FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

IN RE: ERNESTO PATACSIL AND MARILYN EMBRY PATACSIL, DEBTORS JOSEPH CABARDO; DONNABEL SUYAT; MARISSA BIBAT; MACTABE BIBAT; RENATO MANIPON; ALICIA BOLLING; CARLINA CABACONGAN; JOHN DAVE CABACONGAN; MALLISON & MARTINEZ; LAW OFFICES OF JOHN R. GRELE, *Plaintiffs - Appellants*, v. ERNESTO PATACSIL; MARILYN EMBRY PATACSIL, *Defendants - Appellees*.	No. 25-342 D.C. No. 2:23-cv-01231-DJC OPINION

Appeal from the United States District Court
for the Eastern District of California
Daniel J. Calabretta, District Court, Presiding

Argued and Submitted March 4, 2026
San Francisco, California

Filed August 27, 2026

Before: Milan D. Smith, Jr. and Ryan D. Nelson, Circuit Judges, and Brian M. Morris, Chief District Judge.[*]

Opinion by Judge R. Nelson

SUMMARY[**]

Bankruptcy / Appellate Jurisdiction

The panel dismissed for lack of jurisdiction an appeal by a group of creditors from the district court's order (1) affirming the bankruptcy court's interlocutory ruling in the creditors' adversary proceeding seeking determination of the nondischargeability of chapter 7 debtors' judgment debts under the California Private Attorneys General Act and (2) remanding to the bankruptcy court for further proceedings.

The creditors sought exception of the debts from discharge under 11 U.S.C. §§ 523(a)(6) and (7). The bankruptcy court concluded that trial was necessary to determine whether § 523(a)(6) shielded most of the

[*] The Honorable Brian M. Morris, United States Chief District Judge for the District of Montana, sitting by designation.

[**] This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

judgment from discharge. It concluded that part of the PAGA judgment was excepted from discharge under § 523(a)(7) and part was not. The district court granted appellants leave to file an interlocutory appeal of the order holding that § 523(a)(7) did not except discharge of a portion of the PAGA judgment. The district court affirmed and then remanded the matter to the bankruptcy court for further proceedings.

The panel held that the court of appeals has jurisdiction under 28 U.S.C. § 158(d)(1) over appeals of orders that finally dispose of discrete disputes within a larger bankruptcy case. Applying the *Landmark Fence* factors, however, the panel concluded that appellants could not subdivide the dischargeability determination proceeding into a preliminary issue resolving an individual exception from discharge. Because the district court remanded the proceeding to the bankruptcy court for a trial on another exception, its order was not a final order as to the discrete proceeding—a dischargeability determination. The panel therefore dismissed the appeal for lack of jurisdiction.

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OPINION

R. NELSON, Circuit Judge:

Bankruptcy proceedings differ from traditional civil cases we more often hear. Bankruptcy proceedings can be a complex process of reorganizing various financial aspects of debtors' lives. Because the proceedings can involve so many aspects, an appealable order can fit into two categories. First, district court orders can resolve the entire "umbrella bankruptcy case," that is, the entire process by which debtors discharge their debt. *Ritzen Grp., Inc. v. Jackson Masonry, LLC*, 589 U.S. 35, 38 (2020). We clearly have jurisdiction over this set of bankruptcy orders.

But an umbrella bankruptcy case "involves an aggregation of individual controversies, many of which would exist as stand-alone lawsuits but for the bankrupt status of the debtor." *Bullard v. Blue Hills Bank*, 575 U.S. 496, 501 (2015) (cleaned up). Thus, Congress provides us with jurisdiction over a second category of appeals. These are appeals of orders which "finally dispose of discrete disputes within the larger case." *Id.* (citation omitted). We are asked here to decide whether a discrete dispute is final and appealable.

In this case, a group of creditors appeals an order that rejected one basis for excepting their debt from discharge; a second basis is set for trial. Creditors argue that the appealed order is a final order of a discrete dispute within the larger bankruptcy case, and thus appealable. But the Supreme Court has warned against "slicing the case too thin." *Id.* at 502. "An erroneous identification of an interlocutory order as a final decision may yield an appeal over which the appellate forum lacks jurisdiction." *Ritzen*, 589 U.S. at 39.

Any preliminary issue in a bankruptcy can theoretically be considered a discrete dispute even though it may only decide a portion of the case. *See id.* at 44. Creditors appeal this type of preliminary step.

Appellants cannot subdivide the dischargeability determination proceeding into a preliminary issue resolving an individual exception from discharge. Because the district court remanded the proceeding to the bankruptcy court for a trial on another exception, it is not a final order as to the discrete proceeding—a dischargeability determination. We thus dismiss the appeal for lack of jurisdiction.

I

A

Ernesto and Marilyn Patacsil owned and operated facilities providing group home care to people with special needs. In 2012, eight of the Patacsils' employees sued them in the federal district court. The employees, led by Joseph Cabardo (collectively, Cabardo Appellants), claimed that the Patacsils violated California labor law by failing to provide required work breaks, pay employees the lawful wage for hours worked, and "comply with laws requiring wage statements, accurate timekeeping records, and payments of amounts owed upon departure." Among their nine claims, Cabardo Appellants sought civil penalties under the California Private Attorneys General Act (PAGA) for violations of the California Labor Code which injured themselves and "other current or former employees." PAGA authorizes aggrieved employees to sue employers on behalf of the California Labor and Workforce Development Agency (LWDA) to recover civil penalties for violations of the California Labor Code. *See* Cal. Lab. Code § 2699(a).

At trial, the jury found in plaintiffs' favor, and the district court "awarded $893,815.62 in damages and $1,077,218.62 in attorneys' fees" (the PAGA Judgment). As part of that award, the district court imposed PAGA penalties on the Patacsils for willful violations. In total, the PAGA penalties were $79,524.53. The district court also held that "[a]ny civil penalties recovered by aggrieved employees are distributed 75 percent to the LWDA and 25 percent to the aggrieved employees."

B

A month after the district court entered the PAGA Judgment, the Patacsils filed for Chapter 7 bankruptcy. A petitioner for Chapter 7 bankruptcy has a right to discharge "all debts that arose before the date of the order for relief." 11 U.S.C. § 727(b). Discharge "releases the debtor from personal liability for her pre-bankruptcy debts," *Albert-Sheridan v. State Bar of Cal. (In re Albert-Sheridan)*, 960 F.3d 1188, 1192 (9th Cir. 2020) (citation omitted), except for nineteen categories of debts protected from discharge, *see* 11 U.S.C. §§ 523(a), 727(b).

In bankruptcy court, Cabardo Appellants filed an adversary proceeding seeking determination of the nondischargeability of the PAGA Judgment debts. Cabardo Appellants allege three causes of action, including two causes of action for determination of nondischargeability of the PAGA Judgment debts. First, Cabardo Appellants assert that the PAGA penalties imposed in the PAGA Judgment are excepted from discharge as debt incurred "for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit." 11 U.S.C. § 523(a)(7). Second, Cabardo Appellants assert that the unpaid wages and other common law damages awarded in the PAGA Judgment are excepted from discharge because those debts were incurred based on the "willful and malicious injury by the debtor to another." 11 U.S.C. § 523(a)(6).

Cabardo Appellants then moved in limine asserting that an exception from discharge applies to the PAGA Judgment debts, and seeking to bar the Patacsils "from presenting evidence" that those debts were discharged. The Patacsils argued that neither of the exceptions from discharge (§ 523(a)(6) nor § 523(a)(7)) applied to the PAGA Judgment.

The bankruptcy court concluded that trial was necessary to determine whether § 523(a)(6) shields most of the judgment from discharge. "Willful and malicious" under § 523(a)(6) has "a particular meaning," and "imposes a higher intent hurdle than the California Labor Code." Thus, the prior PAGA Judgment under the California Labor Code did not necessarily compel the conclusion that the judgment is excepted from discharge under the Bankruptcy Code. "As a result, the remaining issue (intent) must be resolved by trial."

The bankruptcy court's findings under § 523(a)(7) were more complex. Cabardo Appellants did not argue that § 523(a)(7) excepted discharge of the approximately $810,000 in civil damages that were not imposed as PAGA penalties. Of the roughly $80,000 in PAGA penalties, only 75% (approximately $60,000) was payable to a governmental unit—LWDA—and thus excepted. But the 25% (approximately $20,000) that was payable to Cabardo Appellants, along with the approximately $1 million in attorney fees, was not excepted from discharge under § 523(a)(7).

Cabardo Appellants requested leave from the district court to file an interlocutory appeal of the bankruptcy court's order under 28 U.S.C. § 158(a)(3). That appeal sought review of only the portion of the bankruptcy court's order holing that § 523(a)(7) does not except discharge of their 25% portion of PAGA penalties and attorney fees. The district court granted the motion for an interlocutory appeal and affirmed. The district court held that the Cabardo Appellants' $20,000 portion of the PAGA penalties was "for the benefit of," but not "payable to," a "governmental unit," as required by § 523(a)(7). The same was true for the attorney fees. So the district court affirmed the bankruptcy court's refusal to except these portions of the PAGA Judgment from discharge under § 523(a)(7). The district court then remanded this matter "to the bankruptcy court for further proceedings."

C

Cabardo Appellants appealed to this court without seeking certification from us or the district court. Cabardo Appellants request reversal of the bankruptcy court's order discharging their claim to 25% of the PAGA penalties and attorney fees from the PAGA Judgment. Cabardo Appellants argue that we have jurisdiction under 28 U.S.C. § 158(d), because the district court's order is functionally final under the four-factor test applied in *In re Landmark Fence Co.*, 801 F.3d 1099 (9th Cir. 2015). Cabardo Appellants argue "the Bankruptcy Court's ruling regarding the dischargeability of a portion of penalties shared with aggrieved employees and private attorneys general" is final as to that issue. The Patacsils did not challenge our jurisdiction.

Mindful of our duty to ensure our own jurisdiction, *Riley v. Bondi*, 606 U.S. 259, 273 (2025), and that the underlying order is an interlocutory order over which we typically lack jurisdiction, *In re Westwood Shake & Shingle, Inc.*, 971 F.2d 387, 389 (9th Cir. 1992), we issued a focus order asking the parties to discuss jurisdiction at oral argument. Cabardo Appellants argued that because the § 523(a)(7) issue is a pure legal question separate from the remaining § 523(a)(6) issue, the district court's ruling on the § 523(a)(7) issue is "final" under *In re Century Centre Partners Ltd.*, 969 F.2d 835, 838 (9th Cir. 1992).

II

Even when both parties agree that we have jurisdiction, "we have an independent duty to examine our own subject matter jurisdiction." *Bank of New York Mellon v. Watt*, 867 F.3d 1155, 1157 (9th Cir. 2017) (cleaned up). "[T]he mere consent of parties cannot confer upon a court of the United States the jurisdiction to hear and decide a case." *Landmark Fence*, 801 F.3d at 1102 (quoting *People's Bank v. Calhoun*, 102 U.S. 256, 260–61 (1880)). We have jurisdiction to consider our own jurisdiction, and we review that question de novo. *In re Gugliuzza*, 852 F.3d 884, 889 (9th Cir. 2017).

III

We have jurisdiction over "all final decisions, judgments, orders, and decrees entered" by the district court in bankruptcy disputes. 28 U.S.C. § 158(d)(1). Cabardo Appellants contend that the district court issued a final decision on the issue of dischargeability under § 523(a)(7). But that contention commits the very error the Supreme Court has admonished us against: making an order "final" by "slicing the case" into every preliminary order. *Bullard*, 575 U.S. at 502.

We must first determine the scope of the proceeding on appeal and then determine whether the appealed order finally resolves that proceeding. In this case, the relevant proceeding within the umbrella of the bankruptcy is the adversary proceeding to determine dischargeability. *Kiviti v. Bhatt*, 80 F.4th 520, 529 (4th Cir. 2023). Because the district court remanded for further fact-finding on the issue of exception of dischargeability under § 523(a)(6), the dischargeability proceeding is not final. So we lack jurisdiction over the separate § 523(a)(7) issue. *See Landmark Fence*, 801 F.3d at 1102.

A

The "erroneous identification of an interlocutory order as a final decision" in a bankruptcy proceeding is a "matter of considerable importance." *Ritzen*, 589 U.S. at 39. We thus summarize the controlling rules and then address the specific questions before us.

Most civil appeals come to our court under 28 U.S.C. § 1291, which grants us "jurisdiction of appeals from all final decisions of the district courts of the United States." The term "final decisions" does important work in § 1291, and "is normally limited to an order that resolves the entire case." *Ritzen*, 589 U.S. at 38. This makes sense in traditional litigation, where the entire case or controversy between a set of parties is "viewed as a single judicial unit." *Id.* (cleaned up). The parties do not invoke our jurisdiction under § 1291.

But bankruptcy is "different" from ordinary civil cases. *Bullard*, 575 U.S. at 501. "A bankruptcy case involves 'an aggregation of individual controversies,' many of which would exist as stand-alone lawsuits but for the bankrupt status of the debtor." *Id.* (quoting 1 Collier on Bankruptcy

¶ 5.08[1][b], p. 5–42 (16th ed. 2014)). "It is thus common for bankruptcy courts to resolve discrete controversies definitively while the umbrella bankruptcy case remains pending." *Ritzen*, 589 U.S. at 38. So "Congress has [] provided that orders in bankruptcy cases may be immediately appealed if they finally dispose of discrete disputes within the larger case." *Bullard*, 575 U.S. at 501 (quoting *Howard Delivery Serv., Inc. v. Zurich Am. Ins.*, 547 U.S. 651, 657, n.3 (2006)).

Section 158(d)(1) grants circuit courts jurisdiction to hear "appeals from all final decisions, judgments, orders, and decrees entered" by the district court sitting in its appellate capacity. § 158(d)(1). The district court's appellate capacity is an unusual wrinkle. While district courts typically serve as courts of original jurisdiction, *Gugliuzza*, 852 F.3d at 889, they also "have jurisdiction to hear appeals . . . from final judgments, orders, and decrees . . . entered in cases and proceedings referred to the bankruptcy judges." § 158(a)(1).[1] Our jurisdiction to hear appeals from the district court under § 158(d) is thus constrained by the district court's jurisdiction to hear appeals of final orders in bankruptcy "cases and proceedings." *See Gugliuzza*, 852 F.3d at 893 ("This interpretation of finality in bankruptcy cases determines the scope of the district court . . . authority to hear appeals . . . under § 158(a)(1) as well as our authority to hear [appeals] under § 158(d)(1), which are governed by the same constraints.").

[1] As a formal matter, Congress vests original jurisdiction over bankruptcy proceedings in the district court. 28 U.S.C. § 1334. But in practice, "every district court has provided by rule or order for automatic reference to bankruptcy judges." 1 Collier on Bankruptcy ¶ 3.02[1] (16th ed. 2026); *see* 28 U.S.C. § 157(a) (authorizing referral).

The scope of the relevant proceeding is only the first constraint under § 158(d)(1). An order in that proceeding must also be final. *Bank of New York Mellon*, 867 F.3d at 1157. We once again return to the problem of defining multiple discrete judicial units within the umbrella case. A "final" order under § 158 need only "terminate a discrete proceeding in bankruptcy, rather than the entire bankruptcy case," to be appealable. *In re Gilman*, 176 F.4th 1152, 1161 (9th Cir. 2026) (en banc). Such an appeal to the district court may be "technically interlocutory" because the umbrella case keeps going, but "final for purposes of § 158." *Gugliuzza*, 852 F.3d at 897 (internal quotation marks omitted).[2]

We thus apply a more "flexible" approach to finality in bankruptcy than in ordinary civil litigation. *Landmark Fence*, 801 F.3d at 1101. This flexible approach comes in two flavors. First, if the district court simply "affirms or reverses" a decision of the bankruptcy court, we look only to

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[2] The requirement of finality shows a way in which our appellate bankruptcy jurisdiction is more constrained than the appellate jurisdiction of the district court. District courts may grant leave to appeal an interlocutory order of the bankruptcy judge. *See* § 158(a)(3). But orders resolving interlocutory appeals are not final orders for our jurisdiction under § 158(d)(1). *See Westwood Shake*, 971 F.2d at 389 ("If the underlying bankruptcy court order is interlocutory, so is the district court order affirming or reversing it."). The district court granted Cabardo Appellants leave to appeal under § 158(a)(3), but Cabardo Appellants never moved for certification of a second-level appeal to our court. This forecloses any possibility of jurisdiction under either § 1292(b) or § 158(d)(2), which provide us jurisdiction over certified interlocutory appeals at our discretion. *See Gilman*, 176 F.4th at 1161 n.6; *see also Gugliuzza*, 852 F.3d at 890. We thus face the question whether the orders of the bankruptcy court and the district court were final (thus rendering superfluous the district court's grant of leave for an interlocutory appeal) and subject to our jurisdiction under § 158(d)(1).

the bankruptcy court's order and determine whether it (1) "'resolves and seriously affects substantive rights'" and (2) "'finally determines the discrete issue to which it is addressed.'" *Gugliuzza*, 852 F.3d at 894 (quoting *In re Perl*, 811 F.3d 1120, 1126 (9th Cir. 2016)). Second, when a district court also includes a remand in its disposition—as here—we must determine whether the district court's order is final. *See id.* We look to four factors: "(1) the need to avoid piecemeal litigation; (2) judicial efficiency; (3) the systemic interest in preserving the bankruptcy court's role as the finder of fact; and (4) whether delaying review would cause either party irreparable harm." *Perl*, 811 F.3d at 1126 (quoting *Landmark Fence*, 801 F.3d at 1102). We often call these four the *Landmark Fence* factors.

We proceed by considering each constraint in turn.

B

Cabardo Appellants urge us to apply the *Landmark Fence* factors to the § 523(a)(7) issue. They contend that the § 523(a)(7) issue is a pure legal question, rendering the bankruptcy court's remaining fact-finding on the § 523(a)(6) issue independent from the merits of this appeal. Cabardo Appellants' argument breaks down at the "initial step in the analysis" because they fail to define the "proper scope of the proceeding, or 'discrete dispute,' adjudicated below." *Kiviti*, 80 F.4th at 529. We could treat any order as "final" if we were to slice finality down to the dispute resolved by that order. But we cannot slice "the case too thin." *Ritzen*, 589 U.S. at 44 (quoting *Bullard*, 575 U.S. at 502). Doing so "define[s] 'proceeding' to include disputes over minor details about how a bankruptcy case will unfold." *Id.* We thus start by determining the scope of the discrete dispute below.

1

To determine the proper scope of a proceeding, "we start with the text." *United States v. Myers*, 170 F.4th 1180, 1184 (9th Cir. 2026). As explained, the first constraint is § 158(a)'s grant of jurisdiction to the district court over appeals of orders in "cases and proceedings referred to the bankruptcy judges." § 158(a); *see also Gugliuzza*, 852 F.3d at 893. The Supreme Court has twice grappled with whether a bankruptcy court order resolved one of the specific "proceedings" under § 158(a). We look to these cases for permissible definitions of the undefined term "proceedings." Although acknowledging that it "hardly clinches the matter," *Bullard*, 575 U.S. at 503, the Court suggested in both cases that the term "proceeding" may be defined, in some ways, with reference to the Bankruptcy Code's sixteen categories of "core proceedings" that bankruptcy judges may hear under 28 U.S.C. § 157(b).

In *Bullard*, the Court held that an order denying confirmation of a Chapter 13 plan was not final and appealable. "The relevant proceeding is the process of attempting to arrive at an approved plan that would allow the bankruptcy to move forward." 575 U.S. at 502. That proceeding is final when the bankruptcy court confirms the plan—not each time the court rejects a plan and tells the debtor to try again. *Id.* In the Court's words, "[i]t ain't over till it's over" and that point comes only with an order that "alters the status quo and fixes the rights and obligations of the parties." *Id.* at 502–03. The Court found an "additional" textual clue suggesting that only confirmation of plans fixes the rights of parties. *Id.* at 503. Section 157(b)(2)(L) lists "confirmations of plans" as a core proceeding, but says nothing of denials. *Id.* This "suggests that Congress viewed the larger confirmation process as the 'proceeding,' not the ruling on each specific plan." *Id.*

The Court also considered the list of core proceedings in *Ritzen*. 589 U.S. at 43. There, the Court held that an order denying a creditor's motion for relief from the automatic stay was final and appealable. "A bankruptcy court's order ruling on a stay-relief motion disposes of a procedural unit anterior to, and separate from, claim-resolution proceedings." *Id.* Stay-relief motions and the claim resolution proceedings are governed by different procedural rules and standards of substantive law. *Id.* at 43–44. The Court again found a "textual clue." *Id.* at 44 (quoting *Bullard*, 575 U.S. at 503). Section 157(b)(2)(G) lists motions to terminate, annul, or modify the stay as a core proceeding, and § 157(b)(2)(B) lists the "allowance or disallowance of claims against the estate" separately. *Id.* Although once again not dispositive, that separation suggests Congress viewed stay-relief adjudication as a proceeding "distinct from claim adjudication." *Id.*

There is one important distinction between these cases and the Cabardo Appellants' appeal. Disputes in bankruptcy are generally classified as either "adversary proceedings," or "contested matters," an "undefined catchall for other issues the parties dispute." *Bullard*, 575 U.S. at 505 (citing Fed. R. Bankr. P. 7001, 9014). *Bullard* and *Ritzen* were both contested matters. When the ruling involves a contested matter, "determining finality can be challenging." *Gilman*, 176 F.4th at 1161. The list of such matters "is 'endless' and covers all sorts of minor disagreements." *Bullard*, 575 U.S. at 505 (quoting 10 Collier ¶ 9014.01).

"For appeals taken from an adversary proceeding," as here, "finality is often easier to assess." *Gilman*, 176 F.4th at 1161. Rule 7001 lists ten adversary proceedings, "essentially full civil lawsuits carried out under the umbrella of the bankruptcy case." *Bullard*, 575 U.S. at 505. If the enumeration of "core proceedings" supplied a textual clue in the harder setting of contested matters, it supplies a stronger textual clue here.

Section 157(b)(2)(I) provides that "determinations as to the dischargeability of particular debts" are core proceedings. We understand this text to indicate that the appropriate judicial unit is the entire dischargeability determination, not the adjudication of specific legal theories that may support or block dischargeability. After all, it is the discharge or enforcement of the debt that "alters the status quo and fixes the rights and obligations of the parties." *Bullard*, 575 U.S. at 502. And the same debt could be excepted from discharge under more than one provision of § 523. *See, e.g.*, *Severo v. Comm'r*, 586 F.3d 1213, 1218 & n.2 (9th Cir. 2009) (considering alternate grounds for an exception to discharge).

The bankruptcy rules also confirm that we do not divide the proceeding further. Rule 7001(f) provides that "a proceeding to determine whether a debt is dischargeable" is an "adversary proceeding." Fed. R. Bankr. P. 7001(f). An adversary proceeding is a clear analogy to traditional litigation. In an ordinary civil case appealed under § 1291, the relevant judicial unit is the case, not individual claims. *E.g.*, *Fletcher v. Gagosian*, 604 F.2d 637, 638 (9th Cir. 1979). We do not allow parties to appeal individual claims while other claims remain pending in the district court because doing so "undermines efficient judicial administration and encroaches upon the prerogatives of district court judges." *Bullard*, 575 U.S. at 501 (cleaned up). Thus, we have stated that an order "normally must entirely terminate an adversary proceeding to be final." *Gilman*, 176 F.4th at 1161 (cleaned up).

One other portion of the Bankruptcy Rules solidifies our conclusion. Federal Rule of Civil Procedure 54(b) provides one limited exception under which the district court may "direct entry of a final judgment as to one or more, but fewer than all, claims." Federal Rule of Bankruptcy Procedure 7054(a) confirms that Rule 54(b) applies to adversary proceedings in bankruptcy. We have dismissed appeals of bankruptcy orders that "did not dispose of all issues in the adversary proceeding but only dismissed one count of a four-count counterclaim." *In re King City Transit Mix, Inc.*, 738 F.2d 1065, 1066–67 (9th Cir. 1984). We observed in that case that the district had not directed entry of judgment under Rules 54(b) or 7054(a). *See id.* at 1066.

Applying these principles here, the relevant judicial unit is the adversary "proceeding to determine whether" the Patacsils' debt to Cabardo Appellants is "dischargeable." Fed. R. Bankr. P. 7001(f). It is not the individual legal issues or claims within that proceeding. *See* Fed. R. Bankr. P. 7054(a). At least two of our sister circuits have reached the same conclusion, and we see no reason to depart from their approaches. *See, e.g.*, *Kiviti*, 80 F.4th at 529 ("The appropriate procedural unit for determining finality here is the adversary proceeding."); *In re Chateaugay Corp.*, 922 F.2d 86, 90 (2d Cir. 1990) ("[T]he discrete dispute is the adversary proceeding.").

2

In re Century Centre Partners, 969 F.2d 835 (9th Cir. 1992), does not alter this conclusion. That opinion states that "[c]ertain proceedings" may be "so distinct and conclusive that final decisions as to them should be appealable as of right." *Id.* at 838 (cleaned up). This is true as far as it goes. But to the extent *Century Centre* suggests that "proceedings" can include conclusive orders as to individual issues, it is no longer good law under intervening Supreme Court and circuit precedent.

In *Century Centre*, we concluded that we had jurisdiction over three claims in an adversary proceeding even though a fourth claim remained pending before the bankruptcy court. There, the debtor sued the Federal Deposit Insurance Corporation (FDIC) to seek reclassification of equity interests, subordination of the FDIC's claims, turnover payments, and damages for breach of the covenant of good faith and fair dealing. *Century Ctr.*, 969 F.2d at 836. The bankruptcy court granted the FDIC's motion for summary judgment on the first three claims, but held that a factual dispute required a trial on the breach of covenant claim. *Id.* In a single paragraph, we concluded that the bankruptcy court's order was final as to the first three claims—even though the fourth claim was going to trial. *Id.* at 838. "In the present case the status of the notes is entirely distinct from Century Centre's Fourth Claim, and the decision as to these claims is conclusive." *Id.*

We have done little in the last thirty-four years to expand this limited reasoning. We have cited *Century Centre*'s jurisdictional holding only once. *See In re Prestige Ltd. P'ship-Concord*, 234 F.3d 1108, 1112 (9th Cir. 2000). We held that a denial of partial summary judgment over remaining issues was appealable because it presented a purely legal issue "potentially dispositive" of the entire adversary proceeding. *Id.* at 1113–14. The pure legal exception to finality is consistent with *Century Centre*. The debtor's first three claims were governed by a distinct body of law, whereas the remaining fourth claim was a common law breach claim. *Century Ctr.*, 969 F.2d at 836–38.

The problem for Cabardo Appellants is that we abandoned the pure legal exception to finality in the wake of *Bullard*. In *Gugliuzza*, we explained that the prior pure legal test asked if the legal issue "1) could dispose of the case or proceeding and obviate the need for fact finding; or 2) would materially aid the bankruptcy court in reaching its disposition on remand." 852 F.3d at 896 (quoting *In re Bonner Mall P'ship*, 2 F.3d 899, 904 (9th Cir. 1993)). We concluded that this pure legal test is "inconsistent with *Bullard* and our post-*Bullard* precedent." *Id.* at 897. Under *Bullard*, we must probe whether the appealed order "finally dispose[s] of a discrete dispute within the larger case." *Id.* (cleaned up). The *Bullard* test probes finality—not "whether it would be judicially efficient to consider" the appeal. *Id.* at 898. Thus, *Gugliuzza* did not recognize an alternate test for appellate jurisdiction—it repudiated the pure legal test.

To the extent *Century Centre* suggests that we can divide an adversary proceeding by individual legal claims and "pure legal issues," it "is no longer binding on district judges and three-judge panels of this court." *Id.* (quoting *Miller v. Gammie*, 335 F.3d 889, 893 (9th Cir. 2003) (en banc)); *accord Gilman*, 176 F.4th at 1162 ("[T]his rationale for exercising jurisdiction is inconsistent with *Bullard*." (cleaned up)). We instead apply the four-factor finality test outlined in *Landmark Fence*, 801 F.3d 1099, keeping in mind the "appropriate procedural unit for determining finality," *Kiviti*, 80 F.4th at 529.

C

Applying the *Landmark Fence* factors, the district court's order on fewer than all claims in the adversary proceeding is not a "final" order under § 158(d). As explained above, we assess whether a district court's order remanding an appeal is final using four factors: (1) avoidance of piecemeal litigation; (2) judicial efficiency; (3) preservation of the bankruptcy court's fact-finding role; and (4) preventing irreparable harm to either party. *Gugliuzza*, 852 F.3d at 894. The first two factors seek to prevent "multiple climbs up the appellate ladder and slides down the chute and the delays and inefficiencies that result." *Gilman*, 176 F.4th at 1162 (cleaned up).

Cabardo Appellants' complaint seeks a determination of the dischargeability of the debt under § 523(a)(6), and the remaining debt under § 523(a)(7). So even treating the district court's order as a functional grant of summary judgment on dischargeability under § 523(a)(7), there remains a strong possibility of a second appeal because of the live controversy over discharge of other debts, including the same debt, under § 523(a)(6). Such a risk of piecemeal litigation weighs heavily toward concluding that the order is not final because the appellate process would be shorter if the court declines jurisdiction and instead waits for "ultimate review of all the combined issues." *Gugliuzza*, 852 F.3d at 894 (citation omitted).

The remand to consider the § 523(a)(6) issue is not a "mechanical or computational task," as Cabardo Appellants claim. *In re Saxman*, 325 F.3d 1168, 1172 (9th Cir. 2003) (cleaned up). That exception from discharge requires a showing of subjective intent, *In re Su*, 290 F.3d 1140, 1145–46 (9th Cir. 2002), a factual issue that the bankruptcy court held "must be resolved by trial." The likelihood of a second appeal is impermissibly high when the district court remands for "fact-finding on a central issue" such as exceptions to discharge. *Gugliuzza*, 852 F.3d at 898.

In other words, "an appeal now would not necessarily avoid an appeal later." *In re Bender*, 586 F.3d 1159, 1166 (9th Cir. 2009). In such cases, "the appellate process likely will be much shorter if [the Court] decline[s] jurisdiction and await[s] ultimate review on all the combined issues." *In re Lakeshore Vill. Resort, Ltd.*, 81 F.3d 103, 106 (9th Cir. 1996) (internal quotations omitted). Factors one and two do not support finality.

For similar reasons, the third factor also favors declining jurisdiction at this juncture. "[T]he bankruptcy court's fact-finding role is best preserved by allowing the remand to run its course." *Gugliuzza*, 852 F.3d at 899. We have held that the district court's "explicit directions for the bankruptcy court to engage in 'further fact-finding'" gives the bankruptcy court "opportunity to assess whether and to what extent the district court's order alters its assessment." *Landmark Fence*, 801 F.3d at 1103. Although the district court's § 523(a)(7) analysis is distinct from any remaining issues under § 523(a)(6), the normal course is to allow the bankruptcy court to make that determination in the first instance.[3] The bankruptcy court presides over the entire discharge proceeding. § 157(b)(2)(I). That proceeding requires additional fact-finding and is incomplete. Waiting for the bankruptcy court to complete the entire proceeding

[3] The bankruptcy court could determine that there "is no just reason for delay," and certify partial-final summary judgment on the § 523(a)(7) issue. But that decision is in the discretion of the bankruptcy court. Fed. R. Bankr. P. 7054(a).

best respects its fact-finding role. *See Gugliuzza*, 852 F.3d at 899.[4]

Finally, delaying review causes neither party irreparable harm. The parties may still appeal the entire adversary proceeding once the remaining § 523(a)(6) issue is decided. *See id.* at 894. Whatever delay Cabardo Appellants suffer vindicating their right to collect the debt "is regrettable," but does not comprise an "irreparable" harm. *Landmark Fence*, 801 F.3d at 1103. The fourth factor thus does not support immediate review either.

In sum, the district court's order remanding the adversary proceeding to the bankruptcy court is not a final order under *Landmark Fence*. We thus lack jurisdiction over this appeal under § 158(d)(1).

IV

Any order can finally resolve a proceeding if the proceeding is sliced thin enough. Cabardo Appellants attempt to slice the proceeding down to a single legal issue. That goes too far. When we define the relevant judicial unit as the adversary proceeding, it becomes apparent that no final order confers us with jurisdiction under § 158(d)(1).

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[4] Our decision in *In re Scholz* found this factor weighed "in favor of exercising jurisdiction" because the appeal "concern[ed] a purely legal issue that [did] not turn in any way on the factual record" even though the Bankruptcy Appellate Panel remanded for further fact-finding. 699 F.3d 1167, 1170 (9th Cir. 2012). As discussed, isolating a legal issue as a "pure question of law," even one that would be "efficient" to resolve before the remand is complete, is "inconsistent with *Bullard*." *Gugliuzza*, 852 F.3d at 897. After *Bullard*, the bankruptcy court's fact-finding role "is best preserved by allowing the remand to run its course" when the remand calls for fact-finding on a central issue. *Id.* at 899.

DISMISSED.