

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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JULIE A. SU,

Civil No. 22-2002 (JRT/TNL)

Plaintiff,

v.

**CONSENT JUDGMENT AND ORDER**

AXIS HOME PCA AGENCY, INC., et al.,

Defendants.

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Kevin M. Wilemon, **U.S. DEPARTMENT OF LABOR**, Office of The Solicitor,  
230 S. DEARBORN ST., Room 844, Chicago, IL 60604, for plaintiff.

Nicholas N Sperling, **TREPANIER MACGILLIS BATTINA P.A.**, 8000 Flour  
Exchange Building, 310 Fourth Avenue South, Minneapolis, MN 55415, for  
defendants.

Plaintiff, Julie A. Su, Acting Secretary of Labor, United States Department of  
Labor, has filed a complaint under the Fair Labor Standards Act of 1938 as amended (29  
U.S.C. § 201 *et seq.*) (“FLSA”), and Defendants Axis Home PCA Agency, Inc. and Cubtan  
Nur, individually, (collectively “Defendants”) have appeared by counsel, and agree to  
the entry of this Consent Judgment and Order (“Consent Judgment”) without contest.

Defendants admit and the Court finds that this Court has jurisdiction of this case  
under 29 U.S.C. §§ 216(c), 217 and 28 U.S.C. § 1345.

Defendants admit and the Court finds Defendants are engaged in related activities performed through unified operation or common control for a common business purpose and are an “enterprise” under 29 U.S.C. § 203(r) of the FLSA.

Defendants admit and the Court finds Defendants are an enterprise engaged in commerce or in the production of goods for commerce within the meaning of 29 U.S.C. § 203(1)(A) of the FLSA.

Defendants admit and the Court finds Defendants are employers as defined in 29 U.S.C. § 203(d) of the FLSA.

Upon motion of attorneys for the Acting Secretary and Defendants and for cause shown, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED**, pursuant to section 17 of the FLSA that Defendants, their officers, agents, servants, and all persons acting or claiming to act on their behalf and interest be, and they hereby are, permanently enjoined and restrained from violating the provisions of sections 7 , 11(c), 15(a)(2), and 15(a)(5) of the FLSA, in any of the following manners:

1. Defendants shall not, contrary to 29 U.S.C. §§ 207 and 215(a)(2), employ any of their employees including, but not limited to, any of their employees working at Axis Home PCA Agency, Inc., or at any business location owned, operated, and/or controlled by Defendants, or at any other locations at which their employees perform work, in any workweek when they are engaged in commerce or employed in an

enterprise engaged in commerce, within the meaning of the FLSA, for workweeks longer than forty hours, unless said employees receive compensation for their employment in excess of forty hours at a rate equivalent to one and one-half times the regular rate at which they are employed, including but not limited to:

a. Workweeks during which total hours worked by any of Defendants' employees for the same or different clients exceeds 40 hours; or

b. Workweeks during which total hours worked by any of Defendants' employees performing different tasks and/or services for the same or different clients exceeds 40 hours.

2. 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 including, but not limited to, any of their employees working at Axis Home PCA Agency, Inc., or at any business location owned, operated, and/or controlled by Defendants, or at any other locations at which their employees perform work, as prescribed by the Regulations issued pursuant to 29 U.S.C. §§ 211(c) and 215(a)(5) and found at 29 C.F.R. Part 516. Defendants shall make such records available at all reasonable times to representatives of the Plaintiff.

3. Pursuant to 29 U.S.C. § 215(a)(3), Defendants shall not discharge or take any retaliatory action against any of their current or former employees because the current or former employee engages in any of the following activities:

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

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

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

4. Defendants shall utilize an electronic timekeeping system for tracking and maintaining a record of all hours worked by employees on behalf of Defendants for two years from the execution of this Consent Judgment. Nothing in this provision alters Defendants' obligation to comply with record retention requirements under the FLSA, or a rule or regulation promulgated pursuant to the FLSA.

5. Defendants shall distribute the following Wage and Hour Fact Sheets to all current employees upon execution of this Consent Judgment, and new employees, upon hire, for two years from execution of this Consent Judgment: (1) Fact Sheet #21:

Recordkeeping Requirements under the Fair Labor Standards Act (FLSA); (2) Fact Sheet #22: Hours Worked Under the Fair Labor Standards Act (FLSA); (3) Fact Sheet #23: Overtime Pay Requirements of the Fair Labor Standards Act (FLSA); and (4) Fact Sheet #25: Home Health Care and the Companionship Services Exemption under the Fair Labor Standards Act (FLSA).

6. Defendants shall post a file-stamped copy of this Consent Judgment in a conspicuous place at Axis Home PCA Agency, Inc.'s principal office for two years from the date Defendants receive a court-approved copy of this Consent Judgment.

**FURTHER, JUDGMENT IS HEREBY ENTERED**, pursuant to section 16(c) of the Act, in favor of the Acting Secretary and against Defendants in the total amount of \$135,000.00, plus post-judgment interest as set forth in Exhibit A.

