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6 DAVID SWISHER

and Aggrieved Employees

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF SAN DIEGO

10 DAVID SWISHER, an Individual, on behalf
11 of himself and all other aggrieved employees
12 of Defendants in the State of California,

13 Plaintiff,

14 vs.

15 APRO, LLC dba UNITED OIL; DOUG
16 BARTLETT, an Individual; and DOES 1-10,
Inclusive,

17 Defendants.

ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

05/26/2020 at 12:28:10 PM

Clerk of the Superior Court
By Marc David, Deputy Clerk

Case No. 37-2020-00016871-CU-OE-CTL

UNLIMITED CIVIL CASE

COMPLAINT FOR:

1. Failure to Pay Earned Wages (Cal. Lab. Code § 204);
2. Failure to Pay Minimum Wages (Cal. Lab. Code §§ 1182.12, 1194, *et seq.*, 1197, 1198; IWC Wage Order No. 7-2001);
3. Failure to Pay Overtime Compensation (Cal. Lab. Code §§ 510, 1194, 1198; IWC Wage Order No. 7-2001);
4. Failure to Pay Meal Period Compensation (Cal. Lab. Code §§ 226.7, 512, 1198; IWC Wage Order No. 7-2001);
5. Failure to Pay Rest Period Compensation (Cal. Lab. Code §§ 226.7, 1198; IWC Wage Order No. 7-2001);
6. Failure to Furnish Wage and Hour Statements (Cal. Lab. Code § 226);
7. Waiting Time Penalties (Cal. Lab. Code §§ 201, 203);
8. Failure to Indemnify for All Necessary Expenditures (Cal. Lab. Code § 2802; IWC Wage Order No. 7-2001); and

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**9. Civil Penalties for Violations of the
Labor Code (Cal. Lab. Code, § 2698, *et*
seq.).**

Demand for Jury Trial

Plaintiff DAVID SWISHER (“SWISHER”), on behalf of himself and all other California aggrieved employees of Defendants APRO, LLC dba UNITED OIL (“APRO” or the “COMPANY”) and DOUG BARTLETT, an individual, (“BARTLETT”) alleges as follows:

Nature of the Action

1. This is an individual action for violation of California’s wage and hour laws and representative action brought by SWISHER in accordance with California’s Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (the “PAGA”), on behalf of himself and other current and former aggrieved California employees of Defendants whom Defendants subjected to the wage and hour violations described in this Complaint during the relevant liability periods.

2. **The class of aggrieved workers under the PAGA is composed of all individuals who work for or have worked for APRO and/or BARTLETT as hourly retail employees, as well as those whom Defendants have otherwise subjected to Labor Code violations, including unpaid wages, unpaid overtime, noncompliant meal and rest periods, wage statements that were inaccurate, untimely, and/or not provided at all; unreimbursed necessary, work-related expenses; and the like (the “PAGA Aggrieved Employees”) in the State of California from January 31, 2019 to the final judgment (the “PAGA Period”).**

3. Plaintiff, by this action, seeks damages, injunctive relief, penalties, unpaid wages, and any other remedies the Court deems just due to the illegal conduct of Defendants, as alleged herein.

Jurisdiction and Venue

4. Pursuant to Article VI, § 10 of the California Constitution, subject matter jurisdiction is proper in the Superior Court of California, County of San Diego, State of California.

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5. Venue is proper in this Court because Defendants did substantial business in San Diego County, California, and employed Plaintiff and at least some PAGA Aggrieved Employees in San Diego County, California at all relevant times.

The Parties

6. Plaintiff SWISHER is, and at all relevant times was, a competent adult residing in San Diego County, California.

7. On information and belief, Defendant APRO is, and at all relevant times was, a limited liability company doing business and operating in San Diego County, California.

8. On information and belief, Defendant BARTLETT is, and at all relevant times was, a competent adult residing in San Diego County, California.

9. On information and belief, BARTLETT, at all relevant times, was a director, officer, and/or managing agent of Defendant APRO within the meaning of California Labor Code section 558.1 and California Civil Code section 3294. On information and belief, BARTLETT, at all relevant times, exercised substantial discretion in his decision-making such that his decisions ultimately determined corporate policy of APRO.

