Nos. 21-16433, 21-16429

IN THE

United States Court of Appeals for the Ninth Circuit

TIANMING WANG, *ET AL.*,
Plaintiffs-Appellees,

v.

IMPERIAL PACIFIC INTERNATIONAL (CNMI), LLC,
Defendant-Appellant.

On Appeal from the United States District Court
for the Northern Mariana Islands, No. 1:18-cv-00030
Hon. Ramona V. Manglona, U.S. District Judge

MOTION FOR LEAVE TO FILE BRIEF BY THE HUMAN TRAFFICKING LEGAL CENTER, FREEDOM NETWORK USA, AND GLOBAL LABOR JUSTICE - INTERNATIONAL LABOR RIGHTS FORUM AS *AMICI CURIAE* SUPPORTING APPELLEES

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March 21, 2022

CORPORATE DISCLOSURE STATEMENT

The Human Trafficking Legal Center certifies that it has no parent corporation and that no publicly held corporation owns ten percent or more of its stock.

Freedom Network USA certifies that it has no parent corporation and that no publicly held corporation owns ten percent or more of its stock.

Global Labor Justice - International Labor Rights Forum also certifies that it has no parent corporation and that no publicly held corporation owns ten percent or more of its stock.

MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

The Human Trafficking Law Center, Freedom Network USA, and Global Labor Justice - International Labor Rights Forum respectfully move for leave to file the accompanying *amicus curiae* brief in support of Plaintiffs-Appellees. Counsel sought consent from the parties to file this brief. Plaintiffs-Appellees consented; Defendants-Appellants did not.

This appeal implicates frequently litigated questions in human trafficking and forced labor cases—namely, the availability of discovery sanctions against defendants who defy court orders and drag their feet in discovery, and the proper pleading standards for causes of action under human trafficking and forced labor statutes. All three proposed amici curiae are devoted to eradicating human trafficking and forced labor, and ensuring that the victims of those offenses have meaningful access to the courts to enforce the remedies to which they are entitled.

No party or party's counsel authored this brief in whole or in part; no party or party's counsel contributed money to fund the preparation of this brief; and no person except amici, their members, or their counsel contributed money intended to fund the preparation or submission of this brief. *See* Fed. R. App. P. 29(a)(4)(E).

The amicus brief is timely because it is filed within seven days of this Court's March 15, 2022 order accepting the filing of Plaintiffs-Appellees' principal brief. The brief complies with Federal Rule of Appellate Procedure 29(a)(5) because it contains fewer than 7,000 words—half the length authorized for the parties' principal briefs.

Given their substantial interest in this case, amici respectfully seek leave to file the attached brief as *amici curiae*.

Respectfully submitted,

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INTEREST OF *AMICI CURIAE*

In 2000, Congress passed the Trafficking Victims Protection Act — the first comprehensive piece of U.S. legislation aimed at prosecuting and preventing human trafficking, including labor trafficking and forced labor. In the decades following, Congress has repeatedly broadened the scope of the law through multiple reauthorizations to address this "dark side of globalization."[1] H.R. Rep. No. 110-430, at 33-34 (2007). Trafficking and forced labor victims are exploited and abused not just by those who exploit them directly, but also by those who aid or profit from the exploitation. Because justice for those victims requires recovery against the perpetrators, as well as those who benefit or gain from this "contemporary manifestation of slavery," *Ditullio v. Boehm*, 662 F.3d 1091, 1094 (9th Cir. 2011) (quoting Pub. L. No. 106-386, § 102, 114 Stat. 1464, 1466 (2000) (codified as amended at 18 U.S.C. § 1589 *et seq.*)., Congress created a civil liability regime to supplement the TVPRA's criminal provisions in 2008's Trafficking Victims Protection Reauthorization Act ("TVPRA"), 18 U.S.C. § 1595(a).

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[1] Amici refer to the Trafficking Victims Protection Act of 2000 along with its subsequent reauthorizations and amendments as the "TVPRA," except where specifically noted otherwise.

This case presents the question whether a company that has long perpetrated and profited from the use of forced labor can avoid liability by engaging in bad-faith discovery misconduct that exploits the same vulnerabilities that made its victims targets in the first place.

Amici have a strong interest in ensuring that traffickers cannot manipulate the legal system in this way.

The Human Trafficking Legal Center is a non-profit organization that empowers trafficking survivors to seek justice under the federal anti-trafficking statutes. Since its inception in 2012, it has trained more than 5,000 attorneys at top law firms across the country to handle civil trafficking cases pro bono, connected more than 470 individuals with pro bono representation, and educated more than 38,000 community leaders on trafficking victims' rights. HTLC advocates for justice for all victims of human trafficking and forced labor, including through frequent amicus briefs in cases arising under the anti-trafficking statutes.

Freedom Network USA ("FNUSA"), a non-profit corporation, is the largest alliance of human trafficking advocates in the United States. Our 91 members include survivors of human trafficking and those who provide legal and social services to trafficking survivors in over 40 cities

across the United States. In total, our members serve over 2,000 trafficking survivors per year, including adults and minors, of both sex and labor trafficking. FNUSA engages in field-building and advocacy to increase understanding of the wide array of human trafficking cases in the United States. FNUSA provides training and technical assistance, funded by the United States Department of Justice Office for Victims of Crime ("OVC"), including providing guidance to all OVC Human Trafficking Housing Program grantees on the implementation of voluntary services as required by OVC. FNUSA was involved in the passage of the TVPRA and has been a key advocate in each subsequent Reauthorization. FNUSA and our members have an interest in preventing abuse and exploitation by ensuring that all victims are fully protected and have access to justice. Labor trafficking is a crime of physical and psychological abuse tied to economic exploitation. Ensuring that survivors have prompt access to civil court judgments is critical to meeting the comprehensive needs of survivors.

