

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO**

ARIANE ROSE VILLARIN, on behalf of herself  
and all others similarly situated,

*Plaintiff,*

v.

HEALTH CARE FACILITY  
MANAGEMENT, LLC, d/b/a  
COMMUNICARE FAMILY OF  
COMPANIES, and WORLDWIDE  
HEALTHSTAFF SOLUTIONS, LLC,

*Defendants.*

Case No. 1:23-cv-00097-MRB

**SECOND AMENDED CLASS  
AND COLLECTIVE ACTION  
COMPLAINT**

Plaintiff Ariane Rose Villarin (“Plaintiff”), by and through her undersigned counsel, as and for her Second Amended Complaint against Defendant Health Care Facility Management, LLC, doing business as CommuniCare Family of Companies (“CommuniCare”), and Defendant Worldwide Healthstaff Solutions, LLC (“Worldwide”), alleges as follow:

**INTRODUCTION**

1. Ariane Villarin, an immigrant nurse from the Philippines, came to the U.S. to work for CommuniCare; she was placed as a nurse in a senior living community in St. Louis, Missouri. This action arises out of Ms. Villarin’s recruitment to work for CommuniCare and the conditions of her employment, especially the restrictions which sought to keep her – and other immigrant nurses like her – from leaving their jobs with CommuniCare.

2. CommuniCare is a healthcare services provider that hires registered nurses, primarily from the Philippines, to work in healthcare facilities all over the United States that it

either owns, controls, or manages, or that it contracts with to provide nursing personnel.

3. CommuniCare's "employment" is essentially indentured servitude. CommuniCare mandates that its workers do not leave the company for thirty-six months unless they pay the company an amount in the range of \$16,000, an amount CommuniCare claims to have expended related to each nurse's immigration. Nurses who dare to leave CommuniCare are faced with lawsuits seeking as much as \$100,000 plus punitive damages, attorneys' fees, and costs. This conduct constitutes forced labor in violation of the Trafficking Victims Protection Act, 18 U.S.C. § 1589 *et seq.* ("TVPA"); the repayment requirements also means that CommuniCare fails to pay nurses their salaries "free and clear," and its demands for repayment are illegal kickbacks, in violation of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* ("FLSA").

4. Although CommuniCare knows that its immigrant nurse employees work overtime because of the lack of sufficient nursing staff in their assigned healthcare facilities, it does not pay the nurses all of those overtime hours, especially meal periods and off-the-clock hours that its nurse-employees utilize to continue working and taking care of patients.

5. CommuniCare and Worldwide maintain their scheme of obtaining foreign labor through fraud. They defraud the United States government, which approves CommuniCare's immigrant visa petitions without knowing that the company routinely fails to pay its workers the prevailing wage it promises. They defraud the workers themselves, who arrive in the United States and find themselves subjected not only to unexpectedly harsh employment terms and unsafe workplace conditions, but also to several weeks of unpaid employment, contrary to CommuniCare's attestations that its immigration-sponsored employees will immediately be put on payroll upon their entrance into the United States.

6. Plaintiff now brings this case, on behalf of herself and all others similarly-

situated, as a class action pursuant to Fed. R. Civ. P. 23 against CommuniCare and Worldwide alleging violations of the TVPA and RICO. She also brings this case as a collective action due to Defendant CommuniCare's failure to pay her and other similarly-situated employees minimum wages "free and clear" and its failure to pay her and over similarly-situated employees overtime compensation at the rate of one and one-half times their regular rate of pay for all the hours they worked over 40 each workweek in violation of the FLSA.

7. On behalf of herself and all similarly-situated immigrant nurses who have been employed by CommuniCare during the relevant statutes of limitations and who may opt into this action, Plaintiff seeks a judgment against CommuniCare for compensatory and liquidated damages for violations of the FLSA. On behalf of herself and a class of immigrant nurses recruited by Worldwide and employed by CommuniCare, Plaintiff seeks a judgment for treble compensatory and punitive damages for violations of the RICO.

8. Plaintiff also seeks a declaration that the "Repayment Provision" (*i.e.*, the provision that requires nurses to pay approximately \$16,000 if they leave CommuniCare before 36 months of work) in CommuniCare's contract with the immigrant nurses is unenforceable under the TVPA, the FLSA, and Ohio law.

### **JURISDICTION AND VENUE**

9. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question) because this matter arises under the laws of the United States – specifically, the FLSA, TVPA and RICO.

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

11. This Court has supplemental jurisdiction over the state law claims pursuant to

28 U.S.C. § 1367 because the state law claims form part of the same case or controversy as the federal law claims.

12. This Court has personal jurisdiction over CommuniCare, and venue is proper in this Court, because Defendant's headquarters are within the Southern District of Ohio.

13. This Court has personal jurisdiction over Worldwide because Worldwide regularly transacted business with CommuniCare and its corporate officers in Ohio, and by so doing, did engage in a persistent course of conduct, that is, rendering recruitment and immigration-related services to CommuniCare and registered nurses working in Ohio and elsewhere, and from which services, it derived substantial revenues from Ohio.

### **PARTIES**

14. Plaintiff Ariane Rose Villarin is a Registered Nurse who was formerly employed by CommuniCare. She is a citizen of the Republic of the Philippines and a legal permanent resident of the United States. She lives in the state of Texas.

15. At all relevant times, Plaintiff was an employee engaged in commerce or in the production of goods for commerce within the meaning of 29 U.S.C. §§ 206-207. Plaintiff routinely handled medications, supplies and other products that have been shipped across state lines by out-of-state vendors.

16. At all relevant times, Plaintiff was an employee of CommuniCare within the meaning of 29 U.S.C. § 203(e).

17. Plaintiff's written consent to join this action as to the First Cause of Action pursuant to 29 U.S.C. § 216(b) has previously been filed in this case. (ECF No. 1-1.)

18. Defendant HealthCare Facility Management LLC, doing business as CommuniCare Family of Companies is, upon information and belief, a limited liability company

organized under the laws of the State of Ohio with a principal place of business in Hamilton County, Ohio.

19. At all relevant times, CommuniCare was an employer within the meaning of 29 U.S.C. § 203(d).

20. At all relevant times, CommuniCare was an enterprise within the meaning of 29 U.S.C. § 203(r).

21. At all relevant times, CommuniCare was an enterprise engaged in commerce or in the production of goods for commerce within the meaning of 29 U.S.C. § 203(s)(1). It provides health care services and operates healthcare facilities across at least seven states; sells and markets its services across state lines and throughout the United States; uses telephonic transmissions crossing state lines to do business; accepts and utilizes products, medications and medical supplies that have shipped across state lines; and uses connected health technology and telehealth systems that allow access to its services from different locations and across state lines.

22. At all times relevant herein, CommuniCare performed related activities through unified operation and common control for a common business purpose, and thus operated as a single enterprise within the meaning of 29 U.S.C. § 203(r)(1).

23. Defendant Worldwide HealthStaff Solutions, LLC is a limited liability company organized under the laws of the State of North Carolina with a principal place of business in Charlotte, North Carolina.

24. According to its website, Worldwide is in the business of direct hire international nurse recruitment, and it provides its healthcare employer-clients a recruitment pipeline of experienced health staff, including registered nurses from the Philippines.

25. Defendant Worldwide was, at all times relevant, CommuniCare's principal

recruitment agency that provided recruitment services and prepared immigration sponsorship documents for and on behalf of CommuniCare's nurse-beneficiaries.

26. Upon information and belief, Defendant Worldwide regularly prepared immigration forms, such as Form I-140 immigrant petitions and Form ETA 9089 applications, including those forms it prepared for the benefit of the Plaintiff and other beneficiary-employees of Defendant CommuniCare, all of which forms it sent, either by email or postal service or courier service, to Defendant CommuniCare in Ohio, particularly within this District, for Defendant CommuniCare and its officers to review and sign.

27. Upon information and belief, Defendant Worldwide regularly communicated with Defendant CommuniCare and its officers in Ohio regarding the immigration forms it prepared for CommuniCare, and which communications were sent to Ohio, within this District, by Worldwide either through email, text, phone, postal service, or courier service.

28. Upon information and belief, Defendant Worldwide regularly transacted business with Defendant CommuniCare and its corporate officers in Ohio, sending them its invoices or bills for the recruitment services and immigration-related services it did for them, and by so doing, did engage in a persistent course of conduct, that is, rendering recruitment services and immigration-related services to Defendant CommuniCare and registered nurses working in Ohio and elsewhere, and from which services, it derived substantial revenues from Ohio.

### **FACTUAL ALLEGATIONS**

#### **CommuniCare's Employment of Foreign-Trained Registered Nurses**

29. Defendant CommuniCare, through its agent Defendant Worldwide, brings trained nurses from the Philippines and elsewhere, petitioning them through the immigrant visa sponsorship process, bringing them to the United States, and providing their labor to healthcare

facility-clients or to other facilities it owns or manages.

30. CommuniCare brings foreign registered nurses to the U.S. with the help of Worldwide.

31. Defendant CommuniCare and Worldwide are distinct corporate entities.

32. They play different roles within the recruitment process. Worldwide is principally responsible for recruiting nurses when they are in the Philippines. Worldwide does not itself employ nurses. Instead, CommuniCare employs the registered nurses that Worldwide recruited in the Philippines.

33. CommuniCare uses Worldwide for its recruitment activities because Worldwide, upon information and belief, is licensed to conduct recruitment activities by the Philippine Overseas Employment Administration (“POEA”) or is affiliated with a Philippine agency accredited by the POEA.

34. Through Worldwide and directly, Defendant CommuniCare recruits and enters into form contracts with international healthcare workers.

35. Under CommuniCare’s form contract, CommuniCare assigns foreign-sponsored registered nurses to its own healthcare facilities or to other healthcare facilities that have entered into agreements to pay CommuniCare for the workers’ labor.

#### **Relevant Foreign Labor Certification Process**

36. Employers sponsoring green card workers to be employed in healthcare occupations under the EB-2 and EB-3 visa categories must make various attestations to the federal government, under penalty of perjury, to sponsor and employ those workers.

37. EB-2 and EB-3 visas are employment-based green cards for foreign nationals who perform work not of a temporary or seasonal nature for which qualified workers are not

available in the United States.