10. At all relevant times, every defendant was the agent, representative, employee, servant or affiliated entity of every other defendant and, in doing the acts herein alleged, each defendant is liable and responsible to Plaintiff for the acts of every other defendant.

11. Plaintiff is ignorant of the true names and capacities of defendants sued herein as DOES 1 through 10, inclusive, and therefore sue said defendants by such fictitious names. Plaintiff will amend this Complaint to allege the true names and capacities of such fictitiously named defendants when they are ascertained.

General Allegations

12. Defendants: (1) failed to pay Plaintiff and the PAGA Aggrieved Employees their earned wages; (2) failed to pay Plaintiff and the PAGA Aggrieved Employees the required minimum wage; (3) failed to pay Plaintiff and the PAGA Aggrieved Employees the required overtime compensation; (4) employed Plaintiff and the PAGA Aggrieved Employees for more than five hours without timely, uninterrupted meal periods of not less than 30 minutes and failed to compensate

1 Plaintiff and the PAGA Aggrieved Employees for the missed meal periods; (5) employed Plaintiff
2 and the PAGA Aggrieved Employees for work periods of four hours or major fraction thereof
3 without rest periods of ten minutes net rest time and failed to compensate Plaintiff and the PAGA
4 Aggrieved Employees rest period compensation for the missed rest periods; (6) failed to provide
5 Plaintiff and the PAGA Aggrieved Employees with timely and accurate wage and hour statements;
6 (7) failed to pay Plaintiff and the PAGA Aggrieved Employees their earned wages in a timely
7 manner upon separation; and (8) failed to reimburse Plaintiff and the PAGA Aggrieved Employees
8 for their necessary, work-related expenditures. The foregoing acts and other acts by the defendants
9 violated provisions of the Labor Code, including §§ 201, 202, 203, 204, 208, 226, 226.7, 510, 512,
10 1174, 1194, 1197, 1198, 2802, and 2698, *et seq.*; violated the applicable Wage Orders issued by the
11 IWC of the State of California (the “Wage Order(s)”), and violated the rights of Plaintiff and the
12 PAGA Aggrieved Employees.

13 **Specific Allegations**

14 13. SWISHER commenced employment with APRO’s predecessor, “United Pacific,” in
15 or around July 2008. On information and belief, APRO later acquired and/or merged with “United
16 Pacific” and assumed SWISHER as its employee. On information and belief, APRO employed
17 Swisher throughout the relevant liability periods.

18 14. On information and belief, APRO, together with its affiliates and subsidiaries,
19 subsumes about 320 company-operated gas stations and convenience stores and 55 fee-operated and
20 leased locations. On information and belief, most of these locations are within California.

21 15. Throughout his employment with APRO, SWISHER worked as a gas station-
22 convenience store manager in La Mesa, California. His last pay rate was \$17.85 per hour.
23 Throughout the relevant liability periods, APRO paid SWISHER on an hourly basis and otherwise
24 treated him as a nonexempt employee. SWISHER was terminated by BARTLETT on or about May
25 23, 2019.

26 16. Throughout the relevant liability periods, SWISHER typically worked Monday
27 through Friday, from 6:00 a.m. to 2:30 p.m. and occasionally on the weekends. The store he
28 managed typically had eight to twelve hourly employees on staff, though there was a great deal of

