UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ZESS MISTY C. ILAN, on behalf of herself and all others similarly situated, *Plaintiff*, - against - AMERISTAR STAFFING, INC., AHMED S. AHMED and LAMIS YAHIA, *Defendants.*	Docket No. 23-cv- **CLASS ACTION COMPLAINT** Trial by Jury

PLAINTIFF ZESS MISTY C. ILAN ("Plaintiff" or "Ilan"), by undersigned counsel, on behalf of herself and all others similarly situated, as and for her complaint against Defendants Ameristar Staffing, Inc. ("Ameristar"), Ahmed S. Ahmed ("Ahmed") and Lamis Yahia ("Yahia"), alleges as follows:

PRELIMINARY STATEMENT

1. This is an action for damages and injunctive relief for violations of the Trafficking Victims Protection Act ("TVPA"), 18 U.S.C. §§ 1589, *et seq.*, the New York Labor Law ("NYLL"), Article 19, §§650 *et seq*., and for a declaratory judgment that a $10,000 "liquidated damages" penalty is unenforceable under the TVPA, the 13th Amendment to the United States Constitution, New York statutory and common law.

2. The TVPA, NYLL, and declaratory judgment claims are brought as a class action, pursuant to Rules 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure, on behalf of all foreign-trained therapists who worked for or are working for Defendant AMERISTAR since May 16, 2017 under an employment contract containing indenture provisions requiring the

therapist-employee to pay $10,000 penalty and "the cost of recruiting another therapist which is usually 50% of said therapist's annual salary".

3. This action arises out of Defendants' recruitment, provision and/or obtaining of Plaintiff's labor or services through the use of fraud and the threat of serious harm that resulted in the forced labor and wage exploitation of the Plaintiff by Defendants.

4. Defendants are foreign labor recruiters who, upon information and belief, have recruited and sponsored more than forty (40) physical therapists, physiotherapists, exercise physiologists and physical therapy assistants to work for Defendants in the state of New York under contracts of indentured servitude.

5. Plaintiff was forced under the circumstances to continue working for Defendants despite her complaints of not being paid for all of her hours of work because of Defendants' threats to have her pay the $10,000 indenture and the cost of recruiting another therapist.

6. On behalf of herself and all other foreign-trained therapists employed by the Defendants, Plaintiff seeks: compensatory, punitive and emotional distress damages for violations of the TVPA; compensatory and liquidated damages and pre- and post-judgment interest for violations of the NYLL; an injunction prohibiting Defendants from threatening to enforce or enforcing the indenture in the employment contracts; a declaration that the indenture is unenforceable under the TVPA, the 13th Amendment to the U.S. Constitution, 42 U.S.C. § 1994 and New York statutory and common law; an award of reasonable attorney's fees and costs as authorized by 18 U.S.C. 1595(a); and such other relief as the Court deems just and proper.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question) in that the claims arise from the TVPA, 18 U.S.C. § 1589 *et seq*.

8. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. § 2201(a).

9. 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.

10. This Court has personal jurisdiction over Defendants, and venue is proper in this Court because Defendants' main office and headquarters and/or residence/domicile are within the Eastern District of New York and because a substantial part of the events or omissions giving rise to the claims occurred in the Eastern District of New York pursuant to 28 U.S.C. §1391(b).

PARTIES

11. Plaintiff ILAN is an adult female individual who resides in Queens County, State of New York.

12. At all times relevant, Plaintiff ILAN is a physical therapist licensed in the state of New York. She is a citizen of the Philippines with at least a bachelor's degree in Physical Therapy from a foreign educational institution and is a lawful permanent resident of the United States.

13. Defendant Ameristar Staffing, Inc. is, upon and information, a corporation duly organized and existing under the laws of the state of New York since May 16, 2017. Likewise upon information and belief, it maintains its corporate office at 107-02R Jamaica Avenue, Richmond Hill, NY 11418, within this District.

14. Upon information and belief, Defendant AMERISTAR is, at all times relevant, a healthcare services provider and is engaged in providing the services of physical therapists,

exercise physiologists and physical therapy assistants, among other healthcare professionals, to work at various health care facilities in the state of New York, mostly within this District.

15. Defendant AHMED is, upon information and belief, at all times relevant, the President, Chief Executive Officer, and/or the managing agent of Defendant AMERISTAR.

16. Upon information and belief, Defendant AHMED resides at and is domiciled at Queens County, New York, and/or holds offices at 107-02R Jamaica Avenue, Richmond Hill, NY 11418, within this District.

17. Defendant YAHIA is, upon information and belief, at all times relevant, the Director of Rehabilitation and/or an executive officer or agent of Defendant AMERISTAR. Likewise upon information and belief, YAHIA is presently the Vice President of Defendant AMERISTAR.

18. Upon information and belief, Defendant YAHIA resides at and is domiciled at Queens County, New York, and/or holds offices at 107-02R Jamaica Avenue, Richmond Hill, NY 11418, within this District.

19. Each Defendant was at all relevant times an "employer" within the meaning of the New York Labor Law in that each had the power to hire and fire employees; each supervised and controlled the conditions of employment, and; that each determined the rates and methods of wage payment.

20. At all relevant times, each Defendant employed Plaintiff ILAN as defined by New York State Labor Law § 651(5) and (6) and applicable regulations, 12 N.Y.C.R.R. § 142-2.14.

21. Upon information and belief, each Defendant had the power to hire and fire the Plaintiff and each member of the Class, establish and pay their wages, set their work schedules and maintain their employment records.

22. Upon information and belief, at all times relevant, Defendants determined Plaintiff's places of work-assignments, established the terms of her employment, controlled her work schedules and supervised her work.

23. Defendants AHMED and YAHIA, upon information and belief, exercised complete domination and control of Defendant AMERISTAR in respect to the conduct alleged in this Complaint, including violations of the TVPA designed to coerce the continued performance of Plaintiff and other therapists under their employment contracts notwithstanding the Defendants' failure to pay their services for all of their hours of work.

24. Defendants AHMED and YAHIA, upon information and belief, used their complete domination and control of Defendant AMERISTAR to commit wrongs against Plaintiff and other therapists-employees, including violations of the TVPA designed to coerce the continued performance of Plaintiff and other therapists under their contracts notwithstanding the Defendants' failure to pay them for all their hours of work.

25. Defendants AMERISTAR, AHMED, and YAHIA are associated in fact and comprise a venture as that term is used in the TVPA, 18 U.S.C. §§ 1589 and 1595.

26. All of the acts alleged in this Complaint were authorized, ordered, and implemented by Defendants.

STATEMENT OF FACTS

27. Sometime early October 2021, Defendants, through YAHIA, reached out to Plaintiff who was then in the state of Illinois and offered her employment in New York.

28. Defendants offered Plaintiff immigration sponsorship to secure her permanent resident status in exchange for Plaintiff working for Defendants as a physical therapist.

29. Plaintiff agreed to be sponsored by Defendants.

30. Defendants instructed Plaintiff to coordinate with Defendant YAHIA and their immigration lawyer to comply with sponsorship requirements.

31. In exchange for the offer of employment and immigration sponsorship, Defendants required Plaintiff to enter into a two-year employment contract.

32. On or about October 7, 2021, Defendants sent Plaintiff a copy of their employment contract.

33. In her discussion with Defendants, particularly with Defendant YAHIA, Plaintiff was informed that her hourly rate as a physical therapist would be forty dollars ($40.00), but that she would be paid thirty two dollars ($32.00) only during the time that her social security number had not arrived yet.

