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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 THE PRUDENTIAL INSURANCE
9 COMPANY OF AMERICA,

10 Plaintiff,

11 v.

12 G. E. C., a minor; T.A.C, a minor; and
13 A.M.C., a minor,

14 Defendants.

CASE NO. C16-5666 BHS

ORDER DENYING A.M.C.'S AND
T.A.C.'S MOTION FOR
SUMMARY JUDGMENT AND
DENYING G.E.C.'S MOTION FOR
SUMMARY JUDGMENT

15 This matter comes before the Court on Defendant G.E.C.'s motion for summary
16 judgment (Dkt. 35) and A.M.C.'s and T.A.C.'s cross-motion for summary judgment
17 (Dkt. 49). The Court has considered the pleadings filed in support of and in opposition to
18 the motions and the remainder of the file and hereby denies the motions.

19 **I. PROCEDURAL HISTORY**

20 On July 29, 2016, Plaintiff the Prudential Insurance Company of America
21 ("Prudential") filed a complaint in interpleader against G.E.C. and Defendants T.A.C.
22 and A.M.C. Dkt. 1. Prudential issued a life insurance policy to Charles Cruz, and, upon
Mr. Cruz's death, a dispute exists as to the proper beneficiaries under the policy. *Id.*

1 On January 3, 2017, the Court granted Prudential's motion to deposit the
2 remaining proceeds into the Court registry and be dismissed from this matter. Dkt. 17.

3 On December 13, 2017, G.E.C. filed a motion for summary judgment. Dkt. 35.
4 On March 26, 2018, T.A.C. and A.M.C. responded and, in the same document, requested
5 affirmative relief in their favor. Dkt. 41. On March 30, 2018, G.E.C. replied and agreed
6 to T.A.C. and A.M.C.'s suggestion that the remaining \$200,000 in proceeds would be
7 distributable to T.A.C. and A.M.C. if the \$200,000 that was released to Mr. Cruz's
8 mother, Pamela Cruz, was kept in constructive trust for the benefit of G.E.C. and his
9 stepsiblings. Dkt. 45.

10 On April 18, 2018, the Court entered an order noting that the cross-motion of
11 T.A.C. and A.M.C. was not noted in accordance with the local rules. Dkt. 47.
12 Accordingly, the Court requested that the parties meet and confer to establish a briefing
13 schedule to afford G.E.C. adequate time to respond to the cross-motion. *Id.* The Court
14 also requested that the parties confer over the apparent agreement in their briefing
15 regarding the funds that were distributed to Pamela Cruz and how the disposition of those
16 funds might resolve this matter. *Id.*

17 On April 26, 2018, T.A.C. and A.M.C. filed their renewed cross-motion for
18 summary judgment. Dkt. 49. On May 14, 2018, G.E.C. responded. Dkt. 50. On May 18,
19 2018, A.M.C. and T.A.C. replied. Dkt. 53.

20 **II. FACTUAL BACKGROUND**

21 In 1997, Mr. Cruz married Cassandra Cruz (now Cassandra Nagel). The couple
22 had two children, T.A.C and A.M.C. In 2008, the couple legally separated and divorced.

1 On December 18, 2008, Mr. Cruz and Silke Greer married. The couple had one child,
2 G.E.C. Silke had two children from a previous marriage that Mr. Cruz treated as his
3 own.

4 Mr. Cruz was active duty military throughout his marriage to Cassandra and
5 remained active duty until his death. As an active duty member of the armed services,
6 Mr. Cruz was entitled to a \$400,000 Servicemembers' Group Life Insurance ("SGLI")
7 policy issued by Prudential. Mr. Cruz and Cassandra's divorce decree included a
8 provision about life insurance that required Mr. Cruz to maintain \$200,000 of his SGLI
9 policy for the benefit of T.A.C. and A.M.C.

10 On July 30, 2008, Mr. Cruz completed an election of benefits under the SGLI
11 policy. Mr. Cruz elected to grant five percent of the benefits to Cassandra, twenty-five
12 percent to T.A.C., twenty-five percent to A.M.C., ten percent each to his mother and
13 father, and the remaining twenty-five percent to Silke.

