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JUN 04 2024

CLERK OF THE NAPA SUPERIOR COURT.

BY *[Signature]*
DEPUTY

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF NAPA**

HERNAN RAI ZARAGOZA LEMUS,
individually, and on behalf of other
aggrieved employees pursuant to the
California Private Attorneys General Act;

Plaintiff,

vs.

WILLIAM KREYSLER & ASSOCIATES,
INC., a California corporation; and DOES 1
through 100, inclusive,

Defendants.

Case No.: 22CV000774

**[PROPOSED] FIRST AMENDED
COMPLAINT FOR ENFORCEMENT
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT, CALIFORNIA LABOR
CODE § 2698, ET SEQ.**

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

DEMAND FOR JURY TRIAL

LAWYERS for JUSTICE, PC
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**[PROPOSED] FIRST AMENDED COMPLAINT FOR ENFORCEMENT UNDER THE PRIVATE ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE § 2698, ET SEQ. AND DEMAND FOR JURY TRIAL**

COMES NOW, Plaintiff HERNAN RAI ZARAGOZA LEMUS ("Plaintiff"),
individually, and on behalf of other aggrieved employees pursuant to the California Private
Attorneys General Act, and alleges as follows:

JURISDICTION AND VENUE

1. This representative action is brought pursuant to the California Labor Code
section 2698, *et seq.* The civil penalties sought by Plaintiff exceed the minimal jurisdiction
limits of the Superior Court and will be established according to proof at trial.

2. This Court has jurisdiction over this action pursuant to the California
Constitution, Article VI, Section 10, which grants the superior court "original jurisdiction in
all other causes" except those given by statute to other courts. The statutes under which this
action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over Defendant because, upon information and
belief, Defendant is a citizen of California, has sufficient minimum contacts in California, or
otherwise intentionally avails itself of the California market so as to render the exercise of
jurisdiction over it by the California courts consistent with traditional notions of fair play and
substantial justice.

4. Venue is proper in this Court because, upon information and belief,
Defendant maintains offices, has agents, and/or transacts business in the State of California,
including the County of Napa. At all relevant times, Defendant maintained its
headquarters/"nerve center" within the State of California, County of Napa.

PARTIES

5. Plaintiff HERNAN RAI ZARAGOZA LEMUS is an individual residing in the
State of California.

6. Defendant WILLIAM KREYSLER & ASSOCIATES, INC. at all times herein
mentioned, was and is, upon information and belief, a California corporation, and at all times
herein mentioned, an employer whose employees are engaged throughout the State of
California, including the County of Napa.

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1 7. At all relevant times, WILLIAM KREYSLER & ASSOCIATES, INC. was the
2 "employer" of Plaintiff within the meaning of all applicable state laws and statutes.

3 8. At all times herein relevant, WILLIAM KREYSLER & ASSOCIATES, INC.
4 and DOES 1 through 100, and each of them, were the agents, partners, joint venturers, joint
5 employers, representatives, servants, employees, successors-in-interest, co-conspirators and
6 assigns, each of the other, and at all times relevant hereto were acting within the course and
7 scope of their authority as such agents, partners, joint venturers, representatives, servants,
8 employees, successors, co-conspirators and/or assigns, and all acts or omissions alleged
9 herein were duly committed with the ratification, knowledge, permission, encouragement,
10 authorization and/or consent of each defendant designated as a DOE herein.

11 9. The true names and capacities, whether corporate, associate, individual or
12 otherwise, of defendants DOES 1 through 100, inclusive, are unknown to Plaintiff who sues
13 said defendants by such fictitious names. Plaintiff is informed and believes, and based on
14 that information and belief alleges, that each of the defendants designated as a DOE is legally
15 responsible for the events and happenings referred to in this Complaint, and unlawfully
16 caused the injuries and damages to Plaintiff as alleged in this Complaint. Plaintiff will seek
17 leave of court to amend this Complaint to show the true names and capacities when the same
18 have been ascertained.

19 10. WILLIAM KREYSLER & ASSOCIATES, INC. and DOES 1 through 100
20 will hereinafter collectively be referred to as "Defendants."

