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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
6

7 ARABIAN GAS AND OIL
8 DEVELOPMENT COMPANY,

9 Plaintiff,

10 v.

11 WISDOM MARINES LINES, S.A., et al.,

12 Defendants.

Case No. [16-cv-03801-DMR](#)

**ORDER RE: CIVIL CONTEMPT
SANCTIONS**

Re: Dkt. No. 73

13 Specially Appearing Defendants Wisdom Marine Lines, S.A. and Wisdom Marine Lines
14 Co. (collectively, “Wisdom”) request that the court hold Plaintiff Arabian Gas and Oil
15 Development Company (“AGODCO”) in civil contempt for its failure to comply with the March
16 30, 2017 order to post an additional undertaking in the amount of \$171,804.05. Wisdom seeks
17 monetary sanctions of \$31,017.26 as reimbursement for attorneys’ fees and costs incurred in
18 seeking a contempt sanction. [Docket Nos. 73, 94]. AGODCO opposes. [Docket No. 89]. The
19 parties submitted supplemental briefing at the court’s request. [Docket Nos. 93, 94]. The court
20 held oral argument on August 10, 2017.

21 Having considered the parties’ briefing and oral argument, and for the reasons stated
22 below and on the record, Wisdom’s request for civil contempt sanctions is **GRANTED**. The court
23 finds that AGODCO is in civil contempt of its March 30, 2017 order. AGODCO is subject to a
24 fine of \$500.00 per day, beginning on the day following the date of this order, to be paid until
25 AGODCO complies with the March 30 order by posting the additional undertaking. The court
26 awards Wisdom \$20,091.82 for attorneys’ fees and costs reasonably expended in seeking this
contempt sanction.

27 **I. BACKGROUND**

28 The facts and procedural history underlying this attachment action are set forth in detail in

1 prior orders. See *Arabian Gas & Oil Dev. Co. v. Wisdom Marines Lines, S.A.*, No. 16-CV-03801-
2 DMR, 2017 WL 1175592, at *1-2 (N.D. Cal. Mar. 30, 2017) [Docket No. 68]; *Arabian Gas & Oil*
3 *Dev. Co. v. Wisdom Marines Lines, S.A.*, No. 16-CV-03801-DMR, 2017 WL 2378060, at *1 (N.D.
4 Cal. June 1, 2017) [Docket No. 84]. The court will confine its discussion to the information
5 relevant to Wisdom’s request for civil contempt sanctions.

6 On March 30, 2017, AGODCO was ordered to post an additional undertaking in the
7 amount of \$171,804.05 within 14 days of the order, or by April 13, 2017 (“March 30 order”). See
8 *Arabian Gas & Oil Dev. Co.*, 2017 WL 1175592, at *8.

9 AGODCO did not post the additional undertaking by April 13, 2017.

10 On April 13, 2017, AGODCO filed a mandamus petition with the Ninth Circuit. See
11 *Petition for Writ of Mandamus in In re: Arabian Gas & Oil Dev. Co.*, No. 17-71080 [Appellate
12 Docket No. 1]. It also filed an emergency motion with the Ninth Circuit to stay the March 30
13 order. See *Emergency Motion to Stay in In re: Arabian Gas & Oil Dev. Co.*, No. 17-71080
14 [Appellate Docket No. 3].

15 On April 17, 2017, AGODCO moved this court to stay the March 30 order pending
16 resolution of its mandamus petition. [Docket No. 70]. Wisdom opposed the stay and requested
17 civil contempt sanctions for AGODCO’s failure to comply with the March 30 order. [Docket No.
18 73].

19 On May 25, 2017, the court denied AGODCO’s motion to stay. See *Arabian Gas & Oil*
20 *Dev. Co.*, 2017 WL 2378060 [Docket No. 84]. Despite the fact that AGODCO “conceded that it
21 had violated the court’s March 30, 2017 order,” see *id.* at *5; 5/25/17 Tr. at 7:25-8:4 [Docket No.
22 87], AGODCO received one final opportunity to post the additional undertaking by June 1, 2017.
23 See *Arabian Gas & Oil Dev. Co.*, 2017 WL 2378060, at *5. Accordingly, the court held
24 Wisdom’s request for civil contempt sanctions in abeyance until the end of the day on June 1,
25 2017. *Id.*

26 On May 31, 2017, AGODCO filed a motion for leave to file a motion for reconsideration
27 of the May 25 order. [Docket No. 81]. In the alternative, AGODCO requested a brief stay due to
28 “the official observance of Ramadan in Plaintiff’s home country of Bahrain” so that it could post

1 the additional undertaking. [Docket No. 81 at 2].

