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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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CAROLYN GARRETT,  <p style="text-align: right;">Plaintiff,</p>	}	3:14-cv-00141-LRH-WGC
vs.	}	<u>ORDER</u>
GARRETT BULLOCK; DIANN MARTIN; CATHERINE HINTZEN; JASON GARRETT,  <p style="text-align: right;">Defendants.</p>	)          )          )	

Before the Court is former interpleader Plaintiff UBS Financial Services Inc.’s (“UBS”) Motion for Reasonable Attorney Fees and Costs. Doc. #72.<sup>1</sup> Beneficiary Carolyn Garrett (“Garrett”) filed an Opposition (Doc. #75), to which UBS replied (Doc. #78). Also before the Court is Garrett’s Motion for Relief from a Judgment or Order. Doc. #77. UBS filed an Opposition (Doc. #82), to which Garrett replied (Doc. #87). Garrett also filed a Supplemental Opposition to UBS’s Motion for Attorney Fees and Costs, and Motion to Extend Time to Oppose (Doc. #86), to which UBS replied (Doc. #89).

**I. Factual Background and Procedural History**

Garrett’s mother Jo Anne Garrett executed the “Jo Anne Garrett Family Trust” on August 12, 2002. Doc. #5-1. Jo Anne Garrett executed an amendment to the Trust on March 15, 2013 (“the Amendment”), naming Carolyn Garrett as the successor trustee and sole beneficiary. Doc. #5-2. Jo Anne Garrett’s attorney Peter J. Smith (“Smith”) executed a Certificate of Independent

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<sup>1</sup> Refers to the Court’s docket number.

1 Review on March 5, 2013, stating that he (1) counseled Jo Anne Garrett regarding the  
2 Amendment; (2) was disassociated from the interest from the trust and could advise Jo Anne  
3 Garrett impartially; and (3) concluded that the Amendment was not the result of fraud, duress, or  
4 undue influence. Doc. #15-2. Jo Anne Garrett passed away on October 14, 2013; her body was  
5 found in a wooded area near her home after she had been reported missing on October 11, 2013.  
6 Doc. #19 at 2.

7 In December, 2013, Smith contacted UBS on behalf of Carolyn Garrett and requested that  
8 UBS recognize Garrett as the successor trustee. *Id.* An attorney for UBS called Smith on  
9 January 2, 2014, and explained his concerns about the validity of the Amendment on the grounds  
10 that Nevada Revised Statute (“NRS”) § 155.097 presumes that a transfer to a caregiver that goes  
11 into effect after a transferor’s death is void. Smith withdrew as Garrett’s counsel on January 28,  
12 2014. *Id.* UBS states that thereafter Garrett refused to help UBS determine whether individuals  
13 identified as beneficiaries to the Trust prior to the Amendment had a claim to the Trust. *Id.* at 3.

14 On March 10, 2014, UBS sent letters via certified mail to the individuals identified as  
15 beneficiaries to the original 2002 Trust. *Id.* These letters informed the beneficiaries about  
16 Garrett’s demand for distribution of the Trust and asked the beneficiaries to contact counsel if  
17 they objected to the validity of the Amendment. *Id.* at 3-4. On March 13, 2014, the lawyer for  
18 one beneficiary, Diann Martin (“Martin”), sent a facsimile to UBS stating that Martin objected to  
19 the validity of the Amendment and sought to prove that Garrett “not only influenced her mother,  
20 but that Jo Anne Garrett was not in the proper state of mind at the time the [amendment] was  
21 made.” Doc. #19, Ex. F. In an email written March 27, 2014, another beneficiary, Catherine  
22 Hintzen Garrison (“Garrison”), objected to the Amendment and stated that it was likely the result  
23 of undue influence by Garrett. Doc. #14, Ex. C.

