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SUSAN M. SPRAUL, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No. CC-15-1030-FKiKu
)	
PLEASURE POINT MARINA, LLC,)	Bk. No. 6:14-15871-WJ
)	
Debtor.)	
)	
<hr/> NARAN REITMAN,)	
)	
Appellant,)	
)	
v.)	MEMORANDUM¹
)	
PLEASURE POINT MARINA, LLC,)	
)	
Appellee.)	
)	

Argued and Submitted on October 22, 2015
at Los Angeles, California

Filed - November 3, 2015

Appeal from the United States Bankruptcy Court
for the Central District of California

Honorable Wayne E. Johnson, Bankruptcy Judge, Presiding

Appearances: Kira L. Klatchko of Lewis Brisbois Bisgaard &
Smith argued for appellant Naran Reitman; Robert
P. Goe of Goe & Forsythe, LLP argued for appellee
Pleasure Point Marina, LLC.

Before: FARIS, KIRSCHER and KURTZ, Bankruptcy Judges.

¹ This disposition is not appropriate for publication.
Although it may be cited for whatever persuasive value it may
have (see Fed. R. App. P. 32.1), it has no precedential value.
See 9th Cir. BAP Rule 8024-1(c)(2).

1 **INTRODUCTION**

2 This case presents a depressingly familiar set of
3 circumstances. Due to the combined effects of an attorney's
4 inattention, a client's intransigence, and a breakdown in the
5 attorney/client relationship, no one timely complied with
6 discovery obligations. As a result, the bankruptcy court
7 required the client (who in this case is also an attorney) to pay
8 the princely sum of \$4,265.87, representing a third of the
9 attorneys' fees and costs incurred by the opposing party, under
10 Rule 7037 of the Federal Rules of Bankruptcy Procedure.² We hold
11 that the bankruptcy court did not abuse its discretion in
12 sanctioning the client for his role in hindering the discovery
13 process and disobeying the court's order. Accordingly, we
14 AFFIRM.

15 **FACTS**

16 Appellant Naran Reitman is an attorney who represented
17 Ronald and Melinda Lerg in a state-court action against Appellee
18 Pleasure Point Marina, LLC.

19 Perceiving that the state court litigation was "at an
20 impasse," Mr. Reitman sent counsel for Pleasure Point a letter
21 stating that "plaintiffs are left with no choice but to demand
22 that the Board accept the plaintiffs' proposal, as written, and
23 execute the Settlement Agreement tendered by the plaintiffs
24 If the Board fails to execute the Settlement

25
26 ² Unless specified otherwise, all chapter and section
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, all
28 "Rule" references are to the Federal Rules of Bankruptcy
Procedure, Rules 1001-9037, and all "Civil Rule" references are
to the Federal Rules of Civil Procedure, Rules 1-86.

1 Agreement[,] . . . the plaintiffs will proceed forward with a
2 plan to place Pleasure Point Marina, LLC into involuntary
3 bankruptcy.”³

4 The Lergs retained attorney Thomas Polis as bankruptcy
5 counsel. Mr. Polis did not, however, entirely replace
6 Mr. Reitman; in his own words, Mr. Reitman continued to act “as
7 the referring attorney, to provide information and documents
8 relating to the state court proceeding, and to be available to
9 the bankruptcy attorney and clients as needed.”

10 On May 5, 2014, the Lergs made good on their threat and
11 filed an involuntary bankruptcy petition against Pleasure Point.
12 At the time of the initial filing, the Lergs were the only
13 petitioning creditors.

14 Pleasure Point filed a Motion to Dismiss Involuntary
15 Bankruptcy Proceeding Pursuant to Sections 303 and 305 (“Motion
16 to Dismiss”). Pleasure Point claimed that it had more than
17 twelve creditors, so at least three petitioning creditors were
18 required under § 303, but the Lergs’s petition included only two
19 petitioning creditors. The hearing on the Motion to Dismiss was
20 set for June 30, 2014.

21 On June 27, 2014, one business day before the hearing on the
22 Motion to Dismiss, Mr. Polis, as counsel for Mr. Reitman, filed a
23

24 ³ Although Mr. Reitman, as counsel for the Lergs, sent the
25 letter to Pleasure Point threatening involuntary bankruptcy, at
26 oral argument, counsel for Mr. Reitman argued that it was
27 bankruptcy attorney Thomas Polis who suggested the involuntary
28 bankruptcy and that Mr. Reitman “had nothing to do with it.”
This assertion is not supported by the record and is belied by
the fact that Mr. Reitman ostensibly authored the letter to
Pleasure Point in the state court action.

1 Joinder to Involuntary Petition by Creditor of the Debtor
2 ("Joinder"). Mr. Reitman contended that he was a creditor of
3 Pleasure Point, based on an assignment of a promissory note made
4 by Pleasure Point in favor of the Lergs.⁴ Thus, Mr. Reitman's
5 role changed; in addition to being the "referring attorney"
6 working with Mr. Polis, he became a party to the involuntary case
7 and a client of Mr. Polis. According to Mr. Reitman, this was
8 supposed to be a temporary arrangement: "I expected to retain
9 personal counsel and substitute such counsel in Mr. Polis' place
10 shortly thereafter."

11 In response to the Joinder, Pleasure Point argued that the
12 assignment was ineffective and was made solely to fabricate a
13 third petitioning creditor. This argument was unavailing; the
14 bankruptcy court denied Pleasure Point's Motion to Dismiss and
15 scheduled trial on the involuntary petition for August 21, 2014.
16 Due to the impending trial date, the court set an expedited
17 discovery schedule. Exhibit lists and witness lists were due on
18 August 7, and responses to requests for production were due seven
19 days after service, rather than the usual thirty days.

20 On or around July 11, Pleasure Point served the Lergs with
21 requests for production of documents ("First Lergs RPOD").
22 Responses were due on July 21. Thirty-four of the thirty-eight
23 categories of requested documents dealt with the merits of the
24 Lergs' claims against Pleasure Point; the remaining four
25

26 ⁴ At oral argument, counsel for Mr. Reitman argued that
27 Mr. Polis advised Mr. Reitman that he should be the third
28 petitioning creditor. This contention is also unsupported by the
record.