2 AGODCO did not post the additional undertaking by June 1, 2017.

3 On June 2, 2017, the court denied AGODCO's reconsideration motion and request for a
4 brief stay, but gave AGODCO two additional weeks to file a response to Wisdom's request for
5 civil contempt sanctions. See *Arabian Gas & Oil Dev. Co. v. Wisdom Marines Lines, S.A.*, No.
6 16-CV-03801-DMR, 2017 WL 2406720 (N.D. Cal. June 2, 2017) [Docket No. 86]. Regarding
7 AGODCO's request for a brief stay, the court explained that while it would normally entertain
8 such a request, this particular request was "both late and vague, and smack[ed] of foot-dragging."
9 *Id.* at *2. AGODCO's request was "suspiciously short on specifics;" AGODCO provided no
10 details about the steps it had taken to procure the additional bond, nor did it explain how Ramadan
11 actually affected its ability to obtain it. *Id.* at *3.

12 On June 13, 2017, the Ninth Circuit denied AGODCO's mandamus petition. See 6/13/17
13 Order in *In re: Arabian Gas & Oil Dev. Co.*, No. 17-71080 [Appellate Docket No. 7]. The Ninth
14 Circuit explained that "Petitioner has not demonstrated that this case warrants the intervention of
15 this court by means of the extraordinary remedy of mandamus." *Id.* The Ninth Circuit denied
16 AGODCO's emergency stay motion as moot. *Id.*

17 On June 16, 2017, AGODCO filed its opposition to Wisdom's request for civil contempt
18 sanctions. [Docket No. 89]. In its opposition, AGODCO raised procedural and substantive
19 challenges, but did not argue that it was unable to pay the additional undertaking. Wisdom filed a
20 reply on June 23, 2017. [Docket No. 91].

21 On July 18, 2017, the court ordered Wisdom to submit invoices to support its request for
22 attorneys' fees and costs. [Docket No. 92]. The court ordered AGODCO to provide "evidence of
23 its financial condition including, for 2016 and the first half of 2017, profit and loss statements and
24 a balance sheet showing assets and liabilities." [Docket No. 92 at 1].

25 On July 28, 2017, in response to the July 18 order, AGODCO argued for the first time that
26 it should not be held in civil contempt because it is unable to pay the additional undertaking.
27 [Docket No. 93]. To support its claimed inability to pay, AGODCO submitted three
28 unauthenticated financial documents purporting to show the precarious financial health of a

1 company called Arabian Worldwide Ventures SPC (“Arabian Worldwide”). See Docket No. 93;
2 2016 Financial Statement (Ex. 1) [Docket No. 93-1]; Balance Sheet for January 1 through June 30,
3 2017 (Ex. 2) [Docket No. 93-2]; Trial Balance Sheet for January 1 through June 30, 2017 (Ex. 3)
4 [Docket No. 93-3]. According to AGODCO, Arabian Worldwide has been doing business under
5 the trade name AGODCO since April 2012. [Docket No. 93 at ¶ 2].

6 To date, AGODCO has not posted the additional undertaking.

7 **II. DISCUSSION**

8 Wisdom requests civil contempt sanctions for AGODCO’s failure to comply with the
9 March 30 order, including monetary sanctions of \$31,017.26 in attorneys’ fees and costs.

10 Before turning to the merits, the court addresses several procedural challenges raised by
11 AGODCO. First, AGODCO contends that Wisdom’s motion should be denied because Wisdom
12 should have noticed it as a separate motion, rather than seeking contempt sanctions in its
13 opposition to AGODCO’s motion to stay. While technically correct, this argument elevates form
14 over substance. AGODCO received two weeks to file a written opposition to the request for
15 contempt sanctions—the same amount of time it would have received under the local rules for a
16 regularly noticed motion. AGODCO also had the opportunity to present oral argument.

17 AGODCO also asserts that it cannot be held in contempt of the March 30 order to post an
18 additional undertaking because the court lacked jurisdiction to issue such an order. According to
19 AGODCO, the court lacked jurisdiction because California attachment statutes do not authorize a
20 court to increase an undertaking when the court has already quashed the writ of attachment and
21 released the property subject to the writ. This argument has already been rejected in a prior order.
22 See, e.g., *Arabian Gas & Oil Dev. Co.*, 2017 WL 2378060, at *1, n.1 (explaining that the “court
23 retained jurisdiction over Defendants’ motion to increase Plaintiff’s undertaking as it was ancillary
24 or incident to the order vacating Plaintiff’s writ, and, moreover, because Plaintiff’s \$10,000.00
25 undertaking was and is still posted with the court”).

26 Finally, AGODCO asserts that it was not in contempt of the March 30 order because it was
27 in the process of seeking appellate review of a legal issue of first impression. This argument also
28 lacks merit. The fact that AGODCO filed a writ of mandamus with the Ninth Circuit regarding

1 the March 30 order does not excuse its compliance with the order. See Wright & Miller, 16A Fed.
2 Prac. & Proc. Juris. § 3954 (4th ed.) (“The taking of an appeal does not by itself suspend the
3 operation or execution of a district-court judgment or order during the pendency of the appeal.”);
4 Matter of Combined Metals Reduction Co., 557 F.2d 179, 188 (9th Cir. 1977) (“Absent the grant
5 of a stay or injunction and the approval of a bond, the status quo of the litigation is not fixed and
6 the litigation is free to continue.”) (citation and internal quotation marks omitted).

