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 DENYING-IN-PART AND GRANTING-IN-PART DEFENDANT LEVI STRAUSS & CO.'S MOTION TO DISMISS PLAINTIFFS' THIRD AMENDED COMPLAINT

THIS MATTER came before the court on October 31, 2002 for hearing on Levi Strauss & Co.'s Motion to Dismiss and/or Strike Portions of Plaintiffs' Third Amended Complaint.

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Attorneys Michael Rubin, Albert H. Meyerhoff, and Joyce C.H. Tang appeared on behalf of plaintiffs. Attorneys Thomas Clifford, Timothy Cahn, and Greg Gilchrist (via telephone) appeared on behalf of defendant.

Upon consideration of the written and oral arguments of counsel, defendant Levi Strauss & Co.'s (hereinafter "Levi Strauss") Motion to Dismiss and/or Strike Portions of Plaintiffs' Third Amended Complaint (hereinafter "TAC") is DENIED-IN-PART and GRANTED-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 may be granted. Dismissal is appropriate pursuant to Rule 12(b) if a plaintiff can prove no set of facts in support of his claim that would entitle him to relief. *See* Buckey v. County of Los Angeles, 968 F.2d 791, 794 (9th Cir.), *cert. denied*, 506 U.S. 999 (1992). Review is based on the contents of the complaint. Moore v. City of Costa Mesa, 886 F.2d 260, 262 (9th Cir. 1989). 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 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).

DISCUSSION

Defendant Levi Strauss moved the court to dismiss or strike all or a portion of each of the remaining claims asserted against it by the plaintiffs in their Third Amended Complaint: (1) the portions of the First and Second Claims alleging several Racketeer Influenced and Corrupt Organizations Act (hereinafter "RICO") enterprises; (2) the Fifth Claim alleging violations of the Alien Tort Claims Act (hereinafter "ATCA"); and (3) the Seventh Claim for injunctive and declaratory relief.[1]

I. RICO CLAIMS

Levi Strauss moved to dismiss the RICO claims on the ground that the plaintiffs have not sufficiently alleged the existence of a RICO enterprise.

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[1] The court previously dismissed with prejudice the plaintiffs' Third (Anti-Peonage Act) and Fourth (Thirteenth Amendment) Claims. *See* Order Re: Motion to Dismiss Plaintiffs' First Amended Complaint pp. 35-43 (Nov. 26, 2001) (hereinafter "FAC Order") and Order Granting in Part and Denying in Part Customer Defendants' Motion to Dismiss the Plaintiffs' Second Amended Complaint pp. 40-42 (May 10, 2002) (hereinafter "SAC Order"). The plaintiffs' Sixth Claim for false imprisonment is asserted against the Contractor/Manufacturer defendants only. *See* Third Amended Complaint for Damages and Injunctive Relief ¶¶ 277-80 (July 25, 2002).

On October 2, 2002, defendant Levi Strauss and the plaintiffs stipulated that Levi Strauss will stay its pending motion to strike the plaintiffs' request for injunctive relief under RICO until the disposition in the United States Supreme Court of National Organization for Women, Inc. v. Scheidler, 267 F.3d 687 (7th Cir. 2001), *cert. granted*, ___ U.S. ___, 2002 LEXIS 2842 (2002). *See* Stipulation By and Between Plaintiffs and Defendant Levi Strauss & Co. Regarding the Third Amended Complaint ¶ 4 (Oct. 2, 2002). The parties agreed that Ninth Circuit law will control Levi Strauss's motion to strike the plaintiffs' request for injunctive relief, unless the Supreme Court rules in Scheidler that private parties may seek injunctive relief under RICO. Id. Therefore, this court's order will only discuss defendant Levi Strauss's motion to dismiss the plaintiffs' RICO and ATCA claims.

A. RICO Enterprises

The court set forth the applicable legal standard for alleging the existence of a RICO enterprise in its prior two Orders. *See* FAC Order pp. 2-7 and SAC Order pp. 3-5. The following discussion assumes familiarity with the analysis in those court Orders.

