UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

WALEED KHALID ABU AL-WALEED AL HOOD AL-QARQANI; AHMED KHALID ABU AL-WALEED AL HOOD AL-QARQANI; SHAHA KHALID ABU AL-WALEED AL HOOD AL-QARQANI; NAOUM AL-DOHA KHALID ABU AL-WALEED AL HOOD AL-QARQANI; NISREEN MUSTAFA JAWAD ZIKRI, Petitioners-Appellants, v. CHEVRON CORPORATION; CHEVRON USA INC., Respondents-Appellees. In re: EDWARD C. CHUNG.	No. 19-17074 SPECIAL MASTER PROCEEDING DC No. 4:18-cv-03297-JSW ND Cal., Oakland **RESPONDENTS-APPELLEES' RESPONSE BRIEF REGARDING THE SPECIAL MASTER *SAUDI SUN* ARTICLE PROCEEDINGS**

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Respondents-Appellees Chevron Corporation and Chevron U.S.A. Inc. ("Respondents") respectfully submit this brief pursuant to the Special Master's orders following the March 11, 2022, Pre-Hearing Conference (Dkts. 88, 106), and in response to the brief filed by Edward Chung of Chung, Malhas & Mantel, PLLC, on May 10, 2022 (Dkt. 107-1). Mr. Chung is counsel to the subset of five Petitioners from the district court action who are parties to this appeal ("Petitioners-Appellants").[1]

INTRODUCTION

This sanctions proceeding arises out of a filing made by Mr. Chung in the course of Petitioners-Appellants' appeal from the denial of their petition to confirm an alleged foreign arbitral award under the New York Convention. Mr. Chung submitted to the Court a copy of what appears to be a bona fide newspaper article, characterizing it as "a *Saudi Sun* article that explains and provides an informative summary of factual and procedural events related to" matters in dispute in the appeal. Dkt. 66-1 at 1. Mr. Chung presented this document as if it were an independent publication from a third party, without disclosing who wrote it or the fact that no bona fide publication called the "*Saudi Sun*" actually exists. The record reflects that

[1] *See* Dkt. 73-1 at 8-9 (striking unnamed "heirs" from the appellate docket).

the *Saudi Sun* article was fabricated by Petitioners-Appellants in an evident attempt to mislead the Court of Appeals regarding the nature and origins of the document.

On the same day it affirmed denial of the petition on the merits (Dkt. 73-1), the Ninth Circuit ordered Mr. Chung to "show cause why sanctions should not be imposed for filing the article at Docket Number 66." Dkt. 74 at 3. The Court explained that "[c]ounsel for appellants filed a motion asking us to consider a news article from a publication we are unable to locate," and that "the article appears to have been fabricated for purposes of this litigation." *Id.* at 1.

Following Mr. Chung's response to the order to show cause, and prior to issuing the mandate resolving the merits appeal in this case (*see* Dkt. 82), the Court appointed the Special Master to oversee further proceedings. Dkt. 80. The Court stated that the Special Master is "authorized to conduct any proceedings he deems appropriate to determine the legitimacy of the article attached at Docket Entry No. 66, and prepare a written report and recommendation to this panel regarding what, if any, sanctions should be imposed on Mr. Chung for submitting the article to this court." *Id.*

As detailed herein, Mr. Chung's conduct with respect to the *Saudi Sun* article constitutes bad faith, an attempted fraud on the court, and a violation of the Ninth Circuit's General Order 12.9(a) as informed by the Washington Rules of Professional Conduct and Federal Rule of Appellate Procedure 46(c). Mr. Chung offers a

litany of unfounded excuses as to why he cannot be sanctioned, as well as baseless accusations against Respondents and their counsel in an attempt to distract from his own wrongdoing. Mr. Chung's legal theories are groundless, and his assertions are both outside the limited scope of this proceeding and wrong on the merits.

Accordingly, Mr. Chung should be sanctioned. Respondents respectfully submit that an appropriate compensatory sanction would be an award to Respondents of the attorneys' fees they incurred in responding to the *Saudi Sun* article and participating in these sanctions proceedings. Respondents also respectfully submit that the Special Master should recommend that the panel refer Mr. Chung for potential discipline before the Ninth Circuit or the Washington State Bar, where Mr. Chung is licensed, for both his filing of the *Saudi Sun* article and his vexatious and outrageous behavior throughout the course of these Special Master proceedings.

In addition, none of Mr. Chung's proposed witnesses should be permitted to testify at the evidentiary hearing.

BACKGROUND

Respondents set forth details regarding the procedural history of this matter below to provide the relevant context for the issues before the Special Master.

I. The District Court Proceedings

In June 2018, Petitioners filed a petition in the United States District Court for the Northern District of California seeking recognition and enforcement against Respondents of an alleged foreign arbitration award under the New York Convention. As set forth in the record before the district court, the arbitral "award" in question was nothing but a sham. There was no enforceable arbitration agreement between Petitioners and Respondents, and the purported arbitration was "highly irregular and appears to have been engineered to produce a result in favor of Petitioners." 1-ER-0014.

Petitioners purport to be heirs of land owners whose ancestor entered into a deed with the Saudi government in 1949 to allow the government to conduct oil exploration and production on certain lands in Saudi Arabia, and Petitioners claimed they were owed lease payments by virtue of this transaction. 1-ER-0005, 1-ER-0007. Some of these alleged heirs attempted to bring these claims in the courts of Saudi Arabia against the government of that country, but the Saudi authorities determined that the land at issue had been completely transferred (and not leased) to the Saudi government and that full compensation had been received for that transfer. SER-205–06.

Disgruntled with this result, the alleged heirs attempted to drag Chevron Corporation into this dispute by invoking an arbitration clause in a 1933 Concession

Agreement between the Kingdom of Saudi Arabia and a Chevron predecessor. But as this Court has already held, "there was no binding agreement to arbitrate between the parties." Dkt. 73-1 at 13.

Petitioners nonetheless purported to commence arbitral proceedings against Chevron Corporation and an entity wholly owned by the Saudi government, Saudi Aramco, before the so-called "International Arbitration Center" ("IAC") in Cairo, Egypt, seeking compensation under the 1949 deed. In so doing, they repeatedly flouted the actual requirements of the arbitration clause that they purported to invoke, including its requirement for ad hoc arbitration in The Hague absent contrary agreement by the parties. Dkt. 73-1 at 6; 1-ER-0013-14.

As the district court found, "the constitution of the arbitral panel was highly irregular and appears to have been engineered to produce a result in favor of Petitioners." 1-ER-0014. "None of the[] procedures [for selecting arbitrators] were followed as required," and "[t]here were multiple resignations of appointed arbitrators, some in protest of the proceedings, and a rotating cast of arbitrators filled the positions vacated by others." *Id*. There were even conflicting "awards," with the "arbitral panel" initially issuing an opinion concluding that it had no jurisdiction, only to be disbanded and reconstituted with different arbitrators, who then "issued an award ordering Chevron to pay the heirs $18 billion." Dkt. 73-1 at 6; *see* 1-ER-0014-15.

The new panel also purported to award itself tens of millions of dollars in arbitration fees. *See* SER-182–83.

A Chevron entity reported the fraudulent arbitration scheme to the Egyptian authorities, who commended criminal investigative proceedings in 2015. SER-221; SER-225–28. Egypt's General Prosecutor (its highest-ranking law enforcement official) assumed control of the investigation from 2017 onward. Dist. Ct. Dkt. 117 ¶¶ 27–33; SER-225–27 ¶¶ 15–21. Ultimately, Egyptian law enforcement brought criminal cases against all three of the "arbitrators" who issued the sham award in 2015, as well as the IAC's secretary and executive director/vice president (Hassan Hammad). All of these individuals have been convicted in Egypt for their frauds.[2]

On September 24, 2019, the district court dismissed the petition to confirm the arbitral "award." 1-ER-0005-16. The district court found that no enforceable arbitration agreement existed between Petitioners and Respondents. 1-ER-0010-11.

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[2] *See*, *e.g.*, Dist. Ct. Dkt. 141 at 2 (initial Egyptian criminal conviction of the five IAC defendants in January 2019); Dist. Ct. Dkt. 158 at 2 (May 2019 intermediate Egyptian appellate affirmance of convictions for two defendants who appealed); Dkt. 29-2 at 2–3 (Egyptian equivalent of the U.S. Supreme Court affirming criminal conviction of the only defendant who appealed to that court in February 2020); Dkt. 45 at 2–4 (second Egyptian criminal conviction of Hassan Hammad stemming from second investigation pertaining to forged signatures used throughout the fraudulent IAC arbitration); *see also* Dkts. 29-1, 39, 45-1, 53 (briefing and supporting declarations regarding Respondents' requests for judicial notice of the Egyptian criminal convictions explaining the history of the proceedings).

It also found that "numerous procedural infirmities would independently preclude confirmation of the arbitral award"—including that "the constitution of the arbitral panel was highly irregular and appears to have been engineered to produce a result" in Petitioners' favor and that Petitioners had "failed to produce a duly certified copy of the arbitration award." 1-ER-0011-16.

II. Appellate Proceedings Before the Ninth Circuit

On October 18, 2019, Petitioners-Appellants—a subset of five of the Petitioners from the district court action—filed a notice of appeal from the district court's order. After briefing, the case was assigned to a panel consisting of then-Chief Judge Sidney R. Thomas, Judge Eric D. Miller, and Judge Paul J. Kelly, Jr., of the United States Court of Appeals for the Tenth Circuit, sitting by designation.

Shortly before oral argument, Petitioners-Appellants filed a motion contending that Judge Miller should recuse himself because (a) his impartiality was purportedly in question due to alleged work done by his former law firm (but not Judge Miller personally) for Chevron U.S.A. in unrelated matters, (b) while in private practice Judge Miller had acted as co-counsel with Respondents' counsel Gibson Dunn & Crutcher LLP in an unrelated matter, and (c) he had been supervised by Gibson Dunn partner Thomas G. Hungar while both were at the Office of the Solicitor General more than a decade previously (again, in unrelated matters). Dkt. 56 at 2-3.

