IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN MARIANA ISLANDS

DOES I, et al., On Behalf of Themselves and All Others Similarly Situated, Plaintiffs, v. THE GAP, INC., et al., Defendants.	Case No. CV-01-0031 ORDER GRANTING IN PART AND DENYING IN PART CUSTOMER DEFENDANTS' MOTION TO DISMISS THE PLAINTIFFS' SECOND AMENDED COMPLAINT

THIS MATTER came before the court on March 19, 2002 for hearing on the non-settling customer defendants' Motion to Dismiss the Second Amended Complaint.[1]

[1] Manufacturer defendants American Pacific Textile, Inc., Commonwealth Garment Mfg., Inc., Hansae (Saipan), Inc., Mariana Fashions, Inc., Marianas Garment Mfg., Inc., Michigan, Inc., Mirage (Saipan), Inc., N.E.T. Corp., Onwel Mfg., Inc., Top Fashion Corp., Advance Textile Corp., Net Apparel Co., Micronesian Garment Mfg., Inc., Pang Jin Sang Sa Corp., United International Corp., U.S. CNMI Development Corp., Concorde Garment Mfg. Corp., Global Mfg., Inc., L&T International Corp., Trans-Asia Garment Forte Corp., Grace International, Inc., Joo Ang Apparel, Inc., Express Mfg., Inc., Sako Corp., Neo Fashion, Inc., Uno Moda Corp., and Winners Corp. joined in Part II. A-H of the customer

Attorneys Michael Rubin, Albert H. Meyerhoff, and Joyce C.H. Tang appeared on behalf of plaintiffs. Attorneys Colin Thompson, William M. Fitzgerald, Robert Goldberg, Thomas Clifford, Steven Pixley, Brien Sers Nicholas, Richard Pierce, Robert O'Connor, Reginald D. Steer, Michael Canter, Joseph Horey, John D. Osborn, Brian McMahon, Jay Sorensen, Eric S. Smith, Gregory P. Joseph, and Daralyn Durey appeared on behalf of defendants.

Upon consideration of the written and oral arguments of counsel, defendants' Motion to Dismiss the Second Amended Complaint is GRANTED IN PART and DENIED IN PART as set forth herein.

STANDARD FOR MOTION TO DISMISS

Defendants move to dismiss plaintiffs' claims under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted. A Rule 12(b)(6) dismissal is proper only where there is either a "lack of a cognizable legal theory" or "the absence of sufficient facts alleged under a cognizable legal theory." Balistreri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1988). In considering a motion to dismiss for failure to state a claim, a court must accept as true all material allegations in the complaint, as well as reasonable inferences to be drawn from them. The court construes all material allegations in the light most favorable to the plaintiff. Zimmerman v. City of Oakland, 255 F.3d 734, 737 (9th Cir. 2001). However, a court need not accept as true unreasonable inferences, unwarranted deductions of fact, or conclusory legal allegations cast in the form of factual allegations. *See, e.g.,* Pillsbury, Madison & Sutro v. Lerner, 31 F.3d 924, 928 (9th Cir. 1994) (internal quotation omitted).

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defendants' Motion to Dismiss the Plaintiffs' Second Amended Complaint.

DISCUSSION

I. RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT, 18 U.S.C. § 1962, CLAIMS

The defendants move to dismiss the Racketeer Influenced and Corrupt Organizations Act (hereinafter "RICO") claims on the following grounds: (1) the plaintiffs have not sufficiently alleged the existence of RICO enterprises; (2) the plaintiffs have not sufficiently alleged a § 1962(d) conspiracy; (3) the plaintiffs have not properly alleged the requisite *mens rea* for indictment under the particular predicate acts; (4) the plaintiffs have not alleged the requisite injuries that confer standing under RICO; (5) the plaintiffs have not adequately alleged the retailer defendants' participation in the conduct of the affairs of an enterprise; (6) the plaintiffs have not properly alleged the requisite proximate cause between the customer defendants' acts and the plaintiffs' § 1962(c) injury; and (7) the plaintiffs have not properly pleaded the predicate acts of involuntary servitude and/or peonage.

A. RICO Enterprises[2]

To state a RICO claim, the plaintiffs must demonstrate (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity. 18 U.S.C. § 1962. To allege violations of § 1962(a) and (c), the plaintiffs must sufficiently allege the existence of an "enterprise." Simon v. Value Behavioral Health, Inc., 208 F.3d 1073, 1083 (9th Cir. 2000). An "'enterprise' includes any individual, partnership, corporation, association, or other legal entity, and any union or group

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[2] *See also* Order Re: Motion to Dismiss Plaintiffs' First Amended Complaint, filed Nov. 26, 2001 (hereinafter "Order"), p.3-5, for discussion on the legal standard for proving a RICO enterprise.

of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(4).

The Supreme Court in United States v. Turkette, 452 U.S. 576, 582-583 and n.4 (1981), defined an "association-in-fact enterprise" as a group of persons associated for the common purpose of engaging in a course of conduct. The Court noted that such associations may exist for legitimate or illegitimate purposes, and that the existence of an association-in-fact enterprise is proved by evidence of (1) an ongoing formal or informal organization, (2) evidence that the various associates function as a continuing unit, and (3) evidence showing that the enterprise exists separately from the pattern of racketeering activities. Id.

In the Ninth Circuit, "[a]t a minimum, to be an enterprise, an entity must exhibit some sort of structure for the making of decisions, whether it be hierarchical or consensual. The structure should provide some mechanism for controlling and directing the affairs of the group on an on-going, rather than an *ad hoc*, basis. The structure requirement, however, does not mean that every decision must be made by the same person, or that authority may not be delegated." Chang v. Chen, 80 F.3d 1293, 1299 (9th Cir. 1996) (citing United States v. Riccobene, 709 F.2d 214, 222 (3rd Cir. 1983) (internal quotations omitted)).[3]

The Ninth Circuit further stated that it "is not necessary to show that the enterprise has some function wholly unrelated to the racketeering activity. Rather, it is sufficient to show that the organization has an existence beyond that which is merely necessary to commit the predicate

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[3] *See also* Simon, 208 F.3d at 1083 (stating same) and Wagh v. Metris Direct, Inc., 2002 WL 257846 *2 (N.D. Cal. Feb. 20, 2002) (stating that "a RICO enterprise must have an ascertainable structure separate and apart from the structure inherent in the conduct of the pattern of racketeering activity.").

racketeering offenses. The function of overseeing and coordinating the commission of several different predicate offenses and *other activities* on an ongoing basis is adequate to satisfy the separate existence requirement."[4] Chang, 80 F.3d at 1299 (emphasis added).

In the Second Amended Complaint (hereinafter "SAC"), the plaintiffs allege the same two RICO enterprises discussed in the First Amended Complaint (hereinafter "FAC") – (1) separate enterprises consisting of single retailer defendants associated-in-fact with single manufacturer defendants and (2) one enterprise consisting of all retailer defendants associated-in-fact with all manufacturer defendants – and five new categories of RICO enterprises. These newly alleged enterprises are: (1) an association-in-fact enterprise of all manufacturer defendants; (2) an association-in-fact enterprise among all retailer defendants; (3) an association-in-fact enterprise between each retailer and the various manufacturers who manufacture the retailers' garments in the Commonwealth of the Northern Mariana Islands (hereinafter "CNMI"); (4) an association-in-fact enterprise between each retailer and all manufacturers that are members of the Saipan Garment Manufacturers Association (hereinafter "SGMA"); and (5) an association-in-fact enterprise comprising each group of commonly-owned and -operated manufacturers.

The defendants argued that the plaintiffs have not adequately alleged the existence of a

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[4] The Turkette Court stated that the RICO "...enterprise is not the "pattern of racketeering activity;" it is an entity separate and apart from the pattern of activity in which it engages. The existence of an enterprise at all times remains a separate element which must be proved...." Turkette, 452 U.S. at 583. The Ninth Circuit follows this view. *See* Chang, 80 F.3d at 1298 (stating that the predicate acts of racketeering activity, by themselves, do not satisfy the RICO enterprise element and that the existence of a RICO enterprise is a separate element which must be proved).

RICO enterprise.

1. The plaintiffs have properly alleged an association-in-fact enterprise consisting of individual retailers and individual manufacturers.

The court previously concluded that the "plaintiffs have adequately alleged the existence of the various single retailer-single manufacturer RICO enterprises." *See* Order p. 5-6. The court reasoned that the plaintiffs' allegations of the various contracts and agreements between single retailers and single manufacturers, together with the allegations of a course of conduct that gave the individual retailer defendants some means of joint control and participation in the operations of individual garment factories, were sufficient to show a "structure" and an available mechanism for decision-making and direction of the affairs of the individual retailer-individual manufacturer enterprises.[5] Id. at 5.

The defendants argued that the court's previous finding should be reconsidered because the plaintiffs do not allege how the existence of a commercial contract between a given retailer and manufacturer satisfies the "structure" requirement.[6]

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[5] "The alleged agreements and conduct includes purchase agreements, vendor codes of conduct, on-site quality control monitoring by retailers, vendor compliance monitoring, and the setting of quality standards and turn-around times." Order p. 5.

[6] The plaintiffs argued that the defendants seek improper reconsideration of their previous unsuccessful challenge to the plaintiffs' allegations of conspiracy, unlawful intent, causation, and peonage as a RICO predicate act. The plaintiffs contend that Local Rule 7.1.g prohibits untimely and procedurally improper reconsideration, as does the law-of-the-case doctrine. The defendants argued that Local Rule 7.1.g and the law-of-the-case-doctrine only applies to orders that (1) either dismiss claims with prejudice or (2) enter final judgment, and do not apply to interlocutory orders. The court agrees with the defendants and holds that it has the discretion to reconsider portions of its previous Order because in some instances changed circumstances exist, while in others the court is

Upon reviewing its previous Order and the allegations of the SAC, the court still concludes that the plaintiffs have properly alleged an association-in-fact enterprise consisting of individual retailers and individual manufacturers. The contractual relationships the individual retailers have with the individual manufacturers are sufficient to show or from which may be inferred a "structure" and a mechanism for making decisions and directing the affairs of the alleged enterprise.[7] The plaintiffs allege in the SAC that the individual retailers and individual manufacturers legitimately contract with each other for the production of garments, and it is through these contracts that the individual retailers direct and control the operations of the individual factories and through which the parties allegedly engage in racketeering activities. *See* SAC ¶¶ 15 ("The Retailers that purchase and sell the Contractors' CNMI-manufactured

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presented with newly-discovered evidence. *See* United States v. Alexander, 106 F.3d 874, 876 (9th Cir. 1997) ("Under the "law of the case" doctrine, a court is generally precluded from reconsidering an issue that has already been decided by the same court, or a higher court in the identical case. The doctrine is not a limitation on a tribunal's power, but rather a guide to discretion. A court may have discretion to depart from the law of the case where: (1) the first decision was clearly erroneous; (2) an intervening change in the law has occurred; (3) the evidence on remand is substantially different; (4) other changed circumstances exist; or (5) manifest injustice would otherwise result.") and Local Rule 7.1.g ("...[R]econsideration of any other order which results in a dismissal with prejudice or a judgment may be appropriate when (1) the court is presented with newly-discovered evidence, (2) the court committed clear error or the initial decision was manifestly unjust, (3) there has been an intervening change in controlling law, or (4) there is some other, highly persuasive circumstance warranting reconsideration. ").

