UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 25-60672-CIV-DAMIAN

HARBOUR TOWNE SMI OPCO, LLC,

Plaintiff,

v.

M/Y "LADY CHER L C's," her engines, machinery, tackle, apparel, boats, furniture, equipment, rigging, freights, and all other appurtenances, etc., *in rem*,

Defendant.
_____/

ORDER ON PLAINTIFF'S RENEWED
MOTION FOR FINAL DEFAULT JUDGMENT [ECF NO. 43]

THIS CAUSE is before the Court on Plaintiff, Harbour Towne SMI Opco, LLC's ("Harbour Towne" or "Plaintiff"), Renewed Motion for Final Default Judgment Against the Defendant, M/Y "LADY CHER L C's", filed on February 1, 2026. [ECF No. 43 ("Motion")]. Claimant, RBC Centura Bank ("RBC" or "Claimant"), filed a Response to the Motion [ECF No. 45], and Plaintiff filed a Reply [ECF No. 46]. Defendant did not respond and the time to do so has passed.

THE COURT has reviewed the Motion, the Response and Reply, the pertinent portions of the record, and the applicable law and is otherwise fully advised. The Court also heard argument from counsel for Plaintiff and Claimant at a Status Conference held on May 8, 2026. *See* ECF No. 58. For the reasons stated on the record and as further discussed herein, Harbour Towne's Motion is granted in part as to liability.

I. BACKGROUND

This action involves a claim to foreclose on a maritime lien for necessaries against *in rem* Defendant Vessel, M/Y "LADY CHER L C's" – a 2005 55-foot Ocean Odyssey, motor yacht, with hull identification number XYU02057F405, its engines, tackle, equipment, gear, appurtenances, *etc.* *See generally* Compl. [ECF No. 1]. The Defendant Vessel was owned by non-party James Muskal, who hired Plaintiff to provide dockage and other marina services for the Defendant Vessel. *Id.* ¶¶ 4–5. Specifically, on January 8, 2015, Muskal entered into a contract with Plaintiff, who agreed to provide dockage, electricity, and other necessaries to the Defendant Vessel. *See id.* ¶ 6; *see also id.*, Ex. A, Dockage Contract [ECF No. 1-1]; Ex. B, Dockage Invoices [ECF No. 1-2].

Plaintiff alleges that it provided services to the Vessel but those services have not been paid since May 2024. Compl. ¶¶ 7–9; *see also* Affidavit of Logan Moore [ECF No. 43-1]. Plaintiff claims it is owed $61,059.06 in unpaid dockage and other necessaries for services rendered to the Defendant Vessel and brings a claim for the outstanding sum against the Defendant Vessel to enforce its maritime lien pursuant to 46 U.S.C. § 31342. *See* Mot. at 2–5.

On April 28, 2025, this Court ordered the Clerk to issue a warrant of arrest *in rem* for the Defendant Vessel and appointed Plaintiff as substitute custodian for the Vessel. [ECF Nos. 6, 8]. On April 29, 2025, the Clerk issued a Warrant for Arrest *In Rem* [ECF No. 8], and on May 2, 2025, the U.S. Marshals Service served the Warrant. *See* Executed Warrant [ECF No. 28-1]. Plaintiff then published the Notice of Action in the Broward County Sun-Sentinel on May 10 and on May 17, 2025, in compliance with Rule C(4) of the

Supplemental Rules for Admiralty and Maritime Claims and Local Admiralty Rule C(4) for the Southern District of Florida. [ECF No. 29].

On July 14, 2025, Claimant, RBC, filed a Verified Claim pursuant to Local Admiralty Rule C(6). [ECF No. 12]. RBC claims an interest in the Vessel pursuant to a First Preferred Ship Mortgage executed by James B. Muskal and Cheryll C. Collins-Muskal (the "Borrowers") on August 31, 2024 ("Ship Mortgage"), encumbering the Vessel in favor of Claimant. *Id.* ¶¶ 8–9. Claimant asserts that the Borrowers are indebted to it in the total amount of $358,608.20, plus accrued and unpaid interest at a per diem rate of $66.97 from and after May 1, 2025. *Id.* ¶ 16. On July 24, 2025, Claimant filed its Answer and Affirmative Defenses. [ECF No. 13]. Claimant asserts that Plaintiff's maritime lien is subject and subordinate to the interests in the Vessel granted to Claimant by virtue of the Ship Mortgage and Loan Documents. *Id.* at 4. While Claimant appears to assert a claim against the Defendant Vessel, Claimant has neither filed an intervening complaint nor moved to intervene to present its claim pursuant to Local Admiralty Rule E(2).

