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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

FIDELITY NATIONAL TITLE  
COMPANY,

Plaintiff,

v.

U.S. SMALL BUSINESS  
ADMINISTRATION; PLACER COUNTY  
ENVIRONMENTAL HEALTH; ALLAN  
R. FRUMKIN; FREDRICK W.  
HODGSON; LINDA H. HODGSON; and  
DOES 1 through 20, inclusive,

Defendants.

No. 2:13-CV-02030-KJM-AC

ORDER

AND RELATED  
COUNTER/CROSSCLAIMS.

This matter is before the court on Fidelity National Title Company's motion for discharge of trustee and for payment of its attorneys' fees and costs. ECF No. 111 (Mot.). The court took the matter under submission without oral argument. The court grants Fidelity's motion for discharge and grants in part its motion for costs and attorneys' fees. The court takes judicial notice of the bankruptcy court materials submitted in Fidelity's unopposed request. ECF No. 124.

1 I. BACKGROUND

2 Fredrick and Linda Hodgson owned a hotel in Kings Beach, California. Fidelity  
3 Mem. P. & A. 2, ECF No. 112 (Mem.); SBA Opp'n 1, ECF No. 117 (SBA Opp'n).  
4 Counterdefendant East Bay Investors (EBI) held the first deed of trust on the hotel, and the SBA  
5 held the second deed of trust. SBA Opp'n 2. EBI appointed Fidelity as its trustee under its deed  
6 of trust, and Fidelity recorded a notice of default on May 16, 2012. *Id.* One day before a  
7 foreclosure sale of the hotel was to take place, the Hodgsons filed a petition under Chapter 13 of  
8 the Bankruptcy Code in Nevada federal court. Req. for Judicial Notice Ex. A, at 4, ECF No. 124  
9 (RJN). Their Nevada bankruptcy case was dismissed on November 16, 2012. *Id.* The same day,  
10 Fidelity conducted a foreclosure sale of the hotel. Mem. 2; SBA Opp'n 1. EBI purchased the  
11 property for \$135,101.85 more than was owed under the foreclosed deed of trust. Mem. 2; SBA  
12 Opp'n 2. One day before that sale, however, the Hodgsons had filed a second petition under  
13 Chapter 13 in California. RJN 4. Although the California bankruptcy court annulled the  
14 automatic stay associated with the second petition, RJN 5-6, the Hodgsons maintain the  
15 foreclosure sale was conducted in violation of the automatic stay, Hodgson Opp'n 2-4, ECF No.  
16 118. The Hodgsons also commenced an action for wrongful foreclosure in California state court.  
17 Mem. 1-2. That action was removed to the bankruptcy court. Wechsler Decl. Ex. B, at 8, ECF  
18 No. 113-1 (Decl.).

19 On July 15, 2013, the day the California bankruptcy case was dismissed, *see id.*,  
20 the SBA sent a letter to Fidelity's counsel asserting that its security interest entitled it to the  
21 surplus sale proceeds. Mem. 3; Decl. Ex. A, at 3-4. Fidelity replied on July 17, 2013 and  
22 expressed its concern the Hodgsons might amend their wrongful foreclosure complaint to join  
23 Fidelity, invalidate the foreclosure sale, or seek to recover the surplus funds. *Id.* Ex. B at 8.  
24 Fidelity proposed to disburse the surplus to SBA in return for SBA's promise to indemnify  
25 Fidelity if it were later required to return the surplus funds to the Hodgsons or EBI. *Id.* SBA  
26 declined to pursue such an agreement. *Id.* Ex. C, at 10. On July 18, 2013, Fidelity sent a letter to  
27 the Hodgsons and their counsel. *Id.* Ex. D, at 12. Fidelity requested the Hodgsons confirm they  
28 sought only money damages in their wrongful foreclosure case and not to vacate the sale itself.

