrieved Employees other than Plaintiff may have under the law against Released Parties for violations of the California Labor Code.

31. **Covenants and Representations by Plaintiff and Plaintiff's Counsel.** Plaintiff represents and warrants that he has not assigned or transferred or purported to assign or transfer to any person or entity, any claim or portion thereof, or interest therein, which is or may be subject to this Settlement Agreement. Plaintiff acknowledges that he has read this Settlement Agreement, that he fully understands his rights, privileges, and duties under the Settlement Agreement, and enters into this Settlement Agreement freely and voluntarily. Plaintiff further acknowledges that he has had the opportunity to consult with his attorneys to explain the terms of this Settlement Agreement and the consequences of signing this Settlement Agreement.

32. **Limited Disclosure and No Publicity.** Except as provided below, to the extent necessary to effectuate the settlement or as required by the PAGA statute, a court of law, or legal process, neither Plaintiff nor Plaintiff's Counsel will publicize the terms of this Settlement Agreement or issue a press release, hold a press conference, publish information about the

settlement on any website or through any social media, or otherwise publicize the settlement or communicate its terms in public or in private, unless ordered by the Court.

33. **Obligation of Plaintiff's Counsel to Submit Settlement Agreement to the LWDA.** To permit judicial review and approval of the Settlement, and as required by Labor Code section 2698, *et seq.*, Plaintiff's Counsel will file the Settlement Agreement with the Court and submit the Settlement to the LWDA as part of the parties' seeking Court approval of the Settlement, per Labor Code § 2699(1)(2).

34. **Filing of Motion for Approval of Settlement by Plaintiff's Counsel.** Plaintiff's Counsel shall be responsible for preparing the Motion for Approval of the Settlement ("Approval Motion") and providing Defendant's Counsel with sufficient opportunity to propose revision to the Approval Motion prior to filing. Plaintiff's Counsel will file the Approval Motion, which is mutually agreed to by the Parties, as soon as practicable. Plaintiff's Counsel will serve the Approval Motion on Defendant's Counsel. Pursuant to California Labor Code section 2698, *et seq.*, Plaintiff's Counsel shall undertake all required submissions and disclosures to the Court to obtain approval of the settlement. The order approving the settlement shall include a provision that the Action is dismissed with prejudice, which shall constitute a final and binding resolution of Plaintiff's claims herein.

35. **Termination of Settlement Agreement.** If the Court does not approve the settlement, if the Court does not enter judgment as provided for in this Settlement Agreement, or if appellate review is sought and, on such review, the Court's decision is materially modified or reversed, or if one or more of the material terms of the Settlement Agreement is not approved or is materially modified or reversed or found to be invalid, then either of the Parties shall have the right within 10 days of written notice thereof to elect to terminate the Settlement Agreement, in which case the Settlement Agreement shall have no force or effect, and the Parties shall be deemed to have reverted to their respective status as of the date and time immediately prior to the execution of this Settlement Agreement. However, if the Court declines to approve the Settlement Agreement as drafted, the Parties agree to attempt in good faith to amend the Settlement Agreement to resolve the Court's concerns with the Settlement Agreement, before either Party terminates the Settlement Agreement.

36. **Judgment.** As part of the Approval Motion to approve the Settlement, Plaintiff shall submit a proposed order and judgment which enters judgment in the Action in accordance with the terms of the Settlement, retains jurisdiction over the Action for the purpose of enforcing the terms of the Settlement following approval of the Settlement, and enjoins the prosecution of any of the PAGA Released Claims against Copart. The judgment will release and bar Plaintiff's Released Claims and the PAGA Released Claims as to Plaintiff, the State of California, and Aggrieved Employees.

ADMINISTRATION OF SETTLEMENT

37. **Settlement Administrator.** The Parties have mutually selected ILYM Group, Inc. to handle the administration of this settlement, subject to approval by the Court.

38. **Notice to Aggrieved Employees.** Within ten (10) business days after the Effective Date, Defendant shall provide the Settlement Administrator with a list of the Aggrieved Employees (the "Aggrieved Employees List"). Copart will in good faith compile from its records a list of Aggrieved Employees that will be in a computer-readable format, such as a Microsoft Excel spreadsheet, and shall include each Aggrieved Employee's full name, last known mailing address, last known telephone number, total pay periods worked for Copart in California during the PAGA Period, and Social Security number, to the extent available from Copart's records. Because Social Security numbers are included in the list, the Settlement Administrator will maintain the list in confidence, and shall only access and use the list to administer the settlement in conformity with the Court's orders. Within 7 business days of receiving the Aggrieved Employees' information from Copart, the Settlement Administrator will circulate to counsel for both Parties an anonymized spreadsheet containing the Individual PAGA Payments to each Aggrieved Employee and the data used to calculate said payments. The Settlement Administrator shall obtain approval from all counsel of the calculations before mailing Individual PAGA Payments.

39. **Explanatory Letter and Individual PAGA Payments.** Upon receipt of the information for Aggrieved Employees, the Settlement Administrator will perform a search on the National Change of Address database to update the Aggrieved Employees' addresses. Within twenty-one (21) calendar days after the Settlement has been fully funded and after receiving approval from Plaintiff's Counsel and Defendant's counsel of the payment calculations as provided above, the Settlement Administrator shall mail copies of the explanatory letter, which has been mutually approved by the Parties and is attached hereto as **Exhibit A**, along with Individual PAGA Payments to all Aggrieved Employees via regular First Class U.S. Mail.

The Settlement Administrator will calculate the amount to be received by each Aggrieved Employee, which will be based on the formula set forth in Paragraph 28, *supra*. The Settlement Administrator will send each Aggrieved Employee a check for his or her Individual PAGA Payment along with the explanatory letter. Checks will remain negotiable for 180 days. Each Individual PAGA Payment shall be deemed penalties and reported using IRS Form 1099, with no withholdings taken.

40. **Undeliverable Notices.** The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Aggrieved Employee. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Aggrieved Employee.

Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a "skip trace" or other reputable search method using the name, address and/or Social Security number of the Aggrieved Employee involved, and will perform up to a single re-mailing if a new address is located.

Funds represented by checks returned as undeliverable after a re-mailing, checks for whom the Settlement Administrator could not locate an updated address after performing a skip

trace, and funds represented by checks remaining un-cashed more than 180 days after issuance (collectively, "Uncashed Checks"), shall escheat to the California State Controller's Office for deposit in the Unclaimed Property Fund, in the name of the Aggrieved Employee.

41. **Distribution of Other Payments.** The Settlement Administrator shall distribute payments to (1) the LWDA; (2) Plaintiff's Counsel for Plaintiff's Counsel's Court-approved attorneys' fees and litigation costs and expenses; (3) Plaintiff for the Court-approved enhancement payment; and (4) the Settlement Administrator for Court-approved Settlement administration costs incurred in connection with the Settlement, at the same time it makes payments to Aggrieved Employees pursuant to Paragraph 39, *supra*.

42. **Accounting.** Within 45 days after all payments have been made under the Settlement, the Settlement Administrator will provide an accounting under oath to the Parties of the amounts paid from the settlement.

MISCELLANEOUS PROVISIONS

43. **No Impact on Employee Benefit Plans.** Neither the Settlement Agreement nor any amounts paid to Plaintiff, any Aggrieved Employee, or the LWDA under the settlement will modify any previously credited hours or service under any employee benefit plan, policy, or bonus program sponsored by Copart. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under Copart's sponsored benefit plans, policies, or bonus programs. The payments made under the terms of this Settlement Agreement shall not be applied retroactively, currently, or on a going-forward basis, as salary, earnings, wages, or any other form of compensation for the purposes of any Copart benefit plan, policy, or bonus program. Copart retains the right, if necessary, to modify the language of its benefit plans, policies, and bonus programs to effect this intent, and to make clear that any amounts paid pursuant to this Settlement Agreement are not for "hours worked," "hours paid," "hours of service," or any similar measuring term as defined by applicable plans, policies, and bonus programs for purposes of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Settlement Agreement.

44. **Tax Consequences.** Plaintiff and Aggrieved Employees will be solely responsible for correctly characterizing any compensation received under the settlement on his/her personal income tax returns for tax purposes, and paying all appropriate taxes due for any and all amounts paid to them under the settlement. Plaintiff, Copart, Plaintiff's Counsel, and Defendant's Counsel make no representations or warranties with respect to tax consequences of any payment under this Settlement Agreement, do not intend anything contained in this Settlement Agreement to constitute advice regarding taxes or taxability, nor shall anything in this Settlement Agreement be relied upon as such.

45. **Governing Law.** This Settlement Agreement shall be construed under and governed by the laws of the State of California. This Settlement Agreement shall be deemed to have been entered into in California, and all questions of validity, interpretation, or performance of any of its terms or of any rights or obligations of the Parties to this Settlement Agreement shall be governed by California law. If any legal or equitable action or arbitration is necessary to enforce the terms of this Settlement Agreement, it shall be brought in the State of California,

County of Sacramento.

46. **Entire Agreement.** This Settlement Agreement constitutes the entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements may be deemed binding on the Parties. The Parties each acknowledge and represent that no promise or representation not contained in this Settlement Agreement has been made to them, and acknowledge and represent that this Settlement Agreement contains the entire understanding between them and contains all terms and conditions pertaining to the compromise and settlement of the Action and PAGA Released Claims.

47. **Judgment and Continued Jurisdiction.** The Parties agree that this Settlement Agreement shall be enforceable by the Court pursuant to California Code of Civil Procedure section 664.6, and the Court, to the fullest extent of the law, shall retain exclusive and continuing jurisdiction over this Action, over all Parties, and the Aggrieved Employees to interpret and enforce the terms, conditions, and obligations of the Settlement Agreement.

48. **Amendment or Modification.** This Settlement Agreement may be amended or modified only by a written instrument, signed by either the Parties or their successors-in-interest or counsel for all Parties, subject to approval by the Court.

49. **Authorization to Enter into Binding Settlement Agreement.** Defendant represents and warrants that the undersigned has the authority to act on behalf of Copart and to bind Copart to the terms of this Settlement Agreement. Plaintiff represents and warrants that he has the capacity to act on his own behalf and on behalf of all who might claim through him to bind him to the terms and conditions of this Settlement Agreement. Counsel for all Parties warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties warrant that they understand and have full authority to enter into this settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any settlement and/or mediation privileges and/or confidentiality provisions that otherwise might apply under federal or state law.

50. **Binding on Successors and Assigns.** This Settlement Agreement will be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

51. **Execution and Counterparts.** This Settlement Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, including facsimile and scanned copies of the signature page, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange among themselves original signed counterparts.

52. **Acknowledgement of Mutual Drafting and that the Settlement is Fair, Adequate, and Reasonable.** The Parties believe this Settlement Agreement is a fair, adequate,

and reasonable settlement of the Action, and have arrived at this settlement after arm's-length negotiations by experienced counsel. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this settlement. The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive, arm's-length negotiations and that neither Party shall be considered the "drafter" of this Settlement Agreement for purposes of having terms construed against that Party. The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more strictly against one Party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

53. **Invalidity of Any Provision.** Before declaring any provision of this Settlement Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Settlement Agreement valid and enforceable.

