UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FR. MEYERS SOHN CANADA INC.,	:	
	:	
Plaintiff,	:	**REPORT AND RECOMMENDATION**
	:	
-v-	:	20-CV-9814 (GBD) (RFT)
	:	
RESOURCE REUTILIZATION LLC, et al.,	:	
	:	
Defendants.	:	

ROBYN F. TARNOFSKY, United States Magistrate Judge.

TO THE HONORABLE GEORGE B. DANIELS, UNITED STATES DISTRICT JUDGE:

Plaintiff Fr. Meyers Sohn Canada Inc. ("FMS") brought this action against Defendants Resource Reutilization LLC ("Resource") and Kejriwal Paper USA, Ltd. ("Kejriwal Paper"), alleging that Plaintiff had provided transportation and other services for Defendants' cargo and that Defendants failed to pay the freight, demurrage, detention, storage, and other charges. (*See* ECF 1, Compl. ¶ 15.) Your Honor ruled that Plaintiff was entitled to a default judgment and referred the action to the Honorable Barbara C. Moses, United States Magistrate Judge, for an inquest on damages. (*See* ECF 22, 24.) On November 15, 2023, the reference was reassigned to me. Plaintiff seeks compensatory damages in the amount of $1,276,832.73, prejudgment simple interest at the rate of 12% annually, attorneys' fees in the amount of $27,627.50, and costs in the amount of $1,460.84.

FACTUAL BACKGROUND

Plaintiff is the agent of its affiliate, Fr. Meyer's Sohn, North America LLC ("FMSNA"), a non-vessel operating common carrier and ocean freight forwarder licensed by the Federal

Maritime Commission. (*See* ECF 26, Proposed Findings of Fact ("PFF") ¶ 11.) On June 6, 2013, Kejriwal Paper executed and submitted to Plaintiff a document entitled "Credit Application," which Plaintiff approved, and Plaintiff subsequently advanced substantial funds on Kejriwal Paper's behalf in connection with export shipments of Kejriwal Paper. (*See id.* ¶ 13.) In the Credit Application, Kejriwal Paper agreed to Plaintiff's General Terms and Conditions of Service. (*See id.*)

In March of 2020, Kejriwal Paper engaged Plaintiff to provide Resource with ocean transportation and related logistics services for 41 containers (the "Goods") that Resource was moving from the United States to India. The booking confirmations for the shipments stated: "All services provided by Fr. Meyer's Sohn North America LLC are subject to its General Terms and Conditions of Service, copies of which are available on request and are located at https://www.fms-logistics.com/en/general-terms-and-conditions/." (*Id.* ¶ 14.) The invoices for the shipments similarly stated: "All services provided by Fr. Meyer's Sohn North America LLC are subject to its General Terms and Conditions of Service, copies of which are available on request and are located at www.fms-logistics.com." (*Id.* ¶ 15.)

FMSNA's General Terms and Conditions of Service provide, among other things, that the party for whom FMSNA is rendering its services shall pay for those services and indemnify FMSNA for any fines or penalties arising out of the export of the party's merchandise. (*See id.* ¶ 19.) FMSNA's General Terms and Conditions of Service also state that in "any dispute involving monies owed to the Company [that is, Plaintiff], the Company shall be entitled to all costs of

collection, including reasonable attorney's fees and interest at 12% per annum or the highest rate allowed by law, whichever is less . . . ." (*See id.*)

An affiliate of Plaintiff provided the transportation services for the Goods and arranged for them to be carried on various steamship lines. (*See id.* ¶¶ 16-18.) The designated recipients of the Goods refused to accept delivery, and so the Goods were returned to the port, where they accrued demurrage, detention, storage, and other charges, which were assessed by the steamship lines, the port, and the terminal. (*See id.* ¶¶ 21-22.) Defendants were apprised of the freight services and the charges that accrued while the Goods remained in the port because the intended recipients refused to accept them but failed to pay. (*See id.* ¶¶ 23, 25.) In an attempt to avoid the continued accrual of charges, on September 25, 2020, Plaintiff issued a notice to the steamship lines of its intent to abandon the Goods. (*See id.* ¶ 24.)

