

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

SEP 18 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

DAVID M. SEMAS and METALAST,
INC., a Nevada corporation,

Plaintiffs - Appellants,

v.

CHEMETALL US, INC., a Delaware
corporation; et al.,

Defendants - Appellees,

CHEMEON SURFACE TECHNOLOGY,
LLC,

Intervenor-Defendant -
Appellee.

No. 24-6584

D.C. No.

3:19-cv-00125-CLB

District of Nevada,

Reno

MEMORANDUM¹

DAVID M. SEMAS and METALAST,
INC., a Nevada corporation,

Plaintiffs - Appellees,

v.

CHEMETALL US, INC., a Delaware
corporation; et al.,

No. 25-2477

D.C. No.

3:19-cv-00125-CLB

District of Nevada,

Reno

¹ This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Defendants - Appellees,
ALBEMARLE CORPORATION; et al.,
Defendants,
CHEMEON SURFACE TECHNOLOGY,
LLC,
Intervenor,

Mr. MARC Y. LAZO, Senior Litigation
Attorney,
Interested Party - Appellant.

DAVID M. SEMAS and METALAST,
INC.,
Plaintiffs - Appellees,
v.
Mr. MARC Y. LAZO, Senior Litigation
Attorney,
Interested Party - Appellee,
CHEMETALL US, INC.; et al.,
Defendants - Appellants,
ALBEMARLE CORPORATION; et al.,
Defendants,

No. 25-4111
D.C. No.
3:19-cv-00125-CLB
District of Nevada,
Reno

CHEMEON SURFACE TECHNOLOGY,
LLC,

Intervenor.

DAVID M. SEMAS and METALAST,
INC.,

Plaintiffs - Appellants,

v.

CHEMETALL US, INC.; et al.,

Defendants - Appellees,

and

MARC Y. LAZO, Senior Litigation
Attorney,

Interested Party - Appellee,

and

ALBEMARLE CORPORATION; et al.,

Defendants,

CHEMEON SURFACE TECHNOLOGY,
LLC,

Intervenor.

No. 25-4402

D.C. No.

3:19-cv-00125-CLB

District of Nevada,

Reno

Appeal from the United States District Court
for the District of Nevada
Carla Baldwin, Magistrate Judge, Presiding

Argued and Submitted August 12, 2026
Reno, Nevada

Before: OWENS, FORREST, and VANDYKE, Circuit Judges.

These consolidated appeals arise out of Plaintiffs-Appellants David Semas and his business Metalast Inc.'s (collectively, Semas) trademark-infringement action brought against Defendants-Appellees. Defendants are manufacturers and distributors for Chemeon Surface Technology, LLC, a business with which Semas was previously engaged in litigation over the same marks at issue in this case. *See Chemeon Surface Tech. v. Metalast Int'l, Inc.*, No. 3:15-CV-00294-CLB, 2021 WL 694815 (D. Nev. Feb. 23, 2021), *aff'd in part, vacated in part, remanded sub nom.*, *Chemeon Surface Tech. LLC v. Metalast Int'l, Inc.*, No. 21-15561, 2022 WL 1797316 (9th Cir. June 2, 2022). The district court dismissed Semas' claims as precluded based on the prior *Chemeon* action. Semas appeals that ruling, and Semas and his initial trial counsel, Marc Lazo, separately appeal the district court's award of attorney fees, for which Lazo was held jointly and severally liable as a sanction.¹ Finally, Defendants cross-appeal the district court's temporal limitation of the attorney-fee award. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

1. Preclusion. We review de novo a district court's dismissal of a complaint based on res judicata. *Media Rts. Techs., Inc. v. Microsoft Corp.*, 922 F.3d

¹Defendant Albemarle is not a party to the attorney-fee appeals.

1014, 1020 (9th Cir. 2019). Defendants sought dismissal of Semas’s claims under both claim and issue preclusion. Semas forfeited any challenge to issue preclusion below by not addressing it, but the district court nonetheless dismissed the case based only on claim preclusion. On appeal, Defendants again argued that he abandoned this dispositive issue. We agree.

