

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TRANSAMERICA LIFE INSURANCE)
COMPANY,)
)
Plaintiff-in-Interpleader,)
)
v.)
)
YOUSEF RABADI, INTESAR)
ALTURK, BILL BILTAGI,)
LYSAGHT LAW GROUP LLP, and)
DOES 1 through 10,)
)
Defendants-in-Interpleader.)

CV 15-07623-RSWL-Ex

**ORDER re Cross-Claimant
Bill Biltagi's Motion
for Summary Judgment
[99]; Cross-Claimants
Yousef Rabadi & Intesar
Alturk's Motion for
Summary Judgment [100];
Cross-Defendant Brian C.
Lysaght & Lysaght Law
Group's Motion for
Summary Judgment [118]**

YOUSEF RABADI, INTESAR)
ALTURK, and BILL BILTAGI,)
)
Cross-Claimants,)
)
v.)
)
LYSAGHT LAW GROUP LLP and)
BRIAN C. LYSAGHT,)
)
Cross-Defendants.)

Currently before the Court are the following
Motions: (1) Cross-Claimant Bill Biltagi's Motion for
Summary Judgment [99]; (2) Cross-Claimant Yousef Rabadi

1 and Intesar Alturk's Motion for Summary Judgment [100]
2 (collectively, "Cross-Claimants' Motions"); (3) and
3 Cross-Defendant Brian C. Lysaght and Lysaght Law
4 Group's Motion for Summary Judgment or in the
5 Alternative Summary Adjudication ("Cross-Defendants'
6 Motion") [118-1]. Having reviewed all papers submitted
7 pertaining to this Motion, the Court **NOW FINDS AND**
8 **RULES AS FOLLOWS:** the Court **GRANTS** Cross-Claimants'
9 Motions [99, 100]. The Court **DENIES** Cross-Defendants'
10 Motion [118].

11 I. BACKGROUND

12 A. Factual Background

13 1. Parties and Relevant Non-Parties

14 Cross-Claimants Bill Biltagi, Yousef Rabadi, and
15 Intesar Alturk (collectively, "Cross-Claimants")¹ are
16 beneficiaries to a life insurance policy (the "Policy")
17 Transamerica Life Insurance Company ("Transamerica")
18 issued on behalf of Victoria Rabadi (the "Insured") on
19 July 27, 2011. Decl. of Sue Lewis ("Lewis Decl.") Exs.
20 A at 1; B; ECF No. 84-1; Decl. of Robert Tauler
21 ("Tauler Decl.") Ex. A at 487, ECF No. 136-1.

22 a. *Cross-Claimants & Cross-Defendants*

23 Cross-Claimant Bill Biltagi was listed on
24 beneficiary transfer papers as the Insured's "business
25 associate," and holds a 9% interest in the Policy.

26
27 ¹ Because Cross-Claimant Yousef Rabadi shares the same last
28 name with various other non-parties, the Court will refer to
Cross-Claimants—when discussed individually—by their first and
last names (i.e. Yousef Rabadi, Intesar Alturk).

1 Lewis Decl. Ex. B. He was the owner of the Policy upon
2 the Insured's death and remains the owner to this day.
3 Tauler Decl. Ex. A, at 489. Yousef Rabadi was
4 identified as the Insured's son, and later her nephew,
5 on Policy documentation. See id. at 207, 459. He has
6 a 47% interest in the Policy. Id. at 487. Intesar
7 Alturk has a 44% interest in the Policy, and was
8 identified as the Insured's "business associate." Id.
9 at 487. She is apparently the mother of Abraham
10 Khader, the Insured's broker who prepared most of her
11 Policy paperwork. Decl. of Brian Lysaght ("Lysaght
12 Decl.") Ex. 1, at ¶ 49, ECF No. 107-1.

13 Cross-Defendants Brian C. Lysaght and Lysaght Law
14 Group (collectively, "Cross-Defendants") are a law firm
15 that entered into a contingency fee agreement with its
16 clients, Josef Rabadi, Reem Rabadi, and Sandra Rabadi
17 (collectively, "State Court Rabadis") regarding
18 representation in Sandra Rabadi, et al. v. Noura
19 Shoubash, et al., Los Angeles Superior Court Case No.
20 BC 459192 ("State Court Action"). Decl. of Andre
21 Boniadi ("Boniadi Decl.") Ex. 1, at 7-8, ECF No. 100-3.
22 Cross-Defendants had an attorney's lien (the "Lien") on
23 proceeds related to the State Court Action. Id. at 8.
24 Neither Cross-Defendants nor the State Court Rabadis
25 were named as beneficiaries to the Policy at hand. See
26 Lewis Decl. ¶ 5, Ex. B. Cross-Defendants also did not
27 represent the Insured or Yousef Rabadi. See Decl. of
28 Yousef Rabadi ("Rabadi Decl.") ¶ 9, Ex. 1, ECF No. 100-

1 4.

2 b. *Non-Parties*

3 Abraham Khader ("Khader"), was a licensed life
4 settlement insurance broker who prepared the Insured's
5 life insurance applications. See Tauler Decl. Ex. A,
6 at 234, 357. Michael Lotta ("Lotta") was Khader's
7 attorney in an Orange County state-court case involving
8 Khader's alleged fraudulent purchase and sale of life
9 insurance contracts, Nouha Hreish et al. v. Abraham
10 Khader, et al., Case No. 30-2013-00649323-CU-FR-CJC
11 ("Orange County Action"). See Decl. of Natasha Riggs
12 ("Riggs Decl.") Ex. 1 at ¶¶ 17-18, ECF No. 121-1.²

13 Nabil Yousef Rabadi is the Insured's brother, who
14 was a joint owner of the Policy at one point. Tauler
15 Decl. Ex. A, at 395, 489. Reem Al-Rabadi is Yousef
16 Rabadi's mother and Nabil Rabadi's wife, listed as a
17 contingent beneficiary on the Policy. Id. at 488.

18 2. The Life Insurance Policy

19 On April 8, 2011, the Insured applied with
20 Transamerica for a 10-Year Level Term life insurance
21 policy totaling \$4,000,000. Id. at 62-65. Her
22 application represented that she had real property
23 holdings of \$19 million, a family net worth of \$17.9

24
25 ² Khader is also currently the subject of a formal
26 Accusation by the California Insurance Commissioner, filed on
27 November 17, 2016. Lysaght Decl. Ex. 1. The Accusation seeks to
28 revoke Khader's insurance broker's license. Id. at ¶ 49. The
Accusation also claims that Khader made his mother, Intesar
Alturk, a beneficiary to life insurance policies where she had no
real interest with the insureds. Id. at ¶ 29.

1 million, annual earned income of \$80,000, and unearned
2 income of \$510,000. Id. at 62-65, 71-74. On July 27,
3 2011, Transamerica insured Victoria Rabadi under life
4 insurance policy number 60160747. Id. at 169. Later
5 in July 2011, Khader requested on the Insured's behalf
6 an increase in the Policy from \$4 million to \$5.5
7 million, effective September 21, 2011. Id. at 196,
8 222, 951.

9 On September 21, 2011, Yousef Rabadi—initially
10 listed as the Insured's "son," then later her
11 "nephew"—was designated the primary beneficiary. Id.
12 at 209-210. He was a 100% beneficiary at the time.
13 Id.

14 For the first six months, the Policy premium
15 payments were \$11,000 per quarter. Id. at 212-214.
16 They increased to \$27,475 when Khader converted the
17 Policy from an Increased Term Policy to a Universal
18 Life Policy on January 21, 2012. Id. at 241, 274.
19 Yousef Rabadi sent initial premium payments for both
20 iterations of the Policy. Id. at 2, 198. It is
21 unclear whether the Insured made any premium payments
22 on the Policy. See generally Tauler Decl. Ex. A.

23 Khader initially refused to file a questionnaire
24 that asked questions to ferret out whether the Policy
25 was a Stranger Oriented Life Insurance ("STOLI")
26 Policy. Id. at 322, 326-29. On April 26, 2012, he
27 finally filled out a questionnaire. Id. at 326-29.

