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UNITED STATES DISTRICT COURT  
Northern District of California

RICHMOND BAY MARINA, LLC,

No. C 13-02978 MEJ

Plaintiff,

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR DEFAULT  
JUDGMENT AGAINST THE VESSEL  
"RELAX"**

v.

THE VESSEL "RELAX," her engines, boats,  
tackle, apparel and furniture, No. 1037234,

[Dkt. No. 23]

Defendant.

**I. INTRODUCTION**

On June 28, 2013, Plaintiff Richmond Bay Marina, LLC, filed this admiralty and maritime action *in rem* against Defendant The Vessel "Relax," Documentation No. 1037234, alleging that between June 1, 2001, and December 30, 2012, the Vessel incurred berthing charges and late fees at the Marina Bay Yacht Harbor and consumed electrical utilities during May through August 2011, which remain unpaid to the total of \$6,956.23. Compl. ¶¶ 5-8, Dkt. No. 1. Plaintiff seeks to foreclose a maritime lien against the Vessel, her engines, boats, tackle, apparel, and furniture pursuant to the Federal Maritime Lien Act ("FMLA"), 46 U.S.C. § 31342, and seeks a judgment condemning the Vessel and an order for its sale to pay the outstanding amount. *Id.* at 3.

Pending before the Court is Plaintiff's Motion for Default Judgment (Dkt. No. 23). No adverse parties – including the owner of the Vessel – have appeared in the action or filed an opposition to the Motion. On November 7, 2013, the Court held a hearing on the Motion. After carefully reviewing the record, and controlling authorities, the Court **GRANTS** Plaintiff's Motion for Default Judgment.

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**II. BACKGROUND**

Defendant is a fiberglass recreational sailing vessel approximately 63' in length. Compl. ¶ 3. On November 1, 2008, the Vessel's owner, Paul Kassatkin, entered into a Berth License Agreement with Plaintiff, pursuant to which Plaintiff agreed to provide berthing and electrical power to the Vessel while it was located in the Marina Bay Yacht Harbor in Richmond, California. *Id.* ¶ 5; Dkt. No. 29 at 1-6 (Agreement). The Vessel was berthed at the Marina Bay Yacht Harbor under the Berth License Agreement until January 20, 2012, when the Vessel was moved to Emeryville Marina, in Emeryville, California. Compl. ¶ 5.

Plaintiff alleges that between June 1, 2011 and December 30, 2012, pursuant to the Berth License Agreement, the Vessel incurred \$6,615 in berthing charges, plus \$245 in late fees (at a rate of \$35 per month). *Id.* ¶ 6. Additionally, Plaintiff alleges that the Vessel consumed electrical utilities for the months of May through August 2011, in the amount of \$96.23. *Id.* ¶ 7. According to Plaintiff, the total amount of \$6,956.23 is due and payable (*Id.* ¶ 8), and it has demanded payment of the outstanding amount, but it has not been paid (*Id.* ¶ 10).

As a result, Plaintiff filed the instant *in rem* action, asserting a maritime lien against the Vessel, her engines, boats, tackle, apparel, and furniture pursuant to 46 U.S.C. § 31341(a)(1) and general maritime law. Compl. ¶ 11; Mot. at 2.

On July 2, 2013, the Court approved Plaintiff's proposed warrant of arrest, ordering that a warrant be issued for arrest of the Vessel, which the Clerk of Court thereafter issued. Dkt. Nos. 13, 14. Concurrently, the Court granted Plaintiff's Application for Appointment of a Substitute Custodian, appointing Stephen Orosz, Harbormaster of Marina Bay Yacht Harbor, custodian of the Vessel and authorizing the U.S. Marshal for the Northern District of California to surrender possession of the Vessel to him. Dkt. No. 11. The Marshal arrested the Vessel on July 17, 2013, at Emeryville Marina, and it was towed to the Marina Bay Yacht Harbor. Dkt. No. 15. The Marshal filed a Process Receipt and Return on July 19, 2013. *Id.*

Thereafter, Plaintiff published a Notice of Action and Arrest in *The Recorder*, in compliance with Admiralty Local Rule 4-2(a), and Plaintiff filed the Proof of Publication pursuant to Admiralty

1 Local Rule 4-2(b). Dkt. No. 16.

2 On August 22, 2013, Plaintiff requested entry of default (Dkt. No. 17), which the Clerk of  
3 Court entered on August 22, 2013 (Dkt. No. 18).

