

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

**JULIE A. SU**, Acting Secretary of Labor, )  
United States Department of Labor, )  
 )  
Plaintiff, )

v. ) Case No.:

**TPS CAREGIVING, LLC d/b/a** )  
**COMFORT KEEPERS HOME CARE a** )  
**limited liability company; HEAL AT** )  
**HOME, LLC, a limited liability** )  
**company; HEALING HANDS HOME** )  
**HEALTH, LLC, a limited liability** )  
**company; HEALING HANDS** )  
**PERSONAL SERVICES AGENCY,** )  
**LLC, a limited liability company; TPS** )  
**MEDICAL HOLDINGS, LLC, a limited** )  
**liability company; HEALING HANDS** )  
**OUTPATIENT THERAPY AND** )  
**REHABILITATION CENTER, LLC, a** )  
**limited liability company;** )  
**COMMUNITY INTEGRATION** )  
**SUPPORT SERVICES, LLC, a limited** )  
**liability company; TRANQUILITY** )  
**NURSING AND REHAB, LLC, a** )  
**limited liability company, and TIM** )  
**PAUL, an individual** )  
 )  
Defendants. )

---

**COMPLAINT**

---

Pursuant to Section 217 of the Fair Labor Standards Act, of 1938, as amended (29 U.S.C. § 201 *et seq.*) (“FLSA”), Plaintiff, **Julie A. Su**, Acting Secretary of Labor, United States Department of Labor (“Acting Secretary”), brings this action to enjoin and restrain the Defendants TPS Caregiving, LLC d/b/a Comfort Keepers

Home Care (“Comfort Keepers”); Heal at Home, LLC (“Heal at Home”); Healing Hands Home Health, LLC (“HHHH”); Healing Hands Personal Services Agency, LLC (“HHPSA”); TPS Medical Holdings, LLC (“Medical Holdings”); Healing Hands Outpatient Therapy and Rehabilitation Center, LLC (“HHOT”); Community Integration Support Services, LLC (“Community Integration”); Tranquility Nursing and Rehab, LLC (“Tranquility”); (collectively, “Corporate Defendants”) and Tim Paul (collectively with the Corporate Defendants, “Defendants”) from violating Sections 206, 207, 211, 215(a)(2) and/or 215(a)(5) of the FLSA and to recover unpaid compensation—plus an equal amount in liquidated damages pursuant to Section 216(c) of the FLSA (29 U.S.C. § 216(c))—for Defendants’ employees.

On January 20, 2022, the United States District Court for the Southern District of Indiana, Indianapolis Division entered a Consent Judgment in *Walsh v. Heal at Home, LLC, et. al*, Docket 1:21-cv-02160-SEB-TAB, Doc. 24 (“Consent Judgment”). In the Consent Judgment, Defendants Heal at Home, Comfort Keepers, and Paul agreed (in relevant part) to pay damages in the form of back wages and liquidated damages for FLSA violations from April 30, 2019, through April 11, 2020. This Court further enjoined Defendants Heal at Home, Comfort Keepers, and Paul from future violations of Sections 207 and 215(a)(2) of the FLSA.

Beginning on September 14, 2023, the Acting Secretary, through the Wage and Hour Division, conducted an investigation of Defendants’ employment and pay practices for compliance with the FLSA. The Acting Secretary’s investigation established violations dating from April 12, 2020, and continuing to the present (the

“Violation Period”). Unless stated otherwise, all allegations and conditions relate to the Violation Period.

### **Preliminary Statement**

As alleged more fully below, Defendants repeatedly and willfully violated—and continue to violate—the FLSA in operating their home health care agencies. Defendants engaged in a variety of practices to evade their FLSA overtime and recordkeeping obligations. They failed to pay employees a premium for overtime hours worked by manipulating their employees’ regular rates of pay for the purpose of avoiding their overtime obligations. For the reasons below, the Acting Secretary seeks to recover back wages and liquidated damages for employees, and to enjoin Defendants from violating the FLSA in the future.

### **Jurisdiction and Venue**

1. This Court has jurisdiction of this case. 29 U.S.C. §§ 216(c), 217 and 28 U.S.C. § 1345.
2. This Court is the proper venue because all or a substantial part of the events or omissions giving rise to these allegations occurred in this judicial district.

