NO. 14-56440

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MICHIKO SHIOTA GINGERY, KOICHI MERA, and
GAHT-US CORPORATION,

Plaintiffs-Appellants,

vs.

CITY OF GLENDALE, a municipal
corporation, SCOTT OCHOA,
in his capacity as Glendale City Manager,

Defendants-Appellees.

On Appeal from United States District Court
Central District of California
Case No. 2:14-cv-1291
Honorable Percy Anderson, Judge Presiding

PLAINTIFFS-APPELLANTS' OPENING BRIEF

BLECHER COLLINS PEPPERMAN & JOYE
MAXWELL M. BLECHER
DONALD R. PEPPERMAN
TAYLOR C. WAGNIERE
515 South Figueroa Street, Suite 1750
Los Angeles, California 90071-3334
Telephone: (213) 622-4222
Attorneys for Plaintiffs-Appellants

LAW OFFICES OF RONALD S. BARAK
RONALD S. BARAK
206 Giardino Way
Pacific Palisades, California 90272
Telephone: (310) 459-3963
Attorneys for Plaintiffs-Appellants

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, none of the Plaintiffs-Appellants has a parent corporation, subsidiaries, or affiliates that have issued shares to the public.

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STATEMENT OF JURISDICTION

(A) *District Court Jurisdiction*: The district court had subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343(a)(3), and 1367.

(B) *Appellate Jurisdiction*: Plaintiffs-Appellants are appealing from the district court's final judgment and order granting Defendants-Appellees' Motion to Dismiss, entered on August 4, 2014. (ER 18-19.)[1] Plaintiffs-Appellants timely filed a Notice of Appeal on September 3, 2014. (ER 01-17.) This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether the district court erred in denying leave to amend the Complaint?

2. Whether the district court erred in holding that Plaintiffs-Appellants lacked standing to bring a foreign affairs preemption claim against the City of Glendale to challenge the installation and maintenance of a 1,100 pound statue and plaque on public lands that unconstitutionally intrudes on the federal government's foreign affairs powers, where Plaintiffs-Appellants suffered injury-in-fact by being unable to use and enjoy the public land where the monument and plaque were installed and/or, in the alternative, where Plaintiff-Appellant Michiko Shiota Gingery has municipal taxpayer standing?

[1] "ER" refers to the Excerpts of Record filed concurrently.

3. Whether Glendale's action is preempted by the federal government's exclusive authority to regulate foreign affairs?

STATEMENT OF THE CASE

A. Introduction

This is a case concerning whether the City of Glendale, acting without any basis of traditional local government authority, can purposefully inject itself into a highly-charged and contested area of foreign affairs by installing a 1,100 pound monument and accompanying plaque concerning Comfort Women that by their very nature and existence threaten diplomatic relations with Japan, one of the United States' closest international friends and allies. In July 2013, even though Glendale's then-mayor recognized that the historical dispute over World War II Comfort Women "is an international one between Japan and South Korea and the City of Glendale should not be involved on either side" (ER 62, ¶32), Glendale approved and installed in its Central Park a bronze statue of a young girl in Korean dress sitting next to an empty chair with a bird perched on her shoulder. (ER 57-58, ¶11.) Integral to and featured prominently next to the bronze statue is a permanent granite plaque that was *never* approved by the City Council. Among other language describing the statue, the plaque contains the following language concerning Japan's activities during World War II:

> "I was a sex slave of the Japanese Military";
>
> "In memory of 200,000 Asian and Dutch women who were removed from their homes in Korea, China, Taiwan, Japan, the Philippines, Thailand, Vietnam, Malaysia, East Timor and Indonesia, to be coerced into sexual slavery by the Imperial Armed Forces of Japan between 1932 and 1945";
>
> "And in Celebration of proclamation of 'Comfort Women Day' by the City of Glendale on July 30, 2012 and of the passing of House Resolution 121 by the United States Congress on July 30, 2007, urging the Japanese Government to accept historical responsibility for these crimes";
>
> "It is our sincere hope that these unconscionable violations of human rights shall never recur." (*Id*.)

Regardless of the historical accuracy of these statements (and, to be sure, there is significant scholarly and diplomatic debate in the highest levels of government as to what actually occurred), the installation of this monument and plaque—taking a foreign affairs position that Japan violated international human rights law by coercing women into sexual slavery and advocating that an important friend and ally of the United States "accept historical responsibility for these crimes"—clearly interferes with foreign affairs, and violates the Supremacy Clause. Glendale's actions are thus preempted.

To be clear, these are not anodyne statements merely "commemorating" historical events; this is *advocacy* on the part of Glendale directed at Japan. Indeed, public responses from the highest echelon of the Japanese Government, including Japan's Prime Minister, Japan's Chief Cabinet Secretary, and Japan's

Ambassador to the United States, all confirm that Glendale's advocacy has created significant diplomatic tensions with Japan. (ER 63-64, ¶¶36-42.)

Glendale knew this was to be expected. Since at least 2001, the U.S. Government has taken the firm position that the Comfort Women issue should be dealt with exclusively by the *federal government* because any other course could disrupt Japan's "delicate" relations with China and South Korea and create "serious implications for stability in the region." (ER 64, ¶44.) Glendale should not have addressed this issue, especially through an unconstitutional monument and plaque on public lands.

The question before this Court is *not* whether human rights atrocities were committed by Japan during World War II, but instead whether a California city may label Japan a violator of international human rights for alleged actions during World War II and advocate that Japan's present government accept public and international responsibility. Furthermore, the question is who has standing to bring such a claim. Neither one of these issues requires this Court to do anything more than apply clearly established Supreme Court and Ninth Circuit precedent. This Court can do so without entangling itself in foreign affairs.

Notwithstanding clearly established precedent in this Circuit providing Plaintiffs-Appellants ("Plaintiffs") with standing, the district court held that Plaintiffs lacked standing to raise these claims because this was not an

Establishment Clause case. (ER 23.) The district court also held—even though it no longer had jurisdiction once it resolved the standing inquiry against Plaintiffs—that they also failed to state a claim upon which relief could be granted. (ER 24-26.) It also refused leave to amend—even one time. (ER 26.) This appeal now follows.

B. Factual Background

Glendale is a small municipality in California. (ER 56, ¶9.) Glendale's governing authority consists of a five-member city council ("City Council"), one of whom also serves as Glendale's mayor. (*Id.*) Glendale's Central Park contains an Adult Recreation Center, which the residents of Glendale and the surrounding areas may freely use. (ER 57-58, ¶11.) Glendale installed the monument and plaque immediately adjacent to the Adult Recreation Center in Central Park. (*Id.*)

Plaintiff Michiko Shiota Gingery is a long-time resident of Glendale who would like to use the Adult Recreation Center and enjoy Central Park. (ER 54-55, ¶6.) As a Glendale resident of Japanese heritage, she strongly believes the monument and plaque present an unconstitutional and unfairly one-sided portrayal of the debate surrounding Comfort Women. She thus suffers feelings of exclusion, humiliation, and anger because of the unconstitutional monument and plaque's allegations concerning the Japanese during World War II. (*Id.*) Plaintiff Koichi Mera is a Japanese-American living in nearby Los Angeles. He is similarly

alienated, humiliated, and angered by the unconstitutional monument and plaque. (ER 55-56, ¶8.) Despite wanting to make use of Central Park, both Gingery and Mera avoid using Central Park and the Adult Recreation Center because of the unconstitutional monument and plaque. (ER 54-56, ¶¶6, 8.)

The presence of the monument and plaque also negatively affect Plaintiff GAHT-US Corporation's ("GAHT-US") local members, who avoid using and benefitting from Glendale's Central Park. (ER 66, ¶51.) GAHT-US is a California non-profit corporation with the purpose of strengthening the historical and cultural ties between the Japanese and American people by providing educational resources about World War II history and, specifically, Japan's involvement in World War II. (ER 55, ¶7.) Several of GAHT-US's members live in Glendale and the surrounding areas. (*Id*.) These members suffer feelings of exclusion, humiliation, and anger, and do not use the Central Park or Adult Education Center on account of the unconstitutional monument and plaque. If the monument and plaque were removed, Plaintiffs would make use of Central Park and the facilities located in it. (ER 66, ¶53.)

1. The Monument and Plaque

On July 30, 2013, Glendale installed the monument in Glendale's publicly-owned Central Park near the Adult Recreation Center. (ER 57-58, ¶11.) The monument was approved at a Special Meeting of Glendale's City Council on July

9, 2013, during which a schematic diagram depicting the proposed statue and its location—but *not* the text of its accompanying plaque—was presented to the City Council and the public. (ER 61-62, ¶¶29-30.)

The monument and plaque relate to historically contested international events that occurred during World War II concerning the allegedly forced recruitment of women who served as sexual partners for the Japanese Imperial Army. (ER 58-59, ¶¶14, 18.) The heated international debate concerning responsibility for these women, known as "Comfort Women," continues to this day, and has been a source of continuing and substantial tension between the nations of Japan and South Korea in recent decades. (ER 59, ¶18.) Japan asserts that all World War II-related claims were resolved pursuant to the Treaty of Peace signed in 1951 by Japan, the United States, and nearly 50 other allied nations. (ER 60, ¶¶21-23.) Japan also established the Asian Women's Fund in 1995 to compensate former Comfort Women in numerous countries including South Korea. (ER 59, ¶19.) South Korea, however, contends that the Comfort Women issue remains unresolved and unredressed. (*Id.*, ¶20.) As recently as December 2011, the Comfort Women issue was divisive in discussions between Japan's then-Prime Minister Yoshihiko Noda and South Korea's then-President Lee Myung-bak. (ER 60, ¶24.) In fact, discussions aimed specifically at strengthening the relationship between the two countries terminated when South Korea's President

Lee urged Japan's Prime Minister Noda to take additional responsibility for Comfort Women. (*Id.*)

The federal government has generally and rightfully sought to avoid becoming a party to this contentious historical debate between its important Asian allies. (ER 64, ¶43.) In 2001, the United States filed a Statement of Interest in connection with a different lawsuit, *Joo v. Japan*, 413 F.3d 45 (D.C. Cir. 2005), brought by former Comfort Women against Japan in the United States that warned of the "delicate" relations involved and that pronouncing on the Comfort Women issue in the United States could create "serious implications for stability in the [East Asian] region." (*Id.*, ¶44; ER 35-51.) In the last two years, White House Spokesperson Victoria Nuland, Secretary of State John Kerry, and Daniel Russel, U.S. Assistant Secretary of State for East Asian and Pacific Affairs, have all stated that the Comfort Women issue is one between Japan and South Korea, and that the United States is hopeful that the nations will work together to resolve their differences. (ER 64-65, ¶¶46-48.)

2. Local and International Criticism of the Monument and Plaque

Because of the controversy surrounding Comfort Women, there has been considerable backlash over the monument and plaque from members of Glendale's community, local Japanese Americans, and Japanese governmental officials. (ER 61-62, ¶¶30-31.) Public outcry over the outright and unconstitutional foreign

affairs advocacy of the monument and plaque began even before the monument and plaque were unveiled on July 30, 2014. During the City Council's Special Meeting on July 9, 2013, numerous people voiced their opposition to the monument, and many argued to the City Council that the issue of Comfort Women is a matter exclusively for diplomatic foreign relations and that the proposed monument presented a contentious viewpoint that inappropriately inserted Glendale into foreign affairs. (ER 62, ¶31.)

After the monument and plaque were installed, Japanese officials at all levels of government publicly expressed disapproval of the monument and plaque and Glendale's foray into international politics. (ER 63-64, ¶¶37-42.) On July 24, 2013, the press secretary of the Japanese Ministry of Foreign Affairs commented that the monument and plaque "does not coincide with our [Japan's] understanding" of the Comfort Women dispute. (ER 63, ¶37.) Over the next week, at least three other Japanese officials expressed disappointment with Glendale's actions. (ER 63-64, ¶¶39-42.) By August 2014, word of Glendale's actions reached the highest ranks of the Japanese government. (*Id*.) On August 13, 2014, Japanese Prime Minister Shinzo Abe stated that he was "extremely dissatisfied" with the installation of the monument and plaque. (ER 63, ¶41.)

Members of Glendale's City Council acknowledged the foreign affairs intrusion of Glendale's actions on numerous occasions. At the July 30, 2013 City

Council Meeting, City Council Member Laura Friedman commented: "We really put the city of Glendale on the international map today by doing this." (ER 62, ¶34.) Then-Mayor Dave Weaver admitted that it was inappropriate for Glendale to comment on this specific foreign affairs matter: The dispute over Comfort Women "is an international one between Japan and South Korea and the City of Glendale should not be involved on either side." (ER 62, ¶32.)

Importantly, when the monument was being considered by the City Council, then-Councilmember Zareh Sinanyan, now Glendale's mayor, emphasized that Glendale intended to insert itself into foreign affairs notwithstanding his expressly acknowledged understanding that such action violated this Court's clear case law:

> Another argument [is that] Glendale has no authority to do anything about this issue, it's a federal issue. Just last year, the Turkish government pushed a lawsuit which they succeeded on in the Ninth Circuit making the exact same argument, saying that the recognition of the Armenian genocide by state authorities was not proper [presumably referring to this Court's decision in *Movsesian v. Victoria Versicherung AG*, 670 F.3d 1067, 1072 (9th Cir. 2012)] . . . I'm sorry it's a moral issue, not a state issue. . . We are taking a meaningful step to show our moral support, our sharing of the pain that our Korean brothers and sisters feel about this issue . . .[2]

[2] *See* Plaintiffs-Appellants' Motion To Take Judicial Notice filed concurrently herewith, and Plaintiffs-Appellants' Motion To File Physical Exhibit, filed on February 27, 2015 (Doc. # 15). This Court may take judicial notice of these statements. *See* Fed. R. Evid. 201(b)(2) (allowing a court to take judicial notice of a fact "not subject to reasonable dispute because it . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned"); *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007) (per curiam) (a court may consider "matters properly subject to judicial notice.").

C. The District Court's Dismissal with Prejudice

On August 4, 2014, *without any hearing*, Judge Anderson issued an opinion granting Glendale's Federal Rule of Civil Procedure 12(b)(1) motion and also, *without jurisdiction to do so*, *purported* to grant Glendale's Rule 12(b)(6) motion. (ER 20-27.) In his Order, Judge Anderson: (1) determined that the Court did not possess subject matter jurisdiction; (2) in the alternative, dismissed the case on the merits; (3) declined to exercise supplemental jurisdiction over Plaintiffs' state law claim (ER 26); (4) denied Glendale's companion special "anti-SLAPP" motion to strike as "moot" (ER 27); and (5) tolled the statute of limitations on Plaintiffs' state law claim. (ER 26-27.) Plaintiffs' federal cause of action was dismissed by Judge Anderson with prejudice without allowing Plaintiffs to amend their complaint even a single time. (ER 24-26.) In contravention of controlling precedent, Judge Anderson ruled that "even if" the Court had subject matter jurisdiction, "dismissal is still appropriate because Plaintiffs have failed to allege facts that state a cognizable legal theory." (ER 25.) On September 3, 2014, Plaintiffs filed a timely Notice of Appeal. (ER 01-17.)

Accordingly, Plaintiffs respectfully request permission file DVD copies of this video. This content of this video recording can also be found on Defendant's official website at http://www.glendale.granicus.com/mediaplayer.php?view_id=12&clip_id=4249.

STANDARD OF REVIEW

This Court reviews *de novo* a district court's dismissal of a complaint under Rule 12(b) of the Federal Rules of Civil Procedure. *See, e.g.*, *Haisten v. Grass Valley Med. Reimbursement Fund, Ltd.*, 784 F.2d 1392, 1396 (9th Cir. 1986) (Rule 12(b)(1) dismissal for lack of subject matter jurisdiction); *Ft. Vancouver Plywood Co. v. United States*, 747 F.2d 547, 552 (9th Cir. 1984) (Rule 12(b)(6) dismissal for failure to state a claim). "For purposes of ruling on a motion to dismiss for want of standing, both the trial and reviewing courts must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party." *Warth v. Seldin*, 422 U.S. 490, 501 (1975); *see also Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). When "reviewing a motion to dismiss," this Court must not place "an unreasonable burden" on plaintiffs. *Desert Citizens Against Pollution v. Bisson*, 231 F.3d 1172, 1178 (9th Cir. 2000). Furthermore, in a *de novo* review, absolutely no appellate deference should be given to the district court's decision. *Rabkin v. Oregon Health Scis. Univ.*, 350 F.3d 967, 970 (9th Cir. 2003). Instead, this Court must look solely at the allegations contained in the complaint, as well as any documents that are properly subject to judicial notice. *Leadsinger, Inc. v. BMG Music Publ'g*, 512 F.3d 522, 526 (9th Cir. 2008). "Dismissal with prejudice and without leave to amend is not appropriate unless it is clear on de novo review that the complaint

could not be saved by amendment." *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) (citing *Chang v. Chen*, 80 F.3d 1293, 1296 (9th Cir. 1996)). Such a dismissal will be affirmed only if it appears "beyond doubt" that the complaint cannot be saved by further amendment. *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 188 (9th Cir. 1987) (citation omitted).

SUMMARY OF ARGUMENT

1. The district court erred in dismissing the Complaint and refusing to grant Plaintiffs leave to amend—even once—because the Complaint could easily be amended to establish standing and state a claim upon which relief could be granted *if that was not already the case*.

2. In any event, the district court crafted an illogical and inconsistent rule for establishing the standing of an individual plaintiff who loses the enjoyment and recreational use of public lands on account of the installation and maintenance of an unconstitutional monument and plaque that injects a local government into issues of foreign affairs constitutionally reserved for the federal government. The district court held, notwithstanding this Court's controlling precedent in *Barnes-Wallace v. City of San Diego*, 530 F.3d 776 (9th Cir. 2008) (recently reaffirmed as the standing law of this Circuit by *Barnes-Wallace v. City of San Diego*, 704 F.3d 1067, 1076–77 (9th Cir. 2012)), that an individual plaintiff's avoidance of a public park on account of an unconstitutional monument and plaque erected by a city "is

simply not the type of injury" that gives rise to standing to raise a foreign affairs preemption claim. (ER 23.) While the district court believed it could decide which injuries are appropriate to afford standing in a case raising important questions of foreign affairs preemption, this Court has been clear that district courts should not mix the standing analysis with the merits. The injury alleged by the individual Plaintiffs here—psychological injury *coupled with* the loss of enjoyment and use of Glendale's Central Park on account of the installation and maintenance of an unconstitutional monument and plaque—is precisely the type of injury-in-fact that this Court has found sufficient for purposes of standing in *Barnes-Wallace* and numerous other cases. As *Barnes-Wallace* is controlling precedent, the individual Plaintiffs clearly have standing to bring suit, and the district court's holding to the contrary must be reversed.

Even *if* the individual plaintiffs do not have standing under *Barnes-Wallace*, this Court should hold that Plaintiff Gingery has municipal taxpayer standing as she resides in Glendale and pays taxes that are used to maintain the monument and plaque, and were used to acquire and maintain the land on which the monument and plaque sit, in which case the Court need not reach the standing of the other plaintiffs. *Clinton v. City of New York*, 524 U.S. 417, 431 n.19 (1998). At a minimum, this Court should grant Plaintiff Gingery leave to amend her Complaint to show municipal taxpayer standing.

Given that the individual Plaintiffs clearly have standing in this case, the Court need not reach the organizational Plaintiff's standing. Nonetheless, GAHT-US does have standing because one or more of its members have standing and because the interests at stake are germane to the organization's purpose and the participation of individual members is not required in the lawsuit.

3. Once the district court held that Plaintiffs lacked standing, it no longer had jurisdiction to adjudicate the merits. The district court, however, *improperly* assumed hypothetical jurisdiction and sought to resolve the merits. In light of the unique circumstances of this case where the district court has given every reason to believe that even with Plaintiffs standing established a 12(b)(6) dismissal is imminent, this Court should not only find standing, but should also hold that Plaintiffs state a claim upon which relief can be granted and remand the case to the district court for further proceedings *consistent with such a holding*. *See Kimes v. Stone*, 84 F.3d 1121, 1126 (9th Cir. 1996) (recognizing this Court's discretion to proceed to the merits on appeal).

ARGUMENT

I. THE DISTRICT COURT ERRED IN REFUSING TO GRANT LEAVE TO AMEND—EVEN ONCE

The district court dismissed Plaintiffs' Complaint without permitting leave to amend—even once—contrary to this Court's controlling case law. *See Thinket Ink Info. Res., Inc. v. Sun Microsystems, Inc.*, 368 F.3d 1053, 1061 (9th Cir. 2004)

("Dismissal of a complaint without leave to amend is improper unless it is clear, upon *de novo* review, that the complaint cannot be saved by any amendment."). The district court provided no justification for this extreme judgment. There are instances where leave to amend should not be granted, "such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc." *Foman v. Davis*, 371 U.S. 178, 182 (1962). Plaintiffs' Complaint falls into *none* of these narrow categories.[3]

The district court did not base its dismissal on the statute of limitations or some other reason which Plaintiffs would be unable to cure by amendment. Rather, each issue the district court relied upon was based on *facts* alleged in the Complaint, which should have been liberally construed in favor of Plaintiffs, and, to the extent necessary, could have been *fixed easily* through amendment.

Despite the district court's erroneous conclusion otherwise, allowing Plaintiffs to amend the Complaint—especially for the first time—would not have

[3] The district court noted that "Plaintiffs have not asked for leave to amend the Complaint to cure the deficiencies identified by Defendant." (ER 26.) Though never given the opportunity, "[i]t is of *no consequence* that no request to amend the pleading was made in the district court." *Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986) (emphasis added) (citation omitted). No specific request for leave to amend is needed to require a district court to comply with Rule 15. *Doe v. United States*, 58 F.3d 494, 497 (9th Cir. 1995).

been futile. This Court has held that the standard for futility is extremely high. *Miller v. Rykoff-Sexton, Inc.*, 845 F.2d 209, 214 (9th Cir. 1988). As this brief shows, in particular in Part IIB *infra* at 26–28, addressing Plaintiff Gingery's tax standing, amendment would not be futile.[4]

II. PLAINTIFFS HAVE STANDING TO CHALLENGE GLENDALE'S INSTALLATION OF A PUBLIC MONUMENT AND PLAQUE THAT UNCONSTITUTIONALLY INTERFERES WITH THE FEDERAL GOVERNMENT'S EXCLUSIVE POWER TO REGULATE FOREIGN AFFAIRS

The elements of Article III standing are well-established. The plaintiff must allege "(1) an 'injury in fact,' (2) a sufficient 'causal connection between the injury and the conduct complained of,' and (3) a 'likel[ihood]' that the injury 'will be redressed by a favorable decision.'" *Susan B. Anthony List v. Driehaus*, 134 S. Ct. 2334, 2341 (2014) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992)). A complaint need not provide any detailed analysis establishing the particular injury suffered. Rather, a plaintiff must set forth only general allegations

[4] In addition to taxpayer standing, Plaintiffs could have pled facts, especially with limited discovery, to show, for instance, that Glendale's City Council erected the monument and plaque in order to influence foreign affairs and to discriminate against Japan and the Japanese generally. Furthermore, Plaintiffs also could have added facts demonstrating Glendale's stigmatic injury to Plaintiffs (and all Japanese-Americans) based upon the language in the plaque and a resulting cause of action against Glendale for violation of the Equal Protection Clause of the U.S. Constitution. *See, e.g., U. S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 534–35 (1973) ("For if the constitutional conception of 'equal protection of the laws' means anything, it must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot constitute a legitimate governmental interest.").

of injury because the court will "presume that general allegations embrace the specific facts that are necessary to support the claim." *Lujan*, 504 U.S. at 561 (internal quotations omitted).

As discussed below, it is clear under this Court's case law that a plaintiff that alleges psychological injury *coupled with* the inability to use and enjoy public land on account of the placement of an unconstitutional monument on that land has standing to sue. The district court, however, held that this case does not raise the type of injury that affords a plaintiff standing to raise a foreign affairs preemption claim. (ER 23.) There is no legal basis for this holding. Under the district court's *incorrect* rationale, numerous plaintiffs alleging all manner of claims arising from unconstitutional use of public lands—from Establishment Clause challenges regarding the placement of religious symbols to challenges to environmental regulations—would be subject to dismissal for lack of standing in this Circuit. This Court should hold, following *Barnes-Wallace*, that Plaintiffs satisfy all three prerequisites for standing for the following reasons.

A. The Individual Plaintiffs Have Standing Because Glendale's Installation Of The Monument And Plaque Directly Results In Their Psychological Injury And Loss Of Enjoyment And Recreational Use Of Glendale's Public Land

The individual Plaintiffs have suffered an injury-in-fact because Glendale's unconstitutional placement of the monument and plaque in Glendale's Central Park causes them emotional harm *that prevents them* from using the Central Park and its

Adult Recreation Center, and thus denies them full enjoyment of the park's benefits. (ER 54-56, ¶¶6-9.) Plaintiffs avoid using and enjoying the Glendale Central Park and its Adult Recreation Center so long as the monument and plaque remain in place on account of strong feelings of exclusion, discomfort, humiliation, and anger directly caused by the unconstitutional monument and plaque. (*Id*.)

While psychological injury *alone* is not an injury-in-fact sufficient for standing under Article III, *Valley Forge Christian College v. Americans United for Separation of Church and State*, 454 U.S. 464, 485–86 (1982), under Supreme Court case law psychological injury *coupled with* impairment of aesthetic and recreational interests in the use of land is without question sufficient to confer standing, *Lujan*, 504 U.S. at 562–63; *Duke Power Co. v. Carolina Envtl. Study Group, Inc.*, 438 U.S. 59, 73–74 (1978); *Sierra Club v. Morton*, 405 U.S. 727, 734–35 (1972). As the Supreme Court has recognized, plaintiffs allege injury-in-fact when they "are persons for whom the aesthetic and recreational value of the area will be lessened by the challenged activity." *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 182 (2000) (quoting *Sierra Club*, 405 U.S. at 735.) This Court has also recognized that standing exists where plaintiffs' enjoyment and use of public land would be diminished by events occurring on the land. *See Ocean Advocates v. U.S. Army Corps of Eng'rs*, 402 F.3d 846, 860 (9th Cir. 2005) (holding that a plaintiff organization suffered injury

from increased risk of an oil spill that would impair its aesthetic or recreational enjoyment of a stretch of Alaskan coastline); *see also Alaska Wildlife Alliance v. Jensen*, 108 F.3d 1065, 1068 (9th Cir. 1997) (finding standing for diminished enjoyment of land in part because of "noise, trash and wakes of vessels[.]").

