APPENDIX A-2

FILED

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VICTORIA ELIA KALDAWI, Plaintiff-Appellant, v. THE STATE OF KUWAIT; et al., Defendants-Appellees.	No. 17-55389 D.C. No. 2:14-cv-07316-JAK-JPR Central District of California, Los Angeles ORDER

Before: WALLACE, SILVERMAN, and BYBEE, Circuit Judges.

Kaldawi's motion to file an oversized petition for rehearing en banc (Docket Entry No. 22) is granted.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Kaldawi's petition for rehearing en banc (Docket Entry No. 21) is denied.

Kaldawi's motion to expedite case (Docket Entry No. 23) is denied as unnecessary.

No further filings will be entertained in this closed case.

APPENDIX A-3

NOT FOR PUBLICATION

FILED

DEC 26 2017

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VICTORIA ELIA KALDAWI, Plaintiff-Appellant, v. THE STATE OF KUWAIT; et al., Defendants-Appellees.	No. 17-55389 D.C. No. 2:14-cv-07316-JAK-JPR MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
John A. Kronstadt, District Judge, Presiding

Submitted December 18, 2017**

Before: WALLACE, SILVERMAN, and BYBEE, Circuit Judges.

Victoria Elia Kaldawi appeals pro se from the district court's judgment dismissing her claims against the sovereign defendants for lack of subject matter jurisdiction and denying her motion to enter default judgment and dismissing her claims against the individual defendants We have jurisdiction under 28 U.S.C.

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* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

§ 1291. We review de novo subject matter jurisdiction under the Foreign Sovereign Immunities Act ("FSIA"), *Phaneuf v. Republic of Indonesia*, 106 F.3d 302, 304-05 (9th Cir. 1997), and determinations as to personal jurisdiction, *Love v. Associated Newspapers, Ltd.*, 611 F.3d 601, 608 (9th Cir. 2010). We may affirm on any basis supported by the record. *Thompson v. Paul*, 547 F.3d 1055, 1058-59 (9th Cir. 2008). We affirm.

The district court properly dismissed Kaldawi's claims against the sovereign defendants for lack of subject matter jurisdiction because Kaldawi failed to establish an exception to the sovereign defendants' immunity under the FSIA. *See Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 443 (1989) (statutory exceptions to FSIA provide sole basis for jurisdiction over a foreign state); *see also In re Tuli*, 172 F.3d 707, 712 (9th Cir. 1999) ("When entry of judgment is sought against a party who has failed to plead or otherwise defend, a district court has an affirmative duty to look into its jurisdiction over both the subject matter and the parties."). The district court did not abuse its discretion in denying Kaldawi's motion to enter default against these defendants for the same reason. *See* 28 U.S.C. § 1608(e) ("No judgment by default shall be entered by a court of the United States . . . against a foreign state . . . unless the claimant establishes his claim or right to relief by evidence satisfactory to the court."); *Dreith v. Nu Image, Inc.*, 648 F.3d 779, 786 (9th Cir. 2011) (standard of review).

Dismissal of Kaldawi's claims against Al-Fahed, Al-Suheil and Al-Fares for lack of personal jurisdiction was proper because Kaldawi did not establish that these defendants had "certain minimum contacts" with California "such that the maintenance of the suit d[id] not offend the traditional notions of fair play and substantial justice." *Love*, 611 F.3d at 609 (citation and internal quotation marks omitted). The district court did not abuse its discretion in denying Kaldawi's motion to enter default judgment against these defendants for the same reason. *See Tuli*, 172 F.3d at 712 (it is proper to avoid entry of default judgment if there is no personal jurisdiction over a defendant); *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986) (standard of review).

Kaldawi's motion to expedite case and ruling (Docket Entry No. 17) is denied as unnecessary.

AFFIRMED.

APPENDIX B-1

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. LA CV14-07316 JAK (JPRx) Date March 17, 2017

Title Victoria Elia Kaldawi v. The State of Kuwait, et al.

Present: The Honorable JOHN A. KRONSTADT, UNITED STATES DISTRICT JUDGE

Andrea Keifer	Not Reported
Deputy Clerk	Court Reporter / Recorder
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Not Present	Not Present

Proceedings: **(IN CHAMBERS) ORDER RE PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT (DKT. 64);**

PLAINTIFF'S APPLICATION FOR DEFAULT JUDGMENT AGAINST THE STATE OF KUWAIT, MINISTRY OF INTERIOR AND JAWAD HUSSAIN MEERZA (DKT. 61) JS-6

I. Introduction and Procedural Background

Victoria Elia Kaldawi ("Plaintiff"), who is self-represented, filed this action on September 18, 2014. The claims arise out of her alleged unlawful detention and subsequent expulsion from Kuwait in 1995. The defendants named in the Complaint are the State of Kuwait and the Kuwait Ministry of Interior ("Ministry"), General Fahed Ahmad Al-Fahed ("Al-Fahed"), Abdullah Abdul-Rahman Al-Fares ("Al-Fares"), Abdul-Rahman Al-Suheil ("Al-Suheil") and Jawad Hussain Meerza ("Meerza") (collectively, "Defendants"). Dkt. 3. The Complaint advances ten claims against all Defendants: (i) "Torture, Cruel Inhuman and Degrading Treatment"; (ii) "Kidnapping & Illegal Abduction"; (iii) Assault; (iv) Battery; (v) "Denial of Right to Consular Access in Violation of the Vienna Convention on Consular Relations"; (vi) "Arbitrary Arrest & Incommunicado Detention"; (vii) "Libel & Slander - Defamation of Personal Reputation & Business Goodwill"; (viii) "Denial of Procedural Due Process of Law in Criminal Proceedings"; (ix) "Wrongful Expulsion without Due Process of Law"; and (x) "Continuing Violations of International Human Rights Laws and Instruments Binding upon Kuwait."

None of the Defendants has appeared in this action. On February 17, 2016, defaults were entered as to Al-Fahed, Al-Fares and Al-Suheil, and Plaintiff was directed to file a noticed motion for the entry of a default judgment as to each on or before March 18, 2016. Dkt. 51. The same order denied Plaintiff's request for entry of default as to the remaining Defendants -- Kuwait, the Ministry and Meerza -- because Plaintiff had not shown that each had been served with the Complaint. Subsequently, the Court, *sua sponte*, issued an Order to Show Cause ("OSC") why these unserved parties should not be dismissed

due to Plaintiff's lack of prosecution. Dkt. 51 at 4. Plaintiff filed a timely response to the OSC, as well as several subsequent updates. Dkt. 53, 54, 57. She then filed an application for entry of default as to Kuwait, the Ministry and Meerza ("Application"). Dkt. 61.