14 On September 14, 2015, Mr. Cruz completed another election of benefits form.
15 Mr. Cruz elected to grant fifty percent of the benefits to his mother, Pamela Cruz, and
16 fifty percent to "My child (ren) Cassandra Cruz mother of my two children as custodian
17 for the minor children pursuant to the UGMA/UTMA." Dkt. 1-1 at 1.

18 On October 22, 2015, Mr. Cruz died while on active duty.

19 After his death, Mr. Cruz's mother, Pamela, submitted a claim for fifty percent of
20 the proceeds. Prudential paid the claim, and Pamela has placed the \$200,000 in an
21 interest-bearing account in her name that she intends to maintain for the benefit of G.E.C.
22 and Mr. Cruz's stepchildren.

1 On January 6, 2016, Cassandra submitted a claim on behalf of T.A.C. and A.M.C.
2 for the remaining \$200,000. On February 6, 2016, Silke submitted a claim on behalf of
3 G.E.C. for the same funds.

4 III. DISCUSSION

5 The parties have each moved for summary judgment on the record before the
6 Court. Summary judgment is proper only if the pleadings, the discovery and disclosure
7 materials on file, and any affidavits show that there is no genuine issue as to any material
8 fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).
9 The moving party is entitled to judgment as a matter of law when the nonmoving party
10 fails to make a sufficient showing on an essential element of a claim in the case on which
11 the nonmoving party has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323
12 (1986). There is no genuine issue of fact for trial where the record, taken as a whole,
13 could not lead a rational trier of fact to find for the nonmoving party. *Matsushita Elec.*
14 *Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (nonmoving party must
15 present specific, significant probative evidence, not simply “some metaphysical doubt”).
16 *See also* Fed. R. Civ. P. 56(e). Conversely, a genuine dispute over a material fact exists if
17 there is sufficient evidence supporting the claimed factual dispute, requiring a judge or
18 jury to resolve the differing versions of the truth. *Anderson v. Liberty Lobby, Inc.*, 477
19 U.S. 242, 253 (1986); *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d
20 626, 630 (9th Cir. 1987).

21 The determination of the existence of a material fact is often a close question. The
22 Court must consider the substantive evidentiary burden that the nonmoving party must

1 meet at trial—e.g., a preponderance of the evidence in most civil cases. *Anderson*, 477
2 U.S. at 254; *T.W. Elec. Serv., Inc.*, 809 F.2d at 630. The Court must resolve any factual
3 issues of controversy in favor of the nonmoving party only when the facts specifically
4 attested by that party contradict facts specifically attested by the moving party. The
5 nonmoving party may not merely state that it will discredit the moving party’s evidence
6 at trial, in the hopes that evidence can be developed at trial to support the claim. *T.W.*
7 *Elec. Serv., Inc.*, 809 F.2d at 630 (relying on *Anderson*, 477 U.S. at 255). Conclusory,
8 nonspecific statements in affidavits are not sufficient, and missing facts will not be
9 presumed. *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 888–89 (1990).

10 The Court concludes that there is a genuine dispute of fact over Mr. Cruz’s intent
11 when he wrote his designation to “My child (ren) Cassandra Cruz mother of my two
12 children as custodian for the minor children pursuant to the UGMA/UTMA” as it appears
13 on his election of benefits form.

14 The payment of SGLI policy proceeds is governed by 38 U.S.C. § 1970, which
15 provides the following order of precedence for recipients:

16 First, to the beneficiary or beneficiaries as the member or former
17 member may have designated by a writing received prior to death . . . ;

18 Second, if there be no such beneficiary, to the widow or widower of
19 such member or former member;

20 Third, if none of the above, to the child or children of such member
21 or former member and descendants of deceased children by representation;

22 Fourth, if none of the above, to the parents of such member or
former member or the survivor of them;

Fifth, if none of the above, to the duly appointed executor or
administrator of the estate of such member or former member;

Sixth, if none of the above, to other next of kin of such member or
former member entitled under the laws of domicile of such member or
former member at the time of the insured’s death.

