IT IS SO ORDERED.

Dated: May 19, 2025

John E. Hoffman, Jr.
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:	:	Case No. 24-53823
Ricky Ray Anderson and Melanie Michele Anderson,	:	Chapter 13
Debtors.	:	Judge Hoffman
Estate of Donovan L. Lewis,	:	
Plaintiff,	:	
v.	:	Adv. Pro. No. 24-2084
Ricky Ray Anderson,	:	
Defendant.	:	

MEMORANDUM OPINION AND ORDER

I. Introduction

Parties may remove civil claims from state court to federal court. But a federal court may remand removed claims on any equitable ground, or abstain from hearing such claims in the interests of justice and comity with state courts or out of respect for state law.

Well before the defendant-debtor filed his Chapter 13 bankruptcy petition, the plaintiff in this adversary proceeding sued him in state court, raising claims based solely on state law. After the state court denied his motion for summary judgment, the defendant appealed, but just eight days later, the defendant filed his bankruptcy case, which stayed the state court appeal. And after the plaintiff moved for relief from the automatic stay so she could continue pursuing her claims in state court, the defendant removed the state court action to this Court. Before removal, the parties had engaged in almost 18 months of extensive discovery and motion practice in state court, and the plaintiff's claims were nearly ready for trial.

For the reasons explained below, the interests of justice, comity, equity and respect for state law all favor abstention under 28 U.S.C. § 1334(c)(1) and remand under 28 U.S.C. § 1452(b). The Court will therefore abstain from hearing this case and remand it to the state court from which it was removed. To avoid further delay, the Court will also grant the plaintiff relief from stay so she may continue pursuing her claims against the defendant in state court. And finally, as to the defendant's objection to the plaintiff's proof of claim, the Court will defer its ruling until the state court decides whether to award damages to the plaintiff and, if so, in what amount.

II. Background

On September 24, 2024 ("Petition Date"), Ricky Ray Anderson filed a Chapter 13 bankruptcy petition. *See* Case No. 24-53823 ("Main Case"), Doc. 1.[1] Three months later, Anderson removed the civil action captioned *Estate of Donovan Lewis v. Ricky Anderson et al.*, Case No. 23-CV-001021 ("State Case") from the Franklin County Ohio Court of Common Pleas ("State Court") to this Court. Doc. 1 at 1–3 ("Notice").[2] The complaint in the State Case is attached to the Notice. Doc. 1 at 4–24 ("Complaint").

[1] Anderson filed a joint petition with his wife, who is not a defendant in this proceeding.
[2] Unless noted otherwise, docket numbers refer to the docket in this adversary proceeding.

Rebecca Duran, "the mother and duly-appointed Administrator of the Estate of Donovan Lewis," initiated the State Case by filing the Complaint on February 16, 2023. Compl. at 1, 16. The Complaint alleges that on August 30, 2022, Anderson—then an officer with the Columbus Division of Police—shot and killed Donovan Lewis while attempting to serve a warrant. *Id.* at 2. Duran's Complaint raises seven state law causes of action against Anderson based on his fatal shooting of Lewis: wrongful death, battery, breach of a duty of care, intentional infliction of emotional distress, negligent infliction of emotional distress, failure to render aid, and deprivation of state constitutional and statutory rights. *Id.* at 17–19. Nearly 18 months of extensive discovery and motion practice in the State Case followed.

About a month before the Petition Date, the State Court denied Anderson's motion for summary judgment on state law immunity grounds. Doc. 1 at 351–67 ("State Court Summary Judgment Order"). Some three weeks later, Anderson appealed the State Court's denial of summary judgment[3] to Ohio's Tenth District Court of Appeals. Doc. 1 at 368–69. But just eight days after that, Anderson filed his Chapter 13 petition, *see* Main Case, Doc. 1, putting his state court appeal on hold. *See* Doc. 1 at 391; *see also Cathey v. Johns-Manville Sales Corp.*, 711 F.2d 60, 62 (6th Cir. 1983) (explaining that the automatic stay applies to appeals taken by debtors in proceedings in which they initially were defendants).

[3] "Generally, the denial of summary judgment is not a final, appealable order." *Hubbell v. City of Xenia*, 873 N.E.2d 878, 880 (Ohio 2007). But Ohio Revised Code § 2744.02(C) provides: "An order that denies . . . an employee of a political subdivision the benefit of an alleged immunity from liability . . . is a final order." And the Supreme Court of Ohio has held that "when a trial court denies a motion in which a political subdivision or its employee seeks immunity under [Ohio Revised Code] Chapter 2744, that order denies the benefit of an alleged immunity and thus is a final, appealable order pursuant to [Ohio Revised Code § 2744.02(C)]." *Hubbell*, 873 N.E.2d at 883. When the State Court denied Anderson's motion for summary judgment on state law immunity grounds, it denied Anderson—an employee of a political subdivision at all times relevant to the State Case—the benefit of an alleged immunity. Thus, the State Court Summary Judgment Order was a final, appealable order under Ohio law.

After the Petition Date, the parties continued fighting on multiple fronts. First, Duran asked the Court for relief from the automatic stay so she could continue prosecuting the State Case. *See* Main Case, Doc. 24 ("Stay Motion"). Rather than contest the merits of that motion, Anderson removed the State Case on the day his response was due, and filed a response later that day arguing that the Stay Motion "should be deemed moot" because the State Case "is now within the jurisdiction of this Court[.]" Main Case, Doc. 28 ("Stay Response") at 2.

Second, after Anderson removed the State Case, Duran filed a motion asking the Court to permissively abstain from hearing it under 28 U.S.C. § 1334(c)(1) or equitably remand it back to the State Court under 28 U.S.C. § 1452(b). Doc. 4 ("Remand Motion"). Anderson then filed an objection to that motion, Doc. 9 ("Remand Objection"), to which Duran replied, Doc. 11.

Finally, after filing the Remand Motion, Anderson objected to the proof of claim Duran filed in his Chapter 13 case. Main Case, Doc. 41 ("Claim Objection"); *see also* Main Case, Proof of Claim 24-1. Duran's proof of claim is based on Anderson's alleged liability in the State Case, but Anderson contested Duran's claim, arguing that because it is contingent and unliquidated, it should be disallowed. Claim Obj. at 1. In response, Duran says her claim being "contingent and unliquidated . . . is not a basis for disallowance" and asks the Court to either estimate the amount of her claim under 11 U.S.C. § 502(c) or overrule the Claim Objection without prejudice to her filing a separate motion for estimation. Main Case, Doc. 51 at 1.

After briefing the Remand Motion and Claim Objection, the parties agreed to hold the Stay Motion in abeyance pending the Court's decision on the Remand Motion. *See* Main Case, Doc. 52. But because the Remand Motion, Stay Motion, and Claim Objection are all intertwined, the Court will address all three in this opinion.

III. Jurisdiction and Constitutional Authority

For the reasons explained below, the Court has core, arising-in jurisdiction over the claims Duran raised in her Complaint. But even if those claims were not core, deciding a motion to remand—distinct from adjudicating the claims sought to be remanded—is a core proceeding in which bankruptcy courts may enter final orders. *See Bavelis v. Doukas (In re Bavelis)*, 453 B.R. 832, 845 (Bankr. S.D. Ohio 2011) ("Motions seeking dismissal based on an alleged lack of subject-matter jurisdiction are core proceedings. So too are motions seeking abstention, remand and transfer of venue.") (cleaned up); *see also Horne v. Humphreys (In re James F. Humphreys & Assocs., L.C.)*, 558 B.R. 764, 768 (Bankr. S.D. W. Va. 2016) ("Abstention matters are routinely, and finally, handled by bankruptcy courts."); *Mason v. Costello (In re Klarchek)*, 508 B.R. 386, 389 (Bankr. N.D. Ill. 2014) ("A motion for remand of a proceeding removed to the bankruptcy court is . . . a core proceeding within this court's statutory and constitutional authority."). The Court accordingly has jurisdiction and constitutional authority to rule on the Remand Motion.

Because bankruptcy courts have "the exclusive authority to grant relief from the [automatic] stay," *Johns-Manville*, 711 F.2d at 62, the Court also has the authority to decide the Stay Motion. *See also In re Shrum*, 597 B.R. 845, 854 (Bankr. E.D. Mich. 2019) ("Only the bankruptcy court may lift or modify the automatic stay.").

Finally, claim objections are core proceedings in which bankruptcy courts have the authority to enter final judgment under 28 U.S.C. § 157(b)(2)(B). *See Waldman v. Stone*, 698 F.3d 910, 919 (6th Cir. 2012) ("When a debtor . . . seeks disallowance of a creditor's proof of claim . . . the bankruptcy court's authority [to enter a final judgment] is at its constitutional maximum.") (citing *Stern v. Marshall*, 564 U.S. 462, 497–99 (2011)).

IV. Legal Analysis

A. The Court Has Core, Arising-in Jurisdiction Over Duran's Complaint Because She Filed a Proof of Claim Raising Identical Issues in Anderson's Bankruptcy.

Before addressing the parties' other arguments, the Court must determine whether it has jurisdiction over the claims asserted in the Complaint. "If [subject-matter] jurisdiction exists, the court must then determine the manner in which this jurisdiction should be exercised." *Nationwide Roofing & Sheet Metal, Inc. v. Cincinnati Ins. Co. (In re Nationwide Roofing & Sheet Metal, Inc.)*, 130 B.R. 768, 772 (Bankr. S.D. Ohio 1991) (cleaned up). Neither party disputed the Court's jurisdiction over this adversary proceeding, nor did Duran argue that removing the State Case was improper. Still, the Court's "duty to review subject-matter jurisdiction is ongoing and 'applies irrespective of the parties' failure to raise a jurisdictional challenge on their own[.]'" *Rhiel v. Cent. Mortg. Co. (In re Kebe)*, 444 B.R. 871, 875 (Bankr. S.D. Ohio 2011) (quoting *Campanella v. Com. Exch. Bank*, 137 F.3d 885, 890 (6th Cir. 1998)). And the parties do not clearly agree on what type of jurisdiction the Court has, making it necessary to determine that as well.

1. Bankruptcy Jurisdiction Generally

"Bankruptcy courts . . . derive their jurisdiction from the district courts." *Wasserman v. Immormino (In re Granger Garage, Inc.)*, 921 F.2d 74, 77 (6th Cir. 1990) (cleaned up). Section 1334 of the Judicial Code governs district courts' jurisdiction over bankruptcy cases and proceedings. Section 1334(a) gives district courts original and exclusive jurisdiction over "all cases under title 11," 28 U.S.C. § 1334(a), referring to "the bankruptcy case itself." *Kirk v. Hendon (In re Heinsohn)*, 231 B.R. 48, 56 (Bankr. E.D. Tenn. 1999), *aff'd*, 247 B.R. 237 (E.D. Tenn. 2000). Section 1334(b) gives them original but not exclusive jurisdiction over proceedings "arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(b). District courts may refer their jurisdiction over bankruptcy cases and proceedings to bankruptcy courts, 28 U.S.C.

