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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

JOHN DOE I - JOHN DOE XII,
JAMES ROE I - JAMES ROE XV,
JANE ROE I - JANE ROE VII,

PLAINTIFFS,

vs.

Case No.: 1:06-cv-00627-DFH-VSS

BRIDGESTONE CORPORATION,
BRIDGESTONE AMERICAS
HOLDING INC., BRIDGESTONE
FIRESTONE NORTH AMERICAN TIRE
LLC, BFS DIVERSIFIED PRODUCTS,
LLC, FIRESTONE NATURAL RUBBER
COMPANY, FIRESTONE PLANTATION
CO., BRIDGESTONE FIRESTONE
CORPORATE DOES 1-10, DANIEL J.
ADOMITIS, CHARLES STUART,
INDIVIDUAL BRIDGESTONE FIRESTONE
DOES 11-20,

DEFENDANTS.

PLAINTIFFS’ SUPPLEMENTAL BRIEF IN REPLY TO
DEFENDANTS’ SUPPLEMENTAL BRIEF

Plaintiffs file this brief in reply to Defendants’ Supplemental Brief (“Def. Supp. Br.”) regarding international standards for forced labor and forced child labor. There is no question, considering both international and U.S. law, that both forced labor and forced child labor are prohibited, and that these norms are sufficiently “universal, specific, and obligatory” to qualify as a “law of nations” violation¹ under the Alien Tort Statute (“ATS”), 28 U.S.C. § 1350.

A. The ILO Standards on Forced and Child Labor Reinforce that they are “Universal, Specific, and Obligatory” Norms.

Defendants sow confusion by merging the question of whether the standards set by the

¹ In *Sosa v. Alvarez-Machain*, 542 U.S. 692, 732 (2004), the Supreme Court affirmed the approach of dozens of federal courts that plaintiffs sue under the ATS for violations of international norms that are “specific, universal, and obligatory.”

1 International Labor Organization (“ILO”) are important in determining whether a particular norm
2 meets the “universal, specific, and obligatory” standard for a “law of nations” violation under the
3 ATS, with the issue of whether the ILO and its Declaration on Fundamental Principles and
4 Rights at Work (the “ILO Declaration,” attached as Exhibit A to the Declaration of Terry
5 Collingsworth, filed on July 3, 2006) provides any new, binding enforcement processes. *See* Def.
6 Supp. Br. at 1-3. Plaintiffs’ purpose in referring to the ILO Declaration was to demonstrate that,
7 by incorporating the core ILO Conventions therein, including the prohibitions of forced and child
8 labor, the ILO demonstrated clearly that there is universal consensus prohibiting these practices.

9 The attached Declaration of Professor Virginia A. Leary (“Leary Decl”),² a renowned
10 expert on international labor standards and the ILO, agrees that the ILO Declaration was meant to
11 reinforce the universality of the core Conventions, including the prohibitions on forced and child
12 labor. Leary Decl ¶¶ 16-17. More fundamentally, based on the ILO Conventions and other
13 international instruments,³ “the prohibition of forced labor itself, irrespective of consideration as
14

15 ² As the Supreme Court has held, as far back as *United States v. Smith*, 18 U.S. (Wheat)
16 153, 160-61 (1820), the “law of nations” is determined “by consulting the works of jurists,
17 writing professedly on public law; or by general usage and practice of nations; or by judicial
18 decisions recognizing and enforcing that law.” The Supreme Court reaffirmed this holding in
19 *Sosa*. *See* 542 U.S. at 734 (citing *The Paquette Habana*, 175 U.S. 677 (1900)).
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21

22 ³ The U.S. has ratified a wide array of international treaties that to indicate an unwavering
23 commitment to outlawing forced labor. For example, the U.S. was one of 152 states that ratified
24 the International Covenant on Civil and Political Rights (“ICCPR”). G.A.Res. 2200A (XXI),
25 December 16, 1996, 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1996), 999
26 U.N.T.S. 171, entered into force March 23, 1976. The ICCPR specifically prohibits all forms of
27 forced labor. *See* Leary Decl ¶¶ 13-14.
28

1 an aspect of slavery, is now unequivocally considered a violation of a peremptory norm.” *Id.* ¶¶
2 22-27. In reaching this conclusion, Professor Leary notes that the inclusion in the ILO
3 Declaration that the “elimination of all forms of forced or compulsory labor” as a fundamental or
4 core right was significant mainly because it was universally accepted. The ILO Declaration was
5 adopted by 273 votes of representatives of governments, trade unions and employers’
6 organizations, and there were no votes against it. *Id.* ¶ 16.