Judge Miller rejected Petitioners-Appellants' arguments for recusal, explaining that none of Petitioners-Appellants' proffered grounds required recusal based on an appearance of partiality under 28 U.S.C. § 455(a) or pursuant to 28 U.S.C. § 455(b)(2), which requires recusal only where "in private practice [a judge] served as lawyer in the matter in controversy, or a lawyer with whom [the judge] previously practiced law served during such association as a lawyer concerning the matter." *See* Dkt. 56 at 2-3. Petitioners-Appellants filed a petition for certiorari seeking review of Judge Miller's refusal to disqualify himself, but the Supreme Court denied the petition on June 21, 2022. Dkts. 101, 103.

Before oral argument or a decision in the appeal, Respondents filed requests for judicial notice in this Court of two criminal judgments entered by the Egyptian courts involving individuals affiliated with the sham Egyptian arbitration. *See* Dkt. 29-2 at 2–3 (affirmance by Egypt's highest court of the criminal conviction of one of the arbitrators who issued the sham "award"); Dkt. 45 at 2–4 (second Egyptian criminal conviction of the IAC's director, Hassan Hammad, stemming from investigation pertaining to forged signatures used throughout the fraudulent IAC arbitration).

Petitioners-Appellants moved to strike both of these requests. Dkt. 46. Then, on July 25, 2021, Petitioners-Appellants filed a motion to attach a "supplemental exhibit" in support of their motion to strike, in the form of a purported *Saudi Sun*

article (Dkt. 66-1). The article is formatted like a newspaper, with a masthead for *The Saudi Sun*, followed by six stories in triple-column print, with photographs scattered throughout. The first page of the article has a banner that reads, "WHO OWNS THE OIL? U.S. Lawyers Extract the Crude Truth About Oil Cartels Chevron, Saudi Aramco and The Royal Court of the Kingdom of Saudi Arabia." Segments of the purported article are entitled: (1) "The Untold Secret of Saudi Oil is Exposed and Sparks International Chain [sic] of Events to Conceal Who Owns the Oil and Owes an $18 Billion Dollar Arbitral Debt"; (2) "The Ghost of the Ninety-Third Congress and the U.S. Department of Justice's Prior Criminal Investigation into Aramco and the 1973 Oil Embargo"; (3) "Saudi Embassy and Oil Cartels Linked to Car Bombing of Egyptian Prosecutor, Numerous Unlawful Imprisonments, Death Sentences and Executions"; (4) "Understanding the New York Convention Treaty and the Pending U.S. Confirmation and Enforcement Against Chevron and Aramco"; (5) "Rule of Law or Rule by Law? You be the Judge"; and (6) "Chevron and Saudi Aramco Lawyers Pass the Deadline to Annul an $18 Billion Dollar [sic] Foreign Arbitral Award." *See generally* Dkt. 66-2.

The purported article has no bylines, and Petitioners-Appellants did not disclose the article's author(s) to the Court. Instead, they asserted that the exhibit was a "*Saudi Sun* article that explains and provides an informative summary of factual and procedural events related to the 2014 and 2015 arbitration proceedings that took

place in Cairo, Egypt and the U.S. confirmation and Enforcement proceedings in the United States." Dkt. 66-1 at 1.

In opposing Petitioners-Appellants' motion to docket the *Saudi Sun* article, Respondents noted that "there is considerable reason to believe that the so-called 'article' was in fact prepared by or at the behest of [Petitioners-Appellants] and/or their counsel purely to try to legitimize their unfounded claims." Dkt. 69 at 1-2. In reply, Petitioners-Appellants again failed to identify who authored the *Saudi Sun* "article," and instead accused Respondents of improperly alleging that "Appellants breached their duty of candor by seeking to attach an exhibit that Appellants clearly and unequivocally states is not evidence and only being offered for demonstrative purposes." Dkt. 71 at 3.

On August 12, 2021, the Ninth Circuit affirmed the district court's conclusion that the purported "award" against Chevron Corporation is unenforceable. The Court "agree[d] with the district court that there was no binding agreement to arbitrate between the parties." Dkt. 73-1 at 13. It also addressed and rejected Petitioners-Appellants' two proffered grounds for claiming entitlement to invoke the 1933 Agreement's arbitration clause. *Id.* at 13–15.

On November 16, 2021, the Ninth Circuit denied Petitioners-Appellants' petition for rehearing *en banc* without recorded dissent. Dkt. 81. On June 21, 2022,

the Supreme Court denied Petitioners-Appellants' petition for certiorari. Dkts. 101, 103.

III. The Ninth Circuit's Order to Show Cause Why Sanctions Should Not Be Imposed for Mr. Chung's Filing of a Fake Newspaper

On the same day that it issued its opinion affirming the district court's denial of the petition to confirm the sham "award," this Court "ordered [counsel for Petitioners-Appellants] to show cause why sanctions should not be imposed for filing the article at Docket Number 66." Dkt. 74 at 3. The panel explained that it had been "unable to locate" the supposed publication and that the "article appears to have been fabricated for purposes of this litigation." *Id.* at 1. This Court referenced its "inherent authority to fashion sanctions for fraud upon the court," as well as its authority to "sanction 'counsel or a party for conduct that violates the Federal Rules of Appellate Procedure, the Circuit Rules, orders or other instructions of the Court, the rules of professional conduct or responsibility in effect where counsel maintains his or her principal office or as authorized by statute.'" *Id.* at 2–3 (quoting 9th Cir. G.O. 12.9(a) and citing *Chambers v. NASCO, Inc.*, 501 U.S. 32, 46 (1991); Fed. R. App. P. 46(c); 9th Cir. R. 46-2(a); Wash. R. Prof'l Conduct 3.3).

In responding to the order to show cause, Mr. Chung again failed to reveal who wrote the *Saudi Sun* "article," nor did he explain why Petitioners-Appellants characterized it in that fashion and failed to disclose its authorship when they presented it to the Court. Instead, Mr. Chung filed a 20-page motion to vacate the order

to show cause (Dkt. 78) and a "response" to the order to show cause containing a cover letter and the same memorandum of law and exhibits as the motion to vacate (Dkt. 79), in which Mr. Chung offered various unfounded excuses for why sanctions should not be imposed.[3]

On November 15, 2021, two weeks before issuing the mandate (*see* Dkt. 82), the Ninth Circuit appointed Judge A. Wallace Tashima as Special Master to oversee further proceedings. Dkt. 80. The order authorized the Special Master "to conduct any proceedings he deems appropriate to determine the legitimacy of the article attached at Docket Entry No. 66, and prepare a written report and recommendation to this panel regarding what, if any, sanctions should be imposed on Mr. Chung for submitting the article to this court." *Id.*

The Special Master scheduled a Pre-Hearing Conference on March 11, 2022, and invited the parties to submit pre-hearing briefs regarding "the scope and length of the evidentiary portion of the hearing, *i.e.*, whether counsel contemplate calling

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[3] Mr. Chung's submissions implied that disclosure of the author(s) of the article would violate the attorney-client privilege or work-product protections, which would seem to be an admission that counsel prepared it. Dkt. 79-1 at 19 ("[T]he Order to Show Cause does not asks [sic] Appellants to violate attorney client privilege or work product."). However, Mr. Chung then immediately implied otherwise by stating that "journalist[s] have been executed for writing pieces that expose corruption in Saudi Arabia." *Id.* (emphasis omitted). It is unclear why the identity of the author or authors of the *Saudi Sun* article would be protected by any privilege or work-product doctrine.

any witnesses, including expert witnesses, and/or adducing or offering any documentary evidence." Dkt. 83 at 2. The parties submitted Pre-Hearing Conference Statements on March 1, 2022. Dkts. 85, 86. Respondents stated that they "anticipate calling Mr. Chung and anyone else involved in drafting the *Saudi Sun* 'article' as hostile fact witnesses," and that they would identify rebuttal experts to the extent the Special Master permitted expert testimony and Petitioners-Appellants designated an expert. Dkt. 85 at 8-9. Mr. Chung did not identify any specific witnesses, instead stating that while he "reserves the right to call lay and expert witnesses, upon clarifying the alleged violations that Appellants' counsel purportedly violated [sic]," he "intends to call certain individuals from Chevron, Inc. and Chevron USA as well as their respective legal counsel and translators for the purposes of determining the 'legitimacy' of the article." Dkt. 86 at 9. Mr. Chung added that he "may also seek to call individuals overseas that can attest to the illicit activity addressed in the article and those individuals that have personal knowledge of Gibson, Dunn & Crutcher's killstep tactic that was addressed in the article." *Id.* (emphasis omitted). Mr. Chung did not address who wrote the *Saudi Sun* article in his Pre-Hearing Conference Statement, instead repeating various arguments for why sanctions would purportedly be improper. Dkt. 86.

The Special Master held the Pre-Hearing Conference on March 11, 2022. At the Pre-Hearing Conference, Mr. Chung did not reveal the authorship of the *Saudi*

Sun article. He instead represented to the Special Master that "I really don't see what the point of who wrote it has any relevance whatsoever [sic][.]" Dkt. 94-3 (3/11/22 Tr.) at 29:16-17. The Special Master recognized that "it would be helpful, I think, for Mr. Chung to answer certain questions under oath" at the evidentiary hearing. *Id.* at 30:22-25. Given Mr. Chung's failure to name specific witnesses he intended to call at the hearing in either his Pre-Hearing Conference submission or during the Pre-Hearing Conference, the Special Master ordered that "if Mr. Chung intends to call any witnesses at the above hearing, he shall list such witnesses in an Appendix to his Opening Brief and provide a brief statement of each such witness's testimony." Dkt. 88 at 2.

The Special Master scheduled an evidentiary hearing for August 26, 2022, and ordered corresponding briefing deadlines for the parties. Dkt. 88. As discussed at the Pre-Hearing Conference, these briefs were to address "what, if any, sanctions should be imposed on Mr. Chung for submitting the article" and "the legitimacy of that article, that demonstrative exhibit." Dkt. 94-3 (3/11/22 Tr.) at 31:23-32:2.

