

MAR 17 2026

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NOT FOR PUBLICATION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

<p>In re: E. LYNN SCHOENMANN, Debtor.</p>	<p>BAP No. NC-25-1124-GCS Bk. No. 22-30028</p>
<p>E. LYNN SCHOENMANN, Appellant, v. UNITED STATES OF AMERICA, Appellee.</p>	<p>Adv. No. 23-03043 MEMORANDUM*</p>

Appeal from the United States Bankruptcy Court
for the Northern District of California
Dennis Montali, Bankruptcy Judge, Presiding

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

INTRODUCTION

Chapter 7¹ debtor E. Lynn Schoenmann appeals the bankruptcy court’s judgment holding her debt to the United States Small Business Administration (“SBA”) nondischargeable. The bankruptcy court determined that Schoenmann made a fraudulent misrepresentation and

* 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.

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

provided a materially false written financial statement in connection with obtaining an SBA Economic Injury Disaster Loan (“EIDL”).

In addition to holding the debt nondischargeable under § 523(a)(2)(A) and (B), the bankruptcy court held that Schoenmann’s wrongful misapplication of the EIDL funds subjected her to a civil penalty of 150% of the loan amount pursuant to 15 U.S.C. § 636(b), which was also nondischargeable under § 523(a)(7).

Schoenmann argues that the court made evidentiary errors, and she asserts the record does not support the court’s findings of fraud.

Schoenmann maintains that the penalty under 15 U.S.C. § 636(b) does not apply to her loan, she did not “wrongfully misapply” the funds, and the language of statute is unconstitutionally vague.

Schoenmann does not demonstrate reversible error in any of the court’s rulings. We AFFIRM.

FACTS²

A. Prepetition Events

In 1997, Schoenmann was appointed as a chapter 7 panel trustee in the Northern District of California, and she served in that capacity until her

² We exercise our discretion to take judicial notice of documents electronically filed in the adversary proceeding and main bankruptcy case. *See Atwood v. Chase Manhattan Mortg. Co. (In re Atwood)*, 293 B.R. 227, 233 n.9 (9th Cir. BAP 2003).

removal in 2024.³ In 2018, Schoenmann’s husband, Donn⁴ passed away, and his son Stuart was appointed executor of his estate. Stuart opened a probate case in April 2018, which led to litigation between Schoenmann and Donn’s children and grandchildren from a prior marriage (collectively the “Probate Petitioners”).

In 2019, the Probate Petitioners filed a First Amended Verified Petition, asserting claims against Schoenmann for financial elder abuse, breach of spousal fiduciary duty, fraud, allocation of debt, voidable transfer, and recovery of estate assets. The Probate Petitioners sought an order setting aside a Post Marital Agreement between Donn and Schoenmann which purported to treat their earnings and retirement accounts as separate property (the majority of which was held by Schoenmann), and to give Schoenmann a right of survivorship in several real properties which Donn owned as separate property. They also sought damages against Schoenmann, as well as punitive damages, double damages, and treble damages under state law.

³ In May 2024, the bankruptcy court granted the United States Trustee’s motion to remove Schoenmann as a panel trustee for cause, pursuant to § 324(a). The court entered the order in *In re Li’s Capital LLC*, Case No. 18-30918-dm, and based its decision on Schoenmann’s fraudulent actions as determined by the state court in the probate litigation and on her misconduct in obtaining and misapplying the EIDL funds. Schoenmann appealed that decision, and we affirmed. *See Schoenmann v. United States Tr. (In re Li’s Capital LLC)*, BAP No. NC-24-1096-FBC, 2025 WL 1066799 (9th Cir. BAP Apr. 8, 2025).

⁴ Because many of the parties involved in the probate litigation share a last name, we use their first names for clarity. No disrespect is intended.

Schoenmann hired lawyers and experts to assist in her defense of the probate litigation. The case proceeded to trial in November 2021, after which the court took the matter under submission.

A month before the probate trial, Schoenmann applied for the EIDL. The EIDL application required Schoenmann to disclose any “Contingent Liabilities,” including any “Legal Claims & Judgments,” as part of her financial statement. Schoenmann did not disclose the probate litigation as a contingent liability.

