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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

HE NAM YOU and KYUNG SOON KIM,  
for themselves and on behalf of all others  
similarly situated,

No. C 15-03257 WHA

Plaintiffs,

v.

HIROHITO; NOBUSKE KISHI; NIPPON  
YUSEN KABUSHIKI KAISHA; NISSAN  
MOTOR CO., LTD.; TOYOTA MOTOR  
CORPORATION; HITACHI, LTD.;  
NIPPON STEEL & SUMITOMO METAL  
CORPORATION; MITSUI GROUP;  
OKAMOTO INDUSTRIES, INC.; and  
SANKEI SHIMBUN CO., LTD.,

**ORDER DISMISSING ACTION**

Defendants.

**INTRODUCTION**

In this putative class action for crimes against humanity during the Second World War and for defamation, a prior order granted one defendant’s motion to dismiss for lack of personal jurisdiction. Plaintiffs were given leave to conduct jurisdictional discovery and both sides submitted supplemental briefs. For the reasons stated below and in the prior order, this order **AFFIRMS** the earlier order granting defendant’s motion to dismiss. Additionally, because plaintiffs have failed to timely serve the remaining defendants, this order **DISMISSES** all claims against all remaining defendants.



1 independent third party, Rafu Shimpo, which independently selects which articles it publishes  
2 in its Los Angeles-based paper, with a focus on local stories of interest to the Japanese  
3 community in Los Angeles. Sankei does not directly generate any revenue from the United  
4 States (*id.* at 39, 51–52; Kondo Decl. ¶ 12).

5 A prior order granted Sankei’s motion to dismiss for lack of personal jurisdiction (Dkt.  
6 No. 122). That order noted that plaintiffs had referred to a third-party website, Manta.com,  
7 which maintains a database of information about businesses in the United States. The  
8 Manta.com profile indicated that Sankei earned more than one million dollars in revenue from  
9 its three United States branches. Although the unverified Manta.com profile could not establish  
10 personal jurisdiction over Sankei, that order indicated it could be a basis to conduct  
11 jurisdictional discovery. Plaintiffs sought leave to conduct jurisdictional discovery regarding  
12 Sankei’s presence in the United States, which leave was granted (Dkt. No. 153). This order  
13 follows the parties’ submission of supplemental briefs detailing the results of plaintiffs’  
14 jurisdictional discovery, which included the production of documents and a Rule 30(b)(6)  
15 deposition (Dkt. Nos. 173, 176).

## 16 ANALYSIS

### 17 1. SANKEI.

18 Plaintiffs contend that jurisdictional discovery revealed facts that support the exercise of  
19 personal jurisdiction over Sankei by way of either general or specific jurisdiction. This order  
20 addresses the new facts revealed through discovery.

#### 21 A. General Jurisdiction.

22 Plaintiffs primarily contend that Sankei is subject to general jurisdiction in California.  
23 “A court may assert general jurisdiction over foreign (sister-state or foreign-country)  
24 corporations to hear any and all claims against them when their affiliations with the State are so  
25 ‘continuous and systematic’ as to render them essentially at home in the forum State.”  
26 *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011). Sankei is a  
27 Japanese corporation with its principal place of business in Tokyo and major offices in Osaka;  
28 its only direct contact with California is the presence of a news bureau in Los Angeles that

1 generates no revenue. The order granting Sankei’s motion to dismiss held, on that basis, that  
2 Sankei was plainly not “at home” in California.

3 Plaintiffs’ jurisdictional discovery did not contradict the facts on which that holding was  
4 based. Sankei did not directly generate any revenue in the United States. Any sales of Sankei’s  
5 content in the United States occurred either through the independent courier, OCS, or Sankei  
6 Digital, in which Sankei holds an 80% stake. Plaintiffs entirely abandoned any investigation  
7 into the profile of Sankei on Manta.com, which formed the sole basis for permitting  
8 jurisdictional discovery. Sankei’s only direct presence in the United States was its  
9 newsgathering bureaus. That is an insufficient basis to find that Sankei is “essentially at home”  
10 in the United States.

11 Plaintiffs advance a new theory of general jurisdiction — that Sankei is a subsidiary of a  
12 media conglomerate called Fujisankei Communications Group and that the latter’s contacts,  
13 which include those of a separate subsidiary, Fujisankei Communications International, can be  
14 attributed to Sankei for the purpose of establishing general jurisdiction.

15 *First*, plaintiffs submit no admissible evidence regarding the existence of “Fujisankei  
16 Communications Group.” Plaintiffs cite an article on Wikipedia.com that states “FCI is a US  
17 company owned by a media conglomerate called Fujisankei Communications Group which  
18 owns Sankei as well.” Contrary to the article, FCI’s parent company is Fuji Media Holdings,  
19 Inc., which owns only a 40% stake in Sankei (Kondo Dep. ¶ 6; Aoki Dep. ¶ 3; Kurosawa Dep.  
20 at 18).

