

AUG 08 2016

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NOT FOR PUBLICATION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-15-1216-FDKu  
 )  
 SoCAL SLEEP CENTERS, LLC, ) Bk. No. 2:14-bk-28581-NB  
 )  
 Debtor. )  
 )  
 \_\_\_\_\_ )  
 )  
 MAUREEN JAROSCAK, )  
 )  
 Appellant, )  
 )  
 v. ) **MEMORANDUM\***  
 )  
 ARCADIA HUB HOLDINGS 3, LLC; )  
 UNITED STATES TRUSTEE, )  
 )  
 Appellees.\*\* )  
 )  
 \_\_\_\_\_ )

Argued and Submitted on July 28, 2016  
at Pasadena, California

Filed - August 8, 2016

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

Honorable Neil W. Bason, Bankruptcy Judge, Presiding

Appearances: Robert Rice argued for Appellant Maureen Jaroscak;  
Sumi Sakata argued for Appellee United States  
Trustee.

Before: FARIS, DUNN, and KURTZ, Bankruptcy Judges.

\* 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.

\*\* Arcadia Hub Holdings 3, LLC did not file an answering  
brief or otherwise participate in this appeal.

1 **INTRODUCTION**

2 Appellant Maureen Jaroscak appeals the bankruptcy court's  
3 imposition of sanctions against her for her conduct while she  
4 represented debtor SoCal Sleep Centers, LLC in its chapter 11<sup>1</sup>  
5 case. Ms. Jaroscak argues that she did not make any false  
6 statements or mislead the court. She contends that the court  
7 erred by sanctioning her, rather than her client, and refusing to  
8 amend its order (pursuant to the parties' stipulation) to  
9 sanction her client, rather than her.

10 Ms. Jaroscak's arguments on appeal are all meritless, and  
11 some are frivolous. Accordingly, we AFFIRM.

12 **FACTUAL BACKGROUND**

13 **A. The unlawful detainer action**

14 Arcadia Hub Holdings 3, LLC ("Arcadia Hub") owned commercial  
15 real property in Beverly Hills, California. Arcadia Hub's  
16 tenant, Beverly Hills Surgery Center, allegedly subleased some or  
17 all of the premises to SoCal Sleep Centers<sup>2</sup> without Arcadia Hub's  
18 knowledge.

19 In or around July 2014, Arcadia Hub began eviction  
20 proceedings in California Superior Court against Beverly Hills  
21 Surgery Center and filed an unlawful detainer action.  
22 Ms. Jaroscak, who is an attorney licensed to practice in  
23

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

<sup>2</sup> SoCal Sleep Centers is allegedly a sleep clinic that  
diagnosed sleep abnormalities.

1 California, represented SoCal Sleep Centers.<sup>3</sup> She signed a  
2 "Prejudgment Claim of Right of Possession" on behalf of SoCal  
3 Sleep Centers, in which she claimed that SoCal Sleep Centers  
4 occupied the premises when the unlawful detainer complaint was  
5 filed and had continued to occupy the premises ever since.

6 Inexplicably, Ms. Jaroscak also signed SoCal Sleep Centers'  
7 answer to the complaint, which took the opposite position.  
8 According to the answer, SoCal Sleep Centers "has tendered  
9 possession and keys to the premises to plaintiff. Possession is  
10 no longer an issue in the proceeding and no complaint for  
11 unlawful detainer may be brought against the defendants."<sup>4</sup>

12 The superior court later struck SoCal Sleep Centers'  
13 prejudgment claim of right of possession as improperly executed.  
14 It entered judgment for possession and unpaid rent in favor of  
15 Arcadia Hub and against Beverly Hills Surgery Center.

16 **B. SoCal Sleep Centers' chapter 11 bankruptcy**

17 On September 30, 2014, SoCal Sleep Centers filed a  
18 chapter 11 bankruptcy petition. Ms. Jaroscak was listed as its  
19 attorney of record.  
20  
21  
22

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23 <sup>3</sup> Arcadia Hub alleged that Ms. Jaroscak also represented  
24 Beverly Hills Surgery Center.

25 <sup>4</sup> Ms. Jaroscak claims that this admission is a typo. She  
26 asserts that it should have read, "Defendant has **not** tendered  
27 possession . . . ." (Emphasis added.) This assertion is not  
28 credible. The very next sentence of the answer says that  
"[p]ossession is no longer an issue in this proceeding . . . ."  
The "correction" would make the answer internally and patently  
inconsistent.

1           **1.     SoCal Sleep Centers' schedules**

2           SoCal Sleep Centers' bankruptcy filings were woefully  
3 deficient. Among other things, Ms. Jaroscak did not file a  
4 retention application<sup>5</sup> or disclosure of compensation, and she did  
5 not file any "first day motions" which are almost always  
6 necessary in a chapter 11 case.

7           SoCal Sleep Centers sought an extension to file its  
8 schedules and statement of financial affairs in a motion filed on  
9 October 14, 2014, the day those documents were due. SoCal Sleep  
10 Centers' manager, Mr. Oxman, submitted a declaration that SoCal  
11 Sleep Centers had been unable to submit its schedules, because,  
12 as a result of the landlord's unlawful detainer action and  
13 intimidation, "[a]ccess to debtor's business records to  
14 adequately complete the schedules has been severely impaired  
15 . . . ."

16           The bankruptcy court granted SoCal Sleep Centers an  
17 extension to file its schedules. SoCal Sleep Centers never filed  
18 the required schedules and statements.

19           **2.     Ms. Jaroscak's conflicting statements**

20           Arcadia Hub filed a motion for relief from the automatic  
21 stay ("Motion for Relief"). It argued (among other things) that  
22 \_\_\_\_\_

23           <sup>5</sup> This was a serious omission. A person filing a retention  
24 application must disclose "all of the person's connections with  
25 the debtor," Rule 2015(a), so the court can evaluate whether the  
26 person is a "disinterested person," § 101(14), and "does not hold  
27 or represent an interest adverse to the estate," § 327(a). It  
28 was later revealed that Ms. Jaroscak's husband, Brian Oxman, is a  
manager of SoCal Sleep Centers. (Mr. Oxman was also  
Ms. Jaroscak's law partner until he was disbarred for  
misconduct.) Ms. Jaroscak should have disclosed these facts at  
the very inception of the chapter 11 case.