7 In another context, Professor Leary observes (*Id.* ¶ 24) that the ILO Commission on
8 Forced Labor in Myanmar (Burma) found that:

9 ***there exists now in international law a peremptory norm prohibiting any recourse to***
10 ***forced labour and that the right not to be compelled to perform forced or compulsory***
11 ***labour is one of the basic human rights... any person who violates this peremptory***
12 ***norm is guilty of a crime under international law.*** *Forced Labour in Myanmar (Burma)*,
13 Report of the Commission of Inquiry (Geneva, July 2, 1998), at ¶¶ 203 and
14 204)(emphasis added).⁴

15
16 Likewise, while it should go without saying that forced child labor is an even more
17 despised and condemned practice than adult forced labor, international standards, including the
18 ILO Conventions, confirm the universal nature of the prohibition. *See* Leary Decl ¶¶ at 26-27.
19 Professor Leary notes that the ILO’s *Global Alliance Report* states that “child labor amounts to
20 forced labor not only when children are forced, as individuals in their own right, by a third party
21 to work under the menace of a penalty, but also when a child’s work is included within the forced
22 labor provided by the family as a whole.” *Id.* ¶ 27. This is precisely the nature of Plaintiffs’ child
23 labor allegations. *See* Compl. ¶¶ 4, 55, 65.

24 Defendants’ assertion that they have a “defense” that the children they otherwise insist are
25 prohibited from working on the Firestone Plantation are free to work as long as they are in

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27 ⁴Available at

28 <http://www.ilo.org/public/english/standards/relm/gb/docs/gb273/myanmar.htm>.

1 school, Def. Supp. Br. at 4, ignores the key point that Plaintiffs allege the child workers are
2 unable to attend school because of the long hours and grueling conditions they are forced to
3 endure. *See* Compl. ¶¶ 4,55,66.

4 There is simply no question that international standards, particularly those derived from
5 the ILO, are clear that forced labor and forced child labor are internationally condemned, and are
6 sufficiently defined to qualify as “universal, specific, and obligatory” norms.

7 ***B. U.S. Domestic Law Is Likewise Consistent With International Standards***
8 ***Prohibiting Forced and Child Labor.***

9 In addition to international law, U.S. domestic law shows an overwhelming acceptance of
10 the prohibitions of forced labor and child labor. Plaintiffs’ Complaint includes a claim for forced
11 labor under the Thirteenth Amendment’s prohibition of “slavery” and “involuntary servitude.”
12 The Thirteenth Amendment’s clear statement of fundamental U.S. policy prohibiting the conduct
13 of forced labor also serves as the Constitutional basis for a series of federal statutes that outlaw
14 forced labor and trafficking, which Plaintiffs likewise rely upon to support their forced labor
15 claims. *See* Compl. ¶¶ 110-29 and Pls’ Opp to Dismissal Motion at 18-21. For example, 18
16 U.S.C. § 1595 provides a civil remedy for violations of the Trafficking Victims Protection Act
17 of 2000 (“TVPA2000”), which includes specific provisions to prohibit any person from
18 providing or obtaining persons for forced labor (18 U.S.C. § 1589), and from trafficking,
19 “recruit[ing], harbor[ing], or transport[ing] any person for forced labor or services” (18 U.S.C. §
20 1590) . This statutory scheme was specifically based upon the Thirteenth Amendment. *See* Pub.
21 L. No. 106-386, § 102(b)(22) (Oct. 28, 2000), codified at 22 U.S.C. § 7101. The Congressional
22 findings for the TVPA2000 state that “[o]ne of the founding documents of the United States, the
23 Declaration of Independence, recognizes the inherent dignity and worth of all people. It states
24 that men are created equal and that they are endowed by their Creator with certain unalienable
25 rights. The right to be free from slavery and involuntary servitude is among those unalienable
26 rights.” Pub. L. No. 106-386, 102, 114 Stat. 1464 (2000).