38. In obtaining the required Department of Labor (“DOL”) employment certification to obtain an EB-2 or EB-3 green card visa, an employer must typically complete and sign Form ETA 9089 and obtain DOL certification that there are no U.S. workers able, willing and qualified to do the job before then petitioning the United States Citizenship and Immigration Services (“USCIS”) to seek such a visa.

39. For certain occupations, DOL has predetermined there are insufficient U.S. workers who are able, willing, and qualified. These occupations are referred to as Schedule A occupations and include registered nurses and physical therapists.

40. Thus, when petitioning for green card visas for workers in Schedule A occupations, employer-petitioners file the Form I-140 Immigrant Petition for Alien Workers and the Form ETA 9089 directly with the USCIS.

41. As part of the Form ETA 9089 filing, the employer must attest that the employer will pay at least the prevailing wage which is determined by the DOL based on the “average wage paid to similarly employed workers in a specific occupation in the area of intended employment.” The purpose of the prevailing wage requirement is to ensure that the hiring of a foreign worker will not adversely affect the wages and working conditions of U.S. workers comparably employed.

42. The employer must also attest that the employer will be able to place the green card worker on payroll on or before the date of proposed entry into the United States.

43. The employer must certify that the job opportunity’s terms, conditions, and occupational environment are not contrary to federal, state, or local law.

44. Additionally, when petitioning for a green card visa for Schedule A occupations, a petitioner attests that the job opportunity involves full-time and permanent employment, meaning

that it will employ the beneficiary full-time, guarantee a full-time wage, and pay the beneficiary that wage.

45. Upon information and belief, CommuniCare has caused, directed, and authorized Worldwide to prepare and file multiple Form I-140 petitions and Form ETA 9089 to sponsor registered nurses from the Philippines.

46. CommuniCare has caused the filing of multiple Form I-140 petitions and Form ETA 9089 applications with the USCIS to sponsor registered nurses from the Philippines and elsewhere, including the filing of the Form I-140 petition and Form ETA 9089 on behalf of the Plaintiff.

#### **Plaintiff's Immigration Sponsorship by CommuniCare**

47. At all times relevant, Plaintiff was an immigrant worker sponsored by CommuniCare under federal immigration law and regulations.

48. Like many Philippine-trained nurses, Plaintiff dreamt of coming and working in the United States where employment opportunities for nurses were better and where wages were higher than in the Philippines.

49. Like many Philippine-trained nurses, Ms. Villarín believed that working as a nurse in the United States was a way to get out of poverty and to improve her station in life.

50. Ms. Villarín saw ads placed by Worldwide on social media and reached out to Worldwide by email. In response, Worldwide told Plaintiff they could set her up with an interview with CommuniCare.

51. Worldwide facilitated a video interview with CommuniCare personnel. Approximately two weeks later, Worldwide told Ms. Villarín that she had passed the interview.

52. Shortly thereafter, Worldwide sent Villarín some paperwork to begin the

employment process.

53. In February of 2021, CommuniCare extended a conditional offer of employment to Ms. Villarin whereby she was to render services as a Registered Nurse at an initial base pay rate of \$32.50 per hour.

54. Also on February 23, 2021, Plaintiff signed a two-page long letter-contract with Worldwide, which says “Congratulations again on receiving a DIRECT HIRE job offer with a WorldWide HealthStaff Solutions Ltd. (HealthStaff) employer.”

55. That letter also says “If, for any reason you do not complete the immigration process and arrive in the United States, you will owe HealthStaff for costs incurred on your behalf. This amount will range from \$1,000 to \$10,000 depending on when you may withdraw from the process.”

56. The Worldwide contract concludes, “With Healthstaff and you working as a team your American dream will become reality. We look forward to the day when we can say ‘Welcome to America!’”

57. CommuniCare, on or about April 27, 2021, filed a Form I-140 immigrant worker petition with the USCIS on behalf of Plaintiff so that Plaintiff could come and work in the United States. Prior to submitting its Form I-140 petition on behalf of Plaintiff, CommuniCare required Plaintiff to certify the truthfulness of her educational and employment credentials as a registered nurse. CommuniCare required Plaintiff to make such declaration on the Form ETA 9089 application for permanent employment certification, which it submitted as part of the Form I-140 petition packet with the USCIS.

58. CommuniCare gave Plaintiff a copy of the Form ETA 9089 to review and sign. In so doing, CommuniCare represented to Plaintiff that pursuant to the same Form ETA 9089, it

was certifying under penalty of perjury that it would be able “to place the alien [that is, Plaintiff] on the payroll on or before the date of the alien’s proposed entrance into the United States” and that “the job opportunity’s terms, conditions, and occupational environment are not contrary to Federal, state or local law.”

59. The USCIS approved CommuniCare’s I-140 immigrant petition on behalf of Plaintiff on or about April 28, 2021.

60. As a result of the approval of CommuniCare’s I-140 petition on behalf of Plaintiff, the U.S. Embassy in Manila, Philippines scheduled Plaintiff for her consular visa interview on April 18, 2022.

61. Prior to Plaintiff’s consular visa interview, CommuniCare – through Worldwide – sent Plaintiff a letter dated March 21, 2022 confirming its offer of employment and informing Plaintiff that she would be employed by CommuniCare at the Green Park Senior Living Community in St. Louis, MO. This letter would be presented at the U.S. Embassy green card interview as a confirmation of the terms and conditions of the offered employment. The letter – which was presented as a non-negotiable contract which Plaintiff would have to sign to be able to come to the U.S. to work – also including a provision that Plaintiff would have to pay approximately \$16,000 to CommuniCare if she left before 36 months.

62. On June 3, 2022, CommuniCare’s onboarding coordinator notified Plaintiff that she could arrive in the United States in mid-July 2022.

63. As CommuniCare’s agent, Worldwide facilitated and assisted Plaintiff regarding her ticketing and travel itineraries from the Philippines to the United States.

64. Plaintiff arrived in the United States with an immigrant visa on July 19, 2022. She was picked up at the airport by CommuniCare’s agents and was booked at a hotel near the

healthcare facility where CommuniCare assigned her to work.

**CommuniCare's Letter-Contracts of Employment with the Repayment Provision**

65. On or about July 1, 2022, CommuniCare sent Plaintiff another letter-contract. As before, CommuniCare presented Plaintiff July 1, 2022 letter-contract on a take-it-or-leave-it basis, and required Plaintiff to affix her electronic signature to the same. This contract was presented after the Plaintiff's green card interview and shortly before she was scheduled to depart the Philippines.

66. Plaintiff, and most of the other similarly-situated immigrant nurses, 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

67. Plaintiff, and other similarly-situated immigrant nurses, relied on the representations by CommuniCare's and/or its agents, including Worldwide, that the letter-contract presented to her was allegedly valid and enforceable.

68. CommuniCare and/or its agents did not inform Plaintiff that she had the right to seek the advice of counsel to review the letter-contract presented to her.

69. CommuniCare gave Plaintiff a short time to accept, sign and return the letter-contract.

70. Upon information and belief, CommuniCare's letter-contract form was not reviewed or approved by the POEA.

71. Pursuant to the July 1, 2022 letter-contract, Plaintiff's work-assignment would be at the Green Park Senior Living Community in St. Louis, MO, and her base pay rate was \$32.50 per hour.

72. Pursuant to the July 1, 2022 letter-contract, all new employees “must attend an orientation program during the first week of employment.” Plaintiff understood this to mean that CommuniCare would conduct her orientation on her first week of actual employment.

73. The July 1, 2022 letter-contract provided that CommuniCare allegedly intended “to make advance payments in the amount of approximately \$16,000 USD” on Plaintiff’s behalf “for expenses related to immigration, including certain filing fees, recruitment/agency fees, legal costs and temporary housing”. “Such expenses are considered advancements eligible to be forgiven over a period of” “thirty-six (36) months, at a rate of 1/36<sup>th</sup> for each month of service at CommuniCare” (“Repayment Provision”).

74. Pursuant to the July 1, 2022 letter-contract, if Plaintiff were to leave her employment but fails to repay the advance payments of approximately \$16,000 USD at the time of termination, CommuniCare may pursue restitution through legal channels.

75. The letter also states that CommuniCare can withhold, offset, or retain amounts which would otherwise be owed to Plaintiff to satisfy amounts owed to CommuniCare.

76. Plaintiff electronically signed the July 1, 2022 letter-contract because she feared that if she did not, CommuniCare would withdraw its immigration sponsorship, revoke her green card, and/or not give her the promised job.

77. Similar to when the first and second iterations of the offer-letter of employment were extended, CommuniCare did not inform Plaintiff that she could secure the services of legal counsel to review and to explain to her the terms of the July 1, 2022 letter-contract.

78. Other immigrant nurses who came to the United States also signed letter-contracts under similar conditions and with similar provisions.

**Conditions of Plaintiff’s Employment with CommuniCare**

79. CommuniCare did not provide Plaintiff any actual work assignment until sometime during the last week of September 2022. CommuniCare did not put Plaintiff on its payroll, and did not provide Plaintiff with any money from the time she entered into the United States in July 2022 until late September 2022.

80. Other immigrant nurses who came to the U.S. to work with CommuniCare similarly had long periods of time during which they did not have work or income.

81. It was not until September 26, 2022 that CommuniCare provided Plaintiff with an actual work-assignment and required her to report to CommuniCare at the Green Park Senior Living Community in St. Louis, MO for her supposed orientation.

82. Green Park Senior Living Community was one of many similar healthcare centers owned and/or managed and/or operated by CommuniCare.

83. On her first day at work, Plaintiff was given a three-hour orientation of administrative policies and procedures by the facility's Human Resources Manager. She was, however, not given proper orientation on clinical policies and procedures, especially on the PCC System used in charting and documenting patient conditions and progress. She was not given any orientation skills checklist.

84. On her first day at work, and without proper full orientation, Plaintiff was immediately assigned to the facility's Alzheimer's Unit, and then to the Long Term Care Unit, just because there were not enough nursing personnel to take care of the patients.

