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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

HMONG I, a fictitious name, on behalf of herself and as representative of members of a class of similarly situated claimants,

Plaintiff,

v.

LAO PEOPLE'S DEMOCRATIC REPUBLIC; et al.,

Defendants.

No. 2:15-cv-2349 TLN AC

ORDER AND FINDINGS AND RECOMMENDATIONS

Plaintiff has moved for entry of default judgments. ECF Nos. 7, 11, 19, 22. This matter was accordingly referred to the undersigned by E.D. Cal. R. ("Local Rule") 302(c)(19). For the reasons that follow, the undersigned will recommend that no default judgments be entered, and that the district court issue an Order to Show Cause why this complaint should not be dismissed for lack of federal jurisdiction.¹

I. BACKGROUND / COMPLAINT

This lawsuit was filed by "Hmong I," alleged to be a fictitiously named real person.

¹ After the hearing on the motion, plaintiff submitted over 580 pages of exhibits and unsworn statements, and requested that the court consider them in support of her motion. ECF Nos. 28, 29. For the reasons that follow, the undersigned will deny the requests to consider those statements and documents.

1 Complaint ¶ 6. Hmong I “resides in an unspecified location in Southeast Asia.” Id. ¶ 21.
2 Plaintiff’s husband was killed as part of “the official campaign in Laos to terminate Hmong
3 people.” Id. ¶¶ 19, 55. She sues under the Alien Tort Statute (the “Act” or “ATS”), 28 U.S.C.
4 § 1350, for the wrongful death of her husband, and seeks an injunction to, among other things,
5 “allow the Hmong people to reside in Laos in peace.” Id. ¶¶ 70, 78.

6 Although plaintiff alleges that she sues “on behalf of herself and as representative of
7 members of a class of similarly situated claimants,” she has not moved to certify a class, which
8 would be required if this action were to proceed as a class action. See Fed. R. Civ. P. (“Rule”) 23
9 (parties may sue as “representative parties” of a class only if the requirements of
10 Rule 23(a)(1)-(4) are satisfied).² At oral argument, counsel for plaintiff acknowledged that
11 plaintiff had not moved for class certification and moreover, that plaintiff was proceeding at this
12 point only on behalf of herself, Hmong I. Counsel asserted that plaintiff would consider the
13 Rule 23 issues after the motion for default judgment had been resolved with regard to Hmong I.
14 Accordingly, the undersigned does not here consider any issues regarding class representation or
15 Rule 23. Such matters, in any event, have not been referred to the magistrate judge.

16 Plaintiff sues the country of Laos, its sitting President and Prime Minister, the Ministers of
17 Defense, Justice and Public Security, and “General Bounchanh.” Complaint ¶¶ 24-35. The
18 complaint alleges that defendants engaged in a campaign of atrocities (including murder, torture,
19 rape, maiming and poisoning and destroying “the jungle/their environment”) against a group of
20 Hmong people in Laos, after the Vietnam War. Complaint ¶¶ 3, 56. This campaign was intended
21 to achieve the extermination of those among the Hmong people who had joined, or who had some
22 connection with, the “Secret Army.” Complaint ¶¶ 4, 35, 56, 58, 59, 64. The Secret Army is
23 alleged to be a group of Hmong whom the “USA/CIA” recruited, during the Vietnam War from
24 1960-75, to fight the Pathet Lao and the Vietcong in Laos and Vietnam, and “to rescue US

25 ² See also, Comcast Corp. v. Behrend, 133 S. Ct. 1426, 1432 (2013) (“The class action is an
26 exception to the usual rule that litigation is conducted by and on behalf of the individual named
27 parties only. To come within the exception, a party seeking to maintain a class action must
28 affirmatively demonstrate his compliance with Rule 23”) (citations and internal question marks
omitted).

1 soldiers that were in the Laotian/Vietnam border area.” Complaint ¶¶ 57-59.

