UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	SA CV10-01172 JAK (MLGx)	Date	August 27, 2012
Title	Mairi Nunag Tanedo, et al. v. East Baton Rouge Parish School Board, et al.		

Present: The Honorable	JOHN A. KRONSTADT, UNITED STATES DISTRICT JUDGE

Andrea Keifer	Not Reported
Deputy Clerk	Court Reporter / Recorder
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Not Present	Not Present

Proceedings: **(IN CHAMBERS) ORDER RE DEFENDANTS UNIVERSAL PLACEMENT INTERNATIONAL INC. AND LOURDES "LULU" NAVARRO'S MOTION FOR PARTIAL SUMMARY JUDGMENT (Dkt. 283)**

I. Introduction

Plaintiffs comprise a class of Filipino nationals who travelled from the Philippines to the United States to work as schoolteachers in Louisiana. The class brings claims against various Defendants who were involved in recruiting Plaintiffs in the Philippines, bringing them to the United States, and employing them here.[1] Defendants Universal Placement International Inc. ("UPI") and Lourdes "Lulu" Navarro ("Navarro") (together, "Defendants") have moved for partial summary judgment with respect to certain issues related to Plaintiffs' first cause of action under the Trafficking Victims Protection Act ("TVPA"), 18 U.S.C. § 1595, and their second cause of action, under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1962. The Court heard oral argument in this matter on July 30, 2012, and took the matter under submission. Dkt. 300. For the following reasons, the Court GRANTS in part, and DENIES in part, Defendants' motion for partial summary judgment.

II. Factual Background

Plaintiffs are Filipino nationals who traveled to the United States to work as teachers in Louisiana public schools. In order to work in the United States, they needed H-1B visas issued by the United States Customs and Immigration Services. Defendant UPI is a California corporation, headed by

[1] On December 12, 2011, the Court granted in part, and denied in part, Plaintiffs' motion for class certification. Dkt. 232. With regard to the moving Defendants, the Court certified the following claims for class treatment: (i) Plaintiff's TVPA claims for forced labor, 18 U.S.C. § 1589; trafficking with respect to peonage, slavery, involuntary servitude, or forced labor, 18 U.S.C. § 1590; and unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor, 18 U.S.C. § 1592; (ii) Plaintiff's RICO claims, with the alleged TVPA violations as predicate acts; and (iii) Plaintiffs' state law claims, for violations of the Employment Agency, Employment Counseling, and Job Listing Services Act, Cal. Civ. Code § 1812.508; unfair business practices, Cal. Bus. & Prof. Code § 17200; and negligent misrepresentation.

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Navarro. UPI recruits teachers from the Philippines to teach in the United States. Defendant PARS International Placement Agency ("PARS") is a Philippine corporation, headed by Defendant Emilio Villarba. Like UPI, PARS recruits teachers from the Philippines to teach in the United States (UPI, Navarro, PARS, and Villarba are collectively the "Recruiter Defendants"). PARS is alleged to be UPI's agent in the Philippines. Defendant Robert Silverman is a California attorney who, with his law firm Silverman & Associates, represented the Louisiana school districts in the recruitment process (Silverman and the firm are collectively the "Attorney Defendants"). Defendant East Baton Rouge Parish School Board ("EBR") and other Louisiana school districts contracted with the Recruiter Defendants and Attorney Defendants to recruit Filipino teachers to work in their districts. Defendant Elizabeth Duran Swinford is the former Associate Superintendent for Human Resources for EBR (Swinford and EBR are collectively the "Employer Defendants").[2]

In 2006, the Recruiter Defendants began advertising their teacher recruiting services to United States school districts. They also advertised teaching opportunities in the Philippines. The Recruiter Defendants interviewed Plaintiffs and class members for teaching positions. Plaintiffs allege that the Recruiter Defendants, after extending them job offers, revealed to Plaintiffs only some of the steps in the recruitment process. At first, the Recruiter Defendants told Plaintiffs only of the need to submit certain documents in support of their visa applications and to pay a recruitment fee ("First Recruitment Fee") of approximately $5,000 per applicant. This First Recruitment Fee included fees that, according to regulations governing H-1B visas, the petitioning United States employers, and not the beneficiary teachers, were required to pay. This First Recruitment Fee was non-refundable.

