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12 Attorneys for DANIEL TAMEZ, and SEAN ACOSTA, on behalf of themselves and all
13 others similarly situated and aggrieved

14
15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16
17 **IN AND FOR THE COUNTY OF ORANGE**

18 DANIEL TAMEZ and SEAN ACOSTA, on
19 behalf of themselves and all others similarly
20 situated and aggrieved,

21 Plaintiffs,

22 vs.

23 AMERICAN WIRELESS
24 CONSTRUCTION INC., a California
25 corporation; VICTOR ZANONI, an
26 individual; and DOES 1 to 100, inclusive,

27 Defendants.

Case No.: 30-2021-01177089-CU-OE-CXC

**CLASS ACTION AND REPRESENTATIVE
COMPLAINT**

JURY TRIAL DEMANDED

Assigned for All Purposes
Judge William Claster

CX-104

1 Plaintiffs DANIEL TAMEZ and SEAN ACOSTA, on behalf of themselves and all other
2 employees similarly situated and aggrieved, hereby file this Complaint against Defendants
3 AMERICAN WIRELESS CONSTRUCTION INC. and DOES 1 to 100, inclusive (collectively
4 referred to herein as "Defendants"). Plaintiffs are informed and believes, and on the basis of that
5 information and belief, allege as follows:

6 **JURISDICTION AND VENUE**

7 1. Jurisdiction is proper in this court by virtue of the California statutes, decisional
8 law, and regulations, and the local rules under the Orange County Superior Court Rules.

9 2. Venue in this Court is proper in that Defendant AMERICAN WIRELESS
10 CONSTRUCTION INC. has a principal business address located in the County of Orange, State
11 of California.

12 **THE PARTIES**

13 3. Plaintiff DANIEL TAMEZ ("Plaintiff TAMEZ") is, and at relevant times was, an
14 individual domiciled in the State of California and a citizen of the State of California who worked
15 as a non-exempt hourly employee for Defendants in the State of California.

16 4. Plaintiff SEAN ACOSTA ("Plaintiff ACOSTA") is, and at relevant times was, an
17 individual domiciled in the State of California and a citizen of the State of California who worked
18 as a non-exempt hourly employee for Defendants in the State of California.

19 5. Defendant AMERICAN WIRELESS CONSTRUCTION INC. ("AMERICAN
20 WIRELESS CONSTRUCTION") is a California corporation that, at all relevant times, was
21 authorized to do business within the State of California and is doing business in the State of
22 California.

23 6. On information and belief, VICTOR ZANONI is an individual residing in the State
24 of California and is, and at all relevant times has been, the President of AMERICAN WIRELESS
25 CONSTRUCTION INC.. On information and belief, VICTOR ZANONI devised and implemented
26 the policies at issue in this complaint and "caused" these violations as that term is used in Labor
27 Code §§ 558 and 1197.1. Pursuant to Labor Code §§558 and 1197.1, VICTOR ZANONI is liable as
28 a person who "caused" the violations to occur.

7. The true names and capacities of the DOE Defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff, who therefore sues each such Defendants by said fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiffs will seek leave of Court to amend this Complaint to reflect the true names and capacities of the Doe Defendants when such identities become known.

8. Plaintiffs are further informed and believes that, at all relevant times, each Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other Defendants, and was engaged with some or all of the other Defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this complaint. Plaintiffs are further informed and believe and thereon allege that each Defendant acted pursuant to and within the scope of the relationships alleged above, and that at all relevant times, each Defendant knew or should have known about, authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other Defendants.

9. At all relevant times, Defendants were and are legally responsible for all of the unlawful conduct, policies, practices, acts and omissions complained of herein. Further, Defendants are responsible for each of the unlawful acts or omissions complained of herein under the doctrine of respondent superior. The conduct of Defendants' managers and supervisors was at all relevant times undertaken as employees of Defendants, acting within the scope of their employment or authority in all of the unlawful activities described herein.

CLASS ALLEGATIONS

10. Plaintiffs bring this action as a class action under Code of Civil Procedure section 382 on behalf of themselves and all others similarly situated. The class Plaintiffs seek to represent is defined as follows: “All non-exempt employees who were employed by AMERICAN WIRELESS CONSTRUCTION in California, at any time within the four years prior to the filing of the initial complaint.”

a. Numerosity: While the exact number of Class Members is unknown to Plaintiffs

1 at this time, the class is so numerous that the individual joinder of all members is
2 impractical under the circumstances of this case.

