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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 UNITED OF OMAHA LIFE INSURANCE  
10 COMPANY,

11 Plaintiff,

12 v.

13 RICHARD MARKS, et al.,

14 Defendants.

Case No. C19-1336-RSL

ORDER

15  
16 This matter comes before the Court on (1) “United of Omaha Life Insurance Company’s  
17 Motion to Dismiss Wilmington Trust, N.A.’s Counterclaim” (Dkt. #30), (2) “United of Omaha  
18 Life Insurance Company’s Motion for Leave to Deposit Funds, to Dismiss United of Omaha  
19 with Prejudice, and to Discharge Liability,” (Dkt. #20), and (3) “Wilmington Trust N.A.’s  
20 Motion to Extend Pre-trial Schedule and Related Dates” (Dkt. #44).

21 **I. BACKGROUND**

22 **a. Factual Background**

23 United of Omaha Life Insurance Company (“United”) issued a \$1,000,000 life insurance  
24 policy (“the Policy”) to Daniel Marks (“the decedent”). See Dkt. #21-1 (Ex. 1). The decedent  
25 passed away on or around June 8, 2019 in King County, Washington. Dkt. #1 at 2. Prior to  
26 March 4, 2019, the decedent owned the Policy, and Richard Marks (“Marks”) and Charles John  
27 Allan Williams (“Williams”) were named as the irrevocable beneficiaries. See Dkts. #21-2 (Ex.  
28 2), #21-3 (Ex. 3). On March 4, 2019, the decedent sold the Policy to Coventry First, LLC  
 (“Coventry”), which allegedly resulted in ownership of the Policy vesting in Wilmington Trust,  
ORDER - 1

1 N.A. (“Wilmington”) as a securities intermediary. See Dkts. #24 at 3, #25-1 (Ex. A). On March  
2 15, 2019, Coventry notified United by facsimile of its purchase of the Policy. See Dkt. #31-1  
3 (Ex. 1). Subsequently, Wilmington sent United (1) a “Beneficiary’s Release and Consent to  
4 Change Beneficiary” form purportedly signed by Marks on March 4, 2019 and notarized by  
5 Notary Public Lanae Myles, see Dkt. #31-2 (Ex. 2), (2) a “Beneficiary’s Release and Consent to  
6 Change Beneficiary” form purportedly signed by Williams on March 24, 2019 and notarized by  
7 Notary Public Lanae Myles, see Dkt. #31-3 (Ex. 3), (3) a “Change of Ownership Form” dated  
8 April 1, 2019, identifying Wilmington as the new Policy owner and purportedly signed by the  
9 decedent, Marks, Williams, and Melissa A. Marion on behalf of Wilmington, see Dkt. #31-4  
10 (Ex. 4), and (4) an “Application for Change of Beneficiary” form dated April 2, 2019,  
11 purportedly signed by Williams, Marks, and Melissa A. Marion on behalf of Wilmington, see  
12 Dkt. #31-5 (Ex. 5). Thereafter, United issued an endorsement identifying Wilmington as the  
13 Policy’s sole irrevocable beneficiary effective April 1, 2019. See Dkts. #21-3 (Ex. 3), #34-1  
14 (Ex. A). After the decedent passed away, Marks, Williams, and Wilmington claimed competing  
15 interests in the Policy proceeds. The parties now imply that the notarized signatures of Marks  
16 and Williams authorizing the Policy’s beneficiary change may have been forged. See, e.g.,  
17 Dkts. #30 at 1-2, #48 at 2.

18 Wilmington now alleges that Williams sent United a notarized “security letter” in  
19 September 2016, identifying himself as an irrevocable beneficiary of the Policy and stating that,  
20 “should any changes be made to the Policy, a password and notarized signature must be  
21 presented by him.” Dkt. #24 at 7-8. Wilmington further alleges that United sent a “reply letter”  
22 to Williams acknowledging receipt of this “security letter.” Id.