1 SoCal Sleep Centers had filed its bankruptcy petition in bad  
2 faith. Additionally, Arcadia Hub stated that it believed that  
3 SoCal Sleep Centers' suite "is effectively empty and that no  
4 personal property is located therein. . . . [N]o business has  
5 been conducted . . . for over one year since Tenants'  
6 '1-800-GET-THIN' marketing program was shut down by governmental  
7 investigators."

8         SoCal Sleep Centers opposed the Motion for Relief.  
9 Ms. Jaroscak submitted a declaration in support of the opposition  
10 in which she stated (among other things) that SoCal Sleep Centers  
11 was able to cure the rent arrearage and had tendered payment to  
12 Arcadia Hub. She said that SoCal Sleep Centers had not abandoned  
13 the property and attested that "SoCal Sleep Centers has sleep  
14 study equipment, computers, files, and reception area equipment  
15 and supplies on the premises and I have seen such equipment and  
16 fixtures. . . . SoCal Sleep Centers still maintains a presence  
17 at the medical suite." She further stated that "SoCal Sleep  
18 Centers operates out of that location."

19         On October 28, 2014, the same day that SoCal Sleep Centers  
20 filed its opposition to the Motion for Relief, the court held a  
21 status conference. Counsel for Arcadia Hub and the Office of the  
22 United States Trustee ("U.S. Trustee") informed the court that  
23 SoCal Sleep Centers had not filed many of the required documents,  
24 communicated with the U.S. Trustee, or appeared for its initial  
25 interview and § 341 meeting. They argued that the bankruptcy  
26 petition was filed in bad faith. Arcadia Hub represented that  
27 "[t]he premises have, in fact, been vacant for approximately a  
28 year. There is no business being conducted in the premises, and

1 has not been for approximately a year." Ms. Jaroscak responded  
2 that "we are still there. There are still files there. There is  
3 furniture there. There are computers there." She stated that  
4 "[t]he debtor is not insolvent."

5 The court expressed concern that SoCal Sleep Centers had not  
6 filed first day motions that would have addressed issues such as  
7 cash collateral, utilities, and payroll. The court required  
8 SoCal Sleep Centers to file an "extensive" status report, warning  
9 that it "may well have to dismiss the case . . . if there aren't  
10 some really good answers."

11 The very next day, SoCal Sleep Centers filed a motion to  
12 dismiss its chapter 11 case ("Motion to Dismiss"). It gave two  
13 reasons for requesting dismissal: (1) it was unable to comply  
14 with the court's filing requirements, since it "does not have  
15 access to its books, records, software, or files, to facilitate  
16 compliance with Chapter 11 filing requirements due to a  
17 government seizure of books and records on June 3, 2014[;]" and  
18 (2) it "does not have sufficient information to formulate a  
19 workable Chapter 11 plan within the next several months. The  
20 absence of its records and papers makes it impossible to complete  
21 this task." (Previously, SoCal Sleep Centers had blamed Arcadia  
22 Hub, not the federal government, for blocking access to its  
23 records.)

24 In support of the Motion to Dismiss, Ms. Jaroscak attested:

25 3. On June 3, 2014, the United States Attorneys'  
26 Office, including a task force of several government  
27 agencies, conducted a raid of several locations  
28 occupied by Beverly Hills Surgery Center, LLC,  
including [SoCal Sleep Centers' suite]. **I was  
personally present at the time of the raid.**

1           4. **As a result of the raid, business files,**  
2 **computers, software, patient records, and all records**  
3 **belonging to . . . SoCal Sleep Centers, LLC, were**  
4 **seized by the government and to date, have not been**  
5 **returned.** The raid effectively put all of the  
6 occupants . . . out of business. . . .

7           5. While requests to the federal government for  
8 return of some of the materials have been made by the  
9 other defendants, nothing of any substance has been  
10 returned by the government. **The other occupants at**  
11 **9001 Wilshire, including SoCal Sleep Centers, LLC, have**  
12 **been unable to continue in their business operations.**  
13 Without access to books, records, and billing  
14 information, no billing can be sent and no revenue has  
15 been received since June 4, 2014. The money which  
16 SoCal Sleep Centers has offered to pay the landlord  
17 [has] come from the other occupants, and **SoCal Sleep**  
18 **Centers has no assets or funds available.**<sup>6</sup>

19           6. . . . . **SoCal Sleep Centers, LLC does not have**  
20 **access to their records to effectively comply with the**  
21 **US Trustee requirements, to make the motions required**  
22 **of it to be in compliance with Chapter 11 statutes and**  
23 **local rules, and to formulate a workable Chapter 11**  
24 **Reorganization Plan.**

25 (Emphases added.)

26 **C. Hearings on the Motion for Relief and Motion to Dismiss**

27           The court held hearings on the Motion for Relief and Motion  
28 to Dismiss. Inexplicably, SoCal Sleep Centers did not appear at  
the hearing on the Motion for Relief, so the court granted the  
motion, terminating the automatic stay retroactively as of the  
petition date.

          Ms. Jaroscak did appear at the hearing on the Motion to  
Dismiss and continued status conference. The court dismissed the

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<sup>6</sup> Ms. Jaroscak claims that this admission is another  
unfortunate typo; she claims that she meant to say that SoCal  
Sleep Centers had "no **other** assets or funds available."  
(Emphasis added.) This is not plausible. Adding the word  
"other" would make the sentence absurd, because there is nothing  
in the paragraph to which "other" might refer.