[7] It is clear that contractual relationships among various entities can establish a RICO enterprise. Loma Linda Univ. Med. Ctr., Inc. v. Farmers Group, Inc., 1995 WL 363441 *2 (E.D. Cal. May 15, 1995) (citing River City Markets, Inc. v. Fleming Foods West, Inc., 960 F.2d 1458, 1462 (9th Cir. 1992) (stating that "[v]irtually every business contract can be called an 'association in fact.'")).

garments, direct, control and are responsible for and unlawfully profit from the unlawful conduct of their Contractors and Recruiters alleged herein, provided and continue to provide substantial encouragement and support to the Contractors and their agents in formulating and perpetuating the policies and practices as issue, and have the power through contracts, oversight, and economic pressure to require the Contractors, as a condition of doing or continuing business with the Retailers, to prevent and remediate such conduct, policies, and practices, and to formulate and implement monitoring programs and other procedures to prevent such conduct from occurring or from causing injury to plaintiffs and Class members. The Retailers are aware of the unlawful sweatshop conditions that pervade the CNMI garment industry. . .[they] visit the Contractors' factories for "quality control" and factory and barracks monitoring. . .and claim to have in place extensive monitoring programs.... The Retailers and Contractors have jointly and deliberately blocked the development and implementation of workplace monitoring programs. . .in order to increase their profits. . . and to increase their control over plaintiffs and Class members...."), 173(a) ("The Retailers jointly exercise meaningful control over the employment policies and working and living conditions applicable to each Class member, and are responsible for the Contractors' violations of the legal standards alleged herein, as a result in part of the Retailers' active participation in formulating and devising Codes of Conduct and Monitoring Programs applicable to the CNMI garment factory workplaces and worker living quarters. . ., their unfettered on-site presence in the CNMI Garment factories for purposes of monitoring, quality control, contract enforcement, and the information-gathering by which they gained knowledge of the unlawful conditions. . .and their knowing acquiescence in and encouragement

of the perpetuation of such unlawful conditions, in order to increase their profits and the profits of their co-conspirators...."), and 173(b) ("The Retailers control the operative details of the Class members' tasks, including the quantity, quality standards, turnaround time, and other operative details of the production process, and enforce those details through their contracts with the Contractors....").[8] These allegations are sufficient to show the requisite "structure" of an association-in-fact enterprise. Furthermore, the allegations show that the association-in-fact enterprise has an existence separate and apart from the alleged racketeering activity.

Accordingly, and for the above reasons, the plaintiffs have adequately alleged an association-in-fact enterprise consisting of individual retailers and individual manufacturers.

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[8] *See also* SAC ¶¶ 46-66 (identifies the retailer defendants and the manufacturer defendants they contract with to manufacture garments), 68-95 (identifies the manufacturer defendants and the retailer defendants they contract with to manufacture garments), 173(c)-(f) (additional allegations of Retailers' control over conditions affecting workers), 174 ("Plaintiffs and Class members have as a result of the conduct of defendants and defendants' agents. . .become the victims of an unlawful scheme, in which each defendant participates.... This scheme is financially supported and knowingly implemented by defendants, both by their affirmative conduct in creating and enforcing the unlawful working and living conditions challenged herein, by deliberately implementing ineffectual monitoring programs that are designed to overlook the most common violations of those rights, by blocking the implementation of more effective monitoring programs and provisions of such programs, and by the conspiracy by which they knowingly, consciously, and deliberately mutually refrain from complaining, commenting, or remedying their own and other defendants' labor and human rights violations while engaging in or encouraging acts of peonage, involuntary servitude, kidnapping and criminal coercion and other violations of federal and CNMI law."), and 177 ("...Many of the Retailers advertise or publicly proclaim that they have in place extensive anti-sweatshop, quality control standards and monitoring and inspection protocols, allegedly designed to both ensure quality control and compliance by their Contractors with all applicable laws. The Retailers have actual knowledge of the abuses and violations. . .but deliberately choose not to enforce their Codes of Conduct or Monitoring Programs....").

The defendants' motion to dismiss is denied.

2. The plaintiffs have not properly alleged an association-in-fact enterprise consisting of all retailer defendants and all manufacturer defendants.

The court previously concluded that the plaintiffs have not adequately alleged the existence of an enterprise consisting of all retailer defendants and all manufacturer defendants because the FAC did not allege "an overarching structure and a mechanism for making decisions and directing or controlling the affairs of all retailer defendants and manufacturer defendants as a group on an ongoing basis." Order p. 7.

The defendants argued that none of the plaintiffs' new allegations cure the FAC's defects because they fall into the same categories the court previously identified and rejected. *See* Id. ("Although the allegations show common business purposes and interconnections through the utilization of the same contract brokers, compliance monitors, and manufacturers, as well as interconnections between certain of the manufacturers themselves, there are no allegations showing an overarching structure....").

Although it is a close decision, the court concludes that the plaintiffs have not cured their deficiency and have not properly pleaded an association-in-fact enterprise consisting of all retailers and all manufacturers. While the plaintiffs do allege the existence of a "structure" for consensual decision making,[9] they fail to allege that all the retailer defendants and all the

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[9] *See, e.g.*, SAC ¶¶ 120 ("...[T]he Retailers, through their agents,. . .began working with the Contractors through the mechanism of the SGMA to develop a uniform Code of Conduct and monitoring program for the Saipan garment industry. ... Each defendant, individually or through one or more agents, worked together to create the new Code of Conduct and monitoring program."), 123 ("All defendants, individually or though one or

manufacturer defendants have an existence beyond that which is necessary to commit the RICO predicate acts.[10] Instead, the allegations of the SAC show or give rise to an inferrence that the existence of the alleged association-in-fact enterprise of all the retailers and all the manufacturers was for the sole purpose of committing the alleged predicate acts of racketeering. *See, e.g.,* SAC ¶¶ 121 ("The standards set forth in these Codes are not meaningfully enforced, as defendants know. To the contrary, the promulgation and public dissemination of defendants' Codes was part of defendants' scheme to mislead the public and prospective nonresident Saipan garment workers....") and 122 ("The monitoring programs administered by, or at the direction of, defendants and the SGMA. . .are deliberately designed to be ineffective in preventing and remediating the violations of plaintiffs' and Class members' rights. ... [D]efendants, for their own profit and mutual benefit, have routinely employed and continue to employ similar illegal practices to deprive their workers of their rights, while at the same time, through the SGMA in

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more agents, exchange information between and among themselves through the auspices of the SGMA concerning contracting, labor and workplace practices, policies, and mechanisms for accomplishing the unlawful practices and conditions alleged herein...."), and 125 ("[E]ach defendant knows that these standards and each of them are routinely violated and not remediated, and that loopholes were deliberately created in the scope of the SGMA standards. . .to help further the conspiracies alleged herein. Each defendant has knowingly participated in the formulation and implementation of monitoring and enforcement programs in the CNMI, including the SGMA's monitoring and enforcement programs, that were deliberately designed to avoid detecting such violations in order to perpetuate the unlawful conditions alleged herein.").

[10] *See* Chang, 80 F.3d at 1300 (holding that appellants failed to allege an organization with sufficient structure to satisfy RICO's enterprise element because the "appellants have not alleged a structure to the organization beyond that which was inherent in the alleged acts of racketeering.").

particular, they jointly maintain a public but false front enabling defendants to claim progress in improving working conditions in their factories.").[11]

The plaintiffs argued that all the retailers and all the manufacturers maintain an independent existence apart from their alleged racketeering activity through their legitimate contracting, advertising, and lobbying activities. While the court acknowledges that individually the retailers and manufacturers contract with each other, there are no contracts alleged linking all retailers or all manufacturers, and more importantly, all retailers and all manufacturers together. Paragraph 126 alleges that:

> "[D]efendants and each of them have conspired to engage in and have in fact engaged in the same or similar marketing strategies and advertising methods to promote the sale and distribution of garments manufactured for the Retailers by the Contractors in the CNMI and sold throughout the United States and the world. Such strategies and methods include. . . publicly proclaiming that the Contractors comply with various "Codes of Conduct," "compliance standards" or "operating guidelines" adopted to prevent or to remedy the very conditions of forced labor and worker exploitation. . .that have characterized the CNMI garment industry, including the SGMA standards, while knowing that the Contractors do not comply with those codes, standards, and guidelines and that Class

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[11] *See also* SAC ¶¶ 123 ("All defendants, individually or though one or more agents, exchange information between and among themselves through the auspices of the SGMA concerning contracting, labor and workplace practices, policies, and mechanisms for accomplishing the unlawful practices and conditions alleged herein....") and 125 ("[E]ach defendant knows that these standards and each of them are routinely violated and not remediated, and that loopholes were deliberately created in the scope of the SGMA standards. . .to help further the conspiracies alleged herein. Each defendant has knowingly participated in the formulation and implementation of monitoring and enforcement programs in the CNMI, including the SGMA's monitoring and enforcement programs, that were deliberately designed to avoid detecting such violations in order to perpetuate the unlawful conditions alleged herein.").

members are injured in their persons and property as a result of that non-compliance." SAC ¶ 126.

This paragraph does not show or give rise to an inferrence that the alleged association-in-fact enterprise of all the retailers and all the manufacturers exists independently from their alleged racketeering activity. Instead, paragraph 126 shows or infers that all the retailers and all the manufacturers allegedly engage in the same or similar marketing and advertising strategies for the sole purpose of perpetuating the alleged conspiracy among all the retailers and all the manufacturers to mislead the public and prospective nonresident Saipan garment workers. *See* SAC ¶ 121 ("...[T]he promulgation and public dissemination of defendants' Codes was part of defendants' scheme to mislead the public and prospective nonresident Saipan garment workers...."). As discussed *supra* Part I.A, p. 5, "[t]he function of overseeing and coordinating the commission of several different predicate offenses and *other activities* on an on-going basis is adequate to satisfy the separate existence requirement." Chang, 80 F.3d at 1299. The SAC fails to allege any "other activities" that all the retailers and all the manufacturers oversee or coordinate that is separate from the alleged racketeering acts.

Accordingly, and for the above reasons, the plaintiffs have not properly alleged an association-in-fact enterprise consisting of all retailer defendants and all manufacturer defendants. The motion to dismiss is granted and plaintiffs are given leave to amend.

3. The plaintiffs have properly alleged an association-in-fact enterprise consisting of all manufacturer defendants.

The plaintiffs argued that there is an association-in-fact enterprise consisting of all manufacturer defendants because each manufacturer is a member of the SGMA and each

manufacturer perpetuates this enterprise through the auspices of the SGMA and other communications and contacts.

