

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.*

Consent Judgment

No. 19-cv-1941 (DRH) (GRB)

**CONSENT JUDGMENT**

Plaintiff, R. ALEXANDER ACOSTA, the Secretary of Labor, has filed his complaint and Defendants CHAD C. BROWN INC., D/B/A CHAD BROWN RACING (“Corporate Defendant”), and CHAD C. BROWN (together, “Defendants”) appeared by Counsel, waive their answer, and agree to the entry of this Consent Judgment without contest. By executing this Consent Judgment, Defendants waive formal service of the summons and complaint.

Defendants acknowledge that they have notice of and understand the provisions of this Consent Judgment; acknowledge their responsibilities pursuant to this Consent Judgment; and acknowledge that they will be subject to sanctions in contempt of this Court if they fail to comply with the provisions of this Consent Judgment.

- I. Defendants admit that they violated sections 7, 11(c), 15(a)(2), and 15(a)(5) of the Fair Labor Standards Act of 1938, as amended ([29 U.S.C. § 201 et seq.](#)) (“the Act” or “the

- FLSA”) by failing to pay their employees overtime wages for all hours allegedly worked, and failing to make, keep, and preserve adequate and accurate records.
- II. Defendants submit to the jurisdiction of this Court over them and over the subject matter of this action. Defendants admit that this Court has the authority to enter and enforce this Order and that this Court is the most appropriate venue for any enforcement action that may be required as a result of this Order.
  - III. Defendant Chad C. Brown Inc. admits that from at least December 13, 2014 through August 31, 2017 (“the relevant time period”), it was an employer, within the meaning of Section 3(d) of the Act, 29 U.S.C. § 203(d), of groomers and hot walkers in, among other locations, Elmont and Saratoga, New York.
  - IV. Defendant Chad Brown admits that during the relevant time period he was an employer, within the meaning of Section 3(d) of the Act, 29 U.S.C. § 203(d), of groomers and hot walkers in, among other locations, Elmont and Saratoga, New York.
  - V. During the relevant time period, Defendants admit that they failed to keep accurate wage and hour records.
  - VI. During the relevant time period, Defendants admit that they failed to pay certain of their employees overtime at one and one-half the regular hourly rate for certain hours in excess of forty per week.
  - VII. In a related administrative matter, the Secretary, pursuant to the H-2B provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. §§ 1101(a)(15)(H)(ii)(b) et seq., 1184(c)(14), and regulations at 20 CFR Part 655, subpart A (2008), 20 CFR Part 655, subpart A (2015), and 29 CFR Part 503 (2015), determined that during the relevant time period Defendants also committed violations relating to the USCIS Form

I-129, Petition for a Nonimmigrant Worker (I-129 Petition), and Applications for Temporary Employment Certification filed under the 2008 and 2015 regulations (ETA Form 9142B with Appendix B). These claims, for which the Secretary assessed \$918,682.50 in back wages and \$76,981.38 in civil monetary penalties (“CMPs”) separate and apart from the back wages and civil money penalties referenced elsewhere in this Consent Judgment, have been resolved through a separate administrative agreement between the parties.

It is, therefore, upon motion of the attorneys for Plaintiff and for cause shown ORDERED that:

1. Defendants, their officers, employees, agents, and all persons acting or claiming to act in Defendants’ behalf and interest, be, and hereby are, permanently enjoined and restrained from violating the provisions of Sections 6, 7, 11(c), 15(a)(2), 15(a)(3), and 15(a)(5) of the Fair Labor Standards Act of 1938, as amended ([29 U.S.C. § 201 et seq.](#)) (“the Act”), in any of the following manners:
  - a. Defendants shall not, contrary to Section 7 of the Act, employ any of their employees in any workweek for workweeks longer than the hours now, or which in the future become, applicable under Sections 7 and 15(a)(2) of the Act, unless the employees receive compensation for their employment in excess of the prescribed hours at rates not less than one and one-half times the employees’ regular rates, as required by 29 C.F.R. Part 778, unless such employees are exempt from the overtime requirements of the Act.
  - b. Defendants shall make, keep, and preserve adequate records of their employees and of the wages, hours, and other conditions and practices of employment

maintained by them as prescribed by the Regulations issued pursuant to Section 11(c) of the Act and found at 29 C.F.R. Part 516.

