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## UNITED STATES DISTRICT COURT

Northern District of California

Oakland Division

ALLIANZ LIFE INS.,

No. C 11-04404 LB

Plaintiff,

v.

**ORDER GRANTING PLAINTIFF  
ALLIANZ LIFE INSURANCE  
COMPANY'S MOTION FOR  
DISCHARGE OF STAKEHOLDER IN  
INTERPLEADER AND RECOVERY OF  
ATTORNEYS' FEES**RUTH INGER AGORIO, *et al.*

Defendants.

[ECF No. 25]

**I. INTRODUCTION**

Allianz Life Insurance Company ("Plaintiff") brings this Motion for Discharge of Stakeholder in Interpleader Action and for Recovery of Attorneys' Fees Incurred. ECF No. 25 at 1.<sup>1</sup> Ruth Inger Agorio, *et al.* ("Defendants") filed an Opposition to Plaintiff's motion on December 21, 2011, (ECF No. 26), and Plaintiff filed their Reply on January 5, 2012 (ECF No. 27). The court grants Plaintiff's Motion for Discharge of Stakeholder in Interpleader because Defendants do not contest that Plaintiff is a neutral stakeholder having no claim to the insurance policy which is the subject matter of this action and Plaintiff potentially faced adverse, competing claims. The court grants Plaintiff's request for recovery of attorneys' fees in a reduced amount because the requested amount is unreasonable and Plaintiff did not submit sufficient information to substantiate the requested

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<sup>1</sup> Citations are to the Electronic Case File ("ECF") with pin cites to the electronic page number at the top of the document, not the pages at the bottom.

1 amount.

2 **II. BACKGROUND FACTS**

3 On or about March 19, 1990, Plaintiff issued a life insurance policy numbered 002783969  
4 (thJanuary 23, 2012e “Policy”) insuring Enrique Agorio (“Decedent”). Complaint, ECF No. 1 at 3,  
5 ¶ 10. The Policy had a death benefit of \$600,000.00. *Id.* Initially, the Policy designated Decedent  
6 as the Policy owner and Ruth Inger Agorio, Decedent’s spouse, as the primary beneficiary. *Id.* at 3,  
7 ¶ 11.

8 On or about April 6, 1990, Plaintiff received an Absolute Assignment and Transfer of Ownership  
9 Form executed by Decedent which transferred ownership of the Policy to the Enrique Agorio, M.D.,  
10 MPH, A Medical Corporation Retirement Trust. *Id.* at 3, ¶ 12. Additionally, on the same day,  
11 Plaintiff received a Change in Beneficiary Designation executed by Decedent which changed the  
12 beneficiary to the Enrique Agorio, M.D., MPH, A Medical Corporation Retirement Trust. *Id.*  
13 Accordingly, the Policy owner and beneficiary were changed to the Enrique Agorio, M.D., MPH, A  
14 Medical Corporation Retirement Trust. *Id.* at 4, ¶ 12.

15 Plaintiff alleges that, upon information and belief, the Enrique Agorio, M.D., MPH, A Medical  
16 Corporation Retirement Trust (the “Trust”), maintained plan funds for the Enrique Agorio, M.D.,  
17 MPH, A Medical Corp. Profit Sharing Plan, which is believed to have been an ERISA plan. *Id.* at 4,  
18 ¶ 13.

19 Decedent died on June 20, 2011. *Id.* at 4, ¶ 14. At the time of death, the Policy owner  
20 and beneficiary were the Enrique Agorio, M.D., MPH, A Medical Corporation Retirement Trust. *Id.*  
21 at 4, ¶ 15. But, the Policy provides that if “no named beneficiary is living when the insured dies, the  
22 proceeds will be paid to the owner or the owner's estate.” *Id.*