1 case on its own motion with a 180-day bar on refileing and denied  
2 the Motion to Dismiss as moot. The court stated that it had  
3 "some real concerns about how the case commenced and how things  
4 progressed." The court contemplated issuing an order to show  
5 cause why SoCal Sleep Centers or Ms. Jaroscak should not be  
6 sanctioned: "it's a real concern to me that giving some leeway to  
7 the debtor for additional time to file schedules, giving some  
8 leeway to the debtor to be able to establish why relief from the  
9 automatic stay shouldn't be granted, continuing the hearing on  
10 that, and then it all turns out, 'Oh, never mind. None of that  
11 was really true.'"

12 Ms. Jaroscak defended her previous statements by saying  
13 that, at the time SoCal Sleep Centers filed its petition, it  
14 believed that it "would be able to put [itself] together and move  
15 forward." She stated that, after meeting with her client  
16 following the status conference, "it became apparent to me that  
17 my client was not going to be able to do that. They did not have  
18 the records. More importantly, when I enlightened them about the  
19 fact that if they were going to stay in the space that they were  
20 in, that they were going to have to continue to pay the current  
21 rent, which is approximately \$25,000 a month, there is absolutely  
22 no way at this point that they could do that."<sup>7</sup> As for the

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23  
24 <sup>7</sup> This statement is troubling for at least two reasons.  
25 First, contrary to the implication of Ms. Jaroscak's statements,  
26 SoCal Sleep Centers knew that it had to pay rent; in response to  
27 Arcadia Hub's Motion for Relief, it had assured the court that it  
28 could and would cure the delinquent rent. Second, any competent  
attorney for a chapter 11 debtor in possession would have  
"enlightened" the debtor about the need to pay post-petition rent  
(continued...)

1 status of the business, Ms. Jaroscak stated that "[a]s far as the  
2 business going there, there is furniture there. There is some  
3 artwork there. There have been some other things there. I was  
4 there yesterday. They are not, at this point, effectively doing  
5 a business there."

6 **D. The OSC**

7 In response to the U.S. Trustee's request for sanctions and  
8 initiation of disciplinary proceedings against Ms. Jaroscak  
9 ("Request for Sanctions"), the court issued its order to show  
10 cause (the "OSC") why Ms. Jaroscak should not be sanctioned or  
11 referred to the state's disciplinary board.

12 In response to the OSC, Ms. Jaroscak argued that she did not  
13 mislead the court and her statements "were essentially true,  
14 despite apparent inconsistencies."

15 First, regarding SoCal Sleep Centers' access to its  
16 documents (and ability to file schedules), Ms. Jaroscak argued  
17 that she did not conceal or lie about the government's seizure of  
18 SoCal Sleep Centers' records and that "there is no absolute need  
19 for Jaroscak to tell the court **all of the reasons** for why Debtor  
20 was having trouble getting access to documents," and that she was  
21 entitled to "exercis[e] her discretion" in presenting her  
22 client's case to the court. (Emphasis added.) "Jaroscak's  
23 decision to withhold this information was then merely an attorney  
24 deciding how much to tell the Court and when." Also, she claimed  
25 (for the first time) that SoCal Sleep Centers was "in the process

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26  
27 <sup>7</sup>(...continued)  
28 even before filing the petition because § 365(b)(3) requires the  
debtor in possession to do exactly that.

1 of trying to reconstruct its records.”

2       Second, regarding the status of SoCal Sleep Centers’  
3 operations, Ms. Jaroscak argued that she had correctly informed  
4 the court that SoCal Sleep Centers “was attempting to maintain an  
5 active business even in the face of the loss of most of its most  
6 critical documents and records . . . .” She stated that,  
7 “although Debtor and other occupants moved certain equipment out  
8 of the Suite 106 during October, Debtor continued to try to  
9 maintain an active presence at Suite 106.”

10       Prior to the hearing on the OSC, the court issued a  
11 tentative ruling wherein it indicated that it was inclined to  
12 sanction Ms. Jaroscak in the amount of Arcadia Hub’s attorneys’  
13 fees pursuant to its inherent power. It said that Ms. Jaroscak’s  
14 October 23, 2014 declaration in support of SoCal Sleep Centers’  
15 opposition to the Motion for Relief was “willfully misleading,  
16 submitted in bad faith, presented for the improper purposes of  
17 causing unnecessary delay and needless increase in the cost to  
18 Landlord of litigation, lacking sufficient evidentiary support,  
19 and not warranted by the evidence or on any stated and reasonable  
20 information and belief.” It also indicated that it was inclined  
21 to hold an evidentiary hearing regarding additional sanctions,  
22 such as referral to the state’s disciplinary board (i.e., public-  
23 interest sanctions).<sup>8</sup>

24 \_\_\_\_\_

25       <sup>8</sup> The issue of other sanctions was resolved when  
26 Ms. Jaroscak agreed not to represent any party before the  
27 bankruptcy court in the Central District of California for a  
28 three-year period. Although Ms. Jaroscak agreed to that  
sanction, she has appealed from that order also (BAP No.  
(continued...)

1 Following a hearing on the OSC, the court issued an order  
2 adopting its tentative ruling and awarded Arcadia Hub \$18,987.82  
3 ("Original Order").

4 **E. Ms. Jaroscak's attempt to amend the Original Order**

5 Ms. Jaroscak did not appeal the Original Order. However,  
6 there was a flurry of activity on March 6, 2015, the deadline to  
7 file a notice of appeal from the Original Order. Ms. Jaroscak,  
8 through counsel, told Arcadia Hub's counsel that she "would like  
9 to amend the order to make the debtor instead of her liable for  
10 the sanctions." Arcadia Hub initially stated in an e-mail that  
11 it "does not care who pays the sanctions" but was "not going to  
12 agree to amend the Order." Ms. Jaroscak's counsel replied, "She  
13 does not have the money. I can get the money from the client if  
14 the order is amended." Later that day, a cashier's check drawn  
15 by Mr. Oxman was delivered to counsel for Arcadia Hub in the  
16 amount of the sanctions award. Arcadia Hub's counsel then signed  
17 a stipulation to amend the Original Order by changing the last  
18 sentence from

19 IT IS HEREBY ORDERED that Maureen Jaroscak shall pay to  
20 Arcadia Hub Holdings 3, LLC within fourteen days from  
21 the entry of this Order, sanctions in the sum of  
22 \$19,407.82 - \$420 = \$18,987.82.