§ 157(a), "and every district court in the country, including the Southern District of Ohio, has [done so]." *Murray v. Willkie Farr & Gallagher LLP (In re Murray Energy Holdings Co.)*, 654 B.R. 469, 479 (Bankr. S.D. Ohio 2023) (cleaned up).

"District courts, and bankruptcy courts by referral, exercise three categories of jurisdiction" over adversary proceedings such as this one: (1) arising-under; (2) arising-in; and (3) related-to jurisdiction. *Id.* at 480. First, bankruptcy courts have arising-under jurisdiction over "proceedings that involve a cause of action created or determined by [the Bankruptcy Code]." *Mich. Emp. Sec. Comm'n v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1144 (6th Cir. 1991); *see also Willkie*, 654 B.R. at 480 (collecting cases). Second, bankruptcy courts have arising-in jurisdiction over "proceedings . . . that, by their very nature, could arise only in bankruptcy cases." *Wolverine Radio*, 930 F.2d at 1144. "Matters that arise-under title 11 and arise-in cases under title 11 together comprise 'core proceedings,' 28 U.S.C. § 157(b)(2), in which bankruptcy courts generally may enter final judgments." *Willkie*, 654 B.R. at 480 (cleaned up).

The third category is related-to jurisdiction. "'An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate.'" *Wolverine Radio*, 930 F.2d at 1142 (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984)). "Stated another way, a claim is 'related to' the bankruptcy proceeding if it would have affected the debtor's rights or liabilities." *Browning v. Levy*, 283 F.3d 761, 773 (6th Cir. 2002). And an action need only have a conceivable effect on the debtor's bankruptcy to be related to it. *Wolverine Radio*, 930 F.2d at 1143.

Related-to proceedings are, by definition, non-core. *See Stern*, 564 U.S. at 477 ("The terms non-core and related are synonymous . . . . The phraseology of section 157 leads to the conclusion

that there is no such thing as a core matter that is 'related to' a case under title 11.") (cleaned up); *Wolverine Radio*, 930 F.2d at 1144 ("[S]ection 157 apparently equates core proceedings with the categories of 'arising under' and 'arising in' proceedings.") (cleaned up); *Reyes-Colón v. Banco Popular De Puerto Rico*, 110 F.4th 54, 65 n.12 (1st Cir. 2024) ("Proceedings that fall under 'arising under' or 'arising in' jurisdiction are also called 'core proceedings' while related-to proceedings are considered non-core."). The core/non-core distinction matters because while bankruptcy courts "generally may enter final judgments" in core proceedings, they cannot do so in non-core proceedings unless all the parties consent. Without party consent, bankruptcy courts may only "submit proposed findings of fact and conclusions of law to the district court" in non-core proceedings. *Willkie*, 654 B.R. at 480–81.

Having laid out the foundational principles guiding its analysis, the Court will now determine what type of jurisdiction it has over the claims Duran raised in her Complaint.

2. Duran's State Law Claims Became Core Because She Filed a Proof of Claim Raising Identical Issues in Anderson's Bankruptcy Case.

As stated above, the Complaint raised seven claims against Anderson, all of which arose under state law well before his bankruptcy. *See* Compl. at 17–19. Duran argues that the claims in her Complaint "are only 'related to' the bankruptcy case," making them non-core. Remand Mot. at 5. Anderson does not directly address the form of this Court's jurisdiction, but admits that "the removed matter is non-core[.]" Notice at 2. Again, non-core and related-to proceedings are synonymous. *See Reyes-Colón*, 110 F.4th at 65 n.12.

Normally, the parties would be correct that this is a non-core matter. Each claim in the Complaint arose under state law, not the Bankruptcy Code. And each existed independently of Anderson's bankruptcy. So under other circumstances, Duran's claims would fail the tests for arising-under or arising-in jurisdiction and, at most, be subject to the Court's non-core, related-to

jurisdiction. But here, Duran's state law claims became core when she filed a proof of claim raising identical issues in Anderson's bankruptcy case. *See* Main Case, Proof of Claim 24-1 at 4.

That principle was articulated in *Langenkamp v. Culp*, in which the Supreme Court held that "by filing a claim against a bankruptcy estate," a creditor "triggers the process of 'allowance and disallowance of claims,' thereby subjecting himself to the bankruptcy court's equitable power." 498 U.S. 42, 44 (1990) (quoting *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 59–60 & n.14 (1989)). As many courts have recognized, that means "a pre-petition state law claim may transform into a core proceeding if the creditor files a proof of claim with the bankruptcy court." *Kurz v. EMAK Worldwide, Inc.*, 464 B.R. 635, 643 (D. Del. 2011); *see also Tallo v. Gianopoulos*, 321 B.R. 23, 27 (E.D.N.Y. 2005) ("By filing a proof of claim, Tallo rendered his claims core proceedings and necessarily became a party under the bankruptcy court's core jurisdiction.") (cleaned up); *Pan Am. World Airways, Inc. v. Evergreen Int'l Airlines, Inc.*, 132 B.R. 4, 7 (S.D.N.Y. 1991) ("When a creditor files a proof of claim it submits itself to the bankruptcy court's equitable power, and the claims, even though arising under state law, become core proceedings within the jurisdiction of the bankruptcy court.").

At least four circuits agree.

In *S.G. Phillips Constructors, Inc. v. City of Burlington (In re S.G. Phillips Constructors, Inc.)*, 45 F.3d 702 (2d Cir. 1995), the Second Circuit addressed whether bankruptcy courts had core jurisdiction over prepetition state law claims against debtors. The *S.G. Phillips* panel held that "the determinative factor as to the bankruptcy court's jurisdiction [was] that the City filed a proof of claim resulting in an adversary proceeding that involved the allowance or disallowance of claims against the estate. In so doing, the City necessarily became a party under the court's core jurisdiction." *S.G. Phillips*, 45 F.3d at 705 (cleaned up).

That holding was based on an earlier Second Circuit case, in which a creditor (Gulf) asserted that "its [prepetition] state law breach of contract claim [was] merely 'related to' the bankruptcy case, and that such claim would have been filed in the state court but for the bankruptcy filing." *Gulf States Expl. Co. v. Manville Forest Prods. Corp. (In re Manville Forest Prods. Corp.)*, 896 F.2d 1384, 1389 (2d Cir. 1990). From that premise, Gulf argued that its claim needed "to be adjudicated by an Article III judge." *Id.* The Second Circuit disagreed:

> While it is true that the instant adversary proceeding involved a pre-petition breach of contract claim, as in [*Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982)], there is one crucial distinction which Gulf ignores. Unlike the defendant in *Marathon*, Gulf filed a proof of claim in [the debtor's] Chapter 11 case. *By filing a proof of claim, Gulf submitted itself to the equitable power of the bankruptcy court to disallow its claim*.

Id. (emphasis added) (citing *Granfinanciera*, 492 U.S. at 59–60 & n.14).

In *Southeastern Sprinkler Co. v. Meyertech Corp. (In re Meyertech Corp.)*, the Third Circuit dealt with "an action which [had] as its foundation a question of the validity of a claim which accrued under state law against the bankrupt estate prior to bankruptcy." 831 F.2d 410, 417 (3d Cir. 1987). Though the creditor's action was based on state law, the court concluded it was "correctly characterized as a claim against the bankrupt estate of Meyertech. As such, the litigation of its merits [was] a core proceeding under the bankruptcy judge's jurisdiction as provided by § 157(b)(2)(B)." *Id.* at 418.

This rule also informed the Ninth Circuit's decision in *Benedor Corp. v. Conejo Enterprises, Inc. (In re Conejo Enterprises, Inc.)*, 96 F.3d 346 (9th Cir. 1996). There, a creditor (Benedor) sued the debtor (Conejo) "in a California state court alleging, *inter alia*, a state law breach of contract claim . . . . One year later, in May 1994, Conejo filed for Chapter 11 bankruptcy and removed the Benedor state action to the bankruptcy court." *Id.* at 349. Even though the

creditor asserted a prepetition state law claim, the *Conejo* panel held that "[o]nce Benedor filed its proof of claim, it subjected its claim to the core jurisdiction of the bankruptcy court." *Id.* at 353.

Each of those circuit cases involved a state law claim against a debtor. And each held that by filing a proof of claim in the debtor's bankruptcy case, the creditor subjected its state law claims to the bankruptcy court's core, arising-in jurisdiction—even when those claims actually arose prepetition. The Fifth Circuit has explained that:

> The filing of the proof [of claim] invokes the special rules of bankruptcy concerning objections to the claim, estimation of the claim for allowance purposes, and the rights of the claimant to vote on the proposed distribution. *Understood in this sense, a claim filed against the estate is a core proceeding because it could arise only in the context of bankruptcy*. Of course, the state-law right underlying the claim could be enforced in a state court proceeding absent the bankruptcy, but the nature of the state proceeding would be different from the nature of the proceeding following the filing of a proof of claim.

Wood v. Wood (In re Wood), 825 F.2d 90, 97 (5th Cir. 1987) (cleaned up) (emphasis added).

As these cases show, filing a proof of claim generally invokes a bankruptcy court's core jurisdiction over state law causes of action underlying that claim. Importantly, however, a proof of claim "only transforms a pre-petition state law action into a core proceeding *when the proof of claim raises the [same] issues as the state action*." *Kurz*, 464 B.R. at 643 (emphasis added); *see also In re Exide Techs.*, 544 F.3d 196, 212–13 (3d Cir. 2008) ("Both [the bankruptcy and district courts] reasoned that, by filing a proof of claim in the debtor's bankruptcy case, the [creditors] invoked the allowance process and their claims became core. We could accept this reasoning *if . . . the subject matter of the proofs of claim is the same as that of the state law action*.") (emphasis added); *Steinman v. Spencer (In re Argus Grp. 1700, Inc.)*, 206 B.R. 737, 747–48 (Bankr. E.D. Pa. 1996) ("Debtors' proposition that the filing of a proof of claim in bankruptcy transforms a pre-petition state law claim which was filed in state court before the bankruptcy into

a core proceeding is sound. However, *this result only obtains where the proof of claim raises the same claims as the state law action*.") (cleaned up) (emphasis added), *aff'd sub nom. Argus Grp. 1700, Inc. v. Steinman*, 206 B.R. 757 (E.D. Pa. 1997).

In short, "where a party has filed a proof of claim in a debtor's case, any action asserted by that party against the debtor that raises the same issues as those encompassed by the proof of claim is a core proceeding[.]" *Beneficial Nat'l Bank USA v. Best Reception Sys., Inc. (In re Best Reception Sys., Inc.)*, 220 B.R. 932, 944 (Bankr. E.D. Tenn. 1998). Here, Duran's proof of claim against Anderson "is based upon the claims set forth in the [State Case]." Main Case, Proof of Claim 24-1 at 4. Because Duran filed a proof of claim raising identical issues, "the litigation of [the] merits [of her claims in the State Case] is a core proceeding[.]" *Meyertech*, 831 F.2d at 418.

That Duran's state law claims are subject to this Court's core jurisdiction might present a slight wrinkle, given that both parties believed those claims were non-core and based their briefing on that belief. But their arguments primarily focus on permissive abstention and equitable remand. Permissive abstention "applies to both non-core [] and core proceedings," *Best Reception*, 220 B.R. at 952, and a federal court may remand a removed matter "on any equitable ground," regardless of the form its jurisdiction takes, 28 U.S.C. § 1452(b). So the core/non-core distinction notwithstanding, the Court may still abstain from hearing and remand the State Case. For the reasons explained below, that is precisely what it will do here.

B. Permissive Abstention and Equitable Remand Are Essentially Identical, so Both Doctrines May Be Addressed in a Single Analysis.

Duran, again, asks the Court to abstain from hearing the State Case or equitably remand it. Remand Mot. at 6–14. Section 1334(c)(1) of the Judicial Code, which governs permissive abstention, says "nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a

particular proceeding," even if it has jurisdiction to do so. 28 U.S.C. § 1334(c)(1). And § 1452(b) allows federal courts to remand a removed claim or cause of action "on any equitable ground." 28 U.S.C. § 1452(b).

Permissive abstention and equitable remand "are essentially identical." *Mann v. Waste Mgmt. of Ohio, Inc.*, 253 B.R. 211, 215 (N.D. Ohio 2000). "The factors to be considered by the district court when determining whether permissive abstention or equitable remand is appropriate are virtually the same." *Rahl v. Bande*, 316 B.R. 127, 135 (S.D.N.Y. 2004) (cleaned up); *see also Parrett v. Bank One, N.A. (In re Nat'l Century Fin. Enters., Inc., Inv. Litig.)*, 323 F. Supp. 2d 861, 885 (S.D. Ohio 2004) ("The analysis under § 1334(c)(1) is largely the same as under § 1452(b)."); *Meritage Homes Corp. v. JPMorgan Chase Bank, N.A.*, 474 B.R. 526, 572–73 (Bankr. S.D. Ohio 2012) (same). "Therefore, the Court need not undertake separate analyses to determine whether permissive abstention or equitable remand is appropriate; the doctrines are properly addressed with one analysis." *Doe v. Roman Cath. Church of Archdiocese of New Orleans*, 588 F. Supp. 3d 698, 716 (E.D. La. 2022).

C. Permissive Abstention and Equitable Remand Are Appropriate Here.

Courts consider many factors when deciding whether to permissively abstain under § 1334(c)(1), including:

> (1) the effect or lack of effect on the efficient administration of the estate if a court abstains, (2) the extent to which state law issues predominate over bankruptcy issues, (3) the difficulty or unsettled nature of the applicable state law, (4) the presence of a related proceeding commenced in state court or other non-bankruptcy court, (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334, (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case, (7) the substance rather than form of an asserted core proceeding, (8) the feasibility of severing state law claims from core bankruptcy matters . . . , (9) the burden on this court's docket, (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties, (11) the existence of a right to a jury trial, (12) the

> presence in the proceeding of nondebtor parties and (13) any unusual or other significant factors.

Meritage Homes, 474 B.R. at 573; *see also Willkie*, 654 B.R. at 495 (quoting same).

This standard "is a multifactor balancing test, not a rule in which every element must be satisfied[.]" *Johnston v. City of Middletown (In re Johnston)*, 484 B.R. 698, 714–15 (Bankr. S.D. Ohio 2012). "[N]o one factor is necessarily determinative," "not all the factors need to weigh in favor of permissive abstention in order for it to be appropriate," and "the relevance and importance of each [factor] will vary with the particular circumstances of each case[.]" *Id.* at 715. In other words, courts "need not plod through a discussion of each factor in the laundry lists developed in prior decisions." *Waleski v. Montgomery, McCracken, Walker & Rhoads, LLP (In re Tronox)*, 603 B.R. 712, 726 (Bankr. S.D.N.Y. 2019) (cleaned up), *aff'd*, 2022 WL 16753119 (2d Cir. Nov. 8, 2022), *cert. denied*, 143 S. Ct. 2027 (2023). "The analysis is not a mechanical or mathematical exercise," but one that "largely ask[s] the Court to balance the federal interest in efficient bankruptcy administration against the interest of comity between the state and federal courts." *Id.* (cleaned up).

"The decision whether to abstain is within the sound discretion of the bankruptcy judge." *McDaniel v. ABN Amro Mortg. Grp.*, 364 B.R. 644, 650 (S.D. Ohio 2007). Still, "[e]quitable remand and permissive abstention should be deployed sparingly." *Tilton v. MBIA Inc.*, 620 B.R. 707, 717 (S.D.N.Y. 2020) (cleaned up). As shown above, the Court has core jurisdiction over the claims in the Complaint. Because federal courts have a "virtually unflagging obligation . . . to exercise the jurisdiction given them," *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 817 (1976), "[t]he general rule is that a federal court must accept the jurisdiction granted it, and permissive abstention and equitable remand are warranted only on very rare occasions," *Doe*, 588 F. Supp. 3d at 716 (cleaned up).

Put differently, permissive abstention and equitable remand are "extraordinary and narrow exception[s] to the duty of the federal courts to adjudicate controversies which are properly before it." *Bavelis*, 453 B.R. at 881 (cleaned up). So "there is a presumption in favor of the exercise of federal jurisdiction and against abstention. And the movant bears the burden of establishing that permissive abstention is warranted." *Molner v. Reed Smith, LLP (In re Aramid Ent. Fund, LLC)*, 628 B.R. 584, 594 (Bankr. S.D.N.Y. 2021) (cleaned up).

1. Abstention and Remand Will Support the Efficient Administration of Anderson's Bankruptcy Estate.

On balance, abstaining and remanding the State Case is the most efficient course of action here. This case was pending before the State Court for 18 months before Anderson's bankruptcy. During that time, the parties engaged in extensive discovery and motion practice, and the State Court necessarily became familiar with the State Case. There is little reason to start over now.

In *Meritage Homes*, the Court chose not to abstain and remand a state court action "[b]ecause it would result in an entirely new court becoming involved in the disputes between" the parties, which in turn "would result in the duplicative and uneconomical use of judicial resources." *Meritage Homes*, 474 B.R. at 573. Here, the opposite is true: exercising the Court's jurisdiction would create—and abstention and remand would prevent—those same ills. That is, retaining the State Case would lead to the duplicative and uneconomical use of judicial resources because it would result in an entirely new court—either this Court or the federal district court—becoming involved in the dispute between Duran and Anderson. While the new court would benefit from the already-completed discovery, and could certainly decide the State Case in a timely fashion, it would be far more efficient for the State Court to do so.

a. Retaining the State Case Would Create a Procedural Quagmire.

Aside from the State Court's familiarity with the State Case, deciding Duran's claims against Anderson in the federal forum would be a convoluted process to say the least. Section 157(b)(5) of the Judicial Code provides that:

> The district court shall order that *personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending*, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.

28 U.S.C. § 157(b)(5) (emphasis added).

Most of Duran's claims against Anderson are personal injury tort and wrongful death claims, so § 157(b)(5) would appear to require that those claims be tried in district court. *See, e.g.*, *Palazzola v. City of Toledo (In re Palazzola)*, No. 09-37696, 2011 WL 3667624, at *6 n.4 (Bankr. N.D. Ohio Aug. 22, 2011) ("[A]s a personal injury tort, § 157(b)(5) precludes Plaintiffs' § 1983 claim from being tried in this court."). But the caselaw shows that this statute's 'requirements' are not nearly as absolute as they may appear.

First, despite the statute saying that district courts "shall order" personal injury and wrongful death claims to be tried before them, courts have consistently recognized that § 157(b)(5) allows district courts to leave those claims where they are pending. That is, the statute "allows abstention for personal injury cases," and "only where abstention does not occur will the requirement for adjudication in a district court take effect." *Citibank, N.A. v. White Motor Corp. (In re White Motor Credit)*, 761 F.2d 270, 273 (6th Cir. 1985) (cleaned up); *accord A.H. Robins Co. v. Piccinin (In re A.H. Robins Co.)*, 788 F.2d 994, 1010 (4th Cir. 1986).

Not only may courts abstain from hearing § 157(b)(5) claims, but those claims can even be tried in bankruptcy court, despite the statute explicitly stating otherwise. "The Supreme Court has held—though most overlook this particular holding—that section 157(b)(5) is *not* jurisdictional

and the parties may consent to the trial of personal injury and wrongful death claims in the bankruptcy court." *In re Residential Cap., LLC*, 536 B.R. 566, 571 (Bankr. S.D.N.Y. 2015); s*ee also Stern*, 564 U.S. at 479 ("We need not determine what constitutes a 'personal injury tort' . . . because . . . § 157(b)(5) is not jurisdictional, and [] Pierce consented to the Bankruptcy Court's resolution of his defamation claim.").

Here, that means that even though § 157(b)(5) says that district courts "shall order" that personal injury and wrongful death claims "shall be tried" in district court, this Court could try Duran's claims if both she and Anderson consented. Though the parties might consent to this Court's resolution of Duran's state law claims (should it choose not to abstain and remand), they might also move to transfer[4] this proceeding to the appropriate district court—or the district court might transfer it sua sponte. *See In re New York Med. Grp., P.C.*, 265 B.R. 408, 412 (Bankr. S.D.N.Y. 2001) ("The party seeking relief under § 157(b)(5) must make the motion in the district

[4] Section 157(b)(5) prompts courts to make two types of "transfers." One is a more traditional *inter*-district transfer—moving a claim from one district court to another. *See, e.g.*, *Sutherland v. DCC Litig. Facility, Inc. (In re Dow Corning Corp.)*, 778 F.3d 545, 549 (6th Cir. 2015) ("Sutherland's claim was transferred [from the Middle District of North Carolina] to the Eastern District of Michigan pursuant to 28 U.S.C. § 157(b)(5)[.]"). The other is an *intra*-district transfer—moving a § 157(b)(5) claim from a bankruptcy court to the district court of which it is a unit. Intra-district transfers are often done via the district court's withdrawal of the reference under § 157(d). *See, e.g.*, *Doe v. Martinez (In re Martinez)*, No. 10-0103-j, 2010 WL 3075282, at *3 (D.N.M. July 15, 2010) ("Because the bankruptcy proceeding involves [§ 157(b)(5) claims], the Court finds the appropriate action is to withdraw the reference[.]"); *Peterson v. 610 W. 142 Owners Corp. (In re 610 W. 142 Owners Corp.)*, No. 94 B 44488 (JGH), 1999 WL 294995, at *2 (S.D.N.Y. May 11, 1999) (same). Courts often describe what happens after the reference is withdrawn as a "transfer." *See, e.g.*, *de Jesus-Gonzalez v. Segarra-Miranda*, 476 B.R. 376, 380 (D.P.R. 2012) ("In order for a case to be transferred from the bankruptcy court to the district court, a withdrawal of reference motion must be filed[.]"); *Caudill v. Burrows (In re Oasis Corp.)*, No. C2-08-00288, 2008 WL 2473496, at *2 (S.D. Ohio June 18, 2008) (withdrawing the reference and ordering that the claims be "immediately transferred" to the district court). Because courts use "transfer" to describe intra-district transfers of claims done via withdrawal of the reference, the Court will do the same here.

court in the district in which the bankruptcy case is pending, but the district court may act without a formal motion in appropriate circumstances.") (cleaned up).

In effect, choosing not to abstain here could result in not one, but two new courts becoming involved in the State Case. Unless the parties consented to trial in this Court, they could file a motion requesting that all of Duran's personal injury and wrongful death claims be transferred to the United States District Court for the Southern District of Ohio for trial. *Pan Am Shuttle, Inc. v. Pan Am World Airways, Inc. (In re Pan Am Corp.)*, 16 F.3d 513, 516 (2d Cir. 1994) (motions to transfer § 157(b)(5) claims "should be made to the district court in the district where the bankruptcy is proceeding"). The district court would have to spend time and resources considering that motion, and even if it were inclined to transfer Duran's personal injury and wrongful death claims, it would have to further consider whether § 157(b)(5) provides a basis for transferring her negligent and intentional infliction of emotional distress claims. *See* Compl. at 17–18. "Courts have reached different results under section 157(b)(5) for emotional distress claims (whether negligent or intentional)." *Residential Cap.*, 536 B.R. at 572. Some say the statute applies to all personal injury tort claims, while others read § 157(b)(5) more narrowly, holding that it only applies to claims involving actual bodily injury. *See id.* (collecting cases).

Even if Duran's emotional distress claims are not subject to § 157(b)(5), that would only further complicate matters, because the district court would then have to consider whether it should withdraw the reference and try those claims alongside the others in Duran's Complaint. *See* 28 U.S.C. § 157(d) ("The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown."). Such considerations, aside from taking substantial time and judicial resources, would only further delay the determination of Anderson's liability, and thus further delay the administration of his

bankruptcy estate. Opening the door to those complications by choosing to retain the State Case—which was nearly ready for trial before removal—would be the antithesis of efficiency.

b. Duran's Claims Must be Liquidated During Anderson's Chapter 13 Case, and That Is Most Efficiently Done in State Court.

Advancing another argument in favor of this Court retaining the State Case, Anderson says that the adjudication of Duran's claims against him is inextricably connected to the efficient administration of his bankruptcy estate. *See* Remand Obj. at 8. There is no disputing that point. But even though the State Case and the administration of Anderson's estate are connected, abstention and remand is still the best way to minimize any delay associated with the liquidation of Duran's claims and move Anderson's bankruptcy case forward.

The allowance (or disallowance) and liquidation of Duran's claim will affect the administration of Anderson's bankruptcy case—specifically, the confirmation of his Chapter 13 plan—by affecting the dividend his plan must pay to unsecured creditors. To be confirmed, a Chapter 13 plan must satisfy the "best interest of creditors test," which requires "the value . . . of property to be distributed under the plan on account of each allowed unsecured claim" to be "not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7[.]" 11 U.S.C. § 1325(a)(4); *see also In re Engle*, 496 B.R. 456, 458 (Bankr. S.D. Ohio 2013). In other words, a Chapter 13 plan cannot be confirmed unless unsecured creditors will receive at least as much through the debtor's plan as they would if the debtor liquidated under Chapter 7.

Anderson's plan proposes to pay a 5% dividend to nonpriority unsecured creditors. Main Case, Doc. 12 at 1. But the Chapter 13 trustee has already objected to the confirmation of his plan because, according to her calculations, Anderson would need to pay a 47.42% dividend to satisfy the best interest of creditors test. Main Case, Doc. 22 at 1–2. And if he is found liable for all or

even part of Duran's $10 million dollar claim, it will affect the dividend that Anderson's plan must pay to unsecured creditors by reducing each creditor's pro rata share of the proceeds of Anderson's hypothetical Chapter 7 liquidation. *See In re Malloy*, No. 23-33442-KRH, 2024 WL 4668430, at *6 (Bankr. E.D. Va. Nov. 4, 2024) ("[I]n light of the Court's estimation of the Creditor's Claim, the Plan is underfunded. The Plan funding . . . will not be sufficient to pay the Creditors' estimated claim . . . plus the other distributions contemplated by the Plan. For these reasons, confirmation of the Plan must be denied, without prejudice to the Debtor to propose an amended plan that will allow him to satisfy the State Court Judgment.").

The point is that until the amount of Duran's proof of claim is determined, Anderson will be unable to confirm a Chapter 13 plan. That may leave his bankruptcy case on this Court's docket for some time. But even so, the most efficient option is still to abstain and remand, because the key to the efficient administration of Anderson's estate will be the timely adjudication of the State Case. Exercising jurisdiction, as explained above, would likely result in most (if not all) of Duran's claims being sent to the district court for trial, while leaving any claims not subject to 28 U.S.C. § 157(b)(5) to be tried here (unless the district court withdrew the reference as to those claims). That would be far less efficient than remanding Duran's claims to the State Court, which has already spent 18 months handling the State Case.

c. Anderson's Other Efficiency Arguments Fall Flat.

Resisting these conclusions as to efficiency, Anderson asserts that the State Case "is not close to being ready for a trial." Remand Obj. at 6. But that does not seem accurate. The State Case docket reveals that the State Court set a discovery cutoff date of May 24, 2024, and a dispositive motion deadline one month earlier. Although some notices of deposition were filed after that cutoff, discovery in the State Case was complete or nearly complete before the Petition Date. And even if Anderson were right about the case not being close to ready for trial, it would

still be closer to trial in the State Court than it could possibly be in this Court or the district court. Again, because the State Case was pending before it for 18 months, the State Court is more familiar with the intricacies of the case than this Court, allowing it to move toward trial in that forum as quickly or more quickly than it could here. There is no efficiency to be gained by taking over a case that the State Court was well on its way to deciding, especially given that most of (if not all) of Duran's claims might be transferred to yet another court—the district court—for trial.

Making another argument against abstention, Anderson says the State Case is currently stayed and cannot proceed "unless the *State Court* grants relief from the bankruptcy stay." Remand Obj. at 6 (emphasis added). The Court assumes he meant to say that the State Case cannot proceed unless the *bankruptcy court* grants relief from the automatic stay, which is true. But Anderson failed to mention that Duran has already sought relief from stay so she can continue prosecuting the State Case against him in State Court. The Court entered an agreed order holding the relief from stay motion in abeyance pending its decision to abstain or remand. Main Case, Doc. 52. But as discussed above and in the next section, the parties have already completed briefing on Duran's Stay Motion, and the Court will decide that matter here and now. So there will be no delay in moving the State Case forward following remand.

For his last argument regarding efficient administration and judicial economy, Anderson says that a separate adversary proceeding Duran brought against him is both core and "inseparable from the State [Case]." Remand Obj. at 8. In that adversary proceeding, No. 25-2003 ("Dischargeability Action"), Duran asks that Anderson's anticipated judgment debt from the State Case be found nondischargeable under § 1328(a)(4) of the Bankruptcy Code, which bars the discharge of "any debt . . . for restitution, or damages, awarded in a civil action against the debtor

as a result of willful or malicious injury by the debtor that caused personal injury to an individual or the death of an individual." 11 U.S.C. § 1328(a)(4); *see also* Dischargeability Action, Doc. 1.

True, "determinations as to the dischargeability of particular debts" are core proceedings. 28 U.S.C. § 157(b)(2)(I). But the argument that judicial economy would be favored by exercising jurisdiction over the State Case—because it is "inseparable" from the "substance" of Duran's Dischargeability Action—holds no water. "The dischargeability of a debt must be recognized as a matter separate from the merits of the debt itself." *Sill v. Sweeney (In re Sweeney)*, 276 B.R. 186, 195 (B.A.P. 6th Cir. 2002). The issue in the State Case is whether Anderson is liable under state law, while the issue in the Dischargeability Action is whether Anderson may discharge his potential liability. Although a debt's merits and dischargeability are connected, the Court need not decide the former to decide the latter, particularly where it would be more prudent for the State Court to do so. In short, the State Case and Duran's Dischargeability Action are far from inseparable.

For all these reasons, the efficient-administration-of-the-estate factor supports abstention and remand. As shown below, so do nearly all the other factors.

2. Substance of the State Case and Burden on the Court's Docket

When deciding whether to permissively abstain, courts also consider the burden a removed case would put on their dockets and "the substance rather than form of an asserted core proceeding[.]" *Meritage Homes*, 474 B.R. at 573. As stated above, the claims Duran asserted in the State Case became core in form because they are identical to those on which her proof of claim in Anderson's bankruptcy is based. Still, the substance of the State Case is that of a state law civil action—not a core bankruptcy matter. *See Auto Money N. LLC v. Abernathy (In re Auto Money N. LLC)*, 650 B.R. 491, 502 (Bankr. D.S.C. 2023) ("Considering the substance of the underlying 'core' matters, they involve disputes that can be and were raised in, and pending before, the courts

of another state when this case was filed, properly brought outside the bankruptcy case, and again, appear to have no place in this Court or in federal court absent the underlying bankruptcy filing.").

Also, for the many reasons discussed above, the State Case would impose a burden (though not an undue one) on the docket of either this Court or the district court, each (or possibly both) of which would have to become intimately familiar with a matter that was already nearing trial in the State Court. Reworking that ground would be burdensome, inefficient, and illogical given the State Case's status at the time of removal. *See O'Rourke v. Cairns*, 129 B.R. 87, 91 (E.D. La. 1991) ("The state court was on the verge of trying this case when it was removed. To retain this case would be an extravagant expense of judicial resources because of the state court's readiness."). Because Duran's claims are core in form only and would burden the docket of this Court or the district court, these factors also support abstention and remand.

3. State Law Issues, Some of Which Appear Difficult or Unsettled, Predominate Over Bankruptcy Issues And Cannot Be Severed.

Courts deciding whether to abstain from hearing a removed matter consider "the extent to which state law issues predominate over bankruptcy issues" and "the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court[.]" *Meritage Homes*, 474 B.R. at 573. These factors reflect the "interest of comity with State courts" and "respect for State law" that underlies the doctrine of permissive abstention. 28 U.S.C. § 1334(c)(1). And comity "tak[es] into account such factors as . . . the nature of the state law claims, the character of the governing state law, and the relationship between the state and federal claims." *City of Chicago v. Int'l Coll. of Surgeons*, 522 U.S. 156, 173 (1997). When removed claims "are governed exclusively by state law and invoke no substantive right created by federal law or federal bankruptcy law, respect for state law and the

interest of comity with state courts heavily favor abstention." *Charles Schwab & Co. v. Girod LoanCo, LLC*, No. 19-13099, 2020 WL 3056397, at *6 (E.D. La. June 9, 2020).

The degree to which state law issues predominate over bankruptcy issues in this adversary proceeding cannot be overstated. As already noted, the Complaint asserts seven claims for relief against Anderson, all of which are based purely on state law. Although Duran subjected herself to the Court's core, arising-in jurisdiction by filing a proof of claim, the Complaint itself raised no bankruptcy-based claims or issues. So here, state law issues predominate over bankruptcy issues. And severing the state law claims from the core bankruptcy matters is not feasible. By filing a proof of claim against Anderson that raised identical issues, Duran made all of her state law claims core bankruptcy matters. That, in turn, made it impossible to sever those claims from core bankruptcy matters; the state law claims have become those core matters. Because state law issues are predominant and severing the state law claims is not feasible (or, for that matter, possible), these factors strongly favor abstention and remand.

So does the unsettled nature of the applicable state law, which is a "primary determinant for the exercise of discretionary abstention[.]" *Lindsey v. Dow Chem. Co. (In re Dow Corning Corp.)*, 113 F.3d 565, 571 (6th Cir. 1997) (cleaned up). To be sure, most of Duran's claims are based on state statute or well-settled doctrines of state tort law. *See* Remand Mot. at 10. So is Anderson's claim that Ohio statute immunizes him for his conduct as a government official. *See* Remand Obj. at 7. This Court "is as able as the state courts . . . to apply the plain language of a statute or a holding of a controlling decision that is squarely on point to the facts of a case." *Junk v. CitiMortgage, Inc. (In re Junk)*, 512 B.R. 584, 618 (Bankr. S.D. Ohio 2014). But there is little doubt that the State Court would have greater expertise in matters of state law. *See Charles*

Schwab, 2020 WL 3056397, at *6 ("To retain this case would cause duplicative and uneconomical use of scarce judicial resources. The state court has expertise in resolving state law issues[.]").

Aside from the State Court's greater expertise, not all the state law issues raised in this case are so clear-cut. Count six of the Complaint seeks to hold Anderson liable for violating "Andre's Law," a Columbus, Ohio city ordinance that requires police officers to summon emergency services and render aid to anyone "suffering serious bodily harm due to a use of force by the division of police[.]" Columbus, Ohio Police and Fire Divisions Code § 1915.01(B), available at https://library.municode.com/oh/columbus. Anderson asserts that there are no issues in the State Case that have not been addressed by Ohio courts. Remand Obj. at 7. But as Duran points out, Remand Mot. at 10–11, whether Andre's Law supports a private cause of action remains an unsettled question—one that, to date, no Ohio court has answered.

Because the State Case presents difficult or unsettled questions of state law, the third abstention factor—along with the interests of comity and respect for state law it promotes—also weighs in favor of abstention and remand.

4. Although Duran May Exercise Her Right to a Jury Trial In This Forum, the Differing Standards for State and Federal Jury Verdicts Suggest that Anderson Is Forum Shopping.

Despite arguing that her claims should be tried before a State Court jury, Duran concedes that both "the State Court [and] the district court are equipped to conduct a jury trial[.]" Remand Mot. at 14. As this Court has explained, "the existence of a right to a jury trial" does not "counsel in favor of abstention," because even if parties "refuse[] to consent to this Court's conducting a jury trial under 28 U.S.C. § 157(e), a party may move to withdraw the reference to preserve a trial by jury." *Bavelis*, 453 B.R. at 882–83 (cleaned up). Given that either forum can conduct a jury trial, this abstention factor is neutral. *See Tilton*, 620 B.R. at 717 ("The sixth factor—right to a

jury trial—is neutral. Both this Court and the [New York state court] are equipped to conduct a jury trial.").

While the right to a jury trial is a neutral factor here, it bears noting that there are significant differences in the way that right is afforded to defendants by the state and federal forums. And it appears that Anderson's removal may have been an attempt to exploit those differences for tactical reasons, which raises "the discomforting specter of forum-shopping[.]" *Bacardi Int'l Ltd. v. V. Suarez & Co.*, 719 F.3d 1, 15 (1st Cir. 2013) (cleaned up). To explain why, a brief recap of the events leading up to removal is in order: On August 22, 2024—about one month before the Petition Date—the State Court denied Anderson's motion for summary judgment. *See* State Ct. Summ. J. Order. Then, on September 16, 2024, Anderson appealed the State Court's denial of summary judgment. Doc. 1 at 368–69. Just eight days later, Anderson filed his Chapter 13 petition, staying his state court appeal. Doc. 1 at 391.

Why would Anderson appeal the State Court's denial of summary judgment, and then immediately file bankruptcy to stay his own pending appeal? While his motive for doing so is unclear, at least one court has observed that those who receive unfavorable results in federal or state court "frequently file [bankruptcy] cases to avoid posting a bond while they appeal [an] adverse judgment and seek a second bite at the apple in the bankruptcy court." *In re Roberts*, No. 22-10521-JGR, 2024 WL 1460287, at *1 (Bankr. D. Colo. Mar. 28, 2024). Anderson's actions could be seen as delay tactics, if nothing else, but Duran says they are much more than that. In her view, "Anderson is likely looking to this Court as a friendlier forum for future rulings" after the State Court denied his motion for summary judgment. Remand Mot. at 13. That is certainly not an unreasonable interpretation of his actions.

"Without some showing that [the removing party] is, in fact, seeking a better result by shopping around, this factor does not support abstention." *Valley Media, Inc. v. Toys R Us, Inc. (In re Valley Media, Inc.)*, 289 B.R. 27, 32 (Bankr. D. Del. 2003). To make that showing, Duran points out that it will be much harder for her to obtain a favorable jury verdict in federal court than in the State Court. *Id.* In the State Court, only three-fourths of the jurors would need to agree on a verdict against Anderson. Ohio R. Civ. P. 48 ("In all civil actions, a jury shall render a verdict upon the concurrence of three-fourths or more of their number."). But in federal court, any verdict against Anderson would have to be unanimous. Fed. R. Civ. P. 48(b) ("Unless the parties stipulate otherwise, the verdict must be unanimous . . . ."); *see also* Fed. R. Civ. P. 81(c)(1) ("These rules apply to a civil action after it is removed from a state court.").

Courts have recognized that a plaintiff seeking a lower threshold for a verdict, and conversely, a defendant seeking a higher threshold, amounts to forum shopping. *See, e.g.*, *Stichting Pensioenfonds ABP v. Countrywide Fin. Corp.*, 447 B.R. 302, 312 (C.D. Cal. 2010) ("Plaintiff accuses the Defendants of forum shopping, but the facts suggest Plaintiff, too, is forum shopping. . . . Plaintiffs admit they prefer to litigate in state court . . . because a jury trial in California would require less than a unanimous verdict. Thus, both parties are forum shopping."). And at least one other bankruptcy court found that conduct like Anderson's indicated forum shopping serious enough to convince it that abstention would be warranted.

That court, in *Gilbane Building Co. v. Air Systems Inc. (In re Encompass Services Corp.)*, 337 B.R. 864 (Bankr. S.D. Tex. 2006), *aff'd*, 2006 WL 1207743 (S.D. Tex. May 3, 2006), dealt with parallel state court and bankruptcy proceedings. The state court plaintiff (ASA) sued the state court defendant (Gilbane) in California court, and "[t]hat suit was disposed of in favor of ASA on a motion for summary judgment[.]" *Id.* at 867, 876. Gilbane "appealed in the California state

court system," but soon thereafter initiated an adversary proceeding in the bankruptcy court raising "many of the same issues presented in its losing effort in the California suit." *Id.* at 868, 876. The bankruptcy court took exception to that, saying Gilbane "chose to litigate in a California state court, and now that it has lost at the trial level, [] wants this Court to assert jurisdiction over the matter and in effect terminate the ongoing appeal in [state court]." *Id.* at 876–77. The "most important factor" directing the court "toward abstention [was] the overwhelming presence of indications that Gilbane is trying to take the proverbial second bite at the apple." *Id.* at 879.[5] Because Gilbane was trying to shop for a more favorable forum after losing in state court, the bankruptcy court chose to abstain, stating it was "not an insurer against the outcome of bad choices." *Id.* at 877.

While he has not yet lost at the trial level, Anderson, much like Gilbane, is pursuing an adversary proceeding involving the same issues as the State Case only after receiving an unfavorable result from the State Court at summary judgment. Exercising jurisdiction over this matter would effectively terminate Anderson's ongoing state court appeal, just as deciding not to abstain would have done in *Gilbane*. Parties cannot (or at least should not) be permitted to get a do-over via removal. Just as "concern that a party will lose its case does not demonstrate the inadequacy of a forum," *Junk*, 512 B.R. at 622 (cleaned up), "removal should not be justified on the ground that the bankruptcy court would be friendlier to the bankrupt," *In re Briarpatch Film Corp.*, 281 B.R. 820, 832 (Bankr. S.D.N.Y. 2002). Given the unfavorable results Anderson received before removal, and the more difficult standard for a jury verdict in the federal forum, it appears likely that Anderson's removal amounts to forum shopping. It is hard to fathom what he

[5] The *Gilbane* court mainly discussed forum shopping during its jurisdictional analysis, *see id.* at 876–77, but later said that even if it had jurisdiction over the removed action, it would permissively abstain on account of Gilbane's obvious forum shopping, *id.* at 879.

sought to obtain through removal, other than a trial in a friendlier forum. So Anderson's maneuvering is yet another factor that counsels in favor of abstention and remand.

5. Other Factors

Although many of the abstention/remand factors carry little weight or simply do not apply here, the Court will briefly consider them for the sake of completeness.

The fourth factor concerns the presence of a related proceeding[6] in another court. Anderson says that there are no related proceedings pending before the State Court, and notes that Duran has initiated a lawsuit in the federal district court, arising "from the exact same" facts as the State Case, against the City of Columbus and Police Chief Elaine Bryant. Remand Obj. at 7–8. In that lawsuit, Duran alleges that the City of Columbus and Chief Bryant are liable for Lewis's death under 42 U.S.C. § 1983. *See* Case No. 24-cv-01841, Doc. 1.

Although Anderson says Duran's § 1983 lawsuit is pending "in this Court," Remand Obj. at 7, that is incorrect. That case is pending before the United States *District* Court for the Southern District of Ohio, not the United States *Bankruptcy* Court for the Southern District of Ohio. So Duran's pending § 1983 action does little to move the needle away from abstention and remand. For one thing, "courts have not frequently afforded this factor a significant amount of weight on its own." *N.J. Dep't of Envtl. Prot. v. Occidental Chem. Corp. (In re Maxus Energy Corp.)*, 560 B.R. 111, 126 (Bankr. D. Del. 2016). And Duran's § 1983 action is only somewhat related to the

[6] "Related proceedings" should not be confused with proceedings over which a bankruptcy court would have "related-to" jurisdiction. Rather, this factor asks courts to consider whether there are any proceedings that have some relationship to the removed case pending in other courts. *See, e.g.*, *Webster Place Ath. Club LLC v. Romco-Webster Place, LLC (In re Webster Place Ath. Club LLC)*, 599 B.R. 20, 31 (Bankr. N.D. Ill. 2019); ("The existence of those related proceedings in state court also weigh in favor of abstention."); *N.J. Dep't of Env't Prot. v. Occidental Chem. Corp. (In re Maxus Energy Corp.)*, 560 B.R. 111, 126 (Bankr. D. Del. 2016) ("There can be little doubt that the Claims currently in front of this court are associated with an extensive body of related proceedings in State Court.").

State Case. Her complaint in that action involves some of the same factual issues as the State Case, but given that it involves entirely different defendants and claims, it should be no surprise that her § 1983 complaint also alleges entirely different facts (in addition to the ones that overlap). Plus, Anderson is not even a defendant in Duran's § 1983 lawsuit, and he admits that "the one cause of action alleged [in that lawsuit] is different." Remand Obj. at 8. All told, this factor weighs slightly—very slightly—against abstention and remand.

As for the fifth factor, the parties concede that the Court's only basis for jurisdiction over the Complaint is 28 U.S.C. § 1334, which supports abstention and remand. Remand Mot. at 12; Remand Obj. at 8. The twelfth factor favors abstention as well, because there are no non-debtor parties here (other than Duran).[7] And finally, the thirteenth factor does not apply; neither party raised any additional unusual or significant factors for the Court's consideration. Remand Mot. at 14; Remand Obj. at 9.

6. Final Observations.

Federal courts generally exercise permissive abstention and equitably remand removed cases in which the parties "allege[d] no federal claims," jurisdiction is based solely on the debtor's bankruptcy under 28 U.S.C. § 1334, and the state court action had "progressed through motion practice, discovery, and the state court marked the case as 'trial ready.'" *Tilton*, 620 B.R. at 717 (cleaned up). Just so here. While the State Court never marked the State Case as "trial ready," it may as well have, given the extensive pre-bankruptcy discovery and motion practice outlined above. Duran raised no federal claims, and the Court would lack jurisdiction over her Complaint but for its connection to Anderson's bankruptcy. That is to say nothing of the predominance of state law issues or the glaring inefficiency that would result from this Court or the federal district

[7] Every defendant named in the Complaint has been dismissed from the State Case—except for Anderson. *See* Notice at 2; Remand Mot. at 14; Remand Obj. at 3.

court starting from square one and taking over a case that was nearly ready for trial before the State Court. For all these reasons, the Court will exercise its discretion to permissively abstain and equitably remand the State Case.

D. The Court Will Grant Duran Relief From Stay to Continue Prosecuting the State Case.

As mentioned above, after Anderson filed his Chapter 13 petition, Duran sought relief from the automatic stay under § 362(d) of the Bankruptcy Code, which would allow her to continue moving the State Case forward in the State Court. Duran alleges that cause exists to lift the stay under § 362(d)(1) because the State Case involves purely state law issues, defending against her claims would not affect Anderson's bankruptcy estate (because his defense is being bankrolled by a third party), and clear harm would result from not permitting the State Case to proceed. Stay Mot. at 3–4.

Anderson responded not by contesting the merits of Duran's Stay Motion, but by removing the State Case to this Court and, based on that removal, arguing that the Stay Motion "should be deemed moot" because the State Case "is now within the jurisdiction of this Court to hear the issues of the civil dispute, determine whether there is any liability against the Debtor, and, if so, determine damages." Stay Resp. at 2.

After Duran replied, Main Case, Doc. 32, the Court entered an agreed order holding its decision on the Stay Motion in abeyance pending its decision on removal. Main Case, Doc. 52. But now, having found it appropriate to abstain and remand the State Case, efficiency dictates that the Court should also determine whether to grant relief from stay and allow that case to continue before the State Court during Anderson's bankruptcy. *See Junk*, 512 B.R. at 616 ("Of course, it makes sense to grant relief from stay only if the Court also abstains from deciding the issues that will be decided by the state court.").

"When a debtor files a petition for bankruptcy, the Bankruptcy Code protects the debtor's interests by imposing an automatic stay on efforts to collect prepetition debts outside the bankruptcy forum." *City of Chicago v. Fulton*, 592 U.S. 154, 156 (2021). Among the debt collection efforts stayed by § 362 of the Bankruptcy Code is "the commencement or continuation . . . of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced [prepetition], or to recover a claim against the debtor that arose [prepetition]." 11 U.S.C. § 362(a)(1). In short, when a debtor files bankruptcy, any ongoing judicial proceedings against that debtor must be halted. But relief from stay "is available for 'cause' under § 362(d)(1) to permit state court litigation to go forward under certain circumstances." *Junk*, 512 B.R. at 605.

Section 362(d)(1) of the Bankruptcy Code provides that "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay . . . for cause[.]" 11 U.S.C. § 362(d)(1). While the Code "does not define what constitutes cause under § 362(d)(1), courts determine whether relief from the automatic stay is appropriate on a case-by-case basis." *In re Gundrum*, 509 B.R. 155, 162–63 (Bankr. S.D. Ohio 2014) (citing *Laguna Assocs. Ltd. P'ship v. Aetna Casualty & Surety Co. (In re Laguna Assocs. Ltd. P'ship)*, 30 F.3d 734, 737 (6th Cir. 1994)). "The decision whether or not to lift the automatic stay resides within the sound discretion of the bankruptcy court." *In re Martin*, 542 B.R. 199, 202 (B.A.P. 6th Cir. 2015). And in the Sixth Circuit, bankruptcy courts consider several factors when deciding whether to lift the stay: "1) judicial economy; 2) trial readiness; 3) the resolution of preliminary bankruptcy issues; 4) the creditor's chance of success on the merits; and 5) the cost of defense or other potential burden to the bankruptcy estate and the impact . . . on other creditors." *Garzoni v. K–Mart Corp. (In re*

Garzoni), 35 F. App'x 179, 181 (6th Cir. 2002); *see also Martin*, 542 B.R. at 202 (applying those factors); *Junk*, 512 B.R. at 607 (same).

For many of the same reasons the Court found abstention and remand appropriate, it also finds cause to lift the stay. When it comes to judicial economy and trial readiness, "[w]here the stayed non-bankruptcy litigation has reached an advanced stage, courts have shown a willingness to lift the stay to allow the litigation to proceed." *IBM v. Fernstrom Storage & Van Co. (In re Fernstrom Storage & Van Co.)*, 938 F.2d 731, 737 (7th Cir. 1991) (cleaned up). Their willingness to lift the stay under those circumstances is "based on the sound principle that the further along the litigation, the more unfair it is to force the plaintiff suing the debtor-defendant to duplicate all of its efforts in the bankruptcy court." *Id.* (cleaned up).

As noted above, before Anderson filed his bankruptcy case and his notice of removal, the State Case was nearly ready for trial after 18 months of discovery and motion practice in the State Court. Allowing the State Case to proceed in the State Court would best promote judicial economy by placing that matter in front of the court most familiar with both the case and the applicable law. *See Martin*, 542 B.R. at 203 ("The Panel is not convinced that the bankruptcy court erred in regard to the trial readiness factor. Clearly, the state court litigation is at a more advanced stage of litigation than the adversary proceeding."); *Secrest v. Secrest (In re Secrest)*, 453 B.R. 623, 628–29 (Bankr. E.D. Va. 2011) ("The more that the case disposition is controlled by state law, the more the bankruptcy court should defer to the state court[.]"). Granting relief from stay would also support judicial economy by allowing the State Court to determine Anderson's liability on what is by far the largest claim against him in his bankruptcy case. Because the State Case was much further along in the State Court, it can be resolved more quickly there, meaning Anderson's Chapter

13 case and the Dischargeability Action—both of which will be impacted if Anderson is found liable in the State Case—can be resolved more quickly as well.

The third and fourth *Garzoni* factors support granting relief from stay as well. There are no preliminary bankruptcy issues to resolve. And as for Duran's chance of success on the merits, "all that is required is that the movant make more than a vague initial showing that he can establish a prima facie case." *Peterson v. Cundy (In re Peterson)*, 116 B.R. 247, 249 (D. Colo. 1990) (cleaned up). In other words, "[e]ven a slight probability of success on the merits may be sufficient to support lifting an automatic stay in an appropriate case." *Am. Airlines, Inc. v. Cont'l Airlines, Inc. (In re Cont'l Airlines, Inc.)*, 152 B.R. 420, 426 (D. Del. 1993); *see also In re Scarborough-St. James Corp.*, 535 B.R. 60, 69 (Bankr. D. Del. 2015) (quoting same and finding the plaintiff "made (at least) the requisite slight showing of the probability of success on the merits"). Here, the State Court has already found that Duran showed more than a slight chance of success on the merits when it denied Anderson's motion for summary judgment.

At summary judgment, Anderson argued that he was immune from civil liability for his conduct—including his fatal shooting of Donovan Lewis—while serving as a government official. State Ct. Summ. J. Order at 7–8. As the State Court noted, Ohio law "confers a general grant of immunity from civil suits for political subdivisions and [their] employees," but there are several exceptions that can "strip them of that immunity." *Id.* at 7 (cleaned up). One of those exceptions applies if "[t]he employee's acts or omissions were . . . in a wanton or reckless manner[.]" Ohio Rev. Code § 2744.03(A)(6)(b). And Duran argued that a jury could reasonably conclude, based on her evidence, that Anderson acted recklessly in shooting Lewis, stripping him of his immunity.

The State Court agreed. First, it found that adverse inferences from Anderson's invocation of the Fifth Amendment[8] could support several conclusions by a jury in favor of Duran:

> 1. that Anderson did not perceive a threat of injury prior to shooting, based upon the very short period of time between the door [to Lewis's bedroom] opening and [Anderson's] shot, particularly in light of Anderson's age.
>
> 2. that Anderson did not follow his training and Columbus Police Department protocol related to deploying his K-9 partner.
>
> 3. that Anderson did not perceive a threat of injury prior to shooting, as he fired only a single shot and immediately holstered his weapon, while at least one other officer present had his weapon pointed at Lewis and did not fire.

State Ct. Summ. J. Order at 13.

So too could the opinions offered by Duran's experts. One expert, Dr. Casner, opined that because Anderson shot Lewis less than half a second after opening the door to Lewis's bedroom, it was "likely that parts of the decision-to-fire process, characteristic of experienced officers, were skipped or elided." *Id.* at 13. Another expert, Dr. Lyman, determined that Anderson's "use of deadly force . . . was improper, reckless, and unjustified under the circumstances known by Anderson at the time." *Id.* at 14 (cleaned up). The State Court explained that if "the opinions of Casner and Lyman are credited by a jury, it is sufficient to allow a conclusion that Anderson was reckless in firing his service weapon." *Id.*

After considering Duran's evidence, the State Court found that she made enough of a showing to survive Anderson's motion for summary judgment. "When combining the adverse inferences based upon Anderson's invocation of the Fifth Amendment with the expert testimony provided by [Duran]," the State Court was unable to "conclude that reasonable minds can come to

[8] Unlike in criminal matters, "the Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them[.]" *Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976) (cleaned up).

only one conclusion and that that conclusion is adverse to [Duran] as it relates to statutory immunity." *Id.*

Duran, in short, has shown at least some chance of success on the merits of the State Case, satisfying the fourth *Garzoni* factor. She has also alleged, and Anderson has not disputed, that a third party is paying for Anderson's legal representation in the State Case, so continued litigation in the State Court will impose little to no burden on his estate or other creditors. *See* Stay Mot. at 3 ("Anderson testified at the meeting of creditors held pursuant to 11 U.S.C. § 341, that a third party is paying for his legal representation in the State [] Case."). In any event, Anderson "has not [argued] that the state court litigation will unfairly burden the bankruptcy estate or other creditors." *Martin*, 542 B.R. at 203–04 (affirming grant of relief from stay where, in addition to not burdening the estate, the "underlying cause of action involve[d] state law [] issues . . . and a jury demand" and the "state court litigation [was] further along than the bankruptcy court").

"While imposing either no or relatively minimal costs on creditors and the estate, granting relief from the automatic stay will promote judicial economy by permitting the court in which the [parties] have been litigating . . . to adjudicate the state law issues on which this adversary proceeding and bankruptcy case turn." *Junk*, 512 B.R. at 616. For these and the other reasons set forth above, the Court will grant Duran relief from the automatic stay.[9]

[9] Courts may only grant relief from stay "after notice and a hearing[.]" 11 U.S.C. § 362(d). "Compliance with these basic prerequisites is indispensable in assuring that all parties in interest have an opportunity to be heard." *In re I.R.S. Liabs. & Refunds in Chapter 13 Proc.*, 30 B.R. 811, 812–13 (M.D. Tenn. 1983). But under the Bankruptcy Code, "after notice and a hearing" means "after such notice as is appropriate in the particular circumstances, and such *opportunity for a hearing* as is appropriate in the particular circumstances[.]" 11 U.S.C. § 102(1)(A) (emphasis added). Indeed, that phrase expressly "authorizes an act without an actual hearing if such notice is given properly and if such a hearing is not requested timely by a party in interest[.]" 11 U.S.C. § 102(1)(B)(i). In other words, "[a] motion for relief from the automatic stay can be ruled upon by a bankruptcy court without a hearing if 'opportunity' for a hearing is given the party against

E. The Court Will Not Estimate Duran's Proof of Claim Because Its Liquidation in the State Court Will Not Unduly Delay the Administration of Anderson's Bankruptcy Case.

Having decided to remand the State Case, and grant Duran relief from stay to continue prosecuting it in the State Court, the Court will now address Duran's proof of claim and her request for claim estimation.

Duran says that if she wins the State Case, Anderson will owe her an estimated $10 million judgment debt. Remand Mot. at 3. Based on her estimate of his potential future liability, Duran filed a $10 million proof of claim in Anderson's Chapter 13 case. *See* Main Case, Proof of Claim No. 24-1. Anderson, as stated above, objected to Duran's claim; he disagrees with the estimated $10 million amount, and asserts that the claim should be disallowed because it is both contingent and unliquidated. *See* Claim Obj. at 2. In response, Duran argues that Anderson failed to state a legitimate ground for disallowing her claim, and asks the Court to estimate the amount of the claim pursuant to § 502(c) of the Bankruptcy Code.[10] *See* Main Case, Doc. 51 at 2.

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whom the relief is sought." *Smith v. Mortg. Elec. Registration Sys., Inc. (In re Smith)*, 378 B.R. 416, 2007 WL 2018109, at *4 (B.A.P. 6th Cir. 2007).

Here, Anderson certainly received appropriate notice and an opportunity to be heard as to the Stay Motion. Anderson responded to that motion, and in his Stay Response, he could have requested a hearing, addressed the merits of Duran's arguments, or rebutted Duran's factual assertions. But he did not do so. The Local Bankruptcy Rules require that "[a]ny response to a motion for relief from stay shall state with particularity the reasons that the motion is opposed[.]" LBR 4001–1(a)(7). The only argument Anderson made in opposition to the Stay Motion was that, in his view, the motion was rendered moot by the removal of the State Case. But that argument has no force, because the Court has decided to abstain from hearing and remand the State Case.

In short, Anderson had both notice and an opportunity to be heard that were appropriate under the circumstances. Yet he declined to provide any reason for opposing Duran's Stay Motion, other than removal.

[10] It bears noting that the Court could only estimate Duran's claim for purposes of plan confirmation. Core proceedings include the "estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12, or 13 . . . but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution[.]" 28 U.S.C. § 157(b)(2)(B).

Anderson's argument that Duran's claim should be disallowed because it is contingent and unliquidated is a non-starter. "[T]he Bankruptcy Code itself reflects that the contingent, unmatured nature of a debt is not itself a basis for disallowance of a claim." *In re Higgins*, No. BR 22-12021-MDC, 2024 WL 3517390, at *9 (Bankr. E.D. Pa. July 23, 2024). Section 502(b) provides that if a party in interest objects to a claim, the bankruptcy court "shall determine the amount of such claim" and "shall allow such claim in such amount, except to the extent that . . . such claim is unenforceable against the debtor . . . *for a reason other than because such claim is contingent or unmatured*[.]" 11 U.S.C. § 502(b)(1) (emphasis added). From that alone, it is clear that "an objection to a claim cannot stand if the sole basis for the objection is that the claim is 'contingent or unmatured.'" *In re Morales*, 506 B.R. 213, 221 (Bankr. S.D.N.Y. 2014); *see also In re New Power Co.*, 313 B.R. 496, 507 (Bankr. N.D. Ga. 2004) ("[T]he fact that a claim is contingent or unmatured is not grounds to disallow a claim unless that claim is for unmatured interest.").

Instead of disallowing contingent and unliquidated claims, § 502(c)(1) of the Bankruptcy Code provides that there "shall be estimated for purpose of allowance . . . any contingent or unliquidated claim, the fixing or liquidation of which . . . would unduly delay the administration of the case[.]" 11 U.S.C. § 502(c)(1). Estimation "does not require the bankruptcy court to determine the merits of contingent or unliquidated claims." *In re J Publ'n Co.*, 660 B.R. 391, 394

Most of Duran's claims, again, are contingent and unliquidated personal injury and wrongful death claims. While the Court could estimate those claims for purposes of confirming Anderson's Chapter 13 plan, any estimation for purposes of distribution would not be a core proceeding, and would thus need to be made by the district court. *See* 1 *Collier on Bankruptcy* ¶ 3.06[1] (Richard Levin & Henry J. Sommer eds., 16th ed. 2025) ("An estimation of unliquidated [personal injury and wrongful death] claims necessary for plan confirmation may take place in the bankruptcy court. . . . However, when it comes time to determine the claims for purposes of distribution, section 157(b)(2)(B) lets it be known that this is not a core matter, and that the determination for purposes of distribution must be undertaken by the district court.").

(Bankr. N.D. Ill. 2024) (cleaned up). Rather, "it allows the court to *estimate* how a court . . . would rule on the merits of those claims" and use that estimate to calculate payments to creditors. *Id.*

Section 502(c)(1), by its plain terms, requires courts to estimate claims under certain circumstances. But "estimation does not become mandatory merely because liquidation may take longer and thereby delay administration of the case." *In re Dow Corning Corp.*, 211 B.R. 545, 563 (Bankr. E.D. Mich. 1997). "Liquidation of a claim, in fact, will almost always be more time consuming than estimation." *Id.* But § 502(c)(1) "makes it clear that estimation . . . is mandated and required" only if liquidation "would *unduly delay* the case's administration." *In re N. Am. Health Care, Inc.*, 544 B.R. 684, 688 (Bankr. C.D. Cal. 2016) (emphasis added) (cleaned up); *see also J Publ'n*, 660 B.R. at 394–95 ("This estimation tool . . . may not be deployed unless the bankruptcy court first determines that waiting for a final ruling on the merits of the claim . . . would unduly delay distribution of assets in the bankruptcy case."). "For estimation to be mandatory, then, the delay associated with liquidation must be 'undue.'" *Dow Corning*, 211 B.R. at 563.

"Something is 'undue' if it is 'unjustifiable.'" *Id.* (citing Random House College Dictionary, at 1433 (rev. ed. 1980)); *see also Black's Law Dictionary* (12th ed. 2024) (defining "undue" as "[e]xcessive or unwarranted"). "When considering whether the delay would be 'undue,' a court considers all the circumstances in the case and, in particular, how long the liquidation process would take compared with the uncertainty due to the contingency in question." *In re Teigen*, 228 B.R. 720, 723 (Bankr. D.S.D. 1998) (cleaned up). In addition, determining whether waiting for liquidation would create an undue delay requires courts to "perform a kind of cost-benefit analysis by considering the time, costs and benefits associated with both estimation and liquidation." *Dow Corning*, 211 B.R. at 563; *see also Teigen*, 228 B.R. at 723 ("The costs and benefits associated with both liquidation and estimation also should be considered.").

In other words, to determine whether estimation is necessary to avoid undue delay, the Court must consider how long liquidation would take, the uncertainty of the claims in question, and the relative costs and benefits of estimating Duran's proof of claim versus waiting for the State Court to liquidate damages.

For the reasons explained below, the cost of estimating Duran's claim far outweighs what little time estimation might save. Though liquidation *might* take longer, it would provide certainty, and thus enable the parties to reliably act. Estimation, by contrast would (1) take a significant amount of time and (2) lack any meaningful degree of accuracy, due to the uncertain and contingent nature of Duran's claims. Given that it will be far less costly and likely take just slightly longer, waiting for the State Court to liquidate Duran's claims will not "unduly delay" the administration of Anderson's Chapter 13 case.

In this case, and in general, "[t]here are good reasons to liquidate, and not simply estimate, unliquidated claims." *Dow Corning*, 211 B.R. at 563. The bankruptcy court in *Dow Corning* identified several costs associated with estimating claims, including (1) the "delay or expense associated with litigation over the question of how to best estimate the tort claims," (2) the "delay and expense associated with the estimation process itself," and (3) "the very real concern that the estimates may prove to be inaccurate[.]" *Id.*

As for the method of estimating Duran's tort claims, "[n]either the Code nor the Federal Rules of Bankruptcy Procedure provide any procedures or guidelines for estimation." *In re Windsor Plumbing Supply Co.*, 170 B.R. 503, 520 (Bankr. E.D.N.Y. 1994). But courts "addressing the issue have held that bankruptcy judges may use 'whatever method is best suited to the particular contingencies at issue.'" *Id.* (citing *Bittner v. Borne Chem. Co.*, 691 F.2d 134, 135 (3d Cir. 1982)); *see also N. Am. Health Care*, 544 B.R. at 689 ("Congress has not precisely defined the mode or

method of claim estimation . . . . Instead, it has left the particular mode or method of claim estimation to a bankruptcy court's sound discretion (and the reported cases so hold)."). Bankruptcy courts, in estimating claims, are bound only by "the legal rules which may govern the ultimate value of the claim," *Off. Comm. of Asbestos Claimants v. Asbestos Prop. Damage Comm. (In re Fed.-Mogul Glob., Inc.)*, 330 B.R. 133, 155 (D. Del. 2005), as well as the Federal Rules of Bankruptcy Procedure and Evidence, 4 *Collier on Bankruptcy* ¶ 502.04[2] (Richard Levin & Henry J. Sommer eds., 16th ed. 2025). And with no consistent, identifiable method for estimating claims, Duran and Anderson could argue extensively about how the Court should do so here.

The estimation process itself would introduce further costs and delays—"regardless of the estimation method selected, for the process to have any semblance of fairness it will necessarily involve hearings that would be quite lengthy and protracted." *Dow Corning*, 211 B.R. at 563. "Moreover, dissatisfaction with an estimation of the total value of tort claims could, as in *Bittner*, 691 F.2d at 135, result in an appeal, occasioning further time delay." *Id.* at 564. Whether such an estimate could be immediately appealed is arguable, "since it does not fully decide the rights of any party. Nevertheless, just arguing that threshold question would take time even if the appellate court(s) ultimately agree(s) that the appeal was interlocutory and refused to entertain it." *Id.* Further, if a plan is confirmed over Duran's objection based on the Court's estimation, that could create a basis for appealing the confirmation order as well. *See id.* (citing *Colorado Mountain Express, Inc. v. Aspen Limousine Serv., Inc. (In re Aspen Limousine Serv., Inc.)*, 193 B.R. 325, 339 (D. Colo. 1996)).

On top of being costly and lengthy, estimation would almost certainly be inaccurate. For one thing, "*an estimate necessarily implies no certainty* and is not a finding or fixing of an exact amount; it is merely the court's best estimate for the purpose of permitting the case to go forward."

N. Am. Health Care, 544 B.R. at 688 (emphasis added). And the risk of an inaccurate estimate of Duran's claims is compounded by the uncertainty in play here, on at least two levels. First, there is the uncertainty stemming from Anderson's pending appeal. If the state appellate court finds that Anderson was entitled to summary judgment, and that result survives any further appeal, Duran's claims against him would be worth nothing. Second, even if Duran wins on appeal, there is no guarantee as to how the State Court jury would decide the merits of her claims. The jury could find Anderson not liable at all, liable for only part of the $10 million in damages Duran estimated, or liable for all or even more than that $10 million estimate. That makes it quite challenging for the Court to reliably estimate the amount of Duran's claims.

There is a more fundamental problem, though. Even after spending an unknowable amount of time and money fighting over estimation (to say nothing of the judicial resources that would be spent refereeing that fight), the parties would, "at best, . . . only have an estimation; the actual amount of [the] claim would still need to be determined by liquidation." *In re Wandler*, No. 85-05771, 1986 WL 713514, at *1 (Bankr. D.N.D. Jan. 15, 1986). That is, all the Court's efforts in estimating Duran's claims would necessarily be duplicative of the State Court's efforts to adjudicate and liquidate those claims.

Compared to all the costs and delays of estimation, the "primary disadvantage associated with pursuing the liquidation process from a case administration standpoint—time delay—is highly speculative and, in any event, need not be terribly onerous." *Dow Corning*, 211 B.R. at 563. Estimation, as explained above, would require substantial time, preparation by the parties, and judicial resources—all in an attempt to divine how the State Court would decide a matter that it is already prepared to decide. Given that the State Case was nearly ready for trial before removal,

the duplicative work of estimation would be pointless when liquidation—that is, the determination of the actual amount of Duran's claim—will occur in due course following remand.

True, Anderson's state court appeal will have to be dealt with before the State Case can proceed to trial. But even so, "there is no guarantee that estimation would in fact move matters along significantly faster." *Dow Corning*, 211 B.R. at 563. Between choosing an appropriate method of estimation and going through the estimation process, the Court would have to convene evidentiary hearings, oversee briefing and motion practice, consider and issue decisions on those motions, and await the results of potential appeals from its estimation and confirmation orders—all of which would take quite some time.

In short, estimating Duran's claim against Anderson might be faster than liquidation—but not by much. And estimation necessarily produces an uncertain result. Liquidation, while (potentially) slower, produces a certain result. Given all the drawbacks of estimation discussed above, and the many contingencies associated with Duran's claims, it is quite justifiable to wait slightly longer for the certainty of liquidation over the uncertainty of estimation. Because estimation would create little to no benefit in terms of speedier case administration, and require significant resources, time, and duplicative efforts, the delay associated with liquidation is far from unjustifiable, unwarranted, or excessive, and therefore not undue.

For these reasons, liquidation will not unduly delay the administration of Anderson's bankruptcy case. The best way to determine the amount of Duran's proof of claim, and thus promote the efficient administration of Anderson's bankruptcy, is for the State Court to determine his liability and damages in the State Case. Because estimating the amount of Duran's proof of claim is neither necessary nor prudent here, the Court will defer its ruling on the Claim Objection until the State Case concludes through a final, nonappealable order.

F. The Court Will Hold the Dischargeability Action in Abeyance Pending the Determination of Anderson's Liability and Damages in the State Case.

Because the Court will remand the State Case and grant Duran relief from stay as to that matter, it will also hold the Dischargeability Action in abeyance pending the State Case's conclusion. Because "[t]he dischargeability of a debt must be recognized as a matter separate from the merits of the debt itself," *Sweeney*, 276 B.R. at 195, allowing the State Court to first determine Anderson's liability in the State Case is the most prudent course of action here. Questions of liability and dischargeability generally involve the same facts, so bankruptcy courts often hold dischargeability actions in abeyance pending a determination of the debtor's liability for the debt alleged to be nondischargeable. *See, e.g.*, *Martin*, 542 B.R. at 203.

Determining a debtor's liability first makes sense, because issue-preclusion principles apply in nondischargeability actions. *Grogan v. Garner*, 498 U.S. 279, 284 n.11 (1991); *see also Miller v. Grimsley (In re Grimsley)*, 449 B.R. 602, 608 (Bankr. S.D. Ohio 2011) ("Issue preclusion applies in the context of dischargeability litigation.") (cleaned up); *Simmons Cap. Advisors, Ltd. v. Bachinski (In re Bachinski)*, 393 B.R. 522, 534 (Bankr. S.D. Ohio 2008) (same). So factual findings made in the State Case will carry issue-preclusive effect in the Dischargeability Action, simplifying the process of determining whether Anderson's debt will be excepted from discharge under 11 U.S.C. § 1328(a)(4). As a matter of judicial economy, it makes little sense to carry on separate, parallel proceedings where the same facts will be at issue. It will be far more efficient to let the State Court apply its expertise in matters of state law, wait until the jury renders a verdict, and then have this Court make its dischargeability determination against the backdrop of any preclusive factual findings made by the State Court jury.

In short, there is no reason for two different courts to cover the same ground. The State Court can decide the merits of Duran's claims, and this Court can then determine whether

Anderson's resulting debt (if any) is excepted from discharge. Duran's Dischargeability Action will therefore be held in abeyance until Anderson's liability, if any, is established in the State Case.

G. The Court Cannot Award Duran Costs and Fees Under 28 U.S.C. § 1447(c) Because Anderson Had an Objectively Reasonable Basis for Removal.

One last thing. Duran requests (in a roundabout way) that the Court order Anderson to pay the costs and fees she incurred challenging his removal of the State Case. Rather than seeking an order directly requiring him to pay the legal expenses she incurred as a result of removal, Duran acknowledges that Anderson is protected by the automatic stay, and asks for authorization to include those expenses in her proof of claim against his estate. *See* Remand Mot. at 15. But the Court can neither require Anderson to pay her legal expenses, nor authorize Duran to include those expenses in her proof of claim, because Anderson had an objectively reasonable basis for removal.

Section 1447(c) of the Judicial Code provides that when remanding a removed case, courts "may require payment of just costs and any actual expenses, including attorney fees, incurred as a result of the removal." 28 U.S.C. § 1447(c). The former version of the statute authorized courts to award fees only when a case was "removed improvidently"—that is, "only if the defendant acted in bad faith by removing the action." *Mints v. Educ. Testing Serv.*, 99 F.3d 1253, 1256 (3d Cir. 1996). But Congress removed that requirement in 1988, leaving no explicit standard to govern when courts should award costs and fees after remand. *Id.* at 1257.

In *Martin v. Franklin Capital Corp.*, 546 U.S. 132 (2005), the Supreme Court set a standard for awarding costs and fees under § 1447(c): Courts may do so "*only where the removing party lacked an objectively reasonable basis for seeking removal*. Conversely, when an objectively reasonable basis exists, fees should be denied." *Martin*, 546 U.S. at 141 (emphasis added).

So when does a party lack an objectively reasonable basis for seeking removal? Generally, only "where the removal failed to meet the statutory requirements or where the court lacks subject

matter jurisdiction over the removed case." *Med. Assocs. of Erie v. Zaycosky*, 77 F.4th 159, 162 (3d Cir. 2023). For example, the Seventh Circuit upheld a grant of attorney fees under § 1447(c) when a defendant removed a case based on a purported "federal question," but the plaintiff's complaint was in fact based entirely on state law. *Jackson Cnty. Bank v. Dusablon*, 915 F.3d 422, 424–25 (7th Cir. 2019). Another court awarded a plaintiff costs and fees under § 1447(c) when a defendant improperly attempted to remove a state court class action lawsuit to federal court, even though the federal court lacked jurisdiction over that lawsuit. *Kerbs v. Safeco Ins. Co. of Ill.*, No. C11-1642 MJP, 2011 WL 6012497, at *4–5 (W.D. Wash. Dec. 1, 2011).

A bankruptcy court's jurisdiction over a state court action provides an objectively reasonable basis for seeking that action's removal. In *Tilton*, for instance, the court determined it had related-to jurisdiction over a removed state court action. *Tilton*, 620 B.R. at 713–14. Although it found abstention and remand appropriate in that case, *id.* at 717, the court also found that the defendant had an objectively reasonable basis for seeking removal because it had jurisdiction over the removed case under 28 U.S.C. § 1334(b). As a result, the court could not order the defendant to pay the plaintiff's legal expenses under § 1447(c). *Id.* at 718.

Here, as in *Tilton*, the Court has jurisdiction over the State Case under 28 U.S.C. § 1334(b). Thus, Anderson had an objectively reasonable basis for seeking its removal, ruling out any award of costs and fees to Duran under § 1447(c). Still, Anderson's argument that the Court should not award costs or fees because he sought removal to promote the "efficient adjudication of all claims," Remand Obj. at 9, ignores reality. To the contrary, as explained above, abstaining and remanding the State Case is the most efficient way to adjudicate Duran's claims. But regardless, Anderson had an objectively reasonable basis for seeking removal, so the Court cannot require him to pay Duran's attorney fees or costs.

V. Conclusion

Judicial economy, comity, equity and respect for state law all counsel in favor of abstention and remand. So too does the specter of forum shopping raised by Anderson's removal. For these and the other reasons explained above, the Court **GRANTS** the Remand Motion's request for permissive abstention and equitable remand. But because Anderson had an objectively reasonable basis for seeking removal, the Court **DENIES** the Remand Motion's request for costs and fees under 28 U.S.C. § 1447(c).

The Court also **GRANTS** the Stay Motion for the reasons stated above. Duran may pursue a judgment against Anderson in the State Court, seek to have damages liquidated against him based on any judgment obtained in the State Case, and participate in any related appellate process.

Until the State Case concludes through entry of a final nonappealable order, the Dischargeability Action shall be **HELD IN ABEYANCE**. In addition, it is **ORDERED** that every three months from the date this opinion and order is entered, the parties shall file a report in the Dischargeability Action updating the Court on the status of the State Case and any related appellate proceedings. Once the State Case concludes, the parties shall file a final status report explaining the outcome of that case and informing the Court that the Dischargeability Action is ready to move forward.

Finally, as for the Claim Objection, the Court will defer its ruling until the State Case concludes through entry of a final nonappealable order.

IT IS SO ORDERED.

Copies to:

John W. Kennedy and Myron N. Terlecky, Attorneys for Plaintiff

David Goldstein, Attorney for Defendant