7 The court now turns to the merits of the request for civil contempt sanctions.

8 **A. Legal Principles**

9 As recently explained by the Ninth Circuit in *Shell Offshore Inc. v. Greenpeace, Inc.*, 815
10 F.3d 623, 628 (9th Cir. 2016), the “court’s contempt powers are broadly divided into two
11 categories: civil contempt and criminal contempt.” Since the “difference between criminal and
12 civil contempt is not always clear,” *United States v. Rylander*, 714 F.2d 996, 1001 (9th Cir. 1983),
13 the Supreme Court instructed courts to look to the “character and purpose” of the sanction to
14 determine whether the contempt is civil or criminal. *Gompers v. Buck’s Stove & Range Co.*, 221
15 U.S. 418, 441 (1911). Contempt is “criminal if [the sanction] is ‘punitive’ and for the purpose of
16 ‘vindicat[ing] the authority of the court.’” *Lazar v. Ford Motor Co.*, 399 F.3d 1101, 1110 (9th
17 Cir. 2005) (quoting *Gompers*, 211 U.S. at 441). By contrast, “contempt is civil if [the sanction] is
18 ‘remedial’ and ‘for the benefit of the complainant.’” *Lazar*, 399 F.3d at 1110 (quoting *Gompers*,
19 211 U.S. at 441).

20 “[C]ourts have inherent power to enforce compliance with their lawful orders through civil
21 contempt.” *Shillitani v. United States*, 384 U.S. 364, 370 (1966); see also 28 U.S.C. § 636(e)(4)
22 (“In any case in which a United States magistrate judge presides with the consent of the parties . . .
23 the magistrate judge may exercise the civil contempt authority of the district court.”). “The
24 standard for finding a party in civil contempt is well settled: The moving party has the burden of
25 showing by clear and convincing evidence that the [non-moving party] violated a specific and
26 definite order of the court.” *FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1239 (9th Cir. 1999)
27 (internal quotation marks omitted); see also *In re Bennett*, 298 F.3d 1059, 1069 (9th Cir. 2002)
28 (same). Generally, a violation is shown by the party’s “failure to take all reasonable steps within

1 the party’s power to comply.” Reno Air Racing Ass’n., Inc. v. McCord, 452 F.3d 1126, 1130 (9th
2 Cir. 2006) (citation and internal quotation marks omitted). Willfulness is not an element of
3 contempt. Id.

4 If the moving party establishes a violation of a specific and definite court order, the burden
5 shifts to the non-moving party “to prove that it ‘took all reasonable steps within [its] power to
6 insure compliance.’” Logtale, Ltd. v. IKOR, Inc., No. 11-CV-05452-EDL, 2016 WL 7740750, at
7 *2 (N.D. Cal. July 22, 2016) (quoting Hook v. Ariz. Dep’t of Corr., 107 F.3d 1397, 1403 (9th Cir.
8 1997)). “A person should not be held in contempt if his action appears to be based on a good faith
9 and reasonable interpretation of the court’s order.” Reno Air Racing Ass’n., 452 F.3d at 1130
10 (internal quotation marks omitted).

11 **B. Analysis**

12 To begin with, AGODCO contends that the sanctions sought by Wisdom are criminal
13 rather than civil in nature. Presumably, AGODCO makes this assertion in an attempt to trigger the
14 significant due process protections that must be provided before a finding of criminal contempt
15 can be made. See Int’l Union, United Mine Workers of Am. v. Bagwell, 512 U.S. 821, 826–27
16 (1994) (in context of criminal contempt, due process procedural protections include the right to
17 notice of charges, assistance of counsel, ability to present a defense, and, in certain instances, the
18 right to a jury trial); see also Fed. R. Crim. P. 42 (procedures for criminal contempt include notice,
19 appointment of a prosecutor, and a jury trial).

20 AGODCO makes two attempts to paint the requested sanctions as criminal. Both are
21 specious. First, AGODCO points to Wisdom’s single citation to 18 U.S.C. § 401, which is the
22 criminal contempt statute. See Defs’ Opp’n to Mot. to Stay at 7 [Docket No. 73]. Although
23 Wisdom’s reasons for making a sole citation section 401 are unclear, the whole of Wisdom’s
24 briefing makes it abundantly clear that it seeks civil rather than criminal contempt sanctions.
25 Specifically, Wisdom seeks reimbursement of the fees and costs it incurred as a result of
26 AGODCO’s failure to comply with the March 30 order. This is a classic civil contempt sanction.
27 See United States v. United Mine Workers of Am., 330 U.S. 258, 303–04 (1947) (explaining that
28 compensatory civil contempt sanctions are intended to “compensate the complainant for losses

1 sustained,” are “payable to the complainant” and must “be based upon evidence of complainant’s
2 actual loss”). Next, AGODCO argues that Wisdom’s statement that AGODCO “should be held
3 responsible” betrays a punitive purpose. See Defs’ Opp’n to Mot. to Stay at 9. This amounts to
4 word play. As Wisdom explains, AGODCO will be held responsible for its “cavalier treatment of
5 these proceedings” through the issuance of civil contempt sanctions. *Id.* at 8-9.

