

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

Matter of GUI ZHU CHEN, YA YUN LI,
MARIA RODRIGUEZ, GUI HUA SONG
and CHUN FENG ZHUANG,

On behalf of themselves and all others
similarly situated,

Petitioners,

-against-

ROBERTA REARDON, as Commissioner
of the New York State Department of
Labor,

Respondent.

**VERIFIED ARTICLE 78
CLASS ACTION PETITION**

Index No. _____

For a Judgment Pursuant to Article 78 of
the Civil Practice Law and Rules.

Petitioners Gui Zhu Chen, Ya Yun Li, Maria Rodriguez, Gui Hua Song, and Chun Feng Zhuang (collectively, “Petitioners”), by their attorneys, for their verified class-action petition pursuant to Article 78 of the New York Civil Practice Law and Rules, allege as follows:

PRELIMINARY STATEMENT

1. Many home care aides provide essential care for elderly and disabled New Yorkers by working continuously through 24-hour shifts. Their employers, home care agencies, systematically steal their wages by paying them for only 13 of the 24 hours of each shift, even when the aides do not receive at least five hours of uninterrupted sleep and three hours for meal breaks, in violation of the New York Labor Law. As a result, home care aides often make less than the hourly minimum wage and receive little to none of the overtime pay they are owed.

2. In a concerted effort to recover their stolen wages, Petitioners, along with hundreds of other home care aides, sought the assistance of the New York State Department of Labor

(“NYSDOL”), the agency tasked with vindicating the public interest by preventing abuses of the New York Labor Law.

3. The NYSDOL agreed to investigate these claims. And for a period of time, the NYSDOL used its powers to obtain the information required to confirm what home care aides had been saying for years: their employers knowingly paid them for no more than 13 hours whenever they worked a 24-hour shift, even though the aides worked continuously, never receiving five hours of uninterrupted sleep or three hours of completely duty-free mealtime.

4. The NYSDOL developed an efficient method to investigate home care aide complaints by auditing the claims of a representative sample of aides. This method ensured the investigations could proceed with minimal resource expenditure on the part of the NYSDOL.

5. In December 2019, the NYSDOL described the results of the investigation as “overwhelmingly corroborative” of the aides’ complaints of wage theft. *See* Affirmation of Carmela Huang in Support of Article 78 Petition and Motion for Class Certification (“Huang Aff.”) Ex. 1, Rogers Email, Dec. 3, 2019.

6. Despite substantial progress in the investigations, on April 27, 2023, the NYSDOL suddenly reversed course and began closing the complaints filed by Petitioners and other home care aides, deviating from its previously stated course of action and the investigatory procedures described in its own Field Operations Manual.

7. To justify the closings, the NYSDOL relied on a new, de facto rule that it will no longer investigate claims filed by home care aides whose unions have entered into mandatory arbitration agreements with the aides’ employers where those arbitration agreements would cover the aides’ claims.

8. The NYSDOL implemented this new rule based on the incorrect legal conclusion that private arbitration agreements between Petitioners' and other home care aides' unions and their employers supersede the NYSDOL's authority.

9. The NYSDOL promulgated this de facto rule without following the rulemaking procedures required by the New York State Administrative Procedures Act ("SAPA").

10. Its arbitrary determination to close the investigation of these complaints has no rational connection to the evidence obtained during the investigations or the agency's statutory directive to enforce the Minimum Wage Act and eliminate the employment of persons "at wages insufficient to provide adequate maintenance for themselves and their families." N.Y. Lab. Law § 650.

11. Petitioners bring this Article 78 petition, on behalf of themselves and other similarly situated aides whose cases were closed by the NYSDOL pursuant to the NYSDOL's recent policy decision not to investigate allegations filed by home care aides whose unions have entered into arbitration agreements with their employers. Petitioners seek an order directing the NYSDOL to re-open its investigations into Petitioners' and putative class members' complaints of wage theft.

PARTIES

12. Petitioner Gui Zhu Chen is a resident of Kings County, New York.

13. Petitioner Ya Yun Li is a resident of Kings County, New York.

14. Petitioner Maria Rodriguez is a resident of Bronx County, New York.

15. Petitioner Gui Hua Song is a resident of New York County, New York.

16. Petitioner Chun Feng Zhuang is a resident of Kings County, New York.

17. Respondent Roberta Reardon is the Commissioner of the New York State Department of Labor and has the duty, power and authority to investigate and attempt to resolve

controversies between employers and employees related to the payment of wages, including the payment of the minimum wage, overtime, and spread of hours pay. The Commissioner's primary business address is in Albany County, New York.

VENUE AND JURISDICTION

18. This Court has subject matter jurisdiction over the causes of action set forth in this Verified Petition and Complaint.

19. This Court has jurisdiction over Petitioners' claims brought pursuant to CLPR § 7803(3).

20. Venue is proper pursuant to CLPR § 506(b) and CPLR § 7804(b).

STATEMENT OF FACTS

Wage Theft is an Endemic Feature of 24-Hour Shifts.

21. Since at least 1980, the NYSDOL has advised employers of home care aides that they may lawfully discharge their obligations under the Minimum Wage Act by paying aides according to a "13-hour rule." *See* Huang Aff. Ex. 46, Mar. 11, 2010, Letter; Huang Aff. Ex. 42, Jul. 14, 1995, Letter; Huang Aff. Ex. 47, NYSDOL IBA Answer at ¶ 39.

22. Under this interpretation of the New York Labor Law – the 13-hour rule – agencies may pay "live-in" home care aides working 24-hour shifts for just 13 hours as long as the aides receive (a) *eight hours* of sleep (five of which must be uninterrupted), and (b) *three hours* of meal breaks. *Id.*

23. But for many years, the NYSDOL rarely enforced its own rule – when investigating wage claims by aides, it failed to inquire into sleep or meal breaks. *See* Huang Aff. Ex. 22, NCLEJ Title VI Complaint at Section III.B.

24. As a result of the NYSDOL's practice of not investigating sleep or meal breaks, it has become the industry standard to pay only for 13 hours regardless of whether aides receive

proper sleep or meal breaks. Indeed, the managed long-term care plans contracted by the state to provide home care services reimburse home care employers for 24-hour shifts at per diem rates that cover a *maximum* of 13 hours, and agency employers, using a wage scale determined by 1199SEIU, default to paying aides working 24-hour shifts for 13 hours only. *See* NYSDOH, *Personal Care Agencies*, https://www.health.ny.gov/facilities/long_term_care/reimbursement/pcr/docs/personal_care_rates_2022-10.pdf; Huang Aff. Ex. 36, CPC MOA; Huang Aff. Ex. 37, First Chinese Presbyterian MOA; Huang Aff. Ex. 38, UJC MOA.

25. “Industry practice has been to *presume* that home care workers working 24-hour shifts always work just 13 hours.” *See* Huang Aff. Ex. 39, NYC DCA Testimony at 1.

26. At the same time, home care aides are systematically assigned to work 24-hour shifts where they are required to work continuously throughout the entire 24-hour period, in violation of state Medicaid regulations. *See* 18 N.Y.C.R.R. § 505.14(a)(2); *also* Huang Aff. Ex. 22, NCLEJ Title VI Complaint at Sections III.A, IV.A.

27. As the New York City Department of Consumer Affairs¹ testified to the NYSDOL in July 2018, “an uninterrupted five hours of sleep for these workers is rare...Workers routinely report that they are not able to effectively use the sleep and meal periods for their own purposes; that they must regularly work during scheduled meal and sleep breaks and are never relieved from work during those breaks...” *See* Huang Aff. Ex. 39, NYC DCA Testimony at 3.

