towards justice

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August 13, 2024

By Email Only

Ann Lesser, Esq.
Vice President
American Arbitration Association

Aaron Schmidt, Esq.
Vice President
American Arbitration Association

Patrick Tatum
Vice President
American Arbitration Association

Re: Management Health Systems, LLC d/b/a MedPro

Dear Ms. Lesser, Mr. Schmidt, and Mr. Tatum,

We write again to the American Arbitration Association to express grave concerns with AAA's practice of allowing itself to be weaponized by corporate employers seeking to enforce "stay or pay" contracts against workers through AAA arbitrations. This firm first raised these issues for AAA last year, related to litigation in *Vidal v. Advanced Care Staffing*, LLC, No. 1:22-cv-05535-NRM-MMH (E.D.N.Y.). As is evident in the experiences of our current clients, several former employees of Management Health Systems, LLC d/b/a MedPro ("MedPro"), AAA is continuing to cause serious harm to workers across the country by administering arbitrations seeking to enforce "stay or pay" contracts, especially those that punish foreign workers by charging them tens of thousands of dollars of penalties, and thousands more in arbitration costs and attorney's fees, for leaving jobs where they often experience low pay and poor working conditions. *See* Exhibit 1 (complaints to the NLRB regarding these arbitrations).

We respectfully request that you cease administering such arbitrations or, at the very least, stay such arbitrations pending the review of the legality of the "stay or pay" provision by an administrative agency or court. You have already issued a similar moratorium against administering consumer debt collection arbitrations. And, as discussed below, all the due process concerns underlying the consumer debt collection moratorium apply with special force in the context of "stay or pay" contracts, particularly in arbitrations like those brought by MedPro that weaponize AAA in service of a scheme to procure forced labor.

A. Background

(1) "Stay or Pay" Contracts

"Stay or pay" contracts require workers to pay damages or penalties if they leave their job before the end of a contractual commitment period. As discussed in extensive news coverage of the issue,[1] these contracts often have the effect of indenturing vulnerable workers in low-paid, difficult, or dangerous jobs.

In most cases, stay-or-pay provisions are illegal on their face, whether because they violate minimum wage laws, run afoul of non-compete or unfair competition laws, or because they amount to forced labor in violation of federal and state anti-trafficking protections. *See* Part B.1., *infra*. And as we have now seen on several occasions, when these contracts are enforced within AAA arbitrations, they typically allow employers to recover attorney's fees and costs, including AAA's arbitration costs, in direct defiance of AAA's own rules and its stated interest in the due process rights of workers. Time and time again, AAA proceedings brought by employers to enforce "stay or pay" provisions have been used not to resolve a dispute in an efficient and just manner, but rather to intimidate and punish migrant workers.

(2) MedPro's Weaponization of AAA Arbitrations against Foreign Workers

Towards Justice represents five former MedPro workers facing devastating legal and financial consequences as a result of MedPro's illegal "stay or pay" contracts and one-sided forced arbitration provisions. Under MedPro's employment contracts, which are offered on a take-it-or-leave-it basis to immigrant workers whose first language is not English, workers are purportedly bound by provisions requiring them to work for MedPro for approximately three years. If workers like our clients quit or are terminated by MedPro before the contractual period is up, they are required to pay so-called "Actual Damages" related to their departure. These damages can be as high as $40,000 and include vague, open-ended costs such as MedPro's costs of finding a replacement employee and "lost profits" (i.e., whatever amount of money MedPro expected to make from the worker's labor in the time remaining on their contract when they left).

For the past few years, MedPro has included in its contracts an arbitration provision that seeks to "cover[] all Claims that could otherwise be brought in federal, state, or local court or agency under applicable federal, state, or local laws, rules, ordinances or regulations" and that allows the prevailing party to recover all arbitration costs and attorney's fees from the losing party. MedPro has taken advantage of this arbitration provision to use AAA and the arbitral forum to threaten, confuse, and punish foreign nurses formerly employed by MedPro:

First, MedPro threatens nurses with its "loser pays" provision, which compounds the danger of financial ruin by saddling nurses with tens of thousands of dollars in attorney's fees, arbitration costs, and expenses on top of any alleged contractual debt. For example, in an effort to procure a settlement, MedPro's attorney wrote to our client Sariga Kunnapilly that she owed them

[1] *See, e.g.,* Robin Kaiser-Schatzlein, *Pay Thousands to Quit Your Job? Some Employers Say So*, N.Y. Times (Nov. 20, 2023); Shannon Pettypiece, *Trapped at work: Immigrant health care workers can face harsh working conditions and $100,000 lawsuits for quitting*, NBC News (Jun. 4, 2023); Michael Sainato, *'I feel like a criminal for quitting': nurses in the US fight 'stay or pay' agreements*, The Guardian (Dec. 29, 2023).

not only $32,290 in so-called damages, but also an unspecified amount of attorney's fees and AAA fees.

Second, AAA's arbitration process often adds to the fear and confusion experienced by vulnerable foreign workers. In Ms. Kunnapilly's case, the AAA case administrator assigned to the file had previously assured Ms. Kunnapilly that while AAA could not provide legal advice, "one of AAA's missions as a not-for-profit is to educate people about dispute resolution." But rather than "educate" Ms. Kunnapilly, AAA told her that "[t]he cost of the Arbitrator's time incurred is the responsibility of [MedPro] in this matter pursuant to the Employment fee schedule," when AAA knew that MedPro intended to seek arbitrator fees from Ms. Kunnapilly through the arbitration. Furthermore, when it became clear through the email exchange that Ms. Kunnapilly did not understand the distinction between the case manager, the arbitrator, and a lawyer representing her, AAA informed her that if she "obtain[ed] representation there will be no charge." This of course was inaccurate and caused further confusion for Ms. Kunnapilly about AAA's role in the proceedings.

Third, MedPro takes advantage of the AAA's lax service standards to acquire default judgements against nurses who only learn of the judgment when the company properly serves them with an enforcement lawsuit in accordance with state court rules. In at least three cases that we are aware of, MedPro served AAA arbitration demands on nurses at physical and electronic addresses that were no longer active and pursued the arbitration within AAA all the way to judgment without the nurses even learning about the proceeding. AAA did not appear to ever raise any concerns about whether these nurses were even aware of the arbitrations. In fact, it is not always clear that MedPro knows who the absent nurses against whom AAA has rubber-stamped judgments are: For example, a default judgment against our client Nishanth George repeatedly referred to him as "Ms." and "her," even though Mr. George is male, and relied on MedPro's testimony about supposed communications with Mr. George in May 2022 about his intent to resign from his job at MedPro, even though Mr. George had actually resigned from MedPro in July 2021—ten months prior to May 2022. With (sometimes erroneous) default judgments in hand, MedPro coerces workers into unfavorable settlement agreements that include draconian confidentiality and non-disparagement provisions, such as in the case of our client Jyothi Renny. Workers who do not settle find themselves subject to enforcement proceedings in state court, which MedPro threatens could lead to serious consequences to their credit and livelihood.

(3) Prior Calls on AAA to Decline Stay-or-Pay Contract Cases

This is not the first time our law firm has raised concerns with AAA regarding the weaponization of your arbitral forum in service of a scheme to obtain forced labor. Towards Justice also represents Benzor Shem Vidal, an immigrant worker who was sued in a AAA-administered arbitration to enforce a coercive stay-or-pay contract. *See generally Vidal v. Advanced Care Staffing, LLC*, No. 1:22-cv-05535-NRM-MMH, 2023 WL 2783251 (E.D.N.Y. Apr. 4, 2023). Towards Justice repeatedly raised the concern that AAA was being used to facilitate forced labor in violation of state and federal laws, AAA's own policies and practices, and due process protections. The New York Office of the Attorney General ("NY OAG") also weighed in, reinforcing to AAA that companies were using arbitration "to attempt to enforce illegal liquidated damages provisions." Letter from NY OAG to AAA at 1 (Jan. 4, 2023), Exhibit 2 (attached). The NY OAG asked AAA to "consider staying the arbitration" and "to exercise its authority to decline to administer future proceedings

brought under like circumstances, concerning unlawful contract provisions that violate the [Trafficking Victims Protection Act ("TVPA")] and seek unenforceable penalties." *Id.* at 3. Nonetheless, AAA forged ahead with arbitration, telling the worker that concerns about the validity of the contract were "premature and do not support the issuance of a stay." *See Vidal*, 2023 WL 2783251, at *6.

The United States District Court for the Eastern District of New York and the Second Circuit Court of Appeals disagreed. As the district court noted in its opinion and order enjoining the arbitration proceedings that AAA refused to stay, "Courts around the country…have held that contracts such as this—in which immigrant workers are threatened with severe financial penalties if they leave their employment before the end of their contract term—can violate the TVPA." *Id.* at *14. Indeed, as the court explained, "It is not difficult to see why any nurse in Vidal's position would reasonably believe that this ['stay or pay'] provision could easily lead to an enormous judgment against him." *Id.* The district court was especially disturbed that Vidal's contract, like the MedPro contracts at issue here, contained a "loser pays" provision, converting the costs of the arbitral forum into a coercive tool designed to extract Mr. Vidal's labor. *See id.* at *16. The Second Circuit affirmed. *See* Summary Order, No. 23-303-cv (2d Cir. Mar. 7, 2024), ECF No. 107.