23 After Decedent died, Plaintiff received a claim for the Policy death benefit from Ruth Inger  
24 Agorio, individually, as the widow of Decedent. *Id.* at 4, ¶ 16. Ms. Agorio also stated that the Trust  
25 was dissolved in 2005. *Id.* at 4, ¶ 17. Ms. Agorio claims that she and Decedent intended for Ms.  
26 Agorio to be the named beneficiary after the Trust was allegedly dissolved. *Id.* Ms. Agorio also  
27 claims that she and Decedent had paid the premiums for the Policy after the Trust was allegedly  
28 dissolved. *Id.*

1 Plaintiff claims that it could not determine as a matter of law that the Trust had been dissolved,  
2 that the Trust no longer had legal claim to the Policy death benefit as the named beneficiary and  
3 owner, or that other beneficiaries or governmental entities have claims to the Policy benefits through  
4 the Trust. *Id.* at 4, ¶ 18. It also claims that it could not determine as a matter of law that there are no  
5 plan members or beneficiaries of the Enrique Agorio, M.D., MPH, A Medical Corp. Profit Sharing  
6 Plan, having a legal claim to the Policy death benefit. *Id.* Additionally, Plaintiff was not able to  
7 determine as a matter of law if the Estate of Enrique Agorio may have a claim to the Policy death  
8 benefit as a beneficiary of the Trust. *Id.* at 4-5, ¶ 18. And Ms. Agorio, individually, made a claim  
9 for the Policy death benefit. *Id.* at 5, ¶ 19.

10 Given these issues, Plaintiff claims that it might be subject to multiple liability with respect to  
11 the proceeds of the Policy. *Id.* at 5, ¶ 20. Plaintiff further claims that the claims are adverse and  
12 conflicting. *Id.* at 5, ¶ 21. Thus, Plaintiff claims to be in the position of an innocent stakeholder  
13 faced with the possibility of multiple liability under the Policy. *Id.* Plaintiff does not claim any  
14 interest in the Policy proceeds which Plaintiff claims that it has been willing to deliver to the person  
15 or persons entitled to the funds. *Id.* at 5, ¶ 22. Plaintiff further claims that it has not colluded with  
16 any of the parties concerning the matters of this cause but, instead, filed the complaint to avoid  
17 multiple liability and unnecessary suits and costs incidental to them. *Id.* at 5, ¶ 23.

18 Pursuant to this court's order granting Plaintiff's Motion to Deposit Funds (ECF No. 19),  
19 Plaintiff deposited the entire amount of \$605,013.70 that is subject to the claims at issue in this  
20 lawsuit. Motion, ECF No. 25 at 7. Plaintiff claims no further interest in the funds and now seeks  
21 discharge from all future liabilities. *Id.* Plaintiff also seeks recovery of \$45,111.24 in attorneys'  
22 fees for work related to the interpleader action. *Id.* at 3.

### 23 III. LEGAL STANDARDS

#### 24 A. Discharge of Stakeholders in Interpleader Actions and Recovery of Attorneys' Fees

25 As an initial matter, the court determines whether the requirements for rule or statutory  
26 interpleader action have been met by determining if there is a single fund at issue and whether there  
27 are adverse claimants to that fund. *See Mack v. Kuckenmeister*, 619 F.3d 1010, 1023 (9th Cir.  
28 2010). Once this determination has been made, the federal interpleader statute presupposes that a

1 disinterested plaintiff who deposits the entire disputed fund with the court may be completely  
2 discharged from the litigation, leaving the remaining claimants to resolve their dispute. *See* 28  
3 U.S.C. § 2361 (“Such district court shall hear and determine the case, and may discharge the  
4 plaintiff from further liability . . .”).

5 “Generally, courts have discretion to award attorney fees to a disinterested stakeholder in an  
6 interpleader action.” *Abex Corp. v. Ski's Enterprises, Inc.*, 748 F.2d 513, 516 (9th Cir. 1984).