On April 19, 2016, Plaintiff filed a Motion for Default Judgment as to Al-Fahed, Al-Fares and Al-Suheil ("Motion"). Dkt. 64. On April 21, 2016, these matters were taken under submission. Dkt. 66. On May 25, 2016, Plaintiff filed a request for oral argument. Dkt. 74. The request was granted and a hearing on the Application and Motion was held on July 21, 2016. Dkt. 75. At the hearing, the Application and Motion were **DENIED**, with this written Order to follow. Dkt. 76.

On July 29, 2016, in response to an issue raised by the Court, Plaintiff submitted a copy of a judgment issued in a prior proceeding in the United States District Court, District of Columbia, Case No. 05-01385 UNA. Dkt. 77. On August 2, 2016, the Court issued an Order that identified certain deficiencies in Plaintiff's pleadings, and required Plaintiff to submit a supplemental brief that addressed them. Dkt. 78. In the August 2 Order, Plaintiff was advised that if she did not show the basis for any viable claim, this action could be dismissed with prejudice. *Id.* at 2.

On October 3, 2016, Plaintiff submitted the requested supplemental brief ("Supplemental Brief"). Dkt. 90. In addition to addressing the pleading deficiencies previously identified to Plaintiff, the Supplemental Brief added new theories of recovery under the Justice Against Sponsors of Terrorism Act ("JASTA"), Pub. L. No. 114–222, 130 Stat. 852 (2016).

Having considered all of these matters, and for the reasons stated in this Order, both the Application and Motion are **DENIED**, and this action is **DISMISSED** with prejudice.

II. Factual and Procedural Background

A. In General

The Complaint does not set forth the factual basis for its claims in a coherent or organized manner as required by Fed. R. Civ. P. 8. However, it presents a description of the history and content of international human rights treaties and principles as well as information about Plaintiff's life, background and values. *See, e.g.*, Dkt. 3, ¶ 13 ("This Case represents Plaintiff Victoria's Cry for Justice to prevail; as Innocent Godly Christian Peacemaker Faithful Loyal US American Citizen Woman of Lebanese Origin, born in Kuwait February 26th . . . as a Victim of wrong forcible circumstances, caused by Wars, Immigration (problem of where do we belong safely home), Wrong Laws of Nations, Prejudice, Discrimination & dealings with Evil Men . . . ." (capitalization in original)).

The Complaint alleges that Plaintiff is an American citizen, who was born in Lebanon, and resides in California. *Id.* ¶ 6. Plaintiff lived with her parents in Kuwait until 1986. *Id.* ¶¶ 13, 19, 21. Plaintiff then moved to the United States. In 1991, while residing in California, Plaintiff was offered the opportunity to travel to Kuwait to use her knowledge of the country and her contacts to assist American companies in

doing business there. *Id.* ¶ 23. Plaintiff then went to Kuwait, where she worked from 1991 to 1995. *Id.*

The Complaint alleges that under the law of Kuwait, Plaintiff was required to have a Kuwaiti sponsor to enter the country and do business there. *Id.* ¶ 19. To satisfy these requirements, Plaintiff signed a contract pursuant to which she and Al-Fahed would work as partners to obtain contracts for American companies that wanted to business in Kuwait. *Id.* ¶ 23. The Complaint alleges that as their work proceeded, several disagreements arose between Al-Fahed and Plaintiff. *Id.* ¶ 24. Consequently, Plaintiff decided to work by herself to negotiate contracts. She did so with respect to an agreement between Martin Explosives and a Kuwaiti company that was representing Turkey. *Id.* The Complaint alleges that this contract was valued at $11 Million. *Id.* The Complaint alleges that Al-Fahed became upset due to Plaintiff's success, and then tried to undermine her work. *Id.* Plaintiff then ended her business relationship with Al-Fahed. *Id.*

In 1992, Meerza allegedly became the sponsor for Plaintiff so that she could continue doing business in Kuwait. *Id.* ¶ 26. Thereafter, it is alleged that Plaintiff authored and released, "Kuwait International Directory 1994 – Economic, Investment and Touristic" ("Directory"). *Id.* The Complaint alleges that this 400-page directory and reference book included historic and other information about Kuwait. *Id.* The Complaint alleges that the Directory was original and well received throughout Kuwait. *Id.* ¶ 27. The government of Kuwait as well as other public and private organizations purchased the Directory. *Id.*

The Complaint alleges that Al-Fahed was upset by Plaintiff's success with the Directory and that he then began to threaten and harass Plaintiff, and demanded that she leave the country. *Id.* ¶ 28. The Complaint alleges that he was also responsible when, on July 4, 1995, two agents of the Kuwaiti General Department of Criminal Investigations confronted Plaintiff at her apartment. *Id.* ¶¶ 30, 46. They were then joined by Al-Suheil, who was their supervisor. *Id.* ¶ 31. Al-Suheil asked Plaintiff several questions, and the agents searched her apartment, and found and took possession of some of her property. *Id.* The agents then asked Plaintiff to leave with them, and promised that she could make a phone call from their office. *Id.* ¶ 32. The Complaint alleges that the agents then forcibly took Plaintiff to their office, held her there against her will, but did not allow her to contact anyone. *Id.* Plaintiff informed the agents that she was an American citizen. Nonetheless, they refused to allow her to contact officials at the U.S. Embassy or Consulate. *Id.* The Complaint alleges that personnel at the U.S. Embassy were informed of Plaintiff's detention, but the Kuwaiti agents influenced those employed at the Embassy and they decided not to interfere. *Id.* ¶ 42.