1 38 U.S.C. § 1970(a). Pursuant to 38 U.S.C. § 1970, “the serviceman’s intended
2 designation of beneficiary [i]s the paramount consideration” *Prudential Ins. Co. of*
3 *Am. v. Smith*, 762 F.2d 476, 480 (5th Cir. 1985). Accordingly, “[o]nly if the serviceman
4 fail[s] to file such designation of beneficiary d[oes] the non-designation statutory order of
5 determining preferred beneficiaries come into play.” *Id.* The Court must strictly construe
6 the statute, regardless of arguments of equity or fairness. *Ridgway v. Ridgway*, 454 U.S.
7 46, 62–63 (1981).

8 The parties’ arguments for summary judgment can be divided into two parts. First,
9 each party argues that the designation is unambiguous on its face and should therefore be
10 construed in their favor. Second, the parties argue that even if the designation is
11 ambiguous, any ambiguity should be resolved in their favor.

12 The Court disagrees with both parties on the first issue and finds that the
13 designation is ambiguous on its face. It is not clear from the text of the designation or the
14 election of benefits form whether the term “My child (ren)” refers exclusively to T.A.C.
15 and A.M.C., or all of Mr. Cruz’s “children” as defined by 38 U.S.C. § 1965(8),¹ which
16 would include G.E.C. While the words “My child (ren)” would clearly refer to all three
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18 ¹ “The term ‘child’ means a legitimate child, a legally adopted child, an illegitimate child
19 as to the mother, or an illegitimate child as to the alleged father, only if (A) he acknowledged the
20 child in writing signed by him; or (B) he has been judicially ordered to contribute to the child’s
21 support; or (C) he has been, before his death, judicially decreed to be the father of such child; or
22 (D) proof of paternity is established by a certified copy of the public record of birth or church
record of baptism showing that the insured was the informant and was named as father of the
child; or (E) proof of paternity is established from service department or other public records,
such as school or welfare agencies, which show that with his knowledge the insured was named
as the father of the child.” 38 U.S.C. § 1965(8).

1 biological children of Mr. Cruz if read in isolation, the remainder of the designation
2 creates ambiguity by directing half of the insurance proceeds to be paid to “Cassandra
3 mother of my two children as custodian for the minor children pursuant to
4 UGMA/UTMA.” This language strongly suggests that the designation was intended to be
5 for the exclusive benefit of T.A.C. and A.M.C., as it would lead to a strange result if the
6 designation was also to benefit G.E.C. and Cassandra was designated as the custodian on
7 behalf of G.E.C., who is not her child. Unfortunately, while the designation notes that
8 Cassandra is the mother of Mr. Cruz’s two children, Cassandra is designated as custodian
9 for “*the* minor children” without specifying if the intended beneficiaries are *her* children.
10 While it seems to the Court that the reference to “Cassandra Cruz mother of my two
11 children” likely indicates that Mr. Cruz intended the designation exclusively for her two
12 children, the Court recognizes that reasonable minds might differ. Accordingly, the
13 designation is ambiguous and the Court looks to extrinsic evidence to determine the
14 service member’s intent.

15 G.E.C. offers several reasons why he believes the Court should resolve the
16 ambiguity in his favor. First, G.E.C. argues that 38 U.S.C. § 1967(a)(3)(B) requires that
17 any child of a service member, such as himself, be listed as a beneficiary on an SGLI
18 policy for a minimum of \$10,000. *See* Dkt. 35 at 5. That is not the case, however, as 38
19 U.S.C. § 1967(a)(3)(B) instead clearly requires that any child of a service member *be*
20 *insured against death* in an amount no less than \$10,000. *See* 38 U.S.C. § 1967(a).
21 Rather, as stated by the Supreme Court, “[f]ederal law and federal regulations bestow
22 upon the service member an absolute right to designate the policy beneficiary.” *Ridgway*,

1 454 U.S. at 59. Second, G.E.C. argues that the Court should give deference to the United
2 States Army’s initial SGLI determination that the designation was intended to include
3 G.E.C. However, the record demonstrates that this decision was not without dispute, *see*
4 Dkt. 36 at 43, 45, and G.E.C. fails to provide any authority for the proposition that the
5 Court must defer to the SGLI determination if a designation is ambiguous. Furthermore,
6 the SGLI determination fails to account for the fact that if G.E.C. is an intended
7 beneficiary, Cassandra is plainly the designated custodian of the proceeds for all the
8 minor children, and there is no language authorizing a disbursement of funds to Silke as
9 custodian for G.E.C. Finally, G.E.C. relies on the text of the designation itself and argues
10 that the term “My child (ren)” should necessarily include him because he satisfies the
11 statutory definition of Mr. Cruz’s “child” and the designation was made after his birth.