After paying the First Recruitment Fee, Plaintiffs received job offers to teach in the United States. Plaintiffs interviewed at a United States embassy to obtain their H-1B visas. The Recruiter Defendants instructed Plaintiffs to have embassy officials send Plaintiffs' passports and visas -- when issued -- directly to the office of the Recruiter Defendants in the Philippines, rather than to Plaintiffs. Once the Recruiter Defendants had Plaintiffs' documents, they allegedly told Plaintiffs, for the first time, that Plaintiffs would have to pay a second larger recruitment fee ("Second Recruitment Fee") plus the cost of airfare from the Philippines to the United States to take on their teaching positions in Louisiana. The Second Recruitment Fee was 20% of each Plaintiff's expected first year salary. Many Plaintiffs took out substantial loans to pay the fees. Plaintiffs would then have to pay an additional 10% of their second year salary if they remained in the United States for a second year of employment. Because Plaintiffs earned approximately $40,000 per year teaching in Louisiana, the First Recruitment Fee, Second Recruitment Fee, and second year salary fee totaled approximately $17,000. This figure does not include the aforementioned airfare for travel from the Philippines to Louisiana.

Plaintiffs allege that, if they did not pay these additional fees about which they were first advised after they had paid the First Recruitment Fee, they would forfeit the First Recruitment Fee, lose their jobs in the United States, and lose their H-1B visas. Accordingly, Plaintiffs contend that they felt

[2] All claims against the Attorney Defendants have been stayed pending resolution of their appeal of the Court's Order denying their special motion to strike. *See* Minute Orders re Defendants' Motion to Enforce Stay, Dkt. 251, 255. Similarly, all claims against Swinford have been stayed pending resolution of her appeal on the issue of qualified immunity. Dkt. 121.

compelled to accede to the demands of the Recruiter Defendants because they needed to work in the United States to repay the debts they had incurred in the Philippines as part of the recruitment process to that point. Thus, they felt compelled to teach in the United States and pay a large percentage of their salaries to UPI and PARS. Moreover, Plaintiffs contend that, once they were in the United States, the Recruiter Defendants threatened legal action against Plaintiffs and other class members, including deportation, if they protested the fee arrangement.

The Attorney Defendants allegedly participated in the scheme to compel Plaintiffs' labor by obtaining for Plaintiffs only one-year H-1B visas, instead of what Plaintiffs contend were the standard three-year visas. According to Plaintiffs, this allowed the Recruiter Defendants to have additional leverage over Plaintiffs -- the ability to threaten their deportation after one year of work in the United States. Additionally, the Attorney Defendants allegedly participated in the scheme to have Plaintiffs pay visa fees that their employers were required to pay under the applicable federal regulations.[3]

III. Analysis

A. Financial Harm as Serious Harm

Section 1589 of the TVPA makes it illegal to obtain or provide the labor of a person by, *inter alia*, "means of serious harm or threats of serious harm to that person or another person." 18 U.S.C. § 1589(a)(1). On December 23, 2008, Congress amended the TVPA to provide a definition of serious harm, which included financial harm:

> The term "serious harm" means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm.

18 U.S.C. § 1589(c)(2); *see also* William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat 5044 (2008). Defendants argue that the amendment to the TVPA in December 23, 2008 to define "serious harm" to include financial harm implies that "serious harm" did not include financial harm prior to that date, and, therefore, cannot apply to any conduct that occurred before December 23, 2008. Thus, they argue that, because any alleged acts of human trafficking by forced labor in this case occurred prior to December 23, 2008, Defendants cannot be liable for forced labor under § 1589.

Defendants' claim is unpersuasive. Financial harm was cognizable as serious harm prior to the December 23, 2008 amendment. The Ninth Circuit addressed financial harm in *United States v. Dann*,

[3] The procedural background of this matter has been detailed elsewhere. *See, e.g.*, July 2, 2012 Order re Class Action Notice, Dkt. 282; March 30, 2011 Order re Stay, Dkt. 255; December 12, 2011 Order re Class Certification, Dkt. 232.

