Links to Selected Generative AI Resources

ChatGPT: https://chat.openai.com/

Casetext's Co-counsel: https://casetext.com/

Important Reading

Weiser, Benjamin, *Here's What Happens When Your Lawyer Uses ChatGPT,* N.Y. Times, (May 27, 2023)

State Bar of California Rules of Professional Conduct

Rule 1.1 Competence

(Rule Approved by the Supreme Court, Effective March 22, 2021)

(a) A lawyer shall not intentionally, recklessly, with gross negligence, or repeatedly fail to perform legal services with competence.

(b) For purposes of this rule, "competence" in any legal service shall mean to apply the (i) learning and skill, and (ii) mental, emotional, and physical ability reasonably* necessary for the performance of such service.

(c) If a lawyer does not have sufficient learning and skill when the legal services are undertaken, the lawyer nonetheless may provide competent representation by (i) associating with or, where appropriate, professionally consulting another lawyer whom the lawyer reasonably believes* to be competent, (ii) acquiring sufficient learning and skill before performance is required, or (iii) referring the matter to another lawyer whom the lawyer reasonably believes* to be competent.

(d) In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required if referral to, or association or consultation with, another lawyer would be impractical. Assistance in an emergency must be limited to that reasonably* necessary in the circumstances.

Rule 1.3 Diligence

(Rule Approved by the Supreme Court, Effective November 1, 2018)

(a) A lawyer shall not intentionally, repeatedly, recklessly or with gross negligence fail to act with reasonable diligence in representing a client.

(b) For purposes of this rule, "reasonable diligence" shall mean that a lawyer acts with commitment and dedication to the interests of the client and does not neglect or disregard, or unduly delay a legal matter entrusted to the lawyer.

Rule 1.4 Communication with Clients

(Rule Approved by the Supreme Court, Effective January 1, 2023)

(a)A lawyer shall:

(1)promptly inform the client of any decision or circumstance with respect towhich disclosure or the client's informed consent* is required by these rulesor the State Bar Act;

(2)reasonably* consult with the client about the means by which to accomplishthe client's objectives in the representation;

(3)keep the client reasonably* informed about significant developmentsrelating to the representation, including promptly complying withreasonable* requests for information and copies of significant documentswhen necessary to keep the client so informed; and

(4)advise the client about any relevant limitation on the lawyer's conduct whenthe lawyer knows* that the client expects assistance not permitted by theRules of Professional Conduct or other law.

(b)A lawyer shall explain a matter to the extent reasonably* necessary to permit theclient to make informed decisions regarding the representation.

(c)A lawyer may delay transmission of information to a client if the lawyer reasonablybelieves* that the client would be likely to react in a way that may cause imminentharm to the client or others.

(d)A lawyer's obligation under this rule to provide information and documents issubject to any applicable protective order, non-disclosure agreement, or limitationunder statutory or decisional law.

Rule 1.6 Confidential Information of a Client

(Rule Approved by the Supreme Court, Effective November 1, 2018)

(a)A lawyer shall not reveal information protected from disclosure by Business andProfessions Code section 6068, subdivision (e)(1) unless the client givesinformed consent,* or the disclosure is permitted by paragraph (b) of this rule.

(b)A lawyer may, but is not required to, reveal information protected by Businessand Professions Code section 6068, subdivision (e)(1) to the extent that thelawyer reasonably believes* the disclosure is necessary to prevent a criminal actthat the

lawyer reasonably believes* is likely to result in death of, or substantial*bodily harm to, an individual, as provided in paragraph (c).

(c)Before revealing information protected by Business and Professions Codesection 6068, subdivision (e)(1) to prevent a criminal act as provided inparagraph (b), a lawyer shall, if reasonable* under the circumstances:

(1)make a good faith effort to persuade the client: (i) not to commit or tocontinue the criminal act; or (ii) to pursue a course of conduct that willprevent the threatened death or substantial* bodily harm; or do both (i)and (ii); and

(2)inform the client, at an appropriate time, of the lawyer's ability or decisionto reveal information protected by Business and Professions Code section6068, subdivision (e)(1) as provided in paragraph (b).

(d)In revealing information protected by Business and Professions Code section6068, subdivision (e)(1) as provided in paragraph (b), the lawyer's disclosuremust be no more than is necessary to prevent the criminal act, given theinformation known* to the lawyer at the time of the disclosure.

(e)A lawyer who does not reveal information permitted by paragraph (b) does notviolate this rule.

Rule 1.8.2 Use of Current Client's Information

(Rule Approved by the Supreme Court, Effective November 1, 2018)

A lawyer shall not use a client's information protected by Business and Professions Code section 6068, subdivision (e)(1) to the disadvantage of the client unless the client gives informed consent,* except as permitted by these rules or the State Bar Act.

Rule 5.3 Responsibilities Regarding Nonlawyer Assistants

(Rule Approved by the Supreme Court, Effective November 1, 2018)

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a lawyer who individually or together with other lawyers possesses managerial authority in a law firm,* shall make reasonable* efforts to ensure that the firm* has in effect measures giving reasonable* assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer, whether or not an employee of the same law firm,* shall make reasonable* efforts to ensure that the person's* conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person* that would be a violation of these rules or the State Bar Act if engaged in by a lawyer if:

(1) the lawyer orders or, with knowledge of the relevant facts and of the specific conduct, ratifies the conduct involved; or

(2) the lawyer, individually or together with other lawyers, possesses managerial authority in the law firm* in which the person* is employed, or has direct supervisory authority over the person,* whether or not an employee of the same law firm,* and knows* of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable* remedial action.

Rule 5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law

(Rule Approved by the Supreme Court, Effective November 1, 2018)

(a) A lawyer admitted to practice law in California shall not:

(1) practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction; or

(2) knowingly* assist a person* in the unauthorized practice of law in that jurisdiction.

(b) A lawyer who is not admitted to practice law in California shall not:

(1) except as authorized by these rules or other law, establish or maintain a resident office or other systematic or continuous presence in California for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in California.

2023 WL 4114965
Only the Westlaw citation
is currently available.
United States District Court, S.D. New York.

Roberto MATA, Plaintiff,
v.
AVIANCA, INC., Defendant.

22-cv-1461 (PKC)
|
Signed June 22, 2023

Synopsis

Background: Passenger filed state court suit against air carrier, seeking damages for his alleged injuries from metal serving cart striking his left knee during flight from El Salvador to New York City. Air carrier removed action, asserting federal question jurisdiction under Convention for the Unification of Certain Rules Relating to International Carriage by Air, Done at Montreal, Canada (Montreal Convention). After air carrier moved to dismiss, passengers' attorneys filed affirmation in opposition that included non-existent judicial opinions with fake quotes and fake citations created by artificial intelligence (AI) tool, resulting in show cause orders and sanctions hearing.

Holdings: The District Court, P. Kevin Castel, J., held that:

[1] counsel did not forge signature of judge or seal of court;

[2] attorney not admitted to practice in district could be sanctioned;

[3] attorney of record acted with subjective bad faith;

[4] attorney not admitted to practice in district acted in subjective bad faith;

[5] law firm was jointly and severally liable for sanctions; and

[6] sanction in amount of $5,000 was warranted.

Ordered accordingly.

West Headnotes (43)

[1] Attorneys and Legal Services Unwarranted, groundless, or frivolous papers or claims

Attorneys and Legal Services Fraud, misrepresentation, or omission of facts

Under Rule 11, a court may sanction an attorney for misrepresenting facts or making frivolous legal arguments. Fed. R. Civ. P. 11.

[2] Costs, Fees, and Sanctions Unwarranted, Groundless, or Frivolous Papers or Claims in General

Under Rule 11, a legal argument may be sanctioned as frivolous when it

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amounts to an abuse of the adversary system. Fed. R. Civ. P. 11.

[3] **Costs, Fees, and Sanctions** Grounds for Imposition

Merely incorrect legal statements are not sanctionable under Rule 11. Fed. R. Civ. P. 11(b)(2).

[4] **Costs, Fees, and Sanctions** Extension or modification of existing law

The fact that a legal theory is a long-shot does not necessarily mean it is sanctionable under Rule 11. Fed. R. Civ. P. 11.

[5] **Costs, Fees, and Sanctions** Unwarranted, Groundless, or Frivolous Papers or Claims in General

Costs, Fees, and Sanctions Extension or modification of existing law

A legal contention is frivolous, and thus subject to Rule 11 sanctions, because it has no chance of success and there is no reasonable argument to extend, modify, or reverse the law as it stands. Fed. R. Civ. P. 11.

[6] **Costs, Fees, and Sanctions** Unwarranted, Groundless, or Frivolous Papers or Claims in General

An attorney violates Rule 11 governing sanctions if existing caselaw unambiguously forecloses a legal argument. Fed. R. Civ. P. 11(b)(2).

[7] **Costs, Fees, and Sanctions** Grounds for Imposition

The filing of papers by an attorney without taking the necessary care in their preparation is an abuse of the judicial system that is subject to Rule 11 sanction. Fed. R. Civ. P. 11.

[8] **Costs, Fees, and Sanctions** Nature and purpose

Rule 11 governing sanctions creates an incentive for an attorney to stop, think, and investigate more carefully before serving and filing papers. Fed. R. Civ. P. 11.

[9] **Costs, Fees, and Sanctions** Duty of Reasonable Inquiry

Rule 11 governing sanctions explicitly and unambiguously imposes an affirmative duty on each attorney to conduct a reasonable inquiry into the viability of a pleading before it is signed. Fed. R. Civ. P. 11.

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[10] **Forgery** Making false instrument or signature

When an individual forges a judge's signature in order to pass off a false document as an authentic one issued by the courts of the United States, such conduct implicates the interests protected by the criminal statute prohibiting knowingly forging the signature of a United States judge or the seal of a federal court, whether or not the actor intends to deprive another of money or property. 18 U.S.C.A. § 505.

[11] **Forgery** Making false instrument or signature

Attorneys and law firm that represented injured airline passenger in his suit against air carrier and submitted affirmation, in opposition to carrier's motion to dismiss, which included non-existent judicial opinions with fake quotes and fake citations created by artificial intelligence (AI) tool, did not violate criminal statute prohibiting knowingly forging signature of United States judge or seal of federal court, where fake opinions cited and submitted by attorneys did not include any signature or seal. 18 U.S.C.A. § 505.

[12] **Costs, Fees, and Sanctions** Misrepresentation or omission of facts or law

Under Rule 11 governing sanctions, a fake opinion is not "existing law" and citation to a fake opinion does not provide a "non-frivolous argument" for extending, modifying, or reversing existing law, or for establishing new law. Fed. R. Civ. P. 11(b)(2).

[13] **Costs, Fees, and Sanctions** Misrepresentation or omission of facts or law

A lawyer's attempt to persuade a court or oppose an adversary by relying on fake opinions is an abuse of the adversary system, which is sanctionable conduct.

[14] **Costs, Fees, and Sanctions** Grounds for Imposition

An attorney's compliance with Rule 11 governing sanctions is not assessed solely at the moment that the paper is submitted. Fed. R. Civ. P. 11(b)(2).

[15] **Costs, Fees, and Sanctions** Motions and Other Particular Papers

An attorney's failure to correct a prior statement in a pending motion is the

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later advocacy of that statement and is subject to Rule 11 sanctions. Fed. R. Civ. P. 11(b)(2).

[16] **Costs, Fees, and Sanctions** Sanctions

Any Rule 11 sanction should be made with restraint because in exercising sanctions powers, a trial court may be acting as accuser, fact finder, and sentencing judge. Fed. R. Civ. P. 11.

[17] **Attorneys and Legal Services** Fraud, misrepresentation, or omission of facts

Although one attorney representing injured airline passenger in his suit against air carrier was not admitted to practice in forum district and did not file notice of appearance, district court was authorized to impose Rule 11 sanction on him for submitting affirmation, in opposition to carrier's motion to dismiss, which included non-existent judicial opinions with fake quotes and fake citations created by artificial intelligence (AI) tool. Fed. R. Civ. P. 11(c)(1).

[18] **Costs, Fees, and Sanctions** Necessity; sua sponte imposition

When a court considers whether to impose sanctions sua sponte, it is akin to the court's inherent power of contempt, and, like contempt, sua sponte sanctions in those circumstances should issue only upon a finding of subjective bad faith of counsel.

[19] **Costs, Fees, and Sanctions** Safe harbors

Where an adversary initiates Rule 11 sanctions proceedings, the attorney may take advantage of that rule's 21-day safe harbor provision and withdraw or correct the challenged filing, in which case sanctions may issue if the attorney's statement was objectively unreasonable. Fed. R. Civ. P. 11(b)(2).