21 11. Plaintiff further alleges that Defendants including the unknown defendants
22 identified as DOES, directly or indirectly controlled or affected the working conditions,
23 wages, working hours, and conditions of employment of Plaintiff and the other aggrieved
24 employees so as to make each of said Defendants employers and employers liable under the
25 statutory provisions set forth herein.

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PAGA ALLEGATIONS

12. At all times herein set forth, PAGA was applicable to Plaintiff's employment by Defendants.

13. At all times herein set forth, PAGA provides that any provision of law under the California Labor Code that provides for a civil penalty to be assessed and collected by the LWDA for violations of the California Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of herself and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

14. Pursuant to PAGA, a civil action under PAGA may be brought by an "aggrieved employee," who is any person that was employed by the alleged violator and against whom one or more of the alleged violations was committed.

15. Plaintiff was employed by Defendants and the alleged violations were committed against him during his time of employment and he is, therefore, an aggrieved employee. Plaintiff and the other employees are "aggrieved employees" as defined by California Labor Code section 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations were committed against them.

16. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved employee, including Plaintiff, may pursue a civil action arising under PAGA after the following requirements have been met:

- a. The aggrieved employee shall give written notice by online submission (hereinafter "Employee's Notice") to the Labor & Workforce Development Agency (hereinafter "LWDA") and by U.S. Certified Mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

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1 b. The LWDA shall provide notice (hereinafter "LWDA Notice") to the
2 employer and the aggrieved employee by certified mail that it does not
3 intend to investigate the alleged violation within sixty (60) calendar
4 days of the postmark date of the Employee's Notice. Upon receipt of
5 the LWDA Notice, or if the LWDA Notice is not provided within
6 sixty-five (65) calendar days of the postmark date of the Employee's
7 Notice, the aggrieved employee may commence a civil action pursuant
8 to California Labor Code section 2699 to recover civil penalties in
9 addition to any other penalties to which the employee may be entitled.

10 17. On May 9, 2022, Plaintiff provided written notice by online submission to the
11 LWDA and by U.S. Certified Mail to Defendant WILLIAM KREYSLER & ASSOCIATES,
12 INC. of his intent to seek civil penalties under PAGA for provisions of the California Labor
13 Code alleged to have been violated, including the facts and theories to support the alleged
14 violations. Plaintiff has not received a notice from the LWDA, within sixty-five (65)
15 calendar days of the date of Plaintiff's notice, indicating that it intends to investigate.

16 18. Therefore, Plaintiff has satisfied the administrative prerequisites under
17 California Labor Code section 2699.3(a) to recover civil penalties against Defendants for
18 violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a),
19 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802, and 2810.5, and Industrial
20 Welfare Commission Wage Orders, including *inter alia*, Wage Orders 1-2001, 4-2001, and
21 16-2001.

22 **GENERAL ALLEGATIONS**

23 19. At all relevant times set forth herein, Defendants employed Plaintiff and other
24 aggrieved hourly-paid or non-exempt employees who worked for any of the Defendants in
25 the State of California (hereinafter collectively referred to as the "other aggrieved
26 employees").

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20. Defendants, jointly and severally, employed Plaintiff as an hourly-paid, non-exempt employee from approximately October 2020 to approximately June 2021 in the State of California.

21. Defendants hired Plaintiff and the other aggrieved employees, and failed to compensate them for all hours worked, missed meal periods or rest breaks.

22. Defendants had the authority to hire and terminate Plaintiff and the other aggrieved employees, to set work rules and conditions governing Plaintiff's and the other aggrieved employees' employment, and to supervise their daily employment activities.

23. Defendants exercised sufficient authority over the terms and conditions of Plaintiff's and the other aggrieved employees' employment for them to be joint employers of Plaintiff and the other aggrieved employees.

24. Defendants directly hired and paid wages and benefits to Plaintiff and the other aggrieved employees.

25. Defendants continue to employ hourly-paid or non-exempt employees, within the State of California.

26. Plaintiff and the other aggrieved employees worked over eight (8) hours in a day, over forty (40) hours in a week, and/or over (6) six consecutive days in a workweek during their employment with Defendants.

27. Plaintiff is informed and believes, and based thereon alleges, that Defendants engaged in a uniform policy and systematic scheme of wage abuse against their hourly-paid or non-exempt employees. This scheme involved, *inter alia*, failing to pay them for all hours worked and for missed (short, late, interrupted, and altogether missed) meal periods and rest breaks in violation of California law.

28. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other aggrieved employees were entitled to receive certain wages for overtime compensation and that they were not receiving wages for overtime compensation.

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1 29. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 failed to provide Plaintiff and the other aggrieved employees the required rest and meal
3 periods during the relevant time period as required under the Industrial Welfare Commission
4 Wage Orders and thus they are entitled to any and all applicable penalties.

5 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants
6 knew or should have known that Plaintiff and the other aggrieved employees were entitled to
7 receive all meal periods or payment of one additional hour of pay at Plaintiff's and the other
8 aggrieved employee's regular rate of pay when a meal period was missed, and they did not
9 receive all meal periods or payment of one additional hour of pay at Plaintiff's and the other
10 aggrieved employee's regular rate of pay when a meal period was missed.

11 31. Plaintiff is informed and believes, and based thereon alleges, that Defendants
12 knew or should have known that Plaintiff and the other aggrieved employees were entitled to
13 receive all rest periods or payment of one additional hour of pay at Plaintiff's and the other
14 aggrieved employees' regular rate of pay when a rest period was missed, and they did not
15 receive all rest periods or payment of one additional hour of pay at Plaintiff's and the other
16 aggrieved employees' regular rate of pay when a rest period was missed.

17 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants
18 knew or should have known that Plaintiff and the other aggrieved employees were entitled to
19 receive, but were not provided with, a day of rest as required by California Labor Code
20 sections 551 and 552, because they were required to regularly work in excess of thirty (30)
21 hours in a week and/or six (6) hours in any one (1) day thereof, during workweeks in which
22 they were required to work in excess of six (6) days, without accumulating or being provided
23 the opportunity to take at least one (1) day of rest, and when they accumulated days of rest,
24 they were not actually provided the opportunity to take the equivalent of one (1) day's rest in
25 seven (7) during each calendar month.

26 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants
27 knew or should have known that Plaintiff and the other aggrieved employees were entitled to
28 receive at least minimum wages for compensation and that they were not receiving at least

1 minimum wages for all hours worked.

2 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants
3 knew or should have known that Plaintiff and the other aggrieved employees were entitled to
4 receive all wages owed to them upon discharge or resignation, including overtime and
5 minimum wages and meal and rest period premiums, and they did not, in fact, receive all
6 such wages owed to them at the time of their discharge.

7 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants
8 knew or should have known that Plaintiff and the other aggrieved employees were entitled to
9 receive all wages owed to them during their employment. Plaintiff and the other aggrieved
10 employees did not receive payment of all wages, including overtime and minimum wages
11 and meal and rest period premiums, within any time permissible under California Labor
12 Code section 204.

13 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants
14 knew or should have known that Plaintiff and the other aggrieved employees were entitled to
15 receive complete and accurate wage statements in accordance with California law, but, in
16 fact, they did not receive complete and accurate wage statements from Defendants. The
17 deficiencies included, *inter alia*, the failure to include the total number of hours worked by
18 Plaintiff and the other aggrieved employees.

19 37. Plaintiff is informed and believes, and based thereon alleges, that Defendants
20 knew or should have known that Defendants had to keep complete and accurate payroll
21 records for Plaintiff and the other aggrieved employees in accordance with California law,
22 but, in fact, did not keep complete and accurate payroll records.

23 38. Plaintiff is informed and believes, and based thereon alleges, that Defendants
24 knew or should have known that Plaintiff and the other aggrieved employees were entitled to
25 reimbursement for necessary business-related expenses and costs.

26 39. Plaintiff is informed and believes, and based thereon alleges, that Defendants
27 knew or should have known that Plaintiff and the other aggrieved employees were entitled to
28 receive, but were not provided with, the following information by way of a written notice at

1 the time of hiring, and by way of written notice at the time there are changes to said
2 information: the rate or rates of pay and basis thereof, whether paid by the hour, shift, day,
3 week, salary, piece, commission, or otherwise, including any rates for overtime, as
4 applicable; allowances, if any, claimed as part of the minimum wage, including meal or
5 lodging allowances; the regular payday designated by the employer in accordance with the
6 requirements of the California Labor Code; the name of the employer, including any "doing
7 business as" names used by the employer; the physical address of the employer's main office
8 or principal place of business, and a mailing address, if different; the telephone number of
9 the employer; the name, address, and telephone number of the employer's workers'
10 compensation insurance carrier; that an employee may accrue and use sick leave, has a right
11 to request and use accrued paid sick leave, may not be terminated or retaliated against for
12 using or requesting the use of accrued paid sick leave, and has a right to file a complaint
13 against an employer who retaliates; and any other information the Labor Commissioner
14 deems material and necessary.