1 turnover that sometimes resulted in having as few as six employees available to cover the 24/7 needs
2 of the location. SWISHER's duties included: stocking, inventory, scheduling, cleaning, ordering
3 product, scheduling repairs, customer service, ringing up sales, and taking calls after hours. He also
4 relieved cashiers so that they could take their lunches and breaks and as such, would man the
5 register. Additionally, he was required to conduct two "field surveys" per day. This involved
6 driving to several competitors' gas stations in the morning and then again in the afternoon to take
7 note of their pricing. SWISHER was required to use his personal vehicle to conduct these field
8 surveys, driving approximately twelve miles per day. In addition to using his personal vehicle for
9 daily field surveys, SWISHER was also required to attend approximately ten divisional meetings
10 that were normally held outside of San Diego County, near Los Angeles. These trips were
11 approximately 200 miles, round-trip. APRO never reimbursed SWISHER for all the business
12 mileage that he incurred on behalf of the COMPANY; he was not reimbursed from about July 2018
13 through the end of his employment. In addition, up until the last year and half or so of his
14 employment, SWISHER also had to drive to the bank and back on behalf of the COMPANY using
15 his personal vehicle. He estimates that this added an additional three to four miles to his daily
16 mileage. On information and belief, the Company subjected and continues to subject all its hourly
17 manager employees to the same policy and practice of failing to issue expense reimbursement for
18 necessary, work-related mileage.

19 17. SWISHER was subjected to meal and rest break violations and compelled to
20 complete work off-the-clock throughout his management of the APRO's La Mesa, California gas
21 station-convenience store. With respect to meal breaks, SWISHER's attempts to take a meal break
22 were interrupted approximately four to five days per week. Similarly, he was not given adequate
23 opportunity to take uninterrupted rest breaks on most days of the week. Interruptions included phone
24 calls from employees and vendors coming into the business who needed to be supervised and
25 attended to. Additionally, there were monthly audits (whereas earlier in his employment, audits had
26 been quarterly, they became a monthly item for the last few years of his employment). On
27 information and belief, the Company subjected and continues to subject all its hourly manager
28 employees to these meal and rest break violations.

1 18. In addition to the interrupted breaks throughout his scheduled workday, SWISHER,
2 throughout the relevant liability periods, frequently had to attend to employee scheduling, phone
3 calls, and other issues in his off hours. He conservatively estimates that he was engaged in off-the-
4 clock work approximately ten hours per week, for which he was never compensated. APRO also
5 had a “5 Minute Rule” according to which employees were required to contact and reach a
6 supervisor within five minutes of any emergency, gas bill notice, fire, or other specified incident. If
7 an employee were not able to immediately reach SWISHER, they would call the division manager,
8 either Anthony Demith (“Mr. Demith”) or BARTLETT – and SWISHER would be reprimanded for
9 not having fielded the call. As such, APRO always required SWISHER to be on-call; and otherwise
10 did not compensate SWISHER for any work-related communications he received and attended to
11 “after hours”. On information and belief, the Company subjected and continues to subject all its
12 hourly manager employees to these uncompensated, off-the-clock work violations.

13 19. When SWISHER raised concerns about his inability to take breaks and unpaid, off-
14 the-clock work to BARTLETT and Mr. Demith, they shrugged it off and told him, “You got to do
15 what you got to do” or similar words. Throughout the relevant liability periods, there were many
16 instances in which SWISHER was directed by BARTLETT and/or Mr. Demith to clock out yet
17 continue working to complete tasks that had to be done that day. However, BARTLETT and Mr.
18 Demith very strict about meeting performance metrics and staying within labor budgets. So,
19 SWISHER being compelled to clock out and work off the clock, was a frequent occurrence; indeed,
20 it was expected of him by BARTLETT and Mr. Demith.

21 20. The COMPANY gas station-convenience store that SWISHER was tasked to manage
22 was open for business 24 hours per day, seven days per week, yet only 280 labor hours were allotted
23 to SWISHER to cover all the around-the-clock shifts and employees, including himself. The explicit
24 directive he was given by his district manager at the time, whether BARTLETT and/or Mr. Demith,
25 was that he must clock out to complete his work if/when doing otherwise would result in his location
26 accumulating more than the allotted 280 labor hours. This practice was ongoing for at least the last
27 four years of his employment and, on information and belief, throughout the relevant liability
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1 periods. On information and belief, the Company subjected and continues to subject all its manager
2 employees to the same uncompensated, off-the-clock work violations.

