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Clerk of Court
Superior Court of CA,
County of Santa Clara
21CV391554
Reviewed By: R. Walker

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8 **SUPERIOR COURT OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SANTA CLARA**

10
11 INOCENCIO CRUZ BERMUDEZ,
12 individually, and on behalf of all others
similarly aggrieved,

13 Plaintiff,

14 vs. WINDY HILLS EQUESTRIAN, INC., a
15 California corporation, LAURA GERST, an
individual, GREGORY GERST, an
16 individual, and DOES 1 through 10,
inclusive,

17 Defendants.
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CASE NO. 21CV391554

COMPLAINT FOR INDIVIDUAL RELIEF
AND UNDER THE PRIVATE ATTORNEYS
GENERAL ACT

JURY TRIAL DEMANDED

GENERAL ALLEGATIONS

1. Plaintiff INOCENCIO CRUZ BERMUDEZ is an individual residing in the State of California.

2. On information and belief, defendant WINDY HILLS EQUESTRIAN, INC. (“Windy Hills”) is a California corporation duly licensed to conduct business in the State of California.

3. On information and belief, defendant LAURA GERST is an individual residing in the State of California and is, and at all relevant times has been, the Chief Executive Officer of defendant WINDY HILLS EQUESTRIAN, INC., owns, operates, and/or manages WINDY HILLS EQUESTRIAN, INC., and had direct control and power over the working conditions and the violations at issue in this Complaint. On information and belief, LAURA GERST devised and implemented the policies at issue in this complaint and “caused” these violations as that term is used in Labor Code §§ 558, 1197.1 and 2699(f). Pursuant to Labor code §§ 558, 1197.1, 2699(f), LAURA GERST is individually liable as a person who “caused” the violations to occur

4. On information and belief, defendant GREGORY GERST is an individual residing in the State of California and is, and at all relevant times has been, the Secretary and Chief Financial Officer of defendant WINDY HILLS EQUESTRIAN, INC., owns, operates, and/or manages WINDY HILLS EQUESTRIAN, INC., and had direct control and power over the working conditions and the violations at issue in this Complaint. On information and belief, GREGORY GERST devised and implemented the policies at issue in this complaint and “caused” these violations as that term is used in Labor Code §§ 558, 1197.1 and 2699(f). Pursuant to Labor code §§ 558, 1197.1, 2699(f), GREGORY GERST is individually liable as a person who “caused” the violations to occur

5. Plaintiff is unaware of the names and capacities of those defendants sued as DOES 1 through 10 but will amend this complaint when that information becomes known. Plaintiff is informed and believes and thereon alleges that, at all relevant times, each of the defendants, including the DOE defendants, was the officer, director, employee, agent, representative, alter ego, or co-conspirator of each of the other defendants, and in engaging in the conduct alleged

1 herein, was acting in the course and scope of, and in furtherance of, such relationship. Unless
2 otherwise specified, Plaintiff will refer to all defendants as “Defendant,” and each allegation
3 pertains to each defendant.

4 6. This court possesses original subject matter jurisdiction over this matter. Venue is
5 proper in this judicial district because Defendant Windy Hills transacts business in this district,
6 and some of the complained of conduct occurred in this judicial district, and defendants Laura
7 Gerst and Gregory Gerst reside in this judicial district.

8 7. At all relevant times, Plaintiff worked for Defendant as a non-exempt employee
9 with the job of stable hand at Defendant’s equestrian center, until his employment terminated in
10 and around January 2021.

11 FIRST CAUSE OF ACTION

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

14 8. Plaintiff incorporates by reference the allegations contained in paragraphs 1
15 through 7.

16 9. California law provides employees in California must 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 Plaintiff regularly worked hours for which he was not compensated by Defendant as required by
19 California law, as Defendant did not track Plaintiff’s hours worked and/or pay him an hourly
20 wage for all hours worked. Instead, Defendant paid Plaintiff a lump sum on a bi-monthly basis,
21 and which lump sum was insufficient to compensate Plaintiff for all hours worked at a rate equal
22 to or greater than minimum wage. By way of example, in 2020 Plaintiff on occasion worked 100
23 hours in a workweek while attending equestrian shows throughout California and was paid a
24 weekly sum of no more than \$780, resulting in an hourly rate of about \$7.80 during such
25 workweeks even though the applicable minimum wage was \$12 an hour.