85. Plaintiff typically worked the 7 A.M. to 7 P.M. shift, seven days on any two-week period.

86. On most days, Plaintiff was assigned to be the charge nurse taking care on average between thirty six (36) and thirty nine (39) long-term care patients. To put this into

perspective, if the Plaintiff worked nonstop without any break or pause for any reason during the entire 12-hour shift, this would give her about 18 minutes per patient. She struggled to provide care for her patients.

87. The facility where CommuniCare assigned Plaintiff to work also failed to adequately staff nursing assistants, which meant that Plaintiff was not only doing the work of two nurses, but was also performing duties that would typically be the responsibility of assistants, such as sanitary cleaning, hygiene care, and feeding assistance for residents unable to feed themselves.

88. While working at the facility, CommuniCare required Plaintiff to report to the facility's nursing managers and supervisors who were either directly employed by CommuniCare or were employed by another company affiliated with and/or managed or controlled by CommuniCare. In any case, CommuniCare likewise required Plaintiff to also report to CommuniCare regarding any issue involving the terms and conditions of her employment. Plaintiff did report to CommuniCare her concerns about the terms and conditions of her employment while employed at the Green Park Senior Living Community.

89. At work, Ms. Villarín was typically the only nurse on her ward, leaving her with responsibility for around 39 patients. This high patient load meant that she was rarely able to take a break, and often was not able to provide adequate care.

90. The lack of proper orientation and job training, coupled with the unreasonable daily RN-patient ratio, made Plaintiff's work extremely difficult, and the conditions unsafe.

91. She often was unable to take time for a lunch break.

92. 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 accept or to endorse turn-over of care from

the previous or to the incoming nurse on duty.

**CommuniCare's Failure to Pay All Compensable Hours**

93. At all times relevant, CommuniCare employed Plaintiff and other similarly-situated individuals who performed the duties and responsibilities of a Registered Nurse.

94. CommuniCare employed, and continues to employ, other similarly-situated healthcare employees as registered nurses, nursing assistants and/or aides.

95. CommuniCare employed Plaintiff and other similarly-situated nurses as non-exempt employees under the FLSA.

96. CommuniCare paid Plaintiff and other similarly-situated nurses an hourly wage.

97. CommuniCare had power over personnel and payroll decisions regarding Plaintiff and other similarly-situated nursing employees. CommuniCare assigned Plaintiff to work at the Green Park Senior Living Community Center, and supervised her work there. CommuniCare had the power to hire and fire the Plaintiff and other similarly-situated nursing employees, establish and pay their wages, set their work schedules and maintain their employment records. CommuniCare prepared and executed the letter-contract that Plaintiffs had to sign to obtain her position, and it prepared and executed the letter-contracts entered into by other nursing employees as well.

98. CommuniCare established the hourly wage rate of Plaintiff and others similarly-situated, and through its facility's supervisors, set Plaintiff's work schedules. CommuniCare regularly kept Plaintiff's employment records.

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

100. Plaintiff and similarly-situated employees performed compensable work for

CommuniCare during their uncompensated meal periods.

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

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

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

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

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

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

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

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

109. CommuniCare discouraged employees from reporting missed meal periods because it did not want to pay employees for missed meal periods.

110. CommuniCare has observed Plaintiff and similarly-situated employees working through their unpaid meal periods.

111. Given the nursing and rehabilitation facilities' demands and understaffing,

CommuniCare knew that to get the tasks done that it assigned to Plaintiff and similarly-situated employees, Plaintiff and similarly-situated employees had to work through their unpaid meal periods.

112. Given the nursing and rehabilitation facilities' demands and understaffing, CommuniCare knew that to get the tasks done that it 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 receive or make proper endorsement of care and/or to continue with patient care.

113. Even though CommuniCare knew that Plaintiff and similarly-situated employees were working during "meal periods" and/or during "off-the-clock" hours, CommuniCare 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.

#### **CommuniCare's Failure to Pay Overtime Compensation**

114. Plaintiff and other similarly-situated employees each regularly worked over forty (40) hours per week. Plaintiff worked on average approximately 50 – 55 hours per workweek.

115. For example, for the work week starting on December 4, 2022 through December 10, 2022, CommuniCare suffered or permitted Plaintiff to work, on the following work hours, with working break time: on Monday (December 5), from 6:50 AM to 9:00 PM; on Tuesday (December 6), from 6:50 AM to 7:40 PM; on Friday (December 9), from 6:50 AM to 7:40 PM, and; on Saturday (December 10), from 6:50 AM to 7:40 PM. During this workweek, Plaintiff worked a total of 52 hours and 40 minutes. However, CommuniCare paid her only 49.5 hours, including 9.5 overtime hours. CommuniCare did not pay Plaintiff the full 12 hours and 40 minutes of overtime hours that she worked. Upon information and belief, CommuniCare typically and

regularly did not pay all the hours of work of Plaintiff and of other similarly-situated employees.

116. 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 forty each workweek.

117. CommuniCare knowingly and willfully engaged in the above-mentioned violations of the FLSA.

### **CommuniCare's Misrepresentation Regarding Its Visa Petitions**

118. CommuniCare filed Form I-140 immigrant worker petitions and Form ETA 9089 on behalf of many Philippine-trained registered nurses, including Plaintiff, to bring them to the United States to work in its healthcare facilities and in its clients' facilities.

119. CommuniCare has, since 2021 through the present time, been filing Form I-140 petitions and Form ETA 9089 applications with the USCIS on behalf of Filipino registered nurses to obtain their immigrant visas and to bring them to work in its healthcare facilities.

120. In its submissions of I-140 petitions and Form ETA 9089 to the USCIS, which upon information and belief were regularly signed by its Chief People Officer, CommuniCare typically utilized and made use of postal mail and/or other courier services.

121. In submitting Form ETA 9089 to obtain immigrant visas for Plaintiff and other foreign-sponsored registered nurses, CommuniCare attested that, among other things, (a) the terms and conditions of employment did not violate federal, state, or local law; (b) the job opportunity was for full-time, permanent employment; (c) that CommuniCare would be able to place the beneficiaries on payroll on or before the date they entered into the United States; and (d) that CommuniCare intended to pay the beneficiary the prevailing wage rates.

122. CommuniCare knew that each of those attestations was false.

123. First, CommuniCare knowingly misrepresented that the terms of its employment were consistent with federal, state, and local law by presenting what was essentially an illegal penalty provision as a repayment provision

124. Second, CommuniCare misrepresented that it was petitioning for a job opportunity that was for full-time, permanent employment. CommuniCare knew that it was not offering full-time, permanent employment, but was instead offering employment contingent on the worker being placed with a CommuniCare client or with a CommuniCare-owned or managed facility. It was not CommuniCare's intention to pay workers, including Plaintiff, for any periods in which they were not placed with and actively working for a CommuniCare facility or client-facility. Instead, it intended to "bench" workers during periods in which they were not actively working for a CommuniCare facility or client-facility.

125. For example, CommuniCare only paid Plaintiff once she began working for the CommuniCare facility Green Park. CommuniCare knew that would not happen until well after Plaintiff's entry into the United States. CommuniCare had notice well before Plaintiff's departure to the United States that she would arrive in mid-July 2022, and knew that she would not begin working for the facility for some time after her entry.

126. CommuniCare thus maintained the ability to "bench" Plaintiff and other nurses, while telling USCIS it was doing no such thing. Its Repayment Provision allowed CommuniCare to maintain control over these workers and place them with its facilities or with client-facilities when needed without fear that those workers would find employment elsewhere, even though CommuniCare would not be paying them before their placements and active assignments with CommuniCare facilities or client-facilities.

127. Third, while CommuniCare attested in its filings that it would pay its employees,

including Plaintiff, the prevailing wage rates, this was a misrepresentation. CommuniCare was not offering wage payments free and clear. Rather, CommuniCare intended to subject workers, including Plaintiff, to the threat of having to kickback those wages to cover CommuniCare's own business costs. CommuniCare also knew that it was not going to pay prevailing wages during periods in which its workers were "benched" before their assignments.

128. Plaintiff Villarín arrived in the United States on July 19, 2022, but the job assignment CommuniCare gave her did not start until September 26, 2022. Other than providing her with one month of housing, CommuniCare did not pay or otherwise provide financial support for Plaintiff upon her entrance into the United States, or before she began work.

129. Other nursing employees were treated the same by CommuniCare. For example, Jeffrey Banayat arrived in the United States on June 22, 2022 but was not given any work assignment until August 4, 2022. Arman Candelaria arrived on April 28, 2022, but was not given any employment until June 15, 2022. Mary Engnan arrived on March 28, 2022, but was not given any work assignment until May 15, 2022. Jeddalyn Ramos arrived on July 11, 2022, but was not provided any employment until August 10, 2022. Sherra Vega arrived on February 23, 2022, but was not given any work assignment until May 16, 2022.

130. CommuniCare did not intend to pay these workers, and others similarly situated, and actually did not pay them and other similarly-situated foreign nurses during the periods of time from their arrival dates to their actual first day of work-assignments.

131. Furthermore, by intending to charge its own business expenses to its workers – including expenses related to the preparation of visa applications, insofar as those expenses were included in the Repayment Provision – CommuniCare misrepresented that it intended to pay those workers the prevailing wage.

132. These misrepresentations caused harm to Plaintiff and other similarly- situated foreign-trained registered nurses employed by CommuniCare.

133. Had CommuniCare disclosed its intention to bench and not pay nurses before their assignments with CommuniCare facilities or client-facilities, USCIS would have required that CommuniCare pay Plaintiff and other similarly-situated nurses for the entire period in which they were residing in the United States on CommuniCare-sponsored green card visas pursuant to CommuniCare's commitment to serve as a permanent and full-time employer.

134. These misrepresentations were part of a pattern of misrepresentations made by CommuniCare to USCIS in potentially hundreds of visa petitions with the goal of obtaining green card workers, including Plaintiff.

**Worldwide Participated in the Recruitment and Sponsorship of Filipino Nurses by CommuniCare, Knew of CommuniCare's Misrepresentations in the Visa Petitions and Condoned Those Misrepresentations**

135. At all times relevant, Defendant Worldwide was principally responsible for sourcing and screening nurse-applicants that it referred to Defendant CommuniCare for immigration sponsorship. As part of its responsibilities in recruiting for CommuniCare, Defendant Worldwide prepared immigration forms, such as Form I-140 petitions and Form ETA 9089 applications, on behalf of nurse-beneficiaries sponsored by CommuniCare, including the Plaintiff and other foreign-trained nurses such as Jeffrey Banayat, Arman Candelaria, Mary Engnan, Jeddalyn Ramos and Sherra Vega, among others.

