**NOT FOR PUBLICATION**

**UNITED STATES BANKRUPTCY APPELLATE PANEL OF THE NINTH CIRCUIT**

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| In re:<br>DECO ENTERPRISES, INC.,<br>Debtor. | BAP No. CC-25-1089-SCN<br><br>Bk. No. 2:20-bk-11846-BB |
| BENJAMIN POULADIAN,<br>Appellant,<br>v.<br>DECO ENTRPRISES, INC.; ABS CAPITOL, LLC; BABAK SINAI; SIAMAK SINAI; SAMAN SINAI,<br>Appellees.[**] | Adv. No. 2:20-ap-01126-BB<br><br>**MEMORANDUM**[*] |

Appeal from the United States Bankruptcy Court
for the Central District of California
Sheri Bluebond, Bankruptcy Judge, Presiding

Before: SPRAKER, CORBIT, and NIEMANN, Bankruptcy Judges.

## INTRODUCTION

Benjamin Pouladian appeals from a judgment after trial entered in

[*] 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.

[**] Though Pouladian named all the above-captioned parties as appellees, all the listed appellees other than Saman Sinai filed a statement indicating that they have no stake in the issues Pouladian has raised on appeal. Nor have they participated in this appeal.

his litigation with chapter 7[1] debtor Deco Enterprises, Inc. ("Deco") and others. The judgment awarded millions of dollars in damages against Pouladian, but his appeal does not challenge his liability or those damages. Instead, Pouladian challenges the bankruptcy court's denial of his cross-claim for equitable indemnity against the other principals of Deco. More specifically, Pouladian asserts that the bankruptcy court erred when it determined that he is not entitled to apportionment of the damages awarded against him with Saman Sinai[2] as a joint tortfeasor.

The bankruptcy court ruled that Pouladian waived and abandoned his cross-claim for equitable indemnity as part of a stipulation submitted to the court shortly before trial. We agree and AFFIRM.

## FACTS[3]

Beginning in 2005, Pouladian formed Deco with Babak, Siamak, and Saman to operate a business manufacturing and distributing lighting fixtures. For the next 14 years, Pouladian acted as Deco's president. Though he generally was in charge of its operations, Pouladian and the

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[1] Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1532, all "Rule" references are to the Federal Rules of Bankruptcy Procedure, and all "Civil Rule" references are to the Federal Rules of Civil Procedure.

[2] We hereinafter refer to Saman and his two brothers—Babak Sinai and Siamak Sinai—by their first names for ease of reference. No disrespect is intended.

[3] We exercise our discretion, when appropriate, to take judicial notice of documents electronically filed in the underlying bankruptcy case and adversary proceeding. *See Atwood v. Chase Manhattan Mortg. Co. (In re Atwood)*, 293 B.R. 227, 233 n.9 (9th Cir. BAP 2003).

Sinai brothers were all directors (and shareholders) of Deco. Pouladian and Saman each owned 30% of Deco while Babak and Siamak owned 20% each. In 2019, Pouladian resigned as Deco's president. He then sued Deco and others in state court for breach of contract, fraud, conversion, intentional infliction of emotional distress, and violation of Cal. Labor Code § 2802. Pouladian's complaint largely focused on Deco's alleged failure to reimburse him for using his personal credit cards to pay the company's business expenses. Deco and Babak cross-claimed against Pouladian and others alleging a host of malfeasance against Pouladian arising from his governance of Deco's operations. A related company known as ABS Capitol, LLC ("ABS") also cross-claimed against Pouladian. It alleged that Pouladian engaged in forgery and fraud to enable him to use ABS's real property as collateral for millions of dollars of loans for Deco's benefit.

In turn, Pouladian filed a cross-complaint and third-party complaint against the three Sinai brothers, asserting a claim for equitable indemnity. Pouladian accused the brothers of engaging in their own self-dealing and diversion of Deco's funds to its financial detriment. In relevant part, Pouladian claimed that Saman diverted over $3 million of Deco's funds to pay the operating expenses of other companies that Saman owned. Pouladian further alleged that Saman caused Deco to pay over $1 million of his personal expenses and redeemed over $140,000 in credit card rewards points belonging to Deco for his own personal benefit. As for ABS's cross-claim, Pouladian asserted that Saman forged his brothers'

signatures on certain loan documents in order to use ABS's real property as collateral for loans to Deco.

Deco filed bankruptcy in February 2020.[4] Shortly thereafter, Deco removed to the bankruptcy court Pouladian's lawsuit and the associated cross-claims and third-party claim. After several years of discovery and summary judgment motions, the parties submitted their joint pretrial stipulations to the court. The court entered its joint pretrial order in November 2024 to govern the course of trial for all claims raised in the adversary proceeding. One of the issues of law identified by the pretrial order was whether Pouladian and the three Sinai brothers breached fiduciary duties they owed to Deco. Another issue of law was whether Pouladian was "entitled under equitable principles such as comparative fault to be indemnified by Deco's other officers and shareholders for any loss for which Pouladian is found liable to Deco, and, if so, in what amounts."

The parties engaged in further discussions roughly a week before trial in an effort to streamline the proceedings.[5] These discussions resulted in a joint email dated February 12, 2025, which was sent to the court. The

[4] Though initially filed under chapter 11, the case was converted to chapter 7 in June 2023.

[5] Trial took place on February 18 and 19, 2025. After the parties made their closing arguments, the court set March 4, 2025, as the deadline for filing supplemental briefs on certain lingering jurisdictional issues and March 18, 2025, for the next hearing, so the court could orally render its final rulings.

email was drafted by counsel for ABS, Babak, and Siamak but verbally approved by all counsel. It did not, however, include Saman who to that point had acted without counsel. Saman apparently had no involvement in the February 12, 2025 joint email or in the subsequent trial. The email advised the court that counsel for all parties were "stipulating to certain issues . . .to make the trial proceedings . . . as efficient as possible." In relevant part, the joint letter advised the court that the parties had stipulated:

> 5. The only claim(s) that Benjamin Pouladian is pursuing are for recovery of or setoff of the substantial credit card debt that Deco refused to pay and for which Pouladian is obligated. Additionally, Mr. Pouladian is pursuing his claim for breach by Deco of California Labor Code 2802 for failure to pay the credit card charges incurred.

The email correspondence leading up to the joint letter reflects that the language of paragraph 5 of the parties' stipulation was drafted by Pouladian's counsel. After the parties submitted their joint email to the court, the bankruptcy judge's chambers staff responded the same day, stating that the court did not need a formal stipulation filed (or an order entered) on that stipulation.

A day later, February 13, 2025, the bankruptcy court advised the parties by email that it had certain questions for the parties in advance of trial. In pertinent part, the court pondered the relevance of Pouladian's assertion that Saman bore responsibility for the downfall of Deco's business and queried whether Pouladian was arguing "that his fear that he

would lose his job [was] a defense to a claim for breach of fiduciary duty[.]" Pouladian's counsel responded to this question in the negative, stating that he was not relying on Saman's alleged misconduct as a defense to the breach of fiduciary duty to claim. According to counsel, "[w]e're just trying to give the Court a picture of everything."

At the outset of trial on February 18, 2025, the parties discussed with the court the meaning of Pouladian's language from the February 12, 2025 joint email limiting his claims to be tried. Pouladian's counsel confirmed that the only claim he was asserting was his breach of contract claim against Deco. Pouladian's counsel never mentioned any surviving indemnity claim against Saman or anyone else. The court then read into the record the stipulation addressed in the parties' February 12, 2025 joint email, including Pouladian' s language stating that "'the only claim . . . Pouladian is pursuing . . . is . . . for recovery of or set off of the substantial credit card debt that Deco refused to pay and for which Pouladian is obligated.'" Again, Pouladian's counsel did not say anything to clarify this language or to indicate that Pouladian intended to prosecute his indemnity cross-claim.

Next, the parties presented their opening arguments. As part of his opening argument, Pouladian asserted that he was damaged not only by incurring credit card debt for goods and services procured for Deco's benefit but also by Deco not repaying $325,000 in loans he advanced to the company. When the court pointed out that Pouladian had stipulated to

pursue only the credit card debt he incurred for Deco's benefit, Pouladian's counsel admitted that this was a mistake and stated that he also intended to pursue the claim for the unpaid loan. But the remainder of Pouladian's opening argument never mentioned any indemnity claim or Saman's potential exposure for such a claim based on his self-dealing. Rather, Pouladian merely argued in defense of Deco's claims against him that Babak and Siamak knew what was going on and had acquiesced to his actions.

