CIVIL LITIGATION ON BEHALF OF VICTIMS *of* HUMAN TRAFFICKING

Fourth Edition (DRAFT)
EXCERPTS

DRAFT

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DISCLAIMER

This manual is intended to introduce attorneys representing trafficked clients to the basic litigation tools for trafficking civil cases. However, the legal theories discussed here do not address distinctions among jurisdictions, and the content of this manual is by no means exhaustive of the laws and litigation strategies available to trafficked persons. For these reasons, this manual is not to serve as a replacement for independent research of legal claims and strategy tailored to the circumstances of a particular case.

Non-attorneys or attorneys who are not civil litigators may also benefit from this manual by familiarizing themselves with their client's options for civil relief. All those providing services to trafficked persons can inform their client that they have options for civil relief and assist their client in finding a competent attorney. However, the unauthorized rendering of legal advice, including the interpretation of these materials for a trafficking victim by individuals not licensed to practice law, should not occur under any circumstances. A civil attorney, preferably one who has previous experience with civil litigation on behalf of immigrant victims of exploitation, is in the best position to provide sound legal advice.

Acknowledgments

Many people – generations of interns, *pro bono* contributors at law firms, and colleagues at the authors' organizations – have contributed to the four editions of this manual. They will receive much-deserved acknowledgments when the Fourth Edition of this manual moves from draft to final form. For now, the authors particularly would like to thank Alexandra Levy and Erzulie Coquillon Cruz for their tireless contributions to this effort. We couldn't have done this without them.

The authors also wish to dedicate the Fourth Edition of this manual to Sheila Neville, who passed away on June 9, 2014. As a Senior Attorney at the Legal Aid Foundation of Los Angeles, Sheila was a talented and committed advocate for human trafficking survivors. We also credit Sheila with securing the funding to get the first edition of the manual off the ground over ten years ago, when only a few human trafficking civil cases had been filed. She was our dear friend, and her legacy lives on in these pages.

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Chapter 1 : Logistical Concerns

I. The Pros and Cons of Civil Litigation

Civil suits against human traffickers became possible under federal law in 2003. But at the time of this publication – more than a decade after passage of the law – trafficking victims have filed just over 140 cases in federal court. Multiple factors underpin this dearth of cases. One key factor seems to be that trafficking victims simply do not know that they have a private right of action.

Traditionally, many trafficking cases have come to attorneys as immigration cases, with individuals seeking T visas or U visas as crime victims. Because the Department of Justice prosecutes so few trafficking cases each year, very few victims ever see their traffickers held accountable. Civil litigation can change this: by bringing suit against their traffickers, victims can get redress even in the absence of any criminal prosecution. An attorney assisting a trafficking victim should make his or her client aware of this option. Even if the client decides not to pursue civil litigation, he or she should have the opportunity to make an informed choice.

From the victim's perspective, civil litigation may provide the only option to obtain justice. In the absence of a criminal prosecution, victims may feel powerless to hold traffickers accountable. Civil litigation places the reins of power in the victim's hands. In consultation with counsel, he or she decides whether to file, whether to settle, or whether to proceed to trial. This process, if done well, can be both healing and empowering. In some cases, traffickers have held victims in servitude for years, if not decades. Civil litigation offers the opportunity to obtain lost wages, compensation for emotional distress and physical injuries, and other monetary damages, including punitive damages.[1] It can also supplement a criminal suit; monetary relief not available through a criminal restitution order can be won through civil litigation. A civil action may also provide the only opportunity to hold joint tortfeasors and unindicted co-conspirators accountable. Finally, civil litigation may offer a victim his or her sole chance to confront the abuser. Not all victims seek that opportunity, but some do.

From a policy perspective, civil cases create a powerful deterrent. Even if the traffickers believe (often erroneously) that they can avoid criminal liability, the risk of civil litigation may cause them to think twice before engaging in abusive behavior.

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[1] Both the Ninth and Tenth Circuit Courts of Appeal have upheld the availability of punitive damages under the Trafficking Victims Protection Act civil remedy. *See Francisco v. Susano*, 525 Fed. Appx. 828, 835 (10th Cir. 2013); *Ditullio v. Boehm*, 662 F.3d 1091, 1098 (9th Cir. 2011). For more discussion of damages, see Chapter 4, *infra.*

Statistics show that criminal prosecution alone cannot end human trafficking.[2] Civil litigation is an important addition to the arsenal to combat traffickers.

But civil litigation is not without cost. Pursuing a case usually requires the trafficking victim to relive traumatic experiences. Victims may find discovery invasive and terrifying. One civil litigator likened the experience to "inviting a wild animal to live in your home." Litigation can be a lengthy ordeal, and even a favorable judgment does not always guarantee just compensation. Filing a civil suit may have implications for a victim's immigration status (both positive and negative). Family members previously unaware of the abuse may learn about the trafficking. Privacy cannot be guaranteed. In light of the costs and benefits, an attorney's job is to help a *particular* victim make the right decision given his or her *particular* circumstances.

In making the initial decision of whether to file a civil trafficking lawsuit, attorneys and victims should consider the following questions:

- *Do the potential defendants have the resources to satisfy a judgment?* There are many reasons to file a civil trafficking lawsuit aside from monetary compensation, but victims and attorneys alike should be aware that even a victory in court does not guarantee that damages will be recovered.
- *Are the potential defendants located in the United States?* Serving process on and collecting judgments against defendants who are not in the United States is not impossible, but can present a significant hurdle.
- *Is the potential plaintiff available for discovery?* If the victim is foreign and plans to return to his home country, he may not be able to follow through on the necessary steps to successfully prosecute a case.
- *Will civil litigation have an impact on the potential plaintiff's immigration status?* Under limited circumstances, a trafficking victim pursuing a civil case against a trafficker may be able to obtain deferred action or an extension of "continued presence" to remain in the United States to pursue the lawsuit. This litigation-related immigration relief permits a victim to work legally through the pendency of the suit.[3] On the other hand, civil litigation may expose a victim's immigration status through discovery or introduce inconsistent statements that could undermine an immigration filing.
- *Is the potential plaintiff willing to endure years of litigation?* Pursuing civil

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[2] The U.S. Department of State reported that only 7,705 trafficking cases were prosecuted in the entire world in 2012. *See* U.S. Department of State, Trafficking in Persons Report: June 2013 at 46, http://www.state.gov/j/tip/rls/tiprpt/2013/index.htm (last visited Jan. 2, 2015). Of those cases, only 1,153 were prosecutions for forced labor. *See id.*

[3] *See* Chapter 1 §III(C).

litigation can be very time-consuming. The potential plaintiff should consider whether s/he is in a position to tolerate such a lengthy – and often exhausting – process.

- *Are there safety concerns for the potential client or for his or her family?* Traffickers who bring foreign victims to the United States may have ties to the victims' families back home. Similarly, traffickers of U.S. citizen victims may be able to make credible threats against friends and family in this country. Ideally, a trafficker's threats will not dictate a victim's course of action, but a responsible attorney will discuss this risk with a client.
- *Are there other potential plaintiffs?* Victims trafficked by the same individual or organization can bring joint claims, or, in some cases, a class action lawsuit.[4]
- *If the government is prosecuting the case, will criminal prosecutors seek restitution on the potential plaintiff's behalf? If so, what kind?* Criminal restitution is mandatory in trafficking cases.[5] Criminal restitution can cover back wages, liquidated damages for back wages, out-of-pocket losses, and in the case of sex trafficking, all income earned for the trafficker. The Treasury Department has determined that criminal restitution orders under the federal trafficking statute are tax-free for purposes of federal income tax. A *tax-free* criminal restitution order is ultimately more valuable than a (taxable) civil judgment in the same amount. The attorney and potential plaintiff must work together to calculate the precise amount of restitution owed. If the criminal prosecutors obtain (and enforce) a significant criminal restitution order, it may not be necessary to pursue a civil case.[6] Civil attorneys should work actively with prosecutors to maximize a client's restitution order. Victims' attorneys should also monitor collection by the federal authorities.
- *Is there a criminal case pending?* Depending on the claims, a civil case may be automatically stayed pending completion of federal criminal proceedings. A civil case may be easier to litigate after the completion of a criminal case, particularly if the criminal case ends in a conviction. The rules of evidence and procedure usually allow evidence used in the criminal case to be obtained and used in civil proceedings.[7] If traffickers are convicted of trafficking charges in criminal court, they are collaterally estopped from contesting civil claims brought on the same grounds.[8] Under these

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4 *See* Chapter 2 § II(B).

5 *See* 18 U.S.C. § 1593.

6 *See* Chapter 1 § III(A).

7 *See* Chapter 1 § III.

8 *See Samirah v. Sabhnani*, 772 F.Supp.2d 437, 443-44 (E.D.N.Y. 2011).

circumstances, a civil trial against the same defendants focuses exclusively on damages.

•*Do the potential defendants have any reasonable claims to diplomatic immunity?* A successful diplomatic immunity defense will usually cause a case to be dismissed and service to be quashed. However, recent legal developments have made cases against diplomats much more promising.[9]

II. Working with Pro Bono Attorneys and Co-Counsel

An attorney who is considering representing a trafficking victim in court should seek the assistance of attorneys who have experience in the field. A number of firms and NGO lawyers have already tackled pioneering trafficking litigation *pro bono*. The Southern Poverty Law Center (SPLC) has litigated multiple cases, including one key case that ended in a $14 million judgment in 2015.[10] The Human Trafficking Pro Bono Legal Center (www.htprobono.org), based in Washington, D.C., has created a database of every civil case filed under the federal trafficking statute, 18 U.S.C. § 1595. The password-protected database is available to non-governmental organizations and pro bono attorneys handling trafficking cases. SPLC and the Human Trafficking Pro Bono Legal Center also offer training, technical assistance, and referrals to *pro bono* counsel with experience handling trafficking cases. Please contact the authors of this manual for more information about resources available to *pro bono* counsel handling trafficking civil cases.

Trafficking victims, who frequently have no financial resources to fund legal services, often benefit greatly from *pro bono* assistance from law firms. *Pro bono* law firms are well-positioned to handle human trafficking cases, sometimes in partnership with non-governmental organization attorneys already working with the clients. The ABA Standing Committee on *pro bono* and public service website may also be helpful.[11] The ABA can also link *pro bono* attorneys with other resources to assist them in handling human trafficking cases. Finally, attorneys may find useful information at www.probono.net.

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[9] *See* Chapter 1 § V(A).

[10] *See* Southern Poverty Law Center, Press Release, "Federal jury in SPLC case awards $14 million to Indian guest workers victimized in labor trafficking scheme by Signal International and its agents," Feb. 18, 2015, http://www.splcenter.org/get-informed/news/federal-jury-in-splc-case-awards-14-million-to-indian-guest-workers-victimized-in- (last visited Feb. 19, 2015).

[11] *See* American Bar Association, Standing Committee on Pro Bono and Public Service, www.abanet.org/legalservices/probono/home.html (last visited Jan. 2, 2015).

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X. Intentional Torts and Negligence

A trafficking victim may also choose to file civil tort claims against his trafficker. If successful, he or she may be awarded compensatory or punitive damages. The burden of proof in a civil action is lower than that in a criminal case; a civil plaintiff only needs to prove the defendant's liability *by a preponderance of the evidence* rather than *beyond a reasonable doubt*. If a victim has already won a criminal case against his trafficker, torts analogous to causes of action for which the trafficker was criminally convicted may not have to be proven again under the doctrine of collateral estoppel. However, filing tort claims may be equally, if not more valuable, in the absence of a criminal trial.

The statute of limitations for common law torts is one year in most states. Tort law varies greatly by jurisdiction, so it is imperative to do state law research. However, some torts come up frequently in human trafficking situations and, though their particularities may vary by state, their essential components are consistent.

A. Intentional Infliction of Emotional Distress

The elements of intentional infliction of emotional distress ("IIED") include: (1) extreme and outrageous conduct by the defendant (or the defendant's agent); (2) intent to cause, or the reckless disregard of causing, emotional distress; (3) severe or extreme emotional distress suffered by the plaintiff; and (4) actual or proximate cause between the conduct and the distress.[738]

Most states do not require a victim to exhibit physical manifestations of mental distress to make a successful IIED claim. While "extreme and outrageous" conduct is not clearly defined, mere rudeness or inflammatory behavior is not sufficient.[739] Courts will often take note of the relationship between the plaintiff and the defendant. For example,

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[738] *See generally* RESTATEMENT 2D OF TORTS, § 46 (1977).

[739] *See, e.g., Braunling v. Countrywide Home Loans, Inc.,* 220 F.3d 1154, 1158 (9th Cir. 2000).

continuous mocking or harassment by an employer toward an employee is more likely to be characterized as outrageous than taunting between equals.[740]

B. False Imprisonment

False imprisonment can be alleged where there has been: (1) nonconsensual, intentional confinement of the plaintiff; (2) for an appreciable length of time, no matter how short (even 15 minutes); (3) for no lawful purpose.[741]

A successful claim for physical restraint must show that the plaintiff had no reasonable means of escape.[742] Confinement does not require physical restraints, however.[743] Instead, it may consist of a threat of immediate force against the plaintiff or his family, a failure to act when the defendant has a legal duty to act, or an improper assertion of legal authority.[744] Human trafficking victims are particularly vulnerable to certain kinds of threats—for example, threats of deportation. Several courts have held that threats of deportation could be considered criminal means of securing forced labor.[745]

C. Assault

The elements of assault include: (1) an act intending to cause a harmful or offensive contact with the person of the other or a third person, or an imminent apprehension of such a contact and (2) reasonable apprehension of such injury by the plaintiff (actual contact is not required).[746]

Intent must be proven. The defendant must desire or be substantially certain that the plaintiff will apprehend harm or offensive contact.[747] Furthermore, the plaintiff must actually perceive the harm or offensive contact and the apprehension perceived must be imminent.[748] Mere words alone do not suffice for an assault claim.[749]

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740 *See, e.g., Patterson v. Xerox Corp.*, 901 F. Supp. 274, 279 (N.D. Ill. 1995).

741 *See generally* 4 MODERN TORT LAW: LIABILITY AND LITIGATION § 41:3 (2d ed.); RESTATEMENT 2D OF TORTS § 35 (1977). The specific elements of false imprisonment vary by state.

742 *See id*.

743 *See, e.g., Doe v. Siddig*, 810 F.Supp.2d at 137 ("Defendants' implication that a plaintiff must allege a direct physical restraint in order to recover for false imprisonment is misplaced.").

744 *See id.*

745 *See Kiwanuka v. Bakilana*, 844 F.Supp.2d 107, 111 (D.D.C. 2012) (finding threats of deportation constituted abuse of the legal process). *But see United States v. Shackney,* 333 F.2d 475, 486 (2d Cir. 1964) (holding that threats of deportation do not generally rise to the level of false imprisonment).

746 *See generally* RESTATEMENT 2D OF TORTS, § 21 (1977).

747 *See generally id.* § 32.

748 *See generally id.* § 24.

D. Battery

The elements of battery are: (1) the acts intending to cause a harmful or offensive contact with the person of the other or a third person, or an imminent apprehension of such a contact and (2) an offensive [or harmful] contact with the person of the other directly or indirectly results.[750] Battery is actionable even in trivial physical contacts so long as they are harmful or offensive and without consent.

E. Fraudulent Misrepresentation

The elements of fraudulent misrepresentation are: (1) misrepresentation (falsity, concealment, or nondisclosure); (2) defendant knew of or consciously disregarded the statement's falsity; (3) defendant intended to induce the plaintiff's action in reliance on the representation; (4) plaintiff reasonably relied on the representation to his or her detriment; and (5) plaintiff suffered damages.[751]

The misrepresentation must be of a past or present material fact. Material fact is defined as information of importance to a reasonable person or where the defendant knows that the victim attaches importance to the fact in question. A representation that is technically true but conveyed to deceive a person constitutes a misrepresentation. A misrepresentation also occurs when the defendant has a duty to disclose but does not. In assessing the reasonableness of the plaintiff's reliance on the misrepresentation, the court will take into account his particular qualities and circumstances.

Claims of fraudulent misrepresentation must be pled with particularity under Federal Rule of Civil Procedure 9(b).[752]

F. Negligence

Negligence does not require intent. Its elements include: (1) Duty: a legally recognized relationship between the parties; (2) Standard of Care: the required level of expected conduct; (3) Breach of Duty: failure to meet the standard of care; (4) Cause-in-Fact: plaintiff's harm must have the required nexus to the defendant's breach of duty; (5) Proximate Cause: there are no policy reasons to relieve the defendant of liability; and (6) Damages: the plaintiff suffered a cognizable injury.[753]

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749 *See generally id.* § 31.

750 *See generally id,* § 13.

751 *See generally* 37 AM. JUR. 2D *Fraud and Deceit* § 27 (2014).

752 *See Circle Group Internet, Inc. v. Fleishman-Hillard, Inc*., 231 F. Supp. 2d 801, 803 (N.D. Ill. 2002).

753 *See generally* RESTATEMENT (SECOND) OF TORTS §§ 281, 282, 284 (1977)..

It is particularly important to plead negligence when the defendant may have an insurance policy that the case could trigger. For example, homeowners' insurance policies frequently cover negligence. The policies generally do not cover intentional torts. But triggering the duty to defend under one count in the complaint will force the insurance company to defend against all counts of the complaint. In some domestic worker forced labor cases, homeowners insurance companies have intervened and settled the case directly with the victims. Examples of negligence include: (1) failure to provide adequate medical care, (2) failure to provide a safe work environment, and (3) failure to prevent an accident in the household.

G. Negligent Infliction of Emotional Distress

Unlike the tort of intentional infliction of emotional distress, in most jurisdictions negligent infliction of emotional distress ("NIED") does not require a showing of outrageous conduct as a *prima facie* element.[754] However, there is authority to the contrary.[755] In brief, negligent infliction of emotional distress involves: (1) conduct by the defendant (2) that was reasonably foreseeable to cause injury or severe emotional distress and (3) severe distress, including to the point of illness or bodily harm.[756] Courts have disagreed on whether actionable emotional distress must be accompanied by physical injury, with some holding that observable physical symptoms are required, and others holding that they are not.[757] In some cases, claimants may be required to demonstrate that the physical injuries occurred contemporaneously with or shortly after the incidents causing emotional distress.[758]

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[754] *See generally* 38 AM. JUR. 2D *Fright, Shock, Etc.* § 11 (2014). Not all states recognize these claims, however. *See id.*

[755] *See* 61 N.Y. JUR. 2D *Fright, Shock, Etc*. § 22 (2014) (stating that in New York, a claim for negligent infliction of emotional distress requires a showing of "extreme and outrageous conduct"); *Ericson v. City of Meriden,* 113 F. Supp. 2d 276, 291 (D. Conn. 2000) (applying Connecticut law) (tort arises only where it is based upon conduct of the defendant that is egregious, outrageous, or done in an inconsiderate, humiliating, or embarrassing manner).

[756] *See* 61 N.Y. JUR. 2D *Fright, Shock, Etc.* § 22 (2014). Absent physical injury resulting from the defendant's shocking conduct, a plaintiff alleging negligent infliction of emotional distress "must demonstrate through expert medical or scientific proof that he or she has suffered a 'severe emotional injury,' and such injury occurs if a reasonable person, normally constituted, would be unable to adequately cope with the mental stress engendered by the circumstances of the case." *Id.*

[757] *Compare Freeman v. Kansas State Network, Inc.,* 719 F. Supp. 995, 1000 (D. Kan. 1989) (applying Kansas law and finding that physical injury is required) *with Kelley v. Schlumberger Tech. Corp.,* 849 F.2d 41, 44 (1st Cir. 1988) (applying Louisiana law and finding that physical injury is not required).

[758] *See Freeman*, 719 F. Supp. at 1000 (applying Kansas law).

H. Trespass to Chattel and Conversion[759]

Trespass to chattel and conversion both protect personal property from wrongful interference. Trespass to chattel involves less serious damage, though in some cases both torts may be applicable.

i. Trespass to Chattel

Trespass to chattel is the intentional interference with the right of possession of personal property. The defendant's acts must intentionally damage the chattel, deprive the possessor of its use for a substantial period of time or totally dispossess the chattel from the victim. The defendant need not act in bad faith or intend to interfere with the rights of others; he must only intentionally damage or possess another person's property. Unlike conversion, the doctrine of transferred intent has traditionally been applied to trespass to chattel.

ii. Conversion

Conversion is an intentional exercise of dominion and control over a chattel that so seriously interferes with the right of another to control the chattel that the defendant may rightly be required to pay the other the full value of the chattel.

XI. Contract Claims

Victims of human trafficking may be able to sue for breaches of written or oral contracts. In most states, the award of contract remedies precludes an award of tort remedies – and therefore precludes punitive damages, regardless of whether the breach was willful.

Contract law differs from state to state; however, some broad concepts apply universally.

A. Breach of Written Contract

If an offeror fails to deliver what is promised in a written contract, an offeree may be entitled to expectation or reliance damages. A breach of a written contract may be established when a trafficked person accepts a written offer of employment and is not then given the agreed-upon opportunity or salary.[760]

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759 *See, for example,* 104 N.Y. JUR. 2D *Trespass* § 8 (2014).

760 *See, e.g., Carazani v. Zegarra,* 972 F.Supp.2d 1, 16-20 (D.D.C. 2013).

B. Breach of Oral Contract

An oral contract is similar to an implied agreement between the traffickers and the trafficked persons. In order to establish the existence of an oral contract, it is necessary to show that: (1) the offeror intended the offer, (2) the terms of the offer were "certain" and "definite,"[761] (3) the offeree accepted the offer, and (4) the agreement was supported by adequate consideration.[762]

C. Statute of Frauds

Under the Statute of Frauds, certain oral agreements are void if they cannot be performed within one year.[763] Nevertheless, the Statute of Frauds may be overcome by showing a plaintiff's partial performance in reliance on the oral promise.[764] One trafficking plaintiff defeated the defendants' Statute of Frauds defense by arguing that there was "a fraudulent oral promise by the defendant upon which the plaintiff justifiably relied by engaging in acts that are 'unequivocally referable' to the oral promise, resulting in substantial injury to the plaintiff."[765]

D. Breach of the Covenant of Good Faith and Fair Dealing

All contracts are governed by an implied covenant of good faith and fair dealing.[766] Because the covenant is so broad, what constitutes a breach can vary widely.[767]

E. Damages

Contract remedies are generally limited to compensatory, or expectation, damages. Expectation damages are calculated to place the victim of the breach in the position he would be in had the breach not occurred. Compensatory damages for wrongful discharge may include future earnings (or "front pay"). Future earnings may substitute for reinstatement.[768]

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[761] *See, e.g., Clark v. Walker,* No. 04-cv-941, 2004 WL 2967105, *3-4 (N.D. Ill. Nov. 23, 2004).

[762] *See generally* 17A AM. JUR. 2d *Contracts* §§ 1, 19 (2014).

[763] *Topo v. Dhir*, No. 01 Civ. 10881, 2003 U.S. Dist. LEXIS 21937, at *10 (S.D.N.Y. Dec. 3, 2003) (quoting N.Y. Gen. Oblig. Law § 5-701).

[764] *Id.* at *11.

[765] *Id.*

[766] *See generally* 22 N.Y. JUR. 2D *Contracts* § 227 (2014).

[767] *See generally* 28 N.Y. PRAC., CONTRACT LAW § 11:23 (2014).

[768] Damage awards are offset by a plaintiff's duty to mitigate; that is to say, a victim of a breach must seek other ways to meet his need and, if he does not, the amount he should have been able to recover will be subtracted from his damage ward.

Alternatively, a plaintiff may recover reliance damages, which are calculated to put the victim of the breach in the position he would have occupied had the promise never been made.[769] For example, reliance damages can be losses incurred as a result of the worker's relocation due to the employer's false representations regarding the employment.

XII. Quasi-Contract Claims

Whereas contractual obligations are based on agreements between parties, quasi-contractual obligations arise from broader concepts of justice.[770] Quasi-contracts are rooted in the idea that even if parties do not expressly create obligations to each other (in a contract), concepts of justice and fairness create their own obligations. Whereas a quasi-contract based in fact "does not exist unless the parties manifest assent, by reason of words or conduct," a quasi-contract based in law does not, and may bestow rights that the parties did not intend.[771]

Courts use quasi-contracts to remedy unjust enrichment and provide restitution.[772] The measure of damages is determined by the benefit conferred to the defendant. Other factors that are relevant to the court's determination of how to make the plaintiff whole again include "the relative fault, the contractual risks assumed by the parties, any unjust enrichment or unjust impoverishment, and the fairness of alternative risk allocations not agreed upon and not attributable to the fault of either party."[773]

A. Unjust Enrichment

Unjust enrichment is defined as "[t]he retention of a benefit conferred by another without offering compensation, in circumstances where compensation is reasonably expected" or a "benefit obtained from another, not intended as a gift and not legally justifiable, for which the beneficiary must make restitution or recompense."[774] Under the principle of unjust enrichment, a plaintiff can recover in restitution if: (1) the plaintiff

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769 *See, for example, ATACS Corp. v. Trans World Commc'ns, Inc.,* 155 F.3d 659, 669 (3d Cir. 1998) ("Where a court cannot measure lost profits with certainty, contract law protects an injured party's reliance interest by seeking to achieve the position that it would have obtained had the contract never been made, usually through the recovery of expenditures actually made in performance or in anticipation of performance.").

770 *See generally* 1 WILLISTON ON CONTRACTS § 1:6 (4th ed. 2014).

771 *Id*. The distinction is significant, as "differen[t] . . . legal relations" exist under each. *Id.*

772 *See id.* .

773 CORBIN ON CONTRACTS § 1.20 (Matthew Bender & Co. 2004).

774 BLACK'S LAW DICTIONARY 748 (3d ed. 2006).

has conferred a benefit on the defendant; (2) the plaintiff conferred the benefit with the expectation of being compensated for its value; (3) the plaintiff's expectation was known or should have been known to the defendant; and (4) allowing the defendant to avoid liability would unjustly enrich the defendant.

In a recent trafficking case, a court stated that the fact that the defendant paid a sub-contractor for plaintiffs' labor would not necessarily defeat an unjust enrichment claim.[775] Other examples of unjust enrichment in trafficking cases could include the difference between the prevailing wage that the defendant would have paid on the open market and the miniscule (or nonexistent) remuneration provided to the victim.[776]

B. Quantum Meruit

Quantum meruit means "as much as is deserved."[777] *Quantum meruit* awards damages "in an amount considered reasonable to compensate a person who has rendered services in a quasi-contractual relationship."[778] Generally, recovery in *quantum meruit* requires the following elements: (1) the performance of services in good faith, (2) the acceptance of the services by the person to whom they are rendered, (3) an expectation of compensation therefore, and (4) a determination of the reasonable value of the services rendered.[779]

XIII. Other State Statutory Claims

State statutes may provide additional relief to a trafficking victim, and an effective advocate must research these thoroughly. For example, Maryland courts have limited discretionary authority to award treble damages for wage and hour violations.[780] Connecticut law gives double damages for minimum wage, late payment, and other wage violations.[781] In California, an employee may be entitled to double damages if induced to

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775 *See Rodriguez*, 2007 WL 684117, at *5.

776 *See Mazengo v. Mzengi,* Report and Recommendation.

777 BLACK'S LAW DICTIONARY 586 (3d ed. 2006).

778 *Id.*

779 *See Topo v. Dhir,* No. 01-cv-10881, 2003 U.S. Dist. LEXIS 21937, at *9 (S.D.N.Y. Dec. 3, 2003) (in human trafficking lawsuit, cross-motions for summary judgment denied on, *inter alia, quantum meruit* claim), Report and Recommendation *aff'd* in relevant part 2004 U.S. Dist. LEXIS 4134, at *11-12 (S.D.N.Y. Mar. 15, 2004).

780 *See* MD. CODE ANN., LAB. & EMPL. §§ 3-427, 3-507. *But see Horlick v. Capital Women's Care, LLC,* 896 F.Supp.2d 378, 389 (D. Md. 2011) (holding that, under the Maryland Wage Act, "even if an employer is found liable for damages, the employer is not liable for statutory treble damages, attorneys' fees, or costs if there is a bona fide dispute about the payment").

781 *See* CONN. GEN. STAT. § 31-72.

move based on a misrepresentation regarding the terms of employment.[782] In addition, an unlawful, unfair, or fraudulent business act or practice can be challenged in court by any member of the public who may have been deceived.[783] Remedies include restitution and disgorgement of wrongfully gained profits.[784]

XIV. Potential for Counterclaims

Defendants have raised counterclaims in 10 federal civil human trafficking cases.[785] Only one such counterclaim was successful.[786]

1. Libel, slander, and defamation

In six federal civil human trafficking cases, defendants have brought counterclaims for libel, defamation, or slander.[787] Of these cases, three are ongoing with counterclaims still pending[788]; one settled with no direct resolution of the counterclaims[789]; counterclaims in one case were dismissed[790], and one counterclaim succeeded[791].

In *Bhardwaj v. Dayal*, defendants brought counterclaims for libel and slander, alleging that statements made in the initial and amended complaints were defamatory. [792] The court dismissed the counterclaims, on grounds that statements made in the course of a legitimate judicial proceeding enjoy an "absolute privilege" against defamation claims.[793]

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782 *See* CAL. LAB. CODE §§ 970, 972.

783 *See* CAL. BUS. & PROF. CODE §§ 17200.

784 *See* CAL. BUS. & PROF. CODE §§ 17200, 17203, 17204.

785 *Bhardwaj v. Dayal*, 11-cv-04170 (S.D.N.Y.), *Calumba v. Massey*, 13-cv-8936 (S.D.N.Y.), *Castellanos v. Worldwide Distribution Systems*, 14-cv-12609 (E.D.Mi.), *Chigangu v. DNusha*, 14-cv-00062 (E.D.Ky.), *Doe v. Penzato*, 10-cv-5154 (N.D.Cal.), *Nunag-Tanedo v. East Baton Rouge*, 10-cv-1172 (C.D.Cal.), *Panwar v. Access Therapies, Inc.*, 12-cv-00619 (S.D.Ind.), *Shukla v. Sharma*, 07-cv-2972 (E.D.N.Y.), *Sylla v. Conde*, 14-cv-03681 (D.S.C.), *Tuburan v. Massey*, 12-cv-08561 (S.D.N.Y.).

786 *Shukla v. Sharma*, 07-cv-2972 (E.D.N.Y.)

787 *Bhardwaj v. Dayal*, 11-cv-04170 (S.D.N.Y.), *Calumba v. Massey*, 13-cv-8936 (S.D.N.Y.), *Chigangu v. DNusha*, 14-cv-00062 (E.D.Ky.), *Shukla v. Sharma*, 07-cv-2972 (E.D.N.Y.), *Sylla v. Conde*, 14-cv-03681 (D.S.C.), *Tuburan v. Massey*, 12-cv-08561 (S.D.N.Y.).

788 As of February 26, 2015. *Calumba v. Massey*, 13-cv-8936 (S.D.N.Y.), *Chigangu v. DNusha*, 14-cv-00062 (E.D.Ky.), *Sylla v. Conde*, 14-cv-03681 (D.S.C.)

