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Superior Court of California
County of Fresno
By: Jessica Leal, Deputy

10
11 **SUPERIOR COURT OF CALIFORNIA**
12 **FOR THE COUNTY OF FRESNO**

13 HAILEY POPOVICH, as an aggrieved
14 employee pursuant to the Private
15 Attorneys General Act (PAGA),

16 Plaintiff,

17
18 vs.

19 RUSSELL CELLULAR, INC.; and DOES
20 1 to 20, inclusive,

21 Defendants
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23
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Case No. [20CECG02552](#)

COMPLAINT FOR DAMAGES

1. **Civil Penalties Pursuant to Private
Attorney General Act, Labor Code §
2698 *et seq.***

1 Plaintiff HAILEY POPOVICH (“Plaintiff”) hereby files this Representative PAGA
2 Complaint against Defendant RUSSELL CELLULAR, INC.; and DOES 1 to 20, inclusive,
3 (hereinafter collectively referred to as “Defendants”). Plaintiff alleges the following:

4 **PARTIES AND JURISDICTION**

5 1. This is an enforcement action under the Labor Code Private Attorneys General Act of
6 2004 (“PAGA”), California Labor Code section 2698, *et seq.* to recover civil penalties and any other
7 available relief on behalf of Plaintiff, the State of California, and other current and former employees
8 who worked for Defendants in California and who suffered at least one violation of the Labor Code
9 as set forth in this complaint, at any time between June 25, 2019 and judgement.

10 2. Plaintiff HAILEY POPOVICH is an individual over the age of eighteen (18) and is now
11 and/or at all times mentioned in this Complaint was a resident of the State of California.

12 3. Plaintiff is informed and believes, and thereon alleges, that Defendant RUSSELL
13 CELLULAR, INC. is a Missouri Corporation licensed to and actually doing business in California.
14 Defendant RUSSELL CELLULAR, INC. is a company that owns and operates retail sales locations
15 of cellular services and related equipment in California and other states.

16 4. Plaintiff is further informed and believes, and thereon alleges, that each of the Defendants
17 herein was, at all times relevant to this action, the agent, employee, or joint employer or joint
18 venturer of the remaining defendants and was acting within the course and scope of that relationship.
19 Plaintiff is further informed and believes, and thereon alleges, that each of the Defendants herein
20 gave consent to, ratified and authorized the acts alleged herein to each of the remaining defendants.
21 The true names and capacities of the defendants named herein Does 1 through 20, inclusive, whether
22 individual, corporate, associate, or otherwise are unknown to Plaintiff, who therefore sues such
23 defendants by fictitious names pursuant to California Code of Civil Procedure section 474. Plaintiff
24 will amend this complaint to show such true names and capacities of Does 1 through 20, inclusive,
25 when they have been determined.

26 5. The Fresno County Superior Court has jurisdiction in this matter under the California
27 Constitution, Article VI, section 10. The statute under which this action is brought does not specify
28 any other basis for jurisdiction.

1 6. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that some of
2 the wrongful acts and violations of law asserted herein occurred within Fresno County.

3 7. On June 25, 2020, Plaintiff filed her Labor Code § 2699.3 Private Attorney General Act
4 (“PAGA”) notice with the California Labor & Workforce Development Agency (“LWDA”). The
5 LWDA did not respond to Plaintiff’s PAGA notice within 65 days, thus deputizing Plaintiff to
6 represent herself, other aggrieved employees, and the California Labor Commissioner for the
7 purpose of collecting civil penalties for violations of the California Labor Code committed by
8 Defendants.

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10 **FACTS COMMON TO ALL CAUSES OF ACTION**

11 8. Claimant worked for Defendants from approximately October 7, 2019 until
12 approximately April 24, 2020 in one of their retail locations in California. Claimant was a non-
13 exempt employee, paid hourly plus commissions. During her employment, Claimant, and other
14 aggrieved employees, were made to suffer numerous violations of the California Labor Code.

15 9. Defendant did not allow Claimant and similarly situated employees to take their
16 statutorily required meal and rest periods. Claimant and similarly situated employees regularly
17 missed their meal and rest periods and/ or they were provided late. Defendant failed to provide
18 Claimant and other similarly situated employees a 30-minute, duty-free meal period before the end
19 of the fifth hour of work as required under the law.

