

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

10:30 AM

1: -

Chapter

#0.00 All hearings on this calendar will be conducted in Courtroom 301 at 21041 Burbank Boulevard, Woodland Hills, California, 91367. All parties in interest, members of the public and the press may attend the hearings on this calendar in person.

Additionally, (except with respect to evidentiary hearings, or as otherwise ordered by the Court) parties in interest (and their counsel) may connect by ZoomGov audio and video free of charge, using the connection information provided below. Members of the public and the press may only connect to the zoom audio feed, and only by telephone. Access to the video feed by these individuals is prohibited.

Parties in interest may participate 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). Members of the public, the press and parties in interest may participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate remotely and there are no fees for doing so. No pre-registration or prior approval is required.

The audio portion of each hearing will be recorded electronically by the Court and that recording will constitute its official record. Recording, retransmitting, photographing or imaging Court proceedings by any means is strictly prohibited.

Join CACB ZoomGov Meeting

Video/audio web address: <https://cacb.zoomgov.com/j/1601155644>

Meeting ID: 160 115 5644

Password: 134499

Join by Telephone

Telephone conference lines: 1-669-254-5252 OR 1-646-828-7666

Meeting ID: 160 115 5644

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

10:30 AM

CONT...

Chapter

Password: 134499

For more information on appearing before Judge Kaufman by ZoomGov, please see the information entitled "Tips for a Successful ZoomGov Court Experience" on the Court's website at: <https://www.cacb.uscourts.gov/judges/honorable-victoria-s-kaufman> under the tab "Telephonic Instructions."

Docket 0

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

10:30 AM

1:23-10696 Monica L Columbia

Chapter 11

#1.00 First Interim Application For Compensation of General Counsel
(Law Offices Of Robert M. Yaspan) To The Debtor-In-Possession

fr. 9/12/24; 9/26/24; 10/10/24(stip); 10/31/24

Docket 245

Tentative Ruling:

I. BACKGROUND

A. Debtor's Assets and Liabilities

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

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

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

10:30 AM

CONT...

Monica L Columbia

Chapter 11

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

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

In May 2024, following the death of Debtor's spouse, from whom Debtor was separated, Debtor filed an amended schedule A/B, stating that she had a fee simple interest in her residence 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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

10:30 AM

CONT...

Monica L Columbia

Chapter 11

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

10:30 AM

CONT...

Monica L Columbia

Chapter 11

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.

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

C. Debtor's Chapter 11 Plans and Proposed Disclosure Statements

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

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

On May 8, 2024, Debtor filed a *Third Amended Plan of Reorganization* [doc. 157] and a *Third Amended Disclosure Statement to Amended Plan of Reorganization* (the "Third Amended Disclosure Statement") [doc. 158]. After the hearing on the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

10:30 AM

CONT... Monica L Columbia

Chapter 11

adequacy of the Third Amended Disclosure Statement, the Court issued its ruling detailing that disclosure statement's deficiencies. *Court's Ruling* [doc. 185]. Among other things, the Court noted that Debtor had not provided "any cash flow projections, e.g., regarding the debtor's postconfirmation sales of inventory and consigned jewelry." *Id.*

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

D. Order to Show Cause and Appointment of Trustee

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

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

E. Fee Application

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

10:30 AM

CONT... Monica L Columbia
258].

Chapter 11

On September 12, 2024, the Court held a hearing on the Fee Application. By that time, contrary to Local Bankruptcy Rule 2016-1(a)(1)(J), the Firm had not: (1) filed a declaration from Debtor indicating that Debtor has reviewed the Fee Application and had no objection to it, or (2) filed a declaration describing the steps taken to obtain Debtor's declaration and Debtor's response to those efforts. To provide additional time for the Firm to comply with Local Bankruptcy Rule 2016-1(a)(1)(J), the Court continued the hearing. On September 19, 2024, Debtor filed a declaration in support of the Fee Application [doc. 283].

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

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

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

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

10:30 AM

CONT... Monica L Columbia

Chapter 11

On October 31, 2024, the Court held a continued hearing on the Fee Application. On November 4, 2024, the Court entered a scheduling order regarding the Fee Application (the "Scheduling Order") [doc. 311]. The Scheduling Order required that the Firm "file a declaration addressing the alleged jewelry transaction(s) with the Debtor raised in the Trustee Opposition and nondisclosure of such." *Id.* On November 13, 2024, Mr. Yaspan filed his declaration ("Yaspan Declaration" or "Yaspan Decl.") [doc. 315].

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

F. Mr. Yaspan's Possession of Debtor's Jewelry

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

1. June 2023 Meeting

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

10:30 AM

CONT... **Monica L Columbia**

Chapter 11

Mr. Yaspan admits that, during the June 2023 meeting, he "inspected some of [Debtor's] jewelry inventory," allegedly "with the goal of determining what kind of markup [Debtor] normally used for her sales." *Yaspan Decl.*, ¶¶ 6, 8 [doc. 315]. According to Mr. Yaspan, Debtor told him that "the markup depended on the price of the jewelry and whether it was a recent or older acquisition. The jewelry [Debtor] designed herself had an added price—it was not based [solely] on the value of the metal and gems[; ... Debtor] priced the jewelry high enough that she could always provide a discount which was the main way it was sold." *Id.*, ¶ 8.

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

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

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

2. Subsequent Meetings

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

10:30 AM

CONT... Monica L Columbia

Chapter 11

According to Debtor, Mr. Yaspan requested to meet, and did meet, with Debtor on three additional occasions to purchase more jewelry from Debtor as: (1) a birthday gift to Mr. Yaspan's daughter, (2) gifts to Ms. Kurland and other friends of Mr. Yaspan, and (3) holiday gifts. *Debtor Decl.*, ¶¶ 6, 8, 11.b [doc. 317]. During the meetings, Debtor represents that Mr. Yaspan and Debtor "discussed specific recipients, pricing, and suitability of the items he was purchasing." *Id.*, ¶ 7. Debtor further alleges that, at Mr. Yaspan's request, she offered the jewelry to him at discounted prices. *Id.*, ¶ 9.