SBA approved Schoenmann’s EIDL application, and Schoenmann signed the Loan Authorization and Agreement (the “Loan Agreement”) for a loan in the principal amount of \$924,700. Pursuant to the Loan Agreement, Schoenmann agreed to use the EIDL proceeds “solely as working capital to alleviate economic injury caused by disaster occurring in the month of January 31, 2020, and continuing thereafter”

The Loan Agreement stated: “Whoever wrongfully misapplies the proceeds of an SBA disaster loan shall be civilly liable to the Administrator in an amount equal to one-and-one half times the original principal amount of the loan under 15 U.S.C. § 636(b).” And it required Schoenmann to certify that, “All representations in the Borrower’s Loan Application (including all supplementary submissions) are true, correct and complete and are offered to induce SBA to make this Loan.” SBA disbursed \$924,700 to Schoenmann on December 13, 2021.

Two weeks later, the probate court issued a “Tentative Decision” to invalidate the Post Marital Agreement, based on findings that Schoenmann had engaged in undue influence, spousal abuse, and misrepresentation. The Tentative Decision provided that it would become final unless a party filed an objection within 15 days.

Schoenmann used the EIDL funds to pay \$223,167.36 to her probate litigation attorneys, \$40,960.80 to experts in the probate litigation, and \$155,000 for retainers for bankruptcy professionals. She transferred the remaining approximately \$450,000 to a brokerage account to earn income until she had to pay back the EIDL over 30 years at an interest rate of 3.75%.

B. The bankruptcy and adversary proceeding

A month after receiving the EIDL funds and approximately two weeks after the state court’s Tentative Decision, Schoenmann filed a chapter 11 petition under subchapter V. The bankruptcy court subsequently converted the case to chapter 7.

SBA filed an adversary complaint seeking to hold the EIDL nondischargeable under § 523(a)(2)(A) and (B), and to hold the civil liability under 15 U.S.C. § 636(b) nondischargeable under § 523(a)(7).

Schoenmann filed a motion for summary judgment, asserting that SBA could not prove it relied on her failure to disclose the probate litigation, or that it was harmed by her alleged conduct. Schoenmann also

argued that she did not knowingly misuse the EIDL proceeds, and the civil penalty statute was unconstitutionally vague.

In opposition, SBA submitted the declaration of Alfonso E. Olivas, a Supervisory Loan Specialist who reviewed Schoenmann's EIDL application and testified that SBA relied on Schoenmann's statements and omissions in her application and Loan Agreement. Although he did not personally review the application at the time it was submitted, Olivas stated that if Schoenmann had disclosed the probate litigation, the SBA loan officer would have assessed Schoenmann's ability to repay the loan while considering the contingent liability.

At the hearing, the bankruptcy court granted Schoenmann's motion as to the claims under § 523(a)(2)(A) and (B), holding that Olivas was not competent to establish SBA's reliance on the alleged misrepresentations and omissions. The court denied summary judgment on the § 523(a)(7) claim.

After the hearing, Schoenmann filed a supplemental brief, which the court construed as a motion for reconsideration. She argued that the COVID-19 pandemic did not constitute the type of "disaster" contemplated by 15 U.S.C. § 636(b). Schoenmann claimed that SBA made the loan under 15 U.S.C. § 636(a), pursuant to the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"). She further argued that the civil penalty requires knowing, intentional misuse of EIDL funds, of which SBA had no

evidence. SBA also filed a motion for reconsideration of summary judgment on its claims under § 523(a)(2)(A) and (B).

After a hearing and further briefing, the bankruptcy court granted SBA's motion for reconsideration. The court reasoned that justifiable reliance, for purposes of § 523(a)(2)(A), takes into account the knowledge and relationship of the parties. It cited *Citibank (South Dakota), N.A. v. Eashai (In re Eashai)*, 87 F.3d 1082, 1089 (9th Cir. 1996), for the proposition that institutional lenders can establish justifiable reliance by demonstrating a lack of "red flags" in the application. Similarly, the court relied on *Gertsch v. Johnson & Johnson, Finance Corp., (In re Gertsch)*, 237 B.R. 160, 170 (9th Cir. BAP 1999), for the proposition that a lender may demonstrate reasonable reliance, for purposes of § 523(a)(2)(B), "by showing that it followed its normal business practices." The court determined that Olivas's testimony about SBA's procedures was probative of SBA's reliance, and because he was familiar with the EIDL loan process and he reviewed the application and found no red flags, he could testify to SBA's justifiable reliance.

