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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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MASAO KINJO and YOJU MORI,
Plaintiffs,

NO. CIV. 2:09-CV-03603 FCD/DAD

v.

MEMORANDUM AND ORDER

CHAMPION SHIPPING AS and
CHAMPION TANKERS AS,
Defendants.

_____ /

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Plaintiffs Masao Kinjo and Yoju Mori ("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 Express"), a shipping tanker registered in Liberia, and plaintiffs' vessel, the S/V Princess Taiping ("the Taiping"), a small, replica 15th century

1 Chinese sailing vessel registered in Hong Kong and owned by Tmax
2 Strategy & Marketing Limited. This matter is before the court on
3 defendant Champion Shipping AS's motion to dismiss on the basis
4 of *forum non conveniens*. Plaintiffs oppose the motion. For the
5 reasons set forth below,¹ defendant's motion is GRANTED.²

6 BACKGROUND

7 This action arises out of an alleged collision between the
8 MV Champion Express and the Taiping that occurred in
9 international waters off the coast of Taiwan on April 26, 2009
10 ("the Collision"). The Champion Express is a large, 609-foot
11 chemical tanker owned by Champion Shipping and operated by
12 Champion Tankers. The Taiping was a 53-foot wooden replica of a
13 15th century Chinese vessel commissioned by Taiwanese national
14 Liu Ningsheng. The Taiping was nearing the completion of an
15 extended voyage when the alleged collision occurred off the coast
16 of Taiwan, destroying the vessel. (Def.'s Mot Dismiss, ("MTD")
17 2.) Following the collision, the Taiping's crew members were
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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 rescued by the Taiwanese Air Force and Coast Guard, who
2 transported them to Taiwan and issued a report on the incident.
3 (Compl. ¶ 7.)

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

25 Plaintiffs filed the present action on December 30, 2009,
26 seeking to recover damages for physical and emotional injuries

1 resulting from the collision.³ This is one of two related
2 actions arising out of the collision, both of which were brought
3 by Taiping crew members. Both of the plaintiffs in this action
4 are Japanese citizens. All plaintiffs in the related action,
5 *Cook, et al. v. Champion Shipping AS, et al.*, No. 2:09-CV-03605-
6 FCD DAD ("the Cook action"), are citizens of California and
7 Hawaii. The Champion Express S/V was crewed by 25 individuals at
8 the time of the collision. (MTD 3.) 24 crew members were
9 citizens of India, and one was a citizen of Greece. (Id.)
10 Plaintiffs obtained a Letter of Undertaking for this and the Cook
11 action in the amount of \$10.5 million. (Decl. of John M.
12 Toriello ("Toriello Decl."), filed Apr. 12, 2010, ¶ 8.) Champion
13 agrees to amend the Letter of Undertaking in order to secure any
14 judgment rendered by the Hong Kong Admiralty Court for both these
15 plaintiffs and the plaintiffs in the Cook action in the event the
16 present action is dismissed by this court for *forum non*
17 *conveniens*. (Toriello Decl. ¶ 8.)

18 ANALYSIS

19 Emphasizing plaintiff's Japanese citizenship and the foreign
20 jurisdiction agreements already existing between the owners of
21 the Taiping and Champion Shipping, defendant moves to dismiss
22 this action on the basis of *forum non conveniens*, arguing, "[i]t
23 is clear that the central focus for this claim and all other
24 claims related to [the collision] is Asia and the most convenient
25 location to resolve these claims is in Hong Kong." (MTD at 6.)

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 Plaintiffs respond that defendant cannot make a showing
2 sufficient to overcome the presumption that plaintiffs' chosen
3 forum is correct. (Pls.' Opp.'n, filed May 18, 2010, at 1.)

