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# Hidden interest and hidden gems

## A look at the laws of interest on judgments, and how it is all calculated

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Looking for the secrets of pre- and post-judgment interest? All you need is a \$26.99 printing calculator. We start with Code of Civil Procedure section 685.010, subdivision (a), which sets the rate of interest for judgments at 10% per annum and section 685.020, subdivision (a), which commences 10% interest on the date of entry of the judgment. This article offers the curlicues of compounding interest, interest in excess of usury, and hidden interest.

### Interest accrues for pre-judgment attorney fees but fixed post-judgment

Plaintiff seeks pre-judgment fees, which the court typically hands down the fee and cost award weeks, months or years, if an appeal, after the entry of the judgment. This is the rule: "Where costs are established by the judgment, but the amount of the award is ascertained at a later time, the court clerk enters the costs on the judgment after the amount is determined." (*Lucky United Properties Inv., Inc. v. Lee et al.* (2013) 213 Cal.App.4th 635, 642. ("Lucky #2").) Let's take this example: After prevailing in a contract case with a fee clause, Plaintiff files a fee motion which would be heard anywhere between three and 12 months, and further strung out in an appeal. If the pre-judgment fees are, say, \$2,500,000, the fee award becomes part of the judgment, interest accrues as of the date of the judgment, even awards months later.

### Who owns the interest on the post-judgment for fee award in a FEHA case?

Statutory fees are due the prevailing party that includes the fees accruing during the trial and the appeal. Plaintiff recovers the appellate fees which are deemed "prejudgment" fees in adding these fees to the judgment and subject to 10% per annum but "... Interest on these awards run from the date the awards are entered, not from the date of entry of the underlying judgment." (*Lucky #2, supra*, p. 656.)

Let's do the math. The damages are, say, \$1 mil in a FEHA case. Plaintiff recovers pre-judgment fees of, say, \$200,000, costs of \$10,000 and pre-judgment interest of \$100,000. The total is \$1,310,000. Defendant posted a 150% bond issued by an admitted surety.

Defendant files an appeal, and after two years, the appellate court affirms the FEHA award. Given that fee relief is based on FEHA, the court awards \$200,000 for post-judgment appellant and ancillary work.

Here is the current math: \$1,310,000 (principal, pre-judgment interest, costs and fees for the judgment). The daily rate for the pre-judgment attorney fees are \$54.79 per day. The daily interest rate for \$200,000 of post judgment fees is \$54.79. (*Lucky #2, supra*, p. 656.) Pre- and post-judgment fees in FEHA cases belong to the attorney. (*Hernandez v. Siegel*, (2014) 230 Cal.App.4th 165, 175.)

Aside from pre- and post-judgment fees, the attorney receives the accrued

interest at the daily rate of (a) \$54.79 from the date of the judgment for the prejudgment fees, and (b) \$54.70 per day for the post judgment fees of from the date of entry.

### Post-judgment alter ego order liability for the original judgment, even if alter ego is granted post judgment.

Code of Civil Procedure section 187 enables the court to pierce the corporate veil and impose liability upon the corporate principals based upon inequitable conduct. In *Highland Springs Conference & Training Ctr. v. City of Banning* (2016) 124 Cal.App.4th 267, 286 ("*Highland #1*"), expanded alter ego remedies because "... a court errs if it refuses to apply the alter ego doctrine based solely on a plaintiff's unreasonable delay, or lack of due diligence, in asserting the alter ego claim ..." *Highland #1* enables counsel to develop the alter ego claim that would add the individual to the judgment which includes post-judgment interest under the original judgment at 10%.

In granting the alter ego relief, the alter-ego person is deemed to be a judgment debtor as of the date of the judgment. Under alter ego, the person brought into for the original judgment bears interest at 10% which might date back months or even years.

### The inventory of interest gems that fall from the sky

Interest accrues when the damages are certain and ascertainable by calculation.



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(Civ. Code, § 3287, subd. (a); *Holdgrafer v. Unocal Corporation* (2008) 160 Cal.App.4th 907, 935.) Prejudgment is an element of damages and becomes part of the judgment and hence de facto compounding of interest. [7% set for non contract damages.]

Absent a specific contract rate, breach of contract interest accrues at 10% per annum upon fixing the amount. (i.e., sale of goods or services). (Civ. Code, § 3289, subd. (b).)

Interest in excess of 10% [e.g., 18% per annum] applies in the sale of goods and services save the consumer transactions. (*Southwest Concrete Products v. Gosh Construction Corp.* (1990) 51 Cal.3d 701.) Interest at 18% inflates the recovery and compounds the prejudgment interest when the judgment bears 10% interest.

Interest at 10% accrues on a rejected Code of Civil Procedure section 998 offer and from date of rejection. (Civ. Code, § 3291, subd. (a).) Rejection of a section 3291(a) offer might amount to six figures of interest if a seven-figure judgment.

Interest at seven percent accrues upon a finding of oppression, fraud, or malice which likewise might add \$100,000 in pre-judgment interest if a million-dollar verdict. (Civ. Code, § 3288.)

Interest at 10% accrues post-award, but pre-judgment, on an arbitration award under Civil Code section 3287, subdivision (a) (*Britz v. Alfa Food & Dairy Co.* (1995), 34 Cal.App.4th. 1085), which is separate from the pre-award interest and fixed by the arbitrator at any rate. (Code Civ. Proc., §§ 1287.4 and 1287.6.) The judgment based on the award (plus

post-award and pre-confirmation fees and interest) accrues interest at 10% (§ 685.010, subd. (a)) and even compounding of interest. A six-month gap between the award and confirmation of the \$2,000,000 award generate interest of \$100,000.

Interest at any rate applies to forbearance under a settlement agreement and exempt from usury. “Accordingly, we hold that the usury law does not prohibit a judgment creditor from receiving forbearance fees in addition to statutory postjudgment interest.” (*Bisno v. Kahn*, (2014) 225 Cal.App.4th 1087, 1110.)

Interest might exceed 10% pre-judgment but the judgment accrues interest at 10%. Section 685.010(a) sets interest 10% percent is rate for judgment. (See Cal. Const., art. XV, § 1.)

Federal Rates of post-judgment interest are subject to agreement in excess of the federal rate (about 1%). “This is so because “[n]othing in § 1961 indicates that Congress sought to limit freedom of contract with respect to postjudgment interest” and “[t]he text of § 1961 does not expressly limit parties’ ability to agree to a different postjudgment interest rate.” (*Bisno v. Kahn*, *supra*, p. 1109.) Given a billion-dollar judgment, stipulated interest might generate millions in interest.

### It's simple interest

Interest is simple, not compound, except when the judgment is renewed because the post-judgment interest is added to the original judgment, and total emerges as the renewal judgment.

(§ 683.120(b).) Renewing every five years is an interest accelerant by increasing interest on the renewed judgment. (§ 683.110(b).)

Interest might exceed 10%, pre-judgment, based on choice of law based on “... the relationship of the state of chosen law to the contract, second, the difference between the rates of interest of the forum and the chosen law state.” (*Mencor Enterprises, Inc., v. Hets Equities Corp.*, (1987) 190 Cal.App.3d 432, 436.) Valid choice of law determines interest rates. (*Airs Aromatics, LLC v. CBL Data Recovery Techs. Inc.*, (2020) 50 Cal.App.5th 1009, 1014.)

Interest is exempt from usury constrains if the lender holds a California Finance Lender’s License. (Fin. Code, § 22002.)

### Conclusion

Interest is not found money, but an integral part of the judgment. Bring your calculator and always keep the tape.

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