789 *Tuburan v. Massey*, 12-cv-08561 (S.D.N.Y.)

790 *Bhardwaj v. Dayal*, 11-cv-04170 (S.D.N.Y.)

791 *Shukla v. Sharma*, 07-cv-2972 (E.D.N.Y.)

792 *See* Order, *Bhardwaj v. Dayal*, 11-cv-04170 (June 21, 2012) Document 70 at *2.

793 Order, *Bhardwaj v. Dayal*, 11-cv-04170 (June 21, 2012) Document 70 at *2 (quoting *Chord Assocs., LLC v. Protech 2003-D LLC*, 2010 WL 3780380, at *3 (E.D.N.Y. Sept. 21, 2010)). The court noted that had the proceedings been instigated maliciously or with an intent to defame, the privilege would not apply, but that was not alleged here. See *id.*

In *Shukla v. Sharma*, defendants brought counterclaims against the plaintiff for slander per se, alleging that he had made statements to Ashram devotees and to the media "in order to injure Defendants and deprive Defendants of the respect, confidence and esteem essential to the Ashram and the Individual Defendants' positions in the Ashram."[794] A jury awarded three defendants $500,000 in total compensatory damages for libel.[795] The defendants' other counterclaims – for breach of contract and conversion – were unsuccessful.[796]

2. Other notable counterclaims

In *Nunag-Tanedo v. East Baton Rouge*, defendants counterclaimed for relief for promissory fraud, alleging that one plaintiff borrowed money and refused to pay it back.[797] These counterclaims were dismissed on grounds that provisions of the contracts in question were unenforceable under Louisiana law.[798]

In *Panwar v. Access Therapies, Inc*., the defendant alleged that "[plaintiff's] allegations…were made for the purpose of circumventing the administrative procedures and remedies of the Immigration and Nationality Act…"[799] The court dismissed this counterclaim as having been pled in a conclusory fashion.

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[794] Answer to Complaint with Counterclaims, *Shukla v. Sharma*, 07-cv-2972 (E.D.N.Y.) Document 9 at *19

[795] *See* Jury Verdict, *Shukla v. Sharma*, 07-cv-2972 (E.D.N.Y.) Document *138 (p 3-6)

[796] *See* id.

[797] *See* First Amended Counterclaim, *Nunag-Tanedo v. East Baton Rouge Parish School Board*, 10-cv-01172 (Document 385) at *3.

[798] *See* Plaintiff's Trial Brief, *Nunag-Tanedo v. East Baton Rouge Parish School Board*, 10-cv-01172 (Document 403) at *4, Amended Judgment, *Nunag-Tanedo*, 10-cv-01172 (Document 515) at *2.

[799] *Panwar v. Access Therapies*, Dkt 44 at 27

Chapter 4 : Damages

I. Background

Damages are the lynchpin of most civil trafficking cases. Whether received by settlement or verdict, damages offer victims the prospect of economic self-sufficiency, and may provide victims some measure of closure.

II. Procedure

A few general procedural rules apply to damages. First, the civil plaintiff's burden of proof with respect to liability also applies to damages. The plaintiff must prove *by a preponderance of the evidence* what she has suffered and expects to suffer as a result of the defendant's actions. Some jurisdictions apply a more stringent standard to punitive damages.[800]

Second, the doctrine of *collateral estoppel* (also known as *issue preclusion*) bars subsequent litigation for injuries claimed in the original lawsuit.[801] Therefore, both past and prospective losses must be pled.

Third, damages awards may require that payments be made in a lump sum, or they may be divided into periodic payments. Lump sum awards are more common and combine past and prospective losses. Periodic payments, on the other hand, accommodate changes in the plaintiff's needs, such as fluctuating medical bills. In a structured settlement, a defendant agrees to make periodic payments to the plaintiff.[802]

While lump sum awards require careful investment, periodic payments incur higher administrative costs. Each has its advantages, and attorneys should help clients make judicious financial choices based on their anticipated economic needs.

III. Types of Damages

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[800] *See Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 23, n.11 (1991) ("We have considered the arguments…as to the constitutional necessity of imposing a standard of proof of punitive damages higher than 'preponderance of the evidence.' There is much to be said in favor of a State's requiring, *as many do*…a standard of 'clear and convincing evidence' or, even, 'beyond a reasonable doubt,'…as in the criminal context. We are not persuaded, however, that the Due Process Clause requires that much." (emphasis added))

[801] *See generally Allen v. McCurry*, 101 S.Ct. 411 (1980).

[802] *See generally*, Brian Brown & Lisa Chalidze, *Structured Settlements: An Overview*, 22 VT. B. J. & L. DIG. 14 (1996); Dirk Yandell, *Advantages and Disadvantages of Structured Settlements*, 5 J. LEGAL. ECON. 71 (1995).

The majority of civil trafficking damages are compensatory or punitive. However, other kinds of damages may be available as well.

A. Compensatory Damages

Compensatory damages are awarded as compensation, indemnity, or restitution for harm, and are meant to restore the plaintiff to the position he or she was in before the injury occurred. There are two types of compensatory damages: economic and non-economic, also known as special damages and general damages, respectively. Economic (special) damages compensate the plaintiff for concrete monetary losses, such as medical expenses and lost earnings, proximately resulting from the defendant's misconduct. Non-economic (general) damages compensate a plaintiff for his pain and suffering, loss of enjoyment of life, and other intangible losses.[803]

i. Economic Damages

Economic damages compensate the plaintiff for any monetary losses flowing directly from his injury. They include, but are not limited to, lost earnings, medical expenses for physical, psychiatric, or psychological care, physical and occupational therapy or rehabilitation, transportation, temporary housing costs, and child care expenses. To corroborate evidence of these losses, all receipts and affidavits attesting to these expenditures should be collected and recorded.

The importance of retaining physical evidence of losses cannot be emphasized enough. In the case of a default judgment, sufficient documentation of the plaintiff's losses may eliminate the need for a hearing; the D.C. District Court recently held that no hearing was necessary to determine damages, awarded as part of a default judgment, where the plaintiff provided that:

> [H]er employment contract, the prevailing wage determination policy guidance from the Employment and Training Administration, the prevailing wage rates for housekeepers from 2006 to 2009 in the Washington, D.C. area…, the FLSA minimum wage for that period, a weekly tabulation of the hours the plaintiff worked, the plaintiff's medical expenses, the plaintiff's T-Visa, and Declarations from the plaintiff and her mental health counselor.[804]

(a) Lost Wages

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[803] The Economic Loss Rule precludes recovery in tort of economic losses not accompanied by injury or personal harm. *See, for example, Hunt Const. Group, Inc. v. Brennan Beer Gorman/Architects, P.C.,* 607 F.3d 10, 14-16 (2d Cir. 2010) (describing Vermont law interpreting rule).

[804] *See, e.g., Carazani*, 972 F.Supp.2d at 15 ("[A] hearing is not necessary if the court can resolve the damages claims 'on the papers alone.'") (citing *Shepherd v. American Broadcasting Companies, Inc.*, 862 F.Supp. 486, 491 (1994)).

Past and future lost wages usually comprise the bulk of a trafficking victim's economic damages. There are two ways to calculate lost income.[805] The most common formula for calculating lost wages is the *minimum wage and overtime standard* set forth by the FLSA or the applicable state labor code.[806] If the victim performed work for which he or she normally would have earned more than minimum wage, however, the compensation should be calculated based on the *prevailing wage rate*. The prevailing wage rate is the rate the worker would have earned in a legal market for doing his particular job. The U.S. Department of State measures the prevailing wage rate for domestic workers using wage data collected under the Occupational Employment Statistics Program.[807] The Department of Labor also maintains a prevailing wage database for every region in the United States.[808] Courts may also look to expert testimony to determine prevailing wage rates.[809]

In most cases, a worker must be paid 1.5 his regular wage rate for any hours worked overtime – that is, hours worked in excess of 40 in a given workweek.[810] Therefore, to determine lost wages, the wage rate should be multiplied by the number of hours worked, up to 40; this number should be added to the 1.5 times the wage rate multiplied by the number of hours worked in excess of 40. Other violations of federal or state labor law, such as failure to provide rest and meal breaks, accrue monetary penalties that can also factor in to a plaintiff's actual damages.

If the underlying work is illegal – for example, if the victim was forced into prostitution – no minimum wage analysis applies. In this case, damages may be calculated as the trafficker's profits from his exploitation of the victim.[811] The TVPA requires that restitution include "the *greater* of the gross income or value to the defendant

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[805] The same methods are used for calculating criminal and civil restitution; this formula is identical to the one described in Chapter 1 § III(A). In all cases, lost income for purposes of restitution is calculated for the time period in which the victim was acting under the trafficker's direct control.

[806] *See* U.S. Department of Labor, Wage and Hour Division, Compliance Assistance - Wages and the Fair Labor Standards Act (FLSA), http://www.dol.gov/whd/flsa/ (last visited Jan. 6, 2015).

[807] *See* 20 C.F.R. § 656.40; *Carazani*, 972 F.Supp.2d at 17.

[808] One such database, the Foreign Labor Certification Data Center, is accessible at http://www.flcdatacenter.com (last visited Jan. 6, 2015).

[809] *See, e.g., Mazengo v. Mzengi*, 2007 WL 8026882, at *4.

[810] *See* 29 U.S.C. § 207(a)(1) (2010). This analysis applies even if the claim is made under state law and state law does not have an overtime provision. *See, e.g., Carazani,* 972 F.Supp.2d at 18 ("the FLSA establishes 'a national floor' over which domestic workers must be compensated at least 1.5 times the 'regular rate at which he is employed for working in excess of the maximum workweek'").

[811] *See, e.g., United States v. Robinson*, 508 Fed. Appx. 867, 871 (11th Cir. 2013) (upholding a restitution award under 18 U.S.C. § 1593 calculated based on "the amount charged for [the child victim's commercial sexual] services and the amount of time she worked").

of the victim's services or labor or the value of the victim's labor as guaranteed under the…[FLSA]."[812] Pursuing damages for forced illegal work under a theory of disgorgement of profits may be fruitful, as illegal work is often lucrative.[813]

(b) Calculating Future Losses

Future wages may be awarded if the plaintiff suffered a "loss of capacity to earn income."[814] In order to recover, he "must establish only that the future economic damages are reasonably certain to occur."[815] A trafficking victim may lose the capacity to earn income as a result of having his or her immigration status compromised.[816]

Whether based on lost earning potential or prospective medical expenses, the calculation of a trafficking victim's future losses should factor in the plaintiff's life expectancy, work life expectancy, and the expected duration of the his injuries.[817] The total amount of future losses must be discounted to its present day value to factor in inflation and earned interest. The present value of future damages is a smaller amount than simply the sum of all lost earnings. This is because the amount awarded today—if invested prudently—will earn interest.[818]

Courts use two methods to discount future wage loss to present day value: "total offset" or "real interest." The "total offset" method applies the same inflation rate for both general inflation and wage inflation.[819] Proponents of this method argue that it is as (if not more) accurate as assigning an inflation rate factor. Opponents of this method

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[812] 18 U.S.C. § 1593(b)(3) (2008) (emphasis added).

[813] The defendants' ill-gotten gains may even exceed the victim's losses, in which case disgorgement is clearly the preferable damages theory. *See United States v. Fu Sheng Kuo*, 620 F.3d 1158, 1165, n.1 (9th Cir. 2010) ("For instance, an enslaved victim forced to work as a drug mule may smuggle millions of dollars' worth of drugs for the defendant. The value of that service to the defendant easily might exceed the victim's actual losses.").

[814] *Ortiz v. Home Depot USA, Inc.,* No. 12-cv-61512, 2013 WL 5774873, at *1 (S.D. Fla. Oct. 25, 2013) (quoting *Benjamin v. Diel*, 831 So.2d 1227,1229 (Fla. 4th DCA 2002)).

[815] *Id.* (quoting *Auto–Owners Insurance Co. v. Tompkins,* 651 So.2d 89, 90 (Fla.1995)).

[816] *See, for example, Calimlim,* 538 F.3d at 709 (trafficker refused to renew victim's visa).

[817] *See, for example, Cummings v. Standard Register Co.,* 265 F.3d 56, 66 (1st Cir. 2001) (plaintiff's projected retirement age appropriate for admission into evidence and for consideration by jury for front pay award)..

[818] *See Chesapeake & O. Ry. Co. v. Kelly*, 241 U.S. 485, 489 (1916) ("So far as a verdict is based upon the deprivation of future benefits, it will afford more than compensation if it be made up by aggregating the benefits without taking account of the earning power of the money that is presently to be awarded.").

[819] *See* Michael T. Brody, *Inflation, Productivity, and the Total Offset Method of Calculating Damages for Lost Future Earnings*, 49 U. CHI. L. REV. 1003, 1022 (1982).

argue that the total offset method incorrectly assumes that price and wage inflation cancel each other out.[820]

In *Jones & Laughlin Steel Corp. v. Pfeifer*, the Supreme Court endorsed the "real interest" method, and stated that the following elements should be factored into the calculation of future wage loss to present value: (1) "the amount that the employee would have earned during each year that he could have been expected to work after the injury" and (2) the "appropriate discount rate, reflecting the safest available investment."[821] The Court also stated that the discount rate for a damage award should reflect the real interest rate.[822] Ultimately, the approach taken in a given case will depend on that jurisdiction's precedent and the arguments of each party's attorneys and economic experts.

ii. Non-Economic Damages

Non-economic damages primarily compensate the plaintiff for pain and suffering. Physical pain is defined as the sensory pain experienced by the plaintiff from his or her injuries and from treatment of those injuries. Mental suffering includes the mental anguish resulting from physical injuries as well as non-physically induced emotional distress. Examples of emotional distress include worry, grief, anxiety, depression, and despair. Emotional distress also includes psychiatric disorders resulting from the defendant's misconduct, such as Post-Traumatic Stress Disorder ("PTSD"). The trauma of the trafficking experience causes many trafficked plaintiffs to suffer from PTSD, resulting in symptoms such as insomnia, memory difficulties, and feelings of fear and panic.[823] This type of emotional harm is compensable under the TVPA.[824] A plaintiff may establish evidence of pain and suffering through his or her own testimony, as well as through the testimony of expert witnesses, such as medical and mental health practitioners.

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820 *See Jones & Laughlin Steel Corp. v. Pfeifer,* 462 U.S. 523, 534-35 (1983).

821 *See id*. at 537-38.

822 *See id*. at 549.

823 *See, e.g., Carazani*, 972 F.Supp.2d 1, at 25 (describing compensable emotional symptoms, including suicidality, "dissociation, hyperarousal, mood dysregulation, and changes in neurovegetative indicators, such as sleep, appetite, and concentration").

824 *See id.*; *Doe v. Howard*, No. 11-cv-1105, 2012 WL 3834867, at *2 (E.D. Va. Sept. 4, 2012); *Mazengo,* 2007 WL 8026882, at *7. *See also* Richard L. Newman & Rachel Yehuda, *PTSD in Civil Litigation: Recent Scientific and Legal Developments*, 37 JURIMETRICS 257 (1997) (reviewing literature and empirical studies).

Courts do not tend to use well-defined guidelines to aid jurors in calculating the amount of pain and suffering damages.[825] Some commentators have argued that the absence of clear guidelines has produced unequal awards for equally severe injuries.[826] Some courts allow attorneys to make pain and suffering award recommendations, which greatly influence juries.[827] Therefore, presenting a clear and predictable formula for calculating damages may play a key role in how much the jury awards the trafficked plaintiff.

One approach to the calculation of pain and suffering damages is the *per diem* method.[828] This method places a daily monetary amount on the plaintiff's suffering and multiplies that amount by the number of days that the plaintiff suffered and will suffer in the future. Some courts have rejected the *per diem* method, characterizing it as mere conjecture and an excessive measure of damages.[829]

Analysis of prior awards in similar cases may also provide some guidance for determining pain and suffering damages.[830] Finally, attorneys should be aware that many states have attempted to alleviate the unpredictability of damage awards through statutory reforms, such as caps on pain and suffering damages. Attorneys should verify whether such a cap exists in their jurisdiction and calculate damages accordingly.

B. Punitive Damages

Punitive damages are "awarded against a person to punish him for his outrageous conduct and to deter him and others like him from similar conduct in the future."[831] The damages must be "reasonable in their amount and rational in light of their purpose to

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825 *See* Mark Geistfeld, *Placing a Price on Pain and Suffering: A Method for Helping Juries Determine Tort Damages for Nonmonetary Injuries*, 83 CAL. L. REV. 773, 781 (1995).

826 *See id.* at 784-85.

827 *See* Roselle L. Wissler, et al., *Instructing Jurors on General Damages in Personal Injury Cases*, 6 PSYCHOL. PUB. POL'Y & L. 712, 714 (2000).

828 *See id*. at 782.

829 *See, for example, Moorehead v. State Farm Fire & Cas. Co.*, 123 F.Supp.2d 1004, 1007 (W.D. Va. 2000) (holding per diem basis was improper method of computing emotional distress damages). *But see Regions Bank v. White*, 06-cv-1475, 2009 WL 3148732, at *2 (E.D. Ark. Sept. 24, 2009) ("Although the Eighth Circuit does not allow for instructions on *per diem* mathematical calculations, it does not 'disapprove of *per diem* closing arguments as long as such arguments are carefully controlled by the district court'." (quoting *Vanskike v. ACF Industries, Inc.,* 665 F.2d 188, 211 (8th Cir.1981)).

830 *See* James F. Blumstein, et al., *Beyond Tort Reform: Developing Better Tools for Assessing Damages for Personal Injury*, 8 YALE.J. ON REG. 171, 172 (1991).

831 RESTATEMENT (SECOND) OF TORTS § 908 (1979). *See also* A. Mitchell Polinsky & Steven Shavell, *Punitive Damages: An Economic Analysis*, 111 HARV. L.REV. 869, 878 (1998) (using "economic reasoning" to assess application of punitive damages for deterrence purposes).

punish what has occurred and to deter their repetition."[832] Because they are punitive, they are more susceptible to due process challenges.[833] Though states vary in their standards for punitive damages, negligence does not generally rise to the level of conduct warranting punitive damages.

In 2011, the Ninth Circuit Court of Appeals held that the TVPA "permits recovery of punitive damages because it creates a cause of action that sounds in tort and punitive damages are available in tort actions under the common law."[834] The court elaborated:

> [Human trafficking] obviously meets the common law standards for award of punitive damages because it is both intentional and outrageous. Moreover, permitting punitive damages is consistent with Congress' purposes in enacting the TVPA, which include increased protection for victims of trafficking and punishment of traffickers. We therefore hold that punitive damages are available under 18 U.S.C. § 1595.[835]

In 2013, the Tenth Circuit Court of Appeals also awarded punitive damages under the TVPA. That court employed a two-step test to determine whether punitive damages were available under the statute.[836] First, the court queried whether Congress had "indicated an intent to exclude punitive damages from the full range of common law remedies otherwise presumptively afforded in the TVPA."[837] Finding it had not, the court considered whether punitive damages were a "proper part of righting the wrong done by violation of the TVPA."[838] The court agreed with the Ninth Circuit that the TVPA creates a cause of action similar to a tort and that punitive damages are therefore an appropriate remedy.[839]

i. Procedure

Punitive damages call into play special procedural rules. Some courts and legislatures have increased the burden of proving punitive damages from a preponderance

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832 *Pacific Mut. Life Ins. Co. v. Haslip,* 499 U.S. 1, 21 (1991)..

833 *See, e.g., St. Louis, I.M.& S. R. Co. v. Williams*, 251 U.S. 63, 66-67 (1919).

834 *Ditullio,* 662 F.3d at 1094.

835 *Id.* at 1098.

836 *See Francisco v. Susano*, 525 Fed.Appx. 828, 833-34 (10th Cir. 2013).

837 *Id*. at 833.

838 *Id.* at 834.

839 *See id*. at 835. Several lower courts have also awarded punitive damages under the TVPA following *Ditullio* and *Francisco*. *See Carazani*, 972 F.Supp.2d at *19 (awarding $543,041.28 in punitive damages for forced labor and trafficking that was "particularly depraved"); *Howard*, 2012 WL 3834867, at *5 (awarding $2,000,000 in punitive damages in light of the defendants' "intentional egregious and outrageous conduct"); *Shukla v. Sharma*, No. 07–cv–2972, 2012 WL 481796, at *16 (E.D.N.Y. Feb. 12, 2012) (awarding a total of $1,000,000 in punitive damages).

standard to a clear and convincing standard;[840] others have gone so far as to require to proof beyond a reasonable doubt.[841] Some states have also implemented bifurcated proceedings to determine separately whether defendants are liable for punitive damages.[842] In a bifurcated system, there are two trial segments. Defendants must first be found to have committed a tort or other injury and have the compensatory damages assessed against them. Only then is the jury to consider punitive damages. Finally, many states have enacted statutory caps to limit the amount of punitive awards.

ii. Ratio

The Supreme Court has articulated certain parameters to prevent excessive punitive awards. In *BMW of North America, Inc. v. Gore*, the Supreme Court held that punitive damages should reflect the reprehensibility of the defendant's conduct and should have a predictable relationship with the harm suffered as well as civil penalties authorized.[843] In *State Farm Insurance Company v. Cambell,* the Court held that the relationship between punitive and compensatory damages should generally be a single digit ratio.[844] Thus, a punitive award 10 times greater than the compensatory award may be considered excessive and an unconstitutional violation of a defendant's due process rights. Since the *Gore* decision, lower courts have held that punitive damages should bear a "reasonable relationship" to compensatory damages; some have even provided a specific ratio of punitive to compensatory damages.[845] Though the *Gore* guideposts do not provide an exact formula for ascertaining the correct amount of punitive damages, they are nonetheless helpful to gauge whether a court will likely consider an attorney's estimate is within a reasonable scope. Notably, in evaluating TVPA claims, some courts have favored a one-to-one ratio of compensatory to punitive damages.[846]

In other states, however, the defendant's wealth is not considered essential in the determination of a punitive award and may only be considered if the defendant appeals

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[840] *See* Lee R. Russ, *Annotation, Standard of Proof as to Conduct Underlying Punitive Damage Awards — Modern Status*, 58 A.L.R. 4th 878 (1987).

[841] *See* COLO. REV. STAT. § 13-25-127.

[842] *See* CAL. CIV. CODE § 3295 (d); N.C. GEN. STAT. § 1D-30.

[843] *See BMW of North Am., Inc. v. Gore,* 517 U.S. 559, 575 (1996).

[844] *See State Farm Ins. Co. v. Campbell,* 538 U.S. 408, 410 (2003) ("in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages will satisfy due process").

[845] *See* A. Mitchell Polinsky & Steven Shavell, *Punitive Damages: An Economic Analysis*, 111 HARV. L.REV. 869, 939, n.221 (1998).

[846] *See, e.g., Carazani*, 972 F.Supp.2d, at *27 (awarding punitive damages equal to compensatory damages); *Shukla*, 2012 WL 481796, at *16 (reducing a $2,500,000 punitive damage award to $1,000,000, resulting in a 1:1 ratio).

iv. Vicarious Liability for Punitive Damages

Trafficked plaintiffs may seek to impose punitive damages on third party employers whose employees served as the primary agents for the trafficking violations. There are various jurisdictional approaches to this issue. Some courts allow claims for punitive damages to flow to employers for the misconduct of their employees based on a vicarious liability theory. Other states implement a more stringent standard. For example, in California, an employer is liable for punitive damages based on the actions of an employee only if:

> the employer had advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of other or authorized or ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice.[847]

With respect to corporate employers, California law further requires that the "advance knowledge" and "conscious disregard" be on the part of the corporation's "officer, director, or managing agent."[848]

Still, other states follow the Second Restatement, which states that punitive damages can be awarded against "a master or other principal because of an act by an agent" if: the principal or managerial agent authorized the doing and the manner of the act, or the agent was unfit and the principal or a managerial agent was reckless in employing or retaining him, or the agent was employed in a managerial capacity and was acting in the scope of employment, or the principal or a managerial agent of the principal ratified or approved the act.[849]

C. Nominal Damages

Nominal damages (*e.g.*, $1) are symbolic damages to establish the rights of the plaintiff and/or to clarify that defendant committed the wrongful act. Nominal damages are usually awarded when the violation is established but no actual harm occurred or was proven with certainty.

D. Injunctive and Other Equitable Relief

Prohibitory injunctions order the defendant to refrain from certain activities while mandatory injunctions order the defendant to perform a particular act. Other types of equitable relief include constructive trusts or equitable liens.

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847 CAL. CIVIL CODE § 3294(b).

848 *Id.*

849 RESTATEMENT (SECOND) OF TORTS, § 909 (1965).

E. Liquidated Damages

Liquidated damages are determined by the parties to a contract in anticipation of possible breach. They reflect the total compensation to be paid by the breaching party to the other party. Liquidated damages may also be set by statute, as they are under the FLSA.[850]

F. Statutory Damages

Some state and federal labor and civil rights statutes allow for an award of statutory damages. This is usually a fixed amount (*e.g.*, $1,000), or a maximum amount (*e.g.*, up to $1,000) that either is automatically awarded, or that may be awarded instead of actual damages where actual damages are difficult to quantify. As noted above, child victims of sex trafficking are eligible for statutory damages of $150,000.

G. Interest

In several circuits, prejudgment interest is available on back pay awards if liquidated damages are not awarded.[851] Courts differ on how to calculate prejudgment interest. "Unlike postjudgment interest, there is no statutory rate of prejudgment interest…and the amount of prejudgment interest required to properly compensate the victim can vary depending on the particular circumstances of the case."[852] Some courts have calculated the prejudgment interest rate based on the prime rate from the date of injury to the date of judgment.[853] Courts have also used a prejudgment interest rate set out by state statute.[854]

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[850] *See* 29 U.S.C. § 216(b) (2008) (liquidated damages are to equal wages lost).

[851] Some appellate courts have held that pre-judgment interest for back pay awards under the FLSA is mandatory, *see Usery v. Associated Drugs, Inc*., 538 F.2d 1191, 1194 (5th Cir. 1976); *McClanahan v. Mathews*, 440 F.2d 320, 326 (6th Cir. 1971), or should be presumed to be appropriate, *see Brock v. Richardson,* 812 F.2d 121, 126-27 (3d Cir. 1987); *Ford v. Alfaro*, 785 F.2d 835, 842 (9th Cir. 1986); *Donovan v. Sovereign Sec., Ltd.,* 726 F.2d 55, 57-58 (2d Cir. 1984); *Brennan v. Maxey's Yamaha, Inc.,* 513 F.2d 179, 183 (8th Cir. 1975); *cf. Clifton D. Mayhew, Inc. v. Wirtz*, 413 F.2d 658, 663 (4th Cir. 1969) (finding district court's denial of pre-judgment interest was not an abuse of discretion); *Clougherty v. James Vernor Co.,* 187 F.2d 288, 293-94 (6th Cir. 1951), *cert. denied*, 342 U.S. 814 (1951) (denying pre-judgment interest).

[852] *Cement Div., Nat'l Gypsum Co. v. City of Milwaukee,* 144 F.3d 1111, 1114 (7th Cir. 1998) (internal citations omitted).

[853] *See id.* at 1114-15 (finding the prime rate appropriate for calculation of prejudgment interest); *Donovan v. Dairy Farmers of Am.,* 53 F. Supp. 2d 194, 197-98 (N.D.N.Y. 1999) (awarding prejudgment interest from the date of the injury).

[854] *See, e.g.*, *Baker v. John Morrell & Co.,* 266 F. Supp. 2d 909, 949 (N.D. Iowa 2003).

Post-judgment interest in federal district court cases "shall be calculated from the date the judgment is entered, at a rate equal to the weekly average 1-year constant maturity Treasury yield. . . ."[855]

H. Attorneys' Fees and Costs

Courts may award reasonable attorneys' fees and litigation costs to the prevailing party.

IV. Insurance

A. Collateral Source Rule

Under the traditional collateral source rule, injury payments the plaintiff receives from other sources – for example, health insurance, public benefits, or charity – do not reduce the defendant's obligation to pay damages in a civil action. In other words, a defendant is liable for the full amount of compensation, regardless of assistance the plaintiff may obtain from collateral sources. The rule is intended to prevent defendant from benefitting from the plaintiff's prudence in obtaining health insurance or from charity given to the plaintiff.

This rule usually applies to trafficked plaintiffs—benefits and donations for their injuries will *not* offset the amount of damages assessed against the defendant.[856] However, damages against the defendant will be offset by the defendant's payment of direct benefits to the plaintiff intended as compensation for the plaintiff's injuries.

B. Homeowner's Insurance As An Additional Source of Recovery

If a trafficking defendant owns a home, the homeowner's insurance policy may be a source of recovery for the plaintiff. Homeowner's insurance policies generally include both first-party and third-party liability provisions. These policies protect the policyholder against damage to the home, as well as injuries to third parties resulting from the policyholder's negligent conduct. The personal liability provision in homeowner's insurance policies generally extends to injuries that occur both within and outside of the home. Homeowner's insurance, in some cases, may provide up to $500,000 in coverage, providing trafficked plaintiffs with a deep pocket, protection against defendants declaring bankruptcy, and protection against defendants depleting their assets.

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[855] 28 U.S.C. § 1961 (2000).

[856] Approximately half of states have eliminated the rule or restricted its application for specific claims, usually those involving medical malpractice and claims against public entities.

The key to triggering coverage of a trafficker's homeowner's insurance policy is to plead claims that are explicitly enumerated in the policy itself. The claim most often found in these policies is "negligence," providing protection for accidental injuries to third parties that occur within the home and injuries caused by the policyholder's unintentional conduct outside the home. However, some policies also protect against claims of false imprisonment, and invasion of privacy. Early discovery of the trafficker's insurance policy will determine the range of claims and the extent of the trafficker's personal liability coverage.

If the policy does indeed cover a claimed injury, the trafficked plaintiff's attorney should make sure that defense counsel tenders the complaint to the insurer. It may be possible at this point to settle with the insurer within the monetary limits of the policy coverage. If a settlement cannot be reached, litigation against both the trafficker and the insurer is a possibility.

V. Tax Consequences

As of February 6, 2012, mandatory restitution payments awarded under 18 U.S.C. § 1593 are excluded from gross income for federal income tax purposes.[857] This exemption is narrow, and restitution payments awarded under different statutes may still be taxed as income.[858] For this reason, it is important to ensure that criminal restitution payments are formally awarded under 18 U.S.C. § 1593, and not under any other provision.

Tax treatment of civil damages differs for physical injuries and non-physical injuries. Compensatory damages for physical injuries are tax-exempt, whereas emotional distress damages are not.[859]

Tax rules are complex. Before negotiating a settlement or structuring a proposed verdict, it is essential to understand how tax regulations will impact the damage award. Counsel should seek the advice of a tax expert. Because many trafficking survivors seek to adjust their status from T-visa holder to legal permanent resident, state and federal

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[857] IRS, Notice 2012-12: Restitution Payments under the Trafficking Victims Protection Act at 2, http://www.irs.gov/pub/irs-drop/n-12-12.pdf (last visited Jan. 2, 2015).

