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 POST-HEARING BRIEF**

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The Division of Enforcement ("Division") respectfully submits this Post-Hearing Brief setting forth the findings of fact and conclusions of law established at the June 2025 evidentiary hearing (the "Hearing") regarding the request by Respondent Epic Capital Wealth Advisors, LLC ("Epic") to register with the Commission as an investment adviser.

Despite having no clients or assets under management, and despite numerous states indicating that they would not grant similar registrations for other entities run by Epic's principal and only employee, David Anthony, the firm applied to the Commission, first by claiming it was eligible under the "internet adviser exemption" under 17 C.F.R. § 275.203A-2(e), and thereafter as a newly formed adviser under 17 C.F.R. § 275.203A-2(c), on the contention that Epic will manage more than $100 million within 120 days. It is up to the Commission – and by extension Your Honor – to grant or deny Epic's current registration request. Under Section 203(c) of the Investment Advisers Act, 15 U.S.C. § 80b-3, the Commission "shall deny" Epic's registration if, among other reasons, the firm's registration would otherwise be subject to suspension or revocation – conditions met if (1) any person associated with the adviser has been enjoined from acting as an investment adviser, or from engaging in any conduct or practice in connection with that activity, and (2) such action is in the public interest. *See* 15 U.S.C. §§ 80b-3(d), (e). It is undisputed that Epic's principal, Anthony, has been enjoined by the State of Colorado from working as, or operating, an investment adviser in that state. Thus, the only question is whether it is in the public interest to grant Epic's request to be a Commission-registered adviser with Anthony at the helm. The Division submits, based on the evidence adduced at the Hearing, that it is not.

The Hearing conclusively established that, not only would the public interest be disserved by granting the imprimatur of Commission registration to Epic, but also that doing so would

introduce substantial and continuing risks to the investing public and Epic's future clients. If approved, Epic would be owned, managed, and run entirely by Anthony, whom a Colorado state court has enjoined from working as an investment adviser in that state until 2033, and he is a person whom both the states of Utah and California have concluded should not be permitted to provide investment advice there either. The SEC should not serve as registrar of last resort for Anthony or his new advisory firm.

As the Hearing demonstrated, Anthony repeatedly failed to meet clear legal obligations, and repeatedly testified to behavior that appeared patently inconsistent with his claim to be a "true fiduciary." Over just a few days of testimony and with a handful of exhibits, Anthony admitted to intentionally and repeatedly violating a court order, falsifying or negligently completing regulatory filings, withholding material information from (or selectively disclosing it to) investors, and exercising consistently questionable judgment and behavior. Anthony also exhibited substantial issues with credibility, disposition, temperament, and candor *during the Hearing* when responding to basic questions about his past conduct and future plans for Epic. While the Division need not – and did not endeavor to – relitigate and prove up the allegations of the underlying Colorado state court proceedings that led to Anthony signing a settlement where he agreed to the 10-year injunction now in place, the evidence adduced nevertheless showed repeated instances of deeply problematic conduct by Anthony that demonstrated it is not in the public interest to grant Epic's application. And, even when confronted with that conduct, Anthony displayed no meaningful remorse for past misdeeds and offered no credible intention to operate Epic in a more compliant fashion or more transparently with potential investors.

The evidence showed that the potential registration of Epic with the Commission arises only because Anthony has concluded that various states, including Utah where Epic is based,

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will *not* grant him the same registration he now seeks from the Commission. But this intentional rejection of state-registration options, which would normally be the first step for a new advisor with no assets under management, clients, or firm history, presents its own substantial public-interest concerns, including that if Epic does obtain Commission registration but is thereafter not able to maintain its eligibility with the Commission, the firm may face a circumstance where it operates with neither a federal nor state authorization. Given these circumstances, Anthony should first resolve his myriad issues with various state regulators before putting Epic's future clients or their money at risk.

I. PROPOSED FINDINGS OF FACT

The Court held a four-day evidentiary hearing on June 2, 3, 4, and 10, 2025, at which four witnesses—David Anthony, David Pierce, Lana Pierce, and Brett Flickner—testified, for which a Transcript of 662 pages was prepared ("T."), and at which approximately 35 Division Exhibits ("DX") and 16 Respondent Exhibits ("RX") were received in evidence. The Division respectfully submits that evidence establishes the following:

A. David Anthony and Anthony Capital, LLC

David Anthony is the former owner and operator of a Colorado-based investment advisory firm Anthony Capital, LLC ("Anthony Capital"). T. 27:8-13, 38:2-40:2; DX 48C at 3 (¶ 3). From its inception in the mid-to-late 2000s until it ceased operating (and was taken over by a receiver) in 2022, Anthony Capital was registered as an investment adviser with the State of Colorado. T. 39:15-40:2, 40:21-41:3; DX 5, 9. At its peak in the mid-2010s, Anthony Capital managed between $20 and $30 million in investors' assets. T. 40:9-13. Because Anthony Capital "didn't have assets of $100 million under management that would be requisite to become a federal advisor," Anthony never applied for SEC registration for Anthony Capital. T. 42:1-12.

Anthony has substantial prior experience in the financial industry, including previously holding the designation of a Certified Financial Planner ("CFP") between 2004 and 2022, DX 34 at *22, and passing Series 6,7, 55, 63, and 65 exams. T. 30:4-9, 208:20-209:13. Before starting Anthony Capital, Anthony worked in insurance, T. 28:2-6, and, earlier in his career, worked at Merrill Lynch. T. 43:22-44:3. Anthony started Anthony Capital to "be an entrepreneur and do things that I couldn't do at Merrill Lynch," including offering more specialized solutions for clients, T. 44:20-45:3, and selling investment products beyond what Merrill Lynch allowed him to sell clients, T. 45:4-46:7, which he said created a "disconnect between trying to be a true fiduciary and offer[ing] true insights that I was not able to do" at Merrill Lynch, T. 46:4-7. Anthony also hosted a weekly radio program called the "Retirement Income Show with Dave Anthony," that he used "primarily [for callers] to become clients of Anthony Capital." T. 33:2-10, 34:3-8.

B. Regulation D Funds Set Up by Anthony.

Between at least 2017 and 2021, Anthony raised new investor funds using exemptions under the Securities Act of 1933 ("Securities Act") Regulation D ("Reg. D"), 17 C.F.R. § 230.500 *et seq.*, which "provides exemptions from Securities Act registration for securities offerings under three separate rules: Rules 504, 505 and 506." *SEC v. Bronson*, 14 F. Supp. 3d 402, 409 (S.D.N.Y. 2014); *see also infra* at 6: "The Private Funds" Table. Anthony referred to these Reg. D funds as "the private funds," T. 35:5-6, 36:18, and one of his main purposes for setting these funds up was to use them as a Roth IRA "conversion tool[]" for clients, whom he believed could obtain tax benefits by purchasing "alternative investments" through the funds. T. 35:4-12, 77:16-21, 91:1-92:13. Anthony explained that it was *he*, David Anthony (as opposed to Anthony Capital), that acted as the fund manager, notwithstanding that he named each of the

Reg. D private funds with the "Anthony Capital" moniker in the fund's name. The private funds at issue in the Hearing, which will collectively be referred to as the "Private Funds," were:

- Anthony Capital Alternative Investments, LLC (hereinafter, "ACAI");
- Anthony Capital Bond Fund 1, LLC (hereinafter, the "Bond Fund");
- Anthony Capital Funding, LLC (hereinafter, the "Promissory Note Fund"); and
- Anthony Capital Alternative Investment Income Funds numbered One through Five (hereinafter, "Income Funds" or, individually, "Income Fund 1, 2…").

The investor assets held in the Private Funds were not attributed to Anthony Capital's assets under management ("AUM") because, as noted, the Private Funds were not advised by the state-registered Anthony Capital. T. 79:21-80:3 ("No, Anthony Capital did not provide investment advice to the funds that I set up. . . . I, David Anthony, managed those funds."). Instead, Anthony testified that he "was the principal of those funds, so [] [he] directed what those funds would go out and buy and sell. But those funds didn't invest in stocks, bonds and mutual funds as traditional investments." T. 80:4-10.

Two of the Private Funds – the Bond Fund and Promissory Note Fund – were fixed-income offerings advertised to pay between 10 and 14 percent returns over different principal-lockup periods. T. 157:3-158:6. The other six Private Funds – ACAI and Income Funds 1 through 5 – were set up to invest in "life settlements" that, Anthony touted, were projected to return 60% over a five-to-seven-year horizon. T. 92:1-6, 80:10-14, 81:7-22 (describing ACAI), 85:7-11 (describing Income Funds 1-5).

