IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

KURIAN DAVID, SONY VASUDEVAN SULEKHA, PALANYANDI THANGAMANI, MURUGANANTHAM KANDHASAMY, HEMANT KHUTTAN, PADAVEETTIYIL ISSAC ANDREWS, and KECHURU DHANANJAYA, on behalf of other similarly situated individuals, and SABULAL VIJAYAN, KRISHAN KUMAR, JACOB JOSEPH KADDAKKARAPPALLY, KULDEEP SINGH, and THANASEKAR CHELLAPPAN, individually, Plaintiffs, v. SIGNAL INTERNATIONAL LLC, MALVERN C. BURNETT, GULF COAST IMMIGRATION LAW CENTER, L.L.C., LAW OFFICES OF MALVERN C. BURNETT, A.P.C., INDO-AMERI SOFT L.L.C., KURELLA RAO, J & M ASSOCIATES, INC. OF MISSISSIPPI, BILLY R. WILKS, J & M MARINE & INDUSTRIAL, LLC, GLOBAL RESOURCES, INC., MICHAEL POL, SACHIN DEWAN, and DEWAN CONSULTANTS PVT. LTD (a/k/a MEDTECH CONSULTANTS). Defendants.	Case No. 08-1220 JCZ/DEK Class Action and Collective Action

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT
OF THEIR SUPPLEMENTAL MOTION FOR CLASS CERTIFICATION

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I. PRELIMINARY STATEMENT

Seven named Plaintiffs[1] seek to represent a putative class of approximately 500 ship and rig workers from India to pursue federal class claims against Defendants under the Trafficking Victims Protection Reauthorization Act of 2003, 18 U.S.C. §§ 1589, 1590 ("TVPA"); the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962(c)-(d) ("RICO"); the Civil Rights Act of 1866, 42 U.S.C. § 1981; and the Ku Klux Klan Act of 1871, 42 U.S.C. § 1985. (Rec. Doc. 946 (2d Am. Compl.) at ¶¶ 9, 273-352)[2]

Defendants in this action include immigration attorney Malvern C. Burnett and his businesses Gulf Coast Immigration Law Center, LLC and Law Offices of Malvern C. Burnett, A.P.C. ("Burnett"); labor recruiter Michael Pol and his company Global Resources, Inc. ("Pol"); labor broker Billy Wilks ("Wilks"), and the two companies through which he operated, J & M Associates Inc. of Mississippi ("J & M") and J & M Marine & Industrial, LLC; Kurella Rao ("Rao") and his company Indo-Ameri Soft, LLC ("IAS"); Indian labor recruiter Sachin Dewan and his company Dewan Consultants Pvt., Ltd ("Dewan"); and American employer Signal International, LLC ("Signal").

Plaintiffs seek to have a class certified pursuant to Fed. R. Civ. P. 23(b)(3) consisting of

> **all Indian guest-workers who were recruited by one or more Defendants and who traveled and/or were transported to the United States at any time through September 30, 2007 pursuant to 8 U.S.C. § 1101 (a)(15)(H)(ii)(B) ("H-2B") visas assigned to Defendant Signal International.**

Plaintiffs' claims arise out of a fraudulent scheme built around the fictitious promise of permanent residence in the United States. Based on that core false promise, as well as other

[1] Kurian David, Sony Vasudevan Sulekha, Palanyandi Thangamani, Muruganantham Kandhasamy, Hemant Khuttan, Padaveettiyil Issac Andrews, and Kechuru Dhananjaya.

[2] Plaintiffs' complaints have also asserted common law claims for fraud, negligent misrepresentation and breach of contract. Consistent with suggestions made by the Court, Plaintiffs do not seek certification to pursue these common law claims as a class, but have entered into a tolling agreement with Defendants reserving the right to pursue such claims on an individual basis if necessary.

misrepresentations by Defendants, Plaintiffs paid exorbitant labor recruiting fees and traveled to the U.S. to work at Signal's marine fabrication facilities in Mississippi and Texas. Once there, Plaintiffs were subject to segregated housing, severe discrimination and adverse working and living conditions that, given their debts, reasonable persons in their position would have felt compelled to endure.

The falsity of the core promise made to all Plaintiffs is not in dispute: Defendants Dewan, Pol and Burnett have testified that every putative class member was promised that Signal would sponsor him for permanent residence (a green card); Signal executives have testified that Signal had no intent to sponsor all putative class members for green cards and that any such promise was a false one. The universal reliance on that promise by the putative class is equally not in dispute. In the words of the Signal representative charged with overseeing the recruitment of Signal H-2B workers at Signal: "Assurance of green card is why they came." (Ex. 521 (Bingle)[3] (Nov. 2006 notes of John Sanders), Declaration of Chandra S. Bhatnagar ("Bhatnagar Decl.", Appendix A) (Exhibits cited herein are submitted with the Bhatnagar Declaration in a separate Appendix A, and reference to them in this Brief will be to their exhibit numbers. The exhibits appear sequentially behind tabs bearing their corresponding exhibit numbers.)

Defendants' scheme relied not only on false representations to Plaintiffs regarding obtaining permanent residency in the U.S., but also on false representations about the employment and living conditions at Signal. Defendants also used coercive tactics to get Plaintiffs to pay exorbitant recruiting fees, coercive tactics to compel submission by Plaintiffs to the conditions at Signal, and coordinated and systemically exploited Plaintiffs' precarious financial situation and vulnerable immigration status. The scheme yielded Dewan, Pol and Burnett millions of dollars in fees and procured for Signal a cheap, compliant and expendable labor pool. As a result of this fraudulent

[3] 19 exhibits used in the Michael Pol deposition were, in error, identically numbered to exhibits used in the Bill Bingle deposition. The exhibit numbers run from 512 to 530. To distinguish between them, as used in this brief, the deponent's last name – either Bingle or Pol – is included in a parenthetical next to the exhibit number.

scheme, Signal saved millions of dollars in wages it would otherwise have had to pay contract laborers and American direct hires.

Plaintiffs seek treatment as a class, not only because they satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure and because class treatment would be the most fair and judicially efficient way to adjudicate this action, but because that is precisely how Plaintiffs were treated by Defendants – as a nameless and faceless class (albeit second class) of fungible migrant workers who could be misled and exploited without regard to individual rights or interests. Defendants no doubt will oppose class certification by arguing that there are distinctions among individual Plaintiffs. These distinctions will be no more than distractions, details having little to do with the core facts of the case:

- The fact that all class members were lured into Defendants' scheme by advertisements falsely promising permanent residency within two years, long-term employment and the opportunity to bring their families and settle permanently in the United States;

- The fact that all class members received those same false promises at group seminars conducted by Defendants in India and in the United Arab Emirates ("U.A.E.");

- The fact that all class members paid fees to Defendants worth years of their India and or U.A.E. salaries, which required Plaintiffs to incur massive debt;

- The fact that Defendants did not intend to, nor did they, provide class members with permanent residency, or long-term employment in the U.S., consistent with their promises. Instead, Defendants provided H-2B guest-worker visas which gave Plaintiffs only temporary status in the U.S. and required the putative class to accept all conditions of at-will employment at Signal or else suffer "serious harm" as defined by the TVPA;[4]

[4] The U.S. Court of Appeals for the First Circuit upheld a jury instruction defining "serious harm" as

> both physical and non-physical types of harm. Therefore, a threat of serious harm includes any threats--includes threats of any consequences, whether physical or non-physical, that are sufficient under all of the surrounding circumstances to compel or coerce a reasonable person in the same situation to provide or to continue providing labor or services.

United States v. Bradley, 390 F.3d 145, 150 (1st Cir. 2004), vacated on other grounds, 545 U.S. 1101 (2005). This definition was substantially adopted by Congress when it defined "serious harm" in the 2008 amendment to the TVPA. P.L. 110-457, Title II, Subtitle C, § 222(b)(3), 18 U.S.C. § 1589(c)(2) (Dec. 23, 2008). In the case of all Plaintiffs, the alternative to work at Signal was to return to India financially bankrupt and socially scarred, or to remain in the United States without H-2B visa status, suffering the resulting difficulties and distress. Together with the coercive tactics and threats made against Plaintiffs, as described more fully herein, Plaintiffs faced such serious harm.

- The fact that class members[5] were compelled to live in crowded, non-OSHA compliant trailers, with up to 24 men in each one, at Signal's Mississippi and Texas facilities (the only significant distinction between these two "mancamps" being that the Mississippi mancamp was built "on a lead-contaminated waste site" and presumably the Texas mancamp was not);[6]

- The fact that only putative class members, among all Signal employees, were residents of these racially homogenous, segregated, male-only, confined "mancamps";

- The fact that class members had $1,050 per month deducted from their wages to help Signal both recoup the capital cost outlay of building the mancamps and to make a profit. This exorbitant mandatory rent effectively compelled class members to remain in these mancamps to avoid having to pay rent on two locations;

- The fact that, as residents in Signal's mancamps, class members had no privacy, were denied outside visitors, were deprived of other personal rights and were exposed to abnormally high rates of illness;

- The fact that Defendants, and in particular Signal, made false assurances to class members to suppress complaints and enforce discipline; and

- The fact that those putative class members (who are also asserting claims in their individual capacity) who were vocal in requesting changes to the deplorable conditions at Signal were subjected to forced detention and attempted deportation by Signal as an "example" to the other workers.

Defendants' main defenses (by Dewan, Pol and Burnett that they believed the representations they made to the workers were true, and by Signal that Dewan, Pol and Burnett were not authorized to make the promises that Signal acknowledges were false) are meritless. More importantly, however, for purposes of the instant motion, such defenses are equally applicable to the claims of all putative class members and therefore support class certification.

As much as the facts of this case reveal an affront to basic human dignity and human rights, caused by unscrupulous deception, it is equally a class-wide affront arising out of a class-wide

[5] At least 38 putative class members were subject to the fraudulent scheme, to the extent that they paid recruiting fees upon the false promises of permanent residency and employment, but then were denied work at Signal. Though these putative class members were subject to legal and financial distress in coming to the United States without the promised employment and satisfy the Rule 23 requirements in the same respect as all other putative class members, Plaintiffs' 42 U.S.C. § 1981 claim, which relates exclusively to conditions at Signal, does not apply to them. For these putative class members, the Court has the option to certify a sub-class, as contemplated in Rule 23(c)(5) of the Federal Rules of Civil Procedure, which would still permit them to proceed in the class action in respect of all other claims alleged.

[6] Signal's recruitment of workers for its Mississippi and Texas facilities was completely indistinguishable. (Schnoor Dep. 198:12-199:10; Cunningham Dep. 56:12-57:21 (Signal's management in Mississippi set policies for the Texas mancamp as well))

deception. The pernicious scheme underlying this case, and to which each member of the putative class fell prey, had no individualized dimensions. In other words, Indian workers only became part of the putative class by paying thousands of dollars to Dewan, Pol and Burnett, based on false promises, with most then delivered to Signal to work as fitters or welders under psychologically coercive working and living conditions. Plaintiffs' allegations are legally cognizable wrongs that were suffered by each member of the putative class and thus mandate class certification.

II. PROCEDURAL BACKGROUND

Plaintiffs filed this proposed class action on March 7, 2008, filed their First Amended Complaint on April 28, 2008, and filed their Second Amended Complaint on November 23, 2010. (Rec. Docs. 1, 44, 47, 946) On October 1, 2008, Class Representative Plaintiffs moved to certify this case as a class action. (Rec. Doc. 165) Defendants requested, and the Court granted, discovery on class issues after which, the Court ruled, Plaintiffs would have an opportunity to supplement their class certification motion. (Rec. Doc. 227) Plaintiffs incorporate by reference their original motion for class certification (Rec. Doc. 165) and now file this renewed submission (brief, together with exhibits and deposition excerpts) re-urging certification of a Rule 23(b)(3) class.

III. STATEMENT OF FACTS

A. Phase 1 of Defendants' Scheme: The Indo Ameri-Soft and J & M Associates Recruitment (2004-2005)

In 2003, and into 2004, Dewan, Pol and Burnett conceived of a scheme to recruit and transport workers from India to the United States on permanent residency visas. The purpose, stages and respective roles of each of these three Defendants were memorialized in a "Multi-Lateral Business Agreement" signed in March 2004. (Ex. 455) The express purpose of the agreement was "to select, acquire, and transport to the United States foreign skilled workers under the 'permanent

residence' process for migration and to be employed by valid employers in the United States to be produced by 'Global.'"[7] (Id. at 1)

At the initial stage, Dewan, Pol and Burnett charged each worker a minimum of 5 "lakh" rupees or 500,000 rupees[8] (roughly $10,000-$12,000) for permanent residency and employment in the U.S., which even Dewan, the scheme's India-based labor recruiter, acknowledged was several years' worth of salary for the average Indian ship worker.[9] (Dewan Dep. 516:3-519:10) (Deposition excerpts cited herein are provided in a separate Appendix B, and reference to them in this Brief will be limited to the deponent's name along with a page and line cite. The deposition excerpts in Appendix B are organized and tabbed by deponent name)

Also in early 2004, Defendant Kurella Rao, through his company Indo-Ameri Soft, LLC ("IAS"), executed a Bilateral Business Agreement with Dewan (Ex. 756; Rao Sept. 17, 2009 ("Vol. I") Dep. 186:21-187:12; 188:7-21), providing that Dewan would recruit skilled workers for Defendant IAS to sponsor for "U.S.A. Permanent Residency/Green card" at a price of approximately 5 lakh rupees per worker. (Ex. 756 at 2; Dewan Dep. 215:21-216:9) Burnett conceived of the IAS terms and conditions, including the payment structure with which the workers would have to comply. (Rao Dep. 19:1-21:10, 27:4-8; 52:16-18)

Shortly thereafter, Defendant Wilks, general manager of Defendant J & M, a company that sub-contracted laborers to other companies, contracted with Defendant Global Resources to provide and "transport to the United States, foreign skilled workers under the 'permanent resident' process for migration, and to be employed by J & M or its subsidiaries and acquired on behalf of J & M by Global for that purpose." (Ex. 522 (Pol); Wilks Dep. 23:10-23) This agreement stipulated Global's

[7] Defendant Global Resources is the company owned and operated by Defendant Michael Pol.
[8] A "lakh" is a term used in India to refer to one hundred thousand of any item, thus 5 "lakh" rupees would be the equivalent of 500,000 rupees.
[9] Five lakh rupees was the fee charged by Defendants Rao, J & M, Pol, Dewan and Burnett to all recruits for permanent residency until the expedited option of workers coming over to Signal on an H-2B visa surfaced, at which time Defendants increased the fee up to eight lakh rupees: between $17,600-$20,000. (Khuttan Dep. 317:21-318:11; Dewan Dep. 434:20-437:17)

provision of recruiting services "to J & M at no charge" and "an Immigration Attorney," namely Burnett, to advise J & M and to handle the immigration filings. (Ex. 522 (Pol) at ¶ 3; Wilks Dep. 33:23-34:15) Wilks sent Pol a demand letter for 300 workers (100 structural welders, 100 pipe welders and 100 shipfitters). (Ex. 520 (Pol)) Wilks's sons, who were J & M Associates[10] officers (Wilks Dep. 13:16-14:6), executed a power of attorney authorizing Pol to represent J & M in "bring[ing] qualified legal entry craftsmen from the country of India to the United States for the purpose of employment with J & M." (Ex. 521 (Pol))

After execution of these agreements in 2004, Dewan, in partnership with Pol, recruited workers for permanent residency and employment with J & M. (Dewan Dep. 103:9-13, 209:16-212:2; Pol Dep. 62:2-65:9, 100:21-103:8, 107:14-111:16) In January 2004, Rao and Burnett joined Dewan to recruit Indian workers in India and in the U.A.E. for permanent residency employment with IAS. Burnett explained the terms and conditions to workers over a three-week recruiting trip. (Rao Dep. 18:20-23:6) The original IAS and J & M recruits in 2004 and 2005, who together numbered approximately 360 (Wilks Dep. 49:1-4 (232 J & M recruits); Rao Dep. 50:2-7 (approximately 130 IAS workers)), were all promised that they would receive green cards in the United States within two years (Dewan Dep. 183:2-185:8, 220:13-20 (confirming two year promise to both IAS and J & M recruits); Rao Dep. 31:17-21; Wilks Dep. 23:10-24:14; 25:8-26:8; 35:2-36:5; Ex. 756 at ¶¶ 1, 17))

The two year permanent residency guarantee was never fulfilled. (Dewan Dep. 286:7-287:4; Wilks Dep. 74:2-75:12, 122:11-19; Smith Dep. 93:11-15, 95:7-11) In fact, by February 2006, after almost two years of these Defendants collecting fees from these hundreds of Indian recruits, Burnett had still not even filed for permanent residence, let alone obtained a single green card, for any one of them. (Dewan Dep. 283:10-287:4; Rao Dep. 71:9-16) With the groundswell of workers in India

[10] Plaintiffs, in their Second Amended Complaint, allege that newly named Defendants Billy Wilks and J & M Marine & Industrial, LLC are alter egos of or successors to J&M Associates. This itself is a common question of law and fact.

increasingly frustrated with the lack of progress and desperate for a return on their investment (each had already paid approximately $7,000), and with the continued desire by Dewan, Pol and Burnett to preserve their ability to generate revenue from the existing recruits as well as new groups of recruits, the scheme entered a second phase.

B. Phase 2 of Defendants' Scheme: Green Cards with the Option of H-2B Visas and Involvement of Signal

On April 18, 2006, Global Resources, under the auspices of the Multi-Lateral Business Agreement with Dewan and Burnett, entered into an agreement with Signal to obtain foreign skilled workers under the "H-2B" temporary program and/or the "permanent residence" process. (Ex. 423 ("Signal-Global contract")) The agreement was designed to create a "win-win" situation for Dewan, Pol, Burnett and Signal. However that "win-win" was built, almost literally, on the backs and life-savings of the putative class of vulnerable Indian workers. The agreement allowed Signal to obtain a cheap source of labor, potentially saving "millions of dollars" (Schnoor Dep. 155:9-12) at absolutely "no cost to Signal." (Schnoor Dep. 65:2-66:16; Bingle Dep. 23:9-24:2 ("a pretty good deal [for Signal]"); Ex. 563 (Dec. 1, 2006 letter from Schnoor to Burnett confirming that "[Burnett's] fees and costs incurred in representing Signal in this matter will be billed to and paid by the skilled foreign workers. Signal will have no responsibility for your fees and expenses."); Ex. 574 (Burnett retainer charging Signal $0.00/hr))

For Dewan, Pol and Burnett, the agreement provided a U.S. employer onto which they could offload the IAS and J&M recruits, who had been promised permanent residency in the United States within two years and who had already each paid thousands of dollars for that promise. Additionally, Dewan, Pol and Burnett could leverage the guaranteed employment at Signal not only to extract further fee installment payments from the prior Indian recruits, but also to solicit fees from a new crop of Indian recruits. In all, Dewan, Pol and Burnett, over the course of phases 1 and 2 of their scheme, collected an estimated $7 million from all the putative class members.