PROCEDURAL HISTORY

On November 20, 2020, Plaintiff filed the Complaint in this action alleging breach of contract, open account, account stated, and quantum meruit/unjust enrichment. (*See* ECF 1, Compl.) Plaintiff filed affidavits of service indicating that, on December 8, 2020, Defendants were served with the Summons and Complaint. (*See* ECF 9, 10.) The Answer to the Complaint was due on December 29, 2020. (*See id.*) Defendants failed to answer or otherwise respond to the Complaint.

On January 26, 2021, pursuant to Fed. R. Civ. P. 55(b)(2) and Rule 55.2(b) of the Local Rules of this Court, Plaintiff moved for entry of default against Defendants. (*See* ECF 15, 16.) The Clerk of Court provided a certificate of default on the same day. (*See* ECF No. 17.) On May

18, 2021, Your Honor ruled that Defendants were in default and referred this matter to a magistrate judge for an inquest on damages. (*See* ECF 22, 24.)

DISCUSSION

I. Jurisdiction and Venue

I am satisfied that this Court has subject matter jurisdiction over Plaintiff's claims. "[I]nterpretation of maritime contracts stems from the Constitution's grant of admiralty jurisdiction to federal courts." *Norfolk S. Ry. Co. v. Kirby*, 543 U.S. 14, 23 (2004) (citing U.S. Const. art. III, § 2, cl. 1). In addition, 28 U.S.C. § 1333(1) grants federal district courts original jurisdiction over "[a]ny civil case of admiralty or maritime jurisdiction[.]" To determine whether maritime jurisdiction is appropriate in a contract dispute, the contract at issue must be a maritime one, which means the contract must relate "to the navigation, business or commerce of the sea." *Fireman's Fund Ins. Co. v. Great Am. Ins. Co. of N.Y.*, 822 F.3d 620, 632 (2d Cir. 2016) (internal citation omitted). This case qualifies since it concerns "ocean transportation and related logistics services" from the United States to India. (ECF 1, Compl. ¶ 9.)

I am also satisfied as to personal jurisdiction over Defendants, which is "a necessary prerequisite to entry of a default judgment." *Reilly v. Plot Comm.*, No. 15-CV-5118 (PAE) (BCM), 2016 WL 6837895, at *2 (S.D.N.Y. Oct. 31, 2016) (quoting *Sheldon v. Plot Commerce*, No. 15-CV-5885 (CBA) (CLP), 2016 WL 5107072, at *6 (E.D.N.Y. Aug. 26, 2016), *report and recommendation adopted*, 2016 WL 5107058 (E.D.N.Y. Sept. 19, 2016)). Both Defendants are organized under the laws of the State of New York and have their principal place of business in this District. (*See* ECF 26, PFF ¶¶ 2-3.) For this reason, venue is also proper in this District.

II. Liability

Following a default, the district court must accept as true all the well pleaded factual allegations in the complaint, except those relating to damages. *See Finkel v. Romanowicz*, 577 F.3d 79, 84 (2d Cir. 2009). However, before entering a default judgment, the Court is required to determine whether those factual allegations, taken as true, establish a defendant's liability as a matter of law. *See id*.

In the Complaint, Plaintiff asserts five causes of action: breach of Plaintiff's General Terms and Conditions of Service, breach of the 2013 credit agreement between Plaintiff and Kejriwal Paper, open account, account stated, and quantum meruit and unjust enrichment. (ECF 1, Compl. ¶¶ 26-49.)

To establish a breach of a maritime contract, "a plaintiff must prove, by a preponderance of the evidence, (1) the existence of a contract between itself and that defendant; (2) performance of the plaintiff's obligations under the contract; (3) breach of the contract by that defendant; and (4) damages to the plaintiff caused by that defendant's breach." *OOCL (USA) Inc. v. Transco Shipping Corp.*, No. 13-CV-5418 (RJS), 2015 WL 9460565, at *4 (S.D.N.Y. Dec. 23, 2015) (quoting *Diesel Props S.r.l. v. Greystone Bus. Credit II LLC*, 631 F.3d 42, 52 (2d Cir. 2011)).[1]

Plaintiff has adequately alleged the existence of a contract between it and Defendants. Plaintiff issued booking confirmations that specifically stated: "All services provided by Fr.