Even though the court previously concluded that there were no contracts alleged linking all manufacturer defendants together,[12] the court finds that the SAC sufficiently alleges a "structure" for decision making among all manufacturers. *See* SAC ¶ 119 ("One of the principal purposes of the SGMA is to promote and ensure uniformity of labor practices among all its members, including the Contractors, and to standardize the duties, obligations and conduct of the Contractors toward their garment workers. Defendants, through the SGMA, mutually agree on what are acceptable labor and employment practices, and discuss the laws applicable to their workplaces. The Contractors exchange information between and among themselves under the auspices of the SGMA concerning each other's labor, employment and workplace practices, including all the unlawful practices and conditions...."). In addition, the allegations are sufficient to show or infer that all the manufacturers maintain a separate existence apart from their alleged racketeering activity because according to the SAC, all the manufacturers "are, or at relevant times have been, members of the SGMA" (SAC ¶ 118) and it was not until the late 1990's that the retailers began working with the manufacturers through the SGMA to develop a uniform Code of Conduct and monitoring program. *See* SAC ¶ 120 ("In the late 1990's, in response to ongoing reports of pervasive labor and human rights violations in the Saipan garment industry, the Retailers, through their agents, including BSR, began working with the Contractors through

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[12] *See supra* Part I.A.2, p. 12.

the mechanism of the SGMA to develop a uniform Code of Conduct and monitoring program for the Saipan garment industry.").

Accordingly, the plaintiffs have properly alleged an association-in-fact enterprise consisting of all manufacturer defendants. The motion to dismiss is denied.

4. The plaintiffs have not properly alleged an association-in-fact enterprise consisting of all retailer defendants.

The plaintiffs argued that there is an association-in-fact enterprise consisting of all retailer defendants and that all retailers perpetuate this enterprise through the auspices of the SGMA. The court does not agree.

As discussed *supra*, the SAC does not allege that there are contracts linking all retailer defendants together. *See* Part I.A.2, p. 12. The SAC also lacks any allegations that show or from which may be inferred a hierarchical or consensual "structure" to the organization. At most, the allegations show that the retailers have common business purposes and interconnections through their utilization of the same suppliers, brokers, or sourcing agents and vendor compliance monitors. *See* SAC ¶¶ 97 ("Many Retailers share the same suppliers, brokers, or sourcing agents....") and 99 ("The Retailers also share vendor compliance agents to monitor the workplace and living conditions of the Contractors."). Finally, the plaintiffs do not allege that all the retailers maintain a separate existence apart from their alleged racketeering activity. Instead, the SAC shows or infers that the existence of the alleged association-in-fact enterprise of all the retailers was for the sole purpose of committing the alleged predicate acts of racketeering. *See* SAC ¶¶ 120, *supra* p. 14 ("This Code and program were designed principally to improve the

public image of the industry rather than effect meaningful change or to improve the working or living conditions of plaintiffs and Class members."), 121 ("The standards set forth in these Codes are not meaningfully enforced, as defendants know. To the contrary, the promulgation and public dissemination of defendants' Codes was part of defendants' scheme to mislead the public and prospective nonresident Saipan garment workers...."), and 122 ("The monitoring programs administered by, or at the direction of, defendants and the SGMA. . .are deliberately designed to be ineffective in preventing and remediating the violations of plaintiffs' and Class members' rights.").

Accordingly, the plaintiffs have not properly alleged an association-in-fact enterprise consisting of all retailer defendants. The motion to dismiss is granted and plaintiffs are given leave to amend.

5. The plaintiffs have properly alleged an association-in-fact enterprise consisting of each retailer and the various manufacturers who manufacture the retailers' garments in the CNMI.

The plaintiffs argued that there is an association-in-fact enterprise consisting of each retailer and the various manufacturers who manufacture the retailers' garments in the CNMI because the retailer and the various manufacturers share identical form contracts, supervisory personnel, codes of conduct and monitoring protocols in their dealings with each other.

Because the court previously concluded that the plaintiffs have sufficiently alleged an association-in-fact enterprise consisting of individual retailers and individual manufacturers (*see supra* Part I.A.1) and an association-in-fact enterprise consisting of all manufacturer defendants (*see supra* Part I.A.3), the court also concludes that the plaintiffs have sufficiently alleged an

association-in-fact enterprise consisting of each retailer and the various manufacturers who manufacture the retailer's garments. The motion to dismiss is denied.

6. The plaintiffs have not properly alleged an association-in-fact enterprise consisting of each retailer and all manufacturers that are members of the SGMA.

The plaintiffs argued that there is an association-in-fact enterprise consisting of each retailer and all manufacturers that are members of the SGMA because each retailer and all the manufacturers share information and planning though the SGMA, and all are responsible for the drafting, implementation, and enforcement of the SGMA codes and monitoring programs.

The court previously concluded that the plaintiffs have sufficiently alleged an association-in-fact enterprise consisting of individual retailers and individual manufacturers (*see supra* Part I.A.1) and an association-in-fact enterprise consisting of all manufacturer defendants (*see supra* Part I.A.3) because it was the individual contract between the individual retailer and individual manufacturer for the production of garments that provided the organization with a "structure" and an "existence separate from its participation in the racketeering activities." However, the court concludes that the plaintiffs have not properly alleged an association-in-fact enterprise consisting of each retailer and all manufacturers that are members of the SGMA because there are no contracts alleged linking each retailer to all manufacturers who are members of the SGMA.

Accordingly, the plaintiffs have not properly alleged an association-in-fact enterprise consisting of each retailer and all manufacturers that are members of the SGMA. The motion to dismiss is granted and plaintiffs are given leave to amend.

7. The plaintiffs have properly alleged an association-in-fact enterprise consisting of each group of commonly owned and commonly operated manufacturers.

The plaintiffs argued that there is an association-in-fact enterprise consisting of each group of commonly owned and commonly operated manufacturers because of the manufacturers' common business relationships, oral and written agreements, and ongoing courses of conduct.[13]

The court previously determined that the plaintiffs have properly alleged an association-in-fact enterprise consisting of all manufacturers (*see supra* Part I.A.3), and it therefore follows that the plaintiffs have properly alleged an association-in-fact enterprise of commonly owned and commonly operated manufacturers. The requisite "structure" is alleged in paragraph 119 – "Defendants, through the SGMA, mutually agree on what are acceptable labor and employment practices, and discuss the laws applicable to their workplaces. The Contractors exchange information between and among themselves under the auspices of the SGMA concerning each other's labor, employment and workplace practices, including all the unlawful practices and conditions...." SAC ¶ 119. Furthermore, in addition to its participation in the alleged racketeering acts, it can be inferred that these alleged association-in-fact enterprises exist for the separate purpose of making money for the group of commonly owned and commonly operated manufacturers, which satisfies the "separate existence" requirement.[14]

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[13] *See* SAC ¶¶ 98, 100-02, and 247 (x)(iv), (y), (z)(iv), (bb)(v), (cc)(viii), (ff)(iv), (ii), and (tt)(ii) for identification of the alleged groups of commonly-owned and -operated manufacturer defendants.

[14] *See* Chang, 80 F.3d at 1300 (citing United States v. Feldman, 853 F.2d 648, 660 (9th Cir. 1988) (holding that corporations alleged to be part of the RICO enterprise had a legal

Accordingly, the plaintiffs have properly pleaded an association-in-fact enterprise consisting of each group of commonly owned and commonly operated manufacturers. The motion to dismiss is denied.

B. Conspiracy under 18 U.S.C. §1962(d)

1. Plaintiffs have sufficiently pleaded a §1962(d) conspiracy to violate §1962(c).

The court previously concluded that the plaintiffs adequately pleaded a conspiracy under § 1962(d)[15] to violate § 1962(c) because the plaintiffs sufficiently pleaded the retailer defendants' knowledge or awareness of the alleged scheme to conduct or participate in the affairs of various enterprises through a pattern of racketeering activity and sufficiently pleaded the retailer defendants' agreement to facilitate this alleged scheme. *See* Order p. 21-23.

Defendants in the instant motion argued that the plaintiffs' conspiracy claim fails because the allegations of the SAC do not demonstrate that the retailer defendants agreed to have some part in directing the affairs of the alleged enterprise. The defendants agreed with the court's previous order that "[t]o state a claim for conspiracy under RICO, it must be alleged that the defendants knew about and agreed to facilitate some criminal scheme, and the scheme, if completed, must constitute a criminal offense under RICO." *See* Order p. 22 (citing Salinas v.

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existence separate from their participation in the racketeering acts because the corporations also functioned to achieve legal objectives, such as building homes and manufacturing tools, and existed for the purpose of making money for the individual defendants)).

15 Section 1962(d) provides that "[i]t shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b) or (c) of this section." 18 U.S.C. § 1962(d).

United States, 522 U.S. 52, 63-64 (1997)). However, the defendants contend that the post-Salinas precedent makes it clear that a RICO conspiracy can be analyzed as two agreements: "an agreement to conduct or participate in the affairs of an enterprise and an agreement to the commission of at least two predicate acts." Brouwer v. Raffensperger, Hughes & Co., 199 F.3d 961, 964 (7th Cir. 2000) (citing United States v. Neapolitan, 791 F.2d 489 (7th Cir. 1986)). As to the first agreement, the defendants argued that the Ninth Circuit adheres to a strict standard because it draws a distinction between a claim that defendants "conspir[ed] *to* operate or manage an enterprise" and a claim that defendants "conspir[ed] *with* someone who is operating or managing an enterprise." Neibel v. Trans World Assurance Co., 108 F.3d 1123, 1128 (9th Cir. 1997) (quoting United States v. Antar, 53 F.3d 568, 581 (3rd Cir. 1995)). According to the Ninth Circuit, "[l]iability under section 1962(d) would be permissible under the first scenario, but, without more, not under the second."[16] Id. In sum, the defendants contend that the SAC's conspiracy claim is inconsistent with Ninth Circuit precedent because the SAC does not allege an explicit agreement by the retailer defendants to participate in the operation or management of the alleged enterprises.

The plaintiffs argued that the SAC does allege that the retailer defendants conspired to manage or operate the asserted RICO enterprises. The plaintiffs further argued that Neibel is no longer the controlling standard because it predates the Supreme Court's decision in Salinas,

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16 As to the second agreement, the defendants noted that the Supreme Court in Salinas ruled that a defendant need not agree to commit the predicate acts personally – the defendant need only agree that someone should commit the predicate acts that further the racketeering enterprise. *See* Salinas, 522 U.S. at 477.

which this court relied upon in its Order, and which holds that a RICO conspiracy may be established even where each conspiring defendant "does not agree to commit or facilitate each and every part of the substantive offense." Salinas, 522 U.S. at 65.

