

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CLOSED

CIVIL MINUTES -- GENERAL

Case No. **CV 16-4271-JFW (ASx)**

Date: March 3, 2023

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

**PRESENT:**

**HONORABLE JOHN F. WALTER, UNITED STATES DISTRICT JUDGE**

**Shannon Reilly  
Courtroom Deputy**

**None Present  
Court Reporter**

**ATTORNEYS PRESENT FOR PLAINTIFFS:**  
None

**ATTORNEYS PRESENT FOR DEFENDANTS:**  
None

**PROCEEDINGS (IN CHAMBERS):** **ORDER DENYING PLAINTIFFS’ MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO FRCP 60(b)(6) [filed 1/26/23; Docket No. 245]**

On January 26, 2023, Plaintiffs Keo Ratha, Sem Kosal, Sophea Bu, Yem Ban, Nol Nakry, Phan Sophea, and Sok Sang (collectively, “Plaintiffs”) filed a Motion for Relief from Judgment Pursuant to FRCP 60(b)(6) (“Motion”). On February 6, 2023, Defendant Rubicon Resource, LLC (“Rubicon”) filed its Opposition. On February 13, 2023, Plaintiffs 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 February 27, 2023 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<sup>1</sup>**

Plaintiffs are seven villagers from rural Cambodia who allege they were recruited to work at factories in Thailand to produce seafood for export to the United States. Plaintiffs also allege that they were subjected to debt bondage, forced labor, and other abuses at those factories. Rubicon, the only Defendant that is the subject of this Motion, did not recruit or employ Plaintiffs. Instead, Plaintiffs allege that Rubicon benefitted from Plaintiffs’ labor. Rubicon, a Delaware limited liability company with its principal place of business in Culver City, California, was formed in 1999 as a

<sup>1</sup> The factual and procedural background of this action is well known to the parties and the Court. As a result, the Court will briefly summarize only the factual and procedural history relevant to this Motion.

joint venture to market and sell seafood to customers in the United States.

On June 15, 2016, Plaintiffs filed a Complaint against Defendants Rubicon, Wales & Co. Universe, Ltd. (“Wales”), Phatthana Seafood Co., Ltd. (“Phatthana”), and S.S. Frozen Food Co., Ltd. (“SSF”) (collectively, “Defendants”), alleging claims for: (1) violation of the Trafficking Victims Protection Reauthorization Act (“TVPRA”), 18 U.S.C. § 1595; and (2) violation of the Alien Tort Statute (“ATS”).<sup>2</sup> Plaintiffs alleged they were forced to work for Phatthana or SSF beginning no later than 2012. Rubicon was not alleged to be a “perpetrator,” but a person who “knowingly benefits . . . from participation in a venture which that person knew or should have known has engaged in an act in violation” of the TVPRA.

After extensive discovery, including depositions in Thailand, Cambodia, and the United States, Defendants moved for summary judgment. On December 21, 2017, the Court issued three Orders granting summary judgment to all Defendants. See Docket Nos. 225, 226, and 227. With respect to Rubicon, the Court ruled that: (1) Plaintiffs failed to demonstrate that Rubicon knowingly participated in a human trafficking venture; (2) Plaintiffs failed to demonstrate that Rubicon knew or should have known that human trafficking existed at Phatthana’s Songkhla factory; and (3) there was no evidence that Rubicon benefitted from Phatthana’s alleged human trafficking. On January 4, 2018, a Judgment was entered in favor of Defendants, which Plaintiffs appealed. See Docket Nos. 230 and 231.

On February 25, 2022, the Ninth Circuit affirmed the Court’s Judgment. See Docket No. 240. On May 31, 2022, the Ninth Circuit denied Plaintiffs’ petition for rehearing en banc and issued an amended Opinion. See Docket No. 242; see also *Ratha v. Phatthana Seafood Co., Ltd.*, 35 F.4th 1159 (9th Cir. 2022). On June 8, 2022, the Ninth Circuit’s Mandate issued. Docket No. 243. On October 28, 2022, Plaintiffs filed a petition for writ of certiorari in the Supreme Court. The only issue presented in the petition for writ of certiorari involved personal jurisdiction as to Phatthana and SSF; Plaintiffs did not challenge the Court’s “dismissal” of Plaintiffs’ claims against Rubicon. On December 5, 2022, the Supreme Court denied Plaintiffs’ petition for writ of certiorari.

