

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

January 20, 2022 at 11:00 a.m.

1. [19-90382-E-7](#) TRACY SMITH MOTION FOR ORDER ON
[19-9013](#) MWH-16 COMPLETION OF SALE OF REAL
Mark Hostetter PROPERTY
KALRA V. SMITH 12-29-21 [82]

ADVERSARY PROCEEDING CLOSED:
03/06/2020

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order Setting Hearing Re: *Ex Parte* Application For Order on Completion of Sale of Real Property was served by the Clerk of the Court on Plaintiff's Attorney and U.S. Trustee as stated on the Certificate of Service on January 3, 2022. The court computes that 17 days' notice has been provided.

**The *Ex Parte* Application For Order on Completion of Sale of Real Property is
XXXXXXXXXXXXXX.**

Judgment Creditor Paul Kalra ("Judgment Creditor") requested by an *Ex Parte* Application For Order on Completion of Sale of Real Property ("*Ex Parte* Application"). Dckt. 82. Judgment Creditor's application details the post-judgment enforcement actions by Judgment Creditor and a sale of real property by the U.S. Marshal in the enforcing of this monetary judgment. It further states that the U.S. Marshal has requested the Judgment Creditor obtain an order stating the remaining balance of this Judgment before the U.S. Marshal proceeds with the involuntary sale of a second piece of property in Judgment Creditor's enforcement of this Judgment.

The Federal Court Monetary Judgment in this Adversary Proceeding was issued on February

17, 2020 for an amount of \$228,916.00. Dckt. 37. The court cannot locate on the Docket any order(s) awarding fees and costs in addition to the above Judgment amount.

The Judgment awarded by this court and determined to be nondischargeable is a Federal Court monetary judgment. This is distinguished from a Federal Court judgment that merely states obligations owing on a State Court judgment are nondischargeable and said State Court judgment may be enforced in the State Court.

In the *Ex Parte* Application, which is supported by Judgment Creditor's Declaration (Dckt. 83) various costs, fees, expenses, and post-judgment interest accrual amounts added to the Judgment amount are stated. Judgment Creditor requests the following post-judgment credits and debits:

1. U.S. Marshal's costs for Notice of Levy posting and recording: \$349.00
2. U.S. Marshal's fees for property sale: \$1,562.00
3. Stanislaus County Clerk Recording fee: \$29.00
4. Costs to post Notice of U.S. Marshal's sale: \$90.00
5. Costs to advertise U.S. Marshal's sale in Modesto Bee: \$903.00
6. FATCO title sale guarantee: \$400.00
7. Key change: \$220.00
8. Homeowners' Association lien: \$3,262.00
9. Stanislaus County tax lien: \$2,243.00
10. Attorney fees: \$1,000.00.

Dckt. 88.

Judgment Creditor calculates the current judgment balance as the following:

- A. Original Judgment Amount: \$228,916.00
- B. Total Post-Judgment Interest: \$42,585.00
- C. Levy Costs: \$10,058.00
- D. Judgment Credits: <\$81,000.00>
- E. Current Judgment Balance: \$200,559.00

Id.

In the *Ex Parte* Application, Judgment Creditor uses California Civil Code § 3289 to compute post-judgment interest at 10% per annum. *Ex Parte* App., p. 3:7-10; Dckt. 82. However, that provision relates to pre-judgment interest, providing, “Any legal rate of interest stipulated by a contract remains chargeable after a breach thereof, as before, until the contract is superseded by a verdict or other new obligation.” Cal. Civ. 3289(a).

Using California Civil Code § 3289, Judgment Creditor calculated the per diem interest to be \$62.71. *Id.* This computation is made by dividing the \$228,916 by 365 (representing the days in the year) and then multiplying that by 10%. (The same number is reached by computing 10% annual simple interest on the \$228,916.19 Judgment amount and dividing the annual interest by 365 days.)

Court’s January 3, 2022 Order

Though the court identified an apparent miscalculation of the post-judgment interest, rather than denying the *Ex Parte* Application without prejudice, because the Judgment Creditor is in the process of enforcing the nondischargeable Federal Court Monetary Judgment, the court issued an Order setting this hearing on Judgment Creditor’s application. Dckt. 86. The ordered Judgment Creditor to file and serve a supplemental pleading providing detailed computation of the amount owing on the Judgment, including the citation to the applicable law (including case law and treatise, as appropriate) and the application of the sales proceeds to that Judgment amount. The court’s main concern was Judgment Creditor’s use of California Civil Code § 3289 as the basis for post-judgment interest when Federal Law states otherwise.

