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**I.**  
**BACKGROUND**

**A. Plaintiff's Allegations**

This is an interpleader action brought by Plaintiff insurance company American General to resolve competing claims to payments due under the structured settlement annuity of decedent Michael Linn Lemons. Plaintiff brings this interpleader action pursuant to Federal Rule of Civil Procedure 22. (Compl. ¶¶ 1, 5, ECF No. 1.)

Western National issued annuity No. 199934 (the "Annuity"), effective September 15, 1982, in connection with Michael Linn Lemons's ("Michael") settlement of a personal injury lawsuit.<sup>1</sup> (Id. at ¶ 7.) To fund its obligation to make certain payments in accordance with the settlement, Interstate Fire and Casualty Company ("IFCC") purchased the Annuity from Plaintiff, naming Michael as the annuitant and measuring life. (Id. at ¶ 8; Ex. 1, ECF No. 1-1 (Annuity schedule page).) The Annuity directs certain guaranteed payments of \$100,000.00 to be paid every five years on September 15, including but not limited to the years of 2012, 2017, 2022, 2027, and 2032. (Compl. ¶ 9, n.2; Ex. 1.) At the time of issuance, IFCC was the designated beneficiary of the Annuity, with the right to change the beneficiary reserved. (Compl. ¶ 9; Ex. 2, ECF No. 1-2 (Annuity application).)

On or around November 9, 1992, Plaintiff received a letter and general power of attorney from Edith Lemons ("Edith"), advising that Edith had power of attorney over Michael because he did not have the use of his hands. (Compl. ¶ 10; Ex. 3, ECF No. 1-3 (power of attorney and letter from Edith).)

On or around May 6, 2006, Plaintiff received an additional power of attorney naming Freda B. Bales ("Freda") as Michael's agent and Leon Lemons ("Leon") as alternate agent. (Compl. ¶ 11; Ex. 4, ECF No. 1-4 (power of attorney from Freda).)

On or around August 23, 2007, Freda submitted a beneficiary change form to Plaintiff naming herself and Defendant Sharon Bushman ("Sharon") as the beneficiaries of the Annuity.

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<sup>1</sup> Plaintiff is the successor-in-interest to Western National Life Insurance Company ("Western National"). (Compl. ¶¶ 7, n.1.).

1 (Compl. ¶ 12; Ex. 5, ECF No. 1-5 (beneficiary change form).)

2 By letter dated September 25, 2007, Plaintiff requested that IFCC approve or deny Freda’s  
3 beneficiary change request. (Compl. ¶ 13; Ex. 6, ECF No. 1-6 (Plaintiff’s letter to IFCC).) IFCC  
4 approved the request, which was received by Plaintiff on or around October 10, 2007, and  
5 officially acknowledged and recorded by Plaintiff the same day. (Compl. ¶ 14; see also Ex. 5.)

6 On February 1, 2010, Michael passed away. (Compl. ¶ 15.)

7 After Michael’s death, Plaintiff provided death claim paperwork to the designated  
8 beneficiaries, Freda and Sharon. (Id. at ¶ 16.) Upon receipt of the completed paperwork,  
9 Plaintiff split the Annuity payments equally between Freda and Sharon (the “Freda Annuity  
10 Payments” and the “Sharon Annuity Payments”). (Id.) As part of the death claim paperwork,  
11 Freda and Sharon provided beneficiary forms for their Annuity payments. (Id. at ¶ 17.) Freda  
12 named her husband, Darrell Bales (“Darrell”) as the sole primary beneficiary of the Freda  
13 Annuity Payments, and Defendant Miklos as the contingent beneficiary. (Id.; Ex. 7, ECF No. 1-7  
14 (Freda’s beneficiary form).) So did Sharon. (Compl. ¶ 17; Ex. 8, ECF No. 1-8 (Sharon’s  
15 beneficiary form).)

16 On September 15, 2012, Plaintiff tendered equal lump sum payments to Sharon and Freda.  
17 (Compl. ¶ 18.)

18 On October 3, 2014, Freda passed away (leaving Darrell as the sole beneficiary of the  
19 Freda Annuity Payments). (Id. at ¶ 19.)

20 On August 24, 2015, Darrell died. (Id. at ¶ 20.) Darrell did not provide death claim  
21 forms to Plaintiff prior to his death; therefore, his estate became the default beneficiary of the  
22 Freda Annuity Payments. (Id. at ¶ 21.) Plaintiff later received the necessary death claim  
23 paperwork from Darrell’s estate, in which Darrell’s granddaughter, Defendant Heather Litz  
24 (“Heather”), was named the designated trust beneficiary to whom the Freda Annuity Payments  
25 were to be directed. (Id. at ¶ 22.)

26 On September 15, 2017, Plaintiff tendered lump sum payments in equal portions to  
27 Sharon and Heather. (Id. at ¶ 23.)

28 On or around May 3, 2022, the Fresno County Public Guardian (“Guardian”) was

1 appointed as the conservator of the property and estate of Defendant Micklos. (Id. at ¶¶ 4, 24; Ex.  
2 9, ECF No. 1-9 (letters of conservatorship).) Guardian requested Annuity beneficiary information  
3 from Plaintiff. (Compl. ¶ 25.) Plaintiff advised Guardian that Freda and Sharon were the  
4 Annuity beneficiaries at the time of Michael’s death. (Id. at ¶ 26.) By letter dated August 3,  
5 2022, Guardian formally disputed the validity of the current beneficiaries (Freda and Sharon),  
6 indicating its belief that Micklos, Michael’s son, was the intended beneficiary of Michael’s  
7 benefit, and that Freda and Sharon had become beneficiaries as a result of fraudulent activity or  
8 undue influence. (Id. at ¶ 27; Ex. 10, ECF No. 1-10 (Guardian’s letter of dispute).)

9 Plaintiff alleges it is a neutral stakeholder with respect to the Annuity payments, and is  
10 ready to deliver the remaining payments upon order of this Court. (Compl. ¶¶ 30, 31.) Due to the  
11 instant dispute between the Defendants as to who is legally entitled to the remaining Annuity  
12 payments, and to which Defendant/s Plaintiff should deliver the remaining Annuity payments,  
13 Plaintiff placed a hold on the remaining Annuity payments, effective as of the September 15,  
14 2022 payment and filed the instant action in interpleader. (Id. at ¶¶ 28, 29.)