652 F.3d 1160, 1163-66 (9th Cir. 2011). Although *Dann* was decided in 2011, it concerned trafficking that occurred between 2006 and April 2008*, i.e.*, before the December 23, 2008 amendment. In *Dann*, the Ninth Circuit held that there was sufficient evidence of threatened financial harm to constitute serious harm, which was instrumental in obtaining the victim's forced labor. *Id.* at 1171. Although the question whether "serious harm" included financial harm before the December 23, 2008 amendment was not specifically addressed by the Ninth Circuit, the clear implication of the court's analysis is that it did include such harm. In a section titled "Financial Harm," *Dann* analyzed the threats of financial harm that defendant utilized. Further, *Dann* emphasized that the TVPA as enacted in 2000 was designed to overrule the Supreme Court's holding in *United States v. Kozminski*, 487 U.S. 931 952 (1988), which had limited the definition of involuntary servitude to "'physical' or 'legal' coercion." *Dann*, 652 F.3d at 1169. Congress in 2000 "intended to reach cases in which persons are held in a condition of servitude through nonviolent coercion." *Id.* Further, in discussing the scope of serious harm, the Ninth Circuit cited the Seventh Circuit's holding in *United States v. Calimlim*, 538 F.3d 706, 712-14 (7th Cir. 2008), and summarized *Calimlim*'s holding in a parenthetical as "finding threat to stop paying victim's poor family members constitutes serious harm." *Dann*, 652 F.3d at 1169. *Calimlim*, which concerned trafficking that ended in 2004, was decided on August 15, 2008, before the December 23, 2008 amendment. 538 F.3d at 709. In *Calimlim*, the Seventh Circuit dismissed as having "no merit" defendants' argument that there could be no serious harm without threats of physical coercion, because § 1589 "is not written in terms limited to overt physical coercion, and we know that when Congress amended the statute it expanded the definition of involuntary servitude to include nonphysical forms of coercion." *Id.* at 714. Part of defendants' scheme in *Calimlim* to coerce the victim's labor was to cause the victim to "believe that she might be deported and her family seriously harmed because she would no longer be able to send money." *Id.* at 710. These financial threats thus constituted threats of serious harm.[4] *See also United States v. Sou*, No. 09-00345, 2011 WL 3207265, at *3-*5 (D. Haw. July 26, 2011) (holding that serious harm included financial harm under the pre-December 23, 2008 TVPA).

Additional considerations confirm that financial harm constituted serious harm before the December 23, 2008 amendment.[5] The pre-amendment version of § 1589 referred to "threats of serious harm to, or physical restraint against, that person," and "serious harm or physical restraint." 18 U.S.C. § 1589 (2003). That § 1589 distinguishes between serious harm and physical restraint indicates that, prior to 2008, Congress intended that serious harm not be limited to physical harm, and instead include at least some non-physical harm, *e.g.*, financial harm. This is consistent with the House Conference Report from 2000. It stated that the TVPA "refers to a broad array of harms, including both physical and

[4] In their reply, Defendants argue that *Dann* and *Calimlim* are distinguishable because the facts of those cases presented financial threats more severe than those of the instant case. However, that the financial harm in those cases may have been greater than in the present case does not affect whether before the December 23, 2008 amendment, financial harm was cognizable as serious harm.

[5] Plaintiffs argue that the December 23, 2008 amendment is best read as a clarification of, and not an alteration to, existing law, and thus the amendment's express definition of "serious harm" would apply to pre-amendment conduct. *See United States v. Sanders*, 67 F.3d 855, 856 (9th Cir. 1995) ("The Ninth Circuit has consistently stated that when an amendment is a clarification, rather than an alteration, of existing law, then it should be used in interpreting the provision in question retroactively."). However, the *Sanders* rule applies only when an amendment is labeled or designated a clarification. *Id.* Plaintiffs have provided no indication that the December 23, 2008 amendment was labeled as such.

nonphysical," and would apply "where the traffickers use more subtle means designed to cause their victims to believe that serious harm will result to themselves or others if they leave," such as threats of families' "bankruptcy in their home country." H.R. Conf. Rep. No. 106-939, at 101 (2000).[6]

