

FILED & ENTERED

DEC 11 2024

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY Cetulio DEPUTY CLERK

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SAN FERNANDO VALLEY DIVISION

In re:

MONICA L. COLUMBIA,

Debtor.

Case No.: 1:23-bk-10696-VK

Chapter 11

**MEMORANDUM OF DECISION DENYING
FEE APPLICATION AND ORDERING
DISGORGEMENT PURSUANT TO 11 U.S.C.
§§ 327(a) AND 328(c) AND FED. R. BANKR. P.
2014(a)**

Hearing:

Date: December 11, 2024

Time: 10:30 a.m.

Place: Courtroom 301
21041 Burbank Blvd.
Woodland Hills, CA 91347

For the reasons set forth below, the Court will deny the allowance of all compensation requested in the *First Interim Application for Compensation of General Counsel (Firm) to the Debtor-in Possession* [doc. 245] and order the disgorgement of all funds received to pay the fees of the Law Offices of Robert M. Yaspan with respect to this case.

///

///

1 **I. BACKGROUND**

2 **A. Debtor's Assets and Liabilities**

3 On May 19, 2023 (the "Petition Date"), Monica L. Columbia ("Debtor") filed a voluntary
4 chapter 11 petition [doc. 1]. On June 28, 2023, Debtor filed a *Status Conference Report* [doc.
5 30], in which Debtor made the following representations:

6 The Debtor designs custom jewelry which she sells through wholesale consignment
7 agreements with high end jewelers who have stores in luxury hotels. The hotels that
8 sell the jewelry are international in location. Additionally, she sells jewelry and
other products through her home office in Woodland Hills, California.

9 The principal assets of the Debtor include the following: (a) a 50% interest in the
10 home located at 4309 Natoma, Woodland Hills, CA 91364, which the Debtor values
11 at \$2,200,000 or so. The other 50% is held in joint tenancy with Mr. Columbia[...;
12 and] (b) about \$1,087,000 in inventory held worldwide (at cost) of which
13 approximately \$326,190 (or about 30%) consist of the Debtor's own designs and
14 products ("OWNED INVENTORY") and approximately \$761,110 (or about 70%)
15 of which is held by the Debtor under a separate oral consignment agreement
16 ("CONSIGNMENT INVENTORY"). If all the CONSIGNMENT INVENTORY
17 were sold the Debtor estimates that [she] would net out about \$570,800 from that
18 product.

19 The principal liabilities of the Debtor include about \$920,000 or more in consensual
20 secured claims against the home, various judgment liens of about \$400,000 or more
21 against the home; various unsecured claims well in excess of \$560,000, and an
22 unsecured claim of about \$700,000 from the consignor of the CONSIGNMENT
23 INVENTORY. In addition, there is about \$175,000 in tax claims as listed on
24 Schedule E.

25 *Status Conference Report* and supporting *Declaration of Monica Columbia*, ¶¶ 3-5 [doc. 30].

26 In May 2024, following the death of Debtor's spouse, from whom Debtor was separated,
27 Debtor filed an amended schedule A/B, stating that she had a fee simple interest in her residence
28 located at 4309 Natoma Ave., Woodland Hills CA 91364 (the "Property"). *Amended Schedule*
A/B [doc. 156]. Debtor provided a value of \$2.2 million for her interest in the Property. *Id.*
Among other personal property, Debtor also disclosed: (1) a 100% interest in Indulge Fine
Jewelry (describing that business as closed in 2021); (2) \$15,000 in accounts receivable; (3)
inventory with a value of \$468,000; and (4) inventory on consignment from Jan Beyer with a
value of \$761,110.00, regarding which the Debtor has stated that she is "entitled to commission

percentage upon sale per oral agreement.” *Id.*

In July 2024, the Debtor filed a motion to sell the Property. After holding a hearing on the sale of the Property, the Court entered an order granting the motion [doc. 233], authorizing the Property to be sold free and clear of liens, claims and interests for \$2,270,000.

B. Employment Application

On June 6, 2023, Debtor filed an application to employ the Law Offices of Robert M. Yaspan (the “Firm”) as general counsel for Debtor (the “Employment Application”) [doc. 26]. In his declaration in support of the Employment Application, Mr. Yaspan stated:

As further set forth in this Declaration, the FIRM has diligently investigated any adverse interest, it or its attorneys may have with the Debtor, and interested parties, and concluded no adverse interests or conflict of interest presently exist. The FIRM utilizes a number of overlapping procedures to determine its relationships, if any, to parties that may have connections to a case. Specifically, the FIRM uses computer searches to review its databases in order to discover relationships as well inquires as to the memory of the attorneys and review its case-files. The FIRM also inquires concerning whether any relationships exist that may escape the scrutiny utilizing computer searches upon which the FIRM principally relies. The FIRM has not located any relationships which might have to be disclosed.

In this case, the FIRM also focused its inquiry on ascertaining whether it or any attorney thereof represents, has represented, or otherwise has a current or prior relationship with the Trustee, the Debtors [sic], the creditors and any other party listed on the Debtor's respective *Schedules* and *Statement of Financial Affairs*.

Based on the preceding review, it is my understanding and belief that the FIRM does not hold or represent an interest adverse to the estate, and does not have any connection, within the meaning of Bankruptcy Rule 2014, either with the Debtor or its creditors, or any other party in interest in this case, their respective attorneys or accountants....

