



1 Before the court is a renewed motion to dismiss or, in the  
2 alternative, motion to stay filed by defendants Junzo Suzuki and  
3 Paul Musashi Suzuki (collectively "the Suzukis") (#276).<sup>1</sup> The  
4 motion incorporates by reference the Suzukis' motion to dismiss  
5 filed on January 8, 2015 (#209), which the court denied without  
6 prejudice at a hearing on June 4, 2015. The court granted in  
7 limited part the alternative motion to stay at a hearing on April  
8 22, 2015. The alternative motion to stay has apparently also been  
9 renewed. Plaintiffs have opposed the motions (#224, #284), and the  
10 Suzukis have replied (#229, #287). On October 6, 2015, the Suzukis  
11 filed a supplement to their motion (#305), to which plaintiffs have  
12 responded (#307).<sup>2</sup>

13 This action is one of several cases involving the MRI fallout  
14 that are pending or resolved in both the United States and Japan.  
15 Plaintiffs filed their original complaint on July 5, 2013. Weeks  
16 earlier, nine MRI investors had filed a breach of contract action  
17 against MRI in Japan, and five investors had filed petitions to  
18 attach the Suzukis' property, also in Japan. Within a year of  
19 plaintiffs' complaint, the U.S. Securities and Exchange Commission  
20 ("S.E.C.") filed a complaint against Fujinaga, MRI, and others in  
21 the District of Nevada, and six MRI investors filed a fraud suit  
22 against the Suzukis, two MRI investors filed an unjust enrichment  
23 suit against MRI, and several more petitions to attach the Suzukis

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25 <sup>1</sup> Defendant LVT, Inc. ("Sterling Escrow") joins the renewed motion to  
26 dismiss (#279). Defendants MRI and Edwin Fujinaga ("Fujinaga") joined the  
original motion to dismiss (#212).

27 <sup>2</sup> Plaintiffs object to the supplement as being filed without leave of  
28 court. Because the supplement presents recent developments relevant to the  
court's decision, the court will consider the supplement.

1 assets were filed - all in Japan. In or around April 2015, another  
2 action was filed in Japan against the Suzukis.<sup>3</sup> Most recently, the  
3 grand jury in the District of Nevada returned a criminal indictment  
4 against Fujinaga and the Suzukis.

5 Judgment has been entered in the S.E.C. action. Although the  
6 trial court had granted a motion to dismiss the first MRI action  
7 based on the forum selection clause in the parties' contract, that  
8 decision was reversed by Tokyo High Court and the Japanese Supreme  
9 Court has recently declined review. The other suits also appear to  
10 be proceeding.

11 Defendants move for dismissal of this case on the grounds of  
12 forum non conveniens. The Suzukis argue that they and most of the  
13 plaintiffs, potential witnesses, and documentary evidence are  
14 located in Japan. They also argue that Nevada's nexus to this case  
15 insofar as it concerns the Suzukis is minimal or nonexistent; while  
16 MRI is a Nevada corporation, the Suzukis assert they were not  
17 involved in MRI's general operations and instead were involved  
18 primarily in investor relations and marketing in Japan. The  
19 Suzukis also argue that despite filing their case in Nevada, only  
20 six of the twenty-five plaintiffs have agreed to be deposed in the  
21 state, and those six did not even attend their depositions that had  
22 been scheduled in June on at least fourteen-days' notice each.  
23 They argue that all of this demonstrates that Japan is a much more  
24 convenient forum. In the alternative, defendants request a stay of  
25 this action in light of the actions pending in Japan and the United

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27 <sup>3</sup> The parties made this representation to the court at the April 22,  
28 2015, hearing. Beyond the fact this latest suit was filed to freeze the  
Suzukis' Japanese assets, no other information has been presented to the  
court. (See Doc. #250 (Apr. 22, 2015, Hearing Tr. 14-17)).

