**UNITED STATES OF AMERICA**
**Before the**
**SECURITIES AND EXCHANGE COMMISSION**

**ADMINISTRATIVE PROCEEDING**
**File No. 3-22307**

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| **In the Matter of**<br><br>**EPIC CAPITAL WEALTH ADVISORS, LLC,**<br><br>**Respondent.** | **MOTION FOR SUMMARY DISPOSITION** |

Pursuant to Rules 154 and 250 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.154, 201.250, and the Commission's Orders Instituting Proceedings and Scheduling Briefs, the Division of Enforcement ("Division") moves for summary disposition of the claims against Respondent Epic Capital Wealth Advisors, LLC ("Epic Capital").

## INTRODUCTION

The Commission should deny Epic Capital's application for registration as an investment adviser because its principal, David Anthony, was enjoined by a Colorado state court from, among other things, offering or selling securities or acting as an investment adviser in Colorado for ten years. While Epic Capital argues that the proceedings underlying the injunction were flawed and the allegations against Anthony false, this is not the appropriate forum to relitigate the state injunction, and Epic Capital cannot dispute the fact of the injunction itself. Thus, the only question is whether denying Epic Capital's application is in the public interest. Based on the undisputed facts on the record before the Commission, the Division respectfully submits that it would be in the public interest to deny Epic Capital's application for registration as an investment adviser.

**OS Received 12/13/2024**

## FACTS

1. Epic Capital filed an application for registration as an investment adviser with the Commission on September 24, 2024. Ex. 1. Epic Capital amended its application for registration as an investment adviser on October 2, and October 25, 2024. Exs. 2, 3.[1]

2. David Anthony is Epic Capital's owner, president, and chief compliance officer. *See* Ex. 1. Anthony is also the president, chief compliance officer, and owner of Anthony Capital, LLC ("Anthony Capital"), which was licensed with the State of Colorado as an investment adviser from 2013 to 2023. *See* Ex. 25.[2]

3. On November 8, 2024, the Securities and Exchange Commission issued an Order Instituting Proceedings ("OIP") against Epic Capital to determine whether its pending application for registration as an investment adviser should be denied pursuant to Section 203(c)(2)(B) of the Investment Advisers Act of 1940 ("Advisers Act").

4. Epic Capital filed an Answer on December 2, 2024, and an Amended Answer with Exhibits later the same day.[3]

5. Under Section 203(c)(2) of the Advisers Act, the Commission "shall deny" Epic Capital's application if the resulting registration would be subject to suspension or revocation under Section 203(e) of the Advisers Act. 15 U.S.C.§ 80b-3(c)(2).

6. Section 203(e) provides, in relevant part, that the registration of an investment

[1] True and correct copies of these filings from the Investment Adviser Registration Database ("IARD") are attached as Exhibits 1, 2, and 3.

[2] A true and correct copy of Anthony Capital's latest form ADV from the IARD is attached as Exhibit 25.

[3] Epic Capital did not serve Division counsel with copies of the Amended Answer or Exhibits. While the undersigned has been able to obtain access the Exhibits, it is unclear if they were accompanied by any substantive amendments to the Answer itself. Cites to the Answer in this motion are to the original Answer filed by Epic Capital and served on the undersigned via email at 12:15 a.m., Monday, December 2.

adviser shall be suspended or revoked if the Commission finds that such suspension or revocation is in the public interest and the investment adviser or any person associated therewith is "permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction, . . . from acting as an investment adviser, . . . broker, dealer, . . . or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security." 15 U.S.C.§ 80b-3(e)(4).

7. On April 17, 2023, the District Court for Denver County, Colorado (hereinafter, the "State Court") entered an Order enjoining Anthony, for a period of 10 years, from:

a. Offering to sell or selling any securities or investments in the State of Colorado;
b. Making recommendations or otherwise rendering advice to clients in the State of Colorado regarding securities and managing securities accounts or portfolios for clients in the State of Colorado; and
c. Engaging in business in the State of Colorado as a securities broker-dealer, sales representative, investment adviser, or investment adviser representative.