28 On April 9, 2013, the Insured transferred 100% of

1 the ownership in the Policy to Nabil Rabadi, her
2 brother and Yousef Rabadi's father. Id. at 395-96.
3 Id. On October 16, 2013, beneficiary designation and
4 ownership change forms were submitted, changing owners
5 from Nabil Yousef Rabadi (100%) to: (1) Nabil Yousef
6 Rabadi (50%) and (2) Bill Biltagi (50%). Id. at 411-
7 12. Bill Biltagi was identified as the Insured's
8 "business associate." Id. at 432. Yousef Rabadi was
9 now identified as the Insured's "nephew," not her son.
10 Id. On November 26, 2013, the Insured submitted
11 another beneficiary designation form, introducing
12 Intesar Alturk, Khader's mother, as a 41% beneficiary.
13 Id. at 459. She was identified as the Insured's
14 "business associate." Id. at 459.

15 When Policy benefits became due, the Policy
16 provided life insurance coverage totaling \$5,500,000.
17 See Lewis Decl. ¶ 9. Cross-Claimants were designated
18 beneficiaries as follows: Yousef Rabadi (47%), Intesar
19 Alturk (44%), and Bill Biltagi (9%). Id. at Ex. B.

20 3. The Attorney's Lien and State Court Action

21 On April 11, 2011, the State Court Rabadis (Josef,
22 Reem, and Sandra) filed Sandra Rabadi, et al. v. Noura
23 Shoubash, et al., the State Court Action. Bill
24 Biltagi's Req. for Judicial Notice ("Biltagi's RJN")
25 Ex. 3, ECF No. 99-4. Khader and Intesar Alturk were
26 defendants in the State Court Action. Id. On May 5,
27 2013, the State Court Rabadis retained Cross-Defendants

28 ///

1 to represent them in the State Court Action.³ Boniadi
2 Decl. Ex. 1.

3 Cross-Defendants entered into a contingency fee
4 agreement with the State Court Rabadis. Id. The
5 "Legal Fees" section of the contingency fee agreement
6 provided:

7 Attorney will receive 33% of the net recovery
8 received from any and all defendants, to any or
9 all plaintiffs, in kind or cash, whether by way
10 of verdict, award, or settlement as a result of
11 this litigation engagement. The term "net
12 recovery" means (1) the total of all amounts
13 received by settlement, arbitration award or
14 judgment including any awards of attorneys fees,
15 (2) minus all costs and disbursements actually
16 paid by Clients.
17 Id. at 8.

18 Another section defined the "Attorney's Lien:"

19 Clients hereby grant Attorney an ATTORNEY'S LIEN
20 on any and all claims or causes of action that
21 are the subject of the representation. The Lien
22 will be for sums due and owing under this
23 agreement and will attach to any recovery
24 obtained, whether by arbitration award,
25 judgment, settlement, or otherwise.

26 Id. at 11-12.

27 a. *State Court Rabadis' Meeting with Khader*

28 On March 4, 2014, Lotta-Khader's attorney in the
Orange County Action—and Khader allegedly met with the
State Court Rabadis unbeknownst to Cross-Defendants.
Am. Decl. of Natasha Riggs ("Riggs Am. Decl.") ¶ 9, ECF
No. 124. At that meeting, Khader apparently induced

³ The Fourth Amended Complaint in the State Court Action
alleged that Khader and Intesar Alturk were members of an
enterprise designed to cheat the State Court Rabadis out of money
owed them as investors in life insurance policies. Lysaght Decl.
¶ 2, ECF No. 108.

1 the State Court Rabadis into dismissing the State Court
2 Action against him and Intesar Alturk in return for
3 future compensation from other life insurance policies.
4 Id. at ¶ 9. On March 6, 2014, Lotta sent Cross-
5 Defendants a letter advising that the State Court
6 Rabadis had settled the case "for no exchange of
7 payment of funds by either party" and enclosed a
8 proposed Request for Dismissal of the Complaint with
9 prejudice. Supp. Decl. of Brian Lysaght ("Lysaght
10 Supp. Decl.") ¶ 6, Ex. 3, ECF Nos. 108, 108-2. On
11 March 14, 2014, Allen Chau sent Cross-Defendants a
12 letter advising that he was the State Court Rabadis'
13 new attorney and enclosed substitution of attorney
14 forms. Riggs Decl. Ex. 9, at 7:17-20, ECF No. 121-8.

15 On April 15, 2014, Cross-Defendants filed a Notice
16 of Attorney's Lien in the State Court Action. Decl. of
17 Vivian I. Orlando ("Orlando Decl.") Ex. 1, ECF No. 84-
18 2. The Notice of Lien provided:

19 Please take notice that [Cross-Defendants have]
20 a contractual attorney's lien . . . on all
21 proceeds and compensation of any kind paid to
22 Plaintiffs and Cross-Defendants Josef Rabadi,
23 Reem Rabadi, and/or Sandra Rabadi ("Clients")
24 in this action, whether in settlement, after
25 trial, or otherwise . . . whether transmitted
26 directly or indirectly by payments to third
27 parties. Said charging lien includes
28 compensation by or on behalf of insurance
companies, brokers, life settlement companies
. . . .

25 Id.

26 The State Court Rabadis dismissed their claims
27 against Khader and Intesar Alturk in the State Court
28 Action on May 7, 2014, and the case was ultimately

1 dismissed for failure to prosecute on July 1, 2016.
2 Riggs Decl. Ex. 11, ECF No. 121-10. Per Cross-
3 Defendants, the State Court Rabadis invested in
4 Khader's improper policies, filed a lawsuit against
5 him, then rejoined the enterprise upon dismissing the
6 State Court Action against Khader and Intesar Alturk.
7 Lysaght Supp. Decl. ¶ 17.

8 The Insured died on May 18, 2015. Lewis Decl. Ex.
9 C. Bill Biltagi filed his claim for benefits to the
10 Policy on June 2, 2015, claim number 505200394159, as
11 did the other Cross-Claimants. Lewis Decl. Ex. D;
12 Decl. of Bill Biltagi ("Biltagi Decl.") ¶ 5, ECF No.
13 99-1. On June 29, 2015, Cross-Defendants advised
14 Transamerica that their Lien applied to up to 30% of
15 the Policy proceeds, triggering the instant
16 Interpleader Action in federal court. Orlando Decl.
17 Ex. 2.

18 **B. Procedural Background**

19 On September 18, 2015, Transamerica paid the
20 undisputed 70% of the Policy proceeds to
21 Cross-Claimants' client trust account. Compl. ¶ 20,
22 ECF No. 1. Because Transamerica was unable to
23 determine which parties were owed the remaining 30% of
24 the Policy death benefits ("Policy proceeds" or
25 "interpled funds"), totaling \$1,653,354.67, it filed a
26 Complaint in Interpleader on September 29, 2015 [1].
27 The interpled funds are on deposit with the Court as of
28 October 7, 2015 [8].

1 On January 11, 2016, Cross-Defendants filed their
2 Answer to the Complaint-In-Interpleader, asserting
3 various affirmative defenses [15]. On January 13,
4 2016, Cross-Claimants filed their Answer to the
5 Complaint-In-Interpleader [20] and Cross-Claim against
6 Cross-Defendants, (1) for declaratory judgment that
7 Cross-Defendants do not have an enforceable Lien
8 against either Cross-Claimants or the Policy, and
9 seeking a determination of their rights to the Policy
10 proceeds. Cross-Cl. ¶ 9, ECF No. 22.⁴

11 Cross-Claimants filed a Motion to Strike Cross-
12 Defendants' Affirmative Defenses in its Answer to the
13 *Complaint-in-Interpleader* on February 1, 2016 [28],
14 which the Court granted in part and denied in part
15 [51]. On June 8, 2016, Cross-Defendants filed an
16 Answer to the *Cross-Complaint*, raising affirmative
17 defenses for unclean hands, illegal STOLI policy, and
18 conspiracy [66] (emphasis added). Cross-Claimants did
19 not file a Motion to Strike this answer.

20 On December 21, 2016, the Court granted
21 Transamerica's Motion to Dismiss, discharging it of all
22 liability regarding the Policy and allowing the case to
23 proceed between Cross-Claimants and Cross-Defendants
24 [97].

25
26 ⁴ The second cross-claim was for Intentional Interference
27 with Contractual Relations, which was dismissed on May 17, 2016
28 in the Court's Order Granting Cross-Defendants' Motion to Strike
the second cross-claim pursuant to California Code of Civil
Procedure § 425.16 ("Anti-SLAPP" Motion) [59].

