CIVIL LITIGATION ON BEHALF OF VICTIMS OF HUMAN TRAFFICKING

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ABOUT THE AUTHORS

Kathleen Kim is the director of the Human Trafficking Project at Lawyers’ Committee for Civil Rights of the San Francisco Bay Area. She founded the project as a Skadden Fellow in October 2002, the first of its kind to focus on the civil needs of trafficked persons. In addition to representing trafficked persons in civil litigation, Kathleen assists her clients to access protection and benefits under the TVPA and TVPRA. She gives technical assistance and trainings on trafficking civil litigation as well as general human trafficking issues both locally and nationally, to community-based organizations, social and legal service providers, and government agencies. She co-coordinates a coalition of San Francisco Bay Area anti-trafficking NGOs and participates in a regional Task Force coordinated by the Northern California AUSA office to develop an effective response to trafficking cases. In collaboration with other NGOs, Kathleen meets with state and federal legislators and Department of Justice officials to evaluate implementation of current laws aimed to combat human trafficking and to recommend human rights-focused policy reforms that broaden protections to trafficking victims.

Kathleen’s caseload includes one of the first cases to utilize the newly enacted trafficking private right of action under the TVPRA. She is co-author of “Civil Litigation on Behalf of Victims of Human Trafficking,” a technical assistance manual for attorneys representing trafficked persons in civil suits. She is also co-author of “Human Trafficking Private Right of Action: Civil Rights for Trafficked Persons in the United States,” to be published in the Winter 2005 volume of the Hastings Women’s Law Journal.

Kathleen received her J.D. from Stanford Law School where she worked as an advanced clinical student on behalf of low-wage immigrant workers and was a member of Stanford Law Review. She was a 2001 Judge M. Takasugi public interest fellow. Prior to law school, Kathleen worked as an ESL instructor for migrant farmworkers and in China’s Shandong Province.

Dan Werner is Litigation Director for the Workers’ Rights Law Center of New York, Inc. (WRLC). The WRLC opened its doors in June 2004 with the support of an Echoing Green Fellowship awarded to Werner and co-founder Tricia Kakalec. The WRLC provides legal representation and community education to low-wage workers in New York State’s Hudson Valley on employment and civil rights matters. The WRLC also provides technical assistance to attorneys representing victims of trafficking in civil litigation.

Werner is a 1996 graduate of the State University at Buffalo School of Law where he received the Law Faculty Award, and he received his B.A. in Anthropology and Spanish from Grinnell College. Werner was an attorney with Farmworker Legal Services of New York from 1998 until 2004. Before then, as a National Association for Public Interest Law Equal Justice Fellow with the Migrant Farmworker Justice Project in Florida, he developed litigation against major citrus companies that resulted in the payment of significant back wages and forced the citrus companies to overhaul their labor practices. Prior to law school, Werner was an Assistant Special Master in the Office of the Court Monitor, U.S. District Court for the District of Puerto Rico, where he worked on the Morales-Feliciano prison reform litigation.

Werner maintains an active federal litigation docket, primarily involving violations of low-wage workers’ employment and civil rights. In his eight years as an attorney for low-wage workers, Werner has recovered over $1.4 million for his clients. His cases have resulted in numerous precedent-setting published opinions benefiting low-wage workers. He has also lectured around the United States on Low-wage worker issues.
Dear Colleagues:

It is with tremendous pleasure that we introduce the first manual on civil litigation for trafficked persons in the United States. Countless hours have been invested into this manual. It represents, however, only a launching point for what we hope to be a continuing discussion around the civil rights of trafficked persons.

There are many people I want to thank that have provided their support through this process. My utmost gratitude to the staff at Lawyers Committee for Civil Rights of the San Francisco Bay Area and the Skadden Fellowship Program for believing in a Civil Rights for Trafficked Persons legal services project. At the time I first proposed the project, in 2001, the original Victims of Trafficking and Protection Act had just been enacted. The public was still unaware of human trafficking, let alone a trafficked person's right to civil relief against the perpetrators. Without the willingness of my host organization and the Skadden Program, to take a chance with a novel issue area, I would lack the experience to substantiate the content of this manual.

Second, my thanks to all the human rights attorneys who challenge the exploitation of economic migrants for their guidance and history of landmark litigation. I am fortunate to be surrounded by them at the Lawyers Committee and to have received mentorship from attorneys at partner civil rights organizations too many to name here. It was through these relationships that I was put in contact with yet another civil rights role model and my co-author, Dan Werner, whose dedication to fighting for the rights of his clients and enabling others to do the same is inspiring.

Third, I am grateful to all the human rights advocates I have had the honor of working with since beginning this project. Members of the Freedom Network and others have endlessly advocated for a victim-focused perspective of modern-day slavery that recognizes civil relief as an essential component of a human rights framework.

Finally, my greatest appreciation goes to my clients. Their inherent strength and determination liberated them from enslavement, and their pursuit of social justice by holding their abusers directly accountable constitutes the driving force behind these cases.

Please feel free to contact me at the Lawyers Committee to provide any further assistance or training on civil rights for trafficked persons.

Sincerely,

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Dear Counselors:

This litigation manual represents the culmination of many months of research, writing, editing, and reworking. Many people have helped and supported me through this process. First, although I have recently helped launch the Workers’ Rights Law Center of New York, Inc, I did the bulk of the work on this project as an attorney with Farmworker Legal Services of New York, Inc. FLSNY Co-Directors Jim Schmidt and Lew Papenfuse, and the entire FLSNY staff, have done exceptional work on behalf of trafficking victims, and have supported this endeavor from the beginning. While at FLSNY, I was also privileged to work with exceptional summer law clerks, all of whom helped with this guide. They are Tosh Anderson, Abe Greene, Kate Griffith, Lara Kasper, John McGoldrick, Dan Nazer, Mónica Ramírez, Daniel Schlanger, and Julia Willdorf. Professor Michael Wishnie of NYU School of Law helped tremendously with a thorough edit of a near-final draft. Others provided support for this effort, including Tricia Kakalec, who was my co-counsel at FLSNY and co-founded the Workers’ Rights Law Center with me, and my wonderful wife, Nan Schivone. Finally, none of this would have happened without the co-authorship, care, and patience of Kathleen Kim of the Lawyers’ Committee for Civil Rights, and the spark and support of Sheila Neville of the Legal Aid Foundation of Los Angeles.

Without question, my inspiration for the work I do on behalf of victims of trafficking remains the brave men and boys who risked their lives fleeing a trafficker’s slave camps in western New York during the Summer of 2001. Javier H., Hector H., Miguel P., S.R.C., Juventino C., Juan G., Jonas G., L.P.R., V.C., and Marcos C. lived the terror of modern-day slavery. Yet they have shown, and continue to show, an unparalleled fortitude and commitment to justice.

I write this shortly after the third anniversary of the attacks of September 11, 2001. In these three years, many of the same people who engaged in public self-congratulations for advancements in the laws protecting victims of trafficking have cynically stripped immigrants of their liberties, weakened labor law protections for immigrant workers, and helped create the conditions abroad that drive men, women, and children to take desperate measures to survive. These are conditions that contribute to modern-day slavery in the United States. Until policy-makers recognize this continuum, stop clamoring for political gain on the backs of trafficking victims, and genuinely seek systemic remedies, the number of slaves in our homeland inevitably will continue to rise.

I am always available to lend a hand to practitioners representing victims of trafficking. If you have any questions about anything in this manual, please call me at (845)331-6615 or e-mail me at dwerner@wnyle.com. Keep up the good work!

Very truly yours,

Daniel Werner
Civil litigation on behalf of trafficked persons is emerging as a powerful tool for providing compensation to victims as well as deterring traffickers by increasing financial disincentives. On December 19, 2003, Congress passed the Trafficking Victims Protection Reauthorization Act, which amends the original Trafficking Victims Protection Act of 2000\textsuperscript{1} to include a private right of action for trafficked persons. The new trafficking-specific cause of action demonstrates clear congressional intent that trafficked persons have the right to individually enforce a remedy for modern-day slavery. In addition to the trafficking civil claim, many U.S. laws, such as federal and state employment laws and tort laws related to forced labor conditions, can provide civil relief to trafficked persons.\textsuperscript{2}

Trafficked persons endure a multitude of abuses resulting in both economic and non-economic losses, including unpaid wages and overtime, and tremendous pain and suffering. Private enforcement of these injuries can result in substantial recovery in the form of compensatory, punitive and other damage awards. Trafficked persons have civil rights to pursue such redress in addition to or in the absence of a criminal investigation or prosecution of the traffickers. The need for relief from a civil action may be even greater in the absence of a criminal prosecution.

Beyond material recovery, trafficked persons may benefit from a civil action by personally holding the traffickers and joint employers accountable for their injuries. In contrast to criminal cases, which are brought by government prosecutors representing the state’s interest to punish the defendant for committing crimes against the state, civil cases are brought by trafficked plaintiffs retaining attorneys to represent their interest in obtaining direct relief. As the actual plaintiff party in the civil case rather than a victim/witness of a crime, the trafficked person ultimately controls the direction of the legal case.

Several civil cases have been brought on behalf of trafficked persons in the United States resulting in successful judgments or settlements. Through the assertion of their civil rights, trafficked persons have gained a fuller recovery and a sense that social justice has been served. The success of these cases would not have been possible without the collaboration of experienced civil litigators with advocates, social service providers and immigration attorneys.

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. 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 clients’ options for civil relief. All those providing services to trafficked persons can inform their clients that they have options for civil relief and assist their clients in finding a competent attorney. However, the unauthorized rendering of legal

\textsuperscript{1}For a background on the Trafficking Victims Protection Act and the immigration relief and benefits available to trafficked persons, please see (the LAFLA manual).

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.

This is a dynamic area of the law addressing a fundamental human right: to be free from slavery. Slavery’s contemporary manifestation, legally termed “human trafficking,” intersects employment and immigration matters as well as domestic and international legal norms. Anti-trafficking civil litigation evokes this complex array of issues. Jurisprudential developments are inevitable. Therefore, this manual should be regarded as a continuous “work in progress.” The authors will provide periodic addenda based on changes in the law and lessons learned from ongoing litigation.
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CHAPTER 1: LOGISTICAL CONCERNS

I. THE “PROS” AND “CONS” OF CIVIL LITIGATION

Attorneys representing victims of trafficking have a responsibility to discuss civil litigation with their clients, and to weigh the “pros” and “cons” of a lawsuit. Absent an effort from the criminal prosecutors to seek restitution from the traffickers, litigation may provide the only means by which victims of trafficking may be “made whole”. Litigation also discourages would-be-traffickers and employers hiring trafficked persons from engaging in these practices.

When considering whether to file litigation on behalf of trafficking victims, attorneys and clients should consider the following factors:

Are there potential defendants who have the resources to satisfy a judgment?
- Is your client available for discovery?
- Are the potential defendants located in the United States?
- Is your client willing to endure years of litigation?
- Are there safety concerns for your client and his/her family?
- Are there other potential plaintiffs?
- How will civil litigation impact the criminal case?
- Do you have the resources to prosecute the civil case? If not, are there firms that may be willing to co-counsel?
- Will civil litigation have any impact on your client’s immigration status?
- Will the criminal prosecutors seek restitution on behalf of your client and others?

II. FINDING HELP FROM, AND CO-COUNSELING WITH, OTHER ATTORNEYS

Attorneys considering litigation on behalf of trafficking victims are encouraged to seek the assistance of other attorneys who have experience in this area. Please contact the authors of this manual for advice and referrals in your geographic area.

Attorneys with limited resources should also consider seeking pro bono assistance from law firms. A good place to start is the website for the ABA Standing Committee on pro bono and public service: http://www.abanet.org/legalservices/probono/home.html

III. WORKING WITH A PARALLEL CRIMINAL PROSECUTION

§ 1.1 How restitution in the criminal case may impact the civil action

Under the Mandatory Victim Restitution Act of 1996\(^1\) restitution is now mandatory in many cases. Therefore, it must be addressed in plea negotiations and in the court’s sentencing colloquy. A criminal sentence that includes restitution may also be recorded by the victim and enforced as any other judgment. Thus, if prosecutors are aggressive about restitution, a criminal defendant pleads guilty, and the court orders restitution, there may be no need

\(^1\) 18 U.S.C. §§ 3613(a), 3663(a) (2000).
to take the time and expense of engaging in civil litigation. On the downside, if restitution is not part of plea discussions, and the court fails to inform a criminal defendant upon accepting a sentence that restitution will be an element, then the court may not be able to impose restitution. Since prosecutors and criminal defendants are mostly focused on jail time, restitution can be forgotten to the detriment of the victim/civil plaintiff.

§ 1.2 How a criminal conviction of the traffickers may help the civil case

Under the collateral estoppel doctrine, a guilty verdict in a criminal case may be used in a subsequent civil action to prove the facts upon which it was based.\(^2\) Keep in mind, however, that the guilty verdict only has a collateral estoppel effect on the guilty party and his/her privies at the time of the criminal proceeding.\(^3\) Therefore, it may be difficult to argue that a guilty verdict of a trafficker has a preclusive effect on a joint employer or joint tortfeasor in the parallel civil litigation.

§ 1.3 Immigration-related benefits of clients’ participation in the criminal prosecution

The Trafficking Victims Protection Act of 2000 ("TVPA")\(^4\) provides that:

> “[f]ederal law enforcement officials may permit an alien individual's continued presence in the United States, if after an assessment, it is determined that such individual is a victim of a severe form of trafficking and a potential witness to such trafficking, in order to effectuate prosecution of those responsible…”\(^5\)

As a result of this provision, trafficking victims who are available to be witnesses in a criminal prosecution often receive continued presence and employment authorization. Furthermore, an immigrant who is 18 years of age or older must comply with “any reasonable request for assistance in the investigation or prosecution of the acts of trafficking” in order to be eligible for a “T” visa.\(^6\) Similar requirements apply for the “S” visa, and the “U” visa.\(^7\)

Regularization of a client’s immigration status will help the client’s civil case. A plaintiff’s current immigration status generally is not admissible in a civil proceeding. However, representing undocumented immigrants can be logistically tricky. For example, it may be difficult for an undocumented immigrant to travel to depositions or court appearances.

§ 1.4 The prosecutors’ position regarding the civil action

*Staying the civil action until the conclusion of the criminal prosecution*

If the civil action is filed before the introduction of evidence in the criminal proceeding, it is very likely that the criminal prosecutors will move to intervene in the civil case for the

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\(^2\) For a good review of case law on this subject, see In re Towers Financial Corp. Noteholders Litigation, 75 F. Supp. 2d 178, 181 (S.D.N.Y. 1999).

\(^3\) See, e.g., Stichting Ter Behartiging Van De Belangen Van Oudaandeelhouders in Het Kapitaal Van Saybolt Int'l B.V. v. Schreiber, 327 F.3d 173, 180 n.2 (2d Cir. 2003)


\(^7\) See id. at § 1101(a)(15)(S)(ii).

\(^8\) See id. at § 1101(a)(15)(U)(o)(III).
limited purpose of staying discovery. Where there are parallel civil and criminal actions, such motions are routinely granted. Alternatively, the Court may deny the government’s motion to intervene, but rule *sua sponte* to stay the civil proceedings. The prosecutors generally want a stay because criminal defendants should not be able to use the more permissive civil discovery process to make an end run around restrictions on criminal discovery. On the other hand, the defendants themselves may support a stay rather than having to choose between claiming Fifth Amendment privilege in civil discovery, which carries a negative inference in civil proceedings, and jeopardizing their defense in the criminal proceedings by responding to discovery. The government will likely also argue this position in its brief in support of the stay.

From the plaintiff’s perspective, a stay may be beneficial in several respects. First, if your client is concerned about her/his safety and has thus far maintained anonymity in both the civil and the criminal action, civil discovery may jeopardize this. For example, while you may obtain a protective order prohibiting deposition questions that may endanger your client, it is immensely difficult to assure that your client is sufficiently prepared so as to avoid revealing such information. This is particularly true if your client lacks formal education and experience with legal processes.

A stay also may be helpful if the defendants are expected to claim Fifth Amendment privilege in the civil discovery. As discussed above, though the Fifth Amendment privilege carries a negative inference in civil litigation, this inference is not helpful if you are trying to learn facts to support your claim against unindicted civil defendants. The spectre of the Fifth Amendment privilege will render much of this critical initial fact-finding practically impossible. Additionally, even if some civil discovery has taken place, new issues of contention will undoubtedly arise in the course of the presentation of evidence in the criminal trial. This will require a second round of discovery. This process would be stilted and duplicative, and seems unnecessary in light of the ease with which the court can relieve the burden.

Further, it is likely that you will be able to use some of the positions adopted by the criminal defendants in support of your client’s civil claims. The doctrine of judicial estoppel prevents a party from using one argument in one case, and then relying on a contradictory argument to prevail in another similar case. Under the same doctrine, the criminal defense will try to use any sworn testimony of your client from the civil litigation to attack your clients’ testimony in the criminal case.

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13 The U.S. Supreme Court most recently explained the judicial estoppel doctrine in New Hampshire v. Maine, 532 U.S. 742, 749 (2001). See also Ogden Martin Sys. of Indianapolis, Inc. v. Whiting Corp., 179 F.3d 523, 527 (7th Cir. 1999) (holding that courts will apply judicial estoppel when (1) the later position is clearly inconsistent with the earlier position; (2) the facts at issue are the same in both cases; and (3) the party to be estopped has convinced the first court to adopt its position).
Finally, as discussed above, collateral estoppel will likely preclude a criminal defendant who was found guilty from raising certain defenses in the civil action.

The 2003 reauthorization of the TVPA grants a civil cause of action for violations of the Act, but requires that the civil action be stayed “during the pendency of any criminal action arising out of the same occurrence in which the claimant is the victim.” This appears to create a statutory mandate that the civil action be stayed until the trial court proceedings have concluded.

There is one glaring downside to a stay: defendants – particularly those who are not part of the criminal prosecution will have ample time to manipulate their evidence. Therefore, you may want to request that a stay include an order requiring that the defendants preserve any documentary or other physical evidence pertaining to the action. In the securities litigation context, where stays are commonplace, courts frequently order that documents be preserved while a stay is in effect.

**Willingness of the prosecution to share evidence with plaintiff’s counsel**

A grand jury indictment is perhaps the best source for information that is available to the prosecution. You should also frequently review the criminal case docket. You will not volunteer some evidence to you before it is presented at trial. However, the prosecution is required to provide any exculpatory evidence, or evidence that may be used to impeach the testimony or credibility of a witness, to the criminal defense counsel with sufficient time to allow defense counsel to prepare for trial. You may want to ask the prosecution to provide these materials to you, as well. In addition to information bearing on claims and defenses in the civil and criminal cases, prosecutors may also share information regarding the extent and identity of defendants’ assets.

You may be able to get some information to support your client’s civil claims if you insist on being present during the prosecution’s interviews of your clients. Keep in mind, however, that you cannot be present during your client’s grand jury testimony.

Once the criminal prosecution is over, you should be able to get some evidence through the Freedom of Information Act and your state’s equivalent public records law. Be sure to send FOIA requests to all agencies that were involved in the investigation, including Immigration and Customs Enforcement (formerly the INS), FBI, Department of Labor, and the State Department.

**§ 1.5 Impact of your client’s prior statements on the criminal prosecution**

Be aware that non-privileged statements your client makes, or statements you make on your client’s behalf, may be used by the criminal defense if the statements are non-hearsay or fall

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16 See, e.g., Newby v. Enron, 338 F.3d 467 (5th Cir. 2003).
17 You can get a listing of case filings in most federal courts at the PACER website: http://www.pacer.uscourts.gov. You must sign up for PACER and specify the courts from which you will seek docket information, and there is a nominal fee for this service. Once you have reviewed the PACER listing, you can usually order copies of the filings by contacting the clerk of the court.
within one of the hearsay exceptions. It is best to err on the side of caution. Clients should be advised not to discuss the case with anyone not covered by one of the privileges. As an attorney, you should also be circumspect in any public statements.

The most easily admissible statements are prior statements made under oath by the witness, as these statements are considered non-hearsay. Therefore, if your client has provided any sworn testimony, including deposition testimony as part of the civil litigation, before the introduction of evidence at the criminal trial, the criminal defense is very likely to review the testimony with a fine-toothed comb to find any inconsistencies. Therefore, as discussed above, it benefits the criminal prosecution, and hence your client, to support a stay of the civil proceedings until the conclusion of the criminal case.

§ 1.6 Admissibility in the civil action of your client’s statements made in the course of the criminal investigation

Any sworn testimony given by your client as part of the criminal proceeding (e.g., grand jury or trial testimony) most likely will be admissible in the civil litigation. Additionally, police reports – and therefore your client’s statements contained in police reports – will likely be admissible under the Federal Rule of Evidence 803(8)(C) hearsay exception, unless the sources indicate lack of trustworthiness. Further, there is no sweeping law enforcement or confidential informant privilege, though courts recognize a law enforcement privilege under many circumstances.

IV. ASSESSING YOUR CLIENT’S CREDIBILITY

Essentially, there are two separate questions that must be answered in assessing your client’s credibility. First, as your client’s attorney, you must determine the truthfulness of your client’s story. Second, you should assess the factors the defense will use to attack your client’s credibility. Some of these factors are as follows:

§ 1.7 Impact of prior criminal and/or immigration-related offenses

Most trafficking victims committed an immigration-related offense by entering the United States without inspection, overstaying a visa, or possessing fraudulent immigration documents. Therefore, the question of whether the defense can use these offenses to attack your client’s credibility is very likely to arise in the course of the civil litigation.

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19 See generally Fed. R. Evid. 801-804; cf. Fed. R. Evid. 613 (regarding examining a witness or introducing evidence concerning prior statements).
21 Fed. R. Evid. 801(d)(1).
24 See, e.g., S.E.C. v. TheStreet.com, 273 F.3d 222, 231 n.10 (2d Cir. 2001).
25 See Fed. R. Civ. P. 11(b) (by signing and filing a document with the Court, the attorney certifies that he/she conducted a reasonable inquiry).
Generally, specific acts are admissible to attack a witness's credibility if, at the discretion of the court, the acts are probative of untruthfulness. Therefore, courts have allowed, for example, prior use of a false name, and filing of false or forged tax returns to prove untruthfulness. However, even if such evidence is probative of untruthfulness, the court may still refuse to admit this evidence because its probative value is substantially outweighed, inter alia, by the danger of unfair prejudice.

The admissibility of immigration-related offenses remains an open question. One court, for example, determined that:

“[i]rrespective of whether the desperate, and illegal, effort of an indigent Mexican immigrant to work here seriously brings his character into question, it was not clearly erroneous... to conclude that this evidence would be highly prejudicial.”

Another court, in response to a defendant’s requests for admission seeking information relating to whether plaintiffs provided false information about their immigration status to defendants, opined:

“[w]hile I am not at this point deciding whether this information is properly admissible at trial, I do find that it may be relevant as to plaintiffs’ credibility and as such is discoverable.”

Unlike most employment law cases, in civil litigation involving victims of trafficking, the plaintiff’s immigration status at the time of his or her victimization is likely to be an essential element of the plaintiff’s claim. In most trafficking cases, it is one of the elements the trafficker used to compel forced labor. Therefore, it makes little sense to try to prevent this information from surfacing.

§ 1.8 How the defense may use your clients’ benefits under the TVPA to attack your clients’ credibility

If your client has received resettlement benefits under the TVPA, the defense will likely try to introduce evidence of these benefits to support an argument that your client fabricated his story in order to obtain the benefits. In the civil action, your best argument is that your client’s benefits are simply not relevant. The benefits are tied to participation in the criminal action and are not at all impacted by the civil action.

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26 See Fed. R. Evid. 608(b).
27 See United States v. Ojeda, 23 F.3d 1473, 1476-77 (8th Cir. 1994).
28 See United States v. Chevalier, 1 F.3d 581, 583-84 (7th Cir. 1993); see also Chnapkova v. Koh, 985 F.2d 79, 82-83 (2d Cir. 1993).
CHAPTER 2: PROCEDURE

I. PROTECTING YOUR CLIENTS FROM THE TRAFFICKERS

§ 2.1 The use of pseudonyms in the complaint to conceal your clients’ identities

If you or your client is concerned that the defendants will attempt to retaliate once the defendants learn of the lawsuit, you should try to use pseudonyms in the complaint. The leading case on this subject is Doe v. Frank, which sets forth factors the court may consider when determining whether a plaintiff may proceed anonymously. In the trafficking context, one court allowed plaintiffs to proceed using pseudonyms based on the defendants’ previous use of threats as alleged in a parallel criminal indictment, and because of the government’s interest in protecting the identity of potential witnesses in the criminal case.

§ 2.2 Temporary restraining orders and preliminary injunctions

If there is an immediate risk of harm to your client, you may wish to seek a temporary restraining order ("TRO") and/or a preliminary injunction. For example, you may want to seek a TRO or preliminary injunction to prevent the defendants from contacting your client and your client’s family. To obtain a TRO or preliminary injunction, a plaintiff first must establish that he will suffer irreparable harm if no injunction is issued. Then, a plaintiff must show “either (a) a likelihood of success on the merits or (b) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly” in its favor.

Specifically obtaining a TRO can be difficult, and courts are even more reluctant to issue an ex parte TRO. A TRO is a court order that enjoins a party from engaging in a particular action. The TRO remains in effect until the court rules on your motion for a preliminary injunction, which can take a long time, depending on the weight of the court’s docket. Unless you are seeking an ex parte TRO, the court will hear arguments on the motion for a TRO once notice is given to the opposing party.

Generally, if you are seeking a TRO, you must also prepare a motion for an expedited hearing, where you will indicate when you expect to serve the opposing party. You will also have to draft a proposed “order to show cause.” Usually, a party seeking a TRO will hand-deliver the motion papers to the court and will wait for the assigned judge to issue the order to show cause. The order to show cause must then be personally served (usually within the next 24-48 hours) on the opposing party. Consult your local rules and talk to the clerk of the court before seeking a TRO. Most courts have very specific and sometimes convoluted rules that must be followed when seeking a TRO.

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951 F.2d 320 (11th Cir. 1992).
93 Id. at 323.
95 Warner-Lambert Co. v. Northside Development Corp., 86 F.3d 3, 6 (2d Cir. 1996); see also Otokoyama Co. v. Wine of Japan Import, Inc., 175 F.3d 266, 270 (2d Cir. 1999) (describing the same requirement).
§ 2.3 Protective Orders

Once the litigation proceeds into discovery, defendants are likely to seek information about your client that may jeopardize your client’s security. For example, defendants may ask for your client’s current address and employer, and for information on your client’s hometown address in his/her country of origin and family. In a case where security is not a concern, this type of background discovery is usually acceptable. However, where retaliation is a concern, this information can put the safety of your client and her family in jeopardy.

If the defendants seek this information in discovery, you should move for a protective order. The court may limit discovery where the disclosure would present a “danger of intimidation” which could “inhibit plaintiffs in pursuing their rights.” In one case, the court prevented the disclosure of the plaintiffs’ addresses and employers where a member of the defendants’ family had publicly accused the immigrant workers of being members of a “terrorist sleeper cell.” In that case, the court found that:

“[a]ssuming, arguendo, that information regarding plaintiffs’ residences and places of employment could lead to evidence relevant to the defense of this action... any such evidence is clearly outweighed by the potential that this information may be used to harass, oppress, or intimidate the plaintiffs.”

The argument to prevent the disclosure of identifying information is essentially the same as the argument to prevent disclosure of immigration status. You may also present the alternative argument that, if these matters are to be disclosed, they should not be disclosed to the defendants, but rather only to their counsel.

With respect to information about the plaintiffs’ current employer, several cases are on point. In Doe v. Handman, a plaintiff obtained a protective order protecting her present and former employers and business acquaintances from being deposed by defendants. The court noted that plaintiff had demonstrated a “legitimate personal harm” in showing that her job would be in jeopardy if her employer knew of the pendency of her case. Moreover, the defendant had not met his burden of showing that depositions of these individuals would be relevant to the plaintiff’s cause of action. For these reasons, the Doe v. Handman court granted to the plaintiff the protective order requested.

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* Id.
* Id.
* Id. at *13.
In **Graham v. Casey’s General Stores**, the court noted that a subpoena sent to a plaintiff’s current employer “could be a tool for harassment and result in difficulties for [the plaintiff] in her new job.”\(^{44}\) The defendant had sought through deposition of plaintiff’s current employer information as to whether the plaintiff had filed prior lawsuits or administrative charges in connection with this new job. The court, however, quashed defendant’s subpoena, requiring defendant to provide independent evidence that there had been any such prior lawsuits or administrative charges.\(^{45}\) These cases suggest that allowing access to a current employer poses a significant risk to a plaintiff in an employment matter. Allowing a defendant to discover a plaintiff’s current landlord could present similar problems.

Your claim for a protective order should be bolstered by any evidence (such as the criminal indictment) of prior efforts to intimidate your client. It is even stronger if the court already allowed your client to proceed using a pseudonym. It logically follows that, if the plaintiff’s identity cannot be revealed, information that would subject her to identification, and therefore intimidation, must also be protected from discovery.

**§ 2.4 Protecting Others**

Anyone with knowledge of your client’s case – witnesses, friends, family members, Good Samaritans, even social service providers may also face intrusive discovery requests. If revealing their identifying information puts their safety in jeopardy, it may also be concealed through protective orders. However, their knowledge of the case does risk exposure to the defendants since their communications with the client do not necessarily enjoy the same privilege that exists between the attorney and client. Typically testimony from those playing a supportive role in your client’s life will help to corroborate your client’s case.

While the supporting testimony of social service providers may also be to the benefit of your client’s case, there is good reason to keep certain information confidential, such as written notes taken in the course of treatment that may damage your client’s credibility or other information that your client simply does not want revealed. The Supreme Court has held that communications between a psychotherapist and patient in the course of treatment are privileged and therefore, protected from discovery.\(^{46}\) Psychotherapist is defined as psychiatrist, psychologist, and clinical social worker. Each must be licensed. The Supreme Court has not determined whether this privilege extends to non-licensed social service workers. However, lower federal courts have extended the privilege to non-licensed counselors.\(^{47}\) State evidence codes and case law may differ in the application of the psychotherapist-patient privilege.

\(^{44}\) 206 F.R.D. 251, 256 (S.D. Ind. 2002).

\(^{45}\) Id.; see also Centeno-Bernuy, 219 F.R.D. at 61-62 (“to enable [defendants] to discuss plaintiffs’ allegations of illegal treatment by their former landlords/employers with plaintiffs’ current landlords and/or employers, is inherently intimidating”); cf. Conrod v. Bank of New York, No. 97 Civ. 6347, 1998 U.S. Dist. LEXIS 11634, at *5 (S.D.N.Y. July 30, 1998) (noting the “negative effect that disclosures of disputes with past employers can have on present employment” and sanctioning defendants for subpoenaing plaintiff’s current employer without conferring with the court and plaintiff’s counsel).

\(^{46}\) Jaffee, 518 U.S. at 9-10.