[858] *See Stadnyk v. C.I.R.*, 367 Fed.Appx. 586, 590 (6th Cir. 2010) ("The fact that the damages award is compensatory does not make it nontaxable. The Supreme Court has found compensatory settlement awards that are not otherwise excluded to be taxable as gross income…").

[859] *See* 26 U.S.C. § 104(a)(2) (2002); *Stadnyk,* 367 Fed.Appx. at 593; *Murphy v. Internal Revenue Service,* 493 F.3d 170, 180 (D.C. Ct. App. 2007). ("[G]ross income…include[s] an award for nonphysical damages.").

taxes must be paid appropriately. It is advisable to seek the assistance of a pro bono financial advisor, as well as pro bono tax counsel, to determine the best investments to shelter damages recovered in civil litigation.

VI. Public Benefits

A large damage award may affect a victim's access to government-issued benefits, such as Medicare, Medicaid, food stamps, and low-income housing. Tort payments (including worker's compensation) will usually be factored into calculations determining a plaintiff's eligibility for government assistance, unless such benefits are exempted by statute.[860]

Two factors may mitigate the impact of a damage award on a plaintiff's eligibility for public benefits: the amount of damages and the method of payment. A victim may be able to preserve his eligibility for certain benefits if he accepts small periodic payments as opposed to a lump sum. Alternatively, it may be in a victim's interest to receive a larger award, forego benefits until this money runs out, then reapply for them when he is again in need. Public benefits attorneys, as well as materials provided by the Western Center on Law and Poverty (www.wclp.org), may be helpful in determining a strategy for maintaining public benefits in spite of a damage award. It may be possible to create a trust for the plaintiff or a representative payee structure to avoid disruption to the client's benefits.[861]

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[860] For example, tort compensation relating to federal Holocaust Reparations is exempt from the calculation of eligibility for some public benefits.

[861] For one example of a District of Columbia-based program offering such services, see Bread for the City, Representative Payee Program, http://www.breadforthecity.org/services/social-services/representative-payee-program (last visited Jan. 2, 2015).

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Trafficking Damages Awards

Case	Facts	Claims	Judgment
Fernandes v. Hayes, No. 6:11-CV-0137 (W.D. Tex. Apr. 27, 2012) Docket No. 22: Order granting motion for default judgment and damages in the amount requested	Indian plaintiff worked for defendants in Kuwait as a maid; was promised higher wages and 48 hours/week schedule if she moved to U.S. as defendants' live-in maid. In U.S., plaintiff's duties included cleaning, laundry, cooking, making beds, and taking care of defendants' grandchildren. Plaintiff was made to work more than 40 hours/week. After working for defendants for 406 days without pay, plaintiff escaped and contacted authorities. (1 year, 1 month of labor)	Default judgment entered. Claims brought under: (1) Trafficking Victims Protection Act, forced labor (§ 1589) (2) Fair Labor Standards Act (3) Texas Theft Liability Act (4) contract and tort law	**$203,000 mental & emotional distress (TVPA)**[1] (*calculated as $500/day x 406 days of forced labor*) $47,958.75 wage damages (TVPA) $2,354 conversion damages (TVPA) **$506,625.50 punitive damages (TVPA)** (*calculated as 2x TVPA compensatory award*) $47,958.75 FLSA damages $1,000 additional damages (TLA) $20,700 attorneys' fees $430 costs **<u>Total Award</u>: $830,027**
Gurung v. Malhotra, No. 10-CV-5086 2012 U.S. Dist. LEXIS 41907 (S.D.N.Y. Mar. 16, 2012)	Plaintiff was 17-years-old when brought to U.S.; forced to work 16 hours/day, 7 days/week, cooking, cleaning, performing daily massages, catering parties; forced to sleep on floor; deprived of food;	Default judgment entered. Claims brought under: (1) Trafficking Victims Protection Act, trafficking (§ 1590); forced labor (§ 1589);	**$500,000 emotional distress (TVPA)** **$300,000 punitive damages** $392,721 wage damages $36,076 prejudgment interest $220,898 attorneys' fees

[1] For explanation of damages calculation, see plaintiff's motion for default judgment in *Fernandes v. Hayes*, No. 6:11-CV-0137, Docket No. 16-15, at 2 (W.D. Tex. Apr. 4, 2010).

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Case	Facts	Claims	Judgment
	paid less than $120 over course of 40 months work. (3 years, 4 months of labor)	involuntary servitude (§ 1584); unlawful seizure of documents (§ 1592); (2) Alien Tort Claims Act; (3) federal and state wage laws; (4) state law claims for fraud, false imprisonment, conversion, assault, intentional and negligent infliction of emotional distress, promissory estoppels; (5) quantum meruit; unjust enrichment	$8,640 costs **<u>Total Award</u>: $1,458,335** **(plus legal research fees)**
Shukla v. Sharma, No. 07-CV-2972 2012 U.S. Dist. LEXIS 18392 (E.D.N.Y. Feb. 14, 2012)	Plaintiff approached in India about working in U.S. ashram; given assurances about salary and living conditions. Plaintiff's living space in ashram was cramped and dirty. Typical work day began at 5:00 a.m. and ended at 10:00 p.m. Defendants forced plaintiff to work as priest and perform janitorial work. Plaintiff's movements and privacy monitored. Passport confiscated. (3 years, 6 months of labor)	Jury verdict: defendants liable for forced labor and trafficking. Claims brought under: (1) Trafficking Victims Protection Act, forced labor (§ 1589); trafficking (§ 1590).	**$250,000 compensatory damages** (TVPA, § 1589) **$750,000 compensatory damages** (TVPA, § 1590) $**2,500,000 punitive damages** (TVPA, § 1590) (*court reduced jury award from $3,500,000 because plaintiff was liable for defamation*) **<u>Total Award</u>: $3,000,000 (affirmed by the 2d circuit, except for $16,080 for time spent litigating fee dispute.)**

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Case	Facts	Claims	Judgment
Mazengo v. Mzengi, 2007 U.S. Dist. LEXIS 99377 (D.D.C. Dec. 20, 2007)	Upon arrival in U.S., plaintiff's passport and copy of employment contract confiscated; forced to work 17 hours/day, 7 days/week, caring for children, cleaning house, cooking, washing dishes, raking, shoveling, preparing food for defendants' catering business; forced to sleep in room with infant child and to care for child through night; yelled at and struck on the face once; sent outside with inadequate clothing to perform chores; medical needs neglected (forced to wait 3 years with ingrown toenail before taken to doctor).	Default judgment entered. Claims brought under: (1) Thirteenth Amendment; Trafficking Victims Protection Act, involuntary servitude (§ 1584); forced labor (§ 1589); trafficking (§ 1590) (2) federal and state wage laws; (3) state law claims for fraud, negligent infliction of emotional distress; (4) unjust enrichment and breach of contract	**$250,000 emotional distress damages** **$150,000 punitive damages** $19,961.64 fraudulent inducement $510,249.21 state wage law $45,101.69 unjust enrichment $84,036.25 attorney's fees **Total Award: $1,059,348.79**

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Case	Facts	Claims	Judgment
	(4 years, 2 months of labor)		
Peña Canal v. de la Rosa Dann, 2010 U.S. Dist. LEXIS 97856 (N.D. Cal. Sept. 2, 2010)	Peruvian plaintiff promised high wages and private living space for housework; passport confiscated and threatened with deportation; worked 15 hours/day, 7 days/week cleaning, caring for three children, cooking, and cleaning houses for defendant's real estate business; forced to sleep on living room floor; kept from communicating with family in Peru; allotted only a small amount of food each day (1 year, 9 months of labor)	Default judgment entered. Claims brought under: (1) Trafficking Victims Protection Act, forced labor (§ 1589); trafficking (§ 1590) ; (2) state anti-trafficking law; (3) Thirteenth Amendment; (4) federal and state wage laws; (5) state law claims for intentional infliction of emotional distress; negligent infliction of emotional distress.	$340,746.75 wages (reduced by criminal restitution) **$92,400 emotional distress** **$309,406.41 punitive damages** (in part under TVPRA) (*calculated as amount equal to compensatory damages*) **<u>Total Award</u>: $618,812.82**
Does v. Rodriguez, 2007 WL 684114 (D. Colo. Mar. 2, 2007)	. Defendants sued for scheme of debt bondage-obtained labor from farm worker plaintiffs through threats of physical harm, intimidation, and abuse of the legal process. (6 months of labor)	Claims brought under: (1) Fair Labor Standards Act; (2) Migrant Seasonal Agricultural Worker Protection Act; (3) Trafficking Victims Protection Act; (4) civil RICO; and (5) Unjust Enrichment.	**<u>Total Award</u>: $1.574 million per plaintiff** (5 plaintiffs total)

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Case	Facts	Claims	Judgment
Aguilar v. Imperial Nurseries, 2008 WL 2572250 (D. Conn. May 28, 2008)	Guatemalan plaintiffs obtained lawful visas to work planting in North Carolina, but were instead transported to Connecticut; forced to work at tree nursery for 78 hours/week with little pay; passports confiscated and travel restricted; threatened with arrest, imprisonment, and deportation.	Default judgment entered. Claims brought under: (1) federal and state wage laws; (2) Migrant Seasonal Agricultural Worker Protection Act; (4) breach of contract; (5) unjust enrichment; (6) state law claims of fraud, false imprisonment; intentional infliction of emotional distress; negligent infliction of emotional distress; reckless and negligent contracting and supervision; (7) Trafficking Victims Protection Act; (8) Alien Tort Claims Act; and (9) Civil RICO.	Total Award: Between $391,553.77 and $827,127.43 per person
Licea v. Curacao Drydock Co., 584 F. Supp. 2d 1355 (S.D. Fla. 2008)	Cuban laborers forced into labor camps to repair ships; intimidation, threats of persecution and imprisonment; passports confiscated, held in captivity; worked 16 hours/day for up to 45 days straight; forced to perform dangerous physically demanding work without safety measures or medical care; lived in inhumane barracks; one laborer injured his	Claims brought under: (1) Alien Tort Statute (28 U.S.C. § 1350); (2) RICO (18 U.S.C. § 1962(b)); (3) Trafficking Victims Protection Act, forced labor (§ 1589); (4) state law claims of false imprisonment and negligence, and (5) Civil RICO.	Plaintiffs I and III: $15 million compensatory each $10 million punitive each Total Award: $25 million each Plaintiff II: $20 million compensatory (higher due to hand injury) $10 million punitive Total Award: $30 million

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Case	Facts	Claims	Judgment
	hand badly, then fuel flooded his glove and his injured hand caught fire, yet he was still denied medical care by defendant.		
United States v. Sabhani, 566 F. Supp. 2d 139 (E.D.N.Y. 2008)	Indonesian plaintiffs forced to perform household duties; on duty 24 hours a day (called upon to perform at all hours of the night); constantly deprived of sleep (unable to obtain a mere 5 hours a night); forced to sleep on the floor in various parts of house; deprived of food (sometimes forced to eat out of the garbage); beaten, tortured, kept in subjugation against their will.	Claim for wage restitution under 18 U.S.C. § 1593	Plaintiff I (4 years, 4 months of labor): $310,371.91 back pay $310,371.91 liquidated damages Total Award: $620,743.82 Plaintiff II (2 years, 4 months of labor): $157,901.20 back pay $157,901.20 liquidated damages Total Award: $315,802.40 Note: 2d Cir. upheld liquidated damages award; remanded restitution award for re-calculation without overtime payments

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Francisco v. Susano, 10-cv-00332 (D.Colo.)	Four laborers were promised reasonable pay and accommodations, but were subjected to abusive conditions and forced to work exceedingly high numbers of hours in construction.	Claims brought under: (1) FLSA; (2) TVPA/ TVPRA (18 U.S.C. §§ 1589, 1590, 1595); (3) Violations of Colorado Wage Act, Labor Code; (4) False Imprisonment; (5) Outrageous Conduct	Plaintiff 1 awarded $192,757 Plaintiff 2 awarded $396,006.30 Plaintiff 3 awarded $396,006.30 Plaintiff 4 awarded $252,289 (total award = $1,237,058.60) (note: 10th Cir. held that punitive damages are available under the TVPA.)
David v. Signal, 08-cv-01220 (E.D.La.)	Indian guest workers paid between $10,000 and $20,000 to labor recruiters and lawyers in exchange for the promise of green cards and permanent US residency. Instead, they were forced to work in shipyards under abusive conditions.	Claims brought under: (1) TVPA/ TVPRA (18 U.S.C. §§ 1585, 1589, 1590, 1595); (2) RICO; (3) Civil Rights Act of 1866 (42 U.S.C. § 1981); (4) Ku Klux Klan Act of 1871 (42 U.S.C. § 1985); (5) FLSA; (6) Fraud and Negligent Misrepresentation; (7) Breach of Contract; (8) False Imprisonment; (9) Assault and Battery; (10) IIED; (11) NIED	Over $14,000,000 awarded to five plaintiffs, including compensatory and punitive damages.
Pichardo v. Francisco, 13-cv-04300 (S.D.N.Y.)	After being promised a good job, marriage, and the ability to stay in the United States, plaintiff moved to the U.S. from the Dominican Republic. She was forced to work at a parking garage for 15 hours per day for no pay.	TVPA/ TVPRA (18 U.S.C. §§ 1581, 1584, 1589, 1590, 1592, 1597, 1595) New York State Labor Law Fraudulent Misrepresentation Unjust Enrichment	Default judgment for $148,863.42; remains uncollected

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Butigan v. Al-Malki, 13-cv-00514 (E.D.Va.)	A 31-year-old Filipino woman was trafficked through Qatar and forced to work in the home of a Qatari official and his family.	Claims brought under: (1) TVPA/ TVPRA (18 U.S.C. §§ 1584, 1589(a), 1590, 1592, 1593A, 1595); (2) Conspiracy to violate TVPA/ TVPRA; (3) FLSA; (4) False Imprisonment; (5) Breach of Contract; (6) Fraudulent Misrepresentation; (7) IIED; (8) Assault	Default judgment in the amount of $492,717 ($97,717 in compensatory and $400,000 in punitive damages)
Ballesteros v. Al-Ali, 11-cv-00152 (D.R.I.)	A Filipina woman was forced to live in the home of defendants, who are citizens of the United Arab Emirates. She was forced to serve as a domestic worker for approximately 119 hours per week for no pay.	Claims brought under: (1) TVPA/ TVPRA (18 U.S.C. §§ 1584, 1589, 1590, 1595); (2) FLSA; (3) Breach of Contract; (4) Attorneys' Fees Under Rhode Island Law; (5) NIED; (6) IIED; (7) False Imprisonment; (8) Civil Liability for Crimes and Offenses under Rhode Island Law	Default judgment in the amount of $1,231,800

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Nunag-Tanedo v. East Baton Rouge Parish School District, 10-cv-1172 (C.D.Cal.)	A labor recruiting firm lured 350 Filipino teachers to the US to teach in Louisiana public schools. They had to pay recruitment fees and went into debt, and were then forced to work under duress.	Claims brought under: (1) TVPA/ TVPRA (18 U.S.C. §§ 1589, 1590, 1592, 1594, 1595); (2) RICO; (3) Employment Agency, Employment Counseling, and Job Listing Services Act (under California Civil Code); (4) Unfair Business Practices; (5) Fraud; (6) Negligent Misrepresentation; (7) Breach of Fiduciary Duty; (8) Legal Malpractice; (9) Negligent Hiring	Judgment for plaintiffs after jury trial in the amount of $5,792,064.75 (= 4,481,505.00 + $1,310,559.75 in attorneys' fees)
Ramos v. Hoyle, 08-cv-21809 (S.D.Fl.)	Defendants lured plaintiffs, two Peruvian women, to come work for defendants in the United States. Once they were here, they subjected them to abusive conditions and forced them to work for virtually no pay.	Claims brought under: (1) FLSA; (2) Florida Minimum Wage Act; (3) Breach of Contract; (4) Fraud; (5) TVPA/ TVPRA (18 U.S.C. §§ 1589, 1590, 1595)	Judgment for plaintiffs after jury trial: Plaintiff 1: $116,508.00 (state minimum wage claims ($36.887.00) + liquidated damages under FLSA ($36,887.00) + breach of contract damages ($40,234.00) + retaliation ($2,500.00)) Plaintiff 2: $61,329.00 (state minimum wage claims ($18,230.00) + liquidated damages under FLSA ($18,230.00) + breach of contract damages ($24,869.00))

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

KURIAN DAVID, et al. **Plaintiffs**	**CIVIL ACTION**
VERSUS	**No. 08-1220**
SIGNAL INTERNATIONAL, LLC, et al., **Defendants**	**SECTION "E"**
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, **Plaintiff**	**CIVIL ACTION**
VERSUS	**No. 12-557**
SIGNAL INTERNATIONAL, LLC, et al., **Defendants**	**SECTION "E"**
LAKSHMANAN PONNAYAN ACHARI, et al., **Plaintiffs**	**CIVIL ACTION**
VERSUS	**No. 13-6218** **(c/w 13-6219, 13-6220, 13-6221, 14-732, 14-1818)**
SIGNAL INTERNATIONAL, LLC, et al., **Defendants**	**SECTION "E"**

Applies To:
David v. Signal
(No. 08-1220)

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GENERAL INSTRUCTIONS

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1. YOU HAVE HEARD THE EVIDENCE IN THIS CASE. I WILL NOW INSTRUCT YOU ON THE LAW THAT YOU MUST APPLY. IN ANY JURY TRIAL, THERE ARE, IN EFFECT, TWO JUDGES. I AM ONE OF THE JUDGES; THE OTHER IS YOU THE JURY. IT IS MY DUTY TO PRESIDE OVER THE TRIAL AND TO DETERMINE WHAT TESTIMONY AND OTHER EVIDENCE IS ADMISSIBLE UNDER THE LAW FOR YOUR CONSIDERATION. IT IS ALSO MY DUTY AT THE END OF THE TRIAL TO INSTRUCT YOU ON THE LAW APPLICABLE TO THIS CASE. IT IS YOUR DUTY TO FOLLOW THE LAW AS I SHALL STATE IT TO YOU. YOU MUST APPLY THAT LAW TO THE FACTS AS YOU FIND THEM FROM THE EVIDENCE IN THE CASE. YOU ARE NOT TO SINGLE OUT ONE INSTRUCTION ALONE AS STATING THE LAW, BUT MUST CONSIDER THE INSTRUCTIONS AS A WHOLE.

2. DO NOT CONSIDER ANY STATEMENT THAT I HAVE MADE IN THE COURSE OF TRIAL OR MAKE IN THESE INSTRUCTIONS AS AN INDICATION THAT I HAVE ANY OPINION ABOUT THE FACTS OF THIS CASE.

3. YOU HAVE HEARD THE CLOSING ARGUMENTS OF THE ATTORNEYS. STATEMENTS AND ARGUMENTS OF THE ATTORNEYS ARE NOT EVIDENCE AND ARE NOT INSTRUCTIONS ON THE LAW. THEY ARE INTENDED ONLY TO ASSIST YOU IN UNDERSTANDING THE EVIDENCE AND THE PARTIES' CONTENTIONS.

4. ANSWER EACH QUESTION FROM THE FACTS AS YOU FIND THEM. DO NOT DECIDE WHO YOU THINK SHOULD WIN AND THEN ANSWER THE

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QUESTIONS ACCORDINGLY. YOUR ANSWERS AND YOUR VERDICT MUST BE UNANIMOUS.

5. THE FACT THAT A PERSON HAS BROUGHT A LAWSUIT AND IS IN COURT SEEKING DAMAGES CREATES NO INFERENCE OR PRESUMPTION THAT SUCH PERSON IS ENTITLED TO A JUDGMENT FOR ANY AMOUNT AT ALL. ANYONE MAY MAKE A CLAIM, AND THE FACT OF MAKING THE CLAIM BY IN ITSELF IN NO WAY TENDS TO ESTABLISH IT. LIKEWISE THE FACT THAT A DEFENDANT RAISES A DEFENSE CREATES NO INFERENCE OR PRESUMPTION THAT THE DEFENSE HAS MERIT.

6. DO NOT LET BIAS, PREJUDICE OR SYMPATHY PLAY ANY PART IN YOUR DELIBERATIONS. A CORPORATION IS CONSIDERED A PERSON UNDER THE LAW. A CORPORATION AND ALL OTHER PERSONS ARE EQUAL BEFORE THE LAW AND MUST BE TREATED AS EQUALS IN A COURT OF JUSTICE.

7. THIS CASE SHOULD BE CONSIDERED AND DECIDED BY YOU AS AN ACTION BETWEEN PERSONS OF EQUAL STANDING IN THE COMMUNITY, OF EQUAL WORTH, AND HOLDING THE SAME OR SIMILAR SITUATIONS IN LIFE. A CORPORATION OR POLITICAL ENTITY HAS THE SAME RIGHT TO A FAIR TRIAL AS DOES A PRIVATE INDIVIDUAL. ALL PERSONS, CORPORATIONS, POLITICAL SUBDIVISIONS, OR OTHER ENTITIES STAND EQUAL BEFORE THE LAW AND MUST BE TREATED AS EQUALS IN THE COURT OF JUSTICE.

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8. YOU MUST ANSWER ALL QUESTIONS USING A PREPONDERANCE OF THE EVIDENCE STANDARD OF PROOF UNLESS I INSTRUCT YOU OTHERWISE. PROOF BY A PREPONDERANCE OF THE EVIDENCE SIMPLY MEANS EVIDENCE THAT PERSUADES YOU THAT THE PLAINTIFF'S CLAIM IS MORE LIKELY TRUE THAN NOT TRUE.

IN DECIDING WHETHER ANY FACT HAS BEEN PROVEN BY A PREPONDERANCE OF THE EVIDENCE, YOU MAY, UNLESS OTHERWISE INSTRUCTED, CONSIDER THE TESTIMONY OF ALL WITNESSES, REGARDLESS OF WHO MAY HAVE CALLED THEM, AND ALL EXHIBITS RECEIVED IN EVIDENCE, REGARDLESS OF WHO MAY HAVE PRODUCED THEM.

IF THE PROOF FAILS TO ESTABLISH ANY ELEMENT OF THE PLAINTIFF'S CLAIM BY A PREPONDERANCE OF THE EVIDENCE, YOU SHOULD FIND FOR THE DEFENDANT AS TO THAT CLAIM. THE ONE EXCEPTION TO THIS RULE IS WITH RESPECT TO PROOF OF ENTITLEMENT TO PUNITIVE DAMAGES. I WILL INSTRUCT YOU ON THE BURDEN OF PROOF WHEN I ADDRESS THE INDIVIDUAL CLAIMS UNDER WHICH PLAINTIFFS SEEK PUNITIVE DAMAGES.

9. IN DETERMINING THE WEIGHT TO GIVE TO THE TESTIMONY OF A WITNESS, YOU SHOULD ASK YOURSELF WHETHER THERE WAS EVIDENCE TENDING TO PROVE THAT THE WITNESS TESTIFIED FALSELY CONCERNING SOME IMPORTANT FACT, OR WHETHER THERE WAS EVIDENCE THAT AT SOME OTHER TIME THE WITNESS SAID OR DID SOMETHING, OR FAILED TO SAY OR

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DO SOMETHING, THAT WAS DIFFERENT FROM THE TESTIMONY THE WITNESS GAVE BEFORE YOU DURING THE TRIAL.

10. YOU SHOULD KEEP IN MIND, OF COURSE, THAT A SIMPLE MISTAKE BY A WITNESS DOES NOT NECESSARILY MEAN THAT THE WITNESS WAS NOT TELLING THE TRUTH AS HE OR SHE REMEMBERS IT, BECAUSE PEOPLE MAY FORGET SOME THINGS OR REMEMBER OTHER THINGS INACCURATELY. SO, IF A WITNESS HAS MADE A MISSTATEMENT, YOU NEED TO CONSIDER WHETHER THAT MISSTATEMENT WAS AN INTENTIONAL FALSEHOOD OR SIMPLY AN INNOCENT LAPSE OF MEMORY; AND THE SIGNIFICANCE OF THAT MAY DEPEND ON WHETHER IT HAS TO DO WITH AN IMPORTANT FACT OR WITH ONLY AN UNIMPORTANT DETAIL.

11. THE INTEREST OF A WITNESS IN THE OUTCOME OF A SUIT, WHETHER SUCH INTEREST IS BY REASON OF RELATIONSHIP, FINANCIAL OR OTHERWISE, MAY HAVE THE EFFECT OF LESSENING THE VALUE OF SUCH WITNESS'S TESTIMONY.

12. IF THE PLAINTIFF OR ANY OTHER WITNESSES IS FOUND TO BE UNTRUTHFUL OR HAS BEEN DISCREDITED, YOU HAVE THE RIGHT TO DISTRUST AND REJECT ALL OF THE TESTIMONY GIVEN BY HIM IN ANY AND ALL PARTICULARS.

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13. WHILE YOU SHOULD CONSIDER ONLY THE EVIDENCE IN THIS CASE, YOU ARE PERMITTED TO DRAW SUCH REASONABLE INFERENCES FROM THE TESTIMONY AND EXHIBITS AS YOU FEEL ARE JUSTIFIED IN THE LIGHT OF COMMON EXPERIENCE. IN OTHER WORDS, YOU MAY MAKE DEDUCTIONS AND REACH CONCLUSIONS THAT REASON AND COMMON SENSE LEAD YOU TO DRAW FROM THE FACTS THAT HAVE BEEN ESTABLISHED BY THE TESTIMONY AND EVIDENCE IN THE CASE.

14. THE TESTIMONY OF A SINGLE WITNESS MAY BE SUFFICIENT TO PROVE ANY FACT, EVEN IF A GREATER NUMBER OF WITNESSES MAY HAVE TESTIFIED TO THE CONTRARY, IF AFTER CONSIDERING ALL THE OTHER EVIDENCE YOU BELIEVE THAT SINGLE WITNESS.

15. CERTAIN TESTIMONY HAS BEEN PRESENTED TO YOU DURING THE COURSE OF THE TRIAL THROUGH A DEPOSITION. A DEPOSITION IS THE SWORN, RECORDED ANSWERS TO QUESTIONS ASKED A WITNESS IN ADVANCE OF THE TRIAL. UNDER SOME CIRCUMSTANCES, IF A WITNESS CANNOT BE PRESENT AT TRIAL TO TESTIFY FROM THE WITNESS STAND, THAT WITNESS'S TESTIMONY MAY BE PRESENTED, UNDER OATH, IN THE FORM OF A DEPOSITION. THUS, SOME TIME BEFORE THIS TRIAL, ATTORNEYS REPRESENTING THE PARTIES IN THIS CASE QUESTIONED THIS WITNESS UNDER OATH. A COURT REPORTER WAS PRESENT AND RECORDED THE TESTIMONY. THE QUESTIONS AND ANSWERS WERE READ OR SHOWN TO YOU DURING THE COURSE OF THE TRIAL. THIS DEPOSITION TESTIMONY IS

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ENTITLED TO THE SAME CONSIDERATION, IS TO BE JUDGED BY YOU AS TO CREDIBILITY, AND IS TO BE WEIGHED AND OTHERWISE CONSIDERED BY YOU IN THE SAME WAY, INSOFAR AS THAT IS POSSIBLE, AS IF THE WITNESS HAD BEEN PRESENT IN COURT AND HAD TESTIFIED FROM THE WITNESS STAND.

16. DURING THE COURSE OF THE TRIAL, YOU HAVE HEARD OBJECTIONS TO THE EVIDENCE. SOMETIMES THESE HAVE BEEN ARGUED OUT OF THE HEARING OF THE JURY. IT IS THE DUTY OF THE ATTORNEY ON EACH SIDE OF A CASE TO OBJECT WHEN THE OTHER SIDE OFFERS TESTIMONY OR OTHER EVIDENCE THAT THE ATTORNEY BELIEVES IS NOT PROPERLY ADMISSIBLE. YOU SHOULD NOT DRAW ANY INFERENCE AGAINST OR SHOW ANY PREJUDICE AGAINST A LAWYER OR HIS CLIENT BECAUSE OF THE MAKING OF AN OBJECTION. UPON ALLOWING TESTIMONY OR OTHER EVIDENCE TO BE INTRODUCED OVER THE OBJECTIONS OF AN ATTORNEY, THE COURT DOES NOT, UNLESS EXPRESSLY STATED, INDICATE ANY OPINION AS TO THE WEIGHT OR EFFECT OF SUCH EVIDENCE. AS STATED BEFORE, YOU THE JURY ARE THE SOLE JUDGES OF THE CREDIBILITY OF ALL WITNESSES AND THE WEIGHT AND EFFECT OF ALL EVIDENCE. WHEN THE COURT HAS SUSTAINED AN OBJECTION TO A QUESTION ADDRESSED TO A WITNESS, THE JURY MUST DISREGARD THE QUESTION ENTIRELY, AND MAY DRAW NO INFERENCE FROM THE WORDING IT, OR SPECULATE AS TO WHAT THE WITNESS WOULD HAVE SAID IF PERMITTED TO ANSWER.

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17. ANY NOTES THAT YOU HAVE TAKEN DURING THIS TRIAL ARE ONLY AIDS TO MEMORY. IF YOUR MEMORY SHOULD DIFFER FROM YOUR NOTES, THEN YOU SHOULD RELY ON YOUR MEMORY AND NOT ON THE NOTES. THE NOTES ARE NOT EVIDENCE. A JUROR WHO HAS NOT TAKEN NOTES SHOULD RELY ON HIS OR HER INDEPENDENT RECOLLECTION OF THE EVIDENCE AND SHOULD NOT BE UNDULY INFLUENCED BY THE NOTES OF OTHER JURORS. NOTES ARE NOT ENTITLED TO ANY GREATER WEIGHT THAN THE RECOLLECTION OR IMPRESSION OF EACH JUROR ABOUT THE TESTIMONY.

18. THERE ARE TWO TYPES OF EVIDENCE THAT YOU MAY CONSIDER IN PROPERLY FINDING THE TRUTH AS TO THE FACTS IN THE CASE. ONE IS DIRECT EVIDENCE—SUCH AS TESTIMONY OF AN EYEWITNESS. THE OTHER IS INDIRECT OR CIRCUMSTANTIAL EVIDENCE—THE PROOF OF A CHAIN OF CIRCUMSTANCES THAT INDICATES THE EXISTENCE OR NONEXISTENCE OF CERTAIN OTHER FACTS. AS A GENERAL RULE, THE LAW MAKES NO DISTINCTION BETWEEN DIRECT AND CIRCUMSTANTIAL EVIDENCE, BUT SIMPLY REQUIRES THAT YOU FIND THE FACTS FROM A PREPONDERANCE OF ALL THE EVIDENCE, BOTH DIRECT AND CIRCUMSTANTIAL.

19. WHEN KNOWLEDGE OF TECHNICAL SUBJECT MATTER MAY BE HELPFUL TO THE JURY, A PERSON WHO HAS SPECIAL TRAINING OR EXPERIENCE IN THAT TECHNICAL FIELD—HE IS CALLED AN EXPERT WITNESS—IS PERMITTED TO STATE HIS OPINION ON THOSE TECHNICAL MATTERS. HOWEVER, YOU ARE

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NOT REQUIRED TO ACCEPT THAT OPINION. AS WITH ANY OTHER WITNESS, IT IS UP TO YOU TO DECIDE WHETHER TO RELY UPON IT.

