

1 Protection's ("Cal Fire") Motion for Judgment on the Pleadings,
2 Or Alternatively, Motion to Dismiss (Doc. #12) Plaintiffs MWE
3 Services, Inc. ("MWE") and Christopher Martin's (collectively
4 "Plaintiffs") First Amended Complaint in Interpleader (Doc. #1-1,
5 Exh. A) ("FAC"); and (2) Defendants United States Department of
6 Agriculture Forest Service and United States Geological Survey's
7 (collectively "United States") Motion to Dismiss (Doc. # 18) the
8 FAC for lack of Subject Matter Jurisdiction.¹ Cal Fire submitted
9 a Reply (Doc. #23) to the United States' motion, and the United
10 States filed a statement of non-opposition (Doc. #20) to Cal
11 Fire's motion. Plaintiffs filed a joint and several opposition
12 (Doc. #21) to both motions. The United States filed a reply
13 (Doc. #24) to the opposition.

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15 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

16 On December 10, 2012, Plaintiffs filed the First Amended
17 Complaint in Interpleader (Doc. 1-1, Exh. A) in Yuba County
18 Superior Court. The United States removed the case (Doc. #1) to
19 this Court on January 2, 2014.

20 According to the FAC, Plaintiff Christopher Martin is a
21 resident of the State of Missouri and MWE is a corporation
22 organized under the laws of the State of Nebraska. FAC ¶¶ 1-2.
23 Plaintiffs are the insureds under a commercial general liability
24 policy in which the insurer is Berkley Regional Specialty
25 Insurance Company. Id. ¶ 5. Plaintiffs allege that Defendants

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27 ¹ This motion was determined to be suitable for decision without
28 oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled
for May 21, 2014.

1 have claimed or may claim that they are entitled to the funds
2 from the policy, which may subject Plaintiffs to multiple
3 liability under 28 U.S.C. § 1335 and Federal Rules of Civil
4 Procedure Rule 22. Id. ¶¶ 6-7. They indicate the claims arise
5 from a fire that occurred in and around Yuba County, California.
6 Id. ¶ 3. The FAC indicates that Cal Fire has already filed a
7 complaint against Plaintiffs for damages as a result of the fire.
8 Plaintiffs claim no interest in the funds except for attorneys'
9 fees and costs and request the Court to determine the persons who
10 are legally entitled to receive the funds. Id. ¶¶ 9-10.
11 Plaintiffs state they are ready and willing to tender the funds
12 to the Court "with their insurer's consent." Id.

14 II. OPINION

15 A. Requests for Judicial Notice

16 The United States requests the Court judicially notice (Doc.
17 #18-2) two documents, (1) the FAC (RJN Exh. 1) and (2) a
18 complaint filed by Cal Fire against Plaintiffs for "fire
19 suppression, investigation, auditing, and litigation fees and
20 costs" (RJN Exh. 2).

21 Generally, the Court may not consider material beyond the
22 pleadings in ruling on a motion to dismiss. The exceptions are
23 material attached to, or relied on by, the complaint so long as
24 authenticity is not disputed, or matters of public record,
25 provided that they are not subject to reasonable dispute. E.g.,
26 Sherman v. Stryker Corp., 2009 WL 2241664 at *2 (C.D. Cal. Mar.
27 30, 2009) (citing Lee v. City of Los Angeles, 250 F.3d 668, 688
28 (9th Cir. 2001) and Fed. R. Evid. 201). The first document is

1 the operative complaint in this action. It is clearly a document
2 the Court will rely on in ruling on the motions, and as such, the
3 request is granted as to it.

4 The second document is a complaint filed in another action
5 in the Yuba County Superior Court. It is specifically referenced
6 in Plaintiffs' FAC and relied on by Plaintiffs. As such, the
7 Court will take judicial notice of it.

8 Cal Fire seeks judicial notice (Doc. #14) of four documents.
9 The first is the complaint already discussed above, filed by Cal
10 Fire against Plaintiffs in the Yuba County Superior Court. The
11 other three documents concern the removal and subsequent remand
12 of the other action. The Court does not find notice of these
13 documents necessary in ruling on the motions before it, and as
14 such, denies Cal Fire's request.

15 Plaintiffs seek judicial notice (Doc. #21-4) of two
16 documents. The first is their answer to the complaint noticed
17 above. The second is Plaintiff MWE's case management conference
18 statement filed in connection with the other action. The Court
19 does not find either necessary in ruling on the motions currently
20 before it, and therefore denies Plaintiffs' request.