54. **Severability.** If any term or provision of this Settlement Agreement is held to be invalid or unenforceable, provided that the essential terms and conditions of this Settlement Agreement for each Party remain valid, binding and enforceable, the remaining portions of this Settlement Agreement will continue to be valid, and will be performed, construed, and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the Settlement Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

55. **No Waiver.** No waiver of any condition or covenant contained in this Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such Party of the same or any other condition, covenant, right, or remedy.

56. **Cooperation and Execution of Necessary Documents.** All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to implement the settlement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS THEREOF, the Parties each acknowledge that he/it has read the foregoing Settlement Agreement, accepts and agrees to the provisions contained in this Settlement Agreement, and hereby executes it voluntarily and with full understanding of its consequences.

Dated: March 16, 2022

PLAINTIFF JOSEPH MONTGOMERY

Joseph B Montgomery III
Joseph B Montgomery III (Mar 16, 2022 23:08 PDT)

Dated: 3/16/22, 2022

COPART, INC.

By: Gregory R. DePasquale
Gregory R. DePasquale

APPROVED AS TO FORM:

Dated: March 16, 2022

JAMES HAWKINS, APLC

By: Christina M. Lucio
James R. Hawkins
Christina M. Lucio
Attorneys for Plaintiff, Joseph Montgomery

Dated: March 16, 2022

LEWIS BRISBOIS BISGAARD & SMITH, LLP

By: Jeffrey S. Ranen
Jeffrey S. Ranen
William C. Sung
Casey N. Engstrom
Attorneys for Defendant, Copart, Inc.

EXHIBIT A

[CLAIMS ADMINISTRATOR LETTERHEAD]

Mailing Date

NOTICE OF PAGA SETTLEMENT AND RELEASE OF CLAIMS

Re: *Joseph Montgomery, individually and on behalf of himself and all others similarly situated v. Copart, Inc., and DOES 1 through 50, inclusive*, Sacramento County Superior Court Case No. 34-2020-00280733-CU-OE-GDS

<<EmployeeName>>
<<Address1>> <<Address2>>
<<City>>, <<State>> <<Zip>>

I. NOTICE OF PAGA SETTLEMENT

The Sacramento County Superior Court (the “Court”) has approved a settlement in the above-captioned action filed by Plaintiff Joseph Montgomery (“Plaintiff”) on behalf of himself and all other aggrieved employees.

Plaintiff alleges that Defendant Copart, Inc. failed to comply with the requirements of the California Labor Code. Specifically, Plaintiff claims that Copart, Inc. failed to pay for all hours worked, including overtime and minimum wages; failed to provide meal periods; failed to pay one hour of premium pay when lawful meal periods were not provided; failed to provide rest periods; failed to pay one hour of premium pay when lawful rest periods were not provided; failed to maintain accurate records of hours worked; failed to timely pay all wages at termination; failed to furnish accurate itemized wage statements; and failed to pay all earned wages at least twice per month.

Plaintiff is solely seeking civil penalties on behalf of the California Labor and Workforce Development Agency (“LWDA”) and other aggrieved employees under the Private Attorneys General Act (“PAGA”).

Copart, Inc. denies any liability and wrongdoing of any kind associated with the claims alleged in the above referenced matter, and further denies that the matter is appropriate for representative treatment for any purpose other than settling the matter. The Court has not ruled on the merits of Plaintiff’s claims or Copart, Inc.’s defenses, and no finding of liability has been made.

You are receiving this Notice because you are in the group of employees referred to as “Aggrieved Employees,” which is defined as: all current and former hourly or non-exempt employees that worked for Defendant in California at any time during the Release Period. The Release Period is defined as the period from April 9, 2019 to November 10, 2021.

II. CALCULATION OF INDIVIDUAL PAGA PAYMENT

The Settlement requires Defendant to pay the Gross Settlement Amount of \$1,290,000, which will be distributed as follows: <<LWDAPayment>> will be paid to the LWDA; <<AggrievedEmployeesPayment>> will be paid to you and the other Aggrieved Employees as individual PAGA payments; <<AttorneysFeesPayment>> will be paid to Plaintiff's lawyers for their work on the lawsuit and <<AttorneysCosts>> for their costs incurred on the lawsuit; <<EnhancementAward>> will be paid to Plaintiff as a service fee for his work and risks undertaken in bringing the lawsuit; and <<SettlementAdministratorFees>> will be paid to the settlement administrator for administration costs.

You worked <<PayPeriods>> pay periods during the Release Period from April 9, 2019 to November 10, 2021. The total amount of pay periods worked by all Aggrieved Employees during the PAGA Period is <<TotalPayPeriods>>. Your individual PAGA payment is estimated to be <<CheckAmount>>.

Each individual PAGA payment was calculated on a pro rata basis (*i.e.*, proportional) based on the number of pay periods worked by each Aggrieved Employee in the Release Period divided by the total number of pay periods worked by all Aggrieved Employees.

III. RELEASE

The Court has approved the parties' Settlement Agreement. By operation of the Settlement's terms, all Aggrieved Employees will release Defendant, all of Defendant's affiliated companies and its respective parent companies, subsidiaries, affiliates, shareholders, members, agents (including, without limitation, any investment bankers, accountants, insurers, reinsurers, attorneys and any past, present, or future officers, directors and employees) predecessors, successors, and assigns from any and all claims under the PAGA which arose during the Release Period, that were alleged in the action or could have been alleged in the action based on the facts alleged in the action ("Released Claims").

The Released Claims include, but are not limited to, claims under the PAGA for civil penalties based on the factual allegations alleged in the notice letters Plaintiff sent to the LWDA on April 9, 2020 and October 13, 2021 and the Complaint, including failure to pay for all hours worked, including overtime and minimum wage; failure to provide meal periods; failure to pay one hour of premium pay when lawful meal periods were not provided; failure to provide rest periods; failure to pay one hour of premium pay when lawful rest periods were not provided; failure to maintain accurate records of hours worked; failure to timely pay all wages at termination; failure to furnish accurate itemized wage statements; failure to pay all earned wages twice per month; Labor Code sections 201, 202, 203, 204, 210, 216, 218.5, 218.6, 221-224, 225.5, 226, 226.3, 226.7, 510, 512, 516, 558, 1174, 1174.5, 1194, 1194.2, 1195, 1197, 1198, 2698, et seq., 2699(a), 2802; Business and Professions Code sections 17200-17208; and applicable IWC Wage Orders.

Upon entry of the Order approving the Settlement, any Aggrieved Employee covered by this Settlement Agreement will be barred from proceeding with any claim released in this Settlement.

IV. SETTLEMENT ADMINISTRATOR

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

You may call the Settlement Administrator, ILYM Group, Inc., toll free at <<**TelephoneNumber**>> with any questions.

The enclosed payment represents your portion of the settlement recovery. The enclosed check is valid for 180 days from the date of its issuance. For tax purposes, an IRS Form 1099 will be issued to you for this payment. After 180 days, the funds from uncashed checks will be distributed to the Controller of the State of California to be held in your name in the Unclaimed Property Fund. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

You will be bound by the above release whether or not you cash the check.

EXHIBIT 2

JAMES *JH* HAWKINS

A PROFESSIONAL LAW CORPORATION

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618
TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

April 9, 2020

Via Online Filing (LWDA) and Certified Mail (Employer)

California Labor and Workforce Development Agency
Attn: PAGA Administrator

Copart, Inc.
14185 Dallas Pkwy, Suite 300
Dallas, TX 75254
Certified Mail Receipt: 7018 1130 0001 8270 3435

Copart, Inc.
Agent for Service of Process: CSC Lawyers Incorporating Service (C1592199)
2710 Gateway Oaks Dr., Suite 150N
Sacramento, CA 95833
Certified Mail Receipt: 7018 1130 0001 8270 3442

Re: NOTICE PURSUANT TO LABOR CODE SECTIONS 2698 *et seq.*

To Whom It May Concern:

PLEASE TAKE NOTICE that Plaintiff Joseph Montgomery, on behalf of himself and all others similarly situated, hereby gives NOTICE of his Complaint pursuant to Labor Code Sections 2698, *et seq.* against Defendant Copart, Inc., a Delaware corporation, and DOES 1 through 50, inclusive. Plaintiff intends to commence an action against Defendants pursuant to Labor Code sections 2698 *et seq.* Plaintiff hereby gives written notice by online submission to the Labor and Workforce Development Agency, and by certified mail to Defendant Copart, Inc. via its agent for service of process.

Plaintiff has attaches his Complaint, and incorporates the allegations in the Complaint as though fully set forth herewith, setting out the specific provisions of the Labor Code that Plaintiff alleges have been violated, including the facts and relevant theories alleged against Defendants in the PAGA representative action complaint.

NOTICE PURSUANT TO LABOR CODE SECTIONS 2698 et seq.

April 9, 2020

Page 2

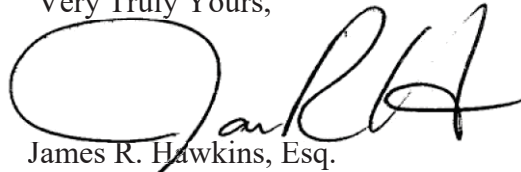
Plaintiff alleges that Defendants committed the violations specified in the Complaint against both him and the group of aggrieved employees that she seeks to represent: Any and all persons who worked as non-exempt employees of Defendants in customer service or member service positions, call center positions, or in similar related positions, however titled, during the liability period.

All Labor Code and related Complaint allegations pertain to all entities or individuals named in the Complaint, even if not so specified.

Please advise by certified mail within sixty-five (65) days of the post mark on this letter if the LWDA intends to investigate these claims. Thank you, and please contact me if you have any questions or require additional information.

Please contact me if you have any questions or require additional information.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "James R. Hawkins", written over the typed name.

James R. Hawkins, Esq.

Enclosure: PAGA Representative Complaint

James R. Hawkins (SBN 192925)
Christina M. Lucio (SBN 253677)
JAMES HAWKINS APLC
9880 Research Drive, Suite 200
Irvine, California 92618
Telephone: (949) 387-7200
Facsimile: (949) 387-6676
James@Jameshawkinsaplc.com
Christina@Jameshawkinsaplc.com

Attorneys for Plaintiff JOSEPH MONTGOMERY,
on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

JOSEPH MONTGOMERY, individually
and on behalf of himself and all others
similarly situated,

Plaintiff,

v.

COPART, INC., a Delaware Corporation,
and DOES 1-50, inclusive,

Defendants.

Case No.

COMPLAINT

Assigned for All Purposes To:

Hon.

Dept.:

COMPLAINT FOR DAMAGES FOR:

- 1) Failure to Pay All Wages Owed,
including Overtime;**
- 2) Failure to Provide Lawful Meal
Periods;**
- 3) Failure to Timely Pay Wages Owed
Upon Separation From Employment;**
- 4) Failure to Furnish Accurate Itemized
Wage Statements;**
- 5) Violation of the Unfair Competition
Law;**

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff JOSEPH MONTOMGERY (“Plaintiff”), an individual, assert claims against defendant COPART, INC., a Delaware Corporation, and DOES 1-50, inclusive (collectively “COPART” or “Defendants”) as follows:

INTRODUCTION

1. This is a Class Action, pursuant to California Code of Civil Procedure section 382, on behalf of Plaintiff and any and all persons who are or were employed by Defendants as non-exempt employees, however titled, in the State of California within four (4) years prior to the filing of the Complaint in this action until the resolution of this lawsuit and whose job duties did not consist of over 50% administrative, executive or professional duties (collectively referred to as the “Class” or “Class Members” or “Non-Exempt Employees”).

2. During the “liability period,” as defined as the applicable statute of limitations for each and every cause of action contained herein – i.e. Plaintiff’s claims under the Unfair Competition Law is four (4) years; Plaintiff’s claims for either unpaid wages or actual damages is three (3) years; and Plaintiff’s claims for statutory penalties is one (1) year from the filing of this action through the present (referred to as “the liability period(s)”) – Defendants consistently maintained and enforced against its Non-Exempt Employees unlawful practices and policies in violation of California state wage and hour laws, including failing to lawfully and accurately pay Plaintiff and Class Members for all hours worked, including minimum wages and overtime; failing to lawfully provide meal periods; failing to pay one hour of pay at the employee’s regular rate of pay when legally mandated meal periods were not lawfully provided; failing to accurately pay overtime; failing to provide accurate itemized wage statements; and failing to keep accurate records.

3. Defendants implemented uniform policies and practices that deprived Plaintiff and Class Members of earned wages, including minimum wages; straight time wages; overtime wages; premium wages; and lawful meal breaks.

4. Such actions and policies, as described above and further herein, were and continue to be in violation of the California Labor Code. Plaintiff, on behalf of himself and all Class members, bring this action pursuant to the California Labor Code, including sections 201, 202, 203,

204, 218.5, 218.6, 221-224, 226, 226.3, 226.7, 510, 512, 516, 558, 1174, 1194, 1194.2, 1195, 1197, 1198, 2802, applicable IWC California Wage Orders and California Code of Regulations, Title 8, section 11000 *et seq.*, seeking unpaid wages, unpaid meal period compensation, unreimbursed expenses, penalties, liquidated damages, and reasonable attorneys' fees and costs.

5. Plaintiff, on behalf of himself and others similarly situated, pursuant to Business and Professions Code sections 17200-17208, also seek restitution from Defendants for their failure to pay to Plaintiffs and Class Members all of their wages, including overtime and premium wages.

JURISDICTION AND VENUE

6. This action is brought as a Class Action on behalf of Plaintiff and similarly situated employees of Defendants pursuant to California Code of Civ. Proc. Section 382. The monetary damages and restitution sought by Plaintiff exceeds the minimum jurisdiction limits of the California Superior Court and will be established according to proof at trial.

7. This Court has jurisdiction over this action pursuant to the California Constitution Article VI §10, which grants the California Superior Court original jurisdiction in all causes except those given by statute to other courts. The statutes under which this action is brought do not give jurisdiction to any other court.

8. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure, Section 410.10 and California Business & Professions Code, Section 17203.

9. This Court has jurisdiction over Defendants because, upon information and belief, each Defendant is either a resident of California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over them by the California Courts consistent with traditional notions of fair play and substantial justice. Defendants have done and are doing business throughout California.

10. The unlawful acts alleged herein have a direct effect on Plaintiff and the other similarly situated Non-Exempt Employees within Sacramento County and it is believed that Defendants have employed over one hundred Class Members as Non-Exempt Employees throughout the state.

11. The California Superior Court also has jurisdiction in this matter because the

individual claims of the Class Members described herein are presently believed to be under the seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for Federal Court and the aggregate potential damages and recovery by all of the claims of the Plaintiff's Class, including attorneys' fees, placed in controversy by Plaintiff's class-wide claims, is presently believed to be under the five million dollar (\$5,000,000.00) threshold of the Class Action Fairness Act of 2005. Further, there is no federal question at issue, as the issues herein are based solely on California statutes and law, including the Labor Code, IWC Wage Orders, the California Code of Civil Procedure, the California Civil Code, and the California Business and Professions Code.

12. Venue is proper in this Court because one or more of the Defendants reside, transact business, or have offices in this County, and the acts or omissions alleged herein took place in this County.

PARTIES

13. Copart, Inc., is a Delaware corporation in good standing that is authorized to do business throughout the state. Copart, Inc.'s headquarters are located at 14185 Dallas Parkway, Suite 300, Dallas, Texas 75254.

14. Copart, Inc. operates in numerous countries, including the United States, with multiple locations throughout California. Copart, Inc. provides online vehicle auction and remarketing services.

15. During the relevant time, Plaintiff Joseph Montgomery was a resident of the County of Sacramento in California.

16. Plaintiff was employed by Defendants during the liability period as a Customer Services Representative in Sacramento, CA.

17. Plaintiff and the members of the putative class were employed by Defendants as non-exempt employees in customer service or similar related positions, however titled, (the "Class Members" or "Non-Exempt Employees") during the liability period.

18. Whenever in this complaint reference is made to any act, deed, or conduct of Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or through one or more of Defendants' officers, directors, agents, employees, or representatives, who was

1 actively engaged in the management, direction, control, or transaction of the ordinary business and
2 affairs of Defendants.

3 19. The true names and capacities of Defendants, whether individual, corporate,
4 associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to
5 Plaintiff, who therefore sue Defendants by such fictitious names under Code of Civil Procedure §
6 474. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
7 capacities of the Defendants designated hereinafter as DOES when such identities become known.

8 20. Plaintiff is informed and believes, and thereon allege, that the Doe Defendants are
9 the partners, agents, or principals and co-conspirators of Defendants and of each other; that
10 Defendants and the Doe Defendants performed the acts and conduct herein alleged directly, aided
11 and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the benefits
12 of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent of the
13 liability of the Defendants as alleged herein.

14 21. Plaintiff is further informed and believes, and thereon alleges, that at all times
15 material herein, each Defendant was completely dominated and controlled by its co-Defendants
16 and each was the alter ego of the other. Whenever and wherever reference is made in this complaint
17 to any conduct by Defendant or Defendants, such allegations and references shall also be deemed
18 to mean the conduct of each of the Defendants, acting individually, jointly, and severally.
19 Whenever and wherever reference is made to individuals who are not named as Defendants in this
20 complaint, but were employees and/or agents of Defendants, such individuals, at all relevant times
21 acted on behalf of Defendants named in this complaint within the scope of their respective
22 employments.

23 **FACTUAL ALLEGATIONS**

24 22. During the relevant time frame, Defendants compensated Plaintiff and the Non-
25 Exempt Employees based upon an hourly wage.

26 23. Plaintiff and the Class Members were, and at all times pertinent hereto, have been
27 non-exempt employees within the meaning of the California Labor Code, and the implementing
28 rules and regulations of the IWC California Wage Orders. They are subject to the protections of

1 the IWC Wage Orders and the Labor Code.

2 24. Plaintiff was employed as an hourly non-exempt Customer Service Representative
3 from March 2, 2018, through June 28, 2019. Plaintiff provided customer services at Defendant's
4 location in Sacramento, California.

5 25. The members of the putative class provided customer service as employees of
6 Defendants throughout the state of California during the liability period.

7 26. Plaintiff typically worked five days a week, averaging over 40 hours a week.

8 27. Plaintiff is informed and believes, and thereon alleges, that Defendants are and were
9 advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the
10 requirements of California's wage and employment laws.

11 28. All Class Members, including Plaintiff, are similarly situated in that they are all
12 subject to Defendants' uniform policies and systemic practices as specified herein.

13 1. Plaintiff and the Class Members were not properly compensated for all hours
14 worked.

15 2. In addition, the Class Members frequently worked in excess of eight (8) hours a
16 day and/or over forty (40) hours in a workweek, but were not properly paid for such time at a rate
17 of time and one-half the employee's regular rate of pay per hour. Plaintiff and the Class Members
18 also often worked in excess of twelve (12) hours in one day and/or over eight (8) hours on the
19 seventh day of the workweek, but were not properly paid for such time at a rate of two times the
20 employee's regular rate of pay per hour.

21 3. Class Members were regularly required to work shifts in excess of five hours
22 without being provided a lawful meal period and over ten hours in a day without being provided a
23 second lawful meal period as required by law.

24 4. Indeed, during the relevant time, as a consequence of Defendants' staffing and
25 scheduling practices, lack of coverage, work demands, and Defendants' policies and practices,
26 Defendants frequently failed to provide Plaintiff and the Class Members timely, legally complaint
27 uninterrupted 30-minute meal periods on shifts over five hours as required by law.

28 5. On information and belief, Plaintiff and Class Members did not waive their rights

1 to meal periods under the law.

2 6. Plaintiff and the Class Members were not provided with valid lawful on-duty meal
3 periods.

4 7. Despite the above-mentioned meal period violations, Defendants failed to
5 compensate Plaintiff, and on information and belief, failed to compensate Class Members, one
6 additional hour of pay at their regular rate as required by California law when meal periods were
7 not timely or lawfully provided in a compliant manner.

8 8. Plaintiff is informed and believes, and thereon alleges, that Defendants know,
9 should know, knew, and/or should have known that Plaintiff and the other Class Members were
10 entitled to receive premium wages based on their regular rate of pay under Labor Code §226.7 but
11 were not receiving such compensation.

12 9. Defendants also failed to provide accurate, lawful itemized wage statements to
13 Plaintiff and the Class Members in part because of the above specified violations. In addition,
14 upon information and belief, Defendants omitted an accurate itemization of total hours worked,
15 the name and address of the legal entity that is the employer, gross pay and net pay figures from
16 Plaintiff and the Class Members' wage statements.

17 10. Defendants have also made it difficult to determine applicable rates of pay and
18 account with precision for the unlawfully withheld wages and deductions due to be paid to Non-
19 exempt Employees, including Plaintiff, during the liability period because they did not implement
20 and preserve a lawful record-keeping method to record all hours worked, meal periods, and non-
21 provided meal periods owed to employees as required for non-exempt employees by 29 U.S.C.
22 section 211(c), California Labor Code section 226, and applicable California Wage Orders.

23 11. Plaintiff is informed and believes, and thereon alleges, that at all times herein
24 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
25 thereof for resignations without prior notice as the case may be) they had a duty to accurately
26 compensate Plaintiffs and Class Members for all wages owed including minimum wages, straight
27 time wages, overtime, meal period premiums, and that Defendants had the financial ability to pay
28 such compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so in part

1 because of the above-specified violations.