\(^{47}\) See Oleszko v. State Compensation Ins. Fund, 243 F. 3d 1154 (9th Cir. 2001) (extending the psychotherapist-patient privilege to counselors at an employment assistance program who “are trained as counselors, are held out as counselors… and, like psychotherapists, their job is to extract personal and often painful information from employees in order to determine how to best assist them.”); see also United States v. Lowe, 948 F. Supp. 97 (D. Mass. 1996) (extending privilege to rape crises counselors). But see Jane Student 1 v. Williams, 206 F.R.D. 306 (S.D. Ala. 2002) (refusing to extend privilege to unlicensed counselors at a mental health center).
II. INDIVIDUAL ACTIONS VERSUS CLASS ACTIONS, REPRESENTATIVE ACTIONS, AND MASS ACTIONS

§ 2.5 A brief introduction to class actions, representative actions, and mass actions in the context of trafficking cases

Most cases of trafficking are limited to a small number of victims. However, cases occasionally arise with large numbers of victims. Often, these victims are difficult to locate, are intimidated by the legal process, or the traffickers prevent them from accessing an attorney and the courts. Where there are large numbers of victims, you should consider bringing the civil litigation as a class action, a representative action, and/or a mass action.

A federal class action is brought pursuant to Federal Rule of Civil Procedure 23 (“Rule 23”). Most causes of action may be brought on behalf of a Rule 23 class, with the notable exception of the Fair Labor Standards Act (“FLSA”), the Age Discrimination in Employment Act (“ADEA”), and the Equal Pay Act (“EPA”). In a Rule 23 class, individuals who meet the class definition are automatically members of the class, though in Rule 23(b)(3) classes they may affirmatively opt out of the class. Therefore, unless a class member opts out, the class member is bound by any judgments or court decisions in the class action. In a class action, the statute of limitations is tolled for all class members when the class action Complaint is filed, but it starts to run for an individual eligible class member once the individual opts out of the action.

A representative action (frequently also referred to as a “collective action” or a “FLSA class action”) is allowed only for actions brought under the FLSA, the ADEA, or the EPA. As discussed above, Rule 23 class actions are prohibited under each of these statutes. (Note that your state minimum wage, overtime, or employment discrimination laws most likely allow class actions.) In a representative action, a similarly situated employee must opt into the case by filing a consent to sue with the court. Unless a worker opts into the action, the worker is not bound by and judgments or decisions of the court. However, in most cases (unless you can make an argument for equitable tolling) the statute of limitations is only tolled once the consent is filed.

Finally, a mass action is a lawsuit with multiple plaintiffs. Some include hundreds of plaintiffs. To file a mass action, you must only meet the requirements for joinder. More plaintiffs may be added later in the litigation by amending the complaint, so long as you have not passed the deadline to amend as set forth in the scheduling order. Unless defendants have not filed a responsive pleading to the prior complaint and no more than 20 days have passed since the prior complaint was served, in which case you may amend the complaint as a matter of right, you must either obtain written consent from the defendants to amend the complaint or file a motion for leave to amend.48

§ 2.6 Consider the following questions as you evaluate whether to bring a class action or an individual action:

- Does the case satisfy the requirements of Rule 23?
- Does your client want to be a class representative?
- Does your client understand the responsibilities of being a class representative and how bringing the case as a class action may impact your client’s damages?
- Does your client have an understanding of the case?
- Does the defendant have the solvency to satisfy a class-wide judgment?

*See Fed. R. Civ. P. 15(a).*
Do you have the time, and does your firm have the resources, to distribute class notice and to be class counsel?

Is there a cap on damages under any of the statutes alleged to be violated?

How might bringing the case as a class action impact the likelihood of settlement?

Does Legal Services Corporation fund your program? (In which case, you cannot bring a Rule 23 class action.)

Are there other attorneys who will be willing to co-counsel the case with you?

§ 2.7 Rule 23 class actions

Requirements for certification

In order for a case to be filed as a class action, the case must satisfy the numerosity, commonality, typicality, and adequacy of representation requisites of Rule 23(a).

With respect to numerosity, the unique nature of trafficking case may allow for certification of a relatively small class because “joiner of all members is impracticable.” 49 Please consider that:

“[D]etermination of practicability depends on all the circumstances surrounding a case, not on mere numbers. Relevant considerations include judicial economy arising from the avoidance of a multiplicity of actions, geographic dispersion of class members, financial resources of class members, the ability of claimants to institute individual suits, and requests for prospective injunctive relief which would involve future class members.” 50

There is substantial overlap between the typicality question and the commonality question, and similar issues may arise in either context. Unlike commonality, however, which requires that all members of the class have common claims, the typicality requirement compares the claims of the class representatives with the claims of the remainder of the class. The most common problem with satisfying the typicality requirement arises when the class representatives lack standing to bring a claim alleged on behalf of the class, 51 or the representatives’ claims are time-barred, though the claims of other class members are not necessarily time barred. 52

In the trafficking context, commonality and typicality questions may arise if the class consists of many victims over several years, or if different individuals or entities jointly employed the victims. These scenarios should not present a problem for certification. 53 The adequacy of representation prong encompasses both the representation of the class by the named plaintiffs,

50 Robidoux v. Celani, 987 F.2d 931, 936 (2d Cir. 1993) (citations omitted); cf. Doe v. Charleston Area Medical Ctr., Inc., 529 F.2d 638, 645 (4th Cir. 1975) (“Where the plaintiff has demonstrated that the class of persons he or she wishes to represent exists, that they are not specifically identifiable supports rather than bars the bringing of a class action, because joinder is impracticable.”).
51 See, e.g., Cornett v. Donovan, 51 F.3d 894, 897 n.2 (9th Cir. 1995), cert. denied, 518 U.S. 1033 (1996).
52 See, e.g., Piazza v. Ebsco Industries, Inc., 273 F.3d 1341, 1347 (11th Cir. 2001).
53 See, e.g., Forbush v. J.C. Penney Co., 994 F.2d 1101, 1106 (5th Cir. 1993) (finding commonality where four different pension plans were the subject of the class action); Ansoumana v. Grinstead’s Operating Corp., 201 F.R.D. 81, 87 (S.D.N.Y. 2001) (class members working during different periods of time does not defeat typicality); Siedman v. American Mobile Sys., Inc., 157 F.R.D. 354, 360-61 (E.D. Pa. 1994) (commonality found although damages differed among class members but common questions of liability predominated).
and the quality of the legal representation provided by class counsel. First and foremost, the courts will look for potential conflicts between the class representatives and the remainder of the class. In trafficking cases, make sure your class representatives did not play a role in the trafficking. For example, if a class representative was used as a guard to assure that other victims did not leave a forced labor situation – even if the representative himself was trafficked – the court may determine that he will not protect the interests of the class.

Courts may consider other factors, including those reflecting the honesty and trustworthiness of the class representative, such as a class representative’s contradictory testimony. This raises obvious questions for victims of trafficking, many of whom may have committed immigration offenses that a hostile court may determine impacts their credibility. Further, many trafficking victims lack formal education, which certainly will be highlighted by a party trying to resist class certification. Courts may also consider the class representatives’ understanding of the case. However, familiarity with the nuances of the legal theories in the case is not required.

Unavailability for discovery may impact this prong. In a trafficking case, the adequacy prong should not be impacted by a representative’s undocumented status. Still, a class representative who resides abroad and who is likely unable to lawfully enter the United States to participate in discovery may be deemed an inadequate representative, though there is apparently no case law directly on point. You may wish to present the importance of your client’s presence in the United States as a class representative as an equity supporting your client’s T visa application.

Finally, with respect to the adequacy of counsel, if you work for a small law office with limited resources or limited class action experience, you should consider bringing in a larger firm to co-counsel the case. In a trafficking case, you may need to distribute class notice abroad, which will require a substantial investment of resources.

**Class certification under Rule 23(b)(2)**

A Rule 23(b)(2) class may be certified for injunctive or declaratory relief. You may be able to construe some monetary damages, such as front or back pay, as equitable relief within the purview of a Rule 23(b)(2) class if the injunctive or declaratory relief sought predominate.

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54 See Crawford v. Honig, 37 F.3d 485, 487 (9th Cir. 1994).
55 See, e.g., Retired Chicago Police Assn. v. City of Chicago, 7 F.3d 584, 598-99 (7th Cir. 1993), cert. denied, 519 U.S. 932 (1996).
59 See Kline v. Wolf, 702 F.2d 400, 402-03 (2d Cir. 1983) (refusal to answer discovery questions is a factor indicating inadequate representation); see also FEDERAL JUDICIAL CENTER, MANUAL FOR COMPLEX LITIGATION (THIRD) § 30.16 (1995) (class representative must “vigorously pursue the litigation in the interests of the class, including subjecting themselves to discovery.”).
60 See Ansoumana, 201 F.R.D. at 87.
61 See Robinson v. Metro North Commuter R.R., 267 F.3d 147, 155 (2d Cir. 2001). But see Allison v. Citgo Petroleum Corp., 151 F.3d 402, 415 (5th Cir.1998) (“monetary relief predominates in (b)(2) class actions unless it is incidental to requested injunctive or declaratory relief.”).
In a Rule 23(b)(2) class, as compared to a Rule 23(b)(3) class, notice to class members is not required and class members need not be provided the opportunity to opt out. See Fed. R. Civ. P. 23(c). This, of course, makes a (b)(2) class far easier to litigate than a (b)(3) class. Additionally, in a (b)(3) class, common issues must predominate - a requirement absent from a (b)(2) class where the common issues must merely exist. Still, it is hard to imagine a scenario in a trafficking case where injunctive or declaratory relief would predominate sufficiently to meet the standards set forth in either Allison or Robinson. Therefore, it is most likely that class certification in a trafficking case would be sought under Rule 23(b)(2) only for injunctive relief, and certification of a (b)(3) class would be sought for monetary damages.

**Class certification under Rule 23(b)(3)**

In a trafficking case, the most significant obstacle to (b)(3) certification is the requirement that common questions predominate. However, even within the context of a Rule 23(b)(3) class action, this should not present a problem so long as the allegations involve a common scheme.62 However, it is important to look at the law in your jurisdiction, as the circuit courts’ approach to predominance varies significantly.

### § 2.8 Representative actions under the Fair Labor Standards Act

**Procedure for representative action certification**

As the statute of limitations in a FLSA action is only tolled once an opt-in plaintiff files the consent to sue, you should seek pre-certification of the representative class very early in the litigation. This generally is not a problem, as the burden on plaintiffs to prove that there are other similarly situated individuals is very light. Pre-certification (sometimes referred to as “conditional certification”) allows you to obtain the names and addresses of all similarly situated workers from the defendants. It also allows for the distribution of court-authorized notice.63

**Discovery considerations**

Unlike a Rule 23 class action, class members who have opted into a representative action may be subject to discovery.64 However, courts typically, but not universally, allow for representative testimony,65 reducing the burden of producing large numbers of opt-in plaintiffs for discovery. This may be particularly important in trafficking cases, where many of the opt-in plaintiffs likely live abroad.

**Interrelationship with Rule 23 class certification**

An action may simultaneously be a representative action for the FLSA components and a Rule 23 class action for other causes of action, including state minimum wage and overtime violations.66

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64 See, e.g., Adkins v. Mid-American Growers, Inc., 143 F.R.D. 171, 174 (N.D. Ill. 1992) (stating that discovery should be done on a representative basis).


66 See generally Ansoumana v. Gristede’s Operating Corp., 201 F.R.D. 81 (S.D.N.Y. 2001) (certifying a Rule 23 class for state wage claims after 350 workers had already opted into a FLSA representative action).
§ 2.9 Restrictions on recipients of Legal Services Corporation funding

Organizations receiving Legal Services Corporation funding may not represent plaintiffs in a Rule 23 class action or the state equivalent. However, LSC-funded programs may bring representative actions or mass actions.

III. WHEN TO FILE THE CIVIL ACTION

§ 2.10 Statute of Limitations

Watch for short statutes of limitation

If you primarily practice employment law, you may not be aware that the statute of limitations on some causes of action is quite short. For example, in New York and many other states, the statute of limitations for most intentional torts is one year. For some causes of action, the statute of limitations may be six months or less. You should immediately determine the causes of action and their respective statutes of limitations after being retained by a trafficking victim. Failure to do so may constitute malpractice if, as a result, your client is precluded from bringing certain claims.

Equitable tolling

If a worker is held in bondage, or even in immigration custody, he or she has a strong argument that the statute of limitations should be equitably tolled for that time period. Bondage likely constitutes just the kind of extraordinary circumstance contemplated in the equitable tolling doctrine.

You also may be able to argue that the two-year statute of limitations for FLSA actions (three years for willful violations) should be tolled if the employer failed to display a poster, as required by the FLSA, informing employees of their minimum wage and overtime rights.

§ 2.11 Consider the impact on the criminal prosecution

If you do not need to toll a short statute of limitation, it is always best to wait to file a civil action until the conclusion of the introduction of evidence in a parallel criminal case. This way, you avoid altogether the question of whether a stay is necessary.

§ 2.12 Media and publicity considerations

Legal battles are fought both in the courtroom and in the court of public opinion. An effective use of the media may benefit your client, while a less-than-circumspect approach may potentially be very damaging.

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68 See Letter from LSC Office of Compliance and Enforcement, to Kenneth F. Boehm 8-9 (April 18, 2002) (“Congress expressly barred class actions, not representative action or other cases in which relief might be granted to more than a small group... of plaintiffs”), available at http://www.flsny.org/images/LSCRepAction.pdf
70 See, e.g., Hilao v. Estate of Marcos, 103 F.3d 767, 773 (9th Cir. 1996) (statute of limitations on Torture Victims Protection Act is tolled while plaintiff is imprisoned or incapacitated); National Coalition Gov’t of Union of Burma v. Unocal, Inc., 176 F.R.D. 329, 360 (C.D. Cal. 1997); cf. Osbourne v. United States, 164 F.2d 767 (2d Cir. 1947) (plaintiff's internment by Japan during World War II tolled the limitations period on his claim under the Jones Act against his employer for injury occurring immediately prior to his internment).
72 See § 1.4, supra. For an interesting review of the ethics of an attorney's contact with the media, see Jonathan M. Moses, Note, Legal Spin Control: Ethics and Advocacy in the Court of Public Opinion, 95 COLUM. L. REV. 1811 (1995).
IV. WHERE TO FILE THE CIVIL ACTION

§ 2.13 State Court versus Federal Court

Most trafficking cases will have both state and federal causes of action. Therefore, you will have a choice of filing your case in state or federal court. You should make your decision based on an evaluation of the forums available to you. Research the size of verdicts, the make-up of the potential jury pool, and the politics of the court in light of your clients’ claims, ethnicity and immigration status. Talk to experienced plaintiffs’ lawyers in your area if you are not sure how to answer these questions.

§ 2.14 Bankruptcy court

When your client retains you, as soon as you know the identities of the potential defendants, you should check to see if any of them have filed for bankruptcy. Bankruptcy courts often impose a short time period during which creditors may file proofs of claim. If you miss that deadline, you may not be able to collect any money from the bankrupt debtor.

If one of the defendants is in bankruptcy, it is often helpful to have the automatic stay on the civil proceedings lifted. In trafficking cases, which likely involve complex issues of federal law, your motion to lift the stay will likely be granted.\footnote{See, e.g., In re TPI Int’l Airways, 222 B.R. 663, 667 (S.D. Ga. 1998); In re American Body Armor & Equip., 155 B.R. 588, 590 (M.D. Fla. 1993); In re White Motor Corp., 42 B.R. 693, 703-04 (N.D. Oh. 1984).}

You may also try to claim that your client’s damages are exempt from dischargeability under section 523(a)(2) (services obtained by fraud) and/or (a)(6) (willful or malicious injury) of the U.S. Bankruptcy Code.\footnote{See 11 U.S.C. §§ 523(a)(2), (a)(6) (2004).}

If you are not familiar with bankruptcy procedure, you should contact a bankruptcy attorney who represents creditors. Most local bar associations have a bankruptcy section. The authors also have some limited materials regarding litigating in bankruptcy court.

§ 2.15 Personal jurisdiction

If it benefits your clients, you may be able to assert personal jurisdiction over out-of-state defendants in the state where your clients were recruited.\footnote{See, e.g., Ochoa v. J.B. Martin & Sons Farms, Inc., 287 F.3d 1182, 1187-93 (9th Cir. 2002).} This may be helpful, for example, if your clients were recruited in the Ninth Circuit to work in the Fourth Circuit. Additionally, the cost of distant litigation may provide a strong incentive for defendants to settle the case.

V. WHOM TO NAME AS DEFENDANTS

Trafficking schemes frequently are multi-tiered. At the “bottom” may be the smugglers. Within the smuggling network may be the recruiters in the country of origin - those involved with moving the victims across borders and within the United States. Next may be labor contractors, who often are directly responsible for putting the “severe” in severe forms of trafficking. The labor contractors may have agents who help maintain control of the victims. Next, there are the employers. In situations where there are not labor contractors involved, the employers may have direct involvement in the severe form of trafficking. However, many employers retain
contractors under the often mistaken belief that these “middle men” will isolate the employers from liability for labor law violations. Employers may range in size from individual homeowners who employ trafficking victims as housekeepers, to multi-national manufacturers or retailers who hire trafficking victims in their plants. Often there are several employers. For example, a small textile manufacturer and several large clothing producers may jointly and simultaneously employ trafficking victims.

In light of these frequently complex and convoluted layers, figuring out whom to sue can be a daunting challenge. At the lower end, the smugglers may be difficult to identify and impossible to serve. Frequently, the contractors and the small employers are the actors who end up under indictment and may be the easiest to name in a lawsuit. However, these individuals may lack the solvency to satisfy a large judgment on behalf of trafficking victims.

The larger entities, though frequently overlooked in criminal prosecutions or simply unindictable due to the government’s burden of proof in a criminal action, should be named in civil litigation if they are joint employers and/or joint tortfeasors. Ultimately, these larger entities may end up paying the bulk of any judgment arising from the civil litigation.

§ 2.16 What to consider in sex trafficking cases

Aside from suing the traffickers and procurers (such as pimps, owners of escort services, saunas, and other prostitution-related businesses) in sex trade trafficking cases, you may be able to sue the purchasers of the sex (the “Johns”), to the extent you are able to identify some of them, under a number of causes of action. You may even consider suing a class of defendant purchasers if, for example, through the records of the sex trade business you are able to establish the requisites for a class. The causes of action against the traffickers, procurers, and the purchasers may include the trafficking private right of action, intentional torts such as assault, false imprisonment, and intentional infliction of emotional distress; you may also be able to bring actions under civil RICO and the Alien Torts Claims Act. (These causes of action are discussed in detail in Chapter Three, supra.) Additionally, some states have passed legislation giving a person the right to sue for damages caused by being used in prostitution, though the volume of litigation under these statutes has been very limited. Note also that the potential civil rights cause of action under the federal Violence Against Women Act appears to have been eliminated by the U.S. Supreme Court’s decision in United States v. Morrison.

§ 2.17 Naming the employers

**Determining who employed the plaintiffs**

If you do not know who employed your client other than the trafficker, you may wish to engage in some immediate discovery to determine this. The trafficker himself or herself should be able to shed some light on this question, as may your client. Keep in mind, however, that many courts apply a broad definition of “employ” to actions under the Fair Labor Standards Act, and other statutes. Therefore, just because the trafficker was not necessarily an agent of...
a larger entity, you should not rule out suing the larger entity. Be careful, however, to look at
the definition of “employ” for all of the labor-related causes of action in your Complaint. Some
statutes may have a definition that is more limited than the FLSA definition.

Before applying a joint employment analysis, you should first examine whether the larger
entity directly employed the trafficking victims. If the victims were direct employees of the
larger entity, you may be able to extend liability to the larger entity for labor law violations
and for torts.

**Agency and vicarious liability: when employers may be liable for the torts of the traffickers**

A larger entity may be liable for the torts of a smaller entity (e.g. traffickers) if (1) the larger
entity employs a smaller entity; (2) the smaller entity employs trafficking victims; and (3) the
employment of the trafficking victims is within the scope of the smaller entity’s employment
to the larger entities. This rests on the existence of privity between the victims and the larger
entity. In other words, where an agent has the principal’s express or implied authority to
hire subagents (trafficking victims), there is privity between the subagents and the principal.80
As a result, “[t]he relation of agency exists between the principal and authorized sub-agent.
Persons employed by the agent to perform the work of the principal are employees of the
principal and not the employees of the agent.”81

Unlike joint employment issues under federal statutes, state law generally controls questions
of agency. Therefore, you should look at the law on agency in the jurisdiction where you
will be filing the civil action.

**Labor law violations: joint employment standards**

Larger entities often incorrectly argue that, if traffickers, for example, acted outside the
scope of their agency while employing the plaintiffs, the plaintiffs are necessarily precluded
from impugning liability to the larger entity. However, this theory errs by conflating joint
employment theory and agency theory. A worker may, as a matter of economic reality, be
economically dependent on two or more entities, and therefore, be jointly employed by
these entities under the FLSA and some other labor laws. A worker’s relationship as an
employee of a second (and less directly involved) entity exists regardless of whether the
first entity is acting as an independent contractor, an agent, or both. Joint employment
liability hinges solely on the worker's economic dependency on two or more entities,
not the relationship between the putative employers.82

The application of the “economic reality” test differs significantly between the circuits. Within
the circuits, the test may be applied differently to different industries. The joint employment

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England Bank, 47 U.S. 212 (1948)).

Packing Co., 765 F.2d 1317, 1327-28 (5th Cir. 1985) (holding that if a farm labor contractor who recruited
plaintiff farmworkers is an employee of the farmer, the farmworkers are the farmer's employees); see also
(same); see also 29 C.F.R. § 500.20(b)(4) (2005) (same).

82 See Nationwide Mut. Ins. Co. v. Darden, 503 U.S. 318, 326 (1992) (FLSA definition of “employ” has such
breadth as to “stretch[ ] the meaning of ‘employee’ to cover some parties who might not qualify as such
under a strict application of traditional agency law principles.”)
doctrine is particularly well-developed in agricultural labor, where the use of labor contractors is commonplace.83 Courts also have addressed joint employment questions in other industries.84 One should be aware that a worker might be jointly employed by multiple entities, even if the worker’s employment is not concurrently with all of the entities. For example, in Bureerong,85 the Court found that plaintiffs adequately stated a cause of action alleging that nine separate purchasers were employers within the meaning of the FLSA.

§ 2.18 Naming different defendants for different causes of action

It is entirely appropriate to name some defendants in some counts and other defendants in other counts. For example, you may name the trafficker or the direct employer for the intentional tort allegations, and the manufacturer as a joint employer for some of the labor law violations. A good way to organize the complaint is to specify with each count which defendants are included, and to include topical headings in your factual allegations.

VI. WHEN TO INCLUDE A JURY DEMAND

The general rule of thumb is that plaintiffs prefer jury trials and defendants prefer bench trials. This is because juries award far greater damages on average than do judges. However, in trafficking cases, you should weigh the likelihood of greater damages against the potential risk of bringing your case before a jury. First and foremost, you should know your judge and know your jury pool. Consider who your client is and who the defendants will be in light of the politics of the court and the biases of the community.

VII. SERVICE OF PROCESS: SERVING A DEFENDANT YOU CANNOT FIND

In trafficking cases, it is very likely that some of the defendants will be difficult to serve. Federal Rule of Civil Procedure 4(e) allows for service upon an individual within a judicial district of the United States pursuant to the laws of the state in which the action is brought, or the state in which service came into effect. Therefore, if service by mail or personal service is not successful, many states allow for a “nail and mail” or “leave and mail” option. If these methods fail or are not available, you may petition the court for an alternative means of service, which must be “reasonably calculated, under the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”86 The most common form of alternative service is service by publication, which

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83 See, e.g., Charles v. Burton, 169 F.3d 1322, 1328-29 (11th Cir. 1999); Torres-Lopez v. May, 111 F.3d 633, 639 (9th Cir. 1997); Antenor v. D & S Farms, 88 F.3d 925, 937 (11th Cir. 1996); Real v. Driscoll Strawberry Assocs., Inc., 603 F.2d 748, 754 (9th Cir. 1979); Hodgson v. Griffin & Brand of McAllen, Inc., 471 F.2d 235, 238 (5th Cir. 1973).
85 959 F. Supp. at 1233.
generally requires that you show that (1) service is otherwise impossible (or cannot be made with due diligence); (2) it is reasonable to conclude that the defendant is likely to read the newspaper in which notice is published; and (3) defendant is otherwise on notice that there may be a case pending against him.\textsuperscript{87} In the trafficking context, one court allowed service by publication based in part on a declaration of an INS Special Agent indicating that the defendant to be served had been indicted, but remained at large and was considered a fugitive.\textsuperscript{88} These requirements, however, will vary from state to state. State law will also govern the specific form of service by publication, so you will need to look this up in your jurisdiction.


CHAPTER 3: CAUSES OF ACTION

The Trafficking Victims Protection Act of 2000 was enacted to comprehensively combat human trafficking in the United States by strengthening criminal laws against the traffickers while providing conditional protection and benefits to the victims. It was amended in December 2003 to include a private right of action. In addition to the trafficking civil claim, many other U.S. laws may provide civil remedies to trafficked persons. These laws, including federal and state labor and employment laws, and tort laws related to forced labor conditions are intended to protect all workers from exploitation. Be sure to consult your state labor codes, constitution and other statutes for additional causes of action.


§ 3.1 Civil remedy for violation of the TVPRA

The TVPRA allows an individual who is a victim of a violation of sections 1589, 1590 or 1591 to bring a civil action against the alleged defendant in a district court to recover damages and reasonable attorneys fees. Note that a civil action filed under section 1595 will be stayed during the criminal action arising out of the same occurrence.

§ 3.2 Background

The recently passed TVPRA provides private rights of action for the trafficking crimes of forced labor, trafficking into servitude and sex trafficking. The TVPRA also makes human trafficking crimes predicate offenses for RICO charges, and adds “trafficking in persons” to the definition of racketeering activity. Please refer to the RICO section of this manual for more information on bringing RICO civil claims.

§ 3.3 Making a Claim

The trafficking private right of action was only recently implemented, and few cases have utilized it. In order to bring an appropriate claim under section 1595, the plaintiff must be a victim of one of three specified trafficking crimes: forced labor, trafficking into servitude, or sex trafficking.

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89 See generally Kim & Hreshchyshyn, supra note 2 (providing further analysis of the trafficking private right of action and other causes of action utilized in trafficking civil suits).
91 Id. at § 1595 (a).
92 Id. at § 1595 (b)(1); see also, § 1.3, supra.
Forced Labor

“Whoever knowingly provides or obtains the labor or services of a person—(1) by threats of serious harm to, or physical restraint against, that person or another person; (2) 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 (3) by means of the abuse or threatened abuse of law or the legal process…”

Trafficking Into Servitude

“Recruiting, harboring, transporting, providing, or obtaining by any means any person for labor or services in violation of laws prohibiting slavery, involuntary servitude, debt bondage or forced labor.”

Sex Trafficking of Children or by Force, Fraud or Coercion

“Whoever knowingly—in or affecting interstate or foreign commerce…recruits, entices, harbors, transports, provides, or obtains by any means a person; or benefits, financially or by receiving anything of value, from participation in a venture…knowing that force, fraud, or coercion…will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act…”

§ 3.4 Retroactive applications

It should be noted that courts are unlikely to allow the new trafficking claim to be applied retroactively. There is a general presumption against retroactive application of legislation. Principles of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly.

In Landgraf v. USI Film Products, the Supreme Court stated, “prospectivity remains the appropriate default rule.” The Court further states, “[o]ur statement in Bowen that ‘congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result’ was a step in a long line of cases barring retroactivity unless it was clearly intended by Congress.” Therefore, only clear congressional intent allowing retroactivity, established by explicit statutory language, will overcome the presumption of prospectivity.

Although the legislative history of the original TVPA 2000 indicates that a private right of action was contemplated, this civil remedy was eliminated in the final version of the bill. The TVPRA 2003 private right of action does not expressly provide for retroactive application.

§ 3.5 Statute of Limitations

The TVPRA does not specify a statute of limitation for the private right of action.

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95 Id. at § 1590.
96 Id. at § 1591.
98 Langraf v. USI Film Products, 511 U.S. 244, 272 (1994).
99 Id. (citing Bowen v. Georgetown University Hosp. 488 U.S. 204, 208 (1988)).
§ 3.6 Damages

The TVPRA civil remedy provides for damages and reasonable attorneys' fees.

II. IMPLIED RIGHTS OF ACTION UNDER THE THIRTEENTH AMENDMENT AND ITS ENABLING STATUTE

§ 3.7 Thirteenth Amendment of the U.S. Constitution

Sec. 1. [Slavery prohibited.]

“Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”

Sec. 2. [Power to enforce amendment.]

“Congress shall have power to enforce this article by appropriate legislation.”

Sale into involuntary servitude

“Whoever knowingly and willfully holds to involuntary servitude or sells into any condition of involuntary servitude, any other person for any term, or brings within the United States any person so held, shall be fined under this title or imprisoned not more than 20 years, or both. If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both.”

§ 3.8 Background

The Thirteenth Amendment and its enabling statute, 18 U.S.C. § 1584, prohibit involuntary servitude. Unlike the Fourteenth Amendment, the Thirteenth Amendment and §1584 apply to both state action and private conduct.

Neither the Thirteenth Amendment nor §1584 expressly provides a civil remedy for victims of involuntary servitude. However, §1584's provision of a criminal penalty does not preclude implication of a private cause of action for civil damages. A court may imply a private right of action if it determines Congress intended to create one by implication. Courts that have implied a cause of action have generally done so when “the statute in question… prohibited certain conduct or created federal rights in favor of private parties.”

104 Id.
105 Id.
106 Id at 384 (citing Touche Ross & Co. v. Redington, 422 U.S. 560, 569 (1979)).
107 Id.
To date, the U.S. Supreme Court has yet to recognize a private cause of action for involuntary servitude under the Thirteenth Amendment. The Eastern District of New York in Manliguez recently found a private cause of action under §1584 based on involuntary servitude, holding that the beneficiaries of §1584’s protection are victims of a constitutionally prohibited practice; the statute is rooted in the Thirteenth Amendment, which confers the federal right to be protected from involuntary servitude; and a private cause of action would be consistent with §1584’s legislative intent. The Manliguez court noted that other circuits have declined to extend civil liability to cases under §1584. However, the Manliguez court differentiated these cases by noting that they involved claims that did not meet the definition of “involuntary servitude” established under United States v. Kozminski.

§ 3.9 Making a Claim

To make a valid private right of action claim under §1584 a plaintiff must demonstrate that defendant’s actions fit the definition of involuntary servitude. The U.S. Supreme Court has held that for purposes of prosecution the term “involuntary servitude” means: “a condition of servitude in which the victim is forced to work for the defendant by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or the legal process.” This definition includes all cases “in which the defendant holds the victim in servitude by placing the victim in fear of such physical restraint or injury or legal coercion.” It should be noted, however, that evidence of other means of coercion, of poor working conditions, or of a victim’s special vulnerabilities may be relevant in determining whether the physical or legal coercion or threats could have compelled the victim to serve. Furthermore, evidence of other means of coercion or poor working conditions may be used to corroborate disputed evidence.

The TVPA enacted an expanded definition of involuntary servitude that includes labor compelled by psychological coercion. Therefore, trafficked plaintiffs pleading an implied cause of action under the Thirteenth Amendment should encourage courts to consider the TVPA’s broader definition of involuntary servitude.

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108 Manliguez, 226 F.Supp 2d at 383 n.7 (citing City of Memphis v. Greene, 451 U.S. 100, 125 (1981)).
109 See id. at 383.
110 Id. at 384.
111 Id. (citing Buchanan v. City of Bolivar, 99 F.3d 1352, 1357 (6th Cir. 1996)); Turner v. Unification Church, 473 F. Supp. 367, 375 (D.R.I. 1978)).
112 Id. at 377 (citing United States v. Kozminski, 487 U.S. 931, 952 (1988)).
113 Kozminski, 487 U.S. at 952.
114 Id.
115 Id.
116 Id.
117 8 U.S.C. § 103(5) (2000) (defining involuntary servitude as “a condition of servitude induced by means of- (A) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or (B) the abuse or threatened abuse of the legal process.”).
118 See Kim & Hreshchyshyn, supra note 2, at 135 (discussing psychological coercion under the TVPA).
§ 3.10 Statute of Limitations

Plaintiffs bringing civil claims under section 1584 must also meet the appropriate statute of limitations. Though section 1584 does not specify a statute of limitations, the Supreme Court in North Star Steel Co. v. Thomas,\(^{119}\) directs courts to borrow from the most analogous state law in the absence of a federal statute of limitations: “A look at this Court’s docket in recent years will show how often federal statutes fail to provide any limitations period for the causes of action they create, leaving courts to borrow a period, generally from state law, to limit these claims.”\(^ {120}\) The state limitations period must not, however, “frustrate or interfere with the implementation of national policies… or be at odds with the purpose and operation of federal substantive law.”\(^ {121}\) The applicable statutes of limitations may vary from state to state. In many states, complaints must be filed within one year of the alleged violation.\(^ {122}\) However, in New York, the appropriate statute of limitations has been found to be three years.\(^ {123}\)

§ 3.11 State Forced Labor Claims

Currently no state law directly provides civil remedies for victims of human trafficking. However, nearly half of the states in the U.S. have constitutional provisions prohibiting slavery and involuntary servitude. The states which include slavery and involuntary servitude provisions in their constitutions are: Alabama, Arkansas, California, Colorado, Georgia, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Nebraska, Nevada, North Carolina, North Dakota, Ohio, Oregon, Tennessee, Utah, and Wisconsin.

III. THE ALIEN TORT CLAIMS ACT (“ATCA”) \(^ {124}\)

The ATCA grants federal jurisdiction for “any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.”\(^ {125}\)

§ 3.12 Background

The statute was enacted in 1789 by the first Congress, but was rarely invoked for almost 200 years. It has reemerged in more recent years as the primary civil litigation tool for addressing human rights abuses.\(^ {126}\) In a recent court decision, the Supreme Court upheld ATCA jurisdiction and conferred a cause of action for a narrow class of torts.\(^ {127}\) Additionally, several federal appeals courts have upheld ATCA jurisdiction based on violations on a variety of human rights


\(^{120}\) Id. at 33.

\(^{121}\) Id. at 34 (citing DelCostello v. Int’l Bhd. of Teamsters, 462 U.S. 151, 161 (1983), quoting Occidental Life Ins. Co. of Cal. v. EEOC, 432 U.S. 355, 367 (1977)).


\(^{123}\) See Manliguez, 226 F. Supp. 2d at 385 (citing Owens v. Okure, 488 U.S. 235, 249-50 (1989)).


\(^{125}\) Id.

\(^{126}\) See Kim & Hreshchysyn, supra note 2, at 129-34 (discussing the application of ATCA in trafficking civil suits).

norms. Still, ATCA litigation has ensued with much judicial scrutiny and the role of courts in adjudicating and enforcing international law continues to be contested.

*Filartiga v. Pena-Irala* 129

This landmark decision determined by the Second Circuit marked the first modern case in which a court upheld ATCA jurisdiction for a suit between non-U.S. citizens for violations of the “laws of nations.” The *Filartiga* court upheld jurisdiction pursuant to the ATCA over a claim by one Paraguayan citizen against another for causing the wrongful death of the former’s son by torture. The court determined that “deliberate torture perpetrated under color of official authority violates universally accepted norms of the international law of human rights, regardless of the nationality of the parties.” 130

The *Filartiga* decision has lifted the two-hundred year old ATCA from obscurity and has given optimism to foreign plaintiffs trying to acquire jurisdiction in federal courts in the United States for cases alleging human rights abuses both here and abroad.

*Kadic v. Karadzic* 131

In *Kadic*, the United States Court of Appeals for the Second Circuit held that alien plaintiffs could bring a claim against Radovan Karadzic, a Bosnian-Serb leader. The allegations pertained to certain tortuous acts, which violated international law and were committed in Bosnia-Herzegovina by forces under Karadzic’s authority. The Second Circuit broadened ATCA jurisdiction for a range of human rights violations occurring abroad committed by non-state actors, including rape, torture, genocide, slavery and slave trade, and other war crimes by a Serbian military. Most importantly, the decision solidified the view that ATCA claims can be brought against non-state actors who commit atrocities in pursuit of genocide and war crimes, or who act under color of law.

*John Doe I v. Unocal Corp.* 132

This case was brought against Unocal Corporation by forced laborers in Burma. Originally the court dismissed this case, but the plaintiffs - building on the *Kadic* decision - have recently persuaded the Ninth Circuit to reinstate a suit against Unocal for forced labor, rape and extrajudicial killing that took place in Myanmar. Unocal did not act under color of state law, but the corporation ostensibly supplied “assistance” or “encouragement” to the offending government actors. 133 The case was reargued in July of 2003 before an *en banc* panel of the Ninth Circuit. The court in this case had the capability of handing down a monumental decision by ruling in favor of the plaintiffs. However, the parties reached


129 630 F.2d 876 (2d Cir. 1980).

130 Id. at 878.

131 70 F.3d 232 (2d Cir. 1995).


133 John Doe v. Unocal Corp, Nos. 00-56603, 00-57197, Nos. 00-56628, 00-57195, 2002 U.S. App. LEXIS 19263 (9th Cir. September 18, 2002).
a confidential settlement in principle in December 2004. Unocal would have been the first case in which an American-based corporation stood trial in federal court because of jurisdiction predicated on ATCA for suspected violations of international law.

**Sosa v. Alvarez-Machain**

The Supreme Court in Alvarez has recently recognized ATCA jurisdiction and a cause of action for a narrow class of torts. In Alvarez, the Court rejected an ATCA cause of action on behalf of a Mexican national who was arbitrarily arrested and kidnapped by another Mexican national collaborating with U.S. federal agents. The Court reasoned that “arbitrary arrest” did not rise to the level of an international norm that created legal obligations enforceable by federal courts. The Court reiterated vague language that an ATCA cause of action could only be brought for a “modest number of international law violations” that must be specific and definite. In determining whether an international norm is sufficiently definite to support a cause of action, courts must consider the “practical consequences” on foreign policy of allowing plaintiffs to bring the action in U.S. courts. The Court also emphasized Congress’ sole role in creating private rights and that Congress has never “affirmatively encouraged greater judicial creativity” regarding ATCA jurisprudence.

The Court’s opinion has the unique effect of bolstering an ATCA claim based on trafficking now that the TVPRA has been passed. With the TVPRA, Congress has expressed clear intent to provide a private right of action for trafficking. Thus, the availability of an ATCA claim for trafficked persons does not run the risk of creating “new rights,” which the Alvarez Court cautioned against. Continued use of ATCA will contribute to the development of ATCA case law recognizing forced labor and other slave-like practices as binding international legal norms; it will emphasize the importance of enforcing these international norms in domestic courts.

### § 3.13 Making a Claim

In order to establish subject matter jurisdiction under the ATCA, a plaintiff must show that defendant violated a “specific, universal and obligatory” norm of international law. Courts have held that the following claims satisfy this standard: torture; forced labor; slavery; prolonged arbitrary detention; crimes against humanity; genocide; disappearance; extrajudicial killing; violence against women; and cruel, inhuman, or degrading treatment. However, a number of other serious violations have not met the standard, including forced transborder abduction.

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136 Id. at 2766.
137 Alvarez, 124 S. Ct. at 2763.
138 In re Estate of Marcos, Human Rights Litig., 25 F.3d 1467, 1475 (9th Cir. 1994).
Plaintiffs hoping to establish subject matter jurisdiction based on other norms of international law must show widespread acceptance of the norm by the community of nations. Such acceptance may be demonstrated by reference to state practice, international treaties, the decisions of international tribunals, and the writings of international law scholars.\textsuperscript{141}

It should be noted, though, that since international law traditionally applied only to states, there are some restrictions regarding ATCA jurisdiction in cases brought against private individuals or corporations. In such cases, the rule of international law will apply in two contexts: (1) where the rule of international law includes in its definition culpability for private individuals; or (2) where the private actor acted “under color of law.”\textsuperscript{142}

First, the ATCA applies to private actors who violate the limited category of international law violations that do not require state action. These limited violations of customary international law are known as \textit{jus cogens} norms, “accepted and recognized by the international community of states as a whole from which no derogation is permitted.”\textsuperscript{143} To date, courts have held this category to include genocide, piracy, and slavery. Courts have also held that international law is violated where a private individual commits wrongs such as rape, torture or murder in pursuit of genocide, slavery, or violations of the laws of war.

Second, a private individual or entity may also be sued under the ATCA by acting “under color of law” in committing violations of international law norms that only apply to states. In applying this rule, courts have looked to standards developed under 42 U.S.C. §1983 in suits seeking to redress violations of rights protected by the U.S. Constitution. In general, a defendant has acted under “color of law” where she acted together with state officials or with state aid.\textsuperscript{144}

The ATCA not only creates subject matter jurisdiction for violations of international law, but also provides a cause of action.\textsuperscript{145} Once a plaintiff successfully pleads a valid international law violation under the ATCA, she may then proceed to prove her case based on the relevant definition under international law. Where international law does not provide the relevant rules of decision, courts have at various times applied domestic federal common law, state law or the law of the foreign nation in which the tort was committed.

The sources of international law that provide potential bases for an ATCA claim are in Appendix A.

\textbf{§ 3.14 Statute of Limitations}

The text of the ATCA does not specify a statute of limitations (“SOL”). However, in \textit{Papa v. United States},\textsuperscript{146} the Ninth Circuit found that the 10-year SOL of the Torture Victims Protection Act (TVPA) applies to ATCA claims.

\textsuperscript{141} For international sources giving substance to forced labor as a violation of international legal norm, please refer to the ATCA appendix.

\textsuperscript{142} See Kadic, 70 F.3d at 239-41.


\textsuperscript{144} See Kadic, 70 F.3d at 245.

\textsuperscript{145} Alvarez, 124 S. Ct. at 2761; Flores v. S. Peru Copper Corp., 343 F.3d 140, 154 (2d Cir. 2003); Abebe-Jira v. Negewo, 72 F.3d 844, 848 (11th Cir. 1996); Hilao v. Estate of Marcos, 25 F.3d 1467, 1475 (9th Cir. 1994).

\textsuperscript{146} 281 F.3d 1004 (9th Cir. 2002). See also Manliguez v. Joseph, 226 F. Supp. 3d 377, 386 (E.D.N.Y. 2002).
§ 3.15 Damages

While courts are not consistent in the method by which they determine the scope of damages, they have been consistent in allowing victims to receive both compensatory and punitive damages for infringement of the ATCA.\(^{147}\)

IV. FEDERAL RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT ("RICO")\(^{148}\)

The Federal Racketeer Influenced and Corrupt Organizations Act ("RICO") makes it unlawful "for any person who has received any income derived... from a pattern of racketeering activity" to use or invest such income in activities relating to interstate or foreign commerce.\(^{149}\)

§ 3.16 Background

Congress passed RICO in 1970 as part of the Organized Crime Control Act, aimed at strengthening legal mechanisms for combating organized crime. In particular, it broadened civil and criminal remedies and created evidentiary rules tailored to admitting evidence of organized crime.

§ 3.17 Making a Claim

A successful RICO civil claim must be based on a "pattern" of "racketeering activity." "Racketeering activity" is defined as behavior that violates certain other laws, either enumerated federal statutes or state laws addressing specified topics and bearing specified penalties. "Pattern" requires at least two acts of racketeering activity, the last of which occurred within 10 years after the commission of a prior act of racketeering activity.\(^{150}\)

The TVPRA adds human trafficking crimes as predicate offenses for RICO charges and "trafficking in persons" is now included in the definition of a racketeering activity.\(^{151}\)

Other racketeering activities that qualify as criminal predicate acts for bringing a civil RICO claim in the trafficking context include:

- Mail and wire fraud
- Fraud in connection with identification documents
- Forgery or false use of passport
- Fraud and misuse of visas, permits, and other documents
- Peonage and slavery
- Activities prohibited under the Mann Act
- Importation of an alien for immoral use\(^{152}\)

\(^{147}\) See Paul v. Avril, 901 F.Supp. 330 (S.D. Fla. 1994) (awarding punitive damages in the amount of $4 million for torture and false imprisonment to Haitian citizens opposing the former Haitian military rule); see also Filartiga v. Pena-Irala, 577 F.Supp. 860 (E.D.N.Y. 1984) (awarding plaintiffs $10 million in compensatory and punitive damages for the torture and murder of a seventeen-year-old member of their family).


\(^{149}\) Id. at § 1962(a).

\(^{150}\) Id. at § 1961.

\(^{151}\) Id. at § 1961(1)(A).

\(^{152}\) Id. at § 1961.
Extortion (i.e., an employer threatening deportation when an employee complains about minimum wage or overtime, amounts to unlawful extortion of employee’s property interest in minimum wage or overtime.)

§ 3.18 Statute of Limitations

RICO does not specify a statute of limitations, however, in Agency Holding Corp. v. Malley-Duff & Associates, Inc., the Supreme Court applied a four-year statute of limitations. The Court adopted the four-year statute of limitations period from the civil remedies provision of the Clayton Anti-Trust Act as applicable to all federal civil RICO claims.

§ 3.19 Damages

Plaintiffs in RICO civil actions are entitled to treble damages and recovery of attorney’s fees and costs. Other remedies include: “ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise.” Any person whose business or property has been damaged as the result of proscribed racketeering activities may file a suit in federal court.

V. FAIR LABOR STANDARDS ACT (“FLSA”)  

The Fair Labor Standards Act (“FLSA”) is designed to alleviate “labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers.” The minimum wage and maximum hour protections offered by the FLSA provide trafficked workers with compensatory damages as well as liquidated damages for the willful wage and hour violations that occur in the context of forced labor.

§ 3.20 Substantive Protections

Minimum Wage

FLSA section 6(a) provides that:

“All employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates... except as otherwise provided in this section... not less than $5.15 an hour beginning September 1, 1997.”

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153 Violation of state theft or extortion criminal laws is a RICO predicate act. Practitioners should consult their state's laws on this issue.
156 Agency Holding Corp., 483 U.S. at 145.
158 Id. at § 1964(a).
160 Id. at § 202.
There have been no changes in the federal minimum wage since September 1, 1997.
Any amount paid under minimum wage will suffice for a claim of unpaid wages under the FLSA. Trafficked workers are often paid far less than federal minimum wage or are not paid at all. If the state minimum wage standard is higher, the Department of Labor (“DOL”) will calculate unpaid wages according to federal and state standards, and inform the employer of their obligation under both. However, the DOL can only enforce requirements under the FLSA. If your state minimum wage is higher, you should consider filing with your local labor commissioner or exercising your client’s private right of action, if available. You may use the FLSA claim to attain federal court jurisdiction and include a supplemental state minimum wage claim. Keep in mind that, even if the state minimum wage is higher, the liquidated damages provision of the FLSA may result in higher overall damages for your client if your state law does not have a similar provision.

**Maximum Hours & Overtime**

FLSA section 7(a)(1) states that:

“[N]o employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce... for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.”

Trafficked workers are often forced to work far more than forty hours per week. Exceedingly high hours can amount to significant damages in unpaid overtime. Be aware that some states provide more overtime protections than given by the FLSA. For example, California increases the overtime rate to two times the minimum wage for a workday of over twelve hours.

**§ 3.21 Calculating Hours**

Hours worked are defined as “all the time during which an employee is necessarily required to be on the employer’s premises, on duty or at a prescribed work place.”

Trafficked workers may be required to be “on-call” 24 hours a day without breaks or uninterrupted sleeping time. This “on call” time may constitute compensable work time.

The FLSA regulations provide guidelines for calculating hours worked and include specific interpretations for rest and meal breaks, sleep time and other periods of free time. In general, if sleeping time, meal periods or other periods of free time is interrupted by a call to duty, the interruption must be counted as hours worked. The following is an overview of these guidelines. Please look to the regulations for more detailed information.

**Breaks**

Meal breaks where the employee is still required to work are compensable. Break periods of less than twenty minutes are also compensable.

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162 See 29 C.F.R. § 785.23 (2003). For domestic workers it can be argued that sleeping with a child is working because the worker's presence is comforting to the child. There are no reported decisions on this though.
163 Id. at § 785.1.
164 Id. at § 785.19(a).
165 Id. at § 785.18.
Sleep

For shifts shorter than 24 consecutive hours, all hours are compensable including time spent sleeping or engaging in personal activities. For shifts longer than 24 hours, up to eight hours of sleep time may be excluded from compensable hours. However, interrupted sleep time can be compensated for the length of the interruption; and if sleep time is interrupted to the point where the employee is denied a reasonable night’s sleep, the full eight hours can be compensated.\footnote{166}

Other free time

For periods of free time (other than those relating to meals and sleeping) to be excluded from hours worked, the periods must be of sufficient duration to enable the employee to make effective use of that time for his or her personal purposes.\footnote{167}

§ 3.22 Record Keeping

The FLSA requires that employers keep contemporaneous records of hours worked by their employees.\footnote{168} If an employer fails to maintain accurate records, the employee can provide a reasonable estimation of the hours worked. The burden then falls on the employer to affirm or deny the reasonableness of the employee’s estimation by showing the exact number of hours worked by the employee.\footnote{169} Some state labor codes award the employee damages for the employer’s failure to maintain records. Employers may also be subject to civil penalties for record-keeping violations and pay stub violations under state laws. However, there is no private right of action to enforce the FLSA’s record-keeping provisions.

§ 3.23 Deductions

A deduction only violates the FLSA if it brings the worker’s hourly wages below the minimum wage, or if it cuts into the worker’s overtime wages.\footnote{170} Generally, an employer who pays a worker cash wages below the minimum wage or overtime may consider certain facilities as credits towards the required wages, unless:

- the employee has not actually and voluntarily received the benefit (note that several circuits have held that meal deductions do not need to be voluntary);\footnote{171}
- the facilities for which the deduction is taken are furnished primarily for the benefit or convenience of the employer;\footnote{172}

\footnote{166} Id. at § 785.23.
\footnote{167} 29 C.F.R. § 785.15 (2003).
\footnote{169} Mt. Clemens Pottery, 328 U.S. at 687.
\footnote{171} See id. at § 531.30 (2003); see also David Bros. Inc. v. Marshall, 522 F. Supp. 628 (N.D. Ga. 1981). But see Herman v. Collins Foods, Inc., 176 F.3d 912, 918-19 (6th Cir. 1999) (DOL regulation requiring deductions for meals to be voluntary is “no longer a viable regulation” and therefore involuntary meal deductions were proper); Davis Bros.Inc. v. Donovan, 700 F.2d 1368 (11th Cir. 1983) (same); Donovan v. Miller PropertiesInc., 547 F. Supp. 785 (M.D. La. 1982), aff’d 711 F.2d 49 (5th Cir. 1983) (same).
\footnote{172} See 29 C.F.R. § 531.3(d) (2003); see also Arriaga v. Fla. Pac. Farms, 305 F.3d 1228 (11th Cir. 2002).
the benefit has been furnished in violation of federal, state, or local law;\textsuperscript{173}

\textbullet\ the credit exceeds the “reasonable cost” of the item;\textsuperscript{174} or

\textbullet\ they are not deducted under the terms of a bona fide collective bargaining agreement.\textsuperscript{175}

The following deductions might arise in trafficking cases:

\textit{Inbound Transportation (Smuggling Fees)}

Smuggling fees are the most common charge to victims of trafficking. Though no cases have directly addressed the question of smuggling fees, the FLSA unequivocally prohibits deductions for facilities furnished in violation of federal, state, or local law.\textsuperscript{176} Because smuggling violates federal immigration laws, deductions for smuggling fees violate the FLSA to the extent that they bring the worker's wages below the minimum. Similarly, if the worker were transported in violation of federal, state, or local transportation safety laws (e.g. the worker was transported in a severely overcrowded vehicle), deductions for this transportation would also be illegal.

Additionally, a line of cases has developed in the farmworker context finding inbound transportation costs to be for the benefit of the employer.\textsuperscript{177} Therefore, courts have determined that these costs must be reimbursed to the worker during the first workweek, because otherwise the inbound transportation costs, which the worker expended for the employer's benefit, will bring the first week's wages below the minimum.\textsuperscript{178}

Finally, the cost of transportation from one worksite to another cannot be deducted.\textsuperscript{179} However, the actual cost of transporting a worker from his or her home to the worksite can be deducted so long as the travel time does not constitute hours worked under the FLSA.\textsuperscript{180} Arguably, however, charges for transportation beyond normal commuting distances are to the benefit of the employer, and therefore, should not be deducted.

\textit{Housing}

Generally, the reasonable cost of housing can be deducted from a worker's minimum or overtime wages. However, there are significant exceptions that might arise in the trafficking context. First, if the conditions of the housing violate federal, state, or local law, the employer cannot charge the worker for the housing if it brings the wages below the minimum.\textsuperscript{181} Second, if the housing is furnished for the benefit of the employer, the deduction violates the FLSA.\textsuperscript{182}


\textsuperscript{175}See id. at § 531.6.

\textsuperscript{176}See id. at § 531.31.


\textsuperscript{178}Id.

\textsuperscript{179}See 29 C.F.R. § 531.32(c) (2003).

\textsuperscript{180}See id. at § 531.32(a).

\textsuperscript{181}See Case Farms, 96 F. Supp. 2d at 638-40.

\textsuperscript{182}See, e.g., Stewart v. SUNY Maritime College, 141 Lab. Cas. (CCH) ¶ 40,166 (S.D.N.Y. September 19, 2000). But see Soler v. G & U, Inc., 833 F.2d 1104, 1110-11 (2d Cir. 1987) (housing furnished to migrant workers was not to the benefit of the employer).
If the housing is legal and is not for the benefit of the employer, the amount of the permissible deduction is frequently disputed. The question of how to calculate the reasonableness of deductions varies between the circuits. For example, the Second Circuit allows a deduction for the “fair rental value” of the housing. Other circuits have found, however, that the employer can only deduct the “actual cost” of providing the housing.

**Meals**

Only the actual cost of meals may be deducted from a worker’s minimum wages. The employer, however, need not calculate the cost of providing each meal to each individual employee, but rather may deduct the average cost of providing the meals to a group of workers. Obviously, deductions from wages for alcohol furnished without the proper license, and deductions for illegal drugs, both violate the FLSA.

**Essential Tools and Uniforms**

“Tools of the trade and other materials and services incidental to carrying on the employer’s business” are for the benefit of the employer, and therefore, charges for these materials cannot be deducted from a worker’s wages. Likewise, an employer cannot charge a worker for the purchase or rental of a uniform “where the nature of the business requires the employee to wear a uniform.”

**FICA and Other Employment Taxes**

Deductions for taxes are permitted to bring a worker’s wages below the minimum if (1) the employer remits the withheld taxes to the appropriate agency, and (2) the underlying law permits the employer to deduct the taxes. In the trafficking context, employers who know that their employees are using false Social Security numbers often withhold payroll taxes but do not report these withholdings to the IRS or the state taxing authority. This, of course, is a violation of the FLSA and of other federal and state laws. Likewise, some employers attempt to charge workers with the employer’s portion of the payroll taxes. As this charge is illegal under federal tax law, it also violates the FLSA if it brings the worker’s wages below the minimum.

**Payments of Debts**

As discussed above, payment of a debt incurred for an activity that violates the law, such as a smuggling fee or charges for illegal drugs, is prohibited under the FLSA. However, an employer may advance wages to a worker and then deduct the advance from the worker’s paycheck, even if it cuts into the minimum wages. However, if the employer benefits in

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184 See, e.g. Caro-Galvan v. Curtis Richardson, Inc., 993 F.2d 1500, 1513-14 (11th Cir. 1993); Donovan v. Williams Chemical Co., 682 F.2d 185, 189 (8th Cir. 1982); Lopez v. Rodriguez, 668 F.2d 1376, 1381 (D.C. Cir. 1981).
186 Id. at 920-21.
188 Id. at § 531.32(c).
189 Id. at § 531.38.
any way, such as through a profit, kickback, or other means, the debt charge is illegal if it reduces the wages below the minimum.\footnote{Id.; 29 C.F.R. § 531.35 (2003).} You should also look at your state labor law, which may impose requirements on employers advancing money to workers. If the employer failed to follow a procedure dictated by state law, recuperating a debt from a worker’s wages would violate the FLSA because the loan was a “facility” provided in violation of state law.

\section*{§ 3.24 Statute of Limitations}

Actions for non-willful violations of the FLSA must be commenced within two years after the violation occurs. Actions for willful violations of the FLSA must be commenced within 3 years after they occur.\footnote{29 U.S.C. § 255 (2000). There are several cases which suggest that if an employer fails to post notice of FLSA rights and/or promises to catch worker up in unpaid wages, the employer is estopped from later arguing statute of limitations. See, e.g., Cisneros v. Jinny Beauty Supply Co., No. 03 C 1453, 2004 U.S. Dist. LEXIS 2094 (D. Ill. February 5, 2004); Cortez v. Medina's Landscaping, No. 00 C 6320, 2002 U.S. Dist. LEXIS 18831 (D. Ill. September 30, 2002) (defendants' failure to post the notice required tolled the limitations period until the employee acquired a general awareness of his rights under the FLSA); Kamens v. Summit Stainless, Inc., 586 F. Supp. 324 (D. Pa. 1984). But see Claeys v. Gandalf Ltd., 303 F. Supp. 2d 890 (D. Ohio 2004) (plaintiff failed to show that employer willfully or recklessly violated FLSA overtime requirement); see also Viciedo v. New Horizons Computer Learning Ctr. of Columbus, 246 F. Supp. 2d 886 (D. Ohio 2003) (though plaintiff did not see posting, other witness did).}

\section*{§ 3.25 Damages}

An employer who violates the minimum wage and maximum hours provisions of the FLSA is liable to the employee for the amount of their unpaid wages and overtime. Additionally, the employer will almost always be liable for an additional, equal amount as liquidated damages.\footnote{29 U.S.C. § 16(b) (2000). But see 29 C.F.R. § 790.22 (2003) (setting forth limited prerequisites for the court to exercise discretion in the award of liquidated damages).} Defendants in violation of the FLSA must also pay a plaintiff's reasonable attorney's fees in addition to any judgment awarded.\footnote{Id.} Civil penalties of up to $10,000 may be awarded in certain circumstances.\footnote{See 29 U.S.C. § 216(a) (2000) (penalties relating to transport of items produced in violation of the Act); see also 29 U.S.C. § 216 (e) (2000) (penalties arising from child labor violations).} Injunctive relief is available to restrain violation of the minimum wages or overtime provisions of the Act, or the prohibition on engaging in transport of items produced in violation of such provisions.\footnote{29 U.S.C. § 216 (e) (2000) (penalties arising from child labor violations).} Some circuits also allow the award of punitive damages.\footnote{See Travis v. Gary Community Mental Health Ctr., 921 F.2d 108 (7th Cir. 1990) (plaintiff entitled to punitive damages under FLSA, 29 U.S.C.S. § 215(a)(3), because damages under that section were not limited). But see Snapp v. Unlimited Concepts, 208 F.3d 928 (11th Cir. 2000) (holding that punitive damages go beyond the statutory goal of making a plaintiff whole again, so are not available in an anti-retaliation claim).}

\section*{§ 3.26 Other Protections}

The FLSA prohibits an employer from firing or otherwise retaliating against an employee for exercising her rights under wage and hour laws.\footnote{29 U.S.C. § 215(a) (2000).} An employer who violates the anti-retaliation
provisions is liable for legal or equitable relief such as employment, reinstatement, promotion, and payment of wages lost plus an additional amount as liquidated damages.\textsuperscript{199}

The FLSA does not require severance pay, sick leave, vacations, or holidays.\textsuperscript{200}

\textbf{§ 3.27 FLSA Coverage}

With the exception of the FLSA’s specific exemptions, the FLSA covers employees engaged in interstate commerce or the production of goods for interstate commerce, or if the employee is employed by an “enterprise” engaged in commerce of the production of goods for interstate commerce.\textsuperscript{201} An employer must meet the “Interstate Commerce Test” and the “Gross Sales Test” to be subject to FLSA enterprise coverage. This means that the enterprise must have at least two employees engaged in interstate commerce or the production, handling or sale of goods for interstate commerce, and the gross sales of the enterprise must exceed $500,000.\textsuperscript{202} All employees of a covered enterprise are entitled to FLSA’s protections. Even if the employer does not meet the $500,000 enterprise test, the employee will still be covered by the FLSA if, in the course of her work, she is engaged in interstate commerce or in the production of goods for interstate commerce. Therefore, an individual employee working for an individual or a small business may still be covered by the FLSA.

The FLSA affords protection to “any individual employed by an employer” who has “suffered or [is] permitted” to work.\textsuperscript{203} The “economic reality” test is used to determine whether this employment relationship exists for purposes of FLSA enforcement. The test analyzes the circumstances of the whole activity to determine whether the individual is economically dependent on the supposed employer.\textsuperscript{204} Some of the factors that may be considered in this analysis include: direct or indirect supervision of employees and direct or indirect authority to determine and modify employment terms.\textsuperscript{205} Whether an individual meets the definition of an employee under the FLSA is not affected by factors such as the place where the work is performed, the absence of a formal employment agreement, the time or method of payment, or whether an entity is licensed by the state or local government.