Global Labor Justice-International Labor Rights Forum (GLJ-ILRF) is a non-governmental organization that works transnationally to advance policies and laws that protect decent work and just migration;

to strengthen workers' ability to advocate for their rights; and to hold corporations accountable for labor rights violations in their supply chains. GLJ-ILRF works with trade unions, faith-based organizations, and community groups to support workers and their families.

GLJ-ILRF has an interest in ensuring migrant worker plaintiffs have access to protections afforded under U.S. anti-trafficking laws. GLJ-ILRF also has an interest in ensuring that this Court is aware of the first-hand experiences of migrant workers and concrete access to justice challenges.

Because perpetrators who engage in or benefit from human trafficking and forced labor often seek to thwart justice, courts must have the ability to attach sanctions for litigation misbehavior. Without that power, defendants in such cases have every incentive to drag their feet, obstruct civil proceedings, and derail any reckoning for their actions. Accordingly, *amici* have a substantial interest in courts' ability to apply sanctions, up to and including default judgment, as the district court appropriately did here. In addition, amici have an interest in maintaining trafficking survivors' access to justice, which Appellant Defendant-Appellant Imperial Pacific International (CNMI), LLC ("IPI")

seeks to subvert by urging the Court to depart from the normal pleading standards under the Federal Rules of Civil Procedure and impose an excessively stringent standard that finds no justification in the rules or relevant statutes.

CERTIFICATE OF AUTHORSHIP

Under Federal Rule of Appellate Procedure 29(a)(4)(E), amici certify that no counsel for a party authored this brief in whole or in part, and no party or counsel for a party contributed money intended to fund the preparation or submission of this brief. No one other than amici, their members, or their counsel contributed money intended to fund the preparation or submission of this brief.

Plaintiffs-Appellees have consented to the filing of this brief. Defendants-Appellants have not. Accordingly, this brief is accompanied by a motion for leave to file an amicus brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

Forced labor is a feature, not a bug, of the global supply chain, leading to billions of dollars in illegal profits. But despite the scope of this global problem, survivors of forced labor rarely see their day in court.

Congress has enacted and expanded remedies for trafficking and forced labor survivors. Given the dearth of government enforcement, private suits are often a forced-labor victim's only real source of justice. But defendants in such suits have every incentive to forestall an adverse judgment through a war of litigative attrition. And despite the work that HTLC and other organizations do to match victims of trafficking with counsel, discovery abuse is a very real impediment to justice. Accordingly, courts should have the full panoply of sanctions for litigation misconduct available to them. In those instances, like here, where despite repeated warnings, and repeated opportunities to comply with the district court's orders, defendants continue to deny plaintiffs the discovery to which they are entitled, default judgment is entirely appropriate.

Moreover, in applying default judgment, this Court should not, as IPI urges, impose a more stringent standard for evaluating the sufficiency of plaintiffs' allegations than the Federal Rules of Civil Procedure require. That would reward the same bad behavior that Congress intended to deter. This Court should affirm the district court's reasonable efforts to deter egregious litigation misconduct.

ARGUMENT

I. Forced labor victims need access to justice in federal courts through the TVPRA.

A. Perpetrators of forced labor generate billions of dollars in illegal profits by exploiting vulnerable victims.

Forced labor is a widespread practice that "exists in formal and informal labor markets of both lawful and illicit industries." U.S. Dep't of State, *Trafficking in Persons Report* 13 (2015) ("2015 Trafficking Report"), https://bit.ly/3JhLc9T. By one calculation, nearly 25 million people were trapped in forced labor situations in 2016. Int'l Labour Office, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage* 9 (2017), https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcom m/documents/publication/wcms_575479.pdf. Forced labor persists because it is extraordinarily profitable: it has been "the fastest growing source of profits for organized criminal enterprises worldwide." 22 U.S.C. § 7101(b)(8). Experts estimate that the total illegal profits obtained from the use of forced labor worldwide amount to over $150 billion per year. Int'l Labour Office, *Profits and Poverty: The Economics of Forced Labour* 13 (2014), https://bit.ly/3HHgy9O; *see* 146 Cong. Rec. S10167 (daily ed.

Oct. 11, 2000) (statement of Sen. Wellstone) ("[P]rofit in the trade can be staggering.").

To protect their ill-gotten profits, perpetrators of forced labor often target vulnerable victims who lack the education, resources, and access to legal systems necessary to protect themselves. 22 U.S.C. § 7101(b)(4)-(5), (16)-(18), (20). "Although human trafficking is found in many trades, the risk is more pronounced in industries that rely upon low-skilled or unskilled labor," including jobs "often filled by socially marginalized groups including migrants, people with disabilities, or minorities." 2015 Trafficking Report at 14; *accord* 22 U.S.C. § 7101(b)(17). These "[l]ow-wage and migrant workers" face "restricted movement, minimal oversight mechanisms, withheld wages, and increasing debts," all of which are "indicators or flags for human trafficking." U.S. Dep't of State, *Trafficking in Persons Report* 4 (2021), https://bit.ly/3HIGvFX. The largest number of forced labor cases, after domestic work, are found in the construction industry. Int'l Labour Office, *Global Estimates of Modern Slavery*, *supra*, at 11.