2 12. Plaintiff and the Class Members are covered by applicable California IWC Wage
3 Orders and corresponding applicable provisions of the California Code of Regulations, Title 8,
4 section 11000 *et seq.*

5 **CLASS ACTION ALLEGATIONS**

6 29. Plaintiff brings this action on his own behalf, as well as on behalf of each and every
7 other person similarly situated, and thus, seeks class certification under California Code of Civil
8 Procedure §382.

9 30. All claims alleged herein arise under California law for which Plaintiff seeks relief
10 as authorized by California law.

11 31. The **proposed class** is comprised of and defined as: All persons currently or
12 formerly employed by Defendants as non-exempt employees in customer service or similar related
13 positions, however titled, throughout the state of California within four (4) years prior to the filing
14 of the Complaint in this action until the resolution of this lawsuit and whose job duties did not
15 consist of over 50% administrative, executive or professional duties. (hereinafter collectively
16 referred to as the “Class” or “Class Members”).

17 32. Plaintiff also seeks to represent Subclasses included in the Plaintiff’s Class, which
18 are composed of Class Members satisfying the following definitions:

19 a. All Class Members who were not paid at least minimum wage for all hours
20 worked (collectively “**Minimum Wage Subclass**”);

21 b. All Class Members who were not accurately paid overtime for hours worked
22 over eight in a day or over forty in a workweek (collectively “**Overtime Subclass**”);

23 c. All Class Members who worked more than five (5) hours in a workday and
24 were not provided with a timely, uninterrupted lawful meal period of net thirty (30) minutes, and
25 were not paid compensation of one hour premium wages at the employee’s regular rate in lieu
26 thereof (hereinafter collectively referred to as the “**Meal Period Subclass**”);

27 d. All Class Members who did not receive all owed wages at the time of
28 separation or within 72 hours in the case of resignation (hereinafter collectively referred to as the

1 “**Waiting Time Subclass**”);

2 e. All Class Members who were not provided with accurate and complete
3 itemized wage statements (hereinafter collectively referred to as the “**Inaccurate Wage Statement**
4 **Subclass**”);

5 f. All Class Members who were employed by Defendants and subject to
6 Defendant’s Unfair Business Practices (hereinafter collectively referred to as the “**Unfair Business**
7 **Practices Subclass**”).

8 33. Plaintiff reserves the right, under Rule 3.765, California Rules of Court, to amend
9 or modify the descriptions of the Class and Subclasses to provide greater specificity as appropriate,
10 or if it should be deemed necessary by the Court or to further divide the Class Members into
11 additional Subclasses or to limit the Subclasses to particular issues. Any reference herein to the
12 Class Members or the Plaintiffs’ Class includes the members of each of the Subclasses.

13 34. As set forth in further detail below, this action has been brought and may properly
14 be maintained as a class action under the provisions of section 382 of the Code of Civil Procedure
15 because there is a well-defined community of interest in the litigation, and the proposed Class and
16 Subclasses are easily ascertainable through Defendants’ records.

17 a. Numerosity: The members of the Class and Subclasses are so numerous that
18 joinder of all members of the Class and Subclasses would be unfeasible and impractical. The
19 membership of the entire Class and Subclasses is unknown to Plaintiff at this time, however, the
20 Class is estimated to be over a hundred individuals. Accounting for employee turnover during the
21 relevant periods necessarily increases this number substantially. Plaintiff alleges Defendants’
22 employment records would provide information as to the number and location of all Class
23 Members. Joinder of all members of the proposed Class is not practicable.

24 b. The proposed class is easily ascertainable. The number and identity of the
25 class members are determinable from Defendants’ payroll records and time records for each class
26 member.

1 c. Commonality: There are common questions of law and fact as to the Class
2 and Subclasses that predominate over questions affecting only individual Class Members. These
3 common questions of law and fact include, without limitation:

4 1) Whether Defendants were required to pay Class Members for hours worked
5 during “shift change”;

6 2) Whether Defendants paid Class Members at least minimum wage for all
7 hours worked;

8 3) Whether Defendants knew or should have known that Class Members were
9 required to perform work off the clock;

10 4) Whether Defendants accurately calculated and paid all Class Members
11 overtime premiums for the hours which Plaintiff and Class Members worked in excess of eight (8)
12 hours per day and/or forty (40) hours per week;

13 5) Whether Defendants had a policy and practice of providing lawful, timely
14 meal periods in accordance with Labor Code § 512, as well as the applicable Industrial Welfare
15 Commission (“IWC”) wage order;

16 6) Whether Defendants on-duty meal periods were lawful;

17 7) Whether Defendants had a policy and practice of complying with Labor
18 Code section 226.7 and IWC Wage Order on each instance that a lawful meal period was not
19 provided;

20 8) Whether Defendants failed to timely pay all wages upon separation in
21 accordance with Labor Code sections 201-202;

22 9) Whether Defendants omitted required information from itemized wage
23 statements;

24 10) Whether Defendants failed to maintain accurate records of Class Members'
25 earned wages, work periods, meal periods and deductions;

26 11) Whether Defendants engaged in unfair competition in violation of section
27 17200 et seq. of the Business and Professions Code;

28 12) Whether Defendants’ conduct was willful and/or reckless;

1 13) Whether Defendants failed to provide accurate itemized wage statements in
2 violation of Labor Code § 226; and

3 14) The appropriate amount of damages, restitution, and/or monetary penalties
4 resulting from Defendants' violations of California law.

5 d. Typicality: Plaintiff is qualified to, and will fairly and adequately protect the
6 interests of each member of the Class and Subclasses with whom he has a well-defined community
7 of interest. Plaintiff's claims herein alleged are typical of those claims which could be alleged by
8 any member of the Class and/or Subclasses, and the relief sought is typical of the relief which
9 would be sought by each member of the Class and/or Subclasses in separate actions. All members
10 of the Class and/or Subclasses have been similarly harmed by Defendants' failure to provide lawful
11 meal periods, failure to provide accurate wage statements, failure to timely pay wages at
12 termination, failure to pay minimum wages, and failure to accurately pay all wages earned including
13 all owed premium and overtime wages, all due to Defendants' policies and practices that affected
14 each member of the Class and/or Subclasses similarly. Further, Defendants benefited from the same
15 type of unfair and/or wrongful acts as to each member of the Class and/or Subclasses.

16 e. Adequacy: Plaintiff is qualified to, and will fairly and adequately protect the
17 interests of each member of the Class and/or Subclasses with whom he has a well-defined
18 community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that
19 he has an obligation to make known to the Court any relationships, conflicts, or differences with
20 any member of the Class and/or Subclasses, and no such relationships or conflicts are currently
21 known to exist. Plaintiff's attorneys and the proposed counsel for the Class and Subclasses are
22 versed in the rules governing class action discovery, certification, litigation, and settlement and
23 experienced in handling such matters. Other former and current employees of Defendants may also
24 serve as representatives of the Class and Subclasses if needed.

25 f. Superiority: The nature of this action makes the use of class action
26 adjudication superior to other methods. A class action will achieve economies of time, effort,
27 judicial resources, and expense, which would not be achieved with separate lawsuits. The
28 prosecution of separate actions by individual members of the Class and/or Subclasses would create

1 a risk of inconsistent and/or varying adjudications with respect to the individual members of the
2 Class and/or Subclasses, establishing incompatible standards of conduct for the Defendants, and
3 resulting in the impairment of the rights of the members of the Class and/or Subclasses and the
4 disposition of their interests through actions to which they were not parties. Thus, a class action is
5 superior to other available means for the fair and efficient adjudication of this controversy because
6 individual joinder of all Class Members is not practicable, and questions of law and fact common
7 to the Class predominate over any questions affecting only individual Class Members. Each
8 member of the Class has been damaged and is entitled to recovery by reason of Defendants'
9 unlawful policies and practices, including Defendants' failure to provide lawful meal periods,
10 failure to pay minimum wages, failure to provide accurate wage statements, failure to timely pay
11 wages at termination, and failure to accurately pay all wages earned including all owed premium
12 and overtime wages, all due to Defendants' policies and practices that affected each member of the
13 Class and/or Subclasses similarly. Class action treatment will allow those similarly situated persons
14 to litigate their claims in the manner that is most efficient and economical for both parties and the
15 judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the
16 management of this action that would preclude its maintenance as a class action.

17 g. Public Policy Considerations: Employers in the state of California violate
18 employment and labor laws every day. However, current employees are often afraid to assert their
19 rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions
20 because they believe their former employers may damage their future endeavors through negative
21 references and/or other means. The nature of this action allows for the protection of current and
22 former employees' rights without fear of retaliation or damage. Additionally, the citizens of
23 California have a significant interest in ensuring employers comply with California's labor laws
24 and in ensuring those employers who do not are prevented from taking further advantage of their
25 employees.

1 **CLASS ACTION CLAIMS**

2 **FIRST CAUSE OF ACTION**

3 **FAILURE TO PAY ALL WAGES OWED, INCLUDING OVERTIME**

4 **(By Plaintiff and the Minimum Wage and Overtime Subclasses Against Defendants)**

5 13. Plaintiff incorporates by reference each and every paragraph above, and realleges
6 each and every allegation contained above as though fully set forth herein.

7 14. At all times relevant, Labor Code §1194 provides that any employee receiving less
8 than the legal minimum wage or the legal overtime compensation applicable to the employee is
9 entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or
10 overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit.

11 15. Labor Code §1197 states: "The minimum wage for employees fixed by the
12 commission is the minimum wage to be paid to employees, and the payment of a less wage than
13 the minimum so fixed is unlawful."

14 16. Cal. Lab. Code § 1198 further states that the employment of an employee for longer
15 hours than those fixed by the Industrial Welfare Commission is unlawful.

16 17. The IWC Wage Orders similarly require that employees be paid on the established
17 payday for the period involved, not less than the applicable minimum wage for all hours worked in
18 the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.

19 18. At all times relevant, pursuant to Labor Code section 510, 1194, and the IWC
20 wage orders applicable to Plaintiff's and the Class Members' employment by Defendants
21 provided that employees working for more than eight (8) hours in a day or forty (40) hours in a
22 work week are entitled to overtime compensation at the rate of one and one-half times the regular
23 rate of pay for all hours worked in excess of eight (8) hours in a day or forty (40) hours in a work
24 week. An employee who works more than twelve (12) hours in a day or in excess of eight (8)
25 hours in a day on the seventh day of work in a particular work week is entitled to overtime
26 compensation at a rate of twice the regular rate of pay.

1 19. The IWC Wage Orders define “hours worked” as “the time during which an
2 employee is subject to the control of an employer, and includes all the time the employee is
3 suffered or permitted to work, whether or not required to do so.”

4 20. At all times relevant, Plaintiff and Class Members consistently worked hours for
5 which they were not paid because Plaintiff and the Class Members were required to work off the
6 clock.

7 21. Plaintiff is informed and believes that Defendants and its managers were aware
8 that Plaintiff and the Class Members were working off the clock and that they should have been
9 paid for this time.

10 22. In addition, Plaintiff is informed and believes that Defendants failed to compensate
11 employees for all overtime hours worked at the proper regular rate.

