

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

Tuesday, March 5, 2024

Hearing Room

5B

10:30 AM

8:00-00000

Chapter

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completed your appearance(s).

Docket 0

Tentative Ruling:

- NONE LISTED -

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8:24-10008 Ingrid Guibert and Luis Guibert

Chapter 7

#1.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

**4205 HIDDEN OAKS LLC
Vs
DEBTORS**

Docket 43

Tentative Ruling:

Tentative for March 5, 2024
Grant. Appearance suggested.

Party Information

Debtor(s):

Ingrid Guibert

Represented By
Jonathan Blair Haskett

Joint Debtor(s):

Luis Guibert

Represented By
Jonathan Blair Haskett

Movant(s):

4205 Hidden Oaks LLC

Represented By
Kevin H Jang

Trustee(s):

Weneta M.A. Kosmala (TR)

Pro Se

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8:24-10264 Edmond D Braccini

Chapter 7

#2.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

PRIME JEFFERSON, LLC

Vs.

DEBTOR

Docket 12

Tentative Ruling:

Tentative for March 5, 2024
Grant as unopposed. Appearance is optional.

Party Information

Debtor(s):

Edmond D Braccini

Pro Se

Movant(s):

Prime Jefferson, LLC

Represented By
Allison Kathleen Higley

Trustee(s):

Weneta M.A. Kosmala (TR)

Pro Se

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8:24-10287 Andres Felipe Estevez

Chapter 7

#3.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

BGEG INVESTMENTS L.P.

Vs.

DEBTOR

Docket 10

Tentative Ruling:

Tentative for March 5, 2024
Grant as unopposed. Appearance is optional.

Party Information

Debtor(s):

Andres Felipe Estevez

Pro Se

Movant(s):

BGEG Investments L.P.

Represented By
Curtis Tyler Greer IV

Trustee(s):

Richard A Marshack (TR)

Pro Se

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8:23-12467 Mauricio Zamora and Jessica Belmont

Chapter 7

#4.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**TOYOTA MOTOR CREDIT CORPORATION
Vs.
DEBTORS**

Docket 29

Tentative Ruling:

Tentative for March 5, 2024
Grant as unopposed. Appearance is optional.

Party Information

Debtor(s):

Mauricio Zamora	Pro Se
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Joint Debtor(s):

Jessica Belmont	Pro Se
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Movant(s):

Toyota Motor Credit Corporation	Represented By Kirsten Martinez
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Trustee(s):

Weneta M.A. Kosmala (TR)	Pro Se
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8:18-12933 Vickie Ann Valdez

Chapter 13

**#5.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 1-30-24)**

**DEUTSCHE BANK TRUST COMPANY AMERICAS
Vs.
DEBTOR**

Docket 87

***** VACATED *** REASON: OFF CALENDAR - ORDER GRANTING
MOTION FOR RELIEF FROM THE AUTOMATIC STAY ENTERED 2-28-
24**

Tentative Ruling:

Tentative for January 30, 2024
Grant unless loan is current postpetition or other APO stipulation.
Appearance required.

Party Information

Debtor(s):

Vickie Ann Valdez

Represented By
Misty A Perry Isaacson

Movant(s):

DEUTSCHE BANK TRUST

Represented By
Joseph C Delmotte
Dane W Exnowski

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:23-12114 Doo M Ko

Chapter 7

#6.00 Motion for relief from the automatic stay REAL PROPERTY

**DEUTSCHE BANK NATIONAL TRUST COMPANY
Vs.
DEBTOR**

Docket 30

***** VACATED *** REASON: OFF CALENDAR - CASE DISMISSED -
TRUSTEE'S REQUEST TO DISMISS DEBTOR FOR FAILURE TO
APPEAR AT 341(a) MEETING FILED 2-13-24**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Doo M Ko

Pro Se

Movant(s):

Deutsche Bank National Trust

Represented By
Theron S Covey
Sean C Ferry

Trustee(s):

Weneta M.A. Kosmala (TR)

Pro Se

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8:23-12371 Steven Paul Oppgard

Chapter 7

**#6.10 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 2-20-24)**

**NATIONSTAR MORTGAGE LLC
Vs.
DEBTOR**

Docket 28

Tentative Ruling:

Tentative for March 5, 2024
Written opposition? Status?
Appearance required.

Tentative for February 20, 2024
Grant as unopposed. Appearance is optional.