C. False Promises of Green Cards to Recruits in India and in the U.A.E.

An essential element of Dewan, Pol and Burnett's scheme – promising Indian workers permanent residence and long-term employment in the U.S. – was executed, both before and after Signal was in the fold, through advertisements placed in Indian and Middle Eastern newspapers. (Ex. 460 (various newspaper ads from around India and the U.A.E. promising permanent residence in the United States); Sulekha Dep. 92:16-93:5; Kandhasamy Dep. 280:24-282:22; Khuttan Dep. 108:16-110:17, 230:3-231:8) These promises were then repeated at several in-person seminars conducted by Dewan, Pol and Burnett. (Sulekha Dep. 135:13-136:23, 138:1-140:15; Khuttan Dep. 111:22-112:13; Dewan Dep. 218:24-221:10, 224:13-21; Pol Dep. 207:7-208:16; Sulekha Dep. 138:1-139:10, 163:4-19; David Dep. 180:12-182:13, 394:18-395:21) Dewan, Pol and Burnett's promises to the putative class were encapsulated in a Signal PowerPoint presentation, played by Dewan in a continuous loop at all Signal-oriented seminars. (Dewan Dep. 457:17-458:12; Ex. 684 at Slide # 3 ("[a]ll Green Card applicants will automatically be enrolled as H-2B candidates, however, it is not guaranteed that they be approved with H-2B visas which will bring them to the United States within 6 months. This will not affect the 'Employment based Green Card' process.") (emphasis added))

Thus, during the recruitment of the putative class members for employment at Signal, it was the H-2B visas that were the uncertain commodity, while the attainment of green cards was always assured. (Ex. 423 at ¶ 22 ("Signal understands and agrees that it is possible that temporary H-2B visas may not be issued in a timely manner due to caps set by the US government. In any case, the permanent resident (I-140) process will continue as agreed upon."); Ex. 684; Pol Dep. 208:9-16; Dewan Dep. 430:9-439:15; Burnett Dep. 518:11-519:7) Signal even concedes in its Answer[11] that "permanent residence" was part of the scheme being proposed by Pol to Signal from the beginning. (Rec. Doc. 122 ¶¶ 9, 10) The contract signed between Global Resources and Signal evinced Signal's

[11] The long title to Signal's Answer is "Amended And Restated Claims Against Co-Defendants (Cross Claims) And Third Party Defendant, Answer And Affirmative Defenses Of Signal International, LLC To Plaintiffs' First Amended Complaint" ("Answer").

clear obligation to obtain permanent residence visas for each Indian worker independent of the success or failure of the H-2B process. It governed Signal's involvement in the entire recruitment scheme. Most significantly, the obligations arising out of it clearly raise common questions of law and fact for the members of the putative class with respect to the claims in this litigation.

Dewan, Pol and Burnett were, at best, indifferent to the fulfillment of the promises made to the putative class, as their sole interest was in maximizing profits from the putative class.[12] As Dewan acknowledged, the Indian workers were "taken for a ride." (Dewan Dep. 285:17-287:4) Dewan also admitted that he made promises "across the board" to all recruits that Signal would apply for green cards "for everybody." (Dewan Dep. 393:22-394:5, 436:7-437:17, 442:7-445:5) Pol similarly represented to Plaintiffs that "Signal was going to get [Plaintiffs] permanent residence eventually. They were going to apply for it." (Pol Dep. 243:10-244:11; see also Pol Dep. 226:21-25 (Q: "Now, you mentioned that it was always your understanding from Signal that they were intending to apply for green cards on behalf of the workers. A: You bet."))

The green card promise also was repeated in a form letter Dewan signed that was given to members of the putative class (Ex. 59 ("[Signal International] shall proceed with your Green Card for United States of America")), and was expressly included in a uniform written agreement that Dewan gave to each worker. (Exs. 351 at ¶ 5; 344 at ¶ 5; 500 at ¶ 5; 505 at ¶ 5; 502 at ¶ 5) Identical sets of written agreements echoed Pol and Burnett's promises "to obtain permanent residence status in the

[12] Throughout this process, from luring initial recruits all the way to selling a 10 month temporary visa as if it were a permanent resident visa, Dewan, Pol and Burnett's greed and contempt for the workers and view of them as a homogenous and exploitable group of fee-payers were revealed repeatedly in their private e-mail communications. (Ex. 572 (Nov. 28, 2006 e-mail from Burnett to Dewan and Pol informing Dewan that a worker whose "father was dying of cancer and [who] no longer wanted to participate in the green card program [had] … no[] reason to stop payment or back out on our agreement. We did the work; we need to get paid."); Ex. 468 (Feb. 3, 2006 Burnett–Dewan e-mail: "Mafiaso: Tell them to pay up or we will substitute with willing candidates. What can't you make the dolts understand? What's wrong with copies? Am I missing something here? Confused and pissed, I remain, Yours truly, Mal. By the way, tell Rao to SHOW ME THE MONEY…"); Ex. 834 (Dec. 16, 2006 e-mail from Burnett to Dewan: "Lastly, the check which the idiot stopped payment on was … in the amount of 1792.08. … Please see if you can't get Ramesh to 'persuade' him to pay me this amount in a money order plus $50 stopped payment fee…. If he does not pay, I will see to it that his visa gets mysteriously revoked."); Padaveettiyil Vol. I Dep. 74:5-75:8 (Dewan tore agreement paper in pieces as threat to force Padaveettiyil go to Signal on H-2B visa); Khuttan Dep. 294:4-295:12 (Dewan's staff threatens to hold passport until last payment is received))

United States within 24 months"[13] in exchange for separate payments of $3,750 to each of Dewan, Pol and Burnett from every worker. (Exs. 350, 342, 500, 505 (Burnett's contracts); Exs. 354, 345, 500, 327 (Pol's contracts)) These promises, as described in Section D below, were patently false.

Even after the Indian workers' arrival at Signal's facilities, Dewan and Burnett, along with Signal personnel, actively participated in meetings designed to continue the deception by providing renewed, but still false, assurances of permanency for the workers, who were constantly inquiring about when they would get the promised green cards. (Bingle Dep. 94:24-96:7, 182:14-183:6)[14]

D. The Green Card Promises to Plaintiffs Were Demonstrably False

As a threshold matter, the procedures inherent in the H-2B process, by which Plaintiffs were transported to the U.S., preclude automatic conversion to green cards. (Bingle Dep. 46:24-47:11) Nonetheless, Defendants falsely promised Plaintiffs that the H-2B visas would be extended and would then convert automatically to green cards. (Padaveettiyil Mar. 16, 2009 ("Vol. I") Dep. 133:17-134:8; Khuttan Dep. 51:9-52:13, 273:3-274:24; David Dep. 359:13-360:9, 394:18-395:21; Kandhasamy Dep. 194:20-195:21; Thangamani Dep. 483:16-486:15; Sulekha Dep. 139:11-140:11)

Moreover, as part of the H-2B application process, Signal repeatedly certified to the U.S. government, in H-2B visa-related filings with the Department of Labor and United States Citizenship & Immigrations Services ("USCIS"), that its labor needs were temporary and that all of the workers would be returning to India in ten months. (See, e.g., Ex. 515 (Bingle) (10-month Labor Certification application signed by Signal V.P. Bill Bingle); Ex. 830 (10-month Labor Certification signed by former Signal Senior V.P. Thomas Rigolo); Ex. 835 (10-month H-2B I-129 Visa Application signed

[13] The agreements introduced a caveat that there might be delay in obtaining the green cards, however, that caveat was offset by an assurance that a delay or failure to obtain green card would allow the worker a refund. As discussed below, no refunds were ever issued to any of the workers. As Michael Pol made clear during his deposition: "We didn't refund anybody." (Pol Dep. 171:7-13)

[14] Signal V.P. Bill Bingle testified that on October 31, 2006, when he picked up the very first wave of Indian workers from the airport, they were already asking about their green cards. Bingle himself confirmed that he falsely told those workers that Signal "would take care of the filings." (Bingle Dep. 182:14-20) When asked if he ever corrected that statement, which he admitted was untrue, Bingle said that he "[n]ever had the opportunity, I guess, or did not see the need to tell them." (Bingle Dep. 182:21-183:6)

by Signal V.P. Bill Bingle); Ex. 836 (10-month H-2B I-129 Visa Application signed by former Signal Senior V.P. Thomas Rigolo)) If Signal's pledge, made under oath to the U.S. government, was true and accurate, then by definition the promise of green cards made to all the workers was false. In fact, Signal was simultaneously lying to both the U.S. government and the workers.

Signal's V.P., Bill Bingle, who signed, under penalty of perjury, a labor certification application to the U.S. Department of Labor and an H-2B I-129 visa application to USCIS (Ex. 515 (Bingle); Ex. 835) confirming Signal's ten month intention for the putative class, conceded that the representations to the U.S. government were false because Signal intended to employ the Indian migrant workers for longer than ten months. Bingle stated that he was uncomfortable lying under oath to the government, but nonetheless knowingly did so upon the instructions of Signal's lawyer, co-defendant Malvern Burnett.[15] (Bingle Dep. 53:11-55:10, 57:12-61:21; see also Ex. 519 (Bingle) (Sept. 16, 2006 e-mail from Burnett to Signal: "It is important that the embassy/consular staff not be advised that the work will extend beyond 10 months regardless of how long Signal may believe the temporary need will exist.")) Bingle, again at the instruction of Burnett, sent a letter to the U.S. Department of Homeland Security (Ex. 516 (Bingle)), which was also incorporated into the H-2B I-129 visa application, in which Bingle knowingly misrepresented Signal's intentions with respect to the Indian workers:

> *Q.* I understand you are saying Malvern Burnett told you to say this. I understand that he drafted the letter. I'm asking you if those two sentences, as drafted by Malvern Burnett, were consistent with Signal's intent or not?
>
> *A.* No.
>
> *Q.* They were inconsistent with Signal's intent?
>
> *A.* Yes.
>
> *Q.* So they were inaccurate statements to tell the government this in July 2006?
>
> [Objections omitted]

[15] Former Signal V.P., Thomas Rigolo also admitted during his deposition that he knew at the outset that "a two-year time frame is what [Signal was] really shooting for," yet he stated that he had "no reservation" signing USCIS documents under penalty of perjury indicating Signal's intent to employ the foreign labor for only 10 months. (Rigolo Dep. 88:1-10, 229:8-18)

A. Yes.

Q. Did you have any problem signing a letter with inaccurate statements even though your attorney was telling you to do it?

[Objections omitted]

A. Yes, we had problems – I mean I had a problem with it, but it's what the immigration lawyer who was versed in the H-2B process told us this is how the process works.

(Bingle Dep. 59:19-60:20) Burnett, for his part, justified the irreconcilable conflict between the promises of permanent residency, which he, Dewan and Pol made to Plaintiffs, and the representations of temporary need that he advised Signal to make to the U.S. government with the disingenuous statement: "permanence is a very relative concept." (Burnett Dep. 456:22-458:21)[16]

While Signal was lying to the U.S. government, Signal and its agents were simultaneously and admittedly lying to Plaintiffs. Contrary to the unequivocal promises that Signal was going to file for green cards for all of the Indian workers, Signal definitively had no such intent. Rather, Signal was satisfied to import workers on the temporary H-2B guestworker visa program – a program fundamentally incompatible with filing for green cards – and only after two years and expiration of the last H-2B visa extension make a decision as to which, if any, of the Indian workers it would sponsor for green cards:

Q. And as we discussed yesterday, the fact that these workers were promised green cards was problematic in two respects: First, because you can't guarantee what the U.S. government's going to do, right?

A. Correct.

Q. And, second, because Signal had not even determined for itself that it was going to even file for green cards for any or all of these workers, right?

A. Correct.

[16] Signal made further false statements to the government when it applied for extensions of H-2B visas in the summer of July 2007, representing that all the Indian workers would return to India at the end of the 10 month extension, even though Signal well knew by that time – indeed Signal knew many months earlier – that the workers were expecting to stay in the U.S. with permanent residence status. (Ex. 450; Snyder Dep. 220:8-225:4; Bingle Dep. 192:7-19)

(Schnoor Dep. 232:5-15) As conceded by Signal Senior V.P., Ron Schnoor, it was only at the end of the H-2B visa terms, and not before, that Signal would assess both its demand for workers generally and each individual Indian worker's skills and attitude, before deciding which, if any, workers Signal would sponsor for green cards. (Schnoor Dep. 46:10-50:20, 54:4-56:6, 70:10-72:6; Rigolo Dep. 69:24-71:17; see also Bingle Dep. 72:6-73:22) Signal itself has articulated its mindset in its Answer: "All Signal knew was that it was told it was lawfully getting workers into this country on H-2B temporary visas. If these fitters and welders were good employees, Signal believed it to be their option to apply for a green card." (Rec. Doc. 122 ¶ 26) Despite its agents having definitively promised green cards to all putative class members, Signal believed it had sole discretion, to be exercised at the end of the H-2B visa term, to decide to sponsor some, all, or no workers for permanent residency. Specifically, for purposes of the instant motion, the discretion Signal believed it had, and its intent to apply for green cards, are common questions that will be proven by each class member through reference to Signal executives' testimony and writings and are therefore quintessential class questions.

The sworn testimony of Defendants establishes that, notwithstanding Signal's intent to the contrary, the recruits were uniformly promised permanent residency. Dewan testified that Signal V.P. Bill Bingle told him in India during the summer of 2006 that Signal would file for green cards for all the Indian workers (Dewan Dep. 746:2-747:4) Bingle denies discussing green cards with Dewan (Bingle Dep. 94:11-23, 96:13-25), instead stating that, to the extent Dewan and Burnett promised the Indian workers green cards, Dewan and Burnett were being dishonest. (Bingle Dep. 133:9-134:22) While the jury can address the credibility gap among Defendants, for class purposes,

the promises that were made to every Plaintiff, and the undisputed falsity of those promises, constitute one of the central common questions that predominates.[17]

Pol certainly understood his agreement with Signal as authorizing him to recruit workers "on the permanent residency process," and made representations on behalf of Signal accordingly. (Pol Dep. 197:24-198:4; Ex. 559) Dewan viewed his Power of Attorney from Signal as broadly authorizing him to recruit workers in the name of Signal for permanent residency. (Dewan Dep. 393:22-394:5) Signal does not dispute giving Dewan *carte blanche* authority, but contends that it did not authorize representations regarding permanent residency. (Schnoor Dep. 50:4-11) Even if it were somehow a valid defense to Plaintiffs' claims for Signal to argue that its agents were not authorized to make representations about green cards, this would be a central question common to the adjudication of all Plaintiffs' claims collectively and thus support certification of the putative class.

E. Signal's Further Adoption of the Fraudulent Scheme

Notwithstanding any credible contention Signal might make that it had not authorized promises being made to Plaintiffs in Signal's name, there is compelling evidence that Signal executives learned of those very promises in the summer of 2006, months before any Indian workers arrived at Signal facilities. On August 23, 2006, John Sanders, Signal's Corporate Program Manager and manager of the Pascagoula mancamp where the Mississippi workers were housed, as well as Signal's "point-man" in communicating with Dewan, Pol and Burnett (Sanders Nov. 19, 2009 ("Vol. I") Dep. 73:1-2), e-mailed Thomas Rigolo, then Senior V.P. and G.M. of Signal's Texas operation. Sanders's e-mail, among other things, specifically advised Rigolo of the expectations of the Indian H-2B workers that, during the time they are working at Signal, they "will likely have received their green cards." (Ex. 817) The very next day, August 24, 2006, Pol wrote to Sanders cautioning that, in

[17] Signal's Senior V.P., Ron Schnoor, when shown the letter given to each worker by Dewan promising that Signal would apply for a green card (Ex. 59), conceded it "could be misunderstood perhaps" (Schnoor Dep. 89:12-21), and that "perhaps" it was wrong for Dewan to have made this promise. (Schnoor Dep. 90:14-91:4) Former Signal Senior V.P., Thomas Rigolo was more forthcoming: he acknowledged that a promise of a green card to the putative class of Indian workers, while they were in India, would be false. (Rigolo Dep. 66:7-67:2)

preparation for the workers' interviews with U.S. consulate in India (an H-2B visa requisite), Dewan, Pol or Burnett "needs to be with each and every candidate going into the consulates before their interview" as they "need to be coached [to not reveal that] we are going to process them for a green card." (Ex. 550)[18]

Although Signal has denied knowing of the green card promise in the summer of 2006 (notwithstanding the document trail precisely demonstrating that knowledge (Exs. 550, 817)), Signal's executives, Ron Schnoor and Bill Bingle, have conceded that, at least by November 2006, after the first workers arrived at Signal, Signal learned that all the H-2B workers were being promised green cards. Despite this knowledge, and despite the fact that Signal had no intent at that time to sponsor all (or any) of the workers for green cards, Signal nonetheless consciously continued for months thereafter to import hundreds more workers on this false premise. (Bingle Dep. 115:9-118:5; Schnoor Dep. 56:18-25, 109:11-110:9; see also Snyder Dep. 39:24-41:6; Sanders Jan. 20, 2010 ("Vol. III") Dep. 167:25-170:3, 172:18-173:7, 199:5-200:19, 202:16-205:3, 207:15-208:8)

Not only did Signal executives know about the false promise of green cards, but they also knew about the exorbitant fees charged by Dewan, Pol and Burnett. In November 2006, Signal's mancamp manager, John Sanders, spoke with several of the first group of Indian workers to arrive – days after their arrival -- reviewing receipts that they had obtained from their numerous payments to Dewan, Pol and Burnett. Sanders constructed a pie chart of the fees (Ex. 700) that is consistent with the putative class members' allegations in this litigation, which he shared with Signal management,

[18] Sanders, during his deposition, insisted that he never read Pol's August 24, 2006 e-mail (Sanders Vol. I Dep. 71:18-72:25) and did not learn about green cards until October of 2006 when Pol mentioned it to him over lunch (Sanders Vol. I Dep. 126:23-127:21). Sanders further testified that it would have been a "huge problem" had he known workers were being promised green cards. (Sanders Vol. I Dep. 110:9-111:13) However, as Sanders's e-mail to Thomas Rigolo on August 23, 2006, quoted and cited above, makes clear, Sanders, as well as Rigolo, in fact knew very well the workers, before coming to Signal, were expecting green cards. Further undermining Sanders's dubious claims of ignorance, Pol testified that Sanders telephoned him shortly after receiving the August 24, 2006 e-mail to thank Pol for providing certain Consulate information in that e-mail that Sanders found helpful. (Pol Dep. 574:8-576:15)

including Bingle, Schnoor and Lisa Spears in November 2006.[19] (Sanders Vol. III Dep. 202:16-205:3, 207:15-208:8)

Signal actually fired Pol in November 2006, purportedly because the Indian workers had been charged "exorbitant" fees by Signal's agents, because Pol refused to refund a portion of the money (Bingle Dep. 101:3-5; Schnoor Dep. 40:24-41:19; Exs. 520 (Bingle), 559), and because Pol had falsely promised the workers green cards. (Schnoor Dep. 109:11-23) Inexplicably, Signal continued to work with Pol's partners, Dewan and Burnett, including to import additional waves of Indian workers, despite Dewan and Burnett's refusal to refund any money to the Indian workers (Schnoor Dep. 41:10-22, 118:12-14; Exs. 523 (Bingle), 669), despite Dewan and Burnett's continued false promises to the workers (Schnoor Dep. 113:22-114:9, 236:14-21) and despite Signal's mistrust of at least Dewan. (Bingle Dep. 122:2-8) Signal's John Sanders had already concluded that the three were in a "conspiracy" to extract inordinate fees from the putative class. (Sanders Vol. III Dep. 63:12-64:19; Ex. 522 (Bingle))

Thus, by November 2006, Signal knew about both the false green card promises made to the putative class and the exorbitant fees that they were charged, but chose to take no corrective action.[20] This was a watershed moment as far as this class action is concerned. From November 2006 onwards, Signal with its eyes wide open, and in concert with its co-defendants, accepted hundreds more workers into the trap that defines this case. (Schnoor Dep. 62:8-63:2)

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[19] One of Sanders's charts represents the fees of a worker who was recruited in phase 1 of the scheme (some time in 2004/2005), and Sanders's second chart shows the fees of a worker who was recruited in the second phase of the scheme (2006). While the total estimate of the workers payments was correct, the worker who was recruited in phase one (worker # 79), significantly understated the amount of money that was actually going to Burnett. This is entirely understandable because the worker did not know that the scheme was set out such that Rao was paying Burnett most of the money that Rao collected and that Dewan collected money on behalf of Burnett. With the benefit of discovery, Plaintiffs now know that Burnett likely took in approximately $3,750 from the worker.