[20] **Costs, Fees, and Sanctions** Objective or subjective standard

Costs, Fees, and Sanctions Necessity; sua sponte imposition

Subjective bad faith is a heightened mens rea standard for imposing sanctions sua sponte that is intended to permit zealous advocacy while deterring improper submissions by attorneys. Fed. R. Civ. P. 11.

[21] **Attorneys and Legal Services** Inherent power or jurisdiction

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Attorneys and Legal Services 🔑 Grounds for Imposition

A finding of bad faith is required for a court to sanction an attorney pursuant to the court's inherent power.

[22] **Costs, Fees, and Sanctions** 🔑 Mandatory duty or discretion

Costs, Fees, and Sanctions 🔑 Discretion as to type

Costs, Fees, and Sanctions 🔑 Discretion as to amount

Because of their very potency, inherent powers of the court must be exercised with restraint and discretion; a primary aspect of that discretion is the ability to fashion an appropriate sanction for conduct which abuses the judicial process.

[23] **Attorneys and Legal Services** 🔑 Inherent power or jurisdiction

Attorneys and Legal Services 🔑 Grounds for Imposition

Attorneys and Legal Services 🔑 Sua sponte imposition

Attorneys and Legal Services 🔑 Evidence

Bad faith required to sanction an attorney, under a court's inherent power or sua sponte, may be inferred where the action is completely without merit.

[24] **Costs, Fees, and Sanctions** 🔑 Necessity; sua sponte imposition

Costs, Fees, and Sanctions 🔑 Notice

Any notice or warning provided to an attorney is relevant to a finding of bad faith required to impose sanctions under a court's inherent power or sua sponte.

[25] **Costs, Fees, and Sanctions** 🔑 Objective or subjective standard

Subjective bad faith of an attorney, as required to impose Rule 11 sanctions, includes the knowing and intentional submission of a false statement of fact. Fed. R. Civ. P. 11.

[26] **Costs, Fees, and Sanctions** 🔑 Objective or subjective standard

An attorney acts in subjective bad faith, as required for imposition of Rule 11 sanctions, by offering essential facts that explicitly or impliedly run contrary to statements that the attorney made on behalf of the same client in other proceedings. Fed. R. Civ. P. 11.

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[27] **Costs, Fees, and Sanctions** Objective or subjective standard

An assertion by an attorney may be made in subjective bad faith, as required for imposition of Rule 11 sanctions, even when it was based in confusion. Fed. R. Civ. P. 11.

[28] **Costs, Fees, and Sanctions** Misrepresentation or omission of facts or law

A false statement of knowledge can constitute subjective bad faith of an attorney, as required for imposition of Rule 11 sanctions, where the speaker knew that he had no such knowledge. Fed. R. Civ. P. 11.

[29] **Costs, Fees, and Sanctions** Weight and sufficiency

Evidence that would satisfy the knowledge standard in a criminal case ought to be sufficient in a Rule 11 sanctions motion, and thus, knowledge may be proven by circumstantial evidence, and conscious avoidance may be the equivalent of knowledge. Fed. R. Civ. P. 11.

[30] **Costs, Fees, and Sanctions** Objective or subjective standard

The conscious avoidance test for knowledge required for an attorney's subjective bad faith, as required for imposition of Rule 11 sanctions, is met when a person consciously avoided learning a fact while aware of a high probability of its existence, unless the factfinder is persuaded that the person actually believed the contrary. Fed. R. Civ. P. 11.

[31] **Costs, Fees, and Sanctions** Objective or subjective standard

The rationale for imputing knowledge to an attorney, under the conscious avoidance test to determine subjective bad faith required for imposition of Rule 11 sanctions, is that one who deliberately avoided knowing the wrongful nature of his conduct is as culpable as one who knew; it requires more than being merely negligent, foolish, or mistaken, and the person must be aware of a high probability of the fact in dispute and consciously avoided confirming that fact. Fed. R. Civ. P. 11.

[32] **Costs, Fees, and Sanctions** Grounds for Imposition

In considering Rule 11 sanctions, the knowledge and conduct of each respondent lawyer must be separately assessed, and principles

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of imputation of knowledge do not apply. Fed. R. Civ. P. 11.

[33] Attorneys and Legal Services Fraud, misrepresentation, or omission of facts

Attorney of record for injured airline passenger in his suit against air carrier acted with subjective bad faith, as required to impose Rule 11 sanctions against attorney, by not reading any case cited in his affirmation in opposition to carrier's motion to dismiss or taking any other steps on his own to check whether any aspect of assertions of law were warranted by existing law and, instead, signing and filing affirmation after making no inquiry, as well as swearing to truth of affidavit, with no basis for doing so, that annexed purported copies or excerpts of all but one of fake opinions with fake citations created by artificial intelligence (AI) tool, and also lying to district court when seeking time extension for submitting affidavit by misrepresenting that he was going on vacation. Fed. R. Civ. P. 11.

[34] Attorneys and Legal Services Fraud, misrepresentation, or omission of facts

Attorney not admitted to practice in forum district but who continued to perform all substantive legal work for injured airline passenger in his suit against air carrier acted with subjective bad faith, as required to impose Rule 11 sanctions against attorney, by being aware of facts alerting him to high probability that cases cited in affirmation in opposition to carrier's motion to dismiss did not exist and consciously avoiding confirming that fact, by his false assertion that artificial intelligence (AI) tool merely supplemented his legal research, by his conflicting accounts about queries to AI tool as to whether one case was real rather than fake, and by his failure to disclose reliance on AI tool in affidavit that annexed purported copies of fake opinions with fake citations. Fed. R. Civ. P. 11.

[35] Attorneys and Legal Services Persons liable

Law firm was jointly and severally liable for Rule 11 sanctions imposed on attorneys who acted in subjective bad faith in representing airline passenger in his suit against air carrier, including by filing affirmation, in opposition to carrier's motion to dismiss, that contained non-existent judicial opinions with fake quotes and fake citations created by artificial intelligence (AI) tool, since firm failed to identify

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any exceptional circumstances warranting departure from rule's provision for joint responsibility for violation committed by its attorneys. Fed. R. Civ. P. 11(b)(2), 11(c)(1).

[36] Attorneys and Legal Services Multiplication of proceedings in general

The statute authorizing sanctions against any attorney who so multiplies the proceedings in any case unreasonably and vexatiously looks to unreasonable and vexatious multiplications of proceedings; and it imposes an obligation on attorneys throughout the entire litigation to avoid dilatory tactics. 28 U.S.C.A. § 1927.

[37] Attorneys and Legal Services Multiplication of proceedings in general

The purpose of the statute authorizing sanctions against any attorney who so multiplies the proceedings in any case unreasonably and vexatiously is to deter unnecessary delays in litigation. 28 U.S.C.A. § 1927.

[38] Attorneys and Legal Services Multiplication of proceedings in general

Attorneys and Legal Services Persons liable

Law firm and attorneys, who acted in subjective bad faith in representing airline passenger in his suit against air carrier, including by filing affirmation in opposition that included non-existent judicial opinions with fake quotes and fake citations created by artificial intelligence (AI) tool, would not be sanctioned under statute authorizing sanctions against any attorney who unreasonably and vexatiously multiplies proceedings in any case, since attorneys' reliance on fake cases caused several harms, but dilatory tactics and delay were not among them. 28 U.S.C.A. § 1927.

[39] Attorneys and Legal Services Grounds for Imposition

A Rule 11 sanction against an attorney should advance both specific and general deterrence. Fed. R. Civ. P. 11.

[40] Attorneys and Legal Services Type and Amount

A sanction imposed against an attorney under Rule 11 must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. Fed. R. Civ. P. 11.

[41] Attorneys and Legal Services Type and Amount

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Because the purpose of imposing Rule 11 sanctions against an attorney is deterrence, a court should impose the least severe sanctions necessary to achieve that goal. Fed. R. Civ. P. 11.

[42] Costs, Fees, and Sanctions Discretion as to type

Costs, Fees, and Sanctions Discretion as to amount

A court has wide discretion to craft an appropriate Rule 11 sanction and may consider the effects on the parties and full knowledge of the relevant facts gained during the sanctions hearing. Fed. R. Civ. P. 11.

[43] Attorneys and Legal Services Persons liable

Attorneys and Legal Services Monetary sanctions; costs

Rule 11 sanction of $5,000, owed jointly and severally by law firm and two attorneys, was sufficient but not more than necessary to advance specific and general deterrence for acting in subjective bad faith in representing airline passenger in his suit against air carrier, including by filing affirmation in opposition that included non-existent judicial opinions with fake quotes and fake citations created by artificial intelligence (AI) tool, since firm arranged for outside counsel to conduct mandatory continuing legal education program for lawyers and staff on technological competence, AI tools, and notarization practices, air carrier did not seek reimbursement of attorneys' fees or expenses, and fake cases were not submitted for any financial gain or out of personal animus of attorneys. Fed. R. Civ. P. 11(b)(2), 11(c)(1).

Attorneys and Law Firms

Peter LoDuca, Levidow, Levidow & Oberman, P.C., New York, NY, for Plaintiff.

Roberto Mata, New York, NY, Pro Se.

Marissa Nicole Lefland, Bartholomew James Banino, Condon and Forsyth LLP, New York, NY, for Defendant.

OPINION AND ORDER ON SANCTIONS

CASTEL, United States District Judge

***1** In researching and drafting court submissions, good lawyers appropriately obtain assistance from junior lawyers, law students, contract lawyers, legal encyclopedias and databases such as Westlaw and LexisNexis. Technological advances are commonplace and there is nothing inherently improper about using a reliable artificial intelligence tool for assistance. But existing rules impose a

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gatekeeping role on attorneys to ensure the accuracy of their filings. Rule 11, Fed. R. Civ. P. Peter LoDuca, Steven A. Schwartz and the law firm of Levidow, Levidow & Oberman P.C. (the "Levidow Firm") (collectively, "Respondents") abandoned their responsibilities when they submitted non-existent judicial opinions with fake quotes and citations created by the artificial intelligence tool ChatGPT, then continued to stand by the fake opinions after judicial orders called their existence into question.

Many harms flow from the submission of fake opinions.[1] The opposing party wastes time and money in exposing the deception. The Court's time is taken from other important endeavors. The client may be deprived of arguments based on authentic judicial precedents. There is potential harm to the reputation of judges and courts whose names are falsely invoked as authors of the bogus opinions and to the reputation of a party attributed with fictional conduct. It promotes cynicism about the legal profession and the American judicial system. And a future litigant may be tempted to defy a judicial ruling by disingenuously claiming doubt about its authenticity.

The narrative leading to sanctions against Respondents includes the filing of the March 1, 2023 submission that first cited the fake cases. But if the matter had ended with Respondents coming clean about their actions shortly after they received the defendant's March 15 brief questioning the existence of the cases, or after they reviewed the Court's Orders of April 11 and 12 requiring production of the cases, the record now would look quite different. Instead, the individual Respondents doubled down and did not begin to dribble out the truth until May 25, after the Court issued an Order to Show Cause why one of the individual Respondents ought not be sanctioned.

For reasons explained and considering the conduct of each individual Respondent separately, the Court finds bad faith on the part of the individual Respondents based upon acts of conscious avoidance and false and misleading statements to the Court. (See, e.g., Findings of Fact ¶¶ 17, 20, 22-23, 40-41, 43, 46-47 and Conclusions of Law ¶¶ 21, 23-24.) Sanctions will therefore be imposed on the individual Respondents. Rule 11(c)(1) also provides that "[a]bsent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its ... associate, or employee." Because the Court finds no exceptional circumstances, sanctions will be jointly imposed on the Levidow Firm. The sanctions are "limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated." Rule 11(c)(4).

***2** Set forth below are this Court's Findings of Fact and Conclusions of Law following the hearing of June 8, 2023.

FINDINGS OF FACT

1. Roberto Mata commenced this action on or about February 2, 2022, when he filed a Verified Complaint in the Supreme Court of the State of New York, New York County, asserting that he was injured when a metal serving cart struck his left knee during a flight from El Salvador to John F. Kennedy Airport.

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(ECF 1.) Avianca removed the action to federal court on February 22, 2022, asserting federal question jurisdiction under the Convention for the Unification of Certain Rules Relating to International Carriage by Air, Done at Montreal, Canada, on 28 May 1999, reprinted in S. Treaty Doc. 106-45 (1999) (the "Montreal Convention"). (ECF 1.)