Party Information

Debtor(s):

Steven Paul Oppgard

Represented By
Stephen L Burton

Movant(s):

Wells Fargo Bank, National

Represented By
Jennifer C Wong

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

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8:24-10017 Merik Migliore and Tanhya Ramirez

Chapter 7

**#7.00 Order To Show Cause Re: Dismissal For Failure To Comply With Rule 1006(B)
(\$38.00 Due On 1/09/2024)**

Docket 1

Tentative Ruling:

Tentative for March 5, 2024
Dismiss if not current. Appearance required.

Party Information

Debtor(s):

Merik Migliore	Pro Se
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Joint Debtor(s):

Tanhya Ramirez	Pro Se
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Trustee(s):

Thomas H Casey (TR)	Pro Se
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8:22-11091 Martin Arnold Van Der Hoeven

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**#8.00 Order To Show Cause Why Michael Kocourek Should Not Be Held In Civil Contempt Due To His:
(cont'd from 1-30-24)**

a). Failing To Appear For His FRBP 2004 Examination On The Originally Scheduled Date Of July 13, 2023, On The Erroneous Basis That He Had Emergency Business For Debtor-Related Entity Fuzelo Inc;

b). Failing To Produce Ordered Documents Responsive To Any Of 30 Categories Of Sought By Troiano's Subpoena Prior To Or At Kocourek's Rescheduled August 24, 2023 FRBP 2004 Examination Without Objecting To The Requests, Moving To Quash The Subpoena, Or Moving For A Protective Order; and

c). Failing To Performj An Adequate Search For Such Documents.

Docket 0

Tentative Ruling:

Tentative for March 5, 2024
Status? Appearance required.

Tentative for January 30, 2024

Troiano argues in his response that Kocourek allegedly never reviewed the documents produced by Debtor or asked him about which documents have been produced, so there is no way that he could know he did not have additional documents. During the meet and confer process after the examination, Kocourek allegedly agreed to perform a supplemental search for documents, but never did so. Finally, even if Kocourek only has documents

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that Debtor already produced, Troiano is still entitled to know what those documents are.

Like Troiano, the court also does not buy that Kocourek, as an officer of the five debtor-related entities, does not have access or ability to provide basic corporate formational documents, responsive emails, or other communications. Kocourek's only argument here is that he did not provide documents because he either did not have them in his possession or Debtor already provided them. Further, as argued by Troiano, even if Debtor already produced relevant documents, Kocourek was still required to comply with the 2004 Examination Order, even if it would be duplicative. Especially since it is unclear at this point whether it would have been the same documents as there appears to have been no communication between Debtor and Kocourek regarding what was to be produced. Accordingly, the court finds that Troiano has provided clear and convincing evidence that there was a violation of a court order, and Kocourek has not provided a persuasive argument as to why he should not be held in civil contempt. The court is more interested in seeing that discovery obligations are met than in determining what measures are needed to compel obedience. Therefore, the parties are to meet and confer and exchange a written punch list of all the categories of documents requested, with a specific listing of what has been produced and what is known to exist but not produced. If requested documents do not exist to the knowledge of the alleged contemnor, that must be stated, with specificity in writing under penalty of perjury. The court will continue the hearing about thirty days and will thereupon evaluate any levels of willful disobedience based on this exchange in assessing remedies.

Appearance required.

Party Information

Debtor(s):

Martin Arnold Van Der Hoeven

Represented By
Leonard M Shulman

Trustee(s):

Karen S Naylor (TR)

Pro Se

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8:23-10434 Shirley Q. Pham

Chapter 7

#9.00 Debtor's Motion For Order Re Voluntary Dismissal Of Debtors Chapter 7
Bankruptcy Case Pursuant To Section 707 Of The Bankruptcy Code

Docket 84

Tentative Ruling:

Tentative for March 5, 2024
Grant as unopposed. Appearance is optional.