On October 14, 2025, the Clerk entered a default against the Defendant Vessel. [ECF No. 33]. On January 16, 2026, this Court entered an Order directing that the Defendant Vessel be sold by the U.S. Marshal and that all proceeds from the sale be deposited into the registry of the Court for disbursement in accordance with further order of the Court. [ECF No. 41].

Plaintiff now seeks entry of default final judgment against the Vessel pursuant to Federal Rule of Civil Procedure 55(b). The Motion is ripe for adjudication.

II. LEGAL STANDARD

Under Federal Rule of Civil Procedure 55(b)(2), the Court may enter a final judgment of default against a party who has failed to plead in response to a complaint. "[A] defendant's default does not in itself warrant the court entering a default judgment." *DirecTV, Inc. v. Huynh*, 318 F. Supp. 2d 1122, 1127 (M.D. Ala. 2004) (quoting *Nishimatsu Constr. Co., Ltd. v. Houston Nat'l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975); other citations omitted). Before entering default judgment, the Court must ensure that it has jurisdiction over the claims and parties and that the well-pled factual allegations of the complaint, which are assumed to be true, adequately state a claim for which relief may be granted. *See Nishimatsu*, 515 F.2d at 1206.

"Entry of default judgment is only warranted when there is a sufficient basis in the pleadings for the judgment entered, with the standard for a sufficient basis for the judgment being akin to that necessary to survive a motion to dismiss for failure to state a claim." *Singleton v. Dean*, 611 F. App'x 671, 671 (11th Cir. 2015) (quoting *Surtain v. Hamlin Terrace Found.,* 789 F.3d 1239, 1245 (11th Cir. 2015) (cleaned up)). Conceptually, then, a motion for default judgment is like a reverse motion to dismiss for failure to state a claim. *Surtain*, 789 F.3d at 1245. Thus, before entering a default judgment for damages, a court must ensure that the well-pled allegations in the complaint (which are taken as true due to the default) state a substantive cause of action and provide a sufficient basis for the particular relief sought. *Tyco Fire & Sec., LLC v. Alcocer*, 218 F. App'x 860, 863 (11th Cir. 2007). If a plaintiff fails to meet this pleading standard, then the plaintiff will not be entitled to default judgment.

Once a plaintiff has established a sufficient basis for liability, the Court must conduct an inquiry to determine the appropriate damages. *PetMed Express, Inc. v. MedPets.Com, Inc.*, 336 F. Supp. 2d 1213, 1217 (S.D. Fla. 2004) (citation omitted). Although an evidentiary hearing is generally required, the Court need not conduct such a hearing "when . . . additional evidence would be truly unnecessary to a fully informed determination of damages." *Safari Programs, Inc. v. CollectA Int'l Ltd.*, 686 F. App'x 737, 746 (11th Cir. 2017). Therefore, where the record adequately supports the award of damages, an evidentiary hearing is not required. *See SEC v. Smyth*, 420 F.3d 1225, 1232 n.13 (11th Cir. 2005) ("Rule 55(b)(2) speaks of evidentiary hearings in a permissive tone . . . We have held that no such hearing is required where all essential evidence is already of record." (citations omitted)).