3 21. As a result of the failure to pay SWISHER for all hours that he worked and a failure
4 to provide California Labor Code-compliant meal and rest breaks, or break premium payments in
5 lieu of the compliant breaks, APRO failed to issue accurate wage statements to SWISHER. On
6 information and belief, APRO subjected and continues to subject all its hourly manager employees
7 to these same wage statement violations due to its failure to provide compliant meal and rest breaks
8 and due to uncompensated, off-the-clock work.

9 22. To date, APRO has not paid SWISHER all wages that he is still owed, in violation
10 of California's final pay laws and has failed to indemnify SWISHER for all necessary expenditures
11 he incurred in direct consequence of the discharge of his duties.

12 23. On March 18, 2020, the San Diego Superior Court issued Administrative Order No.
13 031820-34 (the "Administrative Order") directing, among other things, the court's closure for non-
14 emergency matters from March 17, 2020 through April 3, 2020, including ordinary case initiation
15 filings. The Administrative Order was extended through May 22, 2020, and the San Diego Superior
16 Court intends to reopen on or about May 26, 2020. In general, per the Administrative Order, all days
17 within the court closure period are deemed holidays for purposes of computing statutory filing
18 deadlines. As such, for purposes of SWISHER's individual claims, the statutory periods relate back
19 from on or about March 18, 2020.

20 SWISHER's Exhaustion of Administrative Remedies

21 24. On or about January 31, 2020, SWISHER notified the California Labor & Workforce
22 Development Agency (the "LWDA") of the Labor Code violations to which he and his aggrieved
23 peers were subjected, and on information and belief, continue to be subjected. Thereafter, he timely
24 served this PAGA notice on APRO by certified mail, in compliance with the PAGA statute. The
25 LWDA failed to notify SWISHER by certified mail that it did not intend to investigate the alleged
26 violations within 60 calendar days of the postmark date of the notice filing and failed to send any
27 notice within 65 days of Plaintiff's filing of the notice of its intention to investigate Plaintiff's
28 claimed violations. The 65th day fell on Sunday, April 5, 2020, during the court closure period

1 referenced above. As such, for purposes of SWISHER's representative claim, the PAGA Period
2 relates back from on or about January 31, 2020 and continues prospectively until the final judgment.

3 **First Cause of Action**

4 **For Failure to Pay Earned Wages**

5 **(California Labor Code § 204)**

6 **By SWISHER Against All Defendants**

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

9 26. Defendants failed to pay Plaintiff the wages that he earned, as required by the Code
10 and the Wage Order.

11 27. Plaintiff has been deprived of his rightfully earned wages as a direct and proximate
12 result of Defendants' failure to pay said compensation. Plaintiff is entitled to recover such amounts,
13 plus interest thereon, attorney's fees and costs.

14 **Second Cause of Action**

15 **For Failure to Pay Minimum Wages**

16 **(California Labor Code §§ 1182.12, 1194 *et seq.*, 1197, 1198; IWC Wage Order No. 7-2001)**

17 **By SWISHER Against All Defendants**

18 28. Plaintiff hereby incorporates by reference and re-alleges paragraphs 1 through 24,
19 inclusive, as though set forth fully herein.

20 29. Plaintiff is entitled to minimum wage as provided under the Code and the Wage
21 Orders.

22 30. The Labor Code and the Wage Orders provide that an APRO must pay a minimum
23 wage to an employee, which ten dollars and no cents (\$10.00) per hour for all hours worked effective
24 January 1, 2016 through December 31, 2016; for employers with 26 employees or more ten dollars
25 and fifty cents (\$10.50) per hour for all hours worked effective January 1, 2017 through December
26 31, 2017; for employers with 26 employees or more, eleven dollars (\$11.00) per hour for all hours
27 worked effective January 1, 2018 through December 31, 2018; for employers with 26 employees or
28 more, twelve dollars and no cents (\$12.00) per hour for all hours worked effective January 1, 2019

1 through December 31, 2019; and for employers with 26 employees or more, thirteen dollars (\$13.00)
2 per hour for all hours worked effective January 1, 2020 through the present.

3 31. On information and belief, Defendants employed 26 or more employees throughout
4 the relevant liability periods.

