



OVCTTAC



Office for Victims of Crime
OVC

Civil Legal Remedies and Criminal Restitution for Human Trafficking Victims

February 19, 2015
3:15–4:15 p.m. eastern time

The material presented during today's webinar session will be available on the Human Trafficking Learning Community.

The session will be recorded and will begin shortly.

As with all technology, we may experience a momentary lapse in the Webinar session. In the event of a problem, please be patient and remain on the line. If the problem persists, please contact Jadams@ovcttac.org for technical assistance.



Justice for Trafficking Victims in the United States: Criminal Restitution and Civil Damages

February 19, 2015

**THE HUMAN TRAFFICKING PRO
BONO LEGAL CENTER**

Martina E. Vandenberg





AGENDA

1. What criminal restitution is available at the federal level?
2. What civil legal remedies are available to human trafficking survivors through state and federal laws?
3. How can advocates press for criminal restitution and civil remedies?
4. What challenges do advocates face and how can they overcome them when advocating for civil legal remedies and criminal restitution at each level?
5. Who is involved in the process of requesting criminal restitution?



1. Has criminal restitution been ordered in any of your federal criminal trafficking cases? Yes or No?

2. For those who answered yes, did you participate in the process? Yes or No?

3. Were the funds ever collected and provided to the victim(s)? Yes or No?



Criminal Restitution
for trafficking victims is
mandatory under federal
law.

18 USC § 1593

Research conducted by HT
Pro Bono and WilmerHale
found that restitution is
ordered in only 36% of
cases.





Definition of “full amount of the victim’s losses” under TVPRA, 18 U.S.C. § 1593

...the term “full amount of the victim’s losses” ... shall in addition include the **greater of the gross income or value to the defendant of the victim’s services or labor or the value of the victim’s labor** as guaranteed under the minimum wage and overtime guarantees of the Fair Labor Standards Act.



Definition of “full amount of the victim’s losses” under TVPRA, 18 U.S.C. § 1593:

Definition.— For purposes of this subsection, the term “full amount of the victim’s losses” includes any costs incurred by the victim for—

- (A) **medical services** relating to physical, psychiatric, or psychological care;
- (B) physical and occupational therapy or rehabilitation;
- (C) necessary **transportation**, temporary **housing**, and **child care** expenses;
- (D) **lost income**;
- (E) **attorneys’ fees**, as well as other costs incurred; and
- (F) any other losses suffered by the victim as a **proximate result** of the offense.



U.S. v. Lewis

1:09-cr-00213-EGS

District Court for the District of Columbia

- Defendant pled guilty to four counts of sex trafficking of minors;
- Judge appointed guardian *ad litem* to calculate restitution;
- GAL retained psychiatric expert;
- Prosecution calculated trafficker's gross earnings;
- Court rejected the “illegal work” argument;
- Restitution ordered under 18 USC § 1593;
- Total restitution award: **\$3,892,055** for four victims.



U.S. v. Edwards

011-CR-0316, District of Maryland, Greenbelt

- Defendants indicted for forced labor;
- Defendants pled guilty to alien harboring;
- Defendants paid \$50,000 into escrow account before sentencing;
- Court held two-day sentencing hearing;
- FLSA liquidated damages for unpaid wages included in restitution order;
- Restitution calculated under 18 USC § 1593;
- Final restitution award: **\$369,580.80.**



U.S. v. Akouavi Kpade Afolabi

- More than 20 girls from West Africa forced to work in hair braiding salons in Newark and East Orange, New Jersey;
- Girls ranged in age from 10 to 19;
- The girls were forced to turn over all of their earnings and tips to the traffickers;
- Afolabi sentenced to 27 years in prison and ordered to pay victims **\$3,949,140.80** in missed wages as criminal restitution.



Who is Involved in the Federal Restitution Process?

- Federal Prosecutors
- Pro Bono Attorneys
- NGO Attorneys
- Probation Officers
- Case Managers/Social Workers
- Federal Judges



Challenges to Obtaining Restitution:

- If the prosecutor does not request restitution, there is an 88% chance that it will not be awarded;
- Some prosecutors and judges believe that a defendant must be able to afford restitution. Ability to pay is **irrelevant** under the statute;
- Some judges are unwilling to award restitution in sex trafficking cases for “illegal work.” On appeal, courts have said that this objection is “**preposterous.**” *United States v. Cortes-Castro* (11th Circuit);
- Prosecutors sometimes use the wrong statute, **ignoring IRS Notice 12-2012**;
- Prosecutors may negotiate **plea agreements** without a restitution order, or may fail to include all victims;
- Prosecutors may fail to include liquidated damages in forced labor wage calculations.



