UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	**CV 20-6277 FMO (MAAx)**	**Date**	**December 14, 2020**
Title	**Yehonatan Kapach v. Intel Corporation, et al.**		

Present: The Honorable	Fernando M. Olguin, United States District Judge

Vanessa Figueroa	None Present
Deputy Clerk	Court Reporter / Recorder
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
None Present	None Present

Proceedings: (In Chambers) Order Re: Pending Motions

Having reviewed and considered the briefing filed with respect to plaintiff Yehonatan Kapach's ("Kapach" or "plaintiff") Motion for Default Judgment (Dkt. 27, "Plf. Motion") and Intel Corporation's Motion to Dismiss (Dkt. 22, "Intel Motion") and the record in this action, the court finds that oral argument is not necessary to resolve the motions, see Fed. R. Civ. P. 78(b); Local Rule 7-15; Willis v. Pac. Mar. Ass'n, 244 F.3d 675, 684 n. 2 (9th Cir. 2001), and concludes as follows.

BACKGROUND

On July 13, 2020, plaintiff Yehonatan Kapach ("plaintiff" or "Kapach"), a citizen and resident of Israel,[1] filed a pro se complaint against his former employer, Intel Corporation ("Intel") and "several public officials in the State of Israel" including: Dikla Klein Yona ("Yona"); Yehoram Shaked ("Shaked"); Esther Hayut ("Hayut"); Daphna Barak Erez ("Erez"); Anat Baron ("Baron"); Yael Vilner ("Vilner"); Edna Arbel ("Arbel"); David Mintz ("Mintz"); and George Kara ("Kara") (collectively, "individual defendants"). (See Dkt. 1, Complaint at ¶¶ 1-2, 7, 10, 13-15, 24). Yona is a "magistrate" at the Israel Enforcement and Collections Authority in Tel Aviv, (see id. at ¶ 12), Shaked is a "family court judge in the City of Tel Aviv[,]" (id. at ¶ 14), and Hayut, Erez, Baron, Vilner, and Mintz, and Kara are "Israel Supreme Court judges," while Arbel is a "former Supreme Court judge." (See id. at ¶ 17). Accusing the individual defendants of belonging to a "cult of radical feminists' ideology who promote hatred and contempt toward men, female supremacy and the enslavement of men to serve the needs and whims of women[,]" (id.), plaintiff's claims arise from child support proceedings and orders issued by Israeli courts, and Intel's compliance with a wage garnishment order. (See id. at ¶¶ 36, 38, 47-48). Plaintiff avers that defendants' conduct has rendered him a "slave" and a victim of forced labor and human trafficking. (See id. at ¶¶ 48, 100, 124).

Plaintiff lists numerous federal and state statutes, conventions, and proclamations that have allegedly been violated by defendants. (See, generally, Dkt. 1, Complaint). Plaintiff alleges that

[1] Plaintiff recently left Israel "to live in Los Angeles." (Dkt. 1, Complaint at ¶ 7).

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Intel's compliance with the wage garnishment order "constitute[s] outrageous conduct and acts of enslavement and forced labor contrary to the domestic laws and . . . international treaties[.]" (Id. at ¶ 66). With respect to the individual defendants, plaintiff alleges that their conduct amounts to "torture," and that they are "accountable under the Alien Tort Claims Act." (Id. at ¶ 137). Plaintiff also alleges that the individual defendants are exempt from immunity under the state-sponsored terrorism exception to the Foreign Sovereign Immunity Act. (See id. at ¶¶ 138-39). Plaintiff seeks $20,000,000 in "punitive damages[.]" (Id. at ¶ 144).

DISCUSSION

I. MOTION FOR DEFAULT JUDGMENT.

Plaintiff seeks default judgment against the individual defendants for failure to respond to the Complaint. (See Dkt. 27, Plf. Motion). However, default judgment is inappropriate in this case. First, plaintiff failed to secure entry of default by the Clerk of Court. (See, generally, Dkt.); see Local Rule 55-1 ("When application is made to the Court for a default judgment, the application shall be accompanied by a declaration in compliance with F.R.Civ.P. 55(b)(1) and/or (2) and include the following: (a) When and against what party the default was entered[.]").

Second, even if plaintiff had done so, the court could not grant default judgment because plaintiff has failed to meet the factors set forth in Eitel v. McCool, 782 F.2d 1470 (9th Cir. 1986). (See, generally, Dkt. 27, Plf. Motion). In exercising its discretion as to whether default judgment should be entered, the court considers, among other factors, the merits of plaintiff's substantive claims and the sufficiency of the complaint. Eitel, 782 F.2d at 1471-72. The court also has an obligation to assess whether it has subject matter and personal jurisdiction over defendants before issuing default judgment against them. 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."); accord Kaldawi v. Kuwait, 709 F.Appx. 452, 453 (9th Cir. 2017).