1 States, which they assert are parallel or substantially similar  
2 proceedings.

3 Plaintiffs oppose both the motion to dismiss and the motion to  
4 stay, arguing that their choice of forum is entitled to deference  
5 and that the nexus of this case to Nevada is sufficient to keep it  
6 before this court. Plaintiffs argue that, contrary to the Suzukis'  
7 representation, many witnesses and much of the documentary evidence  
8 is located in Nevada and the Suzukis' connection to Nevada is not  
9 minimal: Junzo Suzuki owns two condos in Las Vegas, Paul Musashi  
10 Suzuki maintains a bank account and a residence in Nevada, and both  
11 traveled to Nevada nearly 100 times over the years to conduct  
12 seminars, tours, and junkets as part of their work with MRI. In  
13 addition, they argue, the Suzukis were paid commissions that came  
14 directly from money the plaintiffs had deposited with MRI in Nevada  
15 bank accounts. Moreover, the nexus to Nevada is overall strong, as  
16 the investments that are the subject of this case were marketed -  
17 by the Suzukis - as being backed by Nevada law, the MRI investment  
18 contracts signed by the plaintiffs contained a Nevada forum  
19 selection clause, and the plaintiffs' investment monies were wired  
20 to a bank account in Nevada and managed by a Nevada escrow company.  
21 Plaintiffs further deny that they have refused to be deposed in the  
22 United States, noting that the six plaintiffs could have attended  
23 depositions in the United States during the week of July 20, 2015,  
24 that plaintiffs had been in the process of arranging for other  
25 named plaintiffs to be deposed in the United States, and that it  
26 was the Suzukis who decided not to go forward with the depositions  
27 in July, presumably in order to create grounds for filing the  
28 renewed motion to dismiss.



1 **I. Forum Non Conveniens**

2 In deciding a motion to dismiss on forum non conveniens  
3 grounds, the court accepts as true the facts alleged by plaintiffs  
4 in their complaint. *Carijano v. Occidental Petroleum Corp.*, 643  
5 F.3d 1216, 1222 (9th Cir. 2011). "The mere fact that a case  
6 involves conduct or plaintiffs from overseas is not enough for  
7 dismissal." *Carijano*, 643 F.3d at 1224.

8 The doctrine of forum non conveniens is an "exceptional tool  
9 to be employed sparingly," and not a "doctrine that compels  
10 plaintiffs to choose the optimal forum for their claim." *Dole Food*  
11 *Co. v. Watts*, 303 F.3d 1104, 1118 (9th Cir. 2002).

12 Historically, the doctrine's purpose is to root out cases  
13 in which the "open door" of broad jurisdiction and venue  
14 laws "may admit those who seek not simply justice but  
15 perhaps justice blended with some harassment," and  
16 particularly cases in which a plaintiff resorts "to a  
17 strategy of forcing the trial at a most inconvenient  
18 place for an adversary."

19 *Carijano*, 643 F.3d at 1224. A defendant seeking forum non  
20 conveniens dismissal must make a clear showing of facts that  
21 establish the oppression and vexation of the defendant is out of  
22 proportion to plaintiff's convenience. *Boston Telecomms. Group,*  
23 *Inc. v. Wood*, 588 F.3d 1201, 1206 (9th Cir. 2009).

24 A case may be dismissed under the doctrine of forum non  
25 conveniens if: (1) the moving party shows the existence of an  
26 adequate alternative forum; and (2) the balance of private and  
27 public interests favor dismissal. *Loya v. Starwood Hotels &*  
28 *Resorts*, 583 F.3d 656, 664 (9th Cir. 2009).

26 A. Adequate Alternative Forum

27 Generally, an adequate alternative forum exists if the  
28 defendant is amenable to service in that forum and plaintiff can

1 obtain "some remedy" for the wrong at issue. *Piper Aircraft Co. v.*  
2 *Reyno*, 454 U.S. 235, 254 n. 22 (1981); *Tuazon v. R.J. Reynolds*  
3 *Tobacco Co.*, 433 F.3d 1163, 1178 (9th Cir. 2006). A forum is  
4 typically inadequate only where the remedy is "so clearly  
5 inadequate or unsatisfactory, that it is no remedy at all."  
6 *Tuazon*, 433 F.3d at 1178. "The defendant bears the burden of  
7 proving the existence of an adequate alternative forum." *Cheng v.*  
8 *Boeing Co.*, 708 F.2d 1406, 1411 (9th Cir. 1983).

