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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Scottsdale Capital Advisors Incorporated,

No. MC-18-00035-PHX-GMS

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Plaintiff,

ORDER

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v.

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Financial Industry Regulatory Authority
Incorporated,

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Defendant.

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Pending before this Court is the Claimant’s Notice of Motion and Motion to Enforce Subpoena in Arbitration and Request for Contempt Sanctions (Doc. 1). That motion is denied.

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On April 4, 2018, the Arizona FINRA Arbitration Panel issued a subpoena to FINRA which was personally served. The subpoena called both for On May 1, 2018, the Arizona Arbitration Panel ordered FINRA to immediately produce certain documents responsive to the subpoena. On May 8, 2018, the Arizona Arbitration Panel ordered FINRA to appear as a witness in the Arizona Arbitration. FINRA has refused to comply with either order.

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In this Circuit, the arbitration panel has no power to grant document discovery from third parties other than at a hearing. *CVS Health Corporation v. Vividus, LLC*, 878 F.3d 703, 708 (9th Cir. 2017). The Court therefore declines to enforce the subpoena to the extent that the May 1 order requires the non-party to provide pre-hearing document discovery.

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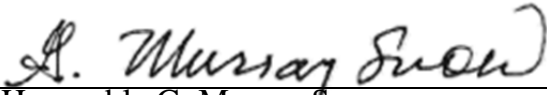
1 The Court further declines to enforce the subpoena to the extent that the May 8,
2 2018 order of the arbitration panel would require FINRA witness(es) that were party to
3 “communications between FINRA and Miller relating to Claimant” to appear as a witness
4 at an arbitration hearing in Scottsdale.

5 Fed. R. Civ. P. 45(c)(1)(A) specifies that “a subpoena may command a person to
6 attend a . . . hearing only . . . within 100 miles of where the person resides, is employed,
7 or regularly transacts business.” Defendant objects that no FINRA witness meeting the
8 criteria set forth in the subpoena “resides, is employed or regularly transacts business
9 within 100 miles of Scottsdale or the state of Arizona.” Plaintiff does not assert
10 otherwise, nor does it make any argument in its Reply that it has the authority to compel
11 the attendance of such witnesses at arbitration.¹

12 **IT IS THEREFORE ORDERED** that the Motion to Enforce Subpoena and for
13 Sanctions (Doc. 1) is denied.

14 **IT IS FURTHER ORDERED** that Counsel for Claimant shall show cause by
15 **July 13, 2018** why this Court should not schedule a hearing to sanction counsel pursuant
16 to the footnote below.

17 Dated this 3rd day of July, 2018.

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19 _____
20 Honorable G. Murray Snow
21 United States District Judge

23 ¹ The Court had previously instructed that no Reply was to be filed. Claimant
24 nevertheless filed a Reply without receiving leave of Court to do so. In that Reply
25 Plaintiff relied on various authorities from outside this Circuit for the proposition that this
26 Court could enforce the panel’s subpoena for a production of documents prior to the
27 hearing. Counsel nevertheless failed to cite the binding Ninth Circuit authority *CVS*
28 *Health Corporation v. Vividus, LLC*, 878 F.3d 703, 708 (9th Cir. 2017) which appears to
be directly adverse to the authorities cited by Claimant. This appears to violate ER
3.3(a)(2) of the Arizona Rules of Professional Conduct. These rules govern the conduct
of attorneys appearing before this Court. L.R. Civ. 83.2(e). This Court thus orders that
counsel for Claimant, no later than July 13, shall file an explanation with the Court not to
exceed five pages, why it should not schedule a disciplinary hearing pursuant to LRCiv.
83.2(a).