In their Third Amended Complaint, the plaintiffs re-allege the three RICO enterprises which the court granted them leave to amend in its SAC Order. *See* SAC Order pp. 10-13, 15-16, and 17. These alleged enterprises are: (1) an enterprise consisting of all retailer defendants associated-in-fact with all manufacturer defendants; (2) an association-in-fact enterprise among all retailer defendants; and (3) an association-in-fact enterprise between each retailer and all manufacturers that are members of the Saipan Garment Manufacturers Association (hereinafter "SGMA").

On October 2, 2002, the plaintiffs stipulated that they will dismiss without prejudice their allegations of a RICO enterprise comprising an association-in-fact between all retailers and all manufacturers and a RICO enterprise comprising an association-in-fact between all retailers. *See* Stip. By and Between Pl. and Def. Levi Strauss Re: Third Amend. Compl. ¶ 1 (Oct. 2, 2002). On the same date, defendant Levi Strauss stipulated that it withdrew as moot its pending motion to dismiss the allegations of a RICO enterprise comprising an association-in-fact between all retailers and all manufacturers and a RICO enterprise comprising an association-in-fact between all retailers. Id. at ¶ 3.

In light of the parties' stipulation, the court need only consider the alleged association-in-fact enterprise between each retailer and all manufacturers that are members of the SGMA.

The court previously concluded 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." *See* SAC Order p. 17. The court reasoned that the SAC did not allege the existence of contracts that link each retailer to all manufacturers who are members of the SGMA. Id. However, the court noted that allegations of individual contracts, such as the individual contracts for the production of garments, are sufficient to show, or the existence of which may be inferred from, a "structure" of the alleged organization and the organization's existence separate from its participation in the racketeering activities. Id.

Defendant Levi Strauss now argues that the plaintiffs have not cured their deficient allegations of a RICO enterprise consisting of Levi Strauss and all SGMA-member manufacturers because the TAC still fails to allege contracts that link each retailer to all SGMA manufacturers and the TAC fails to allege a mechanism for making decisions and directing or controlling the affairs of each retailer and all SGMA manufacturers.

Upon reviewing its previous orders and the allegations of the TAC, the court now concludes that the plaintiffs have met the minimum pleading standard to allege an association-in-fact enterprise consisting of individual retailers and all manufacturers that are members of the SGMA. *See* In re Sumitomo Copper Litigation, 104 F. Supp.2d 314, 319 (S.D.N.Y. 2000) (stating that "[a]llegations of the existence of a RICO enterprise must meet only the "notice pleading" requirement of Fed. R. Civ. Pro. 8.").[2] First, the court acknowledges that while the

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[2] *Cf.* Vicom, Inc. v. Harbridge Merchant Services, Inc., 20 F.3d 771, 776 (7th Cir. 1994) (holding that unless the RICO claim involves fraud, it must conform only to the

TAC continues to allege contracts between individual retailers and individual manufacturers for the production of garments,[3] there are no contracts alleged linking individual retailers (i.e. Levi Strauss) and ***all*** SMGA-member manufacturers. However, the plaintiffs make general allegations in the TAC that "the Retailers, the Contractors and others" have numerous business relationships and oral and written agreements among them. The agreements alleged include:

> agreements to share information; to commit the wrongful acts alleged herein; to encourage and facilitate other conspirators' commission of the wrongful acts alleged herein; to keep secret from the public the wrongful acts alleged herein; to create, disseminate, and publicly proclaim compliance with Codes of Conduct and monitoring programs that defendants know and help to ensure are not formulated or implemented in a manner that would likely prevent or remedy the wrongful acts alleged herein; to block the implementation of more effective monitoring programs and stricter Codes of Conduct; to negotiate garment prices and turnaround times that could only be profitably accomplished with a captive workforce and through wage and other violations, including the wrongful acts alleged herein; and to not enforce contract termination and remediation clauses where breaches of those contracts are known. Defendants' agreements also include...: [agreements] to restrict plaintiffs' and Class members rights,...; to promote the Saipan garment industry based upon false representations concerning the Contractors' legal compliance; to monitor, inspect, and report upon

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standards set out in Rule 8) and Planned Parenthood of Columbia/Willamette, Inc. v. American Coalition of Life Activists, 945 F. Supp. 1355, 1379 (D.C. Or. 1996) (holding that when the alleged RICO predicate acts do not involve fraud, the more lenient pleading standard in Rule 8(a) applies). In this case, the plaintiffs allege that the defendants engaged in the following predicate acts of racketeering: extortion, peonage, involuntary servitude, kidnapping, criminal coercion, theft, theft of services, theft by extortion, and receiving stolen property. *See* TAC ¶¶ 248-254.

