

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

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

10:00 AM

**8:00-000000**

**Chapter**

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**United States Bankruptcy Court  
Central District of California  
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Courtroom 5B Calendar**

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**Hearing Room**

**5B**

10:00 AM

CONT...

**Chapter**

**Password:** 150570

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

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

10:00 AM

**CONT...**

**Chapter**

Docket 0

**Tentative Ruling:**

- NONE LISTED -

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

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

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

**#1.00 STATUS CONFERENCE RE: Complaint  
(cont'd from 11-09-23)  
[Gregory Emdee, Attorney for Todd Becker - Appearing on All the Talon  
Matters]  
(cont'd from 1-11-24)**

Docket 1

**Tentative Ruling:**

Tentative for January 11, 2024

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

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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.

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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.

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Tentative for September 14, 2023

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

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

10:00 AM

**CONT... Parks Diversified, LP**

**Chapter 11**

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

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

<b>Party Information</b>
--------------------------

**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

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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Courtroom 5B Calendar**

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

10:00 AM

**CONT... Parks Diversified, LP**

**Chapter 11**

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

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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**Wednesday, January 17, 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

**#2.00** 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]**  
**(cont'd from 1-11-24)**

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.*

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Tentative for November 9, 2023

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

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

10:00 AM

**CONT... Parks Diversified, LP**

**Chapter 11**

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.

<b>Party Information</b>
--------------------------

**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



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

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

10:00 AM

**CONT...**

**Parks Diversified, LP**

**Chapter 11**

	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

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

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

10:00 AM

**CONT...**

**Parks Diversified, LP**

**Chapter 11**

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

**United States Bankruptcy Court  
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Santa Ana  
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Courtroom 5B Calendar**

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**5B**

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

**#3.00** 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]  
(cont'd from 1-11-24)

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.*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Parks Diversified, LP

Represented By  
Marc C Forsythe

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

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

10:00 AM

**CONT... Parks Diversified, LP**

**Chapter 11**

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

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

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

10:00 AM

**CONT... Parks Diversified, LP**

**Chapter 11**

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

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

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

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

**#4.00** 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]**  
**(cont'd from 1-11-24)**

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*

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

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

10:00 AM

**CONT...**

**Parks Diversified, LP**

**Chapter 11**

*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

**United States Bankruptcy Court  
Central District of California  
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Courtroom 5B Calendar**

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

10:00 AM

**CONT... Parks Diversified, LP**

**Chapter 11**

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.*



**United States Bankruptcy Court  
Central District of California  
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Courtroom 5B Calendar**

**Wednesday, January 17, 2024**

**Hearing Room**

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**CONT... Parks Diversified, LP**

**Chapter 11**

**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  
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

**United States Bankruptcy Court  
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Courtroom 5B Calendar**

**Wednesday, January 17, 2024**

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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):**

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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**8:21-11558 Parks Diversified, LP**

**Chapter 11**

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

**#5.00** 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]**  
**(cont'd from 1-11-24)**

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.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Parks Diversified, LP

Represented By  
Marc C Forsythe  
Charity J Manee

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
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Courtroom 5B Calendar**

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

10:00 AM

**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

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

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

10:00 AM

**CONT... Parks Diversified, LP**

**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

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

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

1:30 PM

**8:23-11862    Jose Oscar Magana**

**Chapter 13**

**#1.00    Confirmation Of 1st Amended Chapter 13 Plan  
(cont'd from 12-20-23)**

Docket      15

**Tentative Ruling:**

Tentative for January 17, 2024

Can debtor interlineate to cure actual amount of Notable Capital arrearage and Trustee's perceived amendments to achieve 100% amortizing plan payments/conduit status? *Appearance required.*

-----  
Tentative for December 20, 2023

- 1) CONDUIT TREATMENT SEEMS APPROPRIATE. PRIOR 2020 CASE DISMISSED 2022 HAD \$38K ARREARS, NOW AT \$73K ARREARS per Notable Capital.
- 2) NEED DECLARATION RE SECURED PAYMENTS FILED.
- 3) NEED DECLARATION RE TAXES/DSO FILED.
- 4) NO PROVISION FOR \$26K IRS PRIORITY, \$16K IRS SECURED TAXES, AND \$4.5K FTB SECURED CLAIM.
- 5) SLIGHTLY HIGHER MORTGAGE ARREARS CLAIMS FILED BY 1ST AND 2ND TD LIENHOLDERS.

Appearance required.

-----  
Tentative for November 15, 2023

Several deficiencies noted. Amount of arrears and increase from prior proceeding suggest conduit payments would be appropriate. Missing documents per Trustee must be addressed. Arrearages considerably higher than reported and priority claims must be addressed in plan. Appearance required.