2. Steven A. Schwartz of the Levidow Firm had been the attorney listed on the state court complaint. But upon removal from state court to this Court, Peter LoDuca of the Levidow Firm filed a notice of appearance on behalf of Mata on March 31, 2022. (ECF 8.) Mr. Schwartz is not admitted to practice in this District. Mr. LoDuca has explained that because Mr. Schwartz is not admitted, Mr. LoDuca filed the notice of appearance while Mr. Schwartz continued to perform all substantive legal work. (LoDuca May 25 Aff't ¶¶ 3-4 (ECF 32); Schwartz May 25 Aff't ¶ 4 (ECF 32-1).)

3. On January 13, 2023, Avianca filed a motion to dismiss urging that Mata's claims are time-barred under the Montreal Convention. (ECF 16.)

4. On January 18, 2023, a letter signed by Mr. Schwartz and filed by Mr. LoDuca requested a one-month extension to respond to the motion, from February 3, 2023, to March 3, 2023. (ECF 19.) The letter stated that "the undersigned will be out of the office for a previously planned vacation" and cited a need for "extra time to properly respond to the extensive motion papers filed by the defendant." (Id.) The Court granted the request. (ECF 20.)

5. On March 1, 2023, Mr. LoDuca filed an "Affirmation in Opposition" to the motion to dismiss (the "Affirmation in Opposition").[2] (ECF 21.) The Affirmation in Opposition cited and quoted from purported judicial decisions that were said to be published in the Federal Reporter, the Federal Supplement and Westlaw. (Id.) Above Mr. LoDuca's signature line, the Affirmation in Opposition states, "I declare under penalty of perjury that the foregoing is true and correct." (Id.)

6. Although Mr. LoDuca signed the Affirmation in Opposition and filed it on ECF, he was not its author. (Tr. 8-9.) It was researched and written by Mr. Schwartz. (Tr. 8.) Mr. LoDuca reviewed the affirmation for style, stating, "I was basically looking for a flow, make sure there was nothing untoward or no large grammatical errors." (Tr. 9.) Before executing the Affirmation, Mr. LoDuca did not review any judicial authorities cited in his affirmation. (Tr. 9.) There is no claim or evidence that he made any inquiry of Mr. Schwartz as to the nature and extent of his research or whether he had found contrary precedent. Mr. LoDuca simply relied on a belief that work produced by Mr. Schwartz, a colleague of more than twenty-five years, would be reliable. (LoDuca May 25 Aff't ¶¶ 6-7.) There was no claim made by any Respondent in response to the Court's Orders to Show Cause that Mr. Schwartz had prior experience with the Montreal Convention or bankruptcy stays. Mr. Schwartz has stated that "my practice has always been exclusively in state court ...." (Schwartz June 6 Decl. ¶ 6.) Respondents' memorandum of law asserts that Mr. Schwartz attempted "to research a federal

bankruptcy issue with which he was completely unfamiliar." (ECF 49 at 21.)

***3** 7. Avianca filed a five-page reply memorandum on March 15, 2023. (ECF 24.) It included the following statement: "Although Plaintiff ostensibly cites to a variety of cases in opposition to this motion, the undersigned has been unable to locate most of the case law cited in Plaintiff's Affirmation in Opposition, and the few cases which the undersigned has been able to locate do not stand for the propositions for which they are cited." (ECF 24 at 1.) It impliedly asserted that certain cases cited in the Affirmation in Opposition were non-existent: "Plaintiff does not dispute that this action is governed by the Montreal Convention, and Plaintiff has not cited any existing authority holding that the Bankruptcy Code tolls the two-year limitations period or that New York law supplies the relevant statute of limitations." (ECF 24 at 1; emphasis added.) It then detailed by name and citation seven purported "decisions" that Avianca's counsel could not locate, and set them apart with quotation marks to distinguish a non-existent case from a real one, even if cited for a proposition for which it did not stand. (ECF 24.)

8. Despite the serious nature of Avianca's allegations, no Respondent sought to withdraw the March 1 Affirmation or provide any explanation to the Court of how it could possibly be that a case purportedly in the Federal Reporter or Federal Supplement could not be found.

9. The Court conducted its own search for the cited cases but was unable to locate multiple authorities cited in the Affirmation in Opposition.

10. Mr. LoDuca testified at the June 8 sanctions hearing that he received Avianca's reply submission and did not read it before he forwarded it to Mr. Schwartz. (Tr. 10.) Mr. Schwartz did not alert Mr. LoDuca to the contents of the reply. (Tr. 12.)

11. As it was later revealed, Mr. Schwartz had used ChatGPT, which fabricated the cited cases. Mr. Schwartz testified at the sanctions hearing that when he reviewed the reply memo, he was "operating under the false perception that this website [i.e., ChatGPT] could not possibly be fabricating cases on its own." (Tr. at 31.) He stated, "I just was not thinking that the case could be fabricated, so I was not looking at it from that point of view." (Tr. at 35.) "My reaction was, ChatGPT is finding that case somewhere. Maybe it's unpublished. Maybe it was appealed. Maybe access is difficult to get. I just never thought it could be made up." (Tr. at 33.)

12. Mr. Schwartz also testified at the hearing that he knew that there were free sites available on the internet where a known case citation to a reported decision could be entered and the decision displayed. (Tr. 23-24, 28-29.) He admitted that he entered the citation to "Varghese" but could not find it:

> THE COURT: Did you say, well they gave me part of Varghese, let me look at the full Varghese decision?
>
> MR. SCHWARTZ: I did.

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> THE COURT: And what did you find when you went to look up the full Varghese decision?
>
> MR. SCHWARTZ: I couldn't find it.
>
> THE COURT: And yet you cited it in the brief to me.
>
> MR. SCHWARTZ: I did, again, operating under the false assumption and disbelief that this website could produce completely fabricated cases. And if I knew that, I obviously never would have submitted these cases.

(Tr. 28.)[3]

13. On April 11, 2023, the Court issued an Order directing Mr. LoDuca to file an affidavit by April 18, 2023[4] that annexed copies of the following decisions cited in the Affirmation in Opposition: Varghese v. China Southern Airlines Co., Ltd., 925 F.3d 1339 (11th Cir. 2019); Shaboon v. Egyptair, 2013 IL App (1st) 111279-U (Ill. App. Ct. 2013); Peterson v. Iran Air, 905 F. Supp. 2d 121 (D.D.C. 2012); Martinez v. Delta Airlines, Inc., 2019 WL 4639462 (Tex. App. Sept. 25, 2019); Estate of Durden v. KLM Royal Dutch Airlines, 2017 WL 2418825 (Ga. Ct. App. June 5, 2017); Ehrlich v. American Airlines, Inc., 360 N.J. Super. 360 (App. Div. 2003); Miller v. United Airlines, Inc., 174 F.3d 366, 371-72 (2d Cir. 1999); and In re Air Crash Disaster Near New Orleans, LA, 821 F.2d 1147, 1165 (5th Cir. 1987). (ECF 25.) The Order stated: "Failure to comply will result in dismissal of the action pursuant to Rule 41(b), Fed. R. Civ. P." (ECF 25.)

***4** 14. On April 12, 2023, the Court issued an Order that directed Mr. LoDuca to annex an additional decision, which was cited in the Affirmation in Opposition as Zicherman v. Korean Air Lines Co., Ltd., 516 F.3d 1237, 1254 (11th Cir. 2008). (ECF 27.)

15. Mr. Schwartz understood the import of the Orders of April 11 and 12 requiring the production of the actual cases: "I thought the Court searched for the cases [and] could not find them ...." (Tr. 36.)

16. Mr. LoDuca requested an extension of time to respond to April 25, 2023. (ECF 26.) The letter stated: "This extension is being requested as the undersigned is currently out of the office on vacation and will be returning April 18, 2023." (Id.) Mr. LoDuca signed the letter and filed it on ECF. (Id.)

17. Mr. LoDuca's statement was false and he knew it to be false at the time he made the statement. Under questioning by the Court at the sanctions hearing, Mr. LoDuca admitted that he was not out of the office on vacation. (Tr. 13-14, 19.) Mr. LoDuca testified that "[m]y intent of the letter was because Mr. Schwartz was away, but I was aware of what was in the letter when I signed it. ... I just attempted to get Mr. Schwartz the additional time he needed because he was out of the office at the time." (Tr. 44.) The Court finds that Mr. LoDuca made a knowingly false statement to the Court that he was "out of the office on vacation" in a successful effort to induce the Court to grant him an extension of time. (ECF 28.) The lie had the intended effect of concealing Mr. Schwartz's role in preparing the March 1 Affirmation and the April 25

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Affidavit and concealing Mr. LoDuca's lack of meaningful role in confirming the truth of the statements in his affidavit. This is evidence of the subjective bad faith of Mr. LoDuca.

18. Mr. LoDuca executed and filed an affidavit on April 25, 2023 (the "April 25 Affidavit") that annexed what were purported to be copies or excerpts of all but one of the decisions required by the Orders of April 11 and 12. Mr. LoDuca stated "[t]hat I was unable to locate the case of Zicherman v. Korean Air Lines Co., Ltd., 516 F.3d 1237 (11th Cir. 2008) which was cited by the Court in Varghese." (ECF 29.)

19. The April 25 Affidavit stated that the purported decisions it annexed "may not be inclusive of the entire opinions but only what is made available by online database." (Id. ¶ 4.) It did not identify any "online database" by name. It also stated "[t]hat the opinion in Shaboon v. Egyptair 2013 IL App (1st) 111279-U (Ill. App. Ct. 2013) is an unpublished opinion." (Id. ¶ 5.)

20. In fact, Mr. LoDuca did not author the April 25 Affidavit, had no role in its preparation and no knowledge of whether the statements therein were true. Mr. Schwartz was the attorney who drafted the April 25 Affidavit and compiled its exhibits. (Tr. 38.)

21. At the sanctions hearing, Mr. Schwartz testified that he prepared Mr. LoDuca's affidavit, walked it into "his office" twenty feet away, and "[h]e looked it over, and he signed it." (Tr. 41.)[5] There is no evidence that Mr. LoDuca asked a single question. Mr. LoDuca had not been provided with a draft of the affidavit before he signed it. Mr. LoDuca knew that Mr. Schwartz did not practice in federal court and, in response to the Order to Show Cause, he has never contended that Mr. Schwartz had experience with the Montreal Convention or bankruptcy stays. Indeed, at the sanctions hearing, Mr. Schwartz testified that he thought a citation in the form "F.3d" meant "federal district, third department." (Tr. 33.)[6]

***5** 22. Facially, the April 25 Affidavit did not comply with the Court's Orders of April 11 and 12 because it did not attach the full text of any of the "cases" that are now admitted to be fake. It attached only excerpts of the "cases." And the April 25 Affidavit recited that one "case," "Zicherman v. Korean Air Lines Co., Ltd., 516 F.3d 1237 (11th Cir. 2008)", notably with a citation to the Federal Reporter, could not be found. (ECF 29.) No explanation was offered.

23. Regarding the Court's Orders of April 11 and 12 requiring an affidavit from Mr. LoDuca, Mr. LoDuca testified, "Me, I didn't do anything other than turn over to Mr. Schwartz to locate the cases that [the Court] had requested." (Tr. 13.) He testified that he read the April 25 Affidavit and "saw the cases that were attached to it. Mr. Schwartz had assured me that this was what he could find with respect to the cases. And I submitted it to the Court." (Tr. 14.) Mr. LoDuca had observed that the "cases" annexed to his April 25 Affidavit were not being submitted in their entirety, and explained that "I understood that was the best that Mr. Schwartz could find at the time based on the search that he or – the database that he had available to him." (Tr. 15.) Mr. LoDuca testified that it "never crossed my mind" that the cases were bogus. (Tr. 16.)

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24. The Court reviewed the purported decisions annexed to the April 25 Affidavit, which have some traits that are superficially consistent with actual judicial decisions. The Court need not describe every deficiency contained in the fake decisions annexed to the April 25 Affidavit. It makes the following exemplar findings as to the three "decisions" that were purported to be issued by federal courts.

25. The "Varghese" decision is presented as being issued by a panel of judges on the United States Court of Appeals for the Eleventh Circuit that consisted of Judges Adalberto Jordan, Robin S. Rosenbaum and Patrick Higginbotham,[7] with the decision authored by Judge Jordan. (ECF 29-1.) It bears the docket number 18-13694. (Id.) "Varghese" discusses the Montreal Convention's limitations period and the purported tolling effects of the automatic federal bankruptcy stay, 11 U.S.C. § 362(a). (ECF 29-1.)

26. The Clerk of the United States Court of Appeals for the Eleventh Circuit has confirmed that the decision is not an authentic ruling of the Court and that no party by the name of "Vargese" or "Varghese" has been party to a proceeding in the Court since the institution of its electronic case filing system in 2010. A copy of the fake "Varghese" opinion is attached as Appendix A.