1 *Id.* Ex. D, at 13. On July 29, 2013, Mr. Hodgson sent a fax informing Fidelity that “any action  
2 taken [at the time of the foreclosure sale] or resulting from those acts is not acceptable to or  
3 approved by my wife Linda or me.” *Id.* Ex. E, at 14. Fidelity also received a letter from Allan  
4 Frumkin, the Hodgsons’ former attorney. *Id.* Ex. F, at 17. In the letter Mr. Frumkin informed  
5 Fidelity he was a judgment creditor of the Hodgsons and claimed a right to any funds to be  
6 distributed to them. *Id.*

7 Fidelity forwarded Mr. Hodgson’s fax to the SBA on August 1, 2013 and affirmed  
8 its intent to file an interpleader. *Id.* Ex. G, at 20. Fidelity filed an interpleader in Placer County  
9 Superior Court on August 13, 2013, nine months after the foreclosure sale, and deposited the  
10 surplus funds with that court the next day. Mem. 2; SBA Opp’n 3. The funds remain on deposit.  
11 Decl. 4. SBA removed the interpleader to this court on September 30, 2013. SBA Opp’n 3. The  
12 Hodgsons filed counterclaims against Fidelity, EBI, Bank of the West, and others on May 13,  
13 2014. Mem. 4. Fidelity attempted to negotiate a stipulated discharge, but the Hodgsons did not  
14 agree to the stipulation. Decl. 5-6.

15 Fidelity filed this motion on August 21, 2014, seeking “discharge . . . of all  
16 liability arising out of the handling of surplus funds . . .” and “\$20,440.66 (should there be no  
17 opposition) or \$21,003.16 (should there be an opposition).” Mot. 2. Bank of the West does not  
18 oppose the motion “so long as any award of fees or costs is paid from the interpled funds.” Bank  
19 of the West Opp’n 2, ECF No. 115. EBI does not oppose Fidelity’s request for discharge, but  
20 requests the court (1) order the surplus funds remain with Placer County Superior Court until  
21 resolution of the Hodgsons’ claims and (2) postpone consideration of Fidelity’s request for fees  
22 until the Hodgsons’ claims are resolved. EBI Opp’n 1-2, ECF No. 116. The SBA opposes  
23 Fidelity’s motion, contending (1) Fidelity was not a disinterested stakeholder, (2) the SBA is  
24 entitled to the interpleaded funds, (3) Fidelity breached its duties as trustee, and (4) Fidelity is not  
25 entitled to attorneys’ fees or costs. SBA Opp’n 5-8. The SBA does not directly oppose Fidelity’s  
26 motion for discharge. The Hodgsons oppose Fidelity’s discharge, the award of any fees or costs,  
27 and the interpleader in total. Hodgson Opp’n 2, ECF No. 118.

28

1 II. DISCUSSION

2 A. Motion for Discharge

3 Rule 22 allows a party to file a claim in interpleader given the “possibility of  
4 exposure to double or multiple liability.” *Lee v. W. Coast Life Ins. Co.*, 688 F.3d 1004, 1009 (9th  
5 Cir. 2012). Interpleader allows a stakeholder to protect itself when it faces more than one claim  
6 to a single fund. *Id.* (quoting *Mack v. Kuckenmeister*, 619 F.3d 1010, 1024 (9th Cir. 2010)).  
7 Interpleader is meant to “prevent[] the stakeholder from being obliged to determine at his peril  
8 which claimant has the better claim.” *Id.* (quoting 7 CHARLES A. WRIGHT ET AL., FED. PRACT. &  
9 PROC. § 1702 (3d ed.)).

10 In an interpleader action, the district court first decides whether the requirements  
11 of Rule 22 have been met, and then the court evaluates the defendants’ claims to the single fund.  
12 *Mack*, 619 F.3d at 1023-24 (quoting *Rhoades v. Casey*, 196 F.3d 592, 600 (5th Cir. 1999)). The  
13 SBA removed this case based on 28 U.S.C. § 1444,<sup>1</sup> so the requirements of Rule 22 apply. Not.  
14 of Removal 1, ECF No. 1. Interpleader is proper if “there is a single fund at issue” and if “there  
15 are adverse claimants to that fund.” *Lee*, 688 F.3d at 1009; FED. R. CIV. P. 22(a)(1).