### **Defendants**

3. Defendant Comfort Keepers is a limited liability company within this Court’s jurisdiction with an office at 1335 Sadlier Circle, Indianapolis, Indiana, 46238 in Marion County where it conducts business.

4. Defendant Heal at Home is a limited liability company with an office at 1335 Sadlier Circle, Indianapolis, Indiana, 46238 in Marion County where it conducts business.

5. Defendant HHHH is a limited liability company with an office at 216 E. 9th Street, Anderson, Indiana 46016 in Madison County where it conducts business.

6. Defendant HHPSA is a limited liability company with an office at 216 E. 9th Street, Anderson, Indiana 46016 in Madison County where it conducts business.

7. Defendant Medical Holdings is a limited liability company with an office at 1335 Sadlier Circle, Indianapolis, Indiana, 46238 in Marion County where it conducts business.

8. From April 12, 2020, through December 31, 2021, Defendant HHOT was a limited liability company with an office at 216 E. 9th Street, Anderson, Indiana 46016 in Madison County where it conducted business.

9. From April 12, 2020, through June 1, 2021, Defendant Community Integration was a limited liability company with an office at 1335 Sadlier Circle, Indianapolis, Indiana, 46238 in Marion County where it conducted business.

10. From April 12, 2020, through, October 15, 2021, Defendant Tranquility was a limited liability company with an office at 1335 Sadlier Circle, Indianapolis, Indiana, 46238 in Marion County where it conducted business.

11. Defendants Comfort Keepers, Heal at Home, HHHH, and HHPA are home health care agencies providing home health care services to clients in the Indianapolis, Indiana metropolitan area.

12. Defendant Medical Holdings provides management and payroll services for the other Corporate Defendants.

13. From April 12, 2020, through December 31, 2021, Defendant HHOT was a home health care agency providing home health care services to clients in the Indianapolis, Indiana metropolitan area.

14. From April 12, 2020, through June 1, 2021, Defendant Community Integration was a home health care agency providing home health care services to clients in the Indianapolis, Indiana metropolitan area.

15. From April 12, 2020, through October 15, 2021, Defendant Tranquility was a home health care agencies providing home health care services to clients in the Indianapolis, Indiana metropolitan area.

16. Defendant Paul has actively managed and supervised the Corporate Defendants' operations and employees. Among other actions, Paul has hired and fired employees, set their work schedules, and set their pay rates. He is the sole owner of the Corporate Defendants.

17. Defendant Paul has acted directly or indirectly in the Corporate Defendants' interests with respect to their employees and is therefore an "employer" under the FLSA. 29 U.S.C. § 203(d).

18. During the Investigation Period, Defendants engaged in business within Madison and Marion Counties, within this Court's jurisdiction.

### **The FLSA Applies to Defendants**

19. Defendants are each and together an "enterprise" under the FLSA due to their related activities performed through unified operation or common control and for a common business purpose. 29 U.S.C. § 203(r).

20. Defendants are each and together an "enterprise engaged in commerce" under the FLSA, because they had (i) two or more employees who are engaged in or produced goods for commerce; and (ii) an annual gross volume of sales or business done greater than \$500,000 during the Violation Period. 29 U.S.C. § 203(s)(1)(A).

21. Defendants employed persons in domestic service in households, and thus affected commerce. 29 U.S.C. § 202(a). Defendants' employees annually earned in excess of \$2,100 from Defendants. 29 C.F.R. § 552.2(b). Defendants' employees worked more than eight hours in a workweek. 29 C.F.R. § 552.2(b).

### **Overtime Violations**

22. Defendants repeatedly violated Sections 207 and 215(a)(2) of the FLSA when they failed to pay their employees 1.5 times their regular rates for hours worked in excess of 40 in a workweek.

23. Defendants' violations have occurred in two circumstances: upon implementation of enterprise-wide reforms in conjunction with the Consent

Judgment and when an employee's patient was approved for additional coverage hours by Medicare or Medicaid.

*Enterprise-Wide Consolidation of Hours Worked*

24. Among other FLSA violations in 2019 and 2020 covered by the Consent Judgment, Defendants Heal at Home, Comfort Keepers, and Paul failed to pay employees an overtime premium for hours worked more than 40 in a workweek. Specifically, Defendants Heal at Home, Comfort Keepers, and Paul paid employees separately for hours worked at multiple companies within the same enterprise, instead of combining the hours and paying an overtime premium.