[1] Federal law controls the interpretation of a maritime contract. *See Norfolk*, 543 U.S. at 22-23.

Meyer's Sohn North America LLC are subject to its General Terms and Conditions of Service, copies of which are available on request and are located at https://www.fms-logistics.com/en/general-terms-and-conditions/." (ECF 1, Compl. ¶ 9.) When a booking confirmation incorporates terms and conditions of service by reference, the booking confirmation becomes a final, independent contract. *See, e.g., Mediterranean Shipping Co. (USA) Inc. v. Am. Cargo Shipping Lines, Inc.*, No. 13-CV-6357 (ER), 2014 WL 4449796, at *5 (S.D.N.Y. Sept. 10, 2014) (explaining that when booking confirmations incorporated terms and conditions by reference, it "rendered the [booking confirmations] independent contracts for the purpose of imposing the payment obligations at issue"); *CMA-CGM (Canada), Inc. v. World Shippers Consultants, Ltd.*, 921 F. Supp. 2d 1, 7 (E.D.N.Y. 2013) (holding that the booking confirmations at issue incorporated by reference the full terms and conditions of bills of lading and therefore imposed payment obligations on the defendant).

Here, the booking confirmations clearly state that the services provided by Plaintiff are subject to its General Terms and Conditions of Service and explain where those terms and conditions can be located. (*See* ECF 1, Compl. ¶ 9.) That is sufficient to incorporate the General Terms and Conditions of Service by reference and impose on Defendants the obligation to make the payments described in those terms and conditions. *See, e.g., World Shippers*, 921 F. Supp. 2d at 7 (ruling that booking confirmations that stated that they were subject to terms and conditions and provided the address of the website where the terms and conditions were located incorporated by reference those terms and conditions).

Plaintiff has adequately alleged that it performed under the contract by transporting the Goods to India. (*See* ECF 1, Compl. ¶¶ 12-15.) Plaintiff has adequately alleged that Defendants breached the contract by not paying the freight charges or the accrued demurrage, detention, storage, and other fees. (*See id.* ¶ 16.) And Plaintiff has adequately alleged that it incurred damages as a result of Defendants' breach. (*See id.* ¶¶ 17, 29.)

Because Plaintiff has adequately alleged Defendants' liability for breach of the FMSNA General Terms and Conditions of Service, the Court need not reach the merits of Plaintiff's other causes of action. Plaintiff seeks to recover the same damages, for the same conduct, under its other claims (*see id.* ¶¶ 32, 37, 40, 44, 47), so any recovery on those claims would be duplicative of Plaintiff's damages for breach of the FMSNA General Terms and Conditions of Service. *See Prof'l Merch. Advance Capital, LLC v. C Care Servs., LLC*, No. 13-CV-6562 (RJS), 2015 WL 4392081, at *6 (S.D.N.Y. July 15, 2015) (dismissing claims for account stated and unjust enrichment because the Court had already found that the defendants were liable for breach of contract and guarantee, and because unjust enrichment and account stated would be duplicative of those claims). I therefore limit my analysis, for purposes of this inquest, to Plaintiff's claim for breach of its General Terms and Conditions of Service.

III. Damages

A. Legal Standards

Although the Court must accept all of the well-pleaded facts in the complaint as true when determining liability, it may not rely on Plaintiff's unsupported allegations to establish its damages. *See Greyhound Exhibitgroup v. E.L.U.L. Realty Corp.*, 973 F.2d 155, 158 (2d Cir. 1992).

Rather, "[t]here must be an evidentiary basis for the damages sought by plaintiff, and a district court may determine there is sufficient evidence either based upon evidence presented at a hearing or upon a review of detailed affidavits and documentary evidence." *Cement & Concrete Workers Dist. Council Welfare Fund, Pension Fund, Annuity Fund, Educ. & Training Fund & Other Funds v. Metro Found. Contractors Inc.*, 699 F.3d 230, 234 (2d Cir. 2012).

