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UNITED STATES DISTRICT COURT

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EASTERN DISTRICT OF CALIFORNIA

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KAREN FIELD, TRUSTEE OF THE
DESHON REVOCABLE TRUST,

No. 2:15-cv-00241-TLN-DB

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Plaintiff,

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v.

**ORDER GRANTING MOTION FOR
ACCOUNTING AND TO DEPOSIT
INTERPLEADER FUNDS**

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UNITED STATES OF AMERICA, *et al.*,

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Defendants.

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This matter is before the Court pursuant to Defendant United States of America's ("Defendant")¹ Motion for Accounting and to Deposit Interpleader Funds. (ECF No. 67.)

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Plaintiff Karen Field ("Plaintiff") opposes the motion (ECF No. 71), and Defendant replied (ECF No. 85). For the reasons set forth below, the Court hereby GRANTS Defendant's Motion for Accounting and to Deposit Interpleader Funds.

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I. FACTUAL AND PROCEDURAL BACKGROUND

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Plaintiff is the trustee of the Henry DeShon Revocable Trust ("Trust"). (ECF No. 67 at 2.) On January 28, 2015, Plaintiff initiated this interpleader action under 28 U.S.C. § 1335 against many defendants who assert claims on the Trust's funds to determine the order in which the funds

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¹ Plaintiff brought suit against many individuals and entities. For clarity, the Court will refer to the movant, the United States of America, as Defendant. Two other defendants join the motion, the California Franchise Tax Board and Gary W. Rogers, trustee of the Ann V. Rogers Trust. The Court will refer to these defendants by name.

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1 should be distributed. (ECF No. 1 ¶ 1; ECF No. 56 ¶ 1; ECF No. 67 at 2.) Plaintiff filed her
2 second amended complaint on September 2, 2015. (ECF No. 56.)

3 Henry DeShon (“DeShon”) passed away on March 28, 2009. (ECF No. 67-1 at 2.) In
4 life, DeShon held himself out to be a stockbroker, though he was not licensed in California. (ECF
5 No. 56 ¶ 15.) Following DeShon’s death, it was discovered that he had embezzled from his
6 clients, but had not reported the embezzlement income on his tax returns. (ECF No. 71 at 2.) The
7 Trust was funded with life insurance benefits from life insurance policies on the life of DeShon.
8 (ECF No. 56 ¶ 21.) A number of creditors have claims on the Trust’s funds, including victims of
9 DeShon’s embezzlement, the Internal Revenue Service, and the California Franchise Tax Board.
10 (ECF No. 71 at 2.) Plaintiff initiated this action asking the Court to determine whether the Trust
11 should pay federal and state taxes before compensating DeShon’s victims. (ECF No. 67-1 at 2.)

12 Plaintiff is a California Licensed Professional Fiduciary. (ECF No. 67-2 at 7.) Prior to
13 her appointment as trustee, Plaintiff prepared two accountings for the Trust. (ECF No. 67-2 at 7.)
14 The first accounting covered the period from October 16, 2009, through December 31, 2010.
15 (ECF No. 67-2 at 7.) The second accounting covered the period from January 1, 2011, through
16 April 30, 2013. (ECF No. 67-2 at 7.) That second accounting showed the Trust’s funds on hand
17 as of April 30, 2013, totaled \$434,716.81. (ECF No. 67-2 at 7, 68.)

18 Plaintiff was appointed trustee of the DeShon Trust on May 6, 2014, by the Sacramento
19 County Probate Court. (ECF No. 71 at 4.) In both her second amended complaint and her
20 response in opposition, Plaintiff states that the Trust currently holds \$379,287.72. (ECF No. 56 ¶
21 21; ECF No. 71 at 5.) On April 29, 2016, Plaintiff deposited \$304,287.32 of the Trust’s funds
22 with the Court. (ECF No. 71 at 6.) Plaintiff retained the difference in anticipation of future
23 expenses of up to \$5,000 for the Trust’s trustee, \$20,000 for the Trust’s attorney, and \$50,000 for
24 the Trust’s litigation counsel. (ECF No. 71 at 5–6.)

25 Defendant asks the Court to order Plaintiff to produce an accounting for the Trust from
26 February 2014 to present and to deposit all Trust funds with the Court. (ECF No. 67-1 at 6.)
27 Two additional defendants, the California Franchise Tax Board and Gary W. Rogers, trustee of
28 the Ann V. Rogers Trust, join Defendant’s motion. (ECF Nos. 68 & 79.)

1 **II. STANDARD OF LAW**

2 Pursuant to 28 U.S.C. § 1335, district courts have original jurisdiction over interpleader
3 actions where two or more claimants are claiming money or property if, among other
4 requirements, the plaintiff deposits the money, property, or value of loans or other instruments,
5 into the registry of the court, or gives a bond in that amount payable to the clerk of the court. 28
6 U.S.C. § 1335.