2 The complaint alleges that defendants’ conduct was undertaken in violation of
3 “international law,” and in violation of following treaties: the 1962 Geneva Convention; the 1966
4 International Covenant on Civil and Political Rights; and the 1973 Vientiane Ceasefire
5 Agreement. Complaint ¶¶ 15, 16, 39, 45-47, 48, 49; see also Complaint ¶ 78 (requesting
6 injunction requiring defendants to abide by the cited treaties). The complaint also alleges that
7 defendants’ conduct violated various Laotian laws (“Decree[s] of the President of the Lao
8 People’s Democratic Republic on the Promulgation of the Penal Law”). See Complaint ¶¶ 51-54.

9 II. DEFAULT JUDGMENT STANDARDS

10 A motion for entry of a default judgment involves “the two-step process” set out by
11 Rule 55. Eitel v. McCool, 782 F.2d 1470, 1471 (9th Cir. 1986) (citing 6 Moore’s Federal Practice
12 ¶ 55.02[3], at 55-8). The first step is for plaintiff to ask the Clerk of the Court to enter a default.
13 Rule 55(a). The Clerk must enter the default if plaintiff makes a showing “by affidavit or
14 otherwise,” that the “party against whom a judgment for affirmative relief is sought has failed to
15 plead or otherwise defend.” Id. For reasons that plaintiff failed to explain in her motion or at oral
16 argument, she never took this first step.

17 Skipping instead to the second step, plaintiff now moves the court for the entry of a
18 default *judgment* under Rule 55(b)(2). However, even if plaintiff had taken the first step and
19 obtained entry of a default, that would not automatically entitle her to a court-ordered default
20 judgment, since the decision to grant or deny an application for default judgment lies within the
21 district court’s sound discretion. Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980).

22 In making this determination, the court may consider the following factors: (1) the
23 possibility of prejudice to the plaintiff; (2) the merits of plaintiff’s substantive claim; (3) the
24 sufficiency of the complaint; (4) the sum of money at stake in the action; (5) the possibility of a
25 dispute concerning material facts; (6) whether the default was due to excusable neglect; and
26 (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the
27 merits. Eitel, 782 F.2d at 1471-72.

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1 III. ANALYSIS

2 An analysis of the Eitel factors, as set forth below, shows that plaintiff is not entitled to a
3 default judgment. The undersigned accordingly does not address the issues involved in
4 determining whether plaintiff has achieved proper service on the sovereign nation of Laos, its
5 sitting head of state, its sitting head of government, several of its sitting government ministers,
6 and a general. See 28 U.S.C. § 1608(a) (specifying manner of service upon a foreign state); cf.
7 Autotech Techs. LP v. Integral Research & Dev. Corp., 499 F.3d 737, 748 (7th Cir. 2007) (“In
8 fact, service through an embassy is expressly banned both by an international treaty to which the
9 United States is a party and by U.S. statutory law. The Vienna Convention on Diplomatic
10 Relations, Apr. 18, 1961, 23 U.S.T. 3227, prohibits service on a diplomatic officer.”), cert.
11 denied, 552 U.S. 1231 (2008).

12 As further discussed below, the undersigned finds that this case is not within the
13 jurisdiction of the district court. Thus, even if service has been properly effected, no default
14 judgment could be entered. Moreover, if service was not properly effected, it would be futile for
15 plaintiff to attempt proper service of a complaint that is not within the jurisdiction of this court.
16 For the same reason, the undersigned does not recommend ordering plaintiff to engage in the
17 futile act of obtaining an entry of default from the Clerk of the Court.

18 A. Prejudice, Material Disputes, Excusable Neglect

19 Plaintiff has not mentioned or addressed any of the Eitel factors in requesting a default
20 judgment. Accordingly, the undersigned cannot determine whether plaintiff would be prejudiced
21 if the court declines to enter a default judgment. Moreover, since the defendants have not
22 appeared, the undersigned cannot determine whether they would dispute material facts of the
23 complaint, nor whether their failure to appear is the result of excusable neglect (even assuming
24 they had been properly served).

25 B. Amount in Controversy and the Policy Favoring Decisions on the Merits

26 Plaintiff seeks a judgment “in excess of \$5 million.” Complaint ¶ 69. This large amount
27 tends to disfavor a default judgment. See Eitel, 782 at 1472 (“because Eitel was seeking almost
28 \$3 million in damages from McCool and because the parties disputed material facts in the

1 pleadings, we cannot say that the district court abused its discretion in denying the default
2 judgment”).

3 As for the policy favoring decisions on the merits, the analysis starts with “the general
4 rule that default judgments are ordinarily disfavored,” and that “[c]ases should be decided upon
5 their merits whenever reasonably possible.” Eitel, 782 F.2d at 1472. That rule is particularly
6 weighty here, where default judgments are sought against a foreign nation, its sitting head of
7 state, its sitting head of government, and several of its government ministers. See Practical
8 Concepts, Inc. v. Republic of Bolivia, 811 F.2d 1543, 1551 (D.C. Cir. 1987) (Ginsburg,
9 Cir. Judge) (“[i]ntolerant adherence to default judgments against foreign states could adversely
10 affect this nation's relations with other nations”).

11 C. The Merits and Sufficiency of the Complaint

12 Examination of the second and third Eitel factors -- the merits of plaintiff’s claims and the
13 sufficiency of the complaint -- establish that no default judgment is warranted here. Where the
14 complaint lacks merit, it is well within the court’s discretion to deny a default judgment on that
15 ground alone. Aldabe, 616 F.2d at 1092-93 (“[g]iven the lack of merit in appellant’s substantive
16 claims, we cannot say that the district court abused its discretion in declining to enter a default
17 judgment”). In this case, to say that the complaint “lacks merit” is not to say that plaintiff’s
18 allegations of atrocities are untrue or unsubstantiated, it is to say that those allegations do not
19 appear to confer jurisdiction on this court or entitle plaintiff to obtain the relief she seeks by way
20 of litigation.

21 In her motion, arguments at hearing, and post-hearing submissions, plaintiff seeks to
22 present evidence of the alleged treaty violations and human rights abuses committed against
23 members of the putative class. The undersigned rejects these requests.³ Where the complaint

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25 ³ “Whether to receive evidence going to liability on a default judgment motion is within the
26 discretion of the court. See Fed. R. Civ. P. 55(b)(2)(C); Parker W. Int’l, LLC v. Clean Up Am.,
27 Inc., 2009 WL 2916664 at *4, 2009 U.S. Dist. LEXIS 86346 at *7 (N.D. Cal. Sept. 1, 2009) (the
28 court “retains the authority to require a plaintiff to ‘establish the truth of any allegation by
evidence”). However, such evidence is taken to allow plaintiff to prove an allegation actually
contained in the complaint; the evidence is not a substitute for missing allegations. See Fed. R.
(continued...)

1 fails to support jurisdiction, the court lacks the authority to entertain evidence. This court's
2 jurisdiction turns not on proof of treaty violations and human rights abuses, but on the provisions
3 of the Alien Tort Statute as interpreted by the United States Supreme Court and the Ninth Circuit.
4 The undersigned accordingly turns to that issue.

5 1. Jurisdiction to consider this case

6 The Alien Tort Statute provides:

7 The district courts shall have original jurisdiction of any civil action
8 by an alien for a tort only, committed in violation of the law of
nations or a treaty of the United States

9 28 U.S.C. § 1350; see also 28 U.S.C. § 1330 (“[t]he district courts shall have original jurisdiction
10 . . . against a foreign state . . . as to any claim for relief in personam with respect to which the
11 foreign state is not entitled to immunity”). “[T]he ATS is a jurisdictional statute creating no new
12 causes of action.” Sosa v. Alvarez-Machain, 542 U.S. 692, 724 (2004). However, “[t]he
13 jurisdictional grant is best read as having been enacted on the understanding that the common law
14 would provide a cause of action . . .” Id. at 724.