The specific injury alleged here clearly gives rise to standing because unconstitutional displays of monuments and memorials on public land may cause an individual such distress (and thus an injury-in-fact) that he/she may no longer freely use and enjoy the land on which the display in located. *See e.g.*, *Buono v. Norton*, 371 F.3d 543, 547 (9th Cir. 2004) ("We have repeatedly held that inability to unreservedly use public land suffices as injury-in-fact."); *Barnes-Wallace*, 530 F.3d at 784 ("We have held that . . . restrictions on plaintiffs' use of land constitute redressable injuries for the purposes of Article III standing."); *Ellis v. City of La Mesa*, 990 F.2d 1518, 1523 (9th Cir. 1993) ("[T]he district court properly determined that a plaintiff has been injured due to his or her not being able to freely use public areas.") (internal quotations omitted); *Hewitt v. Joyner*, 940 F.2d 1561, 1564 (9th Cir. 1991) (affirming the district court's determination that "the plaintiffs demonstrated an injury in fact by the curtailment of their right to use a public park."). Affirmative avoidance of public lands in light of symbols or monuments displayed there is more than sufficient to establish a legally cognizable

injury for purposes of standing. *Vasquez v. Los Angeles County*, 487 F.3d 1246, 1252–53 (9th Cir. 2007).

While many of these standing cases arise in the context of Establishment Clause challenges to governmental displays of religious symbols on public lands, this Court has been clear that the standing analysis is *not* limited to just Establishment Clause cases. For instance, in *Barnes-Wallace*, this Court held that because the plaintiffs wanted to use portions of a park leased to the Boy Scouts, but did not do so because they were "offended" by the Boy Scouts' policies excluding homosexuals, atheists, and agnostics from membership, they showed "both personal emotional harm *and* the loss of recreational enjoyment" which clearly constituted an injury-in-fact. 530 F.3d at 785 (emphasis added). While this Court drew an *analogy* to Establishment Clause cases, it explained that "[p]sychological injury can be caused by symbols or activities other than large crosses." *Id.* at 786 n.6. This Court also noted, again by analogy, that standing rules for environmental cases lend *additional support* to a general rule of standing that psychological injury coupled with a loss of enjoyment of public land on account of events occurring on the land supports standing. *Id*. at 785.

There is no reason to view these cases as limited to Establishment Clause claims, as Judge Anderson erroneously did. (ER 23.) The Supreme Court has explicitly rejected the view that standing doctrine under the Establishment Clause

is the product of "special exceptions." *Valley Forge*, 454 U.S. at 488. The Supreme Court has also applied the same standing analysis from cases brought under the Establishment Clause to cases in other contexts. *See, e.g.*, *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377, 1386–88 (2014) (applying analysis from *Valley Forge* when evaluating standing under the Equal Protection Clause).

This Court's rule for purposes of Article III standing is clear: Where psychological injury "interferes with [] personal use of [public] land," there is standing to bring suit. *Barnes-Wallace*, 530 F.3d at 784 (citing *Valley Forge*, 454 U.S. at 485).

The *Barnes-Wallace* court employed a common sense rule for standing where public monuments are challenged as unconstitutional. That rule can be stated as follows: A mere ideological objection to a monument does not confer standing, *Valley Forge*, 454 U.S. at 485–86, but a psychological injury on account of an unconstitutional monument that causes plaintiffs to avoid public lands by reason of the unconstitutional monument itself and the message it displays clearly does confer standing, *Barnes-Wallace*, 530 F.3d at 784.

Such a rule is particularly appropriate in cases such as this where the suit is based on the Constitution itself. In numerous cases, this Court has been clear that suits raising constitutional claims are to be construed liberally when evaluating

standing. *See, e.g.*, *LSO, Ltd. v. Stroh*, 205 F.3d 1146, 1155 (9th Cir. 2000) (noting that when a case "implicates First Amendment rights, the inquiry tilts *dramatically* toward a finding of standing.") (emphasis added); *Arizona Right to Life Political Action Comm. v. Bayless*, 320 F.3d 1002, 1006 (9th Cir. 2003) (same). As such, the presumption in a case like this where governmental action is challenged as unconstitutional is to find standing.

Here, the Complaint, which must be construed in favor of Plaintiffs and accepted as true, alleges that they "would like to use Glendale's Central Park and the Adult Recreation Center located within Central Park," but they now avoid "doing so because [they are] offended by the Public Monument's pointed expression of disapproval of Japan and the Japanese people." (ER 55, ¶6.) For the same reasons, the presence of the monument and plaque in Glendale's Central Park also "diminishes [their] enjoyment of the Central Park and its Adult Recreation Center." (ER 55, ¶7.) Glendale has erected a monument and plaque that associates Japan and the Japanese with alleged war crimes, sexual slavery, and "unconscionable violations of human rights." (ER 58, ¶11.) Plaintiffs thus suffer "feelings of exclusion, discomfort, and anger" because they are of Japanese heritage, and are directly implicated by the monument and plaque. (ER 54-56, ¶6-8.) This takes Plaintiffs' injuries far outside the realm of a "generalized grievance" because the injuries are suffered *uniquely* by those of Japanese heritage living in

Glendale and the surrounding areas who have a direct interest in using the land and facilities located in Glendale's Central Park. Plaintiffs would be confronted with the monument and plaque any time they attempt to make use of the Adult Recreation Center facilities or enter Central Park. (ER 65-66, ¶¶50, 53.) Even more than the *Barnes-Wallace* plaintiffs, Plaintiffs here must choose between avoiding Glendale's Central Park or being forced to confront the monument and plaque in order to use these public facilities. *See Barnes-Wallace*, 530 F.3d at 785 ("The plaintiffs are faced with the choice of not using Camp Balboa and the Aquatic Center, which they wish to use, or making their family excursions under the dominion of an organization that openly rejects their beliefs and sexual orientation."). The individual Plaintiffs have thus suffered an injury-in-fact under this Court's clearly established case law.

The individual Plaintiffs likewise amply satisfy the Article III requirements of traceability and redressability. Indeed, Glendale has never suggested otherwise. Instead, all of Glendale's standing arguments before the district court were focused on injury-in-fact. The "causal connection" between Glendale's unconstitutional actions and the inability of the Plaintiffs to use and enjoy the Central Park and Adult recreation center is unmistakable. *See Lujan*, 504 U.S. at 560 ("[T]here must be a causal connection between the injury and the conduct complained of[.]"); *see also Bennett v. Spear*, 520 U.S. 154, 162 (1997) (injury must be "fairly traceable to

the actions of the defendant[.]") (internal quotations omitted). Plaintiffs objected to Glendale's decision to install the monument and plaque and expressed their disagreement at Glendale City Council meetings well before filing suit. (ER 61-62, ¶¶28, 31-32.) After the monument and plaque were erected, Plaintiffs avoided using Glendale's Central Park despite their stated wish to make use of that land and its facilities. Their injuries are much more than an "abstract objection" because at least one of the Plaintiffs resides in Glendale in close proximity to Central Park, they are Japanese-Americans, and they have stated personal interest in using the land at issue. *See Barnes-Wallace*, 530 F.3d at 785 ("[Plaintiffs] reside in San Diego, where Camp Balboa and the Aquatic Park are located, and have expressed a desire to make personal use of the facilities operated by the Council."). But for Glendale's installation and maintenance of the monument and plaque, there would be no injury.

A decision declaring that the monument and plaque are unconstitutional and an injunction requiring removal would plainly redress the injury. *See Lujan*, 504 U.S. at 561 ("[I]t must be 'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.'"). Plaintiffs' psychological injuries and physical avoidance of Glendale Central Park would be remedied by the removal of the monument and plaque. As the Complaint makes plain, if the monument and plaque are removed, Plaintiffs will make use of Glendale's Central

Park. (ER 66, ¶53.) As long as Glendale maintains the monument and plaque in its current state, Plaintiffs will suffer continued humiliation and loss of recreational use of Glendale Central Park. *See Barnes-Wallace*, 530 F.3d at 787 ("As long as the Council as an organization maintains policies that exclude from participation and demean people in the plaintiffs' position, no amount of evenhanded access to the leased facilities will redress the plaintiffs' injury: emotional and recreational harm arising out of the Council's control and administration of public land that the plaintiffs wish to use.").

Accordingly, under well-established jurisprudence, the individual Plaintiffs have satisfied the "irreducible constitutional minimum of standing." *Lujan*, 504 U.S. at 560.

B. In The Alternative, This Court Should Hold That Plaintiff Gingery Has Municipal Taxpayer Standing, Or It Should Provide Her with Leave To Amend The Complaint

Individual Plaintiff Michiko Gingery also has municipal taxpayer standing because she pays taxes as a resident of Glendale (ER 54-55, ¶6), and these taxes were used to support the monument and plaque and are still being used to support its maintenance. (ER 58, ¶13.) To establish standing in a municipal taxpayer suit, this Court requires "pocketbook injury," which "simply requires the 'injury' of an allegedly improper expenditure of municipal funds." *Cammack v. Waihee*, 932 F.2d 765 (9th Cir. 1991).

Gingery alleges in the Complaint that she is "a long-time resident of Glendale" (ER 54-55, ¶6) and that "Glendale exercises exclusive custody and control of Central Park and the Public Monument, and upon information and belief, provides all necessary maintenance services for the Public Monument." (ER 58, ¶13.) The Court should find standing based on these allegations.

In the alternative, this Court should grant leave to amend either by remanding the case to the district court or under 28 U.S.C. § 1653 so that Plaintiff Gingery may plead such standing with additional facts, if required. *Snell v. Cleveland, Inc.*, 316 F.3d 822, 828 (9th Cir. 2002); *see also* 28 U.S.C. § 1653 ("Defective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts."); *Blue Ridge Insurance Co. v. Stanewich*, 142 F.3d 1145, 1148 (9th Cir. 1998) (declining to remand case to district court where the jurisdictional defect in the complaint "may be cured by amendment and nothing is to be gained by sending the case back for that purpose") (internal citations and quotations omitted).

It is respectfully submitted that it would be a waste of judicial resources to remand this action to the district court with directions to allow Plaintiff Gingery to amend the Complaint. After she would amend to establish standing, the district court would almost certainly dismiss the Complaint for failure to state a claim. Then, the parties would return again to this Court for resolution of the same issues

presented on the merits of this appeal. As discussed in greater detail below in Parts III and IV, this Court should thus allow amendment now, find standing, and then hold that the Complaint states a claim upon which relief can be granted. *See Kimes*, 84 F.3d at 1126.

C. Plaintiff GAHT-US Has Organizational Standing

Given that the individual Plaintiffs clearly have standing to sue in this case, the Court need not reach the issue of GAHT-US's organizational standing. *See Clinton*, 524 U.S. at 431 n. 19 (where one party has standing the court "need not consider" the standing issue as to the other plaintiffs); *Bowsher v. Synar*, 478 U.S. 714, 721 (1986) (same). Nonetheless, GAHT-US does have standing.

"An association has standing to bring suit on behalf of its members when its members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Friends of the Earth*, 528 U.S. at 181 (citing *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977)). As demonstrated above, Plaintiffs Gingery and Koichi Mera have standing as individual Plaintiffs because they have sustained emotional injuries and have stated that they "would like to use Glendale's Central Park and its Adult Recreation Center," but, as a result of alienation due to the monument and plaque, they avoid doing so. (ER 55-56, ¶8.)

Because Gingery and Mera have standing, and are members of GAHT-US, GAHT-US also has standing. *Id.*; *Hunt*, 432 U.S. at 342–43.[5]

Glendale's "unfairly biased portrayal of the Japanese government" has caused many of GAHT-US's members to also "suffer feelings of exclusion, discomfort, and anger by the continued presence of the monument, and the controversial and disputed stance on the debate surrounding Comfort Women that it perpetuates." (ER 55, ¶7.) Because of the monument and plaque, local GAHT-US members no longer feel comfortable using Central Park and the facilities located in it. (*Id.*)

The interests at stake in this lawsuit—the local, global, and political implications of Glendale's interference in foreign relations between the United States, Korea, and Japan—are completely germane to the organizational purpose of GAHT-US, which is to provide educational resources "concerning the history of World War II and related events, with an emphasis on Japan's role," and to "enhance a mutual historical and cultural understanding between and among the Japanese and American people." (ER 55, ¶7.)

Finally, GAHT-US's individual members will not need to participate in this litigation because only declaratory and injunctive relief is sought. *See Alaska Fish*

[5] In the event this Court finds that the individual Plaintiffs did not suffer injury-in-fact, Plaintiff Gingery has taxpayer standing to support GAHT-US's standing, in which case this Court still need not reach the standing of the other Plaintiffs. *Clinton*, 524 U.S. at 431 n.19.

& Wildlife Federation and Outdoor Council, Inc. v. Dunkle (9th Cir. 1987) 829 F.2d 933, 938 (finding standing "because the [organization] seeks declaratory and prospective relief rather than money damages [and thus] its members need not participate directly in the litigation").

D. The District Court Erroneously Concluded That There Was No Standing

Even though Plaintiffs have standing under well-established case law, the district court erroneously dismissed the case for lack of standing. The district court reasoned that "[t]he fact that local residents feel disinclined to visit a local park *is simply not the type of injury* that can be considered to be in the 'line of causation' for alleged violations of the foreign affairs power and Supremacy clause." (ER 23 (emphasis added).) The district court provided no citation or support for this illogical and incorrect assertion.

Under *Barnes-Wallace*, a plaintiff that avers emotional injury *and* loss of enjoyment or use of public land plainly has standing to challenge unconstitutional actions by a city whatever the cause of action pled might be. 530 F.3d at 784. The focus for standing purposes is not on *how* the plaintiff pleads the case in terms of a cause of action, but rather on *what* the injury is that is alleged by the plaintiff. The district court inappropriately conflated the standards for an injury-in-fact that must be shown for Article III standing purposes with the showing necessary to establish Plaintiffs' claim on the merits. To affirm the district court's rationale risks

creating an illogical and new standing doctrine in this Circuit where the merits of the underlying claim matter for purposes of injury-in-fact. However, this Court has been clear that "[w]hether a plaintiff has a legally protected interest (and thus standing) does not depend on whether he can demonstrate that he will succeed on the merits." *Tyler v. Cuomo*, 236 F.3d 1124, 1133 (9th Cir. 2000) (quoting *Louisiana Energy & Power Auth. v. Federal Energy Regulatory Comm'n*, 141 F.3d 364, 368 (D.C. Cir. 1998)). The determination whether Article III standing exists should not be influenced by some sort of pre-judgment about the merits and, in any event, is prohibited by *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 93–97 (1998), which holds that a court must determine that it *has* jurisdiction before reaching the merits.

More so, despite striking similarities between Plaintiffs' case and this Court's decision in *Barnes-Wallace*, the district court improperly tried to distinguish that case as creating a unique rule for standing in Establishment Clause cases. As explained above, however, this Court in *Barnes-Wallace* was clear that its rationale applied beyond cases challenging religious displays on public lands. *Barnes-Wallace*, 530 F.3d at 784–86 & n. 6. Indeed, the Court there cited not only Establishment Clause cases but also environmental cases to support its standing rationale. The types of claims pled in *Barnes-Wallace* were irrelevant, as they should be under this Court's case law, to the determination of injury-in-fact.

Next, the district court sought to label this case as one raising a generalized grievance. Without any analysis, the district court cited *Caldwell v. Caldwell*, 545 F.3d 1126 (9th Cir. 2008), for the conclusion that the harm complained of here "is no more than an 'abstract objection'" and, therefore, there is "too slight a connection between [plaintiff's] generalized grievance, and the government conduct." (ER 23.)

However, *Caldwell* is distinguishable. In *Caldwell*, this Court held that a plaintiff lacked standing to raise an Establishment Clause claim arising from a discussion of religious views on a University of California website—a single section out of more than 800 pages. 545 F.3d at 1128–29. The plaintiff alleged that the website "endorses beliefs which hold that religion is compatible with evolutionary theory and disapproves of beliefs, such as her own, that are to the contrary, thereby exposing her to government endorsed religious messages and making her feel like an outsider." *Id*. at 1228. This Court held that "there is too slight a connection between [plaintiff's] generalized grievance, and the government conduct about which she complains" because she failed to allege any *specific harm* connected with the direct exposure to unwelcome religious material. *Id.* at 1133. In reaching this conclusion, this Court highlighted the fact that neither the plaintiff nor her children had been exposed to the unwelcome discourse in the classroom. *Id.* Indeed, all the plaintiff there could aver was that she, as a parent,

was "offended" by the website's portrayal of evolutionary theory and that she was "made to feel like an outsider[]" because upon accessing the website (which the University of California had made accessible to the public) she was "exposed to government-endorsed religious messages to her harm." *Id*. at 1130. Importantly, the plaintiff in *Caldwell* did not aver that she was unable to use the website or any other public land or service on account of the message conveyed. *Id*.

Unlike *Caldwell*, Plaintiffs' injury here is more than an abstract disagreement with one page of an 840 page website hosted by a public university. In this case, Plaintiffs objected to Glendale's decision to install the monument and expressed their disagreement at City Council meetings well before filing suit. (ER 61-62, ¶¶28, 31-32.) After the monument and plaque were installed, Plaintiffs avoided using Central Park despite their stated wish to make use of that land and its facilities. Their injuries are much more than an "abstract objection" because of their proximity to Central Park, their status as Japanese-Americans, and their stated personal interest in using and inability to use the land at issue. *See Barnes-Wallace*, 530 F.3d at 785; *cf. Caldwell*, 545 F.3d at 1133 ("[Plaintiffs] asserted interest—informed participation as a citizen in school board meetings, debates, and elections, especially with respect to selection of instructional materials and how teachers teach the theory of evolution in biology classes in the public schools—is not sufficiently differentiated and direct to confer standing on her[.]"). Even if

Caldwell were on point, *Barnes-Wallace* is the standing law of this Circuit. *See Barnes-Wallace*, 704 F.3d at 1078 (explaining that *Caldwell*, "as a decision by a later three-judge panel, cannot by its own force overrule this panel's prior opinion [in *Barnes-Wallace.*]").

The district court determined that Plaintiffs were not the appropriate plaintiffs to bring a foreign affairs preemption claim against Glendale. Yet, the law of this Circuit is clear that so long as the plaintiffs, as here, suffer an injury-in-fact then they have standing to sue regardless of how the district court views the merits.

III. THIS COURT SHOULD FIND STANDING AND REACH THE MERITS

Once the district court held that it lacked standing, it had *no* power to reach the merits of the case. Here, the district court incorrectly assumed hypothetical jurisdiction and inappropriately sought to rule on the merits. Specifically, the district court stated: "Even if Plaintiffs possessed Article III standing, dismissal is still appropriate because Plaintiffs have failed to allege facts . . . to support a conclusion that the Comfort Women monument in Glendale's Central Park . . . violates the Supremacy Clause or foreign affairs power." (ER 25.) The district court's ruling on the sufficiency of plaintiffs' claims therefore exceeded its jurisdiction. *See, e.g.*, *Steel Co.*, 523 U.S. at 101–02; *Sacks v. Office of Foreign Assets Control*, 466 F.3d 764, 771 (9th Cir. 2006).

While as a general matter, a "dismissal for *failure to state a claim* may be affirmed on any basis supported in the record," *Public Util. Dist. No 1 v. IDACORP Inc.*, 379 F.3d 641, 646 (9th Cir. 2004) (emphasis added), there is appellate jurisdiction to do so *only where* the district court *exercised* jurisdiction to determine the complaint's sufficiency to state a claim, *Steel Co.*, 523 U.S. at 94, 101. Here, the district court could not do so because when it denied standing it no longer had jurisdiction to reach the merits. *Id.* at 94–95.

Thus, in the normal course of events, this Court would reverse the district court's standing determination and remand for further proceedings. This case is unique, however, because the district court has already signaled what it will do on remand. While an appellate court should not address the merits of *new* claims not actually decided below, *Singleton v. Wulff*, 428 U.S. 106, 119–21 (1976), it is an appropriate exercise of appellate jurisdiction for this Court to find standing and resolve the Rule 12(b)(6) motion in favor of Plaintiffs where the claims have been fully briefed and are ripe for review. In doing so, no deference whatsoever should be given to the district court's hypothetical judgment on the merits. *See Steel Co.*, 523 U.S. at 101 ("Hypothetical jurisdiction produces nothing more than a hypothetical judgment[.]").

The Supreme Court has held that the practice of limiting appellate review to questions decided below serves two purposes: (1) preserving the trial court's

"authority to determine questions of fact" and (2) preventing the parties from being "surprised on appeal by final decision there of issues upon which they have had no opportunity to introduce evidence." *Hormel v. Helvering*, 312 U.S. 552, 556 (1941). Where these policies are not implicated, the appellate court is not bound by the practice, which is "devised to promote the ends of justice, not to defeat them." *Id*. at 557.

Neither of the purposes of limiting appellate review is served in this case, where this Court is asked to decide: (1) a purely legal question that (2) was raised in the court below (indeed, the district court tried to resolve the issue) and is being comprehensively briefed by both sides in this Court. There is no possibility of Defendants-Appellees here being unfairly "surprised" by appellate consideration of the constitutional issues here. Remanding this constitutional merits issue to the district court would accomplish nothing other than to delay justice and needlessly prolong substantial uncertainty.

This Court has held that it has discretion to consider a merits issue for the *first time* on appeal when the argument involves a purely legal issue in which no additional evidence or argument would affect the outcome of the case, especially in cases where the Supremacy Clause is alleged to prohibit governmental action. *Kimes*, 84 F.3d at 1126. That description fits this case and is even more appropriate here because *none* of the merits arguments are being raised for the first

time on appeal. Therefore, should this Court hold that Plaintiffs have standing, it should proceed to resolve the 12(b)(6) issue in favor of Plaintiffs.

IV. THE POLITICAL-QUESTION DOCTRINE DOES NOT BAR THIS LAWSUIT

The political-question doctrine is "primarily a function of separation of powers," *Baker v. Carr*, 369 U.S. 186, 210 (1962), and "is designed to restrain the Judiciary from inappropriate interference in the business of the other branches of Government[.]" *United States v. Munoz-Flores*, 495 U.S. 385, 394 (1990). It thus "excludes from judicial review those controversies which revolve around policy choices and value determinations constitutionally committed for resolution to the halls of Congress or the confines of the Executive Branch." *Japan Whaling Ass'n v. American Cetacean Soc'y*, 478 U.S. 221, 230 (1986). In *Baker*, the Supreme Court identified six characteristics "[p]rominent on the surface of any case held to involve a political question," including, as relevant here, "a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it." 369 U.S. at 217. To determine whether "one of these formulations" is applicable, this Court must engage in a "discriminating inquiry into the precise facts and posture of the particular case." *Id.* The basic principle of the political-question doctrine is that where resolving a legal claim would require an evaluation of quintessentially

Executive Branch or Legislative Branch policy, the claim is nonjusticiable under the political-question doctrine. This is not such a case for the following reasons.

First, this Court is *not* being asked to pass judgment on the content of U.S. foreign policy. Indeed, this Court can decide this dispute *without questioning* the wisdom of U.S. foreign policy. This is so because the question presented is whether under the U.S. Constitution Glendale can make its own foreign policy regarding Japan by erecting and maintaining the monument and plaque. As this Court recently held in *Movsesian v. Victoria Versicherung AG*, 670 F.3d 1067, 1072 (9th Cir. 2012) (en banc), "even when the federal government has taken no action on a particular foreign policy issue, the state [or a municipality, such as Glendale] generally is not free to make its own foreign policy on that subject." Reaching the same conclusion in this case in no way requires the Court to interfere with other branches of government or pronounce on U.S. foreign policy.

Second, Plaintiffs submit that the political-question doctrine is inapplicable to a case raising a foreign affairs preemption claim where the actions of a state or municipality are being challenged. Indeed, there are numerous cases, including Supreme Court and Ninth Circuit, that have proceeded to the merits on foreign affairs preemption claims. *See, e.g.*, *Am. Ins. Ass'n v. Garamendi*, 539 U.S. 396, 401–12 (2003) (holding unconstitutional a California statute directing production of Holocaust-era insurance policies); *Deutsch v. Turner Corp.*, 324 F.3d 692, 712–

16 (9th Cir. 2003) (holding unconstitutional a California statute extending statute of limitations for claims by World War II slave laborers).

Third, the appropriate use of the political-question doctrine in a case such as this can be seen in the case of *Joo v. Japan*, a case where the U.S. government urged the court to dismiss a lawsuit filed by former Comfort Women against Japan on political-question grounds. 413 F.3d 45, 48–53 (D.C. Cir. 2005). The *Joo* plaintiffs, former Comfort Women who were nationals of China, Korea, the Philippines, and Taiwan, sought monetary relief through private litigation against Japan, arguing that their individual claims were not extinguished by treaties executed between their respective governments and Japan. *Joo*, 413 F.3d at 46. The court decided that, in light of the Executive Branch's primary authority in this area, interpretation of those treaties was appropriately delegated to the Executive Branch because "adjudication by a domestic court not only 'would undo' a settled foreign policy of state-to-state negotiation with Japan, but also could disrupt Japan's 'delicate' relations with China and Korea, thereby creating 'serious implications for stability in the region."' *Id.* at 52. Critically, the United States urged that result in *Joo* because the adjudication of the plaintiffs' claims would require the court "to judge the policy considerations underlying the drafting, negotiation and ratification" of the U.S. treaty with Japan that ended World War II. (ER 38.) The political-question doctrine was applicable there because a court was

being asked to *judge* the policy of the federal government in the area of foreign affairs.

In contrast, in no way is this Court being asked to judge U.S. foreign policy. Instead, this Court is being asked to determine whether the Constitution's allocation of the foreign affairs power prevents Glendale, notwithstanding Japan's objection and without the consent of the federal government, to inject itself into a contested area of foreign affairs. Confirming our view of the law, the United States has recently taken the position that the political-question doctrine is *not applicable* in a case where the court need not "question[] the wisdom" of U.S. foreign policy in resolving a claim that state tort law is preempted by the foreign affairs power. Brief of the United States as *Amicus Curiae* at 7–8, *KBR, Inc. v. Metzgar*, No. 13-1241, 2015 WL 231968 (U.S. Jan. 20, 2015).[6] That is the case here.

