

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
Robert Kwan, Presiding  
Courtroom 1675 Calendar**

**Tuesday, February 13, 2024**

**Hearing Room 1675**

1:30 PM  
**2:00-00000**

**Chapter 0**

**#0.00**

**PROCEDURES FOR APPEARING FOR, OR ACCESSING,  
COURT HEARINGS IN JUDGE KWAN'S CASES**

**INSTRUCTIONS FOR THE GENERAL PUBLIC AND THE MEDIA: See Special Instructions Below.**

**INSTRUCTIONS FOR PARTIES OFFICIALLY APPEARING ON THEIR MATTERS AT HEARINGS BEFORE JUDGE KWAN AND THEIR COUNSEL:** Judge Kwan conducts non-evidentiary hearings in hybrid format, that is, in person in the courtroom and remotely by video using Zoom for Government (ZoomGov) videoconferencing technology, but only in person in the courtroom for evidentiary hearings, trials and other matters specially set by Judge Kwan. Parties officially appearing on their matters at hearings before Judge Kwan and their counsel may choose to appear in person in the courtroom or remotely on ZoomGov at a hearing on their matters unless otherwise ordered by the court. Judge Kwan's courtroom is located in Courtroom 1675, 16<sup>th</sup> Floor, Roybal Federal Building, 255 East Temple Street, Los Angeles, California 90012. Parties are directed to review Judge Kwan's self-calendar instructions for calendaring hearings, whether by in-person and/or ZoomGov.

For parties and their counsel officially appearing on their matters using ZoomGov to appear remotely at hearings, video and audio connection information for each hearing will be provided on Judge Kwan's publicly posted hearing calendar on the court's website, which may be viewed online at: <http://ecf-ciao.cacb.uscourts.gov/CiaoPosted/default.aspx>, and then selecting "Judge Kwan" from the tab on the left-hand side of the page.

Parties and their counsel officially appearing on their matters may view and/or listen to hearings before Judge Kwan using ZoomGov free of charge. Individual participants may appear at a hearing by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individual participants may also participate in a hearing by ZoomGov audio only using a telephone (standard telephone charges may apply). Neither a Zoom nor a ZoomGov account are necessary to

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participate in a hearing, and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the court and constitute its official record.

To implement the mandate of the Judicial Conference of the United States that the general public and the media may not access the video feed of a court hearing, only the audio feed (see Special Instructions to the General Public and the Media below), Judge Kwan or court personnel may inquire as to the status of a person accessing ZoomGov as either an official hearing participant or a member of the general public or the media, and the court may place persons attempting access to video feed of a court hearing in a Zoom waiting room for a status inquiry and otherwise restrict a member of the general public or the media to audio access only if accessing the hearing remotely.

**SPECIAL INSTRUCTIONS FOR THE GENERAL PUBLIC AND THE MEDIA:** The Judicial Conference of the United States has now clarified its policy on Cameras in the Courtroom and mandated that the members of the general public (or the Public) and the Media may not observe **by video** any court hearing proceedings unless they are actual parties or counsel with matters before the court in which they have an official interest. However, as an accommodation to the Public and the Media, the Judicial Conference of the United States has also clarified that many court hearing proceedings will still be accessible **by audio**, but that this audio accommodation for the Public and the Media is limited to (1) non-trial hearings; and (2) non-live witness evidentiary hearings.

To be clear, during hearings where no live testimony is being received by the court, the court may permit hearing accessibility remotely by audio, but not video, to the Public and the Media. No trials may ever be accessible remotely by audio to the Public and the Media. The court has the final control regarding remote audio accessibility and may choose to terminate remote audio accessibility at any time, regardless of the type of hearing. These remote audio services are accessible through ZoomGov, and the Public and the Media may utilize the telephone number login, but not the video login, presented by the court on its publicly posted hearing calendar, which may be viewed online at: <http://ecf-ciao.cacb.uscourts.gov/CiaoPosted/default.aspx>, and then selecting "Judge Kwan" from the tab on the left-hand side of the page.

Members of the Public and the Media may always personally attend hearings

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before the court in open court in-person in the courtroom. Judge Kwan's courtroom is located in Courtroom 1675, 16<sup>th</sup> Floor, Roybal Federal Building, 255 East Temple Street, Los Angeles, California 90012.

On hearing days, Judge Kwan's courtroom will remain open during hearings for in-person public and media attendance, so that the courtroom observers will have video and audio access to ZoomGov participants. The court will have video monitors on and viewable within the courtroom for viewing. The parties, including counsel, their clients, and self-represented individual parties, may virtually join the hearing and appear remotely or virtually on ZoomGov.