24 On March 17, 2014, UBS filed a Complaint for Interpleader pursuant to 28 U.S.C. § 1335  
25 and Federal Rule of Civil Procedure 22, naming Carolyn Garrett, Garrett Bullock, Diann Martin,  
26 Jason Garrett, Catherine Hintzen [Garrison], Bodhi Garrett, Re-Evaluation Counseling  
27 Community Resources, Inc., Travis Garrett, and Cynthia Mitchell as Defendants. Doc. #1.  
28 Garrett filed an Answer on April 10, 2014. Doc. #4. On May 9, 2014, attorney Bret Whipple

1 (“Whipple”) filed an Answer on behalf of Defendants Garrett Bullock, Diann Martin, Jason  
2 Garrett, Catherine Hintz[en Garrison], Bodhi Garrett, Travis Garrett, and Cynthia Mitchell. Doc.  
3 #18. Whipple filed an Amended Answer on July 3, 2014, which omitted Bodhi Garrett, Travis  
4 Garrett, and Cynthia Mitchell. Doc. #35. The Magistrate Judge granted Whipple’s Motion to  
5 withdraw as counsel for Garrett Bullock, Diann Martin, Jason Garrett, and Catherine Hintzen  
6 Garrison on September 2, 2014. Doc. #52. Several named defendants stated that they do not  
7 intend to object to the Amendment.<sup>2</sup>

8 On March 10, 2015, the Court entered an Order granting Garrett’s Motion for Joinder in  
9 part, denying Garrett’s Motion for Summary Judgment, granting Garrett’s Motion for Default  
10 Judgment, and denying Garrett’s Motion for Further Extension to File a Motion for Judgment on  
11 the Pleadings. Doc. #71. The Court also granted UBS’s Motion to Deposit Funds, Motion for  
12 Discharge, Motion for Permanent Injunction, and Motion to File for Reasonable Attorney Fees.  
13 *Id.* UBS filed its Motion for Attorney Fees on March 16, 2015, and Garrett filed her Motion to  
14 Reconsider on April 7, 2015.

## 15 **II. Discussion**

16 There are two motions currently pending before the Court: (1) UBS’s Motion for  
17 Attorney Fees, and (2) Garrett’s Motion to Reconsider the Court’s March 10, 2015 Order. The  
18 Court considers UBS’s Motion for Attorney Fees after Garrett’s Motion to Reconsider.

### 19 **A. Motion to Reconsider**

20 Garrett has moved for reconsideration under Federal Rule of Civil Procedure 60(b),  
21 which provides grounds for relief from a final judgment or order. “Reconsideration is  
22 appropriate if the district court (1) is presented with newly discovered evidence, (2) committed  
23 clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in  
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26 <sup>2</sup> On March 14, 2014, Cynthia Mitchell signed an “Acknowledgment and Release,” stating her  
27 belief that the Amendment is valid. Doc. #24-4. Bodhi Garrett filed an “Acknowledgment and Release”  
28 on July 30, 2014. Doc. #49-1. Garrett states that she served Travis Garrett with a Notice of Intention to  
Enter Default on August 7, 2014, but he did not respond. Doc. #51 at 2. UBS acknowledged at the  
November 13, 2014, status conference that Re-Evaluation Counseling Community Resources has  
disclaimed its interest.

1 controlling law.” *School Dist. No. 1J, Multnomah Cnty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263  
2 (9th Cir. 1993). A motion for reconsideration is not a substitute for a timely appeal, and a  
3 motion can be denied if a party merely uses the motion to reargue its case. *See Am. Ironworks &*  
4 *Erectors, Inc. v. N. Am. Const. Corp.*, 248 F.3d 892, 899 (9th Cir. 2001) (finding that the district  
5 court did not abuse its discretion in denying a motion to amend because the moving party merely  
6 reargued its case). District courts have discretion regarding whether to grant a motion to amend  
7 under Rule 60(b). *Wood v. Ryan*, 759 F.3d 1117, 1121 (9th Cir. 2014).