While the FLSA applies to nearly every occupation and industry, special rules may modify or limit recovery in some situations. The rules that are particularly relevant to human trafficking cases are described below. An employer who claims an exemption under the FLSA has the burden of showing that it applies.\textsuperscript{206}

\begin{itemize}
\item \textsuperscript{199} Id.
\item \textsuperscript{200} It can be argued that there should be a private right of action to enforce the hot goods provision of the FLSA. This has not been litigated yet though. See, e.g., Lara Jo Foo, The Vulnerable and Exploitable Immigrant Workforce and the Need for Strengthening Worker Protective Legislation, 103 Yale L.J. 2179, 2208-09 (1994).
\item \textsuperscript{201} 29 U.S.C. §§ 206-207 (2000).
\item \textsuperscript{202} Id. at § 203(s).
\item \textsuperscript{203} Id. at § 203(e)(g).
\item \textsuperscript{205} Rutherford Food Corp. v. McComb, 331 U.S. 722 (1947).
\end{itemize}
Undocumented Workers

A worker's immigration status is irrelevant in determining “employment relationship” for purposes of FLSA enforcement. All workers are protected under the FLSA regardless of immigration status. Widespread misunderstanding regarding back pay recovery for undocumented workers has occurred due to Hoffman Plastic Compounds v. NLRB. 207 In this case, undocumented workers attempting to assert their rights under the National Labor Relations Act were wrongfully terminated after their employer retaliated. The court determined that the plaintiffs were not entitled to recover for wages they would have earned had they not been fired. 208 However, Hoffman does not limit recovery of any unpaid wages and overtime for work already performed. 209 It has also been held that Hoffman does not bar undocumented workers from receiving compensatory and punitive damages for retaliation under the FLSA. 210 Still, there remains some uncertainty as to whether courts will extend Hoffman’s limitations on back pay to other types of remedies in suits brought by undocumented workers. For more information on Hoffman Plastics and advocacy efforts aimed at broadening worker protections for undocumented immigrants, go to the National Employment Law Project website at www.nelp.org.

Sex Workers

Although forced prostitution is not covered by the FLSA since it is considered illegal employment, other types of employment and legal commercial sex work may be covered. Congress intended the FLSA to apply to “labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers,” so the FLSA presumably covers any work, including legal commercial sex work, that violates fair hours and pay standards. 211 For example, legal sex workers such as exotic dancers, who work immensely irregular hours without a bona fide contract that specifies overtime pay, would have an actionable claim under the FLSA. 212 However, sex workers could be exempted from FLSA coverage if their place of work is considered a “recreational center” that does not operate for more than seven months of the year. 213 Even in the absence of an FLSA claim, victims of sex trafficking have many other causes of action available to them.

Relatives

When an enterprise’s only regular employees are the owner and the owner’s parent, spouse, child, brother, sister, grandchildren, grandparents, and in-laws, it is not a covered enterprise or part of a covered enterprise for purposes of FLSA. 214

208 Id. at 151-52.
209 In Hoffman the Court denied an NLRB claim for “backpay” based on compensation that the plaintiff would have received had he not been wrongfully terminated. Id. at 148-49. This situation may be distinguished from a plaintiff who seeks “backpay” in the form of payment for labor already performed but never compensated. See Flores v. Albertsons, Inc., No. CV 01-00515 AHM (SHx), 2002 U.S. Dist. LEXIS 6171, *17-20 (C.D. Cal. April 9, 2002) (rejecting defendant’s argument that Hoffman bars an undocumented worker’s claim for backpay under FLSA based on work already performed); see also Liu v. Donna Karan Int’l, 207 F. Supp. 2d 191 (S.D. N.Y. 2002) (same).
212 Id. at § 207(f).
213 Id. at § 213(3)(A).
214 Id. at § 203(s).
While this exemption may preclude enforcement of the FLSA in cases of servile marriage or where certain family members are trafficked for forced labor, numerous other claims can be brought for both compensatory and punitive damages. In addition, this exemption does not apply to certain members of the extended family such as cousins, uncles, aunts, nieces, and nephews.\(^{215}\)

**Domestic Service Workers**

The FLSA distinguishes between live-in and non-live-in domestic workers.\(^{216}\) Domestic service employees\(^{217}\) who reside in the household where they are employed are entitled to the same minimum wage as domestic service employees who work only during the day. However, § 13(b)(21) provides an exemption from the Act's overtime requirements for such employees.\(^{218}\) Live-in domestic workers are not entitled to time and a half.\(^{219}\) Employers must pay live-in workers the applicable minimum wage rate for all hours worked.

Be sure to check your state's wage and hour laws as many states do provide overtime relief for live-in domestic workers. For example, California provides time and a half to live-in domestic workers after nine hours worked in a workday and two times the regular pay after nine hours worked on the sixth or seventh day worked in a workweek.\(^{220}\) New York and New Jersey also give overtime to live-in domestic workers under state law.\(^{221}\)

The FLSA regulations provide for a special interpretation of calculating hours worked for live-in domestic workers, which differs from the general rule.\(^{222}\) In determining the number of hours worked by a live-in worker, the employee and the employer may exclude, by agreement between themselves, the amount of sleeping time, meal time and other periods of complete freedom from all duties when the employee may either leave the premises or stay on the premises for purely personal pursuits. A copy of this agreement can be used to establish hours worked in the absence of a contemporaneous time record, allowing employers of live-in domestic workers to be exempt from the general FLSA record-keeping requirement. However, the employer must still show that this agreement reflects actual hours worked. The definition of free time for live-in domestic workers is the same as the

\(^{215}\) Singh, 214 F. Supp. 2d at 1061.

\(^{216}\) “Workers such as ‘babysitters employed on a casual basis, companions for the aged and infirm, and domestic workers who reside in their employers households’ do not enjoy protection under FLSA. 165 ALR Fed 165; see 29 U.S.C. § 213(b)(21) (2000).

\(^{217}\) “Domestic service employment” refers to services of a household nature performed by an employee in or about a private home. The term includes, but is not limited to, employees such as cooks, waiters, butlers, valets, maids, housekeepers, governesses, nurses, janitors, laundresses, caretakers, handymen, gardeners, footmen, grooms, and chauffeurs of automobiles for family use. It also includes babysitters employed on other than a casual basis. 29 C.F.R. § 552.3 (2003).


\(^{219}\) Non-live-in domestic workers are entitled to overtime pay if they work more than eight hours, more than 40 hours per work week, or on the seventh day of the workweek. 29 U.S.C. § 213(a)(15) (2000).


\(^{222}\) Note that the “casual babysitting” exception of the FLSA domestic worker coverage is narrowly construed and is intended for teenagers and others not dependent on the income. See, e.g., Topo, 2004 U.S. Dist. LEXIS 4134 at *9-10.
general rule. For periods of free time (other than those relating to meals and sleeping) to be excluded from hours worked, the periods must be of sufficient duration to enable the employee to make effective use of the time. If the sleeping time, meal periods or other periods of free time are interrupted by a call to duty, the interruption must be counted as hours worked.223

Proving hours worked in domestic worker cases can be difficult since it is often the employer's word against the employee's. However, your client can produce evidence of the extent of their work with witnesses or lists of tasks that the employer may have ordered your client to complete. Domestic workers who were caring for children can corroborate their work schedule with the child's daily schedule.

Farmworkers

Agricultural workers are entitled to the federal minimum wage of $5.15 per hour, with some exceptions. However, they are exempt from the FLSA's overtime requirements. Keep in mind, however, that the FLSA definition of agriculture is fairly limited. Therefore, many packing shed workers, and any worker changing the raw, natural state of the agricultural product, are eligible for overtime.227

Further exemptions apply to agricultural workers less than 16 years of age, particularly if employed by their parents. (See “Children” below.)

Joint employment liability almost always exists when agricultural employers utilize the services of farm labor contractors. In these situations, both the grower and the contractor are responsible for complying with the FLSA.

Agricultural employers must also comply with the Migrant and Seasonal Agricultural Worker Protection Act, which provides farmworkers with additional industry-specific protections. (See § V, “Migrant and Seasonal Agricultural Worker Protection Act”.)

Children

The FLSA provides both added protections and exemptions for children. The FLSA protects against oppressive child labor in three major areas: (1) hour regulation, (2) age limitations, and (3) regulation of hazardous occupations. The FLSA provides that no producer, manufacturer, or dealer shall ship or deliver goods using oppressive child labor. In addition, 'no employer shall employ any oppressive child labor in commerce or in the production of goods for commerce...’ Oppressive child labor” can occur when the employer violates the minimum age or hazardous job requirements. The standard can vary greatly depending

223 For domestic workers it can be argued that sleeping with a child is working because the worker is giving the employer the benefit of their services by comforting or tending to the child. 29 C.F.R. § 552.102 (2003).

224 Agricultural work is defined as work performed on a farm as an incident to or in conjunction with farming operations. See 29 U.S.C. § 203(f) (2000). The U.S. Department of Labor regulations further refine this definition. See generally 29 C.F.R. § 780, et seq. (2003).


229 29 U.S.C. § 212 (2000) (basic child labor guidelines are found in this section).
on the nature of the work (agriculture, non-agriculture or a job deemed particularly hazardous like mining and manufacturing), and whether the child is working for a parent.\textsuperscript{230} The largest exemption in child minimum age and hazardous job restrictions occurs when the child is employed by his or her parent or by a person standing in the parent’s place, except in manufacturing or mining occupations. These parental exceptions are particularly loose in the agricultural context.\textsuperscript{231} Additional regulations granted to the Secretary of Labor under section 212(b) of the FLSA have added some substance to the FLSA guidelines. For example, youth under the age of 14 are not allowed to work any non-agricultural job with the exception of acting or delivering newspapers.\textsuperscript{232}

There are specific guidelines for youth engaged in work experience and career exploration programs.\textsuperscript{233}

There is also minimum wage exception for youth. This allows an employer to pay any newly hired employee under 20 years old less than minimum wage. The pay rate is set at $4.25 for the first 90 consecutive calendar days of employment.\textsuperscript{234}

For details on required certification when employing children see 29 C.F.R. § 570.5-.12

\textbf{Non-agriculture}

The minimum age standards in all occupations except agriculture are as follows:

- 16 years old is the general minimum age requirement.
- Youth who are age 14-16 may work in occupations other than manufacturing or mining when the employment does not overlap with school hours, or otherwise interfere with the child’s schooling or health and well-being.\textsuperscript{235}
- Youth who are age 14-16 years old cannot work more than 3 hours a day or 18 hours a week when school is in session and they cannot work more than 8 hours a day and forty hours a week when school is not in session.\textsuperscript{236}
- Youth who are age 14 and 15 can only work between 7:00 am and 7:00 pm during the school year. The hours extend to 9:00 pm between June 1 and Labor Day.\textsuperscript{237}
- When the employment is found particularly hazardous by the Secretary of Labor or detrimental to their health and well-being, the youth must be 18 or older.\textsuperscript{238}
- Youth who are age 18 or older are not subject to any restrictions on jobs or hours.\textsuperscript{239}

\textsuperscript{230} Id. at § 203(l).
\textsuperscript{231} 29 C.F.R. § 570.2(a)(2) (2003); see also 29 U.S.C. 213(c) (2000) (outlining particular tasks deemed unfit for youth).
\textsuperscript{233} See id. at § 570.35a.
\textsuperscript{234} 29 C.F.R. § 2006(g)(1) (2000).
\textsuperscript{235} 29 C.F.R. § 570.2(a)(1)(i) (2003).
\textsuperscript{236} Id. at § 570.35a.
\textsuperscript{237} Id.
\textsuperscript{238} Id. at § 570.2(a)(1)(ii). For more information on which occupations are considered hazardous by the Secretary of Labor, see Subpart E.
\textsuperscript{239} Id. at § 570.2.
Agriculture

The minimum age requirement for children working in agriculture is generally 16 when the employment is during school hours and the job is within the school district in which the minor is living at the time.240 There are major exceptions under agriculture that allow children younger than 12 to work when the employer is the child’s parent or a person standing in place of the parent on a farm owned and operated by this person.241 In addition, children under these circumstances are not protected against hazardous occupation as they would in non-agricultural work. When the agricultural employment takes place outside school hours, the age limit drops to 14, though 12 and 13 year olds may be employed with written parental consent and a child under 12 may be employed by his or her parent on a farm owned or operated by the parent or on a farm where all employees are exempt from the minimum wage provisions as per FLSA guidelines.242

Child Labor restrictions do not apply to:

- Youth over 14 when the work is not declared hazardous and the employment is outside school hours.243
- Children age 12 or 13 with written consent from a parent, or who work on the same farm as a parent, provided the work is outside school hours.
- Children under the age of 12 when employed by the parent or person standing in place of a parent on a farm owned by this person.
- Youth under 12 employed on a farm exempt from minimum wage requirements outside school hours with parental consent.244
- Children 10 or 11 working as hand harvest laborers for no more than 8 weeks in a calendar year, subject to Department of Labor waiver.245

There is limited protection for children under 16 for hazardous activities.246

§ 3.28 Civil Penalties for Child Labor Violations

FLSA section 16(e)247 specifically addresses civil penalties for violations of child labor:

- Each “oppressive child labor” violation, or violation of FLSA sections 12 or 13(c)248 is not to exceed $10,000 per employee.249

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242 Id.
244 29 C.F.R. § 570.2(b) (2003).
245 Id. at § 575.1(b)(5).
246 See id. at § 570.71 (listing particular jobs in agriculture considered hazardous).
248 Id. at §§ 212, 213(c)(5).
249 For any violation occurring on or after January 7, 2002, the civil money penalty amount increases to not to exceed $11,000 for each employee who was subject of violation. The FLSA language outlining how to calculate the damages takes into consideration the available evidence of the violation in conjunction with the size of the business and gravity of harm. 29 U.S.C. § 216(e) (2000); see also 29 C.F.R. § 579.5 (2003).
Willful minimum wage and maximum hour violations – FLSA sections 6 and 7\textsuperscript{250} – are $1,000 per violation.\textsuperscript{251}

There is no private right of action for FLSA child labor violations. Therefore, any child labor violations should be reported directly to the U.S. Department of Labor.

\section*{§ 3.29 Enforcement of the Fair Labor Standards Act}

The injured worker can bring a claim in federal district court under the FLSA, or file a complaint with the DOL. The DOL has its own prosecutors, called solicitors, and may institute an action on behalf of one or more employees in federal court, but only if the employer is unwilling to cooperate. If the DOL solicitors bring an action in court on the employee’s behalf, the employee’s right to bring a separate action under the FLSA terminates.\textsuperscript{252}

It is important to keep in mind that the DOL is charged with enforcing the FLSA and does not necessarily represent the interest of the worker. While the DOL may be able to obtain a quicker judgment for the employee, a private lawsuit will give your client more control over the direction of his or her case. Be sure to check your state labor code as your state statute may provide for greater wage and hour protections than the FLSA as well as additional remedies against employer misconduct.

\section*{VI. MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT\textsuperscript{253}}

The Migrant and Seasonal Agricultural Worker Protection Act ("AWPA"), affords significant protections to migrant and seasonal farmworkers. The AWPA imposes specific requirements for housing conditions, transportation safety and insurance, wage statements, payroll records, working arrangement enforcement, farm labor contractor registration, and disclosure of the terms and conditions of employment. Attorneys with farmworker legal services programs around the country have developed expertise in AWPA litigation. If you are representing a farmworker in a trafficking case and you are not familiar with the AWPA, please contact Daniel Werner at the Workers’ Rights Law Center of New York, Inc. for a list of farmworker legal services providers in your area.

\section*{VII. TITLE VII OF THE CIVIL RIGHTS ACT ("TITLE VII")\textsuperscript{254}}

Title VII of the 1964 Civil Rights Act prohibits employers from discriminating against employees on the basis of any of the following protected categories: race, color, religion, national origin, sex or pregnancy. Employers may not “fail or refuse to hire or to discharge any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual’s race, color, religion, sex, or national origin.”\textsuperscript{255}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{250} 29 U.S.C. §§ 206-207 (2000).
\item \textsuperscript{251} Id. at § 216(e).
\item \textsuperscript{252} Id. at § 216.
\item \textsuperscript{253} Id. at § 1801 et seq.
\item \textsuperscript{254} Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-2000e17 (2000); Portions of this section were adapted with permission from the Legal Aid Society, Employment Law Center, Workers’ Rights Clinic Employment Law Manual, 2003.
\item \textsuperscript{255} 42 U.S.C. § 2000e2 (2000).
\end{itemize}
\end{footnotesize}
Title VII violations in the human trafficking context are common, particularly in situations of sexual, racial or national origin harassment and other types of discriminatory treatment. Note that Title VII only applies to employers with fifteen or more employees.  

§ 3.30 Proving Discrimination

While discrimination in the workplace context arises in many variations, there are at least three discrete theories of proving employment discrimination. To establish a Title VII employment discrimination claim on the basis of race, color, sex, sexual orientation, national origin, age, religion or disability, one of the following theories may apply: individual disparate treatment, systemic disparate treatment, and disparate impact.

**Individual disparate treatment**

Individual disparate treatment occurs when an employer treats an employee in a manner that differs from how other employees are treated on the basis of his or her race, color, religion, sex or national origin. An individual disparate treatment claim must establish a *prima facie* case by demonstrating the following elements:

- The employee must be a member of a protected class;
- The employee must be either qualified for the job opening or performing satisfactorily in the job;
- An adverse action must have occurred against the employee; and
- Evidence of discrimination after the employee was fired, not hired, etc. must be shown.

After the above elements have been established, the burden shifts to the employer to provide a “legitimate, non-discriminatory reason” for the adverse action. If the employer puts forth a legitimate, non-discriminatory reason, the burden shifts back to the employee. The employee must show that the employer's reason was a “pretext,” which means the employer had a different, unlawful reason for its adverse action. An employee can establish a pretext through direct or indirect evidence.

**Mixed Motive**

Mixed motive cases occur when the employer acted discriminatorily because of several motivating factors, one of which was the employee’s membership in a protected class. The employee can establish a mixed motive violation by proving that race, color, religion, sex or national origin was a “motivating factor” for any employment practice. However, if the employer demonstrates that it would have made the same decision without the “impermissible motivating factor,” the employer can avoid reinstating the employee or paying damages.

**Stray Remarks**

A stray remark has been defined as an ambivalent comment. More specifically, it is a comment by someone lacking the authority to make decisions, or by a decision maker that is unrelated to the actual decision-making process. If an employer makes a single, isolated, discriminatory comment it rarely suffices to establish employment discrimination.

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256 Id. at § 2000e.

Systemic Disparate Treatment

Systemic disparate treatment arises when an employer discriminates against a worker and tends to similarly discriminate against many people who belong to the same protected class. Systemic disparate treatment may occur in the following manner:

Facial Discrimination

Facial discrimination cases arise when the employer has a policy or employment requirement that clearly discriminates against one group but claims that there is a legitimate reason for the policy. The legitimate reason defense can be met if the employer provides a justification for the policy or shows that the requirement is a “bona fide occupational qualification” or “BFOQ.” To establish this, the employer must show (1) the requirement is “reasonably necessary to the normal operation of the particular business;” and (2) without the requirement, “all or substantially all” of the excluded people would be unable to “safely and efficiently” perform the job, or dealing with people on an individual basis would be “impossible or highly impractical.”

Pattern and Practice

Pattern and practice cases occur when an employer has unstated policies that produce a “pattern and practice” of discrimination against a Title VII protected group within the company. Pattern and practice discrimination may be established through the use of statistical evidence illustrating a difference between the composition of the employer’s labor force and that of the “qualified relevant labor market.” Once the employee’s prima facie case is established, the burden shifts to the employer to provide a legitimate, non-discriminatory reason for the difference in composition between the employer’s labor force and the available labor force. If the employer meets this burden, the employee must show that the employer’s reason is a pretext.

Disparate Impact

A claim of disparate impact arises when one group of people is more adversely affected by an employer’s “neutral” employment practice than others. Under disparate impact claims, it is unnecessary to show the employer’s intent to discriminate. Instead, the employee must establish that the employment practice disproportionately adversely impacts a protected class, at which point the burden shifts to the employer. The employer must show that the practice is required by a business necessity. However, even if business necessity is shown, the employee can prove a violation if an alternative practice exists that would achieve the employer’s business necessity while having a lesser disparate impact.

§ 3.31 Sexual Harassment

Sexual harassment is a form of sex discrimination in violation of Title VII. Traditionally, courts have recognized two different forms of sexual harassment: quid pro quo and “hostile work environment.”

Quid Pro Quo

Essentially, quid pro quo is a type of sexual harassment that involves adverse employment decisions resulting from an employee’s refusal to accept a supervisor’s demands for sexual

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favors or to tolerate a sexually charged work environment. The plaintiff’s *prima facie* case must show that he or she suffered a “tangible job action,” which the Supreme Court has defined as “a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits.”

**“Hostile Work Environment”**

A plaintiff employee can also establish Title VII liability by showing that he or she was unlawfully subjected to hostile, offensive, or intimidating behavior that is so “severe and pervasive that it alters the conditions of the plaintiff’s employment and creates an abusive working environment.” To prove a “hostile work environment” claim, the employee plaintiff must show that he or she was subjected to conduct that was (1) based on sex, (2) unwelcome, and (3) sufficiently severe or pervasive to alter the condition of plaintiff employee’s employment and create an abusive working environment.

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263 Sex-based conduct may include, but is not limited to, sexual advances, requests for sexual favors, or other verbal, visual, or physical conduct of a sexual nature. However, a sexual harassment claim based on the creation of a hostile work environment need not have anything to do with sexual advances. See e.g., Oncale v. Sundowner Offshore Serv., Inc., 523 U.S. 75, 79 (1998) (“[H]arassing conduct need not be motivated by sexual desire to support an inference of discrimination on the basis of sex.”); Meritor Savings Bank, 477 U.S. at 67-68. So long as the harassing conduct is based on gender, it violates the law as harassment based on sex, even if the harassing conduct is not in itself sexual. Accordingly, same-sex harassment is actionable under Title VII, regardless of the harasser’s sexual orientation. Oncale, 523 U.S. at 79 (“A trier of fact might reasonably find... discrimination... if a female victim is harassed in such sex-specific and derogatory terms by another woman as to make it clear that the harasser is motivated by general hostility to the presence of women in the workplace.”).
264 A complainant may demonstrate that the conduct was unwelcome by showing, among other things, emotional distress, deteriorating job performance, that she avoided the harasser, that she informed friends or family of the harassment, that she complained to the harasser or other company representatives of the harassment, or absence of evidence showing the conduct was welcome or encouraged. The fact that sex-related conduct was ‘voluntary,’ in the sense that the plaintiff employee was not forced to participate against her will, is not a defense to a sexual harassment suit. Meritor Savings Bank, 477 U.S. at 67-68.
265 Meritor Savings Bank, 477 U.S. at 65-69. To show that the harassing conduct was severe or pervasive enough to create an abusive working environment, plaintiff employee must meet both an (i) objective and (ii) a subjective standard. Harris v. Forklift Sys., Inc., 510 U.S. 17 (1993). Under the objective standard, plaintiff employee must show that a reasonable woman would have considered the conduct severe or pervasive. Ellison v. Brady, 924 F.2d 872, 878 (1991). (“A female plaintiff states a prima facie case of hostile environment sexual harassment when she alleges conduct which a reasonable woman would consider sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment.”) Or that in consideration of the totality of circumstances the environment was sufficiently hostile or abusive. Harris, 510 U.S. at 22, listing factors considered in the totality of circumstances test. Under the subjective standard, plaintiff employee needs to show that she actually found the conduct sufficiently severe or pervasive to interfere with the work environment. The fact finder must take the plaintiff’s fundamental characteristics into consideration. Conduct by employer does not need to seriously affect an employee’s psychological well-being or lead the employee to suffer injury in order to be actionable under Title VII. Harris, 510 U.S. at 22 (“Title VII comes into play before the harassing conduct leads to a nervous breakdown... . As long as the environment would reasonably be perceived, and is perceived, as hostile or abusive, there is no need for it also to be psychologically injurious.”).
§ 3.32 Other Harassment: Race and/or National Origin

Federal law requires employers to provide a work environment free of racial harassment, which may include taking positive steps to redress or abolish the intimidation of employees. Discrimination in violation of Title VII occurs where an employer fails to take reasonable action to eliminate racial harassment. An employee must show that the harassment is pervasive (more than isolated or sporadic events)\textsuperscript{266} in order to establish a Title VII violation. Courts may look to the totality of the circumstances, the gravity of the harm, and the nature of the work environment in determining whether the harassment is sufficiently pervasive to constitute a violation. Other factors the court may consider are the relationship of the employee to the alleged perpetrator, and whether there is evidence of other hostility, such as sexual harassment, in addition to the racial harassment.

"Hostile Work Environment"

A “hostile work environment” has specific meaning and arises when the emotional, psychological, and physical stability of minority employees is adversely impacted by the racial discrimination in the workplace. Liability based on a “hostile work environment” theory may exist without a showing of economic loss to the employee. An employee can generally establish a “hostile work environment” by showing there is a continuous or concerted pattern of harassment by co-employees that remain uninvestigated and unpunished by management.

Employer Liability for Behavior of Supervisors, Co-workers and Third-Parties

Traditional agency principles determine employer liability for the acts of supervisory employees. Employers are strictly liable for hostile work environment harassment by supervisors.\textsuperscript{267} There is no individual liability for supervisors under Title VII. When a non-supervisory co-worker harasses an employee, the employer's conduct is reviewed for negligence. Once an employer knows or should know of harassment by a co-worker, remedial obligations begin, and the employer is liable for the hostile work environment created by a co-worker unless it takes adequate remedial measures. Employers may also be liable for the harassment of their workers by customers, clients, or personnel of other businesses with which the employer has an official relationship. An employer will be held liable if it has acquiesced to the situation, or simply failed to exercise any control it possessed to stop the harassment. Liability is generally denied when the employer takes appropriate steps to stop the harassment.

§ 3.33 Retaliation By Employer

It is a violation of Title VII for an employer to retaliate against employees who make Title VII complaints. Plaintiff employee may still be able to assert a successful claim of unlawful retaliation even if the underlying claim of discrimination is found to be without merit. The employee’s conduct will likely be protected if her opposition was based on a “reasonable belief” that her employer was violating anti-discrimination laws. In addition, plaintiff (the employee complaining of discrimination) need not be a member of the protected class of people who are being discriminated against.

\textsuperscript{266} Pierson v. Norcliff Thayer, Inc. 605 F. Supp. 273, 42 FEP 528 (E.D. Mo. 1985) (denying Title VII violation claim where there were four specific instances of racial harassment).

\textsuperscript{267} Note that the harasser must be plaintiff employee's own supervisor and that the employee can assert affirmative defenses to avoid liability. Meritor Savings Bank, 477 U.S. at 57.
§ 3.34 Filing Process and Statute of Limitations

To assert a Title VII claim, the employee must first file a claim with the Equal Employment Opportunity Commission (EEOC) to exhaust administrative remedies. The employee must file the discrimination claim with the EEOC within 300 days of the discriminatory act. In hostile work environment or pattern and practice discrimination cases, the “continuing violation” doctrine applies. This means that the statute of limitations clock is reset with each new violation. The employee should allege all relevant allegations of discrimination in the administrative claim otherwise such claims will be barred from a later civil complaint for failure to exhaust. The EEOC receives and investigates discrimination charges, makes reasonableness findings and may litigate on behalf of the charging party. If the EEOC determines that there is no cause for a discrimination finding, the agency will issue a “dismissal without particularized findings” determination and the charging party should request a “Right to Sue Letter,” which is required before the employee can file suit against the employer in court. If the EEOC finds possible discrimination, the agency will informally attempt to negotiate a settlement with the employer. The EEOC may file a civil suit on behalf of the employee if the agency is unable to successfully negotiate an agreement, or it may issue a Right to Sue Letter to the employee authorizing a civil claim to be filed in court. The employee has 90 days to file a lawsuit after receipt of the Right to Sue Letter from the EEOC.

§ 3.35 Damages

An employer in violation of Title VII is liable for the employee's back pay and front pay as well as compensatory and punitive damages and attorneys' fees and costs. However, in trafficking contexts where the worker may have undocumented immigration status, back pay and front pay recovery may be limited.

Compensatory and punitive damages for disparate treatment or intentional discrimination under Title VII are awarded pursuant to the Civil Rights Act of 1991. Title VII has damages “caps” which limit the amount of compensatory and punitive damages that an employee can recover. Recovery for compensatory and punitive damages under the Civil Rights Act of 1991 is available to those plaintiffs who can recover under the Civil Rights Act of 1866.

VIII. CIVIL RIGHTS ACT OF 1866 ("SECTION 1981")

The Civil Rights Act of 1866 is an additional discrimination cause of action. The Civil Rights Act of 1866 prohibits discrimination in the making, performance, modification, and termination of

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269 It is important to check with the state version of the EEOC statute because the statute of limitations in most states is often longer than that for the claims filed with the EEOC.
271 See section on undocumented workers under the FLSA, which describes the impact of Hoffman Plastics.
272 Compensatory damages may be available for other costs incurred as a result of the discriminatory act, not including back pay, front pay and pre-judgement interests, such as medical expenses and emotional distress.
274 The maximum damage awards are: 1) 15-100 employees = $50,000; 2) 101-200 = $100,000; 3) 201-500 = $200,000; 4) 500 + employees = $300,000.
contracts, including enjoyment of all benefits, privileges, terms and conditions of contractual relationships, as well as terms and conditions of employment. The statute covers discrimination only on the basis of race and national origin.\textsuperscript{277}

\textsection{1981} permits recovery of unlimited compensatory and punitive damages. Furthermore, it does not have the procedural filing requirements of Title VII and has a longer statute of limitations. It also allows for attorney’s fees and costs.\textsuperscript{278}

**IX. INTENTIONAL TORTS AND NEGLIGENCE**

Tort claims provide compensatory damages for the distress suffered by the employee, as well as punitive damages meant to punish the employer. The statute of limitations for common law torts in many states is \textit{one year}. Since some human trafficking cases lead to successful criminal prosecutions, analogous torts may not have to be proven under the doctrine of collateral estoppel. However, the absence of a criminal trial should not deter your client from pursuing tort claims. In civil cases, the burden of proof is a preponderance of the evidence, which is a lower standard to meet than the burden of beyond a reasonable doubt in the criminal context. Please note that tort law is extremely varied depending on jurisdiction. It is highly recommended that you consult your juristictions application of tort laws. The following are torts that frequently occur in human trafficking situations.

\textsection{3.36 Intentional Infliction of Emotional Distress (IIED)}

IIED involves:

- Extreme and outrageous conduct by the defendant or the defendant’s agent;
- Intent to cause, or the reckless disregard of causing, emotional distress;
- Severe or extreme emotional distress suffered by the plaintiff; and
- Actual or proximate cause between the conduct and the distress.

Most states recognize IIED without requiring the victim to suffer physical manifestations of mental distress. “Extreme and outrageous” conduct is not clearly defined, however, mere rudeness or offensive behavior is not sufficient. The relationship between the plaintiff and the defendant is important. For example, continuous mocking by an employer toward an employee is more likely to be characterized as outrageous rather than taunting among equals.\textsuperscript{279}

\textsection{3.37 False Imprisonment}

The following are elements of false imprisonment:

- Nonconsensual, intentional confinement of the plaintiff;
- No lawful purpose; and
- Confinement for an appreciable length of time, no matter how short (can be 15 minutes).

\textsuperscript{277} Id.

\textsuperscript{278} Id. at \textsection{1988}.

