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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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THOMAS COOK, JASON K. ARNOLD,
JACK L. DURHAM, JOHN M.
HUNTER, III, LARZ A. STEWART,
and ELIZABETH H. ZEIGER

NO. CIV. 2:09-CV-03605 FCD/DAD

Plaintiffs,

v.

MEMORANDUM AND ORDER

CHAMPION SHIPPING AS and
CHAMPION TANKERS AS,

Defendants.

_____/

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Plaintiffs Thomas Cook, Jason K. Arnold, Jack L. Durham,
John M. Hunter, III, Larz A. Stewart, and Elizabeth H. Zeiger
("plaintiffs") bring this action in the United States District
Court for the Eastern District of California against defendants
Champion Shipping, AS, and Champion Tankers, AS, (collectively
"defendants") seeking damages for injuries allegedly resulting
from a collision in international waters off the coast of Taiwan
between defendants' vessel M/V Champion Express ("Champion

1 Express"), a shipping tanker registered in Liberia, and
2 plaintiffs' vessel, the S/V Princess Taiping ("the Taiping"), a
3 small, replica 15th century Chinese sailing vessel registered in
4 Hong Kong and owned by Tmax Strategy & Marketing Limited. This
5 matter is before the court on defendant Champion Shipping AS's
6 motion to dismiss on the basis of *forum non conveniens*.

7 Plaintiffs oppose the motion. For the reasons set forth below,¹
8 defendant's motion is GRANTED.²

9 **BACKGROUND**

10 This action arises out of an alleged collision between the
11 MV Champion Express and the Taiping that occurred in
12 international waters off the coast of Taiwan on April 26, 2009
13 ("the Collision"). The Champion Express is a large, 609-foot
14 chemical tanker owned by Champion Shipping and operated by
15 Champion Tankers. The Taiping was a 53-foot wooden replica of a
16 15th century Chinese vessel commissioned by Taiwanese national
17 Liu Ningsheng. The Taiping was nearing the completion of an

18
19 ¹ Because oral argument will not be of material
20 assistance, the court orders the matter submitted on the briefs.
E.D. Cal. L.R. 230(g).

21 ² Plaintiffs also move to strike declarations submitted
22 in support of defendant's reply memorandum, arguing that
23 defendant's reply should be limited to the facts raised in the
24 moving and opposition papers. The Ninth Circuit has held "where
25 new evidence is presented in a reply . . . , the district court
26 should not consider the new evidence without giving the non-
27 movant an opportunity to respond." Provenz v. Miller, 102 F.3d
28 1478, 1483 (9th Cir. 1996) (internal quotations omitted).
However, the court finds the declarations respond to discrete
issues raised by plaintiffs' in their opposition brief, and do
not raise new facts or arguments. Moreover, given the
stipulations by the parties to continue the hearing almost two
months later than the initial hearing date, plaintiffs have had
ample opportunity to respond to the declarations, but have failed
to do so. Accordingly, plaintiffs' motion to strike is DENIED.

1 extended voyage when the alleged collision occurred off the coast
2 of Taiwan, destroying the vessel. (Def.'s Mot. to Dismiss,
3 ("MTD"), filed Apr. 12, 2010, at 2.) Following the collision,
4 the Taiping's crew members were rescued by the Taiwanese Air
5 Force and Coast Guard, who transported them to Taiwan and issued
6 a report on the incident. (Compl. ¶ 13; Decl. of George David
7 Lamplough ("Lamplough Decl."), filed Apr. 12, 2010, ¶ 3.4.)

8 On August 28, 2009, Champion Shipping issued a Writ of
9 Summons to initiate a limitation proceeding before the Admiralty
10 Court of the Hong Kong Special Administrative Region Court of
11 First Instance (the "Hong King Admiralty Court"). (MTD at 4;
12 Lamplough Decl. ¶ 3.7.) By initiating the proceeding, the owners
13 of Champion Express voluntarily submitted to that court's
14 jurisdiction and consented to service of process in Hong Kong.
15 (Lamplough Decl. ¶ 3.7.) Champion subsequently sent a copy of
16 the Summons to plaintiffs, as well as Tmax, Taiping Master Liu
17 Ning Sheng, and passenger Chao Hsiu Ying. Tmax, Sheng, and Ying,
18 along with Taiping First Mate Yuquan Tang, filed acknowledgments
19 of service in Hong Kong. (Id. at ¶ 3.9.) On September 24, 2009,
20 Champion Shipping issued a Summons for a Limitation Decree,
21 notice of which was sent to plaintiffs. (Id. at ¶ 3.10.) On
22 November 10, 2009, the Hong Kong court issued a Limitation
23 Decree, copies of which were sent to plaintiffs' attorneys in
24 California. (Id. at ¶ 3.14.) Champion Shipping stipulated to an
25 extension of time for plaintiffs to file claims in the Hong Kong
26 action up to and including August 10, 2010 (Id. at 3.18), and
27 have stipulated to further extension if necessary. (Id. at
28 4.35.)

