

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, January 11, 2024

Hearing Room

5B

10:00 AM

8:00-000000

Chapter

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ZoomGov meeting number: 161 742 0634

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completed your appearance(s).

Docket 0

Tentative Ruling:

- NONE LISTED -

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8:21-11311 Hilde Van Der Westhuizen

Chapter 7

Adv#: 8:21-01059 Anastasia Sky, MD. v. Van Der Westhuizen

#1.00 STATUS CONFERENCE RE: Judgment filed June 2, 2023, the Bankruptcy Appellate Panel has reversed and remanded this court's Order Granting Motion for Summary Judgment entered June 27, 2022.
(cont'd from 11-09-23)

Docket 0

Tentative Ruling:

Tentative for January 11, 2024

According to the status conference report Plaintiff will be asking for a continuance until after a foreclosure sale scheduled 2/7/24. A further explanation is requested, particularly as to how this claim at center of this adversary can be satisfied. *Appearance required.*

Tentative for November 9, 2023
Status? Appearance is required.

Tentative for 7/27/23:

Of course, a decision is needed on whether the court can issue any deadlines in a matter on appeal. The controversy seems to be whether the prior order is merely interlocutory since it does not dispose of the case, but only the summary judgment. The court will hear argument on that point. In meantime, for discussion purposes the following deadlines are suggested.

Deadline for completing discovery: 12/31/23
Last date for filing pre-trial motions: 1/12/24
Pre-trial conference on: 2/8/24 @ 10:00AM

Appearance: required

Party Information

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CONT... Hilde Van Der Westhuizen

Chapter 7

Debtor(s):

Hilde Van Der Westhuizen

Represented By
Joseph A Weber
Fritz J Firman

Defendant(s):

Hilde Van Der Westhuizen

Represented By
Fritz J Firman

Plaintiff(s):

Anastasia Sky, MD.

Represented By
Scott S Weltman

Trustee(s):

Karen S Naylor (TR)

Represented By
Arturo Cisneros
Nathan F Smith
Christina J Khil

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8:22-11556 Stonebridge Ventures, LLC

Chapter 11

Adv#: 8:22-01093 Lewis et al v. Stonebridge Ventures, LLC et al

**#2.00 STATUS CONFERENCE RE: Complaint For Removal Of State Court Action
(cont'd from 9-07-23)
(cont'd from 11-02-23 per court's own mtn)
(cont'd from 11-09-23)
[Stonebridge Ventures, LLC is dismissed from adversary see document #
31]**

Docket 1

Tentative Ruling:

Tentative for January 11, 2024
Settlement status? Appearance required.

Tentative for November 9, 2023
Has the 9019 motion granted 10/31 resolved this case? Appearance is
suggested.

Tentative for September 7, 2023
Continue to November 2, 2023 at 10:00 a.m.
Appearance is only required if date does not work.

Tentative for 6/29/23:
Settlement still pending? How long a continuance?

Tentative for 5/25/23:
Paragraph G in the status report suggests that settlement discussions are
underway, but no timeline is given. While the court encourages settlement
sometimes arbitrary deadlines help focus the discussions, and continuances

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Chapter 11

are not unlimited. Are those necessary or advisable here?

Appearance: required

Tentative for 3/16/23:

Parties are still discussing the lien claim issue? Do the parties prefer the setting of discovery deadlines and scheduling of a pretrial conference at this time? Or is another continuance preferred?

Appearance: required

Tentative for 1/12/23:

It is not clear to the court why this matter should be tried in bankruptcy court instead of its original jurisdiction, the Riverside County Superior Court. Although title of estate property might be affected, adjudication of any legal issue affecting title and as to non-debtor parties could as well be determined there; no unique Title 11 issue appears. There is, however, the possibility of a §544 strongarm question regarding any "special lien" claim; but that is only hypothetical at this point. Moreover, the title issues may be at the threshold of mootness as the Trustee has moved to sell the subject property free of liens. There was no reply filed to this court's OSC re Remand/Abstention. Therefore, this court abstains from these issues and remands to Riverside Superior Court, but with the admonitions as described above. Mr. Polis is to submit an order.

Party Information

Debtor(s):

Stonebridge Ventures, LLC

Represented By
Summer M Shaw

Defendant(s):

Stonebridge Ventures, LLC

Pro Se

Joshua Raymond Pukini

Pro Se

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CONT... Stonebridge Ventures, LLC

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Ryan Justin Young Pro Se

Calpac Management, Inc Pro Se

Edmund Valasquez, Jr. Pro Se

Luna Construction Management, Pro Se

Plaintiff(s):

Darryl Lewis Represented By
Thomas J Polis

Sanna Akhtanova Represented By
Thomas J Polis

Trustee(s):

Arturo Cisneros (TR) Represented By
Arturo Cisneros
Nathan F Smith
William Malcolm

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8:23-10500 Nasser Ghodsifar

Chapter 7

Adv#: 8:23-01058 Javahery v. Ghodsifar

**#3.00 STATUS CONFERENCE RE: Second Amended Complaint To Determine Dischargeability Of Debt Pursuant To 11 USC §523(a)(2)(A) and 11 USC § 523(a)(4)]
(another summons issued on 8-25-23)
(cont'd from 11-09-23)**

Docket 5

***** VACATED *** REASON: CONTINUED TO 2-29-24 T 10:00 A.M.
PER ANOTHER SUMMONS ISSUED ON 12-11-23**

Tentative Ruling:

Tentative for November 9, 2023
See #23 at 11:00 a.m. Appearance required.