What You Can Do:

- Obtain pro bono counsel for the trafficking victim;
- Advocate for restitution with the prosecutor early in the case;
- Develop calculations for restitution by determining how much your client is owed;
- Gather receipts to support your client's claims for "out-of-pocket" expenses, such as medical or housing costs;
- Meet with the probation officer to arrange an interview with your client;
- Assist your client in submitting a strong victim impact statement;
- If the prosecutor fails to request restitution, work with the pro bono attorney to intervene in the case.



The Civil Rights Division of the Justice Department issued a formal response to the HT Pro Bono/WilmerHale Restitution Report:

“Securing restitution for trafficking victims is an essential part of DOJ’s victim-centered approach to trafficking investigations and prosecutions.’ ...The department has worked to strengthen enforcement and train federal prosecutors in restitution, it said. ‘We look forward to continuing to secure significant restitution orders, and to work with victims’ pro bono counsel to seek justice for victims of human trafficking,’ the department said.”

The National Law Journal, October 2014

(c) The Human Trafficking Pro Bono Legal Center 2014



1. Have you helped your clients pursue civil remedies at the state level?
2. Have you helped your clients pursue civil remedies at the federal level?
3. If you answered yes to questions 1 and 2, was this a positive experience for the client?
4. Were any funds obtained?



Civil Litigation Against Traffickers:

- Many states have enacted their own private right of action statutes under **state law**.
- Trafficking victims have a **federal** private right of action.



State Law and Civil Remedies

- According to data compiled by the Polaris Project, 35 states and the District of Columbia now have civil remedies for trafficking survivors to sue their traffickers.
- State laws differ in the lengths for the statutes of limitations, damages available, and precise causes of action.
- States also have significant differences in jury verdict requirements (unanimous v. non-unanimous).
- The Uniform Law Commission (ULC) has also promulgated a model state law that includes these civil remedies.



Federal Private Right of Action: 18 U.S.C. § 1595

- (a) An individual who is a victim of a violation of this chapter may bring a **civil action against the perpetrator** (or whoever knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of this chapter) in an appropriate district court of the United States and **may recover damages** and reasonable attorneys fees.
- (b)
- (1) Any civil action filed under this section **shall be stayed** during the pendency of any criminal action arising out of the same occurrence in which the claimant is the victim.
- (2) In this subsection, a “criminal action” includes investigation and prosecution and is pending until final adjudication in the trial court.
- (c) No action may be maintained under this section unless it is commenced not later than **10 years** after the cause of action arose.

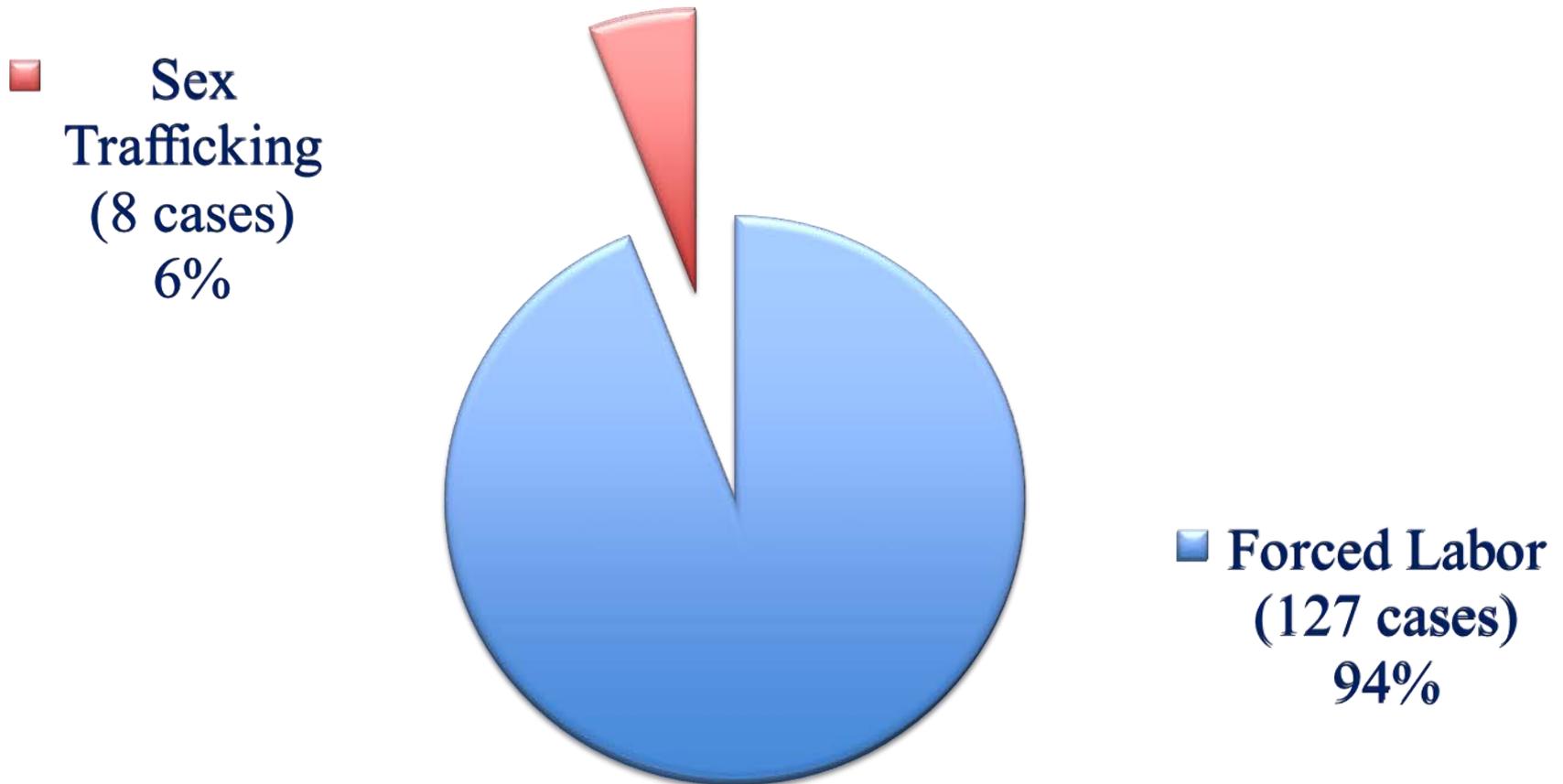
***Original statute passed in 2003, as amended.



135 federal civil cases have been
filed under 18 U.S.C. § 1595
since the 2003 TVPRA
amendments.