4 A court has "the discretion to decline jurisdiction in a
5 case where litigation in a foreign forum would be more convenient
6 for the parties." Lueck v. Sundstrand Corp., 236 F.3d 1137, 1142
7 (9th Cir. 2001) (citing) Gulf Oil Corp. v. Gilbert, 330 U.S. 501,
8 504 (1947). A party moving for dismissal on *forum non conveniens*
9 grounds has the burden of showing: (1) whether an adequate
10 alternative forum exists; and (2) whether the balance of private
11 and public interest factors favors dismissal. Ceramic Corp. of
12 America v. Inka Maritime Corp., 1 F.3d 947, 949 (9th Cir. 1993).
13 There is a strong presumption to honor a plaintiff's choice of
14 forum, but a court may balance that presumption against the
15 "private interests" and "public interests" of litigating in a
16 foreign country. Lueck, 236 F.3d at 1145. Further, a foreign
17 plaintiff's forum selection is entitled to less deference than an
18 American plaintiffs. Piper Aircraft Co. v. Reyno, 454 U.S. 235,
19 255-56 (1981). The Ninth Circuit considers the following
20 "private interests" in its analysis:

- 21 (1) the residence of the parties and the witnesses;
- 22 (2) the forum's convenience to the litigants;
- 23 (3) access to physical evidence and other sources of
proof;
- 24 (4) whether unwilling witnesses can be compelled to
testify;
- 25 (5) the cost of bringing witnesses to trial;
- 26 (6) the enforceability of the judgment;⁴ and
- 27 (7) all other practical problems that make trial of a
case easy, expeditious, and inexpensive.

28 ⁴ Plaintiffs and defendant agree that this is not a
significant factor.

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

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

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

14 **I. Adequacy Of Alternative Forum**

15 The requirement of an alternative forum is generally
16 satisfied when the defendant is amenable to process in the other
17 jurisdiction. See Lockman Found. v. Evangelical Alliance
18 Mission, 930 F.2d 764, 768 (9th Cir. 1991). This requirement may
19 not be satisfied, however, in "rare circumstances ... where the
20 remedy offered by the other forum is clearly unsatisfactory."
21 Piper, 454 U.S. at 256. However, "[a] foreign forum must only
22 provide the plaintiff with 'some' remedy in order for the
23 alternative forum to be adequate." Loya v. Starwood Hotels &
24 Resorts Worldwide, Inc., 583 F.3d 656, 666 (9th Cir. 2009)
25 (citing Lueck, 236 F.3d at 1143-44 (rejecting the plaintiffs'
26 argument that New Zealand offered no remedy for their losses
27 because it has legislated tort law out of existence, and noting
28 that the district court was not required to ask whether
plaintiffs could bring this lawsuit there but rather, whether New

1 Zealand offered "a" remedy)). A forum is not inadequate simply
2 because its laws offer a plaintiff lesser remedy than its
3 American counterpart. Lueck, 236 F.3d at 1143 (citing Piper, 454
4 U.S. at 240); Loya, 583 F.3d at 666 ("[T]hat the law, or the
5 remedy afforded, is less favorable in the foreign forum is not
6 determinative.").

7 In this case, both Champion Shipping, and Champion Tankers,
8 through a signed declaration of its Managing Director Arne Viste,
9 have expressly agreed to submit to the jurisdiction of the Hong
10 Kong Admiralty court. (Supplemental Decl. of Arne Viste ("Viste
11 Supp. Decl."), filed May 28, 2010, ¶ 5.) Thus, Hong Kong is
12 available for adjudication of this dispute.