Many trafficking and forced labor victims are also undocumented migrants with little education and few language skills; whose "poverty,

irregular status, isolation, language barriers, debt, and lack of proper identity papers" make them "particularly vulnerable to exploitation." Rohit Malpani, *Legal Aspects of Trafficking for Forced Labour Purposes in Europe* 34 (Int'l Labour Office, Working Paper Apr. 2006), https://bit.ly/3HJFeyo.

This case presents a classic example of the methods unscrupulous entities use to flout labor, immigration, and anti-trafficking laws. Plaintiffs-Appellees Tianming Wang, Dong Han, Liangcai Sun Yongjun Meng, Qingchun Xu, Youli Wang, and Xiyang Du are all Chinese residents who were among the victims of a forced labor scheme perpetrated by IPI and its contractors to quickly construct a massive hotel and casino in Saipan, which is part of the Commonwealth of the Northern Mariana Islands. 7-ER-1309-55. If IPI didn't meet its construction deadline, it risked losing its exclusive casino license. 7-ER-1316, 1334. Because there weren't enough available foreign worker visas, IPI arranged for Chinese workers, like plaintiffs here, to incur massive debts to enter Saipan as "tourists" and then forced them to work long hours under dangerous conditions for little or no pay. 7-ER-1310, 1315-16. IPI eventually had more than 2,000 people working around the

clock to complete the casino, allowing it to keep its license. 7-ER-1329-30. These indebted foreign workers were held in forced labor, illegally underpaid, and dangerously overworked in unsafe conditions without basic protective equipment. 7-ER-1310, 1319-21, 1324, 1336. Their passports were seized, and they were threatened with deportation and physical violence if they refused to work or complained to authorities. 7-ER-1310-11, 1317-19, 1321-22.

B. IPI's argument that plaintiffs did not plead a TVPRA violation would deny justice to trafficking and forced labor victims by imposing pleading burdens not supported by the statute's text or purposes.

Congress passed the TVPRA to "increase[] protection for victims of trafficking," like plaintiffs here. *Ditullio*, 662 F.3d at 1094, 1098. The TVPRA thus criminalizes broad categories of conduct that constitute or facilitate labor trafficking or forced labor. Criminal prosecutions for labor trafficking are rare, however, due to a lack of resources and political will. Rebekah R. Carey, Human Trafficking Legal Ctr., *Federal Human Trafficking Civil Litigation: 2020 Data Update* 12 (2021), https://bit.ly/3Hd90KF. Given the dearth of such prosecutions, civil actions are often the *only* path to justice for trafficking victims.

The TVPRA thus creates a broad civil right of action "that permits victims of trafficking to recover compensatory and punitive damages from individuals who violate [it]." *Ditullio*, 662 F.3d at 1100; *see* 18 U.S.C. § 1595(a). The civil action imposes liability on both "perpetrator[s]" of forced labor and anyone who "knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in" forced labor. 18 U.S.C. § 1595(a). In so doing, Congress sought both to punish traffickers and to remove the financial incentives that lead trafficking beneficiaries to turn a blind eye to the exploitation from which they profit. *The Global Fight to End Modern Slavery: Hearing Before the S. Comm. on Foreign Rels.*, 115th Cong. 4 (2018) (statement of Sen. Menendez).

To honor these purposes, TVPRA plaintiffs should not be required to plead more facts than those required by the civil action provision's plain language or the Federal Rules of Civil Procedure. In this case, IPI only challenges plaintiffs' allegations of knowledge. But its arguments are inconsistent with the TVPRA's text. IPI first suggests it could not "knowingly benefit" from its venture with its contractors without

knowledge that its contractors violated the TVPRA, IPI Br. 25-26. That is wrong. The TVPRA provides to victims of coerced labor a cause of action against any third party who "knowingly benefits, financially or by receiving anything of value from participation in a venture which that person knew or should have known" relied on coerced labor. *Lesnik v. Eisenmann SE*, 374 F. Supp. 3d 923, 951 (N.D. Cal. 2019). Accordingly, to state a claim under this cause of action, a plaintiff must allege that the defendant: (1) obtained a financial benefit from a venture that relied on the plaintiff's coerced labor and (2) knew or should have known about the plaintiff's coerced labor. *Lesnik*, 374 F. Supp. 3d at 952. As plaintiffs explain in their brief, they easily satisfied it here. Indeed, there can be no serious question that plaintiffs alleged that IPI knew it was receiving something of value in the form of labor to construct its casiNo. Pls.' Br. 38; *see* 7-ER-1316, 1334-35 ¶¶ 51, 215, 216.

IPI next argues that plaintiffs did not plead it "knew or should have known" about its venture's TVPRA violations, but that argument depends on the false premise that "information and belief" allegations cannot be credited for purpose of default judgment. IPI Br. 23-26. On a Rule 12(b)(6) motion, district courts *can* and indeed regularly do assume

the truth of facts pleaded "on information and belief." *Soo Park v. Thompson*, 851 F.3d 910, 928-29 (9th Cir. 2017). The same is true when reviewing a motion for default judgment. *Fong v. United States*, 300 F.2d 400, 409 (9th Cir. 1962); *see DIRECTV, Inc. v. Hoa Huynh*, 503 F.3d 847, 854 (9th Cir. 2007) ("In reviewing a default judgment, this court takes 'the well-pleaded factual allegations' in the complaint 'as true.'" (quoting *Cripps v. Life Ins. Co.*, 980 F.2d 1261, 1267 (9th Cir. 1992)).