Fed. R. Civ. P. 8(a)(2) requires that "a pleading which sets forth a claim for relief ... shall contain a short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. P. 8 (a)(2).

[3] *See, e.g.,* TAC ¶¶ 15 and 187(a)-(f).

> conditions in the Contractors' factories and living quarters; to undertake and implement joint industry advertising efforts; to undertake and implement joint political lobbying efforts; and to purchase and sell garments manufactured in the CNMI.

TAC ¶ 242.[4] The plaintiffs further alleged that the defendants worked together through the SGMA to conduct both legitimate and illegitimate activities, and it is the defendants' legitimate activities that give the alleged enterprise of individual retailers and SGMA-member manufacturers an existence beyond that which is necessary to commit the RICO predicate acts.[5]

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[4] *See also* TAC ¶¶ 129 ("In the late 1990's,... the Retailers,... began working together with the Contractors through the mechanism of the SGMA to develop a uniform Code of Conduct and monitoring program for the Saipan garment industry. The Retailers and the Contractors entered into agreements among and between themselves to allocate the responsibility for funding and for performing the work required to develop and implement such Code of Conduct and monitoring program.") and 132 ("All defendants,... exchange information between and among themselves through the auspices of the SGMA, and have agreements between and among themselves to exchange such information, concerning contracting, labor and workplace practices, policies, and mechanisms for accomplishing the unlawful practices and conditions alleged herein, for avoiding or minimizing the potential impact of any public detection or exposure of those unlawful practice[s] and conditions, for misleading the public and prospective non-resident Saipan garment workers about actual workplace and living conditions, for standardizing workplace practices and schemes for depriving plaintiffs and Class members of their rights as alleged herein, and for maintaining plaintiffs' and Class members' status as vulnerable, captive workers who are readily susceptible to exploitation and deprivation of legally-protected rights.").

[5] *See, e.g.,* TAC ¶¶ 19 ("...[D]efendants have met in person and by telephone and have exchanged correspondence and e-mails to discuss and plan collaborative action, joint strategies, and mutually beneficial conduct to implement the conspiracies alleged herein,... and to share common resources in formulating and implementing Codes of Conduct, monitoring plans, and monitoring and auditing protocols. ...[D]efendants also engaged in collaborative and cooperative conduct for the independent purposes of obtaining the enactment of laws, rules, and regulations that would benefit the garment industry as a whole and the CNMI garment industry in particular, and of engaging in advertising and public relations ventures to improve the public image of the garment industry as a whole (continued...)

While it is a close question, the court concludes that the allegations of general contracts and agreements among "all defendants" and the allegations of the defendants' legitimate activities are sufficient to show, or allow an inference of, an association-in-fact enterprise of Levi Strauss and all SGMA-member manufacturers. One can reasonably infer that the general contracts and agreements alleged link Levi Strauss and all the SGMA-member manufacturers.[6] Furthermore, the plaintiffs have properly alleged a "structure" of the organization for consensual decision making.[7] *See* TAC ¶ 129 ("...[T]he Retailers, through their agents,... began working together with the Contractors through the mechanism of the SGMA to develop a uniform Code of Conduct and monitoring program for the Saipan garment industry. ... Defendants mutually

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[5](...continued)
and the CNMI garment industry in particular.") and 127 ("The SGMA was formed in 1993 and served and continues to serve both legitimate purposes and illegitimate purposes, including the purpose of furthering the illegal schemes alleged herein. The SGMA conducted and continues to conduct legitimate public relations activities concerning minimum wage, immigration, and other issues in the CNMI. Defendants have worked together and through the SGMA to conduct both legitimate activity and the unlawful activities alleged herein.").

