



Honorable Mike K. Nakagawa  
United States Bankruptcy Judge



Entered on Docket  
June 06, 2025

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

\* \* \* \* \*

In re:	)	Case No.: 24-14345-MKN
	)	Chapter 7
PAULENE KAY TRAUTMAN,	)	
	)	
Debtor.	)	
	)	
ANDREW LARSON,	)	Adv. Proc. No.: 24-01158-mkn
	)	
Plaintiff,	)	
	)	
v.	)	Date: December 30, 2024
	)	Time: 9:30 a.m.
PAULENE KAY TRAUTMAN,	)	
	)	
Defendant.	)	

**ORDER ON MOTION TO: (I) DISMISS CLAIMS PURSUANT TO 11 U.S.C. §§ 523 AND 727 FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED; AND (II) DISMISS ARGUMENTS PURSUANT TO 11 U.S.C. § 707 WITHOUT PREJUDICE<sup>1</sup>**

On December 30, 2024, the court heard the Motion to: (I) Dismiss Claims Pursuant to 11 U.S.C. §§ 523 and 727 for Failure to State a Claim Upon Which Relief Can Be Granted; and (II)

<sup>1</sup> In this Order, all references to “ECF No.” are to the number assigned to the documents filed in the above-captioned bankruptcy case as they appear on the docket maintained by the clerk of court. All references of “AECF No.” are to the documents filed in the above-captioned adversary proceeding. All references to “Section” or “§§ 101-1532” are to the provisions of the Bankruptcy Code. All references to “Bankruptcy Rule” are to the Federal Rules of Bankruptcy Procedure. All references to “Civil Rule” are to the Federal Rules of Civil Procedure. All references to “Evidence Rule” are to the Federal Rules of Evidence.

Dismiss Arguments Pursuant to U.S.C. § 707 Without Prejudice brought by the defendant in the above-captioned Adversary Proceeding.<sup>2</sup> The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.<sup>3</sup>

#### BACKGROUND<sup>4</sup>

Paulene Kay Trautman (“Debtor”) and Andrew Larson (“Larson”) were once domestic partners under Nevada law. The relationship did not last. Their parting led to proceedings commenced in the Eighth Judicial District Court, Clark County, Nevada (“Nevada State Court”) and in this bankruptcy court.

##### A. The Dissolution Proceeding.

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<sup>2</sup> On November 25, 2024, the above-captioned debtor and defendant filed the instant Motion to: (I) Dismiss Claims Pursuant to 11 U.S.C. §§ 523 and 727 for Failure to State a Claim Upon Which Relief Can be Granted; and (II) Dismiss Arguments Pursuant to 11 U.S.C. § 707 Without Prejudice (“Adversary Dismissal Motion”). (AECF No. 5). The motion is supported by a Request for Judicial Notice to which various exhibits are attached. (AECF No. 6). A hearing on the Adversary Dismissal Motion was noticed to be held on December 30, 2024. (AECF No. 7). On December 5, 2024, there was filed “Creditor, Andrew Larson’s Opposition to Debtor’s Motion to Dismiss Claims Pursuant to 11 U.S.C. §§ 523 and 727” (“Larson Opposition”). (AECF No. 10). Also on December 5, 2025, Debtor filed her reply in response to that opposition (“Reply”). (AECF No. 11).

<sup>3</sup> On October 1, 2024, the above-captioned debtor filed in the Chapter 7 proceeding a Motion to: (I) Avoid Lis Pendens as Impairing the Debtor’s Homestead Exemption Pursuant to 11 U.S.C. § 522(f) and (II) Cancel and Expunge Lis Pendens Pursuant to NRS § 14.015. That Motion was accompanied by her declaration in support as well as the declaration of her bankruptcy counsel. (ECF Nos. 17, 18, and 19). On October 11, 2024, Larson, in pro se, filed an opposition to that Motion. (ECF No. 24). On October 24, 2024, Larson, in pro se, filed an amended opposition to that Motion. (ECF No. 28). On October 25, 2024, Debtor filed a reply accompanied by her supplemental declaration (“Debtor Supplemental Declaration.”). (ECF Nos. 29 and 30). That Motion was heard on November 6, 2024, and taken under submission. That Motion remained under submission at the time the instant Adversary Dismissal Motion was heard.