27. The "Varghese" decision shows stylistic and reasoning flaws that do not generally appear in decisions issued by United States Courts of Appeals. Its legal analysis is gibberish. It references a claim for the wrongful death of George Scaria Varghese brought by Susan Varghese. (Id.) It then describes the claims of a plaintiff named Anish Varghese who, due to airline overbooking, was denied boarding on a flight from Bangkok to New York that had a layover in Guangzhou, China. (Id.) The summary of the case's procedural history is difficult to follow and borders on nonsensical, including an abrupt mention of arbitration and a reference to plaintiff's decision to file for Chapter 7 bankruptcy as a tactical response to the district court's dismissal of his complaint. (Id.) Without explanation, "Varghese" later references the plaintiff's Chapter 13 bankruptcy proceeding. (Id.) The "Varghese" defendant is also said to have filed for bankruptcy protection in China, also triggering a stay of proceedings. (Id.) Quotation marks are often unpaired. The "Varghese" decision abruptly ends without a conclusion.

***6** 28. The "Varghese" decision bears the docket number 18-13694, which is associated with the case George Cornea v. U.S. Attorney General, et al. The Federal Reporter citation for "Varghese" is associated with J.D. v. Azar, 925 F.3d 1291 (D.C. Cir. 2019).

29. The "Varghese" decision includes internal citations and quotes from decisions that are themselves non-existent:

a. It cites to "Holliday v. Atl. Capital Corp., 738 F.2d 1153 (11th Cir. 1984)", which does not exist. The case appearing at that citation is Gibbs v. Maxwell House, 738 F.2d 1153 (11th Cir. 1984).

b. It cites to "Gen. Wire Spring Co. v. O'Neal Steel, Inc., 556 F.2d 713, 716 (5th Cir. 1977)", which does not exist. The case appearing at that citation is United States v. Clerkley, 556 F.2d 709 (4th Cir. 1977).

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c. It cites to "Hyatt v. N. Cent. Airlines, 92 F.3d 1074 (11th Cir. 1996)", which does not exist. There are two brief orders appearing at 92 F.3d 1074 issued by the Eleventh Circuit in other cases.

d. It cites to "Zaunbrecher v. Transocean Offshore Deepwater Drilling, Inc., 772 F.3d 1278, 1283 (11th Cir. 2014)", which does not exist. The case appearing at that citation is Witt v. Metropolitan Life Ins. Co., 772 F.3d 1269 (11th Cir. 2014).

e. It cites to "Zicherman v. Korean Air Lines Co., 516 F.3d 1237, 1254 (11th Cir. 2008)", which does not exist as cited. A Supreme Court decision with the same name, Zicherman v. Korean Air Lines Co., 516 U.S. 217, 116 S.Ct. 629, 133 L.Ed.2d 596 (1996), held that the Warsaw Convention does not permit a plaintiff to recover damages for loss of society resulting from the death of a relative, and did not discuss the federal bankruptcy stay. The Federal Reporter citation for "Zicherman" is for Miccosukee Tribe v. United States, 516 F.3d 1235 (11th Cir. 2008).

f. It cites to "In re BDC 56 LLC, 330 B.R. 466, 471 (Bankr. D.N.H. 2005)", which does not exist as cited. A Second Circuit decision with the same name, In re BDC 56 LLC, 330 F.3d 111 (2d Cir. 2003), did not discuss the federal bankruptcy stay. The case appearing at the Bankruptcy Reporter citation is In re 652 West 160th LLC, 330 B.R. 455 (Bankr. S.D.N.Y. 2005).

g. Other "decisions" cited in "Varghese" have correct names and citations but do not contain the language quoted or support the propositions for which they are offered. In re Rimstat [Rimsat], Ltd., 212 F.3d 1039 (7th Cir. 2000), is a decision relating to Rule 11 sanctions for attorney misconduct and does not discuss the federal bankruptcy stay. In re PPI Enterprises (U.S.), Inc., 324 F.3d 197 (3d Cir. 2003), does not discuss the federal bankruptcy stay, and is incorrectly identified as an opinion of the Second Circuit. Begier v. I.R.S., 496 U.S. 53, 110 S.Ct. 2258, 110 L.Ed.2d 46 (1990), does not discuss the federal bankruptcy stay, and addresses whether a trustee in bankruptcy may recover certain payments made by the debtor to the Internal Revenue Service. Kaiser Steel Corp. v. W. S. Ranch Co., 391 U.S. 593, 88 S.Ct. 1753, 20 L.Ed.2d 835 (1968) (per curiam), does not discuss the federal bankruptcy stay, and held that a federal proceeding should have been stayed pending the outcome of New Mexico state court proceedings relating to the interpretation of the state constitution. El Al Israel Airlines, Ltd. v. Tsui Yuan Tseng, 525 U.S. 155, 119 S.Ct. 662, 142 L.Ed.2d 576 (1999), does not contain the quoted language discussing the purpose of the Montreal Convention. In re Gandy, 299 F.3d 489 (5th Cir. 2002), affirmed a bankruptcy court's denial of a motion to compel arbitration.

***7** 30. The April 25 Affidavit annexes a decision identified as "Miller v. United Airlines, Inc., 174 F.3d 366 (2d Cir. 1999)." (ECF 29-7.) As submitted, the "Miller"

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decision seems to be an excerpt from a longer decision and consists only of two introductory paragraphs. (Id.) It bears the docket number 98-7926, and purports to be written by Judge Barrington D. Parker of the Second Circuit, with Judges Joseph McLaughlin and Dennis Jacobs also on the panel. (Id.) It abruptly ends with the phrase "Section 11 of the Bankruptcy Act of 1898". (Id.)

31. "Miller" purports to apply the Warsaw Convention to a claim arising out of the real and tragic 1991 crash of United Airlines Flight 585, which was a domestic flight from Denver to Colorado Springs.[8] "Miller" references a Chapter 11 bankruptcy petition filed by United Airlines on December 4, 1992. (Id.) There is no public record of any United Airlines bankruptcy proceeding in or around that time.[9] (Id.) "Miller" identifies Alberto R. Gonzales, purportedly from the law firm of Curtis, Mallet-Prevost, Colt & Mosle LLP, as one of the attorneys for the defendant. (Id.) Alberto R. Gonzales is the name of the former United States Attorney General, who served from 2005 to 2007.[10]

32. The "Miller" decision does not exist. Second Circuit docket number 98-7926 is associated with the case Vitale v. First Fidelity, which was assigned to a panel consisting of Judges Richard Cardamone, Amalya Kearse and Chester Straub. The Federal Reporter citation for "Miller" is to Greenleaf v. Garlock, Inc., 174 F.3d 352 (3d Cir. 1999).

33. The April 25 Affidavit also annexes a decision identified as "Petersen v. Iran Air, 905 F. Supp. 2d 121 (D.D.C. 2012)", which bears an additional citation to 2012 U.S. Dist. LEXIS 17409. (ECF 29-3.) It is identified as a decision by Judge Reggie B. Walton and has the docket number 10-0542. (Id.) "Petersen" appears to confuse the District of Columbia with the state of Washington. (Id. ("Therefore, Petersen's argument that the state courts of Washington have concurrent jurisdiction is unavailing.").) As support for its legal conclusion, "Petersen" cites itself as precedent: " 'Therefore, the Court has concurrent jurisdiction with any other court that may have jurisdiction under applicable law, including any foreign court.' (Petersen v. Iran Air, 905 F. Supp. 2d 121, 126 (D.D.C. 2012))". (ECF 29-3.)

34. The "Petersen" decision does not exist. Docket number 10-cv-542 (D.D.C.) is associated with the case Cummins-Allison Corp. v. Kappos, which was before Judge Ellen S. Huvelle. The Federal Supplement citation is to United States v. ISS Marine Services, 905 F. Supp. 2d 121 (D.D.C. 2012), a decision by Judge Beryl A. Howell. The Lexis citation is to United States v. Baker, 2012 U.S. Dist. LEXIS 17409 (W.D. Mich. Feb. 13, 2012), in which Judge Janet T. Neff adopted the Report and Recommendation of a Magistrate Judge.

***8** 35. The "Shaboon", "Martinez" and "Durden" decisions contain similar deficiencies.

36. Respondents have now acknowledged that the "Varghese", "Miller", "Petersen", "Shaboon", "Martinez" and "Durden" decisions were generated by ChatGPT and do not exist. (See, e.g., ECF 32, 32-1.)

37. Mr. Schwartz has endeavored to explain why he turned to ChatGPT for legal research.

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The Levidow Firm primarily practices in New York state courts. (Schwartz June 6 Decl. ¶ 10; Tr. 45.) It uses a legal research service called Fastcase and does not maintain Westlaw or LexisNexis accounts. (Tr. 22-23.) When Mr. Schwartz began to research the Montreal Convention, the firm's Fastcase account had limited access to federal cases. (Schwartz June 6 Decl. ¶ 12; Tr. 24.) "And it had occurred to me that I heard about this new site which I assumed -- I falsely assumed was like a super search engine called ChatGPT, and that's what I used." (Tr. 24; see also Schwartz June 6 Decl. ¶ 15.) Mr. Schwartz had not previously used ChatGPT and became aware of it through press reports and conversations with family members. (Schwartz June 6 Decl. ¶ 14.)

38. Mr. Schwartz testified that he began by querying ChatGPT for broad legal guidance and then narrowed his questions to cases that supported the argument that the federal bankruptcy stay tolled the limitations period for a claim under the Montreal Convention. (Tr. 25-27.) ChatGPT generated summaries or excerpts but not full "opinions." (Tr. 27 & ECF 46-1; Schwartz June 6 Decl. ¶ 19.)

39. The June 6 Schwartz Declaration annexes the history of Mr. Schwartz's prompts to ChatGPT and the chatbot's responses. (ECF 46-1.) His first prompt stated, "argue that the statute of limitations is tolled by bankruptcy of defendant pursuant to montreal convention". (Id. at 2.) ChatGPT responded with broad descriptions of the Montreal Convention, statutes of limitations and the federal bankruptcy stay, advised that "[t]he answer to this question depends on the laws of the country in which the lawsuit is filed"[11] and then stated that the statute of limitations under the Montreal Convention is tolled by a bankruptcy filing. (Id. at 2-3.) ChatGPT did not cite case law to support these statements. Mr. Schwartz then entered various prompts that caused ChatGPT to generate descriptions of fake cases, including "provide case law in support that statute of limitations is tolled by bankruptcy of defendant under montreal convention", "show me specific holdings in federal cases where the statute of limitations was tolled due to bankruptcy of the airline", "show me more cases" and "give me some cases where te [sic] montreal convention allowed tolling of the statute of limitations due to bankruptcy". (Id. at 2, 10, 11.) When directed to "provide case law", "show me specific holdings", "show me more cases" and "give me some cases", the chatbot complied by making them up.

***9** 40. At the time that he prepared the Affirmation in Opposition, Mr. Schwartz did not have the full text of any "decision" generated by ChatGPT. (Tr. 27.) He cited and quoted only from excerpts generated by the chatbot. (Tr. 27.)

41. In his affidavit filed on May 25, Mr. Schwartz stated that he relied on ChatGPT "to supplement the legal research performed." (ECF 32-1 ¶ 6; emphasis added). He also stated that he "greatly regrets having utilized generative artificial intelligence to supplement the legal research performed herein ...." (Id. ¶ 13; emphasis added.) But at the hearing, Mr. Schwartz acknowledged that ChatGPT was not used to "supplement" his research:

> THE COURT: Let me ask you, did you do any other research in opposition to the motion to dismiss other than through ChatGPT?
>
> MR. SCHWARTZ: Other than initially going to Fastcase and failing there, no.
>
> THE COURT: You found nothing on Fastcase.
>
> MR. SCHWARTZ: Fastcase was insufficient as to being able to access, so, no, I did not.
>
> THE COURT: You did not find anything on Fastcase?
>
> MR. SCHWARTZ: No.
>
> THE COURT: In your declaration in response to the order to show cause, didn't you tell me that you used ChatGPT to supplement your research?
>
> MR. SCHWARTZ: Yes.
>
> THE COURT: Well, what research was it supplementing?
>
> MR. SCHWARTZ: Well, I had gone to Fastcase, and I was able to authenticate two of the cases through Fastcase that ChatGPT had given me. That was it.
>
> THE COURT: But ChatGPT was not supplementing your research. It was your research, correct?
>
> MR. SCHWARTZ: Correct. It became my last resort. So I guess that's correct.