8 Garrett’s Motion fails to identify newly discovered evidence or an intervening change in  
9 controlling law to justify reconsideration under Rule 60. The Court therefore presumes that  
10 Garrett’s Motion is premised on the belief that certain portions of the Court’s March 10, 2015,  
11 Order constituted clear error. Much of Garrett’s Motion rehashes arguments that Garrett has  
12 repeatedly made throughout this litigation. However, the Court’s March 10, 2015, Order made a  
13 number of findings that Garrett considers adverse to her position: (1) declining to grant Garrett’s  
14 Motion for Joinder of Carolyn Garrett as Trustee; (2) denying her Motion for Summary  
15 Judgment; (3) granting her motion for default judgment;<sup>3</sup> (4) denying her request for further  
16 extension to file a Motion for Judgment on the Pleadings; and (5) granting UBS’s motion to  
17 deposit funds, for discharge from liability, for permanent injunction, and to file attorney fees.  
18 Doc. #71 at 10-11.

### 19 1. Motion for Joinder

20 Garrett argues that the Court erred in joining Garrett as a Plaintiff to this lawsuit, and  
21 declining to grant Garrett’s Motion to join herself as a Trustee-defendant. The Court joined  
22 Garrett as a Plaintiff because it had dismissed plaintiff-intervener UBS in the same order, thereby  
23 necessitating joinder of a plaintiff.<sup>4</sup> This was not clear error. Fed. R. Civ. P. 20(a)(1) (plaintiffs  
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25 <sup>3</sup> Although resolved in her favor, Garrett objects to the Court’s grant of her Motion for Default  
26 Judgment “because it relied upon [her] attorney being ordered by the court to get rid of UBS’s  
27 ‘defendants.’” *See* Doc. #87 at 4.

28 <sup>4</sup> The Court inadvertently identified this as a motion to join Garrett as an individual plaintiff,  
when in fact Garrett moved to join herself in a Trustee capacity.

1 can be joined if “they assert any right to relief . . . arising out of the same transaction, occurrence,  
2 or series of transactions or occurrences,” and “any question of law or fact common to all  
3 plaintiffs will arise in the action”). The Court notes that joining Garrett as a Plaintiff does not  
4 impact her legal rights, including any right to claim funds from the Trust, or to become Trustee.

5 The Court declined to join Garrett in a Trustee capacity because under Nevada law, a  
6 transfer to a caregiver that is effective on or after the decedent’s death is presumed void. NRS  
7 § 155.097(2)(b). The Statute includes an exception if the instrument is reviewed by an  
8 “independent attorney.” NRS § 155.0975(3). An “independent attorney” is an attorney who did  
9 not draft the instrument in question, did not serve as the transferor’s caregiver, did not arrange  
10 for or pay for the drafting of the instrument in question, and did not serve as an attorney for  
11 someone who acted as the transferor’s caregiver or arranged for the creation of the instrument in  
12 question. *See* NRS § 155.094; NRS § 155.097(2). The Court declined to join Garrett as a  
13 Trustee because the record indicates that the Amendment was presumed to be void, and a  
14 question remained regarding whether Smith—who created the Amendment—was an  
15 “independent attorney.”<sup>5</sup> Doc. #71 at 5. Moreover, two beneficiaries, Martin and Garrison,  
16 wrote to UBS stating their belief that the Amendment was the result of undue influence or  
17 duress. *Id.* There remains a dispute as to whether Smith was an independent attorney, and  
18 Martin and Garrison still have not withdrawn their objections to the Amendment. As such,  
19 Garrett is not currently the Trustee in this action. Accordingly, the Court did not commit clear  
20 error in declining to join Garrett in a Trustee capacity.

## 21 2. Motion for Summary Judgment

22 The Court denied Garrett’s Motion for Summary Judgment because there remained  
23 disputes as to whether Smith was an “independent attorney” under Nevada law, and whether  
24 beneficiaries continued to dispute the validity of the Amendment. *Id.* at 6-7. Garrett argues that  
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26 <sup>5</sup> Garrett represents that UBS admitted in a document that Smith was an independent attorney.  
27 Doc. #87 at 4. However, the document cited (Doc. #1, Ex. C) states exactly the opposite: “Since Mr.  
28 Smith drafted the transfer instrument (the Amended Trust), and since he, on more than one occasion,  
identifies himself as your attorney, we do not believe that he meets the Nevada statutory definition of  
‘independent attorney.’”