1 Plaintiffs filed the present action on December 30, 2009,
2 seeking to recover damages for physical and emotional injuries
3 resulting from the collision.³ This is one of two related
4 actions arising out of the collision, both of which were brought
5 by Taiping crew members. Two of the 6 plaintiffs in this action
6 are California citizens. The remaining four plaintiffs are
7 citizens of Hawaii. Both plaintiffs in the related action,
8 *Kinjo, et al. v. Champion Shipping AS, et al.*, No. 2:09-CV-03603-
9 FCD DAD ("the Japanese action"), are Japanese citizens. The
10 Champion Express S/V was crewed by 25 individuals at the time of
11 the collision. (MTD at 3.) 24 crew members were citizens of
12 India, and one was a citizen of Greece. (Id.) Plaintiffs
13 obtained a Letter of Undertaking for this and the Japanese action
14 in the amount of \$10.5 million. (Decl. of John M. Toriello
15 ("Toriello Decl."), filed Apr. 12, 2010, ¶ 4.) Champion agrees
16 to amend the Letter of Undertaking in order to secure any
17 judgment rendered by the Hong Kong Admiralty Court for both these
18 plaintiffs and the plaintiffs in the Japanese action in the event
19 the present action is dismissed by this court for *forum non*
20 *conveniens*. (Id.)

21 ANALYSIS

22 Emphasizing the foreign jurisdiction agreements already
23 existing between the owners of the Taiping and Champion Shipping
24 as well as the fact that only two of the litigants in this action
25 are residents of California, defendant moves to dismiss this
26

27 ³ Plaintiffs have secured *quasi in rem* jurisdiction over
28 Champion Shipping AS, and are presently attempting to secure
personal jurisdiction over Champion Tankers AS.

1 action on the basis of *forum non conveniens*, arguing, "[i]t is
2 clear that the central focus for this claim and all other claims
3 related to [the collision] is Asia and the most convenient
4 location to resolve these claims is in Hong Kong." (MTD at 6.)
5 Plaintiffs respond that defendant cannot make a showing
6 sufficient to overcome the presumption that their chosen forum is
7 correct and should be respected.

8 A court has "the discretion to decline jurisdiction in a
9 case where litigation in a foreign forum would be more convenient
10 for the parties." Lueck v. Sundstrand Corp., 236 F.3d 1137, 1142
11 (9th Cir. 2001) (citing) Gulf Oil Corp. v. Gilbert, 330 U.S. 501,
12 504 (1947). A party moving for dismissal on *forum non conveniens*
13 grounds has the burden of showing: (1) whether an adequate
14 alternative forum exists; and (2) whether the balance of private
15 and public interest factors favors dismissal. Ceramic Corp. of
16 America v. Inka Maritime Corp., 1 F.3d 947, 949 (9th Cir. 1993).
17 There is a strong presumption to honor a plaintiff's choice of
18 forum, but a court may balance that presumption against the
19 "private interests" and "public interests" of litigating in a
20 foreign country. Lueck, 236 F.3d at 1145. The Ninth Circuit
21 considers the following "private interests" in its analysis:

- 22 (1) the residence of the parties and the witnesses;
- 23 (2) the forum's convenience to the litigants;
- 24 (3) access to physical evidence and other sources of
proof;
- 25 (4) whether unwilling witnesses can be compelled to
testify;
- 26 (5) the cost of bringing witnesses to trial;
- 27 (6) the enforceability of the judgment;⁴ and

28 ⁴ Plaintiffs and defendant agree that this is not a
(continued...)