V. GLENDALE'S ACTION IS PREEMPTED BY THE FEDERAL GOVERNMENT'S AUTHORITY TO REGULATE FOREIGN AFFAIRS

Under the U.S. Constitution, "[p]ower over external affairs is not shared by the States; it is vested in the national government exclusively." *United States v. Pink*, 315 U.S. 203, 233 (1942). That is because "for national purposes, embracing

[6] A true and correct copy of this brief is attached as Exhibit B to the Declaration of Maxwell M. Blecher in Support of Plaintiffs' Motion To Take Judicial Notice filed concurrently herewith, and also available at *KBR, Inc. v. Metzgar*, 2014 WL 7185601 (U.S.).

our relations with foreign nations, we are but one people, one nation, one power." *Chae Chan Ping v. United States*, 130 U.S. 581, 606 (1889). As a result, "the Supreme Court has long viewed the foreign affairs powers . . . as reflections of a generally applicable constitutional principle that power over foreign affairs is reserved to the federal government." *Deutsch*, 324 F.3d at 709; *see also Garamendi*, 539 U.S. at 413–14. Attempts by state or local governments to involve themselves in foreign policy matters necessarily constitute "an intrusion . . . into the field of foreign affairs which the Constitution entrusts to the President and the Congress." *Zschernig v. Miller*, 389 U.S. 429, 432 (1968). Municipalities are subject to the same limitations as states because neither is afforded any role whatsoever in defining foreign policy. *See Hines v. Davidowitz*, 312 U.S. 52, 63 (1941) ("Our system of government is such that the interest of the cities, counties and states, no less than the interest of the people of the whole nation, imperatively requires the federal power in the field of foreign relations to be left entirely free from local interference."). Glendale's installation and maintenance of the monument and plaque runs afoul of these constitutional requirements.

A. The Constitution Preempts Municipal Action That Interferes With Foreign Policy

It is firmly-established that a private party may bring a claim alleging that state or municipal action is preempted by the Constitution. *See, e.g.*, *Garamendi*, 539 U.S. at 413–14; *Crosby v. National Foreign Trade Council*, 530 U.S. 363,

372–73 (2000); *Foster v. Love*, 522 U.S. 67, 70–72 (1997); *Gade v. Nat'l Solid Wastes Mgmt. Assn*, 505 U.S. 88, 96 (1992). State or municipal action must not be permitted to "distort[] the allocation of responsibility to the national government for the conduct of American diplomacy." *In re World War II Era Japanese Forced Labor Litig.*, 164 F. Supp. 2d 1160, 1168 (N.D. Cal. 2001) (internal quotations omitted), *aff'd sub nom. Deutsch*, 317 F.3d 1005, *opinion amended and superseded on denial of reh'g*, 324 F.3d 692 (9th Cir. 2003). This principle is of such importance that "'even in the absence of a treaty' or federal statute, a state may violate the constitution by 'establish[ing] its own foreign policy.'" *Deutsch*, 324 F.3d at 709 (quoting *Zschernig*, 389 U.S. at 441).

The Supreme Court has repeatedly recognized that state action in conflict with the federal government's exercise of its foreign relations and war powers is preempted. *See Garamendi*, 539 U.S. at 420–21; *Zschernig*, 389 U.S. at 440; *Pink*, 315 U.S. at 230–31. Even in the absence of such a conflict, however, the Supreme Court has indicated that state action is preempted if it intrudes "into the field of foreign affairs." *Zschernig*, 389 U.S. at 432; *see also Hines*, 312 U.S. at 63 ("Our system of government . . . imperatively requires that federal power in the field affecting foreign relations be left entirely free from local interference.").

Following this precedent, this Court has recognized that the Constitution "gives the federal government the *exclusive authority* to administer foreign

affairs." *Movsesian*, 670 F.3d at 1071 (emphasis added). "Under the foreign affairs doctrine, state laws that intrude on this exclusively federal power are preempted." *Id*. (citing *Garamendi*, 539 U.S. at 418–20).

As this Court has explained, there are two types of foreign affairs preemption: conflict preemption and field preemption. "Under conflict preemption, a state law must yield when it conflicts with an express federal foreign policy." *Movsesian*, 670 F.3d at 1071. "But the Supreme Court has made clear that, even in the absence of any express federal policy, a state law still may be preempted under the foreign affairs doctrine if it intrudes on the field of foreign affairs without addressing a traditional state responsibility. This concept is known as field preemption or 'dormant foreign affairs preemption."' *Id.* at 1072.

When analyzing a case for field preemption, this Court's *Movsesian* decision directs this Court to ask whether a state or municipality has "addressed a traditional state responsibility" or has instead "intruded on a power expressly or impliedly reserved by the Constitution to the federal government." *Movsesian*, 670 F.3d at 1074. In so doing, this Court must look to determine the "real purpose" of the state or municipal action. *Id*. at 1075 (quoting *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 964 (9th Cir. 2010)). Glendale has acted beyond any area of traditional responsibility and has impermissibly intruded on the federal

government's foreign affairs power by injecting itself into a contested area of foreign affairs.

B. Under This Court's *Movsesian* Decision, Glendale's Actions Are Preempted Because They Do Not Concern An Area Of Traditional State Authority

Glendale's actions in installing the monument and plaque attempt to establish foreign policy and disturb foreign relations in a deeply contested international arena between Japan and South Korea without addressing *any* traditional area of state or municipal responsibility. The Comfort Women issue continues to be a highly charged international debate that has not yet remotely been resolved to the satisfaction of the nations involved. (ER 59, ¶¶15-18.) As Plaintiffs' Complaint details, "[d]isagreements concerning responsibility for Comfort Women are a major impediment to improved present-day relations between Japan and South Korea, which are less than cordial" (ER 59, ¶18), and the United States, even as recently as February 2013, has continued to encourage Japan and South Korea to "work together to resolve their concerns over historical issues in an amicable way," and to "put history behind them and move the relationship forward." (ER 64-65, ¶¶46-47.) The implications of the global discourse on the Comfort Women issue, including the actions or omissions of Japan as a foreign government, do not in any way touch on any traditional municipal responsibility of Glendale. *See Von Saher*, 592 F.3d at 965 (providing a

forum for Holocaust restitution claims, while "a laudable goal, it is not an area of 'traditional state responsibility,' and the statute is therefore subject to a field preemption analysis."); *Movsesian*, 670 F.3d at 1076 (extending insurance claim statute of limitations for victims of the Armenian Genocide did not concern an area of traditional state responsibility); *Garamendi*, 539 U.S. at 425 (no state interest in "regulating disclosure of European Holocaust-era insurance policies"); *see also Zschernig*, 389 U.S. at 440 ("The several States, of course, have traditionally regulated the descent and distribution of estates. But those regulations must give way if they impair the effective exercise of the Nation's foreign policy.").

Because the Comfort Women issue is a matter of continuing international relations controversy and negotiation unrelated to Glendale's local "traditional" responsibilities, Glendale simply cannot be permitted to infringe upon the federal government's exclusive authority to conduct foreign relations with and between Japan and South Korea. *Japan Line, Ltd. v. Los Angeles Cnty.*, 441 U.S. 434, 455 (1979) ("California may not tell this Nation or Japan how to run their foreign policies."). Glendale is a small municipal government with local concerns, and has no stake of any kind in controversies between South Korea and Japan arising out of World War II.

Importantly, the monument and plaque here challenged do much more than commemorate; they advocate that Japan violated international human rights during

World War II and also advocate that the present day government of Japan accept responsibility and make amends for alleged activities that occurred during World War II. Thus, while this Court has not "offer[ed] an opinion," and thus left open the question, whether there are circumstances where foreign affairs preemption would be appropriate in a case where "California [] express[ed] support for Armenians by, for example, declaring a commemorative day," *Movsesian*, 670 F.3d at 1077 n.5, there is no authority holding "that a state [or municipal] government's First Amendment interests, if any, should weigh into a consideration of whether a state has impermissibly interfered with the federal government's foreign affairs power," *Nat'l Foreign Trade Council v. Natsios*, 181 F.3d 38, 62 (1st Cir. 1999), *aff'd on other grounds*, 530 U.S. 263 (2000). Glendale's arguments before the district court that purely expressive conduct is not subject to foreign affairs preemption is supported by no authority. Indeed, it violates logic. Just as a city cannot erect a monument that violates the Establishment Clause by expressing the position that, for example, "This is a Christian government," so too it cannot erect a monument and plaque that violates the Supremacy Clause. By way of another example, had Glendale installed a monument and plaque that expressed the view that "Glendale commemorates the valiant efforts of ISIL's freedom fighters against the United States," it is our position that under governing precedent this would be preempted under the foreign affairs power because it unconstitutionally intrudes upon the President's foreign affairs and

war powers. Since in at least some circumstances mere commemoration and purely expressive conduct can be preempted by the foreign affairs power, the monument and plaque here, which is much more than commemorative because it sides against Japan and advocates that the present-day government of Japan accept historical responsibility on contested foreign affairs matters and make amends, is likewise subject to foreign affairs preemption.

To be clear, the monument and plaque seek to establish foreign policy by taking sides, casting blame on Japan, and pressuring Japan to "accept historical responsibility for these crimes." This Glendale cannot do. *See Zschernig*, at 441 (even in the absence of a conflicting federal policy, a state may violate the Constitution by "establish[ing] its own foreign policy"); *see also Japan Line*, 441 U.S. at 455 ("California may not tell this Nation or Japan how to run their foreign policies.").

Lest there be any doubt, the "real purpose" of Glendale's action here was to unconstitutionally inject itself into foreign affairs and not some alleged traditional municipal purpose of merely expressing an opinion. Glendale's then-mayor, Dave Weaver, conceding that Glendale's installation of the monument and plaque was improper, stated in a letter to Yoshikazu Noda, Mayor of Higashiosaka, Japan, that the dispute over Comfort Women "is an international one between Japan and South

Korea and the City of Glendale should not be involved on either side." (ER 62, ¶32.)

Indeed, when the monument was being considered by the City Council, then-Councilmember Zareh Sinanyan, now Glendale's mayor, made clear that Glendale intended to insert itself into foreign affairs notwithstanding his expressly acknowledged understanding that such action violated this Court's clear case law. Addressing the questionable authority of Glendale to approve the monument, Sinanyan stated:

> Another argument [is that] Glendale has no authority to do anything about this issue, it's a federal issue. Just last year, the Turkish government pushed a lawsuit which they succeeded on in the Ninth Circuit making the exact same argument, saying that the recognition of the Armenian genocide by state authorities was not proper [presumably referring to this Court's *Movsesian* case] . . . I'm sorry it's a moral issue, not a state issue. . . We are taking a meaningful step to show our moral support, our sharing of the pain that our Korean brothers and sisters feel about this issue . . .[7]

Of course, even if it is "a laudable goal, it is not an area of traditional state responsibility." *Von Saher*, 592 F.3d at 965. Sinanyan's presumptive reference to this Court's *Movsesian* decision clearly shows that he and presumably others on Glendale's City Council knew that in approving the monument they were injecting

[7] *See* Plaintiffs-Appellants' Motion To Take Judicial Notice filed concurrently herewith, and Plaintiffs-Appellants' Motion To File Physical Exhibit, filed on February 27, 2015 (Doc. # 15).

Glendale into foreign affairs notwithstanding this Court's clearly established case law prohibiting such action.

Even if Glendale did have some local stake in this international dispute spanning 70 years, which it does not, field preemption would require that its interest yield to the federal government's command of foreign affairs because "our system of government is such that the interest of the cities, counties and states, no less than the interest of the people of the whole nation, imperatively requires that federal power in the field affecting foreign relations be left entirely free from local interference." *Hines*, 312 U.S. at 63. Field preemption is especially applicable here where there is an absence of *any* local government interest that Glendale may be able to cobble together related to the Comfort Women issue. *Garamendi*, 539 U.S. at 425 (" If any doubt about the clarity of the conflict remained, however, it would have to be resolved in the National Government's favor, given the weakness of the State's interest, against the backdrop of traditional state legislative subject matter. . .").

C. Under *Movsesian*, Glendale's Actions Are Preempted Because They Intrude On Powers Reserved To The Federal Government By Seeking To Establish Foreign Policy Regarding Comfort Women

Glendale's intrusion on the federal government's exclusive power to conduct foreign affairs has had much "more than some incidental or indirect effect in foreign countries." *Zschernig*, 389 U.S. at 434–35 (internal quotations omitted).

Indeed, the monument and plaque express a distinct point of view by taking sides "with [its] Korean brothers and sisters" and casting blame on Japan on a specific matter of foreign policy. The monument and plaque seek to establish a foreign policy position, whereby the Japanese government is encouraged to "accept historical responsibility for these crimes" at the behest of Glendale. *See id.* at 441 (holding that, even in the absence of a conflicting federal policy, a state may violate the Constitution by "establish[ing] its own foreign policy"). Glendale has engaged in highly charged advocacy and condemnation of a foreign government's disputed wartime conduct, which it cannot, and should not be allowed to, do under the Constitution. *See id*. at 435–36 (finding preempted an Oregon statute because it invited courts to engage in an analysis of foreign governments and their conduct).

There is no doubt that Glendale's actions have compelled officials at nearly every level of government in Japan to openly criticize Glendale's actions and its contested position on the Comfort Women issue. In fact, the monument and plaque have been met with vehement disapproval from officials from the highest levels of the Japanese government. Japan's Prime Minister, Japan's Chief Cabinet Secretary, and Japan's Ambassador to the United States have all publicly commented on and condemned Glendale actions regarding the monument and plaque. (ER 63-64, ¶¶36-42.) For example, shortly after the installation of the

monument and plaque, the Japanese Ambassador to the United States, Kenichiro Sasae, stated that that the position espoused by Glendale in the in the monument and plaque is "irreconcilable" with the position of the Government of Japan and is "highly regrettable." (ER 63, ¶39.) The same day, Yoshihide Suga, Japan's Chief Cabinet Secretary, described Glendale's conduct as "conflict[ing] with the [Japanese] government's view that the issue of the Comfort Women should not be part of any political or diplomatic agenda." (*Id*., ¶40.) Two weeks later, Japanese Prime Minister Shinzo Abe stated that he was "extremely dissatisfied" with Glendale's decision.[8] (*Id.*, ¶41.)

Glendale's actions risk the United States' relationship with both Japan and South Korea, and have contributed to the continued animosity and unresolved tension between Japan and South Korea on the issue of Comfort Women. In an international context, "[e]xperience has shown that international controversies of the gravest moment, sometimes even leading to war, may arise from real or imagined wrongs to another's subjects inflicted, or permitted, by a government."

[8] Since Plaintiffs-Appellants' Complaint was filed on February 20, 2014, Japan's Chief Cabinet Secretary released a question and answer press statement concerning the monument and plaque in which he stated: "This installation of a memorial statue by a municipal government in the U.S. is incompatible with the views of the Japanese Government." Press Conference by the Chief Cabinet Secretary, Feb. 21, 2014, *available at* http://japan.kantei.go.jp/tyoukanpress/201402/21_p.html, a true and correct copy of which is attached to as Exhibit A to the Declaration of Maxwell M. Blecher in Support of Plaintiffs-Appellants' Motion To Take Judicial Notice filed concurrently herewith.

Hines, 312 U.S. at 64. The Supreme Court has long recognized that the potential to disrupt foreign affairs is especially probable—even for seemingly benign issues on a domestic level—because of the volatility of such issues when magnified on an international scale. *Japan Line*, 441 U.S. at 456 ("This case concerns foreign commerce. Even a slight overlapping of tax—a problem that might be deemed *de minimis* in a domestic context—assumes importance when sensitive matters of foreign relations and national sovereignty are concerned.").

Whether the wrongs are "imagined" or not, the Comfort Women issue strikes at the core of Japan's and South Korea's wartime legacies on delicate issues such as prostitution and sexual slavery—fragile subjects for even the strongest of allies to traverse in a sensitive and appropriate fashion. Glendale's uninvited incursion into international and diplomatic relations not only has the "great potential for disruption or embarrassment" for the United States, *Zschernig*, 389 U.S. at 434–35, but negatively affects the strain between Japan and South Korea, and risks the relationship between the United States and both countries. This Glendale cannot be permitted to do.

D. The District Court's Merits Discussion Is Entitled To No Deference And, In Any Event, Is Wrong

As noted above, the district court's "merits" discussion is entitled to no deference because it was based on hypothetical subject matter jurisdiction. In any event, the district court applied the wrong legal standard.

As already explained, field preemption prevents Glendale from installing and maintaining this monument and plaque. The district court made much of the fact that the plaque's language encouraging Japan to issue a formal apology echoes the language of House Resolution 121, which Congress passed in July 2007. (ER 25.) It matters not that Glendale seemingly acted based on a legally nonoperative resolution of one house of Congress. As this Court has explained, whether the state action challenged is in accord with the actions of some federal officials is irrelevant to the analysis. *Hines*, 312 U.S. at 61 (finding preemption even though "[t]he basic subject of the state and federal laws is identical[.]"); *Crosby*, 530 U.S. at 379–80 ("The fact of a common end hardly neutralizes conflicting means[.]"); *Gade*, 505 U.S. at 103 (accord). This Court also confirmed this view in *Movsesian*:

> The statute expresses a distinct political point of view on a specific matter of foreign policy. It imposes the politically charged label of 'genocide' on the actions of the Ottoman Empire (and, consequently, present-day Turkey) and expresses sympathy for Armenian Genocide victims. The law establishes a particular foreign policy for California—one that decries the actions of the Ottoman Empire and seeks to provide redress for Armenian Genocide victims . . . .

670 F.3d at 1076 (internal quotations and citations omitted).

Here, the situation is identical and even more problematic. Field preemption precludes Glendale from expressing a distinct political point of view on a specific

matter of foreign policy by using emotionally-charged language explicitly directed at a foreign government.

Importantly, this is not the standard type of monument erected by a local government, such as one commemorating a U.S. war hero, a police officer lost in the line of duty, or a local citizen's role in city beautification. This is a monument where Glendale is advocating that Japan take "responsibility" for alleged human rights violations that allegedly occurred during World War II. Indeed, this is in no way a matter of traditional municipal responsibility, such as maintaining streets and transportation services and providing other local public services.[9] Glendale has no constitutional authority to install and maintain a monument and plaque to stand as the moral compass for the United States or the world when it comes to foreign policy.

[9] As for Glendale's definition of its traditional local interests, see Glendale's Code of Ordinances, a true and correct copy of which is attached to the Declaration of Maxwell M. Blecher in support of Plaintiffs-Appellants' Motion To Take Judicial Notice filed concurrently herewith, and also available at https://www.municode.com/library/ca/glendale/codes/code_of_ordinances. The Code of Ordinances lists the following areas of governance: Titles 4 (Local Revenue and Finance), 5 (Business Taxes, Licenses and Regulations), 6 (Animals), 8 (Health and Safety), 9 (Public Peace and Welfare), 10 (Vehicles and Traffic), 12 (Streets, Sidewalks and Public Places), 13 (Public Services), 15 (Buildings and Construction), 16 (Subdivisions) and 30 (Zoning). Nowhere does the Code provide for Glendale to police or govern foreign nations, or even to urge them to accept responsibility for alleged international human rights violations, particularly foreign nations today allied with the U.S., or to provide this country, any other country, or the world with moral or ethical directives.

Finally, the district court noted that a holding in favor of Plaintiffs "would invite unwarranted judicial involvement in the myriad symbolic displays" undertaken by local governments and impinge upon the local government's right to "communicate with the citizenry." (ER 25-26, citing *Alameda Newspapers, Inc. v. City of Oakland*, 95 F.3d 1406, 1415 (9th Cir. 1996)). This argument is a red herring, because, as noted above, this is not mere commemoration but advocacy directed at the Japanese government.

A municipality has no right to "speak" in such a manner as to interfere with foreign affairs. *Nat'l Foreign Trade Council*, 181 F.3d at 61 (Nothing "suggests that a state government's First Amendment interests, if any, should weigh into a consideration of whether a state has impermissibly interfered with the federal government's foreign affairs power."). Glendale does not have "free license to communicate offensive or partisan messages," and its speech is clearly limited by the Constitution. *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 468, 482 (2009); *see also R.J. Reynolds Tobacco Co. v. Bonta*, 272 F. Supp. 2d 1085, 1106 (E.D. Cal. 2003) *aff'd sub nom. R.J. Reynolds Tobacco Co. v. Shewry*, 384 F.3d 1126 (9th Cir. 2004) *opinion amended and superseded on denial of reh'g*, 423 F.3d 906 (9th Cir. 2005) ("[I]t is to be hoped that the courts will recognize that limitations, both constitutional and otherwise derived, constrain the government's power to speak on controversial issues."); *Creek v. Village of Westhaven*, 80 F.3d 186, 193 (7th Cir.

1996) ("Even if municipalities do have First Amendment rights, however, a question we need not decide, we do not think they have the right to foment, whether through speech or otherwise, governmental discrimination on grounds of race."); *Adams v. Maine Municipal Ass'n*, 2013 WL 9246553, at *19 (D. Me., Feb. 14, 2013) ("If government speech is discriminatory, it might be challenged under the Equal Protection Clause . . . Even when a challenge is brought under the Free Speech Clause, the government speech doctrine's protections appear to be limited."); *Downs v. Los Angeles Unified School Dist.*, 228 F.3d 1003, 1007 (9th Cir. 2000) (the government can and should regulate its own speech when it is "'disrespectful,' 'offensive,' 'upsetting,' 'objectionable,' and 'derogatory.'"). Just as a municipality cannot erect a monument that violates the Establishment Clause, so too it cannot erect a monument and plaque that violates the Supremacy Clause.

Furthermore, affirming the district court's illogical reasoning would mean that federal courts in this Circuit could not evaluate whether all manner of arguable speech by local governments accords with the Constitution. Just as it is not constitutionally permissible under the Establishment Clause for a local government to communicate to its citizenry that it is a Christian government and impermissible under Equal Protection for a local government to communicate that minorities, immigrants, or a particular race are inferior to others in the local community, so too is it impermissible under the Constitution for a local government to take a

contested position on a matter of foreign affairs and advocate that a foreign government accept responsibility for its alleged crimes during World War II.

According to the district court, to hold for Plaintiffs here would mean that "those who may harbor some factual objection to the historical treatment of a state or municipal monument to the victims of the Holocaust could make similar claims to those advanced by Plaintiffs in this action." (ER 25.) This assumption is misplaced. The atrocities committed during the Holocaust are not subject to any serious debate, do not conflict with U.S. foreign policy, nor would a statement regarding the horrors of the Holocaust necessarily draw the protest of the German government. Furthermore, war crimes that occurred during the Holocaust have been adjudicated by an international tribunal, apologies have been issued, reparations have been paid, and Germany does not deny wrongdoing. More so, Germany's horrific actions against Jewish and other people during the Holocaust have not been a controversial issue of global politics for several decades. This is not true for the Comfort Women debate, as Japan's strenuous objection to this monument and plaque and the lack of scholarly consensus make plain.

Glendale's actions are also more than merely commemorative because it has installed a 1,100 pound permanent monument that monopolizes "the use of the land on which [it] stand[s] and interfere[s] permanently with other uses of public space." *Pleasant Grove*, 555 U.S. at 479. As Glendale's then-Mayor and current Mayor

explained, the monument and plaque take a side on foreign affairs—a deeply contested side—in the debate against an important U.S. ally and proceed to adjudicate the blameworthiness of Japan and the Japanese people for wartime activities in World War II.

This monument and plaque, as well as the district court's judgment, should not be allowed to stand.

CONCLUSION

For the foregoing reasons, Plaintiffs-Appellants respectfully request that the judgment of the district court be reversed as requested herein.

Dated: March 13, 2015 Respectfully submitted,

THE LAW OFFICES OF RONALD S. BARAK
RONALD S. BARAK

BLECHER COLLINS PEPPERMAN & JOYE
MAXWELL M. BLECHER
DONALD R. PEPPERMAN
TAYLOR C. WAGNIERE

By: /s/ *Maxwell M. Blecher*
MAXWELL M. BLECHER
Attorneys for Plaintiffs-Appellants

STATEMENT OF RELATED CASES

Pursuant to Ninth Circuit Rule 28-2.6, Plaintiffs-Appellants state that they are not aware of any related cases pending in this Court.

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 32(a)(7)(C) of the Federal Rules of Appellate Procedure, and Ninth Circuit Rule 32-1, Plaintiffs-Appellants hereby certify that this Opening Brief is proportionately spaced, has a typeface of 14-point and contains 13,925 words.

Dated: March 13 , 2015

Respectfully submitted,

By: /s/ *Maxwell M. Blecher*
MAXWELL M. BLECHER
Attorneys for Plaintiffs-Appellants

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on March 13, 2015.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

By: /s/ *Maxwell M. Blecher*
MAXWELL M. BLECHER
Attorneys for Plaintiffs-Appellants

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NO. 14-56440

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MICHIKO SHIOTA GINGERY, KOICHI MERA, and
GAHT-US CORPORATION,

Plaintiffs-Appellants,

vs.

CITY OF GLENDALE, a municipal
corporation, SCOTT OCHOA,
in his capacity as Glendale City Manager,

Defendants-Appellees.

On Appeal from United States District Court
Central District of California
Case No. 2:14-cv-1291
Honorable Percy Anderson, Judge Presiding

PLAINTIFFS-APPELLANTS' EXCERPTS OF RECORD
VOLUME I OF II

BLECHER COLLINS PEPPERMAN & JOYE
MAXWELL M. BLECHER
DONALD R. PEPPERMAN
TAYLOR C. WAGNIERE
515 South Figueroa Street, Suite 1750
Los Angeles, California 90071-3334
Telephone: (213) 622-4222
Attorneys for Plaintiffs-Appellants

LAW OFFICES OF RONALD S. BARAK
RONALD S. BARAK
206 Giardino Way
Pacific Palisades, California 90272
Telephone: (310) 459-3963
Attorneys for Plaintiffs-Appellants

INDEX TO PLAINTIFFS-APPELLANTS' EXCERPTS OF RECORD

Dated: March 13, 2015

Respectfully submitted,

THE LAW OFFICES OF RONALD S. BARAK
RONALD S. BARAK

BLECHER COLLINS PEPPERMAN & JOYE
MAXWELL M. BLECHER
DONALD R. PEPPERMAN
TAYLOR C. WAGNIERE

By: /s/ *Maxwell M. Blecher*
MAXWELL M. BLECHER
Attorneys for Plaintiffs-Appellants

71117.1

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By: /s/ *Maxwell M. Blecher*
MAXWELL M. BLECHER
Attorneys for Plaintiffs-Appellants

TAB 1

William B. DeClercq (State Bar No. 240538)
William@DeClercqLaw.com
DECLERCQ LAW GROUP
225 South Lake Avenue, Suite 300
Pasadena, California 91101
Tel: (626) 408-2150
Fax: (626) 408-2159

Attorney for Plaintiffs
MICHIKO SHIOTA GINGERY,
KOICHI MERA, and GAHT-US
CORPORATION

IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

MICHIKO SHIOTA GINGERY, an individual, KIOCHI MERA, an individual, GAHT-US CORPORATION, a California Non-Profit corporation,

Plaintiff,

v.