1 it was error for the Court to find that Martin and Garrison had not withdrawn their challenges to  
2 the validity of the Amendment. Doc. #87 at 5-6. The record indicates, however, that Garrison  
3 and Martin expressly challenged the validity of the Amendment (Doc. #19, Ex. F; Doc. #14, Ex.  
4 C), and have not yet withdrawn these objections. Additionally, there remains a dispute as to  
5 whether Smith was an “independent attorney” under Nevada law. Accordingly, it was not clear  
6 error for the Court to deny Garrett’s Motion for Summary Judgment. *See Anderson v. Liberty*  
7 *Lobby, Inc.*, 477 U.S. 242, 255 (1986) (noting that a district court has discretion to “deny  
8 summary judgment in a case where there is reason to believe that the better course would be to  
9 proceed.”).

### 10 3. Motion for Default Judgment

11 The Court granted Garrett’s Motion for Default Judgment against Cynthia Mitchell,  
12 Bodhi Garrett, and Re-Evaluation Counseling Community Resources because each signed  
13 “Acknowledgment and Release” forms, stating that they did not oppose the Amendment. Doc.  
14 #71 at 7. The Court granted Garrett’s Motion for Default Judgment against Travis Garrett  
15 because he was served the interpleader action on April 24, 2014, and his Answer was due on  
16 May 14, 2014, but he never responded. *Id.*; *see Ganz v. Hauf, CHTD v. U. Med. Ctr. Of S. Nev.*,  
17 2:10-cv-0996, 2012 WL 6626894, at \*2 (D. Nev. Dec. 18, 2012) (granting default judgment  
18 because “by failing to respond to the interpleader complaint, aforementioned defendants are  
19 essentially conceding their interest,” among other factors). Despite having moved for default  
20 judgment against these defendants, Garrett states that granting her motion “was a mistake and  
21 needs review because it relied upon [her] attorney being ordered by the court to get rid of UBS’s  
22 ‘defendants.’” Doc. #87 at 4. Despite claiming that she no longer believes that entry of default  
23 judgment was appropriate, Garrett has not shown that it was clear error for the Court to grant her  
24 motion, or that this ruling was the result of misrepresentation or fraud. *See De Saracho v.*  
25 *Custom Food Mach., Inc.*, 206 F.3d 874, 880 (9th Cir. 2000) (finding that to obtain  
26 reconsideration under Federal Rule of Civil Procedure 60(b)(3), the moving party must show by  
27 clear and convincing evidence that the ruling was the result of misrepresentation or fraud).

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1                                   **4.       Motion for Further Extension**

2                   The Court held a status conference on November 13, 2014. Doc. #59. At the status  
3 conference, Garrett stated her intention to file a Motion for Judgment on the Pleadings, and the  
4 Court granted allowed her to file this Motion on or before December 3, 2014. *Id.* On December  
5 9, 2014, the Court granted an unopposed motion to extend time, permitting Garrett to file a  
6 Motion for Judgment on the Pleadings on or before December 24, 2014. Doc. #63. Garrett  
7 missed this deadline and filed another Motion to Extend Time on December 29, 2014. Doc. #65.  
8 The Court granted this motion on December 31, 2014, allowing Garrett until January 28, 2015, to  
9 file her motion, and noting that “No further extensions shall be granted.” Doc. #66. On January  
10 28, 2015, Garrett filed a Motion to Clarify Order, effectively requesting additional time to file her  
11 motion. Doc. #67. The Court granted Garrett’s Motion on February 2, 2015, allowing Garrett  
12 until February 12, 2015, to file her motion, and again noting “There will be no further  
13 extensions.” Doc. #69. Garrett did not file her motion by February 12, 2015, but on March 6,  
14 2015, filed a Motion requesting further extension of time, among other relief. Doc. #70. In its  
15 March 10, 2015, Order on the other pending motions, the Court denied Garrett’s Motion as  
16 untimely. Doc. #71 at 2.

