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8 Attorneys for Plaintiff,

9 SIMONE LINSComb, and all others similarly situated

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF LOS ANGELES**

12 **(UNLIMITED JURISDICTION)**

13 SIMONE LINSComb, as an "aggrieved
14 employee" on behalf of other similarly situated
15 "aggrieved employees" under the Labor Code
16 Private Attorney General Act of 2004,

17 *Plaintiff,*

18 vs.

19 COPART, INC., a Delaware corporation;
20 COPART-DALLAS, INC., a California
21 corporation; COPART-HOUSTON, INC., a
22 California corporation; and DOES 1-50,
23 inclusive,

24 *Defendants.*

Case No.: 21STCV27096

**COMPLAINT FOR VIOLATIONS OF
THE LABOR CODE AND CIVIL
PENALTIES UNDER THE LABOR
CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004, LABOR
CODE §§ 2698, ET SEQ.**

JURY TRIAL DEMANDED



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1 Plaintiff, SIMONE LINSOMB (hereafter "Plaintiff"), on behalf of herself, the State of
2 California, and other Aggrieved Employees, complaints and alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this representative action based on alleged violations of the
5 California Labor Code and Industrial Welfare Commission Order No. 7-2001 (hereafter "the
6 Wage Order"), against Defendants COPART, INC., a Delaware corporation, COPART-
7 DALLAS, INC., a California corporation, COPART-HOUSTON, INC., a California corporation,
8 and DOES 1-50, inclusive (collectively "Defendants").

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
10 her, the State of California, and other similarly situated and aggrieved current and former
11 employees who worked in California as hourly, non-exempt employees, for civil penalties and
12 other related relief. These claims are based on Defendants' failures to: (1) Provide all rest and
13 meal periods; (2) Pay all wages earned for all hours worked at the correct rates of pay; (3) Provide
14 accurate written wage statements; (4) Timely pay wages during and upon termination of
15 employment and; (5) Maintain accurate employment records. Accordingly, Plaintiff now seeks to
16 recover civil penalties and related relief through this representative action.

17 **II. THE PARTIES**

18 3. Plaintiff, an individual and resident of California, on or about December 9, 2019,
19 began working for Defendants as a customer service representative. Defendants employed her
20 continuously from that date until on or about January 29, 2021.

21 4. Defendant COPART, INC., is a corporation organized and existing under the laws
22 of Delaware and a citizen of California based on Plaintiff's information and belief.

23 5. Defendant COPART-DALLAS, INC., is a corporation organized and existing
24 under the laws of California and a citizen of California based on Plaintiff's information and belief.

25 6. Defendant COPART-HOUSTON, INC., is a corporation organized and existing
26 under the laws of California and a citizen of California based on Plaintiff's information and belief.

27 7. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
28 participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but
is informed and believes and thereon alleges that said Defendants are legally responsible for the
wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants



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when ascertained.

A. THE AGGRIEVED EMPLOYEES

8. The “Aggrieved Employees” are all individuals currently and formerly employed by Defendants in California, as hourly, non-exempt employees, including, but not limited to customer service representatives, dispatchers, and persons in comparable positions, at any time during the period of May 18, 2020 and entry of judgment (“the PAGA Period”).

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

10. At all relevant times, in perpetrating the acts and omissions alleged herein, Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack of a practice which resulted in Defendants not paying Plaintiff and the other Aggrieved Employees in accordance with applicable California labor laws as alleged herein.

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

III. FACTUAL ALLEGATIONS

12. On December 9, 2019, Defendants began to employ Plaintiff as a customer service representative at their office in Sun Valley, California. In approximately April 2020, Defendants promoted Plaintiff to dispatcher. Defendants continuously employed Plaintiff in that capacity until January 29, 2021, when her employment ended.

13. At all relevant times, Defendants issued wages to Plaintiff and the Aggrieved Employees on a bi-weekly basis and paid them at an hourly rate of pay. At all relevant times, Defendants classified Plaintiff and the other Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

14. At all relevant times, Plaintiff and the Aggrieved Employees have worked over 8 hours in one workday and/or over 40 hours in one workweek. Despite this, Defendants failed to



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1 provide Plaintiff and the Aggrieved Employees with all timely rest and meal periods pursuant to
2 California law. Due to the work load and low staffing levels, Plaintiff and the Aggrieved
3 Employees were denied their 30-minute duty-free meal period within the first five hours of work.
4 Defendants frequently forced Plaintiff and the other Aggrieved Employees to forego timely, duty-
5 free, 30-minute meal periods by assigning them more time-sensitive work than they could
6 reasonably expect them to complete within their first five hours of work. Defendants also denied
7 meal periods to Plaintiff and the Aggrieved Employees because there were insufficient employees
8 to cover for them during rest breaks and meal periods.