CITY OF GLENDALE, a municipal corporation,

Defendants.

Case No.: 2:14-cv-1291-PA-AJW
[Hon. Percy Anderson, Courtroom 15]

PLAINTIFFS' NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT:

AND

REPRESENTATION STATEMENT
(Circuit Rule 3-2)

Complaint filed: February 20, 2014

NOTICE IS HEREBY GIVEN that plaintiffs MICHIKO SHIOTA GINGERY, KIOCHI MERA and GAHT-US CORPORATION, (collectively "Plaintiffs") hereby appeal to the United States Court of Appeals for the Ninth District from the August 4, 2014 "MINUTES - IN CHAMBERS regarding Motion to Dismiss Pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), or to Strike Pursuant to Rule 12(f) ("Motion to Dismiss") [Docket Entry No. 20] filed by

the Defendant City of Glendale" (Docket No. 47), attached hereto as Exhibit A, and the final judgment of this Court entered in this case on August 4, 2014 (Docket No. 48), attached hereto as Exhibit B.

Pursuant to Ninth Circuit Rule 3-2, below is a Representation Statement that identifies all parties to the action, along with the names, addresses, telephone numbers and email addresses of their respective counsel.

DATED: September 3, 2014

DECLERCQ LAW GROUP

By: William B. Declercq

WILLIAM B. DECLERCQ, ESQ.
Attorney for Plaintiffs

DECLERCQ LAW GROUP
225 South Lake Avenue, Suite 300
Pasadena, California 91101

REPRESENTATION STATEMENT

1.) Plaintiffs-Appellants Michiko Shiota Gingery, Kiochi Mera and GAHT-US Corporation are represented by:

William B. DeClercq, Esq.
William@DeClercqLaw.com
DECLERCQ LAW GROUP
225 South Lake Avenue, Suite 300
Pasadena, California 91101
(626) 408-2150

2.) [Proposed] *Amicus Curiae* The Global Alliance for Preserving the History of WW II in Asia is represented by:

Barry A. Fisher, Esq.
bfisher557@aol.com
FLEISHMAN AND FISHER
1925 Century Park East Suite 2000
Los Angeles, CA 90067
(310) 557-1077

3.) Defendant-Appellee City of Glendale is represented by:

Christopher S. Munsey, Esq.
cmunsey@sidley.com
Frank John Broccolo, Esq.
fbroccolo@sidley.com
Laura L Richardson, Esq.
laura.richardson@sidley.com
Bradley H Ellis, Esq.
bellis@sidley.com
SIDLEY AUSTIN LLP
555 South Flower Street Suite 4000
Los Angeles, CA 90013
213-896-6000

Andrew C Rawcliffe, Esq.
ARawcliffe@ci.glendale.ca.us
GLENDALE CITY ATTORNEY
613 East Broadway Suite 220
Glendale, CA 91206
818-548-2080

4.) [Proposed] *Amicus Curiae* Korean American Forum of California is represented by:

Catherine Elizabeth Sweetser, Esq.
catherine.sdshhh@gmail.com
SCHONBRUN DESIMONE SEPLOW
HARRIS HOFFMAN AND HARRISON LLP
723 Ocean Front Walk
Venice, CA 90291
310-396-0731

DECLERCQ LAW GROUP
225 South Lake Avenue, Suite 300
Pasadena, California 91101

CERTIFICATE OF SERVICE

I, William B. DeClercq, hereby declare under penalty of perjury as follows:

I am an attorney with the DeClercq Law Group, with offices at 225 South Lake Avenue, Suite 300, Pasadena, California 91101. I am over the age of 18.

On September 3, 2014 I electronically filed the following PLAINTIFFS' NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT AND REPRESENTATION STATEMENT with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to counsel of record.

Executed on September 3, 2014.

/s/ William B. DeClercq

DECLERCQ LAW GROUP
225 South Lake Avenue, Suite 300
Pasadena, California 91101

EXHIBIT A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 14-1291 PA (AJWx)	Date	August 4, 2014
Title	Michiko Shiota Gingery, et al. v. City of Glendale, et al.		

Present: The Honorable	PERCY ANDERSON, UNITED STATES DISTRICT JUDGE	
Paul Songco	Not Reported	N/A
Deputy Clerk	Court Reporter	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
None	None

Proceedings: IN CHAMBERS

Before the Court are a Special Motion to Strike Pursuant to California Code of Civil Procedure section 425.16 ("Anti-SLAPP Motion") (Docket No. 19) and a Motion to Dismiss Pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), or to Strike Pursuant to Rule 12(f) ("Motion to Dismiss") (Docket No. 20) filed by defendant City of Glendale ("Glendale" or "Defendant"). Defendant challenges the sufficiency of the Complaint filed by plaintiffs Michiko Shiota Gingery, Koichi Mera, and GAHT-US Corporation (collectively "Plaintiffs"). Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds these matters are appropriate for decision without oral argument.

I. Background

This action concerns the installation of a monument in Glendale's Central Park. According to the Complaint, the monument was unveiled on July 30, 2013, and includes a 1,100 pound bronze statue of a young girl in Korean dress sitting next to an empty chair with a bird perched on her shoulder. Next to the statue is a plaque that reads, in part:

> In memory of more than 200,000 Asian and Dutch women who were removed from their homes in Korea, China, Taiwan, Japan, the Philippines, Thailand, Vietnam, Malaysia, East Timor and Indonesia, to be coerced into sexual slavery by the Imperial Armed Forces of Japan between 1932 and 1945.
>
> And in celebration of proclamation of "Comfort Women Day" by the City of Glendale on July 30, 2012, and of passing House Resolution 121 by the United States Congress on July 30, 2007, urging the Japanese Government to accept historical responsibility for these crimes.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 14-1291 PA (AJWx)	Date	August 4, 2014
Title	Michiko Shiota Gingery, et al. v. City of Glendale, et al.		

> It is our sincere hope that these unconscionable violations of human rights never recur.

(Compl. ¶ 11.)

Plaintiffs filed this action for declaratory and injunctive relief on February 20, 2014. The Complaint alleges two causes of action. In their first claim, which Plaintiffs label a claim for "Unconstitutional Interference with Foreign Affairs Power," Plaintiffs allege that Glendale's erection of the monument "interferes with the Executive Branch's primary authority to conduct foreign relations by disrupting foreign policy as to the resolution of the historical debate concerning comfort women. The Public Monument also violates the Supremacy Clause." (Compl. ¶ 59.) According to the Complaint, by installing the Comfort Women monument, Glendale "has taken a position in the contentious and politically-sensitive international debate concerning the proper historical treatment of the former comfort women. More specifically, given the inflammatory language used in the plaque that is prominently featured alongside the statue, Glendale has taken a position at odds with the expressed position of the Japanese Government." (Compl. ¶ 61.) In support of their assertion that this Court possesses subject matter jurisdiction, the Complaint alleges that this action arises under "42 U.S.C. § 1983; the foreign affairs powers of the United States, U.S. Const. art. II, sec. 1, cl. 1, sec. 2, cl. 1; sec. 2, cl. 2; and sec. 3; and the Supremacy Clause, U.S. Constitution, art. VI, cl. 2." (Compl. ¶ 1.) Plaintiffs' second cause of action asserts a supplemental state law claim under the Glendale Municipal Code alleging that Glendale's city council failed to comply with Robert's Rules of Order when it approved the placement of the monument.

According to the Complaint, plaintiff Michiko Shiota Gingery is a resident of Glendale who was born in Japan and is now a naturalized citizen of the United States. Plaintiff GAHT-US Corporation ("GAHT-US") is a non-profit corporation organized under the laws of California. The purpose of GAHT-US is to "provide accurate and fact-based educational resources to the public in the U.S., including within California and Glendale, concerning the history of World War II and related events, with an emphasis on Japan's role." (Compl. ¶ 7.) Koichi Mera is a Japanese-American who resides in the City of Los Angeles and is the President of GAHT-US. The Complaint alleges that Gingery, Mera, and the members of GAHT-US avoid using Glendale's Central Park where the monument is located because they are "offended by the Public Monument's pointed expression of disapproval of Japan and the Japanese people." (Compl. ¶ 6.)

Both parties filed Requests for Judicial Notice in which they seek to have the Court take judicial notice of various historical facts and governmental statements concerning the controversies surrounding the acknowledgment of responsibility for the treatment of the Comfort Women and reaction by some within the Japanese government to the monument. Although neither party has objected to the other party's Request for Judicial Notice, the materials of which the parties have requested the Court to take judicial notice are not necessary or relevant to the Court's resolution of the pending motions. The Court therefore denies the parties' Requests for Judicial Notice.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 14-1291 PA (AJWx)	Date	August 4, 2014
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The Court has also received two Ex Parte Applications for Leave to Appear as Amicus Curiae. The first of the Amicus Applications was filed by The Global Alliance for Preserving the History of WW II in Asia (the "Global Alliance") (Docket No. 39). The Global Alliance seeks leave to file a proposed Amicus Brief containing historical information concerning the Comfort Women. The second Amicus Application was filed by the Korean-American Forum of California (Docket No. 45) and includes declarations from two individuals detailing their experiences during World War II as Comfort Women. Although the Court has reviewed the materials submitted by the Amicus applicants, the Court has concluded that none of the information provided by the proposed Amicus applicants is necessary for the Court's disposition of the present motions. The Court therefore has not relied on any of the information contained in the Amicus applications in reaching its decision concerning the pending motions. The Ex Parte Applications for Leave to Appear as Amicus Curiae are therefore denied without prejudice.

II. Analysis

In its Anti-SLAPP Motion, Defendant contends that the Complaint's first claim alleging violations of the United States Constitution does not allege a viable federal claim and is therefore susceptibly to a Motion to Strike pursuant to California Code of Civil Procedure section 425.16. Although the Complaint's first claim could have been crafted to more clearly indicate that it is brought pursuant to 42 U.S.C. § 1983, the Court concludes that, at a minimum, Plaintiffs' first claim is intended to be a federal claim, originally filed in federal court, and that California Code of Civil Procedure section 425.16 does not apply to that claim. See Hilton v. Hallmark Cards, 599 F.3d 894, 901 (9th Cir. 2009) ("[T]he anti-SLAPP statute does not apply to federal causes of action."). Because this Court's subject matter jurisdiction is based on the Complaint's first claim, and that claim is not susceptible to an anti-SLAPP Motion, the Court will first address Glendale's Motion to Dismiss.

In its Motion to Dismiss, Glendale asserts, pursuant to Federal Rule of Civil Procedure 12(b)(1), that Plaintiffs lack standing to pursue their claim alleging violations of the United States Constitution's foreign affairs powers and Supremacy Clause. Glendale additionally argues, pursuant to Federal Rule of Civil Procedure 12(b)(6), that Plaintiffs' constitutional claim fails to state a claim upon which relief can be granted, presents a political question over which the Court should not interfere, and impermissibly infringes on Glendale's First Amendment rights.

A. Lack of Standing

Article III of the United States Constitution requires that a litigant have standing to invoke the power of a federal court. Because Article III's standing requirements limit subject matter jurisdiction, a lawsuit is properly challenged by a rule 12(b)(1) motion to dismiss. See Chandler v. State Farm Mut. Auto. Ins. Co., 598 F.3d 1115, 1122 (9th Cir. 2010). For the purpose of ruling on a motion to dismiss for lack of standing, the Court must accept as true all material allegations of the complaint and must

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construe the complaint in favor of the complaining party. Maya v. Centex Corp., 658 F.3d 1060, 1068 (9th Cir. 2011).

To satisfy Article III standing, a plaintiff must show that she has suffered an "'injury in fact,'" that there is a "causal connection between the injury," and the defendant's complained-of conduct, and that it is likely "that the injury will be redressed by a favorable decision." Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 2136-37, 119 L. Ed. 2d 351 (1992); see also Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 180-81 (2000). To demonstrate an "injury in fact," a plaintiff must establish an "invasion of a legally protected interest which is (a) concrete and particularized [citations] and (b) 'actual or imminent, not "conjectural" or 'hypothetical.'" Lujan, 504 U.S. at 560. To meet this test, the "line of causation" between the alleged conduct and injury must not be "too attenuated," and "the prospect of obtaining relief from the injury" must not be "too speculative." Allen v. Wright, 468 U.S. 737, 752 (1984); Maya v. Centex Corp., 658 F.3d 1060, 1070 (9th Cir. 2011).

Plaintiffs assert that their avoidance of Glendale's Central Park resulting from their disagreement and distress over the content of the Comfort Women monument is a sufficient injury in fact to confer standing upon them to assert their federal claim. But that injury in fact has no causal connection to the constitutional claims alleged in the Complaint. The fact that local residents feel disinclined to visit a local park is simply not the type of injury that can be considered to be in the "line of causation" for alleged violations of the foreign affairs power and Supremacy Clause. That is, even if Glendale's placement of the monument did violate the Constitution's delegation of foreign affairs powers to the Executive Branch, and in some way upset the Supremacy Clause's constitutional balance between state and federal authority, the relationship between that legal harm and the offense Plaintiffs have taken to the existence of the monument is simply too attenuated to confer standing on Plaintiffs to pursue the federal claim they have asserted in this action. See Caldwell v. Caldwell, 545 F.3d 1126, 1133 (9th Cir. 2008) ("Caldwell's offense is no more than an 'abstract objection' to how the University's website presents the subject. . . . Accordingly, we believe there is too slight a connection between Caldwell's generalized grievance, and the government conduct about which she complains, to sustain her standing to proceed.").

Barnes-Wallace v. City of San Diego, 530 F.3d 776 (9th Cir. 2008), the case on which Plaintiffs principally rely to support their purported standing to pursue their claims, is readily distinguishable. Barnes-Wallace involved Establishment Clause and Equal Protection challenges brought on behalf of agnostic and lesbian parents to the City of San Diego's leasing of public land to an organization that excludes persons because of their religious and sexual orientations. The causal relationship between the presence of such an organization on public land as a deterrent to those plaintiffs' use and enjoyment of that public land, and the Establishment Clause and Equal Protection claims asserted in that action was far more direct than is the relationship between the alleged harms and Supremacy Clause and foreign affairs power claims pursued by the Plaintiffs in this action. Id. at 785-86 ("[T]he plaintiffs here are lesbians and agnostics, members of the classes of individuals excluded and publicly disapproved of by

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the Boy Scouts. They are not bystanders expressing ideological disapproval of the government's conduct."); see also Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 485, 102 S. Ct. 752, 765, 70 L. Ed. 2d 700 (1982) ("Although respondents claim that the Constitution has been violated, they claim nothing else. They fail to identify any personal injury suffered by them as a consequence of the alleged constitutional error, other than the psychological consequence presumably produced by observation of conduct with which one disagrees.").

Finally, Gingery's concern that the placement of the monument "presents the potential to disrupt the United States' strategic alliances with its closest East Asian allies, Japan and South Korea" (Compl. ¶ 6,) is not a sufficient injury in fact to confer standing. See Lujan, 504 U.S. at 575, 112 S. Ct. at 2143, 119 L. Ed. 2d 351 ("'It is an established principle . . . that to entitle a private individual to invoke the judicial power to determine the validity of executive or legislative action he must show that he has sustained or is immediately in danger of sustaining a direct injury as the result of that action and it is not sufficient that he has merely a general interest common to all members of the public.'") (quoting Ex parte Lévitt, 302 U.S. 633, 634, 58 S. Ct. 1, 82 L. Ed. 493 (1937)). For all of the foregoing reasons, the Court concludes that Plaintiffs lack standing to pursue their federal claim.

B. Failure to State a Claim

Generally, plaintiffs in federal court are required to give only "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a). While the Federal Rules allow a court to dismiss a cause of action for "failure to state a claim upon which relief can be granted," they also require all pleadings to be "construed so as to do justice." Fed. R. Civ. P. 12(b)(6), 8(e). The purpose of Rule 8(a)(2) is to "'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955, 1964, 167 L. Ed. 2d 929 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47, 78 S. Ct. 99, 103, 2 L. Ed. 2d 80 (1957)). The Ninth Circuit is particularly hostile to motions to dismiss under Rule 12(b)(6). See, e.g., Gilligan v. Jamco Dev. Corp. , 108 F.3d 246, 248–49 (9th Cir. 1997) ("The Rule 8 standard contains a powerful presumption against rejecting pleadings for failure to state a claim.") (internal quotation omitted).

However, in Twombly, the Supreme Court rejected the notion that "a wholly conclusory statement of a claim would survive a motion to dismiss whenever the pleadings left open the possibility that a plaintiff might later establish some set of undisclosed facts to support recovery." Twombly, 550 U.S. at 561, 127 S. Ct. at 1968 (internal quotation omitted). Instead, the Court adopted a "plausibility standard," in which the complaint must "raise a reasonable expectation that discovery will reveal evidence of [the alleged infraction]." Id. at 556, 127 S. Ct. at 1965. For a complaint to meet this standard, the "[f]actual allegations must be enough to raise a right to relief above the speculative level." Id. at 555, 127 S. Ct. at 1965 (citing 5 C. Wright & A. Miller, Federal Practice and Procedure §1216, pp. 235–36 (3d ed. 2004) ("[T]he pleading must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action") (alteration in original)); Daniel v. County of Santa Barbara, 288 F.3d 375, 380 (9th Cir. 2002) ("'All allegations of material fact are

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taken as true and construed in the light most favorable to the nonmoving party.'") (quoting Burgert v. Lokelani Bernice Pauahi Bishop Trust, 200 F.3d 661, 663 (9th Cir. 2000)). "[A] plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Twombly, 550 U.S. at 555, 127 S. Ct. at 1964–65 (internal quotations omitted). In construing the Twombly standard, the Supreme Court has advised that "a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." Ashcroft v. Iqbal, 556 U.S. 662, 679, 129 S. Ct. 1937, 1950, 173 L. Ed. 2d 868 (2009).

Even if Plaintiffs possessed Article III standing, dismissal is still appropriate because Plaintiffs have failed to allege facts that state a cognizable legal theory. Plaintiffs have alleged no well-pleaded factual allegations that could plausibly support a conclusion that the Comfort Women monument in Glendale's Central Park, with a plaque expressing "sincere hope that these unconscionable violations of human rights never recur," violates the Supremacy Clause or foreign affairs powers. See Am. Ins. Ass'n v. Garamendi, 539 U.S. 396, 421, 123 S. Ct. 2374, 2390, 156 L. Ed. 2d 376 (2003) ("The exercise of federal executive authority [over the conduct of foreign relations] means that state law must give way where, as here, there is evidence of clear conflict between the policies adopted by the two."). Plaintiffs' Complaint provides no well-pleaded allegations of the required "clear conflict" between the federal government's foreign relations policies concerning recognition of the plight of the Comfort Women and Glendale's placement of the monument in its Central Park. Id. Indeed, as alleged in the Complaint, the plaque accompanying the statue cites to House Resolution 121, passed by Congress on July 30, 2007, "urging the Japanese Government to accept historical responsibility for these crimes." (Compl. ¶ 11.)

Any contrary conclusion would invite unwarranted judicial involvement in the myriad symbolic displays and public policy issues that have some tangential relationship to foreign affairs. For instance, those who might harbor some factual objection to the historical treatment of a state or municipal monument to the victims of the Holocaust could make similar claims to those advanced by Plaintiffs in this action. Neither the Supremacy Clause nor the Constitution's delegation of foreign affairs powers to the federal government prevent a municipality from acting as Glendale has done in this instance:

> Holding that cities are preempted under . . . federal law . . . from making pronouncements on matters of public interest . . . would mark an unprecedented and extraordinary intrusion on the rights of state and local governments. An inherent power of any sovereign government and one that is fundamental to any form of democracy is the ability to communicate with the citizenry. . . . Absent explicit direction from Congress, we are not willing to conclude that our federal government has

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chosen to adopt a rule that is so antithetical to fundamental principles of federalism and democracy.

Alameda Newspapers, Inc. v. City of Oakland, 95 F.3d 1406, 1415 (9th Cir. 1996).

Glendale's placement of the Comfort Women monument in its Central Park does not pose the type of interference with the federal government's foreign affairs powers that states a plausible claim for relief. Instead, even according to the facts alleged in the Complaint, Glendale's placement of the statue is entirely consistent with the federal government's foreign policy. Plaintiffs have not asked for leave to amend the Complaint to cure the deficiencies identified by Defendant. Nor does the Court believe that any amendment could cure those deficiencies. The Court therefore concludes that Plaintiffs have failed to state a viable constitutional claim and that any amendment would be futile. As a result, the Court dismisses Plaintiffs' first claim with prejudice. See Reddy v. Litton Industries, Inc., 912 F.2d 291, 296 (9th Cir. 1990). The Court declines to address Defendant's remaining arguments in support of its Motion to Dismiss.

C. Supplemental State Law Claim

The Court has supplemental jurisdiction over Plaintiff's remaining state law claim under 28 U.S.C. § 1367(a). Once supplemental jurisdiction has been established under § 1367(a), a district court "can decline to assert supplemental jurisdiction over a pendant claim only if one of the four categories specifically enumerated in section 1367(c) applies." Exec. Software v. U.S. Dist. Court for the Cent. Dist. of Cal., 24 F.3d 1545, 1555–56 (9th Cir. 1994). The Court may decline supplemental jurisdiction under § 1367(c) if: "(1) the claim raises a novel or complex issue of State law, (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction, (3) the district court dismissed all claims over which it has original jurisdiction, or (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction."

Here, the Court has dismissed the only claim over which it has original jurisdiction. Accordingly, the Court declines to exercise supplemental jurisdiction over Plaintiffs' state law claim. See 28 U.S.C. § 1367(c)(3). The Court therefore dismisses the Complaint's second claim without prejudice.

Conclusion

For all of the foregoing reasons, the Court concludes that Plaintiffs lack standing to pursue their first claim for violations of the United States Constitution's provisions concerning foreign affairs powers and the Supremacy Clause. The Court additionally determines that the Complaint's first claim also fails to state a claim upon which relief can be granted. The Court therefore dismisses the Complaint's first claim with prejudice. The Court declines to exercise supplemental jurisdiction over the Complaint's remaining state law claim and dismisses that claim without prejudice. Pursuant to 28 U.S.C. § 1367(d),

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this Order acts to toll plaintiffs' statute of limitations on their state law claim for a period of thirty (30) days, unless state law provides for a longer tolling period. Defendant's Anti-SLAPP Motion is denied as moot.

IT IS SO ORDERED.

EXHIBIT B

JS-6

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

MICHIKO SHIOTA GINGERY, KOICHI MERA, and GAHT-USA CORPORATION, Plaintiffs, v. CITY OF GLENDALE, Defendant.	CV 14-1291 PA (AJWx) JUDGMENT

Pursuant to the Court's August 4, 2014 Minute Order granting the Motion to Dismiss filed by defendant City of Glendale ("Defendant"), which dismissed the sole federal claim asserted by plaintiffs Michiko Shiota Gingery, Koichi Mera, and GAHT-USA Corporation (collectively "Plaintiffs") with prejudice, and declined to exercise supplemental jurisdiction over Plaintiffs' remaining state law claim and dismissed that claim without prejudice,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiffs' federal constitutional claim for violation of the foreign affairs power and Supremacy Clause is dismissed with prejudice and Plaintiffs' remaining state law claim is dismissed without prejudice.

. . . .

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiffs take nothing and that Defendant shall have its costs of suit.

IT IS SO ORDERED.

DATED: August 4, 2014

Percy Anderson
UNITED STATES DISTRICT JUDGE

TAB 2

JS-6

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

MICHIKO SHIOTA GINGERY, KOICHI MERA, and GAHT-USA CORPORATION, Plaintiffs, v. CITY OF GLENDALE, Defendant.	CV 14-1291 PA (AJWx) JUDGMENT

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IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiffs' federal constitutional claim for violation of the foreign affairs power and Supremacy Clause is dismissed with prejudice and Plaintiffs' remaining state law claim is dismissed without prejudice.

. . . .

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiffs take nothing and that Defendant shall have its costs of suit.

IT IS SO ORDERED.

DATED: August 4, 2014

Percy Anderson
UNITED STATES DISTRICT JUDGE

TAB 3

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 14-1291 PA (AJWx)	Date	August 4, 2014
Title	Michiko Shiota Gingery, et al. v. City of Glendale, et al.		

Present: The Honorable	PERCY ANDERSON, UNITED STATES DISTRICT JUDGE	
Paul Songco	Not Reported	N/A
Deputy Clerk	Court Reporter	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
None	None

Proceedings: IN CHAMBERS

Before the Court are a Special Motion to Strike Pursuant to California Code of Civil Procedure section 425.16 ("Anti-SLAPP Motion") (Docket No. 19) and a Motion to Dismiss Pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), or to Strike Pursuant to Rule 12(f) ("Motion to Dismiss") (Docket No. 20) filed by defendant City of Glendale ("Glendale" or "Defendant"). Defendant challenges the sufficiency of the Complaint filed by plaintiffs Michiko Shiota Gingery, Koichi Mera, and GAHT-US Corporation (collectively "Plaintiffs"). Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds these matters are appropriate for decision without oral argument.

I. Background

This action concerns the installation of a monument in Glendale's Central Park. According to the Complaint, the monument was unveiled on July 30, 2013, and includes a 1,100 pound bronze statue of a young girl in Korean dress sitting next to an empty chair with a bird perched on her shoulder. Next to the statue is a plaque that reads, in part:

> In memory of more than 200,000 Asian and Dutch women who were removed from their homes in Korea, China, Taiwan, Japan, the Philippines, Thailand, Vietnam, Malaysia, East Timor and Indonesia, to be coerced into sexual slavery by the Imperial Armed Forces of Japan between 1932 and 1945.
>
> And in celebration of proclamation of "Comfort Women Day" by the City of Glendale on July 30, 2012, and of passing House Resolution 121 by the United States Congress on July 30, 2007, urging the Japanese Government to accept historical responsibility for these crimes.

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> It is our sincere hope that these unconscionable violations of human rights never recur.

(Compl. ¶ 11.)