On January 5, 2023, the Abolish Trafficking Reauthorization Act of 2022 (“ATRA”) was signed, amending the TVPRA’s civil remedy provision, Section 1595, to make the “attempt” to benefit from human trafficking actionable. Specifically, Section 102 of the ATRA provides:

**SEC. 102. TECHNICAL AND CLARIFYING UPDATE TO CIVIL REMEDY.**

Section 1595(a) of title 18, United States Code, is amended by inserting “or attempts or conspires to benefit,” after “whoever knowingly benefits,”.

As a result, Section 1595(a) of the TVPRA now reads:

An individual who is a victim of a violation of this chapter may bring a civil action against the perpetrator (or whoever knowingly benefits or attempts or conspires to

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<sup>2</sup> On November 9, 2016, the Court granted Defendants’ Motion to Dismiss with respect to Plaintiffs’ ATS claim. See Docket No. 56.

benefit, 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.

## II. Legal Standard

Federal Rule of Civil Procedure 60(b) provides for reconsideration of a final judgment or order where one or more of the following is shown: (1) "mistake, inadvertence, surprise or excusable neglect"; (2) "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)"; (3) "fraud . . . , misrepresentation, or misconduct by an opposing party"; (4) "the judgment is void"; (5) "the judgment has been satisfied, released, or discharged"; (6) "any other reason that justifies relief." Fed. R. Civ. P. 60(b).

In exercising its discretion in determining whether Rule 60(b) applies, courts should be mindful that there is a compelling interest in finality of judgments and final judgments should not be disturbed lightly. See *Matton Steamboat Co. v. Murphy*, 319 U.S. 412, 415 (1943) ("The purpose of statutes limiting the period for appeal is to set a definite point of time when litigation shall be at an end, unless within that time the prescribed application has been made; and if it has not, to advise prospective appellees that they are freed of the appellant's demands"); *Paddington Partners v. Bouchard*, 34 F.3d 1132, 1144 (2d Cir. 1994) (Rule 60 "preserves a balance between serving the ends of justice and ensuring that litigation reached an end within a finite period of time"). Thus, "[r]econsideration for any of the reasons set forth in Rule 60(b) is an 'extraordinary remedy that works against the interest of finality and should be applied only in exceptional circumstances.'" *Audionics Sys., Inc. v. AAMP of Fla., Inc.*, 2015 WL 11201243, at \*7 (C.D. Cal. Nov. 4, 2015) (citations omitted). "Motions for relief from judgment pursuant to Rule 60(b) are addressed to the sound discretion of the district court and will not be reversed absent an abuse of discretion." *Casey v. Albertson's Inc.*, 362 F.3d 1254, 1257 (9th Cir. 2004).

## III. Discussion

In their Motion, Plaintiffs move pursuant to Rule 60(b)(6) for relief from the Judgment entered in favor of Rubicon on the grounds that extraordinary circumstances exist. Specifically, Plaintiffs argue that extraordinary circumstances exist because the ATRA signed into law by President Biden on January 5, 2023, retroactively clarifies that 18 U.S.C. § 1595(a) authorizes suit against those who attempt to benefit from participation in a venture that engages in forced labor and that clarification abrogates the Ninth Circuit's opinion affirming summary judgment and, as a result, calls into question this Court's Judgment. In its Opposition, Rubicon argues that there are no extraordinary circumstances that justify vacating the Judgment in favor of Rubicon. Rubicon argues that the Judgment is adequately supported by independent grounds based on a fully developed factual record, unrelated to Plaintiffs' "attempt to benefit" theory. Rubicon also argues that the amendment to 18 U.S.C. § 1595(a) cannot apply to pre-enactment conduct because it substantively changes the law and Congress's intent on retroactivity is not clear. In addition, Rubicon argues that the amendment does not apply because this case was no longer pending at the time of its enactment.

### **A. Legal Standard for “Extraordinary Circumstances” Under Rule 60(b)(6)**

“A movant seeking relief under Rule 60(b)(6) must show “extraordinary circumstances” justifying the reopening of a final judgment.” *Henson v. Fidelity National Financial, Inc.*, 943 F.3d 434, 443–44 (9th Cir. 2019) (quoting *Jones v. Ryan*, 733 F.3d 825, 833 (9th Cir. 2013)). However, a change in law alone is not an extraordinary circumstance. See *Gonzalez v. Crosby*, 545 U.S. 524, 536 (2005) (“It is hardly extraordinary that subsequently, after petitioner’s case was no longer pending, this Court arrived at a different interpretation [of the relevant statute]”); *Bynoe v. Baca*, 966 F.3d 972, 980 (9th Cir. 2020) (“A clear and authoritative change in the law governing the judgment in a petitioner’s case *may* present extraordinary circumstances”) (emphasis added).

For Rule 60(b)(6) motions premised on post-judgment changes in law, the Ninth Circuit analyzes the “extraordinary circumstances” requirement in six non-exhaustive factors in the context of habeas petitions: (1) the nature of the legal change, including whether the change in law resolved an unsettled legal question; (2) whether the movant exercised diligence in pursuing reconsideration of his or her claim; (3) the parties’ reliance interests in the finality of the judgment; (4) the delay between the finality of the judgment and the Rule 60(b)(6) motion; (5) the relationship between the change in law and the challenged judgment; and (6) whether there are concerns of comity that would be disturbed by reopening a case. *Bynoe*, 966 F.3d at 983 (citing *Phelps v. Alamedia*, 569 F.3d 1120, 1134–40 (9th Cir. 2009)). In *Henson*, the Ninth Circuit extended the factors initially considered in *Phelps* and *Bynoe* beyond the habeas context. *Henson v. Fidelity National Financial, Inc.*, 943 F.3d 434 (9th Cir. 2019) (“While we conclude that many of the *Phelps* factors are relevant to the Rule 60(b)(6) analysis in the [non-habeas] context, we reemphasize that courts must consider all of the relevant circumstances surrounding the specific motion before the court in order to ensure that justice be done in light of all the facts”). However, the Ninth Circuit emphasized that these factors were “not intended to be a rigid or exhaustive list,” and the Court’s “ultimate charge in evaluating a Rule 60(b)(6) motion remains to ‘intensively balance’ all the relevant factors, ‘including the competing policies of the finality of judgments and the incessant command of the court’s conscience that justice be done in light of all the facts.’” *Henson*, 943 F.3d at 446 (quoting *Phelps*, 569 F.3d at 1133, 1135).

### **B. The Applicable Factors Weigh Against Granting Plaintiffs’ Motion**

In considering whether there are extraordinary circumstances justifying reopening the Judgment entered in favor of Rubicon based on a change in the law, the Court concludes that the applicable factors weigh heavily against granting Plaintiffs’ Motion for the reasons discussed below.<sup>3</sup>

#### **1. The Nature of the Legal Change, Its Connection to the Challenged Judgment, and the Ninth Circuit’s Treatment of Past Amendments to the TVPRA Weigh Heavily in Favor of Rubicon**

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<sup>3</sup> The sixth factor relating to concerns of comity does not apply to this case. See *Henson*, 943 F.3d at 452 (“[C]onsiderations of comity ‘between independently sovereign state and federal judiciaries’ that we discussed in *Phelps* do not apply here at all, because this case does not involve a federal habeas petition that challenges a state conviction”).

The first and fifth factors relate to the nature of the legal change and its connection to the challenged judgment. In this case, the Court granted summary judgment on Plaintiffs' TVPRA claim to Rubicon on three grounds: (1) there was no evidence demonstrating that Rubicon knowingly participated in a human trafficking venture; (2) there was no evidence that Rubicon knew or should have known about Phatthana's alleged human trafficking; and (3) there was no evidence that Rubicon benefitted from Phatthana's alleged human trafficking. Indeed, the Court specifically concluded that "Plaintiffs have failed to demonstrate that Rubicon or Wales knew or should have known that human trafficking existed at Phatthana's Songkhla factory." Order Granting Defendants Rubicon Resources, LLC and Wales & Co. Universe, Ltd.'s Motion for Summary Judgment ("Rubicon Summary Judgment Order") (filed December 21, 2017; Docket No. 226), p. 7. Although the change to Section 1595(a) might potentially apply to the third ground of the Court's decision granting summary judgment, the Court agrees with Rubicon that the Court's decision is fully supported by the first and second grounds and the change to Section 1595(a) does not apply to or in any way affect the first and second grounds of the Court's decision. As a result, the Court concludes that because the change to Section 1595(a) would not alter the Court's decision in favor of Rubicon, the first and fifth factors weigh heavily against granting relief pursuant to Rule 60(b)(6). See *Jones v. Ryan*, 733 F.3d 825, 840 (9th Cir. 2013) (holding that doubt about whether a change in law would impact the original opinion weighs "heavily" against Rule 60(b) relief); see also *Bynoe*, 966 F.3d at 986 ("Where a court rested its judgment on a basis only marginally altered by later changes in relevant law, reopening a judgment is disfavored"); *Beaver v. Tarsadia Hotels*, 29 F.Supp. 3d 1294, 1301-02 (S.D. Cal. 2014) ("A motion for reconsideration cannot be used to ask the Court to rethink what the Court has already thought through merely because a party disagrees with the Court's decision") (internal citations omitted).

In addition, although Plaintiffs argue that granting their Motion would allow the Court to reconsider all three grounds of the Court's decision granting summary judgment to Rubicon, the Court finds those arguments unpersuasive. Plaintiffs suggest that if their Motion is granted, Rubicon would be "entitled to move again for summary judgment," which would "allow the Court to reassess these issues in light of the ATRA, any guidance that can be gleaned from the Ninth Circuit's opinion, and other relevant legal updates." Motion, 16: 12-15. However, as Rubicon argues, there is nothing to "reassess." The only issue affected by the change to Section 1595(a) is Plaintiffs' "attempt to benefit" argument and the Ninth Circuit did not provide any "guidance" on the other two grounds of the Court's decision. Moreover, whether there may have been "other relevant legal updates" in the over five years since the Judgment was entered is not a basis to relitigate, and, more importantly, Plaintiffs have failed to demonstrate that there are any other potential "relevant legal updates" that would qualify as "extraordinary circumstances" for purposes of Rule 60(b)(6). Although Plaintiffs speculate that the Ninth Circuit's decision affirming the Court's Judgment was solely based on the straightforward ground of statutory interpretation as to one of three independent elements, rather than an assessment of the voluminous factual record, "signals at least some doubt about whether this Court ruled correctly" on the "knew or should have known" element as to Rubicon, such speculation does not support vacating the Judgment pursuant to Rule 60(b)(6).

Moreover, Plaintiffs' Motion is based on their assumption that the changes to Section 1595(a) apply retroactively because the changes represent only a clarifying amendment rather

than a substantive change of law.<sup>4</sup> See, e.g., *United States v. Donaghe*, 50 F.3d 608, 612 (9<sup>th</sup> Cir. 1994) (“Normally, when an amendment is deemed clarifying rather than substantive, it is applied retroactively”). Despite Plaintiffs’ argument to the contrary, Plaintiffs’ assumption that the change to Section 1595(a) is merely a clarification is seemingly based on the title of Section 102 of the AFTA – “**TECHNICAL AND CLARIFYING UPDATE TO CIVIL REMEDY.**” However, the Ninth Circuit has explained that the title of a statutory amendment is not sufficient to make it merely clarifying, rather than a substantive change of law. See, e.g., *Beaver v. Tarsadia Hotels*, 816 F.3d 1170, 1187 (9<sup>th</sup> Cir. 2016) (holding that a bill can be “silen[t] on the issue of retroactivity” even with the word “clarify” in the title). In this case, the ATRA states neither an effective date nor that it applies retroactively to pending cases. In addition, the Ninth Circuit previously ruled that when Section 1595 was enacted in 2003 to provide a civil remedy, it could not be applied retroactively because “[i]t changed substantive law and attached new legal burdens to violations of the TVPA.” *Ditullio v. Boehm*, 662 F.3d 1091, 1100 (9<sup>th</sup> Cir. 2011). Furthermore, several district courts have held that when Section 1595 was amended in 2008 to add the beneficiary liability provision, it could not be applied retroactively because it created new legal consequences. See, e.g., *Owino v. CoreCivic, Inc.*, 2018 WL 2193644, at \*38-\*39 (S.D. Cal. May 14, 2018) (holding that because the “‘financial benefit’ element cause of action did not exist” prior to the 2008 amendments, the 2008 amendments “create new legal consequences” and therefore “do not apply retroactively barring Congress’s clear intent to do so”); *St. Louis v. Perlitz*, 2016 WL 1408076, at \*3 (D. Conn. Apr. 8, 2016) (“Because the amended version of §1595 has the effect of increasing defendants’ liability for past conduct, it cannot be applied retroactively in the absence of a clear statement from Congress, which the statute lacks”); see also *T.P. v. Wyndham Hotels & Resorts, Inc.*, 2022 WL 17363234, at \*4-\*5 (S.D. Ohio Dec. 1, 2022); *H.G. v. Inter-Continental Hotels Corp.*, 489 F. Supp. 3d 697, 710 (E.D. Mich. 2020); *Griffin v. Alamo*, 2016 WL 7391046, at \*4 (W.D. Ark. Dec. 21, 2016). Similarly, because the most recent amendment to Section 1595 expands civil liability to attempts to benefit and appears to be the first federal statute imposing civil liability for such attempts, the Court concludes that this latest amendment to Section 1595 represents a change in substantive law and attaches new legal burdens to violations of the TVPRA. As a result, the Court concludes that the amendment cannot be applied retroactively in the absence of a clear statement from Congress, which it lacks. *Landgraf v. USI Film Prods.*, 511 U.S. 244, 267 (1994) (holding that because Congress “has the authority to enact retroactive statutes, courts ordinarily do not apply statutes retroactively unless a statute evidences congressional intent to apply retroactively”).