5 32. Defendants altogether failed paid to pay SWISHER for compelled off-the-clock
6 work, as described in this Complaint, in violation of California's minimum wage laws, among other
7 provisions of the Labor Code.

8 33. As a result, Defendants failed to pay Plaintiff minimum wage for his work, as
9 required by the Code and the Wage Orders.

10 34. Defendants thus required Plaintiff to work under conditions prohibited by order of
11 the IWC, in violation of those orders.

12 35. Defendants deprived Plaintiff of his rightfully earned minimum wage compensation,
13 as a direct and proximate result of Defendants' failure to pay said compensation. Under Labor Code
14 § 1194, Plaintiff is entitled to recover such amounts, plus interest thereon, reasonable attorney's
15 fees, and costs.

16 36. In addition, under Labor Code § 1194.2, Plaintiff is entitled to recover liquidated
17 damages in an amount equal to the minimum wages unlawfully unpaid, and interest thereon.

18 **Third Cause of Action**

19 **For Failure to Pay Overtime Compensation**

20 **(California Labor Code §§ 510, 1194, 1198; IWC Wage Order No. 7-2001)**

21 **By SWISHER Against All Defendants**

22 37. Plaintiff hereby incorporates by reference and re-alleges paragraphs 1 through 24,
23 inclusive, as though set forth fully herein.

24 38. The Code and the Wage Order provide that a workday consists of eight hours, a
25 workweek consists of 40 hours, and an APRO must compensate an employee who works overtime
26 hours with either one-and-one-half times or double the employee's regular rate of compensation.
27 Defendants employed Plaintiff for more than eight hours per day and more than 40 hours per
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1 workweek, but Defendants failed to pay Plaintiff the overtime compensation required by the
2 California Labor Code and the Wage Order.

3 39. Defendants thus required Plaintiff to work for longer hours than those fixed, or under
4 conditions prohibited, by order of the IWC, in violation of those orders.

5 40. Defendants deprived Plaintiff of his rightfully earned overtime compensation as a
6 direct and proximate result of Defendants' failure to pay said compensation. Under Labor Code §
7 1194, Plaintiff is entitled to recover such amounts, plus interest thereon, attorney's fees, and costs.

8 **Fourth Cause of Action**

9 **For Failure to Pay Meal Period Compensation**

10 **(California Labor Code §§ 226.7, 512, 1198; IWC Wage Order No. 7-2001)**

11 **By SWISHER against All Defendants**

12 41. Plaintiff hereby incorporates by reference and re-alleges paragraphs 1 through 24,
13 inclusive, as though set forth fully herein.

14 42. The Code and the Wage Order provide that an employee is entitled to an
15 uninterrupted, off-the-clock meal period of not less than 30 minutes for every five hours worked.
16 The Code and the Wage Order also require the employer to pay the employee one hour at the
17 employee's regular rate of compensation for each day that the employer does not provide at least
18 one required meal period.

19 43. Defendants employed Plaintiff for work periods of more than five (5) hours without
20 a timely meal period of not less than 30 minutes and failed to compensate Plaintiff for such meal
21 periods, as required by Code § 226.7 and the Wage Order.

22 44. Defendants deprived Plaintiff of his rightfully earned compensation for meal periods
23 as a direct and proximate result of Defendants' failure to pay said compensation.

24 45. The remedy provided for in Code § 226.7 constitutes a wage, and Plaintiff is entitled
25 to interest thereon. *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1099-1100.

26 46. Defendants thus required Plaintiff to work for longer hours than those fixed, or under
27 conditions prohibited, by order of the IWC, in violation of those orders.

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Fifth Cause of Action
For Failure to Pay Rest Period Compensation
(California Labor Code §§ 226.7, 1198; IWC Wage Order No. 7-2001)
By SWISHER Against All Defendants

47. Plaintiff hereby incorporates by reference and re-alleges paragraphs 1 through 24, inclusive, as though set forth fully herein.