15 **B. Procedural History**

16 On September 13, 2022, Plaintiff filed this action against Defendants Sharon, Heather,  
17 and Micklos (collectively, “Defendants”). (ECF No. 1.) The complaint asserts one cause of  
18 action, for interpleader, based on the conflicting claims to the remaining Annuity payments and  
19 Plaintiff’s inability to tender the remaining Annuity payments absent a court order identifying the  
20 proper beneficiary or beneficiaries. (Id. at 7–8.) The complaint seeks an order directing  
21 Defendants to interplead and litigate their competing claims and respective rights to the remaining  
22 Annuity payments within a specified time; interpleading all claims as to the remaining Annuity  
23 payments or, alternatively, declaring which party is entitled to the remaining Annuity payments;  
24 enjoining Defendants and any other potential claimants from exercising rights or benefits under  
25 the Annuity until the Court issues an order regarding the entitlement status of the “interpleader  
26 property,” and from initiating any action against Plaintiff related to the facts that form the basis of  
27 the instant action; awarding Plaintiff reasonable attorneys’ fees, to be deducted from the  
28 remaining Annuity payments; discharging Plaintiff from further liability with respect to the

1 Annuity; and dismissing Plaintiff from this action, with prejudice, upon an order permitting  
2 Plaintiff to deposit the remaining Annuity payments, as they become due under the schedule set  
3 forth in the Annuity, into the Court's Registry pending resolution of the competing claims. (Id. at  
4 8–9.)

5 Micklos, through his court-appointed conservator (Guardian), answered the complaint on  
6 January 20, 2023. (ECF No. 18.) The executed waiver of service for Heather indicates Plaintiff  
7 personally served Heather with the summons and complaint on November 10, 2022. (ECF No.  
8 7.) On January 26, 2023, the Court granted Plaintiff's motion to serve Sharon by publication.  
9 (ECF Nos. 15, 19, 20.) On March 8, 2023, Plaintiff filed a notice of completion of service on  
10 Sharon by publication. (ECF No. 22.) Neither Heather nor Sharon has answered the complaint or  
11 otherwise appeared in this action. At Plaintiff's request, Default was entered against Heather and  
12 Sharon on April 6, 2023. (ECF Nos. 23, 24.)

13 Plaintiff filed the instant motion for default judgment against Heather and Sharon on April  
14 11, 2023, seeking interpleader relief and annuity payment direction. (ECF No. 25.) Specifically,  
15 the motion seeks an order (1) entering default judgment against Heather Litz and Sharon  
16 Bushman, (2) granting Plaintiff's claim for interpleader, (3) enjoining Defendants from initiating  
17 litigation against Plaintiff on claims arising out of the instant matter, (4) discharging Plaintiff  
18 from any further liability relating to the Annuity payments beyond making payments as  
19 contemplated by this order, (5) directing Plaintiff to pay the remaining Annuity payments to  
20 Defendant Micklos Lemons (via his court-appointed conservator, the Fresno County Public  
21 Guardian) or his estate, if Micklos dies before disbursement of the final payment, (6) awarding  
22 Plaintiff attorneys' fees and costs in the amount of \$10,000.00, to be withheld from the  
23 \$100,000.00 September 15, 2022 Annuity payment, and (7) dismissing with prejudice all claims  
24 that could have been asserted against Plaintiff arising out of the Annuity and/or Annuity payments  
25 that are the subject of the instant litigation. (Id. at 2–3.) Defendant Micklos has stipulated to the  
26 motion. (See id. at 3; ECF No. 25-1 at 5.) No opposition to Plaintiff's motion has been filed.  
27 The matter came before the Court for hearing on May 24, 2023. (ECF No. 28.) As previously  
28 noted, counsel for Plaintiff and counsel for the Fresno County Public Guardian (as the

1 conservator of the property and estate of Defendant Micklos Lemons), appeared by  
2 videoconference; however, no appearances were made by Defendants Heather or Sharon. (See  
3 id.) The matter is deemed submitted.

## 4 II.

### 5 LEGAL STANDARD

6 “Our starting point is the general rule that default judgments are ordinarily disfavored,” as  
7 “[c]ases should be decided upon their merits whenever reasonably possible.” NewGen, LLC v.  
8 Safe Cig, LLC, 840 F.3d 606, 616 (9th Cir. 2016) (quoting Eitel v. McCool, 782 F.2d 1470, 1472  
9 (9th Cir. 1986)). Pursuant to Federal Rule of Civil Procedure (“Rule”) 55, obtaining a default  
10 judgment is a two-step process. Entry of default is appropriate as to any party against whom a  
11 judgment for affirmative relief is sought that has failed to plead or otherwise defend as provided  
12 by the Federal Rules of Civil Procedure and where that fact is made to appear by affidavit or  
13 otherwise. Fed. R. Civ. P. 55(a). After entry of default, a plaintiff can seek entry of default  
14 judgment. Fed. R. Civ. P. 55(b). Rule 55(b)(2) provides the framework for the Court to enter a  
15 default judgment:

#### 16 (b) Entering a Default Judgment.

17 (2) By the Court. In all other cases, the party must apply to the  
18 court for a default judgment. A default judgment may be entered  
19 against a minor or incompetent person only if represented by a  
20 general guardian, conservator, or other like fiduciary who has  
21 appeared. If the party against whom a default judgment is sought  
22 has appeared personally or by a representative, that party or its  
representative must be served with written notice of the application  
at least 7 days before the hearing. The court may conduct hearings  
or make referrals--preserving any federal statutory right to a jury  
trial--when, to enter or effectuate judgment, it needs to:

- 23 (A) conduct an accounting;
- 24 (B) determine the amount of damages;
- 25 (C) establish the truth of any allegation by evidence; or
- 26 (D) investigate any other matter.