9       The Suzukis argue that Japan is an adequate forum because (1)  
10 they are amenable to service there and (2) there is an adequate  
11 remedy, as evidenced by the pending lawsuits that Japanese courts  
12 have allowed to proceed. Plaintiffs disagree that Japan is an  
13 adequate alternative forum. First, they argue the decisions  
14 allowing the cases to proceed in Japan are not final, so they may  
15 at some point be dismissed on grounds of improper venue. Second,  
16 they assert that Japanese courts, lacking a class action mechanism,  
17 would be overwhelmed by the individual cases of more than 8,000  
18 investors. Third, they assert that Japanese courts would have  
19 difficulty applying U.S. securities laws. Finally, they argue that  
20 under Japanese law, they would not be entitled to certain relief  
21 they could obtain in the United States.

22       The possibility that some of plaintiff's claims may not be  
23 available in the alternate forum is not dispositive. *Lockman Found.*  
24 *v. Evangelical Alliance Mission*, 930 F.2d 764, 768-69 (9th Cir. 1991).  
25 Thus, Japan is not an inadequate forum merely because it does not  
26 provide all avenues and mechanisms for relief available in the United  
27 States. See *id.* at 769. As the Suzukis and MRI are clearly amenable  
28 to process in Japan, and there are remedies available to plaintiffs,

1 Japan is arguably an adequate alternative forum as to the Suzukis and  
2 MRI. Although the venue arguments raised in various of the Japanese  
3 cases may not be completely resolved, the Japanese Supreme Court's  
4 recent refusal to review the lower court's decision allowing the first  
5 MRI to proceed in Japan suggests that it is likely all cases filed in  
6 Japan will remain there.

7 Even so, it has not been demonstrated that either Fujinaga or  
8 Sterling Escrow, the other two defendants in this case, are amenable  
9 to service of process in Japan. Japan is therefore not an adequate  
10 alternative forum as to those defendants.

11 B. Private and Public Interests

12 "Ordinarily, a plaintiff's choice of forum will not be disturbed  
13 unless the private interest and public interest factors strongly favor  
14 trial in a foreign country." *Lueck v. Sundstrand Corp.*, 236 F.3d  
15 1137, 1145 (9th Cir. 2001). A plaintiff need not select the optimal  
16 forum, but "only a forum that is not so oppressive and vexatious to  
17 the defendant 'as to be out of proportion to plaintiff's  
18 convenience.'" *Tuazon*, 433 F.3d at 1180.

19 The plaintiffs' selection of forum is due some deference. While  
20 a plaintiff's selection of a forum is generally due heavy deference,  
21 deference is reduced for both foreign plaintiffs and U.S. residents  
22 who sue in other than their home forums. *Lueck*, 236 F.3d at 1145;  
23 *Gemini Capital Grp., Inc. v. Yap Fishing Corp.*, 150 F.3d 1088, 1091  
24 (9th Cir. 1998); *Mujica v. Occidental Petroleum Corp.*, 381 F. Supp.  
25 2d 1134, 1141 (C.D. Cal. 2005); see also *Boston Telecomms.*, 588 F.3d  
26 at 1207. "[L]ess deference," however, "is not the same thing as no  
27 deference." *Lueck*, 236 F.3d at 1143. The plaintiffs concede that,  
28 as residents of Japan (and one resident of Canada/Texas), their

1 selection of a U.S. forum is not entitled to heavy deference, though  
2 it is entitled to some deference.

3 i. Private Factors

4 Private factors include: (1) the residence of parties and  
5 witnesses; (2) the forum's convenience to the litigants; (3) access  
6 to physical evidence and other sources of proof; (4) whether unwilling  
7 witnesses can be compelled to testify; (5) the cost of bringing  
8 witnesses to trial; (6) the enforceability of the judgment; and (7)  
9 "all other practical problems that make trial of the case easy,  
10 expeditious and inexpensive." *Lueck*, 236 F.3d at 1145.

11 a. *Residence of parties and witnesses*

12 The Suzukis claim to be residents of Japan, however they do also  
13 own property in Hawaii. Named plaintiffs are primarily Japanese  
14 residents, though at least one resides part-time in Texas. MRI and  
15 Sterling Escrow are Nevada corporations, and Fujinaga resides in  
16 Nevada. The Suzukis argue that there are likely witnesses in Japan  
17 who could testify about MRI's marketing materials, the Suzukis' roles  
18 in the Tokyo MRI office, and the Suzukis' statements during seminars.  
19 The plaintiffs argue that there are many witnesses in Nevada, lay and  
20 expert, including those associated with MRI's operations and the  
21 operations of other entities with which MRI did business, as well as  
22 those familiar with the ways in which MRI purported to run its  
23 business.