17                   The Court acknowledges that as a pro se litigant, it is more difficult for Garrett to  
18 construct legal arguments than it would be for a seasoned attorney. However, “pro se litigants in  
19 the ordinary civil case should not be treated more favorably than parties with attorneys of  
20 record.” *Jacobsen v. Filler*, 790 F.2d 1362, 1364 (9th Cir. 1986). The Court granted Garrett  
21 multiple extensions of time to file her motion, stating twice that she would receive no further  
22 extensions. Garrett failed to file her motion within the time provided, and instead filed a motion  
23 to extend time three weeks after the final deadline. The Court reaffirms its decision to deny  
24 Garrett’s Motion for further extension. *See Manley v. Zimmer*, No. 3:11-cv-0636, 2014 WL  
25 4471662, at \*6 (D. Nev. Sept. 10, 2014) (“[I]t is the trial court’s responsibility to exercise its  
26 discretion in granting or denying extensions of time as it manages the progress of litigation.”).

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1                                   **5.        UBS’s Motions**

2            The Court granted each of UBS’s four Motions: (1) to deposit funds; (2) for discharge;  
3 (3) for permanent injunction; and (4) for reasonable attorney fees. Doc. #71 at 11. Garrett’s  
4 Motion to Reconsider these rulings is based largely on the same arguments that she previously  
5 raised—that UBS never should have instituted the interpleader action, and caused unnecessary  
6 delay. A party cannot use a motion to reconsider merely to reargue its case. *See Am. Ironworks*  
7 *& Erectors, Inc.*, 248 F.3d at 899 (finding that the district court did not abuse its discretion in  
8 denying a motion to amend because the moving party merely reargued its case). By merely re-  
9 alleging the same arguments Garrett made prior to the Court’s Order, Garrett has not identified  
10 newly discovered evidence, clear error, or an intervening change in controlling case law to justify  
11 reconsideration.

12            Garrett also argues that the Court should reconsider the March 10, 2015, Order on UBS’s  
13 Motion because UBS “engaged in fraud and other misconduct during the preparation of the  
14 Interpleader and perpetrated fraud upon the court by misrepresenting almost every ‘fact’ in the  
15 presentation to the Court.” Doc. #77 at 10; Fed. R. Civ. P. 60(b)(3) (recognizing fraud,  
16 misrepresentation, or misconduct by an opposing party as legitimate grounds for relief from a  
17 final judgment). To prevail on a motion to reconsider for fraud, misrepresentation, or  
18 misconduct under Rule 60(b)(3), “the moving party must prove by clear and convincing evidence  
19 that the verdict was obtained through fraud, misrepresentation, or other misconduct and the  
20 conduct complained of prevented the losing party from fully and fairly presenting the defense.”  
21 *De Saracho*, 206 F.3d at 880. “The rule is aimed at judgments which were unfairly obtained, not  
22 at those which are factually incorrect.” *In re M/V Peacock on Complaint of Edwards*, 809 F.2d  
23 1403, 1405 (9th Cir. 1987); *Peck v. Nevin*, No. 2:12-cv-0782, 2015 WL 1384930, at \*1-2 (D.  
24 Nev. Mar. 25, 2015).

25            Garrett identifies six of the “most disturbing” facts that were allegedly misrepresented to  
26 the Court by UBS: (1) that Smith was Carolyn Garrett’s attorney while he was Jo Anne Garrett’s  
27 attorney; (2) that UBS disputed whether Smith was an “independent attorney”; (3) that Garrett  
28 refused to help UBS verify the Amendment by contacting other beneficiaries; (4) that UBS