[6]

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.'")).

See supra TAC ¶¶ 129, 132, and 242.

[7]

See Chang v. Chen, 80 F.3d 1293, 1299 (9th Cir. 1996) (holding that "[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.").

designed such Code of Conduct and monitoring program principally to improve the public image of the CNMI garment industry rather than to effect meaningful change.... Defendants, individually or through one of more agents, worked together to create the new Code of Conduct and monitoring program and allocated resources to create and implement the new Code of Conduct pursuant to agreements with other defendants.").[8] Finally, the alleged enterprise's legitimate activities are enough to sustain a claim of an association-in-fact enterprise of Levi Strauss and all SGMA-member manufacturers because one can reasonably infer from the allegations that the alleged enterprise has a function or an existence beyond that which is necessary to commit the predicate acts of racketeering.[9] The plaintiffs properly plead in paragraph 19 that Levi Strauss and the SGMA-member manufacturers have engaged in "other activities" apart from the acts of racketeering that the defendants allegedly performed:

> [The] defendants [] engaged in collaborative and cooperative conduct for the independent purposes of obtaining the enactment of laws, rules, and regulations that would benefit the garment industry as a whole and the CNMI garment industry in particular, and of engaging in advertising and public

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[8] *See also* TAC ¶ 132 ("All defendants, individually or through one or more agents, exchange information, between and among themselves through the auspices of the SGMA, and have agreements between and among themselves to exchange such information, concerning contracting, labor and workplace practices, policies, and mechanisms for accomplishing the unlawful practices and conditions alleged herein....").

[9] To plead a RICO enterprise 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 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." Chang, 80 F.3d at 1299 (Emphasis added).

relations ventures to improve the public image of the garment industry as a whole and the CNMI garment industry in particular.

TAC ¶ 19.[10] The court concludes that this is sufficient given the lenient pleading standard of Fed. R. Civ. P. 8.

Accordingly, the plaintiffs have met the minimum pleading requirements of an association-in-fact enterprise consisting of Levi Strauss and all SGMA-member manufacturers, sufficient to survive this motion to dismiss. The allegations will or will not be borne out through discovery and at trial. The defendant's motion to dismiss is denied.

II. Alien Tort Claims Act

The Alien Tort Claims Act confers original jurisdiction on the district courts over any civil action by an alien for a tort committed in violation of the Law of Nations or treaty of the United States. 28 U.S.C. § 1350. "Courts ascertaining the context of the law of nations must interpret international law not as it was in 1789, but as it has evolved and exists among the nations of the world today." Kadic v. Karadzic, 70 F.3d 232, 238 (2nd Cir. 1995). Courts find the norms of contemporary international law by consulting the works of jurists, or by the general usage and practice of nations, or by judicial decisions recognizing and enforcing that law. Id. In order for a tortious act to be actionable under the ATCA, it must be in violation of an international norm that is specific, obligatory, and universally condemned by the international

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[10] *See also* TAC ¶ 127 ("The SGMA conducted and continues to conduct legitimate public relations activities concerning minimum wage, immigration, and other issues in the CNMI. Defendants have worked together and through the SGMA to conduct both legitimate activity and the unlawful activities alleged herein.").

community. Hilao v. Estate of Marcos, 103 F.3d 789, 794 (9th Cir. 1996).

The plaintiffs allege in their Fifth Claim for Relief that the defendants have violated the Law of Nations and customary international law by requiring the plaintiffs and Class members to engage in forced labor, involuntary servitude, and peonage. TAC ¶ 270. The complaint further alleges that the defendants violated the ATCA by acting in concert, combination and conspiracy with foreign governments, foreign government officials, and foreign government owned and operated Recruiters to deprive the plaintiffs and Class members of their fundamental human rights. *See* TAC ¶ 271.

The court previously held that it need not consider whether the defendants' alleged conduct violated international law because the court did 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.[11] *See* SAC Order p. 49. The plaintiffs were given leave to amend their ATCA claims. Id.

