UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES -- GENERAL

Case No. **CV 16-4271-JFW (ASx)** Date: November 9, 2016

Title: Keo Ratha, et al. *-v-* Phatthana Seafood Co., Ltd., et al.

PRESENT:
HONORABLE JOHN F. WALTER, UNITED STATES DISTRICT JUDGE

Shannon Reilly	**None Present**
Courtroom Deputy	**Court Reporter**

ATTORNEYS PRESENT FOR PLAINTIFFS:	**ATTORNEYS PRESENT FOR DEFENDANTS:**
None	None

PROCEEDINGS (IN CHAMBERS): **ORDER DENYING IN PART AND GRANTING IN PART DEFENDANTS' MOTION TO DISMISS COMPLAINT [filed 8/10/16; Docket No. 40]**

On August 10, 2016, Defendants Phatthana Seafood Co., Ltd. ("Phatthana"); S.S. Frozen Food Co., Ltd. ("S.S. Frozen Foods"); Rubicon Resources, LLC ("Rubicon"); and Wales & Co. Universe, Ltd. ("Wales") (collectively, "Defendants") filed a Motion to Dismiss Complaint ("Motion"). On September 30, 2016, Keo Ratha ("Ratha"), Sem Kosal ("Kosal"), Sophea Bun ("Bun"), Yem Ban ("Ban"), Nol Nakry ("Nakry"), Phan Sophea ("Sophea"), and Sok Sang ("Sang") (collectively, "Plaintiffs") filed their Opposition. On October 14, 2016, Defendants filed a Reply. Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court found the matter appropriate for submission on the papers without oral argument. The matter was, therefore, removed from the Court's November 7, 2016 hearing calendar and the parties were given advance notice. After considering the moving, opposing, and reply papers, and the arguments therein, the Court rules as follows:

I. Factual and Procedural Background

A. Background of the Parties

Plaintiffs bring claims under the Trafficking Victims Protection Reauthorization Act ("TVPRA") and the Alien Tort Statute ("ATS") against Defendants, who allegedly were members of a joint venture in the seafood industry in Thailand that was engaged in and profited from human trafficking and forced labor. Plaintiffs allege the following in summary fashion regarding the roles and members of the joint venture: Phatthana, a Thai corporation, controlled the shrimp and seafood factory where the Plaintiffs were put to work after they were transported to Thailand from their home country of Cambodia; S.S. Frozen Foods, a Thai corporation, shared facilities, resources, and management with Phatthana; Rubicon, a Delaware corporation, was responsible

for marketing and distributing Thai seafood products in the United States on behalf of Phatthana and S.S. Frozen Foods; and Wales, a Thai corporation, was responsible for insuring that orders for Thai seafood were delivered to Rubicon or the ultimate purchaser in the United States.

Plaintiffs are Cambodian nationals who were recruited to work at Defendants' shrimp and seafood factories in Thailand. After agreeing to pay the required recruitment fees, Plaintiffs were transported across the border to Thailand by employment recruiters, who Plaintiffs allege were agents of Defendants. When Plaintiffs arrived at Defendants' factory, Defendants took and held Plaintiffs' passports and other travel documents in order to prevent them from returning home or seeking other employment.[1] Although Plaintiffs were put to work immediately, they were unable to repay the recruitment fees because Defendants paid Plaintiffs far less than the agreed-to salary. In addition, Plaintiffs incurred additional debt because of mandatory, but undisclosed, deductions for transportation, equipment, and materials. Plaintiffs were also required to rent employer-provided housing, even though some of the Plaintiffs had been promised they would be provided with free accommodations. Even after working in excess of eight hours a day, six days a week, Plaintiffs did not make enough money to afford adequate food, and some were reduced to eating seafood they found washed up on the beach. In response to workers' complaints, Defendants threatened to report them to the police, physically abused them, and refused to let Plaintiffs leave, even after some Plaintiffs made multiple requests to go home.