20. IN DECIDING WHETHER TO ACCEPT OR RELY UPON THE OPINION OF AN EXPERT WITNESS, YOU MAY CONSIDER ANY BIAS OF THE WITNESS, INCLUDING ANY BIAS YOU MAY INFER FROM EVIDENCE THAT THE EXPERT WITNESS HAS BEEN OR WILL BE PAID FOR REVIEWING THE CASE AND TESTIFYING, OR FROM EVIDENCE THAT HE TESTIFIES REGULARLY AS AN EXPERT WITNESS AND HIS INCOME FROM SUCH TESTIMONY REPRESENTS A SIGNIFICANT PORTION OF HIS INCOME.

21. THE WEIGHT WHICH IS TO BE ASSIGNED TO THE TESTIMONY OF EXPERTS IS TO BE ASCERTAINED BY THE QUALIFICATIONS AND EXPERIENCE OF THE WITNESS AS WELL AS THE MATERIALS AND CIRCUMSTANCES UPON WHICH HIS OPINION IS GROUNDED.

22. YOU MAY EXCLUDE THE TESTIMONY OF AN EXPERT, IF THAT TESTIMONY LACKS AN ADEQUATE FOUNDATION OR IS NOT BASED ON DATA REASONABLY RELIED UPON BY EXPERTS IN A PARTICULAR FIELD OF EXPERTISE.

23. IF YOU FIND THAT A DEFENDANT IS LIABLE TO A PLAINTIFF OR PLAINTIFFS, THEN YOU MUST DETERMINE AN AMOUNT THAT IS FAIR COMPENSATION FOR ALL OF THAT PLAINTIFF OR THOSE PLAINTIFFS'

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DAMAGES. THESE DAMAGES ARE CALLED COMPENSATORY DAMAGES. THE PURPOSE OF COMPENSATORY DAMAGES IS TO MAKE A PLAINTIFF WHOLE— THAT IS, TO COMPENSATE THE PLAINTIFF FOR THE DAMAGE THAT HE HAS SUFFERED. COMPENSATORY DAMAGES ARE NOT LIMITED TO EXPENSES THAT A PLAINTIFF MAY HAVE INCURRED BECAUSE OF HIS INJURY. IF A PLAINTIFF WINS, HE IS ENTITLED TO COMPENSATORY DAMAGES FOR THE ECONOMIC INJURY, PHYSICAL INJURY, AND PAIN AND SUFFERING. A PLAINTIFF IS ALSO ENTITLED TO COMPENSATORY DAMAGES FOR MENTAL ANGUISH THAT HE HAS SUFFERED BECAUSE OF THE DEFENDANT'S WRONGFUL CONDUCT, UNLESS I INSTRUCT YOU OTHERWISE.

YOU MAY AWARD COMPENSATORY DAMAGES ONLY FOR INJURIES THAT A PLAINTIFF PROVES WERE PROXIMATELY CAUSED BY A DEFENDANT'S ALLEGEDLY WRONGFUL CONDUCT. AN INJURY IS PROXIMATELY CAUSED WHEN THE ACT PLAYED A SUBSTANTIAL PART IN BRINGING ABOUT OR ACTUALLY CAUSING INJURY OR DAMAGE; AND THE INJURY OR DAMAGE WAS EITHER A DIRECT RESULT OR A REASONABLY PROBABLE CONSEQUENCE OF THE ACT. THE DAMAGES THAT YOU AWARD MUST BE FAIR COMPENSATION FOR ALL OF A PLAINTIFF'S DAMAGES, NO MORE AND NO LESS. YOU SHOULD NOT AWARD COMPENSATORY DAMAGES FOR SPECULATIVE INJURIES, BUT ONLY FOR THOSE INJURIES THAT A PLAINTIFF HAS ACTUALLY SUFFERED OR THAT A PLAINTIFF IS REASONABLY LIKELY TO SUFFER IN THE FUTURE.

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IF YOU DECIDE TO AWARD COMPENSATORY DAMAGES, YOU SHOULD BE GUIDED BY DISPASSIONATE COMMON SENSE. COMPUTING DAMAGES MAY BE DIFFICULT, BUT YOU MUST NOT LET THAT DIFFICULTY LEAD YOU TO ENGAGE IN ARBITRARY GUESSWORK. ON THE OTHER HAND, THE LAW DOES NOT REQUIRE THAT A PLAINTIFF PROVE THE AMOUNT OF HIS LOSSES WITH MATHEMATICAL PRECISION, BUT ONLY WITH AS MUCH DEFINITENESS AND ACCURACY AS THE CIRCUMSTANCES PERMIT.

YOU MUST USE SOUND DISCRETION IN FIXING AN AWARD OF DAMAGES, DRAWING REASONABLE INFERENCES WHERE YOU FIND THEM APPROPRIATE FROM THE FACTS AND CIRCUMSTANCES IN EVIDENCE.

IF YOU FIND THAT A DEFENDANT OR MULTIPLE DEFENDANTS DID IN FACT VIOLATE MORE THAN ONE OF A PLAINTIFF'S RIGHTS, YOU MUST REMEMBER, IN CALCULATING THE DAMAGES, THAT A PLAINTIFF IS ENTITLED TO BE COMPENSATED ONLY FOR INJURIES HE ACTUALLY SUFFERED. THUS, IF A DEFENDANT VIOLATED MORE THAN ONE OF THE PLAINTIFF'S RIGHTS, BUT THE RESULTING INJURY WAS NO GREATER THAN IT WOULD HAVE BEEN HAD THE DEFENDANT VIOLATED ONLY ONE OF THOSE RIGHTS, YOU SHOULD AWARD AN AMOUNT OF COMPENSATORY DAMAGES NO GREATER THAN YOU WOULD AWARD IF THE DEFENDANT HAD VIOLATED ONLY ONE OF THE PLAINTIFF'S RIGHTS. IF, ON THE OTHER HAND, THE DEFENDANT VIOLATED MORE THAN OF THE PLAINTIFF'S RIGHTS AND YOU IDENTIFY SEPARATE INJURIES RESULTING FROM THE SEPARATE VIOLATIONS, YOU SHOULD

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AWARD AN AMOUNT OF COMPENSATORY DAMAGES EQUAL TO THE TOTAL OF THE DAMAGES YOU BELIEVE WILL FAIRLY AND JUSTLY COMPENSATE THE PLAINTIFF FOR THE SEPARATE INJURIES HE HAS SUFFERED.

24. YOU MAY AWARD PUNITIVE DAMAGES FOR CERTAIN CLAIMS IN THIS CASE. WITH RESPECT TO ALL CLAIMS, THE PLAINTIFFS HAVE THE BURDEN OF PROVING THAT PUNITIVE DAMAGES SHOULD BE AWARDED. THE PURPOSE OF PUNITIVE DAMAGES IS TO PUNISH AND DETER, NOT TO COMPENSATE. PUNITIVE DAMAGES SERVE TO PUNISH A DEFENDANT AND, BY DOING SO, TO DETER OTHERS FROM ENGAGING IN SIMILAR CONDUCT IN THE FUTURE. YOU ARE NOT REQUIRED TO AWARD PUNITIVE DAMAGES. IF YOU DO DECIDE TO AWARD PUNITIVE DAMAGES, YOU MUST USE SOUND REASON IN SETTING THE AMOUNT. YOUR AWARD OF PUNITIVE DAMAGES MUST NOT REFLECT BIAS, PREJUDICE, OR SYMPATHY TOWARD ANY PARTY. IT SHOULD BE PRESUMED THAT A PLAINTIFF HAS BEEN MADE WHOLE BY COMPENSATORY DAMAGES, SO PUNITIVE DAMAGES SHOULD BE AWARDED ONLY IF A DEFENDANT'S MISCONDUCT IS SO REPREHENSIBLE AS TO WARRANT THE IMPOSITION OF FURTHER SANCTIONS TO ACHIEVE PUNISHMENT OR DETERRENCE.

IF YOU DECIDE TO AWARD PUNITIVE DAMAGES UNDER ANY CLAIM, THE FOLLOWING FACTORS SHOULD GUIDE YOU IN FIXING THE PROPER AMOUNT:

(1) THE REPREHENSIBILITY OF A DEFENDANT'S CONDUCT, INCLUDING BUT NOT LIMITED TO WHETHER THERE WAS DECEIT, COVER-UP, INSULT, OR INTENDED OR RECKLESS INJURY;

(2) THE DURATION OF THE CONDUCT;

(3) WHETHER THE DEFENDANT WAS AWARE OF THE HARM BEING CAUSED;

(4) WHETHER THE DEFENDANT'S CONDUCT WAS MOTIVATED BY A DESIRE TO AUGMENT PROFIT; AND

(5) THE RATIO BETWEEN THE PUNITIVE DAMAGES YOU ARE CONSIDERING AWARDING AND THE AMOUNT OF HARM THAT WAS SUFFERED BY THE VICTIM OR WITH WHICH THE VICTIM WAS THREATENED;

YOU MAY CONSIDER THE FINANCIAL RESOURCES OF A DEFENDANT IN FIXING THE AMOUNT OF PUNITIVE DAMAGES.

YOU MAY IMPOSE PUNITIVE DAMAGES AGAINST ONE OR MORE OF THE DEFENDANTS AND NOT OTHERS. YOU MAY ALSO AWARD DIFFERENT AMOUNTS AGAINST DIFFERENT DEFENDANTS. LIKEWISE, YOU MAY IMPOSE PUNITIVE DAMAGES IN FAVOR OF ONE OR MORE PLAINTIFFS AND NOT OTHERS. YOU MAY ALSO AWARD SUCH PUNITIVE DAMAGES IN DIFFERENT AMOUNTS IN FAVOR OF DIFFERENT PLAINTIFFS DEPENDING ON HOW YOU VIEW THE RELATIONSHIP BETWEEN THE AWARD, IF ANY, AND THE HARM, IF ANY, TO THE INDIVIDUAL PLAINTIFF.

25. ANY CONTRACTUAL DAMAGES AWARDED MUST BE FAIR COMPENSATION FOR A PLAINTIFF'S DAMAGES, NO MORE AND NO LESS. CONTRACTUAL

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DAMAGES ARE NOT ALLOWED AS A PUNISHMENT AND CANNOT BE IMPOSED OR INCREASED TO PENALIZE A DEFENDANT.

26. IN MAKING ANY DAMAGE AWARD, YOU ARE NOT TO CONSIDER ANY ATTORNEYS FEES THAT MAY HAVE BEEN INCURRED BY EITHER PARTY IN BRINGING OR DEFENDING THIS LAWSUIT. YOU SHOULD ALSO NOT CONSIDERWHETHER ANY DAMAGES MAY BE SUBJECT TO INCOME TAX.

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PLAINTIFFS' CLAIMS

I WILL NOW INSTRUCT YOU ON PLAINTIFFS' CLAIMS.

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CLAIM ONE: FORCED LABOR AND TRAFFICKING FOR FORCED LABOR

PLAINTIFFS ASSERT CLAIMS AGAINST SIGNAL, BURNETT, AND DEWAN FOR VIOLATIONS OF THE TRAFFICKING VICTIMS PROTECTION ACT, SPECIFICALLY, FORCED LABOR AND TRAFFICKING FOR FORCED LABOR. SIGNAL, BURNETT AND DEWAN DENY THESE CLAIMS. I WILL NOW INSTRUCT YOU ON THE LAW APPLICABLE TO THESE CLAIMS.

A. APPLICABLE LAW

I. FORCED LABOR

IN ORDER TO PREVAIL ON THEIR CLAIM FOR FORCED LABOR, PLAINTIFFS MUST PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT A DEFENDANT KNOWINGLY PROVIDED OR OBTAINED THE LABOR OR SERVICES OF PLAINTIFFS:

(A) BY MEANS OF THREATS OF SERIOUS HARM TO, OR PHYSICAL RESTRAINT AGAINST, THAT PERSON OR ANOTHER PERSON;

(B) BY MEANS OF ANY SCHEME, PLAN, OR PATTERN INTENDED TO CAUSE THE PERSON TO BELIEVE THAT, IF THE PERSON DID NOT PERFORM SUCH LABOR OR SERVICES, THAT PERSON OR ANOTHER PERSON WOULD SUFFER SERIOUS HARM OR PHYSICAL RESTRAINT; OR

(C) BY MEANS OF THE ABUSE OR THREATENED ABUSE OF LAW OR THE LEGAL PROCESS.

IN CONSIDERING THIS INSTRUCTION, I INSTRUCT YOU THE WORDS "PROVIDE" AND "OBTAIN" ARE TO BE GIVEN THEIR ORDINARY MEANINGS. "PROVIDE" MEANS TO SUPPLY SOMETHING OR MAKE SOMETHING AVAILABLE.

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"OBTAIN" MEANS TO GAIN, ACQUIRE, OR ATTAIN.

"ABUSE OR THREATENED ABUSE OF LAW OR LEGAL PROCESS" MEANS THE USE OR THREATENED USE OF A LAW OR LEGAL PROCESS, WHETHER ADMINISTRATIVE, CIVIL, OR CRIMINAL, IN ANY MANNER OR FOR ANY PURPOSE FOR WHICH THE LAW WAS NOT DESIGNED, IN ORDER TO EXERT PRESSURE ON ANOTHER PERSON TO CAUSE THAT PERSON TO TAKE SOME ACTION OR REFRAIN FROM TAKING SOME ACTION. THIS MAY INCLUDE BUT IS NOT LIMITED TO THREAT OF DEPORTATION, MISREPRESENTATION ABOUT THE AVAILABILITY OR LACK OF AVAILABILITY OF IMMIGRATION OR CIVIL REMEDIES, AND/OR RESTRICTING ACCESS TO IMMIGRATION OR CIVIL REMEDIES.

THE TERM "SERIOUS HARM" MEANS ANY HARM, WHETHER PHYSICAL OR NON-PHYSICAL, INCLUDING PSYCHOLOGICAL, FINANCIAL, OR REPUTATIONAL HARM, THAT IS SUFFICIENTLY SERIOUS, UNDER ALL THE SURROUNDING CIRCUMSTANCES, TO COMPEL A REASONABLE PERSON OF THE SAME BACKGROUND AND IN THE SAME CIRCUMSTANCES TO PERFORM OR TO CONTINUE PERFORMING LABOR OR SERVICES IN ORDER TO AVOID INCURRING THAT HARM. YOU MUST DETERMINE WHETHER THE SERIOUS HARM WAS SUFFICIENT TO CAUSE PLAINTIFFS REASONABLY TO BELIEVE THAT THEY HAD NO CHOICE BUT TO WORK OR TO REMAIN WORKING FOR THEIR EMPLOYER DEFENDANT TO AVOID SERIOUS HARM TO THEMSELVES OR TO ANOTHER PERSON.

TO DETERMINE WHETHER PLAINTIFFS REASONABLY BELIEVED THEY HAD TO PERFORM OR TO CONTINUE PERFORMING LABOR OR SERVICES IN

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ORDER TO AVOID INCURRING THAT HARM YOU MAY CONSIDER THE CUMULATIVE EFFECT OF THE CONDUCT OF THE DEFENDANT OR DEFENDANTS ON PLAINTIFFS. YOU MAY ALSO CONSIDER PLAINTIFFS' BACKGROUND, PHYSICAL AND MENTAL CONDITION, EXPERIENCE, EDUCATION, SOCIOECONOMIC STATUS, AGE, ANY INEQUALITIES BETWEEN THEM AND THE DEFENDANTS WITH RESPECT TO THESE CONSIDERATIONS, INCLUDING THEIR RELATIVE STATIONS IN LIFE, IMMIGRATION STATUS, CULTURAL BACKGROUND, ETHNICITY, ABILITY TO SPEAK THE LANGUAGE SPOKEN IN THE REGION OF THE COUNTRY WHERE HE WAS PERFORMING THE LABOR OR SERVICES, BACKGROUND, SOCIAL ISOLATION, AND SOCIAL STATUS.

THE WORDS "SCHEME," "PLAN," AND "PATTERN" ARE TO BE GIVEN THEIR ORDINARY MEANINGS. A "SCHEME, PLAN, OR PATTERN INTENDED TO CAUSE A PERSON TO BELIEVE THAT NONPERFORMANCE OF LABOR OR SERVICES WILL RESULT IN SERIOUS HARM" NEED NOT INVOLVE ACTUAL THREATS OF SERIOUS HARM, BUT MAY INVOLVE ANY OTHER MEANS-INCLUDING DECEPTION OR PSYCHOLOGICAL COERCION-USED TO CAUSE THE WORKER TO REASONABLY BELIEVE THAT HE, HIS FAMILY, OR ANY OTHER PERSON WOULD SUFFER SERIOUS HARM IF HE REFUSED TO CONTINUE PROVIDING LABOR OR SERVICES.

THE FACT THAT PLAINTIFFS MAY HAVE HAD AN OPPORTUNITY TO FREELY COME AND GO FROM THE EMPLOYER'S PREMISES MAY BE CONSIDERED BUT DOES NOT DETERMINE WHETHER THEY WERE SUBJECTED TO FORCED LABOR IF THE EMPLOYER PLACED PLAINTIFFS IN SUCH FEAR OR CIRCUMSTANCES THAT THEY DID NOT REASONABLY BELIEVE THEY COULD

LEAVE THEIR EMPLOYMENT. PLAINTIFFS NEED NOT PROVE PHYSICAL RESTRAINT, SUCH AS THE USE OF CHAINS, BARBED WIRE, OR LOCKED DOORS, IN ORDER TO ESTABLISH THE OFFENSE OF FORCED LABOR.

WHETHER SIGNAL PAID PLAINTIFFS' A SALARY OR A WAGE MAY BE CONSIDERED BUT DOES NOT DETERMINE WHETHER PLAINTIFFS WERE SUBJECTED TO FORCED LABOR.

WHETHER A PLAINTIFF MAY HAVE INITIALLY AGREED, VOLUNTARILY, TO RENDER THE SERVICE OR PERFORM THE WORK, MAY BE CONSIDERED BUT DOES NOT DETERMINE WHETHER ANY OF THE DEFENDANTS SUBJECTED THE PLAINTIFFS TO FORCED LABOR.

IF SIGNAL SUBJECTED A PLAINTIFF TO FORCED LABOR FOR A PERIOD OF TIME, BUT IT IMPROVED CONDITIONS TO THE EXTENT THAT SIGNAL WAS NO LONGER SUBJECTING A PLAINTIFF TO FORCED LABOR, SIGNAL STILL MAY BE LIABLE FOR FORCED LABOR FOR THE PERIOD OF TIME WHEN THE FORCED LABOR OCCURRED.

II. <u>TRAFFICKING FOR FORCED LABOR</u>

IN ORDER TO PREVAIL ON THEIR CLAIM OF TRAFFICKING FOR FORCED LABOR, PLAINTIFFS MUST ESTABLISH THE FOLLOWING BY A PREPONDERANCE OF THE EVIDENCE:

1. A DEFENDANT RECRUITED, TRANSPORTED, PROVIDED, OR OBTAINED, BY ANY MEANS, ANY PERSON FOR LABOR OR SERVICES; AND

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2. THE DEFENDANT ACTED WITH THE KNOWLEDGE THAT THE PERSON WOULD BE SUBJECTED TO FORCED LABOR, WHICH I DESCRIBED ABOVE.

AS USED IN THIS INSTRUCTION, THE WORD "RECRUIT" MEANS TO ENGAGE IN FINDING AND ATTRACTING A PERSON FOR EMPLOYMENT. "TRANSPORT" MEANS THE ACT OF PROCESSING OR MOVING A PERSON FROM ONE PLACE TO ANOTHER. "PROVIDE" MEANS TO SUPPLY SOMETHING OR MAKE SOMETHING AVAILABLE. "OBTAIN" MEANS TO GAIN, ACQUIRE, OR ATTAIN.

B. DAMAGES

IF YOU FIND THAT PLAINTIFFS PROVED EACH OF THE REQUIREMENTS LISTED ABOVE WITH RESPECT TO FORCED LABOR AND/OR TRAFFICKING FOR FORCED LABOR, YOU MAY AWARD DAMAGES. PLAINTIFFS SEEK COMPENSATORY AND PUNITIVE DAMAGES FOR THEIR FORCED LABOR AND TRAFFICKING FOR FORCED LABOR CLAIMS.

I. <u>COMPENSATORY DAMAGES</u>

YOU MAY AWARD COMPENSATION FOR ANY DAMAGES PROXIMATELY CAUSED BY A DEFENDANT'S VIOLATION OF THE LAWS AGAINST FORCED LABOR AND/OR TRAFFICKING FOR LABOR. YOU MAY CONSIDER THE FOLLOWING ELEMENTS OF DAMAGE:

1. MENTAL ANGUISH EXPERIENCED DURING THE RECRUITMENT PROCESS UP TO THE POINT AT WHICH EACH PLAINTIFFS' EMPLOYMENT AT SIGNAL ENDED;

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2. MONEYS PAID DURING THE RECRUITMENT PROCESS AND IN ORDER TO COME TO THE UNITED STATES TO WORK FOR SIGNAL, INCLUDING, BUT NOT LIMITED TO: RECRUITMENT FEES; TRAVEL EXPENSES; LEGAL FEES; MEDICAL TESTING; SKILLS TESTING AND ADMINISTRATIVE FEES; LOSSES ON ANY PERSONAL OR REAL PROPERTY SOLD OR PAWNED FOR THE PURPOSES OF MAKING PAYMENTS IN CONNECTION WITH THE RECRUITMENT; AND FEES AND INTEREST PAID ON ANY LOANS INCURRED AS A RESULT OF THE RECRUITMENT PROCESS UP TO THE POINT AT WHICH EACH PLAINTIFFS' EMPLOYMENT AT SIGNAL ENDED; AND
3. DEDUCTIONS TAKEN FROM PLAINTIFFS' PAYCHECKS BY SIGNAL FOR ROOM AND BOARD.

II. PUNITIVE DAMAGES

YOU MAY AWARD PUNITIVE DAMAGES IF YOU FIND BY A PREPONDERANCE OF THE EVIDENCE THAT A DEFENDANT ACTED WITH MALICE OR RECKLESS INDIFFERENCE TO ONE OR MORE OF THE PLAINTIFFS' RIGHTS TO BE FREE FROM FORCED LABOR OR TRAFFICKING FOR FORCED LABOR.

FOR PURPOSES OF THIS INSTRUCTION, "MALICE" MEANS THAT A DEFENDANT ACTED WITH INTENT TO CAUSE INJURY OR THAT A DEFENDANT'S CONDUCT WAS DESPICABLE AND WAS DONE WITH A WILLFUL AND KNOWING DISREGARD OF THE RIGHTS OR SAFETY OF ANOTHER. A PERSON ACTS WITH KNOWING DISREGARD WHEN HE OR SHE IS AWARE OF THE PROBABLE DANGEROUS CONSEQUENCES OF HIS OR HER CONDUCT AND DELIBERATELY FAILS TO AVOID THOSE CONSEQUENCES.

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CLAIM TWO: DISCRIMINATION

PLAINTIFFS ASSERT CLAIMS AGAINST SIGNAL FOR DISCRIMINATION UNDER A FEDERAL CIVIL RIGHTS STATUTE. SIGNAL DENIES THIS CLAIM. THE STATUTE PROHIBITS DISCRIMINATION AGAINST AN EMPLOYEE BECAUSE OF THE PERSON'S RACE, ETHNICITY, ANCESTRY, OR STATUS AS AN H-2B VISA HOLDER. BEING INDIAN QUALIFIES AS PART OF A PERSON'S RACE, ETHNICITY, OR ANCESTRY.

PLAINTIFFS CLAIM THAT WHILE WORKING AND LIVING AT THE SIGNAL FACILITIES THEY WERE SUBJECT TO TWO KINDS OF DISCRIMINATORY TREATMENT BECAUSE THEY WERE INDIAN AND/OR HELD H-2B VISAS. FIRST, PLAINTIFFS CLAIM THAT THEIR RACE, ETHNICITY, ANCESTRY, OR STATUS AS H-2B VISA HOLDERS WAS A MOTIVATING FACTOR IN SIGNAL'S DECISION TO SUBJECT THEM TO EMPLOYMENT TERMS AND CONDITIONS TO WHICH SIGNAL DID NOT SUBJECT ITS NON-INDIAN OR NON-H-2B VISA EMPLOYEES, SPECIFICALLY, REQUIRING PLAINTIFFS TO LIVE AT THE SIGNAL MAN CAMP AND/OR DEDUCTING FEES FROM PLAINTIFFS' PAY FOR ACCOMMODATIONS IN THE SIGNAL MAN CAMP. SECOND, PLAINTIFFS CLAIM THAT THE CONDITIONS AT THE MAN CAMP WERE SEVERE OR PERVASIVE ENOUGH TO RISE TO THE LEVEL OF HARASSMENT AND THAT THEY WERE SUBJECTED TO THESE HARASSING CONDITIONS BECAUSE THEY ARE INDIAN OR BECAUSE THEY WERE H-2B VISA HOLDERS. PLAINTIFFS CAN PREVAIL UNDER THEIR DISCRIMINATION CLAIMS IF THEY PROVE EITHER OR BOTH OF THE TYPES OF DISCRIMINATION THEY ALLEGE.

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SIGNAL DENIES THAT PLAINTIFFS WERE DISCRIMINATED AGAINST IN ANY WAY. SIGNAL ASSERTS THAT IT WOULD HAVE MADE THE SAME DECISIONS ABOUT HOUSING PLAINTIFFS IN THE MAN CAMP AND DEDUCTING MAN CAMP FEES FROM PLAINTIFFS' WAGES EVEN IF PLAINTIFFS WERE NOT INDIAN OR H-2B VISA HOLDERS. SIGNAL ALSO ASSERTS THAT PLAINTIFFS WERE NOT SUBJECT TO HARASSING CONDITIONS AT THE MAN CAMP.

A. APPLICABLE LAW

I WILL NOW INSTRUCT YOU ON THE LAW RELATED TO THE TWO KINDS OF DISCRIMINATION ALLEGED BY PLAINTIFFS:

I. <u>DISCRIMINATORY TERMS AND CONDITIONS OF EMPLOYMENT</u>

PLAINTIFFS ALLEGE THAT SIGNAL REQUIRED THEM TO LIVE IN THE MAN CAMP AND DEDUCTED FEES FOR THE SIGNAL MAN CAMP ACCOMODATIONS FROM THEIR WAGES BECAUSE THEY ARE INDIAN OR BECAUSE THEY WERE H-2B VISA HOLDERS. TO PREVAIL ON THIS CLAIM, PLAINTIFFS MUST PROVE EACH OF THE FOLLOWING BY A PREPONDERANCE OF THE EVIDENCE:

1. SIGNAL REQUIRED PLAINTIFFS TO LIVE IN THE SIGNAL MAN CAMP AND/OR DEDUCTED FEES FROM PLAINTIFFS' WAGES FOR THE MAN CAMP ACCOMMODATIONS; AND
2. PLAINTIFFS' BEING INDIAN, OR PLAINTIFFS' STATUS AS H-2B WORKERS WAS A MOTIVATING FACTOR IN SIGNAL'S DECISION TO HOUSE PLAINTIFFS IN THE SIGNAL MAN CAMP AND/OR DEDUCT THE MAN CAMP FEES.

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ALTHOUGH PLAINTIFFS MUST PROVE THAT SIGNAL ACTED WITH INTENT TO DISCRIMINATE, PLAINTIFFS ARE NOT REQUIRED TO PROVE THAT SIGNAL ACTED WITH PARTICULAR INTENT TO VIOLATE PLAINTIFFS' FEDERAL CIVIL RIGHTS.

IN SHOWING THAT PLAINTIFFS' BEING INDIAN OR STATUS AS H-2B VISA HOLDERS WAS A MOTIVATING FACTOR FOR SIGNAL'S ACTIONS, PLAINTIFFS ARE NOT REQUIRED TO PROVE THAT THEIR BEING INDIAN OR STATUS AS H-2B VISA HOLDERS WAS THE SOLE MOTIVATION, OR EVEN THE PRIMARY MOTIVATION FOR SIGNAL'S DECISION TO HOUSE PLAINTIFFS IN THE MAN CAMP OR DEDUCT THE MAN CAMP FEES FROM PLAINTIFFS' PAY. PLAINTIFFS NEED ONLY PROVE THAT THEIR BEING INDIAN OR STATUS AS H-2B VISA HOLDERS PLAYED A MOTIVATING PART IN SIGNAL'S DECISION EVEN THOUGH OTHER FACTORS MAY HAVE ALSO MOTIVATED SIGNAL.

FOR PURPOSES OF THIS INSTRUCTION, A FACTOR IS A "MOTIVATING FACTOR" IF IT PLAYED A PART IN SIGNAL'S DECISION TO HOUSE PLAINTIFFS IN THE SIGNAL MAN CAMP OR DEDUCT THE MAN CAMP FEES FROM PLAINTIFFS' PAY.

IF YOU FIND THAT PLAINTIFFS PROVED EACH OF THE REQUIREMENTS LISTED ABOVE, YOU MUST DECIDE WHETHER SIGNAL HAS SHOWN THAT IT WOULD HAVE MADE THE SAME DECISIONS WITH RESPECT TO HOUSING PLAINTIFFS IN THE SIGNAL MAN CAMP OR DEDUCTING THE MAN CAMP FEES FROM PLAINTIFFS' PAY EVEN IF IT HAD NO DISCRIMINATORY MOTIVE. YOUR VERDICT MUST BE FOR SIGNAL IF SIGNAL PROVES BY A PREPONDERANCE OF THE EVIDENCE THAT SIGNAL WOULD HAVE TREATED PLAINTIFFS THE SAME

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EVEN IF PLAINTIFFS' BEING INDIAN OR BEING H-2B VISA HOLDERS HAD PLAYED NO ROLE IN SIGNAL'S DECISION.

II. HARASSING LIVING CONDITIONS

PLAINTIFFS ALSO CLAIM THAT SIGNAL SUBJECTED THEM TO HARASSING LIVING CONDITIONS IN THE MAN CAMP BASED ON THEIR RACE, ETHNICITY, ANCESTRY, OR STATUS AS H-2B VISA HOLDERS.

SIGNAL IS LIABLE FOR THE CLAIMED HARASSMENT IF PLAINTIFFS ESTABLISH THE FOLLOWING BY A PREPONDERANCE OF THE EVIDENCE:

1. PLAINTIFFS, OR SOME OF THEM, WERE SUBJECT TO UNWELCOME HARASSMENT;
2. THE HARASSMENT COMPLAINED OF WAS BASED ON THEIR RACE, ETHNICITY, ANCESTRY, OR STATUS AS H-2B VISA HOLDERS; AND
3. THE HARASSMENT COMPLAINED OF AFFECTED A TERM, CONDITION, OR PRIVILEGE OF EMPLOYMENT.