Members of the general public and the media, however, may only view the hearings in person from the courtroom, which will remain open, or by audio access, as noted above. To implement the mandate of the Judicial Conference of the United States that the general public and the media may not access the video feed of a court hearing, only the audio feed, Judge Kwan or court personnel may inquire as to the status of a person accessing ZoomGov as either an official hearing participant or a member of the general public or the media, and the court may place persons attempting access to video feed of a court hearing in a Zoom waiting room for a status inquiry and otherwise restrict a member of the general public or the media to audio access only if accessing the hearing remotely. Individual members of the public and the media may access a hearing by ZoomGov audio only using a telephone (standard telephone charges may apply). Neither a Zoom nor a ZoomGov account are necessary to access the live audio feed of a hearing, and no pre-registration is required.

**RESTRICTIONS ON LIVE TESTIMONY AT HEARINGS:** No live testimony, however, will be permitted at a hearing by ZoomGov unless specifically authorized by the court either prior to, or during, a hearing. If a party intends to call a witness to testify by remote transmission, the party calling the witness should state such intention in the joint pretrial stipulation filed before the final pretrial conference or file a written application for permission to call a witness by remote means at least 21 days before the evidentiary hearing or as soon as practicable if the evidentiary hearing is set on less than 21 days notice.

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ZoomGov logon information for all matters on today's hearing calendar:

**Video/audio web address: <https://cacb.zoomgov.com/j/1618020419>**

**ZoomGov meeting number: 161 802 0419**

**Password: 753208**

**Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666**

Please connect at least 5 minutes before the start of your hearing, and wait with your microphone muted until your matter is called.

Zoomgov hearing etiquette: (a) wait until the judge calls on you, so everyone is not talking at once; (b) when you first speak, state your name and, if you are an attorney, whom you represent (do not make your argument until asked to do so); (c) when you make your argument, please pause from time to time so that, for example, the judge can ask a question or anyone else can make an objection; (d) if the judge does not see that you want to speak, or forgets to call on you, please say so when other parties have finished speaking (do not send a "chat" message, which the judge might not see); and (e) please let the judge know if he mispronounces your name or uses the wrong pronoun.

Docket 0

**Tentative Ruling:**

- NONE LISTED -

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**2:18-23361 Zacky & Sons Poultry, LLC**

**Chapter 11**

Adv#: 2:23-01464 Zacky et al v. Great Rock Capital Partners Management, LLC et al

**#1.00** Motion for Abstention and Remand

Docket 33

**\*\*\* VACATED \*\*\* REASON: Ord cont to 2/27/24 at 2p.m. ent 2/8/24**

**Tentative Ruling:**

Revised and updated tentative ruling as of 2/7/24.

Off calendar. Continued by stipulation and order to 2/27/24 at 2:00 p.m. (not 1:30 p.m. as requested in the parties' stipulation as there are other matters on the 1:30 p.m., and setting the matter at 2:00 p.m. will minimize the time for counsel to wait for this matter to be called.)

The court modifies the initial tentative ruling on the matter posted on 2/6/24.

Regarding the court's complaint about not receiving a judge's copy of defendant's opposition papers, the court stated that as a preliminary matter, despite the representations on defendant's proof of service of its opposition papers that a judge's copy of such papers were served on the presiding judge on 1/31/24, the presiding judge as of 2/6/24 has not received a judge's copy of the defendant's opposition papers. Defendant is required by Local Bankruptcy Rule (LBR) 5005-1(d) to serve a judge's copy of its opposition papers on the presiding judge. The court notes that the opposition papers consist of a 79 page memorandum of points and authorities and a 161 page counsel declaration, which both well-exceeded the pandemic exclusion from the judge's copy requirement under LBR 5005-2(d) for documents of 25 pages or less in length. In preparing a tentative ruling on the motion, the court has exercised its discretion to review 18 pages of text of defendant's memorandum of points and authorities and the Murray Energy Holdings opinion attached thereto, which is an officially published case opinion. However, the court will not read the 161 page counsel declaration until defendant provides a judge's copy to the presiding judge. Court staff has contacted counsel's office for defendant to serve a judge's copy of the opposition papers before the hearing, and failure of counsel for defendant to serve a judge's copy of the opposition papers before the hearing may result in

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the imposition of monetary or other sanctions, including disregarding the counsel declaration, for failure to comply with LBR 5005-1(d) based on the court's authority pursuant to LBR 1001(f) and its inherent authority.

Subsequently, counsel for defendant called and notified the presiding judge's courtroom deputy that a judge's copy of the opposition papers will be promptly delivered to the court. If the judge's copy is promptly delivered, the court sees no necessity to act on this preliminary matter further. However, the court cannot explain why it did not receive a judge's copy as represented on the proof of service of the opposition papers, and perhaps counsel needs to review this matter with her legal assistant.