21 B. Legal Standard

22 There are two forms of interpleader, "rule interpleader,"
23 under Rule 22 of the Federal Rules of Civil Procedure, and
24 "statutory interpleader," pursuant to 28 U.S.C. § 1335. Both
25 allow a party to file a claim for interpleader if there is a
26 possibility of exposure to double or multiple liability. Lee v.
27 W. Coast Life Ins. Co., 688 F.3d 1004, 1009 (9th Cir. 2012).

28 "The purpose of interpleader is for the stakeholder to 'protect

1 itself against the problems posed by multiple claimants to a
2 single fund.'" Mack v. Kuckenmeister, 619 F.3d 1010, 1024 (9th
3 Cir. 2010) (quoting Minn. Mut. Life Ins. Co. v. Ensley, 174 F.3d
4 977, 980 (9th Cir.1999)).

5 When a person holding funds or property encounters other
6 parties who are making conflicting possessory claims for those
7 funds or property, he may join the parties as defendants and
8 require them to litigate who is entitled to the funds or
9 property. Michelman v. Lincoln Nat. life Ins. Co., 685 F.3d 887,
10 893 (9th Cir. 2012); ReliaStar Life Ins. Co. v. Northam, 2:13-CV-
11 00063-TLN, 2013 WL 5703341, at *2 (E.D. Cal. 2013).

12 There are some general requirements for interpleader.
13 Interpleader requires that the plaintiff-stakeholder have in its
14 possession, custody or control, a particular fund or property.
15 Mock v. Collins, No. EDCV 04-395-VAP SGLX, 2004 WL 3619122, at *2
16 (C.D. Cal. 2004); ReliaStar Life Ins., 2013 WL 5703341, at *2; 28
17 U.S.C. § 1335(a). Further, there must be multiple, adverse
18 claims made to that same property or fund. ReliaStar Life Ins.,
19 at *2. Finally, the plaintiff stakeholder must have a reasonable
20 fear of multiple liability; that is, the stakeholder must have "a
21 good faith belief that there are or may be colorable competing
22 claims to the stake," based on "a real and reasonable fear of
23 exposure to double liability or the vexation of conflicting
24 claims." Michelman, 685 F.3d at 894.

25 C. Analysis

26 Both Cal Fire's and the United States' motions attack
27 Plaintiffs' FAC as failing to meet the requirements discussed
28 above. The Court first addresses the United States' contention

1 that the FAC must be dismissed because Plaintiffs do not have
2 control or possession over the insurance funds that serve as the
3 basis for this interpleader action.

4 1. Possession or Control

5 In its Motion to Dismiss, the United States contends
6 Plaintiffs do not have possession or control over the policy
7 proceeds at issue and therefore lack standing to bring the
8 present action. U.S. MTD at pp. 4-5. The United States argues
9 that Plaintiffs are merely insureds named in the policy, and any
10 control over the policy funds is subject to the consent of the
11 insurance company.

12 Plaintiffs respond that they are the beneficiaries of the
13 policy, are entitled to the full amount provided under it, but
14 admit they can only interplead the funds "with their insurer's
15 consent." Opp. at p. 4; see also FAC ¶ 9. They contend their
16 insurer's consent is "reasonably inferred" to have been given due
17 to the fact that no reservation of rights exists on the policy.
18 However, no legal authority supporting this specific contention
19 is provided. In its Reply, Cal Fire argues that an insurer's
20 decision not to reserve rights to assert coverage defenses does
21 not afford the insured any control over the actual insurance
22 proceeds. Cal Fire Reply at p. 3.

23 The Court finds Defendants' arguments persuasive. Plaintiffs
24 have failed to meet this foundational element of interpleader
25 actions. Despite Plaintiffs' arguments regarding reasonable
26 inferences, they have not adequately demonstrated that they have
27 possession of the policy funds or provided evidence that their
28 insurer has placed the funds within Plaintiffs' custody or

1 control. As such, they lack standing to bring this interpleader
2 action. Accordingly, the Court GRANTS the United States' Motion
3 to Dismiss, without prejudice, as Plaintiffs may at some point
4 gain the necessary control over the policy funds.

5 The Court need not address the United States' remaining
6 contentions in support of its motion and DENIES Cal Fire's
7 motion as moot.

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III. ORDER

10 For the reasons set forth above, the Court GRANTS the United
11 States' Motion to Dismiss the FAC. Cal Fire's motion is DENIED
12 as moot.

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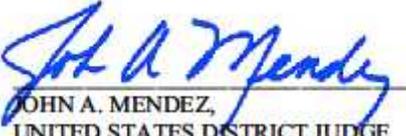
IT IS SO ORDERED.

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Dated: June 11, 2014

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JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE

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