4 On October 4, 2013, Mr. Kassatkin filed a request for Supervised Access to Remove Personal  
5 Belongings from the Vessel. Dkt. No. 20. Mr. Kassatkin, however, did not formally appear in this  
6 action or file a verified statement of right of possession or ownership interest in the Vessel.

7 Subsequently, on October 11, 2013, Plaintiff filed the instant Motion for Default Judgment.  
8 Dkt. No. 23. No oppositions were filed in response to the Motion. On November 7, 2013, the Court  
9 held a hearing on the Motion. Mr. Kassatkin appeared at the hearing and indicated that he opposed  
10 the Motion. The Court explained to Mr. Kassatkin that he had to appear in the matter, move to set  
11 aside the entry of default, and file an opposition or a statement setting forth his interest in the Vessel.  
12 Following the hearing, the Court issued an order setting a deadline for Mr. Kassatkin to appear and  
13 move to set aside the default for November 19, 2013. Dkt. No. 27 at 1. The Court also ordered that  
14 Mr. Orosz permit Mr. Kassatkin to go aboard the Vessel to recover personal items. *Id.* The Court  
15 continued the hearing on the Motion for Default Judgment to November 21, 2013. *Id.*

16 Prior to the November 21, 2013 hearing, Mr. Kassatkin failed to file any opposition to the  
17 Motion or move to set aside the entry of default. At the hearing, the Court questioned whether Mr.  
18 Kassatkin had attempted to file any opposition. Mr. Kassatkin responded that he had no defense to  
19 set the default aside. Accordingly, the Court took the Motion under submission and now issues its  
20 ruling.

### 21 III. LEGAL STANDARD

22 Pursuant to Admiralty Local Rule 6-2(b), after entry of default, a plaintiff may move for  
23 default judgment pursuant to Federal Rule of Civil Procedure 55(b). The Court may enter default  
24 judgment upon a showing that: (1) notice has been given as required by Admir. L.R. 6-1(a)(2) and  
25 (b)(2); (2) the time to answer has expired; and (3) no one has filed a verified statement of right of  
26 possession or ownership interest in the property. Admir. L.R. 6-2(b)(1)-(3).

27 Admiralty Local Rule 6-1, in turn, provides in relevant part:  
28

1 (a) Notice Required. A party seeking a default judgment in an action *in rem* must  
2 show that due notice of the action and arrest of the property has been given:

3 (2) In actions not subject to Fed. R. Civ. P. Supp. G:

4 i. By publication as required in Fed. R. Civ. P. Supp. C(4);

5 ii. By service upon the master or other person having custody of the  
6 property; and

7 iii. By service under Fed. R. Civ. P. 5(b) upon every other person who  
8 has not appeared in the action and is known to have an interest in the  
9 property.

10 Admir. L.R. 6-1(a)(2).

11 Generally, “[t]he district court’s decision whether to enter default judgment is a discretionary  
12 one.” *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). In determining whether default  
13 judgment is appropriate, the Ninth Circuit has enumerated the following factors for courts to  
14 consider: (1) the possibility of prejudice to the plaintiff; (2) the merits of the plaintiff’s substantive  
15 claim; (3) the sufficiency of the complaint; (4) the sum of money at stake in the action; (5) the  
16 possibility of dispute concerning material facts; (6) whether default was due to excusable neglect; and  
17 (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the  
18 merits. *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986). Where a default judgment is  
19 granted, the scope of relief is limited by Federal Rule of Civil Procedure 54(c), which states that a  
20 “default judgment must not differ in kind from, or exceed in amount, what is demanded in the  
21 pleadings.” Fed. R. Civ. P. 54(c). Upon entry of default, all factual allegations within the complaint  
22 are accepted as true, except those allegations relating to the amount of damages. *TeleVideo Sys., Inc.*  
23 *v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

### 24 III. DISCUSSION

#### 25 A. Magistrate Judge Jurisdiction to Enter Judgment

26 The initial issue this Court must address is whether the undersigned magistrate judge may  
27 enter judgment in this action in light of the fact that Mr. Kassatkin did not appear or consent to  
28 magistrate jurisdiction pursuant to 28 U.S.C. § 636(c). The Court concludes that it may.