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

3. Discussions Between Debtor and Mr. Yaspan

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

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

4. The Invoice

On September 25, 2024, the day before a hearing on the Fee Application, Debtor provided Mr. Yaspan with an invoice for the jewelry that he had taken from her (the "Invoice"). *Yaspan Decl.*, ¶ 15 and Exhibit 2 thereto [doc. 315]; *Debtor Decl.*, ¶ 9

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

10:30 AM

CONT... **Monica L Columbia**

Chapter 11

[doc. 317]; *Frealy Decl.*, ¶ 2 and Exhibit 1 thereto [doc. 297]. Debtor represents that the Invoice reflects the full retail prices of the jewelry; according to Debtor, Debtor became aware that it was improper to sell the jewelry to Mr. Yaspan at discounted prices, given Mr. Yaspan's employment as her bankruptcy counsel. *Debtor Decl.*, ¶¶ 9, 11.d [doc. 317].

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

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

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

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

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

10:30 AM

CONT... **Monica L Columbia**

Chapter 11

On the second page of the Invoice, Debtor listed as item no. 5 an "alternating Blue Sapphire and white diamond Bracelet bangle YG gf" with a price of \$4,700. *Frealy Decl.*, Exhibit 1 [doc. 297]; *Yaspan Decl.*, Exhibit 2 [doc. 315]. Further down the second page of the Invoice, Debtor wrote "#5 Returned (B sapp + diam Bangle) Stone fell out and exchanged for all YG circle Bangle w/ diamond toggle accent." Debtor indicated a \$4,700 credit for the returned item but indicated that the value of the "YG circle Bangle w/ diamond toggle accent" was \$8,300, leaving a balance of \$3,600 due to Debtor. *Id.* The "YG circle Bangle w/ diamond toggle accent" was not turned over to the Trustee. *Frealy Decl.*, ¶ 2 [doc. 320].

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

II. LEGAL STANDARDS

A. Limitations on Representation by an Attorney Holding Adverse Interests

1. 11 U.S.C. § 327(a)

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

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

"These statutory requirements – disinterestedness and no interests adverse to the estate - serve the important policy of ensuring that all professionals appointed pursuant to section 327(a) tender undivided loyalty and provide untainted advice and

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

10:30 AM

CONT... **Monica L Columbia**

Chapter 11

assistance in furtherance of their fiduciary responsibilities.'" *In re Tevis*, 347 B.R. at 687 (quoting *Rome v. Braunstein*, 19 F.3d 54, 58 (1st Cir. 1994)). "Conflicting loyalties produce inadequate representation, which threatens the interests of both the debtor and the creditors, and compromises the ability of the court to mete out justice in the case." *In re Lee*, 94 B.R. 172, 178 (Bankr. C.D. Cal. 1988) (internal citations omitted).

The two-pronged test set forth in § 327(a) is ongoing; it "does not evaporate once the attorney's employment is approved." *In re Sundance Self Storage-El Dorado LP*, 482 B.R. 613, 625 (Bankr. E.D. Cal. 2012) (citing *Rome*, 19 F.3d at 57-58). Section 328(c) provides, in relevant part, that "the court may deny allowance of compensation ... under section 327 ... if, **at any time during such professional person's employment** ..., such professional person is not a disinterested person, or represents or holds an interest adverse to the interest of the estate" 11 U.S.C. § 328(c) (emphasis added).

Interest Adverse to the Estate

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

Disinterested Person

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

The term "disinterested person" means a person that—

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

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

10:30 AM

CONT... **Monica L Columbia**

Chapter 11

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

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

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

The disclosure requirements of Rule 2014(a) are strictly applied, with the burden on the applicant "to make full, candid, and complete disclosure of all connections with the debtor." *In re Mehdipour*, 202 B.R. 474, 478 (B.A.P. 9th Cir. 1996) (citing *In re Park-Helena Corp.*, 63 F.3d 877, 881-82 (9th Cir. 1995) (collecting cases) and *In re Plaza Hotel Corp.*, 111 B.R. 882 (Bankr. E.D. Cal.), *aff'd*, 123 B.R. 466 (B.A.P. 9th Cir. 1990), *aff'd sub nom. Horner v. Webster*, 123 B.R. 466 (B.A.P. 9th Cir. 1990)); *see also In re NIR W. Coast, Inc.*, 638 B.R. 441, 449 (Bankr. E.D. Cal. 2022).

"Professionals must disclose all connections with the debtor, creditors and parties in interest, no matter how irrelevant or trivial these connections may seem. The disclosure rules are not discretionary." *Mehdipour*, 202 B.R. at 480 (citing *In re EWC, Inc.*, 138 B.R. 276 (Bankr. W.D. Okla. 1992)).

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

3. Local Bankruptcy Rule 2090-2(a)

Local Bankruptcy Rule 2090-2(a) provides that "[a]n attorney who appears for any purpose in this court is subject to the standards of professional conduct set forth in

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

10:30 AM

CONT... **Monica L Columbia**

Chapter 11

Local Civil Rule 83-3." In turn, Local Civil Rule 83-3.1.2 provides:

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

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

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

4. Ethical Limitations on Representation

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

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

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

Even where there is no direct adversity, a conflict of interest requiring informed written consent* under paragraph (b) exists if there is a significant risk that a lawyer's ability to consider, recommend or carry

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

10:30 AM

CONT...

Monica L Columbia

Chapter 11

out an appropriate course of action for the client will be materially limited as a result of the lawyer's other 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

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

18 U.S.C. § 154(1) (Adverse interest and conduct of officers) forbids the act of "knowingly purchas[ing], directly or indirectly, any property of the estate" in a bankruptcy case in which the actor is an officer of the court. "An attorney does not simply act as an advocate for his client; he is also an officer of the court." *United States v. Assoc'd Convalescent Enters., Inc.*, 766 F.2d 1342, 1346 (9th Cir. 1985).