In their TAC, the plaintiffs re-plead their involuntary servitude and peonage claims, both as RICO predicate acts under 18 U.S.C. §§ 1961(1)(B), 1581, and 1584 and under the ATCA, and also plead for the first time, a claim of forced labor. *See* TAC ¶¶ 248, 251-52, and 270.

A. Involuntary Servitude

In their TAC, the plaintiffs re-plead the same involuntary servitude allegations as both a

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[11] The court dismissed with prejudice the plaintiffs' claim for involuntary servitude as a RICO predicate act, dismissed with leave to amend the plaintiffs' claim of common law peonage against the defendants, and dismissed with prejudice the plaintiffs' claim against the defendants for violation of the Anti-Peonage Act. *See* SAC Order pp. 33-42.

RICO predicate act and as a claim under the ATCA. However, the court previously dismissed with prejudice the plaintiffs' claim for involuntary servitude as a RICO predicate act for the reasons set forth on pages 33-37 of its SAC Order. *See also* FAC Order p. 43-46. The same rationale applies equally here. Thus, for the same reasons the court dismissed the involuntary servitude claims as a RICO predicate act, the court now dismisses the plaintiffs' involuntary servitude claims under the ATCA.

Accordingly, the plaintiffs' claim of involuntary servitude under the ATCA is dismissed with prejudice.[12]

B. Forced Labor

In their TAC, the plaintiffs have plead for the first time a claim of forced labor under the ATCA. While the plaintiffs plead forced labor and involuntary servitude as separate claims under the ATCA, the plaintiffs argued that the same facts alleged support both claims. Given the court's dismissal of the involuntary servitude claim under the ATCA, the forced labor claim can survive only if plaintiffs can adequately demonstrate that forced labor is a tortious cause of action distinct from involuntary servitude. To that end, plaintiffs rely on a definition of forced labor contained within a provision of the federal criminal code and argue that it is controlling under the ATCA. Specifically, plaintiffs maintain that Title 18, United States Code, Section 1589, Forced labor, which provides in relevant part that forced labor occurs when a defendant:

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[12] To the extent the plaintiffs are asking for reconsideration (*see* Plaintiffs' Opposition to Levi Strauss & Company's Motion to Dismiss the Third Amended Complaint p. 11-12 n. 9 (Oct. 1, 2002)), that motion is denied.

> obtains the labor or services of a person (1) by threats of serious harm to, or physical restraint against, that person or another person; (2) by means of any scheme, plan, or patter intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or (3) by means of the abuse of threatened abuse of law or the legal process[.]

18 U.S.C. § 1589 (Trafficking Victims Protection Act, § 112(a)(1)).

The court finds no compelling reason to adopt that standard in this case. The plaintiffs fail to persuasively explain why this provision of federal criminal law should control a claim sounding in tort under the ATCA. To be sure, Congress under the Constitution indeed has the power to define and punish offenses against the law of nations. But there is simply no indication that Congress, in defining the offense of forced labor in Section 1589 of Title 18 and attaching criminal penalties to such conduct, also intended to create a new tort actionable under the ATCA.

The plaintiffs allegations of forced labor are an unpersuasive attempt to bypass the court's prior dismissal of their involuntary servitude claims. The court fails to see any meaningful difference between an allegation of involuntary servitude and forced labor under the ATCA.

Accordingly, the plaintiffs' claim for forced labor under the ATCA is dismissed with prejudice.

C. Common Law Peonage

In their TAC, the plaintiffs re-plead their peonage claim, both as a RICO predicate act and under the ATCA. The court previously concluded that the plaintiffs have not alleged a common law peonage claim against the defendants for the reasons set forth on pages 37-40 of the

SAC Order.[13] Because of the plaintiffs' insufficient pleading of peonage, the court declined to address whether the defendants' alleged conduct of holding the plaintiffs in a state of peonage violated international law. *See* SAC Order p. 49.