15 It is clear in this Circuit that, in general, a cause of action will lie under the Act when an
16 alien sues for violations of international law. Doe I v. Nestle USA, Inc., 766 F.3d 1013, 1018
17 (9th Cir. 2014) (“under Sosa, the federal courts are available to hear tort claims based on
18 violations of international law”), cert. denied, 136 S. Ct. 798 (2016). However, because all the
19 conduct alleged in the complaint takes place wholly within the territory of Laos,⁴ the court must
20 first address the question of whether the statute that confers subject matter jurisdiction upon this
21 court, 28 U.S.C. § 1350, reaches claims for conduct that occurs entirely outside of the United

23 Civ. P. 55(b)(2)(C) (“[t]he court may conduct hearings . . . to . . . *establish the truth of any*
24 *allegation by evidence*”) (emphasis added); Bd. of Trustees of Pipe Trades Dist. Council No. 36
25 Health & Welfare Trust Fund v. Clifton Enterprises, Inc., 2013 WL 2403573 at *8, 2013 U.S.
26 Dist. LEXIS 77068 at *26 (N.D. Cal. May 31, 2013) (“while CRB’s liability is not established
through its default [because the allegations were legal conclusions], the Court may accept
affidavits and other evidence to establish the truth of Plaintiffs’ allegations”).

27 ⁴ The undersigned briefly discusses below the argument that plaintiff’s counsel asserted for the
28 first time at oral argument, namely, that conduct underlying plaintiff’s claim did occur in the
United States.

1 States, and wholly within the territory of a foreign nation.

2 In Kiobel v. Royal Dutch Petroleum Co., plaintiffs were “Nigerian nationals residing in
3 the United States.” 133 S. Ct. 1659, 1662 (2013). They filed suit under the Alien Tort Statute,
4 alleging that defendant Dutch, British, and Nigerian corporations “aided and abetted the Nigerian
5 Government in committing violations of the law of nations in Nigeria.” Id. The question
6 presented to the Court was “whether and under what circumstances courts may recognize a cause
7 of action under the Alien Tort Statute, for violations of the law of nations occurring within the
8 territory of a sovereign other than the United States.” Id. at 1662.

9 The Court concluded that “the presumption against extraterritoriality applies to claims
10 under the ATS, and that nothing in the statute rebuts that presumption.” Id. at 1669. The
11 presumption arises from a canon of statutory construction that reflects “the ‘presumption that
12 United States law governs domestically but does not rule the world.’” Id. at 1664 (quoting
13 Microsoft Corp. v. AT & T Corp., 550 U.S. 437, 454 (2007)). Because there is no indication that
14 Congress intended this Act to apply to conduct occurring entirely in another country, the Court
15 held that “petitioners’ case seeking relief for violations of the law of nations occurring outside the
16 United States is barred.” Id. at 1669. Despite its broad language, however, Kiobel also indicated
17 that extraterritorial claims could be asserted “where the claims touch and concern the territory of
18 the United States . . . with sufficient force to displace the presumption against extraterritorial
19 application.” Id. at 1669.

20 In Doe I, the lawsuit was brought by three Malian “former child slaves who were forced to
21 harvest cocoa in the Ivory Coast.” 766 F.3d at 1016, 1027. On appeal to the Ninth Circuit, the
22 defendants argued that the action was properly dismissed because “the plaintiffs’ complaint
23 improperly seeks extraterritorial application of federal law contrary to the Supreme Court’s recent
24 decision” in Kiobel. Doe I, 766 F.3d at 1020. The Ninth Circuit reversed the dismissal, and
25 remanded to the district court so that plaintiffs could attempt to amend their complaint in light of
26 the “touch and concern” language of Kiobel. Id. at 1027 (in Kiobel, the Court articulated “a new
27 ‘touch and concern’ test for determining when it is permissible” for a claim under the Act to seek
28 the extraterritorial application of federal law”).

1 This case falls squarely within Kiobel, as all the conduct alleged in the complaint occurred
2 in Laos. Moreover, the complaint does not allege any facts that might bring it within the “touch
3 and concern” language of Kiobel and Doe I. There is no allegation that the plaintiff or any
4 defendant has any connection with the United States (except that, by implication, plaintiff or her
5 late husband had some connection with the Secret Army in Laos). For example, there is no
6 allegation that any defendant fled, or otherwise travelled, to this country. All the conduct set
7 forth in the complaint is alleged to have occurred, and to be occurring, within the territory of
8 Laos. The complaint contains no allegation of any conduct occurring in the United States, having
9 any effect in this country, or being directed at, or affecting, anyone in or from the United States.