12 23. In some instances, Plaintiff and the Class Members worked in excess of eight (8)
13 hours in a day and/or forty (40) hours in a week, and on occasion over twelve hours in a day or
14 over eight hours on the seventh day of work in a particular workweek without being paid all
15 wages owed as required by law.

16 24. Upon information and belief, Defendants knew or should have known Plaintiffs
17 and the Class Members were undercompensated.

18 25. Defendants’ failure to pay Plaintiffs and Class Members the unpaid balance of
19 wages owed violates the provisions of Labor Code §510, §1194, §1197, §1198, and the applicable
20 IWC wage orders and is therefore unlawful.

21 26. Accordingly, Defendants owe Plaintiff and Class Members wages, including
22 minimum wages and overtime wages, and have failed and refused, and continue to fail and refuse,
23 to pay Plaintiffs and Class Members the wages owed.

24 27. Pursuant to Labor Code §1194, Plaintiffs and Class Members are entitled to recover
25 their unpaid compensation, as well as interest, costs, and attorneys’ fees.

26 28. In addition, pursuant to Labor Code §1194.2(a), Plaintiff and the Class Members
27 are entitled to “recover liquidated damages in an amount equal to the wages unlawfully unpaid
28 and interest thereon.”

29. Also, pursuant to Labor Code §1197.1, Plaintiff and the Class Members are entitled to claim all applicable civil penalties as a direct result of Defendants' policy and practice of paying a wage less than the minimum fixed by an order of the commission.

30. Accordingly, Plaintiff and Class Members are entitled to recover their unpaid wages, including minimum wages, overtime compensation, as well as interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE LAWFUL MEAL PERIODS

(By Plaintiff and the Meal Period Subclass Against All Defendants)

31. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

32. Pursuant to Labor Code § 512, no employer shall employ an employee for a work period of more than five (5) hours without providing a meal break of not less than thirty (30) minutes in which the employee is relieved of all of his or her duties, 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 employee.

33. For the four (4) years preceding the filing of this lawsuit, Defendants failed to provide Plaintiff and Class Members timely and uninterrupted first meal periods of not less than thirty (30) minutes within the first five hours of a shift.

34. Indeed, during the relevant time, as a consequence of Defendants' staffing and scheduling practices, lack of coverage, work demands, and Defendants' policies and practices, Plaintiff and the Class Members were not provided with legally required meal periods.

35. On information and belief, Plaintiff and Class Members did not waive their rights to meal periods under the law.

36. Plaintiff and the Class Members were not provided with valid lawful on-duty meal periods.

37. Plaintiff and the Class Members were not paid one hour of pay at their regular rate for each day that a first meal period was not lawfully provided.

38. As a proximate result of the aforementioned violations, Plaintiff and the Class Members have been damaged in an amount according to proof at time of trial.

39. Pursuant to Labor Code § 226.7, Plaintiff and Class Members are entitled to recover one (1) hour of premium pay for each day in which a meal period violation occurred. They are also entitled to recover reasonable attorneys' fees, cost, interest, and penalties as applicable.

40. As a result of the unlawful acts of Defendants, Plaintiffs and the Class they seek to represent have been deprived of premium wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 218.6, 226.7, 512 and the applicable IWC Wage Orders, and Civil Code section 3287.

THIRD CAUSE OF ACTION

FAILURE TO TIMELY PAY WAGES OWED AT SEPARATION

(By Plaintiff and the Waiting Time Subclass Against All Defendants)

41. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

42. Labor Code §§ 201 and 202 require Defendants to pay their employees all wages due within seventy-two (72) hours of separation of employment.

43. Section 203 of the Labor Code provides that if an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to pay the subject employee's wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

44. Plaintiff and Class Members are entitled to compensation for all forms of wages earned, including but not limited to minimum wages, overtime, and premium meal period compensation, but to date have not received such compensation, therefore entitling them to Labor Code § 203 penalties.

45. More than thirty (30) days have passed since affected Waiting Time Subclass Members have left Defendants' employ, and on information and belief, they have not received payment pursuant to Labor Code § 203.

1 46. Plaintiff and Waiting Time Subclass Members are thus entitled to 30 days' wages
2 as a penalty under Labor Code § 203, together with interest thereon and attorneys' fees and costs.

3 **FOURTH CAUSE OF ACTION**

4 **KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED**
5 **EMPLOYEE WAGE STATEMENT PROVISIONS**

6 **(By Plaintiff and Wage Statement Subclass Against Defendants)**

7 47. Plaintiff repeats and incorporates herein by reference each and every allegation set
8 forth above, as though fully set forth herein.

9 48. Labor Code section 226(a) reads in pertinent part: "Every employer shall,
10 semimonthly or at the time of each payment of wages, furnish each of his or her employees, either
11 as a detachable part of the check, draft, or voucher paying the employee's wages, or separately
12 when wages are paid by personal check or cash, an accurate itemized statement in writing
13 showing (1) gross wages earned, (2) total hours worked by the employee... (4) all deductions...
14 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
15 name of the employee and only the last four digits of his or her social security number or an
16 employee identification number other than a social security number, (8) the name and address of
17 the legal entity that is the employer, and (9) all applicable hourly rates in effect during each the
18 pay period and the corresponding number of hours worked at each hourly rate by the
19 employee....".

20 49. Further, the IWC Wage Orders require in pertinent part: Every employer shall
21 keep accurate information with respect to each employee including the following: (3) Time
22 records showing when the employee begins and ends each work period. Meal periods, split shift
23 intervals, and total daily hours worked shall also be recorded...(5) Total hours worked in the
24 payroll period and applicable rates of pay...."

25 50. Labor Code section 1174 of the California also requires Defendants to maintain
26 and preserve, in a centralized location, among other items, records showing the names and
27 addresses of all employees employed and payroll records showing the hours worked daily by, and
28 the wages paid to, its employees. On information and belief and based thereon, Defendants have

1 knowingly and intentionally failed to comply with Labor Code section 1174, including by
2 implementing the policies and procedures and committing the violations alleged in the preceding
3 causes of action and herein. Defendants' failure to comply with Labor Code section 1174 is
4 unlawful pursuant to Labor Code section 1175.

5 51. Defendants have failed to record many of the items delineated in applicable
6 Industrial Wage Orders and Labor Code section 226, and required under Labor Code section
7 1174, including by virtue of the fact that each wage statement which failed to accurately
8 compensate Plaintiff and Class Members for all hours worked and for missed and non-provided
9 meal periods, or which failed to include compensation for all minimum wages earned or overtime
10 hours worked, was an inaccurate wage statement.

11 52. On information and belief, Defendants failed to implement and preserve a lawful
12 record-keeping method to record all hours worked, meal periods, and non-provided meal periods
13 owed to employees, as required for Non-Exempt Employees under California Labor Code section
14 226 and applicable California Wage Orders. In order to determine if they had been paid the
15 correct amount and rate for all hours worked, Plaintiff and Class Members have been, would have
16 been, and are compelled to try to discover the required information missing from their wage
17 statements and to perform complex calculations in light of the inaccuracies and incompleteness of
18 the wage statements Defendants provided to them.

19 53. As a pattern and practice, in violation of Labor Code section 226(a) and the IWC
20 Wage Orders, Defendants did not and still do not furnish each of the members of the Wage
21 Statement Class with an accurate itemized statement in writing accurately reflecting all of the
22 required information. Specifically, Defendants have also omitted accurate itemizations of total
23 hours worked, the name and address of the legal entity that is the employer, and gross pay from
24 Plaintiff and the Class Members' wage statements. In addition, Defendants have failed to provide
25 accurate itemized wage statements as a consequence of the above-specified violations for failure
26 to accurately pay all wages owed, accurately record all hours worked, and failure to pay meal
27 period premiums as required by law.

28 54. Moreover, upon information and belief, as a pattern and practice, in violation of

1 Labor Code section 226(a) and the IWC Wage Orders, Defendants did not and do not maintain
2 accurate records pertaining to the total hours worked for Defendants by the members of the Wage
3 Statement Class, including but not limited to, beginning and ending of each work period, meal
4 period and split shift interval, the total daily hours worked, and the total hours worked per pay
5 period and applicable rates of pay.

6 55. Plaintiffs and the members of the Wage Statement Class have suffered injury as a
7 result of Defendants' failure to maintain accurate records for the members of the Wage Statement
8 Class in that the members of the Wage Statement Class were not timely provided written accurate
9 itemized statements showing all requisite information, such that the members of the Wage
10 Statement Class were misled by Defendants as to the correct information regarding various items,
11 including but not limited to the identity of the employer, total hours worked by the employee,
12 gross pay, net wages earned and all applicable hourly rates in effect during the pay period and the
13 corresponding number of hours worked at each hourly rate.

14 56. Pursuant to Labor Code section 226, and in light of Defendants' violations
15 addressed above, Plaintiff and the Wage Statement Class Members are each entitled to recover up
16 to a maximum of \$4,000.00, along with an award of costs and reasonable attorneys' fees.

17 **FIFTH CAUSE OF ACTION**

18 **VIOLATION OF THE UNFAIR COMPETITION LAW**

19 **By Plaintiff and Class Against All Defendants**

20 57. Plaintiff incorporates by reference and realleges each and every allegation contained
21 above, as though fully set forth herein.

22 58. Defendants' conduct, as alleged in this complaint, has been, and continues to be,
23 unfair, unlawful, and harmful to Plaintiff and Class Members, Defendants' competitors, and the
24 general public. Plaintiff also seeks to enforce important rights affecting the public interest within
25 the meaning of the California Code of Civil Procedure § 1021.5.

26 59. Defendants' policies, activities, and actions as alleged herein are violations of
27 California law and constitute unlawful business acts and practices in violation of California
28 Business and Professions Code §§ 17200, *et seq.*

60. A violation of California Business and Professions Code §§ 17200, *et seq.*, may be predicated on the violation of any state or federal law.

61. The state law violations, including violations of the relevant IWC Wage Order, detailed herein above are the predicate violations for this cause of action. By way of example only, in the instant case Defendants' policy of failing to lawfully provide Plaintiff and the Class with timely meal periods or pay one (1) hour of premium pay when a meal period was not lawfully provided violates Labor Code § 512, and § 226.7, and the IWC Wage Orders. Defendants further violated the law through their policies of failing to fully and accurately compensate Plaintiff and the Class Members for all hours worked, including minimum wages and overtime, and failing to reimburse for necessary expenses, as well as failing to provide accurate itemized wage statement as specified above.

62. Plaintiff and the Class Members have been personally aggrieved by Defendants' unlawful and unfair business acts and practices alleged herein by the loss of money and/or property.

63. Pursuant to California Business and Professions Code §§ 17200, *et seq.*, Plaintiff and the Class Members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four (4) years prior to the filing of this complaint; an award of attorneys' fees pursuant to California Code of Civil Procedure §1021.5; interest; and an award of costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff pray judgment against Defendants, as follows:

Class Certification

1. That this action be certified as a class action;
2. That Plaintiff be appointed as the representatives of the Class;
3. That Plaintiff be appointed as the representatives of the Subclasses; and
4. That counsel for Plaintiff be appointed as counsel for the Class and Subclasses.

On the First Cause of Action

(Failure to pay all wages owed, including overtime)

1. For the unpaid balance of the full amount of any overtime, minimum wages, and

1 regular wages owed, as well as interest thereon,

2 2. Penalties according to statute,

3 3. Liquidated damages,

4 4. Reasonable attorneys' fees, and costs of suit;

5 5. For interest and

6 6. For such other and further relief as the Court deems proper.

7 **On the Second Cause of Action**

8 (Failure to Provide Lawful Meal Periods)

9 1. For one (1) hour of premium pay for each day in which a required meal period was
10 not lawfully provided;

11 2. For reasonable attorneys' fees and costs pursuant to statute; and

12 3. For such other and further relief as the Court deems proper.

13 **On the Third Cause of Action**

14 (Failure to Timely Pay Wages At Separation)

15 1. For unpaid wages;

16 2. For penalties pursuant to Labor Code § 203;

17 3. For interest;

18 4. For reasonable attorneys' fees and costs pursuant to statute; and

19 5. For such other and further relief as the Court deems proper.

20 **On the Fourth Cause of Action**

21 (Failure to Provide Accurate Itemized Wage Statements)

22 1. For statutory penalties, including penalties pursuant to Labor Code section 226;

23 2. For reasonable attorneys' fees and costs; and

24 3. For such other and further relief as the Court deems proper;

25 **On the Fifth Cause of Action**

26 (Violation of the Unfair Competition Law)

27 1. That Defendants, jointly and/or severally, pay restitution and/or disgorgement of
28 sums to Plaintiff and Class Members for the Defendants' past failure to pay overtime and regular

1 wages, and for premium wages for meal periods that were not provided to Plaintiff and Class
2 Members over the last four (4) years in an amount according to proof;

3 2. For reasonable attorneys' fees that Plaintiff and Class Members are entitled to
4 recover under California Code of Civil Procedure § 1021.5 and Labor Code section 1194;

5 3. For pre-judgment interest on any unpaid overtime wages due from the day that such
6 amounts were due;

7 4. For costs of suit incurred herein that Plaintiff and Class Members are entitled to
8 recover under the Labor Code; and

9 5. For such other and further relief as the Court deems proper.

10
11
12 **DEMAND FOR JURY TRIAL**

13 Plaintiff, on behalf of the Class and Subclasses, respectfully demand a jury trial in this
14 matter.

15 Respectfully submitted,

16
17
18 Dated: April 2, 2020



JAMES HAWKINS, APLC
James R. Hawkins, Esq.
Christina M. Lucio, Esq.

21 Attorneys for Plaintiff JOSEPH MONTGOMERY, on
22 behalf of himself and all others similarly situated
23
24
25
26
27
28

EXHIBIT 3

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Attorneys for Plaintiff JOSEPH MONTGOMERY,
on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

JOSEPH MONTGOMERY, individually
and on behalf of himself and all others
similarly situated,

Plaintiff,

v.

COPART, INC., a Delaware Corporation,
and DOES 1-50, inclusive,
Defendants.

Case No. 34-2020-00280733

Assigned To:
Hon. Richard K. Sueyoshi
Dept.: 40

FIRST AMENDED COMPLAINT FOR:

1.) Civil Penalties Under the Private
Attorneys' General Act, Labor Code
Section 2698 *et seq.*

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff JOSEPH MONTGOMERY (“Plaintiff”), individually and on behalf of the general public as private attorney general, hereby asserts representative claims against defendant COPART, INC., a Delaware Corporation, and DOES 1-50, inclusive (collectively “COPART” or “Defendants”) as follows:

INTRODUCTION

1. This is a representative action for recovery of penalties under the Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code sections 2698 *et seq.* PAGA permits “aggrieved employees” to bring a lawsuit as a representative action on behalf of themselves and all other current and former employees, to recover civil penalties and address an employer’s violations of the California Labor Code.

2. In this case, Defendants violated various provisions of the California Labor Code and relevant IWC Wage Orders. As set forth below, Defendants implemented policies and practices which led to Defendants’ (1) failure to pay all wages owed for all hours worked, including minimum wages and overtime; (2) failure to provide lawful, timely meal periods; (3) failure to authorize and permit rest periods; (4) failure to pay one hour of premium pay when timely, lawful meal periods were not provided; (5) failure to timely pay all owed wages at the time of termination; (6) failure to provide accurate, itemized wage statements; and (7) failure to keep accurate records.

3. As set forth in greater detail herein, Defendants engaged in conduct and adopted policies that were and continue to be in violation of the California Labor Code and applicable law. Plaintiff, on behalf of herself and all other aggrieved employees, brings this PAGA action and seeks penalties for violations of the California Labor Code, including without limitation sections 201, 202, 203, 204, 210, 216, 225.5, 226, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1198, 2698 *et seq.*, Business and Professions Code section 17200 and 17203, applicable IWC California Wage Orders (including Wage Order 7 and 9) and California Code of Regulations, Title 8, section 11000 *et seq.*

JURISDICTION AND VENUE

4. The penalties sought by Plaintiff exceed the minimum jurisdiction limits of the California Superior Court and will be established according to proof at trial.

5. This Court has jurisdiction over this action pursuant to the California Constitution Article VI §10, which grants the California Superior Court original jurisdiction in all causes except those given by statute to other courts. The statutes under which this action is brought do not give jurisdiction to any other court.

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

7. This Court has jurisdiction over Defendants because, upon information and belief, each Defendant is either a resident of California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over them by the California Courts consistent with traditional notions of fair play and substantial justice. Defendants have done and are doing business throughout California.

8. The unlawful acts alleged herein have a direct effect on Plaintiff and the other similarly situated aggrieved employees within the State of California, including without limitation in and it is believed that Defendants have employed over one hundred Aggrieved Employees throughout the state.

9. The California Superior Court also has jurisdiction in this matter because the individual claims of the Aggrieved Employees described herein are presently believed to be under the seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for Federal Court and the penalties may not be aggregated to satisfy the amount in controversy requirement to establish diversity jurisdiction. Further, there is no federal question at issue, as the issues herein are based solely on California statutes and law, including the Labor Code, and IWC Wage Orders.

10. Venue is proper in this Court because one or more of the Defendants reside, transact business, or have offices in this County, and the acts or omissions and Defendants' illegal policies and practices which are the subject of this action were applied, at least in part, in this County.

THE PARTIES

11. Defendant Copart, Inc., is a Delaware corporation in good standing that is authorized to do business throughout the state. Copart, Inc.'s headquarters are located at 14185 Dallas Parkway, Suite 300, Dallas, Texas 75254.

1 12. Defendant operates in numerous countries, including the United States, with
2 multiple locations throughout California. Defendant provides online vehicle auction and
3 remarketing services.

4 13. During the relevant time, Plaintiff Joseph Montgomery was a resident of the
5 County of Sacramento in California.

6 14. Plaintiff was employed by Defendants during the liability period as a Customer
7 Service or Call Center Representative in Sacramento, CA.

8 15. Plaintiff and the members of the aggrieved employee group were employed by
9 Defendants as non-exempt employees, however titled, (the “Aggrieved Employees”) during the
10 liability period.

11 16. Whenever in this complaint reference is made to any act, deed, or conduct of
12 Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or through
13 one or more of Defendants’ officers, directors, agents, employees, or representatives, who was
14 actively engaged in the management, direction, control, or transaction of the ordinary business and
15 affairs of Defendants.

16 17. The true names and capacities of Defendants, whether individual, corporate,
17 associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to
18 Plaintiff, who therefore sue Defendants by such fictitious names under Code of Civil Procedure §
19 474. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
20 capacities of the Defendants designated hereinafter as DOES when such identities become known.

21 18. Plaintiff is informed and believes, and thereon allege, that the Doe Defendants are
22 the partners, agents, or principals and co-conspirators of Defendants and of each other; that
23 Defendants and the Doe Defendants performed the acts and conduct herein alleged directly, aided
24 and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the benefits
25 of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent of the
26 liability of the Defendants as alleged herein.

27 19. Plaintiff is further informed and believes, and thereon alleges, that at all times
28 material herein, each Defendant was completely dominated and controlled by its co-Defendants

1 and each was the alter ego of the other. Whenever and wherever reference is made in this complaint
2 to any conduct by Defendant or Defendants, such allegations and references shall also be deemed
3 to mean the conduct of each of the Defendants, acting individually, jointly, and severally.
4 Whenever and wherever reference is made to individuals who are not named as Defendants in this
5 complaint, but were employees and/or agents of Defendants, such individuals, at all relevant times
6 acted on behalf of Defendants named in this complaint within the scope of their respective
7 employments.

8 **FACTUAL ALLEGATIONS**

9 20. During the relevant time frame, Defendants compensated Plaintiff and the
10 Aggrieved Employees based upon an hourly wage.

11 21. Plaintiff and the Aggrieved Employees were, and at all times pertinent hereto,
12 have been non-exempt employees within the meaning of the California Labor Code, and the
13 implementing rules and regulations of the IWC California Wage Orders. They are subject to the
14 protections of the IWC Wage Orders and the Labor Code.

15 22. Plaintiff was employed as an hourly non-exempt Member Service Representative
16 from March 2, 2018, through June 28, 2019. Plaintiff performed customer service and call center
17 functions at Defendant's location in Sacramento, California.

18 23. The members of the aggrieved group worked as non-exempt employees of
19 Defendants in customer service or member service positions, call center positions, or in similar
20 related positions, however titled, during the liability period.

21 24. Plaintiff typically worked five days a week, averaging over 40 hours a week.

22 25. Plaintiff is informed and believes, and thereon alleges, that Defendants are and were
23 advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the
24 requirements of California's wage and employment laws.

25 26. Plaintiff and the Aggrieved Employees are covered by applicable California IWC
26 Wage Orders and corresponding applicable provisions of the California Code of Regulations, Title
27 8, section 11000 *et seq.*, including Wage Order No. 7 and/or 9.

28 27. All Aggrieved Employees, including Plaintiff, are similarly situated in that they

1 are all subject to Defendants' uniform policies and systemic practices as specified herein.

2 **Failure to Accurately and Fully Pay All Wages,**
3 **Including Minimum Wages and Overtime**

4 28. This action is brought under Labor Code section 510, 515, 1194, 1197, 1198, and
5 the IWC Wage Order.

6 29. Labor Code § 1182.12 sets the minimum wage.

7 30. Labor Code § 1194 provides that "Notwithstanding any agreement to work for a
8 lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
9 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance
10 of the full amount of this minimum wage or overtime compensation, including interest thereon,
11 reasonable attorney's fees, and costs of suit."

12 31. Labor Code § 1197 states that "The minimum wage for employees fixed by the
13 commission or by any applicable state or local law, is the minimum wage to be paid to employees,
14 and the payment of a lower wage than the minimum so fixed is unlawful."

