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.**	**DIVISION OF ENFORCEMENT'S REPLY BRIEF IN SUPPORT OF PETITION FOR REVIEW OF THE INITIAL DECISION**

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The Division of Enforcement ("Division") respectfully submits this Reply to Respondent Epic Capital Wealth Advisors, LLC's ("Epic") Response filed on August 30, 2025 (the "Response" or "Resp.").

Epic's Response confirms that the "lack of adequate notice" issue the Law Judge raised *sua sponte*, and which formed the principal basis for the Initial Decision to dismiss this proceeding, has never been a matter of concern or confusion to Respondent. At no point in Epic's lengthy Response does the firm embrace or defend the Law Judge's view that Epic was not provided sufficient notice or an opportunity to be heard on the Division's public-interest arguments under *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979). Rather, Epic has again taken on these arguments on their merits, and called them "weak and misleading," wrong, or not relevant. There is no question though that Epic has been and remains aware of the Division's contentions, evidence, and arguments about why the firm should not be permitted to register as an investment adviser. Granting Epic's patently problematic application on the mistaken premise that the Division "shifted gears" or strayed improperly from the OIP when it presented the actual evidence about why Epic's registration is not in the public interest remains unwarranted.

In addition, it is only the Response (consistent with the prior filings of Respondent) that raises matters truly outside the realm of possible relevance to Epic's application, namely in its voluminous accusations against Colorado state officials for alleged conduct that took place when the Colorado Division of Securities ("CDS") examined and later sued David Anthony and his former state-adviser firm Anthony Capital, LLC ("Anthony Capital"), and when it implores the Commission to investigate or prosecute those claims. Those unproven matters are not the issues of this proceeding. In view of the indisputable fact that a person associated with Epic—Anthony—is enjoined by the State of Colorado, and that Epic's registration therefore "would be subject to suspension of revocation under" Section 203(e) of the Advisers Act, the sole issue before the

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Commission is narrow and straightforward: is registering Epic consistent with the *Steadman* public interest factors? The evidentiary record clearly demonstrates it is not. The Commission should reject the procedural-due-process issue relied on by the Law Judge and consider the full evidence from the Hearing. Notably, the Law Judge previously recognized that what the Division sought to prove at the Hearing (but which was discounted because of the due-process ruling) "could ostensibly be part of a public interest analysis as to whether Epic Capital's registration should be denied," Initial Decision ("ID") at 8. Specifically, the Commission should consider the Division's evidence and arguments which "raise serious issues regarding Anthony's fitness to serve in a fiduciary role." *Id*. In other words, the violations of a court order, false or negligent submission of registration paperwork, violations of state laws, poor judgment, and various public policy factors that were addressed in the Division's Opening Brief can and respectfully should be relied on to deny Epic's registration as contrary to the public interest.

I. Reply to Epic's "Factual Background"

The Commission should reject the entirely unsupported "Factual Background" section provided in the Response. Although claiming to "wholeheartedly agree with Judge Foelak's decision," the Response devotes not a single sentence to addressing the Initial Decision's Findings of Fact nor to rebutting any of multiple, adverse findings *against* Anthony (and by implication Epic) made by the Law Judge. Thus, the Law Judge's determination that Anthony violated a court order, ID at 4-5, 8, made "confusing" or "misleading" statements on Forms ADV, *id.* at 5-6, 8, and had instances of less than complete disclosures to investors, *id.* at 3, 8, remain unchallenged. Further, as the Division argued in its Opening Brief, those findings were only a sliver of the problematic behaviors by Anthony—most notably issues with his credibility—that the Commission should consider when evaluating the public interest of approving Epic's application. *See* Div. Opening Br. at 4. Indeed, the Response magnifies those credibility concerns.