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

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

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

"Any professional who the court determines to hold or represent an interest adverse to the estate or who is not disinterested is not an officer of the estate during the time of conflict and must be denied compensation for services performed during the conflict...." *Mehdipour*, 202 B.R. at 478 (ordering full disclosure of fees by counsel for chapter 11 debtor; counsel failed to disclose conflicts of interest that existed while counsel represented debtor as debtor in possession); *see also In re Sanchez*, 241 F.3d

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

10:30 AM

CONT... **Monica L Columbia**

Chapter 11

1148, 1151 (9th Cir. 2001) ("An actual conflict of interest can justify a complete denial of compensation."); *In re Westwood Shake & Shingle, Inc.*, 971 F.2d 387, 390 (9th Cir. 1992); *Hixon v. Poppin & Shier*, 894 F.2d 409, 1990 WL 4866 at *2 (9th Cir. 1990) ("A conflict in interest by a debtor's attorney 'would clearly warrant a total 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).

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

III. ANALYSIS

A. 11 U.S.C. § 327(a)

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

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

10:30 AM

CONT... **Monica L Columbia**

Chapter 11

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

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

B. Rule 2014(a)

Even if Mr. Yaspan's jewelry transactions with Debtor had not created an actual conflict of interest, Mr. Yaspan violated Rule 2014 by failing to disclose his acquisition of the jewelry from Debtor, any gifts he made of the jewelry and his transactions with Debtor to obtain the jewelry. *See Park-Helena*, 63 F.3d at 881-82. This disclosure violation was of an ongoing nature; over a lengthy period of time, while the jewelry was in his possession, Mr. Yaspan and the Firm failed to disclose such possession, and Mr. Yaspan's intentions to purchase the jewelry, in: (1) a supplement to the Employment Application; (2) the Fee Application; or (3) any supplement to the Fee Application. *See Employment Application* [doc. 26]; *Fee Application* [doc. 245].

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

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

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

10:30 AM

CONT... **Monica L Columbia**
451.

Chapter 11

IV. CONCLUSION

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

The U.S. Trustee must submit the order within seven (7) days.

FOOTNOTES

- FN 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.
- FN 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).
- FN 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].
- FN 4: An asterisk (*) identifies a word or phrase defined in the terminology rule. *See* Cal. R. Prof. Conduct 1.0.1.
- FN 5: In addition, Cal. R. Pro. Conduct 1.8.1, regarding business transactions with a client and pecuniary interests adverse to a client, provides:

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:

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

10:30 AM

CONT...

Monica L Columbia

Chapter 11

- (a) the transaction or acquisition and its terms are fair and reasonable* to the client and the terms 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;
- (b) the client either is represented in the transaction or acquisition by an independent lawyer of the 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
- (c) the client thereafter provides informed written consent* to the terms of the transaction or acquisition, and to the lawyer's role in it.

FN 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 turnover 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].

Party Information

Debtor(s):

Monica L Columbia

Represented By
Robert M Yaspan

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

1:00 PM

1:23-10696 Monica L Columbia

Chapter 11

#2.00 Status conference re Chapter 11 voluntary petition

fr. 7/13/23; 11/9/23; 12/14/23; 2/15/24; 2/22/24; 4/18/24; 7/11/24
8/1/24, 8/29/24; 10/31/24

Docket 1

Tentative Ruling:

On October 28, 2024, Todd Frealy, the chapter 11 trustee (the "Trustee"), filed a motion to convert this case to one under chapter 7 [doc. 302].

On October 30, 2024, the Trustee filed a *Supplemental Declaration in Support of Motion to Approve Compromise of Controversy with Debtor Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure and Motion to Convert Case to Chapter 7* (the "Supplemental Declaration") [doc. 306]. The Supplemental Declaration details the amounts of: (1) the secured claims, priority unsecured claims and nonpriority unsecured claims to be paid; (2) the estimated compensation payable to the Trustee; and (3) the estimated fees and expenses to be paid by the estate to any professionals, if the Court approves the proposed settlement and the case is converted to a case under chapter 7.

The deadline to oppose the motion to convert the case was no later than November 14, 2024. *See* Local Bankruptcy Rule 9013-1(o)(1). As of December 6, 2024, as to the motion to convert, the Trustee has not filed a declaration of service and non-response and lodged a proposed order pursuant to Local Bankruptcy Rule 9013-1(o)(3).

Party Information

Debtor(s):

Monica L Columbia

Represented By
Robert M Yaspan

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

1:00 PM

1:24-10228 Mr. Tortilla, Inc.

Chapter 11

#3.00 Motion to Withdraw as Debtor's Bankruptcy Counsel

fr. 8/29/24; 10/31/24

Docket 277

Tentative Ruling:

In light of the *Substitution of Attorney* filed by Mr. Tortilla, Inc. on December 4, 2024 [doc. 301], the Court will deny the motion to withdraw as counsel to Mr. Tortilla, Inc., as debtor and debtor in possession, as moot.

Appearances on December 11, 2024 are excused.

8/9/24 Tentative Ruling

Deny.

I. BACKGROUND

A. The Bankruptcy Case

On February 14, 2024, Mr. Tortilla ("Debtor") filed a chapter 11 petition, initiating this bankruptcy case. On March 12, 2024, the United States Trustee filed a notice of appointment of official committee of unsecured creditors (the "Committee") [doc. 82].

As set forth in Debtor's initial chapter 11 case status conference report and the supporting declaration of one of its principals:

The Debtor is a California corporation which is wholly owned by brothers Anthony and Ronald Alcazar. The Debtor owns and operates a tortilla manufacturing and food processing business located in San Fernando The Debtor sells its tortillas to distributors and wrap manufacturers, and through online retailers such as Amazon.com and others Debtor's assets include cash in the accounts, receivables from Amazon and other parties,

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

1:00 PM

CONT...

Mr. Tortilla, Inc.

Chapter 11

inventory, equipment, office furniture, fixtures, a refrigerated truck and a 2007 Honda Element. Debtor's assets have an estimated value of \$1,830,573.67 as of the petition date. Debtor's secured creditors include holders of merchant cash advance loans, Amazon loan, equipment finance loans with claims estimated at \$8,953,129.26. Debtor's priority creditors include the Internal Revenue Service and Employment Development Department with estimated scheduled claims totaling \$754,674.65. Debtor's general unsecured creditors include vendors, delinquent rent, credit cards, legal fees for an estimated \$4,256,866.98 claim total.

Debtor's Status Conference Report (the "First Status Report"); Declaration of Anthony Alcazar in Support Thereof, paras. 3-7 [doc. 109].

Prior to the petition date, Debtor entered into a written fee agreement, dated January 25, 2024 (the "Fee Agreement"), with the Law Offices of Michael Jay Berger ("Movant"). *See* Application for Order Authorizing Debtor to Employ General Bankruptcy Counsel (the "Employment Application"), Ex. 4 [doc. 36]. On February 7, 2024, Debtor paid Movant a \$20,000 retainer plus the \$1,738.00 fee required to file a chapter 11 petition. Employment Application, para. 7 and Declaration of Michael Jay Berger, filed in support of the Employment Application, para. 11 [doc. 36]. The Employment Application states that "[n]o compensation will be paid to [Movant] by the Debtor except, upon application to, and approval by the Bankruptcy Court after notice and hearing."

The Fee Agreement includes the following provisions:

2. **Scope of Services.** You are hiring me to prepare and file a Chapter 11 bankruptcy petition for Mr. Tortilla, Inc. ("You"). I will provide the legal services reasonably required to represent you. Representation will include pre-bankruptcy planning, negotiating with the creditors, preparing a Chapter 11 bankruptcy Petition and all supporting schedules and statements, advising you regarding your legal rights and obligations in a bankruptcy proceeding, filing Notices of Automatic Stay, assisting you in preparing the documents and reports required by the Office of the United States Trustee, representing you at the initial debtor interview with the Office of the United States Trustee, representing you at the first meeting of creditors, representing you in

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

1:00 PM

CONT...

Mr. Tortilla, Inc.

Chapter 11

opposition to any Motion for Relief from Stay that may be filed and assisting you in preparing the paperwork needed to continue and conclude a Chapter 11 proceeding. In addition, I will respond to creditor inquiries, review proofs of claim filed in your bankruptcy, object to inappropriate claims, respond to all Motions filed in your bankruptcy proceeding and negotiate with your creditors as needed. If and when it is appropriate, I will prepare a proposed Disclosure Statement and Plan of Reorganization for you. I will keep you informed about the status of your case and to respond to your inquiries.

8. Discharge and Withdrawal. You may discharge me at any time. I may withdraw with your consent or for good cause as found by a court of law. Good cause, includes, but is not limited to, your breach of this agreement, your refusal to cooperate with me or to follow my advice on a material matter, or any fact or circumstance which would render my continuing representation of you nonproductive, unlawful, or unethical.

In February 2024, Movant filed the Employment Application, which was granted by the Court [doc. 111].

On June 13, 2024, Debtor filed a second case status report (the "Second Status Report") [doc. 220]. In the declaration of Anthony Alcazar filed in support of the Second Status Report (the "Second Alcazar Declaration"), Mr. Alcazar states, in part:

Debtor, through counsel, has been working with counsel for the Creditors' Committee in negotiating with Amazon for the release of Debtor's receivables in Amazon vendor accounts. Release of these accounts to the Debtor is necessary for Debtor to have the income to pay its operating costs, and to propose a feasible Plan of reorganization that includes payment to creditors.

Debtor is reviewing the claims filed to its bankruptcy case, to determine if objection to any of the claims is appropriate.

Second Alcazar Declaration, paras. 10 and 11 [page 6, doc. 220].

On July 18, 2024, Debtor filed a third case status report (the "Third Status Report") [doc. 258]. In the declaration of Anthony Alcazar filed in support of the Third Status

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

1:00 PM

CONT...

Mr. Tortilla, Inc.

Chapter 11

Report (the "Third Alcazar Declaration"), Mr. Alcazar states, in part:

Debtor has been successful in obtaining the release of its receivables frozen in its vendor accounts with Shopify, Walmart, PayPal, Amazon Canada.

Of the two options for the resolution of Debtor's bankruptcy – either continued operation of Debtor's business, or sale of all or part of the business – it appears increasingly likely that sale of the business will be necessary to ensure a distribution to Debtor's unsecured creditors, and to pay Debtor's administrative claims.

Third Alcazar Declaration, paras. 6 and 9 [page 5, doc. 258].

On August 8, 2024, the Court held a hearing on Movant's first interim application for fees and expenses in the total amount of \$84,317.93. After the hearing, the Court entered an order approving fees of \$82,311.00 and expenses of \$2,006.93 [doc. 281]. The Court further ordered that "given the existence of other substantial administrative expense claims, and the [Debtor] having acknowledged that a sale of its business likely is necessary to pay administrative expense claims and to enable a distribution to unsecured creditors, [Debtor] may not pay the balance of the approved fees, prior to the Court's approval of a final fee application or entry of further order of the Court."

B. The Motion to Withdraw

On August 8, 2024, Movant filed a motion to withdraw as Debtor's bankruptcy counsel (the "Withdrawal Motion") [doc. 277]. As grounds for withdrawal, Movant represents that Debtor has failed to cooperate with counsel in the prosecution of its case, has not followed Movant's advice on material matters and there has been a breakdown of the relationship between Debtor and Movant.

Movant has not provided any specific information about Debtor's alleged failure to cooperate or to follow Movant's advice. Moreover, Movant recently was able to work cooperatively with the Committee and secured creditors to obtain final approval of Debtor's motion to use cash collateral. *See Order Granting Debtor's Motion for Order Authorizing Use of Cash Collateral on a Final Basis* [doc. 285].

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

1:00 PM

CONT... **Mr. Tortilla, Inc.**

Chapter 11

On August 14, 2024, the Committee filed an opposition to the Motion, requesting the Court deny the Motion until Debtor obtains suitable replacement counsel [doc. 283].

II. LEGAL STANDARDS

"It is a longstanding rule that corporations and other incorporated associations must appear in court through an attorney." *Westhoff Vertriebsges MBH v. Berg*, 2024 WL 947803, *3 (S.D. Cal. February 14, 2024); *see also CE Res., Inc. v. Magellan Grp., LLC*, 2009 WL 3367489 at *2 (E.D. Cal. October 14, 2009) (citing *In re Am. W. Airlines*, 40 F. 3d 1058, 1059 (9th Cir. 1994)). Under Local Bankruptcy Rule ("LBR") 9011-2(a), a corporation "may not file a petition or otherwise appear without counsel in any case or proceeding ..."