The following supplemental disclosures are made with respect to disinterestedness of the FIRM, including all attorneys expected to render services in this case:

- (a) The FIRM is not and was not a creditor or an insider of the Debtor;
- (b) The FIRM is not and was not, within two years before the Petition Date, an employee of the Debtor;
- (c) The FIRM does not have an interest materially adverse to the interest of the estate or any class of creditors, by reasons of any direct or indirect relationship to, connection with, or interest in, the Debtor, or for any other reason. The FIRM does not represent the United States Trustee nor any employee of the Office of the United States Trustee;
- (d) Within the meaning of 11 U.S.C. Section 101(14) my FIRM, and I, are disinterested persons.

1 *Declaration of Robert M. Yaspan in Support of Employment Application*, ¶¶ 21-24 [doc. 26]. Mr.
2 Yaspan also disclosed that Debtor paid the Firm a \$27,000 retainer on May 10, 2023. *Id.* ¶ 20;
3 *see also Yaspan Decl.*, ¶ 3 and Exhibit 1 thereto (deposited check from Debtor to Firm dated
4 May 10, 2023) [doc. 315]. On July 24, 2023, the Court entered an order granting the
5 Employment Application [doc. 45].

6 **A. Debtor's Chapter 11 Plans and Proposed Disclosure Statements**

7 In November 2023, Debtor filed a *Plan of Reorganization* [doc. 96] and a *Disclosure*
8 *Statement to Plan of Reorganization* [doc. 97]. In December 2023, Debtor filed an *Amended*
9 *Disclosure Statement to Plan of Reorganization* [doc. 107]. In March 2024, Debtor filed an
10 *Amended Plan of Reorganization* [doc. 123] and a *Second Amended Disclosure Statement to*
11 *Amended Plan of Reorganization* (the “Second Amended Disclosure Statement”) [doc. 124].

12 The projections attached to the Second Amended Disclosure Statement anticipated
13 Debtor having inventory and consignment sales ranging from \$35,000 to \$40,000 per month
14 during the pendency of the plan. *Id.* at 35-38. However, Debtor’s monthly income reported in her
15 monthly operating reports (“MORs”) from and including September 2023 through February
16 2024, ranged from a low of \$3,948 to a high of \$43,648. *MORs* [docs. 94, 95, 106, 114, 122,
17 138]. On April 4, 2024, the U.S. Trustee filed an objection to the Second Amended Disclosure
18 Statement [doc. 129]. In this objection, the U.S. Trustee noted, in relevant part, that Debtor’s
19 sales projections did not appear realistic in light of her reported monthly income. *Id.* On April
20 22, 2024, the Court entered an order denying approval of the Second Amended Disclosure
21 Statement [doc. 150].

22 On May 8, 2024, Debtor filed a *Third Amended Plan of Reorganization* [doc. 157] and a
23 *Third Amended Disclosure Statement to Amended Plan of Reorganization* (the “Third Amended
24 Disclosure Statement”) [doc. 158]. After the hearing on the adequacy of the Third Amended
25 Disclosure Statement, the Court issued its ruling detailing that disclosure statement’s
26 deficiencies. *Court’s Ruling* [doc. 185]. Among other things, the Court noted that Debtor had not
27 provided “any cash flow projections, e.g., regarding the debtor’s postconfirmation sales of
28 inventory and consigned jewelry.” *Id.*

1 On July 8, 2024, Debtor filed a *Third Amended Disclosure Statement to Amended Plan of*
2 *Reorganization (Modified)* (the “Fourth Amended Disclosure Statement”) [doc. 204]. Attached
3 as Exhibit 8 to the Fourth Amended Disclosure Statement is an inventory of Debtor’s jewelry. *Id.*
4 Ex. 8. The Fourth Amended Disclosure Statement also was inadequate. Like the Third Amended
5 Disclosure Statement, the Fourth Amended Disclosure Statement did not provide the necessary
6 information or projections to satisfy the standards set forth in 11 U.S.C. § 1125. *Court’s Ruling*
7 [doc. 261]. On August 30, 2024, the Court entered an order denying approval of the Fourth
8 Amended Disclosure Statement [doc. 268].

9 ***B. Order to Show Cause and Appointment of Trustee***

10 On April 18, 2024, the Court entered an *Order to Show Cause Why Chapter 11 Trustee*
11 *Should Not Be Appointed or Case Should Not Be Converted to One Under Chapter 7* (the
12 “OSC”) [doc. 143]. On August 29, 2024, the Court held a hearing on the OSC and subsequently
13 issued its ruling for the appointment of a chapter 11 trustee [docs. 261 and 266].

14 On September 5, 2024, the United States Trustee filed a notice of appointment of Todd
15 A. Frealy to serve as the chapter 11 trustee (the “Trustee”) [doc. 274]. On September 9, 2024, the
16 Court entered an *Order Approving Appointment of a Chapter 11 Trustee* [doc. 277].

17 ***C. Fee Application***

18 On August 22, 2024, the Firm filed its *First Interim Application for Compensation of*
19 *General Counsel (Firm) to the Debtor-in Possession* (the “Fee Application”) [doc. 245]. In the
20 Fee Application, the Firm sought approval and payment of \$203,084.89 in fees and
21 reimbursement of \$7,495.27 in expenses. On August 29, 2024, the United States Trustee filed an
22 objection to the Fee Application (the “UST Objection”) [doc. 258].

