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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CACHET FINANCIAL SERVICES,
Plaintiff,
v.
C&J ASSOCIATES, INC., et al.,
Defendants.

Case No. [5:16-cv-06862-EJD](#)

**ORDER DENYING MOTION FOR
DISCHARGE FROM FURTHER
LIABILITY RE INTERPLEADED
FUNDS; DENYING MOTION FOR
ATTORNEYS' FEES AND COSTS**

Re: Dkt. Nos. 157, 158

I. Introduction

This is a statutory interpleader action initiated by Cachet Financial Services (“Cachet”) against eighty-two defendants to resolve conflicting claims to \$1,050,761.90 (the “Interpleaded Funds”), which Cachet deposited with this Court. Cachet moves for an order (1) discharging Cachet from any further responsibility and any liability with respect to the Interpleaded Funds and (2) imposing a permanent injunction from the filing or prosecution of any action or the assertion of claims against Cachet as to those Interpleaded Funds. Cachet also moves for recovery of \$78,075.50 in attorneys’ fees and \$10,628.52 in costs. Defendants Pacific Diversified Insurance Services, Inc. (“Pacific”) and Robert Talbott, Inc. (“Talbott”) (collectively “Defendants”) oppose the motions. The Court finds it appropriate to take the motions under submission for decision without oral argument pursuant to Civil Local Rule 7-1(b). Based upon all pleadings filed to date, Cachet’s motions are denied.

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1 II. BACKGROUND

2 Cachet is an electronic Automated Clearing House (“ACH”) third party service provider
3 that processes a variety of electronic funds transfers (“EFT”) in the form of payroll ACH transfers.
4 The transfers commonly take the form of direct deposit payroll and electronic payment processing.
5 The interpleaded funds came into Cachet’s possession as a result of its contractual relationship
6 with defendant Pinnacle Workforce Solutions (“Pinnacle”), a company that provides payroll
7 processing services to employers. The remaining eighty-one Defendants are employers who used
8 Pinnacle’s payroll services and have claims to the Interpleaded Funds.

9 Pursuant to a “Remarketer Agreement,” Cachet provided ACH transaction services for
10 Pinnacle. Pinnacle provided weekly instructions directing Cachet to debit specific accounts from
11 Pinnacle’s employer clients, to aggregate their funds within Cachet’s general clearing account, and
12 to credit specific accounts for the purpose of making ACH payroll payments to the employees of
13 Pinnacle’s employer clients.

14 On or about September 21, 2016, Pinnacle allegedly submitted a written instruction file to
15 Cachet that specified the ACH debits and credits Cachet was to execute. Upon transferring the
16 funds as directed by Pinnacle, however, Cachet determined that Pinnacle allegedly had insufficient
17 funds in the general clearing account to credit the employee accounts of Pinnacle’s employer
18 clients. Cachet alleges that in accordance with the ACH rules promulgated by the National
19 Automated Clearing House Association and its agreement with Cachet’s bank, Cachet provided its
20 own funds to cover the shortfall and credited the employees’ accounts using other funds in the
21 clearing account. Cachet alleges that Pinnacle was required to, but failed to fully repay Cachet for
22 the shortfall, which totaled \$835,748.83.

23 On or about September 27, 2016, Pinnacle submitted another ACH instruction file and the
24 employers’ accounts were debited. Cachet, however, refused to issue the requested credits to
25 various employees’ accounts unless Pinnacle cleared the alleged shortfall from the previous week.
26 Pinnacle allegedly refused Cachet’s demand to cure the shortfall and ceased communication with
27

1 Cachet. Cachet alleges that it therefore froze Pinnacle’s funds and alerted the authorities,
2 including the Federal Bureau of Investigation. According to Cachet’s investigation, Pinnacle had
3 been engaging in fraud and is now defunct.

