

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON**

**BUNGE S.A.,**

Plaintiff,

v.

**PACIFIC GULF SHIPPING  
(SINGAPORE) PTE LTD., PACIFIC  
GULF SHIPPING CO. LIMITED, and  
DOES 1 through 100,**

Defendants.

Case No. 3:19-cv-00491-IM

**ORDER**

**IMMERGUT, District Judge.**

Before the Court are three postjudgment motions filed by Plaintiff: a Bill of Costs and associated motion, ECF 42, ECF 43; a Motion for Attorney Fees, ECF 46; and a Motion to Amend Judgment, ECF 52.

**BACKGROUND**

This action arises under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958 (the “New York Convention”). ECF 1 at ¶¶ 2–3.

Plaintiff sought to enforce an arbitration award it obtained against Defendant Pacific Gulf Shipping (Singapore) Pte. Ltd (“PGS-S”). *Id.* at ¶ 1. Plaintiff alleged that a separate entity, Defendant Pacific Gulf Shipping Co. Ltd. (Marshall Islands) (“PGSC-MI”), is an alter ego of Defendant PGS-S. *Id.* at ¶¶ 15–42. Defendant PGSC-MI had brought a separate action in this district, *Pacific Gulf Shipping Co. v. Adamastos Shipping & Trading S.A., et al.*, Case No. 3:18-cv-2076 (“*Vigorous Shipping* action”). *Id.* at ¶ 42.<sup>1</sup> However, Defendants never appeared in this matter, and on March 31, 2020, this Court granted Plaintiff’s Motion for Default Judgment, ECF 26. ECF 38. This Court subsequently entered judgment for Plaintiff. ECF 41.

## DISCUSSION

### A. Bill of Costs

Under 28 U.S.C. § 1920, the court “may tax as costs” certain expenses when a party timely files a bill of costs. This statute enumerates a limited set of recoverable expenses absent express authority under another provision. *Bunker Holdings Ltd. v. Yang Ming Liberia Corp.*, 906 F.3d 843, 847 (9th Cir. 2018). The prevailing party is presumptively allowed to recover for these expenses. *See* Fed. R. Civ. P. 54(d)(1). Nevertheless, the district court retains discretion in allowing or denying an award of costs. *Padgett v. Loventhal*, 706 F.3d 1205, 1209 (9th Cir. 2013). If the court grants the request, it may tax costs without specifying its reasons. *Save Our Valley v. Sound Transit*, 335 F.3d 932, 945 (9th Cir. 2003). However, if the court denies a

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<sup>1</sup> Defendants in the *Vigorous Shipping* action, which are not parties here, deposited \$9.5 million with the court as substitute security. *See* No. 3:18-cv-2076-MO, Dkt. 121 (D. Or. Mar. 20, 2019). In that case, Judge Mosman later granted summary judgment in defendants’ favor. No. 3:18-cv-2076-MO, Dkt. 210 (D. Or. Jan. 31, 2020). Plaintiffs in the *Vigorous Shipping* action (including PGSC-MI) appealed to the Ninth Circuit, which granted a stay of the district court’s release of the substitute security pending resolution of the appeal. No. 20-35159, Dkt. 18 (9th Cir. Apr. 3, 2020).

request to tax costs, it must provide reasons for doing so. *Ass'n of Mexican-Am. Educators v. State of California*, 231 F.3d 572, 591–92 (9th Cir. 2000) (en banc).

Plaintiff requests an award of costs for the fee of filing the Complaint (\$400), the fees of two pro hac vice applications (\$600 total), the costs of serving the complaint and summons on each Defendant (\$858.90 total), the costs of serving the motion for default judgment on each Defendant (\$140.12 total), the cost of purchasing a transcript (\$105.60) from the *Vigorous Shipping* action, and the docket fee under 28 U.S.C. § 1923 (\$20). ECF 42; ECF 43.