Upon review of RICO conspiracy case law, the court finds that the Supreme Court's decision in Salinas defines and governs what constitutes a violation of § 1962(d). While the court acknowledges the defendants' argument that it is important to distinguish between civil and criminal RICO conspiracy claims,[17] the court finds nothing in Salinas which limits the Supreme Court's holding to only criminal RICO conspiracies.[18] To date, the Supreme Court has not addressed the issue whether Salinas is limited only to criminal conspiracies. In Beck v. Prupis, 529 U.S. 494, 501 n.6 (2000), the Supreme Court provided some guidance when it stated that:

> "We have turned to the common law of criminal conspiracy to define what constitutes a violation of § 1962(d), *see* Salinas v. United States, 522 U.S. 52, 63-65, 118 S. Ct. 469, 139 L. Ed.2d 352 (1997), a mere violation being all that is necessary for criminal liability. This case, however, does not present simply the question of what constitutes a violation of § 1962(d), but rather the meaning of a civil cause of action for private injury by reason of such a violation. In other words, our task is to interpret §§ 1964(c) and 1962(d) in conjunction, rather than § 1962(d) standing alone." Id.

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17 The defendants argued that in the civil context, it is sensible to confine liability to conspiring to operate or manage an enterprise because the purpose of § 1962(d) liability is to impute liability for a specific injury, not to redress the harm to society that a criminal conspiracy represents. The defendants further argued that a contrary rule would permit every failed § 1962(c) claim to be recast as a § 1962(d) conspiracy claim.

18 Salinas was a criminal case where the Supreme Court affirmed the Fifth Circuit's holding that a deputy could be convicted of a conspiracy under RICO, even if he did not accept or agree to accept two bribes.

This court is of the same view as the Third Circuit in Smith v. Berg, 247 F.3d 532 (3rd Cir. 2001),[19] that the Supreme Court's reference to Salinas in Beck "does not in any way repudiate its holding about what constitutes a conspiracy violation or indicate that the violation is different in a civil context." Id. at 538. Rather, Beck reaffirms Salinas. *See* Smith, 247 F.3d at 538-39 ("...[T]he footnote observes that Beck "does not present simply the question of what constitutes a violation of § 1962(d), but rather the meaning of a civil cause of action for private injury by reason for such a violation." The plain import of this passage is that the question of what constitutes a violation of section 1962(d) continues to be defined under and governed by Salinas.") (internal citation omitted).[20]

Therefore, according to Salinas, to state a claim for conspiracy under RICO it must be alleged that the defendants knew about and agreed to facilitate some criminal scheme, and the scheme, if completed, must constitute a criminal offense under RICO. *See* Salinas, 522 U.S. at 63-64; *see also* Howard v. America Online, 208 F.3d 741, 751 (9th Cir. 2000) (a defendant must be aware of the essential nature and scope of the enterprise and agree to participate in it). This requirement is satisfied where an agreement which is a substantive violation of RICO is alleged

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19 The Third Circuit in Smith overruled its earlier decision in United States v. Antar, 53 F.3d 568 (3rd Cir. 1995), which held that liability under § 1962(d) would only attach in conspiracies to operate or manage an enterprise. *See* Smith, 247 F.3d at 538 ("We therefore hold that any reading of Antar suggesting a stricter standard of liability under section 1962(d) is inconsistent with the broad application of general conspiracy law set forth in Salinas.").

20 In light of Salinas and Beck, it appears to this court that Neibel is no longer good law.

or it is alleged that the defendants agreed to commit or participate in two predicate offenses. *See* Howard, 208 F.3d at 751. A defendant need not agree to commit or facilitate every part of the substantive offense under RICO. *See* Salinas, 522 U.S. at 65. Further, a defendant need not have violated the substantive RICO provision in order to be liable as a conspirator. *See* Beck, 529 U.S. at 501-06.

Applying Salinas to the SAC, the court finds that the plaintiffs have sufficiently pleaded the retailer defendants' knowledge or awareness of the criminal scheme and an agreement to facilitate it. In ¶¶ 120-23, the plaintiffs allege that the retailer defendants worked with the manufacturer defendants through the mechanism of the SGMA to develop a uniform Code of Conduct and monitoring program for the Saipan garment industry, both of which the defendants know are not meaningfully enforced, and the defendants allegedly continue to exchange information between and among themselves concerning labor and workplace practices, policies, and mechanisms for accomplishing the unlawful practices and conditions alleged in the complaint. *See also* SAC ¶125 ("Each defendant holds itself out to the public and to plaintiffs, Class members and prospective non-resident Saipan garment workers as ensuring the Contractors' full compliance with the SGMA's Code of Conduct standards and the Codes of Conduct of the Retailers and their agents, but each defendant knows that these standards and each of them are routinely violated and not remediated, and that loopholes were deliberately created in the scope of the SGMA standards. . .to help further the conspiracies alleged herein. Each defendant has knowingly participated in the formulation and implementation of monitoring and enforcement programs in the CNMI, including the SGMA's monitoring and enforcement

programs, that were deliberately designed to avoid detecting such violations in order to perpetuate the unlawful conditions alleged herein."). It can be inferred from these paragraphs that the retailer defendants knew or were aware of the conditions at the garment factories, and knew of the essential nature and scope of the enterprise and agreed to participate in it.

Plaintiffs must also allege the requisite injury to property under § 1962(a) and (c) in order to state a conspiracy claim under § 1962(d). *See* Simon, 208 F.3d at 1084 ("Failure to plead the requisite elements of either a Section 1962(a) or a Section 1962(c) violation implicitly means that he cannot plead a conspiracy to violate either section."). As noted *infra*,[21] plaintiffs have adequately alleged the retailer defendants' participation in the conduct of the affairs of an enterprise in violation of § 1962(c).

Accordingly and for the above reasons, the plaintiffs have sufficiently pleaded a conspiracy under § 1962(d) to violate § 1962(c). The defendants' motion to dismiss is denied.

2. Plaintiffs have sufficiently alleged a §1962(d) conspiracy to violate §1962(a).

The court previously concluded that the plaintiffs did not adequately allege the requisite injury under § 1962(a) and thus their conspiracy claim based thereon failed.

The court concludes that the plaintiffs have now properly alleged an "investment injury" under § 1962(a) because the SAC sufficiently alleges that the defendants used or invested the alleged racketeering proceeds in the establishment or operation of an enterprise. *See* discussion *infra* Part I.D, p. 28-29.

Accordingly, the plaintiffs have sufficiently pleaded a conspiracy under § 1962(d) to

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[21] *See* discussion *infra* Part I.E.1, p. 29-31.

violate § 1962(a). The defendants' motion to dismiss is denied.

C. Plaintiffs have properly alleged the requisite *mens rea* for indictment under the particular predicate acts.

Defendants argued that the SAC does not state a civil RICO claim because it fails to allege the requisite *mens rea* for indictment under the particular predicate offenses. The defendants contend that the plaintiffs' allegations simply label the defendants' alleged conduct and/or states of mind as "knowing," "deliberate," and "reckless," without presenting particular facts to substantiate those labels.

In order to establish liability under RICO, the plaintiffs must allege that the defendants possess "the specific intent associated with the various underlying predicate offenses." Genty v. Resolution Trust Corp., 937 F.2d 899, 908 (3rd Cir. 1991); *see also* Lancaster Community Hospital v. Antelope Valley Hospital Dist., 940 F.2d 397, 404 (9th Cir. 1991) ("A specific intent to deceive is an element of the predicate act."). RICO imposes no additional *mens rea* requirement beyond that found in the predicate crimes. United States v. Biasucci, 786 F2d. 504, 512 (2nd Cir.), *accord* United States v. Blinder, 10 F.3d 1468 (9th Cir. 1993). *Mens rea* may be shown directly or circumstantially, as by "the existence of a scheme which was reasonably calculated to deceive persons of ordinary prudence and comprehension [when that] intention is shown by examining the scheme itself." Ikuno v. Yip, 912 F.2d 306, 310-11 (9th Cir. 1990). *Mens rea* is also shown in a complaint that provides factual allegations of criminal intent. *See* Holden v. Hagopian, 978 F.2d 1115, 1121 (9th Cir. 1992) (court need not accept conclusory allegations of intent); 2 Mathews, et al., CIVIL RICO LITIGATION § 9.04 (2d ed. 1992) ("Every RICO predicate offense requires criminal intent.... [T]he courts view intent as a fundamental

element of the claim that must be supported by some factual allegations permitting the inference of intent, and not mere conclusory allegations.").

The court concludes that the SAC properly pleads the requisite *mens rea* as to each predicate act alleged.[22] *See* SAC ¶¶ 8 (The plaintiffs "...are forced to work excessive hours without being paid the legally-required minimum wage and overtime premium. ... When the workers. . .fail to meet the quotas, defendants routinely dock the workers' pay or force them to work long hours on an unpaid off-the-clock basis. ... [D]efendants knowingly deprive plaintiffs and Class members of compensation to which they are lawfully entitled both by contract and by statute."), 15 (The Retailers. . .direct, control, and are responsible for and unlawfully profit from the unlawful conduct of their Contractors and Recruiters.... The Retailers are aware of the unlawful sweatshop conditions.... The Retailers and Contractor have jointly and deliberately blocked the development and implementation of the workplace monitoring programs that would effectively identify and require prompt and appropriate remediation of the unlawful conditions.... Each Retailer and Contractor knowingly and recklessly participates in an unlawful enterprise with each other...."), 46-66 (all paragraphs allege that each defendant "...was either aware of or recklessly disregarded the system of forced labor, involuntary servitude and unlawful sweatshop conditions complained of...."), and 120 ("Each defendant, individually or through one or more

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[22] *See* SAC ¶¶ 248, 250-60 (allegations and elements of the various racketeering acts, i.e. extortion, peonage, involuntary servitude, kidnaping, criminal coercion, theft, theft of services, theft by extortion, and receiving stolen property).

agents, worked together to create the new Code of Conduct and monitoring program.").[23]

Accordingly, the plaintiffs have sufficiently alleged that the defendants acted with the

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[23] *See also* SAC ¶¶ 122 ("The monitoring programs administered by, or at the direction of, defendants and the SGMA. . .are deliberately designed to be ineffective in preventing and remediating the violations...."), 123 ("All defendants. . .exchange information between and among themselves. . .concerning contracting, labor and workplace practices, policies, and mechanisms for accomplishing the unlawful practices and conditions...."), 124 ("Each defendant has. . .knowingly consented to have the SGMA act on its own behalf...."), 125 ("Each defendant has knowingly participated in the formulation and implementation of monitoring and enforcement programs in the CNMI. . . that were deliberately designed to avoid detecting such violations in order to perpetuate the unlawful conditions...."), 127 ("Each defendant. . .did in fact control and determine, the workplace and living conditions and the conditions of employment. . .[and] knowingly participated in a scheme to share the economic profits from its own and each other defendants' individual and collective efforts. . .and deliberately decided. . .neither to acknowledge nor to insist on the prevention or remediation...."), 128 ("...[E]ach defendant agreed to commit, or provided substantial encouragement to one or more other defendants to commit, the wrongful and unlawful acts. . .and to prevent the disclosure of such acts to the public, to consumers, or to prospective non-resident Saipan garment workers."), 173(a) ("The Retailers jointly exercise meaningful control over the employment policies and working and living conditions applicable to each Class member, and are responsible for the Contractors' violations of the legal standards alleged herein, as a result in part of the Retailers' active participation in formulating and devising Codes of Conduct and Monitoring Programs applicable to the CNMI garment factory workplaces and worker living quarters...."), 173(b) ("The Retailers control the operative details of the Class members' tasks, including the quantity, quality standards, turnaround time, and other operative details of the production process, and enforce those details through their contracts with the Contractors...."), and 174 ("Plaintiffs and Class members have as a result of the conduct of defendants and defendants' agents. . .become the victims of an unlawful scheme, in which each defendant participates.... This scheme is financially supported and knowingly implemented by defendants, both by their affirmative conduct in creating and enforcing the unlawful working and living conditions challenged herein, by deliberately implementing ineffectual monitoring programs that are designed to overlook the most common violations of those rights, by blocking the implementation of more effective monitoring programs and provisions of such programs, and by the conspiracy by which they knowingly, consciously, and deliberately mutually refrain from complaining, commenting, or remedying their own and other defendants' labor and human rights violations while engaging in or encouraging acts of peonage, involuntary servitude, kidnaping and criminal coercion and other violations of federal and CNMI law.").

appropriate *mens rea* associated with the various underlying predicate acts. The defendants' motion to dismiss is denied.