4 Cachet alleges that Pinnacle’s refusal to cure the shortfall constituted a breach of the
5 Remarketer Agreement. Accordingly, Cachet invoked its alleged contractual and common law
6 rights of offset¹, retaining the recently debited funds to recover the \$835,748.83 Cachet had
7 credited to employees the week before. After the offset, there remained \$1,050,761.90 in the
8 clearing account.

9 Cachet filed the instant interpleader action on November 29, 2016. Cachet sought to
10 secure waivers of service, signed acknowledgments of service or personal service for each of the
11 defendants. Numerous defendants informed Cachet’s counsel that they did not want to be
12 involved in this suit and those defendants have been dismissed from the action. Cachet brought a
13 motion for an order allowing it to deposit the Interpleaded Funds with the Court, which was
14 granted. Cachet also brought a motion for an order appointing a Special Master under Federal
15 Rule of Civil Procedure 53 to oversee a reasonable claims and distribution process, which was
16 granted. The Special Master is currently overseeing the claims process.

17 Three Defendants, Pacific, Talbott and Pinnacle Manufacturing Corp. have filed
18 counterclaims against Cachet seeking to recover the amounts Cachet debited from their respective
19 accounts that were used by Cachet to offset Pinnacle’s obligation to Cachet. These three
20 Defendants allege that at the time Cachet debited their accounts Cachet had no intention of
21 crediting their employees’ accounts with Defendants’ funds. Litigation of the counterclaims is
22 stayed pending completion of the Special Master’s claim determination process and submission of
23

24 _____
25 ¹ Cachet’s alleged contractual right to offset is based on the following clause in the Remarketer
26 Agreement: “[Pinnacle] agrees to make every reasonable effort to assist CACHET, as may be
27 requested in the collection of outstanding returned EFT transactions from the Client as a result of
28 NSF or other funding problems. This assistance shall include but not be limited to withholding
payroll processing or other services performed on behalf of Client, offsetting trust funds held on
behalf of Client and other supportive efforts as may be required.” Complaint, Ex. 1, p. 21.
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1 the Special Master’s final report on distribution of the Interpleaded Funds.

2 III. DISCUSSION

3 A. Discharge of Liability

4 Title 28 United States Code Section 2361 governs interpleader actions. The statute
5 provides in pertinent part that “a district court may issue its process for all claimants and enter its
6 order restraining them from instituting or prosecuting any proceeding in any State or United States
7 court affecting the property . . . involved in the interpleader action until further order of the court.”
8 Further, Section 2361 provides that the court “shall hear and determine the case, and may
9 discharge the plaintiff from further liability, make the injunction permanent, and make all
10 appropriate orders to enforce its judgment.” 28 U.S.C. §2361. An interpleader action usually
11 involves two stages. First, the court decides whether the requirements for a statutory interpleader
12 action have been met by determining if there is a single fund at issue and whether there are
13 adverse claimants to that fund. Lee v. West Coast Life Ins. Co., 688 F.3d 1004, 1009 (9th Cir.
14 2012). Second, “[i]f the district court finds that the interpleader action has been properly brought
15 the district court will then make a determination of the respective rights of the claimants.” Id.

16 Cachet asserts that it has satisfactorily established it is entitled to be discharged from any
17 further liability with respect to the Interpleaded Funds. Cachet has deposited the Interpleaded
18 Funds with the Court, disclaims any interest in the Funds and does not contest any parties’ claim
19 to the Funds. Accordingly, Cachet seeks an order discharging Cachet from any further
20 responsibility and liability with respect to the Interpleaded Funds and imposing a permanent
21 injunction from the filing or prosecution of any action or the assertion of claims against Cachet
22 with respect to the Interpleaded Funds.

23 Defendants raise several arguments in opposition to Cachet’s motion, all of which center
24 on the propriety of Cachet’s offset. First, Defendants contend that Cachet should not be
25 discharged because Cachet kept \$835,748.83 of the \$1,886,510.73 debited from Pinnacle customer
26 accounts on September 27, 2016, before depositing the remaining \$1,050,761.90 with the Court.