27 U.S. law includes several provisions that use “internationally recognized worker rights,”
28 including freedom from forced or child labor, as a standard for conferring or removing benefits to
trading partners. For example, the Generalized System of Preferences Renewal Act of 1984

1 (“GSP”), 19 U.S.C. §§ 2461-66, allows duty free access to the U.S. market for specified products
2 from developing countries in exchange for compliance with the worker rights standard, including
3 “*a prohibition on the use of any form of forced or compulsory labor.*” *Id.* § 2462

4 (a)(4)(emphasis added).⁵ As Professor Leary (Leary Decl ¶ 19) points out:

5 The GSP provision is more than a mere statement of policy – it creates enforceable
6 norms. For example, the United States revoked Burma’s GSP benefits for its use of
7 forced labor in 1989. *See* 54 Fed. Reg. 16190-01, 1989 WL 299594 (Apr. 21, 1989). Both
8 the European Union and Canada have likewise applied the forced labor prohibition in
9 their own versions of GSP to remove Burma from their programs for noncompliance.
10 Further, Pakistan lost its U.S. GSP benefits in 1996 for several products due to the use of

9 ⁵ Numerous other U.S. trade laws reference this same definition of “internationally
10 recognized worker rights” from the GSP provision. *See, e.g.*, Caribbean Basin Initiative (“CBI”),
11 19 U.S.C. §§2702(b)(7) (provides that a “beneficiary country” may lose its benefits under this
12 statute “if such country has not or is not taking steps to afford internationally recognized worker
13 rights.”); Overseas Private Investment Corporation (“OPIC”), 22 U.S.C. § 2191 (1986)
14 (conditions financing and insurance to U.S. companies investing in developing countries on
15 condition that host country comply with “internationally recognized worker rights”); the African
16 Growth and Opportunity Act, 19 U.S.C. § 3703(a)(1)(F) (creates a GSP program specific to sub-
17 Saharan Africa with increased benefits dependent upon compliance with “internationally
18 recognized worker rights”). In addition, the Omnibus Trade and Competitiveness Act of 1988,
19 amending section 301 of the Trade Act of 1974, makes forced labor an “unreasonable” trade
20 practice, subjecting a U.S. trading partner to sanctions, if a country “permits any form of forced
21 or compulsory labor.” 19 U.S.C. § 2411. For further discussion of trade laws linked to
22 compliance with worker rights, including a prohibition on forced labor, see Compa and Vogt,
23 *Labor Rights in the Generalized System of Preferences: A 20-Year Review*, 22 Comparative
24 Labor Law & Policy Journal 199, 205-06 (2001).

1 forced child labor. *See* 61 Fed. Reg. 54719, 1996 WL 33673898 (Oct. 17, 1996).

2 All of the specific, federal provisions that outlaw forced and child labor, as well as the
3 numerous international provisions to which the U.S. ascribes, demonstrate conclusively that the
4 world, including the U.S., has reached a clear consensus on the sanctity of the prohibitions of
5 forced and child labor at issue in this case. As the U.S. Department of State pronounced, “[a]n
6 international consensus exists, based on several key International Labor Organization (ILO)
7 Conventions, that certain worker rights constitute core labor standards. These include . . .
8 freedom from forced and child labor.”⁶

9
10 ***C. The Firestone Defendants Are Not Covered By Any “Economic Necessity” Defense to Using Forced Labor, Including Forced Child Labor.***

11 Defendants assert that because economic conditions in Liberia are so desperate, Liberia
12 should be given an exemption from compliance with the universal prohibition of forced labor.
13 Def. Supp. Br. at 5-6. Bridgestone-Firestone had revenues last year of 25.57 billion U.S. dollars.⁷
14 This enormous company does not get to piggyback on Liberia’s poverty, especially since
15 Liberia’s 2005 Gross Domestic Product (“GDP”), at 2.755 billion dollars,⁸ is a fraction of
16 Defendants’ revenue. Indeed, Firestone’s position demonstrates graphically that the company is
17 knowingly taking advantage of impoverished people who have no choice but to work under the
18 brutal conditions imposed by the company. As Plaintiffs’ allege, workers who could not meet the
19 onerous quota set by Firestone were told to put their children to work. Complaint ¶¶ 4, 55, 65.