Based on your administration of arbitrations brought by MedPro and the issuance of default judgments in those cases, AAA appears to have learned nothing from *Vidal*. We are asking once again for your organization to decline to administer arbitrations like those brought by MedPro.

B. "Stay or Pay" Contracts are Typically Illegal on Their Face

Courts and regulators across the country have raised grave concerns about the proliferation of "stay or pay" contract provisions. They have also concluded, in many contexts, that these provisions are illegal as a matter of state and federal law. When the debts thrust on workers include the costs of debt collection—including arbitration costs—through a "loser pays" provision, these concerns are only more acute. In the face of these serious concerns, AAA should decline to administer arbitrations enforcing these provisions.

First, in many cases, "stay or pay" provisions violate the Trafficking Victims Protection Act. Under the TVPA, it is unlawful for an employer to "knowingly provide[] or obtain[] the labor or service of a person…by means of serious harm or threats of serious harm to that person or another person" or "by means of the abuse or threatened abuse of law or legal process." 18 U.S.C. § 1589(a). By imposing contractual provisions on workers that force them to choose between coerced labor or financial ruin, companies like MedPro violate the TVPA. Any reasonable person in such a circumstance would feel compelled to continue to work to avoid incurring the serious financial harm threatened by companies like MedPro. *See Paguirigan v. Prompt Nursing Emp't Agency*, 286 F. Supp. 3d 430, 535 (E.D.N.Y. 2017) ($25,000 contract termination fee an unenforceable penalty designed to compel performance). As noted above, the New York Attorney General has raised similar concerns to AAA—concerns that have as yet gone unheeded. *See* Letter from NY OAG to AAA (attached here as Exhibit 2). Several courts have concluded that even just the inclusion of a "stay or pay" provision in an employment contract—regardless of enforcement—may violate the TVPA. *See Byron v. Avant Healthcare Professionals, LLC*, No. 6:23-cv-1645-JSS-LHP, 2024 WL 2304490, at *12-15; *see also Carmen v. Health Carousel, LLC*, No. 1:20-cv-313, 2023 WL 5104066, at *7-9 (S.D. Ohio, Aug. 9, 2023); *Vidal*, 2023 WL 2783251, at *17; *Magtoles v. United Staffing Registry, Inc.*, No. 21CV1850KAMPK, 2021 WL 6197063, at *8 (E.D.N.Y. Dec. 30, 2021).

Second, "stay or pay" contracts often violate federal and state wage and hour laws. In the vast majority of cases, these contracts require workers who leave employment to pay back costs to the employer that are for the employer's benefit. As in this case, these could include administrative expenses, *see Carmen*, 2023 WL 5104066, at *14-15, or "lost profits," Complaint at ¶ 69, *Su v. Advanced Care Staffing, LLC*, No. 23-cv-2119 (E.D.N.Y. Mar. 20, 2023), ECF No. 1; *see also* Complaint at ¶ 3, *Su v. Smoothstack, Inc.*, No. 24-CV-4789 (E.D.N.Y. Jul. 10, 2024), ECF No. 1. Under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, *et seq.*, an employer like MedPro may not require employees like our clients to pay costs or damages that are "primarily for the benefit of the employer" when those costs or damages take the employee's wages below applicable federal minimum wage or required overtime in the relevant workweek. *See, e.g.*, 29 C.F.R. § 531.35 (where an employer does seek to recoup costs paid for the employee's benefit, such costs may not include a "profit" for the employer).

Third, in many cases, "stay or pay" contracts may violate state or federal competition law. The Federal Trade Commission's proposed rule on non-compete agreements specifically prohibits "stay or pay" contracts like those at issue here as an unfair method of competition. Non-Compete Clause Rule, 89 Fed. Reg. 38342, 38364 (May 7, 2024) (to be codified at 16 C.F.R. pts. 910, 12). "Stay or pay" contracts may also violate state non-compete or unfair competition laws. *See, e.g.*, Colo. Rev. Stat. § 8-2-113 (Colorado non-compete law specifically allowing TRAPs, but only in narrow circumstances); *see also Fredericks v. Ameriflight, LLC*, No. 3:23-CV-1757-X, 2024 WL 1183075, at *5 (N.D. Tex. Mar. 19, 2024)("If an [employment] agreement provides a severe economic penalty on a departing employee, courts use the noncompete reasonableness factors to assess whether the agreement is unlawful.") (applying Texas trade practices law) (citation omitted).

(C) Arbitrating Cases Brought by Employers Seeking to Enforce "Stay or Pay" Contracts Contravenes AAA's Guiding Principles and Policies

Administering arbitrations in these cases is flatly inconsistent with AAA's purported interests in administering speedy, efficient, and *fair* arbitration proceedings. MedPro and others use their arbitration requirements not to facilitate efficient and fair dispute resolution, but rather to increase the potential costs and risks to workers who dare to leave their employers. As explained here, workers facing arbitration for violating purported "stay or pay" contract terms often do not receive adequate notice and fail to appear, subjecting them to default judgments. Even when workers do appear, they are steamrolled by opposing counsel, confused by the arbitral process and the role of AAA, and have no meaningful opportunity to participate in the arbitration proceeding.

Furthermore, in most cases involving "stay or pay" contracts, including in *Vidal* and in the arbitrations brought by MedPro, the arbitration clauses at issue requires the worker to pay back their employer's attorney's fees and the arbitration costs. These provisions contravene the stated purposes and protections of the AAA's Employment Due Process Protocols and employment fee schedules, which provide that "the company shall pay the arbitrator's compensation unless the individual, *post* dispute, *voluntarily* elects to pay a portion of the arbitrator's compensation" and that "arbitrator compensation, expenses, and administrative fees are not subject to reallocation by the arbitrator(s) except upon the arbitrator's determination that a claim or counterclaim was filed for purposes of harassment or is patently frivolous." AAA, *Employment/Workplace Fee Schedule*, at 2-3 (Nov. 1, 2020) https://adr.org/sites/default/files/Employment_Fee_Schedule.pdf (emphasis added).

AAA must not allow unenforceable arbitration requirements to be used to intimidate and coerce workers, just as MedPro used the "loser pays" term here. Whether or not AAA would ever enforce these provisions is beside the point. AAA rules allow it to decline to administer arbitrations based on the inclusion of a provision in an arbitration clause that fails to comport with AAA requirements, and AAA's failure to take that step in the cases MedPro brought against workers only allows MedPro to continue using the provision as part of its coercive threats.

In declining to administer arbitrations seeking to collect on "stay or pay" contracts, AAA should be guided by the moratorium it imposed on administering consumer debt collection arbitrations. Explaining its decision to issue the moratorium, Richard Naimark testified on behalf of AAA before the Domestic Policy Subcommittee of the House Committee on Oversight and Government Reform. Mr. Naimark noted that AAA's moratorium was grounded in concerns about excessive default judgments, the appearance of bias when the same arbitrator presided over many debt collection disputes brought by the same corporate creditor, and the risk that prevailing creditors would seek to recover collection fees and costs that they would not be permitted to recover under applicable law.[2] Precisely these concerns apply with equal—or even greater—force to the "stay or pay" contracts that AAA continues to arbitrate. For the same reasons AAA instituted its consumer debt collection arbitration moratorium, it should institute a moratorium with respect to disputes seeking to collect debts from workers.

* * *

For all these reasons, we request that you cease immediately from administering arbitrations seeking to enforce stay-or-pay contracts against workers. Or, at the very least, that you decline to administer any arbitrations brought by MedPro involving its "stay or pay" contracts.

Respectfully,

/s/ *David H. Seligman*

David H. Seligman
Rachel W. Dempsey
Juno Turner

Towards Justice
303 E. 17th Avenue, Suite 400
Denver, CO 80203

[2] *See* Arbitration or Arbitrary: The Misuse of Mandatory Arbitration to Collect Consumer Debts, Hearing Before the Domestic Policy Subcomm., Oversight and Gov't Reform Comm. (Jul. 22, 2009).

Exhibit 1

FORM NLRB-501
(3-21)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case	Date Filed

INSTRUCTIONS:
File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer
Management Health Systems, LLC, d/b/a MedPro International

b. Tel. No.
954-739-4247

c. Cell No.

f. Fax. No.

d. Address *(Street, city, state, and ZIP code)*
Int'l Place at Sawgrass II
1580 Sawgrass Corporate Pkwy.
Suite 200
Sunrise, FL 33323

e. Employer Representative
Liz Tonkin, President and CEO

g. e-mail

h. Number of workers employed
1,000

i. Type of Establishment *(factory, mine, wholesaler, etc.)*
nurse staffing agency

j. Identify principal product or service
nurse labor

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*
The Charged Employer has interfered with the filing employee's Section 7 rights by maintaining a policy and practice of prohibiting workers from speaking out about their wages and working conditions, prohibiting workers from soliciting their colleagues to leave their jobs in search of better wages and working conditions, maintaining an overbroad arbitration provision, using a Repayment Agreement Provision that functions as a de facto non-compete agreement, filing an arbitration against the employee and other employees without their knowledge to obtain a default judgment against them, and getting a court order to enforce the default judgment in arbitration to collect on the unlawful Repayment Agreement Provision.