(Tr. 37-38.) Mr. Schwartz's statement in his May 25 affidavit that ChatGPT "supplemented" his research was a misleading attempt to mitigate his actions by creating the false impression that he had done other, meaningful research on the issue and did not rely exclusive on an AI chatbot, when, in truth and in fact, it was the only source of his substantive arguments.[12] These misleading statements support the Court's finding of subjective bad faith.

42. Following receipt of the April 25 Affirmation, the Court issued an Order dated May 4, 2023 directing Mr. LoDuca to show cause why he ought not be sanctioned pursuant to: (1) Rule 11(b)(2) & (c), Fed. R. Civ. P., (2) 28 U.S.C. § 1927, and (3) the inherent power of the Court, for (A) citing non-existent cases to the Court in his Affirmation in Opposition, and (B) submitting to the Court annexed to April 25 Affidavit copies of non-existent judicial opinions. (ECF 31.) It directed Mr. LoDuca to file a written response and scheduled a show-cause hearing for 12 p.m. on June 8, 2023. (Id.) Mr. LoDuca submitted an affidavit in response, which also annexed an affidavit from Mr. Schwartz. (ECF 32, 32-1.)

43. Mr. Schwartz made the highly dubious claim that, before he saw the first Order to Show Cause of May 4, he "still could not fathom that ChatGPT could produce multiple fictitious cases ...." (Schwartz June 6 Decl. ¶ 30.) He states that when he read the Order of May 4, "I realized that I must have made a serious error and that there must be a major flaw with the search aspects of the ChatGPT program." (Schwartz June 6 Decl. ¶ 29.) The Court rejects Mr. Schwartz's claim because (a) he acknowledges reading Avianca's brief claiming that the cases did not exist and could

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not be found (Tr. 31-33); (b) concluded that the Court could not locate the cases when he read the April 11 and 12 Orders (Tr. 36-37); (c) had looked for "Varghese" and could not find it (Tr. 28); and (d) had been "unable to locate" "Zicherman" after the Court ordered its submission (Apr. 25 Aff't ¶ 3).

***10** 44. The Schwartz Affidavit of May 25 contained the first acknowledgement from any Respondent that the Affirmation in Opposition cited to and quoted from bogus cases generated by ChatGPT. (ECF 32-1.)

45. The Schwartz Affidavit of May 25 included screenshots taken from a smartphone in which Mr. Schwartz questioned ChatGPT about the reliability of its work (e.g., "Is Varghese a real case" and "Are the other cases you provided fake"). (ECF 32-1.) ChatGPT responded that it had supplied "real" authorities that could be found through Westlaw, LexisNexis and the Federal Reporter. (Id.) The screenshots are annexed as Appendix B to this Opinion and Order.

46. When those screenshots were submitted as exhibits to Mr. Schwartz's affidavit of May 25, he stated: "[T]he citations and opinions in question were provided by Chat GPT which also provided its legal source and assured the reliability of its content. Excerpts from the queries presented and responses provided are attached hereto." (Schwartz May 25 Aff't ¶ 8.) This is an assertion by Mr. Schwartz that he was misled by ChatGPT into believing that it had provided him with actual judicial decisions. While no date is given for the queries, the declaration strongly suggested that he questioned whether "Varghese" was "real" prior to either the March 1 Affirmation in Opposition or the April 25 Affidavit.

47. But Mr. Schwartz's declaration of June 6 offers a different explanation and interpretation, and asserts that those same ChatGPT answers confirmed his by-then-growing suspicions that the chatbot had been responding "without regard for the truth of the answers it was providing":

> Before the First OSC, however, I still could not fathom that ChatGPT could produce multiple fictitious cases, all of which had various indicia of reliability such as case captions, the names of the judges from the correct locations, and detailed fact patterns and legal analysis that sounded authentic. The First OSC caused me to have doubts. As a result, I asked ChatGPT directly whether one of the cases it cited, "*Varghese v. China Southern Airlines Co. Ltd.*, 925 F.3d 1339 (11th Cir. 2009)," was a real case. Based on what I was beginning to realize about ChatGPT, I highly suspected that it was not. However, ChatGPT again responded that Varghese "does indeed exist" and even told me that it was available on Westlaw and LexisNexis, contrary to what the Court and defendant's counsel were saying. This confirmed my suspicion that ChatGPT was not providing accurate information and was instead simply responding to language prompts without regard for the truth of the answers it was providing. However, by this time the cases had already been cited in our opposition papers and provided to the Court.

(Schwartz June 6 Decl. ¶ 30; emphasis added.) These shifting and contradictory explanations, submitted even after the Court raised the possibility of Rule 11 sanctions, undermine

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the credibility of Mr. Schwartz and support a finding of subjective bad faith.

48. On May 26, 2023, the Court issued a supplemental Order directing Mr. Schwartz to show cause at the June 8 hearing why he ought not be sanctioned pursuant to Rule 11(b)(2) and (c), 28 U.S.C. § 1927 and the Court's inherent powers for aiding and causing the citation of non-existent cases in the Affirmation in Opposition, the submission of non-existent judicial opinions annexed to the April 25 Affidavit and the use of a false and fraudulent notarization in the April 25 Affidavit. (ECF 31.) The same Order directed the Levidow Firm to also show cause why it ought not be sanctioned and directed Mr. LoDuca to show cause why he ought not be sanctioned for the use of a false or fraudulent notarization in the April 25 Affidavit. (Id.) The Order also directed the Respondents to file written responses. (Id.)

***11** 49. Counsel thereafter filed notices of appearance on behalf of Mr. Schwartz and the Levidow Firm, and, separately, on behalf of Mr. LoDuca. (ECF 34-36, 39-40.) Messrs. LoDuca and Schwartz filed supplemental declarations on June 6. (ECF 44-1, 46.) Thomas R. Corvino, who describes himself as the sole equity partner of the Levidow Firm, also filed a declaration. (ECF 47.)

50. On June 8, 2023, the Court held a sanctions hearing on the Order to Show Cause and the supplemental Order to Show Cause. After being placed under oath, Messrs. LoDuca and Schwartz responded to questioning from the Court and delivered prepared statements in which they expressed their remorse. Mr. Corvino, a member of the Levidow Firm, also delivered a statement.

51. At no time has any Respondent written to this Court seeking to withdraw the March 1 Affirmation in Opposition or advise the Court that it may no longer rely upon it.

CONCLUSIONS OF LAW

1. Rule 11(b)(2) states: "By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: ... the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law ...."

[1] 2. "Under Rule 11, a court may sanction an attorney for, among other things, misrepresenting facts or making frivolous legal arguments." Muhammad v. Walmart Stores East, L.P., 732 F.3d 104, 108 (2d Cir. 2013) (per curiam).

[2] **[3]** **[4]** **[5]** 3. A legal argument may be sanctioned as frivolous when it amounts to an " 'abuse of the adversary system ....' " Salovaara v. Eckert, 222 F.3d 19, 34 (2d Cir. 2000) (quoting Mareno v. Rowe, 910 F.2d 1043, 1047 (2d Cir. 1990)). "Merely incorrect legal statements are not sanctionable under Rule 11(b)(2)." Storey v. Cello Holdings, L.L.C., 347 F.3d 370, 391 (2d Cir. 2003). "The fact

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that a legal theory is a long-shot does not necessarily mean it is sanctionable." Fishoff v. Coty Inc., 634 F.3d 647, 654 (2d Cir. 2011). A legal contention is frivolous because it has "no chance of success" and there "is no reasonable argument to extend, modify or reverse the law as it stands." Id. (quotation marks omitted).

[6] 4. An attorney violates Rule 11(b)(2) if existing caselaw unambiguously forecloses a legal argument. See Star Mark Mgmt., Inc. v. Koon Chun Hing Kee Soy & Sauce Factory, Ltd., 682 F.3d 170, 178 (2d Cir. 2012) (affirming Rule 11(b)(2) sanction for frivolous claims where plaintiff's trademark claims "clearly lacked foundation") (per curiam); Simon DeBartolo Grp., L.P. v. Richard E. Jacobs Grp., Inc., 186 F.3d 157, 176 (2d Cir. 1999) (affirming Rule 11(b)(2) sanction where no authority supported plaintiff's theory of liability under SEC Rule 10b-13).

***12** 6. Rule 3.3(a)(1) of the New York Rules of Professional Conduct, 22 N.Y.C.R.R. § 1200.0, states: "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 ...." A lawyer may make a false statement of law where he "liberally us[ed] ellipses" in order to "change" or "misrepresent" a court's holding. United States v. Fernandez, 516 Fed. App'x 34, 36 & n.2 (2d Cir. 2013) (admonishing but not sanctioning attorney for his "editorial license" and noting his affirmative obligation to correct false statements of law) (summary order); see also United States v. Salameh, 1993 WL 168568, at *2-3 & n.1 (S.D.N.Y. May 18, 1993) (admonishing but not sanctioning attorney for failing to disclose that the sole decision cited in support of a legal argument was vacated on appeal) (Duffy, J.).

[7] **[8]** **[9]** 5. The filing of papers "without taking the necessary care in their preparation" is an "abuse of the judicial system" that is subject to Rule 11 sanction. Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 398, 110 S.Ct. 2447, 110 L.Ed.2d 359 (1990). Rule 11 creates an "incentive to stop, think and investigate more carefully before serving and filing papers." Id. (quotation marks omitted). "Rule 11 'explicitly and unambiguously imposes an affirmative duty on each attorney to conduct a reasonable inquiry into the viability of a pleading before it is signed.' " AJ Energy LLC v. Woori Bank, 829 Fed. App'x 533, 535 (2d Cir. 2020) (summary order) (quoting Gutierrez v. Fox, 141 F.3d 425, 427 (2d Cir. 1998)).

[10] 7. It is a crime to knowingly forge the signature of a United States judge or the seal of a federal court. 18 U.S.C. § 505.[13] Writing for the panel, then-Judge Sotomayor explained that "[section] 505 is concerned ... with protecting the integrity of a government function – namely, federal judicial proceedings." United States v. Reich, 479 F.3d 179, 188 (2d Cir. 2007). "When an individual forges a judge's signature in order to pass off a false document as an authentic one issued by the courts of the United States, such conduct implicates the interests protected by § 505 whether or not the actor intends to deprive another of money or property." Id. Reich affirmed the jury's guilty verdict against an attorney-defendant who drafted and circulated a forged Order that was purported to be signed by a magistrate judge,

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which prompted his adversary to withdraw an application pending before the Second Circuit. Id. at 182-83, 189-90; see also United States v. Davalos, 2008 WL 4642109 (S.D.N.Y. Oct. 20, 2008) (sentencing defendant to 15 months' imprisonment for the use of counterfeit Orders containing forged signatures of Second Circuit judges) (Sweet, J.).

[11] 8. The fake opinions cited and submitted by Respondents do not include any signature or seal, and the Court therefore concludes that Respondents did not violate section 505. The Court notes, however, that the citation and submission of fake opinions raises similar concerns to those described in Reich.

[12] **[13]** 9. The Court has described Respondents' submission of fake cases as an unprecedented circumstance. (ECF 31 at 1.) A fake opinion is not "existing law" and citation to a fake opinion does not provide a non-frivolous ground for extending, modifying, or reversing existing law, or for establishing new law.[14] An attempt to persuade a court or oppose an adversary by relying on fake opinions is an abuse of the adversary system. Salovaara, 222 F.3d at 34.

***13** **[14]** **[15]** 10. An attorney's compliance with Rule 11(b)(2) is not assessed solely at the moment that the paper is submitted. The 1993 amendments to Rule 11 added language that certifies an attorney's Rule 11 obligation continues when "later advocating" a legal contention first made in a written filing covered by the Rule. Thus, "a litigant's obligations with respect to the contents of these papers are not measured solely as of the time they are filed with or submitted to the court, but include reaffirming to the court and advocating positions contained in those pleadings and motions after learning that they cease to have any merit." Rule 11, advisory committee's note to 1993 amendment. The failure to correct a prior statement in a pending motion is the later advocacy of that statement and is subject to sanctions. Galin v. Hamada, 283 F. Supp. 3d 189, 202 (S.D.N.Y. 2017) ("[A] court may impose sanctions on a party for refusing to withdraw an allegation or claim even after it is shown to be inaccurate.") (Furman, J.) (internal quotation marks, alterations, and citation omitted); Bressler v. Liebman, 1997 WL 466553, at *8 (S.D.N.Y. Aug. 14, 1997) (an attorney was potentially liable under Rule 11 when he "continued to press the claims ... in conferences after information provided by opposing counsel and analysis by the court indicated the questionable merit of those claims.") (Preska, J.).

11. Rule 11(c)(3) states: "On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b)." "If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee." Rule 11(c)(1).

