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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: Master File No MDL-1347

WORLD WAR II ERA JAPANESE
FORCED LABOR LITIGATION,

This Document Relates To:

- Resus v Mitsui & Co, Ltd, et al,
ND Cal No 00-3313
- Llanza v Mitsui & Co (USA), Inc, et al,
ND Cal No 00-3240
- Saldajeno v Ishihara Sangyo Kaisha Ltd, et al,
ND Cal No 00-2960
- Santo Domingo v Ishihara
ND Cal No 00-3828

ORDER NO 9

In these consolidated actions, plaintiffs from various countries seek damages and other remedies from Japanese corporations for their forced labor during World War II. The four matters in the above caption represent the classes of Filipino plaintiffs. On September 21, 2000, the court dismissed the claims of plaintiffs who were United States or Allied soldiers in the war based on the court's conclusion that the 1951 Treaty of Peace with

1 Japan constitutes a waiver of such claims. In re World War II Era
2 Japanese Forced Labor Litigation, 114 F Supp 2d 939, 942 (ND Cal
3 2000) (Order No 4). Motions to dismiss brought by plaintiffs who
4 were not members of the armed forces of the United States or its
5 allies were not addressed by the order and remain pending with the
6 court. The four matters involving Filipino plaintiffs were
7 transferred to this court after the initial hearing on defendants'
8 motions to dismiss. As a result, defendants now move to dismiss
9 and/or for judgment on the pleadings in the actions involving
10 Filipino plaintiffs.

11
12 I

13 The Filipino plaintiffs assert essentially the same
14 claims as the other plaintiffs in these actions. Most notably,
15 they seek compensation under California Code of Civil Procedure §
16 354.6, a law permitting an action by "any person who was a member
17 of the civilian population conquered by the Nazi regime, its allies
18 or sympathizers, or prisoner-of-war [of the same regimes] * * *
19 [to] recover compensation for labor performed as a Second World War
20 slave labor victim * * * from any entity or successor in interest
21 thereof, for whom that labor was performed * * * ." Cal CCP §
22 354.6. The Filipino plaintiffs also assert claims under California
23 tort and common law, such as intentional infliction of emotional
24 distress, conversion, unjust enrichment, constructive trust and
25 unfair business practices prohibited by California Bus & Prof Code
26 § 17200. One of the Filipino plaintiffs also asserts violations of
27 the "law of nations."

1 Defendants argue that the claims of the four Filipino
2 actions are barred by the Treaty of Peace with Japan for the same
3 reasons the claims of the Allied POWs are barred. As noted in
4 Order No 4, the treaty was signed at San Francisco on September 8,
5 1951, by the representatives of the United States and 47 other
6 Allied powers and Japan. Treaty of Peace with Japan, [1952] 3 UST
7 3169, TIAS No 2490 (1951) (hereinafter, Treaty). The waiver
8 provision in the treaty is Article 14(b). See *id* at 3183. In
9 essence, that provision broadly waives "all" reparations and "other
10 claims" of the "nationals" of Allied powers "arising out of any
11 actions taken by Japan and its nationals during the course of the
12 prosecution of the war." *Id*. Defendants argue that the
13 Philippines was an "Allied Power," and thus the claims of any of
14 its nationals are barred. The key issue for the court to address,
15 therefore, is whether the Philippines is an "Allied power" subject
16 to the provisions of the treaty.

17 Article 25 of the treaty defines "Allied Powers" for the
18 purposes of the treaty. *Id* at 3190. In relevant part, that
19 article provides that "the Allied Powers shall be the States at war
20 with Japan, or any State which previously formed a part of the
21 territory of a State named in Article 23, provided that in each
22 case the State concerned has signed and ratified the Treaty." *Id*.
23 The Philippines was an official signatory of the treaty. *Id* at
24 3304. Article 23, which directs each signatory to ratify the
25 treaty, specifically names the Republic of the Philippines. *Id* at
26 3189. Indeed, the Philippines sent six representatives to the
27 treaty negotiations to sign on behalf of the country: Carlos P

1 Romulo, J M Elizalde, Vicente Francisco, Diosdado Macapagal,
2 Emiliano T Tirona and V G Sinco. Id. The Philippines ratified the
3 treaty on July 23, 1956, and deposited the ratification with the
4 United States pursuant to Article 24 of the treaty. See M J Bowman
5 and D J Harris, Multilateral Treaties Index and Status at 172
6 (Butterworths 1984) (Def Req for Judicial Notice (Doc #200), Exh
7 B). The treaty thus became effective in the Philippines on July
8 23, 1956. Id.

9 The Filipino plaintiffs do not dispute any of these
10 facts. In fact, a professor submitting a declaration in support of
11 their opposition explicitly states that "Article 14(b) is to be
12 read as a waiver by the Philippines [sic] with respect to the
13 claims of Filipino nationals 'arising out of any action taken by
14 Japan and its nationals in the course of the prosecution of the
15 war.'" Magallona Decl (Doc #249), ¶ 3.

16 In sum, because the Philippines is specifically named in
17 Article 23 and the country both signed and ratified the treaty,
18 under Article 25 the Philippines is an Allied power for purposes of
19 the treaty. Treaty at 3190. The court finds, therefore, that for
20 the reasons discussed in Order No 4, the Treaty of Peace with Japan
21 bars the claims of the Filipino plaintiffs.

22
23 II

24 In an effort to avoid the preclusive effect of the
25 treaty, the Filipino plaintiffs put forth several unpersuasive
26 arguments, several of which were likewise asserted by the Allied
27 plaintiffs but rejected in Order No 4. In their first and most

1 prominent argument, the Filipino plaintiffs assert that their
2 claims do not arise out of conduct taken "in the prosecution of the
3 war." Pl Opp Br (Doc #247) at 4-8. As the court noted in Order No
4 4, "[i]t is particularly far-fetched to attempt to distinguish
5 between the conduct of Imperial Japan during the Second World War
6 and the major industry that was the engine of its war machine." In
7 re World War II, 114 F Supp 2d at 948. The Filipino plaintiffs are
8 asking the court to make that distinction.

9 The Filipino plaintiffs argue that their complaints are
10 different from those in the Allied matters. Specifically, they
11 contend that no facts are alleged which would permit the court to
12 infer that defendants' conduct in the Philippines was taken in the
13 course of the prosecution of the war. Pl Opp Br (Doc #247) at 5.
14 The court has reviewed the four Filipino complaints and finds this
15 argument to be seriously disingenuous.

16 Three of the four complaints are filled with allegations
17 equating the actions of defendants with those of Japan's efforts to
18 prosecute the war. For example, the Llanza complaint asserts that
19 "[t]he defendants, in collaboration and conspiracy with the Empire
20 of Japan, developed plan [sic], scheme [sic] and/or common
21 enterprises, through and by which the defendants enabled the Empire
22 of Japan to conduct and execute the entire operations of World War
23 II." Llanza compl, ¶ 64. The same complaint then asserts that
24 "the Japanese government established programs whereby the Japanese
25 companies could use the Filipino, and other allied civilians and
26 POWs as slave or forced laborers * * * 'toward the prosecution of
27 the Greater East Asiatic War.'" Id, ¶ 72 (quoting the Japanese
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1 Prisoners of War Bureau). Similarly, the Resus complaint alleges
2 that a "Japanese military government de facto ruled the
3 [Philippines] until it was liberated in February 1945 * * * [and]
4 appropriated ownership of non-Japanese owned industry and
5 production which, in turn, commissioned or entrusted them to
6 private Japanese companies including the defendants * * * [who]
7 forced Filipinos to work as slave and forced laborers." Resus
8 compl, ¶¶ 104-05 (emphasis in original). The Saldajeno complaint
9 asserts that "one of Japan's major purposes * * * in occupying [the
10 Philippines] was to exploit the * * * large deposits of copper,
11 coal, manganese and iron - all resources that Japan badly needed
12 for its wartime efforts." Saldajeno compl, ¶ 37.

13 The Filipino plaintiffs ignore these allegations and,
14 instead, hang their argument on the Santo Domingo complaint only.
15 That particular action was initiated after the court issued Order
16 No 4. Consequently, the plaintiffs in that matter have artfully
17 attempted to plead around the Article 14(b) bar. The complaint
18 alleges that "[o]ne of Defendants' * * * goals from 1941-1945 was
19 to exploit the natural resources in the area, especially mining
20 resources, for their self-interest, profit, and financial gain, and
21 not for the prosecution of the war." Santo Domingo compl, ¶ 27.
22 Assuming that defendants' intent was not to prosecute the war by
23 operating their businesses with the help of forced labor, however,
24 does not establish that Japan's intent in "transacting business"
25 with such defendants was not to help Japan prosecute the war. See
26 id, ¶ 39. As defendants correctly point out, the treaty
27 unambiguously waives all Allied claims "arising out of any actions
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1 taken by Japan and its nationals in the course of the prosecution
2 of the war" regardless whether defendants sought to prosecute the
3 war or simply sought financial gain. See Treaty at 3183 (emphasis
4 added). Indeed, the fact that the Santo Domingo plaintiffs assert
5 a claim under California Code of Civil Procedure § 354.6
6 demonstrates that they seek compensation for injuries arising in
7 the course of Japan's prosecution of the war. As stated above, it
8 would be a stretch to attempt to distinguish between the conduct of
9 Japan during the war and the companies that supported its war
10 machine. Overall, therefore, the allegations of the Filipino
11 complaints demonstrate that their actions are within the scope of
12 the treaty's waiver.