16 The requirement for an “adverse claimant” is not exacting. Adverse claims may  
17 be both actual and potential. *Mack*, 619 F.3d at 1023 (quoting *Minn. Mut. Life Ins. Co. v. Ensley*,  
18 174 F.3d 977, 980 (9th Cir. 1999)). Claims need not be “bona fide,” but interpleader plaintiffs  
19 must file in good faith. *Michelman v. Lincoln Nat. Life Ins. Co.*, 685 F.3d 887, 893-94 (9th Cir.  
20 2012). “[A] stakeholder must have a good faith belief that there are or may be colorable  
21 competing claims to the stake. This is not an onerous requirement.” *Id.* (citing 4 JAMES WM.  
22 MOORE, MOORE’S FEDERAL PRACTICE § 22.03[1][c] (3d ed. 1997) (“[C]ourts appear to require  
23 merely that the stakeholder’s concern in this regard be more than conjectural.”). Fear of multiple  
24 liability need only be “real and reasonable.” *Id.* Inevitably some claims will be meritless, but this

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25 <sup>1</sup> “Any action brought under section 2410 of this title against the United States in any State court  
26 may be removed by the United States to the district court of the United States for the district and  
27 division in which the action is pending.” 28 U.S.C. § 1444. Section 2410 of Title 28 describes,  
28 among other actions, “any civil action or suit in any district court, or in any State court having  
jurisdiction of the subject matter . . . of interpleader or in the nature of interpleader with respect  
to, real or personal property on which the United States has or claims a mortgage or other lien.”

1 determination “is the very purpose of the proceeding.” *Id.* (quoting *Aaron v. Mahl*, 550 F.3d 659,  
2 663 (7th Cir. 2008)). Interpleader could hardly protect a stakeholder or “do[] justice  
3 expeditiously” if the action crumbled at one claimant’s assertion that another’s claim lacked  
4 merit. *Id.*

5 At issue here are the surplus funds from the foreclosure sale. The adverse  
6 claimants include the SBA, the Hodgsons, and Mr. Frumkin. Interpleader is proper. This  
7 conclusion withstands the SBA’s argument that Fidelity had a statutory duty to disburse funds to  
8 it. SBA Opp’n 6. Fidelity was not required to evaluate the relative strengths of the claims it  
9 faced. *See Michelman*, 685 F.3d at 894 (quoting *N.Y. Life Ins. Co. v. Welch*, 297 F.2d 787, 790  
10 (D.C. Cir. 1961) (“A stakeholder, acting in good faith, may maintain a suit in interpleader . . .  
11 even though he believes only one of them is meritorious.”)). Neither do the claims’ disparate  
12 origins disqualify them. FED. R. CIV. P. 22(a)(1)(A).

13 It is true interpleader has equitable roots, and federal courts from time to time find  
14 interpleader is improper when it would “reward inequitable or improper conduct.” WRIGHT,  
15 *supra*, § 1709. Interpleader may be inappropriate if a claimant asserts laches, *see U.S. Fire Ins.*  
16 *Co. v. Asbestospray, Inc.*, 182 F.3d 201, 208 (3d Cir. 1999), or unclean hands, *see Farmers*  
17 *Irrigating Ditch & Reservoir Co. v. Kane*, 845 F.2d 229, 232 (10th Cir. 1988). To prove laches, a  
18 claimant must show unreasonable delay and prejudice. *Evergreen Safety Council v. RSA Network*  
19 *Inc.*, 697 F.3d 1221, 1226 (9th Cir. 2012); *U.S. Fire*, 182 F.3d at 208. Fidelity’s interpleader was  
20 nine months in the making, *see* SBA Opp’n 2, but this delay was reasonable given the Hodgsons’  
21 bankruptcy litigation. Fidelity had also engaged the SBA in negotiations. Decl. Ex. B at 8.

