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14 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF FRESNO**

16 HAILEY POPOVICH, individuals, on behalf
17 of the State of California, as private attorney
18 general, and on behalf of all aggrieved
19 employees,

20 Plaintiff,

21 v.

22 RUSSELL CELLULAR, INC.; and DOES 1
23 to 100, inclusive

24 Defendants.

CASE NO: 20CECG02552
SETTLEMENT AGREEMENT AND
RELEASE OF ALL CLAIMS

25 This Settlement Agreement and Release of All Claims (“Settlement Agreement”) is made
26 and entered into between Plaintiffs Hailey Popovich (“Popovich”), Jessica Gonzalez
27 (“Gonzalez”), Marco Acevedo (“Acevedo”), and Chardai Jackson (“Jackson”) (collectively
28

1 “Plaintiffs”) acting in a private attorney general capacity on behalf of the State of California and
2 Defendant Russell Cellular Inc. (“Defendant”).

3 **I. DEFINITIONS**

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

6 1. “Actions” means the following PAGA actions: *Hailey Popovich v. Russell*
7 *Cellular, Inc.*, Fresno County Superior Court Case No. 20CECG02552 filed on September 1,
8 2020 (individually, the “Popovich Action”); *Jessica Gonzalez v. Russell Cellular, Inc.*, Fresno
9 County Superior Court Case No. 20CECG00491 filed on February 19, 2021 (individually, the
10 “Gonzalez Action”); and *Marco Acevedo and Chardai Jackson v. Russell Cellular Inc., Fresno*
11 *County Superior Court* Case No. VCU285275 filed December 7, 2020 (individually, the
12 “Acevedo/Jackson Action”) and the LWDA notice letters filed by each of the Plaintiffs alleging
13 violations of California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 351, 510, 512, 558,
14 1174, 1194, 1197, 1197.1, 1198, 2802, and Industrial Welfare Commission Wage Order No. 7-
2001. (collectively, the “Actions”).

15 2. “Aggrieved Employees” means “Plaintiffs and all individuals who were employed
16 by Defendant in California and classified as non-exempt employees during the PAGA Period. The
17 PAGA Period means “the period beginning on June 25, 2019 to July 31, 2022.”

18 3. “Court” means the Superior Court of California, County of Fresno.

19 4. “Covered Claims” shall mean and refer to: any and all claims, demands, rights,
20 liabilities, and/or causes of action for PAGA penalties pursuant to California Labor Code Section
21 2699, *et seq.*, for violation of California Labor Code Sections 201, 202, 203, 204, 210, 225.5, 226,
22 226.3, 226.7, 351, 510, 512 and 558, 1174, 1194, 1197, 1197.1, 1198, 2802, and any claims that
23 could have been brought pursuant to Labor Code Section 2698, *et seq.*, based on the facts asserted
24 in the Action.

25 5. “Defendant” means Russell Cellular Inc.

26 6. “Released Parties” means Russell Cellular Inc. and all of their present and former
27 parent corporations, members, affiliates, subsidiaries, divisions, predecessors, related or affiliated
28 companies, shareholders, insurers, successors and assigns, and all current and former employees,

1 attorneys, officers, directors and agents thereof, both individually and in their business capacities,
2 and their employee benefit plans and programs and the trustees, administrators, fiduciaries and
3 insurers of such plans and programs.

4 7. "Defendant's Counsel" means the law firm of Freeman Mathis & Gary, LLP.

5 8. "Effective Date" means the earliest date, following entry by the Court of an order
6 and judgment finally approving this settlement upon which one of the following has occurred:

7 a. If no objection is filed to the settlement and no objector appears at
8 the hearing of final approval, ten (10) calendar days following the
9 Court's entry of the order granting approval.

10 b. If an objection is filed to the settlement and/or an objector appears
11 at the hearing of final approval, then the earlier of the following:

12 (1) The expiration of all potential appeal periods without filing of a
13 notice of appeal of the final approval order or judgment; or

14 (2) Final affirmance of the approval order and judgment by an
15 appellate court as a result of any appeal(s); or

16 (3) Final dismissal or denial of all such appeals (including any
17 petitions for review, rehearing, certiorari, etc.) such that the
18 approval order and judgment is no longer subject to further judicial
19 review.

20 9. "Individual PAGA Payment" means the amount to be paid to each of the
21 Aggrieved Employees out of 25% of the PAGA Payment. Such individual shares are to be
22 apportioned and based solely on the number of pay periods attributed to each Aggrieved
23 Employee during the PAGA Period. These shares will be calculated by the Settlement
24 Administrator based on the data Defendant submits to the Settlement Administrator thirty (30)
25 days following the Effective Date. If the thirtieth day falls on a Saturday, Sunday, or holiday, the
26 corresponding deadline will be the following business day.

27 10. "LWDA" means the California Labor & Workforce Development Agency.

28 9. "Gross Settlement Amount" means the total sum of Two Hundred Forty Thousand Dollars
and Zero Cents (\$240,000.00) for payment of the Settlement Administration Expenses, Attorneys'

1 Fees, Attorneys' Expenses, PAGA Representative Enhancement Awards, and the PAGA
2 Payment. The Gross Settlement Amount shall be the total amount paid by Defendant in
3 connection with this matter. The Gross Settlement Amount cannot be increased for any reason,
4 except as provided for herein at Paragraph III (3).