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Much of the Response's Factual Background is devoted to repeating Anthony's self-serving *ipse dixit* and is contrary to the well-documented history of the state-court litigation that occurred after the CDS filed a civil complaint in 2022 (the "CDS Complaint") against Anthony, his former firm Anthony Capital, and various related entities in Colorado state court (hereinafter, the "State Court" and the "Colorado State Case"). *See* DX 5. Throughout the Response, Epic rehashes Anthony's claims about the conduct of CDS officials, his own attorneys, a court-appointed receiver, and even the mediator selected by Anthony's attorney during that earlier lawsuit. These contentions fundamentally contradict the Law Judge's findings that Epic simultaneously claims to accept, and, more problematically, are consistently unmoored to any record evidence other than Anthony's own testimony (which Epic also does not attempt to cite), and thus there is no basis to amend or revise the Law Judge's findings. And Epic has had its say on these points already at the Hearing and in the record evidence he submitted; indeed, as the Initial Decision noted, Anthony used his time to present evidence at the Hearing to "largely argue[] that the allegations in the Colorado complaint were false," ID at 2, and the Law Judge's findings credited none of these speculative contentions or claims of misconduct by state officials, lawyers, and judges.

The Factual Background also devotes substantial coverage to relitigating the propriety of the State Court's decision to enter the temporary restraining order and preliminary injunction against Anthony and the Anthony Entities (defined in Division's Opening Brief at 9) in March and April 2022. Resp. *5-10. This again is premised entirely on Anthony's own word, including the lengthy diversion about something to do with an entity called Senior Settlements, and seems directed at proving state-official misconduct claims that are irrelevant to whether Epic should be registered. *See* T. 463:13, 465:4, 510:10-12. For example, Anthony quotes at length from a statement by a "Mr. Schantz," who was not a witness at the Hearing and whose statements appear

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to be nowhere in the admitted evidence, Resp. at * 9-10. Respondent fails to adequately connect any of these scattershot allegations to any of the facts addressed in the Initial Decision or the Division's Opening Brief. And, to the extent he is attempting to prove that Colorado state judges made the wrong decisions three years ago, that is immaterial as there is no dispute at day's end that the various court orders addressed by the Division were ultimately entered and in effect against Anthony (and the Anthony Entities), regardless of Anthony's views of their propriety. *See, e.g., Walker v. City of Birmingham*, 388 U.S. 307, 314 (1967) ("An injunction duly issuing out of a court of general jurisdiction . . . served upon persons made parties therein and within the jurisdiction, must be obeyed by them, however erroneous the action of the court may be. . . ."). If Anthony and Anthony Capital believed that the Colorado courts made erroneous decisions, there were ample means of recourse (in 2022 and after) available to them to remedy such errors in Colorado. This proceeding has never been and should not now be that vehicle.

Next, Anthony makes the incredible (and unsupported) claim that he was "unaware of what had transpired in the actual Colorado State Case hearing in March 2022" at which he was represented by counsel. Resp. at *6. Even if true, which Epic has not demonstrated, that would still not form a legitimate excuse for Anthony's violations of the State Court's orders, *see* ID at 5, as he has admitted to understanding that "[a]t that time everything was still frozen and we couldn't do anything unless we got the Judge's approval. And the assets were going to remain seized." T. 223:14-21. Thus, regardless of the reasons for the State Court's orders, there is no meaningful dispute that Anthony was bound by them and aware of the restrictions on his activities with Anthony Capital.

Epic also makes a series of claims in connection with the May 9, 2022 Order Appointing Receiver in the State Court Case (DX 9) ("Receivership Order"). Here, again, the Response offers factually unsupported claims that the Receiver appointed by the State-Court judge has told "false

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lies" and was "convinced that I was laundering money with the Columbian drug cartel." Resp. at *11. Again, Epic makes no effort to connect any of that to why it would be in the public interest to register the firm. And, rather than present facts that undermine the Initial Decision's findings about Anthony's conduct under the Receivership Order, including the finding that "Anthony took several actions that were inconsistent with these prohibitions," ID at 5, the Response rests on vague and irrelevant claims that the scope of that order was too broad and should not have included financial accounts for members of his family. Resp. at *11. These arguments could have been (and possibly were, as Anthony gives no evidence on this point) made to the State Court, but regardless have no bearing on the public interest inquiry.

The Response next recounts the events that led to Anthony agreeing to settle the State Court Case, Resp. at *12-13. Again, these events were covered in the Initial Decision, ID at 5, and Anthony's additional gloss, without any record citations or evidence, should be rejected. The Response thereafter attempts to relitigate the State Court's multiple decisions to enforce the settlement, but tellingly omits the lengthy decisions of the Colorado judge who rejected these arguments when presented by Anthony's attorneys at the appropriate time. *See* DX 17 (Order Regarding Settlement Agreement); DX 19 (Order Denying Defendant's Motion to Set Aside Mediator Settlement). As the Division presented at the Hearing, all of these contentions were vigorously litigated by Anthony and his attorneys in the State Court. *See* DX 13, 14, 15, 16, RX 17 (State Court filings). They were rejected.

