



## **MacPherson-Pomeroy v. North American Company for Life and Health Insurance**

2022 | Cited 0 times | E.D. California | April 8, 2022

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

BARBARA MACPHERSON-POMEROY,

Plaintiff, v. NORTH AMERICAN COMPANY FOR LIFE AND HEALTH INSURANCE,

Defendant.

No. 1:20-cv-00092-DAD-BAM

ORDER DENYING THIRD-PARTY DEFENDANT DEBANEE MACPHERSON AND APPOINTMENT OF COUNSEL AND GRANTING PLAINTIFF BARBARA MACPHERSON-SUMMARY JUDGMENT (Doc. Nos. 76, 86, 99) NORTH AMERICAN COMPANY FOR LIFE AND HEALTH INSURANCE,

Counter Claimant, v. BARBARA MACPHERSON-POMEROY,

Counter Defendant. NORTH AMERICAN COMPANY FOR LIFE AND HEALTH INSURANCE,

Third-Party Plaintiff, v. DEBANEE MACPHERSON UDALL and MELANIE RODRIGUEZ,

Third-Party Defendants.

Before the court is plaintiff Barbara MacPherson- summary judgment as to

-party complaint for interpleader. (Doc. Nos. 76, 14.) pending motion for summary judgment, third-party defendant Debanee MacPherson Udall has moved to (i) continue summary judgment, and (ii) appoint an attorney to represent her in this case, including for purposes of opposing . (Doc. Nos. 86, 92.) pending motion for summary judgment was taken under submission on the papers (Doc. No. 77) and the court now also takes motion for a continuance and for appointment of counsel under submission on the papers in accordance with its Standing Order in Light of Judicial Emergency in the Eastern District of California. For the reasons discussed below, the court will



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## BACKGROUND A. Factual Background 2

This matter arises from the death of plaintiff Barbara MacPherson- husband, Casey MacPherson-Pomeroy, who held a life insurance policy in the amount of \$1,500,000 purchased from defendant North American.

1 overwhelming caseload has been well publicized and the long-standing lack of judicial resources in this district long-ago reached crisis proportion. That situation has now been partially addressed December 17, 2021. Nonetheless, for over twenty-two months the undersigned was left presiding over approximately 1,300 civil cases and criminal matters involving 735 defendants. That situation resulted in the court not being able to issue orders in submitted civil matters within an acceptable period of time and continues even now as the undersigned works through the predictable backlog. This has been frustrating to the court, which fully realizes how incredibly frustrating it is to the parties and their counsel. 2 y judgment is unopposed. See Fed. R. Civ. P.

In August 2018, Barbara and Casey moved to the Island of Anguilla, a British overseas territory in the Caribbean. (Doc. No. 76-2 at ¶¶ 6 7 childhood friends Caleb and Carly Guillory and Chuck and Alisha Gros visited Casey and Barbara to celebrate the new year. (Doc. No. 76-4 at 204.) On the evening of December 30, 2018, the three couples visited an outdoor beach bar. (Id.) While walking home from the beach bar, Barbara, Casey, and Caleb each drank from the same plastic cup containing an alcoholic beverage, which had been left unattended immediately before the group left for home. (Id. at 204 05; Doc. No. 76-2 at ¶ 8.) Shortly after arriving home, all three became seriously ill. (Doc. No. 76-2 at ¶ 9.) Caleb and Casey died on December 30 and 31, 2018, respectively, while Barbara survived. (Id. at ¶ 10.) criminal charges had been brought against Barbara or anyone else in the group that attended the beach bar on December 30, 2018. (Doc. No. 76-2 at ¶ 12.) Barbara maintains that she did not kill Casey. (Id. at ¶ 22.)

(Policy No. LB02834040). (Id. at ¶ 13; Doc. No. 76-4 at 25 83.) Casey purchased the policy in 2013 from defendant North American and increased its value to \$1,500,000 in 2014. (Doc. No. 76-2 at ¶¶ 1 2.) Barbara is the primary beneficiary under the policy, but in July 2018, Casey added Melanie Rodriguez (his niece) and Debanee MacPherson Udall (his sister) as contingent beneficiaries. 3

(Id. at ¶¶ 3 4; Doc. No. 76-4 at 204.) There are no other primary or contingent beneficiaries under the life insurance policy. (Doc. No. 76-2 at ¶ 5.) American in early 2019. (Id. at ¶ 14.) B. Procedural Background

On December 16, 2019, plaintiff filed a complaint in the Fresno County Superior Court against North American for breach of contract and the covenant of good faith and fair dealing. (Doc. No. 1 at 17.) North American removed the action to this federal court on January 17, 2020 based on diversity of citizenship. (Doc. No. 1.) 3 According to the endorsement of the chang shall be paid to any Primary Beneficiaries who survive the Insured, but if none survive, proceeds shall be paid to any Contingent



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Beneficiaries who survive, or if none survive, to the Estate of the Policyowner -4 at 68 69.)

