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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT COURT OF CALIFORNIA

10 UBS FINANCIAL SERVICES INC., a
11 Delaware corporation,

12 Petitioner,

No. 2:13-MC-00114-KJM-AC

13 vs.

14 JAMES S. CAVE,

15 Respondent.

ORDER

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18 This matter is before the court on petitioner's motion for an order confirming an
19 arbitration award under the Federal Arbitration Act ("FAA"), 9 U.S.C. § 9. ECF No. 1. The court heard
20 oral argument on petitioner's motion on January 17, 2014. John Bamford appeared telephonically for
21 petitioner, and James Cave appeared pro se for himself.

22 At the hearing on January 17, 2014, Mr. Cave represented that he was not aware he had
23 previously been under an obligation to pay the arbitration award because he was under the impression
24 the award was on appeal. For the reasons elaborated below, these matters are not before this court; the
25 court's role is limited to determining whether petitioner has met the minimal requirements to confirm
26 the award and reduce it to a judgment. For the reasons below, the court finds that petitioner has met
27 these requirements and GRANTS petitioner's motion.

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1 At the hearing, Mr. Cave also averred he has received no correspondence from
2 petitioner indicating the amount owed, when it is due, and whom he should pay. As discussed at the
3 hearing, these matters are not within the scope of the matter pending before the court; however,
4 respondent is advised he may contact petitioner’s counsel of record, Jeffrey N. Goldberg of Palmer
5 Lombardi & Donahue LLP, by mail at his address at 888 W. 6th St., 12th Floor, Los Angeles, CA
6 90017, or by telephone at (213) 688-0440, with any questions about the manner or form of payment.

7 I. BACKGROUND

8 Respondent joined petitioner UBS Financial to work as a financial advisor in its
9 Roseville, California office. When he was hired, respondent signed an employment agreement
10 containing an arbitration clause and therein “agre[ed] to arbitrate any dispute, claim or controversy that
11 may arise” between him and petitioner. Decl. John R. Bamford, Ex. 1, at 12, ECF No. 1-3. Respondent
12 also agreed that “any arbitration award rendered against [him] may be entered as a judgment in any
13 court of competent jurisdiction.” *Id.*

14 In connection with respondent’s employment at petitioner’s firm, respondent also
15 received a forgivable loan from petitioner in the amount of \$163,793.00. *Id.*, Ex. 2, ECF No. 1-4. The
16 forgivable loan was memorialized in a promissory note. The promissory note provided that the loan
17 would be forgiven in installments over a nine-year period conditioned on respondent’s continuing full-
18 time employment as a financial advisor at petitioner’s firm. *Id.* The promissory note also contained an
19 arbitration clause through which respondent agreed that “any disputes between [himself] and UBS
20 Financial Services . . . will be determined by arbitration as authorized and governed by the arbitration
21 law of the state of New York.” *Id.*, Ex. 2, at 5.

22 In 2009, respondent voluntarily resigned from his position as a financial advisor at UBS
23 with an outstanding balance of \$159,114.50 remaining on the promissory note. Under the terms of the
24 agreement, the balance became immediately due and payable upon his resignation. Respondent has
25 refused to repay any of the outstanding balance on the note. *Id.* ¶ 5, ECF No. 1-2.

26 Petitioner filed for arbitration before the Financial Industry Regulatory Authority
27 (“FINRA”) to recover the outstanding balance as well as interest and attorneys’ fees. Respondent filed
28 several counterclaims in the arbitration arising from his former employment at petitioner’s firm.

1 On November 14, 2012, the arbitration panel denied respondent’s counterclaims in their
2 entirety, found for petitioner, and awarded petitioner \$145,593.00 in “compensatory damages” payable
3 over five years at a rate of \$29,118.60 per year. *Id.*, Ex. 3, at 3, ECF No. 1-5. Less than one year later,
4 on November 8, 2013, petitioner filed the pending motion to confirm the arbitration award.

5 II. DISCUSSION

6 A. Confirmation of Arbitration Award

7 Section 9 of the FAA authorizes a party to an arbitration to apply for an order
8 confirming an award: “any time within one year after the award is made any party to the arbitration may
9 apply to the court so specified for an order confirming the award, and thereupon the court must grant
10 such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of
11 this title.” 9 U.S.C. § 9. If no court is specified by the parties, then the party may make an application
12 in the district in which the award was granted. *Id.*

13 “On application for an order confirming the arbitration award, the court ‘must grant’ the
14 order ‘unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this
15 title.’” *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 587 (2008). “There is nothing malleable
16 about ‘must grant,’ which unequivocally tells courts to grant confirmation in all cases, except when one
17 of the ‘prescribed’ exceptions applies.” *Id.* Thus, “the confirmation of an arbitration award is a
18 summary proceeding that merely makes what is already a final arbitration award a judgment of the
19 court.” *Romero v. Citibank USA, Nat’l Ass’n*, 551 F. Supp. 2d 1010, 1014 (E.D. Cal. 2008) (quoting
20 *Florasynth, Inc. v. Pickholz*, 750 F.2d 171, 175–76 (2d Cir. 1987)).

