

No. _____

In the
Supreme Court of the United States

UNITED STATES OF AMERICA ex rel.
GWEN THROWER,

Petitioner,

v.

ACADEMY MORTGAGE CORPORATION,

Respondent.

**On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit**

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Under 28 U.S.C. §1961, post-judgment interest “shall be allowed on any money judgment in a civil case recovered in a district court”—including attorneys’ fees—and “shall be calculated from the date of the entry of the judgment.” All courts agree that this entitlement to post-judgment interest applies to awards of attorneys’ fees. And five circuits have held that interest accrues from the date of the entry of the judgment unconditionally entitling a party to fees, even if the fee amount is not specified until a later order. But the decision below joins three other circuits in embracing the minority position that interest on an attorneys’ fees award does not begin to run until the court has quantified the amount of fees owed. That conclusion deprived petitioner of hundreds of thousands of dollars in interest that she would have been entitled to recover in the majority of circuits. And it further entrenched an open and acknowledged circuit split over the meaning of a statute that Congress enacted to ensure uniformity in the treatment of interest.

The question presented is:

Whether entry of a judgment definitively establishing a plaintiff’s entitlement to attorneys’ fees triggers accrual of post-judgment interest on those fees.

PARTIES TO THE PROCEEDING

Petitioner Gwen Thrower was the plaintiff-appellant below.

Respondent Academy Mortgage Corporation was the defendant-appellee below.

STATEMENT OF RELATED PROCEEDINGS

This case arises from and is directly related to the following proceedings:

- *United States ex. rel. Thrower v. Acad. Mortg. Corp.*, No. 16-cv-02120 (N.D. Cal.) (judgment entered on September 13, 2024)
- *United States ex rel. Thrower v. Acad. Mortg. Corp.*, No. 24-6247 (9th Cir. 2026) (panel decision on April 6, 2026).
- *United States ex rel. Thrower v. Acad. Mortg. Corp.*, No. 24-6247 (9th Cir. 2026) (denying petition for panel rehearing and en banc rehearing on May 28, 2026).

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PETITION FOR WRIT OF CERTIORARI

This petition presents a clean opportunity to resolve a persistent issue that has produced a 5-4 circuit split. 28 U.S.C. §1961 provides for post-judgment interest “on any money judgment in a civil case,” instructing that such interest “shall be calculated from the date of the entry of the judgment.” By specifying that interest starts to accrue from “the entry of the judgment,” Congress aimed to “provide[] a uniform time from which to determine post-judgment issues.” *Kaiser Aluminum & Chem. Corp. v. Bonjorno*, 494 U.S. 827, 835 (1990). Application of §1961 has been anything but uniform, however, when it comes to awards of fees and costs. Five circuits hold that the statute applies to a judgment that establishes a party’s right to fees and costs, even if that judgment leaves the determination of the amount of that award to a later date. But four circuits hold that post-judgment interest does not run until the court enters a subsequent order quantifying the precise amount of fees and costs owed. The issue arises often in the fee-shifting context, where courts frequently adjudge a party’s right to fees in one proceeding, hoping the parties will be able to resolve the amount of fees, and then determine the amount of fees owed in a subsequent proceeding if the parties are unable to come to a voluntary agreement. In those cases, the difference between the majority and minority approaches can lead to wildly different calculations of post-judgment interest, and the minority approach skews incentives for a voluntary agreement. That divergence destroys the uniformity that §1961 was supposed to create and puts private enforcement of important federal policy at the mercy of geography.

This case exemplifies the problem. Petitioner sued respondent under the False Claims Act and spent seven years litigating that action before successfully settling her claims. In January 2023, the district court entered judgment confirming the settlement. At that moment, petitioner undisputedly became entitled to reasonable attorneys' fees pursuant to the FCA's mandatory fee-shifting provision. But while respondent did not dispute petitioner's entitlement to fees, it disputed the precise amount of those fees at great length, "ma[king] choices that drove up time spent on the fee petition." CA9.ER-106. Through a series of extension, discovery, and supplementary briefing requests, respondent ignored this Court's "oft-stated" admonition that "an application for attorney's fees 'should not result in a second major litigation,'" *Kirtsaeng v. John Wiley & Sons, Inc.*, 579 U.S. 197, 207 (2016) (quoting *Indep. Fed'n of Flight Attendants v. Zipes*, 491 U.S. 754, 766 (1989)), and delayed the fees calculation for 16 months before the district court finally entered an order quantifying them.

Having postponed the inevitable for as long as it could, respondent disclaimed any obligation to pay for the time value of money for the sixteen months it dithered. As petitioner argued, the plain text of §1961(a) and the holdings of most circuits preclude that gambit: Post-judgment interest runs from the district court's January 2023 judgment confirming the settlement and dismissing the FCA claims. After all, that is the "entry of ... judgment" that definitively adjudged petitioner entitled to an award of attorneys' fees. 28 U.S.C. §1961(a). But the district court adopted the minority approach and rewarded respondent's delay tactics by awarding interest only

from the date of its order quantifying the amount of fees entered 16 months later.

Courts (within and outside the circuit) and commenters alike had counted the Ninth Circuit among those circuits applying the majority rule, under which that decision should have been reversed. But the panel abruptly reversed course, acknowledged the division of authority, and shifted the Ninth Circuit to the short side of the split, holding that there is no “money judgment” under §1961 until a court sets “a definite and certain designation of the amount which plaintiff is owed by defendant.” App.7. As the Nation’s largest circuit—with a busy docket of public interest and other statutory fee-shifting litigation—that about-face is independently significant. And it exacerbates a hopelessly intractable circuit split on an issue that demands uniformity and that only this Court can resolve.

The decision below not only puts the Ninth Circuit on the short side of the split; it puts the court on the wrong side. The circuits in the minority camp (including the panel below) rely almost entirely on §1961’s use of the term “money judgment.” But there is no dispute that the January 2023 judgment is a money judgment that entitled petitioner to fees. And it does not cease to be a money judgment just because it does not quantify every dollar owed. Common sense confirms that conclusion. “[T]he whole point of §1961 is to ensure that a successful party receives compensation for any delay in the time it takes for the opposing party to pay up.” *Linneman v. Vita-Mix Corp.*, 970 F.3d 621, 636 (6th Cir. 2020) (Thapar, J., joined by Kethledge and Griffin, JJ.). Yet the Ninth

Circuit's approach not only deprives successful plaintiffs of part of that compensation, but rewards delay tactics, frustrates efforts for parties to resolve disputes about the amount of fees voluntarily, and threatens to convert fee disputes into a second major litigation. This Court should grant review and confirm that the "uniform time" for determining post-judgment interest is the final merits judgment conclusively establishing a party's entitlement to fees.

OPINIONS BELOW

The Ninth Circuit's opinion is reported at 172 F.4th 695 and reproduced at App.1-14. The Ninth Circuit's order denying panel and en banc rehearing is not reported but is reproduced at App.15-16. The district court's opinion is unpublished but available on Westlaw at 2024 WL 4194800 and reproduced at App.17-30.

JURISDICTION

The Ninth Circuit issued its opinion on April 6, 2026. The Ninth Circuit denied panel rehearing and rehearing en banc on May 28, 2026. Justice Kagan extended the time to file a petition to September 25, 2026. This Court has jurisdiction under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

28 U.S.C. §1961(a) provides, in relevant part, that "[i]nterest shall be allowed on any money judgment in a civil case recovered in a district court. Execution therefor may be levied by the marshal, in any case where, by the law of the State in which such court is held, execution may be levied for interest on judgments recovered in the courts of the State. Such

interest shall be calculated from the date of the entry of the judgment”

31 U.S.C. §3730(d)(2) of the False Claims Act provides, in relevant part, that “[i]f the Government does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys’ fees and costs.”

STATEMENT OF THE CASE

A. Legal Background

This case involves the interplay between two federal statutes. Under the first, 28 U.S.C. §1961(a), Congress provided for post-judgment interest on all federal judgments. Specifically, Congress instructed that interest “shall be allowed on any money judgment in a civil case recovered in a district court” and “shall be calculated from the date of the entry of the judgment.” 28 U.S.C. §1961(a). As this Court has explained, the point of post-judgment interest is to compensate the successful plaintiff for being deprived of the use of the funds to which she was legally entitled. *See Kaiser*, 494 U.S. at 835; *see also* Comment, *Interest on Judgments in the Federal Courts*, 64 Yale L.J. 1019, 1019 (1955) (“The function of interest in the judicial process is to compensate a wronged party for the deprivation of the monetary value of his loss from the time of the loss to the payment of a money judgment.”). The lower courts have uniformly held that this post-judgment interest

applies to awards of attorneys’ fees, *see Associated Gen. Contractors of Ohio, Inc. v. Drabik*, 250 F.3d 482, 485 (6th Cir. 2001), and is mandatory, *see, e.g., H.C. v. N.Y.C. Dep’t of Educ.*, 71 F.4th 120, 129 (2d Cir. 2023).

That is where the second statute comes into play: “[T]he FCA creates a mandatory fee-shifting scheme.” App.4. Under the FCA, a successful relator, including a relator who succeeds in “settling the claim,” “*shall* ... receive an amount for reasonable expenses ... plus reasonable attorneys’ fees and costs.” 31 U.S.C. §3730(d)(2) (emphasis added). Accordingly, the moment a plaintiff successfully settles an FCA claim, she is necessarily and automatically entitled to reasonable attorneys’ fees. *See Shaw v. AAA Eng’g & Drafting, Inc.*, 213 F.3d 538, 544 (10th Cir. 2000) (holding that the FCA’s fee-shifting provisions “are mandatory on their face”); *Simring v. Rutgers*, 634 F.App’x 853, 857 (3d Cir. 2015) (“A relator *must* receive ‘reasonable’ attorneys’ fees when an FCA suit results in a settlement in which the defendant agrees to pay money.” (emphasis added)). Numerous other statutes provide for fee shifting—in some cases mandatory, *e.g.*, 29 U.S.C. §216(b) (FLSA); 29 U.S.C. §2617(a)(3) (FMLA); 15 U.S.C. §15(a) (Clayton Act); 18 U.S.C. §1964(c) (RICO), in other cases mandatory but subject to defenses such as substantial justification and special circumstances, 28 U.S.C. §2412(d)(1)(A) (EAJA), and in still other cases discretionary, *e.g.*, 35 U.S.C. §285 (Patent Act).

B. Factual Background

Respondent Academy Mortgage Corporation is a mortgage lender that participates in residential mortgage insurance programs run by the Federal

Housing Administration (FHA). App.2. These programs enable lenders like Academy to underwrite and endorse eligible mortgages for FHA insurance. App.2; *see also United States v. Acad. Mortg. Corp.*, 968 F.3d 996, 1000-01 (9th Cir. 2020). To qualify for these programs, both the borrowers and the loans must meet specific eligibility criteria, and participating lenders must certify that the mortgages they originate comply with those requirements. 968 F.3d at 1000-01.

