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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA  
RENO, NEVADA

JOAN R. MACK AS TRUSTEE OF THE )  
PALACE JEWELRY & LOAN CO., INC. )  
401(k) PROFIT SHARING PLAN AND )  
TRUST )  
Plaintiff, )  
vs. )  
RANDAL S. KUCKENMEISTER, CPA, )  
MST, as Administrator of the )  
Estate of Charla Marie Mack, )  
Deceased; DARREN ROY MACK, an )  
individual; and DOES 1 through 50, )  
inclusive, )  
Defendants. )

3:08-CV-370-ECR-RAM

Order

In early 2006, Charla Mack and Defendant Darren Mack were in the midst of an acrimonious divorce. During the divorce negotiations, Darren Mack agreed to transfer approximately \$500,000 in a 401(k) plan to Charla Mack. Before the state court entered any order, however, Charla Mack suffered an untimely death at the hands of her husband. Darren Mack now claims that the retirement money is his. Defendant Randal Kuckenmeister, as administrator of Charla Mack's estate, contends that the funds belong to the estate. Plaintiff Joan Mack, as trustee of the 401(k) profit sharing plan and trust, seeks to interplead the funds under Federal Rule of Civil Procedure 22. Joan Mack is also Darren Mack's mother.

1 For the reasons set forth below, we find that the state court  
2 has already determined that the funds belonged to Charla Mack in its  
3 nunc pro tunc order of June 20, 2007. Plaintiff's claim is barred  
4 by the doctrine of collateral estoppel, and the case should be  
5 dismissed.

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7 **I. Background**

8 Defendant Darren Mack and Charla Mack were engaged in divorce  
9 proceedings throughout 2005 and into the early part of 2006. As  
10 part of the divorce, Darren Mack agreed to execute a Qualified  
11 Domestic Relations Order ("QDRO")<sup>1</sup> that would name Charla as the  
12 alternate payee of a 401(k) plan. The state court tasked Charla  
13 Mack's attorney with writing an order to that effect for the court's  
14 signature. (State Ct. Order, June 20, 2007, Ex. B at 2 (#11).)  
15 Prior to the signing of the order, however, Darren Mack murdered  
16 Charla and shot the state court judge who was presiding over the  
17 proceedings. As a result, the state court did not enter the QDRO  
18 before Charla's death.

19 After Charla's death, her estate moved for entry of an order in  
20 Nevada state court that would, among other things, execute a QDRO to  
21 transfer to Charla \$500,000 plus interest. The motion was granted,  
22 and on June 20, 2007, the state court entered an order, nunc pro  
23 tunc as of January 9, 2006 – a date when Charla was still alive –

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25 <sup>1</sup>A QDRO is a domestic relations order that "creates or recognizes  
26 the existence of an alternate payee's right to, or assigns to an  
27 alternate payee the right to, receive all or a portion of the benefits  
28 payable with respect to a participant under a plan." 26 U.S.C. §  
414(p) (1) (A) (I).

1 stating that "a QDRO will be executed which will transfer to Mrs.  
2 Mack the sum of five hundred thousand dollars with any appreciation  
3 that is distributed to that five hundred thousand dollars." (Id.)  
4 Defendant Darren Mack has appealed that decision to the Nevada  
5 Supreme Court, where the decision is still pending.

6 Defendant Darren Mack contends that an estate cannot be named  
7 as a QDRO under Ninth Circuit law. As a result, he has threatened  
8 suit against the trustee of the 401(k) plan, Plaintiff Joan Mack,  
9 should she pay the benefit to Charla Mack's estate.

10 In light of the claims of Charla Mack's estate and Darren  
11 Mack's threatened legal action, Plaintiff filed a Complaint (#2) in  
12 federal court on July 7, 2008. She seeks to interplead the \$500,000  
13 in retirement money and prays for declaratory relief as to the  
14 rights and obligations of the parties with respect to the retirement  
15 funds in question.

16 Defendant Darren Mack answered (#9) the complaint and filed a  
17 Cross-claim (#9) against Defendant Kuckenmeister on July 30, 2008,  
18 seeking to claim the retirement funds for himself. Kuckenmeister  
19 filed a Motion to Dismiss (#22) the cross-claim on August 26, 2008,  
20 which Darren Mack opposed (#25) on September 12, 2008.  
21 Kuckenmeister filed a Reply (#27) on September 26, 2008.

22 Meanwhile, Kuckenmeister filed a Motion to Dismiss (#11) the  
23 original complaint on August 4, 2008, arguing that the issue had  
24 already been resolved by the state court and hence was barred by the  
25 doctrine of collateral estoppel. Both Plaintiff and Darren Mack  
26 filed Oppositions (## 20, 21) to Kuckenmeister's motion to dismiss

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1 on August 22, 2008. Kuckenmeister filed a Reply (#24) on September  
2 5, 2008.

3 Both of Kuckenmeister's motions to dismiss (## 11, 22) are  
4 ripe, and we now rule on them.

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## **II. Motion to Dismiss Standard**

7 A motion to dismiss under Fed. R. Civ. P. 12(b)(6) will only be  
8 granted if the complaint fails to "state a claim to relief that is  
9 plausible on its face." Bell Atl. Corp. v. Twombly, 127 S.Ct. 1955,  
10 1974 (2007). On a motion to dismiss, "we presum[e] that general  
11 allegations embrace those specific facts that are necessary to  
12 support the claim." Lujan v. Defenders of Wildlife, 504 U.S. 555,  
13 561 (1992) (quoting Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 889  
14 (1990)) (alteration in original). Moreover, "[a]ll allegations of  
15 material fact in the complaint are taken as true and construed in  
16 the light most favorable to the non-moving party." In re Stac  
17 Elecs. Sec. Litig., 89 F.3d 1399, 1403 (9th Cir. 1996) (citation  
18 omitted).

19 Although courts generally assume the facts alleged are true,  
20 courts do not "assume the truth of legal conclusions merely because  
21 they are cast in the form of factual allegations." W. Mining  
22 Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981). Accordingly,  
23 "[c]onclusory allegations and unwarranted inferences are  
24 insufficient to defeat a motion to dismiss." In re Stac Elecs., 89  
25 F.3d at 1403 (citation omitted).

26 Review on a motion pursuant to Fed. R. Civ. P. 12(b)(6) is  
27 normally limited to the complaint itself. See Lee v. City of L.A.,

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1 250 F.3d 668, 688 (9th Cir. 2001). If the district court relies on  
2 materials outside the pleadings in making its ruling, it must treat  
3 the motion to dismiss as one for summary judgment and give the non-  
4 moving party an opportunity to respond. Fed. R. Civ. P. 12(b);  
5 see United States v. Ritchie, 342 F.3d 903, 907 (9th Cir. 2003). "A  
6 court may, however, consider certain materials -- documents attached  
7 to the complaint, documents incorporated by reference in the  
8 complaint, or matters of judicial notice -- without converting the  
9 motion to dismiss into a motion for summary judgment." Ritchie, 342  
10 F.3d at 908.

11 If documents are physically attached to the complaint, then a  
12 court may consider them if their "authenticity is not contested" and  
13 "the plaintiff's complaint necessarily relies on them." Lee, 250  
14 F.3d at 688 (citation, internal quotations and ellipsis omitted). A  
15 court may also treat certain documents as incorporated by reference  
16 into the plaintiff's complaint if the complaint "refers extensively  
17 to the document or the document forms the basis of the plaintiff's  
18 claim." Ritchie, 342 F.3d at 908. Finally, if adjudicative facts  
19 or matters of public record meet the requirements of Fed. R. Evid.  
20 201, a court may judicially notice them in deciding a motion to  
21 dismiss. Id. at 909; see Fed. R. Evid. 201(b) ("A judicially  
22 noticed fact must be one not subject to reasonable dispute in that  
23 it is either (1) generally known within the territorial jurisdiction  
24 of the trial court or (2) capable of accurate and ready  
25 determination by resort to sources whose accuracy cannot reasonably  
26 be questioned.").

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1 **III. Motion to Dismiss (#11)**

2 Kuckenmeister avers that the issue Plaintiff seeks to resolve –  
3 what to do with the retirement funds – has already been decided and  
4 is thus precluded from being litigated again. Plaintiff contends  
5 that the issue now before the Court is not what to do with the  
6 retirement funds, but whether an estate may be named as an alternate  
7 payee by a QDRO. Defendant Darren Mack likewise argues that it is  
8 improper under the Employee Retirement Income Security Act to  
9 transfer funds to an estate, and hence a different issue is raised  
10 before this Court than what was before the state court.

11 The preclusion doctrines may be raised in a Rule 12(b)(6)  
12 motion. See Maldonado v. Harris, 370 F.3d 945, 951-52 (9th Cir.  
13 2004) (reviewing claim preclusion on a motion to dismiss). When a  
14 party asserts the preclusive effect of a state court judgment, 28  
15 U.S.C. § 1738 requires that a federal court give a state court  
16 judgment the same full faith and credit as that judgment would  
17 receive under the law of the state in which the judgment was  
18 rendered. Migra v. Warren City Sch. Dist. Bd. of Educ., 465 U.S.  
19 75, 84 (1984); Albano v. Norwest Fin. Haw., Inc., 244 F.3d 1061,  
20 1063 (9th Cir. 2001).<sup>2</sup>

21 Collateral estoppel, or issue preclusion, “forecloses  
22 relitigation of factual or legal issues that have been actually and  
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24 <sup>2</sup>A state court judgment may be considered without converting the  
25 motion to dismiss to a motion for summary judgment. See In re Am.  
26 Cont’l Corp./Lincoln Sav. & Loan Sec. Litig., 102 F.3d 1524, 1537 (9th  
27 Cir. 1996) (“[A]mple authority exists which recognizes that matters  
of public record, including court records in related or underlying  
cases which have a direct relation to the matters at issue, may be  
looked to when ruling on a 12(b)(6) motion to dismiss.”).

1 necessarily decided in earlier litigation." San Remo Hotel, L.P. v.  
2 S.F. City & County, 364 F.3d 1088, 1094 (9th Cir. 2004). Under  
3 Nevada law, which has been clarified since the parties submitted  
4 their briefs, there is a four-part test for determining whether  
5 issue preclusion applies: (1) "the issue decided in the prior  
6 litigation must be identical to the issue presented in the current  
7 action; (2) the initial ruling must have been on the merits and have  
8 become final; (3) the party against whom the judgment is asserted  
9 must have been a party or in privity with a party to the prior  
10 litigation; and (4) the issue was actually and necessarily  
11 litigated." Five Star Capital Corp. v. Ruby, 194 P.3d 709, 713  
12 (Nev. 2008) (internal quotation marks, ellipsis, and footnote  
13 omitted).

14 First, Plaintiff's complaint makes it clear that the issue to  
15 be decided in this case is the same issue that was decided in the  
16 prior state court action. Plaintiff's complaint seeks to interplead  
17 the \$500,000 and prays for this Court to adjudge the rights of the  
18 various parties with respect to those retirement funds. This issue  
19 is precisely what the state court decided in its order of June 20,  
20 2007.

21 Defendant Darren Mack's contention that the issue before this  
22 Court is whether a QRDO can transfer benefits to an estate is not  
23 well taken. The state court's order was issued nunc pro tunc as of  
24 January 9, 2006, when Charla Mack was still alive. Thus, for  
25 present purposes, it is as though the state court QDRO was entered  
26 when Charla Mack was alive and then she subsequently passed away.  
27 The estate would then receive the benefits, not because the QDRO was  
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1 entered for the estate, but because the QDRO is deemed to have been  
2 entered for Charla Mack before she died.

3       Next, the initial ruling was final and on the merits. The  
4 state court order makes it clear that the order was entered only  
5 after considerable motion practice, lengthy negotiations, multiple  
6 hearings, and at least two agreements entered on the record. (State  
7 Ct. Order, June 20, 2007, Ex. B at 2 (#11).) Moreover, the state  
8 court, in issuing its order nunc pro tunc, took great care to limit  
9 its order to what the record showed that the court had decided  
10 already. (Id. at 3.) The court determined that the state court  
11 judge "intended his pronouncement [of January 9, 2006,] to be a  
12 binding order." (Id. at 4.) The order included a provision  
13 requiring that a QDRO be executed that would transfer \$500,000 to  
14 Charla Mack. Thus, the initial ruling was final and on the merits.