### 23 **b. Procedural History**

24 On August 23, 2019, United brought this cause of action in interpleader, naming Marks,  
25 Williams, and Wilmington as defendants. See Dkt. #1. The action concerns defendants’  
26 competing claims to the proceeds from the Policy. Id. On November 7, 2019, United moved for  
27 leave to deposit the life insurance funds into the Court’s registry, and for an order dismissing it  
28 with prejudice and discharging it from further liability in the matter. See Dkt. #20. Wilmington

1 filed an opposition to United’s motion, asserting that United faces liability to the claimants as a  
2 negligent stakeholder. See Dkt. #26. Wilmington amended its answer to the interpleader  
3 complaint to assert counterclaims against United, alleging negligence, “estoppel,” and “unclean  
4 hands.” See Dkt. #24.

5 **II. UNITED’S MOTION TO DISMISS WILMINGTON’S COUNTERCLAIMS**  
6 **(Dkt. #30)**

7 United moves to dismiss Wilmington’s counterclaims under Federal Rule of Civil  
8 Procedure (“Rule”) 12(b)(6) for failure to state a claim. See Dkt. #30.

9 **a. Legal Standard**

10 To survive a motion to dismiss, Wilmington’s counterclaims must allege facts sufficient  
11 to “state a claim to relief that is plausible on its face.” Bell Atl. Corp. v. Twombly, 550 U.S.  
12 544, 570 (2007). A claim is facially plausible “when the plaintiff pleads factual content that  
13 allows the Court to draw the reasonable inference that the defendant is liable for the misconduct  
14 alleged.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). The Court presumes all well-pleaded  
15 allegations to be true and draws all reasonable inferences in favor of the non-moving party. See  
16 In re Fitness Holdings Int’l, Inc., 714 F.3d 1141, 1144-45 (9th Cir. 2013). The facts must allow  
17 the Court “to infer more than the mere possibility of misconduct.” Iqbal, 556 U.S. at 679.  
18 “Threadbare recitals of the elements of the cause of action, supported by mere conclusory  
19 statements, do not suffice.” Id. at 678. If a plaintiff’s complaint fails to state a cognizable legal  
20 theory or fails to provide sufficient facts to support a claim, dismissal is appropriate. See Taylor  
21 v. Yee, 780 F.3d 928, 935 (9th Cir. 2015).

22 **b. First Cause of Action: Negligence**

23 Wilmington’s first cause of action against United is for negligence. To prevail on a  
24 negligence claim under Washington law, Wilmington must prove (1) duty, (2) breach, (3) injury,  
25 and (4) proximate causation. See, e.g., Lowman v. Wilbur, 178 Wn.2d 165, 169 (2013).

26 Wilmington asserts that United owed it a duty arising from Williams’ alleged “security  
27 letter.” Namely, Wilmington alleges that United (1) failed to obtain the “password” from  
28 Williams prior to removing Williams as an irrevocable beneficiary, and (2) failed to disclose the

1 alleged security letter’s existence to Wilmington when processing the beneficiary change. See  
2 Dkt. #24 at 7-9. The Court rejects the notion that Williams’ alleged “security letter” gave rise to  
3 any duty on United’s part. It is undisputed that United received notarized change of beneficiary  
4 forms from Williams and Marks. See Dkts. #24 at 4-5, #30 at 3-4, #33 at 2. Wilmington fails to  
5 support its argument that United was obligated to honor and to disclose Williams’ unilateral  
6 request for additional “security” prior to recognizing a beneficiary change using the Policy’s  
7 established procedure. See Dkt. #31-6 (Ex. 6) at 3 (“You may change the owner of this policy  
8 by making an absolute assignment . . . by Written Request. If the Beneficiary designation in  
9 effect is irrevocable, the Beneficiary must also sign the written request.”).<sup>1</sup> Indeed, Washington  
10 law expressly rejects the notion that United was required to abide by Williams’ unilateral  
11 request. See RCW 48.18.190 (“No agreement in conflict with, modifying, or extending any  
12 contract of insurance shall be valid unless in writing and made part of the policy.”). United had  
13 no duty to honor or disclose Williams’ “security letter.” Accordingly, Wilmington’s allegations  
14 regarding United’s obligations as to the alleged “security letter” do not support a negligence  
15 claim.