D. Plaintiffs have sufficiently alleged an "investment injury" under § 1962(a).

The court previously held that the FAC did not allege an investment injury under § 1962(a) because it did not allege or reasonably give rise to an inference that the defendants used or invested the alleged racketeering proceeds in the establishment or operation of any enterprise and the plaintiffs' allegations of injury were not sufficient to show an injury resulting from such use or investment, as opposed to injuries caused by predicate the acts.[24] *See* Order p. 11-13.

The defendants argued that the plaintiffs' allegations in the SAC are conclusory because they are not specific as to which defendants reinvested which income, in which enterprise, derived from which predicate acts, and for which purpose. The defendants also argued that the plaintiffs do not allege an investment injury separate and distinct from an injury due to the predicate acts. The court does not agree.

The court finds that ¶ 268 of the SAC cures the pleading deficiency. In ¶ 268, the plaintiffs sufficiently allege that the defendants used or invested the alleged racketeering proceeds in the establishment or operation of an enterprise:

"Defendants and each of them reinvested and continue to reinvest a portion

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[24] In order to state an "investment injury" claim based on a violation of 18 U.S.C. § 1962(a), plaintiffs must allege that the injury to their property resulted from defendants' use or investment of RICO proceeds. *See* Nugget Hydroelectric L.P. v. Pacific Gas & Elec., 981 F.2d 429, 437 (9th Cir. 1992) (standing to sue under § 1962(a) requires alleged injury in business or property by the use or investment of the racketeering income).

> of the unlawful profits they obtain as alleged herein to perpetuate their control over the Saipan garment production system and to ensure the continued profitable operation of the scheme alleged herein. Defendants invest such profits in promotional campaigns, in monitoring operations, in workplace and barracks inspections, in legal fees, in meetings, and in efforts to control the terms and conditions of plaintiffs' and Class members' employment and the terms of applicable and potentially applicable Codes of Conduct and monitoring programs...."

Plaintiffs further allege that they suffered injury to their property as a result of the defendants' investment of the RICO proceeds:

> "...By investing their profits into ensuring the perpetuation of their conspiracy, defendants seek to ensure their conspiracy will encompass and affect and continue to encompass and affect all non-resident garment workers and all potential garment industry employers of such workers in the CNMI, thereby depriving plaintiffs and Class members of the opportunity to change employers, to organize, to bargain collectively for higher wages or better working conditions, or to negotiate for greater pay or increased benefits, and thereby further to depress the wages and working conditions in the Saipan garment factories for defendants' own profit and to plaintiffs' and Class members' economic detriment." SAC ¶ 268.

Accordingly, the plaintiffs have sufficiently alleged an "investment injury" under §1962(a). The motion to dismiss is denied.

E. Violation of 18 U.S.C. § 1962(c)

1. Plaintiffs have sufficiently alleged the retailer defendants' participation in the conduct of the affairs of an enterprise.

The court previously held that the allegations of the FAC adequately show an *opportunity* for the retailer defendants to participate in the enterprise. However, the allegations purportedly showing that the retailer defendants actually did participate in the enterprise were insufficient to

constitute the requisite "participation" in the conduct of the affairs of the enterprise.[25] *See* Order p. 19.

The defendants argued that the SAC does not cure the plaintiffs' deficiency because it does not contain new allegations that have not already been addressed by this court in its previous order. The defendants further contend that their alleged participation in the formulating of worldwide codes of conduct and monitoring programs does not demonstrate the requisite "participation" in the direction of an enterprise. The court does not agree.

In the SAC, the plaintiffs have adequately alleged affirmative action and participation by the defendants in the control and direction of the alleged enterprises. *See* SAC ¶ 15 ("The Retailers and Contractors have jointly and deliberately blocked the development and implementation of workplace monitoring programs that would effectively identify and require prompt and appropriate remediation of the unlawful conditions of employment and the unlawful workplace and living quarter conditions. . .and have chosen not to use their contractual, economic, and oversight control to prevent those conditions from occurring or from requiring effective remedial action."). The SAC's allegations show or give rise to an inferrence that the

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[25] In order to state a claim based on violation of RICO § 1962(c), plaintiffs must allege that the defendants "(1) conduct (2) [the affairs] of an enterprise (3) through a pattern (4) of racketeering activity." Sedima v. Imrex Co., Inc., 473 U.S. 479, 496 (1985). "[T]he essence of the violation is the commission of those [racketeering] acts in connection with the conduct of an enterprise." Id. at 497. In Reves v. Ernst & Young, 507 U.S. 170, 184 (1993), the Supreme Court determined that participation in the conduct of the affairs of the enterprise requires that the defendant have some part in the direction of the enterprise. The Court stated it encompasses both upper level management as well as lower rung participants who are under the direction of upper management, and that liability is also extended to those "associated with" the enterprise who participate in the operation and management of the enterprise's affairs. *See* Id. at 185.

retailer defendants' participation is beyond mere acquiescence to conditions and more than just applying economic pressure. The allegations show that the retailer defendants are involved in the day-to-day operations and have direction and control in the affairs of the alleged enterprises. *See* SAC ¶ 120 ("...the Retailers, through their agents, . . .began working with the Contractors through the mechanism of the SGMA to develop a uniform Code of Conduct and monitoring program for the Saipan garment industry.").[26]

Accordingly, the plaintiffs have sufficiently alleged the retailer defendants' participation in the conduct of the affairs of an enterprise. The defendants' motion to dismiss is denied.

2. Plaintiffs have properly alleged the requisite proximate cause between the customer defendants' acts and the plaintiffs' § 1962(c) injury.

To have standing to sue under RICO, the plaintiffs must have been injured in their

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[26] *See also* SAC ¶¶ 123 ("All defendants. . .exchange information between and among themselves through the auspices of the SGMA concerning contracting, labor and workplace practices, policies, and mechanisms for accomplishing the unlawful practices and conditions. . . for standardizing workplace practices and schemes for depriving plaintiffs and Class members of their rights...."), 173(a) ("The Retailers jointly exercise meaningful control over the employment policies and working and living conditions applicable to each Class member, and are responsible for the Contractors' violations of the legal standards alleged herein, as a result in part of the Retailers' active participation in formulating and devising Codes of Conduct and Monitoring Programs applicable to the CNMI garment factory workplaces and worker living quarters...."), and 173(b) ("The Retailers control the operative details of the Class members' tasks, including the quantity, quality standards, turnaround time, and other operative details of the production process, and enforce those details through their contracts with the Contractors, through the economic penalties they threaten to impose upon Contractors that do not comply with the specific terms of the production contracts, and by their on-site monitoring and inspection of the Contractors' factories.").

business or property by conduct constituting a violation of § 1962. *See* 18 U.S.C. § 1964(c).[27] Furthermore, the plaintiffs must allege a concrete financial loss to their business or property proximately caused by defendants' conduct.[28] *See* Order p. 7-8.

The defendants argued that the plaintiffs' § 1962(c) claim fails because the SAC does not adequately plead proximate cause. The defendants contend that the SAC fails to allege facts that show that the customer defendants were specifically involved in the conduct that is alleged to have caused the plaintiffs' financial loss. Furthermore, the defendants argued that the link between the customer defendants' acts and the alleged injuries suffered by the plaintiffs is too attenuated.

The plaintiffs argued that the court need not reconsider this issue because it previously concluded that the plaintiffs' alleged injury to their property was proximately caused by the defendants' conduct. *See* Order p. 8-10. The court agrees.

The court previously concluded that the "[p]laintiffs allegations of lost wages caused by the predicate acts of involuntary servitude. . .and peonage. . .show an **injury to plaintiffs' property for RICO purposes**," the "[p]laintiffs' allegations of excessive payments for employer-provided food and housing are sufficient to show an **injury to property caused by the**

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[27] "Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court . . ." 18 U.S.C. § 1964(c).

[28] *See* Oscar v. Univ. Student Co-op. Ass'n, 965 F.2d 783, 786 (9th Cir. 1992) (stating that to allege a financial loss compensable under RICO, the plaintiff must allege injury that is a direct or indirect result of the racketeering activity).

defendants' alleged violations of RICO," and that the "[p]laintiffs [have] adequately alleged payment of the recruitment fees as an **injury caused by defendants' RICO violations**." Order p. 8-9 (Emphasis added). The SAC still pleads that the plaintiffs' alleged injury to their property was proximately caused by the defendants' conduct. *See, e.g.*, SAC ¶¶ 10 ("In addition to being required to pay exorbitant recruitment fees and substantial non-interest generating performance deposits, most plaintiff and Class members are required to pay the Contractors up to $100 each month to live in. . .employer-owed barracks. ...Workers are also required to pay up to an additional $100 each month for food...."), 11 ("The Contractors purport to pay plaintiffs and Class members the applicable CNMI minimum wage, although they do not pay for all hours that they force those workers to work...."), and 12 ("Defendants and their agents place plaintiffs and Class members in dire economic circumstances, as a result of, *inter alia*, requiring mandatory unpaid work, charging exorbitant recruitment fees (often coupled with usurious interest), performance deposits, and renewal fees, charging excessive amounts for food and lodging, and paying low hourly wage rates for the time that is compensated.").

Accordingly, the plaintiffs have properly alleged the requisite proximate cause between the customer defendants' acts and the plaintiffs § 1962(c) injury. The defendants' motion to dismiss is denied.

II. Involuntary Servitude and Peonage

A. Plaintiffs have not adequately alleged involuntary servitude as a predicate act sufficient for RICO purposes.

The court previously dismissed the plaintiffs' claim for involuntary servitude because the FAC did not contain sufficient allegations to show or give rise to an inference that the plaintiffs

were forced to work by the use or threat of physical restraint, physical injury or legal coercion and that they had no other choice but to work. *See* Order p. 46.

