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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

GENOMATICA, INC.,  
Plaintiff,  
v.  
ICELANDIC GENOMIC VENTURES  
HOLDING, S.A.R.L. et al.,  
Defendants,  

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AND RELATED COUNTERCLAIMS  
AND CROSS-CLAIMS.  

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Case No. 3:12-cv-0268-GPC-BGS  
**ORDER GRANTING IN PART  
AND DENYING IN PART  
GENOMATICA, INC.'S MOTION  
FOR ATTORNEY FEES  
(ECF NO. 70)**

This is an interpleader action in which Genomatica, Inc. (“Genomatica”) asserts it is an innocent stakeholder in a dispute over the ownership of certain shares of its stock. (ECF No. 1.) In its Complaint, Genomatica alleged a dispute had arisen between Iceland Genomic Ventures Holding S.à.R.L. (“IGVH”), on the one hand, and Iceland Genomic Partners (“IGP”), on the other hand. (Id.)

On May 22, 2012, IGVH filed an answer to Genomatica’s Complaint, also asserting counterclaims against Genomatica and cross-claims against IGP, Tryggvi

1 Petursson (“Petursson”), and Iceland Genomic Venture Partners, S.A. (“IGVP”) (all  
2 three collectively, “Petursson Defendants”). (ECF No. 7.)

3 On July 10, 2012, IGP filed an answer to Genomatica’s Complaint. (ECF No.  
4 18.) The Petursson Defendants, however, never responded to IGVH’s cross-claims.  
5 Accordingly, this Court entered default judgment on IGVH’s cross-claims against the  
6 Petursson Defendants on January 31, 2013. (ECF No. 60.)

7 On March 21, the Court granted Genomatica’s Motion to Dismiss & Discharge,  
8 denied IGVH’s initial Motion for Summary Judgment, and granted Genomatica’s  
9 Motion to Dismiss IGVH’s Counterclaims. (ECF No. 64.) In granting Genomatica’s  
10 Motion to Dismiss & Discharge, the Court required Genomatica to deposit with the  
11 Clerk of Court the shares that were actually in dispute, to wit, the 400,000 shares  
12 retitled in the names of the Petursson Defendants. Genomatica deposited said shares  
13 on March 29, 2013. (ECF No. 67.)

14 The Court further directed IGVH to take the necessary steps to dispose of this  
15 interpleader action. Thus, on April 12, 2013, IGVH filed its second motion for  
16 summary judgment, in which it asks the Court to enter judgment in IGVH’s favor as  
17 to ownership of the disputed Genomatica shares. (ECF No. 74.)

18 On July 29, 2013, the court issued an order that, among other things, granted  
19 IGVH’s Motion for Summary Judgment. (ECF Nos. 81, 82.) This order concluded the  
20 interpleader action and directed that Genomatica re-title the deposited shares of stock  
21 in IGVH’s name.

22 Remaining is Genomatica’s Motion for Attorney Fees (“Fee Motion”). (ECF No.  
23 70.) IGVH filed a response in opposition to the Fee Motion, (ECF No. 76), and  
24 Genomatica filed a reply, (ECF No. 78). The Court deems the Fee Motion suitable for  
25 disposition without oral argument. See CivLR 7.1.d.1.

## 26 **DISCUSSION**

### 27 **I. Legal Standard**

28 “Generally, courts have discretion to award attorney fees to a disinterested

1 stakeholder in an interpleader action.” Abex Corp. v. Ski’s Enters., Inc., 748 F.2d 513,  
2 516 (9th Cir. 1984). “The amount of fees to be awarded in an interpleader action is  
3 committed to the sound discretion of the district court.” Trs. Dirs. Guild Am. v. Tise,  
4 234 F.3d 415, 426 (9th Cir. 2000) (affirming district court’s award of \$3,000 in  
5 attorney fees where interpleader plaintiff requested \$97,000). “[F]ee awards are  
6 properly limited to those fees that are incurred in filing the action and pursuing the  
7 plan’s release from liability . . . includ[ing], for example, preparing the complaint,  
8 obtaining service of process on the claimants to the fund, and preparing an order  
9 discharging the plaintiff from liability and dismissing it from the action.” Id. at 426-27.  
10 These fees “are typically modest.” Id. at 427. Though, larger amounts have been  
11 awarded where claimants have filed “unusual, generally not well-taken pleadings.”  
12 Equitable Life Assurance Soc. U.S. v. DeGeorge, 2006 WL 4704613, at \*4 (C.D. Cal.  
13 Aug. 28, 2006).<sup>1</sup>

