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4 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA

16 JANE DOE I, JANE DOE II, HELENE PETIT,
7 MARTIN LARSSON, LEESHAI LEMISH, and
8 ROLAND ODAR)

19 Plaintiffs,)

20 v)

2 LIU QI, and DOES 1-5, inclusive)

22 Defendants.)

Civil Action No. **C 02 0672 CW**

**MOTION FOR JUDGMENT BY
DEFAULT; DECLARATION OF
JOSHUA SONDEHEIMER**

Date: May 1, 2002
Time: 1:30 p.m.
Place: Courtroom C, 15th Floor

Hon. Edward M. Chen, Magistrate Judge

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26 Plaintiffs Jane Doe, *et al.*, respectfully move that the Court enter a judgment by default
27 against defendant Liu Qi ("defendant") in the above-captioned civil action in an amount to be
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1 determined according to proof at an evidentiary hearing. A hearing on this Motion has been
2 scheduled by the Court in advance of the filing of this Motion for May 1, 2002, at 1:30 p.m
3 Plaintiffs request that an evidentiary hearing on damages be set for a date subsequent to the
4 scheduled May , 2002, hearing, at which plaintiffs intend to present live testimony from plaintiffs
5 and other witnesses. This Motion is based on the following points and authorities, the declaration
6 of Joshua Sondheimer, the record and file herein, and such other evidence and argument as may be
adduced at a hearing on this matter.

8 POINTS AND AUTHORITIES

9 1. STATEMENT OF FACTS

10 Plaintiffs' complaint alleges that defendant is liable for acts constituting torture, cruel,
11 inhuman or degrading treatment, arbitrary detention, crimes against humanity, and serious
12 interference with freedom of religion and belief against plaintiffs. Defendant was personally
13 served with the summons, complaint, and supplemental documents on February 7, 2002, as
14 evidenced by the Return of Service of summons on file with this Court, filed March 8, 2002

15 Defendant failed to appear or otherwise defend in this action within the twenty (20) days
16 permitted for an answer or other responsive pleading under Federal Rule of Civil Procedure 12(a),
17 and has made no appearance to the present day. Declaration of Joshua Sondheimer, ¶¶ 4-5,
18 attached hereto as Exhibit A. Defendant is not a minor or incompetent person. *Id.* ¶ 3. On March
19 12, 2002, the Clerk of this Court entered defendant's default

20 2. ARGUMENT

21 Plaintiffs' complaint sets forth specific allegations of defendant's liability for torture, cruel,
22 inhuman or degrading treatment, and other torts recognized as violations of the law of nations.
23 Accordingly, this Court has jurisdiction over this action pursuant to 28 U.S.C. § 1350 (the "Alien
24 Tort Claims Act," or "ATCA"), see *In re Estate of Ferdinand Marcos, Human Rights Litigation*,
25 25 F.3d 1467, 472-76 (9th Cir. 1994), and under 28 U.S.C. § 1331, by virtue of plaintiffs' claims
26 under the Torture Victim Protection Act ("TVPA"), 28 U.S.C. § 1350 note.

27 Plaintiffs request compensatory and punitive damages in this matter. As plaintiffs'
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2 damages are not for a sum certain or an amount that can be made certain by computation, Rule
3 55(b) of the Federal Rules of Civil Procedure requires plaintiffs to make this application to the
4 court for a default judgment. Fed. R. Civ. P. 55 Default judgment is appropriate where a
5 defendant properly served with the summons and complaint fails to appear or otherwise defend
6 within the time permitted by law; 2) the moving party has established the fact of such failure by
7 affidavit or declaration; 3) the defendant is not an infant or incompetent person; and 4) a default
8 has been entered against the defendant. *Id.*

9 Plaintiffs have established each of these conditions. As presented in the motion and the
10 accompanying affidavit of Joshua Sondheimer, defendant was properly served with the summons,
11 complaint and supplemental papers on February 7, 2002, and failed to appear or otherwise defend
12 in this action within the 20 days permitted for defendant's answer or other responsive pleading.
13 Plaintiff is not incompetent or a minor. The Clerk of this Court, accordingly, has entered
14 defendant's default.

15 As plaintiffs' claim for compensatory and punitive damages is not for a sum certain,
16 plaintiffs hereby request an evidentiary hearing pursuant to Rule 55(b)(2) of the Federal Rules of
17 Civil Procedure to establish their entitlement to damages. Plaintiffs request that such hearing be
18 scheduled subsequent to the May , 2002, hearing presently scheduled in this matter. To the extent
19 that the Court intends that testimony regarding damages be presented at the May hearing,
20 plaintiffs respectfully request that the evidentiary hearing be bifurcated from the May hearing, or
21 that the May hearing be continued to a date in June 2002 or later, on the ground that additional
22 time is necessary to coordinate appearances by the six plaintiffs, some of whom must travel from
23 abroad, and other witnesses. Plaintiffs' complaint reserves their right to trial by jury

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