

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

ELIZABETH GIBSON, ALYSON INDURSKY,
CASSONDRA SHAUGHNESSY, and INEZ
SLOAN, individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

CITIZENS OPTIONS UNLIMITED, INC.,
NYSARC, INC., and AHRC NASSAU,

Defendants.

**CLASS AND COLLECTIVE
ACTION COMPLAINT**

Jury Trial Demanded

Plaintiffs Elizabeth Gibson, Alyson Indursky, Cassandra Shaughnessy, and Inez Sloan (“Plaintiffs”), individually and on behalf of all others similarly situated, by their attorneys, Outten & Golden LLP and Kessler Matura P.C., upon personal knowledge as to themselves and upon information and belief as to other matters, allege as follows:

NATURE OF THE ACTION

1. Citizens Options Unlimited, Inc. (“Citizens”), NYSARC, Inc. (“NYSARC”), and AHRC Nassau (collectively, “Defendants”) are non-profit organizations that operate various facilities for people with disabilities throughout the state of New York. Among these is the Shoreham Intermediate Care Facility (“Shoreham ICF”), a residential facility consisting of 11 houses in which people with intellectual and developmental disabilities live and receive clinical and supportive care. Until in or around July 2019, the Shoreham ICF was owned and controlled solely by NYSARC and AHRC Suffolk. Beginning around that time, AHRC Nassau and

Citizens assumed co-ownership of the facility with NYSARC. Upon information and belief, Defendants co-own and operate ICFs throughout Nassau and Suffolk County.

2. Plaintiffs are current and former “House Managers” at the Shoreham ICF. House Managers are assigned to specific houses and work with Direct Support Professionals (“DSPs”) and other House Managers to deliver care to residents. House Managers occupy a station low on the workplace hierarchy: they report to building administrators (who oversee multiple houses), who are managed by Assistant Directors, who in turn have their own superiors.

3. In theory, there is a division of labor between House Managers and DSPs. On a given shift, House Managers must monitor staffing and scheduling and complete certain paperwork, in addition to assisting DSPs as needed, while DSPs must focus on the front-line work of caring for the residents, including cleaning, preparing food, and helping residents shower and change.

4. But in practice, House Managers primarily perform DSP job duties. To address chronic understaffing, Defendants have required House Managers to work long hours to assist and fill in for DSPs on understaffed shifts. But even though House Managers perform the same non-exempt job duties as DSPs, Defendants pay time-and-a-half to DSPs for their overtime hours while paying no overtime premium to House Managers.

5. Under this chaotic regime, House Managers have worked extremely long hours. House Managers work late at the ICF 6-7 days per week, and when they return home, they are on call 24/7, where they manage staffing and coverage issues and medical emergencies involving residents. They are expected to be reachable by their work phones at all times and to travel to the facility on a moment’s notice to fill in for DSPs on understaffed shifts.

6. Even though House Managers regularly work many weekly overtime hours, Defendants unlawfully avoided paying an overtime premium for *any* weekly hours over 40, through two illegal mechanisms. First, Defendants require House Managers to clock out as House Managers and clock back in as DSPs for their overtime hours, so that they are paid at a lower DSP rate for hours over 40, rather than 1.5 times their regular rate – even though House Managers perform DSP job duties all week long, and not just during overtime hours. Second, even though Defendants require House Managers to be on call after clocking out and leaving the facility and to perform some work functions from home, Defendants do not compensate House Managers for any off-the-clock work.

7. Plaintiffs seek to recover unpaid overtime wages on behalf of themselves and House Managers who have worked for Defendants, pursuant to the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201, *et seq.* (“FLSA”), and the New York Labor Law, Art. 6 §§ 190 *et seq.*, and Art. 19, §§ 650 *et seq.* (“NYLL”).

THE PARTIES

Plaintiff Elizabeth Gibson

8. Plaintiff Gibson is a resident of Mastic, New York. Ms. Gibson worked as a House Manager at the Shoreham ICF from approximately June 2015 to August 2021.

9. Ms. Gibson is a covered employee within the meaning of the FLSA and NYLL.

10. Throughout her employment with Defendants, Ms. Gibson routinely worked over 40 hours a week but was not paid an overtime premium for any weekly hours over 40. Between 2019, and when she separated from Defendants in 2021, Ms. Gibson’s Director, Mary Gilleran, instructed her to clock out as a House Manager and clock back in as a DSP when she reached for 40 hours each week, which resulted in Ms. Gibson being paid at an hourly rate lower than her

customary rate of pay and depriving her of overtime payments at one and one-half times her regular rate for each hour over 40 worked. During this period, she typically worked 6-7 days per week at the ICF. With rare exception, she worked well over 8 hours per day, and on many occasions worked 60 weekly hours or more on the clock, including during overnight shifts, which were at times followed consecutively by an all-day shift.