The chart below gives an overview of each of the Private Funds at issue in this matter:

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The Private Funds					
Fund Name	*Inc. Date*	*Exemption*[1]	*# of Investors*	*$ Raised*	*Transfers with Anthony Entities*
Fixed Return Funds					
Promissory Note	2018[2]/2020[3]	504(b)(1)/ 506(b)[4]	Unk.; ~12 unaccredited in Rule 504 offering[5]	~ $2.3 mil.[6]	Borrowed from this fund to make Life Settlement premium payments[7]
Bond	2020-2021[8]	506(c)	~32; btw. 2-13 unaccredited[9]	$5 mil.[10]	
Life-Settlement Funds					
ACAI	2017[11]	506(b)	3-5[12]	~ $1 mil.[13]	Bank account received commissions from sellers of policies to Income Funds 1-5[14]
Income Fund 1	2018[15]	506(c)	14[16]	~ $2 mil.[17]	
Income Fund 2	2019[18]	506(c)	8-10[19]	~$2 mil.[20]	$602,000 loan to Promissory Note Fund[21]
Income Fund 3	2020[22]	506(c)	2[23]	~$4 mil.[24]	
Income Fund 4	2020[25]	506(c)	~6-10[26]	$2.6 mil.[27]	
Income Fund 5	2021[28]	506(c)	Unk., at least 7[29]	>$20 mil[30]	

[1] *See generally* RX 3.
[2] RX 3 at *55.
[3] RX 3 at *63.
[4] RX 3 at *57, 66.
[5] DX 23 at 64:17-20.
[6] DX 23 at 51:21-52:4.
[7] DX 23 at 125:21-127:10, 129:4-8; T. 177:14-178:8.
[8] DX 23 at 21:12; *but see* RX 3 at *72 (listing year as 2021).
[9] RX 3 at *78; DX 23 at 32:9-15.
[10] DX 23 at 21:23-4
[11] RX 3 at *1.
[12] T. 105:4-6
[13] T. 105:11-14.
[14] T. 103:14-22, 107:14-108:3.
[15] RX 3 at *10.
[16] RX 3 at *16.
[17] T. 138:2-4.
[18] RX 3 at *20.
[19] T. 140:1-2.
[20] T. 139:17-20.
[21] T. 173:6-19
[22] RX 3 at *26.
[23] T. 140:7-15 (describing Pierces as only two investors); RX 3 at *34.
[24] T. 140:10; DX 23 at 143:5-8
[25] RX 3 at *35.
[26] T. 143:22-23; RX 3 at *43.
[27] T. 143:19-21.
[28] RX 3 at *45.
[29] RX 3 at *51.
[30] T. 144:5-8.

1. Bond Fund and Promissory Note Fund

The Bond Fund (*i.e.*, Anthony Capital Bond Fund 1, LLC) and the Promissory Note Fund (*i.e.*, Anthony Capital Funding, LLC) each offered fixed-return investments. T. 154:1-4. Anthony described the Bond Fund and Promissory Note Fund as his two "problem children," T. 175:10-15, as the investors in both funds lost all (or almost all) of their principal and received only a fraction of the expected interest payments. T. 168:9-14. The total losses of these investors' principal was approximately $7 million. T. 175:16-18.

A. The Bond Fund Lost Approximately $5 Million in Principal.

The Bond Fund was a Rule 506(c) offering that raised more than $5 million in investor funds that was used by Anthony to make private-placement investments into a Florida-based fund called Harbor City Capital ("Harbor City"). T. 152:15-25, 155:15-18, 198:19-22. Despite being a Rule 506(c) offering, Anthony testified the Bond Fund had "some" ("one or two") unaccredited investors "that were placed in that fund by mistake." T. 156:6-13. That approximation in the Hearing, however, deviated from (and reduced) the number of unaccredited investors Anthony had told Colorado state investigators about in 2021, when he said the Bond Fund had 12 or 13 unaccredited investors. *See* DX 23 at 32:9-17.

The Bond Fund offered three investment classes – Classes A, B, and C – which advertised paying annual interest of 10, 12, or 14 percent, respectively, based on principal lockup periods of one, three, and five years. T. 153:1-10, 157:11-158:13. The Bond Fund was also advertised as a way to invest funds in digital media marketing and advertising, T. 152:17-25, but in reality was a direct investment in another fixed-rate-return investment called Harbor City Capital Bond Fund 5 that was offering "digital media bonds." DX 23 at 13:2-15. Harbor City Capital Bond Fund 5 was to pay a marginally higher rate-of-return for its three classes, which

Anthony referred to as the "override," T. 158:17-160:21; DX 23 at 22:15-23, and Anthony intended to keep the override and pay the remainder to Bond Fund investors. T. 158:14-159:8. Anthony testified that he had identified the Harbor City through an ad on Facebook, T. 155:7-14, and then contacted Harbor City's principal J.P. Maroney. T. 155:7-14, 182:8-183:14. The Bond Fund's first investments into Harbor City were made around August 2020 and continued until March 2021. T. 188:14-24.

In March 2021, staff of the SEC called Anthony and informed him they were conducting an investigation of Harbor City. T. 188:25-189:15. Anthony testified that, in that call, SEC investigators told Anthony that their investigation was non-public and that "no one had broken any laws, nor was there any trouble yet. They were just doing an investigation." T. 190:12-23. Within "ten seconds" of the call with the SEC, Anthony called Maroney to tell him about the call with the SEC, telling him, among other things, "I just got off the call with the SEC where they were investigating – they said that they were doing an investigation in Harbor City and they had questions about you and your fund." T. 190:9-18, 191:2-8; DX 23 at 39:3-6 (stating that Anthony received $150,000 back from Harbor City in recently invested money). Anthony also testified that he had also been recording conversations with Maroney and others at Harbor City, T. 187:25-188:13, but that his counterparties were unaware of the recordings. T. 188:7.

On April 27, 2021, the SEC announced fraud charges against Harbor City and Maroney. *See* https://www.sec.gov/enforcement-litigation/litigation-releases/lr-25082 (Apr. 27, 2021). Anthony confirmed that, despite immediately contacting Maroney about the SEC's investigation, he did to notify any of his investors in the Bond Fund about the call with the SEC until after the SEC initiated its lawsuit. T. 201:8-23. Anthony further explained that he had been upset with the SEC about it not having given him a "heads up" of its non-public investigation. T. 197:23-

198:18, 199:5-10, 202:24-205:8; DX 23 at 175:22-177:11. The Bond Fund lost approximately $5 million as a result of its investment in Harbor City. T. 198:19-22, 309:10-16.

B. The Promissory Note Fund Lost Approximately $2 Million.

The Promissory Note Fund was a Rule 504(b) and Rule 506(c) offering, T. 153:10-13; RX 3 at *57, 66, that had an objective of placing money in merchant cash advance investments, and funding "small and medium sized business to provide them [with] working capital." T. 164:16-165:10. Anthony described: "We were providing working capital to the business so they could go and continue to function. And we were getting paid back a portion of their accounts receivables that they would get from the Merchant Cash Sales that they would be expected to get in the future." T. 165:5-10. The Promissory Note Fund was set up as a two-year fund, and the structure of merchant-cash-advance investments was such that returns should have been paid relatively quickly after a fund investment, as Anthony testified that "a [portion] of moneys [allocated] should be received the next week back into the fund from the firm." T. 165:21-166:4. Like the Bond Fund, however, the Promissory Note Fund used a third party to invest client funds; a company called White Chair Capital was to invest money from Promissory Note Fund investors, and Anthony testified White Chair's investment was made into a New-York-firm called Midtown Resources. T. 168:19-171:21.

Anthony testified that all Promissory Note Fund investors' principal was lost because Midtown Resources "stole the funds and would not return the funds to us." T. 169:1-3. This led Anthony to notify Promissory Note Fund investors that their principal was lost, where he described writing to investors that their investment was a "complete loss because of fraud due to Midtown Resources . . . being deemed a Ponzi scheme for the Securities and Exchange Commission." T. 172:23-173:5, 177:5-13. Some of the lost funds included money that Anthony

had *loaned* into the Promissory Note Fund from Income Fund 2 (a loan of $602,000). T. 173:6-173:19.

Anthony also testified that the Promissory Note Fund not only received money from one of his other managed funds (Income Fund 2), but that it also sent money to other Private Funds. T. 177:14-178:8. Anthony justified these related-party transactions by claiming that his Life Settlement Funds (defined *infra*) were small or medium sized businesses, notwithstanding his acknowledgement during testimony that those funds employed *only* him and had no business operations other than making investments at Anthony's direction. T. 177:24-178:19. When asked if he told any of the Promissory Note Fund investors that his definition of small-business investments included Anthony's own companies, Anthony testified that he "might have mentioned" that to "[i]investors that called and asked about questions on accounts," which was "only one or two" who "wanted to seek bank statements about what had actually happened with the funds . . . was my fund now completely worthless?" T. 181:4-13, indicating *both* that their money had been *lost* and that Anthony only disclosed such information after the fact.

2. The Life Settlement Funds

From 2018 until 2021, Anthony set up a series of Rule 506 offerings that were substantially invested in "life settlement" investments, namely ACAI and Income Funds 1 through 5 (collectively, the "Life Settlement Funds"). *See supra* at 6: "The Private Funds" Table. Anthony described life settlements as a "non-correlated investment to the stock market where you're buying an interest in a life insurance policy from someone who no longer wants [] their life insurance policy and they're selling it on the open market for cash," which would make the purchaser the owner of the policy responsible for paying premiums. T. 88:19-89:11. Such arrangements have been held to be "investment contracts and, therefore, securities." *SEC v.*

Barry, 670 F. Supp. 3d 976, 979 (C.D. Cal. 2023) (describing factual background of that lawsuit) (citing 15 U.S.C. § 77b(a)(1) and 15 U.S.C. § 78c(a)(10)); *see also id.* at 984-85 ("Existing cases examining life settlement arrangements have tended to find that they are investment contracts under the *Howey* test.") (collecting cases).