1 categories concerned the assignment of claims to Mr. Reitman.

2 Mr. Polis served the Lergs's written responses on July 24, a
3 few days late. The responses claimed that the Lergs had already
4 filed all of the requested documents in the bankruptcy court.
5 Accordingly, the Lergs did not produce any additional documents.

6 On or around July 14, Pleasure Point served a second set of
7 requests for production of documents on the Lergs (collectively,
8 "Second Lergs RPOD"). The Second Lergs RPOD included a single
9 request for the Lergs's federal and state income tax returns
10 spanning 2003 to the present.

11 Also on or around July 14, Pleasure Point served Mr. Reitman
12 with a request for production of documents ("Reitman RPOD").
13 Among other things, the requests concerned the assignment of
14 claims from the Lergs to Mr. Reitman, as well as Mr. Reitman's
15 billing records regarding his representation of the Lergs. The
16 responses to the Second Lergs RPOD and the Reitman RPOD were due
17 by July 21.

18 At that point, the discovery process began to go awry.
19 Mr. Polis forwarded the Reitman RPOD to Mr. Reitman on July 15.
20 According to Mr. Reitman's unrebutted declaration testimony, by
21 July 17, he had given Mr. Polis everything he needed to prepare
22 responses to the Second Lerg RPOD and the Reitman RPOD.
23 Mr. Reitman told Mr. Polis that all of the requested documents
24 were either protected by the attorney-client privilege or
25 nonexistent. Mr. Reitman expected Mr. Polis to prepare and serve
26 the responses, and Mr. Polis never contended otherwise.

27 On July 25, 2014, Mr. Reitman left on a two-week motorcycle
28 trip to South Dakota. On July 28, Mr. Polis also left on

1 vacation. Mr. Polis had not served the discovery responses that
2 were due on July 21; he has never attempted to explain or excuse
3 that failure.

4 On July 29, Pleasure Point sent a letter to Mr. Polis to
5 follow up on the outstanding discovery requests. Mr. Polis, who
6 was still on vacation at the time, informed Pleasure Point the
7 following day that he would respond to the discovery requests
8 when he returned to the office on August 5. Given that witness
9 lists and exhibit lists were due on August 7, Pleasure Point
10 found Mr. Polis's response unacceptable and thereafter filed its
11 Emergency Motion to Compel Responses to Written Discovery and for
12 Monetary Sanctions Against Petitioning Creditors and Their
13 Counsel of Record ("Motion to Compel").

14 Mr. Reitman contends that he did not realize that Mr. Polis
15 had not responded to the Second Lergs RPOD and the Reitman RPOD
16 until he checked his e-mail on July 30. He then exchanged a
17 number of e-mails with Mr. Polis, wherein he blamed Mr. Polis for
18 his failure to answer the discovery requests and accused
19 Mr. Polis of professional negligence. Mr. Polis responded by
20 expressing frustration with Mr. Reitman's self-serving e-mails
21 and his attempts to control the case.

22 On August 4, Mr. Polis filed an opposition to the Motion to
23 Compel. Mr. Polis argued (in summary) that Pleasure Point's
24 requests were overbroad. He did not address his failure to file
25 timely responses to the Second Lergs RPOD and the Reitman RPOD.

26 The bankruptcy court held a hearing on the Motion to Compel
27
28

1 on August 5.⁵ Mr. Reitman still had not produced any documents
2 responsive to the discovery requests. The court continued the
3 hearing and entered its Second Scheduling Order that provided
4 for, among other things, a meet-and-confer and supplemental
5 briefing regarding the Motion to Compel. The court ordered:

6 7. A continued hearing regarding the Emergency
7 Motion [to Compel] shall occur on August 13, 2014 at
8 1:00 p.m. to consider the request of Debtor to compel
9 discovery responses. Trial counsel for all parties are
10 hereby ordered to meet and confer regarding the pending
11 discovery dispute. If the parties do not otherwise
12 resolve the matter themselves, then on August 8, 2014
13 at 12:00 p.m., the parties shall meet and confer for at
14 least one hour in person in good faith in an attempt to
15 resolve the Emergency Motion. Senior counsel of record
16 for the moving party and senior counsel of record for
17 the opposing party shall personally attend the meeting.
18 The meeting shall occur at the United States Bankruptcy
19 Court, 3420 Twelfth Street, Riverside, CA 92501 in any
20 available conference room on the third floor. The
21 parties may move the date, time and location of the
22 meeting pursuant to an agreement confirmed in writing
23 (or by e-mail) provided the meeting occurs no later
24 than August 8, 2014 at 12:00 p.m. No court order is
25 required to move the date, time and location of the
26 meeting. However, the meeting must occur in person
27 (i.e. not by telephone) and senior counsel must attend.

18 The court also required a joint stipulation ("Stipulation")
19 pursuant to Central District of California Local Bankruptcy Rule
20 ("LBR") 7026-1(c)(3) and provided for supplemental briefing
21 regarding the Motion to Compel:

22 8. If the parties are unable to reach an
23 agreement resolving the Emergency Motion, then (a) the
24 parties shall prepare the stipulation required by
25 LBR 7026-1(c)(3) and submit it to the court no later
26 than August 11, 2014, (b) supplemental briefs regarding
27 the Emergency Motion are due no later than August 12,

26 ⁵ Mr. Reitman states that he wanted to monitor the hearing
27 telephonically, but Mr. Polis told him (incorrectly) that the
28 hearing was set for 1:30 p.m., not 1:00 p.m. As a result,
Mr. Reitman only heard the last few minutes of the hearing.

1 2014 at 10:00 a.m. and (c) trial counsel for all
2 parties must appear at the continued hearing on August
3 13, 2014. Appearances by telephone are not authorized
4 for the hearing on August 13, 2014.