48. The Code and the Wage Order provide that an employee is entitled to an uninterrupted rest period of not less than 10 net minutes for every four hours worked or major fraction thereof. The Code and the Wage Order require the employer to pay the employee one hour at the employee’s regular rate of compensation for each day that the employer does not provide at least one required rest period.

49. Defendants employed Plaintiff for work periods of four hours or major fraction thereof without rest periods of ten minutes’ net rest time and failed to compensate Plaintiff for such rest periods, as required by Code § 226.7 and the Wage Order.

50. Defendants deprived Plaintiff of his rightfully earned compensation for rest periods as a direct and proximate result of Defendants’ failure to pay said compensation.

51. The remedy provided for in Code § 226.7 constitutes a wage, and Plaintiff is entitled to interest thereon. *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1099-1100.

52. Defendants thus required Plaintiff to work for longer hours than those fixed, or under conditions prohibited, by order of the IWC, in violation of those orders.

Sixth Cause of Action
For Failure to Furnish Wage and Hour Statements
(California Labor Code § 226)
By SWISHER Against All Defendants

53. Plaintiff hereby incorporates by reference and re-alleges paragraphs 1 through 24, inclusive, as though set forth fully herein.

54. Labor Code § 226(a) required Defendants, “semimonthly or at the time of each payment of wages,” to furnish Plaintiff “an accurate itemized statement in writing” showing gross

1 and net wages earned, total hours worked by the employee/employees, rates of pay, and other
2 information. Defendants knowingly and intentionally failed to provide Plaintiff with such wage
3 and hour statements.

4 55. Defendants thus required Plaintiff to work for longer hours than those fixed or under
5 conditions prohibited by order of the IWC, in violation of those orders.

6 56. Plaintiff suffered injury because of Defendants' knowing and intentional failure to
7 provide him with the wage and hour statements required by law.

8 57. Under Labor Code § 226, subsections (e) and (f), and based on Defendants' conduct
9 as alleged herein, Plaintiff is entitled to: (a) fifty dollars (\$50) for the initial pay period in which a
10 wage and hour statement violation occurred, and one hundred dollars (\$100) per employee for each
11 violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars
12 (\$4,000); (b) injunctive relief to ensure Defendants' compliance with Labor Code § 226; and (c)
13 an award of costs and reasonable attorney's fees.

14 58. Defendants' conduct also entitles Plaintiff to seek preliminary and permanent
15 injunctive relief, including but not limited to an order that Defendants issue wage and hour
16 statements to Plaintiff that comply with Labor Code § 226.

17 **Seventh Cause of Action**

18 **For Waiting Time Penalties**

19 **(California Labor Code §§ 201 and 203)**

20 **By SWISHER Against All Defendants**

21 59. Plaintiff hereby incorporates by reference and re-alleges paragraphs 1 through 24,
22 inclusive, as though set forth fully herein.

23 60. Defendants willfully failed to pay Plaintiff accrued wages due to him promptly upon
24 separation, as required by California Labor Code § 201.

25 61. Based on Defendants' conduct as alleged herein, Defendants are liable for statutory
26 penalties pursuant to Labor Code § 203.

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Eighth Cause of Action

For Failure to Indemnify for All Necessary Expenditures or Losses

(California Labor Code § 2802; IWC Wage Order No. 7-2001)

By SWISHER Against All Defendants

62. Plaintiff hereby incorporates by reference and re-alleges paragraphs 1 through 24, inclusive, as though set forth fully herein.

63. Labor Code § 2802(a) provides:

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

64. Throughout the relevant liability periods, the Company required Plaintiff to conduct necessary, work-related tasks for the Company using his personal devices, including his mobile phone and personal vehicle, all without reimbursement. Plaintiff is entitled to a “reasonable percentage” of his mobile phone bill. *Cochran v. Schwan’s Home Service, Inc.* (2014) 228 Cal.App.4th 1137, 1144. Plaintiff is also entitled to a reasonable reimbursement for his compelled, work-related use of his personal vehicle on behalf of the COMPANY.

65. Defendants have not indemnified Plaintiff to date for the necessary, work-related expenditures on behalf of the COMPANY, as described in this Complaint.