1 On February 28, 2017, Cross-Claimants separately
2 filed Motions for Summary Judgment as to the
3 Complaint-In-Interpleader and Cross-Claim for
4 Declaratory Relief [99, 100]. The Court received
5 Cross-Defendants' Oppositions to the Motions for
6 Summary Judgment on March 7, 2017 and March 8, 2017
7 [106, 109] and Cross-Claimants' joint Reply on March
8 13, 2017 [112, 138]. Cross-Defendants filed their own
9 Motion for Summary Judgment as to their affirmative
10 defenses on March 14, 2017 [118-1]. Cross-Claimants'
11 separate Oppositions followed on March 21, 2017 [129,
12 133], and Cross-Defendants filed their Reply on March
13 28, 2017 [141].

14 II. FINDINGS OF FACT

- 15 1. The Insured was insured under Transamerica Life
16 Insurance Policy number 60160747. Cross-Cl. Bill
17 Biltagi's Stmt. of Uncontroverted Facts ("Biltagi's
18 SUF") ¶ 1, ECF No. 99-5; Cross-Cls.' Yousef Rabadi
19 & Intesar Alturk's Stmt. of Uncontroverted Facts
20 ("Rabadi's SUF") ¶ 1, ECF No. 100-1; see Lewis
21 Decl. ¶ 4, Ex. A.
- 22 2. The Rabadi State Court Action was filed on April 7,
23 2011. Cross-Defs.' Stmt of Uncontroverted Facts
24 ("Cross-Defs.' SUF") ¶ 24, ECF No. 120; Biltagi's
25 RJN Ex. 3, at 1667.
- 26 3. On June 2, 2015, Bill Biltagi filed his claim for
27 benefits under the Policy, Claim number
28 505200394159. Biltagi's SUF ¶ 8; Lewis Decl. Ex.

1 D, at 57.

2 4. On May 5, 2013, the State Court Rabadis signed a
3 Retainer agreement with Cross-Defendants.

4 Biltagi's SUF ¶ 11; Rabadi's SUF ¶ 4; Cross-Defs.'
5 SUF ¶ 65; Boniadi Decl. Ex. 1.

6 5. On October 1, 2013, change in beneficiary forms
7 submitted to Transamerica changed the Policy owners
8 and beneficiaries as follows: Nabil Yousef Rabadi
9 (50%); Bill Biltagi (50%). Cross-Defs.' SUF ¶ 66;
10 Tauler Decl. Ex. A, at 411-414.

11 6. Cross-Defendants filed a Notice of Attorney's Lien
12 in Los Angeles Superior Court Case number BC459192,
13 Sandra Rabadi et al. v. Noura Shoubash, et al. on
14 April 15, 2014. Biltagi's SUF ¶ 15; Orlando Decl.
15 Ex. 1.

16 7. Around May 2014, Cross-Defendants served
17 Transamerica's counsel with a copy of its Notice of
18 Attorney's Lien. Biltagi's SUF ¶ 17; Rabadi's SUF
19 ¶ 6; Orlando Decl. ¶ 2, Ex. 1.

20 8. Transamerica, the corporation, received a copy of
21 the Notice of Attorney's Lien on or around May 13,
22 2014. Biltagi's SUF ¶ 18; Rabadi's SUF ¶ 6; Lewis
23 Decl. ¶ 8, Ex. F.

24 9. The Insured died on May 18, 2015, and Cross-
25 Claimants, the Beneficiaries, made claims to the
26 full Policy proceeds. Biltagi's SUF ¶¶ 19-20;
27 Rabadi's SUF ¶¶ 7-8; Lewis Decl. Exs. C-D.

28 10. The Insured and Yousef Rabadi have never been

1 Cross-Defendants' clients. Biltagi's SUF ¶ 26; see
2 Rabadi's SUF ¶ 11; Rabadi Decl. ¶ 6.

3 III. DISCUSSION

4 A. Legal Standard

5 1. Summary Judgment Standard

6 Federal Rule of Civil Procedure 56 states that a
7 "court shall grant summary judgment" when the movant
8 "shows that there is no genuine dispute as to any
9 material fact and the movant is entitled to judgment as
10 a matter of law." Fed. R. Civ. P. 56(a). A fact is
11 "material" for purposes of summary judgment if it might
12 affect the outcome of the suit, and a "genuine issue"
13 exists if the evidence is such that a reasonable fact-
14 finder could return a verdict for the non-moving party.
15 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248
16 (1986). The evidence, and any inferences based on
17 underlying facts, must be viewed in the light most
18 favorable to the opposing party. Twentieth Century-Fox
19 Film Corp. v. MCA, Inc., 715 F.2d 1327, 1329 (9th Cir.
20 1983). In ruling on a motion for summary judgment, the
21 court's function is not to weigh the evidence, but only
22 to determine if a genuine issue of material fact
23 exists. Anderson, 477 U.S. at 255.

24 Under Rule 56, the party moving for summary
25 judgment has the initial burden to show "no genuine
26 dispute as to any material fact." Fed. R. Civ. P.
27 56(a); see Nissan Fire & Marine Ins. Co. v. Fritz Cos.,
28 210 F.3d 1099, 1102-03 (9th Cir. 2000). The burden

1 then shifts to the non-moving party to produce
2 admissible evidence showing a triable issue of fact.
3 Nissan Fire & Marine Ins., 210 F.3d at 1102-03; see
4 Fed. R. Civ. P. 56(a). Summary judgment "is
5 appropriate when the plaintiff fails to make a showing
6 sufficient to establish the existence of an element
7 essential to [their] case, and on which [they] will
8 bear the burden of proof at trial." Cleveland v.
9 Policy Mgmt. Sys. Corp., 526 U.S. 795, 805-06 (1999);
10 Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).
11 The standard "provides that the mere existence of *some*
12 alleged factual dispute between the parties will not
13 defeat an otherwise properly supported motion for
14 summary judgment; the requirement is that there be no
15 *genuine* issues of *material* fact." Anderson, 477 U.S.
16 at 247-48.

17 **B. Analysis**

18 1. Bill Biltagi's Request for Judicial Notice is
19 **GRANTED**

20 A court "may judicially notice a fact that is not
21 subject to reasonable dispute because it: (1) is
22 generally known . . .; or (2) can be accurately and
23 readily determined from sources whose accuracy cannot
24 reasonably be questioned." Fed. R. Evid. 201(b). A
25 court "must" take judicial notice "if a party requests
26 it and the court is supplied with the necessary
27 information." Fed. R. Evid. 201(c)(2).

28 Bill Biltagi asks the Court to take judicial notice

1 of the following ("Biltagi's RJN"): (1) Lewis and
2 Orlando Declarations attached to Transamerica's Motion
3 to Dismiss [84-1, 84-2]; (2) Caption pages of the
4 Complaint and First Amended Complaint and court docket
5 portion of the State Court Action, Sandra Rabadi et al.
6 v. Noura Shoubash, et al., Los Angeles Superior Court
7 case number BC459192. Biltagi's RJN ¶¶ 1-3, Exs. 1-3.

8 The Court may take judicial notice of previous
9 filings in the same litigation between the same
10 parties, like the Lewis and Orlando Declarations. See
11 Shuttlesworth v. City of Birmingham, 394 U.S. 147, 157
12 (1969). A court may also "take judicial notice of the
13 existence of another court's opinion or of the filing
14 of pleadings in related proceedings; the Court may not,
15 however, accept as true the facts found or alleged in
16 such documents." Peel v. BrooksAmerica Mortg. Corp.,
17 788 F. Supp. 2d 1149, 1158 (C.D. Cal. 2011) (emphasis
18 added)(citations omitted). Because the exhibits
19 contain only the caption page and not the allegations
20 of the complaint, the Court can take judicial notice of
21 the State Court Action documents. Thus, the Court
22 **GRANTS** Biltagi's RJN in its entirety [99-4].