The same is true of Pouladian's closing argument, which focused exclusively on Deco's and ABS's claims for liability. Pouladian's counsel discussed at length why he thought his client was not liable to Deco for malfeasance in his management of Deco or to ABS for securing loans against its property for Deco's benefit. But Pouladian's counsel never argued that Deco's or ABS's losses from the alleged misconduct should be apportioned between Pouladian and the Sinai brothers.

The court orally rendered its findings of fact and conclusions of law on March 18, 2025, using the factual and legal issues identified in the pretrial order as a template for its decision. The court specifically found that Pouladian breached his fiduciary duties "to Deco and its shareholders" not only by using Deco's credit cards to pay his personal expenses but by permitting Saman to do the same. Likewise, Pouladian breached his fiduciary duties by cashing in corporate credit card points for his own benefit and by splitting those cash proceeds with Saman. The court also

found that Saman breached his fiduciary duties.[6] As for damages caused by these breaches, however, the court stated: "It's really only about Pouladian." And the court later reiterated: **"Saman is not a party so that's not relevant.**" (Emphasis added.) Yet, the court continued to work its way through the legal issues as identified in the pretrial stipulation. When it came near the end of the legal issues listed in the order adopting the pretrial stipulation, the court read the second to last legal issue: "Is Pouladian entitled under equitable principle[s], such as compared [sic] fault to be indemnified by Deco's other officers and shareholders?" In response, the court simply answered "no" to this question.

After the court addressed the questions posed by the pretrial order, it elaborated on its oral findings of fact and conclusions of law to calculate the specific damages Deco and ABS incurred. The court broke down the damages to be awarded against Pouladian by the nature of his misconduct. It held that he was liable to Deco for $1,177,350.65 in unauthorized salary increases he personally received from Deco in contravention of a shareholder agreement between him and the Sinai brothers. The court also held Pouladian liable to Deco for an additional $3,731,117 for breaching his fiduciary duties to Deco. The court indicated that in incurring this liability, Pouladian tortiously acted in concert with Saman and thus Pouladian was

[6] In addition, the court found that both Pouladian and Saman actively concealed: (1) material facts concerning their salary increases; (2) their use of Deco funds to pay personal expenses and fund Saman's other companies; and (3) their misappropriation of the cash value of Deco's credit card points.

liable for all amounts both he and Saman misappropriated from Deco. Finally, the court further held Pouladian liable to ABS for $5,533,200.67 for his and Saman's use of ABS's collateral under false pretenses.

After calculating the various amounts, the court asked counsel for the prevailing parties to prepare proposed written findings of fact and conclusions of law. During a colloquy with counsel, the court cautioned that if they were to use the pretrial stipulation to prepare the findings and conclusions they were to pay attention to the court's discussion in its oral ruling as to the parties it said were not relevant. Counsel for the prevailing parties then acknowledged that as of the date of the pretrial order Saman was a party, but all claims against him had since been dropped, "**[s]o he wasn't even a party to this action**." (Emphasis added.) Counsel for Pouladian did not object or respond to this discussion.

Counsel for the prevailing parties submitted to the court a proposed judgment and proposed findings of fact and conclusions of law. The proposed findings included three independent grounds for concluding that Pouladian was not entitled to any recovery on his indemnity claim against the Sinai brothers: (1) based on the evidence presented at trial; (2) because California law precluded any such claim; and (3) because of the February 12, 2025 "Stipulation of the Parties."

Pouladian's counsel objected to the proposed judgment and proposed findings of fact and conclusions of law. For the first time since the beginning of trial, Pouladian focused on Saman and argued that the

court was required to address his claim for equitable indemnity. He insisted that he never intended to abandon this claim and that Saman was still a party in the action. Thus, he concluded that the court "mistakenly believed that Saman was not a party to the litigation." Pouladian also submitted his counsel's declaration similarly stating that Pouladian never actually abandoned or waived the equitable indemnity claim. According to counsel, the February 12, 2025 joint email was only meant to limit Pouladian's claims against Deco.

In support of his objection, Pouladian referenced nearly two dozen of the court's oral findings that Saman had engaged in the same or similar tortious conduct as he had. Citing *Baird v. Jones*, 21 Cal. App. 4th 684 (1993), Pouladian contended that as concurrent joint tortfeasors he was entitled to equitable indemnity from Saman. He directed the court to his cross-examination of Babak and Siamak at trial and his efforts to focus on their culpability as evidence that he believed his indemnity claim was still before the court. Alternatively, Pouladian argued that, to the extent the court believed that he had abandoned his equitable indemnity claim, there should be no findings or ruling regarding this cross-claim in either the judgment or in the findings and conclusions so he could sue Saman for equitable indemnity in the future.