\textsuperscript{279} See John L. Diamond, et. al., Understanding Torts (2d ed. 2002).
Confinement can take several different forms: physical barriers; force or threat of immediate force against the plaintiff, his or her family, or others in plaintiff’s immediate presence or property; omission when the defendant has a legal duty to act; or improper assertion of legal authority. If a physical barrier is used to restrain the plaintiff, it must surround the plaintiff in all directions so that there is no reasonable means of escape.280

§ 3.38 Assault
The following are elements of assault:

■ Demonstration of an unlawful intent by defendant to inflict immediate injury or offensive contact on the plaintiff who is then present; and

■ Reasonable apprehension of such injury by the plaintiff (actual contact not required).

Intent needs to be proven. The defendant must desire or be substantially certain that the plaintiff will apprehend harm or offensive contact. Furthermore, the plaintiff must actually perceive the harm or offensive contact and the apprehension perceived must be imminent. Mere words alone do not suffice for an assault claim. Most states require that the apprehension of immediate harm or offensive contact be reasonable.281

§ 3.39 Battery
The following are elements of battery:

■ Intentional, unlawful, and harmful or offensive contact by defendant;

■ With the plaintiff; and

■ Without the plaintiff’s consent.

Battery is actionable even in trivial physical contacts so long as they are harmful or offensive and without consent. The physical contact does not even need to touch the plaintiff’s body so long as it intrudes his or her personal autonomy. Unlike assault, the plaintiff does not need to be conscious of the contact.282

§ 3.40 Fraudulent Misrepresentation
The following are elements of fraudulent misrepresentation:

■ A misrepresentation (falsity, concealment, or nondisclosure);

■ Defendant knew of or consciously disregarded the statement’s falsity;

■ Defendant intended to induce the plaintiff’s action in reliance on the representation;

■ Plaintiff reasonably relied on the representation to his detriment; and

■ Plaintiff suffered damages.

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

280 Id.
281 Id.
282 Id.
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 or her particular qualities as well as the circumstances surrounding the case.283

§ 3.41 Negligence

Negligence is used when intention cannot be proven. It involves:

- Duty - a legally recognized relationship between the parties
- Standard of Care - the required level of expected conduct
- Breach of Duty - failure to meet the standard of care
- Cause-in-Fact - plaintiff's harm must have the required nexus to the defendant's breach of duty
- Proximate Cause - there are no policy reasons to relieve the defendant of liability
- Damages - the plaintiff suffered a cognizable injury284

§ 3.42 Negligent Infliction of Emotional Distress

Unlike the tort of intentional infliction of emotional distress, negligent infliction of emotional distress does not require a showing of outrageous conduct as a *prima facie* element.285 However, there is authority to the contrary.286 Basically, negligent infliction of emotional distress involves:

- Defendant should have realized (and was negligent in not realizing) that his or her conduct involved an unreasonable risk of causing emotional distress.
- Distress, if it were caused, might result in illness or bodily harm.287
- Requirement of physical injury: 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.288 In some cases, claimants may be required to demonstrate that the physical injuries occurred contemporaneously with or shortly after the incidents causing emotional distress.289

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283 Id.
284 Id.
289 Freeman, 719 F. Supp. 995 (applying Kansas law).
§ 3.43 Trespass to chattel and conversion

Trespass to chattel and conversion are two different intentional torts that protect personal property from wrongful interference. In many cases both torts may be applicable.

§ 3.44 Trespass to Chattel

Trespass to chattel is the intentional interference with the right of possession of personal property. The defendant’s acts must either:
- Intentionally damage the chattel;
- Deprive the possessor of its use for a substantial period of time; or
- Totally dispossess the chattel from the victim.

There is no requirement that the defendant act in bad faith or intend to interfere with the rights of others. It is sufficient that the defendant intends to damage or possess a chattel, which is properly possessed by another.

Unlike conversion, the doctrine of transferred intent has traditionally been applied to trespass to chattel.

§ 3.45 Conversion

The following are elements of conversion:
- There must be an intentional exercise of dominion and control over a chattel.
- This exercise of dominion and control must so seriously interfere 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.

Only very serious harm to the property or other serious interference with the right of control constitutes conversion. Less serious damage or interference may still be considered trespass to chattel.

X. CONTRACT CLAIMS

Victims of human trafficking may have contract claims for breach of written or oral contracts. The award of contract remedies precludes tort remedies in a majority of states, and therefore punitive damages regardless of the willfulness of the breach. It should be noted that contract law differs from state to state.

§ 3.46 Breach of Written Contract

When there has been a written offer of employment that has been accepted by the trafficked client, and the trafficked person has not been paid the promised salary or given the promised job opportunity, a breach of a written contract is established. If the offeror fails to deliver what is promised in the written contract, then the offeree is entitled to expectation or reliance damages.

290 Understanding Torts, supra note 279, at 20-24.
291 Melvin Eisenberg, Gilbert Law Summaries, Contracts 39 (1993) (“If mutual assent is explicitly manifested in oral or written words of agreement, the resulting contract is said to be expressed.”)
§ 3.47 Breach of Oral Contract

An oral contract is very similar to an implied agreement between the traffickers and the trafficked persons. In order to establish an oral contract, it is necessary to first establish that there was an intent to offer by the traffickers, and second, that the terms of the offer are sufficiently certain and definite. However, the inability to establish that the terms of the offer were “certain” or “definite” does not in itself preclude that an oral contract has been made.

§ 3.48 Breach of the Covenant of Good Faith and Fair Dealing

Within every contract, there is an implied covenant of good faith and fair dealing. This covenant is meant to allow the terms of the contract to be interpreted fairly. Therefore, what constitutes a breach of the covenant depends on the particular terms of the contract. Even though the covenant is essentially an implied contract term, courts have occasionally held that the breach of the implied covenant of good faith and fair dealing can also constitute a tort. This allows for tort damages as well as contract damages.

§ 3.49 Damages

Contract remedies are generally limited to compensatory damages of which the standard measure is expectation damages. Expectation damages are intended to place the victim of the breach in the position they would have been in if the promise had been performed. Future earnings or front pay may be recovered in the event of wrongful discharge and can substitute reinstatement, less any sum, which has been earned or could be earned through the plaintiff's duty to mitigate damages. As an alternative, reliance damages are based on the non-breaching party's costs and have the purpose of putting the non-breaching party back into the position they would have been in had the promise never been made. 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.

XI. QUASI-CONTRACT CLAIMS

Quasi-contractual obligations are imposed by the law for reasons of justice, as opposed to contractual obligations that are based on an agreement between parties. Accordingly, the terms of the quasi-contractual obligation are often “determined by what equity and morality appear to require after the parties have come into conflict.” Quasi-contracts differ from express and implied contracts in that the former develops independent of the intention or promises of the parties and instead depends on the benefit conferred on the breaching party. Quasi-contracts may give rise to rights in spite of the express refusal of a party. In fact, “quasi-contract” is somewhat of a misnomer, as it is often a remedy in the form

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292 Id. at 41-42.
293 Understanding Torts, supra note 279, at 419.
295 Id. at 181-82.
298 Restatement, supra note 296.
299 Corbin, supra note 296.
of restitution, rather than a contractual agreement. Factors that are relevant to the court’s determination of how to restore the parties to the *status quo* 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.”

§ 3.50 Unjust Enrichment

Unjust enrichment has been defined as “circumstances which give rise to the obligation of restitution, that is, the receiving and retention of property, money, or benefits which in justice and equity belong to another.”

§ 3.51 Quantum meruit

*Quantum meruit* is a theory of recovery in the form of restitution. The principle of quantum meruit has been defined as a “recovery in which one party to a contract sues the other, not on the contract itself, but on an implied promise to pay for so much as the party suing has done. If one party refuses to perform his part, the other may rescind and sue on a *quantum meruit*.”

XII. OTHER STATE STATUTORY CLAIMS

It is imperative to research your state statutes for additional claims that may provide relief to your trafficked clients. For example, in Maryland, courts have discretionary authority to award treble damages for wage and hour violations. Connecticut law gives double damages for minimum wage violations. In California, an employee may be entitled to double damages if induced to move based on a misrepresentation regarding the terms of employment. In addition, under §17200 of the California Business and Professional Code, an unlawful, unfair or fraudulent business practice can be challenged in court by any member of the public that may have been deceived. Remedies include restitution and disgorgement of wrongfully gained profits.

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300 Restatement, supra note 296.
301 Corbin, supra note 297.
303 Eisenberg, supra note 291, at s. 312.
304 Restatement, supra note 296, at § 370 cmt a.
§ 4.1 Compensatory Damages

Compensatory damages are awarded as compensation, indemnity or restitution for harm and are meant to restore the plaintiff back to his or her position before the injury occurred. Compensatory damages are also awarded for pain and suffering and mental distress.

§ 4.2 Punitive Damages

Punitive damages are awarded to punish and deter egregious conduct. The court has discretion in awarding punitive damages, but often awards them when the injury is committed with malice, or as otherwise permitted by statute.

§ 4.3 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.

§ 4.4 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 restitutionary remedies such as a constructive trust or equitable lien.

§ 4.5 Liquidated Damages

Liquidated damages are the amount predetermined by the parties to a contract as the total compensation to an injured party should the other party breach the contract. Liquidated damages may also be set by statute, as with the Fair Labor Standards Act, to remedy a breach of that statute.

§ 4.6 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.

§ 4.7 Pre-judgment Interest

In several circuits pre-judgment interest is available on back pay awards if liquidated damages are not awarded.\textsuperscript{310} Courts differ on how to calculate prejudgment interest. Some courts base

\textsuperscript{310} Some appellate courts have held that pre-judgment interest for back pay awards under the FLSA is mandatory, see Brock v. Richardson, 812 F.2d 121, 126 (3d Cir. 1987). See also Usery v. Associated Drugs, Inc., 538 F.2d 1191, 1194 (5th Cir. 1976); see also McClanahan v. Mathews, 440 F.2d 320, 326 (6th Cir. 1971), or should be presumed to be appropriate. See Ford v. Alfaro, 785 F.2d 835, 842 (9th Cir. 1986); see also Donovan v. Sovereign Security, Ltd., 726 F.2d 55, 57-58 (2d Cir. 1984); see also 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). But see Clougherty v. James Vernor Co., 187 F.2d 288, 293-94 (6th Cir.), cert. denied, 342 U.S. 814 (1951) (denying pre-judgment interest).
pre-judgment interest rate calculations on federal post-judgment interest rates calculated from the date the judgment is entered, “at a rate equal to the weekly average 1-year constant maturity Treasury yield.” Other courts have calculated the pre-judgment interest rate based on the prime rate from the date of injury to the date of judgment. Yet other courts utilize the state pre-judgment interest rate.

§ 4.8 Attorneys’ Fees and Costs

The costs of litigation and the prevailing party’s reasonable attorneys’ fees may be awarded.

§ 4.9 Other Issues

Receipt of a damage award or settlement amount will have tax consequences. Furthermore, depending on the amount of the award, government benefits your client is receiving such as health insurance, food stamps and low-income housing may be affected. Consult tax attorneys and public benefits experts to learn more.


312 See, e.g., Cement Div., Nat’l Gypsum Co. v. City of Milwaukee, 144 F.3d 1111 (7th Cir. 1998); see also Donovan v. Dairy Farmers of Am., 53 F. Supp. 2d 194 (N.D.N.Y. 1999).

APPENDIX A: INTERNATIONAL LAW CITES

I. Universal Declaration of Human Rights


Relevant Articles:

a. Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

b. Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

c. Article 23:

(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

...  

(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

d. Article 24: Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

II. The International Covenant on Civil and Political Rights (ICCPR)

U. S., June 8, 1992, 993, U.N.T.S. 171. The ICCPR was opened for signature by the UN General Assembly in 1966 and entered into force in 1976. This covenant details the basic civil and political rights of individuals and nations.

Relevant Articles:

a. Article 8:

(1) No one shall be held in slavery and the slave-trade in all their forms shall be prohibited.

(2) No one shall be held in servitude.

(3) (a) No one shall be required to perform forced or compulsory labour...

III. International Labour Organization: Convention Concerning Forced or Compulsory Labour.

Adopted by the General Conference of the International Labour Organization, June 28, 1930 as modified by the Final Articles Revision Convention, 1946. All signatories undertake to stop the use of forced or compulsory labor in all its forms within the shortest possible period.
Relevant Articles:

a. Article 2(1): For the purposes of this Convention the term “forced or compulsory labour” shall mean all work or service which is exacted from any persons under the menace of any penalty and for which the said person has not offered himself voluntarily.

b. Article 4: The competent authority shall not impose or permit the imposition of forced or compulsory labour for the benefit of private individuals, companies or associations.

IV. Convention Concerning the Abolition of Forced Labour

1957. This Convention prohibits the use of any form of forced or compulsory labor by the government.

Relevant Articles:

Article 1: Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labour—

(a) as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system;

(b) as a method of mobilising and using labour for purposes of economic development;

(c) as a means of labour discipline;

(d) as a punishment for having participated in strikes;

(e) as a means of racial, social, national or religious discrimination.

V. International Covenant on Economic, Social and Cultural Rights

U.S., Oct. 5, 1977, 993 U.N.T.S. 3, 1966. This covenant describes the basic economic, social, and cultural rights of individuals and nations, including the right to self-determination, wages sufficient to support a minimum standard of living, equal pay for equal work, equal opportunity for advancement, form trade unions, strike, paid or otherwise compensated maternity leave, free primary education, and accessible education at all levels, and copyright, patent, and trademark protection for intellectual property.

Relevant Articles:

a. Article 7: The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(1) Remuneration which provides all workers, as a minimum, with:
   a) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
   b) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(2) Safe and healthy working conditions...

(3) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.
b. Article 10: Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be prohibited and punishable by law.

VI. American Convention on Human Rights


Relevant Articles:

Article 6:

(1) No one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women.

(2) No one shall be required to perform forced or compulsory labor…

VII. Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights

Concluded at San Salvador, Nov. 17, 1988, O.A.S.T.S. No. 69. See above.

Relevant Articles:

Article 7: The States Parties to this Protocol recognize that the right to work to which the foregoing article refers presupposes that everyone shall enjoy that right under just, equitable and satisfactory conditions, which the States Parties undertake to guarantee in their internal legislation, particularly with respect to:

(a) Remuneration which guarantees, as a minimum, to all workers dignified and decent living conditions for them and their families and fair and equal wages for equal work, without distinction;

... 

(e) Safety and hygiene at work;

...

(g) A reasonable limitation of work hours, both daily and weekly. The days shall be shorter in the case of dangerous or unhealthy work or of night work;

(h) Rest, leisure and paid vacations as well as remuneration for national holidays.

VIII. Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”)

U.N., Dec. 18, 1979. CEDAW is often described as an international bill of rights for women. Consisting of a preamble and 30 articles, it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination.

Relevant Articles:

a. Article 6: States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.
b. Article 11:

(1) States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:
   a) The right to work as an inalienable right of all human beings;
   b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
   c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
   d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
   
   f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

IX. Declaration on the Elimination of Violence Against Women


Relevant Articles:

a. Article 3: Women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. These rights include, inter alia:

   (c) The right to liberty and security of person;
   
   (e) The right to be free from all forms of discrimination;
   
   (g) The right to just and favourable conditions of work;
   
   (h) The right not to be subjected to torture, or other cruel, inhuman or degrading treatment or punishment.

b. Article 2: Violence against women shall be understood to encompass...

   (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution.

X. Declaration on the Human Rights of Individuals Who are Not Nationals of the Country in which They Live

Relevant Articles:

a. Article 5: Aliens shall enjoy, in accordance with domestic law and subject to the relevant international obligation of the State in which they are present, in particular the following rights:
   (a) The right to life and security of person…
   (b) The right to protection against arbitrary or unlawful interference with privacy, family, home or correspondence…

b. Article 6: No alien shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

c. Article 8: Aliens lawfully residing in the territory of a State shall also enjoy:
   (a) The right to safe and healthy working conditions, to fair wages…

XI. International Labour Organization: Convention Concerning Minimum Age for Admission to Employment


Relevant Articles:

a. Article 1: Each member... undertakes to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.

b. Article 2:
   (3) The minimum age... shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years.

XII. Convention on the Rights of the Child

U.N., G.A. Res. 44/25, open for signature Nov. 20, 1989. This convention bans discrimination against children and provides for special protection and rights appropriate to minors.

Relevant Articles:

a. Article 32:
   (1) States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely... to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
   (2) ...States Parties shall in particular:
      a) Provide for a minimum age of minimum ages for admission to employment;
      b) Provide for appropriate regulation of the hours and conditions of employment

b. Article 34: States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral, and multilateral measures to prevent:
   (a) The inducement or coercion of a child to engage in any unlawful sexual activity.
XIII. Advisory Decision of the Inter-American Court Regarding the Rights of Undocumented Workers.

Opinion Consultiva OC-18/03 de 17 de septiembre de 2003, Solicitada por los Estados Unidos Mexicanos. On September 17, 2003, the Inter-American Court issued an advisory decision establishing that countries violate international law when their labor laws discriminate against undocumented workers.

Relevant Sections:

8. That the migrant quality of a person cannot constitute justification to deprive him of the enjoyment and exercise of his human rights, among them labor rights. A migrant, at the moment of taking on a work relationship, acquires rights by being a worker that must be recognized and guaranteed, independent of his regular or irregular situation in the State of employment. These rights are the consequence of a labor relationship.

9. That the State has the obligation to respect and guarantee human labor rights of all workers, independent of their condition as nationals or foreigners, and to not tolerate situations of discrimination that prejudice them, in labor relationships that are established between private persons (employer-employee). The State must not permit that private employers violate the rights of workers, or that a contractual relationship weakens minimum international standards.

10. That workers, by being entitled to labor rights, must be able to count on all adequate means to exercise them. Undocumented migrant workers have the same labor rights that correspond to the rest of workers in the State of employment, and the State must take all necessary measures for this to be recognized and complied with in practice.

11. That States cannot subordinate or condition the observation of the principal of equality before the law and non discrimination in consequence of the objectives of its public policies, whatever these may be, including those of migrant character.
Human Trafficking Project: Representing the Civil Rights of Trafficked Persons

Estimates have ranged from 800,000 to four million people trafficked each year for the purpose of forced labor—approximately 20,000 to 50,000 into the United States. Lured by false promises of well-paying jobs and legal residency, victims of human trafficking arrive in the United States only to find themselves subjected to atrocious abuses, forced into slavery through debt bondage, threats of deportation and at times, torture and imprisonment. The Bay Area, with the highest percentage of foreign-born in California, is a major destination for such workers. They are enslaved in industries that prevail here, such as the domestic service, agricultural, garment and commercial sex industries.

Launched in October 2002, the Lawyers’ Committee for Civil Rights is one of the only legal organizations in the nation with a project specifically addressing trafficked persons civil needs. Through direct services, education and outreach, and policy work, the Lawyers’ Committee advocates for the rights of trafficking victims. Our individualized legal representation provides trafficked workers with remedies for the civil rights violations they suffer as a result of the trafficking. In addition to a new federal trafficking civil right of action passed just last year under the Trafficking Victims Protection Reauthorization Act (TVPRA), trafficking victims are entitled to recover damages under state and federal employment laws as well as tort laws related to their forced labor conditions. We also assist our clients in accessing the protection and benefits provided by the Victims of Trafficking and Violence Protection Act (VTVPA) passed by Congress in October 2000. The VTVPA grants immigration relief and social services to victims of human trafficking who are willing to cooperate with the federal government to investigate and/or prosecute the trafficking crime.

Realizing a severe lack of public awareness on the issue of human trafficking, the Lawyers’ Committee engages in extensive education and outreach efforts. With respect to trafficked persons’ civil rights, we have developed and implemented comprehensive training and technical assistance materials for advocates and attorneys pursuing civil relief on behalf of their trafficked clients. More broadly, we provide trainings to social service providers, community-based organizations, legal service organizations and government agencies. Trainings are designed to equip organizations to identify victims and provide them with the legal relief and government benefits that may be available to them. The Lawyers’ Committee co-founded a Bay Area coalition of anti-trafficking service providers and advocates. We are also a member of a regional Task Force coordinated by the Northern District of California’s AUSA office to develop an effective response to trafficking cases. Finally, we evaluate implementation of the TVPA and work with other NGOs to engage in human rights focused policy reforms by meeting regularly with legislators and Department of Justice officials. The recently passed TVPRA, expanding the rights of trafficking victims attest to the success of our legislative efforts.

For over thirty-five years, the Lawyers’ Committee for Civil Rights has advanced the rights of people of color, poor people, and immigrants and refugees by providing free legal services to individuals on civil legal matters.

For more information about our work, please contact Kathleen Kim, director of the Human Trafficking Project, at (415) 543 9444 ext. 234 or kkim@lccr.com.
The Victims of Trafficking and Violence Prevention Act of 2000 provides immigration relief and social services to trafficked persons willing to cooperate with law enforcement in the investigation and prosecution of the trafficking. It was recently amended to include a private right of action. In addition to the trafficking civil claim, many U.S. laws can provide civil remedies to trafficked persons. These laws are intended to protect all workers from exploitation—including federal and state labor and employment laws, and tort laws related to forced labor conditions.

As the plaintiff in a civil suit, a trafficked person can vindicate his or her individual rights by seeking compensatory and punitive damages from the traffickers that abused her. Civil actions are also appropriate in the absence of a criminal investigation and prosecution, but the trafficked person is still entitled to unpaid wages and other damages. It is important to be aware of this as it can provide a trafficked person with monetary relief even if he or she leaves the country.

<table>
<thead>
<tr>
<th>Trafficked workers have civil rights:</th>
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<tbody>
<tr>
<td>■ Right to be paid</td>
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<tr>
<td>■ Right to be free from discrimination, harassment and abuse</td>
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<tr>
<td>■ Right to a healthy and safe work environment</td>
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Violation of these rights entitles trafficked persons to remedies from their employer. All workers have these rights regardless of their immigration status.

The Human Trafficking Project at the Lawyers' Committee for Civil Rights of the San Francisco Bay Area, focuses on the civil rights of human trafficking victims. With the assistance of hundreds of pro bono attorneys, the Lawyers’ Committee provides free legal assistance and representation to trafficked persons on civil legal matters. Founded in 1968, the Lawyers' Committee for Civil Rights is devoted to advancing the rights of people of color, poor people, and immigrants and refugees.

For more information, please contact Kathleen Kim at the Lawyers' Committee for Civil Rights at (415) 543-9444 or kkim@lccr.com
Sample Complaint 1

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

LAWYERS COMMITTEE FOR CIVIL RIGHTS
OF THE SAN FRANCISCO BAY AREA

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

Plaintiff,

v.

Defendants.

COMPLAINT FOR DAMAGES
DEMAND FOR JURY TRIAL

Case No.
Plaintiff, by and through her undersigned attorneys, with personal knowledge as to herself and her actions and otherwise upon information and belief, hereby alleges as follows:

I. INTRODUCTION

1. Human trafficking is a modern-day form of slavery, involving victims who are forced, defrauded, or coerced into sexual or labor exploitation. Trafficking in human beings is reaching epidemic proportions throughout the world, including right here in the United States. President Bush has called human trafficking a special kind of evil in the abuse and exploitation of the most innocent and vulnerable, and Congress, recognizing the countless human tragedies such practices inflict, passed the Trafficking Victims Protection Reauthorization Act of 2003 (the TVPRA), establishing a private cause of action for victims of human trafficking in order to ensure both that victims can be made whole and that the perpetrators of this inhuman practice are fully deterred from committing such acts. This action is brought under the TVPRA and other state and federal laws to seek just compensation for a victim of human trafficking.

2. is one of tens of thousands victims of human trafficking in the United States, brought into this country under false promises of fair pay and humane treatment. Defendants knowingly and willfully conspired to lure from her home in with false promises of a simple -housekeeping job working solely for one elderly couple. They further promised her that she would have ample free time since she would not be required to work very much, and that she would be treated like one of the family. These promises turned out to be horribly false. Instead, upon her arrival in the United States, Defendants immediately confiscated her passport.
and subjected to what would become thirteen long months of backbreaking labor and psychological abuse. The abuse included forcing Plaintiff to work for two households for at least 14 hours a day, 7 days a week with no days off, all for a paltry sum equating to no more than pennies an hour.

3. Defendants ensured silence and obedience by keeping her in a constant state of fear of deportation, detention, or worse, including threatening to report her to the police if she communicated with anyone about Defendants treatment of her. Defendants actions forced Plaintiff into involuntary servitude, while at the same time denying her basic rights of freedom, basic medical attention, and fair pay.

4. Plaintiff brings this civil action under the TVPRA, the California Labor Code, the Fair Labor Standards Act (FLSA), state common law, and other provisions of federal and state law. By this complaint, Plaintiff seeks redress for these egregious violations of her basic human and civil rights.

II. JURISDICTION

5. Jurisdiction of the subject matter of this action is established under 28 U.S.C. Section 1331, the Fair Labor Standards Act, 29 U.S.C. Section 201 et. seq. and the Trafficking Victims Protection Reauthorization Act, 18 U.S.C Section 1589 et. seq.

6. This Court has supplemental jurisdiction over the related state law claims asserted herein under the doctrine of pendent jurisdiction and pursuant to 28 U.S.C. / 1367. Supplemental jurisdiction over those claims is appropriate because they arise from the same common nucleus of operative facts from which the federal claims arise.
7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because all the Defendants reside in this District, and because a substantial part of the events and omissions giving rise to the claims occurred in this District.

III. PARTIES

8. Plaintiff Hemalatha Salgado is, and at all times relevant was, a citizen of County, California in Defendants’ homes for over thirteen months. Following her escape from Defendants, and through the present she resides in County.

9. Defendant Jaliya Gunawardane is a resident of County, California. Defendant employed Plaintiff as a domestic worker and child-care worker from on or about March 19, 2003 until May 1, 2004. At all times relevant herein Defendant was an employer pursuant to the FLSA and the California Labor Code.

10. Defendant Lisa Gulli (aka Lisa Gunawardane) is a resident of County, California. Defendant employed as a domestic worker and child-care worker from on or about March 19, 2003 until May 1, 2004. At all times relevant herein Defendant was an employer pursuant to the FLSA and the California Labor Code.

11. Defendant Sitadevi Ranjani Gunawardane is a resident of County, California. Defendant employed Plaintiff as a domestic worker from on or about March 19, 2003 until May 1, 2004. At all times relevant herein Defendant
was an employer pursuant to the FLSA and the California Labor Code.

12. Defendant is a resident of Los Angeles County, California. Defendant employed as a domestic worker from on or about March 19, 2003 until May 1, 2004. At all times relevant herein Defendant was an employer pursuant to the FLSA and the California Labor Code.

IV. FACTUAL ALLEGATIONS

DEFENDANTS' REPRESENTATIONS TO PLAINTIFF

1. In the fall of 2002, was living in and was actively seeking work, hoping to earn extra income to help support her children and their families. She responded to a newspaper advertisement for domestic work, and was subsequently referred to .

2. met with about the housecleaning position. He informed her that his sister, Defendant , sought to employ a housekeeper beginning after December 2002.

3. met in in December 2002. offered Plaintiff a position as a housekeeper working for her and her husband. promised Plaintiff that she would be paid a monthly income of $350 for undemanding housekeeping work and that she would be working solely for and her husband, an elderly couple that lived alone. was also told that all costs of travel would be paid for, that she would be treated like a family member in the
household, and that her salary would be increased if things went well. Unbeknownst to Plaintiff, all of these representations were false, designed by Defendants to lure her into a life of abject servitude in the United States. With no reason to believe in the falsity of these representations, however, Plaintiff gladly accepted [REDACTED] offer.

**PLAINTIFF’S TREATMENT BY DEFENDANTS**

4. Upon her arrival at the Los Angeles International Airport on March 18, 2003, [REDACTED] immediately took [REDACTED] passport, along with a traveler’s check for $100 that she had to cover incidental travel expenses. After spending the night in [REDACTED] home, she was taken the next day, on March 19, to the home of [REDACTED] and immediately put to work as a housekeeper and child-care worker. Contrary to what she had been told by [REDACTED] in [REDACTED], she was told that she would be working full-time for [REDACTED] and his family of four, including a three-year old girl and a one and a half year old infant son.

5. Among [REDACTED] daily work duties, she was required to take care of and clean up after two young children, prepare meals for the entire family, and perform all of the housework in [REDACTED] household. [REDACTED] day began at 7 a.m. every morning and continued without rest until at least 9 p.m. every night. Even then, she was required to be on call throughout the night to care for the children should they wake in the middle of the night. Plaintiff was also responsible for all of the domestic work for the family at all times, and even for cooking and cleaning for large dinner parties thrown by [REDACTED]
6. In addition to the full time work she performed at [ ] and [ ] house, Plaintiff was taken two days a week with the children to [ ] house, where she continued to look after the children and prepared meals for them and [ ]. On Saturdays [ ] house to clean. In short, instead of being solely a housekeeper for one elderly couple as had been represented to her by [ ], Plaintiff found herself forced to be a full-time servant/nanny/cook at the beck and call of two separate households. Not once during the thirteen months that she worked for Defendants was she even given a single day off.

7. To make matters worse, contrary to [ ] representation that she would be treated like a member of the family, [ ] was regularly subjected to humiliating and degrading treatment that made it clear that she was little more than a slave in the eyes of the Defendants. During the first three months of her time at [ ] and [ ] house, Plaintiff was forced to sleep in the laundry room on a dirty cot, which was so dusty that it caused her nosebleeds. Later she was forced to sleep on a bed so old and dilapidated that it caused [ ] severe backaches. Further, in order to look after the [ ] children at night, this bed was placed in the daughter’s bedroom, so that [ ] had no privacy. Indeed, her destitute condition was even recognized by the [ ] daughter, who referred to her as a servant.

8. Plaintiff was not permitted to eat with the [ ] family or given time to eat. Instead, she was instructed to eat her meals at the kitchen counter, and was not permitted to use the dining table or chairs. When her back pain got so severe from this arrangement, [ ] began eating her
meals outside, where at least there was a patio table and chairs. On many occasions during her meals, Defendants demanded that Plaintiff interrupt her meal to take care of the children.

9. In addition to the severe back pain that she suffered from her eating and sleeping conditions, fell on three separate occasions chasing after the children, on one occasion injuring her arm so severely that she has yet to regain full normal function. Defendants refused repeated requests to see a doctor. After weeks of persistent pleading, Defendants took to meet with a doctor at Defendant office. The doctor recommended that Plaintiff receive a blood test and a sling for her injured arm. Defendants refused and told Plaintiff to fashion a sling from old clothes for her arm.

**DEFENDANTS PSYCHOLOGICAL AND OTHER ABUSE OF PLAINIFF**

10. In order to ensure subservience and silence throughout her ordeal, Defendants severely restricted Plaintiff's communication and movement during her employment. They threatened to turn Plaintiff over to the police if she ever spoke to anyone. Defendants also threatened to desert her at the airport although they had confiscated and hid Plaintiff's passport and did not provide her with a return plane ticket to . Defendants prohibited from speaking to anyone, or even from providing her location or address to her husband and children in . Defendants threatened with arrest and desertion to enforce their restrictions of her communications and movement.