The Factual Background concludes with Respondent making a series of claims against the Receiver's *ongoing* management of the receivership estate in the State Court Case. Resp. at *14; *see also* https://www.anthonycapitalreceivership.com/case-updates (last accessed Sept. 16, 2025). Again, given that the proceeding against Anthony Capital remains ongoing and in receivership,

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Anthony presumably has avenues to address any such complaints in Colorado and they have no bearing on whether to register his newer adviser firm Epic.

In summary, none of the purported Factual Background set out by Epic provides any basis to revisit any of the factual findings in the Initial Decision.

II. Reply to Argument

The Response's lengthy Argument confirms that the notice and due process issue that formed the basis for dismissing this proceeding in the Initial Decision was not a concern for Epic, which has never indicated that it was not aware of the Division's arguments or complaint that it was not given an adequate opportunity to respond to them. While Epic's Response undoubtedly embraces the *result* of the Initial Decision and recognizes the Law Judge's reasoning that that the Division "attempt[ed] to prove a denial based on public interest matters not charged in the OIP," Resp. at *24, Respondent tellingly fails to defend the view or conclusion that it was not provided sufficient notice, but instead argues that the Division's evidence was "weak and misleading." *Id.* Moreover, while supporting the outcome, the Response simultaneously fails to acknowledge or actually accept as established the many troubling conclusions drawn by the Law Judge about Anthony's conduct that the Law Judge seemed to imply could otherwise be considered absent the due-process concern. More importantly, Anthony seems to view the outcome as some recognition that the allegations in the Colorado State Case are unproven, if not false. *See* Resp. at *16 ("Indisputed [sic] evidence was presented at the four day hearing in June proving the innocence of David Anthony and Judge Foelak correctly ruled on her decision."). But that, respectfully and most emphatically, was not what the Hearing evidence established. And the reasons given in the Response about why Epic should be permitted to register fail to provide any meaningful rebuttal of the Division's myriad reasons for denying Epic's registration.

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A. The Response Confirms that the Due Process Concerns Raised by the Law Judge Should Not Be an Impediment to Consideration of the Full Record of Public Interest Factors.

Epic's Response confirms that, as the Division argued in the Opening Brief, Epic has never taken any issue with the adequacy of the notice provided in this proceeding by the OIP or, subsequently, the Division in its various filings and presentations it has made. It also confirms that Epic appears to have deliberately waived any lack-of-notice argument and used its opportunities to respond to the Division to make the points and arguments it wished to make. The Division's Opening Brief addressed this matter, which was not considered by the Law Judge, by pointing out that Anthony has made clear throughout this proceeding that one of his primary motivations for pursuing Epic's registration is to expose what he views as fraud by the State of Colorado, the Receiver, and mediator in the State Court Case. *See* T. 396:17-400:3 ("I said, yes, the truth needs to be told. I'm going to apply as an SEC Registered Advisor so that we can get this in print, we can get out what actually happened, and we can get this."). The Response, which goes into elaborate detail of these charges of misconduct while also explaining that Epic did not believe it necessary to file additional submissions to address the Division's very different arguments, Resp. at *24, establishes that Epic was aware of the public-interest factors raised by the Division, and has quite deliberately chosen a litigation strategy focused on areas of interest to Epic.

The Response therein acknowledges and accepts that Epic has been afforded the necessary opportunity to be heard and to provide its evidence, positions, and arguments in this proceeding. And the Response also directly addressed reasons the firm believes the Commission should reject the Division's arguments, addressed below, which itself confirms that no additional process to apprise Epic of the public-interest inquiry is needed here. The fundamental requirement that Epic needs to have been provided notice "of such nature as reasonably to convey the required

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information" and the opportunity to present its objections, *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314–15 (1950), has plainly been met.

B. The Response's Wide Range of Arguments are Unmoored to the Record, Premised on Speculative Accusations, or Otherwise Deficient.