24 While the potential class of plaintiffs, most of whom reside in  
25 Japan, is in the thousands, there are just 25 named plaintiffs. Most  
26 of those named plaintiffs, the Suzukis, and an unidentified number of  
27 other witnesses reside in Japan. One named plaintiff, Fujinaga,  
28 Munoz, and an unidentified number of other witnesses reside in the

1 United States.

2 While more witnesses and litigants may reside in Japan than in  
3 the United States, the court is not persuaded by the current evidence  
4 that such an imbalance is significant. Accordingly, this factor does  
5 not weigh in favor of dismissal at this stage of the proceeding.

6 *b. Convenience to litigants and witnesses*

7 In addition to Japan being the location of all relevant parties,  
8 witnesses and evidence, the Suzukis argue, the United States is an  
9 especially inconvenient forum because plaintiffs are refusing to be  
10 deposed here. In addition, the Suzukis' ability to travel to the  
11 United States for their own depositions is hindered by the asset  
12 freeze currently in place.

13 Plaintiffs argue that because Japan has no class action  
14 mechanism, trying these cases in Japan would be much more inconvenient  
15 than trial in the United States because there would be thousands of  
16 separate lawsuits each with their own filing fees and bond  
17 requirements. As noted, plaintiffs also deny that they have refused  
18 to be deposed in the United States, pointing to the six named  
19 plaintiffs that have already agreed to be deposed here. Finally,  
20 plaintiffs assert that the Suzukis' asset freeze argument is not  
21 supported by any evidence and is impossible to evaluate as discovery  
22 into the Suzukis' assets has been lacking.

23 As noted, a large number of litigants and witnesses are in each  
24 forum. Thus, wherever this case is tried, it will be inconvenient for  
25 some witnesses. The plaintiffs' inability to timely attend the  
26 depositions scheduled by the Suzukis does demonstrate one of the major  
27 inconveniences of litigating in this forum. However, although the  
28 plaintiffs have not yet assured opposing counsel that all named

1 plaintiffs will be made available for depositions in the United  
2 States, the Suzukis have failed to provide sufficient evidence to  
3 convince the court that the plaintiffs will refuse to be deposed in  
4 the United States. It appears to the court that several plaintiffs  
5 had agreed to attend depositions in the United States and that the  
6 reason those depositions was because the Suzukis did not want them to.  
7 Further, there are substantial inconveniences associated with  
8 litigating in Japan. A lack of a class action mechanism means  
9 litigation could increase exponentially if investors were required to  
10 file in Japan. In addition, the court is not persuaded by the  
11 Suzukis' argument that they are hampered in their ability to the  
12 travel to the United States due to the asset freeze. The freeze  
13 carves out an exception for litigation fees and costs. Accordingly,  
14 the court concludes the convenience to parties and witnesses of  
15 litigating in Japan versus litigating in the United States does not  
16 weigh in favor of a dismissal.

17 *c. Access to physical evidence/proof*

18 The Suzukis argue that much of the physical evidence is in Japan  
19 because that is where most of the events took place. This evidence  
20 would include documents seized and records made during the  
21 investigations of Japan's Financial Services Agency and SESC.  
22 Plaintiffs disagree that a significant quantity of the evidence in is  
23 in Japan. They argue that the documents seized by the SESC are not  
24 available to private litigants at any rate and therefore do not weigh  
25 in favor of a Japanese forum. And they assert that relevant banking  
26 and accounting records showing MRI investment figures and losses are  
27 maintained by MRI in Las Vegas.

28 Documentary evidence in this case appears to exist in both Japan

1 and the United States. The Suzukis have not demonstrated that based  
2 on the location of documentary evidence litigation would necessarily  
3 be more convenient in Japan. Accordingly, this factor does not weigh  
4 in favor of dismissal.

5 d. *Compelling unwilling witnesses to testify*

6 The Suzukis argue that because the plaintiffs themselves are  
7 unwilling to testify in Nevada, it is likely that other relevant  
8 witnesses in Japan will resist testifying in Nevada. Plaintiffs  
9 assert that, conversely, defendants do not explain how any unwilling  
10 witnesses located in the United States, such as Fujinaga, Sterling  
11 Escrow's Peter Munoz and other high-ranking employees of MRI, could  
12 be compelled to testify in Japan. Further, plaintiffs argue that they  
13 have agreed to testify in this case.