1 (7) all other practical problems that make trial of a
2 case easy, expeditious, and inexpensive.

3 Id. (citing Gulf Oil, 330 U.S. at 508). In addition, the Ninth
4 Circuit considers the following "public interests":

- 5 (1) local interest of lawsuit;
6 (2) the court's familiarity with governing law;
7 (3) burden on local courts and juries;
8 (4) congestion in the court; and
9 (5) the costs of resolving a dispute unrelated to this
10 forum.

11 Id. at 1147 (citing Piper Aircraft Co. v. Reyno, 454 U.S. 235,
12 259-61 (1981)). A court should consider the "private interest"
13 and "public interest" factors applicable to a case before it and
14 give appropriate weight to each factor. Id. at 1145 (citing Gulf
15 Oil, 330 U.S. at 508 (citations omitted)). A court "should
16 consider [these factors] together in arriving at a balanced
17 conclusion." Id.

18 **I. Adequacy Of Alternative Forum**

19 The requirement of an alternative forum is generally
20 satisfied when the defendant is amenable to process in the other
21 jurisdiction. See Lockman Found. v. Evangelical Alliance
22 Mission, 930 F.2d 764, 768 (9th Cir. 1991). This requirement may
23 not be satisfied, however, in "rare circumstances ... where the
24 remedy offered by the other forum is clearly unsatisfactory."
25 Piper, 454 U.S. at 256. However, "[a] foreign forum must only
26 provide the plaintiff with 'some' remedy in order for the
27 alternative forum to be adequate." Loya v. Starwood Hotels &

28 ⁴(...continued)
significant factor.

1 Resorts Worldwide, Inc., 583 F.3d 656, 666 (9th Cir. 2009)
2 (citing Lueck, 236 F.3d at 1143-44 (rejecting the plaintiffs'
3 argument that New Zealand offered no remedy for their losses
4 because it has legislated tort law out of existence, and noting
5 that the district court was not required to ask whether
6 plaintiffs could bring this lawsuit there but rather, whether New
7 Zealand offered "a" remedy)). A forum is not inadequate simply
8 because its laws offer a plaintiff lesser remedy than its
9 American counterpart. Lueck, 236 F.3d at 1143 (citing Piper, 454
10 U.S. at 240); Loya, 583 F.3d at 666 ("[T]hat the law, or the
11 remedy afforded, is less favorable in the foreign forum is not
12 determinative.").

13 In this case, both Champion Shipping AS, and Champion
14 Tankers AS, through a signed declaration of its Managing Director
15 Arne Viste, have expressly agreed to submit to the jurisdiction
16 of the Hong Kong Admiralty court. (Supplemental Decl. of Arne
17 Viste ("Viste Supp. Decl."), filed May 28, 2010, ¶ 5.) Thus,
18 Hong Kong is available for adjudication of this dispute.

19 Further, defendant presents evidence that the potential
20 relief accorded in the Hong Kong Court is not "clearly
21 unsatisfactory." Specifically, Hong Kong Basic Law, through The
22 Merchant Shipping Ordinance (Cap 434), has incorporated The
23 Convention on Limitation of Liability for Maritime Claims, 1976
24 ("the 1976 Convention"). Basic Law (Cap. 434), s12. The 1976
25 Convention, while limiting liability for shipowners for damage
26 caused by or occurring on or in direct connection to their ship,
27 allows for plaintiffs to recover when "it is proved that the
28 [plaintiff's] loss resulted from [the ship owner's] personal act

1 or omission, committed with the intent to cause such loss, or
2 recklessly and with knowledge that such loss would probably
3 result." (Laplough Decl. ¶ 4.3.2 (citing Merchant Shipping
4 (Limitation of Shipowners Liability) Ordinance (Cap 434), s4,
5 Sch2).) Pursuant to the 1976 Convention, once plaintiffs have
6 filed and proved their claims, the Hong Kong court will
7 distribute among them the amount of their proved claims, drawing
8 from the approximately \$12.5 million Limitation Decree filed in
9 that court by defendants. (Id. at 4.3.6 (citing Merchant
10 Shipping (Limitation of Shipowners Liability) Ordinance (Cap
11 434), s12, Sch 2).) Furthermore, with respect to their personal
12 injury claims, plaintiffs will be required to prove largely the
13 same elements and meet the same burden of proof in Hong Kong
14 Admiralty court as they would in an American court. See Joseph
15 Constantine Steamship Line Ltd v. Imperial Smelting Corporation
16 Ltd., (1942) AC 154 per Lord Maugham (establishing as the burden
17 of proof in Hong Kong personal injury claims: "he who asserts
18 must prove, not he who denies"). Accordingly, defendant has
19 presented sufficient evidence that the Hong Kong Admiralty Court
20 provides an adequate remedy.

