

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

Central
330 West Broadway
San Diego, CA 92101

SHORT TITLE: Felczer vs. Apple Inc [E-FILE]

CLERK'S CERTIFICATE OF SERVICE BY MAIL

CASE NUMBER:
37-2011-00102593-CU-OE-CTL

I certify that I am not a party to this cause. I certify that a true copy of the Minute Order Dated 8/14/2017 was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at San Diego, California, on 08/15/2017.

Clerk of the Court, by: *P. Ashworth*
P. Ashworth, Deputy

TYLER J BELONG
HOGUE & BELONG
170 LAUREL STREET
SAN DIEGO, CA 92101

MICHAEL G LEGGIERI
LITTLER MENDELSON
1255 TREAT BLVD. # 600
WALNUT CREEK, CA 94597

JEFFREY L HOGUE
HOGUE & BELONG
170 LAUREL STREET
SAN DIEGO, CA 92101

JULIE A DUNNE
LITTLER MENDELSON
501 W BROADWAY # 900
SAN DIEGO, CA 92101-3577

Additional names and address attached.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 08/14/2017

TIME: 04:21:00 PM

DEPT: C-67

JUDICIAL OFFICER PRESIDING: Eddie C Sturgeon

CLERK: Patricia Ashworth

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT: ///

CASE NO: 37-2011-00102593-CU-OE-CTL CASE INIT.DATE: 12/16/2011

CASE TITLE: Felczer vs. Apple Inc [E-FILE]

CASE CATEGORY: Civil - Unlimited CASE TYPE: Other employment

APPEARANCES

8/1/17 Ex parte order

Plaintiffs Brandon Felczer, Ryan Goldman, Ramsey Hawkins and Joseph Lane Carco's request for prejudgment interest is granted. Defendant Apple Inc. argues prejudgment interest should be denied. The court finds that at the time of the jury verdict, damages were determined to be a sum certain. Prejudgment interest is awarded from the time of the verdict to the time of the judgment at the rate of 7%.

Civil Code section 3287 states, in part:

(a) A person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in the person upon a particular day, is entitled also to recover interest thereon from that day, except when the debtor is prevented by law, or by the act of the creditor from paying the debt. This section is applicable to recovery of damages and interest from any debtor, including the state or any county, city, city and county, municipal corporation, public district, public agency, or any political subdivision of the state.

Children's Hosp. and Medical Center v. Bonta (2002) 97 Cal.App.4th 740, 774-75, cited by plaintiffs, states:

'The test for recovery of prejudgment interest under [Civil Code] section 3287, subdivision (a) is whether *defendant* actually know[s] the amount owed or from reasonably available information could the defendant have computed that amount. [Citation.] The statute ... does not authorize prejudgment interest where the amount of damage, as opposed to the determination of liability, "depends upon a judicial determination based upon conflicting evidence and it is not ascertainable from truthful data supplied by the claimant to his debtor." [Citations.] (*Fireman's Fund Insurance Co. v. Allstate Ins. Co.*, [supra,] 234 Cal.App.3d 1154, 1173 ...) Thus, where the amount of damages cannot be resolved except by verdict or judgment, prejudgment interest is not appropriate. []

...However, while the award of prejudgment interest was proper, the 10 percent rate of interest set by the

court was excessive. The court appears to have fixed the rate of interest at 10 percent on the basis of subdivision (b) of Civil Code section 3289, which as material provides that "[i]f a contract entered into after January 1, 1986, does not stipulate a legal rate of interest, the obligation shall bear interest at a rate of 10 percent per annum after a breach." Respondent hospitals agree that, as their right to reimbursement from DHS is not based on contract, the rate of prejudgment interest should be that fixed by article XV, section 1 of the California Constitution; namely, 7 percent per annum.

Up to the time of trial, the evidence shows the amounts owed to plaintiffs were uncertain. However, once the verdict was entered, interest should begin to run, especially in light of the long delay between the verdict and the judgment.

Eddie C. Sturgeon

Judge Eddie C Sturgeon