In his opening brief, Mr. Chung once again failed to identify who wrote the *Saudi Sun* article, instead asserting that "it is immaterial who wrote [sic] or whether it was published." Dkt. 107-1 at 19. And Mr. Chung repeated various arguments from his order to show cause response and Pre-Hearing Conference statement for why sanctions are purportedly impermissible. Mr. Chung also proposed to call seven

witnesses at the hearing: two are judges of this Court (Hon. Sidney Thomas and Hon. Eric Miller), three are counsel to Respondents in these proceedings (Anne Champion, Thomas Hungar, and Randy M. Mastro, partners at Gibson, Dunn & Crutcher), and two are current or former Saudi government officials (former ambassador to Egypt Ahmed Qattan and current Saudi Minister of State Dr. Issam Bin Saeed). Dkt. 107-2. None of them is alleged to possess any material personal knowledge regarding either the authorship of the *Saudi Sun* article or the question whether *The Saudi Sun* is a legitimate publication.

Mr. Chung filed his opening brief on May 10, 2022.[4] Simultaneously with and subsequent to that submission, Mr. Chung greatly increased Respondents' attorney costs related to these proceedings and engaged in additional sanctionable behavior by making a series of filings laced with incendiary rhetoric, demonstrably false and outrageous mischaracterizations of the record, and frivolous legal arguments. For example, Mr. Chung filed a motion to stay these Special Master proceedings, which did not even cite the governing standards for motions to stay (*see* Dkt. 89) and which the Clerk summarily denied three days later (Dkt. 91). Mr. Chung also docketed several motions to strike Respondents' filings for which Mr. Chung lacked any good faith basis to file, including requests to strike both Respondents' request

[4] The Clerk of Court originally struck Mr. Chung's opening filing, but the Special Master vacated that striking order on July 15, 2022. Dkt. 106.

for judicial notice of a transcript of the audio recording of the March 11, 2022 Pre-Hearing Conference (*see* Dkts. 95, 100) and Respondents' response to Mr. Chung's request for clarification and modification of an order from the Clerk striking his sanctions brief (Dkt. 98). In these filings, Mr. Chung falsely referred to Judge Miller as "a corrupt judge" (Dkt. 98 at 16) who purportedly committed "judicial misconduct" (Dkt. 95-1 at 3 (emphasis omitted)), outrageously and falsely accused counsel for Respondents of harboring anti-Asian bias (Dkt. 98 at 1 n.1), and improperly and disrespectfully characterized this proceeding as "star-chamber proceedings," "kangaroo court proceedings" (Dkt. 100 at 4), and "*McCarthyism* hearings" (Dkt. 98 at 12), all the while mischaracterizing the record. Respondents address Mr. Chung's false assertions here in further detail because Mr. Chung repeats many of those same mischaracterizations in his sanctions brief (*see infra* Argument II.C). And when the Special Master denied Mr. Chung's frivolous motion to compel access to the video recording of the Pre-Hearing Conference (Dkt. 106), Mr. Chung filed a baseless motion for disqualification (Dkt. 109).

ARGUMENT

As detailed below, Mr. Chung's conduct in presenting the fabricated *Saudi Sun* article to the Court without disclosing Petitioners-Appellants' role in preparing it constitutes bad faith misconduct and an attempted fraud on the Court, which merits the imposition of sanctions pursuant to the Court's inherent authority. Mr. Chung

errs in arguing that Federal Rule of Appellate Procedure 38 displaces the Court's inherent authority in this regard; that rule deals only with sanctions for filing frivolous appeals.

Mr. Chung's misdeeds are also sanctionable pursuant to Ninth Circuit General Order 12.9(a). They violate the Washington Rules of Professional Conduct, where Mr. Chung is barred, because Mr. Chung's behavior amounts to making false statements to a tribunal and engaging in dishonesty, fraud, deceit, or misrepresentation. They also violate Federal Rule of Appellate Procedure 46(c)'s prohibition against conduct unbecoming a member of the bar.

Mr. Chung's assorted arguments as to why sanctions are impermissible all fail. For example, Mr. Chung incorrectly contends that the *Saudi Sun* article cannot be "fabricated" if it only contains truthful assertions. The truth or falsity of the contents of the *Saudi Sun* article is irrelevant to whether Mr. Chung should be sanctioned for having submitted it without disclosing that the *Saudi Sun* is not a bona fide publication and that the supposed "article" is in reality an advocacy piece drafted by Petitioners-Appellants' counsel (although the content of the *Saudi Sun* article is also laced with falsehoods in any event).

Mr. Chung also erroneously maintains that he cannot be sanctioned for filing the *Saudi Sun* article because he never sought judicial notice of it and described the document as a "demonstrative." Those facts provide no defense, however, because

they do not change the misleading and deceitful nature of Mr. Chung's bad-faith submission to the Court.

Mr. Chung mistakenly contends that Federal Rule of Appellate Procedure 27 prevents the imposition of sanctions because it allows him to docket "any paper" in support of a motion. Federal Rule of Appellate Procedure 27(a)(2)(B)(i) is merely a procedural rule requiring parties to attach to motions "any paper [already] necessary to support a motion." Dkt. 107-1 at 10 (emphases omitted). Contrary to Mr. Chung's contention, it does not purport to authorize a party to rely on or attach any documents that are fraudulent exhibits.

Mr. Chung falsely contends that sanctions are inappropriate because the merits panel conducted impermissible judicial research in violation of ABA Advisory Opinion 478 in examining whether *The Saudi Sun* exists as a bona fide publication. ABA Advisory Opinion 478 is not binding authority in federal court, and would provide no defense for Mr. Chung here even if it did control.

Mr. Chung's wild accusations of misconduct by Respondents are utterly unpersuasive. They have no relevance to the questions at issue in this proceeding, and are demonstrably untrue in any event.

An award of compensatory sanctions is appropriate here. Under the Ninth Circuit's "but for" test for compensatory sanctions, Mr. Chung should be required to compensate Respondents for fees and costs incurred in responding to the filing of

the fake newspaper article and in participating in these sanctions proceedings. Mr. Chung's contention that an award of Respondents' counsel fees is time-barred by Ninth Circuit Rule 39-1.6 is unfounded, as that rule governs party-submitted motions and not *sua sponte* sanctions awards.

Furthermore, Mr. Chung's misconduct warrants referral to disciplinary authorities. Mr. Chung submitted the *Saudi Sun* article while concealing its true authorship, dragged out these proceedings by refusing to admit who wrote it at every opportunity, and filed frivolous and repetitive motions with demonstrably false and outrageous mischaracterizations of the record in an effort to escape sanctions for his misdeeds.

Finally, Mr. Chung is the only appropriate witness for the evidentiary hearing. Mr. Chung's proposal to call seven purported witnesses, which rests on his fantastical and irrelevant allegations rather than the issues actually before the Special Master, should be rejected.

I. Mr. Chung's Conduct Is Sanctionable

The Ninth Circuit has asked the Special Master to determine the "legitimacy of the article," and to "prepare a written report and recommendation to this panel regarding what, if any, sanctions should be imposed on Mr. Chung for submitting the article to this court." Dkt. 80. The available evidence demonstrates that *The Saudi Sun* (despite its appearance) is not a legitimate publication produced by a third-

party news organization, but was instead fabricated by Petitioners-Appellants' counsel for the purposes of this litigation. Mr. Chung should be sanctioned because he acted in bad faith, breached his duty of candor to the court, and committed an attempted fraud on the Ninth Circuit by submitting the *Saudi Sun* article to the Court without disclosing, and in a manner reasonably calculated to conceal, these facts.

A. Mr. Chung's Conduct Was Intentionally Misleading and Reflected A Disgraceful Lack Of Candor To The Court

The Saudi Sun is not a genuine newspaper, as is clear from the fact that no record exists of any such publication. *See* Dkt. 111-2 (Declaration of Spencer E. Scott documenting that the *Saudi Sun* does not appear in commercial databases or through Internet searches).[5] The evidence establishes that the supposed *Saudi Sun* article was instead prepared and submitted by Petitioners-Appellants' counsel in a manner intended to convey the impression that it was a legitimate third-party news article from a bona fide news publication.

Given the inherently misleading nature of Petitioners-Appellants' submission, which was prepared and submitted in a manner clearly calculated to convey the false impression that it was a legitimate news article produced by a bona fide third-party

[5] Mr. Chung did not oppose Respondents' request to supplement the record with this declaration.

publication rather than a party-generated advocacy piece, the only reasonable inference is that Mr. Chung intended to mislead the Ninth Circuit about the document's source and objectivity. First, there is the format, which on its face sends the message that the document is a bona fide news publication, and the title and masthead, which are plainly intended to convey the impression that the document is an article from a legitimate news publication. Second, the *Saudi Sun* article repeatedly uses the third person in referring to Mr. Chung, his law firm, one of his law partners, and actions they each took, further conveying the impression that a third party wrote it:

- "Like the movie a *Few Good Men*, someone high up the corporate and political chain issued a 'Code Red', except that in this case *U.S. legal counsel Edward C. Chung refers* to this legal tactic as the 'kill step'."

- "In fact, on November 7, 2018 the Ras Tanura landowners *U.S. legal counsel, Edward C. Chung, filed a letter* with the U.S. District Court for the Northern District of titled, 'Notice of Due Process Violation and Request for Appointment of Special Counsel'."

- "In November 7, 2018 letter [sic] *attorney Chung expressed his concern* of recent threats made against his Saudi clients for not withdrawing from the U.S. enforcement proceedings."

- "It should be noted that days prior to *attorney Chung's November 7, 2018 letter* to U.S. federal court Judge White [sic], Chevron's counsel, Gibson, Dunn & Crutcher, LLP terminates it legal representation of the Saudi Embassy . . . ."

- "During the course of enforcing an $18 billion dollar arbitration award issued against U.S. Chevron and Aramco by a panel of arbitration judges, *a team of U.S. lawyers from the Seattle based law firm, Chung, Malhas & Mantel, PLLC have dug deep* in the oil conglomerate's archives . . . ."

- "Why? Because although the June 3, 2015 arbitral award had already been issued, in June of 2018 *the Seattle based law firm, Chung, Malhas & mantel [sic], PLLC filed a petition* to enforce the June 3, 2015 arbitral award under an international treaty known as the New York Convention."

- "*As Chung, Malhas & Mantel, PLLC pointed out*, had our U.S. Supreme Court issued their decisions in Egypt or Saudi Arabia, they would likely be criminally indicted for finding jurisdiction."

- "*Dr. Dima N. Malhas, a U.S. attorney and partner of Chung, Malhas & Mantel* with law degrees in international law, civil law and Sharia jurisprudence and who is fluent in Arabic, *realized* that the purported criminal investigative report filed by Chevron's legal counsel was not even written in Arabic although it sporadically contained Arabic words."

Dkt. 66-2 (emphases added).

Finally, and most significantly, Mr. Chung submitted the *Saudi Sun* article to the Court in support of a motion to strike evidence that Respondents had submitted relating to criminal proceedings in Egypt, he presented the article as providing "factual" information to the Court, and he clearly intended the Court to rely upon it. Dkt. 66-1 at 1. Indeed, he expressly represented to the Court that the document was "a *Saudi Sun* article that explains and provides an informative summary of factual and procedural events related to the 2014 and 2015 arbitration proceedings that took place in Cairo, Egypt and the U.S. confirmation and Enforcement proceedings in the United States." *Id*. He also asserted that it would "aide [sic] the panel in considering Appellants' pending Motion to Strike Respondent's [sic] Judicial Notice" and "aid[] this Court in understanding why Chevron alternative legal grounds to deny confirmation of a foreign arbitral award is not competent." *Id*. at 4 (emphasis omitted).

Those statements conclusively establish Mr. Chung's intent that the panel rely on the misleading submission and treat it as an "article" from a publication called "*The Saudi Sun*" (as opposed to an untimely and improper supplemental brief prepared by Petitioners-Appellants' counsel in support of their then-pending motion to strike Respondents' requests for judicial notice).

The record is clear that Petitioners-Appellants' counsel in fact fabricated this article, as evident from the substantial pictorial and word-for-word verbal overlap between the article and Petitioners-Appellants' previous court filings. *See* Dkt. 110-2 Ex. 1 (chart documenting overlap);[6] *see also* Dkt. 74 at 2 (panel's Order to Show Cause noting that the *Saudi Sun* article "contains language that appears verbatim in appellants' brief opposing the request for judicial notice"). Despite his many opportunities to reveal the truth since submitting the *Saudi Sun* article, Mr. Chung has never explained how or by whom it was prepared.[7]

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[6] Mr. Chung also did not oppose Respondents' request for either supplementation of the record or judicial notice to include this document.

[7] Because Mr. Chung signed the *Saudi Sun* submission and filed it with his ECF credentials, and because he is counsel of record for Petitioners-Appellants in this appeal, he is responsible for the *Saudi Sun*'s contents and the fact that it constituted an attempted fraud on the court. *See Dela Rosa v. Scottsdale Mem'l Health Sys., Inc.*, 136 F.3d 1241, 1244 (9th Cir. 1998) ("[T]he attorney of record is ultimately responsible for *both* the form *and* the content of the materials submitted to this court.") (emphases in original).

For all these reasons, the record is clear that Mr. Chung's conduct was intentionally misleading and reflected a disgraceful lack of candor to the Court. As explained below, such conduct is justly sanctionable under the Court's inherent authority and several applicable rules. It would also support a disciplinary referral.

B. Mr. Chung's Conduct Merits Sanctions Under the Court's Inherent Authority Because It Constitutes Bad Faith and an Attempted Fraud on the Court

This Court has inherent authority to sanction Mr. Chung's conduct as an attempted fraud on the court.[8] *See* Dkt. 74 at 2–3. The Supreme Court encountered and rebuked similar wrongdoing in *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944), *overruled in part on other grounds, Standard Oil Co. of Cal. v. United States*, 429 U.S. 17 (1976). There, officials and attorneys of one party to a patent dispute drafted a trade journal article regarding a new technique for blowing glass, and arranged for its publication under the name of a supposedly disinterested expert. The party then submitted the ghost-authored article to the court of appeals in support of its claim, without disclosing the ghostwriting of the article. *Id.* at 240–41. The Supreme Court characterized this behavior as "a deliberately planned and

[8] Mr. Chung claims, without citation, that "any imposition of sanctions by use of its 'inherent authority' would be a violation of Appellants' due process rights." Dkt. 107-1 at 16. Mr. Chung's due process rights have been protected as he will be afforded notice and an opportunity to be heard before a compensatory sanction, if any, is imposed. *See Am. Unites for Kids v. Rousseau*, 985 F.3d 1075, 1095 (9th Cir. 2021).

carefully executed scheme to defraud . . . the Circuit Court of Appeals." *Id.* at 245. The Court therefore set aside an appellate judgment that relied in part on the article, holding that "[e]very element of the fraud here disclosed demands the exercise of the historic power of equity to set aside fraudulently begotten judgments." *Id.*

Here too, the Court has inherent authority to sanction Mr. Chung for submitting a fraudulent, ghostwritten article in support of a motion to strike Respondents' requests for judicial notice of two Egyptian judicial opinions pertaining to the sham "award" (Dkt. 46). Mr. Chung attempted to mislead the Ninth Circuit and lend his meritless arguments an air of legitimacy by presenting them as if they had been adopted by a legitimate, third-party newspaper. Such conduct is clearly sanctionable.[9]

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[9] Mr. Chung's continued misconduct following the Court's Order to Show Cause is consistent with and confirmatory of his bad faith conduct in submitting the *Saudi Sun* article, and justifies a reference to disciplinary authorities in its own right. Mr. Chung has engaged in numerous examples of gross misconduct unbecoming an officer of the court in his many filings during this sanctions proceeding, including his scurrilous and false reference to Judge Miller as "a corrupt judge" (Dkt. 98 at 16) who purportedly committed "judicial misconduct" (Dkt. 95-1 at 3), his baseless motion to disqualify the Special Master (Dkt. 109) and suggestion that the Special Master is biased and violated the "Code of Conduct for United States Judges" (*id.* at 5), his outrageously false accusation that counsel for Respondents harbors anti-Asian bias (Dkt. 98 at 1 n.1), and his improper and disrespectful characterization of this proceeding as "star-chamber proceedings," "kangaroo court proceedings" (Dkt. 100 at 4), and "*McCarthyism* hearings" (Dkt. 98 at 12).

1. Federal Rule of Appellate Procedure 38 Does Not Provide The Exclusive Basis For Imposing Sanctions in Federal Appellate Courts

Mr. Chung errs in contending that Rule 38 of the Federal Rules of Appellate Procedure provides the exclusive basis for sanctions related to appellate proceedings, and therefore precludes the Court from relying on its inherent authority. Dkt. 107-1 at 14–16. Rule 38 is simply the appellate analog of Rule 11 of the Federal Rules of Civil Procedure. It provides that "[i]f a court of appeals determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee." Fed. R. App. P. 38.

Contrary to Mr. Chung's contention, the authorities on which he relies do not purport to hold that Rule 38 provides the sole basis for the imposition of sanctions by appellate courts. Rather, those authorities merely confirm that Rule 38, not Rule 11, governs the imposition of sanctions for filing a frivolous appeal. *E.g.*, *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 407 (1990) (holding that Rule 38, rather than Rule 11, governs the issue of fee-shifting for filing a frivolous appeal, because "[t]he Federal Rules of Appellate Procedure place a natural limit on Rule 11's scope. On

appeal, the litigants' conduct is governed by Federal Rule of Appellate Procedure 38.").

Nothing in Rule 38 addresses the issue of sanctions for misconduct that is distinct from the filing of a frivolous appeal, and it certainly does not purport to preclude a court of appeals from utilizing its inherent authority, other court rules, or any other sources of authority to impose sanctions for other forms of misconduct by counsel during the course of an appellate proceeding. Mr. Chung cites no authority to the contrary.

Indeed, far from providing any support for Mr. Chung's contention that the codification of specific sanctions authority somehow eliminates the inherent authority of courts to sanction misconduct, Supreme Court precedent expressly rejects that notion. In *Chambers v. NASCO, Inc.*, the Court squarely held that "nothing in . . . other sanctioning mechanisms . . . warrants a conclusion that a federal court may not, as a matter of law, resort to its inherent power to impose attorney's fees as a sanction for bad-faith conduct." 501 U.S. 32, 50 (1991). Accordingly, federal courts are not "forbidden to sanction bad-faith conduct by means of the inherent power

simply because that conduct could also be sanctioned under the statute or the Rules." *Id*.[10]

2. The Truth or Falsity of the Contents of the *Saudi Sun* Article is Irrelevant to the Issue of Sanctions

Mr. Chung apparently contends that if the content of the *Saudi Sun* article is accurate, he cannot be sanctioned for having filed it, notwithstanding his efforts to disguise its true nature and authorship. *See* Dkt. 94-3 (3/11/22 Tr.) at 18:21-25 ("MR. CHUNG: [I]f we're talking about legitimacy of the article, we have to—that article relates to Chevron's misconduct, then we have to explore Chevron's misconduct and their 106 pages of falsified evidence. That's the only thing."). Mr. Chung is wrong. Even if every word of the *Saudi Sun* article were accurate—which it certainly is not, as discussed *infra* II.C—Mr. Chung's misleading characterization and

[10] Mr. Chung also errs in contending that Federal Rule of Appellate Procedure 47(b) somehow precludes sanctions here. Dkt. 107-1 at 15. Rule 47(b) provides that "[n]o sanction … may be imposed for noncompliance with any requirement not in federal law, federal rules, or the local circuit rules" absent "actual notice of the requirement." Here, however, the imposition of sanctions on Mr. Chung is justified by his violation of the requirements of federal law and rules, including the long-established prohibition against fraud on the court and the various requirements listed in Ninth Circuit General Order 12.9(a). Rule 47(b) therefore has no application here.

portrayal of the document and his failure to disclose its true authorship are sufficient to constitute an attempted fraud on the court.

In *Hazel-Atlas Glass Co.*, the Supreme Court specifically rejected the argument that there could be no fraud on the court because the ghostwritten article stated only truthful contentions. The Court instead held that "[t]ruth needs no disguise. The article, even if true, should have stood or fallen under the only title it could honestly have been given—that of a brief in behalf of Hartford, prepared by Hartford's agents, attorneys, and collaborators." 322 U.S. at 247. Substitute "Petitioners-Appellants" for "Hartford" and you have the instant case.[11]

The Ninth Circuit's Order to Show Cause makes clear that the Court was focused on Petitioners-Appellants' apparently misleading presentation of the nature, origin, and authorship of the *Saudi Sun* article, not its contents. The Court stated that "the article appears to have been fabricated for purposes of this litigation" because the Court was "unable to locate" *The Saudi Sun*. Dkt. 74 at 1. The Court also stated that "[t]he article purports to originate from a publication called *The Saudi*

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[11] In prior briefing, Petitioners-Appellants argued that *Hazel-Atlas Glass Co.* conflicts with the adoption of the Federal Rules of Appellate Procedure in 1967 and therefore has no precedential effect for purposes of assessing whether conduct rises to the level of fraud on the court. Dkt. 71 at 5-6. Petitioners-Appellants offered no authority for this argument then, nor could they now. There is no such conflict, and the Ninth Circuit continues to cite *Hazel-Atlas* in the context of fraud on the court. *See Dixon v. Comm'r*, 316 F.3d 1041, 1046 (9th Cir. 2003), as amended (Mar. 18, 2003).

Sun"; "[t]he article is undated and lists no author and no address, website, or contact information for the publisher"; and "it contains language that appears verbatim in appellants' brief opposing the request for judicial notice." *Id.* at 2. Mr. Chung's contentions regarding the alleged accuracy of the content of the *Saudi Sun* article are thus irrelevant, and cannot insulate him from sanctions.

3. The Procedural Posture Under Which Petitioners-Appellants Submitted the *Saudi Sun* Article Does Not Preclude Sanctions

Mr. Chung is not excused from liability for sanctions merely because he identified the *Saudi Sun* article as a "demonstrative exhibit" offered for "demonstrative purposes." Dkt. 66-1 at 2-4. This description does not reveal that no such publication exists and that Petitioners-Appellants' counsel wrote the article, which are the core elements of Mr. Chung's deceit in submitting the article to the Court. Mr. Chung's intent that the Court rely on the exhibit is apparent from the fact that he submitted it, misleadingly described it as "a *Saudi Sun* article" rather than Petitioners-Appellants' own advocacy piece, asserted that it "explains and provides an informative summary of factual and procedural events" of relevance, and advised the Court that the "article" would "aide the panel" and "aid[] this Court" in resolving the matters before it. *Id*. at 1, 4. This conduct constitutes an attempted fraud on the Court.

As the Ninth Circuit has counseled, "[t]he vice of misrepresentation is not that it is likely to succeed but that it imposes an extra burden on the court." *In re Disciplinary Action Boucher*, 837 F.2d 869, 871 (9th Cir.), *modified*, 850 F.2d 597 (9th Cir. 1988). By submitting the *Saudi Sun* article in a manner tending to deceive the Court regarding its authorship or provenance, Mr. Chung imposed an extra burden on the Court to interrogate and determine its provenance, and clearly violated his duty to "state clearly, candidly, and accurately the record as it in fact exists." *Id*. This misconduct merits sanctions.

Nor is Mr. Chung's conduct excused because he did not ask the Court to take judicial notice of the *Saudi Sun* article pursuant to Federal Rule of Evidence 201. Dkt. 107-1 at 19. There is no authority for this proposition. The Court may punish attempted fraud on the Court, including when "an 'officer of the court'"—such as an attorney—"perpetrates fraud affecting the ability of the court or jury to impartially judge a case," *Pumphrey v. K.W. Thompson Tool Co.*, 62 F.3d 1128, 1130 (9th Cir. 1995), without a requirement that fraudulent documents be formally offered into evidence or attached to a specific sort of motion. Moreover, "[f]raud on the court

occurs when the misconduct harms the integrity of the judicial process, regardless of whether the opposing party is prejudiced." *Dixon*, 316 F.3d at 1046.[12]

C. Mr. Chung's Conduct Merits Sanctions Pursuant to Ninth Circuit General Order 12.9(a) Because It Violates the Washington Rules of Professional Conduct

Mr. Chung's conduct is also sanctionable under Ninth Circuit General Order 12.9(a) because it violates the applicable Rules of Professional Conduct in the jurisdiction where Mr. Chung is barred (Washington). *See* Dkt. 74 at 2–3.

Washington Rule of Professional Conduct Rule 3.3(a)(1) prohibits a lawyer from "mak[ing] a false statement of fact or law to a tribunal or fail[ing] to correct a false statement of material fact or law previously made to the tribunal by the lawyer." In filing a fake newspaper article from a nonexistent publication and urging the Court to rely on it while failing to disclose the fact that it was ghostwritten by Petitioners-Appellants' counsel, Mr. Chung has made a "false statement of fact or law to a tribunal" and has subsequently "fail[ed] to correct" that false statement multiple times.

Washington Rule of Professional Conduct 8.4(c) also prohibits a lawyer from "engag[ing] in conduct involving dishonesty, fraud, deceit or misrepresentation." Case law holds that making false statements to a tribunal in violation of Rule

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[12] Mr. Chung further errs in contending that the Court's Order to Show Cause states that he asked the Court to take judicial notice of the *Saudi Sun* article. Dkt. 107-1 at 13. The Order to Show Cause says no such thing. *See* Dkt. 74.

3.3(a)(1) also violates Rule 8.4(c). *See In re Disciplinary Proceeding Against Conteh*, 175 Wash. 2d 134, 141-42, 146, 148 (2012) (sustaining violation of both rules for the same conduct). Mr. Chung's misconduct thus violates Rule 8.4(c) as well.

Mr. Chung argues that Rule 3.3 cannot provide a basis for sanctions here because the merits panel denied Petitioners-Appellants' motion to strike as moot and Rule 3.3 "relates to the offering of 'material evidence.'" Dkt. 107-1 at 13 (emphasis omitted). Mr. Chung is mistaken.[13]

As an initial matter, Rule 3.3(a)(1) contains no materiality requirement as to the making of false statements, as confirmed by Washington state case law. *See*

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[13] To the extent Mr. Chung contends that denial of the motion containing the *Saudi Sun* article on grounds of mootness precludes sanctions generally, he is also mistaken. Even dismissal of an appeal in its *entirety* for mootness does not preclude the court from imposing sanctions for filing a frivolous appeal. *See Holloway v. United States*, 789 F.2d 1372, 1374 (9th Cir. 1986) ("Dismissal on the ground of mootness does not deprive us of jurisdiction to make [a sanctions] award."). Mr. Chung is also wrong in contending that the issuance of the mandate precludes sanctions. As an initial matter, Mr. Chung fails to address the fact that the Court issued the order appointing the Special Master to conduct further sanctions proceedings two weeks before it issued the mandate. *See* Dkts. 80, 82. In addition, "courts retain the authority to resolve collateral issues . . . that do not involve 'a judgment on the merits of an action,' such as attorney fees or sanctions," *United States v. Real Prop. Located at 475 Martin Lane, Beverly Hills, CA*, 545 F.3d 1134, 1145 n.6 (9th Cir. 2008) (quoting *Cooter & Gell*, 496 U.S. at 394-95), and Mr. Chung's misconduct occurred before the mandate issued, meaning the Court has jurisdiction to address it, *cf. Sgaraglino v. State Farm Fire & Cas. Co.*, 896

Conteh, 175 Wash. 2d at 141-42, 146, 148 (stating that "the hearing officer's finding that the omission was 'material' was not necessary to finding a violation" of Rule 3.3(a)(1) for knowingly making a false statement to a tribunal).[14] Nor does Rule 8.4(c) contain a materiality requirement. *See id.* (same conduct violated Rule 8.4(c)).

But even assuming all portions of these rules did include a materiality requirement, sanctions would still be appropriate here, notwithstanding the denial of Petitioners-Appellants' motion as moot. In construing the definition of "material" in the context of prosecutions for making materially false statements under 18 U.S.C. § 1001 and committing perjury under 18 U.S.C. § 1621, this Court has held that a

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F.2d 420, 421 (9th Cir. 1990) (no jurisdiction to sanction counsel for misconduct that occurred after the mandate issued).

[14] Washington Rule of Professional Conduct 3.3 originally stated, "A lawyer shall not knowingly make a false statement of material fact or law to a tribunal." In 2006, however, the rule was amended to state, "A lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer." Johanna M. Ogdon, *Washington's New Rules of Professional Conduct: A Balancing Act*, 30 Seattle U. L. Rev. 245, 269 (2006). Although *In re Disciplinary Proceeding Against Jensen*, 192 Wash. 2d 427, 442 (2018), as amended (Jan. 7, 2019), stated in dictum that "RPC 3.3(a)(1) prohibits lawyers from knowingly making or failing to correct false statements of material fact or law to a tribunal," that statement misquotes the plain language of the amended rule as to the making of false statements. Moreover, the error did not impact the court's decision because the materiality of the false statements was not in dispute. *See id.*

misstatement is material "if it has a natural tendency to influence, *or is capable of influencing*, the decision of the decisionmaking body to which it was addressed." *United States v. King*, 735 F.3d 1098, 1107–08 (9th Cir. 2013) (Section 1001) (alteration and quotation marks omitted; emphasis added); *accord United States v. McKenna*, 327 F.3d 830, 839 (9th Cir. 2003) (Section 1621). In other words, "[a] misstatement need not actually influence the agency decision in order to be material; propensity to influence is enough," such that an inquiry into materiality is concerned "not with the extent of . . . reliance, but rather with the intrinsic capabilities of the false statement itself." *King*, 735 F.3d at 1107–08 (citation and quotation marks omitted); *see also McKenna*, 327 F.3d at 839 ("The government need not prove that the perjured testimony actually influenced the relevant decision-making body."). And, "materiality is tested at the time the alleged false statement was made: Later proof that a truthful statement would not have helped the [decision-making body] does not render the false testimony immaterial." *McKenna*, 327 F.3d at 839 (alteration in original; quotation marks omitted).

Petitioners-Appellants' submission of what purported to be an independent newspaper article adopting their various theories for why the Court should rule for Petitioners-Appellants on the merits of the appeal was clearly material, therefore, notwithstanding the denial of Petitioners-Appellants' motion as moot. When Mr. Chung submitted the *Saudi Sun* article, the Court had not yet ruled on the merits of

the appeal. Presenting the *Saudi Sun* as a bona fide news article and without disclosing Petitioners-Appellants' role in preparing it could have influenced the Court to take a more sympathetic view of Petitioners-Appellants' arguments, as "[t]he court relies on the lawyers before it to state clearly, candidly, and accurately the record as it in fact exists." *Boucher*, 837 F.2d at 871. Indeed, Mr. Chung clearly intended the Court to rely on it to the benefit of Petitioners-Appellants; he asserted that it would "aid[] this Court in understanding why Chevron['s] alternative legal grounds to deny confirmation of a foreign arbitral award [are] not competent." Dkt. 66-1 at 4 (emphasis omitted).

Accordingly, sanctions are proper pursuant to Ninth Circuit General Order 12.9(a), because Mr. Chung's conduct with respect to the *Saudi Sun* article violates the Washington Rules of Professional Conduct.

D. Mr. Chung's Conduct Merits Sanctions Pursuant to Ninth Circuit General Order 12.9(a) Because It Violates Federal Rule of Appellate Procedure 46

Mr. Chung's conduct is also sanctionable under Ninth Circuit General Order 12.9(a) because it violates Federal Rule of Appellate Procedure 46(c), which prohibits "conduct unbecoming a member of the bar." *See* Dkt. 74 at 2–3. "'Conduct unbecoming a member of the court's bar' means 'conduct contrary to professional standards that shows an unfitness to discharge continuing obligations to clients or the courts, or conduct inimical to the administration of justice.'" *In re Girardi*, 611

F.3d 1027, 1035 (9th Cir. 2010) (citations omitted). Mr. Chung's conduct with respect to the *Saudi Sun* article plainly satisfies this standard. *See In re Ray*, 951 F.3d 650, 653 (5th Cir. 2020) (affirming finding of "conduct unbecoming a member of the bar" where attorney "engaged in fraud, misrepresentation, and misconduct that created a false record and provided fodder for false arguments by Hernandez and his counsel to this court and to the Fifth Circuit in the initial appeal" by failing to produce medical records).

II. Mr. Chung's Proffered Defenses For His Misconduct Are Without Merit

Mr. Chung has never denied that he or other employees of his law firm prepared *The Saudi Sun*, or that he concealed its authorship from the Ninth Circuit when he filed it. Nor does he dispute that no such publication actually exists, even though he presented it to the Court as if it were a bona fide third-party news publication. Instead, as discussed below, Mr. Chung offers a host of meritless legal arguments and mischaracterizations of the record in an effort to sidestep sanctions. None has any merit.

A. Federal Rule of Appellate Procedure 27 Does Not Authorize Mr. Chung's Behavior

Mr. Chung asserts that Federal Rule of Appellate Procedure 27(a)(2)(B)(i) immunizes him from sanctions for his misconduct in submitting the *Saudi Sun* article because the rule allegedly provides that "a party motioning this Court may attach to the motion 'any paper necessary to support a motion.'" Dkt. 107-1 at 10 (emphasis

omitted). Mr. Chung's attempt to turn a procedural requirement into a justification for attempting to deceive the Court with a misleading filing is wholly unpersuasive.

Rule 27 simply provides that a party relying on a document to support a motion must serve and file that document with the motion. *See* Fed. R. App. P. 27(a)(2)(B)(i) (providing that any document "necessary to support a motion must be served and filed with the motion"). It certainly does not purport to authorize litigants to submit misleading or fraudulent documents in support of a motion. Petitioners-Appellants' position to the contrary is frivolous on its face, and not surprisingly they are unable to cite any authority adopting their position.

B. ABA Opinion 478 Has No Relevance to Whether the Special Master May Recommend Sanctions

Mr. Chung also suggests that sanctions are improper because the merits panel "engaged in unnecessary *ex parte* independent research in violation of ABA Formal Advisory Opinion 478 Governing Judicial Conduct," Dkt. 107-1 at 19, in determining that Dkt. 66-2 is "a news article from a publication we are unable to locate," Dkt. 74 at 1. This argument is both irrelevant and meritless.

In the first place, Mr. Chung cites no authority for the proposition that advisory opinions of the ABA are binding on federal courts of appeals. In any event, the panel did not run afoul of Advisory Opinion 478 in issuing the order to show cause. The Advisory Opinion states (at 11), "judges should not use the Internet for independent fact-gathering related to a pending or impending matter *where the parties*

can easily be asked to research or provide the information" (emphasis added). In Respondents' opposition to the motion, Respondents stated, based on their own research, "[t]here is no indication . . . that [*The*] *Saudi Sun* even exists as a news organization or publication, and the version presented by [Petitioners-Appellants], notably undated, does not bear any indication of its origin or of the mailing address or even an email address or website for this purported newspaper." Dkt. 69 at 1. Thus, the panel did not conduct *sua sponte* research on an issue of its own devising that the parties had not addressed, but instead engaged in the entirely appropriate activity of seeking to determine the accuracy of Respondents' research efforts regarding a matter of public notice, namely, the question whether *The Saudi Sun* exists as a bona fide news publication.[15]

[15] Mr. Chung also asserts that he has been "prejudiced" because he has "not been provided, despite repated [sic] requests, the March 11, 2022 audio and video Zoom recording he was obligated to consent to in order to participate in the Special Master scheduled Pre-Hearing Conference." Dkt. 107-1 at 1. The Special Master has now denied Mr. Chung's request for the audio and video recordings as moot and unnecessary, respectively. Dkt. 106. Moreover, Mr. Chung has been provided with a transcript of the hearing (Dkt. 94-3), the audio recording of the hearing is publicly available on the docket in this action, Dkt. 87, and Respondents' counsel have had no difficulty accessing and transcribing it, Dkt. 94-2 (Henrick Decl.) ¶¶ 3–4.

C. Mr. Chung's Baseless Accusations of Wrongdoing Against Respondents and Their Counsel Are Irrelevant to the Issues Before the Special Master

In an attempt to obfuscate the narrow scope of the questions actually at issue in this proceeding, Mr. Chung fills his pre-hearing brief with false and unsubstantiated allegations that Respondents "made numerous false statements, fabricated court documents in support of [their] opposition to confirmation of a foreign arbitral award and interfered with U.S. judicial proceedings." Dkt. 107-1 at 2. These baseless accusations are irrelevant to this proceeding, because the only tasks with which the Ninth Circuit has charged the Special Master are "to conduct any proceedings he deems appropriate to determine the legitimacy of the article attached at Docket Entry No. 66," *i.e.*, the *Saudi Sun* article, and to "prepare a written report and recommendation to this panel regarding what, if any, sanctions should be imposed on Mr. Chung for submitting the article to this court." Dkt. 80. As explained above, *supra* Argument I.B.2, those tasks do not include an examination of the accuracy or lack thereof of the *contents* of the *Saudi Sun* article. Instead, the question is simply whether the "article" is what it purported to be (namely, a legitimate news article published by a bona fide third-party news organization providing independently developed information that would aid the Court in its decisionmaking) or was instead

an advocacy piece written by Petitioners-Appellants' counsel but prepared and submitted in a misleading manner calculated to deceive the Court.

Moreover, Mr. Chung's baseless allegations against Respondents and their counsel have already been presented to the district court and the Ninth Circuit in multiple filings made by Petitioners and Petitioners-Appellants. Neither court gave any credence whatsoever to these allegations, both courts squarely rejected Petitioners' and Petitioners-Appellants' claims for relief, and the Supreme Court has now denied certiorari, rendering those courts' judgments final and unreviewable. Accordingly, there is no basis for revisiting these irrelevant, unsubstantiated, and false allegations in this proceeding.

In any event, Mr. Chung's allegations are false. For example, Mr. Chung asserts that Respondents "filed a doctored 106 Page Egyptian Prosecutor Report" that had been "fraudulently translated from Arabic to English." Dkt. 107-1 at 6 (emphasis omitted). The referenced document is a copy of the Egyptian General Prosecutor's case file documenting the Egyptian government's criminal investigations into various perpetrators of the sham arbitration. Respondents submitted that document during the district court proceedings. Dist. Ct. Dkt. 119-1 (Supp. Hesham Decl. Ex 20). It was authenticated by a sworn declaration from Respondents' Egyptian counsel (SER-221, SER-228), and was accompanied by a notarized, certified

translation from Arabic to English by Geotext Translations, Inc., Dist. Ct. Dkt. 119-1 at 2.

Mr. Chung has never offered any competent evidence to support his assertions that the Egyptian General Prosecutor's case file is illegible. Instead, he cites only to an unsworn letter from a translator stating that he and others at his firm were unable to read a document. 8-ER-1580; Dkt. 107-5 Ex. 3. Unsworn assertions from a litigant's agent are inadmissible hearsay and thus irrelevant. Fed. R. Evid. 802. Accordingly, there is no genuine dispute about the authenticity of the Egyptian General Prosecutor's case file.

Mr. Chung further tries to discredit the criminal prosecutions by falsely contending—as he has repeatedly done before—that criminal proceedings in Egypt concluded with a dismissal of the case in 2017, only to re-open shortly after Respondents filed their motion to dismiss in the district court in this action in 2018. Dkt. 107-1 at 5-8 & n.5. To support this false assertion, Mr. Chung cites a May 30, 2017, decision from the El Nozha Misdemeanor Court. *Id.* at 8. As the record clearly establishes, however, this ruling was a procedural decision with no effect on the pendency of the criminal investigation or the validity of the subsequent criminal convictions. The Chevron entity that initiated criminal proceedings in Egypt initially brought its complaints before a misdemeanor court, but as the criminal scheme deepened, it re-

quested that the misdemeanor court dismiss the case, because that court lacked jurisdiction to adjudicate the felonies committed by those associated with the sham arbitration. SER-225–26 ¶¶ 15-19; Dist. Ct. Dkt. 117 ¶¶ 20-26. Following the dismissal, Egyptian authorities continued to investigate the arbitral tribunal's misconduct surrounding the sham "award," and numerous criminal convictions resulted from those investigations. *See* Dist. Ct. Dkts. 141-1, 158-1; Dkt. 29-2 Ex. A; Dkt. 45 Ex. A.

