

1 J. KIRK DONNELLY (SBN 179401)
2 **LAW OFFICES OF J. KIRK DONNELLY, APC**
3 2173 Salk Avenue, Suite 250
4 Carlsbad, CA 92008
5 Tel. (760) 209-5894
6 kdonnelly@jkd-law.com

7
8 Counsel for Plaintiff RUDIS CARRANZA

Electronically
FILED
by Superior Court of California, County of San Mateo
ON 3/8/2024
By /s/ Hessen Ladcani
Deputy Clerk

9 **SUPERIOR COURT OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF SAN MATEO**

11 RUDIS CARRANZA, individually, and on
12 behalf of all others similarly aggrieved,

13 Plaintiff,

14 vs. BRISBANE RECYCLING CO., INC., a
15 California corporation, JOSEPH NUBLA, an
16 individual, and DOES 1 through 50,
17 inclusive,

18 Defendants.

CASE NO. 24-CIV-01496

INDIVIDUAL AND REPRESENTATIVE
COMPLAINT UNDER THE PRIVATE
ATTORNEYS GENERAL ACT, LABOR
CODE SECTION 2698, *et seq.*

JURY TRIAL DEMANDED

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2

3
4

5
6
7
8
9
10
11
12

13
14
15
16
17
18
19
20

21
22
23

24
25
26
27
28

1 Defendant as non-exempt employee, however titled, in the State of California, from the date one
2 year prior to submission of Plaintiff's PAGA notice letter.

3 7. During the period beginning one-year period preceding the filing of the required
4 PAGA notice with the Labor Workforce & Development Agency, and continuing through the
5 present, as alleged herein, Defendant violated Labor Code sections 201-203, 204, 210, 221-
6 223, 226, 226.7, 432, 510, 512, 1174, 1194, 1197, 1198, 1199, 2802, and all applicable
7 Wage Orders, as to Plaintiff and all other similarly aggrieved employees. These violations
8 subject Defendants to civil penalties as set forth in the foregoing statutes as well as other
9 provisions of the Labor Code, including without limitation Labor Code sections 203, 210,
10 225.5, 226.3, 256, 1174.5, 1194.2, 1197.1, and 2699, and section 20 of all applicable IWC
11 Wage Orders.

12 FIRST CAUSE OF ACTION

13 (Recovery of Unpaid Minimum Wages and Liquidated Damages – Labor Code §§ 1194 and
14 1194.2)

15 8. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

16 9. California law mandates that employees in California be paid for all hours worked,
17 up to 40 per week or 8 per day, at a regular time rate no less than the mandated minimum wage.
18 Defendant violated California minimum wage laws by requiring, suffering or permitting Plaintiff
19 and other aggrieved employees to work without compensation in part by using a rounding system
20 that, as applied, systematically deprived them of compensable hours worked because the time
21 recording system implemented by Defendant resulted in understating actual compensable hours
22 worked due to the rounding. Plaintiff and other similarly aggrieved employees also were required to
23 report for work before the scheduled start time for their shifts and perform work "off the clock" and
24 before clocking in. Further, Defendant did not pay Plaintiff and other aggrieved employees for all
25 hours worked as reflected in their time records. Accordingly, Plaintiff and similarly aggrieved
26 employees were not paid for all hours worked causing minimum wage violations pursuant to
27 Labor Code sections 1194-1199, and all applicable Wage Orders.

28 10. Pursuant to Labor Code Sections 1194 and 1193.2, Plaintiff is entitled to recover

1 all unpaid minimum wages and liquidated damages, plus attorney's fees and costs, in an amount
2 to be proved at trial.

3 SECOND CAUSE OF ACTION

4 (Recovery of Unpaid Overtime – Labor Code § 1194)

5 11. Plaintiff incorporates by reference the allegations contained in paragraphs 1
6 through 10.