The Complaint alleges that while Plaintiff was detained, she was assaulted and "pushed [ ] harshly," then locked in a jail cell. *Id.* ¶ 33. Plaintiff was not told why she was being held. *Id.* Her detention continued for four days during which she did not have access to a lawyer and was not advised of her legal rights. *Id.* Plaintiff was detained in a cell that was very dirty, was provided with "horrible food," and had to sit and sleep on the floor near two other women. *Id.* ¶ 34. Plaintiff felt shocked, horrified, humiliated, ashamed, degraded and traumatized. *Id.*

During the second day of detention, Plaintiff was interviewed by another agent who told Plaintiff that she

had to leave Kuwait. *Id.* ¶ 35. The Complaint alleges that Plaintiff told the agent that she had no criminal record and should not be required to leave the country. *Id.* In response, an agent allegedly prepared a letter that was to be signed by the head of the Kuwaiti Passport Administration, stating that Plaintiff was unwanted in Kuwait, and should be denied entry if she tried to return. *Id.*

The Complaint alleges that criminal records in Kuwait were falsified to reflect that Plaintiff had been charged with prostitution. They also allegedly included false statements about other criminal activities and security-related notes. The alleged purpose of these fabricated claims was to make it appear that Plaintiff had committed a crime. *Id.* On July 8, 1995, four days after her initial detention, Plaintiff was taken to her apartment and allowed to pack a few things, but was permitted to take all of her personal belongings. *Id.* ¶ 40. She was then transported to an airport and was required to board a flight to Lebanon. *Id.* ¶ 41. The Complaint alleges that Plaintiff lost thousands of copies of the Directory, because she was unable to sell them or take them with her when she was required to leave Kuwait. *Id.* ¶ 44. After spending some time in Lebanon, Plaintiff returned to the United States on December 24, 1995. *Id.* ¶ 45.

The Complaint alleges that as a result of this conduct, Plaintiff suffers from Post-Traumatic Stress Disorder ("PTSD"). *Id.* Plaintiff also allegedly lost several pending business opportunities in Kuwait, the corresponding income and her favorable reputation. *Id.* ¶ 47.

B. Individual Defendants

The Complaint alleges that each of the individual Defendants, except Meerza, is a former member of the Kuwaiti government. Al-Fahed is alleged to be the former Head of Security. *Id.* ¶ 9. The Complaint alleges that Al-Fares is the former Head of the General Department of Criminal Investigation. *Id.* ¶ 10. Al-Fares allegedly cooperated with, and took instructions from, Al-Fahed, and ordered his agents to detain Plaintiff. *Id.* The Complaint alleges that Al-Suheil is a former supervisor and agent of the General Department of Criminal Investigation. *Id.* ¶ 11. Al-Suheil is allegedly the supervisor that was assigned by Al-Fahed and Al-Fares to take the aforementioned actions as to Plaintiff. *Id.*

The Complaint alleges that Meerza is a dual citizen of Kuwaiti and the United States. *Id.* ¶ 12. It also alleges that he knew about Plaintiff's abduction and unlawful detention, but failed to take any steps to help her. *Id.* Instead, it is alleged that Meerza "silently partnered with the crimes, and the conspiracy" against Plaintiff. *Id.*

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. LA CV14-07316 JAK (JPRx) Date March 17, 2017

Title Victoria Elia Kaldawi v. The State of Kuwait, et al.

III. Analysis

A. Application for Entry of Default as to Meerza

1. Legal Standard

Pursuant to Fed. R. Civ. P. 4(f)(1), service on an individual in a foreign country is governed, first, "by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents." Both the United States and Kuwait are members of the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents (the "Hague Convention"), Nov. 15, 1965, 20 U.S.T. 361, 656 U.N.T.S. 163. The Hague Convention requires that each member country establish a "Central Authority" to process requests for service from someone in another member country. *Id.* art. 2. If a Central Authority determines that the request for service does not comply with the provisions of the Hague Convention, it "shall promptly inform the applicant and specify its objections to the request." *Id.* art. 4. If there are no objections, the Central Authority then serves the documents on the named defendants, in accordance with the domestic law of the country where service is effected. *Id.* art. 5. Finally, the Central Authority must complete a certificate ("Certificate"), which states whether service has been effected or the reasons why it has not occurred. *Id.* at. 6. The Central Authority is required to return the Certificate directly to the applicant. *Id.*

Article 15 of the Hague Convention provides that member states may choose to allow the entry of judgment even if no Certificate of service or delivery has been received when the following conditions are satisfied. First, the document was served in accordance with the Hague Convention. Second, it has been at least six months since the date of service. Third, all reasonable efforts were made to obtain the Certificate. The United States, which is a member State, has determined that a default judgment may be entered if these three conditions met. *See Marschauser v. Travelers Indem. Co.*, 145 F.R.D. 605, 608 (S.D. Fla. 1992).

2. Application

Plaintiff made several attempts to serve Defendants. Dkt. 11, 12, 15-18, 22-24, 29, 35, 36, 39, 40. Plaintiff's third attempt, which she sent by Federal Express (Dkt. 32), was delivered to the Kuwait Ministry of Justice on May 14, 2015. Dkt. 31 at 4-5. Plaintiff reports that she sent several follow-up emails and made phone calls to the Ministry of Justice, the Minister of Justice and the Head of the Central Authority Office to determine the status of service, and to request that the Certificates be mailed to her. Dkt. 45 at 1-2. Plaintiff's January 15, 2016 status report states that she received confirmation that all Defendants except Meerza had been served. Dkt. 50 at 2. In light of this statement, an Order to Show Cause ("OSC") issued in this action as to why Meerza should not be dismissed for lack of prosecution. Dkt. 51 at 4.

Plaintiff filed a timely response to the OSC (Dkt. 53) as well as a later update. Dkt. 54. In her first response, Plaintiff stated that Meerza "should have been served through the Central Authority to his

mailing address, though this Defendant had been in hospital and in ICU since last year due to severe heart condition." Dkt. 53 at 2-3. In the updated response, Plaintiff stated that "all Defendants except Jawad Hussain Meerza who was served later, were served by the Central Authority on May 18, 19, and May 20, 2015." Dkt. 54 at 2. One inference from these reports is that Plaintiff contends that Meerza was served after May 20, 2015. However, because the reports were inconsistent, Plaintiff was ordered to file a further response to the OSC to explain "why her report on January 15, 2016 (Dkt. 50) stated that Meerza was not served, while her response to the OSC (Dkt. 54) states that Meerza 'was served later.'" Dkt. 55 at 2.