7 “Deposit of the disputed funds in the court’s registry is a jurisdictional requirement to
8 statutory interpleader under 28 U.S.C. § 1335.” *Gelfgren v. Republic Nat. Life Ins. Co.*, 680 F.2d
9 79, 81–82 (9th Cir. 1982); *see Minnesota Mut. Life Ins. Co. v. Ensley*, 174 F.3d 977, 981 (9th Cir.
10 1999) (finding interpleader plaintiff satisfied the requirements of the interpleader statute by,
11 among other requirements, depositing the full amount of the insurance policy proceeds into the
12 registry of the court); *Aetna Life Ins. Co. v. Bayona*, 223 F.3d 1030, 1033 (9th Cir. 2000), *as*
13 *amended on denial of reh’g and reh’g en banc* (Nov. 3, 2000) (awarding interpleader plaintiff
14 attorney’s fees deducted from the deposited funds after plaintiff deposited the full amount of the
15 insurance proceeds with the district court).

16 **III. ANALYSIS**

17 Plaintiff argues that Defendant’s motion to deposit the Trust’s funds is moot because
18 Plaintiff has already deposited the funds, minus amounts for anticipated expenses. (ECF No. 71
19 at 7.) Plaintiff adds that an accounting is unnecessary and that producing one would create an
20 expense for which she would need to be reimbursed, the type of expense for which she set aside
21 money in accounts for the retained funds. (ECF No. 71 at 6–7.)

22 A. Deposit of Interpleader Funds

23 Plaintiff argues that she has already deposited the “subject funds in escrow,” moot
24 Defendant’s motion. (ECF No. 71 at 7.) The parties disagree on the definition of “subject
25 funds.” Defendant argues that Plaintiff must deposit the entire balance of the Trust with the Court
26 pursuant to § 1335’s jurisdictional requirements. (ECF No. 67 at 3.) Plaintiff argues that the
27 “subject funds” are the Trust balance minus the amounts in retained funds accounts to cover
28 *anticipated* administrative expenses, such as trustee fees and attorney’s fees. (ECF No. 71 at 7.)

1 Plaintiff does not cite any authority for the proposition that she may set aside a portion of
2 interpleader funds to cover anticipated expenses. (ECF No. 71 at 7.) Plaintiff does cite several
3 cases which discuss the court's approval of trust expenses which had already been incurred, rather
4 than of funds set aside for anticipated expenses. (ECF No. 71 at 7.) Plaintiff cites *Colorado*
5 *Wool Marketing Ass'n v. Monaghan*, 66 F.2d 313, 315 (10th Cir. 1933) (allowing payment of
6 reasonable expenses a court ordered receiver had already incurred to maintain a band of sheep
7 which were held in the custody of the court); *Kennebec Box Co. v. O.S. Richards Corp.*, 5 F.2d
8 951, 951 (2d Cir. 1925) (allowing payment of administrative expenses incurred in setting up a
9 receivership before payment to any creditor, even though payment of those administrative
10 expenses would leave the fund insolvent); *U.S. v. Weisburn*, 48 F.Supp. 393, 397 (E.D. Pa. 1943)
11 (holding that some of the expenses of an insolvent estate, such as administrative and legal fees
12 which the executor had already incurred, had priority over the estate's tax debts); and *Abrams v.*
13 *U.S.*, 274 F.2d 8, 12 (8th Cir. 1960) (approving a trustee's request for attorney's fees which had
14 been incurred in setting up and managing the trust). (ECF No. 71 at 7.)

15 Plaintiff's argument, that she is permitted to set aside funds in accounts for those retained
16 funds because some Trust expenses may have priority even over tax claims, is not persuasive.
17 Her authority does not support that proposition but provides examples of payment of expenses for
18 fixed amounts that had already been incurred. Section 1335 requires plaintiffs to deposit funds in
19 their possession with the court when they file interpleader actions. 28 U.S.C. § 1335. Plaintiff
20 has filed this interpleader action asking the Court to determine how to distribute the Trust's
21 assets, and that action requires Plaintiff to deposit all Trust funds with the Court. 28 U.S.C. §
22 1335; *Gelfgren*, 680 F.2d at 81–82. Plaintiff plans to deposit any remainder with the Court after
23 the case concludes and those anticipated expenses are known and have been paid. (ECF No. 71-5
24 at 2.) Therefore, those retained funds are Trust funds at stake and Plaintiff must deposit those
25 funds with the Court.