In this case, Plaintiff currently seeks: (1) damages in the amount of $1,276,832.73; (2) prejudgment simple interest at a rate of 12%; (3) attorneys' fees in the amount of $27,627.50; and (4) costs in the amount of $1460.84. (*See* ECF 26, PFF ¶ 26.) Plaintiff supports its demand with a declaration and documentary evidence. (*See* ECF 27.) I have reviewed these submissions and conclude that they constitute a "sufficient basis from which to evaluate the fairness" of Plaintiff's damages request. *Fustok v. ContiCommodity Servs., Inc.*, 873 F.2d 38, 40 (2d Cir. 1989).

B. Contract Damages

In computing damages for a breach of contract, the Court must determine the "amount necessary to put the plaintiff in the same economic position he would have been in had the defendant fulfilled his contract." *Adams v. Lindblad Travel, Inc.*, 730 F.2d 89, 92 (2d Cir. 1984). Here, had Defendants fulfilled their contractual obligations under the General Terms and Conditions of Service, they would have paid Plaintiff for its provision of ocean freight services and the fees that accrued when the intended recipients refused to take possession of the Goods. (*See* ECF 1, Compl. ¶¶ 11-17.)

In the Complaint, Plaintiff alleged that, as of November of 2020, Defendants had failed to pay it $915,626 for demurrage, detention, storage, and other charges, and $47,335 for freight charges, which together total $962,961, plus interest, late fees, and attorneys' fees and costs. (*See id.* at 9-10 (demand for judgment).) In its inquest submissions, however, Plaintiff submitted 14 invoices, dating from April 13, 2020 to April 5, 2021, totaling $1,276,832.73. (*See* ECF 27, Declaration of Marc Waetjen ("Waetjen Decl.") Ex. 3.)

Irrespective of the evidence submitted, a default judgment "must not differ in kind from, or exceed in amount, what is demanded in the pleadings." Fed. R. Civ. P. 54(c); *see also Silge v. Merz*, 510 F.3d 157, 160 (2d Cir. 2007) ("By limiting damages to what is specified in the 'demand for judgment,' [Rule 54(c)] ensures that a defendant who is considering default can look at the damages clause, satisfy himself that he is willing to suffer judgment in that amount, and then default without the need to hire a lawyer."). Here, the Complaint sought only $962,961 in charges, plus interest, late fees, and attorneys' fees and costs. The 14 invoices submitted in connection with this inquest substantiate $1,276,832.73 in charges, but that amount exceeds the $962,961 sought in the Complaint for freight, demurrage, detention, storage, and other charges by $313,871.73.

There is no indication in the inquest submissions that the additional $313,871.73 is due to late fees, or to interest, or to attorneys' fees and costs. Indeed, while the figure does not tie precisely to any amount in the invoices, it appears that it relates to additional detention fees that accrued after this case was filed: the invoices as of July 13, 2020 totaled $47,335, which Plaintiff alleged was the amount of the unpaid freight charges; and in March and April of 2021,

Plaintiff issued invoices in the amount of $130 for an amendment fee and invoices in the amounts of $91,642.18, $45,993.83, $138,964.69, $311,618.06, $274,979.76, and $366,169.22 for detention fees. (*See* ECF 27, Waetjen Decl. Ex. 3.) But the demand for judgment did not say that Plaintiff was seeking detention fees that would accrue after the case was filed. Under those circumstances, Plaintiff's recovery is limited to the amount for such charges sought in the demand for judgment, or $962,961, plus interest and attorneys' fees and costs. *See Silge*, 510 F.3d at 160.

C. Interest

In admiralty cases, courts generally award prejudgment interest to prevailing plaintiffs. *See Ingersoll Milling Mach. Co. v. M/V Bodena*, 829 F.2d 293, 310-11 (2d Cir. 1987) (prejudgment interest in admiralty cases "should be granted in the absence of exceptional circumstances") (internal citation omitted). The rate of prejudgment interest is to be determined by the trial court in its sound discretion. *See id.*; *see also Great Lakes Bus. Tr. v. M/T ORANGE SUN*, 855 F. Supp. 2d 131, 155-56 (S.D.N.Y. 2012) (collecting standards which have been used to determine the rate of prejudgment interest, including by reference to Treasury Bill rates, average prime rates, and statutory rates of the forum state), *aff'd*, 523 F. App'x 780 (2d Cir. 2013).[2]

In this case, Plaintiff seeks prejudgment interest at the rate of 12%, which is the rate provided in FMSNA's General Terms and Conditions of Service. (*See* ECF 27, Waetjen Decl. ¶ 14

[2] In breach of contract cases applying New York law, prejudgment interest is awarded at the statutory rate of 9%, "unless the parties contracted for a different rate[.]" *E*Trade Fin. Corp. v. Deutsche Bank AG*, 374 F. App'x 119, 123 (2d Cir. 2010).