With respect to Epic's specific Arguments, the Response sets forth 17 unnumbered bolded sections that address a range of issues. None of them has merit.

1. Arguments about Fraud by the State of Colorado, the Receiver's Management of Assets, and the State Court Injunction

The first several sections of Epic's Argument reiterate claims raised in the "Factual Background" that the State of Colorado engaged in a fraud, Resp. at *14-16, and reassert allegations that the Receiver has not distributed assets correctly to investors in the Colorado State Case and has received excessive compensation, *id.* at *15. It also implies the Commission has a duty to investigate this, and later Epic even implores the Commission to act on "clear and unmistakable evidence that the state of Colorado presented false information to the judge, presented false evidence, and lied under the penalty of law that has resulted in the loss of $80 million worth of investor assets." Resp. at *14, *24-27. The Division already has addressed that these allegations, particularly those about the Colorado State Case, are baseless and the Law Judge credited none of them in the Initial Decision. As the Division carefully demonstrated at the Hearing, Anthony was afforded ample due process during the Colorado State Case and was represented by attorneys of his choosing throughout those proceedings, whom he now also disparages. At bottom, these arguments simply fail to reconcile that Anthony is protesting final orders and injunctions of courts, whose decisions must be respected, regardless of his personal feelings. Those feelings likewise provide no basis for converting the question of whether to grant a newly formed adviser's registration into a plenary review of state-court decisions. *See*, *e.g.*, *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 431 (1982) ("The notion

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of 'comity' includes 'a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways.' Minimal respect for the state processes, of course, precludes any presumption that the state courts will not safeguard federal constitutional rights.") (internal citations omitted); *Harris v. N.Y. State Dept. of Health*, 202 F. Supp. 2d 143, 151-164 (S.D.N.Y. 2002) (discussing various principles at play in federal review of state decisions). Having been unsuccessful in convincing the Colorado judicial system to endorse his arguments, there is no basis to consider them anew here.

2. Epic Miscasts the Relevance of Anthony's Prior History and Overlooks the Initial Decision's Problematic Findings About His Recent Conduct.

Next, beginning on page 16 of the Response, Epic cites to the *Steadman* factors at issue and notes that Anthony "was previously licensed as a Certified Financial Planner, had a 20+ year successful career in financial services with zero customer complaints." Resp. at *16. Here, Respondent overlooks that it was another claim about Anthony's CFP license, which he made in his Forms ADV submitted for Epic, that the Law Judge found "misleading" because when Anthony filed Epic's Form ADV "he was aware that the Certified Financial Planner board was concerned about his Colorado suspension and might not renew his credential." ID at 6. Similarly, the assertion that Anthony's career has been successful is undermined by the injunction against him, the undisputed fact that Anthony lost $7 million of Promissory Note Fund and Bond Fund investors' money to apparent frauds, *id.* at 3-4, and the more-recent events outlined in the Initial Decision that led the Law Judge to recognize potentially serious issues about Anthony's fitness to serve in a fiduciary capacity. *See*, *e.g.*, *id.* at 8 ("These points raise serious issues regarding Anthony's fitness to serve in a fiduciary role. . . .").

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3. Anthony's Spiral of Allegations of Misconduct is Not a Basis to Register Epic.

Rather than embrace or defend the bases given in the Initial Decision, which ruled in Epic's favor, Respondent spends the bulk of its argument laying out a spiral of allegations about the Division's case, including by repeatedly accusing the Division of making misrepresentations, being wrong or "fabricating" arguments, and providing misleading information. Resp. at *17-23. This is the latest in a firmly established pattern of Anthony resorting to allegations and bombastic claims, instead of evidence. As the Division pointed out in its Post-Hearing Brief, to which Epic did not respond, "the passage of time since the conclusion of the State Court Case has indicated that Anthony has instead turned to baseless accusation, instead of self-reflection and reform," and that his reliance on baseless allegations should be considered as part of the *Steadman* inquiry as it reflects on an apparent lack of acceptance of responsibility and poor judgment. *See*, *e.g.*, *In the Matter of Meyer Blinder*, 1995 SEC LEXIS 89 at *9 (Jan. 17, 1995) ("There is nothing in the record to indicate that anything less than the most severe sanction should be assessed against Mr. Blinder. There is no support for his belief that '[t]he SEC is after me . . . it is the biggest conspiracy of this country, putting me away when I was doing nothing but good and helping people.'"). Anthony must acknowledge that it was *he* who agreed to settle the Colorado State Case and that his attempts to unwind that settlement were unsuccessful—his continuing refusal to do underlies much of his ever-escalating series of claims against the State of Colorado and now, also apparently, the Division.