TO DETERMINE WHETHER ANY ALLEGED HARRASSMENT RISES TO A LEVEL THAT AFFECTED THE TERMS OR CONDITIONS OF ANY PLAINTIFF'S EMPLOYMENT, YOU SHOULD CONSIDER ALL OF THE CIRCUMSTANCES, INCLUDING: THE FREQUENCY OF THE CONDUCT; ITS SEVERITY; WHETHER IT IS PHYSICALLY THREATENING OR HUMILIATING, AND WHETHER IT UNREASONABLY INTERFERES WITH A PLAINTIFF'S WORK PERFORMANCE. THERE IS NO REQUIREMENT THAT THE CONDUCT BE PSYCHOLOGICALLY INJURIOUS.

HARASSMENT MAY INCLUDE EXTREMELY INSENSITIVE CONDUCT BECAUSE OF THE PLAINTIFF'S ETHNICITY, ANCESTRY, RACE, OR STATUS AS H-

2B VISA HOLDERS. SIMPLE TEASING, OFFHAND COMMENTS, SPORADIC USE OF OFFENSIVE LANGUAGE, OCCASIONAL JOKES RELATED TO RACE, ETHNICITY, ANCESTRY, AND/OR STATUS AS H-2B VISA HOLDERS, AND ISOLATED INCIDENTS (UNLESS EXTREMELY SERIOUS) WILL GENERALLY NOT AMOUNT TO DISCRIMINATORY CHANGES IN THE TERMS AND CONDITIONS OF EMPLOYMENT. BUT DISCRIMINATORY INTIMIDATION, RIDICULE, OR OTHER VERBAL OR PHYSICAL CONDUCT MAY BE SUFFICIENTLY EXTREME TO ALTER THE TERMS AND CONDITIONS OF EMPLOYMENT.

YOU MUST CONSIDER THE EVIDENCE FROM BOTH THE PLAINTIFFS' PERSPECTIVE AND THE PERSPECTIVE OF A REASONABLE PERSON. FIRST, PLAINTIFFS MUST ACTUALLY FIND THE SITUATION OFFENSIVE. NEXT, YOU MUST LOOK AT THE EVIDENCE FROM THE PERSPECTIVE OF A REASONABLE PERSON'S REACTION TO A SIMILAR ENVIRONMENT UNDER SIMILAR CIRCUMSTANCES. YOU CANNOT VIEW THE EVIDENCE FROM THE PERSPECTIVE OF AN OVERLY SENSITIVE PERSON. NOR CAN YOU VIEW THE EVIDENCE FROM THE PERSPECTIVE OF SOMEONE WHO IS NEVER OFFENDED. RATHER, THE ALLEGED HARASSING BEHAVIOR MUST BE SUCH THAT A REASONABLE PERSON IN THE SAME OR SIMILAR CIRCUMSTANCES AS PLAINTIFFS WOULD FIND THE CONDUCT OFFENSIVE.

B. DAMAGES

IF YOU FIND THAT PLAINTIFFS PROVED EACH OF THE REQUIREMENTS LISTED ABOVE WITH RESPECT TO DISCRIMINATORY TERMS AND CONDITIONS OF EMPLOYMENT OR HARASSING LIVING CONDITIONS, YOU MAY AWARD

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DAMAGES. PLAINTIFFS SEEK COMPENSATORY DAMAGES AND PUNITIVE DAMAGES FOR THEIR DISCRIMINATION CLAIMS.

I. COMPENSATORY DAMAGES

YOU MAY AWARD COMPENSATION FOR ANY DAMAGES PROXIMATELY CAUSED BY SIGNAL'S UNLAWFUL DISCRIMINATION. YOU MAY CONSIDER THE FOLLOWING ELEMENTS OF DAMAGE:

1. MENTAL ANGUISH SUFFERED WHILE WORKING FOR SIGNAL; AND
2. DEDUCTIONS TAKEN FROM PLAINTIFFS' PAYCHECKS BY SIGNAL FOR ROOM AND BOARD.

II. PUNITIVE DAMAGES

YOU MAY AWARD PUNITIVE DAMAGES IF YOU FIND BY A PREPONDERANCE OF THE EVIDENCE THAT SIGNAL ACTED WITH MALICE OR RECKLESS INDIFFERENCE TO ONE OR MORE PLAINTIFFS' RIGHTS TO BE FREE FROM DISCRIMINATION.

FOR PURPOSES OF THIS INSTRUCTION, "MALICE" MEANS THAT A DEFENDANT ACTED WITH INTENT TO CAUSE INJURY OR THAT A DEFENDANT'S CONDUCT WAS DESPICABLE AND WAS DONE WITH A WILLFUL AND KNOWING DISREGARD OF THE RIGHTS OR SAFETY OF ANOTHER. A PERSON ACTS WITH KNOWING DISREGARD WHEN HE OR SHE IS AWARE OF THE PROBABLE DANGEROUS CONSEQUENCES OF HIS OR HER CONDUCT AND DELIBERATELY FAILS TO AVOID THOSE CONSEQUENCES.

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CLAIM THREE: RETALIATION

PLAINTIFF JACOB JOSEPH KADAKKARAPPALLY (WHO I WILL NOW REFER TO AS "MR. JACOB") ASSERTS SIGNAL RETALIATED AGAINST HIM BY FIRING HIM IN VIOLATION OF A FEDERAL CIVIL RIGHTS STATUTE. SIGNAL DENIES THIS CLAIM.

A. APPLICABLE LAW

IT IS UNLAWFUL FOR AN EMPLOYER TO TERMINATE AN EMPLOYEE FOR COMMUNICATING WITH CIVIL RIGHTS LAWYERS, ATTEMPTING TO LEARN ABOUT WORKPLACE RIGHTS, INFORMING OTHER WORKERS OF THEIR RIGHTS, AND/OR COMPLAINING ABOUT THE WORKING AND LIVING CONDITIONS FOR INDIAN WORKERS AT SIGNAL. THE LAW REFERS TO THESE ACTIVITIES AS "PROTECTED ACTIVITY."

TO PROVE UNLAWFUL RETALIATION, MR. JACOB MUST ESTABLISH THE FOLLOWING BY A PREPONDERANCE OF THE EVIDENCE:

1. MR. JACOB ENGAGED IN PROTECTED ACTIVITY;
2. SIGNAL TERMINATED MR. JACOB'S EMPLOYMENT; AND
3. SIGNAL WOULD NOT HAVE TERMINATED MR. JACOB BUT FOR HIS ENGAGING IN PROTECTED ACTIVITY.

MR. JACOB DOES NOT HAVE TO PROVE THAT UNLAWFUL RETALIATION WAS THE SOLE REASON DEFENDANT TERMINATED HIM, BUT MUST SHOW THAT SIGNAL WOULD NOT HAVE TERMINATED HIM IN THE ABSENCE OF—BUT FOR—HIS ENGAGING IN THE PROTECTED ACTIVITY.

IF YOU DISBELIEVE THE REASON SIGNAL HAS GIVEN FOR ITS DECISION TO TERMINATE MR. JACOB'S EMPLOYMENT, YOU MAY, BUT ARE NOT

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REQUIRED TO INFER, THAT SIGNAL WOULD NOT HAVE TERMINATED MR. JACOB BUT FOR HIS ENGAGING IN THE PROTECTED ACTIVITY.

B. DAMAGES

IF YOU FIND THAT MR. JACOB HAS PROVED EACH OF THE REQUIREMENTS LISTED ABOVE WITH RESPECT TO RETALIATION, YOU MAY AWARD DAMAGES. MR. JACOB SEEKS COMPENSATORY DAMAGES AND PUNITIVE DAMAGES FOR HIS RETALIATION CLAIM.

I. COMPENSATORY DAMAGES

YOU MAY AWARD COMPENSATION FOR ANY DAMAGES PROXIMATELY CAUSED BY SIGNAL'S UNLAWFUL RETALIATION. SPECIFICALLY, YOU MAY AWARD COMPENSENATION FOR ANY MENTAL ANGUISH MR. JACOB SUFFERED.

II. PUNITIVE DAMAGES

YOU MAY AWARD PUNITIVE DAMAGES IF YOU FIND BY A PREPONDERANCE OF THE EVIDENCE THAT SIGNAL ACTED WITH MALICE OR RECKLESS INDIFFERENCE TO MR. JACOB'S RIGHT TO BE FREE FROM UNLAWFUL RETALIATION.

FOR PURPOSES OF THIS INSTRUCTION, "MALICE" MEANS THAT A DEFENDANT ACTED WITH INTENT TO CAUSE INJURY OR THAT A DEFENDANT'S CONDUCT WAS DESPICABLE AND WAS DONE WITH A WILLFUL AND KNOWING DISREGARD OF THE RIGHTS OR SAFETY OF ANOTHER. A PERSON ACTS WITH KNOWING DISREGARD WHEN HE OR SHE IS AWARE OF THE PROBABLE DANGEROUS CONSEQUENCES OF HIS OR HER CONDUCT AND DELIBERATELY FAILS TO AVOID THOSE CONSEQUENCES.

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CLAIM FOUR: RICO

PLAINTIFFS ASSERT CLAIMS AGAINST SIGNAL, BURNETT, AND DEWAN FOR VIOLATIONS OF THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT (RICO). SIGNAL, BURNETT AND DEWAN DENY THESE CLAIMS.

THERE ARE TWO SECTIONS OF THE RICO STATUTE THAT PLAINTIFFS ARE SUING UNDER, WHICH I WILL DESCRIBE IN TURN.

UNDER THE FIRST SECTION, IT IS UNLAWFUL FOR ANYONE ASSOCIATED WITH AN "ENTERPRISE" TO CONDUCT, OR TO PARTICIPATE, DIRECTLY OR INDIRECTLY, IN CONDUCT OF THE ENTERPRISE'S AFFAIRS THROUGH A "PATTERN OF RACKETEERING ACTIVITY." I WILL CALL THIS THE "RICO GENERAL CLAIM. "

UNDER THE SECOND SECTION, IT IS UNLAWFUL FOR ANYONE TO CONSPIRE TO VIOLATE THE RICO GENERAL CLAIM. I WILL CALL THIS THE "RICO CONSPIRACY CLAIM."

A. APPLICABLE LAW

I. RICO GENERAL CLAIM

IN ORDER TO PREVAIL ON THEIR RICO GENERAL CLAIM, PLAINTIFFS MUST ESTABLISH THE FOLLOWING BY A PREPONDERANCE OF THE EVIDENCE:

1. THE EXISTENCE OF AN ENTERPRISE;
2. THE ENTERPRISE ENGAGED IN, OR HAD SOME EFFECT ON, INTERSTATE OR FOREIGN COMMERCE;
3. THE DEFENDANTS WERE EMPLOYED BY OR ASSOCIATED WITH THE ALLEGED ENTERPRISE;

4. DEFENDANTS PARTICIPATED, EITHER DIRECTLY OR INDIRECTLY, IN THE CONDUCT OF THE AFFAIRS OF THE ENTERPRISE; AND
5. DEFENDANTS PARTICIPATED THROUGH A PATTERN OF RACKETEERING ACTIVITY.

NOW I WILL PROVIDE YOU WITH SOME ADDITIONAL INSTRUCTIONS TO APPLY AS YOU CONSIDER THE FACTS THAT THE PLAINTIFFS MUST PROVE.

ELEMENT 1

FOR THE FIRST ELEMENT, AN "ENTERPRISE" DOES NOT HAVE TO BE A LEGAL ENTITY. IT CAN BE AN ASSOCIATION OF PERSONS OR ENTITIES, WHICH THE LAW REFERS TO AS AN "ASSOCIATION-IN-FACT" ENTERPRISE. PLAINTIFFS HAVE ALLEGED THREE SUCH ENTERPRISES IN THIS CASE:

- RICO ENTERPRISE I: AN ONGOING BUSINESS RELATIONSHIP BETWEEN DEWAN, BURNETT, SIGNAL, AND THE UNITED STATES CONSULAR OFFICERS IN INDIA
- RICO ENTERPRISE II: AN ONGOING BUSINESS RELATIONSHIP BETWEEN DEWAN, MICHAEL POL, BURNETT, AND SIGNAL
- RICO ENTERPRISE III: AN ONGOING BUSINESS RELATIONSHIP BETWEEN DEWAN, MICHAEL POL, BURNETT, SIGNAL, SWETMAN SECURITY, AND M&M BANK

THE ASSOCIATION BETWEEN THE ENTERPRISE'S MEMBERS MIGHT BE LOOSE OR INFORMAL. BUT THE ENTERPRISE MUST HAVE AT LEAST A PURPOSE, RELATIONSHIPS AMONG THOSE ASSOCIATED WITH THE

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ENTERPRISE, AND A DURATION SUFFICIENT TO PERMIT THOSE ASSOCIATES TO PURSUE THE ENTERPRISE'S PURPOSE.

NOT ALL MEMBERS OF AN ENTERPRISE HAVE TO VIOLATE RICO TO BE PART OF AN ENTERPRISE. INNOCENT PARTIES CAN BE ENTERPRISE MEMBERS.

ELEMENT 2

FOR THE SECOND ELEMENT, PLAINTIFFS MUST PROVE THAT ONE OR MORE OF THE ENTERPRISES ENGAGED IN OR HAD AN EFFECT ON INTERSTATE OR FOREIGN COMMERCE. "ENGAGE IN OR HAVE AN EFFECT ON INTERSTATE OR FOREIGN COMMERCE" MEANS THAT THE ENTERPRISE EITHER ENGAGED IN, OR HAD AN EFFECT ON COMMERCE BETWEEN TWO OR MORE STATES, OR ON COMMERCE BETWEEN A STATE AND A FOREIGN COUNTRY.

ELEMENT 3

FOR THE THIRD ELEMENT, PLAINTIFFS MUST PROVE THAT DEFENDANTS WERE EMPLOYED OR ASSOCIATED WITH ONE OR MORE OF THE ALLEGED ENTERPRISES. THE REQUIREMENT THAT DEFENDANTS BE EMPLOYED BY OR ASSOCIATED WITH ONE OR MORE OF THE ENTERPRISES MEANS THAT THEY MUST HAVE SOME MINIMAL ASSOCIATION WITH ONE OR MORE OF THE ALLEGED ENTERPRISES. DEFENDANTS MUST KNOW SOMETHING ABOUT THE ACTVITIES OF ONE OR MORE OF THE ALLEGED ENTERPRISES AS THEY RELATE TO THE RACKETEERING ACTIVITIES.

ELEMENT 4

FOR THE FOURTH ELEMENT, PLAINTIFF MUST PROVE THAT DEFENDANTS PARTICIPATED, DIRECTLY OR INDIRECTLY, IN THE CONDUCT OF THE AFFAIRS OF ONE OR MORE THE ALLEGED ENTERPRISES. TO PROVE THIS,

PLAINTIFFS MUST SHOW THAT DEFENDANTS ACTIVELY CONDUCTED OR PARTICIPATED IN CONDUCTING THE AFFAIRS OF THE ALLEGED ENTERPRISE THROUGH A PATTERN OF RACKETEERING ACTIVITY. DEFENDANTS DO NOT NEED TO PARTICIPATE IN, OR BE AWARE OF, THE ACTIVITIES OF ALL OF THE ENTERPRISES.

ELEMENT 5

FOR THE FIFTH ELEMENT, PLAINTIFFS MUST PROVE THAT DEFENDANTS PARTICIPATED IN THE CONDUCT OF THE AFFAIRS OF ONE OR MORE OF THE ENTERPRISES THROUGH A "PATTERN OF RACKETEERING ACTIVITY.

I WILL FIRST INSTRUCT YOU ON WHAT CONSTITUTES "RACKETEERING ACTIVITY." I WILL THEN INSTRUCT YOU ON WHAT CONSTITUTES A "*PATTERN*" OF RACKETEERING ACTIVITY.

i. "RACKETEERING ACTIVITY"

"RACKETEERING ACTIVITY"—ALSO KNOWN AS A "PREDICATE ACT"—IS AN ACT THAT VIOLATES THE LAWS AGAINST FORCED LABOR, TRAFFICKING FOR FORCED LABOR, MAIL FRAUD, WIRE FRAUD, OR IMMIGRATION DOCUMENT FRAUD. I HAVE ALREADY INSTRUCTED YOU ON THE ELEMENTS OF FORCED LABOR AND TRAFFICKING FOR FORCED LABOR. I WILL NOW INSTRUCT YOU ON THE ELEMENTS OF THE REMAINING PREDICATE ACTS—MAIL FRAUD, WIRE FRAUD, AND IMMIGRATION DOCUMENT FRAUD.

IN ORDER TO ESTABLISH THE PREDICATE ACT OF MAIL FRAUD, PLAINTIFFS MUST PROVE THE FOLLOWING BY A PREPONDERANCE OF THE EVIDENCE:

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1. DEFENDANTS KNOWINGLY DEVISED OR INTENDED TO DEVISE A SCHEME TO DEFRAUD THE PLAINTIFFS;
2. THE SCHEME TO DEFRAUD EMPLOYED FALSE MATERIAL PROMISES;
3. DEFENDANTS MAILED SOMETHING, OR CAUSED SOMETHING TO BE SENT OR DELIVERED THROUGH THE UNITED STATES POSTAL SERVICE OR A PRIVATE OR COMMERCIAL INTERSTATE CARRIER FOR THE PURPOSE OF EXECUTING SUCH SCHEME OR ATTEMPTING SO TO DO; AND
4. DEFENDANTS ACTED WITH A SPECIFIC INTENT TO DEFRAUD.

A "SCHEME TO DEFRAUD" MEANS ANY PLAN, PATTERN, OR COURSE OF ACTION INTENDED TO DEPRIVE ANOTHER OF MONEY OR PROPERTY.

A "SPECIFIC INTENT TO DEFRAUD" MEANS A CONSCIOUS, KNOWING INTENT TO DECEIVE OR CHEAT SOMEONE.

A PROMISE IS "FALSE" IF IT IS KNOWN TO BE UNTRUE OR IS MADE WITH RECKLESS INDIFFERENCE AS TO ITS TRUTH OR FALSITY. A PROMISE WOULD ALSO BE "FALSE" IF IT CONSTITUTES A HALF TRUTH, OR EFFECTIVELY OMITS OR CONCEALS A MATERIAL FACT, PROVIDED IT IS MADE WITH THE INTENT TO DEFRAUD.

A PROMISE IS "MATERIAL" IF IT HAS A NATURAL TENDENCY TO INFLUENCE, OR IS CAPABLE OF INFLUENCING, THE DECISION OF THE PERSON OR ENTITY TO WHICH IT IS ADDRESSED.

IT IS NOT NECESSARY THAT PLAINTIFFS PROVE EVERY DETAIL OF THE NATURE AND PURPOSE OF THE SCHEME. WHAT MUST BE PROVED IS THAT

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DEFENDANTS KNOWINGLY DEVISED OR INTENDED TO DEVISE A SCHEME TO DEFRAUD BY MEANS OF FALSE PROMISES.

IT IS ALSO NOT NECESSARY THAT THE PLAINTIFFS PROVE THAT THE MAILED MATERIAL OR SENT MATERIAL BY PRIVATE OR COMMERCIAL INTERSTATE CARRIER WAS ITSELF FALSE OR FRAUDULENT, OR THAT THE USE OF THE MAIL OR A PRIVATE OR COMMERCIAL INTERSTATE CARRIER WAS INTENDED AS THE SPECIFIC OR EXCLUSIVE MEANS OF ACCOMPLISHING THE ALLEGED FRAUD.

PLAINTIFFS MUST PROVE THAT THE USE OF THE MAILS OR PRIVATE OR COMMERCIAL INTERSTATE CARRIER WAS CLOSELY RELATED TO THE SCHEME BECAUSE DEFENDANTS EITHER MAILED SOMETHING OR CAUSED IT TO BE MAILED OR EITHER SENT OR DELIVERED SOMETHING OR CAUSED IT TO BE SENT OR DELIVERED BY A PRIVATE OR COMMERCIAL INTERSTATE CARRIER IN AN ATTEMPT TO EXECUTE OR CARRY OUT THE SCHEME.

THE ALLEGED SCHEME NEED NOT ACTUALLY SUCCEED IN DEFRAUDING ANYONE.

ALSO, A PLAINTIFF DOES NOT HAVE TO SHOW HE RELIED UPON THE FRAUD. IN OTHER WORDS, A PLAINTIFF MAY BE INJURED BY FRAUD DIRECTED AT ANOTHER PERSON.

TO "CAUSE" THE MAILS OR PRIVATE OR COMMERCIAL INTERSTATE CARRIER TO BE USED IS TO DO AN ACT WITH KNOWLEDGE THAT THE USE OF THE MAILS OR PRIVATE OR COMMERCIAL INTERSTATE CARRIER WILL FOLLOW IN THE ORDINARY COURSE OF BUSINESS OR WHERE SUCH USE CAN REASONABLY BE FORESEEN EVEN THOUGH THE DEFENDANT DID NOT INTEND

OR REQUEST THE MAILS OR PRIVATE OR COMMERCIAL INTERSTATE CARRIER TO BE USED.

EACH SEPARATE USE OF THE MAILS, OR A PRIVATE OR COMMERCIAL INTERSTATE CARRIER, IN FURTHERANCE OF A SCHEME TO DEFRAUD BY MEANS OF FALSE PROMISES CONSTITUTES A SEPARATE PREDICATE ACT.

I HAVE JUST DESCRIBED THE ELEMENTS OF MAIL FRAUD. THE ELEMENTS OF THE PREDICATE ACT OF *WIRE FRAUD* ARE IDENTICAL EXCEPT FOR ONE KEY DIFFERENCE: WHEREAS MAIL FRAUD INVOLVES USE OF THE MAILS, WIRE FRAUD REQUIRES THAT DEFENDANTS TRANSMITTED, OR CAUSE TO BE TRANSMITTED BY WAY OF WIRE, SUCH AS INTERNET, E-MAIL, TELEPHONE CALLS, FAXES, OR OTHER SIMILAR COMMUNICATIONS, IN INTERSTATE OR FOREIGN COMMERCE, ANY WRITING, SIGN, SIGNAL, PICTURE, OR SOUND FOR THE PURPOSE OF EXECUTING A "SCHEME" AS I HAVE DEFINED FOR YOU, ABOVE.

IN ORDER TO ESTABLISH THE PREDICATE ACT OF IMMIGRATION DOCUMENT FRAUD, PLAINTIFFS MUST PROVE THE FOLLOWING BY A PREPONDERANCE OF THE EVIDENCE:

1. DEFENDANTS MADE A FALSE STATEMENT;
2. THE FALSE STATEMENT WAS MADE KNOWINGLY;
3. THE FALSE STATEMENT WAS MADE UNDER OATH; AND
4. THE FALSE STATEMENT WAS MADE IN A DOCUMENT REQUIRED BY THE IMMIGRATION LAWS.

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ii. "PATTERN OF RACKETEERING ACTIVITY"

I HAVE JUST DESCRIBED WHAT CONSTITUTES RACKETEERING ACTIVITY. IN ORDER TO ESTABLISH THE FIFTH ELEMENT OF THEIR RICO GENERAL CLAIM, HOWEVER, PLAINTIFF MUST PROVE A "*PATTERN* OF RACKETEERING ACTIVITY." A PATTERN OF RACKETEERING ACTIVITY MEANS THAT DEFENDANTS COMMITTED AT LEAST TWO DISTINCT PREDICATE ACTS. DISTINCT DOES NOT HAVE TO MEAN DIFFERENT TYPES. BUT BY ITSELF, PROOF OF TWO OR MORE PREDICATE ACTS DOESN'T ESTABLISH A PATTERN UNDER RICO.

TO PROVE A PATTERN OF PREDICATE ACTS, PLAINTIFFS MUST SHOW THAT THE ACTS WERE RELATED TO ONE ANOTHER AND TO THE ENTERPRISE. TWO OR MORE ACTS OF RACKETEERING ACTIVITY THAT AREN'T RELATED DON'T ESTABLISH A PATTERN OF RACKETEERING ACTIVITY UNDER RICO. PREDICATE ACTS ARE RELATED TO ONE ANOTHER IF THEY HAVE THE SAME OR SIMILAR PURPOSES, RESULTS, PARTICIPANTS, VICTIMS, OR METHODS. PREDICATE ACTS ARE ALSO RELATED IF THEY HAVE COMMON DISTINGUISHING CHARACTERISTICS AND AREN'T ISOLATED EVENTS.

TO BE RELATED, THE PREDICATE ACTS DON'T HAVE TO BE THE SAME KIND OF ACTS. FOR EXAMPLE, THE ACTS MAY COMPRISE ONE ACT OF WIRE FRAUD AND ONE ACT OF MAIL FRAUD.

TO MAKE UP A PATTERN OF RACKETEERING ACTIVITY, PREDICATE ACTS MUST DEMONSTRATE CONTINUITY. CONTINUITY CAN BE DEMONSTRATED IN TWO BASIC WAYS. THE FIRST IS TO DEMONSTRATE RELATED PREDICATE ACTS EXTENDING OVER A SUBSTANTIAL PERIOD OF TIME. THE SECOND IS TO SHOW

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CONDUCT THAT DOESN'T OCCUR OVER A SUBSTANTIAL PERIOD OF TIME BUT, BY ITS NATURE, IS LIKELY TO BE REPEATED INTO THE FUTURE.

AGAIN, "RACKETEERING ACTIVITY" MEANS AN ACT THAT VIOLATES THE STATUTES AT ISSUE. BUT YOU CAN'T CONSIDER JUST ANY RACKETEERING ACT OF DEFENDANTS ALLEGEDLY COMMITTED IN VIOLATION OF ONE OF THESE STATUTES AS BEARING ON WHETHER DEFENDANTS COMMITTED TWO OR MORE PREDICATE ACTS AS A PATTERN OF RACKETEERING ACTIVITY. TO DETERMINE IF THERE IS A PATTERN OF RACKETEERING ACTIVITY, YOU MUST CONSIDER ONLY THOSE SPECIFIC RACKETEERING ACTS PLAINTIFFS ALLEGE AGAINST DEFENDANTS. AND YOU CAN'T FIND THAT DEFENDANTS ENGAGED IN A PATTERN OF RACKETEERING ACTIVITY UNLESS YOU UNANIMOUSLY AGREE ON WHICH OF THE ALLEGED PREDICATE ACTS, IF ANY, MAKE UP THE PATTERN.

FINALLY, YOU CANNOT FIND A DEFENDANT LIABLE JUST FOR ASSOCIATING WITH OR BEING EMPLOYED BY AN OTHERWISE LAWFUL ENTERPRISE IF OTHERS CONDUCT THE ENTERPRISE'S AFFAIRS THROUGH A PATTERN OF RACKETEERING ACTIVITY IN WHICH THE DEFENDANT ISN'T PERSONALLY ENGAGED.

II. <u>RICO CONSPIRACY CLAIM</u>

IN ADDITION TO THE RICO GENERAL CLAIM I JUST DESCRIBED, PLAINTIFFS ALSO ASSERT CLAIMS AGAINST SIGNAL, BURNETT, AND DEWAN FOR CONSPIRING TO VIOLATE RICO, WHAT I MENTIONED EARLIER AS THE RICO CONSPIRACY CLAIM.

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I HAVE ALREADY GIVEN YOU INSTRUCTIONS ON THE ELEMENTS OF A VIOLATION OF THE GENERAL RICO STATUTE. NOW YOU MUST DECIDE IF PLAINTIFFS HAVE PROVED BY A PREPONDERANCE OF THE EVIDENCE WHETHER TWO OR MORE OF THE DEFENDANTS ENGAGED IN A CONSPIRACY TO VIOLATE THE GENERAL RULE RICO STATUTE.

GENERALLY, A RICO "CONSPIRACY" IS AN AGREEMENT BY TWO OR MORE PEOPLE TO COMMIT AN UNLAWFUL ACT. PUT ANOTHER WAY, IT'S A KIND OF PARTNERSHIP FOR ILLEGAL PURPOSES. EVERY MEMBER OF THE CONSPIRACY BECOMES THE AGENT OR PARTNER OF EVERY OTHER MEMBER. PLAINTIFFS DON'T HAVE TO PROVE THAT ALL THE PEOPLE NAMED IN THE COMPLAINT WERE MEMBERS OF THE CONSPIRACY—OR THAT THOSE WHO WERE MEMBERS MADE ANY KIND OF FORMAL AGREEMENT. THE HEART OF THE CONSPIRACY IS THE MAKING OF THE UNLAWFUL PLAN ITSELF. AND PLAINTIFFS DON'T HAVE TO PROVE THAT THE CONSPIRATORS WERE SUCCESSFUL IN CARRYING OUT THE PLAN.

IN ORDER TO PREVAIL ON THEIR RICO CONSPIRACY CLAIM, PLAINTIFFS MUST ESTABLISH THE FOLLOWING BY A PREPONDERANCE OF THE EVIDENCE:

1. TWO OR MORE PERSONS OR ENTITIES AGREED TO TRY TO ACCOMPLISH AN UNLAWFUL PLAN TO ENGAGE IN A PATTERN OF RACKETEERING ACTIVITY; AND
2. A DEFENDANT AGREED TO THE OVERALL OBJECTIVE OF THE CONSPIRACY OR AGREED WITH AT LEAST ONE OTHER DEFENDANT TO COMMIT TWO PREDICATE ACTS AS PART OF THE CONSPIRACY.

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PLAINTIFFS MAY SHOW AN "AGREEMENT TO THE OVERALL OBJECTIVE OF THE CONSPIRACY" BY CIRCUMSTANTIAL EVIDENCE THAT A DEFENDANT MUST HAVE KNOWN THAT OTHERS WERE ALSO CONSPIRING TO PARTICIPATE IN THE SAME ENTERPRISE THROUGH A PATTERN OF RACKETEERING ACTIVITY. IF PLAINTIFFS PROVE AGREEMENT ON AN OVERALL OBJECTIVE, THEN IT ISN'T NECESSARY THAT A DEFENDANT AGREE TO PERSONALLY COMMIT TWO PREDICATE ACTS.

A DEFENDANT CAN ALSO ENGAGE IN A RICO CONSPIRACY EVEN IF THAT DEFENDANT DIDN'T AGREE TO THE CONSPIRACY'S OVERALL OBJECTIVE. IT'S ENOUGH THAT A DEFENDANT ENGAGED IN A PART OF THE CONSPIRACY WITH AT LEAST ONE OTHER DEFENDANT BY COMMITTING AT LEAST TWO PREDICATE ACTS—ALONE OR WITH SOMEONE ELSE.

WHILE THE ESSENCE OF A RICO CONSPIRACY IS AN AGREEMENT TO FURTHER AN ENDEAVOR THAT, IF COMPLETED, WOULD SATISFY ALL THE ELEMENTS OF A SUBSTANTIVE RICO VIOLATION, PLAINTIFFS DON'T HAVE TO OFFER DIRECT EVIDENCE OF AN AGREEMENT. THE CONSPIRACY'S EXISTENCE CAN BE INFERRED FROM THE PARTICIPANTS' CONDUCT. BUT A DEFENDANT MUST OBJECTIVELY MANIFEST, THROUGH WORDS OR ACTIONS, AN AGREEMENT TO PARTICIPATE IN THE ENTERPRISE'S AFFAIRS.