Petitioner Gwen Thrower worked as an underwriter for Academy. App.2. Nine years ago, Thrower sued Academy under the FCA, alleging that it had falsely certified compliance with the FHA's insurance program. App.2. Thrower alleged that, though Academy certified compliance, it "used a variety of methods to approve unqualified loans, such as pressuring underwriters and making exceptions to government-required conditions on file." *United States v. Acad. Mortg. Corp.*, 2018 WL 1947760, at *1 (N.D. Cal. Apr. 25, 2018). When borrowers defaulted on those unqualified loans, the government suffered financial losses. *Acad. Mortg. Corp.*, 968 F.3d at 1001.

Exercising her statutory right to proceed with the action herself, Thrower spent the next seven years litigating the case. App.2-3. After years of extensive litigation, including comprehensive discovery, trial preparation, and mediation, *see* CA9.ER-76, the parties reached a settlement in August 2022—though they did not finalize the terms until December of that year. CA9.ER-215. As part of the settlement, Academy agreed to pay \$38.5 million to resolve the FCA allegations, with nearly \$27 million going to the

United States Treasury and the remainder going to Thrower. App.3.

In light of that settlement, on January 19, 2023, the parties filed a joint stipulation under Federal Rule of Civil Procedure 41(a)(1) to dismiss with prejudice Thrower's claims against Academy. App.3; *see also* CA9.ER-216. Although the FCA entitles an individual who successfully settles an FCA claim to attorneys' fees, the parties recognized that they were likely to disagree over the specific amount of fees to which Thrower was entitled. Accordingly, their stipulated dismissal provided that Thrower's claim for reasonable expenses and attorneys' fees "shall not be dismissed and shall remain pending." CA9.ER-216. The parties also proposed a schedule for continued proceedings to determine the amount of fees Academy owed. The parties agreed that they would first confer, and, if unable to reach an agreement, brief the dispute by mid-July 2023. CA9.ER-210-11. Eight days later, on January 27, 2023, the district court approved the stipulation and entered the parties' proposed order with the stipulated dismissal (the "January 2023 judgment"); it also adopted the parties' proposed schedule for determining the attorneys' fees. *See* App.3.

What should have been a straightforward and speedy determination of reasonable fees turned into precisely the sort of second major litigation this Court has warned against. After an initial, fruitless conferral period, petitioner filed her motion for reasonable fees and expenses on May 31, 2023. A hearing on the issue was originally set for July 27, 2023, but, owing to a series of delay tactics on the part

of Academy, that hearing was postponed by six months.

Academy first moved for an extension of time to file its opposition. When it finally filed that opposition, Academy expressly stated that it “does not contest the entitlement to fees as a result of the settlement, the statute makes that clear.” CA9.ER-153. Academy challenged only the amount of fees requested. To that end, Academy sought extensive post-judgment discovery. CA9.ER-77. After Thrower objected to some of Academy’s more baseless discovery requests, Academy sought additional briefing on the scope of discovery and moved to compel production of “all raw time entries and associated metadata” from Thrower’s counsel. CA9.ER-77. Both the magistrate judge and the district court rejected Academy’s motion because it gave “no valid reason for this additional data.” CA9.ER-139. Indeed, the district court explicitly called out Academy’s transparent delay tactic, noting that its unnecessary discovery request “would incur additional delay in adjudicating the motion for fees which has been pending since mid-2023.” CA9.ER-137.

The district court finally held a hearing on the fees issues on January 11, 2024. Even then, however, Academy’s delays did not cease. At the hearing, Academy again proposed additional briefing, CA9.ER-126-27, which the court declined to order. Two weeks later, Academy yet again, unprompted, requested a further round of supplemental briefing, *see* N.D.CA.Dkt.483, which this time the court granted, *see* N.D.CA.Dkt.487.

On May 31, 2024—16 months after the January 2023 judgment—the court finally quantified the precise amount of fees owed and awarded Thrower roughly \$8.5 million in attorneys’ fees and expenses (the “May 2024 fees determination”).¹ App.3-4. The court recognized that Academy “agrees that [petitioner] is entitled to reasonable attorney’s fees and costs.” CA9.ER-80. And the court again admonished Academy for its delay tactics during the fee litigation, emphasizing that Academy “made choices that drove up time spent on the fee petition,” including “requesting extensions,” “seeking supplemental discovery,” and “raising a discovery dispute.” CA9.ER-106. At long last, all that remained to do was determine the amount of post-judgment interest.

C. Procedural History

After another unsuccessful conferral period, Thrower moved the district court to set the date on which interest started accruing on the attorneys’ fees award.

1. Thrower argued that the proper accrual date for determining post-judgment interest was January 27, 2023—the date the court ordered dismissal. Under §1961(a), post-judgment interest “shall be calculated from the date of the entry of the judgment.” 28 U.S.C. §1961(a). And, as Thrower explained, the relevant “judgment” for §1961(a) purposes is the one entitling

¹That award was reduced to \$5.4 million on appeal after the Ninth Circuit reversed the district court’s use of a 1.75 multiplier. *See United States ex rel. Thrower v. Acad. Mortg. Corp.*, 172 F.4th 703, 713 (9th Cir. 2026).

a party to attorneys' fees, even if that judgment reserves for a later decision the precise quantification of fees to be awarded. That is the rule followed by a majority of circuits, *see Drabik*, 250 F.3d at 486, including seemingly the Ninth Circuit, *id.* at 486, 490, 494 (discussing *Friend v. Kolodzieczak*, 72 F.3d 1386, 1391-92 (9th Cir. 1995)). Because the FCA's mandatory fee-shifting regime entitled Thrower to attorneys' fees as soon as the parties' settlement became final, the January 2023 judgment was the "entry of ... judgment" specified in §1961(a) that started the post-judgment interest accrual clock.

Academy never disputed that Thrower was entitled to reasonable attorneys' fees immediately upon entry of the January 2023 judgment. *See* CA9.ER-153. Nor did Academy argue that, to constitute a "judgment" under §1961(a), a judgment must quantify the amount of fees awarded. To the contrary, Academy conceded that post-judgment interest should run from "the date of the award" of fees, even if "the date of the quantification of the award" is later. *See* CA9.Dkt.15.1 at 16. Academy's only argument was that the January 2023 judgment was not a "judgment" under §1961(a) because it did not explicitly mention Thrower's entitlement to fees. Notwithstanding Academy's concession that, by operation of law, the January 2023 judgment entitled Thrower to attorneys' fees, Academy maintained that because the judgment did not recite the magic word "entitlement," post-judgment interest did not start until 16 months later, when the district court entered its May 2024 fees determination. *See* CA9.ER-21-22.

2. Persuaded by Academy’s magic-word test, the district court held that post-judgment interest on Thrower’s attorneys’ fees award did not begin to run until the May 2024 fees determination. The court agreed with both parties that “a specific monetary award for fees is not required to start the running of post-judgment interest if the court rules that the plaintiff is ‘unconditionally entitled’ to fees,” but it held that “no such unconditional entitlement was enunciated in [its] January 27 [judgment].” App.22. Ignoring the FCA’s mandatory fee-shifting provision, the court concluded that Thrower did not become “legally entitled to fees ... until the May 31 Order.” App.21. That ruling reduced Thrower’s recovery of attorneys’ fees by hundreds of thousands of dollars and rewarded Academy’s delay tactics by the same amount.

3. The Ninth Circuit did not embrace the district court’s magic-words requirement. But though the panel accepted that Thrower’s entitlement to attorneys’ fees was established immediately upon entry of the January 2023 judgment, it nevertheless affirmed, on the theory that there is no “money judgment” on fees until a court sets “a definite and certain designation of the amount which plaintiff is owed by defendant.” App.7, 13. In other words, the court reasoned that even though the January 2023 judgment undisputedly established Thrower’s legal entitlement to attorneys’ fees, she had no right to recover post-judgment interest on those fees until the court determined their precise amount 16 months later.

The panel acknowledged that, under the predecessor statutes to §1961(a), interest accrued “on *all* judgments” without exception. App.5 (emphasis added). But, invoking a contemporary dictionary definition and out-of-circuit precedent construing the term “money judgment” narrowly to avoid federalism concerns, the court held that a §1961(a) “money judgment” must precisely quantify the amount owed. App.6-7 (discussing *Money Judgment*, Black’s Law Dictionary (3d ed. 1933) and *Penn Terra Ltd. v. Dep’t of Env’t Res.*, 733 F.2d 267 (3d Cir.1984)).

The Ninth Circuit openly acknowledged that that conclusion squarely departs from the views of the Fifth, Sixth, Eighth, Eleventh, and Federal Circuits—all of which have held that a “judgment that unconditionally entitles the prevailing party to reasonable attorney fees” starts the interest-accrual clock. *Drabik*, 250 F.3d at 494; see App.11-12. But it dismissed those decisions as largely “appealing to policy or equitable concerns.” App.12. Indeed, the panel even acknowledged that its decision conflicted with a previous Ninth Circuit opinion. See App.10-11 (discussing *Friend*, 72 F.3d at 1391-92). But it dismissed that decision as non-precedential because the relevant passage came from a district court opinion attached as an appendix and adopted by the Ninth Circuit—not from the Ninth Circuit’s opinion itself. Having dismissed the weight of authority to the contrary, the panel concluded that “the May 2024 Order is the only judgment that provides ‘a definite and certain designation of the amount’ of the attorneys’ fees owed to [Thrower],” so it affirmed the district court. App.14.

REASONS FOR GRANTING THE PETITION

The Ninth Circuit has now joined the short side of an acknowledged, entrenched circuit split. The Fifth, Sixth, Eighth, Eleventh, and Federal Circuits all hold that post-judgment interest on attorneys' fees runs from the entry of a judgment on the merits establishing the successful party's entitlement to those fees. The decision below joins the Third, Seventh, and Tenth Circuits in holding to the contrary that interest runs from the time the district court quantifies the fees owed. While "it is often this Court's job to resolve circuit splits and bring nationwide uniformity to the application of federal law," *Bowe v. United States*, 607 U.S. 13, 49 (2026) (Gorsuch, J., dissenting), it is particularly critical to do so here. The very purpose of §1961(a) is to provide courts "a uniform time [in calculating] post-judgment issues." *Kaiser*, 494 U.S. at 835. Yet this circuit split leaves courts routinely applying different rules, as bifurcated merits judgments and fees quantification orders are the norm in district court litigation. And the quantum of the differences produced by the circuits' varying approaches will only increase as interest rates continue to rebound from decades of near-zero Treasuries rates.