In that regard, Anthony's first allegation that "the Division tried to manufacture negative information about Anthony and his application as an Advis[e]r," Resp. at *17, by pointing out readily apparent violations of the Receivership Order, is contrary to the actual evidence and the conclusions of the Initial Decision. ID at 5 ("Anthony took several actions that were inconsistent

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with these prohibitions . . ."). As the Law Judge found, and the Division laid out at length (to which Epic offered no response), Anthony violated the State Court's Receivership Order that removed his control over the Anthony Entities. And while the Division cited to the specific paragraphs and text of the Receivership Order (DX 9) at issue in both its Post-Hearing Brief and Opening Brief (at page 10), the Response only musters vague allegations that the Division's assertions were "inexpeciabl[e]" and points to no actual record evidence that warrants revisiting the Law Judge's findings. On top of which, Epic appears to *justify* why some of the apparent violations occurred with explanations that the Law Judge heard and plainly did not credit as acceptable for not following a court order. Resp. at *18-19.

Next, Anthony accuses the Division of wrongfully asserting that he is not credible because he was upset. But the matter of Anthony's credibility, which was not addressed in the Initial Decision but respectfully should be considered by the Commission, stems not from any inference to be drawn from Anthony being "upset" but from the actions he took in the Colorado State Case and in this proceeding. In this proceeding in particular, Anthony's testimony was often contradictory and his demeanor was repeatedly hostile, confrontational, and evasive in a way that suggested he was providing less-than-fully-truthful testimony. When examined during the Hearing, he refused to answer relevant questions, responded at times simply by posing the question back to Division counsel, was caught repeatedly being less than fulsome until confronted with

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omitted facts, and was repeatedly impeached.[1] Beyond that, Anthony also expressed a *forward-looking* intent at the Hearing to consider creating a nominal ownership structure for Respondent Epic if, in the future, his direct ownership created regulatory hurdles, which itself should bear on the credibility of any representation he now offers that he will comply with the Commission's rules (including the requirement to withdraw Epic's registration if the firm does not raise the necessary assets under management within 120 days). *See* T. 605:19-607:8 ("So if that came to this place, in this example, and the regulation was, you can't have anyone who owns the company that has a suspended license affiliated with Epic Capital Wealth's Advisors on or ownership side, okay, then ***I would transfer ownership to my wife or my child*** or someone else that I know I can trust, to have them be the owner of the company so we could satisfy that requirement, if that was a deal-breaker with the state or any other state, ***and I would continue to be the rainmaker and the face and bring all the funds*** in and those could be allocated to the investment adviser representatives, those are all scenarios that we can look at.") (emphases added); *see also* ID at 6 ("Finally, he testified that if he

[1] *See*, *e.g.*, T. 363:2-7 ("A. What do you think the point was?"); T. 407:17-18 (Q. Okay. What was the name of the third party? A. That's proprietary."); T. 358:1-6 ("A. No, you're not. You've got a plan. And I did complete this application. You're not being honest."); T. 384:1-5 (A. I think you know the answer to that. Yes."); T. 407:22-23 ("You're making that up, Mr. McDonald, you're making that up, a hypothetical of what would happen if you didn't get the hundred million dollars monies. Nowhere in the SEC documentation does it say, you have to include this in your application and on your Form ADV what your plan B is if you don't reach the level of assets. It doesn't say that anywhere. That's pure conjecture on your part."); *see also compare* T. 35:19-21 ("Q. And as part of operating Anthony Capital, did you have any use of or involvement with K1s? A. No.") *with* T. 36:10-19 ("Q. But the funds you advised issued K1s, right? A. Yes. Yes. Outside of the Registered Investment Advisory space, the private funds, the Regulation [D] Funds issued K1s."); *compare* T. 249:10-12 ("Q. My question was, did you open any other bank accounts after the receivership order was entered? A. To the best of my knowledge, no.") *with* T. 264:3-14 ("A. So, to cut to the chase, I did open up an account. I funded it with my personal moneys."); *compare* T. 162:12-163:15 (describing that "Matthew" was not compensated in connection with Bond Fund) *with* DX 23 at 96:1-5 ("And my Matthew Yore . . . he was compensated as well with the same overrides that we got from the money flow."); *compare* T. 156:6-13 (describing one or two unaccredited investors in Bond Fund) *with* DX 23 at 32:9-17 (describing 12 or 13 unaccredited investors in Bond Fund).

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could not register as an investment adviser representative in the states where he advised clients, he would hire new personnel to manage client funds and could transfer ownership of the company to his wife or child but 'continue to be the rainmaker and the face' of the operation."). Anthony's answer is transparently problematic because it suggests that he would permit the beneficial ownership of Epic to remain with an otherwise disqualified person. And, Anthony's answer revealed that his wife, children, or friend's ownership would still give Anthony actual control – Anthony said he would remain "the rainmaker and the face" of the firm and control some operations. T. 582:22-584:4 ("As the owner of the firm, I want to be the face of the firm and the rainmaker, when I'm the person who is bringing all of the clients in, I'm bringing all the assets in, and ***then I'm assigning those individuals to investment adviser representatives*** underneath my firm and they're going through and doing the planning process.") (emphasis added).

Epic next raises a series of factual contentions about events at Anthony Capital and during the Colorado State Case, including why he decided to "overturn the settlement," Resp. at *19, disclosure of conflicts of interest in the Life Settlement Funds, *id.* at 19-20, business loans between his entities, *id.* at 21, and whether he made misleading statements on Forms ADV, *id.* at 22. Epic contends that the Division was wrong on each of these issues. Here again, the Initial Decision made findings contrary to these arguments about why Anthony wanted to settle the Colorado State Case, ID at 5, found "at least some evidence that Anthony's life settlement investments involved a conflict of interest," highlighted that one of the investors that Respondent called to testify "was not aware of this relationship between the purchase price of the policy and the commission Anthony received," *id.* at 3, stated Anthony "did not tell [Promissory Note Fund] investors about the loss because he was confident the life settlement fund would still meet its expected return," *id.*, and

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said Epic's Form ADV had a "misleading" statement, *id.* at 6.[2] Epic's arguments in the Response do nothing to disturb these findings of fact. And, to the extent Epic contends the Division's arguments following the Hearing were mistaken, then it should have provided briefing and put forward its position with proposed findings of fact and conclusions of law to the Law Judge before the Initial Decision was issued.

Anthony also claims the Division "thinks that just because $100m is a large number to achieve for assets under management that it can't be done so the application should be denied," Resp. at *19, but that misstates the Division's arguments. The Initial Decision also mistook that "the Division argues that Epic Capital is unlikely to meet the $100 million assets under management threshold within 120 days," ID at 9, which also was not the Division's argument. The Division's argument, instead, was that if Epic is unable to raise the necessary $100 million but does raise *some* amount of money from new clients and must withdraw its SEC registration (because of insufficient AUM), that would create a circumstance where Epic holds client funds but there is no state-jurisdiction where Epic could readily *transition to* as a state-registered adviser,

[2] With respect to the Form ADV submitted to the State of Utah, about which Epic claims "there was not an intent to deceive," Resp. at *22, Epic muddles multiple separate applications and events into one. To his specific argument that the Division's claim that "Anthony did not want the Utah regulators to know about the Anthony Capital case is blatantly false," Resp. at *22, that was not the Division's argument. The Division argued that after Utah regulators informed Anthony that they intended to deny the application of Anthony Capital to register, *see* DX 36, Anthony responded by claiming that the Anthony Capital at issue "is different from Anthony Capital, LLC Colorado" and that "Colorado has no jurisdiction over a UT entity that was created after the case in Colorado was settled." DX 35 at 2. The point is not one of deception but of Anthony having no basis for his statement in the Form ADV that he submitted to Utah (DX 25) that Anthony Capital, LLC was a Utah entity (when it had not even been formed (DX 33)), and then later trying to convince Utah regulators that the Colorado State Case against "Anthony Capital, LLC" should not be considered as relevant, and whether Anthony had any legitimate basis for that statement when he had not even formed a new Utah LLC entity at the time he applied, used the same name of "Anthony Capital," and appeared to be trying to continue the "prior" Anthony Capital's business. *See also* DX 35 at 3 ("Applying for a new IARD entity number for the Utah LLC would not materially change the analysis and the basis for denial would be analyzed using these factors for any new application that is submitted.").