PLAINTIFFS DON'T HAVE TO SHOW THAT THE ALLEGED MEMBERS OF THE CONSPIRACY ENTERED INTO ANY EXPRESS OR FORMAL AGREEMENT, OR THAT THEY DIRECTLY STATED THE DETAILS OF THE SCHEME, ITS OBJECT, OR PURPOSE, OR THE PRECISE MEANS BY WHICH THE OBJECT OR PURPOSE WAS TO BE ACCOMPLISHED. PLAINTIFFS ALSO DON'T HAVE TO ESTABLISH THAT

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ALL THE MEANS OR METHODS ALLEGED TO CARRY OUT THE ALLEGED CONSPIRACY WERE, IN FACT, AGREED ON, OR THAT ALL THE MEANS OR METHODS THAT WERE AGREED ON WERE ACTUALLY USED OR PUT INTO OPERATION. PLAINTIFFS DON'T HAVE TO PROVE THAT ALL PERSONS OR ENTITIES ALLEGED TO BE CONSPIRACY MEMBERS WERE ACTUALLY MEMBERS OR THAT ALLEGED CONSPIRATORS SUCCEEDED IN ACCOMPLISHING THEIR UNLAWFUL OBJECTIVES.

IT ISN'T ENOUGH IF THE EVIDENCE SHOWS ONLY THAT THE ALLEGED CONSPIRATORS AGREED TO COMMIT THE ACTS OF RACKETEERING PLAINTIFFS ALLEGE, WITHOUT MORE, OR THAT THEY AGREED TO PARTICIPATE IN THE AFFAIRS OF THE SAME ALLEGED ENTERPRISE. IT DOESN'T MATTER THAT THE ALLEGED CONSPIRATORS PARTICIPATED IN THE CONDUCT OF THE AFFAIRS OF THE ALLEGED ENTERPRISE THROUGH DIFFERENT OR DISSIMILAR ACTS OF RACKETEERING ACTIVITY SO LONG AS THE ALLEGED RACKETEERING ACTS WOULD—IF ACTUALLY COMMITTED—CREATE A "PATTERN OF RACKETEERING ACTIVITY" AS I'VE DEFINED IT.

A DEFENDANT CAN BECOME A MEMBER OF A CONSPIRACY WITHOUT KNOWING ALL THE UNLAWFUL SCHEME'S DETAILS OR WITHOUT KNOWING THE NAMES AND IDENTITIES OF ALL THE OTHER ALLEGED CONSPIRATORS. IF PLAINTIFFS PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT A PARTICULAR DEFENDANT HAS KNOWINGLY JOINED THE ALLEGED CONSPIRACY, IT DOESN'T MATTER THAT THE DEFENDANT MAY NOT HAVE PARTICIPATED IN THE ALLEGED CONSPIRACY OR SCHEME'S EARLIER STAGES. MERE PRESENCE AT THE SCENE OF SOME TRANSACTION OR EVENT, OR MERE

SIMILARITY OF CONDUCT AMONG VARIOUS PERSONS AND THE FACT THAT THEY MAY HAVE ASSOCIATED WITH EACH OTHER, AND MAY HAVE ASSEMBLED TOGETHER AND DISCUSSED COMMON AIMS AND INTERESTS, DOESN'T NECESSARILY PROVE THE EXISTENCE OF A CONSPIRACY. A PERSON WHO DOESN'T HAVE KNOWLEDGE OF A CONSPIRACY, BUT WHO HAPPENS TO ACT IN A WAY THAT ADVANCES SOME OBJECT OR PURPOSE OF CONSPIRACY, DOESN'T BECOME A CONSPIRATOR.

PLAINTIFFS DON'T HAVE TO PROVE THAT A DEFENDANT ACTUALLY COMMITTED ANY OF THE ACTS THAT THE DEFENDANT MAY HAVE AGREED TO COMMIT TO ESTABLISH HIS MEMBERSHIP IN THE CONSPIRACY.

TO DETERMINE WHETHER THERE WAS A CONSPIRACY, YOU MUST CONSIDER ALL THE EVIDENCE IN THE CASE. IF YOU FIND THAT THERE WAS A CONSPIRACY, THEN YOU CAN ATTRIBUTE THE STATEMENTS OR ACTS OF THE CO-CONSPIRATORS TO THE DEFENDANT. IF YOU FIND THAT THERE WAS NOT A CONSPIRACY, THEN YOU CAN'T ATTRIBUTE THE STATEMENTS OR ACTS OF ANY OF THE DEFENDANTS TO ONE ANOTHER.

IF YOU FIND THE CONSPIRACY DID NOT EXIST, THEN YOU MUST FIND FOR THE DEFENDANTS ON THE RICO CONSPIRACY CLAIM. BUT IF YOU ARE SATISFIED THAT THE CONSPIRACY EXISTED, YOU MUST DETERMINE WHO THE MEMBERS OF THE CONSPIRACY WERE.

IF YOU FIND THAT A PARTICULAR DEFENDANT IS A MEMBER OF ANOTHER CONSPIRACY, BUT NOT THE ONE PLAINTIFFS HAVE ALLEGED, THEN YOU CAN'T FIND THAT DEFENDANT LIABLE IN THIS CASE. PUT ANOTHER WAY, YOU CAN'T FIND THAT A DEFENDANT VIOLATED THE RICO CONSPIRACY

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STATUTE UNLESS YOU FIND THAT DEFENDANT WAS A MEMBER OF THE CONSPIRACY CHARGED—NOT SOME OTHER SEPARATE CONSPIRACY.

B. DAMAGES

IF YOU FIND THE PLAINTIFFS HAVE ESTABLISHED THEIR RICO GENERAL CLAIM AND/OR THEIR RICO CONSPIRACY CLAIM, YOU MAY AWARD COMPENSATORY DAMAGES.

WITH RESPECT TO THE RICO GENERAL CLAIM, THE DAMAGES THAT PLAINTIFFS MAY RECOVER ARE THOSE CAUSED BY THE PREDICATE ACTS CONSTITUTING THE PATTERN OF RACKETEERING ACTIVITY IF THEY INJURE PLAINTIFFS IN THEIR BUSINESS OR PROPERTY. IT ISN'T NECESSARY THAT EVERY PREDICATE ACT CAUSED DAMAGE TO PLAINTIFFS. BUT PLAINTIFFS CAN ONLY RECOVER DAMAGES CAUSED BY PREDICATE ACTS THAT ARE PART OF THE PATTERN OF RACKETEERING ACTIVITY.

WITH RESPECT TO THE RICO CONSPIRACY CLAIM, A DEFENDANT IS RESPONSIBLE FOR ALL DAMAGES CAUSED BY PREDICATE ACTS COMMITTED BY MEMBERS OF THE CONSPIRACY THAT CAUSED INJURY TO PLAINTIFFS. IT ISN'T NECESSARY THAT EVERY PREDICATE ACT CAUSED DAMAGE TO PLAINTIFFS, BUT THEY CAN ONLY RECOVER FOR DAMAGES CAUSED BY A PREDICATE ACT COMMITTED BY A CONSPIRACY MEMBER.

YOU MAY AWARD ONLY THE FOLLOWING ITEMS OF COMPENSATORY DAMAGES:

1. COMPENSATION FOR ALL MONEYS PAID DURING THE RECRUITMENT PROCESS AND IN ORDER TO COME TO THE UNITED STATES TO WORK FOR SIGNAL, INCLUDING, BUT NOT

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LIMITED TO: RECRUITMENT FEES; TRAVEL EXPENSES; LEGAL FEES; MEDICAL TESTING; SKILLS TESTING AND ADMINISTRATIVE FEES; LOSSES ON ANY PERSONAL OR REAL PROPERTY SOLD OR PAWNED FOR THE PURPOSES OF MAKING PAYMENTS IN CONNECTION WITH THE RECRUITMENT DESCRIBED HEREIN; AND FEES AND INTEREST PAID ON ANY LOANS INCURRED AS A RESULT OF THE RECRUITMENT PROCESS AND UP TO THE POINT AT WHICH EACH PLAINTIFF'S EMPLOYMENT AT SIGNAL WAS TERMINATED; AND

2. COMPENSATION OF DEDUCTIONS TAKEN FROM PLAINTIFFS' PAYCHECKS BY SIGNAL FOR ROOM AND BOARD

YOU MAY NOT AWARD COMPENSATION FOR ANY OTHER LOSSES, SUCH AS PERSONAL INJURY OR EMOTIONAL HARM.

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PRELIMINARY INSTRUCTION FOR CLAIMS FIVE, SIX, AND SEVEN—AGENCY

WITH RESPECT TO CLAIMS FIVE, SIX, AND SEVEN, IN DETERMINING THE LIABILITY OF THE DEFENDANTS, YOU MAY CONSIDER THAT A DEFENDANT CAN BE HELD LIABLE FOR THE ACTS OF ITS AGENTS, INCLUDING AGENTS WHO ARE NOT PARTIES TO THIS SUIT.

AN "AGENT" IS A PERSON WHO IS AUTHORIZED TO ACT ON BEHALF OF ANOTHER PERSON OR BUSINESS. THE OTHER PERSON OR BUSINESS IS CALLED A "PRINCIPAL."

A COMPANY IS LEGALLY RESPONSIBLE FOR DAMAGES CAUSED BY THE WRONGFUL CONDUCT OF ITS AGENTS WHILE THOSE AGENTS ARE ACTING WITHIN THE SCOPE OF THEIR AUTHORITY.

IF THE AGENT WAS ACTING WITHIN THE SCOPE OF HIS AUTHORITY WHEN HE HARMED OR INJURED PLAINTIFF(S), THEN THE PRINCIPAL AND THE AGENT ARE BOTH LEGALLY RESPONSIBLE TO ANY OF THE PLAINTIFF(S) WHO YOU BELIEVE WERE INJURED BY THE CONDUCT.

HOWEVER, AN AGENT FOR A DISCLOSED PRINCIPAL IS NOT LIABLE FOR THE TORTS OF THE PRINCIPAL OR THE PRINCIPAL'S BREACH OF CONTRACT. TO BE LIABLE, THE AGENT MUST COMMIT 'INDIVIDUAL WRONGDOING.' IN OTHER WORDS, THE AGENT INCURS NO PERSONAL LIABILITY ABSENT FRAUD OR EQUIVALENT MISCONDUCT.

ESTABLISHING THE AGENCY RELATIONSHIP

YOUR FIRST STEP IS TO DETERMINE WHETHER AN AGENCY RELATIONSHIP EXISTS. THERE ARE TWO WAYS THAT AN AGENCY

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RELATIONSHIP CAN BE FORMED: ACTUAL AUTHORITY (WHICH INCLUDES BOTH EXPRESS AND IMPLIED AUTHORITY), AND APPARENT AUTHORITY. I WILL DESCRIBE EACH OF THOSE TO YOU NOW.

(1) ACTUAL AUTHORITY: AN AGENT ACTS WITH ACTUAL AUTHORITY WHEN THE AGENT REASONABLY BELIEVES, BASED ON THE WRITTEN OR SPOKEN WORDS OF THE PRINCIPAL OR THE PRINCIPAL'S CONDUCT, THAT THE PRINCIPAL WISHES THE AGENT TO SO ACT. ACTUAL AUTHORITY CAN BE EXPRESS OR IMPLIED.

A. EXPRESS AUTHORITY: AN AGENT'S EXPRESS AUTHORITY IS WHAT THE PRINCIPAL TELLS THE AGENT OR SHOWS THE AGENT ABOUT WHAT HIS WORK IS AND/OR HOW TO DO HIS WORK.

B. IMPLIED AUTHORITY: "IMPLIED AUTHORITY" IS ACTUAL AUTHORITY EITHER (1) TO DO WHAT IS NECESSARY, USUAL, AND PROPER TO ACCOMPLISH OR PERFORM AN AGENT'S EXPRESS RESPONSIBILITIES OR (2) TO ACT IN A MANNER IN WHICH AN AGENT REASONABLY BELIEVES THE PRINCIPAL WISHES THE AGENT TO ACT.

THE PRESENCE OF ACTUAL AUTHORITY REQUIRES THAT AN AGENT'S BELIEF BE REASONABLE AT THE TIME THE AGENT ACTS. IT IS ALSO NECESSARY THAT THE AGENT IN FACT BELIEVES THAT THE PRINCIPAL DESIRES THE ACTION TAKEN BY THE AGENT.

THE DETERMINATION OF REASONABLENESS IS A QUESTION FOR YOU. THE AGENT'S INTERPRETATION OF THE PRINCIPAL'S DESCRIPTION OF

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AUTHORITY IS REASONABLE IF IT REFLECTS ANY MEANING KNOWN BY THE AGENT TO HAVE BEEN INCLUDED IN THAT DESCRIPTION BY THE PRINCIPAL. THE QUESTION IS WHETHER A REASONABLE PERSON IN THE AGENT'S POSITION WOULD INTERPRET THE DESCRIPTION AS AN EXPRESSION OF THE ACTUAL AUTHORITY THE PRINCIPAL INTENDED TO CONVEY IN LIGHT OF THE OVERALL CONTEXT, INCLUDING THE CIRCUMSTANCES OF WHICH THE AGENT HAS NOTICE AND THE AGENT'S FIDUCIARY DUTY TO THE PRINCIPAL. AN AGENT'S UNDERSTANDING OF HIS ACTUAL AUTHORITY IS ONLY REASONABLE IF IT ACCORDS WITH THE PRINCIPAL'S EXPRESSIONS AND COMMUNICATIONS WITH THE AGENT AND THE INFERENCES A REASONABLE PERSON IN THE AGENT'S POSITION WOULD DRAW FROM THOSE EXPRESSIONS AND COMMUNICATIONS WHICH CREATED THE AGENCY.

(2) APPARENT AUTHORITY: APPARENT AUTHORITY EXISTS WHEN A THIRD PARTY REASONABLY BELIEVES THAT AN AGENT OR OTHER ACTOR HAS AUTHORITY TO ACT ON BEHALF OF THE PRINCIPAL. THE THIRD PARTY'S BELIEF MUST BE REASONABLE AND BASED ON THE PRINCIPAL'S WRITTEN OR SPOKEN WORDS OR OTHER CONDUCT THAT INDICATES THE PRINCIPAL HAS CONFERRED AUTHORITY ON THE AGENT OR OTHER ACTOR.

IF A PERSON REASONABLY BELIEVES THAT AN AGENT HAS AUTHORITY TO ACT ON BEHALF OF HIS PRINCIPAL AND SUFFERS DAMAGES AS A RESULT OF THE AGENT'S CONDUCT WHILE THE AGENT IS WORKING FOR THE PRINCIPAL, THEN THE PRINCIPAL WILL BE LEGALLY RESPONSIBLE FOR THE PERSON'S HARM OR INJURY.

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THOUGH A PRINCIPAL IS BOUND BY THE ACTIONS OF ITS AGENT WITHIN THE SCOPE OF THAT AGENT'S ACTUAL OR APPARENT AUTHORITY, TO RECOVER UNDER THE THEORY OF APPARENT AUTHORITY, A PLAINTIFF MUST SATISFY A THREE-PRONG TEST. SPECIFICALLY, PLAINTIFFS MUST SHOW BY A PREPONDERANCE OF THE EVIDENCE: (1) ACTS OR CONDUCT ON THE PART OF THE PRINCIPAL INDICATING THE AGENT'S AUTHORITY, (2) REASONABLE RELIANCE ON THOSE ACTS, AND (3) A DETRIMENTAL CHANGE IN POSITION AS A RESULT OF SUCH RELIANCE. THE DETERMINATION OF APPARENT AUTHORITY IS A FACTUAL ISSUE FOR YOU TO DECIDE.

FOR PLAINTIFFS TO ESTABLISH LIABILITY OF THE PRINCIPAL UNDER THE THEORY OF APPARENT AUTHORITY, PLAINTIFFS MUST SHOW (1) ACTS OR CONDUCT OF THE PRINCIPAL INDICATING THE AGENT'S AUTHORITY, (2) THAT PERSONS OF REASONABLE PRUDENCE, ORDINARILY FAMILIAR WITH BUSINESS PRACTICES, DEALING WITH THE AGENT MIGHT RIGHTFULLY BELIEVE THE AGENT TO HAVE THE POWER HE ASSUMES TO HAVE AND (3) A DETRIMENTAL CHANGE IN POSITION BY THE THIRD PERSON AS A RESULT OF THAT RELIANCE.

SCOPE OF AUTHORITY

IF YOU DETERMINE THAT EXPRESS, IMPLIED OR APPARENT AUTHORITY EXISTS, YOU MUST NEXT DETERMINE WHETHER THE AGENT ACTED WITHIN THE SCOPE OF HIS AUTHORITY.

AN AGENT'S CONDUCT IS WITHIN THE SCOPE OF HIS AUTHORITY IF HE IS CARRYING OUT THE WORK HE WAS HIRED TO DO OR IF HE IS DOING SOMETHING THAT IS NECESSARY OR USUALLY DONE IN ORDER TO CARRY OUT

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THE WORK HE WAS HIRED TO DO. YOU SHOULD CONSIDER WHETHER THE AGENT'S CONDUCT WAS IN FACT DONE IN ORDER TO CARRY OUT THE PRINCIPAL'S WORK OR WHETHER SUCH CONDUCT IS EXPECTED TO CARRY OUT THE PRINCIPAL'S WORK.

A PRINCIPAL DOES NOT HAVE TO SPECIFICALLY AUTHORIZE AN AGENT'S CONDUCT FOR IT TO BE WITHIN THE SCOPE OF HIS EMPLOYMENT. AN AGENT'S CONDUCT WHICH IS CONNECTED OR NECESSARY TO CARRY OUT HIS EMPLOYMENT IS WITHIN THE SCOPE OF HIS EMPLOYMENT AS AN AGENT.

IF AN AGENT DOES SOMETHING THAT IS CONTRARY TO WHAT THE PRINCIPAL HAS TOLD HIM TO DO, THE PRINCIPAL MAY STILL BE LEGALLY RESPONSIBLE FOR THE AGENT'S CONDUCT IF THE CONDUCT WAS DONE WITHIN THE SCOPE OF THE AGENT'S EMPLOYMENT.

IF AN AGENT DOES SOMETHING THAT GOES BEYOND HIS SCOPE OF AUTHORITY, THE PRINCIPAL IS NOT LEGALLY RESPONSIBLE FOR THE AGENT'S CONDUCT.

HOWEVER, A PRINCIPAL MAY STILL BE LIABLE FOR ACTS OF THE AGENT THAT GO BEYOND THE SCOPE OF HIS AUTHORITY IF APPARENT AUTHORITY EXISTS. THAT IS, IF AN AGENT DOES SOMETHING THAT GOES BEYOND HIS SCOPE OF AUTHORITY BUT A THIRD PERSON REASONABLY BELIEVES THAT THE PRINCIPAL HAD AUTHORIZED THE AGENT TO DO SUCH AN ACT, AND THEN THAT PERSON RELIES ON THE AGENT'S CONDUCT IN A WAY THAT CAUSES HIM HARM, THEN THE PRINCIPAL IS LEGALLY RESPONSIBLE FOR THE AGENT'S CONDUCT.

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FINALLY, A PRINCIPAL MAY BE LIABLE FOR ACTS OF ITS AGENT THAT WENT BEYOND THE SCOPE OF THE AGENT'S AUTHORITY IF THE PRINCIPAL RATIFIES THE ACT. RATIFICATION OCCURS WHEN A PRINCIPAL INDICATES ASSENT TO BE BOUND BY THE PRIOR UNAUTHORIZED ACT OF AN AGENT, SO THAT THE ACT IS GIVEN EFFECT AS IF THE AGENT HAD BEEN ACTING WITH ACTUAL AUTHORITY.

A PERSON INDICATES HIS ACCEPTANCE OF THE PRIOR ACT THROUGH HIS CONDUCT OR WORDS, OR BY HIS FAILURE TO OBJECT TO THE ACT WITHIN A REASONABLE TIME OF LEARNING OF THE ACT. A PERSON MAY ALSO RATIFY AN AGENT'S ACT BY ACCEPTING THE BENEFITS OF THE AGENT'S UNAUTHORIZED CONDUCT.

A PERSON IS NOT BOUND BY A RATIFICATION MADE WITHOUT KNOWLEDGE OF MATERIAL FACTS ABOUT THE AGENT'S ACT UNLESS THE PRINCIPAL CHOSE TO RATIFY WITH AWARENESS THAT SUCH KNOWLEDGE WAS LACKING.

A PERSON WHO HAS RATIFIED IS NOT BOUND BY THE RATIFICATION IF IT WAS MADE WITHOUT KNOWLEDGE OF MATERIAL FACTS ABOUT THE ACT OF THE AGENT OR OTHER ACTOR. THE BURDEN OF ESTABLISHING THAT A RATIFICATION WAS MADE WITH KNOWLEDGE IS ON THE PARTY ATTEMPTING TO ESTABLISH THAT RATIFICATION OCCURRED.

APPLICATION TO PLAINTIFFS' CLAIMS

IN PLAINTIFFS' CLAIMS FIVE, SIX, AND SEVEN (WHICH I WILL EXPLAIN TO YOU SHORTLY), PLAINTIFFS ASSERT THAT SIGNAL IS RESPONSIBLE FOR

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THE ACTS OF ITS AGENTS. IN ORDER TO FIND FOR THE PLAINTIFFS, YOU MUST DETERMINE THE FOLLOWING:

1. THAT BURNETT AND/OR DEWAN WAS SIGNAL'S AGENT(S);
2. THAT THE AGENT HAD ACTUAL OR APPARENT AUTHORITY; AND
3. THAT THE AGENT ACTED WITHIN THE SCOPE OF HIS AUTHORITY OR THE PLAINTIFFS REASONABLY BELIEVED THE AGENT WAS AUTHORIZED AND RELIED ON THE AGENT'S CONDUCT IN A WAY THAT CAUSED THEM HARM. YOU MAY ALSO FIND FOR PLAINTIFFS, EVEN THOUGH THE AGENT WENT BEYOND THE SCOPE OF HIS AUTHORITY, IF SIGNAL RATIFIED THE ACT OF THE AGENT.

NOW THAT I HAVE EXPLAINED THE CONCEPT OF AGENCY, I WILL INSTRUCT YOU ON CLAIMS FIVE, SIX, AND SEVEN.

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CLAIM FIVE: FRAUD

PLAINTIFFS ASSERT THAT SIGNAL, BURNETT, AND DEWAN COMMITTED FRAUD AGAINST THEM BY MAKING INTENTIONALLY FRAUDULENT STATEMENTS TO THEM AND/OR CONCEALING MATERIAL FACTS FROM THEM REGARDING THE FOLLOWING: LONG TERM EMPLOYMENT IN THE UNITED STATES WITH A U.S. EMPLOYER; PLAINTIFFS' ABILITY TO RECEIVE A GREEN CARD OR PERMANENT RESIDENCY WITHIN TWO YEARS; PLAINTIFFS' ABILITY TO RECEIVE A GREEN CARD OR PERMANENT RESIDENCY WHILE REMAINING IN THE U.S.; SIGNAL'S INTENT TO SPONSOR THE PLAINTIFFS FOR GREENCARDS; AND THE REASONABLENESS OF HOUSING AND LIVING CONDITIONS TO BE PROVIDED BY SIGNAL TO PLAINTIFFS. SIGNAL, BURNETT, AND DEWAN DENY THESE CLAIMS.

A. APPLICABLE LAW

I HAVE EARLIER INSTRUCTED YOU ON THE LAW OF AGENCY. IF YOU DECIDE THAT PLAINTIFFS WERE DEFRAUDED, THAT THE PERSONS WHO DEFRAUDED THEM WERE AGENTS OF SIGNAL, BURNETT AND/OR DEWAN, AND THAT THOSE AGENTS COMMITTED FRAUD WITHIN THE SCOPE OF THEIR AGENCY, THEN YOU MUST ALSO FIND SIGNAL, BURNETT AND/OR DEWAN LIABLE FOR THE FRAUD COMMITTED BY THEIR AGENTS.

IN ORDER TO PREVAIL ON THEIR FRAUD CLAIM, PLAINTIFFS MUST PROVE THE FOLLOWING BY A PREPONDERANCE OF THE EVIDENCE:

1. A PARTY TO A CONTRACT (OR WITH THE PARTY'S PARTICIPATION) OR THE PARTY'S AGENT COMMITTED ANY OF THE FOLLOWING ACTS:

A. THE SUGGESTION, AS A FACT, OF SOMETHING THAT IS NOT TRUE, BY ONE WHO DOES NOT BELIEVE IT TO BE TRUE;

B. THE ACTIVE CONCEALMENT OF A FACT BY ONE HAVING KNOWLEDGE OR BELIEF OF THE FACT;

C. A PROMISE MADE WITHOUT ANY INTENTION OF PERFORMING IT;

D. ANY OTHER ACT DESIGNED TO DECEIVE; OR

E. ANY SUCH ACT OR OMISSION AS THE LAW SPECIFICALLY DECLARES TO BE FRAUDULENT.

2. THE ACTS WERE COMMITTED WITH INTENT TO DECEIVE ANOTHER PARTY OR INTENT TO CONVINCE ANOTHER PARTY TO ENTER INTO THE CONTRACT;

3. PLAINTIFFS RELIED ON THE FRAUDULENT REPRESENTATIONS MADE BY THE PARTY OR BY THE PARTY'S AGENTS; AND

4. PLAINTIFFS WERE DECEIVED BY THE FRAUDULENT REPRSENTATIONS MADE BY THE PARTY OR BY THE PARTY'S AGENTS

IN CONSIDERING WHETHER AN ACT IS FRAUDULENT, YOU MAY NOTE THAT MERE SILENCE AS TO FACTS LIKELY TO AFFECT THE WILLINGNESS OF A PERSON TO ENTER INTO A CONTRACT IS NOT FRAUD, UNLESS THE CIRCUMSTANCES OF THE CASE ARE SUCH THAT IT IS THE DUTY OF THE

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PERSON KEEPING SILENT TO SPEAK, OR UNLESS HIS SILENCE IS EQUIVALENT TO SPEECH.

MALVERN BURNETT, AS THE PLAINTIFFS' ATTORNEY, HAD A FIDUCIARY RELATIONSHIP WITH THEM. A PERSON HAS A DUTY TO SPEAK WITH CANDOR AND COMPLETENESS AND TO DISCLOSE ALL RELEVANT FACTS WHEN HE IS A FIDUCIARY IN RELATION TO ANOTHER PERSON. WHEN A PERSON IS A FIDUCIARY, FAILURE TO DISCLOSE ALL FACTS FULLY AND HONESTLY WILL CONSTITUTE FRAUD.

IF YOU FIND THAT THE SOLE FRAUD COMMITTED BY SIGNAL OR ITS AGENTS OR DEWAN OR HIS AGENTS WAS FRAUD AS A RESULT OF REMAINING SILENT, YOU SHOULD CONSIDER WHETHER THE PLAINTIFFS DEFRAUDED BY THE SILENCE OF SIGNAL OR ITS AGENTS, OR DEWAN OR ITS AGENTS, FAILED TO EXERCISE ORDINARY DILIGENCE TO DISCOVER THE TRUTH BEFORE ENTERING INTO AGREEMENTS WITH THE DEFENDANT OR ITS AGENTS. ORDINARY DILIGENCE IS DILIGENCE THAT A REASONABLE PERSON IN THE PLAINTIFFS' SITUATION WOULD EXERCISE UNDER THE CIRCUMSTANCES. IF A DEFENDANT COMMITTED FRAUD ONLY BY SILENCE, AND WAS NOT IN A FIDUCIARY RELATIONSHIP WITH THE PLAINTIFFS, THEN THE PLAINTIFFS' FAILURE TO EXERCISE ORDINARY DILIGENCE IS EVIDENCE THAT THE PLAINTIFFS WERE NOT DECEIVED BY THAT DEFENDANT.

B. DAMAGES

IF YOU FIND THAT PLAINTIFFS PROVED EACH OF THE REQUIREMENTS LISTED ABOVE, YOU MAY AWARD COMPENSATION FOR DAMAGES PROXIMATELY CAUSED BY A DEFENDANT OR ITS AGENT'S FRAUD. PLAINTIFFS

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SEEK DAMAGES THEY INCURRED FROM THE TIME OF THEIR RECRUITMENT UNTIL THE END OF THEIR EMPLOYMENT AT SIGNAL. YOU MAY CONSIDER THE FOLLOWING ELEMENTS OF DAMAGE:

1. FEES AND EXPENSES PAID BY PLAINTIFFS RELATED TO RECRUITMENT, TRAVEL AND LOANS;
2. ANY DIFFERENCE BETWEEN WAGES PROMISED TO PLAINTIFFS AND WAGES THEY ACTUALLY RECEIVED; AND
3. FEES DEDUCTED FROM PLAINTIFFS' WAGES BY SIGNAL FOR ROOM AND BOARD AT THE MAN CAMP.

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CLAIM SIX: NEGLIGENT MISREPRESENTATION

PLAINTIFFS CLAIM THAT SIGNAL, BURNETT AND DEWAN MADE MISREPRESENTATIONS TO THEM REGARDING THE FOLLOWING: LONG TERM EMPLOYMENT IN THE UNITED STATES WITH A U.S. EMPLOYER; PLAINTIFFS' ABILITY TO RECEIVE A GREEN CARD OR PERMANENT RESIDENCY WITHIN TWO YEARS; PLAINTIFFS' ABILITY TO RECEIVE A GREEN CARD OR PERMANENT RESIDENCY WHILE REMAINING IN THE U.S.; SIGNAL'S INTENT TO SPONSOR THE PLAINTIFFS FOR GREENCARDS; AND THE REASONABLENESS OF HOUSING AND LIVING CONDITIONS TO BE PROVIDED BY SIGNAL TO PLAINTIFFS. SIGNAL, BURNETT AND DEWAN DENY THESE CLAIMS.

A. APPLICABLE LAW

I HAVE EARLIER INSTRUCTED YOU ON THE LAW OF AGENCY. IF YOU DECIDE THAT MISREPRESENTATIONS WERE MADE TO THE PLAINTIFFS, THE PERSONS WHO MADE THE MISREPRESENTATIONS WERE AGENTS OF SIGNAL, BURNETT AND/OR DEWAN, AND THE MISREPRESENTATIONS WERE MADE WITHIN THE SCOPE OF THEIR AGENCY, THEN YOU MUST FIND SIGNAL, BURNETT AND/OR DEWAN LIABLE FOR THE MISREPRESENTATIONS MADE BY THEIR AGENTS.