On February 21, 2020, North American filed an answer to plaintiff along with a counterclaim and third-party complaint for interpleader against plaintiff and contingent beneficiaries Melanie Rodriguez and Debanee MacPherson Udall. (Doc. Nos. 13, 14.) In its interpleader complaint, North American alleges that Barbara, Melanie, and Debanee have adverse so 24.) North American also alleges the bases for the purported risk of multiple liability, namely that (i) the Royal Anguilla Police Force and the Anguilla Coroners Court the

death, but that the coroner has not resolved the inquest because plaintiff has refused to testify at that inquest. 4

(Id. at ¶¶ 15 21.) On March 4, 2020, the court granted North American leave to deposit its admitted liability the \$1,500,000 with the registry of the court and the court has received those funds. (Doc. No. 16.)

On April 2, 2020, appearing in propria persona, third-party defendant Melanie Rodriguez that I am a secondary beneficiary under the life insurance policy at issue, I am not challenging the

payment of the policy benefits to the primary beneficiary, Barbara MacPherson- No. 21 at 1.) Since the filing of her answer, Melanie has not appeared at any of the status

conferences or other hearings held by the court in this action, nor has she submitted any other filings.

4 are unresolved issues rendering the manner or cause of death unclear or is necessary and will direct that an inquest be so conducted At the same time, the Anguillan certificate of death attached to the interpleader complaint states that the causes of death were: acute pulmonary oedema and haemorrhage; acute cardiac toxicity with cardiac ischaemia; seizures; and hyperthermia. (Doc. No. 14-3.)

On April 21, 2020, at that time appearing through counsel, third-party defendant Debanee MacPherson Udall terpleader complaint. (Doc. No. 22.) , among other things, that

Barbara MacPherson- of Casey MacPherson-Pomeroy's death and, as such, if the inquest and ongoing police investigation determine his death was a homicide Barbara MacPherson-Pomeroy was probably the perpetrator, either alone or in conjunction with others, and as a result she is not permitted under California law to receive the life insurance proceeds under Probate Code §252. . . . (Doc. No. 22 at ¶ 23.) On March 31, 2021, plaintiff filed a motion for summary judgment in her favor on North , wherein she requests life insurance proceeds be summarily adjudicated in her favor pending motion remains unopposed, but Debanee, who is now proceeding in propria persona, 5



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has sought to postpone its adjudication on three occasions, two of which requests remain pending before the court. First, on April 20, 2021, the day her brief judgment was due,

which the court granted. (D brief in opposition was again due , she filed the pending motion for another continuance and for appointment of counsel. (Doc. No. 86.) With Third, on May 28, 2021, 10 days after her opposition brief was due, Debanee filed an amended

motion for a continuance and appointment of counsel, which plaintiff also opposed. (Doc. Nos. 92, 93.)

On February 15, 2022, plaintiff filed a request for a ruling on her pending motion for summary judgment, arguing that it has been 11 months since that motion had been filed. (Doc. No. 99.) No party filed any resp ///// 5 , (Doc. Nos. 61, 63), which the court granted on April 8, 2021. (Doc. No. 79.)

for summary judgment, the court will first motion for a continuance and appointment of counsel. C. Motion for a Continuance and Appointment of Counsel

In her pending motion Debanee requests that the court: (i) again continue the hearing on , and thus, continue deadline to file an opposition brief , and (ii) appoint counsel to represent her, including in filing an opposition to -pending summary judgment motion. 6

(Doc. No. 86 at 3) (citing Fed. R. Civ. P. 6(b)).