11. Further adding to feelings of confinement and isolation were rules severely limiting her ability to keep in touch with her
family in [redacted]. She was only allowed to telephone her family by purchasing $10 phone cards, which she had to pay out of her meager wages. Even then, Defendants monitored her calls by listening in on another telephone receiver. On several occasions, [redacted] sister-in-law called and asked to speak with [redacted], but Defendants claimed that she was unavailable. Defendants would not even allow [redacted] to receive e-mails from her sons, claiming that e-mail was too expensive. She could only write occasional letters to her family by stealing stamps, and was only able to receive letters when she could intercept them before Defendants found them first. Thus, by these and other tactics of psychological intimidation and social isolation, Defendants imprisoned [redacted] in a virtual jail cell, confining her with threats in a country that was completely foreign to her.

12. [redacted] ordeal ended only with the advice and guidance of a Good Samaritan who had witnessed [redacted] suffering while visiting Defendants house. When the Good Samaritan learned the details of [redacted] situation, she helped [redacted] to escape. Finally, after thirteen months of insufferable abuse and neglect, on May 1, 2004, [redacted] gathered her courage and strength to escape, without her passport and her last month’s wages.

13. During the entire time Plaintiff worked for Defendants, she was forced to work a minimum of 14 hours per day, 7 days per week. For this work, she was paid the equivalent of just pennies an hour, without rest breaks, meal breaks, or any days off. Furthermore, contrary to [redacted] representation that she would pay for all travel expenses, Defendants deducted a sum of $50 from her monthly wages to pay for her flight to the United
States. She now seeks full compensation for her labors, along with any other relief as the Court sees as just and proper.

V. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF
(Trafficking Victims Protection Reauthorization Act, Forced Labor, 18 U.S.C.A // 1589, 1595)

(Against All Defendants)

1. Plaintiff hereby refers to and incorporates each and every allegation set forth in Paragraphs 1 through 25 of this Complaint as though fully set forth herein.

2. The forced labor provision of the Trafficking Victims Protection Reauthorization Act (TVPRA), 18 U.S.C. Section 1589, establishes, Whoever knowingly provides or obtains the labor or services of a person — (1) by threats of serious harm to, or physical restraint against, that person or another person; (2) 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 (3) by means of the abuse or threatened abuse of law or the legal process shall be fined or imprisoned not more than 20 years, or both.

3. Defendants knowingly obtained [REDACTED] services by threatening her with serious harm, including threatening to report her to the police and threatening to desert her in the middle of the airport, causing her to fear that she would be arrested or detained, as Defendants had confiscated and hid Plaintiff’s passport and did not provide her with a return plane ticket to [REDACTED].
4. Defendants knowingly obtained Plaintiff’s services by their scheme, plan or pattern intended to cause [BLANK] to believe that, if she did not perform the labor or services Defendants requested, she would suffer serious harm or physical restraint.

5. Defendants knowingly obtained [BLANK] services by means of the abuse or threatened abuse of the law or the legal process.

6. Defendants used force, threats and intimidation to hold Plaintiff in captivity and force her to work without paying her the compensation required by law.

7. As a result of Defendants’ conduct, Plaintiff has suffered damages in an amount to be determined at trial.

8. Pursuant to 18 U.S.C. Section 1595, [BLANK] is entitled to recover damages and reasonable attorney’s fees for Defendants’ wrongful conduct.

SECOND CLAIM FOR RELIEF
(Trafficking Victims Protection Reauthorization Act
Trafficking Into Servitude, 18 U.S.C.A § 1590, 1595)

(Against All Defendants)

9. Plaintiff hereby refers to and incorporates each and every allegation set forth in Paragraphs 1 through 33 of this Complaint as though fully set forth herein.

10. The trafficking into servitude provision of the TVPRA, 18 U.S.C. Section 1590, provides: Recruiting, harboring, transporting, providing, or obtaining by any means an person for labor or services in violation of laws prohibiting slavery, involuntary servitude, debt bondage or forced labor shall subject defendant to fines.
11. As set forth herein, Defendants knowingly recruited, harbored, transported, provided, and obtained [REDACTED] to provide labor and services to each of Defendants.

12. As a result of Defendants' conduct, Plaintiff has suffered damages in an amount to be determined at trial.

13. Pursuant to 18 U.S.C. Section 1595, Plaintiff is entitled to recover damages and reasonable attorney's fees for Defendants' wrongful conduct.

THIRD CLAIM FOR RELIEF
(Violations of the Fair Labor Standards Act)

Against All Defendants

14. Plaintiff hereby refers to and incorporates each and every allegation set forth in Paragraphs 1 through 38 of this Complaint as though fully set forth herein.

15. The FLSA, 29 U.S.C. Section 206, provides that an employee employed in domestic service in a household shall be paid the minimum wage as required by law. At all relevant times, [REDACTED] was employed in domestic services in one or more households and was so employed for more than 8 hours in the aggregate every week. Domestic service employees who live in the household where they are employed are entitled under the FLSA to be paid the minimum wage for all hours worked pursuant to 29 C.F.R. Section 552.102.

16. [REDACTED] provided services on a daily and weekly basis for all of the Defendants, so that at all relevant times each of the Defendants was a single employer or joint employer of Plaintiff within the meaning of the
FLSA, 29 U.S.C. Section 203(d). Defendants never paid Plaintiff the minimum wage for the services that she provided to them. Contrary to agreement with Defendant, when Defendants did pay Plaintiff for her work, they unlawfully deducted $50 per month for her inbound transportation costs, without agreement or consent.

17. Plaintiff, a non-exempt employee, performed work for each of the individual Defendants at all times alleged herein.

18. Defendants knowingly and willfully required, suffered or permitted to work hours well beyond a normal work day, including working a minimum of 14 hours a day, seven days a week, and knowingly and willfully failed and refused to pay the minimum wage for hours worked as required under federal law.

19. Defendants often required Plaintiff to be on-call 24 hours a day without any rest breaks or uninterrupted sleeping time. During many nights, Defendants children interrupted sleep and Defendants required that she wake up and take care of them, denying Plaintiff a reasonable night s sleep. Defendants required that work through meals and be on call at all times.

20. Defendants have specific employment record-keeping obligations under the FLSA, 29 U.S.C. Section 211(c), including making, keeping, and preserving records of their employees and of the wages, hours, and other conditions and practices of employment maintained by Defendants. Defendants are obligated to accurately record the actual number of hours that each employee works. Plaintiff is informed and believes and on that basis alleges that Defendants have failed to keep adequate employment records and
have not properly or adequately recorded [redacted] hours worked during her employment.

21. Defendants knew, should have known, or showed reckless disregard for the FLSA’s provisions applicable to Plaintiff and willfully, intentionally and without good faith violated and continue to violate these laws. As a result of Defendants’ willful violations, Plaintiff is entitled to receive liquidated damages in an additional amount above the wages already due her.

22. Under the FLSA, 29 U.S.C. Section 216(b), [redacted] is entitled to recover all unpaid wages, an additional equal amount as liquidated damages, and reasonable attorneys’ fees and costs in amounts to be proven at trial.

FOURTH CLAIM FOR RELIEF
(Violation of the California Labor Code/Failure to Pay Minimum Wages and Overtime)
(Against All Defendants)

23. Plaintiff hereby refers to and incorporates each and every allegation set forth in Paragraphs 1 through 47 of this Complaint as though fully set forth herein.

24. California Labor Code Section 1197 provides that the failure of any employer to pay an employee the minimum wage for hours worked as established by state law is unlawful. California Labor Code Section 1194 provides that any employee who has received less than the legal minimum wage or legal overtime compensation is entitled in a civil action to the full balance of such minimum wage and overtime pay, including interest, attorneys’ fees and costs of suit. Under California Labor Code Section
1194.2(a) an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon for an employer's failure to pay less than the minimum wage.

25. 8 California Code of Regulations Section 11150 provides that a live-in employee shall have at least 12 consecutive hours free of duty during each workday of 24 hours, and the total span of hours for a day of work shall be no more than 12 hours, except that an employee who is required or permitted to work during the 12 consecutive off-duty hours shall be compensated at the rate of one and one-half times the employee's regular rate of pay for all such hours worked. 8 California Code of Regulations Section 11150 further provides that no live-in employee shall be required to work more than 5 days in any one workweek, except in the case of emergency. A live-in employee must be compensated for time worked in excess of 5 workdays at the rate of one and one-half times the employee's regular rate of pay up to and including 9 hours, while time worked in excess of 9 hours on the 6th and 7th days shall be compensated at double the employee's rate of pay.

26. 8 California Code of Regulations Section 11150 provides that every employer shall provide meal periods and rest periods to employees. No employer shall employ an employee for a work period of more than 10 hours per day without providing the employee two separate meal periods of not less than 30 minutes each. Every employer shall authorize and permit all employees to take rest periods based on the total hours worked daily at the rate of 10 minutes rest for every 4 hours worked, or major fraction thereof. Authorized rest periods shall be counted as hours worked for which the employer shall not take deductions from an employee's wages.
27. 8 California Code of Regulations Section 11150 provides that every employer shall keep accurate employment records, including accurate time records showing when the employee begins and ends each work period, meal periods, and the total number of hours worked each day. The employer is also required to provide an employee with an itemized statement in writing showing: (1) all deductions, (2) the dates for which the employee is being paid, (3) the employee’s name and (4) the employer’s name.

28. Defendants knowingly and willfully required, suffered or permitted [redacted] to work in violation of these standards, and knowingly and willfully failed and refused to pay Plaintiff overtime wages for overtime hours worked as required under California law.

29. Defendants knowingly and willfully failed and refused to pay Plaintiff the minimum wage required under California law for the hours worked and services provided for Defendants by Plaintiff.

30. Defendants knowingly and willfully failed and refused to provide with rest breaks and meal periods as required by California law.

31. Defendants unlawfully deducted $50 per month for Plaintiff’s inbound transportation costs, without [redacted] agreement or consent.

32. Plaintiff is informed and believes and on that basis alleges that Defendants have failed to keep adequate employment records and have not properly or adequately recorded [redacted] hours worked during her employment.

33. Defendants willful failure to pay [redacted] the minimum wage violates of California Labor Code Sections 1194 and 1197, which require Defendants to pay Plaintiff at the minimum wage rate under California law of $6.75 per hour.
34. Defendants willful failure to pay the overtime premiums required by law violates the overtime provisions of California Labor Code Sections 1194 and 1197 and 8 California Code of Regulations Section 11150.

35. Defendants' failure to pay Plaintiff minimum wages and overtime premiums was not in good faith, and Defendants had no reasonable grounds for believing that their failure to pay such wages and overtime premiums was not a violation of California law.

36. Plaintiff is not exempt from the requirements of the California Labor Code that she be paid minimum wage and/or overtime as alleged herein.

37. Plaintiff is entitled to recover all unpaid minimum and/or overtime wages to which she is entitled, plus interest and attorneys' fees and costs incurred in bringing this civil action. Plaintiff is also entitled to liquidated damages in an amount equal to the minimum wages unlawfully not paid to her by Defendants and interest thereon.

38. As a direct and proximate result of Defendants' unlawful failure and refusal to pay wages as required by California law, and other violations of the law as set forth herein, Plaintiff has suffered damages in an amount to be proven at trial.

FIFTH CLAIM FOR RELIEF
(Violation of California Labor Code Sections 203 and 204)

(Against All Defendants)

39. Plaintiff hereby refers to and incorporates each and every allegation set forth in Paragraphs 1 through 63 of this Complaint as though fully set forth herein.
40. Section 203 of the California Labor Code provides that if an employer willfully fails to pay any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the date of the termination of employment for 30 days. Section 204 requires that all wages earned by any employee are due and must be paid twice during the calendar month on days designated in advance by the employer as the regular paydays.

41. At the time Plaintiff escaped Defendants’ confinement, Defendants owed her wages and overtime premiums, as alleged herein.

42. At all times alleged herein, Defendants failed to pay twice monthly as required by law.

43. Defendants have willfully failed to pay Ms. Salgado the wages and overtime premiums she is due, entitling her to waiting time penalties pursuant to California Labor Code Section 203.

SIXTH CLAIM FOR RELIEF
(Violation of California Labor Code Sections 551 and 552 and 8 California Code of Regulations Section 11150 / Rights To Days of Rest)

(Against All Defendants)

44. Plaintiff hereby refers to and incorporates each and every allegation set forth in Paragraphs 1 through 68 of this Complaint as though fully set forth herein.

45. California Labor Code Section 551 requires that every person employed in any occupation of labor is entitled to one day’s rest in every seven days. California Labor Code Section 552 requires that no employer shall cause his employees to work more than six days in seven. 8 California
Code of Regulations Section 11150 requires that in each calendar month, an employee shall receive the equivalent of one day’s rest in every seven days.

46. During employment with Defendants, Defendants never provided Plaintiff with a single day of rest, in violation of California Labor Code Section 551 and 552 and 8 California Code of Regulations Section 11150.

47. Plaintiff is entitled to recover penalties pursuant to California Labor Code Section 558.

48. As a direct and proximate result of Defendants’ unlawful failure and refusal to provide days of rest as required by California law, and other violations of the law as set forth herein, has suffered damages in an amount to be proven at trial.

**SEVENTH CLAIM FOR RELIEF**

(Violation of California Labor Code Section 970)

(Against Defendant Sitadevi Ranjani Gunawardane)

49. Plaintiff hereby refers to and incorporates each and every allegation set forth in Paragraphs 1 through 73 of this Complaint as though fully set forth herein.

50. California Labor Code Section 970 prohibits either directly or indirectly influencing, persuading, or engaging any person to change from any place outside of California to any place within the state of California for employment by means of knowingly false representations, whether spoken, written, or advertised in printed form. Section 972 of the California Labor Code provides that any person who violates Section 970 is liable to the aggrieved party for double damages resulting from such misrepresentations.
51. In or about December 2002, Defendant [Redacted] knowingly made false representations to [Redacted] about the circumstances and the lawfulness of her emigration to the United States, including, but not limited to, falsely informing [Redacted] that she would be properly paid in accordance with the laws of the United States, and that she would have a simple and undemanding job working in Defendant [Redacted] household.

52. Defendant [Redacted] had knowledge of the falsity of her misrepresentations at the time those misrepresentations were made and/or had no reasonable grounds for believing her representations to be true.

53. Defendant [Redacted] intended for Plaintiff to rely on her false statements and misrepresentations to induce Plaintiff to travel to California.

54. Plaintiff justifiably relied on Defendant's misrepresentations in deciding to leave her home and family in [Redacted] and emigrate to the United States.

55. As a result of Defendant's misrepresentations, [Redacted] was injured in an amount to be proven at trial and is entitled to all appropriate penalties under the California Labor Code, including, but not limited to, double damages.

**EIGHTH CLAIM FOR RELIEF**
(Intentional Fraud)
56. Plaintiff hereby refers to and incorporates each and every allegation set forth in Paragraphs 1 through 80 of this Complaint as though fully set forth herein.

57. Defendant knowingly made false representations to in or about December 2002 about the circumstances and the lawfulness of her emigration to the United States, including, but not limited to, falsely informing that she would be properly paid in accordance with the laws of the United States and that she would have a simple and undemanding job working in Defendant s household.

58. Defendant had knowledge of the falsity of her misrepresentations at the time those misrepresentations were made.

59. Defendant intended for Plaintiff to rely on her false statements and misrepresentations. Plaintiff justifiably relied on Defendant s misrepresentations in deciding to leave her home and family in and emigrate to the United States.

60. One of Defendant s purposes in making these false representations to was to induce her to leave her family and travel to the United States where she would be employed by Defendants without being paid the minimum wages and overtime premiums required by law.

61. Plaintiff was injured as a result of her reliance on Defendant false statements and misrepresentations, which caused her to leave her family and home country, subjected her to
exploitation of her labor, and caused her to suffer physical and emotional damages. Plaintiff is entitled to damages in an amount to be proven at trial.

62. Defendants committed the acts alleged in this Complaint with the wrongful intention of injuring with an improper motive amounting to malice, in conscious disregard of rights. Because Defendants actions were willful, wanton, malicious and oppressive, is also entitled to an award of punitive damages.

NINTH CLAIM FOR RELIEF
(Negligent Misrepresentation)

(Against Defendant)

63. Plaintiff hereby refers to and incorporates each and every allegation set forth in Paragraphs 1 through 87 of this Complaint as though fully set forth herein.

64. Defendant made false representations to in or about December 2002 about the circumstances and the lawfulness of her emigration to the United States, including, but not limited to, falsely informing Ms. that she would be properly paid in accordance with the laws of the United States and that she would have a simple and undemanding job working in Defendant household.

65. Defendant had no reasonable grounds for believing her representations to be true.

66. Defendant intended for Plaintiff to rely on her false statements and misrepresentations. Plaintiff justifiably relied on Defendant s misrepresentations in deciding to leave her home and family in and emigrate to the United States.
67. Plaintiff was injured as a result of her reliance on Defendant false statements and misrepresentations, which caused her to leave her family and home country, subjected her to exploitation of her labor, and caused her to suffer physical and emotional damages. Plaintiff is entitled to damages in an amount to be proven at trial.

TENTH CLAIM FOR RELIEF
(Conspiracy)
(Against Defendants)

68. Plaintiff hereby refers to and incorporates each and every allegation set forth in Paragraphs 1 through 92 of this Complaint as though fully set forth herein.

69. On information and belief, alleges that at all times herein mentioned each of the Defendants was the agent of each of the remaining Defendants, and in doing the things herein alleged, was acting within the course and scope of such agency.

70. In or about December 2002, Defendants knowingly and willfully conspired and agreed to fraudulently induce to emigrate to the United States and to fail and refuse to pay her in accordance with the laws of the United States as set forth herein.

71. Defendants committed the acts alleged herein pursuant to, and in furtherance of, their conspiracy and the above-alleged agreement.

72. Defendants furthered the conspiracy by sponsoring visa, making all of her travel arrangements from to the United States, meeting at the Los Angeles Airport, taking her passport and cash away from her immediately upon her arrival in the United States, and transporting her to and leaving her at
the home of Defendants Jaliya and Lisa Gunawardane. Defendants further cooperated, encouraged, and ratified this conspiracy to commit fraud and unlawfully fail to pay wages as required by law by continuing to employ and continuing to ratify and encourage employment at the home of Defendants Jaliya and Lisa Gunawardane.

73. Defendants furthered the conspiracy by cooperating, encouraging, and ratifying Defendants’ conspiracy by essentially holding Plaintiff captive in Defendants’ homes for over thirteen months. Defendants also took acts in furtherance of the conspiracy by failing to pay minimum wage and overtime premiums as required by law.

74. Defendants took additional acts in furtherance of this conspiracy by keeping in a constant state of fear of deportation, detention, or worse, repeatedly threatening to report her to the police or immigration officials if she communicated with anyone about Defendants’ treatment of her. This constant psychological abuse and intimidation reduced Plaintiff to a state of involuntary servitude, denied her basic rights of freedom, basic medical attention, and fair pay.

75. Defendants committed the acts alleged in this Complaint with the wrongful intention of injuring Plaintiff with an improper motive amounting to malice, in conscious disregard of rights. Because Defendants’ actions were willful, wanton, malicious and oppressive, is also entitled to an award of punitive damages.
76. As a proximate result of the wrongful acts herein alleged, Plaintiff has been damaged in an amount to be proven at trial.

ELEVENTH CLAIM FOR RELIEF
(False Imprisonment)

(Against All Defendants)

77. Plaintiff hereby refers to and incorporates each and every allegation set forth in Paragraphs 1 through 100 of this Complaint as though fully set forth herein.

78. Defendants violated Plaintiff’s personal liberty by acting in a manner that had the purpose and effect of confining Plaintiff against her will and limiting contact with the outside world, including significantly limiting her contact with her own family. Defendants accomplished this restraint through the use of fraud and the negligent and intentional use of physical, psychological and economic force, and express and implied threats of physical, psychological and economic force against .

79. Defendants had no privilege, permission, or consent to restrain, confine and detain Plaintiff for appreciable periods of time as set forth herein.

80. As an actual and proximate result of Defendants’ conduct, has suffered damages in an amount to be proven at trial.

81. Defendants committed the acts alleged in this Complaint with the wrongful intention of injuring Plaintiff with an improper motive amounting to malice, in conscious disregard of Plaintiff’s rights. Because Defendants actions were willful, wanton, malicious and oppressive, Plaintiff is also entitled to an award of punitive damages.

TWELFTH CLAIM FOR RELIEF
(Breach of Oral Contract)
82. Plaintiff hereby refers to and incorporates each and every allegation set forth in Paragraphs 1 through 105 of this Complaint as though fully set forth herein.

83. Defendant and Plaintiff agreed that Ms. Salgado would be fairly compensated for the services she performed for Defendant in the United States and that she would have reasonable working conditions.

84. Plaintiff has duly performed each and every condition, covenant, and promise and obligation required on her part to be performed in accordance with the terms and conditions of this oral contract.

85. Defendant breached her contract with by not making the payments required by this oral contract.

86. As a result of Defendant’s breach of contract, Plaintiff has suffered damages in an amount to be determined at trial.

THIRTEENTH CLAIM FOR RELIEF
(Breach of Covenant of Good Faith and Fair Dealing)

87. Plaintiff hereby refers to and incorporates each and every allegation set forth in Paragraphs 1 through 110 of this Complaint as though fully set forth herein.

88. The oral contract between Plaintiff and Defendant contains, by implication of law, a covenant of good faith and fair dealing. Defendant covenanted that she would not do anything in the performance or enforcement of
oral contract to impair or frustrate the right of [redacted] to receive the benefits she had been promised.

89. By willfully failing to perform under this oral contract, failing to pay Plaintiff the minimum wages and overtime premiums required by law, and subjecting Plaintiff to unlawful working conditions, Defendant [redacted] breached the implied covenant of good faith and fair dealing.

90. As a result of the Defendant [redacted] breach of the implied covenant of good faith and fair dealing, [redacted] has been wrongfully denied the benefits of her oral contract and has sustained damages in an amount to be determined at trial.

FIFTEENTH CLAIM FOR RELIEF
(Intentional Infliction of Emotional Distress)

(Against All Defendants)

91. Plaintiff hereby refers to and incorporates each and every allegation set forth in Paragraphs 1 through 114 of this Complaint as though fully set forth herein.

92. By Defendants' status as employers, by virtue of Defendants' role in bringing [redacted] to the United States unlawfully and with knowledge of [redacted] vulnerability and dependence upon Defendants as alleged herein, each of the Defendants owed [redacted] a duty of care and a fiduciary duty to act in Plaintiff's best interests.

93. Defendants engaged in extreme and outrageous conduct as set forth herein.
94. Defendants knowingly, deliberately, and intentionally committed the acts alleged in this Complaint against and/or recklessly disregarded the probability of causing emotional distress.

95. Defendants each intentionally committed the acts alleged in this Complaint against Plaintiff and thereby caused to suffer fear, depression, humiliation, mental anguish, and severe physical and emotional distress, directly and proximately causing damage to.

96. Defendants committed the acts alleged in this Complaint with the wrongful intention of injuring Plaintiff with an improper motive amounting to malice, in conscious disregard of rights. Because Defendants actions were willful, wanton, malicious and oppressive, is also entitled to an award of punitive damages.

FIFTEENTH CLAIM FOR RELIEF
(Negligent Infliction of Emotional Distress)
(Against All Defendants)

97. Plaintiff hereby refers to and incorporates each and every allegation set forth in Paragraphs 1 through 120 of this Complaint as though fully set forth herein.

98. By Defendants status as employers, by virtue of Defendants role in bringing from to the United States unlawfully and with knowledge of vulnerability and dependence upon Defendants as alleged herein, each of the Defendants owed a duty of care and a fiduciary duty to act in Plaintiff s best interests.
99. Defendants each negligently committed the acts alleged in this Complaint against Plaintiff and thereby caused Ms. Salgado to suffer fear, depression, humiliation, mental anguish, and severe physical and emotional distress, directly and proximately causing damage to Ms. Salgado.

100. By the actions alleged herein, Defendants negligently breached their duties of care to Plaintiff, directly and proximately causing harm and damages to Plaintiff.

SIXTEENTH CLAIM FOR RELIEF
(Conversion)

(Against Defendants Sitadevi Ranjani Gunawardane and Dr. Sisira Gunawardane)

101. Plaintiff hereby refers to and incorporates each and every allegation set forth in Paragraphs 1 through 124 of this Complaint as though fully set forth herein.

102. Plaintiff owned a passport and a $100 traveler's check that Defendants Sitadevi Ranjani Gunawardane and Dr. Sisira Gunawardane took from Ms. Salgado immediately after she landed in the Los Angeles Airport and converted her property to their use. Defendants have knowingly and wrongfully refused, and continue to refuse, to return Plaintiff's property to her.

103. As a result of Defendants' wrongful acts and omissions, Ms. Salgado has been injured and damaged and demands restitution and damages, in an amount to be determined at trial.

104. Defendants committed the acts alleged in this Complaint with the wrongful intention of injuring Plaintiff with an improper motive amounting to malice, in conscious disregard of Ms. Salgado's rights. Because Defendants
actions were willful, wanton, malicious and oppressive, Plaintiff is also entitled to an award of punitive damages.

**SEVENTEENTH CLAIM FOR RELIEF**

(Negligence)

(Against Defendants)

105. Plaintiff hereby refers to and incorporates each and every allegation set forth in Paragraphs 1 through 128 of this Complaint as though fully set forth herein.

106. According to the California Division of Workers' Compensation, the purpose of the workers’ compensation statutes is to allow employees to promptly receive workers’ compensation benefits for on-the-job injuries.

107. Each of the individual Defendants is an employer as defined by Section 3300(c) of the California Labor Code, Every person which has any natural person in service.

108. Section 3700 of the Labor Code provides that every employer shall secure payment of compensation by, among other things, being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in the state of California. Section 3706 of the California Labor Code provides that if any employer fails to secure the payment of compensation, an employee may bring an action at law against such employer for damages.

109. By Defendants’ status as employers, by virtue of Defendants’ role in bringing from Sri Lanka to the United States unlawfully and with knowledge of vulnerability and dependence upon Defendants as alleged herein, and by cutting Plaintiff off
from other sources of aid and support, including cutting off Plaintiff’s communications with her own family, each of the Defendants owed a duty of care and a fiduciary duty to act in Plaintiff’s best interests.

110. Defendants reasonably should have known of their obligations as California employers to provide workers’ compensation insurance for Plaintiff.

111. Defendants reasonably should have known of their obligations to provide Plaintiff with adequate medical care, given their duties of care and fiduciary duties to Plaintiff.

112. As a direct and proximate result of Defendants’ negligence, Plaintiff suffered several on-the-job injuries as alleged in this Complaint, including, but not limited to severe back pain and three separate occasions falls that occurred while chasing after Defendants’ children, on one occasion injuring her arm so severely that she has yet to regain full normal function.

113. As a direct and proximate result of Defendants’ negligence, Plaintiff suffered additional damages from her on-the-job injuries because Defendants failed and refused to provide any basic medical care to Plaintiff, thereby exacerbating her injuries. After persistent pleading to see a doctor, Defendants took to meet with a doctor at Defendant office. The doctor recommended that Plaintiff receive a blood test and a sling for her injured arm. Defendants refused and told Plaintiff to fashion a sling from old clothes for her arm.

114. Defendants negligently failed to carry workers’ compensation insurance as required by California Labor Code Section 3300 et. seq., thereby negligently failing to provide workers’ compensation benefits to Plaintiff for
her on-the-job injuries and causing additional damages to Plaintiff as described herein.

115. By engaging in the acts alleged in this Complaint, Defendants failed to exercise reasonable care to protect [Redacted] from harm, and thereby breached their duty of care to her.

116. Plaintiff worked more than 52 hours during the 90 days prior to the injuries described herein. [Redacted] earned $100 or more during the 90 days prior to the injuries she suffered as described in this Complaint.

117. As a proximate result of Defendants' negligence, Plaintiff has incurred medical and related expenses and suffered damages in an amount to be proven at trial.

VI. JURY TRIAL DEMAND
1. Plaintiff hereby demands a jury trial on all issues so triable.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court enter judgment or issue an order against Defendants, and each of them, as follows:

1. Compensatory and special damages in an amount to be proven at trial;
2. Unpaid wages, including minimum wages and overtime premiums, in an amount to be proven at trial;
3. Statutory penalties and liquidated damages according to proof at time of trial;
4. Punitive and exemplary damages in an amount according to proof at the time of trial;
5. Pre- and post-judgment interest;
6. Reasonable attorneys' fees and costs; and
7. Such other and further relief as the Court deems just and proper.

Dated: September 3, 2004

WILSON SONSINI GOODRICH &
Professional Corporation

By:_____________________________

Attorneys for Plaintiff
SECOND AMENDED COMPLAINT

INTRODUCTION

1. This is a class action brought by ten migrant farmworkers and similarly situated class members who were held in debt peonage by farm labor contractors, and (hereinafter “Contractor Defendants”). Plaintiffs and/or other class members were jointly employed by local farmers and farms, (hereinafter “Grower Defendants”).
2. Plaintiffs file this lawsuit as a class action pursuant to Fed. R. Civ. P. 23(a), 23(b)(2), and 23(b)(3) for all claims other than Assault and those claims brought under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201 et seq.. Plaintiffs file this lawsuit as a representative action for claims brought under the FLSA.

3. Plaintiffs complain that Defendants routinely failed to pay the Plaintiffs and/or others the federal and state minimum wage, as required by the FLSA and Article 19 of the New York State Labor Law and its implementing regulations.

4. Plaintiffs complain of multiple of violations of the Migrant and Seasonal Agricultural Worker Protection Act ("AWPA"), 29 U.S.C. § 1801 et seq., by the Defendants. These include: (1) housing the Plaintiffs and others at dilapidated and overcrowded labor camps; (2) failing to disclose in writing the terms and conditions of employment at the time of recruitment; (3) providing false and misleading information to the Plaintiffs and others at the time or recruitment; (4) failing to comply with a working arrangement entered into with the Plaintiffs; (5) failing to provide the Plaintiffs and others with accurate wage statements; (6) failing to maintain accurate payroll records; (7) failing to pay the Plaintiffs for all of the hours they worked; (8) transporting the workers in unsafe vehicles without adequate insurance; (9) failing to post the required information at the labor camps; and (10) failing to register as a farm labor contractor and securing the services of unregistered and/or improperly registered farm labor contractors.


6. Plaintiffs complain that Defendants failed to comply with the terms and conditions of employment promised to the Plaintiffs and/or other class members in violation of New York State Contract Law.

7. Plaintiffs complain that Defendants made unauthorized deductions from the wages of Plaintiffs and/or other class members in violation of the wage deduction provisions of Article 6 of New York State Labor Law.

8. Contractor Defendants also committed Fraud, False Imprisonment and Intentional Infliction of Emotional Distress against Plaintiffs and other class members.

9. Contractor Defendants also assaulted six of the named Plaintiffs.

JURISDICTION

10. The jurisdiction of this Court is invoked pursuant to 29 U.S.C. § 1854(a), this action arising under the AWPA; by 18 U.S.C. § 1964, this action arising under the RICO; by 29 U.S.C. § 216(b), this action arising under the FLSA; by 28 U.S.C. § 1337, this action arising under Acts of Congress regulating commerce; and by 28 U.S.C. § 1331, this action involving questions of federal law.