The bankruptcy court denied Schoenmann's motion for reconsideration and meticulously recounted the history of legislative changes that authorized SBA to make disaster loans to small businesses affected by the COVID-19 pandemic. The court noted that the CARES Act, enacted in March 2020, specifically deemed COVID-19 to be a disaster for purposes of 15 U.S.C. § 636(b) and broadened SBA's authority to make EIDL loans to small businesses affected by the pandemic.

C. The trial and the bankruptcy court's ruling

Prior to trial, Schoenmann filed a motion in limine seeking to preclude Olivas from testifying as an undesignated expert witness, and to exclude any evidence on subjects for which SBA failed to provide meaningful interrogatory answers. The court denied Schoenmann's motion subject to her establishing prejudice based on facts adduced at trial and not reasonably within the responses provided in discovery.

At trial, Olivas testified about the disaster loan approval process and stated that SBA relied on Schoenmann's application in approving the EIDL. According to Olivas, if Schoenmann had disclosed contingent liabilities, SBA would have reviewed the details and determined whether she would be able to repay the loan if she was exposed to the contingent liabilities. He further testified that if SBA learned of intentional inaccuracies in an application, it would not approve the loan.

Schoenmann testified that she did not disclose the probate litigation because she did not believe it was a contingent legal claim or judgment. She believed at the time that there was no possibility she could be found liable in the action.

After trial, the court issued a written memorandum holding the EIDL nondischargeable under § 523(a)(2)(A) and (B) and holding the penalty based on Schoenmann's misuse of the EIDL funds nondischargeable under § 523(a)(7). The court found that Schoenmann made a false representation that she would use the EIDL funds solely for working capital for her

trustee business but instead intended to use the proceeds to pay litigation expenses in the probate action. The court determined that SBA justifiably relied on Schoenmann's representation and was damaged as a result.

The court additionally held that Schoenmann's EIDL application as a whole constituted a materially false written financial statement. Because the testimony of SBA's employees indicated that contingent liabilities would trigger further scrutiny and potential denial of the loan, the court determined that SBA reasonably relied on Schoenmann's financial statement.

The bankruptcy court noted that Schoenmann's failure to disclose the probate litigation could be viewed as a fraudulent omission under § 523(a)(2)(A), in which case, reliance and causation are established, citing *Apte v. Japra, M.D., F.A.C.C., Inc, (In re Apte)*, 96 F.3d 1319, 1323 (9th Cir. 1996).

Finally, the court held that Schoenmann wrongfully used the EIDL proceeds. Schoenmann's wrongful misapplication caused her to incur statutory liability under 15 U.S.C. § 636(b), which the court determined was a nondischargeable penalty under § 523(a)(7).

The court entered judgment in favor of SBA and against Schoenmann for \$2,314,790.11. Schoenmann timely appealed.

JURISDICTION

The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334 and 157(b)(2)(I). We have jurisdiction under 28 U.S.C. § 158.

ISSUES

Did the bankruptcy court err by holding the EIDL debt nondischargeable under § 523(a)(2)(A) or (B)?

Did the bankruptcy court err by imposing the statutory penalty based on Schoenmann's wrongful misapplication of EIDL proceeds?

Did the court err in its evidentiary rulings?

STANDARDS OF REVIEW

The ultimate question of whether a claim is nondischargeable is a mixed question of law and fact, which we review de novo. *Carrillo v. Su (In re Su)*, 290 F.3d 1140, 1142 (9th Cir. 2002). 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. 2014).

When the appellant challenges the bankruptcy court's factual findings supporting its nondischargeability decision, we review those findings for clear error. *In re Su*, 290 F.3d at 1142. Factual findings are clearly erroneous if they are illogical, implausible, or without support in the record. *Retz v. Samson (In re Retz)*, 606 F.3d 1189, 1196 (9th Cir. 2010). "Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous." *Anderson v. City of Bessemer City*, 470 U.S. 564, 574 (1985).

