

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

THOMAS E. PEREZ, Secretary of Labor,)	
United States Department of Labor,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 4:16-cv-3162
)	
FIVE OAKS ACHIEVEMENT CENTER, LLC)	
d/b/a FIVE OAKS ACHIEVEMENT CENTER;)	
WHISPERING HILLS ACHIEVEMENT)	
CENTER, LLC d/b/a WHISPERING HILLS)	
ACHIEVEMENT CENTER; and NORTH FORK)	
EDUCATIONAL CENTER, LLC d/b/a)	
NORTH FORK EDUCATIONAL CENTER,)	
)	
Defendants.)	

COMPLAINT

Plaintiff, Thomas E. Perez, Secretary of Labor, United States Department of Labor (hereinafter “the Secretary”), brings this action to enjoin Five Oaks Achievement Center, LLC d/b/a Five Oaks Achievement Center (hereinafter “Five Oaks Achievement Center”); Whispering Hills Achievement Center, LLC d/b/a Whispering Hills Achievement Center (hereinafter “Whispering Hills Achievement Center”); and North Fork Educational Center, LLC d/b/a North Fork Educational Center (hereinafter “North Fork Educational Center”) (collectively referred to as “Defendants”) from violating the provisions of Sections 7 and 15(a)(2) of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 201, *et seq.* (the “Act”), and to restrain Defendants from withholding payment of minimum wage and overtime compensation found by the Court to be due employees under the Act, and an equal amount as liquidated damages due to the employees who are named in the attached Exhibit A.

I.

This Court has jurisdiction over this action pursuant to Sections 16 and 17 of the Act, 29 U.S.C. §§ 216 and 217, and 28 U.S.C. §§ 1331 and 1345.

II.

1. Defendant Five Oaks Achievement Center, LLC is now, and at all times hereinafter mentioned was, a limited liability company in Fort Bend County, Texas, within the jurisdiction of this Court, doing business as Five Oaks Achievement Center, a for-profit residential treatment center for troubled youth located at 7674 Pechacek Road, New Ulm, Texas 78950.

2. Defendant Whispering Hills Achievement Center, LLC is now, and at all times hereinafter mentioned was, a limited liability company in Fort Bend County, Texas, within the jurisdiction of this Court, doing business as Whispering Hills Achievement Center, a for-profit residential treatment center for troubled youth located at 4110 FM 609, Flatonia, Texas 78941.

3. Defendant North Fork Educational Center, LLC is now, and at all times hereinafter mentioned was, a limited liability company in Fort Bend County, Texas, within the jurisdiction of this Court, doing business as North Fork Educational Center, a for-profit residential treatment center for troubled youth located at 3001 Elm Grove Road, Wylie, Texas 75098.

III.

At all times hereinafter mentioned, Defendants Five Oaks Achievement Center, Whispering Hills Achievement Center, and North Fork Educational Center have been an enterprise within the meaning of Section 3(r) of the Act, 29 U.S.C. § 203(r), in that Defendants have been, through unified operation or common control, engaged in the performance of related activities for a common business purpose, which is operating three for-profit residential treatment

centers for troubled youth.

IV.

At all times hereinafter mentioned, Defendants have been 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), in that they have employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person and in that it has an annual gross volume of sales made or business done of not less than \$500,000 (exclusive of excise taxes at the retail level which are separately stated).

V.

1. During the period since December 1, 2012, Defendants have violated and are violating the provisions of Sections 7 and 15(a)(2) of the Act, 29 U.S.C. §§ 207 and 215(a)(2), by employing employees in an enterprise engaged in commerce or in the production of goods for commerce within the meaning of the Act for workweeks longer than forty hours without compensating such employees for their employment in excess of forty hours per week at rates not less than one and one-half times the regular rates at which they were employed.

2. Defendants deducted eight hours of sleep time from the direct care staff employees' hours worked each week. In order for Defendants to deduct eight of hours of sleep time, Defendants must meet three requirements and Defendants failed to meet two of the three requirements. Defendants failed to provide adequate sleep facilities and failed to ensure employees received five hours of uninterrupted sleep each night.

VI.

As a result of the violations of the Act, overtime compensation has been unlawfully withheld by Defendants from their employees. The employees at issue, who are listed on the attached Exhibit A, are employees within the meaning of Section 3(e)(1) of the Act, 29 U.S.C. § 203(e)(1).

VII.

WHEREFORE, cause having been shown, Plaintiff prays for judgment against Defendants Five Oaks Achievement Center, LLC d/b/a Five Oaks Achievement Center; Whispering Hills Achievement Center, LLC d/b/a Whispering Hills Achievement Center; and North Fork Educational Center, LLC d/b/a North Fork Educational Center as follows:

1. For an Order pursuant to Section 17 of the Act permanently enjoining and restraining Defendants, their officers, agents, servants, employees, and those persons in active concert or participation with Defendants, from violating Sections 7 and 15(a)(2) of the Act;
2. For an Order pursuant to 16(c) of the Act finding Defendants liable for unpaid overtime compensation due to Defendants' employees and for liquidated damages equal in amount to the unpaid compensation found due Defendants' employees listed in the attached Exhibit A (additional liquidated damages may be owed to certain employees presently unknown to Plaintiff for the period covered by this complaint); or in the event liquidated damages are not awarded;
3. For an Order pursuant to Section 17 enjoining and restraining Defendants from withholding payment of unpaid overtime compensation found due Defendants' employees and pre-judgment interest computed at the underpayment rate established by the Secretary of Treasury pursuant to 26 U.S.C. § 6621;

4. For an Order awarding Plaintiff the costs of this action; and
5. For an Order granting such other and further relief as may be necessary and appropriate.

Respectfully Submitted,

M. PATRICIA SMITH
Solicitor of Labor

JAMES E. CULP
Regional Solicitor

MARGARET TERRY CRANFORD
Counsel for Wage and Hour

By:

/s/ Kristina T. Harrell
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