The prevailing parties replied to Pouladian's objection to the proposed findings of fact and conclusions of law. The reply focused primarily on the actions and statements of Pouladian's counsel as being

consistent with waiver of the indemnity claim. The prevailing parties pointed to: (1) the language of the February 12, 2025 joint email; (2) the emails between the parties leading up to the February 12, 2025 joint email; (3) the court's statements before, during, and after trial indicating that it was relying on paragraph 5 of the February 12, 2025 joint email to limit Pouladian's claims for trial to only those specifically identified in that paragraph; and (4) Pouladian's failure to clarify his position in response to the court's statements. The prevailing parties further observed that Pouladian's counsel had drafted the portion of the parties' stipulation limiting the scope of Pouladian's claims for trial, which the court had read into the record at the beginning of trial. Finally, the reply noted that Pouladian had originally listed Saman as a witness in the case, but he removed Saman as a witness as part of the same stipulation.

On April 23, 2025, the bankruptcy court entered its written findings of fact and conclusions of law. The court did not adopt wholesale the prevailing parties' proposed findings and conclusions; instead, the court revised and embellished them. With respect to Pouladian's indemnity claim, the court ruled as follows:

> **4. Pouladian is not entitled to recovery on his Cross-Complaint for Equitable Indemnity Against Babak Sinai, Siamak Sinai, and Saman Sinai, for the following reasons**:
>
> a) Based on Evidence: Pouladian is not entitled to Equitable Indemnity Against Babak Sinai or Siamak Sinai and failed to prove up any claim for equitable indemnification, either in whole or in part,

as against Saman Sinai;

b) Based on Agreement/Stipulation of the Parties: On February 12, 2025, the Parties sent a stipulation to the Court, as follows:

"The only claim(s) that Benjamin Pouladian is pursuing are for recovery of or setoff of the substantial credit card debt that Deco refused to pay and for which Pouladian is obligated. Additionally, Mr. Pouladian is pursuing his claim for breach by Deco of California Labor Code § 2802 for failure to pay the credit card charges incurred;"

c) Based on California Law:

(i) Pouladian, as an intentional tortfeasor, is not entitled to contribution from any other alleged tortfeasor [Cal. Civ. Proc. Code § 875(d)]; and

(ii) Any right to contribution may be enforced only after one tortfeasor has, by payment, discharged the joint judgment or has paid more than his pro rata share thereof, and Pouladian has not paid any portion of the judgment against him [Cal. Civ. Proc. Code § 875(c)].

The court entered judgment against Pouladian on that same date—April 23, 2025. The judgment in relevant part denied Pouladian any relief as against any of the Sinai bothers on his cross-claim seeking equitable indemnity and contribution. The judgment further stated that all three Sinai brothers were the prevailing parties on the cross-complaint and were entitled to attorney's fees. Pouladian timely appealed.

## JURISDICTION

The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334, 1367,

and 157. We have jurisdiction under 28 U.S.C. § 158.[7]

## ISSUE

Did the bankruptcy court err when it held that Pouladian was not entitled to equitable indemnification from Saman?

## STANDARD OF REVIEW

This appeal largely hinges on the interpretation of the February 12, 2025 email to chambers in which Pouladian limited the claims he said he was going to pursue at trial. Although the court did not require a formal stipulation, it treated the email as such and incorporated it into the record to govern the trial. Though this stipulation arose during litigation in federal court, its interpretation is governed by applicable state law—in this instance California law–which we review de novo. *See Navarro v. Mukasey*, 518 F.3d 729, 733-34 (9th Cir. 2008); *Jeff D. v. Andrus*, 899 F.2d 753, 758-60