16 Wilmington also baldly asserts that United “owed a duty to future purchasers of the  
17 Policy to ensure that the Policy title was not contested.” See Dkts. #24 at 8, #33 at 6-7. It  
18 alleges that United’s duty arose when it “placed the Policy, a security, into the stream of  
19 commerce entrapping Wilmington, the successor in interest.” Id. Wilmington presents no  
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24 <sup>1</sup> While the Court’s review in the context of a Rule 12(b)(6) motion to dismiss is generally  
25 limited to the contents of the complaint, see Campanelli v. Bockrath, 100 F.3d 1476, 1479 (9th Cir.  
26 1995), certain documents “may be incorporated by reference into a complaint if the plaintiff refers  
27 extensively to the document or the document forms the basis of the plaintiff’s claim,” United States v.  
28 Ritchie, 342 F.3d 903, 908 (9th Cir. 2003) (citations omitted) (“The doctrine of incorporation by  
reference may apply, for, example, when a plaintiff’s claim about insurance coverage is based on the  
contents of a coverage plan[.]”). On this basis, the Court takes judicial notice of the select pages from  
the Policy that are attached as Exhibit 6 to United’s motion to dismiss. See Dkt. #31-6 (Ex. 6).

1 authority supporting the existence of such a duty, and the Court can find none.<sup>2</sup> The Court  
2 rejects the implication that United had a duty to conduct an additional, independent investigation  
3 into whether Marks' and Williams' notarized beneficiary forms were the product of free will.  
4 Cf. Klem v. Wash. Mut. Bank, 176 Wn.2d 771, 793 (2013) ("The proper functioning of the legal  
5 system depends on the honesty of notaries who are entrusted to verify the signing of legally  
6 significant documents").

7 Wilmington fails to state a claim for negligence under Washington law. Its first cause of  
8 action against United is accordingly DISMISSED with prejudice pursuant to Rule 12(b)(6).

9 **c. Second Cause of Action: Equitable Estoppel**

10 In its second cause of action, Wilmington alleges that United is "estopped from  
11 maintaining that anyone other than Wilmington is the beneficiary of the Policy." See Dkt. #24  
12 at 9. Wilmington alleges that United represented to it "that the prior irrevocable beneficiary  
13 designations had been removed from the Policy," while "fail[ing] to inform Wilmington that it  
14 failed to remove the prior irrevocable beneficiary designations in accordance with the Security  
15 Requirements." Id. Wilmington asserts that it "relied upon United's representations." Id. The  
16 Court construes Wilmington's second cause of action as one for equitable estoppel. A claim for  
17 equitable estoppel "requires proof of (1) an admission, act or statement inconsistent with a later  
18 claim; (2) another party's reasonable reliance on the admission, act or statement; and (3) injury  
19 to the other party which would result if the first party is allowed to contradict or repudiate the  
20 earlier admission, act or statement." Dep't of Ecology v. Campbell & Gwinn, LLC, 146 Wn.2d  
21 1, 20 (2002) (citation omitted). "[A] party asserting estoppel must prove each of its elements by  
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24 <sup>2</sup> Wilmington's reliance on Lee v. West Coast Life Insurance Co., 688 F.3d 1004, 1012-13 (9th  
25 Cir. 2012) is misplaced. In Lee, the Ninth Circuit held that "the federal interpleader remedy does not  
26 shield a negligent stakeholder from tort liability for its creation of a conflict over entitlement to the  
27 interpleaded funds." Id. at 1014. However, the negligence counterclaim in Lee stemmed from the  
28 insurer's own failure to correctly execute a policy change form. Id. at 1007. A policy administrator at  
the insurer's office erroneously instructed the parties to sign and execute the change form in a manner  
inconsistent with the correct procedures for changing the policy's ownership and beneficiaries. Id. No  
such allegation is present here, and Lee does not support Wilmington's contention that United owed it a  
duty as a future purchaser of the Policy.

1 clear, cogent, and convincing evidence.” Berschauer/Phillips Constr. Co. v. Seattle Sch. Dist.  
2 No. 1, 124 Wn.2d 816, 831 (1994) (citation omitted).