15 40. Plaintiff is informed and believes, and based thereon alleges, that Defendants
16 knew or should have known that they had a duty to compensate Plaintiff and the other
17 aggrieved employees pursuant to California law, and that Defendants had the financial ability
18 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
19 falsely represented to Plaintiff and the other aggrieved employees that they were properly
20 denied wages, all in order to increase Defendants' profits.

21 41. At all material times set forth herein, Defendants failed to pay overtime wages
22 to Plaintiff and the other aggrieved employees. Plaintiff and the other aggrieved employees
23 were required to work more than eight (8) hours per day, more than forty (40) hours per
24 week, and/or more than six (6) consecutive days in a workweek without being paid proper
25 overtime compensation.

26 42. At all material times set forth herein, Defendants failed to provide
27 uninterrupted meal and rest periods to Plaintiff and the other aggrieved employees.

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1 43. At all material times set forth herein, Defendants failed to pay Plaintiff and the
2 other aggrieved employees at least minimum wages for all hours worked.

3 44. At all material times set forth herein, Defendants failed to pay Plaintiff and the
4 other aggrieved employees all wages owed to them upon discharge or resignation.

5 45. At all material times set forth herein, Defendants failed to pay Plaintiff and the
6 other aggrieved employees' wages within any time permissible under California law,
7 including, *inter alia*, California Labor Code section 204.

8 46. At all material times set forth herein, Defendants failed to provide Plaintiff
9 and the other aggrieved employees' a day of rest in violation of California Labor Code
10 sections 551 and 552.

11 47. At all material times set forth herein, Defendants failed to provide complete
12 and accurate wage statements to Plaintiff and the other aggrieved employees.

13 48. At all material times set forth herein, Defendants failed to keep complete and
14 accurate payroll records for Plaintiff and the other aggrieved employees.

15 49. At all material times set forth herein, Defendants failed to provide notice to
16 Plaintiff and other aggrieved employees as required by California Labor Code section
17 2810.5.

18 50. At all material times set forth herein, Defendants failed to reimburse Plaintiff
19 and the other aggrieved employees for necessary business-related expenses and costs.

20 At all material times set forth herein, Defendants failed to properly compensate Plaintiff
21 and the other aggrieved employees pursuant to California law in order to increase Defendants'
22 profits.

23 51. California Labor Code section 218 states that nothing in Article 1 of the Labor
24 Code shall limit the right of any wage claimant to "sue directly . . . for any wages or penalty
25 due to him [or her] under this article."

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FIRST CAUSE OF ACTION

Violation of California Labor Code § 2698, et seq.

(Against WILLIAM KREYSLER & ASSOCIATES, INC. and DOES 1 through 100)

52. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 51, and each and every part thereof with the same force and effect as though fully set forth herein.

53. PAGA expressly establishes that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

54. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

55. Plaintiff and the other hourly-paid or non-exempt employees are "aggrieved employees" as defined by California Labor Code section 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations was committed against them.

Failure to Pay Overtime

56. Defendants' failure to pay legally required overtime wages to Plaintiff and the other aggrieved employees is in violation of the Wage Orders and constitutes a violation of California Labor Code sections 510 and 1198.

Failure to Provide Meal Periods

57. Defendants' failure to provide legally required meal periods to Plaintiff and the other aggrieved employees is in violation of the Wage Orders and constitutes a violation of California Labor Code sections 226.7 and 512(a).

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Failure to Provide Rest Periods

58. Defendants' failure to provide legally required rest periods to Plaintiff and the other aggrieved employees is in violation of the Wage Orders and constitutes a violation of California Labor Code section 226.7.

Failure to Pay Minimum Wages

59. Defendants' failure to pay legally required minimum wages to Plaintiff and the other aggrieved employees is in violation of the Wage Orders and constitutes a violation of California Labor Code sections 1194, 1197 and 1197.1.