Under LBR 2091-1(a), a motion filed under LBR 9013-1 is required for withdrawal without substitution for "an attorney who has appeared on behalf of an entity or any individual in any manner concerning administration of the case . . . to withdraw as counsel." Pursuant to LBR 2091-1(e)(2), "[u]nless good cause is shown and the ends of justice require, no substitution or withdrawal will be allowed that will cause unreasonable delay in prosecution of the case or proceeding to completion."

In federal court, "the decision to permit counsel to withdraw is within the sound discretion of the trial court." *Westhoff Vertriebsges MBH v. Berg*, 2024 WL 947803 at*1; *see also Atkins v. Bank of Am., N.A.*, 2015 WL 4150744, *1 (N.D. Cal. July 9, 2015) (citations omitted). Courts have considered the following factors when evaluating a motion to withdraw: "(1) the reasons why withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case." *CE Resource, Inc. v. Magellan Grp., LLC*, 2009 WL 3367489, at *2 (E.D. Cal. Oct. 14, 2009); *see also Deal v. Countrywide Home Loans*, 2010 WL 3702459, at *2 (N.D. Cal. Sept. 15, 2010); *and Beard v. Shuttermart of Cal., Inc.*, 2008 WL 410694, at *2 (S.D. Cal. Feb. 13, 2008).

When denying an attorney's request to withdraw from representing a client that is a corporation, the court in *CE Resource* explained: "The case law has established that the court has discretion to deny attorney's request to withdraw where such withdrawal will work an injustice or cause undue delay. It would be an injustice to leave [the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

1:00 PM

CONT...

Mr. Tortilla, Inc.

Chapter 11

client] in a judicial stalemate until a replacement attorney could be located." 2009 WL 3367489, at *3.

III. DISCUSSION

Here, Debtor is a corporation, and it may appear in court **only** through an attorney. See LBR 9011-2(a).

Although the case is in its sixth month, it is far from being resolved. Debtor is considering a sale of all or part of Debtor's business. Third Alcazar Declaration, p. 5. Furthermore, Debtor has yet to file objections to proofs of claim or to file a plan of reorganization and disclosure statement. In light of the present posture of this case, to authorize Movant's withdrawal, without Debtor having lined up replacement counsel, would result in considerable prejudice to Debtor and creditors of the estate and would delay the progress of this case.

Taking into account that Debtor has not obtained new bankruptcy counsel, and in light of Movant's failure to demonstrate the existence of sufficient cause to grant the Withdrawal Motion, the Court will not grant Movant's request to withdraw as Debtor's counsel at this time.

IV. CONCLUSION

The Court will deny the Motion.

The Committee must submit the order within seven (7) days.

Party Information

Debtor(s):

Mr. Tortilla, Inc.

Represented By
Michael Jay Berger

Movant(s):

Mr. Tortilla, Inc.

Represented By
Michael Jay Berger

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

1:00 PM

1:24-10228 Mr. Tortilla, Inc.

Chapter 11

#4.00 Status conference re: chapter 11 case

fr. 4/11/24, 6/27/24, 8/1/24; 12/12/24

Docket 1

Tentative Ruling:

The Court will continue the chapter 11 case status conference to **1:00 p.m. on January 15, 2025**, to be held in connection with the Order to Show Cause why this case should not be converted to a case under chapter 7 [doc. 299].

Appearances on December 11, 2024 are excused.

Party Information

Debtor(s):

Mr. Tortilla, Inc.

Represented By
Michael Jay Berger

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

1:00 PM

1:24-11732 Rhodium Properties, LLC

Chapter 11

#5.00 U.S. Trustee's Motion Under 11 U.S.C. § 1112(b) to dismiss or convert case

Docket 7

Tentative Ruling:

The Court has reviewed the United States Trustee's supplement to the motion [doc. 30].

Has the debtor provided to the United States Trustee (1) adequate proof of insurance and (2) all documents that are required to be submitted as part of the 7-Day Package?

Party Information

Debtor(s):

Rhodium Properties, LLC

Represented By
Kevin Tang

Movant(s):

United States Trustee (SV)

Represented By
Katherine Bunker

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

1:00 PM

1:24-11732 Rhodium Properties, LLC

Chapter 11

#6.00 Order to Show Cause Why this Case Should Not
Be Dismissed with a One Year Bar to Refiling

fr. 11/14/24

Docket 3

Tentative Ruling:

Given that the only significant assets of the debtor's estate consist of vacant parcels of real property, and that there is only one creditor identified in the debtor's schedules D and E/F, which creditor is the beneficiary of deeds of trust against some or all of that real property, pursuant to 11 U.S.C. §§ 105(a), 349(a) and 1112(b)(1), the Court will dismiss this case with a one-year bar to refiling as a case filed not in good faith.

The Court will prepare the order.

Party Information

Debtor(s):

Rhodium Properties, LLC

Represented By
Kevin Tang

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

1:00 PM

1:24-11732 Rhodium Properties, LLC

Chapter 11

#7.00 Status conference re: chapter 11 case

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rhodium Properties, LLC

Represented By
Kevin Tang

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

1:00 PM

1:24-11748 Lytton Vineyard & Winery, L.P.

Chapter 11

#8.00 Status conference re chapter 11 case

Docket 1

Tentative Ruling:

The parties should address the following:

Deadline to file proof of claim ("Bar Date"): **January 31, 2025.**

Deadline to mail notice of Bar Date: **December 12, 2024.**

The debtor must use the mandatory court-approved form Notice of Bar Date for Filing Proofs of Claim in a Chapter 11 Case, F 3003-1.NOTICE.BARDATE.

Continued chapter 11 case status conference to be held at **1:00 p.m. on February 19, 2025.**

The debtor in possession or any appointed chapter 11 trustee must file a status report, addressing the debtor's progress to confirming a chapter 11 plan, to be served on the debtor's 20 largest unsecured creditors, all secured creditors, and the United States Trustee, no later than **14 days** before the continued status conference. The status report must be supported by evidence in the form of declarations and supporting documents.