5 10. "PAGA" means the California Labor Code Private Attorneys General Act, California
6 Labor Code section 2698, *et seq.*

7 11. "PAGA Action" means the Causes of Action collectively asserted in the Actions.

8 12. "PAGA Approval Date" means the date that the Court signs the Judgment approving the
9 settlement of the PAGA Action.

10 13. "PAGA Payment" means the total amount remaining in the Gross Settlement Amount
11 after payment of the Attorneys' Fees, Attorneys' Expenses, PAGA Representative Enhancement
12 Awards, and the Administration Costs. Of the PAGA Payment, 75% shall be paid to the LWDA
13 and 25% shall be paid to the Aggrieved Employees. The Aggrieved Employees will be issued a
14 form 1099 for their Individual PAGA Payments.

15 14. "PAGA Representative Enhancement Awards" refers to the monetary amounts to be paid
16 to Plaintiffs from the Gross Settlement Amount in exchange for their services as PAGA
17 representatives. PAGA Representatives will apply to the Court for an Order approving PAGA
18 Representative Enhancement Awards in the amount of Fifteen Thousand Dollars (\$15,000) to
19 Plaintiffs Popovich, Gonzalez, Acevedo and Jackson. The PAGA Representative Enhancement
20 Awards shall be paid from the Gross Settlement Amount and are subject to Court approval, and a
21 reduction or denial of which is not a basis for any Plaintiff to void, rescind, or terminate this
22 binding Agreement.

23 15. "PAGA Period" means the time period from June 25, 2019 through and including
24 July 31, 2022.

25 16. "Parties" mean Plaintiffs Hailey Popovich ("Popovich"), Jessica Gonzalez
26 ("Gonzalez"), Marco Acevedo ("Acevedo"), and Chardai Jackson ("Jackson") (collectively
27 "Plaintiffs") acting in a private attorney general capacity on behalf of the State of California and
28 Defendant Russell Cellular Inc. ("Defendant").

1 17. “Plaintiffs’ Counsel” and “PAGA Counsel” mean Mark D. Potter, Esq. and James
2 M. Treglio, Esq. of POTTER HANDY, LLP, BLUMENTHAL NORDREHAUG BHOWMIK DE
3 BLOUW LLP, and CASTLE LAW, California Employment Counsel, PC. .

4 18. “Settlement Administrator” means Phoenix Class Action Administration Solutions.

5 **II RECITALS**

6 1. On September 1, 2020, Plaintiff Hailey Popovich filed the Popovich Action. The
7 Complaint in the Popovich Action asserted a single cause of action under PAGA .

8 2. On February 19, 2021, Plaintiff Jessica Gonzalez filed the Gonzalez Action. As
9 with Plaintiff Popovich, Plaintiff Gonzalez’s complaint asserted a single cause of action under
10 PAGA

11 3. On December 7, 2020, Plaintiffs Acevedo and Jackson filed the Acevedo/Jackson
12 Action. The Complaint in the Acevedo/Jackson Action also asserted a single cause of action
13 under PAGA.

14 4. In the Actions, Plaintiffs allege that Defendant’s policies and practices resulted in
15 Defendant’s failure to provide Plaintiffs and the Aggrieved Employees with compliant wage
16 statements and meal and rest periods, as well as a derivative claim for failure to pay final wages.
17 Plaintiffs allege that this underlying conduct gives rise to a claim pursuant to Labor Code §2699,
18 *et seq.*

19 5. On October 1, 2020, April 15, 2021 and, February 3, 2021, Defendant filed
20 Answers in the Popovich Action, the Gonzalez Action, and the Acevedo/Jackson Action,
21 respectively;

22 6. On March 26, 2021, Defendant filed a Notice of Related Claim, relating the
23 Actions;

24 7. On October 25, 2021, the parties and counsel in the Popovich Action and in the
25 Gonzalez Action conducted an all-day mediation in front of the well-respected mediator, Lisa
26 Klerman, Esq.;

27 8. Prior to the mediation, the Parties engaged in an investigation and an informal
28 exchange of information to understand the nature of the allegations and the scope of potential
liability and engaged in discussions in an effort to resolve the PAGA Action. Defendant provided

1 Plaintiffs' Counsel with documents and data points related to their PAGA claims pursuant to the
2 mediation privilege;

3 9. The mediation concluded without a settlement, but the Parties and the Mediator
4 continued to engage with one another over the period of several months of hard-fought
5 negotiations;

6 10. The Actions settled subsequently after all sides agreed to a Mediator's proposal
7 which was memorialized in the form of a Memorandum of Understanding ("MOU").

8 11. Defendant denies all of the allegations made by Plaintiffs in the Actions and denies
9 that it is liable or owes damages or other compensation or remedies to anyone with respect to the
10 Actions. Defendant denies any liability or wrongdoing of any kind associated with the claims
11 alleged in the Actions and further denies that the Actions are appropriate for representative
12 treatment for any purpose other than settling the Actions. Defendant contends, among other
13 things, that it has complied at all times with the California Labor Code, the related California
14 Wage Orders, and the California Business & Professions Code, all other state and federal wage
15 laws, and further contends that all of its respective employees were and are paid properly and that
16 the Actions are without merit;

17 12. The Parties recognize that the issues presented in the Actions are likely only to be
18 resolved with extensive and costly pretrial and trial proceedings, and that further litigation will
19 cause inconvenience, distraction, disruption, delay and expense disproportionate to the potential
20 benefits of litigation. The Parties have taken into account the risk and uncertainty of the outcome
21 inherent in any litigation.

22 13. Plaintiff and PAGA Counsel have diligently pursued an investigation of the
23 Aggrieved Employees' claims against Defendant.

24 14. Based on their own independent investigations and evaluations, the Parties and
25 their respective counsel are of the opinion that the settlement for the consideration and on the
26 terms set forth in this Settlement Agreement is fair, reasonable adequate, and is in the best
27 interests of Plaintiffs, the Aggrieved Employees, and Defendant in light of all known facts and
28 circumstances and the risks inherent in litigation, including the potential appellate issues. Further,
PAGA Counsel believes that the settlement amount entered into is in the best interests of the

1 Aggrieved Employees and that the settlement for each Aggrieved Employee is fair, reasonable,
2 and adequate given the inherent risk of litigation.

3 15. The purpose of this Settlement Agreement is to settle and compromise the Actions,
4 all Covered Claims by Plaintiffs and the Aggrieved Employees that Plaintiffs and the Aggrieved
5 Employees have against Defendant and the Releasees (as defined below). Without admitting or
6 conceding any liability or damages whatsoever, the Parties have agreed to fully and finally
7 resolve the Action pursuant to the terms and conditions of this Settlement Agreement.

8 **III OPERATIVE TERMS OF SETTLEMENT AGREEMENT**

9 The Parties agree as follows:

10 1. Non-Admission. Defendant contends that it has complied with all federal, state, and
11 local laws that Plaintiffs allege were violated. Defendant has denied, and continues to deny, each
12 of the claims and contentions alleged in the Actions. Defendant has asserted and continues to
13 assert defenses to claims in the Actions, and has expressly denied and continues to deny any
14 wrongdoing or liability arising out of any of the facts or conduct alleged in the Actions. Neither
15 this Settlement Agreement, nor any action taken to carry out the terms of this Settlement
16 Agreement, shall ever be construed as, offered, admitted, received, or deemed to be evidence in
17 any civil, criminal, administrative, or other proceeding against Defendant, or may be used as an
18 admission, concession, or indication by or against Defendant of any fault, wrongdoing, or liability
19 whatsoever. Nothing in this Settlement Agreement shall be construed to be an admission by
20 Defendant of any liability or wrongdoing as to Plaintiffs, the Aggrieved Employees, or any other
21 person, or entity, including the State of California. Defendant specifically disclaims any such
22 liability or wrongdoing. The Parties have entered into this Settlement Agreement with the
23 intention to avoid further disputes and litigation with the attendant inconvenience, expenses, and
24 risks. This Settlement Agreement and any related court documents or orders are not and may not
25 be cited or admitted as evidence of liability. Neither this Settlement Agreement nor any of its
26 terms shall be offered or used as evidence by any of the Parties, or any of the Aggrieved
27 Employees, in the Actions or in any other action or proceeding; provided, however, this shall not
28 prevent this Settlement Agreement from being used, offered, or received in evidence in any
proceeding to enforce, construe, or finalize this Settlement Agreement.

1 2. Qualified Stipulation to Representative Treatment. The Parties stipulate to
2 representative treatment for purposes of settlement only. Defendant contends that the facts do not
3 justify representative treatment and would contest that matter in the Actions but for the Settlement
4 Agreement. The trial court has not ruled on manageability in the underlying litigation. This is not
5 intended to be, and it should not be construed as, any admission of fact or law in this matter or
6 any other matter that representative treatment is appropriate. If the Court does not grant approval
7 of this settlement, then the Parties revert to their previous positions and Defendant will not
8 stipulate to representative treatment.

9 3. Timing of Payment.

10 a. Within fifteen (15) days after the Effective Date of this settlement, Defendant shall
11 deposit One Hundred Twenty Thousand Dollars and Zero Cents (\$120,000.00) as 50% of
12 the Gross Settlement Amount in a Qualified Settlement Fund (“QSF”) established by the
13 Settlement Administrator (“Initial Funding Date”)

14 b. Within one hundred eighty (180) days after the Initial Funding Date, Defendant
15 shall deposit One Hundred Twenty Thousand Dollars and Zero Cents (\$120,000.00) as
16 50% of the Gross Settlement Amount in a QSF established by the Settlement
17 Administrator (“Final Funding Date”)

18 c. Within thirty (30) days after the Effective Date of this settlement, Defendant shall
19 provide the Settlement Administrator with a list of all Aggrieved Employees including
20 each Aggrieved Employee’s full name; last known address; Social Security number; and
21 data on the total number of pay periods attributable to each of the Aggrieved Employees
22 during the PAGA Period. Based upon this data, the Settlement Administrator will
23 determine, and thereafter inform Defendant and Plaintiffs of, the Individual PAGA
24 Payments it will pay each of the Aggrieved Employees. The information provided by
25 Defendant to the Settlement Administrator is considered by the Parties to be confidential
26 information and will not be shared with Plaintiffs or Plaintiffs’ Counsel. If the thirtieth day
27 falls on a Saturday, Sunday, or holiday, the corresponding deadline will be the following
28 business day.