23 On September 12, 2024, the Court held a hearing on the Fee Application. By that time,
24 contrary to Local Bankruptcy Rule 2016-1(a)(1)(J), the Firm had not: (1) filed a declaration from
25 Debtor indicating that Debtor has reviewed the Fee Application and had no objection to it, or (2)
26 filed a declaration describing the steps taken to obtain Debtor’s declaration and Debtor’s
27 response to those efforts. To provide additional time for the Firm to comply with Local
28

1 Bankruptcy Rule 2016-1(a)(1)(J), the Court continued the hearing. On September 19, 2024,
2 Debtor filed a declaration in support of the Fee Application [doc. 283].

3 On September 26, 2024, the Court held a continued hearing on the Fee Application. At
4 that hearing, Debtor appeared and stated that she wanted to withdraw her declaration in support
5 of the Fee Application. Debtor represented that she: (1) disputed the amount of fees and expenses
6 sought in the Fee Application, and (2) felt misled in her conversation with Mr. Yaspan about the
7 consequences of signing the declaration in support of the Fee Application. In response, Joseph
8 McCarty, appearing on behalf of the Firm, stated that the Firm no longer represented Debtor.¹

9 In order for Debtor to evaluate whether to withdraw her declaration filed in support of the
10 Fee Application, and potentially to obtain replacement counsel, the Court again continued the
11 hearing on the Fee Application, i.e., to October 31, 2024. On October 7, 2024, Debtor filed a
12 *Substitution of Attorney*, substituting the Firm with Jeremy W. Faith of Margulies Faith, LLP as
13 Debtor's counsel [doc. 287].

14 On October 17, 2024, the Trustee filed an opposition to the Fee Application (the "Trustee
15 Opposition") [doc. 297]. The Trustee Opposition disclosed to the Court—for the first time—that
16 Mr. Yaspan was in possession of some of Debtor's jewelry, which jewelry was inventory for her
17 business. *See id.* Mr. Yaspan had not paid Debtor for that jewelry. *See id.*

18 On October 21, 2024, the Firm filed a notice of withdrawal of the Fee Application
19 without prejudice (the "Withdrawal") [doc. 298]. The Withdrawal stated that the Firm "intends
20 on filing a new [fee] application at a later date that addresses issues raised in the [UST Objection
21 and the Trustee Opposition] it has received and [which] the F[irm] disputes."²

22 On October 31, 2024, the Court held a continued hearing on the Fee Application. On
23 November 4, 2024, the Court entered a scheduling order regarding the Fee Application (the
24 "Scheduling Order") [doc. 311]. The Scheduling Order required that the Firm "file a declaration
25

26
27 ¹ Prior to this continued hearing on the Fee Application, neither the Court nor Debtor was made aware that the Firm
no longer represented Debtor. As mandated by Local Bankruptcy Rule 2091-1(a)(1), the Firm had not filed the
requisite motion for withdrawal without substitution.

28 ² Because the UST Objection and Trustee Opposition were filed prior to the Withdrawal, the Withdrawal was
ineffective to dismiss the Fee Application. *See* Fed. R. Bankr. P. 7041(a) and 9041(c); Local Bankruptcy Rule 9013-
1(k).

1 addressing the alleged jewelry transaction(s) with the Debtor raised in the Trustee Opposition
2 and nondisclosure of such.” *Id.* On November 13, 2024, Mr. Yaspan filed his declaration
3 (“Yaspan Declaration” or “Yaspan Decl.”) [doc. 315].

4 On November 22, 2024, Debtor filed a declaration in response to the Fee Application
5 (“Debtor Decl.”) [doc. 317]. On November 25, 2024, the U.S. Trustee filed a response to the
6 Yaspan Declaration (the “UST Response”) [doc. 318]. In the UST Response, the U.S. Trustee
7 submits that, taking into account Mr. Yaspan’s transactions with Debtor regarding the jewelry,
8 and his lack of disclosure of those transactions, the following remedies are warranted: full denial
9 of the Fee Application and refund of any fees received by the Firm. *UST Response* [doc. 318].
10 On November 27, 2024, the Trustee filed a response to the Yaspan Declaration [doc. 320]. On
11 December 2, 2024, the Trustee filed an amended response to the Yaspan Declaration [doc. 322].

12 ***D. Mr. Yaspan’s Possession of Debtor’s Jewelry***

13 Mr. Yaspan alleges that in late March 2023, Debtor’s certified public accountant, Irina
14 Kurland, contacted Mr. Yaspan’s paralegal, Tanya Menachian, to refer Debtor to the Firm.
15 *Yaspan Decl.*, ¶ 2 [doc. 315]. Less than two months later, in mid-May 2023, Debtor filed her
16 chapter 11 petition [doc. 1].

17 ***1. June 2023 Meeting***

18 In June 2023, Mr. Yaspan and Irina Kurland met with Debtor and Debtor’s boyfriend at
19 Debtor’s house (the “June 2023 Meeting”). *Yaspan Decl.*, ¶ 6 [doc. 315]; *Debtor Decl.*, ¶¶ 2-3
20 [doc. 317]. Mr. Yaspan represents that the purpose of the June 2023 Meeting was to go over
21 Debtor’s business records so that he “could start drafting projections for a plan of
22 reorganization.” *Yaspan Decl.*, ¶ 6 [doc. 315]. Debtor alleges that “Mr. Yaspan explained that the
23 purpose of the [June 2023 M]eeting was to determine if [Debtor] would like to hire [Ms.
24 Kurland] to prepare” Debtor’s monthly operating reports. *Debtor Decl.*, ¶ 2 [doc. 317].