On March 14, 2016, Plaintiff filed a supplemental response to the OSC. Dkt. 57. There, she stated that the head of the International Relations Department, Zakaria Al-Ansari ("Al-Ansari") promised her that all Defendants would be served. Al-Ansari was not able to confirm whether Meerza had been served. Plaintiff attempted to contact Meerza directly in February 2016, while he was hospitalized, but he refused to speak with her. *Id.* at 6. Plaintiff states that, on March 5, 2016, she made another attempt to contact Meerza. At that time he allegedly spoke with her and told her that he was in critical condition at the hospital due to major heart failure. *Id.* However, Plaintiff does not report whether she received confirmation from Meerza that he had been served. Instead, Plaintiff states:

> I believe he got served like other defendants, as known that his relatives and family helps him get his mail, and I had spoken to his cousin in Kuwait to leave him a message, but I Plaintiff, not sure if he can respond any further to this complaint, therefore, I trust your Honorable Judge to decide whether to keep him as defendant or dismiss him.

Id. (underlining omitted) (errors in original).

Based on the foregoing, Plaintiff has not established that Meerza has been served, notwithstanding that she has been provided with several opportunities to do so over a two-year period. Moreover, Plaintiff has stated that Meerza was hospitalized and in critical condition. At the hearing on the Motion and Application, Plaintiff stated that Meerza should be dismissed due to his health. Dkt. 76. Therefore, Plaintiff's Application to enter default as to Meerza is **DENIED** with prejudice and Meerza is **DISMISSED**.

B. Application for Entry of Default as to Kuwait and the Ministry

1. Legal Standard

a) Service of Process

Fed. R. Civ. P. 4(j)(1) provides that, "[a] foreign state or its political subdivision, agency, or instrumentality must be served in accordance with [the Foreign Sovereign Immunities Act of 1976 ("FSIA")], 28 U.S.C. § 1608." Kuwait is a foreign state, and the Ministry is one of its political subdivisions. *See Bodoff v. Islamic Republic of Iran*, 907 F. Supp. 2d 93, 100 (D. D.C. 2012) ("[D]efendant Iran is plainly a foreign state. With respect to defendant MOIS [Iranian Ministry of Information and Security], the FSIA defines foreign state to

include 'a political subdivision . . . . or an agency or instrumentality of a foreign state.' 28 U.S.C. § 1603(a). Applying this definition, this Court finds (as it has previously) that MOIS is a political subdivision of Iran, and so 'is treated as a member of the state of Iran itself.'").

Section 1608 of the FSIA provides four methods for serving a foreign state or political subdivision. 28 U.S.C. § 1608(a). They are listed in the order of preference in the statute, which controls the sequence of their potential use. Until a preferred method is attempted or deemed inapplicable to the party to be served, the next alternative cannot be used. *See Peterson v. Islamic Republic of Iran*, 627 F.3d 1117, 1129 n.4 (9th Cir. 2010) (citing *Ben-Rafael v. Islamic Republic of Iran*, 540 F. Supp. 2d 39, 52 (D.D.C. 2008)). The first method requires service "in accordance with any special arrangement for service between the plaintiff and the foreign state." *Id.* § 1608(a)(1). If there is no such arrangement, service is to be effected "in accordance with an applicable international convention on service of judicial document." *Id.* § 1608(a)(2). Because there is no special arrangement between Plaintiff and Kuwait, and both Kuwait and the United States are signatories to the Hague Convention, service pursuant to the Hague Convention is required.

b) Entry of Default and FSIA Immunity

Section 1608(e) provides: "No judgment by default shall be entered by a court of the United States or of a State against a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state, unless the claimant establishes his claim or right to relief by evidence satisfactory to the court." Section 1608(e) parallels Fed. R. Civ. P. 55(d), which allows for entry of a default judgment against the United States "only if the claimant establishes a claim or right to relief by evidence that satisfies the court." These extra protections are in place in part because a foreign government may be slow to respond to a civil action, particularly with respect to one initiated here. *See Jerez v. Republic of Cuba*, 775 F.3d 419, 422 (D.C. Cir. 2014). Section 1608(e) codifies the well-known requirement that due process considerations require plaintiffs seeking default judgment to show a prima facie case. *Moore v. United Kingdom*, 384 F.3d 1079, 1090 (9th Cir. 2004).

The FSIA provides broad immunity to foreign states. "Subject to existing international agreements to which the United States is a party at the time of enactment of this Act a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States except as provided in sections 1605 to 1607 of this chapter." 28 U.S.C. § 1604. Therefore, the first step in the present analysis is to determine whether Kuwait and the Ministry are immune pursuant to the provisions of the FSIA.[1]

"The FSIA 'provides the sole basis for obtaining jurisdiction over a foreign state in the courts of this country.'" *Adler v. Fed. Republic of Nigeria (Adler II)*, 219 F.3d 869, 874 (9th Cir. 2000). "Under the FSIA, a foreign state is presumptively immune from suit in federal court unless one of the exceptions to the statute applies." *Id.* The presumption of immunity applies where a defendant makes out a prima facie case that it is a foreign state or where "it is apparent from the pleadings or uncontested that the defendant

[1] FSIA immunity is not extended to the individual Defendants. *Samantar v. Yousuf*, 560 U.S. 305 (2010) (a foreign official sued for conduct undertaken in an official capacity is not entitled to "foreign state" immunity under the FSIA).

is a foreign state." *Peterson*, 627 F.3d at 1124 (9th Cir. 2010). At that point, "the burden of production shifts to the plaintiff to offer evidence that an exception applies. . . . If the plaintiff satisfies her burden of production, jurisdiction exists unless the defendant demonstrates by a preponderance of the evidence that the claimed exception does not apply." *Id.* at 1125 (internal citations omitted). "This burden-shifting scheme, which puts most of the weight on the plaintiff, is partly motivated by the fact that federal jurisdiction does not exist unless one of the exceptions to immunity from suit applies." *Id.*

2. Application

Plaintiff relies on two exceptions to the FSIA and contends that each establishes a basis for jurisdiction. They are §1605(a)(2) ("commercial activity exception") and §1605(a)(5)(A)&(B) ("tortious act exception"). Dkt. 3, ¶ 2; Dkt. 90 at 5. As a threshold matter, the jurisdictional allegations in the Complaint do not satisfy the requirements of Fed. R. Civ. P. 8. That Rule provides that "[a] pleading that states a claim for relief must contain . . . a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it." Fed. R. Civ. P. 8(a)(1). Rule 8(a) is governed by the notice pleading standard of *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and applies to complaints that allege an exception to foreign sovereign immunity. *Doe v. Holy See*, 557 F.3d 1066, 1074-75 (9th Cir. 2009). Although the Complaint refers to specific exceptions to the FSIA, it does not provide any explanation with respect to why any of them applies in this action. For this independent ground, the Complaint is deficient and does not warrant the entry of a default judgment.

Further, a review of the merits of the exceptions that are claimed while applying a generous interpretation of the allegations in the Complaint leads to the same result.

a) § 1605(a)(2) ("commercial activity exception")

Under 28 U.S.C. § 1605(a)(2), a foreign state is not immune from jurisdiction in a case

> [1] in which the action is based upon a commercial activity carried on in the United States by the foreign state;
>
> or [2] upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere;
>
> or [3] upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States . . . .

Each of these three clauses is independently sufficient to establish an exception to the FSIA. *Cf. Republic of Argentina v. Weltover, Inc.*, 504 U.S. 607, 611 (1992) ("respondents relied only on the third clause of § 1605(a)(2) to establish jurisdiction").

Neither the allegations in the Complaint nor the arguments advanced in the Supplemental Brief are sufficient to establish the basis for applying the commercial activity exception. There are no allegations that Kuwait or the Ministry engaged in a commercial activity. Nor are there any sufficient to show what activity occurred and that it caused a direct effect in the United States.

First, the commercial activities described in the Complaint are related to obtaining visas and business contracts for American companies and selling the Directory. These activities were all allegedly undertaken by Plaintiff and her partners, Al-Fahed and Meerza. There are no sufficient allegations as to any commercial activity by Kuwait or the Ministry. The Complaint makes a few allegations that certain Government entities contracted with Plaintiff to purchase the Directory and to provide certain advertising. But, these claimed actions are not the focus of the claims advanced by Plaintiff. Instead, those claims arise from her alleged unlawful detention and deportation. This is not "commercial activity." *Saudi Arabia v. Nelson*, 507 U.S. 349, 361-62 (1993) ("[T]he intentional conduct alleged here (the Saudi Government's wrongful arrest, imprisonment, and torture of Nelson) could not qualify as commercial under the restrictive theory. The conduct boils down to abuse of the power of its police by the Saudi Government, and however monstrous such abuse undoubtedly may be, a foreign state's exercise of the power of its police has long been understood for purposes of the restrictive theory as peculiarly sovereign in nature. . . . Exercise of the powers of police and penal officers is not the sort of action by which private parties can engage in commerce.").

Second, the Complaint does not plead that any conduct was carried out in the United States, or caused a direct effect here. "[A]n effect is direct if it follows as an immediate consequence of the defendant's activity." *Weltover*, 504 U.S. at 618 (alterations and quotations omitted). Accordingly, effects that are "at best secondary or incidental results" are not direct. *Corzo v. Banco Cent. de Reserva del Peru*, 243 F.3d 519, 525 (9th Cir. 2001). "[T]he effect must also be more than 'purely trivial' or 'remote and attenuated.'" *Terenkian v. Republic of Iraq*, 694 F.3d 1122, 1134 (9th Cir. 2012). "[M]ere financial loss by a person-individual or corporate-in the U.S. is not, in itself, sufficient to constitute a 'direct effect.'" *Adler v. Fed. Republic of Nigeria (Adler I)*, 107 F.3d 720, 726-27 (9th Cir. 1997).

"[A] direct effect requires that 'legally significant acts giving rise to the claim occurred' in the United States." *Adler II*, 219 F.3d at 876. "[A] court must look to the place where legally significant acts giving rise to the claim occurred' in determining the place where a direct effect may be said to be located." *Terenkian*, 694 F.3d at 1134 (internal quotations omitted). Courts "may not interpret § 1605(a)(2) 'in a manner that would give the district courts jurisdiction over virtually any suit arising out of an overseas transaction in which an American citizen claims to have suffered a loss from the acts of a foreign state.'" *Id.* at 1135 (quoting *United World Trade, Inc. v. Mangyshlakneft Oil Prod. Ass'n*, 33 F.3d 1232, 1239 (10th Cir. 1994)). "[A] mere tangential effect in the United States from a breach that occurs elsewhere does not constitute a 'direct effect' . . . ." *Id.* at 1134 (citing *United World Trade, Inc.*, 33 F.3d at 1238, for proposition that "Congress did not intend to provide jurisdiction whenever the ripples caused by an overseas transaction manage eventually to reach the shores of the United States.").

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. LA CV14-07316 JAK (JPRx) Date March 17, 2017

Title Victoria Elia Kaldawi v. The State of Kuwait, et al.

Plaintiff's only alleged nexus between the wrongdoing by Defendants and the United States is that Plaintiff resides here. Plaintiff argues that she and Al Fahed entered Kuwait to facilitate business between the United States and Kuwait based on her "contracts signed by U.S. Companies." Dkt. 90 at 6. Plaintiff adds that the "Kuwait International Directory 1994" was published widely, including in the United States. *Id.* As made clear by the prior discussion of the scope of this exception, these allegations are not sufficient to warrant the application of the commercial activity exception.

b) § 1605(a)(5)(A)&(B) ("non-commercial tort exception")

Under 28 U.S.C. § 1605(a)(5), a foreign state is not immune from jurisdiction in a case

> not otherwise encompassed in paragraph (2) above, in which money damages are sought against a foreign state for personal injury or death, or damage to or loss of property, occurring in the United States and caused by the tortious act or omission of that foreign state or of any official or employee of that foreign state while acting within the scope of his office or employment; except this paragraph shall not apply to--
>
> > (A) any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function regardless of whether the discretion be abused, or
> >
> > (B) any claim arising out of malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights . . . .

"Section 1605(a)(5) is limited by its terms, however, to those cases in which the damage to or loss of property occurs *in the United States*. Congress' primary purpose in enacting § 1605(a)(5) was to eliminate a foreign state's immunity for traffic accidents and other torts committed in the United States, for which liability is imposed under domestic tort law." *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 439-40 (1989) (emphasis in original) (citing H.R. Rep., at 14, 20–21; S. Rep., at 14, 20–21). It is not sufficient that the alleged tort "may have had effects in the United States." *Id.* at 441. Instead, the non-commercial tort exception 'requires not only that personal injury or property damages occur in the United States, but that the tortious act or omission occur here." *Sec. Pac. Nat. Bank v. Derderian*, 872 F.2d 281, 285 n.8 (9th Cir. 1989). *McKeel v. Islamic Republic of Iran*, 722 F.2d 582 (9th Cir. 1983) applied the same reasoning:

> Section 1605(a)(5), the exception for noncommercial torts on which appellants rely, is directed primarily at the problem of traffic accidents in the United States caused by automobiles operated by a foreign embassy. The legislative history makes this clear. Admittedly section 1605(a)(5) is cast in general terms and, with certain exceptions, includes all tort actions for money damages not encompassed by the commercial activity exception in section 1605(a)(2). However, nothing in the legislative history suggests that Congress intended to assert jurisdiction over foreign states for events occurring wholly within their own territory. Such an intent would not be consistent with the prevailing practice in international law. That practice is that a state loses its sovereign immunity

for tortious acts only where they occur in the territory of the forum state. (internal citations omitted).

Id. at 587-88.

The allegations in the Complaint are unambiguous as to this issue. Thus, all of the alleged misconduct by the Defendants occurred in Kuwait. Therefore, the non-commercial tort exception does not apply.

3. 1605A ("terrorism exception" under JASTA)

In Plaintiff's Supplemental Brief, she argues that an exception to sovereign immunity is available under JASTA, a statute that abrogates the immunity of foreign states as to private actions seeking monetary relief for acts of international terrorism. Dkt. 90 at 10. The purpose of JASTA is "to provide civil litigants with the broadest possible basis, consistent with the Constitution of the United States, to seek relief against persons, entities, and foreign countries . . . that have provided material support, directly or indirectly, to foreign organizations or persons that engage in terrorist activities against the United States." Pub. L. No. 114–222, 130 Stat. 853.

JASTA allows for damages only in cases alleging "physical injury to person or property or death occurring in the United States and caused by . . . an act of international terrorism in the United States." 28 U.S.C. § 1605B. There are no such allegations in the Complaint. Even if the Complaint could be construed to claim that Plaintiff has continued to suffer some injury while in the United States, those injuries are due to action that occurred in Kuwait. Nor is there any allegation that Defendants participated in acts of terrorism as defined by 18 U.S.C. § 2331. For these reasons, this JASTA exception to sovereign immunity does not apply in this action.

* * *

For the foregoing reasons, there is no jurisdiction over Kuwait or the Ministry. Because there is no basis to enter a judgment against them, the Application as to Kuwait and the Ministry is **DENIED**, and these parties are **DISMISSED** with prejudice.

C. Motion for Default Judgment as to Al-Fahed, Al-Suheil and Al-Fares

1. Legal Standard

Local Rule 55-1 requires that a party moving for default judgment submit a declaration or include information with respect to each of the following: (1) when and against which party default has been entered; (2) the pleading as to which default has been entered; (3) whether the defaulting party is an infant or incompetent person, and if so, whether that person is represented by a general guardian, committee, conservator or other representative; (4) whether the Servicemembers Civil Relief Act, 50 U.S.C. App. § 521, applies to the defaulting party; and (5) whether notice has been served on the

defaulting party, if required by Fed. R. Civ. P. 55(b)(2).

Once the foregoing procedural requirements have been satisfied, whether to enter a default judgment is within the discretion of the court. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). In exercising this discretion, district courts should consider the following seven factors: (1) the possibility of prejudice to the plaintiff; (2) the merits of the plaintiff's substantive claim; (3) the sufficiency of the complaint; (4) the sum of money at stake in the action; (5) the possibility of a dispute concerning material facts; (6) whether the default was due to excusable neglect; and (7) the strong public policy favoring decisions on the merits (collectively, "the *Eitel* factors"). *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

2. Application

a) Procedural Requirements of Local Rule 55-1

Plaintiff has satisfied the procedural requirements of Local Rule 55-1. Default was entered against Al-Fahed, Al-Suheil and Al-Fares ("Defendants") on February 17, 2016. Dkt. 52. Defendants are neither infants nor incompetent persons. Defendants are not in a military service or otherwise exempt under the Servicemembers Civil Relief Act. Finally, notice of the Motion has been served on Defendants. Dkt. 64 at 2; Dkt. 69; Dkt. 70.

b) *Eitel* Factors

(1) Possibility of Prejudice

As a result of the failure of Defendants to appear or participate in this litigation, Plaintiff will suffer prejudice if a default judgment is not entered. Thus, absent its entry, Plaintiff would be left without a remedy. *Philip Morris USA v. Castworld Prods., Inc.*, 219 F.R.D. 494, 499 (C.D. Cal. 2003) ("Plaintiff would suffer prejudice if the default judgment is not entered because Plaintiff will be without other recourse for recovery."); *PepsiCo v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002) ("If Plaintiffs' motion for default judgment is not granted, Plaintiffs will likely be without other recourse for recovery."). Therefore, the first *Eitel* factor weighs in favor of granting the Motion.

(2) Substantive Merits and Sufficiency of the Claim

The second and third *Eitel* factors assess the substantive merit of the movant's claims and the sufficiency of its pleadings. These factors "require that a [movant] state a claim on which [it] may recover." *PepsiCo*, 238 F. Supp. 2d at 1175 (internal quotation marks omitted). Plaintiff asserts ten claims in the Complaint: (i) "Torture, Cruel Inhuman and Degrading Treatment"; (ii) "Kidnapping & Illegal Abduction"; (iii) Assault; (iv) Battery; (v) "Denial of Right to Consular Access in Violation of the Vienna Convention on Consular Relations"; (vi) "Arbitrary Arrest & Incommunicado Detention"; (vii) "Libel & Slander - Defamation of Personal Reputation & Business Goodwill"; (viii) "Denial of Procedural Due Process of Law in Criminal Proceedings"; (ix) "Wrongful Expulsion without Due Process of Law"; and (x) "Continuing Violations of

International Human Rights Laws and Instruments Binding upon Kuwait."