<sup>4</sup> Pursuant to Evidence Rule 201(b), the court takes judicial notice of the documents and information appearing on the docket maintained by the court clerk in the above-captioned case. See United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980). See also In re Blas, 614 B.R. 334, 339 n.27 (Bankr. D. Alaska 2019) (“This court may take judicial notice of the docket of other courts.”).

1 On September 12, 2022, the Debtor commenced a proceeding against Larson to dissolve  
2 the domestic partnership (“Dissolution Action”) in the Family Division of the Nevada State  
3 Court, denominated Case No. D-22-654752-U. See Debtor Declaration at ¶ 8.

4 On September 15, 2022, Larson recorded against the Debtor a Notice of Lis Pendens in  
5 the Clark County real property records as Instrument No. 20220915-0002763, thus asserting an  
6 alleged interest in residential real property located at 3511 Bagnoli Court, Las Vegas, Nevada  
7 89141 (the “Residence”). Id. ¶ 9.

8 On September 7, 2023, Larson, in pro se, commenced a separate action against the  
9 Debtor in the Civil Division of the Nevada State Court, denominated Case No. A-23-877285-C  
10 (“Larson Civil Action”). His complaint asserted a variety of legal theories, including claims for  
11 “animal abuse and cruelty; conversion; theft; intentnional [sic] infliction of emotional dsitress  
12 [sic]; unjust enrichment; neglegent [sic] breach of fiduciary duty; fraud; malice; oppression; and  
13 defamation.” See Debtor Declaration at ¶ 11.

14 On or about September 11, 2023, Larson recorded against the Residence an additional  
15 Notice of Lis Pendens in the Clark County real estate records as Instrument No. 20230911-  
16 0000304. The additional Notice of Lis Pendens purportedly is based on a claim to an interest in  
17 the Residence arising from his claims for relief alleged in the Larson Civil Action.<sup>5</sup> See Debtor  
18 Declaration at ¶ 12.<sup>6</sup>

19 On September 27, 2023, Larson filed a notice of voluntary dismissal of the Larson Civil  
20 Action, but did not take any steps to remove, release, or otherwise expunge the Lis Pendens that  
21 he had recorded. See Debtor Declaration at ¶ 13.

22 On April 5, 2024, the Family Court entered a Stipulated Decree of Termination of  
23 Domestic Partnership; Dismissal of Third Party Complaint With Prejudice; and Mutual Waivers  
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25 <sup>5</sup> In this Order, the Notice of Lis Pendens recorded in connection with the Dissolution  
26 Action as well as the Notice of Lis Pendens recorded in connection with the Larson Civil Action  
27 may be referenced jointly as “the Lis Pendens.”

28 <sup>6</sup> A copy of the additional Notice of Lis Pendens is attached as Exhibits 8 to the Debtor  
Declaration.

1 and Releases (the “Divorce Decree”).<sup>7</sup> Pursuant to the Divorce Decree, the parties agreed, *inter*  
 2 *alia*, that their domestic partnership would be terminated, that the Debtor was awarded the  
 3 Residence as her sole and separate property, and that Larson would receive the sum of \$17,000  
 4 from the Debtor’s retirement savings in full settlement and release of any and all claims between  
 5 the parties. See Debtor Declaration at ¶ 15. In particular, the stipulated Divorce Decree provides  
 6 in pertinent part as follows:

7 **IT IS FURTHER STIPULATED AND THUS ORDERED, ADJUDGED**  
 8 **AND DECREED** upon receipt by Andrew of his share of Paulene’s  
 9 retirement account as set forth above, Andrew and Paulene hereby mutually  
 10 release each other to the fullest extent permitted by law, for any claims of  
 11 injury by the other, and each party does hereby forever relinquish, release,  
 12 waive and forever discharge the other from all claims and causes of action of  
 13 any type, known or unknown, that either of them had in the past against the  
 14 other, for whatever reason, including, but not limited to, by reason of their  
 15 domestic partnership and/or their relationship prior to entering their domestic  
 16 partnership. This release includes, but is not limited to, all claims based on  
 17 injury or damage of any nature whatsoever to the other person, whether  
 18 negligent, willful and wanton, intentional or otherwise. This release is final  
 19 and irrevocable, regardless of any facts which may exist but are not known  
 20 to the parties. Each party further covenants and agrees for himself and  
 21 herself, his and her heirs, personal representatives and assigns, attorneys or  
 22 agents, that neither of them shall at any time hereafter sue the other or the  
 23 other’s estate, heirs, personal representatives, grantees, devisees or assigns,  
 24 for the purpose of enforcing all rights released, waived or relinquished under  
 25 this Agreement; and each party further agrees that in the event any suit shall  
 26 be commenced, this release, when pleaded, shall be and constitute a complete  
 27 defense thereto. Divorce Decree at 8:10 to 9:7. (Emphasis added.)

28 **IT IS FURTHER STIPULATED AND THUS ORDERED, ADJUDGED**  
**AND DECREED** Andrew shall cause the dismissal he filed in the Eighth  
Judicial District Court Case No. A-23-877285-C, which case he previously  
filed against Paulene, to be amended to reflect the case is dismissed WITH  
PREJUDICE. Moreover, any case filed by Andrew in any Court  
whatsoever, against Paulene Trautman, shall be dismissed with prejudice, as  
Andrew has waived and all claims he may possess against Paulene. Divorce  
 Decree at 11:17-25. (Emphasis added.)

**IT IS FURTHER STIPULATED AND THUS ORDERED, ADJUDGED**  
**AND DECREED** that except as specifically specified herein, each party

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<sup>7</sup> The stipulated Divorce Decree was submitted jointly to the Family Court by counsel for the Debtor and for Larson.

1 hereto is released and absolved from any and all obligations for future acts  
 2 and duties of the other, and except as specified herein, each of the parties  
 3 hereby releases the other from any and all liabilities, debts or obligations of  
 4 every kind or character incurred up to this date. Divorce Decree at 13:9-16.  
 (Emphasis added.)

5 There is no indication that the Divorce Decree was directly appealed.

6 On April 26, 2024, Larson filed in the Family Court, through his state court counsel, a  
 7 Motion to Set Aside the Decree of Dissolution of Domestic Partnership (the initial “Motion to  
 8 Set Aside”). See Debtor Declaration at ¶ 16.

9 On April 29, 2024, the Debtor recorded her Declaration of Homestead on the Residence.  
 10 See Debtor Declaration at ¶ 18.

11 On May 17, 2024, the Debtor filed in the Dissolution Action her opposition to Larson’s  
 12 Motion to Set Aside. See Debtor Declaration at ¶ 20.

13 On June 24, 2024, the Family Court held a hearing on the initial Motion to Set Aside,  
 14 indicated that it would hear further argument and briefing, and continued the matter to August  
 15 12, 2024. See Debtor Declaration at ¶ 21.

16 On August 2, 2024, 2024, Larson, in pro se, filed his own Motion to Set Aside  
 17 (both motions filed by or on behalf of Larson are referred to as the “Motion to Set Aside”),  
 18 which was set for hearing on August 12, 2024. See Debtor Declaration at ¶ 22.

#### 19 **B. The Bankruptcy Proceeding.**

20 On August 23, 2024, the Debtor filed her voluntary Chapter 7 petition. (ECF No. 1).  
 21 The case was assigned for administration to Chapter 7 bankruptcy trustee Lenard E. Schwartz  
 22 (“Trustee”). A Notice of Chapter 7 Bankruptcy Case – No Proof of Claim Deadline  
 23 (“Bankruptcy Notice”) was issued, initially scheduling a meeting of creditors for September 25,  
 24 2024, and a deadline of November 25, 2024, for interested parties to object to the Debtor’s  
 25 Chapter 7 discharge or to object to the discharge of a particular debt. (ECF No. 7).

26 On September 4, 2024, a stipulated order was entered approving a stipulation permitting  
 27 the Dissolution Action to be completed in the Nevada State Court. (ECF No. 12). The  
 28 stipulation was reached between the Debtor, Larson, and the Trustee inasmuch as the Motion to

1 Set Aside remained pending in the Dissolution Action and a further hearing and ruling by the  
2 Family Court was scheduled for September 9, 2024.

3 On September 9, 2024, the Family Court held a further hearing and indicated that  
4 it was denying the Motion to Set Aside. See Debtor Declaration at ¶ 24.<sup>8</sup>

5 On or about October 8, 2024, the Family Court entered its order denying Larson's Motion  
6 to Set Aside the Divorce Decree ("Order Denying Set Aside"). See Debtor Supplemental  
7 Declaration at ¶ 2 and Exhibit 19. The Order Denying Set Aside provides in pertinent part as  
8 follows:

9 **THE COURT FURTHER NOTES** it is not able to set the Decree aside, so  
10 it must deny Andrew's Motions. The Decree was entered on May 4, 2024.  
11 Andrew argues that Paulene did not comply with the Decree, but that is an  
12 enforcement issue, not a do-over issue.[Video Transcript at 11:19:42].  
13 Moreover, Andrew indicates he received the \$17,000, so Paulene has  
14 complied. Andrew is arguing about a 30 day deadline, but the Exhibits to the  
15 Opposition show there is a dispute on timing. It is undisputed Andrew  
16 accepted the money and has not returned it. At any rate, non-compliance  
17 does not support a set aside. [Video transcript at 11:18:04] Order Denying  
18 Set Aside at 5:7-17. (Emphasis added.)

16 **THE COURT FURTHER NOTES** the parties and their settlement  
17 agreement were fully canvassed by Judge Ochoa at the November 14, 2023  
18 settlement conference, on the record, and Andrew has not provided any offers  
19 of proof supporting a basis to set the agreement aside. [Video transcript at  
20 1:20:08]. To set aside, there would have to be some extreme duress, fraud,  
21 lack of capacity, or concealment that occurred prior to the agreement. [Video  
22 transcript at 11:20:23]. Having buyer's remorse after entering the agreement  
23 is not a basis. Order Denying Set Aside at 5:18-27. (Emphasis added.)

21 The Debtor and Larson also specifically agreed that "neither party shall pay periodic alimony to  
22 the other, and each party hereto hereby forever waives alimony." Divorce Decree at 4:1-4.  
23  
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25 <sup>8</sup> As discussed in note 3, supra, the Debtor separately filed a Motion to: (I) Avoid Lis  
26 Pendens as Impairing the Debtor's Homestead Exemption Pursuant to 11 U.S.C. § 522(f) and (II)  
27 Cancel and Expunge Lis Pendens Pursuant to NRS § 14.015. That Motion sought to avoid the lis  
28 pendens recorded by Larson under Section 522(f)(1) or, in the alternative, to expunge the Lis  
Pendens under Nevada law. The Motion was heard on November 6, 2024, and is the subject of a  
separate order entered by the bankruptcy court.

On November 5, 2024, Larson filed in pro se a notice of appeal from the Order Denying Set Aside. See RJN Exhibit 8. The Debtor attests that Larson has not obtained a stay pending appeal of the Divorce Decree or the Order Denying Set Aside. See Debtor Declaration at ¶ 26.

On November 21, 2024, Larson commenced the Adversary Proceeding, in pro se, against the Debtor. (AECF No. 1). Larson's complaint ("Adversary Complaint") seeks to deny the Debtor a Chapter 7 discharge pursuant to Sections 727(a)(2), 727(a)(4), and 727(a)(5). He further seeks a determination of dischargeability of debt under Sections 523(a)(2) and 523(a)(4). The Adversary Complaint also alleges that the Debtor is ineligible for Chapter 7 relief pursuant to Section 707(b)(2).<sup>9</sup>

On November 25, 2024, a summons was issued, setting an initial scheduling conference to be held in the Adversary Proceeding on March 27, 2025. (AECF No. 3).

On November 25, 2024, the Debtor filed the instant Adversary Dismissal Motion, along with a request for judicial notice ("RJN").<sup>10</sup> The Adversary Dismissal Motion was noticed to be heard on December 30, 2024. (AECF No. 7).

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<sup>9</sup> The Adversary Complaint, however, does not seek dismissal of the Chapter 7 proceeding under Bankruptcy Rule 1017(e)(1). The deadline to seek dismissal under Section 707(b) is sixty days after the first date set for the meeting of creditors. See FED.R.BANKR.P. 1017(e)(2). As the latter date was September 25, 2024, the deadline to seek dismissal under Section 707(b) was November 24, 2024. That deadline has expired.

<sup>10</sup> Eight documents are attached as exhibits to the RJN. Exhibit "1" is a copy of the complaint filed by Debtor on September 12, 2022, commencing the Dissolution Action. Exhibit "2" consists of copies of the various notices of lis pendens filed by Larson. Exhibit "3" is a copy of the Family Court's minutes in the Dissolution Action regarding a settlement conference held between Debtor and Larson on November 14, 2023. Exhibit "4" is a copy of the stipulated Divorce Decree entered on April 5, 2024, for termination of the domestic partnership and resolution of pending disputes between the parties. Exhibit "5" is a copy of the initial Motion to Set Aside filed by Larson's Family Court attorney on April 26, 2024. Exhibit "6" is a copy of the additional motion to set aside filed by Larson in pro se on August 2, 2024. Exhibit "7" is a copy of an order denying the motions to set aside the Divorce Decree ("Order Denying Set Aside"), entered by the Family Court on October 8, 2024. Exhibit "8" is a copy of a notice of appeal filed by Larson on November 15, 2024, regarding the Order Denying Set Aside. No objection has been made to the exhibits attached to the RJN, and judicial notice is taken pursuant to Evidence Rule 201.



On December 5, 2024, Larson filed his opposition (“Opposition”) to the Adversary Dismissal Motion. (AECF No. 10).

On December 5, 2024, the Debtor filed her reply (“Reply”) to Larson’s Opposition. (AECF No. 11).

On December 16, 2024, Larson filed an amended complaint (“Amended Complaint”) against the Debtor.<sup>11</sup> (AECF No. 13).

On December 30, 2024, the Adversary Dismissal Motion was heard and taken under submission.

### APPLICABLE LEGAL STANDARD

Debtor seeks dismissal of the Adversary Proceeding “for failure to state a claim upon which relief can be granted.” See FED.R.CIV.P. 12(b)(6). The pleading standard under Civil Rule 8(a)(2) “demands more than unadorned, the-defendant-unlawfully-harmed-me accusation.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009), quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). Moreover, a pleading “that offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of a cause of action will not do.’” Id. “Nor does a complaint suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’” Id. at 557. The standard for dismissing a claim under Civil Rule 12(b)(6) is whether the complaint alleges sufficient factual matter to ‘state a claim to relief that is plausible on its face.’ Curb Mobility, LLC v. Kaptyn, Inc., 434 F. Supp.3d 854, 858 (D. Nev. 2020), quoting Ashcroft v. Iqbal, 556 U.S. at 678.

In considering a motion under Civil Rule 12(b)(6), the court accepts as true all factual allegations made by, and draws all reasonable inferences in favor of, the nonmoving party. See Heimrich v. Dep’t of the Army, 947 F.3d 574, 577 (9th Cir. 2020). However, “the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions.” Ashcroft v. Iqbal, 556 U.S. at 678. “In keeping with these principles, a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they

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<sup>11</sup> Like the Adversary Complaint, the proposed Amended Complaint again asserts claims under Sections 727(a)(2), 727(a)(4), 727(a)(5), 523(a)(2), and 523(a)(4), but also includes references to various federal criminal statutes that do not provide private rights of action.



are no more than conclusions, are not entitled to the assumption of trust. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.” Id. at 679. Dismissal is appropriate if there is “a lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory.” Taylor v. Bosco Credit LLC, 2020 WL 7663436, at \*1 (9th Cir. Dec. 24, 2020).<sup>12</sup> Where an amendment to a complaint would be futile, dismissal without leave to amend may be appropriate. See Ramachandran v. Best & Krieger, 2021 WL 428654, at \*4 (N.D. Cal. Feb. 8, 2021). Amendment is futile when it is clear that amendment would not remedy the complaint’s fatal deficiencies. Id.