20 10. Defendant also failed to provide rest periods to Claimant and similarly situated
21 employees for every 4 hours worked or major fraction thereof. Defendant’s management staff were
22 aware this was occurring and did not ensure meal and/ or rest periods were provided to Claimant and
23 similarly situated employees in compliance with California law.

24 11. Defendant required Claimant and similarly situated employees to use their personal cell
25 phone during work and to complete required work tasks. Many work tasks required by Defendant
26 involve the use of Defendant’s information systems, and Claimant and similarly situated employees
27 were required to download and use an app on their phones in order to complete required work tasks.
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1 Defendant did not reimburse Claimant and similarly situated employees for this required use of their
2 personal cell phone for business purposes.

3 12. Defendant also did not provide Claimant and similarly aggrieved employees all wages
4 owed upon their termination or within seventy-two (72) hours of their separation from employment,
5 including but not limited to, all unpaid meal and rest period penalties.

6 13. As a result, Defendant did not provide Claimant and similarly situated employees legally
7 compliant wage statements noting, among other things, total hours worked, gross wages earned, the
8 applicable hourly rates in effect during the pay period and the corresponding number of hours
9 worked at each hourly rate.

10 14. Plaintiff is informed and believes that Defendants have committed numerous other
11 violations of the California Labor Code.

12 15. Upon information and belief, all transactions regarding hiring, terminations, promotions,
13 pay increases, etc. relating to Defendant's California employees were submitted to and processed by
14 Defendant's HR departments in its corporate headquarters. Additionally, on information and belief,
15 Defendant's corporate records, in particular HR and pay records pertaining to Defendant's California
16 employees, are also maintained at Defendant's corporate headquarters.

17 16. Upon information and belief, Defendant maintains a central Payroll department at its
18 corporate headquarters which process payroll for all Defendant's employees, including Plaintiff and
19 similarly situated, aggrieved employees.

20 17. Plaintiff is informed and believes, and thereon alleges, that Defendant knew or should
21 have known that its aggrieved employees were entitled to meal and rest break periods,
22 reimbursement of expenses, and timely payment of all wages earned upon termination of
23 employment.

24 18. At all times herein set forth, PAGA provides that any provision of law under the Labor
25 Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and collected
26 by the LWDA for violations of the California Labor Code and applicable IWC Wage Order may, as
27 an alternative, be recovered by aggrieved employees in a civil action brought on behalf of
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1 themselves and other current or former employees pursuant to procedures outlined in California
2 Labor Code section 2699.3.

3 19. PAGA defines an aggrieved employee in Labor Code section 2699(c) as “any person who
4 was employed by the alleged violator and against whom one or more of the alleged violations was
5 committed.”

6 20. Plaintiff and other current and former employees of Defendant are aggrieved employees
7 as defined by the Labor Code in that they are all Defendant’s current or former employees and one
8 or more of the alleged violations was committed against them.

9 21. Plaintiff brings this cause of action as a proxy for the State of California and in this
10 capacity, seeks penalties on behalf of all Aggrieved Employees for Defendants’ violations of the
11 California Labor Code, including but not necessarily limited to, those Labor Code and Wage Order
12 violations identified above.

13 22. On or about June 25, 2020, Plaintiff, through counsel, sent written notice to the LWDA
14 regarding Defendant’s violations of the California Labor Code, pursuant to Labor Code section
15 2698, et seq., PAGA. As of the date of the filing of this Complaint, the LWDA has not informed
16 Plaintiff whether the LWDA intends to investigate Plaintiff’s PAGA claims. As such, Plaintiff has
17 exhausted her administrative remedies under PAGA and may proceed in this Court.

18 23. Plaintiff is thus entitled to recover civil penalties on behalf of the State of California and
19 all aggrieved employees for all violations of the Labor Code from June 25, 2019, through trial on
20 this matter.

21 24. Pursuant to *Huff v. Securitas Sec. Servs. USA, Inc.*, 23 Cal. App. 5th 745, 761, 233 Cal.
22 Rptr. 3d 502, 513 (2018), Plaintiff seeks civil penalties on behalf of the State of California and all
23 aggrieved employees for all violations of the California Labor Code, whether she experienced them
24 personally or not.

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FIRST CAUSE OF ACTION
CIVIL PENALTIES PURSUANT TO PAGA § 2698 ET SEQ.

25. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 24 as though fully set forth herein.

26. Plaintiff brings this cause of action as a proxy for the State of California and in this capacity, seeks penalties on behalf of all Aggrieved Employees for Defendants' violations of the California Labor Code, including but not necessarily limited to, those Labor Code and Wage Order violations identified above.