Plaintiff's claims are not sufficiently pleaded. They also lack substantive merit for several reasons.

First, there is no showing of personal jurisdiction over any of the Defendants. "[W]hen a court is considering whether to enter a default judgment, it may dismiss an action *sua sponte* for lack of personal jurisdiction." *In re Tuli*, 172 F.3d 707, 712 (9th Cir. 1999). "To avoid entering a default judgment that can later be successfully attacked as void, a court should determine whether it has the power, i.e., the jurisdiction, to enter the judgment in the first place." *Id.*

To establish personal jurisdiction, a party must show both that the long-arm statute of the forum state confers personal jurisdiction over an out-of-state defendant, and that the exercise of jurisdiction is consistent with federal due process requirements. *Gray & Co. v. Firstenberg Mach. Co., Inc.*, 913 F.2d 758, 760 (9th Cir. 1990). California's long-arm statute is coextensive with federal due process requirements. Cal. Civ. Proc. Code § 410.10; *Roth v. Garcia Marquez*, 942 F.2d 617, 620 (9th Cir. 1991). Personal jurisdiction may be exercised over a nonresident party who has "minimum contacts" with the forum state, such that the exercise of jurisdiction "does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (internal quotation marks omitted). Here, Plaintiff has not alleged any facts showing any contacts between any of Defendants and this District. That Plaintiff lives here, and continues to suffer the injurious effects of the alleged detention and expulsion here, is insufficient. *Walden v. Fiore*, 134 S. Ct. 1115, 1125 (2014) ("[M]ere injury to a forum resident is not a sufficient connection to the forum. Regardless of where a plaintiff lives or works, an injury is jurisdictionally relevant only insofar as it shows that the defendant has formed a contact with the forum State. The proper question is not where the plaintiff experienced a particular injury or effect but whether the defendant's conduct connects him to the forum in a meaningful way.").

The allegations in the Complaint, the arguments set forth in the Motion, and the supplemental arguments in Plaintiff's Supplemental Brief state that all relevant conduct occurred in Kuwait. There is no evidence that any of the individual Defendants have had any contacts with California or this District. Indeed, it is alleged that each is a former official of the Kuwaiti government who currently resides in Kuwait. Therefore, this factor weighs against the entry of a default judgment.

Second, Plaintiff asserts a series of claims that appear to be based on state tort law, each of which is time barred. "Although the statute of limitations is ordinarily an affirmative defense that the defendant must raise at the pleadings stage and that is subject to rules of forfeiture and waiver, district courts may dismiss an action *sua sponte* on limitations grounds in certain circumstances where the facts supporting the statute of limitations defense are set forth in the papers plaintiff himself submitted." *Donell v. Keppers*, 835 F. Supp. 2d 871, 877 (S.D. Cal. 2011) (quoting *Walters v. Indus. & Commer. Bank of China, Ltd.*, 651 F.3d 280, 293 (2d Cir. 2011)); *accord Taiwan Civil Rights Litig. Org. v. Kuomintang Bus. Mgmt. Comm.*, 486 F. App'x 671, 671-72 (9th Cir. 2012) (unpublished) ("Contrary to plaintiffs' contention, the district court did not err by addressing the statute of limitations issue sua sponte in ruling on plaintiffs' motion for default judgment.").

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. LA CV14-07316 JAK (JPRx) Date March 17, 2017

Title Victoria Elia Kaldawi v. The State of Kuwait, et al.

The limitations period under California law for claims based on assault, battery and other torts is two years. A claim for libel, slander or false imprisonment has a one-year limitations period. *Hassen v. Nahyan*, 2010 WL 9538408, at *15 (C.D. Cal. Sept. 17, 2010); Cal. Code Civ. Proc. §§ 335.1, 340(c).[2] All of the alleged conduct occurred in 1995, which was almost 20 years prior to the filing of this action. At the hearing on the Motion, Plaintiff stated that she was unable to bring this action earlier due to the trauma that resulted from the alleged misconduct by Defendants, her obligations to assist her parents who have had significant health issues, and the inability to engage counsel. There is no authority that either of the final two explanations tolls a limitations period. Even if Plaintiff's own health issues somehow impeded her timely filing of this action in a manner that would warrant tolling, there is no evidence that Plaintiff was incapacitated throughout the relevant period. On the contrary, the evidence shows that Plaintiff filed a very similar case in the District Court of the District of Columbia on July 12, 2005. *Kaldawi v. State of Kuwait, et al.*, Case No. 05-1385-UNA. Dkt. 77. That action was dismissed without prejudice on the same day that it was filed for failure to state a claim. Because it is likely that all of Plaintiff's claims are time barred, this also weighs against the entry of a default judgment.

Third, many of the claims asserted by Plaintiff are based on alleged violations of international treaties. Plaintiff cites the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant of Economic, Social and Cultural Rights, the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, and the Convention on the Elimination of Racial Discrimination. Plaintiff has not shown that any of these treaties provides a private cause of action. "Whether or not treaty violations can provide the basis for particular claims or defenses [] appears to depend upon the particular treaty and claim involved." *United States v. Lombera-Camorlinga*, 206 F.3d 882, 885 (9th Cir. 2000). *See Park v. Ashland Dist. Ranger*, 2009 WL 4547858, at *2 (D. Or. Dec. 1, 2009) ("Plaintiff brings claims for violations of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which he says implement the Universal Declaration of Human Rights. The treaties cited by plaintiff do not support a private right of action."); *Guaylupo–Moya v. Gonzalez*, 423 F.3d 121, 137 (2d Cir. 2005) ("provisions of the ICCPR do not create a private right of action or separate form of relief enforceable in United States courts"); *Sosa v. Alvarez-Machain*, 542 U.S. 692, 728 (2004) ("Several times, indeed, the Senate has expressly declined to give the federal courts the task of interpreting and applying international human rights law, as when its ratification of the International Covenant on Civil and Political Rights declared that the substantive provisions of the document were not self-executing."); *Serra v. Lappin*, 600 F.3d 1191, 1197 (9th Cir. 2010) (quoting *Sosa*, 542 U.S. 692, 728 (2004)) ("The ICCPR fails to satisfy either requirement because it was ratified 'on the express understanding that it was not self-executing and so did not itself create obligations enforceable in the federal courts.'").

