

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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UNUM LIFE INSURANCE COMPANY of  
AMERICA, a Maine Corporation,

NO. CIV. S-09-732 FCD/EFB

Plaintiff,

v.

MEMORANDUM AND ORDER

LARRY PAINTER, an individual;  
LEONARD ERMATINGER, an individual; and RYAN PAINTER, an individual,

## Defendants.

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This matter is before the court on the motions of defendants/cross-defendants LARRY PAINTER and RYAN PAINTER ("the Painters") to dismiss a cross-claim pursuant to Federal Rule of Civil Procedure ("FRCP") 12(b)(6) and to strike a portion of the cross-claimant's answer pursuant to FRCP 12(f)(2). Leonard Ermatinger, the defendant/cross-claimant, opposes the Painters' motions. For the reasons set forth below, the Painters' motions are DENIED.

## BACKGROUND

2 Plaintiff UNUM Life Insurance Company of America ("UNUM")  
3 instituted this interpleader action concerning the group life  
4 insurance proceeds of the deceased, Jacqueline Painter  
5 ("Jacqueline"). (Compl., filed March 17, 2009.) The complaint  
6 names as defendants Ermatinger and the Painters. ([Id.](#))  
7 Ermatinger, the decedent's father, alleges that he is the sole  
8 heir of Jacqueline's estate. (Ermatinger Answer & Cross-cl.  
9 ("Cross-cl."), filed July 8, 2009, at 4.) The complaint  
10 identifies Larry Painter as the primary beneficiary of  
11 Jacqueline's policy and Ryan Painter as the contingent  
12 beneficiary. (Compl. ¶ 10.)

13       Larry Painter married Jacqueline on December 30, 1983.  
14 (Cross-cl. at 4.) Ryan Painter is Larry Painter's son and was  
15 Jacqueline's step-son. (*Id.*) Larry Painter filed for  
16 dissolution of marriage in 1994. (*Id.*)

17 In 1995, Jacqueline began working for Con-Way Transportation  
18 ("Con-Way"). (Id.) She was insured under an UNUM group life  
19 insurance policy ("Policy") issued to Con-Way. (Compl. ¶ 9.) On  
20 September 18, 1995, she designated Larry Painter as the primary  
21 beneficiary of the Policy and Ryan Painter as the contingent  
22 beneficiary of the Policy. (Id. at ¶ 10.)

23 Ermatinger alleges that Larry Painter and Jacqueline entered  
24 into a Marital Settlement Agreement ("Agreement") on April 29,  
25 1996 and May 1, 1996, which was incorporated into a Judgement of  
26 Dissolution on July 3, 1996 by the Superior Court of Sacramento.  
27 (Cross-cl. at 4-5.) In the Agreement, Ermatinger alleges that  
28 the parties "waive[d] and renounce[d] any and all rights to

1 inherit the estate of the other at the other's death." (Id. at  
2 5.) The purpose of the Agreement was to "resolve all property  
3 and other rights of each party against the person or property of  
4 the other in all respects." (Id.) The Agreement, Ermatinger  
5 asserts, is binding on the "respective legatees, devisees, heirs,  
6 executors, administrators, assignees and successors in interest  
7 of the parties." (Id. at 6.)

8 Jacqueline died intestate on February 16, 2008. (Cross-cl.  
9 at 6.) Con-Way allegedly notified UNUM of Jacqueline's passing  
10 and identified Larry Painter as the primary beneficiary of the  
11 Policy and Ryan Painter as the contingent beneficiary of the  
12 Policy. (Compl. ¶ 13.) UNUM instituted this interpleader action  
13 after Ermatinger's attorney notified UNUM that Ermatinger would  
14 contest the Painters' designations as the beneficiaries of the  
15 Policy. (Id. at ¶¶ 16, 20.)

16 Ermatinger claims that the Agreement and Judgment of  
17 Dissolution constitute a waiver of Larry Painter's rights to the  
18 life insurance proceeds that is also binding on Ryan Painter.  
19 (Cross-Cl. at 6.) Ermatinger seeks declaratory relief, finding  
20 him the sole owner of the life insurance proceeds based on his  
21 status as Jacqueline's only heir. (Id. at 7.) Ermatinger also  
22 seeks attorney fees and costs in addition to sanctions against  
23 the Painters and their counsel of record for "pursuing bad faith  
24 claims and frivolous litigation." (Id.)

25 The Painters now move to dismiss Ermatinger's cross-claim on  
26 the following grounds: (1) California law, specifically Section  
27 5000 of the California Probate Code, excludes insurance proceeds  
28 from a decedent's estate; (2) the Agreement does not incorporate

1 any reference to life insurance policies; and (3) the cross-claim  
2 against Ryan Painter fails because Ryan Painter was not a party  
3 to the Agreement and thus could not have waived his interest as a  
4 contingent beneficiary of the Policy. (Painters' Mem. Mot.

5 Dismiss ("Painters' Mem"), filed July 27, 2009, at 3-4.)

6 The Painters also move to strike Ermatinger's denial "that  
7 Larry Painter or Ryan Painter have any right to said insurance  
8 proceeds" from paragraph 10 of Ermatinger's answer on the ground  
9 that Ermatinger has not stated a sufficient defense to UNUM's  
10 allegation that Jacqueline designated the Painters as  
11 beneficiaries of the Policy. (Painters' Mem. at 6.)

12 **STANDARDS**

13 **1. Motion To Dismiss For Failure To State A Claim**

14 On a motion to dismiss, the allegations of the complaint  
15 must be accepted as true. Cruz v. Beto, 405 U.S. 319, 322  
16 (1972). The court is bound to give the plaintiff the benefit of  
17 every reasonable inference to be drawn from the "well-pleaded"  
18 allegations of the complaint. Retail Clerks Int'l Ass'n v.  
19 Schermerhorn, 373 U.S. 746, 753 n.6 (1963). Thus, the plaintiff  
20 need not necessarily plead a particular fact if that fact is a  
21 reasonable inference from facts properly alleged. See id.

22 Nevertheless, it is inappropriate to assume that the  
23 plaintiff "can prove facts which it has not alleged or that the  
24 defendants have violated the . . . laws in ways that have not  
25 been alleged." Associated Gen. Contractors of Calif., Inc. v.  
26 Calif. State Council of Carpenters, 459 U.S. 519, 526 (1983).  
27 Moreover, the court "need not assume the truth of legal  
28 conclusions cast in the form of factual allegations." United

1     States ex rel. Chunie v. Ringrose, 788 F.2d 638, 643 n.2 (9th  
2 Cir. 1986). Indeed, "[t]hreadbare recitals of the elements of a  
3 cause of action, supported by mere conclusory statements, do not  
4 suffice." Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009)  
5 (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555  
6 (2007)).

7       In ruling upon a motion to dismiss, the court may consider  
8 only the complaint, any exhibits thereto, and matters which may  
9 be judicially noticed pursuant to Federal Rule of Evidence 201.  
10 See Mir v. Little Co. of Mary Hospital, 844 F.2d 646, 649 (9th  
11 Cir. 1988); Isuzu Motors Ltd. v. Consumers Union of United  
12 States, Inc., 12 F. Supp. 2d 1035, 1042 (C.D. Cal. 1998).

13       Ultimately, the court may not dismiss a complaint in which  
14 the plaintiff alleged enough facts to "state a claim to relief  
15 that is plausible on its face." Iqbal, 129 S. Ct. at 1949  
16 (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570  
17 (2007)). Only where a plaintiff has failed to "nudge [his or  
18 her] claims across the line from conceivable to plausible," is  
19 the complaint properly dismissed. Id. at 1952. When there are  
20 well-pleaded factual allegations, "a court should assume their  
21 veracity and then determine whether they plausibly give rise to  
22 an entitlement to relief." Id. at 1950.

23 **2. Motion To Strike For Alleging An Insufficient Defense**

24       FRCP 12(f)(2) authorizes the court, by motion of a party or  
25 by its own initiative, to "strike from a pleading an insufficient  
26 defense." The function of a 12(f) motion is to avoid the time  
27 and expense of litigating spurious issues by dispensing with  
28 those issues prior to trial. Fantasy, Inc. v. Fogerty, 984 F.2d

1 1524, 1527 (9th Cir. 1993), rev'd on other grounds, 510 U.S. 517  
2 (1994); Sidney-Vinstein v. A.H. Robins Co., 697 F.2d 880, 885  
3 (9th Cir. 1983).