Plaintiff's motion is denied as to the pro hac vice fees and the cost of serving the motion for default judgment on each Defendant. Pro hac vice fees are not “[f]ees of the clerk” that may be taxed under 28 U.S.C. § 1920(1). *Kalitta Air L.L.C. v. Cent. Texas Airborne Sys. Inc.*, 741 F.3d 955, 957–58 (9th Cir. 2013) (per curiam). As to the costs of sending copies of the motion for default judgment to Defendants, Plaintiff contends that it was “forced” to incur these expenses. ECF 43 at 5–6. However, Plaintiff was not obligated to serve this motion on Defendants because they were already in default. ECF 22; ECF 24; *see* Fed. R. Civ. P. 5(a)(2) (“No service is required on a party who is in default for failing to appear.”). Furthermore, postage and delivery costs are not recoverable under the costs statute. *Adidas Am., Inc. v. Payless Shoesource, Inc.*, No. 01-cv-1655-KI, 2009 WL 302246, at \*3 (D. Or. Feb. 9, 2009) (citing *Smith v. Tenet Healthsystem SL, Inc.*, 436 F.3d 879, 889 (8th Cir. 2006)).

Plaintiff's motion is also denied as to the cost of purchasing a transcript from the *Vigorous Shipping* action. ECF 42 at 3. The costs statute allows taxing of “[f]ees for printed or electronically recorded transcripts necessarily obtained for use in the case.” 28 U.S.C. § 1920(2). The court has discretion in determining whether transcripts were “necessarily obtained.” *See Twentieth Century Fox Film Corp. v. Goldwyn*, 328 F.2d 190, 224 (9th Cir. 1964) (holding that

taxing of expenses to purchase trial transcripts was not abuse of discretion). More recently, however, the Ninth Circuit has cautioned against an expansive view of what is “necessarily obtained.” *See Kalitta Air*, 741 F.3d at 959. “The ‘necessarily obtained for use in the case’ standard does not allow a prevailing party to recover costs for materials that ‘merely added to the convenience of counsel’ or the district court.” *Id.* (quoting *In re Williams Sec. Litig.-WCG Subclass*, 558 F.3d 1144, 1147 (10th Cir. 2009)).

Other than a statement that all of its costs were “necessarily incurred,” Vacura Decl., ECF 44 at ¶ 9, Plaintiff has not explained how the *Vigorous Shipping* transcript was reasonably necessary to prevail in this action. Instead, Plaintiff states in its briefing that the transcript will aid in enforcing its judgment against Defendants. ECF 43 at 6. Plaintiff has not provided any authority supporting taxation of the cost of purchasing a transcript from a separate proceeding. *See id.* In light of the “narrow construction of the costs statute,” *Kalitta Air*, 741 F.3d at 959, Plaintiff’s request to award the cost of the transcript fee is denied.

This Court finds that the other items requested in the cost bill—the fee for filing the Complaint (\$400), the fees for serving of the complaint and summons on each Defendant (\$858.90 total), and the statutory docket fee (\$20)—are reasonable. Accordingly, Plaintiff is awarded costs in the amount of \$1,278.90.

#### **B. Motion for Attorney’s Fees**

Plaintiff moves for an award of attorney’s fees (1) for work performed for the arbitration pursuant to the tribunal’s decision and the charter party’s designation of English law, and (2) for work associated with this proceeding. ECF 46. This Court addresses the attorney’s fees requested for this action before turning to those associated with the underlying arbitration.

In actions to enforce arbitration awards under the New York Convention, the court may “award attorney’s fees when the losing party has acted in bad faith, vexatiously, wantonly or for

oppressive reasons.” *Ministry of Def. & Support for the Armed Forces of the Islamic Republic of Iran v. Cubic Def. Sys., Inc.*, 665 F.3d 1091, 1104 (9th Cir. 2011). The Ninth Circuit has observed that an “unjustified refusal to abide by an arbitrator’s award . . . may equate an act taken in bad faith, vexatiously or for oppressive reasons.” *Id.* (quoting *Sheet Metal Workers’ Int’l Ass’n Local Union No. 359 v. Madison Indus., Inc. of Ariz.*, 84 F.3d 1186, 1192 (9th Cir. 1996)). Courts have awarded attorney’s fees under the New York Convention solely on the basis of a defendant’s failure to appear and/or oppose confirmation of a foreign arbitral award. *See, e.g., Swiss Inst. of Bioinformatics v. Glob. Initiative on Sharing All Influenza Data*, 49 F. Supp. 3d 92, 95, 98–99 (D.D.C. 2014). Based on the record of Defendants’ refusal to abide by the arbitrator’s award and failure to appear despite notice of these proceedings, *see* Vacura Decl., ECF 36, this Court finds that Plaintiff is entitled to an award of attorney’s fees for this action.

