2024 WL 754736
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United States District Court, District of Columbia.

Rafael VALLECILLO, Plaintiff,
v.
EMBASSY OF the REPUBLIC
OF SOUTH AFRICA, Defendant.

No. 20-cv-432-ACR-ZMF
|
Signed February 9, 2024

Attorneys and Law Firms

Michael E. Veve, Michael E. Veve, PLLC, Alexandria, VA, for Plaintiff.

REPORT AND RECOMMENDATION

ZIA M. FARUQUI, United States Magistrate Judge

***1** Plaintiff Rafael Vallecillo seeks a default judgment against his former employer, the Embassy of the Republic of South Africa, for alleged age discrimination. The undersigned recommends GRANTING Vallecillo's motion for default judgment.

I. BACKGROUND

1. Factual Background

In October 1980, the Embassy of the Republic of South Africa ("the Embassy") hired Vallecillo as a driver. *See* Compl. ¶ 7, ECF No. 1. In 1996, he became an administrative assistant. *See id.* Vallecillo was employed as a "locally recruited personnel" ("LRP") rather than as a career civil servant. Compl. ¶¶ 9–10; Mem. Br. & Aff. Supp. Mot. Default J. ("Mot. Default") 1, ECF No. 25-1. Vallecillo was employed continuously until his termination on September 30, 2019. *See* Compl. ¶ 8. "Throughout his 39 years of employment by the Embassy, Plaintiff consistently received positive periodic job performance reviews from his Embassy supervisors." Compl. ¶ 11; *see also* Mot. Default at 1–2.

In early 2016, the Embassy offered its approximately 36 LRPs —including Vallecillo—a voluntary resignation incentive option ("voluntary resignation plan"). *See* Compl. ¶¶ 12–15; Mot. Default 2–3. Vallecillo asked to participate in the voluntary resignation plan, which would have provided 33 weeks' base pay, an annual bonus, accrued leave, and six months of contributions to his health insurance plan. *See* Compl. ¶¶ 16, 18. In March 2017, Embassy personnel informed Vallecillo that he was not qualified to participate because his "position was not being considered to be abolished." *Id.* ¶ 25. Separately, Embassy personnel allegedly "pressured and dissuaded" other LRPs from applying for the voluntary resignation plan "to avoid paying them the higher amounts that would be due to them as more senior and older employees as well as to avoid any appearance that the Embassy was getting rid of its older employees and replacing them with younger employees." *Id.* ¶ 28. Vallecillo claims that in exchange for remaining at work, those LRPs were given new employment contracts specifying that, upon their eventual retirement, they would receive the same voluntary resignation benefits as had been included in the voluntary resignation plan. *See id.* ¶ 29. Vallecillo was not offered such a contract. *See id.* ¶ 31.

On July 2, 2019, Vallecillo signed a new three-year employment agreement with the Embassy that did not contain voluntary resignation benefits. *See* Compl. ¶ 31; Mot. Default at 2. Among other things, the agreement provided that it "shall be governed by and construed in accordance with the laws of the District of Columbia." Mot. Default at 2; *see also* Compl. ¶ 1.

On August 19, 2019, Vallecillo received a letter from the Embassy terminating his employment as of September 30, 2019 "[o]wing to the reorganisation of the Embassy." Mot. Default at 2; *see also* Compl. ¶ 32. Vallecillo was the only employee terminated as a result of this reorganization. *See* Compl. ¶ 33; Mot. Default at 2. "The Embassy did not develop, follow or execute a facially-neutral [reduction in force] reorganization plan for 2019 taking into account multiple members of protected classes." Mot. Default at 2. The Embassy allocated Vallecillo's job duties to younger employees after his termination. *See* Compl. ¶ 34.

2. Procedural History

***2** On February 13, 2020, Vallecillo filed suit against the Embassy, alleging violations of the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621 *et seq.* *See* Compl. ¶ 38. Thus began a multi-year saga to effectuate service upon the Defendant. *See generally* Notice, ECF No. 8; Notice of Service of Process, ECF No. 19. On June 16, 2020, Vallecillo requested that the Clerk of Court effect service pursuant to 28 U.S.C. § 1608(a)(3), a provision of the Foreign Sovereign Immunities Act ("FSIA") governing service of process on foreign nations.[1] *See* Request, ECF No. 7. On December 7, 2020, the court directed Vallecillo to explain whether service could be effectuated pursuant to 28 U.S.C. § 1608(a)(1) or (2), which are FSIA provisions describing how a plaintiff must first attempt to serve a foreign nation before using the method provided in § 1608(a)(3). *See* Min. Order (Dec. 7, 2020). Vallecillo explained that service under 28 U.S.C. § 1608(a)(1) or (2) was not possible. *See* Notice at 2. The court then instructed the Clerk of Court to "effectuate service pursuant to 28 U.S.C. § 1608(a)(3) 'by sending a copy of the summons and complaint and a notice of suit ... by any form of mail requiring a signed receipt' to the 'head of the ministry of foreign affairs' of the Republic of South Africa." Min. Order (Dec. 11, 2020). On February 25, 2021, the Clerk docketed a Certificate of Mailing attesting that it had mailed one copy of the summons, complaint, and notice of suit to the head of ministry of foreign affairs of the Republic of South Africa ("South Africa"). *See* Certificate of Mailing 1, ECF No. 9.

Vallecillo received no response from South Africa. *See* Request to Effectuate Service 1, ECF No. 11. On June 8, 2021, Vallecillo proposed that he attempt service again under § 1608(a)(4), the last permissible method under the FSIA. *See id.* On June 9, 2021, the court permitted Vallecillo to go forward, although it took no view on the merits of Vallecillo's prior service attempt. *See* Min. Order (June 9, 2021). On July 1, 2021, the Clerk docketed a "Certificate of Clerk of mailing two copies of the summons, complaint, and notice of suit, together with a translation of each into the official language of the foreign state on 7/1/2021, by certified mail, return receipt requested, to the U. S. Department of State, Director of Overseas Citizens Services, pursuant to 28 U.S.C. 1608(a)(4)."[2] Certificate of Clerk, ECF No. 14.

On November 21, 2022, the Clerk docketed a letter from the U.S. Department of State Office of Legal Advisor. *See* Notice of Service of Process at 1. The letter attests that on September 12, 2022, the United States Embassy in South Africa transmitted the complaint and related documents to the Department of International Relations and Cooperation of South Africa. *See id.* at 2.

On December 7, 2022, Vallecillo moved for the Clerk to enter default pursuant to Fed. R. Civ. P. 55(a). *See* Request for Clerk's Entry of Default 1–2, ECF No. 20. On December 16, 2022, the Clerk did so. *See* Clerk's Entry of Default, ECF No. 21. On February 28, 2023, Vallecillo moved for default judgment pursuant to Fed. R. Civ. P. 55(b). *See* Pl.'s Mot. for Default J., ECF No. 24. On August 3, 2023, Vallecillo re-filed the Motion for Default accompanied by additional briefing. *See* Pl.'s Mot. for Default J. 1, ECF No. 25. On August 21, 2023, Vallecillo's Motion for Default Judgment was randomly referred to the undersigned for a Report and Recommendation. *See* Min. Order (Aug. 21, 2023). On January 22, 2024, Vallecillo supplemented his request for Default Judgment in response to an order by this Court. *See* Suppl. Aff. Pl.'s Attorney's Fees & Costs ("Suppl. Aff.") 1–2, ECF No. 28.

To date, South Africa has not entered an appearance or otherwise responded to this action.

II. LEGAL STANDARD

Pursuant to Rule 55, "there is a two-step process for a party seeking default judgment: entry of default, followed by entry of default judgment." *Edwards v. Charles Schwab Co.*, No. 19-cv-3614, 2022 WL 839636, at *1 (D.D.C. Feb. 14, 2022) (internal quotation marks omitted); *see* Fed. R. Civ. P. 55(a). First, "[i]f a defendant has failed to plead or otherwise defend against an action, the plaintiff may request that the clerk of the court enter default against that defendant." *Simon v. U.S. Dep't of Just.*, No. 20-cv-850, 2020 WL 4569425, at *2 (D.D.C. Aug. 7, 2020) (citing Fed. R. Civ. P. 55(a)).

***3** Second, "[a]fter the clerk's entry of default, the plaintiff may move for default judgment." *Id.* (citing Fed. R. Civ. P. 55(b)(2)). The FSIA adds "a heightened standard for default judgment [against a foreign state] because of sovereign immunity." *Dahman v. Embassy of Qatar*, No. 17-cv-2628, 2018 WL 3597660, at *2 (D.D.C. July 26, 2018) (citing 28 U.S.C. § 1608(e) and *Weinstein v. Islamic Republic of Iran*, 175 F. Supp. 2d 13, 19–20 (D.D.C. 2001)). Accordingly, the

court may enter default judgment against a foreign state only "when (1) the Court has subject matter jurisdiction over the claims, (2) personal jurisdiction is properly exercised over the defendants, (3) the plaintiffs have presented satisfactory evidence to establish their claims against the defendants, and (4) the plaintiffs have satisfactorily proven that they are entitled to the monetary damages they seek." *Braun v. Islamic Republic of Iran*, 228 F. Supp. 3d 64, 75 (D.D.C. 2017).

III. DISCUSSION

1. Subject Matter Jurisdiction

"[T]he procedural posture of a default does not relieve a federal court of its 'affirmative obligation' to determine whether it has subject matter jurisdiction over the action." *Braun*, 228 F. Supp. 3d at 74 (quoting *James Madison Ltd. by Hecht v. Ludwig*, 82 F.3d 1085, 1092 (D.C. Cir. 1996)). District courts have original jurisdiction over civil actions against a foreign state "for relief in personam with respect to which the foreign state is not entitled to immunity either under [the FSIA] or under any applicable international agreement." 28 U.S.C. § 1330(a). There does not appear to be any international agreement limiting jurisdiction over this matter. The question then is whether the Embassy is entitled to immunity under the FSIA.

As is relevant here, a foreign state is not entitled to immunity under the FSIA either (1) where it "has waived its immunity either explicitly or by implication" or (2) where "the action is based upon a commercial activity carried on in the United States by the foreign state." 28 U.S.C. § 1605(a)(1)–(2).

A. *Implied Waiver*

"[A] foreign state implicitly dispenses with its immunity" by "executing a contract containing a choice-of-law clause designating the laws of the United States as applicable." *Ivanenko v. Yanukovich*, 995 F.3d 232, 239 (D.C. Cir. 2021) (citing *World Wide Minerals, Ltd. v. Republic of Kaz.*, 296 F.3d 1154, 1161 n.11 (D.C. Cir. 2002)); *see also* H.R. Rep. No. 94-1487, at 18 (1976) (listing a foreign state's "agree[ment] that the law of a particular country should govern a contract" as an example of an "implicit waiver" for FSIA purposes). This is because "choice-of-law clauses designating U.S. law as applicable appear to contemplate a role for United States courts in resolving disputes," given that U.S. courts are "best able to interpret and apply the laws of this country." *Ashraf-Hassan v. Embassy of Fr.*, 40 F. Supp. 3d 94, 100 (D.D.C. 2014) (internal quotation marks omitted). "This is particularly the case where the transaction embodied in the contract is to be implemented [in the United States]." *Id.* at 100–01 (citing *Joseph v. Off. of Consulate Gen. of Nigeria*, 830 F.2d 1018, 1023 (9th Cir. 1987)). *In Ashraf-Hassan*, this court found that by stipulating that the plaintiff's employment contract would be governed by "local legislation," the Embassy of France "assumed obligations to abide by U.S. law—including [employment discrimination laws]"—thus impliedly waiving "its right to assert immunity" against such claims. *Id.* at 101 (citing *Ghawanmeh v. Islamic Saudi Acad.*, 672 F. Supp. 2d 3, 9–10 (D.D.C. 2009) (finding an implied waiver of immunity in a similar case) and *Joseph*, 830 F.2d at 1023 (same)).

***4** Vallecillo alleges his employment contract provided that it "shall be governed by and construed in accordance with the laws of the District of Columbia." Mot. Default at 2. By agreeing that D.C. law controlled the interpretation of the employment contract, the Embassy assumed an obligation to abide by U.S. law, including the ADEA. *See Ashraf-Hassan*, 40 F. Supp. 3d at 100. The Embassy thus waived its sovereign immunity, thereby granting this Court subject-matter jurisdiction. *See Braun*, 228 F. Supp. 3d at 75–78.

B. *Commercial Activity Exception*

Separately, the commercial activity exception to sovereign immunity also grants this Court subject matter jurisdiction. A foreign state is not entitled to immunity under the FSIA in an action that is based on the sovereign's commercial, rather than governmental, activity. *See* 28 U.S.C. § 1605(a)(2). As relates to employment discrimination claims, the commercial activity exception applies where an employee "was employed in an administrative, non-civil servant capacity and was not involved in governmental decision-making" and the employee's "claims are 'based upon' such employment." *Ashraf-Hassan v. Embassy of Fr.*, 610 F. App'x 3, 5 (D.C. Cir. 2015) (citation omitted). Vallecillo was not a civil servant, rather, he was employed as an LRP administrative assistant. *See* Compl. ¶¶ 7, 9–10. Because Vallecillo worked in a role involving no governmental decision-making and his claims are based upon this employment, the commercial activity

exception applies. *See, e.g.*, *Youssef v. Embassy of U.A.E.*, 2021 WL 3722742, No. 17-cv-2638 (D.D.C. 2021), at *8–10 (D.D.C. Aug. 23, 2021) (holding that the commercial activity exception applied to an age discrimination plaintiff who had been employed by an embassy as an "administrative officer"); *Dahman*, 2018 WL 3597660, at *4–8 (finding that the commercial activity exception applied to an age discrimination plaintiff who had been employed by an embassy as an accountant).

2. Personal Jurisdiction

The FSIA provides that "[p]ersonal jurisdiction over a foreign state shall exist as to every claim for relief over which the district courts have jurisdiction ... where service has been made under section 1608 of this title." 28 U.S.C. § 1330(b). The issue then is whether Vallecillo properly served the Embassy.

Because embassies are considered foreign states for FSIA purposes, service must occur pursuant to § 1608(a). *See De Sousa*, 229 F. Supp. 3d at 26 (collecting cases). This section provides four methods of service "in descending order of preference." *Ben-Rafael v. Islamic Republic of Iran*, 540 F. Supp. 2d 39, 52 (D.D.C. 2008).

First, § 1608(a) permits service "in accordance with any special arrangement for service between the plaintiff and the foreign state or political subdivision." 28 U.S.C. § 1608(a)(1). Second, if no special arrangement exists, service is permitted in accordance with any "applicable international convention on service of judicial documents." 28 U.S.C. § 1608(a)(2). Here, service was not available by either of these methods. In 2019, Vallecillo attempted to arrange service with the Embassy's local counsel to no avail, and South Africa is not a party to an applicable international convention on service of judicial documents. *See* Notice at 1–2.

Third, service can be made by sending the documents, "together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned." 28 U.S.C. § 1608(a)(3). On June 16, 2020, Vallecillo attempted to serve South Africa according to this provision. *See* Request. On February 25, 2021, the Clerk docketed confirmation that she had mailed the appropriate documents to the head of ministry of foreign affairs of South Africa. *See* Certificate of Mailing at 1. However, Defendant gave no indication that it had received service.

***5** Fourth, "if service cannot be made within 30 days" under the third option, a party may send two copies of the documents, "together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the Secretary of State in Washington, District of Columbia, to the attention of the Director of Special Consular Services—and the Secretary shall transmit one copy of the papers through diplomatic channels to the foreign state and shall send to the clerk of the court a certified copy of the diplomatic note indicating when the papers were transmitted." 28 U.S.C. § 1608(a)(4). On June 16, 2021, Vallecillo requested that the Clerk of Court effect service under § 1608(a)(4). *See* Request to Effectuate Service at 1–2. On July 1, 2021, the Clerk did so. *See* Certificate of Clerk. The State Department then transmitted the documents through diplomatic channels to South Africa. *See* Notice of Service of Process at 1. On November 21, 2022, the U.S. Department of State Office of Legal Advisor attested that the United States Embassy in South Africa had successfully transmitted the documents to the Department of International Relations and Cooperation of the Republic of South Africa under cover of diplomatic note delivered on September 12, 2022. *See id.* Thus, Vallecillo effectively served Defendant via § 1608(a)(4) in November 2022, thereby affording the Court personal jurisdiction over the Embassy. [3] *See Braun*, 228 F. Supp. 3d at 77–78.

3. Satisfactory Evidence to Establish Claims

"In seeking default judgment against a foreign state, Plaintiff needs to prove 'his claim or right to relief by evidence satisfactory to the court.' " *Dahman*, 2018 WL 3597660, at *1 (quoting 28 U.S.C. § 1608(e)). "The statute does not specify what constitutes 'evidence satisfactory to the court,' and the D.C. Circuit has left it to courts to determine 'how much and what kinds of evidence the plaintiff must provide.' " *Selig v. Islamic Republic of Iran*, 573 F. Supp. 3d 40, 58 (D.D.C. 2021) (quoting *Han Kim v. Democratic People's Republic of Korea*, 774 F.3d 1044, 1046-51 (D.C. Cir. 2014)). Overall, "the quantum and quality of evidence that might satisfy a court can be less than that normally required" in a contested proceeding. *Owens v. Republic of Sudan*, 864 F.3d 751, 785

(D.C. Cir. 2017) (citations omitted). "Uncontroverted factual allegations that are supported by admissible evidence are taken as true." *Braun*, 228 F. Supp. 3d at 74–75 (citing *Roth v. Islamic Republic of Iran*, 78 F. Supp. 3d 379, 386 (D.D.C. 2015)).

The ADEA makes it unlawful for an employer "to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age." 29 U.S.C. § 623(a)(1). "To prevail, '[a] plaintiff must prove by a preponderance of the evidence (which may be direct or circumstantial), that age was the 'but-for' cause of the challenged employer decision.' " *DeJesus v. WP Co. LLC*, 841 F.3d 527, 532 (D.C. Cir. 2016) (quoting *Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167, 177–78 (2009)).

Courts have found a wide variety of circumstantial evidence to support the inference that age discrimination was the but-for cause of a challenged adverse employment action. For example, the elements of a *prima facie* case [4] —(i) at the time plaintiff was fired, he was a member of the class protected by the ADEA ("individuals who are at least 40 years of age," 29 U.S.C. § 631(a)), (ii) he was otherwise qualified for the position, (iii) he was discharged by his employer, and (iv) the employer successively hired persons younger than plaintiff to fill his position—provide relevant evidence of age discrimination. *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 142 (2000). Discrimination may also be inferred where an "employer mak[es] false or inconsistent explanations for its actions." *Jarmon v. Genachowski*, 720 F. Supp. 2d 30, 40 (D.D.C. 2010). Past excellent performance ratings followed by an adverse employment action may also evidence discrimination. *See Fennell v. AARP*, 770 F. Supp. 2d 118, 127 (D.D.C. 2011) (finding that plaintiff's "impeccable" job performance earning "repeated[ ] praise[ ]" throughout his employment gives rise to an inference of discrimination); *Iweala v. Operational Techs. Servs.*, Inc., 634 F. Supp. 2d 73, 82–83 (D.D.C. 2009) (finding that "very good" performance ratings evidenced employer's pretext in terminating plaintiff).

***6** Vallecillo "factual allegations that are supported by affidavit[ ]" are sufficient to establish a claim under the ADEA. *Roth*, 78 F. Supp. 3d at 386. First, Vallecillo successfully pleads a *prima facie* case: he was a member of the class protected under the ADEA (he was in his sixties); he was fired despite being qualified for his position; and his job duties were allocated to younger employees after his termination. *See* Mot. Default at 2. This alone supports an inference of discrimination. *See Reeves*, 530 U.S. at 142. The Embassy also offered "inconsistent explanations for its actions:" it claimed there was a "reorganization" of the Embassy, however, Vallecillo was the only affected individual. *See id.*; Compl. ¶¶ 25, 32–33; *Jarmon*, 720 F. Supp. 2d at 40. Discrimination is further evidenced by Vallecillo's exemplary performance record, despite which the Embassy terminated him. *See* Mot. Default at 2; *Fennell*, 770 F. Supp. 2d at 127. This evidence satisfies the Court that Vallecillo has sufficiently established a viable claim against Defendant. Therefore, default is appropriate. *See Reed v. Islamic Republic of Iran*, 845 F. Supp. 2d 204, 212–13 (D.D.C. 2012) (granting default judgment as to an IIED claim).

4. Satisfactory Evidence to Establish Damages

Last, a plaintiff must "satisfactorily prove[ ] that they are entitled to the monetary damages they seek." *Braun*, 228 F. Supp. 3d at 75. "To obtain damages ... a plaintiff must prove that the consequences of the foreign state's conduct were reasonably certain (*i.e.*, more likely than not) to occur, and must prove the amount of damages by a reasonable estimate consistent with this [Circuit]'s application of the American rule on damages." *Id.* at 82 (quoting *Roth*, 78 F. Supp. 3d at 402). The Court "may rely on detailed affidavits or documentary evidence to determine the appropriate sum" of damages. *Dahman*, 2018 WL 3597660, at *9 (quoting *Adkins v. Teseo*, 180 F. Supp. 2d 15, 17 (D.D.C. 2001)).

A. *Damages Under the ADEA*

The ADEA "explicitly provides for back pay, unpaid overtime compensation, and liquidated damages but not compensatory and punitive damages." *Vanegas v. P & R Enters., Inc.*, No. 2-cv-478, 2002 WL 31520357, at *2 (D.D.C. Oct. 9, 2002) (citing 29 U.S.C. § 626(b)).

Vallecillo is entitled to $214,078.62 in damages, which is calculated as follows:

- 33 months' salary totaling $123,172.50, based on Plaintiff's salary of $44,790 under the employment contract in place at the time of termination;
- 33 months' pension contributions totaling $14,645.21;
- Prorated bonus of $10,264.38;
- 33 months' medical and dental insurance premiums totaling $64,382.50; *and*
- 33 months' disability insurance premiums totaling $1,614.03.

See Mot. Default at 3, 5–6, 7; Compl. at 8–9. These damages are recoverable under the ADEA because they represent the wages and benefits Vallecillo would have accrued under the remainder of his 3-year employment agreement that was in place at the time of his wrongful termination. *See Vanegas*, 2002 WL 31520357, at *2. These figures represent a "reasonably certain" sum that Vallecillo has proved by a "reasonable estimate." *Braun*, 228 F. Supp. 3d at 82. Vallecillo has not requested an "outsized sum" representing an exorbitant number of years of employment; instead, he requests compensation for fewer than three years. *Cf. Dahman*, 2018 WL 3597660, at *9 (setting a hearing to determine damages where plaintiff sought an "outsized sum" of ten years' front pay plus back pay).

Liquidated (or double) damages are permitted under the ADEA where the employer's conduct was "willful"—that is, where "the employer either knew or showed reckless disregard for the matter of whether its conduct was prohibited by the statute." *Hazen Paper Co. v. Biggins*, 507 U.S. 604, 617 (1993). Conduct is willful where it "wholly disregards the law without making any reasonable effort to determine whether the plan he is following would constitute a violation of the law." *Trans World Airlines, Inc. v. Thurston*, 469 U.S. 111, 126 (1985) (cleaned up). By contrast, an employer does not "willfully" violate the ADEA where it "incorrectly but in good faith and nonrecklessly believe[s] that the statute permits a particular age-based decision." *Hazen Paper Co.*, 507 U.S. at 616. Courts award liquidated damages equal to the amount of back pay and lost benefits. *See, e.g.*, *Vanegas*, 2002 WL 31520357, at *2 (noting that "the Eleventh Circuit has specified that liquidated damages include *only* double the amount of back pay and lost fringe benefits").

***7** The facts as alleged adequately support an inference that the Embassy's conduct was "willful." *See, e.g.*, *Santiago v. Crown Heights Ctr. for Nursing & Rehab.*, No. 15-cv-4381, 2017 WL 9482107, at *22 (E.D.N.Y. Feb. 24, 2017) (finding willfulness at default judgment where employer "should have been cognizant of the fact that firing plaintiff without any perceived performance issues and replacing him with someone much younger constituted a violation of the ADEA"). The Embassy fired Vallecillo despite his excellent performance; did not abide by an age-neutral reduction in force plan; and reallocated Vallecillo's job duties to younger employees after his termination. *See* Mot. Default at 5. Moreover, there is no evidence that the Embassy "incorrectly but in good faith and nonrecklessly believe[d] that the [ADEA] permit[ted]" Vallecillo's termination. *Hazen Paper Co.*, 507 U.S. at 616. Thus, the Court finds that Vallecillo has offered satisfactory evidence to support the award of $214,078.62 in liquidated damages, representing lost pay and benefits. *See Press v. Concord Mortg. Corp.*, No. 08-cv-9497, 2009 WL 6758998, at *7 (S.D.N.Y. Dec. 7, 2009) (awarding liquidated damages for "backpay and benefits").

B. *Attorney's Fees*

The ADEA "authorize[s] the recovery of attorneys' fees." *Lindsey v. District of Columbia*, No. 7-cv-1939, 2012 WL 6840529, at *1 (D.D.C. Mar. 29, 2012) (citing 29 U.S.C. §§ 626(b)-(c), 216(b)). "The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *Ashraf-Hassan*, 189 F. Supp. 3d at 55 (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)). Courts have found the number of hours expended to be reasonable when attorneys "clearly identif[ied] the number of hours worked and the tasks performed by the [ ] attorneys" and determined the hours were "reasonable relative to the work performed in this case." *SNH Med. Off. Properties Tr. v. A Bloomin' Sandwich Cafe, Inc.*, No. 19-cv-745, 2020 WL 5834858, at *9 (D.D.C. Sept. 30, 2020). "To prove that the requested rates are reasonable, a plaintiff must demonstrate how the requested rate compares to the prevailing market rates in the relevant community for individuals with comparable experience." *Id.* (internal quotation marks omitted). For example, the rate charged is

reasonable where the attorneys "demonstrated that the hourly rates requested are lower than the USAO Attorneys' Fee Matrix Hourly Rate for attorneys with their respective levels of experience." *Id.*; *see also Bricklayers & Trowel Trades Int'l Pension Fund v. Crowe Constr. Inc.*, No. 22-cv-47, 2023 WL 4581311, at *4 (D.D.C. July 18, 2023) (finding rates below the applicable USAO matrix rates reasonable).

Vallecillo seeks attorney's fees and costs of $29,675. *See* Pl.'s Attorney's Fees & Costs Aff. 1, ECF No. 25-2. Vallecillo's attorney has submitted an hourly billing statement documenting ninety hours of work expended at the rate of $300 per hour, as well as $2,275 spent on fees. *See* Suppl. Aff. at 2. Vallecillo's attorney clearly identified the number of hours worked on specific tasks. *See* Suppl. Aff., Ex. D, Michael E. Veve Time & Expenses Rs. 11–14, ECF No. 28-4. The ninety hours expended over the last four and a half years were reasonable. *See Lasheen v. Loomis Co.*, No. 2:1-cv-227, 2013 WL 1178209, at *11 (E.D. Cal. Mar. 21, 2013) (finding that billing over 900 hours was reasonable in an FSIA default case and awarding $226,251.63 in attorney's fees given "the amount of time that plaintiff's counsel was required to expend on this action over the past twelve years"); *A Bloomin' Sandwich Cafe*, 2020 WL 5834858, at *9. And Plaintiff's attorney's billing rate is less than half the rate he would command under the USAO Attorneys' Fee Matrix. *See* Suppl. Aff., Ex. C, USAO Attorney's Fees Matrix 9–10, ECF No. 28-3. Thus, his rate is reasonable. *See A Bloomin' Sandwich Cafe*, 2020 WL 5834858, at *9.

C. *Post-Judgment Interest*

***8** "Interest shall be allowed on any money judgment in a civil case recovered in a district court." 28 U.S.C. § 1961(a). "Application of section 1961(a) is mandatory, not discretionary." *Lanny J. Davis & Assocs. LLC v. Republic. of Eq. Guinea*, 962 F. Supp. 2d 152, 165 (D.D.C. 2013) (citing *Cont'l Transfert Technique Ltd. v. Fed. Gov't of Nigeria*, 850 F. Supp. 2d 277, 287 (D.D.C. 2012)). This mandate applies equally to judgments "against a foreign sovereign." *Id.* Thus, Vallecillo is entitled to post-judgment interest at the rate set forth in § 1961(a). *See id.*

IV. RECOMMENDATION

The Court recommends **GRANTING** Plaintiff's Motion for Default Judgment. The Court recommends awarding Plaintiff $428,157.24 (direct damages of $214,078.62 plus the same value in liquidated damages), $29,675 in attorney's fees and costs, and post-judgment interest under 28 U.S.C. § 1961.

All Citations

Slip Copy, 2024 WL 754736

Footnotes

1 "Courts have uniformly found that embassies are integral parts of a foreign state's political structure, and therefore appropriately considered foreign states for FSIA purposes." *De Sousa v. Embassy of Republic of Angl.*, 229 F. Supp. 3d 23, 26 (D.D.C. 2017) (cleaned up).

2 The Clerk's Office did not docket the certificate, which appears to be a clerical oversight. *See* Certificate of Clerk at 1.

3 Because service was proper under § 1608(a)(4), the Court need not decide whether Vallecillo also properly effected service under § 1608(a)(3).

4 Vallecillo need not specifically make out a *prima facie* case: "the *prima facie* case is an evidentiary standard, not a pleading requirement." *Spaeth v. Georgetown Univ.*, 839 F. Supp. 2d 57, 63 (D.D.C. 2012) (citations

omitted) (rejecting motion to dismiss for failure to state a claim). Instead, the elements of a *prima facie* case are used here as relevant indicia of discrimination.

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