<b>Party Information</b>
--------------------------

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

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

1:30 PM

**CONT... Jose Oscar Magana**

**Chapter 13**

**Debtor(s):**

Jose Oscar Magana

Represented By  
Michael D Franco

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

1:30 PM

**8:23-11897 Francisco Javier Andrade**

**Chapter 13**

**#2.00 Confirmation Of Chapter 13 Plan  
(cont'd from 11-15-23)**

Docket 13

**Tentative Ruling:**

Tentative for January 17, 2024

Is the First Amended Plan filed on November 14, 2023 opposed? *Appearance required.*

-----  
Tentative for November 15, 2023

Repeat filer (four earlier filings). Amended plan was to provide conduit treatment, but was it done? Per Barclays, why should the in rem relief of stay earlier ordered not apply? See #15. Appearance required.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Francisco Javier Andrade

Represented By  
Michael D Franco

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se



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

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

1:30 PM

**8:23-12163 Mac Dilani**

**Chapter 13**

**#3.00 Confirmation Of Chapter 13 Plan  
(cont'd from 12-20-23)**

Docket 21

**Tentative Ruling:**

Tentative for January 17, 2024

Secured claims missing from Ambridge or Quail Hill. Per Trustee calculation, plan is under-funded by \$13,154 (assuming Debtor files a POC for Ambridge at scheduled amount of \$6,802). Further, needs interlineation to account for Mr. Cooper GAP for 12/2023 and 1/2024 and additional shortage.

*Appearance required.*

-----

Tentative for December 20, 2023

The prior case having only recently been dismissed for continuing defaults, conduit treatment would seem to be expected, as Trustee requests.

Feasibility is very questionable. Business reports needed. Bar date is not until 12/29. Appearance required.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Mac Dilani

Represented By  
Joseph A Weber  
Fritz J Firman

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

1:30 PM

**8:23-12227 Hugo Gonzalez**

**Chapter 13**

**#4.00 Confirmation Of Chapter 13 Plan**

Docket 0

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE CONVERTED  
TO CHAPTER 7 ON 12-13-23 SEE DOCUMENT #55**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Hugo Gonzalez

Represented By  
Halli B Heston

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

1:30 PM

**8:23-12239 Anna Maria Escarcega**

**Chapter 13**

**#5.00 Confirmation Of Chapter 13 Plan**

Docket 9

**Tentative Ruling:**

Tentative for January 17, 2024

Trustee's various objections and missing documents need attention.

*Appearance required.*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Anna Maria Escarcega

Represented By

Charles Shamash

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

1:30 PM

**8:23-12260 Romeo Juncaj and Elizabeth Ontiveros Juncaj**

**Chapter 13**

**#6.00 Confirmation Of Chapter 13 Plan**

Docket 5

**Tentative Ruling:**

Tentative for January 17, 2024

Are suggested interlineations agreeable? Appearance required.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Romeo Juncaj

Represented By  
Robert T Chen

**Joint Debtor(s):**

Elizabeth Ontiveros Juncaj

Represented By  
Robert T Chen

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

1:30 PM

**8:23-12263 Lindsay Michelle Moss**

**Chapter 13**

**#7.00 Confirmation Of Chapter 13 Plan**

Docket 4

**Tentative Ruling:**

Tentative for January 17, 2024

Various documents are missing per Trustee. Appearance required.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Lindsay Michelle Moss

Represented By  
James Mortensen

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

1:30 PM

**8:23-12271 Richard Paul Parker**

**Chapter 13**

**#8.00 Confirmation Of Chapter 13 Plan**

Docket 7

**Tentative Ruling:**

Tentative for January 17, 2024

Various missing documents and discrepancies in amounts need to be addressed. *Appearance required.*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Richard Paul Parker

Represented By

Christopher J Langley

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

1:30 PM

**8:23-12299 Victor Manuel Ramos Rivas**

**Chapter 13**

**#9.00 Confirmation Of Chapter 13 Plan**

Docket 9

**Tentative Ruling:**

Tentative for January 17, 2024

Is the vehicle comprising OneMain's collateral subject to §1325(a) "hanging paragraph"? Appearance required.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Victor Manuel Ramos Rivas