26 10. Pursuant to Labor Code section 1194 and 1194.2, Plaintiff is entitled to recover all
27 unpaid minimum wages and liquated damages, plus attorney’s fees and costs, in an amount to be
28 proved at trial.

1 SECOND CAUSE OF ACTION

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

3 11. Plaintiff incorporates by reference the allegations contained in paragraphs 1
4 through 10.

5 12. California law provides employees in California must be paid overtime, equal to
6 1.5 times the employee's regular rate of pay, for all hours worked in excess of 40 per week or 8
7 per day, unless they are exempt. An employee must be paid double the employee's regular rate of
8 pay for all hours worked over 12 per day and all hours worked over 8 on the seventh day of work
9 in a work week. Plaintiff, who was a non-exempt employee, regularly worked more than 40
10 hours per week, and/or 8 hours per day, and/or 12 hours per day, and/or more than 8 hours on the
11 seventh day of work in a work week, but was not paid all overtime and double time wages due
12 and owing under California law. By way of example, Plaintiff typically worked 8 or more hours
13 per day Monday to Friday, and 6 or more hours on Saturday, each work week, but never was paid
14 any overtime or double time.

15 13. Pursuant to Labor Code section 1194, Plaintiff is entitled to recover all unpaid
16 overtime and double time wages, plus attorney's fees and costs, in an amount to be proved at trial.

17 THIRD CAUSE OF ACTION

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

19 14. Plaintiff incorporates by reference the allegations contained in paragraphs 1
20 through 13.

21 15. Plaintiff regularly worked periods of more than five and ten hours in a workday
22 without being provided mandatory thirty-minute, duty-free meal periods. Upon information and
23 belief, Defendant failed to maintain a company meal period policy compliant with California law.
24 Moreover, as noted above, Plaintiff regularly worked in excess of 10 hours per shift and, thus,
25 was entitled to uninterrupted thirty minute meal period before the end of the fifth hour and a
26 second thirty minute meal period before the end of the tenth hour of work. Defendant often
27 required Plaintiff to work more than 10 hours in a shift but only provided him with one meal
28 period. Defendant also failed to pay Plaintiff an additional hour of wages at his regular rate of

1 compensation for each workday a meal period was not provided, or was late, short or interrupted.

2 16. Pursuant to Labor Code section 226.7, Plaintiff is entitled to recover premium
3 wages in the amount of one hour of pay at his regular rate for each day he did not receive all
4 fully-compliant meal periods to which he was entitled, in an amount to be proved at trial.

5 FOURTH CAUSE OF ACTION

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

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

9 18. Defendant failed to provide Plaintiff all required and/or fully compliant rest
10 periods, or compensation in lieu thereof. Defendant employed policies and procedures that
11 ensured Plaintiff would not receive all legally required rest periods, as Defendant did not
12 authorize and permit all required rest periods in strict accordance to, and in compliance with, the
13 timing requirements of the Labor Code and applicable Wage Order(s). Plaintiff was not provided
14 proper rest breaks because purported rest breaks were not provided at all or were short,
15 interrupted, untimely, and/or on duty. Defendant also failed to pay Plaintiff an additional hour of
16 wages at his regular rate of compensation for each workday a rest period was not provided, or
17 was late, short or interrupted.

18 19. Pursuant to Labor Code section 226.7, Plaintiff is entitled to recover premium
19 wages in the amount of one hour of pay at his regular rate for each day he did not receive all
20 fully-compliant rest periods to which he was entitled, in an amount to be proved at trial.

21 FIFTH CAUSE OF ACTION

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

23 20. Plaintiff incorporates by reference the allegations contained in paragraphs 1
24 through 19.

25 21. 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

number, the name and address of the legal entity that it is the employer, and all applicable hourly rates in effect during the pay period and all hours worked at each rate.

22. Defendant knowingly and intentionally failed to provide Plaintiff with proper, itemized wage statements for the reasons addressed herein, including without limitation failing to provide an accurate count of all hours worked, gross pay, net pay, and all hourly rates in effect during the pay period and the number of hours worked at each rate. Accordingly, under Labor Code section 226, Plaintiff is entitled to penalties in the amount of \$50.00 for the initial pay period in which a violation occurred, and \$100.00 for each subsequent pay period in which a violation occurred, up to an aggregate penalty of \$4,000.00, plus attorney's fees and costs, all in an amount to be proved at trial.