8 15. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
9 Aggrieved Employees to take 10-minute rest breaks every four hours or major fraction thereof,
10 as required by the Wage Order. Defendants' management never authorized breaks, and the heavy
11 work load they assigned the Aggrieved Employees to complete did not permit them. Furthermore,
12 Defendants failed to pay premium wages for each workday they failed to provide Plaintiff and
13 the Aggrieved Employees with a timely meal period in compliance with California law.
14 Defendants also failed to pay premium wages for each workday they failed to provide Plaintiff
15 and the Aggrieved Employees with a timely rest period in compliance with California law.

15 16. At all relevant times, Defendants required Plaintiff and the Aggrieved Employees
16 to perform work while clocked-out and failed to compensate them for this time. Defendants
17 required Plaintiff and the Aggrieved Employees to perform work duties before clocking-in for the
18 morning shifts, including but not limited to, answering phone calls and emails, communicating
19 with the drivers, and opening the gates for the drivers. Further, under threat of disciplinary action,
20 Defendants required Plaintiff and the Aggrieved Employees to clock-out at specific times, even
21 while still working. At all relevant times, Defendants required Plaintiff and the Aggrieved
22 Employees to perform necessary work duties after they clocked-out for the day, including but not
23 limited to dispatching work for the next day, confirming all vehicle arrivals, filing paperwork for
24 incoming vehicles, helping drivers with drop-offs, and communicating with drivers and
25 customers. Defendants required Plaintiff and the Aggrieved Employees to complete these duties
26 before they left, even if they had already clocked-out as instructed. Defendants failed to
27 compensate Plaintiff and the Aggrieved Employees for this work performed off-the-clock.

27 17. As a result of these aforementioned violations, Defendants failed to provide
28 Plaintiff and the Aggrieved Employees with accurate written wage statements; failed to pay them



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all wages earned during employment; and failed to maintain accurate employee records with respect to Plaintiff and the Aggrieved Employees as required under California law.

18. For the reasons stated herein, Plaintiff alleges that as a result of Defendants' unlawful practice and policies, Plaintiff and the Aggrieved Employees were:

- A. Not provided with all off duty meal periods;
- B. Not provided with all rest break periods as required by law;
- C. Not paid one hour's pay for each workday in which Defendants failed to provide them with one or more timely rest periods;
- D. Not paid one hour's pay for each workday in which Defendants failed to provide them with one or more timely meal periods;
- E. Not paid all wages earned, including, but not limited to, regular and overtime wages for work performed while clocked-out;
- F. Not provided with accurate and complete wage statements; and
- G. Not timely paid all earned and unpaid wages during their employment with Defendants and at the time such employment ended.

IV. FIRST (AND ONLY) CAUSE OF ACTION

CIVIL PENALTIES

(Lab. Code §§ 2698, *et seq.*)

(By Plaintiff, on behalf of herself and the other Aggrieved Employees, against all Defendants)

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

20. At all relevant times, Plaintiff and the Aggrieved Employees have been non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

A. FAILURE TO PROVIDE REST BREAKS AND MEAL PERIODS

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

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

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

An employer shall not employ an employee for a work period of



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

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

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

Rest Periods

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

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

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

Meal Periods

(A) "No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employee and the employer. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked. An 'on duty' meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written



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1 agreement between the parties an on-the-job paid meal period is
2 agreed to. The written agreement shall state that the employee
may, in writing, revoke the agreement at any time.”

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

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

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

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

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

22 27. Pursuant to the Wage Order, Plaintiff and the Aggrieved Employees were entitled
23 to be provided with net rest breaks of at least ten minutes for each four-hour period of work, or
24 major fraction thereof.

25 28. Defendants intentionally failed to provide Plaintiff and the Aggrieved Employees
26 with all required 30-minute duty free meal periods and 10-minute rest periods free from any work
duties in accordance with the Wage Order.

