**SO ORDERED.**

**SIGNED this 5th day of November, 2025.**

Mitchell L. Herren
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF KANSAS**

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| In re: | Case No. 24-11014<br>Chapter 7 |
| Jay Thomas Doshier<br>Crystal Marie Doshier,<br>Debtors. | |
| Darcy D. Williamson, Trustee,<br>Plaintiff,<br>v.<br>Hailstone Legal Group, LLC,<br>Defendant. | Adv. No. 25-05004 |

**ORDER GRANTING MOTION TO DISMISS IN PART**

In May 2023, Debtor Jay Doshier engaged defendant Hailstone Legal Group, LLC, to provide debt resolution services. About five months later, having paid a total of $7282.10 to Hailstone, he and his spouse filed for bankruptcy. This is an

adversary proceeding against Hailstone by plaintiff Darcy Williamson, the trustee for the debtors' Chapter 7 estate. Count I of her first amended complaint seeks to recover $7282.10 from Hailstone as fraudulent transfers under 11 U.S.C. §§ 548(a)(1)(B) and 550(a)(1); Counts II and III seek damages from Hailstone for violations of the Kansas Credit Services Organization Act ("KCSOA") and the Kansas Consumer Protection Act ("KCPA").[1]

This proceeding is now before the Court on Hailstone's motion to dismiss for failure to state a claim under Fed. R. Civ. P. 12(b)(6), which applies here via Fed. R. Bankr. P. 7012(b).[2] The Court will grant Hailstone's motion in part by dismissing Count I without prejudice and deny the motion as to Counts II and III.

To survive a motion to dismiss under Rule 12(b)(6), a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is plausible when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556). In determining whether a claim is plausible, a court must draw all reasonable inferences from the facts in favor of the plaintiff. *See*

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[1] *See* First Am. Compl. ¶ 25, ECF 24. Count I is a core proceeding arising under title 11; Counts II and III are non-core proceedings related to the bankruptcy case. *See Celotex Corp. v. Edwards*, 514 U.S. 300, 307 n.5 (1995); 28 U.S.C. § 157(a), (b)(2)(H). Venue is appropriate under 28 U.S.C. § 1409(a).

[2] ECF 36. Hailstone appears by attorneys Mark B. Schaffer and Heather L. Kramer. Williamson appears by attorney J. Michael Morris.

*Brooks v. Mentor Worldwide LLC*, 985 F.3d 1272, 1281 (10th Cir. 2021) (citing *Brown v. Montoya*, 662 F.3d 1152, 1162-63 (10th Cir. 2011)). However, conclusory allegations are not entitled to the assumption of truth, and threadbare recitals of the elements of a cause of action will not suffice. *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555); *Brooks*, 985 F.3d at 1281 (citing *Khalik v. United Air Lines*, 671 F.3d 1188, 1193 (10th Cir. 2012)).

The burden is on the party moving for dismissal under Rule 12(b)(6) to show that the complaint does not state a plausible claim for relief. *See* 5 Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1357 (3d ed.). Determining whether a complaint states a plausible claim is a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. *Iqbal*, 556 U.S. at 679.

**Count I.** Section 548(a)(1)(B) of the Bankruptcy Code permits a trustee to avoid transfers made by the debtor within two years of the bankruptcy petition where the debtor received "less than a reasonably equivalent value" for the transfer and was insolvent when the transfer was made. Williamson's first amended complaint alleges:

- On May 25, 2023, the debtor Jay Doshier entered into an agreement with Hailstone (the "**Agreement**") under which "Hailstone was to, *inter alia*[,] work to settle certain debts by negotiating settlements with creditors." (First Am. Compl. ¶ 9, ECF 24.)

- The debtor "enrolled" a total of $28,900 of unsecured debt into the Agreement. (*Id.*)
- Hailstone's fee was to be 27% of the total enrolled debt, or $7803. (*Id.*)
- "The Agreement also provided for the establishment of a 'dedicated account' to which the debtor[] would make the monthly payments by automatic draw from the debtor['s] regular bank account." (*Id.* ¶ 10.)
- "[T]he debtor[] made monthly payments totaling $7,282.10 to or for the benefit of Hailstone before the bankruptcy." (*Id.* ¶ 11.)
- "The negotiation of debt settlements with unsecured creditors is the same service that is regulated under the [KCSOA]." (*Id.* ¶ 13.)
- "[T]he fees allowed under the KCSOA for such services are significantly less than the fees provided for under the Agreement." (*Id.*)
- "The debtor[] received less than a reasonably equivalent value in exchange for the transfer(s) in that the fee was excessive for the service provided." (*Id.*)
- "[T]he debtor had to file bankruptcy in any event, including as to the 'enrolled' creditors." (*Id.* ¶ 14).
- The debtor was "insolvent at the time of the payments/transfers." (*Id.* ¶ 16.)

Hailstone argues that Count I fails to state a claim for fraudulent transfer under § 548(a)(1)(B) because (1) "the Trustee fails to provide any details to support the assertion that the fees are 'excessive' in relation to what is allowed under the

KCSOA";[3] (2) "[s]imply because the Debtor had to ultimately declare bankruptcy does not mean that Hailstone did not provide value to the Debtor";[4] (3) "the Trustee does not even allege what services Hailstone failed to perform";[5] and (4) "the Trustee cannot even allege that the purported amount paid by the Debtor into the dedicated account totaling $7,282.10 was even received by Hailstone during the required two-year time frame [because] Hailstone receives no fees unless it settles an account."[6] Williamson responds that she "does not oppose dismissal of Count I, without prejudice."[7] In its reply, Hailstone does not address dismissal of Count I other than noting the Trustee "agreed to dismiss Count I."[8] The Court construes Hailstone's reply as consenting to dismissal of Count I without prejudice[9] and therefore grants Hailstone's motion in part, dismissing Count I without prejudice.

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[3] Brief in Support of Defendant's Motion to Dismiss Amended Complaint (Defendant's Brief) 7, ECF 37.

[4] *Id.* at 8.

[5] *Id.*

[6] *Id.* at 9.

[7] Brief in Support of Plaintiff Trustee's Response to Motion to Dismiss Amended Complaint 2, ECF 42.

[8] Reply in Support of Defendant's Motion to Dismiss 1, ECF 45. In total regarding Count I, Hailstone states: "Only two counts of the Amended Complaint remain. In h[er] response, the Trustee agreed to dismiss Count I, which asserted a claim under 11 U.S.C. § 548. That leaves Counts II and III." *Id.*

[9] Alternatively, the Court construes the Trustee's response to Hailstone's motion to dismiss as a motion to voluntarily dismiss Count 1 under Fed. R. Civ. P. 41(a)(2) which Hailstone does not oppose. *See Bell v. Turner Recreation Comm'n*, No. 09-2097-JWL, 2009 WL 2914057, at *1-2 (D. Kan. Sept. 8, 2009) (construing response to motion to dismiss under Fed. R. Civ. P 12(b)(6) as a request for dismissal without prejudice under Rule 41(a)(2); collecting cases following same approach).

**Counts II and III.** The KCSOA regulates "credit services organizations"[10] in the state of Kansas. Among other things, it requires such organizations to obtain a license from the state, prohibits them from taking a variety of enumerated actions, and limits the fees they may charge. *See* K.S.A. §§ 50-1118 ("Licensing required to conduct credit services organization business; application"), 50-1121 ("Prohibited acts"), 50-1126 ("Fees charged by licensee; when allowed"). It also provides that any violation of the KCSOA also constitutes a deceptive act or practice under the KCPA. *See* K.S.A. § 50-1132. However, it exempts "[a]ny individual licensed to practice law in this state acting within the course and scope of such individual's practice as an attorney, and such individual's law firm," from its provisions. *See* K.S.A. § 50-1116(b).

Count II of Williamson's first amended complaint alleges that Hailstone violated the KCSOA in a variety of ways; Count III alleges that such violations also constitute deceptive acts or practices under the KCPA. Hailstone argues that Count II fails to state a claim because it (Hailstone) is exempt from the KCSOA under

[10] A "credit services organization" is a person who engages in, or holds out to the public as willing to engage in, the business of debt management services for a fee, compensation or gain, or in the expectation of a fee, compensation or gain. K.S.A. § 50-1117(c). "Debt management service" means (1) receiving or offering to receive funds from a consumer for the purpose of distributing the funds amount such consumer's creditors in full or partial payment of such consumer's debts; (2) improving or offering to improve a consumer's credit record, history, rating or score; or (3) negotiating or offering to negotiate to defer or reduce a consumer's obligations with respect to credit extended by others. K.S.A. § 50-1117(d).

§ 50-1116(b),[11] and that Count III fails to state a claim because it (Count III) is derivative of Count II. However, the § 50-1116(b) exemption is in the nature of an affirmative defense—and an affirmative defense is a proper basis for dismissal under Rule 12(b)(6) "only when the complaint itself admits all the elements of the affirmative defense by alleging the factual basis for those elements." *Fernandez v. Clean House, LLC*, 883 F.3d 1296, 1299 (10th Cir. 2018) (citing *Xechem, Inc. v. Bristol-Myers Squibb Co.*, 372 F.3d 899, 901 (7th Cir. 2004), and *Miller v. Shell Oil Co.*, 345 F.2d 891, 893 (10th Cir. 1965)). That is not the case here.

Hailstone argues that it is exempt from the KCSOA under § 50-1116(b) because "the KCSOA does not apply to law firms, and Hailstone is indisputably a law firm."[12] This argument misstates the scope of § 50-1116(b), which does not exempt all "law firms." Rather, the exemption applies only to a Kansas-licensed attorney acting within the course and scope of that attorney's law practice, and then—if that condition is met—to that attorney's law firm.

As to the first condition, Hailstone points out that the Agreement "was reviewed and signed by a Kansas attorney: Johnny Lok."[13] "Consequently,"

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[11] To support its argument that it is exempt from the KCSOA, Hailstone looks to the Agreement, copies of which are attached to its motion to dismiss. *See* Ex. A, ECF 37-1; Ex. B, ECF 37-2. The Court may consider those copies here without converting Hailstone's motion into one for summary judgment because (1) Williamson does not dispute their authenticity and (2) the Agreement was referred to in, and is central to, the first amended complaint. *See Berneike v. CitiMortgage, Inc.*, 708 F.3d 1141, 1146 (10th Cir. 2013) (citation omitted).

[12] Defendant's Brief 2, ECF 37.

[13] *Id.* at 11. The Court takes judicial notice that an attorney named "Johnny Manjune Lok" is listed in the Kansas Supreme Court Attorney Directory available

Hailstone argues, "the services the Debtor obtained from Hailstone were legal services from a licensed Kansas attorney and within the course and scope of that person's practice."[14] But Hailstone's conclusion is not supported by its premise. Mr. Lok's signature is just that: a signature. It does not appear on the copy of the Agreement that contains the debtor's signature.[15] It does not establish that he acted as the debtor's attorney or took any further action at all. *Cf. Parks v. Persels & Assocs., LLC,* 509 B.R. 345, 353 (D. Kan. 2014) ("Goodwin's departure from the minimal expectations of any attorney is so complete that a rational fact finder could determine that he was not acting as an attorney at all.").

As to the second condition, Hailstone is not "indisputably" a law firm. The KCSOA defines "law firm" as "a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization." K.S.A. § 50-1117(f). According to

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at https://directory-kard.kscourts.gov (last visited Nov. 3, 2025). *Cf. Tal v. Hogan*, 453 F.3d 1244, 1264 n.24 (10th Cir. 2006) ("[F]acts subject to judicial notice may be considered in a Rule 12(b)(6) motion without converting the motion to dismiss into a motion for summary judgment. . . . However, the documents may only be considered to show their contents, not to prove the truth of matters asserted therein.") (citations omitted).

[14] Defendant's Brief 12, ECF 37.

[15] *Compare* Defendant's Brief. Ex. A at 18-19, ECF 37-1, *with* Ex. B at 18-19, ECF 37-2. The debtor signed the Agreement on May 25, 2023. *See generally* Ex. A (containing numerous debtor signatures), ECF 37-1. In contrast, the Agreement's document history indicates that Mr. Lok opened the Agreement on June 23, 2023, at 1:59:52 p.m. and signed it at 2:00:00 p.m.—eight seconds later. *See* Ex. B at 47, ECF 37-2.

Hailstone, it is a law firm because its name is "Hailstone Legal Group" and because the Agreement "states that the Debtor and Hailstone were to form an 'Attorney/Client relationship' . . . [and] details the legal services provided to the Debtor."[16] But § 50-1117(f) requires "a lawyer or lawyers"—which requirement is not satisfied by a name containing the word "legal," or a customer's desire to hire an attorney, or an entity's categorization of its own services as "legal."[17] And even if that requirement were satisfied, Mr. Lok's signature does not establish any particular relationship between Mr. Lok and Hailstone. *Cf. Parks,* 509 B.R. at 352-53 (holding that § 50-1116(b) did not apply to law firm that hired Kansas attorney as independent contractor). In short, neither the first amended complaint nor the Agreement establishes that Hailstone is exempt from the KCSOA under § 50-1116(b).

The Court grants Hailstone's motion in part by dismissing Count I without prejudice and denies the motion as to Counts II and III.

IT IS SO ORDERED.

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[16] Defendant's Brief 11, ECF 37.

[17] As Judge Nugent once observed:

> If it walks like a duck and swims like a duck and quacks like a duck, it is a duck. Persels and Goodwin may hold themselves out as lawyers providing unbundled, limited legal representation, but there is plenty of evidence in the summary judgment record to suggest that they "walk, swim, and quack" like a credit services organization that supplies debt settlement services while posing as a law firm.

*In re Kinderknecht*, 470 B.R. 149, 185 (Bankr. D. Kan. 2012).