1. Whether to Extend the Deadline for the Filing of an Opposition Brief Federal Rule of Civil Procedure 6(b) provides that [w]hen an act may or must be done within a specified time, the court may, for good cause, extend the time: . . . on motion made after the time has expired if the party failed to act because of excusable neglect. To determine whether a partys failure to meet a deadline constitutes excusable neglect, courts

must apply a four-factor equitable test, examining: (1) the danger of prejudice to the opposing party; (2) the length of the delay and its potential impact on the proceedings; (3) the reason for the delay; and (4) whether the movant acted in good faith. Ahanchian v. Xenon Pictures, Inc., 624 F.3d 1253, 1261 (9th Cir. 2010).

Debanee claims she needs additional time to file her opposition summary judgment because: (i) she

the court entered a stipulated protective order in this case restricting the ability of a specific private investigator from reviewing discovery, which purportedly makes it ///// ///// ///// 6 motion (Doc. No. 86) and is largely the same in content, the court will treat them as one motion.

difficult for her to secure counsel; 7



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and (iii) multiple attorneys have declined to undertake her representation since her original attorney in this action withdrew. (Doc. No. 86 at 2 3.) Debanee also claims, in her amended motion filed on May 28, 2021 introduced to potential legal coun

5.)

Having considered the showing made in support of this request, the court finds that Debanee has failed to establish the granting of a further extension of time for Debanee to file her opposition motion for summary judgment. First, the court already granted Debanee an extension of time to file her opposition back in April 2021. (Doc. Nos. 82, 83.) Moreover, since her pending extension of time request was made, approximately ten months have passed, yet during that time she has still failed to file an opposition to the motion, nor has she secured new counsel to enter an appearance on her behalf in this action. In fact, the ten-month delay that occurred due to this // 7 Debanee claims that the protective order is licensed investigators and potentially other counsel staff have made obtaining new counsel 86 at 8.) This claim is meritless. Although Debanee does not explain what protected material she seeks to share or how precisely the protective order has obstructed her efforts to secure counsel, the protective order in question (which Debanee's prior counsel stipulated to on her behalf) explicitly permits [o]utside or inside counsel that have appeared in this action or are actively 4 5.) The protective order also provides that protected material can be shared with [o]ther persons upon an order from this court or a stipulation of the parties. (Id. at 5.) If Debanee was concerned about sharing protected material under the protective order, then she could have sought either a stipulation of the parties or an order from this court or maintained that her prospective counsel was actively engaged in the preparation of this action. But Debanee has not made any such requests, and thus, it does not appear that the protective order raised s to Debanee securing new counsel. Finally, to the extent Debanee is concerned about the access of protected materials by counsels licensed investigators and potentially other counsel staff, No. 86 at 8) the protective order explicitly allows employees of counsel assisting in the conduct of this action to review protected material, with the only exception being that it prohibits a specific individual from reviewing protected material, further order of the Court. (Doc. No. 47 at 4 5.)

8

has already provided Debanee with another lengthy de facto extension of time to file her opposition to summary judgment. At the same time, that passage of time has resulted in meaningful prejudice to plaintiff who originally filed her motion for summary judgment now almost a full year ago. Further delay is not warranted under these circumstances where Debanee has had months to act but has failed to do so. Although the court has no reason to for another extension of time has been made in good faith, the time elapsed is simply too great resolution of long-pending motion any longer. See *Hakim v. Fed. Ins. Co.*, No. 20-55423, 2021 WL 6101345, at \*1 (9th Cir. Dec. 21, 2021) (upholding denial of a request for continuance made by pro se litigant to file an opposition to even where the district court had failed to discuss each excusable neglect factor or to consider the prejudice to the pro se



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litigant stemming from the denial of the request); 9

cf. Ahanchian, 624 F.3d at 1261 (finding good cause for a one- week extension of time exceptionally constrained deadline resulting from local rules).

once again extend the deadline to file her opposition brief to the pending motion for summary judgment is denied.

2. Whether to Appoint Counsel To start, this court has long held that there is no constitutional right to counsel in a civil case. Unlike in criminal cases that implicate the Sixth Amendment right to counsel, civil litigants who cannot afford counsel are not constitutionally guaranteed the appointment of a lawyer. Adir Int l, LLC v. Starr Indem. & Liab. Co., 994 F.3d 1032, 1038 39 (9th Cir. 2021) (internal citation omitted), cert. denied, \_\_ U.S.\_\_, 142 S. Ct. 861 (2022) proceedings in forma pauperis, the district court may request an attorney to represent any person

unable to afford counsel. Agyeman v. Corr. Corp. of Am., 390 F.3d 1101, 1103 (9th Cir. 2004) (quoting 28 U.S.C. § 1915(e)(1)). 8 See fn.1, above. 9 Citation to this unpublished Ninth Circuit opinion is appropriate pursuant to Ninth Circuit Rule 36-3(b).

pending motion, she requests that this court appoint counsel to represent her in this civil action , respond and represent herself,

3.) She also suggests that she is having difficulty retaining at 5.)