10 This recitation is not intended to imply that the existence of any one or group of these
11 contacts would be sufficient to permit this action to go forward. However, the *absence* of any
12 possible connection to this country places the case squarely within the bar of Kiobel. Indeed, a
13 principal goal of the lawsuit is to enable the Hmong people to live in peace *in Laos*:

14 Plaintiff requests injunctive relief in the form of preliminary or
15 permanent injunction requiring Defendants to cease their illegal
16 campaign of atrocities against Hmong people in Laos; to require an
17 appropriate investigation into all these atrocities; to require Laotian
government officials to take affirmative steps to declare this
campaign as over, and to allow the Hmong people to reside in Laos
in peace

18 Complaint ¶ 78.

19 Plaintiff does not cite or address Kiobel or (Doe I) in her motion for default judgment, and
20 at oral argument, counsel informed the court that he was not prepared to address it. Instead
21 counsel insisted that the action was governed by Trajano v. Marcos (In re Estate of Ferdinand E.
22 Marcos Human Rights Litig.), 978 F.2d 493 (9th Cir. 1992) (“Marcos”), cert. denied, 508 U.S.
23 972 (1993), and the district court cases plaintiff cited in her motion, all of which pre-date Kiobel.
24 Counsel did not respond to the undersigned’s question about the effect Kiobel may have had on
25 Marcos.

26 In Marcos, the plaintiff’s son was kidnapped, interrogated, tortured and murdered in the
27 Philippines by Philippine military intelligence personnel who were acting under defendant’s

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1 direction. Marcos, 978 F.2d at 495-96.⁵ In analyzing the Alien Tort Statute, the Ninth Circuit
2 stated that to state a claim under the Act required only “an alien, a tort, and a violation of
3 international law.” Id. at 499. The court went on to reject the argument “that the district court
4 erred in assuming jurisdiction of a tort committed by a foreign state’s agents against its nationals
5 outside of the United States, and having no nexus to this country.” Id. at 499. It is difficult to see
6 how Marcos and Kiobel could be reconciled, when Kiobel held that “petitioners’ case seeking
7 relief for violations of the law of nations occurring outside the United States is barred,” at least
8 where the claims do not “touch and concern” the United States. Kiobel, 133 S. Ct. at 1669.⁶

9 Moreover, another Ninth Circuit case further weakens the argument that Marcos governs
10 this case, in which there is “no nexus” to the United States. In Sarei v. Rio Tinto PLC., 221 F.
11 Supp. 2d 1116 (C.D. Cal. 2002),⁷ plaintiffs were “current and former residents of the island of
12 Bougainville in Papua New Guinea.” They filed a putative class action under the Alien Tort
13 Statute, alleging that “defendants’ mining operations on Bougainville destroyed the island’s
14 environment, harmed the health of its people, and incited a ten-year civil war, during which
15 thousands of civilians died or were injured.” On appeal, the Ninth Circuit relied heavily upon
16 Marcos, stating:

17 Our circuit has addressed this same issue once before. In In re
18 Estate of Ferdinand Marcos, Human Rights Litig. (Marcos I), 978
19 F.2d 493, 499-501 (9th Cir. 1992), we considered an ATS claim

20 ⁵ Defendant was the daughter of the former President of the Philippines, Ferdinand Marcos. The
21 Ninth Circuit denied defendant’s assertion of immunity under the Foreign Sovereign Immunity
22 Act (“FSIA”), 28 U.S.C. §§ 1330, 1602-11, on the ground that she “admitted acting on her own
23 authority, not on the authority of the Republic of the Philippines.” Marcos, 978 F.2d at 496.