Additionally, the court addressed Judgment Creditor’s request for attorney’s fees. Pursuant to California Code of Civil Procedure § 685.040, it did not appear to the court that Judgment Creditor is allowed attorney’s fees as attorney’s fees were not included in the underlying judgment.

In the Order setting the hearing, the court includes the provisions of 28 U.S.C. § 1961 (Federal monetary judgment post judgment interest rate), California Civil Code § 3289(a) providing for prejudgment interest on a breached contractual obligation “until the contract is superseded by a verdict or other new obligation;” citation to the link at the Court’s website for properly computing post-judgment interest on a Federal monetary judgment; ^{Fn.1.} California Code of Civil Procedure § 685.040 governing the right to post-judgment attorney’s fees in enforcing a judgment (requiring the underlying judgment to include an award of attorney’s fees); Federal Rule of Bankruptcy 7054 incorporates Federal Rule of Civil Procedure 54(a)-(c) and 54(d)(2)(A)–(C) and (E) into the Federal Rule of Bankruptcy Procedure 7054 which set the federal court procedure for obtaining attorney’s fees to be included in the Federal judgment; and California Code of Civil Procedure § 701.510 which relates to the sale of property of a judgment debtor by a levying officer.

FN. 1. (<http://www.caeb.circ9.dcn/AttorneyInformation.aspx>)

Judgment Creditor’s January 11, 2022 Supplement

On January 11, 2022, Judgment Creditor filed a Supplement to their *Ex Parte* Application.

Dckt. 88. The Supplemental Pleading is a two part composite document. The first is the supplemental legal analysis. It cites to California Code of Civil Procedure § 685.010 which provides for 10% post-judgment interest and Federal Rule of Bankruptcy Procedure 7069 as incorporating the state court procedural law for enforcing a federal judgment. It then cites to 11 U.S.C. § 506(b) to a “secured claim” valuation in a bankruptcy case.

It then discusses the Judgment-Debtor’s bad conduct and references to his being indited for crimes. Judgment-Creditor then argues that because of Judgment-Debtor’s “great wealth,” he should be forced to pay 10% post-judgment interest.

The Supplemental Pleading contains no discussion of 28 U.S.C. § 1961. It does not include any case citations or treatise discussion of post-judgment interest on Federal monetary judgments.

Regarding post-judgment interest, Judgment Creditor again cites California Code of Civil Procedure to govern post-judgment interest. Judgment Creditor cites California Code of Civil Procedure § 685.010 which states “[i]nterest accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied.” Judgment Creditor uses Federal Rules of Bankruptcy Procedure 7069 incorporating Federal Rules of Civil Procedure 69(a) as grounds for applying state law.

Regarding attorney’s fees, Judgment Creditor states attorney’s fees should be classified under Marshal costs to execute, because the Marshall declined to prepare or obtain property sale documents, and instead delegated to Judgment Creditor and Counsel the tasks of preparing its notices and updating the debt owed.

DISCUSSION

California Code of Civil Procedure § 701.510 et. seq. provides that in enforcing a judgment, the levying officer may sell property of the judgment debtor. California Code of Civil Procedure § 701.810 provides for the distribution of the sales proceeds. After payment of preferred labor claims, tax liens, exemption amounts, senior liens, and the levying officer costs, then:

(f) To the judgment creditor to satisfy the following, in the following order:

- (1) First, any costs and interest accruing on the judgment after issuance of the writ pursuant to which the sale or collection is conducted.
- (2) Second, the principal amount due on the judgment with costs and interest, as entered on the writ.

Post-Judgment Interest

Federal Rules of Civil Procedure 69(a) governs the execution of Money Judgments:

A money judgment is enforced by a writ of execution, unless the court directs otherwise. The procedure on execution—and in proceedings supplementary to and in aid of judgment or execution—must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies.

From the plain text of Rule 69(a), state law applies **unless** otherwise provided under federal statute. For post-judgment interest on a Federal Court judgment at the district level, Federal law provides 28 U.S.C. § 1961(a), (b):

§ 1961. Interest

(a) 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, 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. The Director of the Administrative Office of the United States Courts shall distribute notice of that rate and any changes in it to all Federal judges.

(b) Interest shall be computed daily to the date of payment except as provided in section 2516(b) of this title and section 1304(b)(1) of title 31, and shall be compounded annually.