25 Mr. Yaspan admits that, during the June 2023 meeting, he “inspected some of [Debtor’s]
26 jewelry inventory,” allegedly “with the goal of determining what kind of markup [Debtor]
27 normally used for her sales.” *Yaspan Decl.*, ¶¶ 6, 8 [doc. 315]. According to Mr. Yaspan, Debtor
28 told him that “the markup depended on the price of the jewelry and whether it was a recent or

1 older acquisition. The jewelry [Debtor] designed herself had an added price—it was not based
2 [solely] on the value of the metal and gems[; ... Debtor] priced the jewelry high enough that she
3 could always provide a discount which was the main way it was sold.” *Id.*, ¶ 8.

4 Debtor represents that, while inspecting Debtor’s jewelry, Mr. Yaspan “asked [Ms.
5 Kurland] to show him what jewelry pieces she liked.” *Debtor Decl.*, ¶ 4 [doc. 317]. According to
6 Debtor, Ms. Kurland stated that her favorite stones were blue sapphires and tried on a sapphire
7 and diamond necklace. *Id.* “Mr. Yaspan then added a moon-shaped sapphire pendant to the
8 necklace and indicated that he would purchase both pieces for [Ms. Kurland].” *Id.*

9 Mr. Yaspan acknowledges that, during the June 2023 Meeting, he told Debtor he “might
10 be interested in purchasing some of her jewelry for a few gifts for some friends.” *Yaspan Decl.*, ¶
11 10 [doc. 315]. According to Mr. Yaspan, “Debtor then offered to provide certain jewelry pieces
12 to [Mr. Yaspan] ‘on approval’ to review to see if any [of Mr. Yaspan’s] friends might be
13 interested.” *Id.* Mr. Yaspan further admits that “of the items of jewelry that were provided to
14 him” at the June 2023 Meeting, he “had been interested in a few.” *Id.*, ¶ 15.

15 According to Debtor, Mr. Yaspan “inquired about the price, agreed to the amount [that
16 Debtor] stated, and said [that he and Debtor] could settle payment at a later date. [Mr. Yaspan
17 and Ms. Kurland] left with the jewelry, and it was understood to be a gift, not a consignment or
18 memo arrangement.” *Debtor Decl.*, ¶ 5 [doc. 317]. Mr. Yaspan states that he “did not ever agree
19 to purchase the jewelry” because he “had concern regarding the jewelry [Debtor] designed due to
20 the design value she gave it over the value of the metal and gems.” *Id.* Mr. Yaspan also
21 represents that, when he received a jewelry invoice from Debtor in September 2024 (as discussed
22 below), “the prices were higher than expected.” *Id.*, ¶ 16.

23 ***1. Subsequent Meetings***

24 According to Debtor, Mr. Yaspan requested to meet, and did meet, with Debtor on three
25 additional occasions to purchase more jewelry from Debtor as: (1) a birthday gift to Mr.
26 Yaspan’s daughter, (2) gifts to Ms. Kurland and other friends of Mr. Yaspan, and (3) holiday
27 gifts. *Debtor Decl.*, ¶¶ 6, 8, 11.b [doc. 317]. During the meetings, Debtor represents that Mr.
28 Yaspan and Debtor “discussed specific recipients, pricing, and suitability of the items he was

1 purchasing.” *Id.*, ¶ 7. Debtor further alleges that, at Mr. Yaspan’s request, she offered the jewelry
2 to him at discounted prices. *Id.*, ¶ 9.

3 In September and December 2023, Mr. Yaspan and Debtor met two more times at
4 Debtor’s house. *Yaspan Decl.*, ¶ 11 [doc. 315]; *Debtor Decl.*, ¶¶ 6, 8 [doc. 317]. Mr. Yaspan
5 acknowledges that he received more jewelry from Debtor during these meetings. *Yaspan Decl.*, ¶
6 11 [doc. 315]. Mr. Yaspan further states that because he “assumed the [jewelry pieces] were
7 from [Debtor’s] older inventory,” Debtor “did not seem to need [the jewelry for her business
8 operations] and had not requested that [Mr. Yaspan] return them.” *Id.*

9 **2. Discussions Between Debtor and Mr. Yaspan**

10 In August 2024, Mr. Yaspan and Debtor had a phone conversation regarding Debtor’s
11 declaration to be filed in support of the Fee Application. *Debtor Decl.*, ¶ 12 [doc. 317]. Debtor
12 “expressed concerns about [Mr. Yaspan’s] fees and the jewelry payment.” In response, Mr.
13 Yaspan informed Debtor “that signing [the] declaration ... would not obligate [Debtor] to pay
14 the full amount [requested in the Fee Application], and that [Debtor and Mr. Yaspan] would
15 negotiate a settlement after factoring in the jewelry prices.” *Id.*³

16 In a later conversation, with the Trustee present, Mr. Yaspan offered to return the
17 jewelry; Debtor refused and demanded payment instead. *Debtor Decl.*, ¶ 13 [doc. 317]; *Yaspan*
18 *Decl.*, ¶ 16 [doc. 315].

19 **3. The Invoice**

20 On September 25, 2024, the day before a hearing on the Fee Application, Debtor
21 provided Mr. Yaspan with an invoice for the jewelry that he had taken from her (the “Invoice”).
22 *Yaspan Decl.*, ¶ 15 and Exhibit 2 thereto [doc. 315]; *Debtor Decl.*, ¶ 9 [doc. 317]; *Frealy Decl.*, ¶
23 2 and Exhibit 1 thereto [doc. 297]. Debtor represents that the Invoice reflects the full retail prices
24 of the jewelry; according to Debtor, Debtor became aware that it was improper to sell the jewelry
25 to Mr. Yaspan at discounted prices, given Mr. Yaspan’s employment as her bankruptcy counsel.
26 *Debtor Decl.*, ¶¶ 9, 11.d [doc. 317].