Semas “effectively abandoned” any challenge he may have had to Defendants’ issue-preclusion defense by not addressing this defense before the district court. *Walsh v. Nev. Dep’t of Hum. Res.*, 471 F.3d 1033, 1037 (9th Cir. 2006); *see also Jenkins v. County of Riverside*, 398 F.3d 1093, 1095 n.4 (9th Cir. 2005) (“[Plaintiff] abandoned her other two claims by not raising them in opposition to the [defendant’s] motion for summary judgment.”). As we may affirm the district court “on any ground supported by the record even if the district court did not consider the issue,” we find no error in the dismissal of Semas’s claims, and we do not address claim preclusion. *Perfect 10, Inc. v. Visa Int’l Serv. Ass’n*, 494 F.3d 788, 794 (9th Cir. 2007).

2. Attorney Fees & Attorney Sanction. We review the award of attorney fees under the Lanham Act and state law and the imposition of sanctions for an abuse of discretion. *SunEarth, Inc. v. Sun Earth Solar Power Co.*, 839 F.3d 1179, 1181 (9th Cir. 2016) (en banc) (per curiam) (Lanham Act); *Kona Enters., Inc. v. Est. of Bishop*, 229 F.3d 877, 883 (9th Cir. 2000) (state law); *Lahiri v. Universal Music &*

Video Dist. Corp., 606 F.3d 1216, 1218 (9th Cir. 2010) (sanctions). In this context, a district court abuses its discretion if its decision “is based on an inaccurate view of the law or a clearly erroneous finding of fact.” *Parsons v. Ryan*, 949 F.3d 443, 453 (9th Cir. 2020) (citation omitted) (discussing fee awards); *see also Lahiri*, 606 F.3d at 1219 (discussing sanctions).

a. *Fees Under the Lanham Act.* The Lanham Act provides that reasonable attorney fees may be awarded to the prevailing party “in exceptional cases.” 15 U.S.C. § 1117(a). “[A]n ‘exceptional’ case is simply one that stands out from others with respect to the substantive strength of a party’s litigating position . . . or the unreasonable manner in which the case was litigated.” *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 572 U.S. 545, 554 (2014) (discussing fees under the Patent Act); *see also SunEarth*, 839 F.3d at 1180 (applying *Octane Fitness* to the Lanham Act). Exceptionality is based on “the ‘totality of the circumstances,’” “including ‘frivolousness, motivation, objective unreasonableness (both in the factual and legal components of the case) and the need in particular circumstances to advance considerations of compensation and deterrence.’” *SunEarth*, 839 F.3d at 1180–81 (quoting *Octane Fitness*, 572 U.S. at 554 & n.6). District courts assessing fee shifting under the Lanham Act are “exercising equitable discretion in light of the nonexclusive factors . . . and using a preponderance of the evidence standard.” *Id.*

The district court awarded fees only for the period between the filing of this case in the Central District of California and its transfer to the District of Nevada, relying on what it found to be “blatant forum shopping,” duplicity of the *Chemeon* litigation, a pattern of similar conduct by Lazo in other cases, and Lazo’s unprofessional behavior in conducting the litigation. We recently affirmed an award of attorney fees under the Lanham Act based in part on “litigation that strongly suggest[ed] forum shopping.” *ThermoLife Int’l, LLC v. BPI Sports*, No. 23-15903, 2026 WL 2409839; --F.4th -- (9th Cir. Aug. 18, 2026) (citation modified); *see also Mendocino Ry. v. Ainsworth*, 113 F.4th 1181, 1190 (9th Cir. 2024) (“[A]ny indication that a party sought to manipulate the litigation or behaved vexatiously to wind up in the forum of its choosing supports a finding of forum shopping.” (citation modified)). In doing so, we joined the chorus of our sister circuits who recognize that vexatious litigation and gamesmanship can warrant an award of attorney fees under the Lanham Act or the Patent Act’s parallel provision. *See, e.g., TE-TA-MA Truth Found.-Fam. of URI, Inc. v. World Church of the Creator*, 392 F.3d 248, 261 (7th Cir. 2004); *Securacomm Consulting, Inc. v. Securacom Inc.*, 224 F.3d 273, 279–82 (3d Cir. 2000); *Nat’l Ass’n of Pro. Baseball Leagues, Inc. v. Very Minor Leagues, Inc.*, 223 F.3d 1143, 1148 (10th Cir. 2000).