Anthony was, again, the fund manager for each of the Life Settlement Funds and "would go in and purchase the appropriate policies that would give these investors not only the expected return, which is why we were doing this, is a 60 percent expected return over five to seven years[,] [b]ut also the ability to do a discounted Roth conversion, typically at 40 percent." T. 92:1-8; *see also* T. 80:12-16. Anthony believed that life-settlement investments were "the key and really are the secret sauce to be able to do the discounted Roth IRA conversion." T. 91:3-6. These Roth conversions involved converting his investors' traditional IRA accounts into Roth accounts, where the withdrawals or distributions would be tax-free.

The so-called "secret sauce" was nothing more than reporting to the IRS a fair-market value for the investments held in the Life Settlement Funds that was substantially below the acquisition price of those investments. T. 113:1-5, 115:10-17. Anthony testified that life-settlement investments are "private investments," like a used car, and "since it's not a publicly traded security, it becomes the owner of that asset to relay to the self-directed custodian what the fair market value of that asset is." T. 123:16-25. Anthony testified, that because the "retail" price of his life settlement investments included commission payments and fees that had been paid *on top of the actual* "wholesale" price of the life-insurance policies themselves, the fair market value for the bundle of policies was *lower* than the purchase price paid by the Life Settlement Fund. T. 124:6-125:20 ("The difference between the 600,000, which is the wholesale price versus the $1 million, which is the retail price, is the difference of those fees, commissions

and expenses. . . ."); *see also* T. 117:1-12 ("So when we do a Roth conversion, we want to go in and get this thing discounted by 40 percent to reflect that wholesale price, because the IRS allows us to do that. So savvy participants would then reflect and report to the IRS that it was a $60,000 fair market value of that life settlement asset.").

Anthony described that "we would back into" the acquisition price (*i.e.* the "retail price") that his Life Settlement Funds would pay for policies to a dollar amount that would result in an estimated 60 percent rate of return (based on the expected death benefit) over the five- to seven-year investment horizon he advertised. T. 118:4-15, T. 121:17-122:8; DX 23 at 121:10-123:1. Anthony gave Colorado state securities investigators an example of this during an interview in 2021 (*i.e.*, during the operation of the funds), by explaining that a life-insurance policy with a $1 million death benefit might have a wholesale price of $300,000. T. 121:17-122:8; DX 23 at 129:11-25, 139:25-140:9. At that price, over the five-to-seven-year period, the expected rate of return would be 17%, which would exceed Anthony's target of 12%. Thus, Anthony would agree with the seller to increase the price the Life Settlement Funds would pay from $300,000 to $400,000 (which would yield an expected 12% averaged-annual return), and the seller would pay Anthony (to the ACAI bank account) the $100,000 difference from the price increase. T. 104:20-105:1, 113:6-16 ("So we were extrapolating what all the fees and commissions and added expenses were that were added into these policies from someone who's selling the policy at the wholesale level to us buying the policy at the retail level. . . .Then you had fees and expenses that were paid out to the agent that was representing the person that was buying the policy."). This structure meant that Anthony, as the fund manager for all Life Settlement Funds, had an incentive to buy policies that would pay him the highest commissions, whereas the funds themselves had an interest in acquiring the best policies for the lowest price. Not only did

Anthony refuse in his testimony to acknowledge this conflict of interest, one of the investors he called as a witness was unaware that the price of the life insurance policies paid for by his investment would have been influenced by Anthony's commission. T. 657:4-10.

The upfront commissions Anthony received from these life-settlement acquisitions could be substantial: Anthony testified that the commission he received ranged "from 3 percent or 5 percent on the low end up to 20 or 25 percent or even higher on the high end, depending on the policy." T. 114:18-24. In total, Anthony said he received between $3 and $5 million in such commissions. T. 108:16-20. In addition, when a death benefit was received, Anthony would receive between 2 and 5 percent of the death benefit. T. 110:3-22.

The upfront cost of life-settlement policies was not the only cost to the Life Settlement Funds; after acquiring a life-settlement policy, the Life Settlement Funds became responsible for the premium payments on the life-insurance policies. T. 125:21-126:4. Although Anthony touted the investment timeline as five-to-seven years, he did not reserve sufficient cash to make expected premium payments over that period of time. T. 127:13-128:5. Rather, he would "typically try to have enough cash on hand to pay premium payments for the first year." *Id.* When premium reserves were depleted, Anthony either sold policies or obtained loans or new investments in the Life Settlement Funds to cover premium payments. T. 129:4-130:19. Even in the case of "an early maturity," where an insured person died earlier than anticipated, Anthony testified that the "fund might use that early maturity to pad some of the life expectancy reserves for the individuals that might live beyond 60 months." T. 99:21-100:5.

Anthony testified that Income Funds 1 through 5, which raised approximately $30 million in investor money, only had two death benefits paid during his management of the funds. T. 144:18-145:9 ("Fund 1 had only had one death benefit. That was the LP fund that had been

paid out. . . . Fund 2 had not had any maturities and Fund 3 had not had any maturities. It had one policy that was sold to generate income to pay premiums for the next year. As I mentioned, Fund 4 had not had any maturities and Fund 5 had one maturity of approximately $500,000 that had paid out once the Receiver took possession of the fund.").

C. The Colorado State Investigation and Lawsuit.

In May 2021, the Colorado Division of Securities ("CDS") began an examination of registrant Anthony Capital. T. 206:6-9. At that time, Anthony was living in Utah. T. 207:16-18. Anthony testified that he did not need to register as investment adviser representative ("IAR") in Utah because Anthony Capital did not have more than five clients in the state. T. 208:20-209:13. As part of that examination, Anthony gave a lengthy telephone interview to Colorado state investigators, during which he discussed much of the above-described conduct concerning the Private Funds. *See generally* DX 23.

1. The Colorado Complaint against Anthony and the Anthony Entities

On March 1, 2022, the Colorado Securities Commissioner, Tung Chan, through the Colorado Attorney's General's Office, filed a lawsuit on behalf of the CDS against Anthony, Anthony Capital, the Promissory Note Fund, the Bond Fund, the ACAI, Income Funds One through Five, and Anthony's insurance company (collectively, the "Anthony Entities"), *see* DX 5. The Colorado Securities Commissioner's civil complaint (the "CDS Complaint") was filed in the District Court for Denver County, Colorado (hereinafter, the "State Court" and the "State Court Case"). *Id.* at 1. The CDS Complaint alleged, *inter alia*, that Anthony, while associated with 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 that about $2.3 million in investor money went directly to him. *Id.* ¶¶ 4-7, 24, 71-110. The CDS Complaint further alleged that investors had not received returns from the majority of their investments. *Id.* ¶ 7.

On March 2, 2022, the Honorable Darryl F. Shockley, District Court Judge of the State Court, entered an *ex parte* temporary restraining order freezing the Anthony Entities' assets and enjoining them and Anthony 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* DX 6 (hereinafter, the "TRO"); T. 211:22-212:11, 213:4-216:4. The TRO included an asset freeze against "[a]ll bank, trading, or other financial accounts owned, operated, and controlled by Anthony." DX 6 at 4. Anthony testified that he learned of the State Court Case and TRO while in South America on an extended vacation. T. 216:10-217:10. Anthony hired attorneys to represent him in connection with the State Court Case, including for a preliminary injunction hearing that occurred on March 24 and 28, 2022. T. 218:18-219:4, 221:23-222:5. Despite returning to meet with his attorneys, Anthony did not attend the that hearing, and denied understanding that the State Court had issued a preliminary injunction, T. 222:2-11, but he 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. After losing at the preliminary injunction hearing, Anthony fired his original attorneys and hired a new attorney, Otto Hilbert, who continued to represent him in the State

Court Case. T. 230:1-15 ("And Otto Hilbert was the one who wrote the response as to why the assets should not be placed in receivership.").

2. Anthony's Intentional Violations of State Court's Receivership Order

Over Anthony and his attorney's objections, on May 9, 2022, the State Court entered an Order Appointing Receiver, DX 9 ("Receivership Order"), designating Randel Lewis as the Receiver (hereinafter, the "Receivership" and "Receiver") to take over, control, and administer the Anthony Entities' assets and operations, as well as selected assets of Anthony personally, all of which was placed into a receivership "Estate." *See id.* at 2-3; *see also id.* at 4-13 (enumerating various powers of the receiver). Anthony understood the gravity of the Receivership. *See* T. 229:8-15 ("All the significance in the world, because now all the assets were frozen and we couldn't administer not only any of the investments for my investors that were losing hundreds of thousands of dollars, but we also couldn't pay premiums on the life settlement funds that had $80 million of moneys that were subject to being lost because of what the Judge had done based on the false testimony."). Anthony understood that Receivership Order was entered by a court but equivocated in his testimony with respect whether he had to comply with that court order. *Compare* T. 229:16-22 ("Q. And you understood that this order was a court order, correct? A. Yeah. It was signed by the Denver District Court, correct.") *with* T. 231:7-13 ("Q. And you understood, though, that until the Court changed its orders, you were required to follow the Court's orders at all times, correct? A. No, I didn't. I didn't understand the nature or the severity of the consequences of it being placed in receivership at all. This all blindsided me completely across the board."); *see also* T. 231:14-20 ("No. If the Court ordered something, then I would never not want to comply with what the Court ordered willingly. I wouldn't do that."). Nevertheless, Anthony acknowledged reading the Receivership Order

around the time it was issued. T. 232:16-22. Anthony also knew the assets in the Receivership Estate "were no longer in my control. I could not do anything with them nor communicate with any of the investors regarding anything that had happened." T. 236:4-10.

