UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

R. ALEXANDER ACOSTA, Secretary of Labor, United States Department of Labor, *Plaintiff*, v. CHAD C. BROWN INC., d/b/a CHAD BROWN RACING, d/b/a CHAD BROWN RACING STABLES, INC., and CHAD C. BROWN, an individual, *Defendants.*	**Complaint** No. 19-cv-1941

1. Plaintiff, R. ALEXANDER ACOSTA, Secretary of Labor, United States Department of Labor (the "Secretary"), by and through undersigned counsel, brings this action pursuant to Section 16(c) and Section 17 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. § 201, *et seq*.) ("the Act" or "the FLSA"), alleging that Defendants violated Sections 7, 11(c), 15(a)(2), and 15(a)(5) of the Act, to recover back wages and liquidated damages; to enjoin acts and practices that violate the provisions of the FLSA; and to obtain other appropriate relief. The Secretary brings this action seeking, *inter alia*, back wages and liquidated damages for over one hundred hot walkers and groomers employed by the Defendants at horse stables in Elmont and Saratoga, New York.

2. Defendant Chad C. Brown ("Brown") is a horse racing trainer and the sole owner of the horse racing training company, Defendant Chad C. Brown Inc. d/b/a Chad Brown Racing d/b/a Chad Brown Racing Stables, Inc. ("Chad Brown Racing" or "Corporate Defendant")

(collectively, "Defendants"). Together, Defendants employ trainers, assistant trainers, forepersons, hot walkers and groomers to provide care and training to racing horses in Elmont and Saratoga, New York, and other locations around the country.

3. In violation of the Act, Defendants failed to pay overtime to groomers and hot walkers for all hours worked in excess of forty in a week and falsified time records to conceal the actual hours worked by their employees. Defendants' employees frequently worked in excess of forty hours each week, often performing extra tasks that required them to stay beyond their ostensible weekly schedules. However, Defendants failed to accurately track employees' time and paid them for fewer hours than they actually worked. In addition, when calculating the premium pay owed for a particular week, Defendants failed to include the nondiscretionary bonuses they regularly awarded to certain groomers, as required by the Act and its regulations. Consequently, in addition to depriving their employees of overtime premiums for many of the hours worked beyond 40 in a week, Defendants did not pay the correct overtime premium. As a result of Defendants' unlawful payment and record keep practices, 150 current and former groomers and hot walkers are owed unpaid wages under the Act.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to Section 17 of the FLSA, 29 U.S.C. § 217, and 28 U.S.C. §§ 1331 and 1345.

5. Venue of this action lies in the United States District Court for the Eastern District of New York because a substantial part of the events or omissions giving rise to the claims occurred in this District, specifically in Nassau County.

FACTUAL ALLEGATIONS

THE PARTIES

6. Plaintiff, R. ALEXANDER ACOSTA, Secretary of Labor, United States Department of Labor, is vested with authority to file suit to restrain violations of the FLSA and recover back wages and liquidated damages, and is the proper plaintiff for this action.

7. Defendants BROWN and CHAD BROWN RACING together employ groomers and hot walkers, among other employees, at racing horse stables in, among other places, Elmont and Saratoga, New York. Defendants maintain a year-round training division at Belmont Park Race Track located at 2150 Hempstead Turnpike, Elmont, New York 11003.

8. Defendant CHAD BROWN RACING is a company organized under the laws of the State of New York, having its principal office at 316 N. 5th Ave., Mechanicville, New York 12118.

9. Defendant BROWN, an individual, is the founder and sole owner of Chad Brown Racing. He is in active control and management of the Corporate Defendant. Defendant Brown regulated the employment of all persons employed by him and had the authority to hire, fire, and supervise employees, control their hours worked, determine employee compensation, and otherwise act directly and indirectly in the interest of the Corporate Defendant in relation to the employees during the relevant time period. He is thus an employer of the employees within the meaning of section 3(d) of the Act.