We review a bankruptcy court's evidentiary rulings for abuse of discretion, and then only reverse if any error would have been prejudicial

to the appellant. *Van Zandt v. Mbunda (In re Mbunda)*, 484 B.R. 344, 351 (9th Cir. BAP 2012), *aff'd*, 604 F. App'x 552 (9th Cir. 2015).

DISCUSSION

A. Legal standards governing nondischargeability under § 523(a)(2) and (a)(7)

Section 523(a)(2) “excepts from discharge debts arising from various forms of fraud.” *Lamar, Archer & Cofrin, LLP v. Appling*, 584 U.S. 709, 715 (2018). Under subparagraph (A), debts are nondischargeable if they are obtained by “false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor’s or an insider’s financial condition.” Subparagraph (B) bars discharge of a debt arising from a “statement in writing . . . that is materially false . . . respecting the debtor’s or an insider’s financial condition.”

To prevail on a nondischargeability claim under § 523(a)(2)(A), a creditor must prove, by a preponderance of the evidence:

- (1) misrepresentation, fraudulent omission, or deceptive conduct by the debtor;
- (2) knowledge of the falsity or deceptiveness of [the debtor’s] statement or conduct;
- (3) an intent to deceive;
- (4) justifiable reliance by the creditor on the debtor’s statement or conduct; and
- (5) damage to the creditor proximately caused by [its] reliance on the debtor’s statement or conduct.

Turtle Rock Meadows Homeowners Ass’n v. Slyman (In re Slyman), 234 F.3d 1081, 1085 (9th Cir. 2000). A fraudulent omission of a material fact may

constitute a false representation if the debtor is under a duty to disclose. *In re Apte*, 96 F.3d at 1323-24; *In re Eashai*, 87 F.3d at 1089.

To prove a claim for nondischargeability under § 523(a)(2)(B), a creditor must prove essentially the same elements, except that the misrepresentation must be a materially false statement in writing respecting the debtor's financial condition, and the creditor must reasonably rely on the statement. *See Candland v. Ins. Co. of N. Am. (In re Candland)*, 90 F.3d 1466, 1469 (9th Cir. 1996) (quoting *Siriani v. N.W. Nat'l Ins. Co. (In re Siriani)*, 967 F.2d 302, 304 (9th Cir. 1992)).

"Section 523(a)(7) expressly requires three elements for a debt to be non-dischargeable. The debt must (1) be a fine, penalty, or forfeiture; (2) be payable to and for the benefit of a governmental unit; and (3) not constitute compensation for actual pecuniary costs." *Albert-Sheridan v. State Bar of Cal. (In re Albert-Sheridan)*, 960 F.3d 1188, 1193 (9th Cir. 2020).

B. The bankruptcy court did not err by holding the debt nondischargeable under § 523(a)(2).

Schoenmann argues that SBA's claim is based on alleged statements respecting her financial condition, which are excluded from § 523(a)(2)(A). According to Schoenmann, Olivas testified that the application and Loan Agreement constituted a written submission about Schoenmann's financial condition.⁵ Schoenmann is incorrect for two reasons.

⁵ Olivas testified that the information submitted by Schoenmann was understood as, and intended by SBA to be, a submission of her financial condition. But the

First, a fraudulent omission of a material fact, even respecting a debtor's financial condition, can constitute fraud under § 523(a)(2)(A). *See Manion v. Strategic Funding Source, Inc. (In re Manion)*, 667 B.R. 473, 480 (9th Cir. BAP 2025) ("Nothing in the plain language of § 523(a)(2)(A) prevents plaintiffs from prosecuting, and courts from adjudicating, nondischargeability of a debt based on multiple misrepresentations and omissions, whether those misrepresentations and omissions are related in subject matter or not."). Schoenmann is correct that debts obtained by materially false statements about a debtor's financial condition are typically dischargeable unless they are in writing. *Oregon v. Mcharo (In re Mcharo)*, 611 B.R. 657, 660 (9th Cir. BAP 2020). But fraudulent omissions are not "statements." *Id.* at 661-62. Consequently, a debtor may commit a fraudulent omission under § 523(a)(2)(A) even if the omission is pertinent to the debtor's financial condition. *See id.* at 662.