3 b. Common Questions of Law and Fact. This lawsuit is suitable for class treatment
4 because common questions of law and fact predominate over individual issues.
5 Common questions include, but are not limited to, the following: (1) whether
6 Defendants provided Plaintiffs and the Class Members with all meal periods or
7 premium payments in lieu thereof in compliance with California law; (2) whether
8 Defendants provided Plaintiffs and the Class Members with all rest periods, or
9 premium payments in lieu thereof, in compliance with California law; (3) whether
10 Defendants failed to pay Plaintiffs and the Class Members all owed minimum
11 wages in compliance with California law; (4) whether Defendants failed to pay
12 Plaintiffs and the Class Members all sick leave time benefits in compliance with
13 California law; (5) whether Defendants failed to pay Plaintiffs and the Class
14 Members all owed overtime wages in compliance with California law; (6)
15 whether Defendants provided Plaintiffs and the Class Members with accurate,
16 itemized wage statements in compliance with California law; (7) whether
17 Defendants compensated Plaintiffs and the Class Members at the proper
18 prevailing wage rate(s); (8) whether Defendants reimbursed Plaintiffs and the
19 Class Members for all reasonable and necessary business expenses; (9) whether
20 Defendants maintained accurate records as to the true start and start times of
21 Plaintiffs and the Class Members' shifts and of all owed meal periods; (10)
22 whether Defendants timely paid Plaintiffs and the Class Members all wages due
23 during employment and upon separation of employment; and (11) whether
24 Defendants violated California Business and Professions Code sections 17200,
25 et seq.

26 c. Ascertainable Class. The proposed class is ascertainable as its members can be
27 identified and located using information in Defendants' business, payroll and
28 personnel records.

- 1 d. Numerosity. The plaintiff class is so numerous that the individual joinder of all
2 members is impractical under the circumstances of this case. While the exact
3 number of Class Members is unknown to Plaintiff, Plaintiff is informed and
4 believes the class consists of at least 100 individuals.
- 5 e. Typicality. Plaintiffs' claims are typical of the claims of the Class Members.
6 Plaintiffs suffered a similar injury as the other Class Members as a result of
7 Defendants' common practices regarding, inter-alia, failure to provide proper
8 meal and rest periods or premium compensation in lieu thereof, failure to provide
9 all owed minimum and overtime wages, failure to compensate all prevailing
10 wages, failure to pay all owed sick pay leave, failure to provide accurate wage
11 statements, failure to reimburse for business expenses, failure to maintain
12 adequate records, and failure to timely pay all wages during employment and
13 upon termination. In addition, Plaintiffs will fairly and adequately protect the
14 interests of the Class Members. Plaintiffs have no interests adverse to the
15 interests of the other Class Members.
- 16 f. Superiority. A class action is superior to other available means for the fair and
17 efficient adjudication of this controversy since individual joinder of all members
18 of the class is impractical. Class action treatment will permit a large number of
19 similarly situated persons to prosecute their common claims in a single forum
20 simultaneously, efficiently, and without the unnecessary duplication of effort and
21 expense that numerous individual actions would engender. Furthermore, as the
22 damages suffered by each individual member of the class may be relatively small,
23 the expenses and burden of individual litigation would make it difficult or
24 impossible for individual members of the class to redress the wrongs done to
25 them, while an important public interest will be served by addressing the matter
26 as a class action. The cost to the court system of adjudication of such
27 individualized litigation would be substantial. Individualized litigation would
28 also present the potential for inconsistent or contradictory judgments. Finally,

1 the alternative of filing a claim with the California Labor Commissioner is not
2 superior, given the lack of discovery in such proceedings, the fact that there are
3 fewer available remedies, and the losing party has the right to a trial de novo in
4 the Superior Court.

5 **FACTUAL ALLEGATIONS**

6 11. During the four-year period preceding filing of this complaint, Plaintiffs and each of the
7 Class Members were employed by Defendants in the State of California as non-exempt workers.
8 Defendants, at all times, exercised control over Plaintiffs and each of the Class Members, and
9 suffered and/or permitted them to work.

10 12. Plaintiff TAMEZ was employed by Defendant AMERICAN WIRELESS
11 CONSTRUCTION as a non-exempt, hourly-paid installer. Plaintiff TAMEZ typically worked
12 sixteen hours per day, five (5) days per week. Plaintiff TAMEZ's job duties included, but were not
13 limited to, those associated with installing government phone lines at Los Angeles City Hall.

14 13. Plaintiff ACOSTA was employed by Defendant AMERICAN WIRELESS as a non-
15 exempt, hourly-paid installer. Plaintiff ACOSTA typically worked twelve to sixteen hours per day,
16 five (5) days per week. Plaintiff ACOSTA's job duties included, but were not limited to, those
17 associated with installing government phone lines at Los Angeles City Hall.