66. Under Labor Code § 2802(c), Plaintiff is entitled to recover all reasonable costs, including attorney’s fees, incurred in enforcing his rights granted by Labor Code § 2802.

Ninth Cause of Action

For Civil Penalties for Violations of the Labor Code

(California Labor Code Section 2698, *et seq.*)

By SWISHER Individually, On Behalf of All Aggrieved Employees, and

On Behalf of the Public Against APRO

67. Plaintiff hereby incorporates by reference and re-alleges paragraphs 1 through 24, inclusive, as though set forth fully herein.

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1 68. Throughout the PAGA Period, Defendants have violated and, on information and
2 belief, continue to violate provisions of the Labor Code, including §§ 201, 202, 203, 204, 208, 226,
3 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

4 69. Labor Code sections 2699(a) and (g) authorize an aggrieved employee, on behalf of
5 himself or herself and other current or former employees, to bring a civil action to recover civil
6 penalties pursuant to the procedures specified in Labor Code § 2699.3.

7 70. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
8 § 2699.3. By letter dated January 31, 2020, Plaintiff gave written notice by online filing with the
9 LWDA and by certified mail to Defendant APRO of Plaintiff's allegations of APRO's violations of
10 the Labor Code. The LWDA failed to notify this representative Plaintiff by certified mail that it does
11 not intend to investigate the alleged violations within 60 calendar days of the postmark date of the
12 notice filing and failed to send any notice within 65 days of Plaintiff's filing of the notice of its
13 intention to investigate Plaintiff's claimed violations.

14 71. Pursuant to Labor Code § 2699.3, subdivision (a)(2), Plaintiff may seek civil
15 penalties under the PAGA, codified at Labor Code §§ 2698, *et seq.*

16 72. Pursuant to Labor Code § 2699, subdivisions (a) and (f), Plaintiff is entitled to
17 recover civil penalties for APRO's violations of Labor Code §§ 201, 202, 203, 204, 208, 226, 226.7,
18 510, 512, 1174, 1194, 1197, 1198, and 2802, in the following amounts:

19 a. For violation of Labor Code § 201, one hundred dollars (\$100) for each
20 underpaid employee for each pay period the employee was underpaid, and
21 two hundred dollars (\$200) for each subsequent violation for each underpaid
22 employee for each pay period (penalty amounts established by Labor Code
23 Section 2699(f)(2));

24 b. For violation of Labor Code § 204, one hundred dollars (\$100) for each
25 underpaid employee for each pay period the employee was underpaid, and
26 two hundred dollars (\$200) for each subsequent violation or any willful or
27 intentional violation, for each underpaid employee for each pay period, plus
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1 25 percent of the amount unlawfully withheld (penalty amounts established
2 by Labor Code Section 210);

3 c. For violation of Labor Code § 208, one hundred dollars (\$100) for each
4 aggrieved employee per pay period for the initial violation and two hundred
5 dollars (\$200) for each aggrieved employee per pay period for each
6 subsequent violation (penalty amounts established by Labor Code Section
7 2699(f)(2));

8 d. For violation of Labor Code § 226(a), two hundred fifty dollars (\$250) for
9 each employee per pay period for the initial violation and one thousand
10 dollars (\$1,000) per employee in a subsequent violation (penalty amounts
11 established by Labor Code Section 226.3) *or* one hundred dollars (\$100) for
12 each aggrieved employee per pay period for the initial violation and two
13 hundred dollars (\$200) for each aggrieved employee per pay period for each
14 subsequent violation;

15 e. For violation of Labor Code § 226(b), one hundred dollars (\$100) for each
16 aggrieved employee per pay period for the initial violation and two hundred
17 dollars (\$200) for each aggrieved employee per pay period for each
18 subsequent violation (penalty amounts established by Labor Code Section
19 2699(f)(2));

20 f. For violation of Labor Code § 226.7, one hundred dollars (\$100) for each
21 underpaid employee for each pay period the employee was underpaid, and
22 two hundred dollars (\$200) for each subsequent violation for each underpaid
23 employee for each pay period (penalty amounts established by Labor Code
24 Section 2699(f)(2));