Plaintiffs filed this action for declaratory and injunctive relief on February 20, 2014. The Complaint alleges two causes of action. In their first claim, which Plaintiffs label a claim for "Unconstitutional Interference with Foreign Affairs Power," Plaintiffs allege that Glendale's erection of the monument "interferes with the Executive Branch's primary authority to conduct foreign relations by disrupting foreign policy as to the resolution of the historical debate concerning comfort women. The Public Monument also violates the Supremacy Clause." (Compl. ¶ 59.) According to the Complaint, by installing the Comfort Women monument, Glendale "has taken a position in the contentious and politically-sensitive international debate concerning the proper historical treatment of the former comfort women. More specifically, given the inflammatory language used in the plaque that is prominently featured alongside the statue, Glendale has taken a position at odds with the expressed position of the Japanese Government." (Compl. ¶ 61.) In support of their assertion that this Court possesses subject matter jurisdiction, the Complaint alleges that this action arises under "42 U.S.C. § 1983; the foreign affairs powers of the United States, U.S. Const. art. II, sec. 1, cl. 1, sec. 2, cl. 1; sec. 2, cl. 2; and sec. 3; and the Supremacy Clause, U.S. Constitution, art. VI, cl. 2." (Compl. ¶ 1.) Plaintiffs' second cause of action asserts a supplemental state law claim under the Glendale Municipal Code alleging that Glendale's city council failed to comply with Robert's Rules of Order when it approved the placement of the monument.

According to the Complaint, plaintiff Michiko Shiota Gingery is a resident of Glendale who was born in Japan and is now a naturalized citizen of the United States. Plaintiff GAHT-US Corporation ("GAHT-US") is a non-profit corporation organized under the laws of California. The purpose of GAHT-US is to "provide accurate and fact-based educational resources to the public in the U.S., including within California and Glendale, concerning the history of World War II and related events, with an emphasis on Japan's role." (Compl. ¶ 7.) Koichi Mera is a Japanese-American who resides in the City of Los Angeles and is the President of GAHT-US. The Complaint alleges that Gingery, Mera, and the members of GAHT-US avoid using Glendale's Central Park where the monument is located because they are "offended by the Public Monument's pointed expression of disapproval of Japan and the Japanese people." (Compl. ¶ 6.)

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II. Analysis

In its Anti-SLAPP Motion, Defendant contends that the Complaint's first claim alleging violations of the United States Constitution does not allege a viable federal claim and is therefore susceptibly to a Motion to Strike pursuant to California Code of Civil Procedure section 425.16. Although the Complaint's first claim could have been crafted to more clearly indicate that it is brought pursuant to 42 U.S.C. § 1983, the Court concludes that, at a minimum, Plaintiffs' first claim is intended to be a federal claim, originally filed in federal court, and that California Code of Civil Procedure section 425.16 does not apply to that claim. See Hilton v. Hallmark Cards, 599 F.3d 894, 901 (9th Cir. 2009) ("[T]he anti-SLAPP statute does not apply to federal causes of action."). Because this Court's subject matter jurisdiction is based on the Complaint's first claim, and that claim is not susceptible to an anti-SLAPP Motion, the Court will first address Glendale's Motion to Dismiss.

In its Motion to Dismiss, Glendale asserts, pursuant to Federal Rule of Civil Procedure 12(b)(1), that Plaintiffs lack standing to pursue their claim alleging violations of the United States Constitution's foreign affairs powers and Supremacy Clause. Glendale additionally argues, pursuant to Federal Rule of Civil Procedure 12(b)(6), that Plaintiffs' constitutional claim fails to state a claim upon which relief can be granted, presents a political question over which the Court should not interfere, and impermissibly infringes on Glendale's First Amendment rights.

A. Lack of Standing

Article III of the United States Constitution requires that a litigant have standing to invoke the power of a federal court. Because Article III's standing requirements limit subject matter jurisdiction, a lawsuit is properly challenged by a rule 12(b)(1) motion to dismiss. See Chandler v. State Farm Mut. Auto. Ins. Co., 598 F.3d 1115, 1122 (9th Cir. 2010). For the purpose of ruling on a motion to dismiss for lack of standing, the Court must accept as true all material allegations of the complaint and must

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construe the complaint in favor of the complaining party. Maya v. Centex Corp., 658 F.3d 1060, 1068 (9th Cir. 2011).

To satisfy Article III standing, a plaintiff must show that she has suffered an "'injury in fact,'" that there is a "causal connection between the injury," and the defendant's complained-of conduct, and that it is likely "that the injury will be redressed by a favorable decision." Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 2136-37, 119 L. Ed. 2d 351 (1992); see also Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 180-81 (2000). To demonstrate an "injury in fact," a plaintiff must establish an "invasion of a legally protected interest which is (a) concrete and particularized [citations] and (b) 'actual or imminent, not "conjectural" or 'hypothetical.'" Lujan, 504 U.S. at 560. To meet this test, the "line of causation" between the alleged conduct and injury must not be "too attenuated," and "the prospect of obtaining relief from the injury" must not be "too speculative." Allen v. Wright, 468 U.S. 737, 752 (1984); Maya v. Centex Corp., 658 F.3d 1060, 1070 (9th Cir. 2011).

Plaintiffs assert that their avoidance of Glendale's Central Park resulting from their disagreement and distress over the content of the Comfort Women monument is a sufficient injury in fact to confer standing upon them to assert their federal claim. But that injury in fact has no causal connection to the constitutional claims alleged in the Complaint. The fact that local residents feel disinclined to visit a local park is simply not the type of injury that can be considered to be in the "line of causation" for alleged violations of the foreign affairs power and Supremacy Clause. That is, even if Glendale's placement of the monument did violate the Constitution's delegation of foreign affairs powers to the Executive Branch, and in some way upset the Supremacy Clause's constitutional balance between state and federal authority, the relationship between that legal harm and the offense Plaintiffs have taken to the existence of the monument is simply too attenuated to confer standing on Plaintiffs to pursue the federal claim they have asserted in this action. See Caldwell v. Caldwell, 545 F.3d 1126, 1133 (9th Cir. 2008) ("Caldwell's offense is no more than an 'abstract objection' to how the University's website presents the subject. . . . Accordingly, we believe there is too slight a connection between Caldwell's generalized grievance, and the government conduct about which she complains, to sustain her standing to proceed.").

Barnes-Wallace v. City of San Diego, 530 F.3d 776 (9th Cir. 2008), the case on which Plaintiffs principally rely to support their purported standing to pursue their claims, is readily distinguishable. Barnes-Wallace involved Establishment Clause and Equal Protection challenges brought on behalf of agnostic and lesbian parents to the City of San Diego's leasing of public land to an organization that excludes persons because of their religious and sexual orientations. The causal relationship between the presence of such an organization on public land as a deterrent to those plaintiffs' use and enjoyment of that public land, and the Establishment Clause and Equal Protection claims asserted in that action was far more direct than is the relationship between the alleged harms and Supremacy Clause and foreign affairs power claims pursued by the Plaintiffs in this action. Id. at 785-86 ("[T]he plaintiffs here are lesbians and agnostics, members of the classes of individuals excluded and publicly disapproved of by

UNITED STATES DISTRICT COURT
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the Boy Scouts. They are not bystanders expressing ideological disapproval of the government's conduct."); see also Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 485, 102 S. Ct. 752, 765, 70 L. Ed. 2d 700 (1982) ("Although respondents claim that the Constitution has been violated, they claim nothing else. They fail to identify any personal injury suffered by them as a consequence of the alleged constitutional error, other than the psychological consequence presumably produced by observation of conduct with which one disagrees.").

Finally, Gingery's concern that the placement of the monument "presents the potential to disrupt the United States' strategic alliances with its closest East Asian allies, Japan and South Korea" (Compl. ¶ 6,) is not a sufficient injury in fact to confer standing. See Lujan, 504 U.S. at 575, 112 S. Ct. at 2143, 119 L. Ed. 2d 351 ("'It is an established principle . . . that to entitle a private individual to invoke the judicial power to determine the validity of executive or legislative action he must show that he has sustained or is immediately in danger of sustaining a direct injury as the result of that action and it is not sufficient that he has merely a general interest common to all members of the public.'") (quoting Ex parte Lévitt, 302 U.S. 633, 634, 58 S. Ct. 1, 82 L. Ed. 493 (1937)). For all of the foregoing reasons, the Court concludes that Plaintiffs lack standing to pursue their federal claim.

B. Failure to State a Claim

Generally, plaintiffs in federal court are required to give only "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a). While the Federal Rules allow a court to dismiss a cause of action for "failure to state a claim upon which relief can be granted," they also require all pleadings to be "construed so as to do justice." Fed. R. Civ. P. 12(b)(6), 8(e). The purpose of Rule 8(a)(2) is to "'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955, 1964, 167 L. Ed. 2d 929 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47, 78 S. Ct. 99, 103, 2 L. Ed. 2d 80 (1957)). The Ninth Circuit is particularly hostile to motions to dismiss under Rule 12(b)(6). See, e.g., Gilligan v. Jamco Dev. Corp. , 108 F.3d 246, 248–49 (9th Cir. 1997) ("The Rule 8 standard contains a powerful presumption against rejecting pleadings for failure to state a claim.") (internal quotation omitted).

However, in Twombly, the Supreme Court rejected the notion that "a wholly conclusory statement of a claim would survive a motion to dismiss whenever the pleadings left open the possibility that a plaintiff might later establish some set of undisclosed facts to support recovery." Twombly, 550 U.S. at 561, 127 S. Ct. at 1968 (internal quotation omitted). Instead, the Court adopted a "plausibility standard," in which the complaint must "raise a reasonable expectation that discovery will reveal evidence of [the alleged infraction]." Id. at 556, 127 S. Ct. at 1965. For a complaint to meet this standard, the "[f]actual allegations must be enough to raise a right to relief above the speculative level." Id. at 555, 127 S. Ct. at 1965 (citing 5 C. Wright & A. Miller, Federal Practice and Procedure §1216, pp. 235–36 (3d ed. 2004) ("[T]he pleading must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action") (alteration in original)); Daniel v. County of Santa Barbara, 288 F.3d 375, 380 (9th Cir. 2002) ("'All allegations of material fact are

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taken as true and construed in the light most favorable to the nonmoving party.'") (quoting Burgert v. Lokelani Bernice Pauahi Bishop Trust, 200 F.3d 661, 663 (9th Cir. 2000)). "[A] plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Twombly, 550 U.S. at 555, 127 S. Ct. at 1964–65 (internal quotations omitted). In construing the Twombly standard, the Supreme Court has advised that "a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." Ashcroft v. Iqbal, 556 U.S. 662, 679, 129 S. Ct. 1937, 1950, 173 L. Ed. 2d 868 (2009).

Even if Plaintiffs possessed Article III standing, dismissal is still appropriate because Plaintiffs have failed to allege facts that state a cognizable legal theory. Plaintiffs have alleged no well-pleaded factual allegations that could plausibly support a conclusion that the Comfort Women monument in Glendale's Central Park, with a plaque expressing "sincere hope that these unconscionable violations of human rights never recur," violates the Supremacy Clause or foreign affairs powers. See Am. Ins. Ass'n v. Garamendi, 539 U.S. 396, 421, 123 S. Ct. 2374, 2390, 156 L. Ed. 2d 376 (2003) ("The exercise of federal executive authority [over the conduct of foreign relations] means that state law must give way where, as here, there is evidence of clear conflict between the policies adopted by the two."). Plaintiffs' Complaint provides no well-pleaded allegations of the required "clear conflict" between the federal government's foreign relations policies concerning recognition of the plight of the Comfort Women and Glendale's placement of the monument in its Central Park. Id. Indeed, as alleged in the Complaint, the plaque accompanying the statue cites to House Resolution 121, passed by Congress on July 30, 2007, "urging the Japanese Government to accept historical responsibility for these crimes." (Compl. ¶ 11.)

Any contrary conclusion would invite unwarranted judicial involvement in the myriad symbolic displays and public policy issues that have some tangential relationship to foreign affairs. For instance, those who might harbor some factual objection to the historical treatment of a state or municipal monument to the victims of the Holocaust could make similar claims to those advanced by Plaintiffs in this action. Neither the Supremacy Clause nor the Constitution's delegation of foreign affairs powers to the federal government prevent a municipality from acting as Glendale has done in this instance:

> Holding that cities are preempted under . . . federal law . . . from making pronouncements on matters of public interest . . . would mark an unprecedented and extraordinary intrusion on the rights of state and local governments. An inherent power of any sovereign government and one that is fundamental to any form of democracy is the ability to communicate with the citizenry. . . . Absent explicit direction from Congress, we are not willing to conclude that our federal government has

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> chosen to adopt a rule that is so antithetical to fundamental principles of federalism and democracy.

Alameda Newspapers, Inc. v. City of Oakland, 95 F.3d 1406, 1415 (9th Cir. 1996).

Glendale's placement of the Comfort Women monument in its Central Park does not pose the type of interference with the federal government's foreign affairs powers that states a plausible claim for relief. Instead, even according to the facts alleged in the Complaint, Glendale's placement of the statue is entirely consistent with the federal government's foreign policy. Plaintiffs have not asked for leave to amend the Complaint to cure the deficiencies identified by Defendant. Nor does the Court believe that any amendment could cure those deficiencies. The Court therefore concludes that Plaintiffs have failed to state a viable constitutional claim and that any amendment would be futile. As a result, the Court dismisses Plaintiffs' first claim with prejudice. See Reddy v. Litton Industries, Inc., 912 F.2d 291, 296 (9th Cir. 1990). The Court declines to address Defendant's remaining arguments in support of its Motion to Dismiss.

C. Supplemental State Law Claim

The Court has supplemental jurisdiction over Plaintiff's remaining state law claim under 28 U.S.C. § 1367(a). Once supplemental jurisdiction has been established under § 1367(a), a district court "can decline to assert supplemental jurisdiction over a pendant claim only if one of the four categories specifically enumerated in section 1367(c) applies." Exec. Software v. U.S. Dist. Court for the Cent. Dist. of Cal., 24 F.3d 1545, 1555–56 (9th Cir. 1994). The Court may decline supplemental jurisdiction under § 1367(c) if: "(1) the claim raises a novel or complex issue of State law, (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction, (3) the district court dismissed all claims over which it has original jurisdiction, or (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction."

Here, the Court has dismissed the only claim over which it has original jurisdiction. Accordingly, the Court declines to exercise supplemental jurisdiction over Plaintiffs' state law claim. See 28 U.S.C. § 1367(c)(3). The Court therefore dismisses the Complaint's second claim without prejudice.

Conclusion

For all of the foregoing reasons, the Court concludes that Plaintiffs lack standing to pursue their first claim for violations of the United States Constitution's provisions concerning foreign affairs powers and the Supremacy Clause. The Court additionally determines that the Complaint's first claim also fails to state a claim upon which relief can be granted. The Court therefore dismisses the Complaint's first claim with prejudice. The Court declines to exercise supplemental jurisdiction over the Complaint's remaining state law claim and dismisses that claim without prejudice. Pursuant to 28 U.S.C. § 1367(d),

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this Order acts to toll plaintiffs' statute of limitations on their state law claim for a period of thirty (30) days, unless state law provides for a longer tolling period. Defendant's Anti-SLAPP Motion is denied as moot.

IT IS SO ORDERED.

NO. 14-56440

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MICHIKO SHIOTA GINGERY, KOICHI MERA, and
GAHT-US CORPORATION,

Plaintiffs-Appellants,

vs.

CITY OF GLENDALE, a municipal
corporation, SCOTT OCHOA,
in his capacity as Glendale City Manager,

Defendants-Appellees.

On Appeal from United States District Court
Central District of California
Case No. 2:14-cv-1291
Honorable Percy Anderson, Judge Presiding

PLAINTIFFS-APPELLANTS' EXCERPTS OF RECORD
VOLUME II OF II

BLECHER COLLINS PEPPERMAN & JOYE
MAXWELL M. BLECHER
DONALD R. PEPPERMAN
TAYLOR C. WAGNIERE
515 South Figueroa Street, Suite 1750
Los Angeles, California 90071-3334
Telephone: (213) 622-4222
Attorneys for Plaintiffs-Appellants

LAW OFFICES OF RONALD S. BARAK
RONALD S. BARAK
206 Giardino Way
Pacific Palisades, California 90272
Telephone: (310) 459-3963
Attorneys for Plaintiffs-Appellants

INDEX TO PLAINTIFFS-APPELLANTS' EXCERPTS OF RECORD

Dated: March 13, 2015

Respectfully submitted,

THE LAW OFFICES OF RONALD S. BARAK
RONALD S. BARAK

BLECHER COLLINS PEPPERMAN & JOYE
MAXWELL M. BLECHER
DONALD R. PEPPERMAN
TAYLOR C. WAGNIERE

By: /s/ *Maxwell M. Blecher*
MAXWELL M. BLECHER
Attorneys for Plaintiffs-Appellants

71117.1

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on March 13, 2015.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

By: /s/ *Maxwell M. Blecher*
MAXWELL M. BLECHER
Attorneys for Plaintiffs-Appellants

TAB 4

Michael J. Garcia, City Attorney, SBN 192848
Ann M. Maurer, Chief Assistant City Attorney, SBN 179649
AMaurer@glendaleca.gov
Miah Yun, Assistant City Attorney, SBN 218808
MYun@glendaleca.gov
Andrew Rawcliffe, Deputy City Attorney, SBN 259224
ARawcliffe@glendaleca.gov
613 E. Broadway, Suite 220
Glendale, CA 91206
Telephone: (818) 548-2080
Facsimile: (818) 547-3402

Bradley H. Ellis, SBN 110467
bellis@sidley.com
Frank J. Broccolo, SBN 210711
fbroccolo@sidley.com
Christopher S. Munsey, SBN 267061
cmunsey@sidley.com
Laura L. Richardson, SBN 288954
laura.richardson@sidley.com
SIDLEY AUSTIN LLP
555 West Fifth Street, Suite 4000
Los Angeles, California 90013
Telephone: (213) 896-6000
Facsimile: (213) 896-6600

Attorneys for Defendant
CITY OF GLENDALE

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MICHIKO SHIOTA GINGERY, an individual, KOICHI MERA, an individual, GAHT-US Corporation, a California non-profit corporation,

Plaintiffs,

vs.

CITY OF GLENDALE, a municipal corporation, SCOTT OCHOA, in his capacity as Glendale City Manager,

Defendants.

Case No. 2:14-cv-1291-PA-AJW

Assigned to: Hon. Percy Anderson

DECLARATION OF CHRISTOPHER S. MUNSEY

[Filed concurrently with Glendale's Special Motion to Strike; Glendale's Motion to Dismiss Pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(6), and 12(f); Request for Judicial Notice; and [Proposed] Orders]

Date: May 12, 2014
Time: 1:30 p.m.
Place: Courtroom 15

I, Christopher S. Munsey, hereby declare:

1. I am an attorney with the law firm Sidley Austin LLP, counsel of record for Defendant City of Glendale ("Defendant") in the above-entitled action. I am licensed to practice law in the State of California and admitted to practice before this Court. I make this declaration based on my personal knowledge, and, if called upon as a witness, I could and would testify competently as to the matters set forth below.

2. Attached hereto as Exhibit 1 is a true and correct copy of a document prepared at my direction reflecting examples of state and local government proclamations, resolutions, statues, monuments, and memorials regarding historical events implicating foreign affairs.

3. Attached hereto as Exhibit 2 is a true and correct copy of excerpts of the History-Social Science Content Standards for California Public Schools, which I obtained from the California Department of Education website, run by the State of California, available at http://www.cde.ca.gov/be/st/ss/documents/histsocscistnd.pdf.

4. Attached hereto as Exhibit 3 is a true and correct certified copy of excerpts of the City of Glendale Charter.

5. Attached hereto as Exhibit 4 is a true and correct copy of excerpts of the United States Department of State's 2003 Japan Report, Country Reports on Human Rights Practices, which I obtained from the Department of State website, run by the United States government, available at http://www.state.gov/j/drl/rls/hrrpt/2003/27772.htm.

6. Attached hereto as Exhibit 5 is a true and correct copy of House Resolution 121, which I obtained from the U.S. Government Printing Office website, run by the United States government, available at http://www.gpo.gov/fdsys/pkg/BILLS-110hres121ih/pdf/BILLS-110hres121ih.pdf.

7. Attached hereto as Exhibit 6 is a true and correct copy of a document entitled "On the Issue of Wartime 'Comfort Women,'" which I obtained from the Ministry of Foreign Affairs of Japan website, run by the Japanese government,

available at http://www.mofa.go.jp/policy/postwar/issue9308.html.

8. Attached hereto as Exhibit 7 is a true and correct copy of the statement by former Japanese Chief Cabinet Secretary Yohei Kono on the results of the study "On the Issue of 'Comfort Women,'" which I obtained from the Ministry of Foreign Affairs of Japan website, run by the Japanese government, available at http://www.mofa.go.jp/policy/women/fund/state9308.html.

9. Attached hereto as Exhibit 8 is a true and correct copy of a document entitled the 2001 "Recent Policy of the Government of Japan on the Issue Known as 'Wartime Comfort Women,'" which I obtained from the Ministry of Foreign Affairs of Japan website, run by the Japanese government, available at http://www.mofa.go.jp/policy/q_a/faq3.html.

10. Attached hereto as Exhibit 9 is a true and correct copy of the 2007 "Recent Policy of the Government of Japan on the Issue Known as 'Wartime Comfort Women,'" which I obtained from the Ministry of Foreign Affairs of Japan website, run by the Japanese government, available at http://www.mofa.go.jp/policy/women/fund/policy.html.

11. Attached hereto as Exhibit 10 is a true and correct copy of a transcript of remarks made by Japanese Prime Minister Shinzo Abe on March 14, 2014, which I obtained from the Ministry of Foreign Affairs of Japan website, run by the Japanese government, available at http://www.mofa.go.jp/a_o/rp/page3e_000155.html.

12. Attached hereto as Exhibit 11 is a true and correct copy of the Secretary of State's Preface to the 2013 Country Reports on Human Rights Practices, which I obtained from the U.S. Department of State website, run by the United States government, available at http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper.

13. Attached hereto as Exhibit 12 is a true and correct copy of excerpts of the 2004 South Korea Report, Country Reports on Human Rights Practices, which I obtained from the U.S. Department of State website, run by the United States

government, available at http://www.state.gov/j/drl/rls/hrrpt/2004/41647.htm.

14. Attached hereto as Exhibit 13 is a true and correct copy of excerpts of the 2013 Japan Report, Country Reports on Human Rights Practices, which I obtained from the U.S. Department of State website, run by the United States government, available at http://www.state.gov/j/drl/rls/hrrpt/2013/eap/220199.htm.

15. Attached hereto as Exhibit 14 is a true and correct copy of excerpts of the Statement of Interest filed by the United States in *Joo v. Japan*, Case No. 00-CV-2233 (D.D.C.).

16. Attached hereto as Exhibit 15 is a true and correct copy of excerpts of the transcript of State Department Spokesperson Victoria Nuland's August 16, 2012 press briefing, which I obtained from the U.S. Department of State website, run by the United States government, available at http://www.state.gov/r/pa/prs/dpb/2012/08/196589.htm#JAPAN.

17. Attached hereto as Exhibit 16 is a true and correct copy of excerpts of the Transcript of State Department Director of the Office of Press Relations Patrick Ventrell's July 9, 2012 press briefing, which I obtained from the U.S. Department of State website, run by the United States government, available at http://translations.state.gov/st/english/texttrans/2012/07/201207098729.html#axzz2wuISdulT.

18. Attached hereto as Exhibit 17 is a true and correct copy of excerpts of the transcript of State Department Spokesperson Jen Psaki's May 16, 2013 press briefing, which I obtained from the U.S. Department of State website, run by the United States government, available at http://www.state.gov/r/pa/prs/dpb/2013/05/209511.htm.

19. Attached hereto as Exhibit 18 is a true and correct copy of excerpts of the transcript of State Department Spokesperson Jen Psaki's January 16, 2014 press briefing, which I obtained from the U.S. Department of State website, run by the United States government, available at http://translations.state.gov/st/english/texttrans/2014/01/20140116291167.html#axzz2

wuISdulT.

20. Attached hereto as Exhibit 19 is a true and correct copy of an article published by Arirang News that contains an embedded video of recent statements made by the United States Ambassador to South Korea Sung Kim, which I obtained from the Arirang News website, available at http://www.arirang.co.kr/News/News_View.asp?nseq=158758.

21. Attached hereto as Exhibit 20 is a true and correct copy of excerpts of the transcript of State Department Spokesperson Jen Psaki's March 10, 2014 Press Briefing, which I obtained from the U.S. Department of State website, run by the United States government, available at http://translations.state.gov/st/english/texttrans/2014/03/20140310295719.html#axzz2wuISdulT.

22. Attached hereto as Exhibit 21 is a true and correct copy of the results of a business-entity search for GAHT-US Corporation on the California Secretary of State website, run by the State of California.

23. Attached hereto as Exhibit 22 is a true and correct copy of excerpts of the transcript of State Department Spokesperson Victoria Nuland's January 7, 2013 press briefing, which I obtained from the U.S. Department of State website, run by the United States government, available at http://www.state.gov/r/pa/prs/dpb/2013/01/202522.htm#JAPAN.

24. Attached hereto as Exhibit 23 is a true and correct copy of the transcript of Secretary of State John Kerry's February 13, 2014 remarks with Republic of Korea Foreign Minister Yun Byung-se, which I obtained from the U.S. Department of State website, run by the United States government, available at http://www.state.gov/secretary/remarks/2014/02/221640.htm.

25. Attached hereto as Exhibit 24 is a true and correct copy of an article published by the Yonhap News Agency on February 17, 2014, which I obtained from the Yonhap News Agency website, available at

http://english.yonhapnews.co.kr/interview/2014/02/17/37/0800000000AEN20140217004900315F.html.

26. Attached hereto as Exhibit 25 is a true and correct copy of the transcript of Secretary of State John Kerry's February 7, 2014 remarks with Japanese Foreign Minister Fumio Kishida, which I obtained from the U.S. Department of State website, run by the United States government, available at http://www.state.gov/secretary/remarks/2014/02/221459.htm.

27. Attached hereto as Exhibit 26 is a true and correct copy of the transcript of the March 25, 2014 remarks by President Obama, President Park of the Republic of Korea, and Prime Minister Abe of Japan, which I obtained from the White House website, run by the United States government, available at http://www.whitehouse.gov/the-press-office/2014/03/25/remarks-president-obama-president-park-republic-south-korea-and-prime-mi.