34. Defendant YAHIA advised Plaintiff that eight dollars ($8.00) would be withheld by Defendants from her $40 hourly-rate as and by way of her social security and tax withholding contributions.

35. When Plaintiff inquired when her immigration sponsorship application would be filed, Defendant YAHIA responded that the immigration sponsorship application would be filed "once you come and start working with us".

36. On October 10, 2021, Plaintiff informed Defendants that as a result of the offer of employment, she was moving to New York on October 26, 2021.

37. On or about October 12, 2021, Defendants' immigration lawyer contacted Plaintiff and gave her the list of documents he needed for preparing and filing the immigration sponsorship application.

38. Plaintiff thereafter submitted her educational credentials, physical therapy license, and immigration documents to Defendants' immigration lawyer.

39. Defendant YAHIA thereafter told Plaintiff that she could allegedly start working on October 27, 2021.

40. YAHIA informed Plaintiff that her work would initially be in Brooklyn two days per week, but that YAHIA would "find something for you (Plaintiff) rest of week for sure."

41. When Defendants' immigration lawyer sent the draft of the Form I-140 immigrant petition for Plaintiff to review, Plaintiff noticed that the worksite address and the offered wage rate stated in the Form I-140 petition did not match what she had been told by Defendants.

42. Plaintiff clarified with Defendant YAHIA why her worksite address as indicated in the Form I-140 petition was in Bronx, New York when she had been advised that she would be working in Brooklyn, New York, and why her offered annual wage rate in the Form I-140 petition was only $79,000 when she had been informed that she would be receiving $40 per hour.

43. Defendant YAHIA responded that the worksite address stated in the Form I-140 petition was "for immigration purposes only" and that Defendants "put less in [the] immigration [form] in case you [Plaintiff] need to go [to the] Philippines for [a] month or so, and those days will not be paid, so we will be in safe side." YAHIA reiterated that Plaintiff's annual wage rate would be "around $83k", meaning, around eighty three thousand dollars.

44. Plaintiff tried to clarify her true offered wage rate because the employment contract she was required to sign stated that her compensation was "$77k only". Plaintiff said: "I was kinda confused because different documents say different things."

45. YAHIA replied that Plaintiff actually signed "40$ per hour".

46. Plaintiff again inquired and clarified that her "40 dollars per hour is 83k per year".

47. YAHIA confirmed and replied: "yes".

48. Upon having been satisfied that she would be compensated at the rate of at least $40 per hour, Plaintiff thereafter submitted her signed immigration application forms to Defendants' immigration lawyer for filing.

49. YAHIA thereafter listed down the immigration fees that needed to be paid by Plaintiff, which were: "$700 for I-140; $2,500 for premium; $1,225 for I-485 and; $1,500 initial lawyers fee".

50. Plaintiff entered into an understanding with Defendants, through YAHIA, that Defendants would initially shoulder the fees and would eventually deduct the same from Plaintiff's payroll income (which they in fact did).

51. On October 21, 2021, Plaintiff communicated to Defendants and clarified: "I'll be there on 26th. When do I start working and where should I go?"

52. Defendant YAHIA responded that Plaintiff would start working in Brooklyn on October 27 and 28, and would go for interview on the 29th, "and we will see from there."

53. Plaintiff relied on representations by Defendants that she could start working on October 27, 2021.

54. In fact, Plaintiff was afraid that Defendants would not file her immigration sponsorship application if she did not start working for Defendants. She clearly remembered YAHIA's words that her immigration sponsorship would only be filed "once you come and start working with us."

55. Plaintiff did start working for Defendants on October 27, 2021.

56. Upon information and belief, Defendants caused the filing of the Form I-140 immigrant petition on behalf of the Plaintiff with the U.S. Citizenship and Immigration Services ("USCIS") of the U.S. Department of Homeland Security on or about November 5, 2021.

57. Upon information and belief, in filing the Form I-140 immigrant petition on Plaintiff's behalf, Defendants, as petitioning employer, promised the USCIS that they would pay Plaintiff, their beneficiary, at least the prevailing wage rate for the offered position of Physical Therapist at the area of employment.

58. Upon information and belief, Defendants submitted to the USCIS Form ETA 9089 certification application which included this promise to pay Plaintiff at least the prevailing wage rate.

59. Upon information and belief, Defendants made an attestation to the USCIS that "the wage the employer will pay to the alien to begin work will equal or exceed the prevailing wage that is applicable at the time the alien begins work or from the time the alien is admitted to take up the certified employment" (20 CFR Part 656 (c)(1)).

60. Likewise upon information and belief, it was Defendant AHMED who signed the Form I-140 immigrant petition and the Form ETA 9089 certification application on behalf of Defendant AMERISTAR in his capacity as AMERISTAR's Chief Executive Officer and President.

61. By signing the Form I-140 petition and the Form ETA 9089, Defendants AMERISTAR and AHMED certified under penalty of perjury that the information contained in the immigration forms and the evidence submitted with them were true and correct.

62. Defendants' immigration lawyer simultaneously filed Plaintiff's Form I-485 adjustment application and Form I-765 work employment authorization application with Defendants' Form I-140 immigrant petition.

63. The Form I-140 immigrant petition filed by Defendants on behalf of the Plaintiff was thereafter approved by the USCIS on or about November 12, 2021.

64. Despite initial discussions that Plaintiff would be working at a Brooklyn healthcare facility, Defendants actually assigned Plaintiff to render her services as an out-patient physical therapist at the Tulip Rehab Physical Therapy clinic in Hempstead, New York, within this District, from October 27, 2021 through January 7, 2022.

65. From January 17, 2022 through February 11, 2022, Defendants assigned and placed Plaintiff to work as an out-patient physical therapist at the Rego Rehab clinic in Rego Park, New York, also within this District.

66. From February 14, 2022 through April 1, 2022, Defendants assigned Plaintiff to render her services as an out-patient physical therapist at the Universal Physical Therapy clinic in the Bronx, New York.

67. Defendants thereafter assigned Plaintiff to work as an out-patient physical therapist at the Osteopractic Center for Physical Therapy at Ridgewood, New York, within this District, from April 4, 2022 through March 8, 2023.

68. From March 13, 2023 through May 11, 2023, Defendants assigned and required Plaintiff to render out-patient physical therapy services at the Golden Care Physical Therapy clinic in Glendale, New York, within this District.

69. From May 16, 2023 to May 25, 2023, Defendants required Plaintiff to render services as an out-patient physical therapist at the Chung Ying Physical Therapy and Acupuncture clinic in Brooklyn, New York, also within this District.

70. From May 29, 2023 through Plaintiff's last day of work on October 27, 2023, Defendants required Plaintiff to work as a physical therapist at the Concord Nursing and Rehabilitation Center in Brooklyn, New York, within this District.

71. Starting from October 27, 2021 through July 21, 2022, Defendants purportedly paid Plaintiff a wage rate of thirty two dollars ($32.00) per hour.

72. Starting from July 22, 2022 through October 26, 2022, Defendants purportedly paid Plaintiff a wage rate of forty dollars ($40.00) per hour.

73. Starting from October 27, 2022 through October 2023, Defendants purportedly paid Plaintiff a wage rate of forty one dollars ($41.00) per hour.