On the merits, the court notes that Plaintiff's motion as set forth in the caption is styled "Motion by Lilian D. Zacky for Abstention Pursuant to 28 USC §§ 1334(C)(1) & (2)." The court agrees with Defendant in its opposition to the motion that the court lacks authority to grant abstention because the adversary proceeding has been removed from state court and is no longer pending there. Settled Ninth Circuit case law provides that the abstention is not possible for a removed state court action because 28 U.S.C. §§ 1334(c) (1) and (2) are inapplicable since there is no pending state court proceeding as such has been removed. *Schuman v. State of California (In re Lazar)*, 227 F.3d 967, 981-982 (9<sup>th</sup> Cir. 2001), citing, *Security Farms v. International Brotherhood of Teamsters*, 124 F.3d 999, 1009-1010 (9<sup>th</sup> Cir. 1997); but see, e.g., *Frelin v. Oakwood Homes Corp.* 292 B.R. 369, 380-381 (Bankr. E.D. Ark. 2003) (rejecting the Ninth Circuit's position that abstention is inapplicable to removed state court proceedings, stating the majority rule is contrary to the Ninth Circuit); *In re Scanware, Inc.*, 411 B.R. 889 (Bankr. S.D. Ga. 2009) (also holding abstention applies to removed state court proceedings). (However, whether or not Ninth Circuit precedent on this point is a minority view is debatable, but for purposes of this case, it is controlling on this court, so it must follow the Ninth Circuit rule as set forth in *Lazar* and *Security Farms*.) Thus, Plaintiff's arguments for abstention in her motion are thus misplaced, and abstention relief cannot be granted on her motion.

Nevertheless, the court observes that Plaintiff in her motion does state in the opening sentence of her motion: "Plaintiff Lillian D. Zacky, individually and as Trustee of the Survivor's Trust Created Under the Robert D. Zacky Trustee

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(‘Plaintiff’), brings this motion for abstention and remand pursuant to 28 U.S.C. §§ 1452(b), 1334(c)(2) and 1334(c)(1) and [sic]." Motion at 1 (there is a hanging "and" at the end of this sentence, and the court was unsure whether there was additional authority that Plaintiff was asserting, or this was a mere proofreading error.). As previously stated, the abstention provisions are inapplicable to a removed state court action under Ninth Circuit case law. Regarding equitable remand, Defendant asserts in its opposition at page 1, footnote 1: "The title of the Motion includes the word ‘remand’ but the Motion contains arguments only on abstention." (Although this is a small quibble by the court to correct Defendant’s assertion, the court at the risk of being hypertechnical points out that the reference to remand in the motion is in the first sentence in the body (or text) of the motion, not in the title of the motion in the caption.). Nonetheless, Defendant is correct in pointing out that Plaintiff in her motion does not set forth any arguments for equitable remand under 28 U.S.C. § 1452(b), that is, there is no analysis of any applicable standard of equitable remand under 28 U.S.C. § 1452(b), though the factors may be similar to permissive abstention under 28 U.S.C. § 1334(c)(1). See, e.g., *Cabana v. Rodriguez* (In re People’s Choice Home Loan), Adv. No. 8:07-ap-01239-RK, 2007 WL 9637067, slip op. at \*2 (Bankr. C.D. Cal. Oct. 31, 2007); see also, *Murray v. Willkie Farr & Gallagher LLP*, 654 B.R. 469, 494-495 (Bankr. S.D. Ohio 2023).

If Plaintiff seeks an order for equitable remand of the action to the New York state court under 28 U.S.C. § 1452(b), the court has discretion to grant equitable remand, but she will need to set forth her arguments explicitly to demonstrate based on the legal standard under the applicable case law that a court would grant her relief for equitable remand of this case to the New York state court, and Defendant should have an opportunity to respond to such arguments. The case law setting forth the various factors that courts have applied in considering equitable remand under 28 U.S.C. § 1452(b) includes: *Federal Home Loan Bank of Chicago v. Bank of America Securities LLC*, 448 B.R. 517, 525-526 (C.D. Cal. 2011); *Citigroup, Inc. v. Pacific Investment Management Co., LLC* (In re Enron Corp.), 296 B.R. 505, 508-509 and n. 2 (C.D. Cal. 2003); *Nilsen v. Neilson* (In re Cedar Funding, Inc.), 419 B.R. 807, 820-821 and n. 18 (9<sup>th</sup> Cir. BAP 2009). This court would definitely consider these authorities in considering equitable remand as these authorities are from courts for which an appeal may be taken from the court's ruling on the

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**CONT... Zacky & Sons Poultry, LLC**

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motion, that is, the United States District Court for the Central District of California and the United States Bankruptcy Appellate Panel of the Ninth Circuit. The court is unaware of published case precedent of the United States Court of Appeals for the Ninth Circuit setting forth the factors that courts should consider in deciding whether to grant or deny equitable remand under 28 U.S.C. 1452(b).