1 offered Garrett the option of a declaratory judgment determination to prove the Trust was valid;  
2 (5) that UBS attempted to avoid litigation by contacting beneficiaries to the Trust; and (6) that  
3 there were claims against the trust that necessitated the interpleader action. Doc. #77 at 11.  
4 These representations are either irrelevant, or supported by law or documentation to indicate that  
5 they were not misrepresentations. First, the fact that Smith wrote the Amendment to the Trust  
6 raises the question of whether he was an “independent attorney” and acting for Garrett’s benefit.  
7 See NRS § 155.094; NRS § 155.097(2); Doc. #82, Ex. 1. Second, Garrett indicated in a letter  
8 that she would not help UBS contact beneficiaries of the Trust. Doc. #19, Ex. D at 5. Third,  
9 whether or not UBS offered Garrett the option of declaratory judgment was irrelevant to the  
10 Court’s analysis. Fourth, the record indicates that UBS attempted to avoid litigation by sending  
11 all former beneficiaries acknowledgment and release forms prior to filing the interpleader action.  
12 See Doc. #19, Ex. C. Furthermore, Nevada’s presumption of invalidity for this type of  
13 Amendment made it necessary for UBS to contact the Trust’s former beneficiaries in an attempt  
14 to validate the Amendment. Fifth, both Martin and Garrison objected to the Amendment as  
15 being potentially the result of undue influence. Doc. #19, Ex. F; Doc. #14, Ex. C.

16 Despite referencing these purported misrepresentations, Garrett has not shown by clear  
17 and convincing evidence that the Court’s Order was obtained by fraud, or that these  
18 representations prevented Garrett from presenting her defense. Accordingly, Garrett has not  
19 identified a compelling reason to reconsider the Court’s Order on UBS’s Motions.<sup>6</sup>

20 **B. Motion for Attorney Fees**

21 In the March 10, 2015, Order, the Court found that it was reasonable for UBS to file the  
22 interpleader action due to the disputes to the validity of the Amendment, and stated that it would  
23 consider a Motion for Attorney Fees filed pursuant to Local Rule 54-16. Doc. #71 at 11. UBS  
24 filed this Motion on March 16, 2015. Doc. #72.

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27 <sup>6</sup> To the extent that Garrett also argues that UBS’s alleged misrepresentations also tainted the  
28 Court’s rulings on her Motions, the Court finds that Garrett has failed to show by clear and  
convincing evidence that these rulings were obtained by fraud, or that they prevented Garrett  
from presenting a defense. *De Saracho*, 206 F.3d at 880.

1 UBS requests that the Court award attorney fees based on the lodestar method of  
2 calculation, in the amount of \$43,551.90,<sup>7</sup> which represents a total of 133.80 hours of work on  
3 this case, at a blended hourly rate of \$325.50. Doc. #72 at 3. UBS represented in its Motion that  
4 UBS billed an additional twenty hours at an hourly rate of \$340, which would add an additional  
5 \$6800 to the lodestar. *Id.* UBS's lodestar is based on work performed by four separate  
6 individuals: (1) David C. McElhinney, an equity partner at Lewis Roca Rothgerber, LLP, billing  
7 at a rate of \$340 per hour; (2) Jesse Simpson, an equity partner at Lewis Roca Rothgerber, LLP,  
8 billing at a rate of \$425 per hour; (3) Peter Wand, a partner at Lewis Roca Rothgerber, LLP,  
9 billing at a rate of \$280.50 per hour; and (4) Patty Miller, a litigation paralegal and private  
10 investigator at Lewis Roca Rothgerber, LLP, billing at a rate of \$161.50 per hour. *Id.* at 3-4.

11 UBS argues that the work performed, and time and labor required litigating this case  
12 weighs in favor of granting the full amount of UBS's lodestar. UBS argues further that it took  
13 steps to resolve this case in a straightforward and simple manner when it contacted Garrett on  
14 February 4, 2014, which would have allowed UBS to deposit funds with the court and be  
15 dismissed from the action without the need for significant attorney involvement. In response,  
16 Garrett requested that UBS immediately recognize her as Trustee. On March 10, 2014, UBS  
17 mailed Acknowledgment and Release forms to nine named beneficiaries. On March 13, 2014,  
18 UBS received a facsimile transmission from Daniel Page, a lawyer for beneficiary Martin,  
19 notifying UBS that Martin planned to contest the validity of the Amendment. At this point, UBS  
20 concluded that it had no option but to file the Complaint for Interpleader, on March 17, 2014.