1 4. Distribution of Individual PAGA Payments. The Individual PAGA Payments are
2 to be apportioned by the Settlement Administrator based on the number of pay periods attributed
3 to each Aggrieved Employee during the PAGA Period divided by the total number of pay periods
4 attributed to all Aggrieved Employees during the PAGA Period. The Settlement Administrator
5 shall determine the Individual PAGA Payments to each of the Aggrieved Employees based on the
6 data provided to it by Defendant. Defendant shall have no additional obligations to search or
7 review any records to determine the number of Aggrieved Employees or pay periods. No
8 Aggrieved Employee shall have the right to object to, or contest, the calculation of his/her/their
9 Individual PAGA Payment.

10 5. Payments From the Gross Settlement Amount. The Parties agree to the following
11 allocations to be paid from the Gross Settlement Amount:

12 a. PAGA Payment: The PAGA Payment is the total of the Gross Settlement
13 Amount, less the Attorneys' Fees, Attorneys' Expenses, PAGA Representative Enhancement
14 Awards, and the Administration Costs, as approved by the Court. The PAGA Payment will be
15 subject to Court approval consistent with Labor Code section 2699. Upon approval, the PAGA
Payment shall be distributed as follows:

- 16 (1) 75% of the PAGA payment being paid to the LWDA; and
17 (2) 25% of the PAGA payment being paid to the Aggrieved Employees per
18 Sections 5 and 6 of the Settlement Agreement.
19 (3) The payments set forth in section 6(a)(2) of this Settlement Agreement
20 will be reported on IRS Form 1099s. The Parties acknowledge and agree
21 that all payments under this Settlement Agreement are for the settlement
22 of contested claims for penalties. Accordingly, the Parties acknowledge
23 and agree that Defendant is not responsible for any employer-side taxes
24 in connection with any payments under this Settlement Agreement.
25 Plaintiffs and Plaintiffs' Counsel will each provide Defendant with a
26 completed W-9 form before the payments set forth in section 4(a)(2) of
27 this Settlement Agreement are made.
28

1 b. Attorneys' Fees and Attorneys' Expenses: Plaintiffs' Counsel shall request
2 that the Court approve an award of Attorney's Fees in an amount not to exceed one-third
3 (currently \$80,000) of the Gross Settlement Amount (currently \$240,000.00) pursuant to
4 Declarations by Plaintiffs' Counsel in connection with the prosecution of this Action.

5 A Joint Prosecution and Attorney Fee Split Agreement ("Agreement") was entered into
6 effective March 28, 2022 (the "Effective Date"), and sets forth the terms of the co-counsel
7 relationship by and among Blumenthal Nordrehaug Bhowmik De Blouw LLP ("Blumenthal"),
8 Castle Law: California Employment Counsel, PC ("Castle Law"), and Potter Handy LLP ("PH")
9 (together, "Attorneys"), in connection with litigation of the representative action lawsuits entitled
10 *Acevedo, et al. v. Russell Cellular, Inc., et al.*, Tulare Superior Court Case No. VCU285275;
11 *Popovich v. Russell Cellular, Inc.*, Fresno Superior Court Case No. 20CECG02552; and *Gonzalez*
12 *v. Russell Cellular, Inc.*, Fresno Superior Court Case No. 21CECG00491 ("the Actions").

13 Attorneys shall divide any fee award resulting from the litigation and settlement of the
14 Actions, including any multiplier (i.e., premium above the lodestar), as follows: 37.5% to
15 Blumenthal, 37.5% to Castle Law, and 25% to PH regardless of lodestar.

16 Therefore, Plaintiffs' Counsel shall also request up to \$14,250.00 in Attorneys' Expenses.
17 Blumenthal firm's costs are \$7,800; Castle Law firm's costs are \$4,575.35; and PH firm's costs
18 are \$1,874.64. The Attorneys' Fees and Attorneys' Expenses requests shall be subject to the
19 Court's review and approval. Defendant agrees that it will not oppose Plaintiffs' request for
20 Attorneys' Fees or Attorneys' Expenses in the amounts above. In the event that the Court
21 approves a payment of less than one-third of the Gross Settlement Amount in Attorneys' Fees,
22 and/or less than \$14,250.00 in Attorneys' Expenses, to Plaintiffs' Counsel, the unawarded
23 difference will be added to the PAGA Payment. Payment of Attorneys' Fees and Attorneys'
24 Expenses will be reported on an IRS Form 1099 issued to Plaintiffs' Counsel. Except as set forth
25 in this Settlement Agreement, each party shall bear their own costs and fees of this Action. The
26 payment of Attorneys' Fees and Attorneys' Expenses shall be made by the Settlement
27 Administrator to Plaintiffs' Counsel. Approval of Attorneys' Fees and/or Attorneys' Expenses by
28 the Court in an amount(s) less than the amount(s) requested is not a material term of this
Settlement Agreement and the award of any Attorneys' Fees and/or Attorneys' Expenses at less

1 than requested by Plaintiffs' Counsel does not give rise to a basis to abrogate this Settlement
2 Agreement. Plaintiffs' Counsel will each provide Defendant with a completed W-9 form before
3 the payment of any Attorneys' Fees and Attorneys' Expenses awarded by the Court is made to
4 Plaintiffs' Counsel.

