



**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re:
GL Master Inc.,

Case No.: 2:18-bk-24302-NB
Chapter: 7

**ORDER REGARDING EVIDENTIARY
HEARING ON ORDER TO SHOW CAUSE**

Debtor(s)

Hearing Date:
Date: August 19, 2020
Time: 9:00 a.m.
Place: Courtroom 1545
255 E. Temple Street
Los Angeles, CA 90012
[But see below re appearances
via Zoomgov]

On July 24, 2020 this Bankruptcy Court issued an order directing Debtor, Freda Wang, Thomas Polis, Lynn Chao, and The Law Offices of Lynn Chao APC (collectively, "Responding Parties") to appear and show cause why they should not be held in contempt and why compensatory and coercive sanctions should not be imposed on them for failing to abide by this Bankruptcy Court's orders for discovery under Rule 2004 (Fed. R. Bankr. P.) (the "OSC," dkt. 173). The OSC set the above-captioned hearing date and time, directed the parties to meet and confer regarding possible

1 evidentiary hearing procedures and lodge a proposed order establishing such
2 procedures. The OSC concluded:

3 The deadline for the Responding Parties' briefs to be filed and served is
4 **August 4, 2020**. The deadline for the Alleged Employees' responsive brief is
5 **August 11, 2020**, which is also the deadline for the parties to lodge proposed
6 order(s) for the evidentiary hearing procedures. The failure of any party to
7 meet and confer and/or agree to terms of a proposed form of order will be
8 deemed as that party's consent to the procedures adopted by this Court and
9 any arguments of prejudice will be deemed waived and forfeited. [OSC (dkt.
10 173), p.9:5-10.]

11 As of the preparation of this order, no briefs appear on the docket, nor has any
12 party lodged any proposed order setting evidentiary hearing procedures different from
13 or in addition to those established in the OSC. Accordingly, the parties are deemed to
14 have waived and forfeited (i) any further briefing on the subjects of the OSC, beyond
15 what was in the motion for an OSC and supporting and opposing papers, and (ii) any
16 objections to this Bankruptcy Court's procedures for conducting the evidentiary hearing
17 on the OSC (the "Trial").

18 **(1) No party has established that the notice of appeal has any current effect on
19 this Bankruptcy Court's jurisdiction**

20 This Bankruptcy Court is aware of the Notice of Appeal (dkt. 177) of the
21 OSC. But this Bankruptcy Court ruled during the 2004 examinations conducted on
22 August 3, 2020 that the OSC is an interlocutory order and therefore, unless and until the
23 Bankruptcy Appellate Panel for the Ninth Circuit (the "BAP") grants leave to appeal, the
24 appeal has no effect on this Bankruptcy Court's jurisdiction. See 28 U.S.C. 158(a)(3);
25 *Cato v. Fresno City*, 220 F.3d 1073 (9th Cir. 2000) (discovery sanction order not
26 appealable); *Nascimento v. Dummer*, 508 F.3d 905, 908 (9th Cir. 2007) ("When a
27 Notice of Appeal is defective in that it refers to a non-appealable interlocutory order, it
28 does not transfer jurisdiction to the appellate court, and so the ordinary rule that the
 district court cannot act until the mandate has issued on the appeal does not apply.")
 (citation omitted). See also, e.g., *In re Sherman*, 491 F.3d 948, 967 (9th Cir. 2007)
 (even with respect to the order or judgment on appeal, bankruptcy court retains

1 jurisdiction “to implement or enforce the judgment or order, although it may not alter or
2 expand upon the judgment”; and “[i]f a party wants to stay all of the proceedings in
3 bankruptcy court while an appeal is pending, it must file a motion for a stay”) (citations
4 and internal quotation marks omitted).