23 2. Yousef Rabadi & Intesar Alturk's Request for
24 Judicial Notice is **GRANTED**

25 Cross-Claimants Yousef Rabadi and Intesar Alturk
26 seek judicial notice of the following ("Rabadi's RJN"):
27 (1) Transamerica's Complaint-In-Interpleader filed on
28 September 29, 2015 [1]; (2) the Court's Order Directing

1 Deposit of Interpleader Funds on October 7, 2015 [8];
2 (3) Cross-Defendants' Answer to the Complaint-in-
3 Interpleader, filed on January 11, 2016 [15]; (4)
4 Cross-Claimants' Answer to the Complaint-in-
5 Interpleader, filed on January 13, 2016 [20]; (5) Lewis
6 Declaration attached to Transamerica's Motion to
7 Dismiss, filed on October 18, 2016 [84-1]. Rabadi's
8 Req. for Jud. Ntc. ("Rabadi's RJN") ¶¶ 1-5, Exs. 1-5,
9 ECF No. 100-2.

10 Because "it is well established that a court can
11 take judicial notice of its own files and records under
12 Rule 201," Gerritsen v. Warner Bros. Entm't Inc., 112
13 F. Supp. 3d 1011, 1034 (C.D. Cal. 2015), and because
14 the Court already judicially noticed the Lewis
15 Declaration in Biltagi's RJN, the Court **GRANTS** Rabadi's
16 RJN in its entirety [100-2].

17 3. Cross-Defendants' First Request for Judicial
18 Notice is DENIED

19 Cross-Defendants ask the Court to take judicial
20 notice ("Cross-Defendants' First RJN") of the minute
21 order in American General Life Insurance Company v.
22 Munshi, et al., 2:08-cv-6439-DDP(RZx), ECF No. 185.
23 Cross-Defs.' Req. for Jud. Ntc. ("Cross-Defs.' RJN") ¶
24 1, Ex. 1, ECF No. 131.

25 The Court can consider Munshi as persuasive
26 authority, but "to the extent [Cross-Defendants] seek
27 to cite that case in support of their arguments,
28 judicial notice is also unnecessary: the Court can, and

1 will consider the reasoning of that ruling for whatever
2 persuasive value it may have." Diversified Capital
3 Inv., Inc. v. Sprint Commc'ns, Inc., No.
4 15-cv-03796-HSG, 2016 WL 2988864, at *5 (N.D. Cal. May
5 24, 2016). The Court thus **DENIES** Cross-Defendants'
6 First RJN in its entirety [119].

7 4. Cross-Defendants' Second Request for Judicial
8 Notice is GRANTED in Part and DENIED in Part

9 Cross-Defendants also seek judicial notice of the
10 following: 1) Cross-Claimants' Rule 26 Initial
11 Disclosures from this case; (2) the California
12 Department of Insurance Amended Accusation against
13 Khader and Alturk, dated November 17, 2016; and (3) the
14 Verdict and Special Findings in United States v.
15 Carpenter, No. 3:13-CR-226-RNC (D. Conn. June 6, 2016).
16 Cross-Defs.' Sec. Req. for Judicial Notice ("Cross-
17 Defs.' Sec. RJN") ¶¶ 1-3, ECF No. 142.

18 "Discovery items such as requests for discovery and
19 responses to requests for discovery are not proper
20 subjects for judicial notice because they are not
21 'self-authenticating' and thus cannot be verified."
22 United Safeguard Distributors Ass'n v. Safeguard Bus.
23 Sys., Inc., 145 F. Supp. 3d 932, 942 (C.D. Cal. 2015).
24 Because of this, and because it is unclear for what
25 purpose the initial disclosures are proffered, the
26 Court thus does not take judicial notice of Cross-
27 Claimants' Rule 26 Initial Disclosures.

28 A court may "take judicial notice of the *existence*

1 of another court's opinion or of the filing of
2 pleadings in related proceedings; the Court may not,
3 however, accept as true the facts found or alleged in
4 such documents." Peel, 788 F. Supp. 2d at 1158
5 (emphasis added)(citations omitted). The Court takes
6 judicial notice of the Department of Insurance
7 Accusation for the *existence* of its filing, but does
8 not rely on the statements therein in its ruling on the
9 instant Motions.

10 The Court can consider Carpenter as persuasive
11 authority, but judicial notice is unnecessary as Cross-
12 Defendants have already cited to Carpenter in their
13 Reply. Cross-Defs.' Reply 12:17-18. The Court will
14 consider the reasoning for whatever persuasive value it
15 may have. Diversified Capital, 2016 WL 2988864, at *5.
16 5.

17 Accordingly, the Court **GRANTS** Cross-Defendants'
18 Second RJN as to the Department of Insurance
19 Accusation, but **DENIES** Cross-Defendants' Second RJN as
20 to the Carpenter case and Cross-Claimants' Rule 26
21 Initial Disclosures.

22 5. The Parties' Evidentiary Objections

23 a. *Bill Biltagi's Objection to Roth*
24 *Declaration*

25 Bill Biltagi objects to the Roth Declaration [126]
26 in its entirety. Steven Roth was a disclosed, non-
27 testifying expert in Hreish v. Khader, the Orange
28 County Action against Khader and Intesar Alturk. Decl.

1 of Steven Roth ("Roth Decl.") ¶ 2, ECF No. 126. Cross-
2 Defendants proffer his declaration to show Khader's
3 repeated involvement in STOLI policies. See generally
4 Roth Decl. Because the Court does not consider any of
5 the Roth Declaration in reaching its conclusions on
6 Cross-Defendants' Motion for Summary Judgment,⁵ it
7 **SUSTAINS** as **MOOT** this objection [130].

8 b. *Bill Biltagi's Objection to Riggs*
9 *Declaration*

10 Bill Biltagi objects to the Riggs Declaration in
11 its entirety and the attached exhibits on the grounds
12 of irrelevance, inadequate evidentiary foundation,
13 hearsay, and violation of Federal Rule of Civil
14 Procedure 56(c)(4), among other things. Biltagi's
15 Objs. ¶¶ 10-24, ECF No. 130. The Riggs Declaration
16 [121] includes exhibits like the Third Amended
17 Complaint in the Orange County Action, Cross-
18 Defendants' requests for production and interrogatories
19 in this action, a Status Conference Statement in the
20 State Court Action, depositions in the Orange County
21 Action, and State Bar searches for Lotta. See Riggs
22 Decl. Exs. 1-16.

23 The Court **OVERRULES** Cross-Claimants' Objections to
24 _____

25 ⁵ The Roth Declaration and attached exhibits largely concern
26 alleged life insurance and life settlement investment schemes led
27 by Khader, Intesar Alturk, and Bill Biltagi that victimized
28 Plaintiffs in the Orange County Action. Roth Decl. ¶ 4. Because
the injured parties and alleged wrongdoing do not directly
resolve key claims and affirmative defenses in this Action, the
Court does not consider the Roth Declaration in its analysis.

1 Paragraph 9 because they are boilerplate and "devoid of
2 any specific argument or analysis as to why any
3 particular exhibit or assertion in a declaration should
4 be excluded," United States v. HVI Cat Canyon, Inc., -
5 --F. Supp. 3d---, 2016 WL 7011348, at *5 (C.D. Cal.
6 Sept. 30, 2016). The Court **SUSTAINS** Objections to
7 Paragraphs 10-21 and Objections to Exhibits 1-16 as
8 **MOOT**, as the Court has not relied on the objected-to
9 evidence [130].⁶

10 c. *Cross-Claimants' Objections to Third Riggs*
11 *Declaration & Exhibits*

12 Cross-Claimants object to the Third Riggs
13 Declaration [143] in its entirety on the following
14 grounds: irrelevant, lacks foundation, conclusory, and
15 that it violates Federal Rule of Civil Procedure
16 56(c)(4). Biltagi's Objs. to Third Riggs Decl. ¶ 1,
17 ECF No. 146. They also object to Exhibits 17-23
18 attached to the Third Riggs Declaration.⁷

19 _____
20 ⁶ Upon review, the discovery requests and responses in this
21 case do not reveal any new information or documentation beyond
22 what the parties already argue in their moving papers. Some of
23 the exhibits are also largely repetitive of other exhibits and
24 declarations the Court has already considered, that have been
25 judicially noticed, or are not objected to. Finally, some of the
26 exhibits—like Allen Chau's State Bar of California website
27 profile, allegations that Cross-Claimants' counsel now represents
28 the State Court Rabadis, or allegations relevant to the parties
in the separate Orange County Action—do not clearly advance
Cross-Defendants' affirmative defenses or the Lien's
applicability, and thus were not considered in the Court's
reasoning.

