

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-22307

In the Matter of

EPIC CAPITAL WEALTH
ADVISORS, LLC

Respondent.

MOTION TO QUASH SUBPOENA

Pursuant to Rule 232(e) of the Commission’s Rules of Practice, 17 C.F.R. § 201.232(e), non-parties Theodore J. Hartl (“Mr. Hartl”) and the law firm Ballard Spahr LLP (the “Firm”), move to quash the untimely subpoena they received from David M. Anthony, on behalf of respondent Epic Capital Wealth Advisors, LLC because: (1) the requested documents are held *in custodia legis* in the Receivership Case (defined below) and are immune from civil process; (2) the subpoena violates the Receivership Order (defined below) and the federal *Barton* doctrine; (3) the subpoena seeks privileged and confidential information; and (4) it is unreasonable, oppressive, and unduly burdensome. In support of this Motion to Quash Subpoena (this “Motion”),¹ Mr. Hartl and the Firm respectfully state:

I. BACKGROUND

1. The Securities and Exchange Commission instituted these proceedings on November 8, 2024 pursuant to Section 203(c)(2)(B) of the Investment Advisers Act of 1940, as against Epic Capital Wealth Advisors, LLC. On January 23, 2025, the Commission issued its Order Setting Proceeding for Expedited Hearing on January 31, 2025.

¹ This Motion is combined with the “written brief of the points and authorities relied upon” under Rule 154(a), 17 C.F.R. § 201.154(a).

2. A hearing in this matter is scheduled for June 2, 2025.

3. More than three years ago, on March 1, 2022, Tung Chan, the Securities Commissioner for the State of Colorado, filed a complaint commencing Case No. 22CV30574 (the “Receivership Case”) in the District Court for the City and County of Denver, Colorado (the “Receivership Court”), against David M. Anthony, now the principal of Epic Capital Wealth Advisors, LLC, and against entities that Mr. Anthony previously operated in Colorado: Anthony Capital, LLC; Anthony Capital Bond Fund 1, LLC; Anthony Capital Funding, LLC; Anthony Capital Alternative Investments, LLC; Anthony Capital Alternative Investments Income One Fund, L.P.; Anthony Capital Alternative Investments Income Two Fund, LLC; Anthony Capital Alternative Investments Income Three Fund, LLC; Anthony Capital Alternative Investments Income Four Fund, LLC; Anthony Capital Alternative Investments Income Five Fund, LLC; Sidebysidequotes.com, LLC (together, the “Anthony Entities”).

4. On May 9, 2022, the Receivership Court entered its Order Appointing Receiver (the “Receivership Order”), appointing Randel Lewis as receiver (the “Receiver”) for certain assets of Mr. Anthony, the Anthony Entities, and affiliates. A certified copy of the Receivership Order is attached to this Motion as **Exhibit A**.

5. Mr. Hartl and the Firm are counsel of record for the Receiver in the Receivership Case, which remains pending in the Receivership Court. Mr. Hartl is a partner with the Firm.

6. On May 23, 2025, Mr. Anthony, on behalf of respondent Epic Capital Wealth Advisors, LLC, sent a Subpoena to Produce Documents (the “Subpoena”) to Mr. Hartl via e-mail, purportedly seeking production of virtually every document related to the pending Receivership Case, in addition to confidential and privileged communications that are related to the Receiver’s administration of the Receivership Case. Mr. Anthony’s e-mail was sent from an

██████████ account that is property of the Estate in the Receivership Case that the Receiver has repeatedly instructed Mr. Anthony to cease using, and it contained no communications, other than “Please see attached subpoena,” with no order. This Court’s Order, Release No. 6938/May 23, 2025, was provided to Mr. Hartl and the Firm on May 27, 2025 by counsel for the Division of Enforcement.