Party Information

Debtor(s):

Nasser Ghodsifar

Represented By
Richard G. Heston

Defendant(s):

Nasser Ghodsifar

Pro Se

Joint Debtor(s):

Farisa Tahan

Represented By
Richard G. Heston

Plaintiff(s):

Afsaneh Javahery

Represented By
Richard L. Sturdevant

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

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Nasser Ghodsifar

Chapter 7

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8:21-12506 Sarina Browndorf

Chapter 7

Adv#: 8:23-01117 Casey v. 5pm Investments, Inc.

#4.00 STATUS CONFERENCE RE: Chapter 7 Trustee's Complaint for (1) Declaratory Relief, and (2) Avoidance and Recovery of Fraudulent Transfers and (3) Marshalling

Docket 1

Tentative Ruling:

Tentative for January 11, 2024

Continue to April 11, 2024 at 10:00 a.m. per request in the Status Conference report, to allow documentation of and authorization for settlement.

Appearance optional.

Party Information

Debtor(s):

Sarina Browndorf

Represented By
Susan K Sefflin
Steven T Gubner
Jessica L Bagdanov
Jessica Wellington

Defendant(s):

5pm Investments, Inc.

Pro Se

Plaintiff(s):

Thomas H Casey

Represented By
Jessica L Bagdanov

Trustee(s):

Thomas H Casey (TR)

Represented By
Jessica L Bagdanov

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8:21-11558 Parks Diversified, LP

Chapter 11

Adv#: 8:23-01030 Talon Diversified Holdings, Inc. et al v. Klein et al

**#5.00 STATUS CONFERENCE RE: Complaint
(cont'd from 11-09-23)
[Gregory Emdee, Attorney for Todd Becker - Appearing on All the Talon
Matters]**

Docket 1

Tentative Ruling:

Tentative for January 11, 2024

No status report? Status of Wong response? *Appearance required.*

Tentative for November 9, 2023

Orders dismissing the second amended complaint without leave to amend as to several of the defendants have been entered. The dismissal of the second complaint re Todd Becker was with leave to amend. One defendant, Linda Wong, has not responded. The court will hear argument as to where this case is going, particularly as to Wong and Becker parties. Appearance required.

Tentative for September 22, 2023

Given the results in #2-10, further status conference is not indicated, but there is confusion as to the conversion theory on the Kimura London & White LLP, William London, Maxx Sharp, and Darrell P. White claim in light of all the other matters. The court sees no reason for a difference here, but a ruling has been made and an order lodged. The court is disposed to correct its own error by changing the order from what has been lodged to what the court thinks the proper ruling is. If anyone is aggrieved by this the matter will be set for a separate hearing.

Tentative for September 14, 2023

No good deed goes unpunished. This has grown unruly. In a moment of

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Chapter 11

weakness the court allowed the scheduling of additional matters, but this piling on is outrageous. The court is overwhelmed by the number of motions that have been filed and set for hearing on this date, all seemingly raising different arguments. To give these matters their due the court needs more time. Except for numbers 12, 13, and 23, these hearings will go forward as status conferences. The court would like to discuss what is going on here and whether mediation can be helpful.

Appearance required.

Tentative for 6/8/23:
See ##20 and 21 @ 11:00AM.

Party Information

Debtor(s):

Parks Diversified, LP

Represented By
Marc C Forsythe
Charity J Manee

Defendant(s):

Todd B. Becker

Represented By
Greg Emdee

Linda Wong

Pro Se

Kimura London & White LLP

Represented By
Paul Grammatico

William London

Represented By
Paul Grammatico

Darrell P. White

Represented By
Paul Grammatico

Maxx Sharp

Represented By
Paul Grammatico

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Michael S. Leboff

Represented By
James R Lance

Goe Forsythe & Hodges LLP

Represented By
Holly M. Carnes
Douglas A Pettit
Matthew C Smith

Marc Forsythe

Represented By
Holly M. Carnes
Douglas A Pettit
Matthew C Smith

David Klein

Represented By
David A Berkley

Klein & Wilson

Represented By
James R Lance

Plaintiff(s):

Richard Parks

Represented By
Michael G Dawe

North Valley Regional Center LLC

Represented By
Michael G Dawe

Talon Diversified Holdings, Inc.

Represented By
Tom Roddy Normandin
Michael G Dawe

North Valley Mall II, LLC

Represented By
Michael G Dawe

Parks Diversified L.P.

Represented By
Michael G Dawe

Lucia Parks

Represented By
Michael G Dawe

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8:21-11558 Parks Diversified, LP

Chapter 11

Adv#: 8:23-01030 Talon Diversified Holdings, Inc. et al v. Klein et al

#6.00 Marc Forsythe And Goe Forsythe & Hodges LLP Motion For Attorney Fees Pursuant to C.C.P. Section 425.16(c)
(cont'd from 11-09-23)
[Gregory Emdee, Attorney for Todd Becker - Appearing on All the Talon Matters as of 1-09-24]

Docket 283

Tentative Ruling:

Tentative for January 11, 2024

This request for fees and costs from Goe & Forsythe is substantially similar to the request of the Kimura parties (see #8). The issues and authorities as discussed in #8 are the same and the reader is invited to review that tentative opinion, which is incorporated herein by reference. One difference is that the amount requested here is larger (\$147,000). But as noted in Plaintiffs' leading case *Mireskandari v. Daily mail and General Trust PLC* 2015, WL 12586343* 14 (C.D. Cal. Nov. 7 2014), and as also observed in #8 on calendar, all of the motions, i.e. for dismissal, anti-SLAPP, core v. non-core issues, remand etc. are interrelated and are thus all compensable as part of the anti-SLAPP. *Kearney v. Foley and Lardner*, 553 F. Supp. 2d 1178, 1183-84 (S.D. Cal. 2008). Moreover, this diminishes the Plaintiffs' argument that "block billing" of the recorded time makes a review and distinction of the component tasks too difficult. The court has no basis for finding that the requested fees are unreasonable, the billing rates seem in line with other law firms and unlike some of the authorities cited, defendants' efforts here were entirely successful. Fees and costs are thus approved as prayed and stay is denied.

Appearance required.

Tentative for November 9, 2023

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This is Defendants Marc Forsythe and Goe Forsythe & Hodges, LLP (collectively, "Goe Forsythe's") motion for an award of their attorney's fees pursuant to California Code of Civil Procedure Section 425.16(c) against Plaintiffs Park Diversified, L.P., Richard Parks, and Lucia Parks ("Plaintiffs").

The court has reviewed the pleadings and agrees with Plaintiffs that the motion is premature and cannot be brought prior to entry of final judgment in the case. "The Ninth Circuit has expressly held an order granting a defendant's anti-SLAPP motion on plaintiff's state law claims 'is not final' under Rule 54. *Hyan v. Hummer*, 825 F.3d 1046 (9th Cir. 2016); Fed. R. Civ. P. 54(b). Given this controlling decision, Emergy may not move for fees at this time [*i.e.*, prior to entry of judgment]." *Better Meat Co. v. Emergy, Inc.* (E.D. Cal., Aug. 31, 2023, No. 221CV02338KJMCKD) 2023 WL 5638266, at *3. The orders dismissing the case are currently in the process of being entered. Consequently, until there is a final judgment rendered, the court finds it appropriate to continue the hearing to December 12, 2023 at 10:00 a.m. Appearance suggested.

Party Information

Debtor(s):

Parks Diversified, LP

Represented By
Marc C Forsythe
Charity J Manee

Defendant(s):

Todd B. Becker

Represented By
Greg Emdee
James J Kjar

Linda Wong

Represented By
John J Immordino

Kimura London & White LLP

Represented By
Paul A. Grammatico

William London

Represented By

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Parks Diversified, LP

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	Paul A. Grammatico
David Klein	Represented By David A Berkley
Maxx Sharp	Represented By Paul A. Grammatico
Klein & Wilson	Represented By James R Lance Kyra E Andrassy Timothy W Evanston David A Berkley Genevieve M. Sauter
Michael S. Leboff	Represented By James R Lance Kyra E Andrassy Timothy W Evanston Genevieve M. Sauter
Goe Forsythe & Hodges LLP	Represented By Holly M. Carnes Kathryn M.S. Catherwood
Marc Forsythe	Represented By Holly M. Carnes Kathryn M.S. Catherwood
David Klein	Represented By David A Berkley
Darrell P. White	Represented By Paul A. Grammatico

Plaintiff(s):

Richard Parks	Represented By Michael G Dawe Tom Roddy Normandin
North Valley Regional Center LLC	Represented By

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Michael G Dawe
Tom Roddy Normandin

Talon Diversified Holdings, Inc.

Represented By
Tom Roddy Normandin
Michael G Dawe

North Valley Mall II, LLC

Represented By
Michael G Dawe
Tom Roddy Normandin

Parks Diversified L.P.

Represented By
Michael G Dawe
Tom Roddy Normandin

Lucia Parks

Represented By
Michael G Dawe
Tom Roddy Normandin

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8:21-11558 Parks Diversified, LP

Chapter 11

Adv#: 8:23-01030 Talon Diversified Holdings, Inc. et al v. Klein et al

#7.00 Defendants Michael S. LeBoff's and Klein & Wilson's Motion For Attorneys' Fees (CCP §425.16(c)(1))
(cont'd from 11-30-23 per amended notice filed 11-09-23)
[Gregory Emdee, Attorney for Todd Becker - Appearing on All the Talon Matters as of 1-09-24]

Docket 285

Tentative Ruling:

Tentative for January 11, 2024

This is the motion of Defendants Michael S. LeBoff and Klein & Wilson (collectively "K&W") for attorney's fees pursuant to California Code of Civil Procedure § 425.16(c)(1) (the "Fee Motion"). K&W is a prevailing defendant on its special motion to strike against Plaintiffs Parks Diversified, L.P., North Valley Regional Center LLC, Richard Parks, and Lucia Parks (collectively, "Plaintiffs"). As it is mandatory under the anti-SLAPP statute, K&W seeks to recover fees in the amount of \$123,501.66 for all hours reasonably spent in connection the anti-SLAPP motion and this fee motion. The arguments and authorities supporting and opposing the Fee Motion are indistinguishable from those discussed in items ## 6 and 8 on calendar and so the reader is invited to review the tentative post on those matters. The court finds no basis for reducing the request for the same or similar reasons discussed in ##6 and 8 and therefore the application is granted as to fees and costs and the request for stay is denied.

Appearance required.

Party Information

Debtor(s):

Parks Diversified, LP

Represented By
Marc C Forsythe

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Charity J Manee

Defendant(s):

David Klein

Represented By
David A Berkley

Todd B. Becker

Represented By
Greg Emdee
James J Kjar

Linda Wong

Represented By
John J Immordino

Maxx Sharp

Represented By
Paul A. Grammatico

William London

Represented By
Paul A. Grammatico

Kimura London & White LLP

Represented By
Paul A. Grammatico

Klein & Wilson

Represented By
James R Lance
Kyra E Andrassy
Timothy W Evanston
David A Berkley
Genevieve M. Sauter

Michael S. Leboff

Represented By
James R Lance
Kyra E Andrassy
Timothy W Evanston
Genevieve M. Sauter

Goe Forsythe & Hodges LLP

Represented By
Holly M. Carnes
Kathryn M.S. Catherwood

Marc Forsythe

Represented By
Holly M. Carnes

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Kathryn M.S. Catherwood

David Klein

Represented By
David A Berkley

Darrell P. White

Represented By
Paul A. Grammatico

Plaintiff(s):

Richard Parks

Represented By
Michael G Dawe
Tom Roddy Normandin

North Valley Regional Center LLC

Represented By
Michael G Dawe
Tom Roddy Normandin

Talon Diversified Holdings, Inc.

Represented By
Tom Roddy Normandin
Michael G Dawe

North Valley Mall II, LLC

Represented By
Michael G Dawe
Tom Roddy Normandin

Parks Diversified L.P.

Represented By
Michael G Dawe
Tom Roddy Normandin

Lucia Parks

Represented By
Michael G Dawe
Tom Roddy Normandin

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Adv#: 8:23-01030 Talon Diversified Holdings, Inc. et al v. Klein et al

#8.00 Defendants Darrell P. White, William London, Maxx Sharp, And Kimura London & White LLP's Motion For Attorneys' Fees Pursuant to C.C.P. Section 425.16(c).
[Defendants Appearing In Person]
[Gregory Emdee, Attorney for Todd Becker - Appearing on All the Talon Matters as 1-09-24]

Docket 362

Tentative Ruling:

Tentative for January 11, 2024

This is the motion of Darrell P. White, William London, Maxx Sharp, and Kimura London & White LLP ("collectively, Kimura"), for attorney's fees, following entry of judgment as the prevailing party on two anti- SLAPP motions against Parks Diversified, L.P., North Valley Regional Center LLC, Richard Parks, and Lucia Parks (collectively, "Plaintiffs").

Plaintiffs did not prevail against Kimura for many reasons. Most importantly, the litigation privilege bars suing lawyers for positions they take in anticipation of litigation. Kimura now brings this motion to recover its fees in connection with the two motions pursuant to California Code of Civil Procedure § 425.6(c)(1). Kimura contends that an award of fees is mandatory under the statute and includes compensation for all hours reasonably spent, including fees for this motion and all work intertwined with the two anti-SLAPP motions.

A. Legal Standard

Pursuant to Code of Civil Procedure § 425.16(c)(1), a prevailing defendant on a special motion to strike shall be entitled to recover his attorneys' fees. Absent circumstances rendering an award unjust, the fee award ordinarily should include compensation for all hours reasonably spent, including those related solely to the fee motion. *Kearney v. Foley and*

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Lardner, 553 F. Supp. 2d 1178, 1181 (S.D. Cal. 2008) (citing *Serrano v. Unruh*, 32 Cal.3d 621, 624 (1982); *Ketchum v. Moses*, 24 Cal.4th 1122, 1141 (2001)). The reasonableness of a fee award is within the discretion of the court. *Kearney*, 553 F. Supp. 2d at 1184-85. Courts consider factors including the nature of the litigation, the complexity of the issues, the success of the attorneys' efforts, counsels' experience and expertise, and the amount of time involved. *Id.* at 1185. In circumstances where expenses are incurred on common issues of fact and law over multiple motions, a defendant may recover all such fees. *Kearney*, 553 F. Supp. 2d at 1183-84 (rejecting assertion that defendants could only recover fees for work specifically performed in preparing the anti-SLAPP motion, but not for a motion to dismiss premised on the same facts and legal defenses).

B. Recovery of Fees for Other Motions

Kimura requests attorneys' fees and costs for the two anti-SLAPP motions but also for its opposition to Plaintiffs' remand motion and ex parte application for continuance of hearing on the second anti-SLAPP motion. Plaintiffs disagree arguing that the work outside of the anti-SLAPP motion should not be compensated and cite to several authorities, including *City of Industry v. City of Fillmore*, 198 Cal.App.4th 191, 218 (2011) ("The defendant can recover only its fees and costs in connection with the motion, not the entire action," citing *Jackson v. Yarbray*, 179 Cal.App.4th 75, 92 (Cal. Ct. Of App. 2009); *Christian Research Institute v. Alnor*) 165 Cal.App.4th 1315, 1320, 81 Cal.Rptr.3d 866 (2008). However, the court agrees with Kimura that fees and costs in connection with the motion, and the other filed pleadings are directly related to the anti-SLAPP motions. This contrasts somewhat with Plaintiff's *Fillmore* case which was not an entirely successful anti-SLAPP motion and involved a more far-ranging set of issues.

First, in our case the motions to dismiss were brought as alternative motions to the anti-SLAPP motions with almost identical arguments and were ruled upon together by this court. Second, the remand and core/non-core motions were both attempts to prevent or undo the ruling of the anti-SLAPP order. Finally, any fees incurred as a result for meeting and conferring with counsel on the anti-SLAPP motions and other related motions would be a direct connection with motion to strike. Thus, the court finds that recovery of

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fees and costs for other motions related to the anti-SLAPP are both reasonable and permitted.

C. Reasonableness of Fees

The reasonableness of a fee award is within the discretion of the court. *Kearney*, 553 F. Supp. 2d at 1184-85. Courts consider factors including the nature of the litigation, the complexity of the issues, the success of the attorneys' efforts, counsels' experience and expertise, and the amount of time involved. *Id.* at 1185.

Plaintiffs argue that Kimuras' fee requests are unreasonable and grossly excessive and should be reduced to a request of \$20,000. Unsurprisingly, Kimura strongly disagrees. It should go without saying that all involved invested significant time, effort, research, briefing, and preparation for the several motions filed in connection with this adversary proceeding. This was a fairly complicated case procedurally and substantively with many players and moving parts. Although the amount in fees is significant and the rate in which firms charge considerable (but less allegedly than charged by colleagues in Los Angeles), this was expected given the number of motions filed and hearings held. The court sees no reason to deem Kimura's requested fees unreasonable given these circumstances.

D. Stay Entry of Judgment on Attorney Fees?

Plaintiffs request that the court should issue a stay on the judgment of the attorney fees as the court's orders giving rise to the present attorney fee motions are on appeal. Plaintiff argues that it would be reasonable to issue the stay, even if only until January 29, 2024 hearing in the District Court on the jurisdictional issues. However, as Kimura contends, this court has already addressed Plaintiffs' ex parte request for a continuance and/or indefinite stay of the judgment, which has been denied. The court does not see any change nor good cause for further delay in this case, and a motion for a stay has not been filed. Thus, the court denies Plaintiffs' request here.

Fees and costs awarded as prayed and the request for stay is denied.
Appearance required.

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Santa Ana
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10:00 AM

CONT... Parks Diversified, LP

Chapter 11

Party Information

Debtor(s):

Parks Diversified, LP

Represented By
Marc C Forsythe
Charity J Manee

Defendant(s):

David Klein

Represented By
David A Berkley

Todd B. Becker

Represented By
Greg Emdee
James J Kjar

Linda Wong

Represented By
John J Immordino

Maxx Sharp

Represented By
Paul A. Grammatico

William London

Represented By
Paul A. Grammatico

Kimura London & White LLP

Represented By
Paul A. Grammatico

Klein & Wilson

Represented By
James R Lance
Kyra E Andrassy
Timothy W Evanston
David A Berkley
Genevieve M. Sauter

Michael S. Leboff

Represented By
James R Lance
Kyra E Andrassy
Timothy W Evanston
Genevieve M. Sauter

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
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CONT... Parks Diversified, LP

Chapter 11

Goe Forsythe & Hodges LLP

Represented By
Holly M. Carnes
Kathryn M.S. Catherwood

Marc Forsythe

Represented By
Holly M. Carnes
Kathryn M.S. Catherwood

David Klein

Represented By
David A Berkley

Darrell P. White

Represented By
Paul A. Grammatico

Plaintiff(s):

Lucia Parks

Represented By
Michael G Dawe
Tom Roddy Normandin

Talon Diversified Holdings, Inc.

Represented By
Tom Roddy Normandin
Michael G Dawe

North Valley Mall II, LLC

Represented By
Michael G Dawe
Tom Roddy Normandin

Parks Diversified L.P.

Represented By
Michael G Dawe
Tom Roddy Normandin

Richard Parks

Represented By
Michael G Dawe
Tom Roddy Normandin

North Valley Regional Center LLC

Represented By
Michael G Dawe
Tom Roddy Normandin

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
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Thursday, January 11, 2024

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10:00 AM

8:21-11558 Parks Diversified, LP

Chapter 11

Adv#: 8:23-01030 Talon Diversified Holdings, Inc. et al v. Klein et al

#9.00 Defendant David Klein's Motion For Attorneys' Fees And Costs Pursuant to C.C.P. Section 425.16(c) and Civil Code 1717.
[David Klein Intends To Appear In Person]
[Gregory Emdee, Attorney for Todd Becker - Appearing on All the Talon Matters as of 1-09-24]

Docket 366

Tentative Ruling:

Tentative for January 11, 2024

This is Defendant David Klein's ("Klein") motion for an award for attorney's fees and costs pursuant to C.C.P. § 425.16(c) and Civ. Code § 1717 against Plaintiffs Talon Diversified Holdings, Inc. ("Talon"), North Valley Mall II, LLC ("NVM II"), Parks Diversified, L.P. ("Parks Diversified"), Richard Parks ("Richard"), individually and in his capacity as trustee of the Parks Family Trust (the "Trust"), and Lucia Parks ("Lucy"), individually and in her capacity as trustee of the Trust (collectively the "Plaintiffs" or "Parks"). Klein seeks \$89,100.00 total in attorney fees and costs. Regarding the anti-SLAPP request for fees the authorities and arguments are indistinguishable from those discussed in items ##6-8 and so that discussion is incorporated herein by reference. In Klein's motion there is an additional request to recover \$17,465 for fees in addition to the \$70,956 in fees labelled for the anti-SLAPP motion under Civil Code §1717. Plaintiffs have failed entirely to respond to this argument. As there appears to be no issue regarding these fees, and Plaintiffs have not opposed those specifically, those requested fees are likewise granted. Appearance required.

Party Information

Debtor(s):

Parks Diversified, LP

Represented By
Marc C Forsythe
Charity J Manee

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Santa Ana
Theodor Albert, Presiding
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CONT... Parks Diversified, LP

Chapter 11

Defendant(s):

David Klein

Represented By
David A Berkley

Todd B. Becker

Represented By
Greg Emdee
James J Kjar

Linda Wong

Represented By
John J Immordino

Maxx Sharp

Represented By
Paul A. Grammatico

William London

Represented By
Paul A. Grammatico

Kimura London & White LLP

Represented By
Paul A. Grammatico

Klein & Wilson

Represented By
James R Lance
Kyra E Andrassy
Timothy W Evanston
David A Berkley
Genevieve M. Sauter

Michael S. Leboff

Represented By
James R Lance
Kyra E Andrassy
Timothy W Evanston
Genevieve M. Sauter

Goe Forsythe & Hodges LLP

Represented By
Holly M. Carnes
Kathryn M.S. Catherwood

Marc Forsythe

Represented By
Holly M. Carnes
Kathryn M.S. Catherwood

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Chapter 11

David Klein

Represented By
David A Berkley

Darrell P. White

Represented By
Paul A. Grammatico

Plaintiff(s):

Richard Parks

Represented By
Michael G Dawe
Tom Roddy Normandin

North Valley Regional Center LLC

Represented By
Michael G Dawe
Tom Roddy Normandin

Talon Diversified Holdings, Inc.

Represented By
Tom Roddy Normandin
Michael G Dawe

North Valley Mall II, LLC

Represented By
Michael G Dawe
Tom Roddy Normandin

Parks Diversified L.P.

Represented By
Michael G Dawe
Tom Roddy Normandin

Lucia Parks

Represented By
Michael G Dawe
Tom Roddy Normandin

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8:23-10028 Young Yol Byeon

Chapter 13

Adv#: 8:23-01113 OH v. Bank of New York Mellon Corporation et al

#10.00 Defendant Auction.com, Inc.'s Motion To Dismiss First Amended Adversary Proceeding 12(b)(6)

Docket 47

Tentative Ruling:

Tentative for January 11, 2024

A. Background

These are Defendants Auction.com, Inc. and Locke Lord LLP's Rule 12(b) motions to dismiss each cause of action in the First Amended Complaint of Plaintiff Myong Suk Oh ("Plaintiff"). Each defendant filed a separate motion to dismiss, but given their identical nature, the court has consolidated them into a single tentative (see #11) below. Neither motion was opposed.

On September 2, 2016, Plaintiff filed a lawsuit in the Superior Court of California - Orange County. In that case, Plaintiff made allegations regarding standing of Bank of New York Mellon as Trustee for the Certificate holders of CWMBS, Inc., CHL Mortgage Pass-Through Trust 2005-3, Mortgage Pass-Through Certificates, Series 2005-3 ("BONY") and other defendants. Judgment was entered in favor of BONY on December 13, 2017. A second lawsuit was brought against BONY and MTC Financial Inc ("MTC"), in which Auction.com is an agent, but was subsequently dismissed and barred by *res judicata* based on the judgment in the first lawsuit. A third lawsuit was brought in the United States District Court, Central District of California, but BONY was never properly added as a defendant. Nonetheless, the court also dismissed that case based on *res judicata* and judgment was entered in the favor of the remaining defendants, which included MTC as well.

Chung Jae Sun, Plaintiff's supposed "successor-in-interest" filed a lawsuit against BONY, Shellpoint, MTC, and Auction.com in the United States District Court – Central District of California, challenging their standing to foreclose on the Property. This was dismissed with prejudice as to all

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defendants, including Auction.com, on February 21, 2023, based on Chung's lack of standing to bring such claims as well as *res judicata*. The court entered judgment in favor of all defendants. Locke Lord represented Auction.com in this lawsuit.

B. Legal Standard

When considering a motion under FRCP 12(b)(6), a court takes all the allegations of material fact as true and construes them in the light most favorable to the nonmoving party. *Parks School of Business v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995). A complaint should not be dismissed unless a plaintiff could prove no set of facts in support of his claim that would entitle him to relief. *Id.* Motions to dismiss are viewed with disfavor in the federal courts because of the basic precept that the primary objective of the law is to obtain a determination of the merits of a claim. *Rennie & Laughlin, Inc. v. Chrysler Corporation*, 242 F.2d 208, 213 (9th Cir. 1957).

"While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 554-556 (2007). A complaint must contain sufficient factual matter to state a claim to relief that is plausible on its face. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) citing *Twombly*. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Id.* The plausibility standard asks for more than a sheer possibility that a defendant has acted unlawfully. *Id.* The tenet that a court must accept as true all factual allegations is not applicable to legal conclusions. *Id.*

C. Motion to Dismiss

1. Res Judicata/Judicial Estoppel

"*Res judicata*, also known as claim preclusion, bars litigation in a subsequent action of any claims that were raised or could have been raised in the prior action." *W. Radio Servs. Co. v. Glickman*, 123 F.3d 1189, 1192 (9th

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Cir. 1997). Res judicata applies whenever there is "(1) an identity of claims, (2) a final judgment on the merits, and (3) identity or privity between parties." *W. Radio Servs. Co.*, 123 F.3d at 1192. Similarly, "[c]ollateral estoppel, or issue preclusion, bars the re-litigation of issues actually adjudicated in previous litigation between the same parties." *Kamilche Co. v. United States*, 53 F.3d 1059, 1062 (9th Cir. 1995). To invoke collateral estoppel, a party must show that (1) the issue necessarily decided at the previous proceeding is identical to the one which is sought to be relitigated; (2) the first proceeding ended with a final judgment on the merits; and (3) the party against whom collateral estoppel is asserted was a party or in privity with a party at the first proceeding. *Trevino v. Gates*, 99 F.3d 911, 923 (1996).

Auction.com argues, and the court agrees, that Plaintiff's complaint is barred under both theories of claim and issue preclusion. Regarding the first and second element of both, a final judgment has been rendered in four lawsuits regarding the issue of standing to enforce the loan. The third element is met because MTC, who is in privity with Auction.com, was a party to the second, third and fourth lawsuits. Auction.com was also a party to the fourth lawsuit. Further, Plaintiff and her "successor-in-interest" were the plaintiffs in all prior cases. Auction.com has satisfied all the elements to bar this complaint based on res judicata and collateral estoppel.

2. Litigation Privilege

The crux of Plaintiff's complaint is that Locke Lord submitted filings to the U.S. District Court (or Superior Court) which contained allegedly false documents, leading the courts to dismiss Plaintiff's complaints with prejudice. Locke Lord argues that such claims are barred by the litigation privilege.

California Civil Code section 47, subdivision (b) states, in relevant part: "A privileged publication or broadcast is one made: ... (b) In any ... (2) judicial proceeding." Civ. Code § 47(b); see also *Hagberg v. California Federal Bank FSB*, 32 Cal. 4th 350, 360 (2004). The litigation privilege "has been extended to any communication, whether or not it is a publication, and to all torts other than malicious prosecution. Thus, the privilege has been applied to suits for fraud, negligence and negligent misrepresentation, and interference with contract." *Seltzer v. Barnes*, 182 Cal. App. 4th 953, 969-70 (2010). "[T]he

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litigation privilege applies to any communication (1) made in judicial or quasi-judicial proceedings; (2) by litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action." *Sylmar Air Conditioning v. Pueblo Contracting Services, Inc.*, 122 Cal. App. 4th 1049, 1058 (2004).

Here, the "wrongful" conduct was made within the third and fourth lawsuit,. A "logical relationship" exists as the conduct and statements were made directly as a defense for Locke Lord's client Auction.com – to challenge the foreclosing defendants' standing to enforce the Loan's terms and Auction.com's actions as foreclosing trustee's agent. Plaintiff has not filed an opposition to this motion, and based on Locke Lord's argument, the court is persuaded that all the elements of the litigation privilege have been satisfied.

3. Assignments of the Deed of Trust

Defendants Locke Lord and Auction.com also seek to dismiss Plaintiff's claim that BONY was not properly assigned the loan, and thus improperly substituted MTC as trustee under the Deed of Trust to commence foreclosure proceedings. Defendants argue that Plaintiff does not have legal authority to challenge the assignment for several reasons.

Under California law, "[s]omeone who is not a party to [a] contract has no standing to enforce the contract" *Gantman v. United Pac. Ins. Co.*, 232 Cal. App. 3d 1560, 1566 (1991) (citation omitted). Here, Plaintiff is not a party to any assignment of the Deed of Trust. Further, no party to the assignment has asserted that it is void. Under the terms of the Deed of Trust, the beneficiary was apparently free to assign it, even without advance notice to Plaintiff. The Deed of Trust also provides that the entity to whom Plaintiff must make payments may change: "A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this [Deed of Trust] and performs other mortgage loan servicing obligations under the Note, this [Deed of Trust], and Applicable Law. There might also be one or more changes of the Loan Servicer unrelated to a sale of the Note." Based on these stated terms, it appears that Plaintiff was put on notice both that the Deed of Trust could be assigned to another entity and that the party to make loan payments to might change. As there is not

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opposition filed by the Plaintiff, the court is persuaded that Plaintiff does not have standing to challenge the assignment.

4. First Claim for Declaratory Relief

Plaintiff's first claim for declaratory relief seek a declaration regarding fraud in the bankruptcy court against other defendants and not Auction.com. This first claim should be dismissed as to Auction.com because Plaintiff does not allege any facts suggesting that Auction.com filed any documents in Debtor's bankruptcy. Plaintiff also makes no allegations that Auction.com has any interest in the Property or that Auction.com has claimed to have an interest in the Property. Further, Auction.com contends that the claim should be dismissed because declaratory relief is not an individual cause of action, but an equitable relief. *Biederman v. Northwest Trustee Services, Inc.*, 2015 WL 3889371 (C.D. Cal. Jun. 24, 2015). As stated above, Plaintiff has filed no opposition to rebut these arguments. Thus, the court finds that the first claim for relief should be dismissed.

5. Second Claim to Vacate Orders against all Defendants

Plaintiff's second claim seeks to set aside the Orders and Judgments entered against her in the previous lawsuits based on "false documents" submitted to the courts.

It is well settled that "[a]lthough Bankruptcy Rule 9024 makes Civil Rule 60 applicable to cases arising under the Bankruptcy Code, Rule 60 generally only applies to judgments or orders of the bankruptcy court..." *In re: W.R. Grace & Co.*, 476 B.R. 114, 120 (D. Del. 2012). Under this authority, this court does not have the power to set aside judgments and orders entered in state and district court cases. Further, the threshold for dismissal under Rule 60 is high and requires that the fraud on the court be established by clear and convincing evidence. *U.S. v. Estate of Stonehill*, 600 F.3d 415, 443 (9th Cir. 2011). The court is not persuaded that Plaintiff has met this standard, given the previous findings, review of the complaint, and the fact that Plaintiff has not even chosen to file an opposition to these motions to dismiss.

Even if Plaintiff had met the clear and convincing evidence standard,

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Plaintiff still could not overturn the judgments using Rule 60(d)(3). It is well-settled that "relief from fraud on the court is available only where the fraud was not known at the time of settlement or entry of judgment." *U.S. v. Sierra Pacific Industries, Inc.*, 862 F.3d 1157, 1169 (9th Cir. 2017). Plaintiff's claims for fraud were known at the time of entry of judgment because the claim rests on the same allegations from the previous lawsuits – that the documents were "false and fraudulent".

To conclude, the motions to dismiss filed by both Locke Lord and Auction.com are granted without leave to amend based on the arguments presented and Plaintiff's lack of opposition or participation in this proceeding.

Appearance required.

Party Information

Debtor(s):

Young Yol Byeon

Represented By
Rex Tran

Defendant(s):

NewRez LLC

Represented By
Jonathan C Cahill

Dane Exnowski

Represented By
Dane W Exnowski

Bank of New York Mellon

Pro Se

BAYVIEW LOAN SERVICING,

Pro Se

MTC Financial, Inc

Represented By
John C Steele

Auction.Com, Inc.

Represented By
Meagan S Tom

McCalla Raymer Leibert Pierce,

Represented By
Dane W Exnowski

Wright, Finlay & Zak, LLP

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
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Thursday, January 11, 2024

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CONT... Young Yol Byeon

Chapter 13

Arnold L Graff

Klinedinst, PC

Pro Se

Locke Lord LLP

Represented By
Meagan S Tom

Plaintiff(s):

MYONG Suk OH

Represented By
Yi Y Oh

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
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Chapter 13

Adv#: 8:23-01113 OH v. Bank of New York Mellon Corporation et al

#11.00 Defendant Locke Lord LLP's Motion To Dismiss Adversary Proceeding
12(b)(6)

Docket 50

Tentative Ruling:

Tentative for January 11, 2024

See item #10. The issues, authorities and arguments are nearly identical and so the memorandum in #10 shall serve as the decision in both. Appearance required.

Party Information

Debtor(s):

Young Yol Byeon

Represented By
Rex Tran

Defendant(s):

Bank of New York Mellon

Pro Se

BAYVIEW LOAN SERVICING,

Pro Se

MTC Financial, Inc

Represented By
John C Steele

Auction.Com, Inc.

Represented By
Meagan S Tom

McCalla Raymer Leibert Pierce,

Represented By
Dane W Exnowski

Wright, Finlay & Zak, LLP

Represented By
Arnold L Graff

Klinedinst, PC

Pro Se

Locke Lord LLP

Represented By

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, January 11, 2024

Hearing Room

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11:00 AM

CONT... Young Yol Byeon

Chapter 13

NewRez LLC

Meagan S Tom

Represented By
Jonathan C Cahill

Dane Exnowski

Represented By
Dane W Exnowski

Plaintiff(s):

MYONG Suk OH

Represented By
Yi Y Oh

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se