Here, the court finds that the appointment of counsel is not justified. First, Debanee does not have a constitutional right to counsel in this civil action over life insurance proceeds. Nor does this court have authority under 28 U.S.C. § 1915(e)(1) to request that an attorney represent Debanee because she has never sought to proceed in forma pauperis in this action. Debanee does not even claim that she is indigent, only that she has not been able to retain counsel in connection with this case and . (Doc. No. 86 at 2 3.) Debanee has not identified a source of authority for the court to grant her motion, nor has she established any legitimate need for the appointed of counsel on her behalf.

quest that this court appoint counsel to represent her in this civil action will denied.

## LEGAL STANDARD A. Interpleader

Interpleader is a procedural device used to resolve conflicting claims to money or property. It enables a person or entity in possession of a tangible res or fund of money (the asserting mutually exclusive claims to that stake. Great Wall De Venezuela C.A. v. Interaudi Bank, 117 F. Supp. 3d 474, 481 (S.D.N.Y. 2015) (quoting Moores Federal Practice § 22.02[1] (3d ed. 2013)); Lee v. W. Coast Life Ins. Co., 688 F.3d 1004, 1009 (9th Cir. 2012) ( [I]nterpleader . . . allow[s] a party to file a claim for .



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claim Mack v. Kuckenmeister, 619 F.3d 1010, 1024 (9th Cir. 2010). This includes protecting against the possibility of court-imposed liability to a second claimant where the stakeholder has already voluntarily paid a first claimant. But it also includes limiting

litigation expenses, which is not dependent on the merits of adverse claims, only their existence. Id.

When the interpleader procedure is initiated, it typically proceeds in two stages. Lee, 688 F.3d at 1009. statutory interpleader action have been met by determining if there is a single fund at issue and wheth Id. interpleader action has been properly brought the district court will then make a determination of Id. The two stages to an interpleader action need not be bifurcated; the entire action may be disposed of at one time W. Conf. of Teamsters Pension Plan v. Jennings, No. C-10-03629 EDL, 2011 WL 2609858, at \*5 (N.D. Cal. June 6, 2011), report and recommendation adopted, No. C 10-03629 PJH, 2011 WL 2609860 (N.D. Cal. July 1, 2011). The second stage of an interpleader action may be adjudicated at summary judgment when there is no material dispute of fact, Rhoades v. Casey, 196 F.3d 592, 600 (5th Cir. 1999), and ach claimant has the burden of establishing his or her right to the fund or property by a preponderance of the evidence. Chase Inv. Servs. Corp. v. L. Offs. of Jon Divens & Assocs., LLC, 748 F. Supp. 2d 1145, 1164 (C.D. Cal. 2010).

Federal civil procedure allows two mechanisms for invoking interpleader statutory interpleader under 28 U.S.C. § 1335 and rule interpleader under Rule 22 and their jurisdictional requirements differ. Under statutory interpleader, district courts have original jurisdiction over actions if: (1) the amount in dispute exceeds \$500; (2) there are two or more adverse claimants of diverse citizenship; and (3) the plaintiff deposits the money or property in dispute into the registry of the court or posts an adequate bond. See 28 U.S.C. § 1335. Statutory interpleader has been two or more claimants, without regard to the circumstance that other rival claimants may be co-

State Farm Fire & Cas. Co. v. Tashire, 386 U.S. 523, 530 (1967). In contrast, rule interpleader under Federal Rule of Civil Procedure 22 is a procedural device only and requires that jurisdiction must be proper under 28 U.S.C. § 1331 or § 1332. See Morongo Band of Mission Indians v. California State Bd. of Equalization, 858 F.2d 1376, 1382 (9th Cir. 1988).

### B. Motion for Summary Judgment

dispute as to any ma Civ. P. 56(a).