28. Attached hereto as Exhibit 27 is a true and correct copy of the White House Press Secretary's statement on the President's upcoming trip to Asia, which I obtained from the White House website, run by the United States government, available at http://www.whitehouse.gov/the-press-office/2014/02/12/statement-press-secretary-president-s-travel-asia-april.

29. Attached hereto as Exhibit 28 is a true and correct copy of excerpts of the Model Curriculum on Human Rights and Genocide, which I obtained from the California Department of Education website, run by the California government, available at http://www.cde.ca.gov/ci/hs/im/documents/modelcurrichrgenoc.pdf.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed this 11th day of April, 2014 in Los Angeles, California.

Christopher S. Munsey

EXHIBIT 14

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HWANG GEUM JOO, et al., Plaintiffs, v. JAPAN, Defendant.	Civil Action No. 00-CV-2233 (~~2288~~) Judge Henry H. Kennedy, Jr.

FILED
MAY - 8 2001
NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA

LET THIS BE FILED
/s/ Henry H. Kennedy
5/8/01

Of Counsel:

LINDA JACOBSON
Assistant Legal Adviser

JAMES G. HERGEN
Assistant Legal Adviser

WYNNE M. TEEL
Attorney-Adviser

Office of the Legal Adviser
United States Department of State
Washington, D.C. 20037

STUART E. SCHIFFER
Acting Assistant Attorney General

KENNETH L. WAINSTEIN
United States Attorney

DAVID J. ANDERSON (#36988)
VINCENT M. GARVEY (#127191)
AMY M. ALLEN (#447080)
U.S. Department of Justice
Civil Division, Federal Programs Branch
P.O. Box 883
901 E Street, N.W., Room 918
Washington, D.C. 20044
(202) 514-4523

Attorneys for the United States

Dated: April 27, 2001

PRELIMINARY STATEMENT

The named plaintiffs in this case are South Korean, Chinese, and Filipino women, as well as residents of Taiwan, who were held as "Comfort Women" during World War II by Japanese military forces. The horror of plaintiffs' ordeal can scarcely be overstated. There is no dispute about the moral force animating their quest to redress the wrongs done to them. At the conclusion of the Second World War, the United States condemned, in the strongest possible terms, the Japanese Government's conduct before and during the War. The United States and its allies conducted War Crimes Trials, which resulted in the execution or other punishment of hundreds of Japanese perpetrators of atrocities. Despite our deep sympathy for the plaintiffs, the United States is nonetheless compelled to file this Statement of Interest in order to explain that this Court has no jurisdiction over plaintiffs' claims due to Japan's sovereign immunity and by virtue of international obligations entered into by the United States and other nations with Japan at the close of World War II, which render plaintiffs' claims nonjusticiable. As a matter of law, Japan is not amenable to suit on plaintiffs' claims in the courts of the United States. The United States appears in this action, pursuant to 28 U.S.C. § 517, because of its interests in the proper application of the law relating to the immunity of foreign nations in U.S. courts, and because the relief sought would have serious repercussions for our foreign policy toward Japan and other nations.[1]

The actions that are the subject of plaintiffs' complaint occurred during the period when sovereigns enjoyed absolute immunity in the United States. The law in effect at the time the

[1] "The Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States." 28 U.S.C. § 517.

not the sort of activity exercised by private parties); Cicippio v. Islamic Republic of Iran, 30 F.3d 164, 167-68 (D.C. Cir. 1994), cert. denied, 513 U.S. 1078 (1995); De Letelier v. Republic of Chile, 748 F. 2d 790, 797 (2d Cir. 1984), cert. denied, 471 U.S. 1125 (1985); Arango v. Guzman Travel Advisors Corp., 621 F.2d 1371, 1379 (5th Cir. 1980); Doe v. Unocal Corp., 963 F. Supp. 880, 888 (C.D. Cal. 1997); see also Millen Industries, Inc. v. Coordination Council for North American Affairs, 855 F.2d 879, 885 (D.C. Cir. 1988) ("Even if a transaction is partly commercial, jurisdiction will not obtain if the cause of action is based on sovereign activity"). Japan's treatment of plaintiffs was an abuse of its military power, but "[h]owever monstrous such abuse undoubtedly may be, a foreign state's exercise of that power has long been understood for purposes of the restrictive theory as peculiarly sovereign in nature." Nelson, 507 U.S. at 361.

II. PLAINTIFFS' COMPLAINT PRESENTS A NONJUSTICIABLE POLITICAL QUESTION.

Plaintiffs' complaint also must be dismissed because it presents a nonjusticiable political question. Courts may not adjudicate cases whose resolution would entail the determination of a political question. See, e.g., Baker v. Carr, 369 U.S. 186, 210 (1962); Chicago & Southern Air Lines, Inc. v. Waterman S. S. Corp., 333 U.S. 103, 111 (1948); Coleman v. Miller, 307 U.S. 433, 454-55 (1939); Marbury v. Madison, 5 U.S. 137, 165-66 (1803). Under the political question doctrine, courts dismiss as nonjusticiable cases which would require the judiciary to involve itself in policy choices in areas that have been constitutionally committed to the political branches. In Baker v. Carr, the Supreme Court identified six hallmarks of a nonjusticiable case. 369 U.S. at 217 (outlining the criteria for what constitutes a non-justiciable political question); see also Nixon v. United States, 506 U.S. 224, 228 (1993); United States v. Rostenkowski, 59

F.3d 1291, 1304 (D.C. Cir. 1995). Any one of these characteristics may be sufficient to preclude judicial review. Baker, 369 U.S. at 217; Aktepe v. United States, 105 F.3d 1400, 1402-03 (11th Cir. 1997), cert. denied, 522 U.S. 1045 (1998).

In his concurrence in Goldwater v. Carter, 444 U.S. 996, 998 (1979), Justice Powell summed up the Baker criteria into three inquiries: "(i) Does the issue involve resolution of questions committed by the text of the Constitution to a coordinate branch of Government? (ii) Would resolution of the question demand that a court move beyond areas of judicial expertise? (iii) Do prudential considerations counsel against judicial intervention?" The answers to each of those questions demonstrate that plaintiffs here have presented a nonjusticiable political question. See also Antolok v. United States, 873 F.2d 369, 381 (D.C. Cir. 1989).

The instant lawsuit presents stark separation of powers difficulties. Determining whether, and how, to assert the claims of their citizens against foreign states is properly the role of the government – in this case the governments of China, the Philippines, and North and South Korea. Consideration of plaintiffs' claims would require U.S. courts to pass on the sufficiency of these countries' agreements with Japan and their reasons for entering those agreements. Japan has entered into, or is in the process of negotiating, war-claims settlement and/or peace agreements with China and the two Koreas that emerged after WWII. The United States supported those agreements and negotiations. United States courts are not the appropriate forums to judge the policy considerations underlying the drafting, negotiation and ratification of the 1951 Treaty of Peace with Japan and the successive war claims agreements consummated between Japan and third countries pursuant to that Treaty.

A. The Treaty Of Peace With Japan And Related Treaties Establish A Framework For The Resolution Of War Claims Against Japan.

This lawsuit cannot be addressed in a vacuum, distinct from the complex historical matrix from which it arises. The plaintiffs in this case are of at least three different nationalities, Filipino, Chinese, and Korean. The history of Japan's war claims settlements with the United States and its allies, including the Philippines, and various Chinese and Korean political entities is complex, and some context is appropriate. The framework established by those treaties was intended to resolve completely claims against Japan arising out of World War II.

The 1951 Treaty of Peace with Japan, 3 U.S.T. 3169, provided, among other things, for the end of the U.S. Occupation, a return of Japan to the family of nations, and payment by Japan (through the asset-seizure mechanism) for damages caused by wartime aggression. Although unequivocally requiring Japan to compensate Allied nations for war losses, the Peace Treaty recognized that full payment for all damages was impossible if a "viable economy" were to be created in Japan. See Peace Treaty, Art. 14(a) (Exhibit 1); S. Exec. Rep. No. 82-2, at 12 (1952) (Exhibit 2).

Under the Treaty, the Government of Japan gave up the use of property and other assets held by Japanese nationals outside of Japan to satisfy war claims. The seizure and eventual liquidation of Japanese assets was legitimized in Article 14(a)(2) of the Peace Treaty. Pursuant to that Article and Article 16 of the Treaty, assets located in Allied territory valued at approximately $4 billion were confiscated by Allied governments, and their proceeds distributed to Allied nationals in accordance with domestic legislation. See Comments on British Draft, Memorandum by the Officer in Charge of Economic Affairs in the Office of Northeast Asian

Affairs (Hemmendinger) to the Deputy to the Consultant (Allison), April 24, 1951, reprinted in Foreign Relations of the United States 1951, Vol. VI, Asia and the Pacific, at 1016 (1977) (Exhibit 3). In return, under Article 14(b) of the 1951 Peace Treaty, the United States and the Allies agreed to "waive all reparations claims of the Allied Powers, other claims of the Allied Powers and their nationals arising out of any actions taken by Japan and its nationals in the course of the prosecution of the war."[9]

In a unanimously favorable report on the Treaty, the Senate Committee on Foreign Relations expressly recorded its decision that "the reparations provisions of the Treaty are eminently fair," and that it "is the duty and responsibility of each government to provide such compensation for persons under its protection as that government deems fair and equitable, such compensation to be paid out of reparations that may be received from Japan or from other sources." S. Exec. Rep. No. 82-2, at 12-13 (Ex. 2). Consistent with the United States' "duty and responsibility" to provide such "compensation for persons under its protection as it deems fair and equitable," id., Congress amended the War Claims Act of 1948, 50 U.S.C. App. §§ 2001-2017 (1994), to afford compensation to victims of Japan during WWII. 50 U.S.C. App.

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[9] Several lawsuits were filed in California courts by plaintiffs seeking to recover from defendant Japanese companies damages for back wages and injuries allegedly suffered as prisoners of war during WW II under Cal. Code of Civ. Pro. 354.6. The court granted defendants' motion to dismiss the claims of the Allied prisoners of War under the Treaty of Peace with Japan because "[o]n its face, the treaty waives 'all' reparations and 'other claims' of the 'nationals' of Allied powers 'arising out of any actions taken by Japan and its nationals during the course of the prosecution of the war.'" In re World War II Era Japanese Forced Labor Litigation, 114 F. Supp. 2d 939, 945 (N.D. Cal. 2000).

§ 2005(d) (1994).[10]

The Senate gave its advice and consent to the Treaty on March 20, 1952, by a vote of 66 to 10. 98 Cong. Rec. 2594 (1952). The Treaty was considered as part of a package with three additional security treaties relating to the Pacific region, reflecting the United States' view of the Treaty as an integral part of its political and foreign relations goals in that region. See, e.g., 98 Cong. Rec. 2327, 2361, 2450, 2462 (1952).

The participation of other nations in the Treaty, and in particular the resolution of claims arising from Japan's actions during the World War II, was strongly influenced by the geopolitical situation in East Asia. The Philippines was a party to the Treaty. Because the Philippines signed and ratified the Peace Treaty, any wartime claims of Philippine nationals against Japan have been expressly waived by Article 14(b) of the Treaty, including those claims at issue here. As a result of political complications, China and Korea did not become party to the 1951 Treaty.[11]

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[10] A proposal that would have allowed federal courts to adjudicate war compensation claims was rejected because of the complexity of the issues and the need to have the claims "classified by experts who are qualified so to do" in order to "get some rationality out of this situation [and] to determine the categories of claims that should be allowed." 94 Cong. Rec. 564 (1948). There can be no doubt that Congress did not want claims within the Commission's jurisdiction to be adjudicated by the courts, because it barred even judicial review of the Commission's decisions "by mandamus or otherwise." 50 U.S.C. App. § 2010 (1994).

[11] China presented the biggest obstacle to a comprehensive settlement, since by 1949 there was strong international disagreement over which political entity legally represented China: the People's Republic of China ("PRC") in Beijing or Chiang Kai-Shek's Nationalist forces on Taiwan ("the Republic of China"). See Memorandum of Conversation, by the Deputy Director of the British Commonwealth and Northern European Affairs (Satterthwaite), Washington, March 30, 1951, reprinted in Foreign Relations of the United States 1951, Vol. VI, Asia and the Pacific, at 953-54 (1977) (Exhibit 4). The U.S. Government continued strongly to support the Chinese Nationalists. Great Britain, by contrast, favored recognition of the People's Republic of China.

Korea presented a different but equally complicated set of problems. As Korea had been

Consequently, Article 14(b) of the Treaty, providing for waiver of all Allied claims against Japan and its nationals, does not cover the PRC, Taiwan, or North or South Korea. However, the Allies inserted several provisions into the Treaty that provided for some form of compensation to these countries. Other articles of the Treaty obligated Japan to enter into bilateral agreements with China and Korea on terms similar to those provided in the Treaty. In this manner, the Allies established comprehensive framework for the disposition of war claims.

Article 26 of the Treaty, for example, obligated Japan to enter into a war-claims settlement with a Chinese political entity (without specifying which Chinese entity) within three years. Article 21 of the Treaty stated that China would be entitled to the benefits of Articles 10 and 14(a). In Article 10, Japan renounced all rights and interests in China, and Article 14(a) provided for the seizure and liquidation of assets located in Chinese territory. This was extremely significant because almost half of all Japanese-owned assets abroad were located in China.

Within three years, Japan concluded a bilateral treaty of peace with the "Republic of China" (Taiwan), on substantially the same terms as are provided for in the 1951 Treaty. See Treaty of Peace Between the Republic of China and Japan, April 28, 1952, 1858 U.N.T.S. 38 (Exhibit 6). The situation with regard to the People's Republic of China is more complicated. In the wake of President Nixon's "opening" to the People's Republic of China, Japan sought to

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under the colonial occupation of Japan since 1910, "the view of the United States and Japanese governments was that . . . Korea had fought against the Allies during the Pacific War and therefore was not eligible for reparations." See U.S. Dep't of State Publications, Record of Proceedings of the Conference for the Conclusion and Signature of the Treaty of Peace with Japan, 84 (1951) (Exhibit 5). Korea nevertheless was recognized as having "a special claim on Allied consideration." Id.

normalize relations. Japan and the PRC, while not signing a formal peace treaty, agreed to a "Joint Communique" which terminated the "abnormal state of affairs that ha[d] hitherto existed between Japan and the People's Republic of China." Joint Communique of the Government of Japan and the Government of the People's Republic of China, Art. 1 (Exhibit 7). In the Joint Communique, the PRC renounced its demand for war reparations from Japan. Id., Art. 5. The Treaty of Peace and Friendship between China and Japan incorporated and formalized the terms of the Joint Communique. August 12, 1978, 19784 U.N.T.S. 269 (Exhibit 8).

Korea also received benefits under Article 21 of the Treaty, and its independence was recognized under Article 2. Article 4(a) obligated Japan to resolve all claims between Korea and Japan through "special arrangements between the two governments," and Article 4(b) provided for the Korean Government's seizure of all Japanese-owned assets in Korea. This was a significant step towards the resolution of Korean claims as these assets were, by all accounts, substantial. By the end of World War II, Japan and its nationals had acquired 5 billion dollars' worth of assets in Korea, almost 85 percent of all property in Korea. See Sung-Hwa Cheong, The Politics of Anti-Japanese Sentiment in Korea: Japanese-South Korean Relations under American Occupation, 1945-1952, 48 (1991).

Japan and the Republic of Korea (South Korea) entered into an agreement as contemplated in Article 4(a) of the Treaty in 1965 following years of protracted negotiations in which the United States was heavily involved. See Agreement on the Settlement of Problems Concerning Property and Claims and On Economic Cooperation Between Japan and the Republic of Korea, June 22, 1965, 8473 U.N.T.S. 258 (Exhibit 9); see also generally Cheong, supra, at 99-118 (discussing U.S. role in the negotiations). The terms of this agreement were

greatly influenced by the fact that Korea already had received substantial compensation under Article 4(b) of the 1951 Treaty, as discussed above. Cheong, supra, at 117. The Japan-ROK agreement is part and parcel of the framework created by the United States and its allies in 1951. A similar agreement between Japan and North Korea is currently under negotiation, in furtherance of Japan's obligations under Article 4(a) of the 1951 Treaty.

Thus, although Article 14(b) of the Treaty did not extinguish claims of nationals of countries not party to the Treaty, the text and negotiating history of the Treaty demonstrates that it was intended to completely resolve war claims against Japan and its nationals. See In re World War II Era Japanese Forced Labor Litigation, 114 F. Supp. 2d 939, 946 (N.D. Cal. 2000); Tenney v. Mitsui & Co., Ltd., Case No. CV-99-11545, slip op. at 4-5 (C.D. Cal. Feb. 24, 2000) (J. Marshall) (Exhibit 10).

B. The Court Must Defer To The Judgment Of The Executive And Legislative Branches In The Resolution Of War-Related Claims Against Japan, As Reflected In The 1951 Peace Treaty.

The United States Senate gave its advice and consent to the Treaty on March 20, 1952, by a vote of 66 to 10. In entering into the Treaty, it manifestly was not the intent of the President and Congress to preclude Americans from bringing their war-related claims against Japan and Japanese nationals in U.S. courts, while allowing federal or state courts to serve as a venue for the litigation of similar claims by non-U.S. nationals. Regardless of what arrangements Korea and China have with Japan, it would be inconsistent with the framework and intent of the 1951 Treaty for their claims to be litigated in U.S. courts.

The 1951 Treaty created the international framework for bringing closure to World War II claims against Japan and its nationals. In drafting the Treaty, the Allies took pains not only to

address settlement of their own war-related claims with Japan, but those of non-party nations as well. As discussed above, the Allies inserted several provisions into the Treaty that provided for some form of compensation to those countries. See Treaty, Arts. 2, 4, 10, 14 and 21 (Ex. 1). In addition, the Treaty obligated Japan to enter into bilateral agreements with those entities on terms similar to those provided in the Treaty. Id., Arts. 4 and 26. The Allies' intent was to effect as complete and lasting a peace with Japan as possible by closing the door on the litigation of war-related claims, and instead effecting the resolution of those claims through political means. This policy decision was made in order to allow Japan as a nation to rebuild its economy and become a stable force and strong ally in Asia. See In re World War II Era Japanese Forced Labor Litigation, 114 F. Supp. 2d at 946-47; S. Exec. Rep. No. 82-2, at 2-3 (Ex. 2); Aldrich v. Mitsui & Co. (USA), Case No. 87-912-Civ-J-12, slip op. at 3 (M.D. Fla. Jan. 20, 1988) (Exhibit 11). To that end, the United States actively facilitated and encouraged Japan's efforts to enter into peace treaties and/or claims settlement agreements with non-signatory nations such as China, Korea, Burma and Indonesia.

An assertion of jurisdiction by this Court would fail to give appropriate deference to the policy established by the Executive and Congress and would be at odds with established precedents. Foreign relations in general – and matters of war and peace in particular – frequently present political questions. U.S. v. Belmont, 301 U.S. 342, 328 (1937). Under the Constitution, the conduct of American diplomatic and foreign affairs is entrusted to the political branches of the federal government. See, e.g., Haig v. Agee, 453 U.S. 280, 292 (1981); Chicago & Southern Air Lines, 333 U.S. at 111; United States v. Pink, 315 U.S. 203, 222-23 (1942); United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 320 (1936); Oetjen v. Central Leather Co., 246 U.S.

297, 302 (1918). As articulated by the Court in Baker v. Carr, 369 U.S. at 217, there is a "textually demonstrable constitutional commitment" of U.S. diplomacy and foreign policy to the political branches of the government.[12] Indeed, as the Supreme Court has observed, matters

> vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations . . . are so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference.

Harisiades v. Shaughnessy, 342 U.S. 580, 588-89 (1952); see also Luftig v. McNamara, 373 F.2d 664, 665-66 (D.C. Cir.), cert. denied, 387 U.S. 945 (1967); Z & F Assets Realization Corp. v. Hull, 114 F.2d 464, (D.C. Cir. 1940), aff'd, 311 U.S. 470 (1941). Thus, the Judiciary's refusal to review foreign policy decisions – in this case the policy reflected in the 1951 Treaty – properly shows deference to the responsibilities committed to the political branches under the Constitution, as well as the practical limitations on the role of the Judiciary. Chicago & Southern Air Lines, 333 U.S. at 111; see also Antolok, 873 F.2d at 381 ("nowhere does the Constitution contemplate the participation by the third, non-political branch, that is the Judiciary, in any fashion in the making of international agreements"); Ange v. Bush, 752 F. Supp. 509, 512 (D.D.C. 1990) ("the Constitution grants operational powers only to the two political branches . . .

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[12] The President and Congress both have constitutional authority with respect to the Nation's foreign affairs. The President is the Nation's "guiding organ in the conduct of our foreign affairs," in whom the Constitution vests "vast powers in relation to the outside world." Ludecke v. Watkins, 335 U.S. 160, 173 (1948). The President's power flows from his positions as Chief Executive, U.S. Const. art. II, § 1, cl. 1, and Commander in Chief, id. art. II, § 2, cl. 1. See Chicago & Southern Air Lines, 333 U.S. at 109. In particular, the Constitution grants the President the specific power to "make Treaties" with the advice and consent of two-thirds of the Senators present, U.S. Const. art. II, § 2, cl. 2. Congress has the power to declare war, U.S. Const. art. I, § 8, cl. 11; and broad power to regulate commerce with foreign nations, id. art. I, § 8, cl. 3. And, as noted above, the Senate provides its advice and consent with regard to treaties. Id. art. II, § 2, cl. 2. It is clear from the text of the Constitution that the power over foreign affairs and foreign commerce lies exclusively with the Executive and Legislative Branches.

where decisions are made based on political and policy considerations. The far-reaching ramifications of those decisions should fall upon the shoulders of those elected by the people to make those decisions").

The Court should not second guess the difficult and sensitive foreign policy judgments made by the United States and the other Allied governments in the wake of World War II. See Chicago & Southern Air Lines, 333 U.S. at 111; Aktepe, 105 F.3d at 1403-04; Ange, 752 F. Supp. at 515.

C. Resolution of Plaintiffs' Claims Would Require The Court To Move Beyond Areas Of Judicial Expertise.

Resolution of the plaintiffs' claims also would demand that a court move beyond areas of judicial expertise. Plaintiffs' claims involve issues for which there are no judicially manageable standards. Consideration of plaintiffs' allegations necessarily would put the Court in the position of judging the reasonableness of agreements entered into between other foreign governments, such as Japan and China or Korea, and the effects of those agreements on the rights of their citizens with respect to events occurring outside the United States. Belmont, 301 U.S. at 328. Under international law, governments decide how to address the claims of their own nationals – whether to put them forward and whether and how to settle them. See L. Henkin, Foreign Affairs and the Constitution 299-300 (1972). The plaintiffs' governments, China, Korea and the Philippines, as well as the authorities on Taiwan, chose to resolve those claims through international agreements with Japan. The decisions of those governments as reflected in those agreements are not susceptible of analysis by U.S. courts.

While both political branches maintain certain authority in foreign relations and in war-

making, "the judicial branch, on the other hand, is neither equipped nor empowered to intrude" into this realm. Ange, 752 F. Supp. at 512. The judgments required in foreign affairs "are delicate, complex, and involve large amounts of prophecy," and therefore should "be undertaken only by those directly responsible to the people whose welfare they advance or imperil." Id. (citing Chicago & Southern Air Lines, 333 U.S. at 111); see also More v. Intelcom Support Services, Inc., 960 F.2d 466, 472 (5th Cir. 1992) (while "courts are well equipped to resolve questions of domestic law," they "venture into unfamiliar territory when interpreting . . . treaties negotiated with foreign governments"); Riegle v. Federal Open Market Committee, 656 F.2d 873, 881 (D.C. Cir.), cert. denied, 454 U.S. 1082 (1981) (Meddling with the decision making of the political branches "extends judicial power beyond the limits inherent in the constitutional scheme for dividing federal power" (citations omitted)).

The Supreme Court has recognized not only "the limits of [its] own capacity to 'determine precisely when foreign nations will be offended by particular acts' . . . but consistently acknowledged that the 'nuances' of 'the foreign policy of the United States . . . are much more the province of the Executive Branch and Congress than of [the] Court.'" Crosby v. National Foreign Trade Council, 530 U.S. 363, 386 (2000) (internal citations omitted); see also Harisiades, 342 U.S. at 588-89; Regan v. Wald, 468 U.S. 222, 242 (1984).

United States courts should not be placed in the position of judging the wisdom behind agreements entered into between two foreign governments, such as Japan and China or Korea, on the rights of their citizens with respect to events occurring outside the United States, or attempting to analyze those agreements. Courts as a general matter do not consider themselves competent to resolve such matters. See Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398,

423-25 (1964); Kelberine v. Societe Internationale, Etc., 363 F.2d 989, 995 (D.C. Cir. 1965), cert. denied, 385 U.S. 1044 (1967); Occidental of Umm al Qaywayn, Inc. v. A Certain Cargo of Petroleum Laden Aboard Tanker Dauntless Colocotronis, 577 F.2d 1196, 1204-05 (5th Cir. 1978), cert. denied, 442 U.S. 928 (1979). These are matters to be decided through negotiation among the governments involved, not in a United States' courtroom.

D. Prudential Considerations Counsel Against Judicial Intervention.

Prudential considerations also counsel against review of plaintiffs' claims. First, on matters of international relations, the United States needs to speak with one voice. See Antolok, 873 F.2d 384. Second, this case presents "an unusual need for unquestioning adherence to a political decision already made." Baker, 369 U.S. at 217. Finally, the respect due the political branches, in addition to all the other factors discussed above, weighs in favor of finding this case nonjusticiable.

Judicial review of plaintiffs' claims against Japan would frustrate the policy established by the 1951 Peace Treaty of fostering resolution of all war claims against Japan by state-to-state negotiations, a policy that has been in effect for over half a century. The United States was the driving force behind the decision to waive all Allied claims against Japan in the 1951 Treaty. It did so to fulfill fundamental U.S. foreign policy and national security goals. The Peace Treaty, along with a bilateral security agreement the United States entered into with Japan on the same day the Peace Treaty was signed, forms the basis of U.S.-Japan relations, and has been the very cornerstone of our country's foreign policy and regional security in East Asia and the Pacific. A decision to allow these claims to proceed in the face of the Peace Treaty and other governments' agreements with Japan effectively would undo that foreign policy, which has benefitted the entire

country for the last 50 years, by reopening claims that have long since been resolved.