The Court will prepare the order setting the deadlines for the debtor and/or debtor in possession to file a proposed plan and related disclosure statement.

The debtor must lodge the Order Setting Bar Date for Filing Proofs of Claim, using mandatory court-approved form F 3003-1.ORDER.BARDATE, within seven (7) days.

Party Information

Debtor(s):

Lytton Vineyard & Winery, L.P.

Represented By
M Douglas Flahaut

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

1:30 PM

1:17-10673 Hermann Muennichow

Chapter 7

- #9.00 Motion by Chapter 7 Trustee to: (1) Approve Sale of Real Property Free and Clear of all Liens, Interests, Claims, and Encumbrances with Such Liens, Interests, Claims, and Encumbrances to Attach to Proceeds Pursuant to 11 U.S.C. §§ 363(b), (f) & (i); (2) Approve Overbid Procedures; and (3) Determine that Buyer is Entitled to Protection Pursuant to 11 U.S.C. § 363(m)

Docket 194

Tentative Ruling:

I. BACKGROUND

A. *The Murrieta Property*

On November 27, 1983, Hermann Muennichow ("Debtor") and Helayne Muennichow married. On April 29, 2010, Debtor and Ms. Muennichow acquired real property located at 38685 Calle de Lobo, Murrieta, CA 92562 (the "Murrieta Property") as community property. In May 2010, Ms. Muennichow moved into the Murrieta Property and has since lived there continuously. *Declaration of Helayne Muennichow*, ¶ 5 [doc. 197]. On November 19, 2013, Ms. Muennichow filed a petition for dissolution of marriage against Debtor in the Superior Court of California, Los Angeles County (the "State Court"), initiating case no. LD066794 (the "Dissolution Proceeding").

On March 16, 2017 (the "Petition Date"), Hermann Muennichow ("Debtor") filed a chapter 7 voluntary petition [doc. 1]. David Seror was appointed as chapter 7 trustee (the "Trustee"). In his amended schedule A/B, Debtor disclosed that on November 3, 2016, Debtor transferred to Helayne Muennichow his interest in the Murrieta Property "due to pending divorce." *Amended Schedule A/B*, ¶ 18 [doc. 14].

A. *The Agoura Hills Property*

In his amended schedule A/B, Debtor disclosed an interest in real property located at

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

1:30 PM

CONT... **Hermann Muennichow** **Chapter 7**

29000 Indian Ridge Court, Agoura Hills, CA (the "Agoura Hills Property"). *Amended Schedule A/B*, ¶ 1.1 [doc. 14]. In his amended schedule C, Debtor claimed a homestead exemption in the Agoura Hills Property in the amount of \$107,610 pursuant to Cal. Civ. Proc. Code § 704.730. *Amended Schedule C*, ¶ 2 [doc. 14]. Postpetition, on or about November 11, 2017, Debtor died. *Order Granting Agoura Hills Sale Motion*, ¶ E [doc. 157].

On February 24, 2022, the Trustee filed a motion to sell the Agoura Hills Property (the "Agoura Hills Sale Motion") [doc. 152]. On March 29, 2022, the Court entered an order granting the Agoura Hills Sale Motion [doc. 157]. In the order, the Court required the Trustee to hold the \$107,610 homestead exemption funds pending the six-month reinvestment period required under Cal. Civ. Proc. Code § 704.960(b) or further order of the Court. *See id.*

B. The Fraudulent Transfer Adversary Proceeding

On July 28, 2017, the Trustee filed a complaint against Ms. Muennichow for actual and constructive fraudulent transfer, initiating adversary no. 1:17-ap-01069-VK (the "Adversary Proceeding") [Adversary Proceeding, doc. 1]. The Trustee sought to recover, among other things, the Murrieta Property. In August and September 2019, the Court held trial. On September 6, 2019, after trial, the Court issued an oral ruling (the "Oral Ruling") [Adversary Proceeding, doc. 116]. Through the Oral Ruling, the Court held that Ms. Muennichow and/or Debtor did not transfer the Murrieta Property with intent to hinder, delay or defraud Debtor's creditors.

On June 10, 2021, the Trustee filed an application to employ a broker to market the Murrieta Property (the "Application") [doc. 106]. On September 9, 2021, the Court issued a ruling in which it determined that the Murrieta Property is community property which is included in Debtor's estate and available to be sold for the benefit of creditors. *Court's Ruling* [doc. 125]; *Order Approving Application* [doc. 128]. On September 27, 2021, Ms. Muennichow appealed the Court's order approving the Application. *Notice of Appeal and Statement of Election to U.S. District Court* [doc. 130]. On March 17, 2023, the district court affirmed the Court's order approving the Application [doc. 164].

C. The Turnover Adversary Proceeding

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

1:30 PM

CONT... Hermann Muennichow

Chapter 7

On July 26, 2023, the Trustee filed a complaint against Ms. Muennichow for turnover of the Murrieta Property, initiating adversary no. 1:23-ap-01027-VK (the "Turnover Adversary Proceeding") [Turnover Adversary Proceeding, doc. 1].

On July 15, 2024, the Trustee and Ms. Muennichow filed a *Stipulation re: (1) re: Defendant's Cooperation with the Broker in Marketing Efforts of the [Murrieta Property]; and (2) Resolution of Adversary Proceeding* (the "Murrieta Stipulation") [Turnover Adversary Proceeding, doc. 35]. Pursuant to the Murrieta Stipulation, the parties agreed that the Trustee would have six months from July 16, 2024, to undertake commercially reasonable efforts to market and show the Murrieta Property for sale. *See id.* ¶ 1. During that six-month period, Ms. Muennichow agreed to fully cooperate with the Trustee and his agents and to pay the mortgage, property tax, utilities, and mow the lawn in accordance with the guidelines of the homeowners' association. *Id.* ¶¶ 2-3.

The parties further agreed that if, after the expiration of the six-month period, the Trustee did not accept an offer for purchase of the Murrieta Property that will provide unencumbered proceeds to the estate, then the Murrieta Property would be deemed to be abandoned to Ms. Muennichow. *Id.* ¶ 4. Finally, the parties executed a stipulation for entry of judgment for turnover that is held in trust by the Trustee's counsel. The stipulated judgment empowers the Trustee to obtain relief that would force Ms. Muennichow to vacate and turn over possession of the Murrieta Property. *Id.* ¶ 7 and Exhibit 1 thereto. On July 16, 2024, the Court entered an order approving the Murrieta Stipulation [Turnover Adversary Proceeding, doc. 36].

On July 17, 2024, the Trustee filed a motion to approve the compromise with Ms. Muennichow in the bankruptcy case [doc. 184]. On August 8, 2024, the Court entered an order granting the motion to approve the compromise [doc. 186].

D. The Motion and Opposition Thereto

On November 20, 2024, the Trustee filed the *Motion by Chapter 7 Trustee to: (1) Approve Sale of Real Property Free and Clear of All Liens, Interests, Claims, and Encumbrances with Such Liens, Interests, Claims and Encumbrances to Attach to Proceeds Pursuant to 11 U.S.C. §§ 363(b), (f), & (i); (2) Approve Overbid*

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

1:30 PM

CONT... **Hermann Muennichow**

Chapter 7

Procedures; and (3) Determine that Buyer is Entitled to Protection Pursuant to 11 U.S.C. § 363(m) (the "Motion") [doc. 188, refiled as doc. 194]. In the Motion, the Trustee represented that on September 5, 2024, the Trustee obtained an offer from Felipe Alcazar Living Trust (the "Buyer") to purchase the Murrieta Property for \$1,850,000.

On November 27, 2024, Ms. Muennichow filed an opposition to the Motion (the "Opposition") [doc. 196] and a declaration in support of the Opposition [doc. 197]. In her declaration, Ms. Muennichow represented that, on November 22, 2024, she caused to be recorded in the Official Records of Riverside County a homestead declaration against the Murrieta Property. *Declaration of Helayne Muennichow*, ¶ 10 and Exhibit 1 thereto [doc. 197]. On December 4, 2024, the Trustee filed a reply to the Opposition (the "Reply") [doc. 198].

II. DISCUSSION

As a nondebtor spouse, Ms. Muennichow is entitled to the benefit of a homestead exemption, given that one was claimed by Debtor. On the other hand, with respect to the assertion of homestead exemptions, Ms. Muennichow cannot do what she would be prohibited from doing as a joint debtor spouse, e.g., obtain the benefit of more than one homestead exemption. *See* Cal. Civ. Proc. Code § 704.720(c); *In re Homan*, 112 B.R. 356, 360 (9th Cir. B.A.P. 1989) .

Regarding homesteads which are community property of Debtor's estate, the amount of the homestead exemption is fixed as of the Petition Date. Consequently, the amount of the homestead exemption which Ms. Muennichow may receive, as a nondebtor spouse, is limited to \$107,610. *See* 11 U.S.C. § 522(b)(3)(A); Cal. Civ. Proc. Code § 704.730(a) (2012); *In re Hyman*, 967 F.2d 1316, 1318 n.2 (9th Cir. 1992) (citing *In re Herman*, 120 B.R. 127, 130 (9th Cir. B.A.P. 1990)).

The homestead declaration that Ms. Muennichow caused to be recorded against the Murrieta Property post-petition is void as having been recorded in violation of the automatic stay. *See In re Schwartz*, 954 F.2d 569, 571 (9th Cir. 1992).

The parties cite to *In re Pass*, 553 B.R. 749, 760 (9th Cir. B.A.P. 2016). However, *Pass* is inapposite because it involved married debtors who filed a joint chapter 13

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

1:30 PM

CONT... Hermann Muennichow

Chapter 7

petition and subsequently divorced, before the chapter 7 trustee sought to sell the residence of one of the debtors. *Id.* at 759. Further, the joint debtors in *Pass* had recorded a declaration of homestead pre-petition. *Id.* at 753.

The parties should be prepared to address the following:

How will Ms. Muennichow receive the benefit of the \$107,610 in homestead exemption funds which were generated from the Trustee's sale of the Agoura Hills Property?

Taking into account:

- (1) Ms. Muennichow receiving the benefit of the homestead exemption claimed by Debtor in the amount of \$107,610;
- (2) the Trustee's statutory fee pursuant to 11 U.S.C. § 326(a); and
- (3) the aggregate amount of estate professional's fees and costs which may be payable from the sale proceeds -

what portion of the net sale proceeds (after payment of valid liens, the payment of property taxes and closing costs) will be distributed to unsecured creditors from the proposed sale of the Murrieta Property?

Party Information

Debtor(s):

Hermann Muennichow

Represented By
Stuart R Simone
Nicholas A West

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein
Jessica L Bagdanov
Ryan Coy

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

1:30 PM

1:23-10270 Linda Ezor Swarzman

Chapter 7

#10.00 Chapter 7 Trustee's Motion for Order Compelling Turnover of Estate Property

Stipulation re withdrawal of motion filed 12/5/24

Docket 723

*** VACATED *** REASON: Order approving stipulation entered
12/9/24. [Dkt. 740]

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Linda Ezor Swarzman

Represented By
Paul A Beck

Trustee(s):

David M Goodrich (TR)

Represented By
Matthew A Lesnick

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

1:30 PM

1:23-10520 Christophe Doumaiselle

Chapter 7

Adv#: 1:23-01028 Charbonnier v. Doumaiselle

#11.00 Pretrial Status conference re: complaint for nondischargeability and objecting to discharge

fr. 9/27/23; 5/22/24 (stip); 5/29/24; 8/7/24; 9/11/24; 10/9/24(stip)

Docket 1

***** VACATED *** REASON: Rescheduled for 12/12/24 at 1:30 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christophe Doumaiselle

Represented By
Jeffrey J Hagen

Defendant(s):

Christophe Doumaiselle

Represented By
Stella A Havkin

Plaintiff(s):