3. Full name of party filing charge *(if labor organization, give full name, including local name and number)*
Nishanth George

d ZIP code)
[redacted]

[redacted]

4c. Cell No.

4d. Fax No.

[redacted]

5. Full name of national or international labor organization of which it is an affiliate or constituent unit *(to be filled in when charge is filed by a labor organization)*

6. DECLARATION
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

(signature of representative or person making charge)

Rachel Dempsey, Towards Justice
(Print/type name and title or office, if any)

Address 1580 N. Logan Street, Ste 660 PMB 44465, Denver CO 80203

Date 06 / 06 / 2024

Tel. No.
720-364-2689

Office, if any, Cell No.

Fax No.

e-mail
rachel@towardsjustice.org

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.

As set forth in the below charge, charged party Management Health Systems, LLC, d/b/a MedPro ("MedPro"), a major healthcare staffing agency, engages in numerous, systematic violations of its employees' Section 7 rights, both during and after employment. These violations include:

- Requiring workers to enter into stay-or-pay contracts that impose fines of up to $40,000, plus attorneys' fees and other enforcement costs, for exercising their right to seek other employment;
- Weaponizing forced arbitration provisions against workers who leave their jobs, and leveraging arbitration awards to coerce workers into accepting unfavorable settlements that purport to permanently restrict workers from speaking out about their wages, working conditions, and other aspects of their relationship with MedPro;
- Colluding with the American Arbitration Association to impose massive fines in absentia on workers who dare to leave their jobs;
- Maintaining a policy and practice of prohibiting workers from speaking about their wages and working conditions; and
- Prohibiting workers from soliciting their colleagues to leave their jobs in search of better wages and working conditions.

1. MedPro and AAA's Weaponized Arbitration Mill

In order to undermine worker bargaining power and intimidate workers out of exercising their core rights under the NLRA, charged party Management Health Systems, LLC, d/b/a MedPro ("MedPro"), a major healthcare staffing agency, requires workers to agree to several restrictive provisions of employment, including stay-or-pay provisions that indenture vulnerable workers by threatening tens of thousands of dollars in debt if the workers leave their jobs within three years of starting. These contracts violate the NLRA's Section 7 protections by chilling employees' ability to engage in self-organization, mutual aid, and concerted activity to protect their and others' labor rights.

Because MedPro's stay-or-pay contracts violate the NLRA, among other laws, they are illegal and unenforceable, and the debts that they purport to impose are void. But MedPro enforces these unlawful contracts via forced arbitration, enlisting the help of its chosen provider, the American Arbitration Association ("AAA"), to file secretive proceedings pursuing tens of thousands of dollars in fines from workers who dare to engage in concerted activity in search of higher pay or better working conditions.

What's more, MedPro's contract allows it to recover "enforcement costs," meaning that just by filing an arbitration, MedPro can compound its threat of financial ruin by saddling nurses with tens of thousands of dollars in attorneys' fees, arbitration costs, and expenses on top of any alleged contractual debt. And AAA's lax notice requirements mean that many such arbitrations conclude with a default judgment, allowing it to collect its fees and rubber-stamp MedPro's contracts before the workers even receive notice that they are being sued. Together with AAA,

MedPro appears to be running a weaponized arbitration mill, punishing workers who exercise their Section 7 rights.

With default judgments in hand, MedPro is able to further impinge upon workers' Section 7 rights, using the judgments to coerce workers into unfavorable settlement agreements that include draconian confidentiality and non-disparagement provisions, preventing workers from ever speaking out about their treatment by MedPro. Workers who do not settle find themselves subject to enforcement proceedings in state court, which MedPro threatens could lead to serious consequences to their credit and livelihood. This scheme constitutes an ongoing and comprehensive threat to workers' ability to improve their working conditions and stand up for their rights.

2. Nishanth George's Experience With MedPro

Charging Party Nishanth George, a registered nurse, is one victim of MedPro's scheme. George first entered into an employment contract with MedPro in 2007, after the nurse staffing agency he had been working with at the time became defunct. MedPro's contract changed several times over the decade-plus it took George to actually come to the United States to work with MedPro. Each time, MedPro forced George to sign a new contract.

The contract that was operative at the time George came to the United States with MedPro in 2021 required him to work for MedPro for 30 months or else pay MedPro "Actual Damages" related to his departure. The agreement provided that these damages could be as high as $40,000 and described them as including MedPro's out-of-pocket costs for immigration, licensing, and travel to the United States as well as vague, open-ended costs such as the cost of finding a replacement employee and "lost profits" (i.e., whatever amount of money MedPro expected to make from George's labor in the time remaining on George's contract when he left).[1] Upon information and belief, MedPro maintains this contractual term or a similar contractual term today.

In addition to the stay-or-pay provision, MedPro's contract also included several restrictive covenants and other terms intended to restrict workers' abilitly to engage in concerted activity. These included a noncompete and a broad confidentiality provision that prohibited George from sharing any non-public information about MedPro with anyone. He understood the confidentiality provision to mean that he could not speak with his colleagues about anything job-related, including pay. In addition, the contract included an arbitration provision that purported to "cover[] all Claims that could otherwise be brought in federal, state, or local court or agency under applicable federal, state, or local laws, rules, ordinances or regulations" and that allowed the prevailing party to recover all arbitration costs and attorneys' fees from the losing party.[2] The employment agreement also included a non-solicitation provision that prohibited workers from

[1] In a different case, the US Department of Labor has said that a provision allowing an employer to recoup "lost profits" is a kickback against wages in violation of the FLSA.
[2] A worker would have to read over a page more of fine print before learning that NLRB charges are not precluded by the arbitration agreement.

soliciting other MedPro workers. Upon information and belief, MedPro's current employees are still required to agree to these or similar contractual terms.

In March 2021, George moved to St. Louis, Missouri to begin working in a hospital as a MedPro nurse. He soon found that he was grossly underpaid compared to other workers with similar jobs and experience, and that it was difficult to live in the United States on his low pay. Although he was paid less than a full-time nurse, he was on a contract similar to those given to travel nurses, with only a 13-week term that the hospital kept renewing. In June 2021, he contacted MedPro to say that he was unable to support his wife and children on his low wages, and requested a raise. MedPro refused and instead suggested that he stop contributing money to his 401(k) account.

As a result, George exercised his right to engage in concerted activity by giving notice that he would be quitting his job in July 2021 in order to seek out a better one. MedPro responded by informing him that if he quit he would owe MedPro $36,666 in damages and warning him about MedPro's non-solicitation provision. Subsequently, MedPro's corporate counsel followed up offering a payment plan, with a minimum payment of $1,627.17 monthly for 24 months. Despite these threats, George ended work with MedPro in July 2021.

In June 2022, MedPro initiated an arbitration against George seeking to recover its so-called "damages" for his departure. Unlike litigation, initiating an arbitration does not require personal service. George had moved from Missouri to Texas, and the notice of arbitration was sent to a long-defunct address. He also did not receive any email notice of the arbitration, which he believes may have been automatically forwarded to his spam folder and automatically deleted. As a result, George did not receive any notice of the proceedings and was unable to attend the arbitration and defend himself.

On December 20, 2022, the arbitrator issued a default judgment in the amount of $35,556 plus $3,451 in legal fees against George and interest of 18 percent per year. The judgment repeatedly referred to George as "Ms." and "her," even though he is male. It also included a footnote, apparently intended to confirm that George had received adequate notice of the arbitration, finding that Rebecca Bovinet, MedPro's counsel, "last spoke to Ms. George on May 31, 2022, when Ms. George explained she wanted to break the contract. Ms. Bovinet further explained that on June 10, 2022 she emailed Ms. George who responded by email that she was in receipt of an email regarding the arbitration." None of this is accurate, as George (1) is male, (2) provided notice that he intended to leave MedPro to his "Manager of Journey Guide" Christi Blick on July 1, 2021, and (3) received a follow-up email from Rebecca Bovinet on July 13, 2021 regarding the breach fee.

Moreover, the so-called damages that AAA awarded were not a legitimate measure of the harm to MedPro from George's departure. Rather, they were MedPro's own costs of business, and MedPro's attempt to recoup them constitute a violation of and retaliation for George's exercise of his Section 7 rights to engage in concerted activity in search of better wages and working conditions. AAA and the arbitrator earned a total of $5,750 for entering this default judgment.