[20] Ron Schnoor also acknowledged the common "disgruntle[ment]" among "all the candidates" that they had paid high fees (Schnoor Dep. 26:4-18), and he testified that had he known about these fees in October 2006, he would not have hired the workers (Schnoor Dep. 24:19-25:19). Yet Schnoor's explanation has no credibility because Schnoor knew about those fees by no later than November 2006 (Schnoor Dep. 37:10-23), and Signal (and specifically Schnoor) decided to continue to import workers for months thereafter (Schnoor Dep. 37:24-38:14).

When asked why Signal made this choice to keep accepting workers on the basis of false promises, and on unconscionable financial terms, Schnoor simply said, "We needed the workers." (Schnoor Dep. 41:20-25) Indeed, Signal needed the Indian workers as a far cheaper alternative to local labor. Signal intended to use the Indian H-2B workers to displace contract workers who were costing Signal an additional $100,000-$200,000 per day. (Binion Dep. 127:8-128:2) Signal also needed more Indian workers to cover the capital cost investment Signal made in building its segregated, Indian-only mancamps (Schnoor Dep. 150:7-22), and Signal otherwise gave no thought to the plight of these Indian workers:

> *Q.* Mr. Schnoor, did the fact that Signal had invested $7 million in building man camps to accommodate H2B workers and needed to recoup those costs from having the workers come pay $35 a day and work at Signal factor in any way, shape or form into your decision to continue bringing workers from India after November of 2006 despite knowing the extent of the fees that they were paying?
>
> *A.* It was part of the investment. Certainly, our investment was there, and our desire to find a long-term solution was still there, and the need was still there. Absolutely.
>
> *Q.* So, the fact that you built the camps was part of your decision process?
>
> *A.* Oh, absolutely.
>
> *Q.* And the fact that you had a need for workers and that these direct hires from India were less expensive than contract help, correct?
>
> *A.* Business decisions are always made about business, what was good in the best interest of the business and its employees. It always is.
>
> *Q.* And business decisions are about money and profits, too, correct?
>
> *A.* In part.
>
> *Q.* Well, did you give any thought to what was in the best interests to the Indian workers who were still in India in making the decision and continue to bring them in to Signal?
>
> *A.* Eventually.
>
> *Q.* Eventually when?
>
> *A.* When we made the second – or started the second process to apply for more – more H2B visas.
>
> *Q.* That's in –
>
> *A.* Later in 2007.

(Schnoor Dep. 150:7-151:18) This one piece of testimony speaks volumes about Signal.

F. False Promises Relating to Employment

Yet another false promise was made to putative class members by Signal concerning Indian workers' employment. Following the skills tests administered by Signal representatives in India, all Indian workers who passed were given the same offers of employment by Signal. (Bingle Dep. 85:25-86:25, 90:4-8) These offers promised permanent first-class positions with first-class wages ($18 per hour/$27 per hour for overtime). (Ex. 381; Bingle Dep. 90:4-19) Yet, in a classic bait and switch, the Indian workers arrived at Signal and were each required to sign "terminable at will" employment agreements and pass a second skills test. This second test was something that Schnoor acknowledged was "unique" to the Indian workers: "We tested them twice." (Schnoor Dep. 162:10-15) After the second test, those Indian workers whom Signal deemed to be somehow deficient were compelled to accept wage reductions of up to 30%, and in some instances were subject to termination. (Schnoor Dep. 223:14-225:23; Bingle Dep. 213:18-214:16; Duhon Dep. 51:7-52:15)

By February 2007, within weeks of many of the Plaintiffs' arrival, Signal also began implementing a "Yes/No" program evaluating the skills and compliant attitudes of all the Indian workers and terminating any worker that it concluded was a "No" even if the worker had a pending H-2B visa extension. (Schnoor Dep. 204:9-207:14; Rigolo Dep. 90:8-13; Snyder Dep. 187:10-188:19; Ex. 390; Binion Dep. 137:18-141:23; Bingle Dep. 135:10-15; Schnoor Dep. 203:8-205:12; Duhon Dep. 84:15-85:13) The testimony of the head of production at Signal's Orange, Texas facility, Barney Duhon, about this "Yes/No" program was revealing: "you've got 150 or 160 workers who cannot be worked or used here in Texas anymore . . . they can't stay. They've got to either go to another place of work [impossible under the H-2B program] or they've got to go back to India, home, where they came from. That's not my fault." (Duhon Dep. 127:4-15) Duhon's attitude is inherently problematic in light of the assurances given to the Indian workers by Signal as well as by Dewan, Pol and Burnett.

G. Oppressive and Discriminatory Conditions Endured by Plaintiffs at Signal

Yet another false promise made to Plaintiffs concerned the quality of life at Signal. In the recruiting process, Plaintiffs were promised comfortable accommodations and good food. (Padaveettiyil Vol. I Dep. 68:4-70:9; Khuttan Dep. 336:1-15; Sulekha Dep. 361:6-20; David Dep. 330:6-21) Plaintiffs were referred to Signal's website, which had no pictures of the mancamps and gave no indication of the real conditions they would confront.

In fact, Signal required the Indian workers to live in modular trailers set around a grassless, treeless yard, surrounded by chainlink fences, under guard. (Bingle Dep. 237:6-21) Signal built these Indian-only mancamps in Texas and Mississippi, facetiously referred to by Signal management as "the Reservation."[21] (Ex. 604; Ex. 837 (Sept. 1, 2006 e-mail from John Sanders to various Signal personnel)) Further, Signal management "monitor[ed]" the Indian workers to keep track of what parts of town they visited as well as to know when they were in the mancamp. (Rigolo Dep. 199:17-201:11; Ex. 825) By contrast, and tellingly, Signal never required or even allowed any of its non-Indian employees to live in the segregated mancamps. (Bingle Dep. 237:16-21; Schnoor Dep. 154:16-19, 165:19-166:15, 175:5-177:25; Duhon Dep. 103:7-20; Snyder Dep. 185:18-187:9; Schnoor Dep. 154:16-19; Cunningham Dep. 137:17-139:9)

The racially homogenous, segregated, male-only Mississippi and Texas mancamps were a textbook example of a racialized ghetto. Signal's mancamps had rules, such as "No Visitors" and "No Alcohol," which were enforced by the guards who checked Plaintiffs' bags upon entering the mancamps and occasionally conducted searches of the Indian workers' bunks and belongings. (Snyder Dep. 178:23-179:17, 181:3-7; Stevens Dep. 38:4-14, 57:21-24) The members of the putative class were the only Signal employees who were searched in this manner. Penalties for infractions

[21] John Sanders reluctantly conceded during his deposition that Signal's workers were using the term "Reservation" as a humorous racial/ethnic "double entendre" playing on the fact that the mancamp was a segregated tract of land where the migrant Indians were required to live and the fact that Native Americans, colloquially referred to as "Indians," are often relegated to segregated lands referred to as "reservations"). (Sanders Vol. I Dep. 43:21-45:23)

were $250 for the first offense (approximately a week of rent that each worker was paying to Signal), with $500 charged for a second violation. (Ex. 779 at 2, ¶ 8; Cunningham Dep. 185:5-186:17) The harsh penalties and privacy violations only applied to Signal's Indian migrant labor force.

The trailers themselves measured 36 feet by 24 feet, with up to 24 men to a trailer sleeping in 12 bunkbeds that barely left room for the Indian workers to move.[22] (Ex. 838 (pictures inside bunkhouses)) By Signal's own acknowledgment, these Indian-only bunk-houses were not OSHA-compliant, and Signal did not adhere to OSHA regulations because management concluded it would be too "onerous" to comply. (Ex. 840 (Aug. 13, 2007 e-mail from Sanders to Schnoor "Adhering strictly to this [OSHA] guideline would be onerous, in my view"); Schnoor Dep. 254:14-25; Rigolo Dep. 217:7-218:9; Ex. 630; Sanders Nov. 20, 2009 ("Vol. II") Dep. 81:4-20, 83:2-84:8 (Sanders confirming that he was well aware that more than 17 people in the bunkhouse was not compliant with OSHA standards))[23] Signal's indifference to complying with the legal requirements of OSHA is appalling, especially in light of the fact that Signal was aware that the mancamp where Indian workers were forced to live in Pascagoula, Mississippi, was built "on a lead-contaminated waste site." (Ex. 842 (Sept. 28, 2006 e-mail from John Sanders to Signal's caterer); Ex. 843 (Feb. 6, 2007 e-mail from John Sanders to Signal manager Darrell Snyder discussing various cost-saving options to deal with the unsanitary conditions in the mancamp. Sanders rules out an expensive option stating: "we don't pay through the nose for the privilege of having [the putative class] be so happy."))

[22] Plaintiffs have included, with their submission, videos of the trailers in which they were housed and respectfully request the Court to view these videos to comprehend fully the conditions which Plaintiffs were compelled to endure. (Ex. 839 (videos taken of bunkhouses inside the Mississippi mancamp on March 17, 2007))

[23] Signal's flagrant disregard for the health, safety, and well-being of the Indian workers along with Signal's attitude of it being too "onerous" to comply with Federal law on safety and health for the mancamps serve to illustrate Signal's true exploitative and discriminatory nature. It is also not coincidental that only the Indian migrant workers at Signal were subjected to these violations of health and safety and personal rights, while none of Signal's non-Indian employees were forced to endure these conditions. Aside from the obvious safety concerns, the trailers also lacked privacy and, given their proximity to the worksite, were not conducive to regular sleep, which was further aggravated by the fact that the Indian workers had to rise early to take their place in lines for the few toilets and showers. (Ex. 841 (Nov. 29, 2006 e-mail from Sanders to various Signal personnel stating "The man camp's bunk-houses need the upper bunk raised so that the bottom person can sit up in bed . . . Also, there is very little privacy in the bunk-beds right now."); David Dep. 638:6-640:4; Khuttan Dep. 510:3-511:22)

Life in the mancamps also meant that Signal dictated what meals the Indian workers would eat and at what hours – another condition imposed only on the Indian migrant workers. Putative class members ate in dining facilities that Signal itself characterized as "disgusting" and which they "pray[ed]" that the State Health Department did not inspect or "[t]hey will shut this place down." (Ex. 828; see also Ex. 674 (complaints over "bad, stale, molded, and otherwise poor quality food"); Ex. 844 (Dec. 18, 2006 e-mail from Signal employee to various Signal personnel noting that the workers are "very, very, very upset about the quality of food . . ." the limited transportation, the number of workers per trailer and that they fear that if one person gets sick they all would because of the close living quarters)) Prior to the start of their shifts, Indian workers were, unlike any non-Indian workers at Signal, forced to pack their own lunches with food from the cafeteria. Given the Gulf Coast heat and humidity, and that the work facilities had no refrigerators, Plaintiffs' food often spoiled by lunchtime. (Khuttan Dep. 512:20-514:15) Sickness was rampant in the Indian worker mancamps to which none of Signal's non-Indian workforce was exposed. (Snyder Dep. 166:3-22 (workers getting sick "on a daily basis"))

Signal's first mancamp manager, John Sanders, observed first-hand the hazardous health conditions in the camp. In February 2007, Sanders recorded the following in his personal diary:[24]

> The Indians are getting worried and believe there are unhealthful conditions in the camp. It is true. The reason is because the plumbing was so shoddily done by GE's subcontractors, and water has leaked everywhere and stagnated as a result, which serves as a bacterial breeding ground . . .

(Ex. 621 (Feb. 7, 2007 diary entry by John Sanders))

Notwithstanding the abysmal living conditions of the Indian workers of which Signal was well aware (Sanders Vol. II Dep. 20:4-21:20), Signal deducted from the paycheck of every Indian H-2B worker $1,050 per month. (Binion Dep. 30:25-31:3, 57:4-13, 59:9-12; Schnoor Dep. 168:3-11;

[24] During the entire period that Sanders worked at Signal (July 2006–November 2009), he kept a diary recording his personal thoughts relating to his work and life experiences. These diaries serve as contemporaneous records of the events at issue in this litigation as they unfolded both because Sanders was privy to much of Signal's planning and because he made these entries not expecting that they would ever be read by any other person.

Ex 845 (Deduction authorization for "Accommodations for Temporary Workers" allowing "non-refundable" deductions of "$35.00 per day / 7-days per week," from Plaintiffs' paychecks); Ex. 64 (Employment Agreement for "work pursuant to H-2B visa" authorizing a non-refundable $35 per day deduction)) Putative class members asking to live outside the mancamp were told that the $1,050 would be deducted from their wages regardless of whether they lived in the camps – financially compelling the Indian workers to stay in the camps. (Bingle Dep. 203:20-204:3 (confirming that Signal understood that the $35 per day fee "financially compelled" the workers to live in the camps))

The $35 per day amount was calculated by Signal to cover its costs for day-to-day operations of the camp, its capital cost investment in the mancamps, as well as company expenditures such as constructing testing facilities. (Snyder Dep. 185:18-187:9; Schnoor Dep. 154:16-19; Cunningham Dep. 137:17-139:9; Ex. 846 (Sept. 27, 2006 e-mails amongst Signal personnel allocating $35/day fee to building company testing facilities)) Plaintiffs were the only workers in all of Signal who had to forfeit a portion of their wages toward repayment of the company's capital investments. (Schnoor Dep. 165:19-166:15) Indeed, Schnoor advocated for Signal to deduct an even greater amount of mancamp fees ($54 per day) from the Indian workers' paychecks, using what he perceived to be their experience in India as a benchmark and arguing that since the workers would be living better and earning higher net wages than they had earned in India, they should be "happy campers." (Ex. 671) Needless to say, the basis of Schnoor's assessment of both the conditions in the mancamp and of the net financial impact on Indian workers was horribly misguided, and reflected Signal's condescending attitude toward and discriminatory treatment of the putative class.[25]

[25] Signal's exploitative treatment of Plaintiffs was, at times, shockingly discriminatory and derogatory. (Ex. 847 (Feb. 14, 2008 e-mail from Darrell Snyder to Signal's Human Resources Director, Tracey Binion, referring to an Indian worker as a "f*****g Keralite"); Ex. 786 (Signal manager, Darrell Snyder, advising his manager, Signal V.P. Bill Bingle, and Signal's Human Resources Director, Tracey Binion, that he intends to go on a "rat hunt" through the Indian worker mancamp to expose Indian workers who speak out against Signal); Ex. 674 (putative class members described by Signal as "chronic 'Whiners'"); Ex. 848 (Nov. 28, 2007, e-mail from Rhonda George, Signal's final mancamp manager, to Darrell Snyder, joking about setting up an arena and taking bets on fights between Indian workers); Ex. 849 (Dec. 5, 2008 e-mail from Rhonda George to Tracey Binion referring to Indian workers in a disparaging manner); Ex. 445 ([Signal's] CEO, Richard Marler, in a media interview, disgracefully referring to the desperate suicide attempt of Plaintiff Sabulal as

Signal's CFO even referred to the mancamps, which Plaintiffs were compelled to live in and pay for, as a "profit center" for Signal. (Cunningham Dep. 171:18-23; Ex. 850 (man camps are to "be a 'profit' center, since theoretically we will be collecting more from the tenants than the expenses incurred.") Signal deducted $35 per day from all of the Indian H-2B workers' paychecks for these profit centers. (Schnoor Dep. 165:9-166:15; Cunningham Dep. 173:13-18 (Signal's CFO conceding that the $35 per day charge was only deducted from the workers' after-tax revenue meaning the workers were fully taxed on the $35 even though the value of what the workers received for these payments was far less than $35)) In 2007, the only full year that Signal ran the camp before this litigation was filed, it made a profit of over $730,000 from the daily $35 wage deduction. (Ex. 851 (Signal Report on Mississippi and Texas mancamp profit))

Signal's drive to extract actual "cash-in-hand" revenue, over and above the cheap labor it was already getting from the putative class of Indian workers, guided Signal's entire approach to the putative class members and further distinguished them from all of Signal's non-Indian employees.[26] It was the crucial impetus in Signal's willingness to continue with the Indian worker program that even Signal could see was not running smoothly – the rampant illness and widespread worker discontent to name but the two most obvious examples. In fact, by just the third month into the Indian worker program – January 2007 – Ron Schnoor, Signal's Senior V.P., was questioning "the whole deal of the Indians being here" until he realized that Signal needed the $1050 per month from

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"theatrics, a bunch of nonsense")) Not to be outdone, Defendants Pol and Burnett exchanged e-mails extolling the virtues and comparing scores achieved on the video game "Border Patrol", a Swastika-laden racist game hosted on a well-known white supremacist website where the object is for the player to kill 88 undocumented immigrants (88 is a well-known neo-Nazi reference meaning "Heil Hitler"). (Ex. 564) Especially for Burnett, an immigration attorney licensed to practice in Louisiana, this conduct is inexcusable.

[26] Notably, John Sanders, Chris Cunningham, Signal's CFO, and Thomas Rigolo, Signal's former Senior V.P., all testified to the fact that at the very same time as the putative class of Indian workers arrived to work at Signal, Signal President Richard Marler had plans to take Signal public and get "super rich" as Sanders put it. (Ex. 649 (April 19, 2007 Sanders diary entry)) Cunningham testified that in 2006 and 2007 Signal was looking to go public and that in order to do so it needed to have a clean balance sheet and a healthy profit margin. (Cunningham Dep. 60:17-61:12; 64:4-67:23) Therefore, cost and revenue management of the Indian H-2B workers was a significant priority. (Cunningham Dep. 64:18-68:2) Rigolo testified that he first learned Signal wanted to go public in the summer of 2006, at the same time that Signal was working with its co-Defendants to recruit Indian workers. (Rigolo Dep. 251:2-252:3)

each of the hundreds of putative class members (which he and John Sanders calculated to be $3 million annually) to offset Signal's operating and capital costs. (Ex. 852 (John Sanders's Jan. 19, 2007 diary entry); Cunningham Dep. 150:14-18) Without the mancamp fee that Signal extracted as a direct wage deduction from only the Indian workers, Schnoor was not in favor of keeping the Indian workers, whom he believed were "not as physically strong as redneck South Mississippi boys and simply do not work fast. . ." (Ex. 852) The putative class of vulnerable Indian workers was not just vital in providing Signal cheap, compliant and easily exploitable labor, but was also an easy target for the company to further take economic advantage of and bolster its corporate revenue.