III. DISCUSSION

A. Liability

Under the Commercial Instruments and Maritime Lien Act, "a person providing necessaries to a vessel on the order of the owner or a person authorized by the owner [] (1) has a maritime lien on the vessel; (2) may bring a civil action *in rem* to enforce the lien; and (3) is not required to allege or prove in the action that credit was given to the vessel." 46 U.S.C. § 31342(a). "A maritime lien is a 'special property right in a ship given to a creditor by law as security for a debt or claim subsisting from the moment the debt arises.'" *Dresdner Bank AG v. M/V Olympia Voyager*, 465 F.3d 1267 (11th Cir. 2006) (quoting *Galehead, Inc. V. M/V Angelia*, 183 F.3d 1242, 1247 (11th Cir. 1999)). Maritime liens differ from other common law liens in that a maritime lien is "not simply a security device to be foreclosed if the owner defaults"; rather, a maritime lien converts the vessel itself into the obligor and allows injured parties to proceed against it directly. *See Crimson Yachts v. Betty Lyn II Motor*

Yacht, 603 F.3d 864, 868 (11th Cir. 2010) (citation omitted). "In other words, '[a] maritime lien gives to its holder a property right in a vessel, and the proceeding *in rem* is . . . a means of enforcing the property right.'" *Id.* (citation omitted). "To establish a maritime lien on a vessel pursuant to 46 U.S.C. § 31342 in an *in rem* action, a plaintiff must prove: (1) it provided 'necessaries' (2) at a reasonable price (3) to the vessel (4) at the direction of the vessel's owner or agent." *Sweet Pea Marine, Ltd. v. APJ Marine, Inc.*, 411 F.3d 1242, 1249 (11th Cir. 2005) (citation omitted).

As to the first element, "'[c]ourts have construed the term 'necessaries' liberally to include everything 'reasonably needed in the ship's business,' asking 'whether the goods or services in question were necessary to the continued operation of the vessel.'" *Moore v. M/V Sunny USA*, 847 F. App'x 603, 607 (11th Cir. 2021) (quoting *Bradford Marine, Inc. v. M/V Sea Falcon*, 64 F.3d 585, 589 (11th Cir. 1995)). "[R]epairs, supplies, towage, and the use of a dry dock or marine railway" are all "necessaries." 46 U.S.C. § 31301(4).

As to the second element, the reasonableness of charges is measured by whether they are customary and in accord with prevailing charges for the work done and materials furnished. *See Sweet Pea Marine*, 411 F.3d at 1249 (citations omitted). To satisfy its burden on this element, "a plaintiff must present some modicum of evidence which compares the charges claimed with what other competitors would have charged for similar work or materials." *Id.* (citations omitted). This low burden "may be satisfied by witness testimony that the charges were reasonably in accord with industry standards." *Id.* (citation omitted).

The third element asks whether the necessaries were provided to a "vessel," defined in 1 U.S.C. § 3 as any "watercraft or artificial contrivance" used or capable of being used for transportation on water. *See id.* The fourth element requires that the person who procured

the necessaries for the vessel have had the authority to do so; an owner of a vessel, as well as an officer or agent appointed by the owner, are presumed to have that authority. *See* 46 U.S.C. § 31341(a).

Here, the Complaint's well-pled and admitted allegations and record evidence establish that Plaintiff has a maritime lien for necessaries in the Defendant Vessel. First, Plaintiff has shown that it provided necessaries to the Vessel in the form of storage and amenities. *See Am. Eastern Dev. Corp. v. Everglades Marina, Inc.*, 608 F.2d 123, 125 (5th Cir. 1979) (holding that dockage constitutes a necessary). Second, Plaintiff has shown that it provided these necessaries based on a contract with the owner of the Vessel. Compl. ¶¶ 4–7. Third, the necessaries appear to be based on a reasonable price as the owner of the Vessel agreed to the storage fees in the contract, which presumably were paid without incident for over nine years. *Id.* Therefore, Plaintiff has established that it has a maritime lien for necessaries in the Defendant Vessel. *See* Order on Renewed Motion for Default Final Judgment, *HC Investors #1, LLC v. M/Y Best Day Ever*, No. 25-22322-CIV, ECF No. 28, at 5 (S.D. Fla. Aug. 15, 2025) (Altonaga, C.J.) (finding all four elements of the maritime lien test are satisfied where plaintiff alleges it provided services falling within the definition of "necessaries" to the watercraft at the price agreed upon by the parties and paid without incident for two years).