3         Wilmington’s estoppel claim fails because it cannot point to any “admission, act or  
4 statement” by United that is “inconsistent” with a later claim. See Dep’t of Ecology, 146 Wn.2d  
5 at 20. Using the paperwork Wilmington provided, United processed the beneficiary change in  
6 accordance with its Policy’s procedures and subsequently endorsed Wilmington as the Policy’s  
7 beneficiary. See Dkts. #24 at 9, #34-1 (Ex. A). Wilmington’s bare assertion that United has  
8 identified or maintained that any claimant is the rightful beneficiary of the Policy, see Dkt. #33  
9 at 3-4, is flatly undermined by United’s initiation of this interpleader action for that purpose.

10         Furthermore, Wilmington fails to state an equitable estoppel claim based on United’s  
11 alleged failure to disclose Williams’ “security letter.” “Estoppel can arise through silence, as  
12 well as statements, when one has a duty to speak out.” McDaniels v. Carlson, 108 Wn.2d 299,  
13 308 (1987) (citations omitted). As discussed above, Wilmington fails to present any convincing  
14 authority or make any plausible showing that United had a duty to speak or to disclose the  
15 alleged “security letter.”

16         Wilmington cannot establish the elements of equitable estoppel under Washington law.  
17 Its second cause of action is DISMISSED with prejudice under Rule 12(b)(6) for failure to state  
18 a claim.

#### 19                 **d. Third Cause of Action: Unclean Hands**

20         Wilmington’s third cause of action alleges “unclean hands.” See Dkt. #24 at 9. Unclean  
21 hands is an equitable defense in Washington. See, e.g., Miller v. Paul M. Wolff Co., 178 Wn.  
22 App. 957, 966 (2014). Wilmington offers no basis to assert “unclean hands” as an independent  
23 cause of action. See generally Dkt. #33. Wilmington’s third cause of action is DISMISSED  
24 with prejudice pursuant to Rule 12(b)(6) for failure to state a claim.

#### 25                 **e. Conclusion**

26         For the foregoing reasons, United’s Motion to Dismiss Wilmington’s Counterclaims  
27 (Dkt. #30) is GRANTED. Each of Wilmington’s counterclaims against United is dismissed  
28 with prejudice, pursuant to Rule 12(b)(6), for failure to state a claim.

### 1 III. UNITED'S MOTION FOR LEAVE TO DEPOSIT FUNDS (Dkt. #20)

#### 2 a. Interpleader Motion

3 United brings this interpleader action under 28 U.S.C. § 1335. See Dkt. #1. Statutory  
4 interpleader under 28 U.S.C. § 1335 requires minimal diversity of citizenship between the  
5 adverse claimants and an amount in controversy exceeding \$500. See State Farm Fire & Cas.  
6 Co. v. Tashire, 386 U.S. 523, 530 (1967); 28 U.S.C. § 1335. Here, minimal diversity exists  
7 between the adverse claimants—Marks is a citizen of Washington, Williams is a citizen of  
8 Nevada, and Wilmington is a Delaware association with its principal place of business in  
9 Delaware. See Dkt. #1 at 1-2. Further, the amount in controversy is \$1,000,000. Id.  
10 Accordingly, the requirements for statutory interpleader are satisfied and the Court has  
11 jurisdiction over United's Motion for Leave to Deposit Funds (Dkt. #20). See 28 U.S.C. § 1335;  
12 Tashire, 386 U.S. at 530.

13 “Interpleader is proper when a stakeholder has at least a good faith belief that there are  
14 conflicting colorable claims.” Michelman v. Lincoln Nat'l Life Ins. Co., 685 F.3d 887, 889 (9th  
15 Cir. 2012). There are two steps in an interpleader action: (1) the Court must determine whether  
16 “there is a single fund at issue and whether there are adverse claimants to that fund,” and (2) the  
17 Court must adjudicate the adverse claims to determine the respective rights of the claimants.  
18 See Mack v. Kuckenmeister, 619 F.3d 1010, 1023-24 (9th Cir. 2010) (citations omitted).  
19 Pursuant to 28 U.S.C. § 2361, once a disinterested stakeholder deposits the disputed funds with  
20 the Court, the Court may dismiss it from the action and enjoin the claimants from initiating  
21 separate actions against the stakeholder for the same policy benefits. See Lincoln v. Nat'l Life  
22 Ins. Co. v. Ridgway, 293 F. Supp. 3d 1254, 1260 (W.D. Wash. 2018). “Discharge [of an  
23 interpleader] is normally granted absent bad faith by the stakeholder.” Id. (citations omitted).