5 **(2) Procedures for evidentiary hearing on the OSC**

6 In light of the current COVID-19 pandemic and closure of this Bankruptcy Court’s
7 facilities (see General Order No. 20-06), and pursuant to Rule 43(a) (Fed. R. Civ. P.,
8 incorporated by Rule 9017, Fed. R. Bankr. P.), there is “good cause in compelling
9 circumstances” to conduct the Trial remotely, through videoconferencing
10 technology. Further, this Bankruptcy Court finds that the procedures adopted herein will
11 provide "adequate safeguards" for purposes of Federal Rule 43(a) and ensure due
12 process of law. These procedures will (a) enable this Bankruptcy Court to identify,
13 communicate with, and judge the demeanor of all witnesses in real time, (b) enable
14 counsel for the parties to see and hear the witness testimony, interpose objections, and
15 communicate with this Bankruptcy Court in real time, (c) enable the parties, the
16 witnesses and this Bankruptcy Court to have simultaneous access to an identical set of
17 pre-marked exhibits, (d) provide safeguards to avoid any undue influence or
18 interference with the witnesses in connection with their testimony, and (e) preserve the
19 ability of any witness to be represented by counsel during the proceeding, and to
20 communicate with such counsel as this Bankruptcy Court deems appropriate.

21 Accordingly, **IT IS HEREBY ORDERED:**

22 (a) Video hearing. The evidentiary hearing will be conducted via

23 Zoomgov. Participants in the Trial will be connected with the courtroom using
24 that technology but will not be physically present in the courtroom.

25 (b) Zoomgov link, exhibits, and other procedures. As was previously done in
26 connection with the Rule 2004 examinations and resolution of discovery disputes
27 conducted on August 3, 2020, (i) this Bankruptcy Court will send an email to
28 counsel for the Alleged Employees with a link and password to use Zoomgov at

1 the time of the Trial, (ii) that email will direct such counsel to forward those
2 instructions to all other parties and their counsel, (iii) exhibits must be received by
3 this Bankruptcy Court either in paper format or via facsimile (to the facsimile
4 number provided in the email) no later than **Monday, August 17, 2020 at 10:00**
5 **a.m.** (the “**Key Deadline**”), except that impeachment documents may be
6 introduced via the “share screen” function in Zoomgov, (iv) exhibits must be
7 served on opposing counsel via email in “.pdf” format (Adobe Acrobat), or as
8 otherwise agreed in writing, by the Key Deadline, and (v) except as modified
9 herein, the “Posted Procedures of Judge Bason” (available at
10 www.cacb.uscourts.gov) regarding evidentiary hearings/trials apply (e.g., direct
11 testimony by declaration).

12 (c) Required Equipment. For purposes of participation in the Trial, each participating
13 attorney and each witness must have simultaneous access to (i) a computer,
14 equipped with a camera, that is capable of receiving and transmitting video using
15 Zoomgov, (ii) internet browsing software that is adequate to facilitate Zoomgov,
16 (iii) an Internet connection with bandwidth adequate to support the individual's
17 use of Zoomgov, and (iv) Adobe Acrobat Reader for purposes of reviewing
18 exhibits, as directed by counsel or this Bankruptcy Court. Counsel are
19 responsible for verifying compliance with the foregoing not only for themselves
20 but also for each witness with whom they are affiliated (e.g., Mr. Polis is
21 responsible for verifying compliance for each of the Responding Parties).

22 (d) Limitation on witnesses. This Bankruptcy Court’s tentative ruling is that, because
23 all parties failed to file any briefs or lodge any proposed pretrial order by the
24 deadlines in the OSC, no witnesses are permitted other than persons who filed
25 declarations in connection with the motion for an OSC and Responding Parties.
26 But if any party seeks to introduce other witnesses then this Bankruptcy Court
27 will address at the commencement of the Trial if that is permissible.
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1 (e) Prior Notice of Trial Participants. No later than the Key Deadline, the parties
2 shall (i) file a declaration of counsel disclosing the identity of the witnesses they
3 intend to present at the Trial, the subject matter about which each witness is
4 expected to testify, and all attorneys who will participate in the Trial, (ii) file and
5 serve via email any direct testimony via declaration of witnesses with whom they
6 are affiliated, and (ii) provide to the courtroom deputy
7 [sharon_sumlin@cacb.uscourts.gov], and to each other, an email address and
8 telephone number for each witness and each attorney (that information should
9 not be filed on the public docket, for reasons of privacy). The telephone number
10 provided should be a number at which the attorney or witness can be reached
11 during the Trial in the event of an interruption in the audio or video feed.