Failure to Timely Pay Wages Upon Termination

60. Defendants' failure to timely pay wages to Plaintiff and the other aggrieved employees upon termination in accordance with Labor Code sections 201 and 202 constitutes a violation of California Labor Code sections 201 and 202.

Failure to Timely Pay Wages During Employment

61. Defendants' failure to timely pay wages to Plaintiff and the other aggrieved employees during employment in accordance with Labor Code section 204 constitutes a violation of California Labor Code section 204.

Failure to Provide a Day of Rest

62. Defendants' failure to provide a day of rest in violation of California Labor Code sections 551 and 552, as alleged above, constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 551 and 552.

Failure to Provide Complete and Accurate Wage Statements

63. Defendants' failure to provide complete and accurate wage statements to Plaintiff and the other aggrieved employees in accordance with Labor Code section 226(a) constitutes a violation of California Labor Code section 226(a).

Failure to Keep Complete and Accurate Payroll Records

64. Defendants' failure to keep complete and accurate payroll records relating to Plaintiff and the other aggrieved employees in accordance with California Labor Code section 1174(d) constitutes a violation of California Labor Code section 1174(d).

Failure to Provide Required Notices Upon Hiring and Changes Thereto

65. Defendants' failure to provide notice containing requisite information in accordance with California Labor Code section 2810.5 constitutes a violation of California Labor Code section 2810.5.

Failure to Reimburse Necessary Business-Related Expenses and Costs

66. Defendants' failure to reimburse Plaintiff and the other aggrieved employees for necessary business-related expenses and costs in accordance with California Labor Code sections 2800 and 2802 constitutes a violation of California Labor Code sections 2800 and 2802.

67. Pursuant to California Labor Code section 2699, Plaintiff, individually, and on behalf of all aggrieved employees, requests and is entitled to recover from Defendants and each of them, attorneys' fees and costs pursuant to California Labor Code section 218.5, as well as all penalties pursuant to PAGA against Defendants, and each of them, including but not limited to:

- a. Penalties under California Labor Code section 2699 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;
- b. Penalties under California Labor Code section 558 in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;
- c. Penalties under California Code of Regulations Title 8 section 11010 et seq. in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;
- d. Penalties under California Labor Code section 210 in addition to, and

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1 entirely independent and apart from, any other penalty provided in the
2 California Labor Code in the amount of a hundred dollars (\$100) for
3 each aggrieved employee per pay period for the initial violation, and two
4 hundred dollars (\$200) for each aggrieved employee per pay period for
5 each subsequent violation; and

6 e. Any and all additional penalties and sums as provided by the California
7 Labor Code and/or other statutes.

8 68. Pursuant to California Labor Code section 2699(i), civil penalties recovered
9 by aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the
10 Labor and Workforce Development Agency for the enforcement of labor laws and education
11 of employers and employees about their rights and responsibilities and twenty-five percent
12 (25%) to the aggrieved employees.

13 69. Further, Plaintiff is entitled to seek and recover reasonable attorneys' fees and
14 costs pursuant to California Labor Code sections 210, 218.5 and 2699 and any other
15 applicable statute.

16 **DEMAND FOR JURY TRIAL**

17 Plaintiff, individually, and on behalf of other aggrieved employees pursuant to the
18 California Private Attorneys General Act, requests a trial by jury.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff, individually, and on behalf of other aggrieved employees
21 pursuant to the Private Attorneys General Act, prays for relief and judgment against
22 Defendants, jointly and severally, in excess of twenty-five thousand dollars (\$25,000):

23 **As to the First Cause of Action**

24 1. For civil penalties pursuant to California Labor Code sections 2699(a), (f), (g)
25 and 558, costs/expenses, and attorneys' fees for violation of California Labor Code sections
26 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198,
27 2800, 2802, and 2810.5, and Industrial Welfare Commission Wage Orders, including *inter*
28 *alia*, Wage Orders 1-2001, 4-2001, and 16-2001.

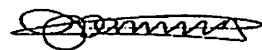
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2. For such other and further relief as the Court may deem equitable and appropriate.

DATED: May 24, 2024

LAWYERS for JUSTICE, PC

By: 
Joanna Ghosh
Attorney for Plaintiff