21 Plaintiffs assert that defendant's evidence is biased and
22 thus, lacks credibility. Specifically, plaintiffs contend that
23 George D. Lamplough ("Laplough") is not a "disinterested expert"
24 because he represents Champion Shipping in the limitation
25 proceeding. However, the court's review of the bases for
26 Lamplough's conclusions as well as a review of the underlying law
27 support consideration of this evidence. See Fed. R. Civ. P. 44.1
28 ("In determining foreign law, the court may consider any relevant

1 material or source, including testimony, whether or not submitted
2 by a party or admissible under the Federal Rules of Evidence.”).
3 Moreover, defendant’s contentions are also supported by the
4 declaration of Clifford Lonsdale Smith (“Smith”), a barrister
5 practicing in Hong Kong, enlisted to provide his “independent
6 opinion” regarding Hong Kong law and procedure. (Supplemental
7 Decl. of Clifford Lonsdale Smith (“Smith Decl.”), filed May 28,
8 2010, ¶¶ 3-4.) Smith has had no personal connection with the
9 admiralty proceeding or this case. (Id. ¶ 4.) However, he
10 declares that he is “in total agreement with the content of, and
11 the views expressed in” the relevant portions of Lamplough’s
12 declaration. (Id. ¶ 6.) Finally, plaintiffs have proffered no
13 evidence or argument to rebut defendant’s demonstration that Hong
14 Kong would offer an adequate forum for relief.

15 Accordingly, the court concludes that defendant has met its
16 burden in demonstrating that there is an adequate alternative
17 forum.

18 **II. The Balance Of Convenience**

19 Given the existence of an adequate alternative forum, the
20 court must balance private and public interest factors to
21 determine whether to dismiss on grounds of *forum non conveniens*.
22 Lockman, 930 F.2d at 769. A court “should consider [these
23 factors] together in arriving at a balanced conclusion.” Lueck,
24 236 F.3d at 1145.

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1 **A. Private Interest Factors**

2 **1. The residence of the parties and the witnesses,**
3 **the forum's convenience to the litigants, and**
4 **access to evidence**

5 In assessing whether the weight to be accorded the residence
6 of the parties and witnesses, the court must look at "the
7 materiality and importance of the anticipated [evidence and]
8 witnesses' testimony and then determine their accessibility and
9 convenience to the forum." Gates Learjet Corp. v. Jensen, 743
10 F.2d 1325, 1335-36 (9th Cir. 1984). While a citizen does not
11 have an absolute right to sue in a United States court, the
12 Supreme Court has observed "that a plaintiff's choice of forum is
13 entitled to greater deference when the plaintiff has chosen the
14 home forum." Id. (citing Mizokami Brothers of Arizona, Inc. v.
15 Baychem Corp., 556 F.2d 975, 977 (9th Cir. 1977) (per curiam),
16 cert. denied, 434 U.S. 1035, 54 L. Ed. 2d 783, 98 S. Ct. 770
17 (1978); Piper Aircraft Co. v. Reyno, 454 U.S. at 255). Courts
18 "afford greater deference to a plaintiff's choice of home forum
19 because it is reasonable and convenient"; "however, the deference
20 due is 'far from absolute.'" Loya, 583 F.3d at 665 (quoting
21 Lockman Found. v. Evangelical Alliance Mission, 930 F.2d 764, 767
22 (9th Cir. 1991)). Indeed, "[t]he presence of American plaintiffs
23 . . . is not in and of itself sufficient to bar a district court
24 from dismissing a case on the ground of *forum non conveniens*."
25 Cheng v. Boeing Co., 708 F.2d 1406, 1411 (9th Cir. 1983).