11. When Ms. Gibson left the facility at the end of the workday, her managers instructed her that she was still on call in case Defendants needed her to fill in for DSPs on an understaffed shift. Her managers also instructed her that she was required to be accessible by her work phone 24/7. If she had any conflicting obligations, Defendants required her to report them ahead of time. She was expected to come to the facility whenever she was called, even on a scheduled day off, and she was reprimanded if she did not. For example, on one occasion in 2020, Defendants reprimanded Ms. Gibson for not reporting that she had a brief afternoon appointment on one of her days off, because she was unavailable to work when Citizens called. Under this system, when she was not present at the Shoreham ICF, Ms. Gibson had little to no downtime that she was free to use for non-work purposes, because during the brief periods each week when she was not at the ICF, she could be called to return to work at any moment. Nevertheless, Defendants did not compensate Ms. Gibson for any on-call time.

12. Additionally, Ms. Gibson performed some of her job duties while not at the ICF. For example, while not at the ICF, she often communicated by phone and text with staff regarding finding coverage for DSPs, to discuss payroll and scheduling, to update the Assistant Director and Director on DSP coverage, or to discuss residents' issues, such as transportation to the hospital for immediate medical needs.

13. Throughout this period, for each bi-weekly pay period, upon information and belief, Ms. Gibson's wage statements consistently reflected 80 hours of work at her House Manager pay rate (minus any vacation or sick days), along with additional hours at a lower rate, and did not include her on-call hours or other off-the-clock work.

14. On multiple occasions during the course of her employment, including approximately once per week during weekly meetings, Ms. Gibson raised concerns to Director Gilleran about receiving a lower rate of pay for overtime hours and about working off the clock without compensation. Ms. Gilleran responded that Ms. Gibson was not entitled to overtime and that her lower rate for hours over 40 was justified.

Plaintiff Alyson Indursky

15. Plaintiff Indursky is a resident of Farmingville, New York. Ms. Indursky worked as a House Manager at the Shoreham ICF from approximately January 2020 to April 2021.

16. Ms. Indursky is a covered employee within the meaning of the FLSA and NYLL.

17. Throughout her employment with Defendants, Ms. Indursky routinely worked over 40 hours a week but was not paid an overtime premium for any weekly hours over 40. Between January 2020 and when she separated from Defendants in 2021, Ms. Indursky's managers instructed her to clock out as a House Manager and clock back in as a DSP when she reached for 40 hours each week, which resulted in Ms. Indursky being paid at an hourly rate lower than her customary rate of pay and deprived her of overtime payments at one and one-half times her regular rate for each hour over 40 worked. During this period, she typically worked 6-7 days per week at the ICF. With rare exception, she worked well over 8 hours per day, and on many occasions worked 60 weekly hours or more on the clock, including during overnight shifts which were at times followed consecutively by a double shift or an all-day shift. Specifically,

Ms. Indursky recalls working approximately 72.5 hours during one week in April 2021 without receiving overtime pay.

18. When Ms. Indursky left the facility at the end of the workday, her managers instructed her that she was still on call in case Defendants needed her to fill in for DSPs on an understaffed shift. Her managers instructed her that she was required to be accessible by her personal and work phone 24/7. If she had any conflicting obligations, Defendants required her to report them ahead of time. She was expected to come to the facility whenever she was called, even on a scheduled day off, and she was reprimanded if she did not. On multiple occasions, her managers, including Director Mary Gilleran, reprimanded her for not answering the phone when someone called to ask her to come to work due to insufficient DSP staffing, and for not being available to come to the facility when called. Under this system, when she was not present at the Shoreham ICF, Ms. Indursky had little to no downtime that she was free to use for non-work purposes, because during the brief periods each week when she was not at the ICF, she could be called to return to work at any moment. Nevertheless, Defendants did not compensate Ms. Indursky for any on-call time.

19. Additionally, Ms. Indursky performed some of her job duties while not at the ICF. For example, she often communicated by phone and text with the Assistant Director, Building Administrators, nursing staff at the ICF, other House Managers, and DSPs regarding staffing and residents' needs.

20. Throughout this period, for each bi-weekly pay period, upon information and belief, Ms. Indursky's wage statements consistently reflected 80 hours of work at her House Manager pay rate (minus any vacation or sick days), along with additional hours at a lower rate, but did not include her on-call hours or other off-the-clock work.

21. On multiple occasions, Ms. Indursky raised concerns to her managers about receiving a lower rate of pay for overtime hours, and about working off the clock without compensation, and her managers responded that these practices were lawful.

Plaintiff Inez Sloan

22. Plaintiff Sloan is a resident of Central Islip, New York. Ms. Sloan worked as a House Manager at the Shoreham ICF from approximately January 2019 to January 2021.

23. Ms. Sloan is a covered employee within the meaning of the FLSA and NYLL.

24. Throughout her employment with Defendants, Ms. Sloan routinely worked over 40 hours a week but was not paid an overtime premium for any weekly hours over 40. Between 2019, and when she separated from Defendants in 2021, Ms. Sloan's managers instructed her to clock out as a House Manager and clock back in as a DSP for her overtime hours each week, which resulted in Ms. Sloan being paid at an hourly rate lower than her customary rate of pay and deprived her of overtime payments at one and one-half times her regular rate for each hour over 40 worked. During this period, she typically worked 6-7 days per week at the ICF. With rare exception, she worked well over 8 hours per day, and on many occasions worked 60 weekly hours or more on the clock, including during overnight shifts which were at times followed consecutively with an all-day shift. Specifically, Ms. Sloan recalls working approximately 100 hours during one week around Easter 2019 or Easter 2020, and throughout her employment with Defendants until it ended in 2021, without receiving overtime pay.

25. When Ms. Sloan left the facility at the end of the workday, her managers instructed her that she was still on call, in the event Defendants needed her to fill in for DSPs on an understaffed shift, and that she was required to be accessible by her work phone 24/7. If she had any conflicting obligations, Defendants required her to report them ahead of time. She was

expected to come to the facility whenever she was called, even on a scheduled day off, and she was reprimanded if she did not. On multiple occasions, her managers reprimanded her for not answering the phone when a manager called to ask her to come to work due to insufficient DSP staffing, and for not being available to come to the facility when called. Under this system, when she was not present at the Shoreham ICF, Ms. Sloan had little to no downtime that she was free to use for non-work purposes, because during the brief periods each week when she was not at the ICF, she could be called to return to work at any moment. Nevertheless, Defendants did not compensate Ms. Sloan for any on-call time.

26. Additionally, Ms. Sloan performed some of her job duties while not at the ICF. For example, while not at the ICF, she often communicated by phone and text with Building Administrators and other staff regarding residents' doctor's appointments, DSP coverage during resident hospital visits, and ensuring appropriate breakfast meals were ready for the residents in the morning.

27. Throughout this period, each bi-weekly pay period, upon information and belief, Ms. Sloan's wage statements consistently reflected 80 hours of work at her House Manager pay rate (minus any vacation or sick days), along with additional hours at a lower rate, but did not include her on-call hours or other off-the-clock work.

28. On multiple occasions, Ms. Sloan raised concerns to Assistant Director April Perkul, Building Administrator Angel Corelli, and others, about receiving a lower rate of pay for overtime hours and about working off the clock without compensation. They responded that her long hours at reduced or no pay were a part of a House Manager's job.

Plaintiff Cassandra Shaughnessy

29. Plaintiff Shaughnessy is a resident of Selden, New York. Ms. Shaughnessy worked as a House Manager at the Shoreham ICF from approximately April 2016 to April 23, 2021 and was terminated on December 15, 2023.

30. Ms. Shaughnessy is a covered employee within the meaning of the FLSA and NYLL. Throughout her employment as a House Manager with Defendants, Ms. Shaughnessy routinely worked over 40 hours a week but was not paid an overtime premium for any weekly hours over 40. Between when Citizens assumed co-ownership of the facility in 2019 through her remaining time as a House Manager, Ms. Shaughnessy's managers instructed her to clock out as a House Manager and clock back in as a DSP for her overtime hours each week, which resulted in Ms. Shaughnessy being paid at an hourly rate lower than her customary rate of pay and deprived her of overtime payments at one and one-half times her regular rate for each hour over 40 worked. During this period, she typically worked 6-7 days per week at the ICF. With rare exception, she worked well over 8 hours per day, and on many occasions worked 60 weekly hours or more on the clock. She often worked from early in the morning until late at night. She also worked some overnight shifts. Specifically, Ms. Shaughnessy recalls working approximately 65-70 hours at the ICF and additional time from home, during the week of February 15, 2021, without receiving overtime pay. In addition, she recalls working approximately 72 hours at the ICF and additional time from home, during the week of August 5, 2019, without receiving overtime pay.

31. When Ms. Shaughnessy left the facility at the end of the workday, her managers instructed her that she was still on call, in case Defendants needed her to fill in for DSPs on an understaffed shift. Ms. Shaughnessy's managers instructed her that she was required to be

accessible by her work phone 24/7. She was expected to come to the facility whenever she was called, even on a scheduled day off, and she was reprimanded if she did not. For example, in 2019, on a day off, when she missed a call to fill in during an overnight shift, a Program Director, Elizabeth [last name unknown], reprimanded her, informing her that she needed to be available when called going forward. After that point, Ms. Shaughnessy answered her phone and came to the facility when called, including, on one occasion, on her son's birthday, and on another, on Christmas in 2020. Under this system, when she was not present at the Shoreham ICF, Ms. Shaughnessy had little to no downtime that she was free to use for non-work purposes, because during the brief periods each week when she was not at the ICF, she could be called to return to work at any moment. Nevertheless, Defendants did not compensate Ms. Shaughnessy for any on-call time.

32. Additionally, Ms. Shaughnessy performed some of her job duties while not at the ICF. For example, while not at the ICF, she often communicated by phone with staff regarding staffing and coverage needs and medical emergencies involving residents.

33. Throughout this period, for each bi-weekly pay period, upon information and belief, Ms. Shaughnessy's wage statements consistently reflected 80 hours of work at her House Manager pay rate (minus any vacation or sick days), along with additional hours at a lower rate, but did not include her on-call hours or other off-the-clock work.

34. On multiple occasions, Ms. Shaughnessy raised concerns to her managers about receiving a lower rate of pay for overtime hours, and about working off the clock without compensation, and her managers responded that she was salaried and not entitled to overtime, and that her long hours at reduced or no pay were a part of a House Manager's job.

Defendant Citizens

35. Defendant Citizens is a domestic not-for-profit corporation incorporated in New York State, with headquarters at 190 Wheatley Road, Brookville, NY. Defendant does business throughout the state of New York.

36. At all relevant times, Citizens was Plaintiffs' and other House Managers' "employer" within the meaning of the FLSA and the NYLL.

37. Upon information and belief, at all relevant times, Citizens has maintained control, oversight, and direction over Plaintiffs and other House Managers, including with respect to hiring and firing, the rate and method of pay, timekeeping, work schedules, and other conditions of employment.

38. Upon information and belief, Citizens' annual gross revenue is not less than \$500,000 within the meaning of 29 U.S.C. § 203(s)(A)(ii).

Defendant NYSARC

39. Defendant NYSARC is a domestic not-for-profit corporation incorporated in New York State, with headquarters at 29 British American Blvd. 1st Floor, Latham, NY 12110. Defendant does business throughout the state of New York as "The Arc New York."

40. AHRC Nassau, a subdivision and chapter of NYSARC headquartered at 190 Wheatley Road, Brookville, NY, owns and operates the Shoreham ICF jointly with Citizens.

41. At all relevant times, NYSARC was Plaintiffs' and other House Managers' "employer" within the meaning of the FLSA and the NYLL.

42. Upon information and belief, at all relevant times, NYSARC has maintained control, oversight, and direction over Plaintiffs and other House Managers, including with respect to hiring and firing, the rate and method of pay, timekeeping, work schedules, and other

conditions of employment.

43. Upon information and belief, NYSARC's annual gross revenue is not less than \$500,000 within the meaning of 29 U.S.C. § 203(s)(A)(ii).

Defendant AHRC Nassau

44. Defendant AHRC Nassau is a domestic not-for-profit corporation incorporated in New York State, with headquarters at 190 Wheatley Road, Brookville, NY. Defendant does business throughout the state of New York.

45. AHRC Nassau is a subdivision and chapter of NYSARC.

46. AHRC Nassau owns and operates the Shoreham ICF jointly with Citizens.

47. At all relevant times, AHRC Nassau was Plaintiffs' and other House Managers' "employer" within the meaning of the FLSA and the NYLL.

48. Upon information and belief, at all relevant times, AHRC Nassau has maintained control, oversight, and direction over Plaintiffs and other House Managers, including with respect to hiring and firing, the rate and method of pay, timekeeping, work schedules, and other conditions of employment.

49. Upon information and belief, AHRC Nassau's annual gross revenue is not less than \$500,000 within the meaning of 29 U.S.C. § 203(s)(A)(ii).

Defendants' Joint Employment of House Managers

50. Upon information and belief, Citizens, NYSARC, and AHRC Nassau operate in concert, in a common enterprise, and through related activities so that the actions of one may be imputed to the other and/or so that they each act as employers and operate as a single enterprise and/or joint employers within the meaning of the FLSA and NYLL.

51. Upon information and belief, Citizens, NYSARC, and AHRC Nassau each act directly or indirectly in the interest of the other in relation to House Managers, and Defendants share control of House Managers, directly or indirectly, by reason of the fact that one Defendant controls and/or is controlled by the other Defendants.

52. Citizens and AHRC Nassau, the subdivision and chapter of NYSARC that co-owns and operates the Shoreham ICF, share headquarters 190 Wheatley Road, Brookville, NY.¹ Those headquarters are reachable at the same phone number: 516-626-1000.²

53. Citizens and AHRC Nassau share officers. For example, the following officers share the same role for both entities: Stanford Perry as Chief Executive Officer, Barry Donowitz as Chief Administrative Officer, Christopher J. O'Connor as Chief Administrative Officer, and Willard T. Derr as Chief Financial Officer.³

54. On their respective websites, Citizens and AHRC Nassau each describe the other as a “partner.”⁴

55. In *Fabiano-Riccio v. Citizens Options Unlimited, Inc.*, Index No. 57973/2021 (N.Y. Sup. Ct. Westchester County), Citizens admitted in its Answer that it was “affiliated” with AHRC Nassau as of June 2020. See NYSCEF Nos. 1 (Complaint) ¶ 6, 4 (Answer) ¶ 3.

56. On information and belief, NYSARC and AHRC Nassau own and control Citizens and pay the salaries of its officers and directors.

¹ *Who We Are*, AHRC Nassau, <https://www.ahrc.org/whoweare/>; *Who We Are*, Citizens Options Unlimited, <https://www.citizens-inc.org/who-we-are/>.

² *Who We Are*, AHRC Nassau, <https://www.ahrc.org/whoweare/>; *Who We Are*, Citizens Options Unlimited, <https://www.citizens-inc.org/who-we-are/>.

³ *Contact Us*, Citizens Options Unlimited <https://www.citizens-inc.org/contact-us/>; *About Us*, AHRC Nassau <https://www.ahrc.org/leadership/>.

⁴ *Who We Are*, Citizens Options Unlimited, <https://www.citizens-inc.org/who-we-are/>; *About Us*, AHRC Nassau <https://www.ahrc.org/leadership/>.

57. On information and belief, NYSARC, AHRC Nassau, and Citizens co-own the Shoreham ICF and jointly manage its operations, including the employment relationship with House Managers and the maintenance of employment records.

JURISDICTION AND VENUE

58. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337, and jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367.

59. This Court also has jurisdiction over Plaintiffs' claims under the FLSA pursuant to 29 U.S.C. § 216(b).

60. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

61. Venue is proper in the Eastern District of New York pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in this District, and Defendants are subject to personal jurisdiction in this District.

FLSA COLLECTIVE ACTION ALLEGATIONS

62. Plaintiffs bring the First Cause of Action, pursuant to the FLSA, 29 U.S.C. § 216(b), on behalf of themselves and Collective Members.

63. The FLSA Collective is defined as follows:

All current and former House Managers employed by Defendants in New York during the time period from three years prior to the filing of the complaint until resolution of this action (referred to herein as the "Collective Members").

64. All of the work that Plaintiffs and Collective Members have performed has been assigned by Defendants, and/or Defendants have been aware of all of the work that Plaintiffs and Collective Members have performed.

65. As part of their regular business practice, Defendants have intentionally, willfully, and repeatedly engaged in a pattern, practice, and/or policy of violating the FLSA with respect to Plaintiffs and Collective Members. This policy and pattern or practice includes, but is not limited to:

- a. willfully failing to pay Plaintiffs and Collective Members overtime wages for all of the hours that they worked for Defendants in excess of 40 hours per workweek; and
- b. willfully failing to record all of the time that its employees, including Plaintiffs and putative Collective Members, have worked for Defendants.

66. Defendants are aware or should have been aware that the FLSA requires them to pay employees performing non-exempt duties an overtime premium for hours worked in excess of 40 per workweek.

67. Defendants' unlawful conduct has been widespread, repeated, and consistent.

68. The Collective Members are known to Defendants, are readily identifiable, and can be located through Defendants' records.

69. Court-authorized notice should issue to the Collective Members to provide them with an opportunity to learn about this lawsuit and submit a consent to join form pursuant to 29 U.S.C. § 216(b) if they wish to join it.

CLASS ALLEGATIONS

70. Plaintiffs bring the Second and Third Causes of Action under the NYLL and under Fed R. Civ. P. 23(a) and (b), on behalf of themselves and all similarly situated employees who worked for Defendants as House Managers during the period between six years prior to the filing of the original Complaint and the date of final judgment in this matter.

71. Excluded from the Class are Defendants, its legal representatives, officers, directors, assigns, and successors, or any individual who has, or who at any time during the class

period has had, a controlling interest in Defendants; the Judge(s) to whom this case is assigned and any member of the Judges' immediate family; and all persons who will submit timely and otherwise proper requests for exclusion from the Class.

72. All of the work that Plaintiffs and Class Members have performed has been assigned by Defendants, and/or Defendants have been aware of all of the work that Plaintiffs and Class Members have performed.

73. As part of its regular business practice, Defendants have intentionally, willfully, and repeatedly engaged in a pattern, practice, and/or policy of violating the NYLL with respect to Plaintiffs and Class Members. This policy and pattern or practice includes, but is not limited to:

- a. willfully failing to pay Plaintiffs and Class Members overtime wages for all of the hours that they worked for Defendants in excess of 40 hours per workweek;
- b. failing to provide proper wage statements as required by law; and
- c. willfully failing to record all of the time that their employees, including Plaintiffs and Class Members, have worked for Defendants.

74. Defendants are aware or should have been aware that the NYLL requires them to pay employees performing non-exempt duties for all hours worked, and to pay overtime premiums for hours in excess of 40 per workweek.

75. Defendants' unlawful conduct has been widespread, repeated, and consistent.

76. Class Members are readily ascertainable. The number and identity of Class Members are determinable from Defendants' records. The rates of pay for each Class Member is also determinable from Defendants' records. For the purpose of notice and other purposes related to this action, their names and addresses are readily available from Defendants' records. Notice can be provided by means permissible under Rule 23.

Numerosity

77. Upon information and belief, there are more than 40 Class Members.

78. Class Members are therefore too numerous to be individually joined in this lawsuit.

Common Questions of Law and/or Fact

79. There are questions of law and fact common to Plaintiffs and Class Members that predominate over any questions affecting only individual members of the Class. These common questions of law and fact include, without limitation:

- a. whether Defendants failed to keep true and accurate time records for all hours worked by Plaintiffs and Class Members;
- b. what proof of hours worked is sufficient where an employer fails in its duty to maintain true and accurate time records;
- c. whether Defendants failed and/or refused to pay Plaintiffs and Class Members for all hours worked in violation of the NYLL;
- d. whether Defendants' violations of the NYLL were willful;
- e. the nature and extent of the Class-wide injury and the appropriate measure of damages for the Class;
- f. whether Defendants had a policy of failing to pay workers for time that they work;
- g. whether Defendants failed to maintain and provide accurate wage statements;
- h. whether Defendants correctly calculated and compensated Plaintiffs and Class Members for hours worked in excess of 40 per workweek.

Typicality

80. Plaintiffs' claims are typical of those claims that could be alleged by any Class Member, and the relief sought is typical of the relief which would be sought by each Class Member in separate actions.

81. All Class Members were subject to the same unlawful practices by Defendants, as alleged herein, of failing to pay overtime, failing to pay for off-the-clock work, and failing to provide proper wage statements.

82. Plaintiffs and Class Members have all sustained similar types of damages as a result of Defendants' failure to comply with the NYLL.

83. Plaintiffs and Class Members have all been injured in that they have been uncompensated or under-compensated due to Defendants' common policies, practices, and patterns of conduct. Defendants' corporate-wide policies and practices affected all Class Members similarly, and Defendants benefited from the same type of unfair and/or wrongful acts as to each of the Class Members.

84. Plaintiffs and Class Members sustained similar losses, injuries, and damages arising from the same unlawful policies, practices, and procedures.

Adequacy

85. Plaintiffs are able to fairly and adequately represent and protect the interests of the Class that they seek to represent because Plaintiffs' interests do not conflict with the interests of the members of the Class.

86. Plaintiffs are represented by counsel who are experienced and competent in both class action litigation and employment litigation and have previously represented many plaintiffs and classes in wage and hour cases.

Superiority

87. A class action is superior to other available means for the fair and efficient adjudication of this controversy – particularly in the context of wage litigation like the present action, where individual plaintiffs may lack the financial resources to vigorously prosecute a

lawsuit in court against a corporate defendant. Individual joinder of all Class Members is not practicable, and questions of law and fact common to Plaintiffs and Class Members predominate over any questions affecting only individual members of the Class. Individualized litigation increases the delay and expense to all parties and the Court. By contrast, class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system.

88. The prosecution of separate actions by the individual members of the Class would create a risk of inconsistent or varying adjudication with respect to individual members of the Class, and, in turn, would establish incompatible standards of conduct for Defendants.

89. Class treatment will allow those similarly situated persons to litigate their claims in the manner most efficient and economical for the parties and the judicial system.

90. Plaintiffs know of no difficulty that would be encountered in the management of this litigation that would preclude its maintenance as a class action.

COMMON FACTUAL ALLEGATIONS

91. Citizens is a non-profit organization that operates various facilities for people with disabilities throughout the state of New York.