This case presents an excellent vehicle to resolve this open and acknowledged split. The issue was squarely resolved below, in a decision that thoroughly considered the competing positions. And nothing would be gained from further percolation, as nine circuits have now weighed in and divided sharply. Delaying resolution thus would serve only to prolong uncertainty as to fee-shifting provisions that are

designed to incentivize and facilitate private litigation in furtherance of important federal policies. Attorneys may be reluctant to take on critical civil rights litigation, for example, if they know that the adjudicated civil rights violator can delay their fees payment by years, interest-free, by prolonging disputes over the amount of fees. The entitlement to interest—let alone access to counsel—should not depend on whether a suit is brought in Michigan instead of California.

The decision below not only deepens an entrenched circuit split, but picks the wrong side. In adopting the minority's cramped interpretation of §1961(a), the Ninth Circuit ignored the plain meaning, history, and purpose of the statute. At the same time, the Ninth Circuit created artificial incentives for parties who have lost on the merits to drag their feet in fixing the amount of attorneys' fees they owe. That rule both undermines the incentives for parties to resolve their fee disputes without further judicial intervention and threatens to turn the fee dispute into a second major litigation.

This Court should grant review and resolve this mature, widely acknowledged circuit split on an important issue on which Congress expressly sought uniformity.

I. The Decision Below Deepens An Entrenched Circuit Split.

Congress enacted §1961(a) to “provide[] a uniform time from which to determine post-judgment issues.” *Kaiser*, 494 U.S. at 835. The decision below frustrates that objective, deepening an entrenched circuit split as to whether interest on attorneys' fees runs from the

entry of a judgment entitling a party to fees (the majority approach), or instead begins to accrue only once the court quantifies the precise amount of the fees award (the minority approach).

1. The Fifth, Sixth, Eighth, Eleventh, and Federal Circuits all hold that interest on attorneys' fees runs from the entry of judgment entitling a party to attorney's fees, not the order quantifying the precise amount. The Sixth Circuit's decision in *Drabik* exemplifies the majority approach. There, two trade associations sued the state of Ohio under 42 U.S.C. §1983 for constitutional violations. 250 F.3d at 483. The district court entered judgment in favor of the trade associations and adjudged them entitled to attorneys' fees under 42 U.S.C. §1988. *Id.* Eleven months later, the court entered a second judgment quantifying the amount of fees to be paid. *Id.* On appeal, the court addressed "[w]hether an award of attorney fees accrues interest, pursuant to 28 U.S.C. §1961, from the date of the judgment that unconditionally entitles the prevailing party to reasonable attorney fees, or the date of the judgment quantifying that fee award." *Id.* at 485.

After surveying the split of authority, the Sixth Circuit concluded that, under §1961(a), "a 'money judgment' is the judgment that unconditionally entitles the prevailing party to reasonable attorney fees." *Id.* at 494. As the court explained, "Congress used the term 'money judgment' in its commonly understood sense of the judgment on a verdict." *Id.* In other words, "Congress intended that post-judgment interest on all damages, including reasonable attorney fees and costs, would run from entry of judgment on

the merits.” *Id.* That makes sense, as the purpose of post-judgment interest is to compensate a successful party for the time value of the money to which she was entitled. *Id.* And the alternative approach would give a losing party “every reason to delay quantification of the fees.” *Id.*

Four other circuits agree that “[t]he relevant judgment for purposes of determining when interest begins to run is the judgment establishing the right to fees or costs, as the case may be.” *Copper Liquor, Inc. v. Adolph Coors Co.*, 701 F.2d 542, 544 (5th Cir. 1983) (en banc) (per curiam); *see also Jenkins v. Missouri*, 931 F.2d 1273, 1275-77 (8th Cir. 1991); *BankAtlantic v. Blythe Eastman Paine Webber, Inc.*, 12 F.3d 1045, 1052-53 (11th Cir. 1994); *Mathis v. Spears*, 857 F.2d 749, 760 (Fed. Cir. 1988). Where, as here, fee-shifting is mandatory and “the prevailing party is unconditionally entitled to ... fees by statutory right, interest will accrue from the date of judgment.” *Copper Liquor*, 701 F.2d at 545.

Echoing *Drabik*, these courts reason that §1961(a)’s plain text is reinforced by two of the statute’s key aims: full compensation and deterrence of wasteful litigation. The majority rule “serves the make-whole objective of fee awards in civil rights cases” and ensures that attorneys are “fully compensated for their successful efforts.” *Jenkins*, 931 F.2d at 1275-77. Full compensation is “the whole point of §1961”—post-judgment interest is meant “to ensure that a successful party receives compensation for any delay in the time it takes for the opposing party to pay up.” *Linneman*, 970 F.3d at 636. “Because a dollar today is worth more than a dollar in the future,

the only way a party can be made whole is to grant interest from the time of the award[.]” *Drabik*, 250 F.3d at 485. And “calculating interest from entry of judgment deters use of the appellate process by the judgment debtor solely as a means of prolonging its free use of money owed the judgment creditor.” *Mathis*, 857 F.2d at 760. A contrary rule “would incentivize the other party to delay payment as much as possible in order to reduce the value of the original judgment.” *Linneman*, 970 F.3d at 636.

This case powerfully illustrates that problem. Academy used extensions, discovery, and additional briefing to prolong the fee quantification process for 16 months, allowing it to retain the time value of millions of dollars and unfairly reducing Thrower’s recovery by hundreds of thousands of dollars. *See supra* pp.8-9.

2. The decision below joins the Third, Seventh, and Tenth Circuits on the short side of a 5-4 split. *See Eaves v. Cnty. of Cape May*, 239 F.3d 527, 534 (3d Cir. 2001); *Fleming v. Cnty. of Kane*, 898 F.2d 553, 565 (7th Cir. 1990); *MidAmerica Fed. Sav. & Loan Ass’n v. Shearson/Am. Exp., Inc.*, 962 F.2d 1470, 1476 (10th Cir. 1992).

These courts “read into the term ‘money judgment’ a requirement that an award of attorney fees to which the prevailing party was entitled be reduced to a sum certain.” *Drabik*, 250 F.3d at 494. For example, the Third Circuit in *Eaves* started from the uncontroversial premise that “post-judgment interest does not begin to run under §1961(a) until the district court enters the judgment at issue, i.e., the ‘money judgment.’” 239 F.3d at 532. And the court recognized that “[t]his observation is not dispositive,

because the problem in this case is that we arguably have two ‘judgments’—a merits judgment assessing damages and setting forth the plaintiff’s entitlement to fees and costs, and the later order quantifying those fees and costs. *Id.* In deciding that the merits judgment did not qualify as a “money judgment” under §1961(a), the Third Circuit relied on its interpretation of that phrase in the bankruptcy context (and applying a narrowing construction) as requiring “*a definite and certain designation of the amount which plaintiff is owed by defendant.*” *Id.* (quoting *Penn Terra*, 733 F.2d at 275).

3. That entrenched and deep circuit split is reason enough to grant review. But resolution by this Court is especially important because the courts of appeals are divided over what this Court’s decision in *Kaiser* has to say about this question. *See, e.g., Gonzaga Univ. v. Doe*, 536 U.S. 273, 278 (2002) (“We ... granted certiorari to resolve the conflict among the lower courts and in the process resolve any ambiguity in our own opinions.” (citation omitted)); *Rita v. United States*, 551 U.S. 338, 346 (2007) (granting certiorari to resolve circuit split on application of *United States v. Booker*, 543 U.S. 220 (2005)).

Kaiser resolved a circuit split over whether post-judgment interest should run from the date of the verdict awarding the plaintiff damages, or from the date that verdict is reduced to a final judgment. The Court concluded that, because the statute requires a “judgment,” its plain text forecloses the verdict approach. 494 U.S. at 834-35. The Court further concluded that a judgment that is vacated because the damages award was not supported by the evidence

does not trigger post-judgment interest, as a vacated judgment does not “ascertain[]” damages “in any meaningful way.” *Id.* at 836.

As the Sixth Circuit explained in *Drabik*, *Kaiser* does not suggest, let alone require, that a fee award must be “reduced to a sum certain” to be “ascertained in a meaningful way.” 250 F.3d at 490. *Kaiser* simply held that interest cannot run from a money judgment that has been vacated and is therefore “legally void and unenforceable.” *Id.* at 491. That in no way compels the conclusion that “an award of attorney fees as part of a final judgment on the merits” is not a money judgment from which interest accrues. *Id.* The judgment in *Kaiser* did not meaningfully ascertain damages because it was vacated owing to a lack of evidentiary support, not because it did not quantify the amount of damages awarded. See Nick J. Kemphaus & Richard A. Bales, *Interest Accrual on Attorney’s Fee Awards*, 23 Rev. Litig. 115, 119 (2004) (“The Supreme Court specifically defined the phrase ‘ascertainment of the damage’ as a judgment supported by the evidence or judgment on the merits, leaving no doubt that it did not mean an exact quantum judgment.” (footnote omitted)).

Nevertheless, the Tenth Circuit has read *Kaiser*’s reference to “ascertain[ing]” damages to require precise quantification. *MidAmerica*, 962 F.2d at 1475-76. And the Third Circuit invoked *Kaiser*’s rejection of arguments focused on “policy considerations rather than the plain language of the statute,” see 494 U.S. at 834-36, to dismiss the majority approach as supposedly policy-centric. 239 F.3d at 538. *But see Drabik*, 250 F.3d at 494 (“While we agree that some of

these courts emphasized this and other equitable concerns, we do not agree that these courts ‘ignore[d] a textual analysis of §1961(a).’” (quoting *Eaves*, 239 F.3d at 531)). Moreover, the Third Circuit in *Eaves* “f[ound] it significant that the initial two cases espousing the ‘majority view’ preceded” *Kaiser*, 239 F.3d at 539-40, but the Fifth, Sixth, Eighth, and Eleventh Circuits have all since held that the majority approach is perfectly consistent with—indeed, supported by—*Kaiser*. As they have explained, the majority approach calculates interest from the judgment entitling the plaintiff to fees, just as *Kaiser* “mandate[s] that interest should not accrue until the party becomes entitled to the award.” *La. Power & Light Co. v. Kellstrom*, 50 F.3d 319, 332 (5th Cir. 1995); see also *Jenkins*, 931 F.2d at 1276 n.3; *BankAtlantic*, 12 F.3d at 1052-53.

* * *

Nine circuits have now weighed in on the question presented,² and they cannot agree. Moreover, part of

² For its part, the Second Circuit has indicated that it agrees with the majority approach, relying on *Mathis* for the proposition that “interest runs from the date of the judgment authorizing the right to the award, not from the date of a later judgment establishing its exact amount.” *Est. of Calloway v. Marvel Ent. Grp.*, 9 F.3d 237, 242 (2d Cir. 1993). And district courts in at least three of the circuits where the question presented remains open—the First, Second, and D.C. circuits—have adopted the majority approach. See *King v. JCS Enters., Inc.*, 325 F.Supp.2d 162, 175 (E.D.N.Y. 2004); *Haddad Motor Grp., Inc. v. Karp, Ackerman, Skabowski & Hogan, P.C.*, 716 F.Supp.2d 161, 162 (D. Mass. 2010); *Baylor v. Mitchell Rubenstein & Assocs., P.C.*, 282 F.Supp.3d 203, 215-16 (D.D.C. 2017), *aff’d sub nom. Baylor v. Mitchell Rubenstein & Assocs., P.C.*, 735 F.App’x 733 (D.C. Cir. 2018).

that disagreement stems from different readings of this Court's *Kaiser* decision. It therefore falls to this Court to restore the uniformity that §1961(a) is designed to ensure.