21 Here, petitioner has submitted the agreements containing arbitration provisions, which
22 clearly provide that this dispute was subject to binding arbitration, and that “any arbitration award
23 rendered against [respondent] may be entered as a judgment in any court of competent jurisdiction.”
24 Decl. Bamford, Ex. 2, at 5, ECF No. 1-4. Petitioner submitted the arbitration award itself, in which the
25 arbitrators decided that respondent “is liable and shall pay to [petitioner] compensatory damages in the
26 amount of \$145,593.00, payable over five years at the rate of \$29,118.60 per year.” *Id.*, Ex. 3, at 3, ECF
27 No. 1-5. Petitioner also has submitted a declaration setting forth the factual and legal basis for the
28 arbitration award. *Id.*, ECF No. 1-2. Considering these items together with the applicable law, the court

1 finds that it has jurisdiction, the parties agreed to arbitrate this dispute concerning the balance on the
2 promissory note, and that petitioner filed the motion to confirm the arbitration award within one year.
3 Because the arbitrator’s award does not appear on its face “completely irrational” or in “manifest
4 disregard of the law,” *Todd Shipyards Corp. v. Cunard Line, Ltd.*, 943 F.2d 1056, 1060 (9th Cir. 1991),
5 the court “must grant” petitioner’s motion to confirm the arbitration award, 9 U.S.C. § 9.

6 Further, the court notes that respondent has not filed an application to modify, correct,
7 or vacate the award under 9 U.S.C. §§ 10 or 11. The award in this case was filed on November 14,
8 2012. As petitioner points out in its motion, because respondent has not filed a notice of a motion to
9 vacate the award “within three months after the award [was] filed or delivered,” 9 U.S.C. § 12,
10 respondent cannot now bring such a motion. Thus, the court need not and does not consider the grounds
11 for vacatur, modification, or correction provided for in sections 10 and 11. *See Hall St. Assocs.*, 552
12 U.S. at 587 (“the court ‘must grant’ the order ‘unless the award is vacated, modified, or corrected as
13 prescribed in sections 10 and 11’”).

14 B. Postjudgment & Prejudgment Interest & Attorneys’ Fees

15 Petitioner also requests postaward prejudgment interest, postjudgment interest, and
16 attorneys’ fees. “In diversity actions, state law determines the rate of prejudgment interest” and the
17 availability of attorneys’ fees, *Am. Tel. & Tel. Co. v. United Computer Sys., Inc.*, 98 F.3d 1206, 1209
18 (9th Cir. 1996); however, “postjudgment interest is governed by federal law.” *Id.*

19 As mentioned above, the promissory note evinces the parties’ choice that the
20 agreement be “governed by the arbitration law of the state of New York.” Decl. Bamford, Ex. 2, at 5,
21 ECF No. 1-4. Under New York law, postaward prejudgment interest “is a matter of right and is not
22 dependent upon the court’s discretion or a specific demand for it.” *Goldberger v. Fischer*, 864
23 N.Y.S.2d 143, 144 (N.Y. App. Div. 2008). Accordingly, postaward prejudgment interest is GRANTED
24 at a rate of 9 percent per annum. N.Y. C.P.L.R. 5004 (McKinney’s 2013).

25 Regarding postjudgment interest, 28 U.S.C. § 1961 provides postjudgment “[i]nterest
26 shall be allowed on any money judgment in a civil case recovered in a district court,” and “interest shall
27 be calculated from the date of entry of judgment” at the rate of the “weekly average 1-year constant

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1 maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System.”

2 Accordingly, the court awards postjudgment interest at a rate of 0.12 percent per annum.¹

3 Regarding attorneys’ fees, petitioner is correct that, under New York law, an agreement
4 can authorize the award of attorneys’ fees. However, the arbitrators’ role is to enforce the agreement,
5 and the court’s role under 9 U.S.C. § 9 is limited to enforcing the arbitrators’ award absent a motion to
6 modify or vacate the award. As discussed above, any motion to modify the award must have been
7 brought within three months, 9 U.S.C. § 12. Here, in petitioner’s award, the arbitrators listed nearly two
8 pages of fees, Decl. Bamford, Ex. 3, at 3–4, ECF No. 1-5, and interpreted the promissory note
9 agreement providing for attorneys’ fees. Yet nowhere in the list of fees is there a provision for
10 attorneys’ fees. Because the arbitrators did not award attorneys’ fees, and petitioner cites no authority
11 for the court’s award of attorneys’ fees where the arbitrators have not, petitioner has not shown that an
12 additional award of attorneys’ fees is warranted.

13 **III. CONCLUSION**

14 For the foregoing reasons, petitioner’s motion to confirm the arbitration award is
15 GRANTED. Petitioner is entitled to postaward prejudgment and postjudgment interest in the amounts
16 set forth above; however, petitioner is not entitled to attorneys’ fees. Judgment shall be entered in favor
17 of petitioner, UBS Financial Services, Inc., and the Clerk of the Court is directed to close the case.

18 IT IS SO ORDERED.

19 Dated: February 25, 2014.

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23 UNITED STATES DISTRICT JUDGE
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25 ¹ FEDERAL RESERVE STATISTICAL RELEASE, Treasury constant maturities, 1-year, week ending Jan. 31,
26 available at <http://www.federalreserve.gov/releases/h15/current/h15.pdf> (last visited Feb. 25, 2014);
27 see also U.S. COURTS.GOV, FORMS & FEES, *Post Judgment Interest Rates*,
28 <http://www.uscourts.gov/formsandfees/Fees/PostJudgmentInterestRates.aspx> (last visited Feb. 25, 2014)
(explaining the calculation of the current applicable rates). In accordance with the Ninth Circuit Library’s practice
of archiving webpages, to avoid the problem of citations to disappearing websites, the court is docketing as Exhibit
A to this order PDF versions of these webpages.