Attorney’s fees awarded based on a showing of bad faith must nevertheless be reasonable. *See Beaudry Motor Co. v. Abko Properties, Inc.*, 780 F.2d 751, 757 (9th Cir. 1986) (citing *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67 (9th Cir. 1975)). This standard applies even when defendant has not objected to the number of hours billed or the hourly rate applied. *See Gates v. Deukmejian*, 987 F.2d 1392, 1401 (9th Cir. 1993). The preferred method is calculation of the lodestar figure, the product of the number of hours reasonably spent on the litigation and a reasonable hourly rate. *See Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). The party seeking an award of attorney’s fees “has the burden of submitting billing records to establish that the number of hours it has requested [is] reasonable.” *Gonzalez v. City of Maywood*, 729 F.3d 1196, 1202 (9th Cir. 2013). Similarly, the fee applicant has the burden of proving that the requested hourly rate is reasonable. *See Camacho v. Bridgeport Fin. Inc.*, 523 F.3d 973, 980 (9th Cir. 2008).

Plaintiff requests attorney's fees for 326.60 hours of time by pro hac vice counsel (Neil Klein and Maria del Rocio Ashby) and 223.70 hours of time by local counsel (Julie Vacura, Kelsey Benedick, Cody Hoesly, and paralegal Matt Singleton). ECF 46 at 5. In support of this request, Plaintiff has submitted declarations and billing records detailing the time spent on individual tasks. *See* Vacura Decl., ECF 47; Klein Decl., ECF 48.<sup>2</sup> This Court has reviewed these submissions and finds that the rates for all counsel and paralegal time are reasonable. However, given the substantial overlap in work and duplication of time by local and pro hac vice counsel on several issues such as alter ego and jurisdictional research, the requested fees are reduced by 10 percent to a total of \$201,884. This Court finds that this amount is reasonable in light of the complex issues involved in this case. *See Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008).

For Attorney Vacura, who has about thirty-five years of experience in legal practice, Plaintiff requests hourly rates of \$465 for work billed in 2019 and \$500 for work billed in 2020. Vacura Decl., ECF 47 at ¶¶ 3, 6. For Attorney Klein, who has over thirty years of experience, Plaintiff requests an hourly rate of \$465. Klein Decl., ECF 48 at ¶¶ 6, 17. For Attorney Rocio Ashby, who has twenty years of experience, Plaintiff requests an hourly rate of \$425. *Id.* at ¶ 7. For Attorney Benedick, who has about three years of experience, Plaintiff requests hourly rates of \$300 for work billed in 2019 and \$340 for work billed in 2020. Vacura Decl., ECF 47 at ¶ 7. For Attorney Hoesly, who has about fifteen years of experience, Plaintiff requests an hourly rate of \$400. *Id.* at ¶ 8. Plaintiff also requests an hourly rate of \$100 for work performed by paralegal Matt Singleton. *Id.* at ¶ 9.

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<sup>2</sup> In support of his fee request, Attorney Klein excluded time billed for issues unrelated to this action. Klein Decl., ECF 48 at ¶ 17.

In determining reasonable hourly rates, typically “[a]ffidavits of the plaintiffs’ attorney and other attorneys regarding prevailing fees in the community, and rate determinations in other cases, particularly those setting a rate for the plaintiff’s attorney, are satisfactory evidence of the prevailing market rate.” *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990). This Court finds that the hourly rates requested are reasonable given each attorney’s experience in legal practice. *See* Oregon State Bar 2017 Economic Survey, at 38–40 (calculating median hourly rates for Portland attorneys as \$425 for over thirty years of experience, \$325 for 16–20 years, \$300 for 13–15 years, and \$235 for 0–3 years); *see also* Vacura Decl., ECF 47 at ¶ 5 (explaining that rates in the Portland area have increased since survey was taken). This Court also finds that the hourly rate of \$100 for a paralegal does not exceed the rates approved in other cases in this district. *See, e.g., J & J Sports Prods., Inc. v. Gonzalez*, No. 1:17-cv-00678-CL, 2018 WL 1515097, at \*3 (D. Or. Feb. 14, 2018), report and recommendation adopted, No. 1:17-cv-00678-CL, 2018 WL 1512998 (D. Or. Mar. 27, 2018) (finding an hourly rate of \$150 to be reasonable for a paralegal in the Portland area).