27 29. At all relevant times, Defendants failed to provide Plaintiff and the Aggrieved
28 Employees with all timely rest and meal periods. Due to the work load and low staffing levels,



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1 Plaintiff and the Aggrieved Employees were denied their 30-minute duty-free meal period within
2 the first five hours of work. Defendants also failed to authorize and permit Plaintiff and the
3 Aggrieved Employees to take ten minute rest breaks every four hours or major fraction thereof,
4 as required by the Wage Order. Defendants never authorized breaks, and the heavy work load
5 they assigned the Aggrieved Employees to complete did not permit them. Furthermore,
6 Defendants failed to pay premium wages for each workday they failed to provide Plaintiff and
7 the other Aggrieved Employees with a timely meal period in compliance with California law.
8 Defendants also failed to pay premium wages for each workday they failed to provide Plaintiff
9 and the Aggrieved Employees with a timely rest period in compliance with California law.

10 30. Plaintiff is informed and believes and thereon alleges that, at all relevant times
11 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
12 which resulted in Defendants not providing the and the Aggrieved Employees with all off-duty
13 meal periods and rest breaks required by California law.

14 **B. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT**
15 **THE CORRECT RATES OF PAY**

16 31. Section 2 of the Wage Order defines “hours worked” as “the time during which
17 an employee is subject to the control of an employer, and includes all the time the employee is
18 suffered or permitted to work, whether or not required to do so[.]”

19 32. Section 4 of the Wage order requires an employer to pay non-exempt employees
20 at least the minimum wage set forth therein for all hours worked, which consist of all hours that
21 an employer has actual or constructive knowledge that employees are working.

22 33. In relevant part, California Labor Code § 510 states,

23 Any work in excess of eight hours in one workday and any work in excess of
24 40 hours in any one workweek and the first eight hours worked on the seventh
25 day of work in any one workweek shall be compensated at the rate of no less
26 than one and one-half times the regular rate of pay for an employee. Any work
27 in excess of 12 hours in one day shall be compensated at the rate of no less
28 than twice the regular rate of pay for an employee. In addition, any work in
excess of eight hours on any seventh day of a workweek shall be compensated
at the rate of no less than twice the regular rate of pay of an employee.

34. Section 3 of the applicable Wage Order states:

(A) Daily Overtime - General Provisions

- (1) The following overtime provisions are applicable to employees 18
years of age or over and to employees 16 or 17 years of age who



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1 are not required by law to attend school and are not otherwise
2 prohibited by law from engaging in the subject work. Such
3 employees shall not be employed more than eight (8) hours in any
4 workday or more than 40 hours in any workweek unless the
5 employee receives one and one-half (1 1/2) times such employee's
6 regular rate of pay for all hours worked over 40 hours in the
7 workweek. Eight (8) hours of labor constitutes a day's work.
8 Employment beyond eight (8) hours in any workday or more than
9 six (6) days in any workweek is permissible provided the employee
10 is compensated for such overtime at not less than:

- 11 (a) One and one-half (1 1/2) times the employee's regular
12 rate of pay for all hours worked in excess of eight (8)
13 hours up to and including 12 hours in any workday, and
14 for the first eight (8) hours worked on the seventh (7th)
15 consecutive day of work in a workweek; and
- 16 (b) Double the employee's regular rate of pay for all hours
17 worked in excess of 12 hours in any workday and for all
18 hours worked in excess of eight (8) hours on the seventh
19 (7th) consecutive day of work in a workweek.
- 20 (c) The overtime rate of compensation required to be paid to
21 a nonexempt full-time salaried employee shall be
22 computed by using the employee's regular hourly salary
23 as one-fortieth (1/40) of the employee's weekly salary.

24 35. Labor Code § 1194 invalidates any agreement between an employer and an
25 employee to work for less than the minimum or overtime wage required under the applicable
26 Wage Order.

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

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

38. In conjunction, these provisions of the Labor Code require employers to
compensate non-exempt employees for "off-the-clock" work (before punching in or after
punching out on a time clock) if the employers knew or should have known that the employees
were working those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

39. At all relevant times during the applicable limitations period, and at Defendants'



1 direction, Plaintiff and the Aggrieved Employees have worked off-the-clock without pay,
2 including before clocking-in for their shifts and after clocking-out at the end of their shifts. Such
3 work included dispatching work for the next day, confirming all vehicle arrivals, filing paperwork
4 for incoming vehicles, helping drivers with drop-offs, and communicating with drivers and
5 customers.