The Receivership Order provided that the Receiver was "hereby directed and empowered to take immediate control and possession of the Estate, and to hold the Estate for this Court *in custodia legis*. The Receiver shall operate, manage, maintain, assemble, marshal, collect, protect, and preserve the Estate, subject to the supervision and exclusive control of this Court, for the benefit of creditors and owners of the Estate." DX 9 at 4 (¶ 3), and the Anthony Entities were "ordered to deliver immediately over to the Receiver all of the Estate, and shall cooperate with the Receiver in the administration of the Estate." *Id.* (¶ 4). While Anthony now claims he cooperated with the Receiver "100 percent," T. 239:17-20, the record plainly established otherwise, and he acknowledged several violations of the terms of the Receivership Order, including:

(1) diverting $100,000 of money payable to Anthony Capital[31] to cover Anthony and his family's personal expenses,[32] T. 251:24-255:13 ("So the investment that, or the payment that EPUS Energy made was a payment that recognized that 1 percent advisor fee that was being paid to Anthony Capital as the, as the Investment Advisor."); DX 48C ¶¶ 9(d), 93 ("I didn't refuse—I told him I did not want to disclose where the funds were as this is what we are using to live on. The state and the receiver have repeatedly said that they would release funds to pay for mortgage expenses, food, housing, payroll, attorney fees, etc., multiple requests have been submitted and they have all been ignored.").[33]

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[31] The Receivership Order defined the scope of the Receivership *Estate* for the Anthony Entities as "except as provided herein, all cash, bank and deposit accounts, all cryptocurrency exchange 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')." DX 9 at 2-3 (emphasis added). Further, Paragraph 10 of the Receivership Order enjoined Anthony from collecting the Estate's assets: "Except as may be expressly authorized by this Court upon notice and a hearing, the Anthony Entities and their officers, managers, members, board of governors and those acting by and on behalf of the Anthony Entities are enjoined from: a. collecting the assets or interests held in the Estate, or any proceeds, revenues, accounts, issues, profits or other revenues thereof…"). DX 9 at 13. The TRO also directed Anthony and the Anthony Entities to hold and retain and prevent the disposition of assets. DX 6 at 6 (¶ 3).

[32] The Receivership Order (¶ 5.f.) provided the Receiver the power to "collect all accounts, *accounts receivable*, notes receivable, income, profits and proceeds that are part of the Estate or represent proceeds of the Estate…" (DX 9 at 4-5 (emphasis added). Paragraph 15.d. of the Receivership Order provided: that the Anthony Entities shall promptly "d. continue to deliver immediately to the Receiver all collections of proceeds of the Estate, including *accounts receivable*, other collections, books and other records relating to the operation, maintenance and management of the Estate, and to permit the Receiver to carry out his duties hereunder without interference. . ." DX 9 at 14-15.

[33] When Anthony was first asked during the Hearing about diverting $100,000 and was asked about the Receiver's specific accusation that he had done that, he denied it. *See* T. 250:11-16 ("I don't know what the Receiver was alluding to there."). *See also* T. 251:6-13. But, moments later, when Division counsel specifically asked Anthony the name of the company that had owed the $160,000 receivable (called "Epus"), T. 251:18-259:14, he admitted to diverting the money to his own benefit. *See* T. 252:4-14 ("So, yes, I was owed $160,000 from EPUS Energy that was payable to me. And that might be what this is referenced, what the Receiver saying that I diverted $100,000 in accounts receivable owed to the estate. That wasn't owed to the estate. That was fraudulent. That was fraudulent that those funds should not have been seized by the estate, because they weren't part of any of the life settlement funds. They weren't part of any of the Anthony Capital funds. They weren't part of any of the annuity payments. It was something that was completely separate.").

(2) conducting financial transactions[34] for some of the Anthony Entities after the Receivership Order was in place, including opening up a bank account for Anthony Capital, LLC, and sending money to an entity called DWS Negocios to close a transaction, T. 237:20-23, T. 257:8-258:25; T. 264:3-265:11; DX 48C-at ¶¶ 9(c), 93-94.

(3) continuing to carry out some operations of the Anthony Entities, T. 246:4-247:8; DX 48C at ¶ 9(a); and

(4) filing tax returns[35] for the Anthony Entities, T. 259:1-4.

With respect to the $100,000 that Anthony diverted from Anthony Capital LLC, Anthony testified that that was not happenstance; rather, Anthony had arranged with the payor EPUS to make the payment (thus specifically violating, among other things, Paragraphs 3, 4, 5.f, 10.a., and 15.d. of the Receivership Order): "But I contacted EPUS to say, we need to have money to live on." T. 253:20-254:6.

In explaining another apparent violation, Anthony testified to violating the Receiver's exclusive "control and possession," DX 9, at 4-5 (¶¶ 3, 5.a., 5.c. 5.i.) by making a payment for a past-due premium using "cash" from his "sock drawer" that he gave to a "neighbor": "And we were getting emails and notifications that the premium payment had not been made and that policy was going to lapse. So, yes, after this order was issued, I took money out of my sock

[34] The Receivership Order (¶ 3) stated it was the Receiver who "shall operate, manage, maintain, assemble, marshal, collect, protect, and preserve the Estate," DX 9 at 4. which included the Anthony Entities. Further, Paragraph 5.a. made clear it was exclusive control: "The Receiver is hereby given the powers and authority usually held by receivers and reasonably necessary to accomplish the purpose of this receivership, including, without limitation, the specific power to: a. take from the Anthony Entities, and from any others in control of the Estate and Estate property, immediate control of the Estate*, to the exclusion of all others*. . . ." *Id.* Paragraph 5.i. of the Receivership Order provided the Receiver the power to "operate, manage, maintain, protect, and preserve the Estate, including, to the extent the Receiver deems appropriate, the going concern value of any business operated by the Estate." DX 9 at 6.

[35] In addition to the above provisions about exclusively operating and managing the Estate, which would include the filing of tax returns, Receivership Order ¶ 5.m.i includes the power "*pay taxes*, insurance, utility charges and other expenses and costs reasonably incurred in managing, preserving, and liquidating the Estate." DX 9 at 7 (emphasis added).

drawer, which was cash, that represented basically all the money we had. And I directed my neighbor, because I was out of town, to go in and buy a cashier's order and to pay the premiums on this policy that was going to lapse." T. 241:1-16.

With respect to filing tax returns for the Anthony Entities, Anthony testified that he filed corporate returns in November 2022 for "all of the years for all of the funds in that time period," T. 259:1-9, and then claimed not to recall if the Receiver directed him to do this, T. 259:13-15. Incredibly, Anthony testified that filing tax returns and communicating with his investors was not related to operating Anthony Capital, T. 259:20-22, 260:1-5, 260:10-18. Moreover, Anthony admitted that he communicated with investors after the Receiver had told him not to do so. T. 261:5-19.

D. Settlement and Judgment of State Court Case

A trial in the State Court case was scheduled to begin in late February 2023. T. 266:22-267:14. Prior to the trial, on January 5, 2023, Anthony participated in a mediation along with his attorney Otto Hilbert, his wife (who was a relief defendant in the State Court case), his wife's attorney, CDS representatives, the Receiver, and a retired Colorado Judge, Ann Frick, who served as the mediator. T. 267:15-268:14. Anthony had no prior dealings with Judge Frick, T. 269:10-15, but his attorney Hilbert had selected the mediator and informed Anthony she was a personal friend and he trusted her opinion. T. 268:9-14, 559:2-6. During the mediation, which lasted all day, Anthony and his attorney were in a separate room from CDS representatives and lawyers. T. 268:15-269:2. Prior to the mediation, Anthony and his attorney had submitted a confidential mediation statement and received similar statements from CDS and the Receiver. T. 272:2-15. Anthony testified he understood that "confidential" meant "it should be held within

those parties," but also conceded that he filed those same confidential mediation statements (with his added commentary) on the docket in this case. T. 277:17-280:11; DX 48D & 48E.

Anthony also surreptitiously recorded his portion of the mediation proceeding on his cellphone, which he claimed captured what Judge Frick told him and the others in his mediation room. T. 270:12-24, 273:6-18. Anthony testified he could not recall if he advised others of the recording, T. 273:12-14, but then was forced to concede that he had not told the mediator and revealed that Judge Frick had been "upset" to learn of the recording, T. 274:15-25. Nevertheless, Anthony attempted to portray his activities as being known to the room by saying his phone was "on the desk" and "face up." T. 274:9-25. Anthony was unable to recall if he had left the phone recording at points when he was not present in the room, including leaving to go to the restroom or to get water. T. 275:5-276:8.

At the conclusion of the mediation, Anthony signed a Memorandum of Settlement, as did an attorney representing the CDS. T. 282:23-283:18; DX 12. Anthony read the Memorandum of Settlement before signing it, T. 284:4-5, but contended that he "did not understand the ramifications of that document." T. 284:24-285:3. The Memorandum of Settlement provided that the parties in the State Court Case would "[f]ile a stipulated injunction for 10 years barring David Anthony offering and selling securities in the state of Colorado," and that the "language of the injunction with track the" Colorado Complaint. DX 12 at 1. Further, the Memorandum of Settlement provided that the parties would "[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.*

At some point after the settlement agreement was signed, Anthony decided he did not wish to settle. T. 301:3:-6. Anthony testified that he made this decision "[i]mmediately within

15 minutes after signing the Settlement Agreement" and "we [referring to him and his wife] felt like that was the wrong decision to do, and we contacted our attorney to rescind the order, that we had made a mistake." T. 305:6-10. Anthony testified that he believed the Settlement Agreement had been entered under "duress" and "false pretenses," namely that he "could continue to operate as an Investment Advisor in the State of Utah or any other state that I wanted to continue to be able to go out and to provide a living for my family if I signed the settlement." T. 305:11-306:2. Nevertheless, in an email Anthony sent to his wife, Hilbert, and his wife's attorney two days after the mediation, January 7, 2023 (which Anthony also filed in this case), with the subject line: "Harbor city notice- Alabama & Reasons to rescind the order," Anthony lodged a series of reasons about why he needed to "break this settlement deal," DX 29 at 2, but not once mentioned any concerns about being unable to get licensed in another state. T. 311:14-23. Anthony instead wrote in the email various reasons why Harbor City was *not* a fraud, writing at one point: "What JP Maroney and Harbor City were doing was valid." DX 29 at 1.

After the settlement, Anthony fired attorney Hilbert and hired yet another attorney who moved to unwind the settlement, DX 17 at 2; T. 557:19-558:23, while the CDS moved the State Court for enforcement of the agreement. T. 312:15-315:24; DX 13 (CDS Motion to Enforce Settlement Agreement), DX 14 (Anthony Motion to Set Aside Mediator Settlement), DX 15 (CDS Reply and Opposition to Anthony Motion), DX 16 (Anthony Reply). The State Court also heard argument on the settlement agreement, DX 17 at 3, and Anthony's attorney attempted to have the State Court consider a transcript of the surreptitious recording of the mediation that Anthony had made, which included redactions applied by Anthony's attorneys, DX 17 at 3, 7 n.1.

On February 28, 2023, the Honorable Jill Dorancy, Denver District Judge for the State of Colorado, issued an Order Regarding Settlement Agreement that, *inter alia*, enforced the January 5, 2023 Memorandum of Settlement as valid. The State Court's Order thoroughly examined the procedural history of the State Court case, mediation, and applicable Colorado law, including a Colorado statute that prohibits the voluntary disclosure or discovery or compulsory process "any information concerning any mediation communication or any communication provided in confidence to the mediator or a mediation organization" absent specific exemptions, Colo. Rev. Stat. Ann. § 13-22-307(2). *See* DX 17 at 7 & n.1. The State Court's Order rejected Anthony's arguments that the settlement resulted from mutual mistake or misrepresentation by the mediator. *Id.* at 4-9. As to Anthony's claim that the mediator "arranged" the deal, the Court wrote: "The Court disagrees. Here, all the parties were represented by counsel in a mediation session which took place before a private mediator. The mediator did not design the terms of the agreement, nor was there an allegation that the mediator had a pre-existing relationship with either party." *Id.* at 7. The Court further reasoned:

> However, 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. The Court finds that there was no mutual mistake as the mediator was not a party to the agreement.
>
> …
>
> Pursuing a settlement agreement that provides certainty for all parties can be complex, because the imposition of certain types of relief can have significant consequences, such as the one raised in this case. The effect of those consequences can vary widely depending on the ultimate goal of the parties and they can range from immaterial to very significant. Here, if the Defendant was concerned about impact that the prohibition in this case would have on his ability to work outside the state of Colorado, those terms should have been reflected in the settlement agreement. Defendant could have requested an agreement which was conditioned

> on his ability to work in Utah and incorporated those terms in the settlement agreement. He failed to do so.

Id. at 7-8. Thereafter, Anthony's attorneys moved for reconsideration, which Judge Dorancy also issued an opinion denying. *See generally* DX 19. Therein, the State Court wrote: "Defendant's argument merely attempts to shift the responsibility to research the impact of his negotiated agreement from himself and his counsel to the mediator and the opposing party." *Id.* at 2. The Court again emphasized that Anthony's efforts to use the mediation conversations to his advantage ignored Colorado statute: "Defendant is asking the Court to ignore the clear requirements of the statute governing mediator communications with no facts or law to support the request. The Court declines to do so." *Id.* at 3.

After the rulings on the settlement, in April 2023, the State Court entered an injunction prohibiting Anthony from engaging in a variety of securities-related activities in Colorado for a period of ten years; the injunction specifically prohibits Anthony 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.

DX 4 at 1; 322:22-323:8. In May 2023, the Colorado Securities Commissioner also entered an Order that suspended Anthony's Colorado investment adviser representative license as well as the license of Anthony Capital until 2033. *See* DX 21 at 2-3; T. 324:30-327:8.

Anthony appealed the State Court decision to enforce the settlement, again represented by an attorney, but the Colorado Court of Appeals dismissed the appeal with prejudice as untimely in July 2023. *See* DX 20; T. 327:10-328:10.

E. Anthony's Efforts to Start New Advisory Firms During and After the Colorado Lawsuit

1. Formation of Epic During Colorado Lawsuit

Since the initiation of the State Court Case in March 2022, Anthony has been residing in Utah. T. 207:17-18. While the case was pending in September 2022, and before he signed the settlement agreement, Anthony incorporated Respondent Epic under the laws of Utah. *See* DX 27 at 1-2; T. 328:12-330:4. Although Anthony bizarrely attempted to claim that he did not form Epic as an investment advisory entity, T. 329:20-330:4, the incorporation documents he filed with Utah plainly stated its purpose was "Registered Investment Advisory firm providing wealth management and money management services for affluent clients." DX 27 at 1.

Anthony testified that when he started Epic, he did not intend for that entity to be an investment adviser but, rather, a retirement income planning company "where I wouldn't need a wealth advisory license and I could do retirement income planning via the use of annuities." T. 332:22-333:6, 334:6-12. Anthony explained he intended to use Epic to "go out and do retirement income planning and then if my registration got approved to be an [i]nvestment [a]dvisor somehow, then I could pivot it and I would already have all the goodwill and all the trademarks and all the logos and the branding there," apparently referring to rehabilitating and using the Anthony Capital name. T. 335:1-336:1. Anthony testified that it was his intention not for Epic to be the advisor entity, but for Anthony Capital to continue that work. T. 336:2-11.

2. Attempt to Register Anthony Capital as a Utah Advisor

On December 1, 2023, Anthony submitted a Form ADV to Utah's securities regulators to register "Anthony Capital, LLC" as an investment adviser with the state. DX 25 at 1, 6. The Form ADV submitted, which Anthony completed and signed under penalty of perjury, stated that the registrant was organized under the laws of the state of Utah, *id.* at 6, and had CRD Number 152504, *id.* at 1. There were two principal issues with those statements. *First*, there was no "Anthony Capital, LLC" formed under the laws of Utah on December 1, 2023, when Anthony submitted the form. Indeed, Anthony did not actually incorporate the new Anthony Capital (Utah) entity until December 5, 2023. *See* DX 33. *Second*, the CRD number Anthony put on the Form ADV was for the Colorado-incorporated Anthony Capital, LLC, and Anthony had not applied to transfer that number to his new Utah entity (which of course did not even exist). T. 53:11-13, 54:5-8; *see also* DX 36 at 1 n.1 ("Item 4 Successions stated the applicant was filing as a succession from Anthony Capital to Anthony Capital LLC as of 12/1/2023. Form ADV 1 Item 3 amended the state of formation from Colorado to Utah, but did not amend ADV Part 1B Item 2.K. which listed the legal status date of formation (1) as 08/09/2006 and the IRS Employer Identification No in Item 2.K.(2) as No. 26-3782746. Therefore, there is inconsistency in the application for which entity is applying in Utah, the Colorado entity formed 08/09/2006 or the Utah entity formed 12/05/2023.").

In late-September 2024, while Anthony Capital's application to Utah was still pending, Anthony filed the first of three Form ADV's to register Epic with the Commission. *See generally* DX 1. One week later, on September 30, 2024, Utah regulators advised Anthony that the state intended to deny Anthony Capital's registration request with Utah. T. 361:1-19, 362:5-12. In particular, Utah regulators told Anthony: "Pursuant to the provisions for denial of an

application, the Division 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.

Later that same day, September 30, 2024, Anthony attempted to assuage Utah regulators by explaining: "The receivership order was for Anthony Capital, LLC a Colorado company." DX 35 at 1-2. During questioning about these statements at the Hearing, Anthony contended (after expressing hostility toward the Division attorney questioning him), T. 363:2-6, that he was trying to convey that the Anthony Capital entity he was applying under (the Utah entity) was "not subject to any enforcement action by Colorado. It's a different entity." T. 363:7-18. In addition, Anthony referenced his then-recent submission of Epic's application to register with the Commission: "Alternatively, [a]ll of my clients are outside of Utah, so an SEC registration as an Internet Only Advisor under Rule 203A- 2(e) is more applicable. I applied last week with the SEC directly under Epic Capital Wealth Advisors, LLC CRD #323482, the system would not let me apply with Anthony Capital as I had previously applied last year for a state registration in UT." DX 35 at 2; T. 363:19-364:17. Anthony testified at the Hearing that "[m]y train of thought was whichever one of these gets approved first, whether it's Anthony Capital at the state level or Epic Capital at the federal level, then I'll be ready to go." T. 365:14-18; *see also* T. 58:22-25 ("I would have preferred to have applied as a federal advisor, as Anthony Capital, LLC.").