B. Procedural History

On June 15, 2016, Plaintiffs filed a Complaint against Defendants, alleging claims for: (1) violation of the TVPRA, 18 U.S.C. § 1595; and (2) ATS. Specifically, Plaintiffs allege in Count 1 that they were victims of peonage, forced labor, involuntary servitude, and human trafficking by Phatthana and S.S. Frozen Foods in violation of Sections 1581 (peonage), 1584 (sale into involuntary servitude), 1589 (forced labor), 1590 (trafficking with respect to peonage, slavery, involuntary servitude, or forced labor), 1592 (unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor), and 1593A (benefitting financially from peonage, slavery, and trafficking in persons). Plaintiffs allege in Count 2 that Rubicon and Wales knowingly benefitted from participation in a venture that they knew or should have known was engaged in peonage, forced labor, involuntary servitude, unlawful conduct with respect to documents, and human trafficking. Plaintiffs allege in Count 3 that they were the victims of the torts of trafficking in persons, involuntary servitude, and forced labor.

II. Legal Standard

A. Rule 12(b)(1)

The party mounting a Rule 12(b)(1) challenge to the Court's jurisdiction may do so either on the face of the pleadings or by presenting extrinsic evidence for the Court's consideration. *See White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000) ("Rule 12(b)(1) jurisdictional attacks can be either facial or factual"). "In a facial attack, the challenger asserts that the allegations contained in a complaint are insufficient on their face to invoke federal jurisdiction." *Safe Air for Everyone v.*

[1] Some of the Plaintiffs did not have passports, and entered Thailand illegally.

Meyer, 373 F.3d 1035, 1039 (9th Cir. 2004). In ruling on a Rule 12(b)(1) motion attacking the complaint on its face, the Court accepts the allegations of the complaint as true. *See, e.g., Wolfe v. Strankman*, 392 F.3d 358, 362 (9th Cir. 2004). "By contrast, in a factual attack, the challenger disputes the truth of the allegations that, by themselves, would otherwise invoke federal jurisdiction." *Safe Air*, 373 F.3d at 1039. "With a factual Rule 12(b)(1) attack . . . a court may look beyond the complaint to matters of public record without having to convert the motion into one for summary judgment. It also need not presume the truthfulness of the plaintiff['s] allegations." *White*, 227 F.3d at 1242 (internal citation omitted); *see also Thornhill Pub. Co., Inc. v. General Tel & Electronics Corp.*, 594 F.2d 730, 733 (9th Cir. 1979) ("Where the jurisdictional issue is separable from the merits of the case, the judge may consider the evidence presented with respect to the jurisdictional issue and rule on that issue, resolving factual disputes if necessary. . . '[N]o presumptive truthfulness attaches to plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims.'") (quoting *Mortensen v. First Fed. Sav. & Loan Ass'n*, 549 F.2d 884, 891 (9th Cir. 1977)). "However, where the jurisdictional issue and substantive issues are so intertwined that the question of jurisdiction is dependent on the resolution of factual issues going to the merits, the jurisdictional determination should await a determination of the relevant facts on either a motion going to the merits or at trial." *Augustine v. U.S.*, 704 F.2d 1074, 1077 (9th Cir. 1983). It is the plaintiff who bears the burden of demonstrating that the Court has subject matter jurisdiction to hear the action. *See Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994); *Stock West, Inc. v. Confederated Tribes*, 873 F.2d 1221, 1225 (9th Cir. 1989).

B. Rule 12(b)(6)

A motion to dismiss brought pursuant to Federal Rule of Civil Procedure 12(b)(6) tests the legal sufficiency of the claims asserted in the complaint. "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.'" *Summit Technology, Inc. v. High-Line Medical Instruments Co., Inc.*, 922 F. Supp. 299, 304 (C.D. Cal. 1996) (quoting *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1988)). However, "[w]hile a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citations and alterations omitted). "[F]actual allegations must be enough to raise a right to relief above the speculative level." *Id.*

In deciding a motion to dismiss, a court must accept as true the allegations of the complaint and must construe those allegations in the light most favorable to the nonmoving party. *See, e.g., Wyler Summit Partnership v. Turner Broadcasting System, Inc.*, 135 F.3d 658, 661 (9th Cir. 1998). "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." *Summit Technology*, 922 F. Supp. at 304 (citing *Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981) *cert. denied*, 454 U.S. 1031 (1981)).

"Generally, a district court may not consider any material beyond the pleadings in ruling on a Rule 12(b)(6) motion." *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1555 n. 19 (9th Cir. 1990) (citations omitted). However, a court may consider material which is properly

submitted as part of the complaint and matters which may be judicially noticed pursuant to Federal Rule of Evidence 201 without converting the motion to dismiss into a motion for summary judgment. *See, e.g., id.*; *Branch v. Tunnel*, 14 F.3d 449, 454 (9th Cir. 1994).