& Ex. 2 (FMSNA General Terms and Conditions of Service) ¶ 13 ("In any dispute involving monies owed to Company, the Company shall be entitled to all costs of collection, including reasonable attorney's fees and interest at 12% per annum or the highest rate allowed by law, whichever is less unless a lower amount is agreed to by Company.").) This rate is on the higher end of the range of interest rates awarded by courts in admiralty cases. *See Interpool Ltd. v. Bernuth Agencies, Inc.*, 959 F. Supp. 644, 651 (S.D.N.Y. 1997) (noting that prejudgment interest should not result in over-compensation to the plaintiff, and reducing 18% rate provided in the parties' agreement down to 6%), *aff'd*, 129 F.3d 113 (2d Cir. 1997). However, this was the rate on which the parties agreed, which counsels in favor of allowing it, as does the fact that, as indicated below, I recommend starting the interest calculation from a conservative date when all the recoverable charges had accrued. On the specific facts of this case, therefore, I conclude that a 12% rate of prejudgment interest is appropriate. *See Indep. Bulk Transp., Inc. v. Vessel Morania Abaco*, 676 F.2d 23, 27 (2d Cir. 1982) (affirming award of prejudgment interest at a rate of 12% as within the trial court's "broad discretion"); *Interglobo Customs Broker, Inc. v. Sunderland Bros. Co.*, No. 19-CV-5723 (GBD) (JLC), 2019 WL 5996281, at *8 (S.D.N.Y. Nov. 14, 2019) (in an admiralty case, awarding prejudgment interest at a rate of 15% where the parties' contract specified that rate), *report and recommendation adopted*, 2020 WL 409685 (S.D.N.Y. Jan. 24, 2020).

Plaintiff has not proposed a date from which the prejudgment is to run. The 14 unpaid invoices in its submission bear dates between April 13, 2020 and April 5, 2021, with the most substantial charges dating from March and April of 2021. (*See* ECF 27, Waetjen Decl. Ex. 3.) This

Court has "broad[ ] discretion to determine when interest commences," *AGCS Marine Ins. Co. v. World Fuel Servs., Inc.*, 220 F. Supp. 3d 431, 441 (S.D.N.Y. 2016) (quoting *Indep. Bulk Transp.*, 676 F.2d at 25), and I recommend calculating prejudgment interest, at a rate of 12%, from April 5, 2021, by which time all the damages had accrued, until the date judgment is entered.

D. Attorneys' Fees

Plaintiff also seeks reimbursement of its attorneys' fees, in the amount of $27,657.50, pursuant to FMSNA's General Terms and Conditions of Service. (ECF 27, Waetjen Decl. ¶ 14 & Ex. 2 (FMSNA General Terms and Conditions of Service) ¶ 13).) Courts applying federal maritime law and New York law regularly award attorneys' fees where the parties' agreement so provides. *See Maersk Inc. v. Alan Mktg., Inc.*, No. 97-CV-3495 (HB), 1998 WL 167323, at *3 (S.D.N.Y. Apr. 10, 1998).

Under the parties' agreement, however, any award of attorneys' fees must be "reasonable." (ECF 27-2, Waetjen Decl. Ex. 2 (FMSNA General Terms and Conditions of Service) ¶ 13.) To determine a "presumptively reasonable fee," or "lodestar," the Court multiplies the hours counsel reasonably spent on the litigation by a reasonable hourly rate. *Millea v. Metro-North R. Co.*, 658 F.3d 154, 166 (2d Cir. 2011) (citing *Arbor Hill Concerned Citizens Neighborhood Ass'n v. Cnty of Albany & Albany Cty. Bd. of Elections*, 522 F.3d 182, 183 (2d Cir. 2008)); *see also Mediterranean Shipping Co.*, No. 13-CV-6489 (JPO) (GWG), 2015 WL 541890, at *7 (applying a "lodestar" method to determine the fee award in a maritime action); *Apex Mar. Co. v. Furniture, Inc.*, No. 11-CV-5365 (ENV) (RER), 2013 WL 2444151, at *5 (E.D.N.Y. June 5, 2013) (quoting *Heartland Payment Sys., Inc. v. Island Pride Homes, Inc.*, No. 10-CV-1739 (ADS) (AKT),

2011 WL 4458988, at *5 (E.D.N.Y. Aug. 31, 2011) (calculating a "presumptively reasonable" fee in an action for breach of a maritime contract).