6 Turning to the merits of the request for civil contempt sanctions, Wisdom has met its initial
7 burden of establishing by clear and convincing evidence that AGODCO violated a specific and
8 definite court order. The March 30 order required AGODCO to post the additional undertaking by
9 April 13, 2017. The May 25 order granted AGODCO a final opportunity to comply by posting the
10 additional undertaking by June 1, 2017. To date, AGODCO has not posted the additional
11 undertaking. Indeed, Plaintiff concedes the violation. See 5/25/17 Tr. at 7:25-8:4; Pltf’s Opp’n to
12 Mot. for Civil Contempt Sanctions [Docket No. 89] at 9 (“Plaintiff admittedly failed to comply
13 with the Court’s Order to post an additional undertaking . . . [.]”).

14 The burden now shifts to AGODCO to prove that it took all reasonable steps within its
15 power to insure compliance. Here, AGODCO argues for the first time that it is presently unable to
16 comply with the March 30 order because it cannot pay the additional undertaking. See Pltf’s
17 Supp. Brief [Docket No. 93] ¶¶ 6-11.

18 A present inability to comply is a complete defense to civil contempt. See *United States v.*
19 *Rylander*, 460 U.S. 752, 757 (1983) (“Where compliance is impossible, neither the moving party
20 nor the court has any reason to proceed with the civil contempt action.”); *United States v.*
21 *Drollinger*, 80 F.3d 389, 393 (9th Cir. 1996) (“Ability to comply is the crucial inquiry, and a court
22 should weigh all the evidence properly before it determines whether or not there is actually a
23 present ability to obey.”) (citations omitted). The “inability to comply” is a rigorous and
24 demanding standard. Under prevailing Ninth Circuit law, the contempnor must establish
25 “‘categorically and in detail’” why he is presently unable to comply with the court’s order. *FTC,*
26 *179 F.3d at 1241* (quoting *N.L.R.B. v. Trans Ocean Export Packing, Inc.*, 473 F.2d 612, 616 (9th
27 Cir. 1973)). If the contempnor’s inability to comply is self-induced, it cannot avoid civil contempt.
28 See *United States v. Asay*, 614 F.2d 655, 660 (9th Cir. 1980); see also *S.E.C. v. Goldfarb*, No. C

1 11-00938 WHA, 2012 WL 2343668, at *4 (N.D. Cal. June 20, 2012) (citing Asay).

2 The court is highly skeptical of AGODCO’s “inability to pay” defense. AGODCO never
3 raised an inability to pay until very recently. It did so only in response to the order for
4 supplemental briefing on AGODCO’s financial condition, which the court requested for the
5 purpose of fashioning an appropriate coercive sanction. In fact, in AGODCO’s May 31, 2017
6 motion for reconsideration, AGODCO asked for an extension to post the increased undertaking,
7 claiming that it needed a modest amount of additional time due to the observance of Ramadan in
8 its home country of Bahrain. AGODCO thereby led the court to believe that it was in the process
9 of obtaining the bond, and would soon be in compliance with the March 30 order. [Docket No. 81
10 at 2]. It now appears that AGODCO either misled the court on May 31, 2017, or it is misleading
11 the court now.

12 AGODCO’s recent assertions regarding its inability to pay are highly suspicious in light of
13 the full record in this case. To begin with, it contends that “AGODCO” is simply a trade name
14 used by Arabian Worldwide, an entity which is purportedly in dire financial straits. This factual
15 contention is questionable. AGODCO cites to the July 24, 2016 sworn declaration of Mr.
16 Eleftherios Antoniadis, who is also known as Terry Andis. AGODCO submitted the declaration
17 in opposition to Defendants’ original motion to dismiss. [Docket No. 38-2]. In the declaration,
18 Andis attests that he is the Group Chief Operating Officer of AGODCO and has been the Chief
19 Operating Officer of Arabian Worldwide Ventures SPC since its founding in 2012. Andis Decl.,
20 ¶¶ 3, 8. Andis further attests that AGODCO is not a corporation, but rather is a brand and trade
21 name used by Arabian Worldwide Ventures SPC:

22 “Since April 2012, the AGODCO trading name and brand was
23 wholly-owned by Arabian Worldwide Ventures SPC, which was
24 doing business as AGODCO, “Arabian Gas and Oil Development
25 Company, and as Arabian Worldwide Ventures, SPC. In Bahrain,
the trade name AGODCO has been used exclusively by Arabian
Worldwide Ventures, SPC which carried on business as AGODCO
in that jurisdiction.”