II. This Is An Ideal Vehicle To Resolve This Exceptionally Important Question.

Section 1961(a) mandates “a uniform time from which to determine post-judgment issues.” *Kaiser*, 494 U.S. at 835. Yet in placing the Nation's largest circuit squarely on the minority side, the decision below compounds an intractable circuit split that makes entitlement to substantial sums dependent on geography. *See* Kemphaus & Bales, *supra* at 131 (§1961(a) is meant to prevent “variances in compensation to prevailing parties for delays in payment of their damage awards between federal district courts”). If Thrower had sued in the Fifth, Sixth, Eighth, Eleventh, or Federal Circuits, she would have received hundreds of thousands of dollars more in interest on her attorneys' fees.

That blatant disparity in applying what is supposed to be a harmonizing statute has considerable practical effect, as district courts routinely enter merits judgments or fee awards orders first and quantify fee amounts later (in hopes that parties can resolve the fee amount voluntarily, and in recognition that a prevailing attorney's compensable work on a case continues throughout this process). For example, in the district in which this case arose, fee quantification routinely occurs well after a merits judgment entitling a plaintiff to mandatory attorneys' fees. *See, e.g., Maslic v. ISM Vuzem*, No. 21-cv-02556 (N.D. Cal.), Dkts. 208, 221 (over three-month delay

between merits judgment and fees quantification in Fair Labor Standards Act case); *Maravilla v. Rosas Bros. Constr., Inc.*, No. 16-cv-06117 (N.D. Cal.), Dkts. 43, 52 (same, six-month delay); *Navarro v. Gen. Nutrition Corp.*, No. 03-cv-0603 (N.D. Cal.), Dkts. 264, 346 (15-month delay between merits judgment and fee quantification in Family and Medical Leave Act); *Valadez v. Aguillo*, No. 08-cv-03100 (N.D. Cal.), Dkts. 99, 112 (two-month delay between merits judgment and fee quantification in RICO case).

Indeed, both the frequency with which this issue arises and the potential stakes of the varying answers are clear from the fact that nine circuits have decided it. And the issue is not limited to fees; courts apply either the majority or minority approach to awards of other costs, too. *E.g.*, *Copper Liquor*, 701 F.2d at 543; *Wheeler v. John Deere Co.*, 986 F.2d 413, 415 (10th Cir. 1993).

Resolution of the question presented is also incredibly important to both the FCA and other fee-shifting statutes. As Congress explained, the FCA’s mandatory fee-shifting provision is designed “to encourage any individual knowing of Government fraud to bring that information forward,” to combat the “growing pervasiveness” of “fraud in Federal programs.” S. Rep. No. 99-345, at 1-2 (1986). Those relators need counsel, and those counsel need adequate economic incentives to take on long, laborious litigation like the seven-year litigation in this case. The extent of those incentives should not turn on whether a relator’s case arises in Florida or California. And forcing parties—and their counsel—to extend interest-free loans to FCA judgment debtors

undermines the FCA’s core purpose of rooting out fraud against the government.

The same is true in other fee-shifting contexts. “Congress’ purpose in adopting fee-shifting provisions was to strengthen the enforcement of selected federal laws by ensuring that private persons seeking to enforce those laws could retain competent counsel.” *City of Burlington v. Dague*, 505 U.S. 557, 568 (1992) (Blackmun, J., dissenting) (citing S. Rep. No. 94-1011, at 6 (1976)); *see also DL v. District of Columbia*, 924 F.3d 585, 588 (D.C. Cir. 2019) (fee-shifting regimes exist to “encourag[e] plaintiffs to bring suits”). For example, 42 U.S.C. §1988 authorizes attorneys’ fees for civil rights litigation to “ensure ‘effective access to the judicial process’ for persons with civil rights grievances.” *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983). This “admirable purpose will be undercut if lawyers fear that they will never actually receive” the full compensation to which they are entitled. *Astrue v. Ratliff*, 560 U.S. 586, 600 (2010) (Sotomayor, J., concurring). Left standing, the decision below threatens precisely that in the Nation’s largest circuit, where important public interest litigation is frequently litigated involving potential awards of significant attorneys’ fees. *See, e.g., Sackett v. EPA*, 598 U.S. 651 (2023); *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507 (2022); *Tandon v. Newsom*, 593 U.S. 61 (2021); *NIFLA v. Becerra*, 585 U.S. 755 (2018).

The minority approach, moreover, does not just burden private enforcement of federal policy; it burdens the district courts. By effectively giving the adjudicated-merits loser an interest-free loan during negotiations and litigation over the fee amount, the

minority rule frustrates settlement discussions and skews them in favor of parties who have defrauded the federal government or violated civil rights. By “incentiviz[ing] the other party to delay payment as much as possible in order to reduce the value of the original judgment,” *Linneman*, 970 F.3d at 636, the minority approach invites needless, protracted litigation. *See Mathis*, 857 F.2d at 760.

This case offers an ideal vehicle for the Court to finally resolve this intractable split. The facts are undisputed; both the parties and the courts below agree that the FCA entitled petitioner to attorneys’ fees as a matter of law upon entry of settlement, and that §1961(a) applies to those fees. The only issue disputed and addressed below was the question presented—namely, whether Thrower is entitled to post-judgment interest from when the court issued its judgment definitively establishing her right to attorneys’ fees, or only after the court quantified the fees amount. And little would be gained by delaying resolution of this important question, as nearly every circuit has weighed in, and there is little hope of courts coalescing of their own accord at this point. Indeed, far from reflecting any effort to reach consensus, the decision below puts the Nation’s most populous circuit on the short side of what is now a 5-4 split. Further percolation is unlikely to be useful to this Court’s consideration; the Court should grant review now.

III. The Decision Below Is Wrong.

The majority of circuits have it right: The text, history, and purpose of §1961(a) confirm that interest on attorneys’ fees runs from the date of entitlement, not the date of fee quantification. The Ninth Circuit’s

contrary arguments are misguided, as are those that have been offered by the other courts that embrace the minority approach. And the minority approach frustrates the incentives for parties to resolve fee disputes voluntarily and prolongs fee disputes into a second major litigation.

1. Section 1961(a) instructs that interest “shall be allowed on any money judgment in a civil case” and that it “shall be calculated from the date of the entry of the judgment.” 28 U.S.C. §1961(a). “Congress used the term ‘money judgment’ in its commonly understood sense of the judgment on a verdict.” *Drabik*, 250 F.3d at 494. Nothing in the text suggests that a merits judgment for damages that includes a fee entitlement is a “money judgment” for one purpose (the damages themselves) but not another (attorneys’ fees triggered by, or awarded in, the merits judgment). To the contrary, “any money judgment’ in §1961 includes a judgment awarding attorney’s fees,” even if the precise amount of fees is not quantified. *Linneman*, 970 F.3d at 635.

Section 1961(a)’s history confirms that the phrase “money judgment” does not contain an unstated quantification requirement. Congress first provided for post-judgment interest in 1842, when it authorized interest “on all judgments in civil causes hereafter recovered in the circuit or district courts of the United States ... to be calculated from the date of the judgment.” App.5 (quoting 5 Stat. 516, 518 (1842)). That statute was carried forward into section 966 of the Revised Statutes, *Washington & G.R. Co. v. Tobriner*, 147 U.S. 571, 586 (1893), which was then carried into the 1940 reorganization of the U.S. Code

as §811, see *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 497 (1941).

At the time, a “judgment” was understood to be anything that “concludes the subject on which it is rendered, and pronounces the law of the case.” *Dynes v. Hoover*, 61 U.S. (20 How.) 65, 76 (1857); see also *Grignon’s Lessee v. Astor*, 43 U.S. (2 How.) 319, 341-42 (1844). No authority over the intervening 100-year period suggests that, in providing for interest on “all judgments in civil cases,” 5 Stat. at 518, Congress sought to distinguish between types of judgments based on whether they quantify fees and costs or establish a party’s entitlement to the same.

Congress instead specified that interest would run on *judgments* to draw two separate distinctions—neither of which has anything to do with award quantification. First, Congress sought to distinguish between judgments of courts of law—which were subject to interest—and decrees of courts of equity—which were not. A decade after Congress passed the first post-judgment interest statute, this Court explained that it “d[id] not embrace cases in equity.” *Perkins v. Fourniquet*, 55 U.S. (14 How.) 328, 331 (1852). *Perkins* “rel[ied] on the use of the word ‘judgment’, as distinguished from ‘decree’, the equitable counterpart,” in holding that “the predecessor statute to section 1961, did not apply to equitable decrees.” *Brock v. Richardson*, 812 F.2d 121, 125 (3d Cir. 1987) (footnote omitted). Second, the term “judgment” excludes the possibility of providing interest upon verdicts before judgment—unless a separate state statute provides for it. See *Mass. Benefit Ass’n v. Miles*, 137 U.S. 689, 691 (1891). This

Court recognized as much in *Kaiser*, holding that interest runs from a judgment, not from the verdict underlying it. 494 U.S. at 834-35. In short, while §1961(a)’s forerunner contemplated a distinction between judgments at law and either decrees at equity or verdicts—with only the former bearing interest—the historical record is bereft of any distinction between a judgment on the merits and a judgment as to the final accounting.

When Congress used the phrase “money judgment” in new §1961(a), the term brought that “old soil” with it. *Sekhar v. United States*, 570 U.S. 729, 733 (2013) (citing F. Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527, 537 (1947)). Indeed, Congress “made only verbal changes in the previous statute,” *Holly v. Chasen*, 639 F.2d 795, 797 (D.C. Cir. 1981), explaining in the accompanying Historical and Revision Notes that the act was based on its predecessor in 28 U.S.C. §811 (1940), and made changes only “in phraseology,” not substance. 28 U.S.C. §1961(a); *see also* H.R. Rep. No. 80-308, at A-166 (1947).

To be sure, §1961(a) added the qualifier “*money* judgment,” whereas previous versions simply referred to “judgment[s].” But that change is readily explained by the fact that, with the adoption of the Federal Rules of Civil Procedure in 1938 and the merger of claims under law and equity, *see Sripetch v. SEC*, 608 U.S. 555, 572 n.1 (2026) (Thomas, J., concurring), simply referring to “judgments” rather than “decrees,” *Baker v. Gen. Motors Corp.*, 522 U.S. 222, 223 (1998), would no longer distinguish between judgments awarding a party money and judgments awarding equitable relief.