(emphasis added). As such, since 28 U.S.C. § 1961(a), (b) is a federal statute governing post-judgment interest on a Federal Court judgment, pursuant to Federal Rules of Civil Procedure 69(a), the federal statute governs, not state law.

The Bankruptcy Court is a unit of the District Court. *See* 11 U.S.C. § 151. Therefore, 28 U.S.C. § 1961(a) applies to bankruptcy court judgments. *See In re Harlin*, 325 B.R. 184, 192 (Bankr. E.D. Mich. 2005).

Federal law is well established that for Federal Court monetary judgments it is federal law that applies. A review of the annotations to 28 U.S.C. § 1961 quickly turns up cases discussing how with the 1982 amendment to 28 U.S.C. § 1961 Congress expressly changed prior federal law that incorporated state law post-judgment interest for Federal Court monetary judgments. These cases include:

Kaiser Aluminum & Chem. Corp. v. Bonjorno,
494 U.S. 827, 831-832, 838-840 (1990).

On April 2, 1982, Congress passed the Federal Courts Improvement Act of 1982, Pub. L. 97-164, 96 Stat. 25, § 302 of which amended 28 U. S. C. § 1961. To permit courts and the bar to prepare themselves for the changes wrought by the Act, Congress delayed its effective date by six months to October 1, 1982. § 402, 96 Stat. 57. The amended version provides:

"(a) 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, at a rate equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled immediately prior to the date of the judgment. The Director of the Administrative Office of the United States Courts shall distribute notice of that rate and any changes in it to all Federal judges.

"(b) Interest shall be computed daily to the date of payment except as provided in section 2516(b) of this title and section 1304(b) of title 31, and shall be compounded annually." 28 U. S. C. § 1961 (1982 ed.).

...

As both the original and the amended versions of § 1961 indicate, a court must consider two factors to determine how much postjudgment interest is owed: (1) the length of time the interest is to run, which requires identification of a starting point and an ending point, and (2) the interest rate at which the interest is to be computed. Section 1961, originally and as amended, provides the starting point -- the date of the entry of judgment -- and the interest rate. The termination point is set by the party who pays the judgment, and in general it may occur at any time following entry of judgment.

Under both versions of § 1961, the calculation of interest is inextricably tied to the date of the entry of judgment. Both provisions provide that the interest due "shall be calculated from [****24] the date of the entry of the judgment." Indeed, even the calculation of the interest rate in amended § 1961 is tied to the judgment date: "interest shall be calculated . . . at a rate equal to the coupon issue yield equivalent . . . of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled immediately prior to the date of the judgment." *See Litton*, 746 F. 2d, at 174 (calculation of rate tied to judgment date indicates Congress intended prospective application of amended § 1961).

...

In the brief legislative history available, there is a single stated purpose for Congress' alteration of the interest rate from the state rate to the Treasury bill rate. Under the prior version of § 1961, "a losing defendant may have an economic incentive to appeal a judgment solely in order to retain his money and accumulate interest on it at the commercial rate during the pendency of the appeal." S. Rep. No. 97-275, *supra*, at 30. Because the prevailing state-set rates were significantly lower than market rates, losing parties found it economical to pursue frivolous appeals. Implicit in Congress' desire to alter the incentives to appeal is the understanding that, at the time judgment is entered, the parties are capable of calculating the value or cost of the interest throughout the time period during which the judgment remains unpaid. In other words, on the date of judgment expectations with respect to interest liability were fixed, so that the parties could make informed decisions about the cost and potential benefits of paying the judgment or seeking appeal. Given Congress' understanding of the

expectation of the parties on the date of judgment and the plain language of the statute, we conclude that both versions of § 1961 fix the rate of interest as of the date of the entry of judgment and, therefore, amended § 1961 may not be applied retrospectively. *See* 865 F. 2d, at 577 (Stapleton, J., concurring and dissenting) ("[T]he rule established by § 1961 after its amendment, as well as the rule established by it before, are focused on a particular point in time -- the date of the entry of judgment. On that date, under both rules, the rate of postjudgment interest is fixed once and for all time for the particular case, and the rate fixed takes effect immediately").

...

Finally, in its cross-petition, Bonjorno asserts that the equities of the case require that the rate of interest be set at a rate higher than that afforded by § 1961. "At common law judgments do not bear interest; interest rests solely upon statutory provision." *Pierce v. United States*, 255 U.S. 398, 406 (1921). Where Congress has not seen fit to provide for a higher rate of interest with respect to antitrust suits and has set a definite interest rate that governs this litigation, the courts may not legislate to the contrary.