Section 636(c) gives magistrate judges the authority to enter judgment in a civil action “upon

1 consent of the parties.” Here, the action is *in rem* against the Vessel. The Ninth Circuit has held that  
2 in an *in rem* forfeiture proceeding, a party that fails to comply with the applicable filing requirements  
3 is precluded from standing as a “party” to the action, thus making it unnecessary to obtain the  
4 individual’s consent to proceed before a magistrate judge. *United States v. 5145 N. Golden State*  
5 *Blvd.*, 135 F.3d 1312, 1317 (9th Cir. 1998). Because Mr. Kassatkin did not appear or file a verified  
6 statement pursuant to Admiralty Local Rule 6-2(b)(3), he does not have standing as a party.  
7 Therefore, the undersigned magistrate judge may enter a judgment on the Motion even though  
8 consent to magistrate judge jurisdiction has not been obtained from him as the owner of the  
9 Defendant Vessel. *See Crescent City Harbor Dist. v. M/V Intrepid*, 2008 WL 5211023, at \*2 (N.D.  
10 Cal. Dec. 11, 2008).

11 **B. Subject Matter Jurisdiction**

12 This Court has jurisdiction over this action under 28 U.S.C. § 1333, which vests district courts  
13 with original jurisdiction over “any civil case of admiralty or maritime jurisdiction.” 28 U.S.C. §  
14 1333. An *in rem* action may be brought to enforce any maritime lien, or whenever a statute of the  
15 United States provides for a maritime action to be brought *in rem*. Fed. R. Civ. P. C(1). Here,  
16 Plaintiff seeks to enforce a maritime lien under the FMLA, 46 U.S.C. § 31342. Accordingly, the  
17 Court has subject matter jurisdiction over this action. *See Ventura Packers, Inc. v. F/V Jeanine*  
18 *Kathleen*, 305 F.3d 913, 918-23 (9th Cir. 2002) (holding that the Maritime Lien Act provides a  
19 statutory basis for the exercise of a district court’s admiralty jurisdiction).

20 **C. Compliance With Admiralty Local Rules**

21 In its Motion, Plaintiff contends that it has complied with the service requirements set forth in  
22 Federal Rule of Civil Procedure Supplemental Rule C(3)(b)(i). This rule provides that, “If the  
23 property that is the subject of the action is a vessel or tangible property on board a vessel, the warrant  
24 and any supplemental process must be delivered to the marshal for service.” Fed. R. Civ. P. Suppl.  
25 R. C(3)(b)(i). Plaintiff submits that the U.S. Marshal’s Process Receipt and Return shows that the  
26 Vessel’s custodian was served when the Vessel was arrested on July 17, 2013. Dkt. No. 15.

27 Next, Plaintiff asserts that it complied with the notice requirements set forth in Admiralty  
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1 Local Rule 4-2(a) when it published notice in *The Recorder*. Mot. at 4. This rule provides:

2 (a) **Publication.** The public notice specific by Fed. R. Civ. P. Supp. C(4) shall be  
3 published once in a newspaper named in Civil L.R. 77-4, and plaintiff's  
4 attorney shall file a copy of the notice as it was published with the clerk. The  
5 notice shall contain:

- 6 (1) The court, title, and number of the action;
- 7 (2) The date of the arrest;
- 8 (3) The identity of the property arrested;
- 9 (4) The name, address, and telephone number of the attorney for plaintiff;
- 10 (5) A statement that any person who asserts a right of possession of any  
11 ownership interest in the property pursuant to Fed. R. Civ. P. Supp.  
12 (C)(6) must file a verified statement of right or interest within 14 days  
13 of the execution of process or within the period specified by court  
14 order;
- 15 (6) A statement that any person required to file a verified statement of right  
16 or interest must also file and serve an answer to the complaint within 21  
17 days after filing the statement of interest or right, and that otherwise,  
18 default may be entered and condemnation ordered;;
- 19 (7) A statement that applications for intervention under Fed. R. Civ. P. 24  
20 by persons claiming maritime liens or other interests against the  
21 property shall be filed within the time fixed by the court; and
- 22 (8) The name, address, and telephone number of the marshal.