6 40. Plaintiff is informed and believes that, at all relevant times, Defendants have
7 applied centrally devised policies and practices to him and the Aggrieved Employees with respect
8 to working conditions and compensation arrangements.

9 41. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
10 Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants'
11 failure to compensate the Aggrieved Employees for all hours worked, including but not limited
12 to, regular and overtime hours at the correct rates of pay.

13 **C. FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

14 42. Pursuant to California Labor Code § 226(a), Plaintiff and the Aggrieved
15 Employees were entitled to receive, bi-weekly or at the time of each payment of wages, an
16 accurate itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable
17 hourly rates in effect during the pay period; and d) the corresponding number of hours worked at
18 each hourly rate by the employee.

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

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

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

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



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1 D. The name of the employee and only the last four digits of his or his social
2 security number or an employee identification number other than a social security number; and

3 E. The number of piece-rate units earned and the piece rate.

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

7 45. As alleged herein, Defendants failed to provide Plaintiff and the other Aggrieved
8 Employees with all meal and rest periods in compliance with California law. They also failed to
9 provide them with premium wages on workdays they failed to provide them with one or more
10 meal and/or rest periods in compliance with California law. As a result, Defendants have failed
11 to properly itemize Plaintiff and the other Aggrieved Employees' gross and net wages earned,
12 total hours worked, hourly rate of pay, the corresponding number of hours worked at each hourly
13 rate, and other requirements of California Labor Code § 226.

14 46. Defendants' failure to provide Plaintiff and the other Aggrieved Employees with
15 accurate wage statements was knowing and intentional. Defendants had the ability to provide
16 Plaintiff and the other Aggrieved Employees with accurate wage statements but intentionally
17 provided wage statements that Defendants knew were not accurate.

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

29 **D. UNTIMELY WAGES DURING EMPLOYMENT**

30 48. Labor Code § 204 states

31 (a) All wages, other than those mentioned in Section 201,



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

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

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

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

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

49. Defendants paid wages to employees on regular intervals. Defendants failed to pay Plaintiff on such intervals for all wages earned and all hours worked including, but not limited to, all premium wages for all rest breaks and/or off-duty meal periods that were not provided. On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.

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1 **E. UNTIMELY FINAL WAGES**

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

4 51. Labor Code § 202 provides that all earned and unpaid wages of an employee who
5 quits after providing at least 72-hours notice before quitting are due and payable at the time of
6 quitting and that all earned and unpaid wages of an employee who quits without providing at
7 least 72-hours notice before quitting are due and payable within 72 hours.

8 52. By failing to pay earned minimum and premium wages to Plaintiff and the
9 Aggrieved Employees, Defendants failed to timely pay them all earned and unpaid wages in
10 violation of Labor Code § 201 or § 202.

11 53. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
12 and the Aggrieved Employees all of their earned and unpaid wages have been willful in that, at
13 all relevant times, Defendants have deliberately maintained policies and practices that violate the
14 requirements of the Labor Code and the Wage Order, even though at all relevant times, they have
15 had the ability to comply with those legal requirements.

16 **F. FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS**

17 54. Labor Code § 1174 states:

18 Every person employing labor in this state shall:

19 ...

20 (c) Keep a record showing the names and addresses of all employees
21 employed and the ages of all minors.

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

55. Labor Code § 1174.5 states:

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



1 56. Section 7 of the Wage Order states,

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

- 4 1. Full name, home address, occupation, and social security number.
- 5 2. Birth date, if under 18 years, and designation as a minor.
- 6 3. Time records showing when the employee begins and ends each
7 work period. Meal periods, split shift intervals and total daily
8 hours worked shall also be recorded. Meal periods during which
9 operations cease and authorized rest periods need not be recorded.
- 10 4. Total wages paid each payroll period, including value of board,
11 lodging, or other compensation actually furnished to the
12 employee.
- 13 5. Total hours worked in the payroll period and applicable rates of
14 pay. This information shall be made readily available to the
15 employee upon reasonable request.
- 16 6. When a piece rate or incentive plan is in operation, piece rates or
17 an explanation of the incentive plan formula shall be provided to
18 employees. An accurate production record shall be maintained by
19 the employer.