11. Supplemental jurisdiction over state law claims is conferred upon this Court by 29 U.S.C. § 1367(a) as these claims arise out of the same nucleus of facts which support the federal claims.

12. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and 29 U.S.C. § 1854(a). Upon information and belief, Defendants’ unlawful employment practices were committed
throughout the Western District, and the Defendants resided in the Western District at all relevant times.

**PARTIES**

**Plaintiffs**

13. Plaintiffs were employees of the Contractor Defendants and, upon information and belief, some or all of the Grower Defendants on one or more occasions in July and August 2001.

14. At all relevant times, Plaintiffs were migrant agricultural workers within the meaning of the AWPA, 29 U.S.C. § 1802(10)(A) in that at all times relevant to this action they were employed in agricultural employment of a seasonal or other temporary nature and were required to be absent overnight from their permanent places of residence.

15. At all relevant times, Plaintiffs were engaged in agricultural employment within the meaning of the AWPA, 29 U.S.C. § 1802(3).

16. At all relevant times, Plaintiffs were employed in the production of goods for sale in interstate commerce.

17. At all relevant times, Plaintiffs were employees of Contractor Defendants, and upon information and belief, some or all of the Grower Defendants within the meaning of the FLSA.
Defendants

18. At all relevant times, Defendants were agricultural employers within the meaning of the AWPA, 29 U.S.C. § 1802(2).

19. At all relevant times, Contractor Defendants were farm labor contractors within the meaning of the AWPA, 29 U.S.C. § 1802(7), in that, for a fee, they recruited, solicited, hired, transported, and housed Plaintiffs and other class members.

20. Contractor Defendants routinely do business within the Western District of New York.

21. At all relevant times, the Contractor Defendants employed the Plaintiffs and other class members.

22. At all relevant times, the Contractor Defendants were an enterprise engaged in a pattern of racketeering activity within the meaning of the RICO, 18 U.S.C. § 1961.

23. At all relevant times, the Contractor Defendants were “persons” within the meaning of the RICO, 18 U.S.C. § 1961.

24. At all relevant times, the Contractor Defendants were engaged in an industry affecting commerce.

25. Upon information and belief, Contractor Defendants are likely to employ the Plaintiffs and/or other class members during future seasons.

26. Upon information and belief, the Defendants engage in some or all of the following operations: growing, harvesting, grading, processing, packaging, repackaging, and selling fruit and vegetables.
27. Upon information and belief, Defendant [redacted], of [redacted], New York, was an employer or joint employer of Plaintiffs and/or class members within the meaning of the 29 U.S.C. § 1802(5) and 19 U.S.C. § 203(g).

28. Upon information and belief, Defendant [redacted], of [redacted], New York, was an employer or joint employer of Plaintiffs and/or class members within the meaning of the 29 U.S.C. § 1802(5) and 19 U.S.C. § 203(g).

29. Upon information and belief, Defendant [redacted], of [redacted], New York, was an employer or joint employer of Plaintiffs and/or class members within the meaning of the 29 U.S.C. § 1802(5) and 19 U.S.C. § 203(g).

30. Upon information and belief, Defendant [redacted], of [redacted], New York, was an employer or joint employer of Plaintiffs and/or class members within the meaning of the 29 U.S.C. § 1802(5) and 19 U.S.C. § 203(g).

31. Upon information and belief, Defendant [redacted], of [redacted], New York, was an employer or joint employer of Plaintiffs and/or class members within the meaning of the 29 U.S.C. § 1802(5) and 19 U.S.C. § 203(g).

32. Upon information and belief, Defendant [redacted], of [redacted], New York, was an employer or joint employer of Plaintiffs and/or class members within the meaning of the 29 U.S.C. § 1802(5) and 19 U.S.C. § 203(g).

33. Upon information and belief, Defendant [redacted], of [redacted], New York, was an employer or joint employer of Plaintiffs and/or class members within the meaning of the 29 U.S.C. § 1802(5) and 19 U.S.C. § 203(g).
34. Upon information and belief, Defendant [redacted], of [redacted], New York, was an employer or joint employer of Plaintiffs and/or class members within the meaning of the 29 U.S.C. § 1802(5) and 19 U.S.C. § 203(g).

35. Upon information and belief, Defendant [redacted], of [redacted], New York, was an employer or joint employer of Plaintiffs and/or class members within the meaning of the 29 U.S.C. § 1802(5) and 19 U.S.C. § 203(g).

36. Upon information and belief, Defendant [redacted] regularly did business as FARMS.

37. Upon information and belief, Defendant [redacted], of [redacted], New York, was an employer or joint employer of Plaintiffs and/or class members within the meaning of the 29 U.S.C. § 1802(5) and 19 U.S.C. § 203(g).

38. Upon information and belief, Defendant [redacted] FARMS, INC. of [redacted], New York was an employer or joint employer of Plaintiffs and/or class members within the meaning of the 29 U.S.C. § 1802(5) and 19 U.S.C. § 203(g).

39. Upon information and belief, Defendant [redacted], INC. of [redacted], New York was an employer or joint employer of Plaintiffs and/or class members within the meaning of the 29 U.S.C. § 1802(5) and 19 U.S.C. § 203(g).

40. Upon information and belief, Defendant [redacted], INC. of [redacted], New York was an employer or joint employer of Plaintiffs and/or class members within the meaning of the 29 U.S.C. § 1802(5) and 19 U.S.C. § 203(g).
41. Upon information and belief, Defendant INC. is a New York corporation which has its place of business at Road, New York, in the County of .

42. Upon information and belief, Defendant INC. is a New York corporation which has its place of business at Road, New York, in the County of .

43. Upon information and belief, Defendant INC. is a New York corporation which has its place of business at Road, New York, in the County of .

44. Upon information and belief, Grower Defendants are likely to employ the Plaintiffs and/or other class members during future seasons.

**CLASS ACTION ALLEGATIONS**

45. All claims for actual, statutory, punitive and liquidated damages, as well as injunctive relief under the AWPA, the RICO, federal Forced Labor statutes, the Alien Torts Claims Act, New York Labor Law, and New York contract law, as well as claims brought for Fraud, False Imprisonment, and Intentional Infliction of Emotional Distress (Counts II through XI) are brought by the Plaintiffs on behalf of themselves and all other similarly situated persons.

46. Class claims for injunctive relief are brought pursuant to Fed. R. Civ. P. 23(a) and 23(b)(2). For the purpose of injunctive relief, the class consists of all migrant and seasonal agricultural workers who have been, are currently, or will be employed, solicited, recruited, hired, furnished or transported by Defendants at Defendants’ contracting, growing, packaging, packing, and/or processing operations.
47. Defendants have acted or refused to act on grounds generally applicable to the class with respect to the claims set forth in Counts II through XI thereby making final injunctive relief applicable to the class appropriate under Rule 23(b)(2) of the Federal Rules of Civil Procedure.

48. Class claims for actual, statutory, punitive, and liquidated damages are brought pursuant to Fed. RR. Civ. P. 23(a) and 23(b)(3). For the purpose of actual, statutory, punitive, and liquidated damages, the class consists of all migrant and seasonal agricultural workers employed by Contractor Defendants between July 1996 and the present.

49. The precise number of individuals in the class is known only to the Defendants. The class is believed to include over 500 individuals. Joinder of all class members is impracticable.

50. There are questions of law and fact common to the class.

51. The claims of the Plaintiffs are typical of the claims of the class. The failure of the Defendants to comply with the AWPA, New York Labor Law, New York contract law, and the failure of the Contractor Defendants to comply with the RICO, the Thirteenth Amendment and federal peonage statutes (18 U.S.C. § 1581, 18 U.S.C. § 1589, 42 U.S.C. § 1994), the Alien Tort Claims Act, and the Contractor Defendants’ Fraud, False Imprisonment and Intentional Infliction of Emotional Distress served to deprive all class members of the protections of these laws.

52. The Plaintiffs will fairly and adequately protect the interests of the class.

53. The Plaintiffs’ counsel are experienced in conducting class actions in federal courts. The Plaintiffs’ counsel are prepared to advance costs necessary to litigate vigorously this action, including the cost of class notice.

54. The common claims set forth in Counts II through XI predominate over any questions affecting only individual class members.
55. The Plaintiffs’ interests in the claims set forth in Counts II through XI are in no way antagonistic or adverse to those of other class members.

56. A class action under Fed. R. Civ. P. 23(b)(3) is superior to other available methods of adjudicating the claims set forth in Counts II through XI because, inter alia:

   a. Common issues of law and fact substantially diminish the interest of members of the class in individually controlling the prosecution of separate actions.

   b. Many of the class members are unaware of their rights to prosecute these claims and lack the means or resources to secure legal assistance;

   c. There has been no litigation already commenced by members of the class to determine the questions presented; and

   d. A class action can be managed without undue difficulty since Defendants have regularly committed the violations complained of herein and were required to maintain detailed records concerning each member of the class.
FACTS

49. Upon information and belief, beginning before 1995 and continuing at least through August 2001, Defendant  operated as a farm labor contractor in the Western District of New York, and Defendants  and  assisted her in her business.

50. In or around May 2001, defendant  submitted an application to the U.S. Department of Labor for a certification of registration as a farm labor contractor.

51. On May 3, 2001, defendant  received a permit from the State of New York Department of Health to operate migrant farm worker housing in a house on  in  County, New York.

52. In or around late July 2001, and continuing through late August 2001, defendant  operated a migrant housing facility on  Road in  County, New York, known as the  Camp.

53. Beginning before May 2001 and continuing at least through August 2001, Defendants  and , working on behalf of defendant , made trips to Arizona and other states for the purposes of recruiting migrant workers.

54. Upon information and belief, Contractor Defendants furnished the labor of Plaintiffs and/or other class members to the Grower Defendants.
THE ROUTE PLAINTIFFS

55. In or around July 2001, Defendants and, working on behalf of Defendant, traveled to Arizona for the purpose of recruiting undocumented field workers to work for the operation in New York.

56. On or about July 15, 2001, Defendants and, working on behalf of Defendant recruited approximately eleven Mexican men and boys, including Plaintiffs , and (hereinafter “the Route Plaintiffs”), in Arizona near the U.S.-Mexican border.

57. Defendant recruited the workers by telling them that they would earn between $400 and $500 a week for three or four months.

58. Beginning on or about July 15, 2001, and continuing until on or about July 17, 2001, Defendants and, working on behalf of Defendant , transported the Route Plaintiffs and five other workers to Western New York in a van that was in an unsafe condition, lacking seats for the workers and operable windows.

59. While being transported to New York the Route Plaintiffs were not allowed to leave the van on a regular basis to use the restroom or to eat.

60. Upon information and belief, Contractor Defendants transported the Route Plaintiffs, or caused the Route Plaintiffs to be transported, from Arizona to New York and to and from work sites in various vehicles without
having an insurance policy or liability bond in effect insuring against liability for damage to persons or property arising from the operation of such vehicles in the amount of $100,000 for each seat in each vehicle.

61. On or about July 17, 2001, and on multiple occasions thereafter, Defendants ⓈⒸⒸⒸⒸ ⓈⒸ芝加百科 warned the route ⓈⒸ Calif 解被 原告 that they were not free to leave unless and until they had paid off approximately $1,000 purportedly for their transportation from Arizona to New York, as well as debts the Defendants claimed the workers owed for rent, food, electricity, and daily transport to the fields.

62. On or about July 17, 2001, Defendants ⓈⒸ芝加百科 and ⓈⒸ芝加百科 spoke threateningly to the Route ⓈⒸ Calif 解被 原告 about another group of workers, referred to as the “Veracruzans”, who had escaped without paying their debts, as a means of intimidating the Route ⓈⒸ Calif 解被 原告 and deterring them from escaping.

63. On or about July 17th, 2001, and on multiple occasions thereafter, Defendants ⓈⒸ芝加百科 and ⓈⒸ芝加百科 warned the Route ⓈⒸ Calif 解被 原告 that they should not walk on the roads or be seen outside the house, that they should not talk to other people they encounter, and that if they did venture out they would be caught and deported by the Immigration and Naturalization Service.

64. In or around July 2001, the Defendants, ⓈⒸ芝加百科 and ⓈⒸ芝加百科 instructed the Route Ⓢ⌒ Calif 解被 原告 that if authorities ever questioned them, the workers were to say that they worked for Mr. Ⓢ⌒ Calif 解被. The workers were instructed not to admit that they worked for Defendant Ⓢ⌒ Calif 解被.
65. In or around July 2001, Defendant [redacted] operated a migrant housing facility on State Route [redacted] and filled it beyond permitted capacity. More than thirty workers were housed there and the six Route [redacted] Plaintiffs were housed with five other workers in one room containing three beds.

66. The water and septic systems in the migrant housing facility on State Route [redacted] did not function properly while the Route [redacted] Plaintiffs were housed there by the Contractor Defendants.

67. In or around July 2001, Defendants [redacted] and [redacted] frequently visited the Route [redacted] house to ensure that the workers did not leave.

68. In or around July 2001, Defendant [redacted] used an agent, known as “Big Dog,” to watch the Route [redacted] Plaintiffs and make sure they did not try to escape.

69. Upon information and belief, “Big Dog” contacted the Defendant [redacted] or one of her family members if a worker strayed outside.

70. In or around July 2001, “Big Dog” and Defendant [redacted] transported Route [redacted] Plaintiffs to and from the fields of local farmers to perform agricultural work.

71. In or around July 2001, the Contractor Defendants and others supervised the Route [redacted] Plaintiffs in the fields.

72. In or around July 2001, Defendant [redacted] punched another worker in plaintiff [redacted]’s presence and told [redacted] that he would get the same treatment if he disobeyed her orders.
73. In or around July 2001, Defendant ☐☐☐☐☐☐☐☐ told Plaintiff ☐☐☐☐☐☐☐☐, who had injured his arm while working, that he would be locked up and would not receive food if he did not work.

74. In or around July 2001, Defendant ☐☐☐☐☐☐☐☐ regularly yelled and cursed at the Route ☐☐☐☐☐☐☐☐ Plaintiffs in order to intimidate them.

75. In around July 2001, Defendant ☐☐☐☐☐☐☐☐ refused to buy food for the Route ☐☐☐☐☐☐☐☐ Plaintiffs even after she was informed that they were hungry and that they had no food to eat.

76. In or around July 2001, Defendants ☐☐☐☐☐☐☐☐ ☐☐☐☐☐☐☐☐ discussed guns and ammunition in the Route ☐☐☐☐☐☐☐☐ Plaintiffs’ presence in order to intimidate the workers.

77. Each Route ☐☐☐☐☐☐☐☐ Plaintiff worked a total of approximately 60 hours for the Contractor Defendants and they were never paid for their labor.

78. In or around July 2001, after Plaintiffs ☐☐☐☐☐☐☐☐ ☐☐☐☐☐☐☐☐ ☐☐☐☐☐☐☐☐ escaped, Defendants ☐☐☐☐☐☐☐☐ and ☐☐☐☐☐☐☐☐ and their agents searched for them and attempted to bring them back.

79. On or around the evening of July 22, 2001, the Route ☐☐☐☐☐☐☐☐ Plaintiffs spent the night outdoors in hiding in order to avoid the pursuit of defendants ☐☐☐☐☐☐☐☐ and ☐☐☐☐☐☐☐☐ and their agents.

80. As a result of the above alleged actions of Defendants, the Plaintiffs suffered great fear, suffering, humiliation and emotional distress.
THE CAMP PLAINTIFFS

81. In or around late July or Early August 2001, Defendants and, working on behalf of defendant , recruited approximately thirty Mexican men and boys, including , , and (the “Camp Plaintiffs”).

82. Defendant recruited the Camp Plaintiffs and the other workers by telling them that they could have plenty of general agricultural work which paid six dollars per hour.

83. In or around late July or early August 2001, Defendants and, working on behalf of defendant , transported the Camp Plaintiffs and approximately 26 other workers to Western New York in a single van that was in an unsafe condition, lacking seats for the workers and operable windows.

84. During the journey to New York the workers were not allowed to leave the van on a regular basis to use the restroom or to eat.

85. Upon information and belief, Contractor Defendants transported the Camp Plaintiffs, or caused the Camp Plaintiffs to be transported, from Arizona to New York and to and from work sites in various vehicles without having an insurance policy or liability bond in effect insuring against liability for damage to persons or property arising from the operation of such vehicles in the amount of $100,000 for each seat in each vehicle.
86. In or around late July, and multiple times thereafter, Defendants warned the Camp Plaintiffs that they were not free to leave unless and until they had paid off approximately $1,800 for their transportation from Arizona to New York, as well as debts that the Defendants claimed the workers owed for rent, food, electricity, and daily transport to the fields.

87. In or around late July 2001, and multiple times thereafter, Defendants warned the Camp workers that they should not walk on the roads or be seen outside the house, that they should not talk to other people they might encounter, and that if they did venture out they would be caught and deported by the INS.

88. In or around late July and August 2001, defendant supervised the Camp Plaintiffs and recorded their names and the hours that they worked.

89. In or around late July and August 2001, defendant threatened to report the Camp Plaintiffs to the INS if they complained about their treatment.

90. In or around late July and August 2001, defendant told the Camp Plaintiffs that if they ever escaped he would hunt them down and beat them.

91. In or around late July and August 2001, defendant used an agent known as “” or “,” to watch the Camp workers and to make sure that they did not try to escape.
92. In or around late July and August 2001, “███” drove vehicles to transport workers to and from the fields of local farmers to perform agricultural work.

93. In August 2001, “███” reported to defendant “███” the names of workers who had spoken with a volunteer English teacher who had visited the “███” Camp, and defendant “███” yelled and cursed at those workers in order to intimidate them.

94. In or around late July and August 2001, defendant “███” retained the “███” Camp plaintiff’s pay checks and gave each worker approximately thirty dollars in cash as their wages for approximately sixty hours of work. Defendant “███” routinely retained employees’ pay checks and exchanged them for far less cash than set forth on the checks.

95. As a result of the above alleged actions of Defendants, the Plaintiffs suffered great fear, suffering, humiliation and emotional distress.
THE RACKETEERING ACTS

96. In order to perpetuate a criminal worker exploitation scheme, the Contractor Defendants knowingly and willfully committed the following predicate offenses under Section 1961(1)(B) of the RICO, 18 U.S.C. § 1961(1)(B):

   b. Involuntary servitude in violation of 18 U.S.C. § 1584;

97. In order to perpetuate a criminal worker exploitation scheme, the Contractor Defendants knowingly and willfully committed the following predicate offenses under Section 1961(1)(A) of the RICO, 28 U.S.C. § 1961(1)(A):

   a. Larceny by extortion in violation of N.Y. Penal Law § 155.05(2); and

VIOLATION OF 18 U.S.C. § 1951: EXTORTION

98. The Contractor Defendants knowingly and willfully committed multiple predicate acts of extortion in violation of 18 U.S.C. § 1951 by wrongfully using threatened force and fear, as described in paragraphs 49 to 93, supra, to induce the Plaintiffs to abandon their property rights to be paid in compliance with federal and state labor laws.

99. The Contractor Defendants violated 18 U.S.C. § 1951 by intentionally (1) affecting or attempting or conspiring to affect interstate commerce by (2) extortion of (3) Plaintiffs’ property rights to be paid in compliance with state and federal law.

VIOLATION OF 18 U.S.C. § 1584: INVOLUNTARY SERVITUDE

101. The Contractor Defendants willfully and continuously held Plaintiffs and other class members in involuntary servitude in violation of 18 U.S.C. § 1584 by threatening Plaintiffs and other class members with legal coercion and use of force in order, as described in paragraphs 49 to 93, supra, to cause Plaintiffs and other class members to believe that they had no choice but to continue to work for the Contractor Defendants.


VIOLATION OF 18 U.S.C. §§ 1341 AND 1343: WIRE FRAUD

103. The Contractor Defendants knowingly and willfully devised a scheme to defraud Plaintiffs and other class members, and to obtain money or property from Plaintiffs and other class members by means false or fraudulent pretenses, representations, or promises, as described in paragraphs 49 to 93, supra. The money or property obtained from Plaintiffs and other class members was the wages the Contractor Defendants were required by state and federal law to pay to the Plaintiffs and other class members, but which were not paid.

104. Upon information and belief, the Contractor Defendants knowingly and willfully used telephones to communicate with each other, with [redacted], and with others with the intent of executing and furthering this fraudulent scheme, in violation of 18 U.S.C. §§ 1341 and 1343.

105. Upon information and belief, these communications included, but were not limited to, telephone calls between Defendant [redacted] and Defendants [redacted] and [redacted], as well as telephone calls between the Contractor Defendants and
In or around July 2001 for the purpose of arranging the scheme by which the Route Plaintiffs were defrauded.

106. Upon information and belief, these communications included, but were not limited to, telephone calls between Defendant and Defendants and , as well as telephone calls between the Contractor Defendants and undocumented immigrant traffickers in or around late July or early August 2001 for the purpose of arranging the scheme by which the Camp Plaintiffs were defrauded.

107. It was reasonably foreseeable that and others would use telephones to respond to the Contractor Defendants. These communications furthered the fraudulent scheme.


VIOLATION OF N.Y. PENAL LAW §§ 155.30 AND 155.40: LARCENY BY EXTORTION

109. The Contractor Defendants knowingly and willfully committed multiple predicate acts of extortion in violation of N.Y. Penal Law §§ 155.30(6) and 155.40(2)(b), which are defined as Grand Larceny by Extortion in N.Y. Penal Law § 155.05, by wrongfully using threatened force and fear, as described in paragraphs 49 to 93, supra, to induce Plaintiffs to abandon their property right to be paid in compliance with state and federal law.

110. These acts of extortion in violation of N.Y. Penal Law §§ 155.30(6) and 155.40(2)(b) constitute “racketeering activity” as defined in the RICO, 18 U.S.C. § 1961(1).

VIOLATION OF N.Y. PENAL LAW §§ 135.25 AND 135.20: KIDNAPING

C54
111. The Contractor Defendants abducted the Plaintiffs and other class members in violation of N.Y. Penal Law § 135.20.

112. As described in paragraphs 49 to 93, supra, the Contractor Defendants restrained the Plaintiffs and other class members for a period of more than twelve hours to accomplish or advance the commission of felonies including, but not limited to: Extortion, Involuntary Servitude, Wire Fraud, and Larceny by Extortion.


THE RICO ENTERPRISE

114. The Contractor Defendants, and other labor recruiters, and the Grower Defendants are a group of individuals associated in fact although not a legal entity, and therefore are an “enterprise” as defined in RICO, 18 U.S.C. § 1961(4).

115. The Contractor Defendants, using their positions as operators of their farm labor contracting business, have made ongoing associations with two or more parties for the purpose of executing essential aspects of the criminal worker exploitation scheme. The Contractor Defendants formed an ongoing association with and other labor recruiters, as well as with the Grower Defendants, in order to commit the predicate acts set forth above.

116. The Contractor Defendants could not successfully conduct the criminal worker exploitation scheme without the associations that formed this enterprise.

117. The Contractor Defendants operated and managed the enterprise comprised of the Contractor Defendants, and other labor recruiters, and the Grower Defendants. They initiated and carried out a criminal worker exploitation scheme for the
enterprise. They directed the activities and managed the flow of information within the enterprise, for the purpose of advancing their scheme.

118. The enterprise regularly moved goods and people across state lines and therefore was engaged in interstate commerce.

**PATTERN OF RACKETEERING ACTIVITY**

119. The predicate acts of criminal racketeering activity described above constitute a “pattern of racketeering activity” as defined in RICO, 18 U.S.C. § 1961(5). The Contractor Defendants repeatedly committed the RICO predicate acts of extortion, involuntary servitude, larceny (by extortion), and kidnaping. The Contractor Defendants have committed multiple acts of wire fraud during all time periods relevant to this action.

120. The predicate acts of criminal racketeering activity described above also were related in the following ways:

a. They had common participants;

b. They had the same victims (Plaintiffs and other class members);

c. They had the same purpose (and result) of benefitting the Contractor Defendants at the expense of the Plaintiffs and other class members;

d. They were interrelated in that, without the acts of wire fraud, the Contractor Defendants would not have kidnaped and held Plaintiffs and other class members in involuntary servitude or extorted their rights to contractual and lawful wages.

121. Such acts of racketeering activity have been part of the Contractor Defendants’ regular way of doing business through the enterprise at least from 1995 to 2001 and therefore show a threat of continued criminal activity.
FIRST CAUSE OF ACTION (COUNT I)

(FAIR LABOR STANDARDS ACT)

(All Defendants)

(Representative Action)

122. Plaintiffs reallege and incorporate by reference the allegations set forth in paragraphs 1 through 121 as if set forth fully here.

123. Plaintiffs represent additional similarly situated employees of the Defendants who suffered violations of the FLSA minimum wage provisions, and who will be joined collectively pursuant to 29 U.S.C. § 216(b).


125. Contractor Defendants’ and, upon information and belief, Grower Defendants’ violations of the FLSA were willful, in that the Defendants knew or showed reckless disregard for the issue of whether Defendants’ conduct was prohibited under the FLSA.

126. Contractor Defendants’, and, upon information and belief, Grower Defendants’ failure to comply with the FLSA minimum wage protections caused Plaintiff and others similarly situated to suffer loss of wages and interest thereon.
SECOND CAUSE OF ACTION (COUNT II)

(MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT)

(Class Action)

ALLEGATIONS AS TO ALL DEFENDANTS:

127. Plaintiffs reallege and incorporate by reference the allegations set forth in paragraphs 1 through 121 as if set forth fully here.

128. By failing to provide the Plaintiffs and/or other class members at the time of recruitment with a written disclosure of the terms and conditions of employment, the Contractor Defendants and, upon information and belief, the Grower Defendants violated the AWPA, 29 U.S.C. § 1821(a).

129. By failing to comply with a working arrangement, the Contractor Defendants and, upon information and belief, the Grower Defendants violated the AWPA, 29 U.S.C. § 1832(c).

130. By knowingly giving false and misleading information to Plaintiffs and other class members the Contractor Defendants and, upon information and belief, the Grower Defendants violated the AWPA, 29 U.S.C. § 1831(f).

131. By failing to pay Plaintiffs and/or other class members their wages when due, the Contractor Defendants and, upon information and belief, the Grower Defendants violated the AWPA, 29 U.S.C. § 1822(a).

132. By failing to make, keep and preserve payroll records for each of the Plaintiffs and/or other class members, the Contractor Defendants and, upon information and belief, the Grower Defendants violated the AWPA, 29 U.S.C. §§ 1821(d)(1), 1831(C)(1).
133. By failing to provide each of the Plaintiffs and/or other class members with an itemized pay statement the Contractor Defendants and, upon information and belief, the Grower Defendants violated the AWPA, 29 U.S.C. §§ 1821(d)(2), 1831(c)(2).

134. By transporting the Plaintiffs and/or other class members in unsafe vehicles, the Contractor Defendants and, upon information and belief, the Grower Defendants violated the AWPA, 29 U.S.C. § 1841(b)(1)(A), and its implementing regulations, 29 C.F.R. §§ 500.104 and 500.105.

135. By transporting the Plaintiffs and other class members, or allowing plaintiffs and other class members to be transported, in vehicles without having an adequate insurance policy or liability bond in effect, the Contractor Defendants and, upon information and belief, the Grower Defendants violated the AWPA, 29 U.S.C. § 1841(b)(1)(C), and its implementing regulations, 29 C.F.R. §§ 500.120 through 500.128.

136. The violations of the AWPA as set forth in paragraphs 101 through 108 were the natural consequence of the conscious and deliberate actions of Contractor Defendants and, upon information and belief, the Grower Defendants and were intentional within the meaning of the AWPA, 29 U.S.C. § 1854(c)(1).

137. The Defendants’ failure to comply with the AWPA caused the Plaintiffs and other class members to suffer damages.
ALLEGATIONS AS TO CONTRACTOR DEFENDANTS:

138. By housing the Plaintiffs and other class members in housing that did not comply with state and federal law, the Contractor Defendants violated the AWPA, 29 U.S.C. § 1823(a).

139. Upon information and belief, by failing to post a certificate of occupancy at the housing occupied by the Plaintiffs and other class members, the Contractor Defendants violated the AWPA, 29 U.S.C. § 1823(b).

140. Contractor Defendants 合同被告1, 合同被告2, 合同被告3, 合同被告4, and 合同被告5 engaged in farm labor contracting activity, without a valid certificate of registration in violation of the APWA, 29 U.S.C. § 1811(a).

141. The violations of the AWPA as set forth in paragraphs 111 through 113 were the natural consequence of the conscious and deliberate actions of Contractor Defendants and were intentional within the meaning of the AWPA, 29 U.S.C. § 1854(c)(1).

142. The Contractor Defendants’ failure to comply with the AWPA caused the Plaintiffs and other class members to suffer damages.

ALLEGATIONS AS TO GROWER DEFENDANTS

143. Upon information and belief, grower defendants utilized the services defendants 合同被告6, 合同被告7, 合同被告8, 合同被告9, and 合同被告10, without first taking reasonable steps to determine that these farm labor contractors possessed a certificate of registration which was valid and which authorized the activity for which the contractor was utilized. This violated the AWPA, 29 U.S.C. § 1842.
144. Upon information and belief, the violations of the AWPA as set forth in paragraph 116 was the natural consequence of the conscious and deliberate actions of the Grower Defendants and were intentional within the meaning of the AWPA, 29 U.S.C. § 1854(c)(1).

145. Upon information and belief, the Grower Defendants’ failure to comply with the AWPA caused the Plaintiffs and other class members to suffer damages.

THIRD CAUSE OF ACTION (COUNT III)

(Racketeer Influenced and Corrupt Organizations ACT)

(Contractor Defendants)

(Class Action)

146. Plaintiffs reallege and incorporate by reference the allegations set forth in paragraphs 1 through 121 as if set forth fully here.

147. At all times relevant to this action, Contractor Defendants were an enterprise , and were an enterprise which engaged in a pattern of racketeering activity.


150. Plaintiffs and other class members suffered injury as a result of these acts of Contractor Defendants.

151. As a result of the actions of Contractor Defendants, Plaintiffs and other class members suffered injuries and are entitled to an award of treble damages, costs and attorney’s fees, as well as an injunction against future violations of the RICO.

**FOURTH CAUSE OF ACTION (COUNT IV)**


(Contractor Defendants)

(Class Action)

152. Plaintiffs reallege and incorporate by reference the allegations set forth in paragraphs 1 through 121 as if set forth fully here.

153. Contractor Defendants acted with malicious intent to impose a condition of debt peonage and forced labor upon Plaintiffs and other class members against their will.

154. Contractor Defendants did impose a condition of debt peonage and forced labor upon Plaintiffs and other class members.

155. This condition of debt peonage was enforced by threats of force, force, and by Contractor Defendants’ total control over means of transportation, food, housing, and communication combined with Plaintiffs’ and other class members’ rural isolation at the Contractor Defendants’ housing camps.

157. The Contractor Defendants committed these acts willfully, knowingly, and in purposeful disregard of Plaintiffs’ rights.