Represented By  
Lauren M Foley

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

1:30 PM

**8:23-12412 Michelle Lecher Gonzalez**

**Chapter 13**

**#10.00 Confirmation Of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Michelle Lecher Gonzalez

Represented By  
Raj T Wadhwani

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se



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

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

1:30 PM

**8:23-12431 Brenda Stanfield**

**Chapter 13**

**#11.00 Confirmation Of Chapter 13 Plan**

Docket 2

**Tentative Ruling:**

Tentative for January 17, 2024

There is a lot going on here. The claims bar date of 1/26 has not even passed. Also, the interrelationship of debtor to the Piecemakers partnership, and its liabilities and assets, is both unclear and disturbing. Similarly, how is it even possible on this record to determine whether the best interest test is met? *Appearance required.*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Brenda Stanfield

Represented By  
Andy C Warshaw

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

1:30 PM

**8:23-12457 Luis Rojas**

**Chapter 13**

**#12.00 Confirmation Of Chapter 13 Plan**

Docket 0

**\*\*\* VACATED \*\*\* REASON: OFF CALENDAR - CASE DISMISSED -  
ORDER AND NOTICE OF DISMISSAL FOR FAILURE TO FILE  
SCHEDULES, STATEMENTS, AND/OR PLAN ENTERED 12-11-23**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Luis Rojas

Pro Se

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

3:00 PM

**8:19-13427 Daniel Patrick Pinto and Jessica D Pinto**

**Chapter 13**

**#13.00 Trustee's Motion To Dismiss Case Failure To Make Plan Payments**

Docket 109

**Tentative Ruling:**

Tentative for January 17, 2024

Grant unless motion to modify on file. *Appearance required.*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Daniel Patrick Pinto

Represented By  
Onyinye N Anyama

**Joint Debtor(s):**

Jessica D Pinto

Represented By  
Onyinye N Anyama

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

3:00 PM

**8:19-14117 Paul Nguyen**

**Chapter 13**

**#14.00 Trustee's Motion to Dismiss Case failure to make plan payments  
(cont'd from 12-20-23)**

Docket 60

**Tentative Ruling:**

Tentative for January 17, 2024

Debtor's medical issue was noted but less clear is why there has not been a hearing of the modification motion filed. Absent a compelling explanation, grant. *Appearance required.*

-----  
Tentative for December 20, 2023

Continue to coincide with motion to modify/suspend. Appearance required.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Paul Nguyen

Represented By  
Chris T Nguyen

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

3:00 PM

**8:20-10233 Lincoln Cabus**

**Chapter 13**

**#15.00** Trustee's Motion to Dismiss Case Failure To Make Plan Payments.

Docket 74

**Tentative Ruling:**

Tentative for January 17, 2024

Grant unless current or motion to modify on file. *Appearance required.*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Lincoln Cabus

Represented By  
Jaime A Cuevas Jr.

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

3:00 PM

**8:21-13012 Jack David Swerda, Jr.**

**Chapter 13**

**#16.00** Trustee's Motion to Dismiss Case failure to make plan payments

Docket 42

**Tentative Ruling:**

Tentative for January 17, 2024  
Grant unless current. *Appearance required.*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Jack David Swerda Jr.

Represented By  
Anthony B Vigil

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

3:00 PM

**8:22-11730 Theresa Nguyen Locke**

**Chapter 13**

**#17.00** Trustee's Motion To Dismiss Case Failure To Make Plan Payments.

Docket 78

**Tentative Ruling:**

Tentative for January 17, 2024

Grant unless current or motion to modify on file. *Appearance required.*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Theresa Nguyen Locke

Represented By  
Christopher J Langley  
Michael Smith

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

3:00 PM

**8:22-10262 Rilla Ann Huml**

**Chapter 13**

**#18.00** Motion to Reconsideration For Cause of Wilmington Savings Fund Society's Allowed Amended Claim 3.4 And Denial Of Debtor's Claim Objection, Pursuant To: 11 USC §502(j); FRBP 3008  
**(cont'd from 11-15-23 per order granting motion to stay hrg schedule for 11/15/23, Debtor's mtn for reconsideration, until 1/17/24 Due to Debtor's Serious Illness entered 11-09-23)**

Docket 171

**Tentative Ruling:**

Tentative for January 17, 2024

This is Debtor's motion for reconsideration for cause of Wilmington Savings Fund Society's ("Wilmington") allowed amended Claim No. 3-4 and the overruling of Debtor's claim objection.

On October 13, 2022, Debtor filed an objection to Wilmington's Proof of Claim No. 3-4 on the grounds that the fees were unreasonable, duplicative, and designed to cause Debtor's confirmed Chapter 13 plan to fail. Wilmington filed an opposition, and the court found that Debtor did not meet her evidentiary burden to challenge the *prima facie* validity of Wilmington's claim. The court continued the matter to provide Debtor with an opportunity to file supplemental briefing. However, Debtor failed to meet her burden again, and the court gave her another opportunity to explain how the attorney fees were unreasonable and/or duplicative with supporting evidence, legal argument, and documentation. After a third round of briefing and hearing on the matter, the court ordered the parties to mediation.

The outcome of the mediation is interpreted differently by the parties. Debtor asserts that the initial mediation term sheet provided to her had been altered in Wilmington's favor; that Debtor was allegedly required to sign a blank page without initials on each term page; and that Wilmington's signature was not legitimate. Wilmington asserts that one day before the deadline to execute the formal settlement agreement, Debtor informed



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

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

3:00 PM

**CONT...**

**Rilla Ann Huml**

**Chapter 13**

Wilmington that she would not sign the settlement agreement and provided a counteroffer with all new terms. Some of these terms included waiver of all pre and post-petition attorney's fees and costs in their entirety and a reduction of the unpaid principal balance on the loan by \$50,000.

On September 19, 2023, the court held a final hearing on the claim objection. After consideration of the briefs and the arguments made in detail at the hearing, the court denied Debtor's claim objection, finding that Wilmington had a right to recover attorney fees from the Debtor's litigation, that the fees were high but reasonable and the mediation did not impact these facts. The court entered an order overruling Debtor's claim objection. Debtor now brings this motion for reconsideration seeking to challenge the court's denial of her claim objection.

**A. Legal Standard**

Section 502(j) provides that "[a] claim that has been allowed or disallowed may be reconsidered for cause. A reconsidered claim may be allowed or disallowed in accordance to the equities of the case." 11 U.S.C. § 502(j). The majority of courts, including the Ninth Circuit BAP and Fifth Circuit Court of Appeals, have held that Rule 59 and Rule 60 provide the applicable standards for motions seeking reconsideration of allowance or disallowance of claims under § 502(j). *In re Cleanmaster Industries, Inc.*, 106 B.R. 628, 630 (BAP 9th Cir. 1989) ("Bankruptcy Rule 9024 provides that Rule 60 of the Fed. R. Civ. P. applies in cases under the Code. Rule 60 sets forth the standards for reconsideration of claims and helps define "cause" under § 502(j).").

"The party seeking reconsideration is not permitted to revisit the merits of the underlying judgment or argue that the trial court committed some legal error in arriving at that judgment. See, e.g., *Van Skiver v. United States*, 952 F.2d 1241, 1243-44 (10th Cir. 1991), cert. denied, 506 U.S. 828, 113 S. Ct. 89, 121 L. Ed. 2d 51 (1992). Instead, that party is limited to the narrow grounds enumerated in FRCP 60(b). *Id.* These grounds generally require a showing that events subsequent to the entry of the judgment make its enforcement unfair or inappropriate, or that the party was deprived of a fair opportunity to appear and be heard in connection with the underlying dispute." *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204,

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

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

3:00 PM

**CONT...**      **Rilla Ann Huml**  
209-210 (BAP 9th Cir. 2006).

**Chapter 13**

**B. Repetition of Arguments & Compliance with Rule 60(b)(1)**

Debtor in her motion alleges that the court failed to consider her subsequent objection to Wilmington's post-petition fee notice and that her arguments in that objection provide for grounds for reconsideration of the order denying her claim objection ("Docket No. 153"). Wilmington contends that Docket No. 153 is based on the same allegations as the objection to Claim No. 3-4 that (1) the attorney fees are unreasonable; (2) the pendency of her appeal precludes Wilmington's ability to recover fees under the loan documents; and (3) the failed mediation negotiations required the objection to be granted. However, this court has already ruled on these issues at the September 19, 2023 hearing, finding that the fees and costs are reasonable and a failed mediation did not have any effect on the matter.

Further, the standard under Rule 60(b)(1) requires that Debtor show that events subsequent to the entry of judgment make enforcement unfair or inappropriate. Docket No. 153 was filed prior to the hearing on September 19, 2023 and the order allowing the claim and denying the claim objection. It also hardly seems plausible that Debtor was deprived of a fair opportunity to appear and be heard given the number of serial hearings on attorney fees and the great length of time spent at the September 19 hearing considering all of her arguments and concerns. While the court may have inadvertently omitted Docket Number 153, review of this subsequent objection does not present persuasive enough arguments to carry Debtor's burden in showing that the court's mistake is significant enough to reconsider the claim objection. Analysis of Docket Number 153 is presented below.

**C. Post-Petition Fee Notice**

Debtor alleges in Docket No. 153 that the post-petition fee notice should be disallowed because (1) no money judgment was entered in favor of Wilmington and the ruling in favor of Wilmington is currently on appeal; (2) the court ordered Wilmington to reduce its fees during mediation negotiations; (3) the mediation precluded Creditor from accruing post-petition fees; (4) and that the mediation was one-sided and void.

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

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

3:00 PM

**CONT...**

**Rilla Ann Huml**

**Chapter 13**

Regarding the first ground for disallowance, this court has said before that waiting for the outcome of an appeal should not preclude allowance of attorney fees here. As Wilmington argues, should Debtor be successful in her appeal attempt, relief from the court to recover the amount is still available. The second ground is also untrue as this court has never ordered Wilmington to reduce its fees, but only encouraged settlement and cooperation amongst the parties. The last two grounds are equally not persuasive as this court does not find the failure of the mediation to have any impact on the reasonableness of attorney fees. Again, if Debtor is successful on her appeal, there will be many opportunities to be reimbursed. However, a delay is almost always to be expected in the judicial system. It may be many months or years before the appeal is resolved and preventing the payment of attorney fees until then (particularly since Debtor promises nothing on the disputed amount in meantime and is otherwise allegedly delinquent, See #18) it is not in the interest of efficiency and fairness. Thus, the court does not find cause for reconsideration, and the Motion is therefore DENIED.

Debtor requests in her untimely reply for one last opportunity to achieve an amicable settlement through yet another mediation or settlement conference. The court is skeptical of this proposition given the failed mediation and the several hearings on this matter. But the court will hear further argument from the parties as to the best path forward with the hope that the parties realize that continue patience is very limited.

Appearance required.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Rilla Ann Huml

Represented By

Brad Weil - DECEASED -

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

3:00 PM

**8:22-10262 Rilla Ann Huml**

**Chapter 13**

**#19.00 Trustee's Motion to Dismiss Case  
(cont'd from 11-15-23 per order granting mtn to stay hrg schedule for  
11/15/23, debtor's mtn for reconsideration entered 11-09-23)**

Docket 168

**Tentative Ruling:**

Tentative for January 17, 2024

Debtor does not address the infeasibility of her plan in her opposition. The motion to reconsider the court's ruling on the claim objection is #18 on calendar. Assuming that the tentative on that motion is denied per tentative, this motion should be granted. *Appearance required.*

<b>Party Information</b>
--------------------------

**Debtor(s):**

Rilla Ann Huml

Represented By

Brad Weil - DECEASED -

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

3:00 PM

**8:20-10727 Carlos R. Andrade**

**Chapter 13**

**#20.00 Debtor's Motion To Vacate Dismissing Bankruptcy Case**

Docket 63

**Tentative Ruling:**

Tentative for January 17, 2024

This is Debtor Carlos R. Andrade's ("Debtor") motion for order vacating this court's order dismissing its bankruptcy case entered on October 12, 2023.

Chapter 13 Trustee filed a motion to dismiss the case due to Debtor's failure to make plan payments, which was granted by this court on October 12, 2023. Debtor missed payments totaling \$2,175 because he was banking with Union Bank and had scheduled automatic payments through TFS. Union Bank was recently purchased by U.S. Bank and Debtor's routing number of the account changed without his knowledge. Thus, he failed to change the routing number with TFS to continue making the automatic payments. Debtor claims to have a cashier's check for the past due payments to the trustee in the amount of \$2,175, and funds for the other chapter 13 payments that have come due since dismissal of the case. [See Exhibit A].

Bankruptcy Rule 9024 provides for relief from Orders or Judgments, incorporating Federal Rule of Civil Procedure Section 60(b). Rule 60(b) permits relief from a Judgment or Order for mistake, inadvertence, surprise, or excusable neglect and any other reason that justifies relief. In a case where the Court's prior order dismissing the debtor's case was determined to be void, the automatic stay was reimposed upon the entry of the order vacating the prior dismissal. See *In re Krueger*, 88, 238, 241 B.R. 238 (9th Cir. BAP 1988).

Here, Debtor asserts that an order vacating this court's dismissal of the bankruptcy case is appropriate because the dismissal was due to Debtor's excusable neglect to change his routing number with TFS to continue the automatic chapter 13 payments. Trustee recommends approval of the motion on the condition that funds of at least \$5,075 needed to cure delinquency are

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

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

3:00 PM

**CONT...**

**Carlos R. Andrade**

**Chapter 13**

demonstrated to be on hand by Debtor by the hearing date on Debtor's motion in the form of a declaration filed or proof of funds brought to the hearing. Based on the circumstances, the court is sympathetic to the mistake that occurred here and is in support of the agreement between Trustee and Debtor of providing proof of funds in the above- stated amount. The motion is granted on the condition stated.

Appearance required.

<b>Party Information</b>
--------------------------

**Debtor(s):**

Carlos R. Andrade

Represented By  
James D. Hornbuckle

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

3:00 PM

**8:23-10675 Jin You**

**Chapter 13**

**#21.00** Movant Eui Jung Lee's Motion For Stay Pending Appeal of the Debtor's  
Confirmed Chapter 13 Plan  
**(changed from 12-20-23)**

Docket 186

**Tentative Ruling:**

Tentative for January 17, 2024

This is Secured Creditor Eui Jung Lee's ("Movant") motion for an order staying the effectiveness and distributions under Debtor Jin You's ("Debtor") Chapter Confirmed 13 Plan until resolution of Movant's appeal presently pending with the United States District Court for the Central District of California.

Movant filed two appeals in this proceeding: (1) an appeal of the Summary Judgment Order on October 21, 2023; and (2) appeal of the Order Confirming the Chapter 13 Plan on October 31, 2023 before the order on the same was entered. A Distribution Motion Order was entered on December 7, 2023, allowing the Trustee to make payments from the estate funds. Movant brings this motion for stay pending appeal on the grounds that Movant is the largest creditor and would be irreparably harmed if there is no stay because then he would be without any economically meaningful remedy if he prevails on his pending appeals.

**A. Legal Standard**

The parties and the court agree that the controlling authority on this matter is *Nken v. Holder*, 556 U.S. 418, 426 (2009). However, the court agrees with Debtor's interpretation that *Nken* provides four factors, not elements, for whether a stay should issue: (1) strong showing that the stay applicant is likely to succeed on the merits; (2) irreparable injury absent a stay; (3) substantial injury to other parties interested in the proceeding; and

**United States Bankruptcy Court  
Central District of California**

**Santa Ana**

**Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

3:00 PM

**CONT... Jin You**

**Chapter 13**

(4) where the public interest lies. Id.

**1. Movant's Success on the Merits of the Appeal**

Movant simply argues in one sentence that his appeals raise substantial issues establishing a likelihood of prevailing. Because of Movant's minimal argument of why and how he may be successful on the merits on the appeal, Debtor contends that this first factor weighs in his favor. Debtor also contends that Movant does not have standing to file the appeal on the order to confirm the Chapter 13 Plan because Movant allegedly made no objection or argued that the plan would in any way harm him financially. Although this court is not obligated to review outside documents to determine the likelihood of success of appeal, Debtor argues that the docket of the Plan Confirmation Appeal is barren of any legal arguments. Furthermore, it is Movant's burden to show that a stay should issue, and Movant does not present persuasive argument as to why the first factor weighs in his favor. *Nken*, 556 U.S. at 433-34. Consequently, the court regards this factor as favoring debtor.

**2. Irreparable Harm in the Absence of the Stay**

Movant contends that he will be irreparably harmed if the stay is not granted because if Debtor and the Chapter 13 Trustee are permitted to make the plan disbursements, it will (1) render these funds unavailable to Movant if the U.S. District Court reverses the Confirmation Order and remands the case; and (2) it will result in Debtor and his creditors receiving funds that may rightfully belong to Movant, which will be difficult to collect following a favorable ruling on appeal. Debtor refutes these arguments on the grounds that while collecting on a judgment can be a frustrating and tedious process, it is not impossible and would not result in the irreparable harm that Movant is contending. Debtor's previous behavior and assertions in this opposition indicate that it has not and will not refuse to conform to any properly issued order reversed this court's order on the confirmed Chapter 13 Plan. The court understands that Movant would prefer to avoid collecting the funds from the Trustee and as Debtor states "jumping through the procedural hoops", but this is not "irreparable harm" as indicated by *Nken*.

**3. Substantial Injury to Interested Parties in the Bankruptcy**



**United States Bankruptcy Court  
Central District of California**

Santa Ana

**Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

3:00 PM

**CONT...**

**Jin You**

**Chapter 13**

Movant's position is that there is no substantial injury to interested parties in the bankruptcy because the only practical effect of the stay would be to delay the final disposition of the funds to the parties. Debtor, on the other hand, argues that a stay would substantially injure him because it would impact when Debtor may find his new housing after having sold his dwelling to fund the estate, when he can calculate his ability to pay large bills, and when he may schedule any necessary medical appointments and procedures. Debtor is also a man of retirement age and subjecting him to an appeal process that could last for months or years are factors affecting the best interest of the estate and the goal of bankruptcy to function as an efficient process. Thus, the court finds that this factor weighs in favor of Debtor.

**4. Implication on Public Interest**

Similar to the first factor, Movant makes no arguments as to how the public interest is implicated by the stay other than to say that pausing distributions does not impact the public interest. Debtor contends that granting this motion to stay does implicate the public interest because Movant's factual and legal arguments are minimal and thus a waste of time and resources of the court. It is the court's responsibility to hear all matters brought before it with great consideration to both parties, but encourages those parties make their best efforts in doing so. This court is not prepared to say that Movant's motion is not worthy of the time and resources spent but the court is disappointed at the lack of argument in certain sections of the motion. Nonetheless, the court does not find that hearing this motion or granting it is a negative implication on the public interest. Thus, this factor is either neutral or favors debtor.

Three out of the four factors weigh in favor of Debtor, Movant's motion to stay pending appeal is therefore **DENIED**. *Appearance required.*

<b>Party Information</b>
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**Debtor(s):**

Jin You

Represented By  
Summer M Shaw

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

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

3:00 PM

**CONT...**

**Jin You**

**Chapter 13**

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

3:00 PM

**8:23-11897 Francisco Javier Andrade**

**Chapter 13**

**#22.00** Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate  
**(cont'd from 11-15-23)**

Docket 10

**Tentative Ruling:**

Tentative for January 17, 2024

Nothing new? See prior tentative from November 15, 2024. Appearance required.

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Tentative for November 15, 2023

Has Debtor overcome the presumption of bad faith? This is the fifth filing.

Proving "good faith" begins with a statutory presumption that every subsequent case filed within one year after dismissal is "filed not in good faith." *In re Thu Thi Dao*, 616 B.R. 103, 113 (Bankr. E.D. Cal. 2020) (citing 11 U.S.C. § 362(c)(3)(C)). Rebutting the presumption of "filed not in good faith" must be by "clear and convincing evidence to the contrary." *Id.* Section 362(c)(3)(B) does not define good faith for purposes of making this determination. Courts have imported pre-BAPCPA case law into the statute to utilize a "totality of the circumstances" test. *In re Castenada*, 342 B.R. 90, 96 (Bankr. S.D. Cal. 2006).

The "totality of the circumstances" test for determining whether a debtor filed a chapter 13 case in good faith includes: (1) whether debtor misrepresented facts in the petition or the plan, unfairly manipulated the Code or otherwise filed the current chapter 13 plan or petition in an inequitable manner; (2) debtor's history of filings and dismissals; (3) whether debtor only intended to defeat state court litigation; and (4) whether egregious behavior is

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

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

3:00 PM

**CONT...**

**Francisco Javier Andrade**

**Chapter 13**

present. Id. (citing *In re Villanueva*, 274 B.R. 836, 841 (9th Cir. BAP 2002)).

Here, the first and third *Castenada* elements are not relevant to the case. The primary issue at bar is weighing Debtor's history of filings. This is the fifth bankruptcy proceeding concerning the Property. The record of Debtor's past filings could be said to show bad faith because Debtor failed to timely submit forms after the initial filings, and even filed a case (the fourth) fifteen minutes before the foreclosure sale, while the third bankruptcy filing was still going on. In *Castenada*, the court found the Debtor filed in good faith partly because the Debtor was not a repeat filer. *Castenada*, 342 B.R. at 97. The same cannot be said here. Furthermore, unlike *Castenada*, where the debtor consistently made their plan payments and significantly reduced the amount of secured debt, no such debt reduction has occurred here. On the other hand, Debtor's asserted change in circumstances, retention of better counsel and consent to conduit payments appear as an admirable attempt to get on the right track.

*No tentative. Appearance required.*

<b>Party Information</b>
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**Debtor(s):**

Francisco Javier Andrade

Represented By  
Michael D Franco

**Movant(s):**

Francisco Javier Andrade

Represented By  
Michael D Franco

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

3:00 PM

**8:23-12046 Jeffrey Adams Gomez**

**Chapter 13**

**#23.00** Objections To Proof Of Claim 14 Through 33 Of Kristina Smith:

<b>Claim No. 14</b>	<b>KRISTINA SMITH</b>
<b>Claim No. 15</b>	<b>KRISTINA SMITH</b>
<b>Claim No. 16</b>	<b>KRISTINA SMITH</b>
<b>Claim No. 17</b>	<b>KRISTINA SMITH</b>
<b>Claim No. 18</b>	<b>KRISTINA SMITH</b>
<b>Claim No. 19</b>	<b>KRISTINA SMITH</b>
<b>Claim No. 20</b>	<b>KRISTINA SMITH</b>
<b>Claim No. 21</b>	<b>KRISTINA SMITH</b>
<b>Claim No. 22</b>	<b>KRISTINA SMITH</b>
<b>Claim No. 23</b>	<b>KRISTINA SMITH</b>
<b>Claim No. 24</b>	<b>KRISTINA SMITH</b>
<b>Claim No. 25</b>	<b>KRISTINA SMITH</b>
<b>Claim No. 26</b>	<b>KRISTINA SMITH</b>
<b>Claim No. 27</b>	<b>KRISTINA SMITH</b>
<b>Claim No. 28</b>	<b>KRISTINA SMITH</b>
<b>Claim No. 29</b>	<b>KRISTINA SMITH</b>