Instead of denying the motion without prejudice for failure to demonstrate that equitable remand should be granted, the court may continue the hearing for further briefing on the equitable remand standard.

The court is posting this tentative ruling before the extended deadline for Plaintiff to file a reply to Defendant's opposition. If Plaintiff in her reply makes arguments addressing equitable remand, which she did not in her original motion, the court will likely afford Defendant the opportunity to file a surreply and continue the hearing.

Prior tentative ruling as of 2/6/24.

As a preliminary matter, despite the representations on defendant's proof of service of its opposition papers that a judge's copy of such papers were served on the presiding judge on 1/31/24, the presiding judge as of 2/6/24 has not received a judge's copy of the defendant's opposition papers. Defendant is required by LBR 5005-1(d) to serve a judge's copy of its opposition papers on the presiding judge. The court notes that the opposition papers consist of a 79 page memorandum of points and authorities and a 161 page counsel declaration, which both well-exceeded the pandemic exclusion from the judge's copy requirement under LBR for documents of 25 pages or less in length. In preparing a tentative ruling on the motion, the court has exercised its discretion to review 18 pages of text of defendant's memorandum of points and authorities and the Murray Energy Holdings opinion attached thereto, which is an officially published case. However, the court will not read the 161 page counsel declaration until defendant provides a judge's copy to the presiding judge. Court staff has contacted counsel's office for defendant to serve a judge's copy of the opposition papers before the hearing, and failure of counsel for defendant to serve a judge's copy of the opposition papers before the hearing may result in the imposition of monetary or other sanctions,



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including disregarding the counsel declaration, for failure to comply with LBR 5005-1(d) and 1001(f), and the court's inherent authority.

On the merits, the court notes that Plaintiff's motion as set forth in the caption is styled "Motion by Lilian D. Zacky for Abstention Pursuant to 28 USC §§ 1334(C)(1) & (2)." The court agrees with Defendant in its opposition to the motion that the court lacks authority to grant abstention because the adversary proceeding has been removed from state court and is no longer pending there. Settled Ninth Circuit case law provides that the abstention is not possible for a removed state court action because 28 U.S.C. §§ 1334(c) (1) and (2) are inapplicable since there is no pending state court proceeding as such has been removed. *Schuman v. State of California (In re Lazar)*, 227 F.3d 967, 981-982 (9<sup>th</sup> Cir. 2001), citing, *Security Farms v. International Brotherhood of Teamsters*, 124 F.3d 999, 1009-1010 (9<sup>th</sup> Cir. 1997); but see, e.g., *Frelin v. Oakwood Homes Corp.* 292 B.R. 369, 380-381 (Bankr. E.D. Ark. 2003) (rejecting the Ninth Circuit's position that abstention is inapplicable to removed state court proceedings, stating the majority rule is contrary to the Ninth Circuit); *In re Scanware, Inc.*, 411 B.R. 889 (Bankr. S.D. Ga. 2009) (also holding abstention applies to removed state court proceedings). (However, Ninth Circuit precedent is controlling on this court, so it follows the rule set forth in *Lazar* and *Security Farms*.) Thus, Plaintiff's arguments for abstention in her motion are thus misplaced, and abstention relief cannot be granted.

Nevertheless, the court observes that Plaintiff in her motion does state in the opening sentence of her motion: "Plaintiff Lillian D. Zacky, individually and as Trustee of the Survivor's Trust Created Under the Robert D. Zacky Trustee ('Plaintiff'), brings this motion for abstention and remand pursuant to 28 U.S.C. §§ 1452(b), 1334(c)(2) and 1334(c)(1) and [sic]." Motion at 1 (there is a hanging "and" at the end of this sentence, and the court was unsure whether there was additional authority that Plaintiff was asserting, or this was a mere proofreading error.). As previously stated, the abstention provisions are inapplicable to a removed state court action under Ninth Circuit case law. Regarding equitable remand, Defendant asserts in its opposition at page 1, footnote 1: "The title of the Motion includes the word 'remand' but the Motion contains arguments only on abstention." (Although this is a small quibble by the court to correct Defendant's assertion, the court at the risk of being

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hypertechnical points out that the reference to remand in the motion is in the first sentence in the body (or text) of the motion, not in the title of the motion in the caption.). Nonetheless, Defendant is correct in pointing out that Plaintiff in her motion does not set forth any arguments for equitable remand under 28 U.S.C. § 1452(b), that is, there is no analysis of any applicable standard of equitable remand under 28 U.S.C. § 1452(b), though the factors may be similar to permissive abstention under 28 U.S.C. § 1334(c)(1). See, e.g., *Cabana v. Rodriguez* (In re People's Choice Home Loan), Adv. No. 8:07-ap-01239-RK, 2007 WL 9637067, slip op. at \*2 (Bankr. C.D. Cal. Oct. 31, 2007); see also, *Murray v. Willkie Farr & Gallagher LLP*, 654 B.R. 469, 494-495 (Bankr. S.D. Ohio 2023).