15 32. Labor Code § 1198 provides: "The maximum hours of work and the standard
16 conditions of labor fixed by the commission shall be the maximum hours of work and the standard
17 conditions of labor for employees. The employment of any employee for longer hours than those
18 fixed by the order or under conditions of labor prohibited by the order is unlawful."

19 33. The Labor Code and the Wage Orders require that employers pay employees at least
20 minimum wage for every hour worked, and overtime for hours worked over eight hours in a day
21 and over forty hours in a week.

22 34. Labor Code § 510, 515 and Section 3(A) of Wage Order No. 7 and 9 require
23 employers to pay employees one-and-one-half (1-1/2) times the employee's regular rate of pay for
24 all those hours worked in excess of forty (40) hours in one work week and/or in excess of eight (8)
25 in one work day, and two (2) times the regular rate of pay for hours worked in excess of twelve
26 (12) hours per day, unless such employees are exempt from the requirements of the Wage Order.

27 35. An employee who works more than twelve (12) hours in a day or more than eight
28 (8) hours on the seventh day in a workweek is entitled to overtime compensation at a rate of twice

1 the regular rate of pay.

2 36. Plaintiff and the aggrieved employees were not exempt from the requirement to be
3 paid minimum wages and overtime wages in accordance with the law.

4 37. Plaintiff alleges that Defendants violated Labor Code sections 510, 1194, 1197,
5 1198 and the IWC Wage Order by failing to pay all wages owed including overtime.

6 38. Plaintiff and the Aggrieved Employees were not properly compensated for all hours
7 worked.

8 39. By way of example only, Plaintiff and, upon information and belief, the Aggrieved
9 Employees, often worked overtime hours for which they were not paid proper overtime wages.

10 40. In addition, Plaintiff alleges that during the relevant time, Plaintiff and the other
11 aggrieved employees worked hours for which they were not compensated as such hours were
12 worked off the clock.

13 41. Plaintiff alleges that Defendant knew or should have known that Plaintiff and the
14 Aggrieved Employees were required to work off-the clock but did not pay Aggrieved Employees
15 for such hours worked.

16 42. As a result of Defendants' conduct in requiring Plaintiffs and the aggrieved
17 employees to work hours for which they were not even paid minimum wage and work hours in
18 excess of eight (8) hours per work day and/or forty (40) in one work week without paying them
19 one-and-one-half (1-1/2) times their regular hour rate (or double-time hours for hours worked in
20 excess of twelve (12) hours per day), Plaintiffs and the aggrieved employees have sustained and
21 will sustain damages in the amount of one-half (1/2) times or double (2) times their regular hourly
22 rate for all overtime hours worked together with interest thereon and attorneys' fees and costs of
23 suit.

24 43. Plaintiff and the Aggrieved Employees are or were employees in the State of
25 California and Defendant was and is an employer employing persons in the State of California. As
26 such, Plaintiff and the Aggrieved employees were the type of persons contemplated to be protected
27 by Labor Code §§1194, and 1194.2 and said provisions were intended to apply to Defendants and
28 to prevent the type of injury and damage set forth herein.

1 44. As a result of Defendants' conduct in not paying Plaintiffs and aggrieved employees
2 all wages earned, Plaintiffs and the aggrieved employees have been deprived of minimum wages
3 for off the clock hours and the legal overtime wage for all overtime hours they worked and for
4 which they were not compensated.

5 **Failure to Provide Lawful Meal Periods**

6 45. Pursuant to Labor Code § 512, no employer shall employ an employee for a work
7 period of more than five (5) hours without providing a meal break of not less than thirty (30)
8 minutes in which the employee is relieved of all of his or her duties, except that when a work period
9 of not more than six (6) hours will complete the day's work the meal period may be waived by
10 mutual consent of the employer and employee.

11 46. Similarly, pursuant to Labor Code § 512, no employer shall employ an employee
12 for a work period of more than ten (10) hours without providing a second meal break of not less
13 than thirty (30) minutes in which the employee is relieved of all of his or her duties. A second meal
14 break may only be waived by mutual consent, and if the employee did not waive his or her first
15 meal period, and the employee's work day will not exceed twelve hours.

16 47. During the liability period, Defendants failed to provide Plaintiff and the Aggrieved
17 Employees with timely and uninterrupted first meal periods of not less than thirty (30) minutes
18 within the first five hours of a shift.

19 48. Plaintiff and the Aggrieved Employees were frequently required to work shifts in
20 excess of five hours without being provided a timely, lawful meal period and over ten hours in a
21 day without being provided a second timely, lawful meal period as required by law.

22 49. Indeed, during the relevant time, as a consequence of Defendants' staffing and
23 scheduling practices, lack of coverage, work demands, and Defendants' policies and practices,
24 Defendants frequently failed to provide Plaintiff and the Aggrieved Employees timely, legally
25 complaint uninterrupted 30-minute meal periods on shifts over five hours as required by law.

26 50. Meal periods, to the extent they were provided in the first instance, were
27 frequently late or interrupted.

28 51. On information and belief, Plaintiff and Aggrieved Employees did not waive their

1 rights to lawful, timely off-duty meal periods under the law.

2 52. Pursuant to Labor Code § 226.7, Plaintiff and Class Members are entitled to recover
3 one (1) hour of premium pay for each day in which a meal period violation occurred.

4 53. Plaintiff and the Aggrieved Employees were not paid one hour of pay at their regular
5 rate for each day that a first or second meal period was not lawfully provided.

6 **Failure to Authorize and Permit Rest Periods**

7 54. Pursuant to the IWC wage orders applicable to Plaintiff's and Aggrieved
8 Employees' employment by Defendants, "Every employer shall authorize and permit all
9 employees to take rest periods, which insofar as practicable shall be in the middle of each work
10 period... [The] authorized rest period time shall be based on the total hours worked daily at the
11 rate of ten (10) minutes net rest time per four (4) hours worked or major fraction
12 thereof...Authorized rest period time shall be counted as hours worked, for which there shall be
13 no deduction from wages."

14 55. Labor Code §226.7(a) prohibits an employer from requiring any employee to work
15 during any rest period mandated by an applicable order of the IWC.

16 56. Defendants were required to authorize and permit employees such as Plaintiff and
17 Aggrieved Employees to take rest periods during shifts in excess of 3.5 hours, based upon the
18 total hours worked at a rate of ten (10) minutes net rest per four (4) hours worked, or major
19 fraction thereof, with no deductions from wages.

20 57. Despite said requirements of the IWC wage orders applicable to Plaintiff's and
21 Aggrieved Employees employment with Defendants, Defendants failed and refused to authorize
22 and permit Plaintiff and Aggrieved Employees to take lawful, net ten (10) minute rest periods for
23 every four (4) hours worked, or major fraction thereof. Such rest breaks, when provided, were
24 frequently untimely or less than net ten minutes because of the work requirements imposed by
25 Defendants, and frequent calls during rest periods.

26 58. Defendant did not pay Plaintiff one additional hour of pay at his regular rate of pay
27 for each day that a rest period violation occurred. On information and belief, the other members
28 of the Aggrieved Group endured similar violations as a result of Defendants' rest period policies

1 and practices and Defendants did not pay said Aggrieved Employees premium pay as required by
2 law.

3 59. By their failure to authorize and permit Plaintiff and the Aggrieved Employees to
4 take a lawful, net ten (10) minute rest period free from work duties every four (4) hours or major
5 fraction thereof worked, including failure to provide two (2) total rest periods on six to ten hour
6 shifts and three (3) total ten (10) minute rest periods on days on which Plaintiff and the other
7 Aggrieved Employees work(ed) a third rest period for shifts in excess of ten (10) hours, and by
8 their failure to provide compensation for such unprovided rest periods as alleged herein,
9 Defendants willfully violated the provisions of Labor Code sections 226.7 and the applicable
10 IWC Wage Order(s).

11 60. Plaintiff alleges upon information and belief that to the extent Defendants paid any
12 premium payments, such payments were not made at the regular rate.

13 **Failure to Provide Accurate Itemized Wage Statements**

14 61. In relevant part, Labor Code section 226(a) requires: An employer, semimonthly
15 or at the time of each payment of wages, shall furnish to his or her employee, an accurate
16 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
17 employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee
18 is paid on a piece-rate basis, (4) all deductions , (5) net wages earned, (6) the inclusive dates of
19 the period for which the employee is paid, (7) the name of the employee and only the last four
20 digits of his or her social security number or an employee identification number other than a
21 social security number, (8) the name and address of the legal entity that is the employer, and (9)
22 all applicable hourly rates in effect during the pay period and the corresponding number of hours
23 worked at each hourly rate by the employee.

24 62. Defendants violated Labor Code section 226 and failed to provide accurate, lawful
25 itemized wage statements to Plaintiff and the Aggrieved Employees in part because of the above
26 specified violations. In addition, upon information and belief, Defendants omitted an accurate
27 itemization of total hours worked, accurate statement of all applicable hourly rates in effect and
28

1 the corresponding number of hours worked at each hourly rate, omission of the proper overtime
2 rate, and premium payments from Plaintiff and the Aggrieved Employees' wage statements.

3 **Failure to Keep Accurate Payroll and Timekeeping Records**

4 63. Wage Order No. 7 and 9, Labor Code sections 226(a), 1174, and 1174.5 require
5 that Defendants keep accurate payroll and timekeeping information.

6 64. By virtue of the above-specified violations, including the failure to record hours
7 worked off the clock, hours worked at overtime rates, and hours worked during purportedly
8 provided meal breaks, Defendant failed to keep accurate timekeeping information for Plaintiff
9 and the Aggrieved Employees.

10 65. Defendant also failed to keep accurate payroll information as a consequence of the
11 above specified violations, including the failure to pay premiums for missed meal and rest breaks
12 as required by law.

13 **Failure to Timely Pay Wages**

14 66. In addition, Plaintiff alleges that Defendants violated section 204 of the Labor
15 Code, as Defendant willfully failed to pay on time to Plaintiff and the aggrieved employees the
16 legal wages (including minimum wages and overtime wages) they earned, and failed to pay one
17 hour wages in lieu of required, but not lawfully provided, meal and rest periods, twice per
18 calendar month as required by law.

19 **Failure to Timely Pay Wages at Termination**

20 67. In part as a result of the above specified violations, Defendants have also failed to
21 pay all wages owed at the time of separation as required by Labor Code §§ 201-202, and did not
22 receive waiting time penalties as required by Labor Code § 203.

23 68. All Aggrieved Employees who were separated from employment are entitled to
24 compensation for all forms of wages earned, including but not limited to unpaid straight time
25 wages, minimum wages, overtime compensation and compensation for non-provided meal and
26 rest periods, but to date have not received such compensation, therefore entitling them to civil
27 penalties under PAGA for violations of Labor Code sections 201-203.
28

1 **FIRST CAUSE OF ACTION**

2 **THE PRIVATE ATTORNEYS GENERAL ACT - LABOR CODE §§ 2698, et. seq.**

3 69. Plaintiff incorporates by reference and reallege each and every allegation contained
4 above, as though fully set forth herein.