#### 27 Id.

28 The decision to grant a motion for entry of default judgment is within the discretion of the

1 court. PepsiCo, Inc. v. Cal. Sec. Cans, 238 F. Supp. 2d 1172, 1174 (C.D. Cal. 2002); see also  
2 TeleVideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987) (“Rule 55 gives the court  
3 considerable leeway as to what it may require as a prerequisite to the entry of a default  
4 judgment.”). The Ninth Circuit has set forth the following seven factors (the “Eitel factors”) that  
5 the Court may consider in exercising its discretion: (1) the possibility of prejudice to the plaintiff;  
6 (2) the merits of the plaintiff’s substantive claim; (3) the sufficiency of the complaint; (4) the sum  
7 of money at stake in the action; (5) the possibility of a dispute concerning material facts; (6)  
8 whether the default was due to excusable neglect; and (7) the strong policy underlying the Federal  
9 Rules of Civil Procedure favoring decisions on the merits. Eitel, 782 F.2d at 1471–72.

10 Generally, once default has been entered, “the factual allegations of the complaint, except  
11 those relating to damages, will be taken as true.” Garamendi v. Henin, 683 F.3d 1069, 1080 (9th  
12 Cir. 2012) (quoting Geddes v. United Fin. Grp., 559 F.2d 557, 560 (9th Cir. 1977)); see also Fed.  
13 R. Civ. P. 8(b)(6) (“An allegation—other than one relating to the amount of damages—is  
14 admitted if a responsive pleading is required and the allegation is not denied.”). Accordingly, the  
15 amount of damages must be proven at an evidentiary hearing or through other means. Microsoft  
16 Corp. v. Nop, 549 F. Supp. 2d 1233, 1236 (E.D. Cal. 2008). Additionally, “necessary facts not  
17 contained in the pleadings, and claims which are legally insufficient, are not established by  
18 default.” Cripps v. Life Ins. Co. of N. Am., 980 F.2d 1261, 1267 (9th Cir. 1992) (internal citation  
19 omitted). The relief sought must not be different in kind or exceed the amount that is demanded  
20 in the pleadings. Fed. R. Civ. P. 54(c).

### 21 III.

### 22 DISCUSSION

23 Before it may evaluate the Eitel factors to determine whether default judgment should be  
24 entered, the Court must first determine whether it properly has jurisdiction in this matter.

#### 25 A. Jurisdiction Over Interpleader Action

26 Federal courts are courts of limited jurisdiction and their power to adjudicate is limited to  
27 that granted by Congress. U.S v. Sumner, 226 F.3d 1005, 1009 (9th Cir. 2000). Plaintiff asserts  
28 the Court has jurisdiction over this matter pursuant to Federal Rule of Civil Procedure 22

1 (Interpleader) and diversity jurisdiction. A “Rule interpleader” action is proper when jurisdiction  
2 can be established under general statutes governing federal court jurisdiction. Alternatively,  
3 subject-matter jurisdiction for a “Statutory interpleader” may be established pursuant to 28 U.S.C.  
4 § 1335 when there exists “minimal diversity” between the claimants and the amount in  
5 controversy exceeds \$500. Herman Miller, Inc. Ret. Income Plan v. Magallon, No. 2:07-cv-  
6 00162-MCE-GGH, 2008 WL 2620748, at \*2 (E.D. Cal. Jul. 2, 2008) (citations omitted).

7 Here, Plaintiff fashions the complaint as a Rule 22 interpleader action based on diversity  
8 jurisdiction pursuant to 28 U.S.C. § 1332. (ECF No. 1 at 3.)

9 A district court has diversity jurisdiction “where the matter in controversy exceeds the  
10 sum or value of \$75,000, ... and is between citizens of different states, or citizens of a State and  
11 citizens or subjects of a foreign state ....” 28 U.S.C. § 1332(a)(1)–(2). The burden of proving the  
12 amount in controversy depends on the allegations in the plaintiff’s complaint. See Lowdermilk v.  
13 U.S. Bank Nat’l Ass’n, 479 F.3d 994, 998–1000 (9th Cir. 2007). When the complaint alleges  
14 damages less than the jurisdictional requirement, the party seeking to establish diversity  
15 jurisdiction must prove the amount in controversy with legal certainty. Id.; Rynearson v.  
16 Motricity, Inc., 601 F. Supp. 2d 1238, 1240 (W.D. Wash. 2009).

17 Here, Plaintiff asserts the amount in controversy exceeds \$75,000.00, exclusive of  
18 attorneys’ fees and costs. (Compl. ¶ 5.) This is demonstrated by Plaintiff’s allegations, which  
19 show Annuity payments made (and to be made) between 2012 and 2032 in the amount of  
20 \$100,000.00 each. (See id. at ¶ 9.) Plaintiff alleges it is a citizen of the state of Texas;  
21 Defendants Sharon and Micklos are citizens of the state of California; and Defendant Heather is a  
22 citizen of the state of Florida. (Id. at ¶ 5.) Thus, Plaintiff has established complete diversity  
23 between the parties named in the lawsuit and the Court has diversity jurisdiction pursuant to 28  
24 U.S.C. § 1332.

25 Accordingly, the Court has subject matter jurisdiction under Rule 22 over Plaintiff’s  
26 interpleader complaint based on diversity.

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1           **B.       Jurisdiction Over Defendants Heather and Sharon<sup>2</sup>**

2           1.       Legal Standards for Service of Process

3           As a general rule, the Court considers the adequacy of service of process before evaluating  
4 the merits of a motion for default judgment. See J & J Sports Prods., Inc. v. Singh, No. 1:13-cv-  
5 1453-LJO-BAM, 2014 WL 1665014, at \*2 (E.D. Cal. Apr. 23, 2014); Penpower Tech. Ltd. v.  
6 S.P.C. Tech., 627 F. Supp. 2d 1083, 1088 (N.D. Cal. 2008); Mason v. Genisco Tech. Corp., 960  
7 F.2d 849, 851 (9th Cir. 1992) (stating that if party “failed to serve [defendant] in the earlier  
8 action, the default judgment is void and has no res judicata effect in this action.”). Service of the  
9 summons and complaint is the procedure by which a court having venue and jurisdiction of the  
10 subject matter of the suit obtains jurisdiction over the person being served. Miss. Publ’g Corp. v.  
11 Murphree, 326 U.S. 438, 444–45 (1946); see Direct Mail Specialists, Inc. v. Eclat Computerized  
12 Techs., Inc. (Direct Mail), 840 F.2d 685, 688 (9th Cir. 1988) (“A federal court does not have  
13 jurisdiction over a defendant unless the defendant has been served properly under Fed. R. Civ. P.  
14 4.”).