[7] The bankruptcy court had original subject matter jurisdiction under 28 U.S.C. § 1334(b) over Pouladian's claims against Deco and Deco's claims against Pouladian. *See generally Nilsen v. Neilson (In re Cedar Funding, Inc.)*, 419 B.R. 807, 818 (9th Cir. BAP 2009). In turn, pursuant to 28 U.S.C. 1367(a), a bankruptcy court may exercise supplemental jurisdiction over additional, related claims even when the bankruptcy court does not have original jurisdiction over the additional claims when those claims share a "'common nucleus of operative facts' and would ordinarily be expected to be resolved in one judicial proceeding" with the claims subject to the bankruptcy court's original jurisdiction. *Montana v. Goldin (In re Pegasus Gold Corp.)*, 394 F.3d 1189, 1195 (9th Cir. 2005) (citing *United Mine Workers v. Gibbs*, 383 U.S. 715, 725 (1966)). Given the various additional claims asserted in the instant litigation—including Pouladian's indemnity claim against the Sinai brothers—these claims were properly part of a single judicial proceeding for purposes of the bankruptcy court exercising supplemental jurisdiction over these claims pursuant to 28 U.S.C. 1367(a).

(9th Cir. 1989); *see also Middleton v. Halliburton Energy Servs., Inc.*, 2023 WL 346668, at *3 (E.D. Cal. Jan. 20, 2023) ("The Court relies on basic contract principles to interpret a Stipulation. . . . Local (California) law controls the interpretation of stipulations, even when the underlying cause of action is federal in nature." (cleaned up)), *appeal dismissed*, 2024 WL 5412447 (9th Cir. Aug. 30, 2024).[8]

Under de novo review, "we consider a matter anew, as if no decision had been made previously." *Francis v. Wallace (In re Francis)*, 505 B.R. 914, 917 (9th Cir. BAP 2014).

## DISCUSSION

Pouladian's appellate argument mirrors his objection to the proposed judgment, findings of fact, and conclusions of law. He denies waiving his claim for equitable indemnification from Saman and contends that the

[8] As the above-cited cases indicate, when interpretation of the stipulation hinges on the plain language of the stipulation, the appropriate standard of review is de novo. *Jeff D.*, 899 F.2d at 759 (listing cases). However, to the extent the trial court needed to consider disputed extrinsic evidence, review of the trial court's assessment of that evidence is subject to the more-deferential clearly erroneous standard. *McKinney-Drobnis v. Massage Envy Franchising, LLC*, 2025 WL 1937451, at *1 (9th Cir. July 15, 2025) (citing *United States v. 1.377 Acres of Land*, 352 F.3d 1259, 1264–65 (9th Cir. 2003)). In the instant appeal, it is doubtful the bankruptcy court needed to rely on any disputed extrinsic evidence to properly construe the February 12, 2025 stipulation. Moreover, virtually all the "facts" the parties have cited on appeal are procedural in nature and undisputed. Even so, to the extent the bankruptcy court made any factual inferences based on extrinsic evidence and Pouladian has challenged those inferences on appeal, we have considered those inferences under the clearly erroneous standard.

bankruptcy court's findings required it to enter judgment in his favor on that claim. Alternatively, he maintains that waiver of the indemnity claim prevented the bankruptcy court from making any findings or entering judgment against him on that claim. Instead, Pouladian believes the court should not have issued any substantive disposition of the claim—thereby reserving it for future adjudication at another time and in another forum. We begin our analysis by addressing whether Pouladian waived the indemnity claim and then consider his other arguments as necessary.

**A. Pouladian waived his equitable indemnity claim.**

Pouladian claims that the court misconstrued paragraph 5 of the February 12, 2025 joint email. He insists that he never meant to waive his indemnity claim. According to him, all paragraph 5 was meant to do was identify the claims he intended to pursue at trial against Deco—not anyone else. Pouladian largely ignores the plain language of the email, which did not evidence any limitation on the scope of his waiver of claims for trial—apart from the specific reservation of his claim for credit card debt he incurred for Deco's benefit (and his related claim under the California Labor Code). He instead posits that the pretrial order—entered prior to the February 12, 2025 joint email—negates his subsequent waiver of the indemnity claim. Pouladian cites no law or facts to support this proposition, which is contradicted by the fact that the court read into the trial record the entire February 12, 2025 stipulation—thereby making it part of the proceedings.

Pouladian further reasons that subsequent events are inconsistent with the bankruptcy court's and the prevailing parties' interpretation of the February 12, 2025 stipulation. Specifically, he cites as inconsistent: (1) the court's failure to dismiss either Saman or the indemnity claim from the lawsuit; (2) his questioning of Babak and Siamak at trial regarding the brothers' alleged misconduct; (3) the numerous findings regarding Saman's misconduct; and (4) the court's decision to rule on the merits of the indemnity claim (albeit negatively).