Van Asdale v. Int'l Game Tech.,
763 F.3d 1089, FN. 2 (9th Cir. 2014)

FN. 1. Under 28 U.S.C. § 1961(a), "[i]nterest shall be allowed on any money judgment in a civil case recovered in a district court." The "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."

James B. Lansing Sound, Inc. v. National Union Fire Ins. Co.
801 F.2d 1560, 1570 (Cir. 9th 1986)

Post-judgment interest is determined by federal law. Title 28 U.S.C. § 1961(a) (1982) provides that interest "shall be allowed on any money judgment in a civil case recovered in a district court" to be "calculated from the date of the entry of the judgment." Prior to its amendment in 1982, section 1961(a) provided that interest was to be awarded "at the rate allowed by State law." 28 U.S.C. § 1961(a) (1976). In 1982, this section was amended to read that interest "shall be calculated . . . at a rate equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price . . . of . . . United States Treasury bills. . . ." 28 U.S.C. § 1961(a) (1982).

Lassman v. Keefe (In re Keefe),
401 B.R. 520, 526 (B.A.P. 1st Cir. 2009)

Postjudgment interest is governed by 28 U.S.C. § 1961(a), which provides: "Interest shall be allowed on any money judgment in a civil **action recovered in a district court**. . . . Such interest shall be calculated from the date of the entry of the judgment." **A bankruptcy court is a "unit" of the district court**, and, therefore, 28 U.S.C. § 1961(a) **applies to bankruptcy court judgments**. *See Lewis v. Harlin (In re Harlin)*, 325 B.R. 184, 192-93 (Bankr. E.D. Mich. 2005).

Because postjudgment interest is mandated by federal statute, a prevailing party in a bankruptcy court action is **automatically entitled to postjudgment interest regardless of whether postjudgment interest is referenced in the pleadings**, a court's order or monetary judgment. See *Miller v. Artistic Cleaners*, 153 F.3d 781, 785 (7th Cir. 1998). Moreover, **federal law governs the rate of postjudgment interest on a federal court judgment even in an action otherwise governed by state law**. See *Loft v. Lapidus*, 936 F.2d 633, 639 (1st Cir. 1991) (postjudgment interest is determined by federal law, not state law, even in diversity cases); see also *Pester Refining Co. v. Ethyl Corp. (In re Pester Refining Co.)*, 964 F.2d 842, 849 (8th Cir. 1992); *Pereira v. Private Brands, Inc. (In re Harvard Knitwear, Inc.)*, 193 B.R. 389, 399 (Bankr. E.D.N.Y. 1996). Accordingly, the bankruptcy court did not err in awarding postjudgment interest at the federal statutory rate prescribed by 28 U.S.C. § 1961(a).

The judgment at issue is for a monetary amount of \$228,916.00. As such, the judgment is a Federal Court monetary judgment recovered in a district court. Therefore, Federal Rules of Civil Procedure 69(a) and 28 U.S.C. § 1961(a), (b) applies. It is abundantly clear that, contrary to Judgment Creditor's assertions, the post-judgment interest rate follows federal law, not state law.

The interest rate on Federal Court monetary judgments is not the same as the 10% post-judgment interest on a judgment issued by the California State Courts. California Code of Civil Procedure § 685.010. Information for computation of post-judgment interest as provided in 28 U.S.C. § 1961 is available on the court's website (cited above) under the Attorney Home Page.

Attorney's Fees

As discussed prior, Federal Rules of Civil Procedure 69(a) governs the execution of money judgments and states unless directed otherwise or a federal statute governs, the procedure and proceedings on execution of a money judgment accord with the procedure of the state where the court is located. For costs relating to the enforcement of the judgment (post-judgment costs), California provides in California Code of Civil Procedure § 685.040 (emphasis added):

§ 685.040. Right to costs of enforcing judgment

The judgment creditor is entitled to the reasonable and necessary costs of enforcing a judgment. Attorney's fees incurred in enforcing a judgment are not included in costs collectible under this title unless otherwise provided by law.

Attorney's fees incurred in enforcing a judgment are included as costs collectible under this title if the underlying judgment includes an award of attorney's fees to the judgment creditor pursuant to subparagraph (A) of paragraph (10) of subdivision (a) of Section 1033.5.