15           Service of a complaint in federal court is governed by Rule 4. “Rule 4 is a flexible rule  
16 that should be liberally construed so long as a party receives sufficient notice of the complaint.”  
17 Direct Mail, 840 F.2d at 688 (quoting United Food & Com. Workers Union v. Alpha Beta Co.,  
18 736 F.2d 1371, 1382 (9th Cir. 1984)). However, “without substantial compliance with Rule 4,  
19 ‘neither actual notice nor simply naming the defendant in the complaint will provide personal  
20 jurisdiction.’ ” Direct Mail, 840 F.2d at 688 (quoting Benny v. Pipes, 799 F.2d 489, 492 (9th Cir.  
21 1986)). “Once service is challenged, plaintiffs bear the burden of establishing that service was  
22 valid under Rule 4.” Brockmeyer v. May, 383 F.3d 798, 801 (9th Cir. 2004) (citations omitted).  
23 “[A] signed return of service constitutes prima facie evidence of valid service which can be  
24 overcome only by strong and convincing evidence.” SEC v. Internet Sols. for Bus., Inc., 509  
25 F.3d 1161, 1163 (9th Cir. 2007).

26           <sup>2</sup> There is no question or challenge as to service on Defendant Micklos. As the Court has noted, Micklos was  
27 personally served via his court-appointed guardian (ECF No. 6), he answered the complaint, thus appearing in this  
28 action (ECF No. 18), and no default was entered against him (see ECF Nos. 23, 24). Further, Micklos has stipulated  
to Plaintiff’s motion for default judgment in interpleader (see ECF No. 25-1 at 5), as he is the party Plaintiff seeks to  
have identified as the proper beneficiary to Michael’s Annuity payments.

1 Rule 4(e) provides that service may be effectuated on a competent, adult individual by: (1)  
2 delivering a copy of the summons and the complaint to that person personally; (2) leaving a copy  
3 of each at the individual's dwelling or usual place of abode with someone of suitable age and  
4 discretion who resides there; or (3) delivering a copy of each to an agent authorized by  
5 appointment or by law to receive service of process. Fed. R. Civ. P. 4(e)(2)(A)–(C). Rule 4 also  
6 permits service on an individual in accordance with state law. Fed. R. Civ. P. 4(e)(1).

7 California identifies a number of manners in which service may be completed on an  
8 individual and/or his agent, including personal service (Cal. Code Civ. Proc. § 415.10),  
9 substituted service (Cal. Code Civ. Proc. § 415.20), and service by publication (Cal. Code Civ.  
10 Proc. § 415.50).

11 As noted under Cal. Code Civ. Proc. § 415.50, service by publication is permitted where  
12 the Court is satisfied that the party cannot be served with reasonable diligence in any other  
13 manner, and either: (1) a cause of action exists against the party upon whom service is to be made  
14 or he or she is a necessary or proper party to the action; or (2) the party to be served has or claims  
15 an interest in real or personal property in this state that is subject to the jurisdiction of the court or  
16 the relief demanded in the action consists wholly or in part in excluding the party from any  
17 interest in the property. Cal. Code Civ. Proc. § 415.50(a).

18 2. Service on Defendant Heather Litz

19 The executed waiver of service for Heather indicates Plaintiff personally served Heather  
20 with the summons and complaint on November 10, 2022, at 9228 Bradleigh Dr., Winter Garden,  
21 Florida 34787. (ECF No. 7.) The waiver is signed by Heather, further indicating she was  
22 personally served. (Id.)

23 Accordingly, the Court finds service was properly effected on Defendant Heather Litz.  
24 Internet Sols. for Bus., Inc., 509 F.3d at 1163.

25 3. Service on Defendant Sharon Bushman

26 As noted, the Court previously granted Plaintiff's motion to serve Sharon by publication,  
27 based on its finding that Plaintiff adequately satisfied the requirements set forth under Cal. Code  
28 Civ. Proc. § 415.50. (See ECF Nos. 15, 19, 20.) More specifically, the Court concluded, based

1 on Plaintiff's supporting affidavit (Reinbold Decl., ECF No. 19), that a cause of action exists  
2 against Sharon (see ECF No. 20 at 4–6); and that Plaintiff acted with reasonable diligence in  
3 attempting to serve Sharon (see id. at 7–8 (detailing multiple service attempts by multiple process  
4 servers at different addresses, use of Accurint, and a private investigator to locate and serve  
5 Sharon)). The Court ordered Plaintiff to complete service on Sharon by publication in the Fresno  
6 Bee, in accordance with California Code of Civil Procedure § 415.50(b) and California  
7 Government Code § 6064. (Id. at 9–10.) For purposes of the instant jurisdictional inquiry, the  
8 Court concludes again that Plaintiff's filings satisfied the requirements under Cal. Code Civ.  
9 Proc. § 415.50 to serve Sharon by publication.

10 On March 8, 2023, Plaintiff filed a proof of service for service of process by publication  
11 on Sharon. (ECF No. 22.) Section 6064 requires publication once a week for four successive  
12 weeks. Cal. Gov. Code § 6064. Consistent with the requirements of § 6064, the affidavit of  
13 publication indicates Plaintiff published the summons for Sharon in the Fresno Bee on February  
14 3, 2023, February 10, 2023, February 17, 2023, and February 24, 2023. (ECF No. 22-1 at 1.)

15 On this record, the Court concludes service was properly effected on Defendant Sharon  
16 Bushman by publication. Cal. Code Civ. Proc. § 415.50; Cal. Gov. Code § 6064.

