

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MARTIN J. WALSH,
SECRETARY OF LABOR,
UNITED STATES DEPARTMENT OF LABOR,

Plaintiff,

v.

AFFECTIONATE HOME HEALTH CARE
SERVICES, LLC d/b/a AFFECTIONATE HOME
HEALTH CARE; HABIBATU K. DUMBAR;
and ASHFORD B. SONII

Defendants.

COMPLAINT

Plaintiff, Martin J. Walsh, Secretary of Labor, United States Department of Labor (“Plaintiff”), brings this action to enjoin Affectionate Home Health Care Services, LLC, d/b/a Affectionate Home Health Care (“Affectionate”), Habibatu K. Dumbar and Ashford B. Sonii (collectively, “Defendants”) from violating the provisions of 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”), and for a judgment against Defendants in the total amount of back wage compensation found by the Court to be due to any of the employees of Defendants pursuant to the Act and an equal amount due to the employees of Defendants in liquidated damages.

1. Jurisdiction of this action is conferred upon the Court by Sections 16(c) and 17 of the Act, 29 U.S.C. §§ 216(c) and 217, and by 28 U.S.C. §§ 1331 and 1345.

2. Defendant Affectionate Home Health Care Services, LLC, d/b/a Affectionate Home Health Care (“Affectionate”) is, and at all times hereinafter referenced was, a Pennsylvania limited liability company with a registered address of 1023 Elmwood Avenue,

Sharon Hill, Pennsylvania 19079 and principal place of business located at 14 S. Lansdowne Avenue, Lansdowne, Pennsylvania, which is within the jurisdiction of this Court.

3. Defendant Affectionate is engaged in a domestic home healthcare business and provides in-home care services through direct care workers to its clients including assistance with activities of daily living such as cooking, dressing, bathing, feeding and attending medical appointments.

4. Defendant Habibatu K. Dumbar (“Dumbar”) is, and at all times hereinafter referenced was, the Director of Nursing and co-owner of Affectionate. Defendant Dumbar oversees the human resource functions of Affectionate as she interviews employees, hires, fires, offers and discusses pay rates, sets employment policies, and handles any pay disputes for all employees. Defendant Dumbar resides in Delaware County, Pennsylvania, within the jurisdiction of this Court. Defendant Dumbar meets the definition of an employer within the meaning of Section 3(d) of the Act. 29 U.S.C. § 203(d).

5. Defendant Ashford B. Sonii (“Sonii”) is, and at all times hereinafter referenced was, the General Manager, Administrator and co-owner of Affectionate. Defendant Sonii works with clients and caregivers, and has oversight of Affectionate’s office employees charged with recording caregivers’ hours worked and payroll processing. Defendant Sonii has also been involved in decisions and exercised authority relating to employee hiring and employee pay. Defendant Sonii resides in Delaware County, Pennsylvania, within the jurisdiction of this Court. Defendant Sonii meets the definition of an employer within the meaning of Section 3(d) of the Act. 29 U.S.C. § 203(d).

6. Defendants employ persons in domestic service for profit, which affects commerce per Section 2(a)(5) of the Act. 29 U.S.C. 202(a)(5). Affectionate employs home

health aides, certified nursing assistants (“CNAs”) and personal care aides (“PCAs”) (collectively, “employees”) to provide in-home care services to Affectionate’s clients, at all times relevant herein.

7. At all times hereinafter mentioned, Defendants have been an enterprise within the meaning of Section 3(r) of the Act, in that the Defendants have been, through a unified operation or common control, engaged in the performance of related activities for a common business purpose. 29 U.S.C. 203(r). These activities constituted (and/or were related to) the provision of health care services to customers, in furtherance of the Defendant’s business purposes. 29 U.S.C. § 203(r).

8. At all times relevant herein, Defendants have employed, and are employing, employees in the activities of an enterprise engaged in commerce. Further, at all times relevant herein, Defendants have had annual gross volume sales made or done in an amount not less than \$500,000, thereby affording coverage to all of their employees pursuant to Section 3(s)(1)(A) of the Act, 29 U.S.C. § 203 (s)(1)(A)(ii).