H. <u>Inevitable Consequences of the False Promises</u>

Plaintiffs universally relied on Defendants' false promises of permanent residency and employment, as well as good living and work conditions, in incurring enormous debts to pay the exorbitant recruitment fees. This had the impact of placing Plaintiffs in the untenable position as H-2B visa holders of having to endure the conditions and impositions (mancamp rules and wage deductions and reductions to name a few) of Signal, or otherwise return to India penniless and deep in debt or abscond from Signal. The putative class never would have paid such incredibly exorbitant fees, for which they went into substantial debt, if not for the promise of a good standard of living and permanent residency for the class members and their wives and children. (David Dep. 254:21-255:1, 315:5-317:11, 563:24-566:1; Kandhasamy Dep. 89:1-12, 93:1-7, 300:14-25; Sulekha Dep. 71:10-74:9; Khuttan Dep. 313:13-314:14; Thangamani Dep. 295:23-297:15)

Defendants Dewan, Pol and Burnett knew the Indian workers were paying for permanent residency, which is why they charged far more in fees to the putative class members than they typically would for an H-2B recruitment. (Pol Dep. 80:5-14, 83:7-16; Burnett Dep. 856:16-857:16, (H-2B fees would not exceed $6,000)) It was how Dewan justified charging each worker several years' worth of salary. (Dewan Dep. 518:25-520:22, 523:18-526:21) Signal, too, knew, as John

Sanders expressly recorded: "assurance of green card is why they came." (Ex. 521 (Bingle) (emphasis added)) Plaintiffs also relied on the promise of long-term employment, at a first-class $18 hourly wage, which Signal knew as well. (Bingle Dep. 87:1-13) Despite the fact that Signal had no specific intention of filing green card applications for all or any of the Plaintiffs, and was intending to re-test, cut wages and even terminate Plaintiffs at will, Signal took no steps to warn Plaintiffs of the falsehoods that underpinned their expectations. Instead, Signal exploited Plaintiffs' predicament.

I. Defendants' Exploitation of Plaintiffs

Once the putative class members had mortgaged their financial futures based on false promises of green cards, long-term employment at first-class wages and good working and living conditions, they were trapped. Despite the two year wait for word of green cards for the initial workers, and despite the substitution of H-2B visas for green cards for the initial workers and the new recruits in 2006 under the auspices of Signal, there were no refunds once cash was collected from putative class members. (Pol Dep. 171:7-13 ("We didn't refund anybody"); Ex. 669 (Dewan and Burnett informing Signal that a "refund of fees is not acceptable for several reasons."))[27] To the contrary, Defendants resorted to reassurances and threats designed to keep each worker in the program (and paying additional fee installments) – guaranteeing that Defendants would get their full fees and ultimately that Signal would get all the Indian workers it needed. (David Dep. 390:20-392:5)

[27] Pol's testimony that no refunds were given (Pol Dep. 176:16-24 (A: "Would you want to give back money that you didn't know where it came from or who collected it?") was consistent with Plaintiffs' testimony that any resistance to proceeding with the program or giving additional installments was greeted with threats of forfeiture of money paid to date. (Sulekha Dep. 354:25-355:13) Dewan testified that he gave hundreds of thousands of dollars in refunds, to which Burnett and Pol refused to contribute (Dewan Dep. 883:5-17); but that testimony is not corroborated by any documentation and is further undermined by Dewan and Burnett's joint refusal to issue refunds to the putative class at Signal's request in early 2007. (Ex. 669 (Feb. 12, 2007 letter from Sachin Dewan to Signal: "Thank you for your letter of January 31, 2007. I have discussed your proposal with Malvern Burnett and we both agree that a refund of fees is not acceptable for several reasons.")) As well, internal e-mails amongst Dewan, Pol and Burnett claiming Dewan actually stole money from them further dispels this claim that refunds were issued. (Ex. 469 (Apr. 24, 2007 e-mail from Michael Pol to Sachin Dewan: "You fucking asshole[,] Mal [Burnett] and I [Pol] listened to the recording that the candidate made on his cell phone of you [Dewan] taking money and making him agree to tell us that he was refunded. What you have done is unbelievable we thought you were our friend. Fuck you"); Dewan Dep. 550:10-16; Ex. 853 (Apr. 30, 2007 e-mail from John Sanders to Bill Bingle, Ron Schnoor, et. al. stating "I am confident the workers never received [refunds from Dewan].")

For the workers who, by November 2006, had not yet been sent to Signal, the compulsion to pay and stay in Defendants' scheme was unavoidable because Dewan had possession of each worker's passport between the time of his Consular interview and subsequent departure for the United States, and Plaintiffs understandably feared that their passports and monies paid would not be returned if they did not do as they were told. (Sulekha Dep. 181:24-183:7; Khuttan Dep. 288:11-289:24; Ex. 822 (Mar. 22, 2007 e-mail from Sachin Dewan to Signal stating that Dewan is holding the workers' passports); Ex. 853 (Apr. 30, 2007 e-mail from John Sanders to Bill Bingle, Ron Schnoor, et. al., noting "This is an example of the affidavit which the workers from Dubai must sign for Dewan Consulting. It says they paid no money, which is false. They paid the same $14,000 or so as everyone else; their signatures were the price Sachin [Dewan] charged to give their passports back.") (emphasis added)) Indeed, the final step before the putative class members flew to the U.S. involved having to wait in line to proceed through Dewan's cramped offices to make the last installment payment, in cash, to Dewan and his colleagues.

Along with this final payment, Defendants required Plaintiffs to execute numerous documents (including English-only documents) shown to the Indian workers just prior to their departure for the U.S.[28] (Khuttan Dep. 296:16-299:23, 294:1-295:12; Thangamani Dep. 543:22-544:13, 514:3-515:22, 517:23-518:10, 550:2-18; Dewan Dep. 872:16-874:9) If any worker expressed reluctance to pay or to sign, Dewan threatened to tear up his passport and visa. (Khuttan Dep. 451:7-24; Thangamani Dep. 517:11-518:4; Sulekha Dep. 354:25-355:13 (witnessed Dewan write "X" through passports of those who contested)) Given that Dewan held onto the workers' passports until the documents were signed and final fees paid – and the workers had already paid thousands of dollars in fees prior to arriving at

[28] One of the documents that Dewan compelled the workers to sign within the last few hours before their departure stated that Dewan would not be liable for anything that happened once the Indian workers arrived in the U.S.; this document, however, also re-confirmed Signal's "promise[]…to file and process …employment base Green Card under EB3 category." (Exs. 351 at ¶ 5, 344 at ¶ 5, 500 at ¶ 5, 505 at ¶ 5, 502 at ¶ 5 (Dewan's Memoranda of Understanding with David, Sulekha, Kandhasamy, Thangamani, and Khuttan)) This confirmation of Signal's promise of green cards in this coerced document evinces the promises that Dewan was making to the workers to wheedle the final payment from them.

Dewan's office for final payment – the duress for the workers in signing documents that they neither understood nor had time to read is undeniable.

Signal learned of Dewan's and Burnett's coercive practice of withholding passports from the putative class members, but did not view the practice as a problem. (Ex. 822 (Mar. 22, 2007 e-mail from Sachin Dewan to Thomas Rigolo and Susan Carlquist-Matte stating "Mr. Tom, I have been waiting for your reply regarding the pending candidates. Based on your answer I can release their passports, as I have a lot of pressure from the candidates.")[29]

In November 2006, Signal recruits, who were still in India, called Signal to ask if they could work for Signal without going through Dewan, Pol and Burnett. Signal uniformly and consistently refused to allow them to do so even after learning of the crippling fees that the Indian workers were forced to pay Signal's agents, and after Signal expressly acknowledged learning that the putative class members were promised green cards. (Sanders Vol. I Dep. 233:6-21, 236:11-237:13; Ex. 618; Bingle Dep. 95:2-96:7) Signal's insistence on the conditions under which the Indian workers would come to work at Signal reinforces the class-wide nature of the wrongs underlying the claims for relief sought in this action, and ratified the previous and ongoing conduct of Signal's agents.

Upon arrival at Signal, the coercive nature of the scheme continued. The Indian workers had no say over whether they would be sent to Mississippi or Texas, which trailer they would be assigned to at the respective mancamp, or even whether they would work day or night shifts. (David Dep. 638:25-640:4; Rigolo Dep. 209:19-210:15) Workers also had no say as to what jobs they would perform, and there was a perception among the Indian workers that they were discriminated against by the Signal foremen and assigned the most dangerous and undesirable tasks, which they were

[29] Rigolo claims to have never read this three-line e-mail because he had resigned from Signal several days earlier. However, Susan Carlquist-Matte, Signal's Head of Human Resources for its Texas operations, and who still works at Signal to this day, clearly knew of Dewan's actions as she was cc'd on the e-mail to Rigolo. More importantly, Rigolo testified that even though he may not have read this particular e-mail, he may nonetheless have known about Dewan's and Burnett's passport withholding practice and testified that "I probably would have assumed that holding passports is part of the application process, and therefore I would not have had any concerns with it." (Rigolo Dep. 153:22-154:19)

compelled to accept given their severe financial distress. (Khuttan Dep. 347:18-348:11, 507:4-508:2 (Indian workers given more difficult/dangerous tasks because they couldn't leave))

Signal executives drafted policies specifically and uniquely for its migrant Indian workforce.[30] As each group of Indian workers arrived at Signal they were required to sign employment agreements that acceded to their employment to be terminable at will (Binion Dep. 38:3-19; see also Ex. 854 (first employment agreement); Ex. 48 (housing agreement); Ex. 779 at ¶¶ 6, 8 (revised housing agreement that each and every Indian H-2B worker had to sign in 2007, mandating strict adherence to Signal's mancamp rules and setting out monetary fines for failure to comply) The only choice for any Indian worker who did not wish to sign the Signal employment agreement, or did not wish to live in or pay for the Signal mancamp, or did not wish to perform the specific tasks assigned, or did not wish to agree to 30% wage deductions, was to return to India, destitute and vulnerable to serious harms (including the risk of physical violence perpetrated by loan-sharks from whom they had borrowed money, the likelihood of bankruptcy which would also expose the Indian workers' families to social ostracism, shame, possible forced evictions from their homes and banishment from their communities). The other untenable option for Plaintiffs was to abscond from Signal in violation of the terms of the H-2B visa, which would render them out of legal status in the U.S. (Schnoor Dep. 184:10-185:25) While a jury can evaluate Signal's culpability in compelling compliance from the Indian workers, for class purposes Signal's actions, which were uniformly applied to the entire putative class, constitutes another of the central common questions that predominates.

[30] "Q. And were there forms that the Indian H2B workers signed that other people didn't sign? A. Yes.
Q. Okay. And by that, you mean that there were forms that Indian H2B workers signed that non-Indian workers didn't sign? A. You talking, like, the Employment Agreement? Q. I think that would be one of them. There would be an Employment Agreement. There would also be housing rules, I would assume. Is that something that only H2B workers signed? A. Yes. Q. Man camp rules and regulations -- A. Yes.
Q. -- is that something that only H2B workers would sign? A. Yes. Q. Payroll deduction form for the $35 a day deduction, is that something only H2B workers would sign? A. Yes." (Binion Dep. 30:3-31:3)

From the early stages of its involvement in Defendants' scheme, Signal had a "use and discard" attitude towards the Indian workers. Signal, though obliged to seek permanent residency for the workers (Ex. 423), instead treated the workers as fungible and expendable. Signal would keep only those workers whom it viewed as skilled and compliant, and even then only as long as there was enough work to keep them productive and profitable. (Schnoor Dep. 46:10-50:20, 54:4-56:6, 70:10-72:6) If they didn't work out or if demand dried up – just as what happened in Texas by March 2007 – then Signal would simply send the Indian workers back to India. (Duhon Dep. 127:4-15)

The devastating effect of the callous indifference that guided Defendants, and in particular Signal management, in bringing vulnerable workers from halfway across the world, was recorded in Sanders's diary (describing a conversation with putative class representative, Dhananjaya Kechuru):

> They [Dhananjay and Babulal] had taken their [Signal on-site] test today and failed. They were devastated. All this way to come, all this hope for a job, and suddenly now the answer - Nothing. There would be no job for them at Signal Orange. As we drove back to Beaumont, Dhananjay, whom I really like, was utterly dejected. He cried out, "You fail me in Dubai, no problem. I come here and you fail me - Problem! What I do now?". He and Babulal had tears welling in their eyes and said, "How will we pay our debts?". Their tears did not lie. Despite the affidavit signed by the workers saying they'd paid no money, in fact they actually had. Sachin [Dewan] has it and it covers his rear-end. Their signing their names to this lie was ransom paid for getting their passport back. Sachin [Dewan] is a cheat. It makes me sick.

(Ex. 855 (John Sanders's April 27, 2007 diary entry) (emphasis added) Sanders's entry captures the Indian workers' powerless position. Thus, Signal's decision to keep bringing in waves of workers, even when Signal undoubtedly knew the predicament of the workers – because Signal "needed the workers" (Schnoor Dep. 41:20-25) – was as unconscionable as it is legally culpable.

J. March 9, 2007: "Black Friday"

March 9, 2007 was a defining day in Defendants' coercive and fraudulent scheme, in terms of its planning and its impact on the putative class members. In the days leading up to March 9, 2007 which became known even among Signal management as "Black Friday" (Ex. 786), Signal

Mississippi mancamp manager Darrell Snyder learned that two of the Indian workers, Sabulal Vijayan ("Sabulal") and Jacob Joseph Kaddakkarappally ("Jacob Joseph") were meeting with outside attorneys (Ex. 443) and, in Snyder's words, "creating unrest." (Snyder Dep. 56:13-18)[31] Signal's retaliation against these Indian workers, who were exploring and advocating on behalf of their and other workers' legal rights, was swift and unequivocal – termination, unlawful detention and attempted forced deportation.[32]

After consultation with U.S. Immigration and Customs Enforcement ("ICE"), Signal chose to carry out its decision with a public display in front of the entire population of Indian workers in the mancamp, using physically intimidating security guards ("healthy boys", "capable of lifting and carrying") (Snyder Dep. 67:2-24)[33] to orchestrate a "secret police-like" round-up of Sabulal, Jacob Joseph, as well as several allegedly non-productive workers that Signal chose to terminate. The raid was conducted at 5:30 am, when "the most amount of workers [were] present." (Stevens Dep. 73:13-74:3; Bingle Dep. 222:18-223:6) In fact, Signal security liaison, Colline Stevens, had suggested that Sabulal and Jacob be terminated quietly at their workstations, in order to be "less disruptive," rather than publicly in front of all of the other Indian workers, but Snyder told her that he had been instructed to carry out the terminations in the mancamp. (Stevens Dep. 67:10-69:16) As Darrell Snyder admitted, this was done as "an example" to the other workers of what happens when you cause unrest in Signal's camp. (Snyder Dep. 74:3-7; Ex. 721 at 2-3 (Incident Summary regarding events of March 9, 2007, authored by one of Signal's security personnel, Pat Stopher, noting "Mr.

[31] Dewan was consulted by Signal with respect to Sabulal and Jacob Joseph; he recommended that "the workers who have initiated this problem should be deported first." (Ex. 446)

[32] There is no dispute that the termination of these two workers, both of whom were good workers (Bingle Dep. 228:9-21), was based on them being viewed by Signal as "rabblerousers." (Ex. 646; Snyder Dep. 56:13-18; Bingle Dep. 228:9-21; Ex. 789 at SIGE0006247 (a Signal Employee review form of Sabulal from March 5, 2007 (just four days prior to his round-up and forced deportation): "Sabulal is very capable and compitant [sic] in his work. He is A very Good employee"]))

[33] At some point during the morning of March 9, 2007, Signal also requested an armed guard to be dispatched to the mancamp. (Snyder Dep. 119:6-120:25)

Snyder wanted to make an example of these men [the Indian workers that Signal intended to deport] to the other Indians.”))

After being forcibly rounded up, the Indian workers were placed under guard in a trailer, where they were told they would remain for several hours until Signal would take them to the airport to return them to India – jobless and deep in debt. (Stevens Dep. 67:3-68:3) Signal’s forced physical restraint, abuse of the legal process, detention and attempted deportation of the two Indian workers were to be used as a forceful demonstration to the Indian workers that resistance to Signal’s rules and demands was unacceptable and would result in similar punishment. The emotional toll of Signal’s actions was so extreme, and the despondency that the Indian workers faced so severe, that one of the workers, Sabulal Vijayan, attempted suicide. (Snyder Dep. 104:8-105:6)

When the Pascagoula police arrived at the mancamp, having been called because of reports that workers were being held against their will (Snyder Dep. 12:6-13:6), Signal personnel provided false statements to the police that no Indian workers had been detained. (Ex. 444 (Pascagoula Police Dep’t Report)) Signal also instructed the security guards to falsify incident reports to this effect. (Ex. 447 (Incident Report)) Despite Signal’s actions, the accounting of the incident was faithfully recorded in John Sanders’s diary: “The workers were dragged from the breakfast line or their bunks early in the morning, then forced to sit in the lounge for many hours . . .” (Ex. 646; see also Snyder Dep. 122:22-123:6) Despite Signal’s attempts to whitewash its illegal conduct, Snyder finally admitted in his deposition giving instructions to the security guards to forcibly bring the terminated Indian workers to a trailer and “keep them here . . .” (Snyder Dep. 80:12-82:18, 101:20-102:5)[34]

There can be no doubt that the Indian workers were unlawfully detained, and Signal’s egregious treatment of these men was indicative of its true nature and attitude toward the putative

[34] When one of the detained Indian workers needed to use the restroom, one of Signal’s employees even had to track down Snyder in order to obtain permission to escort the Indian worker to the bathroom. (Snyder Dep. 125:3-9)

class.[35] There can also be no doubt that Signal's actions had their desired effect, both in the depth and the breadth of the message being sent. First, Indian workers felt even more compelled to compliantly work at Signal in spite of the circumstances. Second, the severity of the threat of Signal's punishment extended through the Mississippi camp and into the Texas mancamp, as the Indian workers in Texas within a few hours learned of the detention and attempted deportation. (Rigolo Dep. 231:25-233:13) As Signal's head of Human Resources testified, the "unrest" stirred up by Sabulal and Jacob Joseph died down after the Indian workers were terminated. (Binion Dep. 94:3-95:11; see also Schnoor Dep. 149:23-150:6)

To further assure there would be no more "unrest" and no more attempts by workers to seek legal redress for the terrible conditions confronting the workers, Signal Senior V.P. Ron Schnoor, also in March 2007, addressed the entire Mississippi camp with a "carrot and stick" message. In this March 2007 address, (attended by Burnett)[36] and secretly audio-recorded by an Indian worker, Schnoor assured putative class members they would be at Signal for the "long term." (Ex. 676 (audio recording of Schnoor's speech, authenticated during his deposition, Schnoor Dep. 301:4-302:9, 304:6-19, 310:7-312:15)) Schnoor's assurance was indisputably false, given that Signal still had not decided which, if any, of the Indian workers would be retained even beyond the initial ten month visa period. (Schnoor Dep. 314:15-315:7, Bingle Dep. 115:9-19) Schnoor's representations were especially disingenuous because, even as Schnoor was assuring the Indian workers to their faces, Signal's "Yes/No" program was in full swing and many of the same putative class members standing

[35] Signal's attitude toward the public service advocates who were trying to help the workers, many of whom gathered outside Signal's gates on March 9, 2007 after learning of the morning's events, was similarly disparaging: "This group of radical left-wing fascist do-gooders, these blatherskites, these clouds without rain, were the devil's tool at Signal." (Ex. 646 (Mar. 12, 2007, John Sanders diary entry)

[36] Dewan also flew from India to Mississippi on March 9, 2007, to assist Signal in quieting the workers "caus[ing] problems." (Ex. 446) He was not at the mancamp during the March 9, 2007 round-up, and it does not appear that he attended the camp meeting at which Schnoor addressed the workers. Within days of Schnoor's speech, Burnett traveled to the Orange, Texas facility to give a speech to the Texas workers as a follow up to the speech given to the workers in Mississippi. (Rigolo Dep. 269:9-22, 274:14-19)

in the audience would not even have their visas extended past July 2007. (Ex. 448; Schnoor Dep. 305:6-306:6; Bingle Dep. 148:25-149:16)[37]

In addition to Signal giving yet another false assurance to the Indian workers, Schnoor also made a serious direct threat to all of the Indian workers: If any Indian worker chose to file a lawsuit against Signal, Signal would refuse to extend any of the H-2B visas for any of the Indian workers, and all of the Indian workers would be deported. (Ex. 676; Schnoor Dep. 313:4-314:3) Indeed, Rigolo, who was of equal seniority to Schnoor, testified at his deposition that a statement that an Indian worker's visa would not get extended if that worker pursues a lawsuit could rightly be understood as "[a] threat to prohibit the person from pursuing a lawsuit." (Rigolo Dep. 246:14-247:1) As described in the Argument section, Signal's actions and threats comprised the very type of abuse of legal process to compel labor that defines human trafficking under the TVPA.