Second, the bankruptcy court specifically held that by signing the Loan Agreement Schoenmann made an affirmative fraudulent misrepresentation to use the EIDL proceeds solely for working capital in her trustee business. The court held that Schoenmann's affirmative misrepresentation in the Loan Agreement was nondischargeable under § 523(a)(2)(A), and it alternatively held the debt nondischargeable under

information referenced by counsel in his question was provided as part of the application. There is no evidence that SBA believed the Loan Agreement to be a written financial statement.

§ 523(a)(2)(B) because Schoenmann obtained the EIDL by use of a materially false financial statement.

Consequently, we must affirm unless Schoenmann can demonstrate error under both subsections.

1. Schoenmann made false representations in the Loan Agreement.

The bankruptcy court found that Schoenmann falsely represented that she would use the EIDL funds “solely as working capital to alleviate the economic injury caused by disaster.” Schoenmann makes one argument pertinent to the Loan Agreement: she contends that her certification was not false because she believed that “working capital” included her legal fees incurred in the probate action.

But as the bankruptcy court noted, Schoenmann presented no evidence that she sought the EIDL to alleviate economic injury, and instead claimed she applied for the loan “because she could” and because SBA sent her an email notifying her of her potential eligibility. The court found that “Schoenmann knew that she would not be using the EIDL to alleviate economic injury caused by the pandemic because she had not suffered any.” *United States v. Schoenmann (In re Schoenmann)*, Case No. 22-30028, 2025 WL 1840384, at *3 (Bankr. N.D. Cal. July 3, 2025).

The court rejected Schoenmann’s argument that “working capital” included legal fees in the probate action because such an argument would “purposefully elide the point of the EIDL entirely.” *Id.* The expanded

COVID-era program was meant to fund small businesses directly affected by the pandemic, not to pay personal expenses incurred in pre-COVID litigation. *Id.*

Furthermore, the court found Schoenmann's testimony not credible, stating: "Any professional should understand the difference between business expenses, also characterized as working capital, and expenses incurred during personal litigation between family members, however characterized." *Id.* We typically defer to the bankruptcy court's determination of witness credibility. *See Cooper v. Harris*, 581 U.S. 285, 309 (2017) (stating that "we give singular deference to a trial court's judgments about the credibility of witnesses"). The bankruptcy court's finding that Schoemann knew she would not use the EIDL proceeds solely for working capital is supported by facts and inferences in the record and is not clearly erroneous.

Because the bankruptcy court did not clearly err by finding Schoenmann made a false representation in the Loan Agreement—and she does not contest the bankruptcy court's other findings of fact—Schoenmann has not demonstrated an abuse of discretion by the bankruptcy court in holding the debt nondischargeable under § 523(a)(2)(A) based on the Loan Agreement.

2. Schoenmann obtained the EIDL through a materially false written financial statement and a material omission.

Schoenmann argues that the bankruptcy court erred by finding that she intentionally failed to disclose the probate litigation. She acknowledges that she may have been mistaken, or possibly negligent, in not disclosing it, but there was no evidence that she did so with intent to defraud SBA.

Intent to defraud is a factual determination that we review for clear error.

In re Candland, 90 F.3d at 1469.

Schoenmann testified that she did not disclose the probate litigation because she believed “there was no possibility on earth that [the Probate Petitioners] could prevail on such a preposterous action.” Trial Tr. 219:21-22, June 9, 2025. But her subjective belief was not relevant to whether the litigation represented a contingent liability. The court found it “beyond credulity” that Schoenmann, who had decades of experience as a chapter 7 trustee, could believe the probate litigation was not a contingent liability. Again, we defer to the bankruptcy court’s determination of witness credibility. *See Cooper*, 581 U.S. at 309. And the court’s finding is not clearly erroneous.

Additionally, omission of a material fact may constitute a fraudulent omission under § 523(a)(2)(A) if the debtor is under a duty to disclose. *In re Apte*, 96 F.3d at 1323. In a business transaction, parties have a duty to disclose facts basic to the transaction if they know the other party is about

to enter into the transaction under a mistake and would reasonably expect disclosure. *See id.* at 1324.