23 Reviewing the Proof of Publication Plaintiff filed, the undersigned agrees that it conforms to  
24 Admiralty Local Rule 4-2(a)'s requirements.

25 Third, Plaintiff contends that it has satisfied Admiralty Local Rule 6-2(b)'s requirements for  
26 default judgment. Mot. at 4. First, Plaintiff states that it has properly given notice in compliance  
27 with Admiralty Local Rule 6-1(a)(2) by the publication of the Notice of Action and Arrest and by  
28 service upon the Substitute Custodian by the U.S. Marshal. Mot. at 4. The Notice expressly stated,  
in relevant part:

Any person who asserts a right to possession of any ownership interest in the  
foregoing vessel pursuant to Fed. R. Civ. P. Supp. C(6) must file a verified statement  
of right or interest within 14 days of the execution of process or within the period  
specified by court order. Any person required to file a verified statement of right or  
interest must also file and serve an answer to the complaint within 21 days after filing  
the statement of interest or right, and that otherwise, default may be entered and  
condemnation ordered. Applications for intervention under Fed. R. Civ. P. 24 by  
persons claiming maritime liens or other interest against the vessel shall be filed

1 within the time fixed by the court.

2 Dkt. No. 16.

3 Next, Plaintiff contends that the time to answer has expired and no answers or motions were  
4 filed in response to the Complaint. Mot. at 4. Third, Plaintiff contends that no one has filed a  
5 verified statement of right of possession or ownership interest in the Vessel. *Id.*

6 The Court agrees that, based on the foregoing, Plaintiff has satisfied each of the requirements  
7 set forth in Admiralty Local Rule 6-2(b) and has complied with the notice requirements of Local Rule  
8 6-1(a)(2). Further, no interested party has filed a timely verified statement asserting an interest in the  
9 Vessel. Accordingly, the Court turns its analysis to whether default judgment is appropriate based on  
10 the factors articulated in *Eitel*.

11 **D. *Eitel* Analysis**

12 1. Possibility of Prejudice to Plaintiff

13 Under the first factor, the Court must examine whether Plaintiff will be prejudiced if the Court  
14 denies its Motion for Default Judgment. *Eitel*, 782 F.2d at 1471-72. As set forth in Plaintiff's  
15 Complaint, pursuant to the Berth License Agreement, Plaintiff provided necessities to the Vessel,  
16 and despite demand for payment, Plaintiff has been unable to recover the outstanding amounts owed  
17 for berthing, late fees, and electricity. Compl. ¶¶ 5-10. Thus, if the Court were to deny Plaintiff's  
18 Motion, Plaintiff would be unable to recover the outstanding amounts and further delay in securing a  
19 judgment would only increase the chances that Plaintiff will be unable to recover such amounts.  
20 Accordingly, this factor weighs in favor of default judgment. *See United States v. Mare Island Sales,*  
21 *LLC*, 2008 WL 4279406, at \*2 (E.D. Cal. Sept. 16, 2008).

22 2. Merits of Plaintiff's Substantive Claim and the Sufficiency of the Complaint

23 The second and third *Eitel* factors focus on the merits of Plaintiff's substantive claims and the  
24 sufficiency of the Complaint. *Eitel*, 782 F.2d at 1471-72. In order for these factors to weigh in  
25 Plaintiff's favor, Plaintiff must assert claims upon which it may recover. *See PepsiCo, Inc. v. Cal.*  
26 *Sec. Cans*, 238 F. Supp. 2d 1172, 1175 (C.D. Cal. 2002). As indicated above, Plaintiff asserts and  
27 seeks to foreclose a maritime lien against the Vessel under 46 U.S.C. § 31342 based on unpaid fees  
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1 for berthing and utilities Plaintiff provided pursuant to the Berth License Agreement.