c. Defendants shall not discharge or take any retaliatory action against an employee, including soliciting the repayment of overtime compensation paid to any employee, because the employee engaged in or is believed to have engaged in any of the following activities:

i. Discloses, protests, or threatens to disclose or protest, to a supervisor or to a public agency, any activity, policy or practice of the employer or another employer, with whom there is a business relationship, that the employee reasonably believes is in violation of the Act or a rule or regulation promulgated pursuant to the Act;

ii. Provides information to, or testifies before, any public agency or entity conducting an investigation, hearing or inquiry into any alleged violation of the Act, or a rule or regulation promulgated pursuant to the Act, by the employer or another employer with whom there is a business relationship; or

iii. Objects to, or refuses to participate in any activity, policy or practice which the employee reasonably believes is in violation of the Act, or a rule or regulation promulgated pursuant to the Act.

d. Defendants, along with their officers, agents, and managers, shall not tell any of their employees not to speak to representatives of the United States Department of Labor (“U.S. Department of Labor”), or tell any of their employees to provide untruthful information to the U.S. Department of Labor

regarding the terms or conditions of their employment, or otherwise obstruct or interfere with any investigative activities of the U.S. Department of Labor.

2. Pursuant to the parties' agreement that unpaid overtime back wages shall be paid to the employees listed on Exhibit A, which is attached hereto, in the amount of \$287,616.95, plus an equal additional amount of liquidated damages of \$287,616.95, and civil money penalties in the amount of \$46,776.00, for a total amount of \$622,009.90, it is ORDERED that Defendants and all persons acting on their behalf are enjoined and restrained from withholding the payment of \$287,616.95 in unpaid overtime back wages due Defendants' employees listed in Exhibit A. Further, Defendants shall pay a total of \$287,616.95 in liquidated damages due Defendants' employees listed in Exhibit A and \$46,776.00 in civil money penalties for recordkeeping and overtime violations of the Act. These payments shall be made by Defendants in accordance with Section 3 of this Consent Judgment.
3. The provisions of this Consent Judgment relative to back wages payments, liquidated damages payments, and civil money penalties shall be deemed satisfied, and the dispute between the Secretary and Defendants with regard to violations of the Act for the relevant period shall be fully and finally resolved, when Defendants deliver to the Wage and Hour Division, United States Department of Labor, 1400 Old Country Rd # 410, Westbury, NY 11590 the following:
  - a. On or before April 29, 2019, a schedule in duplicate bearing the full name and employer identification number of Corporate Defendant, and showing the name, last known (home) address, social security number, gross back wage amount (as listed in the attached Exhibit A), the amounts of legal deductions

for social security and withholding taxes thereto, when due (and, in any event, not later than one year after submitting to the plaintiff the last of the net backwage amounts due hereunder)), and the resulting net backwage amount for each person listed in the attached Exhibit A.

- b. On or before May 21, 2019, a **separate** check or money order for **each** person named in the attached Exhibit A, each of which shall be made payable to the order of the particular person “**or**” the Wage & Hour Division, U.S. Department of Labor, as alternative payees (for example: “Pay to the order of (Employee Name) **or** the Wage & Hour Div., Labor”), and each of which shall be in an amount equal to 100 percent of the net back wage amount due to the particular person after making the aforementioned legal deductions from the total gross amount listed opposite his or her name in the attached Exhibit A. Defendants shall submit all aforementioned legal deductions to the federal and state agencies entitled to them, when due (and no later than one year after submitting to the plaintiff the last payment due hereunder). In the event that a check is returned for “Not Sufficient Funds,” Defendants shall replace such check with a cashier’s check and provide to the Wage and Hour Division an additional check in the amount of \$500.00 payable to the United States Treasury for every returned check.
- c. On or before May 21, 2019, a **separate** check or money order for **each** person named in the attached Exhibit A, each of which shall be made payable to the order of the particular person “**or**” the Wage & Hour Division, U.S. Department of Labor, as alternative payees (for example: “Pay to the order of (Employee

Name) or the Wage & Hour Div., Labor”), and each of which shall be in an amount equal to 100 percent of the total gross liquidated damages due hereunder to the particular person. In the event that a check is returned for “Not Sufficient Funds,” Defendants shall replace such check with a cashier’s check and provide to the Wage and Hour Division an additional check in the amount of \$500.00 payable to the United States Treasury for every returned check.