18 14. Plaintiffs regularly worked periods of more than five and ten hours in a workday
19 without being provided mandatory timely, thirty-minute, duty-free meal periods. Upon information
20 and belief, Defendants failed to maintain a company meal period policy compliant with California
21 law. Plaintiffs were forced to take late first meal periods and/or work through their first meal periods
22 or any purported meal periods would be interrupted/cut short due to the pressures of their workloads
23 and commentary from supervisors pressuring Plaintiffs to take improper meal periods or none at all.
24 Nevertheless, Defendants implemented a policy and practice of automatically deducting thirty
25 minutes per shift for these improper/non-existent meal periods, despite having actual and/or
26 constructive knowledge that Plaintiffs did not receive off-duty, uninterrupted meal periods of thirty
27 minutes duration. Moreover, Plaintiffs did not receive second meal periods when working shifts of
28 more than ten (10) hours. Defendants did not execute written on-duty meal period waiver

1 agreements with Plaintiffs. Furthermore, Defendants did not pay a meal period premium for each
2 missed/improper meal period and/or Defendants failed to pay a proper meal period premium for
3 failure incorporate multiple rates of pay into the regular rate of pay for purposes of calculating any
4 owed meal period premium.

5 15. Plaintiffs were unable to take timely, ten (10) minute, off-duty rest periods, due to the
6 pressures of their workloads and commentary from supervisors pressuring Plaintiffs to take shorter
7 rest periods than they were entitled to, or none at all. Defendants had nothing structured with respect
8 to the provision of first and second rest periods, and third rest periods were never provided despite
9 Plaintiffs typically working shifts of more than ten (10) hours. Plaintiffs did not receive premium
10 pay for any of these missed, late, shortened or interrupted rest periods.

11 16. Plaintiffs were regularly required to perform off-the-clock work by virtue of Defendants'
12 above-described automatic-deduction policy for meal periods as well as its rounding policy. Upon
13 information and belief, Defendants used a time- rounding system that as applied worked to
14 detrimentally shave and round time off from Plaintiffs' workdays. Plaintiffs allege on information
15 and belief that through the operation of Defendants' time-rounding system, Plaintiffs would
16 systematically be deprived of compensable time because the time-recording system implemented
17 by Defendants would almost always, if not always, understate actual compensable work time due to
18 the rounding. Upon information and belief, Defendants had actual or constructive knowledge that
19 its rounding policy resulted in underpaying Plaintiffs the wages they were owed. This time-shaving
20 system, implemented by and through Defendants' unlawful rounding policies and procedures,
21 resulted in violations of California's minimum and overtime wage laws.

22 17. Additionally, Defendants failed to pay Plaintiffs at the proper overtime premium wage
23 rate(s) for work performed beyond eight (8) hours in a day and beyond forty hours in a week by
24 failing to utilize the weighted average method to blend multiple rates of pay to properly calculate
25 the owed overtime rate(s). For example, there were pay periods during which Plaintiffs earned
26 overtime and were paid multiple regular pay rates, including, a LA-RICS Labor pay rate, however
27 the overtime rate did not incorporate those multiple rates of pay as required by law.

28 18. Defendants failed to properly accrue and pay sick leave time benefits, resulting in the

1 underpayment of sick leave time benefits. Notably, where an employer compensates an employee
2 with multiple rates of pay (as Defendants did here), any sick leave pay calculation must incorporate
3 these multiple rates of pay. Defendants failed to incorporate these multiple pay rates resulting in an
4 underpayment of sick leave pay to Plaintiffs. Defendants further failed to provide notice of the
5 correct sick leave amount balance left for Plaintiffs, thus affecting the intelligent exercise of their
6 paid sick leave benefits. But for this failure, Plaintiffs would have used their paid sick leave at least
7 prior to their respective separation dates. This illegal retention of paid sick leave is unlawful.

8 19. Furthermore, as noted, Defendants employed Plaintiffs to work on public works projects,
9 including but not limited to, the installation of government phone lines at Los Angeles City Hall.
10 Defendants were required to pay Plaintiffs on such projects at no less than the general prevailing
11 rate of per diem wages for work of a similar character in the locality in which the public work was
12 performed and at no less than the general prevailing rate of per diem wages for holiday and overtime
13 work. Defendants failed and refused to comply with its legal obligation to pay Plaintiffs proper
14 prevailing wages.

15 20. Defendants did not reimburse Plaintiffs for all reasonable and necessary expenses
16 incurred in the performance of their job duties. Defendants required Plaintiffs to use their personal
17 cell phones to clock-in and clock-out each workday. Defendants failed to reimburse at all and/or did
18 not adequately reimburse Plaintiffs for using personal cell phones for work purposes.

19 21. Plaintiffs were not provided accurate wage statements that complied with Labor Code
20 section 226. Plaintiffs' paystubs did not accurately reflect, inter-alia, meal and rest break premiums
21 for all denied meal and rest breaks and all owed minimum and overtime wages and sick leave pay.
22 Plaintiffs' paystubs also failed to reflect the accurate rate(s) of pay for each hour worked.
23 Accordingly, Defendants have violated Labor Code section 226.