92. Plaintiffs and Class Members are current and former House Managers who were employed by Defendants. House Managers' primary duty is caring for the residents of Defendants' facilities including cleaning, preparing food, and helping them shower and change.

93. House Managers regularly work over 40 hours per week. This includes both time that Defendants recorded through a clock-in/clock-out system and off-the clock work. Defendants avoided paying an overtime premium for any weekly hours over 40 as required by the FLSA and NYLL, through two illegal mechanisms.

94. First, Defendants require House Managers to clock out and clock back in as DSPs for their overtime hours, so that they are paid at a lower DSP rate for hours over 40, rather than one and one-half times their regular rate.

95. Second, even though Defendants require House Managers to be on call after clocking out and leaving the facility and require them to perform some work functions from home, Defendants do not compensate House Managers for off-the-clock work outside of the facility.

96. Defendants maintain time records for all House Managers. However, those time records fail to accurately reflect all of House Managers' hours worked.

97. House Managers' wage statements are consistently inaccurate, in violation of NYLL § 195, because they do not include off-the-clock hours that House Managers regularly work.

98. By providing inaccurate wage statements to Plaintiffs and Class Members while withholding pay for all hours worked, Defendants deprived Plaintiffs and members of the Class of information that could have permitted them to determine the extent of their underpayment.

99. Defendants were aware that House Managers worked more than 40 hours per workweek, among other ways, from complaints by House Managers to their managers about hours worked and improper overtime rates, including those referenced above, yet Defendants failed to pay House Managers any overtime compensation for any of the hours worked over 40 in a workweek.

100. Plaintiffs are informed, believe, and allege that Defendants' unlawful conduct has been widespread, repeated, and consistent as to the Class Members.

101. Defendants were or should have been aware that the FLSA and NYLL required them to pay House Managers overtime compensation for all hours worked in excess of 40 per week.

102. Defendants were or should have been aware that the FLSA and NYLL required them to pay House Managers for all hours worked, including non-overtime hours worked.

103. Defendants' failure to pay House Managers overtime wages for all hours in excess of 40 hours per workweek was willful, intentional, and in bad faith.

104. Defendants' unlawful conduct has been widespread, repeated, and consistent.

FIRST CAUSE OF ACTION
Fair Labor Standards Act – Unpaid Overtime Wages
(Brought on behalf of Plaintiffs and Collective Members)

105. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

106. Defendants have engaged in a widespread pattern, policy, and practice of violating the FLSA, as detailed in this Complaint.

107. Plaintiffs have consented in writing to be a party to this action, pursuant to 29 U.S.C. § 216(b).

108. The overtime wage provisions set forth in §§ 201 *et seq.* of the FLSA apply to Defendants.

109. Defendants are employers engaged in commerce and/or the production of goods for commerce within the meaning of 29 U.S.C. §§ 206(a) and 207(a).

110. At all relevant times, Plaintiffs and Collective Members are, or were, employees within the meaning of 29 U.S.C. §§ 203(e) and 207(a).

111. Defendants failed to pay Plaintiffs and Collective Members the overtime wages to which they were entitled under the FLSA.

112. Defendants failed to keep, make, preserve, maintain, and furnish accurate records of time worked by Plaintiffs and Collective Members.

113. Defendants' violations of the FLSA, as described herein, have been willful and intentional. Defendants failed to make a good faith effort to comply with the FLSA with respect to their compensation of Plaintiffs and Collective Members.

114. Because Defendants' violations of the FLSA have been willful, a three-year statute of limitations applies to this First Cause of Action, pursuant to 29 U.S.C. § 255.⁵

115. As a result of Defendants' willful violations of the FLSA, Plaintiffs and Collective Members have suffered damages by being denied overtime wages in accordance with 29 U.S.C. §§ 201 *et seq.*

116. As a result of the unlawful acts of Defendants, Plaintiffs and Collective Members have been deprived of overtime compensation in amounts to be determined at trial, and are entitled to recovery of such amounts, liquidated damages, pre-judgment interest, attorneys' fees, costs and other compensation pursuant to 29 U.S.C. §§ 201, *et seq.*

SECOND CAUSE OF ACTION
New York Labor Law – Unpaid Overtime Wages
(On behalf of Plaintiffs and Class Members)

117. Plaintiffs reallege and incorporate by reference all preceding allegations.

118. Defendants engaged in a widespread pattern, policy, and practice of violating the NYLL, as detailed in this Complaint.

⁵ Plaintiffs entered a tolling agreement with Citizens that tolled their FLSA and NYLL claims between September 18, 2023 through January 27, 2024.