2 46 U.S.C. § 31342 provides:

3 (a) Except as provided in subsection (b) of this section, a person providing necessities to a  
4 vessel on the order of the owner or a person authorized by the owner--

5 (1) has a maritime lien on the vessel;

6 (2) may bring a civil action in rem to enforce the lien; and

7 (3) is not required to allege or prove in the action that credit was given to the vessel.

8 (b) This section does not apply to a public vessel.

9 46 U.S.C. § 31342.

10 In order to establish a maritime lien for necessities, a supplier must show: (1) that the goods  
11 or services were provided to the vessel; (2) that the goods or services were “necessaries”; (3) that the  
12 charges are reasonable in amount; and (4) that they were ordered by someone with the appropriate  
13 authority. *Belcher Co. of Ala. v. M/V Martha Mariner*, 724 F.2d 1161, 1164 (5th Cir. 1984); *see also*  
14 *Int’l Seafoods of Alaska, Inc. v. Park Ventures, Inc.*, 829 F.2d 751, 753 (9th Cir. 1987); *Farwest Steel*  
15 *Corp v. Barge Sea Span 241*, 769 F.2d 620, 623 (9th Cir. 1985). Plaintiff has made a sufficient  
16 showing as to each of these factors. Section 31301(4) states that “‘necessaries’ includes repairs,  
17 supplies, towage, and the use of a dry dock or marine railway[.]” 46 U.S.C. § 31301(4). “The list is  
18 not exhaustive, and in fact, modern admiralty jurisprudence interprets ‘necessaries’ broadly, as  
19 anything that facilitates or enables a vessel to perform its mission or occupation.” *Ventura Packers*,  
20 305 F.3d at 923. “The term ‘necessaries’ includes most goods or services that are useful to the vessel  
21 to keep her out of danger.” *Id.* Here, the Court finds that Plaintiff has made an adequate showing  
22 establishing the existence of a maritime lien under § 31342.

23 First, Plaintiff has sufficiently alleged and provided documentation that it provided berthing  
24 and electrical power to the Vessel pursuant to the Berth License Agreement from November 2008  
25 through January 30, 2012. Compl. ¶ 5 & Dkt. No. 29 at 1-6. Plaintiff has also provided  
26 documentation demonstrating that between June 1, 2011, and December 30, 2012, the Vessel  
27 incurred berthing charges amounting to \$6,615, plus late fees in the amount of \$245, which remain  
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1 outstanding. Compl. ¶ 6 & Dkt. No. 29 at 7-8. Plaintiff has also sufficiently alleged that the Vessel  
2 consumed electrical utilities for the months of May – August 2011, totaling \$96.23, which remain  
3 outstanding. Compl. ¶ 7 & Dkt. No. 29 at 7-8.

4 Second, the Court agrees with Plaintiff that these services were “necessaries” under §  
5 31301(4). *See Crescent City Harbor District*, 2008 WL 5211023, at \*3 (finding that wharfage is  
6 considered a necessary under maritime law); *Canton Port Servs. v. M/V Snow Bird*, 690 F. Supp. 2d  
7 405, 408 (D. Md. 2010) (finding that docketing services were necessaries under the FMLA); *Am. E.*  
8 *Dev. Corp. v. Everglades Marina, Inc.*, 608 F.2d 123, 125 (5th Cir. 1979) (recognizing that “[s]everal  
9 courts have imposed maritime liens for docking, wharfage, or storage fees . . .”).

10 Third, the charges that Plaintiff seeks are reasonable and are of the type that can be expected  
11 by a harbor providing berthing to a vessel over an extended period of years. *See Crescent City*  
12 *Harbor Dist.*, 2008 WL 5211023, at \*3.

13 Fourth, Mr. Kassatkin procured the services when he executed the Berth License Agreement.  
14 Dkt. No. 29 at 6. Under 46 U.S.C. § 31341(a)(1), as the owner of the vessel, Mr. Kassatkin is  
15 statutorily presumed to have authority to procure necessaries for it.