26 While giving weight to the domicile of the California
27 plaintiffs and the United States citizenship of all plaintiffs,
28 the court nevertheless concludes that the residence of the
parties and witnesses weighs in favor of dismissal. Two of the

1 plaintiffs in this case reside in California. The remaining four
2 plaintiffs reside in Hawaii. Champion Shipping identifies 37
3 potential "material witnesses," 30 of whom are residents of an
4 Asian country. (Def.'s Reply Mem. ("Reply"), filed May 8, 2010,
5 at 9.) These witnesses include the owner, master, and first mate
6 of the Taiping, who are residents of Hong Kong, Taiwan, and the
7 People's Republic of China, respectively. (Id.) These witnesses
8 are likely to have relevant information regarding the "design,
9 construction, equipment, and seaworthiness of the Taiping." (MTD
10 at 12.)

11 The material witnesses residing in Asian countries greatly
12 outnumber those in the United States. Even assuming the truth of
13 plaintiffs' contention that few of these potential witnesses are
14 residents of Hong Kong, these witnesses are concentrated in areas
15 closer to Hong Kong than Sacramento, California. Moreover, the
16 testimony of these witnesses is likely to be material to the
17 resolution of this matter. The owner, master, and first mate of
18 the Taiping have already submitted to the exclusive jurisdiction
19 of the Hong Kong court. The Indian crew members who were aboard
20 the Champion Express at the time of the accident live in India.
21 (Decl. of Arne Viste ("Viste Decl."), filed Apr. 12, 2010, ¶ 7.)
22 The accident was investigated by Taiwanese officials, and
23 plaintiffs were treated by Taiwanese physicians after the
24 collision. (Lampough Decl. ¶ 3.4.) Finally, a joint survey of
25 the Champion Express was conducted in Shanghai. (Id. ¶ 3.6.) As
26 such, relevant witnesses that would have information relating to
27 the accident itself, treatment of plaintiffs, and near-
28 contemporaneous and subsequent investigations of the Champion

1 Express are located in Southeast Asia. See Loya, 583 F.3d at
2 665-66 (holding that dismissal on *forum non conveniens* grounds
3 was warranted where the conduct giving rise to litigation was
4 “arranged, documents, outfitted, undertaken, and investigated” in
5 Mexico).

6 Moreover, most of the relevant physical evidence, including
7 investigative documents and Taiwan Coast Guard reports, is in
8 Asia. Further, relevant documentary evidence about the design,
9 construction, equipment, and seaworthiness of the Taiping will be
10 located in either Hong Kong, where it was registered, or the
11 People’s Republic of China, where it was built. (Lampough Decl.
12 ¶ 3.3.) Taiwan also maintains a vessel tracking system that
13 monitors the movement of vessels along their coastline based on
14 information received from AIS transponders on vessels. (Id. ¶
15 3.4.) Neither plaintiffs nor defendant assert that they have
16 control over this evidence such that it could be brought to court
17 no matter the forum. See Lueck, 236 F.3d at 1146 (holding that
18 the foreign location of documentary evidence weighed in favor of
19 dismissal where it was not in plaintiff’s control or under the
20 control of a foreign government); (see also Lampough Decl. ¶
21 4.7.7. (setting forth the procedures for the High Court to issue
22 requests to all foreign countries and other jurisdictions within
23 the People’s Republic of China)). As such, the location of such
24 evidence weighs in favor of dismissal.

25 Plaintiffs argue that they are individuals of modest means
26 and thus, the balance of inconveniences weighs in favor of this
27 court retaining jurisdiction. However, plaintiffs’ objection to
28 litigation in a foreign forum is substantially diminished by

1 their prior willingness to embark on a trans-Pacific voyage
2 aboard the Taiping, a Hong Kong flagged vessel, which was
3 scheduled to end its journey in Honk Kong. (Pls.' Opp.'n, filed
4 May 19, 2010, at 2.) Further, defendant presents evidence that
5 an action in the Hong Kong Admiralty Court will require little
6 presence by plaintiffs in Hong Kong. Specifically, plaintiffs
7 participate in proceeding through their solicitors and initially
8 give evidence by written statement. Moreover, they are not
9 required to give depositions at an interlocutory stage. (Smith
10 Decl. ¶¶ 23-25.) Finally, defendant has agreed to assist in
11 defraying reasonable transportation and lodging costs if
12 plaintiffs are required to appear. (Suppl Decl. of John M.
13 Toriello ("Toriello Supp. Decl."), filed May 28, 2010, ¶ 4.)