15       Relatedly, the fourth factor – that the issue was necessarily  
16 and actually litigated – is met. Certainly the issue was "actually"  
17 litigated – a state court ordered that a QDRO be executed with  
18 respect to the funds in question after a full hearing on the merits.  
19 Further, resolution of the issue was, by definition, necessary: the  
20 state court could not order the execution of a QDRO without deciding  
21 whether or not to issue a QDRO. In short, the issues of the  
22 retirement funds and the validity of the QDRO were essential to the  
23 state court's decision.

24       The parties disagree about the third factor: whether the  
25 parties involved in the dispute are the same. Clearly, both Charla  
26 Mack and Darren Mack were involved in the divorce proceedings and  
27 were covered by the state court order. Plaintiff argues that she

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1 brings this claim as the trustee of the retirement plan, not as  
2 Darren Mack's mother, and that her interests as trustee were not  
3 represented in the state court proceedings. As a result, she avers  
4 that she was not a party to the dispute, and thus the doctrine of  
5 collateral estoppel does not apply. Kuckenmeister contends that  
6 there is a sufficient nexus between Plaintiff's interests, as  
7 trustee of the retirement plan, and Darren Mack's interests in the  
8 divorce proceedings such that the parties are in privity.

9       It is Plaintiff's status as trustee of the retirement plan that  
10 leads us to conclude that Plaintiff's interests were sufficiently  
11 represented in the state court proceedings. Plaintiff seeks to  
12 interplead the \$500,000 so that the proper party will receive the  
13 funds. Plaintiff, as trustee, has no independent interest as to  
14 which party – Charla Mack or Darren Mack – receives the retirement  
15 funds. Plaintiff's only interest is in insuring that she pays the  
16 funds to the appropriate party. The state court heard extensive  
17 arguments between Charla Mack and Darren Mack as to who should  
18 receive the funds, and the state court ruled in favor of Charla  
19 Mack. Thus, Plaintiff's interests were represented in the state  
20 court proceedings when the state court determined to execute the  
21 QDRO in favor of Charla.

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#### **IV. Motion to Dismiss (#22)**

24       Defendant Darren Mack's cross-claim (#9) disputes the validity  
25 of the QDRO and asserts that the retirement funds in question were  
26 merely "the subject of settlement proceedings between the parties to  
27 the divorce." (D.'s Answer and Cross Claim ¶ 10 (#9).) Further,

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1 Darren Mack alleges that the "divorce court made no decision of fact  
2 in the divorce prior to the decedent's death." (Id. ¶ 11.)  
3 Finally, Darren Mack alleges that the state court's nunc pro tunc  
4 order was improper, and hence he, and not Charla Mack or her estate,  
5 should receive the proceeds of the retirement plan.

6 Kuckenmeister moves to dismiss (#22) the cross-claim on the  
7 grounds that the issue before the Court has already been decided by  
8 the state court's nunc pro tunc order. For the reasons discussed in  
9 Kuckenmeister's other motion to dismiss (#11), we find that Darren  
10 Mack's cross-claim is barred by the doctrine of collateral  
11 estoppel.<sup>3</sup>

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23 <sup>3</sup>We also note that Darren Mack concedes that the issues raised  
24 in the cross claim have been litigated previously. In his answer, he  
25 admits that on June 20, 2007, the state court entered a QDRO for  
26 payment of \$500,000 to Charla Mack, nunc pro tunc as of January 9,  
27 2006. (D.'s Answer ¶ 11 (#9).) While he challenges the correctness  
28 of the state court's decision – that the QDRO was valid – he does not  
dispute that the state court decided the issue. This Court does not  
sit as an appellate court of a state court's decision. Even if Darren  
Mack sought to challenge the state court's decision, the  
Rooker/Feldman doctrine would bar the Court from entering the fray.

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V. Conclusion

The elements of collateral estoppel under Nevada law have been met: the issues that Plaintiff and Defendant Darren Mack seek to litigate have already been decided by a state court.

**IT IS THEREFORE HEREBY ORDERED THAT** Defendant Randal S. Kuckenmeister's Motion to Dismiss (#11) is **GRANTED**.

**IT IS FURTHER ORDERED THAT** Defendant Randal S. Kuckenmeister's Motion to Dismiss Co-Defendant Darren Roy Mack's Cross-Claim (#22) is **GRANTED**.

The Clerk shall enter judgment accordingly.

DATED: JANUARY 22, 2009.

  
UNITED STATES DISTRICT JUDGE