On December 21, 2023, MedPro sued George in Broward County Court, Case Number CACE23022661, in further retaliation for George's exercise of his rights. George learned about the arbitration, and the case to enforce the arbitration award, for the first time when a process server showed up at his home in Texas to serve him with the lawsuit. At that time, he emailed MedPro's lawyers about a potential settlement, but received no response.

George filed various affirmative defenses and stated in his answer that he had not received notice of the arbitration. On April 30, 2024, MedPro submitted a motion to vacate the award and compel arbitration based on George's statements that he had not received notice of the arbitration, which the court granted on May 6, 2024. On May 9, 2024, George received notice that the arbitration against him had been reopened, with an answer deadline of May 24, 2024. He has requested a continuance of one month to help him find counsel. MedPro did not agree, instead stipulating to two weeks.

FORM NLRB-501
(3-21)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case	Date Filed

INSTRUCTIONS:
File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer
Management Health Systems, LLC, d/b/a MedPro International

b. Tel. No.
954-739-4247

c. Cell No.

f. Fax. No.

d. Address *(Street, city, state, and ZIP code)*
Int'l Place at Sawgrass II
1580 Sawgrass Corporate Pkwy.
Suite 200
Sunrise, FL 33323

e. Employer Representative
Liz Tonkin, President and CEO

g. e-mail

h. Number of workers employed
1,000

i. Type of Establishment *(factory, mine, wholesaler, etc.)*
nurse staffing agency

j. Identify principal product or service
nurse labor

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*
The Charged Employer has interfered with the filing employee's Section 7 rights by maintaining a policy and practice of prohibiting workers from speaking out about their wages and working conditions, prohibiting workers from soliciting their colleagues to leave their jobs in search of better wages and working conditions, maintaining an overbroad arbitration provision, using a Repayment Agreement Provision that functions as a de facto non-compete agreement, filing an arbitration against the employee and other employees without their knowledge to obtain a default judgment against them, using the default judgment to pressure the employee into a settlement agreement that includes a broad confidentiality and non-disparagement provision that purports to waive her right to speak out about her working conditions, and getting a court order to enforce the settlement to collect on the unlawful Repayment Agreement Provision.

3. Full name of party filing charge *(if labor organization, give full name, including local name and number)*
Jyothi Renny

4a. Address *(Street and number, city, state, and ZIP code)*
[redacted]

4b. Tel. No.
[redacted]

4c. Cell No.

4d. Fax No.

4e. e-mail
[redacted]

5. Full name of national or international labor organization of which it is an affiliate or constituent unit *(to be filled in when charge is filed by a labor organization)*

6. DECLARATION
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

(signature of representative or person making charge)

Rachel Dempsey, Towards Justice
(Print/type name and title or office, if any)

Address 1580 N. Logan Street, Ste 660 PMB 44465, Denver CO 80203

Date Jun 6, 2024

Tel. No.
720-364-2689

Office, if any, Cell No.

Fax No.

e-mail
rachel@towardsjustice.org

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.

As set forth in the below charge, charged party Management Health Systems, LLC, d/b/a MedPro ("MedPro"), a major healthcare staffing agency, engages in numerous, systematic violations of its employees' Section 7 rights, both during and after employment. These violations include:

- Requiring workers to enter into stay-or-pay contracts that impose fines of up to $40,000, plus attorneys' fees and other enforcement costs, for exercising their right to seek other employment;
- Weaponizing forced arbitration provisions against workers who leave their jobs, and leveraging arbitration awards to coerce workers into accepting unfavorable settlements that purport to permanently restrict workers from speaking out about their wages, working conditions, and other aspects of their relationship with MedPro;
- Colluding with the American Arbitration Association to impose massive fines in absentia on workers who dare to leave their jobs;
- Maintaining a policy and practice of prohibiting workers from speaking about their wages and working conditions; and
- Prohibiting workers from soliciting their colleagues to leave their jobs in search of better wages and working conditions.

1. MedPro and AAA's Weaponized Arbitration Mill

In order to undermine worker bargaining power and intimidate workers out of exercising their core rights under the NLRA, charged party Management Health Systems, LLC, d/b/a MedPro ("MedPro"), a major healthcare staffing agency, requires workers to agree to several restrictive provisions of employment, including stay-or-pay provisions that indenture vulnerable workers by threatening tens of thousands of dollars in debt if the workers leave their jobs within three years of starting. These contracts violate the NLRA's Section 7 protections by chilling employees' ability to engage in self-organization, mutual aid, and concerted activity to protect their and others' labor rights.

Because MedPro's stay-or-pay contracts violate the NLRA, among other laws, they are illegal and unenforceable, and the debts that they purport to impose are void. But MedPro enforces these unlawful contracts via forced arbitration, enlisting the help of its chosen provider, the American Arbitration Association ("AAA"), to file secretive arbitrations pursuing tens of thousands of dollars in fines from workers who dare to engage in concerted activity in search of higher pay or better working conditions.

What's more, MedPro's contract allows it to recover "enforcement costs," meaning that just by filing an arbitration, MedPro can compound its threat of financial ruin by saddling nurses with tens of thousands of dollars in attorneys' fees, arbitration costs, and expenses on top of any alleged contractual debt. And AAA's lax notice requirements mean that many such arbitrations conclude with a default judgment, allowing it to collect its fees and rubber-stamp MedPro's contracts before the workers even receive notice that they are being sued. Together with AAA,

MedPro appears to be running a weaponized arbitration mill, punishing workers who exercise their Section 7 rights.

With default judgments in hand, MedPro is able to further impinge upon workers' Section 7 rights, using the judgments to coerce workers into unfavorable settlement agreements that include draconian confidentiality and non-disparagement provisions, preventing workers from ever speaking out about their treatment by MedPro. Workers who do not settle find themselves subject to enforcement proceedings in state court, which MedPro threatens could lead to serious consequences to their credit and livelihood. This scheme constitutes an ongoing and comprehensive threat to workers' ability to improve their working conditions and stand up for their rights.

2. MedPro's Efforts to Silence Jyothi Renny

Charging Party Jyothi Renny, a registered nurse, is one victim of MedPro's scheme. Renny first entered into an employment contract with MedPro in 2019 while she was living in India, sold on MedPro's promises that she could achieve her American Dream if she took a job with the company.

The employment agreement Renny signed required her to work for MedPro for three years or else pay MedPro "Actual Damages" related to her departure. The agreement provided that these damages could be as high as $40,000 and described them as including MedPro's out-of-pocket costs for immigration, licensing, and travel to the United States as well as vague, open-ended costs such as the cost of finding a replacement employee and "lost profits" (i.e., whatever amount of money MedPro expected to make from Renny's labor in the time remaining on Renny's contract when she left).[1] MedPro intended this provision to prevent Renny from quitting, writing in a Q&A that accompanied the employment agreement that Renny would have no opportunity to "buy out" the contract, stating that MedPro "requires that you fulfill your agreed-upon Commitment Term." Upon information and belief, MedPro maintains this contractual term or a similar contractual term today.

In addition to the stay-or-pay provision, MedPro's contract also included several restrictive covenants and other terms intended to restrict workers' abilitly to engage in concerted activity. These included a noncompete and a broad confidentiality provision that prohibited Anilkumar from sharing any non-public information about MedPro with anyone. In addition, the contract included an arbitration provision that purported to "cover[] all Claims that could otherwise be brought in federal, state, or local court or agency under applicable federal, state, or local laws, rules, ordinances or regulations" and that allowed the prevailing party to recover all arbitration costs and attorneys' fees from the losing party.[2] The employment agreement also included a non-solicitation provision that prohibited workers from soliciting other MedPro

[1] In a different case, the US Department of Labor has said that a provision allowing an employer to recoup "lost profits" is a kickback against wages in violation of the FLSA.
[2] A worker would have to read over a page more of fine print before learning that NLRB charges are not precluded by the arbitration agreement.

workers. Upon information and belief, MedPro's current employees are still required to agree to these or similar contractual terms.

In June 2021, Renny moved to St. Louis, Missouri to begin working in a hospital as a MedPro nurse. Around the time that Renny attended MedPro's orientation for new employees, the company warned her that she was not to speak with her colleagues about her wages or working conditions.

Renny soon found that she was grossly underpaid compared to other workers with similar jobs and experience, and that it was difficult to live in the United States on her low pay. Moreover, the working environment Renny was placed in was rife with discrimination and unsafe working conditions that compromised her ethical obligations as a nurse to provide adequate patient care. Adding to her difficulties, Renny's husband was seriously injured in a car accident, leading Renny to have severe mental health issues that impacted her ability to perform her job.

Renny tried to resolve her workplace issues with MedPro, attempting to negotiate for increased wages and better working conditions, to no avail. As a result, she exercised her right to engage in concerted activity by quitting her job in September 2021 in order to seek out a better one.