25 g. For violation of Labor Code § 510, fifty dollars (\$50) for each underpaid
26 employee for each pay period the employee was underpaid in addition to an
27 amount sufficient to recover underpaid wages, and one hundred dollars
28 (\$100) for each subsequent violation for each underpaid employee for each

1 pay period in addition to an amount sufficient to recover underpaid wages
2 (penalty amounts established by Labor Code Section 558);

3 h. For violation of Labor Code § 512, one hundred dollars (\$100) for each
4 underpaid employee for each pay period the employee was underpaid, and
5 two hundred dollars (\$200) for each subsequent violation for each underpaid
6 employee for each pay period (penalty amounts established by Labor Code
7 Section 2699(f)(2));

8 i. For violation of Labor Code § 1174, five hundred dollars (\$500) for any
9 person employing labor who willfully fails to maintain the records required
10 by subdivision (c) of Section 1174 or accurate and complete records required
11 by subdivision (d) of Section 1174 (penalty amounts established by Labor
12 Code Section 1174.5);

13 j. For violation of Labor Code § 1194(a), one hundred dollars (\$100) for each
14 aggrieved employee per pay period for the initial violation and two hundred
15 dollars (\$200) for each aggrieved employee per pay period for each
16 subsequent violation (penalty amounts established by Labor Code Section
17 2699(f)(2));

18 k. For violation of Labor Code § 1197, one hundred dollars (\$100) for each
19 underpaid employee for each pay period the employee was underpaid, and
20 two hundred dollars (\$250) for each subsequent violation for each underpaid
21 employee for each pay period (penalty amounts established by Labor Code
22 Section 1197.1);

23 l. For violation of Labor Code § 1198, one hundred dollars (\$100) for each
24 underpaid employee for each pay period the employee was underpaid, and
25 two hundred dollars (\$200) for each subsequent violation for each underpaid
26 employee for each pay period (penalty amounts established by Labor Code
27 Section 2699(f)(2)); and
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1 m. For violation of Labor Code § 2802, one hundred dollars (\$100) for each
2 employee for each pay period the employee was aggrieved, and two hundred
3 dollars (\$200) for each subsequent violation for each aggrieved employee for
4 each pay period (penalty amounts established by Labor Code Section
5 2699(f)(2)).

6 73. Plaintiff further demands reasonable attorney's fees, costs of suit, and interest
7 pursuant to California Labor Code §§ 2699(g)(1).

8 **Prayer for Relief**

9 WHEREFORE, Plaintiff hereby prays that the Court enter judgment in his favor and against
10 Defendants and Does 1 through 10, Inclusive, and each of them, as follows:

- 11 1. For unpaid wages in an amount according to proof;
- 12 2. For minimum wage compensation in an amount according to proof;
- 13 3. For liquidated damages for unpaid minimum wages in an amount according to proof;
- 14 4. For overtime compensation in an amount according to proof;
- 15 5. For meal period compensation in an amount according to proof;
- 16 6. For rest period compensation in an amount according to proof;
- 17 7. For injunctive relief to ensure Defendants' compliance with Labor Code § 226;
- 18 8. For Labor Code § 226(e) statutory penalties in an amount according to proof;
- 19 9. For Labor Code § 203 penalties in an amount according to proof;
- 20 10. For civil penalties in accordance with Labor Code § 2698, *et seq.* as to APRO only;
- 21 11. For prejudgment interest on the foregoing at the legal rate;
- 22 12. For reasonable attorney fees on Plaintiffs' First, Second, Third, Sixth, Eighth, and
23 Ninth Causes of Action;
- 24 13. For costs of suit incurred herein;

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14. For such further relief as the Court may deem appropriate.

Plaintiffs hereby demands jury trial of this matter.

Dated: May 26, 2020

KASED LAW GROUP APC



By: _____
Nathan N. Kased
Attorneys for Plaintiff DAVID SWISHER
and all other aggrieved employees of
Defendants in the State of California