25. Following the period covered by the Consent Judgment, Defendants began combining all hours worked by employees across the entire enterprise.

26. As a result of combining employees' hours worked enterprise-wide, more of Defendants' employees accrued significant overtime hours.

27. To counter the rising costs of overtime, Defendants began routinely lowering employees' regular rates of pay.

28. With certain statutory exclusions not relevant here, an employee's "regular rate" includes "all remuneration for employment paid to, or on behalf of, the employee...." 29 U.S.C. § 207(e). "Since the term regular rate is defined to include all remuneration for employment . . . the overtime provisions of the act cannot be avoided by setting an artificially low hourly rate upon which overtime pay is to be based and making up the additional compensation due to employees by other means." 29 C.F.R. § 778.500(a).

29. For example, an employee may have been working 36 hours at each of two Corporate Defendants, at a regular rate of \$14 per hour. Because the employee's work did not exceed 40 hours in a workweek at a single company, Defendants calculated their pay without the overtime premium. In this example, Defendants would pay the employee for 72 hours work at the regular rate of \$14 per hour or \$1,008 per week.

30. Upon consolidation of the employee's hours enterprise-wide, they would be entitled to 40 hours at the regular rate of \$14 per hour and 32 hours at the overtime rate of \$21 per hour, for a total of \$1,232 per week. To keep their costs down, Defendants would then lower the employee's regular rate, for example, to \$12 per hour. Defendants would then pay the employee 40 hours at the new regular rate of \$12 per hour and 32 hours at the new overtime rate of \$18 per hour, for a total of \$1,056.

31. While this amount is more than the \$1,008 Defendants illegally paid the employee before the rate adjustment, it still did not equal the \$1,232 they were entitled to under the FLSA. Accordingly, this represents a manipulation of the employee's regular rate of pay for the purpose of avoiding paying the overtime premium.

*Changes of Medicare- or Medicaid-Approved Hours*

32. In the second circumstance—when Medicare or Medicaid initially approved a higher number of care hours for a given patient—Defendants often required the same assigned employee to work the additional care hours.



33. For example, if Medicare or Medicaid initially approved a patient for 48 care hours, Defendants paid the corresponding employee approximately \$14 per hour as a regular rate of pay for the first 40 hours and at \$21 per hour for the eight overtime hours, totaling \$728 per week.

34. If Medicare or Medicaid increased the approved care hours to 72 per week, the employees were entitled to the same 40 hours at \$14 per hour, and \$21 per hour for the next 32 hours, a total of \$1,232 per week. However, Defendants reduced the corresponding employee's regular rate to approximately \$12.50 per hour as a regular rate of pay for the first 40 hours and paid the employee for 32 hours at the new overtime rate of \$18.75 per hour, for a total of \$1,100 per week.

35. While \$1,100 is more money than Defendants paid the employee before the rate adjustment, it was not the \$1,232 per week they were entitled to under the FLSA. This represents a manipulation of the employee's regular rate of pay for the purpose of avoiding paying the overtime premium.

36. When Medicare- or Medicaid-approved hours significantly decreased, Defendants typically returned to paying employees their original regular rates of pay.

#### *Pay Agreements*

37. Both when consolidating the hours worked at different companies and when adjusting for additional Medicare- or Medicaid-approved hours, Defendants had employees purportedly agree to the revised regular rate using a "Pay Agreement."

38. These Pay Agreements (sometimes sent via text message and sometimes handwritten on blank paper) often include examples of the revised pay structure demonstrating the employee would make more money within each week. But they do not tell the employee how much money they would have been entitled to under the FLSA should they work the increased hours at their original regular rate.

39. Some Pay Agreements explicitly tie the rate change to the number of working hours, for instance by having employees affirm, “I understand if I return to a permanent schedule of no more than 40 hours per week, my pay rate will return to the rate I was offered at hire.”

40. Many employees signed or otherwise “agreed” to their Pay Agreements after the rate change went into effect—sometimes days, sometimes months—or without an effective date.

41. For some employees who have multiple changes in hours worked and regular rates of pay (bona fide or not), Defendants have them sign new Pay Agreements each time, sometimes as often as once a month.