13 Further, defendant presents evidence that the potential
14 relief accorded in the Hong Kong Court is not "clearly
15 unsatisfactory." Specifically, Hong Kong Basic Law, through The
16 Merchant Shipping Ordinance (Cap 434), has incorporated The
17 Convention on Limitation of Liability for Maritime Claims, 1976
18 ("the 1976 Convention"). Basic Law (Cap. 434), s12. The 1976
19 Convention, while limiting liability for shipowners for damage
20 caused by or occurring on or in direct connection to their ship,
21 allows for plaintiffs to recover when "it is proved that the
22 [plaintiff's] loss resulted from [the ship owner's] personal act
23 or omission, committed with the intent to cause such loss, or
24 recklessly and with knowledge that such loss would probably
25 result." (Lamplough Decl. ¶ 4.3.2 (citing Merchant Shipping
26 (Limitation of Shipowners Liability) Ordinance (Cap 434), s4,
27 Sch2).) Pursuant to the 1976 Convention, once plaintiffs have
28 filed and proved their claims, the Hong Kong court will

1 distribute among them the amount of their proved claims, drawing
2 from the \$12.5 million Limitation Decree filed in that court by
3 defendants. (Id. at 4.3.6 (citing Merchant Shipping (Limitation
4 of Shipowners Liability) Ordinance (Cap 434), s12, Sch 2).)
5 Furthermore, with respect to their personal injury claims,
6 plaintiffs will be required to prove largely the same elements
7 and meet the same burden of proof in Hong Kong Admiralty court as
8 they would in an American court. See Joseph Constantine
9 Steamship Line Ltd v. Imperial Smelting Corporation Ltd., (1942)
10 AC 154 per Lord Maugham (establishing as the burden of proof in
11 Hong Kong personal injury claims: "he who asserts must prove, not
12 he who denies"). Accordingly, defendant has presented sufficient
13 evidence that the Hong Kong Admiralty Court provides a remedy.

14 Plaintiffs assert that defendant's evidence is biased and
15 thus, lacks credibility. Specifically, plaintiffs contend that
16 George D. Lamplough ("Lamplough") is not a "disinterested expert"
17 because he represents Champion Shipping in the limitation
18 proceeding. However, the court's review of the bases for
19 Lamplough's conclusions as well as a review of the underlying law
20 support consideration of this evidence. See Fed. R. Civ. P. 44.1
21 ("In determining foreign law, the court may consider any relevant
22 material or source, including testimony, whether or not submitted
23 by a party or admissible under the Federal Rules of Evidence.").
24 Moreover, defendant's contentions are also supported by the
25 declaration of Clifford Lonsdale Smith ("Smith"), a barrister
26 practicing in Hong Kong, enlisted to provide his "independent
27 opinion" regarding Hong Kong law and procedure. (Decl. of
28 Clifford Lonsdale Smith ("Smith Decl."), filed May 28, 2010, ¶¶

1 3-4.) Smith has had no personal connection with the admiralty
2 proceeding or this case. (Id. ¶ 4.) However, he declares that
3 he is "in total agreement with the content of, and the views
4 expressed in" the relevant portions of Lamplough's declaration.
5 (Id. ¶ 6.) Finally, plaintiffs have proffered no evidence or
6 argument to rebut defendant's demonstration that Hong Kong would
7 offer an adequate forum for relief.

8 Accordingly, the court concludes that defendant has met its
9 burden in demonstrating that there is an adequate alternative
10 forum.

11 **II. The Balance Of Convenience**

12 Given the existence of an adequate alternative forum, the
13 court must balance private and public interest factors to
14 determine whether to dismiss on grounds of *forum non conveniens*.
15 Lockman, 930 F.2d at 769. A court "should consider [these
16 factors] together in arriving at a balanced conclusion." Lueck,
17 236 F.3d at 1145.

18 **A. Private Interest Factors**

19 **1. The residence of the parties and the witnesses, 20 the forum's convenience to the litigants, and access to evidence**

21 In assessing whether the weight to be accorded the residence
22 of the parties and witnesses, the court must look at "the
23 materiality and importance of the anticipated [evidence and]
24 witnesses' testimony and then determine their accessibility and
25 convenience to the forum." Gates Learjet Corp. v. Jensen, 743
26 F.2d 1325, 1335-36 (9th Cir. 1984). An American citizen's choice
27 to sue in their home forum is afforded deferential treatment by
28 the court. However, "the presumption applies with less force

1 when the plaintiff or real parties in interest are foreign."