In its motion, Defendant Levi Strauss argued that the plaintiffs have not cured their claim of peonage against the defendants because the TAC does not allege that the plaintiffs' debts are debts owed to their employers. Further, Levi Strauss argued that the plaintiffs' alleged financial obligations for food and housing and performance bonds are insufficient for a claim of peonage because the plaintiffs have not shown that there is a debt owed to the defendant and that the plaintiffs have no choice but to work off their debts. The court agrees.

The court does not find any new allegations that suggest that the debts the plaintiffs incurred to obtain employment in the Saipan garment factories are debts owed to their employers.[14] The plaintiffs, however, amended paragraph 25 to allege that "12,000 RMB of [the

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[13] The court set forth the applicable legal standard for alleging peonage in its prior two Orders. *See* FAC Order pp. 46-47 and SAC Order pp. 37-40. The following discussion assumes familiarity with the analysis in those court Orders.

[14] The TAC continues to allege that most of the Does borrowed money from other sources, besides their recruiters, in order to pay for their recruitment fees. Does 1, 2, 4, 5, 7, 9, 10, 11, 12, 13, 17, 18, 21, 22, and 24 borrowed money from family and friends and Does 15 and 20 borrowed from "loan sharks." The TAC is silent as to how Does 6, 8, 23, and 25 financed their recruitment fees.

As before, the plaintiffs allege that Does 3, 14, and 19 borrowed money from their recruiters. The TAC makes new allegations that Does 5 and 16 also borrowed money from their recruiters. *See* TAC ¶¶ 27 ("Doe V paid a recruitment fee...to obtain her employment with Global. ...[S]he paid 11,000 RMB before she left China, borrowed at a 2% monthly interest rate. She was then required to pay 19,000 RMB in periodic payments to her

(continued...)

32,000 RMB recruitment fee paid] was for Rifu and the rest was for [Doe III's] Recruiter." *See* TAC ¶ 25. The court acknowledges that while this allegation may show a connection between defendant Rifu and the Recruiter, the court concludes that it cannot reasonably infer from this one allegation that a debt owed to a recruiter is in fact a debt owed to the employer, especially when none of the other Does who borrowed money from their recruiters allege that their loans are debts to their employers. Furthermore, the plaintiffs' argument that the recruitment fees are debts owed to the defendants is further undermined by the plaintiffs' new allegation in paragraph 162 of the TAC:

> ...Defendants and their Recruiters know that by requiring these substantial [recruitment] fees that are beyond plaintiffs' and Class members' ability to pay, plaintiffs and Class members will be forced to take out loans and incur substantial debt in order to obtain their employment, will refrain from complaining about unlawful, unsafe, or improper working and living conditions and, will refrain from quitting their jobs prior to the completion of a full term, all to avoid the legal and physical consequences of becoming unable to repay the debts incurred to pay those fees.

TAC ¶ 162. While the plaintiffs allege that they are "forced to take out loans and incur substantial debt" in order to pay their recruitment fees, the court cannot reasonably infer from these allegations that the debts incurred are debts owed to their employers. The same can be said about the plaintiffs' performance deposits. The debts the plaintiffs allegedly incurred to pay their performance deposits cannot be said to be a debt owed to the employer when the TAC's

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[14](...continued)
Recruiter over the multi-year period she worked in the CNMI.") and 38 ("Doe XVI paid a recruitment fee of 2,600 RMB to her Recruiter... before she left for Saipan.... After arriving in Saipan, she was required to sign over every paycheck to her Recruiter. The Recruiter kept 10% of every paycheck until the balance of the recruiting fee was paid....").

allegations do not show or give rise to an inference that the plaintiffs and class members loaned money from their employers to finance these deposits.[15]

Accordingly, the plaintiffs have failed to allege a common law peonage claim against the defendants. Defendant Levi Strauss' motion to dismiss is granted with prejudice.