The defendants argued that the plaintiffs have not alleged facts showing that the threats or physical abuse they allegedly received acted to prevent them from leaving or terminating their employment. The defendants further contend that the plaintiffs had a choice about whether or not to continue their employment, as evidenced by the fact that several plaintiffs renewed their contracts and several plaintiffs worked for more than one factory.

In the SAC, the plaintiffs allege that the defendants threaten to and do physically abuse them and the defendants threaten the plaintiffs with suspension, termination, or deportation if they fail to honor their employment contracts. The SAC also alleges that the defendants threaten the plaintiffs that if they are deported, they and their guarantors will be subject to arrest, prosecution, and imprisonment in their home countries.[29] The plaintiffs contend that their special

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[29] *See* SAC ¶¶ 12 ("Defendants and their agents. . .threaten and engage in physical beatings of plaintiffs and Class members both as punishment and as warnings, and threaten plaintiffs and Class member that if they violate workplace rules or any requirement imposed by their employers or Recruiters, they will be suspended, terminated, or summarily deported to their home countries without regard to due process or their legal rights, and that they or their debt guarantors will thereupon be subject to imprisonment and other penalties."), 154 ("Class members are informed by defendants and the Recruiters and reasonably believe that if they violate the terms of their. . .employment contracts, of if they violate any workplace rules or complain about any workplace or living conditions, their CNMI employment will be terminated, they will be summarily deported to their home countries, and they and their guarantors will be subject to arrest, prosecution, and imprisonment in their home countries."), and 170 ("Defendants and their agents indenture plaintiffs and Class members and compel their labor under the menace and threat of penalties and physical, economic and legal harm to plaintiffs and Class members and their families. Defendants and their agents compel plaintiffs and Class members to work and to continue work by using and threatening to use physical and legal coercion. . .including but not limited to subjecting them to extremely poor conditions, by prohibiting complaints, by

vulnerabilities – their impoverished state, the severe economic consequences they face, being stranded thousands of miles from home, and their lack of employment options – coupled with the physical and legal threats and coercion deprive them of their free will and choice and make them reasonably believe that they have no choice but to work.

The court still concludes that the plaintiffs' allegations are insufficient to support their claim of involuntary servitude. Even accepting as true the well-pleaded factual allegations of the threats and use of physical restraint and abuse and the threats and use of physical and legal coercion, coupled with the plaintiffs' alleged special vulnerabilities, the court cannot reasonably infer that the plaintiffs' free will had been overcome and that the plaintiffs had no choice but to work. The court still finds that the plaintiffs made a "choice, however painful" to work. United States v. Kozminski, 487 U.S. 931, 950 (1988). This is evident in that several of the Does worked in Saipan for more than one year[30] and for more than one factory.[31] Furthermore, the

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threatening jail and imprisonment, by engaging in public acts of violence against Class members, by subjecting them to physical restraint, by locking them into factories and barracks, by taking their passports, and by making a public showing of summary suspensions, terminations, and deportations.").

[30] The court previously determined that the plaintiffs made the choice to work, even in the face of the alleged physical and/or legal coercion, because the plaintiffs repeatedly renewed their one-year employment contracts. For example, Doe IX has been employed by Top Fashion since 1997 (FAC ¶ 23), Doe X was employed by United International Corp. between 1996 and 1999 (FAC ¶ 24), and Doe XI has been employed by Pang Jin since 1997 (FAC ¶ 25). *See* Order p. 49 and n.32. The court notes that the plaintiffs have now edited the SAC to not include the years the Does worked for the various factories. While the court acknowledges that the SAC supersedes the FAC, the court agrees with the defendants that "the plaintiffs cannot make an admitted fact go away simply by deleting it from their pleading." Customer Defendants' Memorandum of Points and Authorities in Support of Motion to Dismiss the Second Amended Complaint, p. 27 n.12 (citing Huey v. Honeywell, Inc., 82 F.3d 327, 333 (9th Cir. 1996) ("When a pleading is amended or

SAC's alleged threats of termination by the defendants are inconsistent with the notion that the plaintiffs want to leave their jobs, but they are left with no choice but to work. As for the severe financial consequences the plaintiffs allegedly face if their employment is terminated or if they are deported,[32] the court has already previously concluded that other "[c]ourts have repeatedly held that the financial consequences attending the quitting of one's job make the choice between continuing to work under adverse conditions and quitting employment an unpleasant choice, but nevertheless a choice." *See* Order p. 50 and n.34. Finally, while the plaintiffs' allegations of physical and legal threats of arrest, prosecution, and imprisonment by the defendants may give rise to involuntary servitude, the court concludes that without more factual information on who or how the arrest, prosecution, and imprisonment will be conducted, the plaintiffs' allegations are insufficient to support their claim of involuntary servitude.

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withdrawn, the superseded portion ceases to be a conclusive judicial admission; but it still remains as a statement once seriously made by an authorized agent, and as such it is competent evidence of the facts stated, though controvertible, like any other extrajudicial admission made by a party or his agent.")).

[31] *See* SAC ¶¶ 21 (Doe III was employed by Little MGM, Big MGM, and UIC.), 30 (Doe XII was employed by Sako Corp. and L&T International Corp.), and 43 (Doe XXV was employed by Winners Corp., Little MGM, and Big MGM.).

[32] *See, e.g.,* SAC ¶¶ 165 ("The economic consequences of such threats and punishments, including the Class members' reasonable fear that they or their family members will be jailed upon their return to their homeland if they are unable to pay the accumulated debt and interest, makes Class members beholden to the Contractors, because if Class members are terminated, their performance deposits are not returned and they cannot pay their recruitment fee debts.") and 168 ("Class members are threatened that if they complain about any condition of their employment, they will be summarily deported, thus losing their performance deposits and remaining fully liable for the entire amount of the unpaid recruitment fees or interest on those fees, and would be arrested, prosecuted, and imprisoned upon returning to their home countries.").

Accordingly, and for the above reasons, the court finds that the plaintiffs' had a "choice, however painful" whether to continue working and, thus, their allegations are insufficient to support a claim of involuntary servitude. The defendants' motion to dismiss is granted with prejudice.

B. Plaintiffs have not properly alleged a common law peonage claim against the defendants.

The court previously concluded that the plaintiffs have properly alleged a "compulsion to labor" common law peonage claim "...because the alleged compulsion under which plaintiffs labor is not simply the threats and/or use of physical and legal coercion; rather, it includes plaintiffs' fear of the threatened consequences if they are unable to pay their recruitment fee debt, which plaintiffs allege is essentially a debt owed to their employer."[33] Order p. 48.

The defendants argued that the SAC makes new allegations which show that none of the Does owe a debt to their employers for their recruitment fees. The SAC instead alleges that the plaintiffs owe debts to their employers for food, lodging, and renewal fees. The defendants contend, however, that this is not a debt because there is no allegation that the plaintiffs borrowed money from their employers to pay for the food, lodging, and renewal fees.

The plaintiffs argued that the SAC adequately alleges that the plaintiffs owe direct debts to the contractor defendants to pay for food, lodging, and renewal fees. The plaintiffs also

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[33] "In order to allege a claim for peonage, there must be a debt owed to the employer and the employer must apply coercion of such a nature that the debtor has no choice but to work off the debt. Based on Supreme Court authority, threats and/or use of physical coercion and/or legal coercion are also required elements of a claim for peonage but the legal ramifications ordinarily attendant with a breach of an employment contract cannot be considered legal coercion resulting in peonage." Order p. 47.

argued that the SAC alleges that the recruiters act as the agents, joint venturers, and co-conspirators of the retailer and contractor defendants. Finally, the plaintiffs contend that the performance deposits they pay to the recruiters is a debt owed to the employer because the bond compels the plaintiffs to work the full stated term of their contracts.

Upon reviewing its previous Order and the changed allegations of the SAC, the court now finds that the plaintiffs have not properly alleged a common law peonage claim against the defendants for three reasons. First, the SAC now alleges that of the 25 Doe plaintiffs, only three owe a debt to the recruiters.[34] Previously, the court found that a debt to the recruiter was essentially a debt to the employer. *See* Order p. 48. However, the SAC does not contain sufficient allegations that show or from which may be inferred that a debt to the recruiter is a debt to the employer. Instead, the SAC makes legal conclusions with no facts to support the allegation that the recruiters are agents of the defendants.[35] The SAC more specifically alleges that recruiters Wuxi, Su Zhou No. 1 and San Ming, have a joint venture relationship with some of the "Lian Tai" ("L&T") factories and that "...on information and belief, at least a portion of

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[34] The SAC alleges that in order to pay for their recruitment fees Does 1, 2, 4, 5, 7, 8, 9, 10, 11, 12, 13, 17, 18, 21, 22, and 24 borrowed money from family and friends, Does 15, 16, and 20 borrowed money from "loan sharks," and Does 3, 14, and 19 borrowed from their recruiters. The SAC is silent as to how Does 6, 23, and 25 financed their recruitment fees.

[35] *See* SAC ¶¶ 6 ("The foreign recruitment agencies ("Recruiters") act as defendants' agents, joint venturers, and co-conspirators with defendants...."), 150 ("Class members. . .must pay recruitment fees. . .to Recruiters that for all relevant purposes herein act as defendants' agents, joint venturers, and co-conspirators."), and 175 ("...Recruiters acting as defendants' agents....").

the recruitment fees paid by [the L&T] workers are ultimately paid to L&T (SAC ¶ 115) and that "[d]efendant Grace, on information and belief, is owned, operated and/or controlled by Tian Foreign Economic Committee, a Chinese Recruiter that recruits workers for Grace and other factories." SAC ¶ 117. While these allegations may show a connection between the L&T Group of Companies and Grace International, Inc. with their recruiters, they do not show or from which may be inferred that the money owed to these recruiters is actually money owed to the defendants. In addition, neither of the three Does who borrowed money from their recruiters worked for the L&T Group or Grace International, Inc.[36]

Second, the payment for food and lodging is not a debt owed to the defendants, but rather a monthly expense. *See* SAC ¶160 ("...the Contractors charge each Class member up to $100 per month for inadequate housing and up to another $100 monthly for inadequate food.").

Third and finally, the SAC does not properly allege that the performance deposits the plaintiffs pay prior to the commencement of their employment are debts owed to their employers.[37] The allegations do not show or give rise to an inferrence that the plaintiffs and

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[36] *See* SAC ¶¶ 21 (Doe III works for Little MGM, but has also been employed by Big MGM and UIC.), 32 (Doe XIV works for Mariana Fashions.), and 37 (Doe 19 worked for Advance Textile Corp.).