Order of Permanent Injunction and Other Relief at 1, *Chan v. Anthony*, 22CV30574 (D. Ct. Denver Cty. Apr. 17, 2023) (hereinafter, the "Injunction") (Exhibit 4).[4]

8. The Injunction was entered in a case initiated by the Securities Commissioner for the State of Colorado against Anthony, Anthony Capital, and various affiliated entities. *See generally* Complaint for Injunctive and Other Relief, *Chan v. Anthony*, 22CV30574 (D. Ct. Denver Cty. filed Mar. 1, 2022) (hereinafter, the "Complaint") (Exhibit 5).

9. The Complaint alleged, *inter alia*, that Anthony, while associated with an

[4] The Commission may take official notice of the filings and orders in the State Court proceedings. 17 C.F.R. § 201.323; *see also, e.g.*, *Valdez v. Monell*, Case No. 21-cv-00860-CMA-KMT, 2022 WL 279626, at *3 (D. Colo. Jan. 31, 2022) (noting that court filings are subject to judicial notice). For ease of reference, true and correct copies of all State Court orders and filings cited herein are attached as Exhibits.

investment adviser, Anthony Capital, through a series of companies he owned and controlled, acquired $26.5 million of investor money and (1) offered and sold unregistered securities without being licensed as a sales representative and through entities that were not licensed as broker-dealers; (2) offered investment advice and accepted commissions through entities that were not licensed as investment advisers; (3) commingled money invested in his various offerings and used proceeds from some Funds to pay off investors in other Funds; and (4) failed to provide full and fair disclosure of material facts to investors, including that he received commissions ranging from 21 to 44 percent and about $2.3 million in investor money went directly to him. *See* Ex. 5 ¶¶ 4-7, 24, 71-110. The Complaint further alleged that investors had not received returns from the majority of their investments. *Id.* ¶ 7.

10. On March 2, 2022, the State Court entered an *ex parte* temporary restraining order freezing Anthony's assets and enjoining him and various affiliated entities from, *inter alia*, offering or selling securities to any person in or from Colorado, acting as a securities investment adviser, or engaging in securities fraud. *See generally* Temporary Restraining Order, Order Freezing Assets, Order of Non-Destruction of Records, and Order for Scheduling a Preliminary Injunction Hearing, *Chan v. Anthony*, 22CV30574 (D. Ct. Denver Cty. Mar. 2, 2022) (hereinafter, the "TRO") (Exhibit 6).

11. Following the entry of the TRO, the State Court held a two-day preliminary-injunction hearing. *See* Transcripts, *Chan v. Anthony*, 22CV30574 (D. Ct. Denver Cty. Mar. 24 and 28, 2022) (Exhibits 7 and 8). Anthony was represented by counsel at the hearing,[5] at

[5] Anthony was represented by a number of different lawyers during the State Court proceedings. The lawyers who represented him at the time of the preliminary injunction hearings withdrew shortly thereafter. *See* Notices of Substitution of Counsel, *Chan v. Anthony*, No. 22CV30574 (D. Ct. Denver Cty. filed Apr. 7, 2022). Substitute counsel moved to withdraw on February 1, 2023. *See* Motion to Withdraw as Attorney of Record, *Chan v. Anthony*, No. 22CV30574 (D. Ct. Denver Cty. filed Feb. 1, 2023). Three new attorneys entered appearances for Anthony and his related entities on January 18, 2023. *See* Entry of

which four witnesses testified and 31 exhibits were accepted into evidence. *See generally* Exs. 7, 8.

12. At the conclusion of the hearing, the State Court ordered that the TRO be converted into a preliminary injunction. *See* Ex. 8 at 112. In granting the preliminary injunction, the State Court found that based on the totality of the evidence, the Colorado Securities Commissioner had shown a reasonable probability of success on the merits, *id.* at 103-12, and concluded that entering a preliminary injunction would not disserve the public interest, *id.* at 110:15-18.

13. The State Court determined, among other things, that it was material that the private placement memoranda for Funds Anthony was raising did not disclose the performance of his prior Funds: "If you've had previous funds and you are offering subsequent funds, then the performance of those funds, especially if they have failed, is something that is -- would be material to a reasonable investor to know when making an investment." *Id.* at 108:19-23.