12 T.A.C. and A.M.C. have also submitted evidence in support of their position.
13 Particularly of note, they have submitted the declaration of Pamela Cruz that weighs
14 strongly in favor of their argument that Mr. Cruz intended that any proceeds benefitting
15 G.E.C. be provided from the proceeds paid to Pamela Cruz. Dkt. 43. *See also* Fed. R.
16 Evid. 803(3). Indeed, Pamela Cruz’s declaration indicates that Mr. Cruz told her that he
17 was designating her as the beneficiary of half of his life insurance proceeds with the
18 intent that the funds would be used for the benefit of G.E.C. and Mr. Cruz’s two older
19 stepchildren with Silke. *Id.* at 1. According to Pamela Cruz, this was because Mr. Cruz
20 did not trust Silke to manage the funds for the children’s benefit. *Id.* Mr. Cruz also told
21 Pamela Cruz that he intended Cassandra to receive the other half of the proceeds on
22 behalf of T.A.C. and A.M.C. *Id.* at 2. Tellingly, Pamela Cruz has testified that she has

1 deposited the life insurance funds into an interest-bearing account² with the expectation
2 that they will someday be used for G.E.C. and his step-siblings' education. *Id.* at 2.
3 However, the evidence that Mr. Cruz did not trust Silke to manage the funds could also
4 be argued to cut in favor of G.E.C. by offering an explanation for why Cassandra, rather
5 than Silke, would be designated as custodian for all of the minor children, including
6 G.E.C., notwithstanding the fact that Cassandra is the mother of T.A.C. and A.M.C. only.

7 As already stated above, the designation that is the subject of this lawsuit is
8 ambiguous and poorly drafted. "Whether a contract is ambiguous is a question of law, but
9 if the contract is ambiguous, the conflict is ordinarily a genuine dispute of material fact
10 inappropriate for resolution on summary judgment." *Lennar Mare Island, LLC v.*
11 *Steadfast Ins. Co.*, 176 F. Supp. 3d 949, 964 (E.D. Cal. 2016) (citations omitted). The
12 parties in this case have each submitted evidence to support their proffered interpretation
13 of the ambiguous designation. The Court finds that the evidence does not unambiguously
14 establish the intent of Mr. Cruz in drafting the designation. Accordingly, both motions for
15 summary judgment must be denied and the matter submitted to a jury.

16 As a final note, the Court acknowledges G.E.C.'s request that the Court enter an
17 order finding that the half of the proceeds received by Pamela Cruz is to be held in a
18 constructive trust for the benefit of G.E.C. and his stepsiblings. However, G.E.C. has
19 cited no authority for the Court's ability to enter such an order. Pamela Cruz is not a party
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21 ² Pamela Cruz has requested the personal information of Silke's children that is necessary
22 to set up college savings accounts on their behalf, but Silke has not provided the information to
Pamela Cruz. Dkt. 43 at 2.

1 to this action, nor is the half of the proceeds that have already been distributed to her the
2 subject of the underlying complaint in interpleader. *See* Dkt. 1. Moreover, the designation
3 assigning half of the proceeds to Pamela Cruz is unambiguously drafted and lacks any
4 language suggesting that the proceeds were to be distributed to her as custodian for
5 G.E.C. and his stepsiblings. Accordingly, G.E.C.'s request is denied.

6 **IV. ORDER**

7 Therefore, it is hereby **ORDERED** that the motion for summary judgment of
8 T.A.C. and A.M.C. (Dkt. 49) and the motion for summary judgment of G.E.C. (Dkt. 35)
9 are **DENIED**.

10 Dated this 19th day of June, 2018.

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BENJAMIN H. SETTLE
13 United States District Judge