22 to

23 IT IS HEREBY ORDERED that Debtor shall pay to Arcadia  
24 Hub Holdings 3, LLC within fourteen days from the entry  
25 of this Order . . . .

25 Arcadia Hub's counsel signed the stipulation to amend the  
26

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27 <sup>8</sup>(...continued)  
28 CC-16-1036).

1 Original Order ("Stipulation") on the afternoon of March 6, 2015,  
2 and Ms. Jaroscak's counsel says that he signed it the same day.  
3 The U.S. Trustee did not sign, and was not asked to sign, the  
4 Stipulation.<sup>9</sup>

5 Months later, on May 29, 2015, Ms. Jaroscak filed a motion  
6 to approve the Stipulation ("Motion to Approve Stipulation").<sup>10</sup>

7 The U.S. Trustee opposed to Motion to Approve Stipulation.  
8 Among other things, it pointed out that the motion was untimely  
9 because Ms. Jaroscak filed it over three months after the court  
10 entered the Original Order.

11 In response, Ms. Jaroscak argued that the Stipulation was  
12 executed in March 2015 and would have been timely if filed  
13 immediately. She blamed the failure to file the Motion to  
14 Approve Stipulation on the inadvertence of her attorney. She  
15 also stated that her counsel "discussed the proposed Stipulation  
16 with [counsel for the U.S. Trustee] and she indicated to him that  
17 the U.S. Trustee did not care about it. . . . [T]he OUST was  
18 aware of the terms of amendment and expressed no objection at the  
19 time."

20 At the hearing on the Motion to Approve Stipulation, the  
21 court indicated that it would "approve the stipulation  
22

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23  
24 <sup>9</sup> As discussed below, Ms. Dare Law, counsel for the  
25 U.S. Trustee, was included in certain e-mail correspondence but  
26 was removed from later communications wherein Ms. Jaroscak and  
27 Arcadia Hub agreed to the Stipulation.

28 <sup>10</sup> The court entered an order granting the Motion to Approve  
Stipulation shortly after it was filed, but later vacated the  
order because it was entered prematurely due to an internal  
clerical error.

1 notwithstanding the United States Trustee's argument, but with  
2 everybody understanding that what I've already decided is what  
3 I've already decided." Ms. Jaroscak's counsel confirmed that:

4 I want to make sure it's clear that we're not sitting  
5 here saying that anything that you issued on that  
6 February 6th tentative ruling has changed. We're not  
7 -- the only thing that's changed is the one slight  
8 thing, which is that the sanctions will be paid by  
9 Arcadia Hub and, in fact, to Arcadia Hub by the debtor  
10 and in fact (indiscernible). Other than that,  
11 everything remains the same.

12 He later reiterated that "the Court awarded the sanctions that  
13 they were awarded. It's only amended that the debtor is to pay  
14 -- can pay the sanctions and everything that's in that order is  
15 unchanged other than that one small part. And I think it's -- I  
16 think it's very important here."

17 The court ruled that "if Arcadia chooses to accept a payment  
18 from another source then it can choose to do so . . . . It also  
19 still holds that the tentative ruling and the findings that were  
20 part of [the Original Order] are still very much extant." The  
21 court approved an amendment whereby the "new version would be  
22 that Arcadia is entitled to payment of its attorney's fees and  
23 based on the findings of fact and conclusions of law that I did  
24 before and that the source of the payment doesn't matter."

25 Ms. Jaroscak's counsel prepared the order amending the  
26 Original Order ("Amended Order"), which stated:

27 The final paragraph of the Order for Payment of  
28 Sanctions by Maureen Jaroscak to Arcadia Hub Holdings 3, LLC  
[Docket No. 69] (the "Order") is hereby amended so that it  
shall read as follows:

**IT IS HEREBY ORDERED** that Maureen Jaroscak or her  
designee shall pay to Arcadia Hub Holdings 3, LLC  
within fourteen days from the entry of this Order,  
sanctions in the sum of \$19,407.82 - \$420 = \$18,987.82.

1           Notwithstanding the above amendment, all other parts of  
2 the Order remain fully in force and effect.

3 **F. Appeal to the BAP**

4           On July 6, 2015, Ms. Jaroscak filed a notice of appeal from  
5 both the Original Order and the Amended Order.

6           On April 17, 2016, Ms. Jaroscak filed a motion to enforce  
7 settlement ("Motion to Enforce") with this Panel. She stated  
8 that, on March 28, 2016, she, Arcadia Hub, and SoCal Sleep  
9 Centers entered into a "settlement" that allegedly resolved the  
10 appeal, since they reaffirmed the terms of the Stipulation. The  
11 motions panel denied the Motion to Enforce without prejudice  
12 pending resolution of the merits of the appeal.

13 **JURISDICTION**

14           The bankruptcy court had jurisdiction pursuant to 28 U.S.C.  
15 §§ 1334 and 157(b)(1). Subject to our discussion of the  
16 timeliness of this appeal, we have jurisdiction under 28 U.S.C.  
17 § 158.

18 **ISSUES**

19           (1) Whether Ms. Jaroscak timely appealed the Original Order.

20           (2) If so, whether the court abused its discretion in  
21 sanctioning Ms. Jaroscak.

22           (3) Whether the court abused its discretion in refusing to  
23 amend the Original Order pursuant to the Stipulation.