17 In sum, the Court finds service was properly effected on Defendants Heather Litz and  
18 Sharon Bushman.

19 **C. Evaluation of the Eitel Factors in Favor of Default Judgment**

20 For the reasons discussed herein, the Court finds that consideration of the Eitel factors  
21 weighs in favor of granting default judgment.

22 1. Possibility of Prejudice to Plaintiff

23 The first factor considered is whether Plaintiff would suffer prejudice if default  
24 judgment is not entered. See PepsiCo, Inc., 238 F. Supp. 2d at 1177. Generally, where default  
25 has been entered against a defendant, a plaintiff has no other means by which to recover against  
26 that defendant. Id.; Moroccanoil, Inc. v. Allstate Beauty Prods., 847 F. Supp. 2d 1197, 1200–01  
27 (C.D. Cal. 2012). Here, the Court finds Plaintiff would be prejudiced if default judgment were  
28 not granted because Plaintiff does not have any other way to determine to whom of the

1 Defendants it should issue the remaining Annuity payments, and failure to issue the Annuity  
2 payments to the proper beneficiary/ies could subject Plaintiff to further litigation. See Vogel v.  
3 Rite Aid Corp., 992 F. Supp. 2d 998, 1007 (C.D. Cal. 2014). This factor weighs in favor  
4 of default judgment.

5 2. Merits of Plaintiff’s Claim and Sufficiency of the Complaint

6 The second and third Eitel factors, taken together, “require that [the] plaintiff[s] state a  
7 claim on which [they] may recover.” PepsiCo, Inc., 238 F. Supp. 2d at 1175. Notably a  
8 “defendant is not held to admit facts that are not well-pleaded or to admit conclusions of  
9 law.” DIRECTV, Inc. v. Hoa Huynh, 503 F.3d 847, 854 (9th Cir. 2007). As mentioned, the  
10 complaint asserts a single claim in interpleader.

11 The Court previously summarized the allegations contained in the operative complaint and  
12 supporting documents that were submitted in support of the motion for default judgment. The  
13 Court incorporates Section I here by way of reference.

14 “In an interpleader action, the ‘stakeholder’ of a sum of money sues all those who might  
15 have claim to the money, deposits the money with the district court, and lets the claimants litigate  
16 who is entitled to the money.” Cripps, 980 F.2d at 1265. “The purpose of interpleader is for the  
17 stakeholder to protect itself against the problems posed by multiple claimants to a single fund.”  
18 Lee v. W. Coast Life Ins. Co., 688 F.3d 1004, 1009 (9th Cir. 2012) (citation and internal  
19 quotations omitted). The Ninth Circuit explains that an interpleader action typically involves two  
20 stages: (1) the district court must determine whether the requirements for an interpleader action  
21 have been met by determining if there is a single fund at issue and whether there are adverse  
22 claimants to that fund; and (2) if the interpleader action has been properly brought, the district  
23 court must make a determination of the respective rights of the claimants. Id. (citations omitted).  
24 As noted, Plaintiff seeks to discharge itself from all liability and be dismissed with prejudice from  
25 the litigation; to enjoin all future related litigation; to recover attorneys’ fees; and it seeks an order  
26 directing it to pay the remaining Annuity payments to Defendant Micklos Lemons. (ECF No. 1 at  
27 3; ECF No. 25-1 at 5.)

28 Federal Rule of Civil Procedure 22 provides that a plaintiff may establish grounds for

1 interpleader where “persons with claims that may expose a plaintiff to double or multiple liability  
2 may be joined as defendants and required to interplead.” Fed. R. Civ. P. 22(a)(1). Rule 22  
3 provides that joinder for interpleader is proper even though:

4 (A) the claims of the several claimants, or the titles on which their  
5 claims depend, lack a common origin or are adverse and  
independent rather than identical; or

6 (B) the plaintiff denies liability in whole or in part to any or all of  
7 the claimants.

8 Id. (emphasis in original).

9 “Interpleader is appropriate if the stakeholder-plaintiff has a real and reasonable fear of  
10 double liability or vexatious, conflicting claims. This danger need not be immediate; any  
11 possibility of having to pay more than is justly due, no matter how improbable or remote, will  
12 suffice.” Prudential Ins. Co. of Am. v. Wells, No. C09–0132 BZ, 2009 WL 1457676, at \*2 (N.D.  
13 Cal. May 21, 2009) (citations and internal quotation marks omitted). As such, “[t]he court’s  
14 jurisdiction in an interpleader action extends both to potential and actual claims.” United  
15 Investors Life Ins. Co. v. Grant, No. 2:05-cv-1716-MCE-DAD, 2006 WL 1282618, at \*2 (E.D.  
16 Cal. May 9, 2006).

17 Here, Plaintiff has demonstrated that it has a real and legitimate fear of multiple litigations  
18 with regard to claims against the Annuity. Sharon and Freda were named beneficiaries prior to  
19 Michael’s death; thereafter, Heather was ultimately named a beneficiary through Freda’s benefit,  
20 and the suspicions of fraudulent activity or undue influence asserted by Micklos’s  
21 conservatorship guardian raise additional questions about the validity of some of the beneficiary  
22 designations. Given the multiple conflicting claims to the Annuity proceeds from Defendants and  
23 the uncertainty as to the identify of the proper primary beneficiary (or beneficiaries), the Court  
24 finds that Plaintiff has met its burden of showing that it “may be exposed to double or multiple  
25 liability” under Rule 22(a)(1). Thus, interpleader is proper.

26 Further, based on the aforementioned substantive facts alleged in the complaint, the Court  
27 finds Plaintiff has sufficiently established Defendant Micklos as the proper beneficiary to the  
28 remaining Annuity payments in this action. “A named interpleader defendant who fails to answer

1 the interpleader complaint and assert a claim to the res forfeits any claim of entitlement that might  
2 have been asserted if service was properly effected upon them ... The Court may accordingly, in  
3 its discretion, grant default judgment against the non-appearing interpleader defendants where the  
4 only remaining claimants demonstrate their entitlement to the funds and do not dispute the  
5 respective distributions.” Standard Ins. Co. v. Asuncion (Asuncion), 43 F. Supp. 3d 1154, 1156  
6 (W.D. Wash. 2014) (quoting Sun Life Assur. Co. of Canada, (U.S.) v. Conroy, 431 F. Supp. 2d  
7 220, 226 (D.R.I. 2006)); see also Cripps, 980 F.2d at 1267 (appearing claimants must demonstrate  
8 entitlement to benefits); Nationwide Mutual Fire Ins. Co. v. Eason (Eason), 736 F.2d 130, 133 n.6  
9 (4th Cir. 1984) (“Clearly, if all but one named interpleader defendant defaulted, the remaining  
10 defendant would be entitled to the fund.”).