In re Oracle Corp. Sec. Litig., 627 F.3d 376, 387

(9th Cir. 2010) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)). The moving party

depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or





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Fed. R. Civ. P. 56(c)(1)(A), (B). When the non-moving party bears the burden of proof at trial, nce to support the non-moving Oracle Corp., 627 F.3d at 387 (citing Celotex, 477 U.S. at 325); see also Fed. R. Civ. P. 56(c)(1)(B). Indeed, summary judgment should be entered, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the of proof at trial. See Celotex n

Id. at 322 23. whatever is before the district court demonstrates that the standard for the entry of summary

Id. at 323.

If the moving party meets its initial responsibility, the burden then shifts to the opposing party to establish that a genuine issue as to any material fact actually does exist. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). In attempting to establish the existence of this factual dispute, the opposing party may not rely upon the allegations or denials of its pleadings but is required to tender evidence of specific facts in the form of affidavits or

admissible discovery material in support of its contention that the dispute exists. See Fed. R. Civ. P. 56(c)(1); Matsushita, 475 U.S. at 586 n.11; Orr v. Bank of Am., NT & SA, 285 F.3d 764, 773 a motion for

When the non-moving party to a summary judgment motion fails to challenge the facts asserted by the moving party in the manner required by Rule 56(c), the court may: consider the fact undisputed for purposes of the motion grant summary judgment if the motion and supporting materials including the facts considered undisputed show that the movant is entitled to it (3). In addition, if the non-moving party fails to submit an opposition to the motion for summary judgment, the district court is not required to search the record for some genuine dispute of material fact. See Carmen v. San Francisco Unified Sch. Dist., 237 F.3d 1026, 1029 31 (9th Cir. 2001). y limit its review to the documents submitted for the purposes of summary judgment and those parts of the record Id. Nonetheless, the moving party must still meet its burden of prohibit[s] the grant of summary judgment by default even if there is a complete failure to respond to the motion. Heinemann v. Satterberg, 731 F.3d 914, 917 (9th Cir. 2013); see also there is a g favor of the non- Walls v. Cent. Contra Costa Cnty. Transit Auth., 653 F.3d 963, 966 (9th Cir. 2011).

## ANALYSIS A. Whether Interpleader Is Proper

At the first stage of interpleader general requirements have been satisfied. 10

Interpleader is proper only if there are adverse claims 10 North American asserts that the court has jurisdiction over this interpleader action under 28 U.S.C. § 1335. (Doc. No. 14 at ¶ 5.) Here, the





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jurisdictional requirements of statutory interpleader are satisfied because the claimants are all citizens of different states (*id.* at ¶¶ 1 4), the amount in controversy (\$1,500,000) far exceeds the \$500 minimum, *Lee*, 688 F.3d at 1008 n.1, and North American has deposited the disputed proceeds with the court. (Doc. No. 16); 28 U.S.C. § 1335(a)(2). The court notes that jurisdiction under 28 U.S.C. § 1332 is also satisfied.

against a single fund. See *Lee*, 688 F.3d at 1009; *Michelman v. Lincoln Nat. Life Ins. Co.*, 685 F.3d 887, 896 (9th Cir. 2012) Interpleader is appropriate where the stakeholder reasonably fears that there may be multiple parties with colorable adverse claims to the stake In determining whether there are adverse claims to a single fund, the stakeholder need only a good faith belief that there are or may be colorable competing claims to the stake, which is not an onerous requirement. *Michelman*, 685 F.3d at 894. The stakeholder also must demonstrate only that the adverse claim whether it is an actual or potential claim has a minimal threshold level of substantiality. *Id.* at 895. The interpleader statute is also remedial in nature and should be liberally construed. *State Farm*, 386 U.S. at 533. pending motion for summary judgment, she does not contest the use of interpleader by North American. (See Doc. No. 76-1 at 13 14.) In fact, plaintiff implies that interpleader was properly invoked by North American because she contends that dispute that there is a single fund at issue and that Barbara, as primary beneficiary, and Debanee,

as one of two secondary beneficiaries, are the only clai -1 at 14.) Although no other party has third-complaint, neither of which contest the interpleader procedure. (See Doc. Nos. 21, 22.) In fact, Debanee also implies that interpleader is appropriate because she affirmatively asserts a claim to the insurance proceeds and has acted in good faith . (Doc. No. 22 at 4 5.) The court concludes that the general requirements to an interpleader action have been satisfied in this case. As alleged in the interpleader complaint, North American admits liability to a single fund of \$1,500,000 to which plaintiff is the primary beneficiary and Debanee is one of two contingent beneficiaries. 11

(Doc. Nos. 14 at ¶¶ 7 9, 23 24; 14-1 at 40 41, 44 46; 14-2.) 11 The second contingent beneficiary, third-party defendant Melanie, stated in her answer that she is MacPherson- s] that the interplead[ed] insurance proceeds be distributed to Barbara MacPherson- (Doc. No. 21 at 1 2.) Accordingly, and in light of that answer, the court will dismiss claim to a portion of the life insurance policy proceeds with prejudice.