14. The State Court also found, in relation to evidence that certain Funds established by Anthony purchased life settlement policies from an entity owned by an individual who had been sued by the Commission and ordered to pay more than $4 million, that: that "[t]he information about Senior Settlements and Mr. Schantz, again, would it have been important for investors to know about the issues with the SEC Mr. Schantz had and that

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Appearance, *Chan v. Anthony*, No. 22CV30574 (D. Ct. Denver Cty. filed Jan. 18, 2023). They moved to withdraw on September 16, 2024. *See* Motion to Withdraw as Attorney of Record and Notice of Intent to Withdraw, *Chan v. Anthony*, No. 22CV30574 (D. Ct. Denver Cty. filed Sep. 16, 2024). Anthony's latest filing in the State Court action was filed *pro se*. *See* Defendant's Response to the Receiver's Ninth Quarterly Report and Opposition to Receiver's Motion to Authorize Termination and Abandonment of Remaining Life Policies and a Request for Emergency Hearing, *Chan v. Anthony*, No. 22CV30574 (D. Ct. Denver Cty. filed Dec. 4, 2024). (These non-substantive filings are not attached as Exhibits; the Division can provide the Commission with copies upon request.)

Senior Settlements was the entity from which these premiums were -- or these insurance policies were being purchased, I think that perhaps that would've been important, that would've -- that perhaps could have been material to many of these investors." *Id.* at 108:24-109:6.

15. Following the entry of the preliminary injunction, the State Court also entered an order appointing a receiver. *See* Order Appointing Receiver, *Chan v. Anthony*, No. 22CV30574 (D. Ct. Denver Cty. May. 9, 2022) ("Receivership Order") (Exhibit 9). The Receivership Order appointed a receiver to administer certain of Anthony's assets, including bank accounts, as well as all of the assets of the Anthony entities named as defendants. *Id.* at 2; *see also id.* at 4-11 (enumerating various powers of the receiver).

16. The State Court set the case for an eight-day trial to commence on February 21, 2023. Notice of Trial and Case Management Conference, *Chan v. Anthony*, No. 22CV30574 (D. Ct. Denver Cty. May. 13, 2022) (Exhibit 10).

17. On January 5, 2023, the parties participated in a mediation, at which Anthony was represented by counsel. *See, e.g.*, Joint Notice of Settlement, *Chan v. Anthony*, No. 22CV30574 (D. Ct. Denver Cty. filed Jan. 10, 2023) (Exhibit 11).

18. At the conclusion of the mediation, Anthony signed a Memorandum of Settlement Terms, pursuant to which he agreed, *inter alia*, that the parties would "[f]ile a stipulated injunction for 10 years barring David Anthony from offering and selling securities in the state of Colorado." Exhibit 12. He also agreed that he would, in a related administrative license-suspension proceeding by the Colorado Securities Commissioner, "[s]ign a consent order suspending the investment adviser license of Anthony Capital LLC and the investment adviser representative license of David Anthony for 10 years." *Id.*

19. On January 10, 2023, the parties informed the State Court that they had

reached settlements in principle, indicating that the parties "are working to finalize written settlement agreements that would include the entry of an injunction and the continuation of the receivership," and asking the State Court to stay all deadlines. Ex. 11.

20. Shortly thereafter, a dispute arose among the parties about the enforcement of the settlement agreement, predicated on the collateral consequences to Anthony from the agreed-upon injunction. According to Anthony, after the mediation, he began to look into the collateral consequences of the injunction, leading to growing concerns, and culminating with Anthony contacting the Utah Division of Securities and learning that an injunction would prevent him from working in the securities industry in Utah. *See* Declaration of David Anthony ¶ 14, *Chan v. Anthony*, No. 22CV30574 (D. Ct. Denver Cty. filed Jan. 26, 2023). (Epic Capital submitted a copy of Anthony's Declaration with the Amended Answer.)

21. The parties filed cross-motions related to the enforcement of the settlement agreement. *See, e.g.*, Motion to Enforce Settlement Agreement, *Chan v. Anthony*, No. 22CV30574 (D. Ct. Denver Cty. filed Jan. 23, 2023) (Exhibit 13); Motion to Set Aside Mediator Settlement, *Chan v. Anthony*, No. 22CV30574 (D. Ct. Denver Cty. filed Jan. 26, 2023) (Exhibit 14); Plaintiff's Combined Reply in Support of Motion to Enforce Settlement Agreement and Opposition to Motion to Set Aside Mediator Settlement, *Chan v. Anthony*, No. 22CV30574 (D. Ct. Denver Cty. filed Jan. 30, 2023) (Exhibit 15); Reply in Support of Motion to Set Aside Mediator Settlement, *Chan v. Anthony*, No. 22CV30574 (D. Ct. Denver Cty. filed Feb. 6, 2023) (Exhibit 16).

22. The State Court ultimately ruled in favor of the Colorado Securities Commissioner, and: (a) granted the motions to enforce the settlement agreement, Order Regarding Settlement Agreement, *Chan v. Anthony*, No. 22CV30574 (D. Ct. Denver Cty. Feb. 28, 2023) (Exhibit 17); *see also* Order Granting Motion to Enforce Settlement

Agreement, *Chan v. Anthony*, No. 22CV30574 (D. Ct. Denver Cty. Apr. 17, 2023) (Exhibit 18); (b) denied Anthony's Motion to Reconsider, Order Regarding Motion for Reconsideration, *Chan v. Anthony*, No. 22CV30574 (D. Ct. Denver Cty. Apr. 17, 2023) (Exhibit 19); and (c) entered the Order of Permanent Injunction and Other Relief, *supra* ¶ 7; Ex. 4. Anthony appealed to the Colorado Court of Appeals, which dismissed his appeal as untimely. Order of the Court, *Chan v. Anthony*, 2023CA1055 (Colo. Ct. App. July 14, 2023) (dismissing Anthony's appeal with prejudice) (Exhibit 20).

**ARGUMENT**

Rule of Practice 250(b) provides for summary disposition if there is no genuine issue with regard to any material fact and the party making the motion is entitled to judgment as a matter of law. 17 C.F.R. § 201.250. Under Section 203(c)(2) of the Advisers Act, the Commission shall deny an application to register with the Commission as an investment adviser if the resulting registration would be subject to suspension or revocation under Section 203(e) of the Advisers Act. 15 U.S.C.§ 80b-3(c)(2). As explained below, there is no genuine dispute of material fact that Epic Capital's application for registration as an investment adviser would be subject to suspension or revocation under Section 203(e), and the Division is entitled to judgment as a matter of law.

**A court of competent jurisdiction enjoined Anthony**. Section 203(e) provides, in relevant part, that the registration of an investment adviser shall be suspended or revoked if, *inter alia*, the investment adviser or any person associated therewith is "permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction, . . . from acting as an investment adviser, . . . broker, dealer, . . . or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security." 15 U.S.C.§ 80b-3(e)(4). There is no dispute that

Anthony is associated with Epic Capital (or that he is and was associated with Anthony Capital), *supra* ¶ 2, or that the State Court entered such an order, *supra* ¶ 7; Ex. 5.

In stating that it is undisputed that the Injunction is an order by a court of competent jurisdiction within the meaning of section 203(e)(4), the Division agrees with Epic Capital that the Injunction is not permanent. *See* Answer at 7. Rather, the Injunction bars Anthony from engaging in certain activities in the State of Colorado for a period of 10 years. *Supra* ¶ 7; Ex. 4. The Division does not agree, however, that the fact that the Injunction was predicated on an agreement of the parties means it is not an order by a court of competent jurisdiction, as Epic Capital appears to argue. *See* Answer at 7. Epic Capital cites no authority for this proposition, and its protestations about the collateral consequences of Anthony's agreement (and, ultimately, the Injunction), *see id.*, do not make the Injunction any less an order by a court of competent jurisdiction within the meaning of section 203(e)(4). On that score, there is no genuine dispute.