DEFENDANT CHAD BROWN RACING IS AN ENTERPRISE ENGAGED IN COMMERCE

10. Defendant Chad Brown Racing is an enterprise within the meaning of Section 3(r) of the Act, 29 U.S.C. § 203(r).

11. Defendant Chad Brown Racing is engaged in the business of training and racing thoroughbred horses.

12. The Defendants employ the hot walkers and groomers listed in Exhibit A, as well as other employees, in the activities of an enterprise engaged in commerce or in the production of goods for commerce, including the handling of, selling of, or otherwise working on goods or materials that have been moved in or produced for commerce. These goods include but are not limited to horse feed, harnesses, saddles, stirrups, reins, bits, various brushes, and horse blankets.

13. At all times relevant to this Complaint, Chad Brown Racing had an annual gross volume of sales made or business done in an amount not less than $500,000.

14. Therefore, Defendant Chad Brown Racing's employees have been employed in an "enterprise engaged in commerce or in the production of goods for commerce" within the meaning of Section 3(s)(1)(A) of the Act, 29 U.S.C. § 203(s)(1)(A).

15. Together with Brown, Chad Brown Racing is an employer of its groomers and hot walkers within the meaning of Section 3(d) of the Act, 29 U.S.C. § 203(d).

DEFENDANTS' PROHIBITED PAY PRACTICES

Defendants Failed to Pay Premium Pay for All Overtime Hours Worked

16. From December 13, 2014 through August 31, 2017, Defendants failed to pay overtime premiums to employees who worked more than 40 hours in a given week, as required by the Act.

17. Defendants employed employees as groomers to provide general care for the horses by, among other things, watering and feeding them, cleaning their stalls, cleaning their coats, and maintaining and cleaning their gear, including their saddles, harnesses, stirrups, and reins.

18. Defendants employed hot walkers to exercise horses, warm horses up ahead of races, and cool horses down again after races and workouts.

19. Defendants' employees employed as groomers and hot walkers regularly worked in excess of 40 hours per week, some of which were unrecorded.

20. Defendants generally assigned hot walkers and groomers to work a fixed number of hours each week according a schedule. Defendants assigned hot walkers and groomers to work a minimum of roughly 39 to 49 hours per week.

21. Defendants, however, also assigned hot walkers and groomers to complete tasks or assignments that required them to work hours in addition to those in their base schedule, such as working races, doing laundry, traveling between racetracks, and overseeing regular visits from a veterinarian.

22. As a result, during the period at issue, Defendants' groomers and hot walkers regularly worked upwards of 51 hours per week, with some working as many as 60 or more hours in a week.

23. Nevertheless, at all times relevant to this Complaint, Defendants regularly denied their employees premium pay owed pursuant to the Act for all hours worked over 40 per week.

24. Defendants failed to record all hours worked by employees and paid employees only slightly more than the New York State minimum wage for total hours worked.

25. Generally, Defendants failed to record approximately 3 to 10 hours of work per week.

26. For example, during the 2017 racing season, Defendants assigned a hot walker to work three races a week on top of the base schedule, which amounted to 61.25 hours of work per

week. However, Defendants paid this hot walker for no more than 55 hours of work per week at a regular rate of roughly $11.09.

27. During the 2016 and 2017 racing season, Defendants assigned a groomer to work race days once per week for five hours of work in addition to the base schedule, which amounted to a regular workweek of 58 hours. Defendants generally paid the groomer for 53 hours of work per week at a regular rate of roughly $10.93 per hour.

Defendants Underestimated Employee Hours and Falsified Time Records to Conceal Actual Hours Worked

28. During the relevant period, Defendants did not accurately track employee work time and did not have a system for tracking when employees started and stopped working each day.

29. Instead, Defendants created falsified timesheets that consistently underreported the number of hours worked by hot walkers and groomers, contributing to underpayment.