Party Information

Debtor(s):

Shirley Q. Pham

Represented By
Thomas J Polis

Trustee(s):

Thomas H Casey (TR)

Pro Se

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8:23-10898 Jeffrey S Beier

Chapter 7

#10.00 Motion To Reconsider Order Overruling Debtor's Objection To Proof Of Claim 2-1 Filed By The Bank Of New York Successor Trustee TO JPMorgan Chase Bank, N.A., As Trustee For The Bear Stearns Alt-A Trust, Mortgage Pass-Through Certificates, Series 2005-04 [Docket Number 134]

Docket 139

Tentative Ruling:

Tentative for March 5, 2024

This is Debtor's motion for reconsideration of the order ("Claim Objection Order") emanating from the prior hearing January 9, 2024 where Debtor objected to claim #2-1 filed by The Bank of New York Mellon, fka Bank of New York successor Trustee to JPMorgan Chase Bank N.A. as Trustee for the Bear Stearns Alt-A Trust, Mortgage Pass-through Certificate Series 2005-04. In the Claim Objection Order the court denied the objection. Debtor files this motion based on an argument there was a manifest error of fact underlying the Claim Objection Order and reconsideration is necessary to prevent manifest injustice. Since entry of the Claim Objection Order, Debtor has allegedly discovered evidence that establishes that a third party, Wells Fargo Bank, N.A. ("Wells Fargo") had come forward claiming ownership of the subject promissory note and deed of trust. However, Debtor argues this court apparently relied on the assumption that no other person has come forward to claim ownership.

In Debtor's previous claim objection, he asserted that Claimant The Bank of New York Mellon, FKA the Bank of New York Successor Trustee to JPMorgan Chase Bank, N.A., as Trustee for the Bear Stearns Alt-A Trust, Mortgage Pass-through Certificates, Series 2005-04 ("Claimant" or "BONY") could not show the chain of title or that it was the owner of the Promissory Note of the Deed of Trust. The court heard the matter on January 9, 2024 and overruled the claim objection on the grounds that BONY or Claimant provided the paperwork which is consistent with the argument that they are the holder; the court felt fortified in that conclusion as nobody else has come

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forward although this debt has been outstanding now for decades.

Debtor reviewed the record after the hearing and discovered that in the *previous 2008 bankruptcy* Mortgage Electronic Registration Systems, Inc. ("MERS") filed a motion for a relief from stay and stated that the promissory note was assigned from Countrywide to Wells Fargo. Thus, through MERS's testimony in a previous case, Wells Fargo came forward as the owner of the promissory note and deed of trust. Thus, the crux of this Motion is that the court failed to consider the Supplemental Memorandum in its analysis overruling the Claim Objection and this constitutes a manifest error of fact by the court.

A. Legal Standard

FRCP 59(e) provides this court with authorization to reconsider orders and judgments. See *Hansen v. Finn (In re Curry & Sorensen, Inc.)*, 57 B.R. 824, 826–27 (9th Cir. B.A.P. 1986). There are several grounds the court may consider when determining whether a motion to reconsider should be granted: (1) the movant may demonstrate that the motion is necessary because there is newly discovered evidence; (2) the movant may demonstrate that the court committed clear error in rendering the judgment or order (i.e., there was a manifest error of law or fact); (3) the movant may demonstrate reconsideration is necessary to prevent manifest injustice; and/or (4) the movant may demonstrate that there has been an intervening change in controlling law. See *McDowell v. Calderon*, 197 F.3d 1253, 1255 (9th Cir.1999), cert. denied, 529 U.S. 1082 (2000) (citation omitted).

B. Analysis

Debtor argues that the court should reconsider the Claim Objection Order because it was premised on what he characterizes as an incorrect factual assumption that no other party has come forward claiming to own the promissory note and deed of trust. Debtor argues he belatedly discovered after entry of the Claim Objection Order that Wells Fargo, through MERS in Debtor's prior, 2008 Bankruptcy Case stated in pleadings that the promissory note was assigned from Countrywide to Wells Fargo ("Supplemental Memorandum"). Based on this alleged error in fact, Debtor contends that the

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court should now reconsider the motion and conclude that Claimant cannot meet its burden and establish chain of title necessary to prevail.

Debtor cites only part of the justification for allowance of the claim; it still rested primarily upon a documentary chain of title albeit plagued by some holes.

Claimant argues that Debtor cannot demonstrate that reconsideration is necessary because Debtor cannot state that the Supplemental Memorandum was discovered after the hearing as it was in the Judicial Notice and previously served on Debtor in 2008. The court agrees. Further, the court is not persuaded that this was clear error of fact, as the ruling was not based solely on the absence of a rival claimant, but also on the evidence provided by BONY that qualified it as a note holder and beneficiary of the deed of trust. While the Supplemental Memorandum may have been included in the evidence at the last hearing, the court does not recall Debtor mentioning Wells Fargo as a current claimant, as Debtor states that this information was discovered upon re-review of the evidence after the hearing; but the court is not persuaded this makes it "newly discovered" within the meaning of Rule 59. Finally, no evidence has been provided to show that Wells Fargo is currently the note holder and beneficiary (nor claims to be) at any time since 2008, nor has any representative from Wells Fargo come forward stating that they are a rival claimant in this current bankruptcy case.

For the foregoing reasons, the court is not persuaded that any of the McDowell factors are met sufficient to grant the motion for reconsideration. This loan transaction is now twenty years old. It has been in one bankruptcy or another since 2008, some 16 years. Apparently, the loan hasn't been paid upon or at least not paid current in at least a decade given the huge arrearages. Nor is the amount in question trivial, well over \$2,786,000 with arrears exceeding \$1.7 million (about \$2.8 million of which has been recently disbursed by the Trustee to Claimant from the recently authorized sale). The fact that at one point well over a decade ago MERS filed something suggesting Wells Fargo's involvement is not sufficient in this court's view to change the outcome, and the court cannot fathom why Wells would not have been heard from well before now. Even as large an institution as Wells Fargo

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cannot reasonably have "forgotten" about such a sum as is featured here. The far more plausible explanation is that this is a remnant of the many poorly documented securitized loans still outstanding after the "Great Recession" and resulting stock market crash of 2009-11 which wiped out much of that fevered speculation born in that unfortunate era. But none of that is sufficient on this record to disallow the adequate showing Claimant has already made.

Deny. Appearance required.

Party Information

Debtor(s):

Jeffrey S Beier

Represented By
David R Haberbush
Lane K Bogard

Trustee(s):

Arturo Cisneros (TR)

Represented By
Arturo Cisneros
Nathan F Smith

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8:22-11556 Stonebridge Ventures, LLC

Chapter 7

#11.00 Creditor Monika Jensen's Objection To The Late Filed Claim Of Joe Colangelo (Claim #26)

Docket 285

Tentative Ruling:

Tentative for March 5, 2024

This is Creditor Monika Jensen's ("Jensen") objection to the late filed claim #26 of Joe Colangelo ("Colangelo") in the amount of \$1.6 million.

The claims bar deadline was October 2, 2023. Colangelo did not seek any extension of the deadline but filed Claim 26 on December 27, 2023, almost three months after the claims bar date. Although Colangelo claims \$1.6 million, Jensen contends that he only paid \$750,000 toward the purchase of the subject property, and the rest of the \$1.3 million was paid by Jensen. Colangelo asserts that his claim is secured by a vendee's lien that accrues interest at an annual rate of 7% but failed to attach any evidence to support this assertion, aside from his First Amended Complaint.

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).

It is undisputed that Colangelo's Claim 26 was untimely, filed almost three months after the claims bar date. On this ground alone, the court could sustain the claim objection. Colangelo argues that although the claims bar date passed, the Informal Proof of Claim Doctrine should apply. Under this doctrine, the following elements must apply: (1) presentment of a writing; (2) within the time for the filing of claims; (3) by or on behalf of the creditor; (4) bringing to the attention of the court; and (5) the nature and amount of a claim asserted against the estate. Specifically, Colangelo states that his initial

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complaint in one of the adversary proceedings is the informal claim because: (1) the complaint is the presentment of a writing; (2) the adversary was commenced 70 days prior to the claims bar date; and (3) the adversary was commenced on behalf of Colangelo; (4) the adversary brought to the attention of the court (and other interested parties) Colangelo's asserted claim and basis and amount of claim.

Jensen makes a further point that this Complaint was superseded by the First Amended Complaint which was filed on December 27, 2023 (also after the claims bar date). Thus, she argues the Complaint used as the "informal claim" is invalid here. But this is not particularly persuasive in that amended complaints generally relate back to the date of the original complaint for analogous statute of limitations purposes. *Smeltzley v. Nicholson Manufacturing Co.* (1977) 18 Cal.3d 932, 136 Cal.Rptr. 269, 559 P.2d 624 ("An amended complaint relates back to the original complaint, and thus avoids the statute of limitations as a bar against named parties substituted for fictitious defendants, if it: (1) rests on the same general set of facts as the original complaint; and (2) refers to the same accident and same injuries as the original complaint"). Jensen further contends that there is a lack of supporting evidence regarding the amount and the certainty of the claim, but that goes more to the question of whether it can be considered *prima facie* valid and the issue is being litigated in two adversary proceedings, the very place one expects a contested, factually based claim to land. Colangelo has a duty under FRBP 3001(c) and (d) to provide evidence to support his claim, especially given that the claim is untimely and no longer presumed valid. But one supposes that's where the adversary proceeding comes in.

Party Information

Debtor(s):

Stonebridge Ventures, LLC

Represented By
Summer M Shaw
Diana Torres-Brito

Trustee(s):

Arturo Cisneros (TR)

Represented By

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Stonebridge Ventures, LLC

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Arturo Cisneros
Nathan F Smith
William Malcolm

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8:22-11585 AB Capital, LLC, a California limited liability co

Chapter 7

Adv#: 8:22-01091 Marshack v. Pukini, individually and as trustee of The Joshua

**#12.00 Motion To Compel Enforcement And Joshua R. Pukini's Compliance With
Preliminary Injunction
(OST Signed 2-27-24)**

Docket 183

Tentative Ruling:

Tentative for March 5, 2024
Status? Appearance required.

Party Information

Debtor(s):

AB Capital, LLC, a California

Represented By
Diana Torres-Brito

Defendant(s):

TABLEROCK ENTERPRISES,	Pro Se
LUNA CONSTRUCTION	Pro Se
LIVING ART WORKS LLC	Pro Se
CALPAC MORTGAGE FUND,	Pro Se
CALPAC MANAGEMENT, INC.	Pro Se
CAL-PAC DISTRESSED REAL	Pro Se
BDP DEVELOPMENT	Pro Se
ABC 2260 SAN YSIDRO LLC	Pro Se
AB CAPITAL LFD, INC.	Pro Se
AB CAPITAL FUND B, LLC	Pro Se
AB CAPITAL FUND A, LLC	Pro Se

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31831 SUNSET LLC

Pro Se

1034 W BALBOA, LLC

Pro Se

108 AVENIDA SERRA, LLC

Represented By
Anerio V Altman

Edmund Valasquez, Jr.

Pro Se

Ryan Young, individually and as

Represented By
Anthony Bisconti

Joshua R. Pukini, individually and as

Represented By
Anerio V Altman

AB CAPITAL HOLDINGS I, LLC

Pro Se

Plaintiff(s):

Richard A. Marshack

Represented By
James C Bastian Jr
Ryan D O'Dea
Shane M Biornstad
Rika Kido

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
Alan W Forsley
Ryan D O'Dea
Kristine A Thagard
James C Bastian Jr
Marc A Lieberman
Rika Kido

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8:22-11585 AB Capital, LLC, a California limited liability co

Chapter 7

Adv#: 8:22-01091 Marshack v. Pukini, individually and as trustee of The Joshua

#12.10 Order To Show Cause Why Joshua R. Pukini Should Not Be Held In Contempt
For Failure To Comply With Preliminary Injunction

Docket 0

Tentative Ruling:

Tentative for March 5, 2024
Status? Appearance required.

Party Information

Debtor(s):

AB Capital, LLC, a California

Represented By
Diana Torres-Brito

Defendant(s):

TABLEROCK ENTERPRISES,	Pro Se
LUNA CONSTRUCTION	Pro Se
LIVING ART WORKS LLC	Pro Se
CALPAC MORTGAGE FUND,	Pro Se
CALPAC MANAGEMENT, INC.	Pro Se
CAL-PAC DISTRESSED REAL	Pro Se
BDP DEVELOPMENT	Pro Se
ABC 2260 SAN YSIDRO LLC	Pro Se
AB CAPITAL LFD, INC.	Pro Se
AB CAPITAL FUND B, LLC	Pro Se
AB CAPITAL FUND A, LLC	Pro Se
31831 SUNSET LLC	Pro Se

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1034 W BALBOA, LLC

Pro Se

108 AVENIDA SERRA, LLC

Represented By
Anerio V Altman

Edmund Valasquez, Jr.

Pro Se

Ryan Young, individually and as

Represented By
Anthony Bisconti

Joshua R. Pukini, individually and as

Represented By
Anerio V Altman

AB CAPITAL HOLDINGS I, LLC

Pro Se

Plaintiff(s):

Richard A. Marshack

Represented By
James C Bastian Jr
Ryan D O'Dea
Shane M Biornstad
Rika Kido

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
Alan W Forsley
Ryan D O'Dea
Kristine A Thagard
James C Bastian Jr
Marc A Lieberman
Rika Kido