13 The Filipino plaintiffs also put forth several arguments
14 that, at bottom, contend waiver of their claims renders the treaty
15 unconstitutional under Filipino constitutional law and invalid
16 under the fundamental norms of international law. See Pl Opp Br
17 (Doc #247) at 9-14. The court previously rejected similar
18 arguments by the Allied plaintiffs. As stated in Order No 4, these
19 arguments are "contrary to the well-settled principle that the
20 government may lawfully exercise its 'sovereign authority to settle
21 the claims of its nationals against foreign countries.'" In re
22 World War II, 114 F Supp 2d at 948 (quoting Dames & Moore v Regan,
23 453 US 654, 679-80 (1981); citing Neri v United States, 204 F2d
24 867, 868-69 (2d Cir 1953) (enforcing treaty waiver of reparations
25 claims)). Whether waiver of the Filipino plaintiffs' claims
26 violates the constitutional law of the Philippines (as opposed to
27 American constitutional law) is beside the point. Treaties made

1 under the authority of the United States, such as the Treaty of
2 Peace with Japan, are "the supreme Law of the Land." US Const, Art
3 VI. For challenges to such treaties brought in American courts,
4 therefore, the relevant inquiry is whether the treaty complies with
5 American law, not the law of another nation. As the Supreme Court
6 concluded long ago:

7 The treaty is therefore a law made by the proper
8 authority, and the courts of justice have no right to
9 annul or disregard any of its provisions, unless they
10 violate the Constitution of the United States. It is
11 their duty to interpret it and administer it according to
12 its terms. And it would be impossible for the executive
13 department of the government to conduct our foreign
14 relations with any advantage to the country, and fulfil
15 the duties which the Constitution has imposed upon it, if
16 every court in the country was authorized to inquire and
17 decide whether the person who ratified the treaty on
18 behalf of a foreign nation had the power, by its
19 constitution and laws, to make the engagements into which
20 he entered.

21 Doe v Braden, 57 US 635, 657 (1853). Hence, the laws of the
22 Philippines are not relevant for the court's analysis of a treaty
23 made under the authority of the United States. See *id.*

24 The Filipino plaintiffs also argue that the waiver
25 provision does not apply to them because the reparations agreement
26 between Japan and the Philippines only releases Japan from claims
27 to the extent of its payment of reparations. Pl Opp Br (Doc #247)
28 at 18-19. Applying the terms of the reparations agreement to trump
the waiver provision of the treaty strains logic and simply
contradicts the unambiguous language of the reparations agreement.
Specifically, the agreement releases Japan "from its reparations
obligation" to the extent of Japan's payments under the agreement.
See Reparations Agreement Between Japan and the Republic of the

1 Philippines, Article 6 (Def Req for Judicial Notice (Doc #200), Exh
2 C at 4). Hence, the passage cited by the Filipino plaintiffs in
3 Article 6 merely releases Japan from its reparations obligations as
4 they are paid. Id ("By and upon making a payment * * * Japan * * *
5 shall be released from its reparations obligation to the extent of
6 * * * such * * * payment."). The waiver provision in the treaty
7 thus still applies.

8 Finally, the Filipino plaintiffs assert that the Alien
9 Tort Claims Act (ATCA), 28 USC § 1350, provides the court with
10 jurisdiction to hear the claims of the Filipino plaintiffs. See Pl
11 Opp Br (Doc #247) at 19-20. To be sure, the act provides district
12 courts with "original jurisdiction" over claims by aliens for torts
13 "committed in violation of the law of nations or a treaty of the
14 United States." 28 USC § 1350. But the court has already
15 determined that federal subject matter jurisdiction exists for
16 claims, such as these, that are based on the federal common law of
17 foreign policy and relations. In re World War II, 114 F Supp 2d at
18 943-44. The Ninth Circuit's conclusion that the act also creates a
19 cause of action for "violations of specific, universal and
20 obligatory" norms under international law does not alter matters.
21 See In re Estate of Ferdinand Marcos, Human Rights Litigation, 25
22 F3d 1467, 1475 (9th Cir 1994) (citation omitted). The treaty
23 precludes the claims of the Filipino plaintiffs regardless of the
24 authority under which these claims are brought. Accordingly, the
25 ATCA may enable this court to hear the Filipino plaintiffs' claims,
26 but it does not eliminate the preclusive effect of the treaty.

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For the foregoing reasons, defendants' motions to dismiss and/or for judgment on the pleadings are GRANTED with respect to the actions involving Filipino plaintiffs. The clerk shall enter judgment in the above-captioned cases.

IT IS SO ORDERED.

VAUGHN R WALKER
United States District Judge