Defendants next argue that Plaintiffs have failed to present evidence of their "real wealth." Thus, Defendants contend that, because an analysis of "serious harm" requires a determination whether harm "is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm," 18 U.S.C. § 1589(c)(2), there must be evidence of Plaintiffs' background and circumstances and this requires evidence of "real wealth." Defendants cite no authority for the proposition that evidence of such wealth or assets is required to establish whether harm would be sufficiently serious to compel someone of a particular background to be coerced to perform labor. But, even if this were part of the statutory standard, Defendant Navarro admitted that she was aware that the sum of the Second Recruitment Fee and airfare was more than the teachers could pay on their own. Navarro Depo., p.404:20-24, Pl. Exh. F, Dkt. 289-22. As a result, Plaintiffs incurred debt, with such debt among the reasons they felt compelled to work.[7] Further, Plaintiff Donnabel Escuadra declared that she is from a poor family, Escuadra Decl. ¶ 14, Pl. Exh. C, Dkt. 134-3, and that she continued working because of the loans she obtained, the nonrefundable deposits, the successive fees, and threats of lawsuits, *id.* at ¶¶ 10-13, 20. Plaintiff Mairi Nunag Tanedo testified that, because of the loans she obtained at PARS's direction, she incurred $12,000 in debt beyond the fees she had already paid, and that she obtained this large $12,000 loan "[e]ven though this was a very large amount of money," because given the amount of money she had already paid, she "felt like [she] had no choice but to pay the additional money . . . and go work in the United States to pay off [her] debt." Tanedo Decl. ¶ 15, Pl. Exh. A, Dkt. 134-1. Plaintiff Rolando Pascual also testified that "I always felt that I had to perform adequately and to not complain or else Lulu would send me back to the Philippines and have me replaced with someone else. I needed to work [in Louisiana] in order to pay off the debts that I owed to the finance company." Pascual Decl. ¶ 23, Pl. Exh. D, Dkt. 134-4. Taken together, this evidence is sufficient to create a genuine issue of material fact with respect to whether the financial harm was serious, *i.e.*, such that a reasonable person would have felt compelled to continue working.

B. Extraterritorial Application of the TVPA

1. Legal Standard

Defendants argue that any alleged trafficking occurred outside the United States, and that at the time of such trafficking, the TVPA applied only to domestic acts of forced labor and trafficking. Consequently, they contend that Plaintiffs' forced labor and trafficking claims fail. In the December 23, 2008 amendment to the TVPA, Congress expressly extended the reach of certain sections of the TVPA to extraterritorial violations. The amendment concerned the following provisions of the TVPA: § 1581

[6] The Court thus does not consider whether the December 23, 2008 amendment may be applied retroactively, under the standard of *Landgraf v. USI Film Productions*, 511 U.S. 244, 245 (1994).

[7] There is also evidence presented to support Plaintiffs' claim that PARS directed Plaintiffs to obtain loans at high rates. *See* Pascual Decl. ¶ 18, Pl. Exh. D, Dkt. 134-4.

(peonage), § 1583 (enticement into slavery), § 1584 (sale into involuntary servitude), § 1589 (forced labor), § 1590 (trafficking), and § 1591 (sex trafficking of children). 18 U.S.C. § 1596. This amendment did not extend extraterritorial application for document servitude, § 1592.

It is presumed that Congressional legislation applies "only within the territorial jurisdiction of the United States," "unless a contrary intent appears." *Morrison v. Nat'l Australia Bank Ltd.*, 130 S. Ct. 2869, 2877 (2010). This "*Aramco* presumption" derives from the Supreme Court's holding in *EEOC v. Arabian American Oil Co.*, 499 U.S. 244, 248 (1991).

> This principle represents a canon of construction, or a presumption about a statute's meaning, rather than a limit upon Congress's power to legislate. It rests on the perception that Congress ordinarily legislates with respect to domestic, not foreign matters. Thus, unless there is the affirmative intention of the Congress clearly expressed to give a statute extraterritorial effect, we must presume it is primarily concerned with domestic conditions. . . . When a statute gives no clear indication of an extraterritorial application, it has none.

Morrison, 130 S. Ct. 2869, 2877-78 (2010).