136. Worldwide had a principal and significant role in directing or deciding who among the nurse-applicants would be sponsored and eventually be employed by CommuniCare.

137. In the process of preparing immigration forms, of having CommuniCare's corporate officers review and sign the immigration forms, and in submitting the immigration forms

to USCIS upon CommuniCare's instructions, and during the length of time it was doing recruitment business for CommuniCare, Defendant Worldwide knew that CommuniCare had misrepresented certain attestations or promises as stated in the immigration forms and as expressed to the nurse-beneficiaries.

138. At all times relevant, Defendant Worldwide regularly communicated with nurse-beneficiaries, including the Plaintiff, either through electronic mail, postal mail, phone, or courier services, regarding updates about the immigration sponsorship process and also about the terms and conditions of employment of nurse-beneficiaries upon their entrance into the United States.

139. Upon information and belief, during the period of time it was doing recruitment services for CommuniCare, Defendant Worldwide knew that CommuniCare did not intend to provide full-time regular employment to its nurse-beneficiaries and did not intend to pay them for the period from the time of their arrival to the time that work-assignment was actually given to the nurse-beneficiaries.

140. For example, Worldwide knew that Plaintiff Villarín would not be able to work immediately upon her arrival in the U.S.

141. Worldwide knew that CommuniCare did not intend to pay the nurse-beneficiaries the prevailing wage free and clear, and that CommuniCare intended to require its nurse-beneficiaries make payments to CommuniCare if the nurse-beneficiaries did not finish a 36-month term.

142. During the time Worldwide provided recruitment services for CommuniCare, several sponsored Filipino registered nurses complained to Worldwide that CommuniCare had not provided them employment upon their entrance into the United States and that there was no work-

assignment given to them for weeks and even for months, and were not paid any prevailing wage for such period.

143. Likewise upon information and belief, during the time Worldwide provided recruitment services for CommuniCare, several sponsored Filipino registered nurses complained to Worldwide that CommuniCare had required them to repay its alleged business expenses and had threatened them with lawsuits if they did not make the required repayment.

144. Having assisted with the preparation of immigration documents, Worldwide knew about the visa misrepresentations by CommuniCare and condoned the same.

145. As a result of Worldwide's condonation of CommuniCare's visa misrepresentations and/or as a result of its inaction to the nurse-beneficiaries' complaints, the nurse-beneficiaries, including Plaintiff, were not paid the prevailing wage for all of their time of employment and/or were forced under the circumstances to continue working for CommuniCare despite their complaints.

146. Worldwide knew about these circumstances and benefited from them due to its financial relationship with CommuniCare.

**CommuniCare's Pattern and Practice of Threatening Serious Harm to Prevent Sponsored Registered Nurses from Leaving their Employ**

147. CommuniCare engaged in a deliberate scheme, pattern and plan intended to cause Plaintiff and other sponsored registered nurses to believe that they would suffer serious harm if they tried to leave CommuniCare's employ or find other employment.

148. CommuniCare's standard letter-contract of employment provides that an immigration-sponsored registered nurse cannot stop working until s/he either pays or works off an indenture disguised as a "repayment" provision.

149. The indenture – which CommuniCare's letter contracts suggested is

approximately \$16,000, although CommuniCare sought amounts significantly higher in its lawsuits brought against other nurses – is designed to coerce the sponsored registered nurses into continuing their employment with CommuniCare.

150. The amount of \$16,000 (or the higher amounts sought by CommuniCare) is disproportionate to the actual costs incurred by CommuniCare.

151. The \$16,000 indenture (or the higher amounts sought by CommuniCare) is disproportionate to the compensation paid to the sponsored registered nurses.

152. The purpose of the indenture is not to compensate CommuniCare for actual damages.

153. The purpose of the indenture is to obtain and provide Plaintiff's labor and services to CommuniCare and its facility-clients.

154. The purpose of the indenture is to deter Plaintiff from leaving her employment with CommuniCare.

**Plaintiff Reasonably Feared that CommuniCare Would Sue Her for \$16,000—or Much More**

155. The \$16,000 – or more – indenture is part of a contract of adhesion that CommuniCare obtained as a result of unequal sophistication and bargaining power.

156. CommuniCare has brought and threatened to bring baseless lawsuits against several foreign-sponsored registered nurses to induce all foreign-sponsored registered nurses to continue working for CommuniCare.

157. Plaintiff learned that in 2022, CommuniCare had instituted at least five lawsuits against CommuniCare immigrant nurses, including Jeffrey Banayat, Arman Candelaria, Mary Jhane Engnan, Sherra May Vega, and Jeddaly Ramos, who left CommuniCare before working for 36 months. These cases were filed in the Court of Common Pleas, Hamilton County, Ohio.

158. Later, in March 2023, CommuniCare filed a case against Filipino nurse Jedkreisky Malabanan, also in Hamilton County, Ohio, on the same basis.

159. In each of these lawsuits, which are still pending, CommuniCare demanded \$100,000 in damages, plus attorney's fees and costs of litigation, as well as punitive damages. The amount sought in these cases which was much more than the approximately \$16,000 stated in the "repayment provision" of the nurses' letter-contracts.

160. Some other CommuniCare registered nurses who were sued by CommuniCare decided to negotiate and "buy out" their contracts with CommuniCare and, upon information and belief, had paid CommuniCare a substantial amount of money for CommuniCare to withdraw its lawsuits.

161. As a result of CommuniCare's actual or threatened filing of civil lawsuits against employees, some nurses who had resigned returned to work for CommuniCare, despite their concerns about the terms and conditions of their employment, because they were afraid of the process of litigation.

162. CommuniCare's baseless and abusive lawsuits against foreign-sponsored registered nurses are part of a longstanding pattern and practice designed to induce fear and prevent the immigrant nurses from seeking other employment.

163. CommuniCare knew that its pattern and practice of filing lawsuits and threatening legal actions induced fear among its immigrant nurses and prevented them from leaving their employment and seeking employment elsewhere.

164. CommuniCare's actual and threatened legal actions were pursued for the purpose of coercing other immigrant nurses to continue working for it.

165. CommuniCare's actual and threatened legal actions were pursued with the intent

to cause immigrant nurses to believe that they would suffer serious psychological, financial, or reputational harm if they did not continue working CommuniCare.

166. CommuniCare knew that its pattern and practice of filing lawsuits and threatening legal actions caused its foreign-trained nurse- employees to believe that they would suffer serious psychological, financial, or reputational harm if they did not continue working for the company.

167. As a result of CommuniCare's pattern and practice of filing lawsuits and threatening legal actions, Plaintiff believed that she would suffer serious psychological, financial, or reputational harm if she did not continue working for CommuniCare.

168. As a direct and proximate result of CommuniCare's wrongful conduct, Plaintiff and other foreign-sponsored registered nurses continued working for CommuniCare, including for hours that were not fully compensated.

### **Plaintiff's Complaints and Eventual Resignation**

169. On or about December 7, 2022, Plaintiff sent an email containing her complaints about lack of proper orientation and training and the lack of sufficient and safe nursing staffing to CommuniCare's divisional head of human resources.

170. Due to understaffing, Plaintiff would regularly be required to stay on and work for additional hours after working her scheduled 12-hour shifts.

171. Due to understaffing, Plaintiff experienced not being able to utilize her rest days or sick leave benefits because she was required to report to work instead.

172. Due to this understaffing, Plaintiff and other nurses working for CommuniCare were required to be responsible for an excessive number of patients/residents. Plaintiff considered the low nurse-to-patient ratio to be dangerous for both the nurses and their patients.

173. CommuniCare was aware of the understaffing issues but did nothing to correct the situation.

174. Plaintiff's complaints and issues were never fully and satisfactorily addressed by either the facility or by CommuniCare.

175. After weeks of exhausting work and persistent fear of losing her license, Plaintiff, on December 19, 2022, informed the facility's Director of Nursing and Human Resources Manager and also CommuniCare's agents that she was resigning from her position as Registered Nurse and that her last day of work would be on January 2, 2023. In response, CommuniCare told her that she could not leave because she had signed a contract to stay for three years. CommuniCare also told her if she quit she would be sent home to the Philippines, told her about another CommuniCare nurse who had resigned and would face consequences, and said they might transfer her to another ward within Green Park.

176. Plaintiff wanted to leave CommuniCare's employ much earlier, especially after it became clear that the patient load and RN-patient ratio issues were not going to be addressed satisfactorily. However, she was unable to leave because of the severe financial penalty she would have to pay under her contract's Repayment Provision. She knew that her wages were paid on the condition that she stay in her job, and feared that if she left, she would have to repay her wages to CommuniCare. In addition, she feared that CommuniCare would sue her as it had already filed several lawsuits against other Filipino registered nurses, seeking more than \$100,000 in damages.

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

178. Plaintiff was terrified to resign from her job but felt that her working conditions

were extremely unsafe, dangerous, and presented a genuine risk to her nursing license. If Plaintiff lost her license, she would end up even more helpless. Eventually, notwithstanding the substantial risks, she decided to resign from her job and hoped to save her mental health and her license.

179. Plaintiff continues to suffer stress, anxiety, guilt, and depression as a result of her decision to borrow a substantial amount of money she did not even know how to repay. She continues to face ongoing harm because of the potential that CommuniCare will seek to enforce the illegal “repayment provision” to which CommuniCare claims Plaintiff is bound.

180. Much, if not all, of Plaintiff’s “repayment” penalty was not meant to cover costs specifically associated with Plaintiff. To the contrary, it was merely additional income to CommuniCare, used by the company to cover its ordinary business expenses.

181. Plaintiff’s last full week working for CommuniCare was the week ending on January 7, 2023. During that week, Plaintiff worked twelve (12) hours, and based on her \$41 hourly wage, earned approximately \$492.00.

182. Had Plaintiff actually made a “repayment” penalty of even \$14,000, CommuniCare would have paid Plaintiff negative wages in her final workweek.