5 LBR 7026-1(c) (3) provides, among other things, that the
6 Stipulation "must identify, separately and with particularity,
7 each disputed issue that remains to be determined at the hearing
8 and the contentions and points and authorities of each party as
9 to each issue." It must also advise the court of "each party's
10 contentions" for each disputed discovery request.

11 LBR 7026-1(c) (3) (A), (B).

12 The parties held their meet-and-confer on August 7, 2014.
13 Mr. Polis attended in person on behalf of Mr. Reitman and the
14 Lergs, and Robert Goe and Elizabeth LaRocque attended in person
15 as counsel for Pleasure Point. Mr. Reitman, who was still out of
16 state and whom Mr. Polis had told he could participate by phone
17 "if you so choose," participated telephonically.

18 The parties reached a simple resolution of the dispute about
19 the Second Lergs RPOD. Mr. Polis agreed to produce redacted
20 portions of the Lergs's tax returns as a compromise to Pleasure
21 Point's request for complete and unredacted copies.

22 The discussion of the Reitman RPOD was more difficult.
23 Pleasure Point recounts that Mr. Reitman "was combative and was
24 completely uncooperative in producing crucial documents"
25 Mr. Reitman acknowledges that "[t]he discussion was 'spirited.'"
26 Mr. Reitman maintained that he had no documents relating to the
27 assignment of the Lergs's promissory note to him. In the end,
28 Mr. Reitman agreed only to provide a spreadsheet summarizing the
amount of his billings to and payments received from the Lergs

1 and a privilege log for a single letter.

2 At the conclusion of the meet-and-confer, Mr. Reitman
3 believed that all discovery disputes were resolved. He says,
4 however, that he realized shortly after the meeting that he "did
5 not hear how the tax return issue was disposed of." Later that
6 evening, he told Mr. Polis (via text message) to include in the
7 Stipulation a provision that the Lergs's tax returns were not to
8 be revealed to anyone other than the attorneys and retained
9 experts.

10 Counsel for Pleasure Point drafted the Stipulation required
11 by the bankruptcy court pursuant to LBR 7026-1(c)(3). On
12 August 8, 2014, they sent the draft to Mr. Polis to complete the
13 sections describing the positions of Mr. Reitman and the Lergs.
14 On August 10, Mr. Polis responded that he would provide his
15 comments by mid-day on August 11.

16 At this point, the already strained relationship between
17 Mr. Reitman and Mr. Polis collapsed. Mr. Polis did not forward
18 Mr. Reitman the draft Stipulation until the evening of Sunday,
19 August 10, two days after he had received it and one day before
20 it was due. On August 11 (the day the Stipulation was due),
21 Mr. Reitman responded by stating that, "I do not understand the
22 Stipulation. It contains nothing relating to the Lergs and
23 myself prepared by you." He also stated that, "[t]he Stipulation
24 also contains gratuitous statements and argument by the LLC's
25 counsel, which has no place in a Stipulation. All such
26 statements should be deleted." Mr. Polis did not respond.

27 That same day, Mr. Polis's office sent Ms. LaRocque a
28 revised version of the Stipulation, which included a description

1 of the Lergs's position but left blanks for Mr. Reitman's
2 position. Ms. LaRocque responded by requesting comments for
3 Mr. Reitman. Mr. Polis responded that he had forwarded the
4 Stipulation to Mr. Reitman for his review.

5 Mr. Polis forwarded a copy of the revised Stipulation to
6 Mr. Reitman. In response to Mr. Reitman's further questions
7 regarding whether the Lergs's tax returns would be produced,
8 Mr. Polis responded, "You obviously have an agenda going forward
9 with this case that's other than litigating in the most fair,
10 effective and efficient manner to get this done for the clients'
11 best outcome. That's my objective and I'll do what I have to do
12 [to] achieve those ends." Mr. Polis also demanded that
13 Mr. Reitman transmit the Lergs's tax returns to his office for
14 production to Pleasure Point, but Mr. Reitman responded that he
15 had returned the tax returns to the Lergs and was no longer in
16 possession of them.⁶

17 At this point, Mr. Polis essentially abandoned Mr. Reitman.
18 At 3:35 p.m., Ms. LaRocque e-mailed Mr. Polis a revised version
19 of the Stipulation and again asked for comments regarding
20 Mr. Reitman. Shortly thereafter, Mr. Polis told Ms. LaRocque
21 that she should contact Mr. Reitman directly, because "[a]fter a
22 recent conference call regarding this matter, [he was] not
23

24 ⁶ Mr. Reitman's claim that he no longer had possession of
25 the returns is implausible. In the very same e-mail, Mr. Reitman
26 informed Mr. Polis, "I have the clients in my office at this
27 moment." In other words, Mr. Reitman said, virtually in the same
28 breath, that he could not produce the tax returns because the
Lergs had them and that the Lergs were at that moment in
Mr. Reitman's office. Mr. Reitman was "hiding the ball," not
just from Pleasure Point, but also from his own counsel.

1 certain as to [his] future role in this matter." She forwarded
2 the Stipulation to Mr. Reitman and asked for his comments as soon
3 as possible. Mr. Reitman responded, "I have sent instructions
4 under separate cover to Mr. Polis a few moments ago regarding
5 these issues. Mr. Polis now knows what he needs to do." Shortly
6 thereafter, at 5:47 p.m., he again e-mailed Ms. LaRocque, "please
7 advise Mr. Polis, who is being copied on this message, that I am
8 instructing that the Stipulation not be returned to Mr. Goe's
9 office [counsel for Pleasure Point] under any circumstances
10 unless and until you receive further instructions either from me
11 or the clients." Shortly after 6:00 p.m., without waiting for a
12 further response from Mr. Reitman, counsel for Pleasure Point
13 filed the Stipulation in an attempt to meet the court's deadline.

14 The following morning, on August 12, Pleasure Point filed
15 its supplemental brief in support of its Motion to Compel, as
16 provided in the Second Scheduling Order. Pleasure Point alleged
17 that Mr. Reitman and the Lergs were in contempt of the bankruptcy
18 court's order for failing to execute the Stipulation by
19 August 11. Pleasure Point requested that the court sanction
20 Mr. Reitman, the Lergs, and Mr. Polis for \$11,415.10 in
21 attorneys' fees and costs.

22 Half an hour later, Mr. Polis filed the Stipulation with his
23 signature on behalf of the Lergs. Mr. Polis did not sign the
24 Stipulation on behalf of Mr. Reitman or include information about
25 Mr. Reitman's position.

26 Mr. Polis also filed a declaration in which he attempted to
27 explain the circumstances surrounding the Stipulation (and to
28 exculpate himself). He said he had recommended that the Lergs

1 produce redacted portions of their tax returns and that
2 Mr. Reitman had promised to provide the returns for production.
3 He said that the Lergs and Reitman "are now for reasons
4 unbeknownst to me hesitant to provide such documents" He
5 said he had "no control" over the production of documents by
6 Mr. Reitman, that Mr. Reitman's failure to comply with the
7 Stipulations was "his own doing of which I have no control," and
8 that his efforts to protect the Lergs's interests and comply with
9 the court's discovery order "have been completely thwarted by
10 [Mr. Reitman's] blatant disregard for the Court's Discovery Order
11" He said he "will be substituting out of this matter
12 very soon."⁷

13 That day, Mr. Reitman produced a brief summary of billing
14 records and payments from the Lergs to Mr. Reitman. The Lergs
15 also agreed to produce their redacted tax returns.

16 The following day, at the August 13 continued hearing on the
17 Motion to Compel, the parties apprised the bankruptcy court of
18 the ongoing discovery dispute. The court said that it would
19 "take off calendar the motion to compel as to the Lergs, and deem
20 it as resolved by consent of the parties." The court turned its
21 attention to Mr. Reitman, inquiring if he ever responded to the
22 Reitman RPOD. Mr. Reitman at first argued that he was not served
23 with any discovery request, because it was served on Mr. Polis.

25 ⁷ The bankruptcy court did not sanction Mr. Polis, so we
26 need not rule on the propriety of his conduct. We do not condone
27 his decision to abandon one of his clients - Mr. Reitman - in
28 favor of his own self interest or to disclose privileged
attorney-client communications to the court in an effort to
exculpate himself and avoid sanctions.

1 When the court pressed him whether he "at any time, provided a
2 written response to the discovery request," he answered, "No,
3 sir. I provided all of that information to Mr. Goe."⁸ He
4 further admitted that he did not provide a privilege log to
5 opposing counsel; participated in the meet-and-confer by
6 telephone; did not file a supplemental brief; and believed that
7 the discovery dispute was mostly resolved, except for the
8 question whether a particular letter was privileged. He argued,
9 "I did not understand that I was a party to this motion until
10 pretty much right now."⁹ I was never served with discovery.
11 Mr. Polis was. At no time did Mr. Polis tell me that, 'You need
12 to respond to this discovery, and so get it responded to.'"

13 At the conclusion of the hearing, the bankruptcy court
14 sanctioned Mr. Reitman for his (1) failure to respond to
15 discovery requests; (2) failure to participate in person at the
16 August 7, 2014 meet-and-confer; (3) failure to file a
17 supplemental brief; and (4) failure to execute the Stipulation.

18 The bankruptcy court sanctioned Mr. Reitman \$4,265.87 and
19 explained its rationale for doing so:

20 With respect to the sanctions of \$4,265.87, that
21 figure is calculated as follows:

22 ⁸ Mr. Reitman probably misspoke. He probably meant to refer
23 to Mr. Polis, his attorney, rather than opposing counsel.

24 ⁹ Mr. Reitman's position that he was not served with the
25 Motion to Compel or did not understand that it was directed at
26 him is disingenuous. At oral argument, counsel argued that if
27 the motion was electronically filed, he would not have seen it.
28 However, the record is clear that Mr. Polis forwarded the Motion
to Compel to Mr. Reitman. Moreover, even a cursory reading of
the motion (by an attorney, no less) would inform Mr. Reitman
that he is one of the subjects of the Motion to Compel.

1 sanctioning Mr. Reitman under Rule 7037.

2 (2) Whether the bankruptcy court abused its discretion in
3 denying Mr. Reitman's motion for reconsideration.

4 **STANDARDS OF REVIEW**

5 We review the bankruptcy court's imposition of discovery
6 sanctions for abuse of discretion. Freeman v. San Diego Ass'n of
7 Realtors, 322 F.3d 1133, 1156 (9th Cir. 2003). We apply a
8 two-part test to determine objectively whether the bankruptcy
9 court abused its discretion, first determining de novo whether
10 the court identified the correct legal rule, and second examining
11 the court's factual findings under the clearly erroneous
12 standard. Beal Bank USA v. Windmill Durango Office, LLC
13 (In re Windmill Durango Office, LLC), 481 B.R. 51, 64 (9th Cir.
14 BAP 2012) (citing United States v. Hinkson, 585 F.3d 1247,
15 1261-62 (9th Cir. 2009) (en banc)). A bankruptcy court abuses
16 its discretion if it applied the wrong legal standard or its
17 findings were illogical, implausible, or without support in the
18 record. TrafficSchool.com, Inc. v. Edriver Inc., 653 F.3d 820,
19 832 (9th Cir. 2011).

20 Similarly, we review the bankruptcy court's denial of a
21 motion for reconsideration for abuse of discretion. Cruz v.
22 Stein Strauss Tr. #1361, PDQ Invs., LLC (In re Cruz), 516 B.R.
23 594, 601 (9th Cir. BAP 2014) (citing Tracht Gut, LLC v. Cty. of
24 L.A. Treasurer & Tax Collector (In re Tracht Gut, LLC), 503 B.R.
25 804, 810 (9th Cir. BAP 2014)).

26 "We do not reverse for errors not affecting substantial
27 rights of the parties, and may affirm for any reason supported by
28 the record." COM-1 Info, Inc. v. Wolkowitz (In re Maximus

1 Computers, Inc.), 278 B.R. 189, 194 (9th Cir. BAP 2002); see
2 28 U.S.C. § 2111; Civil Rule 61, incorporated by Rule 9005.

3 DISCUSSION

4 **A. Civil Rule 37 mandates discovery sanctions for noncompliance** 5 **with Civil Rule 34.**

6 Under Civil Rule 34(a), a party may serve another party with
7 a request:

8 (1) to produce and permit the requesting party or its
9 representative to inspect, copy, test, or sample the
10 following items in the responding party's possession,
11 custody, or control:

11 (A) any designated documents or electronically
12 stored information - including writings, drawings,
13 graphs, charts, photographs, sound recordings,
14 images, and other data or data compilations -
15 stored in any medium from which information can be
16 obtained either directly or, if necessary, after
17 translation by the responding party into a
18 reasonably usable form; or

19 (B) any designated tangible things[.]

20 Civil Rule 34(a). The responding party must generally serve a
21 response within thirty days of service, although the court may
22 order a longer or shorter period. Civil Rule 34(b) (2) (A). "For
23 each item or category, the response must either state that
24 inspection and related activities will be permitted as requested
25 or state an objection to the request, including the reasons."
26 Civil Rule 34(b) (2) (B).

27 Civil Rule 37(a), which is made applicable by Rule 7037,
28 provides that a party may move to compel discovery when, inter
29 alia, "a party fails to respond that inspection will be permitted
30 - or fails to permit inspection - as requested under [Civil]
31 Rule 34." Civil Rule 37(a) (3) (B) (4). In the event a motion to
32 compel is granted, Civil Rule 37 states that "the court must,

1 after giving an opportunity to be heard, require the party or
2 deponent whose conduct necessitated the motion, the party or
3 attorney advising that conduct, or both to pay the movant's
4 reasonable expenses incurred in making the motion, including
5 attorney's fees." Civil Rule 37(a)(5)(A).

6 However, Civil Rule 37(a) also provides that sanctions are
7 inappropriate in certain circumstances:

8 But the court must not order this payment if:

9 (i) the movant filed the motion before attempting
10 in good faith to obtain the disclosure or
discovery without court action;

11 (ii) the opposing party's nondisclosure, response,
12 or objection was substantially justified; or

13 (iii) other circumstances make an award of
expenses unjust.

14 Id.

15 Similarly, if a party violates a court order regarding
16 discovery, then "the court must order the disobedient party, the
17 attorney advising that party, or both to pay the reasonable
18 expenses, including attorney's fees, caused by the failure,
19 unless the failure was substantially justified or other
20 circumstances make an award of expenses unjust." Civil
21 Rule 37(b)(2)(c).

22 The party facing sanctions bears the burden of proving that
23 its failure to disclose the required information was
24 substantially justified or is harmless. R&R Sails, Inc. v. Ins.
25 Co. of Pa., 673 F.3d 1240, 1246 (9th Cir. 2012) (citing Torres v.
26 City of L.A., 548 F.3d 1197, 1213 (9th Cir. 2008) (construing
27 FRCP 37(c)(1))). The court is not required to find bad faith as
28 a prerequisite to imposing monetary sanctions. Bissell v. United

1 States, 321 F. App'x 549, 552 (9th Cir. 2008); see Lewis v. Ryan,
2 261 F.R.D. 513, 518 (S.D. Cal. 2009) ("The lack of bad faith does
3 not immunize a party or its attorney from sanctions, although a
4 finding of good or bad faith may be a consideration in
5 determining whether imposition of sanctions would be unjust and
6 the severity of the sanctions." (citing Hyde & Drath v. Baker,
7 24 F.3d 1162, 1171 (9th Cir. 1994))).

8 In imposing sanctions, the court should consider the
9 relative responsibility of the attorney and the client in causing
10 the discovery abuse. See, e.g., Dodson v. Runyon, 86 F.3d 37, 40
11 (2d Cir. 1996) (In considering "whether the sanctions should be
12 aimed primarily against the party or the attorney, it can be
13 important for the district court to assess the relative roles of
14 attorney and client in causing the delay, as well as whether a
15 tactical benefit was sought by the delay. In making this
16 statement, we are cognizant of the fact that a client is
17 ordinarily bound by the acts of his lawyer, and this - of course
18 - extends to behavior that would justify a dismissal for failure
19 to prosecute."); Tom v. S.B., Inc., 280 F.R.D. 603, 612 (D.N.M.
20 2012) ("In reviewing whether sanctions are appropriate, the court
21 should consider **who** acted in bad faith, the party or the
22 attorney, and to what degree." (emphasis in original)). Courts
23 must "analyze the conduct of parties and their attorneys
24 separately. 'The rule that the sins of the lawyer are visited on
25 the client does not apply in the context of sanctions,' and we
26 therefore must 'specify conduct of the client herself that is bad
27 enough to subject her to sanctions.'" Ransmeier v. Mariani,
28 718 F.3d 64, 71 (2d Cir. 2013) (quoting Gallop v. Cheney,

1 660 F.3d 580, 584 (2d Cir. 2011) (per curiam), vacated in part on
2 other grounds, 667 F.3d 226, 231 (2d Cir. 2011)).

3 **B. The bankruptcy court did not abuse its discretion when it**
4 **sanctioned Mr. Reitman.**

5 There is no dispute that the bankruptcy court identified the
6 correct standard for the imposition of sanctions under Rule 7037.
7 Rather, Mr. Reitman argues that the court erred in applying that
8 standard to the facts of this case.

9 Similarly, there is no dispute that Mr. Reitman did not
10 fully comply with the bankruptcy court's Second Scheduling Order.
11 Mr. Reitman claims, however, that the bankruptcy court should
12 have sanctioned Mr. Polis, rather than Mr. Reitman, for that
13 noncompliance. Therefore, we turn to the four instances of
14 noncompliance for which the bankruptcy court sanctioned
15 Mr. Reitman.