28. Home care aides working 24-hour shifts “care for some of the most vulnerable members of our society, doing work essential to the survival of their patients.” *Andryeyeva v. New York Health Care*, 33 N.Y.3d 152, 168 (2019). They are also “part of a workforce that is

¹ The agency has since been renamed the Department of Consumer and Worker Protection (DCWP).

predominantly composed of women and recent immigrants, and one that...is easily exploited and vulnerable to various forms of wage theft.” *Id.* Indeed, 90% of home care aides are women, 82% identify as non-white, and 67% are immigrants. *See* PHI, *Workforce Data Center*, <https://www.phinational.org/policy-research/workforce-data-center/>.

29. Their employers “reap huge profits from both private and taxpayer funds, while refusing to pay the minimum wage for each hour worked to those who do challenging labor, at all hours of the day and night, often four or five times a week.” *Andryeyeva*, 33 N.Y.3d at 168. As a result, approximately 58% of home care aides in the state receive some form of public assistance, in no small part because their wages are so low. *See* PHI, *Workforce Data Center*, <https://www.phinational.org/policy-research/workforce-data-center/#states=36&var=Public+Assistance>.

30. According to a recent report issued by the New York City Council’s Committee on Civil Service & Labor, “a full-time home care aide [working in New York City] can expect to earn just \$31,200 per year, well under New York City poverty thresholds.” *See* Huang Aff. Ex. 40, NYC City Council Report at 3.

31. The New York Senate Aging Committee reports that one in four home care workers in New York City lives below the federal poverty line, with poverty rates for home care aides in other parts of the state hovering between 39-50%. *See* Huang Aff. Ex. 41, NYS Senate Report at 7.

32. The NYSDOL showed increased attention to investigation of home care aide cases around the time of the New York Court of Appeals Decision in *Andryeyeva v. New York Health Care, Inc.* In that case, the Court of Appeals upheld the 13-hour rule, it but emphasized that the rule should be a “hair trigger” condition. *See Andryeyeva*, 33 N.Y.3d 152 at 182. “Thus, even if a

home health care aide sleeps without interruption for four hours and 59 minutes, but is not able to obtain five full hours of sleep, [NYS]DOL mandates the employer pay for the entire eight hours allotted for sleep.” *Id.*

Petitioners’ Working Conditions

33. Petitioners worked as home care aides. For almost the entirety of their long careers, they were assigned to work multiple, consecutive 24-hour shifts per week, providing live-in services to elderly, vulnerable and frequently disabled Medicaid recipients. Working around the clock, continuously for days, Petitioners delivered life-sustaining services that enabled their care recipients to live and age safely in their own homes.

34. Petitioners also suffered systematic wage theft. Though they never received five hours of continuous, uninterrupted sleep or three full hours of meal breaks per shift, their employers paid them for no more than 13 hours per 24-hour shift, in violation of the New York Labor Law. *See Andryeyeva*, at 33 N.Y.3d at 182. As a result, Petitioners earned less than the minimum wage per hour. Though most of them worked between 48 and 96 hours each week, they struggled to meet their basic needs and those of their families.

Petitioner Gui Zhu Chen

35. Petitioner Gui Zhu Chen, a 65-year-old woman, worked multiple consecutive 24-hour shifts for approximately six straight years. Ms. Chen regularly worked 72- to 96-hour weeks caring for a senior woman who required constant care at all hours of the day. The agency that employed Ms. Chen never paid her for more than 13 hours a shift. When Ms. Chen protested this illegal wage theft, the agency retaliated against her by terminating her employment.

Petitioners estimate that the agency owes Ms. Chen approximately \$171,000 in unpaid wages, not including liquidated damages and penalties. *See Huang Aff. Ex. 5, Chen Damage Estimate.*

36. In or around March 2013, Ms. Chen began working as a home care aide for the Chinese-American Planning Council Home Attendant Program, Inc. (“CPC”).

37. From approximately December 2013 until approximately April 2014, Ms. Chen worked three consecutive 24-hour shifts per week. Beginning in May 2014, Ms. Chen was frequently assigned one additional 24-hour shift per shift. From approximately January 2015 until the end of January 2019, Ms. Chen regularly worked four consecutive 24-hour shifts per week.

38. For that entire period, Ms. Chen provided services to Ms. L., an elderly woman who was diagnosed with dementia and high blood pressure. Ms. L. also had a urinary disorder and required toileting assistance approximately every 30 minutes to one hour throughout the night.

39. According to Ms. Chen’s contemporaneous notes, during a three-month period from January to March 2016, Ms. Chen assisted Ms. L. with toileting and bathing between seven and nine times each night between 8pm and 8am. *See* Huang Aff. Ex 3, Chen Notes.

40. Ms. Chen never slept for five consecutive hours per shift. Although she never received three completely duty-free meal breaks per shift, Ms. Chen was never paid for all the hours she worked: until February 2016, Ms. Chen was paid for only 12 hours each time she worked a 24-hour shift; after February 2016, Ms. Chen was paid for only 13 hours per shift. *See* Huang Aff. Ex. 4, Chen Paystubs.

41. Additionally, only Ms. Chen’s compensated hours were used to calculate her overtime pay. As a result, when Ms. Chen worked four consecutive 24-hour shifts per week, or 96 hours in total, Ms. Chen received only 8 or 12 hours of overtime pay. *Id.* When Ms. Chen

worked three consecutive 24-hour shifts per week, or 72 hours in total, Ms. Chen received no overtime pay at all. *Id.*

42. In 2016, CPC informed its home care aides that they could get compensation for “night work” if they filled out “night work forms.” Ms. Chen and her case partner (who provided services to Ms. L. on the days that Ms. Chen was not scheduled to work) submitted forms. After accumulating approximately five months’ worth of forms, Ms. Chen and her partner delivered the forms together to a CPC staff member known to Ms. Chen as “Nurse Li.”

43. Nurse Li reviewed the forms and immediately accused Ms. Chen and her partner of trying to defraud the government, which reimburses the agency for home care aide wages. She told Ms. Chen and her partner that she could sue them and throw them in jail.

44. After these threats, Ms. Chen and her partner stopped collecting and submitting night forms, though their night-time responsibilities remained unchanged. They were never paid for the hours that they documented working in their submissions to Nurse Li.

45. At the end of January 2019, Ms. L. died. CPC assigned Ms. Chen a heavy schedule filled with much shorter shifts, sometimes as little as just three hours per day. In October 2020, Ms. Chen asked for a better schedule. CPC responded by firing her. When she asked why she was being fired, Ms. Chen was told that it was because she complained too much.²

Petitioner Ya Yun Li

46. Petitioner Ya Yun Li, a 67-year-old woman, has been working as a home care aide for People Care, Inc. (“People Care”) since September 2007. For the sixteen years she has been employed by People Care, Ms. Li has provided care to one elderly woman who is now 105 years old, working between two and four consecutive 24-hour shifts per week. Ms. Li has never been

² Ms. Chen’s retaliation complaint is still under investigation by the NYSDOL.

paid for more than 13 hours per shift and only receives overtime when she works more than four shifts in one week, despite never getting sufficient sleep or mealtime breaks. Petitioners estimate that Ms. Li is owed at least \$249,000 in unpaid wages, as of this filing, not including liquidated damages and penalties. *See* Huang Aff. Ex. 7, Li Damages Estimate.

47. Ms. Li has been working for People Care since about September 13, 2007. Ms. Li worked four consecutive 24-hour shifts per week until approximately September 2021, when Ms. Li began working two consecutive 24-hour shifts per week. Since approximately March 2022, Ms. Li has generally worked three consecutive 24-hour shifts per week.

48. While working for People Care, Ms. Li has always only provided care to Ms. Y., who has dementia and cancer. Ms. Y. needs assistance multiple times an hour. Ms. Y. also requires assistance with ambulating and toileting, including throughout the night when Ms. Li has been required to help Ms. Y. with ambulating to the bathroom and using the commode at least six to seven times per night. Ms. Li has had to constantly monitor Ms. Y. to ensure that she does not injure herself or try to wander out of her apartment.

49. Ms. Li has never been able to sleep for more than one or two hours at a time. Ms. Li has never had more than a few uninterrupted minutes to eat her meals; she has never had three hours of completely duty-free meal breaks.