#### 7 IV. DISCUSSION

##### 8 A. Discharge of Stakeholder in Interpleader Action

9 In determining whether to discharge a stakeholder in an interpleader action, the court must first  
10 assess whether the stakeholder has the right to interplead. The plaintiff must demonstrate that an  
11 interpleader is justified. And, although Defendants do not contest Plaintiff’s request for discharge,  
12 their arguments regarding whether Plaintiff is entitled to attorneys’ fees touches on the underlying  
13 merits of the interpleader action. In its essence, the debate in this case is whether there are adverse,  
14 conflicting claims to the funds. *See Libby, McNeill, and Libby v. City Nat. Bank*, 592 F.2d 504, 507  
15 (9th Cir. 1978) (“[A] basic jurisdictional requirement of a statutory interpleader action is that there  
16 be ‘adverse claimants’ to a particular fund.”).

17 As set forth above, Plaintiff explained why it considered itself to be facing potential adverse,  
18 conflicting claims. *See* Complaint, ECF No. 1 at 4-5, ¶¶ 20-21. Defendants counter that Ms. Agorio  
19 provided Plaintiff with documentation that established that there was only one claimant. Opposition,  
20 ECF No. 26 at 3. Specifically, Defendants claim that Ms. Agorio provided proof that the Plan and  
21 Trust were terminated and that all of the beneficiaries had received their distributions and executed  
22 the proper paperwork to release any claims. *Id.* Plaintiff responds that Ms. Agorio had different  
23 roles and, in fact, made different demands regarding the distribution of the funds to the various  
24 claimants. Reply, ECF No. 27 at 3. Additionally, Plaintiff calls into question the sufficiency of the  
25 documentation that Ms. Agorio provided to establish the termination of the Trust and the  
26 distributions to the Plan beneficiaries. *Id.* at 3-5.

27 In *Minnesota Mutual Life Insurance Co. v. Ensley*, 174 F.3d 977 (9th Cir. 1999), the plaintiff  
28 issued a policy insuring the life of James Ensley. 174 F.3d at 979. The policy originally named

1 James’s wife Laura Ensley as the beneficiary. *Id.* Subsequently, James changed the beneficiary  
2 designation from Laura to his brother, Donald Ensley. *Id.* at 980. After James’s death, Donald  
3 claimed the insurance proceeds. *Id.* The plaintiff filed a statutory interpleader action naming  
4 Donald and Laura as defendants. *Id.* After the plaintiff filed the interpleader action, Laura filed a  
5 claim for the proceeds. *Id.* The district court granted summary judgment in favor of Laura. *Id.*  
6 Donald then appealed, arguing that the lower court lacked jurisdiction because only one claimant  
7 had come forward at the time of the filing the action. *Id.* The Ninth Circuit found that the district  
8 court did not err by finding interpleader jurisdiction because “[t]he court’s jurisdiction under the  
9 interpleader statute extends to potential, as well as actual, claims.” *Id.* (citing sources).

10 On the other hand, “an asserted adverse claim may be so wanting in substance that interpleader  
11 under the statute may not be justified.” *New York Life Ins. Co. v. Lee*, 232 F.2d 811, 812 (9th Cir.  
12 1956). While the Ninth Circuit has also counseled that the court should not look to the merits of the  
13 claims before determining the propriety of the interpleader, *see Mack*, 619 F.3d at 1024, the  
14 principle articulated in *Lee* is particularly acute where there are not asserted adverse claims but  
15 merely potential adverse claims. And some courts have denied interpleader where there is a single  
16 claimant to a fund and any potential claimants affirmatively disavow their interest in the fund. *See,*  
17 *e.g., Dunbar v. United States*, 502 F.2d 506, 510-11 (5th Cir. 1974); *cf. Libby*, 592 F.2d at 508 n.4  
18 (“Indeed, even had other defendants in the interpleader action made initial claims and then  
19 withdrawn them, there would still be a question whether the district court had jurisdiction.”).