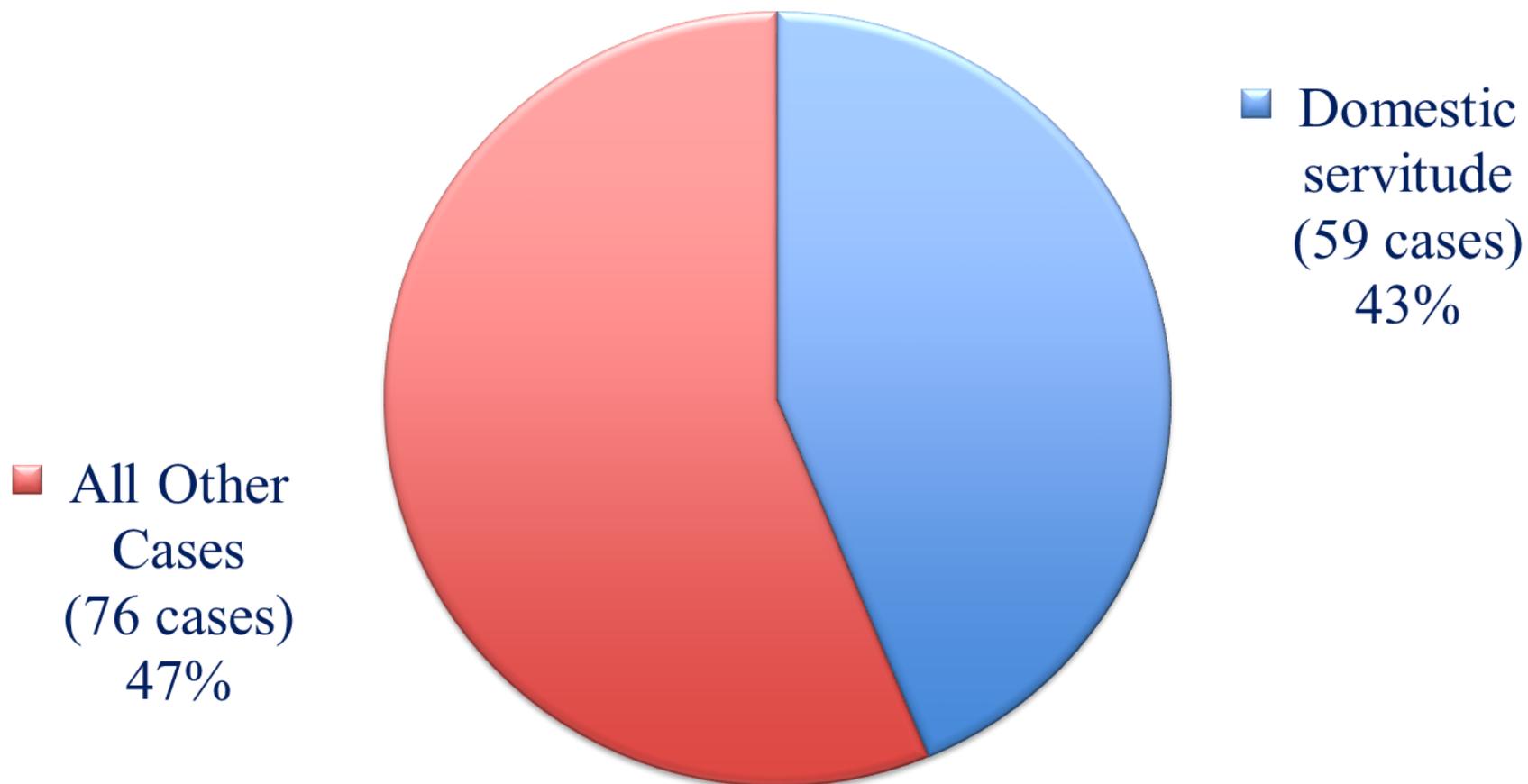
Trafficking Civil Cases



Source: The Human Trafficking Pro Bono Legal Center

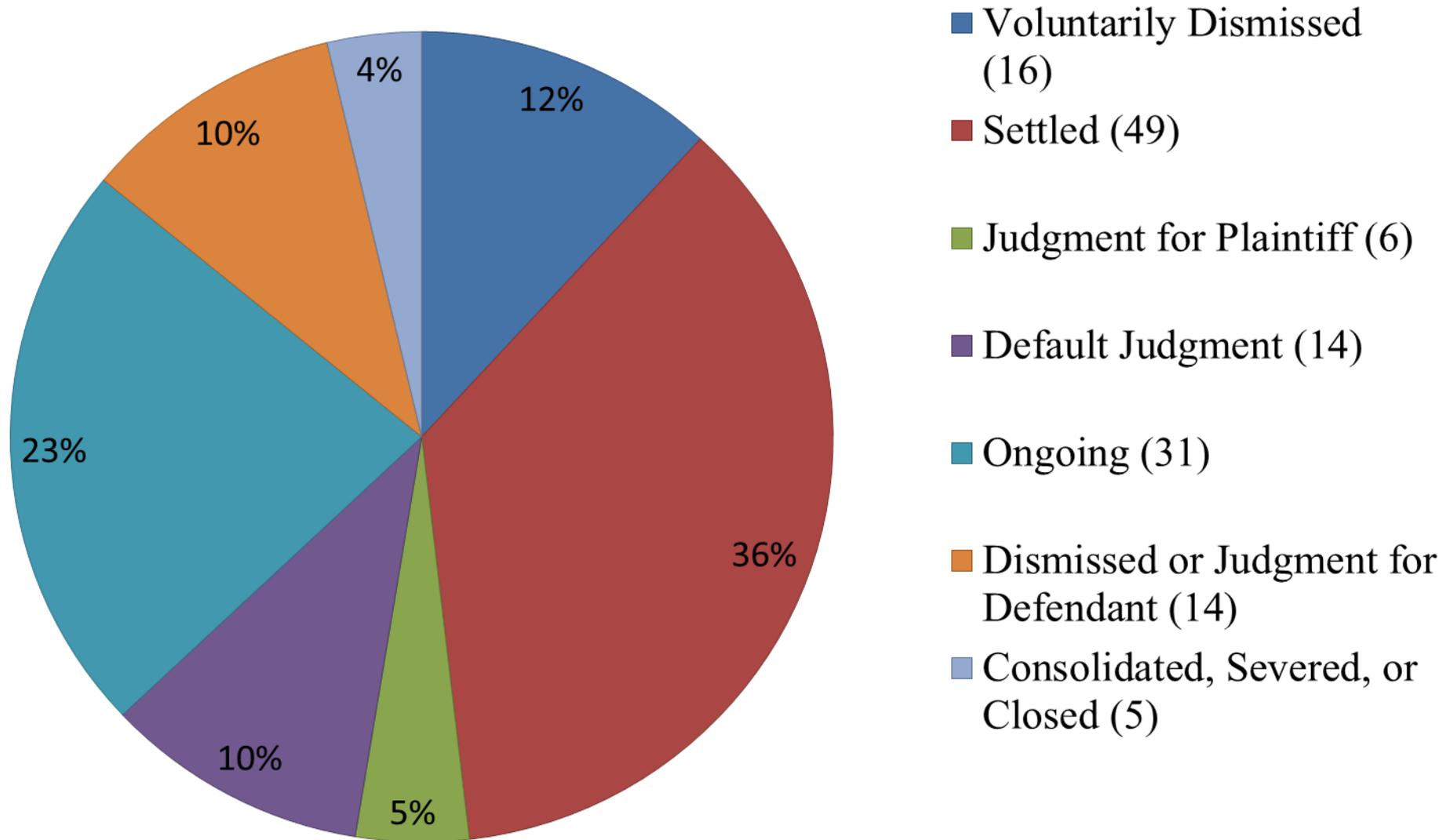


Trafficking Civil Cases



Source: The Human Trafficking Pro Bono Legal Center

Outcomes in 135 Federal Civil Cases Under 18 U.S.C. §1595



Source: The Human Trafficking Pro Bono Legal Center

Case	Facts	Duration of Labor	Judgment
<p><i>Aguilar v. Imperial Nurseries</i>, 2008 WL 2572250 (D. Conn. May 28, 2008)</p>	<p>Twelve Guatemalan plaintiffs obtained lawful visas to work planting in North Carolina, but instead transported to Connecticut, forced to work at tree nursery for 78 hours a week and little pay. Passports confiscated and travel restricted--threatened with arrest, imprisonment, and deportation.</p>	<p>3 Months</p>	<p>\$3,000/day Compensatory (Forced Labor) \$6,000/day Punitive \$300,000 Trafficking Damages Total Awards Range from \$371,000 to \$827,000 per person</p>
<p><i>Mazengo v. Mzengi</i>, No. 07-756 (D.D.C. 2008)</p>	<p>Passport confiscated, forced to cook meals, clean, do laundry, and care for children. Forced to cook food for catering company. Cut off from contact with outside world. Threatened and never paid.</p>	<p>4 Years</p>	<p>\$510,249.21 in treble damages under the Maryland Wage and Hour Law; \$45,101.69 in compensatory damages for unjust enrichment; \$19,961.64 in compensatory damages for fraudulent inducement; \$250,000.00 in compensatory damages for emotional distress; \$150,000.00 in punitive damages; \$84,036.25 in attorney's fees Total Award = \$1,059,348.79</p>