Based upon Utah's intent to deny his registration, Anthony withdrew the application for Anthony Capital to register in that state. *See* DX 37; T. 369:5-22. When he corresponded with Utah regulators about that withdrawal, a Utah regulator informed him that even if he did have a federally registered entity, 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. Utah regulators further told Anthony: "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), thus offering a clear warning that any IAR application he submits in Utah could face the same obstacles as his attempt to register Anthony Capital. *See also* T. 370:10-371:12.

Anthony also testified that he had applied to the state of California to be an investment adviser or IAR and that such an application was also withdrawn "[p]robably because this stuff was going on in Colorado and I wasn't going to be an advisor anymore." T. 403:22-404:9.

F. Epic Capital

1. Pertinent Applications and Information

This matter is proceeding because Respondent Epic, by way of Anthony, filed the above-referenced Form ADV with the Commission to register as an internet adviser on September 24, 2024. *See* DX 1; T. 352:13-353:15. Epic has never been registered with a state, has no clients, and has no assets under management. T. 382:11-22, 384:3-5. That initial Form ADV (Division Exhibit 1) stated, nevertheless, that Epic was then-eligible to register as an "internet advisor" under Rule 203A-2(e), 17 C.F.R. § 275.203A-2(e). *See* DX 1 at 5. Although the application (like other form ADVs) was signed by Anthony under penalty of perjury, T. 353:20-355:17, Anthony's testimony revealed Epic was not actually ready to provide internet advisory services

at that time, and further that Anthony had no real plan or intention to be an internet adviser because "when I spoke to the SEC when they came back and they said, well, you know, do you plan on actually speaking to any of your clients? I said, well yeah, I'm probably going to end up speaking to my clients. And they said, well, you probably shouldn't be in the [internet] only advisor. . . . When I found that new information, then I went back and I rescinded my internet only advisor application and clicked the box that said now I'm applying for the 120 day-rule but *still used all the same forms*." T. 354:8-22 (emphasis added); *see also* T. 380:3-8.

On October 2, 2024, after Anthony voluntarily withdrew the Utah registration for Anthony Capital, he amended Epic's Form ADV to the Commission to register Epic under Rule 203A-2(c), 17 C.F.R. § 275.203A-2(e). This was based on Epic's purported expectation to be managing $100 million or more in assets within 120 days of registration. *See* DX 2 at 1, 5; T. 378:14-381:7. Anthony described that his plan for Epic to raise $100 million would involve activating his website and expediting a prior plan he had to raise $50 million in six months: "[J]ust as I was doing where I had raised close to $50 million in under six months and plan to do that again. Only now more efficiently and more effectively. Because I had already been in front of hundreds of millions of dollars of monies of folks that wanted and were inquiring about Investment Management Services." T. 382:1-10. Anthony never mentioned that he may be required to first register as an IAR with Utah before he could act as an IAR of Epic, but he described that he would make contact with persons on a list of "over 3,000 clients," whom he quickly was forced to admit were simply people who "had responded to Advanced Tax Planning Services," and had never heard of Epic. T. 405:15-24, 408:13-21; *see also* T. 590:21-592:18.

On October 25, 2024, Anthony submitted another amendment to Epic's Form ADV, DX 3 at 1; T. 387:8-10, and that is the operative application at present. This submission followed a

comment letter from the Division of Examinations, DX 38, which identified various matters in Epic's Form ADV for review and correction. *See id.* at 2 ("It appears that the asset of the adviser's sole owner and executive officer may be subject to a restraining order and asset freeze as well as numerous other entities controlled by the adviser's owner. These persons may also currently be under receivership. This appears to be a material fact relating to the advisory relationship that is required to be disclosed in the Form ADV Part 2A brochure.").

Anthony also filed for Epic a Form ADV Parts 2A and 2B, *see* DX 34, where he set forth Epic's intended operations, services, fees, risk and disciplinary information, among other matters. The Part 2A includes a description of the State Court Case proceedings and Colorado suspension, wherein Anthony included a lengthy denial of the allegations, *id.* at 14-15, and claimed that he was "renewing" his CFP license (as of September 2024) even though it had stopped being active in 2022. *See id.* at 563:11-566:18.

Although not stated in any of the Form ADVs and application materials, Anthony testified during the Hearing that one of his reasons for applying for SEC registration was to expose what he viewed as problematic actions by the State of Colorado, Receiver, and mediator from the State Court Case. T. 396:17-400:3. Anthony explained that he has told his old investors: "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. And I'm going to appeal to the SEC and then I'm further going to appeal to the Department of Justice to say we've got criminal actions, criminal actions with the State of Colorado and what they've done." T. 398:18-24; 399:16-18.

2. Epic's Business Plans and Intended Operations

Anthony testified that if Epic is unable to raise the necessary $100 million within the 120-day exemption period, he would withdraw Epic's registration, as required by the Form ADV. T. 386:20-387:78; DX 2 at 6; DX 3 at 6; *but see* T. 571:16-20. When asked for specifics on what Epic would do if, after the 120-day period, Epic raised less than $100 million (*i.e.*, $50 million) and was unable to keep its SEC registration, Anthony testified: " My plan is to get the issue in Colorado resolved and expunged. And so all those false claims that are on my record will be removed because the Attorney General of Colorado would be in jail for fraud." T. 414:19-415:2. Yet, Anthony refused to admit that it could be a safer course for Epic's investors if he *first* resolved his issues with Colorado, and the purportedly improper injunction against him there, before Epic's application was approved. T. 415:3-416:15. Anthony also conceded that his Form ADV would *not* disclose as a risk to investors that if Epic loses its SEC registration that it could face difficulty registering as a state adviser in light of his prior registration issues with multiple states (*e.g.*, Colorado, Utah, and California). T. 417:13-418:6; 604:16-605:18.

Anthony further explained that, if his personal IAR registration is an obstacle to future registration with a state, he would hire new personnel to manage client funds, T. 577:15-578:4, 582:15-21, and that if Anthony's ownership of Epic became an issue, he would transfer ownership but effectively remain in control: "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." T. 606:19-607:8 (emphasis added). Anthony testified, however, that he would not disclose any risk around losing Epic's SEC registration and the firm being unable to register in Utah. T. 604:16-605:18.

During his own presentation of evidence, Anthony called three former investors in the Private Funds, none of whom were asked about Epic and rather appeared entirely unaware that the Hearing at which Anthony asked them to testify concerned his effort to register a new advisory firm.

II. OVERVIEW OF INVESTMENT ADVISER REGISTRATION AND PROCEDURAL HISTORY

A. The Responsibilities to Register and Oversee Investment Advisers are Shared between the Commission and the States.

Section 202(a)(11) of the Investment Advisers Act (the "Advisers Act"), 15 U.S.C. § 80b-2(a)(11), defines an investment adviser as any person or firm that (1) for compensation, (2) engages in the business of (3) providing advice to others or issuing reports or analyses regarding securities. *See* "Regulation of Investment Advisers by the U.S. Securities and Exchange Commission," (hereinafter "Regulation of Investment Advisers") at 2, *available at* https://www.sec.gov/about/offices/oia/oia_investman/rplaze-042012.pdf (March 2013). It is unlawful for any investment adviser, unless registered consistent with the provisions of the Advisers Act, to make use of the means and instrumentalities of commerce as an investment adviser. *See* 15 U.S.C § 80b-3(a). "Until 1996, most investment advisers were subject to regulation by both the SEC and one or more state regulatory agencies." *Id.* at 8. However, the Advisers Act has since been amended "to allocate regulatory responsibility between the SEC and

the states" and "[t]oday, most small advisers[36] and mid-sized advisers[37] are subject to state regulation of advisers and *are prohibited from* registering with the SEC." *Id.* (internal quotation marks and citation omitted) (emphasis added). The prohibition against Commission registration falls away when the advisor's assets under management exceed $100 million *or* when one or more of "exemptions from prohibition" applies to a registrant. *See* 17 C.F.R. § 275.203A-2 ("Exemptions from prohibition on Commission registration"). As a practical matter, this means that registration with the Commission is generally limited to larger advisers (based on assets under management) and those smaller advisers who qualify under an enumerated exception (such as multi-state advisers). *See id.* at 8-17.

Here, the evidence showed that Epic has no present operations and is not a mid-size adviser that may register with the Commission because the value of its assets under management now exceeds $100 million. As reflected in Division Exhibits 1, 2, and 3, which are Epic's Forms ADV, Epic has sought one of the exemptions under Rule 203A-2 (17 C.F.R. § 275.203A-2). Although Anthony has sought to minimize the importance of his shifting from an internet-adviser eligibility to the 120-day exemption, T. 350:12-21, the record shows he made very intentional decisions about what path he believed would get him registered first, T. 366:23-367:17, qualifications and eligibility being, the Division would submit, beside the point.

[36] A small adviser has "less than $25 million of assets under management" and "are regulated by one or more states unless the state in which the adviser has its principal office and place of business has not enacted a statute regulating advisers." *See* Regulation of Investment Advisers, *supra*, at 9 (citations omitted).