27
28

³ Mr. Yaspan denies having agreed to setoff the price of Debtor’s jewelry, which he acquired and/or gave as gifts,
against the estate’s obligation to pay any approved fees to the Firm. *Yaspan Decl.*, ¶ 16 [doc. 315].

1 **4. The Trustee's Investigation and Turnover by Mr. Yaspan**

2 Debtor informed the Trustee that she sold jewelry to Mr. Yaspan on credit before and
3 after the filing of her chapter 11 petition. *Frealy Decl.*, ¶ 2 [doc. 297]. Debtor advised the Trustee
4 that Mr. Yaspan had not paid for the jewelry. *Id.* Debtor also provided the Trustee a copy of an
5 invoice which identifies jewelry that Mr. Yaspan obtained from Debtor. *Id.* ¶ 2 and Exhibit 1
6 thereto (Invoice dated March 2023); *Yaspan Decl.*, Exhibit 2 (same) [doc. 315].

7 The Trustee then raised Debtor's allegations with Mr. Yaspan. *Frealy Decl.*, ¶ 3 [doc.
8 297]. Mr. Yaspan acknowledged that he was in possession of jewelry from Debtor's business.
9 *Id.*; *Yaspan Decl.*, ¶ 17 [doc. 315]. Before that time, Mr. Yaspan had not informed the Trustee
10 that he was in possession of the jewelry. *Frealy Decl.*, ¶ 3 [doc. 297]. After being approached by
11 the Trustee, Mr. Yaspan told the Trustee that he would turn over the jewelry which he received
12 from Debtor. *Id.*

13 On November 8, 2024, the Trustee met with Mr. McCarty and Ms. Menachian at the
14 Firm to receive the jewelry that was in Mr. Yaspan's possession. *Frealy Decl.*, ¶ 2 [doc. 320];
15 *Yaspan Decl.*, ¶ 17 [doc. 315]. The Trustee placed check marks in the right margin of the Invoice
16 to indicate the items of jewelry which were turned over to the Trustee at the meeting. *Frealy*
17 *Decl.*, ¶ 2 [doc. 320]; *see Yaspan Decl.*, Exhibit 2 [doc. 315].

18 On the first page of the Invoice, Debtor listed a "32 [inch] yellow gold chain franco gold
19 (gift for friend) oval yellow gold and white diamond" with a price of \$4,700 and a "grey sapphire
20 pendant" with a price of \$3,900. *Frealy Decl.*, Exhibit 1 [doc. 297]; *Yaspan Decl.*, Exhibit 2
21 [doc. 315]. Neither of these items were turned over to the Trustee; to indicate this, the Trustee
22 wrote "not rec'd" in the right margin of the Invoice. *Frealy Decl.*, ¶ 2 [doc. 320]; *see Yaspan*
23 *Decl.*, Exhibit 2 [doc. 315].

24 On the second page of the Invoice, Debtor listed as item no. 5 an "alternating Blue
25 Sapphire and white diamond Bracelet bangle YG gf" with a price of \$4,700. *Frealy Decl.*,
26 Exhibit 1 [doc. 297]; *Yaspan Decl.*, Exhibit 2 [doc. 315]. Further down the second page of the
27 Invoice, Debtor wrote "#5 Returned (B sapp + diam Bangle) Stone fell out and exchanged for all
28 YG circle Bangle w/ diamond toggle accent." Debtor indicated a \$4,700 credit for the returned

1 item but indicated that the value of the “YG circle Bangle w/ diamond toggle accent” was
2 \$8,300, leaving a balance of \$3,600 due to Debtor. *Id.* The “YG circle Bangle w/ diamond toggle
3 accent” was not turned over to the Trustee. *Frealy Decl.*, ¶ 2 [doc. 320].

4 Exhibit 3 to the Yaspan Declaration consists of “[p]ictures of the jewelry items that [Mr.
5 Yaspan] returned” to the Trustee on November 8th, with Mr. Frealy’s initials on each photograph
6 indicating his receipt of such pieces. *Yaspan Decl.*, ¶ 17 and Exhibit 3 thereto [doc. 315]; *Id.* ¶ 3.

7 **II. LEGAL STANDARDS**

8 **A. Limitations on Representation by an Attorney Holding Adverse Interests**

9 **1. 11 U.S.C. § 327(a)**

10 The professional obligations for an attorney representing a debtor in possession are
11 provided in 11 U.S.C. § 327(a). Pursuant to § 327(a), a debtor in possession, “with the court’s
12 approval, may employ one or more attorneys ... or other professional persons, that do not hold or
13 represent an interest adverse to the estate, and that are disinterested persons....”

14 “Section 327(a) requires the application of a two-pronged test for the employment of
15 professional persons. A debtor in possession or trustee may employ attorneys with court approval
16 only if (1) they do not hold or represent an interest adverse to the estate, and (2) they are
17 disinterested persons.” *In re Tevis*, 347 B.R. 679, 687 (B.A.P. 9th Cir. 2006).