- d. In the event of a default in the timely making of any of the payments specified herein, the full amount under the back wage and liquidated damages provisions of this Judgment which then remains unpaid, plus interest, from the date of this Judgment until the full amount of this Judgment is paid in full, shall become due and payable upon the Secretary’s sending by ordinary mail a written demand to the last business address of Corporate Defendant then known to the Secretary;
- e. On or before April 29, 2019, Defendants shall make a payment in the amount of \$46,776.00 in assessed civil money penalties by doing one of the following:
  1. For electronic payments: go to <https://pay.gov/public/form/start/77734139>, and then:
    - a. Select “Continue to Form” and complete the required fields.
    - b. The “CMP Case Number” is Case No. 1808226.
    - c. The “Date of Assessment” is the date of the Order.
  2. For payments by cashier or certified check:

- a. All payments shall be in separate cashier or certified checks made payable to “Wage and Hour Division - Labor” with “Case No. 1808226” and “Civil Monetary Penalties” written on the face of each check.
- b. Defendants shall send all checks to:

United States Department of Labor – Wage & Hour  
Division  
The Curtis Center, Suite 850 West  
170 S. Independence Mall West  
Philadelphia, PA 19106-3317

4. The Secretary shall allocate and distribute the back wages, and the liquidated damages described in Section 3, less any legally required deductions, to the persons named in the attached Exhibit A, or to their estates if that be necessary, in his sole discretion, and any money not so paid within a period of three years from the date of its receipt, because of an inability to locate the proper persons or because of their refusal to accept it, shall then be deposited in the Treasury of the United States, as miscellaneous receipts, pursuant to 29 U.S.C. § 216(c). Defendants remain responsible for paying the employers’ share of any applicable taxes to the appropriate local, state, and federal revenue authorities.
5. Defendants, and anyone acting on their behalf, shall not in any way directly or indirectly, demand, require or accept any of the back wages or liquidated damages from any person listed on Exhibit A. Defendants, and anyone acting on their behalf, shall not threaten or imply that adverse action will be taken against any person because of his or her receipt of funds due under the provisions of this Consent Judgment or the Act. Violation of this Paragraph may subject Defendants to equitable and legal damages, including punitive damages and civil contempt.

6. Within fifteen (15) days of the entry of this Consent Judgment, Chad Brown Racing shall display in conspicuous places throughout its establishments for its employees' viewing the poster "Employee Rights Under the Fair Labor Standards Act" in Spanish and English issued by the U.S. Department of Labor. Defendants shall maintain these postings permanently.
7. Defendants shall implement the following provisions, as part of a comprehensive compliance plan, to ensure their compliance with the Act:
  - a. **Internal Controls.** Defendants shall designate a human resources manager or bookkeeper ("Compliance Officer") to serve as point person for pay practice compliance, including but not limited to the Act's requirement that Defendants' non-exempt employees, including non-exempt H-2B employees, are paid premium pay, at a rate of time and one half their regular rate, for the hours they work in excess of 40 in a workweek, and the Act's requirement that Defendants maintain accurate hours of their employees' work.
    - i. Defendants shall designate the Compliance Officer within 60 days from the date of entry of this Judgment, and shall maintain the position of Compliance Officer for a minimum of 3 years following the entry of this Judgment.
    - ii. The Compliance Officer must have payroll or human resources experience, familiarity with this Judgment and the Act, and familiarity with the wage-related requirements of the H-2B provisions of the INA and any Temporary Employment Certifications filed by Defendants pursuant to those H-2B provisions.

- iii. Within 30 days of designation of the Compliance Officer, Defendants shall provide a written description of the Compliance Officer's responsibilities to the Compliance Officer.
  - iv. For a three-year period following the entry of this Judgment, Defendants will provide the Secretary with the name of the designated Compliance Officer within 10 days of a written request by the Secretary.
- b. **Timekeeping.** Defendants shall implement and utilize an electronic timekeeping system to ensure that all hours worked by non-exempt employees at each of Defendants' locations are tracked accurately.
- i. Defendants shall complete installation of the electronic timekeeping system within 60 days from the date of entry of this Judgment.
  - ii. Within 60 days of the installation of the electronic timekeeping system or 14 days of employees' arrival at their place of employment, whichever is later, Defendants at their expense will provide training for all employees on the proper use of the electronic timekeeping system in languages understandable to the employees (including but not limited to English and Spanish) and will pay employees for that training time in compliance with the Act.
  - iii. In the event that the electronic timekeeping system is temporarily nonoperational, Defendants shall use other means for keeping accurate records of all hours worked by their employees in accordance with the Act and 29 C.F.R. Part 516.