16 Taken together, the Court finds that Plaintiff has sufficiently established the existence of a  
17 maritime lien under § 31342.

18 3. Sum of Money at Stake

19 The fourth *Eitel* factor analyzes the amount of money at stake in the action. *Eitel*, 782 F.2d at  
20 1471-72. When the amount at stake is substantial or unreasonable in light of the allegations in the  
21 complaint, default judgment is disfavored. *See Truong Giang Corp. v. Twinstar Tea Corp.*, 2007 WL  
22 1545173, at \*12 (N.D. Cal. May 29, 2007). Here, Plaintiff seeks judgment against the Vessel in the  
23 amount of \$6,956.23, which represents the amounts owed for berthing and late fees under the Berth  
24 License Agreement, and utilities provided while at Marina Bay Yacht Harbor. Compl. at 4. Plaintiff  
25 also seeks authorization to use its “custodius legis” costs (pursuant to cost bill to be filed post-  
26 judgment) and that it be permitted to “credit bid” up to its judgment amount at any subsequent U.S.  
27 Marshal conducted auction. *Id.*

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1 The sum Plaintiff seeks is directly related to the amounts due pursuant to the parties' Berth  
2 License Agreement and for electricity provided while the Vessel was berthed at Marina Bay Yacht  
3 Harbor. Thus, this factor weighs in favor of default judgment.

4 4. Possibility of a Material Factual Dispute

5 The fifth *Eitel* factor examines the likelihood of dispute between the parties regarding the  
6 material facts surrounding the case. *Eitel*, 782 F.2d at 1471-72. Upon defaulting, the defendant is  
7 "deemed to have admitted all well-pleaded factual allegations" in the complaint. *DirecTV, Inc. v.*  
8 *Hoa Huynh*, 503 F.3d 847, 851 (9th Cir. 2007) (citations omitted).

9 Here, Plaintiff seeks to recover costs pursuant to the Berth License Agreement and for  
10 electricity provided to the Vessel. The amounts directly correlate to those agreed upon in the parties'  
11 contract and Defendant has provided an itemized breakdown of the payments that remain  
12 outstanding. *See* Dkt. No. 29. Thus, there is little likelihood of a dispute concerning the material  
13 facts in support of Plaintiff's Complaint. This factor, too, weighs in favor of default judgment.

14 5. Whether Default Was the Result of Excusable Neglect

15 The sixth *Eitel* factor examines whether any interested party's failure to respond to Plaintiff's  
16 allegations was the result of excusable neglect. *Eitel*, 782 F.2d at 1471-72. As set forth above,  
17 Plaintiff provided notice by publication pursuant to Admiralty Local Rule 6-1(a)(2). Mr. Kassatkin,  
18 the owner of the Vessel, is clearly on notice of this action, as demonstrated by appearance at the two  
19 hearings the Court held and his Request retrieve property onboard the Vessel. Nevertheless, despite  
20 ample time, neither Ms. Kassatkin nor any other interested party filed an answer or otherwise  
21 challenged the Motion for Default Judgment. There is nothing in the record suggesting that any  
22 individual's failure to appear and litigate this matter is based on excusable neglect. *Shanghai*  
23 *Automation Instrument Co. v. Kuei*, 194 F. Supp. 2d 995, 1005 (N.D. Cal. 2001) (default after proper  
24 service was not excusable neglect). As such, this factor weighs in favor of granting default judgment.

25 6. Strong Public Policy Favoring Decisions on the Merits

26 The final *Eitel* factor examines whether the policy of deciding a case based on the merits  
27 precludes entry of default judgment. *Eitel*, 782 F.2d at 1471-72. In *Eitel*, the Ninth Circuit  
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1 admonished that “[c]ases should be decided on their merits whenever reasonably possible.” *Id.* at  
2 1472. However, courts have recognized that “the mere existence of [Rule 55(b)] indicates that this  
3 preference, standing alone, is not dispositive.” *PepsiCo, Inc.*, 238 F. Supp. 2d at 1177 (internal  
4 quotation and citation omitted). Similarly, other courts have stated that default judgment is  
5 appropriate when a defendant refuses to litigate a case. *See, e.g., Bd. of Trs. v. RBS Wash. Blvd, LLC*,  
6 2010 WL 145097, at \*4 (N.D. Cal. Jan. 8, 2010). Here, given that no interested parties have formally  
7 appeared or participated in the proceedings, a decision on the merits is not possible. In situations  
8 such as this, Rule 55(b)(2) allows the Court to grant default judgment. This final factor thus weighs  
9 in favor of granting Plaintiff’s Motion.