18 ““These statutory requirements—disinterestedness and no interests adverse to the
19 estate—serve the important policy of ensuring that all professionals appointed pursuant to
20 section 327(a) tender undivided loyalty and provide untainted advice and assistance in
21 furtherance of their fiduciary responsibilities.”” *In re Tevis*, 347 B.R. at 687 (quoting *Rome v.*
22 *Braunstein*, 19 F.3d 54, 58 (1st Cir. 1994)). “Conflicting loyalties produce inadequate
23 representation, which threatens the interests of both the debtor and the creditors, and
24 compromises the ability of the court to mete out justice in the case.” *In re Lee*, 94 B.R. 172, 178
25 (Bankr. C.D. Cal. 1988) (internal citations omitted).

26 The two-pronged test set forth in § 327(a) is ongoing; it “does not evaporate once the
27 attorney's employment is approved.” *In re Sundance Self Storage-El Dorado LP*, 482 B.R. 613,
28 625 (Bankr. E.D. Cal. 2012) (citing *Rome*, 19 F.3d at 57-58). Section 328(c) provides, in relevant

1 part, that “the court may deny allowance of compensation ... under section 327 ... if, **at any**
2 **time during such professional person's employment** ..., such professional person is not a
3 disinterested person, or represents or holds an interest adverse to the interest of the estate” 11
4 U.S.C. § 328(c) (emphasis added).

5 ***Interest Adverse to the Estate***

6 While not defined in the Code, courts generally find that holding an “interest adverse to
7 the estate” means: (a) to possess or assert any economic interest that would tend to lessen the
8 value of the bankruptcy estate or create either an actual or potential dispute in which the estate is
9 a rival claimant; or (b) to possess a predisposition under circumstances that render such a bias
10 against the estate. *See In re AFI Holding, Inc.*, 530 F.3d 832, 845 (9th Cir. 2008).

11 ***Disinterested Person***

12 11 U.S.C. § 101(14)(C) provides, in relevant part:

13 The term “disinterested person” means a person that—

14 (A) is not a creditor, an equity security holder, or an insider; [and]

15 (C) does not have an interest materially adverse to the interest of the estate or of
16 any class of creditors or equity security holders, by reason of any direct or
17 indirect relationship to, connection with, or interest in, the debtor, or for any
other reason.

18 “For the purposes of disinterestedness, a lawyer has an interest materially adverse to the
19 interest of the estate if the lawyer either holds or represents such an interest.” *Tevis*, 347 B.R. at
20 688 (emphasis added).

21 **2. *Fed. Rule Bankr. Proc. 2014(a)***

22 Fed. R. Bankr. Proc. (“Rule”) 2014 provides, in relevant part, that an employment
23 application filed under § 327 must be accompanied by a verified statement of the applicant
24 setting forth that person’s connections with the debtor. Rule 2014(a)(2)(F), (a)(3). Rule 2014 also
25 imposes “an ongoing duty to update information as circumstances change.” *In re Bay Voltex*
26 *Corp.*, 2008 WL 8444794, at *8 (B.A.P. 9th Cir. Oct. 9, 2008), *aff’d*, 371 F. App’x 820 (9th Cir.
27 2010) (citing *In re West Delta Oil Co., Inc.*, 432 F.3d 347, 355 (5th Cir. 2005)).
28

1 The disclosure requirements of Rule 2014(a) are strictly applied, with the burden on the
2 applicant “to make full, candid, and complete disclosure of all connections with the debtor.” *In*
3 *re Mehdipour*, 202 B.R. 474, 478 (B.A.P. 9th Cir. 1996) (citing *In re Park-Helena Corp.*, 63
4 F.3d 877, 881-82 (9th Cir. 1995) (collecting cases) and *In re Plaza Hotel Corp.*, 111 B.R. 882
5 (Bankr. E.D. Cal.), *aff’d*, 123 B.R. 466 (B.A.P. 9th Cir. 1990), *aff’d sub nom. Horner v. Webster*,
6 123 B.R. 466 (B.A.P. 9th Cir. 1990)); *see also In re NIR W. Coast, Inc.*, 638 B.R. 441, 449
7 (Bankr. E.D. Cal. 2022). “Professionals must disclose all connections with the debtor, creditors
8 and parties in interest, no matter how irrelevant or trivial these connections may seem. The
9 disclosure rules are not discretionary.” *Mehdipour*, 202 B.R. at 480 (citing *In re EWC, Inc.*, 138
10 B.R. 276 (Bankr. W.D. Okla. 1992)).

11 “Negligent or inadvertent omissions ‘do not vitiate the failure to disclose.’” *Park-Helena*
12 *Corp.*, 63 F.3d at 881 (quoting *In re Maui 14K, Ltd.*, 133 B.R. 657, 660 (Bankr. D. Haw. 1991)).
13 “[A] disclosure violation may result in sanctions ‘regardless of actual harm to the estate.’” *Id.*

14 **3. Local Bankruptcy Rule 2090-2(a)**

15 Local Bankruptcy Rule 2090-2(a) provides that “[a]n attorney who appears for any
16 purpose in this court is subject to the standards of professional conduct set forth in Local Civil
17 Rule 83-3.” In turn, Local Civil Rule 83-3.1.2 provides:

18 In order to maintain the effective administration of justice and the integrity of the
19 Court, each attorney shall be familiar with and comply with the standards of
20 professional conduct required of members of the State Bar of California and
21 contained in the State Bar Act, the Rules of Professional Conduct of the State Bar
22 of California, and the decisions of any court applicable thereto. These statutes, rules
23 and decisions are hereby adopted as the standards of professional conduct, and any
24 breach or violation thereof may be the basis for the imposition of discipline. The
25 Model Rules of Professional Conduct of the American Bar Association may be
26 considered as guidance.

