

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO**

<b>DOUG OPPENHEIMER,</b>	:	<b>Case No. 1:19-CV-770</b>
	:	
<b>Plaintiff,</b>	:	<b>Judge Cole</b>
	:	<b>Magistrate Judge Bowman</b>
<b>v.</b>	:	
	:	
<b>CITY OF MADEIRA, OHIO, et al.,</b>	:	<b>PLAINTIFF’S MOTION FOR</b>
	:	<b>ORDER DIRECTING PAYMENT OF</b>
<b>Defendants.</b>	:	<b>JUDGMENT FOR ATTORNEY FEES</b>
	:	

Pursuant to Fed. R. Civ. P. 70, Plaintiff DOUG OPPENHEIMER respectfully moves this Court for an order directing the CITY OF MADEIRA to pay *instanter* the outstanding amount due under the *Judgment in a Civil Action* (Doc. No. 71, PageID#712), said amount being \$60,961.40 for attorney fees and costs, together with post-judgment interest thereon pursuant to 28 U.S.C. § 1961. “[U]nder Rule 70 a federal court may enforce a money judgment against a state or local government by ordering the defendant to pay it.” *Leroy v. Houston*, 906 F.2d 1068, 1085-86 (5th Cir. 1990); *accord Gates v. Collier*, 616 F.2d 1268, 1271-72 (5th Cir. 1980)(based upon Rule 70, affirming directive to the state auditor and state treasurer to take steps that would result in satisfaction of an award of attorneys’ fees).

On September 13, 2022, this Court entered an *Opinion & Order* (Doc. No. 70, PageID#701-11) awarding Plaintiff DOUG OPPENHEIMER attorney fees and costs, pursuant to 42 U.S.C § 1988, in the amount \$60,961.40. On that same day, the clerk entered the *Judgment in a Civil Action* (Doc. No. 71, PageID#712) for the total amount of \$61,961.40, representing the just-awarded attorney fees and costs, together with \$1,000 previously awarded in nominal damages. While the CITY OF MADEIRA has since paid the nominal damages, the CITY OF MADEIRA has yet to pay the amount awarded pursuant to the *Judgment* for attorney fees or costs,

*i.e.*, \$60,961.40.

While the CITY OF MADEIRA filed a *Notice of Appeal* (Doc. No. 72, PageID#713), it has never sought a stay of the *Judgment* pursuant to Fed. R. Civ. P. 62 nor is it an arm of the federal government entitled to an automatic stay pursuant to Fed. R. Civ. P. 62(e). While the appeal is still presently pending before the Sixth Circuit, the CITY OF MADEIRA has clearly abandoned its effort therein, having not filed a timely brief by the deadline of December 21, 2022, but, instead filing a *Motion for Voluntary Dismissal of Appeal* (a copy of which is attached hereto). While that *Motion*, as well as Plaintiff-Appellee's separately filed *Motion to Dismiss Appeal for Want of Prosecution, Impose Sanctions, or Both*, is still pending before the Sixth Circuit, there is clearly no basis as to why payment by the CITY OF MADEIRA of the *Judgment* should continue to be delayed.<sup>1</sup>

In addition to the amount of the *Judgment* for attorney fees and costs, *i.e.*, \$60,961.40, Plaintiff is also entitled to post-judgment interest thereon. 28 U.S.C. § 1961(a) provides, in pertinent part, that “[i]nterest 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

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<sup>1</sup> “Although an effective notice of appeal divests the district court of jurisdiction over matters forming the basis for appeal, a district court retains jurisdiction to enforce its judgment as long as the judgment has not been stayed or superseded.” *See United States v. Lubowa*, 102 Fed. Appx. 453, 455 (6th Cir. 2004). Thus, while “a district court may not alter or enlarge the scope of its judgment pending appeal, it does retain jurisdiction to enforce the judgment.” *NLRB v. Cincinnati Bronze, Inc.*, 829 F.2d 585, 588 (6th Cir. 1987). Accordingly, this Court possesses jurisdiction to issue the requested order to enforce the *Judgment* as it has not been stayed pending appeal.

interest rate for the week preceding September 13, 2022, was 3.62%.<sup>2</sup>

Thus, based upon a still-outstanding judgment amount of \$60,961.40 and a post-judgment interest rate of 3.62%, daily interest accumulates thereon at \$6.046035 *per diem*. And from September 13, 2022, to February 21, 2023, the total accumulated interest is \$973.41; thus, the amount of principal and interest totals \$61,934.81.

Based upon the foregoing, Plaintiff DOUG OPPENHEIMER respectfully requests an order directing the CITY OF MADEIRA to pay *instanter* and on pain of contempt the outstanding amount due under the *Judgment* of \$61,934.81, together with *per diem* interest after February 21, 2023, of \$6.046035 until said *Judgment* is paid in full.

Respectfully submitted,

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#### **CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing will be served upon all counsel of record via the Court's ECF system on the date of filing.

/s/ Curt C. Hartman

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<sup>2</sup> The United States Bankruptcy Court for the Southern District of California has published on its website the post-judgment interest rates with links located at <https://www.casb.uscourts.gov/post-judgment-interest-rates>. For the week ending September 9, 2022, *i.e.*, the calendar week preceding September 13, 2022, the interest rate was 3.62%.