11 Plaintiff adequately alleges Micklos, as Michael’s son, is the proper beneficiary of the  
12 insurance policy at issue. Defendants Heather and Sharon both defaulted in relation to the  
13 interpleader complaint. Accordingly, it is within the Court’s discretion to grant default judgment  
14 against the non-appearing interpleader Defendants. Because Micklos is the only interpleader  
15 Defendant that has appeared and been designated as proper beneficiary of the interpleaded funds,  
16 the second and third Eitel factors weigh in favor of default judgment.

### 17 3. The Sum of Money at Stake in the Action

18 Under the fourth Eitel factor, “the court must consider the amount of money at stake in  
19 relation to the seriousness of Defendant’s conduct.” PepsiCo, Inc., 238 F Supp. 2d at 1176; see  
20 also Philip Morris USA, Inc. v. Castworld Prods., Inc., 219 F.R.D. 494, 500 (C.D. Cal. 2003).  
21 Here, because Plaintiff seeks only issuance of the remaining Annuity payments, and there is no  
22 particular conduct of any Defendant at issue, this factor weighs neither for nor against entry  
23 of default judgment.

### 24 4. The Possibility of a Dispute Concerning Material Facts

25 The next Eitel factor considers the possibility of a dispute concerning material facts. As  
26 discussed previously, Plaintiff has met its burden of establishing interpleader is proper.  
27 Defendant Micklos has appeared in this action and stipulated to Plaintiff’s motion seeking an  
28 order directing payments be made only to Micklos, as Michael’s son and beneficiary of the

1 Annuity at issue; whereas, Defendant Heather and Sharon have defaulted. Because “all  
2 allegations in a well-pleaded complaint are taken as true after the court clerk enters default  
3 judgment, there is no likelihood that any genuine issue of material fact exists.” Elektra Entm’t  
4 Group Inc. v. Crawford, 226 F.R.D. 388, 393 (C.D. Cal. 2005). Thus, taking the pleaded facts as  
5 true, the Court finds this factor favors entry of default judgment.

6 5. Whether the Default was Due to Excusable Neglect

7 The sixth Eitel factor considers the possibility that a defendant’s default resulted from  
8 excusable neglect. PepsiCo, Inc., 238 F. Supp. 2d at 1177. Courts have found that where a  
9 defendant was “properly served with the complaint, the notice of entry of default, as well as the  
10 paper in support of the [default judgment] motion,” there is no evidence of excusable neglect.  
11 Shanghai Automation Instrument Co. v. Kuei, 194 F. Supp. 2d 995, 1005 (N.D. Cal. 2001).

12 The Court finds this factor weighs in favor of granting default judgment as Sharon and  
13 Heather have failed to file a responsive pleading or otherwise appear in this action, despite being  
14 properly served. See id. (“The default of defendant ... cannot be attributed to excusable neglect.  
15 All were properly served with the Complaint, the notice of entry of default, as well as the papers  
16 in support of the instant motion.”).

17 6. The Strong Policy Favoring a Decision on the Merits

18 “Cases should be decided upon their merits whenever reasonably possible.” Eitel, 782  
19 F.2d at 1472. However, district courts have concluded with regularity that this policy, standing  
20 alone, is not dispositive, especially where a defendant fails to appear or defend itself in an  
21 action. PepsiCo, Inc., 238 F. Supp. 2d at 1177; see also Craigslist, Inc. v. Naturemarket, Inc., 694  
22 F. Supp. 2d 1039, 1061 (N.D. Cal. Mar. 5, 2010). The Court finds this factor weighs in favor of  
23 granting default judgment. See PepsiCo, Inc., 238 F. Supp. 2d at 1177 (“Defendant’s failure to  
24 answer Plaintiffs’ Complaint makes a decision on the merits impractical, if not impossible.  
25 Under Fed. R. Civ. P. 55(a), termination of a case before hearing the merits is allowed whenever  
26 a defendant fails to defend an action.”).

27 In conclusion, the Court finds default judgment is appropriate as to both default  
28 Defendants Sharon and Heather. Therefore, the Court finds Plaintiff’s motion for default

1 judgment should be granted as to each Defendant.

2 **D. Requested Relief: Determination of Respective Rights of the Claimants**

3 1. Discharge and Dismissal

4 Having determined that an interpleader is proper, the Court may discharge the stakeholder  
5 from further liability. Transamerica Life Ins. Co. v. Shubin, No. 1:11-cv-01958-LJO-SKO, 2012  
6 WL 2839704 at \*6 (E.D. Cal. Jul. 10, 2012), report and recommendation adopted, 2012 WL  
7 3236578 (E.D. Cal. Aug. 6, 2012); see also Wells Fargo Bank v. PACCAR Fin. Corp., No. 1:08-  
8 cv-00904-AWI-SMS, 2009 WL 211386, at \*2 (E.D. Cal. Jan. 28, 2009) (explaining that in a  
9 rule interpleader action, “[i]f an interpleading plaintiff has no interest in the stake, the plaintiff  
10 should be dismissed”). “A court should readily discharge a disinterested stakeholder from further  
11 liability absent a stakeholder’s bad faith in commencing an interpleader action, potential  
12 independent liability to a claimant, or failure to satisfy requirements of rule or statutory  
13 interpleader.” OM Financial Life Ins. Co. v. Helton, No. 2:09-cv-01989-WBS-EFB, 2010 WL  
14 3825655, at \*3 (E.D. Cal. Sept. 28, 2010).