2 Piper, 454 U.S. at 266.

3 The court concludes that the residence of the parties and
4 witnesses weighs in favor of dismissal. Both plaintiffs in this
5 action are Japanese citizens. They have proffered neither
6 evidence nor argument demonstrating that California is a more
7 convenient forum. Further, Champion Shipping identifies 37
8 potential "material witnesses," 30 of whom are residents of an
9 Asian country. (Def.'s Reply Mem. ("Reply"), filed May 28, 2010,
10 at 8.) These witnesses include the owner, master, and first mate
11 of the Taiping, who are residents of Hong Kong, Taiwan, and the
12 People's Republic of China, respectively. (Id.) These witnesses
13 are likely to have relevant information regarding the "design,
14 construction, equipment, and seaworthiness of the Taiping." (MTD
15 12.)

16 The material witnesses residing in Asian countries greatly
17 outnumber those in the United States. Even assuming the truth of
18 plaintiffs' contention that few of these potential witnesses are
19 residents of Hong Kong, these witnesses are concentrated in areas
20 closer to Hong Kong than Sacramento, California. Moreover, the
21 testimony of these witnesses is likely to be material to the
22 resolution of this matter. The owner, master, and first mate of
23 the Taiping have already submitted to the exclusive jurisdiction
24 of the Hong Kong court. The Indian crew members who were aboard
25 the Champion Express at the time of the accident live in India.
26 (Decl. of Arne Viste ("Viste Decl."), filed Apr. 12, 2010, ¶ 7.)
27 The accident was investigated by Taiwanese officials, and
28 plaintiffs were treated by Taiwanese physicians after the

1 collision. (Lampough Decl. ¶ 3.4) Finally, a joint survey of
2 the Champion Express was conducted in Shanghai. (Id. ¶ 3.6.) As
3 such, relevant witnesses that would have information relating to
4 the accident itself, treatment of plaintiffs, and near-
5 contemporaneous and subsequent investigations of the Champion
6 Express are located in Southeast Asia. See Loya, 583 F.3d at
7 665-66 (holding that dismissal on *forum non conveniens* grounds
8 was warranted where the conduct giving rise to litigation was
9 “arranged, documents, outfitted, undertaken, and investigated” in
10 Mexico).

11 Moreover, most of the relevant physical evidence, including
12 investigative documents and Taiwan Coast Guard reports, is in
13 Asia. Further, relevant documentary evidence about the design,
14 construction, equipment, and seaworthiness of the Taiping will be
15 located in either Hong Kong, where it was registered, or the
16 People’s Republic of China, where it was built. (Lampough Decl.
17 ¶ 3.3.) Taiwan also maintains a vessel tracking system that
18 monitors the movement of vessels along their coastline based on
19 information received from AIS transponders on vessels. (Id. ¶
20 3.4.) Neither plaintiffs nor defendant assert that they have
21 control over this evidence such that it could be brought to court
22 no matter the forum. See Lueck, 236 F.3d at 1146 (holding that
23 the foreign location of documentary evidence weighed in favor of
24 dismissal where it was not in plaintiff’s control or under the
25 control of a foreign government); (see also Lampough Decl. ¶
26 4.7.7 (setting forth the procedures for the High Court to issue
27 requests to all foreign countries and other jurisdictions within
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1 the People's Republic of China)). As such, the location of such
2 evidence weighs in favor of dismissal.