30. Defendants required groomers and hot walkers to sign blank time sheets.

31. Defendants' supervisors filled in daily and weekly hours after employees signed the time sheets.

32. The hours filled in by supervisors on the timesheets were often incorrect and did not add up.

33. For example, during the week of July 20, 2015, one timesheet page showed five different groomers as working the same schedule of 45.5 hours of morning work (7 days x 6.5 hours), with 8 hours of afternoon work (4 days x 2 hours), for a total of 53.5 hours of work. However, the right column of the timesheet, which indicated the weekly "total" hours worked for the week recorded only 51.5 hours for all five groomers, even though the daily hours clearly indicated the groomers had all worked more.

34. In addition, the hours Defendants recorded on their payroll frequently conflicted with the hours reported as the weekly totals on Defendants' falsified timesheets.

Defendants Miscalculated Premium Pay Rates by Failing to Include Non-Discretionary Bonuses in Groomers' Regular Rate

35. Defendants paid bonuses to certain groomers when horses under their care came in first, second or third at a race.

36. Whenever a particular groomer's horse won a race, for example, Defendants compensated the groomer with a percentage of the winnings as bonus for the week.

37. Defendants determined the bonus amounts based on a predetermined percentage, and awarded them to the corresponding groomer every time a horse placed in a race.

38. On information and belief, Defendants communicated the bonus policy to their employees, including that Defendants would pay a bonus to certain groomers whenever horses under their care placed at a race.

39. Nevertheless, despite the non-discretionary nature of the bonuses, Defendants failed to include the bonuses in the regular rate calculation for the weeks when they were awarded, as required by 29 C.F.R. § 778.211.

40. As a result, Defendants calculated an incorrect regular rate during weeks when groomers received a bonus.

Defendants Failed to Pay the Prevailing Wage Rate for Overtime Hours for H-2B Employees

41. During the relevant period, Defendants employed temporary nonimmigrant employees ("H-2B employees") as some of their groomers and hot walkers pursuant to the H-2B provisions of the Immigration and Nationality Act, as amended, including 8 U.S.C.

§ 1101(a)(15)(H)(ii)(b), § 1184(c)(14), and regulations at 20 C.F.R. Part 655, subpart A (2008), 20 C.F.R. Part 655, subpart A (2015), and 29 C.F.R. Part 503 (2015).

42. In a Temporary Employment Certification signed under penalty of perjury pursuant to the H-2B program, Defendants promised the government that in 2015, they would pay their H-2B employees a rate of $11.67 per hour. Pursuant to 29 C.F.R. § 778.5, $11.67 per hour was the regular rate owed to these employees within the meaning of Section 7.

43. In 2015, Defendants' H-2B employees regularly worked in excess of 40 hours in a week but Defendants did not pay premium pay based on the required regular rate for those hours.

44. For example, according to Defendants' own records and not counting unrecorded hours worked, during the week ending June 12, 2015, Defendants paid an H-2B worker who worked 46 hours at a rate of $13.13 ($8.75 x 1.5) for each hour over 40, instead of at the required premium rate of $17.51 ($11.67 x 1.5) for each hour over 40. As a result, Defendants denied the H-2B employee at least $26.25 in premium pay for that week.

Defendants Failed to Make and Maintain Accurate Records

45. From December 13, 2014 through August 31, 2017, Defendants failed to make, keep, and preserve adequate and accurate records of their employees and of the wages, hours, and other conditions of employment as prescribed by the regulations at 29 C.F.R. Part 516.

46. More specifically, Defendants did not create or maintain adequate and accurate records of the dates and times that their employees started and stopped work each day.

47. Moreover, Defendants did not create or maintain adequate and accurate records of the total regular and overtime hours that their employees worked each week.

48. Instead, as described herein, Defendants created falsified time sheets that were incorrect on their face and underreported hours worked by employees.