5 70. On April 9, 2020, Plaintiff provided written notice by online filing to the Labor and
6 Workforce Development Agency ("LWDA") and via certified mail to Defendant of the specific
7 violations of the California Labor Code that Defendants have violated and continue to violate,
8 including the facts and theories that supported each alleged violation.

9 71. 65 days have passed and no response has been received from the LWDA.
10 Accordingly, the LWDA has permitted Plaintiff to proceed in a representative capacity.

11 72. Plaintiff provided a supplemental amended notice to the LWDA on October 13,
12 2021 regarding certain additional violations and to modify the definition of the aggrieved group.

13 73. 65 days have passed and no response has been received from the LWDA in
14 connection with the supplemental amended notice. Accordingly, the LWDA has permitted Plaintiff
15 to proceed in a representative capacity.

16 74. Plaintiff has exhausted all administrative procedures required of them under Labor
17 Code §§2698, 2699 and 2699.3, and as a result, is justified as a matter of right in bringing forward
18 this cause of action.

19 75. Plaintiff is an aggrieved employee as defined in Labor Code Section 2699(a). He
20 brings this cause of action on her own behalf and all Aggrieved Employees of Defendant.

21 76. Pursuant to Labor Code section 2698 et seq and 2699(a), Plaintiff seeks to recover
22 civil penalties for which Defendants are liable due to numerous Labor Code and Wage Order
23 violations as set forth in this Complaint.

24 77. Specifically, Plaintiff, on behalf of himself and the Aggrieved Employees, seek
25 penalties under Labor Code §2699, for, without limitation, the following:

- 26 a. Defendants' failure to comply with the requirement of Labor Code
27 §1182.12, 1194, 1197, 1198, and Wage Order 7-2001 and 9-2001 to pay at
28 least minimum wage for every hour worked;

- 1 b. Defendants' failure to comply with the requirement of Labor Code §510,
2 1194, 1197, 1198, and Wage Order 7-2001 and 9-2001 to pay all wages
3 earned including overtime wages;
- 4 c. Defendants' failure to comply with the requirement of Labor Code §216 to
5 pay wages after demand was made by Plaintiffs;
- 6 d. Defendants' failure to comply with the requirement of Labor Code §§204
7 and 210 to pay, without condition and within the time set by the applicable
8 article, all wages earned;
- 9 e. Defendants' failure to comply with the requirement of Labor Code §225.5
10 to pay wages due;
- 11 f. Defendants' failure to comply with the requirement of Labor Code §§201
12 and 202 to pay wages due to former employees;
- 13 g. Defendants' failure to comply with the requirement of Labor Code §203 to
14 pay waiting time penalties to former employees for violating Labor Code
15 §§201-202.
- 16 h. Defendants' failure to comply with the requirement of Labor Code §226.7,
17 512, 1198, and IWC Wage Order 7-2001 and 9-2001 to provide
18 uninterrupted 30 minute off-duty meal periods;
- 19 i. Defendants' failure to comply with the requirement of Labor Code §226.7,
20 1198, and IWC Wage Order 7-2001 and 9-2001 to pay one hour of premium
21 pay for each statutorily required meal break that was not provided;
- 22 j. Defendants' failure to comply with the requirement of Labor Code §226.7,
23 1198, and IWC Wage Orders to authorize and permit ten (10) minute rest
24 breaks;
- 25 k. Defendants' failure to comply with the requirement of Labor Code §226.7,
26 1198, and IWC Wage Orders to pay one hour of premium pay at the regular
27 rate for each statutorily required rest break that was not lawfully authorize
28 and permitted;

1 l. Defendants' failure to maintain required records in violation of Labor Code
2 § 226, 1174, and Wage Order 7-2001 and 9-2001;

3 m. Defendants' failure to provide accurate compliant wage statements under
4 Labor Code § 226.

5 78. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code
6 §§2698 and 2699 because of Defendants' violation of numerous provisions of the California Labor
7 Code and IWC Wage Orders. Plaintiff seeks civil penalties for Defendants' violation of Labor
8 Code provisions for which a civil penalty is specifically provided, including but not limited to the
9 following:

10 a. Pursuant to Labor Code § 210, for violations of Labor Code § 204,
11 Defendants are subject to a civil penalty in the amount of one
12 hundred dollars (\$100) for the initial violation for each failure to pay
13 each employee and two hundred (\$200) per employee for violations
14 in subsequent pay periods.

15 b. Pursuant to Labor Code § 226.3, for violations of Labor Code §
16 226(a), Defendants are subject to a civil penalty in the amount of two
17 hundred and fifty dollars (\$250) per aggrieved employee for the
18 initial pay period where a violation occurs and one thousand dollars
19 (\$1,000) per aggrieved employee for violations in subsequent pay
20 periods.

21 c. Pursuant to Labor Code § 558(a), "[a]ny employer or other person
22 acting on behalf of an employer who violates, or causes to be
23 violated, a section of this chapter or any provision regulating hours
24 and days of work in any order of the Industrial Welfare
25 Commission," including Labor Code §§ 510 and 512, shall be subject
26 to a civil penalty, in addition to any other penalty provided by law,
27 of fifty dollars (\$50) for initial violations for each underpaid
28 employee for each pay period for which the employee was underpaid

1 and one hundred dollars (\$100) for each subsequent violation for
2 each underpaid employee for each pay period for which the
3 employee was underpaid.

4 d. Pursuant to Labor Code § 1174.5, for violations of Labor Code §
5 1174(d), Defendants are subject to a civil penalty of five hundred
6 dollars (\$500).

7 e. Pursuant to Labor Code § 1197.1, an employer who pays or causes
8 to be paid to any employee a wage less than the minimum fixed by
9 an order of the commission, shall be subject to a civil penalty as
10 follows: for any initial violation that is intentionally committed, one
11 hundred dollars (\$100) for each underpaid employee for each pay
12 period for which the employee is underpaid; and for each subsequent
13 violation of the same offense, two hundred fifty dollars (\$250) for
14 each underpaid employee for each pay period for which the
15 employee is underpaid regardless of whether the initial violation was
16 intentionally committed.

17 79. Under Labor Code §2699(f), Plaintiff and the Aggrieved Employees are entitled to
18 \$100 for any initial violation and \$200 for all subsequent violations of the above-mentioned
19 provisions of the California Labor Code for which no other civil penalty is specifically provided.

20 80. Under Labor Code §2699, Plaintiff and the Aggrieved Employees should be
21 awarded twenty-five percent (25%) of all penalties due under California law, as well as interest,
22 attorneys' fees and costs.

23 81. Under Labor Code §2699, the State of California should be awarded seventy-five
24 percent (75%) of the penalties due under California law.

25 82. In addition, Plaintiff and the Aggrieved Employees are entitled to recover their
26 attorneys fees and costs.

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1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq. for the violations specified above;
2. For penalties under Labor Code sections 210, 226.3, 1174.5, 1197.1, and 2699(a) and (f);
3. For interest at the legal rate pursuant to Labor Code §§ 218.6, 1194, 2802, California Civil Code §§ 3287, 3288, and/or any other applicable provision providing for pre-judgment interest;
4. For reasonable attorneys' fees, expenses and costs under Labor Code §§1194, 226, 2699, and/or Code of Civil Procedure §1021.5, and/or any other applicable provisions providing for attorneys' fees and costs; and
5. For such other and further relief as the Court deems proper.

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Respectfully submitted,

JAMES HAWKINS, APLC
James R. Hawkins, Esq.
Christina M. Lucio, Esq.

- 15 -

EXHIBIT 4

Matter Billing Detail

JAMES HAWKINS APLC

Date Range: 01/01/1900 to 04/27/2022
Client: COPART001 - Joseph B Montgomery
Matter: JRH 3673 - Copart PAGA- Joseph Montgomery

Date	Expense Code	Description	Debit	Credit	Billing Status	On Hold	Invoice Number	Check Number	Payee
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Balance Forward:

04/09/2020	FIL	Filing Fee- LWDA filing fee CK#8598	\$0.00		Unbilled				
06/15/2020	FST	First Legal Network- FILED- PAGA Complaint, Civil Case Cover Sheet IN#30131279	\$56.45		Unbilled				
06/16/2020	FST	First Legal Network- Additional billing- PAGA complaint; civil cover sheet; ntc of acknowledgement of receipt IN#30133807	\$530.75		Unbilled				
09/04/2020	FST	First Legal Network Notice of Order and Case Management Statement IN#30139041	\$52.25		Unbilled				
12/31/2020	FST	First Legal Network- Plf CMC Report IN#30146136	\$52.25		Unbilled				
01/20/2021	FST	First Legal Network Notice of Entry of Court Minute Order IN#301492229	\$52.25		Unbilled				
07/22/2021	MED	Mediation Services Lisa Klerman CK#9345	\$7,500.00		Unbilled				
07/22/2021	FST	First Legal Network- FILED- Joint Case Management Statement IN#30169470	\$52.25		Unbilled				
08/25/2021	FST	First Legal Network - Filing, ntc of entry of order IN#30172635	\$52.25		Unbilled				
10/12/2021	EXA	Expert Analysis IN#4830 CK#9538	\$1,425.00		Unbilled				
10/13/2021	POS	Postage - LWDA Letter	\$17.12		Unbilled				
12/02/2021	FST	First Legal Network - Filing-FAX/PDF same day, Joint CMC statement , Ntc re tentative IN#30182125	\$104.50		Unbilled				
12/31/2021	FST	First Legal Network- Plaintiff Case Management Statement IN#30146136	\$52.25		Unbilled				
02/24/2022	FST	First Legal Network - Filing FAX/PDF same day, stip to filed FAC ; proposed order, Ntc of Min Order. IN#30192286	\$145.00		Unbilled				
04/27/2022	FIL	Filing Fee estimated cost till case completion	\$303.45		Unbilled				

Total:	\$10,470.77	\$0.00
Balance:	\$10,470.77	

Matter Billing Detail

JAMES HAWKINS APLC

Date	Expense Code	Description	Debit	Credit	Billing Status	On Hold	Invoice Number	Check Number	Payee
Total Fees Billed:-----									
Total Fees Unbilled :-----			\$0.00						
Total Fees Received :-----			\$0.00						
Total Soft Cost Billed :-----			\$0.00						
Total Soft Cost Unbilled :-----			\$0.00						
Total Soft Cost Received :-----			\$0.00						
Total Hard Cost Billed :-----			\$0.00						
Total Hard Cost Unbilled :-----			\$10,470.77						
Total Hard Cost Received :-----			\$0.00						
Total Taxes Billed :-----			\$0.00						
Total Taxes Unbilled :-----			\$0.00						
Total Taxes Received :-----			\$0.00						
Total Late Charges Billed :-----			\$0.00						
Total Late Charges Unbilled:-----			\$0.00						
Total Late Charges Received :-----			\$0.00						
Trust Balance: -----			\$0.00						