To be sure, Epic Capital disputes the allegations underlying the State Court action that led to the Injunction. *See generally* Answer. But the appropriate forum for those arguments is the State Court that entered the Injunction,[6] not the Commission, whose statutory intervention is predicated on the fact that a court of competent jurisdiction entered the Injunction in the first place. *Cf., e.g.*, *In re. Lipkin*, Init. Dec., SEC Rel. No. 317, 2006 WL 2422652, at *3 (Aug. 21, 2006) ("It is well established that the Commission does not permit a respondent to re-litigate issues decided in the underlying civil proceeding."). Epic Capital's remaining arguments about the specific terms of the Injunction are really

[6] Here, Anthony did address his arguments about the collateral consequences of his agreement to the state court, and the state court rejected them. *Supra* ¶¶ 21-22. Epic Capital does not dispute that its attempts to raise these arguments in the appropriate venue were unsuccessful: "I have tried to appeal the settlement agreement . . . but the state of Colorado has denied my appeal." Answer at 8.

complaints about the Injunction's collateral consequences. *See* Answer at 7-8. But the fact remains that Anthony *agreed*—at a minimum—to consent to an injunction enjoining him, for a period of ten years, from offering and selling securities in the State of Colorado. *Supra* ¶ 18; Ex. 12. And, following that agreement, the State Court enjoined Anthony, for a period of ten years, from engaging in certain activities in the State of Colorado, including: (a) offering or selling securities or investments; (b) making investment advice or recommendations to clients; and (c) acting as a securities broker-dealer, sales representative, investment adviser, or investment adviser representative. Ex. 4. Thus, even if Anthony believed that he "could continue working as an Advisor outside of Colorado," Answer at 7,[7] Epic Capital's application to register as an investment adviser with the Commission would still be subject to denial because Anthony was enjoined, even if only in Colorado, from (among other things) acting as an investment adviser. Indeed, Epic Capital's application would be subject to denial even if Utah *had* allowed Anthony to register as an investment adviser because the Colorado State Court is "a court of competent jurisdiction," and it enjoined Anthony from engaging in certain activities enumerated in Section 203(e)(4) of the Advisers Act for 10 years. 15 U.S.C.§ 80b-3(e)(4). That fact—the predicate for the Commission's action—is not subject to genuine dispute.

**The record supports a determination that denial of the application would be in**

[7] In rejecting Anthony's arguments that the settlement agreement was the result of mutual mistake or misrepresentation, the State Court found, among other things, that: the Colorado Securities Commissioner has no jurisdiction outside of Colorado, Ex. 17 at 4, 6; even if the parties did not *intend* to restrict Anthony's out-of-state activity, that is not an assurance that another state would *permit* him to sell securities, *id.* at 5; "Anthony's lack of foresight as to the incidental effects or collateral consequences of the agreement does not support a finding of mutual mistake," *id.* at 6; and "instead of relying on the advice of his counsel, or conducting any independent research prior to, or during the mediation, or relying on his own knowledge and experience as a licensed investment adviser operating investment funds, Defendant Anthony signed both agreements in the presence of his attorney," *id.* at 8.

**the public interest**. In addition to the predicate State Court Injunction, the Commission must determine that denial of Epic Capital's application is in the public interest. 15 U.S.C.§ 80b-3(e). In determining whether remedial action is in the public interest, the Commission can consider various factors, including: "the egregiousness of the respondent's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of its conduct, and the likelihood that the respondent's occupation will present opportunities for future violations." *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979). The Commission's public interest inquiry is flexible, with no single factor being dispositive. *In re. Anton & Chia, LLP*, SEC Release No. 1407, 2021 WL 517421, at *88 (Feb. 8, 2021).

In light of Epic Capital's arguments concerning the State Court proceedings, the Commission may wish to begin its public interest inquiry with the Memorandum of Settlement terms, Ex. 12, as Epic Capital does not dispute that Anthony signed the Memorandum and agreed to its terms. *See* Answer at 7 (referencing "the agreed upon Memorandum of Settlement Terms signed on January 5, 2023"); Anthony Decl. ¶ 13 ("[W]e finally ended the mediation by drafting documents that memorialized terms that we had negotiated."). (To be sure, Epic Capital argues that Anthony was misinformed about the collateral consequences of his agreement, but it does not dispute that he made the agreement in the first instance.) In the Memorandum of Settlement Terms, signed by Anthony in the presence of his then-counsel, he agreed to, among other things, "a stipulated injunction for 10 years barring David Anthony from offering and selling securities in the state of Colorado," and a "consent order suspending the investment adviser license of Anthony Capital LLC and the investment adviser representative license of David Anthony for 10

years." Ex. 12; *supra* ¶ 18.[8] The Complaint alleged that Anthony engaged in securities fraud. *See* Ex. 5 ¶¶ 88-91. And Anthony agreed, albeit "with Defendant neither admitting nor denying the allegations," that "[t]he language of the injunction will track the complaint in the district court case," Ex. 12. The Commission has found that, the existence of an injunction against violating the antifraud provisions "can, in the first instance, indicate the appropriateness in the public interest of a suspension or bar from participation in the securities industry." *Lipkin*, 2006 WL 2422652, at *4.

Turning to the *Steadman* factors,[9] there is no dispute that, if allowed to register as an investment adviser, "respondent's occupation will present opportunities for future violations." *Steadman*, 603 F.2d at 1140. Nor has Respondent "recogni[zed] . . . the wrongful nature of its conduct," or offered any "assurances against future violations." *Id.*; *see also, e.g.*, *In re Yang*, Init. Dec. Rel. No. 788, 2015 SEC LEXIS 1735, at *10 (May 6, 2015) (barring respondent from the securities industry following civil case in which he was enjoined against violations of the antifraud and reporting provisions of the federal securities, noting that "Yang has not recognized the wrongful nature of his conduct").

To be fair, it is Epic Capital's position that Anthony did nothing wrong, and therefore (one can infer) believes it has no reason to acknowledge wrongdoing or offer assurances against future violations. *See generally* Answer; *see also id.* at 2 (claiming, among other things, that "the [state] Enforcement Division, the prosecution, the receiver and the Commissioner are lying and purposefully misrepresenting the facts for personal gain"). But,

[8] Just as the State Court entered the Injunction, so too did the Colorado Securities Commissioner, in her separate license-suspension proceedings, enter an Order suspending Anthony's investment adviser representative license for ten years. *See* Order, *In re Anthony Capital, LLC and David M. Anthony*, Case No. 2023-CDS-10 (May 3, 2023) (Exhibit 21).

[9] The Division focuses on those factors for which undisputed evidence appears on the face of the record.

again, these proceedings are not the proper forum to litigate the merits of the State Court Injunction. *See supra* at 9.[10] Nor, as Epic Capital requests, can the Commission "take immediate action against the Colorado Enforcement Division, the Attorney General, the Commissioner, the prosecution, and the receiver for violations of [18 U.S.C. § 1001] and impose fines and imprisonment," Answer at 3, enjoin the Receiver, *id.* at 8, or "[i]mpose the harshest fines and jail time . . . against the State of Colorado and the Receiver for lying and providing false information," *id.* Those requests are well beyond the scope of these proceedings (and the authority and jurisdiction of the Commission).

The only question for the Commission is whether denying Epic Capital's application is in the public interest. On that question, the Division respectfully submits that it is appropriate for the Commission to consider the Injunction and agreement that precipitated it, *see supra* at 11-12, the records of the State Court proceedings, and certain evidence gathered during those proceedings that Epic Capital does not appear to dispute here, and Anthony did not appear to dispute during the State Court proceedings. In particular, the following evidence introduced during the State Court proceeding appears to be undisputed:

First, although Anthony raised money from investors for several investment vehicles to invest in life settlement policies, *see infra* at 14-15, he did not disclose the (apparently poor) performance of earlier Funds to investors in later Funds. For example, the Private Placement Memorandum ("PPM") for Anthony Capital Alternative Investment Income V Fund, LLC, disclosed that Anthony "has been active in previous Life Settlement fund

[10] Epic Capital takes issue with the recitation of the allegations in Part II of the OIP, particularly the summary of the state court complaint. *See* Answer at 4-6. But Epic Capital does not dispute, as set forth in the OIP, that those allegations accurately set forth what the Securities Commissioner for the State of Colorado *alleged* in its Complaint, or that Anthony was preliminarily enjoined based on the State Court's determination that the Commissioner had shown a reasonable probability of success on the merits on those allegations.