20 This case presents a close case given that Plaintiff did not establish that it had a basis of  
21 knowledge for believing that claimants other than Ms. Agorio might emerge and Ms. Agorio –  
22 despite her various roles – ultimately appears to be the sole claimant and has communicated the lack  
23 of conflict between the putative defendants with regard to the funds. However, the court finds that  
24 the case just barely falls within the contours of *Ensley* and that the potential adverse claims  
25 identified by Plaintiff were not complete shams because – at the time of the filing of the complaint –  
26 the beneficiary designation was the Trust but Plaintiff had competing claims by Ms. Agorio  
27 individually and also on behalf of the Estate. While it might have been wiser for Plaintiff to devote  
28 resources to making certain factual determinations and giving Defendants time to clear up any

1 potential disputes, the court finds that an interpleader action is legally permissible in the  
2 circumstances before it.

3 Turning to the issue of discharge, again, Defendants do not contest Plaintiff’s request. And  
4 discharge is proper because Plaintiff is a disinterested party that has deposited the full amount of the  
5 sought-after funds with the court. 28 U.S.C. § 2361.

6 **B. Request for Recovery of Attorneys’ Fees**

7 “The amount of fees to be awarded in an interpleader action is committed to the sound discretion  
8 of the district court.” *Trustees of Directors Guild of America-Producer Pension Benefits Plans v.*  
9 *Tise*, 234 F.3d 415, 426 (9th Cir. 2000). The Ninth Circuit recognizes that the trial court has  
10 discretion to grant or deny fees based on the specific factors in each individual case. *San Rafael*  
11 *Compania Naviera, S. A. v. American Smelting & Refining Co.*, 327 F.2d 581, 587 (9th Cir. 1964).  
12 However, the court cannot grant fees incurred in asserting an interest in the deposited funds on  
13 behalf of the interpleader plaintiff. *Id.* Also, recoverable fees are appropriately limited to such  
14 actions as “preparing the complaint, obtaining service of process on the claimants to the fund, and  
15 preparing an order discharging the plaintiff from liability and dismissing it from the action.” *Tise*,  
16 234 F.3d at 426-27.

17 Courts outside of the Ninth Circuit have denied attorneys’ fees where the stakeholder is an  
18 insurance company because competing claims are part of the ordinary course of business for an  
19 insurance company and an interpleader action should not be utilized to transfer these ordinary  
20 business expenses to the claimants. *See, e.g., Aetna U.S. Healthcare v. Higgs*, 962 F.Supp. 1412,  
21 1414-15 (D. Kan 1997); *Sun Life Assurance Co. of Canada v. Thomas*, 735 F.Supp. 730, 733 (W.D.  
22 Mich. 1990). The Ninth Circuit has not barred the recovery of attorneys’ fees where the stakeholder  
23 is an insurance company, but it has noted that attorneys’ fees awards to a disinterested stakeholder  
24 are “typically modest.” *Tise*, 234 F.3d at 427.

25 The rationale for permitting the recovery of fees is that it would be inequitable to make the  
26 disinterested stakeholder bear the expense of guarding against vexatious and multiple litigation and  
27 the interpleader action benefits the claimants by facilitating an early determination regarding  
28 ownership of the claimed funds. *Schirmer Stevedoring Co., Ltd. v. Seaboard Stevedoring Corp.*, 306

1 F2d 188, 190 (9th Cir. 1962). On the other hand, “there is an important policy interest in seeing that  
2 the fee award does not deplete the fund at the expense of the party who is ultimately deemed entitled  
3 to it.” *Tise*, 234 F.3d at 427.

4 With these considerations in mind, the court undertakes a lodestar analysis to guide its  
5 determination regarding the appropriate amount of attorneys’ fees and costs. *See Prudential Ins. Co.*  
6 *of America v. Estate of Norva*, No. CV 07-00616 SOM-LEK, 2009 WL 5126340, at \*4-\*6 (D.Haw.  
7 Dec. 28, 2009).