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most notably in Utah where the firm is based. *See* Div. Op. Br. at 40-41. The Response provides no comfort that this issue can be addressed.

Anthony's next series of arguments address the Division's various policy points about the risks of registering Epic in light of Anthony's prior state-registration issues, Resp. at *22-23. Here again, Epic baselessly accuses the Division of "providing misleading information" and creating an unrealistic hypothetical about registration difficulties Anthony may face in Utah. These arguments, however, rely on Anthony's simple failure to either review or accept the substance of communications (in evidence) between himself and Utah regulators. Specifically, on September 30, 2024, Utah regulators advised Anthony that the state intended to deny Anthony Capital's registration request to be a state-registered adviser in Utah: "Pursuant to the provisions for denial of an application, the [Utah] Division [of Securities] intends to file an administrative action denying the application pursuant to the Utah Uniform Securities Act [] §61-1-6 if the application is not withdrawn on or before Friday, October 11, 2024." DX 35 at 1. That email attached a letter explaining the basis for this notice of intent to deny, which cited Anthony Capital's application being "materially incomplete" including for "failure to file a CRD Form U4," and "for documentation and response to the Division's Comment Letter of February 2024" related to the Colorado State Court Case and Receivership. DX 36 at 2; T. 367:18-368:19. In a series of back-and-forth correspondence with Utah regulators, also in evidence as DX 35, 36, and 37, Anthony was informed that even if an Anthony-related entity (as his correspondence referred to his then-pending effort to register Epic) became a federally-registered adviser, there may still be licensing requirements in Utah for Anthony as "investment adviser *representatives* and solicitors in Utah for investment adviser representatives affiliated with federal-covered investment advisers." DX 37 at 1 (emphasis added). Further, Utah regulators further told Anthony:

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> Note: Even though the Adviser is not a state-covered investment adviser but has applied as a federal-covered investment adviser, the firm has not filed a notice in Utah, nor has it ensured that the firm has complied with requirements for licensure of investment adviser representatives conducting business in Utah with Utah clients (See Section 203A(b)(1)(A) that permits states to license, register, or otherwise qualify any investment adviser representative who has a place of business located within that state). The application for an investment adviser representative is similarly reviewed as it was for the state-covered adviser firm and *may result in a denial.*

DX 37 at 2 (emphasis added). This correspondence, written just one year ago, offered a clear warning to Anthony that any IAR application Anthony submits in Utah (where Epic is based) could face the same approval obstacles as his attempt to register Anthony Capital as a Utah-registered adviser. While the Response cites some of the same provisions that Utah regulators provided to Anthony, it appears to fundamentally mistake the point that investment adviser *representative* registration for Anthony personally may be needed if Epic has five or more clients in Utah, and fails to understand that if Anthony Capital was not able to register in Utah, a similar adviser firm like Epic (run by Anthony) likely would be unable to register as well. *See* DX 37 at 2; Utah Code Ann. § 61-1-3(3). This, as the Division argued, could pose substantial hurdles if Epic is required to transition to state-registration in the future.

In these arguments, Anthony again resorts to another groundless accusation against the Division, including the allegation that the Division attorney "makes a blatantly false statement" by contending that the Division cited an authority that does not state what the Division contended. Resp. at *23. But the Response has simply misread the citation in the Division's Opening Brief, *see* page 41, which was *not* (as Epic contends) to a website but to Division Exhibit 37 (quoted above) which plainly states that Utah officials told Anthony that an application for an investment adviser representative "is similarly reviewed as it was for the state-covered adviser firm *and may result in a denial*." (Emphasis added.) While Anthony puts in quotes that the Division argued this "will result in a denial," Resp. at *23, the Division accurately quoted the language from the Utah

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regulators, *see* Opening Brief at *41. Anthony thus fabricates an allegation of intentional misconduct by the Division based only on his own misreading. His willingness to do so should inform the Commission's view of the many similar contentions he has made against those who litigated the Colorado State Case against (and in some instances on behalf of) Anthony.