74. During the periods of time Defendants required Plaintiff to render services as an out-patient physical therapist, Plaintiff was almost always the lone physical therapist treating patients at each of the various worksite-assignments.

75. During these periods of time, Plaintiff rarely took full meal breaks due to the excessive number of patients in her care.

76. At all times relevant, Plaintiff typically reported earlier than the start of her work-shift and extended her hours beyond the end of her work-shift to be able to study the patients' files and/or to make/finish patients' notes or documentation.

77. Plaintiff typically continued her work and stayed behind on a regular basis past beyond the end of her shift, from twenty (20) minutes to one (1) hour after end of office hours.

78. Upon information and belief, the Defendants engaged and are engaging in a policy and practice of paying their therapists less than the prevailing wages that are required by federal immigration rules and regulations and by not paying them all of their hours of work in violation of their employment contracts and New York Labor Law.

79. Plaintiff ILAN was effectively paid less than the prevailing wage rate determined by the USDOL starting on October 27, 2021.

80. Upon information and belief, the prevailing wage rate for a physical therapist in the metropolitan New York City area starting on July 1, 2021 to June 30, 2022 was $36.76 per hour.

81. Defendants paid Plaintiff and other similarly-situated therapists an hourly wage every two-week pay period.

82. Upon information and belief, Defendants had power over personnel and payroll decisions regarding Plaintiff and other similarly-situated therapist-employees.

83. Upon information and belief, Defendants had the power to hire and fire the Plaintiff and other similarly-situated therapist-employees, establish and pay their wages, set their work schedules and maintain their employment records.

84. Plaintiff ILAN's and other similarly-situated employees' pay was subject to a meal period deduction even when they performed compensable work during their meal periods.

85. Defendants' meal period deduction policy is centrally and collectively dictated, controlled and ratified.

86. Under the meal period deduction policy, Defendants required Plaintiff and similarly-situated employees to clock out for a 30-minute meal period per work shift. In other words, there was an automatic 30-minute uncompensated time during Plaintiff's (and other employees') work shift.

87. Plaintiff and similarly-situated employees performed compensable work for Defendants during their uncompensated meal periods.

88. Defendants did not ensure that Plaintiff and similarly-situated employees were completely relieved of their work duties during their uncompensated meal periods.

89. Plaintiff and similarly-situated employees were routinely not completely relieved of their job duties during their uncompensated meal periods.

90. Defendants did not prohibit Plaintiff and similarly-situated employees from working during their meal periods and routinely suffered or permitted them to perform such work.

91. Defendants routinely failed to ensure that unauthorized work was not being performed during employee meal periods.

92. In fact, although Defendants deducted 30-minute meal periods, Defendants expected Plaintiff and similarly-situated employees to be available to work throughout their shifts and consistently required their employees to work during unpaid meal periods.

93. Plaintiff and similarly-situated employees were expected to eat without any change in demands from patients/residents or relief by additional staff.

94. Defendants often required Plaintiff and similarly-situated employees to respond to requests by patients/residents, co-workers, and supervisors, during unpaid meal periods.

95. Defendants knew and/or had reason to believe that Plaintiff and similarly-situated employees performed work during their unpaid meal periods.

96. Defendants discouraged employees from reporting missed meal periods because they did not want to pay employees for missed meal periods.

97. Defendants have observed Plaintiff and similarly-situated employees working through their unpaid meal periods.

98. Given the rehabilitation industry's facilities' demands and understaffing, Defendants knew that to get the tasks done that they assigned to Plaintiff and similarly-situated

employees, Plaintiff and similarly-situated employees had to work through their unpaid meal periods.

99. Given the rehabilitation industry's facilities' demands and understaffing, Defendants knew that to get the tasks done that they assigned to Plaintiff and similarly-situated employees, Plaintiff and similarly-situated employees had to work even before the start of their work shifts, and had to extend their hours beyond the end of their work shifts to properly care for patients and to finish their notes or documentation.

100. Even though Defendants knew that Plaintiff and similarly-situated employees were working during "meal periods" and/or during "off-the-clock" hours, Defendants failed to compensate Plaintiff and similarly situated employees for their work, electing instead to sit back and accept the benefits of Plaintiff and similarly-situated employees' uncompensated work.

101. Plaintiff and, upon information and belief, other similarly-situated employees each regularly worked over forty (40) hours per week.

102. Considering the 30 minutes on most days that Plaintiff worked during meal periods, and the 30 minutes to one hour every day of "off-the-clock" work that Plaintiff rendered for Defendants, Plaintiff worked on average approximately 43 – 48 hours per workweek.

103. Defendants did not pay Plaintiff for the 30 minutes she worked during her supposed meal periods.

104. Defendants did not pay Plaintiff for all the time she worked during "off-the-clock" hours.

105. Upon information and belief, Defendants typically and regularly did not pay all the hours of work of Plaintiff and of other similarly-situated employees.

106. As a result of Plaintiff and other similarly-situated employees not being paid for all hours worked, Plaintiff and other similarly-situated employees were not paid overtime compensation for all the hours they worked over 40 each workweek.

107. Defendants knowingly and willfully engaged in the above-mentioned violations of the NYLL.

108. Defendants typically required their employees to round off their clock-in time and their clock-out time to reflect the official start and end of their respective shifts, even if their employees, such as Plaintiff, came in much earlier than the start of their shifts, and/or left much later than the official end of the shift, to do work for Defendants.

109. To illustrate that Defendants automatically deducted 30 minutes for each full day Plaintiff went to work, Plaintiff's weekly time record for the week starting January 17, 2022 through January 23, 2022 is in point. The particular weekly time record indicates that Plaintiff worked on the following hours:

Jan. 17, 2022	From 9 AM to 6 PM	or 9 hours
Jan. 18, 2022	From 9 AM to 6 PM	or 9 hours
Jan. 19, 2022	From 9 AM to 6 PM	or 9 hours
Jan. 20, 2022	From 9 AM to 6 PM	or 9 hours
Jan. 21, 2022	From 9 AM to 6 PM	or 6 hours = total of 42 hours

However, Defendants deducted 30 minutes on each of the days from January 17, 2022 through January 20, 2022, and thus computed that Plaintiff had allegedly worked for only forty (40) hours for the week, even though she had actually worked forty two (42) hours.

110. As and by way of a second illustration regarding Defendants' practice of unilaterally deducting 30-minute meal period even when not used and also of not counting hours worked before the official start of a shift, Plaintiff's weekly time record for the week starting

March 7, 2022 through March 13, 2022 is in point. During this week, Plaintiff worked as follows:

March 8, 2022	From 9 AM to 4:30 PM	or 7.5 hours
March 9, 2022	From 9 AM to 5 PM	or 7.5 hours (used meal time)
March 10, 2022	From 9 AM to 5 PM	or 7.5 hours (used meal time)
March 11, 2022	From 8:30 AM to 5 PM	or 8.5 hours=total of 31 hours

During this particular work-week, Defendants unilaterally deducted 30 minutes on each of March 8, 2022 and on March 11, 2022, and likewise took off additional 30 minutes from March 11, 2022 as the official work-shift was supposed to start at 9 AM, even if Plaintiff had actually started working at 8:30 AM. Thus, in this particular work-week, Defendants counted only twenty nine and a half (29.5) hours as Plaintiff's work-hours even if she actually worked a total of thirty one (31) hours.