24 22. Plaintiffs' final pay checks, did not include all wages owed as they were devoid of all
25 owed minimum, regular and overtime wages, all owed sick leave pay, and all owed meal and rest
26 period premiums.

27 23. Lastly, Defendants required Plaintiffs to submit to unlawful criminal and/or financial
28

1 background checks as a condition of obtaining and/or holding employment in violation of Labor
2 Code sections 1024.5 and/or 432.7. Defendants also required Plaintiffs to agree in writing to
3 unlawful background checks not in conformance with the requirements of the Investigative
4 Consumer Reporting Agencies Act, Civil Code §§ 1786, et seq. ("ICRAA"), and/or the Fair Credit
5 Reporting Act, 15 U.S.C. §§ 1681, et seq. ("FCRA"), in violation of Labor Code section 432.5.

6 24. Plaintiffs are informed and believe that Defendants engaged in these same herein
7 described unlawful practices with regard to all of the Class Members.

8 **FIRST CAUSE OF ACTION**

9 **(Recovery of Unpaid Minimum Wages and Liquidated Damages -** 10 **Labor Code §§ 510, 1194 and 1194.2)**

11 25. Plaintiffs incorporate all preceding paragraphs as if fully alleged herein.

12 26. California law provides employees in California must be paid for all hours worked, up
13 to 40 per week or 8 per day, at a regular time rate no less than the mandated minimum wage. As
14 alleged herein, Plaintiffs and the Class Members regularly worked hours for which they were not
15 compensated by Defendants as required by California law. They were were required to perform off-
16 the-clock work by virtue of Defendants' automatic-deduction policy for meal periods and rounding
17 policy, *to wit*: Plaintiffs and the Class Members would be required to work through all or part of
18 their meal periods yet Defendants implemented a policy and practice of automatically deducting
19 thirty minutes per shift for purported meal periods, despite having actual and/or constructive
20 knowledge that Plaintiffs and the Class Members were not receiving off-duty, uninterrupted thirty-
21 minute meal periods, resulting in off-the-clock work and thus the underpayment of minimum wages.
22 Furthermore, upon information and belief, Defendants used a time- rounding system that as applied
23 worked to detrimentally shave and round time off from Plaintiffs and the Class Members'
24 workdays. Plaintiffs allege on information and belief that through the operation of
25 Defendants' time-rounding system, Plaintiffs and the Class Members would systematically be
26 deprived of compensable time because the time-recording system implemented by Defendants
27 would almost always, if not always, understate actual compensable work time due to
28 the rounding. Upon information and belief, Defendants had actual or constructive knowledge that

1 its rounding policy resulted in underpaying Plaintiffs and the Class Members the wages they were
2 owed. This time-shaving system, implemented by and through Defendants' unlawful rounding
3 policies and procedures, resulted in violations of California's minimum wage laws. Furthermore,
4 pursuant to Labor Code section 1194, Defendants were required to pay Plaintiffs and the Class
5 Members the minimum required hourly rate of pay at the proper prevailing wage rate; as described
6 herein, Defendants failed to pay the proper prevailing wage rate, resulting in further minimum wage
7 law violations.

8 27. Pursuant to Labor Code sections 1194 and 1194.2, Plaintiffs and the Class Members are
9 entitled to recover all unpaid minimum time wages and liquidated damages thereon, plus attorney's
10 fees and costs, in an amount to be proved at trial.

11 **SECOND CAUSE OF ACTION**

12 **(Recovery of Unpaid Overtime – Labor Code §510)**

13 28. Plaintiffs incorporate all preceding paragraphs as if fully alleged herein.

14 29. California law provides employees in California must be paid overtime, equal to 1.5
15 times the employee's regular rate of pay, for all hours worked in excess of 40 per week or 8 per day,
16 and must be paid double wages for all hours worked in excess of 12 per day, unless they are exempt.
17 As alleged herein, Plaintiffs and the Class Members worked overtime hours for which they were not
18 compensated by Defendants as required by California law. Plaintiffs and the Class Members were
19 were required to perform off-the-clock work, *to wit*: Plaintiffs and the Class Members would be
20 required to work through all or part of their meal periods while Defendant would perform an
21 automatic thirty-minute deduction for these non-compliant meal periods, resulting in significant off-
22 the-clock work/unpaid work hours. Given the number of daily and weekly hours Plaintiffs and the
23 Class Members worked, this resulted in significant denied overtime wages for Plaintiffs and the
24 Class Members. Defendants owe Plaintiffs and the Class Members compensation for this work, and
25 the addition of such hours would require payment at an overtime rate. Furthermore, upon
26 information and belief, Defendants used a time-rounding system that as applied worked to
27 detrimentally shave and round time off from similarly situated aggrieved employees' workdays.
28 Plaintiffs allege on information and belief that through the operation of Defendants' time-rounding