North American also has a good faith belief that there is a colorable adverse claim to the single fund because, in answering the interpleader complaint, Debanee has asserted that California high would prevent plaintiff from collecting the single fund and instead entitle Debanee to one-quarter of it. 12

(Doc. No. 22 at ¶ 23.) North American further alleges in its interpleader complaint that it has unsuccessfully sought information about Casey the Anguilla Coroners Court, but learned that plaintiff has not participated in the investigation and



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that the investigation was still open while awaiting testimony from inquest. (Doc. No. 14 at ¶¶ 15 21.) North American impliedly concludes that the uncertainty

regarding the incomplete investigation and existence of contingent beneficiaries could possibly implicate California Probate Code § 252 thus warranting the use of the interpleader procedure. (Doc. No. 14 at ¶¶ 22 23.) affirmatively alleging that California Probate Code § 252 applies here, satisfies the minimal threshold level of substantiality able adverse claim exists to the single fund. See *United Invs. Life Ins. Co. v. Grant*, 387 F. Appx 683, 686 (9th Cir. 2010) (upholding use of knew enough details about the case by the time it filed a complaint in interpleader to justify its fear of multiple liability if [the primary beneficiary] were determined to have murdered her husband, [the insurer] could remain liable on the life insurance policy even if it had already paid [t 13

Accordingly, the court finds that the use of the interpleader procedure is appropriate here because North American has satisfied the general requirements of interpleader under 28 U.S.C. § 1335. /////

12 California Probate Code § 252 know provides that when a named life the policy is issued, the named beneficiary is not entitled to any benefit under the policy and the policy becomes payable as if the named beneficiary predeceased the decedent. 13 See fn. 9, above.

### B. Rights to the Insurance Proceeds

The court now turns to the second stage of an interpleader action determining the rights of plaintiff and Debanee to the life insurance proceeds which has been raised t motion for summary judgment.

Under California Probate Code § 252,

[a] named beneficiary of a bond, life insurance policy, or other contractual arrangement who feloniously and intentionally kills the principal obligee or the person upon whose life the policy is issued is not entitled to any benefit under the bond, policy, or other contractual arrangement, and it becomes payable as though the killer had predeceased the decedent. Cal. Prob. Code § 252; see also *Est. of McGowan* established in this state that in the event of an intentional killing of the insured by the primary

California Probate Code § 254 provides the insured:

In the absence of a final judgment of conviction of felonious and intentional killing, the court may determine by a preponderance of evidence whether the killing was felonious and intentional for purposes of this part. The burden of proof is on the party seeking to establish that the killing was felonious and intentional for the purposes of this part. Cal. Prob. Code § 254(b); see also *Principal Life Ins. Co. v. Peterson*, 156 Cal. App. 4th 676, 687 (2007) ubdivision (b) of Probate Code section 254 placed on the Administrator the burden of proving, by a preponderance of evidence, that appellant



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feloniously and intentionally killed Laci Peterson. For summary judgment purposes, the Administrator on this interpleader action was thus the functional equivalent of a plaintiff moving for summary judgment. pending motion, she argues that Debanee cannot present any evidence that plaintiff 76-1 Id. at 15 16.)

Among other things, plaintiff contends that Debanee admitted at her deposition in this action Case 1:20-cv-00092-ADA-BAM Document 100 Filed 04/08/22 Page 15 of 18 she is unaware of any evidence that would support any claim that Barbara feloniously and

death. (Id. at 20.) As noted above, Debanee has not offered any evidence or filed any opposition to

14 motion and supporting materials, the court finds that there is no dispute of material fact and plaintiff is entitled to summary judgment in her favor as a matter of law. On the evidence presented on summary judgment, which has been deemed admitted for purposes of this motion under Rule 56(e), the undisputed facts establish that