[37] A mid-size adviser has "between $25 million and $100 million of assets under management" and "are regulated by one or more states if (i) the adviser is registered with the state where it has its principal office and place of business (*e.g.*, it cannot take advantage of an exemption from state registration), and (ii) the adviser is "subject to examination" by that state securities authority." *See* Regulation of Investment Advisers, *supra*, at 9 (citations omitted).

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On September 24, 2024, Anthony first sought to exempt Epic by claiming it was an "internet adviser"[38] under Rule 203A-2(e), 17 C.F.R. § 275.203A-2(e). *See* DX 1 at 5. The Hearing quickly established that Epic was not, in fact, then capable of operating as an internet adviser, including because Anthony did not then have an "operational interactive website" that he intended to use "at all times," 17 C.F.R. § 275.203A-2(e)(1)(i). Indeed, Anthony testified that he quickly abandoned the internet adviser claim upon learning in one phone call that he would not be able to regularly communicate with potential clients.

Thus, beginning on October 2, 2024 and continuing to the present, Anthony amended the Form ADV to attempt to use the "newly formed adviser" exemption under Rule 203A-2(c), 17 C.F.R. § 275.203A-2(c), because Epic claimed to have "a reasonable expectation that it would be eligible to register with the Commission within 120 days after the date the investment adviser's registration with the Commission becomes effective," meaning that Anthony expects Epic will manage $100 million four months after registration. *See* DX 2, 3.

B. Requirements for Action on an Application to Register with the Commission

This proceeding was instituted to determine if Epic's application to register with the Commission should be denied.[39] Under the Advisers Act, within 45 days of the filing of an application to register as an investment adviser (or within such longer period as to which the applicant consents), the Commission shall (A) by order grant such registration; or (B) as here, institute proceedings to determine whether registration should be denied. 15 U.S.C. § 80b-

[38] An adviser is eligible for registration under the internet adviser exemption if the adviser provides investment advice to all of its clients exclusively through the adviser's interactive website, except that the adviser may advise fewer than 15 clients through other means during the preceding 12 months. *See In the Matter of Ajenifuja Investments*, LLC, 2019 SEC LEXIS 157, at *1, 5.

[39] When this matter was instituted, the Commission also instituted proceedings against David Anthony pursuant to Section 203(f) of the Investment Advisers Act of 1940 in File No. 3-22308. The Division has previously moved the Commission to dismiss those proceedings.

3(c)(2). In light of the September 24, 2024 initial Epic application (Division Exhibit 1), and at the instigation of the Division, on November 8, 2024, the Commission issued an Order Instituting Proceedings ("OIP") to determine if Epic's application for registration should be denied under Section 203(c)(2)(B).

If the "Commission finds that the requirements of this section are satisfied and that the applicant is not prohibited from registering as an investment adviser under [15 U.S.C. § 80b-3a]" then it "shall grant such registration." 15 U.S.C. § 80b-3(c)(2)(B). On the other hand, the statute provides that "[t]he Commission shall deny such registration if it does not make such a finding or if it finds that if the applicant were so registered, its registration would be subject to suspension or revocation under subsection (e) of this section." *Id.* That subsection, which is 15 U.S.C. § 80b-3(e), is the crux of the matter before Your Honor, and provides, in relevant part, that the registration of an investment adviser shall be suspended or revoked if the Commission finds that a) such suspension or revocation is in the public interest and b) 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).

Here, Epic's application is subject to scrutiny because if the firm were registered, "its registration would be subject to suspension or revocation" because Anthony is a person associated with Epic who has been "temporarily enjoined by order" by the State Court from "[m]aking 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 "[e]ngaging in business in the State of Colorado as a[n] . . . investment adviser, or investment adviser representative." *See* DX 4 at 1; *see also* U.S.C. § 80b-3(e)(4). This language plainly satisfies the disqualification trigger of Section 203(e), and thus leaves the only question whether granting Epic's application "is in the *public interest*." 15 U.S.C. §80b-3(e) (emphasis added).

On December 13, 2024, the Division moved the Commission under Rule of Practice 250(b) for summary disposition. *See* 17 C.F.R. § 201.250. On January 23, 2025, the Commission denied the Division's motion for summary disposition. In its decision, the Commission wrote that "[t]here are genuine issues of fact material to the Division's contentions that Anthony committed misconduct and that denial of Epic's application is therefore in the public interest. In particular, the Division does not identify any state court findings entitled to preclusive effect as to Anthony's conduct, nor does it address the egregiousness of Anthony's conduct, its isolated or recurrent nature, or his degree of scienter, all of which are factors that are necessary to our determination whether denial of Epic's application is warranted."

On January 24, 2025, Your Honor was designated the Presiding Judge in this matter, and in February 2025, Epic consented to extend the time to conclude these proceedings until October 20, 2025, which eventually led Your Honor to enter procedural orders setting an Initial Decision deadline of August 13, 2025. *See* Orders dated Feb. 18, 2025 and March 25, 2025.

III. Denying Epic's Application to Register Protects Investors and Furthers the Public Interest.

David Anthony's past conduct makes plain that it is not in the public interest to grant Epic the privilege of being registered by the Commission. As demonstrated above, Anthony repeatedly failed to meet his legal obligations, and not simply those imposed on him as a fiduciary when advising clients for the Private Funds. Rather, he intentionally violated basic

requirements that apply to everyone: to follow orders of courts, be truthful on government applications, and to testify candidly, fully, and credibly. Any one of these failures alone should be a sufficient basis for Your Honor to issue an Initial Decision denying Epic's application as against the public interest. That is because they each individually suggest, and in the collective overwhelmingly prove, that there would be substantial and ongoing risks to investors if Anthony were entrusted with their money if Epic were registered now. And, even if Anthony could establish that he did honestly advise his clients, had not violated a court order, and was merely mistaken and sloppy in the numerous applications he submitted under penalty of perjury, and even if he could repair the myriad issues with his credibility exposed at the Hearing, the public interest would still not be served by permitting Epic's registration: Epic clients may quickly find themselves with an adviser where there are *no* viable state or federal registration options, and would be illegally operating as an unregistered advisor. Anthony's testimony showed that he not only does not appreciate that risk, even when it was explained to him, he refused to acknowledge it should be mitigated and addressed, much less disclosed, to potential Epic clients. Finally, the public interest would not be served in countermanding the reasoned judgments of multiple state authorities who, having dealt with and heard from Anthony, have reasonably concluded that he should not be entrusted to manage investor money in their states.

A. The Commission's Broad and Flexible "Public Interest" Duty

To determine whether the Commission's "censure, placing of limitations, suspension, or revocation," 15 U.S.C. § 80b-3(e), is in the "public interest," the Commissioners has been given by Congress "broad discretion." *Marketlines, Inc. v. SEC*, 384 F.2d 264, 267 (2d Cir. 1967) (per curiam) (affirming Commission's revocation of investment adviser registration) (citing *Berko v. SEC*, 316 F.2d 137, 141 (2d Cir. 1963)). In 1979, the Fifth Circuit, in the case of *Steadman v.*

SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), adopted the factors courts had generally considered "in deciding whether to issue an injunction in light of past violations," *SEC v. Blatt*, 583 F.2d 1325, 1334 n. 29 (5th Cir. 1978), as factors the "Commission specifically ought to consider and discuss" when explaining why a particular sanction was required. *Steadman*, 603 F.2d at 1140; *see also Siris v. SEC*, 773 F.3d 89, 94 (D.C. Cir. 2014) ("Considering the entire relevant record and applying the multifactor test set forth in *Steadman v. SEC* . . . the Commission concluded that an industry-wide bar was in the public interest."). These *Steadman* factors include "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 his or her conduct, and the likelihood that the respondent's occupation will present opportunities for future violations." *In the Matter of Gacy M. Kornman*, Exchange Act Rel. No. 59403, 2009 WL 367635, at *6 (February 13, 2009) (citing *Steadman*).

The Commission and federal courts have repeatedly emphasized that the 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); *Kornman*, 2009 WL 367635, at *6; *see also Berko*, 316 F.2d at 141 ("In reviewing these findings, it is important to remember that the Commission is charged with the duty of enforcing the statute in the 'public interest', a mandate which necessarily 'gives the Commission broad discretion' and that its orders are intended to be remedial rather than penal, a result of the fact that the 'design of the statute is to protect investors' and the general public in this specialized filed.") (internal citations omitted). The "inquiry is undertaken not to determine whether there is a 'reasonable likelihood' of future violations but to guide our discretion." *In the Matter of KPMG Peat Marwick LLP*, 54 SEC

1135, 1192, 2001 SEC Lexis 98 at *69 (Jan. 19, 2001). As such, conduct beyond securities law violations is considered; for example, in analyzing the public interest, prior decisions have considered facts like an applicant's failure to pass an examination to qualify as an investment adviser and being found guilty of various serious crimes and disbarred, *Marketlines*, 384 F.2d at 267, and prior "threats of violence," *In the Matter of Meyer Blinder*, Release No. 60, 1995 WL 75233 at *3 (Jan. 17, 1995). As the Second Circuit recognized in *Marketlines*, such matters are "quite relevant to a determination as to whether it is in the public interest for him to continue as an investment adviser— an occupation which can cause havoc unless engaged in by those with appropriate background and standards." 384 F.2d at 267.