15 In support of discharge, Plaintiff contends that it has no claims or interests in the  
16 remaining Annuity payments, and has been willing to deliver them to the person or persons  
17 entitled to them. (Compl. ¶ 35.) The Court finds Plaintiff has shown no other interests in the  
18 litigation or bad faith in initiating the proceedings. Furthermore, no oppositions have been filed  
19 against Plaintiff’s motion—indeed, Defendant Micklos, the only appearing Defendant in this  
20 action, has stipulated to Plaintiff’s motion—and, as previously discussed, the requirements of  
21 Rule interpleader have been met. Therefore, discharging Plaintiff from all liability and  
22 dismissing it with prejudice from the case is appropriate.

23 Further, in addition to discharging the interpleading plaintiff from further liability, “any  
24 civil action of interpleader,” the court may enjoin the parties from instituting further related  
25 actions and make all other appropriate orders. 28 U.S.C. § 2361; Great Am. Life Ins. Co. v.  
26 Brown-Kingston, No. 2:18-cv-02783-MCE-KJN, 2019 WL 8137717, at \*3 (E.D. Cal. May 14,  
27 2019). As soon as Micklos raised with Plaintiff the question as to the proper beneficiary/ies of  
28 the instant Annuity payments, Plaintiff brought this interpleader action as a disinterested



1 stakeholder solely to determine the proper party/parties to receive the remaining Annuity  
2 payments and to avoid potential future litigation. Accordingly, the Court will recommend  
3 enjoining all Defendants and future claimants from any future claims against Plaintiff related to  
4 the Annuity.

5 2. Attorney's Fees

6 a. **Award of Fees and Costs**

7 Plaintiff asks for attorneys' fees and costs to compensate it for bringing this interpleader  
8 action. Defendants have not objected to Plaintiff's request for fees and costs. Courts generally  
9 have discretion to award attorneys' fees to a disinterested stakeholder in an interpleader action,  
10 Abex Corp. v. Ski's Enters., Inc., 748 F.2d 513, 516 (9th Cir. 1984), and routinely grant such  
11 awards absent a showing of bad faith, Schirmer Stevedoring Corp. Ltd. v. Seaboard Stevedoring  
12 Corp., 306 F.2d 188, 194–95 (9th Cir. 1962); see also Trs. of Dirs. Guild of Am.–Producer  
13 Pension Benefits Plans v. Tise (Tise), 234 F.3d 415, 426 (9th Cir. 2000) (holding a court has  
14 broad discretion in an interpleader action, not only with respect to whether to allow attorneys'  
15 fees to be deducted from the policy, but also with respect to the amount of fees to which  
16 an interpleader plaintiff is entitled). The stakeholder will typically be compensated for reasonable  
17 attorneys' fees out of the interpleader fund deposited in the court. Tise, 234 F.3d at 427.

18 As a general matter, a court will award fees from the proceeds whenever: “(1) the party  
19 seeking fees is a disinterested stakeholder; (2) who had conceded liability; (3) has deposited the  
20 funds into court; and (4) has sought a discharge from liability.” Septembertide Publ'g v. Stein &  
21 Day, Inc., 884 F.2d 675, 683 (2d Cir. 1989). Based on the evidence before the Court, it appears  
22 that Plaintiff has met all of the criteria for being awarded attorneys' fees and costs. There is no  
23 argument or evidence that Plaintiff has any interest in the funds or that this case arises from  
24 Plaintiff's wrongdoing. Plaintiff has attempted to resolve all of the Defendants' claims by  
25 initiating the complaint in interpleader and this instant action. Moreover, there is no opposition  
26 from any Defendant to Plaintiff's motion, and Defendant Micklos has stipulated to the motion.  
27 Accordingly, the Court finds that an award of attorneys' fees is warranted in this action. Thus,  
28 the remaining question is the amount to which Plaintiff is entitled.

1           **b.       Amount of Fees and Costs**

2           The Ninth Circuit has indicated that attorneys’ fees in an interpleader action are limited to  
3 time expended on preparing the complaint, obtaining service of process on the claimants to the  
4 fund, obtaining default judgment, and preparing an order discharging the plaintiff from liability  
5 and dismissing it from the action. See Tise, 234 F.3d at 426–27. Because the scope of  
6 compensable expenses is limited, attorneys’ fees awards to the disinterested interpleader plaintiff  
7 are typically modest. This furthers the “important policy interest” in seeing that the fee award  
8 does not unduly deplete the fund of those entitled to it. Id. at 427.

9           Plaintiff proffers that its total fees and costs incurred in bringing this interpleader matter  
10 total \$24,432.28, but that it is willing to reduce its fees and costs request to the flat award of  
11 \$10,000.00. (ECF No. 25-1 at 4 n.2.) The Court notes, however, the fees and costs amount is  
12 proffered by Plaintiff in a footnote, devoid of supporting declarations or billing statements.  
13 Rather, the only clear filing of record which documents some of Plaintiff’s costs is attached to the  
14 proof of service by publication, which indicates Plaintiff spent \$925.00 to effectuate service by  
15 publication pursuant to the Court’s orders. (ECF No. 22-1.) The burden of establishing  
16 entitlement to an attorneys’ fee award lies solely with the claimant. Hensley v. Eckerhart, 461  
17 U.S. 424, 437 (1983). “[T]he burden is on the fee applicant to produce satisfactory evidence—in  
18 addition to the attorney’s own affidavits—that the requested rates are in line with those prevailing  
19 in the community for similar services by lawyers of reasonably comparable skill, experience and  
20 reputation.” Blum v. Stenson, 465 U.S. 886, 896 n.11 (1984); see also Schwarz v. Secy. of  
21 Health and Human Servs., 73 F.3d 895, 908 (9th Cir. 1995). Where supporting documentation is  
22 inadequate, Ninth Circuit caselaw indicates the district court may either request more information  
23 or “simply reduce[ ] the fee to a reasonable amount.” Fischer v. SJB–P.D. Inc., 214 F.3d 1115,  
24 1121 (9th Cir. 2000) (citing Hensley, 461 U.S. at 433, for the proposition that a district court can  
25 “reduce” the fee award where the documentation is inadequate).