Plaintiff also requests an award of \$24,238.05, corresponding to £19,693 in fees and costs for work by London-based counsel in the underlying arbitration. ECF 46 at 5; Kirkpatrick Decl., ECF 49 at ¶ 21. Plaintiff contends that the arbitration tribunal awarded Plaintiff its costs, which include attorney’s fees under English law. Kirkpatrick Decl., ECF 49 at ¶¶ 10, 13. The arbitration decision at issue in this action states that “any legally recoverable costs of the Owners” shall be “assessed either by us or in the High Court at the Owners’ option if not agreed . . .” ECF 1-2 at 3. This award was certified as final by the High Court of Justice on January 17, 2019. ECF 1-3.

Plaintiff cites no authority for this Court's authority to assess attorney's fees under the arbitration award, which specifies instead that fees are to be determined by the arbitration panel or the High Court, based in England and Wales. *See* ECF 1-2 at 3. Accordingly, this Court declines to award attorney's fees for work performed in the underlying arbitration.

### **C. Motion to Amend Judgment**

Plaintiff's Motion to Amend Judgment includes requests to award prejudgment and postjudgment interest. ECF 52. These issues are addressed in turn.

First, Plaintiff requests post-arbitration, prejudgment interest at the annual rate of 5%, compounded quarterly. *Id.* at 5. In actions to enforce arbitration awards under the New York Convention, the district court may allow post-award, prejudgment interest if consistent with the underlying arbitration decision. *See Ministry of Def.*, 665 F.3d at 1103. Here, the arbitration tribunal awarded Plaintiff interest on the award "calculated at the rate of 5% (five per cent) per annum compounded at three monthly rests from 2nd August, 2018 to the date of payment." ECF 1-2 at 3. As a result, this Court previously awarded \$108,749.78 in post-arbitration interest that had accrued as of August 9, 2019. *See* ECF 31 at 8 (Findings and Recommendation); ECF 38 (adopting F&R); *see also* Klein Decl., ECF 26-2 at ¶ 10 (stating this figure in declaration in support of Motion for Default Judgment).

Plaintiff's current request is consistent with both the underlying arbitration decision, *see* ECF 1-2 at 3, and this Court's Order granting Plaintiff's Motion for Default Judgment. This Court therefore grants Plaintiff's motion and amends the April 9, 2020 Judgment to include a total of \$75,251.31 in post-arbitration, prejudgment interest at the rate of 5% per annum compounded quarterly for the period August 10, 2019 through April 9, 2020.

Second, Plaintiff seeks an award of postjudgment interest at the rate of .15%. ECF 52 at 5–6. Money judgments in civil cases must include postjudgment interest. 28 U.S.C. § 1961(a).

The Ninth Circuit has held that this requirement applies to judgments recovered under the New York Convention. *Ministry of Def.*, 665 F.3d at 1102. Postjudgment interest accrues on the entire amount of the judgment, including prejudgment interest, attorney’s fees, and costs. *See Air Separation, Inc. v. Underwriters at Lloyd’s of London*, 45 F.3d 288, 291 (9th Cir. 1995). The interest rate is the “rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding[] the date of the judgment.” 28 U.S.C. § 1961(a).

Because postjudgment interest must be awarded, this Court grants Plaintiff’s request to include it in an amended judgment. *See Cont’l Transfert Technique Ltd. v. Fed. Gov’t of Nigeria*, 850 F. Supp. 2d 277, 287–88 (D.D.C. 2012). Plaintiff is therefore awarded postjudgment interest at the rate of .15% from the date of entry of the original Judgment, April 9, 2020. *See Perkins v. Standard Oil Co. of Calif.*, 487 F.2d 672, 676 (9th Cir. 1973) (“[I]nterest should run from the date of entry of the original judgment because that is the date on which the correct judgment should have been entered.”).

### CONCLUSION

Plaintiff’s Bill of Costs, ECF 42, and Motion for Costs, ECF 43, are GRANTED IN PART and DENIED IN PART. Plaintiff’s Motion for Attorney’s Fees, ECF 46, is GRANTED IN PART and DENIED IN PART. Plaintiff’s Motion to Amend Judgment, ECF 52, is GRANTED. An Amended Judgment will issue consistent with this Order.

**IT IS SO ORDERED.**

DATED this 21st day of May, 2020.

/s/ Karin J. Immergut  
Karin J. Immergut  
United States District Judge