12 (f) Trial exhibit format. The .pdf files shall be named sequentially. The Alleged
13 Employees' exhibits (aka Creditors' exhibits) shall be numbered as follows:
14 C_Ex_1, C_Ex_2, C_Ex_3, etc. Responding Parties' exhibits (aka Debtor's
15 exhibits) shall be lettered as follows: D_Ex_A, D_Ex_B, D_Ex_C, etc. Upon
16 receipt of the .pdf documents, each attorney and witness shall take the steps
17 necessary to ensure that all electronic documents can be successfully opened
18 and are readily available during the Trial.

19 (g) Motions in limine. The parties must file and serve any motions *in limine* no later
20 than **Tuesday, August 18 at 10:00 a.m.**

21 (h) Remote Witness Testimony. Having found "good cause in compelling
22 circumstances" and "adequate safeguards," any witness called to testify at the
23 Trial shall testify by contemporaneous transmission from a different location into
24 the courtroom (each a "Remote Witness"). All Remote Witnesses shall be
25 placed under oath and their testimony shall have the same effect and be binding
26 upon the Remote Witness in the same manner as if such Remote Witness was
27 sworn and testified in open court. Each Remote Witness shall provide their
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1 testimony from a quiet room and must situate themselves in such a manner as to
2 be able to both view the video feed and be seen by the Court.

3 (i) Safeguards for Remote Witness testimony. While the Remote Witness is sworn
4 and testifying, and except as otherwise ordered on the record by this Bankruptcy
5 Court: (i) no person may be present in the room from which the Remote Witness
6 is testifying, (ii) the Remote Witness may not have in the room any documents
7 except the exhibit about which the Remote Witness is being questioned and any
8 declaration the Remote Witness has submitted in lieu of direct testimony, and
9 (iii) the Remote Witness may not communicate with any other person regarding
10 the subject of their testimony, by electronic means or otherwise. Each Remote
11 Witness must be prepared at any time (i) to move their camera, (ii) to share their
12 computer screen, and (iii) to verify by any other means compliance with the
13 provisions of this order. If the witness or their counsel seek to communicate with
14 one another, either shall openly request a recess for such purpose. If such
15 request is granted by the Court, the witness and their counsel may privately
16 confer "offline," *i.e.*, by telephonic means that are not transmitted to the other
17 parties. Counsel are responsible for providing a copy of this order to each
18 witness with whom they are affiliated and reviewing this order with each such
19 witness.

20 (j) Courtroom Formalities. Although conducted using telephonic and
21 videoconferencing technologies, the Trial constitutes a court proceeding. No
22 person shall record— from any location or by any means—the audio or video of
23 the Trial. The audio recording created and maintained by this Bankruptcy Court
24 shall constitute the official record of the Trial. Further, the formalities of a
25 courtroom shall be observed. Counsel and witnesses shall dress appropriately,
26 exercise civility, and otherwise conduct themselves in a manner consistent with
27 the dignity of this Bankruptcy Court and its proceedings.

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1 (k) Technical Pre-Trial Conference. On **Monday, August 17, 2020 at 11:00 a.m.**,
2 this Bankruptcy Court will hold a technical pre-trial conference for the purpose of
3 testing both the telephonic and video conference technologies. All parties and all
4 witnesses must participate in the technical pre-trial conference. All participants
5 are admonished not to discuss the substance of the Trial at the technical pre-trial
6 conference, but instead limit their comments to the functionality of the technology
7 and any procedural matters that relate to the technology.

8 (l) Retention of Jurisdiction. This Bankruptcy Court retains jurisdiction with respect
9 to all matters arising from or related to this Order.

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24 Date: August 13, 2020



Neil W. Bason
United States Bankruptcy Judge