**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF TEXAS**
**WICHITA FALLS DIVISION**

| | | |
|---|---|---|
| **STATE OF TEXAS, et al.,** | § | |
| | § | |
| **Plaintiffs,** | § | |
| | § | |
| **v.** | § | **Civil Action No. 7:15-cv-00151-O** |
| | § | |
| **UNITED STATES OF AMERICA, et al.,** | § | |
| | § | |
| **Defendants.** | § | |

**ORDER**

Before the Court are Plaintiffs' Motion for Award of Prejudgment and Postjudgment Interest (ECF No. 147), filed June 19, 2019; Defendants' Response and Objection (ECF No. 150), filed July 1, 2019; and Plaintiffs' Reply (ECF No. 151), filed July 12, 2019. Having considered the motion, briefing, and applicable law the Court finds that Plaintiffs' motion should be and is hereby **DENIED**.

After the Court ruled on summary judgment and reconsideration, the parties disagreed over how to calculate the monetary amount to be disgorged to Plaintiffs. *See* Joint Status Report 2, ECF No. 144. After a hearing, the parties agreed to attempt to resolve that dispute. *Id*. Now, the parties agree in principle (for purposes of resolving this case only) on the amount that should be returned to Plaintiffs but "disagree on whether the Court's final judgment should include pre-judgment and post-judgment interest on the amount of equitable disgorgement for each Plaintiff State." *Id*. at 4. Importantly, the Court originally awarded specific equitable relief in the form of disgorgement because it found that Defendant waived sovereign immunity—which would normally bar Plaintiff States from recovering damages—under section 702 of the APA. *See Texas v. United States*, 336 F. Supp. 3d 664 (N.D. Tex. 2018). Now, Plaintiff States ask the Court to rely on that waiver of

sovereign immunity to award prejudgment and postjudgment interest on the disgorged Health Insurance Provider Fee ("HIPF") payments.[1] *See* Pls.' Mot., ECF No. 147.

Plaintiffs' arguments trace the following logical progression: (1) interest is "not always damages; it assumes the character of the remedy to which it attaches," meaning interest can, theoretically, be awarded as equitable relief; (2) the interest requested here is, in fact, equitable relief because "when interest attaches to an equitable remedy, such as disgorgement, then the interest is equitable."; and (3) because the "Administrative Procedure Act waives Defendants' sovereign immunity from equitable relief," the final award in this case should include the equitable relief of prejudgment and postjudgment interest on the now-disgorged funds. *Id*. at 1–3. Defendants respond by arguing that: (1) binding precedent holds Plaintiffs must identify a *separate* explicit waiver of sovereign immunity authorizing an interest award; (2) Plaintiffs cannot avoid this requirement by characterizing the interest here as specific equitable relief; and (3) in any event, waivers of sovereign immunity should be narrowly construed. Defs.' Br. 1–4, ECF No. 150.

"In the absence of express congressional consent to the award of an interest separate from a general waiver of immunity to suit, the United States is immune from an interest award." *Library of Cong. v. Shaw*, 478 U.S. 310, 314 (1986). This longstanding "no-interest rule" ensures that the United States will not owe prejudgment or postjudgment interest unless it waives sovereign immunity for that purpose. The rule mirrors the general rule that "waivers of sovereign immunity must be narrowly construed." *United States v. Land*, 213 F.3d 830, 837 (5th Cir. 2000) (citing *Dep't of the Army v. Blue Fox, Inc*., 525 U.S. 255, 261 (1999)). Here, neither party contends that the United States specifically waived the no-interest rule. And accordingly, the Court finds it did

[1] This litigation involves a number of substantive rulings, and background information to the prejudgment and postjudgment interest at issue here can be found there. *See Texas*, 336 F. Supp. 3d 664; *see also Texas v. United State*s, 300 F. Supp. 3d 810 (N.D. Tex. 2018).

not. Rather, Plaintiffs argue that because the Court previously ruled that Defendants waived sovereign immunity under the statutory mandate exception of the APA, it should also apply the APA exception to prejudgment and postjudgment interest. *See* Pls.' Mot. 1–2, ECF No. 147. While logical, that argument does not align with the binding precedent.