⁷ These exhibits include Cross-Claimants' Rule 26
disclosures, the California Insurance Department's November 17,

1 The Court **SUSTAINS the** Objections to Exhibits 17-
2 18 and 20-21 as **MOOT** [146] because the Court did not
3 consider the substance of these exhibits in its ruling.
4 The Court **SUSTAINS** Objections to Exhibits 19, 22-23—it
5 is unclear why the Fifth Circuit and District of
6 Connecticut opinions are relevant to the instant facts.
7 To the extent Cross-Defendants wished to analogize
8 these cases to the facts at hand, Cross-Defendants were
9 welcome to cite and analyze them in their moving
10 papers. The Court **OVERRULES** rote Objections to the
11 entirety of the Riggs Third Declaration. Doe v.
12 Starbucks, Inc., No. SACV 08-0582 AG (CWx), 2009 WL
13 5183773, at *1 (C.D. Cal. Dec. 18, 2009)("[I]n motions
14 for summary judgment with numerous objections, it is
15 often unnecessary and impractical for a court to
16 methodically scrutinize each objection and give a full
17 analysis of each argument raised.")

18 d. *Cross-Defendants' Objections to Biltagi*
19 *Declaration*

20 Cross-Defendants object to specific paragraphs of
21 the Biltagi Declaration on the following grounds: lack
22

23 2016 formal accusation against Khader; United States v. Bazemore,
24 No. 15-10805 (5th Cir. Oct. 5, 2016); the Department of Insurance
25 Commissioner's Bulletin No. SA-2011-02, dated September 25, 2011;
26 the California Department of Insurance Press Release, June 22,
27 2012; an escrow agreement between Intesar Alturk and Josef
28 Rabadi, one of the State Court Rabadis, listing Intesar Alturk's
address as the same Tustin, California address where the State
Court Rabadis live; and the verdict and special findings in
United States v. Carpenter, No. 3:13-CR-226-RN, a District of
Connecticut case dated June 6, 2016.

1 of foundation, improper legal conclusion and improper
2 lay opinion, lack of foundation, lack of personal
3 knowledge, inadmissible hearsay. See Cross-Defs.'
4 Objs. to Biltagi Decl. 2:9-7:20, ECF No. 151.

5 Because many of Defendant's objections are
6 boilerplate and "devoid of any specific argument or
7 analysis as to why any particular exhibit or assertion
8 in a declaration should be excluded," United States v.
9 HVI Cat Canyon, Inc., ---F. Supp. 3d---, 2016 WL
10 7011348, at *5 (C.D. Cal. Sept. 30, 2016), the Court
11 **OVERRULES** Cross-Defendants' Objections to Paragraphs 2,
12 3, 5, 6, 11, 13, and 14.

13 The Court **SUSTAINS** the Objection to Paragraph 4, as
14 Bill Biltagi's statement that the Policy was
15 incontestable could be an improper layperson opinion
16 regarding the Policy's validity under relevant
17 California Insurance law. The Court **SUSTAINS** as **MOOT**
18 the Objection to Paragraph 12, as the Court did not
19 rely on this objected-to evidence.

20 6. Cross-Defendants' Motion for Summary Judgment
21 is DENIED

22 The Court now turns to the merits of Cross-
23 Defendants' Motion. The case boils down to this issue:
24 whether a law firm may assert its attorney's lien—from
25 a contingency fee agreement with clients in a state
26 court action—against life insurance policy proceeds to
27 which its clients are not beneficiaries, whether
28 through the lien's express terms or through affirmative

1 defenses allegedly linking the state-court clients to
2 the policy beneficiaries.

3 Cross-Defendants move for summary judgment as to
4 the affirmative defenses in their Answer to the Cross-
5 Complaint [66]: illegality, unclean hands, and
6 conspiracy. Cross-Defs.' Mot. 2:22-24. The Court
7 cannot grant summary judgment as to these defenses.

8 a. *Policy Illegality*

9 Cross-Defendants ask that the Court determine the
10 Policy is illegal for two reasons. First, the Policy
11 violated the California Life Settlement Act ("CLSA")
12 because the April 11, 2013 ownership transfer from the
13 Insured to Nabil Rabadi was made for a price less than
14 the death benefit, but was not conducted by a licensed
15 life settlement broker. *Id.* at 2:24-3:3. Second, it
16 was a STOLI policy, illegal in California since July 1,
17 2010. Because the Policy is illegal, Cross-Claimants
18 may not recover as beneficiaries. Cross-Defs.' Reply
19 7:5-6.

20 Bill Biltagi counters that the STOLI Policy
21 argument is moot, as (1) Transamerica already paid out
22 the Policy proceeds and the two-year contestability
23 period-to challenge or rescind the Policy-lapsed; (2) a
24 life insurance policy is freely assignable as long as
25 the owner has an insurable interest when the Policy was
26 issued; and (3) Cross-Defendants lack standing to
27 attack the Policy's legality because they are not the
28 insurer, Transamerica. Biltagi's Opp'n 7:21-25-8:19.

1 The Court first addresses Cross-Claimants'
2 counterarguments. Cross-Claimants' point—that Cross-
3 Defendants cannot challenge the Policy's validity, as
4 the contestability window lapsed—is only facially true.
5 Insurance policies in California are incontestable
6 after they have been in issuance for two years, during
7 the lifetime of the insured. Cal. Ins. Code § 10113.5.
8 Here, the policy was issued in 2011 and the Insured
9 died in 2015. The contestability period apparently
10 lapsed in 2013. But the Court recognizes Cross-
11 Defendants' allegation that Khader disguised STOLI
12 policies through straw buyers and fraudulent
13 applications for at least two years to avoid the
14 contestability window. Cross-Defs.' Ans. ¶ 15;
15 see also Hartford Life & Annuity Ins. Co. v. Doris
16 Barnes Family 2008 Irrevocable Trust, No. CV 10-7560
17 PSG (DTBx), 2011 WL 759554, at *4 (C.D. Cal. Feb. 22,
18 2011)("As the Complaint alleges that the Policy was
19 procured through [Defendants'] plan . . . to transfer
20 the beneficial interest in the Policy to third-parties
21 without insurable interests, Plaintiff's claims are not
22 barred by the Policy's incontestability
23 clause.")(internal quotation marks omitted).

24 Cross-Claimants also argue that the Policy was
25 freely assignable due to Victoria Rabadi, the
26 Insured's, insurable interest from the outset.
27 Although an individual with an insurable interest may
28 lawfully "have the policy made payable to whomsoever he

1 or she pleases, regardless of whether the beneficiary
2 designated has an insurable interest," Cal. Ins. Code.
3 § 10110.1(b), the Insured and Cross-Claimants'
4 insurable interest here is suspect. Lincoln Nat'l Life
5 Ins. Co. v. Calhoun, 596 F. Supp. 2d 882, 889 (D.N.J.
6 2009)("Insureds begin to run afoul of the insurable
7 interest requirement, however, when they intend at the
8 time of the policy's issuance, to profit by
9 transferring the policy to a stranger with no insurable
10 interest at the expiration of the contestability
11 period.")

12 i. *Illegal STOLI Policy*

13 The next issue is whether there are no genuine
14 disputes of material fact as to whether this was a
15 STOLI policy. A STOLI policy is a life insurance
16 policy made for the benefit of a third-party investor
17 who "at the time of policy origination, has no
18 insurable interest, under the laws of this state, in
19 the life of the insured." Cal. Ins. Code. §
20 10113.1(w). And "[a]ny device, scheme, or artifice
21 designed to give the appearance of an insurable
22 interest where there is no legitimate insurable
23 interest violates the insurable interest laws." Id. §
24 10110.1(e). Further, STOLI policies are listed under
25 "fraudulent life settlement act[s]" in California
26 Insurance Code section 10113.1(g)(A).