Mr. Chung also points to a stray May 31, 2017, document from a junior Egyptian prosecutor discussing a particular set of charges, and characterizes it as purported proof that the Egyptian criminal proceedings lacked probable cause. *See* Dkt. 107-1 at 6, 8; Dkt. 107-7 Ex. 5. To the contrary, however, Egypt's General Prosecutor, the highest ranking law enforcement officer in Egypt (SER-221 ¶ 2), authorized the Egyptian criminal prosecutions in August 2018, *see* SER-230, SER-238–40, and Egyptian courts entered and affirmed judgments of criminal convictions in those cases under Egyptian law in 2019 and 2020. *See* Dist. Ct. Dkts. 141-1, 158-1; Dkt. 29-2 Ex. A; Dkt. 45 Ex. A. The alleged unadopted and outdated views of a junior prosecutor are thus entirely irrelevant. Mr. Chung points to no evidence to the contrary.

Mr. Chung also insinuates that it was somehow improper of Respondents to report the fraudulent arbitration proceedings to Egyptian law enforcement in the first

place. *See*, *e.g.*, Dkt. 107-1 at 2-3 (accusing Respondents of using "political . . . influence"). It is entirely legitimate under Egyptian law (as under U.S. law) for the victim of a criminal conspiracy to seek relief from the governing authorities. *See* Dist. Ct. Dkt. 117 ¶¶ 34–36. Mr. Chung offers no evidence to the contrary.

Equally meritless and irrelevant are Mr. Chung's unsupported assertions of purported threats and coercion allegedly directed towards persons associated with the sham arbitration in Saudi Arabia. Dkt. 107-1 at 9; Dkt. 107-4 Ex. 2. Not only does Mr. Chung provide no competent proof that such conduct even occurred, he offers no evidence that any such alleged conduct has anything to do with Respondents, this proceeding, or the narrow issues before the Special Master.

III. Mr. Chung Should Be Ordered to Pay Respondents' Legal Fees Incurred in Responding to the *Saudi Sun* Article and These Sanctions Proceedings as a Compensatory Sanction

Respondents respectfully submit that an award of compensatory sanctions is an appropriate and justified remedy for Mr. Chung's misconduct. Compensatory sanctions, unlike punitive sanctions, do not require the protections of a criminal trial. *Am. Unites for Kids v. Rousseau*, 985 F.3d 1075, 1089 (9th Cir. 2021). Instead, compensatory monetary sanctions "need only be preceded by notice and an opportunity to be heard," *Lasar v. Ford Motor Co.*, 399 F.3d 1101, 1112 (9th Cir. 2005), which Mr. Chung has been and will be provided.

The Ninth Circuit applies a "but for" test when evaluating whether a sanction is compensatory: "but for the sanctionable misconduct, would there be any harm warranting compensatory relief?" *Am. Unites for Kids*, 985 F.3d at 1089–90. "'But for' causation is a short way of saying the defendant's conduct is a cause of the event if the event would not have occurred but for that conduct. It is sometimes stated as '*sine qua non*' causation, *i.e.*, 'without which not . . . .'" *UMG Recordings, Inc. v. Shelter Cap. Partners LLC*, 718 F.3d 1006, 1016 n.6 (9th Cir. 2013) (cleaned up; citation omitted).

Pursuant to the "but for" standard, an appropriate compensatory sanction in this case would be to require Mr. Chung to compensate Respondents for the fees and costs they have incurred in opposing his improper submission of the *Saudi Sun* article to the Court in support of his motion to strike, as well as the additional fees and costs they have incurred in participating in these sanctions proceedings. If Mr. Chung had not engaged in the improper act of submitting the fabricated *Saudi Sun* article to the Court, Respondents would not have had to incur the cost and expense of responding to it, and no order to show cause would have issued. And if Mr. Chung had not continued to defend his misconduct, obfuscate his role in the creation and submission of the misleading document, and burden the Court and Respondents with numerous unnecessary and meritless filings, these proceedings could have been dispensed with altogether, or at least greatly simplified.

The law is clear that compensatory sanctions may be awarded for "the reasonable attorneys' fees incurred by Defendants' counsel in preparing Defendants' motion for sanctions." *Am. Unites for Kids*, 985 F.3d at 1091–92. *In re Bavelis*, 743 F. App'x 670 (6th Cir. 2018), is illustrative. There, the sanctioned party concealed the material fact of the assignment of a promissory note from the court, and the court held that fees for "[e]fforts to obtain sanctions due to [the party's] misconduct" satisfied the requirement of "but-for" causation. *Id*. at 675. The sanctioned party, like Mr. Chung here, had "fought at every turn not to be sanctioned," such that the fees incurred "fighting this unnecessary battle would not have been incurred but for the . . . misconduct." *Id.* at 677.[16] Precisely the same is true here, and accordingly Respondents should be awarded their fees and costs incurred in participating in this sanctions proceeding, as well as those incurred in responding to the submission of the *Saudi Sun* article.

Mr. Chung is incorrect in contending that Ninth Circuit Local Rule 39-1.6(a) precludes an award of Respondents' fees and costs as a compensatory sanction. That

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[16] Mr. Chung may try to argue that any sanction should be limited to the fees Respondents incurred in directly opposing the motion containing the *Saudi Sun* article, rather than all fees that Respondents have incurred pursuant to these sanctions proceedings. But in *Goodyear Tire & Rubber Co. v. Haeger*, the Supreme Court confirmed "the but-for standard" for compensatory sanctions and held that, where appropriate, it allows a court "to shift all of a party's fees, from either the start or some midpoint of a suit, in one fell swoop." 137 S. Ct. 1178, 1187 (2017).

rule, which governs party-initiated requests for attorneys' fees, provides that a *party's* "request for attorneys' fees shall be filed no later than 14 days after the expiration of the period within which a petition for rehearing may be filed." The rule says nothing about this Court's ability to award *sua sponte* compensatory sanctions on its own volition, and case law is clear that the Court may do so. In *Chambers*, the Supreme Court squarely held that "nothing in . . . other sanctioning mechanisms . . . warrants a conclusion that a federal court may not, as a matter of law, resort to its inherent power to impose attorney's fees as a sanction for bad-faith conduct." 501 U.S. at 50. And in any event, the Court's order for Mr. Chung to show cause why he should not be sanctioned (Dkt. 74) was issued before the deadline referenced in Local Rule 39-1.6(a), so even under Mr. Chung's erroneous reading of the rule his timing argument is without merit.

Respondents are prepared to submit relevant billing records substantiating their attorneys' fees should the Special Master conclude that such an award is appropriate as a compensatory sanction.

IV. The Special Master Should Also Recommend Mr. Chung's Referral for Attorney Discipline

The Special Master ruled at the Pre-Hearing Conference that he will not be making any recommendations as to whether Mr. Chung should be disciplined, although he noted that "the panel may choose to" ask him to make such a recommen-

dation in the future. Dkt. 94-3 at 4:19-23, 5:11-13. Respondents nevertheless respectfully submit that the Special Master should recommend that the merits panel refer Mr. Chung for disciplinary proceedings within the Ninth Circuit and/or in Washington state where Mr. Chung is licensed. *See* 9th Cir. R. 46-2(b) (A panel of judges "may initiate disciplinary proceedings based on conduct before this Court by issuing an order to show cause under this rule that identifies the basis for imposing discipline."); Wash. R. for Enforcement of Lawyer Conduct 5.1(a) (2022) ("Any person or entity may file a grievance against a lawyer who is subject to the disciplinary authority of this jurisdiction.").

As detailed above, Mr. Chung engaged in a deliberate scheme to defraud the Ninth Circuit Court of Appeals by submitting a document designed to look like an independent third-party newspaper in support of Petitioners-Appellants' claims and filings, without disclosing Petitioners-Appellants' role in drafting it. When confronted with his misconduct and a chance to explain himself, Mr. Chung responded with a litany of baseless and vexatious motions that mischaracterized the record and made outrageously false assertions, all the while refusing to admit the truth about the *Saudi Sun* article and who wrote it. Attorneys have been disciplined for far less egregious wrongdoing. *See, e.g.*, *Conteh*, 175 Wash. 2d at 148 (suspending lawyer for six months for misrepresenting his employment history on an asylum applica-

tion); *see also Girardi*, 611 F.3d at 1038 (noting "[d]isbarment is generally appropriate when a lawyer, with intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information" and causes a "potentially significant adverse effect on the legal proceeding").

Disciplinary authorities should accordingly evaluate whether Mr. Chung's egregious behavior warrants attorney discipline in addition to sanctions.

V. Mr. Chung Is the Only Witness Who Has Been Identified as Having Knowledge of the Preparation and Submission of the *Saudi Sun* Article, and Therefore the Only Witness Whose Testimony Should Be Permitted at the Sanctions Hearing

The Special Master's mandate is narrow. The Ninth Circuit has asked the Special Master "to conduct any proceedings he deems appropriate to determine the legitimacy of the article attached at Docket Entry No. 66," and to consider "what, if any, sanctions should be imposed on Mr. Chung for submitting the article to this court." Dkt. 80. For the reasons set forth herein, Mr. Chung clearly has personal knowledge of the provenance of the *Saudi Sun* article. In contrast, there is no plausible contention that any witnesses from Respondents, their counsel, this Court, or the Saudi government have any relevant knowledge regarding this topic. Evidence and testimony that do not bear on the issues before the Special Master are inadmissible in this proceeding. Fed. R. Evid. 402 ("Irrelevant evidence is not admissible."). Mr. Chung's attempt to turn these proceedings into a far-flung exploration of his

baseless accusations by seeking to examine these immaterial witnesses clearly exceeds the Ninth Circuit's mandate, would needlessly expand and extend these proceedings, would be a waste of the parties' time and the Court's limited resources, and should be rejected.