A grant of attorneys' fees in a merits judgment thus "constitutes a 'money judgment, pursuant to §1961(a), because it involves a judgment for money, i.e., attorney's fees, distinguishable from other types of judgments, such as judgments for equitable or injunctive relief." Kemphaus & Bales, *supra* at 130. Consistent with that understanding, at the same time that Congress added "money judgment" to §1961(a), it made a similar "change[] to phraseology" in the very next section, changing the prior reference to "judgment or decree" to simply "judgment" for the same reason—i.e., because there was no longer a distinction between the two. 28 U.S.C. §1962 note (Historical and Revision).

2. Correctly construed, §1961(a) serves three commonsense purposes. First, post-judgment interest compensates a successful plaintiff for being deprived of the use of the funds to which she was legally entitled. *See Kaiser*, 494 U.S. at 835-36. Because "a dollar today is worth more than a dollar in the future, the only way a party can be made whole is to grant interest from the time of the award." *Drabik*, 250 F.3d at 485.

Second, "[f]ailing to allow awards of attorneys' fees to bear interest would give parties against whom such awards have been entered an artificial and undesirable incentive" to delay the point when their bill comes due. *Jenkins*, 931 F.2d at 1276; *see also, e.g., Mathis*, 857 F.2d at 760. As Congress noted when amending §1961(a), a losing defendant would have an economic incentive to delay payment as long as possible "solely in order to retain his money and accumulate interest." S. Rep. No. 97-275, at 40 (1981).

In the attorneys' fees context in particular, those perverse incentives both frustrate settlement and extend what is supposed be an ancillary proceeding into a second major litigation.

Third, Congress enacted §1961(a) to set a “national uniform rate” for post-judgment interest calculations in district courts across the country. S. Rep. No. 97-275, at 11; *see Kaiser*, 494 U.S. at 835. Courts on the short side of the split acknowledge that delaying the accrual of interest until quantification frustrates the first two objectives, “limit[ing] the amount of post-judgment interest that accrues on an attorney’s fee judgment.” *Eaves*, 239 F.3d at 541. The panel below suggested that those ill effects might be mitigated through ad hoc adjustments to prejudgment interest or lodestar calculations. App.12-13. But that approach sacrifices the third goal of uniformity, as unlike the clear command of §1961(a), “there is no comparable legislation regarding prejudgment interest” which “is governed by traditional judge-made principles” and left to the vast discretion of individual courts. *City of Milwaukee v. Cement Div., Nat’l Gypsum Co.*, 515 U.S. 189, 194-95 (1995); *see also Mooney v. Roller Bearing Co. of Am. Inc.*, 138 F.4th 1349, 1352 (9th Cir. 2025).³

* * *

³ Lodestar adjustments may also be unavailable in many cases because of the EAJA’s statutory rate cap, *see* 28 U.S.C. §2412(d)(2)(A), or because of a fixed-fee agreement that pegs attorneys’ fees to a plaintiff’s recovery. And shunting post-judgment interest into the (discretionary) pre-judgment interest rubric renders optional what Congress, in fee-shifting statutes like the FCA, made mandatory.

Upon the successful settlement of her seven-year FCA case, Thrower was entitled to reasonable attorneys' fees by operation of law. But she had to wait 16 months before the court finally quantified them. Despite decrying that delay and putting the blame squarely on Academy, the courts below rewarded that delay by effectively giving Academy an interest-free loan worth well over six figures. Section 1961(a) does not adopt that perverse approach. It establishes that the time value of those fees during that period inures to the successful party—i.e., Thrower. That is the commonsense rule adopted by a majority of circuits. This Court should grant review to resolve this intractable division of authority and vindicate Congress's goal of a "uniform time from which to determine post-judgment issues." *Kaiser*, 494 U.S. at 835.

CONCLUSION

For the foregoing reasons, this Court should grant the petition.

Respectfully submitted,

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APPENDIX

TABLE OF APPENDICES

Appendix A

Opinion, United States Court of Appeals for the Ninth Circuit, *United States ex rel. Thrower v. Acad. Mortg. Corp.*, No. 24-6247 (Apr. 6, 2026) App-1

Appendix B

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Appendix A

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

No. 24-6247

United States ex rel. GWEN THROWER,
Plaintiff-Appellant,
v.
ACADEMY MORTGAGE CORP.,
Defendant-Appellee.

Argued: Sept. 15, 2025
Filed: Apr. 6, 2026

Before: Milan D. Smith, Jr. and Patrick J. Bumatay,
Circuit Judges, and J. Campbell Barker, District
Judge.*

OPINION

BUMATAY, Circuit Judge:

Gwen Thrower was awarded attorneys’ fees, expenses, and costs in her False Claims Act (“FCA”) action against her former employer, Academy Mortgage Corporation. The question in this appeal:

* The Honorable J. Cambell Barker, United States District Judge for the Eastern District of Texas, sitting by designation.

when does postjudgment interest begin to accrue on those fees, costs, and expenses (collectively “attorneys’ fees”)? We have two possible answers here. It could be the day the district court approved the settlement of her FCA action, as Thrower asserts. Because Thrower became legally entitled to attorneys’ fees on that date, she argues interest should accrue from then. Or it could be the date that the district court entered judgment awarding her the attorneys’ fees, as the district court held. According to the district court, postjudgment interest typically runs from the point that those fees are “actually granted.”

Under the law, interest is allowed on “any money judgment” and “shall be calculated” from “the date of the entry of the judgment.” 28 U.S.C. § 1961(a). Because the district court’s order confirming a settlement without designating the amount of attorneys’ fees is not a “money judgment” on those fees, we affirm.

I.

Thrower was a mortgage underwriter for lender Academy Mortgage Corporation. Academy took part in the Federal Housing Administration Direct Endorsement program, which allows lenders to underwrite and endorse eligible mortgages for Federal Housing Administration insurance without government review. If recipients default, the Department of Housing and Urban Development is on the hook for the loans. In 2016, Thrower sued Academy under the FCA, alleging that it had falsely certified compliance with the program’s regulations. The government decided not to intervene. In fact, the

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government moved to dismiss the FCA action, which the district court denied.

Following years of discovery and litigation, Thrower and Academy settled. As part of the settlement, Academy agreed to pay \$38.5 million to resolve the FCA allegations. Nearly \$27 million would go to the United States Treasury and the rest would go to Thrower. *See* 31 U.S.C. § 3730(d)(2).

In mid-January 2023, Thrower and Academy agreed to dismiss the FCA claims with prejudice. The parties' stipulation expressly excluded Thrower's claim for attorneys' fees. These claims would "not be dismissed and [would] remain pending." "[A]ny disputes" regarding those fees would also "remain pending" before the district court. The parties' joint status report stated that "[t]he only remaining issue" for the district court to resolve was Thrower's claim for attorneys' fees.

On January 27, 2023, the district court approved the settlement and entered an order incorporating the stipulation ("January 2023 Order"). The January 2023 Order dismissed Thrower's FCA claims against Academy with prejudice. But it expressly excluded Thrower's claims for attorneys' fees from dismissal. Those claims would "remain pending before the Court for disposition pursuant to a schedule to be set by the Court."

Months of dispute over attorneys' fees followed. Thrower sought over \$13 million in fees and expenses, which Academy contested. Sixteen months after the settlement was entered, on May 31, 2024, the district court decided the fees dispute ("May 2024 Order"). It

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awarded Thrower \$89,437.77 in expenses and \$8,585,530.20 in attorneys' fees.

Over Thrower's objection, the district court later held that postjudgment interest on the attorneys' fees accrued from entry of the May 2024 Order—not from the January 2023 Order. Thrower timely appealed. We review a district court's award of interest on attorneys' fees for abuse of discretion. *See Guam Soc'y of Obstetricians & Gynecologists v. Ada*, 100 F.3d 691, 702 (9th Cir. 1996).

II.

A.

This case involves the interplay of two federal statutes.

To begin, the FCA creates a mandatory fee-shifting scheme. A successful relator, including one who "settl[es] the claim," "shall ... receive an amount for reasonable expenses ... plus reasonable attorneys' fees and costs." 31 U.S.C. § 3730(d)(2); *see In re Schimmels*, 127 F.3d 875, 877 n.1 (9th Cir. 1997) ("[P]rivate individuals who prosecute meritorious *qui tam* actions are entitled to ... reasonable expenses, attorney's fees, and costs."); *Shaw v. AAA Eng'g & Drafting, Inc.*, 213 F.3d 538, 542 (10th Cir. 2000) (recognizing an FCA relator's entitlement to reasonable attorneys' fees under § 3730(d)(2)).

But the FCA doesn't establish when postjudgment interest on those fees begins to accrue. For that question, we must turn elsewhere. 28 U.S.C. § 1961 governs postjudgment interest in all civil matters in federal courts. It states,

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Interest shall be allowed on any money judgment in a civil case recovered in a district court. Execution therefor may be levied by the marshal, in any case where, by the law of the State in which such court is held, execution may be levied for interest on judgments recovered in the courts of the State. Such interest shall be calculated from the date of the entry of the judgment....

28 U.S.C. § 1961(a). So § 1961 ties the accrual of postjudgment interest to the “date of the entry” of the “money judgment.” And “postjudgment interest on a district court judgment is mandatory.” *Air Separation, Inc. v. Underwriters at Lloyd’s of Lond.*, 45 F.3d 288, 290 (9th Cir. 1995).

So what constitutes a “money judgment”? Some history helps answer that question. “[A]t common law, judgments, whatever the cause of action, did not bear interest.” *Washington & G.R. Co. v. Tobriner*, 147 U.S. 571, 584-85 (1893). But Congress changed that common-law rule. In 1842, Congress first authorized interest on judgments, providing “[t]hat, on all judgments in civil causes hereafter recovered in the circuit or district courts of the United States, interest shall be allowed, and may be levied by the marshal, under process of execution issued thereon ... [with interest] to be calculated from the date of the judgment....” Act of Aug. 23, 1842, 5 Stat. 516, 518 (1842). At the time, it was understood that parties “should not [be] charged with interest before the final decree” as “[i]nterest is not generally allowable upon unliquidated damages.” *Mowry v. Whitney*, 81 U.S. 620, 653 (1871); see also *Moore-McCormack Lines, Inc.*

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v. Amirault, 202 F.2d 893, 897 (1st Cir. 1953) (“[T]he federal cases, at least the older ones, have tended to hold that interest [for an unliquidated claim] cannot be allowed from any date prior to the date of judicial ascertainment of the amount of damages.”).

In 1948, Congress enacted the modern-day version of § 1961, using the term “money judgment” for the first time. Act of June 25, 1948, 62 Stat. 957 (1948). At the time, a “money judgment” was defined as “[o]ne which adjudges the payment of a sum of money, as distinguished from one directing an act to be done or property to be restored or transferred.” *Black’s Law Dictionary* (3d ed. 1933). In support, *Black’s Law Dictionary* cited two cases: *Fuller v. Aylesworth*, 75 F. 694 (6th Cir. 1896), and *Pendleton v. Cline*, 85 Cal. 142 (1890). In *Fuller*, then-Judge (and future President and Chief Justice) William Howard Taft defined a “money judgment” as one finding a defendant “absolutely liable to pay a sum certain to the plaintiff, and awards execution therefor[.]” *Fuller*, 75 F. at 701.

This historical understanding of “money judgment” is consistent with the Third Circuit’s definition of the term, which we’ve expressly adopted. *See Ministry of Def. & Support for the Armed Forces of the Islamic Republic of Iran v. Cubic Def. Sys., Inc.*, 665 F.3d 1091, 1101 (9th Cir. 2011). According to the Third Circuit,

In common understanding, a money judgment is an order entered by the court or by the clerk, after a verdict has been rendered for plaintiff, which adjudges that the defendant shall pay a sum of money to the

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plaintiff. Essentially, it need consist of only two elements: (1) an identification of the parties for and against whom judgment is being entered, and (2) a *definite* and *certain* designation of the amount which plaintiff is owed by defendant. It need not, and generally does not, contain provisions for its enforcement.

Penn Terra Ltd. v. Dep't of Env't Res., 733 F.2d 267, 275 (3rd Cir. 1984).

Thus, for a judicial action to qualify as a “money judgment” under § 1961, we require two elements: “(1) an identification of the parties for and against whom judgment is being entered, and (2) a definite and certain designation of the amount which plaintiff is owed by defendant.” *Cubic Def. Sys.*, 665 F.3d at 1101 (simplified). Of course, an order may be sufficiently “definite and certain” without itself spelling out the exact dollar amount if the designation is “readily discernible” through the “mechanical task” of applying the order. *Id.* (simplified). And if the amount specified in the judgment is later modified by the district court or an appellate court, interest on the revised award will run from the date of the original judgment. *See Perkins v. Standard Oil Co. of Cal.*, 487 F.2d 672, 676 (9th Cir. 1973) (When “the district court’s determination” of attorneys’ fees is “correct to the extent it was permitted to stand,” “interest on a judgment ... partially affirmed should be computed from the date of its initial entry.”).

That a judgment must be readily enforceable—having identified parties and a sufficiently definite amount—fits with § 1961’s focus on *executing* the

money judgment. Under the statute, the “[e]xecution” of the “money judgment” itself may be effected by a federal marshal according to the laws of the state in which the issuing court sits. 28 U.S.C. § 1961(a). Similarly, the version of Rule 69(a) of the Federal Rules of Civil Procedure operative in 1948 provided that the “[p]rocess to enforce a *judgment for the payment of money* shall be a writ of execution, unless the court directs otherwise.” Fed. R. Civ. P. 69(a) (1948) (amended 2007) (emphasis added). Specifying that a “money judgment” must be able to be *paid* by a party and *executed* by a federal marshal shows that it must include a specified sum to be paid out to a specific party. Otherwise, how else could the “money judgment” be executed?

The requirement of an identified party and a sufficiently definite amount also serves “[t]he purpose of postjudgment interest”: “to compensate the successful plaintiff for being deprived of compensation for the loss from the time between the ascertainment of the damage and the payment by defendant.” *Kaiser Aluminum & Chem. Corp. v. Bonjorno*, 494 U.S. 827, 835–36 (1990) (simplified). Without specifying the amount of attorneys’ fees, no “ascertainment of the damage” has occurred, and the plaintiff suffers no loss from the lack of payment. And any “loss of use of money due as damages from the time the claim accrues until judgment is entered” is covered by prejudgment interest. *See West Virginia v. United States*, 479 U.S. 305, 310 n.2 (1987).

All this shows that, for a judgment to serve as a “money judgment” entitled to postjudgment interest, it must have identified parties and “a definite and

certain designation of the amount which plaintiff is owed by defendant.” *Cubic Def. Sys., Inc.*, 665 F.3d at 1101 (simplified).

B.

Only one of the two orders here has both (1) identified parties, and (2) a “definite and certain designation of the amount” of attorneys’ fees. *Id.* (simplified). Thrower’s preferred January 2023 Order does not. To be sure, the January 2023 Order approved the parties’ settlement, which favored Thrower. In exchange for dismissing the FCA claim, Academy agreed to pay Thrower and the government \$38.5 million. But the January 2023 Order expressly carved out Thrower’s claims for attorneys’ fees from dismissal. Instead, the order established that Thrower’s claims for fees would “remain pending” and be decided according to a schedule set by the district court. The January 2023 Order thus provided no “definite and certain” amount Academy owed to Thrower on attorneys’ fees. If Thrower sought to execute the January 2023 Order after its entry, Academy would have no idea how much it owed, and a marshal would also have no idea how much to collect.

In contrast, the May 2024 Order provided all the details needed for a “money judgment.” It expressly granted Thrower’s request for attorneys’ fees from Academy. It thus identifies “the parties for and against whom judgment is being entered.” *Cubic Def. Sys.*, 665 F.3d at 1101 (simplified). And it provides the exact amounts Academy owes Thrower. It awarded Thrower \$8,585,530.20 in attorneys’ fees and \$89,437.77 for expenses. So it easily meets the requirement for a “definite and certain designation of

the amount which plaintiff is owed by defendant.” *Id.* (simplified). Only after the May 2024 Order did Academy know the amount it owed and did Thrower suffer any losses from the lack of payment. Thus, the district court properly concluded that the postjudgment interest on Thrower’s attorneys’ fees accrued starting from the May 2024 Order.

C.

Based on a misreading of our precedent, Thrower offers an alternative test. Citing *Friend v. Kolodziejczak*, 72 F.3d 1386, 1391-92 (9th Cir. 1995), Thrower asserts that interest should run from the judgment in which “the party’s unconditional entitlement to attorneys’ fees is secured.” And because the FCA mandates the award of attorneys’ fees for a successful relator, *see* 31 U.S.C. § 3730(d)(2), Thrower argues that interest should accrue from the January 2023 Order. After all, under the FCA, that Order entitled her to fees and costs.

It’s true that *Friend* contains the following sentence: “Interest runs from the date that entitlement to fees is secured, rather than from the date that the exact quantity of fees is set.” *See Friend*, 72 F.3d at 1391-92. But there’s a major problem. That sentence is not from the binding order. Instead, it’s from the district court opinion attached as an appendix to the order. *Id.* So it isn’t precedential. In *Friend*, the only issue raised on appeal was whether the district court’s prevailing-party analysis was consistent with *Farrar v. Hobby*, 506 U.S. 103 (1992). *Id.* at 1388. We agreed that it was and expressly “adopted [the district court’s] discussion and conclusion that plaintiffs [were] prevailing parties.”

Id. (attaching the district court order in the appendix). But the district court's discussion of postjudgment interest came from a different section of the opinion that was neither appealed to nor decided by this court. And no binding opinion of this court has adopted or cited the district court's discussion of postjudgment interest in *Friend*. It's long established that "[q]uestions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents." *New York Life Ins. Co. v. Gamer*, 106 F.2d 375, 376 (9th Cir. 1939) (simplified).

To be fair, several circuit courts have adopted Thrower's "entitlement" reading of postjudgment interest. Take the Fifth Circuit. According to that court, "[i]f a judgment is rendered that does not mention the right to attorneys' fees, and the prevailing party is unconditionally entitled to such fees by statutory right, interest will accrue from the date of judgment." *Copper Liquor, Inc. v. Adolph Coors Co.*, 701 F.2d 542, 545 (5th Cir. 1983) (en banc) (per curiam), *overruled in part on other grounds by*, *J.T. Gibbons, Inc. v. Crawford Fitting Co.*, 790 F.2d 1193, 1195 (5th Cir. 1986) (en banc). Several circuit courts have followed that example. *See Jenkins ex rel. Agyei v. Missouri*, 931 F.2d 1273, 1276-77 (8th Cir. 1991) (adopting the *Copper Liquor* standard); *Associated Gen. Contractors of Ohio, Inc. v. Drabik*, 250 F.3d 482, 494 (6th Cir. 2001) ("a 'money judgment' is the judgment that unconditionally entitles the prevailing party to reasonable attorney fees"); *BankAtlantic v. Blythe Eastman Paine Webber, Inc.*, 12 F.3d 1045, 1052-53 (11th Cir. 1994) (calculating postjudgment interest from date of judgment securing entitlement to

reasonable costs and fees without announcing the amount); *Mathis v. Spears*, 857 F.2d 749, 760 (Fed. Cir. 1988) (“Interest on an attorney fee award thus runs from the date of the judgment establishing the right to the award, not the date of the judgment establishing its quantum.”).

These circuits, though, largely justify their reading of § 1961 by appealing to policy or equitable concerns—not the law’s text. For example, the Eighth Circuit justifies its rule as “fully compensat[ing]” attorneys “for their successful efforts.” *Jenkins*, 931 F.2d at 1277. The Eighth Circuit feared that delaying “the accrual of post-judgment interest ... until fee awards are quantified” may make attorneys “reluctant to take on complex and expensive litigation.” *Id.*; see also *Drabik*, 250 F.3d at 494 (acknowledging that courts adopting the “entitlement” reading of § 1961 were guided by “policy” and “other equitable concerns”).

But these policy considerations are unfounded. Any losses attorneys may suffer from a delay between a merits judgment and a judgment quantifying attorneys’ fees can be incorporated into the calculation of those fees. “Compensation for th[e] delay is generally made either by basing the award on current rates or by adjusting the fee based on historical rates to reflect its present value.” *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 556 (2010) (simplified). So these concerns can be incorporated into a lodestar calculation. See *Eaves v. County of Cape May*, 239 F.3d 527, 541 (3d. Cir. 2001) (noting “appropriate form of a delay-in-payment adjustment to the lodestar amount” achieves complete compensation). Thus, attorneys can

be adequately compensated for any delay between the entitlement to fees and the fees award by topping up those fees.

More importantly, as the Supreme Court recognized in *Kaiser*, § 1961's text should be treated as "conclusive." *See Kaiser*, 494 U.S. at 835 (simplified). The Court thus rejected an interpretation of § 1961 as unsupported by its text even if sound policy would say otherwise. *Id.* (declining to read "date of judgment" as the date of the "verdict" even if it resulted in "the plaintiff bearing the burden of the loss of the use of the money from verdict to judgment"). Instead, the Court left policy considerations on the proper "allocation of costs accruing from litigation" as "a matter for the legislature, not the courts." *Id.* As discussed above, running postjudgment interest from the date of entitlement to fees would contradict § 1961's plain text.