Where a motion to dismiss is granted, a district court must decide whether to grant leave to amend. Generally, the Ninth Circuit has a liberal policy favoring amendments and, thus, leave to amend should be freely granted. *See, e.g., DeSoto v. Yellow Freight System, Inc.*, 957 F.2d 655, 658 (9th Cir. 1992). However, a Court does not need to grant leave to amend in cases where the Court determines that permitting a plaintiff to amend would be an exercise in futility. *See, e.g., Rutman Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 738 (9th Cir. 1987) ("Denial of leave to amend is not an abuse of discretion where the pleadings before the court demonstrate that further amendment would be futile.").

III. Discussion[2]

In their Motion, Defendants argue that Plaintiffs have failed to allege a basis for extraterritorial jurisdiction for a civil action brought under the TVPRA, and raise several arguments in support of their position. Defendants also argue that, even if Plaintiffs could allege a basis for jurisdiction, the Complaint fails to sufficiently allege violations of the TVPRA. Finally, Defendants argue that Plaintiffs' ATS claim is preempted by their TVPRA claims and that Plaintiffs have failed to allege a sufficient basis for jurisdiction under the ATS. In their Opposition, Plaintiffs dispute all of these arguments.

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[2] Defendants filed a Request of Judicial Notice in Support of Motion to Dismiss Complaint ("Request for Judicial Notice"). Docket No. 51. Although it appears that Defendants could have submitted this Request for Judicial Notice with its Motion rather than waiting to submit it with its Reply, Plaintiffs have not objected to Defendants' Request for Judicial Notice. Accordingly, Defendants' Request for Judicial Notice is **GRANTED**. *See also Gonzales v. Marriott Int'l, Inc.*, 142 F.Supp. 2d 961, 968 (C.D. Cal. 2015) (holding that "[o]fficial acts of the legislative, executive, and judicial departments of the United States" can be judicially noticed under Rule 201 and noting that "federal courts routinely take judicial notice of the legislative history of both federal and California statutes"); *Armstead v. City of Los Angeles*, 66 F.3d 1254, 1261 (C.D. Cal. 2014) (holding that "[c]ourt orders and filings are proper subject of judicial notice"); *Barber v. Nestle USA, Inc.*, 154 F.Supp. 3d 954, 958 n. 1 (C.D. Cal. 2015) (holding that documents published by the United Nations "are published by a governmental entity and are not subject to reasonable dispute, and, accordingly, they are appropriate for judicial notice"). In addition, Plaintiffs submitted three declarations – Declaration of John Alexander Williams, Expert Declaration of William J. Aceves, and the Declaration of Acy Cooper, Jr. – with their Opposition. In their Reply, Defendants object to these declarations. The Court **DENIES as moot** Defendants' objections because the Court did not rely on the declarations in deciding this Motion. *See, e.g., Community Ass'n for Restoration of the Environment, Inc. v. George & Margaret LLC*, 954 F.Supp. 2d 1151, 1155 (E.D. Wash. 2013) (denying as moot motion to strike declarations submitted with opposition to motion to dismiss because " the Court does not rely on any of this evidence for the substance of its ruling on Defendants' joint motion to dismiss. Rather, the Court relies entirely on the Amended Complaint and additional materials appropriately incorporated by reference or a matter of judicial notice").

A. Defendants' Motion Must Be Denied with Respect to Plaintiffs' TVPRA Claims.

Prior to initial passage of the Trafficking Victims Protection Act in 2000, there was no legal regime in the United States to address labor trafficking occurring abroad or to hold multinational corporations accountable if they benefitted from, but did not directly commit, such human rights violations. In 2000, the Trafficking Victims Protection Act ("TVPA") became the first law to attempt to comprehensively address human trafficking. Congress declared that the purposes of the TVPA are to "combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims." Pub.L. No. 106–386, § 102, 114 Stat. 1488 (2000) (codified as amended at 18 U.S.C. § 1589 *et seq*.). One of the TVPA's major goals was to criminalize and increase penalties for various forms of trafficking. The TVPA added the following sections to Title 18 of the United States Code: (1) 18 U.S.C. § 1589, which prohibits providing or acquiring the labor or services of a person by force or threats; (2) 18 U.S.C. § 1590, which prohibits recruiting, harboring, or transporting a person to provide or obtain such a person's labor or services; (3) 18 U.S.C. § 1591, which prohibits sex trafficking of children or by force, fraud, or coercion; and (4) 18 U.S.C. § 1592, which prohibits destroying, concealing, removing, confiscating, or possessing a passport or other immigration documents of another person for the purpose of subjecting the person to involuntary servitude.