24 ⁶ The undersigned notes that despite the broad implication in Marcos that there is no need for a
25 “nexus to this country” in claims under the Act, such a nexus did in fact exist in that case, because
26 defendant had fled to the United States. The question of whether this fact would be sufficient to
27 establish that the Marcos claims “touch and concern” the United States is not clear. However,
28 that fact would certainly meet that standard under the test used by the concurring Justices in
Kiobel, who wrote that the federal courts have jurisdiction under the Act where “(1) the alleged
tort occurs on American soil, (2) the defendant is an American national, or (3) the defendant’s
conduct substantially and adversely affects an important American national interest, *and that*
includes a distinct interest in preventing the United States from becoming a safe harbor (free of
civil as well as criminal liability) for a torturer or other common enemy of mankind.” Kiobel,
133 S. Ct. at 1671 (Breyer, concurring) (emphasis added).

⁷ Aff’d in part, rev’d and remanded in part, 671 F.3d 736 (9th Cir. 2011) (en banc), vacated, 133
S. Ct. 1995 (2013).

1 based on torture that took place in the Philippines. *We*
2 *categorically rejected the argument that the ATS applies only to*
3 *torts committed in this country.* We said, “we are constrained by
4 what § 1350 shows on its face: *no limitations as to the citizenship*
5 *of the defendant, or the locus of the injury.*” *Id.* at 500.

6 Sarei v. Rio Tinto, PLC, 671 F.3d 736, 744-45 (9th Cir. 2011) (en banc) (emphasis added).⁸ The
7 court noted that “[a]lthough the torts alleged all occurred outside of the United States, Rio Tinto
8 has substantial operations in this country,” and went on to hold that “[t]here is no extraterritorial
9 bar to applying the ATS to the conduct alleged in this case.” *Id.* at 747.

10 The Supreme Court vacated the decision in Sarei, and remanded “for further consideration
11 in light of Kiobel v. Royal Dutch Petroleum Co., 569 U.S. ___, 133 S. Ct. 1659 (2013).” Rio
12 Tinto, PLC v. Sarei, 133 S. Ct. 1995 (2013). On remand, the Ninth Circuit “voted to affirm the
13 district court’s judgment of dismissal with prejudice.” Sarei v. Rio Tinto, PLC, 722 F.3d 1109,
14 1110 (9th Cir. 2013) (en banc). Thus, it is even more difficult to view Marcos as stating the
15 applicable law regarding the extraterritorial reach of the Act, where, as here, there is “no nexus”
16 of any kind to the United States.

17 In light of Kiobel, Doe I, and Sarei, the complaint fails to establish that this court can
18 exercise jurisdiction over this case, since it alleges *no conduct* that could be said to “touch and
19 concern” the United States, no matter how that phrase is interpreted, and even if it is assumed that
20 Marcos is still good law.⁹ The remaining cases cited by plaintiff also predate Kiobel, Doe I and
21 Sarei, and in addition, some or all involve cases where there was *some* connection to the United
22 States. *See, e.g.*, Doe v. Saravia, 348 F. Supp. 2d 1112, 1118 (E.D. Cal. 2004) (“*Saravia was*
23 *resident in Modesto, California*, in the Fresno Division of the Eastern Judicial District of
24 California at the time this suit was filed”) (emphasis added); Letelier v. Republic of Chile, 502 F.
25 Supp. 259, 260 (D.D.C. 1980) (a case involving “the bombing deaths of former Chilean
26 ambassador Letelier and Ronni Moffitt in September 1976 in Washington, D.C.”) (emphasis

27 ⁸ Vacated, 133 S. Ct. 1995 (2013).

28 ⁹ The undersigned expresses no view on whether Marcos would be decided the same way today,
given that there was, in fact, a critical nexus to this country in that case, namely, the defendant
had fled to this country. However, Marcos does not mention this nexus in reaching its conclusion
that the ATS reached conduct occurring entirely in the Philippines.

1 added); Filartiga v. Pena-Irala, 577 F. Supp. 860 (E.D.N.Y. 1984) (involving a lawsuit brought by
2 plaintiffs “who had applied for permanent political asylum in the United States,” against a
3 defendant “*who was in United States on a visitor’s visa*”) (emphasis added).