111. The non-payment of Defendants' employees' full and complete work-hours, including the non-payment of any overtime hours, is clearly illustrated in Defendants' payroll practices. As and by way of an illustration, Plaintiff's weekly-time records for the weeks of March 27-April 2, 2023 and of April 3-9, 2023 show that she worked 41.50 hours during the first week, and 44 hours during the second week, for a total of 85.5 hours during the two-week pay-period.

112. During this particular two-week pay-period, Defendants paid Plaintiff $2,305.50 gross pay for eighty (80) hours of work. Defendants' payroll register confirms that Plaintiff was paid on an hourly basis. Thus, Plaintiff was actually paid $28.81 per hour, contrary to their representation that they were paying Plaintiff forty one dollars ($41.00) per hour during this time.

113. In this same two-week pay period, Defendants did not pay Plaintiff any overtime pay, although Plaintiff worked 1.5 hours and 4 hours of overtime or a total of 5.5 overtime hours for the pay period.

114. At the time that Defendants issued Plaintiff her pay check for the above-mentioned two-week pay period, Plaintiff received a second check. The second check was issued by a company called Downtown Brooklyn PT PC, with address at 6451 Fitchell St., 2nd Fl., Rego Park, NY 11374. The second check indicates Plaintiff was paid a gross salary of $1,200 for the pay period from 4/3/2023 through 4/16/2023.

115. Plaintiff never worked for the company called Downtown Brooklyn PT PC. Neither did she ever work at 6451 Fitchell St., 2nd Fl.,, Rego Park, NY 11374.

116. For the workweek from April 10, 2023 through April 16, 2023, Plaintiff worked a total of forty four (44) hours for the Defendants.

117. Thus, to recapitulate Plaintiff's work-hours during these three work-weeks, she worked the following hours:

From March 27, 2023 through April 2, 2023	= 41.50 hours
From April 3, 2023 through April 9, 2023	= 44 hours
From April 10, 2023 through April 16, 2023	= 44 hours

118. Even assuming the check from Downtown Brooklyn PT PC was part of the compensation paid by Defendants to Plaintiff, it would turn out that Defendants would have paid Plaintiff only $2,305.50 and $1,200.00, or a total of $3,505.50 for those three weeks.

119. Had Defendants paid Plaintiff correctly, they would have paid Plaintiff as follows:

<u>For March 27 – April 2, 2023 workweek:</u>		
Regular hourly rate of $41 x 40 hrs	=	$1,640.00
Overtime rate of $61.5 x 1.5 hrs	=	92.25
		========
		$1,732.25

For April 3 – April 9, 2023 workweek:		
Regular hourly rate of $41 x 40 hrs	=	$1,640.00
Overtime rate of $61.5 x 4 hrs	=	246.00
		$1,886.00
For April 10 – 16, 2023 workweek:		
Regular hourly rate of $41 x 40 hrs	=	$1,640.00
Overtime rate of $61.5 x 4 hrs		246.00
		$1,886.00

120. In the above illustration, Defendants clearly did not pay Plaintiff for all her hours of work; did not pay Plaintiff any overtime pay; and did not give Plaintiff the proper pay stubs with correct data or information.

121. Defendants' biweekly payroll register further illustrates something incorrect, if not illegal, on how Defendants computed Plaintiff's wages. Defendants' payroll register indicates Plaintiff was paid on an hourly basis and was always paid 80 hours for each two-week pay period, regardless of her actual number of work-hours. Notably, the gross pays appearing in each pay period varied each time such that it would appear that Defendants were paying Plaintiff a different hourly rate every two weeks. This is illustrated by Defendants' payroll register for the following pay periods:

Check Date: 11/05/2022	Hourly	80 hours	$3,628.50
Check Date: 11/25/2022	Hourly	80 hours	$3,200.00
Check Date: 12/09/2022	Hourly	80 hours	$2,600.00
Check Date: 12/23/2022	Hourly	80 hours	$3,324.50
Check Date: 01/06/2023	Hourly	80 hours	$2,449.75
Check Date: 01/20/2023	Hourly	80 hours	$1,978.25

122. Defendants also engaged in a deliberate scheme, pattern and plan intended to cause Plaintiff and other sponsored therapists to believe that they would suffer serious harm if they tried to leave their employ or find other employment.

123. Defendants' standard contract of employment provides that an immigration-sponsored therapist cannot stop working until s/he either pays or works off a $10,000 indenture disguised as a "liquidated damages" provision and pays "the cost of recruiting another therapist, which is usually 50% of said therapist's annual salary".

124. The $10,000 indenture and "paying the cost of recruiting another therapist" provision are designed to coerce the sponsored therapists into continuing their employment with Defendant AMERISTAR.

125. The amount of $10,000 is disproportionate to the actual costs or probable losses incurred by Defendant AMERISTAR. Upon information and belief, as in the case of Plaintiff ILAN, Defendants did not pay the USCIS filing fees and immigration lawyers' fees for the sponsored therapists.

126. The $10,000 indenture is disproportionate to the compensation paid to the sponsored therapists.

127. The purpose of the $10,000 indenture is not to compensate Defendant AMERISTAR for actual damages.

128. In Plaintiff's case, she was required by Defendants to pay the immigration filing fees for the Form I-140 petition and her Form I-485 adjustment and ancillary applications, immigration lawyer's fees, immigration medical report fee, and visa screen certificate. Defendants did not have to pay for any plane fare or housing/accommodation expenses relative to her sponsorship.

129. Defendants' actual damages, if any, caused by a breach of the employment contracts are and were readily ascertainable.

130. Defendants did not incur $10,000 in sponsoring and hiring the services of Plaintiff ILAN or each of the similarly-situated therapists.

131. The purpose of the $10,000 indenture is to obtain and provide Plaintiff's continuing labor and services to Defendant AMERISTAR.

132. The purpose of the $10,000 indenture is to deter Plaintiff from leaving her employment with Defendant AMERISTAR.

133. Defendants were and are able to calculate the amount of actual damages they would suffer in the event an immigration-sponsored therapist breached the employment contract.

134. Plaintiff reasonably feared that Defendants would sue her for the $10,000 indenture and for the cost of recruiting another therapist.

135. Plaintiff reasonably feared that the costs of defending herself against Defendants' threatened legal action would cause her to suffer serious harm.

136. The $10,000 indenture is part of a contract of adhesion that Defendants obtained as a result of unequal sophistication and bargaining power.

137. Upon information and belief, Defendants have brought or have threatened to bring baseless lawsuits against several sponsored therapists to induce all sponsored therapists to continue working for AMERISTAR.

138. Defendants' threats of baseless and abusive lawsuits against sponsored therapists are part of a longstanding pattern and practice designed to induce fear and prevent sponsored therapists from seeking other employment.

139. Upon information and belief, Defendants did know that their pattern and practice of filing lawsuits or threatening legal actions induced fear among their sponsored or foreign-

trained therapist-employees and prevented them from leaving their employment and seeking employment elsewhere.

140. Upon information and belief, Defendants' actual or threatened legal actions were pursued for the purpose of coercing sponsored therapists to continue working for Defendant AMERISTAR.

141. Upon information and belief, Defendants' actual or threatened legal actions were pursued with the intent to cause their sponsored therapists to believe that they would suffer serious psychological, financial or reputational harm if they did not continue working for Defendant AMERISTAR.