4 Rule 12(f) motions are generally viewed with disfavor and  
5 not ordinarily granted, because they are often used to delay, and  
6 because of the limited importance of the pleadings in federal  
7 practice. Bureerong v. Uvawas, 922 F. Supp. 1450, 1478 (C.D.  
8 Cal. 1996). A motion to strike should not be granted "unless it  
9 is clear that the matter to be stricken could have no possible  
10 bearing on the litigation." Lilley v. Charren, 936 F. Supp. 708,  
11 713 (N.D. Cal. 1996) (citing Colaprico v. Sun Microsystems, Inc.,  
12 758 F. Supp. 1335, 1339 (N.D. Cal. 1991)).

13 **ANALYSIS**

14 **1. Motion To Dismiss**

15 The determinative issue on this motion is whether the  
16 Painters via the Agreement waived their expectancy interests as  
17 beneficiaries of the Policy.

18 The Painters rely on Section 5000 of the California Probate  
19 Code to argue that life insurance policies are not part of a  
20 decedent's estate.<sup>1</sup> (Painters' Mem. at 3-4.) Their argument is  
21 unpersuasive. Section 5000 simply recognizes the validity of  
22 nonprobate transfers upon death provided in insurance policies

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24 <sup>1</sup> The Painters also cite to Section 5600 to argue that  
25 Jacqueline's insurance policy was specifically excluded from  
26 nonprobate transfers that fail as a result of a dissolution of  
27 marriage. (Painters' Mem. at 4.) Section 5600 is inapplicable  
28 to a dissolution of marriage that occurred before January 1,  
2002. Cal. Prob. Code § 5604. The applicable law in effect  
before January 1, 2002, controls the issue of nonprobate  
transfers. Id. For this reason, this court does not address the  
Painters' argument relating to Section 5600.

1 and excludes them from probate. See Cal. Prob. Code § 5000;  
2 Estate of Petersen, 28 Cal. App. 4th 1742, 1746 (1994). As the  
3 Law Revision Comment to Section 5000 explains, the purpose of  
4 Section 5000 is to relieve the relevant parties from complying  
5 with the formalities of a will. Cal. Prob. Code § 5000.

6 The exclusion of an asset from probate does not  
7 automatically remove an asset from a decedent's estate. The Law  
8 Revision Comment to Section 6600, which defines a decedent's  
9 estate to mean all personal and real property, states that a  
10 decedent's estate is "not limited to probate assets." Cal. Prob.  
11 Code § 6600. Moreover, California courts have recognized that a  
12 beneficiary's expectancy interest in a life insurance policy<sup>2</sup> is  
13 an interest that can be waived through a marriage settlement  
14 agreement such that the proceeds later become part of the  
15 decedent's estate. See Life Insurance Co. of N. Am. v. Cassidy,  
16 35 Cal. 3d 599 (1984); Thorp v. Randazzo, 41 Cal. 2d 770 (1953);  
17 Estate of Petersen, 28 Cal. App. 4th at 1753 (explaining that an  
18 asset for nonprobate transfer is community property and remains  
19 part of the community estate subject to division of property at  
20 the dissolution of marriage). Therefore, the Painters cannot  
21 assert that California law excludes, as a matter of law,  
22 insurance proceeds from the waivers in the Agreement or from  
23 Jacqueline's estate.

24

25 <sup>2</sup> The Painters refer to their interests in the Policy as  
26 "contractual benefits." (Painters' Mem. at 4.) This is  
27 inaccurate. A designated beneficiary of a life insurance policy  
28 has an expectancy interest in a gift that vests at the time of  
the insured's death. See Cassidy, 35 Cal. 3d at 606. When an  
insurance policy is purchased with community property funds, the  
resulting policy is an asset of the community subject to division  
during a dissolution. Id. at 605.