If Plaintiff seeks an order for equitable remand of the action to the New York state court under 28 U.S.C. § 1452(b), she will need to set forth her arguments explicitly to show based on the legal standard under the applicable case law that a court would grant equitable remand, and Defendant should have an opportunity to respond to such arguments. The case law setting forth the various factors that courts have applied in considering equitable remand under 28 U.S.C. § 1452(b) includes: *Federal Home Loan Bank of Chicago v. Bank of America Securities LLC*, 448 B.R. 517, 525-526 (C.D. Cal. 2011); *Citigroup, Inc. v. Pacific Investment Management Co., LLC* (In re Enron Corp.), 296 B.R. 505, 508-509 and n. 2 (C.D. Cal. 2003); *Nilsen v. Neilson* (In re Cedar Funding, Inc.), 419 B.R. 807, 820-821 and n. 18 (9<sup>th</sup> Cir. BAP 2009). If Plaintiff seeks an order for equitable remand of the action to the New York state court under 28 U.S.C. § 1452(b), the court has discretion to grant equitable remand, but she will need to set forth her arguments explicitly to demonstrate based on the legal standard under the applicable case law that a court would grant her relief for equitable remand of this case to the New York state court, and Defendant should have an opportunity to respond to such arguments. The case law setting forth the various factors that courts have applied in considering equitable remand under 28 U.S.C. § 1452(b) includes: *Federal Home Loan Bank of Chicago v. Bank of America Securities LLC*, 448 B.R. 517, 525-526 (C.D. Cal. 2011); *Citigroup, Inc. v. Pacific Investment Management Co., LLC* (In re Enron Corp.), 296 B.R. 505, 508-509 and n. 2 (C.D. Cal. 2003); *Nilsen v. Neilson* (In re Cedar Funding, Inc.), 419 B.R. 807, 820-821 and n. 18 (9<sup>th</sup> Cir. BAP 2009). This court would definitely consider these authorities in considering equitable remand as these authorities are

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from courts for which an appeal may be taken from the court's ruling on the motion, that is, the United States District Court for the Central District of California and the United States Bankruptcy Appellate Panel of the Ninth Circuit. The court is unaware of published case precedent of the United States Court of Appeals for the Ninth Circuit setting forth the factors that courts should consider in deciding whether to grant or deny equitable remand under 28 U.S.C. 1452(b).

Instead of denying the motion without prejudice for failure to demonstrate that equitable remand should be granted, the court may continue the hearing for further briefing on the equitable remand standard.

Appearances are not required on 2/13/24 as the hearing on the motion has been continued to 2/27/24. Appearances are required on that later date, and counsel and self-represented parties must appear either in person in the courtroom or remotely through Zoom for Government in accordance with the court's remote appearance instructions.

**Party Information**

**Debtor(s):**

Zacky & Sons Poultry, LLC

Represented By  
Ron Bender  
Juliet Y. Oh  
Todd M Arnold  
Lindsey L Smith  
Riley C. Walter  
E Jay Gotfredson

**Defendant(s):**

Great Rock Capital Partners

Represented By  
Cynthia M Cohen

**Plaintiff(s):**

Lilian D. Zacky

Represented By  
Joseph Tripodi  
E Jay Gotfredson

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**2:17-23722 Kody Branch of California, Inc. and Tony Trinh**

**Chapter 7**

**#2.00 Trustee's Final Report, Application for Compensation  
(Wesley Avery)**

Docket 602

**Tentative Ruling:**

Revised and updated tentative ruling as of 2/6/24. Approve the final report and fee application of the trustee for the reasons stated therein and for lack of timely written objection. The court notes that in the final fee application of trustee's attorneys, they have agreed to the trustee's request to cap payment of its fees and expenses at \$100,000 total rather than \$104,959.56 that they may have otherwise sought allowance and payment of, but this agreement is not reflected in the final report which proposes to pay the attorneys the \$104,959.56 that the attorneys could have sought rather the \$100,000 that trustee and the attorneys had apparently agreed to. Trustee to clarify that payment of his attorneys in the final report will be adjusted downward to \$100,000 total based on the agreement between applicant and trustee.

Appearances are required on 2/13/24, but counsel and self-represented parties must appear either in person in the courtroom or remotely through Zoom for Government in accordance with the court's remote appearance instructions.

**Party Information**

**Debtor(s):**

Kody Branch of California, Inc.