50. People Care has consistently paid Ms. Li for only 13 hours per 24-hour shift. Ms. Li's overtime pay also accrues in 13-hour bundles. So, when Ms. Li works four or more consecutive 24-hour shifts, she receives overtime pay. When she works three or less consecutive 24-hour shifts, she does not receive overtime. *See* Huang Aff. Ex. 6, Li Paystubs.

51. Ms. Li repeatedly told the care coordinator at People Care that she is working around the clock. She has consistently been told that, if she wants to remain employed by People

Care, she must continue working the same shifts providing care to Ms. Y for only 13-hours pay a shift.

52. Ms. Li submitted forms to People Care to correct underpayments, but she has never received additional pay. If Ms. Li indicates that she has worked for 48 hours, she still only gets paid for 26 hours.

Petitioner Maria Rodriguez

53. Petitioner Maria Rodriguez, a 64-year-old woman, has worked as a home care aide for more than 20 years. For at least four of those years, Ms. Rodriguez worked exclusively for 24-hour shifts, working two or three consecutive 24-hour shifts each week. The agency employing Ms. Rodriguez paid her for only 11 to 13 hours of each 24-hour shift. As a result, Petitioners estimate the agency owes her approximately \$80,000 in unpaid wages, not including liquidated damages and penalties. *See* Huang Aff. Ex. 9, Rodriguez Damages Estimate.

54. From 2002, when Ms. Rodriguez began working for First Chinese Presbyterian Community Affairs Home Attendant Corporation (“First Chinese Presbyterian”) as a home care aide, until 2020, when she left First Chinese Presbyterian, Ms. Rodriguez was never paid for all the hours she worked when she was assigned to 24-hour shifts: until June 2016, Ms. Rodriguez was paid for either 11.5, 11.75 or 12 hours per shift; from June 2016 until January 2020, she was paid between 11 to 13 hours per shift. *See* Huang Aff. Ex. 8, Rodriguez Paystubs. She never received overtime wages. *Id.*

55. From March 2016 until approximately January 2020, Ms. Rodriguez worked 24-hour shifts exclusively, alternating between two and three consecutive 24-hour shifts per week.

56. During that time, Ms. Rodriguez provided services to Ms. R., an elderly woman with dementia who stayed awake and active until as late as 1am each night. Ms. Rodriguez had to monitor Ms. R. at all times to ensure that Ms. R. did not leave the apartment or slip and fall

while wandering around the home. As often as ten times per night, Ms. Rodriguez assisted Ms. R. with toileting. As a result, Ms. Rodriguez never received five hours of continuous, uninterrupted sleep, and she never received three full hours of completely duty-free meal breaks.

57. Ms. Rodriguez stopped caring for Ms. R in early 2020. At this point, she considered retiring because the years of working 24-hour shifts had taken its toll. The difficulty of the work and the chronic sleep deprivation she endured have left her body in constant pain. Ms. Rodriguez also suffers from chronic fatigue, anxiety, and depression. But because the wages she received from First Chinese Presbyterian were so low, Ms. Rodriguez does not have any savings and cannot afford to retire. So, despite her advanced age and poor health, Ms. Rodriguez continues to work shorter shifts at another agency.

Petitioner Gui Hua Song

58. Petitioner Gui Hua Song, a 66-year-old woman, worked 24-hour shifts as a home care aide for over a decade, starting in 2009. During the last six years of her employment as a home care aide, Ms. Song worked at least two consecutive 24-hour shifts each week, and for some periods worked as many as four such shifts, or 96 hours per week. Ms. Song never received pay for more than 13 hours in each shift, despite not receiving the sleep or meal breaks required by the 13-hour rule. Petitioners estimate Ms. Song's employing agency owes her approximately \$164,000. *See Huang Aff. Ex. 55, Song Damages Estimate.*

59. Ms. Song worked for First Chinese Presbyterian from June 13, 2009, until September 2020. Throughout her employment, Ms. Song was regularly assigned to work 24-hour shifts.

60. From November 1, 2013, until approximately February 25, 2019, Ms. Song worked two consecutive 24-hour shifts per week. Ms. Song provided services to Ms. C., an elderly

woman who required assistance turning and repositioning her body and changing her diaper every one to two hours, including throughout the night.

61. On February 25, 2019, Ms. C. passed away. Ms. Song was advised by her doctor to stop working 24-hour shifts because of the harm it was causing to her own health. Ms. Song's doctor provided her with a letter explaining why 24-hour shifts were no longer recommended for her, but Ms. Song did not give the letter to First Chinese Presbyterian. Ms. Song was afraid that if she refused to do 24-hour shifts, the company would stop assigning her any work.

62. From approximately March 2019 until May 20, 2019, Ms. Song was assigned to "temporary work," covering shifts for aides unable to work their regular assignments and working shifts of varying lengths, including some 24-hour shifts.

63. From June 2019 until September 2019, Ms. Song was assigned to work four consecutive 24-hour shifts per week. From October 2019 until September 2020, Ms. Song was assigned to work three consecutive 24-hour shifts per week.

64. From June 2019 to September 2020, Ms. Song provided services to Ms. E., an elderly woman with dementia who suffered from insomnia. Ms. Song had extensive night-time duties: each night, Ms. Song assisted Ms. E. with toileting approximately two to three times; Ms. Song had to monitor Ms. E. constantly to ensure that Ms. E. did not harm herself or wander out of her home; and Ms. E. was also frequently incontinent, requiring Ms. Song to clean Ms. E.'s clothes and body.

65. Until January 2014, Ms. Song was paid a per diem rate of \$150.15 whenever she worked a 24-hour shift. *See* Huang Aff. Ex. 15, Song Paystubs. From October 18, 2014, until January 2016, Ms. Song was paid for 12 hours whenever she worked a 24-hour shift. *Id.*

Beginning January 9, 2016, Ms. Song was paid for 13 hours per 24-hour shift. Only Ms. Song's compensated hours were used to calculate her overtime pay. *Id.*

66. In September 2020, Ms. Song was forced to retire after she was severely injured on the job.

Petitioner Chun Feng Zhuang

67. Petitioner Chun Feng Zhuang, a 69-year-old woman, worked for Pella Care home care agency from about September 2015 to November 2022. From about September 2015 to April 2016, Ms. Zhuang worked four consecutive 24-hour shifts per week. After that, Ms. Zhuang regularly worked two consecutive 24-hour shifts per week. Throughout her time working for Pella Care, Ms. Zhuang was paid for only 13 out of the 24 hours of her shifts. Petitioners estimate that Ms. Zhuang is owed approximately \$130,000 in stolen wages, not including liquidated damages, penalties, or interest. *See* Huang Aff. Ex. 52, Zhuang Damage Estimate.

68. From approximately September 2015 to November 2022, Ms. Zhuang was employed by Pella Care as a home care aide. Throughout her employment, Ms. Zhuang regularly worked consecutive 24-hour shifts.

69. From the time she began working for Pella Care until approximately January 2021, Ms. Zhuang cared for Ms. C., an elderly woman who required Ms. Zhuang's help day and night. At least three or four times each night, Ms. Zhuang would have to assist Ms. C. with toileting. While caring for Ms. C., Ms. Zhuang never received five uninterrupted hours of sleep at night. She usually had only 20 to 30 minutes to eat each of her meals.

70. Ms. Zhuang worked four consecutive 24-hour shifts providing care to Ms. C. until approximately April 2016, when Ms. Zhuang began working two consecutive 24-hour shifts per week.

71. After Ms. C. passed away, Ms. Zhuang cared for three individuals for shorter periods of time: beginning April 2021 for a few weeks, from early September 2021 to late November 2021, and from approximately May 2022 to November 2022. During this period, Ms. Zhuang always worked two consecutive 24-hour shifts per week.