183. Even if some of the “repayment” penalty was, in theory, meant to reimburse CommuniCare for costs incurred for Plaintiff’s benefit, repayment would still result in Plaintiff earning below the minimum wage. This is because most of the “repayment” penalty was designed to, or did in fact, cover CommuniCare’s expenses incurred for CommuniCare’s benefit. For example, “expenses related to immigration including certain filing fees, recruitment/agency fees, [and] legal costs,” are clearly CommuniCare’s normal business operating expenses.

### **COLLECTIVE ACTION ALLEGATIONS**

184. Plaintiff brings the First, Second, and Third Causes of Action individually,

pursuant to 29 U.S.C. § 216(b), and on behalf of all similarly-situated individuals who have been, are being, or will be, adversely affected by CommuniCare's unlawful conduct.

185. The FLSA Collective that Plaintiff seeks to represent and for whom she Plaintiff herself is a member, is composed of and defined as follows:

All non-exempt, hourly-paid nurses who entered the United States on visas sponsored by CommuniCare and/or Worldwide, who are or were currently or formerly employed by CommuniCare from February 17, 2020 through the date of final judgment in this matter.

186. All of the work that Plaintiff and the FLSA Collective have performed has been assigned by CommuniCare, and/or CommuniCare has been aware of all of the work that Plaintiff and the FLSA Collective have performed.

187. As part of its regular business practice, CommuniCare has intentionally, willfully, and repeatedly engaged in a pattern, practice, and/or policy of violating the FLSA with respect to Plaintiff and the FLSA Collective. This policy and pattern or practice includes, but is not limited to:

- a. willfully failing to pay Plaintiff and the members of the FLSA Collective wages for all of their hours worked, including during compensable meal periods and off-the-clock hours before and after their work shifts;
- b. willfully failing to pay Plaintiff and the members of the FLSA Collective overtime wages for hours that they worked in excess of 40 hours per workweek;
- c. willfully demanding that Plaintiff and the members of the FLSA Collective pay an unlawful kickback that would reduce their rate of pay below the federal minimum wage for all hours worked;
- d. willfully failing to pay Plaintiff and the members of the FLSA Collective at

least the minimum wage “free and clear” in every workweek;

- e. willfully failing to record all of the time that its employees, including Plaintiff and the FLSA Collective, have worked for the benefit of CommuniCare.

188. Time sheets and/or pay stubs reflect some of the overtime hours Plaintiff and members of the FLSA Collective worked.

189. CommuniCare is aware or should have been aware that federal law required it to pay employees performing non-exempt duties, including Plaintiff and members of the FLSA Collective, minimum wage for all hours worked, and an overtime premium for hours worked in excess of forty per workweek.

190. Plaintiff and the FLSA Collective all perform or performed the same primary nursing duty, and all were paid hourly wages by CommuniCare.

191. CommuniCare’s unlawful conduct has been widespread, repeated, and consistent.

192. Plaintiff cannot currently state the potential Collective’s exact size, but upon information and belief, avers that it consists of at least around 100 individuals.

193. This action is maintainable as an “opt in” collective action pursuant to 29 U.S.C. § 216(b) as to claims for unpaid overtime compensation, unpaid minimum wages, failure to pay wages free and clear, liquidated damages, and attorney’s fees and costs under the FLSA. In addition to Plaintiff, numerous current and former employees employed as nurses are similarly situated with regard to their wages and claims for unpaid wages and damages. In bringing this action, Plaintiff is representing those other employees and their interests, as well as her own.

194. These similarly situated employees are known to CommuniCare and are readily available through CommuniCare's payroll records. These individuals may readily be notified of this action and allowed to opt in pursuant to 29 U.S.C. 216(b) for the purpose of collectively adjudicating their claims for unpaid compensation, unpaid minimum wages, liquidated damages, and attorney's fees and costs under the FLSA.

### CLASS ACTION ALLEGATIONS

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

196. Plaintiff asserts claims on behalf of and seeks to represent the following Classes:

**Foreign-Trained Registered Nurse Class:** All foreign-trained registered nurses sponsored by CommuniCare through the immigration process within the statute of limitations.

**RN Visa Fraud Subclass:** All members of the Foreign-Trained Registered Nurse Class who, within the statute of limitations, CommuniCare did not pay during times after the worker had entered the United States when they were not assigned to a healthcare facility or were waiting for an assignment to begin.

**RN Trafficking Subclass:** All members of the Foreign-Trained Registered Nurse Class who, within the statute of limitations, were required by CommuniCare to sign contracts with a Repayment Provision.

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

198. Numerosity: The Classes are so numerous that joinder of all class members is impracticable. Although the precise number of putative Class members is currently unknown, Plaintiff believes that each Class includes more than forty (40) members. These members can be identified based on CommuniCare's records, which would include information on the employees' placement, length of employment, whether and how much they were paid, and whether and how much they were required to pay in order to leave CommuniCare's employ.

199. Commonality: There are questions of law and fact common to Plaintiff and the members of the Classes that predominate over any questions affecting only individual members.

These common questions of law and fact include:

- a) Whether CommuniCare obtains the labor of foreign-trained registered nurses by using serious harm or threats of serious harm in violation of the TVPA;
- b) Whether CommuniCare's uniform practices surrounding the Repayment Provision and conditions of work constitute attempted labor trafficking in violation of the TVPA;
- c) Whether CommuniCare and Worldwide knowingly recruit foreign-trained registered nurses and knowingly benefits by its violations of the TVPA;
- d) Whether Worldwide knowingly benefits from recruiting foreign-trained registered nurses in violation of the TVPA;
- e) Whether Defendants CommuniCare and Worldwide are engaged in an enterprise through which they conduct racketeering activity that involves fraud in foreign labor contracting and visa fraud;
- f) Whether CommuniCare knowingly misrepresents that it will employ its nurses in full-time permanent positions, when in fact it intends to "bench" those workers and not pay them during periods in which they are not on active assignment for one of CommuniCare's facilities or client-facilities;
- g) The proper measure of damages; and
- h) The proper measure of punitive damages.

200. These common questions arise, in part, because of the uniform circumstances under which Plaintiff and the Classes worked. These include the form contracts and workplace

policies that resulted in a standard environment and 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.

201. Typicality: Plaintiff's claims are typical of the members of the Classes for precisely the reasons set forth above. Among other things, CommuniCare uses a standard letter-contract of employment, and Plaintiff's contract with CommuniCare is typical of CommuniCare's form contracts. Further, CommuniCare treated Plaintiff consistently with other Class members, in accordance with its standard policies and practices. Plaintiff and members of the Classes sustained injuries and damages arising out of and proximately caused by CommuniCare's policies and practices described above.

202. Adequacy of Representation: Plaintiff will fairly and adequately protect the interests of the Classes. Plaintiff is committed to the prosecution of this action and has retained counsel competent and experienced in litigating employment class actions, including actions alleging violations of the FLSA and the TVPA. There are no conflicts between Plaintiff and the Classes she seeks to represent.

203. Superiority: A class action is superior to other available means for fair and efficient adjudication of this controversy. Each Class member has been damaged and is entitled to recovery because of Defendants' illegal policies and practices. Individual joinder of all Class members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Class certification will obviate the need for unduly duplicative litigation that might result in inconsistent judgments concerning Defendants'

practices. Moreover, management of this action as a class action will not likely present any difficulties. In the interests of justice and judicial efficiency, it would be desirable to concentrate the litigation of all Class members' claims in a single forum.

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

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

**FIRST CAUSE OF ACTION**

**Violations of the Fair Labor Standards Act – Overtime Wages  
(Brought on behalf of Plaintiff and the FLSA Collective against CommuniCare)**

206. Plaintiff repeats and realleges the foregoing allegations as if fully set forth here.

207. CommuniCare has engaged in a widespread pattern and practice of violating the FLSA, as described in this Class and Collective Action Complaint.

208. Plaintiff has consented in writing to be a party to this action, pursuant to 29 U.S.C. § 216(b). *See* ECF 1-1.

209. At all relevant times, CommuniCare has been an employer engaged in interstate commerce consistent with 29 U.S.C. §§ 206(a) and 207(a). At all times relevant, CommuniCare employed Plaintiff and the members of the Collective consistent with the terms of the FLSA.

210. At all relevant times, upon information and belief, CommuniCare has had annual gross revenues in excess of \$500,000. Upon information and belief, it has routinely disclosed annual gross revenues in excess of \$500,000 to USCIS in its immigration filings.

211. CommuniCare employs or employed more than four (4) workers who fall under the category of “non-exempt employees” pursuant to the FLSA, and these employees regularly and recurrently either engaged in commerce or handled or otherwise worked on goods or materials that had been moved in or produced for commerce, such as when they handled credit card transactions or when they accepted delivery of supplies ordered from out-of-state.

212. At all times relevant, the wage and hour and all related employee compensation policies of CommuniCare are and were centrally and collectively dictated, controlled, and ratified by the Defendant.

213. Plaintiff and, upon information and belief, members of the Collective each worked more than 40 hours in one or in each of several workweeks.

214. CommuniCare’s practice and policy of not paying Plaintiff and other similarly situated employees for all hours worked, and specifically for work performed during meal periods and during off-the-clock hours (before the start and after the end of each work shift) violated the FLSA, 29 U.S.C. § 207.

215. CommuniCare’s practice and policy of not paying Plaintiff and other similarly situated employees overtime compensation at the rate of one and one-half times their regular rate of pay for the hours they worked over forty each workweek violated the FLSA, 29 U.S.C. § 207.

216. CommuniCare’s failure to keep accurate records of all of the hours worked each workday and the total hours worked each workweek by Plaintiff and other similarly- situated employees violated the FLSA, 29 C.F.R. § 516.2(a)(7).

217. CommuniCare's violations of the FLSA, as described in this Class and Collective Action Complaint, have been willful and intentional. CommuniCare has failed to make a good faith effort to comply with the FLSA with respect to its compensation of Plaintiff and other similarly-situated current and former employees.

218. Because CommuniCare's violations of the FLSA have been willful, a three-year statute of limitations applies, pursuant to 29 U.S.C. § 255.