D. Peonage under the ATCA

As discussed *supra* Part II.C, the court does not find any factual allegations in the TAC that show or give rise to an inference that the defendants held the plaintiffs and class members in the state of peonage. Thus, for the same reasons the court dismissed the plaintiffs' common law peonage claim, the court now dismisses the plaintiffs' peonage claim under the ATCA.[16] The

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[15] *See* TAC ¶¶ 5 ("[G]uest workers are forced... to pay... "performance deposits" of up to $1,250 or more. Those performance deposits, which many Class members are required to pay directly to their Contractor employer in the CNMI or to that Contractor employer's agents, 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 employment set by their Recruiters.") and 163 ("...Class members are required as a condition of their employment to pay the Recruiters... "performance deposits" of up to $1,250 per term of employment. ... Defendants and their Recruiters know that by requiring these substantial performance deposits that are beyond plaintiffs' and Class members' ability to pay, plaintiffs and Class members will be forced to take out loans and incur substantial debt in order to obtain their employment, will refrain from complaining about unlawful, unsafe, or improper working and living conditions and will refrain from quitting their jobs prior to the completion of a full term, to avoid the legal and physical consequences of becoming unable to repay the debts incurred to pay those deposits.").

[16] Because the court concludes that the plaintiffs have failed to sufficiently plead common law peonage, it will not address the plaintiffs' arguments under the ATCA that, to establish peonage, the Law of Nations does not require that a worker's debt must be owed to the employer rather than a third party. *See* Pl. Opp. to Levi Strauss & Co.'s Mot. to Dis. the Third Amend. Comp. p. 19-21.

defendant's motion to dismiss is granted with prejudice.

E. Other Violations of International Law

In addition to involuntary servitude, forced labor, and peonage, the plaintiffs allege other violations of international law. More specifically, the plaintiffs allege that the defendants force plaintiffs and Class members to relinquish:

> universally-recognized and protected rights of association, freedom, speech, and privacy; the right to be free from workplace discrimination on grounds of gender, pregnancy, national origin, and other proscribed grounds; the right to be free from corporal punishment in the workplace; the right to organize and join labor unions and to engage in concerted protected activity; the right to attend church and practice their religions; the right to get pregnant and bear children; the right not to engage in industrial homework; and the right to be free from cruel, inhuman or degrading treatment or punishment.

TAC ¶ 271. The court previously held that "no court has yet accepted plaintiffs' contention that the freedom to associate and the right to be free from discrimination are standards that have as yet evolved into norms of customary international law sufficient to invoke and be actionable under the ATCA." FAC Order p. 52. The court again concludes that the plaintiffs' allegations that the defendants engage in conduct that deprive the plaintiffs and Class members of their fundamental human rights are insufficient to sustain a claim under the ATCA.

A tortious act is actionable under the ATCA when it is "characterized by universal consensus in the international community as to its binding status and its content." Forti v. Suarez-Mason, 694 F. Supp. 707, 712 (N.D. Cal. 1988). The tort must be an international norm that is obligatory, definable, and universally condemned by the international community. Id. *See also supra* Hilao, 103 F.3d at 794. The plaintiffs' claims of their right to be free from cruel,

inhuman and degrading treatment and their rights to speech and association does not meet this standard. *See* Forti, 694 F. Supp. at 712 (N.D. Cal. 1988) (holding that the right to be free from cruel, inhuman or degrading treatment or punishment is not actionable under the ATCA because there is no consensus in the international community as to what constitutes such treatment) and Guinto v. Marcos, 654 F. Supp. 276, 280 (S.D. Cal. 1986) (holding that a violation of the First Amendment right of free speech does not rise to the level of a universally recognized right that is part of the law of nations).

While the plaintiffs cite numerous international law instruments in support of the remainder of their international law claims (i.e. the right to organize and join labor unions; the right to not engage in industrial homework; the right to be free from corporal punishment in the workplace; the right to privacy; the right to freedom; the right to be free from workplace discrimination; the right to attend church and practice one's religion; and the right to get pregnant and bear children), the court concludes that these claims do not rise to the level of a binding, international norm. The plaintiffs have not demonstrated that these claims constitute "well-established, universally recognized norms of international law" rather than "idiosyncratic legal rules." Kadic, 70 F.3d at 239. Finally, the court finds that the international law declarations and agreements cited do not adequately define or identify conduct that render the plaintiffs' claims as discrete violations of international law. *See* Beanal v. Freeport-McMoran, Inc., 197 F.3d 161, 168 (5th Cir. 1999) (in dismissing the ATCA claims of cultural genocide premised on "international conventions, agreements, and declarations," the Fifth Circuit held that it is "problematic to apply [] vague and declaratory documents to [the plaintiff's] claims because

they are devoid of discernable means to define or identify conduct that constitutes a violation of international law.").