14 The focus for this factor does "not rest on the number of  
15 witnesses in each locale but rather the court should evaluate the  
16 materiality and importance of the anticipated witnesses' testimony and  
17 then determine their accessibility and convenience to the forum." *Carijano*,  
18 643 F.3d at 1231 (internal punctuation omitted). The  
19 initial question is whether it has been shown that witnesses would be  
20 unwilling to testify, not whether they are outside the court's  
21 compulsory process. *Id.*

22 The Suzukis have identified no specific witnesses who would be  
23 unwilling to testify, and thus the court is unable to determine the  
24 materiality of their probable testimony. While the Suzukis may wish  
25 to call certain witnesses based in Japan, including MRI employees  
26 located there, they have not established that any of those witnesses  
27 would be unwilling to testify or that their testimony would be  
28 material. Further, it appears that the most important witnesses who

1 might be unwilling to testify in a foreign forum are in the United  
2 States: Fujinaga and Munoz. Accordingly, this factor does not weigh  
3 in favor of dismissal.

4 *e. Cost of bringing witnesses to trial*

5 The Suzukis argue that because most of the potential witnesses  
6 are located in Japan, the cost of bringing this matter to trial in the  
7 United States would be high. Plaintiffs assert that trial in Japan  
8 would not save money because abandoning this case would involve  
9 wasting all the resources already expended on top of the substantial  
10 costs in arranging for U.S. witnesses to testify in Japan.

11 As already discussed, there are witnesses residing in both Japan  
12 and Nevada. The Suzukis, however, have not substantiated their  
13 assertion that "most" are in Japan, nor have they discussed the cost  
14 of producing these Japanese witnesses in the United States.  
15 Accordingly, the court finds this factor does not weigh in favor of  
16 dismissal.

17 *f. Enforceability of Judgment*

18 The Suzukis argue that it would be easier to enforce a Japanese  
19 judgment in Nevada than a United States class action judgment in  
20 Japan. The parties appear to agree that it is unknown whether a  
21 United States class action judgment would be enforceable in Japan.  
22 Nevada, on the other hand, has adopted the Uniform Recognition of  
23 Foreign-Country Money Judgments Act, see Nev. Rev. Stat. §§ 17.700, *et*  
24 *seq.*, and as such it is possible to enforce a foreign money judgment  
25 in the state. Thus, this factor weighs in favor of dismissal.

26 *g. Other Factors*

27 The parties raise several other factors for the court to  
28 consider.



1 First, the Suzukis argue that should this case remain here, much  
2 of the evidence and testimony would need to be translated. That  
3 includes advertisements, explanations, pre-agreement disclosure  
4 documents, contract applications, and financial products trading  
5 contracts. In addition, plaintiffs assert that the Suzukis should pay  
6 for the cost of translating their depositions into English.

7 Plaintiffs argue that translation costs would be even greater if  
8 this case were tried in Japan because most of the marketing materials  
9 in Japanese have already been translated into English and there is an  
10 abundance of English materials and testimony that would have to be  
11 translated into Japanese, including MRI's accounting records.  
12 However, they do not address the Suzukis' apparent argument that their  
13 insistence that they pay for the plaintiffs' depositions is a cost  
14 that would not be incurred were this case tried in Japan.

15 Clearly, there is a significant amount of documentary evidence  
16 and witness testimony that will need to be translated wherever this  
17 case is tried. It is not at all clear that the documents requiring  
18 translation from Japanese to English exceed those requiring  
19 translation from English to Japanese. However, given that the Suzukis  
20 and nearly all plaintiffs speak Japanese, it does appear likely that  
21 there will be significantly more costs in translating depositions and  
22 trial testimony should the case remain here than if the cases were  
23 tried in Japan, particularly to the Suzukis if the plaintiffs are  
24 correct that they must bear that cost. Accordingly, this factor  
25 weighs in favor of dismissal.