-2 at ¶¶ 20 21.) The court

14 Although Debanee did not file an opposition brief, she did include a sworn cover letter to her amended motion for a continuance and appointment of counsel stating that she

oppose[s] the summary judgment adjudication, as pertinent facts to the case can only be ascertained in lieu of [sic] the conclusion of the inquest in Anguilla. Evidence regarding Casey MacPherson-autopsy reports of all the samples, blood test results from all other parties, police and medical staff testimonies. . . . I would ask the court to postpone the summary judgment adjudication until after the inquest in Anguilla has been completed and adjourned. (Doc. No. 92 at 1 2.) a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition. Fed. R. Civ. P. 56(d). Here, cover letter is insufficient to defer resolution of eferences in memoranda and declarations to a need for discovery do not qualify as motions under Rule 56[(d)] requires affidavits setting forth the particular facts expected from the movants discovery. Brae Transp., Inc. v. Coopers & Lybrand, 790 F.2d 1439, 1443 (9th Cir. 1986) Failure to comply with the requirements of Rule 56[(d)] is a proper ground for denying discovery and proceeding to summary judgment. In her cover letter, Debanee does not state the specific facts she hopes to elicit, how those facts are essential in order for her to oppose this summary judgment motion, or how or if she knows the listed evidence even exists. See Fam. Home & Fin. Ctr., Inc. v. Fed. Home Loan Mortg. Corp., 525 F.3d 822, 827 (9th Cir. 2008). Nor has she indicated that subpoenas or any other discovery devices have been deployed to attempt to collect the purported evidence. See Brae, 790 F.2d at 1443 e [Rule 56(d)] movant cannot complain if it fails to pursue discovery diligently before summary judgment. cover letter could be construed as a request to defer the pending motion under Rule 56(d), it will be denied.



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has reviewed the citations to the factual record supporting these material facts and finds that there is adequate support for them. These undisputed material facts conclusively negate an essential element that Debanee must establish under California Probate Code § 252 that plaintiff feloniously and intentionally killed Casey and thus, Debanee cannot satisfy her burden. Finally, plaintiff has carried her own burden of establishing that she is entitled to the life insurance policy proceeds because the life insurance policy (Policy No. LB02834040) states that plaintiff is the primary beneficiary, and the insured has died. (See Doc. No. 76-4 at 25 83.)

Accordingly, the court will grant pl summary judgment entitling her to life insurance policy proceeds. a portion of the proceeds is dismissed with prejudice. 15

CONCLUSION For the reasons explained above:

1. Third-party defendant D appointment of counsel (Doc. No. 86) is denied;

2. Plaintiff Barbara MacPherson- No. 76) is granted;

3. Plaintiff Barbara MacPherson- her motion for

summary judgment (Doc. No. 99) is denied as having been rendered moot by this order; 4. Third-insurance proceeds under Policy No. LB02834040 is dismissed with prejudice;

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15 North Amer two claims asserted in her original complaint breach of contract and breach of the covenant of good faith and fair dealing are still pending. (See Doc. No. 1 at 17 26.) Moreover, although the court is not inviting unnecessary motion practice, the undersigned clarifies that this order has only determined the rights to the interpleaded fund and does not address further forms of relief prayed for in North scharge from liability, injunctive relief enjoining suits in other courts over the interpleaded funds, or an award of costs and fees. (Doc. No. 14 at 5 6.)

5. Third- proceeds under Policy No. LB02834040 is dismissed with prejudice;

6. The Clerk of the Court is directed to terminate third-party defendant Debanee

MacPherson Udall from this action; 7. The Clerk of the Court is directed to terminate third-party defendant Melanie

Rodriguez from this action; 8. The Clerk of the Court is directed to enter judgment in favor of plaintiff Barbara



## MacPherson-Pomeroy v. North American Company for Life and Health Insurance

2022 | Cited 0 times | E.D. California | April 8, 2022

MacPherson-Pomeroy that she is the sole beneficiary entitled to the entirety of the life insurance proceeds under Policy No. LB02834040 and that contingent beneficiaries Melanie Rodriguez and Debanee MacPherson Udall are not entitled to any proceeds under Policy No. LB02834040; and 9. The remaining parties are directed to contact Courtroom Deputy Mamie

Hernandez at (559) 499-5652 or MHernandez@caed.uscourts.gov, within fourteen days of service of this order regarding the scheduling of the Final Pretrial Conference and Jury Trial dates in this action or, if the remaining parties agree that it would be more appropriate, a status conference to discuss any further proceedings in this action. IT IS SO ORDERED. Dated: April 7, 2022 UNITED STATES DISTRICT JUDGE