Initially, the TVPA did not provide a civil remedy to victims of trafficking. However, in 2003, Congress passed the Trafficking Victims Protection Reauthorization Act ("TVPRA") in order to "enhanc[e] provisions on prevention of trafficking, protection of victims of trafficking, and prosecution of traffickers." H.R.Rep. No. 108–264(I), at 8 (2003), 2004 U.S.C.C.A.N. 2408. Specifically, Congress created a private right of civil action for victims of trafficking, which allowed those victims to sue a perpetrator civilly for a violation of Sections 1589, 1590, or 1591 of Chapter 77 of Title 18. *See* 18 U.S.C. § 1595.

In 2008, the TVPRA was expanded to allow a trafficking victim to sue a perpetrator for a violation of any section of Chapter 77 of Title 18 (and, thus, civil actions were no longer limited to violations of Section 1589, 1590, or 1591). In addition, the TVPRA was expanded to allow a trafficking victim to bring an action against those who knowingly benefitted from a violation of the TVPRA. Section 1595(a) currently provides:

> An individual who is a victim of a violation of this chapter may bring a civil action against the perpetrator (or whoever knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of this chapter) in an appropriate district court of the United States and may recover damages and reasonable attorneys fees.

18 U.S.C. § 1595(a).

The 2008 TVPRA also expanded courts' jurisdiction over violations of the TVPRA with the addition of Section 1596. Section 1596(a), which is at issue in this case, provides:

In addition to any domestic or extra-territorial jurisdiction otherwise provided by law,

> the courts of the United States have extra-territorial jurisdiction over any offense (or any attempt or conspiracy to commit an offense) under section 1581, 1583, 1584, 1589, 1590, or 1591 if –
>
> > (1) an alleged offender is a national of the United States or an alien lawfully admitted for permanent residence (as those terms are defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101)); or
> >
> > (2) an alleged offender is present in the United States, irrespective of the nationality of the alleged offender.

The conduct to which extra-territorial jurisdiction extends under Section 1596(a) includes peonage (§ 1581); enticement in to slavery (§ 1583); sale into involuntary servitude (§ 1584); forced labor (§ 1589); trafficking with respect to peonage, slavery, involuntary servitude, or forced labor (§ 1590); and sex trafficking of children or by force, fraud, or coercion (§ 1591).

1. Section 1596 of the TVPRA Is Not Limited to Criminal Actions.

In their Motion, Defendants admit that the offenses alleged by Plaintiffs in their Complaint are subject to extraterritorial jurisdiction under Section 1596 of the TVPRA (with the exception of Section 1592 (unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor), and 1593A (benefitting financially from peonage, slavery, and trafficking in persons)), but argue that the TVPRA's extraterritorial jurisdiction only applies to criminal actions, and not civil actions.

The Supreme Court has reiterated that "Congress, even in a jurisdictional provision, can indicate that it intends federal law to apply to conduct occurring abroad." *Kiobel v. Royal Dutch Petroleum Co.*, 133 S. Ct. 1659, 1665 (2013). With respect to the TVPRA's extraterritorial jurisdiction, Congress's intent is clear. The original version of the 2008 reauthorization of the TVPRA did not contain an extraterritoriality provision. However, Congress added the jurisdictional expansion to the bill before it was passed and shortly after two courts considering TVPRA civil suits held the provisions were not extraterritorial. *See Roe v. Bridgestone Corp*., 492 F. Supp. 2d 988, 1000 (S.D. Ind. 2007), *followed by* H.R. 3887, 110th Cong. (introduced 2007); *Nattah v. Bush*, 541 F. Supp. 2d 223, 234 (D.D.C. 2008), *followed by* S. 3061, 110th Cong. (introduced 2008); *Wesson v. U.S.*, 48 F.3d 894, 901 (5th Cir. 1995) (Congress may amend statute to correct misinterpretation or overrule wrongly decided cases). Thus, Congress has clearly indicated that it intends the TVPRA, unlike statutory schemes that are silent on extraterritorial jurisdiction, to be a unified statutory scheme of interlocking provisions that provides extraterritorial jurisdiction over specific predicate offenses and further expressly provides for restitution and a civil remedy whenever a court in the United States has that jurisdiction. *See, e.g., U.S. v. Baston*, 818 F.3d 651, 666-71 (11th Cir. 2016) (upholding Section 1593 restitution for trafficking in Australia).