27 Per Cross-Defendants, Khader and Cross-Claimants
28 associated in a widespread STOLI scheme. Cross-Defs.'

1 Ans. ¶ 12. Khader recruited the Insured, an older
2 woman of modest means, as a "straw buyer" in his STOLI
3 policy scheme. Cross-Defs.' Mot. 19:5. He
4 misrepresented her net worth in order to issue a high-
5 value life insurance policy. Id. at 22:10-13. Third
6 parties like Cross-Claimants, who allegedly had no
7 insurable interest in the Insured's life,⁸ would then
8 finance the Policy. Cross-Defs.' Ans. ¶ 15. Khader
9 would then disguise the STOLI policy for at least two-
10 years, the time window in which Transamerica could have
11 contested the Policy as the insurer. Id. For
12 instance, Khader did not promptly submit a
13 questionnaire that would alert Transamerica as to
14 whether the Policy was a STOLI policy. Cross-Defs.'
15 Mot. 20:18-20.

16 For support, Cross-Defendants cite a handful of
17 out-of-circuit cases involving garden-variety STOLI
18 policies factually similar to the one at hand. See,
19 e.g., Calhoun, 596 F. Supp. 2d at 889-90 (broker
20 obtained third-party financing for a life insurance
21 policy and immediately assigned the policy to an
22 individual without an insurable interest after the two-
23 year contestability period); United States v. Bazemore,

24

25

26 ⁸ Cross-Claimants each apparently lack an insurable interest
27 in Victoria Rabadi's life. Bill Biltagi is apparently Khader's
28 "trusted associate" and co-defendant in the Orange County Action.
Cross-Defs.' Ans. ¶ 17. Intesar Alturk is Khader's mother, and
Yousef Rabadi, "upon information and belief," has no insurable
interest in the proceeds. Id.

1 No. 15-10805, at *2 (5th Cir. Oct. 5, 2016)(defendant
2 secured policies for senior citizens of modest means by
3 grossly inflating the applicants' net worth and falsely
4 stating that the insured would not transfer the policy
5 to third parties); United States v. Bindow, 804 F.3d
6 558, 566 (2d Cir. 2015)(STOLI policies involved elderly
7 "straw buyers" with exaggerated net worth, but case
8 affirmed insurance brokers' mail and wire fraud
9 convictions and only discussed STOLI policies for the
10 "cognizable harm" element of wire fraud conviction).
11 But even if these cases involve STOLI schemes that are
12 at least factually similar, the cases are
13 distinguishable because they do not involve the unique
14 interplay of interpled funds, an attorney's Lien, and
15 alleged STOLI schemes present here, nor do they advise
16 the Court why Cross-Defendants' Lien applies.

17 Cross-Defendants' argument—that there are no
18 genuine disputes regarding the STOLI policy issue—is
19 impeded by this remaining dispute: *how* the Lien applies
20 to the interpled funds. True, the Court did previously
21 acknowledge that Cross-Defendants' affirmative defenses
22 would "directly impact . . . the proper recipient of
23 the Policy proceeds," and if successful, would "reduce
24 or bar Cross-Claimants' claim to the Policy proceeds."
25 Order re Mot. to Strike 5:8-13, ECF No. 51. But even
26 if the affirmative defenses showed that Cross-Claimants
27 were improper beneficiaries, this would not guarantee
28 that Cross-Defendants have a stake in the interpled

1 funds. To succeed on that assumption, Cross-Defendants
2 must clearly show how the Lien terms apply to the
3 interpled funds, which the Court takes up in infra Part
4 III.B.7.b.

5 The Court is similarly puzzled as to how the
6 Policy's alleged illegality permits Cross-Defendants'
7 seemingly unrelated Lien from the State Court Action to
8 attach to the interpled funds. Cross-Defendants claim
9 the Policy is illegal, yet in the same breath demand
10 their share of proceeds from this apparently illegal
11 Policy. It would appear that Cross-Defendants raise
12 the illegality affirmative defense to ferret out the
13 improper beneficiaries. Even if Cross-Defendants are
14 an interested party in law or equity who may dispute
15 the Policy's validity, Cross-Defendants provide the
16 Court little guidance as to why their Lien should apply
17 once the Policy's illegality is established. See 3
18 George Couch et al., Couch on Insurance 3d § 41:6 (rev.
19 ed. 2016); but see Couch on Insurance 3d at § 41:5
20 ("The majority of courts . . . [state] that only the
21 insurer can raise the objection of want of an insurable
22 interest.")

23 ii. *CLSA Violations*

24 Cross-Defendants argue that the April 11, 2013
25 ownership transfer of the Policy—from the Insured to
26 Nabil Rabadi—violated the CLSA, California Insurance
27 Code § 10113.1 et seq, and was therefore void as a
28 matter of law. Cross-Defs.' Reply 10:14-16. As Cross-

1 Defendants state, "transfers of ownership for a price
2 less than the death benefit [are] illegal if not
3 conducted by a licensed Life Settlement broker." Id.
4 at 10:25-26. California Insurance Code section
5 10113.2(b)(1), which Cross-Defendants cite, says that
6 "no person may enter into, broker, or solicit life
7 settlements . . . unless that person has been licensed
8 by the commissioner." Here, Nabil Rabadi was not a
9 licensed broker and it was therefore improper for him
10 to receive the ownership transfer without providing the
11 Insured consideration. This unlawful transfer, Cross-
12 Defendants argue, tainted the subsequent ownership
13 transfers, beneficiary designations, and ultimately,
14 the final iteration of the beneficiary interests.

15 While the CLSA does not have a code section
16 precisely stating that a licensed Life Settlement
17 broker must oversee a transfer for a price less than
18 the death benefit, Cross-Defendants read this illegal
19 transfer into section 10113.2(b)(1), as an act of
20 "broker[ing]" or "solicit[ing]" that only a licensed
21 broker can perform. Cross-Defendants state that
22 Cross-Claimants never produced documentary evidence
23 that the Insured received compensation for the
24 ownership change and Khader, not Nabil Rabadi, was
25 always the insurance agent on the Term Policy, and
26 Increased Policy and Universal Policy. Cross-Defs.'
27 SUF 19:6-9.

28 Setting aside the stark lack of authority or

1 explanation as to this alleged CLSA violation,
2 Cross-Defendants also do not make it clear how and why
3 Nabil Rabadi—and not Khader, the broker who apparently
4 orchestrated much of the Policy paperwork—initiated the
5 ownership transfer. The ownership change forms appear
6 only to be initiated and signed by Nabil Rabadi and the
7 Insured. But the facts presented are too sparse to
8 confidently say there are no genuine disputes as to
9 whether the Policy violated the CLSA. Even were the
10 Court to find that the transfer required a broker and
11 was thus invalid, Cross-Defendants still have not have
12 linked their Lien to the interpled funds.

13 b. *Conspiracy to Commit Fraudulent Life*
14 *Settlement Acts*

15 Per Cross-Defendants, the undisputed facts
16 establish that Cross-Claimants were involved in
17 Khader's conspiracy to issue fraudulent and illegal
18 STOLI policies, including the Policy at issue. See
19 Cross-Defs.' Mot. 21:5-7.

20 Section 10113.1(g) of the California Insurance Code
21 defines a "fraudulent life settlement act" as
22 "[p]resenting, causing to be presented, or prepared . .
23 . false material information [regarding] the following
24 . . . [a]n application for the issuance of a life
25 settlement contract or insurance policy . . . payments
26 and changes in ownership or beneficiary made in
27 accordance with the terms of a life settlement contract
28 or insurance policy." Other fraudulent life settlement

1 acts include "entering into stranger-originated life
2 insurance (STOLI)." Id. § 10113.1(g)(1)(B).

3 Cross-Claimants committed fraudulent life
4 settlement acts, Cross-Defendants argue, by presenting
5 false information about the Insured's net worth on her
6 life insurance application. Cross-Defs.' Mot. 22:10-
7 15. Moreover, Cross-Claimants "knew" that they were
8 conspiring to present materially false information
9 regarding Policy payments and ownership/beneficiary
10 changes through the following facts: (1) Yousef Rabadi
11 wrote that he was the Insured's son and then her
12 nephew; (2) Khader's assistant filled out premium
13 payment checks on Yousef Rabadi's behalf; and (3)
14 Intesar Alturk pretended she was the Insured's
15 "business associate," even though she was Khader's
16 mother. Id. at 22:17-23:5.