1 Defendants accuse Cachet of debiting funds from Pinnacle customer accounts with no intention of
2 using any of the money to pay the employees of Pinnacle’s customers. They also fault Cachet for
3 making itself whole by taking the offset before depositing the rest of the funds with the Court.
4 Citing Metal Transport Corp. v. Pacific Ventura S.S. Corp., 288 F.2d 363 (2nd Cir. 1961),
5 Defendants argue that the Court does not have jurisdiction over this interpleader action because
6 Cachet did not deposit the entire \$1,886,510.73 that it collected. Second, Defendants contend that
7 a discharge is not appropriate and premature because of the cross-claims pending against Cachet
8 (Docket Nos. 140, 149, 150). Third, Defendants contend that Cachet has unclean hands because
9 Cachet withdrew money from Pinnacle’s customer accounts with no intention of using the money
10 to pay the employees of Pinnacle’s customers. Fourth, Defendants argue that Cachet’s motion for
11 discharge is premature because the Special Master has not assessed whether Cachet should be
12 required to deposit the funds it retained as an offset.

13 “As a general rule, when a sum of money is involved, a district court has no jurisdiction of
14 an action of interpleader if the stakeholder deposits a sum smaller than that claimed by the
15 claimants.” Id. at 365; see also A&E Television Networks, LLC v. Pivot Point Entertainment,
16 LLC, 771 F.Supp.2d 296 (S.D. N.Y. 2011). “Where the offsets to the sum to be deposited are
17 ‘controverted, substantial and uncertain’ jurisdiction should not lie, [citation omitted], unless the
18 stakeholder deposits the largest amount that is in dispute.” Nestle Beverage Co. v. Bayerische
19 Vereinsbank S.A., No. 92-1571 MHP, 1993 WL 96584, at *2 (N.D. Cal. March 24, 1993). “If the
20 stakeholder chooses to deposit the largest amount that is in dispute to achieve jurisdiction, then the
21 stakeholder should plead that the amount deposited is disputed and that only a lesser amount is
22 admitted as being due to the claimants.” Id.

23 Here, Defendants have raised the jurisdictional issue in the context of Cachet’s motion for
24 discharge rather than filing a motion to dismiss for lack of jurisdiction. Nevertheless, subject
25 matter jurisdiction is not waivable and the Court has a duty to determine its jurisdiction *sua*
26 *sponte*. Id.

1 According to the Complaint For Interpleader, Cachet has deposited a sum smaller than that
2 claimed by the claimants. Cachet has deposited \$1,050,761.90 with the Court and yet identifies
3 over eighty claimants with claims far in excess of the Interpleaded Funds. Indeed, a single
4 claimant, Christopher Ranch LLC allegedly has a claim for \$1,125,859.43. Therefore, subject
5 matter jurisdiction is lacking. See Metal Transport Corp., 288 F.2d at 365; Nestle Beverage Co.,
6 1993 WL 96584, at *2; A&E Television Networks, LLC, 771 F.Supp.2d at 300.

7 Accordingly, no later than December 15, 2017, Cachet shall deposit sufficient funds to
8 cover the claims identified in the Complaint For Interpleader. If such deposit is not made, this
9 interpleader action will be dismissed for lack of jurisdiction.

10 B. Attorneys' Fees and Costs

11 In general courts have discretion to award fees to a disinterested stakeholder in an
12 interpleader action. Abex Corp. v. Ski's Enterprises, Inc., 748 F.2d 513, 516 (9th Cir. 1984). Fees
13 are usually ordered paid from the interpleaded fund. Schirmer Stevedoring Co., Ltd. v. Seaboard
14 Stevedoring Corp., 306 F.2d 188 (9th Cir. 1962). Attorneys' fees awards are limited to those fees
15 that are incurred in filing the action and pursuing the plan's release from liability. Id. at 194.
16 Costs may also be awarded to the disinterested stakeholder. Id. Compensable costs "include, for
17 example, preparing the complaint, obtaining service of process on the claimants to the fund and
18 preparing an order discharging the plaintiff from liability and dismissing it from the action."
19 Trustees of Directors Guild of America-Producer Pension Benefits Plans v. Tise, 234 F.3d 415,
20 427 (9th Cir. 2000) (citing Schirmer, supra).