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

22 58. On information and belief, Defendants have willfully failed to maintain the
23 records required by § 1174 and Wage Order, including, but not limited to, the total premium
24 wages earned for missed meal and rest periods owed to Plaintiff and the Aggrieved Employees,
25 and records pertaining to all unpaid hours worked by Plaintiff and the Aggrieved Employees.

26 **G. CIVIL PENALTIES SOUGHT**

27 59. Labor Code § 204 states

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

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

(2) An employer is in compliance with the requirements of subdivision (a) of
Section 226 relating to total hours worked by the employee, if hours worked in



1 excess of the normal work period during the current pay period are itemized as
2 corrections on the paystub for the next regular pay period. Any corrections set out
3 in a subsequently issued paystub shall state the inclusive dates of the pay period
4 for which the employer is correcting its initial report of hours worked.

5 (c) However, when employees are covered by a collective bargaining
6 agreement that provides different pay arrangements, those arrangements shall
7 apply to the covered employees.

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

11 60. Defendants paid wages to employees on regular intervals. Defendants failed to pay
12 Plaintiff on such intervals for all wages earned and all hours worked. On information and belief,
13 Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for
14 all wages earned and all hours worked.

15 61. During the applicable time period, Defendants violated California Labor Code
16 §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, and 1198.

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

20 63. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Aggrieved
21 Employees are entitled to recover civil penalties for each of the Defendants' violations of
22 California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1997, and 1198
23 during the applicable limitations period in the following amounts:

24 A. For violations of California Labor Code §§ 201.3 and 204, one hundred
25 dollars (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
26 (\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation
(penalty amounts established by California Labor Code § 210).

27 B. For violations of California Labor Code § 226(a), two hundred fifty dollars
28 (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per employee
for each subsequent violation (penalty amounts established by California Labor Code § 226.3).

C. For violations of California Labor Code §§ 510 and 512, fifty dollars
(\$50.00) for each aggrieved employee for each initial violation for pay period for which the



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1 employee was underpaid and one hundred dollars (\$100.00) for each underpaid employee for
2 each pay period for which the employee was underpaid (penalty amounts established by
3 California Labor Code § 558).

4 D. For violations of California Labor Code § 1174, five hundred dollars
5 (\$500.00) for each Aggrieved Employee for each initial violation (penalty amounts established
6 by Labor Code § 1174.5).

7 E. For violations of California Labor Code § 1197, one hundred dollars
8 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two
9 hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per
10 pay period (regardless of whether the initial violations were intentionally committed) (penalty
11 amounts established by California Labor Code § 1197.1).

12 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194, and
13 1198, one hundred dollars (\$100.00) for each aggrieved employee per pay period for each initial
14 violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each
15 subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).

16 **H. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS**

17 64. Plaintiff has complied with the procedures for bringing suit specified in California
18 Labor Code § 2699.3. By letter dated May 18, 2021, Plaintiff gave written notice by certified mail
19 to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific
20 provisions of the California Labor Code alleged to have been violated, including the facts and
21 theories to support the alleged violations. A true and correct copy of Plaintiff’s letter to the LWDA
22 dated May 18, 2021 is attached hereto as Exhibit A. The LWDA has not responded to Plaintiff’s
23 letter.

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

27 **VI. PRAYER FOR RELIEF**

28 66. WHEREFORE, Plaintiff, on behalf of herself and the Aggrieved Employees, prays
for relief and judgment against Defendants as follows:

A. Civil penalties;

B. Costs of suit;



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- 1 C. Reasonable attorneys' fees; and
2 D. Such other relief as the Court deems just and proper.

3
4 **VII. DEMAND FOR JURY TRIAL**

5 Plaintiff, on behalf of herself and all other Aggrieved Employees, hereby demands a jury
6 trial on all issues so triable.