219. As a result of CommuniCare's willful violations of the FLSA, Plaintiff and all other similarly situated employees have suffered damages by being denied overtime wages in accordance with 29 U.S.C. §§ 201 *et seq.*

220. As a result of the unlawful acts of CommuniCare, Plaintiff and other similarly situated current and former employees have been deprived of overtime compensation and other wages in amounts to be determined at trial, and are entitled to recovery of such amounts, liquidated damages, prejudgment interest, attorney's fees, costs, and other compensation pursuant to 29 U.S.C. § 216(b).

**SECOND CAUSE OF ACTION**  
**Violations of the FLSA for Illegal Kickbacks**  
**(Brought on behalf of the Plaintiff and FLSA Collective against CommuniCare)**

221. Plaintiff repeats and realleges the foregoing allegations as if fully set forth here.

222. At all relevant times, CommuniCare was an employer within the meaning of the FLSA.

223. The Repayment Provision of CommuniCare's contract is intended to achieve purposes that are illegal under the FLSA, as it aims to force Plaintiffs and others similarly situated to kick back to large amounts in penalties for leaving their jobs for costs that are principally for CommuniCare's benefit, and thus reduce the wages of Plaintiff and others similarly situated below the federal minimum wage.

224. In satisfying its federal minimum wage obligations, CommuniCare may not seek to recover costs or damages that are primarily for its own benefit. In this case, such costs include the estimated \$16,000 “repayment” penalty, CommuniCare’s purported compensatory and punitive damages such as those sought in lawsuits it routinely files against nurses, and CommuniCare’s attorney’s fees that it seeks in lawsuits filed against nurses.

225. Recovery of such damages would, if a lawsuit were brought against Plaintiff, reduce her wages, and the wages of those similarly situated, in the last week of employment (and in many prior weeks of employment as well) to \$0, below the federal minimum wage. Accordingly, CommuniCare’s attempted enforcement of its contract would violate the FLSA.

226. CommuniCare’s violations of the FLSA have been willful and intentional. CommuniCare failed to make a good faith effort to comply with the FLSA with respect to its compensation of Plaintiff and other similarly situated current and former employees.

227. Plaintiff and others similarly situated are entitled to recover, pursuant to 29 U.S.C. § 216(b), all unpaid minimum wages plus an additional equal amount in liquidated damages, costs of suit, reasonable attorneys’ fees, and a declaration that CommuniCare’s contract violates the FLSA because it is an illegal kickback.

**THIRD CAUSE OF ACTION**

**Violations of the FLSA for Failure to Pay Minimum Wage “Free and Clear”  
(Brought on behalf of the Plaintiff and FLSA Collective against CommuniCare)**

228. Plaintiff repeats and realleges the foregoing allegations as if fully set forth here.

229. The Repayment Provision of CommuniCare’s contract is illegal under the FLSA, as such “repayment” penalties aim to force Plaintiff and other similarly situated to pay large penalties for leaving their jobs for costs that are principally for CommuniCare’s benefit.

230. Similarly, the purported “compensatory damages” and attorneys’ fees that CommuniCare threatens to seek in lawsuits against its workers are illegal under the FLSA, as they

aim to force Plaintiff and others similarly situated to pay large penalties for leaving their jobs for ex that are principally for CommuniCare's benefit.

231. Rather than paying Plaintiff and the FLSA Collective their wages "free and clear," CommuniCare maintained and enforced a policy under which the wages paid to employees during every pay period were paid conditionally, subject to the requirement that they not leave their jobs. If they did leave their jobs, they would effectively have to repay all of the wages earned during the last pay period – by incurring these out-of-pocket expenses – plus tens of thousands of additional dollars (whether characterized as "repayment" penalties, purported "compensatory damages," attorneys' fees, or otherwise.

232. By requiring Plaintiff and other similarly situated employees to return their wages to CommuniCare if they left their jobs, CommuniCare failed to pay wages "finally and unconditionally," as required by the FLSA, during every week of employment.

233. Because CommuniCare failed to pay wages "finally and unconditionally," CommuniCare did not meet the wage requirements of the FLSA, which includes the requirement to pay no less than the federal minimum wage for each hour worked free and clear.

234. CommuniCare's violations of the FLSA have been willful and intentional. CommuniCare failed to make a good faith effort to comply with the FLSA with respect to its compensation of Plaintiff and other similar situated current and former employees.

235. Plaintiff and others similarly situated are entitled to recover, pursuant to 29 U.S.C. § 216(b), unpaid minimum wages for each week of employment during which those wages were not paid free and clear plus an additional equal amount in liquidated damages, costs of suit, reasonable attorneys' fees, and a declaration that CommuniCare's contract violates the FLSA because Plaintiff and the collective members' wages are not paid free and clear.

**FOURTH CAUSE OF ACTION**

**Violations of the Trafficking Victims Protection Act, 18 U.S.C. § 1589(a)  
(Brought on behalf of Plaintiff and the Foreign-Trained Registered Nurse Class  
against CommuniCare and Worldwide)**

236. Plaintiff repeats and realleges the foregoing allegations as if set forth fully herein.

237. 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).

238. 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).

239. CommuniCare, together with Worldwide, obtained the labor of Plaintiff and the Foreign-Trained Registered Nurse Class members through threats of serious harm, through a scheme to make Plaintiff and members of the Foreign-Trained Registered Nurse Class believe they would suffer serious harm, and through threatened and actual abuse of legal process, through the terms and administration of its letter-contracts of employment with employees.

240. CommuniCare kept Plaintiff and the Class members working for it against their will with the contract’s terms of indentured servitude, with an unenforceable monetary penalty masquerading as Repayment Provision, with threats of litigation, and with otherwise draconian employment conditions, as described herein.

241. The Repayment Provision is intended to achieve purposes that are illegal under

the TVPA, as it aims to procure or maintain the labor or services of Plaintiff and the Class by threatening them that they will have to pay significant sums of money if they leave their jobs.

242. The letter-contracts of employment further provide that if the employee fails “to repay at the time of termination, CommuniCare may pursue restitution through legal channels.”

243. 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).

244. CommuniCare knowingly used such threats to exert pressure on Plaintiff and the Class to continue working for CommuniCare and to prevent them from seeking employment elsewhere, telling them that they would be on the hook for immigration expenses, recruitment fees, and legal costs, unless they worked for at least 36 months. This was done with the purpose of obtaining Plaintiff’s and the Class’s continued labor for CommuniCare.

245. CommuniCare’s use of such means to obtain the labor of Plaintiff and the Class was knowing and intentional.

246. Plaintiff and the Class suffered damages as a direct and proximate result of CommuniCare’s conduct. These damages include, but are not limited to, emotional distress damages and the loss of proper and correct wage payments.

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

248. 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.

249. 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**

**Violations of the Trafficking Victims Protection Act, 18 U.S.C. § 1589(b)  
(Brought on behalf of Plaintiff and the Foreign-Trained Registered Nurse Class against  
CommuniCare and Worldwide)**

250. Plaintiff realleges and incorporates by reference the foregoing allegations as if set forth fully herein.

251. 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).

252. CommuniCare and Worldwide have knowingly benefited from its participation in the forced labor venture described herein by earning substantial profits from the venture.

253. CommuniCare and Worldwide knew or recklessly disregarded the fact that the venture described herein engaged in obtaining forced labor.

254. 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.

255. 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.

**SIXTH CAUSE OF ACTION**

**Violations of the Trafficking Victims Protection Act, 18 U.S.C. § 1590(a)  
(Brought on behalf of Plaintiff and the Foreign-Trained Registered Nurse Class against  
CommuniCare and Worldwide)**

256. Plaintiff realleges and incorporates by reference all allegations incorporated in

and set forth in paragraphs 197 through 216 as if set forth fully herein.

257. 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.

258. CommuniCare and Worldwide knowingly and purposefully recruited Plaintiff and the Class members, as described herein, in violation of the TVPA.

259. CommuniCare and Worldwide knowingly and purposefully transported Plaintiff and the Class members, as described herein, in violation of the TVPA.

260. CommuniCare and Worldwide knowingly and purposefully provided the labor of Plaintiff and the Class members, as described herein, in violation of the TVPA.

261. CommuniCare and Worldwide knowingly and purposefully obtained the labor of Plaintiff and the Class members, as described herein, in violation of the TVPA.

262. 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.

263. 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.

**SEVENTH CAUSE OF ACTION**

**Violations of the Trafficking Victims Protection Act, 18 U.S.C. § 1594(a)  
(Brought on behalf of Plaintiff and the Foreign-Trained Registered Nurse Class against  
CommuniCare and Worldwide)**

264. Plaintiff realleges and incorporates by reference the foregoing allegations as if set forth fully herein.

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

266. Defendants attempted to violate 18 U.S.C. §§ 1589 and 1590, as described

herein.

267. 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.

268. 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.

#### **EIGHTH CAUSE OF ACTION**

#### **Violation of Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962 (Fraud in Foreign Labor Contracting, 18 U.S.C. § 1351) (Visa Fraud, 18 U.S.C. § 1546) (Brought on behalf of Plaintiff and the RN Visa Fraud Subclass against CommuniCare and Worldwide)**

269. Plaintiff realleges and incorporates by reference the foregoing allegations as if set forth fully herein.

270. Defendant CommuniCare is a "person" within the meaning of 18 U.S.C. § 1961(3).

271. Defendant Worldwide is a "person" within the meaning of 18 U.S.C. § 1961(3).

272. CommuniCare and Worldwide engaged in the following knowing and material fraudulent representations to and concealments of material facts from registered nurses it sponsored with the intent to induce them to come to the United States, where they were ultimately indentured to work under threat of serious harm and abuse of legal process.

273. CommuniCare knowingly misrepresents on its Form I-140 immigrant worker petitions that its terms of employment comply with state law, when in fact its purported "repayment" provision is an illegal penalty under state law because it is not an estimate of CommuniCare's damages. These misrepresentations constitute repeated instances of visa fraud in violation of 18 U.S.C. § 1546.

274. CommuniCare knowingly misrepresents on its Form I-140 immigrant worker petitions that it is seeking workers for full-time permanent employment when it knows that there are periods of time when those workers, such as Plaintiff and the Subclass members, will be “benched”. These misrepresentations constitute repeated instances of visa fraud in violation of 18 U.S.C. § 1546.