Nearly a year later, in or around September 2022, MedPro initiated an arbitration against Renny seeking to recover its so-called "damages" for her departure. Unlike litigation, initiating an arbitration does not require personal service. Renny had moved from Missouri to Texas, and the notice of arbitration was sent to a long-defunct address. Notice was also sent via email, but the email address used was an old personal address that Renny rarely used, and she believes that it may have been filtered into Renny's spam folder. As a result, Renny did not receive any notice of the proceedings and was unable to attend the arbitration and defend herself.

On January 4, 2023, the arbitrator issued a default judgment in the amount of $29,881 plus $1,250 in legal fees against Renny. Based on an invoice submitted to the arbitrator, these damages included *Renny's own wages* during orientation, over $16,000 for the orientation program, and a vague line item called "cost of capital." These so-called damages were not a legitimate measure of the harm to MedPro from Renny's departure. Rather, they were MedPro's own costs of business, and MedPro's attempt to recoup them constitute a violation of and retaliation for Renny's exercise of her Section 7 rights to engage in concerted activity in search of better wages and working conditions.

On January 12, 2023, MedPro attorney Rebecca Bovinet reached out to Renny via phone to inform her that MedPro had received a default judgment against her in arbitration in the amount of approximately $31,000, and that it would seek to confirm the arbitration award in approximately two weeks. Because Renny had not received any prior emails or mail correspondence about the arbitration award, this was the first time she heard about it. Bovinet warned Renny that failure to pay the judgment could result in serious consequences, including to her credit, and could affect any future applications for citizenship. Scared, Renny agreed to enter into a settlement agreement with MedPro that obligated Renny to pay MedPro $30,000 in three

installments of $10,000 each. The settlement agreement included a broad confidentiality and non-disparagement provision that prohibited Renny from "disparaging" MedPro or from sharing "any and all documents and information" about MedPro with anyone. These contract terms, which MedPro forced upon Renny to settle its claims for an unlawful debt, themselves violate Renny's Section 7 rights by prohibiting her from speaking out about the terms and conditions of her employment with other workers or with the NLRB.

Although Renny intended to make the required payments under the settlement agreement, Renny's financial circumstances changed at the end of February when her father, who had promised to sell some of his land to allow Renny to pay MedPro, died. As a result, she was unable to make the first payment. MedPro rebuffed Renny's attempts to negotiate payment to MedPro in lower installments, and on January 3, 2024, MedPro sued Renny in Broward County Court, Case Number CACE24000075, in further violation of Renny's Section 7 rights. Renny filed various affirmative defenses, but MedPro moved to strike them on the basis that the February 2023 settlement agreement entitled MedPro to the ex parte entry of a consent judgment in the amount of $31,131 plus post-judgment interest and attorneys' fees and costs. The judge entered an order granting MedPro's request on March 8, 2024, and Renny now lives with the threat that MedPro will further punish her by seeking to garnish her wages or destroy her credit.

FORM NLRB-501
(3-21)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case	Date Filed

INSTRUCTIONS:
File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer
Management Health Systems, LLC, d/b/a MedPro International

b. Tel. No.
954-739-4247

c. Cell No.

f. Fax. No.

d. Address *(Street, city, state, and ZIP code)*
Int'l Place at Sawgrass II
1580 Sawgrass Corporate Pkwy.
Suite 200
Sunrise, FL 33323

e. Employer Representative
Liz Tonkin, President and CEO

g. e-mail

h. Number of workers employed
1,000

i. Type of Establishment *(factory, mine, wholesaler, etc.)*
nurse staffing agency

j. Identify principal product or service
nurse labor

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*
The Charged Employer has interfered with the filing employee's Section 7 rights by maintaining a Repayment Agreement Provision that functions as a de facto non-compete agreement, maintaining an arbitration agreement that is apt to discourage filings with the NLRB, maintaining a policy and practice of prohibiting workers from speaking about their wages and working conditions, prohibiting workers from soliciting their colleagues to leave their jobs in search of better wages and working conditions, and filing an arbitration against the filing employee in retaliation for leaving.

3. Full name of party filing charge *(if labor organization, give full name, including local name and number)*
Sariga Kunnapilly

4a. Address *(Street and number, city, state, and ZIP code)*
[redacted]

4b. Tel. No.
[redacted]

4c. Cell No.

4d. Fax No.

4e. e-mail
[redacted]

5. Full name of national or international labor organization of which it is an affiliate or constituent unit *(to be filled in when charge is filed by a labor organization)*

6. DECLARATION
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

(signature of representative or person making charge)

Rachel Dempsey, Towards Justice
(Print/type name and title or office, if any)

Address 1580 N. Logan Street, Ste 660 PMB 44465, Denver CO 80203

Date 6/27/2024

Tel. No.
720-364-2689

Office, if any, Cell No.

Fax No.

e-mail
rachel@towardsjustice.org

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PRIVACY ACT STATEMENT

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As set forth in the below charge, charged party Management Health Systems, LLC, d/b/a MedPro ("MedPro"), a major healthcare staffing agency, engages in numerous, systematic violations of its employees' Section 7 rights, both during and after employment. These violations include:

- Requiring workers to enter into stay-or-pay contracts that impose fines of up to $40,000, plus attorneys' fees and other enforcement costs, for exercising their right to seek other employment;
- Weaponizing forced arbitration provisions against workers who leave their jobs, and leveraging arbitration awards to coerce workers into accepting unfavorable settlements that purport to permanently restrict workers from speaking out about their wages, working conditions, and other aspects of their relationship with MedPro;
- Colluding with the American Arbitration Association to impose massive fines, including sometimes in absentia, on workers who dare to leave their jobs;
- Maintaining a policy and practice of prohibiting workers from speaking about their wages and working conditions; and
- Prohibiting workers from soliciting their colleagues to leave their jobs in search of better wages and working conditions.

1. MedPro and AAA's Weaponized Arbitration Mill

In order to undermine worker bargaining power and intimidate workers out of exercising their core rights under the NLRA, charged party Management Health Systems, LLC, d/b/a MedPro ("MedPro"), a major healthcare staffing agency, requires workers to agree to several restrictive provisions of employment, including stay-or-pay provisions that indenture vulnerable workers by threatening tens of thousands of dollars in debt if the workers leave their jobs within three years of starting. These contracts violate the NLRA's Section 7 protections by chilling employees' ability to engage in self-organization, mutual aid, and concerted activity to protect their and others' labor rights.

Because MedPro's stay-or-pay contracts violate the NLRA, among other laws, they are illegal and unenforceable, and the debts that they purport to impose are void. But MedPro enforces these unlawful contracts via forced arbitration, enlisting the help of its chosen provider, the American Arbitration Association ("AAA"), to file secretive arbitrations pursuing tens of thousands of dollars in fines from workers who dare to engage in concerted activity in search of higher pay or better working conditions.

What's more, MedPro's contract allows it to recover "enforcement costs," meaning that just by filing an arbitration, MedPro can compound its threat of financial ruin by saddling nurses with tens of thousands of dollars in attorneys' fees, arbitration costs, and expenses on top of any alleged contractual debt. And AAA's lax notice requirements mean that many such arbitrations conclude with a default judgment, allowing it to collect its fees and rubber-stamp MedPro's contracts before the workers even receive notice that they are being sued. Together with AAA,

MedPro appears to be running a weaponized arbitration mill, punishing workers who exercise their Section 7 rights.

With default judgments in hand, MedPro is able to further impinge upon workers' Section 7 rights, using the judgments to coerce workers into unfavorable settlement agreements that include draconian confidentiality and non-disparagement provisions, preventing workers from ever speaking out about their treatment by MedPro. Workers who do not settle find themselves subject to enforcement proceedings in state court, which MedPro threatens could lead to serious consequences to their credit and livelihood. This scheme constitutes an ongoing and comprehensive threat to workers' ability to improve their working conditions and stand up for their rights.

2. Sariga Kunnapilly's Experience With MedPro

Charging Party Sariga Kunnapilly, a registered nurse, is one victim of MedPro's scheme. Kunnapilly first entered into an employment contract with MedPro in 2008. MedPro's contract changed several times over the decade-plus it took Kunnapilly to actually come to the United States to work with MedPro. Each time, MedPro forced Kunnapilly to sign a new contract. By the time the operative contract came out, Kunnapilly felt like she had no choice but to agree to its terms, because she had been waiting for so long for her job to start.

The contract that was operative at the time Kunnapilly came to the United States with MedPro in 2022 required her to work for MedPro for 30 months or else pay MedPro damages related to her departure. The agreement provided that these damages could be as high as $40,000 and described them as including MedPro's out-of-pocket costs for licensing, credentialing, visa screen services, travel to the United States, and orientation, as well as "costs incurred by the Employer to ensure the Healthcare Professional's successful transition to work and life in the U.S., including, but not limited to, the cost of Employer personnel and infrastructure." MedPro intended this provision to prevent Kunnapilly from quitting, writing in a Q&A that accompanied the employment agreement that Kunnapilly would have no opportunity to "buy out" the contract, stating that MedPro "requires that you fulfill your agreed-upon Commitment Term." Upon information and belief, MedPro maintains this contractual term or a similar contractual term today.