Represented By  
John-Patrick M Fritz

**Trustee(s):**

Wesley H Avery (TR)

Represented By  
D Edward Hays  
Richard A Marshack  
Kristofer R McDonald  
Jeffrey L Sumpter  
David Wood

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**CONT... Kody Branch of California, Inc. and Tony Trinh**

**Chapter 7**

**United States Bankruptcy Court  
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**2:17-23722 Kody Branch of California, Inc. and Tony Trinh**

**Chapter 7**

**#3.00** Application for Compensation for Menchaca & Company LLP,  
Financial Advisor, Fee: \$23,591.00, Expenses: \$58.05.

Docket 592

**Tentative Ruling:**

Revised and updated tentative ruling as of 2/6/24. Approve the final fee application of accountant/financial advisor for trustee for the reasons stated therein and for lack of timely written objection. Appearances are required on 2/13/24, but counsel and self-represented parties must appear either in person in the courtroom or remotely through Zoom for Government in accordance with the court's remote appearance instructions.

**Party Information**

**Debtor(s):**

Kody Branch of California, Inc.

Represented By  
John-Patrick M Fritz

**Movant(s):**

Menchaca & Company LLP

Represented By  
Jeffrey L Sumpter

**Trustee(s):**

Wesley H Avery (TR)

Represented By  
D Edward Hays  
Richard A Marshack  
Kristofer R McDonald  
Jeffrey L Sumpter  
David Wood

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2:17-23722 **Kody Branch of California, Inc. and Tony Trinh**

**Chapter 7**

**#4.00** Application (Final) for Compensation by Marshack Hays Wood LLP  
as General Counsel Fee: \$60,808, Expenses: \$2,110.93.

Docket 591

**Tentative Ruling:**

Revised and updated tentative ruling as of 2/6/24. Approve the final fee application of attorneys for trustee for the reasons stated therein and for lack of timely written objection. The court notes that in the application, applicant has agreed to the trustee's request to cap payment of its fees and expenses at \$100,000 total rather than \$104,959.56 that it otherwise sought allowance and payment (consisting of \$42,040.63 in allowed but unpaid fees and expenses from the first interim fee application, \$62,918.93 in new fees sought in the second and final fee application and \$2,110.93 in new expenses sought in the second and final fee application). The fee application is approved based on the understanding that the amounts to be paid applicant proposed in the trustee's final report in the amount of \$102,848.63 in fees and \$2,110.93 in expenses will be adjusted downward to \$100,000 total based on the agreement between applicant and trustee.

Appearances are required on 2/13/24, but counsel and self-represented parties must appear either in person in the courtroom or remotely through Zoom for Government in accordance with the court's remote appearance instructions.

**Party Information**

**Debtor(s):**

Kody Branch of California, Inc.

Represented By  
John-Patrick M Fritz

**Trustee(s):**

Wesley H Avery (TR)

Represented By  
D Edward Hays  
Richard A Marshack  
Kristofer R McDonald

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**Kody Branch of California, Inc. and Tony Trinh**  
Jeffrey L Sumpter  
David Wood

**Chapter 7**



**United States Bankruptcy Court  
Central District of California  
Los Angeles  
Robert Kwan, Presiding  
Courtroom 1675 Calendar**

**Tuesday, February 13, 2024**

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**2:17-23722 Kody Branch of California, Inc. and Tony Trinh**

**Chapter 7**

**#5.00** Motion to Honor Writ and Authorize Trustee to Pay Funds Detailed in the Final Report to Second Generation, Inc., in Lieu of Payment to Creditor Cong Ty May Trinh Vuong dba Trinh Vuong Garment Co., Ltd.,

Docket 604

**Tentative Ruling:**

Revised and updated tentative ruling as of 2/12/24. Grant trustee's motion to honor writ and pay funds to claimant's judgment creditor for the reasons stated in the moving papers and for lack of timely written opposition. Trustee as a third party garnishee is comply with his duty to turn over garnishment property pursuant to California Code of Civil Procedure 701.010(b), and he does not object to the garnishment. See also, *Coffee v. Haynes*, 124 Cal. 561, 566-567 (1899). The funds being distributed on behalf of the claimant on its proof of claim are no longer in custodia legis and are a proper subject of garnishment. In re *Brickell*, 292 B.R. 705, 707-710 (Bankr. S.D. Fla. 2003), aff'd, 142 Fed. Appx. 385, 389-391 (11th Cir. 2005); In re *Kranich*, 182 F. 849, 850 (E.D. Pa. 1910); but seea, *NVLand, Inc. Vogel* (In re *Ocean Downs Racing Assn.*), 164 B.R. 249 (Bankr. D. Md. 1993). Appearances are required on 2/13/24, but counsel and self-represented parties must appear either in person in the courtroom or remotely through Zoom for Government in accordance with the court's remote appearance instructions.

Prior tentative ruling as of 2/2/24. Counsel for movant has been advised that the court has not received a judge's copy of the moving papers exceeding 25 pages in length as required by LBR 5005-1(d) despite the proof of service representing that a judge's copy was served. The court expects counsel to provide the court with a judge's copy before the court rules upon the motion.