72. In Ms. Zhuang's last assignment, she cared for a bedridden elderly man, Mr. C. who had to be turned in bed every couple of hours. She also had to lift him onto and off a commode. Because he was incontinent, she frequently had to clean him and his surroundings during the night. Caring for Mr. C. was so difficult that Ms. Zhuang decided to retire at the end of 2022.

73. During her employment with Pella Care Ms. Zhuang never received five uninterrupted hours of sleep, let alone eight hours of sleep. She was only able to take from 20-30 minutes for meals. Nevertheless, Ms. Zhuang was only paid for 13 hours for each of her 24-hour shifts. *See* Huang Aff. Ex. 20, Zhuang Paystubs.

Mandatory Arbitration Agreements and Class-Wide Grievances

74. Each Petitioner is a member of a labor union: Petitioners Chen, Li, Rodriguez, and Song are all members of 1199SEIU. Petitioner Zhuang is a member of Local 1770, Home Healthcare Workers of America, IUJAT ("Local 1770").

75. At varying times, Petitioners' unions entered into mandatory arbitration agreements with Petitioners' employers, requiring that any claims alleging violations of the New York Labor Law go through a mandatory arbitration process.

76. At varying times, Petitioners' unions also filed grievances alleging violations of the New York Labor Law that ostensibly covered Petitioners' claims.

1199SEIU Class-wide Grievance and Arbitration

77. 1199SEIU has had a collective bargaining agreement since at least 2012 with 42 home care employers, including CPC, First Chinese Presbyterian and People Care. *See* Huang Aff. Ex. 10, Feb. 2022 Arb. Award at 12.

78. In late 2015-early 2016, 1199SEIU and the home care employers entered into memoranda of agreement requiring that all claims brought by the union or any of its members asserting violations of the New York Labor Law, including all retroactive claims that accrued prior to the signing of the agreement, be subject to mandatory mediation and arbitration. *Id.* at 6.

79. Class action complaints previously filed by employees of CPC and First Chinese Presbyterian were stayed or adjourned pending resolution of the mandatory process. *See* Huang Aff. Ex. 11, Oct. 2016 Arb. Award; *Chu v. Chinese-American Planning Council Home Attendant Program, Inc.*, Index No. 651947/2016 (Sup. Ct. N.Y.), NYSCEF Doc. No. 61; *Guzman v. The First Chinese Presbyterian Cmty. Affairs Home Attendant Corp.*, Index. No. 157401/2016 (Sup. Ct. N.Y.), NYSCEF Doc. No. 26.

80. The claims of Ms. Chen, Ms. Rodriguez, and Ms. Song were automatically included in the union's employer-wide grievances.

81. On January 2, 2019, 1199SEIU expanded the scope of its grievance to cover the claims of all aides who had been employed by any of the 42 home care agencies with whom it had mandatory arbitration agreements, including Ms. Li and the other aides employed by People Care. *See* Huang Aff. Ex. 10, Feb. 2022 Arb. Award at 4.

82. On February 25, 2022, the arbitrator issued a class wide award based on a settlement between 1199SEIU and the home care agencies. *Id.* Each agency would be required to contribute \$250 per employee into a settlement fund that would then be distributed among more than 120,000 of 1199SEIU's members who were employed as home care aides. *Id.* at 4, 53. On

March 1, 2022, the union moved to certify the award. *1199SEIU United Healthcare Workers East v. PSC Cmty. Servs.*, No. 20-cv-3611-JGK (S.D.N.Y.), Dkt. # 183. The award was certified on July 24, 2022. *Id.*, Dkt. # 262.

83. Aides interested in participating in the award were required to submit a claim form by September 27, 2022. *See* Huang Aff. Ex. 12, 1199SEIU Arbitration FAQ. Participation was conditioned on aides releasing any claim that was or could have been asserted by the aide or the union prior to October 31, 2021. *See* Huang Aff. Ex 13, Claim Form and Release. According to 1199SEIU's FAQ on the arbitration distribution, the largest distribution to any single aide is approximately \$18,000; the minimum distribution is \$10. *See* Huang Aff. Ex. 14, 1199SEIU Distribution FAQ.

84. Neither Ms. Chen, Ms. Li, Ms. Rodriguez, nor Ms. Song submitted claim forms to participate in the 1199SEIU settlement.

85. 1199SEIU established an opaque process for distributing the settlement funds. Many home care aides sought information about how their awards from the settlement fund would be determined but were unable to obtain answers from 1199SEIU. These aides only learned the amount of their awards after submitting a claim form and receiving a check. *See* Huang Aff. Ex. 57, Cao Aff.; Huang Aff. Ex. 56, Zhou Aff.

86. Those who submitted claim forms received at most cents on the dollar. For example, He Ping Zhou, who is not a member of the proposed class, was an employee of First Chinese Presbyterian. *See* Huang Aff. Ex. 56, Zhou Affidavit. She worked two consecutive 24-hour shifts for about two years. *Id.* During that time, Ms. Zhou never received five hours of continuous, uninterrupted sleep or three hours of completely duty-free meal breaks. *Id.* Petitioners estimate Ms. Zhou is owed more than \$82,000, not including liquidated damages and

interest. *See* Huang Aff. Ex. 53, Zhou Damages Estimate. But Ms. Zhou received an award payment of just \$619.42, of which only \$360.76 was for wages. *See* Huang Aff. Ex. 49, Zhou Award Payment Details.

Local 1770 Grievance and Arbitration

87. Local 1770 and Pella Care are parties to a collective bargaining agreement that requires the resolution of claims such as those asserted by Ms. Zhuang through a contractual dispute resolution mechanism. *See* Huang Aff. Ex. 2, Nathan Lazelle Email.

88. On February 24, 2023, counsel for Local 1770 informed the NYSDOL that, after Pella Care had been informed by the NYSDOL that Ms. Zhuang had filed a claim, Local 1770 informed Pella Care that it would grieve Ms. Zhuang and other Pella Care workers' claims through the mandatory grievance process. *Id.*

89. Until she received notice from the NYSDOL on March 20, 2023, through her non-attorney representative, Ms. Zhuang had no idea that she was a member of a union, that the union had entered into a mandatory arbitration agreement with her employer, or that the union had filed a grievance on her behalf. *Id.*

Other Unions

90. Based on information provided by the NYSDOL, at least three other unions with home care aides members appear to have followed the lead of 1199SEIU and entered into mandatory arbitration agreements: Home Health Care Workers of America; Local 713 IBOTU, UMC, ILA; and Local 1880. *See* Huang Aff. Ex. 32, Alternate Staffing Closing Letters; Huang Aff. Ex. 33, Human Care Closing Letters; Huang Aff. Ex. 34, Incare Closing Letters.

91. The NYSDOL closed the investigations into the complaints of these union members as well. *See* Huang Aff. Ex. 32, Alternate Staffing Closing Letters; Huang Aff. Ex. 33, Human Care Closing Letters; Huang Aff. Ex. 34, Incare Closing Letters.

92. These aides, as well as all other aides whose unions and employers had entered into mandatory arbitration agreements and whose cases were closed by the NYSDOL, are putative class members.

NYSDOL Investigation of Petitioners' and Putative Class Members' Labor Standards Complaints

93. Unable to opt out of the mandatory arbitration process and not wanting to accept pennies on the dollar for their wage theft claims, Petitioners Chen, Rodriguez, and Song and putative class members sought the NYSDOL's assistance. Petitioners Li and Zhuang filed complaints with the NYSDOL later.

94. The NYSDOL accepted the complaints and made substantial progress in its investigation. The NYSDOL developed an efficient method to investigate the numerous complaints filed by Petitioners and putative class members. The NYSDOL identified home care agencies and aides to serve as a representative sample for the issues raised in all home care aid complaints regarding violations of the 13-hour rule.