Mr. Chung was responsible for filing the *Saudi Sun* article with the Court. *See* Fed. R. App. P. 25(a)(2)(B)(iii) ("A filing made through a person's electronic-filing account and authorized by that person, together with that person's name on a signature block, constitutes the person's signature."); Dkt. 66-1 (the *Saudi Sun* article was e-filed with Mr. Chung's ECF credentials and signed by him). It is evident from the face of the article and the fact of its submission by Mr. Chung that he or other employees of his law firm played a role in preparing it. As shown above, the article regurgitates (often word-for-word) allegations and arguments that Petitioners-Appellants have made in prior filings. *See* Dkt. 110-2 Ex. 1 (chart documenting overlap); *see supra*, Argument Section I.A. And despite being given repeated opportunities to do so, Mr. Chung has identified no other persons involved in its preparation or who even possess relevant knowledge regarding its authorship or legitimacy. As the Special Master correctly recognized at the Pre-Hearing Conference, this makes Mr. Chung an appropriate witness at the August 26, 2022 hearing. Dkt. 94-3 (3/11/22 Tr.) at 30:22-25 ("[I]t would be helpful, I think, for Mr. Chung to answer certain questions under oath" at the evidentiary hearing). Respondents intend to

cross-examine Mr. Chung at the evidentiary hearing, which the Special Master has ruled will be permissible. *Id.* at 49:15-17.[17]

In contrast, none of the seven proposed witnesses identified by Mr. Chung has any knowledge of the preparation of the *Saudi Sun* article or its submission to this Court. Two of these witnesses are judges of this Court (Hon. Sidney Thomas and Hon. Eric Miller), three are counsel to Respondents in these proceedings (Anne Champion, Thomas G. Hungar, and Randy M. Mastro, partners at Gibson, Dunn & Crutcher LLP), and two are current or former Saudi government officials (former Egyptian ambassador Ahmed Qattan and current Saudi Minister of State Dr. Issam Bin Saeed). Dkt. 107-2. Setting aside that it is not clear how some of these witnesses could be compelled to testify at the hearing even if they had relevant information, *see* Fed. R. Civ. P. 45(c) (discussing limits on trial subpoenas), and the lack of any plausible basis to believe they would testify as Mr. Chung claims, their testimony would necessarily be irrelevant to the issues before the Special Master.

Mr. Chung suggests that these seven proposed witnesses will testify as to some combination of "the legitimacy of the public record *contents of*" the *Saudi Sun*

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[17] Respondents do not plan to call any other witnesses at the evidentiary hearing, assuming none of Mr. Chung's proposed witnesses are compelled to testify, except that to the extent the Special Master denies Respondents' unopposed request to supplement the record with the declaration of Spencer E. Scott (Dkt. 111), Respondents reserve the right to call Mr. Scott as a witness.

article, a "letter marked 'highly confidential' former [sic] Saudi Ambassador to Egypt," and/or "Gibson Dunn & Crutcher's [alleged] direct involvement in foreign corrupt practices." Dkt. 107-2 at 2-4 (emphasis added). Mr. Chung further alleges that Mr. Mastro will testify regarding "the car bombing and assassination of the former General Prosecutor of Egypt," his "direct threats to Appellant[s]' Counsel to withdraw," "his direct involvement in foreign corrupt practices," and "his personal knowledge of fabrication of 106 page translated report [sic]." *Id.* at 3. Putting aside the facial absurdity of Mr. Chung's baseless and offensive allegations, none of this proposed testimony would be relevant to or admissible in this proceeding. As explained in Argument, Section I.B.2, *supra*, Mr. Chung's submission of the misleading *Saudi Sun* article is sanctionable regardless of the truth or falsity of the substantive content of the article. Because there is no "absolute right to call any witness," the Special Master should exercise his discretion to "refuse to allow . . . irrelevant testimony." *Barnett v. Norman*, 782 F.3d 417, 422 (9th Cir. 2015).

Mr. Chung's identification of judges of this Court as witnesses in this proceeding is even further afield. In support of calling them as witnesses, Mr. Chung repeats the allegations from his prior frivolous recusal motion (*see supra*, Background II), and proposes to call Judge Miller and Respondents' counsel Thomas G. Hungar to testify regarding their purported "relationship" and communications between "Chevron's legal counsels or representatives" and the Court. Dkt. 107-2 at 2-

4. Even putting aside the falsity and offensiveness of the allegations, these issues are entirely irrelevant to the Special Master's mandate.[18] Indeed, the Special Master has already ruled that he will "obviously . . . not . . . address" Mr. Chung's "concern[s] with Judge Miller's relationships with Gibson Dunn," to which Mr. Chung responded, "Right, absolutely. I understand, Your Honor." Dkt. 94-3 (3/11/22 Tr.) at 15:1-6.[19]

Mr. Chung further claims that Judge Miller would offer testimony on Mr. Chung's legal theories as to why sanctions are inappropriate, including whether the

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[18] Indeed, Petitioners-Appellants already attempted, and failed, to have Judge Miller recused. Dkt. 56; Dkt. 81; *cf. United States v. Alexander*, 106 F.3d 874, 876 (9th Cir. 1997) ("Under the 'law of the case' doctrine, a court is generally precluded from reconsidering an issue that has already been decided by the same court, or a higher court in the identical case." (quotation marks omitted)). The Supreme Court has now denied certiorari (Dkts. 101, 103), rendering the denial of Petitioners-Appellants' recusal motion final and unreviewable.

[19] In filings post-dating his opening sanctions brief, Mr. Chung has raised allegations of bias stemming from the fact that Gibson Dunn supposedly failed to disclose that it re-hired former Gibson Dunn associate Matthew Reagan after Mr. Reagan completed a clerkship for Judge Miller, which do not change this conclusion. *E.g.*, Dkt. 96-1 at 3. Mr. Chung "submits no authority indicating that a law firm should refrain from recruiting judicial clerks—indeed, the Canons indicate otherwise—or must tell opposing counsel, its own clients or the court if it offers employment to a law clerk or its offer is accepted." *First Interstate Bank of Ariz., N.A. v. Murphy, Weir & Butler*, 210 F.3d 983, 989 (9th Cir. 2000). This is because "judges (and their law clerks) are presumed to be impartial and to discharge their ethical duties faithfully so as to avoid the appearance of impropriety," *id.* at 988, and Mr. Chung points to nothing to overcome that presumption other than his own rank speculation and slander of Respondents, their counsel, this Court, and its judges.

Saudi Sun article was submitted "in compliance with FRAP 27," and whether imposing sanctions would "violate[] the Rules of Judicial Conduct [because] there is not [sic] basis under FRAP 47 and the Rules Enabling Act to find that the 'legitimacy of an article' is grounds to sanction an attorney[.]" Dkt. 107-2 at 3-4. Mr. Chung's baseless effort to subpoena a sitting federal judge in order to interrogate him on allegedly applicable legal questions is patently absurd. Moreover, the question whether legal authority exists for the imposition of sanctions on Mr. Chung in the present circumstances is a pure question of law that the Court has delegated to the Special Master for a recommended decision; it is not a topic of permissible witness testimony. *See Crow Tribe of Indians v. Racicot*, 87 F.3d 1039, 1045 (9th Cir. 1996) ("Expert testimony is not proper for issues of law.").

Mr. Chung also asserts that Judges Miller and Thomas would testify regarding their "independent research concerning the 'legitimacy of the article' referenced in Judge Miller's Show Cause Order." Dkt. 107-2 at 3-5. For obvious reasons, Mr. Chung offers no authority for the preposterous notion that judges in a case can be summoned to testify at a hearing regarding sanctions for an attorney's misconduct. In any event, as explained in Argument, II.B *supra*, such testimony would be irrelevant to whether or how Mr. Chung should be sanctioned.

Finally, the Special Master should reject Mr. Chung's attempt to "reserve[] the right to identify additional lay or expert witness that may testify." Dkt. 107-2 at

5. The Special Master has already given Mr. Chung two opportunities to identify witnesses in these proceedings. The Special Master's order in advance of the Pre-Hearing Conference invited the parties to submit briefs regarding, *inter alia*, "whether counsel contemplate calling any witnesses, including expert witnesses." Dkt. 83 at 2. And the Special Master's order following the Pre-Hearing Conference provided that "if Mr. Chung intends to call any witnesses at the above hearing, he shall list such witnesses in an Appendix to his Opening Brief and provide a brief statement of each such witness's testimony." Dkt. 88 at 2. Having failed to identify any expert witnesses, or indeed any witnesses in a position to provide relevant testimony, Mr. Chung has forfeited his right to name further witnesses and should be precluded from doing so.

CONCLUSION

Mr. Chung attempted to defraud this Court when he filed a fabricated *Saudi Sun* article while concealing Petitioners-Appellants' counsel's role in preparing it, and he has continued to draw out these proceedings with specious allegations and arguments while refusing to admit his misconduct. None of Mr. Chung's frivolous arguments prevents the Special Master from recommending sanctions, and none of Mr. Chung's proposed witnesses has anything relevant to say regarding the legitimacy of the *Saudi Sun* article or the need for sanctions. Respondents respectfully submit that sanctions should be imposed in the form of full compensation for the

expenses they have incurred as a result of Mr. Chung's misconduct, including the fees and costs incurred in opposing his improper submission of the *Saudi Sun* article to the Court and the additional fees and costs incurred in participating in these sanctions proceedings. Respondents further respectfully submit that the Special Master should recommend that the panel refer Mr. Chung for potential discipline for his misconduct.

Dated: August 5, 2022

Respectfully submitted,

/s/ Thomas G. Hungar

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation of Circuit Rule 32-1(a) because it contains 13,703 words, excluding the parts of the brief exempted by Federal Rules of Appellate Procedure 32(f).

I further certify that this brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionately spaced 14-point, Times New Roman font using Microsoft Word 2016.

Dated: August 5, 2022

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