24 **STANDARDS OF REVIEW**

25           We review the bankruptcy court's conclusions of law de novo  
26 and its findings of fact for clear error. Hansen v. Moore  
27 (In re Hansen), 368 B.R. 868, 874 (9th Cir. BAP 2007). "De novo  
28 review requires that we consider a matter anew, as if no decision

1 had been made previously.” Francis v. Wallace (In re Francis),  
2 505 B.R. 914, 917 (9th Cir. BAP 2014) (citation omitted). A  
3 bankruptcy court clearly errs if its findings were illogical,  
4 implausible, or “without support in inferences that may be drawn  
5 from the facts in the record.” United States v. Hinkson,  
6 585 F.3d 1247, 1262–63 & n.21 (9th Cir. 2009) (en banc).

7 We review for abuse of discretion the bankruptcy court’s  
8 decision to alter or amend its own order. See Int’l Rehab.  
9 Sciences Inc. v. Sebelius, 688 F.3d 994, 1000 (9th Cir. 2012)  
10 (denial of Civil Rule 59(e) motion); Lal v. California, 610 F.3d  
11 518, 523 (9th Cir. 2010) (denial of Civil Rule 60(b) motion). A  
12 bankruptcy court abuses its discretion if it applies an incorrect  
13 legal standard or misapplies the correct legal standard, or if  
14 its fact findings are illogical, implausible, or not supported by  
15 evidence in the record. TrafficSchool.com, Inc. v. Edriver Inc.,  
16 653 F.3d 820, 832 (9th Cir. 2011).

## 17 DISCUSSION

### 18 **A. Ms. Jaroscak did not timely appeal the Original Order.**

19 The U.S. Trustee argues that Ms. Jaroscak’s appeal from the  
20 Original Order is untimely. Ms. Jaroscak argues that her notice  
21 of appeal from the Amended Order was timely and should relate  
22 back to the Original Order. We agree with the U.S. Trustee.

#### 23 **1. The Original Order was a final and appealable order.**

24 The U.S. Trustee argues that the Original Order was a final  
25 order from which Ms. Jaroscak could have appealed. Although  
26 Ms. Jaroscak does not challenge this assertion, we must consider  
27 it independently because it bears upon our jurisdiction over this  
28 appeal. See Symantec Corp. v. Glob. Impact, Inc., 559 F.3d 922,

1 923 (9th Cir. 2009).

2 In Eden Place, LLC v. Perl (In re Perl), 811 F.3d 1120 (9th  
3 Cir. 2016), the Ninth Circuit held that a bankruptcy court order  
4 determining that a creditor had violated the automatic stay was a  
5 final and appealable order, even though the bankruptcy court  
6 deferred ruling on the amount of sanctions for the violation.  
7 The court of appeals noted that it takes a flexible and pragmatic  
8 approach to “finality” in bankruptcy cases. Id. at 1127. The  
9 court reasoned that:

10 There is no question that the discrete issue addressed  
11 by the bankruptcy court - violation of the automatic  
12 stay - has been definitively and finally resolved.  
13 Resolution of that issue is as final as it will ever be  
14 in this case.

13 Id.

14 Perl establishes that the Original Order was final for  
15 purposes of appeal. If anything, the Original Order was more  
16 final than the order that the Ninth Circuit considered in Perl,  
17 because the Original Order determined not only Ms. Jaroscak’s  
18 liability for sanctions, but also the amount of those sanctions.

19 Similarly, our decision in Stasz v. Gonzalez (In re Stasz),  
20 387 B.R. 271 (9th Cir. BAP 2008), considered, as a matter of  
21 first impression, whether an order granting civil contempt  
22 sanctions under Rule 9020 was final for the purposes of an  
23 immediate appeal. The Panel stated the general rule that “[a]  
24 final order ‘ends the litigation on the merits and leaves nothing  
25 for the court to do but execute the judgment.’” Id. at 274  
26 (quoting Catlin v. United States, 324 U.S. 229, 233 (1945)).

27 The Panel noted that, “[w]hile civil contempt orders  
28 entered ‘during the course of a pending civil action’ are not

1 appealable until final judgment, the Ninth Circuit has allowed  
2 immediate appeals of sanctions orders that dispose of the only  
3 issue before the court.” Id. at 275. The Panel thus determined  
4 that the sanctions order was properly appealable, because “[i]f  
5 the award of sanctions were not appealable now, it is unclear  
6 when the order would become final and appealable. Unlike an  
7 adversary proceeding or a civil action outside bankruptcy, the  
8 culmination of the bankruptcy case does not result in a final  
9 judgment.” Id. at 276.

10 Similarly, the Original Order in the present case was  
11 immediately appealable. It ended the litigation regarding  
12 private sanctions against Ms. Jaroscak and left the court with  
13 nothing to do but execute the order. Although the bankruptcy  
14 court here did not rely on Rule 9020, the result is the same, as  
15 there was no further litigation that would preclude finality of  
16 the Original Order.

17 Under Rule 8002(a)(1), “a notice of appeal must be filed  
18 with the bankruptcy court within 14 days after entry of the  
19 judgment, order, or decree being appealed.” It is undisputed  
20 that Ms. Jaroscak did not appeal the Original Order within  
21 fourteen days of its entry. She did not file a notice of appeal  
22 until July 6, 2015, within the time permitted after entry of the  
23 bankruptcy court’s Amended Order on June 19, 2015.<sup>11</sup> Thus,  
24 absent an exception to Rule 8002, the notice of appeal was  
25 untimely as to the Original Order.

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27 <sup>11</sup> The appeal was timely filed seventeen days after the  
28 entry of the Amended Order due to the observation of the  
Independence Day holiday on July 3 and the intervening weekend.

1           **2. The Amended Order did not create new rights or**  
2           **liabilities such that it extended the time to appeal**  
3           **the Original Order.**

4           Ms. Jaroscak argues that, because the Amended Order “revised  
5 legal rights and obligations” under the Original Order, her  
6 notice of appeal was timely as to the Original Order. We  
7 disagree.

8           As a general rule, the time to file an appeal is extended if  
9 “the lower court, in its second order, has disturbed or revised  
10 legal rights and obligations which, by its prior judgment, had  
11 been plainly and properly settled with finality.” Fed. Trade  
12 Comm’n v. Minneapolis-Honeywell Regulator Co., 344 U.S. 206, 212  
13 (1952). “Only when the lower court changes matters of substance,  
14 or resolves a genuine ambiguity, in a judgment previously  
15 rendered should the period within which an appeal must be taken  
16 or a petition for certiorari filed begin to run anew.” Id. at  
17 211-12. Stated another way, “the mere fact that a judgment  
18 previously entered has been reentered or revised in an immaterial  
19 way does not toll the time within which review must be sought.”  
20 Id. at 211; see United States v. Doe, 374 F.3d 851, 853-54 (9th  
21 Cir. 2004) (stating, in a criminal context, that “[w]here a  
22 district court enters an amended judgment that revises legal  
23 rights or obligations, the period for filing an appeal begins  
24 anew”); Day v. AT&T Disability Income Plan, 608 F. App’x 454, 456  
25 (9th Cir. 2015) (“The Supreme Court has recognized that a  
26 district court’s decision to amend a judgment may re-start the  
27 period during which a litigant may appeal, provided that the  
28 amended judgment differs materially from the earlier judgment.”);  
see also Am. Safety Indem. Co. v. Official Comm. of Unsecured

1 Creditors (In re Am. Safety Indem. Co.), 502 F.3d 70, 72 (2d Cir.  
2 2007) ("it is well-established that [w]here a judgment is  
3 reentered, and the subsequent judgment does not alter the  
4 substantive rights affected by the first judgment, the time for  
5 appeal runs from the first judgment." (citation and internal  
6 quotation marks omitted)).

7 Ms. Jaroscak argues that the Amended Order revised the  
8 Original Order. She further contends that the Amended Order was  
9 a "material change" to the Original Order and that the  
10 U.S. Trustee's "inequitable conduct" was a material change.

11 Ms. Jaroscak fails to explain how the Amended Order changed  
12 the "legal rights and obligations" laid out in the Original  
13 Order. The Amended Order did not affect the court's factual  
14 findings against Ms. Jaroscak or affect Ms. Jaroscak's liability  
15 on the sanctions award; it only permitted Ms. Jaroscak's designee  
16 to pay the sanctions award on her behalf. The court specified  
17 multiple times that the Original Order "still holds and that the  
18 tentative ruling and the findings that were part of [the Original  
19 Order] are still very much extant."

20 Further, Ms. Jaroscak's argument on appeal is the exact  
21 opposite of the argument her counsel made to the bankruptcy  
22 court. Ms. Jaroscak's counsel explicitly and repeatedly  
23 confirmed that the Amended Order did not alter Ms. Jaroscak's  
24 rights or obligations under the Original Order. He stated, "the  
25 only thing that's changed is the one slight thing . . . . Other  
26 than that, everything remains the same." He reiterated that the  
27 Original Order is "only amended that the debtor is to pay -- can  
28 pay the sanctions and everything that's in that order is

1 unchanged other than that one small part." Ms. Jaroscak's  
2 counsel did not object to the court's ruling or the language of  
3 the Amended Order. In fact, her counsel drafted the Amended  
4 Order, which specified that, "[n]otwithstanding the above  
5 amendment, all other parts of the [Original] Order remain fully  
6 in force and effect."

7 The Amended Order did not alter any of Ms. Jaroscak's legal  
8 rights and obligations. Nothing in the Amended Order absolved  
9 her of liability or changed the court's finding of sanctionable  
10 conduct. By her counsel's own admission, the Amended Order  
11 altered only "one slight thing." Accordingly, the Amended Order  
12 did not extend the time to appeal the Original Order.<sup>12</sup>

13 **3. Even if the U.S. Trustee "lulled" Ms. Jaroscak into**  
14 **complacency, the time to appeal the Original Order was**  
15 **not extended.**

16 Ms. Jaroscak also argues that she did not timely appeal the  
17 Original Order because the U.S. Trustee did not object to the  
18 Stipulation and "lulled" her into not timely appealing. This  
19 contention is frivolous.

20 Even assuming that the U.S. Trustee engaged in any kind of

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21 <sup>12</sup> The U.S. Trustee argues that the United States Supreme  
22 Court's decision in Bowles v. Russell, 551 U.S. 205 (2007), also  
23 precludes review of the Original Order. Bowles stands for the  
24 proposition that a time limit for taking an appeal is  
25 jurisdictional, so the failure to appeal timely divests a court  
26 of jurisdiction. The U.S. Trustee questions whether courts  
27 should continue to apply the rule of Minneapolis-Honeywell  
28 Regulator Co. following Bowles.

26 Because we hold that the relation-back doctrine does not  
27 apply to the facts of this case, we need not decide whether the  
28 Ninth Circuit's view of that doctrine remains valid following  
Bowles.

1 improper conduct (and it did not), or that equitable estoppel  
2 might apply (and it does not), the time for taking an appeal from  
3 the Original Order would not change. See Bowles, 551 U.S. at 214  
4 (rejecting equitable considerations as a reason to extend the  
5 time to appeal, stating that the court “has no authority to  
6 create equitable exceptions to jurisdictional requirements”);  
7 Melendres v. Maricopa Cty., 815 F.3d 645, 649 (9th Cir. 2016)  
8 (“we are not at liberty to overlook a defect with the notice of  
9 appeal no matter how compelling an appellant’s argument may be”);  
10 Gonzalez v. Wells Fargo Bank, N.A., No. 13-CV-02210-JST, 2014 WL  
11 93930, at \*3 (N.D. Cal. Jan. 9, 2014) (the time for appeal can  
12 only be enlarged pursuant to Rule 8002(c)).

13 Therefore, we conclude that we lack jurisdiction over  
14 Ms. Jaroscak’s purported appeal from the Original Order.<sup>13</sup> The  
15 only order that we have power to review is the Amended Order.