16 **1. Failure to respond to the Reitman RPOD**

17 The bankruptcy court ruled that Mr. Reitman failed to
18 respond to the Reitman RPOD. We think that this failing,
19 standing alone, would not justify sanctioning Mr. Reitman rather
20 than Mr. Polis.

21 The uncontroverted evidence shows that, well before the
22 response was due, Mr. Reitman gave Mr. Polis the information
23 Mr. Polis needed to draft the response to the Reitman RPOD. For
24 reasons he has never attempted to explain, Mr. Polis simply
25 failed to complete that task.

26 Mr. Reitman's arguments to the bankruptcy court on this
27 issue probably hurt his cause. For example, he argued that he
28 was not responsible for the failure to respond because he was

1 never "served" with the Reitman RPOD. This contention was
2 meritless. Pleasure Point's counsel served the Reitman RPOD on
3 Mr. Polis, who was Mr. Reitman's attorney. Pleasure Point did
4 not need to serve Mr. Reitman with discovery requests directly.
5 The argument is also disingenuous, because Mr. Reitman eventually
6 admitted that Mr. Polis promptly forwarded a copy of the Reitman
7 RPOD to him, and the record confirms that Mr. Polis forwarded a
8 copy of the discovery request on July 15. The bankruptcy court
9 correctly chastised Mr. Reitman for his misleading statements.

10 Nevertheless, responsibility for the failure to serve a
11 response properly rests with Mr. Polis, and that failing,
12 standing alone, would not justify sanctions against Mr. Reitman.

13 **2. Failure to attend the meet-and-confer in person**

14 Second, the bankruptcy court sanctioned Mr. Reitman for
15 attending the August 7 meet-and-confer by phone, rather than in
16 person. The bankruptcy court thought that this was contrary to
17 its Second Scheduling Order which provides, in relevant part:

18 Trial counsel for all parties are hereby ordered to
19 meet and confer regarding the pending discovery
20 dispute. . . . [T]he parties shall meet and confer for
21 at least one hour in person in good faith in an attempt
22 to resolve the Emergency Motion. Senior counsel of
record for the moving party and senior counsel of
record for the opposing party shall personally attend
the meeting. . . . [T]he meeting must occur in person
(i.e. not by telephone) and senior counsel must attend.

23 Mr. Reitman attended the meeting telephonically, ostensibly with
24 Mr. Polis's permission.

25 Mr. Reitman argues that, because he was not counsel of
26 record in the bankruptcy case, he was not obligated to attend the
27 meet-and-confer in person. He argues that the court did not
28 order him to attend the meeting and there is no applicable rule

1 requiring a client to attend a discovery meeting, in person or
2 otherwise. We agree that the Second Scheduling Order is not
3 sufficiently clear to support sanctions against Mr. Reitman on
4 this score.

5 The court made clear that "senior counsel of record" were
6 required to attend the meeting in person. The order stated at
7 least three times that counsel were to meet "in person." The
8 order does state at one point that "the parties shall meet and
9 confer in good faith," but all of the provisions requiring
10 personal appearance apply only to counsel, not the parties. The
11 court did not require any party to attend the meet-and-confer,
12 nor did it impose a requirement that non-counsel must attend in
13 person.

14 Although the meet-and-confer was ordered by the bankruptcy
15 court, the relevant local rule is instructive. LBR 7026-1(c)(2)
16 provides that "**counsel** for the parties must meet in person or by
17 telephone in a good faith effort to resolve a discovery dispute."
18 LBR 7026-1(c)(2) (emphasis added). The rule further states that
19 "[u]nless altered by agreement of the parties or by order of the
20 court for cause shown, **counsel** for the opposing party must meet
21 with **counsel** for the moving party within 7 days of service upon
22 counsel of a letter requesting such a meeting" Id.
23 (emphases added). The rule only requires the attendance of
24 counsel and does not require that any party attend the meet-and-
25 confer. Nor can we say that the court's Second Scheduling Order
26 was clear enough to have "altered" this requirement "by order of
27 the court[.]"

28 When sanctioning Mr. Reitman, the bankruptcy court may have

1 conflated his roles as a client of Mr. Polis and as "referring
2 counsel" (in Mr. Reitman's words) for the Lergs. The court
3 referred to Mr. Reitman as "counsel" and stated:

4 In addition, Mr. Reitman did not participate in person
5 with the meet and confer meeting. That was
6 specifically ordered by the Court. There was a very
7 intentional reason for that. I find that personal
8 appearances at such meetings heightens the attention of
9 counsel involved, cools tempers, and reminds people the
seriousness of problems with discovery issues. And in
fact, this case is a perfect example of how a
resolution was achieved by counsel who were personally
present, **but not with counsel who was on the telephone.**

10 (Emphasis added.) The bankruptcy court's statements are
11 understandable because, in many respects, Mr. Reitman behaved
12 more like an attorney than a client. The fact remains, however,
13 that he was represented by Mr. Polis during the bankruptcy
14 proceedings and the Second Scheduling Order did not unambiguously
15 require the clients, as opposed to counsel, to attend the meet-
16 and-confer.

17 At oral argument, counsel for Pleasure Point - who also
18 represented Pleasure Point during the bankruptcy court
19 proceedings - conceded that he did not believe that the court's
20 Second Scheduling Order regarding in-person participation applied
21 to Mr. Reitman. We agree and hold that the court abused its
22 discretion in sanctioning Mr. Reitman for not participating in
23 the meet-and-confer in person.

24 **3. Failure to file a supplemental brief**

25 Third, the bankruptcy court sanctioned Mr. Reitman for
26 neglecting to file a supplemental brief in opposition to the
27 Motion to Compel. The Second Scheduling Order provided:

28 If the parties are unable to reach an agreement

1 resolving the Emergency Motion, then (a) the parties
2 shall prepare the stipulation required by
LBR 7026-1(c)(3) and submit it to the court no later
3 than August 11, 2014, (b) **supplemental briefs regarding**
4 **the Emergency Motion are due no later than August 12,**
5 **2014** at 10:00 a.m. and (c) trial counsel for all
parties must appear at the continued hearing on
August 13, 2014.