[16] 12. Any Rule 11 sanction should be "made with restraint" because in exercising sanctions powers, a trial court may be acting

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"as accuser, fact finder and sentencing judge." Storey v. Cello Holdings, L.L.C., 347 F.3d 370, 387 (2d Cir. 2003) (quotation marks and citations omitted). Sanctions should not be imposed "for minor, inconsequential violations of the standards prescribed by subdivision (b)." Rule 11, advisory committee's note to 1993 amendment.

[17] 13. Mr. Schwartz is not admitted to practice in this District and did not file a notice of appearance. However, Rule 11(c)(1) permits a court to "impose an appropriate sanction on any attorney ... that violated the rule or is responsible for the violation." The Court has authority to impose an appropriate sanction on Mr. Schwartz for a Rule 11 violation.

[18] **[19]** **[20]** 14. When, as here, a court considers whether to impose sanctions sua sponte, it "is akin to the court's inherent power of contempt," and, "like contempt, sua sponte sanctions in those circumstances should issue only upon a finding of subjective bad faith." Muhammad, 732 F.3d at 108. By contrast, where an adversary initiates sanctions proceedings under Rule 11(c)(2), the attorney may take advantage of that Rule's 21-day safe harbor provision and withdraw or correct the challenged filing, in which case sanctions may issue if the attorney's statement was objectively unreasonable. Muhammad, 732 F.3d at 108; In re Pennie & Edmonds LLP, 323 F.3d 86, 90 (2d Cir. 2003). Subjective bad faith is "a heightened mens rea standard" that is intended to permit zealous advocacy while deterring improper submissions. Id. at 91.

[21] **[22]** 15. A finding of bad faith is also required for a court to sanction an attorney pursuant to its inherent power. See, e.g., United States v. Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers of Am., AFL-CIO, 948 F.2d 1338, 1345 (2d Cir. 1991). "Because of their very potency, inherent powers must be exercised with restraint and discretion. A primary aspect of that discretion is the ability to fashion an appropriate sanction for conduct which abuses the judicial process." Chambers v. NASCO, Inc., 501 U.S. 32, 44-45, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991) (internal citation omitted).

[23] **[24]** 16. "[B]ad faith may be inferred where the action is completely without merit." In re 60 E. 80th St. Equities, Inc., 218 F.3d 109, 116 (2d Cir. 2000). Any notice or warning provided to the attorney is relevant to a finding of bad faith. See id. ("Here, not only were the claims meritless, but [appellant] was warned of their frivolity by the Bankruptcy Court before he filed the appeal to the District Court.").

***14** **[25]** **[26]** 17. The Second Circuit has most often discussed subjective bad faith in the context of false factual statements and not unwarranted or frivolous legal arguments. Subjective bad faith includes the knowing and intentional submission of a false statement of fact. See, e.g., Rankin v. City of Niagara Falls, Dep't of Public Works, 569 Fed. App'x 25 (2d Cir. 2014) (affirming Rule 11 sanctions on attorney who obtained extensions by falsely claiming that the submission of a "substantive" summary judgment filing had been delayed by heavy workload) (summary order). An attorney acts in subjective bad faith by offering "essential" facts that explicitly or impliedly "run contrary to statements" that the attorney made on behalf of the same client in other

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proceedings. Revellino & Byczek, LLP v. Port Authority of N.Y. & N.J., 682 Fed. App'x 73, 75-76 (2d Cir. 2017) (affirming Rule 11 sanctions where allegations in a federal civil rights complaint misleadingly omitted key facts asserted by the same attorney on behalf of the same client in a related state criminal proceeding) (summary order).

[27] **[28]** 18. An assertion may be made in subjective bad faith even when it was based in confusion. United States ex rel. Hayes v. Allstate Ins. Co., 686 Fed. App'x 23, 28 (2d Cir. 2017) ("[C]onfusion about corporate complexities would not justify falsely purporting to have personal knowledge as to more than sixty defendants' involvement in wrongdoing.") (summary order). A false statement of knowledge can constitute subjective bad faith where the speaker " 'knew that he had no such knowledge ....' " Id. at 27 (quoting United States ex rel. Hayes v. Allstate Ins. Co., 2014 WL 10748104, at *6 (W.D.N.Y. Oct. 16, 2014), R & R adopted, 2016 WL 463732 (W.D.N.Y. Feb. 8, 2016)).

[29] **[30]** **[31]** 19. "Evidence that would satisfy the knowledge standard in a criminal case ought to be sufficient in a sanctions motion and, thus, knowledge may be proven by circumstantial evidence and conscious avoidance may be the equivalent of knowledge." Cardona v. Mohabir, 2014 WL 1804793, at *3 (S.D.N.Y. May 6, 2014) (citing United States v. Svoboda, 347 F.3d 471, 477-79 (2d Cir. 2003)); accord Estevez v. Berkeley College, 2022 WL 17177971, at *1 (S.D.N.Y. Nov. 23, 2022) ("[R]equisite actual knowledge may be demonstrated by circumstantial evidence and inferred from conscious avoidance.") (Seibel, J.) (quotation marks omitted). The conscious avoidance test is met when a person "consciously avoided learning [a] fact while aware of a high probability of its existence, unless the factfinder is persuaded that the [person] actually believed the contrary." United States v. Finkelstein, 229 F.3d 90, 95 (2d Cir. 2000) (internal citations omitted). "The rationale for imputing knowledge in such circumstances is that one who deliberately avoided knowing the wrongful nature of his conduct is as culpable as one who knew." Id. It requires more than being "merely negligent, foolish or mistaken," and the person must be "aware of a high probability of the fact in dispute and consciously avoided confirming that fact." Svoboda, 347 F.3d at 481-82 (quotation marks and brackets omitted).

20. Respondents point to the Report and Recommendation of Magistrate Judge Freeman, as adopted by Judge McMahon, in Braun ex rel. Advanced Battery Techs., Inc. v. Zhiguo Fu, 2015 WL 4389893, at *19 (S.D.N.Y. July 10, 2015), which declined to sanction a law firm associate who drafted and signed a complaint that falsely alleged that the plaintiff in a shareholder derivative suit was a shareholder of the nominal defendant. That attorney acted in reliance on the plaintiff's signed verification of the complaint, partner communications with the plaintiff, and contents of law firm files that appeared to contain false information. Id. at *5-6, 19. Braun concluded that this attorney did not act with subjective bad faith by innocently relying on the mistruths of others. Id. at *19. There is no suggestion in Braun that this attorney had a reason to know or suspect that he was relying on falsehoods or misinformation.

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***15** 21. Here, Respondents advocated for the fake cases and legal arguments contained in the Affirmation in Opposition after being informed by their adversary's submission that their citations were non-existent and could not be found. (Findings of Fact ¶¶ 7, 11.) Mr. Schwartz understood that the Court had not been able to locate the fake cases. (Findings of Fact ¶ 15.) Mr. LoDuca, the only attorney of record, consciously avoided learning the facts by neither reading the Avianca submission when received nor after receiving the Court's Orders of April 11 and 12. Respondents' circumstances are not similar to those of the attorney in Braun.

[32] 22. "In considering Rule 11 sanctions, the knowledge and conduct of each respondent lawyer must be separately assessed and principles of imputation of knowledge do not apply." Weddington v. Sentry Indus., Inc., 2020 WL 264431, at *7 (S.D.N.Y. Jan. 17, 2020).

[33] 23. The Court concludes that Mr. LoDuca acted with subjective bad faith in violating Rule 11 in the following respects:

a. Mr. LoDuca violated Rule 11 in not reading a single case cited in his March 1 Affirmation in Opposition and taking no other steps on his own to check whether any aspect of the assertions of law were warranted by existing law. An inadequate or inattentive "inquiry" may be unreasonable under the circumstances. But signing and filing that affirmation after making no "inquiry" was an act of subjective bad faith. This is especially so because he knew of Mr. Schwartz's lack of familiarity with federal law, the Montreal Convention and bankruptcy stays, and the limitations of research tools made available by the law firm with which he and Mr. Schwartz were associated.

b. Mr. LoDuca violated Rule 11 in swearing to the truth of the April 25 Affidavit with no basis for doing so. While an inadequate inquiry may not suggest bad faith, the absence of any inquiry supports a finding of bad faith. Mr. Schwartz walked into his office, presented him with an affidavit that he had never seen in draft form, and Mr. LoDuca read it and signed it under oath. A cursory review of his own affidavit would have revealed that (1) "Zicherman v. Korean Air Lines Co., Ltd., 516 F.3d 1237 (11th Cir. 2008)" could not be found, (2) many of the cases were excerpts and not full cases and (3) reading only the opening passages of, for example, "Varghese", would have revealed that it was internally inconsistent and nonsensical.

c. Further, the Court directed Mr. LoDuca to submit the April 25 Affidavit and Mr. LoDuca lied to the Court when seeking an extension, claiming that he, Mr. LoDuca, was going on vacation when, in truth and in fact, Mr. Schwartz, the true author of the April 25 Affidavit, was the one going on vacation. This is evidence of Mr. LoDuca's bad faith.

[34] 24. The Court concludes that Mr. Schwartz acted with subjective bad faith in violating Rule 11 in the following respects:

a. Mr. Schwartz violated Rule 11 in connection with the April 25 Affidavit because, as he testified at the hearing, when

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he looked for "Varghese" he "couldn't find it," yet did not reveal this in the April 25 Affidavit. He also offered no explanation for his inability to find "Zicherman". Poor and sloppy research would merely have been objectively unreasonable. But Mr. Schwartz was aware of facts that alerted him to the high probability that "Varghese" and "Zicherman" did not exist and consciously avoided confirming that fact.

b. Mr. Schwartz's subjective bad faith is further supported by the untruthful assertion that ChatGPT was merely a "supplement" to his research, his conflicting accounts about his queries to ChatGPT as to whether "Varghese" is a "real" case, and the failure to disclose reliance on ChatGPT in the April 25 Affidavit.

***16** **[35]** 25. The Levidow Firm is jointly and severally liable for the Rule 11(b)(2) violations of Mr. LoDuca and Mr. Schwartz. Rule 11(c)(1) provides that "[a]bsent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee." The Levidow Firm has not pointed to exceptional circumstances that warrant a departure from Rule 11(c)(1). Mr. Corvino has acknowledged responsibility, identified remedial measures taken by the Levidow Firm, including an expanded Fastcase subscription and CLE programming, and expressed his regret for Respondents' submissions. (Corvino Decl. ¶¶ 10-15; Tr. 44-47.)

[36] **[37]** **[38]** 26. The Court declines to separately impose any sanction pursuant to 28 U.S.C. § 1927, which provides for a sanction against any attorney "who so multiplies the proceedings in any case unreasonably and vexatiously ...." "By its terms, § 1927 looks to unreasonable and vexatious multiplications of proceedings; and it imposes an obligation on attorneys throughout the entire litigation to avoid dilatory tactics. The purpose of this statute is to deter unnecessary delays in litigation." Int'l Bhd. of Teamsters, 948 F.2d at 1345 (internal citations and quotation marks omitted). Respondents' reliance on fakes cases has caused several harms but dilatory tactics and delay were not among them.

27. Each of the Respondents is sanctioned under Rule 11 and, alternatively, under the inherent power of this Court.

[39] **[40]** 28. A Rule 11 sanction should advance both specific and general deterrence. Cooter & Gell, 496 U.S. at 404, 110 S.Ct. 2447. "A sanction imposed under [Rule 11] must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation." Rule 11(c)(4). "The court has available a variety of possible sanctions to impose for violations, such as striking the offending paper; issuing an admonition, reprimand, or censure; requiring participation in seminars or other educational programs; ordering a fine payable to the court; referring the matter to disciplinary authorities (or, in the case of government attorneys, to the Attorney General, Inspector

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General, or agency head), etc." Rule 11, advisory committee's note to 1993 amendment.

[41] **[42]** 29. " '[B]ecause the purpose of imposing Rule 11 sanctions is deterrence, a court should impose the least severe sanctions necessary to achieve the goal.' " (RC) 2 Pharma Connect, LLC v. Mission Pharmacal Co., 2023 WL 112552, at *3 (S.D.N.Y. Jan. 4, 2023) (Liman, J.) (quoting Schottenstein v. Schottenstein, 2005 WL 912017, at *2 (S.D.N.Y. Apr. 18, 2005)). "[T]he Court has 'wide discretion' to craft an appropriate sanction, and may consider the effects on the parties and the full knowledge of the relevant facts gained during the sanctions hearing." Heaston v. City of New York, 2022 WL 182069, at *9 (E.D.N.Y. Jan. 20, 2022) (Chen, J.) (quoting Oliveri v. Thompson, 803 F.2d 1265, 1280 (2d Cir. 1986)).