7. The Subpoena seeks three categories of documents for a period of some four years, “from June 1, 2021 to present,” which would encompass tens of thousands of pages of pleadings, transcripts, reports, e-mails, letters, and other materials – most of which, to the extent not publicly available, is subject to privilege under applicable law, to wit:

- i. “[a]ll documents related to David Anthony and any or [sic] the Anthony Entities”;
- ii. “[a]ll documents and communications regarding David Anthony and the Anthony [E]ntities from the Colorado Division of Securities . . . The Colorado Attorney General’s office” and numerous third-parties related to the administration of the Receivership Case, including “Judge Ann Frick,” a retired Denver District Court Judge who served as a mediator in the Receivership Case; and
- iii. “[a]ll medical records, life expectancy reports and valuations done [sic] regarding any of the life settlement policies that were sold or abandoned by the Receiver of the Anthony Entities.”

8. Aside from the fact that the Subpoena is patently untimely under this Court’s scheduling Order of March 25, 2025, Release No. 6931, it should be quashed for at least four other separate reasons:

i. all of the documents sought are property of the Estate (as defined in the Receivership Order) and are thus not held by Mr. Hartl, the Firm, or the Receiver, but held by the Receivership Court *in custodia legis*; they are accordingly not subject to civil process under applicable law;

ii. the Subpoena violates the Receivership Order and the *Barton* doctrine, *Barton v. Barbour*, 104 U.S. 126 (1881) and its progeny;

iii. the Subpoena calls for the production of confidential and privileged communications, work product, and common interest documents; and

iv. the Subpoena is “unreasonable, oppressive, unduly burdensome” and may “unduly delay the hearing” scheduled for June 2, 2025 under Rule 232(e)(2) of the Commission’s Rules of Practice, 17 C.F.R. § 201.232(e)(2);

9. For those reasons, Mr. Hartl and the Firm respectfully request that the Court quash the Subpoena.

II. ARGUMENT AND AUTHORITY

A. *The Documents Sought Through the Subpoena Are Held In Custodia Legis In the Receivership Case and Immune from Civil Process.*

10. The Estate is defined in the Receivership Order as:

the assets of Anthony Capital, LLC; Anthony Capital Bond Fund 1, LLC; Anthony Capital Funding, LLC; Anthony Capital Alternative Investments, LLC; Anthony Capital Alternative Investments Income One Fund, L.P.; Anthony Capital Alternative Investments Income Two Fund, LLC; Anthony Capital Alternative Investments Income Three Fund, LLC; Anthony Capital Alternative Investments Income Four Fund, LLC; Anthony Capital Alternative Investments Income Five Fund, LLC; Sidebysidequotes.com, LLC (together, the “Anthony Entities”) and the real property and improvements held in the name of Epic Expeditions, LLC, including without limitation property with the address of 1950 Edwards Lane, Heber City, Utah 84032, and also including, except as provided herein, all cash, bank and deposit accounts, accounts receivable, notes receivable, and other receivables, business investments and interests, whether legal

or equitable, direct or indirect, in other business enterprises, tangible personal property, general intangibles, inventory, investment property, payment intangibles, real property, claims, causes of action, and choses in action of any kind or nature, instruments, documents, chattel paper, intellectual property, and letter-of-credit rights, together with: (i) all substitutions and replacements for and products of the foregoing; (ii) proceeds of any and all of the foregoing; (iii) with all tangible goods and all accessions; (iv) all accessories, attachments, parts, equipment and repairs now or hereafter attached or affixed to or used in connection with any tangible goods whether now owned or hereafter acquired; and (v) all other things of value owned by the Anthony Entities, including the books, records and other papers of any business or entity owned and operated by and through the Anthony Entities (collectively, the “Estate”).

Receivership Order, Exhibit A, pp. 2-3, ¶ C.

11. Under the Receivership Order, “[t]he Receiver is directed and empowered to take immediate control and possession of the Estate, and to hold the Estate for [the Receivership] Court *in custodia legis*.” *Id.* at p. 4, ¶ 3. The Receiver’s possession of the Estate is “subject to supervision and exclusive control of [the Receivership] Court . . . to the exclusion of all others.” *Id.* at p. 4, ¶¶ 3 and (5)(a). Moreover, “[a]ll who are acting, or have acted, on behalf of the Receiver at the request of the Receiver, including his attorneys and accountants, are protected and privileged with the same protections of [the Receivership] Court as that of the Receiver.” *Id.* at p. 17, ¶ 22.