26 Andis Decl., ¶ 6.

27 However, Andis’s assertions in his July 24, 2016 sworn declaration squarely contradict the
28 statements in the complaint that Andis verified under penalty of perjury in early July 2016, just a

1 few weeks prior to his declaration. See Verification [Docket No. 1-1]. According to the verified
2 complaint, AGODCO is “a corporation organized and existing under and by virtue of the laws of
3 the Kingdom of Bahrain, with a principal place of business located in Bahrain.” Compl., ¶ 3
4 [Docket No. 1].

5 AGODCO’s recently submitted financial documents for Arabian Worldwide are also
6 suspicious. None are authenticated. All three are vague, and do not explain the connection, if any,
7 between AGODCO and Arabian Worldwide. The first document purports to be an audited
8 financial statement for 2016 for Arabian Worldwide Ventures. See 2016 Financial Statement (Ex.
9 1) [Docket No. 93-1]. This statement does not mention AGODCO at all. If AGODCO is actually
10 a trade name used by Arabian Worldwide, one would expect the financial statement to reference
11 AGODCO at page 10, which lists related entities, or on page 18, which discusses pending court
12 cases.

13 Similarly, the second document purports to be a balance sheet for Arabian Worldwide
14 Ventures for the first half of 2017. See Balance Sheet for January 1 through June 30, 2017 (Ex. 2)
15 [Docket No. 93-2]. The balance sheet lists AGODCO as a current liability in the amount of BD
16 (Bahraini Dinar) 96,250.000 or approximately US \$255,285.14 (1BD = US \$2.65). However,
17 there is no explanation for this entry. The third document purports to be a trial balance sheet for
18 Arabian Worldwide that shows a \$0 balance in its bank accounts as of June 30, 2017. See Trial
19 Balance Sheet for January 1 through June 30, 2017 (Ex. 3) [Docket No. 93-3]. This document
20 also lists AGODCO as a credit of BD 96,250.000 or approximately US \$255,285.14. As with the
21 Balance Sheet, this entry is unexplained.

22 The unauthenticated documents submitted by AGODCO stand in stark contrast to the
23 existing record, which demonstrates that AGODCO has substantial financial resources. For
24 example, in December 2013, AGODCO paid a \$5.2 million down payment for an allegedly
25 defective ship pursuant to the Memorandum of Agreement that is the subject of the London
26 arbitration which underlies this attachment proceeding. See Memorandum of Agreement
27 (“MOA”), ¶ 2 [Docket No. 1-4]; Defence and Counterclaim, ¶ 4 [Docket No. 1-7]. Additionally,
28 in his sworn declaration, Andis declared in July 2016 that AGODCO “remained willing, ready,

1 and able to perform its obligations under the respective MOA's[,]” which would mean paying an
2 additional \$20 million. Andis Decl., ¶ 13; see MOA, ¶¶ 1-2.

3 At the hearing, Plaintiff’s counsel attempted to infuse the record with additional “facts”
4 regarding AGODCO’s allegedly precarious financial condition. Counsel asserted that AGODCO
5 was having difficulty in obtaining a bond for the additional undertaking, that some of AGODCO’s
6 assets were tied up in the London arbitration proceedings, and that counsel had considered
7 withdrawing because AGODCO was no longer paying his bills. These are unsupported assertions.
8 The court must consider evidence, not counsel’s representations. AGODCO had ample
9 opportunity to establish a factual record to support its “inability to pay” defense.

10 In sum, the court finds that AGODCO has failed to meet its burden to establish
11 categorically and in detail why it is presently unable to comply with the March 30 order.
12 The court therefore finds AGODCO in civil contempt of the March 30 order.

13 **C. Civil Contempt Sanctions**

14 If a party is found to be in civil contempt, a court may impose two types of sanctions: 1)
15 coercive sanctions, which are designed “to coerce obedience to a court order,” and 2)
16 compensatory sanctions, which are designed to “compensate the party pursuing the contempt
17 action for injuries resulting from the contemptuous behavior. *Gen. Signal Corp. v. Donallco, Inc.*,
18 787 F.2d 1376, 1380 (9th Cir. 1986); see also *Shell Offshore Inc.*, 815 F.3d at 1171. “[A]lthough
19 the district court generally must impose the minimum sanction necessary to secure compliance,
20 see *Whittaker Corp. v. Execuair Corp.*, 953 F.2d 510, 517 (9th Cir. 1992), the district court retains
21 discretion to establish appropriate sanctions.” *United States v. Bright*, 596 F.3d 683, 696 (9th Cir.
22 2010).