24 The parties do not dispute that the Policy proceeds constitute a single fund and that  
25 defendants are asserting adverse claims to that fund. See Dkts. #1 at 2, #20 at 2, #26 at 2-3.  
26 Wilmington, however, challenges United's dismissal from this action on the same grounds  
27 asserted in its counterclaims. See generally Dkt. #26. It argues that interpleader protection is  
28 inappropriate because United is a negligent stakeholder that is liable for creating the controversy

1 before the Court. As described above, Wilmington's allegations against United are baseless, and  
2 the Court has dismissed Wilmington's counterclaims pursuant to Rule 12(b)(6). Finding no  
3 additional claim for liability against United, the Court concludes that United is a disinterested  
4 stakeholder that has initiated this interpleader action in good faith. Because United has met the  
5 requirements for statutory interpleader, the Court will allow it to deposit the Policy proceeds  
6 into the Court's Registry. The Court further finds that United is entitled to dismissal and  
7 discharges it from future liability as to the Policy proceeds. See 28 U.S.C. § 2361.

8 **b. Request for Attorney's Fees**

9 In addition to seeking interpleader protection, United seeks attorney's fees and costs in  
10 the amount of \$6,883.50 for bringing this action.<sup>3</sup>

11 [T]he availability of attorneys' fees for interpleader plaintiffs  
12 recognizes that by bringing the action, the plaintiff benefits all  
13 parties by promoting early litigation on the ownership of the fund,  
14 thus preventing dissipation. Because the interpleader plaintiff is  
15 supposed to be disinterested in the ultimate disposition of the fund,  
16 attorneys' fee awards are properly limited to those fees that are  
17 incurred in filing the action and pursuing the plan's release from  
18 liability, *not* in litigating the merits of the adverse claimants'  
19 positions. Compensable expenses include, for example, preparing  
20 the complaint, obtaining service of process on the claimants to the  
21 fund, and preparing an order discharging the plaintiff from liability  
22 and dismissing it from the action.

23 Trustees of Dirs. Guild of Am.-Prod. Pension Benefits Plans v. Tise, 234 F.3d 415, 426-27 (9th  
24 Cir. 2000) (internal quotation marks and citations omitted). The award of attorney's fees in an  
25 interpleader action is committed to the Court's discretion. See Schirmer Stevedoring Co. v.  
26 Seaboard Stevedoring Corp., 306 F.2d 188, 194 (9th Cir. 1962).

27 Because attorney's fees paid to the "disinterested" interpleader plaintiff "are paid from  
28 the interpleaded fund itself, there is an important policy interest in seeing that the fee award does

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<sup>3</sup> The breakdown of United's fee request is as follows: \$400 represents the filing fee, \$125  
represents the cost for service of process upon Wilmington, and \$6,358.50 represents United's attorney's  
fees. See Dkts. #21, #21-4 (Ex. 4), #21-4 (Ex. 5).



1 not deplete the fund at the expense of the party who is ultimately deemed entitled to it.” Tise,  
 2 234 F.3d at 427. This Court has previously expressed its reluctance to award attorney’s fees in  
 3 interpleader actions, but recognizes that “the Ninth Circuit views interpleading as a boon to the  
 4 claimants and has stated that ‘the proper rule’ is to award attorney’s fees.” Michelman v.  
 5 Lincoln Nat’l Life Ins. Co., No. C10-0271-RSL, 2011 WL 1376266, at \*1-2 (W.D. Wash. Apr.  
 6 11, 2011) (quoting Schirmer Stevedoring, 306 F.3d at 194). With these principles in mind, the  
 7 Court has scrutinized United’s request, see Dkts. #20, #21-4 (Ex. 4), and will award fees. The  
 8 Court finds that the requested \$6,883.50 award of fees and costs represents a minimal portion of  
 9 the disputed funds that are reasonably related to the interpleader.<sup>4</sup>

### 10 c. Conclusion

11 For the foregoing reasons, United’s Motion for Leave to Deposit Funds, to Dismiss  
 12 United with Prejudice, and to Discharge Liability (Dkt. #30) is GRANTED. United is entitled  
 13 to an award of \$6,883.50 in attorney’s fees and costs. United shall disburse the Policy proceeds  
 14 of \$1,000,000, less its award of attorney’s fees and costs of \$6,883.50, into the Court’s Registry,  
 15 and shall thereafter be dismissed from the action with prejudice and discharged from future  
 16 liability with regard to the Policy proceeds.