142. Upon information and belief, Defendants did know that their pattern and practice of filing lawsuits or threatening legal actions caused their sponsored therapists to believe that they would suffer serious psychological, financial or reputational harm if they did not continue working for Defendant AMERISTAR.

143. Plaintiff was a recent arrival from a developing country and unfamiliar with American laws. As a result of Defendants' pattern and practice of filing lawsuits or threatening legal actions, and given the particular vulnerabilities of Plaintiff, Plaintiff reasonably believed that she would suffer serious psychological, financial or reputational harm if she did not continue working for Defendant AMERISTAR.

144. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and other sponsored therapists continued working for the Defendants at hours that were not fully and not properly compensated.

145. Plaintiff ILAN had wanted to leave Defendants' employ much earlier. However, she was unable to leave because of the severe financial penalty she would have to pay under her

contract's indenture provisions and also because of the fear caused by the threat of a lawsuit to enforce said indenture provisions.

146. Plaintiff's inability to leave Defendants caused her substantial distress. Many nights when she returned from work, Plaintiff cried. She felt desperate, helpless and depressed. She felt trapped and scared.

147. Plaintiff was terrified to resign from her job but felt that she had to fight for her employment rights.

148. On several occasions, Plaintiff complained that she was not being paid for all her hours of work.

149. As and by way of an example, the hand scanner in the facility Plaintiff was assigned at was not working correctly. So, Plaintiff's hand-scanned timesheets were incorrect. Despite their being handwritten timesheets purportedly reflecting the correct work-hours of Plaintiff, Defendants did not compute correctly the work-hours of Plaintiff, and did not pay her for all her hours of work.

150. In effect, Defendants did not properly address Plaintiff's wage-and-hour issues.

151. On or about September 25, 2023, Plaintiff advised Defendants that she would be using her five (5) remaining PTO leaves for the October 20 to 27, 2023 pay period as her contract would be ending on October 27, 2023.

152. Defendants responded by stating that the employment contract started only when Plaintiff started payroll with a social security number, which would have been in July 2022. Thus, per Defendants' calculation, the employment contract would end in July 2024.

153. Plaintiff ILAN replied by referencing page two (2) of the employment contract that stated that "the term shall be for one (2) year after the therapist begins providing actual

services at the place of initial assignment," which was October 27, 2021, and attached a copy of her initial timesheet indicating her first day of actual work.

154. Later in the afternoon of September 25, 2023, Defendants' Human Resources Manager replied, thus: "By law your agreement said payment under W2. x x x. Don't let us go further x x x. And we can easily report to USCIS that you didn't complete your contract which started only when you get (sic) your SSN by law."

155. The employment contract between Plaintiff and Defendants was drafted by Defendants.

156. The employment contract was, upon information and belief, a standard employment contract prepared by Defendants which they required their therapists-employees to sign.

157. Defendants' standard employment contract, such as the one Plaintiff was required to sign, included a deliberately misleading term or duration of employment, for while the wording of the language stated that the term was for "one" year, the numerical figure after the word "one" showed the number "2".

158. Defendants' standard employment contract likewise provided that "if the therapist breaches this agreement," "the therapist shall pay … the cost of recruiting another therapist which is usually 50% of said therapist's annual salary plus any additional expenses, for damages in addition to any other expense, salaries and bonus paid to the therapist prior or after being hired."

159. Defendants' standard employment contract also provided that in case of breach by a therapist of the contract, "the therapist shall pay AMERISTAR Staffing liquidated damages of $10,000."

160. Defendants required Plaintiff to sign the nonnegotiable employment contract that Plaintiff did not fully understand. Defendants presented the employment contract to Plaintiff on a take-it-or-leave-it basis.

161. Plaintiff did not have any legal background or any understanding of or familiarity with American contracts law, labor law, or immigration law. Neither did she have any legal training or understanding of Philippine contracts law.

162. Plaintiff relied on the representations by Defendants and their executives that the employment contract presented to her was allegedly valid and enforceable.

163. Defendants and their executives/agents did not inform Plaintiff that she had the right to seek the advice of counsel to review the employment contract presented to her.

164. Defendants impressed upon Plaintiff ILAN that she had to sign the employment contract as presented to her if she wanted her immigration sponsorship to be filed and if she wanted to have employment with Defendants.

165. Like most Philippine-trained physical therapists, Plaintiff ILAN dreamt of working in the United States where employment opportunities for physical therapists were more stable and where wages were considerably much higher and more rewarding as compared to the Philippine situation.

166. Like a lot of Philippine-trained physical therapists, Plaintiff understood and knew that working as a physical therapist in the United States was a way to get out of poverty and to improve her station in life.

167. At the time Plaintiff signed the employment contract on October 13, 2021, she believed she would not be able to secure her green card or permanent resident status if she did

not sign it, because Defendants presented the employment contract as a condition of her green card sponsorship.

168. At the time Plaintiff ILAN did sign the employment contract, she believed Defendants would rescind their offer of immigrant visa sponsorship and offer of full-time employment if she did not sign it.

169. Plaintiff ILAN understood Defendants' Human Resources Manager's September 25, 2023 reply message about "easily reporting to USCIS" as an overt threat to her immigration status.

170. Plaintiff became even more distressed because of Defendants' overt threat.

171. Plaintiff eventually decided to seek legal advice and thereafter decided to have the courts declare the indenture provisions of her employment contract unenforceable.

172. Plaintiff resigned from her employment effective on October 27, 2023, two years after she began providing actual services at the place of initial assignment in Hempstead, New York.

173. Plaintiff continues to suffer stress, anxiety, and depression as a result of her forced labor experience with Defendants and her consequent decision to resign from her job. She continues to face ongoing harm because of Defendants' ongoing threat to enforce the illegal indenture provisions to which Defendants claim Plaintiff is bound.

174. Much, if not all, of Defendants' penalty was not meant to cover costs specifically associated with Plaintiff. To the contrary, it was merely additional income to Defendants, used by AMERISTAR to cover their ordinary business expenses.

175. Had Plaintiff actually made the "liquidated damages" penalty of even $5,000, Defendants would have paid Plaintiff negative wages in her final workweek.

176. Even if some of the "liquidated damages" penalty was, in theory, meant to reimburse Defendants for costs incurred for Plaintiff's benefit, Plaintiff was still going to be paid below the minimum wage. This is because most of the "liquidated damages" penalty was designed to, or did in fact, cover Defendants' expenses incurred for Defendants' benefit.

CLASS ACTION ALLEGATIONS

177. Plaintiff ILAN brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

178. Plaintiff asserts claims on behalf of and seeks to represent the following Class:

> All hourly-paid therapists sponsored and employed by AMERISTAR since May 16, 2017 who were required to sign contracts with indenture provisions, including a "liquidated damages" penalty provision.

179. Plaintiff reserves the right to amend and refine the class definition above or add classes and/or subclasses as litigation progresses.

180. The claims of the Class are properly brought as a class pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure because the Defendants have acted or refused to act on grounds that apply generally to the Class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.

181. The claims of the Class are properly brought as a class action pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure for the following reasons:

(a) Numerosity: The potential class members are so numerous that joinder of all members is impracticable. Although the precise number of such persons is unknown, and the facts on which the calculation of the number are presently within the sole control of the Defendants, upon information and belief, there are approximately more than forty (40) members of the Class during the relevant class action period, most of whom would not be likely to file

individual suits because they lack adequate financial resources, access to attorneys, and/or knowledge of their claims, and are fearful of retaliation.