In addition, Defendants' argument that TVPRA's extraterritorial jurisdiction does not extend to civil actions has been overwhelmingly rejected by the courts. *See, e.g., Aguilera v. Aegis Commc'ns Grp*., 72 F. Supp. 3d 975, 979 (W.D. Mo. 2014) (denying motion to dismiss where the plaintiff was seeking Section 1595 remedy for forced labor in India); *Doe v. Howard*, 2012 WL

3834867, at *2 (E.D. Va. Sept. 4, 2012) (entering default judgment for the plaintiff and allowing remedy pursuant to Section 1595 for trafficking in Yemen and Japan); *Adhikari v. Daoud & Partners*, 697 F. Supp. 2d 674, 683 (S.D. Tex. 2009) ("The civil remedies authorized by Section 1595 attach when any claim is properly brought before a court of law."). Therefore, this Court agrees with the overwhelming majority of courts and concludes that "[t]o hold that the jurisdictional grant of Section 1596 excludes the remedies provided in Section 1595 would be both illogical and in contravention of the purpose of the statute." *Adhikari*, 697 F. Supp. 2d at 683.

2. Section 1596 of the TVPRA Does Not Apply Only to Individuals.

Defendants also argue in their Motion that the TVPRA does not apply to corporations. However, courts have uniformly upheld extraterritorial jurisdiction over TVPRA claims against corporations. *See, e.g., Aguilera*, 72 F. Supp. 3d at 979; *Jean-Charles v. Perlitz*, 937 F. Supp. 2d 276, 288-89 (D. Conn. 2013); *Adhikari*, 697 F. Supp. 2d at 684. Defendants argue that because Subsection 1596(a)(1) is limited to individuals (because it incorporates the definitions of "a national of the United States" and "an alien lawfully admitted for permanent residence" from the Immigration and Nationality Act), all of Section 1596 is limited to individuals. However, Defendants' argument fails to consider Subsection 1596(a)(2), which extends extraterritorial jurisdiction to "an alleged offender present in the United States." It is well established that the term "offender" refers to both natural persons and corporations, and nothing in the language of Section 1596 indicates the limits on Subsection 1596(a)(1) should apply to Subsection 1596(a)(2) or Section 1596 generally. *See, e.g., U.S. v. Ron Pair Enters., Inc*., 489 U.S. 235, 241-42 (1989) (holding that limit on one statutory category did not modify a different category). In fact, the remainder and operative text of Section1596 use the term "person" which, like "offender," indisputably applies to both corporate and natural persons. *See, e.g.,* 1 U.S.C. §1 (defining "person" to include corporations). The use of "person" in the remainder of Section 1596 confirms that corporations are covered by the statute. Accordingly, this Court again agrees with the overwhelming majority of courts and concludes that Section 1596 of the TVPRA applies to corporations.

3. This Court Has Subject Matter Jurisdiction Even Though the Events Alleged in the Complaint Occurred Outside the United States.

In their Motion, Defendants argue that this Court does not have subject matter jurisdiction because all of the alleged underlying violations occurred in Cambodia and Thailand. However, Section 1596, the TVPRA's extraterritorial provision, requires only that "an offender is present" in the United States for subject matter jurisdiction to exist over a TVPRA claim. Defendants do not dispute that this criterion is met by both Rubicon, which is a Delaware corporation and has an office in California, and Wales, which also has an office in California. In addition, Plaintiffs allege that Rubicon and Wales knowingly benefitted financially from forced labor and other violations, and that alleged financial benefit occurred in the United States, and, therefore, extraterritorial jurisdiction is not implicated. *St. Louis v. Perlitz*, 2016 WL 1408076, *2 (D. Conn. Apr. 8, 2016). Thus, the Court concludes that subject matter jurisdiction exists as to Plaintiffs' TVPRA claim against Rubicon and Wales.