26           Here, without declarations or billing statements to support Plaintiff’s fee request, the  
27 Court cannot assess the reasonableness of the requested fee amount with respect to counsel’s  
28 hourly rates or time spent litigating this matter. Nonetheless, it is not insignificant to this Court

1 that Defendant Micklos, who is the intended beneficiary of the remaining Annuity payments, has  
2 stipulated (through his county conservator guardian) to Plaintiff's motion and Plaintiff's fees  
3 request, which would be withheld from Micklos's next Annuity payment. Nor is the fact that  
4 Plaintiff proposed a significant reduction of over 50% of its total reported fees and costs lost on  
5 the Court. The Court is also cognizant that Plaintiff likely reasonably spent several hours to  
6 prepare and file the complaint (with its multiple exhibits) (ECF No. 1), as well as the instant  
7 motion (ECF No. 25), and that Plaintiff accrued significant costs during its multiple attempts to  
8 serve Defendant Sharon, which ultimately included multiple service attempts by several different  
9 process servers at different addresses, the use of Accurint, hiring a private investigator to locate  
10 and serve Sharon, filing a motion to serve by publication, and the attendant costs of publication  
11 after the Court granted Plaintiff's motion (see ECF Nos. 10, 13, 15, 19, 22). The Court also looks  
12 to rulings by other courts in the Eastern District of California, in which fees and costs close to the  
13 range requested by Plaintiff in similar interpleader matters was awarded, even where additional  
14 costs such as service by publication were not incurred. See, e.g., Am. Gen. Life Ins. Co. v.  
15 Vogel, No. 1:21-cv-00762-ADA-SKO, 2022 WL 4292270, at \*9 (E.D. Cal. Sept. 16, 2022),  
16 report and recommendation adopted, 2022 WL 17082543 (E.D. Cal. Nov. 18, 2022) (granting  
17 attorneys' fees and costs in the amount of \$8,641.46); Transamerica Life Ins. Co., 2012 WL  
18 2839704 (awarding \$7,164.25 in fees and costs); Wells Fargo Bank, Nat. Ass'n, 2009 WL  
19 211386 (awarding \$5575.55 in attorneys' fees and costs in pure interpleader-default judgment  
20 action). On the totality of this record and consistent with relevant caselaw, the Court, in  
21 exercising its "broad discretion" to award and assess attorneys' fees in an interpleader action,  
22 Tise, 234 F.3d at 426, finds the requested fees and costs amount proffered by Plaintiff in this  
23 action are reasonable, and recommends Plaintiff's fees' and costs request for \$10,000.00 be  
24 granted.

### 25 3. Payment of Remaining Annuity Payments

26 Plaintiff seeks an order directing it to pay the remaining Annuity payments to Defendant  
27 Micklos Lemons (via his court-appointed conservator, the Fresno County Public Guardian) or his  
28 estate, if Micklos dies before disbursement of the final payment. Having previously determined

1 that Plaintiff sufficiently established Micklos, Michael's son, intended beneficiary, and only non-  
2 defaulting beneficiary is the proper beneficiary to the remaining Annuity payments in this action,  
3 Asuncion, 43 F. Supp. 3d at 1156; Eason, 736 F.2d at 133 n.6, the Court recommends Plaintiff's  
4 request be granted.

5 **IV.**

6 **CONCLUSION AND RECOMMENDATIONS**

7 Based on the foregoing, IT IS HEREBY RECOMMENDED that:

- 8 1. Plaintiff American General Life Insurance Company's motion for default  
9 judgment (ECF No. 25) be GRANTED, as MODIFIED:
- 10 2. Plaintiff American General Life Insurance Company's claim for interpleader be  
11 GRANTED;
- 12 3. Default judgment be ENTERED in favor of Plaintiff American General Life  
13 Insurance Company against Defendants Heather K. Litz and Sharon Bushman;
- 14 4. Defendants be ENJOINED and RESTRAINED from initiating or prosecuting  
15 further any proceeding, at law or in equity, against Plaintiff or its affiliates and  
16 agents arising out of or relating to Plaintiff's payment of the remaining payments  
17 due under the Annuity (No. 199934) in accordance with this order;
- 18 5. Plaintiff and its affiliates and agents be fully and finally DISCHARGED from any  
19 further liability relating to the Annuity payments beyond making payments as  
20 contemplated by this order;
- 21 6. Plaintiff be DIRECTED to pay the remaining Annuity payments to Defendant  
22 Micklos Lemons (via his court-appointed conservator, the Fresno County Public  
23 Guardian) or his estate or any designated beneficiary/ies, if Micklos dies before  
24 disbursement of the final payment (*i.e.*, before September 15, 2032);
- 25 7. Plaintiff be AWARDED attorneys' fees and costs in the amount of \$10,000.00, to  
26 be withheld from the September 15, 2022 Annuity payment amount of  
27 \$100,000.00, prior to its payment to Micklos, by and through his court-appointed  
28 conservator, Fresno County Public Guardian;

1           8.     All claims that could have been asserted against Plaintiff arising out of the Annuity  
2                     and/or Annuity payments that are the subject of the instant litigation be  
3                     DISMISSED with prejudice; and

4           9.     The Court's order be deemed a final order under Federal Rule of Civil Procedure  
5                     54(b).

6     Plaintiff is HEREBY ORDERED to mail a copy of these findings and recommendations to each  
7     of the Defendants at that Defendant's last known address.

8           These findings and recommendations are submitted to the District Judge assigned to this  
9     action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court's Local Rule 304. Within **fourteen**  
10    **(14) days** of service of this recommendation, any party may file written objections to these  
11    findings and recommendations with the Court and serve a copy on all parties. Such a document  
12    should be captioned "Objections to Magistrate Judge's Findings and Recommendations." The  
13    District Judge will review the magistrate judge's findings and recommendations pursuant to 28  
14    U.S.C. § 636(b)(1)(C). The parties are advised that failure to file objections within the specified  
15    time may result in the waiver of the "right to challenge the magistrate's factual findings" on  
16    appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923  
17    F.2d 1391, 1394 (9th Cir. 1991)).

18     IT IS SO ORDERED.

19     Dated: May 25, 2023

  
UNITED STATES MAGISTRATE JUDGE

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