Appearances are required on 2/13/24, but counsel and self-represented parties must appear either in person in the courtroom or remotely through Zoom for Government in accordance with the court's remote appearance instructions.

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**Chapter 7**

**Party Information**

**Debtor(s):**

Kody Branch of California, Inc.

Represented By  
John-Patrick M Fritz

**Movant(s):**

Wesley H Avery (TR)

Represented By  
D Edward Hays  
Richard A Marshack  
Kristofer R McDonald  
Jeffrey L Sumpter  
David Wood

**Trustee(s):**

Wesley H Avery (TR)

Represented By  
D Edward Hays  
Richard A Marshack  
Kristofer R McDonald  
Jeffrey L Sumpter  
David Wood

**United States Bankruptcy Court  
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**2:17-23722 Kody Branch of California, Inc.**

**Chapter 7**

Adv#: 2:19-01466 Avery et al v. Gia Phu Fashion Garment Co.

**#6.00** Pre Trial Conference re: Complaint for avoidance, recovery, and preservation of fraudulent and unauthorized postpetition transfers

fr. 10/6/21, 12/8/21, 1/18/22, 11/15/22, 1/17/23, 3/21/23, 5/23/23, 6/27/23, 8/15/23, 9/12/23, 11/7/23, 12/12/23, 1/9/24,1/30/24

Docket 1

**Tentative Ruling:**

Updated tentative ruling as of 2/8/24. No tentative ruling on the merits. The parties have advised the court in the stipulation to continue the pretrial conference that they are in the process of settling. If the parties are settling, they must propose a reasonable date for filing a dispositive stipulation and proposed order, and how to proceed with the scheduled trial dates as the court is preparing for trial in the absence of a continuance of the trial dates. Appearances are required on 2/13/24, but counsel and self-represented parties must appear either in person in the courtroom or remotely through Zoom for Government in accordance with the court's remote appearance instructions.

Prior tentative ruling as of 1/29/24. Off calendar. Continued by stipulation and order to 2/13/24 at 1:30 p.m. No appearances are required on 1/30/24.

Prior tentative ruling as of 1/8/24. The court on its own motion continues the further pretrial conference to 1/30/24 at 2:30 p.m. by written order to be entered shortly on grounds that the hearing on the related matter of Plaintiff's notice of motion for right to attach order and for issuance of writ of prejudgment attachment is insufficient to meet the statutory requirements of California Code of Civil Procedure Sections 484.040 and 1005(a) and (b). No appearances are required on 1/9/24.

Revised and updated tentative ruling as of 12/6/23. The court has reviewed defendant's status report regarding the status of the applications of its witnesses for visas to appear for trial, stating that the visa applications were

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**CONT... Kody Branch of California, Inc.**

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filed on 12/1/23 and that the visas will take six months to process. The court requests defendant to explain its six month time estimate as the visas are processed and issued by the U.S. Department of State and the applications have been filed. According to the State Department website, it is how taking only 8 calendar days for a visa interview for a nonimmigrant business visitor visa (B-1 visa) in Ho Chi Minh City. That is, the witnesses having filed their visa applications on 12/1/23 should have a visa interview appointment within 8 calendar days of filing, and decision on the visa applications should be forthcoming shortly thereafter. The documentation requirement for a nonimmigrant business visitor visa application is not onerous as indicated on the State Department's website and should have been met when the visa applications were filed. Thus, the court requires a better explanation from defendant why it estimates six months for processing visas for its witnesses as the business purpose of the travel is routine.

Link to State Department visa interview wait times:

<https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/global-visa-wait-times.html>

Link to State Department nonimmigrant visa application documentation requirements:

<https://travel.state.gov/content/travel/en/us-visas/tourism-visit/visitor.html#documentation>

Appearances are required on 12/12/23, but counsel and self-represented parties must appear either in person in the courtroom or remotely through Zoom for Government in accordance with the court's remote appearance instructions.

Prior tentative ruling as of 11/2/23. Having reviewed the joint pretrial stipulation, the court is of the view that it is in proper form and should be approved.

However, the court notes that the parties did not state any evidentiary objections to any of the trial exhibits as required by LBR 7016-1(b)(2)(D), and

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unless the joint pretrial stipulation is amended, the court will assume that the parties have no objections to the exhibits, and in approving the joint pretrial stipulation, the court will receive all of the exhibits into evidence without objection.