275. CommuniCare knowingly misrepresents on its Form I-140 immigrant worker petitions that it pays its green card workers prevailing wage when in fact it does not offer or pay those wages free and clear because it seeks and recovers kickbacks from these workers to pay business expenses through its “repayment” provision and “benches” workers without pay.

276. CommuniCare failed to tell Plaintiff and the Subclass members that there may be periods when they were going to be without an assignment or waiting for an assignment to start and that they would not be paid for that “benching” time, instead communicating to them that they would be full-time and permanent employees.

277. Defendants’ scheme to defraud relied upon multiple repeated uses of the wires, including through email, telephone, and Internet or fax transmissions of relevant visa petitions and paperwork. The scheme was reasonably calculated to deceive and defraud Plaintiff and the RN Visa Fraud Subclass.

278. Defendant willfully, knowingly, and intentionally transmitted or caused to be transmitted writings, signs, or sounds (“wirings”) by means of wire communication in interstate or foreign commerce to execute, advance or further its fraudulent scheme to defraud Plaintiff and the RN Visa Fraud Subclass by means of false representations or promises, in violation of 18 U.S.C. §1343.

279. CommuniCare caused the sending of electronic communications to Plaintiff

regarding her letter-contract of employment on or about July 1, 2022; to nurse Jeffrey Banayat regarding his letter-contract of employment on or about June 22, 2022; to nurse Arman Candelaria regarding his letter- contract of employment on or about May 9, 2022; to nurse Mary Engnan regarding her letter-contract of employment on or about May 3, 2022; to nurse Jeddalyn Ramos regarding her letter-contract of employment on or about July 1, 2022, and; to nurse Sherra Vega regarding her letter-contract of employment on or about May 3, 2022. Upon information and belief, it was CommuniCare's agent or officer named Hailee Aberts who sent out these communications.

280. Defendant Worldwide knew of, came to know of, and/or had to know of CommuniCare's various visa misrepresentations and concealments of material facts as described above, actively condoned the same, and benefited from the same, to the detriment of the nurse-beneficiaries, including the Plaintiff.

281. Among the other wirings transmitted or caused to be transmitted by CommuniCare included, but are not limited to, phone communications and internet communications between/among CommuniCare in Ohio, Worldwide in North Carolina, and foreign-trained registered nurses in the Philippines, regarding the status of recruitment reports and follow-up of immigration petitions, as well as the travel advisories for employee-beneficiaries with approved petitions, phone communications regarding submission of credentials for sponsorship, as well as supporting documentation required by employee-beneficiaries for their consular interviews.

282. These fraudulent representations and concealments of material facts constitute repeated acts of fraud in foreign labor contracting under 18 U.S.C. § 1351 and wire fraud under 18 U.S.C. § 1343 that Defendants engaged in as part of its activities conducting or conspiring to conduct the enterprise's affairs.

283. On its own, this conduct constitutes a pattern of racketeering activity. Alternatively, it constitutes a pattern of racketeering activity in conjunction with multiple acts indictable under 18 U.S.C. § 1351 (fraud in foreign labor contracting), 18 U.S.C. § 1546 (visa fraud), 18 U.S.C. § 1592 (unlawful conduct with respect to documents in furtherance of trafficking, involuntary servitude or forced labor), and 18 U.S.C. § 1590 (trafficking with respect to involuntary servitude or forced labor), contrary to 18 U.S.C. §§ 1962(c) and (d). The activities described above are part of that pattern.

284. The pattern is part of a related and continuous scheme of misconduct over the past several years designed to use lies to recruit inexpensive foreign worker to the United States and keep them trapped in their jobs with illegal contractual terms, workplace policies, and threats.

285. Defendant CommuniCare repeatedly committed the RICO predicate acts of fraud and misuse of visas and other documents, mail and wire fraud, involuntary servitude, forced labor and trafficking. These predicate acts of criminal racketeering activity constitute a “pattern of racketeering activity” as defined by 18 U.S.C. § 1961(5).

286. Defendant Worldwide sent out communications, either mail and/or wire, to various nurse-beneficiaries of CommuniCare regarding the filing of Form I-140 immigrant petitions on their behalf. It sent out a copy of the USCIS I-140 notice of receipt to Plaintiff on or about April 27, 2021; it sent out a copy of the USCIS I-140 notice of receipt to nurse Jeffrey Banayat on or about January 29, 2021; it sent out a copy of the USCIS I-140 notice of receipt to nurse Arman Candelaria on or about February 8, 2021; it sent out a copy of the USCIS I-140 notice of receipt to nurse Mary Engnan on or about January 29, 2021; it sent out a copy of the USCIS I-140 notice of receipt to nurse Jeddalyn Ramos on or about March 19, 2021, and; it sent out a copy of the USCIS I-140 notice of receipt to nurse Sherra Vega on or about January 26, 2021.

287. The continued operations of CommuniCare, of Worldwide, and of CommuniCare's healthcare facilities and client-facilities pose a threat of continued criminal activity, thereby creating a "pattern" as defined by 18 U.S.C. § 1961(5).

288. The predicate acts, as set forth above, are part of Defendants' regular way of doing business.

289. The predicate acts have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics and are not isolated events. The predicate acts have the same or similar purpose: to profit and benefit from the fraudulent recruitment and forced labor of Plaintiff and other sponsored foreign-trained registered nurses.

290. The predicate acts have yielded similar results and caused similar injuries to Plaintiff and, upon information and belief, to other foreign-trained registered nurses, including lost or unpaid wages and benefits, and the pain and suffering brought about by emotional stress and anxiety as a result of Defendants' continuing threat of abuse of the legal process. The predicate acts have resulted to in the detrimental reliance of Plaintiffs and others similarly-situated upon Defendants' misrepresentations as to the nature and terms of her employment in the United States. Contrary to her expectations, Plaintiff did not immediately become employed or given an assignment upon her entry into the United States, and consequently, did not receive the lawful wages and benefits she would have received had she been immediately given a full-time assignment upon her entry. Consequently, these acts of racketeering activity that constitute a pattern of racketeering activity have defrauded the Plaintiff and have enriched the Defendants at the expense of Plaintiffs and other similarly-situated.

291. The predicate acts have similar participants: CommuniCare, Worldwide, and

the various healthcare facilities and facility-clients of CommuniCare.

292. The predicate acts have similar victims: Plaintiff and other foreign-trained registered nurses who were also recruited by Worldwide, sponsored by CommuniCare, later on transported, and provided for labor or services in CommuniCare's healthcare facilities or facility-clients.

293. The predicate acts have similar methods of commission, including comparable recruitment tactics, procedures for facilitating the immigration and visa processes, non-provision of employment upon entry of the sponsored registered nurse to the United States, and the provision to and eventual employment, forced labor, involuntary servitude and exploitative treatment of these foreign-trained registered nurses at CommuniCare' healthcare facilities and/or facility-clients.

294. CommuniCare and Worldwide constitute a RICO "enterprise" as defined by 18 U.S.C. § 1961(4). In the alternative, these entities, together with CommuniCare's facility-clients, constitute such an enterprise. CommuniCare and Worldwide have for several years maintained an ongoing relationship. Through the relationship, Worldwide recruited foreign- trained registered nurses and connected them to CommuniCare. CommuniCare then petitioned or applied for those workers' visas and employed them once they came to the United States. Worldwide communicates with healthcare workers in the Philippines as they have questions about the recruitment and employment process; it serves as the go-between for CommuniCare and the healthcare workers in terms of coordinating travel, arrival dates, necessary paperwork, and preparing for embassy interviews; and it keeps CommuniCare informed on visa paperwork and processing status.

295. Throughout this period, these entities have maintained the common purpose of recruiting, providing, processing, and obtaining inexpensive foreign-trained registered nurses to

perform work in the United States.

296. Those entities, along with CommuniCare's healthcare facility-clients all over the United States, have also maintained an ongoing relationship for several years under which Worldwide has recruited foreign-trained registered nurses and connected them to CommuniCare. CommuniCare petitioned or applied for those workers' visas and employed them once in the United States, placing them at healthcare facilities owned and operated by CommuniCare or its clients. Throughout this period, those entities have maintained the common purpose of recruiting inexpensive foreign- trained registered nurses to perform work in the United States.

297. The enterprise is engaged in interstate commerce in that its activities and transactions relating to the international and interstate movement of workers affect interstate and foreign commerce and frequently require travel and communications across state and international lines.

298. Defendants have conducted or participated directly in the enterprise's affairs. Defendants have been directly engaged in the racketeering activity alleged here, including by providing material misrepresentations to the government regarding the employment of foreign-trained registered nurses, making material misrepresentations to these nurses before they entered the United States, and maintaining policies designed to force those workers to continue working for it under threats of substantial harm. Defendants engaged in these activities to further the enterprise's purpose of recruiting and importing into the United States inexpensive foreign-trained registered nurses to work in its healthcare facilities/clients.

299. Defendants have used the enterprise and the existence of distinct corporate entities within the enterprise to engage in the alleged racketeering activity.

300. The fraudulent representations and concealments of material facts described

above caused Plaintiff and the members of the RN Visa Fraud Subclass to experience harm to business or property in the form of expenses related to moving to the United States without pay that they otherwise would not have incurred, as well as reduced wages and/or lost and unpaid wages and benefits and lost employment opportunities. Thus, Plaintiff and the Subclass members are “persons” with standing to sue within the meaning of 18 U.S.C. § 1964(c).

301. As a direct and proximate result of Defendants’ willful, knowing and intentional acts discussed above, Plaintiff and the members of the RN Visa Fraud Subclass have suffered injuries to their property and/or business, including but not limited to: (a) not receiving the lawful wages and benefits they would have received; (b) lost and unpaid wages and benefits, and; (c) lost employment opportunities.

302. Plaintiff and the members of the RN Visa Fraud Subclass are entitled to an award of damages in an amount to be determined, including treble damages, attorney’s fees, and costs associated with this action.