Here, the individual defendants are foreign government officials, most of whom are current "Israel Supreme Court judges," (Dkt. 1, Complaint at ¶¶ 12-17); (Dkt. 27-1, Affidavit at ¶ 4) ("All [individual] defendants are Israeli and they serve in various judicial capacities."), who are entitled to immunity. Although a foreign official is not protected by the Foreign Sovereign Immunities Act ("FSIA" or "Act"), 28 U.S.C. § 1605; see Samantar v. Yousuf, 560 U.S. 305, 325, 130 S.Ct. 2278, 2292 (2010) (holding that FSIA immunity does not apply to foreign officials), "foreign government officials acting [in] their official capacity . . . are [nonetheless] entitled to immunity[.]" Eliahu v. Jewish Agency for Israel, 919 F.3d 709, 712 (2d Cir. 2019) ("The district court properly dismissed all claims against the Israeli Officials for lack of subject matter jurisdiction because, as foreign government officials acting [in] their official capacity, they are entitled to immunity.") (citing Underhill v. Hernandez, 168 U.S. 250, 252, 18 S.Ct. 83, 84 (1897) (recognizing "[t]he immunity of individuals from suits brought in foreign tribunals for acts done within their own states, in the exercise of governmental authority . . . as civil officers")); Matar v. Dichter, 563 F.3d 9, 14 (2d Cir.

2009) (recognizing that foreign officials are entitled to immunity for acts performed in their official capacity); Marazhapov v. Republic of Kazakhstan, 2019 WL 3035472, *2 (E.D.N.Y. 2019) (same). Plaintiff seeks to hold the individual defendants liable for conduct undertaken in their official capacities.[2] (See Dkt. 1, Complaint at ¶¶ 24-42, 52-64). In short, the court will deny plaintiff's motion for default judgment against the individual defendants. See Eitel, 782 F.2d at 1471-72 (noting that determining whether default judgment should be entered, the court considers, among other factors, the merits of plaintiff's substantive claims and the sufficiency of the complaint); In re Tuli, 172 F.3d at 712. Indeed, the court will dismiss all claims against the individual defendants for lack of subject matter jurisdiction. See Eliahu, 919 F.3d at 712 (holding "district court properly dismissed all claims against the Israeli Officials for lack of subject matter jurisdiction because, as foreign government officials acting [in] their official capacity, they are entitled to immunity").

II. MOTION TO DISMISS.

A motion to dismiss for failure to state a claim should be granted if plaintiff fails to proffer "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570, 127 S.Ct. 1955, 1974 (2007) ("Twombly"); Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S.Ct. 1937, 1949 (2009) ("Iqbal"); Cook v. Brewer, 637 F.3d 1002, 1004 (9th Cir. 2011). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S. at 678, 129 S.Ct. at 1949; Cook, 637 F.3d at 1004; Caviness v. Horizon Cmty. Learning Ctr., Inc., 590 F.3d 806, 812 (9th Cir. 2010). Although the plaintiff must provide "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 1965; Iqbal, 556 U.S. at 678, 129 S.Ct. at 1949; see also Cholla Ready Mix, Inc. v. Civish, 382 F.3d 969, 973 (9th Cir. 2004) ("[T]he court is not required to accept legal conclusions cast in the form of factual allegations if those conclusions cannot reasonably be drawn from the facts alleged. Nor is the court required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.") (citations and internal quotation marks omitted), "[s]pecific facts are not necessary; the [complaint] need only give the defendant[s] fair notice of what the . . . claim is and the grounds upon which it rests." Erickson v. Pardus, 551 U.S. 89, 93, 127 S.Ct. 2197, 2200 (2007) (per curiam) (internal quotation marks omitted); Twombly, 550 U.S. at 555, 127 S.Ct. at 1964.

In considering whether to dismiss a complaint, the court must accept the allegations of the complaint as true, see Erickson, 551 U.S. at 94, 127 S.Ct. at 2200; Albright v. Oliver, 510 U.S. 266, 268, 114 S.Ct. 807, 810 (1994), construe the pleading in the light most favorable to the pleading party, and resolve all doubts in the pleader's favor. See Jenkins v. McKeithen, 395 U.S.

[2] Although plaintiff purports to sue the individual defendants in their individual capacities as members of a cult, (see Dkt. 1, Complaint at ¶ 121), "the actions at issue in this case were all performed by these defendants . . . while acting within the scope of their official capacities." Nagy v. Naday, 2020 WL 1308191, *1 (D. Mass. 2020).

411, 421, 89 S.Ct. 1843, 1849 (1969); Berg v. Popham, 412 F.3d 1122, 1125 (9th Cir. 2005). Dismissal for failure to state a claim can be warranted based on either a lack of a cognizable legal theory or the absence of factual support for a cognizable legal theory. See Mendiondo v. Centinela Hosp. Med. Ctr., 521 F.3d 1097, 1104 (9th Cir. 2008). A complaint may also be dismissed for failure to state a claim if it discloses some fact or complete defense that will necessarily defeat the claim. See Franklin v. Murphy, 745 F.2d 1221, 1228-29 (9th Cir. 1984).

Where a complaint includes allegations of fraud, Federal Rule of Civil Procedure 9(b) requires that those allegations be pleaded with particularity. Fed. R. Civ. P. 9(b) ("In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake."). "To comply with Rule 9(b), allegations of fraud must be specific enough to give defendants notice of the particular misconduct which is alleged to constitute the fraud charged so that they can defend against the charge and not just deny that they have done anything wrong." Bly-Magee v. Cal., 236 F.3d 1014, 1019 (9th Cir. 2001) (internal quotation marks omitted). "Averments of fraud must be accompanied by the who, what, when, where, and how of the misconduct charged." Vess v. Ciba-Geigy Corp. USA, 317 F.3d 1097, 1106 (9th Cir. 2003) (internal quotation marks omitted). "[A] plaintiff must set forth more than the neutral facts necessary to identify the transaction. The plaintiff must set forth what is false or misleading about a statement, and why it is false." Id. (internal quotation marks omitted) (alteration and emphasis in original).

Intel contends that this case should be dismissed under the act of state doctrine.[3] (See Dkt. 22-1, Memorandum of Points and Authorities in Support of [Intel's] Motion to Dismiss ("Memo") at 2-3). The court agrees.

"As a doctrinal matter, the classic statement of the act of state doctrine is that every sovereign State is bound to respect the independence of every other sovereign State, and the courts of one country will not sit in judgment on the acts of the government of another done within its own territory." Sea Breeze Salt, Inc. v. Mitsubishi Corp., 899 F.3d 1064, 1069 (9th Cir. 2018) (alteration marks and internal quotation marks omitted). "In its modern formulation, the doctrine bars suit where (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." Id. (internal quotation marks omitted). "Even when these two mandatory elements are satisfied, courts may appropriately look to additional factors i.e., the policies underlying the act of state doctrine to determine whether application of the act of state doctrine is justified." Royal Wulff Ventures LLC v. Primero Mining

[3] Plaintiff suggests that the act of state doctrine may not be asserted by a private party. (See Dkt. 33, Opp. at ¶ 9). The doctrine, however, is not so limited. See, e.g., Credit Suisse v. U.S. Dist. Court for Central District of California, 130 F.3d 1342, 1348 (9th Cir. 1997) (issuing writ of mandamus directing district court to dismiss action against banks under act of state doctrine); Roe v. Unocal Corp., 70 F.Supp.2d 1073, 1077-82 (C.D. Cal. 1999) (granting corporate defendant's motion to dismiss based on the act of state doctrine).

Corp., 938 F.3d 1085, 1092 (9th Cir. 2019) (alteration marks and internal quotation marks omitted). "When the doctrine is raised on a motion to dismiss, [the court] take[s] the allegations in the complaint as true and views them in the light most favorable to the plaintiff[]." Sea Breeze Salt, Inc., 899 F.3d at 1068.

Here, plaintiff seeks to challenge "(a) an Israeli government order, (b) issued pursuant to Israeli domestic law, (c) by Israel's courts, (d) against an Israeli citizen, (e) within Israel's territory." (Dkt. 22-1, Memo at 2-3); (see Dkt. 1, Complaint at ¶¶ 24-42, 52-64). Plaintiff's claims against Intel stem from Intel's compliance with the garnishment order issued in Israel by Israel's family court system. (See Dkt. 1, Complaint at ¶ 66). Plaintiff alleges that Intel should have defied the order and negotiated on behalf of all male employees. (Id. at ¶¶ 47-49, 76-81). Resolution of plaintiff's claims would require the court to sit in judgment of the official acts conducted in Israel by Israeli public officials, including issuance of the wage garnishment order, with which Intel complied, and for which plaintiff seeks to hold Intel liable. (See Dkt. 1, Complaint at ¶¶ 47-48; see also Dkt. 33, Declaration in Opposition to Motion to Dismiss ("Opp.") at ¶¶ 13, 30). In other words, plaintiff's claims would require the court to determine whether the wage garnishment order is lawful and valid. Thus, the claims fall squarely within the act of state doctrine. See, e.g., Royal Wulff, at 1092-93 ("The district court correctly held that all of Plaintiffs'. . . claims are barred by the act of state doctrine because they would require a United States court to determine whether the Mexican tax authority's . . . Ruling was properly issued under Mexican law."); Sea Breeze Salt, 899 F.3d at 1071 ("The district court . . . correctly determined that the relief sought by plaintiffs would require a United States court to invalidate Mexico's sovereign decisions about the exploitation of its natural resources.").