SIXTH CAUSE OF ACTION

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

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

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

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

SEVENTH CAUSE OF ACTION

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

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

27. Defendant's failure, inter alia, to pay all minimum wages earned, failure to pay all overtime and double time wages earned, and failure to pay premium wages in lieu of missed/non-compliant meal and rest breaks, all in violation of the Labor Code and Wage Orders, constitutes

1 an unlawful, unfair or fraudulent business act or practice, in violation of Business & Professions
2 Code sections 17200, et seq.

3 28. Pursuant to Business & Professions Code section 17203, Plaintiff is entitled to
4 restitution of all unpaid wages and other sums owed, plus attorney's fees and costs, in an amount
5 to be proved at trial.

6 EIGHTH CAUSE OF ACTION

7 (Violation of Private Attorney's General Act – Labor Code §§ 2698, et seq.)

8 29. Plaintiff incorporates by reference the allegations contained in paragraphs 1
9 through 28.

10 30. During the period beginning one-year period preceding the filing of the initial
11 complaint in this action, Defendant violated Labor Code Sections 201-203, 204, 210, 216, 221-
12 224, 226, 226.7, 450, 512, 1174, 1194, 1197, 1198, 1199, 2441, 2810.5, and all applicable Wage
13 Orders, with respect to Plaintiff and all other individuals who worked for Defendant as a non-
14 exempt employee (the "Aggrieved Employees"). These violations subject Defendant to civil
15 penalties as set forth in the foregoing statutes as well as Labor Code Section 2699.

16 31. Plaintiff complied with the procedures for bringing suit specified in Labor Code
17 Sections 2699.3 and 2699.5. By letter dated and postmarked September 30, 2021, Plaintiff
18 gave written notice to the California Labor & Workforce Development Agency ("LWDA") via
19 electronic mail at PAGAfilings@dir.ca.gov, and via certified mail to Defendant, of the
20 specific provisions of the Labor Code and Wage Orders allegedly violated, including the facts
21 and theories to support the alleged violations.

22 32. Under Labor Code Section 2699.3, the LWDA must give written notice by
23 certified mail to the parties it intends to investigate the alleged violations within 63 days of the
24 date of the complainant's written notice. As of the filing of the complaint, the LWDA has not
25 provided the parties any notice of its intention to investigate Plaintiff's claims on behalf of
26 himself and the Aggrieved Employees. As of the filing of the complaint, Defendant has not
27 responded to Plaintiff's PAGA notice in an attempt to cure.

28 33. As alleged herein, Defendant violated Labor Code Sections 201-203, 204, 210,

1 216, 221-224, 226, 226.7, 450, 512, 1174, 1194, 1197, 1198, 1199, 2441, 2810.5, and all
2 applicable Wage Orders. These violations subject Defendant to civil penalties as set forth in
3 the foregoing statutes, which Plaintiff seeks on his behalf and on behalf of the Aggrieved
4 Employees. Plaintiff seeks civil penalties in the amounts set forth in each statute allegedly
5 violated or, for all statutes that lack a specified penalty, Plaintiff seeks default penalties as
6 provided by Labor Code Section 2699.

7 34. Under Labor Code Section 2699(g), Plaintiff is entitled to an award of
8 reasonable attorney's fees and costs in connection with his claims for civil penalties.

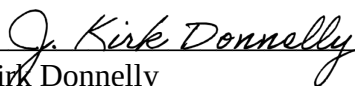
9 PRAYER

10 WHEREFORE, Plaintiff prays for judgment against each Defendant, jointly and severally,
11 as follows:

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

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21 Dated: December 8, 2021

LAW OFFICES OF J. KIRK DONNELLY, APC

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23 
24 J. Kirk Donnelly
25 Attorneys for Plaintiff
26 INOCENCIO CRUZ BERMUDEZ
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DEMAND FOR JURY TRIAL

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

Dated: December 8, 2021

LAW OFFICES OF J. KIRK DONNELLY, APC



J. Kirk Donnelly
Attorneys for Plaintiff
INOCENCIO CRUZ BERMUDEZ