Laurent Charbonnier

Represented By
Eduardo Martorell

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

1:30 PM

1:23-10520 Christophe Doumaiselle

Chapter 7

Adv#: 1:23-01029 Feuvrier et al v. Doumaiselle

#12.00 Pretrial conference re: complaint for nondischargeability
and objecting to discharge

fr. 9/27/23, 5/22/23 (Stip), 5/29/24, 8/7/24; 9/11/24; 10/9/24(stip)

Docket 1

***** VACATED *** REASON: Rescheduled for 12/12/24 at 1:30 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christophe Doumaiselle

Represented By
Jeffrey J Hagen

Defendant(s):

Christophe Doumaiselle

Represented By
Stella A Havkin

Plaintiff(s):

Anthony Petit

Represented By
Eduardo Martorell

Antoine David

Represented By
Eduardo Martorell

Alexandre Jagorel

Represented By
Eduardo Martorell

Michel Audoin

Represented By
Eduardo Martorell

Bruno Larue

Represented By
Eduardo Martorell

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

1:30 PM

CONT... Christophe Doumaiselle

Chapter 7

Stephane Nicolay	Represented By Eduardo Martorell
Pascal Cron	Represented By Eduardo Martorell
Erwann Brion	Represented By Eduardo Martorell
Dorain Grossan	Represented By Eduardo Martorell
Oliver Derrieu	Represented By Eduardo Martorell
Alexandre Mantrana	Represented By Eduardo Martorell
Sebastien Patrick Morel	Represented By Eduardo Martorell
Sebastien Veyrat Masson	Represented By Eduardo Martorell
Clement Deforet	Represented By Eduardo Martorell
Eric Meziere	Represented By Eduardo Martorell
Albert Liaumon	Represented By Eduardo Martorell
Eric Feuvrier	Represented By Eduardo Martorell
Jocelin Laborde	Represented By Eduardo Martorell

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

1:30 PM

1:23-11082 Philip M. Lawrence, II

Chapter 7

Adv#: 1:23-01051 Everett v. Lawrence, II et al

#13.00 Pre-Trial Conference re: Second amended complaint to determine debts non-dischargeable under 11 U.S.C. §523(a)(2)(A) and 523(a)(6)

fr. 2/21/24; 2/28/24; 4/24/24; 6/12/24

Docket 25

***** VACATED *** REASON: Rescheduled for 12/12/24 at 1:30 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Philip M. Lawrence II

Represented By
Robert M Yaspan

Defendant(s):

Philip M. Lawrence II

Represented By
Robert M Yaspan

9639 Amigo Avenue, LLC

Pro Se

Plaintiff(s):

Ashley Everett

Represented By
Herlinda Rebeca Vasquez
Steven A Morris

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Ron Bender
Jeffrey S Kwong

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

1:30 PM

1:23-11130 The Three Builders, Inc.

Chapter 7

Adv#: 1:24-01040 Zamora, Chapter 7 Trustee v. Elkarief

#14.00 Status conference re: complaint to avoid and recover preferential transfer, for turnover of transfer, and to preserve avoided and recovered preferential transfer for benefit of the bankruptcy estate

Docket 1

*** VACATED *** REASON: Rescheduled for 12/12/24 at 1:30 PM.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

The Three Builders, Inc.

Represented By
Brian J Soo-Hoo

Defendant(s):

Gal Elkarief

Pro Se

Plaintiff(s):

Nancy J Zamora, Chapter 7 Trustee

Pro Se

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

1:30 PM

1:24-11323 Irwin Naturals and Irwin Naturals Inc

Chapter 11

#15.00 Application of Debtors To Employ Greenberg Glusker Fields Claman & Machtinger LLP As Special Litigation Counsel

Docket 240

Tentative Ruling:

The Court will continue the hearing on the *Application of Debtors to Employ Greenberg Glusker Fields Claman & Machtinger LLP as Special Litigation Counsel* [doc. 240] to **1:30 p.m. on December 18, 2024.**

Appearances on December 11, 2024 are excused.

Party Information

Debtor(s):

Irwin Naturals

Represented By

Joseph Axelrod

Susan K Seflin

Jessica Wellington

Ashley M Teesdale

Jonathan Seligmann Shenson

Joint Debtor(s):

Irwin Naturals Inc

Represented By

Susan K Seflin

DAI US HOLDCO INC

Represented By

Susan K Seflin

5310 Holdings, LLC

Represented By

Susan K Seflin

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

1:30 PM

1:24-11411 Keith D Price

Chapter 7

#16.00 Motion for Order Authorizing Trustee to Sell Real Property Free and Clear of Liens, Subject to Overbid

Docket 75

Tentative Ruling:

Grant.

Movant must submit the order within seven (7) days.

Party Information

Debtor(s):

Keith D Price

Pro Se

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

1:30 PM

1:24-11748 Lytton Vineyard & Winery, L.P.

Chapter 11

#17.00 Debtor's Emergency motion for interim and final orders
authorizing the use of cas collateral

fr. 10/31/24

Docket 14

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lytton Vineyard & Winery, L.P.

Represented By
M Douglas Flahaut

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

2:00 PM

1:22-10147 Wilma & Frieda's Inc.

Chapter 11

#18.00 Post confirmation status conference re: chapter 11, subchapter V case
fr. 3/9/23; 7/13/23, 1/18/24; 6/20/24, 6/27/24; 12/12/24

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Wilma & Frieda's Inc.

Represented By
Michael Jay Berger
Katherine Bunker

Trustee(s):

Moriah Douglas Flahaut (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

2:00 PM

1:22-10148 Landmark 99 Enterprises, Inc.

Chapter 11

#19.00 Post confirmation status conference re: chapter 11, subchapter V case
fr. 6/15/23; 12/7/23; 4/4/24; 4/11/24; 5/30/24; 10/31/24

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Landmark 99 Enterprises, Inc.

Represented By
Michael Jay Berger

Trustee(s):

Moriah Douglas Flahaut (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, December 11, 2024

Hearing Room 301

2:00 PM

1:24-12038 Biotactics, Inc.

Chapter 11

#20.00 Motion in Individual Ch 11 Case for Order Authorizing Debtor to
Provide Adequate Assurance of Payment to Utility Service Providers
(11 U.S.C. Sec. 366)

Docket 4

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Biotactics, Inc.

Represented By
Michael Jay Berger