The Response next contends that the Commission should not accord weight to the fact that multiple states have not registered Anthony previously and that the State of California "never ruled on anything" about another adviser application which Epic now says "was before any of these events even transpired." Resp. at *23. It is not clear what time period Epic is referring to as "before any of these events" because Anthony did not remember the date of his California application (which he now offers as proof) when asked during the Hearing. T. 403:22-404:2. The Initial Decision noted that "Anthony received a similar response when he attempted to register in California, and he withdrew that application as well," ID at 6. That finding was likely based on the clear implication of his answer at the Hearing when he testified he withdrew the California application "[p]robably because this stuff was going on in Colorado and I wasn't going to be an advisor anymore. How could I be an advisor in California from having these things happening in Colorado?" T. 404:6-9, indicating that it was *not* before the Colorado State Case. What is clear however is that at least two states (Utah and Colorado)[3] have actually informed Anthony that his applications to be an adviser are either prohibited or will not be approved, and Anthony also decided to withdraw his registration effort in California because of the Colorado State Case. Epic fails to respond with any credible argument about why its apparent inability to obtain state-registration, particularly in the state where it is based, will not impact Epic's options to transition

[3] Based on Anthony's Hearing testimony that he withdrew the application to California (without reference to whether or not he received information from the State), the Division's reference on page 47 of the Opening Brief that "at least three states have informed him" should be modified to "at least two states have informed him."

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to a state-registered adviser if that becomes required. Nor has Epic rebutted that Utah state regulators flagged some of the same types of issues concerning the accuracy and completeness of Anthony's regulatory applications, *see* DX 36, which bear on the fulsomeness and reliability of statements in his present application for Epic.

4. Epic's Claims about the Recording of the Mediator and Reiterating its Request for the Commission to Investigate the Colorado State Case Merely Confirm that Epic Has No Concerns About Matters Not Listed in the OIP Being Addressed.

Finally, Epic addresses Anthony's surreptitious recording of the mediator during the Colorado State Case, reiterates his contentions about not violating the Receivership Order, asks for the swift approval of Epic's application, and, as noted earlier, implores the Commission to act on "clear and unmistakable evidence that the state of Colorado presented false information to the judge, presented false evidence, and lied under the penalty of law that has resulted in the loss of $80 million worth of investor assets." Resp. at *24-27. As the Division explained in its Opening Brief, these positions simply demonstrate that the due-process concerns raised by the Law Judge have not been a meaningful issue or concern to Epic. The Division has previously addressed why its theory of the case and specific evidence was not required to be set out in detail in the OIP. In addition, these non-responsive arguments by Epic merely confirm again that its registration request is the vehicle Anthony is using to attempt to relitigate and seek retribution for what transpired in the Colorado State Case, not to substantiate the *bona fides* of Epic. None of those purposes are legitimate ones for registering a new adviser, and doubtlessly make the instant application unlike almost any other request for the 120-day exemption under 17 C.F.R. § 275.203A-2(c). While Anthony has been afforded substantial leeway during these proceedings to make his points and arguments about the Colorado State Case, he ultimately has not put forth credible evidence as to any of what he claimed occurred. The Initial Decision credited none of his wild speculation, and it

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is simply a distraction from the question of whether his new firm Epic should be registered. The record demonstrates that it would not be in the public interest to register a firm that will be overseen, and its compliance run, by a person with a demonstrated inability to follow rules (including orders from a court), who has made misleading and inaccurate statements on forms seeking registration and in testimony, demonstrated poor judgment and animus, and faces future regulatory hurdles that may adversely impact his clients. The Commission should not become the registrar of last resort for David Anthony, and Epic's registration should be denied.

III. Conclusion

The Division respectfully submits that the Initial Decision erred in dismissing this proceeding and granting Epic's request to register as an investment adviser. The Commission should deny Epic's application.

Respectfully submitted this 19th day of September, 2025.

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Reply in Support of the Petition for Review contains 6,615 words excluding the cover page, table of contents, table of authorities, and certificates of compliance and service.

/s/ James P. McDonald
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Securities and Exchange Commission

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing and any attachments was served on the following on September 19, 2025, in the manner indicated below:

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

/s/ James P. McDonald
Division of Enforcement
Securities and Exchange Commission

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