7 12. California law requires employers to pay overtime equal to one and one-half times the
8 regular rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked
9 beyond forty (40) hours per work week. Employers must pay overtime equal to double the regular
10 hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours
11 worked in excess of eight (8) hours on the seventh consecutive day or work in a work week Plaintiff
12 and other aggrieved employees regularly worked more than 8 hours per day and/or more than 40
13 hours per week for which they were not paid at the applicable overtime wage because Defendant
14 failed to include all non-discretionary pay, such as bonuses, in the regular rate of pay for purposes of
15 calculating the correct overtime rate. Plaintiff and other similarly aggrieved employees also were
16 required to report for work before the scheduled start time for their shifts and perform work "off the
17 clock" and before clocking in. Further, Defendant did not pay Plaintiff and other aggrieved employees
18 for all hours worked as reflected in their time records. Accordingly, Defendant failed to pay
19 Plaintiff and other aggrieved employees for all overtime hours worked and further failed to pay
20 for overtime at the correct premium rate.

21 13. Pursuant to Labor Code Section 1194, Plaintiff is entitled to recover all unpaid
22 overtime wages, plus attorney's fees and costs, in an amount to be proved at trial.

23 THIRD CAUSE OF ACTION

24 (Failure to Provide Meal Periods or Compensation in Lieu thereof – Labor Code § 226.7)

25 14. Plaintiff incorporates by reference the allegations contained in paragraphs 1
26 through 13.

27 15. Plaintiff and other aggrieved employees regularly worked periods of more than
28 five hours in a workday without being provided mandatory thirty-minute, duty-free meal periods

1 before the end of the fifth hour of work, and further worked periods of more than 10 hours per
2 shift without being provided a second meal period. Upon information and belief, Defendants
3 failed to maintain a company meal period policy compliant with California law. Plaintiff and
4 similarly aggrieved employees were consistently unable to take timely, thirty-minute
5 uninterrupted meal periods. Defendant further failed to record the start and stop times for meal
6 periods in violation of the Labor Code and Wage Orders, resulting in a presumption that meal
7 periods were not provided. Defendant also failed to pay Plaintiff and other aggrieved employees
8 an additional hour of wages at their regular rates of compensation for each workday a required
9 meal period was not provided, or was late, short or interrupted. This conduct results in violations
10 of Labor Code sections 512, 226.7, and all applicable Wage Orders.

11 16. Under Labor Code section 226.7, Plaintiff is entitled to one additional hour's pay
12 at the regular rate of compensation for each day a meal period was missed, late or interrupted, all
13 in an amount to be proved at trial.

14 FOURTH CAUSE OF ACTION

15 (Failure to Provide Rest Periods or Compensation in Lieu thereof – Labor Code § 226.7)

16 17. Plaintiff incorporates by reference the allegations contained in paragraphs 1
17 through 16.

18 18. California law requires employers to provide employees a paid, duty-free ten (10)
19 minute rest period for each four (4) hours worked, or major fraction thereof. Employers must pay
20 employees an additional hour of wages at the employee's regular rate of pay for each missed or
21 improper (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during
22 shift(s)) rest period. Defendant did not maintain a company rest period policy and/or practice
23 compliant with California law, and Defendant frequently did not provide Plaintiff and other aggrieved
24 employees with appropriate rest periods, particularly as to third rest periods on shifts exceeding 10
25 hours. Per Defendant's policy and/or practice, Plaintiff and other aggrieved employees were not
26 adequately informed and instructed about, and thereby were not afforded an adequate opportunity to
27 take, proper rest breaks per California law. Further, Defendant failed to pay Plaintiff and other
28 aggrieved employees with an additional hour of pay at Plaintiff's and other aggrieved employees'

1 regular rates of pay for each missed or improper rest period. Because Defendant failed to fully and
2 accurately calculate and record time, it also failed to provide Plaintiff and other aggrieved employees
3 with all rest breaks required under California law. Defendant failed to pay them premiums for such
4 missed rest breaks in violation of California law. This conduct results in violations of Labor Code
5 section 226.7, and all applicable Wage Orders.

6 19. Under Labor Code section 226.7, Plaintiff is entitled to one additional hour's pay
7 at the regular rate of compensation for each day a meal period was missed, late or interrupted, all
8 in an amount to be proved at trial.

9 FIFTH CAUSE OF ACTION

10 (Failure to Reimburse Expenses – Labor Code § 2802)

11 20. Plaintiff incorporates by reference the allegations contained in paragraphs 1
12 through 19.