21 *Second*, the only basis for imputing general jurisdiction from one affiliate entity to  
22 another is to determine whether the entities are “alter egos.” *Ranza v. Nike, Inc.*, 793 F.3d  
23 1059, 1071 (9th Cir. 2015), *cert. denied*, 136 S. Ct. 915 (2016). Entities are “alter egos” if (1)  
24 “there is such unity of interest and ownership that the separate personalities [of the two entities]  
25 no longer exists” and (2) “failure to disregard [their separate identities would result in fraud or  
26 injustice.” *Id.* at 1073 (citing *Doe v. Unocal Corp.*, 248 F.3d 915, 926 (9th Cir. 2001)).

27 To succeed, plaintiffs would have to show that *all three* of FCI, Fuji Media, and Sankei,  
28 are alter egos of each other. Plaintiffs fall far short. The “‘unity of interest’ prong of the test

1 requires ‘a showing that the parent controls the subsidiary to such a degree as to render the  
2 latter the mere instrumentality of the former.’ *Ibid.* “Total ownership and shared management  
3 personnel are alone insufficient to establish the requisite level of control.” *Ibid.*

4 Here, plaintiffs fall far short of establishing a unity of interest among FCI, Fuji Media,  
5 and Sankei. Fuji Media holds only a minority interest in Sankei, and there is no evidence that  
6 exerts any control over Sankei, much less such pervasive control that Sankei is merely an  
7 instrumentality of Fuji Media. Plaintiffs’ best points are that Sankei leases office space from  
8 FCI, and that Sankei outsources payment of its United States-based reporters to FCI, and that  
9 Sankei and FCI share some local support staff. This is simply insufficient evidence of the  
10 requisite level of control to support the exercise of alter ego jurisdiction.

11 **B. Specific Jurisdiction.**

12 For claims arising under federal law, as here, an overseas defendant may be subject to  
13 personal jurisdiction in any state if it is not subject to jurisdiction in any state’s courts of general  
14 jurisdiction and its contacts with the United States as a whole are sufficient to establish specific  
15 jurisdiction. *Holland Am. Line Inc. v. Wartsila N. Am., Inc.*, 485 F.3d 450 (9th Cir. 2007). All  
16 claims against Sankei arise out of the same conduct — the publication of allegedly defamatory  
17 articles. Plaintiffs do not argue that Sankei’s newsgathering in the United States had any  
18 relationship to the claims herein.

19 As before, plaintiffs have failed to show that Sankei’s contacts with the United States  
20 had any relationship to the claims asserted herein. The only new evidence on this point is that  
21 88 people subscribed to Sankei’s magazine via Sankei Digital and paid from the United States.  
22 As stated in the prior order, our court of appeals has found personal jurisdiction lacking where  
23 the defendants’ “sole contact” with the forum state related to the claims was the circulation of  
24 156 copies of a libelous publication to California subscribers and independent news dealers.  
25 *Church of Scientology of California v. Adams*, 584 F.2d 893, 896 (9th Cir. 1978). On the other  
26 hand, our court of appeals has held that a newspaper is subject to personal jurisdiction based on  
27 the distribution of only thirteen copies of a defamatory article in California, if the defamatory  
28 materials targeted a plaintiff that lived in California or where the primary impact of the

1 defamatory story was felt in California. *Gordy v. Daily News, L.P.*, 95 F.3d 829, 834  
2 (9th Cir. 1996).

3 The new evidence that a partially-owned subsidiary of Sankei sold online subscriptions  
4 to Sankei's newspaper to 88 individuals that paid from the United States is insufficient to  
5 distinguish our case from *Church of Scientology*. There is no evidence that the article in  
6 question was ever seen by any readers in the United States, but even assuming every subscriber  
7 saw the article, the circulation of 107 copies of the publication, directed entirely by entities  
8 other than our defendant, still falls short of *Church of Scientology* on every dimension. There is  
9 no evidence that Sankei, through its content, its advertising, or its own distribution efforts ever  
10 targeted readers in the United States. Accordingly, Sankei's aggregate contacts in the United  
11 States cannot establish specific personal jurisdiction.

12 **2. OTHER DEFENDANTS.**

13 This case was filed in July 2015. Now, almost a year later, plaintiffs have made no  
14 effort to serve the remaining defendants (two of whom are deceased individuals). Accordingly,  
15 all claims against defendants that have not yet been served are hereby **DISMISSED** for lack of  
16 prosecution.

17 \* \* \*

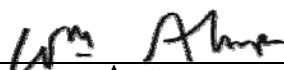
18 The Court acknowledges that our plaintiffs have suffered regrettable and horrific acts  
19 and has patiently allowed them numerous opportunities to overcome the bars to their claims.  
20 The law simply does not permit this Court to serve as a forum for the adjudication of their  
21 claims.

22 **CONCLUSION**

23 For the reasons stated above, the order granting Sankei's motion to dismiss is  
24 **GRANTED**, and all remaining claims are **DISMISSED**, for lack of prosecution. A final judgment  
25 will follow. The clerk shall please **CLOSE THE FILE**.

26 **IT IS SO ORDERED.**

27  
28 Dated: June 21, 2016.

  
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WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE