So Ordered.

Dated: July 29, 2026

G. Michael Halfenger
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

In re:

Daniel Jay Cho,

Debtor.

Case No. 24-25518-gmh
Chapter 7

Jessica Lee,

Plaintiff,

v.

Daniel Jay Cho,

Defendant.

Adv. Proc. No. 25-02050-gmh

ORDER

Daniel Cho filed this chapter 7 case with the assistance of counsel. The chapter 7 trustee reported that there were no assets available from which to pay creditors. ECF No. 12. The court entered an order granting him a chapter 7 discharge. ECF No. 32, at 1 (citing 11 U.S.C. §727). That discharge, among other things, "operates as an injunction

against the . . . continuation of an action . . . to . . . recover . . . any . . . [discharged] debt as a personal liability of the debtor". 11 U.S.C. §524(a)(2). Some debts owed by individual debtors, like Cho, are not dischargeable, however. See *id.* §§523(a) & 727(b).

When Cho filed his bankruptcy case, Jessica Lee had a lawsuit pending against him in a California trial court. ECF No. 1, at 35. In that case, Lee alleged that Cho, with whom she had been in a long-term romantic relationship, owes her damages under California common law for assault, battery, and intentional infliction of emotional distress and under California statutory law for domestic abuse and violations of her civil rights. Before Cho sought bankruptcy protection, the state court dismissed Lee's common law claims and one of her statutory claims as time barred but allowed her to proceed on her remaining statutory claims and scheduled a jury trial. See ECF No. 66-1.

Lee commenced the above-captioned adversary proceeding against Cho alleging that the debt she is undertaking to reduce to judgment in California is excepted from Cho's chapter 7 discharge by §523(a)(6), because it is for willful and malicious injury within the scope of that statute. But she does not want this court to adjudicate immediately whether (or the extent to which) §523(a)(6) may render Cho's (currently unliquidated) debt to her nondischargeable; she instead seeks the opportunity to establish the validity and extent of the debt by completing her state-court litigation against him. In effect, as explained previously—both in a January 12, 2026 docket order and at a hearing held the following day, see ECF Nos. 75–77—she requests that the court modify the §524 discharge injunction to allow her to continue her pending case through the entry of a judgment.

If Cho were known to be liable to Lee on her state-law claims *and* those claims were wholly excepted from Cho's chapter 7 discharge by §523(a)(6), then modification of the discharge injunction would be unnecessary because the injunction only applies to debts that are within the discharge's scope. See §524(a)(2). Federal law reserves for this court the determination of whether §523(a)(6) excepts the debt (if there is one) from the

discharge, but determining the debt's validity and amount remains within the state court's (nonexclusive) domain. See *Tenn. Student Assistance Corp. v. Hood*, 541 U.S. 440, 447 (2004) (first citing *Gardner v. New Jersey*, 329 U.S. 565, 574 (1947); then citing *Straton v. New*, 283 U.S. 318, 320–21 (1931); then citing *Hanover Nat. Bank v. Moyses*, 186 U.S. 181, 192 (1902); then citing *New Lamp Chimney Co. v. Ansonia Brass & Copper Co.*, 91 U.S. 656, 662 (1876); and then citing 28 U.S.C. §1334(e)) (explaining that whether a debt is dischargeable in a bankruptcy case is "an *in rem* proceeding" within the bankruptcy court's "exclusive jurisdiction over a debtor's property, wherever located, and over the estate"); see also, e.g., *Buke, LLC v. Eastburg (In re Eastburg)*, 447 B.R. 624, 633 (B.A.P. 10th Cir. 2011) ("We agree with the bankruptcy court that, although the bankruptcy court has exclusive jurisdiction over a determination of dischargeability under § 523(a)(2), (4), and (6), bankruptcy courts and state courts have concurrent jurisdiction to adjudicate the validity and extent of debts arising under applicable non-bankruptcy law."). Lee eschews any opportunity to have this court liquidate her claims, even if it has jurisdiction to do so. She prefers to return to the California state court, which she contends is a more convenient forum for her and her witnesses. To do that she needs relief from the discharge injunction. See *Eastburg*, 447 B.R. at 633 ("[T]he purpose of modification of the discharge injunction by the bankruptcy court is . . . to give a creditor permission to continue litigation against a debtor in state court. Once a party has filed for protection from his creditors under the Bankruptcy Code, the bankruptcy court is expected to take charge of logistics and play the role of 'traffic cop' with respect to creditors' actions against a debtor. . . . [M]odification of the discharge injunction is one method the bankruptcy court may use to properly exercise this role."); see also *In re Scherman*, No. 21-20542, 2023 WL 4280098, at *4 (Bankr. E.D. Ky. May 24, 2023) (finding that a creditor violated the discharge injunction by seeking to collect a debt that the creditor contended was excepted from the debtor's discharge by §523(a)(2) because the creditor did not obtain a determination of the debt's nondischargeability under §523(c)).

I

The Seventh Circuit Court of Appeals has held that, "although the Bankruptcy Code does not expressly authorize the modification of a discharge, . . . any court that issues an injunction can modify it for good cause on the motion of a person adversely affected by it", which is to say, "a court can modify an injunction that it has entered whenever the principles of equity require it do so." *Hendrix v. Page (In re Hendrix)*, 986 F.2d 195, 198 (7th Cir. 1993) (first citing *Transgo, Inc. v. AJAC Transmission Parts Corp.*, 768 F.2d 1001, 1030 (9th Cir. 1985); and then citing *Winterland Concessions Co. v. Trela*, 735 F.2d 257, 260 (7th Cir. 1984)); see *Hawxhurst v. Pettibone Corp.*, 40 F.3d 175, 182 (7th Cir. 1994) (quoting *In re Shondel*, 950 F.2d 1301, 1304 (7th Cir. 1991)) ("In modifying the discharge injunction, 'the bankruptcy court should exercise its equitable powers with respect to substance and not technical considerations that will prevent substantial justice.'"); see also *Taggart v. Lorenzen*, 587 U.S. 554, 558 (2019) (quoting §524(a)(2)) ("A discharge order 'operates as an injunction' that bars creditors from collecting any debt that has been discharged."); *Brown v. Plata*, 563 U.S. 493, 542 (2011) (quoting *N.Y. State Ass'n for Retarded Children, Inc. v. Carey*, 706 F.2d 956, 967 (2d Cir. 1983)) ("The power of a court of equity to modify a decree of injunctive relief is long-established, broad, and flexible.").

In the context of modifying the discharge injunction to allow a state court to adjudicate the validity and extent of an individual debt that is potentially not within the scope of a chapter 7 discharge, the equitable considerations include

> judicial economy and efficiency (for example, at what phase of litigation is the state court action), the burden and expense to the parties (for example, the time and expense that would be involved in duplication of discovery and litigation), whether there are additional integral parties to the state court action over which the bankruptcy court does not have jurisdiction, the right to a jury trial in state court, [and] whether the state court proceeding negatively impacts the bankruptcy estate.

Eastburg, 447 B.R. at 633–34; see also *In re Robben*, 562 B.R. 469, 476 (Bankr. D. Kan. 2017) (adopting, for purposes of modifying the discharge injunction, twelve factors that *In re Curtis*, 40 B.R. 795, 799–800 (Bankr. D. Utah 1984), identifies as applicable to granting relief from the stay imposed by 11 U.S.C. §362(a)).

A

A central factor in determining whether equitable considerations warrant allowing Lee to proceed with her state-court litigation is the likelihood that she will prevail, both on her state-law claims and on her request for a determination of nondischargeability of the resulting debt under §523(a)(6). If her claims are nonstarters or even decided long-shots, equity likely would not favor requiring the debtor to return to state court before having this court adjudge their dischargeability. To assess her likelihood of success, the court held an evidentiary hearing on February 23, 2026, at which both Lee and Cho testified, primarily about their years-long romantic and domestic relationship.

Lee's and Cho's testimony aligned as to the broad characteristics of their relationship. They met through mutual friends in 2011; quickly started dating; and remained in a relationship, which Lee described as "quite consuming" from the start, for about 9 years. ECF No. 85 (attached audio recording at 05:45–07:10). Throughout that time, they gambled together, primarily (or exclusively) on sports, and while their testimony was that this was, generally, a joint venture, they disagreed about the extent and nature of their respective participation, with Lee testifying that her role was limited to handling the funds (e.g., withdrawals, transfers, deposits of winnings) and placing bets at Cho's direction, and Cho testifying that Lee gambled on her own, as well.

Lee and Cho also testified about wide-ranging and long-running problems between them, and here, their testimony differed. According to Lee, over their time together, Cho isolated her from friends and family, criticized her appearance, belittled her intelligence, surveilled her phone and social-media accounts, harshly questioned

her about male acquaintances and coworkers, derided her loyalty to him and their relationship, threatened to end their relationship if she did not quit her job, and threatened her with physical violence on more than one occasion, including by breaking furniture in anger over failed bets and swinging a baseball bat near her, the latter of which led to her ending the relationship. The evidence presented includes numerous written messages from Cho to Lee corroborating her testimony.

Cho testified that he and Lee had their arguments but that the evidence she presented of messages he sent her—which he agreed were authentic—was not fairly representative of how he normally communicated with her. He conceded that the messages she presented were full of "awful things" but that he "never had intent behind it"; "these were things that were said out of anger." ECF No. 87 (attached audio recording at 09:38–10:06). He testified that he broke two chairs, but that he was not acting violently: he simply grabbed them, and they broke. Indeed, according to Cho, the first time this happened, both he and Lee were surprised by how easily the chair broke, and her own evidence includes a message to a friend seemingly making light of the situation (though she testified that her joking tone was, in part, because she was afraid of how he would react if he saw that she had told her friend about the incident in a more serious way). He testified that he did hold a bat on the occasion Lee described, at the end of their relationship, but that he did not raise it or swing it at her; he spent much of his life as an aspiring baseball player, so he kept bats around and regularly went to batting cages, threw baseballs, and took "dry hacks" for stress relief, when he was upset, which she knew. In his view, their relationship was not one-sided—they both let their anger get the best of them at times, which he regrets—and he never genuinely threatened her or intended to hurt her or damage her property. He admitted that, taken out of context, the messages of his that she presented and the actions of his that she described would appear problematic to a third party, but that in the context of their relationship, Lee would have known that he was never serious and that she was

not in danger from him. E.g., *id.* (12:12–12:22) (testifying that he and Lee "were comfortable saying vulgar things" to each other).

1

Lee seeks to proceed in California state court on related claims under two California statutes: the Domestic Violence Prevention Act (DVPA) and the Ralph Civil Rights Act of 1976.

a

The DVPA provides, in relevant part, that "[a] person is liable for the tort of domestic violence if the plaintiff proves" two things: "(1) [t]he infliction of injury upon the plaintiff resulting from abuse, as defined in subdivision (a) of Section 13700 of the Penal Code" and "(2) [t]he abuse was committed by the defendant, a person having a relationship with the plaintiff as defined in subdivision (b) of Section 13700 of the Penal Code." Cal. Civ. Code §1708.6(a) (West). Section 13700(a) of the California Penal Code defines abuse to include "placing another person in reasonable apprehension of imminent serious bodily injury to himself or herself, or another." Section 13700(b) covers many forms of relationships, describing them from a defendant's perspective to include those with "an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the [defendant] has had a child or is having or has had a dating or engagement relationship." That statute goes on to say that "cohabitants" are "two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship." And for purposes of the relevant statutes, a "dating relationship" arises from "frequent, intimate associations primarily characterized by the expectation of affection or sexual involvement independent of financial considerations." See *M.A. v. B.F.*, 317 Cal. Rptr. 3d 909, 915 (Ct. App. 2024) (quoting Cal. Fam. Code §6210).

A jury could certainly find in Lee's favor on her DVPA claim. Lee's testimony, which a jury could credit over Cho's, is sufficient to establish that he placed her "in

reasonable apprehension of imminent serious bodily injury" on one or more occasions, e.g., by threatening her in written messages and in person, breaking furniture, and brandishing a baseball bat. And this is true even if a jury were to credit Cho's testimony that he never *sincerely* threatened or *actually* intended to physically harm Lee, as the jury could find that, despite his subjective intentions, his conduct placed her "in reasonable apprehension of imminent serious bodily injury". Indeed, Lee testified that the so-called baseball bat incident sufficiently frightened her that she ended their nearly-decade-long relationship. Cho does not dispute that his relationship with Lee was of a kind described in the relevant statutes, and their testimony shows that, at all relevant times, they "had a dating . . . relationship" or were "cohabitants", or both, for purposes of the DVPA. Cf. *People v. James*, 119 Cal. Rptr. 3d 362, 364–65 (Ct. App. 2010).

b

The Ralph Civil Rights Act provides, in relevant part, that "[a]ll persons within the jurisdiction of [California] have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property . . . on account of any characteristic listed or defined in subdivision (b) or (e) of Section 51 . . . . Cal. Civ. Code §51.7(b)(1). Those characteristics include "sex", among many others, and "'[s]ex' also includes, but is not limited to, a person's gender"—which in turn "includes a person's gender identity and gender expression"—for purposes of this statute. *Id.* §51(b) & (e)(6); see *Gabrielle A. v. County of Orange*, 217 Cal. Rptr. 3d 275, 294 (Ct. App. 2017) (first citing Judicial Council of Cal. Civ. Jury Instr. 3063; and then citing *Austin B. v. Escondido Union Sch. Dist.*, 57 Cal. Rptr. 3d 454, 469–70 (Ct. App. 2007)) ("Under the Ralph Act, a plaintiff must establish the defendant threatened or committed violent acts against the plaintiff or their property, and a motivating reason for doing so was a prohibited discriminatory motive . . . ."). Liability under this statute can arise from "[s]peech alone" if "[t]he speech itself threatens violence against a specific person", "[t]he person . . . against whom the threat is directed reasonably fears that, because of

the speech, violence will be committed against them or their property", "[t]he person threatening violence is acting in reckless disregard for the threatening nature of their speech", and "[t]he person threatening violence has the apparent ability to carry out the threat." §51.7(e)(1).

Lee testified about (and provided evidence of written messages of) Cho's attempts to control how she dressed, her interactions and contact with other men, and whether she should remain employed (specifically linked to whether she should instead have prioritized him, their relationship, and bearing his children). She also testified that some of his threatening statements were that she was "lucky" she was "a girl", suggesting that if she were not, he would have physically harmed her. Based on this and related evidence, a jury could find that Cho violated the Ralph Civil Rights Act through violence against her property (such as the chairs that he broke) or threatened violence against her and her property, or both, and that he was motivated to act the way he did because of his discriminatory views of Lee's sex.

c

Cho's arguments that Lee has not shown that she is reasonably likely to succeed on her state-law claims are not persuasive. In effect, his position is that, "[w]hile Lee claims she has a reasonable chance of success at trial in California, she has not produced any evidence which *definitively* proves any of her claims." ECF No. 84, at 5 (emphasis added). For example, Cho asserts that, by Lee's admission, "there were no witnesses and is no evidence of the incident" with the baseball bat. *Id.* The problem with this argument, of course, is that there *is* evidence of the incident: the sworn testimony of Lee, who was there, as well as the sworn testimony of Cho, who was also there. Aside from that, this argument reduces to the following: Lee should not have the *opportunity* to prove her claims because she has not *proven* them yet. That's nonsense. Cho concludes this argument by saying, "Lee has little to no evidence other than her own testimony and the testimony of people she told about the events to prove that any of it

happened." *Id.* at 6. This is hardly damning, especially on claims of abuse, destruction of property, and threats of violence in an intimate-partner relationship. Again, a jury could credit *her* sworn testimony over *his*, about what happened between them—even if no one else was present and no other evidence of his alleged violations exists—and that would be a legally sound factual basis on which she could prevail.

Cho's counsel also argued that a *reasonable* likelihood of success requires that, based on the evidence presented, Lee must be more likely (perhaps substantially more likely) than not to succeed on her state-court claims. ECF No. 87 (attached audio recording at 01:01:35–01:01:50) ("Fifty-fifty isn't a reasonable likelihood of success. Fifty-fifty is it could go either way."). That would be an astoundingly high standard. Until fairly recently, in the context of a preliminary injunction, the standard was merely "a 'better than negligible' chance of success on the merits of at least one . . . claim[]." *Girl Scouts of Manitou Council, Inc. v. Girl Scouts of the U.S., Inc.*, 549 F.3d 1079, 1096 (7th Cir. 2008) (first citing *Ty, Inc. v. Jones Grp., Inc.*, 237 F.3d 891, 897 (7th Cir. 2001); and then citing *Omega Satellite Prods. Co. v. City of Indianapolis*, 694 F.2d 119, 123 (7th Cir. 1982)). In that context, "the 'better than negligible' standard was retired by the Supreme Court." *Ill. Republican Party v. Pritzker*, 973 F.3d 760, 762–63 (7th Cir. 2020) (discussing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7 (2008), and *Nken v. Holder*, 556 U.S. 418 (2009)) ("We infer from *Winter* that a mere possibility of success is not enough."). The current standard, in the preliminary-injunction context, which requires "[a] 'strong' showing", still does not require "proof by a preponderance", as such a standard "would spill too far into the ultimate merits for something designed to protect both the parties and the process while the case is pending." *Id.* at 763. And however higher the standard might be for modifying the discharge injunction, weighing the evidence to determine which party is more likely to prevail would necessarily require this court to act, impermissibly, as factfinder. Under the circumstances, that role is reserved for a jury. To avoid infringing upon the province of a jury by engaging in factfinding, this court applies a

clear test from the preliminary-injunction context: whether Lee has "demonstrat[ed] . . . how [she] proposes to prove the key elements of [her] case." *Id.* Lee has certainly made that demonstration, and her likelihood of success on the merits is more than "reasonable".

"And it is worth recalling that the likelihood of success factor plays only one part in the analysis." *Id.* In fact, neither of the cases cited above for their lists of potentially relevant factors for a court to consider when determining whether to modify a discharge injunction specifically mentions a creditor's likelihood of success on the merits. See *Eastburg*, 447 B.R. at 633–34; *Robben*, 562 B.R. at 476. Here, establishing that Lee has a reasonable likelihood of success on the merits serves a sort of gatekeeping function: again, if it were clear that her state-law claims would (or almost certainly would) fail on the merits after a proper trial, then equity would not be served by forcing the debtor back to California state court to defend against them, and there would be no need for this court to consider any other factors potentially relevant to modifying the discharge injunction (or leaving it in full effect). But, as discussed, Lee has shown how and that she can prevail on the essential elements of her claims, establishing her reasonable likelihood of success on the merits of those claims and warranting this court's consideration of other factors that weigh in favor of (or against) allowing her to continue her state-court litigation.

2

Lee's likelihood of success in proving that any debt resulting from her California claims is excepted, in whole or in part, from Cho's chapter 7 discharge is necessarily somewhat lower, in part because it depends on her success on the merits of those claims, and in part because demonstrating a "willful and malicious injury" for purposes §523(a)(6) of the Bankruptcy Code requires proof of additional distinct elements. While the DVPA, for example, imposes liability for "abuse" from mere recklessness, "[a] creditor invoking section 523(a)(6) must show that the debt at issue arises from an

injury to the creditor's person or property, *intentionally* caused by the debtor, with some level of malice, wickedness, or a specific intent to inflict injury." *Heinrich v. Bagg (In re Bagg)*, 589 B.R. 650, 656 (Bankr. E.D. Wis. 2018) (emphasis added) (citing *First Weber Grp., Inc. v. Horsfall*, 738 F.3d 767, 774–75 (7th Cir. 2013)); see *Horsfall*, 738 F.3d at 775 (explaining that "the requisite intent for purposes of § 523(a)(6) is the intent to injure rather than the intent to act") (discussing *Kawaauhau v. Geiger*, 523 U.S. 57 (1998)). Which is to say, a California jury could find that Cho is liable to Lee under the DVPA without finding that his conduct caused her "willful and malicious injury" for purposes of §523(a)(6).

Still, Lee's testimony and the other evidence she presented to this court would allow a jury to find that Cho went beyond simply (or even recklessly) placing Lee "in reasonable apprehension of imminent serious bodily injury" and that he did, in fact, intentionally injure her "with some level of malice, wickedness, or a specific intent to inflict injury." *Bagg*, 589 B.R. at 656. That's enough to show a sufficient likelihood of success on her claim of nondischargeability, at least in this context.

B

The remaining relevant equitable considerations, including judicial economy and efficiency, weigh heavily in favor of modifying the discharge injunction to allow Lee to proceed with her state-court case in California (before returning to this court for a determination of the nondischargeability of the resulting debt, assuming she prevails on one or more of her state-law claims).

The California state-court case was pending for years, involved extensive discovery and related disputes, and was on the verge of going to trial when it was stayed by Cho's bankruptcy filing. The parties agree that there are potential witnesses who would be available to testify in California but who would or may not be available to testify here. Equity counsels the fullest possible, or at least practicable, presentation of relevant evidence, so the potential unavailability or limited availability of witnesses

weighs in favor of allowing Lee to proceed in California.*

Cho's counsel noted that his purpose in filing for bankruptcy was to "resolve all of his financial issues here in the bankruptcy court." ECF No. 87 (attached audio recording at 01:12:30–01:12:47). But Cho's choice of venue carries little weight here: Lee chose her own venue, California state court, before Cho chose his; Cho exempted all of his prepetition property from his bankruptcy estate, so there wasn't any available for liquidation to fund payments on any of the prepetition claims against him; and none of his other creditors have sought a determination of non-dischargeability, so the only apparent remaining case or controversy is Lee's pending state-law claims against Cho.

Significantly, this court *cannot* resolve what appears to be Cho's only remaining "financial issue" (within the scope of his bankruptcy case) because Lee has not consented to this court entering a final judgment on her state-law tort claims. See *Wellness Int'l Network, Ltd. v. Sharif*, 575 U.S. 665, 674 (2015) ("[L]itigants may validly consent to adjudication by bankruptcy courts."); see also *Stern v. Marshall*, 564 U.S. 462, 479–81 (2011). Indeed, this court cannot even hold a trial on Lee's claims: she has (and has asserted) the right to a trial by jury on her civil claims against Cho but has not "consent[ed] to a jury trial conducted by a bankruptcy judge". Fed. R. Bankr. P. 9015(b); see 11 U.S.C. §157(e) ("If the right to a jury trial applies in a proceeding that may be heard under this section by a bankruptcy judge, the bankruptcy judge may conduct the jury trial if specially designated to exercise such jurisdiction by the district court and with the express consent of all the parties."). And even if the district court were to withdraw the reference to conduct such a trial, it would not be a trial to a *California* jury (at least, not without the extraordinary measures and costs involved in the district court transferring the proceeding to the Central District of California, presuming such a

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* The court reserved the issue of the admissibility of exhibits 4–7 (declarations and an expert report by expected witnesses). There is no need to resolve that issue: under the circumstances, this court does not accept or rely upon the truth of the matters asserted in those exhibits.

transfer were permissible and justifiable). Given all this, equity favors modifying the discharge injunction to allow the parties to try Lee's claims where she first raised them, where all of the relevant facts occurred, and in a court most suited to interpret and apply the nonbankruptcy law in question.

If Lee prevails in California state court, then she will have to return here for a determination as to the non-dischargeability of the resulting debt, but that is the only determination this court is empowered to make.

II

For these reasons, IT IS ORDERED that the discharge injunction is modified to allow Lee's California litigation against Cho to continue through the entry of a final judgment on all of her now-pending claims and the conclusion of any appeal from (or other direct review of) that judgment; her nondischargeability proceeding in this court is stayed pending the conclusion of that litigation.

IT IS FURTHER ORDERED that Lee must file correspondence at least every 120 days from the entry of this order advising this court of the status of the California litigation.

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