We thus decline to depart from our requirement of "a definite and certain designation of the amount which plaintiff is owed by defendant" before starting the accrual of postjudgment interest. *See Cubic Def. Sys., Inc.*, 665 F.3d at 1101 (simplified). And we are not alone in this view. Several of our sister circuits share our conclusion. *See Eaves*, 239 F.3d at 541 ("[P]ost-judgment interest does not begin to run until the court fixes the amount owed—in other words, it commences upon the entry of the 'money judgment.'"); *MidAmerica Fed. Sav. & Loan Ass'n v. Shearson/Am. Express, Inc.*, 962 F.2d 1470, 1476 (10th Cir. 1992) ("Any available postjudgment interest began to accrue on ... the date the fees were meaningfully ascertained and included in a final, appealable judgment."); *Ohio-*

Sealy Mattress Mfg. Co. v. Sealy Inc., 776 F.2d 646, 662 (7th Cir. 1985) (“[P]laintiffs may collect interest on attorney’s fees or costs only from the date that the award was entered.”).

III.

Because the May 2024 Order is the only judgment that provides “a definite and certain designation of the amount” of the attorneys’ fees owed to Thrower, we affirm.

AFFIRMED.

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Appendix B

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

No. 24-6247

United States ex rel. GWEN THROWER,
Plaintiff-Appellant,
v.
ACADEMY MORTGAGE CORP.,
Defendant-Appellee.

Filed: May 28, 2026

Before: Milan D. Smith, Jr. and Patrick J. Bumatay,
Circuit Judges, and J. Campbell Barker,
District Judge.*

ORDER

The panel unanimously votes to deny the petition for panel rehearing. Fed. R. App. P. 40. Judges M. Smith and Bumatay vote to deny the petition for rehearing en banc, and Judges Barker so recommends. The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote

* The Honorable J. Cambell Barker, United States District Judge for the Eastern District of Texas, sitting by designation.

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on it. *Id.* The petitions for panel rehearing and rehearing en banc (dkt. 41) are therefore **DENIED**.

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Appendix C

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA**

No. 16-cv-2120

United States ex rel. GWEN THROWER,
Plaintiff,

v.

ACADEMY MORTGAGE CORP.,
Defendant.

Filed: Sept. 13, 2024

**ORDER GRANTING IN PART RELATOR
GWEN THROWER'S MOTION RE ACCRUAL OF
INTEREST AND FOR SUPPLEMENTAL
ATTORNEYS' FEES**

Presently pending before this Court is Relator Gwen Thrower's "Motion to Set the Date on Which Interest Started Accruing on the Attorneys' Fees and Expenses that the Court Ordered on May 31, 2024 and for Supplemental Attorneys' Fees to Secure that Order and to Collect the Attorneys' Fees and Expenses" at Docket No. 508 ("Mot."). The Court finds that interest on attorneys' fees and expenses began to accrue from the Court's May 31 Order Granting In Part Relator's Motion for Fees, Docket No. 500, with a post-judgment interest rate of 5.20%. The Court grants Relator's

Interim Attorneys' Fees subject to a 15% reduction. The reduced award totals to \$468,022.24 (\$550,614.40 x .85).

I. Background

On January 27, 2023, the Court entered its Order Approving Stipulation of Partial Dismissal ("January 27 Order"). *See* Dkt. No. 438. In this January 27 Order, the issue of fees was specifically carved out from the settlement agreement and the Court retained jurisdiction to decide the applicable fees. The January 27 Order noted that Relator's claims were dismissed "except with respect to Relator's claims pursuant to applicable law for reasonable expenses necessarily incurred and reasonable attorneys' fees and costs ... which are not dismissed and shall remain pending." Dkt. No. 438, at 2.

After briefing and argument, on May 31, 2024, the Court entered an Order Granting In Part Relator's Motion for Fees ("May 31 Order"), awarding Relator \$8,585,530.20 for attorneys' fees and \$89,437.77 for expenses. The attorneys' fees comprised "\$7,798,146.44 for merits work ((T&S) \$7,655,431.44 and (RBGG) \$142,715) and \$787,383.76 for fee motion fees" that had been incurred. Dkt. No. 500 at ECF 2. After meeting and conferring, the parties agreed that \$11,645.54 would be added to the fees total as prejudgment interest on the Rosen Bien Galvan & Grunfeld LLP ("RBGG") merits fees which had been paid by Relator's counsel during the litigation, and that the Court's May 31 Order should be unsealed and filed on the Court's public docket. *See* Dkt. No. 502 at ECF 2.

After additional meeting and conferring, on July 1, 2024, Academy Mortgage paid Relator's counsel a total of \$5,405,714.33, constituting the Court's entire lodestar fees and expenses award. The parties' counsel were unable to agree on resolution concerning (1) the date on which interest started accruing; (2) the 1.75% multiplier (\$3,280,899.19) that the Court awarded; (3) disposition of \$292,754.80 for RBGG's fees work from August 14 through November 30, 2023 and December 1, 2023 through February 12, 2024, *see* Dkt. Nos. 477 and 494, that was not addressed in the Court's May 31 Order; (4) RBGG's additional fees for work commencing February 13, 2024 through July 14, 2024 (\$216,528.40) to complete the work in this Court and to collect the attorneys' fees and expenses; and now (5) RBGG's supplemental fees for fees work from August 14, 2023 through the August 28, 2024 (the date of the hearing on the Motion). The total for all three additional buckets of supplemental fees from items 3, 4, and 5, comes to \$550,614.40.

On July 1, 2024, Academy filed its notice of appeal. Dkt. No. 504. As the parties confirmed at the hearing herein, Academy is appealing only the award of the 1.75% multiplier, amounting to \$3,280,899.19. See Mediation Questionnaire at 2, *United States ex rel. Thrower v. Academy Mortgage Corp.*, No. 24-4103 (9th Cir. Jul 8, 2024), ECF No. 5.1 at ECF 2. The same day, Academy filed the Parties' stipulation "that execution of the Court's May 31, 2024 Order, Dkt. No. 500, will be stayed for 45 days, through August 15, 2024, and Academy need not pay any supersedeas bond during that time." The stipulation further recited, *inter alia*, "Whereas Academy has agreed to pay [and has paid] \$5,405,714.33 to Relator on July 1, 2024 (the

‘Payment’), in satisfaction of an uncontested portion of the Fee Award.” Dkt. No. 505.

On August 19, 2024, the Parties filed another stipulation, reciting “Whereas the Court entered a prior stipulation by the Parties to stay execution of the judgment through August 15, 2024. Whereas the Parties have agreed that a three-week extension of the previous stipulation is appropriate for the Parties to come to an agreement on the Surety. Wherefore, it is hereby stipulated that execution of the Court’s May 31, 2024 Order, Dkt. No. 500, will be stayed for an additional three weeks, through September 9, 2024, and Academy need not provide any supersedeas bond during that time.” Dkt. No. 513. On September 9, 2024, the Parties filed another stipulation, reciting “Wherefore, It Is Hereby Stipulated that execution of the Court’s May 31, 2024 Order, Dkt. 500, will be stayed until October 14, 2024, and Academy need not provide any supersedeas bond during that time.” Dkt. No. 517.

II. Applicable Date Upon Which Post-Judgment Interest Began to Accrue.

The Court first addresses what the applicable date is upon which post-judgment interest on attorneys’ fees and expenses (as distinct from the damages on the merits) began to accrue. Post judgment interest rates are governed by 28 U.S.C. 1961(a) which provides that:

Interest shall be allowed on any money judgment in a civil case recovered in a district court Such interest shall be calculated from the date of the entry of the judgment, at a rate equal to the weekly average 1-year

constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of the judgment

Relator argues the relevant “date of the entry of the judgment” is January 27, 2023—the date the Court entered its Order Approving Stipulation of Partial Dismissal (“January 27 Order”). *See* Dkt. 438. Academy argues the relevant date is the date on which a “money judgment” that is “recovered” in a civil case, 28 U.S.C. § 1961(a)—in this case being May 31, 2024, the date the Court entered its Order Granting In Part Relator’s Motion for Fees in a specified dollar amount (“May 31 Order”). *See* Dkt. 500. Academy argues that the Court’s January 27 Order was not a “money judgment” entitling Relator to attorneys’ fees because the Court specifically retained jurisdiction over the matter to determine the attorneys’ fees and costs Relator were owed and did not enter a money judgment for fees.

Rather than relying on a money judgment of the Court or any order declaring Relators were in fact legally entitled to fees—neither of which occurred until the May 31 Order—Relator argues that the January 27 Order established Relator’s counsel “entitlement” to attorneys’ fees as *a matter of law* because the False Claims Act mandates that after “settling the claim,” Relator “*shall* receive ... reasonable attorneys’ fees and costs.” 31 U.S.C. § 3730(d)(2). However, Relator is unable to point to any case where a party was awarded post-judgment interest going back to an order granting fees. Cases cited by the parties typically involve an award of

interest at the point fees are actually granted. *See Friend v. Kolodzieczak*, 72 F.3d 1386, 1391-92 (9th Cir. 1995) (holding that the post-judgment interest on the fee-on-fee award dated back to the *original* order granting attorney's fees where the court awarded the plaintiff the fee-on-fee award, with the amount to be decided later); *Guam Soc'y of Obstetricians & Gynecologists v. Ada*, 100 F.3d 691 (9th Cir. 1996) (awarding plaintiffs interest from the date of the *initial fee award* as well as interim fees). To be sure, a specific monetary award for fees is not required to start the running of post-judgment interest if the court rules that the plaintiff is "unconditionally entitled" to fees. *Miller v. Vicorp Restaurants, Inc.*, No. C-03-00777 RMW, 2006 WL 463544 (N.D. Cal. Feb. 24, 2006), amended, No. C-03-00777 RMW, 2006 WL 8443027 (N.D. Cal. Apr. 14, 2006) (denying post-judgment interest from date of jury verdict because the verdict did not "unconditionally entitle" Relator to attorneys' fees, many of the causes of actions were CA state law with a fee-shifting scheme for prevailing plaintiff) (collecting cases); *L.H. v. Schwarzenegger*, 645 F. Supp. 2d 888, 902 (E.D. Cal. 2009) (granting interest on attorney's fees from date of order entering stipulated settlement and injunction where stipulated judgment provides that "plaintiffs are the prevailing party in the action and that they could accordingly move for attorneys fees"). But no such unconditional entitlement was enunciated in this Court's January 27 Order.

Accordingly, the Court concludes that post-judgment interest began to accrue on the day of the Court's May 31 Order.

III. Applicable Interest Rate

Because the Parties did not propose an interest rate for the May 31 Order, the Court refers to <https://www.casb.uscourts.gov/post-judgment-interest-rates-2024>. Relator's Counsel suggests this page—the United States Bankruptcy Court Post-Judgment Interest Rates—which identifies the federal judgment rate pursuant to 28 U.S.C. § 1961(a). Declaration of Sanford Jay Rosen, Docket No. 508-1. The Court located the applicable rate on the May 31 Order as of May 31, 2024 of 5.20%.