14 An award of fees is typically “paid from the interpleaded fund itself.” Id. at 427.  
15 The Court, however, “has discretion to award attorney fees and costs: (1) against the  
16 losing claimants as costs to such claimants, (2) from the fund payable to the winning  
17 claimants, or (3) by dividing the fees among the claimants.” Nestle Beverage Co. v.  
18 Bayerische Vereinsbank S.A., 1993 WL 96584, at \*3 (N.D. Cal. Mar. 24, 1993) (citing  
19 Schirmer Stevedoring Co., Ltd. v. Seaboard Stevedoring Corp., 306 F.2d 188, 194 (9th  
20 Cir. 1962). “The prevailing approach in most cases is to tax the plaintiff-in-  
21 interpleader’s fees against the losing claimant.” Chase Inv. Servs. Corp. v. Law  
22 Offices Jon Divens & Assocs., LLC, 748 F. Supp. 2d 1145, 1183 (C.D. Cal. 2010).  
23 This “provid[es] a mechanism for vexatious claimants to incur the costs of their  
24 meritless claims.” Michelman v. Lincoln Nat’l Life Ins. Co., 685 F.3d 887, 898 (9th  
25 Cir. 2012).

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27 <sup>1</sup> See also Sun Life Assurance Co. Canada v. Estate of Chan, 2003 WL 22227881, at \*3 (N.D.  
28 Cal. Sept. 22, 2003) (awarding interpleader fees in addition to fees spent opposing probate petition  
filed in an attempt to preempt the interpleader action); see also Prudential Ins. Co. v. Burrell, 181 F.  
Supp. 391 (S.D. Cal. 1960) (denying request for attorney fees from prevailing claimant where  
interpleader action arose from misconduct by defaulting defendant).

1 Further, “if there is a conflict between plaintiff and the interpleaded parties,  
2 either as to the correctness of the amount deposited or as to any interest of plaintiff in  
3 the fund, the court may not, in the absence of special circumstances, award attorney  
4 fees for the services of his attorneys in connection with such contest.” Schirmer, 306  
5 F.2d at 195.

6 In Schirmer, the claimant argued the stakeholder should not be discharged from  
7 the interpleader because it had deposited the wrong amount with the court. The court  
8 found that the claimant’s arguments against the stakeholder were not plainly frivolous  
9 or made in bad faith. The court thus declined to award the stakeholder any fees  
10 incurred in connection with the stakeholder’s contest with the claimant, awarding the  
11 stakeholder only the fees it incurred in filing the interpleader complaint and obtaining  
12 discharge.

## 13 **II. Analysis**

14 In addition to attorney fees incurred in connection with filing its Complaint  
15 (\$9,396.00) and obtaining service of process on IGVH and the Petursson Defendants  
16 (\$2,140.00), Genomatica argues it is entitled to attorney fees from IGVH (\$92, 973.55)  
17 because it “was forced to go well beyond what is normally required to obtain discharge  
18 from liability due to IGVH’s unjustifiable attempts to keep Genomatica in the action.”  
19 Genomatica further argues it is entitled to fees incurred in connection with dismissing  
20 IGVH’s Counterclaims (\$64,087.45) because they “had absolutely no merit and were  
21 asserted only to keep Genomatica a party to the action.” In that vein, Genomatica  
22 claims IGVH asserted its Counterclaims in bad faith. Genomatica further asserts it  
23 should be awarded its fees in preparing the instant Fee Motion (\$31,731.00). Lastly,  
24 Genomatica argues it should be awarded its costs (\$396.20). In total, Genomatica  
25 seeks \$200,724.20 in attorney fees and costs.