119. At all times relevant, Plaintiffs and Class Members have been employees of Defendants, and Defendants have been the employer of Plaintiffs and Class Members within the meaning of the NYLL §§ 650, *et seq.*, and the supporting New York State Department of Labor Regulations.

120. Defendants failed to pay Plaintiffs and the Class Members all overtime wages for all overtime hours worked to which they are entitled under the NYLL. Defendants failed to pay Plaintiffs and the Class Members for all overtime hours worked at a wage rate of one and one-half times their regular rates of pay.

121. Defendants failed to keep, make, preserve, maintain, and furnish accurate records of time worked by Plaintiffs and Class Members.

122. Defendants lacked a good faith basis, within the meaning of NYLL § 663, to believe its failure to pay Plaintiff overtime wages complied with the NYLL.

123. Through their knowing or intentional failure to pay Plaintiffs and Class Members wages for all hours worked at the appropriate rate, and their failure to compensate Plaintiffs and Class Members for hours worked off-the-clock, Defendants have willfully violated the NYLL, Article 19, §§ 650, *et seq.*, and the supporting New York State Department of Labor Regulations.

124. As a result of the unlawful acts of Defendants, Plaintiffs and Class Members have been deprived of overtime compensation in amounts to be determined at trial, and are entitled to recovery of such amounts, liquidated damages, pre-judgment and post-judgment interest, attorneys' fees, costs and such other relief as provided by law.

THIRD CAUSE OF ACTION

**New York Labor Law – Failure to Provide Accurate Wage Statements
(Brought on behalf of Plaintiffs and Class Members)**

125. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

126. Defendants have willfully failed to supply Plaintiffs and the NY Rule 23 Class Members with accurate statements of wages as required by the NYLL, Article 6, § 195(3), containing the dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer; rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; hourly rate or rates of pay and overtime rate or rates of pay if applicable; the number of hours worked, including overtime hours worked if applicable; deductions; and net wages.

127. Through its knowing or intentional failure to provide Plaintiffs and the NY Rule 23 Class Members with the accurate wage statements required by the NYLL, Defendants have willfully violated NYLL, Article 6, §§ 190, *et seq.*, and the supporting New York State Department of Labor Regulations.

128. Due to Defendants' willful violations of NYLL, Article 6, § 195(3), Plaintiffs and the NY Rule 23 Class Members are entitled to statutory penalties for each work day that Defendants failed to provide them with accurate wage statements reasonable attorneys' fees, costs, and injunctive and declaratory relief, as provided for by the NYLL, Article 6, § 198(1-d).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all other similarly situated individuals, pray for the following relief:

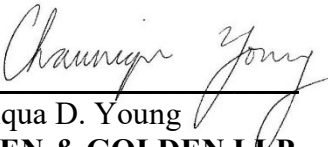
- A. Certification of this case as a class action pursuant to Rule 23 and a collective action pursuant to 29 U.S.C. § 216(b);
- B. Designation of Plaintiffs as the representatives of the Class and their counsel of record as Class Counsel;
- C. A declaratory judgment that the practices complained of herein are unlawful under the FLSA, 29 U.S.C. § 201, *et seq.*, the NYLL, Article 6, §§ 190, *et seq.*, NYLL, Article 19, § 650, *et seq.*, and/or the supporting New York State Department of Labor Regulations;
- D. Appropriate equitable and injunctive relief to remedy violations, including but not necessarily limited to an order enjoining Defendants from continuing their unlawful practices;
- E. An award of damages, according to proof, including unpaid overtime wages, and an additional and equal amount as liquidated damages;
- F. An award of damages, according to proof, including unpaid non-overtime pay, and an additional and equal amount as liquidated damages pursuant to the NYLL;
- G. Penalties, as provided by law;
- H. Pre-judgment and post-judgment interest, as provided by law;
- I. Attorneys' fees and costs of the action incurred herein, including expert fees;
- J. Reasonable service awards for the named Plaintiffs to compensate them for the time they spent attempting to recover wages for the class members and for the risks they took in doing so; and
- K. Such other and further relief as this Court deems just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable.

Dated: New York, NY
March 8, 2024

Respectfully submitted,

By: 
Chauniqua D. Young
OUTTEN & GOLDEN LLP
685 Third Ave., 25th Floor
New York, NY 10017
Telephone: (212) 245-1000
Email: cyoung@outtengolden.com

Troy L. Kessler
Benjamin A. Goldstein
KESSLER MATURA P.C.
534 Broadhollow Road, Suite 275
Melville, NY 11747
Telephone: (631) 499-9100
Email: tkessler@kesslermatura.com
Email: bgoldstein@kesslermatura.com