

1/20/84

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

HAROLD WEISBERG,

Plaintiff,

v.

FEDERAL BUREAU OF  
INVESTIGATION,

Defendant.

Civil Action Nos.  
78-322 and 78-420  
(Consolidated)

DEFENDANT'S MOTION TO AMEND JUDGMENT

Defendant, by its undersigned counsel, hereby moves the Court pursuant to Rule 59(e) of the Federal Rules of Civil Procedure to have the Clerk amend the judgment that was entered in these consolidated cases on January 10, 1984, because that judgment is not fully consistent with the dictates of this Court's Order of December 21, 1983, or with the provisions of 28 U.S.C. §1961 and Official Form 32 of the Federal Rules of Civil Procedure. To correct those inconsistencies, the defendant moves that the judgment be amended in the following ways: (1) that it specifically recite, per the Court's Order of December 21, 1983, that plaintiff and his counsel, James H. Lesar, are jointly liable to the defendant in the amount of \$1,053.55; (2) that it reflect the exact rate of interest that the plaintiff and his counsel will owe on the amounts for which they are liable to the defendant; and, (3) that the effective date of the judgment be the date upon which it was entered.

AT

In support of this motion, the Court is referred to the attached Memorandum of Points and Authorities and to the attached proposed Amended Judgment.

Respectfully submitted,

RICHARD K. WILLARD  
Acting Assistant Attorney General

JOSEPH E. diGENOVA  
United States Attorney

  
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Attorneys for the defendant.

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DEFENDANT'S MEMORANDUM OF POINTS AND AUTHORITIES  
IN SUPPORT OF ITS MOTION TO AMEND JUDGMENT

On April 28, 1983, the Court ordered the plaintiff to pay the defendant \$684.50. Such sum represented the reasonable expenses that were incurred by the defendant in obtaining an Order compelling plaintiff to file responsive answers to certain discovery requests that the defendant had propounded to him.

On November 18, 1983, the Court granted defendant's Rule 37(b) motion and dismissed these consolidated cases with prejudice. The Court also held that plaintiff and his counsel should be assessed the reasonable expenses that the defendant had incurred in prosecuting the dismissal motion. Upon consideration of defendant's expense itemization and plaintiff's response thereto, the Court, on December 21, 1983, ordered the plaintiff and his counsel, James H. Lesar, to pay the defendant the sum of \$1,053.55. Such expense award was in addition to the award of \$684.50 which the Court assessed against the plaintiff on April 28, 1983.

On December 27, 1983, the defendant applied to the Clerk of the Court, pursuant to Rule 58 of the Federal Rules of Civil Procedure, for entry of a judgment that would incorporate the dictates of the Court's Orders of April 28, November 18 and December 21, 1983. The defendant also requested that the judgment recite that interest would be due on the \$684.50 and \$1,053.55 sums and in support of this request cited the Clerk to Official Form 32 in the Appendix of Forms of the Federal Rules of Civil Procedure.\*/

On January 10, 1984, the Clerk entered Judgment in this case. Although that Judgment recited that the defendant was to recover from plaintiff the sums of \$684.50 and \$1,053.55, it did not reflect the Court's Order of December 21, 1983, that plaintiff's counsel, James H. Lesar, was also liable to the defendant for the latter sum. The Judgment also did not specify the exact rate of interest that was to be assessed on the those sums. Finally, inasmuch as the Judgment directed the plaintiff to pay the recited sums to the United States within 60 days, it's effective date was erroneously not the date of entry but 60 days thence.

The defendant now moves the Court to direct the Clerk to correct those aspects of the Judgment by entering the attached proposed Amended Judgment. That proposed Amended Judgment does

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\*/ Official Form 32 contemplates that, if applicable, the rate of interest should be specified in the judgment. As noted infra, the appropriate interest rate is determined by the provisions of 28 U.S.C. §1961.

three things. First, it incorporates the dictates of the Court's Order of December 21, 1983, allowing the defendant to recover from plaintiff's counsel, James H. Lesar, as well as plaintiff himself, the sum of \$1,053.55. Second, it specifies that a 10.1% rate of interest is to be applied to the sums set out in the judgment, such rate being determined under the provisions of 28 U.S.C. §1961(a), and it specifies that the interest is to "be computed daily to the date of payment ... and ... compounded annually." 28 U.S.C. §1961(b). See also R.W.T v. Dalton, 712 F.2d 1225, 1234-35 (8th Cir. 1983); Cooper Liquor Inc. v. Adolph Coors Co., 701 F.2d 542, 543 n.1 (5th Cir. 1983); Litton Systems Inc. v. American Telephone & Telegraph Co., 568 F. Supp. 507, 510-14 (S.D. N.Y. 1983); Lake Tahoe Sailboat Sales v. Douglas County, 562 F. Supp. 523, 524 (D.C. Nev. 1983). Third, it tracts the language of Official Form 32 and makes the effective date of the judgment the date of entry.

In short, defendant's Motion to Amend Judgment should be granted so that the Judgment in these cases is consistent with the dictates of this Court's Order of December 21, 1983, and with the provisions of 28 U.S.C. §1961 and Official Form 32 of the Federal Rules of Civil Procedure.

Respectfully submitted,

RICHARD K. WILLARD  
Acting Assistant Attorney General

JOSEPH E. diGENOVA  
United States Attorney

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AMENDED JUDGMENT

These consolidated actions came on for hearing before the Court, Honorable John Lewis Smith, Jr., District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

It is Ordered and Adjudged that the plaintiff take nothing; that these actions be dismissed with prejudice; that defendant Federal Bureau of Investigation recover from plaintiff Harold Weisberg and his attorney, James H. Lesar, the sum of one thousand fifty-three dollars and fifty-five cents (\$1,053.55) plus interest from the date of judgment at the legal rate of 10.1% computed daily and compounded annually until paid in full; and that, in addition, the defendant Federal Bureau of Investigation recover from plaintiff Harold Weisberg the sum of

six hundred eighty-four dollars and fifty cents (\$684.50) plus interest from the date of judgment at the legal rate of 10.1% computed daily and compounded annually until paid in full.

Dated at Washington, D.C., this \_\_\_\_\_ day of \_\_\_\_\_, 1984.

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CLERK OF COURT



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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FEDERAL BUREAU OF  
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Defendant.

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O R D E R

Upon consideration of defendant's motion to amend judgment filed on January 20, 1984, and the entire record herein, it is

ORDERED and ADJUDGED that the defendant's motion be, and the same is hereby, granted.

It is further ORDERED that the Clerk of the Court shall enter the attached Amended Judgment forthwith.

Dated this \_\_\_\_ day of \_\_\_\_\_, 1984.

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify on this 20<sup>th</sup> day of January, 1984, I have served the foregoing Defendant's Motion to Amend Judgment, and a proposed Order, by first class mail, postage pre-paid to:

James H. Lesar, Esq.  
Suite 900  
1000 Wilson Boulevard  
Arlington, Virginia 22209

  
HENRY J. LAHAIE