In addition to the stay-or-pay provision, MedPro's contract also included several restrictive covenants and other terms intended to restrict workers' abilitly to engage in concerted activity. These included a noncompete and a broad confidentiality provision that prohibited Kunnapilly from sharing any non-public information about MedPro with anyone, which she understood to prohibit her from sharing any information about her job at MedPro, such as salary, with colleagues. In addition, the contract included an arbitration provision that purported to "cover[] all Claims that could otherwise be brought in federal, state, or local court or agency under applicable federal, state, or local laws, rules, ordinances or regulations," that required complete confidentiality, and that allowed the prevailing party to recover all arbitration costs and

attorneys' fees from the losing party.[1] The contract stated that any arbitration would be conducted by JAMS unless JAMS was unavailable, in which case it would be conducted by AAA. The employment agreement also included a non-solicitation provision that prohibited workers from soliciting other MedPro workers. Upon information and belief, MedPro's current employees are still required to agree to these or similar contractual terms.

In November 2022, Kunnapilly moved to the United States to begin work for MedPro. She was initially required to live in Miami for orientation. In December 2022, she moved to Houston, Texas and in January 2023, she began work for MedPro at HCA Houston Healthcare. During the two months before she began work, MedPro was paying Kunnapilly at a rate of approximately $400 per week.

Kunnapilly soon found that she was grossly underpaid compared to other workers with similar jobs and experience, and that it was difficult to live in the United States on her low pay. Even working overtime was of limited help, as MedPro offered only an additional dollar an hour in incentive pay for overtime. Kunnapilly has a child with special needs and is the primary breadwinner for her family. Within a few months, she found that she was going deep into debt trying to keep her head above water. Moreover, while she did not discuss her salary because MedPro had told her that doing so was prohibited, her colleagues who were employed directly with HCA discussed theirs. That was how Kunnapilly learned that HCA employees were making nearly twice as much as she was despite her almost two decades of experience.

Kunnapilly tried to resolve her workplace issues with MedPro, attempting to negotiate for increased wages, but MedPro responded by telling her that her wages were "very competitive." As a result, Kunnapilly exercised her right to engage in concerted activity by quitting her job in March 2023.

In early 2024, MedPro initiated an arbitration against Kunnapilly seeking to recover its so-called "damages" for her departure. Although Kunnapilly's arbitration agreement required arbitrations be commenced with JAMS unless JAMS was unavailable, the arbitration is being administered by AAA. When Kunnapilly requested an itemized list of MedPro's "damages" during the arbitration process, MedPro provided her with a statement for $32,290 in damages, including a vague line item for something called "cost of capital" and over $20,000 in unspecified "U.S. Transition Costs" (which was separate from living expenses and direct costs associated with licensure and testing). This amount was reduced by $2,153 for the two months Kunnapilly worked for MedPro, but MedPro's lawyer also informed Ms. Kunnapilly that "**this figure does NOT include MedPro's fees and costs** (AAA fees, attorneys fees etc.), which the Contract entitles MedPro to as prevailing party fees." MedPro's attempt to recoup these costs constitutes a violation of and retaliation for Kunnapilly's exercise of her Section 7 rights to engage in concerted activity in search of better wages and working conditions.

[1] A worker would have to read nearly two pages of fine print before learning that NLRB charges are not precluded by the arbitration agreement.

FORM NLRB-501
(3-21)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case	Date Filed

INSTRUCTIONS:
File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer
Management Health Systems, LLC, d/b/a MedPro International

b. Tel. No.
954-739-4247

c. Cell No.

f. Fax. No.

d. Address *(Street, city, state, and ZIP code)*
Int'l Place at Sawgrass II
1580 Sawgrass Corporate Pkwy.
Suite 200
Sunrise, FL 33323

e. Employer Representative
Liz Tonkin, President and CEO

g. e-mail

h. Number of workers employed
1,000

i. Type of Establishment *(factory, mine, wholesaler, etc.)*
nurse staffing agency

j. Identify principal product or service
nurse labor

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*
The Charged Employer has interfered with the filing employee's Section 7 rights by maintaining a Repayment Agreement Provision that functions as a de facto non-compete agreement, maintaining an arbitration agreement that is apt to discourage filings with the NLRB, maintaining a policy and practice of prohibiting workers from speaking about their wages and working conditions, prohibiting workers from soliciting their colleagues to leave their jobs in search of better wages and working conditions, and initiating an arbitration against the filing employee in retaliation for leaving.

3. Full name of party filing charge *(if labor organization, give full name, including local name and number)*
Jolly Alexander

4a. Address *(Street and number, city, state, and ZIP code)*
[redacted]

4b. Tel. No.
[redacted]

4c. Cell No.

4d. Fax No.

4e. e-mail
[redacted]

5. Full name of national or international labor organization of which it is an affiliate or constituent unit *(to be filled in when charge is filed by a labor organization)*

6. DECLARATION
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

(signature of representative or person making charge)

Rachel Dempsey, Towards Justice
(Print/type name and title or office, if any)

Address 1580 N. Logan Street, Ste 660 PMB 44465, Denver CO 80203

Date 07/09/2024

Tel. No.
720-364-2689

Office, if any, Cell No.

Fax No.

e-mail
rachel@towardsjustice.org

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- Weaponizing forced arbitration provisions against workers who leave their jobs, and leveraging arbitration awards to coerce workers into accepting unfavorable settlements that purport to permanently restrict workers from speaking out about their wages, working conditions, and other aspects of their relationship with MedPro;
- Colluding with the American Arbitration Association to impose massive fines, including sometimes in absentia, on workers who dare to leave their jobs;
- Maintaining a policy and practice of prohibiting workers from speaking about their wages and working conditions; and
- Prohibiting workers from soliciting their colleagues to leave their jobs in search of better wages and working conditions.

1. MedPro and AAA's Weaponized Arbitration Mill

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Because MedPro's stay-or-pay contracts violate the NLRA, among other laws, they are illegal and unenforceable, and the debts that they purport to impose are void. But MedPro enforces these unlawful contracts via forced arbitration, enlisting the help of its chosen provider, the American Arbitration Association ("AAA"), to file secretive arbitrations pursuing tens of thousands of dollars in fines from workers who dare to engage in concerted activity in search of higher pay or better working conditions.

What's more, MedPro's contract allows it to recover "enforcement costs," meaning that just by filing an arbitration, MedPro can compound its threat of financial ruin by saddling nurses with tens of thousands of dollars in attorneys' fees, arbitration costs, and expenses on top of any alleged contractual debt. And AAA's lax notice requirements mean that many such arbitrations conclude with a default judgment, allowing it to collect its fees and rubber-stamp MedPro's contracts before the workers even receive notice that they are being sued. Together with AAA,

MedPro appears to be running a weaponized arbitration mill, punishing workers who exercise their Section 7 rights.

With default judgments in hand, MedPro is able to further impinge upon workers' Section 7 rights, using the judgments to coerce workers into unfavorable settlement agreements that include draconian confidentiality and non-disparagement provisions, preventing workers from ever speaking out about their treatment by MedPro. Workers who do not settle find themselves subject to enforcement proceedings in state court, which MedPro threatens could lead to serious consequences to their credit and livelihood. This scheme constitutes an ongoing and comprehensive threat to workers' ability to improve their working conditions and stand up for their rights.

2. Jolly Alexander's Experience With MedPro

Charging Party Jolly Alexander, a registered nurse, is one victim of MedPro's scheme. Alexander originally began the process of coming to the United States to work as a nurse in 2007 with a company that is now defunct. Over a decade later, in 2019, Alexander entered into a contract with MedPro, which re-filed her immigration petition in 2020.

Alexander's contract with MedPro required her to work for MedPro for 3 years or else pay damages related to her departure. The agreement provided that these damages could be as high as $40,000 and described them as including MedPro's out-of-pocket costs for licensing, credentialing, visa screen services, and travel to the United States, as well as "costs, expenses, and damages relating to the replacement of the Employee's services to the Client(s)" and lost profits. MedPro intended this provision to prevent Alexander from quitting. MedPro wrote in a Q&A that accompanied the employment agreement that Alexander would have no opportunity to "buy out" the contract, stating that MedPro "requires that you fulfill your agreed-upon Commitment Term." Upon information and belief, MedPro maintains this contractual term or a similar contractual term today.

In addition to the stay-or-pay provision, MedPro's contract also included several restrictive covenants and other terms intended to restrict workers' abilitly to engage in concerted activity. These included a noncompete and a broad confidentiality provision that prohibited Alexander from sharing any non-public information about MedPro with anyone, including with colleagues. In addition, the contract included an arbitration provision that purported to "cover[] all Claims that could otherwise be brought in federal, state, or local court or agency under applicable federal, state, or local laws, rules, ordinances or regulations," that required complete confidentiality, and that allowed the prevailing party to recover all arbitration costs and attorneys' fees from the losing party.[1] The employment agreement also included a non-solicitation provision that prohibited workers from soliciting other MedPro workers. Upon information and belief, MedPro's current employees are still required to agree to these or similar contractual terms.