49. As described herein, the hours reported in Defendants' payroll frequently conflicted with the hours recorded on Defendants' falsified time sheets and understated the hours actually worked by groomers and hot walkers.

Defendants' Violations of the Act Were Willful

50. Defendants have long known that their longstanding pay and recordkeeping practices violate the FLSA.

51. As described herein, Defendants falsified their time records to underreport the actual hours worked and to avoid compliance with the Act's requirement that Defendants pay time and a half for all hours worked beyond 40 in a week.

52. Moreover, in 2010, after an investigation, the New York State Department of Labor issued a citation to Defendants for repeated failures to track employees' actual work hours. As a result of this citation, Defendants knew of their obligation to keep accurate records.

TOLLING AGREEMENT

53. On or about May 22, 2018, Defendants and the Secretary, through counsel, knowingly and voluntarily entered into a Statute of Limitations Tolling Agreement ("Tolling Agreement").

54. The Tolling Agreement states that any legal proceeding brought by the Secretary or affected employees following August 13, 2018 shall be deemed to have been filed 1,339 days prior to the actual filing date.

55. Accordingly, this complaint, filed after August 13, 2018, shall be deemed to have been filed on August 3, 2015.

FIRST CAUSE OF ACTION
Violation of Sections 7(a) and 15(a)(2) of the FLSA
Failure to Pay Overtime

56. The Secretary incorporates by reference and re-alleges the allegations in paragraphs 1 to 55 of the complaint.

57. Defendants willfully have violated the provisions of Sections 7 and 15(a)(2) of the Act by employing employees in an enterprise engaged in commerce or in the production of goods for commerce, for workweeks longer than forty hours, as prescribed in Section 7 of the Act, without compensating the employees for their employment in excess of the prescribed hours at rates not less than one and one-half times the regular rates at which they were employed.

58. Therefore, Defendants are liable for unpaid overtime compensation and an equal amount in liquidated damages under Section 16(c) of the Act or, in the event liquidated damages are not awarded, unpaid overtime compensation and prejudgment interest under Section 17 of the Act.

SECOND CAUSE OF ACTION
Violation of Sections 11(c) and 15(a)(5) of the FLSA
Failure to Make, Keep, and Preserve Adequate and Accurate Records

59. The Secretary incorporates by reference and re-alleges the allegations in paragraphs 1 to 55 of the complaint.

60. Defendants willfully have violated the provisions of Sections 11(c) and 15(a)(5) of the Act, in that Defendants failed to make, keep, and preserve adequate and accurate records of their employees and of the wages, hours, and other conditions of employment as prescribed by the Regulations at 29 C.F.R. Part 516.

WHEREFORE, cause having been shown, Plaintiff respectfully requests that this Court enter judgment against Defendants as follows:

1. An injunction issued pursuant to Section 17 of the Act permanently restraining Defendants, their officers, agents, servants, employees, and those persons in active concern or participation with Defendants, from violating the provisions of Sections 7, 11(c), 15(a)(2), and 15(a)(5) of the Act;
2. An order pursuant to Section 16(c) of the Act finding Defendants liable for unpaid overtime wage compensation found due Defendants' employees listed on the attached Exhibit A and an equal amount of liquidated damages (additional back wage compensation and liquidated damages may be owed to certain employees presently unknown to Plaintiff for the period covered by this Complaint); or
3. In the event liquidated damages are not awarded, for an injunction issued pursuant to Section 17 of the Act restraining Defendants, their officers, agents, employees, and those persons in active concert or participation with Defendants, from withholding the amount of unpaid overtime compensation found due Defendants' employees, and prejudgment interest computed at the underpayment rate established by the Secretary of Treasury pursuant to 26 U.S.C. § 6621;
4. An order compelling Defendants to reimburse the Secretary for the costs of this action; and

5. An order granting such other relief as the Court may deem necessary or appropriate.

DATED: April 3, 2019
New York, New York

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