21 Cachet seeks an award of fees and costs incurred in litigating this action. Cachet does not,
22 however, seek recovery of fees and costs incurred in connection with the three pending
23 counterclaims. Cachet's counsel, Terry L. Higham of Barton, Klugman & Oetting, LLP,
24 submitted a declaration in support of the request for fees and costs. Counsel's representation of
25 Cachet in this action included, but is not limited to: assisting in the post-incident investigation of
26 Defendant Pinnacle; identifying all potential 80 claimants for the Interpleaded Funds; preparing

1 and filing the complaint, motions, the application to deposit the Interpleaded Funds, and other
2 documents; devising a plan for effective case management through the appointment of a special
3 master; communicating with the special master; endeavoring to obtain the claimants' agreement to
4 waive service of process; preparing and effecting service of process for the claimants who did not
5 agree to waive service of process; and making court appearances. Counsel represents that the firm
6 expended 182.9 hours to complete the work outlined above. At a reduced hourly rate of
7 \$450/hour for counsels' work and a reduced hourly rate of \$140/hour for a paralegal, the total fee
8 request is \$78,075.50.

9 Counsel also represents that the firm incurred \$10,628.52 in costs for executing personal
10 service of process on 16 of the 80 Defendants throughout the United States, costs for overnight
11 and postage charges in communicating with 64 Defendants, the client and the Court, costs for
12 computer-assisted research to aid in the identification of agents for service of process for the 80
13 defendants, research of relevant legal concepts, travel costs for two court appearances, photocopy
14 charges, telephone charges and filing fees. The Special Master has also submitted a declaration in
15 support of Cachet's request for fees and costs.

16 Defendants oppose Cachet's request for fees and costs on three grounds. First, Defendants
17 assert that Cachet is not a disinterested stakeholder because Cachet kept \$835,748.83 of the
18 \$1,886,510.73 debited from Pinnacle customer accounts on or about September 27, 2016, before
19 depositing the remaining \$1,050,761.90 with the Court. Defendants fault Cachet for "now
20 attempting to use the interpleader process as cover for taking money that it was not entitled to take
21 and for giving itself a first position claim for the money ahead of all other claimants." Pacific's
22 Opposition, p. 2. Second, Defendants contend that an award of fees and costs is not appropriate
23 because Cachet did not deposit the \$835,748.83. Finally, Defendants contend that Cachet's fee
24 claim is excessive.

25 In response, Cachet contends that it was legally entitled to the offset and fully disclosed the
26 offset in the Complaint For Interpleader. Further, Cachet points out that the \$835,748.83 offset is

1 the subject of Defendants' two counterclaims. Cachet asserts that if these Defendants are not
2 made whole through the distribution of the Interpleaded Funds, they will be free to litigate their
3 counterclaims after the Court lifts the stay. Cachet also contends that the requested fees and costs
4 are supported by a detailed billing summary submitted to the Court and are reasonable considering
5 that Cachet was required to identify and obtain service on 80 separate claimants.

6 Cachet's motion for fees and costs is denied without prejudice at this time because the
7 Court lacks subject matter jurisdiction over this action unless and until Cachet deposits sufficient
8 funds to cover the claims identified in the Complaint For Interpleader.

9 IV. CONCLUSION

10 For the reasons set forth above, Cachet's motion for discharge is DENIED. No later than
11 December 15, 2017, Cachet shall deposit sufficient funds to cover the claims identified in the
12 Complaint For Interpleader. If such deposit is not made, this interpleader action will be dismissed
13 for lack of jurisdiction. Cachet's motion for attorneys' fees and costs is DENIED without
14 prejudice.

15
16 **IT IS SO ORDERED.**

17
18 Dated: November 15, 2017



19
20 EDWARD J. DAVILA
United States District Judge