26 Second, plaintiffs assert that a forum selection clause in their  
27 investment contracts, which selects Nevada as the exclusive forum for  
28 disputes, weighs against dismissal. Although the Suzukis argue they

1 are not bound by the clause because they were not parties to the  
2 contract, plaintiffs assert that under Ninth Circuit law, the Suzukis  
3 were sufficiently related to the contractual relationship between  
4 plaintiffs and MRI that the clause should apply to them. *Manetti-  
5 Farrow, Inc. v. Gucci Am., Inc.*, 858 F.2d 509, 514 n.5 (9th Cir.  
6 1988). The Suzukis dispute that they are closely related enough for  
7 the contracts to bind them and argue that even if they are bound by  
8 the contracts, it would be unfair and unreasonable to enforce the  
9 forum selection clause against them because they cannot enforce it in  
10 Japan: a Japanese court has declared the clause void as against public  
11 policy. Even assuming the clause is unenforceable against the  
12 Suzukis, such a finding would not favor a dismissal.

13       Next, the plaintiffs, citing *Watson v. Merrell Dow Pharm., Inc.*,  
14 769 F.2d 354, 357 (6th Cir. 1985), argue that in order for a dismissal  
15 under forum non conveniens to be appropriate, all defendants must be  
16 amenable to process in the foreign jurisdiction. *Watson* actually  
17 stands for the proposition that dismissal of an individual defendant  
18 who is amenable to process in the alternative forum is proper even  
19 where the other defendants are not. Thus, under *Watson*, it could be  
20 proper to dismiss the Suzukis and MRI, who are all clearly subject to  
21 jurisdiction in Japan, but it would not be proper to dismiss Sterling  
22 Escrow and Fujinaga, over whom it is unclear whether Japan has  
23 jurisdiction. The fact that this entire case could not be dismissed,  
24 however, would mean that it would have to be litigated in two fora at  
25 the same time. The court considers this to be a substantial waste of  
26 judicial resources and an impairment on judicial efficiency, and  
27 therefore concludes that this consideration weighs against dismissal.

28

1           ii. Public Factors

2           The factors to consider in weighing the public interest are: (1)  
3 the local interest of the lawsuit; (2) the court's familiarity with  
4 governing law; (3) the burden on the local courts and juries; (4)  
5 congestion in the court; and (5) the costs of resolving a dispute  
6 unrelated to this forum. *Lueck*, 236 F.3d at 1147.

7           a. *Local Interest*

8           The Suzukis argue that Nevada has a weaker interest in this suit  
9 because the S.E.C. has obtained relief against the two primary  
10 defendants who tied this case to Nevada - MRI and Fujinaga - and that  
11 the relief has rendered those defendants judgment proof. The Suzukis  
12 argue that without MRI and Fujinaga, the interest in this case is  
13 heavily concentrated in Japan: the remaining parties are primarily  
14 Japanese residents or have strong ties to Japan, and any  
15 misrepresentations by the Suzukis took place in Japan. In fact, they  
16 argue, the Japanese courts' refusal to dismiss the actions pending in  
17 Japan suggests they believe Japan has a stronger interest in the case  
18 than the United States. Plaintiffs argue that Nevada's interest in  
19 this case is strong because, regardless of the judgment against MRI  
20 and Fujinaga, a massive fraud was perpetrated within Nevada by the  
21 Suzukis.

22           Nevada's interest in this case is not reduced either by the  
23 S.E.C. judgment or by the argument that Japan may have a stronger  
24 interest. Nevada has a strong interest in preventing and redressing  
25 any fraud committed within its boundaries, and plaintiffs allege that  
26 much of the fraud in this case occurred in Nevada. Accordingly, this  
27 factor weighs against dismissal.

28

1                   b. *Choice of Law*

2           A court's unfamiliarity with and need to apply foreign law  
3 strongly favors dismissal. *Loya v. Starwood Hotels & Resorts*  
4 *Worldwide, Inc.*, 583 F.3d 656, 665 (9th Cir. 2009). While this is a  
5 significant factor, it is not alone sufficient to justify dismissal  
6 when a balancing of factors shows the chosen forum is appropriate.  
7 *Piper Aircraft*, 454 U.S. at 260 n.29. The Suzukis argue that the  
8 choice-of-law provision in the Financial Trading Contract would not  
9 apply to them because they are not parties to the contract, and that  
10 under Nevada's choice-of-law rules, the common law of Japan would  
11 apply to plaintiffs' common law causes of action. Plaintiffs assume  
12 without discussion that Nevada common law and U.S. securities law  
13 would apply in this case.