In *Morrison*, the Supreme Court found no indication that Congress intended § 10(b) of the Securities Exchange Act of 1934 to apply extraterritorially; the Court then held that it did not. 130 S. Ct. at 2883. The respondent-defendant bank was located in Australia and traded only on Australian and other foreign stock exchanges; the fraud was perpetrated through the bank's annual reports and other public documents.[8] The petitioner-plaintiff shareholders were Australian. The fraud concerned the financial status of a subsidiary of defendant located in Florida. The Second Circuit held that the conduct was not domestic, because the "heart of the alleged fraud" occurred outside the United States. *Id.* at 2876. The Supreme Court rejected this analysis, holding that the "focus of the Exchange Act is not upon the place where the deception originated, but upon purchases and sales of securities in the United States." *Id.* at 2884.

> Section 10(b) does not punish deceptive conduct, but only deceptive conduct "in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered." 15 U.S.C. § 78j(b). Those purchase-and-sale transactions are the objects of the statute's solicitude. It is those transactions that the statute seeks to "regulate"; it is parties or prospective parties to those transactions that the statute seeks to "protect."

Id.

[8] Although certain deposit receipts, which represented the right to receive a certain number of shares of common stock, were traded on a U.S. stock exchange, plaintiffs did not own those deposit receipts. Instead they owned common stock, which was traded abroad.

2. Application

The focus of the TVPA is the trafficking of people into the United States, including for the purpose of compelling forced labor here. The House Conference report begins by describing the TVPA as "an Act to combat trafficking of persons, especially into the sex trade, slavery, and slavery-like conditions, in the United States and countries around the world . . . ." H.R. Conf. Rep. No. 106-939, at 1 (2000). It then observes that "[a]t least 700,000 persons annually, primarily women and children, are trafficked within or across international borders. Approximately 50,000 women and children are trafficked into the United States each year," *id.* at 3, and "[t]rafficking for such purposes as involuntary servitude, peonage, and other forms of forced labor has an impact on the nationwide employment network and labor market," *id.* at 4.

The text of TVPA § 1589 itself suggests that the TVPA prohibits the providing or obtaining of labor or services through various means, including threats of serious harm. *See* 18 U.S.C. § 1589. The object of the statute's solicitude -- what it regulates and protects -- is those forced to labor within the United States. Similarly, the focus of § 1590 is the trafficking of people to perform labor in violation of any provision of the TVPA, including § 1589. Thus, the TVPA is not applied extraterritorially when it addresses trafficking people *into* the United States to perform forced labor here, even if done by means of threats of serious harm in part made elsewhere. This is consistent with *Morrison*, in which the Supreme Court held that, to apply the Exchange Act to securities fraud where the deception occurred abroad, was not to apply it extraterritorially where the securities were traded on a domestic exchange.[9] The focus -- and the touchstone of the territoriality inquiry -- of the Exchange Act is where the securities were traded and not where the deception occurred. Similarly, the focus and the touchstone of the territoriality inquiry of the TVPA is where the forced labor occurred and to where the victims were trafficked, and not from where the victims were trafficked or whether some of the means used to compel the labor occurred abroad.

TVPA cases regularly address trafficking into the United States. In *Dann*, the victim was trafficked from Peru to labor in the United States, 652 F.3d 1160, and in *Calimlin*, from the Philippines to the United States. 538 F.3d 706. In *United States v. Bradley*, defendants lured the victims in Jamaica to travel to the United States to work. 390 F.3d 145, 148 (1st Cir. 2004), *judgment vacated on sentencing grounds*, 545 U.S. 1101 (2005). By contrast, application of the TVPA to laborers who worked entirely in Liberia, even for an American employer, was deemed an extraterritorial application of the TVPA. *John Roe I v. Bridgestone Corp.*, 492 F. Supp. 2d 988, 999-1004 (S.D. Ind. 2007). Similarly, it has been held that the TVPA does not to apply to trafficking of persons to work in Iraq. *Nattah v. Bush*, 541 F. Supp. 2d 223, 234 (D.D.C. 2008) *aff'd in part, rev'd in part on other grounds and remanded*, 605 F.3d 1052 (D.C. Cir. 2010).

In the present case, Defendants allegedly trafficked Plaintiffs into the United States to work here. To be sure, certain elements of the trafficking scheme occurred abroad. For example, Plaintiffs were interviewed in the Philippines -- although by a videoconference with EBR personnel in the United

[9] However, because the securities at issue in *Morrison* were traded only on foreign exchanges, plaintiffs there could not avail themselves of § 10(b).

States. *See, e.g.*, Cruz Decl. ¶ 7, Pl. Exh. B, Dkt. 134-2. Money was initially collected from Plaintiffs in the Philippines. *See, e.g.*, *id.* at ¶¶ 12-13. Plaintiffs took out loans in the Philippines to pay Defendants. *See, e.g.*, Tanedo Decl. ¶ 15, Pl. Exh. A, Dkt. 134-1.[10] However, Plaintiffs have presented evidence that other steps of Defendants' alleged plan occurred within the United States. For example, when Plaintiffs were brought to the United States, they first went to UPI's office in Los Angeles, where they signed a contract requiring them to pay an additional portion of their salaries to Defendants. *See, e.g.*, Tanedo Decl. ¶ 16, Pl. Exh. A, Dkt. 134-1. Defendants sued and threatened to sue Plaintiffs in the United States for not paying their fees. *See, e.g.*, Escuadra Decl. ¶¶ 19-20, Pl. Exh. C, Dkt. 134-3; Pascual Decl. ¶ 21, Pl. Exh. D, Dkt. 134-4; Complaint, *Navarro, et al. v. Cruz, et al.*, Super. Ct. Cal., No. BC402506 (filed Jan. 9, 2009), Pl. Exh. 544, Dkt. 289-14. In some cases, Plaintiffs paid Defendants the fees for their immigration petitions from within the United States. *See* Navarro Depo, p.299:10-17, Pl. Exh. F, Dkt. 289-22.

Significantly, it is undisputed that Plaintiffs performed the labor within the United States. The alleged misconduct included having Plaintiffs make payments of certain fees in the United States. Thus, application of the TVPA to the trafficking and forced labor in the present case is not premised on an extraterritorial application of the TVPA.[11]

C. Document Servitude

Section 1592 of the TVPA makes it unlawful to remove, confiscate or possess a passport or other immigration document in connection with a violation of certain other TVPA sections, including § 1589 (forced labor) and § 1590 (trafficking). 18 U.S.C. § 1592(a)(1) ("Unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labor"). Section 1595 sets forth the civil remedies of the TVPA. 18 U.S.C. § 1595. Prior to its amendment on December 23, 2008, § 1595 did not include a civil remedy for violations of § 1592 (document servitude). Instead, it included civil remedies for § 1589 (forced labor), § 1590 (trafficking), and § 1591 (sex trafficking of children). 18 U.S.C. § 1595 (2003). Thus, prior to December 23, 2008, there was a civil remedy for violations of § 1590 (trafficking), which made it illegal to recruit, harbor, transport, provide, or obtain by any means, any person for labor or services in violation of the TVPA. 18 U.S.C. § 1590 (2000).

Defendants argue that they cannot be held liable for any acts of document servitude that

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[10] The nature of the relationship between PARS and UPI, including whether PARS was UPI's agent such that PARS's actions may be attributed to UPI, is a disputed issue of fact.

[11] In their reply, Defendants cite *Love v. Associated Newspapers, Ltd.* to argue that conduct is extraterritorial under the Lanham Act where all conduct occurred abroad, even though a plaintiff is damaged within the United States. 611 F.3d 601 (9th Cir. 2010). Defendants argue that, by contrast in this case, all the challenged conduct occurred abroad, and damages were also suffered abroad, because Plaintiffs made payments to Defendants in the Philippines. Thus, Defendants argue that the alleged TVPA violations occurred abroad. However, *Love* is not controlling. The conduct here occurred in the United States because Plaintiffs were allegedly trafficked here to perform forced labor here. Further, the alleged damages were suffered in the United States, because Plaintiffs performed their labor here.

occurred prior to December 23, 2008, because there was no civil remedy for § 1592 prior to that time.

Plaintiffs acknowledge that there was no express civil remedy for a § 1592 claim before December 23, 2008. However, Plaintiffs argue that, at that time, there was a civil remedy for a § 1590 claim (trafficking). Thus, § 1590 then made it illegal to traffic persons to obtain their labor by a means that violated the TVPA, and § 1592 (document servitude) was included within the prohibitions of the TVPA that could lead to a criminal penalty, and so document servitude violated the TVPA at the time. Plaintiffs argue that there is a viable action for document servitude that occurred prior to December 23, 2008 because § 1590 forbade trafficking by any means that violated "this chapter," *i.e.*, the TVPA, including its criminal provisions.

Contrary to Plaintiffs' argument, however, the TVPA in place prior to December 23, 2008 cannot be read to allow a private action for document servitude. Before December 23, 2008, Congress provided a civil remedy for only three sections of the TVPA: § 1589 (forced labor), § 1590 (trafficking), and § 1591 (sex trafficking of children). Congress did not extend a civil remedy to § 1592 (document servitude) until December 23, 2008. Given that Congress expressly granted a civil remedy with respect to just three TVPA sections, it would be inconsistent with the statute to conclude that it also provided a civil remedy for other violations. To interpret the statute as containing an implied civil remedy through § 1590 would undermine the specific statutory language Congress adopted. *See United States v. Mohrbacher*, 182 F.3d 1041, 1050 (9th Cir. 1999) ("A statute must be interpreted to give significance to all of its parts. We have long followed the principle that statutes should not be construed to make surplusage of any provision."); *Longview Fibre Co. v. Rasmussen*, 980 F.2d 1307, 1312-13 (9th Cir. 1992) ("[T]he *expressio unius*, or *inclusio unius*, principle is that when a statute limits a thing to be done in a particular mode, it includes a negative of any other mode."). Thus, there was no civil remedy for document servitude, whether directly through § 1592 or indirectly through § 1590, before December 23, 2008. Plaintiffs cannot base their § 1592 claims on any document servitude occurring before December 23, 2008.[12]

D. Extortion

Defendants argue that Plaintiffs cannot state a claim for extortion based on Defendants' alleged threats of lawsuits because Defendants were legally entitled to sue Plaintiffs. *See Sosa v. DIRECTV, Inc.*, 437 F.3d 923, 939-40 (9th Cir. 2006) (no extortion under California law unless threat of lawsuit

[12] Defendants also argue that applying § 1592 (document servitude) to actions within the Philippines would constitute extraterritorial application of the TVPA. Specifically, Plaintiffs allege that PARS directed them, within the Philippines, to have their passport and visas sent to the PARS office in the Philippines. *See, e.g.*, Tanedo Decl. ¶ 12, Pl. Exh. A, Dkt. 134-1. PARS would not turn over the documents to Plaintiffs until they paid their placement fees and airfare. *Id.* at ¶¶ 13-14. Thus, in order to obtain their documents, Plaintiffs had to pay the fees, including by obtaining loans, and it was the loss of that money that coerced Plaintiffs to work in the United States. Although Defendants possessed the documents abroad, they did so in order to traffic Plaintiffs to, and force them to work within, the United States. Under the same analysis as set forth *supra* in Section III.B.2, this constitutes a domestic, not extraterritorial, application of the TVPA. Nonetheless, Plaintiffs' § 1592 (document servitude) claim fails because there was no civil remedy for § 1592 before December 28, 2008.

rose to the level of a sham); *In re Nichols*, 82 Cal. App. 73, 76 (1927) (extortion claim predicated on threat to sue requires allegation that threatened suit was objectively baseless).

