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<u>2:00 PM</u> **2:00-00000**

Chapter

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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 nonevidentiary 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, 16th Floor, Roybal Federal Building, 255 East Temple Street, Los Angeles, California 90012. Parties are directed to review Judge Kwan's self-calendaring 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://ecfciao.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, 16th 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 inperson 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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<u>2:00 PM</u> CONT	ZoomGov logon information for all matters on today's hearing cale		hapter
	Video/audio web address: <u>https://cacb.zoomgov</u>	<u>/.com/j/</u> 16141	51606

ZoomGov meeting number: 161 415 1606

Password: 507279 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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2:18-23361Zacky & Sons Poultry, LLCChapter 11Adv#: 2:23-01464Zacky et al v. Great Rock Capital Partners Management, LLC et al

#1.00 Motion for Abstention and Remand

fr. 2/13/24, 2/27/24

Docket 33

Tentative Ruling:

Updated tentative ruling as of 3/4/24. No tentative ruling on the merits. The court will hear argument from the parties and does not plan on posting a tentative ruling for this matter. Appearances are required on 3/5/24, 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.

tentative ruling as of 2/21/24. Off calendar. Continued on the court's own motion to 3/5/24 at 2:00 p.m. by written order to provide defendant sufficient time to prepare and file a sur-reply to plaintiff's reply brief addressing equitable remand. No appearances are required on 2/27/24.

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

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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 Bankrupcy 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 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

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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 (9th Cir. 2001), citing, Security Farms v. International Brotherhood of Teamsters, 124 F.3d 999, 1009-1010 (9th 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 ('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-

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CONT... Zacky & Sons Poultry, LLC 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 (9th 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 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.

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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 2/6/24has 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, 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 (9th Cir. 2001), citing, Security Farms v. International Brotherhood of Teamsters, 124 F.3d 999, 1009-1010 (9th 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

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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 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. 8:07ap-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

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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 (9th 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 (9th 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 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.

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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

Plaintiff(s):

Lilian D. Zacky

Cynthia M Cohen

Represented By

Represented By Joseph Tripodi E Jay Gotfredson Hearing Room 1675

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