Because the existence of contingent liabilities is central to a borrower's ability to repay a loan, and thus material to SBA's decision to lend, Schoenmann was under a duty to disclose prior to signing the Loan Agreement and accepting the EIDL. In cases of fraudulent omission, reliance and causation are established and need not be separately proven. *Id.* at 1323 ("nondisclosure of a material fact in the face of a duty to disclose . . . establish[es] the requisite reliance and causation for actual fraud under the Bankruptcy Code"); *see also Affiliated Ute Citizens v. United States*, 406 U.S. 128, 153 (1972) ("Under the circumstances of this case, involving primarily a failure to disclose, positive proof of reliance is not a prerequisite to recovery."); *Titan Grp. v. Faggen*, 513 F.2d 234, 239 (2d Cir. 1975) ("In cases involving non-disclosure of material facts, even when coupled with access to the information, materiality rather than reliance thus becomes the decisive element of causation.").

The bankruptcy court did not clearly err in its finding that Schoenmann intentionally omitted contingent liabilities from the application, and we find no abuse of discretion in the court's decision to hold the debt nondischargeable based on the omission in the application.

C. Schoenmann wrongfully misapplied the EIDL funds and is subject to the nondischargeable penalty under 15 U.S.C. § 636(b) and § 523(a)(7).

Section 523(a)(7) excepts from discharge any debt “for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for pecuniary loss[.]”

Pursuant to 15 U.S.C. § 636(b), “whoever wrongfully misapplies the proceeds of a loan obtained under this subsection shall be civilly liable to the [SBA] Administrator in an amount equal to one-and-one half times the original principal of the loan.” The civil liability for wrongful misapplication is not compensation for pecuniary loss; it is an additional amount imposed for wrongful conduct and thus, nondischargeable under § 523(a)(7).

Schoenmann does not contest the court’s holding that the civil penalty is nondischargeable under § 523(a)(7). Instead, she asserts she is not subject to the civil penalty because: (1) the EIDL was made under 15 U.S.C. § 636(a), not subsection (b); (2) SBA did not prove that she knowingly and intentionally misused the loan funds; and (3) the statutory penalty provision is unconstitutional.

In arguing the EIDL was not made under 15 U.S.C. § 636(b), Schoenmann essentially rehashes arguments made in her motion for reconsideration of summary judgment. She again claims that the term “disaster,” as used in 15 U.S.C. § 636(b), does not include economic injury

caused by the COVID-19 pandemic and thus, the penalty provision does not apply. Schoenmann completely disregards the bankruptcy court's recitation of legislative changes which specifically defined the COVID-19 pandemic as a disaster for purposes of SBA loans under 15 U.S.C. § 636(b). And the Loan Agreement clearly stated that "[w]hoever wrongfully misapplies the proceeds of an SBA disaster loan shall be civilly liable . . . under 15 U.S.C. § 636(b)." The bankruptcy court did not err by finding that the EIDL was made pursuant to 15 U.S.C. § 636(b).

Nor did the court err by finding that Schoenmann wrongfully misused the proceeds of the EIDL. Schoenmann argues that a wrongful misapplication requires a showing of "knowing, intentional misuse," and she maintains that SBA failed to present any evidence of wrongfulness. But we need not determine the mental state required for liability under 15 U.S.C. § 636(b) because the bankruptcy court already found that Schoenmann acted intentionally. Schoenmann certified that she would use EIDL funds solely as working capital in her trustee business to alleviate economic injury caused by the COVID-19 pandemic. That representation was false because Schoenmann intended to use the proceeds for an unauthorized purpose: to pay personal litigation costs and other expenses. She misapplied the proceeds, and she did so intentionally.⁶

⁶ Schoenmann argues that she did not misuse the portion of the proceeds which she deposited in a brokerage account. But 15 U.S.C. § 636(b) does not impose a penalty based on the amount of proceeds wrongfully misapplied. It subjects any borrower who "wrongfully misapplies the proceeds" of an EIDL loan to a penalty of 150% of "the

Finally, Schoenmann argues the penalty provision is unconstitutional because the term “wrongfully misapplies” is vague, and to the extent it does not require a showing of culpability, it imposes a penalty in violation of due process. She also argues that the statute is unconstitutional because it exacts a huge penalty regardless of how much the borrower misapplied. Schoenmann’s argument is meritless, and she provides no relevant support for it.