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

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

3:00 PM

**CONT...**

**Jeffrey Adams Gomez**

**Chapter 13**

**Claim No. 30**

**KRISTINA SMITH**

**Claim No. 31**

**KRISTINA SMITH**

**Claim No. 32**

**KRISTINA SMITH**

**Claim No. 33**

**KRISTINA SMITH**

Docket 40

**Tentative Ruling:**

Tentative for January 17, 2024

This is Debtor's objection to each of the proofs of claim (14-33) filed by Creditor Kristina Smith ("Creditor"), Debtor's estranged wife with whom he is currently engaged in an ongoing divorce proceeding. Debtor files these objections on the grounds that Creditor has not attached to any of the claims a support order or any other documentation to serve as a basis to conclude that the claims are in fact legally cognizable Domestic Support Obligations ("DSOs"). Further, two of the 14 alleged DSO claims (19 and 20) are admitted duplicates.

A proper proof of claim is presumed valid and is prima facie evidence of the validity of both the claim and its amount. *Lundell v. Anchor Constr, Specialists, Inc. (In re Lundell)*, 223 F.3d 1035, 1039 (9th Cir. 2000); Fed. R. Bankr. P. 3001(f). "Upon objection, the proof of claim provides 'some evidence as to its validity and amount' and is 'strong enough to carry over a mere formal objection without more.'" *Id.* (quoting *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991)). In order to rebut the presumption of validity, the objecting party must provide sufficient evidence and "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Holm*, 931 F.2d at 623; L.B.R. 3007(c)(1). If the objecting party produces sufficient evidence to rebut the presumption of validity, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence. *Lundell*, 223 F.3d at 1039. The ultimate

**United States Bankruptcy Court  
Central District of California**

**Santa Ana**

**Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

3:00 PM

**CONT...**

**Jeffrey Adams Gomez**

**Chapter 13**

burden of persuasion remains at all times upon the claimant. Holm, 931 F.2d at 623.

A proof of claim filed in a bankruptcy case must include supporting evidence, and a claim filed without evidence is subject to objection on that basis. Failure to attach sufficient documentation to a proof of claim will strip the claim of its prima facie validity under FRBP 3001(f), i.e., the claim is no longer presumed valid. See In re Garner, 246 B.R. 617,620 (9th Cir. BAP 2000).

Here, the court cannot properly rule on substance of these claim objections, as there are several deficiencies in the claims and even in the claim objection motion (lack of a declaration). It is undisputed by the parties that documentation was not filed with the proofs of claim and claims #19 and 20 are duplicates. The court agrees with Debtor's cited authority that while the burden of proof is on Debtor to rebut the presumption of validity of a proof of claim, the proofs of claim here are improper as they fail to include any supporting evidence. Debtor cannot sufficiently determine the character of these claims as DSOs and decide whether objection is necessary as these proofs of claim are currently filed. While the court appreciates Creditor's arguments regarding the validity of the claims and the attachment of the Stipulation and Order in her opposition, the court cannot make a determination until the procedural defects are resolved. There is much sympathy for Creditor here, as navigating the procedures and law is not an easy task for a non-lawyer. The court also appreciates the emotional strain, costs, and delay that comes with a divorce proceeding. Nonetheless, procedure is imperative in order to avoid creating a mess of pleadings and to uphold the tenets of justice and fairness in the legal system. Thus, the court sustains the claim objections without prejudice, strongly encouraging Creditor to amend her proofs of claim to include the supporting documentation and a declaration, and to resolve the apparent duplicated claims ##19 and 20. Once the applicable rules are complied with, Debtor may renew his objections (with a supporting declaration) challenging the validity of each claim. Maybe then we can address the substance.

Sustain but without prejudice to refile within 30 days of a more substantiated set of claims that avoids duplicates. *Appearance required.*

**Party Information**

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

**Wednesday, January 17, 2024**

**Hearing Room**

**5B**

3:00 PM

**CONT... Jeffrey Adams Gomez**

**Chapter 13**

**Debtor(s):**

Jeffrey Adams Gomez

Represented By  
Richard G. Heston

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se