9. Defendants willfully violated the provisions of Sections 7 and 15(a)(2) of the Act, 29 U.S.C. §§ 207 and 215(a)(2), by employing their employees in an enterprise engaged in commerce or in the production of goods for commerce for workweeks longer than those prescribed in Section 7 of the Act without compensating said employees for hours worked over forty (40) in a workweek at rates not less than one and one-half times their regular rates. Therefore, Defendants are liable for the payment of unpaid overtime compensation and an equal amount of liquidated damages under Section 16(c) of the Act, 29 U.S.C. § 216(c).

10. For example, from at least October 5, 2018 through September 24, 2021 (“Relevant Period”), Defendants failed to compensate certain of their non-exempt employees

employed as caregivers and home health aides who worked over forty (40) hours in a workweek at one and one-half times their regular rate. Defendants paid certain employees straight time for all or some hours worked over (40) forty in a workweek. Additionally, in workweeks in which certain other employees worked in excess of forty (40) per workweek, Defendants paid those employees a combination of straight time hourly rates and an arbitrary rate for hours worked in excess of forty (40) in a workweek at a rate less than the required time and one-half premium rate and did not pay the required time and one-half premium rate for all overtime hours worked. During the Relevant Period, these employees worked at least one hour up to at least fifty-eight (58) hours in excess of forty (40) hours per workweek, with two caregivers regularly working as many as 84 hours per workweek and one caregiver regularly working 112 overtime hours per workweek.

11. Defendants knew or recklessly disregarded their obligations under Section 7 of the Act to pay their employees who worked more than forty (40) hours in a workweek the required overtime rate. For example, Defendants paid some employees the required overtime rate for some pay periods, but less than the required overtime rate for other pay periods.

12. Defendants willfully violated the provisions of Sections 11(c) and 15(a)(5) of the Act, 29 U.S.C. §§ 211(c) and 215(a)(5), by failing to make, keep and preserve adequate and accurate records of their employees' wages, hours and other conditions of employment, as required by the regulations issued and found at 29 C.F.R. Part 516. For example, Defendants failed to separate regular hours worked from premium hours and failed to accurately record the proper hourly rates in overtime workweeks.

13. As a result of the willful violations alleged above, amounts are owed for hours worked that were paid at rates less than the rates set forth in Section 7 of the Act for the

employees named in Schedule A attached to this Complaint. Additional amounts may be due to other employees employed by Defendants during the time period covered by this Complaint (and continuing up to the time Defendants demonstrate that they came into compliance with the Act) whose identities are not now known to Plaintiff.

14. During the Relevant Period, Defendants continually and willfully violated the provisions of the Act as alleged above. A judgment permanently enjoining and restraining the violations herein alleged (including restraining of withholding of overtime compensation) is specifically authorized by Section 17 of the Act, 29 U.S.C. § 217.

WHEREFORE, cause having been shown, the Secretary prays for judgment against Defendants providing the following relief:

(1) For an injunction issued 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 who receive actual notice of any such judgment, from violating the provisions of Sections 7, 11(c), 15(a)(2) and 15(a)(5) of the Act; and,

(2) For judgment pursuant to Section 16(c) of the Act finding Defendants liable for unpaid overtime compensation due to certain of Defendants' current and former employees listed in the attached Schedule A for the period from at least October 5, 2018, through September 24, 2021, and for an equal amount due to certain of Defendants' current and former employees in liquidated damages. Additional amounts of back wages and liquidated damages may also be owed to certain current and former employees of Defendants listed in the attached Schedule A for violations continuing after September 24, 2021, and may be owed to certain current and former employees presently unknown to the Secretary for the period covered by this Complaint, who may be identified during this litigation and added to Schedule A;

(3) 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;

(4) In the event liquidated damages are not awarded, for an Order awarding prejudgment interest computed at the underpayment rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621.

FURTHER, Plaintiff prays that this Honorable Court award costs in his favor, and an order granting such other and further relief as may be necessary and appropriate.

Respectfully submitted,

Mailing Address:

UNITED STATES DEPARTMENT OF LABOR

Seema Nanda
Solicitor of Labor

U.S. Department of Labor
Office of the Regional Solicitor
1835 Market Street
Mailstop SOL/22
Philadelphia, PA 19103
(215) 861-5037 (voice)
(215) 861-5162 (fax)
mckenna.sharon.h@dol.gov

Oscar L. Hampton III
Regional Solicitor

Adam Welsh
Wage and Hour Counsel

/s/ Sharon H. McKenna
Sharon H. McKenna
Trial Attorney
PA Bar ID # 89181

Date: **September 30, 2022**

Attorneys for Plaintiff