5 c. Administration Costs: The Settlement Administrator was selected by
6 Plaintiffs and was approved by Defendant. Subject to Court approval, Administration Costs shall
7 include the cost of the Settlement Administrator to administer the settlement in the amount not to
8 exceed \$4,350.00. If payment of less than \$4,350.00 is approved, or if the actual cost to
9 administer the settlement is less than \$4,350.00, the difference will be added to the PAGA
10 Payment. In the event that the Settlement Administrator incurs documented expenses in excess of
11 \$4,350.00, the Settlement Administrator may request that the Court approve payment of those
12 expenses from the Gross Settlement Amount. Approval of Administration Costs by the Court in
13 an amount less than the amounts requested is not a material term of this Settlement Agreement
14 and the award of an amount less than requested does not give rise to a basis to abrogate this
15 Settlement Agreement. The amount of Administration Expenses requested for allocation from the
16 Settlement Payment shall not exceed \$4,350.00, based upon the bid submitted by the Settlement
17 Administrator to administrate the settlement. Except as otherwise provided herein, if the Court
18 does not grant approval of the settlement, PAGA Counsel and Defendants shall each pay one-half
19 of any Administration Expenses incurred.

20 6. PAGA Released Claims. Upon the final approval by the Court of this Settlement,
21 each Aggrieved Employee (including Plaintiffs), on behalf of themselves, the State of California,
22 and the LWDA, and in consideration of the PAGA Payment, will fully release and discharge
23 Released Parties from all claims for civil penalties under PAGA, California Labor Code sections
24 2698, *et seq.*, that were alleged in the Actions, as to the Aggrieved Employees, including without
25 limitation, California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 351, 512, 558, 1174,
26 1194, 1197, 1197.1 1198, 2802, California Code of Regulation, Title 8, Section 11040, and
27 Industrial Welfare Commission Wage Orders No. 4-2001 and No. 7-2001 and including all claims
28 for civil penalties under PAGA related to alleged meal periods and meal period premiums, rest

1 periods and rest period premiums, wage statements, and business expense reimbursement,
2 interest, attorneys' fees, costs arising therefrom, that accrued during the PAGA Period.

3 7. Release by Plaintiffs.

4 In addition, Plaintiffs expressly waive the rights provided under California Civil Code
5 Section 1542, which states that:

6 A general release does not extend to claims that the creditor or releasing
7 party does not know or suspect to exist in his or her favor at the time of
8 executing the release and that, if known by him or her, would have
9 materially affected his or her settlement with the debtor or released party.

10 Plaintiffs understand the significance and consequences of a California Civil Code Section
11 1542 waiver, and understand that they hereby waive all claims, known or unknown, suspected or
12 unsuspected against Defendant. Plaintiffs alone shall assume full responsibility for any damages
13 or losses caused by this waiver.

14 Nothing in this Agreement shall be deemed a release or waiver by Plaintiffs of claims
15 Plaintiffs may have against any Released Parties for: (a) unemployment, disability and paid
16 family leave insurance benefits pursuant to the terms of applicable California law; (b) workers'
17 compensation insurance injury or pay benefits pursuant to Division 4 of the California Labor
18 Code, under the terms of any worker's compensation insurance policy or fund of the Plaintiff; and
19 (c) any claims that, under applicable federal, state or local law, are not waivable.

20 8. Covenants and Representations by Plaintiffs and Plaintiffs' Counsel.

- 21 a) Plaintiffs represent and warrant that they have not assigned nor transferred nor purported to
22 assign or transfer to any person or entity, any claim or portion thereof, or interest therein,
23 which is or may be subject to this Settlement Agreement.
- 24 b) The Parties acknowledge that they have read this Settlement Agreement, that they fully
25 understand their rights, privileges and duties under the Settlement Agreement, and enter into
26 this Settlement Agreement freely and voluntarily. The Parties further acknowledge that they
27 have had the opportunity to consult with their attorneys to explain the terms of this
28 Settlement Agreement and the consequences of signing this Settlement Agreement.

9. No Tax Advice or Liability. Except as otherwise stated within this Agreement, all
payments from the Settlement Amount shall be characterized as payments subject to Form 1099

1 reporting. The Parties have had an opportunity to consult with independent tax counsel. The
2 Parties are not giving any tax advice in connection with the settlement or any payments to be
3 made pursuant to this Settlement Agreement. The Parties do not intend anything contained in this
4 Settlement Agreement to constitute legal advice regarding the taxability of any amount paid
5 hereunder, nor shall anything in this Settlement Agreement be relied upon as such. Each recipient
6 of a settlement payment shall be solely and legally responsible for paying all applicable taxes on
7 their respective settlement payments and shall indemnify and hold harmless the Parties from any
8 claim or liability for taxes, penalties, or interest arising as a result of the payments. To the extent
9 that this Settlement Agreement is interpreted to contain or constitute advice regarding any U.S. or
10 Federal tax issue, such advice is not intended or written to be used, and cannot be used, by any
11 person for the purpose of avoiding penalties under the Internal Revenue Code. Defendant is not
12 responsible for any employee tax obligations regarding the allocation of the settlement payments.