"The Supreme Court has indicated that even when the two mandatory elements are satisfied, courts may appropriately look to additional factors to determine whether application of the act of state doctrine is justified." Sea Breeze Salt, 899 F.3d at 1072-73 (citing W.S. Kirkpatrick & Co. v. Envtl. Tectronics Corp., Int'l, 493 U.S. 400, 409, 110 S.Ct. 701, 706-07 (1990)). The factors courts should consider, referred to as the "Sabbatino"[4] factors, include: (1) the degree of codification and consensus concerning a particular area of international law and activity; (2) the impact on foreign relations between the United States and the other sovereign state; (3) whether the government allegedly responsible for the disputed activity is still in existence; and (4) whether the official act of state was in the public interest. See Royal Wulff, 930 F.3d at 1096-98; Sea Breeze Salt, 899 F.3d at 1073-74.

Here, the Sabbatino factors further support application of the act of state doctrine. First, there is no international consensus that child support garnishment orders constitute slavery or involuntary servitude, or that complying with a duly issued garnishment order constitutes wrongful conduct. See, e.g., Sanem v. Smith, 2020 WL 1527863, *1 (D. Mont. 2020) ("[L]ike taxation,

[4] Derived from the Supreme Court's decision in Banco Nacional De Cuba v. Sabbatino, 376 U.S. 398, 428, 84 S.Ct. 923, 940 (1964).

garnishment of wages to enforce a child support order does not transform paid labor into 'slavery [or] involuntary servitude.'"). Second, contrary to plaintiff's assertion, (see Dkt. 33, Opp. at ¶ 33) (asserting that allowing this case to proceed would not strain diplomatic relations because the "State of Israel does not worry about its international image"), permitting this action to proceed could strain the relations between Israel and the United States as it would inject an American court into Israel's family legal system. See, e.g., Friedar v. Government of Israel, 614 F.Supp. 395, 400 (S.D.N.Y. 1985) ("It would be presumptuous for a United States court to review a foreign state's internal administrative activity[.]"). Third, Israel's sovereign authority, under which plaintiff's garnishment order was issued, has not changed. Finally, enforcing child support obligations concerns the public interest. See, e.g., Harris v. Superior Court, 3 Cal.App.4th 661, 664 (1992), disapproved on other grounds in Williams v. Superior Court, 3 Cal.5th 531, 557 n. 8 (2017) ("A case involving child support necessarily involves the public interest."). In short, the court will grant Intel's Motion.[5]

III. LEAVE TO AMEND.

Rule 15 of the Federal Rules of Civil Procedure provides that the court "should freely give leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a)(2); see Morongo Band of Mission Indians v. Rose, 893 F.2d 1074, 1079 (9th Cir. 1990) (the policy favoring amendment must "be applied with extreme liberality"). However, "[i]t is settled that the grant of leave to amend the pleadings pursuant to Rule 15(a) is within the discretion of the trial court." Zenith Radio Corp. v. Hazeltine Research, Inc., 401 U.S. 321, 330, 91 S.Ct. 795, 802 (1971). Having liberally construed and assumed the truth of the allegations in the Complaint, the court is persuaded that plaintiff's claims cannot be saved through amendment. See Lopez v. Smith, 203 F.3d 1122, 1129 (9th Cir. 2000) ("Courts are not required to grant leave to amend if a complaint lacks merit entirely."). The court lacks jurisdiction over the individual defendants, and the claims asserted in this case are barred by the act of state doctrine. In short, the court is persuaded that allowing plaintiff to file an amended complaint would be futile under the circumstances of this case. Accordingly, plaintiff's complaint is dismissed without leave to amend.

This Order is not intended for publication. Nor is it intended to be included in or submitted to any online service such as Westlaw or Lexis.

CONCLUSION

Based on the foregoing, IT IS ORDERED THAT:

1. Plaintiff's Motion for Default Judgment **(Document No. 27)** is **denied**.

2. The individual defendants are dismissed for lack of subject matter jurisdiction.

[5] Given the court's conclusion, the court need not address Intel's remaining contentions.

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3. Intel Corporation's Motion to Dismiss **(Document No. 22)** is **granted**. Plaintiff's Complaint is **dismissed without leave to amend**.

4. Judgment shall be entered accordingly.

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