However, Defendants argue that each Defendant must be present in the United States for the Court to have subject matter jurisdiction pursuant to Section 1596, and because Phatthana and S.S. Frozen Foods are not present in the United States, subject matter jurisdiction does not exist.

However, even if all defendants must be present in the United States for subject matter jurisdiction to exist over the TVPRA claims, the Court concludes that given Plaintiffs' allegations in the Complaint, subject matter jurisdiction exists. A corporation is present in a jurisdiction where it uses an agent to conduct its affairs. *See, e.g., Kiobel v. Royal Dutch Petroleum Co.*, 133 S. Ct. 1659, 1677 (2013) (Breyer, J., concurring) (holding that a foreign corporation is "present" in the United States when "a separate but affiliated company" maintains an office in the United States and conducts work on the company's behalf); *see, also, id.* at 1669 (Roberts, J., for the court) (holding that there was no dispute that the corporation was present in United States). In their Complaint, Plaintiffs have alleged that Defendants are involved in a joint venture and part of an "integrated enterprise." Complaint, ¶ 128. In addition, Plaintiffs allege that Rubicon and Wales are physically present in the United States and are joint venturers or agents of Phatthana and S.S. Frozen Foods, which is sufficient for subject matter jurisdiction over all Defendants.[3] *See, e.g., VIA Techs., Inc. v. ASUS Comput. Int'l*, 2015 WL 3809382, at *5 (N.D. Cal. June 18, 2015) (holding that the alter ego test was satisfied where parent used subsidiary as marketing conduit); *Circle Click Media LLC v. Regus Mgmt. Grp. LLC*, 2013 WL 57861, at *6 (N.D. Cal. Jan. 3, 2013) (holding that alter ego allegations that described defendants as a "single entity" were sufficient); *Ultratech, Inc. v. Ensure NanoTech (Beijing), Inc.*, 108 F. Supp. 3d 816, 826 (N.D. Cal. 2015) (holding that alter ego factors better evaluated after discovery).

4. The Complaint Sufficiently Alleges Violations of the TVPRA.

Defendants also argue that, even if there is subject matter jurisdiction over the TVPRA claims, Plaintiffs' TVPRA claims fail because they do not allege facts sufficient to support each alleged violation. In their Complaint, Plaintiffs allege that Defendants either actively participated in or knowingly benefitted from a joint venture that involved forced labor and trafficking, and Plaintiffs have also alleged facts to support these allegations. Therefore, the Court concludes that Plaintiffs' Complaint meets the standard set forth in *Iqbal* and *Twombly*, and that Plaintiffs have sufficiently alleged facts to allege claims under Section 1595 and the predicate provisions of the TVPRA. Accordingly, Defendants' Motion is denied with respect to its TVPRA claims.

B. Defendants' Motion Must Be Granted with Respect to Plaintiffs' ATS Claim.

The ATS is a jurisdictional statute that grants courts subject matter jurisdiction over foreign violations of international law. Specifically, the ATS provides: "The district court shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States." Under the ATS, a plaintiff that has suffered a tortious violation of international law that is "specific, universal, and obligatory" has a private cause of action. *Sosa v. Alvarez-Machain*, 542 U.S. 692, 725 (2004). Labor trafficking and slavery are examples of internationally accepted crimes that are actionable under the ATS. *Adhikari v. Daoud & Partners*, 697 F.Supp. 2d 674, 687 (S.D. Tex. 2009) ("Numerous courts within the United States have found

[3] In their Motion, Defendants do not challenge Plaintiffs' allegations regarding the relationship between Defendants. In fact, Defendants specifically stated in their Motion that "[s]hould the Complaint survive the pleading stage, Defendants will challenge these theories [of agency, joint venture, single enterprise, and alter ego] in the context of summary judgment. Motion, p.3 n. 2.

trafficking, forced labor, and involuntary servitude cognizable under ATS").

In 2013, the Supreme Court in *Kiobel v. Royal Dutch Petroleum Co.*, 133 S.Ct. 1659 (2013), limited the reach of jurisdiction under the ATS. In *Kiobel*, a Nigerian national residing in the United States sued Dutch, British, and Nigerian corporations pursuant to the ATS, alleging that the corporations aided and abetted the Nigerian government in committing violations of the law of nations in Nigeria. The Supreme Court held that "the presumption against extraterritoriality applies to claims under the ATS, and that nothing in the statute rebuts that presumption." *Id.* at 1669. In *Kiobel*, "all the relevant conduct took place outside the United States." *Id*. The Supreme Court explained that, even where the claims "touch and concern the territory of the United States, they must do so with sufficient force to displace the presumption against extraterritorial application." *Id.* (holding that because corporations are often present in many countries, "it would reach too far to say that mere corporate presence suffices").