13 21. California Labor Code section 2802 provides an employer shall fully reimburse an
14 employee for all reasonable and necessary expenses incurred in the performance of the
15 employee's job duties. Plaintiff and the aggrieved employees regularly incurred expenses
16 including, inter alia, cell phone expenses, as Defendant required Plaintiff and the aggrieved
17 employees to use their personal phones for work purposes such as to communicate with
18 management during shifts. None of these expenses were reimbursed by Defendant.

19 22. Pursuant to Labor Code section 2802, Plaintiff is entitled to recover her
20 unreimbursed business expenses, plus attorney's fees and costs, in an amount to be proved at trial.

21 SIXTH CAUSE OF ACTION

22 (Failure to Provide Accurate Itemized Wage Statements – Labor Code § 226)

23 23. Plaintiff incorporates by reference the allegations contained in paragraphs 1
24 through 22.

25 24. The California Labor Code provides that, at the time of each payment of wages,
26 the employer must provide each employee with an itemized statement showing, inter alia, gross
27 wages earned, total hours worked, all deductions taken, net wages earned, the inclusive dates for
28 which the employee is being paid, the employee's name and last four digits of their social security

1 number, the name and address of the legal entity that it is the employer, and all applicable hourly
2 rates in effect during the pay period and all hours worked at each rate. For the reasons set forth
3 above, Defendants knowingly and intentionally failed to provide Plaintiff and the aggrieved
4 employees with proper, itemized wage statements, as the wage statements failed to accurately
5 reflect, inter alia, gross wages earned, net wages earned, and total hours worked.

6 25. Accordingly, under Labor Code Section 226, Plaintiff is entitled to statutory
7 penalties in the amount of \$50.00 for the initial pay period in which a violation occurred, and
8 \$100.00 for each subsequent pay period in which a violation occurred, up to an aggregate penalty
9 of \$4,000.00, plus attorney's fees and costs, all in an amount to be proved at trial.

10 SEVENTH CAUSE OF ACTION

11 (Waiting Time Penalties – Labor Code §§ 201, et seq.)

12 26. Plaintiff incorporates by reference the allegations contained in paragraphs 1
13 through 25.

14 27. The California Labor Code provides that, at the time of termination of
15 employment, the employer must pay an employee all wages due and owing within the time
16 frames set forth in Labor Code sections 201, et seq. For the reasons addressed herein, Defendant
17 willfully failed to pay Plaintiff all wages due and owing within the deadlines set forth in Labor
18 Code sections 201, et seq.

19 28. Under Labor Code section 203, Plaintiff is entitled to recover waiting time
20 penalties of 30 days' pay, plus attorney's fees and costs, in an amount to be proved at trial.

21 EIGHTH CAUSE OF ACTION

22 (Violation of Labor Code Sections 226 and 1198.5)

23 29. Plaintiff incorporates by reference the allegations contained in paragraphs 1
24 through 29.

25 30. Pursuant to Labor Code Sections 226(b) and 1198.5(b), an employer must provide
26 an employee with access to his or her personnel file and payroll records. Under Labor Code
27 Sections 226(c), an employer that receives a written or verbal request to inspect or copy records
28 from a former employee must comply with the request as soon as possible but not later than 21

1 calendar days from the date of the request, or within 30 calendar days for non-payroll related
2 documents per Labor Code Section 1198.5. If the employer fails to comply with the requirements
3 of Labor Code Sections 226 and 1198.5, the employee may recover from the employer a statutory
4 penalty in the amount of \$750.00 for each violation.

5 31. On or about October 2, 2023, Plaintiff made a written demand to Defendant to
6 inspect or copy his personnel file and payroll records under Labor Code Sections 226(b),
7 1198.5(b), and 432. Defendant failed to respond to Plaintiff's written demand in full.

8 32. Under Labor Code Sections 226(f) and 1198.5(k), Plaintiff is entitled to statutory
9 penalties in the amount of \$750.00 for each violation by Defendant, plus attorney's fees and
10 costs, all in an amount to be proved at trial.

11 NINTH CAUSE OF ACTION

12 (Violation of Business & Professions Code §§ 17200, *et seq.*)

13 33. Plaintiff incorporates by reference the allegations contained in paragraphs 1
14 through 28.