First, the Court disagrees with Plaintiffs' preliminary argument that the interest here should be considered equitable relief—and circumvent the no-interest rule. Section 702 of the APA "waives sovereign immunity for all equitable remedies that provide 'specific' relief, but does not waive immunity for legal *or equitable* remedies that provide 'substitute' relief." *Texas*, 336 F. Supp. at 672. Even if deemed equitable, prejudgment and postjudgment interest are forms of substitute, not specific, relief because both *compensate* a party for *lost use* of the award.[2] *See Virginia v. United States*, 479 U.S. 305, 310 n.2 (1987) ("Prejudgment interest serves to compensate for the *loss of use* of money due as damages from the time the claim accrues until judgment is entered, thereby achieving full compensation for the injury those damages are intended to redress."); *see also Dep't of the Army*, 525 U.S. at 262 ("Damages are given to the plaintiff to *substitute* for a suffered loss, whereas specific remedies 'are not substitute remedies at all, but attempt to give the plaintiff the very thing to which he was entitled." (emphasis in original)); *see also Chamberlain ex rel. Chamberlain v. United States*, 401 F.3d 335, 344 (5th Cir. 2005) ("…interest *compensates* an individual for his lost time value of money" (emphasis added)). As a general matter, this form of relief is different from, say, equitable disgorgement. And the APA only waives immunity for specific relief, not substitute relief. The Court's previous order made this clear:

[2] Plaintiffs argue that if the government unlawfully seized a pregnant cow, and the cow gave birth while in the government's control, the government would be required to return both the cow and the calf. Pls.' Br. 2–3, ECF No. 147. But that example does not pretend to attribute the calf's inclusion as *interest* for the lost use of the cow.

> "The APA waives immunity for relief other than money damages. The term 'money damages' normally refers to a sum of money used as compensatory relief. Accordingly, while § 702 of the APA prohibits compensatory relief—monetary compensation for an injury to the plaintiff's person, property, or reputation—it waives immunity for an equitable action for *specific relief*—which may include the recovery of *specific property or monies*."

*Texas*, 336 F. Supp. at 672 (emphasis added) (cleaned up).

But second, as Plaintiffs note, the Court's previous order recognized an exception to the general rule that "ordering Defendants to return the 'monetary equivalent' of fungible cash payments is ordinarily not 'specific' relief." *Id.* at 674. The Court found that "the APA and the ACA entitle Plaintiffs to disgorgement because the APA waives immunity for 'a suit seeking to enforce a statutory mandate' [and] the ACA mandates that the states are exempt from paying the HIPF." *Id*. So, here, the relevant question becomes whether the Court can award prejudgment and postjudgment interest as a means of enforcing the ACA's statutory mandate exempting states from paying the HIPF.

The current request for interest differs from the original request for return of the HIPF payments in a nuanced but critical way: there is no mandate entitling Plaintiffs to *interest* as *specific relief*. To enforce the ACA's statutory mandate, the Court *specifically disgorged* the HIPF payments because the statute *specifically exempted* states from paying the HIPF. *Id*. at 675. ("[d]efendants unlawfully required Plaintiffs to account for the HIPF…and have no right to retain those funds that properly belong to Plaintiff."). In other words, the Court awarded the states the *specific thing*—the HIPF payments—that the statute mandated they keep. *Id*. at 674 ("…a district court may grant equitable disgorgement as a form of specific relief to enforce compliance with a statutory mandate."). The same cannot be said about the current request for interest and, therefore, the statutory mandate exception cannot be applied in the same way.

So, in conclusion, neither the prejudgment nor postjudgment interest here is: (1) a form of specific equitable relief; (2) specifically included in the ACA's statutory mandate; or (3) otherwise mentioned in a specific waiver of sovereign immunity. Accordingly, the Court finds that Plaintiffs' Motion (ECF No. 147), should be and is hereby **DENIED**. As requested in their status report, the parties are **ORDERED** to file a joint proposed final judgment as well as a schedule for briefing Defendants' motion to stay execution of final judgment **on or before July 29, 2019**.

**SO ORDERED** on this **19th day** of **July, 2019**.

Reed O'Connor
UNITED STATES DISTRICT JUDGE