(b) Commonality: There are questions of law and fact common to Plaintiff and the members of the Class that predominate over any questions affecting only individual members. These common questions of law and fact include:

(i) Whether Defendants obtained the labor of sponsored therapists by using serious harm or threats of serious harm in violation of the TVPA;

(ii) Whether Defendants' uniform practices surrounding the indenture provisions and conditions of work constitute attempted labor trafficking in violation of the TVPA;

(iii) Whether Defendants knowingly recruited foreign-trained therapists and knowingly benefited by their violations of the TVPA;

(iv) Whether the indenture provisions, including the so-called "liquidated damages" provision in Defendants' employment contracts, are enforceable;

(v) The proper measure of damages; and

(vi) The proper measure of punitive damages.

These common questions arise, in part, because of the uniform circumstances under which Plaintiff and the Class worked. These include the form contracts and workplace policies that resulted in a standard set of employer-mandated conditions that employees were forced to abide by under the same threat of being sued, suffering adverse immigration consequences, and facing financial harm.

(c) Typicality: The claims of Plaintiff are typical of the claims of the Class she seeks to represent. Plaintiff and Class members are foreign-trained therapists. They work or have worked for Defendants as hourly-paid therapists. They enjoy the same rights to be paid wages for all hours worked at the prevailing wage rates mandated by federal immigration rules. Plaintiff and Class members have all sustained similar types of damages as a result of Defendants' failure to comply with the employment contracts resulting in their hours of work not all getting compensated and of Defendants' use of threats of legal action to enforce the "liquidated damages" provision in their employment contracts. Plaintiff and the members of the Class have all been injured in that they have been under-compensated due to Defendants' policy, practice and pattern of conduct of not paying them for all of their hours of work.

(d) Adequacy of Representation: Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff understands that as a class representative, she assumes a fiduciary responsibility to the Class to represent its interests fairly and adequately. Plaintiff recognizes that as a class representative, she must represent and consider the interests of each Class member just as she would represent and consider her own interests. Plaintiff understands that in decisions regarding the conduct of the litigation and its possible settlement, she must not favor her own interests over the interests of the Class. Plaintiff recognizes that any resolution of the class action must be in the best interests of the Class. Plaintiff understands that in order to provide adequate representation, she must be informed of developments in litigation, cooperate with class counsel, and testify at deposition and/or trial. Plaintiff has retained counsel competent and experienced in complex class actions, employment litigation and TVPA claims. There is no conflict between Plaintiff and the members of the Class.

(e) Superiority: A class action is superior to other available methods for the fair and efficient adjudication of this controversy – particularly in the context of wage and hour litigation and labor trafficking litigation, where individual plaintiffs lack the financial resources to vigorously prosecute a lawsuit in federal court against corporate defendants. In addition, class litigation is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendants' practices.

182. Common questions of law and fact also predominate as to Plaintiff's claim that Defendants attempted to obtain forced labor in violation of law. Defendants attempted to keep every foreign-trained therapist they sponsored in their employ through the threats of severe penalties and litigation, as well as through threats of serious harm affecting the therapist's immigration and employment status. That attempt – regardless of whether an employee could eventually pay the severe monetary penalty or the degree to which they were forced to continue working against their will – was the same and uniformly made as to each and every sponsored employee.

183. Plaintiff intends to send notice to all members of the Class to the extent required by Fed. R. Civ. P. 23(c)(2). The names and addresses of the Class members are available from Defendants' records.

FIRST CAUSE OF ACTION
Violations of the Trafficking Victims Protection Act, 18 U.S.C. § 1589(a)
(Brought on behalf of Plaintiff and the Class)

184. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 183, as if set forth fully herein.

185. It is a violation of the TVPA to "knowingly provide[] or obtain[] the labor or services of a person . . . (2) by means of serious harm or threats of serious harm . . . ; (3) by

means of the abuse or threatened abuse of law or legal process; or (4) by means of any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm . . .” 18 U.S.C. § 1589(a).

186. The TVPA defines “serious harm” to include nonphysical harm, “including psychological, financial, or reputational harm, that is sufficiently serious . . . to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services to avoid incurring that harm.” *Id.* § 1589(c)(2).

187. Defendants knowingly provided and obtained the labor and services of Plaintiff and the members of the Class by means of the abuse or threatened abuse of law or legal process to exert pressure on Plaintiff and the members of the Class to continue working for the Defendants and to refrain from seeking employment elsewhere.

188. Defendants knowingly provided and obtained the labor and services of Plaintiff and the members of the Class by means of serious harm and threats of serious harm to Plaintiff and the members of the Class, including without limitation, psychological, financial or reputational harm that was sufficiently serious to compel a reasonable person of the same background and in the same circumstance to perform or to continue performing labor or services in order to avoid incurring that harm.

189. Defendants knowingly provided and obtained the labor and services of Plaintiff and the members of the Class by means of a scheme, plan, or pattern intended to cause Plaintiff and the members of the Class to believe that, if they did not perform such labor or services, they would suffer serious harm, including without limitation, psychological, financial or reputational harm, that was sufficiently serious to compel a reasonable person of the same background and in

the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm.

190. Defendants obtained the labor of Plaintiff and the Class members through the terms and administration of their contracts of employment with employees that had illegal indenture provisions.

191. Defendants kept Plaintiff and the Class members working for them against their will with the contract's terms of indentured servitude, including an unenforceable monetary penalty masquerading as a "liquidated damages" provision, and with threats of litigation.

192. The indenture provisions are intended to achieve purposes that are illegal under the TVPA, as they aim to maintain the labor or services of Plaintiff and the Class by threatening them that they will have to pay $10,000 and to pay the cost of recruiting another therapist (which usually is 50% of the therapist's annual salary) if they leave their job before the end of their contracts.

193. These threats constitute the "threatened abuse of legal process" and/or a threat of "serious harm", in violation of 18 U.S.C. § 1589(a)(2)-(3).

194. Defendants knowingly used such threats to exert pressure on Plaintiff and the Class members to continue working for Defendants and to prevent them from seeking employment elsewhere, telling them that they would be on the hook for $10,000 plus the cost of recruiting another therapist, unless they finished their contracts. This was done with the purpose of obtaining Plaintiff's and the Class's continued labor for Defendant AMERISTAR.

195. Defendants' use of such means to obtain the labor of Plaintiff and the Class was knowing and intentional.

196. Plaintiff and the Class suffered damages as a direct and proximate result of Defendants' conduct. These damages include, but are not limited to, emotional distress damages and the loss of proper and correct wage payments, including the prevailing wage rates and compensation for all hours worked, including overtime.

197. Plaintiff and, upon information and belief, the members of the Class each suffered and continue to suffer emotional distress and financial distress due to Defendants' coercive and/or fraudulent tactics resulting in their forced labor and/or trafficking.

198. The emotional effects Plaintiff and, upon information and belief, the Class members suffered and continue to suffer include disrupted sleeping, emotional breakdowns, nightmares, ongoing feelings of fear, difficulty developing trust, anxiety, depression, difficulty concentrating and stress.

199. Plaintiff and the Class are entitled to compensatory and punitive damages and restitution in amounts to be determined at trial, together with reasonable attorney's fees and the costs of this action.