1 system, Plaintiffs and the Class Members would systematically be deprived of compensable time
2 because the time-recording system implemented by Defendants would almost always, if not always,
3 understate actual compensable work time due to the rounding. This time-shaving system,
4 implemented by and through Defendants' unlawful rounding policies and procedures, resulted in
5 violations of California's overtime wage laws. Upon information and belief, Defendants had actual
6 or constructive knowledge that its rounding policy resulted in underpaying Plaintiffs and the Class
7 Members the wages they were owed. Separately, Defendants failed to compensate Plaintiffs and the
8 Class Members at the proper overtime premium wage rate(s) for work performed beyond eight (8)
9 hours in a day and beyond forty hours in a week in that Defendants failed to utilize the weighted
10 average method to blend multiple rates of pay to properly calculate the owed overtime rate(s).

11 30. Plaintiffs and the Class Members are entitled to recover all unpaid overtime wages, plus
12 attorney's fees and costs, in an amount to be proved at trial.

13 **THIRD CAUSE OF ACTION**

14 **(Failure to Provide Meal Periods or Compensation in Lieu Thimeof --** 15 **Labor Code § 226.7)**

16 31. Plaintiffs incorporate all preceding paragraphs as if fully alleged herein.

17 32. Under the Labor Code and IWC Wage Orders, Defendants were required to provide
18 Plaintiff and the Class Members with one 30-minute meal break free from all duties for all shifts
19 longer than 5 hours, and a second 30-minute meal break free from all duties for all shifts longer than
20 10 hours. Meal periods can be waived, but only under the following circumstances: (1) if an
21 employee's total work period in a day is over five (5) hours but no more than six (6) hours, the
22 required meal period may be waived by mutual consent of the employer and employee, and (2) if
23 an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours,
24 the required second meal period may be waived by mutual consent of the employer and employee,
25 but only if the first meal period was not waived. Employers covered by the Wage Orders have an
26 obligation to both (1) relieve their employees for at least one meal period for shifts over five hours
27 (see above), and (2) to record having done so. If the employer fails to properly record a valid meal
28 period, it is presumed no meal period was provided.

33. Plaintiffs and the Class Members regularly worked periods of more than five and ten hours in a workday without being provided proper mandatory thirty-minute, duty-free meal periods. Upon information and belief, Defendants failed to maintain a company meal period policy compliant with California law. Plaintiffs and the Class Member did not receive timely, compliant thirty-minute meal periods. Plaintiffs and the Class Members were forced to take late first meal periods and/or work through their first meal periods or any purported meal periods would be interrupted/cut short due to the pressures of their workloads and commentary from supervisors pressuring Plaintiffs and the Class Members to take improper meal periods or none at all. Nevertheless, as described above, Defendants would perform an automatic deduction for these purported first meal breaks. When working shifts of more than ten (10) hours, Plaintiffs and the Class Members did not receive second meal periods. Defendants did not execute written on-duty meal period waiver agreements with Plaintiffs. Defendants did not pay a meal period premium for each missed/improper meal period, and/or Defendants failed to pay a proper meal period premium for failure to incorporate all non-discretionary forms of remuneration/multiple rates of pay into the regular rate of pay for purposes of calculating any owed meal period premium.

34. Defendants failed to provide Plaintiffs and the Class Members with all required meal periods, or with compensation in lieu thereof. As a result, under Labor Code section 226.7, Plaintiffs and the Class Members are entitled to one additional hour's pay for each day a meal period was missed, late or interrupted, all in an amount to be proved at trial.

FOURTH CAUSE OF ACTION

**(Failure to Provide Rest Periods or Compensation in Lieu Thimeof --
Labor Code § 226.7)**

35. Plaintiffs incorporate all preceding paragraphs as if fully alleged herein.

36. California law requires an employer to authorize or permit an employee to take a rest period of ten minutes for every four hours worked, or major fraction thereof, and such rest periods must be in the middle of the four-hour period insofar as practicable. If the employer fails to provide any required rest periods, or fails to provide a fully compliant rest break of 10 minutes wherein the employee is fully relieved of all duties and all employer control, the employer must pay the

1 employee one hour of pay at the employee's regular rate of compensation for each workday the
2 employer did not provide a legally required and/or fully compliant rest period.