26 Plaintiff also argues that those providing services to the Trust, including herself, will
27 require funds from the Trust to complete their work. (ECF No. 71 at 7.) “Generally, courts have
28 discretion to award attorney fees to a disinterested stakeholder in an interpleader action.” *Abex*

1 *Corp. v. Ski's Enterprises, Inc.*, 748 F.2d 513, 516 (9th Cir. 1984) (citation omitted). "The
2 amount of fees to be awarded in an interpleader action is committed to the sound discretion of the
3 district court." *Trustees of Directors Guild of America-Producer Pension Benefits Plans v. Tise*,
4 234 F.3d 415, 426 (9th Cir. 2000). The trustee, or other provider of professional services to the
5 Trust, may make a motion for approval or payment of fees or expenses at the appropriate
6 time. *Aetna Life Ins. Co.*, 223 F.3d at 1033. Accordingly, the Court GRANTS Defendant's
7 Motion to Deposit Interpleader Funds (ECF No. 67).

8 B. Trust Accounting

9 Plaintiff argues that there is no legal basis for ordering an accounting. (ECF No. 71 at 6–
10 7.) Plaintiff adds that her statements regarding the Trust's balance have been consistent as she
11 reported the same balance in her seconded amended complaint as she did in her subsequent
12 response in opposition to Defendant's motion, \$379,287.72. (ECF No. 71 at 8). Plaintiff's
13 original complaint alleged the trust contained \$434,716.81. (ECF No. 67-1 at 2.)

14 "A cause of action for an accounting requires a showing that a relationship exists between
15 the plaintiff and defendant that requires an accounting, and that some balance is due the plaintiff
16 that can only be ascertained by an accounting." *Teselle v. McLoughlin*, 173 Cal. App. 4th 156,
17 179 (2009) (citing *Brea v. McGlashan* (1934) 3 Cal. App. 2d 454, 460; 5 Witkin, Cal. Procedure
18 (5th ed. 2008) Pleading, § 819, p. 236). An accounting is also available where "the accounts are
19 so complicated that an ordinary legal action demanding a fixed sum is impracticable." *Meixner v.*
20 *Wells Fargo Bank, N.A.*, 101 F.Supp. 3d 938, 961 (E.D. Cal. 2015) (citing *Brea*, 3 Cal. App. 2d at
21 460). "An action for accounting is not available where the plaintiff alleges the right to recover a
22 sum certain or a sum that can be made certain by calculation." *Id.* (quoting *Teselle*, 173 Cal. App.
23 4th at 179).

24 Here, Defendant asserts a claim for \$133,392.12 which Defendant argues has priority over
25 other claims on the Trust. (ECF No. 71 at 8.) The California Franchise Tax Board ("CFTB"),
26 which joins Defendant's motion, asserts a claim in the amount of \$41,227.37. (ECF No. 68 at 1–
27 2.) Both Defendant and CFTB claim fixed amounts and both claims combined total less than the
28 lowest reported value of the Trust's assets. Neither Defendant's nor CFTB's recovery depends on

1 determining whether the Trust's value is \$434,716.81 or \$379,287.72, and neither is entitled to an
2 accounting. *Teselle*, 173 Cal. App. 4th at 179.

3 Defendant, Gary W. Rogers ("Rogers"), the trustee of the Ann V. Rogers Trust, also joins
4 Defendant's motion. (ECF No. 79 at 1-2.) Plaintiff's second amended complaint alleges that
5 Sacramento County Superior Court found that the Ann V. Rogers Trust is a victim of DeShon's
6 embezzlement and is owed \$100,000. (ECF No. 56 ¶ 16.) Plaintiff alleges that the state court
7 identified a number of other victims of DeShon's embezzlement and that the total amount owed
8 to all victims (excluding both Defendant's and CFTB's claims) exceeds the highest reported value
9 of the Trust. (ECF No. 56 ¶ 16.) Recovery for Rogers will likely be a percentage of the amount
10 owed based on a share of the Trust and, therefore, does depend on the value of the Trust and can
11 only be ascertained by an accounting. Accordingly, defendant Rogers is entitled to an accounting
12 and the Court GRANTS Defendant's Motion for an Accounting. *Meixner*, 101 F.Supp. 3d at 961;
13 *Teselle*, 173 Cal. App. 4th at 179.

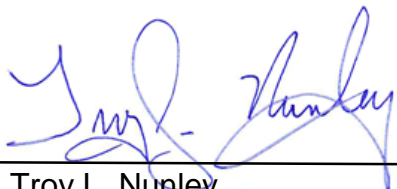
14 **IV. CONCLUSION**

15 For the reasons set forth above, IT IS HEREBY ORDERED that:

- 16 1. The Court GRANTS Defendant's Motion to Deposit Interpleader Funds (ECF No.
17 67), and ORDERS Plaintiff to deposit all Trust funds into the registry of this Court
18 within 14 days of the date of this Order; and
- 19 2. The Court GRANTS Defendant's Motion for an Accounting (ECF No. 67) for the
20 Trust from February 2014 to present, and ORDERS Plaintiff to produce an accounting
21 within 60 days of the date of this Order.

22 IT IS SO ORDERED.

23 Dated: July 13, 2017

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27 Troy L. Nunley
28 United States District Judge