12. Accordingly, none of the documents subject to the Subpoena are technically possessed by Mr. Hartl or the Firm – they are held by the Receivership Court exclusively, albeit subject to the Receiver’s control in administering the Estate on behalf of the Receivership Court. *See, e.g., In re Real Estate Mtg. Guar. Co.*, 55 F.Supp. 749, 752 (E.D. Pa. 1944) (“possession of receiver is possession of court; and the court itself holds and administers the estate, through the receiver as its officer”) (quoting *Atlantic Trust Co. v. Chapman*, 208 U.S. 360, 371 (1908)). A “receiver is an officer of the court, and what he rightfully does under the direction of the court is the act of the court itself.” *Welch v. Renshaw*, 59 P. 967, 970 (Colo. App. 1900); *Midland Bank v.*

Galley Co., 971 P.2d 273, 276 (Colo. App. 1998) (“A receiver is an officer of the trial court exercising jurisdiction over a receivership estate.”).

13. Courts have long recognized that “[n]o rule is better settled than that, when a court has appointed a receiver, his possession is the possession of the court, for the benefit of the parties to the suit and all concerned, and cannot be disturbed without the leave of the court, and that if any person, without leave, intentionally interferes with such possession, he necessarily commits a contempt of court” *Ex parte Tyler*, 149 U.S. 164, 181 (1893). “[T]he possession of property by the judicial department cannot be arbitrarily encroached upon” by other state or federal governmental entities. *Id.* at 183. Courts in similar contexts have barred subpoenas seeking depositions of, and discovery from, receivers and their staff. *See Federal Trade Comm’n ex rel. Yost v. Educare Centre Servs., Inc.*, No. EP-19-CV-196-KC, 2020 WL 4334765 (W.D. Tex. May 26, 2020) (unpublished) (order quashing subpoena duces tecum issued to court appointed receiver on immunity grounds); *Coleman v. Schwarzenegger*, Nos. CIV S–90–0520 LKK JFM P, C01–1351 TEH, 2007 WL 4276554 (N.D. Cal. Nov. 29, 2007) (unpublished) (protective order barring deposition of court appointed receiver on immunity grounds and following *Gary W. v. Louisiana*, 861 F.2d 1366 (5th Cir.1988)).

14. Here, Mr. Hartl and the Firm are agents and representatives of the Receiver, entitled to the same protections of the Receivership Order by its own terms. Given that all of the documents sought through the Subpoena are property of the Estate held by the Receivership Court *in custodia legis*, the Receiver and his counsel are entitled to the same immunity as the Receivership Court, and thus immune from civil process in this matter.

B. Mr. Anthony and Epic Capital Wealth Advisors, LLC Are Violating the Receivership Order and the Barton Doctrine in Pursuing the Subpoena Without Leave of the Receivership Court.

15. The Estate is under the “exclusive control” of the Receivership Court under the plain terms of the Receivership Order, ¶ 3. Beyond that, the Anthony Entities, and their officers and managers are specifically “enjoined from,” among other things “interfering with the operation of the Estate or the Receiver’s exercise of any power [under the Receivership Order] or the Receiver’s discharge of his duties.” See Receivership Order, **Exhibit A**, ¶ 10. That includes Mr. Anthony, as a defendant in the Receivership Case and former officer and manager of the Anthony Entities.

16. Moreover, “no equitable proceeding or enforcement process in any court or tribunal shall be commenced or continued against the Receiver or the Anthony Entities except with the written consent of the Receiver or upon order of [the Receivership] Court.” *Id.* at ¶ 18. The Receiver has not consented in writing, or otherwise, to any subpoena or process to his lawyers; the Receivership Court has not authorized any proceeding to obtain possession of any portion of the Estate from the Receiver or any of his attorneys.