21 Garrett raises a number of arguments in opposition to UBS's Motion for Attorney Fees,  
22 many of which concern Garrett's general disagreement with the Court's March 10, 2015, Order.  
23 Garrett's primary argument is that UBS should not recover attorney fees because it filed this  
24 interpleader action in bad faith and caused unnecessary delay. Doc. #75 at 4. As discussed in the  
25 March 10, 2015, Order, and reaffirmed in this Order, the Court finds that UBS justifiably filed  
26 the Interpleader action and diligently sought to resolve the issues pending before the Court.

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28 <sup>7</sup> UBS's Motion states that UBS is requesting \$43,552.30. It appears that this slight deviation  
from the lodestar actually requested was a typographical error.

1 Garrett also argues that “because the attorneys’ fees are paid from the interpleaded fund  
2 itself, there is an important policy interest in seeing that the fee award does not deplete the fund  
3 at the expense of the party who is ultimately deemed entitled to it.” *Id.* at 5; *Trs. of Dirs. Guild*  
4 *of Am.-Producer Pension Benefits Plans v. Tise*, 234 F. 3d 415, 427 (9th Cir. 2000). “Because  
5 the interpleader plaintiff is supposed to be disinterested in the ultimate disposition of the fund,  
6 attorneys’ fee awards are properly limited to those fees that are incurred in filing the action and  
7 pursuing the plan’s release from liability, not in litigating the merits of the adverse claimants’  
8 positions.” *Tise*, 234 F.3d at 427. Compensable expenses include “preparing the complaint,  
9 obtaining service of process on the claimants to the fund, and preparing an order discharging the  
10 stakeholder from liability and dismissing it from the action.” *Id.*

11 The Court recognizes the significant time and effort that UBS has extended in filing this  
12 interpleader action, responding to Garrett’s pleadings, and appearing at hearings. However, the  
13 Court finds the fees requested by UBS to be excessive given the Ninth Circuit’s caution that  
14 attorney fees to banks in interpleader actions are “typically modest” compared to the total value  
15 of the fund. *Id.* UBS has deposited approximately \$193,000.00 with the Court (Doc. #79), and  
16 now requests more than a quarter of that figure in attorney fees (Doc. ##72; 81). Under the  
17 circumstances before the Court, the Court finds that an award of \$20,000 in attorney fees is  
18 appropriate and fair to compensate UBS without depleting the funds available to claimants.<sup>8</sup>

### 19 **III. Conclusion**

20 IT IS THEREFORE ORDERED that Garrett’s Motion to Reconsider (Doc. #77) is  
21 DENIED.

22 IT IS FURTHER ORDERED that UBS’s Motion for Attorney Fees and Costs (Doc. #72)  
23 is GRANTED in part. UBS shall be paid \$20,000 in attorney fees out of the funds previously  
24 deposited with the clerk of court.

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26 <sup>8</sup> In addition to her Opposition to UBS’s Motion for Attorney Fees and Costs, Garrett filed a  
27 Supplemental Opposition to Motion for Attorney Fees and Costs, and Motion to Extend Time to Oppose.  
28 Doc. #86. This Motion requested thirty days to submit an itemized opposition to UBS’s Motion for  
Attorney Fees. Because the Court has capped UBS’s attorney fees at \$20,000, the Court denies Garrett’s  
motion as moot.

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IT IS FURTHER ORDERED that Garrett's Supplemental Opposition to Motion for Attorney Fees and Costs and Motion to Extend Time (Doc. #86) is DENIED as moot.

IT IS FURTHER ORDERED that the parties and clerk of court shall hereafter use the caption from this Order in any subsequent filings.

IT IS SO ORDERED.

DATED this 27th day of May, 2015.

  
\_\_\_\_\_  
LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE