NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BRIAN LUNDSTROM, Plaintiff-Appellant, v. CARLA YOUNG; et al., Defendants-Appellees.	No. 20-55002 D.C. No. 3:18-cv-02856-GPC-MSB MEMORANDUM* (Filed Apr. 21, 2021)

Appeal from the United States District Court
for the Southern District of California
Gonzalo P. Curiel, District Judge, Presiding

Argued and Submitted April 15, 2021
Pasadena, California

Before: M. SMITH and IKUTA, Circuit Judges, and STEELE,** District Judge.

Plaintiff-Appellant Brian Lundstrom (Lundstrom) appeals the district court's dismissal of his First Amended Complaint against his ex-wife, Carla Young (Young), and his employer, Ligand Pharmaceuticals Incorporated (Ligand), for lack of subject matter

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* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable John E. Steele, United States District Judge for the Middle District of Florida, sitting by designation.

jurisdiction under the *Rooker-Feldman* doctrine[1], failure to state a claim, and lack of Article III standing. Lundstrom argues that his claims do not amount to improper *de facto* appeals from orders from a Texas state court, that his claims fall within the extrinsic fraud exception to *Rooker-Feldman*, and that he has Article III standing.[2] Because the parties are familiar with the facts, we do not recount them here, except as necessary to provide context to our ruling.

We have jurisdiction under 28 U.S.C. § 1291. "We review an application of the *Rooker-Feldman* doctrine *de novo.*" *Carmona v. Carmona*, 603 F.3d 1041, 1050 (9th Cir. 2010). Whether subject matter jurisdiction exists is a question of law that we also review *de novo*. *Bidart Bros. v. Cal. Apple Comm'n*, 73 F.3d 925, 928 (9th Cir. 1996) (citation omitted). We also review *de novo* a dismissal under Federal Rule of Civil Procedure 12(b)(6). *Rhoades v. Avon Prods.*, 504 F.3d 1151, 1156 (9th Cir. 2007).

Under the *Rooker-Feldman* doctrine, federal district courts lack jurisdiction over "cases brought by state-court losers complaining of injuries caused by

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[1] *See Rooker v. Fid. Tr. Co.*, 263 U.S. 413 (1923); *D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462 (1983).

[2] Young seeks sanctions under Federal Rule of Appellate Procedure 38 and 28 U.S.C. § 1927. We deny that request because this appeal does not present highly exceptional circumstances warranting sanctions, but instead involves complex issues relating to the *Rooker-Feldman* doctrine, the majority of which are meritorious. *See In re Westwood Plaza N.*, 889 F.3d 975, 977 (9th Cir. 2018) (quoting *Malhiot v. S. Cal. Retail Clerks Union*, 735 F.2d 1133, 1137 (9th Cir. 1984)).

state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). *Rooker-Feldman* prevents "a party losing in state court . . . from seeking what in substance would be appellate review of the state judgment in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights." *Johnson v. De Grandy*, 512 U.S. 997, 1005-06 (1994).

We developed a two-part test to determine whether the *Rooker-Feldman* doctrine bars jurisdiction over a complaint filed in federal court. First, the federal complaint must assert that the plaintiff was injured by "legal error or errors by the state court." *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1140 (9th Cir. 2004). Second, the federal complaint must seek "relief from the state court judgment" as the remedy. *Id.*

1. In Claims 4 and 5, Lundstrom challenges Texas state court judgments directly, petitioning the district court to declare that a 401(k) Qualified Domestic Relations Order and a Stock Domestic Relations Order issued by a Texas state court are invalid. Counsel for Lundstrom conceded this during oral argument. Because Claims 4 and 5 meet the two-part test from *Kougasian*, the district court lacked jurisdiction to consider those claims under *Rooker-Feldman* and properly dismissed them. *See id.*

2. Lundstrom's remaining claims are not barred by *Rooker-Feldman*. The Supreme Court emphasized that *Rooker-Feldman* is a narrow doctrine, and courts should not construe it "to extend far beyond the contours of the *Rooker* and *Feldman* cases," because that would override "Congress' conferral of federal-court jurisdiction concurrent with jurisdiction exercised by state courts" and supersede "the ordinary application of preclusion law pursuant to 28 U.S.C. § 1738." *Saudi Basic Indus. Corp.*, 544 U.S. at 283. Accordingly, *Rooker-Feldman* "is confined to cases of the kind from which the doctrine acquired its name . . . [and] does not otherwise override or supplant preclusion doctrine or augment the circumscribed doctrines that allow federal courts to stay or dismiss proceedings in deference to state-court actions." *Id.* at 284. "If a federal plaintiff presents some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party, then there is jurisdiction and state law determines whether the defendant prevails under principles of preclusion." *Id.* at 293 (cleaned up).

Lundstrom's remaining claims allege that Ligand and Young breached various fiduciary duties under ERISA and state law. Lundstrom seeks damages, equitable relief, and injunctive relief. These claims do not expressly seek "relief from the [Texas] state court judgment" or assert that Lundstrom was injured by an "error or errors by the [Texas] state court." *See Kougasian*, 359 F.3d at 1140. These claims are independent, even though they "den[y] a legal conclusion that a state

court has reached in a case to which [Lundstrom] was a party." *See Saudi Basic Indus. Corp.*, 544 U.S. at 293.

Therefore, the district court erred by dismissing Claims 1, 2, and 6 for lack of subject matter jurisdiction under *Rooker-Feldman*. The district court also erred by dismissing Claims 1, 2, 3, and 6 for failure to allege a "concrete or actual harm that is not barred by *Rooker-Feldman*." To the extent the district court alternatively dismissed Claim 3 on the merits, it erred by failing to address Lundstrom's claim that Ligand failed to comply with the procedural requirements in 29 U.S.C. § 1056(d)(3)(G)(i). The appellees waived any claim to the contrary by failing to respond to this argument in their briefing. *Moran v. Screening Pros, LLC*, 943 F.3d 1175, 1180 (9th Cir. 2019).

* * *

We affirm the district court's dismissal of Claims 4 and 5 because those claims are barred under *Rooker-Feldman*.[3] We reverse the district court's dismissal of Claims 1, 2, 3, 6, 7, 8, and 9, and remand those claims to the district court to consider any other defenses, including claim and issue preclusion, in the first instance.

The district court shall allow Lundstrom leave to amend his complaint. If the district court ultimately

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[3] Claim 4 should have been dismissed without prejudice because the district court lacked subject matter jurisdiction to consider it. *See Kelly v. Fleetwood Enters. Inc.*, 377 F.3d 1034, 1036 (9th Cir. 2004). The district court shall enter an order reflecting a dismissal without prejudice on Claims 4 and 5.

dismisses all of Lundstrom's federal claims, it need not exercise supplemental jurisdiction over any remaining state law claims. *See* 28 U.S.C. § 1367(c)(3).

AFFIRMED IN PART, REVERSED AND REMANDED IN PART.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BRIAN LUNDSTROM, Plaintiff, v. CARLA YOUNG, an individual; LIGAND PHARMACEUTICALS INCORPORATED, LIGAND PHARMACEUTICALS INCORPORATED 401(k) PLAN; and DOES 1 through 20, Defendants.	Case No. 3:18-CV-2856-GPC-MSB **ORDER GRANTING DEFENDANTS' MOTION TO DISMISS; GRANTING DEFENDANTS' MOTIONS TO SEAL; DENYING DEFENDANT YOUNG'S MOTION FOR SANCTIONS** **[ECF Nos.: 46, 47, 48, 50, 56, 58]** (Filed Dec. 5, 2019)

Before the Court are Defendant Carla Young's ("Young") motion to dismiss the first amended complaint ("FAC"), ECF No. 46, and Defendant Ligand Pharmaceuticals Incorporated's ("Ligand") motion to dismiss the FAC. ECF No. 50. Oppositions were filed on July 22, 2019. ECF Nos. 52, 53. Replies were filed on July 29, 2019. ECF Nos. 54, 55.

On September 19, 2019, Young also filed a motion for sanctions. ECF No. 58. An opposition was filed on October 4, 2019. ECF No. 60. A reply was filed on October 11, 2019. ECF No. 61.

The Court held a hearing on October 25, 2019. Based on the reasoning below, the Court **GRANTS** Defendants' motions to dismiss and **DENIES** Young's motion for sanctions.

I. Background

Plaintiff and Defendant Young married on or around August 21, 1998 in Seattle, Washington, and divorced on July 30, 2014 in Texas. ECF No. 45 ("FAC") ¶¶ 13, 15. The FAC alleges that Lundstrom became employed by Defendant Ligand on or about January 8, 2016 and began participating in the Ligand 401(k) Plan on or about April 1, 2016. *Id.* ¶¶ 16, 18. As part of Plaintiff's employment compensation package, Ligand granted Plaintiff 18,010 company stock options in two lots ("Incentive Stock Options"). *Id.* ¶¶ 20, 21.

On September 13, 2017, the District Court 231st Judicial District of Tarrant County issued an order requiring Plaintiff to pay $55,533.03 in child support arrearages to Young. *Id.* ¶ 22. According to the FAC, Young subsequently submitted a 401(k) Qualified Domestic Relations Order ("401(k) QDRO") and Stock Domestic Relations Order ("Stock DRO") to the District Court 231st Judicial District of Tarrant County for the court's signature. *Id.* ¶¶ 24, 32. Plaintiff alleges that the 401(k) QDRO submitted sought to transfer to Young 100 percent of the benefits held in Plaintiff's account in the 401(k) Plan, and the Stock DRO sought the transfer of 18,010 Incentive Stock Options to Young. *Id.* ¶¶ 23, 31. Plaintiff also alleges that he was

not given an opportunity to review, approve, or contest the validity of the 401(k) QDRO or the Stock DRO prior to Young's submission of both documents to the District Court 231st Judicial District of Tarrant County. *Id.* ¶¶ 26, 27, 34, 35. The Texas court signed the 401(k) QDRO on or about November 21, 2017, and signed the Stock DRO on or about January 22, 2018. *Id.* ¶¶ 28, 36.

According to the FAC, Young sent Ligand copies of the 401(k) QDRO and the Stock DRO in late 2017 and early February 2018, respectively. *Id.* ¶¶ 39, 48. On January 4, 2018, Ligand forwarded a copy of the 401(k) QDRO to Plaintiff. *Id.* ¶ 41. Plaintiff subsequently raised a number of issues concerning the validity of the 401(k) QDRO with Ligand. *Id.* ¶ 42. On January 27, 2018, Plaintiff notified Ligand that he was appealing the 401(k) QDRO with the 2nd Court of Appeals in Fort Worth, Texas. *Id.* ¶¶ 44. On February 1, 2018, the 2nd Court of Appeals in Fort Worth, Texas denied Plaintiff's appeal of the 401(k) and on February 9, 2018, Ligand transferred $62,063.47 from Plaintiff's 401(k) account to Young. *Id.* ¶¶ 45, 46.

On February 7, 2018, a Ligand employee notified Plaintiff that Ligand had received the Stock DRO which dictated the transfer all of Plaintiff's Incentive Stock Options to Young. *Id.* ¶ 49. Plaintiff subsequently raised a number of issues concerning the validity of the Stock DRO with Ligand. *Id.* ¶ 50. Plaintiff also notified Ligand that he was appealing the Stock DRO with the 2nd Court of Appeals in Fort Worth, Texas. *Id.* ¶¶ 44, 51. Plaintiff subsequently filed appeals with the Texas Supreme Court seeking to

invalidate the 401(k) QDRO and Stock DRO. *Id.* ¶ 53. The FAC does not indicate the dates when these appeals were filed or the outcomes of the appeals.

On March 14, 2018, Ligand informed Plaintiff that if Ligand did not receive a hold or other standing order issued by a presiding judge before March 23, 2018, the company would proceed with distributing the Incentive Stock Options to Young on March 28, 2018. *Id.* ¶ 52. On March 14, 2018, Plaintiff informed Ligand that his appeals of the 401(k) QDRO and Stock DRO were pending in the Texas Supreme Court. *Id.* ¶ 53. On May 8, 2018, Ligand informed Plaintiff that the Incentive Stock Option transfer to Young would be processed on that day. *Id.* ¶ 55. Plaintiff alleges that 18,010 Incentive Stock Options were transferred to Young pursuant to the Stock DRO. *Id.* ¶ 57.

The FAC was filed on June 19, 2019. ECF No. 45. The FAC alleges the following causes of action:

First Cause of Action:	Breach of fiduciary duty under ERISA as to Defendants Ligand and Does 1-20 for improperly approving the 401(k) QDRO
Second Cause of Action:	Breach of fiduciary duty as to Defendant Ligand for ignoring information that called into question the validity of the 401(k) QDRO

Third Cause of Action:	Breach of fiduciary duty as to Defendant Ligand for failure to follow ERISA procedures
Fourth Cause of Action:	Declaratory relief as to all Defendants to establish that the 401(k) QDRO is not a QDRO as defined by ERISA and the Internal Revenue Code and attorneys' fees
Fifth Cause of Action:	Supplemental state claim seeking declaratory relief as to all Defendants
Sixth Cause of Action:	Equitable and injunctive relief as to Ligand and Young
Seventh Cause of Action:	Equitable and injunctive relief as to Young
Eighth Cause of Action:	Unjust enrichment supplemental state claim as to Young
Ninth Cause of Action:	Breach of common law fiduciary duty supplemental state claim against Defendants Ligand and Does 1-20

II. Requests for Judicial Notice

Defendants filed requests for judicial notice accompanying their motions to dismiss. ECF No. 46-3 ("Young RJN"); ECF No. 50-19 (Ligand RJN). Plaintiff opposes. ECF No. 52 at 21-22.

As a general rule, "a district court may not consider any material beyond the pleadings in ruling on a Rule 12(b)(6) motion." *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001). However, two exceptions to this rule exist. First, a district court may consider "material which is properly submitted as part of the complaint." *Id.* If the documents are not attached to the complaint, an exception exists if the documents' "authenticity . . . is not contested" and "the plaintiff's complaint necessarily relies" on them. *Id.* (citations omitted). Second, a court may take judicial notice of "matters of public record" under Federal Rule of Evidence ("Rule") 201. *Id.* at 688-89. However, under Rule 201, a court may not take judicial notice of a fact that is "subject to reasonable dispute." Fed. R. Evid. 201(b). If the contents of a matter of public record are in dispute, the court may take notice of the fact of the document at issue but not of the disputed information contained within. *See id.* at 689-90.

Young requests that the Court take judicial notice of the following twenty documents, comprised of filings and orders in Tarrant County District Court in Texas or San Diego Superior Court:

1. A true and correct copy of Tarrant County's 231st Judicial District's Court Order on

September 13, 2017 which enters judgment for child support.

2. A true and correct copy of Tarrant County's 233rd Judicial District's Court Order on April 27, 2017 Regarding Capias Order.

3. A true and correct copy of Tarrant County's 233rd Judicial District's Court Order April 27, 2017 Regarding Commitment Order.

4. A true and correct copy of Tarrant County's 231st Judicial District's Court Order on April 5, 2017 Regarding Relief to Collect Outstanding Judgments.

5. A true and correct copy of Tarrant County's 233rd Judicial District's Court Order on March 4, 2015 Regarding Contempt Order.

6. A true and correct copy of Tarrant County's 231st Judicial District's Court Order on November 21, 2017 Regarding Qualified Domestic Relations Order.

7. A true and correct copy of Tarrant County's 231st Judicial District's Court Order on January 22, 2018 Regarding Domestic Relations Order.

8. A true and correct copy of February 1, 2018 Second District Court of Appeal Opinion.

9. A true and correct copy of February 26, 2018 Second District Court of Appeal Opinion.

10. A true and correct copy of June 8, 2018 Supreme Court of Texas Order.

11. A true and correct copy November 16, 2018 Supreme Court of Texas Order.

12. A true and correct copy of Plaintiff's August 8, 2018 Notice of Registration filed in San Diego Superior Court, Case No. 18FL009397C.

13. A true and correct copy of Ms. Young's declaration in support of opposition to Plaintiff's Ex Parte Application to Stay Earnings Withholdings Order, Case No. 18FL009397C, wherein Ms. Young objects to jurisdiction of California

14. A true and correct copy of San Diego Superior Court's January 8, 2019 Order denying Plaintiff's Ex Parte Application.

15. A true and correct copy Tarrant County's 231st Judicial District's Court Order on March 22, 2017 to Seal Court Records.

16. A true and correct copy Tarrant County's 233rd Judicial District's Court Order on December 3, 2013 Regarding Enforcement by Contempt.

17. A true and correct copy Tarrant County's 233rd Judicial District's Court Order on February 13, 2015 Revoking Suspension.

18. A true and correct copy Tarrant County's 233rd Judicial District's Court Order on February 17, 2016 Regarding Order for Capias.

19. A true and correct copy of Plaintiff's Writs of Mandamus to the Second Court of Appeals regarding the QDRO and DRO.

20. A true and correct copy of Plaintiff's Petitions for Review to the Supreme Court of Texas regarding the QDRO and DRO.

Ligand joins Young's request for judicial notice of Young Exhibits 3-5 and 16-18. ECF No. 50-19. Ligand also requests judicial notice of the following sixteen documents, comprised of state court pleadings, state court orders, a U.S. Securities and Exchange Commission filing, and the record of a state court docket:

1. A true and correct copy of the Qualified Domestic Relations Order – Ligand Pharmaceuticals Inc. 401(k) Plan related to Case No. 233-515485-12, 233rd Judicial District, Tarrant County, Texas, dated November 21, 2017

2. A true and correct copy of the Domestic Relations Order for the Ligand Pharmaceuticals Incorporated 2002 Stock Incentive Plan, as Amended and Restated Effective May 23, 2016 related to Case No. 233-515485-12, 233rd Judicial District, Tarrant County, Texas, dated January 22, 2018.

3. A true and correct copy of a Memorandum Opinion in the Court of Appeals, Second District of Texas, Fort Worth, No. 02-18-00033-CV, dated February 1, 2018.

4. A true and correct copy of a redacted Petition for Review in the Supreme Court of Texas, No. 18-0093, dated February 5, 2018

5. A true and correct copy of a redacted Petition for Review in the Supreme Court of Texas, No. 18-0192, dated March 2, 2018

6. A true and correct copy of an Order Denying the Petition for Writ of Mandamus as amended in the Supreme Court of Texas, No. 18-0093, dated June 8, 2018

7. A true and correct copy of an Order Denying the Petition for Writ of Mandamus as amended in the Supreme Court of Texas, No. 18-0192, dated June 8, 2018

8. A true and correct copy of a redacted Motion for Rehearing in the Supreme Court of Texas, No. 18-0093, dated June 12, 2018

9. A true and correct copy of a redacted 1st Amended Motion for Rehearing in the Supreme Court of Texas, No. 18-0093, dated June 22, 2018.

10. A true and correct copy of Relator's Second Amended Motion for Rehearing in the Supreme Court of Texas, No. 18-0093, dated July 23, 2018.

11. A true and correct copy of Relator's Second Amended Motion for Rehearing in the Supreme Court of Texas, No. 18-0192, dated July 23, 2018

12. A true and correct copy of an Order Denying the Motion for Rehearing in the Supreme Court of Texas, No. 18-0093, dated November 16, 2018.

13. A true and correct copy of an Order Denying the Motion for Rehearing in the Supreme Court of Texas, No. 18-0192, dated November 16, 2018.

14. A true and correct copy of Ligand Pharmaceuticals Incorporated 2002 Stock Incentive Plan, as Amended and Restated Effective May 23, 2016, attached as Exhibit 10.1 to Ligand's Form S-8 filed

with the SEC on July 29, 2016 (accessible from www.sec.gov).

15. A true and correct copy of correct copy of the docket sheet for Lundstrom v. Young (No. 233-515485) in the Tarrant County District Court retrieved through the Lexis CourtLink service on March 11, 2019.

16. A true and correct copy of a document titled "FAQs about Qualified Domestic Relations Orders" downloaded from the United States Department of Labor website on July 2, 2019 (accessible from https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/ouractivities/resource-center/faqs/qdro-overview.pdf).

A. 401(k) QDRO and Stock DRO

A district court may consider "material which is properly submitted as part of the complaint." *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001). If the documents are not attached to the complaint, an exception exists if the documents' "authenticity . . . is not contested" and "the plaintiff's complaint necessarily relies" on them. *Id.* (citations omitted). "Even if a document is not attached to a complaint, it may be incorporated by reference into a complaint if the plaintiff refers extensively to the document or the document forms the basis of the plaintiff's claim." *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). "For 'extensively' to mean anything under *Ritchie*, it should, ordinarily at least, mean more than once." *Khoja v.*

Orexigen Therapeutics, Inc., 899 F.3d 988, 1003 (9th Cir. 2018).

Here, all of Plaintiff's claims are premised on the substance and administration of the 401(k) QDRO and Stock DRO. Furthermore, throughout the FAC, Plaintiff engages in a thorough discussion of and quotes directly from the 401(k) QDRO, FAC ¶¶ 4, 6, 8, 9, 16-18, 21-23, 27-28, 32, 34-36, and the Stock DRO, FAC ¶¶ 24-26, 30-35. Plaintiff has certainly incorporated these two documents by reference in the FAC.

Both Ligand and Young have provided copies of the 401(k) QDRO and Stock DRO in their requests for judicial notice. Ligand Exs. 1, 2; Young Exs. 6, 7. Although the 401(k) QDRO and Stock DRO provided by Ligand and Young are not originals, they are certified copies and are therefore self-authenticating. Fed. R. Evid. 902(4) (certified copies of public records require the custodian or other authorized person to certify that the copies are correct). Thus, Court takes judicial notice of the fact of these 401(k) QDRO and Stock DRO and the contents therein.

B. Texas State Court Documents

Young and Ligand have also filed requests for judicial notice of several court orders (Young Exs. 1-7, 10-11, 14-18; Ligand Exs.1-2, 7, 12-13), court opinions (Young Exs. 8-9, Ligand Ex. 3), court filings (Young Exs. 12-13, 19-20; Ligand Exs. 4, 9-11); and a court docket sheet (Ligand Ex. 15) (collectively, "Texas State Court Documents"). Several of these documents are identical;

for example, Ligand Exhibits 4-7 are identical to Young Exhibits 10, 11, and 20.

While some of these documents are filed under seal in Texas state court, they nonetheless are readily verifiable and, therefore, the proper subject of judicial notice. *See Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 (9th Cir. 2006). Additionally, since these documents are either pleadings or documents otherwise recorded by the court, they are the proper subject of judicial notice. *See Burbank-Glendale-Pasadena Airport Auth. v. City of Burbank*, 136 F.3d 1360, 1364 (9th Cir. 1998) (granting judicial notice of pleadings filed in a related state court action); *Reynolds v. Applegate*, No. C 10-04427 CRB, 2011 WL 560757, at *1 n.2 (N.D. Cal. Feb. 14, 2011) (granting judicial notice of documents recorded in the county recorder office since "the Court may properly see them"); *Ewing v. Superior Court of California*, 90 F. Supp. 3d 1067 (S.D. Cal. 2015) (granting judicial notice of documents filed in state court case, including trial court's judgment and opinion of state appellate court); *Amato v. Narconon Fresh Start*, No. 3:14-CV-0588-GPC-BLM, 2014 WL 5390196, at *4 (S.D. Cal. Oct. 23, 2014) ("Orders in federal court cases and state licenses are matters of public record and are capable of accurate and ready determination.").

On a Rule 12(b)(6) motion to dismiss, when a court takes judicial notice of another court's opinion, it may do so "not for the truth of the facts recited therein, but for the existence of the opinion, which is not subject to reasonable dispute over its authenticity." *Lee*, 250 F.3d

at 690. Ligand argues that orders and pleadings referenced in the FAC may be considered on this motion because they are incorporated by reference in the FAC. Young RJN at 5-9. For example, Plaintiff refers to the fact that he filed appeals in the Texas Supreme Court. FAC ¶¶ 32-33. However, unlike the 401(k) QDRO and Stock DRO, Plaintiff's discussion of these proceedings and relevant filings are insufficiently extensive to be incorporated by reference under the *Ritchie* standard.

Plaintiff opposes Defendants' requests for judicial notice on the grounds that, while courts may take judicial notice of undisputed matters of public record, the court may not take judicial notice of disputed facts stated in public records. A court may take judicial notice of "matters of public record" under Rule 201, but may not take judicial notice of a fact that is "subject to reasonable dispute." Fed. R. Evid. 201(b). If the contents of a matter of public record are in dispute, the court may take notice of the fact of the document at issue but not of the disputed information contained within. *See Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001).

Here, Defendants seek judicial notice of the Court of Appeals, Second District of Texas, Forth Worth's denial of Plaintiffs' writ of mandamus on Febraury 1, 2018, (Ligand Ex. 3; Young Ex. 8); plaintiffs' petitions for writ of mandamus with the Texas Supreme Court challenging the 401(k) QDRO and Stock DRO filed on February 5, 2018 and March 2, 2018, respectively (Ligand Exs. 4, 5); the Texas Supreme Court denial of both of Plaintiff's petitions for writ of mandamus on June

8, 2018 (Ligand Exs. 6, 7); Plaintiff's motion for rehearing on June 12, 2018 (Ligand Ex. 8); the Texas Supreme Court denied the motions for rehearing on November 16, 2018 (Ligands Exs. 12, 13; Young Ex. 11). In response, Plaintiffs dispute the content of these documents.

Because Plaintiffs dispute their contents, the Court can take judicial notice of the fact that these orders were issued by the Texas appellate courts but not the contents contained therein. Thus, the Court **GRANTS** Defendants' requests for judicial notice of the fact of the existence of the Texas State Court Documents, but **DENIES** Defendants' requests for judicial notice of the contents of these documents.[1]

III. Legal Standard on Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6)

Under Rule 12(b)(1) of the Federal Rules of Civil Procedure, a defendant may seek to dismiss a complaint for lack of jurisdiction over the subject matter. The federal court is one of limited jurisdiction. *See Gould v. Mutual Life Ins. Co. of New York*, 790 F.2d 769, 774 (9th Cir. 1986). As such, it cannot reach the merits

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[1] Ligand also requests judicial notice of the Ligand Pharmaceuticals Incorporated 2002 Stock Incentive Plan ("Stock Incentive Plan"), Ligand Ex. 14, and the FAQs about Qualified Domestic Relations Orders ("FAQs"). Ligand Ex. 16. For similar reasons as stated above, the Court **GRANTS** Ligand's request for judicial notice of the Stock Incentive Plan and FAQs, but **DENIES** Defendants' requests for judicial notice of the contents of these documents.

of any dispute until it confirms its own subject matter jurisdiction. *See Steel Co. v. Citizens for a Better Environ.*, 523 U.S. 83, 95 (1998). When considering a Rule 12(b)(1) motion to dismiss, the district court is free to hear evidence regarding jurisdiction and to rule on that issue prior to trial, resolving factual disputes where necessary. *See Augustine v. United States*, 704 F.2d 1074, 1077 (9th Cir. 1983). In such circumstances, "[n]o presumptive truthfulness attaches to plaintiff's allegations, and the existence of disputed facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims." *Id.* (quoting *Thornhill Publishing Co. v. General Telephone & Electronic Corp.*, 594 F.2d 730, 733 (9th Cir. 1979)). Plaintiff, as the party seeking to invoke jurisdiction, has the burden of establishing that jurisdiction exists. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994).

Federal Rule of Civil Procedure 12(b)(6) permits dismissal for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). Dismissal under Rule 12(b)(6) is appropriate where the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory. *See Balistreri v. Pacifica Police Dep't.*, 901 F.2d 696, 699 (9th Cir. 1990). Under Rule 8(a)(2), the plaintiff is required only to set forth a "short and plain statement of the claim showing that the pleader is entitled to relief," and "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

A complaint may survive a motion to dismiss only if, taking all well-pleaded factual allegations as true, it contains enough facts to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* "In sum, for a complaint to survive a motion to dismiss, the non-conclusory factual content, and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief." *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (quotations omitted). In reviewing a Rule 12(b)(6) motion, the Court accepts as true all facts alleged in the complaint, and draws all reasonable inferences in favor of the plaintiff. *al-Kidd v. Ashcroft*, 580 F.3d 949, 956 (9th Cir. 2009). The Court evaluates lack of statutory standing under the Rule 12(b)(6) standard. *Maya v. Centex Corp.*, 658 F.3d 1060, 1067 (9th Cir. 2011).

Where a motion to dismiss is granted, "leave to amend should be granted 'unless the court determines that the allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency.'" *DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992) (quoting *Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986)). In other words, where leave to amend would be

futile, the Court may deny leave to amend. *See DeSoto*, 957 F.2d at 658; *Schreiber*, 806 F.2d at 1401.

IV. LEGAL DISCUSSION

The FAC presents nine causes of action, five of which are based upon ERISA (first, second, third, fourth, and sixth causes of action) and four of which are premised on state law claims (fifth, seventh, eighth, and ninth causes of action).

Defendants advance numerous arguments as to why Plaintiff's FAC should be dismissed. Specifically, they contend that: (1) the *Rooker-Feldman* doctrine bars consideration of Plaintiff's claims; (2) Plaintiff lacks standing; (3) the claims are barred by collateral estoppel; (4) Defendant Young is not subject to personal jurisdiction; and (5) Plaintiff has failed to state a claim as to several causes of action.

Because the Court concludes that Plaintiff lacks standing and that the *Rooker-Feldman* doctrine bars consideration of Plaintiff's claim, the Court **GRANTS** Defendants' motions to dismiss Plaintiff's FAC for lack of subject matter jurisdiction. Since the federal claims are dismissed under Rule 12(b)(1) on the basis of lack of subject matter jurisdiction, the Court concludes that it lacks the authority to exercise supplemental jurisdiction over Plaintiff's state law claims.

A. *Rooker-Feldman* Doctrine

As courts of original jurisdiction, federal district courts lack jurisdiction to review the final determinations of a state court in judicial proceedings. *See Doe & Assocs. Law Offices v. Napolitano*, 252 F.3d 1026, 1029 (9th Cir. 2001). However, federal district courts do have jurisdiction over a "general constitutional challenge," i.e., one that does not require review of a final state court decision in a particular case. *Id.* (citing *Dubinka v. Judges of the Superior Court*, 23 F.3d 218, 221 (9th Cir. 1994)). This distinction between a permissible general constitutional challenge and an impermissible appeal of a state court determination may be subtle and difficult to make. *See id.* (citing *Worldwide Church of God v. Mcnair*, 805 F.2d 888, 891 (9th Cir. 1986)). To draw out this distinction, the court must ask whether it is "in essence being called upon to review the state court decision." *Id.* A de facto appeal exists "when the federal plaintiff both asserts as her injury legal error or errors by the state court and seeks as her remedy relief from the state court judgment." *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1139-40 (9th Cir. 2004). Once the court has found a de facto appeal, it must identify and decline to exercise jurisdiction over any issues that are "inextricably intertwined" with that appeal. *Doe*, 415 F.3d at 1043 (9th Cir. 2005). If the federal constitutional claims presented to the district court are 'inextricably intertwined' with the state court's judgement, then [plaintiff] is essentially asking the district court to review the state court's decision, which the district court may not do." *Id.* If

"consideration and decision have been accomplished, action in federal court is an impermissible appeal from the state court decision." *Id.* (citing *Worldwide Church of God*, 805 F.2d at 892). "Where the district court must hold that the state court was wrong in order to find in favor of the plaintiff, the issues presented to both courts are inextricably intertwined." *Id.*

The Ninth Circuit has cautioned against a broad application of the *Rooker-Feldman* doctrine and has noted that its application tends to be limited to the following types of claims: (1) when the plaintiff complains of harm caused by a state court judgment that directly withholds a benefit from (or imposes a detriment on) the plaintiff based on an allegedly erroneous ruling by the state court; or (2) when the plaintiff complains of a legal injury caused by a state court judgment, based on an allegedly erroneous legal ruling, in a case in which the plaintiff was one of the litigants. *Noel v. Hall*, 341 F.3d 1148, 1163 (9th Cir. 2003).

The analysis of *Rooker-Feldman* in *Carmona v. Carmona*, 603 F.3d 1041, 1051 (9th Cir. 2010) is instructive. There, the plaintiff claimed that qualified domestic relations orders issued by a family court were based upon an erroneous application of ERISA. Accordingly, the plaintiff sought relief from the state court orders and the dismissal of a Family Court order, and prayed for the federal district court to order that the proceedings in family court be dismissed with

prejudice and to enjoin enforcement of the orders.[2] The Ninth Circuit found that *Rooker-Feldman* applied given that the plaintiff asked the district court to set aside the state court orders.

1. ERISA Claims Asserting Breaches of Fiduciary Duty

The first three causes of action assert claims that Ligand failed to perform its duties as a fiduciary. In the first cause of action, Plaintiff alleges that Ligand violated its duty under ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1) by erroneously approving the 401(k) QDRO even though it failed to comply with the requirements of ERISA and the terms of the 401(k) Plan. FAC ¶ 73. Plaintiff also alleges that Ligand and Does 1-20 violated their fiduciary duties by failing to properly investigate the 401(k) QDRO prior to distributing the 401(k) funds to Young. *Id.* ¶ 75.

In the second cause of action, Plaintiff alleges that Ligand ignored information that called the validity of the 401(k) QDRO into question and failed to take reasonable steps to determine the credibility of the 401(k).

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[2] Similarly *DJ St. Jon* is instructive for the present case since there the Plaintiffs asserted that that they should have been given a "fairness hearing" in accordance with Cal. Rules of Court Rule 3.769 thereby challenging the state court's decision that notice of entry be given to the class pursuant to Cal. Rules of Court Rule 3.771. *DJ St. Jon v. Tatro*, No. 15-CV-2552-GPC-JLB, 2016 WL 1162678, at *8 (S.D. Cal. Mar. 23, 2016), *aff'd sub nom. Jon v. Tatro*, 698 F. App'x 917 (9th Cir. 2017).

Plaintiff raises the following issues with Ligand concerning the validity of the 401(k) QDRO:

> (1) although the 401(k) QDRO expressly states that it relates "to the provision of marital property rights for Alternate Payee," it seeks the transfer of Plaintiff's post-marital property because Plaintiff began making contributions to the 401(k) Plan in January of 2016 long after his divorce to Ms. Young was finalized on July 30, 2014; (2) Plaintiff advised Ligand that he did not owe any spousal support (per divorce decree) and that the child support he did owe (approximately $55,000 at the time) was being paid through wage garnishments from his Ligand paychecks ($3,500 per month); and (3) the fact that the 401(k) QDRO itself did not specify a fixed dollar amount that Plaintiff allegedly owed to Ms. Young that would be satisfied through the 401(k) QDRO.

FAC ¶ 85. Plaintiff argues that Ligand, as the plan administrator, had the duty to take reasonable steps to determine the credibility of evidence questioning the validity of a QDRO, and therefore breached its fiduciary duty owed to Plaintiff by "blindly" transferring $62,063.47 from Plaintiff's 401(k) account to Young. *Id.* ¶¶ 81, 82, 87.

While the first and second causes of action avoid a direct challenge of the state court orders, they are inextricably intertwined with the state court judgment. The alleged failures to investigate and failure to take steps to determine credibility of the 401(k) QDRO are nothing more than challenges to the state court orders. Plaintiff's argument supposes that the plan

administrator could operate as a tribunal free to question the credibility of evidence submitted to the Texas court and ignore the effect of a court order. It further requires this Court to examine the factual and legal basis for state court order in determining whether the QDRO was valid. "Where the district court must hold that the state court was wrong in order to find in favor of the plaintiff, the issues presented to both courts are inextricably intertwined." *Worldwide Church of God*, 805 F.2d at 892. When the federal constitutional claims presented to the district court are 'inextricably intertwined' with the state court's judgement, then [plaintiff] is essentially asking the district court to review the state court's decision, which the district court may not do." *Doe*, 415 F. 3d at 1043. As to these two causes of action, Plaintiff is ultimately seeking a review of the state court decision. Accordingly, the Court **DISMISSES** the first and second causes of action.

In the third cause of action, Plaintiff alleges that Ligand breached its fiduciary duty under 29 U.S.C. § 1056(d)(3)(G) to (1) establish reasonable, written procedures to determine the qualified status of a domestic relations order; (2) communicate those procedures to alternate payees; and (3) administer the distribution of benefits under qualified orders. According to the FAC, Ligand either does not have a written policy in place for determining the qualified status of a domestic relations order or has been unwilling to share such since first requested in November of 2018, and Ligand also failed to send Plaintiff a written communication advising him that the 401(k) QDRO satisfied the

requirements under the 401(k) Plan and the Internal Revenue Code and was in fact determined to be a QDRO. FAC ¶ 94. At first glance, it would appear the third cause of action is not inextricably intertwined with the state court orders since it would be unnecessary for this Court to review the Texas court decision to find a breach of fiduciary duty. As such, ostensibly, *Rooker-Feldman* does not provide the basis to dismiss the third cause of action.

On the other hand, Plaintiff essentially attacks the lack of an established protocol to examine the validity of state court orders. Plaintiff does not describe what the written procedures would have provided. However, in order to be meaningful to Plaintiff, such procedures would likely involve the examination of the legal and factual basis for the state court order in violation *Rooker-Feldman*. Ultimately, as to the third cause of action, the distinction between a permissible general constitutional challenge and an impermissible appeal of a state court determination is more subtle and difficult to make. While it is a close call, the Court elects not to dismiss the third cause of action under *Rooker-Feldman*.

Accordingly, the Court will **DISMISS** the first and second causes of action with prejudice. As to the third cause of action, it survives *Rooker-Feldman* analysis but will be dismissed on the alternate grounds analyzed below.

2. ERISA Claims Seeking Declaratory and Injunctive Relief

The fourth cause of action names all of the Defendants and attacks the state court judgment directly, petitioning the Court to declare that both the 401(k) QDRO and the Stock DRO are invalid. FAC ¶ 102. In so far as Plaintiff seeks the invalidation of the QDRO and DRO, his claim is barred by *Rooker-Feldman*. Therefore, the Court **DISMISSES** the fourth cause of action with prejudice.

The sixth cause of action is brought against both Ligand and Young based on Ligand's transfer and Young's receipt of the funds from Plaintiff's 401(k) fund pursuant to the QDRO and stock options pursuant to the DRO. This claim is also inextricably intertwined with the validity of the QDRO and DRO. Young received funds by virtue of a QDRO and DRO issued by a state court judge and the relief sought by Plaintiff necessitates the invalidation of the QDRO and Stock DRO, which, for the reasons stated above would be barred by *Rooker-Feldman*. Therefore, the Court **DISMISSES** the sixth cause of action with prejudice. *See Williams-Ilunga v. Directors/Trustees of Producer-Writers Guild of Am. Pension Plan*, 682 F. App'x 633, 634 (9th Cir. 2017) ("Under *Rooker-Feldman*, there is no defect to be cured: a subsequent federal claim is completely barred if it amounts to 'a de facto appeal from a state court judgment.'") (citing *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1139 (9th Cir. 2004)).

In sum, the Court **DISMISSES** the fourth and sixth causes of action with prejudice.

B. Standing Pursuant to 12(b)(1)

Defendants allege that Plaintiff does not have standing to pursue the ERISA claims because he has failed to assert an injury in fact. Plaintiff counters that he has standing under ERISA, 29 U.S.C. §§ 1001, Et Seq.

"To establish standing to sue under ERISA, [plaintiffs] must show that they are plan 'participants.'" *Poore v. Simpson Paper Co.*, 566 F.3d 922, 925 (9th Cir. 2009). Under Section 502(a)(2), standing is granted to a plan participant to bring an action against a defendant who breaches a fiduciary duty with respect to that plan. *See* 29 U.S.C. § 1132(a)(2). An ERISA plan participant is "any employee or former employee of an employer . . . who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer." 29 U.S.C. § 1002(7).

"To bring an ERISA lawsuit, a plaintiff must not only have standing under the statute, but must also meet the standing requirements of Article III of the U.S. Constitution." *Wells v. California Physicians' Serv.*, No. C05-01229 CRB, 2007 WL 926490, at *3 (N.D. Cal. Mar. 26, 2007) (citing cases). "[T]he irreducible constitutional minimum of [Article III] standing" contains three elements, namely, "[t]he plaintiff must have (1) suffered an injury in fact, (2) that is fairly

traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)).

"To establish injury in fact, a plaintiff must show that he or she suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Id.* at 1548 (quoting *Lujan*, 504 U.S. at 560). An injury may be "concrete" even if it is intangible, and "in determining whether an intangible harm constitutes injury in fact, both history and the judgment of Congress play important roles." *Id.* at 1549. The judgment of Congress is "instructive and important" because "Congress is well positioned to identify intangible harms that meet minimum Article III requirements." *Id.* Thus, "Congress has the power to define injuries and articulate chains of causation that will give rise to a case or controversy where none existed before." *Id.* (quoting *Lujan*, 504 U.S. at 580 (Kennedy, J., concurring)). Nonetheless, "Congress' role in identifying and elevating intangible harms does not mean that a plaintiff automatically satisfies the injury-in-fact requirement whenever a statute grants a person a statutory right and purports to authorize that person to sue to vindicate that right." *Id.* at 1549. Thus, while a procedural violation "can be sufficient in some circumstances to constitute injury in fact," for example, where there is a "risk of real harm," a "*bare procedural violation*, divorced from any concrete harm" does not

"satisfy the injury-in-fact requirement of Article III." *Id.* (emphasis added). *Cf. Harris v. Amgen, Inc.*, 573 F.3d 728, 733 (9th Cir. 2009) (plaintiffs had standing under ERISA to recover losses occasioned by breach of fiduciary duty based on the plan administrators' purchase of stocks with artificially inflated prices); *Ziegler v. Connecticut Gen. Life Ins. Co.*, 916 F.2d 548, 551 (9th Cir. 1990) (plaintiffs need not allege injuries for certain ERISA violations, including a plan fiduciary's failure to perform for the exclusive benefit of participants and their beneficiaries). In *CIGNA*, the Supreme Court maintained a required showing of "actual harm" with respect to the question of standing. *CIGNA Corp. v. Amara*, 563 U.S. 421, 444 (2011).

Here, Plaintiff has alleged that the 401(k) QDRO contained the following defects: (1) the 401(k) QDRO did not specify a fixed dollar amount that would be provided to Young through the QDRO; (2) the 401(k) QDRO erroneously references "marital property rights"; and (3) the child support that Defendant owed Plaintiff was being paid through Defendant's wage garnishments. *Id.* ¶ 42. He then claims that his concrete, actual injury is "the improper transfer of $66,400 from his Ligand 401(k) account and improper transfer of 18,010 stock options granted to Plaintiff under the Ligand Pharmaceuticals Incorporated 2002 Stock Incentive Plan."[3] ECF No. 52 at 17-18.

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[3] Young asserts that Plaintiff's allegations regarding his concrete, actual injury is limited to the "improper transfer to and retention by Defendant of $66,400 from his Ligand 401(k) account in violation of ERISA's anti-alienation provision, and the

In order to find that Plaintiff has suffered a concrete harm based on the transfer of 401(k) funds and stock options, this Court would be called upon to judge the prior state court orders – i.e., the validity of the 401(k) QDRO and Stock DRO. As discussed above, such review is not permitted under *Rooker-Feldman*.

As to the third cause of action based upon failure to establish procedures to determine the qualified status of a qualified relations order, Plaintiff has similarly failed to point to any concrete harm that resulted from the absence of such procedures and the failure to communicate them and apply them.

Since Plaintiff has failed to identify a separate concrete or actual harm that is not barred by *Rooker-Feldman*, he has failed to meet the requirements for standing and Defendants' motion to dismiss for lack of standing will be granted.

As such, the Court therefore **GRANTS** Defendants' motion to dismiss based on standing as to all five claims brought under ERISA (first, second, third, fourth, and sixth causes of action).

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improper transfer to and retention by Defendant of 18,010 stock options granted to Plaintiff under the Ligand Pharmaceuticals Incorporated 2002 Stock Incentive Plan, among other injuries (including those under ERISA and common law)." ECF No. 53 at 9

C. Ligand's Fiduciary Duty Under ERISA

Of the three fiduciary duty claims under ERISA, only the third cause of action has survived *Rooker-Feldman* analysis. Assuming Plaintiff could show standing on the third cause of action, this cause of action fails to state a claim upon which relief can be granted.

In the third cause of action, Plaintiff asserts that Ligand breached its fiduciary duty under ERISA by failing to (1) establish reasonable, written procedures to determine the qualified status of a domestic relations order; (2) communicate those procedures to alternate payees; and (3) administer the distribution of benefits under qualified orders. Ligand contends that it has met its statutory duty under ERISA with respect to its approval process of the 401(k) QDRO. ECF No. 49 at 29. The Court agrees.

The duty for plan administrators in the QDRO approval process is one that is "relatively discrete, given the specific and objective criteria for a domestic relations order that qualifies as a QDRO." *Kennedy v. Plan Adm'r for DuPont Sav. & Inv. Plan*, 555 U.S. 285, 301-02 (2009). The *Kennedy* court likened the requirements to a "statutory checklist" that would "spare an administrator from litigation-fomenting ambiguities." *Id.* at 302 (internal citations omitted). A plan administrator should not be required to determine questions of law or factually complex and subjective determinations. *Id.* In fact, "[w]hen a QDRO is found to meet the statutory criteria, the law requires the [plan adminstrator's]

compliance with the QDRO *without* inquiry as to whether a valid QDRO actually complies with state laws." *Gray v. I.B.E.W. Local 332 Pension Tr.*, No. C09-03782 HRL, 2010 WL 3893590, at *3 (N.D. Cal. Sept. 30, 2010), *aff'd*, 495 F. App'x 831 (9th Cir. 2012) (emphasis in original).

Here, Ligand properly followed a checklist which satisfied the specificity requirements under 29 U.S.C. § 1056(d)(3)(C) and (D), to determine the validity of the 401(k) QDRO. ECF No. 49 at 30-31. Meanwhile, Plaintiff urges the Court to require more of Ligand based upon DOL Advisory Opinion 1999-13A and to hold that Defendants had a further fiduciary duty to investigate the validity of the 401(k) QDRO. The Court disagrees.

DOL Advisory Opinion 1999-13A provides guidance on the duties of a plan administrator in the processing of a QRDO. It was provided at the request of United Airlines as plan administrator and prompted by the submission and approval of dozens of questionable domestic relations orders. These orders were "questionable" or "sham" in nature since they suffered from several suspicious defects, including that several came from the same lawyer and listed the alternate payees and participants as having the same address. The DOL Advisory Opinion observed that a plan administrator who has received a document purporting to be a DRO must carry out his responsibilities under § 206(d)(3) in a manner consistent with his general fiduciary duties. However, the DOL stated clearly that the plan administrator is not required "to review the correctness of a determination by a competent State

authority pursuant to State domestic realtions law." DOL Advisory Opinion 1999-13A. Instead, where credible evidence that questions the validity of a QDRO surfaces, "the administrator must decide how best to resolve the question of validity without inappropriately involving the plan in the State domestic relations proceeding." That is because, "the administrator may not independently determine that the order is not valid under State law and therefore is not a 'domestic relations order.'" *Id.*

According to this advisory opinion, the appropriate course of action depends upon the actual facts and circumstances of the case. *Id.* Here, there was no suggestion of a sham QDRO that revealed any fraud by an attorney or participant or beneficiary. In fact, Plaintiff's challenge of the validity of the QDRO relies on the theory that the trial court erred in granting it, an error that was appealed to the appellate court. Given these claims, it is undisputed that the plan administrator waited until the court of appeals had rejected Plaintiff's challenges before it processed the QDRO. As a result, viewing the facts most favorable to Plaintiff, he has failed to identify a fiduciary duty that Ligand did not perform.

Accordingly, the third cause of action is **DISMISSED** with prejudice.

D. Pendent Jurisdiction

The supplemental jurisdiction statute provides:

> In any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

28 U.S.C. § 1367(a). The Ninth Circuit has concluded that "[t]he statute's plain language makes clear that supplemental jurisdiction may only be invoked when the district court has a hook of original jurisdiction on which to hang it." *Herman Family Revocable Trust v. Teddy Bear*, 254 F.3d 802, 805 (9th Cir. 2001) ("[I]f the federal claim [is] dismissed for lack of subject matter jurisdiction, a district court has no discretion to retain the supplemental claims for adjudication."). "[S]upplemental jurisdiction cannot exist without original jurisdiction . . . where there is no underlying original federal subject matter jurisdiction, the court has no authority to adjudicate supplemental claims under § 1367." *Id.* (*citing Textile Prods., Inc. v. Mead Corp.*, 134 F.3d 1481, 1485-86 (Fed. Cir. 1998); *Saksenasingh v. Sec'y of Educ.*, 126 F.3d 347, 351 (D.C. Cir. 1997).

In *Herman*, the Ninth Circuit vacated a district court's order where the district court had concluded that it lacked admiralty jurisdiction over the federal claims, but nevertheless proceeded to exercise supplemental jurisdiction over the state-law claims and

entered judgment for defendants. *Id.* at 804. The Ninth Circuit distinguished between the exercise of supplemental jurisdiction when the federal claim has been dismissed under Rule 12(b)(1) as opposed to 12(b)(6), finding that "[a] dismissal on the merits is different from a dismissal on jurisdictional grounds. If the district court dismisses all federal claims on the merits, it has discretion under § 1367(c) to adjudicate the remaining claims; if the court dismisses for lack of subject matter jurisdiction, it has no discretion and must dismiss all claims." *Id.* at 806.

Since this Court has dismissed Plaintiff's sole federal claim under Rule 12(b)(1) on the basis of lack of subject matter jurisdiction, the Court therefore concludes that it lacks the authority to exercise supplemental jurisdiction over Plaintiff's state law claims. *See id.*; *see also, e.g.*, *Langer v. Kacha*, No. 14-CV-2610-BAS(KSC), 2016 WL 524440, at *5 (S.D. Cal. Feb. 10, 2016) (dismissing state-law claims under *Herman* once the federal claim was dismissed for lack of subject matter jurisdiction); *ComUnity Collectors LLC v. Mortgage Elec. Registration Servs., Inc.*, No. C-11-4777 EMC, 2012 WL 3249509, at *1 (N.D. Cal. Aug. 7, 2012) (same); *Lopez v. Lassen Dairy, Inc.*, No. CV-F-08-121 LJO GSA, 2010 WL 4705521, at *2 (E.D. Cal. Nov. 12, 2010) (same). The Court thereby **DISMISSES** Plaintiff's state law claims – the fifth, seventh, eighth, and ninth causes of action – without prejudice so that they can be presented, as appropriate, to a state court with jurisdiction.

E. Collateral Estoppel

Defendants argue that Plaintiff's claims are barred by collateral estoppel. Since the claims have been dismissed on other grounds, it is unnecessary to analyze these claims under collateral estoppel principles.

F. Personal Jurisdiction as to Young

Defendant Young also raises a challenge based upon personal jurisdiction deficiencies. However, since the Court has dismissed all of the ERISA based claims against her, the Court finds this challenge is moot.

G. Sanctions

Young has requested the Court order sanctions under Rule 11 and under 28 U.S.C. § 1927 against Plaintiff and his attorneys, Mark Schechter and Paul Woodward of Butterfield Schechter LLP. ECF No. 58. An opposition was filed on October 4, 2019. ECF No. 60. A reply was filed on October 11, 2019. ECF No. 61.

Young alleges that the FAC is legally deficient and that Plaintiffs' attorneys did not perform a reasonable and competent inquiry before filing the FAC. ECF No. 58-1 at 12. Young additionally alleges that Plaintiff and his attorneys' decision to file this action was to "unnecessarily increase the cost of litigation for Ms. Young so that she is forced to the settlement table." ECF No. 58-1 at 17.

1. Rule 11

Rule 11 of the Federal Rules of Civil Procedure ("Rule 11") imposes a duty on attorneys to certify that (1) they have read the pleadings or the motions they file, and (2) the pleading or motion is well-grounded in fact, has a colorable basis in law, and is not filed for an improper purpose. *Sec. Farms. v. Int'l Bhd. of Teamsters*, 124 F.3d 999, 1016 (9th Cir. 1997) (citing Rule 11(b)). Generally, sanctions are appropriately imposed on an attorney for a filing "if either a) the paper is filed for an improper purpose, or b) the paper is 'frivolous.'" *Townsend v. Holman Consulting Corp.*, 929 F.2d 1358, 1362 (9th Cir. 1990) (quoting *Zaldivar v. City of Los Angeles*, 780 F.2d 823, 832 (9th Cir. 1986)).

However, as the Ninth Circuit has recognized, a special set of considerations pertain to Rule 11 motions directed at complaints. Unlike other filings, complaints may be challenged only for "frivolousness," which the Ninth Circuit uses as a "shorthand . . . to denote a filing that is both baseless and made without a reasonable and competent inquiry." *Id.* Unlike the "improper purpose" inquiry, "frivolousness" is not concerned with the motivations of the signing attorney, and "subjective evidence of the signer's purpose is to be disregarded" so long as the contested papers are not baseless. *Id.* According to the Ninth Circuit, complaints, which serve as the legal "vehicle through which [the plaintiff] enforces his substantive legal rights," should be preserved to the extent possible, since the successful vindication of "those rights benefits not only individual plaintiffs but may benefit the public." *Id.*

Frivolousness is determined objectively. "[T]he subjective intent of the . . . movant to file a meritorious document is of no moment. The standard is reasonableness. The 'reasonable [person]' against which conduct is tested is a competent attorney admitted to practice before the district court." *G.C. and K.B. Invest., Inc. v. Wilson*, 326 F.3d 1096, 1109 (9th Cir. 2003). At base, "[t]he issue in determining whether to impose sanctions under Rule 11 is whether a reasonable attorney, having conducted an objectively reasonable inquiry into the facts and law, would have concluded that the offending paper was well-founded." *Truesdell v. So. Cal. Permanente Med. Grp.*, 209 F.R.D. 169, 174 (C.D. Cal. 2002).

Cases warranting imposition of sanctions for frivolous actions are "rare and exceptional." *Operating Eng'rs Pension Trust v. A-C Co.*, 859 F.2d 1336, 1344 (9th Cir. 1988); *In re Keegan Mgmt. Co. Sec. Litig.*, 78 F.3d 431, 437 (9th Cir. 1996) (characterizing sanctions as "an extraordinary remedy, one to be exercised with extreme caution"). "District courts enjoy much discretion in determining whether and how much sanctions are appropriate." *Oliver v. In-N-Out Burgers*, 945 F. Supp. 2d 1126, 1130 (S.D. Cal. 2013) (citing *Haynes v. City & Cnty. of San Francisco*, 688 F.3d 984, 987 (9th Cir. 2012)). A district court's determination of whether to enter sanctions is reviewed for abuse of discretion. *Id.*

Here, Young bears the burden of demonstrating that the FAC includes sanctionable material. The FAC presented genuine questions of law and Plaintiff

alleged significant stakes since the sum of Plaintiffs' funds transferred to Young totaled to over $3 million. FAC ¶ 57. Having discerned no sanctionable material during the course of its review of the FAC, the Court **DENIES** Young's Rule 11 motion.

2. 28 U.S.C. § 1927

Pursuant to 28 U.S.C. § 1927, "[a]ny attorney . . . who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct." "[S]ection 1927 sanctions must be supported by a finding of subjective bad faith," which "is present when an attorney knowingly or recklessly raises a *frivolous* argument, or argues a meritorious claim for the purpose of harassing an opponent." *In re Keegan Mgmt. Co., Sec. Lit.*, 78 F.3d 431, 436 (9th Cir.1996) (internal quotations omitted) (emphasis added).

The Ninth Circuit has found that while recklessness may be the standard under § 1927, "it is an insufficient basis for sanctions under a court's inherent power." *In re Keegan Mgmt. Co., Sec. Litig.*, 78 F.3d 431, 436 (9th Cir. 1996). Instead, counsel's conduct must "constitute[] or [be] tantamount to bad faith." *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 767, 100 S.Ct. 2455, 2465, 65 L.Ed.2d 488 (1980). In sanctioning counsel, "[c]ourts may not invoke [inherent] powers without a 'specific finding of bad faith.'" *Yagman v. Republic Ins.*, 987 F.2d 622, 628 (9th Cir.1993) (quoting

United States v. Stoneberger, 805 F.2d 1391, 1393 (9th Cir.1986)); *accord Zambrano v. City of Tustin*, 885 F.2d 1473, 1478 (9th Cir.1989) ("To insure that restraint is properly exercised, we have routinely insisted upon a finding of bad faith before sanctions may be imposed under the court's inherent power."). "Bad faith is present when an attorney knowingly or recklessly raises a frivolous argument or argues a meritorious claim for the purpose of harassing an opponent." *Trulis v. Barton*, 107 F.3d 685, 694 (9th Cir. 1995).

Here, Young asserts that Plaintiff's failure to add facts in his amended complaint to address the issues raised in Young's original mooted motion to dismiss is proof of Plaintiff's attempt to multiply the proceedings. Young's filing of the amended complaint is insufficient to constitute bad faith given that the original motion to dismiss had not been ruled on. In *Stone Creek*, the Ninth Circuit affirmed the lower court's sanctions order since the plaintiff failed to drop withdraw its actual damages claim when the plaintiff knew that its actual damages claim was meritless, and plaintiff intended to pursue only the defendant's profits. *Stone Creek, Inc. v. Omnia Italian Design, Inc.*, 875 F.3d 426, 443 (9th Cir. 2017), *cert. denied*, 138 S. Ct. 1984, 201 L. Ed. 2d 248 (2018). In the district court proceedings, the plaintiff opposed the defendant's motion to vacate the jury trial and caused additional expense and delay. *Stone Creek Inc. v. Omnia Italian Design Inc.*, No. CV-13-00688-PHX-DLR, 2016 WL 492629, at *2 (D. Ariz. Feb. 9, 2016), *aff'd*, 862 F.3d 1131 (9th Cir. 2017), and *aff'd*, 875 F.3d 426 (9th Cir. 2017). As a

result of the plaintiff's opposition, the defendant was "forced to expend time and resources defending against the claim by, for example, taking depositions and having its expert prepare a report." *Stone Creek*, 875 F.3d at 443.

Here, Plaintiff has not engaged in comparable behavior to support a finding of bad faith. The Court therefore **DENIES** Young's 28 U.S.C. § 1927 motion.[4]

V. MOTIONS TO SEAL

Young filed a motion to file documents under seal accompanying her motion to dismiss the FAC ("First Motion"), ECF No. 47, and filed a second motion to file documents under seal accompanying her motion for sanctions. ECF No. 56 ("Second Motion"). Ligand also filed a motion to file documents under seal. ECF No. 48. No oppositions have been filed.

In her First Motion, Young seeks to file under seal Exhibits 1-11 and 15-20. ECF No. 47. To support her argument, Young cites the prior sealing order by the Texas state court which oversaw the case for which these documents were filed. ECF No. 47. The remaining exhibits that Young seeks to file (i.e., Exhibits 12-14) are documents filed in the San Diego superior court. The Court has previously granted Young's motion to seal documents filed in Texas state court and

[4] Young filed a request for judicial notice accompanying her motion for sanctions seeking judicial notice of twenty-six documents. Since Young's motion for sanctions has been denied in full, the request for judicial notice is rendered moot.

San Diego superior court – the majority of which are identical to the Exhibits in the First Motion. ECF. No. 42. Given the prior sealing order by the Texas state court and for reasons similar to those stated in the Court's prior order granting motions to seal, the Court **GRANTS** Young's motion to file Exhibits 1-11 and 15-20 under seal.

In the Second Motion, Young seeks to file under seal Exhibits 1-18 and 24-27. ECF No. 56. Exhibits 1-18 are identical to sealed exhibits from the First Motion. Exhibits 24-27 are also documents filed related to the Texas state court proceedings. For the same reasons as articulated above, Young's motion to file Exhibits 1-18 and 24-27 under seal is **GRANTED.** The remaining exhibits in her Second Motion (i.e., Exhibits 19-23) are comprised of proof of service of Young's sanctions motion, and four sets of email correspondence between Plaintiff, Young's Texas counsel, and the Court coordinator.

Ligand seeks to seal limited redacted portions of the memorandum support of their motion to dismiss. ECF No. 48. As support for this, Ligand asserts that these excerpts refer to the Texas state court orders that Young has filed under seal in connection with her motion to dismiss. The Court has previously granted Ligand's motion to seal limited redacted portions in support of their motion to dismiss. ECF No. 42. For reasons similar to those stated in the Court's prior order granting Ligand's motion to seal, the Court **GRANTS** Ligand's motion to seal limited redacted portions of the memorandum in support of their motion to dismiss at

the following page and line numbers: 1:7, 2:23-25, 3:2-18 and n.4; 4:1-5, 10:3-4, and 12:13-14.

Accordingly, Defendants' motions to seal are **GRANTED.**

VI. Conclusion

Based on the above, the Court GRANTS the Defendants motions to dismiss the first, second, third, fourth and sixth causes of action with prejudice and without leave to amend. The remaining state law claims – the fifth, seventh, eighth, and ninth causes of action – are dismissed without prejudice so that they can be raised, as appropriate, in state court.

IT IS SO ORDERED.

Dated: December 5, 2019

/s/ Gonzalo P. Curiel
Gonzalo P. Curiel
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIAN LUNDSTROM, Plaintiff-Appellant, v. CARLA YOUNG; et al., Defendants-Appellees.	No. 20-55002 D.C. No. 3:18-cv-02856-GPC-MSB Southern District of California, San Diego ORDER (Filed Jun. 14, 2021)

Before: M. SMITH and IKUTA, Circuit Judges, and STEELE,* District Judge.

The panel unanimously voted to deny the petitions for panel rehearing (Dts. 89, 90). Judges M. Smith and Ikuta voted to deny the petitions for rehearing en banc, and Judge Steele so recommends.

The full court has been advised of the petitions for rehearing en banc and no judge of the court has requested a vote on either petition. Fed. R. App. P. 35.

The petitions for panel rehearing and the petitions for rehearing en banc are **DENIED**.

* The Honorable John E. Steele, United States District Judge for the Middle District of Florida, sitting by designation.

RELEVANT STATUTES

29 U.S.C. § 1132. Civil enforcement

(a) Persons empowered to bring a civil action

A civil action may be brought –

(1) by a participant or beneficiary –

(A) for the relief provided for in subsection (c) of this section, or

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 1109 of this title;

(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan;

(4) by the Secretary, or by a participant, or beneficiary for appropriate relief in the case of a violation of 1025(c) of this title;

(5) except as otherwise provided in subsection (b), by the Secretary (A) to enjoin any act or practice which violates any provision of this subchapter, or (B) to obtain other appropriate equitable

relief (i) to redress such violation or (ii) to enforce any provision of this subchapter;

(6) by the Secretary to collect any civil penalty under paragraph (2), (4), (5), (6), (7), (8), or (9) of subsection (c) or under subsection (i) or (ii);

(7) by a State to enforce compliance with a qualified medical child support order (as defined in section 1169(a)(2)(A) of this title);

(8) by the Secretary, or by an employer or other person referred to in section 1021(f)(1) of this title, (A) to enjoin any act or practice which violates subsection (f) of section 1021 of this title, or (B) to obtain appropriate equitable relief (i) to redress such violation or (ii) to enforce such subsection;

(9) in the event that the purchase of an insurance contract or insurance annuity in connection with termination of an individual's status as a participant covered under a pension plan with respect to all or any portion of the participant's pension benefit under such plan constitutes a violation of part 4 of this title[1] or the terms of the plan, by the Secretary, by any individual who was a participant or beneficiary at the time of the alleged violation, or by a fiduciary, to obtain appropriate relief, including the posting of security if necessary, to assure receipt by the participant or beneficiary of the amounts provided or to be provided by such insurance contract or annuity, plus reasonable prejudgment interest on such amounts;

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[1] So in original. Probably should be "subtitle".

(10) in the case of a multiemployer plan that has been certified by the actuary to be in endangered or critical status under section 1085 of this title, if the plan sponsor –

> **(A)** has not adopted a funding improvement or rehabilitation plan under that section by the deadline established in such section, or
>
> **(B)** fails to update or comply with the terms of the funding improvement or rehabilitation plan in accordance with the requirements of such section,
>
> by an employer that has an obligation to contribute with respect to the multiemployer plan or an employee organization that represents active participants in the multiemployer plan, for an order compelling the plan sponsor to adopt a funding improvement or rehabilitation plan or to update or comply with the terms of the funding improvement or rehabilitation plan in accordance with the requirements of such section and the funding improvement or rehabilitation plan; or

(11) in the case of a multiemployer plan, by an employee representative, or any employer that has an obligation to contribute to the plan, (A) to enjoin any act or practice which violates subsection (k) of section 1021 of this title (or, in the case of an employer, subsection (1) of such section), or (B) to obtain appropriate equitable relief (i) to redress such violation or (ii) to enforce such subsection.

(b) Plans qualified under Internal Revenue Code; maintenance of actions involving delinquent contributions

(1) In the case of a plan which is qualified under section 401(a), 403(a), or 405(a)[2] of Title 26 (or with respect to which an application to so qualify has been filed and has not been finally determined) the Secretary may exercise his authority under

subsection (a)(5) with respect to a violation of, or the enforcement of, parts 2 and 3 of this subtitle (relating to participation, vesting, and funding), only if –

(A) requested by the Secretary of the Treasury, or

(B) one or more participants, beneficiaries, or fiduciaries, of such plan request in writing (in such manner as the Secretary shall prescribe by regulation) that he exercise such authority on their behalf. In the case of such a request under this paragraph he may exercise such authority only if he determines that such violation affects, or such enforcement is necessary to protect, claims of participants or beneficiaries to benefits under the plan.

(2) The Secretary shall not initiate an action to enforce section 1145 of this title.

(3) Except as provided in subsections (c)(9) and (a)(6) (with respect to collecting civil penalties under subsection (c)(9)), the Secretary is not authorized to enforce under this part any requirement of part 7 against a health insurance issuer offering health insurance

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[2] See References in Text note set out under this section.

coverage in connection with a group health plan (as defined in section 1191b(a)(1) of this title). Nothing in this paragraph shall affect the authority of the Secretary to issue regulations to carry out such part.

(c) Administrator's refusal to supply requested information; penalty for failure to provide annual report in complete form

(1) Any administrator (A) who fails to meet the requirements of paragraph (1) or (4) of section 1166 of this title, section 1021(e) of this title, section 1021(f) of this title, or section 1025(a) of this title with respect to a participant or beneficiary, or (B) who fails or refuses to comply with a request for any information which such administrator is required by this subchapter to furnish to a participant or beneficiary (unless such failure or refusal results from matters reasonably beyond the control of the administrator) by mailing the material requested to the last known address of the requesting participant or beneficiary within 30 days after such request may in the court's discretion be personally liable to such participant or beneficiary in the amount of up to $100 a day from the date of such failure or refusal, and the court may in its discretion order such other relief as it deems proper. For purposes of this paragraph, each violation described in subparagraph (A) with respect to any single participant, and each violation described in subparagraph (B) with respect to any single participant or beneficiary, shall be treated as a separate violation.

(2) The Secretary may assess a civil penalty against any plan administrator of up to $1,000 a day from the date of such plan administrator's failure or refusal to file the annual report required to be filed with the

Secretary under section 1021(b)(1) of this title. For purposes of this paragraph, an annual report that has been rejected under section 1024(a)(4) of this title for failure to provide material information shall not be treated as having been filed with the Secretary.

(3) Any employer maintaining a plan who fails to meet the notice requirement of section 1021(d) of this title with respect to any participant or beneficiary or who fails to meet the requirements of section 1021(e)(2) of this title with respect to any person or

who fails to meet the requirements of section 1082(d)(12)(E)[2] of this title with respect to any person may in the court's discretion be liable to such participant or beneficiary or to such person in the amount of up to $100 a day from the date of such failure, and the court may in its discretion order such other relief as it deems proper.

(4) The Secretary may assess a civil penalty of not more than $1,000 a day for each violation by any person of subsection (j), (k), or (l) of section 1021 of this title or section 1144(e)(3) of this title.

(5) The Secretary may assess a civil penalty against any person of up to $1,000 a day from the date of the person's failure or refusal to file the information required to be filed by such person with the Secretary under regulations prescribed pursuant to section 1021(g) of this title.

(6) If, within 30 days of a request by the Secretary to a plan administrator for documents under section 1024(a)(6) of this title, the plan administrator fails to

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[2] See References in Text note set out under this section.

furnish the material requested to the Secretary, the Secretary may assess a civil penalty against the plan administrator of up to $100 a day from the date of such failure (but in no event in excess of $1,000 per request). No penalty shall be imposed under this paragraph for any failure resulting from matters reasonably beyond the control of the plan administrator.

(7) The Secretary may assess a civil penalty against a plan administrator of up to $100 a day from the date of the plan administrator's failure or refusal to provide notice to participants and beneficiaries in accordance with subsection (i) or (m) of section 1021 of this title. For purposes of this paragraph, each violation with respect to any single participant or beneficiary shall be treated as a separate violation.

(8) The Secretary may assess against any plan sponsor of a multiemployer plan a civil penalty of not more than $1,100 per day –

> **(A)** for each violation by such sponsor of the requirement under section 1085 of this title to adopt by the deadline established in that section a funding improvement plan or rehabilitation plan with respect to a multiemployer plan which is in endangered or critical status, or
>
> **(B)** in the case of a plan in endangered status which is not in seriously endangered status, for failure by the plan to meet the applicable benchmarks under section 1085 of this title by the end of the funding improvement period with respect to the plan.

(9)(A) The Secretary may assess a civil penalty against any employer of up to $100 a day from the date

of the employer's failure to meet the notice requirement of section 1181(f)(3)(B)(i)(I) of this title. For purposes of this subparagraph, each violation with respect to any single employee shall be treated as a separate violation.

(B) The Secretary may assess a civil penalty against any plan administrator of up to $100 a day from the date of the plan administrator's failure to timely provide to any State the information required to be disclosed under section 1181(f)(3)(B)(ii) of this title. For purposes of this subparagraph, each violation with respect to any single participant or beneficiary shall be treated as a separate violation.

(10) Secretarial enforcement authority relating to use of genetic information

(A) General rule

The Secretary may impose a penalty against any plan sponsor of a group health plan, or any health insurance issuer offering health insurance coverage in connection with the plan, for any failure by such sponsor or issuer to meet the requirements of subsection (a)(1)(F), (b)(3), (c), or (d) of section 1182 of this title or section 1181 or 1182(b)(1) of this title with respect to genetic information, in connection with the plan.

(B) Amount

(i) In general

The amount of the penalty imposed by subparagraph (A) shall be $100 for each day in the noncompliance period with

respect to each participant or beneficiary to whom such failure relates.

(ii) Noncompliance period

For purposes of this paragraph, the term "noncompliance period" means, with respect to any failure, the period –

(I) beginning on the date such failure first occurs; and

(II) ending on the date the failure is corrected.

(C) Minimum penalties where failure discovered

Notwithstanding clauses (i) and (ii) of subparagraph (D):

(i) In general

In the case of 1 or more failures with respect to a participant or beneficiary –

(I) which are not corrected before the date on which the plan receives a notice from the Secretary of such violation; and

(II) which occurred or continued during the period involved;

the amount of penalty imposed by subparagraph (A) by reason of such failures with respect to such participant or beneficiary shall not be less than $2,500.

(ii) Higher minimum penalty where violations are more than de minimis

To the extent violations for which any person is liable under this paragraph for any year are more than de minimis, clause (i) shall be applied by substituting "$15,000" for "$2,500" with respect to such person.

(D) Limitations

(i) Penalty not to apply where failure not discovered exercising reasonable diligence

No penalty shall be imposed by subparagraph (A) on any failure during any period for which it is established to the satisfaction of the Secretary that the person otherwise liable for such penalty did not know, and exercising reasonable diligence would not have known, that such failure existed.

(ii) Penalty not to apply to failures corrected within certain periods No penalty shall be imposed by subparagraph (A) on any failure if –

(I) such failure was due to reasonable cause and not to willful neglect; and

(II) such failure is corrected during the 30-day period beginning on the first date the person otherwise liable for such penalty knew, or exercising

reasonable diligence would have known, that such failure existed.

(iii) Overall limitation for unintentional failures

In the case of failures which are due to reasonable cause and not to willful neglect, the penalty imposed by subparagraph (A) for failures shall not exceed the amount equal to the lesser of –

(I) 10 percent of the aggregate amount paid or incurred by the plan sponsor (or predecessor plan sponsor) during the preceding taxable year for group health plans; or

(II) $500,000.

(E) Waiver by Secretary

In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the penalty imposed by subparagraph (A) to the extent that the payment of such penalty would be excessive relative to the failure involved.

(F) Definitions

Terms used in this paragraph which are defined in section 1191b of this title shall have the meanings provided such terms in such section.

(11) The Secretary and the Secretary of Health and Human Services shall maintain such ongoing consultation as may be necessary and appropriate

to coordinate enforcement under this subsection with enforcement under section 1320b-14(c)(8)[2] of Title 42.

(12) The Secretary may assess a civil penalty against any sponsor of a CSEC plan of up to $100 a day from the date of the plan sponsor's failure to comply with the requirements of section 1085a(j)(3) of this title to establish or update a funding restoration plan.

(d) Status of employee benefit plan as entity

(1) An employee benefit plan may sue or be sued under this subchapter as an entity. Service of summons, subpena, or other legal process of a court upon a trustee or an administrator of an employee benefit plan in his capacity as such shall constitute service upon the employee benefit plan. In a case where a plan has not designated in the summary plan description of the plan an individual as agent for the service of legal process, service upon the Secretary shall constitute such service. The Secretary, not later than 15 days after receipt of service under the preceding sentence, shall notify the administrator or any trustee of the plan of receipt of such service.

(2) Any money judgment under this subchapter against an employee benefit plan shall be enforceable only against the plan as an entity and shall not be enforceable against any other person unless liability against such person is established in his individual capacity under this subchapter.

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[2] See References in Text note set out under this section.

(e) Jurisdiction

(1) Except for actions under subsection (a)(1)(B) of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this subchapter brought by the Secretary or by a participant, beneficiary, fiduciary, or any person referred to in section 1021(f)(1) of this title. State courts of competent jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under paragraphs (1)(B) and (7) of subsection (a) of this section.

(2) Where an action under this subchapter is brought in a district court of the United States, it may be brought in the district where the plan is administered, where the breach took place, or where a defendant resides or may be found, and process may be served in any other district where a defendant resides or may be found.

(f) Amount in controversy; citizenship of parties

The district courts of the United States shall have jurisdiction, without respect to the amount in controversy or the citizenship of the parties, to grant the relief provided for in subsection (a) of this section in any action.

(g) Attorney's fees and costs; awards in actions involving delinquent contributions

(1) In any action under this subchapter (other than an action described in paragraph (2)) by a participant, beneficiary, or fiduciary, the court in its discretion may allow a reasonable attorney's fee and costs of action to either party.

(2) In any action under this subchapter by a fiduciary for or on behalf of a plan to enforce section 1145 of this title in which a judgment in favor of the plan is awarded, the court shall award the plan –

(A) the unpaid contributions,

(B) interest on the unpaid contributions,

(C) an amount equal to the greater of –

(i) interest on the unpaid contributions, or

(ii) liquidated damages provided for under the plan in an amount not in excess of 20 percent (or such higher percentage as may be permitted under Federal or State law) of the amount determined by the court under subparagraph (A),

(D) reasonable attorney's fees and costs of the action, to be paid by the defendant, and

(E) such other legal or equitable relief as the court deems appropriate.

For purposes of this paragraph, interest on unpaid contributions shall be determined by using the rate provided under the plan, or, if none, the rate prescribed under section 6621 of Title 26.

(h) Service upon Secretary of Labor and Secretary of the Treasury

A copy of the complaint in any action under this subchapter by a participant, beneficiary, or fiduciary (other than an action brought by one or more participants or beneficiaries under subsection (a)(1)(B) which is solely for the purpose of recovering benefits due such

participants under the terms of the plan) shall be served upon the Secretary and the Secretary of the Treasury by certified mail. Either Secretary shall have the right in his discretion to intervene in any action, except that the Secretary of the Treasury may not intervene in any action under part 4 of this subtitle. If the Secretary brings an action under subsection (a) on behalf of a participant or beneficiary, he shall notify the Secretary of the Treasury.

(i) Administrative assessment of civil penalty

In the case of a transaction prohibited by section 1106 of this title by a party in interest with respect to a plan to which this part applies, the Secretary may assess a civil penalty against such party in interest. The amount of such penalty may not exceed 5 percent of the amount involved in each such transaction (as defined in section 4975(f)(4) of Title 26) for each year or part thereof during which the prohibited transaction continues, except that, if the transaction is not corrected (in such manner as the Secretary shall prescribe in regulations which shall be consistent with section 4975(f)(5) of Title 26) within 90 days after notice from the Secretary (or such longer period as the Secretary may permit), such penalty may be in an amount not more than 100 percent of the amount involved. This subsection shall not apply to a transaction with respect to a plan described in section 4975(e)(1) of Title 26.

(j) Direction and control of litigation by Attorney General

In all civil actions under this subchapter, attorneys appointed by the Secretary may represent the Secretary (except as provided in section 518(a) of Title 28), but

all such litigation shall be subject to the direction and control of the Attorney General.

(k) Jurisdiction of actions against the Secretary of Labor

Suits by an administrator, fiduciary, participant, or beneficiary of an employee benefit plan to review a final order of the Secretary, to restrain the Secretary from taking any action contrary to the provisions of this chapter, or to compel him to take action required under this subchapter, may be brought in the district court of the United States for the district where the plan has its principal office, or in the United States District Court for the District of Columbia.

(l) Civil penalties on violations by fiduciaries

(1) In the case of –

(A) any breach of fiduciary responsibility under (or other violation of) part 4 of this subtitle by a fiduciary, or

(B) any knowing participation in such a breach or violation by any other person,

the Secretary shall assess a civil penalty against such fiduciary or other person in an amount equal to 20 percent of the applicable recovery amount.

(2) For purposes of paragraph (1), the term "applicable recovery amount" means any amount which is recovered from a fiduciary or other person with respect to a breach or violation described in paragraph (1) –

(A) pursuant to any settlement agreement with the Secretary, or

(B) ordered by a court to be paid by such fiduciary or other person to a plan or its participants and beneficiaries in a judicial proceeding instituted by the Secretary under subsection (a)(2) or (a)(5).

(3) The Secretary may, in the Secretary's sole discretion, waive or reduce the penalty under paragraph (1) if the Secretary determines in writing that –

(A) the fiduciary or other person acted reasonably and in good faith, or

(B) it is reasonable to expect that the fiduciary or other person will not be able to restore all losses to the plan (or to provide the relief ordered pursuant to subsection (a)(9)) without severe financial hardship unless such waiver or reduction is granted.

(4) The penalty imposed on a fiduciary or other person under this subsection with respect to any transaction shall be reduced by the amount of any penalty or tax imposed on such fiduciary or other person with respect to such transaction under subsection (i) of this section and section 4975 of Title 26.

(m) Penalty for improper distribution

In the case of a distribution to a pension plan participant or beneficiary in violation of section 1056(e) of this title by a plan fiduciary, the Secretary shall assess a penalty against such fiduciary in an amount equal to the value of the distribution. Such penalty shall not exceed $10,000 for each such distribution.

Texas Family Code
§ 9.101. Jurisdiction for
Qualified Domestic Relations Order

(a) Notwithstanding any other provision of this chapter, the court that rendered a final decree of divorce or annulment or another final order dividing property under this title retains continuing, exclusive jurisdiction to render an enforceable qualified domestic relations order or similar order permitting payment of pension, retirement plan, or other employee benefits divisible under the law of this state or of the United States to an alternate payee or other lawful payee.

(b) Unless prohibited by federal law, a suit seeking a qualified domestic relations order or similar order under this section applies to a previously divided pension, retirement plan, or other employee benefit divisible under the law of this state or of the United States, whether the plan or benefit is private, state, or federal.

Texas Family Code
§ 9.104. Defective Prior Domestic Relations Order

If a plan administrator or other person acting in an equivalent capacity determines that a domestic relations order does not satisfy the requirements of a qualified domestic relations order or similar order, the court retains continuing, exclusive jurisdiction over

the parties and their property to the extent necessary to render a qualified domestic relations order.

Texas Family Code
§ 9.1045. Amendment of
Qualified Domestic Relations Order

(a) A court that renders a qualified domestic relations order retains continuing, exclusive jurisdiction to amend the order to correct the order or clarify the terms of the order to effectuate the division of property ordered by the court.

(b) An amended domestic relations order under this section must be submitted to the plan administrator or other person acting in an equivalent capacity to determine whether the amended order satisfies the requirements of a qualified domestic relations order. Section 9.104 applies to a domestic relations order amended under this section.

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

BRIAN LUNDSTROM, Plaintiff, v. CARLA YOUNG, an individual; LIGAND PHARMACEUTICALS, INC.; LIGAND PHARMACEUTIALS, INC. 401(k) PLAN; and DOES 1 through 20, Defendants.	CASE NO. 3:18-cv-02856-GPC-MSB Assigned to: Hon. Gonzalo P. Curiel Mag. Judge: Hon. Michael S. Berg FIRST AMENDED COMPLAINT FOR ACTIONS ARISING UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT AND RELATED STATE LAW ACTIONS (Filed Jun. 19, 2019) Complaint filed: December 20, 2018 Trial date: None set

Plaintiff Brian Lundstrom, in his individual capacity, by and through his undersigned counsel, files this First Amended Complaint ("FAC") against Defendants Carla Young, Ligand Pharmaceuticals Incorporated, Ligand Pharmaceuticals, Inc. 401(k) Plan, and Does 1 through 20, inclusive, (collectively referred to herein as "Defendants") as follows:

NATURE OF THE ACTION

1. This action arises under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. § 1001, et seq., and more particularly §§ 1132(a)(1)(A) and 1132(a)(3).

JURISDICTION AND VENUE

2. **Subject Matter Jurisdiction.** This Court has subject matter jurisdiction over this action pursuant to ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

3. **Personal Jurisdiction.** ERISA provides for nation-wide service of process pursuant to ERISA § 502, 29 U.S.C. § 1132. All defendants are either residents of the United States or subject to the service in the United States and this Court therefore has personal jurisdiction over them. The Court has specific personal jurisdiction over Ms. Young because she received services/benefits from the 401(k) Plan and/or she engaged in conduct described herein which took place in and/or was specifically directed towards this district.

4. **Supplemental Jurisdiction.** This Court has supplemental jurisdiction over the third, fifth, and sixth causes of action of this FAC pursuant to 28 U.S.C. § 1367 in that all claims and causes of action within this FAC are so related that they comprise one case, and all claims and causes of action arise from the same operative facts.

5. **Venue.** Venue is proper in this district pursuant to 29 U.S.C. § 1132(e)(2) because the breach took place within this District; the 401(k) Plan is administered in San Diego, California, within this district; some or all of the events or omissions giving rise to the claims occurred in this district; and/or at least one of the Defendants may be found within this district.

STANDING

6. Plaintiff has standing under ERISA, 29 U.S.C. §§ 1001, et seq., and in accordance with the decision *Stewart v. Thorpe Holding Company Profit Sharing Plan, et al.*, 207 F.3d 1143 (9th Cir. 2000) cert. denied.

PARTIES

7. At all relevant times, Plaintiff was and is an individual who resides in Henderson, Nevada. At all times relevant to this FAC, Plaintiff was and is a plan participant in the Ligand Pharmaceuticals, Inc. 401(k) Plan.

8. At all relevant times, Defendant Carla Young ("Ms. Young") was and is an individual who resides in Southlake, Texas.

9. At all relevant times, Defendant Ligand Pharmaceuticals, Inc. 401(k) Plan (the "401(k) Plan") was and is a qualified retirement plan under ERISA.

10. At all relevant times, Defendant Ligand Pharmaceuticals Incorporated ("Ligand"), was and is a Delaware corporation doing business in the City of San Diego, State of California. At all times relevant, Ligand was and is currently the Plan Sponsor of the 401(k) Plan within the meaning of ERISA § 3(16)(B), 29 U.S.C. § 1002(16)(B), a named Plan Administrator under ERISA § 3(16)(A), 29 U.S.C. § 1002(16)(A), and a fiduciary within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A). At all relevant times, Ligand was a fiduciary of the 401(k) Plan within the meaning of ERISA § 3(21)(A) because it exercised discretionary authority or discretionary control respecting management or distribution of the 401(k) Plan's assets and had discretionary authority or discretionary responsibility in the administration of the 401(k) Plan. At all relevant times, Ligand was also a "party in interest" as to the 401(k) Plan as defined in ERISA § 3(14), 29 U.S.C. 1002(14), because it was an "employer, any of whose employees are covered" by the 401(k) Plan. At all times relevant, Ligand administered the 401(k) Plan from its office located in San Diego, California.

11. Does 1 through 20 are fictitiously named defendants whose true names and identities have not yet

been ascertained, but who, upon information and belief, are in some way responsible for the harm alleged by Plaintiff in this FAC. Once such defendants have been properly identified, Plaintiff will request leave of the Court to amend this FAC in order to incorporate these defendants using their true names and identities.

FACTUAL BACKGROUND

12. Plaintiff incorporates by reference the above paragraphs as though they were fully set forth herein.

13. Plaintiff and Ms. Young married on or around August 21, 1998, in Seattle, Washington.

14. Plaintiff and Ms. Young separated on or around May 20, 2012.

15. Plaintiff and Ms. Young legally divorced according to an agreed decree signed by a Texas court on July 30, 2014.

16. Approximately one and a half years after his divorce decree was signed, Plaintiff became employed by Ligand on or about January 8, 2016. Plaintiff is currently a Ligand employee working remotely from his home in Henderson, Nevada. As part of his job at Ligand, Plaintiff regularly travels to Ligand's office located in San Diego, California.

17. The Ligand 401(k) Plan was first established for the benefit of the employees of Ligand effective as of June 1, 1990.

18. By virtue of his employment, Plaintiff commenced participating in the Ligand 401(k) Plan on or about April 1, 2016.

19. Plaintiff's participation in the 401(k) Plan commenced after his divorce. Therefore, all of the contributions he made to the 401(k) Plan constitute his separate, post-marital property.

20. As part of his employment compensation package, Plaintiff was also granted company stock options pursuant to the Ligand Pharmaceuticals Incorporated 2002 Stock Incentive Plan, as Amended and Restated Effective May 23, 2016 (the "Stock Incentive Plan").

21. Ligand granted Plaintiff 18,010 stock options in two lots (referred to herein as "Incentive Stock Options") under the Stock Incentive Plan. The Incentive Stock Options were granted to Plaintiff in the years following Plaintiff's dissolution of marriage and constitute his separate, post-marital property. The Incentive Stock Options vest two and a half to six and a half years after the definitive divorce and do not expire until 2027 and 2028.

Texas State Orders

22. On September 13, 2017, the District Court 231st Judicial District of Tarrant County issued an order requiring Plaintiff pay $55,533.03 in child support arrearages to Ms. Young. The order specifies that the child support judgment shall be paid by paying $3,500

each month until the arrearage is paid in full. The order further specifies that arrearages owed may be withheld from earnings from Plaintiff's present and subsequent employers.

23. Upon information and belief, following the issuance of the September 13, 2017, order for to child support arrearages, Ms. Young, through her counsel of record in Texas (KoonsFuller), prepared a document which by its title purports to be a qualified domestic relations order seeking 100 percent of the benefits held in Plaintiff's account in the 401(k) Plan (referred to herein as the "401(k) QDRO").

24. Upon information and belief, Ms. Young, through her counsel of record in Texas, submitted the 401(k) QDRO to the District Court 231st Judicial District of Tarrant County, Texas for the court's signature.

25. Plaintiff was not notified of the fact that Ms. Young had submitted the 401(k) QDRO to the District Court 231st Judicial District of Tarrant County, Texas, at the time of the submission.

26. Plaintiff was not given an opportunity to review or approve the 401(k) QDRO prior to it being submitted to the District Court 231st Judicial District of Tarrant County, Texas.

27. Plaintiff was not given an opportunity to contest the validity of the 401(k) QDRO at a duly noticed hearing prior to the time Ms. Young submitted the document to the District Court 231st Judicial District of Tarrant County, Texas, for the court's signature.

28. Upon information and belief, on or about November 21, 2017, the District Court 231st Judicial District of Tarrant County, Texas, *signed* a document which by its title purports to be a qualified domestic relations order seeking 100 percent of the benefits held in Plaintiff's account in the 401(k) Plan.

29. The 401(k) QDRO states that the order "relates to the provision of marital property rights for Alternate Payee." The tax implications differ when a qualified domestic relations order is for marital property rights versus child support.

30. The 401(k) QDRO states that it "awards, assigns, and grants to" Ms. Young an amount equal to 100 percent of Plaintiff's total account balance in the 401(k) Plan despite the fact Plaintiff had no unpaid child support and there was no award of spousal support or division of the Ligand 401(k) Plan as marital property.

31. Upon information and belief, Ms. Young, through her counsel of record in Texas (KoonsFuller), prepared a second document which by its title purports to be a domestic relations order seeking to transfer 18,010 Incentive Stock Options granted to Plaintiff under the Stock Incentive Plan (referred to herein as the "Stock DRO").

32. Upon information and belief, Ms. Young, through her counsel of record in Texas, submitted the Stock DRO to the District Court 231st Judicial District of Tarrant County, Texas, for the court's signature.

33. Plaintiff was not notified of the fact that Ms. Young had submitted the Stock QDRO to the District Court 231st Judicial District of Tarrant County, Texas, at the time of the submission.

34. Plaintiff was not given an opportunity to review or approve the Stock DRO prior to it being submitted to the District Court 231st Judicial District of Tarrant County, Texas.

35. Plaintiff was not given an opportunity to contest the validity of the Stock DRO at a duly noticed hearing prior to the time Ms. Young submitted the document to the District Court 231st Judicial District of Tarrant County, Texas, for the court's signature.

36. Upon information and belief, on or about January 22, 2018, the District Court 231st Judicial District of Tarrant County, Texas, *signed* a document which by its title purports to be a domestic relations order seeking to transfer 18,010 Incentive Stock Options granted to Plaintiff under the Stock Incentive Plan.

37. The Stock DRO identifies Ms. Young as the "Alternate Payee."

38. The Stock DRO identifies 18,010 Incentive Stock Options granted to Plaintiff under the Stock Incentive Plan. However, the Stock DRO does not specify or identify any amount of unpaid child or spousal support owed by Plaintiff that is being satisfied through the Stock DRO.

Ligand's Processing and Approval of the 401(k) QDRO

39. In late 2017, Ms. Young, by and through her legal counsel, sent Ligand a copy of the 401(k) QDRO seeking to transfer 100% of Plaintiff's post-marital retirement benefits held in Ligand's 401(k) Plan.

40. On January 4, 2018, Ligand forwarded a copy of 401(k) QDRO to Plaintiff.

41. Ligand did not provide Plaintiff with a copy of Ligand's qualified domestic relations order processing procedures at the time he was forwarded a copy of the 401(k) QDRO. To date, Ligand has failed to provide Plaintiff with a copy of Ligand's qualified domestic relations order processing procedures for Ligand's 401(k) Plan.

42. After receiving notice of the 401(k) QDRO from Ligand, Plaintiff raised the following issues with Ligand concerning the validity of the 401(k) QDRO: (1) although the 401(k) QDRO expressly states that it relates "to the provision of marital property rights for Alternate Payee", it seeks the transfer of Plaintiff's post-marital property because Plaintiff began making contributions to the 401(k) Plan in January of 2016 long after his divorce to Ms. Young was finalized on July 30, 2014; (2) Plaintiff advised Ligand that he did not owe any spousal support (per divorce decree) and that the child support he did owe (approximately $55,000 at the time) was being paid through wage garnishments from his Ligand paychecks ($3,500 per month); and (3) the fact that the 401(k) QDRO itself

did not specify a fixed dollar amount that Plaintiff allegedly owed to Ms. Young that would be satisfied through the 401(k) QDRO. This list is not exhaustive.

43. To support Plaintiff's contentions, he also provided Ligand with a copy of his divorce decree to show that his 401(k) retirement account was not included as part of the parties' divorce settlement.

44. On January 27, 2018, Plaintiff notified Ligand that he filed an appeal on January 26, 2018, with the 2nd Court of Appeals in Fort Worth, Texas, related to the 401(k) QDRO.

45. On February 1, 2018, the 2nd Court of Appeals in Fort Worth, Texas, denied Plaintiff's appeal.

46. On February 9, 2018, Ligand established a Fidelity account for Ms. Young and transferred $62,063.47 from Plaintiff's 401(k) account to Ms. Young's Fidelity account pursuant to the 401(k) QDRO.

47. On February 13, 2018, Ligand notified Plaintiff of the transfer of his 401(k) funds.

Ligand's Processing and Approval of the Stock DRO

48. Upon information and belief, in early February 2018, Ms. Young, by and through her counsel in Texas (KoonsFuller), sent Ligand a copy of the Stock DRO seeking to transfer 18,010 Incentive Stock Options granted to Plaintiff under the Stock Incentive Plan to Ms. Young.

49. On February 7, 2018, Audrey Warfield-Graham, a Ligand employee, notified Plaintiff via e-mail that Ligand received the Stock DRO seeking to transfer 18,010 Incentive Stock Options granted to Plaintiff under the Stock Incentive Plan to Ms. Young.

50. After receiving the e-mail, Plaintiff raised the following issues with Ligand concerning the validity of the Stock DRO: (1) it seeks the transfer of Plaintiff's post-marital property because Plaintiff received the Incentive Stock Options grants from Ligand long after his divorce to Ms. Young was finalized on July 30, 2014; (2) Plaintiff advised Ligand that he did not owe any spousal support (per divorce decree) and that the child support he did owe (approximately $55,000 at the time) was being paid through wage garnishments from his Ligand paychecks ($3,500 per month); and (3) the fact that the Stock DRO itself did not specify a fixed dollar amount that Plaintiff allegedly owed to Ms. Young that would be satisfied through the Stock DRO. This list is not exhaustive. A t the time of the transfer, the Incentive Stock Options had a value of approximately **$3.2 million** based on Ligand's then stock price of $278 per share and a share exercise price of $99 per share.

51. Plaintiff notified Ligand that he was appealing the Stock DRO with the 2nd Court of Appeals in Fort Worth, Texas.

52. On March 14, 2018, Audrey Warfield-Graham sent Plaintiff an email stating that if Ligand did not receive a hold or other standing order issued by a

presiding judge no later than March 23, 2018, the company would proceed with distributing the Incentive Stock Options to Ms. Young on March 28, 2018.

53. On March 14, 2018, Plaintiff responded to Audrey WarfieldGraham's above-referenced e-mail and notified Ligand that he filed appeals with the Texas Supreme Court seeking to invalidate the 401(k) QDRO and Stock DRO.

54. On May 3, 2018, while Plaintiff's appeal was still under review, Audrey Warfield-Graham sent Plaintiff an e-mail stating that Ligand would proceed by transferring the Incentive Stock Options to Ms. Young pursuant to the Stock DRO because a hold or other standing order had not been issued.

55. On May 8, 2018, while Plaintiff's appeal was still under review, Audrey Warfield-Graham sent Plaintiff an e-mail stating that Incentive Stock Option transfer would be processed on that day.

56. Upon information and belief, Plaintiff alleges that Ligand did not send Plaintiff a written communication explaining whether the 401(k) QDRO or Stock DRO satisfied all necessary requirements under the respective plans, or to the extent applicable ERISA and/or the Internal Revenue Code.

57. Upon information and belief, Plaintiff alleges that Ligand did in fact transfer $62,063.47 to a Fidelity account in Ms. Young's name from Plaintiff's 401(k) account, as well as 18,010 Incentive Stock Options (worth approximately **$3.2 million** at the time of

Ligand's transfer based on Ligand's then stock price of $278 per share and a share exercise price of $99 per share) to Ms. Young pursuant to the Stock DRO and 401(k) QDRO.

58. Plaintiff is excused from filing an administrative claim and exhausting the claims procedures under the 401(k) Plan because doing so would be futile and inadequate, as all of the benefits have already been transferred to Ms. Young.

FIRST CAUSE OF ACTION

BREACH OF FIDUCIARY DUTY UNDER ERISA

[ERISA §§ 404(a), 1056(d)(3), 29 U.S.C. §§ 1109]

(Ligand and Does 1-20 breached their fiduciary duty by improperly approving the 401(k) QDRO without first determining whether the order is qualified under the terms of the 401(k) Plan and ERISA)

59. Plaintiff incorporates by reference the above paragraphs as though they were fully set forth herein.

60. Both common law and ERISA fiduciary duties exist.

61. ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1), requires, inter alia, that a plan fiduciary discharge his or her duties with respect to a plan solely in the interest of the participants and beneficiaries and with the care, skill, prudence, and diligence under the circumstances

then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims, and in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with Title I of ERISA.

62. ERISA § 409, 29 U.S.C. § 1109, provides, inter alia, that any person who is a fiduciary with respect to a plan and who breaches any of the responsibilities, obligations, or duties imposed on fiduciaries by Title I of ERISA shall be personally liable to make good to the plan any losses to the plan resulting from each such breach, and additionally is subject to such other equitable or remedial relief as the court may deem appropriate, including removal of the fiduciary.

63. Upon information and belief, Congress intended ERISA's fiduciary responsibility provisions to be a codification of the common law of trusts, and the duties of care and integrity demanded of a fiduciary are among the highest, if not the highest, known to common law.

64. At all times relevant, Defendant Ligand and Does 1-20 were ERISA fiduciaries to the 401(k) Plan.

65. As a plan participant, Ligand and Does 1-20 owed Plaintiff a fiduciary duty.

66. Section 206(d)(1) of ERISA generally requires pension plans covered by Title I of ERISA to

provide that plan benefits may not be assigned or alienated.

67. Section 206(d)(3)(A) of ERISA states that section 206(d)(1) applies to an assignment or alienation of benefits pursuant to a domestic relations order unless the order is determined to be a qualified domestic relations order (QDRO).

68. A qualified domestic relations order (referred to herein as "QDRO") is a type of domestic relations order (referred to herein as "DRO") relating "to the provision of child support, alimony, or marital property rights to a spouse, former spouse, child, or other dependent of a plan participant . . . made pursuant to a State domestic relations law." 29 U.S.C. § 1056(d)(3)(ii).

69. Section 206(d)(3)(G) of ERISA requires a plan administrator to determine the qualified status of domestic relations orders received by the plan and to administer distributions under such qualified orders, pursuant to reasonable procedures established by the plan.

70. As plan administrator, Ligand was responsible for determining whether the requirements for qualified status are satisfied. 29 U.S.C. § 1056(d)(3)(H).

71. ERISA plan administrators are required to determine whether an order is a QDRO within a reasonable period of time after receipt of a domestic relations order and to promptly notify the participant and each alternate payee of such determination. (ERISA § 206(d)(3)(G)(i); I.R.C. § 414(p)(6)(A).)

72. Upon information and belief, Plaintiff alleges that, notwithstanding approval by Ligand and Does 1-20, the 401(k) QDRO failed to meet the statutory requirements of a QDRO.

73. Upon information and belief, Plaintiff alleges that Ligand and Does 1-20 approved the 401(k) QDRO even though it does not comply with the requirements of ERISA and the terms of the 401(k) Plan and therefore is not a QDRO.

74. Upon information and belief, Plaintiff alleges that the 401(k) QDRO did not constitute a valid QDRO because: (1) Plaintiff owed no unpaid child support or alimony payments; (2) Ms. Young had no marital property right to the assets; and (3) the 401(k) QDRO itself failed to state a specific sum due (i.e., the amount of child/spousal support owed). This list is not exhaustive.

75. Upon information and belief, Plaintiff alleges Ligand and Does 1-20 breached their fiduciary duties to properly investigate the 401(k) QDRO prior to distributing Plaintiff's separate, post-marital assets to Ms. Young.

76. Based on the above-referenced conduct, Plaintiff has been damaged insofar as his post-marital assets have been wrongfully transferred to Ms. Young without valid justification and in violation of ERISA.

77. Plaintiff was damaged as a direct and proximate result of Ligand's breaches in an amount to be proven at trial.

78. Plaintiff has been required to retain counsel and incur costs of suit, and continues to incur attorneys' fees and costs of suit, as a result of the breach of fiduciary duties by Defendants. Plaintiff requests reasonable attorneys' fees and costs of suit incurred herein pursuant to ERISA § 502(g), 29 U.S.C. § 1132(g).

SECOND CAUSE OF ACTION

BREACH OF FIDUCIARY DUTY

ERISA Section 206(d)(3)(1)

(Ligand completely ignored information that called into question the validity of the 401(k) QDRO)

79. Plaintiff incorporates by reference the above paragraphs as though they were fully set forth herein.

80. A plan administrator who has received a document purporting to be a domestic relations order must carry out his or her responsibilities under section 206(d)(3) of ERISA in a manner consistent with the general fiduciary duties in part 4 of title I of ERISA.

81. If a plan administrator has received evidence calling into question the validity of an order relating to marital property rights under State domestic relations law, the plan administrator is not free to ignore that information.

82. When made aware of such evidence, the administrator must take reasonable steps to determine its credibility. (See DOL Advisory Opinion 1999-13A.)

83. With respect to child support orders, a plan administrator has a duty to investigate the order to the extent credible evidence exists that indicates the order is fraudulent or that calls into question the validity of the order.

84. Upon information and belief, Plaintiff alleges that, after being notified of the existence of the 401(k) QDRO, Plaintiff immediately raised issues with Ligand calling into question the validity of the 401(k) QDRO.

85. Specifically, Plaintiff raised the following issues with Ligand concerning the validity of the 401(k) QDRO: (1) although the 401(k) QDRO expressly states that it relates "to the provision of marital property rights for Alternate Payee", it seeks the transfer of Plaintiff's post-marital property because Plaintiff began making contributions to the 401(k) Plan in January of 2016 long after his divorce to Ms. Young was finalized on July 30, 2014; (2) Plaintiff advised Ligand that he did not owe any spousal support (per divorce decree) and that the child support he did owe (approximately $55,000 at the time) was being paid through wage garnishments from his Ligand paychecks ($3,500 per month); and (3) the fact that the 401(k) QDRO itself did not specify a fixed dollar amount that Plaintiff allegedly owed to Ms. Young that would be satisfied through the 401(k) QDRO. This list is not exhaustive.

86. Plaintiff provided Ligand with a copy of his divorce decree to show that his 401(k) account was not included as part of his marital property settlement.

87. Despite the information Ligand received from Plaintiff which seriously called into question the validity of the 401(k) QDRO, Ligand blindly transferred $62,063.47 from Plaintiff's 401(k) account to Ms. Young.

88. Ligand breached its fiduciary duty owed to Plaintiff because it ignored the evidence it received from Plaintiff calling into question the validity of the 401(k) QDRO and transferred $62,063.47 from Plaintiff's 401(k) account to Ms. Young.

89. Based on the above-referenced conduct, Plaintiff has been damaged insofar as $62,063.47 of Plaintiff's post-marital assets has been wrongfully transferred to Ms. Young without valid justification and in violation of ERISA.

90. Plaintiff has been required to retain counsel and incur costs of suit, and continues to incur attorneys' fees and costs of suit, as a result of the breach of fiduciary duties by Defendants. Plaintiff requests reasonable attorneys' fees and costs of suit incurred herein pursuant to ERISA § 502(g), 29 U.S.C. § 1132(g).

THIRD CAUSE OF ACTION

BREACH OF FIDUCIARY DUTY

29 U.S.C. §§ 1056(d)(3)G)(i), 1056(d)(3)(H)(i)

(Ligand failed to follow ERISA qualified domestic relations order procedures)

91. Plaintiff incorporates by reference the above paragraphs as though they were fully set forth herein.

92. ERISA plan administrators have a fiduciary duty to (1) establish reasonable, written procedures to determine the qualified status of a domestic relations order; (2) communicate those procedures to alternate payees; and (3) administer the distribution of benefits under qualified orders (*Stewart v. Thorpe Holding Co. Profit Sharing Plan*, 207 F.3d 1143, 1155-57 (9th Cir. 2000); see 29 U.S.C. § 1056(d)(3)(G).)

93. Upon receipt of "any domestic relations order," a plan administrator must "promptly notify the participant and any other alternate payee of the receipt of such order" and advise them of "the plan's procedures for determining" whether the order is a qualified domestic relations order. 29 U.S.C. § 1056(d)(3)G)(i).

94. Ligand has violated the provisions of ERISA in the following ways:

(a) Upon information and belief, Plaintiff alleges that Ligand either does not have a written policy in place for determining the qualified status of a domestic relations order or has been unwilling to share such since first requested in November of 2018.

(b) Upon information and belief, Plaintiff alleges that Ligand failed to provide Plaintiff a copy of the 401(k) Plan's written procedures for determining whether the 401(k) QDRO satisfied the requirements under the 401(k) Plan and the Internal Revenue Code and was in fact determined to be a QDRO.

(c) Upon information and belief, Plaintiff alleges that Ligand failed to send Plaintiff a written communication advising him that the 401(k) QDRO satisfied the requirements under the 401(k) Plan and the Internal Revenue Code and was in fact determined to be a QDRO.

95. As a direct and proximate result of Ligand's breach, Plaintiff has been damaged in an amount to be proven at the time of trial.

96. Plaintiff has been required to retain counsel and incur costs of suit, and continues to incur attorneys' fees and costs of suit, as a result of the breach of fiduciary duties by Ligand. Plaintiff requests reasonable attorneys' fees and costs of suit incurred herein pursuant to ERISA § 502(g), 29 U.S.C. § 1132(g).

FOURTH CAUSE OF ACTION

DECLARATORY RELIEF

28 U.S.C. § 2201 and ERISA § 1132(a)(3)

(Against All Defendants)

97. Plaintiff incorporates by reference the above paragraphs as though they were fully set forth herein.

98. 28 U.S.C. § 2201(a) provides, "[i]n the case of actual controversy within its jurisdiction . . . any court of the United States, upon filing of an appropriate pleading, may declare the rights . . . of any interested party seeking such declaration, whether or not further relief is or could be sought . . . [and] shall have the force and effect of a final judgment or decree[.]"

99. A qualified domestic relations order (referred to herein as "QDRO") is a type of domestic relations order (referred to herein as "DRO") relating "to the provision of child support, alimony, or marital property rights to a spouse, former spouse, child, or other dependent of a plan participant . . . made pursuant to a State domestic relations law." 29 U.S.C. § 1056(d)(3)(ii).

100. Upon information and belief, Plaintiff alleges that, notwithstanding approval by Ligand, the 401(k) QDRO failed to meet the statutory requirements of a QDRO.

101. Upon information and belief, Plaintiff alleges that the 401(k) QDRO does not meet the requirements to be a QDRO under the terms of the 401(k) Plan and ERISA.

102. Upon information and belief, Plaintiff alleges that the 401(k) QDRO did not constitute a valid QDRO because it does not provide for "child support, alimony payments, or marital property rights" as required by Section 1056(d)(3)(B)(ii)(I) and failed to state a sum due. This list is not exhaustive.

103. Based on the above-referenced conduct, Plaintiff has been damaged insofar as his post-marital assets have been wrongfully transferred to Ms. Young without valid justification and in violation of ERISA.

104. An actual controversy exists between the parties concerning the validity and enforceability of the 401(k) QDRO.

105. To promote efficiency and the interests of justice, Plaintiff respectfully requests that the Court make the following declaratory judgment:

(a) Declare that the 401(k) QDRO is not in fact a QDRO as that term is defined by ERISA and the Internal Revenue Code.

106. Plaintiff has been required to retain counsel and incur costs of suit, and continues to incur attorneys' fees and costs of suit, as a result of the breach of fiduciary duties by Defendants. Plaintiff requests reasonable attorneys' fees and costs of suit incurred herein pursuant to ERISA § 502(g), 29 U.S.C. § 1132(g).

FIFTH CAUSE OF ACTION

DECLARATORY RELIEF

SUPPLEMENTAL STATE CLAIM

(Against All Defendants)

107. Plaintiff incorporates by reference the above paragraphs as though they were fully set forth herein.

108. Upon information and belief, Plaintiff alleges that the Stock DRO invalidly transferred Plaintiff's post-marital assets without valid justification.

109. There exists actual controversies between Plaintiff and Ms. Young including: (1) whether the Stock DRO constitutes a valid domestic relations order under the applicable rules and regulations; (2) whether Plaintiff or Ms. Young should be responsible for the tax consequences resulting from Ms. Young's exercise of the Incentive Stock Options; and (3) whether Ligand must cancel the Incentive Stock Options that Ms. Young has not already exercised because the Incentive Stock Options were not transferred to Ms. Young pursuant to an order meeting the requirements for a domestic relations order.

110. Plaintiff seeks a declaration of his rights or duties, and the rights, duties, and obligations of Defendants.

111. To promote efficiency and the interests of justice, Plaintiff respectfully requests that the Court make the following declaratory judgments:

(a) Declare that the Stock DRO is invalid.

(b) Declare that Ms. Young shall be responsible for all tax consequences resulting from her exercise of the Stock Incentive Options to date.

(c) Declare that Ligand must cancel all unexercised Incentive Stock Options in Ms. Young's possession.

112. Plaintiff's remedies at law are inadequate and Plaintiff is suffering irreparable harm, which requires immediate action and resolution by the Court, before further harm is suffered.

SIXTH CAUSE OF ACTION

EQUITABLE AND INJUNCTIVE RELIEF

ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3)

(Against Ligand and Ms. Young)

113. Plaintiff incorporates by reference the above paragraphs as though they were fully set forth herein.

114. Upon information and belief, Plaintiff alleges that Ms. Young improperly received all of the funds contained in Plaintiff's 401(k) account.

115. Upon information and belief, a Fidelity account has been opened on Ms. Young's behalf to transfer the funds that were previously held in Plaintiff's 401(k) account to Ms. Young pursuant to the 401(k) QDRO.

116. Upon information and belief, Plaintiff alleges Ms. Young was not entitled to receive any of Plaintiff's post-marital assets from the 401(k) Plan.

117. Upon information and belief, Plaintiff alleges Ms. Young is wrongfully holding benefits to which Plaintiff is entitled.

118. As a result of the wrongful possession by Ms. Young, Plaintiff is entitled to the equitable and injunctive relief requested herein and below.

119. Plaintiff avers that he is entitled to an injunction prohibiting Ms. Young from using, transferring, or otherwise disposing of the funds that were previously held in Plaintiff's 401(k) account because an injunction constitutes further equitable relief appropriate to redress and enforce the provisions of Title I of ERISA.

120. Plaintiff has been required to retain counsel and incur costs of suit, and continues to incur attorneys' fees and costs of suit, as a result of the breach of fiduciary duties by Defendants. Plaintiff requests reasonable attorneys' fees and costs of suit incurred herein pursuant to ERISA § 502(g), 29 U.S.C. § 1132(g).

SEVENTH CAUSE OF ACTION

EQUITABLE AND INJUNCTIVE RELIEF

SUPPLEMENTAL STATE CLAIM

(Against Ms. Young)

121. Plaintiff incorporates by reference the above paragraphs as though they were fully set forth herein.

122. Upon information and belief, Plaintiff alleges that Ms. Young improperly received 18,010 Incentive Stock Options granted to Plaintiff pursuant to the Stock Incentive Plan.

123. Upon information and belief, Plaintiff alleges that Ms. Young exercised a portion of the stock options transferred to her pursuant to the Stock DRO resulting in her receiving cash from the exercise.

124. Upon information and belief, Plaintiff alleges Ms. Young was not entitled to receive any of Plaintiff's post-marital assets from the Stock Incentive Plan.

125. Upon information and belief, Plaintiff alleges Ms. Young is wrongfully holding benefits to which Plaintiff is entitled.

126. As a result of the wrongful possession by Ms. Young, Plaintiff is entitled to the equitable and injunctive relief requested herein and below.

127. Plaintiff avers that he is entitled to an injunction prohibiting Ms. Young from exercising the portion of unexercised Incentive Stock Options that she presently possesses and holds without any legal justification.

EIGHTH CAUSE OF ACTION

FOR UNJUST ENRICHMENT

SUPPLEMENTAL STATE CLAIM

(Against Ms. Young)

128. Plaintiff incorporates by reference the above paragraphs as though they were fully set forth herein.

129. Plaintiff's valuable post-marital assets (401(k) account funds and Incentive Stock Options) have been wrongfully transferred to Ms. Young without legal justification.

130. Upon information and belief, Plaintiff alleges that Ms. Young does not have a legal entitlement to Plaintiff's separate, post-marital assets (401(k) account funds and Incentive Stock Options) based on court-ordered and pending child support, spousal support, or the division of marital property.

131. Upon information and belief, Plaintiff alleges that Ms. Young is not entitled to retain the post-marital assets (401(k) account funds and Incentive Stock Options) that were improperly transferred to her from Plaintiff.

132. Upon information and belief, Plaintiff alleges that it would be unjust for Ms. Young to retain Plaintiff's post-marital assets ($62,063.47 from Plaintiff's 401(k) account and 18,010 Incentive Stock Options – worth approximately **$3.2 million** at the time of Ligand's transfer based on Ligand's then stock price of $278 per share and a share exercise price of $99 per share).

133. Plaintiff avers that he is entitled to the imposition of one or more constructive trusts on the 401(k) account funds and Incentive Stock Options themselves as well as the proceeds from the Incentive Stock Options exercised to date.

NINTH CAUSE OF ACTION

FOR BREACH OF COMMON LAW FIDUCIARY DUTY

SUPPLEMENTAL STATE CLAIM

(Against Ligand and DOES 1-20)

134. Plaintiff incorporates by reference the above paragraphs as though they were fully set forth herein.

135. Ligand owed Plaintiff a fiduciary duty under California common law as the custodian and holder of the 18,010 Incentive Stock Options granted to Plaintiff.

136. The 18,010 Incentive Stock Options granted to Plaintiff were Plaintiff's property.

137. Ligand owed Plaintiff a fiduciary duty as the custodian and holder of Plaintiff's 18,010 Incentive Stock Options.

138. Ligand breached its fiduciary duties owed to Plaintiff by: (1) ignoring evidence Plaintiff provided which showed that Ms. Young had no legal entitlement to receive Plaintiff's 18,010 Incentive Stock Options; and (2) wrongfully transferring Plaintiff's 18,010 Incentive Stock Options (worth approximately **$3.2 million** at the time of Ligand's transfer based on Ligand's then stock price of $278 per share and a share exercise price of $99 per share) to Ms. Young.

139. Plaintiff was damaged as a direct and proximate result of Ligand's breaches in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

As to the First Cause of Action:

1. Declare that Ligand and Does 1-20 have breached their fiduciary duties;

2. Damages in an amount to be proven at trial;

3. For reasonable attorneys' fees and costs of suit incurred herein, including fees and costs pursuant to ERISA § 502(g);

4. For appropriate equitable relief under ERISA § 502(a)(3);

5. For pre judgment and post judgment interest to the maximum extent permissible under law;

6. For such other and further relief as the Court deems just and proper.

As to the Second Cause of Action:

1. Declare that Ligand has breached its fiduciary duties;

2. Order Ligand to provide Plaintiff with a copy of Ligand's qualified domestic relations order processing procedures;

3. Damages in an amount to be proven at trial;

4. For reasonable attorneys' fees and costs of suit incurred herein, including fees and costs pursuant to ERISA § 502(g);

5. For appropriate equitable relief under ERISA § 502(a)(3);

6. For pre judgment and post judgment interest to the maximum extent permissible under law;

7. For such other and further relief as the Court deems just and proper.

As to the Third Cause of Action:

1. Declare that Ligand has breached its fiduciary duties;

2. Order Ligand to provide Plaintiff with a copy of Ligand's qualified domestic relations order processing procedures;

3. Damages in an amount to be proven at trial;

4. For reasonable attorneys' fees and costs of suit incurred herein, including fees and costs pursuant to ERISA § 502(g);

5. For appropriate equitable relief under ERISA § 502(a)(3);

6. For pre judgment and post judgment interest to the maximum extent permissible under law;

7. For such other and further relief as the Court deems just and proper.

As to the Fourth Cause of Action:

1. Declare that the 401(k) QDRO is not in fact a QDRO as that term is defined by ERISA and the Internal Revenue Code;

2. For reasonable attorneys' fees and costs of suit incurred herein, including fees and costs pursuant to ERISA § 502(g);

3. For appropriate equitable relief under ERISA § 502(a)(3);

4. For pre judgment and post judgment interest to the maximum extent permissible under law;

5. For such other and further relief as the Court deems just and proper.

As to the Fifth Cause of Action:

1. Declare that the Stock DRO is invalid;

2. For pre judgment and post judgment interest to the maximum extent permissible under law;

3. For such other and further relief as the Court deems just and proper.

As to the Sixth Cause of Action:

1. Declare that Ms. Young is wrongfully holding benefits to which Plaintiff is entitled;

2. Impose a constructive trust on the funds previously held in Plaintiff's 401(k) account which constitute Plaintiff's post-marital property which were wrongfully transferred to Ms. Young;

3. For reasonable attorneys' fees and costs of suit incurred herein, including fees and costs pursuant to ERISA § 502(g);

4. For appropriate equitable relief under ERISA § 502(a)(3);

5. For pre judgment and post judgment interest to the maximum extent permissible under law;

6. For such other and further relief as the Court deems just and proper.

As to the Seventh Cause of Action:

1. Preliminarily and permanently enjoin Ms. Young from exercising any more of the stock options transferred to her pursuant to the Stock DRO;

2. Impose a constructive trust on the benefits (exercised and unexercised stock options including the cash resulting from Ms. Young's exercise of the stock options) which constitute Plaintiff's post-marital property which were wrongfully transferred to Ms. Young;

3. Restitution of the post-marital assets that were improperly transferred to Ms. Young;

4. For pre-judgment and post judgment interest to the maximum extent permissible under law;

5. For such other and further relief as the Court deems just and proper.

As to the Eighth Cause of Action:

1. Restitution of the post-marital assets that were improperly transferred to Ms. Young;

2. For pre-judgment and post judgment interest to the maximum extent permissible under law;

3. For such other and further relief as the Court deems just and proper.

As to the Ninth Cause of Action:

1. Damages in an amount to be proven at trial;

2. For pre judgment and post judgment interest to the maximum extent permissible under law;

3. For such other and further relief as the Court deems just and proper.

ON ALL CAUSES OF ACTION

1. For all costs of suits occurred;

2. For all damages allowed under the law and in accordance to proof;

3. For pre judgment and post judgment interest to the maximum extent permissible under law;

4. For such other and further relief as the Court deems just and proper.

DATED: June 19, 2019

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