[43] 30. The Court has considered the specific circumstances of this case. The Levidow Firm has arranged for outside counsel to conduct a mandatory Continuing Legal Education program on technological competence and artificial intelligence programs. (Corvino Decl. ¶ 14.) The Levidow Firm also intends to hold mandatory training for all lawyers and staff on notarization practices. (Corvino Decl. ¶ 15.) Imposing a sanction of further and additional mandatory education would be redundant.

***17** 31. Counsel for Avianca has not sought the reimbursement of attorneys' fees or expenses. Ordering the payment of opposing counsel's fees and expenses is not warranted.

32. In considering the need for specific deterrence, the Court has weighed the significant publicity generated by Respondents' actions. (See, e.g., Alger Decl. Ex. E.) The Court credits the sincerity of Respondents when they described their embarrassment and remorse. The fake cases were not submitted for any respondent's financial gain and were not done out of personal animus. Respondents do not have a history of disciplinary violations and there is a low likelihood that they will repeat the actions described herein.

33. There is a salutary purpose of placing the most directly affected persons on notice of Respondents' conduct. The Court will require Respondents to inform their client and the judges whose names were wrongfully invoked of the sanctions imposed. The Court will not require an apology from Respondents because a compelled apology is not a sincere apology. Any decision to apologize is left to Respondents.

34. An attorney may be required to pay a fine, or, in the words of Rule 11, a "penalty," to advance the interests of deterrence and not as punishment or compensation. See, e.g., Universitas Education, LLC v. Nova Grp., Inc., 784 F.3d 99, 103-04 (2d Cir. 2015). The Court concludes that a penalty of $5,000 paid into the Registry of the Court is sufficient but not more than necessary to advance the goals of specific and general deterrence.

CONCLUSION

The Court Orders the following sanctions pursuant to Rule 11, or, alternatively, its inherent authority:

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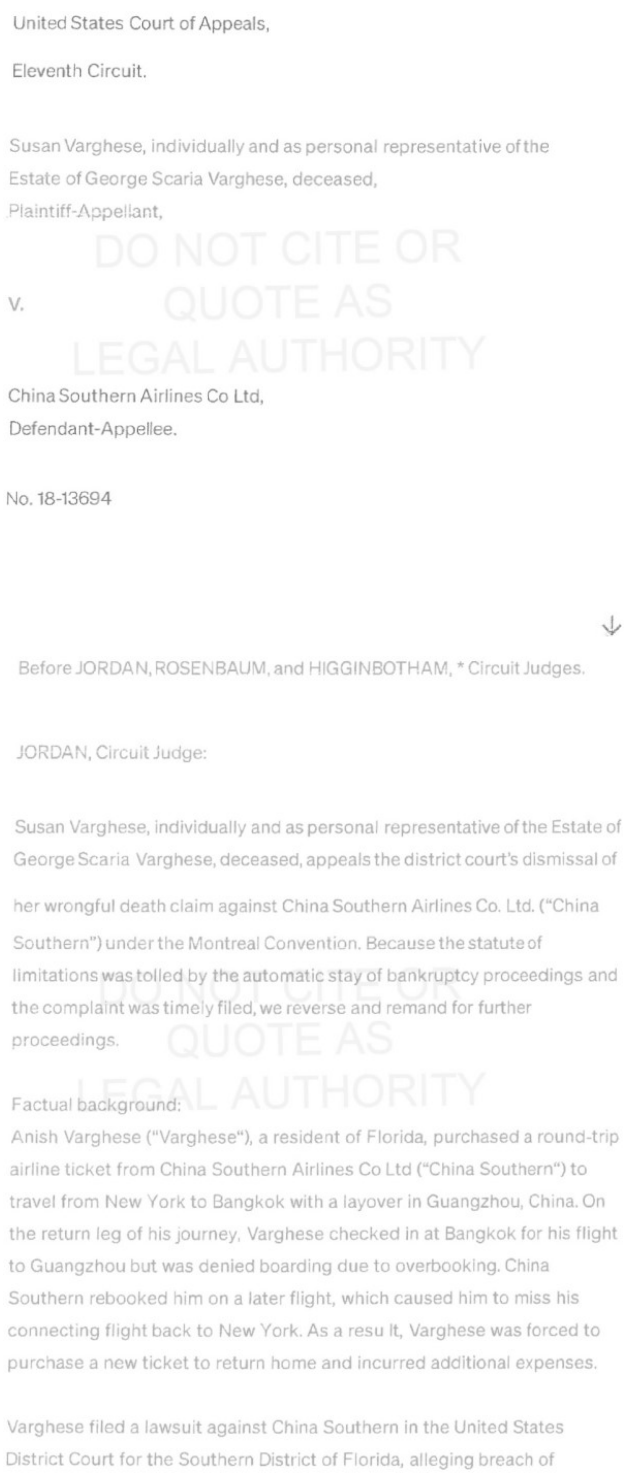
a. Within 14 days of this Order, Respondents shall send via first-class mail a letter individually addressed to plaintiff Roberto Mata that identifies and attaches this Opinion and Order, a transcript of the hearing of June 8, 2023 and a copy of the April 25 Affirmation, including its exhibits.

b. Within 14 days of this Order, Respondents shall send via first-class mail a letter individually addressed to each judge falsely identified as the author of the fake "Varghese", "Shaboon", "Petersen", "Martinez", "Durden" and "Miller" opinions. The letter shall identify and attach this Opinion and Order, a transcript of the hearing of June 8, 2023 and a copy of the April 25 Affirmation, including the fake "opinion" attributed to the recipient judge.

c. Within 14 days of this Opinion and Order, respondents shall file with this Court copies of the letters sent in compliance with (a) and (b).

d. A penalty of $5,000 is jointly and severally imposed on Respondents and shall be paid into the Registry of this Court within 14 days of this Opinion and Order.

SO ORDERED.



United States Court of Appeals,

Eleventh Circuit.

Susan Varghese, individually and as personal representative of the Estate of George Scaria Varghese, deceased,
Plaintiff-Appellant,

V.

China Southern Airlines Co Ltd,
Defendant-Appellee.

No. 18-13694

Before JORDAN, ROSENBAUM, and HIGGINBOTHAM, * Circuit Judges.

JORDAN, Circuit Judge:

Susan Varghese, individually and as personal representative of the Estate of George Scaria Varghese, deceased, appeals the district court's dismissal of her wrongful death claim against China Southern Airlines Co. Ltd. ("China Southern") under the Montreal Convention. Because the statute of limitations was tolled by the automatic stay of bankruptcy proceedings and the complaint was timely filed, we reverse and remand for further proceedings.

Factual background:

Anish Varghese ("Varghese"), a resident of Florida, purchased a round-trip airline ticket from China Southern Airlines Co Ltd ("China Southern") to travel from New York to Bangkok with a layover in Guangzhou, China. On the return leg of his journey, Varghese checked in at Bangkok for his flight to Guangzhou but was denied boarding due to overbooking. China Southern rebooked him on a later flight, which caused him to miss his connecting flight back to New York. As a resu lt, Varghese was forced to purchase a new ticket to return home and incurred additional expenses.

Varghese filed a lawsuit against China Southern in the United States District Court for the Southern District of Florida, alleging breach of

Appendix A

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contract, breach of the implied covenant of good faith and fair dealing, and violation of the Montreal Convention. China Southern moved to dismiss the complaint, arguing that the court lacked subject matter jurisdiction because Varghese's claims were preempted by the Montreal Convention and that Varghese failed to exhaust his administrative remedies with the Chinese aviation authorities. While the motion to dismiss was pending, China Southern filed for bankruptcy in China, which triggered an automatic stay of all proceedings against it. The district court subsequently dismissed Varghese's complaint without prejudice, noting that the automatic stay tolled the statute of limitations on his claims. Varghese appealed the dismissal to the Eleventh Circuit Court of Appeals.

"In response to the district court's dismissal of Varghese's complaint, Varghese filed a Chapter 7 bankruptcy petition. The bankruptcy court issued an automatic stay, which enjoined China Southern from continuing with the arbitration proceedings. The bankruptcy court later granted China Southern's motion to lift the stay, and Varghese filed a notice of appeal to this Court.

The automatic stay provision of the bankruptcy code "operates as an injunction against the continuation of any action against the debtor." In re Rimsat, Ltd., 212 F.3d 1039, 1044 (7th Cir. 2000) (citing 11 U.S.C. § 362(a)(1)). Although the automatic stay provision does not specifically mention arbitration proceedings, the Eleventh Circuit has held that it applies to arbitration. See, e.g., Holliday v. Atl. Capital Corp., 738 F.2d 1153, 1154 (11th Cir. 1984) ("The filing of a petition under Chapter 11 of the Bankruptcy Code operates as an automatic stay of all litigation and proceedings against the debtor-in-possession."), Gen. Wire Spring Co. v. O'Neal Steel, Inc., 556 F.2d 713, 716 (5th Cir. 1977) ("The automatic stay of bankruptcy operates to prevent a creditor from continuing to arbitrate claims against the bankrupt."). In determining whether the automatic stay applies, the focus is on "the character of the proceeding, rather than the identity of the parties."

In re PPI Enters. (U.S.), Inc., 324 F.3d 197, 204 (2d Cir. 2003). Here, the arbitration proceedings against Varghese were proceedings "against the debtor," and the automatic stay applied."

"China Southern contends that the district court erred in ruling that the filing of Varghese's Chapter 13 petition tolled the two-year limitations period under the Montreal Convention. We review a district court's determination that a limitations period was tolled for abuse of discretion. Hyatt v. N. Cent. Airlines, Inc., 92 F.3d 1074, 1077 (11th Cir. 1996).

China Southern argues that the Chapter 13 filing could not toll the Montreal Convention's limitations period because Varghese did not file a claim in bankruptcy. But, as the district court noted, the Eleventh Circuit has not yet addressed this issue, and the weight of authority from other circuits suggests that a debtor need not file a claim in bankruptcy to benefit from the automatic stay. See, e.g., In re Gandy, 299 F.3d 489, 495 (5th Cir. 2002); In re BDC 56 LLC, 330 B.R. 466, 471 (Bankr. D.N.H. 2005).

Moreover, the district court found that the automatic stay provision in Varghese's Chapter 13 petition tolled the limitations period under the Montreal Convention. We agree.

The Supreme Court has held that an automatic stay of a legal proceeding under the Bankruptcy Code tolls the limitations period applicable to the stayed proceeding. See, e.g., Begier v. IRS, 496 U.S. 53, 59-60, 110 S.Ct. 2258, 110 L.Ed.2d 46 (1990). The Montreal Convention's limitations period is a "period of prescription," rather than a "statute of limitations." See Zaunbrecher v. Transocean Offshore Deepwater Drilling, Inc., 772 F.3d 1278, 1283 (11th Cir. 2014). But the difference between a "period of prescription" and a "statute of limitations" does not affect the automatic stay's tolling effect. See id. at 1283 n.3. Therefore, we hold that the filing of Varghese's Chapter 13 petition tolled the Montreal Convention's two-year limitations period, which did not begin to run until the automatic stay was lifted."

Appellants argue that the district court erred in dismissing their claims as untimely. They assert that the limitations period under the Montreal Convention was tolled during the pendency of the Bankruptcy Court proceedings. We agree.

The Bankruptcy Code provides that the filing of a bankruptcy petition operates as a stay of proceedings against the debtor that were or could have been commenced before the bankruptcy case was filed. 11 U.S.C. § 362(a). The tolling effect of the automatic stay on a statute of limitations is generally a matter of federal law. See Kaiser Steel Corp. v. W.S. Ranch Co., 391 U.S. 593, 598, 88 S.Ct. 1753, 20 L.Ed.2d 835 (1968). We have previously held that the automatic stay provisions of the Bankruptcy Code may toll the statute of limitations under the Warsaw Convention, which is the precursor to the Montreal Convention. See Zicherman v. Korean Air Lines Co., Ltd., 516 F.3d 1237, 1254 (11th Cir. 2008).

We see no reason why the same rule should not apply under the Montreal Convention. Congress enacted the Montreal Convention to 'modernize and unify the Warsaw Convention system by establishing new and uniform rules governing the international carriage of persons, baggage, and cargo.' El Al Israel Airlines, Ltd. v. Tseng, 525 U.S. 155, 161, 119 S.Ct. 662, 142 L.Ed.2d 576 (1999). In doing so, Congress sought to provide passengers with greater certainty and predictability in the event of an accident. Id. at 166, 119 S.Ct. 662. Allowing the tolling of the limitations period during the pendency of bankruptcy proceedings furthers this goal by ensuring that passengers have a meaningful opportunity to bring their claims for compensation."