### DISCUSSION

In this Adversary Dismissal Motion, Debtor primarily argues that because the stipulated Divorce Decree resolved and released all claims between parties, Larson is not a creditor under bankruptcy law and therefore cannot assert claims for relief under Section 727 or Section 523. Additionally, Debtor maintains that the allegations of the Adversary Complaint otherwise fail to plead facts sufficient to state claims for which relief may be granted. In response, Larson primarily argues that the Divorce Decree was improperly entered and is the subject of an appeal that is pending in Nevada state court. Without identifying or discussing the elements required for the theories asserted under Sections 727 and 523, Larson also maintains that the sufficient facts have been pled in the Adversary Complaint.

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<sup>12</sup> As in all federal civil actions – bankruptcy or non-bankruptcy – a motion under Civil Rule 12(b)(6) that presents and considers matters outside of the pleadings must be treated as a summary judgment motion governed by Civil Rule 56. See FED.R.CIV.P. 12(d). In the Adversary Dismissal Motion, Debtor references the Divorce Decree and Order Denying Set Aside that was not attached to the Adversary Complaint, but which was offered through its RJN. See Adversary Dismissal Motion at 16:16 to 17:1. Reference to the Divorce Decree and Order Denying Set Aside is not sufficient to warrant treatment of this matter under summary judgment standards.

1 The court having reviewed the written and oral arguments presented by the parties, as  
 2 well as the record submitted, concludes that the Adversary Dismissal Motion must be granted.  
 3 Several considerations require this conclusion.

4 First, the bankruptcy court is barred by the “Rooker-Feldman” doctrine<sup>13</sup> from granting  
 5 relief from the State Court orders. The Rooker-Feldman doctrine prevents relief that “would  
 6 require the [federal court] to determine that the state court’s decision was wrong and thus void.”  
 7 Henrichs v. Valley View Dev., 474 F.3d 609, 616 (9th Cir. 2007).<sup>14</sup> Application of the doctrine  
 8 bars both direct appeals of state court judgments to a lower federal court as well as “de facto”  
 9 appeals where the losing party “asserts as a legal wrong an allegedly erroneous decision by a  
 10 state court, and seeks relief from a state court judgment based on that decision.” Noel v. Hall,  
 11 341 F.3d 1148, 1164 (9th Cir. 2003); Levandowski v. DiPasquale (In re Levandowski), 2021 WL  
 12 948710, at \*3 (D. Ariz. Mar. 12, 2021). There is no dispute that the Family Court entered the  
 13 stipulated Divorce Decree on April 5, 2024. There is no dispute that the Divorce Decree was not  
 14 stayed and was in effect when Larson filed his initial Motion to Set Aside on April 26, 2024.  
 15 There is no dispute that the Divorce Decree was in effect when the Debtor filed her bankruptcy  
 16 petition on August 23, 2024. There is no dispute that a stipulated order was entered by the  
 17 bankruptcy court on September 4, 2024, granting relief from stay to allow the Dissolution Action  
 18 to be completed by the Family Court. There is no dispute that the Family Court entered its Order  
 19 Denying Set Aside on October 8, 2024. There is no dispute that on November 5, 2024, Larson  
 20 filed a notice of appeal with respect to the Order Denying Set Aside. Under the Rooker-Feldman  
 21 doctrine, the bankruptcy court is precluded from revisiting any factual or legal determinations  
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23 <sup>13</sup> The doctrine is based on two decisions of the U.S. Supreme Court: Rooker v. Fidelity  
 24 Trust Co., 263 U.S. 413 (1923), and D.C. Court of Appeals v. Feldman, 460 U.S. 462 (1983).

25 <sup>14</sup> The Rooker-Feldman doctrine is applicable in bankruptcy cases to bar bankruptcy  
 26 courts from reviewing state court decisions. See, e.g., In re Thomason, 2022 WL 318181, at \*8  
 27 (Bankr. D. Idaho Feb. 2, 2022)(claim objection proceeding); In re Wollner, 2020 WL 2764693,  
 28 at \*4 (Bankr. D. Ariz. May 26, 2020)(adversary to determine validity of prior state court  
 foreclosure judgment); In re Fikrou, 2019 WL 5783260, at \*4 (Bankr. D. Nev. July 31,  
 2019)(debtor’s motion to vacate state court order denying declaratory relief).

made by the Nevada State Courts in connection with the Divorce Decree as well as the Order Denying Set Aside.