[1] A worker would have to read nearly two pages of fine print before learning that NLRB charges are not precluded by the arbitration agreement.

In December 2021, Alexander moved to the United States to begin work for MedPro. She first went to Florida for orientation. At that orientation, MedPro representatives told employees that they were required to keep the terms and conditions of their employment, including their salary, confidential, and that they should raise any employment issues they had with MedPro and not with the hospitals where they were placed.

In January 2022, Alexander started work as a nurse at LewisGale Medical Center in Salem, VA. Alexander soon found that she was grossly underpaid compared to other workers with similar jobs and experience, and that she was struggling financially. Additionally, MedPro had sold Alexander's services to LewisGale as a travel nurse, meaning that she was moved around from floor to floor based on where she was needed, which was confusing and overwhelming. Travel nurses are generally paid a premium to compensate for this lack of stability, but Alexander made less than even other permanent employees. Alexander also faced discrimination and disparate treatment from other nurses due to her national origin, meaning that she was often isolated and overwhelmed.

When Alexander raised her issues with pay and discrimination, MedPro suggested that she budget better. As a result, Alexander exercised her right to engage in concerted activity by quitting her job in October 2022. MedPro's corporate counsel, Rebecca Bovinet, emailed Alexander shortly after she provided notice stating that MedPro had calculated her actual damages at $58,032, and based on the $40,000 cap and reduction for months worked, sought to collect $31,111 from her.

In February 2024, MedPro initiated an arbitration against Alexander seeking to recover $31,111 in so-called "damages" for her departure, as well as attorneys' fees, interest, and the costs of the arbitration. MedPro's attempt to recoup these costs constitutes a violation of and retaliation for Alexander's exercise of her Section 7 rights to engage in concerted activity in search of better wages and working conditions.

FORM NLRB-501
(3-21)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case	Date Filed

INSTRUCTIONS:
File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer
Management Health Systems, LLC, d/b/a MedPro International

b. Tel. No.
954-739-4247

c. Cell No.

f. Fax. No.

d. Address *(Street, city, state, and ZIP code)*
Int'l Place at Sawgrass II
1580 Sawgrass Corporate Pkwy.
Suite 200
Sunrise, FL 33323

e. Employer Representative
Liz Tonkin, President and CEO

g. e-mail

h. Number of workers employed
1,000

i. Type of Establishment *(factory, mine, wholesaler, etc.)*
nurse staffing agency

j. Identify principal product or service
nurse labor

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*
The Charged Employer has interfered with the filing employee's Section 7 rights by maintaining a Repayment Agreement Provision that functions as a de facto non-compete agreement, maintaining an arbitration agreement that is apt to discourage filings with the NLRB, maintaining a policy and practice of prohibiting workers from speaking about their wages and working conditions, prohibiting workers from soliciting their colleagues to leave their jobs in search of better wages and working conditions, and filing an arbitration against the filing employee in retaliation for leaving.

3. Full name of party filing charge *(if labor organization, give full name, including local name and number)*
Jisha Gnanayya

umber, city, state, and ZIP code)
[redacted]

[redacted]

4c. Cell No.

4d. Fax No.

[redacted]

5. Full name of national or international labor organization of which it is an affiliate or constituent unit *(to be filled in when charge is filed by a labor organization)*

6. DECLARATION
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

(signature of representative or person making charge)

Rachel Dempsey, Towards Justice
(Print/type name and title or office, if any)

Address 1580 N. Logan Street, Ste 660 PMB 44465, Denver CO 80203

Date 8/12/2024

Tel. No.
720-364-2689

Office, if any, Cell No.

Fax No.

e-mail
rachel@towardsjustice.org

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.

As set forth in the below charge, charged party Management Health Systems, LLC, d/b/a MedPro ("MedPro"), a major healthcare staffing agency, engages in numerous, systematic violations of its employees' Section 7 rights, both during and after employment. These violations include:

- Requiring workers to enter into stay-or-pay contracts that impose fines of up to $40,000, plus attorneys' fees and other enforcement costs, for exercising their right to seek other employment;
- Weaponizing forced arbitration provisions against workers who leave their jobs, and leveraging arbitration awards to coerce workers into accepting unfavorable settlements that purport to permanently restrict workers from speaking out about their wages, working conditions, and other aspects of their relationship with MedPro;
- Colluding with the American Arbitration Association to impose massive fines in absentia on workers who dare to leave their jobs;
- Maintaining a policy and practice of prohibiting workers from speaking about their wages and working conditions; and
- Prohibiting workers from soliciting their colleagues to leave their jobs in search of better wages and working conditions.

1. MedPro and AAA's Weaponized Arbitration Mill

In order to undermine worker bargaining power and intimidate workers out of exercising their core rights under the NLRA, charged party Management Health Systems, LLC, d/b/a MedPro ("MedPro"), a major healthcare staffing agency, requires workers to agree to several restrictive provisions of employment, including stay-or-pay provisions that indenture vulnerable workers by threatening tens of thousands of dollars in debt if the workers leave their jobs within three years of starting. These contracts violate the NLRA's Section 7 protections by chilling employees' ability to engage in self-organization, mutual aid, and concerted activity to protect their and others' labor rights.

Because MedPro's stay-or-pay contracts violate the NLRA, among other laws, they are illegal and unenforceable, and the debts that they purport to impose are void. But MedPro enforces these unlawful contracts via forced arbitration, enlisting the help of its chosen provider, the American Arbitration Association ("AAA"), to file secretive arbitrations pursuing tens of thousands of dollars in fines from workers who dare to engage in concerted activity in search of higher pay or better working conditions.

What's more, MedPro's contract allows it to recover "enforcement costs," meaning that just by filing an arbitration, MedPro can compound its threat of financial ruin by saddling nurses with tens of thousands of dollars in attorneys' fees, arbitration costs, and expenses on top of any alleged contractual debt. And AAA's lax notice requirements mean that many such arbitrations conclude with a default judgment, allowing it to collect its fees and rubber-stamp MedPro's contracts before the workers even receive notice that they are being sued. Together with AAA,

MedPro appears to be running a weaponized arbitration mill, punishing workers who exercise their Section 7 rights.

With default judgments in hand, MedPro is able to further impinge upon workers' Section 7 rights, using the judgments to coerce workers into unfavorable settlement agreements that include draconian confidentiality and non-disparagement provisions, preventing workers from ever speaking out about their treatment by MedPro. Workers who do not settle find themselves subject to enforcement proceedings in state court, which MedPro threatens could lead to serious consequences to their credit and livelihood. This scheme constitutes an ongoing and comprehensive threat to workers' ability to improve their working conditions and stand up for their rights.

2. Jisha Gnanayya's Experience With MedPro

Charging Party Jisha Gnanayaa, a registered nurse, is one victim of MedPro's scheme. Gnanayya first sought to move to the United States for work in 2007. Because of significant visa delays, however, her priority date did not arrive until 2018. At that point, a friend referred her to a recruiter in India that put her in touch with MedPro. Gnanayya first signed a contract with MedPro when she was working in Saudi Arabia in 2019.

The employment agreement Gnanayya signed required her to work for MedPro for three years or else pay MedPro "Actual Damages" related to her departure. The agreement provided that these damages could be as high as $40,000 and described them as including MedPro's out-of-pocket costs for immigration, licensing, and travel to the United States as well as vague, open-ended costs such as the cost of finding a replacement employee and "lost profits" (i.e., whatever amount of money MedPro expected to make from Gnanayya's labor in the time remaining on Gnanayya's contract when she left).[1] Upon information and belief, MedPro maintains this contractual term or a similar contractual term today.

In addition to the stay-or-pay provision, MedPro's contract also included several restrictive covenants and other terms intended to restrict workers' ability to engage in concerted activity. These included a noncompete and a broad confidentiality provision that prohibited Gnanayya from sharing any non-public information about MedPro with anyone. In addition, the contract included an arbitration provision that purported to "cover[] all Claims that could otherwise be brought in federal, state, or local court or agency under applicable federal, state, or local laws, rules, ordinances or regulations" and that allowed the prevailing party to recover all arbitration costs and attorneys' fees from the losing party.[2] The employment agreement also included a non-solicitation provision that prohibited workers from soliciting other MedPro workers. Upon information and belief, MedPro's current employees are still required to agree to these or similar contractual terms.

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[1] In a different case, the US Department of Labor has said that a provision allowing an employer to recoup "lost profits" is a kickback against wages in violation of the FLSA.

[2] A worker would have to read over a page more of fine print before learning that NLRB charges are not precluded by the arbitration agreement.

Gnanayya experienced several difficulties with the immigration process, including MedPro failing to reimburse her for expenses, charging her for parts of the immigration process that she had already completed, and failing to apply for her visa with the right priority date. MedPro also lost Gnanayya's fingerprint cards, and failed to properly register Gnanayya with the Texas Board of Nursing, instead sending the board documents for a different person with the same first name.