[37] *See* SAC ¶¶ 5 ("[The] guest workers must agree to pay. . ."performance deposits" of up to $1250 or more. Those performance deposits constitute forced, interest-free loans that the workers are required to forfeit in their entirety if their CNMI employment terminates before the completion of the term of the employment set by their Recruiters.") and 152 ("...Class members are required as a condition of their CNMI employment to pay the Recruiters substantial, non-interest generating "performance deposits" of up to $1250 per term of employment. . . .Class members are required to pay those deposits upon the condition that the deposits will only be returned to the worker upon completion of the full

class members borrowed money from their employers in order to finance their performance deposits. The plaintiffs' argument that the performance bonds compel the plaintiffs to work the full term of their employment contracts due to the alleged economic duress they will suffer if they do not is insufficient for a claim of peonage because the plaintiffs have still not shown that there is a debt owed to the defendants and the plaintiffs have no choice but to work off the debt.

Accordingly, and for the above reasons, the court finds that the plaintiffs' allegations are insufficient to support a claim of common law peonage. Defendants' motion to dismiss is granted and plaintiffs are given leave to amend.

III. Anti-Peonage Act, 42 U.S.C. § 1994

A. The plaintiffs have not properly alleged the "state action" required to support a claim under the Anti-Peonage Act.

The court previously dismissed the plaintiffs' claim against the defendants for violation of the Anti-Peonage Act because the plaintiffs did not sufficiently allege "state action." *See* Order p. 29-34.

The defendants argued that in the SAC the plaintiffs allege that certain non-defendant recruiters are controlled by the Chinese government. The defendants contend that this is not the requisite state action necessary to make out a claim under the Anti-Peonage Act because this is action of a foreign government, and not of one of the several states or a U.S. territory. The defendants also argued in the alternative that, even if the court concludes that a foreign state's action is "state action" under the Anti-Peonage Act, the plaintiffs have still failed to allege that the foreign state took part in the challenged conduct.

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term of the workers' employment....").

The plaintiffs requested that the court to take a second look at Clyatt v. United States, 197 U.S. 207 (1905) and Craine v. Alexander, 756 F.2d 1070 (5th Cir. 1985) and reconsider its previous conclusion that the Anti-Peonage Act requires state action. The plaintiffs contend that the Supreme Court's conclusion in Clyatt that the Anti-Peonage Act had no state action requirement must have been directed at the Act in its entirety, and not just to its criminal prohibitions. The plaintiffs further argued that the Fifth Circuit in Craine simply "got it wrong" when it held that a plaintiff asserting a claim for peonage must show some state responsibility for the abuse complained of in order to bring the claim.

Upon reviewing its previous ruling, the court still concludes, based on its previous analysis of Clyatt, Craine, and the Act itself, that state action is required in order to state a claim under that Anti-Peonage Act. Furthermore, the court agrees with the defendants that the state action required to support a claim under the Anti-Peonage Act is action by one of the States of the Union, not a foreign state. There is no indication in the Act that Congress intended it to apply to foreign states. In fact, clause one of the Act specifically abolished peonage in "...any **Territory or State of the United States**..." and clause two of the Act declared null and void "...all acts, laws, resolutions, orders, regulations, or usages of any **Territory or State**..." that established, maintained, or enforced peonage.[38] (Emphasis added). Congress's usage of the

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[38] The Anti-Peonage Act states:

> "The holding of any person to service or labor under the system known as peonage is abolished and forever prohibited in any Territory or State of the United States; and all acts, laws, resolutions, orders, regulations, or usages of any Territory or State, which have heretofore established, maintained, or enforced, or by virtue of which any attempt shall hereafter be made to establish, maintain, or enforce,

capital letters "T" and "S" when referring to any "Territory or State" in clause one and any "Territory or State" in clause two illustrates that clause one and clause two of the Act speak of the same thing. Therefore, when read as a whole, the Anti-Peonage Act applies to "any Territory or State of the United States," thus requiring domestic, not foreign, state action to support a claim.

In the SAC, the plaintiffs claim the requisite "state action" with respect to the alleged foreign government owned and operated recruitment agencies. The plaintiffs allege that the defendants conspired with these foreign government owned and operated recruiters to violate the plaintiffs and class members' rights. *See* ¶¶ 273 ("Defendants, acting as joint venturers and in combination, concert,. . .and close conspiracy with the foreign government-owned and -operated Recruiters....") and 274 ("...[D]efendants and their. . .co-conspirators engaged and continue to engage in state action and acted and continue to act under color of state law."). The plaintiffs' allegations of "state action" are not sufficient because the plaintiffs have only alleged "foreign state action." Accordingly, the court finds that the plaintiffs have not properly alleged the "state action" required to support a claim under the Anti-Peonage Act. The defendants' motion to dismiss is granted with prejudice.

IV. Vicarious/Joint Liability

A. Joint venture is not sufficiently pleaded.

In its previous Order, the court held that a joint venture was not sufficiently pleaded

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directly or indirectly, the voluntary or involuntary service of labor of any persons as peons, in liquidation of any debt or obligation, or otherwise, are declared null and void." 42 U.S.C. § 1994.

because the agreements that plaintiffs allege "give structure to the RICO enterprises do not give rise to a common business, do not provide for joint control over any business, and do not demonstrate any understanding to share profits and losses."[39] Order p. 24. The defendants contend that the SAC does not allege facts that cure this deficiency. While the court finds that the plaintiffs have adequately pleaded the joint venture element of "joint control,"[40] the court finds that the SAC does not properly allege the remaining two joint venture elements - joint interest in a common business and an understanding to share profits and losses. Thus, plaintiffs' claim for joint venture fails.

First, the plaintiffs still allege that the retailers engage in competitive bidding for contracts among the manufacturers,[41] which the court previously held negated the plaintiffs'

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To allege the existence of a joint venture plaintiffs must allege an undertaking by two or more persons jointly to carry out a single enterprise for profit. *See* Shell Oil Co. v. Prestidge, 249 F.2d 413, 415 (9th Cir. 1957). The elements of a joint venture are (1) joint interest in a common business; (2) an understanding to share profits and losses; and (3) a right to joint control. Jackson v. East Bay Hospital, 246 F.3d 1248, 1261 (9th Cir. 2001). *See also* 580 Folsom Associates v. Prometheus Development Company, 223 Cal. App.3d 1, 15-16, 272 Cal.Rptr. 227, 234 (1990). The existence of a joint venture may be implied from the acts and declarations of the parties. 580 Folsom Associates, 223 Cal. App.3d at 15-16, 272 Cal.Rptr. at 234.

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See SAC ¶ 173(a) ("The Retailers jointly exercise meaningful control over the employment policies and working and living conditions applicable to each Class member, and are responsible for the Contractors' violations of the legal standards alleged herein, as a result in part of the Retailers' active participation in formulating and devising Codes of Conduct and Monitoring Programs applicable the the CNMI garment factory workplaces and worker living quarters, . . .their unfettered on-site presence in the CNMI garment factories for purposes of monitoring, quality control, contract enforcement, and information-gathering....").

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See SAC ¶ 173(f) ("The Retailers impose substantial economic pressure on the

contention that the retailers and manufacturers have a joint interest in a common business. *See* Order p. 24. Second, the court does not find sufficient allegations in the SAC that show or from which may be inferred that the retailer and manufacturer defendants have an understanding to share in the profits and losses of their common business. The paragraphs that plaintiffs cite primarily illustrate that the defendants' businesses were profitable and that defendants profited from their alleged scheme, and are insufficient to allow an inference that the retailer and manufacturer defendants had an understanding to share profits and losses.[42] *See, e.g.*, SAC ¶¶ 173 ("...[T]he Retailers deliberately choose not to exercise [their] power to ensure compliance, but instead knowingly permit and encourage the violations. . .for their own and for their co-conspirators' mutual economic benefit.") and 174 ("Plaintiffs and Class members have as a

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Contractors. . .by engaging in competitive bidding for contracts among the Contractors or by employing a purchasing or sourcing agent to conduct such competitive bidding among the Contractors on the Retailers' behalf....").

[42] The plaintiffs argued that the elements of a joint venture have been properly pleaded and cite to R.M. Perlman, Inc. v. N.Y. Coat, Suit, Dresses, Rainwear & Allied Workers' Union Local 89-22-1, 33 F.3d 145, 153 (2nd Cir. 1994) for the proposition that there is congressional recognition that garment retailers and contractors functionally engage in an integrated system of production. While the court acknowledges the Second Circuit's analysis of the Garment Industry Proviso of the National Labor Relations Act ("NLRA") and its reference to the "integrated process of production in the apparel and clothing industry," the court finds the R.M. Perlman case distinguishable from the case at hand. R.M. Perlman was a case where former garment industry employers sued local and international unions for damages as a result of alleged unlawful picketing and other intentionally malicious activities. The R.M. Perlman case did not discuss nor mention garment retailers' and contractors' potential liability in a joint venture context. Thus, the court declines to extend Congress' recognition of garment retailers and contractors engaging in an "integrated system of production" in the Garment Industry Proviso of the NLRA as meaning that in a joint venture context, garment retailers and contractors have an understanding to share in the profits and losses of the business.

result of the conduct of defendants and defendants' agents. . .become the victims of an unlawful scheme, in which each defendant participates and from which each defendant benefits economically.... This scheme is financially supported and knowingly implemented by defendants...."). Accordingly, plaintiffs' joint venture claim is not properly pleaded. The defendants' motion to dismiss is granted and plaintiffs are given leave to amend.

B. Agency relationship is properly pleaded.

The court previously dismissed the plaintiffs' allegation of an agency relationship between the retailer and manufacturer defendants because the FAC did not contain sufficient allegations that show or from which may be inferred that the retailer defendants possessed the right to control the means and manner in which the manufacturers conducted their businesses or performed the obligations under the alleged contracts between the retailers and manufacturers.[43] *See* Order p. 25-26.

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[43] An agency relationship exists when one "undertakes to transact some business [or] manage some affair . . . by authority of and on account of [the principal]." In re Coupon Clearing Service, 113 F.3d 1091, 1099 (9th Cir. 1997). The Restatement of Agency defines an agency relationship as "the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act." RESTATEMENT (SECOND) OF AGENCY § 1(1) (1958). *See* 7 N. Mar. I. Code § 3401 (1999) ("In all proceedings, the rules of the common law, as expressed in the restatements of the law approved by the American Law Institute and, to the event not so expressed as generally understood and applied in the United States, shall be the rules of decision in the courts of the Commonwealth, in the absence of written law or customary law to the contrary...."). "[A]pparent agency arises as a result of conduct of the principal which causes the third party reasonably to believe that the agent possesses the authority." Republic of Nicaragua v. Standard Fruit Co., 937 F.2d 469, 480 (9th Cir. 1991). An "important aspect in determining the existence of an agency relationship is the degree of control exercised by the principal over the activities of the agent." In re Coupon Clearing Service, 113 F.3d at 1099.