1       Contrary to the Painters' assertions, the omission of any  
2 reference to life insurance policies in the Agreement is not  
3 fatal to Ermatinger's claim at this stage in the action, where  
4 the court must construe the facts stated in the cross-claim as  
5 true. A marriage settlement agreement is construed under the  
6 rules governing the interpretation of contracts. See In re  
7 Marriage of Eqedi, 88 Cal. App. 4th 17, 22 (2001); In re Marriage  
8 of Iberti, 55 Cal. App. 4th 1434, 1439 (1997). When interpreting  
9 the provisions of a marital settlement agreement, California  
10 courts have considered the parties' mutual intent at the time the  
11 agreement was formed. See e.g., Cassidy, 35 Cal. 3d at 604-05,  
12 608-09; Thorp v. Randazzo, 41 Cal. 2d at 773-75; Tanner v.  
13 Tanner, 57 Cal. App. 4th 419, 425 (1997). Where possible, courts  
14 infer the intent solely from the language of the agreement. See  
15 id.; see also Life Ins. Co. of N. Am. v. Ortiz, 535 F.3d 990, 993  
16 (9th Cir. 2008).

17       While courts usually do not construe general language in a  
18 marital settlement agreement to include a waiver of a  
19 beneficiary's interest in life insurance proceeds, the use of  
20 general language does not foreclose the possibility that the  
21 parties intended to waive expectancies that may have existed at  
22 the time of the settlement. See Cassidy, 35 Cal. 3d at 604-05  
23 (holding that general waiver of rights to "act as an  
24 administrator of the other spouse's estate, to seek a homestead,  
25 to inherit or receive a family allowance and to take under a will  
26 executed prior to the date of the settlement agreement" and "to  
27 receive in any manner any property of the other upon the death of  
28 the other" was clear indication that the beneficiary intended to

1 waive all rights, including the interest as a beneficiary of an  
2 insurance policy). In a marriage settlement agreement, a broad  
3 waiver of "all rights" or language stating the equivalent, as the  
4 Agreement in this case allegedly contains, can suffice as a  
5 waiver of the party's interest in a property subject to a  
6 nonprobate transfer. See Cal. Prob. Code § 145.

7 However, here, the parties dispute whether the Agreement  
8 constitutes a waiver of the Painters' interests. To resolve this  
9 issue, the court must interpret the Agreement in its totality in  
10 order to discern the intentions of Jacqueline and Larry Painter  
11 at the time they entered the Agreement. See Cal. Civ. Code §  
12 1641 ("The whole of a contract is to be taken together, so as to  
13 give effect to every part, if reasonably practicable, each clause  
14 helping to interpret the other"). Based on the pleadings and  
15 nothing more, the court cannot dismiss Ermatinger's cross-claim  
16 against Larry Painter. The court must assume the truth of his  
17 allegation--that Larry Painter waived his interest in the policy  
18 via the Agreement--and the court cannot resolve the parties'  
19 factual dispute on this issue at this stage in the proceedings.  
20 See Cruz, 405 U.S. at 322 ("the allegations of the complaint must  
21 be accepted as true").

22 The Painters also argue that Ryan Painter could not have  
23 waived his interest as a contingent beneficiary to the Policy  
24 because he was not a party to the Agreement. (Painters' Mem. at  
25 5.) This issue also cannot be disposed of at the pleading stage.  
26 Assuming the veracity of Ermatinger's allegation that the  
27 Agreement was a complete waiver of all rights that was also  
28 binding on Ryan Painter, Ermatinger's claim plausibly gives rise

1 to an entitlement of relief. See Iqbal, 129 S. Ct. at 1950. The  
2 rights of the parties in a nonprobate transfer of community  
3 property are still subject to "the terms of the instrument under  
4 which the nonprobate transfer is made" or "a written expression  
5 of intent of a party in the provision for transfer of the  
6 property or in a written consent to the provision." Cal. Prob.  
7 Code § 5011. Courts addressing the specific issue of whether the  
8 interest of a contingent beneficiary survives a marital  
9 settlement agreement also have considered the intent of the  
10 parties and looked at the individual factual circumstances. See  
11 Baekgaard v. Carreiro, 237 F.2d 459, 465 (9th Cir. 1956)  
12 (inferring intent from the language of the policy); Prudential  
13 Ins. Co. v. Broadhurst, 157 Cal. App. 2d 375, 378 (1958)  
14 (determining the issue to be a question of fact).<sup>3</sup> Therefore,  
15 this court also cannot determine the nature of Ryan Painter's  
16 interest as a contingent beneficiary to the Policy by referring  
17 only to the pleadings.