10 7. Summary

11 Based on the foregoing analysis, the Court finds that each of the *Eitel* factors weighs in favor  
12 of granting default judgment. The Court therefore concludes that Plaintiff is entitled to default  
13 judgment in this matter.

14 **E. Relief Requested**

15 Plaintiff seeks judgment against the Vessel in the amount of \$6,956.23; authorization to use  
16 its “custodius legis” costs; that the Vessel be condemned and ordered sold by the U.S. Marshal;  
17 authorization that Plaintiff be permitted to “credit bid” up to its judgment amount at any subsequent  
18 U.S. Marshal-conducted auction; and that such sale be conducted in accordance with general  
19 maritime law and local admiralty rules and procedures for the purposes of satisfying the default  
20 judgment requested. Mot. at 4-5.

21 As detailed above, the Court finds that Plaintiff is entitled to default judgment on its maritime  
22 lien in the amount of \$6,956.23. The Court therefore **GRANTS** Plaintiff’s request to foreclose the  
23 lien and **ORDERS** that the Vessel be condemned and sold by the U.S. Marshal at public auction.

24 With respect to Plaintiff’s request to use its “custodius legis” costs, the Court finds that  
25 Plaintiff is entitled to such costs, provided Plaintiff substantiates the amount claimed.

26 As to Plaintiff’s request that it be allowed to credit bid, the local admiralty rules governing  
27 payment of bids at public auction sales, provide that, “a plaintiff . . . foreclosing a properly recorded  
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1 preferred mortgage on, or other valid security interest in the vessel may bid, without payment of cash,  
2 certified check or cashier's check, up to the total amount of the secured indebtedness as established  
3 by affidavit filed and served by that party on all other parties no later than 14 days prior to the date of  
4 sale." Admir. L. R. 9-2(b). Provided that Plaintiff complies with the notice requirements set forth in  
5 Admir. L. R. 9-2, Plaintiff's request for an order permitting it to credit bid up to its judgment amount,  
6 the request is **GRANTED**.

7 **IV. CONCLUSION**

8 For the reasons set forth above, the Court **GRANTS** Plaintiff's Motion for Default Judgment  
9 against the Vessel "Relax," (U.S. Documentation No. 1037234) her engines, boats, tackle, apparel,  
10 and furniture in the amount of \$6,956.23, and custodies legis costs (pursuant to cost bill to be filed  
11 post-judgment). Plaintiff shall recover the amount of its judgment from the foreclosure of its  
12 maritime lien against the Vessel "Relax," which the Court **ORDERS** to be accomplished through a  
13 public sale, to be conducted by the United States Marshal pursuant to Admiralty Local Rule 9-2, and  
14 that Plaintiff be permitted to credit bid up to its judgment amount at said public sale. The Court shall  
15 retain jurisdiction of this action through the completion of the sale of the Vessel "Relax," and any  
16 related proceedings. To the extent that any dispute remains between Mr. Kassatkin and Plaintiff  
17 whether items on the Vessel constitute personal belongings, the parties shall file a **joint** statement: (1)  
18 listing and describing the items in dispute; and (2) stating each side's position as to why the item  
19 constitutes or does not constitute personal property. The joint statement shall be due no later than  
20 January 9, 2014. Plaintiff shall serve a copy of this Order on Mr. Kassatkin.

21 **IT IS SO ORDERED.**

22  
23 Dated: December 19, 2013

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25 \_\_\_\_\_  
26 Maria-Elena James  
27 United States Magistrate Judge  
28