8 **1. Hourly Rates**

9 As to the requested hourly rate, the fee applicant has the burden of producing satisfactory  
10 evidence that the requested rates are in line with those prevailing in the community for similar  
11 services of attorneys of reasonably comparable skill, experience, and reputation. *Blum v. Stenson*,  
12 465 U.S. 886, 895 n.11 (1984); *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). Affidavits of the  
13 plaintiff’s attorney and other attorneys regarding prevailing fees in the community, and rate  
14 determinations in other cases, particularly those setting a rate for the plaintiffs’ attorney, are  
15 satisfactory evidence of the prevailing market rate. *United Steelworkers of Am. v. Phelps Dodge*  
16 *Corp.*, 896 F.2d 403, 407 (9th Cir. 1990). An attorney’s declaration regarding the reasonableness of  
17 his or her own rate, standing alone, is insufficient to meet the fee applicant’s burden. *See Wren v.*  
18 *RGIS Inventory Specialists*, No. C-06-05778 JCS, 2011 WL 1230826, (N. D. Cal. Apr. 1, 2011)  
19 (citing *Jordan v. Multnomah County*, 815 F.2d 1258, 1263 (9th Cir. 1987)); *APL Co. Pte. Ltd. v. UK*  
20 *Aerosols Ltd.*, No. C 05-00646 MHP, 2010 WL 347667, at \*4 (N. D. Cal. Sept. 3, 2010) (same).

21 Here, Plaintiff requests hourly rates ranging from \$320 per hour to \$610 per hour for the four  
22 attorneys involved. Scherz Decl., ECF No. 25-1 at 2-3. Only Plaintiff’s counsel, Carl Scherz and  
23 Sally Mimms, provided declarations asserting the reasonableness of his requested hourly rates and  
24 that of the other attorneys who worked on the matter for Plaintiff. *Id.*; Mimms Decl., ECF No. 25-2  
25 at 2. Such affidavits generally do not meet Plaintiff’s burden to establish the reasonableness of the  
26 requested hourly rates.

27 In a case involving a case of similar (or potentially less) complexity, a court in this district  
28 considered \$190 hourly rate reasonable for an attorney with roughly similar credentials—albeit at a

1 smaller firm and with fewer years of experience than some of Plaintiff’s counsel. *Sun Life Assur.*  
2 *Co. of Canada, U.S. v. Chirolo*, No. C 08-03465 WHA, 2009 WL 113009, at \*5 (N.D. Cal. Jan. 16,  
3 2009).

4 At the hearing, Ms. Mimms explained that Plaintiff did not submit additional documentation  
5 because a lodestar analysis is not mandatory in interpleader cases. This point is well-taken.

6 Still, the court must have a basis beyond the word of the attorneys in the case. Here, the court  
7 draws on the precedent from other courts, its knowledge of the prevailing community rates, and its  
8 evaluation of the quality of the work performed by Plaintiff’s counsel to assign a rate of \$350 per  
9 hour. *See Columbus Life Ins. Co. v. Hill*, No. CIV. 2:09-cv-0947 FCD DAD, 2010 WL 3717285, at  
10 \*6 (E.D. Cal. Sept. 16, 2010) (awarding hourly rate of \$250 per hour for lawyer from Reed Smith  
11 LLP in a similar case as the market rate for Sacramento); *see also Ingram v. Oroudjian*, 647 F.3d  
12 925, 928 (9th Cir. 2011) (holding that district court did not abuse its discretion by relying, in part, on  
13 its own knowledge and experience in setting an hourly rate).

## 14 **2. Hours Expended**

15 As to the requested hours, a fee applicant must show that she exercised billing judgment in the  
16 preparation of the attorney’s fee application and that the requested hours were reasonably expended  
17 (i.e., not duplicative, unproductive, excessive or otherwise unnecessary). *Hensley*, 461 U.S. at 434.  
18 Detailed billing records – e.g., hourly invoices – are generally required to assist the court in its  
19 determination of reasonable fees. *See, e.g., Entm't Research Grp., Inc. v. Genesis Creative Grp.,*  
20 *Inc.*, 122 F.3d 1211, 1232 (9th Cir. 1997) (“[T]he district court abused its discretion by not requiring  
21 . . . original time records and billing statements.”); *Hensley*, 461 U.S. at 433 (“Where the  
22 documentation of hours is inadequate, the district court may reduce the award accordingly.”).