7. The Acting Secretary shall recover from Defendants the sum of \$67,500.00 in unpaid overtime compensation covering the period from May 16, 2019, to May 15, 2021, for Defendants' current and former employees whose names are listed in the attached Exhibit A, and the additional sum of \$67,500.00 in liquidated damages. The Acting Secretary shall also recover from Defendants \$1,105.57 in interest as set forth in Exhibit B.

a. At the time of Defendants' execution of this Consent Judgment, Defendants shall deliver a preliminary payment in the amount of \$40,500 by ACH transfer, credit card, debit card, or digital wallet at

<https://www.pay.gov/public/form/start/77692637> or [www.pay.gov](http://www.pay.gov) and searching “WHD Back Wage Payment – Midwest Region”.

b. Within 30 calendar days of the entry of this Consent Judgment, Defendants shall deliver the first of 6 monthly payments, each in the amount set forth in Exhibit B, by ACH transfer, credit card, debit card, or digital wallet at <https://www.pay.gov/public/form/start/77692637> or [www.pay.gov](http://www.pay.gov) and searching “WHD Back Wage Payment – Midwest Region”. These payments shall continue on the first day of every month, until December 1, 2024. A 5 calendar-day grace period shall be allowed for receipt of each payment that is required by this paragraph. If Defendants fail to make any payment within that 5 calendar-day grace period, all remaining installment payments shall become immediately due and payable, without presentment, demand, protest or notice of any kind, all of which Defendants hereby expressly waive.

c. Defendants shall also furnish to the Acting Secretary the social security number and last known address for each employee named in Exhibit A.

d. Upon receipt of payment from Defendants, representatives of the Acting Secretary shall distribute such amounts, less appropriate deductions for federal income withholding taxes and the employee’s share of the social security (F.I.C.A.) tax, to the employees or their legal representative as their interests may appear, in accordance with the provisions of section 16(c) of the FLSA.

Defendants remain responsible for the employer's share of F.I.C.A. arising from or related to the back wages distributed by the Acting Secretary.

e. Neither Defendants nor anyone on their behalf shall directly or indirectly solicit or accept the return of any sums paid under this Consent Judgment.

f. If an individual named on Exhibit A refuses any sums paid under this Consent Judgment by attempting to return them to Defendants or to anyone on Defendants' behalf, Defendants shall refuse to accept them and shall ensure that all such sums be immediately paid to the Acting Secretary for deposit as above. Defendants shall have no further obligations with respect to such monies.

g. Any monies not disbursed by the Department of Labor after three years from the date of payment by Defendants, because of the inability to locate the proper persons or because of their refusal to accept payment, shall be deposited into the Treasury of the United States as miscellaneous receipts, pursuant to section 16(c) of the FLSA.

h. The provisions of this Consent Judgment shall not in any way affect any legal right of any individual not named on Exhibit A, nor shall the provisions in any way affect any legal right of any individual named on Exhibit A to file any action against Defendants for any violations alleged to have occurred outside the relevant period.

i. Should Defendants fail to pay any of the aforesaid installment payments on or before the date set forth in Exhibit B, the entire amount of the balance of unpaid compensation remaining shall become due without further notice by the Acting Secretary to Defendants. Any defaulted balance shall be subject to the assessment of interest and penalty interest at rates determined by the U.S. Treasury as required by the Debt Collection Improvement Act of 1996 (P.L. 104-134) published by the Secretary of the Treasury in the Federal Register and other delinquent charges and administrative costs shall also be assessed. In the event of default, the Acting Secretary may pursue enforcement of this agreement and/or any additional collection action that may include, but is not limited to, administrative offset, referral of the account to credit reporting agencies, private collection agencies, and/or the Department of Justice.

8. In the event Defendants fail to make any payment within 5 days of any due date set forth on the payment plan set forth in Exhibit B, and are not otherwise up-to-date on the total owed under this Consent Judgment, then Defendants consent to the entry of a Writ of Execution, consistent with the terms of this Consent Judgment and pursuant to Federal Rule of Civil Procedure 69, to enforce the monetary terms of this Consent Judgment. Such a writ of execution shall be limited to the pending balance of the Defendants' monetary obligations under this Consent Judgment at the time such writ is issued. The Acting Secretary may represent in filing for such a writ that

Defendants consent to its issuance. In the event a writ of execution is entered by the Court, the Acting Secretary may engage in discovery in aid of execution as permitted by the Federal Rules of Civil Procedure. However, the Acting Secretary may not take any steps to enforce the monetary portions of this Consent Judgment absent a default by Defendants under the terms of this Consent Judgment.

9. By entering into this Consent Judgment, Plaintiff does not waive her right to conduct future investigations of Defendants under the provisions of the FLSA and to take appropriate enforcement action, including assessment of civil money penalties pursuant to 29 U.S.C. § 216(e), with respect to any violations disclosed by such investigations.

**IT IS FURTHER ORDERED** that each party shall bear their own costs, fees and other expenses incurred by such party in connection with any stage of this proceeding, but not limited to, attorney fees which may be available under the Equal Access to Justice Act, as amended.

Dated: July 16, 2024  
at Minneapolis, Minnesota

s/John R. Tunheim  
JOHN R. TUNHEIM  
United States District Judge