3 Plaintiffs argue that they are individuals of modest means
4 and thus, the balance of inconveniences weighs in favor of this
5 court retaining jurisdiction.⁵ However, plaintiffs' objection to
6 litigation in a foreign forum is substantially diminished by
7 their prior willingness to embark on a trans-Pacific voyage
8 aboard the Taiping, a Hong Kong flagged vessel, which was
9 scheduled to end its journey in Honk Kong. (Opp.'n at 2.)
10 Plaintiffs' argument is further undermined by the failure to
11 present any argument or evidence that the cost of litigating
12 claims in this court would be less expensive or burdensome to a
13 Japanese citizen than litigating their claims in Hong Kong.
14 Further, defendant presents evidence that an action in the Hong
15 Kong Admiralty Court will require little presence by plaintiffs
16 in Hong Kong. Specifically, plaintiffs participate in proceeding
17 through their solicitors and initially give evidence by written
18 statement. Moreover, they are not required to give depositions
19 at an interlocutory stage. (Smith Decl. ¶¶ 23-25.) Finally,
20 defendant has agreed to assist in defraying reasonable
21 transportation and lodging costs if plaintiffs are required to
22 appear. (Supplemental Decl. of John M. Toriello ("Toriello Supp.
23 Decl."), filed May 28, 2010, ¶ 4.)

24 Accordingly, as plaintiffs and a majority of potentially
25 relevant witnesses reside in Asian countries, physical and

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27 ⁵ The court notes that none of plaintiffs' arguments
28 relate to the two named plaintiffs in this action, but rather,
argue for the convenience and cost to the six named plaintiffs in
the related Cook action.

1 documentary evidence is located in Southeast Asia and Hong Kong,
2 and under the circumstances of this case, this forum is not of
3 particular convenience to many of the litigants, including
4 plaintiffs, these factors weighs in favor of dismissal.

5 **2. Whether unwilling witnesses can be compelled to**
6 **testify and the cost of bringing witnesses to**
7 **trial**

8 Dismissal on the grounds of *forum non conveniens* may be
9 appropriate when the court finds "critical witnesses" to the
10 litigation are beyond its jurisdictional reach. In re Air Crash
11 over the Taiwan Strait on May 25, 2002, 331 F. Supp. 2d 1176,
12 1200 (C.D. Cal. 2004). A defendant must delineate how witnesses
13 not subject to compulsory process are critical to the actions,
14 though it is not required "to identify each potentially critical
15 witness, nor to submit affidavits that provide significant
16 evidentiary detail." Id. (citing Piper, 454 U.S. at 258.)
17 Further, where all witnesses to liability are located in a
18 foreign forum and where a court would be aided by familiarity
19 with the local landscape and easy access to the site of an
20 accident, it may be "unfair" to make foreign defendants proceed
21 to trial in a United States forum. Piper, 454 U.S. at 1199.

22 In this case, defendant has identified a number of critical
23 witnesses who cannot be compelled to provide testimony in this
24 forum, including the owners of the Taiping, crew members and
25 passengers from the Taiping, persons involved in the design and
26 construction of the Taiping, crew members of the Champion
27 Express, and the surveyors retained by the owners of both vessels
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1 to conduct the post incident surveys.⁶ Moreover, as set forth
2 above, the majority of witnesses to the accident, rescue, and
3 subsequent investigation are located in Hong Kong or Southeast
4 Asia. As such, the cost of bringing witnesses to trial would be
5 substantially less if the claims were litigated in Hong Kong.

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

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

10 Finally, the court notes that defendant has made a
11 compelling case that Hong Kong is the only forum where all claims
12 may be resolved in a single proceeding. Collision Jurisdiction
13 Agreements have been executed with the owners of the Taiping, the
14 Master Liu Ning Sheng, the First Mate Yuquan Tang, and additional
15 passenger Chao Hisu-Ying. (Lampaugh Decl. ¶ 3.20.) The
16 Limitation Proceeding has already been initiated in Hong Kong,
17 and defendant has already stipulated to an extension of time for
18 plaintiffs to file claims in this action. (Id. ¶ 3.18.)
19 Further, defendant represents that if plaintiffs were to sue
20 Champion Tankers AS in Hong Kong, it would be open to accept
21 service or proceedings and submit to jurisdiction. (Smith Decl.
22 ¶ 26.)