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21 ⁶ U.S. Dept. of State, Country Reports on Human Rights Practices 1997, Section VI,
22 (January 30, 1998), *available at*
23 http://www.state.gov/www/global/human_rights/1997_hrp_report/overview.html.

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26 ⁷ *See* Google Finance, Bridgestone Corporation, at
27 <http://finance.google.com/finance?cid=697293>.

28 ⁸ <https://www.cia.gov/cia/publications/factbook/geos/li.html>.

1 The poverty-stricken Plaintiffs had no choice but to comply with Firestone's directive.

2 ***D. The Unocal Decision Simply Reinforces that Courts Have Found that ILO***
3 ***Conventions, as Well as other International Materials, Establish that Forced Labor is***
4 ***a "Universal, Specific, and Obligatory" Norm.***

5 Defendants protest too much in contesting Plaintiffs' reference to the decision in *John*
6 *Doe I v. Unocal Corp.*, 395 F. 3d 932 (9th Cir. 2002). See Def. Supp. Br. at 6-7. First, in
7 referencing the decision, in response to a question from the Court at the June 28 Hearing,
8 Plaintiffs' counsel was clear about the status of the decision and stated that it was still "more
9 interesting than a law review article." This is because the Ninth Circuit went through an
10 unassailable assessment of the use of international standards, including ILO Conventions, in
11 agreeing that forced labor was a violation of the law of nations. *Id.* at 945-55. Moreover, even the
12 District Court summary judgment decision that was reversed by the Ninth Circuit held that forced
13 labor was actionable under the ATS, and relied upon the ILO Conventions, as well as other
14 statements by the ILO, and the forced labor decisions from the Nuremberg Tribunals, in reaching
15 this conclusion. See *John Doe I v. Unocal Corp.*, 110 F. Supp. 2d 1294, 1307-11 (C.D. Cal.
16 2000).⁹ While Plaintiffs have cited other, binding, federal decisions establishing that forced

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18 ⁹ There is a long tradition of courts relying upon ILO Conventions for international
19 standards, even Conventions that have not been ratified by the U.S. See, e.g., *McGowan v.*
20 *Maryland*, 366 U.S. 420, 483 n.40 (1961) (Frankfurter, J., concurring) (citing ILO Convention
21 106 on providing for a weekly day of rest); *Bowe v. Colgate-Palmolive Co.*, 416 F.2d 711, 717-
22 18 (7th Cir. 1969) (citing ILO Convention 127 on maximum loads that may be transported by
23 male and female workers); *Presbyterian Church of Sudan v. Talisman Energy, Inc.*, 244 F. Supp.
24 2d 289, 317 (S.D.N.Y. 2003) (citing ILO Convention for proposition that corporations may be
25 held liable under international law for tort violations); *Estate of Rodriguez v. Drummond Co.*,
26 256 F. Supp. 2d 1250, 1263 (N.D. Ala. 2003) ("Although this court recognizes that the United
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1 labor is an actionable norm under the ATS, Pls. Opp. To Motion to Dismiss at 5-6, Firestone has
2 yet to cite a single case indicating that there is even a credible debate on this issue.

3 ***E. Conclusion***

4 At the end of the day, Defendants have failed to even raise a doubt that there is a strong
5 international consensus prohibiting the use of forced or child labor. Defendants' effort to assert
6 "defenses" or raise questions about the application of the forced labor or child labor standards to
7 the factual allegations simply reinforces that this case is not appropriate for evaluation in a
8 motion to dismiss. The assessment of the factual allegations must await discovery, and must be
9 resolved at summary judgment or at trial. *See* Pls Opp to Dismissal Motion at 4-5. *See also* Leary
10 Decl ¶ 28 (forced labor issues of "lack of consent" and "menace of penalty" are inherently factual
11 questions).

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14 Respectfully submitted this 7th day of August, 2006,

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18 By _____
19 Terry Collingsworth
20 INTERNATIONAL LABOR RIGHTS FUND
21 Attorneys for Plaintiffs

22
23 _____
24 States has not ratified ILO Conventions 87 and 98, ***the ratification of these conventions is not***
25 ***necessary*** to make the rights to associate and organize norms of customary international law."
26 (emphasis added)).
27
28