Claiming attorney's fees in enforcing this Judgment are not proper. No attorney's fees were requested in the underlying judgment. Additionally, although Judgment Creditor believes their additional attorney's fees should be classified under Marshal costs to execute, Judgment Creditor provides no legal basis as grounds for why these incidental fees are "provided by law" and should bypass California Code of Civil Procedure § 685.040. As such, the attorney's fees incurred in enforcing the judgment are not allowable.

RULING

For the foregoing reasons, the federal post-judgment interest rate applies. If Judgment Creditor wishes to proceed on collecting post-judgment interest, Judgment Creditor is to provide the court with accurate calculations of the remaining balance of this judgment, including post-judgment interest calculated at the federal rate. Additionally, Judgment Creditor's request for attorney's fees incurred in enforcing the judgment are not allowable. Pursuant to California Code of Civil Procedure § 701.810, the following costs in the amount of \$9,058.00 are recoverable:

1. U.S. Marshal's costs for Notice of Levy posting and recording: \$349.00
2. U.S. Marshal's fees for property sale: \$1,562.00
3. Stanislaus County Clerk Recording fee: \$29.00
4. Costs to post Notice of U.S. Marshal's sale: \$90.00
5. Costs to advertise U.S. Marshal's sale in Modesto Bee: \$903.00
6. FATCO title sale guarantee: \$400.00
7. Key change: \$220.00
8. Homeowners' Association lien: \$3,262.00
9. Stanislaus County tax lien: \$2,243.00.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

Under the facts and circumstances of the enforcement of this Judgment, the U.S. Marshal requesting an order determining the remaining balance of this judgment for further levying officer sales of property of the Judgment Debtor, and good cause appearing;

IT IS ORDERED that Judgment Creditor Paul Kalra's Application For Order on Completion of Sale of Real Property is **xxxxxxxxxxxxxx**.

FINAL RULINGS

2. [14-24616-E-13](#) NICOLE GOLDEN/STEPHEN MOTION FOR SUMMARY JUDGMENT
[21-2012](#) ALTER 12-3-21 [17]

**GOLDEN ET AL V. UNITED STATES
OF AMERICA (INTERNAL REVENUE)**

Final Ruling: No appearance at the January 20, 2022 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all parties appearing in this action on December 3, 2021. By the court’s calculation, 48 days’ notice was provided. 42 days’ notice is required. Local Bankruptcy Rule 7056-1(a).

The Motion for Summary Judgment has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

Pursuant to Court Order Dckt. 44 and the Stipulation to Continue the Hearing Dckt. 43, the **Hearing on Defendant’s Motion for Summary Judgment is continued to February 10, 2022 at 11:00 am at Sacramento Courtroom 33, Dept. E.**

3. [14-24616-E-13](#) [21-2012](#) NICOLE GOLDEN/ STEPHEN
ALTER
GOLDEN ET AL V. UNITED STATES
OF AMERICA (INTERNAL REVENUE)

PRE-TRIAL CONFERENCE RE:
COMPLAINT FOR DETERMINING
DISCHARGEABILITY AND VOIDING
LIEN
2-8-21 [1]

Final Ruling: No appearance at the January 20, 2022 hearing is required.

Plaintiff's Atty: John G. Downing
Defendant's Atty: Ty Halasz

Adv. Filed: 2/8/21
Answer: 3/15/21

Nature of Action:
Validity, priority or extent of lien or other interests in property
Dischargeability - other
Declaratory judgment

Notes:

Continued from 12/9/21 to be set for a further date as determined appropriate by the orders on the cross motions for summary judgment.

Pursuant to Court Order Dckt. 44 and the Stipulation to Continue the Hearing Dckt. 43, the **Status Conference is continued to February 10, 2022 at 11:00 am at Sacramento Courtroom 33, Dept. E** to be conducted in conjunction the hearing on cross motions for summary judgment.

Final Ruling: No appearance at the January 20, 2022 hearing is required.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendant's Attorney on December 4, 2021. By the court's calculation, 47 days' notice was provided. 42 days' notice is required. Local Bankruptcy Rule 7056-1(a).

The Motion for Summary Judgment has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

Pursuant to Court Order Dckt. 44 and the Stipulation to Continue the Hearing Dckt. 43, **the Hearing on Defendant's Motion for Summary Judgment is continued to February 10, 2022 at 11:00 am at Sacramento Courtroom 33, Dept. E.**