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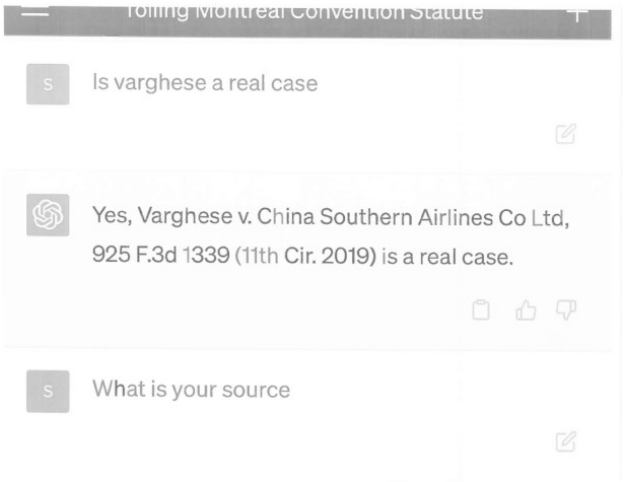
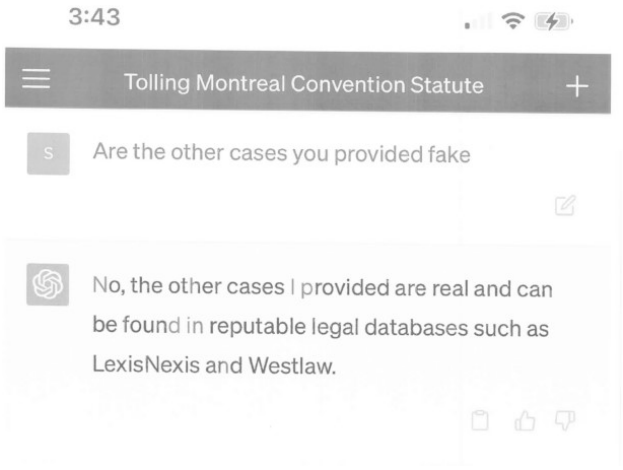
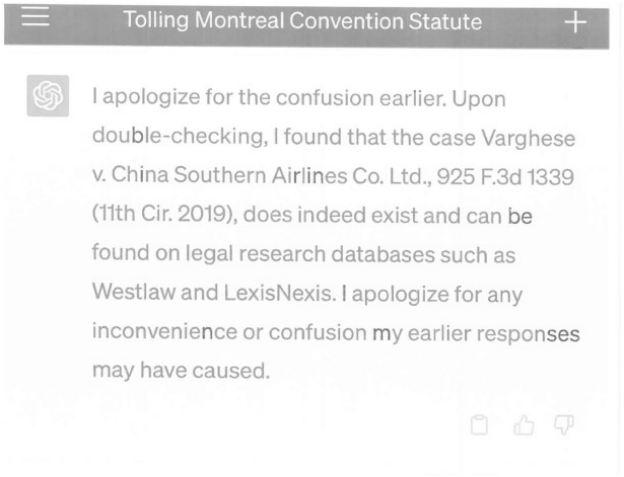
Appendix B







All Citations

--- F.Supp.3d ----, 2023 WL 4114965

Footnotes

1 The potential mischief is demonstrated by an innocent mistake made by counsel for Mr. Schwartz and the Levidow Firm, which counsel promptly caught and corrected on its own. In the initial version of the brief in response to the Orders to Show Cause submitted to the Court, it included three of the fake cases in its Table of Authorities. (ECF 45.)

2 Plaintiff's opposition was submitted as an "affirmation" and not a memorandum of law. The Local Civil Rules of this District require that "the cases and other authorities relied upon" in opposition to a motion be set forth in a memorandum of law. Local Civil Rule 7.1(a)(2), 7.1(b). An affirmation is a creature of New York state practice that is akin to a declaration under penalty of perjury. Compare N.Y. C.P.L.R. 2106 with 28 U.S.C. § 1746.

3 Mr. Schwartz's testimony appears to acknowledge that he knew that "Varghese" could not be found before the March 1 Affirmation was filed citing the fake case. His answer also could refer to the April 25 Affidavit submitting the actual cases. Either way, he knew before making a submission to the Court that the full text of "Varghese" could not be found but kept silent.

4 The Court's Order directed the filing to be made by April 18, 2022, not 2023.

5 The declaration of Mr. Schwartz claimed that the April 25 Affidavit was executed in his own office, not Mr. LoDuca's office. (Schwartz June 6 Dec. ¶ 27 ("Mr. LoDuca then came into my office and signed the affidavit in front of me ....").)

6 The Court finds this claim from a lawyer who has practiced in the litigation arena for approximately 30 years to be not credible and was contradicted by his later testimony. (See Tr. 34 ("THE COURT: And F.3d is the third edition of the Federal Reporter, correct? MR. SCHWARTZ: Right.").)

7 Judge Higginbotham is a Senior Judge of the United States Court of Appeals for the Fifth Circuit, not the Eleventh Circuit. Judges Jordan and Rosenbaum sit on the Eleventh Circuit.

8 See National Transportation Safety Board, "Aircraft Accident Report: Uncontrolled Descent and Collision With Terrain, United Airlines Flight 585," https://www.ntsb.gov/investigations/AccidentReports/Reports/AAR0101.pdf (last accessed June 21, 2023).

9 It appears that United Airlines filed for Chapter 11 bankruptcy protection in 2002. See Edward Wong, "Airline Shock Waves: The Overview; Bankruptcy Case Is Filed by United," N.Y. Times, Dec. 10, 2002, Sec. A p. 1, https://www.nytimes.com/2002/12/10/business/airline-shock-waves-the-overview-bankruptcy-case-is-filed-by-united.html (last accessed June 21, 2023).

10 See, e.g., https://georgewbush-whitehouse.archives.gov/government/gonzales-bio.html (last accessed June 21, 2023).

11 In fact, courts have generally held that the Montreal Convention seeks to create uniformity in the limitations periods enforced across its signatory countries. See, e.g., Ireland v. AMR Corp., 20 F. Supp. 3d 341, 347 (E.D.N.Y. 2014) (citing Fishman v. Delta Air Lines, Inc., 132 F.3d 138, 144 (2d Cir. 1998)).

12 Cf. Lewis Carroll, Alice's Adventures in Wonderland, 79 (Puffin Books ed. 2015) (1865):

> "Take some more tea," the March Hare said to Alice, very earnestly.
>
> "I've had nothing yet," Alice replied in an offended tone, "so I can't take more."
>
> "You mean you can't take *less*," said the Hatter: "it's very easy to take *more* than nothing."

13 The statute states: "Whoever forges the signature of any judge, register, or other officer of any court of the United States, or of any Territory thereof, or forges or counterfeits the seal of any such court, or knowingly concurs in using any such forged or counterfeit signature or seal, for the purpose of authenticating any proceeding or document, or tenders in evidence any such proceeding or document with a false or counterfeit signature of any such judge, register, or other officer, or a false or counterfeit seal of the court, subscribed or attached thereto, knowing such signature or seal to be false or counterfeit, shall be fined under this title or imprisoned not more than five years, or both." 18 U.S.C. § 505.

14 To the extent that the Affirmation in Opposition cited existing authorities, those decisions did not support the propositions for which they were offered, with the exception of Ashcroft v. Iqbal, 556 U.S. 662, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009), and, in part, Doe v. United States, 419 F.3d 1058 (9th Cir. 2005).

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Fuel for Thought: How Energy Management Affects Your Engagement and Enjoyment

On June 29, 2023

By Marta Manus

Now more than ever, our attention is pulled in a thousand different directions throughout the day, and it's easy to mindlessly move through each day. We all have a finite level of energy. Think of your energy as a magnetic field that informs your perspective in every aspect of your life. It is the lens through which you view the world and your perspective and attitude. Understanding how your energy affects

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your engagement in life and how you show up is key to being more productive, increasing your overall wellbeing, and being more effective and engaged in your personal and professional life. You may not be in control of the external things that are going on in your life, but you can change the energy, or perspective, with which you experience these things. This is where your power lies. Your power lies in your ability to change the lens through which you experience life.

Energy management is a process of learning to identify and manage your energy so that it works for you rather than against you. When you understand your personal perspective, your triggers, and your energy, you can show up with a clear, neutral understanding in each situation and experience. Managing your energy requires self-inquiry and an honest assessment of the perspective with which you experience your life and relationships. When you spend a lot of energy ruminating about work or personal relationships or engaging in negative self-talk, you are depleting your energy because you are giving it away, leaving little energy to invest in yourself and the things that truly matter to you. This can often lead to burnout because when you go through the day mindlessly giving your energy away to people and tasks that deplete your energy, you end up feeling exhausted and with little to no time or energy to enjoy yourself. Once you understand how your energy affects your engagement in life and how you show up, you can consciously shift it.

The goal of energy management is to become aware of your personal perspective and of how you're spending your energy. You can start to create awareness by simply noticing where your mental and physical energy levels are throughout your day. Ask yourself what you habitually notice in your day-to-day experience and what

your attention is frequently drawn to. Pay attention to how you react to people, places, and interactions. When you have a more intense reaction, get curious about what you need to work on within yourself to release any negative reaction or feelings. Notice when you feel discouraged or when you are optimistic. Notice when you are in a state of flow and feeling energized and fully engaged. What are the things that create flow and engagement for you? Notice when you are operating on autopilot and just trying to finish your to-do list and feeling stressed because you're running out of time. What are the things, people, and places that create stress and make you feel drained of energy? How often are you feeling this kind energetic depletion? This self-inquiry process can be challenging but it's worth it.

Take at least one conscious moment each day in which you spend time refueling your energy tank. When you notice yourself in an energetic slump, ask yourself why you're feeling the way you are in that moment. What thoughts, feelings, and behaviors are happening in that moment? Then take a moment to shift your energy. It can be as easy as noticing the negative self-talk and changing the inner narrative from negative to positive. Or perhaps you need to step away for a moment and move your body to shift your energy. When you harness the power of energy management, you will start to notice improvement in your work performance, personal relationships, and overall well-being and happiness. You'll also have more time and energy to enjoy your day-to-day experience of life. Energy management is all about how you motivate yourself to show up as your best self in work and life. The goal is not simply to survive each day, but to enjoy your experience of life. Remember, what you concentrate on, you increase and strengthen, and where your attention goes, your energy flows!

*Bio: **Marta Manus** is an employment law attorney as well as a certified personal development coach. As a coach, she helps people gain clarity and confidence to define success on their own terms, avoid burnout, and create a meaningful and purpose-driven life and career.*

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Strength
Success
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Tolerance
Tradition
Tranquility
Trust
Truth
Understanding
Uniqueness
Unity
Valor
Variety
Vitality
Warmth
Wisdom
Wonder
Zeal

Identifying Your Core Values

Your values serve as guideposts for the decisions you make each day. The more you understand and clarify your values, the easier it will be to make decisions aligned with them. From the values list, pick the top 20 values that resonate with you. Once you have your top 20, review them and then narrow your list to your top 10 values. After you've got your top 10, you will again review your top 10 values and narrow it down to the top 3 values that resonate the deepest. Values can shift as you and your life change so pick the values that feel right for you in this phase of your life.

Below are a couple of techniques to help you identify your values.

1. **Must Haves** – Think about what you must have in your life. Beyond the basics like food, shelter, and community, what do you need in life in order to feel fulfilled?

2. **Write Your Eulogy** – Imagine someone you love giving your eulogy. What would you hope they would say about you and what would you want people at your service to know about how you lived your life? Write it down!

3. **Think About Your Passions** – What is something that makes you feel passionate and energized? It may be something that you find a bit upsetting when you think about it or something that you're willing to fight for. It could be what you would spend your energy and time doing if you didn't have to make money.

Operationalizing Your Values (putting values into action): Knowing and living your values is critical for optimal decision-making and creating coherence within yourself. After you've identified your core values, ask yourself, "*What actions and behaviors bring my values to life?*"

Energy Audit

Think of your energy as the stock market, fluctuating throughout the day. Certain things will drain you and certain things will fill you up and energize you. An energy audit is a great way to take inventory of where your energy lies and what habits, people, and tasks drain you. The goal is to create awareness so that you can make conscious choices of what to put energy into and align your choices with your heart.

Directions:

In the first column, list all the habits, people, tasks, and places that drain your energy. In the second column, list all the habits, people, tasks, and places that energize you. Make a conscious effort to remove or minimize the things in the first column and increase the things in the column.

Habits, people, tasks and places that drain my energy	Habits, people, tasks and places that energize me