offerings," Exhibit 24 at 11, and listed five other Funds that Anthony established, *id.*[11] It did not, however, disclose anything about the performance of those earlier Funds. *See generally id.* The Deputy Securities Commissioner for the Colorado Division of Securities testified as follows: "So he's selling Fund Five, knowing that the first three offerings that he issued failed, and he does not disclose that to the investors in Fund Five. That's a material omission." Ex. 8 at 49:24-50:2; *see also id.* at 65:16-17 (stating, on cross-examination, that "the first three funds failed when he was selling Fund Five and didn't disclose it"). (Based on his counsel's cross-examination, it does not appear that Anthony disputed the fact that earlier funds' performance was not disclosed in the PPM. *See id.* at 65:1-66:9.) Based on the evidence presented during the preliminary injunction hearing, the State Court held found "If you've had previous funds and you are offering subsequent funds, then the performance of those funds, especially if they have failed, is something that is -- would be material to a reasonable investor to know when making an investment." *Id.* at 108:19-23.

Second, a number of Anthony's investment vehicles, which received money from outside investors, purchased life settlement policies from Senior Settlements, a company run by William Schantz. Schantz was sued by the Commission in 2017 for running a Ponzi-like scheme in which he allegedly raised money through the sale of promissory notes ostensibly to fund the purchase and sale of life settlement policies. Schantz entered into a no-admit, no-deny settlement with the Commission, pursuant to which he and a related entity were ordered to pay over $4 million, and he was permanently enjoined from certain securities laws violations and from selling promissory notes. Nothing about the Commission's case against Schantz, its allegations, its resolution, or the resulting injunctions, was disclosed to

[11] A true and correct copy of this document, as introduced into evidence at the State Court preliminary injunction hearing, is attached as Exhibit 24.

investors in Anthony's funds. Details that the Division understands to be undisputed, with record citations, are set forth below:

- Anthony testified that there were outside investors in the following Funds (among others) that he established: Anthony Capital Alternative Investment Income One Fund, LLC, Anthony Capital Alternative Investment Income Two Fund, LLC, Anthony Capital Alternative Investment Income Three Fund, LLC, Anthony Capital Alternative Investment Income IV Fund, LLC, and Anthony Capital Alternative Investment Income V Fund, LLC. *See* Transcript of Deposition of David Anthony at 12:13-16, *Chan v. Anthony*, 2022CV30574 (D. Ct. Denver Cty. Dec. 9, 2022) (testifying that there are outside investors in Income One Fund); *id.* at 13:19 (same as to Income Two Fund); *id.* at 14:7-9 (same as to Income Three Fund); 15:7-9 (same Income IV Fund); 15:24-26:1 (same Income V Fund).[12]

- Anthony testified that these Funds purchased life settlement policies from Senior Settlements. *See id.* at 54:15-55:1 (Income Two Fund); *id.* at 201:4-8 (Income One Fund); *id.* at 202:8-13 (Income Two Fund); *id.* at 202:24-203:20 (Income Three, IV, and V Funds); *see also* Transcript of Audio Recording at 115:21-116:1, *In re Anthony Capital, LLC*, Colo. Div. Secs. (June 23, 2021) ("I reached out to one of the firms that set up the first retail life settlements funds back with Bear Sterns in the 90's, Senior Settlements out of New Jersey, and they helped mentor me on how to get the funds set up and how to purchase policies and what to look for and so forth").[13]

- The Deputy Securities Commissioner for the Colorado Division of Securities testified that Mr. Schantz owned Senior Settlements. Ex. 8 at 50:4-8. Anthony does not appear to dispute this fact. *See id.* at 58:25-59:22 (cross-examination by Anthony's counsel about Schantz and Senior Settlements).