SECOND CAUSE OF ACTION
Violations of the Trafficking Victims Protection Act, 18 U.S.C. § 1589(b)
(Brought on behalf of Plaintiff and the Class)

200. Plaintiff realleges and incorporates by reference all allegations incorporated in and set forth in paragraphs 184 through 199 as if set forth fully herein.

201. It is a violation of the TVPA to "knowingly benefit" from participation in a venture which obtains labor in violation of the TVPA, while "knowing or in reckless disregard of the fact" that the venture has obtained labor through such means. 18 U.S.C. § 1589(b).

202. Defendants knowingly benefited from their participation in the forced labor venture described herein by earning substantial profits from the venture. Defendants engaged in the providing or obtaining of labor or services by the means described above.

203. Each Defendant knew or recklessly disregarded the fact that the venture described herein engaged in obtaining forced labor.

204. Plaintiff and the Class suffered damages as a direct and proximate result of Defendants' conduct. These damages include, but are not limited to, emotional distress damages.

205. Plaintiff and the Class are entitled to compensatory and punitive damages and restitution in amounts to be determined at trial, together with reasonable attorney's fees and the costs of this action.

THIRD CAUSE OF ACTION
Violations of the Trafficking Victims Protection Act, 18 U.S.C. § 1590(a)
(Brought on behalf of Plaintiff and the Class)

206. Plaintiff realleges and incorporates by reference all allegations incorporated in and set forth in paragraphs 184 through 205 as if set forth fully herein.

207. It is a violation of the TVPA to "knowingly recruit[], . . . transport[], provide[] or obtain[] by any means, any person for labor or services in violation of" the TVPA.

208. Each Defendant knowingly and purposefully recruited Plaintiff and the Class members, as described herein, in violation of the TVPA.

209. Each Defendant knowingly and purposefully provided the labor of Plaintiff and the Class members, as described herein, in violation of the TVPA.

210. Each Defendant knowingly and purposefully obtained the labor of Plaintiff and the Class members, as described herein, in violation of the TVPA.

211. Plaintiff and the Class suffered damages as a direct and proximate result of Defendants' conduct. These damages include, but are not limited to, emotional distress damages.

212. Plaintiff and the Class are entitled to compensatory and punitive damages and restitution in amounts to be determined at trial, together with reasonable attorney's fees and the costs of this action.

FOURTH CAUSE OF ACTION
Violations of the Trafficking Victims Protection Act, 18 U.S.C. § 1594(a)
(Brought on behalf of Plaintiff and the Class)

213. Plaintiff realleges and incorporates by reference all allegations incorporated in and set forth in paragraphs 184 through 212 as if set forth fully herein.

214. Attempts to violate the TVPA are themselves violations of the TVPA. 18 U.S.C. § 1594(a).

215. Each Defendant attempted to violate 18 U.S.C. §§ 1589 and 1590, as described herein.

216. Plaintiff and the Class suffered damages as a direct and proximate result of Defendants' conduct. These damages include, but are not limited to, emotional distress damages.

217. Plaintiff and the Class are entitled to compensatory and punitive damages and restitution in amounts to be determined at trial, together with reasonable attorney's fees and the costs of this action.

FIFTH CAUSE OF ACTION
New York Labor Law (NYLL – Minimum and Overtime Wages)
(Brought on behalf of Plaintiff and the Class)

218. Plaintiff realleges and incorporates by reference all allegations incorporated in and set forth in paragraphs 1 through 183 as if set forth fully herein.

219. At all relevant times, Plaintiff and the members of the Class, have been employees of the Defendants, and the Defendants have been their employer within the meaning of the New York Labor Law, §§2 and 651.

220. Defendants failed and have failed to pay the Plaintiff and the members of the Class compensation for all their hours of work, in violation of NYLL Article 19, §§650 *et seq.* and the supporting New York State Department of Labor regulations, including at least minimum wages for the hours that were not paid, and also premium overtime pay for all hours of work in excess of forty (40) hours per work-week.

221. Defendants violated Plaintiff's rights and the rights of the members of the Class, by failing to pay them for all of the hours actually worked by them. Defendants' violations of the NYLL have been willful and intentional.

222. Defendants' violations of the NYLL have caused Plaintiff and the members of the Class irreparable harm and injury.

223. Due to Defendants' NYLL violations, Plaintiff and the members of the Class are entitled to recover from Defendants their unpaid wages, liquidated damages, as well as reasonable attorney's fees, and costs and disbursement of the action.

SIXTH CAUSE OF ACTION
New York Labor Law (NYLL – Failure to Provide Proper Wage Statements)
(Brought on behalf of Plaintiff and the Class)

224. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraphs 218 through 223 as if set forth fully herein.

225. Defendants willfully failed to furnish Plaintiff and, upon information and belief, each Class member, with statements with every payment of wages as required by NYLL, Article 6, § 195(3), listing: the dates of work covered by that payment of wage; name of employee;

name of employer; address and phone number of employer; rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; deductions; allowances, if any, claimed as part of the minimum wage; net wages; the regular hourly rate or rates of pay; the overtime rate or rates of pay; and the number of regular and overtime hours worked.

226. Through their knowing or intentional failure to provide Plaintiff and the Class members with the accurate wage statements required by the NYLL, Defendants willfully violated the NYLL, Article 6, §§ 190 *et seq*., and the supporting New York State Department of Labor Regulations.

227. Due to Defendants' willful violations of the NYLL, Article 6, § 195(3), Plaintiff and the Class members are entitled to statutory penalty of two hundred fifty dollars ($250.00) for each workweek that Defendants failed to provide each of them with accurate wage statements, not to exceed a total of five thousand dollars ($5,000) for each one of them, plus reasonable attorney's fees, and costs, as provided for by the NYLL, Article 6, § 198(1-d).

SEVENTH CAUSE OF ACTION
Declaratory Relief Under 28 U.S.C. § 2201
(The Indenture Provisions are Invalid under the 13th Amendment and under the Trafficking Victims Protection Act, 18 U.S.C.§ 1589)
(Brought on behalf of Plaintiff and the Class)

228. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraphs 184 through 217 as if set forth fully herein.

229. The 13th Amendment to the United States Constitution provides that involuntary servitude shall not exist within the United States or any place subject to their jurisdiction.

230. The indenture provisions in Defendants' employment contracts, including the so-called "liquidated damages" provision, are intended to keep Plaintiff and members of the Class in a position of involuntary servitude.

231. The indenture provisions requiring payment of $10,000 and the cost of recruiting another therapist that were in Defendants' employment contracts had the effect of keeping Plaintiff and members of the Class in a position of involuntary servitude.

232. A Court may not use its legal authority and power to enforce indenture provisions in an employment contract that had the purpose and effect of keeping Plaintiff and members of the Class in a position of involuntary servitude.

233. The indenture provisions are intended to achieve purposes that are illegal under the TVPA, as they aim to maintain the labor or services of Plaintiff and the Class members by threatening them that they will have to pay $10,000 and the cost of recruiting another therapist if they leave their job.

234. These threats constitute the "threatened abuse of legal process" and/or a threat of "serious harm", in violation of 18 U.S.C. § 1589(a)(2)-(3).

235. Defendants knowingly used such threats to exert pressure on Plaintiff and the Class members to continue working for AMERISTAR and to prevent them from seeking employment elsewhere, telling them that they would be on the hook for $10,000 and the cost of recruiting another therapist. This was done with the purpose of maintaining Plaintiff's and the Class members' continued labor for Defendant AMERISTAR.