27 C.D. Cal. R. 83-3.1.2.

28 Accordingly, the Court must look to California state law to determine the applicable
professional responsibility rules. *See, e.g., In re Muscle Improvement, Inc.*, 437 B.R. 389, 393
(Bankr. C.D. Cal. 2010); *In re Wheatfield Bus. Park, LLC*, 286 B.R. 412, 419 (Bankr. C.D. Cal.
2002). Nevertheless, “§ 327(a) may impose more stringent requirements on professionals who

1 represent ... debtors-in-possession” than state rules of professional conduct. *In re Bell*, 212 B.R.
2 654, 658 (Bankr. E.D. Cal. 1997).

3 **4. Ethical Limitations on Representation**

4 Cal. R. Pro. Conduct 1.7(b) provides, in relevant part:

5 A lawyer shall not, without informed written consent*⁴ from each affected client
6 and compliance with paragraph (d), represent a client if there is a significant risk
7 the lawyer's representation of the client will be materially limited by ... the lawyer's
own interests.

8 The official comment to Rule 1.7 states, in relevant part:

9 Even where there is no direct adversity, a conflict of interest requiring informed
10 written consent* under paragraph (b) exists if there is a significant risk that a
11 lawyer's ability to consider, recommend or carry out an appropriate course of action
12 for the client will be materially limited as a result of the lawyer's other
13 responsibilities, interests, or relationships, whether legal, business, financial,
professional, or personal. ... The critical questions are the likelihood that a
difference in interests exists or will eventuate and, if it does, whether it will
materially interfere with the lawyer's independent professional judgment

14 Cal. R. Pro. Conduct 1.7, cmt. 4. Even if the lawyer gives the client informed written
15 consent in compliance with Rule 1.7(b), representation is permitted only if it is not prohibited by
16 law. Cal. R. Pro. Conduct 1.7(d)(2).⁵

17 18 U.S.C. § 154(1) (Adverse interest and conduct of officers) forbids the act of
18 “knowingly purchas[ing], directly or indirectly, any property of the estate” in a bankruptcy case
19

20 ⁴ An asterisk (*) identifies a word or phrase defined in the terminology rule. *See* Cal. R. Prof. Conduct 1.0.1.

21 ⁵ In addition, Cal. R. Pro. Conduct 1.8.1, regarding business transactions with a client and pecuniary interests
22 adverse to a client, provides:

23 A lawyer shall not enter into a business transaction with a client, or knowingly* acquire an
ownership, possessory, security or other pecuniary interest adverse to a client, unless each of the
following requirements has been satisfied:

24 (a) the transaction or acquisition and its terms are fair and reasonable* to the client and the terms
25 and the lawyer's role in the transaction or acquisition are fully disclosed and transmitted in
writing* to the client in a manner that should reasonably* have been understood by the client;

26 (b) the client either is represented in the transaction or acquisition by an independent lawyer of the
27 client's choice or the client is advised in writing* to seek the advice of an independent lawyer of
the client's choice and is given a reasonable* opportunity to seek that advice; and

28 (c) the client thereafter provides informed written consent* to the terms of the transaction or
acquisition, and to the lawyer's role in it.

1 in which the actor is an officer of the court. “An attorney does not simply act as an advocate for
2 his client; he is also an officer of the court.” *United States v. Assoc’d Convalescent Enters., Inc.*,
3 766 F.2d 1342, 1346 (9th Cir. 1985).

4 ***B. Consequences When Professionals Hold Interests Adverse to the Estate or Fail***
5 ***to Provide Sufficient Disclosure Under Rule 2014***

6 11 U.S.C. § 328(c) provides, in relevant part:

7 [T]he court may deny allowance of compensation for services and reimbursement
8 of expenses of a professional ... if, at any time during such professional person's
9 employment ... such professional person is not a disinterested person, or represents
10 or holds an interest adverse to the interest of the estate with respect to the matter on
11 which such professional person is employed.

12 “Any professional who the court determines to hold or represent an interest adverse to the
13 estate or who is not disinterested is not an officer of the estate during the time of conflict and
14 must be denied compensation for services performed during the conflict....” *Mehdipour*, 202
15 B.R. at 478 (ordering full disgorgement of fees by counsel for chapter 11 debtor; counsel failed
16 to disclose conflicts of interest that existed while counsel represented debtor as debtor in
17 possession); *see also In re Sanchez*, 241 F.3d 1148, 1151 (9th Cir. 2001) (“An actual conflict of
18 interest can justify a complete denial of compensation.”); *In re Westwood Shake & Shingle, Inc.*,
19 971 F.2d 387, 390 (9th Cir. 1992); *Hixon v. Poppin & Shier*, 894 F.2d 409, 1990 WL 4866 at *2
20 (9th Cir. 1990) (“A conflict in interest by a debtor's attorney ‘would clearly warrant a total
21 forfeiture of all fees.’”) (quoting *In re Siesta Sands Development Corp.*, 84 B.R. 789, 792
(Bankr. M.D. Fla. 1988)); *In re NIR W. Coast, Inc.*, 638 B.R. 441, 449 (Bankr. E.D. Cal. 2022).