14           The court reserves until another day the choice of law issue and  
15 concludes that it does not weigh in favor of dismissal at this time.

16                   c. *Juries*

17           The Suzukis argue that the burden on the juries in Nevada is not  
18 justified because the local interest in the controversy is weaker than  
19 the Japanese interest. For the reasons already discussed, Nevada has  
20 a sufficiently strong interest in this case to justify the court's  
21 time and resources. Accordingly, the burden on a Nevada jury does not  
22 favor dismissal of this case.

23                   d. *Congestion*

24           The Suzukis argue that this court's docket is very full, and that  
25 the time from filing to trial is on average 40 months. Plaintiffs  
26 assert that requiring their claims to be tried in Japanese courts  
27 would lead to an even greater degree of congestion because 8,700  
28 individual cases would increase the caseload there by 25 percent. The

1 Suzukis respond that plaintiffs have offered no proof that all 8,700  
2 plaintiffs would file suit in Japan if this case were dismissed.

3       Given the plaintiffs' ability to consolidate their claims in the  
4 United States, this action will cause less congestion in this court  
5 than the separate actions of thousands of MRI investors would congest  
6 the Japanese courts. Accordingly, this factor weighs against  
7 dismissal.

8                   e. *Costs of resolving suit unrelated to the forum*

9       The Suzukis argue that because Nevada's interest in the dispute  
10 is weak, and it would cost a substantial amount to resolve the matter  
11 here, the case should be dismissed. As already discussed, this action  
12 is not unrelated to Nevada, and Nevada's interest in this action is  
13 quite strong. Accordingly, the costs of resolving suit in this forum  
14 are not out of proportion to the forum's interest in this case. This  
15 factor does not favor dismissal.

16       In weighing the private and public factors, and considering the  
17 deference owed to the plaintiffs' choice of forum, the court concludes  
18 that the evidence currently before the court does not favor dismissal  
19 on forum non conveniens grounds as the defendants have not carried  
20 their burden of showing that trial in this forum would be so vexatious  
21 and/or oppressive as to be out of proportion to plaintiffs'  
22 convenience. Accordingly, the motion to dismiss on forum non  
23 conveniens grounds is **DENIED**.<sup>4</sup>

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26       <sup>4</sup>Although plaintiffs have argued in their opposition that the Suzukis  
27 should be judicially estopped from making many of the factual assertions and  
28 legal arguments they make in their motion, the court need not decide this  
issue at this time. Even accepting the Suzukis' version of the facts  
asserted here, defendants have failed to satisfy their burden of showing  
that dismissal is warranted.

1 **II. Alternative Motion to Stay**

2 The Suzukis argue that in the alternative, the court should stay  
3 this action pending resolution of the Japanese cases. The Suzukis  
4 base this request both on the court's inherent powers as well as the  
5 "international abstention doctrine."

6 The court may stay an action pending resolution of independent  
7 proceedings that bear upon the case if it is efficient for its docket  
8 and will "provide for a just determination of the cases pending before  
9 it." *Leyva v. Certified Grocers of Calif., Ltd.*, 593 F.2d 857, 863-64  
10 (9th Cir. 1979). Relatedly, under the international abstention  
11 doctrine, the court may stay or dismiss an action where there are  
12 parallel proceedings pending in the court of a foreign nation. *Mujica*  
13 *v. Occidental Petroleum Corp.*, 381 F. Supp. 2d 1134, 1157 (C.D. Cal.  
14 2005) (quoting *SuperMicro Computer, Inc. v. Digitechnic, S.A.*, 145 F.  
15 Supp. 2d 1147, 1149 (N.D. Cal. 2001)). "[T]he doctrine allows a court  
16 to abstain from hearing an action if there is a first-filed foreign  
17 proceeding elsewhere." *Supermicro*, 145 F. Supp. 2d at 1149. While  
18 exact parallelism is not required, the pending cases must be at least  
19 "substantially similar." *Nakash v. Marciano*, 882 F.2d 1411, 1416 (9th  
20 Cir. 1989). Courts, including the Ninth Circuit, have applied the  
21 *Colorado River* factors to determine whether a stay under the  
22 international abstention doctrine is appropriate.<sup>5</sup> See *Neuchatel Swiss*  
23 *Gen. Ins. Co. v. Lufthansa Airlines*, 925 F.2d 1193 (9th Cir. 1991);

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25 <sup>5</sup> Those factors include: (1) whether either court has assumed  
26 jurisdiction over a res; (2) the relative convenience of the forums; (3) the  
27 desirability of avoiding piecemeal litigation; and (4) the order in which  
28 the forums obtained jurisdiction. See 424 U.S. at 818, 96 S.Ct. at 1246-47.  
In *Moses Cone*, the Court articulated two more considerations: (5) whether  
state or federal law controls and (6) whether the state proceeding is  
adequate to protect the parties' rights. *Nakash*, 882 F.2d at 1415.