After carefully considering the nature of the legal change, its connection to the challenged judgment, how similar changes to the TVRPA (and TVPA) have been treated by the Ninth Circuit and other courts in the past, and the general rules regarding the retroactive application of both substantive and clarifying changes to statutory law, the Court concludes that these factors weigh

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<sup>4</sup> Even if the amendment to Section 1595 is merely a clarification and not a change in substantive law, the amended Section 1595 would only apply to cases “pending as of the date of its enactment.” *AKCO Music, Inc. v. LaVere*, 217 F.3d 684, 689 (9<sup>th</sup> Cir. 2000). It is undisputed that this case was no longer pending when the ATRA was signed into law. See *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211 (1995) (“Having achieved finality, however, a judicial decision becomes the last word of the judicial department with regard to a particular case or controversy, and Congress may not declare by retroactive legislation that the law applicable to that very case was something other than what the courts said it was”).

heavily in favor of Rubicon.

**2. Although Some Other Factors May Weigh In Favor of Plaintiffs, They Are Not Sufficient to Tip the Balance of the Factors in Favor of Granting Plaintiffs' Motion.**

The third factor relates to the parties' reliance interest in the finality of the judgment. In this case, Plaintiffs fully exercised their rights to appeal the Court's Judgment by not only appealing to the Ninth Circuit, but by also filing a petition for rehearing en banc after the Ninth Circuit affirmed the Court's Order. See, e.g., *Calderon v. Thompson*, 523 U.S. 538, 557 (1998) ("The prisoner has already had extensive review of his claims in federal and state courts . . . the State's interests in actual finality outweigh the prisoner's interest in obtaining yet another opportunity for review"); *Federal Trade Commission v. Ivy Capital, Inc.*, 340 F.R.D. 602 (D. Nev. 2022) ("The parties are entitled to rely on court judgments and move on with their affairs. Reopening this case would be unfair to the FTC and contrary to the goal of finality of judgments."). The Judgment in this case did not cause any reliance interest such as when "a judgment conveys land from one party to another and the prevailing party enters upon the land and installs pipes and appurtenances." *Henson*, 943 F.3d at 450. As a result, the Court concludes that the third factor is, at best, neutral. The Court concludes that the second factor – whether Plaintiffs exercised diligence in pursuing reconsideration of their claim and the fourth factor – the delay between the finality of the judgment and the Rule 60(b)(6) motion – weigh in favor of Plaintiffs.

Accordingly, after careful consideration of the relevant factors and the circumstances of this case, the Court concludes that the required balancing of all relevant factors mandates the denial of Rule 60(b)(6) relief. Granting Plaintiffs' Motion would not promote justice, especially in light of the fact that the Court relied on multiple grounds for granting summary judgment in favor of Rubicon, and only one of those grounds would be potentially affected by the amendment to Section 1595.

**IV. Conclusion**

For all the foregoing reasons, Plaintiffs' Motion is **DENIED**.

IT IS SO ORDERED.