22 Likewise, an argument that Fidelity somehow caused the dispute it now attempts  
23 to sidestep does not fit the facts of this case. The circumstances of the foreclosure sale suggest  
24 Fidelity did not purposefully violate the automatic stay, as the Hodgsons claim. Hodgsons’  
25 Opp’n 3-5. The Nevada case had been dismissed the same day, the California case filed the day  
26 before, and the California stay was later annulled. RJN 4-6. The Hodgsons may maintain their  
27 counterclaims against Fidelity, but not as an interpleader-plaintiff.  
28

1 Fidelity faces multiple claims to the surplus proceeds. It does not claim an interest  
2 in the funds. It wishes to avoid the risks it would face were it to determine alone who has the best  
3 claim. Fidelity's motion for discharge in its capacity as interpleader plaintiff is granted.

4 B. Motion for Attorneys' Fees and Costs

5 In general, a court may award fees and costs to a disinterested stakeholder.  
6 *Gelfgren v. Republic National Life Ins. Co.*, 680 F.2d 79, 81 (9th Cir. 1982). "The amount of fees  
7 to be awarded in an interpleader action is committed to the sound discretion of the district court."  
8 *Trustees of Directors Guild of Am.-Producer Pension Benefits Plans v. Tise*, 234 F.3d 415, 426,  
9 *as amended on denial of reh'g*, 255 F.3d 661 (9th Cir. 2000) (citing *Schirmer Stevedoring Co. v.*  
10 *Seaboard Stevedoring Corp.*, 306 F.2d 188, 194 (9th Cir. 1962)). A court considering a motion  
11 for attorneys' fees should recognize, however, that interpleader is meant to "promote early  
12 litigation" and "prevent[] dissipation" of the contested funds. *Id.*

13 The party claiming attorneys' fees bears the burden of establishing its entitlement  
14 to the award. *Tise*, 234 F.3d at 427. The "traditional test" for awarding fees in an interpleader  
15 action is "less rigorous" than the test used in other contexts. *Sun Life Assur. Co. of Canada v.*  
16 *Chan's Estate*, No. C-03-2205 SC, 2003 WL 22227881, at \*3 (N.D. Cal. Sept. 22, 2003) (citing  
17 *Powell Valley Bankshares, Inc. v. Wynn*, No. 2:01CV00079, 2002 WL 728348, at \*2 (W.D.Va.,  
18 Apr. 11, 2002)). Attorneys' fees in an interpleader action are usually appropriate when "(1) the  
19 party seeking fees is a disinterested stakeholder, (2) who had conceded liability, (3) has deposited  
20 the disputed funds into court, and (4) has sought a discharge from liability." *Sun Life*, 2003 WL  
21 22227881, at \*3 (quoting *Septembertide Publ'g v. Stein & Day, Inc.*, 884 F.2d 675, 683 (2d Cir.  
22 1989)). Fees are "properly limited" to those "incurred in filing the action and pursuing the  
23 [stakeholder's] release from liability, *not* in litigating the merits of the adverse claimants'  
24 positions." *Tise*, 234 F.3d at 426 (emphasis in original). Examples of compensable fees include  
25 for preparation of a complaint, for service of process on the claimants, and for preparing an order  
26 for discharge and dismissal. *Id.* at 426-27. A court may take several factors into consideration  
27 when determining the amount of a fee: (1) the complexity of the case; (2) unique services the  
28 stakeholder provided; (3) the stakeholder's good faith and diligence; (4) "whether the services

1 rendered benefited the stakeholder”; and (5) “whether the claimants improperly protracted the  
2 proceedings.” WRIGHT, *supra* § 1719 (citations omitted).