158. Plaintiffs and other class members suffered injuries as a result of these actions.

**FIFTH CAUSE OF ACTION (COUNT V)**

(ALIEN TORT CLAIMS ACT)

(Class Action)

159. Plaintiffs reallege and incorporate by reference the allegations set forth in paragraphs 1 through 121 as if set forth fully here.

160. Plaintiffs bring this claim pursuant to the Alien Torts Claims Act, 28 U.S.C. § 1350.

161. The Contractor Defendants obtained Plaintiffs’ labor through legal, psychological and other means of coercion intended to cause Plaintiffs to believe that they would suffer serious harm if they did not continue to work for the Contractor Defendants.

163. Plaintiffs and other class members suffered injuries as a result of these actions.

SIXTH CAUSE OF ACTION (COUNT VI)

(NEW YORK CONTRACT LAW)

(All Defendants)

(Class Action)

164. Plaintiffs reallege and incorporate by reference the allegations set forth in paragraphs 1 through 121 as if set forth fully here.

165. By failing to comply with the terms and conditions of employment promised to the Plaintiffs and/or other class members, Contractor Defendants and, upon information and belief, Grower Defendants violated employment contracts entered into with the Plaintiffs and/or other class members.

166. As a result of the Defendants’ violations of these employment contracts, the Plaintiffs and/or other class members suffered damages.
SEVENTH CAUSE OF ACTION (COUNT VII)

(NEW YORK LABOR LAW - MINIMUM WAGE)

(All Defendants)

(Class Action)

167. Plaintiffs reallege and incorporate by reference the allegations set forth in paragraphs 1 through 121 as if set forth fully here.

168. Contractor Defendants and, upon information and belief, Grower Defendants paid the Plaintiffs and/or other class members less than the state-mandated minimum wage, thus violating the New York Labor Law, § 670 et seq.

169. Contractor Defendants’ and, upon information and belief, Grower Defendants’ failure to pay Plaintiffs and/or other class members minimum wages which were due and when they were due was willful within the meaning of the New York Labor Law, § 681.

170. Plaintiffs and other class members are entitled to their unpaid minimum wages, plus an additional 25 percent as liquidated damages, as a consequence of the Defendants’ unlawful actions and omissions, in accordance with New York Labor Law § 681(1).
EIGHTH CAUSE OF ACTION (COUNT VIII)

(NEW YORK LABOR LAW - ILLEGAL DEDUCTIONS FROM WAGES)

(All Defendants)

(Class Action)

171. Plaintiffs reallege and incorporate by reference the allegations set forth in paragraphs through 121 as if set forth fully here.

172. Contractor Defendants and, upon information and belief, the Grower Defendants made deductions from the wages of Plaintiffs and/or other class members. These deductions were made without the authorization of Plaintiffs or other class members. The wage deductions thus violated the New York Labor Law, § 193.

173. Contractor Defendants’ and, upon information and belief, the Grower Defendants’ wrongful deductions from the wages of Plaintiffs and other class members were willful within the meaning of the New York Labor Law, § 198.

174. Plaintiffs and other class members were injured by Defendants’ illegal deductions from their wages.

175. Plaintiffs and other class members are entitled to their unpaid minimum wages, plus an additional 25 percent as liquidated damages, as a consequence of the Defendants’ unlawful actions and omissions, in accordance with New York Labor Law § 198(1-a).
NINTH CAUSE OF ACTION (COUNT IX)

(FRAUD)

(Class Action)

176. Plaintiffs reallege and incorporate by reference the allegations set forth in paragraphs 1 through 121 as if set forth fully here.

177. Contractor Defendants acted to recruit Plaintiffs and other class members through false representations as to facts about work conditions in the Western District of New York.

178. Contractor Defendants knew these representations to be false.

179. Contractor Defendants made these representations for the purpose of inducing Plaintiffs and other class members to rely on them.

180. Plaintiffs and other class members reasonably did rely on the false representations made by the Contractor Defendants. This reliance occurred in ignorance of the falsity of Contractor Defendants’ representations.

181. Plaintiffs and other class members were injured because of their reliance on the false representations made by the Contractor Defendants.
TENTH CAUSE OF ACTION (COUNT X)

(FALSE IMPRISONMENT)

(Contractor Defendants)

(Class Action)

182. Plaintiffs reallege and incorporate by reference the allegations set forth in paragraphs 1 through 121 as if set forth fully here.

183. Contractor Defendants acted with malicious intent to confine Plaintiffs and other class members.

184. Plaintiffs and other class members were conscious of the confinement imposed upon them by the Contractor Defendants.

185. Plaintiffs and other class members did not consent to the confinement imposed upon them by the Contractor Defendants.

186. The confinement imposed upon Plaintiffs and other class members by the Contractor Defendants was not otherwise privileged.

187. Plaintiffs and other class members suffered severe emotional distress and injury as a result of Contractor Defendants’ actions.
ELEVENTH CAUSE OF ACTION (COUNT XI)

(INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS)

(Class Action)

188. Plaintiffs reallege and incorporate by reference the allegations set forth in paragraphs 1 through 121 as if set forth fully here.

189. Contractor Defendants conduct toward Plaintiffs and other class members was extreme and outrageous.

190. Contractor Defendants undertook this conduct with the intent to cause, or with the disregard of the substantial probability of causing, severe emotional distress.

191. Plaintiffs and other class members suffered severe emotional distress and injury as a result of Contractor Defendants’ actions; this emotional distress and injury was causally connected to Defendants’ actions.
TWELFTH CAUSE OF ACTION (COUNT XII)

(ASSAULT)

(Contractor Defendants)

(Route Plaintiffs)

192. Plaintiffs reallege and incorporate by reference the allegations set forth in paragraphs 1 through 121 as if set forth fully here.

193. Contractor Defendants intentionally placed the Route Plaintiffs in apprehension of imminent harm or oppressive contact.

194. The Route Plaintiffs suffered injury as a result of Contractor Defendants’ actions. The Contractor Defendants are liable to the Route Plaintiffs for damages, including punitive damages, arising from this assault.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs and others similarly situated pray that this Court will enter an order:

a. Certifying this cause as a class action in accordance with Fed. RR. Civ. P. 23(a) and 23(b)(2) with respect to claims set forth in Counts II through XI;

b. Certifying this cause as a class action in accordance with Fed. RR. Civ. P. 23(a) and 23(b)(3) with respect to claims for actual, statutory, and liquidated damages as set forth in Counts II through XI;

c. Declaring that the Defendants have intentionally violated the FLSA and its implementing regulations as set forth in Count I;

d. Granting judgment in favor of Plaintiffs and others similarly situated and against Defendants on the Plaintiffs’ FLSA claims as set forth in Count I, and awarding
each of the Plaintiffs and others similarly situated their unpaid minimum wages
and an equal amount in liquidated damages;

e. Declaring that the Defendants have intentionally violated the AWPA and its
implementing regulations as set forth in Count II;

f. Granting judgment in favor of Plaintiffs and other class members and against
Defendants on claims brought under the AWPA as set forth in Count II, and
awarding each of the class members the greater of his or her actual damages or
statutory damages of $500 for each violation of the AWPA and its implementing
regulations;

g. Declaring that the Contractor Defendants have intentionally violated the RICO as
set forth in Count III;

h. Granting judgment in favor of Plaintiffs and other class members and against
Contractor Defendants on claims brought under the RICO as set forth in Count
III, and awarding each of the class members treble damages;

i. Declaring that the Contractor Defendants have intentionally violated 18 U.S.C. §
1581, 18 USCA § 1589 and 42 U.S.C. § 1994 as set forth in Count IV;

j. Granting judgment in favor of Plaintiffs and other class members and against
Contractor Defendants on claims brought under the Thirteenth Amendment to the
1994 as set forth in Count IV, and awarding each of the class members his or her
actual damages and punitive damages;

j. Declaring that the Contractor Defendants have intentionally violated the Alien
Tort Claims Act, 28 U.S.C. § 1350 as set forth in Count V;

k. Granting judgment in favor of Plaintiffs and other class members and against
Contractor Defendants on claims brought under the Alien Tort Claims Act, 28
U.S.C. § 1350 as set forth in Count V, and awarding each of the class members his or her
actual damages and punitive damages;

l. Declaring that the Defendants have violated the terms of an employment contract
entered into with the Plaintiffs and other class members as set forth in Count VI;

m. Granting judgment in favor of Plaintiffs and other class members and against
Defendants on claims brought under the Contract Law as set forth in Count VI,
and awarding each of the class members his actual damages and punitive
damages;
n. Declaring that the Defendants have intentionally violated the minimum wage provisions of New York Labor Law as set forth in Count VII;

o. Granting judgment in favor of Plaintiffs and other class members and against Defendants on claims brought under the minimum wage provisions of New York Labor Law as set forth in Count VII, and awarding each of the class members his or her actual damages plus an additional 25 percent as liquidated damages;

p. Declaring that the Defendants have intentionally violated wage deduction provisions of New York Labor Law as set forth in Count VIII;

q. Granting judgment in favor of Plaintiffs and other class members and against Defendants on wage claims brought under the wage deduction provisions of New York Labor Law as set forth in Count VIII, and awarding each of the class members his or her actual damages plus an additional 25 percent as liquidated damages;

r. Declaring that the Contractor Defendants have committed fraud against Plaintiffs and other class members as set forth in Count IX;

s. Granting judgment in favor of Plaintiffs and other class members and against Contractor Defendants on claims brought for fraud as set forth in Count IX and awarding each of the class members his or her actual damages and punitive damages;

t. Declaring that the Contractor Defendants falsely imprisoned Plaintiffs and other class members as set forth in Count X;

u. Granting judgment in favor of Plaintiffs and other class members and against Contractor Defendants on claims brought for false imprisonment as set forth in Count X and awarding each of the class members his or her actual damages plus punitive damages;

v. Declaring that the Contractor Defendants intentionally inflicted emotional distress upon Plaintiffs and other class members as set forth in Count XI;

w. Granting judgment in favor of Plaintiffs and other class members and against Contractor Defendants on claims brought for intentional infliction of emotional distress as set forth in Count XI, and awarding each of the class members his or her actual damages and punitive damages;

x. Declaring that the Contractor Defendants intentionally assaulted the Route Plaintiffs as set forth in Count XII;
y. Granting judgment in favor of the Route Plaintiffs against Contractor Defendants on claims brought for Assault as set forth in Count XII, and awarding each Route Plaintiff his or her actual damages and punitive damages;

z. Permanently enjoining Defendants from further violations of law as set forth in Counts I through XII.

aa. Awarding the Plaintiffs and other class members prejudgment interest;

ab. Awarding the Plaintiffs and other class members the costs of this action;

ac. Awarding the Plaintiffs and other class members a reasonable attorney’s fee with respect to their claims under FLSA, the RICO, and New York Labor Law; and

ad. Granting such further relief as this Court deems just and equitable.

Dated: June 23, 2003

Respectfully Submitted,

__________________________________________

ATTORNEYS FOR PLAINTIFFS
SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

Plaintiff,

v.

Defendants.

CASE NO.
COMPLAINT FOR DAMAGES
JURY TRIAL DEMANDED
1. Peonage and Involuntary Servitude
2. Violation of the California Labor Code
3. False Imprisonment
4. Invasion of Privacy
5. Fraud
6. Assault and Battery
7. Intentional Infliction of Emotional Distress
8. Negligent Infliction of Emotional Distress
9. Negligent Supervision
10. Negligence Per Se
Plaintiff alleges as follows:

[INTRODUCTION]

1. This is an action for damages arising out of a system of peonage and involuntary servitude which deprived Plaintiff of the most basic rights guaranteed by the California Constitution and statutory law. Plaintiff is a domestic worker whom Defendants confined for over a year inside their residence in Culver City, California. The system of peonage and involuntary servitude to which Plaintiff was subjected violated Article 1, \( \frac{1}{6} \) of the California Constitution and various provisions of the California Labor Code ("Labor Code"). The system also gave rise to causes of action for false imprisonment, invasion of privacy, fraud, assault and battery, intentional infliction of emotional distress, negligent infliction of emotional distress, negligent supervision, and negligence per se. Plaintiff seeks damages to remedy these egregious violations of her rights.

[PARTIES]

2. Plaintiff, Nena Jimeno Ruiz, is a resident of Los Angeles County, California.

3. Plaintiff was employed as a domestic worker by the following Defendants: James Judson Jackson, Elizabeth Nicolas Tagle Jackson ("Individual Defendants"), and Doe Defendants ("Does") 1-10, inclusive.

4. Defendants James Judson Jackson and Elizabeth Nicolas Tagle Jackson are residents of Los Angeles County, California.

5. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as Does 1-10, inclusive, and therefore sues these Defendants by such fictitious names and capacities. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes and on that basis alleges that each fictitiously-named Defendant is responsible in some manner for the occurrences herein alleged, and that Plaintiff’s injuries were proximately caused by the conduct of such Defendant.

6. All of the Defendants, including the Doe Defendants, are alleged to be co-
conspirators with each other, in that each agreed to participate and participated in the furtherance of the objective of a civil wrong as alleged in this Complaint.

7. Plaintiff is informed and believes and thereupon alleges that each Defendant entered into a conspiracy and agreement with the other Defendants and/or subsequently joined said conspiracy and ratified the prior acts and conduct of the Defendants who had previously entered into said conspiracy. Plaintiff is currently unaware of when each Defendant joined said conspiracy and, upon information and belief, alleges that all Defendants have knowingly, maliciously, and willfully entered into said conspiracy, which continues until this day. The purposes of this ongoing conspiracy include, but are not limited to, the wrongs alleged herein. All Defendants' acts and failures to act as alleged herein were perpetrated in furtherance of the ongoing conspiracy.

8. There are other co-conspirators not named as Defendants in this Complaint, who may be called as witnesses pursuant to California Evidence Code §§ 776, 1222, 1223, and 1230.

9. Plaintiff is informed and believes and thereupon alleges that at all times material herein, each Defendant was completely dominated and controlled by his or her co-Defendants, each was the agent, representative, and alter ego of the others, and all aided and abetted the wrongful acts of the others.

10. Whenever and wherever this complaint refers to any act by a Defendant or Defendants, such allegations and references shall also be deemed to mean the acts and failures to act of each Defendant acting individually, jointly, and/or severally.

11. Plaintiff is informed and believes and on that basis alleges that at all material times, each of the Defendants has acted as an employer and/or a joint employer within the meaning of California Labor Code/2650(b).

12. Plaintiff is informed and believes and thereupon alleges that at all times material herein, each of the Defendants was the agent, employee and/or joint venturer of, or working in concert with, co-Defendants and was acting within the course and scope of such agency, employment, and/or joint venture or concerted activity. To the extent that said conduct and
omissions were perpetrated by certain Defendants, Plaintiff is informed and believes and thereupon alleges that the remaining Defendant and/or Defendants confirmed and ratified said conduct and omissions.

13. Whenever and wherever reference is made in this complaint to any act by a Defendant and/or Defendants, such allegations and references shall also be deemed to mean the acts and failures to act of each Defendant acting individually, jointly, and/or severally.

14. Whenever and wherever reference is made to individuals who are not named as Plaintiffs or Defendants in this complaint but are or were employees/agents of Defendants, or any of them, such references shall be deemed to mean that such individuals at all relevant times acted on behalf of Defendants within the scope of their employment.

[FACTUAL ALLEGATIONS]

15. Beginning in or around February 2001 and continuing through approximately [redacted], Plaintiff was falsely imprisoned at the home of the Individual Defendants where she was forced to labor as a domestic servant, usually for eighteen or more hours per day, seven days per week. Plaintiff was forced to sleep on the floor of the dining room at the Individual Defendants home on a dog bed.

16. Defendants, and each of them, unlawfully and intentionally and/or negligently misrepresented to Plaintiff that she was being brought to the United States to work as a traveling companion for Defendant [redacted] s ill mother.

17. Defendants, and each of them, unlawfully and intentionally and/or negligently violated Plaintiff’s personal liberty by confining her against her will and subjecting her to other forms of extreme mental, physical, and economic coercion and cruelty. Defendants restrained Plaintiff through the negligent and/or intentional use of physical force, express or implied threats of physical force, and express or implied threats of harm if she attempted to leave.

18. Defendants, and each of them, forced Plaintiff to work for them without pay until she "repaid" the cost of transportation to the United States.
19. Plaintiff was paid a total of approximately $300 for the hours that she worked.

20. Plaintiff is informed and believes and on that basis alleges that each Defendant acted as Plaintiff’s joint employer because each exercised meaningful control over the work Plaintiff performed. As joint employers, all Defendants are jointly and severally liable for Plaintiff’s unpaid wages and personal injuries.

21. All Defendants benefitted from and were unjustly enriched by the unlawful acts of the remaining Defendants.

[SUSPENSION OF STATUTES OF LIMITATION]

22. Any statute of limitations relating to the causes of action alleged in this complaint on behalf of the Plaintiff has been suspended for the period of Plaintiff’s false imprisonment and for a reasonable time period following her release. Plaintiff was unaware of her rights and unable to seek appropriate remedies, including the filing of a lawsuit during such time period.

[CAUSES OF ACTION]

FIRST CAUSE OF ACTION
PEONAGE AND INVOLUNTARY SERVITUDE

23. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 22 above.

24. Plaintiff brings this claim for relief under the private cause of action implied under the California Constitution, Article I, § 6 and California Penal Code/181.

25. As alleged herein, Defendants used force, threats, and intimidation to hold Plaintiff in captivity and required her to work without lawfully required pay. Defendants forced Plaintiff to work for no pay until she "repaid" the cost of transportation to the United States.

26. Through such actions, Defendants, acting individually and in concert, created and enforced a system of peonage and involuntary servitude prohibited by the California Constitution, Article I, § 6 and California Penal Code/181.

COMPLAINT FOR DAMAGES
27. As a direct and proximate result of these actions, Plaintiff has sustained damages, including extreme mental suffering, humiliation, emotional distress, physical injuries and economic losses, entitling her to damages in an amount to be proven at trial.

28. Defendants committed the acts alleged herein maliciously, fraudulently and oppressively with the wrongful intention of injuring Plaintiff from an improper and evil motive amounting to malice, and in conscious disregard of Plaintiff’s rights. Plaintiff is thus entitled to recover punitive damages from Defendants in amounts to be proven at trial.

SECOND CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES AND OVERTIME
UNDER THE CALIFORNIA LABOR CODE

29. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 28 above.

30. Labor Code/1197 establishes the right of employees to be paid minimum wages for their work, in amounts set by state law. Labor Code/1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by/1197 may recover the unpaid balance together with attorney’s fees and costs of suit, as well as liquidated damages in an amount equal to the wages unpaid and interest thereon.

31. Labor Code/1198 and the Industrial Welfare Commission ("IWC") Wage Order No. 15-2000,3 provide that domestic service "live-in" employees in California shall not be employed more than nine hours in any workday for the first five workdays in any week unless they receive additional compensation beyond their regular wages in amounts specified by law. The employee is entitled to overtime pay at a rate of one and one half times her regular rate for all hours worked in excess of nine during the first five workdays. For the first nine hours worked on the sixth and seventh days of the workweek, the employee is entitled to be paid overtime pay of one and one half times her regular rate. For the remaining hours worked on the sixth and seventh days, the employee is entitled to be paid at double her regular rate. Labor Code/
1194(a) and 1194.2(a) provide that an employee who has not been paid overtime compensation as required by § 1198 may recover the unpaid balance of the full amount of such wages, together with attorney’s fees and costs of suit.

32. IWC Wage Order No. 15-2000 requires employers to permit their employees to take paid breaks and unpaid lunch periods as specified therein, and specifies penalties, in addition to the unpaid wages, to be paid by employers who violate these provisions.

33. At all relevant times, Defendants, and each of them, failed to pay to Plaintiff minimum wage and overtime compensation for hours worked in excess of the maximum hours of work permissible by laws as set forth in the Labor Code and in the IWC Wage Order. At all times, Defendants, and each of them, failed to provide Plaintiff with lunch and break times as specified in the applicable Wage Orders. In addition, Defendants did not pay Plaintiff all wages owed to her at the time she was released from captivity and her employment was terminated, entitling her to recover waiting time penalties equal to thirty days’ pays, pursuant to Labor Code § 203.

34. By virtue of Defendants’ unlawful failure and refusal to pay to Plaintiff wages when due as required by law, other violations of law alleged herein, and other violations of law according to proof, Plaintiff has suffered damages in amounts to be proven at trial, and is entitled to all appropriate penalties provided by the Labor Code and the IWC Wage Orders.

THIRD CAUSE OF ACTION
FALSE IMPRISONMENT

35. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 34 above as though fully set forth.

36. Defendants violated Plaintiff’s personal liberty by acting in a manner which had the effect of confining her against her will and limiting her contact with anyone from the outside world. Defendants accomplished this restraint through the negligent and intentional use of physical force, express and implied threats of physical force, fraud, and by acting in a manner
which had the effect of threatening harm to Plaintiff and her family if Plaintiff attempted to escape. Plaintiff’s false imprisonment ended on or about February 2002, through the intervention of law enforcement agents.

37. As a proximate result of said conduct, Plaintiff has suffered and continues to suffer bodily injury, extreme mental distress, humiliation and anguish, and other emotional and physical injuries, as well as economic losses, all to her damage in amounts to be proven at trial. Defendants committed the acts alleged herein maliciously, fraudulently and oppressively, with the wrongful intention of injuring Plaintiff from an improper and evil motive, amounting to malice, and in conscious disregard of Plaintiff’s rights. Plaintiff thus is entitled to recover punitive damages from Defendants in amounts to be proven at trial.

FOURTH CAUSE OF ACTION
INVASION OF PRIVACY

38. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 37 above.

39. All Defendants violated Plaintiff’s personal privacy by acting in a manner which had the effect of putting her in such close proximity to the Defendants at all times, including all non-work hours, as to eliminate Plaintiff’s personal privacy by effectively disallowing it. Defendants limited Plaintiff’s communications without her consent, restricted Plaintiff’s access to private bedroom facilities, and intruded on her personal affairs. In doing so, Defendants intruded, physically and otherwise, upon the solitude and seclusion of Plaintiff and her private affairs and concerns.

40. As a proximate result of said conduct, Plaintiff suffered an intrusion into her solitude, seclusion, privacy, and personal affairs, entitling her to damages in amounts to be proven at trial.

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FIFTH CAUSE OF ACTION

FRAUD

41. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 40 as though fully set forth.

42. Each of the Defendants and their agents intentionally and/or negligently made representations of material fact in telling Plaintiff that she would be employed as a traveling companion for Defendant [name]’s mother if she came to the United States and that she would be properly paid and would have reasonable working conditions. These representations were in fact false. The truth was that the Individual Defendants wanted the Plaintiff to come to the United States to serve as a domestic worker. When Defendants made the representations, Defendants knew they were false and/or had no reasonable ground for believing that the representations were true. Defendants made the representations with the intent to defraud and induce Plaintiff to come to the United States. At the time Plaintiff acted, Plaintiff did not know the representations were false and believed they were true. Plaintiff acted in justifiable reliance upon the truth of the representations.

43. Each of the Defendants has had and continues to have both the means of obtaining and actual possession of superior knowledge and special information with regard to the facts relevant to a determination of Plaintiff’s rights as an employee. The superior knowledge and special information possessed by Defendants includes, but is not limited to, knowledge of legal requirements for employers and the amounts established by law as the minimum wage. As a result of Defendants’ position to obtain superior knowledge and their actual possession of such knowledge, each Defendant has gained an unconscionable advantage over Plaintiff, who was ignorant of facts relevant to her employment status and rights and who was not in a position to become informed about such facts.

44. Despite their superior knowledge and special information, Defendants, and each of them, actively concealed from Plaintiff that she was entitled to minimum wage, overtime compensation, and/or any other legal protections and benefits available to employees under
California law. Defendants actively concealed these known, material facts with the intent to induce Plaintiff to accept her unpaid and captive status, and for the purpose of preventing Plaintiff from asserting her employment rights in any legal forum available to her. Because of the Defendants’ position of superior access to relevant knowledge and information about Plaintiff’s employment status and rights, Plaintiff justifiably relied upon Defendants’ false representations to her detriment.

45. As a direct and proximate result of Defendants’ conduct as alleged in this Complaint, Plaintiff has lost wages and other benefits in amounts to be proven at trial. Further, the unlawful conduct of Defendants, and each of them, as alleged in this Complaint, was and continues to be malicious, fraudulent, despicable, and/or oppressive in that Defendants, and each of them, acted with full knowledge of the consequences to the Plaintiff as alleged in this Complaint, with the intent to violate the statutory and other employment rights of the Plaintiff, and/or with a willful, conscious, wanton, and reckless disregard for the Plaintiff’s rights and for the deleterious consequences and cruel and unjust hardship resulting to Plaintiff. Consequently, the Plaintiff is entitled to exemplary and punitive damages in an amount to be proven at trial.

SIXTH CAUSE OF ACTION

ASSAULT AND BATTERY

46. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 45 above as though fully set forth.

47. Defendants subjected Plaintiff to offensive and harmful physical contact and caused her to be constantly apprehensive that she would be subjected to intentional invasion of her right to be free from offensive and harmful physical contact. As a proximate result of said conduct, Plaintiff has suffered and continues to suffer extreme mental distress, humiliation, anguish and emotional and physical injuries and economic losses, all to her damage in amounts to be proven at trial.

48. Defendants committed the acts alleged herein maliciously, fraudulently and
oppessively with the wrongful intention of injuring Plaintiff from an improper and evil motive amounting to malice and in conscious disregard of Plaintiff’s rights. Plaintiff thus is entitled to recover punitive damages from Defendants in amounts to be proven at trial.

SEVENTH CAUSE OF ACTION

INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS

49. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 48 above as though fully set forth.

50. Defendants, and each of them, engaged in outrageous conduct towards Plaintiff, with the intention to cause or with reckless disregard for the probability of causing Plaintiff to suffer severe emotional distress. To the extent that said outrageous conduct was perpetrated by certain Defendants, the remaining Defendants adopted and ratified said conduct with a wanton and reckless disregard of the deleterious consequences to Plaintiff. As a proximate result of said conduct, Plaintiff has suffered and continues to suffer extreme mental distress, humiliation, anguish, and emotional and physical injuries, as well as economic losses, all to her damage in amounts to be proven at trial.

51. Defendants committed the acts alleged herein maliciously, fraudulently and oppressively with the wrongful intention of injuring Plaintiff, from an improper and evil motive amounting to malice and in conscious disregard of Plaintiff’s rights, entitling Plaintiff to recover punitive damages in amounts to be proven at trial.

EIGHTH CAUSE OF ACTION

NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS

52. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 51 above as though fully set forth.

53. All Defendants, and each of them, knew or reasonably should have known that the
conduct described herein would and did proximately result in physical and emotional distress to Plaintiff.

54. At all relevant times, all Defendants, and each of them, had the power, ability, authority, and duty to stop engaging in the conduct described herein and/or to intervene to prevent or prohibit said conduct.

55. Despite said knowledge, power, and duty, Defendants negligently failed to act so as to stop engaging in the conduct described herein and/or to prevent or prohibit such conduct or otherwise protect Plaintiff. To the extent that said negligent conduct was perpetrated by certain Defendants, the remaining Defendants confirmed and ratified said conduct with the knowledge that Plaintiff’s emotional and physical distress would thereby increase, and with a wanton and reckless disregard for the deleterious consequences to Plaintiff.

56. As a direct and proximate result of Defendants unlawful conduct, Plaintiff has suffered and continues to suffer serious emotional distress, humiliation, anguish, emotional and physical injuries, as well as economic losses, all to her damage in amounts to be proven at trial.

NINTH CAUSE OF ACTION
NEGLIGENT SUPERVISION

57. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 56 above as though fully set forth.

58. Plaintiff is informed and believes and on that basis alleges that, when engaging in the wrongful conduct alleged herein, Defendants were acting as agents of each other. Each Defendant knew or reasonably should have known that the other Defendants were engaging in the wrongful conduct alleged herein, and that this conduct would directly and proximately result in injury to Plaintiff. Each Defendant knew or reasonably should have known that the other Defendants were employing Plaintiff in violation of legal requirements as alleged herein.

59. Each Defendant had the authority to supervise, prohibit, control, and/or regulate the other Defendants so as to prevent these acts and omissions from occurring.
60. Each Defendant knew or reasonably should have known that unless they intervened to protect Plaintiff and properly to supervise, prohibit, control, and/or regulate the conduct of the other Defendants, those Defendants would perceive their acts and omissions as being ratified and condoned.

61. Each Defendant failed to exercise due care by failing to supervise, prohibit, control, or regulate the remaining Defendants and/or by failing to protect Plaintiff. As a direct and proximate result of Defendants' acts and omissions, Plaintiff has suffered and continued to suffer injuries entitling her to damages in an amount to be determined at trial.

TENTH CAUSE OF ACTION
NEGLIGENCE PER SE

62. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 61 above as though fully set forth.

63. The services provided by Plaintiff to Defendants have been performed under conditions which violated the California Labor Code and the IWC Wage Orders as alleged in this Complaint. All Defendants have known or reasonably should have known of these egregious and ongoing violations, yet have done nothing to investigate, remedy, or report them to the appropriate authorities.

64. The overtime and other provisions of the California Labor Code and applicable IWC Orders were enacted to protect workers from economic and personal injuries caused by poverty-level wages, unduly long hours, and other substandard working conditions. The acts and omissions of Defendants as alleged in this Complaint were and are a substantial factor contributing to the illegal and substandard working conditions under which Plaintiff has labored.

65. Plaintiff is among the class of persons that the California Labor Code and the IWC Orders were designed to protect and for whose protection the foregoing statutes and regulations were adopted. Plaintiff's injuries are of the type that the foregoing statutes and
regulations are intended to prevent. Defendants' violations of the foregoing statutes and regulations constituted negligence per se and created a presumption of negligence.

66. As a direct and proximate result of Defendants' acts and omissions as alleged in this Complaint, Plaintiff has suffered and continues to suffer economic damages, in an amount, nature, and degree to be proven at trial. Defendants' conduct as described in this Complaint was malicious, fraudulent, and/or oppressive, and done with a conscious disregard for the rights of the Plaintiff and for the deleterious consequences of the Defendants' actions. Each Defendant authorized, condoned, and/or ratified the unlawful conduct of all the other Defendants named in this action and of their agents and employees. Consequently, the Plaintiff is entitled to an award of punitive damages.

[PRAYER FOR RELIEF]
WHEREFORE, Plaintiff respectfully prays that this Court enters judgment against Defendants, and each of them, for:

1. Unpaid minimum wages, overtime premiums, penalties and interest, according to proof;
2. Liquidated damages pursuant to Labor Code § 1194.2(a);
3. General, compensatory, and special damages, according to proof;
4. Punitive damages according to proof;
5. Reasonable attorneys' fees and costs;
6. Such other and further relief as the Court deems just and proper.

DATED:

By ________________________________

NENA JIMENO RUIZ
In Propria Persona
JURY TRIAL DEMAND

Plaintiff hereby demands a jury trial on all issues so triable.

DATED: _______________________

By __________________________

NENA JIMENO RUIZ
In Propia Persona