B. Damages

Plaintiff states it is owed $61,059.06 for necessaries and $105,678.62 for costs. Mot. at 16. This Court finds that Plaintiff has not submitted sufficient evidence to allow the Court to account for this total.

1. Necessaries

Plaintiff attached to the Complaint a copy of the License Agreement between Plaintiff and the owners of the Vessel. Compl., Ex. A [ECF No. 1-1]. The agreement provides for a month-to-month service contract for (a) storage/dockage for a fee of $93.50, (b) electric charges as "metered", and (c) sales tax of $5.61, for a daily total of $99.11. *Id.* Plaintiff provides an affidavit of Logan Moore, its general manager, in support of the unpaid invoices for necessaries, totaling $61,059.06, provided to the Defendant Vessel from May 2024 through April 2025. [ECF No. 43-1].

In an *in rem* action, a plaintiff may recover for necessaries, including dockage, storage, and electricity fees. *See Robbie's of Key West v. M/V Komedy III*, 470 F. Supp. 3d 1264, 1270 (S.D. Fla. June 23, 2020) (Moore, J.) (citation omitted); *see also Bradford Marine, Inc. v. M/V Sea Falcon*, 64 F.3d 585, 589 (11th Cir. 1995) (interpreting the word "necessaries" to include what is needed for the ship's business and functioning (citation omitted)). Additionally, the Florida state tax assessed each month is part of the cost of storage. *See Robbie's of Key West*, 470 F. Supp. at 1270. But Plaintiff here seeks costs beyond the cost of storage. For example, the invoices include a $50.00 late fee, which at least one court in this District has found is not recoverable in actions recovering on maritime liens for necessaries. *See Robbie's of Key West*, 470 F. Supp. 3d at 1268 (finding the $50.00 late fee assessed each month "is not the cost of a necessary provided to the Defendant Vessel but was assessed because the representative of the Defendant Vessel failed to pay the monthly invoices") (citation omitted).

Second, the License Agreement sets out a fee schedule that does not track the line-item totals reflected on the composite invoices. As set forth in the License Agreement

attached to the Complaint, the owner of the Defendant Vessel agreed to pay a daily total of $99.11 for dockage and sales tax plus the cost of metered electrical charges. [ECF No. 1-1]. The dockage fees reflected in the composite invoices submitted with the Motion appear to be for more than the contracted daily fee. For example, for the month of June 2025, the invoices reflect a dockage fee of $4,413.75, which amounts to a daily fee of $147.13. *Compare* License Agreement [ECF No. 1-1], *with* Invoices [ECF No. 43-1, at 14–15] (reflecting different monthly rates for dockage). The invoices also reflect that from October 2024 to April 2025 the dockage fee increased to $4,678.57, which amounts to a daily fee of approximately $155.95. The Court is cognizant that the original dockage rate contracted between the parties in 2015 might well have changed a decade later. However, Plaintiff does not provide sufficient evidence to account for the discrepancy in the daily rates charged for dockage.

Further, the invoices contain line items totaling $3,620.00 for "Attorney Fees" in November 2024 and $4,000.00 for "Attorney/US Marshal Fee" in February 2025. *See* ECF No. 43-1 at 14–15. As noted above, the term "necessaries," includes, but is not limited to, "repairs, supplies, towing, and the use of a dry dock or marine railway." 46 U.S.C. § 31301(4). Attorney's fees do not qualify as "necessaries," and "a [p]laintiff may not recover the face value of a deposit with the U.S. Marshal, where [the] [p]laintiff has included no evidence of any actual Marshal fees incurred." *M&M Priv. Lending Grp., LLC v. M/Y Ciao Bella*, No. 19-cv-62350, 2020 WL 5499102, at *4 (S.D. Fla. Sept. 3, 2020) (Valle, Mag. J.) (citation omitted), *report and recommendation adopted*, 2020 WL 5500734 (S.D. Fla. Sept. 11, 2020) (Smith, J.). Here, assuming the $4,000 line item constitutes a deposit with the U.S. Marshal, Plaintiff has not described any actual fees or expenses incurred after the initial