42. For other employees, Defendants fail to provide them with updated Pay Agreements for their additional rate changes.

43. For some employees, Defendants changed their regular rates only once. But Defendants did not change those employees’ rates because their work hours have not changed.

44. These rate reductions are not “bona fide” because employees’ regular rates fluctuate based on their hours rather than being set by a new pay policy meant to be in place for a substantial period of time.

### **Recordkeeping Violations**

45. Defendants repeatedly violated Sections 11 and 15(a)(5) of the FLSA by failing to keep complete and accurate records. 29 U.S.C. §§ 211, 215(a)(5), 29 C.F.R. Part 516.

46. Defendants failed to maintain complete and accurate time and pay records under 29 C.F.R. § 516.2(a)(6)(i) by not recording the regular hourly rate for any workweek in which overtime was owed due to impermissible payment practices.

47. Defendants failed to maintain complete and accurate time and pay records under 29 C.F.R. § 516.2(a)(8) by not maintaining accurate straight time earnings due to impermissible payment practices.

48. Defendants failed to maintain complete and accurate time and pay records under 29 C.F.R. § 515.2(a)(9) by not maintaining accurate records of premium pay for overtime hours due to impermissible payment practices.

### **Willfulness**

49. Moreover, Defendants repeatedly and willfully have violated Sections 7 and 11 of the FLSA because Defendants knew or showed reckless disregard for whether the FLSA prohibited their conduct.

50. As discussed above, Defendants Heal at Home, Comfort Keepers, and Paul entered into a Consent Judgment on January 20, 2022. Defendants Heal at

Home, Comfort Keepers, and Paul assured the Acting Secretary and this Court that they would comply with the FLSA in the future.

51. Defendants have acted willfully when they continued to violate the FLSA after entering into the Consent Judgment.

### **Remedies Sought**

52. As a result of their FLSA violations, Defendants owe affected employees back wages and liquidated damages under 29 U.S.C. §§ 216(c), 217. Many of these employees are currently unknown to the Acting Secretary due to Defendants' recordkeeping violations.

53. Because Defendants repeatedly and willfully violated the FLSA, the Secretary is entitled to recover back wages and liquidated damages for a three-year period. 29 U.S.C. § 255(a).

### **Prayer for Relief**

As a result of Defendants' repeated and willful FLSA violations, the Acting Secretary respectfully requests this Court enter an Order:

A. Permanently enjoining and restraining Defendants, their officers, agents, servants, employees, and those in active concert or participation with them, from violating Sections 207, 211, 215(a)(2), and 215(a)(5) of the FLSA. 29 U.S.C. § 217(a).

B. Finding Defendants liable for unpaid overtime wages, plus an equal amount in liquidated damages, owing to affected employees, including those not yet known to the Acting Secretary. 29 U.S.C. § 216(c).

C. If the Court declines to award liquidated damages, then enjoining and restraining Defendants, their officers, agents, employees, and those persons in active concert or participation with Defendants, from withholding unpaid compensation found owing to Defendants' employees, plus prejudgment interest computed at the underpayment rate established by the Secretary of the Treasury under 26 U.S.C. § 6621.

D. Providing such other relief as may be necessary and appropriate.

E. Awarding costs and granting such other and further relief as may be necessary and appropriate.

Respectfully Submitted,

**SEEMA NANDA**  
Solicitor of Labor

**CHRISTINE Z. HERI**  
Regional Solicitor

*/s/ Haley R. Jenkins*  
HALEY R. JENKINS  
Trial Attorney  
U.S. Department of Labor  
Office of the Solicitor  
230 South Dearborn Street, Rm. 844  
Chicago, Illinois 60604  
312.353.1218  
[Jenkins.haley.r@dol.gov](mailto:Jenkins.haley.r@dol.gov)  
IL Bar #6324112

**ADAM LUBOW**  
Trial Attorney  
U.S. Department of Labor  
Office of the Solicitor  
1240 E. 9th St., Rm. 881  
Cleveland, Ohio 44120  
216.522.3876  
[Lubow.adam.m@dol.gov](mailto:Lubow.adam.m@dol.gov)  
OH Bar #97517

*Attorneys for Plaintiff Julie A. Su,  
Acting Secretary of Labor, United States  
Department of Labor*