

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

WELLS FARGO BANK, N.A.,

Plaintiff,

v.

**MARY LOUISE THOMAS and
BELIMED, INC. d/b/a BELIMED, AG,**

Defendants.

§
§
§
§
§
§
§
§

CIVIL ACTION NO. 4:18-cv-2503

PLAINTIFF'S ORIGINAL PETITION FOR INTERPLEADER

Plaintiff, Wells Fargo Bank, N.A. ("Plaintiff" or "Wells Fargo"), files this Original Petition for Interpleader and sues Defendants, Mary Louise Thomas ("Thomas") and Belimed, Inc. d/b/a Belimed AG ("Belimed") (Thomas and Belimed shall be collectively referred to here as the "Claimant Defendants"), and states as follows:

**I.
PRELIMINARY STATEMENT**

1. Wells Fargo seeks to interplead funds currently being restrained in Thomas' account at Wells Fargo that were wired to Thomas, but purportedly intended for and/or belong to Belimed.

2. Because there are multiple claimants to the funds at issue, Wells Fargo, as a disinterested stakeholder, seeks to interplead the restrained funds into the Court Registry to allow the Claimant Defendants to make their respective claims to the funds.

II.
PARTIES

3. Wells Fargo is a national banking association with its main office, as set forth in its Articles of Association, in Sioux Falls, South Dakota. Accordingly, Wells Fargo is a citizen of South Dakota.

4. Thomas is a resident and citizen of Texas, and is otherwise *sui juris*. Furthermore, the funds at issue in this interpleader lawsuit are currently being restrained in an account held by Thomas that was opened in and is maintained in Houston, Texas.

5. Belimed is a Florida corporation with its principal place of business in North Charleston, South Carolina, and is registered to do business in Texas. Accordingly, Belimed is a citizen of Florida and South Carolina.

III.
JURISDICTION AND VENUE

6. This is an action for interpleader of a sum that exceeds \$500.00

7. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§1335 and 2361, in that there is diversity of citizenship between at least two of the Claimant Defendants, and the amount in controversy in this action exceeds \$500.00, exclusive of interest and costs.

8. This Court has jurisdiction over the parties because the funds at issue were wired to and remain restricted in Thomas' account at Wells Fargo that was opened and is maintained in Houston, Texas. Furthermore, this Court has jurisdiction over the parties, pursuant to 28 U.S.C. § 1335 and 2361, which grants district courts authority to issue nationwide service of process in statutory interpleader actions, and because at least one of the Claimant Defendants is a citizen of and resides in the state of Texas.

9. Venue is appropriate in this Court pursuant to the provisions of 28 U.S.C. § 1391, since a substantial part of the events or omissions giving rise to the claim occurred in this District.

IV. FACTUAL BACKGROUND

10. On or about December 15, 2017, Promedz Jordan (“Promedz”; a business based out of Amman, Jordan), wired \$50,000.00 (the “Wire”) to a personal checking account at Wells Fargo (Acct #: XXXXXX2337; the “Thomas Account”) held by Thomas. A (redacted) copy of the Wire Detail Page (the “Wire Detail”) is attached hereto as **Exhibit “A.”**

11. On the Wire Detail, it specifically references the Thomas Account number in the Beneficiary Information and Credit Information section, and identifies Thomas by name and address in the Credit Information section. However, the Wire Detail also identifies Belimed in the Beneficiary Information section without any further detail.

12. Upon information and belief, and based on representations from Belimed and Promedz, the Wire was intended for Belimed and/or Belimed is entitled to the Wire proceeds as a result of work it did for Promedz. In fact, Belimed recently provided Wells Fargo with a letter from Promedz stating that Belimed is authorized to make a claim to the Restrained Proceeds (as defined in ¶14 herein) and Belimed is acting on behalf of Promedz. See (slightly redacted) July 4, 2018 Authorization Letter, attached hereto as **Exhibit “B.”**

13. However, Thomas has not authorized Wells Fargo to debit the Wire proceeds (or what are left of the Wire Proceeds) from the Thomas Account.