deposit was made. Plaintiff has thus provided no reason to believe it will be unable to obtain return of this deposit. *See SMH, LMC, LLC v. M/Y Triumphant Lady*, No. 23-61259-Civ, 2024 WL 4242283, at *5 (S.D. Fla. Sept. 4, 2024) (Sanchez, Mag. J.) (denying a request for U.S. Marshal's deposit where plaintiff did not provide evidence of an inability to recover the deposit), *report and recommendation adopted*, 2024 WL 4235506 (S.D. Fla. Sept. 19, 2024) (Scola, J.). "Where a party has deposited money with the marshal to cover the marshal's expenses, but the marshal has not spent the entire deposit at the time of the judgment, courts addressing the issue have limited recovery to actual fees incurred." *Fincantieri Marine Repair LLC v. Geysir*, No. 22-cv-410, 2023 WL 2217272, at *12, 12 n.23 (M.D. Fla. Feb. 4, 2023) (denying recovery of unspent deposit to the marshal (collecting cases)), *report and recommendation adopted as modified*, 2023 WL 2213505 (M.D. Fla. Feb. 24, 2023).

2. Costs

Plaintiff has provided an Affidavit of Costs from Plaintiff's counsel in support of the following categories of reimbursement: (1) filing fee in the amount of $405.00; (2) service fee for seizure of Vessel paid to the U.S. Marshal in the amount of $3,500.00; (3) publication costs in the amount of $201.98; and (4) substitute custodian fees for dockage from May 2, 2025 through January 31, 2026, in the amount of $101,571.64. [ECF No. 43-2].

The Affidavit indicates that Plaintiff paid the $405.00 filing fee and $201.98 for publishing the required notice of arrest in the Sun-Sentinel newspaper. *See* Karcher Aff. ¶ 3. Courts have awarded fees incurred in pursuing maritime lien claims for necessaries under 28 U.S.C. § 1920 and Federal Rule of Civil Procedure 54(d)(1). *See, e.g.*, *HC Investors #1, LLC v. M/Y Best Day Ever*, No. 25-22322-CIV, Order, ECF No. 30 (S.D. Fla. Sept. 2, 2025) (Altonaga, C.J.) (awarding costs associated with filing the action and publishing the notice

of service). *But see Robbie's of Key West v. M/V Komedy III*, 470 F. Supp. 3d 1264, 1269 (Moore, J.) (finding plaintiff may not recover legal fees, publication costs, or the costs of the Marshal's bond and the filing fee because "these costs were incurred to assist [p]laintiff in enforcing a maritime lien and were not 'necessaries' which were provided to the vessel to assist the vessel perform her function"). This Court finds that Plaintiff may recover for publishing costs and the filing fee.

Next, Plaintiff seeks reimbursement of the $3,500 it deposited to the U.S. Marshal for arrest fees. Mot. at 15. As noted above, "a [p]laintiff may not recover the face value of a deposit with the U.S. Marshal, where [the] [p]laintiff has included no evidence of any actual Marshal fees incurred." *M&M Priv. Lending Grp., LLC v. M/Y Ciao Bella*, No. 19-cv-62350, 2020 WL 5499102, at *4 (S.D. Fla. Sept. 3, 2020) (citation omitted). Plaintiff has not described any actual fees or expenses incurred after the initial deposit was made. Plaintiff has thus provided no reason to believe it will be unable to obtain return of this deposit.

3. *Custodia Legis* Fees

Plaintiff also seeks costs that it incurred as substitute custodian, totaling $101,571.64 for dockage, security, and vessel maintenance from May 2, 2025, through January 31, 2026. Mot. at 13–15. It is well-settled that the expenses incurred in operating and caring for a vessel while in the custody of the court are considered "expenses of justice" to be reimbursed from the proceeds of the sale of an arrested vessel. *See Donald D. Forsht Assocs., Inc. v. Transamerica ICS, Inc.*, 821 F.2d 1556, 1561–1562 (11th Cir. 1987) (citation omitted). Moreover, "[e]xpenses in *custodia legis* are generally entitled to priority payment." *Staats v. M/Y Perseverance II*, No. 16-cv-62095, 2017 WL 7796314, at *1 (S.D. Fla. May 17, 2017) (Bloom, J.) (quoting *Bunkers Int'l Corp. v. M/V Anasazi*, 2010 WL 2330327, at *1 (M.D. Fla.