- The Commission sued Schantz and an entity he controlled in May 2017, alleging that they made misrepresentations to investors in connection with the sale of approximately $12.5 million in promissory notes purportedly issued to fund the purchase and sale of life settlement policies. ECF No. 1, Complaint, *SEC v. Verto Capital Mgmt.*, No. 17-cv-03115 (D.N.J. filed May 4, 2017).[14] Schantz entered into a no-admit, no-deny settlement with the Commission, pursuant to which he and the company agreed to pay more than $4 million and consented to permanent injunctions against further violations of Section 17(a)(2) and (3) and Section 5 of the Securities Act; Schantz was also enjoined from selling promissory notes. ECF No. 4, Final Judgment as to Defendants William R. Schantz and Verto Capital

[12] A true and correct copy of the transcript of Anthony's deposition in the State Court action is attached as Exhibit 22.

[13] A true and correct copy of the transcript of this audio recording from the proceedings before the Colorado Securities Commissioner is attached as Exhibit 23.

[14] The Commission may take official notice of the filings and orders in the district court proceedings. *Supra* note 4.

Management LLC, *SEC v. Verto Capital Mgmt.*, No. 17-cv-03115-RBK-JS (D.N.J. May 8, 2017) (permanently enjoining Schantz from violating federal securities laws and selling promissory notes).[15]

- Details about the SEC's case against Schantz are publicly available on the Commission's website. *William R. Schantz III and Verto Capital Management LLC*, SEC Lit. Rel. No. 23824 (May 4, 2017), *available at* https://www.sec.gov/enforcement-litigation/litigation-releases/lr-23824 (last visited Dec. 11, 2024).

- Anthony did not disclose to investors in his Funds that Senior Settlements was owned by Schantz, the SEC's lawsuit against Schantz, or the district court judgment in the SEC's case against Schantz. *See* Ex. 8 at 50:10-12. Again, Anthony does not appear to dispute this fact. *See id.* at 58:25-59:22 (cross-examination by Anthony's counsel about Schantz and Senior Settlements).

- In granting the Colorado Securities Commissioner's request for a preliminary injunction, the State Court found that: "The information about Senior Settlements and Mr. Schantz, again, would it have been important for investors to know about the issues with the SEC Mr. Schantz had and that Senior Settlements was the entity from which these premiums were -- or these insurance policies were being purchased, I think that perhaps that would've been important, that would've -- that perhaps could have been material to many of these investors." Ex. 8 at 108:24-109:6.[16]

On the basis of the foregoing, the Division respectfully submits that the undisputed facts on the record before the Commission demonstrate that it would be in the public interest to deny Epic Capital's application for registration as an investment adviser.

[15] An Amended Final Judgment, which included the same injunctions, was entered against Schantz in February 2018. ECF No. 13, Amended Final Judgment, *SEC v. Verto Capital Mgmt.*, 17-cv-03115-RBK-JS (D.N.J. Feb. 27, 2018). On July 1, 2019, the Court held Schantz in contempt for failing to make payments pursuant to the Amended Judgment. ECF No. 28, Order, *SEC v. Schantz*, 17-cv-03115-RBK-JS (D.N.J. July 1, 2019). On September 23, 2019, the Court appointed an agent to liquidate Schantz's property to satisfy his debt to the Commission. ECF No. 45, Consent Order, *SEC v. Schantz*, 17-cv-03115-RBK-JS (D.N.J. Sep. 23, 2019). Apparently that process was incomplete, and Schantz's debt to the Commission still outstanding, as of August 2024, and the Court issued an Order appointing a Substitute Liquidator. ECF No. 54, Text Order, *SEC v. Schantz*, 17-cv-03115-CPO (D.N.J. Aug. 23, 2024).

[16] To be clear: the State Court did not make any findings about Anthony's state of mind with respect to these nondisclosures. Nor is the Division aware of any evidence on this record that Anthony knew of the Commission's case against Schantz or with what state of mind (if any) he acted with respect to the nondisclosures.

Respectfully submitted this 13th day of December 2024.

s/ *Ian Kellogg*

Ian Kellogg
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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 was served on the following on December 13, 2024, in the manner indicated below:

Epic Capital Wealth Advisors, LLC (via email and Accellion)
c/o Mr. David Anthony
[redacted]

s/ *Jessica Stamper*
Division of Enforcement
Securities and Exchange Commission