The district court’s factual finding that Semas filed in California “with the goal to harass Defendants” was not clearly erroneous. Further, although Lazo’s

abusive pattern of conduct post-dated the filing of this action, Semas and Lazo offer no reason why the court could not consider it in the “totality of the circumstances.” *SunEarth*, 839 F.3d at 1180 (citation omitted). And Semas’s argument that the district court improperly punished him for Lazo’s conduct, where he was not a party to the other cases mentioned by the district court, is not well-taken—all of the other cases referenced demonstrating abusive practices centered on the Metalast business, and there is no indication that Semas was unaware of or disapproved the litigation decisions at issue, namely, the decision to file this action in California.

Defendants cross-appeal the district court’s limited award of attorney fees for only the pre-transfer period, rather than the whole case. This contention also fails to persuade given the Supreme Court’s direction that an award of attorney fees under the exceptional-case standard is an exercise of the district court’s “equitable discretion” and “there is no precise rule or formula for making these determinations.” *Octane Fitness*, 572 U.S. at 554 (citation modified). We have previously upheld fee awards under the Lanham Act for less than the entire litigation. *See Cairns v. Franklin Mint Co.*, 292 F.3d 1139, 1157–58 (9th Cir. 2002). The district court’s findings that Semas and Lazo acted in bad faith and with the desire to harass Defendants concern the choice to file this action in California, *not* the

choice to file at all, and the limitation the court imposed was not an abuse of discretion.²

b. *Fees Under Nevada Law.* The district court also relied on Nevada Revised Statute § 18.010(2)(b) in awarding pre-transfer fees. Semas and Lazo argue this was error because initially the complaint asserted state-law claims only under California law. We disagree because the state that matters for purposes of this issue is the forum, not the jurisdiction on which Semas relied in asserting his claims. *See MRO Commc'ns, Inc. v. Am. Tel. & Tel. Co.*, 197 F.3d 1276, 1282 (9th Cir. 1999) (applying Nevada attorney-fee law to state-law claims arising under both Nevada and New Jersey law). Semas and Lazo do not dispute that § 18.010(2)(b)'s standard for awarding attorney fees is satisfied by a finding of exceptionality under the Lanham Act, so, for the reasons previously stated, we find no error in the district court's fee award.

c. *Lazo's Sanction.* Because fees were properly awarded under the Lanham Act and Nevada law, Lazo's only remaining challenge to his sanction is that

²It was also not an abuse of discretion for the district court to decline to take judicial notice of Semas's actions before the United States Patent and Trademark Office after it found the evidence irrelevant. *See Trader Joe's Co. v. Trader Joe's United*, 150 F.4th 1040, 1048 (9th Cir. 2025) (reviewing decision to take judicial notice for abuse of discretion).

he was never notified of or served with Defendants’ motion for attorney fees.³ The district court’s determination regarding the sufficiency of service is reviewed for an abuse of discretion, *Childs. ’ Health Def. v. Meta Platforms, Inc.*, 112 F.4th 742, 767 (9th Cir. 2024), but its underlying factual determinations are reviewed for clear error, *SEC v. Internet Sols. for Bus. Inc.*, 509 F.3d 1161, 1165 (9th Cir. 2007).

Rule 4 of the Federal Rules of Civil Procedure establishes the requirements for service. Lazo has forfeited any challenge to the district court’s conclusion that Defendants’ method of service was proper under Rule 4(e)(1) by failing to raise it in his opening brief. *See, e.g., Lewis v. Andes*, 95 F.4th 1166, 1181 n.7 (9th Cir. 2024). And the district court’s findings that Lazo’s statements and evidence purporting to demonstrate that Defendants never attempted to serve him were not credible and that the Defendants’ proof of service was “legitimate” are not clearly erroneous. Accordingly, we conclude that the district court did not abuse its discretion in determining that Lazo was properly served with Semas’s motion for attorney fees. And because he failed to appear following service, his additional arguments that he was never served with subsequent court orders and filings related to the motion are irrelevant. Fed. R. Civ. P. 5(a)(2).

AFFIRMED.

³We assume without deciding, as have the parties and the district court, that the motion was essentially a pleading against Lazo and was required to be served upon him under Federal Rule of Civil Procedure 4.