7 Respectfully submitted,

8 THE SPIVAK LAW FIRM

9 Dated: July 22, 2021

10 By



11 DAVID SPIVAK

12 MARALLE MESSRELIAN

13 MAYA CHEAITANI

14 Attorneys for Plaintiff, SIMONE LINSOMB,
15 and all others similarly situated
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EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

May 18, 2021

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

RE: *Simone Linscomb/Copart*

To whom it may concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Simone Linscomb (hereafter “Linscomb”) provides notice on behalf of herself and of all individuals currently and formerly employed in California on an hourly basis, including but not limited to, customer service representatives, dispatchers, and employees in comparable positions (hereafter “Aggrieved Employees”), by Copart, Inc., a Delaware corporation, Copart-Dallas, Inc., a California corporation, and Copart-Houston, Inc., a California corporation (hereafter collectively “Copart”) of violations of California Labor Code §§ 201-203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, and 1198.

At all relevant times, Copart has employed persons, conducted business in, and engaged in illegal payroll practices and policies throughout California. Linscomb and the Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 7-2001 (hereafter “the Wage Order”), paragraph 2.E, and “aggrieved employees” within the meaning of California Labor Code § 2699(c).

Statement of Facts

On December 9, 2019, Copart began to employ Linscomb as a customer service representative at its office in Sun Valley, California. In approximately April 2020, Copart promoted Linscomb to dispatcher. Copart continuously employed Linscomb in that capacity until January 29, 2021, when her employment ended.

At all relevant times, Copart issued wages to Linscomb and the Aggrieved Employees on a bi-weekly basis and paid them at an hourly rate of pay. At all relevant times, Copart classified Linscomb and the other Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

At all relevant times, Linscomb and the Aggrieved Employees have worked over 8 hours in one workday and/or over 40 hours in one workweek. Despite this, Copart failed to provide Linscomb and the Aggrieved Employees with all timely rest and meal periods pursuant to California law. Due to the work load and low staffing levels, Linscomb and the other Aggrieved Employees were denied their 30-minute duty-free meal period within the first five hours of work. Copart frequently forced Linscomb and the other Aggrieved Employees to forego timely, duty-free, 30-minute meal periods by assigning them more time-sensitive work than it could reasonably expect them to complete within their first five hours of work. Copart also denied meal periods to Linscomb and the Aggrieved Employees because there were insufficient employees to cover for them during rest breaks and meal periods.

At all relevant times, Copart failed to authorize and permit Linscomb and the Aggrieved Employees to take 10-minute rest breaks every four hours or major fraction thereof, as required by the Wage Order. Copart's management never authorized breaks, and the heavy work load they assigned the Aggrieved Employees to complete did not permit them. Furthermore, Copart failed to pay premium wages for each workday it failed to provide Linscomb and the other Aggrieved Employees with a timely meal period in compliance with California law. Copart also failed to pay premium wages for each workday it failed to provide Linscomb and the other Aggrieved Employees with a timely rest period in compliance with California law.

At all relevant times, Copart required Linscomb and the Aggrieved Employees to perform work while clocked-out and failed to compensate them for this time. Copart required Linscomb and the Aggrieved Employees to perform work duties before clocking-in for the morning shifts, including but not limited to, answering phone calls and emails, communicating with the drivers, and opening the gates for the drivers. Further, under threat of disciplinary action, Copart required Linscomb and the Aggrieved Employees to clock-out at specific times, even while still working. At all relevant times, Copart required Linscomb and the Aggrieved Employees to perform necessary work duties after they clocked-out for the day, including but not limited to dispatching work for the next day, confirming all vehicle arrivals, filing paperwork for incoming vehicles, helping drivers with drop-offs, and communicating with drivers and customers. Copart required Linscomb and the Aggrieved Employees to complete these duties before they left, even if they had already clocked-out as instructed. Copart failed to compensate Linscomb and the Aggrieved Employees for this work performed off-the-clock.

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

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

- a) Copart failed to pay Linscomb and the Aggrieved Employees for all hours worked at the correct rates of pay;
- b) Copart failed to timely provide Linscomb and the Aggrieved Employees with all meal and rest periods as required by California law;
- c) Copart failed to compensate Linscomb and the Aggrieved Employees at one hour's pay for each day in which it failed to provide them with all meal periods as required by California law;

- d) Copart failed to compensate Linscomb and the Aggrieved Employees at one hour's pay for each day in which it failed to provide them with all rest periods as required by California law;
- e) Copart failed to provide Linscomb and the Aggrieved Employees with properly itemized wage statements;
- f) Copart failed to timely pay Linscomb and the Aggrieved Employees all earned wages during employment with Copart; and
- g) Copart failed to maintain accurate employment records for Linscomb and the Aggrieved Employees.