26 IGVH asserts in response that its initial motion for summary judgment and its  
27 Counterclaims were not frivolous, meant to protract the litigation, or made in bad faith.  
28 As to its initial motion for summary judgment, IGVH asserts it was attempting to fully

1 resolve the necessity for an interpleader action by seeking a judgment that it owned the  
2 disputed shares. IGVH asserts it is appropriate for a claimant in some instances to  
3 move for dismissal of an interpleader action where there is no legitimate competing  
4 claim to the allegedly disputed property and that its initial motion for summary  
5 judgment was an appropriate vehicle to conclude the interpleader action early on in the  
6 litigation. As to its Counterclaims, IGVH asserts it had a good faith basis to believe  
7 that Genomatica breached a fiduciary duty and was negligent in re-titling the disputed  
8 shares to the Petursson Defendants.

9 IGVH asserts that, if Genomatica is to recover attorney fees, they should be from  
10 the Petursson Defendants. IGVH further asserts that Genomatica's claimed fees are  
11 neither modest nor reasonable, citing, for example, the fact that over 128 hours alone  
12 were spent on Genomatica's Motion to Dismiss IGVH's Counterclaims.

13 In reply, Genomatica asserts that, at a minimum, the Court should award fees  
14 jointly and severally against both IGVH and the Petursson Defendants.

15 Here, the Court first notes that IGVH is the winning claimant in this interpleader  
16 action. Thus, to assess fees against IGVH, the Court would have to find IGVH  
17 unreasonably protracted this litigation, filed frivolous motions/pleadings, and/or acted  
18 in bad faith. The Court finds IGVH's actions did not unreasonably protract this  
19 litigation. While IGVH's efforts to avoid the interpleader action by filing its initial  
20 summary judgment motion were unsuccessful and not in accord with routine  
21 interpleader practice, the Court credits IGVH's attempt to quickly resolve any dispute  
22 by arguing the Petursson Defendants were not valid claimants and by seeking a  
23 judgment of ownership over the Genomatica shares. Similarly, the Court finds that,  
24 while IGVH's Counterclaims were ultimately dismissed, its Counterclaims were not  
25 completely devoid of merit and were largely dismissed per IGVH's mistake in asserting  
26 its claims against Genomatica itself. Thus, it cannot be said that IGVH's filings were  
27 frivolous. The Court further finds there is no evidence that IGVH acted in bad faith.  
28 Moreover, the Court finds the facts here resemble those in Schirmer to the extent that

1 IGVH, a claimant, disputed the actions of Genomatica, the stakeholder, and to the  
2 extent Genomatica incurred the majority of its fees in connection with that conflict.  
3 Thus, Genomatica is not entitled to an award of attorney fees from IGVH.


4 While Genomatica claims an award of fees against the Petursson Defendants  
5 would be a pyrrhic victory, the Court finds that is the most equitable decision in these  
6 circumstances. The Court will thus award Genomatica the fees and costs it incurred  
7 in filing the interpleader action and obtaining service of process, and a portion of the  
8 fees it incurred in seeking discharge from the interpleader portion of this case, in the  
9 amount of \$20,000.00. The Petursson Defendants shall be solely liable for these  
10 attorney fees and costs.

11 **CONCLUSION**

12 Based on the foregoing, Genomatica's Fee Motion, (ECF No. 70), is **GRANTED**  
13 **IN PART** and **DENIED IN PART**. The Fee Motion is granted to the extent that the  
14 Court awards Genomatica \$20,000.00 in fees. The Fee Motion is denied to the extent  
15 the Court does not award Genomatica the full amount of its requested fees and to the  
16 extent that the Court awards those fees solely against the Petursson Defendants. The  
17 hearing on the Fee Motion, currently set for August 16, 2013, is **VACATED**.

18 **IT IS SO ORDERED.**

19  
20 DATED: August 15, 2013

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22 HON. GONZALO P. CURIEL  
23 United States District Judge  
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