17 Under California law, the elements of civil
18 conspiracy are "the formation and operation of the
19 conspiracy and damage resulting to the plaintiff from
20 an act or acts done in furtherance of a common design."
21 Gonzales v. Lloyds TSB Bank, PLC, 532 F. Supp. 2d 1200,
22 1208 (C.D. Cal. 2006)(citation omitted). Moreover,
23 aiding and abetting takes place if the defendant "knows
24 the other's conduct constitutes a breach of duty and
25 gives substantial assistance or encouragement to the
26 other to so act or gives substantial assistance to the
27 other in accomplishing a tortious result." Am. Gen.
28 Life Ins. Co. v. Khachatourians, No. CV 08-06408 DDP

1 (Rzx), 2012 WL 5267683, at *4 (C.D. Cal. Oct. 24,
2 2012).

3 In Khachatourians, the court carried over its fraud
4 analysis to find that there was a triable issue of
5 material fact as to the conspiracy charge. Id. at *3.
6 More specifically, the checks for the initial policy
7 premium payments came from one defendant's bank
8 accounts specially created to fund the policy payments.
9 Id. And the checks implicitly misrepresented that they
10 complied with the insurance company's rules that the
11 policy could only be funded by the insured, its
12 employer, or its family. Id. In its analysis granting
13 summary judgment as to the fraud issue, the Court
14 reasoned that defendant falsely and implicitly
15 represented that the funds were not coming from a third
16 party. Id. To a certain extent, Cross-Defendants'
17 facts are similar to those in Khachatourians, and the
18 Court could agree that Cross-Claimants conspired to
19 make premium payments from improper individuals and
20 designate individuals without an "insurable interest"
21 as owners and beneficiaries.

22 But even if there are facts supporting the overall
23 conspiracy, Cross-Defendants run into the same problem
24 as in their "STOLI policy" argument: bridging the gap
25 as to why—if Khader and Cross-Claimants engaged in a
26 conspiracy—Cross-Defendants' Lien applies to the
27 interpled funds and precisely how they have a stake in
28 the purportedly ill-gotten Policy proceeds. From what

1 the Court can glean in Cross-Defendants' moving papers,
2 Khader and Lotta's forced discharge of Cross-
3 Defendants—after an improper *ex parte* meeting with the
4 State Court Rabadis—"welcomed back" the State Court
5 Rabadis into the Khader conspiracy. Cross-Defs.' Mot.
6 24:10-15. Apparently, the Lien is connected to the
7 Policy proceeds through the "backdoor effort to avoid
8 [Cross-Defendants'] contingency fee," which in turn
9 facilitated the Khader conspiracy. *Id.* at 24:17-21.
10 Cross-Defendants theory is that Cross-Claimants and the
11 State Court Rabadis are all part of the same enterprise
12 or conspiracy and colluded to prevent Cross-Defendants
13 from its money owed under the State Court Action Lien.

14 But Cross-Defendants present no concrete evidence
15 substantiating this tenuous connection. Cross-
16 Defendants and the State Court Rabadis were never
17 beneficiaries to the Policy, nor are they parties to
18 this interpleader action. Biltagi Decl. ¶¶ 2, 5.
19 Cross-Claimants were never Cross-Defendants' clients in
20 the State Court Action with the Lien. Rabadi Decl. ¶
21 9, Ex. 1 (email from Cross-Defendants to Yousef Rabadi
22 advising that they are not his attorneys). Cross-
23 Defendants evince no agreement between Cross-Claimants
24 and the State Court Rabadis allowing the State Court
25 Rabadis to share in the Policy proceeds, let alone any
26 evidence that the State Court Rabadis were ever paid
27 the interpled funds. Biltagi Decl. ¶ 9. Moreover,
28 Cross-Defendants have no evidence that Cross-Claimants

1 and a third-party, like Lotta or Khader, conspired to
2 prevent them from recovering under their Lien. Id. at
3 ¶ 10. Even if the circumstantial evidence suggests the
4 State Court Rabadis are part of the conspiracy, Cross-
5 Defendants still do not show how the interpled funds
6 are interchangeable with the potential Lien funds.

7 In sum, Cross-Defendants cannot argue that there
8 are no genuine disputes as to validity of their
9 illegality and conspiracy claims, as—even assuming the
10 Policy is invalid and Cross-Claimants are embroiled in
11 a conspiracy, thus barring or reducing Cross-Claimants'
12 claims to the Policy—a dispute remains whether Cross-
13 Defendants have standing to raise these affirmative
14 defenses as a third-party, whether through their Lien
15 or otherwise. Thus, the Court **DENIES** Cross-Defendants'
16 Motion [118-1].

17 7. The Court **GRANTS** Cross-Claimants' Motions for
18 Summary Judgment [99, 100]

19 The Court now considers Cross-Claimants' Motions
20 for Summary Judgment.⁹

21 a. *The Lien's Validity Has Not Been*
22 *Established*

23 Cross-Claimants argue that Cross-Defendants cannot
24 assert a claim against the interpled funds because

25
26 ⁹ Cross-Claimants raise nearly parallel arguments against
27 the validity and enforceability of Cross-Defendants' Lien in
28 their separate Motions for Summary Judgment [99, 100]. As such,
the Court treats them interchangeably for the purposes of this
analysis.

1 Cross-Defendants did not bring an "independent action"
2 against the State Court Rabadis to establish the Lien's
3 value and enforceability from the outset. Rabadi's
4 Mot. 3:17-21; Biltagi's Mot. 3:10-12. Cross-Defendants
5 counter that the interpleader action Transamerica filed
6 constitutes an "independent action" to enforce the
7 Lien. Cross-Defs.' Opp'n 14:1-2. Cross-Defendants'
8 Lien is problematic for two reasons: (1) the
9 interpleader action in this case does not constitute an
10 independent action, and (2) the contingency set forth
11 in the Lien did not take place, thus never triggering
12 the Lien.

13 An attorney's lien is an equitable right to secure
14 attorneys' fees owed from a judgment or recovery in the
15 lawsuit. 7 Corpus Juris Secundum, Attorney & Client §
16 523 (rev. ed. 2017). "An attorney's lien is created []
17 by an attorney fee contract with an express provision
18 regarding the lien" Mojtahedi v. Vargas, 228
19 Cal. App. 4th 974, 315-16 (Ct. App. 2014). The lien
20 survives even after the attorney is discharged, and the
21 attorney is then entitled to the reasonable value of
22 his services prior to discharge. See Weiss v. Marcus,
23 51 Cal. App. 3d 590, 598 (Ct. App. 1975). To enforce
24 the lien, the attorney must adjudicate the lien's value
25 and validity in an "independent action" after a
26 judgment or settlement is rendered. Mojtahedi, 228
27 Cal. App. 4th at 316.

28 Shortly after they were discharged, Cross-

1 Defendants filed a Notice of Attorney's Lien on April
2 15, 2014, which provides:

3 [Cross-Defendants have a lien] on all proceeds
4 and compensation paid to the [State Court
5 Rabadis] in this action, whether in settlement,
6 *after trial, or otherwise*, whether paid in cash
7 or other means, whether transmitted directly or
8 *indirectly by payments to third parties*. Said
9 charging lien includes compensation by or on
10 behalf of *insurance companies, brokers, life*
11 *settlement companies and escrow companies*.

12 As the California Court of Appeals recently held,
13 the independent action need not be a formal complaint;
14 interpleader may suffice. So. Cal. Gas Co. v.
15 Flannery, 5 Cal. App. 5th 476, 496 (Ct. App. 2016).

16 In Flannery, Tepper, a law firm, represented two
17 parties and was eventually substituted out. Id. at
18 481. Tepper's clients and the Southern California Gas
19 Company separately settled, and the Southern California
20 Gas Company deposited the settlement funds and filed a
21 complaint in interpleader, naming Tepper and his
22 clients as some of the claimants. Id. at 482. After
23 Tepper successfully asserted a motion for attorneys'
24 fees, his clients (the other claimants) argued that
25 Tepper did not adjudicate a separate action to
26 establish his lien prior to filing the motion for
27 attorneys' fees. Id. at 494. The Court rejected this
28 argument, holding that the interpleader action
satisfied the independent action requirement. Id.
Tepper's answer to the interpleader complaint placed
the lien's enforceability at issue against his former

1 clients. Id. at 496. The answer and motion for
2 attorneys' fees, coupled together, were akin to Tepper
3 filing an independent action to enforce his lien.