In Article 14 of the 1951 Treaty, the United States expressly waived – on behalf of themselves and its nationals – claims arising out of actions taken by Japan and its nationals during the war, thereby closing the doors of U.S. courts to such claims. This decision by the federal government is entitled to substantial deference because, "when foreign affairs are involved, the national interest has to be expressed through a single authoritative voice." See United States v. Li, 206 F.3d 56, 67 (1st Cir.) (Selya, J., concurring), cert. denied, 121 S. Ct. 379 (2000); Curtiss-Wright Export Corp., 299 U.S. at 320; accord Department of Navy v. Egan, 484 U.S. 518, 529 (1988); Agee, 453 U.S. at 293-94; Alfred Dunhill of London, Inc., 425 U.S. at 705-06 n.18. The necessity that the United States speak with one strong voice is especially critical in complex and delicate circumstances such as one involving an international peace treaty. See DKT Memorial Fund LTD v. Agency for International Development, 887 F.2d 275, 291 (D.C. Cir. 1989) (area of "foreign affairs" is where "the Executive receives its greatest deference, and in which we must recognize the necessity for the nation to speak with a single voice").

The 1951 Treaty of Peace with Japan created a basic framework for the non-judicial resolution of war claims that, for nearly half a century, has been adhered to by all states with war-related claims against Japan. The unambiguous purpose of this process was "to settle the reparations issue once and for all" because "it was well understood that leaving open the possibility of future claims would be an unacceptable impediment to a lasting peace." In re World War II Era Japanese Forced Labor Litigation, 114 F. Supp. 2d at 946 (emphasis added). The litigation of these claims in U.S. court would be inconsistent with the United States'

objective of achieving finality on the issue of war-related claims.[13] It also could have serious implications for stability in the region. The Japanese Government has stated that its relationships with China and Korea are very delicate and that such lawsuits could disrupt relations and ongoing negotiations with those countries. See Memorandum in Support of Motion of Government of Japan to Dismiss Complaint at pp. 1, 27.

Finally, a Court decision to allow these claims to proceed would create the very "multifarious pronouncements" about America's actions overseas that Baker v. Carr commands the Court to avoid. 369 U.S. at 217. Rather than bringing closure on war claims against Japan and its nationals – the purpose of the 1951 Treaty – litigation of these claims would throw open a case-by-case adjudication of war-related claims. If individual plaintiffs were allowed to impose their interpretation of the Treaty on a piece-meal basis through litigation, this would have a potentially serious negative impact on U.S.-Japan relations. It also could affect United States treaty relations globally by calling into question the finality of U.S. commitments.

CONCLUSION

The United States respectfully submits that the claims raised by the plaintiffs should be dismissed.

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[13] As the U.S. Supreme Court has instructed, the United States' interpretation of the Peace Treaty is entitled to "great weight." See Kolovrat v. Oregon, 366 U.S. 187, 194 (1961) ("While courts interpret treaties for themselves, the meaning given them by the departments of government particularly charged with their negotiation and enforcement is given great weight"); Sumitomo Shoji America, Inc. v. Avagliano, 457 U.S. 176, 184-85 (1982) (same).

TAB 5

MAYER BROWN LLP
NEIL M. SOLTMAN (SBN 67617)
nsoltman@mayerbrown.com
MATTHEW H. MARMOLEJO (SBN 242964)
mmarmolejo@mayerbrown.com
RUTH ZADIKANY (SBN 260288)
rzadikany@mayerbrown.com
REBECCA B. JOHNS (SBN 293989)
rjohns@mayerbrown.com
350 South Grand Avenue, 25th Floor
Los Angeles, CA 90071-1503
Telephone: (213) 229-9500
Facsimile: (213) 625-0248

Attorneys for Plaintiffs
MICHIKO SHIOTA GINGERY, KOICHI MERA, and
GAHT-US CORPORATION

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

MICHIKO SHIOTA GINGERY, an individual, KOICHI MERA, an individual, GAHT-US Corporation, a California non-profit corporation,

Plaintiffs,

v.

CITY OF GLENDALE, a municipal corporation, SCOTT OCHOA, in his capacity as Glendale City Manager,

Defendants.

Case No. 2:14-cv-1291

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Michiko Shiota Gingery, Koichi Mera and GAHT-US Corporation ("GAHT"), allege as follows:

JURISDICTION

1. This action arises under, *inter alia*, 42 U.S.C. § 1983; the foreign affairs powers of the United States, U.S. Const. art. II, sec. 1, cl. 1; sec. 2, cl. 1; sec. 2, cl. 2; and sec. 3; and the Supremacy Clause, U.S. Constitution, art. VI, cl. 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3), and the power to grant declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202. This Court also has supplemental jurisdiction under 28 U.S.C. § 1367 over all claims that are so related to claims in the action within original jurisdiction such that they form part of the same case or controversy.

2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because the conduct complained of occurred, is occurring, and/or will continue to occur in Glendale, California, within this judicial district. Defendant City of Glendale ("Glendale") maintains its offices in Glendale, California. Defendant Scott Ochoa ("Ochoa"), who is sued in his official capacity as the City Manager of Glendale, maintains his offices in Glendale, California.

NATURE OF THE ACTION

3. Plaintiffs seek injunctive and declaratory relief relating to the presence of a monument authorized by Glendale and Ochoa and condemning the nation of Japan for its involvement with and treatment of what have come to be known as "comfort women." The monument is located on public land in a publicly owned park in Glendale known as Central Park, located at 201 South Colorado St., Glendale, CA 91205 (the "Public Monument"). Plaintiffs seeks this relief on the grounds that the Public Monument exceeds the power of Glendale, infringes upon the federal government's power to exclusively conduct the foreign affairs of the United States, and violates the Supremacy Clause of the U.S. Constitution.

4. The Public Monument threatens to negatively affect U.S. foreign relations with Japan, one of this nation's most important allies, and is inconsistent with the foreign policy of the United States. That policy is to encourage the relevant foreign nations with direct involvement in the historic events involving comfort women, including the governments of Japan and the Republic of Korea ("South Korea"), to resolve the debate relating to comfort women between or among themselves without the involvement of the United States. The proper historical characterization of the events in issue and the precise role of national governments in those acts have been the subject of discussions and negotiations between the governments of Japan and South Korea for decades, and remain an active topic of political debate.

5. The emplacement of the Public Monument also violates Glendale's Municipal Code.

PARTIES

6. Plaintiff Michiko Shiota Gingery ("Gingery") is a long-time resident of Glendale. Gingery lives in the vicinity of Central Park and the Public Monument. Gingery is a founding member of Glendale's Sister City Committee, a committee created to develop and administer Glendale's Sister City Program. In this capacity, Gingery made significant contributions to Glendale's establishment of a Sister City relationship with the City of Higashiosaka (at the time called Hiraoka), Japan, Glendale's first Sister City. Gingery was born in Japan, and is now a naturalized U.S. citizen. As a Glendale resident of Japanese heritage, Gingery believes the Public Monument presents an unfairly one-sided portrayal of the historical and political debate surrounding comfort women and presents the potential to disrupt the United States' strategic alliances with its closest East Asian allies, Japan and South Korea. She also believes the emplacement of the Public Monument represents a significant obstacle in maintaining friendly relations among Glendale's sister-cities, the primary objective of the Sister City Program.

Gingery suffers feelings of exclusion, discomfort, and anger because of the position espoused by her city of residence through its display and endorsement of the Public Monument. Gingery would like to use Glendale's Central Park and the Adult Recreation Center located within Central Park. But she now avoids doing so because she is offended by the Public Monument's pointed expression of disapproval of Japan and the Japanese people. In addition, the presence of the Public Monument diminishes Gingery's enjoyment of the Central Park and its Adult Recreation Center.

7. Plaintiff GAHT-US Corporation ("GAHT-US") is a non-profit public benefit corporation organized under the laws of the State of California. The purpose of GAHT-US is to provide accurate and fact-based educational resources to the public in the U.S., including within California and Glendale, concerning the history of World War II and related events, with an emphasis on Japan's role. GAHT-US has undertaken this goal in an effort to enhance a mutual historical and cultural understanding between and among the Japanese and American people. Given its mission, GAHT-US believes that the Public Monument advances an unfairly biased portrayal of the Japanese government's purported involvement with comfort women during the Second World War. Individual members of GAHT-US reside in Glendale and nearby cities. GAHT-US's members suffer feelings of exclusion, discomfort, and anger by the continued presence of the Public Monument, and the controversial and disputed stance on the debate surrounding comfort women that it perpetuates. Although GAHT-US members would like to use Glendale's Central Park and its Adult Recreation Center, they no longer intend to do so as a result of their distress due to the Public Monument. In addition, the presence of the Public Monument diminishes GAHT-US members' enjoyment of the Central Park and its Adult Recreation Center.

8. Plaintiff Koichi Mera ("Mera") is a Japanese-American resident of the City of Los Angeles and the President of GAHT-US. Mera disagrees with and is

offended by the position espoused by Glendale through the Public Monument and its pointed condemnation of the Japanese people and government. Although Mera would like to use Glendale's Central Park and its Adult Recreation Center, as a result of his alienation due to the Public Monument, he avoids doing so. In addition, the presence of the Public Monument diminishes Mera's enjoyment of the Central Park and its Adult Recreation Center.

9. Defendant Glendale is a political subdivision of the State of California operating under a charter authorized by the State of California that empowers it to pass lawful ordinances and to govern and administer municipal activities within Glendale's city limits, with authority to be sued in its own name. Glendale's governing authority consists of city council, composed of five city council members (the "City Council"), one of whom also serves as the mayor. The City Council makes policy decisions for Glendale, including decisions regarding the use of public lands.

10. At all relevant times hereto, defendant Ochoa has been the duly appointed City Manager of Glendale with supervisorial responsibility over the day-to-day administration of Glendale's various departments and staff, including but not limited to Glendale's Department of Community Services and Parks, Department of Public Works, Department of Community Development, and Department of Management Services; these departments in one or another manner are involved in the management and operation of Central Park and/or the Public Monument. Ochoa effectively acts as, and is publicly held out to operate as, Glendale's Chief Executive Officer. At all relevant times with respect to the Public Monument, Ochoa acted under color of state law and with the power and authority granted to him by the State of California and Glendale to deprive Plaintiffs of their federal constitutional rights, for which Plaintiffs seek injunctive and declaratory relief.

FACTUAL BACKGROUND

Glendale's Public Monument

11. At a Special Meeting on July 9, 2013, the City Council approved the installation of the Public Monument, described as "a Korean Sister City 'Comfort Woman' Peace Monument," on a substantial portion of public land immediately adjacent to the Adult Recreation Center Plaza in Central Park. The Public Monument was unveiled 21 days later, on July 30, 2013. The Public Monument is a 1,100-pound bronze statue of a young girl in Korean dress sitting next to an empty chair with a bird perched on her shoulder. Integral to and alongside the statue is a permanent bronze plaque that reads:

> I was a sex slave of Japanese military
>
> - Torn hair symbolizes the girl being snatched from her home by the Imperial Japanese Army.
> - Tight fists represent the girl's firm resolve for a deliverance of justice.
> - Bare and unsettled feet represent having been abandoned by the cold and unsympathetic world.
> - Bird on the girl's shoulder symbolizes a bond between us and the deceased victims.
> - Empty chair symbolizes survivors who are dying of old age without having yet witnessed justice.
> - Shadow of the girl is that of an old grandma, symbolizing passage of time spent in silence.
> - Butterfly in shadow represents hope that victims may resurrect one day to receive their apology.
>
> Peace Monument
>
> In memory of more than 200,000 Asian and Dutch women who were removed from their homes in Korea,

> China, Taiwan, Japan, the Philippines, Thailand, Vietnam, Malaysia, East Timor and Indonesia, to be coerced into sexual slavery by the Imperial Armed Forces of Japan between 1932 and 1945.
>
> And in celebration of proclamation of "Comfort Women Day" by the City of Glendale on July 30, 2012, and of passing of House Resolution 121 by the United States Congress on July 30, 2007, urging the Japanese Government to accept historical responsibility for these crimes.
>
> It is our sincere hope that these unconscionable violations of human rights shall never recur.
>
> July 30, 2013.

12. No other monuments are present in this area of Central Park and, upon information and belief, no other permanent markers may be placed there without approval of the City Council.

13. Glendale exercises exclusive custody and control of Central Park and the Public Monument, and upon information and belief, provides all necessary maintenance services for the Public Monument.

The Historical Background Of The Debate Concerning Comfort Women

14. During World War II and the decade leading up to it, an unknown number of women from Japan, Korea, China, and a number of nations in Southeast Asia, were recruited, employed, and/or otherwise acted as sexual partners for troops of the Japanese Empire in various parts of the Pacific Theater of war. These

women are often referred to as comfort women, a loose translation of the Japanese word for prostitute.

15. Beginning in the 1980s, a dispute arose between South Korea and the government of Japan concerning the hardships experienced by Korean comfort women and whether the Japanese government forcefully recruited comfort women.

16. Officials of the Japanese government assert that the Japanese military and Japanese Imperial government were not responsible for or directly involved in the recruitment of comfort women, and that private firms and individuals undertook the recruitment.

17. Other governments, including that of South Korea, claim that comfort women were recruited by and/or forced into sexual slavery by the Imperial Japanese government and/or officials of the Japanese military.

18. The debate concerning historic responsibility for the comfort women camps has been a significant and ongoing source of tension in recent decades between Japan and South Korea, both of which are critical American allies. Disagreements concerning responsibility for comfort women are a major impediment to improved present-day relations between Japan and South Korea, which are less than cordial.

Efforts By Japan and South Korea To Address The Dispute

19. After some years of controversy regarding the Japanese Imperial Government's alleged involvement with comfort women, in 1995 Japan established the Asian Women's Fund to distribute compensation to former comfort women in South Korea, the Philippines, Taiwan, the Netherlands, and Indonesia, and to provide them with letters of apology from the Prime Minister of Japan.

20. Nonetheless, several governments, including the government of South Korea, have continued to demand that Japan take additional steps to redress grievances relating to comfort women.

21. The Japanese government asserts that all World War II-related claims against Japan, including those related to comfort women, were resolved by the Treaty of Peace signed in San Francisco by Japan, the United States, and 47 other allied nations in 1951 (the "Treaty of San Francisco"), the Treaty on Basic Relations between Japan and the Republic of Korea dated June 22, 1965, and/or the Agreement on the Settlement of Problems Concerning Property and Claims and on Economic Co-operation between Japan and the Republic of Korea also dated June 22, 1965 (the "Settlement Agreement").

22. Article 4(a) of the Treaty of San Francisco provides that claims of Korean and Chinese nationals relating to Japan's wartime conduct, including issues related to comfort women, are to be addressed through government-to-government negotiations between Japan and each of those countries.

23. Article 2(1) of the Settlement Agreement provides that the "problem concerning property, rights and interests of the two Contracting Parties [*i.e.*, Japan and South Korea] and their nationals (including juridical persons) and concerning claims between the Contracting Parties and their nationals . . . is settled completely and finally."

24. In December 2011, Japanese Prime Minister Yoshihiko Noda and South Korean President Lee Myung-bak held talks in Kyoto, Japan in an effort to improve bilateral relations between the two neighboring countries. The discussions terminated when President Lee pressed Prime Minister Noda to take additional responsibility for Korean comfort women. Plaintiffs are informed and believe that no further discussions between Japan and South Korea have since taken place.

Glendale's Installation Of The Public Monument

25. Glendale has established a Glendale Sister Cities program to initiate ongoing communication and "promote[] interest and good will" between and among Glendale and its Sister Cities. As of March 2009, Glendale had six Sister

City partnerships: Higashiosaka, Japan; Hiroshima, Japan; Tlaquepaque, Mexico; Rosarito, Mexico; Ghapan, Armenia; and Goseong City, the Republic of Korea.

26. On September 6, 2011, the City Council instructed Glendale's Community Services and Parks staff to explore the possibility of dedicating a portion of public land within Glendale for acceptance and installation of memorials, monuments, and/or artifacts representative of Glendale's sister city partners.

27. On March 26, 2013, the City Council voted to dedicate a plot of public land within Central Park and adjacent to the Adult Recreation Center Plaza for the purpose of sister city-related monuments and memorials.

28. In the spring and summer of 2013, a proposal was made to place a statue in Central Park dedicated to comfort women. During that period, the City Council received hundreds of letters and emails in opposition to the installation of the monument, almost entirely from residents and interested persons of Japanese ancestry.

29. At a July 9, 2013 Special Meeting the City Council considered and approved a motion to install the Public Monument, described as a "Korean Sister City 'Comfort Women' Peace Monument," on public land within Central Park. The report recommending approval of the installation of the Public Monument, submitted to the City Council in conjunction with the motion, included a schematic diagram depicting the proposed statue and its location. The inclusion of the motion to approve installation of the Public Monument in the Special Meeting agenda was submitted to and approved by Ochoa.

30. The schematic diagram of the proposed statue did not include any mention of, or reference to, the text of the plaque that currently is part of the Public Monument. During the Special Meeting, City Council Member Ara Najarian asked Glendale Community Relations Coordinator Dan Bell whether the statue would be accompanied by a plaque and, if so, its inscription. Mr. Bell advised the

City Council that the plaque would say that it was "commemorating and in honor of the comfort women." Mr. Bell made no mention of the text of the plaque that ultimately was installed as part of the Public Monument.

31. During the Special Meeting, numerous individuals, including Japanese-Americans, publicly opposed and condemned the proposed installation of the statue, arguing that the comfort women issue is a matter of current diplomatic communications between South Korea and Japan, and the disputed view advanced by the South Korean government on comfort women.

32. Notwithstanding the numerous objections voiced at the Special Meeting, the City Council approved the installation of the "Korean Sister City 'Comfort Women' Peace Monument" "as shown and described in the Report to Council dated July 9, 2013" by a vote of 4 to 1. Glendale Mayor Dave Weaver, who voted against installation of the Public Monument, later explained in a letter to Yoshikazu Noda, Mayor of Higashiosaka, Japan (a Glendale sister city) that the dispute over comfort women "is an international one between Japan and South Korea and the City of Glendale should not be involved on either side."

33. Three weeks after the City Council's approval, on July 30, 2013, the 1,100 pound bronze Public Monument was unveiled in Central Park. As described above, the statue was accompanied by a plaque accusing the Japanese government of "coerc[ing]" more than 200,000 women "into sexual slavery," and "urging the Japanese Government to accept historical responsibility for these crimes," which it labels an "unconscionable violations of human rights." The City Council never voted to approve the language included on the plaque.

34. Following the Public Monument's installation, at the July 30, 2013 Meeting of the City Council, Glendale City Council Member Laura Friedman commented: "We really put the city of Glendale on the international map today by doing this."

35. The installation of the Public Monument prompted opponents of the Public Monument to commence a petition to compel its removal. The petition, posted on President Barack Obama's website "We The People" in late 2013, quickly received more than 108,000 signatures.

The Japanese Government's Reaction To The Public Monument

36. Glendale's decision to install the Public Monument has elicited numerous unfavorable reactions from the Japanese government.

37. On July 24, 2013, Kuni Sato, the press secretary of the Japanese Ministry of Foreign Affairs, expressed Japan's official displeasure, remarking that installation of the Public Monument "does not coincide with our understanding" of the comfort women dispute.

38. On July 25, 2013, Yoshikazu Noda, the Mayor of Glendale's sister city, Higashiosaka, Japan, advised the City Council that the installation of the Public Monument was "an extremely deplorable situation and the people of Higashiosaka are hurt at a decision made by [Glendale] city to install a comfort woman monument."

39. On July 31, 2013, Kenichiro Sasae, Japanese Ambassador to the United States, declared that Glendale's action is "irreconcilable" with the position of the Government of Japan and is "highly regrettable."

40. On July 31, 2013, Mr. Yoshihide Suga, Japan's Chief Cabinet Secretary, described Glendale's decision to install the Public Monument as "extremely regrettable." He added that Glendale's action "conflicts with the [Japanese] government's view that the issue of the comfort women should not be part of any political or diplomatic agenda."

41. On August 13, 2013, Japanese Prime Minister Shinzo Abe stated that he was "extremely dissatisfied" with the installation of the Public Monument.

42. On January 16, 2014, after being denied a request to meet with Glendale's Mayor and City Council, an association of 321 local Japanese

government legislators submitted an official letter to Glendale, protesting the Public Monument's installation "in the strongest terms" and requesting "that the statue be removed immediately." The letter advised Glendale that "the distorted view of history that the statue represents . . . will surely jeopardize world peace and the possibility of a bright future for our children."

The Executive Branch's Foreign Policy Position On Comfort Women

43. The Executive Branch of the United States, which has primary authority over the direction and conduct of U.S. foreign affairs, consistently has sought to avoid having the United States become embroiled in the contentious historical debate concerning comfort women between its two most important East Asian allies.

44. For example, on May 8, 2001, the United States filed a Statement of Interest in connection with a lawsuit brought by 15 former comfort women against Japan entitled *Joo v. Japan*, United States District Court for the District of Columbia, Case No. 1:00-cv-02233-HHK. That Statement of Interest warned that addressing the comfort women issue in the United States could disrupt Japan's "delicate" relations with China and Korea, thereby creating "serious implications for stability in the region."

45. Based upon the Statement of Interest, the United States Court of Appeal for the District of Columbia Circuit dismissed the *Joo* case as presenting nonjusticiable political questions, holding that "choosing between the interests of two foreign states . . . would adversely affect the foreign relations of the United States."

46. The United States continues to encourage resolution of the comfort women issue between Japan and its neighbors through government-to-government negotiations. During a January 7, 2013 press briefing, White House Spokesperson Victoria Nuland reported that the Administration "continue[s] to hope that the countries in the region can work together to resolve their concerns over historical

issues in an amicable way and through dialogue. As you know, we have no closer ally than Japan. We want to see the new Japanese Government, the new South Korean Government, all of the countries in Northeast Asia working together and solving any outstanding issues, whether they are territorial, whether they're historic, through dialogue."

47. During a trip to Seoul, South Korea in February 2014, U.S. Secretary of State John Kerry said: "It is up to Japan and [South Korea] to put history behind them and move the relationship forward. And it is critical at the same time that we maintain robust trilateral cooperation." "We urge our friends in Japan and South Korea, we urge both of them to work with us together to find a way forward to help resolve the deeply felt historic differences that still have meaning today . . . .We will continue to encourage both allies to find mutually acceptable approaches to legacy issues from the past."

48. In February 2014, Daniel Russel, the U.S. Assistant Secretary of State for East Asian and Pacific Affairs, commented that the U.S.'s position on the comfort women issue is to continue efforts to help manage "sensitive historical legacy problems in a way that contributes to healing and forgiveness in [] conversations in Japan and elsewhere in the region."

The Public Monument Threatens Irreparable Injury to Plaintiffs

49. Despite vocal domestic and international public protest, Glendale persisted in installing the Public Monument, forcing Plaintiffs to bring this action.

50. Allowing the Public Monument to remain in place in Glendale's Central Park threatens irreparable injury to Gingery, Mera, GAHT-US, and its members. As a longtime resident of Glendale with active involvement in Glendale's Sister City Program, the presence of the Public Monument within the designated Sister City area of Glendale's Central Park has turned visiting Central Park into a highly offensive endeavor, effectively denying Gingery full enjoyment of the Park's benefits.

51. The presence of the Public Monument has had a similar impact on GAHT-US's members, including Mera, who avoid using and benefitting from Glendale's Central Park.

52. Plaintiffs have no adequate remedy at law to address the foregoing injuries.

53. If the Public Monument is removed, Plaintiffs will again make use of Glendale's Central Park and its Adult Recreation Center.

54. An actual controversy has arisen and now exists between Plaintiffs and Defendants.

55. Plaintiffs contend that installation of the Public Monument unconstitutionally intrudes on the Executive Branch's authority to conduct American foreign policy, and that Glendale's installation of the Public Monument violates Glendale's Municipal Code.

56. Plaintiffs are informed and believe that Defendants disagree with Plaintiffs' contentions as set forth in the prior paragraph.

57. A justiciable controversy therefore exists between Plaintiffs and Defendants and a judicial declaration is necessary and appropriate at this time in order to determine the legality of Glendale's installation of the Public Monument.

FIRST CLAIM FOR RELIEF

(Unconstitutional Interference With Foreign Affairs Power)

58. Plaintiffs repeat and incorporate the allegations of Paragraph 1 through 57 herein.

59. The Public Monument interferes with the Executive Branch's primary authority to conduct foreign relations by disrupting federal foreign policy as to the resolution of the historical debate concerning comfort women. The Public Monument also violates the Supremacy Clause.

60. The Executive Branch's authority in the field of foreign affairs is violated by state or local actions that have more than an incidental or indirect effect

on, or that have the potential for disruption or embarrassment of, United States foreign policy.

61. Glendale's installation of the Public Monument has a direct impact on U.S. foreign policy that is neither incidental nor indirect. By installing the Public Monument, Glendale has taken a position in the contentious and politically-sensitive international debate concerning the proper historical treatment of the former comfort women. More specifically, given the inflammatory language used in the plaque that is prominently featured alongside the statue, Glendale has taken a position at odds with the expressed position of the Japanese government.

62. The Public Monument is inconsistent with the dual foreign policy objectives promulgated by the Executive Branch on this controversial issue: (1) avoid taking sides in this sensitive historical and political debate between the United States' two most important East Asian allies; and (2) encouraging a resolution to the current diplomatic impasse between the two countries through further government-to-government negotiations.

63. As the reactions from the highest echelons of the Japanese government make clear, Glendale's actions have great potential for disrupting the delicate diplomatic line struck by the Executive Branch on this contentious issue. The Public Monument thus threatens to undermine the U.S. government's foreign relations with a critical Asian ally and, more generally, to destabilize already strained diplomatic relations in this important region of the world.

64. Glendale's action also takes a position on a matter of foreign policy with no claim to be addressing a traditional state responsibility.

65. The actions of Glendale and the City Council in approving and installing the Public Monument are beyond its authority, in violation of the U.S. Constitution's foreign affairs power and the Supremacy Clause, and the Public Monument therefore must be removed.

66. The actions of defendant Ochoa in approving and submitting the proposal to install the Public Monument on public land, and in including a motion to approve the installation in the Special Meeting Agenda, are beyond his authority and unconstitutional, and the Public Monument therefore must be removed.

SECOND CLAIM FOR RELIEF

(Violation of the Glendale Municipal Code)

67. Plaintiffs repeat and incorporate the allegations in Paragraph 1 through 66 herein.

68. Glendale Municipal Code Section 2.04.140 provides: "In all matters and things not otherwise provided for in this chapter, the proceedings of the council shall be governed under Robert's Rules of Order, revised copy, 1952 edition." Pursuant to Robert's Rules of Order, to introduce a new piece of business or propose a decision or action, a motion must be made by a group member. A second motion must then also be made. And after limited discussion, the group then votes on the motion. A majority vote is required for the motion to pass.