<p><i>Pena Canal v. de la Rose Dann</i>, 2010 U.S. Dist. LEXIS 97856 (N.D. Cal. Sept. 2, 2010)</p>	<p>Peruvian Plaintiff promised high wage and private living space for housework. Instead had passport confiscated, threatened with deportation, worked 15 hours/day 7 days/wk cleaning, caring for three children, cooking, and cleaning houses for defendant's real estate business. Forced to sleep on living room floor and kept from communicating with family in Peru.</p>	<p>1 Year, 9 Months</p>	<p>Assumed hourly wage of \$23.70. \$340,746.75 wages (increased by labor code penalties; reduced by criminal restitution order of \$123,740.34) \$92,400 emotional distress \$309,406.41 punitive Total Award = \$618,812.82</p>



Tips for Federal and State Trafficking Civil Cases:

- Obtain pro bono counsel for trafficking victim;
- Screen all cases for possible civil remedies;
- Advise trafficking victim that he/she can end case at any time;
- Attorneys should instruct client **NOT** to destroy any documents, emails, or social media postings;
- Adjust privacy settings on social media sites;
- Identify possible assets available to satisfy civil judgment;
- Be aware that a civil case can proceed whether or not there has been a criminal case.



**Civil Litigation Manual:
Southern Poverty Law Center**

<http://www.splcenter.org/get-informed/publications/civil-litigation-on-behalf-of-victims-of-human-trafficking>

**Uniform Act on the Prevention of and Remedies for Human Trafficking
(Uniform Act)**

<http://www.uniformlaws.org/Act.aspx?title=Prevention%20of%20and%20Remedies%20for%20Human%20Trafficking>



Martina E. Vandenberg
President

**THE HUMAN TRAFFICKING PRO
BONO LEGAL CENTER**

Tel: 202-716-8485

mvandenberg@htprobono.org

www.htprobono.org



Questions?