16 **B. The court did not abuse its discretion in entering the**  
17 **Amended Order and refusing to absolve Ms. Jaroscak of**  
18 **liability.**

19 Ms. Jaroscak contends that the bankruptcy court erred when  
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21 <sup>13</sup> Even if we had jurisdiction to consider the Original  
22 Order, we would affirm. All of Ms. Jaroscak’s challenges to that  
23 order turn on the bankruptcy court’s factual findings. All of  
24 those findings have evidentiary support in the record, and none  
25 of them is clearly erroneous.

26 We are particularly dismayed by Ms. Jaroscak’s argument  
27 that, despite her ethical duty of candor to the tribunal, see  
28 Cal. R. Prof’l Conduct 5-200(B) (an attorney “[s]hall not seek to  
mislead the judge, judicial officer, or jury by an artifice or  
false statement of fact or law”), she was free to use her  
“discretion” to decide when to tell the bankruptcy court the  
whole truth, rather than just part of the story. A half-truth is  
a half-lie.

1 it issued the Amended Order to make her "or her designee"  
2 responsible for the monetary sanctions, rather than adopting the  
3 Stipulation.

4 Ms. Jaroscak's briefs are not models of clarity. As far as  
5 we can tell, she thinks the court erred in two respects.<sup>14</sup> We  
6 reject both contentions.

7 **1. The bankruptcy court was not obligated to approve the**  
8 **Stipulation and modify the Original Order.**

9 Ms. Jaroscak faults the court for "rewriting the settlement"  
10 she reached with Arcadia Hub. The bankruptcy court did not err.

11 In the first place, it is a stretch to call the Stipulation  
12 a "settlement." By its terms, it provides that SoCal Sleep  
13 Centers, rather than Ms. Jaroscak, would pay the sanctions; it  
14 does not exonerate Ms. Jaroscak or even change the amount of the  
15 sanctions. Arcadia Hub did not agree to compromise any of its  
16 rights and claims. The e-mails make it clear that Arcadia Hub  
17 entered into the Stipulation simply because it did not care who  
18 paid the sanctions as long as someone did.

19 More importantly, Ms. Jaroscak's argument rests on a false  
20 assumption. She seems to think that the bankruptcy court had no  
21 choice but to approve the Stipulation. There is no authority for  
22 the proposition that a court **must** modify its orders simply  
23 because the parties ask it to. In fact, the Ninth Circuit  
24 authority is exactly to the contrary. See Nat'l Union Fire Ins.

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26 <sup>14</sup> Ms. Jaroscak argued before the bankruptcy court that the  
27 Motion to Approve Stipulation satisfied Rule 9024. But she does  
28 not argue on appeal that the court erred in its application of  
Rule 9024, so this issue is waived.

1 Co. v. Seafirst Corp., 891 F.2d 762 (9th Cir. 1989) (the court  
2 need not vacate a judgment even when all non-defaulting parties  
3 request that it do so); Ringsby Truck Lines, Inc. v. W.  
4 Conference of Teamsters, 686 F.2d 720 (9th Cir. 1982) (a post-  
5 judgment settlement does not require vacatur of the judgment).

6 Further, Ms. Jaroscak waived this argument because her  
7 counsel did not oppose the entry of the Amended Order. Rather,  
8 her counsel seemed satisfied with the court's ruling. He did not  
9 take issue with the court leaving Ms. Jaroscak liable for the  
10 sanctions but allowing SoCal Sleep Centers to pay on her behalf.

11 **2. The U.S. Trustee was entitled to appear and be heard on**  
12 **the approval of the Stipulation and is entitled to**  
13 **participate in this appeal.**

14 Ms. Jaroscak claims that the U.S. Trustee should not have  
15 objected to the Stipulation and should not be heard in this  
16 appeal. This argument is meritless.

17 Ms. Jaroscak argues that the U.S. Trustee is advocating the  
18 private pecuniary interests of Arcadia Hub and that this is  
19 improper.<sup>15</sup> This argument has no legal foundation. The  
20 U.S. Trustee "may raise and may appear and be heard on any issue  
21 in any case or proceeding under this title . . . ." § 307. The  
22 U.S. Trustee does not need to demonstrate a pecuniary interest in  
23 the outcome of the case. See Stanley v. McCormick, Barstow,

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24 <sup>15</sup> Ms. Jaroscak also argues extensively in her Motion to  
25 Enforce that the U.S. Trustee cannot object to the Stipulation  
26 and defend this appeal in the public interest. She points to the  
27 events in the related appeal of the public-interest sanctions as  
28 proof that the U.S. Trustee no longer has any interest in this  
appeal. Insofar as these events occurred outside the scope of  
this appeal, we reject these arguments. See Kirshner v. Uniden  
Corp. of Am., 842 F.2d 1074, 1077 (9th Cir. 1988).

1 Sheppard, Wayte & Carruth (In re Donovan Corp.), 215 F.3d 929,  
2 930 (9th Cir. 2000). By the same token, the U.S. Trustee is free  
3 to participate even if doing so might further the private  
4 interests of one or more creditors. In fact, the U.S. Trustee's  
5 arguments in bankruptcy cases almost always affect the pecuniary  
6 interests of private parties. There is nothing wrong with that;  
7 it simply means the office is doing its job.

8 Ms. Jaroscak also argues that the U.S. Trustee is estopped  
9 from objecting to the Stipulation and defending the Amended Order  
10 on appeal. Ms. Jaroscak has not shown that any of the elements  
11 of equitable estoppel apply here.

12 The Ninth Circuit has stated that equitable estoppel  
13 requires that the proponent show: "(1) knowledge of the true  
14 facts by the party to be estopped, (2) intent to induce reliance  
15 or actions giving rise to a belief in that intent, (3) ignorance  
16 of the true facts by the relying party, and (4) detrimental  
17 reliance." Estate of Amaro v. City of Oakland, 653 F.3d 808, 813  
18 (9th Cir. 2011) (quoting Bolt v. United States, 944 F.2d 603, 609  
19 (9th Cir. 1991)).