In October 2021, Gnanayya moved to the United States, and in November 2021 she went to Florida for orientation with MedPro. Gnanayya was placed with TriStar Centennial Medical Center in Nashville, TN, where she worked until she left MedPro. Although Gnanayya had been a critical care nurse since she graduated from nursing school, MedPro assigned her to the neurosurgical ICU, where she was treated as a new graduate and had to learn the job from scratch. Although Gnanayya was given a preceptor to help her, the preceptor changed every day, which significantly impeded her development.

In addition, Gnanayya experienced persistent issues with her paycheck, such as being frequently marked absent when she was not. These issues were difficult to resolve, because MedPro and the hospital placed the blame for the errors on each other. This compounded the problem that she was grossly underpaid compared to other workers with similar jobs and experience. Gnanayya soon found that it was difficult to live in the United States on her low pay, particularly as the sole breadwinner for a husband and three children.

Gnanayya tried to resolve her workplace issues with MedPro, attempting to negotiate for increased wages and a transfer to a hospital closer to her extended family, to no avail. As a result, she exercised her right to engage in concerted activity by quitting her job in July 2022 in order to seek out a better one. Shortly after her resignation, MedPro's corporate counsel reached out to Gnanayya stating that she would owe the company $32,222 for leaving.

In October 2022, MedPro's corporate counsel sent an email to Gnanayya stating that she would submit the matter to mediation unless Gnanayya agreed to a payment plan with interest or a lump sum payment in full. Gnanayya did not participate in the mediation.

In January 2024, a MedPro representative emailed Gnanayya stating that the company would initiate arbitration against her unless she agreed to a "settlement" of $32,222. In May 2024, MedPro initiated an arbitration against Gnanayya seeking to recover the $32,222 in so-called "damages" for her departure, as well as attorneys' fees, interest, and the costs of the arbitration. MedPro's attempt to recoup these costs constitutes a violation of and retaliation for Alexander's exercise of her Section 7 rights to engage in concerted activity in search of better wages and working conditions.

Exhibit 2

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
LABOR BUREAU

January 4, 2023

Via Electronic Mail (LesserA@adr.org)
Ann Lesser
Vice President – Labor, Employment, and Elections
American Arbitration Association
120 Broadway, Floor 21
New York, NY 10271

Re: *Unlawful Liquidated Damages Provisions in Employment Contracts and Advanced Care Staffing, LLC v. Benzor Vidal* (Case No. 01-22-0002-9008)

Dear Ms. Lesser:

We write to express our grave concerns about companies using arbitration proceedings to attempt to enforce illegal liquidated damages provisions against foreign nurses. Hospitals and staffing agencies have long engaged in a practice of recruiting nurses from other nations to work in New York, requiring them to sign employment contracts that oblige them to pay unlawful fees (up to $25,000) should they resign or be fired within their first three years of employment. These fees are an unenforceable penalty and the provisions threatening enforcement of such fees compel forced labor, in violation of the Trafficking Victims Protection Act ("TVPA").[1] Through recent public lawsuits, we understand that employers are pursuing damages against workers under these unlawful liquidated damages provisions through mandatory arbitration proceedings before the American Arbitration Association ("AAA").

The New York State Office of the Attorney General (the "OAG") is deeply committed to enforcing federal, state, and local laws to protect vulnerable workers' rights and ensure a workplace free of exploitation. The OAG has and will continue to investigate these types of claims. *See In re: Albany Med Health System f/k/a Albany Medical Center*, AOD No. 21-040 (June 11, 2021); AOD No. 22-058 (September 13, 2022) (settling OAG investigations of employer for unlawfully including and enforcing a $20,000 repayment fee in employment contracts from nurses recruited from foreign nations).[2]

[1] *See Paguirigan v. Prompt Nursing Emp't Agency LLC*, No. 17-cv-1302 (NG) (JO), 2019 U.S. Dist. LEXIS 165587, at *23, 54 (E.D.N.Y. Sep. 23, 2019).

[2] See press releases here: https://ag.ny.gov/press-release/2021/attorney-general-james-recovers-over-90000-restitution-albany-nurses-subjected (AOD No. 21-040 *embedded*); https://ag.ny.gov/press-release/2022/attorney-general-james-returns-24000-nurses-taken-advantage-albany-hospital (AOD No. 22-058 *embedded*).

We have analyzed the contract provisions at issue in the matter of *Vidal v. Advanced Care Staffing, LLC*, 22-cv-5535 (E.D.N.Y. Sept. 16, 2022) (related to pending AAA Case No. 01-22-0002-9008, *Advanced Care Staffing, LLC v. Benzor Vidal*) where Advanced Care Staffing ("ACS") demanded a substantial penalty fee from Vidal, a nurse recruited from a foreign nation, because he failed to complete his three-year employment term. After an initial analysis of ACS contract provisions,[3] they appear invalid and unlawful under the TVPA.

The ACS employment contracts and circumstances under which nurses have signed them, are strikingly similar to the federal matter analyzed against Prompt Nursing Emp't Agency LLC d/b/a Sentosa Services a/k/a/ Sentosacare ("Sentosa"). *Paguirigan*, No. 17-cv-1302 (NG) (JO), 2019 U.S. Dist. LEXIS 165587. In *Sentosa*, nurses recruited from the Philippines were given contracts with a provision requiring them to pay up to $25,000 in liquidated damages if they failed to complete the full three-year employment term. *Id*. at *9.[4] The $25,000 penalty demanded in liquidated damages was disproportionate to the actual costs *Sentosa* incurred in recruiting the nurses,[5] which were ascertainable at the time of hire. *Id*. at *34. This provision constituted a threat of serious financial harm "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." *Id*. at *53 (quoting TVPA § 1589(c)(2)). In reaching this conclusion the court noted consideration of the "particular vulnerabilities of plaintiff and other class members—all of them recent immigrants to the United States—and have also focused on whether it would be objectively reasonable for them to continue working under the circumstances." *Id*. at *54.

Similar to *Sentosa*, ACS's early termination provisions threaten both legal and financial harm in violation of the TVPA § 1589. The indefinite sums demanded by ACS are disproportionate to the ascertainable costs ACS may have incurred in recruiting Vidal, making it an unenforceable penalty.[6]

[3] The first contract Vidal signed in 2019 sought to compel performance of a three-year work term by including a $20,000 promissory note, demanding this amount plus all costs incurred by ACS to enforce this note if Vidal was terminated or resigned within the first three years of work. The second contract Vidal signed in 2022 removed the promissory note requirement, to avoid any interpretation it could be used as an early "buy out," but still demanded reimbursement of all costs and expenses to compel work performance for three years and prevent an early termination. The costs and expenses, as vaguely stated in the second contract, are indefinite, and the financial harm threatened by ACS has the potential to exceed $20,000. In response to Vidal informing ACS of his desire to resign prior to his three-year work term, ACS communicated to him that they would seek significant damages in arbitration, explaining that their purported damages were at least $20,000, the cost of trying to find a new nurse would be $9,000 for each year remaining in his contract, and that Vidal would also be responsible for all attorney's fees and costs incurred in arbitration.

[4] The court noted that although the contract was negotiated at arms length, the parties were of "unequal bargaining power" and the contract was "not achieved through arms length negotiation"; the plaintiff was not represented by counsel when she executed the contract and there was no evidence she had familiarity with American contract law. *Id*. at *25. (internal citations omitted).

[5] When reviewing actual costs, the court looked at lawyer's fees, filing fees, visa fees, ICHP visa screening fees, airfare, and other miscellaneous expenses such as housing. *Id*. at *26.

[6] See *Paguirigan*, at *26 (the liquidated damages provision was an unenforceable penalty where it did not bear "a reasonable proportion to the probable loss").

Accordingly, we request that AAA exercise caution in reviewing the pending arbitration matter, *ACS v. Vidal* (AAA Case No. 01-22-0002-9008). AAA should consider staying the arbitration because it is an undue burden on the worker to defend this matter, especially while the legality of the contract provision at issue is pending review before the U.S. District Court. We also request that AAA perform a review of open matters enforcing similar liquidated damages provisions and consider staying those cases as well.

The OAG also urges the AAA to exercise its authority to decline to administer future proceedings brought under like circumstances, concerning unlawful contract provisions that violate the TVPA and seek unenforceable penalties. *See AAA Employment Arbitration Rules and Procedures*, pp. 7-8 ("If the [AAA] determines that a dispute resolution program on its face substantially and materially deviates from the minimum due process standards of the Employment Arbitration Rules and Mediation Procedures and the Due Process Protocol, the [AAA] may decline to administer cases under that program").[7]

We request that the AAA consider the serious implications of proceeding with these arbitrations and not allow its arbitration program to be used as a tool by employers to further labor trafficking violations.

Sincerely,

/s/ Roya Aghanori
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Assistant Attorney General
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[7] https://www.adr.org/sites/default/files/Employment-Rules-Web.pdf