23 **1. Coercive Per Diem Fine**

24 Coercive civil sanctions “generally take the form of conditional fines.” *Shell Offshore,*
25 *Inc.*, 815 F.3d at 629. The civil contemnor ““carries the keys of his prison in his own pocket,”” by
26 being able “to purge the contempt and obtain his release by committing an affirmative act.”
27 *Bagwell*, 512 U.S. at 828 (quoting *Gompers*, 211 U.S. at 442); *Shell Offshore Inc.*, 815 F.3d at 629
28 (“[T]he ability to purge is perhaps the most definitive characteristic of coercive civil contempt.”).

1 In determining the amount and duration of a coercive fine, courts “must . . . consider the
2 character and magnitude of the harm threatened by continued contumacy, and the probable
3 effectiveness of any suggested sanction in bringing about the result desired.” *United Mine*
4 *Workers of Am.*, 330 U.S. at 304; see also *Whittaker Corp.*, 953 F.2d at 516. “[I]n fixing the
5 amount of a fine to be imposed as a . . . means of securing future compliance, [a court shall]
6 consider the amount of defendant’s financial resources and the consequent seriousness of the
7 burden to that particular defendant.” *United Mine Workers*, 330 U.S. at 304; see also *United*
8 *States v. Anderson*, No. 14-cv-01932-JST, 2016 WL 1169309, at *4 (N.D. Cal. Mar. 25, 2016) (in
9 order to determine the amount of the appropriate sanction, the court ordered the parties to provide
10 information about the defendant’s financial resources).

11 Here, the court finds that a coercive daily fine should be imposed on AGODCO for each
12 day it remains out of compliance with the March 30 order, starting from the day following the date
13 of this order. AGODCO was ordered to the post the additional undertaking by April 13, 2017.
14 See March 30 order. Nearly half a year later, AGODCO still has not posted the additional
15 undertaking despite multiple opportunities to do so. It appears that the only way to gain
16 AGODCO’s compliance with the March 30 order is through use of a coercive fine.

17 The court finds that a fine of \$500.00 a day payable to the court is appropriate under the
18 circumstances. As discussed above, the record shows that AGODCO recently has had access to
19 substantial resources. AGODCO paid a \$5.2 million down payment on a ship in December 2013,
20 and as of July 2016, it remained willing, ready, and able to perform the remainder of the MOA,
21 which meant paying an additional \$20 million. At the hearing, AGODCO’s counsel confirmed
22 that the London arbitration proceedings are ongoing, which strongly suggests that AGODCO has
23 access to the significant assets necessary to fund its legal position in that matter.

24 A daily fine of \$500.00 is well within the range of coercive per diem fines issued by courts
25 in this district for civil contempt. See, e.g., *United States v. Wen-Bing Soong*, No. C-13-4088
26 *EMC*, 2015 WL 5168786, at *4 (N.D. Cal. Sept. 3, 2015) (imposing a coercive daily fine of
27 \$500.00 per spouse, or \$1,000 a day collectively as a couple, was appropriate because the couple
28 appeared to have significant financial resources, a lesser fine was unlikely to secure compliance

1 due to the lengthy period of non-compliance, and further delay would prejudice the other party’s
 2 investigation); *In re Chase Bank USA, N.A. Check Loan Contract Litig.*, No. 3:09-MD-2032
 3 MMC, 2013 WL 772714, at *6 (N.D. Cal. Feb. 28, 2013), *aff’d* in part, appeal dismissed in part,
 4 607 F. App’x 737 (9th Cir. 2015) (imposing a coercive daily fine of \$300.00 against a class
 5 member for violating a court order enjoining class members from prosecuting released claims
 6 against the released parties in a class action settlement); *United States v. Gillies*, No. CV-11-3623
 7 CW MEJ, 2013 WL 968244, at *2 (N.D. Cal. Feb. 22, 2013), report and recommendation adopted,
 8 No. C 11-03623 CW, 2013 WL 968231 (N.D. Cal. Mar. 12, 2013) (imposing a coercive daily fine
 9 of \$250.00 against an individual for failure to comply with court order for more than 300 days).

10 In its supplemental brief, AGODCO argues that the appropriate sanction, if any, would be
 11 to dismiss the case with prejudice. See *Opp’n to Defs’ Request for Civil Contempt Sanctions* at 8-
 12 9. The court rejects this bald attempt to escape a contempt sanction, and ultimately to avoid
 13 compliance with the March 30 order.

14 **2. Compensatory Sanction**

15 Wisdom seeks sanctions of \$31,017.26 as reimbursement for attorneys’ fees and costs
 16 incurred as a result of AGODCO’s failure to comply with the March 30 order. [Docket Nos. 73,
 17 94]; see also Ex. A through Ex. F, Voss Decl. [Docket Nos. 94-2 through 94-7].