IN ORDER TO PREVAIL, PLAINTIFFS MUST PROVE BY A PREPONDEREANCE OF THE EVIDENCE THAT A DEFENDANT OR A DEFENDANT'S AGENT COMMITTED ANY OF THE FOLLOWING ACTS:

A. MADE AN UNTRUE ASSERTION, BELIEVING IT TO BE TRUE, IN A MANNER NOT WARRANTED BY THE INFORMATION OF THE PERSON MAKING THE ASSERTION;

B. COMMITTED A BREACH OF DUTY WHICH, WITHOUT AN INTENT TO DECEIVE, ALLOWED THE PERSON TO GAIN AN ADVANTAGE BY MISLEADING ANOTHER PERSON TO HIS DISADVANTAGE; OR

C. CAUSED, HOWEVER INNOCENTLY, A PARTY TO AN AGREEMENT TO MAKE A MISTAKE AS TO THE SUBSTANCE OF THE THING WHICH IS THE SUBJECT OF THE AGREEMENT.

REGARDING THE DUTY OWED TO PLAINTIFFS, YOU SHOULD CONSIDER WHETHER DEFENDANTS SIGNAL, BURNETT AND/OR DEWAN AND THEIR RESPECTIVE EMPLOYEES AND AGENTS OWED A DUTY OF CARE TO THE PLAINTIFFS NOT TO MAKE A MISSTATEMENT OF MATERIAL FACTS REGARDING THE OPPORTUNITIES FOR IMMIGRATION AND EMPLOYMENT BEING OFFERED TO PLAINTIFFS. BURNETT, AS THE ATTORNEY FOR THE PLAINTIFFS, HAD A FIDUCIARY DUTY TO THE PLAINTIFFS, INCLUDING A DUTY TO SPEAK WITH CANDOR AND COMPLETENESS AND TO DISCLOSE ALL RELEVANT FACTS.

IN CONSIDERING WHETHER ANY DEFENDANT IS LIABLE FOR MISREPRESENTATIONS TO ANY PLAINTIFF, YOU SHOULD ALSO CONSIDER FORESEEABILITY OF HARM, THE NATURE OF THE RELATIONSHIPS THAT EXISTED BETWEEN PLAINTIFFS AND DEFENDANTS, AND WHETHER IT WOULD BE JUST AND REASONABLE TO IMPOSE THE LIABILITY. ADDITIONALLY, WITH RESPECT TO SIGNAL AND ITS AGENTS AND DEWAN AND HIS AGENTS, YOU MUST CONSIDER WHETHER THE PLAINTIFFS EXERCISED ORDINARY DILIGENCE TO DISCOVER THE TRUTH BEFORE ENTERING INTO AGREEMENTS WITH THEM. ORDINARY DILIGENCE IS DILIGENCE THAT A REASONABLE

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PERSON IN THE PLAINTIFFS' SITUATION WOULD EXERCISE UNDER THE CIRCUMSTANCES.

B. DAMAGES

IF YOU FIND THAT PLAINTIFFS PROVED EACH OF THE REQUIREMENTS LISTED ABOVE, YOU MAY AWARD COMPENSATION FOR DAMAGES PROXIMATELY CAUSED BY A DEFENDANT OR ITS AGENT'S NEGLIGENT MISREPRESENTATION. PLAINTIFFS SEEK DAMAGES THEY INCURRED FROM THE TIME OF THEIR RECRUITMENT UNTIL THE END OF THEIR EMPLOYMENT AT SIGNAL. YOU MAY CONSIDER THE FOLLOWING ELEMENTS OF DAMAGE:

1. FEES AND EXPENSES PAID BY PLAINTIFFS RELATED TO RECRUITMENT, TRAVEL AND LOANS;
2. ANY DIFFERENCE BETWEEN WAGES PROMISED TO PLAINTIFFS AND WAGES THEY ACTUALLY RECEIVED; AND
3. FEES DEDUCTED FROM PLAINTIFFS' WAGES BY SIGNAL FOR ROOM AND BOARD AT THE MAN CAMP.

IF YOU FIND BY A PREPONDERANCE OF THE EVIDENCE THAT ANY PLAINTIFF WAS CONTRIBUTORILY NEGLIGENT IN RELYING ON ANY DEFENDANT OR ITS AGENT'S MISREPRESENTATIONS, YOU MAY DECIDE TO REDUCE THAT PLAINTIFF'S DAMAGES TO THE EXTENT OF THE PLAINTIFF'S SHARE IN THE RESPONSIBILITY FOR THE DAMAGE. IN DECIDING WHETHER TO REDUCE A PLAINTIFF'S DAMAGES ON THE BASIS OF CONTRIBUTORY NEGLIGENCE, YOU SHOULD DETERMINE THE PERCENTAGE OF THE REDUCTION BY CONSIDERING WHAT IS JUST AND EQUITABLE CONSIDERING THE PLAINTIFF'S SHARE OF RESPONSIBILITY FOR HIS DAMAGES.

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CLAIM SEVEN: BREACH OF CONTRACT/PROMISSORY ESTOPPEL

PLAINTIFFS ASSERT CLAIMS AGAINST SIGNAL, BURNETT, AND DEWAN FOR BREACH OF CONTRACT AND PROMISSORY ESTOPPEL. SIGNAL, BURNETT AND DEWAN DENY THESE CLAIMS.

A. APPLICABLE LAW

I. BREACH OF CONTRACT

TO PREVAIL ON THEIR BREACH OF CONTRACT CLAIM, PLAINTIFFS MUST ESTABLISH THE FOLLOWING BY A PREPONDERANCE OF THE EVIDENCE:

1. THE EXISTENCE OF A VALID AND BINDING CONTRACT;
2. A DEFENDANT(S) HAS BROKEN OR BREACHED THE CONTRACT; AND
3. PLAINTIFFS LOST MONEY AS A RESULT OF THE BROKEN OR BREACHED CONTRACT

A CONTRACT IS AN AGREEMENT BETWEEN TWO OR MORE PEOPLE OR PARTIES. A CONTRACT CONSISTS OF AN OFFER, AN ACCEPTANCE OF THAT OFFER, AND CONSIDERATION. IF ONE OF THESE THREE ITEMS IS MISSING, THERE IS NO CONTRACT.

AN OFFER IS A PROPOSAL TO ENTER INTO A CONTRACT AND HAS CONDITIONS OR TERMS STATED IN THE OFFER. AN ACCEPTANCE OF THAT OFFER IS AN AGREEMENT TO THE CONDITIONS OR TERMS STATED IN THE OFFER.

CONSIDERATION IS A BENEFIT RECEIVED OR SOMETHING THAT IS GIVEN UP IN ORDER TO FORM THE CONTRACT. CONSIDERATION DOES NOT HAVE TO BE MONEY, BUT IT MUST BE SOMETHING OF VALUE.

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CONSIDERATION IS REQUIRED IN ORDER FOR THE CONTRACT TO BE ENFORCED.

A CONTRACT MAY BE VERBAL OR IN WRITING.

CHANGES TO A CONTRACT ARE NOT VALID UNLESS THERE IS ADDITIONAL CONSIDERATION SUPPORTING THE CHANGES.

II. PROMISSORY ESTOPPEL

IF YOU DECIDE THERE WAS NO VALID CONTRACT, PLAINTIFFS MAY ESTABLISH THEIR CLAIM FOR PROMISSORY ESTOPPEL IF THEY PROVE THE FOLLOWING BY A PREPONDERANCE OF THE EVIDENCE:

1. PROMISES WERE MADE TO PLAINTIFFS;
2. PLAINTIFFS MADE PAYMENTS AND INCURRED EXPENSES IN RELIANCE ON THOSE PROMISES;
3. THE PROMISES ON WHICH PLAINTIFFS RELIED WERE BROKEN; AND
4. IN GOOD CONSCIENCE AND JUSTICE, THE MONEY PAID BY PLAINTIFFS IN RELYING ON THE PROMISES SHOULD BE RETURNED TO PLAINTIFFS.

IN CONNECTION WITH THE ELEMENTS OF PROMISSORY ESTOPPEL, PLAINTIFFS MUST SHOW THAT THE PROMISES MADE TO THEM, AND UPON WHICH THEY RELIED, RELATE TO A PRESENT INTENTION OR PURPOSE OF THE DEFENDANTS. THIS IS BECAUSE A DEFENDANT CANNOT BE PRECLUDED FROM CHANGING HIS INTENTION IN THE FUTURE.

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B. DAMAGES

IF YOU FIND THAT PLAINTIFFS PROVED EACH OF THE REQUIREMENTS LISTED ABOVE WITH RESPECT TO BREACH OF CONTRACT OR PROMISSORY ESTOPPEL, YOU MAY AWARD DAMAGES. PLAINTIFFS SEEK COMPENSATORY AND PUNITIVE DAMAGES FOR THEIR BREACH OF CONTRACT AND PROMISSORY ESTOPPEL CLAIMS.

I. COMPENSATORY DAMAGES

YOU MAY AWARD COMPENSATION FOR ANY DAMAGES PROXIMATELY CAUSED BY A DEFENDANT'S BREACH OF CONTRACT OR BROKEN PROMISES. YOU MAY AWARD THE FOLLOWING ELEMENTS OF COMPSENSATORY DAMAGES:

1. COMPENSATION FOR ALL MONEYS PAID DURING THE RECRUITMENT PROCESS AND IN ORDER TO COME TO THE UNITED STATES TO WORK FOR SIGNAL, INCLUDING, BUT NOT LIMITED TO: RECRUITMENT FEES; TRAVEL EXPENSES; TRAVEL EXPENSES; LEGAL FEES; MEDICAL TESTING; SKILLS TESTING AND ADMINISTRATIVE FEES; LOSSES ON ANY PERSONAL OR REAL PROPERTY SOLD OR PAWNED FOR THE PURPOSES OF MAKING PAYMENTS IN CONNECTION WITH THE RECRUITMENT; AND FEES AND INTEREST PAID ON ANY LOANS INCURRED AS A RESULT OF THE RECRUITMENT PROCESS UP TO THE POINT AT WHICH EACH PLAINTIFFS' EMPLOYMENT AT SIGNAL ENDED;

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2. REFUNDS OF RECRUITMENT FEES, LEGAL SERVICES FEES, AND OTHER FEES AND COSTS THAT DEFENDANTS PROMISED TO PAY PLAINTIFFS IF DEFENDANTS FAILED TO SECURE FOR PLAINTIFFS THE PROMISED VISA EXTENSIONS AND GREEN CARDS;
3. COMPENSATION FOR DEDUCTIONS TAKEN FROM PLAINTIFFS' PAYCHECKS BY SIGNAL FOR ROOM AND BOARD AND ANY DIFFERENCE BETWEEN WAGES PROMISED TO PLAINTIFFS AND WAGES THEY ACTUALLY RECEIVED; AND
4. DISGORGEMENT OF PROFITS RECEIVED BY ADVANTAGE OF DEFENDANTS' AGREEMENTS WITH PLAINTIFFS.

YOU SHOULD SUBTRACT FROM ANY COMPENSATORY DAMAGE AWARD EXPENSES THAT PLAINTIFFS WOULD HAVE HAD TO PAY IF SIGNAL HAD NOT BREACHED THE CONTRACT(S) OR BROKEN ANY PROMISE(S) AND ANY LOSSES OR DAMAGES THAT SIGNAL SHOULD HAVE KNOWN WOULD OCCUR AND COULD HAVE AVOIDED.

II. PUNITIVE DAMAGES

YOU MAY ALSO AWARD PUNITIVE DAMAGES IF PLAINTIFFS PROVED BY CLEAR AND CONVINCING EVIDENCE THAT, IN BREACHING ITS CONTRACT(S) OR BREAKING ITS PROMISE(S), SIGNAL, BURNETT, OR DEWAN ACTED WITH MALICE OR WITH A WILLFUL, WANTON OR RECKLESS DISREGARD FOR THE SAFETY OF OTHERS.

"CLEAR AND CONVINCING EVIDENCE" MEANS THAT THE EVIDENCE IS SO STRONG THAT IT LEADS YOU TO A FIRM BELIEF OR CONCLUSION, WITHOUT

HESITATING, AS TO WHAT THE FACTS ARE AND THAT PLAINTIFFS' CLAIMS ARE TRUE.

FOR PURPOSES OF THIS INSTRUCTION, "MALICE" IS WHEN A PERSON OR CORPORATION INTENTIONALLY DOES SOMETHING WRONG WITHOUT HAVING A VALID REASON OR EXCUSE. “RECKLESS DISREGARD” MEANS WHEN A PERSON KNOWS THAT A RISK OF EMOTIONAL DISTRESS WOULD PROBABLY RESULT FROM HIS CONDUCT AND THEN DISREGARDS THAT RISK AND THE HARM THAT MAY OCCUR AS A RESULT.

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CLAIM EIGHT: FALSE IMPRISONMENT

PLAINTIFF JACOB JOSEPH KADAKKARAPPALLY, WHO I WILL CALL MR. JACOB, ASSERTS A CLAIM AGAINST SIGNAL FOR FALSE IMPRISONMENT, ALLEGING THAT ON MARCH 9, 2007, SIGNAL OR ITS HIRED GUARDS FALSELY IMPRISONED HIM FOR SEVERAL HOURS IN SIGNAL'S TV TRAILER DESPITE HIS REQUESTS TO LEAVE. SIGNAL DENIES THIS CLAIM.

A. APPLICABLE LAW

IN ORDER TO PREVAIL, MR. JACOB MUST ESTABLISH THE FOLLOWING BY A PREPONDERANCE OF THE EVIDENCE:

1. ON MARCH 9, 2007, SIGNAL OR ITS HIRED GUARDS HELD OR DETAINED MR. JACOB FOR SEVERAL HOURS IN SIGNAL'S TV TRAILER DESPITE HIS REQUESTS TO LEAVE; AND
2. MR. JACOB'S HOLDING OR DETENTION WAS UNLAWFUL BECAUSE, LOOKING AT THE TOTALITY OF THE CIRCUMSTANCES, THE ACTIONS OF SIGNAL OR ITS GUARDS WITH REGARD TO THE HOLDING OR DETENTION WERE NOT OBJECTIVELY REASONABLE IN THEIR NATURE, PURPOSE, EXTENT AND DURATION.

FOR ELEMENT 2, A DEFENDANT'S ACTION IS "OBJECTIVELY REASONABLE" IF, IN LIGHT OF ALL THE CIRCUMSTANCES, THE ACTION WAS REASONABLE IN ITS NATURE, PURPOSE, EXTENT, AND DURATION. IT IS THE REASONABLENESS OF THE DEFENDANT'S ACTIONS, NOT THE DEFENDANT'S INTENT, THAT MATTERS.

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B. DAMAGES

IF YOU FIND THAT MR. JACOB HAS PROVED EACH OF THE REQUIREMENTS LISTED ABOVE, YOU MAY AWARD DAMAGES. MR. JACOB SEEKS COMPENSATORY DAMAGES AND PUNITIVE DAMAGES FOR HIS FALSE IMPRISONMENT CLAIM.

I. COMPENSATORY DAMAGES

YOU MAY AWARD COMPENSATION FOR ANY DAMAGES PROXIMATELY CAUSED BY SIGNAL'S FALSE IMPRISONMENT. SPECIFICALLY, YOU MAY AWARD COMPENSENATION FOR ANY MENTAL ANGUISH MR. JACOB SUFFERED.

II. PUNITIVE DAMAGES

YOU MAY ALSO AWARD PUNITIVE DAMAGES IF MR. JACOB PROVED BY CLEAR AND CONVINCING EVIDENCE THAT IN SUBJECTING HIM TO FALSE IMPRISONMENT, SIGNAL OR ITS HIRED GUARDS ACTED WITH MALICE OR WITH A WILLFUL, WANTON OR RECKLESS DISREGARD FOR THE SAFETY OF MR. JACOB.

"CLEAR AND CONVINCING EVIDENCE" MEANS THAT THE EVIDENCE IS SO STRONG THAT IT LEADS YOU TO A FIRM BELIEF OR CONCLUSION, WITHOUT HESITATING, AS TO WHAT THE FACTS ARE AND THAT MR. JACOB'S CLAIMS ARE TRUE.

FOR PURPOSES OF THIS INSTRUCTION, "MALICE" IS WHEN A CORPORATION INTENTIONALLY DOES SOMETHING WRONG WITHOUT HAVING A VALID REASON OR EXCUSE. “RECKLESS DISREGARD” MEANS WHEN A PERSON KNOWS THAT A RISK OF EMOTIONAL DISTRESS WOULD PROBABLY RESULT FROM HIS CONDUCT AND THEN DISREGARDS THAT RISK AND THE HARM THAT MAY OCCUR AS A RESULT.

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CLAIM NINE: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

MR. JACOB ASSERTS A CLAIM AGAINST SIGNAL FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS. SIGNAL DENIES THIS CLAIM.

A. APPLICABLE LAW

IN ORDER TO PREVAIL ON HIS CLAIM FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS, MR. JOSEPH MUST ESTABLISH THE FOLLOWING BY A PREPONDERANCE OF THE EVIDENCE:

1. SIGNAL OR ITS HIRED GUARDS PUBLICLY CONFINED MR. JACOB TO THE TV TRAILER, UNDER GUARD, FOR SEVERAL HOURS;
2. THE CONDUCT OF SIGNAL AND/OR ITS HIRED GUARDS WAS OUTRAGEOUS;
3. SIGNAL OR ITS HIRED GUARDS INTENDED TO CAUSE MR. JACOB EMOTIONAL DISTRESS OR ACTED WITH RECKLESS DISREGARD OF THE PROBABILITY THAT MR. JACOB WOULD SUFFER EMOTIONAL DISTRESS;
4. MR. JACOB SUFFERED EMOTIONAL DISTRESS;
5. THE CONDUCT OF SIGNAL OR ITS HIRED GUARDS, AS DESCRIBED ABOVE, WAS A SUBSTANTIAL FACTOR IN CAUSING MR. JACOB EMOTIONAL DISTRESS; AND
6. IT WAS FORSEEABLE THAT THE CONDUCT OF SIGNAL OR ITS HIRED GUARDS WOULD CAUSE MR. JACOB EMOTIONAL DISTRESS.

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FOR THE SECOND ELEMENT, CONDUCT IS "OUTRAGEOUS" WHEN IT IS SO EXTREME THAT IT GOES BEYOND ALL POSSIBLE BOUNDS OF DECENCY. CONDUCT IS ALSO "OUTRAGEOUS" IF A REASONABLE PERSON WOULD CONSIDER THE CONDUCT SHOCKING AND COMPLETELY UNACCEPTABLE IN A CIVILIZED COMMUNITY.

B. DAMAGES

IF YOU FIND THAT MR. JACOB HAS PROVED EACH OF THE REQUIREMENTS LISTED ABOVE, YOU MAY AWARD DAMAGES. MR. JACOB SEEKS COMPENSATORY DAMAGES AND PUNITIVE DAMAGES FOR HIS INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS CLAIM.

I. COMPENSATORY DAMAGES

YOU MAY AWARD COMPENSATION FOR ANY DAMAGES PROXIMATELY CAUSED BY SIGNAL'S INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS. SPECIFICALLY, YOU MAY AWARD COMPENSENATION FOR ANY MENTAL ANGUISH MR. JACOB SUFFERED.

II. PUNITIVE DAMAGES

YOU MAY ALSO AWARD PUNITIVE DAMAGES IF MR. JACOB PROVED BY CLEAR AND CONVINCING EVIDENCE THAT SIGNAL OR ITS HIRED GUARDS ACTED WITH MALICE OR WITH A WILLFUL, WANTON OR RECKLESS DISREGARD FOR THE SAFETY OF MR. JACOB.

"CLEAR AND CONVINCING EVIDENCE" MEANS THAT THE EVIDENCE IS SO STRONG THAT IT LEADS YOU TO A FIRM BELIEF OR CONCLUSION, WITHOUT HESITATING, AS TO WHAT THE FACTS ARE AND THAT MR. JACOB'S CLAIMS ARE TRUE.

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FOR PURPOSES OF THIS CLAIM, "MALICE" IS WHEN A CORPORATION INTENTIONALLY DOES SOMETHING WRONG WITHOUT HAVING A VALID REASON OR EXCUSE. “RECKLESS DISREGARD” MEANS WHEN A PERSON KNOWS THAT A RISK OF EMOTIONAL DISTRESS WOULD PROBABLY RESULT FROM HIS CONDUCT AND THEN DISREGARDS THAT RISK AND THE HARM THAT MAY OCCUR AS A RESULT.

DRAFT

SIGNAL'S CROSSCLAIM

CERTAIN WITNESSES HAVE TESTFIED ABOUT IMMIGRATION FILINGS MR. BURNETT MADE FOR A NUMBER OF SIGNAL H-2B WOKERS IN JUNE OF 2007. SIGNAL'S CROSSCLAIM AGAINST BURNETT IS AS A RESULT OF SOME OF THOSE FILINGS AND SUBSEQUENT ACTIONS BY UNIDENTIFIED WORKERS AS A RESULT OF THOSE FILINGS. YOU MAY CONSIDER SUCH TESTIMONY IN SIGNAL'S CROSSCLAIM AGAINST BURNETT AND IN BURNETT'S DEFENSE AGAINST THE CROSSCLAIM. YOU SHOULD NOT, HOWEVER, CONSIDER THOSE PARTICULAR FILINGS IN DECIDING THE PLAINTIFFS' CLAIMS AGAINST ALL DEFENDANTS.

I WILL NOW INSTRUCT YOU ON SIGNAL'S CROSSCLAIM.

DRAFT

CROSSCLAIM ONE: INDEMNITY

SIGNAL ASSERTS CLAIMS AGAINST BURNETT AND DEWAN FOR INDEMNITY. BURNETT AND SIGNAL DENY THESE CLAIMS.

A. APPLICABLE LAW

INDEMNITY ALLOWS A PARTY WHO HAS BEEN HELD LEGALLY RESPONSIBLE FOR INJURIES TO A PERSON TO SHIFT THE LOSS TO ANOTHER PARTY OR PARTIES.

IN ORDER TO PREVAIL ON ITS CLAIM FOR INDEMNITY, SIGNAL MUST PROVE THE FOLLOWING BY A PREPONDERANCE OF THE EVIDENCE:

1. SIGNAL OWES A LEGAL OBLIGATION TO PLAINTIFFS IN THE MAIN ACTION;
2. SIGNAL WAS NOT AT FAULT IN INCURRING THE LEGAL OBLIGATION TO PLAINTIFFS; AND
3. IN ALL FAIRNESS, DEWAN AND/OR BURNETT SHOULD INDEMNIFY SIGNAL FOR THE OBLIGATION OWED TO PLAINTIFFS

B. DAMAGES

IF SIGNAL HAS PROVED THE REQUIREMENTS LISTED ABOVE, SIGNAL IS ENTITLED TO DAMAGES IN THE AMOUNT OF THE LEGAL OBLIGATION OWED TO PLAINTIFFS.

DRAFT

CLOSING INSTRUCTIONS

27. IT IS YOUR SWORN DUTY AS JURORS TO DISCUSS THE CASE WITH ONE ANOTHER IN AN EFFORT TO REACH AGREEMENT IF YOU CAN DO SO. EACH OF YOU MUST DECIDE THE CASE FOR YOURSELF, BUT ONLY AFTER FULL CONSIDERATION OF THE EVIDENCE WITH THE OTHER MEMBERS OF THE JURY. WHILE YOU ARE DISCUSSING THE CASE, DO NOT HESITATE TO RE-EXAMINE YOUR OWN OPINION AND CHANGE YOUR MIND IF YOU BECOME CONVINCED THAT YOU ARE WRONG. HOWEVER, DO NOT GIVE UP YOUR HONEST BELIEFS SOLELY BECAUSE THE OTHERS THINK DIFFERENTLY, OR MERELY TO FINISH THE CASE.

28. REMEMBER THAT IN A VERY REAL WAY YOU ARE THE JUDGES—JUDGES OF THE FACTS. YOUR ONLY INTEREST IS TO SEEK THE TRUTH FROM THE EVIDENCE IN THE CASE.

29. WHEN YOU RETIRE TO THE JURY ROOM TO DELIBERATE, YOU MAY TAKE WITH YOU THESE INSTRUCTIONS AND THE EXHIBITS THAT THE COURT HAS ADMITTED INTO EVIDENCE. SELECT YOUR FOREPERSON AND CONDUCT YOUR DELIBERATIONS. YOU MUST NOT COMMUNICATE WITH OR PROVIDE ANY INFORMATION TO ANYONE, BY ANY MEANS, ABOUT THIS CASE. YOU MAY NOT USE ANY ELECTRONIC DEVICE OR MEDIA, SUCH AS A CELL PHONE, IPAD OR COMPUTER; THE INTERNET, ANY INTERNET SERVICE, OR ANY TEXT OR INSTANT MESSAGING SERVICE; OR ANY INTERNET CHAT ROOM, BLOG, OR WEBSITE SUCH AS FACEBOOK, MYSPACE, LINKEDIN, YOUTUBE OR TWITTER,

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TO COMMUNICATE TO ANYONE ANY INFORMATION ABOUT THIS CASE OR TO CONDUCT ANY RESEARCH ABOUT THIS CASE, UNTIL I ACCEPT YOUR VERDICT.

30. IF YOU RECESS DURING YOUR DELIBERATIONS, FOLLOW ALL INSTRUCTIONS THAT THE COURT HAS GIVEN YOU ABOUT YOUR CONDUCT DURING THE TRIAL.

31. IF YOU WANT TO COMMUNICATE WITH ME AT ANY TIME, PLEASE GIVE A WRITTEN MESSAGE TO THE BAILIFF, WHO WILL BRING IT TO ME. I WILL THEN RESPOND AS PROMPTLY AS POSSIBLE EITHER IN WRITING OR BY MEETING WITH YOU IN THE COURTROOM. I WILL ALWAYS FIRST SHOW THE ATTORNEYS YOUR QUESTION AND MY RESPONSE BEFORE I ANSWER YOUR QUESTION.

32. AFTER YOU HAVE REACHED A VERDICT, YOU ARE NOT REQUIRED TO TALK WITH ANYONE ABOUT THE CASE.

33. I HAVE PREPARED TWO VERDICT FORMS FOR YOUR CONVENIENCE AND TO AID YOU IN REACHING A UNANIMOUS DECISION. YOU WILL COMPLETE THESE VERDICT FORMS IN TWO STAGES. THUS, I HAVE CAPTIONED THEM JURY VERDICT FORM STAGE ONE AND JURY VERDICT FORM STAGE TWO.

34. WHEN YOU RETIRE TO THE JURY ROOM IN JUST A FEW MINUTES, YOU WILL TAKE WITH YOU JURY VERDICT FORM STAGE ONE. DURING STAGE ONE, YOU WILL DECIDE WHETHER THE PLANTIFFS OR THE PLAINTIFFS IN CROSS

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CLAIM HAVE PROVEN THEIR CASE AGAINST ANY OF THE DEFENDANTS AND COMPLETE JURY VERDICT FORM STAGE ONE.

35. AFTER YOU HAVE REACHED YOUR UNANIMOUS VERDICT ON JURY VERDICT FORM STAGE ONE, YOUR FOREPERSON MUST FILL IN YOUR ANSWERS TO THE WRITTEN QUESTIONS ON JURY VERDICT FORM STAGE ONE AND SIGN AND DATE THE FORM. YOU WILL THEN RETURN JURY VERDICT FORM STAGE ONE TO ME.

36. IF YOUR ANSWERS TO JURY VERDICT FORM STAGE ONE SHOW THAT YOU HAVE FOUND THE PLAINTIFFS OR THE CROSS CLAIMANTS HAVE PROVEN THEIR CASE, I WILL PROVIDE TO YOU JURY VERDICT FORM STAGE TWO AND YOU WILL AT THAT TIME DETERMINE THE DAMAGES TO BE AWARDED. YOU WILL THEN RETURN JURY VERDICT FORM STAGE TWO TO ME.

37. YOUR VERDICT IN STAGE ONE AND STAGE TWO MUST REPRESENT THE CONSIDERED JUDGMENT OF EACH JUROR. YOUR VERDICT IN STAGE ONE AND STAGE TWO MUST BE UNANIMOUS ON EACH AND EVERY QUESTION YOU ARE CALLED ON TO DECIDE.

38. YOU MAY NOW RETIRE TO THE JURY ROOM TO CONDUCT YOUR DELIBERATIONS AND ANSWER THE QUESTIONS ON JURY VERDICT FORM STAGE ONE.

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PAGE BREAK

Chapter 3 : Causes of Action[323]

I. Trafficking Victims Protection Reauthorization Act of 2003, 22 U.S.C. § 7101 (2004) (TVPRA)

A. Background

Congress enacted the Trafficking Victims Protection Act of 2000 ("TVPA") to combat human trafficking in the United States.[324] The TVPA served a dual purpose: it strengthened the criminal laws used against traffickers and increased the protections offered to victims.[325]

In 2003, Congress passed the Trafficking Victims Protection Reauthorization Act of 2003 ("TVPRA").[326] The TVPRA added a provision to the TVPA allowing trafficked individuals to sue their traffickers in civil court for selected violations of Chapter 77.[327] The TVPRA became the most comprehensive and powerful tool for trafficking victims in U.S. civil courts.

Congress further expanded and strengthened the provisions of the 2003 TVPRA in the 2005 and 2008 William Wilberforce Trafficking Victims Protection Reauthorization Acts.[328] These Reauthorizations aimed to "give continuing effect to the content and aspirations of the 13th Amendment to the Constitution."[329] The 2008 TVPRA enhanced the law in two critical ways: first, by significantly expanding the civil cause of

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323 *See generally* Kathleen Kim & Kusia Hreshchyshyn, *Human Trafficking Private Right of Action: Civil Rights for Trafficked Persons in the United States,* 16 HASTINGS WOMEN'S L.J. 71 (2004) (providing further analysis of the trafficking private right of action and other causes of action used in trafficking civil suits).

324 *See* PUB. L. 106-386 (2000).

325 *See id*. at 22 U.S.C. § 7101 (2000) ("Purposes and Findings"). Scholars dispute the effectiveness and, to some extent, the integrity of these protections, however. *See, e.g.,* Note, *Developments in the Law: Jobs and Borders,* 118 HARVARD L. REV. 2171, 2195-96 (2005) (noting the TVPA's high bar for who "counts" as a victim worthy of protection and suggesting that the policy is "no longer protection, but protection for the sake of prosecution"); Wendy Chapkis, *Trafficking, Migration, and the Law: Protecting Innocents, Punishing Immigrants,* 17 GENDER AND SOC'Y 923, 924 (2003) (arguing that the TVPA uses "sleights of hand" to offer protection to vulnerable women and children forced from their homes into sexual exploitation while denying the same protection to "economic migrants who are understood to be men" who willfully violated national borders). The relief offered to victims is often conditioned on their participation in criminal legal proceedings against their traffickers.

326 *See* PUB. L. 108-193 (2003).

327 *See id.* § 4(a)(4)(A) (adding 18 U.S.C. § 1595). The 2003 TVPRA also added human trafficking crimes to the list of predicate offenses for RICO charges and adds "trafficking in persons" to the definition of racketeering activity. *See id.* § 5(b) (amending 18 U.S.C. § 1961(1)(A)). For more information on bringing RICO trafficking claims, see Chapter 3 § IV.

328 *See* PUB. L. 109-164 (2006); PUB. L. 110-457 (2008).