14 Accordingly, as a majority of potentially relevant witnesses
15 reside in Asian countries, physical and documentary evidence is
16 located in Southeast Asia and Hong Kong, and under the
17 circumstances of this case, this forum is not of particular
18 convenience to many of the litigants, including plaintiffs, these
19 factors weighs in favor of dismissal.

20 **2. Whether unwilling witnesses can be compelled to**
21 **testify and the cost of bringing witnesses to**
22 **trial**

23 Dismissal on the grounds of *forum non conveniens* may be
24 appropriate when the court finds "critical witnesses" to the
25 litigation are beyond its jurisdictional reach. In re Air Crash
26 over the Taiwan Strait on May 25, 2002, 331 F. Supp. 2d 1176,
27 1200 (C.D. Cal. 2004). A defendant must delineate how witnesses
28 not subject to compulsory process are critical to the actions,
though it is not required "to identify each potentially critical

1 witness, nor to submit affidavits that provide significant
2 evidentiary detail." Id. (citing Piper, 454 U.S. at 258.)
3 Further, where all witnesses to liability are located in a
4 foreign forum and where a court would be aided by familiarity
5 with the local landscape and easy access to the site of an
6 accident, it may be "unfair" to make foreign defendants proceed
7 to trial in a United States forum. Piper, 454 U.S. at 1199.

8 In this case, defendant has identified a number of critical
9 witnesses who cannot be compelled to provide testimony in this
10 forum, including the owners of the Taiping, crew members and
11 passengers from the Taiping, persons involved in the design and
12 construction of the Taiping, crew members of the Champion
13 Express, and the surveyors retained by the owners of both vessels
14 to conduct the post incident surveys.⁵ Moreover, as set forth
15 above, the majority of witnesses to the accident, rescue, and
16 subsequent investigation are located in Hong Kong or Southeast
17 Asia. As such, the cost of bringing witnesses to trial would be
18 substantially less if the claims were litigated in Hong Kong.

19 Accordingly, these private factors also weigh in favor of
20 dismissal on the basis of *forum non conveniens*.

21 **3. Other practical problems that make trial of a case**
22 **easy, expeditious, and inexpensive**

23 Finally, the court notes that defendant has made a
24 compelling case that Hong Kong is the only forum where all claims

25 ⁵ Defendant also contends that Tmax Strategy & Marketing
26 Ltd., the corporate owner of the Taiping, is a necessary party to
27 this action and is a Hong Kong corporation not subject to the
28 jurisdiction of this court. Even if Tmax Strategy & Marketing
Ltd. is merely a joint tortfeasor, as suggested by plaintiffs,
this fact still weighs in favor of dismissal.

1 may be resolved in a single proceeding. Collision Jurisdiction
2 Agreements have been executed with the owners of the Taiping, the
3 Master Liu Ning Sheng, the First Mate Yuquan Tang, and additional
4 passenger Chao Hisu-Ying. (Lampaugh Decl. ¶ 3.20.) The
5 Limitation Proceeding has already been initiated in Hong Kong,
6 and defendant has already stipulated to an extension of time for
7 plaintiffs to file claims in this action. (Id. ¶ 3.18.)
8 Further, defendant represents that if plaintiffs were to sue
9 Champion Tankers AS in Hong Kong, it would be open to accept
10 service or proceedings and submit to jurisdiction. (Smith Decl.
11 ¶ 26.)

12 Plaintiffs argue "no forum exists in which all the claims
13 that arose from our collision can be resolved in a single action"
14 because they refuse to submit to the jurisdiction of the Hong
15 Kong Admiralty Court. (Opp.'n at 15.) However, this assertion
16 inappropriately equates plaintiffs' unwillingness to try their
17 case in Hong Kong to the inability of that forum to host the
18 entirety of this litigation with all parties present.
19 Plaintiffs' *can* resolve their claims in a single action in Hong
20 Kong; they simply refuse to submit to jurisdiction.

21 Because Hong Kong offers a forum in which all claims
22 involving all parties could be tried in one action, the court
23 concludes that this factor also weighs in favor of dismissal.