236. Plaintiff and the Class members have a definite and concrete dispute with Defendants concerning the enforceability of the indenture provisions, including the so-called "liquidated damages" provision.

237. The dispute touches the legal relations of parties having adverse legal interests.

238. The dispute is real and substantial.

239. The dispute admits of specific relief through a decree of a conclusive character.

240. The dispute involves a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

241. By reason of the foregoing, an actual and justiciable controversy exists between Plaintiff and the members of the Class, on one hand, and Defendants, on the other hand.

242. Accordingly, Plaintiff, on behalf of herself and the Class, seeks a declaratory judgment under the Declaratory Judgment Act, 28 U.S.C. § 2201, that the indenture provisions requiring payment of $10,000 and the cost of recruiting another therapist in Defendants' employment contracts are void and unenforceable under either or both the 13th Amendment to the U.S. Constitution and the TVPA.

EIGHTH CAUSE OF ACTION
Declaratory Relief Under 28 U.S.C. § 2201
(The Indenture Provisions are Invalid Under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq*. Because These Would Reduce Plaintiff's Wages Below the Federal Minimum Wage)
(Brought on behalf of Plaintiff and the Class)

243. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraphs 218 through 223 and in paragraphs 236 through 242 as if set forth fully herein.

244. When Plaintiff and the Class members worked for Defendants, each of them was an employee pursuant to the Fair Labor Standards Act ("FLSA").

245. Each Defendant was Plaintiff's and each Class member's employer under the FLSA.

246. The indenture provisions are intended to achieve purposes that are illegal under the FLSA, as these aim to force Plaintiff and the Class members to pay Defendants' business expenses --- costs that are principally for Defendants' own benefit --- and thus reduce Plaintiff's and Class members' wages in their last workweek below the federal minimum wage.

247. The indenture provisions are thus illegal and unenforceable under the FLSA because these would, if enforced, permit Defendants to pay Plaintiff and the Class members, their workers, wages that are below the federal minimum wage.

248. In satisfying their federal minimum wage obligations, Defendants may not seek to recover costs or damages that are primarily for their own benefit. In this case, such costs or expenses include, among other purported damages, Defendants' immigration sponsorship expenses, filing fees, recruitment fees or costs, plus legal costs that would mean attorney's fees and the costs of this suit.

249. Defendants' attempt to recoup costs and expenses that are for the benefit of Defendants violates the FLSA because in so doing, Defendants would not pay Plaintiff and the Class members wages "free and clear".

250. Because the recovery of damages such as immigration expenses and immigration filing fees, recruitment fees or costs, or attorney's fees and costs of this suit would reduce Plaintiff's and Class members' wages in the last week of their employment below the federal minimum wage, the enforcement of the indenture provisions would violate the FLSA.

251. Additionally, the provision in Defendants' contracts that requires Plaintiff and the Class members to pay Defendants' legal costs, including attorney's fees and costs of this suit, if Defendants prevail in this case, is inconsistent with the one-way fee shifting provision in the

FLSA, which allows prevailing employees, but not employers, to recover their reasonable attorney's fees in actions brought under the FLSA.

252. Accordingly, Plaintiff, on behalf of herself and the Class, seeks a declaratory judgment under the Declaratory Judgment Act, 28 U.S.C. § 2201, that the indenture provisions are unenforceable.

NINTH CAUSE OF ACTION
Declaratory Relief Under 28 U.S.C. § 2201
(The Indenture Provisions are Unconscionable and Unenforceable Under New York Statutory and Common Law)
(Brought on behalf of Plaintiff and the Class)

253. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraphs 228 through 252 as if set forth fully herein.

254. The parties' employment contract that included the so-called $10,000 "liquidated damages" provision and the provision requiring the payment of the cost to recruit another therapist was drafted by Defendants alone; it was never negotiated by the parties; and under the circumstances, was basically forced upon Plaintiff to sign and execute.

255. The indenture provisions are unconscionable as a matter of New York law.

256. Plaintiff was forced to sign the employment contract containing the $10,000 "liquidated damages" provision and the provision requiring the payment of the cost to recruit another therapist on a take-it-or-leave-it basis and faced substantial harm if she did not sign the agreement, including potentially having her offer of immigration sponsorship withdrawn or having her employment offer rescinded, and any of such would be financially ruinous to her. Plaintiff lacked meaningful choice about whether to enter into and sign the employment agreement.

257. Further, Defendant AMERISTAR is a temporary health care services agency under New York Public Health Law § 2999-JJ.

258. Defendant AMERISTAR's so-called "liquidated damages" provision violates New York Public Health Law § 2999-JJ (3)(d) which mandates that a temporary health care services agency "shall not require the payment of liquidated damages, employment fees, or other compensation should the health care personnel be hired as a permanent employee of a health care entity in any contract with any health care personnel or health care entity or otherwise".

259. The "liquidated damages" and the "payment of the cost of recruiting another therapist" provisions of Defendants' employment contracts are actually a penalty. The amounts liquidated, in the event of a breach, are at least $10,000.00, which did not bear any reasonable proportion to the probable loss. $10,000 is grossly disproportionate to the amount of probable loss by the Defendants.

260. Accordingly, Plaintiff seeks a declaratory judgment under the Declaratory Judgment Act, 28 U.S.C. § 2201 that the indenture provisions are illegal and unenforceable.

DEMAND FOR JURY TRIAL

261. Plaintiff is entitled to and hereby demands a jury trial in this matter on all issues of fact raised by the Complaint.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against each Defendant, jointly and severally, awarding her and all others similarly situated: compensatory and punitive damages for violations of the TVPA; compensatory damages for violations of the NYLL; pre- and post-judgment interest at the statutory rate of 9% on all damages awarded for violations of New York laws; an injunction prohibiting the Defendants from threatening to enforce or enforcing the

indenture provisions in the employment contracts; a declaration that the indenture provisions in Defendants' employment contracts are unenforceable under the 13th Amendment, the TVPA, the FLSA, New York statutory and/or common law; an award of reasonable attorney's fees and costs as authorized by 18 U.S.C. § 1595(a); and such other relief as the Court deems just and proper.

Dated: November 30, 2023.

Respectfully submitted,

LAW OFFICE OF FELIX VINLUAN

/s Felix Q. Vinluan
By: **FELIX Q. VINLUAN**
6910 Roosevelt Avenue, 2nd Floor
Woodside, NY 11377
Tel. No. 718-478-4488
Email: fqvinluan@yahoo.com

JUDE TADEO PALCES LAW

/s Jude T. Palces
By: **JUDE T. PALCES**
535 Lakeville Road
New Hyde Park, NY 11040
Tel. No. 917-816-0482
Email: jtpalces@gmail.com

Counsel for the Plaintiff and the Putative Class

VERIFICATION

STATE OF NEW YORK)
COUNTY OF QUEENS) S.S.

I, ZESS MISTY C. ILAN, of legal age and a resident of the state of New York, after having been sworn in accordance with law, hereby state that I am the plaintiff in the within Complaint. I have read the foregoing complaint and know the contents thereof. The contents are true to my knowledge, except as to matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

ZESS MISTY C. ILAN

SUBSCRIBED AND SWORN to before me this 30th day of November 2023 in Woodside, New York.

Notary Public

FELIX Q. VINLUAN
Notary Public, State of New York
No. 02VI6129101
Qualified in Nassau County
Commission Expires June 20, 2025

ClassAction.org