13 10. No Publicity. The Parties agree this settlement is confidential, except for purposes
14 of enforcement. Plaintiffs and Plaintiffs' Counsel shall not publicize the settlement on their
15 websites, in advertising/marketing materials or on social media, other than filing documents with
16 the Court. The Parties and their counsel agree that they will not issue any press releases or initiate
17 any contact with the media about the fact, amount, or terms of the settlement. If counsel for any
18 party receives an inquiry about the settlement from the media, counsel may respond only after the
19 motion for approval of the settlement has been filed and only by confirming the accurate terms of
20 the settlement. Nothing in this provision shall prevent Defendant or Released Parties from making
21 any required disclosure.

22 11. Court Approval of the PAGA Payment. Plaintiffs will prepare a Motion
23 Requesting Approval of PAGA Settlement with the proposed Judgment ("Approval Motion")
24 within sixty (60) days after complete execution of this Settlement Agreement unless otherwise
25 agreed upon by the Parties, and will provide Defendant with at least five (5) business days to
26 review this Approval Motion before it is filed. Plaintiffs will be responsible for submitting the
27 Parties' long-form settlement agreement and the motion for settlement approval to the LWDA
28 consistent with PAGA. The Parties shall jointly agree on the filing date for the Approval Motion.
The Parties further agree to fully cooperate in the drafting and/or filing of any further documents

1 reasonably necessary to be prepared or filed and shall take all steps that may be requested by the
2 Court pertaining to the approval and implementation of the Settlement. Plaintiffs shall be
3 responsible for submitting a copy of the Court's judgment in any civil action filed pursuant to
4 PAGA, and any other order in the Actions that either provides for or denies an award of civil
5 penalties under PAGA, to the LWDA within ten (10) business days after entry of the judgment or
6 order.

7 12. Court Approval of the PAGA Settlement. The Settlement Agreement is contingent
8 upon the approval by the Court. If the Court should fail to approve this Settlement Agreement in
9 the form agreed to by the Parties, the Parties agree to coordinate efforts to address the Court's
10 questions or concerns. If, after a good faith attempt to address the Court's questions or comments,
11 the Court does not make a final determination to approve this Settlement Agreement, or if
12 appellate review is sought and on such review the Court's decision is materially modified or
13 reversed, or if one or more of the material terms of the Settlement Agreement are not approved or
14 is materially modified or reversed or found to be invalid and the Parties in good faith do not
15 believe that it would be possible to make non-material modifications that would address any
16 concerns raised by the Court, then each of the Parties by and through Counsel shall have the right
17 within ten (10) business days of written notice thereof to elect to terminate the Settlement
18 Agreement, in which event it shall have no force or effect, and the Parties shall be deemed to have
19 reverted to their respective status as of the date and time immediately prior to the execution of this
20 Settlement Agreement. Any change in the amount of Attorneys' Fees, Attorneys' Expenses, or
21 Settlement Administration Costs shall not be material terms that allow either party to seek to void
the Settlement Agreement.

22 **IV ADMINISTRATION OF SETTLEMENT**

23 1. After the execution of this Settlement Agreement, Plaintiffs shall file the Approval
24 Motion and will submit this Settlement Agreement to the LWDA consistent with Labor Code
25 section 2699(l)(2).

26 2. Settlement Administrator will administer the settlement and, subject to Court
27 approval, shall be paid for Administration Costs, which are estimated to be no more than
28 \$4,350.00. Defendant will provide the necessary information about the Aggrieved Employees to

1 the Settlement Administrator consistent with Section III, paragraphs 4 and 5, of this Settlement
2 Agreement.

3 3. The Settlement Administrator will report payment of the Individual PAGA
4 Payments to all required taxing and other authorities, and issue Internal Revenue Service Forms
5 1099s. The Settlement Administrator will establish a QSF, pursuant to Section 468B(g) of the
6 Internal Revenue Service, for the purposes of administering the Settlement.

7 4. Within fifteen (15) business days of the Final Funding Date, the Settlement
8 Administrator will issue to each Aggrieved Employee a check for his/her/their Individual PAGA
9 Payment at his/her/their last known home address along with an explanatory letter, attached as
10 Exhibit A. Nothing herein shall prohibit the Settlement Administrator from paying the Attorneys'
11 Fees and Attorneys' Expenses and/or PAGA Representative Enhancement Awards earlier than
12 fifteen (15) business days following the Final Funding Date. Checks will remain negotiable for
13 180 days. Any checks returned as non-deliverable on or before the check cashing deadline will be
14 sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no
15 forwarding address is provided, for those settlement checks returned as undeliverable and those
16 settlement checks remaining un-cashed for more than 180 days after issuance, the Settlement
17 Administrator shall escheat those checks to the State Controller's Office, Unclaimed Property
18 Division, in the name of the absent employee.