24 **B. Public Interest Factors**

25 Similar to the private interest factors, the court considers
26 any or all of the public interest factors that are relevant to
27 the dispute and gives appropriate weight to each when arriving at
28 a balanced conclusion. Id. at 1145-46 (citing Piper Aircraft,

1 454 U.S. at 255). Of the public interest factors listed above,
2 defendant emphasizes California's minimal connection to the
3 events giving rise to this action, the administrative
4 difficulties and jury imposition that this case represents, and
5 the complex choice of law question facing this court should
6 jurisdiction over this action be retained. Defendant contends
7 that Hong Kong's interest in this litigation is stronger than
8 that of California, and that the cost to a California court in
9 hearing this matter will be far greater than the cost to the Hong
10 Kong Admiralty Court.

11 Given the strained judicial and administrative resources in
12 the Eastern District, California's minimal connection to this
13 litigation, and the complex choice of law issues represented by
14 this case, the court finds the public interest factors weigh in
15 favor of dismissal. See Backcountry Against Dumps v. Abbott, No.
16 CIV S-10-394, 2010 WL 2349194 (E.D. Cal. June 8, 2010) (noting
17 that the Eastern District of California has only seven active
18 judges who maintain a caseload of nearly 1100 cases per judge).
19 The jury in this case will be required to hear testimony from
20 witnesses regarding an alleged collision that took place between
21 two differently flagged vessels in international waters off the
22 coast of Tawian. Despite the fact that two of the parties to
23 this litigation are residents of this state, plaintiffs have
24 failed to set forth any compelling argument or legal support that
25 this community has a generalized interest in a maritime dispute
26 involving multinational parties in which two California residents
27 voluntarily undertook to join the crew of a Hong Kong vessel
28 undertaking a trans-Pacific voyage. In addition, the ultimate

1 questions to be resolved in this action turn on events that
2 occurred in international waters off the coast of Hong Kong.
3 While California has an interest in providing a forum to its
4 residents, that interest is weakened with respect to its
5 residents who purposefully and willingly undertake to avail
6 themselves to the jurisdiction and judicial processes of foreign
7 countries.

8 Moreover, this action is likely to represent a complex
9 choice of laws analysis that appears to rely heavily on the
10 outcome of factual determinations regarding whether there was a
11 collision or merely a close passage. (See Reply at 2-4.) Given
12 California's minimal, if not negligible, interest in providing a
13 forum for this action, this complex analysis is not a task that
14 the court feels compelled to undertake given the circumstances of
15 this case. See MAN Ferrostaal, Inc. v. M/V Vertigo, 447 F. Supp.
16 2d 316, 323 (S.D.N.Y. 2006) (identifying the different approaches
17 courts take to determine what law applies in vessel collision
18 cases). As explained by the Supreme Court in Piper:

19 The doctrine of *forum non conveniens* . . . is
20 designed in part to help courts avoid conducting
21 complex exercises in comparative law . . . [T]he
22 public interest factors point towards dismissal
23 where the court would be required to "untangle
24 problems in conflict of law, and in law foreign to
25 itself.

23 454 U.S. at 251 (quoting Gulf Oil Corp. v. Gilbert, 330 U.S. at
24 509). Plaintiffs assert that because this litigation involves a
25 third party claim against defendants for a collision that
26 occurred in international waters, general maritime law should
27 apply. (Opp.'n at 17 (citing Alkmeon Naviera, S.A. v. M/V Marina
28 L, 633 F.2d 789, 793 (9th Cir. 1980).) Defendant asserts that

1 whether there was a collision or only a close passage is a
2 contested fact that substantially affects the choice of law.
3 Without reaching the merits of this argument, it is the court's
4 opinion that even if general maritime law were to govern this
5 action, thereby rendering the choice of law question neutral, the
6 weight of public interest factors still would overwhelmingly in
7 favor of dismissal.

8 **CONCLUSION**

9 For the foregoing reasons, the court concludes that Hong
10 Kong is an adequate alternative forum and that the balance of
11 private and public factors weigh heavily in favor of dismissal on
12 the basis of *forum non conveniens*. Therefore, defendant's motion
13 to dismiss for an alternative forum is GRANTED. The clerk of the
14 court is directed to close this file.

15 IT IS SO ORDERED.

16 DATED: August 4, 2010



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FRANK C. DAMRELL, JR.
UNITED STATES DISTRICT JUDGE