Second, there is no dispute that a stay of the Divorce Decree and the Order Denying Set Aside has not been entered by the Nevada State Courts. Under Nevada law, it is well established that

Although a judgment maintains its preclusive effect while on appeal...the party challenging the judgment, may, if appropriate, seek to have the judgment stayed pending appeal. A stay will protect the appellant from the judgment's immediate consequences while the reviewing court determines whether reversible error occurred. A stay will not, however, alter the judgment's preclusive effect.

Edwards v. Ghandour, 159 P.3d 1086, 1094 & n.26 (Nev. 2007), citing, e.g., Nev.R.App.P. 8.

See also Van Damme v. Hammer (In re Van Damme), 2013 WL 5550368, at \*10 (B.A.P. 9th

Cir. Oct. 8, 2013) ("Under Nevada law, in issue preclusion cases, a decision is final and

maintains its preclusive effect even if the judgment is on appeal."). A stay initially must be

sought from the district court that issued the judgment or order. See NEV.R.APP.P. 8(a)(1).<sup>15</sup> As

Larson has not obtained a stay of the Divorce Decree nor the Order Denying Set Aside, both

have preclusive effect on the factual and legal determinations made in the Dissolution Action.

Third, Section 101(10) provides that "The term 'creditor' means – (A) entity<sup>16</sup> that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor." 11 U.S.C. § 101(10) (emphasis added). Section 101(5)(A) provides that "The term 'claim' means – (A) right to payment, whether or not such rights is reduced to judgment,

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<sup>15</sup> A stay on appeal sought from a Nevada appellate court requires a showing of: (1) whether the objective of the appeal will be defeated if a stay pending appeal is denied; (2) whether the appellant will suffer irreparable or serious injury if a stay pending appeal is denied; (3) whether the appellee or respondent will suffer irreparable or serious injury if a stay pending appeal is granted; and (4) whether the appellant is likely to prevail on the merits of the appeal. See NEV.R.APP.P. 8(c).

<sup>16</sup> Under bankruptcy law, "The term 'entity' includes person, estate, trust, governmental unit, and the United States trustee." 11 U.S.C. § 101(15). Under bankruptcy law, "The term 'person' includes individual, partnership, and corporation, but does not include governmental unit..." 11 U.S.C. § 101(41).

1 liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal,  
2 equitable, secured, or unsecured...” 11 U.S.C. § 101(5)(A) (emphasis added).

3 Fourth, Section 727(a) requires the court to grant a Chapter 7 discharge “unless” at least  
4 one of twelve specified exceptions is proven to exist. See 11 U.S.C. § 727(a). Section 727(b)  
5 specifies in pertinent part that “Except as provided in section 523 of this title, a discharge under  
6 subsection (a) of this section discharges the debtor from all debts that arose before the date of the  
7 order for relief under this chapter...” 11 U.S.C. § 727(b) (emphasis added).

8 Fifth, Section 523(a) lists twenty separate types of debt<sup>17</sup> that are excepted from a  
9 Chapter 7 discharge. See 11 U.S.C. § 523(a)(1)-(20). Under Section 523(c), the debts specified  
10 in Sections 523(a)(2), (4), and (6) require the creditor to timely object by commencing an  
11 adversary proceeding to determine dischargeability of debt. See FED.R.BANKR.P. 4007(c) (a  
12 complaint under Section 523(c) must be filed within 60 days after the first date set for the  
13 meeting of creditors).

14 Sixth, Section 727(c)(1) provides that “The trustee, a creditor, or the United States trustee  
15 may object to the granting of a discharge under subsection (a) of this section.” 11 U.S.C. §  
16 727(c)(1) (emphasis added). Section 523(c)(1) provides that “Except as provided in subsection  
17 (a)(3)(B) of this section, the debtor shall be discharged from a debt of a kind specified in  
18 paragraph (2), (4), or (6) of subsection (a) of this section, unless, on request of the creditor to  
19 whom such debt is owed, and after notice and a hearing, the court determines such debt to be  
20 excepted from discharge under paragraphs (2), (4), or (6), as the case may be, of subsection (a)  
21 of this section.” 11 U.S.C. § 523(c)(1) (emphasis added).