22 In addition, if a professional fails to provide the required disclosure under Rule 2014, a
23 court may deny fees to that professional and order the professional’s disgorgement of all fees
24 regarding the case which the professional has received. *See, e.g., Park-Helena*, 63 F.3d at 882;
25 *NIR West Coast*, 638 B.R. at 443-44; and *Sundance Self Storage*, 482 B.R. at 635.

26 ///

27 ///

1 **III. ANALYSIS**

2 **A. 11 U.S.C. § 327(a)**

3 Over more than a year, and on multiple occasions, Mr. Yaspan took possession of jewelry
4 in Debtor's inventory, with the intent to acquire that jewelry. Mr. Yaspan's goal was to purchase
5 the inventory for a low price, although it was in the interests of the estate and its creditors for
6 Debtor to maximize the proceeds generated from her sale of the jewelry. Accordingly, during the
7 Firm's representation of Debtor as a debtor in possession, Mr. Yaspan had a financial interest
8 which conflicted with the Firm's employment under § 327(a) and the Firm's ethical obligations.
9 *See* Cal. R. Pro. Conduct 1.7 and cmt. 4 thereto.

10 Debtor contends that she sold the jewelry to Mr. Yaspan, who then gave some of the
11 jewelry to others as gifts; Mr. Yaspan contends that he had not yet decided whether he would
12 purchase the jewelry which he had taken from Debtor. *Debtor Decl.*, ¶ 5 [doc. 317]; *Yaspan*
13 *Decl.*, ¶ 10 [doc. 315]. As a result of the quoted prices, Mr. Yaspan represents that he could not
14 decide whether or not to purchase the jewelry. *See Yaspan Decl.*, ¶ 10 [doc. 315]. Therefore, a
15 conflict was present between Mr. Yaspan and the estate over his payment for the jewelry. *See*
16 Cal. R. Pro. Conduct 1.7 and cmt. 4 thereto.

17 Mr. Yaspan admits that this jewelry was property of the estate. *Yaspan Decl.*, ¶ 17 [doc.
18 315]. While Mr. Yapan and the Firm represented Debtor as a debtor in possession, it would be
19 highly improper and unlawful for Mr. Yaspan to purchase any property of the estate from
20 Debtor. *See* 18 U.S.C. § 154(1).

21 In light of the foregoing, the Court concludes that, throughout nearly all of his
22 representation of Debtor, Mr. Yaspan held an interest adverse to the estate and was not a
23 disinterested person. As a result, pursuant to § 328(c), the Court may deny the Fee Application in
24 full and order the Firm to disgorge all of the funds it has received in connection with this case.
25 *Sundance Self Storage*, 482 B.R. at 629-30, 635.

26 **B. Rule 2014(a)**

27 Even if Mr. Yaspan's jewelry transactions with Debtor had not created an actual conflict
28 of interest, Mr. Yaspan violated Rule 2014 by failing to disclose his acquisition of the jewelry

1 from Debtor, any gifts he made of the jewelry and his transactions with Debtor to obtain the
2 jewelry. *See Park-Helena*, 63 F.3d at 881-82. This disclosure violation was of an ongoing
3 nature; over a lengthy period of time, while the jewelry was in his possession, Mr. Yaspan and
4 the Firm failed to disclose such possession, and Mr. Yaspan's intentions to purchase the jewelry,
5 in: (1) a supplement to the Employment Application; (2) the Fee Application; or (3) any
6 supplement to the Fee Application. *See Employment Application* [doc. 26]; *Fee Application* [doc.
7 245].

8 Prior to the Trustee questioning Mr. Yaspan about the jewelry, which Mr. Yaspan already
9 had obtained from Debtor (some of which he apparently provided to others as gifts), Mr. Yaspan
10 did not acknowledge his possession of the jewelry and his transactions with Debtor regarding the
11 jewelry. *See Yaspan Decl.* [doc. 315]. In fact, the Trustee Opposition is the first filing in which
12 the Court was informed that Mr. Yaspan had taken possession of the jewelry, as well as his
13 intentions to acquire the jewelry, for prices on which he may or may not have reached an
14 agreement with Debtor.⁶

15 Accordingly, on this alternative basis, the Court has discretion to deny the allowance of
16 all compensation requested in the Fee Application and order the disgorgement of fees previously
17 paid with respect to this case. *See, e.g., NIR West Coast*, 638 B.R. at 451.


18
19
20
21
22
23
24
25
26
27
28
⁶ When applying § 328(c) and Rule 2014 to the conduct of Mr. Yaspan and the Firm, the Court need not determine whether Mr. Yaspan has failed to return any of the jewelry which he obtained from Debtor or given, as "gifts," any of Debtor's jewelry to other individuals who have not returned it. *See Park-Helena*, 63 F.3d at 881 ("a disclosure violation may result in sanctions regardless of actual harm to the estate") (internal quotation omitted). *Debtor Decl.*, ¶¶ 4-8, 11 [doc. 317]; *Frealy Decl.*, ¶¶ 2-3 [docs. 320 and 322]; *Yaspan Decl.*, ¶ 17 and Exhibits 2 and 3 thereto [doc. 315].

1 **IV. CONCLUSION**

2 For the foregoing reasons, the Court will deny the allowance of all compensation
3 requested in the Fee Application in the amount of \$203,084.89. The Court will order Mr. Yaspan
4 and the Firm to return to the Trustee all funds received to pay the Firm's fees in this case no later
5 than **January 3, 2025**.

6 The U.S. Trustee must submit the order within seven (7) days.
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

23
24 Date: December 11, 2024
25
26
27
28


Victoria S. Kaufman
United States Bankruptcy Judge