1. Hourly Rate

In determining a reasonable hourly rate, the Court looks to what a "reasonable, paying client would be willing to pay, given that such a party wishes to spend the minimum necessary to litigate the case effectively." *Bergerson v. N.Y. State Office of Mental Health, Cent. N.Y. Psychiatric Ctr.*, 652 F.3d 277, 289-90 (2d Cir. 2011) (internal citation omitted). In maritime cases, courts have approved a wide range of hourly rates. *See, e.g., Globerunners, Inc. v. Environmental Packaging Techs. Holdings, Inc.,* No. 18-CV-4939 (JGK) (BCM), 2020 WL 1865536, at *5 (S.D.N.Y. Mar. 6, 2020) (recommending approval of hourly rates of $515 and $430 for counsel who had over five decades of experience), *report and recommendation adopted*, 2020 WL 1862565 (Apr. 14, 2020); *Interglobo*, 2019 WL 5996281, at *8-9 (noting the "wide range of rates" courts have found to be reasonable in maritime actions and approving an hourly rate of $410 even where an attorney failed to provide information regarding his expertise); *Billybey Marina Servs., LLC v. Affairs Afloat, Inc.*, No. 14-CV-6733 (SJ) (JO), 2016 WL 1266608, at *4-5 (E.D.N.Y. Mar. 11, 2016) (awarding hourly rate of $450 in maritime case for a partner with 36 years of experience), *report and recommendation adopted*, 2016 WL 1271479 (E.D.N.Y. Mar. 30, 2016); *Navig8 Chems. Asia Pte., Ltd. v. Crest Energy Partners, LP*, No. 15-CV-7630 (PAE), 2015 WL 7566866, at *2 (S.D.N.Y. Nov. 24, 2015) (approving hourly rate of $335 in maritime case).

Here, Plaintiff seeks an award of fees based on hourly rates ranging from $150 to $600. (*See* ECF 27-7, Waetjen Decl. Ex. 7.) The average hourly rate of the people working on the matter is $395.83. (*See id.*) No information is provided on the experience of the individuals who worked on the matter. While the hourly rates of three of the individuals who worked on the matter were over $515, which is higher than is typical for maritime cases (*see id.*), since the average hourly rate falls within the range approved by courts, I recommend adopting Plaintiff's proposed hourly rates.

2. Reasonable Hours Expended

In determining the reasonable number of hours worked, "[t]he Court should examine contemporaneous time records that identify, for each attorney, the hours expended on a task, 'with a view to the value of the work product of the specific expenditures to the client's case.'" *Angamarca v. Pita Grill 7 Inc.*, No. 11-CV-7777 (JGK) (JLC), 2012 WL 3578781, at *12 (S.D.N.Y. Aug. 2, 2012) (quoting *Luciano v. Olsten Corp.*, 109 F.3d 111, 116 (2d Cir. 1997)). The Court has discretion to reduce hours spent on the litigation, "as a practical means of trimming fat from a fee application," where it finds the hours are "excessive, redundant, or otherwise unnecessary." *Kirsch v. Fleet St., Ltd.*, 148 F.3d 149, 173 (2d Cir. 1998) (internal citations omitted).