Accordingly, on behalf of herself and the Aggrieved Employees, Linscomb seeks civil penalties based on Copart's alleged violations of the California Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the mercantile industry whether paid on a time, piece rate, commission, or other basis[.]" § 1. The Wage Order defines "Mercantile Industry" to include "industry, business, or establishment operated for the purpose of purchasing, selling, or distributing goods or commodities at wholesale or retail; or for the purpose of renting goods or commodities." § 2(H). At all relevant times during the applicable limitations period, Copart operated an online vehicle auction for the purpose of selling commodities at wholesale or retail. Accordingly, Linscomb and the Aggrieved Employees are entitled to the protections provided by the Wage Order.

Failure To Pay All Wages Earned For All Hours Worked At the Correct Rates of Pay

(Lab. Code §§ 510, 1194, 1197, and 1198)

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

Section 4 of Wage Order states,

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

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

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

In relevant part, California Labor Code § 1194 states,

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

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

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

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

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

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

In relevant part, California Labor Code § 510 states,

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

At all relevant times, and at Copart's direction, Linscomb and the Aggrieved Employees have worked off-the-clock without pay, including before clocking-in for their shifts and after clocking-out at the end of their shifts. Such work included: dispatching work for the next day, confirming all vehicle arrivals,

filing paperwork for incoming vehicles, helping drivers with drop-offs, and communicating with drivers and customers.

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

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

Failure To Provide Meal and Rest Periods
(Lab. Code §§ 226.7, 512, 558, and 1198)

In relevant part, California Labor Code § 1198 states:

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

In relevant part, California Labor Code § 512 states:

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

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

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

Meal Periods:

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

(B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is

no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

...

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

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

Rest Periods:

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

California Labor Code § 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an

applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

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

As described above, at all relevant times during the applicable limitations period, Copart failed to provide Linscomb and the Aggrieved Employees with all timely rest and meal periods. Due to the work load and low staffing levels, Linscomb and the other Aggrieved Employees were denied their 30-minute duty-free meal period within the first five hours of work. Copart also failed to authorize and permit Linscomb and the Aggrieved Employees to take ten minute rest breaks every four hours or major fraction thereof, as required by the Wage Order. Copart never authorized breaks, and the heavy work load they assigned the Aggrieved Employees to complete did not permit them. Furthermore, Copart failed to pay premium wages for each workday it failed to provide Linscomb and the other Aggrieved Employees with a timely meal period in compliance with California law. Copart also failed to pay premium wages for each workday it failed to provide Linscomb and the other Aggrieved Employees with a timely rest period in compliance with California law.

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

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

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

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

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

- 1) gross wages earned,
- 2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- 3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- 4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- 5) net wages earned,
- 6) the inclusive dates of the period for which the employee is paid,
- 7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
- 8) the name and address of the legal entity that is the employer, and
- 9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

As a result of the above described violations, Copart violated California Labor Code § 226 in that it failed to properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the employee, and other requirements of California Labor Code § 226.

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

Failure to Timely Pay Wages
(Lab. Code § 204)

California Labor Code § 204 states all wages (other than those mentioned in Labor Code sections 201–202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

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

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

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

Under Labor Code § 2019, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

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

Copart failed to pay Linscomb and the Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Copart. By failing to pay Linscomb and the Aggrieved Employees as set forth above by such time, Copart is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and the Aggrieved Employees, Linscomb seeks civil penalties from Copart as follows:

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

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

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

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

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

Labor Code section 1174.5 states:

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

Section 7 of the Wage Order states,

- (A) Every employer shall keep accurate information with respect to each employee including the following:
 - (1) Full name, home address, occupation and social security number.
 - (2) Birth date, if under 18 years, and designation as a minor.
 - (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
 - (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
 - (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
 - (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.
- (B) Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in

writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.

- (C) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request.
- (D) Clocks shall be provided in all major work areas or within a reasonable distance thereto insofar as practicable.

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

Copart has failed to maintain the records required by section 1174 and the Wage Order, including but not limited to, the total premium wages earned for missed meal and rest periods, and records pertaining to all unpaid hours worked by Linscomb and the Aggrieved Employees. Accordingly, Linscomb seeks civil penalties on behalf of herself and the other aggrieved employees as follows:

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

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Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code § 2699, subdivision (g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

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cc: Simone Linscomb

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