15 34. Defendant's failure, inter alia, to pay all minimum wages earned, failure to pay all
16 overtime earned, failure to pay premium wages in lieu of missed/non-compliant meal and rest
17 breaks, and failure to reimburse expenses, all in violation of the Labor Code and Wage Orders,
18 constitutes an unlawful, unfair or fraudulent business act or practice, in violation of Business &
19 Professions Code sections 17200, et seq.

20 35. Pursuant to Business & Professions Code section 17203, Plaintiff is entitled to
21 restitution of all unpaid wages, unreimbursed expenses, and other sums owed, plus attorney's fees
22 and costs, in an amount to be proved at trial.

23 TENTH CAUSE OF ACTION

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

25 36. Plaintiff incorporates by reference the allegations contained in paragraphs 1
26 through 35.

27 37. Plaintiff also brings this complaint under the Private Attorneys General Act of
28 2004, Labor Code sections 2698, *et seq.*, ("PAGA"), as a representative action on behalf of the

1 State of California regarding violations of the Labor Code as to all similarly aggrieved individuals
2 employed by Defendants as non-exempt employees, however titled, in the State of California,
3 from the date one year prior to submission of Plaintiff's PAGA notice letter plus tolling.

4 38. During the one-year period, plus applicable tolling, preceding the filing of the
5 required PAGA notice with the Labor Workforce & Development Agency, and continuing through
6 the present, as alleged herein, Defendant violated Labor Code sections 216, 221-224, 226, 226.7,
7 432, 510, 512, 1174, 1194, 1197, 1198, 1199, 2802, 2810.5, and all applicable Wage Orders, as to
8 Plaintiff and all other aggrieved employees employed by Defendant in California during the
9 applicable time frame. All of these violations subject Defendant to civil penalties as set forth in
10 the foregoing statutes as well as other provisions of the Labor Code, including without
11 limitation Labor Code sections 203, 210, 225.5, 226.3, 226.7, 256, 1174.5, 1194.2, 1197.1,
12 and 2699, and section 18 or 20 of all applicable IWC Wage Orders.

13 39. Plaintiff complied with the procedures for bringing suit specified in Labor Code
14 Sections 2699.3 and 2699.5. By letter dated and postmarked December 22, 2023 Plaintiff
15 gave written notice to the California Labor & Workforce Development Agency ("LWDA") via
16 electronic submission at PAGAfilings@dir.ca.gov, and via certified mail to Defendants, of
17 the specific provisions of the Labor Code and Wage Orders allegedly violated, including the
18 facts and theories to support the alleged violations.

19 40. Under Labor Code Section 2699.3, the LWDA must give written notice by
20 certified mail to the parties it intends to investigate the alleged violations within 65 days of the
21 date of the complainant's written notice. As of the filing of this Complaint, the LWDA has not
22 provided the parties any notice of its intention to investigate Plaintiff's claims on behalf of
23 himself and other aggrieved employees, nor has Defendant responded to Plaintiff's PAGA
24 notice in an attempt to cure. Accordingly, Plaintiff has exhausted all administrative remedies
25 required by law.

26 41. Under Labor Code Section 2699(g), Plaintiff is entitled to an award of
27 reasonable attorney's fees and costs in connection with her claims for civil penalties.

28 /////

1 PRAYER

2 WHEREFORE, Plaintiff prays for judgment against each Defendant, jointly and severally,
3 as follows:

- 4 1. For compensatory damages, liquidated damages, and statutory penalties according
5 to proof;
- 6 2. For an order requiring Defendant to make restitution of all amounts wrongfully
7 withheld from Plaintiff;
- 8 3. For civil penalties according to proof;
- 9 4. For pre-judgment interest as permitted by law;
- 10 5. For reasonable attorney's fees and costs of suit; and
- 11 6. For such other and further relief as the Court deems just and proper.

12 Dated: March 7, 2024

LAW OFFICES OF J. KIRK DONNELLY, APC

14 
15 J. Kirk Donnelly
16 Attorneys for Plaintiff Rudis Carranza

17 DEMAND FOR JURY TRIAL

18 Plaintiff hereby demands a trial by jury on all claims so triable.

19
20 Dated: March 7, 2024

LAW OFFICES OF J. KIRK DONNELLY, APC

21 
22 J. Kirk Donnelly
23 Attorneys for Plaintiff Rudis Carranza
24
25
26
27
28