23 Here, Plaintiff provided hourly invoices, requesting \$45,111.24 in fees and costs for 85.5 hours  
24 of work. *See* Motion, ECF No. 25 at 14; Scherz Decl., ECF No. 25-1 at 7-19. As Mimms  
25 summarized in her declaration, these hourly invoices show that Plaintiff’s counsel expended  
26 approximately \$17,000 in basic case preparation and the filing of the complaint. Mimms Decl., ECF  
27 No. 25-2 at 4. Approximately \$16,500 was incurred in work related to the motion to deposit funds.  
28 *Id.* And approximately \$8,900 was incurred and \$2,000 was anticipated to be incurred in work



1 related to the motion for discharge and attorneys' fees. *Id.* In total, Plaintiff estimates that its  
2 attorneys spent a total of 85.5 hours working on the matter. Plaintiff also requests \$20,000 in  
3 attorneys' fees to address appellate issues, if Defendants appeal the award of attorneys' fees.  
4 Motion, ECF No. 25 at 14.

5 This court finds that 85.5 hours far exceeds what was required in this case and for the quality of  
6 the work performed. First, Plaintiff is an insurance company and this case does not present highly  
7 unique or complex issues. Second, the amount of hours requested is not well correlated with the  
8 ultimate quality of Plaintiff's submissions. For example, Plaintiff provided very cursory and  
9 conclusory explanations for its determination that there were conflicting, adverse claims until its  
10 reply brief. Also, all of Plaintiff's papers included minimal case support or legal analysis. Third,  
11 Plaintiff spent time on unnecessary tasks. For example, although no opposition to the motion for  
12 leave to deposit funds was filed, Plaintiff requests compensation for more than four hours of work  
13 spent on a reply brief. *See Scherz Decl.*, ECF No. 25-1 at 14-15.

14 Given these factors, the court finds that only eight hours were reasonable expended on the  
15 matter. The court's determination is buttressed when considering that, ultimately, there appear to be  
16 no conflicting claims (and, therefore, Defendants received no benefit from this action)<sup>2</sup> and the  
17 requested amount would, in absolute terms, significantly deplete the fund.

18 As to the \$20,000 in attorneys' fees to address appellate issues, the court declines to award any  
19 fees for costs not actually incurred or costs solely related to the pursuit of Plaintiff's interest (i.e., the  
20 recovery of its fees). *See Schirmer Stevedoring Co. Ltd.*, 306 F.2d at 194 ("But if there is a contest  
21 between plaintiff and the interpleaded parties, either as to the correctness of the amount deposited or  
22 *as to any interest of plaintiff in the fund*, the court may not, in the absence of special circumstances,  
23 award attorney fees for the services of his attorneys in connection with such contest." (emphasis  
24 added)).

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26 <sup>2</sup> The court notes that Plaintiff's maintenance of the case appears driven by a disagreement  
27 with Defendants about the amount of fees to which it is entitled and not about the resolution of  
28 adverse, conflicting claims to the funds. *See Reply*, ECF No. 27 at 7. As noted above, the Ninth  
Circuit has questioned *in dicta* whether the trial court retains jurisdiction in cases where there is no  
longer a dispute amongst any claimants. *See Libby*, 592 F.2d at 508 n.4.




1 Applying the hourly rate of \$350 per hour to the eight hours that Plaintiff’s counsel reasonably  
2 expended, the court awards \$2,800 to Plaintiff for the attorneys’ fees. The court also awards \$781 in  
3 costs for a total of \$3,581. *See generally Tise*, 234 F.3d at 428 (observing that the award of \$3,000  
4 in fees “in line with those commonly granted to interpleader plaintiffs”). The Court Clerk is hereby  
5 ordered to pay this amount from the registry of the Court to Plaintiff.

6 This disposes of ECF No. 25.

7 **IT IS SO ORDERED.**

8 Dated: February 10, 2012

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LAUREL BEELER  
United States Magistrate Judge

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