3 37. Defendants employed policies and procedures that ensured Plaintiffs and the Class
4 Members would not receive all legally required rest periods, as Defendants did not authorize nor
5 permit all required rest periods in strict accordance to and in compliance with the timing
6 requirements of all applicable Wage Orders. Defendants failed to relieve Plaintiffs and the Class
7 Members of all duties and all employer control for purposes of taking any rest periods. Plaintiffs
8 and the Class Members regularly worked enough hours per shift to be entitled to three (3) rest
9 periods per shift, which Defendants failed to allow for. Similar to as with meal periods, Plaintiffs
10 and the Class Members were not able to avail themselves of their due rest periods for various
11 reasons, including, the pressures of their workloads and commentary from supervisors pressuring
12 Plaintiffs and the Class Members to take improper rest periods or none at all. Per Defendants' illegal
13 rest period policy/practice, Plaintiffs and the Class Members were not relieved of their duties for
14 purposes of taking any rest periods. Defendants further employed policies and procedures ensuring
15 Plaintiffs and Class Members did not receive premium wages to compensate them for workdays
16 they did not receive all legally required and fully compliant rest periods.

17 38. Defendants failed to provide Plaintiffs and the Class Members with all required rest
18 periods, or with compensation in lieu thereof. As a result, under Labor Code section 226.7, Plaintiffs
19 and the Class Members are entitled to one additional hour's pay for each day a rest break was missed,
20 late or interrupted, all in an amount to be proved at trial.

21 **FIFTH CAUSE OF ACTION**

22 **(Failure To Pay Proper Prevailing Wage Rate)**

23 39. Plaintiffs incorporate all preceding paragraphs as if fully alleged herein.

24 40. Labor Code section 1771 provides as follows:

25 "Except for public works projects of one thousand dollars (\$1,000) or less,
26 not less than the general prevailing rate of per diem wages for work of a similar
27 character in the locality in which the public work is performed, and not less than
28 the general prevailing rate of per diem wages for holiday and overtime work
fixed as provided in this chapter, shall be paid to all workers employed on
public works."

1
2 41. Furthermore, Labor Code section 1774 provides as follows: The contractor to whom the
3 contract is awarded, and any subcontractor under him, shall pay not less than the specified prevailing
4 rates of wages to all workmen employed in the execution of the contract.

5 42. Upon information and belief, Defendants employed Plaintiffs and the Class Members in
6 public works projects and did not compensate them at the applicable prevailing wage rates as set by
7 the Director of the State of California Department of Industrial Relations. At all times mentioned
8 herein, Defendants were subject to the minimum wage requirements of the State of California
9 pursuant to Labor Code sections 1194 and 218.5 and prevailing wage laws of the State of California.
10 Pursuant to Labor Code section 1194, Defendants were required to pay Plaintiffs and the Class
11 Members the minimum required hourly rate of pay at the proper prevailing wage rate. At all times
12 mentioned herein, Defendants were subject to the prevailing wage laws of the State of California
13 pursuant to Labor Code section 1771 and 1774, regarding work undertaken on public projects.
14 Pursuant to Labor Code section 1771, Defendants were required to pay Plaintiffs and the Class
15 Members on such projects not less than the general prevailing rate of per diem wages for work of a
16 similar character in the locality in which the public work is performed and not less than the general
17 prevailing rate of per diem wages for holiday and overtime work.

18 43. Defendants violated Labor Code sections 1194, 1194.2, 1771 and 1774 and the
19 applicable wage orders, by failing and refusing to pay Plaintiffs and the Class Members proper
20 prevailing wages.

21 **SIXTH CAUSE OF ACTION**

22 **(Failure To Pay Sick Time Benefits – Labor Code §246)**

23 44. Plaintiffs incorporate all preceding paragraphs as if fully alleged herein.

24 45. California Labor Code section 246(1)(1) provides that paid sick time for non-exempt
25 employees be “calculated in the same manner as the regular rate of pay for the workweek in which
26 the employee uses paid sick time, whether or not the employee actually works overtime in the
27 workweek.”

28 46. California Labor Code section 246(1)(2) further provides that paid sick time for non-

1 exempt employees be “calculated by dividing the employee’s total hours worked in the full pay
2 periods of the prior 90 days of employment.

3 47. Defendants violated Labor Code section 246 by failing to pay all owed sick leave time.
4 Upon information and belief, Defendants failed to comply with California sick leave laws as to
5 Plaintiffs and the Class Members.

6 **SEVENTH CAUSE OF ACTION**

7 **(Failure to Provide Accurate Wage Statements – Labor Code § 226)**

8 48. Plaintiffs incorporate all preceding paragraphs as if fully alleged herein.

9 49. Labor Code section 226(a) provides, in relevant part, that “[a]n employer, semimonthly
10 or at the time of each payment of wages, shall furnish to his or him employee, either as a detachable
11 part of the check, draft, or vouchim paying the employee’s wages, or separately if wages are paid
12 by personal check or cash, an accurate itemized statement in writing showing (1) gross wages
13 earned, (2) total hours worked by the employee . . . , (5) net wages earned, [and] (6) the inclusive
14 dates of the period for which the employee is paid . . . , (8) the name and address of the legal entity
15 that is the employer . . . , (9) all applicable hourly rates in effect during the pay period and the
16 corresponding number of hours worked at each hourly rate by the employee”

17 50. Labor Code section 226(e) provides that “[a]n employee suffering injury as a result of a
18 jknowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover
19 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
20 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period,
21 not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of
22 costs and reasonable attorney’s fees.

