

1 defendants' motion is untimely and must be denied.¹

2 Federal Rule of Civil Procedure 69(a) governs the
3 procedure for enforcement of money judgments in federal court.
4 See Carnes v. Zamani, 488 F.3d 1057, 1059 (9th Cir. 2007). The
5 rule provides that the procedure for enforcing a money judgment
6 "must accord with the procedure of the state where the court is
7 located, but a federal statute governs to the extent it applies."
8 Fed. R. Civ. P. 69(a). Because no federal statute governs the
9 instant motion, the court turns to California procedural law.
10 See Carnes, 488 F.3d at 1060.

11 California's Enforcement of Judgments Law ("EJL")
12 states that a "judgment creditor is entitled to the reasonable
13 and necessary costs of enforcing a judgment." Cal. Civ. Proc.
14 Code § 685.040. These costs may include attorneys' fees incurred
15 while enforcing a judgment if that underlying judgment included
16 an award of attorneys' fees. See id. §§ 1033.5(a)(10); 685.040.

17 The judgment creditor may seek an award of postjudgment
18 attorneys' fees by either filing a memorandum of costs or by
19 serving a noticed motion. See id. §§ 685.070, 685.080. Under
20 either method, however, the judgement creditor must request
21 postjudgment attorneys' fees before the underlying judgment is
22 fully satisfied. Id. §§ 685.070(b) ("Before the judgment is
23 fully satisfied but not later than two years after the costs have
24 been incurred"), 685.080(a) ("The motion shall be made
25 before the judgment is satisfied in full, but not later than two
26 years after the costs have been incurred."); see also Carnes, 488

27 ¹ This motion was determined to be suitable for decision
28 without oral argument pursuant to Local Rule 230(g).

1 F.3d at 1060.

2 The court understands defendants' motion to request
3 fees and costs associated solely with the enforcement of the June
4 3, 2010 judgment awarding attorneys' fees and costs. (See Defs.'
5 Mem. at 3.) Defendants state that judgment "has been collected
6 in full." (Id.; see also id. at 2 ("Yeager did pay Bowlins the
7 balance of the underlying judgment").)

8 In its June 2, 2015 Order, the court stated its concern
9 regarding defendants' representations that the award was already
10 collected in full. (Docket No. 230.) The court also cited to--
11 and quoted from--California Code of Civil Procedure sections
12 685.070(b) and 685.080(a) as well as and Ninth Circuit precedent
13 interpreting those statutes and invited both parties to submit
14 supplemental briefs addressing the issue of timeliness.

15 Defendants submitted a supplemental brief one day later
16 that utterly missed the mark. (Docket No. 231.) Defendants
17 completely ignored the court's attempt to highlight problematic
18 statutory language and failed to even mention sections 685.070 or
19 685.080. Instead, they provided an unnecessary explanation of
20 why Federal Rule of Civil Procedure 54(d) does not apply to their
21 motion--a rule the court never mentioned in its June 2, 2015
22 Order.

23 Even more astonishingly, defendants justified their
24 discussion of Rule 54(d) by saying they had "no indication that
25 there is any other possible basis for the Court's request for
26 supplemental briefing." (Defs' Supplemental Brief at 1-2.) Yet,
27 plaintiff, who unlike defendants is not represented by counsel,
28 grasped the court's meaning and submitted a brief that addressed

1 sections 685.070(b) and 685.080(a). (See Docket No. 237.)
2 Plaintiff also stated that the court's judgment was fully
3 satisfied by March 3, 2014. (Id. at 2.) Accordingly, it is
4 undisputed that the court's June 3, 2010 judgement had been paid
5 in full before defendants filed their motion.

6 Defendants say in passing that the Ninth Circuit's
7 additional award of \$102,929.12 in attorneys' fees and costs
8 incurred while this matter was on appeal remains unpaid. (Defs.'
9 Mem. at 3.) The Ninth Circuit's award does not affect the
10 timeliness of the instant motion, however, because costs and fees
11 awarded by an appellate court "are not added to the trial court
12 judgment, but constitute a separate judgment."² Lucky United
13 Properties Inv., Inc. v. Lee, 185 Cal. App. 4th 125, 138 (1st
14 Dist. 2010) (citing Los Angeles Unified Sch. Dist. v. Wilshire
15 Ctr. Marketplace, 89 Cal. App. 4th 1413, 1419 (1st Dist. 2001));
16 see Cal. Rules of Court 8.278(b)(1), (c)(3). This motion does
17 not request expenses associated with enforcement of the Ninth
18 Circuit's award, and this Order expresses no views on the
19 availability of those expenses at this time. The relevant
20 "judgment" for purposes of this Order is the court's June 3, 2010
21 award.


22 In short, the EJM required defendants to file their
23 motion before the award from this court was fully satisfied. See

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25 ² This conclusion is further supported by the California
26 Supreme Court's interpretation of fee awards under California
27 law, which draws a distinction between (1) "prejudgment costs,
28 "postjudgment enforcement costs and fees." In re Conservatorship
of McQueen, 59 Cal. 4th 602, 608 (2014) (distinguishing the
separate statutory basis for each award).

1 Cal. Civ. Proc. Code §§ 685.070, 685.080. That award has been
2 collected in full, and the motion is therefore untimely. See
3 Carnes, 488 F.3d at 1061 (affirming the denial of a similar
4 motion as untimely).

5 IT IS THEREFORE ORDERED that defendants' motion for
6 attorneys' fees and costs of collection of judgment be, and the
7 same hereby is, DENIED.

8 Dated: June 17, 2015

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10 WILLIAM B. SHUBB
11 UNITED STATES DISTRICT JUDGE
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