After the events of "Black Friday" on March 9, 2007, Signal also began to make clear to the Indian workers that their performance was constantly being evaluated, and any workers who failed to satisfy any of Signal's demands would not have their H-2B visas extended (Schnoor Dep. 211:24-212:13) – in Schnoor's words "the extension is leverage we could use to incentive improvement in skill and attitude." (Ex. 448 (emphasis added); see also Snyder Dep. 192:23-194:9)[38] Signal applied this "leverage" knowing full well that without visa extensions, the Indian workers' only choices were to return to India in crushing debt, with its appurtenant harms, or to "abscond" from Signal in violation of the terms of their H-2B visas. (Schnoor Dep. 214:23-215:16) Conditions at Signal were so bad, however, that escaping is what many Plaintiffs ultimately chose to do. By March 2008, at the time this lawsuit was filed, more than three quarters of the putative class had left Signal.

[37] Incredibly, in the summer of 2007, Signal intended to replace these workers with new groups of Indians arriving on H-2B visas, because Signal still viewed Indian workers as a cheap, disposable source of labor, and Signal wanted to keep the mancamps full to recoup its capital investment. (Ex. 449)

[38] Signal V.P. Bingle, to whom Schnoor's "leverage" instruction was directed, testified that the uncertainty of the evaluation process would cause workers to abscond, and Signal had an economic interest in keeping these relatively cheap workers. (Bingle Dep. 165:18-166:21, 170:6-24) Despite Signal's differing versions of the truth, the "Yes/No" program itself was a breach of the promises made to putative class members.

IV. ARGUMENT

A. Standard for Class Certification

Initial determination of class certification is a procedural issue that is not based on the merits of the case. See Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 178 (1974) ("[T]he question is not whether the plaintiff or plaintiffs have stated a cause of action or will prevail on the merits, but rather whether the requirements of Rule 23 are met."); Oscar Private Equity Invs. v. Allegiance Telecomm., Inc., 487 F.3d 261, 268 (5th Cir. 2007) ("Rule 23's requirements must be given their full weight *independent* of the merits.") (emphasis in original). The Rule 23 inquiry asks how common conduct and common evidence will affect merits determinations. See Alaska Elec. Pension Fund v. Flowserve Corp., 572 F.3d 221, 229 (5th Cir. 2009); Alabama v. Blue Bird Body Co., 573 F.2d 309, 320 (5th Cir. 1978). In ruling on the motion for class certification, the Court must take the substantive allegations of the complaint as true. See In re Chiang, 385 F.3d 256, 262 (3d Cir. 2004) (citing Eisen, 417 U.S. at 177-78); Griffin v. Home Depot, 168 F.R.D. 187, 189 (E.D. La. 1996); In re Catfish Antitrust Litig., 826 F. Supp. 1019, 1033 (N.D. Miss. 1993). The Court should employ a presumption in favor of maintaining a class action, for it is always subject to modification in light of later developments. See Jones v. Diamond, 519 F.2d 1090, 1098 (5th Cir. 1975), disapproved on other grounds by Gardner v. Westinghouse Broad. Co., 437 U.S. 478 (1978); Hamilton v. First Am. Title Ins. Co., 266 F.R.D. 153, 158 (N.D. Tex. 2010) ("the Fifth Circuit has held that judges should err in favor of certification"); see also Fed. R. Civ. P. 23(c)(1)(C).

Plaintiffs seek class certification under Federal Rules of Civil Procedure 23(a) and 23(b)(3).[39] The requirements for certification under Rule 23(a) are met if

> (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the

[39] The Court has issued a Minute Order (Rec. Doc. 926) granting Signal's motion to dismiss Plaintiffs' (b)(2) claim for injunctive relief. Plaintiffs note that the said Order provides that the Court's final order on class certification will include a ruling on the (b)(2) issue; Plaintiffs, therefore, have included a prayer for injunctive relief in the instant class certification motion.

> representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a). A Rule 23(b)(3) class requires that questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. Fed. R. Civ. P. 23(b)(3). Plaintiffs' class claims meet the requirements of Rules 23(a) and 23(b)(3). Therefore, this case should be certified as a class action.

B. Plaintiffs Satisfy All of The Rule (23)(a) Elements

1. The Class Satisfies the Numerosity Requirement and Joinder is Impracticable

Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." Impracticability is not impossibility but difficulty or inconvenience. See Stoffels v. SBC Commc'ns, Inc., 238 F.R.D. 446, 451-52 (W.D. Tex. 2006). A class of more than 40 members will generally be impracticable for joinder. Mullen v. Treasure Chest Casino, L.L.C., 186 F.3d 620, 624 (5th Cir. 1999). In this case, although the precise size of the class is known only to Defendants, Plaintiffs have alleged that the class has more than 500 members. (Rec. Doc. 946 (2d Am. Compl.) at ¶¶ 1, 78; see also 856 (Signal telling U.S. workers that it has applied to the U.S. government for visas for 590 guest workers)) Indeed, Signal has admitted that "approximately 490 foreign workers came to the United States." (Rec. Doc. 122 (Answer) at ¶ 317) Courts routinely hold joinder to be impracticable when the class is much smaller than the putative class here. See Mullen, 186 F.3d at 624; Gutierrez v. LVNV Funding, LLC, No. EP-08-cv-225, 2009 U.S. Dist. LEXIS 54479, at *9-10 (W.D. Tex. Mar. 16, 2009) (23(a)(1) satisfied by showing of 39 known class members and an estimated 100 potential class members); Choice Inc. of Tex. v. Graham, No. 04-1581, 2005 U.S. Dist. LEXIS 11585, at *8 (E.D. La. June 3, 2005) (numerosity satisfied where class consisted of at least 35 members).

Other considerations demonstrate the difficulty of joinder and therefore support class certification. Plaintiffs and other class members are migrant workers who have had to move in search of work. (Rec. Doc. 946 (2d Am. Compl. ¶¶ 1, 14, 15, 78)) As foreign nationals, Plaintiffs and other class members are relatively unfamiliar with the United States legal system and most are uncomfortable speaking and reading English. (Id. at ¶¶ 78, 87b; Rec. Doc. 165-77 (Nair Decl.)) Many courts have found class certification appropriate on the basis of similar characteristics. See Recinos-Recinos v. Express Forestry, Inc., 233 F.R.D. 472, 479 (E.D. La. 2006) (H-2B worker plaintiffs' dispersion through Mexico and Guatemala and lack of fluency in English rendered joinder impracticable); Anderson v. Douglas & Lomason Co., 122 F.R.D. 502, 505 (N.D. Miss. 1988) (numerosity satisfied by 95 putative class members, some of whom were located in Illinois, Georgia and Texas).

2. Named Plaintiffs' and Class Members' Claims Present Common Questions

Rule 23(a)(2) requires that there be "questions of law or fact common to the class." This requirement is expressed in the disjunctive and is satisfied by a showing of either a common question of law or fact. Fed. R. Civ. P. 23(a)(2). It is not necessary that all questions of law or fact be common. In the Fifth Circuit, "the threshold of commonality is not high," Forbush v. J.C. Penney Co., 994 F.2d 1101, 1106 (5th Cir. 1993) (internal citations omitted), and is met "'where there is at least one issue, the resolution of which will affect all or a significant number of the putative class members.'" Mullen, 186 F.3d at 625.

In the predominance section, infra, Plaintiffs set forth a dozen or more additional questions of law and fact. As to each question, resolution for one plaintiff will resolve the class's claims. This satisfies commonality. See Hamilton, 266 F.R.D. at 159-164 (discussing commonality determination); In re FEMA Trailer Formaldehyde Prods. Liab. Litig., No. 07-1873, 2008 U.S. Dist. LEXIS 107688, at *19 (E.D. La. Dec. 29, 2008) (same) (citing James v. City of Dall., 254 F.3d 551,

570 (5th Cir. 2001)); Anderson, 122 F.R.D. at 505 (commonality satisfied by common questions regarding defendant's policy and practice).

3. Plaintiffs' Claims Are Typical

For a class to be certified, the named plaintiffs' claims must be "typical of the claims . . . of the class." Fed. R. Civ. P. 23(a)(2). "The test for typicality. . . is not demanding." McWaters v. FEMA, 237 F.R.D. 155, 161 (E.D. La. 2006) (quoting James, 254 F.3d at 571); see also Forbush, 994 F.2d at 1106; Turner v. Murphy Oil USA, Inc., 234 F.R.D. 597, 605 (E.D. La. 2006) ("[T]he threshold for typicality is low: class representatives must show similarity between their legal and remedial theories and the theories of the rest of the class. Typicality does not require that the claims of the class are identical, but rather that they share the same essential characteristics – a similar course of conduct, or the same legal theory") (internal citations omitted).

The claims of the putative representatives are typical of the class. The named representatives allege that they, and the putative class members, were subjected to a common recruitment scheme in which they were promised, in exchange for payments of thousands of dollars, employment-based green cards, good jobs in the United States, and procurement of their green cards prior to the expiration of their H-2B visas. (Khuttan Dep. 143:17-25, 146:24-147:14, 237:5-241:18, 274:3-277:8, 284:2-25, 313:13-314:14; Kandhasamy Dep. 194:20-196:24, 396:7-398:6, 424:2-425:22; Sulekha Dep. 138:1-140:15, 146:8-150:9, 163:4-19; David Dep. 180:12-183:13, 241:22-243:11; Thangamani Dep. 54:3-57:1, 217:14-21; Dhananjaya Dep. 65:9-66:9, 70:10-72:23, 76:3-77:15, 129:4-130:17, 192:3-193:4; Padaveettiyil Mar. 17, 2009 ("Vol II") Dep. 43:8-17, 53:11-55:5, 83:1-22; see also Pillai[40] Dep. 23:11-24:10, 394:9-395:13, 402:5-406:19) Having descended deeply into debt and having traveled to the United States, the putative representatives, like the rest of the class, found that the conditions were not what they had been promised. (Sulekha Dep. 67:1-73:17, 81:2-20, 313:11-

[40] A few putative class members were witnesses for Signal. Despite testifying for Signal, some of their testimony corroborated the class representatives' testimony and is cited here.

317:21, 347:21-348:18; Khuttan Dep. 245:2-23; Thangamani Dep. 220:17-224:4, 275:25-276:18; David Dep. 209:4-22; Dhananjaya Dep. 193:6-194:18, 306:20-307:7; Padaveettiyil Vol. II Dep. 50:4-22; Padaveettiyil Mar. 18, 2009 ("Vol. III") Dep. 63:1-7; Kandhasamy Dep. 152:1-21; see also Vallentine Dep. 62:3-63:9, 104:3-24, 359:2-362:20) Instead of green cards and decent living and working conditions, Plaintiffs[41] were sequestered in over-crowded and tightly controlled labor camps, subjected to threats of deportation, and falsely promised permanent residency sponsorship as "leverage" to compel compliant behavior. (Ex. 448; Thangamani Dep. 56:1-57:9, 183:10-184:1, 357:15-24; Khuttan Dep. 189:1-22, 327:13-25, 330:2-24, 334:3-25, 336:1-15, 378:1-19, 381:7-382:20, 502:18-504:23, 510:3-511:22; Kandhasamy Dep. 219:22-221:13; David Dep. 207:19-208:17, 495:19-496:7; Ex. 840; Ex. 717 (Security Procedure Manual for Man Camp Facility); Ex. 48 (Man Camp Housing Rules Agreement); see also Vallentine Dep. 275:4-22, 277:23-278-22) Such allegations of common treatment satisfy typicality. See Shipes v. Trinity Indus., 987 F.2d 311, 316 (5th Cir. 1993) (finding typicality satisfied by allegations that defendants' supervisors in different plants used "similar discriminatory employment practices"); Henry v. Cash Today, Inc., 199 F.R.D. 566, 572 (S.D. Tex. 2000) (finding typicality satisfied where plaintiffs alleged *inter alia* that all class members took out payday loans from defendants).

Further, the same legal theories — for example, that Defendants' recruitment scheme and employment practices constitute involuntary servitude, forced labor, and human trafficking — underlie the claims of all the class members. (Rec. Doc. 946 (2d Am. Compl.) at ¶¶ 273-283, 293-331, 335-344, 348-351) These common legal theories satisfy typicality. See Forbush, 994 F.2d at 1106 (finding typicality satisfied where the claim that defendant had a practice of overestimating benefits was typical of all class members, even though the representative plaintiff was covered by a

[41] As detailed in footnote 5, supra, the small group of putative class members who did not work at Signal also found the situation far different from the high-paying job and green card they had been promised. They too had mortgaged their futures but had no income with which to repay their debts. For these putative class members, the Court has the option to certify a sub-class.

pension plan different from many in the class); Stoffels, 238 F.R.D. at 453 (typicality satisfied where named plaintiffs alleged the same legal theories on behalf of themselves and other class members).

4. The Representatives and Class Counsel[42] Adequately Protect Class Interests

Rule 23(a)(4) requires that "the representative parties . . . fairly and adequately protect the interests of the class." Thus, the class representatives' interests should not conflict with those of the class members. Mullen, 186 F.3d at 625-26. In this case, the interests of the named representatives are consistent with those of the other members of the proposed class. All class members have the same interest in obtaining compensation and other relief for their injuries caused by Defendants' racketeering, human trafficking and other unlawful acts. The named representatives will not benefit in any way from actions that will prove harmful to the interests of the members of the class. See id.

Moreover, the class representatives have shown willingness to vigorously represent the class. The seven putative class representatives have collectively sat for eighteen days of depositions, during which they have shown their understanding of the harms that they and other putative class members have suffered. The putative representatives have participated in extensive interviews with counsel during the drafting of the complaint and the RICO fraud chart and have communicated with Plaintiffs' counsel regularly regarding the progress and strategy of this case. (Bhatnagar Decl. at ¶¶ 2 - 3) When this Court called for settlement offers and a settlement conference, the class representatives participated in regular phone calls with counsel to craft Plaintiffs' settlement position. (Bhatnagar Decl. at ¶ 4) In short, the putative class representatives have shown their willingness to be the face of this lawsuit on behalf of the putative class.

[42] Counsel for Signal, Burnett, Dewan, and J&M have stipulated to the adequacy of Plaintiffs' counsel and the adequacy of counsel is not likely to be contested by the remaining defendants, who are pro se. Plaintiffs' counsel are experienced in complex federal class action litigation and will zealously and competently represent the interests of the class. (Ex. 857 (Counsels' Decls.)) The Southern Poverty Law Center, Dewey & LeBoeuf, the American Civil Liberties Union, the Asian American Legal Defense and Education Fund, and the Louisiana Justice Institute have sufficient funds to finance this litigation, have advanced costs thus far, and will continue to do so. (Ids.)

C. Plaintiffs Satisfy the Requirements of Rule 23(b)(3)

1. Class Treatment is Superior to Individual Cases

Rule 23(b)(3) sets forth a non-exclusive list of factors pertinent to the Court's inquiry into the superiority of a class action:

> (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by . . . members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the difficulties likely to be encountered in the management of a class action.

Fed. R. Civ. P. 23(b)(3).

With respect to the first factor, it is extremely unlikely that individual class members have any interest in instituting or controlling their own individual actions. With few exceptions, they are Malayalam, Hindi, Tamil, or Telugu speakers lacking fluency in English and, as described, supra, they are unfamiliar with the United States justice system. (Rec. Doc. 946 (2d Am. Compl. ¶¶ 78, 87b); Rec. Doc. 165-77 (Nair Decl.)) Confronted with migrant workers, courts typically find that the first factor weighs toward the superiority of class treatment. See Recinos-Recinos, 233 F.R.D. at 482 (finding superiority prong is met where class members "reside in Mexico and Guatemala, are not fluent in English and lack sufficient resources to bring an individual lawsuit"); Iglesias-Mendoza v. La Belle Farm, Inc., 239 F.R.D. 363, 373 (S.D.N.Y. 2007) (finding superiority where "[t]he proposed class members are almost exclusively low-wage workers with limited resources and virtually no command of the English language or familiarity with the legal system"); Saur v. Snappy Apple Farms, Inc., 203 F.R.D. 281, 289 (W.D. Mich. 2001) ("[T]he interest in individual lawsuits is minimal in that the class mechanism allows class members for a more effective and far reaching remedy than would be available to them on an individual basis."); Rodriguez v. Carlson, 166 F.R.D. 465, 480 (E.D. Wash. 1996) ("With their lack of English, their presumably limited understanding of the legal system, the fact that few live permanently within the [state], and their generally indigent

status, it is highly unlikely that the individual plaintiffs would pursue this litigation if class certification were not allowed."); cf. Bertulli v. Indep. Ass'n of Cont'l Pilots, 242 F.3d 290, 299 (5th Cir. 2001) (holding that to show lack of superiority, "defendants must not merely show that individual actions are *feasible*; they must show that individual class members have an interest sufficient to make individual actions *desirable*.") (emphasis in original).[43] Indeed, "the first factor, individual control over the litigation, . . . matters mainly when absent class members have personal injury claims." White v. Imperial Adjustment Corp., No. 99-3804, 2002 U.S. Dist. LEXIS 26610, at *50 (E.D. La. Aug. 6, 2002). In the instant action, personal injury damages are not sought on behalf of the class.

The second criterion is inapplicable in the context of this case as Plaintiffs' counsel knows of no separate action commenced by any members of the class. (Bhatnagar Decl. at ¶ 5) The Court should therefore assume this is the only action concerning this controversy. See Saur, 203 F.R.D. at 289 (in the absence of mention of previous lawsuits, court will assume that no such lawsuits have been filed).

With respect to the third factor, in light of the risk of inconsistent judgments in other jurisdictions where this action could be filed, and to promote judicial economy, it is highly desirable to limit these actions to this forum. See In re Educ. Testing Serv. Praxis Principles of Learning & Teaching: Grades 7-12 Litig., MDL No. 1643, 2006 U.S. Dist. LEXIS 9726, at *19 (E.D. La. Mar. 13, 2006) ("Because of the common issues in this case, resolution in a single forum would be beneficial to the class and would promote judicial economy."); White, 2002 U.S. Dist. LEXIS 26610, at *53 ("[T]he piecemeal approach is rife with shortcomings, not the least of which is the possibility of inconsistent adjudications with regard to an identical course of conduct."). Additionally, "the

[43] This case involves parties and witnesses in the U.S. and India. Plaintiffs' counsel are among the few law firms able to commit the resources and advance the costs to represent clients in a public interest case such as this. It is therefore very unlikely other attorneys would take on a parallel civil action, particularly where an individual's prospective recovery would hardly justify the time and expense of bringing his claims. See White, 2002 U.S. Dist. LEXIS 26610, at *52.

value of concentrating litigation in this forum is great as this Court has already made several rulings in this case thus far." Lehocky v. Tidel Techs., Inc., 220 F.R.D. 491, 511 (S.D. Tex. 2004).

With respect to the final factor to be considered, although every class action presents administrative difficulties, the benefits of maintaining this action on a class basis far outweigh any administrative burdens. Nearly 400 putative class members have opted into the FLSA claims, (Rec. Doc. 984 (Notice of Filing FLSA Consents 390-394)), and it is reasonable to expect that these putative class members would file individual actions should class treatment be denied. Duplicative discovery processes, repeated adjudications of similar disputes and excessive costs would likely result from requiring each plaintiff to bring an individual claim. As a complex action, individual adjudications of every issue for each worker would require tremendous expenditure of judicial resources and risk inconsistent rulings. "The purpose of class actions is to conserve 'the resources of both the courts and the parties by permitting an issue potentially affecting every [class member] to be litigated in an economical fashion.'" Jenkins v. Raymark Indus., 782 F.2d 468, 471 (5th Cir. 1986) (alteration in original) (citing Gen. Tel. Co. of the Southwest v. Falcon, 457 U.S. 147, 155 (1982).

As explained infra, though the class members' damages may vary, the calculation of these damages will be based largely upon records of wages paid and fees collected, which Defendants kept in the ordinary course of business. Therefore, these calculations basically will be ministerial in nature. Still, even if "there is a possibility that some damages calculations would be burdensome[,] . . . the economies of class treatment of the numerous common issues weigh in favor of class treatment." Bertulli, 242 F.3d at 299. Further, the size of the class – approximately 500 members – is very much manageable. See Mullen, 186 F.3d at 627-28 (finding a class of "hundreds, instead of millions" to be manageable); Henderson v. Eaton, No. 01-0138, 2002 U.S. Dist. LEXIS 274, at *16 (E.D. La. Jan. 2, 2002) (same); contrast Castano v. Am. Tobacco Co., 84 F.3d 734, 747 (5th Cir. 1996) (finding a class of several million unmanageable). For these reasons, management of the class

action will not present significant difficulties and a class action is the superior mechanism to resolve these claims.

2. Common Questions of Fact and Law Predominate

For a class to be certified under Rule 23(b)(3), it is necessary that "questions of law or fact common to the members of the class predominate over any questions affecting only individual members." Fed. R. Civ. P. 23(b)(3). "[I]n determining whether common issues predominate over individual ones, a factor the court must consider is whether the issues are subject to generalized proof." In re Ford Motor Co. Bronco II Prod. Liab. Litig., 177 F.R.D. 360, 366 (E.D. La. 1997) (citing Blue Bird Body Co., 573 F.2d at 320-324). This predominance test does not require that every issue of fact or law be common to the class, but only that some questions are common and that these predominate over individual questions. Steering Comm. v. Exxon Mobil Corp., 461 F.3d 598, 601 (5th Cir. 2006); Jenkins, 782 F.2d at 472 ("In order to 'predominate,' common issues must constitute a significant part of the individual cases.").

Plaintiffs' claims require extensive but identical factual and legal determinations as to all putative class members' claims. Plaintiffs' RICO claims alone require determinations, as essential elements of each class member's claims, of the existence of three enterprises, the use of each enterprise to engage in patterns of racketeering activity and the conduct of each enterprise by eleven different Defendants. Plaintiffs' additional claims require interpretation of six human trafficking laws and two federal discrimination statutes; interpretation of a common core of documents; and determinations of Defendants' intent and knowledge, the latter of which will be based on interpreting their testimony, written communications and conduct. Denial of class certification would require each individual Plaintiff to present this same proof with redundant arguments about its meaning. The claims are complex; class discovery alone has taken more than two years. That complexity, combined with the mobility and limited English skills of the plaintiff class, as well as the expense of

discovery, makes individual suits excessively expensive and burdensome compared to the potential recovery for any individual. Where a case's complexities would overwhelm individual recoveries, "[e]conomic reality dictates that petitioner's suit proceed as a class action." Eisen, 417 U.S. at 161.

The Court is not deciding the merits of Plaintiffs' claims, but rather whether to certify a class. In the subsections below, Plaintiffs show how the class claims in this case depend on common questions of law and shared proof such that these questions predominate over individual questions.

i. Trafficking Victims Protection Reauthorization Act ("TVPA")

Plaintiffs allege that Signal, Pol and the Dewan defendants engaged in trafficking in persons, attempted trafficking, forced labor, unlawful document-related practices in furtherance of trafficking, involuntary servitude and enticement into modern-day slavery. See 18 U.S.C. §§ 1583, 1584, 1589, 1590, 1592 and 1594. Defendants may violate the TVPA by means of subtle coercion including non-violent physical restraint, threats of deportation, and "intentionally causing the victim to believe that [his] family will face harms such as … starvation, or bankruptcy in their home country." H.R. Rep. No. 106-939 at 101, 106th Cong., 2d Sess. 99-101 (2000);[44] see also United States v. Calimlim, 538 F.3d 706, 713 (7th Cir. 2008); United States v. Sung Bum Chang, 237 Fed. Appx. 985, 988 (5th Cir. 2007); Bradley, 390 F.3d at 153, vacated on other grounds, 545 U.S. 1101 (2005). That is precisely what happened here.

Because Congress added the private right of action for trafficking victims to sue under the TVPA only in 2003, whether to certify a class for a TVPA claim is a question of first impression in the Fifth Circuit. The rare court to have ruled on class certification of a human trafficking lawsuit[45] found all the Rule 23 requirements satisfied because "[t]he plaintiff Does' alleged injuries, although different, all stem from the same alleged conspiracy amongst the defendants to dominate and control the garment work force of Saipan." Does I v. The Gap, Inc., No. cv-01-0031, 2002 WL 1000073, at

[44] For the Court's convenience, a copy of the Report is attached with the cited section highlighted.
[45] Does v. The Gap predated the TVPA's private right of action. The plaintiffs alleged, inter alia, that the defendants had violated the RICO statute by subjecting their employees to peonage and involuntary servitude.

*7 (N.D. Mar. I. May 10, 2002). The Does case, like the instant case, is one in which the Court can determine liability by adjudicating, in a single trial, the conduct of Defendants. In neither case does the number of plaintiffs change the basic calculus for the Court. The question, at all times, remains: Did Defendants violate the TVPA by trafficking Indian men to the United States to perform forced labor as fitters and welders?

In enacting the TVPA, Congress defined "involuntary servitude" to include "any scheme, plan, or pattern intended to cause a person to believe that if the person did not enter into or continue in such condition [of involuntary servitude], that person or another person would suffer serious harm or physical restraint or the abuse or threatened abuse of the legal process," 22 U.S.C. § 7202(5) (emphasis added). In addition, Congress created the crime of "forced labor," 18 U.S.C. § 1589, which incorporates identical language. In introducing this concept of "serious harm," Congress *inter alia* broadened the definition of involuntary servitude to encompass psychological and other subtle forms of compulsion beyond the stunted understanding in pre-TVPA jurisprudence such as United States v. Kozminski, 487 U.S. 931 (1988) and its short-lived progeny.

Central to the TVPA's protections are the new prohibitions against the use of "abuse" or "threatened abuse of legal process" or a "scheme, plan, or pattern intended to cause the person to believe that … that person or another person would suffer serious harm… " to provide or obtain that person's labor. Accordingly, the U.S. Court of Appeals for the First Circuit upheld a jury instruction defining "serious harm" as

> both physical and non-physical types of harm. Therefore, a threat of serious harm includes … threats of any consequences, whether physical or non-physical, that are sufficient under all of the surrounding circumstances to compel or coerce a reasonable person in the same situation to provide or to continue providing labor or services.

Bradley, 390 F.3d at 150.[46] Therefore, "[t]he test of [whether an employee faces] undue pressure is an objective one, asking how a reasonable employee would have behaved. ... [K]nown objective conditions that make the victim especially vulnerable to pressure (such as youth or immigration status) bear on whether the employee's labor was 'obtained' by forbidden means." Id. at 153; Shukla v. Sharma, 07-cv-2972, 2009 U.S. Dist. LEXIS 90044, at *35 (E.D.N.Y. Aug. 14, 2009).

In the context of class certification, the TVPA's creation of this objective "serious harm" test positions TVPA claims of forced labor and involuntary servitude claims as perfect for class treatment. See, e.g., Yokoyama v. Midland Nat'l Life Ins. Co., 594 F.3d 1087, 1093 (9th Cir. 2010) (objective test in consumer fraud statute makes case appropriate for class certification); Seiffer v. Topsy's Int'l, Inc., 520 F.2d 795, 796 (10th Cir. 1975) (declining to review decision granting class certification where underlying statute used objective "reasonable investor" test). In the instant case, the entire class shares key characteristics relevant to the manner in which they were trafficked. All putative class members are Indian men brought to the United States under the auspices of non-transferable H-2B visas for which exorbitant fees were charged. Whether a reasonable person in this situation who had paid exorbitant fees for the H-2B visa, would feel compelled to work at Signal under the classwide circumstances of forced residence in overcrowded, segregated and guarded housing, monitored movement, attempted public forced deportation of dissenters, lack of portability to other jobs, false promises of permanent legal status and risk of financial and social ruin in India is a common merits question for the jury to resolve. Still, it is inherently a common question based on an objective standard.

[46] In 2008, Congress amended the forced labor statute to specify a definition of "serious harm" that is very similar to the Bradley court's definition: "The term 'serious harm' means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm." P.L. 110-457, Title II, Subtitle C, § 222(b)(3), 18 U.S.C. § 1589(c)(2) (Dec. 23, 2008).

Similarly, whether Signal compelled the labor of Plaintiffs "by means of abuse or threatened[47] abuse of law or legal process," 18 U.S.C. § 1589(a)(3), is also a common question applicable to the class. Examples of "abuse or threatened abuse of the legal process" accepted by courts include withholding or providing false information about forms of immigration relief, Calimlim, 538 F.3d at 713, and threats of deportation. Id. ("The immigration laws do not aim to help employers retain . . . employees by threats of deportation, and so their 'warnings' about the consequences were directed to an end different from those envisioned by the law and were thus an abuse of the legal process."); Catalan v. Vermillion Ranch Ltd. P'ship, No. 06-cv-01043, 2007 U.S. Dist. LEXIS 567, at *24 (D. Colo. Jan. 4, 2007) (H-2A guestworkers stated a claim under TVPA for "threatened abuse of law or the legal process" where they were threatened with deportation); United States v. Garcia, No. 02-CR-110S-01, 2003 U.S. Dist. LEXIS 22088, at *23 (W.D.N.Y. Dec. 2, 2003) (threatening victims with deportation "clearly fall[s] within the concept and definition of 'abuse of legal process' since the alleged objective was to intimidate and coerce the workers into forced labor.").[48]

Plaintiffs and other class members suffered three types of abuse of legal process. First, as is well-documented on pages 30-34 of this brief, on March 9, 2007, Signal rounded up and detained a group of workers with the intent to forcibly deport them. These actions targeted two of the H-2B workers who had been most vocal in complaining about the false promises of green cards and the poor living and working conditions at Signal. Signal management has admitted that it hoped the round-up would "make an example" to the remaining workers to keep their heads down and accept their dismal state of affairs. The common evidence of the March 9 incident – most strikingly the

[47] A "statement is a threat if a reasonable person would believe that the intended audience would receive it as a threat, regardless of whether the statement was intended to be carried out." Calimlim, 538 F.3d at 713; United States v. Hart, 226 F.3d 602, 607 (7th Cir. 2000). Signal's V.P., Tom Rigolo, testified that he would perceive as a threat Schnoor's statements about terminations if workers filed a lawsuit. (Rigolo Dep. 246:14-247:1)

[48] Like "serious harm," Congress defined "abuse or threatened abuse of the legal process" as part of the 2008 amendment to the TVPA to mean "the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action." P.L. 110-457, Title II, Subtitle C, § 222(b)(2), 18 U.S.C. § 1589(c)(2) (Dec. 23, 2008) (emphasis added).

well-known attempted suicide by one of the detainees – and the message that it sent to the workers in Mississippi and Texas, would make a reasonable person understand himself to be facing an untenable choice: either work in silence or face deportation and financial ruin.[49] Second, Signal continued to falsely promise workers they would receive green cards if they continued to work there. (Schnoor Dep. 53:16-19; 150:7-22) Having invested up to $20,000 in the process, it was reasonable for class members to feel compelled to continue working at Signal in the hopes that the promises of green cards might be fulfilled. In a third example of abuse of legal process, Signal organized a mandatory meeting for its Pascagoula, Mississippi workers in March 2007. Present at that meeting, among others, were Ron Schnoor from Signal and Defendant Malvern C. Burnett, who continued to hold himself out as an attorney capable of simultaneously and ethically representing both Signal and the workers. Burnett suggested to these worker "clients" that obtaining T visas based on allegations that his other client (Signal) had engaged in human trafficking would be virtually impossible, (Burnett Dep. 458:23-461:9), implying that they had no options but to continue to work for Signal or return to India in crippling debt. Burnett's admonitions were designed to keep the workers at Signal and were a virtual replica of the conduct held to be an abuse of the legal process in Calimlim. Calimlim, 538 F.3d at 713. Signal V.P. Schnoor's message to workers in group meetings equally constituted the very definition of abuse of legal process: behave and keep your mouths shut, and Signal will employ you long-term (a lie at the time it was spoken); meet with lawyers and bring claims against Signal and every Indian worker will be terminated and deported (an all-too-honest threat). (Ex. 676; Schnoor Dep. 301:4-302:9, 313:4-314:3; Rigolo Dep. 246:14-247:1)

In addition to the class-wide applicability of the objective "serious harm" test, class certification is appropriate because the forced labor statute forbids a "scheme, plan, or pattern" intending to compel labor. Plaintiffs allege that Signal and others engaged in a common scheme

[49] Of note, the March 9, 2007 attempted forced deportation occurred approximately four months after the latest date Signal confirmed it learned of the Indian workers' exorbitant debt. Therefore, Signal was well aware of the fear this public deportation display would cause these workers. (Snyder Dep. 108:10-109:22)

designed to make Plaintiffs and putative class members believe they would suffer serious harm or physical restraint if they did not work for Signal without complaint. See 18 U.S.C. § 1589(2) (2008).[50] The existence of the scheme does not hinge on individualized proof of compulsion, as Signal has argued in the past. Rather, it requires only that Defendants acted with intent to make Plaintiffs and class members fear serious harm or restraint. Id. Defendants' scheme, which was directed at all of the Indian migrant workers, was for the purpose of compelling those workers' labor. See Does I v. The Gap, Inc., No. cv-01-0031 2002 WL 1000073 at *7 (D. N. Mar. I. May 10, 2002) (in involuntary servitude class action, rejecting defendants' arguments that plaintiffs' claims required individualized inquiries into plaintiffs' mental states and the causes of such mental states).

A common scheme presents a classic scenario for class treatment. See, e.g., Bratcher v. Nat'l Standard Life Ins. Co., 365 F.3d 408, 421 (5th Cir. 2004) (reversing district court's denial of class certification, "particularly in the face of defendants' common scheme of fraudulent concealment"); Stoffels, 238 F.R.D. at 458 (class certified because plaintiffs allege a common plan). Class treatment is highly appropriate for a cause of action that "focus[es] entirely on the Defendant's conduct, and require[s] no individualized inquiry other than the amount of damages, if any, owed to each plaintiff. ... [T]he individualized quantum determination does not preclude the Court from finding the predominance requirement is met."[51] Turner, 234 F.R.D. at 609; see also id. at 607 (where "the majority of the elements" focus on the defendant's conduct, common claims predominate, even though "there will be some individualized inquiry.").

Additional common questions of law and fact under the TVPA include the following:

[50] This subsection was renumbered 18 U.S.C. § 1589(a)(4) in 2008. 110 P.L. 457, 122 Stat. 5044 (Dec. 23, 2008).

[51] The TVPA's forced labor and involuntary servitude sections, and their subparts, require a showing that defendants "knowingly" and/or "willfully" acted in ways that the defendants intended to force plaintiffs' labor. See 18 U.S.C. §§ 1584, 1589, 1590, 1592. The knowledge and intent of these Defendants is a common question of fact that Plaintiffs will prove – in the merits phase – through Defendants' own testimony and writings which are applicable to Defendants' conduct towards the plaintiff class as a whole. See, e.g., In re Firstplus Fin. Group, Inc. Sec. Litig., No. 3:98-CV-2551-M, 2002 U.S. Dist. LEXIS 20446, at *10 (N.D. Tex. Oct. 23, 2002) (in certifying class for "fraud-on-the-market" claims, a common issue is "whether Defendants acted with knowledge."); Hanrahan v. Britt, 174 F.R.D. 356, 365 (E.D. Pa. 1997) (finding common issues predominate in ERISA action, "issues regarding any misrepresentations/omission, materiality, and intent are relevant . . . and thus common to all members of the class.").

1. Whether Signal intentionally created a population more vulnerable to forced labor, see Chang, 237 Fed. Appx. at 988, by housing Plaintiffs in crowded, unsanitary trailers which made them sick, subjecting them to 24-hour guard surveillance, denying them guests, privacy and adequate opportunities for sleep, providing spoiled and low-quality food, deteriorating Plaintiffs' health due to squalid conditions and publicly terminating workers who advocated for workplace rights;

2. Whether the following conduct of Pol, Dewan and/or Signal constituted, to a reasonable person in Plaintiffs' position, "serious harm," "physical restraint," "abuse of legal process," and threats thereof under 18 U.S.C. § 1589 and/or § 1584:

   a. Charging exorbitant recruitment and accommodation fees;

   b. exploiting workers' fears of verbal, legal and physical harassment, retaliation and violence, as well as loss of moral standing, shame, starvation and bankruptcy, if workers could not repay their debts;

   c. manipulating workers' desperation for the long-promised green cards by, in the words of Mr. Schnoor, using visas as "leverage," (Ex. 448);

   d. threatening deportation if workers displeased Signal, and publicly carrying out the March 9, 2007 attempted deportations in order to make "an example" of Plaintiffs Sabulal and Jacob Joseph to cow the class into accepting conditions at Signal.

3. Whether Pol and Dewan promised to get workers green cards and jobs in exchange for payments of approximately $11,000 to $20,000;

4. Whether Signal authorized Dewan and/or Pol to offer jobs based on permanent residence visas, or ratified the same, by actions including

   a. contracting with Pol to provide for a "permanent resident (I-140) process," (Ex. 423);

b. giving Dewan broadly worded Powers of Attorney which designated him as Signal's "representative in India to facilitate the recruitment of skilled workers … for employment under the temporary and permanent resident program," (Ex. 665; Ex. 512 (Bingle)) (emphasis added);

c. through V.P. Bill Bingle, allegedly telling Dewan that Signal would file for green cards for all the putative class members (Dewan Dep. 746:2-747:4); and

d. Bingle telling workers who inquired about green cards that Signal "would take care of those filings," (Bingle Dep. 182:14-20)

5. Whether the March 9, 2007 terminations, detentions and attempted deportations were carried out publicly to make an example of the terminated workers for Signal's other H-2B workers;

6. When and to what extent Signal became aware of the exorbitant recruitment fees the putative class members paid to Dewan, Pol and Burnett.

In each example above, Defendants' conduct is not a piece of circumstantial evidence unable to outweigh individual variations. Rather, it is an essential element of each putative class member's claims. As noted above, determinations of Defendants' conduct will inherently be proven on common evidence. As set forth in the Facts section, the evidence gathered thus far shows that Defendants did not distinguish between workers in recruiting and employing them. Dewan, Pol and Burnett had each candidate sign identical written agreements. (Exs. 350, 342, 500, 505 (Burnett's contracts with David, Sulekha, Kandhasamy and Thangamani); Exs. 354, 345, 500, 327 (Pol's contracts with David, Sulekha, Kandhasamy and Thangamani);[52] Exs. 351, 344, 500, 505, 502 (Dewan's Memorandum of Understanding with David, Sulekha, Kandhasamy, Thangamani and Khuttan)) Dewan showed workers the identical PowerPoint presentation, (Dewan Dep. 457:17-

[52] Rao and J&M's substantially similar contracts with workers also promised green cards: "WHEREAS, [J&M /Rao]…intend[s] to sponsor expert, highly skilled and experienced Shipyard Workers for U.S.A. Green card/Permanent residency status and … shall … pursue the Immigration process…", Exs. 526 (Pol) (J&M Associates contract), 578 (IAS contract).

458:12; Ex. 684), and falsely promised job candidates "across the board" that Signal would apply for green cards "for everybody." (Dewan Dep. 393:22-394:5, 436:7-437:17, 442:7-445:5) While workers were in India, Signal, through Dewan, gave each worker an identical offer of employment, (Ex. 381), and had each Indian H-2B worker sign identical employment agreements. (See, e.g., Ex. 348 (Signal Employment Agreement between Signal and David signed May 26, 2006)) Once the workers were in the Signal camps in the United States, Signal had them sign new – but still identical – sets of agreements for employment, housing, payroll deductions and rules governing the behavior of H-2B candidates, (Exs. 64, 179, 201 (first version of U.S.-signed Signal Employment Agreements for work "pursuant to H-2B visa" signed by Santhosh Pillai Feb. 2, 2007, signed by Paul Vallentine Nov. 29, 2006, and signed by Ramesh Gunisetti Nov. 30, 2006, respectively) and Exs. 300, 294, 808 (second version of U.S.-signed Signal Employment Agreements for H-2B workers signed by David Feb. 16, 2007, signed by Hemant Khuttan Jan. 26, 2007 and signed by Kechuru Dhananjaya June 7, 2007, respectively); Exs. 48, 76, 811, 858, 859 (Man Camp Housing Rules Agreement signed by Soloman Arava Oct. 31, 2006, signed by Santhosh Pillai Feb. 2, 2007, signed by Kechuru Dhananjaya Jun. 7, 2007, signed by Andrews Padaveettiyil Oct. 31, 2006, and signed by Hemant Khuttan Jan. 26, 2007, respectively); Exs. 63, 181, 779, 860 (H-2B Resident Housing Agreement signed by Santhosh Pillai June 27, 2007, signed by Paul Vallentine Jan. 23, 2007, signed by Sabulal Vijayan Jan. 28, 2007 and signed by Hemant Khuttan Jan. 26, 2007, respectively); Exs. 75, 812, 861, 862 (Signal Auth. for Payroll Deduction for "Accommodations for Temporary Workers" signed by Santhosh Pillai Feb. 2, 2007, signed by Kechuru Dhananjaya June 7, 2007, signed by Andrews Padaveettiyil Oct. 31, 2006 and signed by Hemant Khuttan Jan. 26, 2007 respectively); Ex. 641 (Jan. 28, 2007 Sanders to Binion e-mail asking for 266 copies of Signal's new Housing Agreements before a meeting with the workers so he could "get them to sign" the Agreements); Binion Dep. 30:3-31:3 (all Signal's Indian H-2B workers signed agreements, including an Employment agreement, Housing

Agreement, Man Camp Rules and Payroll Deduction for $35/day that other Signal direct hires did not sign)) All H-2B workers at Signal were compelled to live in Signal's segregated, fenced-in and overcrowded housing facilities (Binion Dep. 57:4-13), where they were subjected to the constant presence of security guards at the sole gate, mandatory bag and badge checks, random searches and denial of visitors. (Ex. 717 (Security Procedures Manual, at 2-6); Stevens Dep. 34:19-35:3, 38:4:14, 41:13-15, 57:21-24)

The trial on the TVPA claims will turn on common questions – such as Defendants' knowledge and intent, the correct interpretation of six TVPA subsections and whether a reasonable person in a Plaintiff's position would have felt compelled to work at Signal under the alleged conditions. Determinations of the conditions will be made through generalized proof – such as documentary evidence of the conditions at Signal's man camps; agreements governing and testimony – mostly by Defendants' themselves – about the recruitment and employment, and Defendants' admissions about visa promises. Commonalities in such complex legal and factual determinations will vastly outweigh individualized issues.

ii. Racketeering Influenced Corrupt Organizations Act ("RICO")

To violate RICO, a defendant must engage in, or conspire to engage in, the conduct of an enterprise through a pattern of racketeering activity. Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 496 (1985). Here, Plaintiffs allege that the Defendants committed or conspired to commit racketeering activities through RICO enterprises by engaging in mail fraud, 18 U.S.C. § 1341; wire fraud, 18 U.S.C. § 1343; immigration document fraud, 18 U.S.C. § 1546; and various human trafficking-related crimes, 18 U.S.C. §§ 1583, 1584, 1589, 1590 and 1592(a).

For the former Signal workers to obtain justice, and for the efficient use of this Court's resources, the RICO claims must be tried as a class action. The answers to the core questions of whether Signal, and each of the other Defendants, conducted or participated in RICO enterprises

through a pattern of racketeering activity will be the same for all putative class members. The proof that Signal, Dewan, Pol, Burnett, J&M and Rao conducted or participated in such enterprises and engaged in such patterns of racketeering activity will be the same whether this case is tried as a class action or as individual cases. Plaintiffs allege that Signal, Dewan, Pol and Burnett conducted or participated in enterprises seeking to fraudulently sell United States visas and job opportunities and to maintain a consistent and acquiescent labor pool at Signal through a pattern of human trafficking-related racketeering acts. As argued above, these trafficking allegations are appropriate for class certification. Plaintiffs further allege that the Defendants committed through the enterprises a pattern of mail, wire and/or visa fraud by engaging in the following conduct: (1) as to Burnett and Signal: filing attestations to the Department of Labor ("DOL") and Citizenship and Immigration Services ("USCIS") of a 10-month labor need for plaintiff class members' H-2B visas knowing that Signal's labor need was two-to-three years and perhaps permanent; (2) as to Dewan, Pol, Burnett and Signal: fraudulently promising United States green cards, visa extensions and jobs; and (3) as to all Defendants: designing and carrying out the fraudulent recruitment scheme by use of the phone, e-mail and the mails, including transactions to deliver recruitment payments from workers.

Class certification of the RICO claims in this case is also necessary for the efficient and affordable administration of justice. The factual record in this case is already extensive and complicated, even before merits discovery. It would be unduly onerous and financially burdensome (for all parties) to require each class member to prove these facts in repetitive individual cases repeating the same discovery disputes and redundant arguments about the correct interpretation of testimony and documentary evidence which is uniformly applicable to class members. See Klay v. Humana, Inc., 382 F.3d 1241, 1273 (11th Cir. 2004) (lower court was "well within its discretion in concluding that it would be better to handle this [RICO] case as a class action instead of clogging the federal courts with innumerable individual suits litigating the same issues repeatedly.") abrogated in

part on other grounds, Braswell Wood Co. v. Waste Away Group, Inc., 2:09-CV-891, 2010 U.S. Dist. LEXIS 80836 (M.D. Ala. Aug. 10, 2010); Henry, 199 F.R.D. at 572 ("Because such a [RICO] claim requires Plaintiffs to show a 'pattern of activity,' the proof in a class action and in an individual action are the same.").

Plaintiffs' claim that Dewan, Pol and Burnett collected huge recruitment fees and conscripted a vulnerable pool of workers by obtaining H-2B visas through fraudulent means — and the question whether Signal authorized or ratified these actions by its agents — exemplifies the common issues of fact which will need to be determined to resolve this case. The evidence adduced thus far includes the following: Burnett filed applications with the U.S government for 590 H-2B visas for Signal to fill a "peak load" need for a "one-time occurrence demand" that would last from October 1, 2006 to July 31, 2007. (Ex. 429 at Burnett-CY-00003, Burnett-CY-00005, Burnett-CY-00015-25, Burnett-CY-00123-126, Burnett-CY-00155-158, Burnett-CY-00167-168, Burnett-CY-00061-68 (Signal H-2B petitions for 110 welders and 180 fitters for MS and 110 welders and 190 fitters for TX, with letters in support signed by Bingle and Rigolo)) Signal V.P.s Bill Bingle and Tom Rigolo stated to the U.S. Government, under penalty of perjury, that those work dates were correct, and Burnett certified that the applications were based on "all information of which [he] had any knowledge." (see, e.g., id. at Burnett-CY-00017-18 (MS fitters), Burnett-CY-00157-158 (TX welders), Burnett-CY000067-68 (MS welders); Ex. 515 (Bingle) at 2 (DOL Application for certification of 180 fitters signed by Bingle); Ex. 595 at 2 (DOL Application for certification of 110 welders signed by Bingle); Ex. 863 (DOL Application for certification of 110 welders signed by Rigolo); Ex. 864 at 2 (DOL Application for certification of 190 fitters signed by Rigolo)) Yet, two months earlier, Signal had entered into the Signal-Global Contract (Ex. 423) to obtain Indian workers through the I-140 permanent residence process, with the workers' arrival to be expedited by H-2B visas if possible.

(Pol Dep. 196:14-198:4; 208:9-16; Dewan Dep. 430:9-439:15, 442:7-445:5; Ex. 463 (Signal-Dewan power of attorney); Burnett Dep. 518:11-519:7; Rec. Doc. 122 at ¶¶ 9 and 10)

At his deposition, Bill Bingle admitted that the H-2B application contained false facts because Signal intended to employ these workers for longer than 10 months. Bingle nonetheless lied to the U.S. government because he was following the advice of Signal's lawyer, Burnett. (Bingle Dep. 53:11-55:10; 57:12-61:21)[53] Burnett, for his part, showed his intent to have Signal lie when he told John Sanders, Signal's "point man" for the H-2B program: "[I]t is important that the embassy/consular staff not be advised that the work will extend beyond 10 months regardless of how long Signal may believe the temporary need will exist," and, "We do not want to publicize the fact that Signal may have a need for temporary workers for the next two to three years because it could jeopardize the granting of temporary work visas for the requested 10 month period." (Ex. 519 (Bingle) (e-mails from Burnett to Sanders))

Based on Signal's false applications, the government granted the H-2B visas, (Exs. 865, 866, 867, 868 (Sept. 1 and 2, 2006 e-mails from Burnett to Pol and Dewan forwarding USCIS's notice of visa approvals with a message describing the sound of a ringing cash register: "CHA CHING") Thereafter, Pol and Dewan took the putative class members' second installment payments and coached them in what to say at consular interviews to keep the workers from revealing that "we are going to process them for a green card." (Ex. 550) In these examples, as with the RICO claims generally, if class certification is denied, each plaintiff will have to present the same evidence of Defendants' conduct of operating enterprises through patterns of racketeering activity.

Plaintiffs' RICO fraud claims specifically can be certified as class claims. Plaintiffs do not seek to certify claims that require a showing of individualized reliance, but rather seek certification of fraud claims under two theories. First, in issuing the H-2B visas the government relied on

[53] At his deposition, Tom Rigolo admitted that despite the 10-month claim in the H-2B application that he signed, "a two-year time frame is what [Signal was] really shooting for." (Rigolo Dep. 88:1-10)

Defendants' attestations to the DOL and USCIS of a 10-month labor need for H-2B visas notwithstanding Signal's knowledge that its labor need was two-to-three years and perhaps permanent. Defendants would be hard-pressed to argue that the government would have issued the visas absent the false applications since the assertion of a temporary need – false in this case – was a statutory prerequisite to the issuance of the visas. 8 U.S.C. § 1101(a)(15)(H)(ii)(B); 8 C.F.R. § 214.2(h)(6)(ii)(B) (2006). Plaintiffs will show they suffered pecuniary losses directly as a result of Defendants' common wire and mail fraud directed at the U.S. government, including their deliberate misrepresentations about the temporary nature of the work. But for the government's granting of the H-2B visas predicated on this fraud, Plaintiffs and class members at the very least would not have made their last installment payment to Defendants Dewan, Pol and Burnett. Stated differently, the H-2B visa issuance resulting from the fraud proximately caused, and in fact directly triggered, Plaintiffs' last installment payment. Because there is a direct relation between the injury – the payment of part of the fees – and RICO mail and wire fraud, the Plaintiffs need not demonstrate first-party reliance on the false statements made to the government.

In refusing to adopt a narrow construction of RICO, the Supreme Court in Bridge found that "a plaintiff asserting a RICO claim predicated on mail fraud need not show, either as an element of its claim or as a prerequisite to establishing proximate causation, that it relied on the defendant's alleged misrepresentations." Bridge v. Phx. Bond & Indem. Co., 553 U.S. 639, 661 (2008); see also Warnock v. State Farm Mut. Auto. Ins. Co., 08cv01, 2008 U.S. Dist. LEXIS 81507, at *16-18 (S.D. Miss. Oct. 14, 2008) (in civil RICO action, payment of attorneys' fees were proximately caused by fraud on court by way of defendants' filing frivolous lawsuits).[54]

[54] Plaintiffs recognize that, after Bridge, the Supreme Court weighed in again on indirect fraud in Hemi Group, LLC v. City of New York, 130 S. Ct. 983, 990-991 (2010). In Hemi, New York City claimed that it lost sales tax revenue from customers based on defendants' failure to report tobacco sales to the State of New York. The Court found that, in part because the allegation was of fourth-party fraud (Defendant fraud on state resulting in customers' failure to pay taxes to city), proximate causation was too attenuated. Id. at 990. The Court also emphasized that a key test for RICO causation is "whether better situated plaintiffs would have an incentive to sue." Id. In Hemi, the Court held that the State of New

Plaintiffs' second theory of RICO fraud is that, based on Defendants' testimony, a market existed for visas, with a green card costing $10,000 to $20,000, and an H-2B visa costing $1,000 to $6,000 dollars. From this market price, a jury could infer that Plaintiffs' participation in Defendants' recruitment – which required payment of 5 lakh rupees to 8 lakh rupees (approximately $11,000 to $20,000) – shows Plaintiffs' general reliance on Defendants' promises that they would receive green cards. Burnett testified that the amount paid by the workers exceeded the dollar amount expectation for H-2B visas. (Burnett Dep. 266:25-269:17 (recruiting and legal fees for a "straight H2B" visa, i.e., an H-2B visa with no green card expectancy, for Indian workers going to Signal would range from $1,500 to $6,000), 782:18-783:13 (five lakh rupees (approximately $11,000) is the base price for a green card charged by Dewan, Pol and Burnett), 856:16-857:16 (total fees for an H-2B would cost $1,000 - $6,000) Pol admitted that a worker would not pay 5 lakh rupees unless he was going to get a green card and a high-paying U.S. job (Pol Dep. 83:7-16; see also id. 80:5-14) Pol told Signal that the fees charged by him, Burnett and Dewan were "reasonable and within the customary rate for these services charged by other labor providers to deliver skilled workers to employers such as Signal … particularly since Global Resources is providing both H-2B visa processing and lawful permanent residence in the U.S. to each of the applicants." (Ex. 559) Defendants' documents and testimony reveal that Dewan, Pol and Burnett would not process visa applications for candidates who paid less than 5 lakh (approximately $11,000). (Ex. 455; Ex. 572 (Nov. 28, 2006 Burnett-Dewan-Pol e-mail insisting on payment from a worker who wanted to be released from recruitment because his father was dying of cancer); Ex. 468 (Feb. 3, 2006 Burnett-Dewan e-mail insisting that workers pay or be replaced); Ex. 834 (Dec. 16, 2006 Burnett-Dewan e-mail threatening to revoke visa if worker does

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York, which had lost $2.75 per cigarette pack as a result of the alleged fraud, would have possessed a stronger incentive to sue. In the instant case, Plaintiffs are alleging injuries as a result of third-party fraud (Defendants' fraud on federal government resulted in Plaintiffs' payments to defendants). Further, the federal government suffered no pecuniary losses as a result of Defendants' fraud. Therefore, unlike the Plaintiffs, the government has no incentive whatsoever to file suit under civil RICO. In fact, Plaintiffs are the only parties who suffered pecuniary losses as a result of the fraud and therefore are uniquely situated to bring this claim.

not pay); Schnoor Dep 26:4-18 (testifying that disgruntlement over high fees was "common to all the candidates")) As for Signal, it understood and documented that "Assurance of green card is why they came." (Ex. 521 (Bingle)) (emphasis added)

At trial, Plaintiffs plan to introduce expert testimony showing that, in the Indian market for foreign visas, no visa candidate would have paid five lakh rupees without the expectation of permanent residency, obviating the need for testimony on individual reliance. From this and similar testimony and evidence, Plaintiffs will ask the jury to infer that a worker's participation in Dewan, Pol and Burnett's recruitment – shown by his travel on an H-2B visa procured by those Defendants – is proof of his reliance on their promises of green cards. This market approach to establishing fraud has been permitted by multiple district courts in the Fifth Circuit.[55] See, e.g., Clower v. Wells Fargo Bank, 259 F.R.D. 253, 259 (E.D. Tex. 2009) vacated on other grounds by 381 Fed. Appx. 450 (5th Cir. 2010) (in case including constructive fraud claims, class certified because "this is not a case where each individual plaintiff has suffered different intangible injuries that would result in a series of individual mini-trials on damages); Newby v. Enron Corp., 236 F.R.D. 313, 317 and 320 (S.D. Tex. 2006) (certifying class based on presumption of reliance); Choice, Inc., 2005 U.S. Dist. LEXIS 11585, at *8 (plaintiffs "are typical victims of [Defendant's] alleged improper practices and willful misrepresentations. . .. The potential Class's injuries arise out of the same course of conduct. . ."); Mays v. Nat'l Bank of Commerce, No. 1:96cv8-D-D, 1998 U.S. Dist. LEXIS 20698, at *27-28 (N.D. Miss. Nov. 19, 1998) (in a lawsuit including fraud claims, "the scheme (alleged in the complaint) was a common practice with respect to all Class members. Once the scheme is proved on a class basis, there is no need to relitigate the existence of the scheme on an individual basis."); In re Catfish Antitrust Litig., 826 F. Supp. at 1040-42 (class certified where plaintiffs presented evidence that there

[55] Most of these cases involve elements of fraud in antitrust claims or fraud on shareholders. Still, there is no reason why the general principles allowing for class-wide proof of reliance cannot apply in the instant case. Fundamentally, as with the defendants in each of these cases, Signal and the other Defendants treated the Indian migrant workers as a class and should not now be able to argue, now that they have been called out on their bad behavior, that these are individual claims relying on individualized proof.

was a price structure in the relevant industry such that objective factors would determine the price each plaintiff paid).