Finally, assuming the plaintiffs have sufficiently plead their additional international law violations, the court concludes that the state action they allege is too attenuated to support these claims.[17] The TAC makes conclusory allegations with no facts to support that the "Chinese recruiting agencies [] are owned, operated, and/or controlled by the government of China." TAC ¶ 4.[18] At most, the court finds that the plaintiffs' allegations show or infer that the Chinese government mostly owns an affiliate of a recruiter. *See* TAC ¶¶ 113-16 (alleging that Universal Group Development, Inc. ("UGDI"), a CNMI corporation, does business as, or shares office

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[17] Under recent Ninth Circuit precedent, a claim of forced labor does not require state action to give rise to liability under the ATCA. *See* Doe I v. Unocal Corp., 2002 U.S. Dist. LEXIS 19263, *35 (9th Cir. Sept. 18, 2002) (holding that "forced labor is a modern variant of slavery that, like traditional variants of slave trading, does not require state action to give rise to liability under the ATCA."). However, as discussed *supra* Part II.B, the court finds that the plaintiffs have failed to allege a claim of forced labor under the ATCA. Therefore, as to the plaintiffs' claims against the defendants for violation of their fundamental and universally-protected rights, the court concludes that state action is required to give rise to liability for those torts under the ATCA. *See* id. at * 30 (stating that a "threshold question in any ATCA case against a private party... is whether the alleged tort requires that private party to engage in state action for ATCA liability to attach....") and *31 (holding that "crimes like rape, torture, and summary execution, which by themselves require state action for ATCA liability to attach, do not require state action when committed in furtherance of other crimes like slave trading, genocide or war crimes, which by themselves do not require state action for ATCA liability to attach."). The court finds no allegations in the TAC that show or infer that the plaintiffs' additional international law claims rise to the level of slavery-like practices or the crimes of "rape, torture, and summary execution."

[18] *See also* TAC ¶ 111 ("Many Chinese Recruiters maintain offices in the CNMI... for purposes [of]... acting as a representative of the Chinese government with respect to defendants and Class members.").

space with the Association of Chinese Enterprises ("ACES"), a Chinese recruiter; that a 90% shareholder of UGDI lists his address as 110 Jiefeng Road which is the address for China Jilin International Economic & Technical Corporation ("China Jillin"); China Jilin is owned and operated by the Chinese government; and that some recruiters require their workers to pay a portion of their recruitment fees to UGDI/ACES.).

Accordingly, the plaintiffs have not sufficiently alleged a violation of international law. The defendant's motion to dismiss is granted with prejudice.

CONCLUSION

Defendant Levi Strauss's Motion to Dismiss and/or Strike Portions of Plaintiffs' Third Amended Complaint is DENIED-IN-PART and GRANTED-IN-ART as set out above.

(1) The plaintiffs have 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 denied.

(2) The plaintiffs have failed to adequately allege involuntary servitude as a claim under the ATCA. The defendant's motion to dismiss is granted with prejudice.

(3) The plaintiffs have failed to adequately allege forced labor as a claim under the ATCA. The defendant's motion to dismiss is granted with prejudice.

(4) The plaintiffs have failed to allege a common law peonage claim against the defendants. The defendant's motion to dismiss is granted with prejudice.

(5) The plaintiffs have failed to allege peonage as a claim under the ATCA. The defendant's motion to dismiss is granted with prejudice.

(6) The plaintiffs have failed to allege a violation of international law. The defendant's motion to dismiss is granted with prejudice.

Unless specifically ordered otherwise, all dismissals are without prejudice.

Defendant Levi Strauss has twenty days from the date of this Order to file their answer.

IT IS SO ORDERED.

Dated this 17th day of December, 2002.

Alex R. Munson
Judge