A waiver of rights typically occurs when the relevant party: (1) knows of an existing right; and (2) expresses an intention to relinquish that right or engages in conduct "'so inconsistent with the intent to enforce the right as to induce a reasonable belief that it has been relinquished[.]'"[9] *Armstrong v. Michaels Stores, Inc.*, 59 F.4th 1011, 1014–15 (9th Cir. 2023) (quoting *United States ex rel. Army Athletic Ass'n v. Reliance Ins. Co.*, 799 F.2d 1382, 1387 (9th Cir. 1986)); *see also Morgan v. Sundance, Inc.*, 596 U.S. 411, 417 (2022) ("Waiver . . . is the intentional relinquishment or abandonment of a known right." (quoting *United States v. Olano*, 507 U.S. 725, 733 (1993))).

Pouladian expressed just such an intention. Paragraph 5 of the February 12, 2025 joint email stated in language proposed by Pouladian's counsel that "[t]he only claim(s) that Benjamin Pouladian is pursuing are

[9] As we noted in the standard of review section above, interpretation of a stipulation entered into during federal litigation is governed by state law. However, as the federal decisions cited in this paragraph indicate, the legal standard for a waiver of rights occurring in federal court is a question of federal law.

for recovery of or setoff of the substantial credit card debt that Deco refused to pay and for which Pouladian is obligated. . . ." Significantly, Pouladian expressly limited the scope of this waiver. He specifically excluded his claims against Deco for debts placed on his credit card, including those claims under Cal. Labor Code § 2802. As he stated in the email, Pouladian waived all claims he was "pursuing" except "only" the credit card debt he expressly identified. There is no indication that his waiver of claims was "only against Deco" as he now argues.[10]

The simultaneous removal of Saman as a witness further evidences that the waiver of claims was not limited to claims against Deco. Moreover, the record reflects that both paragraph 5 and the abandonment of Pouladian's sole claim against Saman were discussed during the course of trial. Both the court and the prevailing parties clearly expressed their understanding that Pouladian effectively had abandoned his indemnity claim. Yet, Pouladian never challenged or disputed this understanding when it was expressed. Nor did he ever address the indemnity claim in either his opening or closing arguments to the court. Pouladian's conduct was fundamentally inconsistent with an intent to pursue the indemnity

[10] Pouladian alternatively contends that the stipulation was limited to those parties represented by counsel and excluded Saman, who was not represented by counsel. True, the exchanged emails did not include Saman. But they did include counsel for Babak and Siamak, who also were subject to Pouladian's claim for equitable indemnity. As explained above, Pouladian expressly reserved only his claims for damages or setoff relating to Deco's use of his credit cards. That Saman was not included in these emails does not affect the clear waiver of Pouladian's other claims.

claim against the Sinai brothers.

Pouladian does not deny what the plain language of paragraph 5 says. Instead, he merely argues that he did not actually intend for paragraph 5 to waive the indemnity claim. But under California law, the objective intent of the parties as manifested in the clear terms of their agreement is controlling; a subjective and undisclosed intent or understanding of one of the parties to the agreement is irrelevant. *Founding Members of the Newport Beach Country Club v. Newport Beach Country Club, Inc.*, 109 Cal. App. 4th 944, 956 (2003); *see also United Com. Ins. Serv., Inc. v. Paymaster Corp.*, 962 F.2d 853, 856 (9th Cir. 1992) (applying California law and stating that "the intent of the parties determines the meaning of the contract[,]" and "[t]he relevant intent is 'objective'—that is, the intent manifested in the agreement and by surrounding conduct—rather than the subjective beliefs of the parties."). Paragraph 5 of the February 12, 2025 joint email contained no qualifications or limitations that Pouladian's waiver of claims was limited to claims against Deco. As such, the only objectively reasonable interpretation of this language is that Pouladian intended to waive any and all claims not expressly referenced in paragraph 5—including his indemnity claim.