4 At oral argument, plaintiff’s counsel asserted for the first time that all the conduct alleged
5 in the complaint occurred because of the breach of an “oral treaty,” and that this breach occurred
6 in the United States.¹⁰ According to counsel, an unidentified President of the United States (since
7 identified in a post-hearing submission as Dwight D. Eisenhower, see ECF No. 28 at 2), entered
8 into an “oral treaty” with the “King of Laos.” Under this treaty, the Hmong people would assist
9 the United States in fighting the Pathet Lao, and the United States would protect the Hmong after
10 the war. However, counsel asserted, the United States had no intention of honoring the treaty,
11 even at the moment that agreement was reached. In addition, according to counsel, the United
12 States left behind weapons that were then used by Laos in the atrocities against the Hmong
13 people. It is not at all clear that such allegations, even if they appeared in the complaint, would
14 suffice to allow this court to exercise jurisdiction over this case. However, since these allegations
15 do not even appear in the complaint, they cannot be used to justify the entry of a default
16 judgment.

17 Plaintiff has now submitted two Requests for Leave to file further statements and
18 evidence, totaling over 580 pages,¹¹ in a belated attempt to show that the claim has some
19 connection to the United States. See ECF Nos. 28, 29. As noted above, even if the submitted
20 documents and additional statements would show that the claims are sufficiently connected to the
21 United States, no default judgment is warranted at this time because none of this information is in
22 the complaint. Under Eitel, the court looks exclusively to the sufficiency of the *complaint*. See
23 also Cripps v. Life Ins. Co. of North America, 980 F.2d 1261, 1267 (9th Cir. 1992) (“necessary

24
25 ¹⁰ Counsel did not explain what an “oral treaty” is, or whether it is the type of “treaty” that is
referred to in the ATS.

26 ¹¹ The exhibits consist of the following unauthenticated and unexplained documents: newspaper
27 articles; pages from treaties, conventions, agreements and resolutions; Congressional testimony;
28 photographs; reports on gold reserves; investor forms; analyses of financial statistics; graphs;
Laotian military orders; maps; and foreign language documents.

1 facts not contained in the pleadings . . . are not established by default.”). It is well established
2 that “[a] plaintiff suing in federal court must show *in his pleading*, affirmatively and distinctly,
3 the existence of whatever is essential to federal jurisdiction [. . .].” Smith v. McCullough, 270
4 U.S. 456, 459 (1926) (emphasis added). This court is not called upon to pore through hundreds of
5 pages of documents submitted after it becomes clear that the *complaint* is insufficient to state a
6 claim or establish federal jurisdiction.

7 In summary, the complaint does not support default judgment against any defendant.
8 Indeed, Kiobel compels the conclusion that the court cannot exercise jurisdiction over this claim.
9 That is sufficient grounds for the court to issue an order to show cause why the entire case should
10 not be dismissed for lack of federal jurisdiction.

11 2. Immunity – People’s Democratic Republic of Laos

12 A foreign state is immune from suit except as specified in the Foreign Sovereign
13 Immunity Act (“FSIA”). 28 U.S.C. § 1604 (“a foreign state shall be immune from the
14 jurisdiction of the courts of the United States . . . except as provided in sections 1605 to 1607 of
15 this chapter); Cassirer v. Kingdom of Spain, 616 F.3d 1019, 1026-27 (9th Cir. 2010), cert. denied,
16 131 S. Ct. 3057 (2011). Indeed, the FSIA is “the sole basis for obtaining jurisdiction over a
17 foreign state in our courts.” Argentine Republic v. Amerada Hess Shipping Corp., 488 U.S. 428,
18 434 (1989); Samantar v. Yousuf, 560 U.S. 305, 313 (2010) (“[a]fter the enactment of the FSIA,
19 the Act – and not the pre-existing common law – indisputably governs the determination of
20 whether a foreign state is entitled to sovereign immunity”). Moreover, “the FSIA ‘must be
21 applied by the district courts in every action against a foreign sovereign, since subject-matter
22 jurisdiction in any such action depends on the existence of one of the specified exceptions to
23 foreign sovereign immunity.’” Amerada Hess, 488 U.S. at 434-35 (quoting Verlinden B.V. v.
24 Central Bank of Nigeria, 461 U.S. 480 (1983)).