69. The Public Monument was not properly approved by the City Council pursuant to Glendale Municipal Code Section 2.04.140. An integral part of the Public Monument—the plaque that specifically attributes responsibility for, *inter alia*, "snatching [women] from their homes" and "coerc[ing them] into sexual slavery" to Japan—was neither proposed to the City Council nor made the subject of a motion to the City Council, and was not approved by it, as required. In fact, the proposed language presented to the Council never mentioned Japan at all, and the City Council was specifically advised that the inscription on the plaque would be different than the inscription ultimately used.

70. As a result, the installation of the monument violated the Glendale Municipal Code.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

1. That the Court declare Glendale's installation of the Public Monument unconstitutional and null and void;

2. That the Court preliminarily and permanently enjoin and compel defendants, and each of them, to remove the Public Monument from public property in Glendale, including but not limited to, any area in or adjacent to Central Park;

3. That the Court award Plaintiffs their costs and attorneys' fees pursuant to 42 U.S.C. § 1988; and

4. For such other and further relief as the Court may deem just and proper.

Dated: February 20, 2014

MAYER BROWN LLP
NEIL M. SOLTMAN
MATTHEW H. MARMOLEJO
RUTH ZADIKANY
REBECCA B. JOHNS

By: s/ Neil M. Soltman
Neil M. Soltman
Attorneys for Plaintiffs
MICHIKO SHIOTA GINGERY, KOICHI MERA, and GAHT-US CORPORATION

TAB 6

ACCO,(AJWx),APPEAL,CLOSED,DISCOVERY,MANADR

UNITED STATES DISTRICT COURT for the CENTRAL DISTRICT OF CALIFORNIA (Western Division - Los Angeles)
CIVIL DOCKET FOR CASE #: 2:14-cv-01291-PA-AJW

Michiko Shiota Gingery, et al v. City of Glendale et al
Assigned to: Judge Percy Anderson
Referred to: Magistrate Judge Andrew J. Wistrich
Case in other court: 9th Circuit, 14-56440
Cause: 42:1983 Civil Rights Act

Date Filed: 02/20/2014
Date Terminated: 08/04/2014
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Michiko Shiota Gingery
an invidual

represented by **Matthew Henry Marmolejo**
Mayer Brown LLP
350 South Grand Avenue 25th Floor
Los Angeles, CA 90071-1503
213-229-9500
Fax: 213-625-0248
Email: mmarmolejo@mayerbrown.com
TERMINATED: 04/29/2014
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Neil M Soltman
Mayer Brown LLP
350 South Grand Avenue Suite 2500
Los Angeles, CA 90071-1503
213-229-9500
Fax: 213-625-0248
Email: nsoltman@mayerbrown.com
TERMINATED: 04/29/2014
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Rebecca Bari Johns
Mayer Brown LLP
350 South Grand Avenue Suite 2500
Los Angeles, CA 90071-1503
213-229-9500
Fax: 213-625-0248
Email: RJohns@mayerbrown.com
TERMINATED: 04/29/2014
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Ruth Zadikany

Mayer Brown LLP
350 South Grand Avenue 25th Floor
Los Angeles, CA 90071-1503
213-229-9500
Fax: 213-625-0248
Email: rzadikany@mayerbrown.com
TERMINATED: 04/29/2014
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

William Benjamin DeClercq
DeClercq Law Group
225 South Lake Avenue Suite 300
Pasadena, CA 91101
626-408-2150
Fax: 626-408-2159
Email: william@declercqlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

Koichi Mera
an individual

represented by **Matthew Henry Marmolejo**
(See above for address)
TERMINATED: 04/29/2014
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Neil M Soltman
(See above for address)
TERMINATED: 04/29/2014
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Rebecca Bari Johns
(See above for address)
TERMINATED: 04/29/2014
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Ruth Zadikany
(See above for address)
TERMINATED: 04/29/2014
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

William Benjamin DeClercq
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

GAHT-US Corporation
a California non-profit corporation

represented by **Matthew Henry Marmolejo**
(See above for address)
TERMINATED: 04/29/2014
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Neil M Soltman
(See above for address)
TERMINATED: 04/29/2014
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Rebecca Bari Johns
(See above for address)
TERMINATED: 04/29/2014
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Ruth Zadikany
(See above for address)
TERMINATED: 04/29/2014
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

William Benjamin DeClercq
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Movant

The Global Alliance for Preserving the History of WW II in Asia

represented by **Barry A Fisher**
Fleishman and Fisher
1925 Century Park East Suite 2000
Los Angeles, CA 90067
310-557-1077
Fax: 310-557-0770
Email: bfisher557@aol.com
ATTORNEY TO BE NOTICED

V.

Defendant

City of Glendale
a municipal corporation

represented by **Christopher S Munsey**
Sidley Austin LLP
555 South Flower Street Suite 4000
Los Angeles, CA 90013

213-896-6000
Fax: 213-896-6600
Email: cmunsey@sidley.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Frank John Broccolo
Sidley Austin
555 W 5th St, Ste 4000
Los Angeles, CA 90013-1010
213-896-6000
Fax: 213 896 6600
Email: fbroccolo@sidley.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Laura L Richardson
Sidley Austin LLP
555 West Fifth Street Suite 4000
Los Angeles, CA 90013
213-896-6052
Fax: 213-896-6600
Email: laura.richardson@sidley.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Bradley H Ellis
Sidley Austin LLP
555 W 5th Street Suite 4000
Los Angeles, CA 90013-1010
213-896-6000
Fax: 213-896-6600
Email: bellis@sidley.com
ATTORNEY TO BE NOTICED

Andrew C Rawcliffe
Glendale City Attorney
613 East Broadway Suite 220
Glendale, CA 91206
818-548-2080
Fax: 818-547-3402
Email: ARawcliffe@ci.glendale.ca.us
ATTORNEY TO BE NOTICED

Defendant

Scott Ochoa
in his capacity as Glendale City Manager
TERMINATED: 04/10/2014

represented by **Andrew C Rawcliffe**
(See above for address)
ATTORNEY TO BE NOTICED

Amicus

Korean American Forum of California
Korean American Forum of California

represented by **Catherine Elizabeth Sweetser**
Schonbrun DeSimone Seplow Harris Hoffman and Harrison LLP
723 Ocean Front Walk
Venice, CA 90291
310-396-0731
Fax: 310-399-7040
Email: catherine.sdshhh@gmail.com
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
02/20/2014	1	COMPLAINT Receipt No: 0973-13399832 - Fee: $400, filed by Plaintiffs MICHIKO SHIOTA GINGERY, GAHT-US Corporation, Koichi Mera.(Attorney Neil M Soltman added to party GAHT-US Corporation(pty:pla), Attorney Neil M Soltman added to party MICHIKO SHIOTA GINGERY(pty:pla), Attorney Neil M Soltman added to party Koichi Mera(pty:pla))(Soltman, Neil) (Entered: 02/20/2014)
02/20/2014	2	CIVIL COVER SHEET filed by Plaintiffs GAHT-US Corporation, MICHIKO SHIOTA GINGERY, Koichi Mera. (Soltman, Neil) (Entered: 02/20/2014)
02/20/2014	3	Request for Clerk to Issue Summons on Civil Cover Sheet (CV-71) 2 , Complaint (Attorney Civil Case Opening), 1 filed by Plaintiffs GAHT-US Corporation, MICHIKO SHIOTA GINGERY, Koichi Mera. (Soltman, Neil) (Entered: 02/20/2014)
02/20/2014	4	Certificate of Interested Parties filed by Plaintiffs All Plaintiffs, identifying N/A. (Soltman, Neil) (Entered: 02/20/2014)
02/20/2014	5	NOTICE of Related Case(s) filed by Plaintiffs GAHT-US Corporation, MICHIKO SHIOTA GINGERY, Koichi Mera. Related Case(s): N/A (Soltman, Neil) (Entered: 02/20/2014)
02/20/2014	6	NOTICE OF ASSIGNMENT to District Judge Percy Anderson and Magistrate Judge Andrew J. Wistrich. (mda) (Entered: 02/20/2014)
02/20/2014	7	NOTICE TO PARTIES OF COURT-DIRECTED ADR PROGRAM filed. (mda) (Entered: 02/20/2014)
02/20/2014	8	21 DAY Summons Issued re Complaint (Attorney Civil Case Opening), 1 as to Defendants City of Glendale, Scott Ochoa. (mda) (Entered: 02/20/2014)
03/03/2014	9	PROOF OF SERVICE Executed by Plaintiff Michiko Shiota Gingery, GAHT-US Corporation, Koichi Mera, upon Defendant City of Glendale served on 2/21/2014, answer due 3/14/2014. Service of the Summons and Complaint were executed upon Leo Zalyan - City Employee in compliance with California Code of Civil Procedure by service on a domestic corporation, unincorporated association, or public entity. Original Summons returned. (Marmolejo, Matthew) (Entered: 03/03/2014)
03/03/2014	10	PROOF OF SERVICE Executed by Plaintiff Michiko Shiota Gingery, GAHT-US Corporation, Koichi Mera, upon Defendant Scott Ochoa served on 2/21/2014,

		answer due 3/14/2014. Service of the Summons and Complaint were executed upon Scott Ochoa - Glendale City Manager in compliance with California Code of Civil Procedure by personal service. Original Summons returned. (Marmolejo, Matthew) (Entered: 03/03/2014)
03/05/2014	11	STIPULATION Extending Time to Answer the complaint as to All Defendants, re Complaint (Attorney Civil Case Opening), 1 filed by Defendants City of Glendale, Scott Ochoa.(Attorney Andrew C Rawcliffe added to party City of Glendale(pty:dft), Attorney Andrew C Rawcliffe added to party Scott Ochoa(pty:dft))(Rawcliffe, Andrew) (Entered: 03/05/2014)
03/05/2014	12	NOTICE of Interested Parties filed by Defendants City of Glendale, Scott Ochoa. (Rawcliffe, Andrew) (Entered: 03/05/2014)
03/05/2014	13	STANDING ORDER by Judge Percy Anderson,READ THIS ORDER CAREFULLY. IT CONTROLS THE CASE AND DIFFERS IN SOME RESPECTS FROM THE LOCAL RULES. (pso) (Entered: 03/27/2014)
04/10/2014	14	NOTICE OF DISMISSAL filed by Plaintiffs Michiko Shiota Gingery, GAHT-US Corporation, Koichi Mera pursuant to FRCP 41a(1) as to Scott Ochoa. (Soltman, Neil) (Entered: 04/10/2014)
04/11/2014	15	NOTICE of Appearance filed by attorney Bradley H Ellis on behalf of Defendant City of Glendale (Attorney Bradley H Ellis added to party City of Glendale(pty:dft))(Ellis, Bradley) (Entered: 04/11/2014)
04/11/2014	16	NOTICE of Appearance filed by attorney Bradley H Ellis on behalf of Defendant City of Glendale (Ellis, Bradley) (Entered: 04/11/2014)
04/11/2014	17	NOTICE of Appearance filed by attorney Bradley H Ellis on behalf of Defendant City of Glendale (Ellis, Bradley) (Entered: 04/11/2014)
04/11/2014	18	NOTICE of Appearance filed by attorney Bradley H Ellis on behalf of Defendant City of Glendale (Ellis, Bradley) (Entered: 04/11/2014)
04/11/2014	19	NOTICE OF MOTION AND MOTION to Strike Complaint (Attorney Civil Case Opening), 1 *Pursuant to California Code of Civil Procedure 425.16* filed by Defendant City of Glendale. Motion set for hearing on 5/12/2014 at 01:30 PM before Judge Percy Anderson. (Ellis, Bradley) (Entered: 04/11/2014)
04/11/2014	20	NOTICE OF MOTION AND MOTION to Dismiss Case *and/or Strike Pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(6), and 12(f)* filed by Defendant City of Glendale. Motion set for hearing on 5/12/2014 at 01:30 PM before Judge Percy Anderson. (Attachments: # 1 Proposed Order Granting Defendant City of Glendale's Motion to Dismiss and/or Strike Pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(6), and 12(f))(Ellis, Bradley) (Entered: 04/11/2014)
04/11/2014	21	DECLARATION of Christopher S. Munsey in support of MOTION to Dismiss Case *and/or Strike Pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(6), and 12(f)* 20 , MOTION to Strike Complaint (Attorney Civil Case Opening), 1 *Pursuant to California Code of Civil Procedure 425.16* 19 filed by Defendant City of Glendale. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12, # 13 Exhibit 13, # 14 Exhibit 14, # 15

		Exhibit 15, # 16 Exhibit 16, # 17 Exhibit 17, # 18 Exhibit 18, # 19 Exhibit 19, # 20 Exhibit 20, # 21 Exhibit 21, # 22 Exhibit 22, # 23 Exhibit 23, # 24 Exhibit 24, # 25 Exhibit 25, # 26 Exhibit 26, # 27 Exhibit 27, # 28 Exhibit 28)(Ellis, Bradley) (Entered: 04/11/2014)
04/11/2014	22	DECLARATION of Karen Cruz in support of MOTION to Dismiss Case *and/or Strike Pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(6), and 12(f)* 20 , MOTION to Strike Complaint (Attorney Civil Case Opening), 1 *Pursuant to California Code of Civil Procedure 425.16* 19 filed by Defendant City of Glendale. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Ellis, Bradley) (Entered: 04/11/2014)
04/11/2014	23	REQUEST FOR JUDICIAL NOTICE re MOTION to Dismiss Case *and/or Strike Pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(6), and 12(f)* 20 , MOTION to Strike Complaint (Attorney Civil Case Opening), 1 *Pursuant to California Code of Civil Procedure 425.16* 19 filed by Defendant City of Glendale. (Ellis, Bradley) (Entered: 04/11/2014)
04/11/2014	24	NOTICE OF LODGING filed *re Proposed Order* re MOTION to Strike Complaint (Attorney Civil Case Opening), 1 *Pursuant to California Code of Civil Procedure 425.16* 19 (Attachments: # 1 Proposed Order Granting Defendant City of Glendales Special Motion to Strike pursuant to California Code of Civil Procedure 425.16) (Ellis, Bradley) (Entered: 04/11/2014)
04/15/2014	25	STIPULATION for Extension of Time to File Response as to MOTION to Dismiss Case *and/or Strike Pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(6), and 12(f)* 20 , MOTION to Strike Complaint (Attorney Civil Case Opening), 1 *Pursuant to California Code of Civil Procedure 425.16* 19 filed by Plaintiff GAHT-US Corporation, Michiko Shiota Gingery, Koichi Mera. (Attachments: # 1 Proposed Order Extending Briefing Schedule and Continuing Hearing Date on the City of Glendale's Motions to Dismiss and to Strike)(Marmolejo, Matthew) (Entered: 04/15/2014)
04/16/2014	26	MINUTE ORDER IN CHAMBERS by Judge Percy Anderson: Before the Court is an Stipulation Extending Briefing Schedule and Continuing Hearing Date on City of Glendales Motions to Dismiss and to Strike [Docket No. 25]. On April 11, 2014, Glendale filed motions to dismiss and to strike plaintiffs complaint which are scheduled for hearing on May 12, 2014, at 1:30 p.m. The parties seek an extension to May 12 to file plaintiffs opposition, June 2 to file defendants reply, and to continue the hearing on the motions to June 16. After reviewing the stipulation, the Court grants it in part and denies it in part. Plaintiffs opposition to the motions is to be filed on or before April 28. Defendants reply, if any, is to be filed on or before May 5. The hearing on the motion is vacated and the Court will advise the parties if it desires to have oral argument. 20 , 19 , 25 . (pso) (Entered: 04/18/2014)
04/28/2014	27	MEMORANDUM in Opposition to MOTION to Dismiss Case *and/or Strike Pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(6), and 12(f)* 20 filed by Plaintiffs GAHT-US Corporation, Michiko Shiota Gingery, Koichi Mera. (Attachments: # 1 Proposed Order)(Soltman, Neil) (Entered: 04/28/2014)
04/28/2014	28	REQUEST FOR JUDICIAL NOTICE re MOTION to Dismiss Case *and/or Strike Pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(6), and 12(f)* 20 filed by Plaintiffs GAHT-US Corporation, Michiko Shiota Gingery, Koichi Mera. (Soltman, Neil) (Entered: 04/28/2014)

04/28/2014	29	DECLARATION of Matthew H. Marmolejo re Request for Judicial Notice, Request for Relief,, 28 filed by Plaintiffs GAHT-US Corporation, Michiko Shiota Gingery, Koichi Mera. (Soltman, Neil) (Entered: 04/28/2014)
04/28/2014	30	MEMORANDUM in Opposition to MOTION to Strike Complaint (Attorney Civil Case Opening), 1 *Pursuant to California Code of Civil Procedure 425.16* 19 filed by Plaintiffs GAHT-US Corporation, Michiko Shiota Gingery, Koichi Mera. (Attachments: # 1 Proposed Order)(Soltman, Neil) (Entered: 04/28/2014)
04/28/2014	31	REQUEST to Substitute attorney William B. DeClercq in place of attorney Neil M. Soltman , *Matthew H. Marmolejo, Ruth Zadikany, Rebecca B. Johns* filed by plaintiff Koichi Mera. (Attachments: # 1 Proposed Order)(Soltman, Neil) (Entered: 04/28/2014)
04/28/2014	32	REQUEST to Substitute attorney William B. DeClercq in place of attorney Neil M. Soltman , *Matthew H. Marmolejo, Ruth Zadikany and Rebecca B. Johns* filed by plaintiff GAHT-US Corporation. (Attachments: # 1 Proposed Order)(Soltman, Neil) (Entered: 04/28/2014)
04/28/2014	33	REQUEST to Substitute attorney William B. DeClercq in place of attorney Neil M. Soltman , *Matthew H. Marmolejo, Ruth Zadikany and Rebecca B. Johns* filed by plaintiff Michiko Shiota Gingery. (Attachments: # 1 Proposed Order)(Soltman, Neil) (Entered: 04/28/2014)
04/29/2014	34	ORDER by Judge Percy Anderson granting Request for Approval of Substitution of Attorney William B. DeClercq for Plaintiff Michiko Shiota Gingery in place of Attorneys Neil M. Soltman, Matthew H. Marmolejo, Ruth Zadikany and Rebecca B. Johns 33 . (gk) (Entered: 04/30/2014)
04/29/2014	35	ORDER by Judge Percy Anderson granting Request for Approval of Substitution of Attorney William B. DeClercq for Plaintiff GAHT-US Corporation in place of Attorneys Neil M. Soltman, Matthew H. Marmolejo, Ruth Zadikany and Rebecca B. Johns 32 . (gk) (Entered: 04/30/2014)
04/29/2014	36	ORDER by Judge Percy Anderson granting Request for Approval of Substitution of Attorney William B. DeClercq for Plaintiff Koichi Mera in place of Attorneys Neil M. Soltman, Matthew H. Marmolejo, Ruth Zadikany and Rebecca B. Johns 31 . (gk) (Entered: 04/30/2014)
05/05/2014	37	REPLY in support of MOTION to Strike Complaint (Attorney Civil Case Opening), 1 *Pursuant to California Code of Civil Procedure 425.16* 19 filed by Defendant City of Glendale. (Ellis, Bradley) (Entered: 05/05/2014)
05/05/2014	38	REPLY in support of MOTION to Dismiss Case *and/or Strike Pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(6), and 12(f)* 20 filed by Defendant City of Glendale. (Ellis, Bradley) (Entered: 05/05/2014)
05/13/2014	39	APPLICATION for Leave to Participate as Amicus Curiae; Memorandum of Points and Authorities; Declaration of Barry A. Fisher filed by Proposed Amicus Curiae The Global Alliance for Preserving the History of WW II in Asia. Lodged Proposed Order.(Attorney Barry A Fisher added to party The Global Alliance for Preserving the History of WW II in Asia(pty:mov))(gk) (Entered: 05/14/2014)
05/13/2014	40	MEMORANDUM of Names, etc. of Counsel Appearing in Action Re Application

		of Proposed Amicus Curiae to File a Brief as Amicus Curiae 39 filed by Movant The Global Alliance for Preserving the History of WW II in Asia. (gk) (Entered: 05/14/2014)
05/13/2014	41	CERTIFICATION AND NOTICE of Interested Parties filed by Movant The Global Alliance for Preserving the History of WW II in Asia. (gk) (Entered: 05/14/2014)
05/13/2014	42	PROOF OF SERVICE filed by Movant The Global Alliance for Preserving the History of WW II in Asia, re Application for Leave to Participate as Amicus Curiae, Memorandum of Points and Authorities, Declaration of Barry A. Fisher 39 , Proposed Order, Proposed Brief, Memorandum of Names, etc. of Counsel Appearing in Action Re Application of Proposed Amicus Curiae to File a Brief as Amicus Curiae 40 , Certification and Notice of Interested Parties 41 , Proof of Service, served on 5/13/2014. (gk) (Entered: 05/14/2014)
07/03/2014	43	MEMORANDUM in Opposition to EX PARTE APPLICATION for Leave to File Amicus Brief 39 *with Proof of Service* filed by Plaintiffs GAHT-US Corporation, Michiko Shiota Gingery, Koichi Mera. (DeClercq, William) (Entered: 07/03/2014)
07/09/2014	44	REPLY in support of a motion EX PARTE APPLICATION for Leave to File Amicus Brief 39 filed by Movant The Global Alliance for Preserving the History of WW II in Asia. (Fisher, Barry) (Entered: 07/09/2014)
07/22/2014	45	EX PARTE APPLICATION for Leave to Appear As Amicus And File Two Declarations of Survivors in Support of Defendant City of Glendale's Motion to Dismiss filed by Amicus Korean American Forum of California. (Attachments: # 1 Declaration of Il Chul Kang in Support of Defendants' Motion to Dismiss, # 2 Declaration of Ok-Seon Lee in Support of Defendants' Motion to Dismiss, # 3 Proposed Order)(Attorney Catherine Elizabeth Sweetser added to party Korean American Forum of California(pty:am))(Sweetser, Catherine) (Entered: 07/22/2014)
07/22/2014	46	DISCLOSURE of Interested Parties filed by Amicus Korean American Forum of California (Sweetser, Catherine) (Entered: 07/22/2014)
08/04/2014	47	MINUTES - IN CHAMBERS by Judge Percy Anderson: Before the Court are a Special Motion to Strike Pursuant to California Code of Civil Procedure section 425.16 ("Anti-SLAPP Motion") 19 and a Motion to Dismiss Pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), or to Strike Pursuant to Rule 12(f) ("Motion to Dismiss") 20 filed by the Defendant City of Glendale. The Court denies the parties' Requests for Judicial Notice. The Ex Parte Applications for Leave to Appear as Amicus Curiae 39 , 45 are denied without prejudice. The Court concludes that Plaintiffs lack standing to pursue their first claim for violations of the United States Constitution's provisions concerning foreign affairs powers and the Supremacy Clause. The Court additionally determines that the Complaint's first claim also fails to state a claim upon which relief can be granted. The Court therefore dismisses the Complaint's first claim with prejudice. The Court declines to exercise supplemental jurisdiction over the Complaint's remaining state law claim and dismisses that claim without prejudice. Pursuant to 28 U.S.C. Section 1367(d), this Order acts to toll plaintiffs' statute of limitations on their state law claim for a period of 30 days, unless state law provides for a longer tolling period. Defendant's Anti-SLAPP Motion is denied as moot. Court Reporter: Not Reported. (gk) (Entered: 08/04/2014)

08/04/2014	48	JUDGMENT by Judge Percy Anderson: Pursuant to the Court's 8/4/2014 Minute Order granting the Motion to Dismiss filed by defendant City of Glendale ("Defendant"), which dismissed the sole federal claim asserted by plaintiffs Michiko Shiota Gingery, Koichi Mera, and GAHT-USA Corporation (collectively "Plaintiffs") with prejudice, and declined to exercise supplemental jurisdiction over Plaintiffs' remaining state law claim and dismissed that claim without prejudice, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Plaintiffs' federal constitutional claim for violation of the foreign affairs power and Supremacy Clause is dismissed with prejudice and Plaintiffs' remaining state law claim is dismissed without prejudice. IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiffs take nothing and that Defendant shall have its costs of suit. (MD JS-6, Case Terminated). (gk) (Entered: 08/04/2014)
09/03/2014	49	NOTICE OF APPEAL to the Federal Circuit filed by Plaintiffs GAHT-US Corporation, Michiko Shiota Gingery, Koichi Mera. Appeal of Judgment,,, 48 , Order on Ex Parte Application to File Amicus Brief, Order on Ex Parte Application for Leave, Order on Motion to Strike, Order on Motion to Dismiss Case,,,,,,,,,,,,,,,,,,,, 47 (Appeal fee of $505 receipt number 0973-14387606 paid.) (Attachments: # 1 Exhibit EXHIBIT A - MINUTES, # 2 Exhibit EXHIBIT B - JUDGMENT)(DeClercq, William) (Entered: 09/03/2014)
09/03/2014	50	NOTICE OF ERRATA filed by Plaintiffs GAHT-US Corporation, Michiko Shiota Gingery, Koichi Mera. correcting Notice of Appeal to Federal Circuit Court of Appeals, 49 *INCORRECT EVENT SELECTED - Plaintiffs appeal to the Ninth Circuit Court of Appeals, not the Federal Circuit Court of Appeals* (DeClercq, William) (Entered: 09/03/2014)
09/03/2014	51	NOTICE OF APPEAL to the 9th CCA filed by Plaintiffs GAHT-US Corporation, Michiko Shiota Gingery, Koichi Mera. Appeal of Judgment,,, 48 , Order on Ex Parte Application to File Amicus Brief, Order on Ex Parte Application for Leave, Order on Motion to Strike, Order on Motion to Dismiss Case,,,,,,,,,,,,,,,,,,,, 47 (Appeal fee FEE NOT PAID.) (Attachments: # 1 Exhibit EXHIBIT A - MINUTES, # 2 Exhibit EXHIBIT B - JUDGMENT)(DeClercq, William) (Entered: 09/03/2014)
09/04/2014	52	NOTIFICATION by Circuit Court of Appellate Docket Number 14-56440, 9th Circuit regarding Notice of Appeal to 9th Circuit Court of Appeals 51 as to Plaintiff GAHT-US Corporation, Michiko Shiota Gingery, Koichi Mera. (mat) (Entered: 09/04/2014)

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