Categorically refusing to credit "information and belief" allegations and creating a more stringent exception to the normal pleading rules would be especially inappropriate in TVPRA cases. *See, e.g., Lesnik,* 374 F. Supp. 3d at 951 (noting that "Rule 9(b) does not apply to Plaintiffs' § 1595 claim because it does not sound in fraud" (citing *Aragon v. Che Ku*, 277 F. Supp. 3d 1055, 1061 n.2 (D. Minn. 2017)). This Court has recognized that "pleading facts alleged upon information and belief" may be required "where the facts are peculiarly within the possession and control of the defendant." *Soo Park*, 851 F.3d at 928 (quoting *Arista Records, LLC v. Doe 3*, 604 F.3d 110, 120 (2d Cir. 2010)). That will usually be the case in TVPRA actions. As explained, victims of forced labor tend to be vulnerable, poor, and legally unsophisticated, while their

more powerful and well-financed exploiters control the evidence the victims will need to prove their case. If victims cannot plead facts based on information and belief, then traffickers will be able to withhold essential evidence with impunity, knowing that they can rely on the very evidentiary gap they created as a defense to default judgment. *See J.C. v. Choice Hotels Int'l, Inc.*, No. 20-cv-155, 2020 WL 6318707, at *6 (N.D. Cal. Oct. 28, 2020) (crediting "information and belief" allegations in TVPRA action); *Rana v. Islam*, 210 F. Supp. 3d 508, 513-14 (S.D.N.Y. 2016) (same, in granting default judgment), *vacated in part on other grounds*, 887 F.3d 118 (2d Cir. 2018) (per curiam).

That is the trick IPI tried to pull in this case, and the district court properly rejected it. As this Court recently held, "knew or should have known" connotes a negligence standard, which is a "less culpable mental state than actual knowledge or recklessness." *Ratha v. Phatthana Seafood Co.*, No. 18-55041, 2022 WL 571015, at *14 (9th Cir. Feb. 25, 2022) (cleaned up). Plaintiffs thus had to plead only that IPI was negligent in not discovering its contractors' TVPRA violations. And Plaintiffs' allegations, including but not limited to those made "on

information and belief," more than satisfied that burden. *See* Pls.' Br. 35-39.

Even IPI's counsel conceded that "if you assume the truth of their allegations, then you're right. Then IPI is liable." 2-ER-54. That concession was correct. Plaintiffs alleged that IPI was directly involved in the forced labor scheme. Specifically, plaintiffs alleged that IPI itself arranged for workers to illegally travel to Saipan as "tourists," provided their unsanitary and overcrowded housing, transported them from that housing to the construction site, and obstructed OSHA investigations into work conditions. 7-ER-1316, 1325, 1333 ¶¶ 138, 193, 201, 202. Those allegations establish that IPI and its contractors violated the TVPRA by "knowingly recruit[ing], harbor[ing], transport[ing], provid[ing], or obtain[ing]" forced labor. 18 U.S.C. § 1590(a).

Even if that were not enough (and it plainly is), plaintiffs also alleged more than enough to establish that IPI "should have known" about the violations. 18 U.S.C. § 1595(a); *Ratha*, 2022 WL 571015, at *14. Specifically, plaintiffs alleged more than sufficient facts that IPI "was aware of its contractors' policies concerning hours of work and harsh punishments and fines for minor work infractions," which were an

essential part of how plaintiffs were coerced into forced labor, that IPI "was deeply involved with selecting and supervising contractors," that it was repeatedly warned about its contractors' use of unauthorized workers and their dangerous working conditions, and that it nonetheless maintained its relationship with its contractors even after learning of their illegal practices. *E.g.*, 7-ER-1316, 1325-34 ¶¶ 46, 50, 138, 168, 182, 185, 197, 202, 207, 208, 210, 211. At a minimum, the warnings IPI received about its contractors should have led it to exercise its oversight and investigate their operations, which would have disclosed that the contractors were violating the TVPRA by (among other things) forcing plaintiffs to work through "serious harm" and "abuse of law or legal process." 18 U.S.C. § 1589(a)-(b).

For these reasons, to find plaintiffs' extensive allegations insufficient to establish IPI's liability under the TVPRA would distort the statute's text, undermine its purposes, and reward IPI for obstructing justice and denying plaintiffs essential evidence through pervasive litigation misconduct. It would also impose a pleading standard far more demanding than what the Federal Rules of Civil Procedure and the relevant statutes call for, with no justification for doing so. The district

court thus properly rejected IPI's arguments, and this Court should do the same.

II. Default judgments (and other discovery sanctions) are an important tool to prevent traffickers from obstructing the TVPRA through litigation misconduct.

A. Perpetrators of forced labor often use litigation misconduct to stonewall victims and stave off a reckoning.

IPI is not alone in engaging in litigation misconduct. Defendants in human trafficking cases often use dilatory tactics and discovery abuse to try to dodge liability. *Villanueva Echon v. Sackett* is a paradigmatic example of the common and recurrent tactics traffickers deploy to frustrate their victims and elude judgment. 809 F. App'x 468 (10th Cir. 2020). There, farm owners in Colorado allegedly forced Filipino immigrants to perform unpaid labor. *Id.* at 469. When the immigrants sued, the owners delayed the case through discovery misconduct, requiring plaintiffs to file repeated motions to compel the discovery to which they were entitled. *Id.*; *see* Report & Recommendation, *Echon v. Sackett*, No. 14-cv-03420 (D. Colo. Jan. 23, 2017), ECF 91. After three such motions to compel, the district court imposed sanctions by deeming certain facts established at summary judgment, and the court of appeals affirmed. 809 F. App'x at 474.