27. On or about June 25, 2020, Plaintiff, through counsel, sent written notice to the LWDA regarding Defendant's violations of the California Labor Code, pursuant to Labor Code section 2698, *et seq.*, PAGA. As of the date of the filing of this Complaint, the LWDA has not informed Plaintiff whether the LWDA intends to investigate Plaintiff's PAGA claims. As such, Plaintiff has exhausted her administrative remedies under PAGA and may proceed in this Court.

28. Plaintiff is thus entitled to recover civil penalties on behalf of the State of California and all aggrieved employees for all violations of the Labor Code from June 25, 2019, through trial on this matter.

29. Defendants' conduct, as alleged herein, violated various sections of the California labor Code, including but not limited to, the following:

30. Labor Code section 1174(d) requires employers to keep "payroll records showing the hours worked daily by and the wages paid to . . . employees . . . 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." Defendants did not keep accurate information regarding all hours worked by Plaintiff and similarly situated employees, largely by failing to accurately record all time worked on their time records. This is in violation of the Labor Code.

31. Labor Code section 226 requires employers to furnish to employees with "an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, . . . (3) the number of piece-rate units earned and any applicable piece rate if the

1 employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on
2 written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6)
3 the inclusive dates of the period for which the employee is paid, (7) the name of the employee and
4 only the last four digits of his or her social security number or an employee identification number
5 other than a social security number, (8) the name and address of the legal entity that is the employer .
6 . . and (9) all applicable hourly rates in effect during the pay period and the corresponding number
7 of hours worked at each hourly rate by the employee . . .” For the reasons stated above, Defendants
8 failed to comply with these requirements with respect to Plaintiff and similarly situated employees in
9 violation of the Labor Code.

10 32. Labor Code section 226.7 and IWC Wage Order No. 4-2001, section 11(A) require
11 employers to provide employees meal periods of thirty (30) minutes per five (5) hours worked. For
12 the reasons stated above, Plaintiff and similarly situated employees were not authorized and
13 permitted to take legally compliant meal periods pursuant to California law. Defendants also failed
14 to pay any meal period premiums for its failure to provide meal periods. This is in violation of the
15 Labor Code.

16 33. Labor Code section 226.7 and IWC Wage Order No. 4-2001, section 12(A) require
17 employers to provide employees paid off-duty rest periods of ten (10) minutes per four (4) hours or
18 major fraction thereof worked. For the reasons stated above, Plaintiff and similarly situated
19 employees were not authorized and permitted to take legally compliant rest periods pursuant to
20 California law in violation of the Labor Code. Defendants also failed to pay any rest period
21 premiums for their failure to provide rest periods. This is in violation of the Labor Code.

22 34. Labor Code sections 201–203 require that all wages, including minimum wages and meal
23 and rest period premiums, be paid to employees upon separation and/or termination of employment.
24 Here, for the reasons stated above, Defendants’ employees did not receive all final wages due and
25 owing to them at the time of termination or seventy-two (72) hours thereafter as required by Labor
26 Code sections 201–203. This is in violation of the Labor Code.
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1 35. Labor Code section 2802(a) states that "An employer shall indemnify his or her
2 employee for all necessary expenditures or losses incurred by the employee in direct consequence of
3 the discharge of his or her duties, or of his or her obedience to the directions of the employer, even
4 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
5 unlawful." For the reasons stated above, Defendants failed to pay required reimbursements to
6 Plaintiff and similarly situated employees for required business expenses in violation of the Labor
7 Code.

8 36. Plaintiff is thus entitled to recover civil penalties on behalf of the State of California and
9 all Aggrieved Employees for these violations of the Labor Code from June 25, 2019, through trial on
10 this matter.
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12 **DAMAGES**

13 WHEREFORE, Plaintiff prays for judgment against Defendant as follows:
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- 15 1. For civil penalties under the California Labor Code according to proof allowed by law;
- 16 2. For an award to Plaintiff of costs of suit incurred herein and reasonable attorney's
17 fees;
- 18 3. For an award of prejudgment and post-judgment interest; and
- 19 4. For an award to Plaintiff of such other and further relief as the Court deems just and
20 proper.

21 Dated: September 1, 2020

22 **Castle Law: California Employment Counsel, PC**

23 By: 
24

25 Timothy B. Del Castillo

26 Kent L. Bradbury

27 Attorneys for Plaintiff HAILEY POPOVICH
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