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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

10 JANIS CARMONA, a.k.a. Janis Kester,

11 Plaintiff,

12 v.

13 HILTON HOTELS CORPORATION  
14 RETIREMENT PLAN, JUDY  
15 CARMONA, *et al.*,

16 Defendants.

Case No. CV-S-04-1310-KJD-RJJ

**ORDER**

17 Presently before the Court is Defendant Judy Carmona's Motion to Dismiss the Amended  
18 Complaint and Cross-Claim (#31). Plaintiff filed a response in opposition (#33). Defendant  
19 Trustees of the Nevada Resort Association International Alliance of Theatrical and Stage Employees  
20 ("IATSE Trustees") also filed a response in opposition (#32). Defendant Judy Carmona's motion  
21 and the oppositions all incorporated by reference the previous filings on Defendant Judy Carmona's  
22 Motion to Dismiss the Complaint (#4) and Motion to Dismiss the Cross-Claim (#18). The Court has  
23 considered all the briefs and exhibits filed in opposition to those motions and the corresponding  
24 replies and sur-replies.

25 The Court has also considered Defendant Judy Carmona's Motion for Extension of Time to  
26 File Opposition to the Motions for Summary Judgment (#39). The Court **GRANTS** the motion to

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1 the extent that it seeks an extension of time to file an opposition to the IATSE Trustees' Motion for  
2 Summary Judgment (#34). The remaining portions of the motion are **DENIED as moot**, because  
3 Defendant Judy Carmona voluntarily withdrew them.

4 I. Facts and Procedural History

5 This dispute concerns the survivorship benefits from Lupe N. Carmona's ("LUPE") pension  
6 plans with the IATSE Trustees and Hilton Hotels Retirement Plan ("HILTON"). Lupe originally  
7 designated Plaintiff Janis Carmona as the beneficiary of these plans, but he later petitioned the Clark  
8 County District Court, Family Division ("Family Court") for an order directing the pension plans to  
9 pay those benefits to Defendant Judy Carmona. Since that time the parties have litigated this issue at  
10 every level of state court as well as in Federal District Court, Federal Bankruptcy Court, the United  
11 States Supreme Court, and no doubt, will argue the merits of this order before the Ninth Circuit  
12 Court of Appeals.

13 Lupe and Plaintiff married on March 7, 1988. On September 3, 1992, Lupe named Plaintiff  
14 as the beneficiary of survivor benefits on both the HILTON and IATSE plans. Lupe retired on  
15 October 1, 1992. On October 27, 1994, Lupe filed for divorce in Family Court. Prior to the divorce,  
16 both Lupe and Plaintiff contacted IATSE and HILTON to inquire whether he could change her as  
17 beneficiary. The providers informed them verbally and in writing that Plaintiff's designation as  
18 beneficiary was irrevocable.

19 Pursuant to a settlement conference, the Family Court granted Lupe both his IATSE and  
20 HILTON pensions as his sole and separate property. During the marriage, Lupe's benefits in his  
21 pension plans had increased more than Plaintiff's own pension. The Family Court ordered Lupe to  
22 pay Plaintiff \$1,500.00 "as and for an equalization of the values of the marital portion of the pensions  
23 divided herein." After the divorce, Lupe petitioned the Family Court for a Qualified Domestic  
24 Relations Order ("QDRO") revoking Plaintiff's designation as the beneficiary.

25 Lupe and Defendant Judy Carmona were married on November 30, 1997. That same month,  
26 Lupe filed a motion asking the Family Court to create a constructive trust for the benefit of his new

1 wife, Defendant Judy Carmona. Lupe contended that the divorce decree awarded him the entirety of  
2 both pension plans, including the survivor benefits. He further asserted that Plaintiff would be  
3 unjustly enriched if she dispossessed him of this property. Plaintiff claimed that survivor benefits are  
4 not death benefits, but an irrevocable interest under both the IATSE and HILTON plans, and thus  
5 they were her sole property. On March 25, 1998, the Family Court held Plaintiff had not waived her  
6 rights to the survivor benefits, but the providers could change Defendant's designation as beneficiary  
7 if they chose.

8         However, one day after Lupe's death on April 15, 1999, the Family court ordered the  
9 administrators of the IATSE and HILTON plans to change the beneficiary designation pursuant to  
10 Lupe's directions. The Family Court stated that it would order the establishment of a constructive  
11 trust for Defendant Judy Carmona's benefit if the administrators failed to make the change. Plaintiff  
12 argued that after Lupe's death, he and his estate were divested of any further interest in the pension  
13 plans, leaving Defendant Judy Carmona with no interest in the survivor benefits because those  
14 benefits were now vested in Plaintiff.

15         Plaintiff appealed the Family Court's orders to the Nevada Supreme Court. On October 21,  
16 2003, the Nevada Supreme Court affirmed the Family Court's order establishing a constructive trust.  
17 It found the divorce decree awarded Lupe his pension rights including the survivor benefits. The  
18 Court also addressed Plaintiff's argument that the Employee Retirement Income Security Act  
19 ("ERISA") preempted the Family Court's creation of a constructive trust relating to ERISA regulated  
20 benefits. The Court stated that although ERISA prohibits alienation of benefits other than to the  
21 designated participant or survivor beneficiary, the Retirement Equity Act ("REA") of 1984 provided  
22 an exception to ERISA's anti-alienation provision, which allowed the designation of an alternate  
23 payee through a QDRO.

24         The Nevada Supreme Court also found Plaintiff had waived her rights to the survivor benefits  
25 from Lupe's plans upon her receipt of the \$1,500.00 payment. Additionally, it found the Family  
26 Court's creation of the constructive trust was essential to effectuate Lupe's wishes and it would be

1 inequitable to allow Plaintiff to retain the benefits because she was no longer married to Lupe at the  
2 time of his death.

3 Plaintiff appealed this decision to the United States Supreme Court. On April 19, 2004, the  
4 United States Supreme Court denied certiorari. In addition to Plaintiff's appeals to the Nevada  
5 Supreme Court and the United States Supreme Court, on February 4, 2004, a United States  
6 Bankruptcy Court held that Plaintiff did not have a legal or equitable interest in the survivor benefits.  
7 Further, in two separate prior actions, this Court has denied Plaintiff relief. On August 14, 2001,  
8 Chief Judge Philip M. Pro held that because ERISA permitted state and federal courts to exercise  
9 concurrent jurisdiction, the Court would not "relitigate issues where another court had jurisdiction  
10 and made a final determination." Kester v. Gaston, Case No. CV-S-01-0431-PMP (PAL), Order,  
11 Doc. #36 at 4 (D. Nev. Aug. 14, 2001).

12 Then, on April 2, 2004, the Family Court issued an order requiring Plaintiff to deposit the  
13 survivor benefit funds she received into a constructive trust. The Family Court noted that both the  
14 Bankruptcy Court and the Nevada Supreme Court had ruled the funds in question were not Plaintiff's  
15 property. That same day, the Family Court entered two QDRO's ordering the two plans to pay the  
16 survivor benefits either to Defendant Judy Carmona or to a constructive trust account for Defendant  
17 Judy Carmona's benefit. On April 28, 2004, Plaintiff filed a Notice of Removal in Federal District  
18 Court for the District of Nevada. See Carmona v. Carmona, Case No. CV-S-04-0534-PMP (RJJ),  
19 Petition for Removal, Doc. #1 (D. Nev.).

20 On August 25, 2004, the Court remanded the action back to Family Court. The Court found  
21 that Plaintiff had failed to timely remove the case, and had waived her right to remove the ERISA  
22 claim. See id. at 6. The Court recited part of its previous order in CV-S-01-0431-PMP notifying  
23 Plaintiff that a "United States District Court does not have the authority to review a final judgment"  
24 of a state court proceeding citing Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923) and Dist. of  
25 Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983). Id. at 7.

26

1 Now, Plaintiff has filed suit in Federal District Court for the third time. In an attempt to  
2 avoid the results of claim and issue preclusion as well as the Rooker-Feldman doctrine, Plaintiff has  
3 brought suit alleging exclusive federal court jurisdiction and has named the two pension trust funds  
4 as defendants in addition to Defendant Judy Carmona. Additionally, the IATSE Trustees have filed a  
5 cross-claim against Defendant Judy Carmona seeking declaratory relief. Defendant Judy Carmona  
6 has filed a motion to dismiss Plaintiff's complaint and IATSE's cross-claim. Essentially, Defendant  
7 Carmona asserts that res judicata and the Rooker-Feldman doctrine preclude those claims.

## 8 II. Rooker-Feldman Doctrine

### 9 A. Application to Plaintiff's Complaint

10 The Rooker-Feldman doctrine is based on the statutory proposition that federal district courts  
11 are courts of original, not appellate jurisdiction. See In re Sasson, 2005 WL 2210195 (9th Cir.  
12 2005)(citing 28 U.S.C. § 1331, 1332). Therefore, federal district courts have "no authority to review  
13 the final determinations of a state court in judicial proceedings." Worldwide Church of God v.  
14 McNair, 805 F.2d 888, 890 (9th Cir. 1986). Only the Supreme Court has original jurisdiction to  
15 review the final judgments or decrees rendered by the highest state court of a state in which a  
16 decision could be had. See Sasson at 5 (citing 28 U.S.C. § 1257(a)).

17 The United States Supreme Court has recently clarified the limit of the Rooker-Feldman  
18 doctrine: "The Rooker-Feldman doctrine...is confined to cases of the kind from which the doctrine  
19 acquired its name: cases brought by state-court losers complaining of injuries caused by state-court  
20 judgments rendered before the district court proceedings commenced and inviting district court  
21 review and rejection of those judgments." Exxon Mobil Corporation v. Saudi Basic Inds. Corp., 125  
22 S.Ct. 1517, 1521-22 (2005). Therefore, three factors must exist in the present action for the Court to  
23 find that it lacks subject matter jurisdiction over the claims raised by Plaintiff. First, the case must be  
24 brought by a state-court loser. Second, the state-court loser must be complaining of injuries caused  
25 by state-court judgments rendered before the district court proceedings commenced. Finally, the  
26 complaint must invite review and rejection of the state-court judgments.

1 All three factors are satisfied in this case, and thus, this Court lacks subject matter jurisdiction  
2 over Plaintiff's complaint. First, Plaintiff is a state-court loser. Plaintiff is complaining of injuries  
3 caused by the state court judgments: primarily, the Nevada Supreme Court's determination that the  
4 state court action was not preempted by ERISA and that Plaintiff had executed a valid waiver of her  
5 spousal interest in Lupe's pension. That determination was rendered on October 21, 2003 before  
6 Plaintiff's claim was filed in this action on September 20, 2004. Finally, though Plaintiff attempts to  
7 artfully draft the complaint, it is clear from the pleadings that Plaintiff is inviting this Court to review  
8 and reject the determinations of the Nevada Supreme Court. Plaintiff's complaint is the classic case  
9 where the Rooker-Feldman doctrine declares such suits "out of bounds"<sup>1</sup>, and it must be dismissed  
10 for want of subject-matter jurisdiction. See id. at 1521.

#### 11 B. Application to IATSE's Cross-claim

12 However, Rooker-Feldman does not bar IATSE's cross-claim. Despite Defendant Judy  
13 Carmona's strident assertions that the IATSE Trustees should be considered in privity with Plaintiff,  
14 Defendant Judy Carmona has not cited the Court to any relevant legal authority that leads to that  
15 conclusion. Rooker-Feldman bars only the losing party in the state suit, and has no application to a  
16 federal suit brought by a nonparty to the state suit. See id. at 1523 (citing Johnson v. De Grandy, 512  
17 U.S. 997, 1005-1006 (1994)).

18 Furthermore, the principles of res judicata do not bar IATSE's cross-claim for the same  
19 reason. A federal action may be barred by the doctrine of res judicata where an earlier lawsuit: (1)  
20 involved the same claim as the present suit; (2) reached a final judgment on the merits; and (3)  
21 involved the same parties or their privies. See Blonder-Tongue Laboratories v. Univ. Of Ill. Found.,

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22  
23 <sup>1</sup>Plaintiff has asserted that as pled the complaint arises under the exclusive jurisdiction of this  
24 Court, and as such, an exception applies barring application of the Rooker-Feldman doctrine. See  
25 G.C. and K.B. Investments v. Wilson, 326 F.3d 1096, 1103 n.4 (9th Cir. 2003). However, that  
26 argument ignores the fact that concurrent jurisdiction existed when the action was proceeding in state  
court. Inexplicably, the parties failed to remove the action before the thirty-day limit expired leading  
this Court to find in CV-S-04-0534-PMP that Plaintiff had waived her right to removal of the ERISA  
claim. Thus, Plaintiff implicitly subjected herself to the final determination of the state court.

1 402 U.S. 313, 323- 324 (1971). A person may be precluded from pursuing a claim if a prior party so  
2 closely represented his legal interests as to be his virtual representative. See Nordhorn v. Ladish  
3 Co., Inc., 9 F.3d 1402 (9th Cir. 1993). Defendant Judy Carmona has not adequately established that  
4 Plaintiff so closely represented the IATSE Trustees' legal interests as to be their virtual  
5 representative. Therefore, the Court declines to dismiss the IATSE Trustees' cross-claim.

6 However, the Court recognizes that the IATSE Trustees and HILTON could have prevented  
7 some of the extensive and unnecessary litigation in this matter simply by interpleading the funds in  
8 issue and seeking a determination as to whether their determinations that the domestic relations  
9 orders in dispute were qualified or not were accurate.<sup>2</sup> Certainly such a course of action would have  
10 been more prudent than filing a cross-claim that could subject the pension funds to an award of  
11 attorney's fees by taking an adversarial stance rather than by proceeding as a "neutral stakeholder in a  
12 typical statutory interpleader action." Trustees of the Directors Guild of America-Producer Pension  
13 Benefits Plans v. Tise, 234 F.3d 415, 427 (9th Cir. 2000). In fact, the parties seem to be positioning  
14 themselves to resolve the issue of whether the plan participant's retirement cuts off a putative  
15 alternate payee's right to obtain an enforceable QDRO, an issue the Tise court recognized was  
16 unresolved in the Ninth Circuit. See id. at 423 n.6.

17 III. Conclusion

18 Accordingly, IT IS HEREBY ORDERED that Defendant Judy Carmona's Motion to Dismiss  
19 (#4) is **DENIED as moot**;

20 IT IS FURTHER ORDERED that Defendant IATSE Trustee's Motion to Expedite  
21 Dispositive Motion Practice (#8) is **GRANTED**;

22 IT IS FURTHER ORDERED that Defendant IATSE Trustee's Motion to Stay State Court  
23 Proceedings (#9) is **DENIED**;

24 \_\_\_\_\_  
25 <sup>2</sup>29 U.S.C. § 1056(d)(3)(H)(I) allows a court of competent jurisdiction to determine whether a  
26 state court's order meets the statutory requirements to be a QDRO. See, also, Trustees of the  
Directors Guild of America-Producer Pension Benefits Plans v. Tise, 234 F.3d 415, 421, 426 (9th  
Cir. 2000).

1 IT IS FURTHER ORDERED that Defendant Judy Carmona's Motion to Dismiss Cross-claim  
2 (#18) is **DENIED as moot**;

3 IT IS FURTHER ORDERED that Defendant Judy Carmona's Motion to Exceed Length of  
4 Reply (#21) is **GRANTED**;

5 IT IS FURTHER ORDERED that Defendant Judy Carmona's Motion to Dismiss Amended  
6 Complaint and Cross-claim (#31) is **GRANTED in part and DENIED in part**;

7 IT IS FURTHER ORDERED that Plaintiff's complaint is **DISMISSED**;

8 IT IS FURTHER ORDERED that Defendant Judy Carmona's Motion to Dismiss the Cross-  
9 claim is **DENIED**;

10 IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Judgment (#35) is  
11 **DENIED as moot**;

12 IT IS FURTHER ORDERED that Defendant Judy Carmona's Motion for Extension of Time  
13 to File an Opposition to Cross-Claimant's Motion for Summary Judgment (#39) is **GRANTED**;

14 IT IS FURTHER ORDERED that Motions (#41, 42, 43, 52, 57 and 62) are **DENIED as**  
15 **moot**;

16 IT IS FURTHER ORDERED that Defendant Judy Carmona's Motion to Withdraw  
17 Countermotion (#44) is **GRANTED**.

18 DATED this 30<sup>th</sup> day of September 2005.

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Kent J. Dawson  
22 United States District Judge  
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