The court of appeals listed defendants' excuses—including "literacy limitations, responses provided through other methods of discovery, and lack of bad faith"—but concluded they could not "justify their failure to comply with the district court's discovery orders." 809 F. App'x at 470, 472. The court of appeals also rejected defendants' contention that their choice to proceed *pro se* implied they were less well-resourced than the represented immigrant laborers. *Id.* at 469, 471. As the court explained, "even pro se litigants are not immune from sanctions for failing to obey a discovery order." *Id.* at 471. Here, IPI, which was represented by a series of highly experienced counsel, cannot even avail itself of the sort of excuses the Tenth Circuit rejected in *Echon*.

In case after case, trafficking plaintiffs confront this type of predictable defendant misdirection and worse: retaliation and discovery misconduct. When one Bangladeshi diplomatic couple allegedly kept a domestic worker in "slavery-like conditions" and "in a state of near complete isolation and dependence," they tried to turn the tables by accusing him of commencing the TVPRA suit as a "scurrilous ruse designed to ensure that he acquire quick legal status in the USA." *Rana v. Islam*, No. 14-cv-1993, 2016 WL 2758290, at *1-2 (S.D.N.Y. May 12,

2016) (quotation marks omitted). Instead of vigorously defending themselves against the serious allegations, they proceeded to boycott the proceeding. They failed to make initial disclosures, excused themselves from depositions, refused to produce documents, and violated the court's scheduling orders despite being granted extensions. *Rana*, 887 F.3d at 120. When the main defendant relocated to Morocco, he even attempted to hide behind consular immunity. *Rana*, 2016 WL 2758290, at *2. Like the district court here, the court ultimately (and properly) granted default judgment against the defendants as a sanction for their repeated failures to comply. *Id.* at *4-5.

As the power dynamics between the parties in *Rana* illustrate, information asymmetries often exist between traffickers and their victims. As a result, the viability of human trafficking claims can hinge on the victims' ability to obtain meaningful discovery. That means defendants have every incentive to obstruct, obfuscate, and delay, which is why defendant discovery abuse is a persistent feature in human trafficking cases.

Consider the case of an immigrant worker who alleged she cleaned and provided domestic services for a Canadian family without pay, seven

days a week, for twelve years. *Oak-Jin Oh v. Soo Bok Choi*, No. 2011-3764, 2016 WL 11430442, at *4 (E.D.N.Y. Feb. 29, 2016). When one defendant canceled a deposition three days before it was to be held, the court sanctioned him with the cost of the court reporter and interpreter. *Id.* at *3-4. The defendant then canceled a second deposition the day of, despite having agreed to the date. *Id.* The same defendant also provided only partial responses to document requests. *Id.* These are by no means isolated examples. *See, e.g., Saiyed v. Archon, Inc.*, No. 16-9530, 2020 WL 7334190, at *9 (D.N.J. Dec. 14, 2020) (drawing an inference of culpability after trafficking defendant failed to appear at important hearings and neglected court deadlines); *Carazani v. Zegarra*, 972 F. Supp. 2d 1, 14 (D.D.C. 2013) (holding trafficking defendant's pattern of non-compliance with discovery orders warranted discovery sanctions); *Doe v. Howard*, No. 11cv1105, 2012 WL 3834930, at *1 (E.D. Va. Aug. 7, 2012) (disapproving misconduct including failing to appear for deposition and refusing to communicate with plaintiff's attorneys), *report and recommendation adopted*, 2012 WL 3834929 (E.D. Va. Sept. 4, 2012); *Yusuf v. Tija*, No. B222277, 2010 WL 4012145, at *3 (Cal. Ct. App. Oct. 14, 2010) (affirming imposition of evidence sanction for discovery abuse

against defendant found guilty at trial of human trafficking) (unpublished and noncitable); Judgment, *Oh v. Choi*, No. 1:11-cv-3764 (E.D.N.Y. Mar. 30, 2016), ECF 154 (granting default as sanctions for discovery misconduct); *see also* Order Granting Default Judgment, *Murray v. Altendorf Transport, Inc.*, No. 2:10-cv-103 (D.N.D. July 12, 2021), ECF 327 (granting default judgment for failure to appear); Order, *Gonzalez Leiva v. Clute*, No. 4:19-cv-87 (N.D. Ind. Jan. 29, 2021), ECF 57 (granting default judgment for failure to appear); Order, *Mendez Perez v. CJR Framing Inc.*, No. 3:19-cv-1429 (N.D. Tex. Jan. 22, 2021), ECF 25 (granting default judgment for failure to appear); Final Judgment Order, *Mendoza v. Valdavia*, No. 1:19-cv-8011 (N.D. Ill. Sept. 8, 2020), ECF 31 (granting default judgment for failure to appear); Memorandum Opinion and Order, *West v. Butikofer*, No. 2:19-cv-1039 (N.D. Iowa Aug. 18, 2020), ECF 20 (granting default judgment for failure to appear); Decision & Order, *Abafita v. Aldukhan*, No. 1:16-cv-06072 (S.D.N.Y. Sept. 16, 2019), ECF 74 (granting default judgment for failure to appear); Order, *Arreguin v. Sanchez*, No. 2:18-cv-133 (S.D. Ga. July 31, 2019), ECF 13 (granting default judgment for failure to appear); Judgment, *Lopez v. Walker*, No. 3:18-cv-170 (E.D. Tenn. Feb. 26, 2019), ECF 31 (granting

default judgment for failure to appear); Default Judgment Against Defendants Der Kogda and Marie-Claire Somda-Kogda, *Meda v. Kogda*, No. 1:17-cv-06853 (S.D.N.Y. July 25, 2018), ECF 81 (granting default judgment for failure to appear); Memorandum and Order, *Ross v. Jenkins*, No. 2:17-cv-2547 (D. Kan. May 23, 2018), ECF 40 (granting default judgment for failure to appear); Order, *Arellano v. Marshalls of MA, Inc.*, No. 1:17-cv-46 (N.D. Ind. Feb. 27, 2018), ECF 71 (granting default judgment for failure to appear); Order, *Belvis v. Colamussi*, No. 2:16-cv-544 (E.D.N.Y. Apr. 27, 2017), ECF 23 (granting default judgment for failure to appear); Memorandum Opinion, *Lipenga v. Kambalame*, No. 8:14-cv-3980 (D. Md. Nov. 9, 2016), ECF 24 (granting default judgment for failure to appear); Judgment, *Alabado v. French Concepts, Inc.*, No. 2:15-cv-2830 (C.D. Cal. May 2, 2016), ECF 110 (granting default judgment for failure to appear); Order, *Macolor v. Libiran*, No. 1:14-cv-4555 (S.D.N.Y. Sept. 16, 2015), ECF 74 (granting default judgment for failure to appear); Order, *Lagasan v. Al-Ghasel*, No. 1:14-cv-1035 (E.D. Va. Mar. 17, 2015), ECF 21 (granting default judgment for failure to appear); Memorandum, *Frankenfield v. Strong*, No. 2:12-cv-54 (M.D. Tenn. Mar. 25, 2014), ECF 38 (granting default

judgment for failure to appear); Default Judgment, *Pichardo v. Arturo Francisco & Expressway Parking Lot, Inc.*, No. 1:13-cv-4300 (S.D.N.Y. Nov. 12, 2013), ECF 25 (granting default judgment for failure to appear); Final Default Judgment, *Does I-IV v. Sunrise Labor Corp.*, No. 9:12-cv-80883 (S.D. Fla. Oct. 15, 2013), ECF 87 (granting default judgment for failure to appear); Order, *Lainez v. Baltazar*, No. 5:11-cv-167 (E.D.N.C. June 28, 2013), ECF 56 (granting default judgment for failure to appear); Final Default Judgment, *Magnifico v. Villanueva*, No. 9:10-cv-80771 (S.D. Fla. Nov. 1, 2012), ECF 133 (granting default judgment for failure to appear); Order of Default, *Ballesteros v. Al-Ali*, No. 1:11-cv-152 (D.R.I. Aug. 14, 2012), ECF 23 (granting default judgment for failure to appear); Order Granting Plaintiff's Motion for Judgment by Default, *Fernandes v. Hayes*, No. 6:11-cv-137 (W.D. Tex. Apr. 27, 2012), ECF 22 (granting default judgment for failure to appear); Decision and Order, *Gurung v. Malhotra*, No. 1:10-cv-5086 (S.D.N.Y. Nov. 22, 2011), ECF 31 (granting default judgment for failure to appear); Order Entering Default Judgment Against Defendants Alfonso Susano and Wiley Innovations Construction Corp., *Francisco v. Wiley*, No. 1:10-cv-332 (D. Colo. Sept. 10, 2013), ECF 120 (granting default judgment for failure to appear); Order

Granting Plaintiff's Motion for Default Judgment, *Canal v. de la Rosa Dann*, No. 4:09-cv-3366 (N.D. Cal. Sept. 2, 2010), ECF 46 (granting default judgment for failure to appear); Order on Plaintiffs' Motion for Judgment by Default and Assessment of Damages Against Defendants, *Asanok v. Million Express Manpower, Inc.*, No. 5:07-cv-48 (E.D.N.C. Oct. 26, 2009), ECF 68 (granting default judgment for failure to appear); Order Granting Rule 55(b)(2) Default Judgment, *Does v. Rodriguez*, No. 1:06-cv-805 (D. Colo. Apr. 13, 2009), ECF 62 (granting default judgment for failure to appear); Ruling re: Plaintiffs Motion for Default Judgment (Doc. No. 67), *Aguilar v. Imperial Nurseries*, No. 3:07-cv-193 (D. Conn. May 29, 2008), ECF 70 (granting default judgment for failure to appear); Order, *Mazengo v. Mzengi*, No. 1:07-cv-756 (D.D.C. Oct. 1, 2007), ECF 15 (granting default judgment for failure to appear).

B. Default judgments must be available to prevent defendants' discovery misconduct from prejudicing human trafficking/forced labor plaintiffs in pursuit of their claims.

Because discovery misconduct is a favorite gambit of perpetrators of forced labor, courts managing discovery in trafficking cases need to have at the ready the full panoply of discovery sanctions. Only then will courts be able to deter abuse and award relief in cases of willful

misconduct and stonewalling. Anything less will allow traffickers and those who benefit from their acts to escape liability and reinforce the belief that forced labor is a crime without meaningful consequences for the culprits. In particular, default judgments are a critical safeguard against forced labor and human trafficking defendants' bad-faith attempts to use dilatory tactics and other bad-faith discovery misconduct to evade merits-based dispositions of the allegations against them.

District courts have the inherent power and authority under Federal Rule of Civil Procedure 37 to enter default judgments against defendants who resort to "abusive litigation practices" to avoid turning over the discovery they are obligated to provide (and to which plaintiffs are entitled). *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 916, 916 (9th Cir. 1987) (per curiam); *see also* 8B Wright & Miller, Federal Practice and Procedure § 2281 (3d ed.) (courts may enter default judgments against "any party or person who seeks to evade or thwart full and candid discovery"). Default judgments are often entered where defendants have a history of violating court orders, and such sanctions accordingly serve as a critical measure to enforce discovery orders against defendants who would otherwise violate them with impunity. *See Fair Hous. of Marin v.*

Combs, 285 F.3d 899, 905 (9th Cir. 2002) (default judgments are permissible "where the violation is due to willfulness, bad faith, or fault of the party" (quotation marks omitted)).

Litigants who are "willful in halting the discovery process" ultimately "act in opposition to the authority of the court," cause potentially irreversible prejudice to plaintiffs, and "deprive other litigants of an opportunity to use the courts as a serious-dispute settlement mechanism." *G-K Props. v. Redevelopment Agency*, 577 F.2d 645, 647 (9th Cir. 1978). And in so doing, they needlessly waste the resources of the courts and opposing parties. Default judgments thus play a critical role in protecting plaintiffs from the irreversible prejudice that would otherwise result from defendants' repeated discovery abuses, and in minimizing the degree to which scarce judicial resources are wasted on policing bad-faith defendants.

Default judgments are especially important safeguards against discovery misconduct in human trafficking cases, which typically involve low resource trafficking victims facing off against significantly more powerful and well-financed defendants who have near-total control over the evidence that would decide the merits of the case. Many of those

forced labor victims never have their day in court. Even when they do—and even when HTLC and other organizations pair those plaintiffs with experienced counsel—they still have to fight an uphill battle against entities like IPI that force them to return repeatedly to court to compel the provision of discovery to which they are unquestionably entitled. By making litigation more expensive, time-consuming, and difficult, such discovery misconduct significantly reduces the deterrence effect of private lawsuits. While the number of civil trafficking forced labor cases brought since 2011 has surged in the last decade, that barely makes a dent in the hundreds of billions in profits that traffickers earn each year. Int'l Labour Office, *Profits and Poverty: The Economics of Forced Labour*, *supra*, at 13.

Recognizing the importance of deterring defendants from engaging in such prejudicial litigation tactics, this Court has repeatedly affirmed the entry of default judgments against defendants who have consistently engaged in willful discovery misconduct. *E.g.*, *Dreith v. Nu Image, Inc.*, 648 F.3d 779, 787-88 (9th Cir. 2011); *Fair Hous. of Marin*, 285 F.3d at 905-06; *Stars' Desert Inn Hotel & Country Club, Inc. v. Hwang*, 105 F.3d 521, 524-25 (9th Cir. 1997); *Adriana Int'l Corp. v. Thoeren*, 913 F.2d 1406,

1417 (9th Cir. 1990); *Wanderer v. Johnston*, 910 F.2d 652, 655 (9th Cir. 1990); *Nilsson, Robbins, Dalgarn, Berliner, Carson & Wurst v. La. Hydrolec*, 854 F.2d 1538, 1547 (9th Cir. 1988) (per curiam). It should do the same here to preserve the most powerful deterrent that a district court has to protect human-trafficking/forced labor plaintiffs against bad-faith discovery misconduct.

In contrast to the value of preserving district courts' ability to enter default judgments, the risk of district courts abusing such sanctions is minimal. Default judgments are only permissible where the discovery violations at issue arise from "willfulness, bad faith, or fault of the party," and prejudice the opposing party. *Fair Hous. of Marin*, 285 F.3d at 905 (quotation marks omitted). And even then, district courts may enter default judgments only after considering five factors before entering default: "(1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the other party; (4) the public policy favoring the disposition of cases on their merits; and (5) the availability of less drastic sanctions." *Adriana Int'l*, 913 F.2d at 1412 (quoting *Malone v. U.S.P.S.*, 833 F.2d 128, 130 (9th Cir. 1987)). In addition, a court imposing case-dispositive sanctions must find

the discovery violations were due to "willfulness, bad faith, or fault of the party." *Commodity Futures Trading Comm'n v. Noble Metals Int'l, Inc.*, 67 F.3d 766, 770-71 (9th Cir. 1995) (quotation marks omitted). These guardrails sufficiently limit district courts' discretion and ensure that such serious sanctions have their intended effect: enabling district courts to enforce discovery orders against bad-faith defendants who would otherwise be free to exploit abusive litigation tactics as a means of evading full discovery and the merits-based judgments that result.

C. This case is a paradigmatic example of when default judgment is appropriate.

The district court properly held that this was an appropriate case for the remedy of a default judgment. IPI sought to avoid responsibility for its trafficking and forced labor by repeatedly and willfully withholding discovery and ignoring court orders requiring production. Before entering a default judgment, the district court gave IPI numerous opportunities to correct its noncompliance and tried multiple lesser sanctions that proved ineffective. In these circumstances, reversing the default judgment would reward IPI for its abusive litigation tactics and misconduct by adding years to the litigation and allowing it to retain the profits it exploited plaintiffs to gain.

As plaintiffs set forth in their complaint, IPI was only able to build its casino through the forced labor of thousands of workers. Those workers were paid illegally low wages while being forced to work around the clock on the "most dangerous worksite" they had ever experienced. 4-ER-550. While IPI and its contractors were aware of those dangers, they did not address them. 7-ER-1324 ¶ 131. As a result of their failure to ensure basic safety measures, one worker died, 7-ER-1327 ¶ 153, and each plaintiff suffered a serious injury. 3-ER-468-69, 495-96, 4-ER-529-30, 547-50, 586-88, 602, 609-10, 646, 657, 7-ER-1336-37.