The NYSDOL Investigates Putative Class Members' Claims & Finds Them Likely to Be Meritorious

95. On December 26, 2018, Petitioner Gui Hua Song and nine other members of 1199SEIU filed labor standards complaints against their employers, alleging years of unpaid minimum wages, overtime and spread of hours. *See* Huang Aff. Ex. 16, Song Labor Standards Complaint; Huang Aff. Ex. 17, Bhatt Email, Jan. 30, 2019.

96. On February 7, 2019, the NYSDOL informed Ms. Song, through counsel, that it was moving forward with investigating the allegations filed by members of 1199SEIU despite the anticipated settlement of the pending class-wide grievance. *See* Huang Aff. Ex. 18, Bhatt Email, Feb. 7, 2019.

97. Following the law as set forth in the *Andryeyeva* decision, the NYSDOL used only two threshold criteria for determining whether an aide had a viable claim: (1) whether the aide received five hours of continuous, uninterrupted sleep each night when working 24-hour shifts and (2) whether the aide received three hours of completely duty-free mealtime each 24-hour shift. *See* Huang Aff. Ex 43, King Email, Jul. 23, 2019.

98. On August 13, 2019, Ms. Chen submitted a labor standards complaint to the NYSDOL regarding CPC's failure to pay her lawful wages. *See* Huang Aff. Ex. 19, Chen Labor Standards Complaint. Ms. Chen subsequently supplemented her complaint to include facts regarding the retaliation she had experienced.

99. On January 8, 2020, Ms. Rodriguez submitted a labor standards complaint form to the NYSDOL to recover the unpaid wages and overtime owed to her by First Chinese Presbyterian. *See* Huang Aff. Ex. 21, Rodriguez Labor Standards Complaint.

100. By March 2020, approximately 120 home care aides covered by 1199SEIU's class-wide grievance had filed complaints with the NYSDOL. *See* Huang Aff. Ex. 22, NCLEJ Title VI Complaint, at Section IV.C. None of the complainants had been paid for more than 13 hours whenever she worked a 24-hour shift. *Id.* None of the complainants regularly received five hours of continuous, uninterrupted sleep or three hours of completely duty-free meal breaks per 24-hour shift. *Id.*

101. To manage the large volume of complaints, the NYSDOL selected four representative agencies to investigate: CPC, First Chinese Presbyterian, Family Home Care of Brooklyn and Queens ("Family Home Care"), and UJC. *See* Huang Aff. Ex. 23, Nathanson Email, Nov. 8, 2021; Huang Aff. Ex. 24, Nathanson Email, Nov. 16, 2021; Huang Aff. Ex. 25, King Email, Nov. 17, 2021; Huang Aff. Ex. 26, Jeanette Lazelle Email, Mar. 3, 2023.

102. After negotiations with the four targeted agencies, the NYSDOL determined that it would subpoena records for five test cases selected by each agency under investigation. Findings for the audit would then be applied across all complainants. *See* Huang Aff. Ex. 26, Jeanette Lazelle Email, Mar. 3, 2023.

103. On December 3, 2019, the NYSDOL reported that the documents it had received were “overwhelmingly corroborative” of the complainants’ allegations of wage theft. *See* Huang Aff. Ex. 1, Rogers Email, Dec. 3, 2019.

104. Although delayed by the exigencies of the COVID pandemic, the investigation into Petitioners’ and the putative class members’ claims continued at least through the end of 2021. The NYSDOL even expanded its inquiry into the joint-employer liability of the managed long-term care organizations that authorized Petitioners’ and the putative class members’ work schedules and duties. *See* Huang Aff. Ex. 27, Nathanson Email, Apr. 8, 2021; Huang Aff. Ex. 28, Rogers Email, Jun. 1, 2021; Huang Aff. Ex. 24, Nathanson Email, Nov. 16, 2021; Huang Aff. Ex. 25, King Email, Nov. 17, 2021; Huang Aff. Ex. 26, Jeanette Lazelle Email, Mar. 3, 2023.

105. On or about May 26, 2022, Ms. Zhuang submitted a labor standards complaint form to the NYSDOL to recover the unpaid wages and overtime owed to her by Pella Care. *See* Huang Aff. Ex. 51, Zhuang Labor Standards Complaint.

106. On or about July 29, 2022, Ms. Li submitted a labor standards complaint form to the NYSDOL to recover the unpaid wages and overtime owed to her by People Care. *See* Huang Aff. Ex. 45, Li Labor Standards Complaint.

107. On March 3, 2023, the NYSDOL informed Petitioners’ counsel that “[t]he 1199 complaints are on hold as we work with [NYS]DOL Counsel to understand the decision’s impact

on our ability to investigate and collect.” *See* Huang Aff. Ex. 26, Jeanette Lazelle Email, Mar. 3, 2023.

108. By letters dated May 3, 2023, the NYSDOL informed Ms. Chen, Ms. Li, Ms. Rodriguez, and Ms. Song that it would not continue to investigate their complaints. The letters contained no explanation for the determination. *See* Huang Aff. Ex. 30, May 3, 2023, Closing Letters.

109. The NYSDOL noted in its closing letter, “We understand other means are available for a resolution of your claim.” *Id.*

110. The NYSDOL’s assertion that other means of resolution are available is untrue: Ms. Chen, Ms. Li, Ms. Rodriguez, and Ms. Song are precluded from pursuing their wage theft claims in court because of the union’s mandatory arbitration agreement with their employers, and the deadline to participate in the 1199SEIU arbitration award passed on September 27, 2022. *See* Huang Aff. Ex. 10, Feb. 2022 Arb. Award at 6; Huang Aff. Ex. 12, 1199SEIU Arbitration FAQ.

111. Since May 2023, the NYSDOL has closed its investigations into complaints filed by hundreds of home care aides. *See* Huang Aff. Ex. 31, 1199SEIU Member Closing Letters; Huang Aff. Ex. 32, Alternate Staffing Closing Letters; Huang Aff. Ex. 33, Human Care Closing Letters; Huang Aff. Ex. 34, Incare Closing Letters.

112. By letter dated May 23, 2023, Ms. Zhuang was also informed that the NYSDOL was closing her case. *See* Huang Aff. Ex. 50, Zhuang Closing Letter.

113. The NYSDOL’s closing letters to Petitioners and the putative class members constitute final determinations because no mechanism for appeal exists, other than this Article 78 proceeding.

NYSDOL Relies on an Unlawful Rule and an Error of Law to Justify Closures

114. On July 6, 2023, a representative of the NYSDOL explained to Ms. Zhuang’s non-attorney representative that the NYSDOL was closing all cases filed by home care aides whose unions had entered into mandatory arbitration agreements with their employers and had filed grievances on behalf of the aides. Huang Aff. Ex. 2, Nathan Lazelle Email. According to the NYSDOL representative, “Following the advice of our counsel’s office we have closed the case. The CBA supersedes our authority in this case. There is no getting around it. The same is true in each case we have closed on this basis.” *Id.*

115. In a recent press release boasting of its success in pursuing claims by two home care aides who are not union members, the NYSDOL publicized this new rule by stating that “NYSDOL may accept these types of cases [investigating violations of the 13-Hour Rule] if an employee is not covered by an arbitration clause...” *See* Huang Aff. Ex. 54, Aug. 1, 2023, Press Release.

116. The NYSDOL has rigidly applied its new policy as the basis for closing cases filed by home care aides whose unions have entered into mandatory arbitration agreements with their employers without regard to aides’ individualized circumstances or any mitigating factors.

117. The NYSDOL has adopted been applying this rule despite never having complied with the SAPA rule-making requirements.

118. The NYSDOL relied on this unlawfully promulgated rule to justify closing Petitioners’ and the putative class members’ cases.

119. The unlawfully promulgated new rule is also legally incorrect. The NYSDOL is not a party to the private arbitration agreements between Petitioners’ and the putative class members’ unions and employers and is therefore not bound by those agreements. Its statutory authority to enforce the New York Labor Law and vindicate the public interest is unaffected by

the union grievance and arbitration process. Nor can any private agreement “supersede” the NYSDOL’s statutory obligations to enforce the laws of the State of New York.