329 H.R. REP. NO. 110-430, at 35 (2007).

action, and, second, by extending liability to those who "financially benefit[] from" Chapter 77 crimes.[330] The civil provision of the TVPRA, as amended in 2008, allows individuals to bring suit for *any* violation of Chapter 77, and against *anyone* who benefits financially from the violation.[331]

Congress amended the law again in 2013, adding a section enhancing penalties for tampering with immigration documents in the course of violating the Immigration and Nationality Act.[332]

B. Civil Remedy for Violation of the TVPRA

Until 2008, victims could only bring civil causes of action for forced labor (18 U.S.C. § 1589), trafficking into servitude (18 U.S.C. § 1590), and sex trafficking (18 U.S.C. § 1591).[333] The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 expanded the scope of possible civil claims to include *all* provisions in Chapter 77.[334] In addition to forced labor, trafficking into servitude, and sex trafficking, civilly actionable violations now include involuntary servitude,[335] obstructing enforcement,[336] enticement,[337] and benefitting financially from human trafficking.[338]

By creating civil liability for deriving financial benefit from trafficking crimes, the 2008 TVPRA expanded the range of possible defendants, as well as the offenses for which defendants could be held liable. This was confirmed in 2011, when a court denied defendants' motion to dismiss a claim under 18 U.S.C. § 1589, holding that "the TVPA

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330 18 U.S.C. § 1593A (2008). The 2008 Reauthorization also granted the U.S. extraterritorial jurisdiction over certain trafficking offenses in 18 U.S.C. § 1596.

331 *See* 18 U.S.C. § 1595(A) (2008). It is important to note some courts have found that civil liability for criminal trafficking offenses only applies to offenses committed after the 2003 Reauthorization. *See Ditullio,* 662 F.3d at 1094. For more discussion of pre-enactment conduct, *see* Order and Reasons at 16, *Abraham v. Singh, et al*., No. 2:04-cv-00044 (E.D. La. July 5, 2005).

332 *See* 18 U.S.C. § 1597 (2013).

333 *See* 18 U.S.C. § 1595 (2008) (amending 18 U.S.C. § 1595 (2003)). Public Law 110–457 struck out "of section 1589, 1590, or 1591" from 18 U.S.C. § 1595 and inserted "(or whoever knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of this chapter)" after "perpetrator." *See* Pub. L. 110–457, § 221(2)(A) (2008).

334 *See* 18 U.S.C. § 1595 (2008).

335 *See* 18 U.S.C. §§ 1584; 1595 (2008).

336 *See* 18 U.S.C. §§ 1581(b); 1595 (2008). Congress added a part (b) on to many of the Chapter 77 crimes, making obstruction of justice a separate crime, providing that "[w]hoever obstructs, or attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be liable to the penalties prescribed in subsection (a) [of this Chapter 77 crime]." 18 U.S.C. § 1581(b) (2008).

337 *See* 18 U.S.C. §§ 1583, 1595 (2008).

338 *See* 18 U.S.C. §§ 1593(A), 1595 (2008).

not only protects victims from the most heinous human trafficking crimes, but also various additional types of fraud and extortion leading to forced labor."[339]

C. Making A Claim

18 U.S.C. § 1595 allows a victim of a violation of Chapter 77 to bring a civil action "against the perpetrator (or whoever knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of this chapter) in an appropriate district court of the United States . . . ."[340]

An individual may bring a TVPRA claim regardless of whether the government is pursuing a criminal investigation or prosecution. However, any civil action filed under section 18 U.S.C. § 1595 will be stayed if a criminal action arises out of the same occurrence.[341]

As of the date of this publication, 144 civil lawsuits have been filed under the TVPRA.[342] Their outcomes have varied: seven ended in a judgment for plaintiff; 15 ended in a default judgment; 50 settled without trial; 20 were voluntarily dismissed, and 15 ended in an involuntary dismissal or a judgment for the defendant. There are currently 32 TVPRA cases pending. An additional five cases were closed or consolidated.

D. The Scope of "Force"

The question of what constitutes "force" is at the center of TVPRA claims brought under 18 U.S.C. § 1589. Forced labor includes labor obtained "by means of force, threats of force, physical restraint, or threats of physical restraint."[343] The 2008 Reauthorization explicitly amended the forced labor provision to include nonphysical harm, stating that:

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339 *Nunag-Tanedo v. E. Baton Rouge Parish Sch. Bd.*, 790 F.Supp.2d 1134, 1145 (C.D. Cal. 2011). *See also United States v. Rivera*, No. 09–cr–619, 2012 WL 2339318, at *6 (E.D.N.Y. June 19, 2012) (criminal labor convictions upheld where defendants benefitted from services provided by victims).

340 18 U.S.C. § 1595(a) (2008).

341 *See* 18 U.S.C. § 1595(b)(1) (2008). The stay is not automatic, but must be requested by the Department of Justice. In some cases, such as *Lunkes v. Yannai*, the defendants requested and obtained a stay while the federal criminal case was on appeal. *See* 882 F.Supp.2d 545, 551 (S.D.N.Y. 2012). For additional discussion, see Chapter 1 § III(C).

342 As of February 2015.

343 18 U.S.C. § 1589 (a)(1) (2008). The previous definition was limited to "threats of serious harm to, or physical restraint against, that person or another person" (18 U.S.C. § 1589 (a)(1) (2000)). At least three courts have interpreted the "serious harm" under the pre-amendment statute to include financial harm, however. *See* Order at 2-3, *Kurian David v. Signal International LLC, et al.*, No. 2:08-cv-01220 (E.D. La. Jan. 6, 2015), citing *Nunag-Tanedo*, 2012 WL 5378742, at *2 and *Sou*, 2011 WL 3207625, at *3-5.

> The term "serious harm" means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm.[344]

Labor may also be defined as forced if it is obtained "by means of the abuse or threatened abuse of law or the legal process."[345] Abuse of the legal process can include threats to deport a victim, as well as threats to force a victim to pay an illegal breach fee.[346] The amended statute defines abuse of the legal process as:

> The term "abuse or threatened abuse of law or legal process" means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.[347]

i. Case Law

Doe v. Howard[348]

In *Doe v. Howard*, a civil case brought in the Eastern District of Virginia, defendants forced the plaintiff into involuntary servitude, sexually abused her, and assaulted her. Defendants defaulted. Based on the allegations in the complaint, the defendants were liable for violations of 18 U.S.C. §§ 1584, 1589, and 1590, and for conspiracy in violation of 15 U.S.C. § 1594. The court found one defendant was found liable under 18 U.S.C. § 1590(b) for obstructing enforcement. Additionally, defendants were found liable for unjust enrichment.

The court awarded both compensatory and punitive damages under the TVPA. The court also awarded damages for emotional distress, forced sexual servitude, forced labor, wage restitution, and unjust enrichment. The total judgment award was $3,306,468 for approximately four months of labor.

Nunag-Tanedo v. East Baton Rouge School Board[349]

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344 18 U.S.C. § 1589 (c)(2) (2008).

345 18 U.S.C. § 1589 (a)(3) (2008).

346 In *Edwards v. Edwards,* for example, the defendants forced the victim to sign a document stating that she would owe the defendants $20,000 if she left their employ. *See* Complaint ¶15, No. 8:12-cv-03761 (D. Md. Dec. 21, 2012).

347 18 U.S§ 1589 (c)(1) (2008).

348 *See* No. 1:11–cv–1105, 2012 WL 3834867, at *1 (E.D. Va. Sept. 4, 2012). It is important to note that the facts in this case occurred in Japan, making this one of the first civil trafficking cases arising under the extraterritorial provisions of U.S. anti-trafficking law. *See id.*

Defendants recruited plaintiffs to teach in the United States under H-1B visas. Defendants then charged plaintiffs exorbitant fees, and threatened plaintiffs with deportation if they did not repay their alleged debts or complained about their treatment.

The court rejected defendants' motion to dismiss under 18 U.S.C. § 1589, holding that "[i]t is sufficient that a defendant's misconduct has created a situation where ceasing labor would cause a plaintiff serious [nonphysical] harm."[350] Furthermore, "the TVPA not only protects victims from the most heinous human trafficking crimes, but also various additional types of fraud and extortion leading to forced labor."[351] The court held a two-week trial in federal court in Los Angeles in December 2012. The jury rejected the central TVPA claim brought by the teachers, but awarded the 347 teachers in the class a total of $4.5 million in other damages. In a press release issued by the Southern Poverty Law Center, the legal director stated, "The jury sent a clear message that exploitive and abusive business practices involving federal guest workers will not be tolerated…. This decision puts unscrupulous recruitment agencies on notice that human beings—regardless of citizenship status—cannot be forced into contracts that require them to pay illegal fees."[352]

United States v. Calimlim[353]

The plaintiff was forced to work as a domestic servant for 19 years. The defendants kept her passport; withheld information about her ability to regularize her immigration status; and threatened her with arrest, imprisonment, or deportation if she tried to escape.[354] A jury convicted the defendants in a federal criminal case. The defendants then appealed on grounds that the statute under which they had been convicted, 15 U.S.C. § 1589, was both unconstitutionally vague and overbroad.

The Seventh Circuit Court of Appeals affirmed the conviction, holding that the terms "serious harm" and "threatened abuse of the legal process" were sufficiently clear, and that even if the appellants "did not know for certain that they would be convicted, the language of the statute alerted them to what was prohibited."[355] The court also held that a

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349 *See* 790 F.Supp.2d at 1136.

350 *Id.* at 1145.

351 *Id.*

352 Press Release, Southern Poverty Law Center, Firm must pay $4.5 million to exploited teachers in precedent-setting SPLC case (Dec. 18, 2012), http://www.splcenter.org/get-informed/news/firm-must-pay-45-million-to-exploited-teachers-in-precedent-setting-splc-case (last visited Jan. 2, 2015).

353 *See* 538 F.3d 706 (7th Cir. 2008).

354 *See id.* at 709 and 713.

355 *Id.* at 711.

threat need not be direct to violate the provision: "[t]aken as a whole, the statute provides ample notice that it prohibits intentionally creating the belief that serious harm is possible, either at defendant's hands or those of others."[356]

The court also distinguished 15 U.S.C. § 1589 from 15 U.S.C. § 1584, which applies only to "servitude procured by threats of physical harm."[357] In contrast to § 1584, "§ 1589 covers nonviolent coercion, and that is what the indictment accused the [Defendants] of doing; there was nothing arbitrary in applying the statute that way."[358] A follow-on civil RICO/TVPA suit ended in a settlement.

United States v. Bradley[359]

Defendants were convicted in a federal criminal case of trafficking plaintiffs from Jamaica to New Hampshire and forcing them to work on a tree farm there. On appeal, defendants argued that "forced labor" could not be proven without evidence of physical force. The First Circuit Court of Appeals affirmed the conviction, stating that the TVPA was intended to encompass "subtle psychological methods of coercion."[360] The court also held that the definition of "coercion" could be different for different people, and that courts should consider a worker's "special vulnerabilities."[361]

United States v. Garcia[362]

United States v. Garcia was the first case in which 18 U.S.C. § 1589 of the TVPA survived a "void for vagueness" challenge. The government indicted various farm labor contractors for trafficking Mexican farm laborers to New York State and forcing them to work under threats of violence and deportation.[363] The defendants sought to dismiss the forced labor charges against them, arguing that the TVPA's undefined nature — specifically, the terms "obtains," "threats of serious harm" and "abuse or threatened abuse of law," made it impermissibly vague.[364] The *Garcia* court rejected the claim,

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356 *Id.*

357 *Id.* at 712.

358 *Id.* (internal citations omitted).

359 *See* 390 F.3d 145. 148 (1st Cir. 2004).

360 *Id.* at 150-51 (discussing various interpretations of coercion under the Act).

361 *Id.* at 152-53.

362 *See* 02-cr-110S-01, 2003 WL 22956917, at *1 (W.D.N.Y. Dec. 2, 2003).

363 *See id.*

364 *See id.* at *2.

declaring that the statute provided the guidance necessary to overcome the vagueness challenge.[365]

ii. Congressional Record

The 2008 reauthorization codified the fact that the harm threatened by the defendants need not be physical. The 2000 TVPA's House Report also took this approach. The "Purpose and Findings" proclaimed that trafficking crimes included those perpetrated through psychological abuse and nonviolent coercion: "[i]nvoluntary servitude statutes are intended to reach cases in which persons are held in a condition of servitude through nonviolent coercion."[366] The 2000 TVPA thus responded to the restrictive definition set forth in *United States v. Kozminski*, a Supreme Court decision that had limited the definition of involuntary servitude to servitude brought about by threats of physical or legal coercion.[367] The 2000 TVPA's legislative conference report emphasized the Act's intent to "provide federal prosecutors with the tools to combat severe forms of worker exploitation that do not rise to the level of involuntary servitude as defined in *Kozminski*."[368] The forced labor statute, 18 U.S.C. §1589, was one such tool.

E. Application of the TVPRA to Trafficking Outside of the United States

The 2008 Reauthorization added a provision granting U.S. extraterritorial jurisdiction over violations of §§ 1581, 1583, 1584, 1589, 1590, and 1591 if the offender is a U.S. national, lawful alien, or "present" in the United States.[369] In addition, in 2010, a court in the Eastern District of New York stated that:

> Congress conferred jurisdiction over human trafficking and forced labor prosecutions based on events occurring abroad, as long as the defendant is a citizen, a permanent resident, or present in the United States. *See* 18 U.S.C. § 1596. Since § 1595 provides a civil remedy for victims of violations of the

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365 *See id.* at *3-6. The court held that the TVPA's forced labor statute was sufficiently definite to provide fair notice to criminal defendants because it required scienter: "Since § 1589 only applies to a person who 'knowingly provides or obtains the labor or services of a person' … the issue of notice is properly 'ameliorated.'" *Id.* at *3 (emphasis added). Additionally, the court stated that nothing in the statute encouraged indiscriminate over-enforcement by law officials: "There is nothing in § 1589 that would cause one to conclude that …'it furnish[es] a … tool for harsh and discriminatory enforcement …'" *Id.* at *6 (quoting *Papachristou v. City of Jacksonville,* 405 U.S. 156, 170 (1972)).

366 Trafficking Victims Protection Act of 2000, PUB. L. 106-386 § 102(b)(13) (2000).

367 *See* 487 U.S. 931, 952 (1988).

368 H.R. Rep. No. 106-939, at 101 (2000).

369 *See* 18 U.S.C. § 1596(a) (2008).

> criminal prohibitions on human trafficking and forced labor, it would now appear to cover claims arising both in the United States and abroad.[370]

Where a defendant has transported workers from abroad to the United States, or recruited them abroad to work in the United States, and trafficked them, the TVPRA will apply whether the alleged conduct took place before or after 2008.[371]

The Supreme Court's 2013 decision in *Kiobel v. Royal Dutch Petroleum Company* limits the extent to which trafficking claims may be applied extraterritorially, however.[372] In that decision, the Court held that "the presumption against extraterritoriality applies to claims under the ATS, [unless] the statute rebuts the presumption."[373] In other words, unless a statute expressly indicates otherwise, it will not be applied to claims that do not "touch and concern the territory of the United States…with sufficient force to displace the presumption against extraterritorial application."[374] Applying the "same logic" as the Court's decision in *Kiobel,* in 2014 the Southern District of Texas in *Adhikari v. Daoud & Partners, et al.* held that the TVPRA does not apply extraterritorially to U.S. corporate defendants for actions that occurred outside of the United States prior to the enactment of section 1596.[375] The TVPRA claim against another defendant in *Adhikari*, a labor recruiter and broker, was dismissed on grounds that the defendant was neither a U.S. national nor permanent resident, and did not maintain a presence in the United States.[376] The court held that applying the

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370 *Velez v. Sanchez*, 754 F.Supp.2d 488, 497, n.7 (E.D.N.Y. 2010) (citing *Adhikari,* 697 F.Supp.2dat 683).

371 *See* Report and Recommendation on Signal's Motion for Partial Summary Judgment, *Samuel v. Signal Int'l, Inc.*, No. 1:13-cv-00323, at * 7 (E.D. Tex. Jan. 26, 2015) (holding that "transporting or recruiting of workers into the United States is a domestic—not extraterritorial—application of the TVPRA. The fact that the Plaintiffs are foreign or some of the acts may have occurred abroad does not change the domestic character of [such] claims.").

372 *See* 133 S.Ct. 1659, 1669 (2013).

373 *Id.*

374 *Id*.

375 *See* 994 F.Supp.2d 831, 834, 837, 839 (S.D. Tex. 2014). Despite expressing "concern[] that the TVPRA's purpose will be undermined if United States defendants escape liability so long as their acts of human trafficking took place outside of United States borders prior to 2008," it "[n]evertheless . . . cannot distinguish the TVPRA's protection of victims of human trafficking from the ATS's protection of aliens for violations of the law of nations." *Id.* at 834. The court concluded that "[t]he conferral of extraterritorial jurisdiction in Section 1596 wrought a substantive change in the law, and cannot be applied retroactively." *Id*. at 840.

376 *See Adhikari v. Dauoud & Partners, et al.,* No. 09-cv-1237, 2013 WL 4511354, at *9 (S.D. Tex. Aug. 23, 2013).

extraterritorial section of the TVPRA could not be applied to such a defendant without exceeding the statute's extraterritorial limits.[377]

F. Pleading Requirements

Courts have held uniformly that the heightened pleading requirements of Federal Rule of Civil Procedure 9 do not apply to claims brought under the TVPRA.

G. Retroactive Applications

The general presumption against retroactive application of legislation prevents courts from directly applying the civil provision of the TVPRA to events occurring prior to its enactment in 2003.[378] Although legislators contemplated including a private right of action in the 2000 TVPA, the final version of the bill did not include the provision.

In 2011, Ninth Circuit Court of Appeals held that the civil TVPA provision could not apply to activity preceding its enactment.[379] A court rejected both "retroactive consequence" and "continuing violation" theories.[380] Though 18 U.S.C. § 1595 attaches civil penalties to activity that was criminal prior to its enactment, the court held that allowing civil remedies for activity preceding the enactment of 18 U.S.C. § 1595 would impermissibly "attach[] new legal burdens" to preceding conduct.[381] The court held that "[n]o authority supports the position that a civil provision increasing liability for the entirety of a continuing violation does not have a retroactive consequence."[382]

Later in 2011, the U.S. District Court for the District of Columbia held that defendants could not be held civilly liable under sections other than those enumerated in the 2003 version of 18 U.S.C. § 1595—namely, §§ 1589, 1590, 1591—for acts preceding the 2008 amendment, which expanded § 1595 to cover all Chapter 77 violations.[383] The court rejected plaintiffs' claim under 18 U.S.C. § 1584 for acts the defendants had committed prior to the 2008 amendment to the TVPA, holding that "[p]ermitting private

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377 *See id.*

378 Only clear congressional intent allowing retroactivity, established by explicit statutory language, will overcome the presumption against retroactivity. In *Landgraf v. USI Film Products*, the Supreme Court stated, "prospectivity remains the appropriate default rule." 511 U.S. 244, 245 (1994). "Congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result' . . . ." *Id.* at 272 (quoting *Bowen v. Georgetown Univ. Hospital,* 488 U.S. 204, 208 (1988)).

379 *See Ditullio*, 662 F.3d at 1102.

380 *See id.* at 1100-02.

381 *Id.* (quoting *Landgraf*, 511 U.S. at 281 (internal citations omitted)).

382 *Id.* at 1102.

383 *See Doe v. Siddig*, 810 F.Supp.2d 127, 136 (D.D.C. 2011).

litigants to invoke Section 1595 to seek relief for violations of Section 1584 predating [the 2008 expansion of 18 U.S.C. § 1595] would undoubtedly 'increase a party's liability for past conduct.'"[384]

Courts have nevertheless integrated aspects of the TVPRA in considering trafficking claims predating its enactment. In *Doe I v. Reddy,*[385] courts allowed plaintiffs to use the TVPA's expanded definition of coercion in claims filed under the Alien Tort Claims Act.[386]

H. Statute of Limitations

The statute of limitations for a civil trafficking case under 18 U.S.C. § 1595 is ten years.[387]

I. Damages

The TVPRA civil remedy provides for damages and reasonable attorneys' fees.[388] The Ninth and the Tenth Circuit Courts of Appeal have upheld the availability of punitive damages in civil trafficking cases. Some sample damages awards include:

- *Aguilar v. Imperial Nurseries*: $3,000/day Compensatory (Forced Labor), $6,000/day Punitive; Total Awards from $391,500 to $827,000 per person;[389]
- *Mazengo v. Mzengi*: $510,249.21 in treble damages under the Maryland Wage and Hour Law; $45,101.69 in compensatory damages for unjust enrichment; $19,961.64 in compensatory damages for fraudulent inducement; $250,000.00 in compensatory damages for emotional distress; $150,000.00 in punitive damages; $84,036.25 in attorney's fees; Total Award = $1,059,348.79;[390] and
- *Peña Canal v. de la Rose Dann*: $340,746.75 in back wages (reduced by criminal restitution order of $123,740.34); $92,400 emotional distress; $309,406.41 punitive; Total Award = $618,812.82.[391]

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384 *Siddig*, 810 F.Supp.2d at 135 (quoting *Landgraf v. USI Film Prods.*, 511 U.S. 244, 283-84 (1994) (internal citations omitted)).

385 *See* No. 02-cv-05570, 2003 WL 23893010, at *1 (N.D. Cal. Aug. 4, 2003).

386 The Alien Tort Claims Act is discussed in section 3 of Chapter 3.

387 *See* 18 U.S.C. §1595(c) (2008). The effective date for this amendment is June 20, 2009.

388 *See* 18 U.S.C. §1595(a) (2008).

389 *See* No. 3:07–cv–193, 2008 WL 2572250, at *1 (D. Conn. May 28, 2008).

390 *See* No. 07-cv-756, 2007 WL 8026882, at *10 (D.D.C. Dec. 20, 2007).

391 *See* No. 09-cv-03366, 2010 WL 3491136, at *4 (N.D. Cal. Sept. 2, 2010).

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E. State Anti-Trafficking Provisions

i. Background

Every state and the District of Columbia have enacted anti-trafficking legislation, making trafficking a felony offense.[412]

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412 *See* Polaris Project, 2014 State Ratings on Human Trafficking Laws, http://www.polarisproject.org/what-we-do/policy-advocacy/national-policy/state-ratings-on-human-trafficking-laws#statereports (last visited Jan. 11, 2015); Center for Women Policy Studies, US Policy Advocacy to Combat Trafficking (US PACT), State Laws/Map of the United States, http://www.centerwomenpolicy.org/programs/trafficking/map/default_flash.asp (last visited Jan. 2, 2015). Chart below compiled from reports by the Polaris Project and the Center for Women Policy Studies.

State Anti-Trafficking Civil Remedies

At the time of this writing, thirty-five states, plus the District of Columbia, explicitly allow state-level private causes of action against traffickers: Alabama, Alaska, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Kentucky, Louisiana, Maine, Massachusetts, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, New Jersey, New Mexico, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin.[413] These civil statutes vary in substance and scope.

State	Bill	Statute	When Enacted	Damages Allowed	Who May Sue	Stat. of Lim.	Notes
AL	HB 432	Ala. Code 13A-6-157	2011	Compensatory, punitive, injunctive, other; treble on proof of actual damages where defendant's acts are willful and malicious	All	-	-
AK	HB 73, SB 22	Alaska Code 09.10.065 (4), (5)	2013	Compensatory, punitive only upon a showing that defendant's conduct was outrageous or evidenced reckless indifference to the interest of another person.	All	-	-
AR	HB 1203	Ark. Code § 16-118-109	2013	Actual, compensatory, or punitive damages; injunctive relief; or "any other	All		Statute of limitations period tolled until

[413] *See* Polaris Project, 2014 State Ratings on Trafficking Laws, http://www.polarisproject.org/storage/2014SRM_pamphlet_download.pdf (last visited Feb. 20, 2015). Polaris Project reviews the status of state laws on a yearly basis, including identifying civil damages provisions. *See id.*

State	Bill	Statute	When Enacted	Damages Allowed	Who May Sue	Stat. of Lim.	Notes
				appropriate relief." Treble damages upon a showing that defendant's acts were willful and malicious. Fees may also be awarded			minor plaintiffs reach age 18.
CA	AB 22	Cal. Civ. Code 52.5(2011)	2005	Actual, compensatory, or punitive damages; injunctive relief; or "any other appropriate relief"; fees and costs.	All	5 years, or 8 years after minor plaintiff reaches age of 18 years	-
CO	HB 14-1273	Col. Civ. Code §13-21-127	2014	Compensatory damages	All		
CT	SB 153	Conn. Gen. Stat. 52-571i (2011)	2006	Statutory damages, not more than $1000 per day, fees	All	-	-
DE	SB 197		2014	Compensatory and punitive damages, injunctive relief, and "any other appropriate relief"; fees.	All	5 years	-
DC		D.C. Code 22-1840	2011	Actual, punitive, compensatory damages; injunctive relief, other	All	-	-
FL	SB 250	Fla. Stat. Ann.	2006	Threefold amount of profit gained	All	-	Includes human

State	Bill	Statute	When Enacted	Damages Allowed	Who May Sue	Stat. of Lim.	Notes
		772.104		from trafficking, at a minimum of $200, and fees and costs.			trafficking as RICO offense. Punitive damages are not permitted.
HI		Haw. Rev. Stat. Ann. 663J- 3	2011	Economic, noneconomic, and exemplary damages, as well as fees and costs.	Sex trafficking victims		
IL	HB 1299	740 Ill. Comp. Stat. 128 §§ 5, 15 (2011)	2006	Declaratory, injunctive, costs, fees, compensatory, economic loss, punitive, gross revenue	Sex trafficking victims	10 years	
IN	HB 1155	Ind. Code Ann. 35-42-3.5-3(a) (2011)		Costs, fees, punitive	All	2 years	
KY	SB 43	Ky. Rev. Stat. Ann. 431.082	2007	Compensatory and punitive damages, fees and costs.	All	5 years	
LA	SB 88	§46:2163	2013	Actual, compensatory, and punitive damages; injunctive relief; fees and costs; and "any other appropriate relief." Treble damages may be awarded where defendant's actions are shown to have been "willful and	All		

State	Bill	Statute	When Enacted	Damages Allowed	Who May Sue	Stat. of Lim.	Notes
				malicious."			
ME	LD 461	Me. Rev. Stat. Ann. Tit. 5, 4701 (2) (2011)	2008	Compensatory and punitive damages, injunctive relief, "any other appropriate relief," and fees and costs	All	10 years, from the age of 18 for a minor plaintiff	
MA	HB 3808	260.4D(a)	2011	Actual, compensatory, and punitive damages; injunctive relief; fees and costs; and "any other appropriate relief." Treble damages may be awarded where defendant's actions are shown to have been "willful and malicious."	All	3 years, from the age 18 for a minor plaintiff	-
MN		Minn. Stat. 609.284 (2), 611A.81	2011	Punitive damages and fees and costs.	All	-	§ 609.284 (3) also provides for dissolution or reorganization of a corporation or business entity convicted of trafficking
MS	HB 673	§ 97-3-54.6	2013	Treble actual damages, punitive	All		

State	Bill	Statute	When Enacted	Damages Allowed	Who May Sue	Stat. of Lim.	Notes
				damages, and fees and costs.			
MO	HB 214	Mo. Rev. Stat. 566.223	2011	Actual and punitive damages, fees and costs	All	10 years from the end of the criminal proceeding, the "victim's emancipation from the defendant," or from the date of a minor plaintiff's 18th birthday	Can only be filed against people found guilty under the criminal provision
NV	AB 383	NRS 41.1399	2007	Actual, compensatory, or punitive damages; injunctive relief; "any other appropriate remedy"; and fees and costs. Treble damages may be awarded where defendant's actions are found to be "willful and malicious."	All	-	Statute of limitations is tolled in several enumerated circumstances
NH	SB	RSA	2014	"[D]amages,	All	10	

State	Bill	Statute	When Enacted	Damages Allowed	Who May Sue	Stat. of Lim.	Notes
	617	633:11		injunctive relief, or other appropriate relief" and fees and costs		years, from the age of 18 for minors	
NJ	A 3352	2C:13-8.1	2013	"appropriate legal or equitable relief," including compensatory and punitive damages; fees and costs.	All		
NM	HB 304	§ 30-52-1.1.	2013	Actual, compensatory, or punitive damages; injunctive relief or "any other appropriate relief" and fees and costs. Treble damages may be awarded upon a showing that defendant's actions were "willful and malicious."	All	10 years, from the age of 18 for minors	
OK	HB 1021	Okla. Stat. Ann. Tit. 21, 748.2	2008	Actual and punitive damages; fees and costs.	All	-	Statute of limitations does not begin until after certain enumerated circumstances.
OR	SB 578	ORS 30.867	2007	"[S]pecial and general damages,	All	6 years	-

State	Bill	Statute	When Enacted	Damages Allowed	Who May Sue	Stat. of Lim.	Notes
				including damages for emotional distress", punitive damages, and fees			
PA	SB 75	§ 3051	2014	Actual, compensatory, and punitive damages; injunctive relief; or "[a]ny other appropriate relief"; fees and costs. Treble damages may be awarded on a showing that defendant's actions were "willful and malicious."	All		
SC	H.3757	§ 16-3-2060	2012	Actual, compensatory, and punitive damages; injunctive relief; or "[a]ny other appropriate relief"; fees and costs. Treble damages may be awarded on a showing that defendant's actions were "willful and malicious."	All		Statute of limitations tolled under circumstances provided in law.
SD		§ 20-9-46	2014	Not specified.	All		
TN	HB 2489	§ 39-13-314	2012	Actual, compensatory, and punitive damages; injunctive relief; or "[a]ny other appropriate relief"; fees and costs.	All		

State	Bill	Statute	When Enacted	Damages Allowed	Who May Sue	Stat. of Lim.	Notes
TX	HB 533	Tex. Civ. Prac. & Rem. Code, 98.002, 3	2009	Actual and exemplary damages; costs and fees.	All	-	-
UT		§ 77-38-15	2014	Actual, compensatory, and punitive damages; injunctive relief; or "[a]ny other appropriate relief"; fees and costs. Treble damages may be awarded on a showing that defendant's actions were "willful and malicious."	All	10	Law provides dates from which statute of limitations runs, as well as tolling circumsta nces.
VT	H. 153	Vt. Stat. Ann. Tit. 13, 2662	2011	Actual and punitive damages, injunctive relief, fees and costs.	All	-	-
WA	HB 1175	RCW 9A.82.100 (1)(a)	2003	"[D]amages and the costs of the suit, including reasonable investigative and attorneys' fees. . . ."	All	3 years	-
WV	HB 2814	§ 61-2-17	2013	Actual, compensatory, and punitive damages; injunctive relief; or "[a]ny other appropriate relief"; fees and costs. Treble damages may be awarded on a showing that	All		

State	Bill	Statute	When Enacted	Damages Allowed	Who May Sue	Stat. of Lim.	Notes
				defendant's actions were "willful and malicious."			
WI	SB 292	Act 116, Sec. 35, §940.302, §948.051.	2008	Actual damages and punitive damages up to three times actual damages, and fees.	Anyone incurring injury or death, child victims	-	-

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