IV. Supplemental Attorneys' Fees, Fees on Fees

The Parties next dispute whether this Court has jurisdiction to address Relator's request for supplemental attorneys' fees.

Relator argues this Court has jurisdiction because none of these new fee requests were the subject of the Court's May 31 Order at Dkt. 500 that Academy has appealed. Academy appeals the 1.75% multiplier (\$3,280,899.19) that the Court awarded on the fees already accrued and awarded. Academy argues that this Court is stripped of jurisdiction because the appeal is on attorneys' fees, the same general subject matter of this new request, arguing "an order on attorney's fees is not 'collateral' to a new request for attorneys' fees—they are the same issue." Opp. at 6.

Generally, the filing of a notice of appeal "confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982); *Hendricks v. Starkist Co.*, No. 13-CV-00729-HSG, 2017 WL 2289210, at *2 (N.D. Cal. May 25, 2017). The purpose

of this rule “is to promote judicial economy and avoid the confusion that would ensue from having the same issues before two courts simultaneously.” *Natural Res. Def. Council v. Sw. Marine, Inc.*, 242 F.3d 1163, 1166 (9th Cir. 2001) (citing *Masalosalo v. Stonewall Ins. Co.*, 718 F.2d 955, 956 (9th Cir. 1983)). This rule “is a creature of judicial prudence, however, and is not absolute.” *Masalosalo*, 718 F.2d at 956. The court is not divested of jurisdiction over matters collateral to a determination of the merits of the case. *See United States ex rel. Shutt v. Cmty. Home & Health Care Servs., Inc.*, 550 F.3d 764, 766 (9th Cir. 2008) (factual issues are “collateral to the main action” when they involve a “factual inquiry distinct from one addressing the merits”); *Masalosalo*, 718 F.2d at 957 (district court retains power to award attorneys’ fees after notice of appeal from decision on merits).

Typically, a motion for attorneys’ fees is considered “collateral” to a decision on the merits. *See Budinich v. Becton Dickinson & Co.*, 486 U.S. 196, 200 (1988). This is because a question that remains undecided after a final order on the merits will not alter or amend the decisions embodied by the order which is the subject of the appeal. *Id.* at 199. An attorneys’ fees determination (distinct from the merits) typically fits this description. *Id.* at 199-200. However, if “the order from which the appeal is taken is the very order” that a party “seeks to augment,” then the district court cannot retain control of the aspects of the case on appeal. *Kowalski v. Farella, Braun & Martel, LLP*, No. C-06-3341 MMC, 2010 WL 475357, at *1 (N.D. Cal. Feb. 4, 2010) (finding that the court lacked jurisdiction to rule on the plaintiff’s motion for fees on remand, where the court had

already issued a prior order regarding fees and costs and the appeal of that order remained pending); *see also Budinich*, 486 U.S. at 200 (“If one were to regard the demand for attorney’s fees as *itself* part of the merits, the analysis would not apply.”) (emphasis in original).

Here, Academy confirmed at the hearing that Academy is appealing only the award of the multiplier (amounting to \$3,280,899.19), and not the merits of the Court’s May 31 Order. Neither of Relator’s requests for supplemental fees was a part of the Order that is now being appealed. Relator does not “seek[] to augment” the Court’s May 31 Order. The Court deciding these new supplemental requests for attorneys’ fees will not result in the “same issues [being heard] before two courts simultaneously.” *Natural Res. Def. Council v. Sw. Marine, Inc.*, 242 F.3d 1163, 1166 (9th Cir. 2001). Just as a motion for attorneys’ fees on the merits is deemed collateral to an order regarding the merits because the resolution of that question will not alter or amend the decisions embodied by the order, *Budinich*, 486 U.S. at 199, so too is a motion for attorneys’ fees-on-fees collateral to an order regarding attorneys’ fees on the merits. Thus, this Court retains jurisdiction to decide Relator’s supplemental requests for attorneys’ fees.

In the Ninth Circuit, reasonable attorneys’ fees are determined by first calculating the “lodestar.” *Jordan v. Multnomah County*, 815 F.2d 1258, 1262 (9th Cir. 1987). “The ‘lodestar’ is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate.” *Morales v. City of San Rafael*, 96 F.3d

359, 363 (9th Cir. 1996) (citation omitted). There is a presumption that the lodestar figure represents a reasonable fee, but “[t]he fee applicant has the burden of producing satisfactory evidence, in addition to the affidavits of its counsel, that the requested rates are in line with those prevailing in the community for similar services of lawyers of reasonably comparable skill and reputation.” *Jordan*, 815 F.2d at 1262-63; *see also Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979-80 (9th Cir. 2008). Additionally, “[t]he fee applicant bears the burden of documenting the appropriate hours expended in the litigation and must submit evidence in support of those hours worked.” *See Gates v. Deukmejian*, 987 F.2d 1392, 1397 (9th Cir. 1992) (citation omitted). “The party opposing the fee application has a burden of rebuttal that requires submission of evidence to the district court challenging the accuracy and reasonableness of the hours charged or the facts asserted by the prevailing party” *Id.* at 1397-98.

In determining a reasonable amount of hours, the court must review time records to decide whether the hours claimed by the applicant are adequately documented and whether any of the hours were unnecessary, duplicative or excessive. *Chambers v. City of L.A.*, 796 F.2d 1205, 1210 (9th Cir.1986), *reh’g denied, amended on other grounds*, 808 F.2d 1373 (9th Cir.1987). To determine reasonable hourly rates, the court must look to the prevailing rate in the community—generally, the forum in which the district court sits—for similar work performed by attorneys of comparable skill, experience, and reputation. *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973, 979 (9th Cir.2008). Parties may seek reasonable attorneys’

fees for work performed on the application for attorneys' fees and costs ("fees on fees"). *Anderson v. Dir., Office of Workers Comp. Programs*, 91 F.3d 1322, 1325 (9th Cir.1996); *Bernardi v. Yeutter*, 951 F.2d 971, 976 (9th Cir.1991). This Court has already done a comprehensive assessment of attorneys' fees, reasonable rates, and reasonable hours in its May 31 Order to which the Parties may refer. *See* Dkt. No 500.

Relator's Counsel submitted four declarations and over 50 pages of time entries to justify their fee award request. Relator's Counsel stated they made discrete billing reductions, and further reduced their lodestar by 20%. The Court finds that the billable rates charged by Counsel—pegged to its 2023 rates—are reasonable. Academy has failed to present any evidence suggesting these fees do not reflect reasonable market rates given the experience and quality of work performed. RBGG affirms their 2023 rates "continue to be at the lower range of rates for comparable attorneys who work on comparable matters to the instant matter in the San Francisco Bay Area." Declaration of Sanford Jay Rosen, Docket No. 508-1 at 2.

The issue lies in the time spent on the supplemental work. The Court has broken down the time periods and docket items filed for each time period in the table below.

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	Time Period	Number of Hours/Lodestar	Work Performed	Reduction	Total Award
Tranche 1	8/14/23-2/12/24 (6 months) Dkt 477, Dkt 494	383.5 hours \$292,754.80	- January 11, 2024 hearing - Respond to RFPs, reviewing producing documents - Discovery briefs (5 pages) - Draft supplemental brief, ECF No 474 (10 pages) - Compile accounting requested by the Court in the Order. Dkt No. 491 (7 pages) - Respond to two of Academy's Supplemental Brief and AMFUS, Dkt Nos. 463, 470, 487, 492 (49 pages)		
Tranche 2	2/14/24-6/14/24 (4 months) Dkt 508-1	244.8 hours \$216,528.40	- Filing interim fee motion (Dkt 495 and 497) (3 pages + 42 pages exhibits) - Preparing Present Interest and Fees motion Dkt 508 (14 pages + 29 page attachments) - Collections efforts (Academy assets acquired by another Company)		
			• Meet, Confer, Research		
Tranche 3	7/15/24-8/28/24 (1 month) Dkt 512-1	32.6 hours \$41,331.20	- Filing the instant Motion on July 15 - Reply brief Dkt 512 (15 pages) \$15,000 in additional fees anticipated to be incurred by Relator's counsel between August 4 and the August 28, 2024 hearing.		
TOTAL		660.9 hours \$550,614.40		15%	\$468,022.24

In addition to the over 1,000 hours on fee work for which the Court granted an award in the May 31 Order, Relators' Counsel now seek fees for an additional 660 hours of work.

At the outset, the Court notes that the more than 1,660 hours for fee work on fees sought herein exceed that which this Court has seen, even in complicated cases. *See, e.g., City & Cnty. of San Francisco*, 748 F.

Supp. at 1438 (awarding fees for 600 hours of fee motion work).

Drilling down, the hours spent do appear excessive in light of the tasks accomplished. In Tranche 1, for example, a total of less than 75 pages of briefing was filed, there was one hearing, and some discovery taken. Relator's Counsel asks this Court to approve 383.5 hours for these tasks but details no support explaining why the tasks took such a substantial amount of time. In Tranche 2, Relator's Counsel filed a total of less than 20 pages of briefs, with 60 pages of exhibits, did collections efforts, met and conferred, and did research, yet there is no explanation how this warranted 244.8 hours of work, especially given that a more complex and time intensive motion for attorneys' fees had already briefed and decided.

The Court finds that a 15% cut is warranted here. The Court acknowledges this reduction exceeds the discretionary 10% overall "haircut" to the fees-on-fees work for which no explanation is required under Ninth Circuit law. *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008) (holding that a district court may apply a 10% haircut on fee award as a matter of general discretion); *see also Greenpeace*, 2020 WL 2465321, at *9 (*citing Moreno*, 534 F.3d at 1112). The Court also acknowledges that Relator argues that their fees-on-fees request in the aggregate is less than 20% of the total fees for merits work, and thus as a ratio, the total fee award including that sought herein, may not seem excessive. *Id.* However, as described above, the additional 600 hours is not fully justified here. While the prior award based on 1,000 hours for

fees-on-fees work was justified in light of the fact that that motion addressed fees that spanned seven years of litigation and involved extensive briefing on the highly contested attorneys' fees, the addition of over 60% of that amount against cannot be similarly justified.

Academy asks this Court to reduce the present fees by 50% to get the total for time spent on attorneys' fees down to 1,300 hours (1,000 already awarded + 300 of the hours now sought) but does not do much analysis to justify such a drastic cut.

Instead based on the work done in connection with the supplemental fee request, the Court finds a 15% cut reasonable. Accordingly, the Court awards an additional amount of fees based on the supplementary work of \$468,022.24 (\$550,614.40 x .85).

IT IS SO ORDERED.

[handwritten: signature]
EDWARD M. CHEN
United States District Judge