23 51. Labor Code section 226.3 provides that “[a]ny employer who violates subdivision (a) of
24 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
25 employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each
26 violation in a subsequent citation, for which the employer fails to provide the employee a wage
27 deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

28 52. Defendants knowingly and intentionally failed to provide Plaintiffs and the Class

1 Members with accurate itemized wage statements as the wage statements provided by Defendants
2 do not accurately reflect, *inter alia*, gross and net wages earned, and Defendants' wage statements
3 are devoid of amounts owed in meal and rest period premiums and all accrued sick leave pay.
4 Defendants' wage statements also fail to reflect all applicable hourly rates in effect during each pay
5 period and the corresponding number of hours worked at each hourly rate by Plaintiffs and the Class
6 Members. Accordingly, Plaintiffs and the Class Members are entitled to damages and penalties.

7 **EIGHTH CAUSE OF ACTION**

8 **(Failure to Timely Pay Wages During Employment and Upon Separation of Employment)**

9 53. Plaintiffs incorporate all preceding paragraphs as if fully alleged herein.

10 54. Labor Code section 204 requires employers to pay all wages (other than those mentioned
11 in Labor Code sections 201 , 201.3 , 202 , 204.1 , or 204.2) earned by any person in any employment
12 twice during each calendar month, on days designated in advance by the employer as the regular
13 paydays. California Labor Code section 201(a) provides, in relevant part, that "[i]f an employer
14 discharges an employee, the wages earned and unpaid at the time of discharge are due and payable
15 immediately."

16 55. California Labor Code section 202(a) provides, in relevant part, that "[i]f an employee
17 not having a written contract for a definite period quits his or her employment, his or her wages
18 shall become due and payable not later than 72 hours thereafter, unless the employee has given 72
19 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or
20 her wages at the time of quitting."

21 56. Defendants failed to pay Plaintiffs and the Class Members all wages that were due and
22 owing during their employments; and, failed to pay Plaintiffs and the Class Members who are former
23 employees all wages that were due and owing upon termination or resignation. Among other things,
24 Plaintiffs and the Class Members were not paid all owed minimum, regular and overtime wages, all
25 owed sick leave pay, nor all owed meal and rest break premiums. Plaintiffs and the Class Members
26 therefore seek damages and penalties.

1 **NINTH CAUSE OF ACTION**

2 **(Failure to Maintain Accurate Records)**

3 57. Plaintiffs incorporate all preceding paragraphs as if fully alleged herein.

4 58. California Labor Code sections 226 and 1174-75 require an employer to keep accurate
5 records of all hour an employee works.

6 59. California Labor Code section 1174.5 provides that “[a]ny person employing labor who
7 willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and
8 complete records required by subdivision (d) of Section 1174 . . . shall be subject to a civil penalty
9 of five hundred dollars (\$500).”

10 60. Section 7(A)(3) of the IWC Wage Orders similarly requires an employer to keep accurate
11 records showing when an employee begins and ends each meal period.

12 61. Plaintiffs are informed and believes that Defendants failed to maintain accurate records
13 in compliance with these statutes. Among other things, Defendants failed to record the actual
14 beginning and end times of Plaintiffs and the Class Members shifts and the true beginning and end
15 times of all meal periods owed to Plaintiffs and the Class Members.

16 62. Plaintiffs and the Class Members therefore seek damages and penalites as a result of
17 these violations.

18 **TENTH CAUSE OF ACTION**

19 **(Failure to Reimburse Necessary Business Expenses - Labor Code §2802)**

20 63. Plaintiffs incorporate all preceding paragraphs as if fully alleged herein.

21 64. California Labor Code section 2802 provides an employer shall fully reimburse an
22 employee for all reasonable and necessary expenses incurred in the performance of the employee’s
23 job duties.

24 65. As alleged herein, Plaintiffs and the Class Members regularly incurred expenses
25 including, inter alia, the cost of using personal cell phones in the performance of their job duties.
26 Defendants required Plaintiffs and the Class Members to use personal cell phones to clock-in and
27 clock-out each workday. Defendants did not reimburse Plaintiffs nor the Class Members for using
28 personal cell phones for work.

66. Pursuant to Labor Code section 2802, Plaintiffs and the Class Members are entitled to recover their unreimbursed business expenses, plus attorney's fees and costs, in an amount to be proved at trial.

ELEVENTH CAUSE OF ACTION

(Violation of Unfair Competition Law – Bus. & Prof. Code § 17200, et seq.)