18 “In fashioning civil contempt sanctions, the court has the discretion to award reasonable
 19 fees and costs as a remedial measure, regardless of whether the party that is in contempt acted
 20 wilfully.” *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 289 F.R.D. 548, 553 (N.D. Cal. 2013),
 21 dismissed (May 23, 2014) (citing *Perry v. O’Donnell*, 759 F.2d 702, 704–705 (9th Cir. 1985).
 22 Courts “calculate an award of attorneys’ fees by first calculating the ‘lodestar.’” *Caudle v. Bristow*
 23 *Optical Co.*, 224 F.3d 1014, 1028 (9th Cir. 2000) (citing *Morales v. City of San Rafael*, 96 F.3d
 24 359, 363 (9th Cir. 1996)). “The ‘lodestar’ is calculated by multiplying the number of hours the
 25 prevailing party reasonably expended on the litigation by a reasonable hourly rate.” *Morales*, 96
 26 F.3d at 363. The lodestar can then be adjusted upon consideration of the twelve factors outlined in
 27 *Kerr v. Screen Guild Extras, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975), cert. denied, 425 U.S. 951
 28 (1976) to determine the reasonableness of the award:

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(1) the time and labor required, (2) the novelty and difficulty of the questions involved, (3) the skill requisite to perform the legal service properly, (4) the preclusion of other employment by the attorney due to acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation, and ability of the attorneys, (10) the “undesirability” of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases.

Id. at 364 n.8 (citing Kerr, 526 F.2d at 70 (9th Cir. 1975)).

Wisdom bears the burden of producing satisfactory evidence “that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.” Blum v. Stenson, 465 U.S. 886, 895, n.11 (1984). “Affidavits of the . . . attorney and other attorneys regarding prevailing fees in the community, and rate determinations in other cases, particularly those setting a rate for the . . . attorney, are satisfactory evidence of the prevailing market rate.” United Steelworkers of Am. v. Phelps Dodge Corp., 896 F.2d 403, 407 (9th Cir. 1990); Chalmers v. City of Los Angeles, 796 F.2d 1205, 1210 (9th Cir. 1986), opinion amended on denial of reh’g, 808 F.2d 1373 (9th Cir. 1987) (“In determining reasonable hours, counsel bears the burden of submitting detailed time records justifying the hours claimed to have been expended.”). Courts also may rely on decisions by other courts awarding similar rates for work in the same geographical area by attorneys with comparable levels of experience. See Rodriguez v. Barrita, Inc., 53 F. Supp. 3d 1268, 1277-78 (N.D. Cal. 2014) (citing Nadarajah v. Holder, 569 F.3d 906, 917 (9th Cir. 2009)). As a general rule, the forum district represents the relevant legal community. Gates v. Deukmejian, 987 F.2d 1392, 1405 (9th Cir. 1992). The court “should . . . exclude from the lodestar fee calculation any hours that were not ‘reasonably expended,’ such as hours that are excessive, redundant, or otherwise unnecessary.” Rodriguez, 53 F. Supp. 3d at 1281 (quoting Hensley, 461 U.S. at 433-34).

Wisdom requests the following hourly rates for its attorneys: \$363.00 for shareholder Elizabeth P. Beazley; \$364.74 for shareholder James A. Marissen; \$316.27 for shareholder Tara B. Voss; \$268.03 for associate Christopher Farnsworth; and \$200.45 for associate Rachel Weitzman. Voss Decl. ¶¶ 7-9.

1 The Voss declaration sets forth the relevant facts supporting the requested hourly rates for
2 each of these timekeepers. Having reviewed the record, the court finds that the requested hourly
3 rates are within the range of reasonable hourly rates for attorneys of comparable skill and
4 experience litigating similar cases in the San Francisco Bay Area. See, e.g., *Ingram v. Oroudjian*,
5 647 F.3d 925, 928 (9th Cir. 2011) (explaining that “judges are justified in relying on their own
6 knowledge of customary rates and their experience concerning reasonable and proper fees”).¹

7 Wisdom requests fees for a total of 101 hours for the work performed by its attorneys.
8 Having reviewed Wisdom’s submissions including the billing records, the court finds that the
9 following hours were reasonably incurred in connection with AGODCO’s failure to comply with
10 the March 30 order:

- 11 • 4.25 hours for reporting and advice to client regarding Plaintiff’s failure to post
12 increased security as ordered by the court, totaling \$1,502.49
- 13 • 1.5 hours for exchanges with counsel for Plaintiff regarding its failure to post
14 increased security as ordered by the court, totaling \$710.00
- 15 • 6.5 hours for opposing Plaintiff’s motion for leave to file a motion for
16 reconsideration; totaling \$2,042.30
- 17 • 12 hours for preparing Defendants’ reply brief in support of Defendants’ request
18 for civil contempt sanction, totaling \$3,770.40
- 19 • 13.25 hours preparing the supplemental brief and supporting documentation for its
20 request for attorneys’ fees and costs, totaling \$4,190.57