In light of the Supreme Court's decision in *Kiobe*l, the Court concludes that, even accepting the allegations in Plaintiffs' Complaint as true, Plaintiffs' ATS claim should be dismissed. In *Sarei v. Rio Tinto PLC*, 671 F.3d 736, 744 (9th Cir.2011), foreign plaintiffs sued foreign defendants who had "substantial operations in this country," including "assets of nearly $13 billion – 47% of which are located in North America." The Supreme Court found that even this degree of corporate presence was not enough to overcome the presumption against extraterritoriality when the alleged torts had occurred outside the United States and that the ATS claim could not survive. *Rio Tinto PLC v. Sarei*, 133 S.Ct. 1995 (2013). The Supreme Court acknowledged that few cases will arrive in federal court without any domestic ties, and, thus, instructed lower courts in cases involving the ATS to consider whether the alleged domestic conduct coincides with the "'focus' of congressional concern." *Morrison v. Nat'l Australia Bank Ltd.*, 561 U.S. 247, 266 (2010). In the case of the ATS, the focus of congressional concern is the "tort . . . committed in violation of the law of nations or a treaty of the United States." 28 U.S.C. § 1350.

In this case, the alleged tort is human trafficking which occurred in Cambodia and Thailand. Even assuming that all of the Defendants have some corporate presence in the United States (either directly or through the joint venture and agency relationship between the Defendants), the activities at issue in this action – allegedly recruiting and then entrapping third country nationals as cheap labor for Thai seafood factories – unquestionably occurred on foreign soil. This is the type of case – where all the allegedly tortious conduct took place on foreign soil and the only connection to the United States is a defendant's "mere corporate presence" – which the Supreme Court held in *Kiobel* is insufficient to rebut the presumption against extraterritoriality. *Id.*; *see also Cardona v. Chiquita Brands Int'l, Inc*., 760 F.3d 1185, 1189 (11th Cir.2014) (rejecting "attempt to anchor ATS jurisdiction in the nature of the defendants as United States corporations"); *Balintulo v. Daimler AG*, 727 F.3d 174, 190 (2d Cir.2013) ("Lower courts are bound by [the rule announced in *Kiobel*] and they are without authority to 'reinterpret' the Court's binding precedent in light of irrelevant factual distinctions, such as the citizenship of the defendants") (emphasis added); *Doe v. Exxon Mobil Corp*., 69 F.Supp.3d 75, 95, 2014 WL 4746256, at *12 (D.D.C. Sept. 23, 2014) (concluding that "the presumption against extraterritoriality is not displaced by a defendant's U.S. citizenship alone").

Thus, the Court concludes that Plaintiffs cannot pursue an ATS claim against any of the Defendants based on their extraterritorial actions. *See, e.g., In re South African Apartheid Litig*.,

56 F.Supp.3d 331, 338 (S.D.N.Y.2014) ("Here, any alleged violation of international law norms was inflicted by the South African subsidiaries over whom the American defendant corporations may have exercised authority and control. While corporations are typically liable in tort for the actions of their putative agents, the underlying tort must itself be actionable. However, plaintiffs have no valid cause of action against the South African subsidiaries under [*Kiobel*] because all of the subsidiaries' conduct undisputedly occurred abroad"). Because mere corporate presence in the United States is insufficient to overcome the presumption against extraterritoriality and because all the relevant allegedly tortious conduct by Defendants occurred outside of the United States, Defendants' Motion on Plaintiffs' ATS claim must be granted, and because amendment is futile, it is granted without leave to amend.[4]

IV. Conclusion

For all the foregoing reasons, Defendants' Motion is **DENIED in part** and **GRANTED in part.** Defendants' Motion is **DENIED** with respect to Plaintiff's TVPRA claims and **GRANTED without leave to amend** with respect to Plaintiff's ATS claim.

IT IS SO ORDERED.

[4] Because the Court has granted Defendants' Motion with respect to Plaintiffs' ATS claim on jurisdictional grounds, it need not address Defendants' preemption argument.

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