23 Plaintiffs argue "no forum exists in which all the claims
24 that arose from our collision can be resolved in a single action"

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26 ⁶ Defendant also contends that Tmax Strategy & Marketing
27 Ltd., the corporate owner of the Taiping, is a necessary party to
28 this action and is a Hong Kong corporation not subject to the
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 because they refuse to submit to the jurisdiction of the Hong
2 Kong Admiralty Court. (Opp.'n 15.) However, this assertion
3 inappropriately equates plaintiffs' unwillingness to try their
4 case in Hong Kong to the inability of that forum to host the
5 entirety of this litigation with all parties present.
6 Plaintiffs' *can* resolve their claims in a single action in Hong
7 Kong; they simply refuse to submit to jurisdiction.

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

11 **B. Public Interest Factors**

12 Similar to the private interest factors, the court considers
13 any or all of the public interest factors that are relevant to
14 the dispute and gives appropriate weight to each when arriving at
15 a balanced conclusion. *Id.* at 1145-46 (citing *Piper*, 454 U.S. at
16 255). Of the public interest factors listed above, defendant
17 emphasizes plaintiff's foreign citizenship, California's minimal
18 connection to the events giving rise to this action, the
19 administrative difficulties and jury imposition that this case
20 represents, and the complex choice of law question facing this
21 court should jurisdiction over this action be retained.

22 Defendant contends that Hong Kong's interest in this litigation
23 is stronger than that of California, and that the cost to a
24 California court in hearing this matter will be far greater than
25 the cost to the Hong Kong Admiralty Court.

26 Given the strained judicial and administrative resources in
27 the Eastern District, California's minimal connection to this
28 litigation, and the complex choice of law issues represented by

1 this case, the court finds the public interest factors weigh in
2 favor of dismissal. See Backcountry Against Dumps v. Abbott, No.
3 CIV S-10-394, 2010 WL 2349194 (E.D. Cal. June 8, 2010) (noting
4 that the Eastern District of California has only seven active
5 judges who maintain a caseload of nearly 1100 cases per judge).
6 The jury in this case will be required to hear testimony from
7 witnesses regarding an alleged collision that took place between
8 two differently flagged vessels in international waters off the
9 coast of Tawian. Plaintiffs have failed to set forth any
10 compelling argument or legal support that this community has a
11 generalized interest in a maritime dispute involving
12 multinational parties in which two Japanese residents voluntarily
13 undertook to join the crew of a Hong Kong vessel undertaking a
14 trans-Pacific voyage. In addition, the ultimate questions to be
15 resolved in this action turn on events that occurred in
16 international waters off the coast of Hong Kong.

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

28 /////

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

5 454 U.S. at 251 (quoting Gulf Oil Corp. v. Gilbert, 330 U.S. at
6 509). Plaintiffs assert that because this litigation involves a
7 third party claim against defendants for a collision that
8 occurred in international waters, general maritime law should
9 apply. (Opp.'n at 17 (citing Alkmeon Naviera, S.A. v. M/V Marina
10 L, 633 F.2d 789, 793 (9th Cir. 1980).) Defendant asserts that
11 whether there was a collision or only a close passage is a
12 contested fact that substantially affects the choice of law.
13 Without reaching the merits of this argument, it is the court's
14 opinion that even if general maritime law were to govern this
15 action, thereby rendering the choice of law question neutral, the
16 weight of public interest factors still would overwhelmingly in
17 favor of dismissal.

18 **CONCLUSION**

19 For the foregoing reasons, the court concludes that Hong
20 Kong is an adequate alternative forum and that the balance of
21 private and public factors weigh heavily in favor of dismissal on
22 the basis of *forum non conveniens*. Therefore, defendant's motion
23 to dismiss for an alternative forum is GRANTED. The clerk of the
24 court is directed to close this file.

25 IT IS SO ORDERED.

26 DATED: August 4, 2010



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FRANK C. DAMRELL, JR.
UNITED STATES DISTRICT JUDGE