[2] The Supplemental Brief cites several statutes and international conventions in which a statute of limitations does not apply to war crimes and crimes against humanity. Dkt. 90 at 16-20. However, none of these statutes and conventions refers to several of the tort claims here, which arise under California law. Further, there is no evidence that Defendants engaged in war crimes or crimes against humanity in connection with their alleged abuse of Plaintiff. Indeed, the allegations of the Complaint suggest that the conduct was the result of business disputes between Plaintiff and one or both of her former partners.

Plaintiff cites the Alien Torts Claim Act ("ATCA"), 28 U.S.C. § 1350, as a basis for some of her claims. However, that statute only provides a basis for *aliens*, i.e., those who are not U.S. citizens, to assert claims for violations of international law. 28 U.S.C. § 1350 ("The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."); *see also In re Estate of Ferdinand E. Marcos Human Rights Litig.*, 978 F.2d 493, 499 (9th Cir. 1992) ("We start with the face of the statute. It requires a claim by an alien, a tort, and a violation of international law."). Plaintiff alleges that she is a U.S. citizen, thus she cannot bring her claims pursuant to the ATCA. *Serra v. Lappin*, 600 F.3d 1191, 1197-98 (9th Cir. 2010) ("The Alien Tort Statute ('ATS'), 28 U.S.C. § 1350, is the only possible vehicle for a claim like Plaintiffs' because no other statute recognizes a general cause of action under the law of nations. . . . We need not decide whether Plaintiffs' proposed minimum wage for prison labor rests on a norm of international character . . . because Plaintiffs have conceded that they are not aliens. The scope of the ATS is limited to suits 'by an alien.'" (Internal alterations and quotation marks omitted))." Plaintiff is not an alien.

Finally, the Act of State doctrine also bears on Plaintiff's claim as to aspects of her detention and her later deportation. It "prevents United States courts from inquiring into the validity of a recognized sovereign power's public acts committed within its own territory." *Hassen*, 2010 WL 9538408, at *21. "[A]n action will be barred only if: (1) there is an official act of a foreign sovereign performed within its own territory; and (2) the relief sought or the defense interposed in the action would require a court in the United States to declare invalid the foreign sovereign's official act." *Credit Suisse v. U.S. Dist. Ct. for Central Dist. of Cal.*, 130 F.3d 1342, 1346 (9th Cir. 1997) (alterations and quotation marks omitted). Although Plaintiff asserts claims for assault, battery, torture and other tortious conduct, the gravamen of her allegations is that Kuwait unlawfully detained her for four days and then unlawfully deported her. Plaintiff also contends that each individual Defendant acted in his official capacity.

For the foregoing reasons, the success on the merits factors weighs against the entry of a default judgment.

(3) The Amount of Money at Stake

In applying the fourth *Eitel* factor, "the court must consider the amount of money at stake in relation to the seriousness of Defendant's conduct." *PepsiCo*, 238 F. Supp. 2d at 1176. Default judgment is discouraged when the amount of money at stake in the litigation is "too large or unreasonable in light of defendant's actions." *Truong Giang Corp. v. Twinstar Tea Corp.*, 2007 WL 1545173, at *12 (N.D. Cal. May 29, 2007). In her Motion, Plaintiff seeks, among other things, the following relief:

1. Personal injury damages for pain and suffering, PTSD, emotional distress and psychological disability in the amount of $12 Million, "tax free";
2. Loss of tangible and intangible personal property damages in the amount of $800,000, "tax free"; and
3. Loss of business income damages in the amount of $5 Million, "tax free"; and

4. Attorney's fees and costs.

Dkt. 64 at 5-6.

Plaintiff requests a total recover of $17.8 Million, as well as an award of costs. Although the Complaint alleges some property and business opportunity losses, there are no allegations that support the amounts sought. Similarly, although the Complaint makes general allegations to the effect that Plaintiff has suffered emotional distress and PTSD, there is no supporting evidence that would justify an award of the amount sought. For the foregoing reasons, this factor weighs against default.

(4) The Possibility of a Dispute Concerning Material Facts

Upon entry of default, all facts pleaded in the Complaint are taken as true, except those relating to damages. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987). Although Defendants may have been able to dispute the material facts, their failure to answer the Complaint supports a finding that this is unlikely. Therefore, the fifth *Eitel* factor weighs in favor of granting the Motion.

(5) Whether Default was Due to Excusable Neglect

The record reflects that there were multiple failed attempts to serve notice of the Summons and Complaint on Defendants. Plaintiff's final attempt to serve notice appears to have been successful, although certain issues remain as to the reliability of the somewhat conflicting reports from Plaintiff about the service process. However, as noted in a prior Order (Dkt. 51), Plaintiff has complied with all service requirements to the best of her ability. Therefore, the sixth *Eitel* factor weighs slightly in favor of entering the requested judgment.

(6) The Strong Public Policy Favoring Decisions on the Merits

The seventh *Eitel* factor generally disfavors the entry of default judgment. However, "although the federal courts prefer to decide cases on their merits when reasonably possible, this preference is not dispositive. When a defendant fails to answer a plaintiff's complaint, a decision on the merits is impractical, if not impossible. Therefore, the preference to decide cases on the merits does not preclude a court from granting default judgment." *United States v. One Glock 19*, 2007 WL 2438361, at *3 (N.D. Cal. Aug. 23, 2007) (internal citations and quotations omitted). By failing to respond to the Complaint and appear in this action, Defendants have precluded a decision on the merits. Therefore, this factor weighs only slightly against entering the requested judgment.

* * *

The *Eitel* factors when considered as a whole weigh substantially against the entry of default judgment. Therefore, the Motion for default judgment is **DENIED**. Further, because Plaintiff has failed to assert any claim on which relief might plausibly be granted, and there is no basis to conclude that she could do so

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through an amended complaint, all claims against Al-Fahed, Al-Suheil and Al-Fares are **DISMISSED** with prejudice.

IV. Conclusion

For the foregoing reasons, the Application and the Motion are **DENIED**, and all claims are **DISMISSED** with prejudice.

IT IS SO ORDERED.

_____ : _____

Initials of Preparer ak

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