June 9, 2010)). Thus, Plaintiff may recover the costs it incurred as substitute custodian for the Defendant Vessel. However, this Court finds that Plaintiff's request is premature as the Defendant Vessel has not yet been sold. As stated in this Court's January 16, 2026 Order on Motion for Interlocutory Sale, all proceeds received from the U.S. Marshal's sale of the Defendant Vessel shall be deposited into the registry of the Court. *See* ECF No. 41 at 6. In that Order, this Court reserved jurisdiction to award *custodia legis* fees. *Id.* at 7. Therefore, Plaintiff may file a motion for *custodia legis* expenses at the appropriate time.

4. Prejudgment Interest

Finally, Plaintiff seeks to recover prejudgment interest on its maritime lien at the rate provided by law. Mot. at 17. The general rule in admiralty law is that prejudgment interest should be awarded unless there is an exceptional circumstance dictating otherwise. *See City of Milwaukee v. Cement Div., Nat Gypsum Co.*, 505 U.S. 189, 193–194 (1995); *see also Federal Ins. Co. v. Sabine Towing & Transp. Co.*, 783 F.2d 347, 352 n.4 (2d Cir. 1986). This Court finds that there are no exceptional circumstances dictating that Plaintiff is not entitled to prejudgment interest in accordance with 28 U.S.C. § 1961. *See Hurtdo v. Balerno Int'l Ltd.*, 408 F. Supp. 3d 1315, 1334 (S.D. Fla. 2019) (Cohn, J.) (computing the average weekly rate under § 1961 to determine the prejudgment interest rate for an admiralty judgment) (citation omitted); *see also Werner Enter., Inc. v. Westwind Mar. Int'l, Inc.*, 554 F.3d 1319, 1328 (11th Cir. 2009) ("In the absence of a controlling statute, the choice of a rate at which to set the amount of prejudgment interest is [] within the discretion of a federal court.").

Plaintiff's invoices reflect that a partial payment made by the Vessel's owner on June 3, 2024, satisfied only those unpaid charges incurred prior to May 1, 2024, and that the Vessel owner's partial payment was not sufficient to cover the entire balance and make the

account current. *See* ECF No. 43-1 at 12. Thus, the unpaid necessaries date back to May 1, 2024. Plaintiff is entitled to pre-judgment interest awarded at the average weekly rate under 28 U.S.C. § 1961 from May 1, 2024, until the date of the sale of the Vessel, which is when the Plaintiff will stop providing custodial services to the Vessel. *See M/Y Triumphant Lady*, 2024 WL 4242283, at *5.

Accordingly, this Court will enter default judgment on liability but defer ruling on damages. *See Robbie's of Key West*, 470 F. Supp. 3d at 1271; Order on Motion for Final Default Judgment, *Gorgol v. Red Carpet Valet, Inc.*, No. 9:19-cv-80035-DMM (S.D. Fla. Apr. 16, 2019), ECF No. 20 (granting motion for default judgment but deferring ruling on damages, instructing plaintiff to submit a supplemental memorandum supporting damages).

Plaintiff may submit a supplemental memorandum on damages that accurately states and calculates the fees for providing necessaries to the Defendant Vessel consistent with this Order.

IV. CONCLUSION

Accordingly, based on the foregoing, it is hereby

ORDERED AND ADJUDGED as follows:

1. Plaintiff's Renewed Motion for Final Default Judgment [**ECF No. 43**] is **GRANTED IN PART** as to liability.

2. Plaintiff may file a supplemental memorandum demonstrating the damages owed by **May 29, 2026**. Final judgment will be entered by separate order after the Court's assessment of any forthcoming memorandum on damages.

3. Failure to file a supplemental memorandum on damages by May 29, 2026, will result in dismissal of this case.

DONE AND ORDERED in Chambers in the Southern District of Florida, this 17th day of May, 2026.

MELISSA DAMIAN
UNITED STATES DISTRICT JUDGE