In denying Defendants' motion to dismiss, the Court already rejected Defendants' legal theory:

> "Extortion has been characterized as a paradoxical crime in that it criminalizes the making of threats that, in and of themselves, may not be illegal." *Flatley v. Mauro*, 39 Cal. 4th 299, 326 (2006). "It is the means employed to obtain the property of another which the law denounces . . . ." *Id.* (citations and quotations omitted). With extortion, it doesn't matter that the money a defendant sought to obtain through threats may have been justly due. *Id.* at 327 (citing *Gomez v. Garcia*, 81 F.3d 95, 97 (9th Cir. 1996)). . . .
>
> Defendants allegedly forced Plaintiffs to choose between forfeiting their initial $5,000 or paying approximately $10,000 more to join the teaching program. . . . Further, Plaintiffs allege that Defendants ensured that profits remained high and that complaints remained low by threatening deportation once Plaintiffs were working in the United States. And Plaintiffs allege that Defendants threatened to deport Plaintiffs if they did not make payments under various contracts. . . .
>
> Plaintiffs allege that Defendants' demands and conduct put them in fear of financial harm and deportation. (FAC ¶¶ 11, 108, 294.) While the Ninth Circuit has adopted a somewhat narrow reading of the term "wrongful use of . . . fear" for extortion claims, the alleged circumstances here meet that reading. *See Sosa*, 437 F.3d at 940. Plaintiffs do not solely allege fear of economic loss, but also allege fear of deportation. With the alleged circumstances surrounding Plaintiffs' recruitment, as immigrant workers who had already incurred approximately $15,000 in debt to work in the United States, this threatened deprivation of income and ability to continue working in the United States was wrongful. And it was this alleged wrongful use of fear that was the "operating or controlling cause compelling" Plaintiffs' continued participation in Defendants' employment scheme. *See California v. Goodman*, 323 P.2d 536, 541 (Cal. Ct. App. 1958).
>
> Based on these allegations, Plaintiffs have plausibly alleged that Defendants wrongfully forced Plaintiffs to fear that they would lose their $5,000 First Recruitment Fee if they did not pay massive additional fees. It is also plausible that after Plaintiffs were in the United States, Defendants wrongfully threatened to deport Plaintiffs if they complained about additional fees and other matters. Plaintiffs have sufficiently alleged the RICO predicate act of extortion against Defendants based on the alleged threats of deportation and severe financial harm.

May 11, 2011 Order Granting in Part and Denying in Part Motion to Dismiss, pp.21-23, Dkt. 114.

Moreover, Plaintiffs have presented evidence of the fees paid and of the threats of deportation. *See, e.g.*, Tanedo Decl. ¶¶ 16-18, Pl. Exh. A, Dkt. 134-1; Cruz Decl. ¶ 19, Pl. Exh. B, Dkt. 134-2. Thus, Plaintiffs have thereby created a genuine issue of material fact as to extortion.

E. Plaintiffs' RICO Claims

Defendants argue that Plaintiffs' RICO claims fail because the alleged RICO predicate acts -- violations of the TVPA, and extortion -- are defective. However, because Plaintiffs' TVPA claims and extortion claims survive, so do Plaintiffs' RICO claims with TVPA violations and extortion as predicate acts.

In their reply, Defendants for the first time argue that RICO cannot be applied extraterritorially, and that, for that reason, the TVPA claims cannot constitute RICO predicates. This argument is unpersuasive for several reasons. First, the alleged extortion occurred within the United States. Consequently, Plaintiffs' RICO claims based on extortion do not require extraterritorial application of RICO. Second, to the extent that the TVPA violations are RICO predicate acts, the alleged TVPA violations occurred domestically and do not require extraterritorial application of the TVPA. Accordingly, making these domestic TVPA violations the predicate acts of a RICO claim is not an extraterritorial application of RICO.

IV. Conclusion

For the foregoing reasons, the Court DENIES, in part, and GRANTS, in part, Defendants' motion for partial summary judgment. Because financial harm was cognizable as serious harm under the TVPA prior to December 23, 2008, Plaintiffs may base their § 1589 forced labor claim on alleged acts that occurred prior to December 23, 2008. To apply the TVPA to Plaintiffs' trafficking and forced labor claims in this case is not to apply the TVPA extraterritorially. Thus, Plaintiffs may base their TVPA claims on Defendants' alleged trafficking of Plaintiffs from the Philippines to labor in the United States. Plaintiffs have created a genuine issue of material fact as to their extortion claims and may bring their RICO claims with the alleged TVPA violations and extortion as predicate acts. The Court GRANTS Defendants' motion with respect to Plaintiffs' claims for violations of § 1592 (document servitude), relating to any conduct that occurred prior to December 23, 2008.

IT IS SO ORDERED.

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