Those weren't the only evils to which plaintiffs were subjected. The workers were subjected to forced labor. Their passports were withheld; their wages, already illegally low, were docked or sometimes never paid; they were forced to work 12- and sometimes 24-hour shifts; and they had to live in filthy, rat-infested, and crowded dormitories without showers, air conditioning, or sometimes even enough beds for all the workers. 4-ER-529, 546-48, 550, 608-09, 645, 7-ER-1319-21, 1340, 1342. And adding insult to injury, plaintiffs had actually paid recruiters (and managers at IPI's contractors) money for jobs that were supposed to be lucrative but were in fact coerced, dangerous, and underpaid. 7-ER-1310, 1318-19.

Instead of these good jobs, they faced physical danger, violence, and threats. 7-ER-1310-11, 1317-21.

That behavior is precisely what Congress intended to address in its anti-trafficking statutes. It created remedies for private plaintiffs to redress the harm done to them, punish the conduct of traffickers, and deter similar conduct by others. The positions advocated by Appellants would gut those remedies and reward their litigation misconduct.

That there was litigation misconduct is clear. IPI behaved little better in court than out. IPI didn't comply with its discovery obligations for nine months (and indeed still has not fully complied). This in turn forced four discovery extensions, and led the court to warn IPI no less than four times that, if need be, it would issue terminating sanctions. And before issuing those terminating sanctions by first entering default and later default judgment against IPI, the court issued lesser sanctions in an unsuccessful effort to compel compliance.

That behavior is part and parcel of IPI's playbook: it breaks labor and workplace safety laws and then drags its feet when called out for those violations. And nothing suggests it has learned its lesson. Well after default judgment was entered in this case, another suit brought by

Turkish workers recently resulted in a partial default judgment against IPI after IPI didn't bother to defend itself. Decision and Order Granting Plaintiffs' Motion for Partial Default Judgment, *Geneç v. Imperial Pac. Int'l (CNMI), LLC*, No. 1:20-cv-31 (D.N. Mar. I. Feb. 24, 2022), ECF 52; Kimberly B. Esmores, *$477K Partial Judgment vs IPI*, SaipanTribune.com (Feb. 22, 2022), https://www.saipantribune.com/index.php/477k-partial-judgment-vs-ipi/ (plaintiffs' counsel noting that IPI had "abandoned the workers it brought to Saipan to build their hotel"). That wasn't the only default entered against IPI either. *See* Memorandum Decision on Entry of Default Pursuant to Rule 37 Against IPI, *Gray v. Imperial Pac. Int'l (CNMI), LLC*, No. 1:19-cv-8 (D.N. Mar. I. Oct. 12, 2021), ECF 14. But even entry of judgment against IPI hasn't deterred its misconduct. Bryan Manabat, *Judge Nullified Release of Claims Signed by Repatriated IPI Workers*, Marianas Variety (Feb. 16, 2021), https://www.mvariety.com/news/judge-nullifies-release-of-claims-signed-by-repatriated-ipi-workers/article_f4c48300-6f2f-11eb-84ee-4bedb386769c.html (noting that court held IPI, IPI Holdings Ltd., and IPI's chairwoman in contempt of court for violating a previous consent judgment with the U.S. Department of Labor, and for not paying their

current employees for over two months); Order Finding Defendants in Contempt for Failure to Comply with Consent Decree, *EEOC v. Imperial Pac. Int'l (CNMI), LLC*, No. 1:19-cv-17 (D.N. Mar. I. Oct. 15, 2021), ECF 60.

IPI's assertions on appeal amount to an argument that the company should get a mulligan for its repeated intransigence. It should not. None of the excuses it proffers for its repeated misbehavior hold up: its conduct predated the COVID-19 pandemic, it failed to provide financial information to substantiate its claims that it could not afford to comply with its discovery obligations, and indeed it conceded that its failure to comply was a function of choosing to meet other financial obligations first. And its belated efforts at compliance were far too little, far too late. To allow IPI a pass at this stage would simply encourage defendants to delay, secure in the knowledge that they need only make a belated feint at compliance to get a second life in litigation. That in turn wastes judicial resources and forces vulnerable victims of forced labor to wait needlessly for the relief to which they are entitled now.

In sum, human traffickers who hold victims in forced labor frequently enjoy impunity. Their conduct flouts the rule of law and

reflects contempt for their victims and the courts, while they seek to thwart entities that try to hold them accountable. In the absence of criminal prosecutions for forced labor, private suits under 18 U.S.C. § 1595 are, as a practical matter, the only path to justice. Here, IPI's behavior reveals the company's contempt for the district court and its willingness to disregard its legal obligations. IPI violated court order after court order, just as it violated these victims' human rights. This Court should not allow defendants generally, or IPI in particular, to sabotage the congressionally-mandated remedy for trafficking victims by tying the hands of district courts when addressing persistent and pervasive litigation misconduct. And this Court should not allow these defendants to impose a heightened standard of pleading, undercutting trafficking victims' opportunity to fight for their rights, and to prevail.

CONCLUSION

This Court should affirm the judgment of the district court.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that:

This brief complies with the length limitations of Fed. R. App. P. 29(a)(5) and Ninth Circuit Rule 32-1 because this brief contains 6,614 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared using Microsoft Word in 14-point Century Schoolbook font.

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