25 The exceptions to this jurisdictional immunity are,

26 [1]cases involving the waiver of immunity, [2] commercial
27 activities occurring in the United States or causing a direct effect in
28 this country, [3] property expropriated in violation of international
law, [4] inherited, gift, or immovable property located in the United

1 States, [5] non-commercial torts occurring in the United States, and
2 [6] maritime liens.

3 Amerada Hess, 488 U.S. at 439 (citations omitted, citing 28 U.S.C. § 1605(a), (b)).

4 None of the above exceptions to the FSIA are alleged in the complaint, none were asserted
5 in the motion for default judgment, and none were mentioned at the hearing on this matter.
6 Accordingly, the court lacks the authority to enter a default judgment here. Indeed, since the
7 immunity is jurisdictional, the court cannot even exercise jurisdiction over the claim against Laos.
8 That is sufficient grounds for the issuance of an order to show cause why the claim against Laos
9 should not be dismissed for lack of jurisdiction.

10 3. Immunity – The President and Prime Minister of Laos

11 While the FSIA now governs the immunity of sovereign states, its enactment (in 1972)
12 had no effect on the immunity of individual government officials. Samantar, 560 U.S. at 308
13 (regarding a suit against petitioner, the former Prime Minister of Somalia, the Court held that “the
14 FSIA does not govern the determination of petitioner’s immunity from suit”).

15 Before the FSIA was enacted, the district court was obliged to dismiss a suit against a
16 foreign state for lack of jurisdiction, if the State Department filed a “Suggestion of Immunity” on
17 behalf of that country. See Peterson v. Islamic Republic Of Iran, 627 F.3d 1117, 1126 (9th
18 Cir. 2010) (if the State Department filed “a formal suggestion of immunity with the court on
19 behalf of the foreign state . . . the district court dismissed the case for lack of jurisdiction”).
20 While such Suggestions are no longer binding on the court when filed on behalf of a foreign state
21 (because of FSIA), there is “no reason to believe that Congress saw as a problem, or wanted to
22 eliminate, the State Department’s role in determinations regarding individual official immunity.”
23 Samantar, 560 U.S. at 323.

24 The U.S. has filed a “Suggestion of Immunity” in this case on behalf of the President and
25 Prime Minister of Laos. ECF No. 23. Plaintiff has not responded to the Suggestion of Immunity,
26 and did not argue that it was not binding on the court at the hearing on this matter. Accordingly,
27 no default judgment can be entered against the President or Prime Minister of Laos, and the
28 Suggestion is grounds for the court to issue an order to show cause why the case against the

1 President and Prime Minister should not be dismissed for lack of federal jurisdiction.

2 III. CONCLUSION

3 For the reasons stated above, IT IS HEREBY ORDERED that plaintiff's Requests for
4 Leave To File additional materials (ECF Nos. 28, 29) are DENIED.

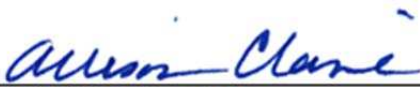
5 Furthermore, IT IS HEREBY RECOMMENDED that:

6 1. Plaintiff's motion for default judgment (ECF No. 19), should be DENIED in its
7 entirety; and

8 2. Plaintiff should be Ordered to Show Cause why this entire action should not be
9 dismissed for lack of federal jurisdiction.

10 These findings and recommendations are submitted to the United States District Judge
11 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty one days
12 after being served with these findings and recommendations, any party may file written
13 objections with the court and serve a copy on all parties. Id.; see also Local Rule 304(b). Such a
14 document should be captioned "Objections to Magistrate Judge's Findings and
15 Recommendations." Any response to the objections shall be filed with the court and served on all
16 parties within fourteen days after service of the objections. Local Rule 304(d). Failure to file
17 objections within the specified time may waive the right to appeal the District Court's order.
18 Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57
19 (9th Cir. 1991).

20 DATED: March 11, 2016

21 
22 ALLISON CLAIRE
23 UNITED STATES MAGISTRATE JUDGE
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