Consistent with these decisions, Plaintiffs in the instant case should be provided the opportunity to prove reliance on a class-wide basis. The evidence cited above, at least shows that Defendants intended to have Plaintiffs rely on the promise of green cards (Ex. 684 at Slide # 3; Burnett Dep. 856:16-857:16 (H-2B fees would not exceed $6,000)) That each class member entered the scheme is evidence that he did indeed rely on this promise. Further, the class-wide disgruntlement arising from the falsity of the promise of green cards was objectively observable by Signal management from the time the workers first arrived at Signal (Schnoor Dep. 26:4-18; Sanders Vol. I Dep. 126:3-22) This provides adequate evidence for a jury to infer reliance class-wide.

Other common questions relevant to Plaintiffs' RICO claims include the following:

1. Whether Burnett and Dewan, with Signal and Pol, J&M and Pol, and Rao, respectively, conducted enterprises with the shared purposes of obtaining skilled and compliant foreign workers for employment at Signal, J&M and Indo-Ameri Soft, respectively, and for fee payments to Dewan, Pol, Burnett and Rao, (Rec. Doc. 946 ¶¶ 273-320);
2. Whether J&M participated in the conduct of Enterprise I – a business relationship with a purpose of recruiting, transporting, providing and obtaining foreign workers to work at shipyards in the United States, including J&M's clients, through a pattern of mail fraud, wire fraud and immigration document fraud (id. at ¶¶ 281-286) — by conduct including contracting with Pol for workers, authorizing Pol and Dewan to recruit workers on behalf of J&M, signing and filling out immigration applications as directed by Burnett, employing workers obtained through such recruiting, and not pursuing the green cards promised by J&M's agents, (Wilks Dep. 23:10-26:8, 43:1-3, 49:1-4, 54:21-55:3, 74:10-75:12, 125:5-126:9; Exs. 520 (Pol), 521 (Pol), 522 (Pol));

3. Whether Rao and Indo Ameri-Soft participated in the conduct of Enterprise I – a business relationship with a purpose of recruiting, transporting, providing and obtaining foreign workers to at shipyards in the United States, including Rao's clients, through a pattern of mail fraud, wire fraud and immigration document fraud (id.) — by conduct including authorizing Dewan to recruit workers on behalf of IAS, recruiting in India and the United Arab Emirates for five weeks, and signing and filling out immigration applications as directed by Burnett, (Rao Dep. 18:20-23:6, 27:4-8, 31:17-21, 45:12-48:2, 186:21-187:12, 188:7-21, 190:20-193:4; Ex. 756);

4. Whether Signal participated in the conduct of Enterprises I, II and III — business relationships between Signal, Dewan, Pol and Burnett, and sometimes associating Rao and J&M, with the purposes of recruiting, transporting, providing and obtaining foreign workers to work at shipyards; selling green cards, visas and work opportunities to Indian workers to convince them to pay fees and to travel to the United States; and providing and maintaining a consistent and acquiescent labor force at Signal through the use of fraudulent assertions, forced labor and trafficking (id. at ¶¶ 273-320) — by conduct including:

   a. contracting with Pol for workers, (Ex. 423; Pol Dep. 192:7-193:10);

   b. authorizing Dewan to recruit workers on behalf of Signal, (Exs. 461, 512 (Bingle));

   c. signing and filling out immigration applications as directed by Burnett, (e.g., Ex. 429; Bingle Dep. 53:11-55:10, 57:12-61:21; see also Ex. 519 (Bingle));

   d. sending employees to India to test candidates to ensure they met Signal's requirements, (Dewan Dep. 395:9-396:21);

   e. requiring workers obtained through such recruiting to live in, and pay for, Signal's overcrowded, unsanitary, racially segregated and guarded labor camps, (Bingle Dep. 237:6-21; Stevens Dep. 38:4-14);

f. exploiting workers' desire for green cards by telling them that Signal would apply for visa extensions and green cards when they knew they had no intention of retaining all the workers, (Bingle Dep. 94:24-96:7, 148:25-149:16, 182:14-183:6; Schnoor Dep. 305:6-306:6, 314:15-315:7);

g. publicly terminating and attempting to deport class members on March 9, 2007, as an example to other class members, (Stevens Dep. 67:3-69:16, 73:13-74:3; Khuttan Dep. 502:18-504:23, Ex. 721);

5. Whether Burnett participated in the conduct of Enterprises I, II and III by conduct including conceiving of the recruitment scheme with Pol and Dewan, participating in recruiting seminars in India, filling out the immigration paperwork filed by J&M, Indo Ameri-Soft and Signal and collecting approximately $2 million from the workers, (Ex. 455; Rec. Doc. 946 at ¶¶ 3, 273-320; Rao Dep. 18:20-23:6, 27:4-8, 52:16-18; Pol Dep. 62:2-65:9, 80:5-14, 90:16-25, 142:1-9);

6. Whether Pol participated in the conduct of Enterprises I, II and III by conduct including conceiving of the recruitment scheme with Burnett and Dewan, soliciting J&M and Signal, participating in recruiting seminars in India, sending Rao's recruits to Signal and collecting approximately $2 million from workers, (Ex. 445 (Pol took in at least $1.8 million); Ex. 455; Rec. Doc. 946 at ¶¶ 3, 273-320; Pol Dep. 62:2-65:9, 80:5-14, 90:16-25, 111:13-18, 116:9-117:1, 192:7-193:10, 208:18-209:23, 253:3-254:10);

7. Whether Dewan participated in the conduct of Enterprises I, II and III by conduct including conceiving of the recruitment scheme with Burnett and Pol, conducting recruiting seminars, collecting money for the other Defendants and collecting approximately $2 million from workers, (Ex. 455; Rec. Doc. 946 at ¶¶ 3, 273-320; Pol Dep. 62:2-65:9, 80:5-14, 90:16-25; Dewan Dep. 228:24-229:2, 232:3-233:8, 393:22-394:5);

8. Whether Burnett, Dewan, Pol and Rao engaged in a multi-year scheme to convince 500 or more Indian men to borrow thousands of dollars to travel to the U.S. only for the Indian men to learn that their visas would be short term and their working conditions would not be what they had been promised.

In addition to the evidence above, Plaintiffs have earlier detailed in Plaintiffs' Opposition to Signal's Re-Urged Motion to Dismiss Class Allegations (Rec. Doc. 683 at 14-17), and incorporated herein by reference, how the RICO claims will be proven on common evidence. Further, central to each class member's RICO claim is Defendants' representations that workers would get green cards, which flowed from a common course of conduct and a key set of documents. In such cases, certification of a class action is appropriate. See Klay, 382 F.3d at 1241 (certifying nationwide class of "almost all doctors versus almost all major [HMOs] in RICO claim alleging underpayments achieved in nine differing ways); Henry, 199 F.R.D. at 572 (common issues predominated in RICO case where defendants' documents establish that "Defendants operated in essentially the same manner… with regard to all customers"); Longden v. Sunderman, 123 F.R.D. 547, 553 (N.D. Tex. 1988) ("[t]he class action device is appropriate in … cases involving similar or identical misrepresentations, even if they are issued at different times."). Courts have certified much more complicated RICO cases for class treatment; see also Williams v. Mohawk Indus., 568 F.3d 1350 (11th Cir. 2009) (reversing district court denial of class certification on RICO claims).

iii. Section 1981

This case is not one in which individuals claim discrimination based on subjective hiring or discrimination by a few bad actors. Rather, in this case Signal's uniform corporate policies toward the putative class lies at the heart of Plaintiffs' discrimination claim under Section 1981. See 42 U.S.C. § 1981(a)-(c); Price Waterhouse v. Hopkins, 490 U.S. 228, 258 (1989), superseded on other grounds by Civil Rights Act of 1991, § 107). Plaintiffs allege that Signal's official policy was to

subject the entire putative class to "discriminatory and offensive mandatory room and board arrangements at Signal labor camps" to which it "did not subject its non-Indian and/or U.S. citizen employees." (Rec. Doc. 946 (2d Am. Compl.) at ¶¶ 336-37) These are typical pattern and practice disparate treatment claims in which "discrimination was the company's standard operating procedure – the regular rather than the unusual practice." Cooper v. Fed. Reserve Bank, 467 U.S. 867, 876 (1984). These pattern and practice cases are "almost exclusively used in class actions," Colindres v. Quietflex Mfg., No. H-01-4319, 2004 U.S. Dist. LEXIS 27981, at *20 (S.D. Tex. Mar. 23, 2004), because a determination as to named plaintiffs will resolve the Section 1981 claims of the entire class.

Common legal questions include whether Signal's housing of the putative class in racially segregated, overcrowded and guarded labor camps while deducting approximately $1,050 per month from each putative class member's paychecks to recover Signal's capital and overhead costs and create "profit center[s]," (Ex. 850), constituted adverse terms or conditions of employment; whether Signal's housing and payroll deduction policies were intentionally applied to a protected class; and in addition to Plaintiffs' claims that Defendants discriminated against them in violation of § 1981 based on their Indian ethnicity and race, whether § 1981 also prohibits discrimination based on citizenship status.

Common factual questions relevant to Section 1981 include whether Signal created separate housing, payroll deduction and disciplinary policies to apply only to its Indian migrant workforce; whether Signal's requiring each putative class member to pay $35/day effectively mandated that they live in the mancamps; and whether Signal considered the race, ethnicity and/or alienage of the putative class in crafting and applying these policies.

Plaintiffs will use Signal's own documents and employees' testimony to answer these questions. If required to bring individual suits, each plaintiff would use the class-applicable

testimony of Signal's executives and employees, as well as Signal-crafted documents, to determine whether Signal intentionally created and applied terms and conditions of employment specifically for the putative class. (Bingle Dep. 195:12-19, 237:6-21 (Signal top executives decided to build the mancamps for the Indian H-2B workers and Signal housed only Indian H-2B workers there); Binion Dep. 30:3-31:3 (Indian H-2B employees were Signal's only employees to sign forms related to housing, $35/day deduction); Binion Dep. 57:4-13 (Signal assigned all Indian H-2B workers to stay in their mancamps); Schnoor Dep. 171:4-17 (Cunningham and Marler "came out with $35 a day"); 180:25–181:14 (Schnoor, Bingle, Marler, Cunningham and, perhaps, Binion, determined the mancamp rules); Cunningham Dep. 181:11-22, 182:19-183:11, 184:5-185:1,188:3-7, 189:17-191:18 (Signal's lawyers drafted Signal's H-2B Housing Agreements, and Signal's CFO approved them); Exs. 779- 780 (housing agreement and approvals of Schnoor and Cunningham)) Similarly, Plaintiffs will use Signal executives' testimony to prove that Signal explicitly considered race, ethnicity and alienage in creating these policies. For example, according to Senior V.P. Ron Schnoor, one criterion he used in determining what wage and living standard to apply to the H-2B workers was what he believed their living situation to be in India. (Ex. 671 (Oct. 10, 2006 Schnoor-Marler e-mail stating that Signal's man camps "will likely be an improvement over their current living conditions"); Schnoor Dep. 173:4-13)

Signal's staff referred to the Indian mancamp as "the Reservation," (Ex. 604), and its mancamp manager at one point referred to an Indian H-2B worker as a "f*****g Keralite." (Ex. 847) According to John Sanders, Signal's "point man" for the H-2B program, Signal used foreign workers because U.S. workers would not live in Signal's labor camps, (Ex. 869); it recruited the putative class in particular because "the Indians will be the least expensive option," (Ex. 517 (Bingle)) In addition, throughout their tenure at Signal, Signal management referred to Indian migrant workers as a monolithic group identified by race/ethnicity, i.e., "the Indians," indicating their race-consciousness

in crafting and applying these policies. (See, e.g., Ex. 870 (Jan. 18, 2008 Binion-Cunningham e-mail asking how long "the Indians had to stay at the camp," and suggesting it be "the entire length of their employment"); Ex. 871 (Dec. 14, 2006 Cunningham-Wilson Lee e-mail stating, "If we have 300 Indians at each location… [w]e'll probably end up with net revenue"); Ex. 671 (Oct. 10, 2006 Schnoor-Marler e-mail directing him to "[s]ee attached Indian cost for MS"); Ex. 872 (Mar. 3, 2008 e-mail from Bingle to George, Scogin about "the Indians"))

Plaintiffs will use generalized proof – namely Defendants' testimony and Signal-employee-authored writings – to show the adversity of the terms and conditions of employment imposed on the putative class compared to Signal's other directly hired workers. A detailed description of these terms and conditions and, in particular, the rules and adverse conditions in the Indian-only mancamps, is set forth in the "Statement of Facts" section above. Courts routinely hold that common issues predominate when a defendant applies common policies to a group, such as Signal's application of policies to its Indian migrant workforce. See, e.g., Anderson, 122 F.R.D. at 506 (predominance satisfied where plaintiffs alleged that defendant applied a discriminatory policy).

iv. Section 1985

As summarized by the Supreme Court in Griffin v. Breckenridge, 403 U.S. 88, 102-03 (1971), the relevant elements of a claim under this Section are: (1) a conspiracy; (2) for the purpose of depriving a person or class of persons equal protection of the laws; (3) an act "in furtherance of the object of the conspiracy" by at least one conspirator; which caused (4) injury to the plaintiff's person or property. The Fifth Circuit appears to have added a fifth requirement, that the action taken by defendants to deprive a plaintiff of his or her rights is itself illegal. McClellan v. Miss. Power & Light Co., 545 F.2d 919, 925 (5th Cir. 1977).

Plaintiffs allege that Signal conspired with its executives, its employees, Swetman security, Dewan and Immigration and Customs Enforcement (ICE), to subject the putative class members,

based on their race, ethnicity and alienage, to involuntary servitude. Common questions of law include whether Section 1985 applies to a racially-distinct group of non-citizens. See Ramirez v. Sloss, 615 F.2d 163, 169 (5th Cir. 1980) (assuming validity of Section 1981 and 1985(3) claims asserted by legal permanent resident denied city employment pursuant to "citizens-only" hiring policy where parties did not contest whether the statutes applied to aliens or alienage discrimination). Other common questions of law and fact include whether the following constitute a violation of Section 1985 as to the putative class:

1. Signal management's decision, after consultation with ICE, to terminate and attempt to deport Indian H-2B workers at the time when "the most amount of workers [were] present." (Stevens Dep. 73:13-74:3; Schnoor Dep. 270:8-271:8);
2. Signal's promises to offer a "long-term solution" to workers who worked hard and quietly and did not pursue legal action – and threats to deport all the workers if any legal claim was pursued against Signal – a 'carrot and stick' tactic that even a fellow Signal Senior V.P. viewed as a "threat" to the workers to prohibit them from pursuing their legal rights (Rigolo Dep. 245:16-247:1; Ex. 676);
3. Signal management's frequent reference to the H-2B workers by their race/ethnicity, as an indication of a race-based violation of their civil rights violations.

Plaintiffs will use Defendants' evidence – mainly the testimony of Signal employees and Signal-produced documents – to prove this claim on behalf of the class. Under such situations, courts have held common issues to predominate. See Welch v. Bd. of Dirs. of Wildwood Golf Club, 146 F.R.D. 131, 138 (W.D. Pa. 1993) (common issues predominated where plaintiff would prove the claims by examining Defendant's policies and actions).

v. Damages

"[R]elatively few motions to certify a class fail because of disparities in the damages suffered by class members." Bell Atl. Corp. v. AT&T Corp., 339 F.3d 294, 306 (5th Cir. 2003). In this case, if a class is certified, Plaintiffs will use standardized formulae and Defendants' records to determine damages. Plaintiffs are not seeking to monetize non-pecuniary losses on a class-wide basis. Rather, Plaintiffs want repayment of the class's money – recruitment fees and mancamp fees – and treble damages as authorized by statute.[56] The Fifth Circuit has said that "refund-type cases," such as this one, "in which damages are calculable using factors developed and maintained in the course of defendants' business" are "ideal" for class treatment. Bratcher, 365 F.3d at 420 n.20.

The approximate amounts paid in recruiting fees can be proven through common evidence. Dewan, Pol and Burnett agreed to charge 5 lakh rupees for green card processing, (Ex. 455), thus this is the amount that the majority of the putative class paid. These Defendants raised the fees to eight lakh rupees once the H-2Bs were certified on the ground that workers were guaranteed an H-2B and a green card. (Khuttan Dep. 317:21-318:11; Dewan Dep. 430:9-436:6) Thus, the date of a plaintiff's recruitment and common agreements signed by the workers will reveal the amount he paid. Trebling damages under RICO is simple arithmetic.

The component of Plaintiffs' damages comprised by Signal's improper mancamp fees also can be calculated in a straight-forward manner based on Signal's own records. Signal recorded the dates worked by each worker and it, by policy, deducted $35/day regardless of whether the worker lived in the camp or ate the food. Signal, furthermore, has provided reports of the specific workers' deductions. Binion Dep. 30:25-31:3, 57:4-13, 59:9-12; Schnoor Dep. 168:3-11; Ex. 779 ("H2B Resident Housing Agreement" authorizing a payroll deduction of $35.00 per calendar day "even if Resident does not keep tenancy in the Landlord's provided housing"); Ex. 812 (Deduction

[56] Plaintiffs may also seek class-wide punitive damages under Section 1981 for Signal's common discriminatory policies and practices.

authorization for "Accommodations for Temporary Workers" allowing "non-refundable" deductions of "$35.00 per day / 7-days per week," from the Migrant Worker's paycheck); Ex. 64 at 3 (Employment Agreement for "work pursuant to H-2B visa" authorizing a non-refundable $35 per day deduction) Thus, calculating the amount of the mancamp fees paid by Plaintiffs would be a simple mathematical exercise.

With such standardized damages, the damages calculations will be "virtually a mechanical task." Blue Bird Body Co., 573 F.2d at 326; see also Bratcher, 365 F.3d at 419 (reversing denial of class certification in case requiring many standardized formulae).

D. The Proposed Class Notice is Adequate

Rule 23 requires that

> [f]or any class certified under Rule 23(b)(3), the court must direct to class members the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must concisely and clearly state in plain, easily understood language:
>
> • the nature of the action,
> • the definition of the class certified,
> • the class claims, issues, or defenses,
> • that a class member may enter an appearance through counsel if the member so desires,
> • that the court will exclude from the class any members who requests exclusion, stating when and how members may elect to be excluded, and
> • the binding effect of the class judgment on the class members under Rule 23(c)(3).

Fed. R. Civ. P. 23(c)(2)(A). The proposed class notice complies with these requirements. It also directly mirrors a class notice approved by this Court. See Recinos-Recinos, 233 F.R.D. 472. Therefore, Plaintiffs ask the Court to Order that this notice be distributed to all putative class members.

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant their motion for certification of a class action.

Respectfully submitted this 1st day of February, 2011,
New Orleans, Louisiana,

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