18 Ermatinger's allegation that the Painters waived their  
19 interests through the Agreement is a "plausible" claim under  
20 California law. The court cannot dismiss a complaint in which  
21 plaintiff has alleged sufficient facts to "state a claim to  
22 relief that is plausible on its face." Iqbal, 129 S. Ct. at  
23 1949. Accordingly, the Painters' motion to dismiss the cross-  
24 claim for failure to state a cognizable claim is DENIED.

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<sup>3</sup> The case that Ermatinger relies upon to argue that the  
27 waiver provision is binding on Ryan Painter, Estate of Jones, 122  
28 Cal. App. 4th 326 (2004), is distinguishable from the case at bar  
because Estate of Jones concerns a testamentary transfer and not  
a nonprobate transfer.

1       2. **Motion To Strike**

2       The Painters also bring a motion to strike Ermatinger's  
3 denial "that Larry Painter or Ryan Painter have any right to said  
4 insurance proceeds" from Paragraph 10 of Ermatinger's answer to  
5 the interpleader complaint. (Painters' Mem. at 6.) Whether the  
6 Painters' interests in the insurance proceeds survived the  
7 marriage settlement agreement is the central issue in this  
8 matter. It is not a "spurious" issue, and the court, as  
9 explained above, cannot decide this matter solely on the  
10 pleadings. Accordingly, the Painters' motion to strike is  
11 DENIED.

12     3. **Request For Attorney's Fees And Sanctions**

13       Ermatinger requests that the court sanction the Painters and  
14 their counsel of record for "pursuing bad faith claims and  
15 frivolous litigation." (Cross-cl. at 7.) The court must deny  
16 Ermatinger's request for sanctions for two reasons. First,  
17 Ermatinger did not adhere to the procedural requirements laid out  
18 in FRCP 11(c)(2).<sup>4</sup> Second, the court does not find the Painters'  
19 assertions "frivolous." The word "frivolous" is used to "denote  
20 a filing that is both baseless and made without a reasonable and  
21 competent inquiry." Holgate v. Baldwin, 425 F.3d 671, 676 (9th  
22 Cir. 2005). Here, the parties do not dispute that Jacqueline  
23 named the Painters as beneficiaries of the Policy. The Painters

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25       <sup>4</sup> "A motion for sanctions must be made separately from  
26 any other motion and must describe the specific conduct that  
27 allegedly violates Rule 11(b). The motion must be served under  
28 Rule 5, but it must not be filed or be presented to the court if  
the challenged paper, claim, defense, contention, or denial is  
withdrawn or appropriately corrected within 21 days after service  
or within another time the court sets." Fed. R. Civ. P. 11.

1 thus had an expectancy interest in the insurance proceeds at the  
2 time Larry Painter and Jacqueline entered the Agreement. As a  
3 marriage settlement agreement does not automatically invalidate  
4 an insurance beneficiary's expectancy interest, the Painters'  
5 assertion that their interest in the Policy's proceeds survived  
6 the Agreement is not "baseless."

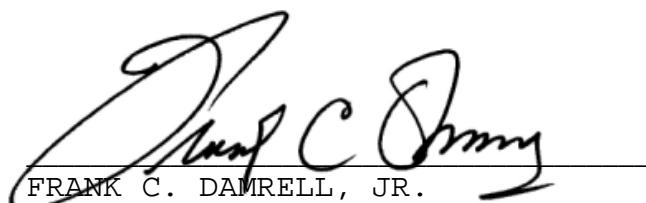
7 Ermatinger also requests the court award him attorney fees  
8 and costs but does not cite a legal basis for such an award, and  
9 thus, his request is properly denied on that basis. (Cross-cl.  
10 at 7.) If, however, Ermatinger seeks attorney fees and costs  
11 because he alleges that the Painters are engaging in frivolous  
12 and bad faith litigation, the court denies the request for the  
13 reasons stated above.

14 **CONCLUSION**

15 For the foregoing reasons, the Painters' motions to dismiss  
16 and to strike are DENIED. Ermatinger's request for sanctions and  
17 attorney fees and costs on the basis of alleged bad faith claims  
18 and frivolous litigation is also DENIED.

19 IT IS SO ORDERED.

20 DATED: September 3, 2009.



21  
22 FRANK C. DAMRELL, JR.  
23 UNITED STATES DISTRICT JUDGE  
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