The lawyers on this matter expended a total of 79.2 hours in connection with this action (*see* ECF 27-7, Waetjen Decl Ex. 7), which involved drafting the complaint (ECF 1), serving Defendants (ECF 9, 10), and submitting the necessary papers to secure a default and award of damages. (ECF 15, 16, 19, 20, 26, 27.) In similar breach of maritime contract cases where a

defendant failed to appear, other attorneys have expended – and other courts have found reasonable – significantly fewer hours in connection with securing a default judgment and an award of damages. *See, e.g., Globerunners,* 2020 WL 1865536, at *6 (stating that it was excessive to spend 80.9 hours on a "straightforward" case and recommending that the hours be discounted by 25%); *Interglobo Customs Broker*, 2019 WL 5996281, at *9 (finding 14.3 hours reasonable); *Mediterranean Shipping Co.*, 2015 WL 541890, at *8 (finding 32.9 hours reasonable). In other "straightforward" cases where a defendant defaulted, courts have also found significantly fewer hours to be reasonable. *See, e.g., 615 Bldg. Co. LLC v. Rudnick*, No. 13-CV-215 (GBD) (RLE), 2015 WL 4605655, at *10 (S.D.N.Y. July 31, 2015) (adopting report and recommendation that found 64 hours to be unreasonable and that recommended reducing those hours by 15%, when the matter was "uncontested," "not procedurally difficult," and had "required limited drafting of documents and appearances for conferences"); *Precise Leads, Inc. v. Nat'l Brokers of Am., Inc.*, No. 18-CV-8661 (RA) (SLC), 2020 WL 736918, at *8 (S.D.N.Y. Jan. 21, 2020) (recommending 15% reduction to the attorney fees), *report and recommendation adopted as modified*, 2020 WL 729764 (S.D.N.Y. Feb. 13, 2020).

Given the straightforward nature of this action and the absence of any conferences, I similarly conclude that the 79.2 hours expended by Plaintiff's attorneys was excessive and should be reduced. I therefore recommend discounting Plaintiff's requested attorneys' fee award by 20%, from $27,657.50 down to $22,125.20 ($27,657.50 × .8).

E. Costs

Plaintiff also seeks $1,460.84 for costs incurred, consisting of $400 in filing fees, $542 in process server expenses, $425 in attorneys' expenses, $59.04 in postage expenses, and $8.80 in PACER fees. (ECF 27, Waetjen Decl. ¶ 20 & Ex. 7.) I agree that costs should be awarded in this amount. *See DeCurtis v. Upward Bound Int'l, Inc.*, No. 09-CV-5378 (RJS), 2011 WL 4549412, at *9 (S.D.N.Y. Sept. 27, 2011) ("The costs sought here are of the type normally incurred and charged to clients, including filing fees, postage fees, service of process fees, and costs associated with legal research and administrative tasks.").

CONCLUSION

For the foregoing reasons, I respectfully recommend that Plaintiff be awarded damages in the amount of $962,961, plus simple prejudgment interest accruing from April 5, 2021, at the annual rate of 12%;[3] attorneys' fees in the amount of $22,125.20; and costs in the amount of $1460.84.

[3] As of January 1, 2024, the prejudgment interest, calculated at 12%, comes to $316,906.51 ($962,961 × 0.12 × (1001 / 365)). The daily rate for 2024, which is a leap year, is $315.72 ($962,961 × 0.12 × (1 / 366)), and if Your Honor adopts this Report and Recommendation, I recommend that Your Honor add the daily rate ($315.72) multiplied by the number of days after January 1, 2024 that the judgment is entered to the amount calculated as of January 1, 2024 ($316,906.51).

Plaintiff is to serve a copy of this Report and Recommendation on Defendants, in the same matter it served its PFF, and to file proof of such service on the docket.

Dated: New York, New York
January 30, 2024

ROBYN F. TARNOFSKY
United States Magistrate Judge

NOTICE OF PROCEDURE FOR FILING OBJECTIONS TO REPORT AND RECOMMENDATION

The parties shall have fourteen days (including weekends and holidays) from service of this Report and Recommendation to file written objections pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure to this Report and Recommendation. A party may respond to another party's objections within fourteen days after being served with a copy. *See* Fed. R. Civ. P. 72(b)(2). Such objections, and any response to objections, shall be filed with the Clerk of the Court. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Any requests for an extension of time for filing objections must be addressed to Judge Daniels.

THE FAILURE TO OBJECT WITHIN FOURTEEN DAYS WILL RESULT IN A WAIVER OF OBJECTIONS AND WILL PRECLUDE APPELLATE REVIEW. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *Thomas v. Arn,* 474 U.S. 140 (1985).