3 Courts may deny a stakeholder’s motions for fees if a substantial controversy  
4 contaminates its relationship with the claimants. *See, e.g., Schirmer Stevedoring*, 306 F.2d at 194  
5 (holding the stakeholder may be awarded attorneys’ fees for filing the complaint, obtaining orders  
6 against further prosecution, and preparing an accounting of amounts payable to it, but not for  
7 “services that could only relate to the contested issues between [the stakeholder] and the  
8 claimants”); *Ferber Co. v. Ondrick*, 310 F.2d 462, 466 (1st Cir. 1962) (holding the district court  
9 had not abused its discretion when it awarded no attorneys’ fees to a stakeholder when most of its  
10 efforts were spent resisting a counterclaim as to which it was not disinterested.); *Hoover, Inc. v.*  
11 *McCullough Indus., Inc.*, 351 F. Supp. 1023, 1031 (D. Ala. 1972) (limiting the fee award in light  
12 of a contest between the interpleader plaintiff and the claimants over the correctness of the  
13 amount deposited in an interpleader action). In addition, if the stakeholder faces multiple claims  
14 in the ordinary course of its business, some courts have declined to award it attorneys’ fees. *See,*  
15 *e.g., Companion Life Ins. Co. v. Schaffer*, 442 F. Supp. 826, 830 (S.D.N.Y. 1977) (expressing an  
16 inclination to deny an insurer’s fee request because “[c]onflicting claims to the proceeds of a  
17 policy are inevitable and normal risks of the insurance business”).

18 Fidelity has employed separate counsel to represent it in its capacities as  
19 interpleader-plaintiff and counter-defendant. Mem. 4. Glenn Wechsler, representing Fidelity in  
20 its capacity as interpleader-plaintiff, has submitted an itemized list of his fees and costs “related  
21 solely to the Trustee’s fees in connection with the Surplus Funds (and not as Counter-Defendant  
22 in the Counterclaim).” Decl. Ex. M. The court has reviewed this list and finds the relatively  
23 lengthy procedural history of this case and Fidelity’s good faith effort to resolve the dispute  
24 warrant a substantial award, but that the award should not include fees Fidelity incurred during  
25 adversarial proceedings before and after the interpleader was filed. The court finds that an award  
26 of \$11,500 appropriately reflects these considerations. This award strikes a balance between the  
27 divergent purposes of interpleader: encouraging early resolution of multiple claims and  
28

1 preserving the funds in dispute. It also reflects the court's finding that Fidelity should not shift  
2 the entirety of the foreseeable cost of its business as trustee in a foreclosure sale.

3 The court is mindful of EBI's request to postpone a fee award until resolution of  
4 the counterclaims. EBI Opp'n 1-2, ECF No. 116. Courts occasionally defer assessment of  
5 attorneys' fees until resolution of the claims. *See, e.g., Settlement Capital Corp. Inc. v. Pagan*,  
6 No. CIV.A. 3:07-CV-1609-, 2009 WL 856466, at \*2 (N.D. Tex. Mar. 30, 2009); *Fox & Grove*,  
7 *Chartered v. Miller*, No. 88 C 3741, 1988 WL 135485, at \*2 (N.D. Ill. Dec. 9, 1988);  
8 *Pennsylvania Fire Ins. Co. v. Am. Airlines, Inc.*, 180 F. Supp. 239, 243 (E.D.N.Y. 1960). *See*  
9 *also* WRIGHT, *supra* § 1719. A court has discretion to assess fees from the interpleaded funds, as  
10 a cost to the losing claimant, or divide them among the claimants. *Schirmer Stevedoring*, 306  
11 F.2d at 195. The court therefore defers its determination of the allocation of the fee award until  
12 resolution of the counterclaims.

### 13 III. CONCLUSION

14 For the foregoing reasons, the court:

- 15 (1) GRANTS the plaintiff's motion for discharge of trustee, and
- 16 (2) GRANTS the plaintiff's motion for attorneys' fees and costs in the amount of  
17 \$11,500 but DEFERS assessment and allocation of the fees and costs until  
18 resolution of the counterclaims.

19 IT IS SO ORDERED.

20 DATED: November 12, 2014.

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23 UNITED STATES DISTRICT JUDGE  
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