17. The Receivership Order is consistent with the federal common law *Barton* doctrine, which provides that, “before suit is brought against a receiver leave of the court by which he was appointed must be obtained.” *Barton*, 104 U.S. at 128. *Barton* and its progeny deprive non-appointing courts of subject matter jurisdiction. *Id.* at 137; *Satterfield v. Malloy*, 700 F.3d 1231, 1234 (10th Cir. 2012). “Part of the rationale underlying *Barton* is that the court appointing the receiver has in rem subject matter jurisdiction over the receivership property.” *Beck v. Fort James Corp. (In re Crown Vantage, Inc.)*, 421 F.3d 963, 971 (9th Cir. 2005) (citing *Barton*, 104 U.S. at 136). Allowing an unauthorized act to proceed without leave amounts to “usurpation of the

powers and duties which belong[] exclusively to another court.” *Id.* (quoting *Barton*, 104 U.S. at 136).

18. *Barton* has been extended to apply to bankruptcy trustees, and to counsel for court officers “where counsel acts under the direction of, or as the functional equivalent of, the trustee” or receiver. *Lankford v. Wagner*, 853 F.3d 1119, 1122 (10th Cir. 2017); *see McDaniel v. Blust*, 668 F.3d 153 (4th Cir. 2012) (holding that *Barton* doctrine applied to suit brought against attorneys for a trustee in bankruptcy); *see also Fontaine v. H&R Cicny Properties, LLC*, 187 N.E.3d 1, 15 (Ohio App. 2022) (applying *Barton* doctrine to preclude claims against receiver’s attorneys and employees); *see also Lawrence v. Goldberg*, 573 F.3d 1265, 1269 (11th Cir. 2009) (the *Barton* doctrine applies to actions against a trustee and trustee’s counsel);

19. The *Barton* doctrine likewise applies to subpoenas purporting to obtain documents from court appointed officers, and is not limited to bar substantive claims. *See In re Circuit City Stores, Inc.*, 557 B.R. 443, 449-50 (Bankr. E.D. Va. 2016) (enjoining subpoena issued to bankruptcy liquidating trustee under *Barton*); *accord In re Eagan Avenatti, LLP*, 637 B.R. 502, 506-07 (Bankr. C.D. Cal. 2022) (applying *Barton* analysis to bankruptcy trustee’s request to incur fees to defend subpoena and distinguishing *In re Media Group, Inc.*, 2006 WL 6810963 (B.A.P. 9th Cir. 2006)).

20. Absent leave of the Receivership Court under the terms of the Receivership Order and the *Barton* doctrine, the Subpoena to Receiver’s counsel – Mr. Hartl and the Firm – are jurisdictionally deficient and must be quashed.

C. The Subpoena Indiscriminately Seeks Privileged and Confidential Documents.

21. It is fundamental that the Receiver controls the Anthony Entities’ privileges, and those of the Estate in the Receivership Case. *See, e.g., C.F.T.C. v. Weintraub*, 471 U.S. 343 (1985)

(corporate privileges held by receiver and subsequent bankruptcy trustee); *S.E.C. v. Ryan*, 747 F. Supp. 2d 355, 367 (N.D.N. Y 2010) (collecting cases). “[T]he attorney-client privilege exists to protect not only the giving of professional advice to those who can act on it, but also the giving of information to the lawyer to enable him to give sound and informed advice.” *National Farmers Union Property & Cas. Co. v. District Court*, 718 P.2d 1044, 1049 (Colo. 1986). The Colorado Supreme Court has recognized that

[i]t is axiomatic that the confidentiality of the attorney-client relationship must be preserved by protecting the communications, documents, and materials which a client has made available to his lawyer in order to obtain legal advice. Consequently, there is an enhanced privacy interest underlying the attorney-client relationship which warrants a heightened degree of judicial protection and supervision when law offices are the subject of a search for client files or documents.

Law Offices of Bernard D. Morley, P.C. v. MacFarlane, 647 P.3d 1215, 1222 (Colo. 1982) (en banc).

22. In addition to the Receiver’s attorney-client privilege, the work product privilege and related common interest doctrine apply to large swaths of the documents sought by the Subpoena to the Receiver’s counsel. *Ritter v. Jones*, 207 P.3d 954, 960 (Colo. App. 2009). And even without the broad immunity and privileges that the Receiver and his counsel have under applicable law, Colorado statutes are clear as to the confidentiality of any materials related to mediation, including those in the Subpoena concerning Judge Frick (ret.). See Colo. Rev. Stat. §§ 13-22-301 to -313. Those mediation documents and materials are confidential and inadmissible under Colorado law. Colo. Rev. Stat. § 13-22-307(3); *Yaekle v. Andrews*, 195 P.3d 1101, 1106 (Colo. 2008) (noting that “protected mediation communications are generally inadmissible as evidence in later judicial proceedings”). A “mediation communication” encompasses “any oral or

written communication prepared or expressed . . . in the course of” any mediation proceeding. Colo. Rev. Stat. § 13-22-302(2.5).

23. Here, the Subpoena propounded to Mr. Hartl and the Firm is exceedingly broad on its face, and does not even attempt to discriminate between unquestionably privileged documents and those that might otherwise be discoverable, were it not for the jurisdictional impediments evident here.

D. The Subpoena is Unreasonable, Oppressive, and Unduly Burdensome and the Non-Privileged Documents Are Available from Other Sources.

24. Under the rules applicable in this Court, a subpoena must be quashed if it is “unreasonable, oppressive [or] unduly burdensome” or if it would “unduly delay the hearing” in this matter, which is scheduled for June 2, 2025. *See* Rule 232(e)(2) of the Commission’s Rules of Practice, 17 C.F.R. § 201.232(e)(2). In similar contexts, “[a] sweeping subpoena which requires a non-party to sift through virtually every document in its files is *prima facie* improper.” *In re Circle K Corp.*, 199 B.R. 92, 102 (Bankr. S.D.N.Y. 1996) (subpoena served on counsel for “all documents relating to the case” was overly broad and unreasonable). That is precisely what the Subpoena seeks from Mr. Hartl and the Firm here.

25. Courts, including this one, “generally take a dim view” of attempts to seek discovery from opposing parties’ lawyers. *In the Matter of Clean Energy Capital, LLC and Scott A. Brittenham*, Order Quashing Subpoenas Directed to Division Attorneys, Administrative Proceeding File No. 3-15766, Release No. 1653/July 25, 2014 (collecting cases). As a practical matter, much of the non-privileged or confidential information that Mr. Anthony and Epic Capital Wealth Advisors, LLC seek from Mr. Hartl and the Firm, as counsel for the Receiver, is and has been public record in the Receivership Case, available from the Receivership Court. The Receiver

has also made his quarterly reports – eleven of them on file in the Receivership Case – and other material pleadings and orders available to the public at:

<https://www.anthonycapitalreceivership.com/>

26. Mr. Anthony and the Anthony Entities were represented by counsel in the Receivership Case, and the discovery conducted by the parties there is in Mr. Anthony's possession and control through his prior counsel; the fact that Mr. Anthony subsequently sued two of the four different firms that represented him in the Receivership Case is of no moment for purposes of the Subpoena in this matter. Even if applicable law permitted Mr. Anthony and Epic Capital Wealth Advisors, LLC to subpoena Receiver's counsel without leave from the Receivership Court, there is simply no legitimate reason to impose on the Receiver or the Estate in the Receivership Case the costs and burdens of screening thousands of documents to create a privilege log when public information is freely available.

III. CONCLUSION AND RELIEF REQUESTED

27. The Subpoena seeks documents and information that is property of the Estate in the Receivership Case and immune from civil process. Absent leave of the Receivership Court, Mr. Anthony and Epic Capital Wealth Advisors, LLC are violating the Receivership Order and the *Barton* doctrine; they are not entitled to any records of the Receiver's administration of the Estate in the Receivership Case, privileged or not. The Subpoena is untimely, overbroad, and unenforceable against Mr. Hartl and the Firm. The Subpoena accordingly should be quashed forthwith.

Dated: May 30, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing and attached materials were served on the following on May 30, 2025, in the manner indicated below:

Epic Capital Wealth Advisors, LLC (via email)
c/o David M. Anthony
dave@epiccapitalwealth.com

Division of Enforcement
Securities and Exchange Commission (via email)
c/o James P. McDonald
McDonaldJa@SEC.GOV

/s/ Sherri Clark
Sherri Clark