21 Wisdom argues that it is entitled to all of the fees incurred in opposing AGODCO’s motion
22 to stay, because it would not have had to oppose a stay motion had AGODCO complied with the
23 March 30 order. This argument is unpersuasive. AGODCO could have filed a stay motion in the
24 normal course of litigation; therefore, Wisdom’s work in opposing the stay is not sufficiently tied

25 _____
26 ¹ Defense counsel compares its hourly rates with those published by RBZ, LLP, a law services
27 group in Los Angeles, California which publishes an annual survey of billing rates charged by
28 Southern California law firms. See Defs’ Supp. Brief at 4 [Docket No. 94]. Since the forum
district represents the relevant legal community for purposes of determining the reasonableness of
the requested hourly rates, see *Gates*, 987 F.2d at 1405, the hourly rates charged by Southern
California law firms are not particularly relevant here.

1 to obtaining AGODCO's compliance with the March 30 order. However, Wisdom devoted
2 approximately half of its opposition brief to its request for civil contempt sanctions. The court
3 finds it reasonable and appropriate to award half of the requested fees for this work, or \$7,265.97.

4 The court declines to award Wisdom any fees expended in opposing AGODCO's petition
5 for writ of mandamus, as Wisdom has failed to show that these fees were reasonably incurred as a
6 result of AGODCO's failure to comply with the March 30 order.

7 In sum, the court awards Wisdom \$19,481.73 in attorneys' fees for the hours reasonably
8 expended as a result of AGODCO's failure to comply with the March 30 order.

9 Wisdom requests \$1,102.21 in costs for LEXIS research, parking and mileage for the May
10 25, 2017 hearing on Plaintiff's motion to stay; airfare and hotel for the May 25, 2017 hearing on
11 Plaintiff's motion to stay; ground transportation for the May 25, 2017 hearing on Plaintiff's
12 motion to stay; and fees paid to an attorney service. See Ex. C through Ex. F to Voss Decl.

13 Having reviewed these invoices, the court finds that it is appropriate to award half of the
14 requested costs for LEXIS research incurred for Wisdom's opposition brief to AGODCO's motion
15 to stay, or \$31.73, because Wisdom devoted approximately half of its opposition brief to its
16 request for civil contempt sanctions. See Ex. C to Voss Decl. (May 31, 2017 invoice listing
17 \$63.45 in LEXIS research). It is similarly appropriate to award half of the requested costs for
18 parking, mileage, airfare, hotel, travel, fees paid to an attorney service, copying costs, and LEXIS
19 research incurred for the May 25, 2017 hearing on Plaintiff's motion to stay, or \$460.40. See Ex.
20 D to Voss Decl. (June 19, 2017 invoice listing \$920.80 in costs). It appears that Wisdom's
21 counsel incurred LEXIS research charges on June 20-21, 2017 solely in connection with drafting
22 and researching Wisdom's reply brief in support of its request for civil contempt sanctions.
23 Accordingly, the court awards the entire requested cost for LEXIS research and fees to the
24 attorney service, or \$117.96. See Ex. E to Voss Decl. (July 21, 2017 invoice). In sum, the court
25 awards Wisdom \$610.09 for the costs reasonably incurred as a result of AGODCO's failure to
26 comply with the March 30 order.

27 In total, the court awards Wisdom a monetary sanction in the amount of \$20,091.82 for the
28 attorneys' fees and costs reasonably expended as a result of Plaintiff's failure to comply with the

1 March 30 order.

2 At the hearing, AGODCO's counsel argued that Wisdom was not entitled to an award of
3 attorneys' fees and costs because its insurer was responsible for those payments, rather than
4 Wisdom. This argument is not well-taken. To begin with, AGODCO raised it for the first time at
5 oral argument, thereby depriving Wisdom of a proper opportunity to respond. Moreover,
6 Plaintiff's counsel is speculating about who actually paid the invoices in question. Finally,
7 AGODCO has not identified any authority which would preclude an award of attorneys' fees to a
8 party because its insurance carrier paid the attorneys' invoices, instead of the party itself.

9 **III. CONCLUSION**

10 In conclusion, the court finds AGODCO in civil contempt of the March 30 order.
11 AGODCO is ordered to pay a daily fine of \$500.00 for each day it remains out of compliance with
12 the March 30 order, beginning with the day following the date of this order. The court awards
13 monetary sanctions to be paid by AGODCO to Wisdom in the amount of \$20,091.82 for
14 reimbursement of attorneys' fees and costs reasonably incurred as a result of AGODCO's failure
15 to comply with the March 30 order. AGODCO shall make full payment to Wisdom within 30
16 days of the date of this order.

17
18 **IT IS SO ORDERED.**

19 Dated: October 3, 2017