4 Cross-Defendants claim that, per Flannery, an
5 interpleader action constitutes an independent action
6 to perfect its lien. But the Flannery analysis is more
7 nuanced than Cross-Defendants lead on. The
8 interpleader in Flannery was between the law firm and
9 its clients; here, unlike Flannery, Cross-Defendants'
10 former clients were not parties to the interpleader
11 action Transamerica instituted. Rabadi's Reply 5:1-7.
12 The fact that the client was named in the interpleader
13 action was deemed "crucial" in the Flannery analysis.
14 Id. at 496. The interpleader action here, unlike the
15 one in Flannery, concerns whether Cross-Claimants or
16 Cross-Defendants are entitled to the interpled funds;
17 the State Court Rabadis are simply not claimants to the
18 Interpleader Action. It makes little sense for Cross-
19 Defendants to argue that the interpleader will resolve
20 its Lien's validity as against its clients. Further,
21 resolution of which claimant has rights to the
22 interpled funds here seemingly has no bearing on the
23 validity and applicability of the Lien, which applied
24 to a wholly separate state-court proceeding.

25 The Lien is also unenforceable because the
26 contingency stated in the contingency fee agreement
27 never came to fruition. "[L]iens created in a
28 contingency fee contract" are not enforceable until the

1 occurrence of the stated contingency." Fracasse v.
2 Brent, 6 Cal. 3d 784, 792 (1972). Cross-Claimants
3 argue that because the state-court action was dismissed
4 in July 2016 without a settlement, the contingency fee
5 agreement and the underlying Lien had no proceeds to
6 draw from. The Lien here sought "compensation of any
7 kind paid to . . . *Josef Rabadi, Reem Rabadi, and/or*
8 *Sandra Rabadi ("Clients") in this action.*" Orlando
9 Decl. Ex. 1 (emphasis added). The contingency would
10 not apply until the State Court Rabadis received
11 compensation from their now-dismissed State Court
12 Action. That Lotta and Khader allegedly impeded the
13 contingency from occurring by substituting out Cross-
14 Defendants and apparently locating an attorney who
15 would dismiss the case, Lysaght Supp. Decl. ¶ 5, does
16 not disturb the undisputed facts that Cross-Defendants
17 did not establish the Lien's validity.

18 b. *The Lien is Inapplicable to the Interpled*
19 *Funds*

20 Even were the Court to assume that Cross-Defendants
21 established the Lien's validity, the fact remains that
22 the Lien is inapplicable to the interpled funds.

23 Per Cross-Claimants, the Lien does not apply to the
24 interpled funds unless Cross-Defendants can show the
25 State Court Rabadis would receive the Policy proceeds
26 in the State Court Action. Biltagi's Mot. at 15:4-8.
27 Cross-Defendants counter that the lack of a direct
28 relationship between Cross-Claimants and the State

1 Court Rabadis does not necessarily deny it relief. Id.
2 at 15:1-3. This is because its conspiracy, unclean
3 hands, and illegality affirmative defenses affect the
4 proper recipient of the Policy proceeds. Id. at 15:4-
5 6. But the Court has already decided that Cross-
6 Defendants' affirmative defenses are useless without a
7 showing that the Lien applies to the interpled funds.
8 See supra Part III.B.6.a-b. Thus, the Court turns to
9 the plain language of the Lien.

10 The Lien terms make it clear that they govern
11 proceeds from the State Court Action. As contemplated
12 in the contingency fee agreement, the Lien applies to
13 "causes of action that are the subject of the
14 representation." Boniadi Decl. Ex. 1, at 8. The Lien
15 would attach to "any recovery obtained, whether by
16 arbitration, award, judgement, settlement or
17 otherwise." Id. at 9. And the Notice of Lien sought
18 all proceeds paid to the State Court Rabadis "in this
19 action . . . whether transmitted directly or indirectly
20 by payments to third parties . . . [including]
21 compensation by or on behalf of insurance companies,
22 brokers." Orlando Decl. Ex. 1. The Notice of Lien
23 mentions compensation from insurance companies or
24 payments to third parties. Id. Even if the State
25 Court Rabadis were paid the Policy proceeds, by Cross-
26 Claimants, a broker like Khader, or an insurance
27 company like Transamerica, Cross-Defendants still
28 cannot demonstrate that these payments constitute

1 "proceeds and compensation" in the State Court Action.

2 The onus is on Cross-Defendants to connect any
3 recovery in the State Court Action to the interpled
4 funds. Cross-Defendants again vaguely argue about the
5 overarching "Khader enterprise." Khader apparently is
6 the common figure duping the State Court Rabadis and
7 apparently manipulating the current Cross-Claimants
8 into his insurance fraud scheme. Because the State
9 Court Action and this case both encompass Khader's far-
10 flung wrongdoing, Cross-Defendants' logic goes, any
11 wrongful payments from Khader in the State Court
12 Action—whether for cooperating with the case's
13 dismissal or otherwise—are intertwined with the Policy
14 proceeds. But Cross-Defendants still cannot overcome
15 that the Lien's terms only apply to the State Court
16 Rabadis, and none of the Cross-Claimants are mentioned.

17 The following disputed facts also apparently link
18 the Lien and its applicants, the State Court Rabadis,
19 to the interpled funds: Intesar Alturk is a member of
20 Khader's illegal enterprise; in 2004, Intesar Alturk
21 extended a line of credit to Josef Rabadi, a State
22 Court Rabadi, totaling \$650,000; Intesar Alturk paid
23 Reem Rabadi, another State Court Rabadi, "hundreds of
24 thousands of dollars;" Intesar Alturk transferred over
25 \$1.6 million to Josef Rabadi in 2007; and Cross-
26 Claimants and the State Court Rabadis are from the same
27 family and share the same address. Cross-Defs.' SUF ¶¶
28 6-8.

1 Cross-Defendants have made little effort to marshal
2 these facts in such a way that would convince the Court
3 that the Lien from the State Court Action applies here.
4 Intesar Alturk, a Cross-Claimant in this case,
5 purportedly paid Josef Rabadi, one of Cross-Defendants
6 former clients, over \$1.6 million in 2005 and 2007.
7 Cross-Defs.' SUF ¶ 8. These alleged events occurred
8 well over 6-8 years before Cross-Defendants even signed
9 the contingency fee agreement with the State Court
10 Rabadis in May 2013. And vague references to
11 Cross-Claimants' role in Khader's "enterprise" do
12 nothing to bridge the wide gap between the Lien's terms
13 and the interpled funds here. This is not a problem of
14 the Court's interpretation of the Lien-the Lien is
15 quite explicit about how and to what funds it applies.
16 If Cross-Defendants sought to advocate for a different,
17 plausible interpretation of the Lien, they had a burden
18 to do so in their moving papers. They did not meet
19 this burden.

20 At bottom, Cross-Defendants try to chip away at
21 Cross-Claimants' rights to the interpled funds by
22 arguing extensively about the illegality and conspiracy
23 affirmative defenses. Cross-Defendants file countless
24 declarations, exhibits, and raise a dizzying array of
25 facts, many of which are repeated allegations from the
26 State Court Action and information gleaned from the
27 Orange County Action. And still, Cross-Defendants
28 never expressly address how the Lien attaches to the

1 interpled funds. Cross-Defendants' argument, in
2 essence, is one of default: if Cross-Claimants are not
3 entitled to the tainted Policy proceeds, then
4 Cross-Defendants, by default, receive them. Biltagi's
5 Opp'n 3:12-18. No matter how correct Cross-Defendants'
6 affirmative defenses might be in isolation, Cross-
7 Defendants still cannot get their Lien's validity and
8 applicability off the ground.

9 Cross-Defendants have not created genuine disputes
10 as to whether the Lien is valid and applicable. As
11 such, the Court grants Cross-Claimants' Motions for
12 Summary Judgment as to the (1) Complaint-In-
13 Interpleader; and (2) the Cross-Claim seeking a
14 declaratory judgment that the Lien is unenforceable and
15 inapplicable to the interpled funds.

16 **IV. CONCLUSION**

17 Thus, the Court **GRANTS** Cross-Claimants' Motions for
18 Summary Judgment [99, 100] and **DENIES** Cross-Defendants'
19 Motion for Summary Judgment [118].

20
21 **IT IS SO ORDERED.**

22 DATED: April 18, 2017

23 s/ RONALD S.W. LEW
24 **HONORABLE RONALD S.W. LEW**
25 Senior U.S. District Judge
26
27
28