**c. Training for Defendants' office managers, assistant trainers, and certain other supervisors.**

- i. Within 60 days of entry of the Consent Judgment, Defendants shall train all of their office managers, assistant trainers, and any other employees with responsibilities for overseeing employees' hours worked, on how to properly record hours worked, how to calculate and record breaks and meal periods, what constitutes compensable time under the Act, the minimum wage and overtime provisions of the Act, the wage-related requirements of the H-2B provisions of the INA, and on the rights of workers to engage in activities protected by the Act without fear of retaliation. For a minimum of three years following the entry of the Consent Judgment Defendants agree to provide the same training to all newly hired or newly promoted office managers, assistant trainers, and any other employees with responsibilities for overseeing employees' hours worked, within 60 days of their start date in such positions. Any employee who is rehired will be considered a new hire for the purposes of the training requirements set forth in this paragraph.
  - ii. For a period of three (3) years from the Effective Date of this Judgment, Defendants shall maintain a log of signed training certifications for all training provided pursuant to Section 7c(i). Defendants shall produce the log to the Secretary upon the Secretary's request.
8. The parties agree that the instant action fully and finally resolves all FLSA claims discussed herein for the relevant period. Neither the commencement of this action nor the provisions of this Consent Judgment shall in any way affect, determine, or prejudice any and all legal

rights of any employees of Defendants not listed on Exhibit A of this Consent Judgment, be they current or former employees, to file any action against defendants under section 16(b) of the Act or likewise for any current or former employee listed on Exhibit A of this Consent Judgment to file any action against Defendants under section 16(b) of the Act for any violations alleged to have occurred after August 31, 2017.

- 9. Each party will bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding.
- 10. The Court retains jurisdiction over this matter for the purposes of enforcing this Consent Judgment.

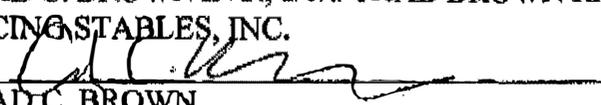
SO ORDERED:

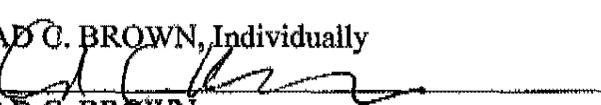
DATED: May 13, 2019  
Central Islip, New York

/s Denis R. Hurley

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HONORABLE  
UNITED STATES DISTRICT JUDGE

Defendants have appeared by the undersigned counsel and hereby consent to the entry of this Judgment.

BY: CHAD C. BROWN INC., d/b/a CHAD BROWN RACING, d/b/a CHAD BROWN RACING STABLES, INC.  
  
CHAD C. BROWN  
Sole owner

BY: CHAD C. BROWN, Individually  
  
CHAD C. BROWN  
  
\_\_\_\_\_  
ALLAN S. BLOOM, ESQ.

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*Attorneys for Defendants*

For Plaintiff Secretary of Labor:

  
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201 Varick Street, Room 983  
New York, NY 10014  
Phone: 646-264-3650  
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*Attorneys for Plaintiff*

STATE OF NY )  
COUNTY OF Westchester :SS:

On the 3<sup>rd</sup> day of April, 2019 before me came **CHAD C. BROWN**, to me known, who, being by me duly sworn, did depose and say that he is a duly authorized officer of **CHAD C. BROWN INC., d/b/a CHAD BROWN RACING, d/b/a CHAD BROWN RACING STABLES, INC.** described in and which executed the foregoing instrument, that he signed his name thereto by like order.

MARY A FERCHAK  
Notary Public - State of New York  
NO. 01FE4860781  
Qualified in Queens County  
My Commission Expires May 27, 2022  
NOTARY PUBLIC

STATE OF NY )  
COUNTY OF Westchester ) :SS:

On the 3<sup>rd</sup> day of April, 2019 before me came **CHAD C. BROWN**, to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

MARY A FERCHAK  
Notary Public - State of New York  
NO. 01FE4860781  
Qualified in Queens County  
My Commission Expires May 27, 2022

NOTARY PUBLIC