14. Accordingly, there are multiple claims to the funds currently being held and restricted in the Thomas Account, which total **\$48,916.35** (the “Restrained Proceeds”).¹

15. At all times material, the relationship between Wells Fargo and Thomas relative to the Thomas Account was/is governed by the Consumer Account Agreement, a true and correct copy of which is attached hereto as **Exhibit “C.”**

16. There is now a dispute as to which of the Claimant Defendants is entitled to the Restrained Proceeds.

17. Wells Fargo seeks to interplead the Restrained Proceeds into the Court Registry to allow the Claimant Defendants to make their respective legal claims to those Restrained Proceeds.

18. Wells Fargo has retained the undersigned attorneys to represent it in this action and has agreed to pay them a reasonable fee.

19. Wells Fargo is entitled to recover its reasonable attorneys’ fees and costs in this matter pursuant to the Consumer Account Agreement and applicable federal law where the general rule is that a disinterested, mere stakeholder plaintiff who brings a necessary interpleader action is entitled to a reasonable award of attorneys’ fees.

20. All conditions precedent to recovery have been performed, waived or have occurred.

¹ Immediately prior to the \$50,000.00 Wire, the Thomas Account had a zero balance, and thus after the Wire, the Thomas Account had \$50,000.00 in it. After the Thomas Account was charged a \$16.00 wire transfer service charge, Thomas used and withdrew a total of \$1,067.65 over the next several days until the Thomas Account was restricted by Wells Fargo, leaving a current total restrained balance of \$48,916.35.

V.
CAUSES OF ACTION

Count 1
Interpleader

21. Paragraphs 1 through 20 of this pleading are incorporated herein by reference, the same as if fully set forth verbatim.

22. At this time there exist potentially rival, adverse and conflicting claims between the Claimant Defendants as to the rightful access to the Restrained Proceeds.

23. Wells Fargo claims no interest in the Restrained Proceeds and has done nothing to create the dispute over the access and/or entitlement to the Restrained Proceeds.

24. By reason of the conflicting claims for access to the Restrained Proceeds, Wells Fargo is in doubt as to who is entitled to the Restrained Proceeds, is in danger of being exposed to double or multiple liability, and cannot safely remit or release the Restrained Proceeds without the aid of this Court.

25. Wells Fargo is ready, willing, and able to deposit the Restrained Proceeds into the Court Registry, or to any other custodian or trustee the Court deems proper.

VI.
PRAYER FOR RELIEF

Wells Fargo prays for relief as follows:

- a. this Court take jurisdiction over the parties, and permit Wells Fargo to deposit the Restrained Proceeds with the Registry of the Court;
- b. this Court issue an order requiring the parties to the above-styled cause to interplead as to their rights and settle or litigate amongst themselves their claims and rights to the Restrained Proceeds;
- c. Wells Fargo be discharged from all liability to any of the parties to this action concerning Wells Fargo's obligations pursuant to the Restrained Proceeds and the Wire, including but not limited to any and all transactions relative to the Thomas Account;

- d. the Claimant Defendants be enjoined and prohibited from instituting any actions against Wells Fargo and/or its agents, affiliates, employees and servants, regarding the Restrained Proceeds and the Wire, including but not limited to any and all transactions relative to the Thomas Account;
- e. Wells Fargo be awarded its costs and reasonable attorneys' fees, to be paid from the Restrained Proceeds, for bringing this action;
- f. Wells Fargo be dismissed as a party to this action; and
- e. for such other and further relief as this Court deems just, equitable and proper.

Dated: July 19, 2018

Respectfully submitted,

FOX ROTHSCHILD LLP

/s/ Andy Nikolopoulos
Andy Nikolopoulos—Attorney in Charge
State Bar No. 24044852
Southern District Bar No. 1822095
Email: anikolopoulos@foxrothschild.com
5420 Lyndon B. Johnson Freeway
Suite 1200
Dallas, TX 75240
Telephone: 972/991-0889
Facsimile: 972/404-0516

*Counsel for Plaintiff, Wells Fargo Bank,
N.A.*