The focus of questions asked during the examination of witnesses at trial and the findings regarding Saman's conduct do not change this equation. The significance of Pouladian's trial examination and the court's findings is equivocal at best and irrelevant at worst. This is in stark contrast

to the plain language of the joint email and Pouladian's failure to object or correct the prevailing parties' and the court's expressed understanding that the indemnity claim had been waived. Nor do we interpret the pretrial order as precluding Pouladian from later waiving his indemnity claim as part of a joint effort by the parties to further streamline the trial proceedings, where all parties and the court agreed. *See generally Amarel v. Connell*, 102 F.3d 1494, 1515 (9th Cir. 1996), *as amended* (Jan. 15, 1997); *Bristol Locknut Co. v. SPS Techs., Inc.*, 677 F2d 1277, 1279-80 (9th Cir. 1982); *Campbell Indus. v. M/V Gemini*, 619 F.2d 24, 27-28 (9th Cir. 1980).

Finally, Pouladian contends that if the court really believed that he had abandoned his indemnity claim, the court would have formally dismissed Saman and the indemnity claim from the lawsuit. Dismissal of the claim certainly would have made good sense, but it principally was Pouladian's responsibility to move for voluntary dismissal of the claim at that point. *See* Civil Rule 41(a)(2), (c). He never made any such request. Regardless, his waiver of the indemnity claim without filing a motion to dismiss resulted in the abandonment of the claim—largely to the same effect. "'A party abandons an issue [or claim] when it has a full and fair opportunity to ventilate its views with respect to an issue and instead chooses a position that removes the issue from the case.'" *Quintero v. Ford Motor Co.*, 2022 WL 2869771, at *1 (9th Cir. July 21, 2022) (quoting *BankAmerica Pension Plan v. McMath*, 206 F.3d 821, 826 (9th Cir. 2000)). "Abandonment generally requires that a litigant deliberately decline to

pursue an argument by taking a position that concedes the argument or removes it from the case." *Id.* (cleaned up) (quoting *Walker v. Beard*, 789 F.3d 1125, 1133 (9th Cir. 2015)). Here, Pouladian did more than simply not pursue the claim at trial. Before trial he unequivocally expressed his intent to waive all claims unrelated to the personal credit card debt. Thus, the remaining parties and the court proceeded to trial knowing that the indemnity claim was not at issue (and Saman no longer was a party to the litigation), though neither the claim nor Saman had been formally dismissed under Civil Rule 41(a)(2). As the claim had not been dismissed, the court properly entered judgment against Pouladian based on his abandonment of the claim resulting from his pretrial waiver of the claim.

**B. We decline to reach Pouladian's other arguments.**

Pouladian contends that any waiver of his indemnity claim precluded the court from entering judgment on the claim. By extension of this argument, he believes his indemnity claim remains for resolution in the future. He asks that if we affirm the bankruptcy court's ruling that he waived and abandoned the indemnity claim, it should be treated the same as a dismissal without prejudice.

We acknowledge that in addition to waiver, the bankruptcy court offered alternative substantive grounds for denying Pouladian any relief on his indemnity claim. But Pouladian's waiver removed the merits of the indemnity claim from the parties' presentation and the court's consideration at trial. There simply no longer was any live indemnity claim

for the parties or the court to address. Having accepted Pouladian's waiver and abandonment of the indemnity claim, there was no need or basis for the bankruptcy court to substantively rule on that claim. The prevailing parties should not have proposed—and the court should not have entered—any findings of fact or conclusions of law specifically addressing the indemnity claim. But, at worst, the court's substantive discussion of the indemnity claim constitutes harmless error as it had no effect on the judgment entered in the underlying adversary proceeding. We routinely ignore harmless error and do so here. *See Van Zandt v. Mbunda (In re Mbunda)*, 484 B.R. 344, 355 (9th Cir. BAP 2012) (citing *Litton Loan Servicing, LP v. Garvida (In re Garvida)*, 347 B.R. 697, 704 (9th Cir. BAP 2006)).

Pouladian is concerned that Saman may argue for issue or claim preclusion in any future action for indemnity that Pouladian may bring. But the controlling issue in this appeal is whether Pouladian waived and abandoned his indemnity claim. We agree with the bankruptcy court that he did. We need not, and do not, address any effect of that waiver beyond the removal of the merits of that claim before the bankruptcy court. We, therefore, decline Pouladian's request to consider what effect his waiver and resulting abandonment of the indemnity claim might have on his ability to pursue such claim elsewhere. Nor do we need to decide whether the bankruptcy court correctly construed Cal. Civ. Proc. Code § 875.

## CONCLUSION

For the reasons set forth above, we AFFIRM.