**NINTH CAUSE OF ACTION**

**Violation of Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962  
(Forced Labor and Trafficking, 18 U.S.C. §§ 1589 and 1590)  
(Brought on behalf of Plaintiff and the RN Trafficking Subclass against Defendants  
CommuniCare and Worldwide)**

303. Plaintiff realleges and incorporates by reference the above allegations as if set forth fully herein.

304. For the reasons described above, Defendants engage in multiple repeated violations of trafficking and attempted trafficking with respect to involuntary servitude or forced labor in violation of 18 U.S.C. § 1590. Defendants engage in that conduct as part of its activities conducting or conspiring to operate the affairs of the enterprise with the goal of furthering the enterprise’s purposes of obtaining and supplying inexpensive foreign-trained registered nurses to

United States healthcare facilities.

305. On its own, this conduct constitutes a pattern of racketeering activity. Alternatively, it constitutes a pattern of racketeering activity in conjunction with multiple acts indictable under 18 U.S.C. § 1351 (fraud in foreign labor contracting), 18 U.S.C. § 1546 (visa fraud), 18 U.S.C. § 1592 (unlawful conduct with respect to documents in furtherance of trafficking, involuntary servitude or forced labor), and 18 U.S.C. § 1590 (trafficking with respect to involuntary servitude or forced labor), contrary to 18 U.S.C. §§ 1962(c) and (d). The activities described above are part of that pattern.

306. The pattern is part of a related and continuous scheme of misconduct over the past several years designed to use lies to recruit inexpensive foreign worker to the United States and keep them trapped in their jobs with illegal contractual terms, workplace policies, and threats.

307. CommuniCare and Worldwide constitute a RICO “enterprise” as defined by 18 U.S.C. § 1961(4). In the alternative, these entities, together with CommuniCare’s facility-clients, constitute such an enterprise.

308. Plaintiff and the members of the RN Trafficking Subclass are “persons” with standing to sue within the meaning of 18 U.S.C. § 1964(c). Related to these violations, Plaintiff and the Subclass members experienced injury to business or property in the form of unpaid wages, reduced wages, payments of expenses related to coming to the United States, lost and unpaid wages and benefits and lost employment opportunities.

309. Plaintiff and the members of the RN Trafficking Subclass are entitled to an award of damages in an amount to be determined, including treble damages, attorney’s fees, and costs associated with this action.

**TENTH CAUSE OF ACTION**  
**Breach of Contract**

**(Brought on behalf of Plaintiff and the Foreign-Trained Registered Nurse Class against CommuniCare)**

310. Plaintiff realleges and incorporates by reference the foregoing allegations as if set forth fully herein.

311. Plaintiff entered into a letter-contract with CommuniCare regarding her employment on or about July 1, 2022.

312. Upon information and belief, each member of the Foreign-Trained Registered Nurse Class likewise entered into similar letter-contracts with CommuniCare which contains basically similar or identical terms as those in the letter-contract signed by Plaintiff.

313. The letter-contracts provided that CommuniCare would pay Plaintiff and each member of the Foreign-Trained Registered Nurse Class an hourly pay for their services as a Registered Nurse.

314. Plaintiff and each member of the Foreign-Trained Registered Nurse Class substantially performed under the letter-contract of employment.

315. CommuniCare breached the letter-contracts of employment by failing to pay Plaintiff and each member of the Foreign-Trained Registered Nurse Class for all of their hours of work.

316. CommuniCare breached the letter-contracts of employment by failing to provide Plaintiff and each member of the Foreign-Trained Registered Nurse Class with an appropriate orientation program during the first week of employment.

317. Plaintiff and each member of the Foreign-Trained Registered Nurse Class suffered damages as a direct and proximate result of CommuniCare's breach of the letter-contracts of employment.

318. Plaintiff and each member of the Foreign-Trained Registered Nurse Class are

entitled to compensatory damages for breach of contract in an amount to be determined at trial.

**ELEVENTH CAUSE OF ACTION**

**Declaratory Relief Under 28 U.S.C. § 2201**

**(The Repayment Provision is Invalid Under the Trafficking Victims Protection Act, 18 U.S.C. § 1589)**

**(Brought on behalf of the Plaintiff and the Foreign-Trained Registered Nurse Class against CommuniCare)**

319. Plaintiff realleges and incorporates by reference the foregoing allegations as if set forth fully herein.

320. The Repayment Provision is intended to achieve purposes that are illegal under the TVPA, as it aims to procure or maintain the labor or services of Plaintiff and the Class members by threatening them that they will have to repay “expenses related to immigration, including certain filing fees, recruitment/agency fees, legal costs and temporary housing”, if they leave their job. The Repayment Provision further provides that if the employee “fail[s] to repay at the time of termination, CommuniCare may pursue restitution through legal channels”

321. 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).

322. CommuniCare knowingly used such threats to exert pressure on Plaintiff and the Class members to continue working for CommuniCare and to prevent them from seeking employment elsewhere, telling them that they would be on the hook for immigration expenses, recruitment fees, and legal costs, unless they worked for at least 36 months. This was done with the purpose of obtaining Plaintiff’s and the Class members’ continued labor for CommuniCare.

323. Additionally, the Repayment Provision’s requirement that Plaintiff and the Class members pay Defendant’s legal costs if Defendant prevails is inconsistent with the one-way fee shifting provision in the TVPA, which allows the victims of trafficking to recover their attorney’s fees in civil actions brought under the TVPA.

324. Plaintiff and the Class members have a definite and concrete dispute with Defendant concerning the enforceability of the “Repayment Provision.”

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

326. The dispute is real and substantial.

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

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

329. 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 Repayment Provision is unenforceable.

#### **TWELTH CAUSE OF ACTION**

##### **Declaratory Relief Under 28 U.S.C. § 2201**

**(The Repayment Provision is Invalid Under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* Because It Would Reduce Plaintiff’s Wages Below the Federal Minimum Wage)  
(Brought on behalf of Plaintiff and the Foreign-Trained Registered Nurse Class against CommuniCare)**

330. Plaintiff realleges and incorporates by reference the foregoing allegations as if set forth fully herein.

331. When Plaintiff and the Class members worked for CommuniCare, each of them was an employee pursuant to the FLSA.

332. CommuniCare was Plaintiff’s and the Class’s employer under the FLSA.

333. The Repayment Provision is intended to achieve purposes that are illegal under the FLSA, as it aims to force Plaintiff and the Class members to pay Defendant “expenses related to immigration, including certain filing fees, recruitment/agency fees, legal costs and temporary housing” --- costs that are principally for CommuniCare’s own benefit --- and thus reduce

Plaintiff's and Class members' wages in their last workweek below the federal minimum wage.

334. The Repayment Provision is thus illegal and unenforceable, under the FLSA because it would, if enforced, permit CommuniCare to pay Plaintiff and the Class members, its workers, wages that are below the federal minimum wage.

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

336. CommuniCare's attempt to recoup costs and expenses that are for the benefit of CommuniCare violates the FLSA because they are an illegal kickback.

337. 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 Repayment Provision would violate the FLSA.

338. Additionally, the Repayment Provision's requirement that Plaintiff and the Class members pay CommuniCare's "legal costs," and CommuniCare's claims for attorneys' fees in the six enforcement actions referred to herein, are 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.

339. In addition, CommuniCare's contract and the indenture it contains violate the FLSA's requirement that wages be paid "free and clear."

340. 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 Repayment Provision is unenforceable and that CommuniCare cannot over the amounts purportedly owed.

**THIRTEENTH CAUSE OF ACTION**  
**Declaratory Relief Under 28 U.S.C. § 2201**  
**(The Repayment Provision is Unconscionable and Unenforceable Under Ohio**  
**Common Law)**  
**(Brought on behalf of Plaintiff and the Foreign-Trained Registered Nurse Class against**  
**CommuniCare)**

341. Plaintiff repeats and realleges the foregoing allegations as if set forth fully herein.

342. The Repayment Provision is unconscionable as a matter of Ohio law.

343. Each of Plaintiff and the members of the Class was forced to enter into a letter-contract of employment containing the Repayment Provision on a take-it-or-leave-it basis and faced substantial harm if s/he did not sign the letter-contract, including potentially having her/his immigration sponsorship withdrawn or having her/his green card revoked, or having her/his employment rescinded, and any of such would be financially ruinous to her/him. Plaintiff and the members of the Class lacked meaningful choice about whether to enter into and sign the letter-contract.

344. The Repayment Provision is also unreasonably favorable to CommuniCare. Among other things, it requires Plaintiff and the members of the Class, who are of limited financial means, to bear costs that could run into tens of thousands of dollars if they do not prevail in this action.

345. The Repayment Provision unreasonably prevents Plaintiff and the members of the Class from vindicating their own contractual and statutory rights under federal and state law, as this would require them to spend tens of thousands of dollars if they do not prevail in this action. This risk effectively chills Plaintiff and the members of the Class from raising their own claims

against CommuniCare, and thus precludes them from vindicating their rights in this action.

346. 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 Repayment Provision is unenforceable.

### **DEMAND FOR JURY TRIAL**

347. 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, and all those similarly situated, collectively pray that this Honorable Court:

- A. Issue an Order permitting this litigation to proceed as a collective action, and certifying the class pursuant to Fed. R. Civ. R. 23(a) and (b)(3);
- B. Order prompt notice, pursuant to 29 U.S.C. § 216(b), to all members of the FLSA Collective that this litigation is pending and that they have the right to “opt in” to this litigation;
- C. Award Plaintiff and the FLSA Collective she represents actual damages for unpaid overtime compensation and minimum wages;
- D. Award Plaintiff and the FLSA Collective she represents liquidated damages equal in amount to unpaid overtime wages found due to Plaintiff and the Collective;
- E. Designate Plaintiff as representative of the Collective/Class and designate Plaintiff’s counsel as counsel for the Collective/Class;
- F. Order Defendants to pay Plaintiff and the Class members compensatory damages, including emotional distress damages, and punitive damages for violation of the TVPA;
- G. Order Defendants to pay Plaintiff and the Class members treble compensatory

and punitive damages for violation of RICO;

H. Declare that the “Repayment Provision” is unenforceable under the TVPA or the FLSA or Ohio law;

I. Award Plaintiff and the Class she represents reasonable attorney’s fees, costs of suit and disbursements, as allowed by FLSA, the TVPA and by RICO;

J. Award Plaintiff and the Class she represents pre- and post-judgment interest at the statutory rate;

K. Award Plaintiff and the Class she represents further and additional relief as this Court deems just and proper.

Dated: April 29, 2024

Respectfully submitted,

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