22 Seventh, all of the theories pursued in the Adversary Complaint are pled under Section  
23 727 and Section 523, and both statutes require relief to be pursued by a creditor of the debtor. In  
24 particular, the Adversary Complaint alleges that the Debtor should be denied a Chapter 7  
25 discharge based on Sections 727(a)(2), (4) and (5). Additionally, the Adversary Complaint  
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28 <sup>17</sup> Under bankruptcy law, “The term ‘debt’ means liability on a claim.” 11 U.S.C. § 101(12).

1 alleges that Larson has claims against the Debtor that would be excepted from discharge under  
2 Sections 523(a)(2) and (4).

3 Eighth, the Family Court specifically found that Larson had received the funds required  
4 by the Divorce Decree, thereby triggering the mutual release provisions specifically set forth in  
5 the same stipulated Divorce Decree. As previously recited above, those provisions expressly  
6 state that the Debtor and Larson “hereby mutually release each other to the fullest extent  
7 permitted by law, for any claims of injury by the other, and each party does hereby forever  
8 relinquish, release, waive and forever discharge the other from all claims and causes of action of  
9 any type, known or unknown, that either of them had in the past against the other, for whatever  
10 reason, including, but not limited to, by reason of their domestic partnership and/or their  
11 relationship prior to entering their domestic partnership. This release includes, but is not limited  
12 to, all claims based on injury or damage of any nature whatsoever to the other person, whether  
13 negligent, willful and wanton, intentional or otherwise. This release is final and irrevocable,  
14 regardless of any facts which may exist but are not known to the parties.”

15 Based on these considerations, it is clear that Larson is an individual who is a person and  
16 entity under bankruptcy law. Under the terms of the Divorce Decree, however, Larson was not  
17 an entity that had a right to payment constituting a claim or debt at the time of or before the  
18 Chapter 7 proceeding was commenced. That Divorce Decree was not stayed pending appeal and  
19 remained in effect despite Larson’s appeal from the Family Court’s decision. Because Larson  
20 did not have a claim against the Debtor, he was not and still is not a creditor under bankruptcy  
21 law. Inasmuch as Larson is not the Trustee in this Chapter 7, is not the United States trustee, and  
22 is not a creditor under Section 101(10), he is not authorized under Section 727(c)(1) to object to  
23 the Debtor’s discharge under Section 727(a). Inasmuch as Larson is not a creditor of the Debtor  
24 under Section 101(10), he also is not authorized under Section 523(c) to object to the  
25 dischargeability of debt. Moreover, because the bankruptcy court is prohibited from granting  
26 Larson relief from the Divorce Decree, Larson has no cognizable legal theory that would permit  
27 him to proceed under Section 727(a) nor Section 523(a). As a result, the Adversary Complaint  
28 fails to state a claim upon which relief can be granted.

1 Under these circumstances, it is unnecessary to examine the sufficiency of Larson's  
2 specific allegations in connection with relief under Sections 727 and 523. Both provisions  
3 require that Larson be a creditor of the Debtor, but he has no claims against the Debtor as a result  
4 of the Divorce Decree. Thus, whatever merit there may be in Larson's factual allegations, any  
5 amendment of the Adversary Complaint would be futile because he is not a creditor as of the  
6 time the Chapter 7 was commenced.

7 **IT IS THEREFORE ORDERED** that the Motion to: (I) Dismiss Claims Pursuant to 11  
8 U.S.C. §§ 523 and 727 for Failure to State a Claim Upon Which Relief Can Be Granted; and (II)  
9 Dismiss Arguments Pursuant to U.S.C. § 707 Without Prejudice, Adversary Docket No. 5, be,  
10 and the same hereby is, **GRANTED with prejudice.**

11 **IT IS FURTHER ORDERED** that the status conference currently scheduled in this  
12 adversary proceeding for June 26, 2025, at 10:00 a.m., is **VACATED** from the calendar.

13  
14 Copies sent via CM/ECF ELECTRONIC FILING

15 Copies sent via BNC to:  
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