Regarding trial testimony, the court normally requires in a bench trial like this one the submission of direct testimony of nonadverse, cooperative witnesses by trial declarations. See *In re Gergely*, 110 F.3d 1448, 1452 (9th Cir. 1997). It would appear that all of defendant's trial witnesses fall into the category of nonadverse, cooperative witnesses, and the court may require the submission of their direct testimony by declaration. Plaintiff's trial witnesses are adverse, and thus, no direct testimony by declaration would be required. At the pretrial conference, the court will discuss with the parties the submission of trial declarations, but notes that there are issues of translation since it appears that the witnesses are not native English speakers as became apparent with the parties' dispute over the submission of declarations from some of these witnesses in opposition to plaintiff's motion for partial summary judgment and with the statement that an interpreter is needed for the testimony of the witnesses at trial. However, since the issues in this case for trial are narrowed by the joint pretrial stipulation to Defendant's defenses, it may be more expedient to dispense with trial declarations and just have the witnesses to testify live.

At the pretrial conference, the court will also discuss with the parties Defendant's request that the witnesses from Vietnam, Dinh Hong and Moc Ly, be allowed to testify remotely on Zoom for Government on grounds that they will need six months time to obtain visas to travel to the United States to testify in person. Plaintiff did not state a position on this request in the joint pretrial statement, though the court notes that both parties are calling the witnesses from Vietnam in their cases-in-chief. In that regard, the court notes Plaintiff did not state whether it will be calling its witnesses to testify in person or on Zoom for Government. In order for the court to allow the witnesses to testify remotely, the court will have to make findings of good cause in compelling circumstances with adequate safeguards in accordance with FRBP 9017 and FRCP 43(a). Defendant should explain the basis for its six month time estimate for visa processing for its witnesses from Vietnam as the time estimate will affect trial scheduling if the witness cannot testify by remote

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transmission.

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Regarding the stated need for an interpreter for the witnesses, the parties should discuss what arrangements that they are making for an interpreter at trial.

Appearances are required on 11/7/23, but counsel and self-represented parties must appear in person or remotely through Zoom for Government in accordance with the court's remote appearance instructions.

Revised tentative ruling as of 9/11/23. No tentative ruling on the merits in light of pending motion for summary judgment. The court will call this matter at the end of the 1:30 p.m. calendar and will advance the related 2:00 p.m. hearing on the summary judgment motion if there are no other remaining matters on calendar. Appearances are required on 9/12/23, but counsel and self-represented parties must appear in person or remotely through Zoom for Government in accordance with the court's remote appearance instructions.

Prior tentative ruling. The court has reviewed the parties' joint status report and will set the following pretrial schedule: (1) deadline to file motions to join other parties or to amend the pleadings: 4/30/22; (2) discovery cutoff date: 10/31/22; (3) deadline to file dispositive pretrial motions: 12/31/22; and (3) post-discovery status conference: 11/15/22 at 1:30 p.m. The court will order the matter referred to mediation, and the parties to file a selection of a mediator and an alternate mediator by 6/30/22 and complete mediation by 12/31/22. Plaintiff to lodge a proposed scheduling order within 7 days after the status conference. Appearances are required on 1/18/22, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

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

Kody Branch of California, Inc.

Represented By  
John-Patrick M Fritz

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**CONT... Kody Branch of California, Inc.**

**Chapter 7**

**Defendant(s):**

Gia Phu Fashion Garment Co.

Represented By  
Stella A Havkin

**Plaintiff(s):**

Wesley H. Avery

Represented By  
David Wood  
D Edward Hays

Second Generation, Inc.

Represented By  
Ryan Coy

**Trustee(s):**

Wesley H Avery (TR)

Represented By  
D Edward Hays  
Richard A Marshack  
Kristofer R McDonald  
Jeffrey L Sumpter  
David Wood

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**2:17-23722 Kody Branch of California, Inc.**

**Chapter 7**

Adv#: 2:19-01466 Avery et al v. Gia Phu Fashion Garment Co.

**#7.00** Motion for Right to Attach Order and Issuance of  
Writ of Prejudgment Attachment

fr, 1/9/24, 1/30/24

Docket 112

**Tentative Ruling:**

Updated tentative ruling as of 2/7/24. Off calendar. The court has determined that oral argument on the motion is not necessary, dispenses with it, takes the motion under submission, vacates the hearing on the motion and has issued a memorandum decision and order on the motion. No appearances for the hearing on the motion are required on 2/13/24.

Prior tentative ruling as of 1/29/24. Off calendar. Continued by stipulation and order to 2/13/24 at 1:30 p.m. No appearances are required on 1/30/24.

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

Kody Branch of California, Inc.

Represented By  
John-Patrick M Fritz

**Defendant(s):**

Gia Phu Fashion Garment Co.

Represented By  
Stella A Havkin

**Movant(s):**

Second Generation, Inc.

Represented By  
Ryan Coy

**Plaintiff(s):**

Wesley H. Avery

Represented By



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**Chapter 7**

David Wood  
D Edward Hays

Second Generation, Inc.

Represented By  
Ryan Coy

**Trustee(s):**

Wesley H Avery (TR)

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