19 5. Within fifteen (15) business days of the Final Funding Date, the Settlement
20 Administrator will pay the amount allocated to the LWDA, Attorneys' Fees, Attorneys' Expenses,
21 PAGA Representative Enhancement Awards, and Administration Costs as approved by the Court
22 from the Gross Settlement Amount.

23 6. The Settlement Administrator will provide an accounting, by means of a
24 declaration under oath, to the parties of the amounts paid out. This declaration, which will also
25 include the amount of un-cashed checks, and undeliverable funds, will be provided to the Court
26 once the 180 days set forth in Section IV, paragraph 4, of this Settlement Agreement expires.

27 7. Defendant makes no representations or warranties with respect to tax
28 consequences of any payment under this Settlement Agreement.

1 **V MISCELLANEOUS PROVISIONS**

2 1. Drafting. The Parties agree that the terms and conditions of this Settlement
3 Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and
4 that neither Party shall be considered the "drafter" of this Settlement Agreement for purposes of
5 having terms construed against that Party.

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

20 3. Successors. This Settlement Agreement shall be binding upon and inure to the
21 benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
22 successors, and assigns.

23 4. Costs and Fees. The Parties shall each bear their own costs, attorneys' fees, and
24 other fees incurred in connection with this Settlement Agreement and in connection with the
25 Actions and Plaintiffs' claims, except as otherwise set forth specifically herein.

26 5. Authority. Defendant represents and warrants that the undersigned has the
27 authority to act on behalf of Defendant and bind Defendant to the terms of this Settlement
28 Agreement. Plaintiffs represent and warrant that they have the capacity to act on their own behalf
and on behalf of the State of California (as private attorneys general under PAGA for the

1 purposes of this Action) and all who might claim through them to bind them to the terms of this
2 Settlement Agreement.

3 6. Governing Law. All terms and conditions of this Settlement Agreement will be
4 governed by and interpreted according to the laws of the State of California. If any legal or
5 equitable action is necessary to enforce the terms of this Settlement Agreement, it shall be
6 brought in the Superior Court of California, County of Fresno.

7 7. Complete Agreement. The Parties acknowledge and represent that upon full
8 execution, except as otherwise stated herein, this Settlement Agreement contains the entire
9 understanding between them with respect to the subject matter hereof and supersedes all prior and
10 contemporaneous agreements and understandings between them, written and oral, with respect to
11 the subject matter hereof. This Settlement Agreement cannot be amended or modified except by a
12 writing signed by the Parties hereto or their successors-in-interest.

13 8. Disputes. Any dispute between the parties as to the remaining terms of the
14 Settlement Agreement may be presented to the mediator, Lisa Klerman, for resolution. The
15 Parties will split the costs of the mediator and all Parties will bear their own attorneys' fees and
16 other costs incurred.

17 9. Continued Jurisdiction. The Court shall retain continuing jurisdiction over the
18 Actions to ensure the continuing implementation of the provisions of the Settlement Agreement.
19 The Parties agree to adopt and apply Rule 3.769(h) of the California Rules of Court requiring
20 entry of judgment.

21 10. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant
22 and represent they are expressly authorized by the Parties whom they represent to negotiate this
23 Settlement Agreement and to take all appropriate action required or permitted to be taken by such
24 Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other
25 documents required to effectuate the terms of this Settlement Agreement. The Parties and their
26 Counsel will cooperate with each other and use their best efforts to effect the implementation of
27 the settlement of the PAGA Action. If the Parties are unable to reach agreement on the form or
28 content of any document needed to implement the settlement of the PAGA Action, or on any
supplemental provisions that may become necessary to effectuate the terms of this Settlement

1 Agreement, the Parties may seek the assistance of the mediator, Lisa Klerman, to resolve such
2 disagreement.

3 11. Execution and Counterparts. This Settlement Agreement may be executed in one
4 or more counterparts by facsimile, electronic signature, or email which for purposes of this
5 Settlement Agreement shall be accepted as an original. All executed counterparts and each of
6 them will be deemed to be one and the same instrument. Any executed counterpart will be
7 admissible in evidence to prove the existence and contents of this Settlement Agreement. The
8 Parties agree the litigation will be stayed for all purposes upon signing, including with respect to
9 California Code of Civil Procedure section 583.310, except such proceedings necessary to
10 implement and complete the settlement, pending the hearing on the Approval Motion to be
11 conducted by the Court.

12 12. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe
13 this Settlement Agreement is a fair, adequate, and reasonable settlement of the Actions and have
14 arrived at this Settlement Agreement after arm's-length negotiations by experienced counsel. The
15 Parties further acknowledge that they are each represented by competent counsel and that they
16 have had an opportunity to consult with their counsel regarding the fairness and reasonableness of
17 this Settlement Agreement.

18 13. Waiver. No waiver of any condition or covenant contained in this Settlement
19 Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered
20 to imply or constitute a further waiver by such party of the same or any other condition, covenant,
21 right or remedy.