120. The United States Department of Labor (“USDOL”) has taken the position that its powers are unaffected by private arbitration agreements. *See* USDOL, *Mandatory Arbitration Won’t Stop Us from Enforcing the Law*, <https://blog.dol.gov/2023/03/20/mandatory-arbitration-wont-stop-us-from-enforcing-the-law>; Huang Aff. Ex. 48, Stewart Motion to Compel.

121. In contrast to the NYSDOL, the USDOL “vigorously prosecute[s] violations at workplaces where workers are bound by mandatory arbitration,” acknowledging its role as “the only viable avenue for meaningful legal recourse” for low-wage workers who are restrained by mandatory arbitration agreements from enforcing their rights. *See* USDOL, *Mandatory Arbitration Won’t Stop Us from Enforcing the Law*, <https://blog.dol.gov/2023/03/20/mandatory-arbitration-wont-stop-us-from-enforcing-the-law>.

Arbitrary and Capricious Nature of the Closings

122. The putative class members are all home care aides who are members of a union that has entered into a mandatory arbitration agreement with their employer and has filed a class-wide grievance covering the aides’ claims of unpaid wages and overtime.

123. In many of the closing letters to these aides, the NYSDOL indicates that the aides have chosen mandatory arbitration as the venue to pursue their claims. *See* Huang Aff. Ex. 32, Alternate Staffing Closing Letters; Huang Aff. Ex. 33, Human Care Closing Letters; Huang Aff. Ex. 34, Incare Closing Letters.

124. This representation is untrue: these aides chose to pursue their claims at the NYSDOL because they believed that the agency was their only option for meaningful recourse. They filed with the NYSDOL before any arbitration decision was reached, and they did not file

claims to recover under any arbitration settlements because the settlement payments would have provided them with less than pennies on the dollar.

125. The 1199SEIU arbitration does not begin to vindicate Petitioners' rights under the New York Labor Law: workers like Ms. Zhou, who were owed tens of thousands of dollars for working multiple, consecutive 24-hour shifts for years received checks for only hundreds of dollars. *See* Huang Aff. Ex. 53, Zhou Damages Estimate; Huang Aff. Ex. 57, Cao Affidavit.

126. In contrast, the NYSDOL has reached outcomes for home care aides who are not members of unions and are not bound by mandatory arbitration agreements that allow them to recover all of the wages owed to them plus liquidated damages. *See* Huang Aff. Ex. 54, Aug. 1, 2023, Press Release.

127. Some of the closing letters also refer to Section 196(2) of the New York State Labor Law, which "grants the Commissioner of Labor discretion to investigate or take assignment of wage claims." *See* Huang Aff. Ex. 32, Alternate Staffing Closing Letters; Huang Aff. Ex. 33, Human Care Closing Letters; Huang Aff. Ex. 34, Incare Closing Letters.

128. However, the NYSDOL has never published standards or regulations governing the exercise of that discretion.

129. The NYSDOL's policy to close investigations when a home care aide's union has invoked mandatory arbitration also conflicts with the New York State Labor Standards Field Investigator's Manual, an internal document that the NYSDOL does not make publicly available.

130. The Field Investigator's Manual provides that the NYSDOL will decline jurisdiction over claims of unionized employees only when the claims require interpretation of an ambiguous or disputed provision of the collective bargaining agreement contract. *See* Huang Aff. Ex. 35, Field Investigator's Manual at Section IV.C.5(a)(ii).

131. Petitioners' and proposed class members' claims did not require any interpretation of their collective bargaining agreements: the claims were based solely on the New York Labor Law and its implementing regulations.

132. The NYSDOL's closure decision also deviates from the Manual's instruction that "[i]nvestigators will 'close cases' off their own dockets once a violation has been issued, a settlement has been reached and payment is received or stipulated, a compliance conference is scheduled, or a referral for an Order to comply is required," as none of these steps have been reached in Petitioners' or other proposed class-member home care aides' cases. *Id.* at Section VIII.C.2.

133. Upon information and belief, that direction still applies to claims brought by employees other than home care aides who have worked 24-hour shifts, demonstrating the arbitrariness of the NYSDOL's apparent new rule.

CLASS ACTION ALLEGATIONS

134. Petitioners bring this Verified Petition and Complaint as a class action pursuant to Article 9 of the CPLR.

135. Petitioners seek to represent themselves and a putative class of similarly situated individuals consisting of all home care aides:

- a. who filed claims with the NYSDOL because they were paid for no more than 13 hours per shift when they worked 24 hours,
- b. whose unions entered into arbitration agreements with their employers covering their claims,
- c. who have not filed claims pursuant to a union arbitration award, and
- d. whose cases have been closed by the NYSDOL.

136. The class is so numerous that joinder of all members is impracticable since over 120 potential class members have already had their cases closed, most likely because of the NYSDOL's new policy.

137. There are questions of law and fact that are common to the class and that predominate over any questions affecting only individual class members, namely whether the NYSDOL's determinations to close the investigations into the putative class members' complaints were affected by errors of law or were arbitrary and capricious and whether the NYSDOL's policy was promulgated in violation of the New York State Administrative Procedures Act.

138. The claims of Petitioners are typical of the claims of the putative class. Petitioners' claims are the same as the claims of the putative class members because they arise from the same errors of law or arbitrary and capricious behavior.

139. Petitioners will fairly and adequately protect the interests of the class. Putative class counsel has decades of combined experience in complex civil litigation, workers' rights litigation, and class action litigation.

140. A class action is superior to other available methods for the fair and efficient adjudication of this controversy and will prevent the imposition of undue financial, administrative, and procedural burdens on the parties and the Court.

141. Due to the complexity of the issues raised by this class action and the scarcity of legal services attorneys available to represent low-income plaintiffs, it is unlikely that a substantial number of individual proceedings would be brought by the members of the proposed class.

142. Class certification will allow review of actions by the NYSDOL affecting class members who otherwise will not be able to seek relief within the statute of limitations period provided by Article 78 of the CPLR.

143. Because the relief afforded to Petitioners will not afford relief for the harm already suffered by the putative class, class certification is proper.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

Article 78: Agency Determination Affected by an Error of Law (Failure to Comply with the New York State Administrative Procedures Act)

144. Petitioners incorporate by reference the allegations contained in the preceding paragraphs as if set forth fully herein.

145. N.Y. State Administrative Procedure Act (“SAPA”) § 102(2)(a)(i) defines a “rule” as “the whole or part of each agency statement, regulation or code of general applicability that implements or applies law.” Before adopting a rule, an agency must comply with the requirements of N.Y. SAPA § 202.

146. The NYSDOL’s policy of closing the investigation of complaints filed by home care aides whose unions have entered into mandatory arbitration agreements covering the aides’ claims, rigidly applied across all home care aides without case-by-case consideration of individual circumstances or mitigating factors, constitutes a rule subject to the procedural requirements of N.Y. SAPA § 202.

147. Before implementing such a rule, the NYSDOL was required to submit a notice of proposed rulemaking to the New York Secretary of State for publication in the state register and to afford the public an opportunity to submit comments on its proposed rule. N.Y. SAPA § 202(1).

148. Having failed to comply with these procedural requirements, the NYSDOL violated the N.Y. SAPA by implementing a rule that is improper, unauthorized and must be annulled.

149. By relying on this improperly promulgated rule to close Petitioners' and the putative class members' cases, the DOL's determinations are affected by an error of law.

SECOND CAUSE OF ACTION

Article 78: Agency Determination Affected by an Error of Law (Private Arbitration Agreements Do Not Supersede the Power of the NYSDOL)

150. Petitioners incorporate by reference the allegations contained in the preceding paragraphs as if set forth fully herein.

151. The NYSDOL's duty to protect the public interest may not be limited by a private arbitration agreement not signed by the Commissioner of Labor. *Cuomo v. Coventry*, 13 N.Y.3d 108, 114 (2009).