1 *Mujica*, 381 F. Supp. 2d 1134. A court should decline to exercise  
2 jurisdiction under *Colorado River* only in “exceptional circumstances.”  
3 *Neuchatel*, 925 F.2d at 1194. Further, the existence of a substantial  
4 doubt as to whether the parallel proceedings will resolve this action  
5 precludes the granting of a stay. *Smith v. Cent. Ariz. Water*  
6 *Conservation Dist.*, 418 F.3d 1028, 1033 (9th Cir. 2005).

7 The Suzukis argue that the pending Japanese actions involve  
8 “substantially the same parties and issue in dispute here,” so the  
9 court should stay this case pending resolution of those actions to  
10 avoid piecemeal litigation or conflicting results. Although the  
11 Suzukis recognize that none of the named plaintiffs are the same in  
12 this action as in any pending Japanese action, they argue that because  
13 all the plaintiffs are represented by the same group of attorneys and  
14 are sharing discovery, they are substantially the same parties.<sup>6</sup> They  
15 also assert that the claims are substantially the same because all are  
16 based on alleged misrepresentations in connection with the MRI  
17 investment scheme and involve the question of whether the Suzukis were  
18 aware of the Ponzi scheme and made the misrepresentations in order to  
19 defraud the plaintiffs.

20 It is unnecessary to reach the *Colorado River* factors in  
21 evaluating the Suzukis’ request to stay because the proceedings in  
22 Japan are not “substantially similar.” While all cases appear to  
23 derive from a common nucleus of operative facts, the parties are

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25 <sup>6</sup> According to plaintiffs, none of the plaintiffs in the Japanese  
26 action against the Suzukis are named plaintiffs in this case, and all have  
27 agreed to opt out of this class action should certification be granted.  
28 (Doc. #225 (Igarishi Decl. ¶ 5)). Plaintiffs do not indicate whether any  
of the plaintiffs in either MRI case are named plaintiffs in this case or  
whether they, too, have agreed to opt out in the case of class  
certification. However, documents provided by the Suzukis appear to suggest  
that none are. (See Doc. #231-1 at 37 & 39; Doc. #231-3 at 9).

1 different - there are no shared plaintiffs in any of the cases and two  
2 defendants in this case are not named in any Japanese case at all -  
3 and this action is substantially more comprehensive both in number and  
4 type of claims. Despite the Suzukis' reliance on it, *Nakash* does not  
5 counsel otherwise. There, the Ninth Circuit found pending actions  
6 substantially similar because the only difference was that corporate  
7 subsidiaries named in one action were not named in the other. This is  
8 different from a situation where completely different plaintiffs who  
9 will likely opt out of a class action are asserting actions against a  
10 fraction of the defendants named in this case. Nor does the fact the  
11 plaintiffs are essentially represented by some of the same attorneys  
12 change the court's conclusion. The Suzukis cite to no authority for  
13 the proposition that plaintiffs in similar causes of action become  
14 substantially similar if they are represented by the same attorneys.  
15 Further, there is substantial doubt as to whether the Japanese cases  
16 will resolve the merits of this action because of the differences in  
17 claims and defendants. Finally, the existence of actions by a handful  
18 of investors in Japan against three of this case's defendants is not  
19 the type of "exceptional circumstances" that would justify a *Colorado*  
20 *River* stay of the comprehensive class action being advanced by the  
21 plaintiffs in the action before this court.

22 In accordance with the foregoing, the Suzukis' motion to dismiss  
23 or stay this action (#209, #276) is **DENIED**.

24 **IT IS SO ORDERED.**

25 DATED: This 29th day of October, 2015.

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28 UNITED STATES DISTRICT JUDGE