20 A party asserting equitable estoppel against the government  
21 must meet a higher standard. Such a party must establish that:  
22 "(1) the government engaged in affirmative misconduct going  
23 beyond mere negligence; (2) the government's wrongful acts will  
24 cause a serious injustice; and (3) the public's interest will not  
25 suffer undue damage by imposition of estoppel." Baccei v. United  
26 States, 632 F.3d 1140, 1147 (9th Cir. 2011) (citation omitted).

27 Ms. Jaroscak has not established a single one of these  
28 elements.

1 She has not shown that the U.S. Trustee made any false  
2 statements with the intent to induce reliance. She argues that  
3 Arcadia Hub and the U.S. Trustee "agreed there would be no  
4 sanctions against Ms. Jaroscak . . . ." She claims that Ms. Law,  
5 attorney for the U.S. Trustee, told her counsel that the  
6 U.S. Trustee "did not care" and had no opposition to the  
7 Stipulation. This recitation of the historical facts is at best  
8 incomplete. Ms. Jaroscak's counsel initiated negotiations to  
9 modify the Original Order by sending an e-mail only to Arcadia  
10 Hub's counsel. When Arcadia Hub's counsel responded, he added  
11 the U.S. Trustee (Ms. Law) to the e-mail string. In that e-mail,  
12 Arcadia Hub's counsel stated that he did not care who paid the  
13 sanction, but Arcadia Hub was "not going to agree to amend the  
14 Order, even if the Court would consider it. The Order has  
15 already been entered, with the detailed findings concerning  
16 Ms. Jaroscak in the attached tentative ruling. As damaging as  
17 that may be to her, that bell can't be un-rung." However, when  
18 Ms. Jaroscak's counsel responded, he removed Ms. Law from the  
19 e-mail string. The U.S. Trustee was not involved in any further  
20 discussions or even aware of the terms of the Stipulation until  
21 after it was filed. Therefore, the record shows only that the  
22 U.S. Trustee knew about, and did not object to, Arcadia Hub's  
23 position stated in the e-mail - that it did not matter who paid  
24 the sanctions, but the findings of sanctionable conduct would  
25 stand. The U.S. Trustee has consistently adhered to that  
26 position.

27 Ms. Jaroscak fails to demonstrate that she detrimentally  
28 relied on the U.S. Trustee's statements. The U.S. Trustee did

1 nothing to prevent or discourage her from filing a timely appeal  
2 or taking any other steps to protect her interests.

3 Ms. Jaroscak also fails to address the heightened standard  
4 for government entities. She does not present any evidence or  
5 argument that the U.S. Trustee engaged in affirmative misconduct  
6 going beyond mere negligence, that its actions caused a serious  
7 injustice, or that preventing the U.S. Trustee from challenging  
8 the Stipulation will not unduly damage the public's interest.

9 In short, the U.S. Trustee was entitled to appear and be  
10 heard on these issues in the bankruptcy court and before the  
11 Panel.

12 **C. The Motion to Enforce is meritless.**

13 Finally, Ms. Jaroscak requests that we enforce a supposed  
14 "settlement" between herself, Arcadia Hub, and SoCal Sleep  
15 Centers that they reached in March 2016. In essence, she asks us  
16 to do exactly what the bankruptcy court refused to do. This  
17 request is frivolous.

18 In the first place, contrary to Ms. Jaroscak's  
19 representations, there is no "new settlement." The so-called  
20 "settlement" consists only of a letter from Arcadia Hub stating  
21 that it is still "satisfied with" the Stipulation and a letter  
22 from SoCal Sleep Centers stating that "the stipulation was  
23 approved on behalf of SoCal Sleep Centers at the time it was  
24 signed, and remains approved on behalf of SoCal Sleep Centers."  
25 The parties' decision to reaffirm, rather than repudiate, the  
26 Stipulation is not a "new" agreement.

27 Second, even if there was a "new agreement" (and there is  
28 not), Ms. Jaroscak mischaracterizes it. As we have explained,

1 the Stipulation does not exonerate her. Rather, as **her own**  
2 **attorney** told the bankruptcy court, it simply provides that her  
3 client will pay the sanctions for her.

4 Third, approval of the supposed "new settlement" would not  
5 terminate this appeal because the U.S. Trustee, the only appellee  
6 in this appeal, is not a party to it. See Hatami v. Kia Motors  
7 Am., Inc., No. SACV 08-226 DOC, 2011 WL 1456192, at \*1 (C.D. Cal.  
8 Apr. 14, 2011) ("The Court cannot enforce a purported settlement  
9 agreement unless all of the terms of that agreement have been  
10 agreed to by both parties.").

11 Finally, Ms. Jaroscak's argument is a blatant attempt to  
12 offer new evidence on appeal, exceed the size limits for  
13 appellate briefs, and evade the standard of appellate review.  
14 She wants us to approve the "settlement" ourselves, without any  
15 regard for the bankruptcy court's decision. That is not the  
16 function of an appellate court.

17 At oral argument, the Panel asked Ms. Jaroscak exactly what  
18 relief she sought. The parties to the Stipulation have done  
19 exactly what they agreed to do; the bankruptcy court did not  
20 amend its order exactly as the Stipulation provided, but  
21 Ms. Jaroscak does not claim that the Stipulation is somehow  
22 "enforceable" against the court. Her counsel responded that she  
23 simply wants clarification that SoCal Sleep Centers may pay the  
24 sanctions on her behalf. We acknowledge that, under the  
25 bankruptcy court's orders, it was permissible for SoCal Sleep  
26 Centers to pay the sanctions on her behalf.

27 Accordingly, we DENY the Motion to Enforce.  
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**CONCLUSION**

For the reasons set forth above, we AFFIRM.

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