152. Therefore, the NYSDOL's determination that it was required to close Petitioners' and the putative class members' cases because its powers were superseded by the arbitration provisions in Petitioners' and putative class members' collective bargaining agreements was affected by an error of law.

THIRD CAUSE OF ACTION

Article 78: Agency Determination Is Arbitrary and Capricious and an Abuse of Discretion

153. Petitioners incorporate by reference the allegations contained in the preceding paragraphs as if set forth fully herein.

154. Section 196 of the New York Labor Law sets forth the duties, power, and authority of the Commissioner of Labor "to investigate and attempt to adjust equitably controversies between employers and employees" while also providing that "[n]othing in this section shall be construed as requiring the commissioner in every instance to investigate and attempt to adjust

controversies, or to take assignment of wage claims.” As such, the NYSDOL has the power to exercise discretion over the cases it chooses to investigate.

155. However, “[a]n agency is forbidden from exercising its discretionary power without first detailing standards or guides to govern the exercise of that discretion.” *Matter of Nicolas v. Kahn*, 47 N.Y.2d 24, 34 (1979). Otherwise, actions stemming from such unfettered discretion to the agency are arbitrary and capricious as a matter of law. *Id.*

156. The NYSDOL has never issued objective standards or guidance for how it exercises its discretion to investigate wage complaints. Therefore, any closures made in reliance on the NYSDOL’s powers pursuant to N.Y. Lab. Law § 196(2) are acts of unfettered discretion that are per se arbitrary and capricious.

157. The determinations also deviate from the NYSDOL’s internal policies and procedures, which provide that the NYSDOL will not exercise jurisdiction to investigate claims of unionized employees only when the claims require interpretation of an ambiguous or disputed provision of the collective bargaining agreement and also provides that “[i]nvestigators will ‘close cases’ off their own dockets once a violation has been issued, a settlement has been reached and payment is received or stipulated, a compliance conference is scheduled, or a referral for an Order to comply is required.”

158. The NYSDOL exercised jurisdiction in these claims by investigating aides’ allegations of wage theft and continuing to do so even after the 1199SEIU arbitration became class wide. Its investigation revealed violations of the New York Labor Law as interpreted by the Court of Appeals.

159. But without any explanation to the putative class, the NYSDOL deviated from its own internal policies and procedures by reversing course and closing Petitioners’ and the

putative class members' cases even though no ambiguous or disputed provision of any collective bargaining agreement is at issue, no violation has been issued, no settlement has been reached, no payment has been received, no compliance conference has been scheduled and/or no order to comply has been referred.

160. The NYSDOL's inexplicable failure to conform to its agency precedent is arbitrary as a matter of law.

161. The NYSDOL's determination to close Petitioners' and the putative class members' cases also has no rational relationship to either the evidence obtained or the NYSDOL's purpose of enforcing the New York Labor Law.

162. The NYSDOL found that Petitioners' and the putative class members' allegations of wage theft were overwhelmingly corroborated by the evidence obtained through its investigative process.

163. Petitioners and the putative class members all earned less than the minimum wage per hour. Each Petitioner and putative class member struggled to meet her basic needs and those of her family.

164. Without the NYSDOL's intervention, Petitioners and the putative class members have no meaningful recourse for obtaining their unpaid wages and no effective mechanism for ending the egregious wage theft that pervades the home care industry.

165. Nevertheless, the NYSDOL summarily reversed course and closed the investigations into Petitioners' and the putative class members' complaints, even though the purpose of New York's Minimum Wage Act is to eliminate, as rapidly as practicable, the employment of persons at wages insufficient to provide adequate maintenance for themselves and their families. N.Y. Lab. Law § 650.

166. The NYSDOL reversed course only after it was evident that the 1199SEIU arbitration award, covering the vast majority of affected home care aides was offering those aides who had worked 24-hour shifts less than pennies on the dollar, thus not coming close to vindicating the New York Labor Law.

167. Moreover, there is no evidence that the arbitration award has resulted in any change in the unlawful practices of the covered home care agencies. Indeed, for Ms. Li, the violations have continued apace during and after the arbitration process, and they remain ongoing.

168. Contrary to the NYSDOL's claims, Petitioners and the putative class members did not choose mandatory arbitration as their venue. Quite the opposite, Petitioners and the putative class members deliberately chose to file claims at the NYSDOL precisely to avoid the outcomes characterized by the 1199SEIU arbitration award.

169. For these reasons, the NYSDOL's decision to close the investigations it had begun was arbitrary and capricious and an abuse of discretion.

FOURTH CAUSE OF ACTION
Failure to Comply with the New York State Administrative Procedures Act

170. Petitioners incorporate by reference the allegations contained in the preceding paragraphs as if set forth fully herein.

171. As alleged in Petitioners' First Cause of Action, the NYSDOL enacted a rule without engaging in rulemaking as required by the SAPA § 202. This conduct constitutes a violation of the SAPA.

172. The NYSDOL rule against investigating cases filed by home care aides subject to private arbitration agreements must be annulled because the agency improperly enacted it in violation of the SAPA's procedural safeguards.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that this Court:

- a. Direct Respondent Reardon to re-open and fully investigate the labor standards complaints filed by Petitioners;
- b. Certify this action and proceeding, pursuant to CPLR Article 9, as a class action, consisting of all home care aides:
 - (i) who filed claims with the NYSDOL because they were paid for no more than 13 hours per shift when they worked 24 hours,
 - (ii) whose unions entered into arbitration agreements with their employers covering their claims,
 - (iii) who have not filed claims pursuant to a union arbitration award, and
 - (iv) whose cases were closed by the NYSDOL.
- c. Appoint Petitioners' counsel as counsel for the class;
- d. Order Respondent Reardon to (i) identify all class members whose labor standards complaints were closed by the NYSDOL because their unions had entered into mandatory arbitration agreements with their employers, and (ii) re-open and fully investigate the labor standards complaints filed by class members;
- e. Convert, if necessary, the Article 78 proceeding to an action;
- f. Award attorneys' fees, costs and disbursements in an amount to be determined; and
- g. Grant Petitioners and the putative class such other and further relief as the Court may deem just and proper.

Dated: August 24, 2023
New York, New York

NATIONAL CENTER FOR LAW AND
ECONOMIC JUSTICE

/s/ Carmela Huang

Carmela Huang
Claudia Wilner
50 Broadway, 15th Floor
New York, NY 10004-3821
(646) 393-3048
huang@ncej.org
wilner@ncej.org

THE LEGAL AID SOCIETY
Elizabeth Saylor, of counsel
Richard Blum, of counsel
Michael Diller, of counsel
49 Thomas Street, 5th Floor
New York, NY 10013
(332) 400-7956
esaylor@legal-aid.org
rblum@legal-aid.org
mdiller@legal-aid.org

Counsel for Petitioners and the Putative Class

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

Matter of GUI ZHU CHEN, YA YUN LI,
MARIA RODRIGUEZ, GUI HUA SONG,
and CHUN FENG ZHUANG,

On behalf of themselves and all others
similarly situated,

Petitioners,

VERIFICATION

Index No. _____

-against-

ROBERTA REARDON, as Commissioner
of the New York State Department of
Labor,

Respondent.

For a Judgment Pursuant to Article 78 of
the Civil Practice Law and Rules.

STATE OF NEW YORK)
 :
COUNTY OF KINGS)

ss.:

GUI ZHU CHEN, being duly sworn, deposes and says:

1. I am a petitioner in the above captioned proceeding.
2. I have reviewed the contents of the foregoing petition.
3. The information stated therein is true to my own knowledge except as to those matters therein stated to be alleged upon information and belief, and as to those matters I believe the information to be true.