### 17 IV. WILMINGTON’S MOTION TO EXTEND PRETRIAL SCHEDULE AND 18 RELATED DATES (Dkt. #44)

19 On April 22, 2020, Wilmington moved to extend several pretrial deadlines in this matter.  
 20 See Dkt. #44. Wilmington seeks to extend the deadlines in the Court’s existing Scheduling  
 21 Order as follows:

- 22 1. Reports from expert witnesses under FRCP 26(a)(2) due **May 28, 2020**

23 All motions related to discovery must be noted on the  
 24 motion calendar no later than the Friday before discovery closes

25  
 26 <sup>4</sup> The Court rejects Wilmington’s explicit challenge to the \$125 service of process fee sought by  
 27 United. Dkt. #26 at 6-7. United has conclusively established that Wilmington delayed in filing its  
 28 waiver of service form for more than two months, despite numerous representations to United that it  
 27 would file the waiver imminently. See Dkts. #29, #29-1. In this context, it was not unreasonable for  
 28 United to serve process upon Wilmington on October 21, 2019. See id.; see also Tise, 234 F.3d at 426-  
 27 (contemplating service of process expenses as compensable).

- 1           pursuant to LCR 7(d) or LCR 37(a)(2)
- 2           2. Discovery completed by **July 7, 2020**
- 3
- 4           3. Settlement conference held no later than **July 21, 2020**
- 5           4. All dispositive motions must be filed by and noted on the **August 7, 2020**
- 6           motion calendar no later than the Friday before discovery
- 7           closes pursuant to LCR 7(d) or LCR 37(a)(2)

8           The Court, having confirmed that the remaining parties in this case do not oppose  
9           Wilmington’s motion (see Dkt. #45),<sup>5</sup> finds good cause exists to grant the requested extensions.  
10          Wilmington’s Motion to Extend Pretrial Schedule and Related Dates (Dkt. #44) is GRANTED.  
11          The Clerk of Court is directed to issue an amended Scheduling Order incorporating the above  
12          adjustments and extending the trial date and additional related dates accordingly.

13           **V. CONCLUSION**

14           For all the foregoing reasons,

15           (1) IT IS HEREBY ORDERED that United’s Motion to Dismiss Wilmington’s  
16           Counterclaims (Dkt. #30) is GRANTED. Each of Wilmington’s counterclaims against United  
17           (see Dkt. #24) is DISMISSED with prejudice pursuant to Rule 12(b)(6).

18           (2) IT IS FURTHER ORDERED that United’s Motion for Leave to Deposit Funds, to  
19           Dismiss United with Prejudice, and to Discharge Liability (Dkt. #20) is GRANTED. United  
20           shall deposit the \$1,000,000 Policy proceeds, less United’s attorney’s fees and costs of  
21           \$6,883.50, into the Court’s Registry as interpleader funds pursuant to 28 U.S.C. § 1335. The  
22           Clerk of Court shall retain such funds until directed to release them by further Order. The Clerk  
23           is further directed to DISMISS United with prejudice from this matter.

24           (3) IT IS FURTHER ORDERED that Wilmington’s Motion to Extend Pretrial  
25           Schedule and Related Dates (Dkt. #44) is GRANTED. The Clerk is directed to issue an  
26           amended Scheduling Order adjusting all pretrial deadlines in accordance with this Order.

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28           <sup>5</sup> Defendant Richard Marks filed no opposition to Wilmington’s motion.

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DATED this 1<sup>st</sup> day of June, 2020.



Robert S. Lasnik  
United States District Judge