67. Plaintiffs incorporate all preceding paragraphs as if fully alleged herein.

68. Defendants' failure, inter alia, to pay Plaintiffs and the Class Members for all hours worked, failure to pay all owed overtime and minimum wages, failure to pay at the proper prevailing wage rates, failure to pay all owed sick time benefits, failure to provide all required meal and rest periods or compensation in lieu thereof, failure to maintain accurate records, failure to provide accurate itemized wage statements, and failure to timely pay wages, all in violation of the Labor Code and Wage Orders, constitutes an unlawful, unfair or fraudulent business act or practice, in violation of Business & Professions Code sections 17200, et seq.

69. Pursuant to Business & Professions Code section 17203, Plaintiffs and the Class Members are entitled to restitution of all unpaid wages and other sums owed, plus attorney's fees and costs, in an amount to be proved at trial.

TWELFTH CAUSE OF ACTION

(Violation of Private Attorneys General Act of 2004 – Labor Code §§ 2698, et seq.)

70. Plaintiffs incorporate all preceding paragraphs as if fully alleged herein.

71. Plaintiffs gave timely written notice by certified mail to Defendants of the violations of various provisions of the California Labor Code as alleged in this complaint and filed notice of the violations online with the Labor and Workforce Development Agency (“LWDA”).

72. The LWDA did not provide notice of its intention to investigate Defendants' violations after expiration of the 65-day waiting time period, or at any time. Defendants also failed to cure within the time allotted by PAGA. Consequently, Plaintiff's right to file the instant lawsuit then duly accrued.

73. Plaintiffs are “Aggrieved Employee(s)” under PAGA, as they were employed by

1 Defendants during the applicable statutory limitations period and suffered one or more of the Labor
2 Code violations set forth herein. Accordingly, Plaintiffs seek to recover on behalf of themselves and
3 all other current and former Aggrieved Employees, the civil penalties provided by PAGA, plus
4 reasonable attorney's fees and costs.

5 74. Plaintiffs bring this action on behalf of themselves and all similarly situated aggrieved
6 employees. **The other Aggrieved Employees shall be defined as follows:** “All non-exempt
7 employees who were employed by AMERICAN WIRELESS CONSTRUCTION in California at
8 any time within the one year and sixty-five days prior to the filing of this Complaint;”

9 75. Plaintiffs seek to recover the PAGA civil penalties through a representative action
10 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th
11 969. Therefore, class certification of the PAGA claims is not required.

12 76. Therefore, under the provisions of PAGA and Labor Code sections 201-202, 203, 204,
13 210, 225.5, 226, 226.3, 226.7, 233-234, 245-248.5, 256, 432.5, 510 512, 558, 558.1, 1024.5, 1174,
14 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 1771, 1774, 2810, 2810.5, 2802, 2699, and all
15 applicable Wage Orders as well as all interpretations of these laws by California Courts and
16 administrative bodies, as well as any other law that is enforceable through PAGA, Defendants are
17 liable for the following penalties:

- 18 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
19 relevant California Labor Code provisions listed herein only if permitted by the
20 PAGA statute; and
- 21 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
22 violations without a civil penalty recoverable under the PAGA, all in the default
23 amounts provided by Labor Code section 2699(f).
- 24 c. The proper measure of penalties under PAGA is the number of violations, whether
25 those violations were committed as against Plaintiffs or any Aggrieved Employee,
26 whether a party to this action or not.

27 77. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
28 Plaintiffs are entitled to recover civil penalties, costs, and attorney’s fees.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs pray for relief and judgment as follows on behalf of themselves,
3 the Class Members and Aggrieved Employees:

- 4 1. For an order that the action, be certified as a class action;
5 2. For an order that Plaintiffs, be appointed class representatives;
6 3. For an order that counsel for Plaintiffs be appointed class counsel;
7 4. For compensatory damages according to proof;
8 5. For an order requiring Defendants to make restitution of all amounts wrongfully
9 withheld from Plaintiffs and the class;
10 6. For pre-judgment interest as permitted by law;
11 7. For civil penalties according to proof, including PAGA penalties;
12 8. Attorney's fees and costs reasonably incurred; and
13 9. Such other and further relief that the Court deems just and proper.
14

15 Dated: January 4, 2021

CROSNER LEGAL, PC

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18 Michael R. Crosner
19 Zachary M. Crosner
20 Blake R. Jones
21 Attorneys for Plaintiffs
22 DANIEL TAMEZ and SEAN ACOSTA
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DEMAND FOR JURY TRIAL

Plaintiffs, DANIEL TAMEZ and SEAN ACOSTA, demand a trial by jury on all claims so triable.

Dated: January 4, 2021

CROSNER LEGAL, P.C.



Michael R. Crosner
Zachary M. Crosner
Blake R. Jones
Attorneys for Plaintiffs
DANIEL TAMEZ and SEAN ACOSTA