6 (Emphasis added.)

7 Mr. Reitman argues that the order permitted, but did not
8 require, the parties to file supplemental briefs. We agree.

9 The Second Scheduling Order does not explicitly require
10 supplemental briefs. While the court makes clear that certain of
11 the provisions are mandatory - "the parties **shall** prepare the
12 stipulation" and counsel "**must** appear at the continued hearing" -
13 the provision regarding supplemental briefs does not contain
14 mandatory language: "supplemental briefs regarding the Emergency
15 Motion are due no later than August 12, 2014[.]" (Emphases
16 added.) This phrasing does not create an imperative that would
17 require supplemental briefing. It would be reasonable for
18 Mr. Reitman to think that further briefing was optional and that
19 he could stand on the arguments raised in his prior opposition to
20 the Motion to Compel.

21 Indeed, counsel for Pleasure Point stated at oral argument
22 that he did not believe that the supplemental briefs were
23 mandatory. Thus, we hold that it would have been unjust to
24 sanction Mr. Reitman solely for failing to file a supplemental
25 brief in opposition to the Motion to Compel.

26 **4. Failure to sign the Stipulation**

27 Finally, the bankruptcy court sanctioned Mr. Reitman for
28 failing to sign the Stipulation by August 11, 2014. At the

1 hearing on the Motion to Compel, the court ordered that,
2 following the meet-and-confer, "the parties shall prepare the
3 stipulation required by LBR 7026-1(c)(3) and submit it to the
4 court no later than August 11, 2014[.]"

5 Mr. Reitman argues that he believed that Mr. Polis was
6 drafting the Stipulation with counsel for Pleasure Point. He
7 states that, when he finally saw a draft of the Stipulation, it
8 did not contain any information relating to himself and the
9 Lergs, and Mr. Polis did not make an effort to include
10 information on Mr. Reitman's behalf. Mr. Reitman contends that,
11 when Ms. LaRocque contacted him for his input, he did not realize
12 that she was Pleasure Point's counsel.¹¹ He says that his e-mail
13 directing Mr. Polis not to sign the Stipulation was not intended
14 to disobey the court's order, but to ensure that "obvious
15 deficiencies were addressed, and language was added to protect
16 the Lergs from the disclosure of sensitive, personal financial
17 information."

18 Mr. Reitman failed to consider the requirements of
19 LBR 7026-1(c)(3). His arguments on appeal reflect the same
20 error. The rule provides:

21 Moving Papers. If counsel are unable to resolve the
22 dispute, the party seeking discovery must file and

23 ¹¹ Mr. Reitman claims that he mistakenly thought that
24 Ms. LaRoque was a colleague of Mr. Polis, rather than opposing
25 counsel. This statement is not believable. Ms. LaRoque's
26 electronic signature on the e-mail stated that she was affiliated
27 with the law firm representing Pleasure Point. Further, she
28 included with her e-mail her prior string of e-mails with
Mr. Polis, which make it clear that she was opposing counsel.
Finally, a prior e-mail strongly suggests that Mr. Reitman knew
that Ms. LaRoque did not work with Mr. Polis.

1 serve a notice of motion together with a written
2 stipulation by the parties.

3 (A) **The stipulation must be contained in 1**
4 **document and must identify, separately and**
5 **with particularity, each disputed issue that**
6 **remains to be determined at the hearing and**
7 **the contentions and points and authorities of**
8 **each party as to each issue.**

9 (B) **The stipulation must not simply refer the**
10 **court to the document containing the**
11 **discovery request forming the basis of the**
12 **dispute.** For example, if the sufficiency of
13 an answer to an interrogatory is in issue,
14 the stipulation must contain, verbatim, both
15 the interrogatory and the allegedly
16 insufficient answer, **followed by each party's**
17 **contentions,** separately stated.

18 (C) In the absence of such stipulation or a
19 declaration of counsel of noncooperation by
20 the opposing party, the court will not
21 consider the discovery motion.

22 LBR 7026-1(c) (3) (emphases added). In other words, the
23 stipulation must not only state the parties' agreements, but must
24 also state and describe their disagreements and their respective
25 arguments.

26 Mr. Reitman balked at the draft Stipulation because he did
27 not think that it should contain Pleasure Point's arguments. In
28 an e-mail to Mr. Polis, he complained that "[t]he Stipulation
also contains gratuitous statements and argument by the LLC's
counsel, which has no place in a Stipulation. All such
statements should be deleted."¹² He admitted to the court, "It
is true we did not comply with the Court's order with respect to

¹² Mr. Reitman told the court that he disagreed with the
Stipulation because "[i]t didn't look like a stipulation to me.
It looked like a brief with lawyer's arguments in it, for the
most part. And whatever agreements were in that stipulation were
buried in it."

1 getting a signed stipulation, but again, if the Court has read
2 that stipulation, which it sounds like you have, I just - I've
3 never seen a stipulation that looked like that, frankly."

4 If Mr. Reitman had bothered to read the local rule, he would
5 have known that his objection lacked any merit. LBR 7026-1(c)(3)
6 explicitly requires that the stipulation include the parties'
7 arguments in support of their positions.

8 Mr. Polis might have been able to resolve this problem by
9 explaining the local rule to Mr. Reitman. So far as the record
10 reveals, Mr. Polis did not attempt to do so. And by that point,
11 the relationship between Mr. Reitman and Mr. Polis was so
12 poisonous that Mr. Reitman likely would not have believed
13 anything Mr. Polis said. Nevertheless, Mr. Reitman was forming
14 legal judgments about what the stipulation should include without
15 familiarizing himself with the applicable law. As a licensed
16 attorney, he cannot escape responsibility for his own legal
17 opinions, even if his co-counsel failed to inform him that those
18 opinions were wrong.