A party challenging a statute has the burden of proving that it is unconstitutional. *See In re Rausch*, 197 B.R. 109, 117 (Bankr. D. Nev. 1996), *aff’d*, 213 B.R. 364 (D. Nev. 1997), and *aff’d sub nom. Ferm v. United States Tr. (In re Crawford)*, 194 F.3d 954 (9th Cir. 1999). A statute is unconstitutionally vague when “it fails to give ordinary people fair notice of the conduct it punishes, or [is] so standardless that it invites arbitrary enforcement.” *Johnson v. United States*, 576 U.S. 591, 595 (2015). But “economic regulation is subject to a less strict vagueness test because its subject matter is often more narrow, and because businesses, which face economic demands to plan behavior carefully, can be expected to consult relevant legislation in advance of action.” *Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 499 (1982).

The term “wrongfully misapplies” is not unconstitutionally vague. The term is defined in the regulation implementing the statute as “the

original principal amount of the loan.”

willful use of any loan proceeds without SBA approval contrary to the loan authorization. If you fail to use loan proceeds for authorized purposes for 60 days or more after receiving a loan disbursement check, such non-use is also considered a wrongful misapplication of the proceeds.” 13 C.F.R. § 123.9(a). And Schoenmann offers no support for her contention that 15 U.S.C § 636(b) is unconstitutional merely because it imposes a penalty based on the amount of the loan and not the amount of the misapplied proceeds.

D. The bankruptcy court did not abuse its discretion in its evidentiary rulings.

Schoenmann argues the bankruptcy court erred by allowing Olivas to testify about what SBA would have done. She maintains that Olivas provided expert opinion testimony, but SBA did not comply with the Civil Rules for expert witnesses. She also argues the court erred by allowing SBA to provide evidence on several subjects for which it failed to provide meaningful interrogatory answers.

The bankruptcy court allowed Olivas to testify as a fact witness with knowledge of SBA’s specific practices and procedures. Olivas did not testify about general practices in the industry or offer any other opinion testimony that would require him to be an expert. He provided first-hand testimony of what he observed and what he knew about SBA’s procedures. We discern no abuse of discretion in the court’s ruling to allow Olivas to testify.

Moreover, Olivas's testimony was relevant to SBA's reliance on Schoenmann's application and Loan Agreement, but reliance and causation are established in cases of fraudulent omission and need not be separately proven. *In re Apte*, 96 F.3d at 1323. Thus, Schoenmann cannot show that the court's evidentiary ruling was prejudicial. See *In re Mbunda*, 484 B.R. at 351; *Harper v. City of L.A.*, 533 F.3d 1010, 1030 (9th Cir. 2008) ("We afford broad discretion to a [trial] court's evidentiary rulings. To reverse such a ruling, we must find that the [trial] court abused its discretion and that the error was prejudicial. A reviewing court should find prejudice only if it concludes that, more probably than not, the lower court's error tainted the verdict." (citation modified)).

Similarly, we find no abuse of discretion in the bankruptcy court's decision to allow SBA to present its case in chief. SBA objected to interrogatories asking for "each fact" that supported its contentions as overly broad and unduly burdensome. To the extent that Schoenmann believed SBA's objections were unfounded, she was required by Local Civil Rule 37, incorporated by Local Bankruptcy Rule 1001-2(a), to file a motion to compel within seven days after the discovery cut-off date set by the court. Schoenmann did not raise the issue until she filed her motions in limine a week before trial, well after the close of discovery.

And again, Schoenmann does not demonstrate any prejudice. The evidence presented by SBA was provided in multiple document productions and discussed in the dispositive motions and accompanying

declarations and evidentiary submissions. The bankruptcy court did not abuse its discretion in its evidentiary rulings, and Schoenmann was not prejudiced by them.

CONCLUSION

Based on the foregoing, we AFFIRM the bankruptcy court's judgment.