The court now finds that the SAC includes sufficient factual allegations of an agency relationship to survive this motion to dismiss. *See* SAC ¶ 127 ("Each defendant was the agent. . .of each other defendant, worked in concert with each other defendant, and acted within the course and scope of such agency.... Each defendant had the right to control and determine, and did in fact control and determine, the workplace and living conditions and the conditions of employment of plaintiffs and Class members...."). The plaintiffs sufficiently allege the retailer defendants' right to control the means and manner in which the manufacturers conduct their businesses in paragraph 173 when they state that "[t]he retailers. . .are responsible for the Contractors' violations. . .as a result in part of the Retailers' active participation in formulating and devising Code of Conduct and Monitoring Programs applicable to the CNMI garment factory workplaces and living quarters.... The Retailers control the operative details of the Class members' tasks, . . .and enforce those details through their contracts with the Contractors, through the economic penalties they threaten to impose upon Contractors who do not comply with the specific terms of the production contracts, and by their on-site monitoring and inspection of the Contractors' factories."

Accordingly, the plaintiffs have properly alleged an agency relationship between the retailer and manufacturer defendants. The motion to dismiss is denied.

C. Aiding and abetting is properly pleaded.

The court previously dismissed the plaintiffs' claim of aiding and abetting liability against the defendants because the business and contractual arrangements alleged in the FAC, and the actions taken pursuant thereto, did not show that the retailer defendants provided

substantial assistance in the manufacturers' alleged peonage, involuntary servitude, and labor violations.[44] *See* Order p. 27-29. Furthermore, the plaintiffs' allegations of the retailer defendants' "encouragement" of the manufacturers' conduct were conclusory and not supported by factual allegations demonstrating active encouragement. Id.

The court finds that the plaintiffs adequately plead in the SAC that the retailer defendants aided and abetted in the manufacturer defendants' conduct. Paragraph 173 alleges the retailers' "substantial assistance" when it states that:

> "The Retailers jointly exercise meaningful control over the employment policies and working and living conditions applicable to each Class member, and are responsible for the Contractors' violations of the legal standards alleged herein, as a result of the Retailers' active participation in formulating and devising Codes of Conduct and Monitoring Programs applicable to the CNMI garment factory workplaces and worker living quarters, . . .their unfettered on-site presence in the CNMI garment factories for purposes of monitoring, quality control, contract enforcement, and information-gathering by which they gained knowledge of the unlawful conditions. . .and their knowing acquiescence in and encouragement of the perpetuation of such unlawful conditions, in order to increase their profits and the profits of their co-conspirators that result therefrom."

The SAC further alleges that the retailer defendants "actively encourage" the manufacturers' alleged unlawful conduct because the retailer defendants allegedly formulate and implement "...ineffectual monitoring programs in the CNMI that they know are designed to allow the

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[44] Civil aiding and abetting includes the following elements: "(1) the party whom the defendant aids must perform a wrongful act that causes an injury; (2) the defendant must be generally aware of his role as part of an overall illegal or tortious activity at the time that he provides the assistance; and (3) the defendant must knowingly and substantially assist the principal violation." Halberstam v. Welch, 705 F.2d 472, 477 (D.C. Cir. 1983). In addition, "[a]dvice or encouragement to act operates as moral support to a tortfeasor and if the act encouraged is known to be tortious it has the same effect upon the liability of the adviser as participation or physical assistance." Id. at 478.

Contractors to continue to violate the rights of plaintiffs and Class members without fear of public discovery or required remediation, and [the Retailers] further [] block the implementation of more effective monitoring programs or the provisions of such monitoring programs." SAC ¶ 173. The retailers "...deliberately choose not to exercise [their] power to ensure compliance, [and] instead knowingly permit and encourage the violation of the Class Members' legal rights...." Id.[45]

Accordingly, plaintiffs adequately plead that the retailers aided and abetted in the manufacturer's alleged unlawful conduct. The defendants' motion to dismiss is denied.

D. Civil conspiracy is properly pleaded.

In its previous Order, the court held that civil conspiracy was properly pleaded.[46] *See*

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[45] *See also* SAC ¶¶ 127 ("Each defendant was the. . .aider and abetter. . .of each other defendant.... Each defendant had the right to control and determine, and did in fact control and determine, the workplace and living conditions and the conditions of employment of plaintiffs and Class members employed in the Contractors' CNMI garment factories, exercised contractual and economic oversight and control over those conditions and the standards for monitoring those conditions, knowingly participated in a scheme to share the economic profits from its own and each other defendants' individual and collective efforts to exploit Class members and to mislead consumers concerning the working conditions under which garments are manufactured in the CNMI, and deliberately decided in its own and its co-defendants' economic self-interest neither to acknowledge nor to insist on the prevention or remediation of the unlawful conditions alleged herein.") and 128 ("...[E]ach defendant was aware of the nature and scope of the unlawful conduct alleged herein and knowingly and intentionally adopted the goal of furthering or facilitating that unlawful conduct. Pursuant to this conspiracy, each defendant agreed to commit, or provided substantial encouragement to one or more other defendants to commit, the wrongful and unlawful acts alleged herein and to prevent the disclosure of such acts to the public, to consumers, or to prospective non-resident Saipan garment workers.").

[46] To plead a civil conspiracy, plaintiffs must allege (1) an agreement between two or more persons, (2) to participate in an unlawful act or a lawful act in an unlawful manner,

Order p. 29. The defendants requested that the court reconsider its previous finding and argued that the SAC does not plead a civil conspiracy because the SAC does not adequately allege the existence of a RICO conspiracy and the plaintiffs do not present any facts showing a conspiracy by the defendants to violate the Anti-Peonage Act and the Alien Tort Claims Act ("ATCA").

As discussed above in the RICO analysis, the plaintiffs have adequately alleged an agreement to participate in an unlawful scheme, overt acts in furtherance thereof, and injury caused by tortious overt acts. Accordingly, plaintiffs have sufficiently pleaded that the retailers and the manufacturers were civil co-conspirators. The motion to dismiss is denied.

V. Alien Tort Claims Act, 28 U.S.C. § 1350

A. Plaintiffs have failed to adequately allege a violation of international law.

The court previously held that it need not consider whether forced or debt labor is actionable under the Alien Tort Claims Act ("ATCA") because the FAC failed to properly allege a claim for involuntary servitude. *See* Order p. 52. As discussed *supra*, Part II.A and B, p. 33-40, the court does not find any factual allegations in the SAC that show or give rise to an inference that the defendants held the plaintiffs and class members in a state of peonage and involuntary servitude. Thus, the court need not consider whether the defendants' alleged conduct violated international law. Accordingly, the defendants' motion to dismiss is granted and plaintiffs are given leave to amend.

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(3) an overt act pursuant to and in furtherance of the common scheme, and (4) an injury caused by an unlawful overt act performed by one of the parties to the agreement. Halberstam, 705 F.2d at 477. "It is only where means are employed, or purposes are accomplished, which are themselves tortious, that conspirators who have not acted but have promoted the act will be held liable." Id. "Proof of a tacit, as opposed to explicit, understanding is sufficient to show agreement." Id.

VI. Statute of Limitations

A. The defendants' statutes of limitations arguments are not properly before the court.

The defendants argued that the plaintiffs have failed to allege facts showing that their claims are not barred by the various statutes of limitations. The plaintiffs opposed stating that this court, in granting plaintiffs' motion for reconsideration, agreed that the ATCA statute of limitations issue was not properly before the court. The court agrees.

The defendants' statutes of limitations arguments are not proper in a motion to dismiss. The statute of limitations argument is an affirmative defense and can also be raised in a dispositive motion. The court has insufficient information before it to rule on the motion at this time and it is, therefore, denied without prejudice.

CONCLUSION

Defendants' Motion to Dismiss the Plaintiffs' Second Amended Complaint is GRANTED IN PART and DENIED IN PART as set out above.

(1) The plaintiffs have properly alleged an association-in-fact enterprise consisting of individual retailers and individual manufacturers. The motion to dismiss is denied.

(2) The plaintiffs have not properly alleged an association-in-fact enterprise consisting of all retailer defendants and all manufacturer defendants. The motion to dismiss is granted and plaintiffs are given leave to amend.

(3) The plaintiffs have properly alleged an association-in-fact enterprise consisting of all manufacturer defendants. The motion to dismiss is denied.

(4) The plaintiffs have not properly alleged an association-in-fact enterprise consisting of all retailer defendants. The motion to dismiss is granted and plaintiffs are given leave to amend.

(5) The plaintiffs have properly alleged an association-in-fact enterprise consisting of each retailer and the various manufacturers who manufacture the retailers' garments in the CNMI. The motion to dismiss is denied.

(6) The plaintiffs have not properly alleged an association-in-fact enterprise consisting of each retailer and all manufacturers that are members of the SGMA. The motion to dismiss is granted and plaintiffs are given leave to amend.

(7) The plaintiffs have properly alleged an association-in-fact enterprise consisting of each group of commonly owned and commonly operated manufacturers. The motion to dismiss is denied.

(8) The plaintiffs have sufficiently pleaded a § 1962(d) conspiracy to violate § 1962(c). The motion to dismiss is denied.

(9) The plaintiffs have sufficiently alleged a § 1962(d) conspiracy to violate § 1962(a). The motion to dismiss is denied.

(10) The plaintiffs have properly alleged the requisite *mens rea* for indictment under the particular predicate acts. The motion to dismiss is denied.

(11) The plaintiffs have sufficiently alleged an "investment injury" under § 1962(a). The motion to dismiss is denied.

(12) The plaintiffs have sufficiently alleged the retailer defendants' participation in the

conduct of the affairs of an enterprise. The motion to dismiss is denied.

(13) The plaintiffs have properly alleged the requisite proximate cause between the customer defendants' acts and the plaintiffs' § 1962(c) injury. The motion to dismiss is denied.

(14) The plaintiffs have not adequately alleged involuntary servitude as a predicate act sufficient for RICO. The defendants' motion to dismiss is granted with prejudice.

(15) The plaintiffs have not properly alleged a common law peonage claim against the defendants. The defendant's motion to dismiss is granted and plaintiffs are given leave to amend.

(16) The plaintiffs have not and cannot properly allege the "state action" required to support a claim under the Anti-Peonage Act. The motion to dismiss is granted with prejudice.

(17) Joint venture is not sufficiently pleaded. The motion to dismiss is granted and plaintiffs are given leave to amend.

(18) An agency relationship is properly pleaded. The motion to dismiss is denied.

(19) Aiding and abetting is properly pleaded. The motion to dismiss is denied.

(20) Civil conspiracy is properly pleaded. The motion to dismiss is denied.

(21) The plaintiffs have failed to adequately allege a violation of international law. The defendants' motion to dismiss is granted and plaintiffs are given leave to amend.

(22) The defendants' statutes of limitations argument is not properly before the court. The defendants' motion to dismiss is denied.

Unless specifically ordered otherwise, all dismissals are without prejudice.

Plaintiffs are granted leave to amend consistent with this Order and shall have twenty

days from the date of this Order to file their third amended complaint. Defendants have twenty days from the date of plaintiffs' filing of their third amended complaint to answer or otherwise respond.

IT IS SO ORDERED.

Dated this 10th day of May, 2002.

Alex R. Munson
Judge