19 Similarly, Mr. Reitman objected that the Stipulation did not
20 include language protecting the Lergs's tax returns from
21 disclosure. He complained to the court, "I did see some language
22 that Mr. Polis put into the stipulation relating to [non-
23 disclosure of the Lergs's tax returns], but I didn't see any
24 indication that Mr. Goe's office had agreed to it, or even knew
25 about it." Again, Mr. Reitman failed to inform himself of the
26 applicable legal requirement. Under LBR 7026-1(c)(3), if the
27 parties have not reached agreement on all issues, the parties
28 were still required to file the Stipulation and state their

1 positions on the issues in dispute.

2 Mr. Reitman's conduct in connection with the Stipulation
3 undercuts his basic argument on appeal, which is that all of the
4 discovery problems were Mr. Polis's fault. By his own admission,
5 Mr. Reitman is not an expert in bankruptcy procedure.
6 Nevertheless, he took on the role of a lawyer for himself and the
7 Lergs by repeatedly and insistently interjecting himself in the
8 drafting and submission of the Stipulation, and eventually
9 directing Mr. Polis not to sign it. He also failed to cooperate
10 with Mr. Polis by drafting provisions describing his own position
11 on the discovery directed to him. The bankruptcy court correctly
12 held that Mr. Reitman violated the Second Scheduling Order by
13 instructing Mr. Polis not to sign the Stipulation.

14 **5. Reduction of sanctions**

15 Moreover, it is apparent that the bankruptcy court properly
16 recognized that the blame for the discovery disputes did not rest
17 solely with Mr. Reitman. The Motion to Compel requested that the
18 court sanction Mr. Reitman, the Lergs, and Mr. Polis and require
19 them to pay \$11,415.10.¹³ Although the court sanctioned
20 Mr. Reitman alone, it only sanctioned him \$4,265.87, or one-third
21 of Pleasure Point's fees and costs. Simple arithmetic shows that
22 the court assigned only one-third of the blame to Mr. Reitman.
23 Thus, even considering Mr. Polis's responsibility for the
24 discovery dispute, it was not unjust to sanction Mr. Reitman in
25

26 ¹³ As noted above, the court used \$12,656 as the sum of
27 Pleasure Point's fees and \$141.60 in costs, based on a review of
28 the invoices attached to Pleasure Point's supplemental brief to
its Motion to Compel.

1 an amount equal to one-third of Pleasure Point's fees and costs.

2 **B. The bankruptcy court did not abuse its discretion in denying**
3 **Mr. Reitman's motion for reconsideration.**

4 As his second point of error, Mr. Reitman contends that the
5 bankruptcy court erred in denying his motion for reconsideration.
6 Although Mr. Reitman identifies the denial of his motion for
7 reconsideration as one of the points of error and mentions it in
8 a paragraph of his factual history, he does not argue the alleged
9 error anywhere in his opening brief.

10 As the Ninth Circuit has stated, "we cannot 'manufacture
11 arguments for an appellant' and therefore we will not consider
12 any claims that were not actually argued in appellant's opening
13 brief. Rather, we 'review only issues which are argued
14 specifically and distinctly in a party's opening brief.'" Indep. Towers of Wash. v. Washington, 350 F.3d 925, 929 (9th Cir.
15 2003) (quoting Greenwood v. Fed. Aviation Admin., 28 F.3d 971,
16 977 (9th Cir. 1994)). Significantly, "[a] bare assertion of an
17 issue does not preserve a claim." Id. (quoting D.A.R.E. Am. v.
18 Rolling Stone Magazine, 270 F.3d 793, 793 (9th Cir. 2001)).

19 Mr. Reitman identifies the bankruptcy court's denial of his
20 motion for reconsideration as a point of error and includes the
21 relevant parts of the record in his appendix, yet fails to
22 "specifically and distinctly" argue how the bankruptcy court
23 abused its discretion in his opening brief.¹⁴ See id.; Rule

24
25
26 ¹⁴ Pleasure Point's answering brief discusses the motion for
27 reconsideration at length. As a result, Mr. Reitman's reply
28 brief contains some argument regarding the motion for
reconsideration. However, the reply brief still does not

(continued...)

1 8014(a)(8) (an appellant's brief must include "the argument,
2 which must contain the appellant's contentions and the reasons
3 for them, with citations to the authorities and parts of the
4 record on which the appellant relies"). As such, we do not
5 consider Mr. Reitman's second point of error.

6 Even if we found it appropriate to address Mr. Reitman's
7 second point of error, we would affirm the bankruptcy court for
8 the reasons stated above. Mr. Reitman argued generally that the
9 court should reverse the sanctions due to his "mistake,
10 inadvertence, surprise, or excusable neglect."¹⁵ However, the
11 motion for reconsideration failed to raise any argument that
12 would alter the bankruptcy court's decision on the Motion to
13 Compel; rather, it merely rehashed his previous arguments. See
14 Fadel v. DCB United LLC (In re Fadel), 492 B.R. 1, 18 (9th Cir.
15 BAP 2013) ("Even if we considered it, the Reconsideration Motion
16 improperly raised legal arguments and/or alleged new facts that
17 Mrs. Fadel could have raised at the initial hearing, and it
18 improperly rehashed arguments she had already presented."). We

19
20 ¹⁴(...continued)
21 identify any way in which the bankruptcy court allegedly erred.

22 Moreover, Mr. Reitman argues that Pleasure Point concedes
23 that the bankruptcy court erred. This is false. Although
24 Pleasure Point addresses the four grounds for sanctions in its
25 discussion of the motion for reconsideration, we construe those
arguments as applying to the bankruptcy court's order on the
underlying Motion to Compel, as well.

26 ¹⁵ Mr. Reitman argues that his grounds for appeal of the
27 motion for reconsideration are not limited to Civil
28 Rule 60(b)(1), although that is the only ground identified in the
motion for reconsideration. However, he does not identify any
additional grounds on appeal.

1 have considered all of those arguments and rejected Mr. Reitman's
2 argument that the bankruptcy court committed reversible error.

3 **CONCLUSION**

4 For the reasons set forth above, we AFFIRM.
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