22 14. Severability. If any term or provision of this Settlement Agreement is held to be
23 invalid or unenforceable, the remaining portions of this Settlement Agreement will continue to be
24 valid and will be performed, construed, and enforced to the fullest extent permitted by law, and
25 the invalid or unenforceable term will be deemed amended and limited in accordance with the
26 intent of the Parties, as determined from the face of the Settlement Agreement, to the extent
27 necessary to permit the maximum enforceability or validation of the term or provision.
28

1 15. Cooperation and Execution of Necessary Documents. All Parties will cooperate in
2 good faith and execute all documents to the extent reasonably necessary to effectuate the terms of
3 this Settlement Agreement and receive approval from the Court.

4 16. Binding Agreement. This Settlement Agreement shall be binding on the Parties
5 upon signature from one of Plaintiffs' Counsel listed below and the Plaintiffs and upon signature
6 by a representative of Defendant who has authority to bind Defendant to this Agreement and
7 counsel for Defendant. This Settlement Agreement is binding only if executed by the above
8 identified representatives of both Parties. Counterpart facsimile or emailed copies of the signature
9 will have the same force and effect as an original signature. This is a binding Settlement
10 Agreement (and can be filed with the Court by either Party and enforced by either Party) with any
11 disputes between the Parties as to the terms of the Settlement Agreement to be resolved by a
12 magistrate judge, judge, or other person mutually agreed upon by the Parties and designated as
13 such herein, with any gaps or missing terms to be resolved by that person if the Parties cannot
14 agree, the resolution of which shall be final and binding on the Parties, subject to Court approval.

15 17. Waiver of Right to Appeal. Provided that the Judgment is consistent with the terms
16 and conditions of the Settlement Agreement, Plaintiff, Aggrieved Employees, the State of
17 California, and Defendant and the Released Parties, hereby waive any and all rights to appeal in
18 connection with any issue in the Judgment (separate from the right to appeal the award of
19 Attorneys' Fees, and Attorneys' Expenses, as provided in this Agreement).

20 18. Judgment To Be Entered On The PAGA Action. Any final approval order or
21 judgment pursuant to this Settlement Agreement shall result in a dismissal with prejudice of the
22 Action.

23 **IN WITNESS THEREOF,** the Parties each acknowledge that they have read the
24 foregoing Settlement Agreement, accept and agree to the provisions contained in this Settlement
25 Agreement and hereby execute it voluntarily and with full understanding of its consequences.

26 Dated: Mar 10, 2023

Dated: _____

27 
Hailey Popovich (Mar 10, 2023 14:30 PST)

28 Hailey Popovich

Jessica Gonzalez

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2 good faith and execute all documents to the extent reasonably necessary to effectuate the terms of
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24 foregoing Settlement Agreement, accept and agree to the provisions contained in this Settlement
25 Agreement and hereby execute it voluntarily and with full understanding of its consequences.

26 Dated: _____

Dated: Mar 10, 2023

27 _____
28 Hailey Popovich



Jessica Gonzalez (Mar 10, 2023 10:04 PST)

1 Dated: 04/17/2023

Dated: 04/17/2023

2 Chardai Jackson

Marco Acevedo

3 1153853D53C97AAE98359A34E4EFA3B5

readyesign

A222574D9B6B3A46F6198FFFE03EDD00

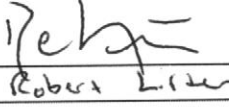
readyesign

4 Chardai Jackson

Marco Acevedo

5 Dated: 4.25.23

6 RUSSELL CELLULAR, INC.

7
8 By: 

9 Its: CFO

10 APPROVED AS TO FORM AND CONTENT:

11 Dated: _____

Dated: _____

12 CASTLE LAW

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

14
15 By: _____

Tim Del Castillo
For Plaintiff Popovich and the
Aggrieved Employees

By: _____

Christine LeVu
Nicholas De Blouw
For Plaintiff Gonzalez and the
Aggrieved Employees

18
19 Dated: 04/17/2023

Dated: 04/25/2023

20 POTTER HANDY LLP

FREEMAN MATHIS & GARY, LLP

21
22 By: 

James M. Treglio
For Plaintiffs Jackson and Acevedo
and the Aggrieved Employees

By: 

Julie A. Marquis
Alec D. Tyra
For Defendant Russell Cellular, Inc.

1 Dated: _____

Dated: _____

4 Chardai Jackson

Marco Acevedo

5 Dated: _____

6 RUSSELL CELLULAR, INC.

8 By: _____
9 Its: _____

10 APPROVED AS TO FORM AND CONTENT:

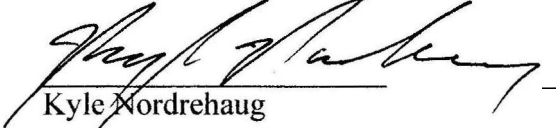
11 Dated: 3/10/2023

Dated: 3/10/23

12 CASTLE LAW

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

15 By: 
Tim Del Castillo
For Plaintiff Popovich and the
Aggrieved Employees

By: 
Kyle Nordrehaug
Nicholas De Blouw
For Plaintiff Gonzalez and the
Aggrieved Employees

19 Dated: _____

Dated: _____

20 POTTER HANDY LLP

FREEMAN MATHIS & GARY, LLP

22 By: _____
James M. Treglio
For Plaintiffs Jackson and Acevedo
and the Aggrieved Employees

By: _____
Julie A. Marquis
Alec D. Tyra
For Defendant Russell Cellular, Inc.