Gui Zhu Chen

Gui Zhu Chen

Sworn to before me this
17 day of August, 2023

[Signature]

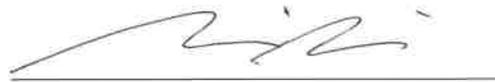
NOTARY PUBLIC

MICHAEL KENNEDY
Notary Public, State of New York
No. 02DI6422643
Qualified in Kings Co
Commission Expires September

CERTIFICATE OF TRANSLATION

I, Zishun Ning, certify that I am fluent in both English and Cantonese and that I have correctly and accurately translated the Verified Petition and above Verification from English to Cantonese, and that Petitioner Gui Zhu Chen has assured me she understands the content of said documents.

Dated: New York, New York
August __, 2023



Sworn to before me this
17 day of August, 2023


NOTARY PUBLIC

MICHAEL KENNEDY DILLER
Notary Public, State of New York
No. 02DI6422643
Qualified in Kings County
Commission Expires September 27, 2025

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

Matter of GUI ZHU CHEN, YA YUN LI,
MARIA RODRIGUEZ, GUI HUA SONG,
and CHUN FENG ZHUANG,

On behalf of themselves and all others
similarly situated,

Petitioners,

VERIFICATION

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ROBERTA REARDON, as Commissioner
of the New York State Department of
Labor,

Respondent.

For a Judgment Pursuant to Article 78 of
the Civil Practice Law and Rules.

STATE OF NEW YORK)
 : ss.:
COUNTY OF KINGS)

YA YUN LI, being duly sworn, deposes and says:

1. I am a petitioner in the above captioned proceeding.
2. I have reviewed the contents of the foregoing petition.
3. The information stated therein is true to my own knowledge except as to those matters therein stated to be alleged upon information and belief, and as to those matters I believe the information to be true.



Ya Yun Li

Sworn to before me this
17 day of August, 2023



NOTARY PUBLIC

MICHAEL KENNEDY DILLER
Notary Public, State of New York
No. 02DI6422643
Qualified in Kings County
Commission Expires September 27, 2025

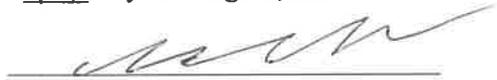
CERTIFICATE OF TRANSLATION

I, Zishun Ning, certify that I am fluent in both English and Cantonese and that I have correctly and accurately translated the Verified Petition and above Verification from English to Cantonese, and that Petitioner Ya Yun Li has assured me she understands the content of said documents.

Dated: New York, New York
August __, 2023



Sworn to before me this
14 day of August, 2023



NOTARY PUBLIC

MICHAEL KENNEDY DILLER
Notary Public, State of New York
No. 02D16422643
Qualified in Kings County
Commission Expires September 27, 2025

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

Matter of GUI ZHU CHEN, YA YUN LI,
MARIA RODRIGUEZ, GUI HUA SONG,
and CHUN FENG ZHUANG,

On behalf of themselves and all others
similarly situated,

Petitioners,

VERIFICATION

Index No. _____

-against-

ROBERTA REARDON, as Commissioner
of the New York State Department of
Labor,

Respondent.

For a Judgment Pursuant to Article 78 of
the Civil Practice Law and Rules.

STATE OF NEW YORK)
 : ss.:
COUNTY OF KINGS)

MARIA RODRIGUEZ, being duly sworn, deposes and says:

1. I am a petitioner in the above captioned proceeding.
2. I have reviewed the contents of the foregoing petition.
3. The information stated therein is true to my own knowledge except as to those

matters therein stated to be alleged upon information and belief, and as to those matters I believe
the information to be true.



Maria Rodriguez

Sworn to before me this
22 day of August, 2023



NOTARY PUBLIC

MICHAEL KENNEDY DILLER
Notary Public, State of New York
No. 02DI6422643
Qualified in Kings County
Commission Expires September 27, 2025

CERTIFICATE OF TRANSLATION

I, Yanin Peña, certify that I am fluent in both English and Spanish and that I have correctly and accurately translated the Verified Petition and above Verification from English to Spanish, and that Petitioner Maria Rodriguez has assured me she understands the content of said documents.

Dated: New York, New York
August 22, 2023



Sworn to before me this
22 day of August, 2023


NOTARY PUBLIC

MICHAEL KENNEDY DILLER
Notary Public, State of New York
No. 02DI6422643
Qualified in Kings County
Commission Expires September 27, 2025

MICHAEL KENNEDY DILLER
Notary Public, State of New York
No. 02DI6422643
Qualified in Kings County
Commission Expires September 27, 2025

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

Matter of GUI ZHU CHEN, YA YUN LI,
MARIA RODRIGUEZ, GUI HUA SONG,
and CHUN FENG ZHUANG,

On behalf of themselves and all others
similarly situated,

Petitioners,

VERIFICATION

Index No. _____

-against-

ROBERTA REARDON, as Commissioner
of the New York State Department of
Labor,

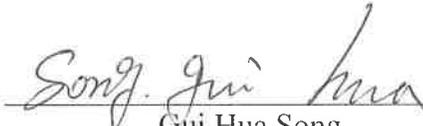
Respondent.

For a Judgment Pursuant to Article 78 of
the Civil Practice Law and Rules.

STATE OF NEW YORK)
 : ss.:
COUNTY OF KINGS)

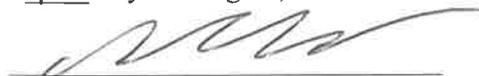
GUI HUA SONG, being duly sworn, deposes and says:

1. I am a petitioner in the above captioned proceeding.
2. I have reviewed the contents of the foregoing petition.
3. The information stated therein is true to my own knowledge except as to those matters therein stated to be alleged upon information and belief, and as to those matters I believe the information to be true.



Gui Hua Song

Sworn to before me this
17 day of August, 2023



NOTARY PUBLIC

MICHAEL KENNEDY DILLER
Notary Public, State of New York
No. 02DI6422643
Qualified in Kings County
Commission Expires September 27, 2025

CERTIFICATE OF TRANSLATION

I, Zishun Ning, certify that I am fluent in both English and Cantonese and that I have correctly and accurately translated the Verified Petition and above Verification from English to Cantonese, and that Petitioner Gui Hua Song has assured me she understands the content of said documents.

Dated: New York, New York
August 17, 2023



Sworn to before me this
17 day of August, 2023



NOTARY PUBLIC

MICHAEL KENNEDY DILLER
Notary Public, State of New York
No. 02DI6422643
Qualified in Kings County
Commission Expires September 27, 2025

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

Matter of GUI ZHU CHEN, YA YUN LI,
MARIA RODRIGUEZ, GUI HUA SONG,
and CHUN FENG ZHUANG,

On behalf of themselves and all others
similarly situated,

Petitioners,

VERIFICATION

Index No. _____

-against-

ROBERTA REARDON, as Commissioner
of the New York State Department of
Labor,

Respondent.

For a Judgment Pursuant to Article 78 of
the Civil Practice Law and Rules.

STATE OF NEW YORK)
 :
COUNTY OF KINGS) ss.:

CHUN FENG ZHUANG, being duly sworn, deposes and says:

1. I am a petitioner in the above captioned proceeding.
2. I have reviewed the contents of the foregoing petition.
3. The information stated therein is true to my own knowledge except as to those matters therein stated to be alleged upon information and belief. and as to those matters I believe the information to be true.

ZHUANG CHUN FENG

Chun Feng Zhuang

Sworn to before me this
17 day of August, 2023



NOTARY PUBLIC

MICHAEL KENNEDY DILLER
Notary Public, State of New York
No. 02DI6422643
Qualified in Kings County
Commission Expires September 27, 2025

CERTIFICATE OF TRANSLATION

I, Zishun Ning, certify that I am fluent in both English and Cantonese and that I have correctly and accurately translated the Verified Petition and above Verification from English to Cantonese, and that Petitioner Chun Feng Zhuang has assured me she understands the content of said documents.

Dated: New York, New York
August 17, 2023



Sworn to before me this
17 day of August, 2023



NOTARY PUBLIC

MICHAEL KENNEDY DILLER
Notary Public, State of New York
No. 02DI6422643
Qualified in Kings County
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