B. Anthony's Past Conduct Demonstrated a Clear Disregard for His Legal and Fiduciary Obligations, Was Recurring, and Included Intentional or Reckless Instances of Disobeying Legal Obligations.

The totality of egregious, repetitive, and deceitful conduct on Anthony's part is difficult to succinctly summarize. Although the Division did not attempt to relitigate or prove all of allegations of the Colorado State Court Case at the Hearing, the Division established the following deeply problematic prior behavior by Anthony, including fraudulent and even criminal conduct:

- Anthony intentionally and repeatedly violated a court order that specifically restrained his conduct;
- Anthony falsified or negligently completed regulatory applications, including the Form ADV applications for Anthony Capital and Epic;
- Anthony violated state laws and rules in surreptitiously recording others and sharing without authorization confidential mediation materials; and
- Anthony's conduct toward Private Fund investors, and his management of those funds, exhibited poor judgment and reasoning concerning disclosure of negative information and other matters.

These represent just *some* of the decisions made by Anthony during his management of Anthony Capital or in connection with his attempt to thwart or overturn the Colorado State Court Case. The common thread, however, is that Anthony lies about, withholds, or minimizes information when it is to his advantage, and he airs, publicizes, and misuses the information of others when he sees a strategy for doing so; the Hearing showed him to be cavalier, ignorant of laws and strictures that reasonable investment advisers should be familiar with and which should have governed his conduct, and motivated principally by self-interest – the antithesis of a fiduciary.

To be sure, the Division did not undertake to prove Anthony's past violations of the law in the Hearing. Nor did Division proactively initiate this case after a fulsome investigation, but rather has responded to Anthony's decision to submit an application to register Epic with the Commission, and is doing so on the relatively expedited timeline contemplated by the registration statute. But while the Division need not prove specific violations of the federal securities laws (or any other laws), the Division provides the analysis below, which highlights certain very-concerning behavior by Anthony, to further demonstrate that it is not in the public interest to allow Epic to register now with the Commission.

1. Anthony Repeatedly Violated the Receivership Order.

The evidence at the Hearing established that Anthony intentionally and routinely violated court the Receivership Order in the State Court Case that removed his control over the Anthony Entities. Some of these violations, the record established, were so plainly intentional and calculated that they likely rise to the level of contempt. For others, the record showed that Anthony's actions were at least reckless and stemmed from either refusal or inexplicable failure to even read court orders that he has now spent years challenging as illegal.

Almost as soon as the State Court entered the Receivership Order in May 2022, Anthony violated it. The record established that his violations of the Receivership Order amount to criminal contempt of court. In the federal criminal code, by way of example, the elements of a criminal contempt under Section 401(3) of Title 18 are:

> *First*, that the court entered an order of reasonable specificity;
>
> *Second*, that the defendant had actual knowledge of the court order;
>
> *Third*, that the defendant disobeyed or disregarded the court order; and
>
> *Fourth*, that the defendant acted willfully and knowingly in disobeying or disregarding the court order.

United States v. Voss, 82 F.3d 1521, 1529 (10th Cir. 1996); *see also* Sand, Modern Federal Jury Instructions-Criminal P 20.02 & Cmt. (2024). The record clearly supports Anthony's probable violations of a criminal contempt statute.

First, the Receivership Order was a court order of reasonable specificity, as it was entered by the State Court on May 9, 2022, DX 9, and plainly and unequivocally designated Randel Lewis as the Receiver to take over, control, and administer the Anthony Entities' assets and operations. *See supra* I.C.2 and nn. 31-35 (discussing specific provisions of the Receivership Order). The Receivership Order is detailed and thorough, and its language and restrictions covered the assets of the Anthony Entities, and even included an "avoidance of doubt" provision that specified: "For the avoidance of doubt, all rights and privileges of the Anthony Entities and the foregoing assets and interests are property of the Estate." DX 9 at 3. The Receivership Order provided that the Receiver was "hereby directed and empowered to take immediate control and possession of the Estate" and "shall operate, manage, maintain, assemble, marshal, collect, protect, and preserve the Estate, subject to the supervision and exclusive control of this Court." DX 9 at 4 (¶ 3). Further, the Anthony Entities (which were all controlled by Anthony) were

"ordered to deliver immediately over to the Receiver all of the Estate, and shall cooperate with the Receiver in the administration of the Estate." *Id.* (¶ 4). In addition to specifically enjoining the Anthony Entities from collecting the Estate's assets (¶ 10.a.), the order calls out "accounts receivable" repeatedly, including to specify they were part of the Receivership Estate (DX 2 at ¶ C.), and provides the Receiver the specific power to "collect all accounts, *accounts receivable*...." (¶ 15.d.).

Second, Anthony testified that he had actual knowledge of the Receivership Order, and that he read the Order around May 9, 2022. T. 232:16-22. Anthony explained the significance to him of the Receivership Order as follows: "All the significance in the world, because now all the assets were frozen and we couldn't administer not only any of the investments for my investors that were losing hundreds of thousands of dollars, but we also couldn't pay premiums on the life settlement funds that had $80 million of moneys that were subject to being lost because of what the Judge had done based on the false testimony." T. 229:5-16. Anthony also testified that knew the property in the Receivership Estate "were no longer in my control. I could not do anything with them nor communicate with any of the investors regarding anything that had happened." T. 236:4-10.

Third, Anthony repeatedly disobeyed the Receivership Order: diverting $100,000 of money payable to Anthony Capital, LLC, pay Anthony and his family's personal expenses; opening a bank account because his prior accounts were closed; sending money to DWS Negocios to close a transaction related to one of the Anthony Entities; continuing to operate the Anthony Entities by, among other things, speaking with clients, and filing multiple tax returns for the Anthony Entities in November 2022. *See supra* I.C.2 and nn. 31-35.

Fourth, Anthony confirmed that he *intended* to disobey the Receivership Order when he took the above action because he had decided that the demands of the Receivership Order were inconsistent with what he believed would benefit him or the Anthony Entities. The clearest example of this was Anthony's explanation about why he diverted an account receivable payment from EPUS Energy to his own benefit (instead of Anthony Capital, LLC), which he justified on the basis that the diverted funds were (in his mind) payable to him instead of the Receivership Estate, T. 251:23-252:14, 253:1-12, and that, to make sure that happened he had "contacted EPUS Energy and said, can you make that payment to me that's owed to me?" T. 252:18-23. Anthony indeed concedes that he took this action intentionally in an effort to benefit his family. T. 253:14-24.

In addition to the diversion of $100,000, the Hearing also established that Anthony's efforts to continue operating some of the Anthony Entities were intentionally taken to circumvent and countermand the Receiver. Here, Anthony's explanation about using cash from his "sock drawer" and then enlisting a neighbor to draw a cashier's check to pay premiums on a policy is most clearly explained as him intending to hide his involvement in circumventing the Receiver's management of the Receivership Estate. Anthony's explanation that he did this because he was "out of town" is non-sensical and irrelevant, because regardless of where he was, he was under an order not to direct the Anthony Entities. Likewise, Anthony's filing of numerous tax returns for the Anthony Entities (which he admitted) in November 2022, six months into the receivership, was an intentional violation of the Receivership Order, as he interfered with the Receiver's exclusive control (subject to Court supervision).

From his testimony at the Hearing, it was not difficult to deduce Anthony's rationale for these intentional violations – he did not (and does not) recognize the legitimacy of the Colorado

State Court's orders, which he believed were based on a fraud by the CDS. But his personal views are irrelevant to what the law requires, and his view totally overlooks that he had numerous attorneys challenging the propriety of these orders in the State Court Case. While Anthony lost, and is unhappy about it, the requirements of the law and Anthony's obligations to follow judges' orders were clear. *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. . . ."). The Court should find his conduct in violating the State Court's orders were intentional and likely constituted contempt of court.

2. Anthony Falsified, or Negligently Completed, Regulatory Filings.

Anthony's problematic prior conduct also included his falsification and inaccurate completion of regulatory filings, principally a Form ADV he submitted to the State of Utah for Anthony Capital and the Form ADV he submitted to the Commission for Epic. The Division introduced Forms ADV for Epic, DX 1, 2, 3, and Anthony Capital, DX 25. Each form indicates it was made under penalty of perjury, DX 1 at 41, DX 2 at 41, DX 3 at 42, DX 25 at 37, and Anthony testified that he signed the forms under penalty of perjury, T. 59:19-22, 61:1-2, T. 355:11-17. The significance of such an attestation has been described as "as much a protection for the accused as it is a threat. All testimony, from third-party witnesses and the accused, has greater value because of the witness' oath and the obligations or penalties attendant to it." *United States v. Dunnigan*, 507 U.S. 87, 97 (1993). The Court should give it meaning here, as the Commission and any state-securities regulator is entitled to expect full and truthful information is provided to them.

The Hearing established that Anthony, at least negligently, completed Forms ADV and submitted them to the State of Utah and the Commission with inaccurate, misleading, or incomplete information. First, on December 1, 2023, Anthony tried to register a company that did not exist—an Anthony Capital, LLC organized in Utah. *Compare* DX 25 at 1, 6 with DX 33 at 1-2. That form also misrepresented that this same, then-fictitious Anthony Capital, LLC (Utah) had a CRD number that it did not, because Anthony used the CRD number for his Colorado company that he had not transferred to any other entity. Anthony's motive for falsifying this information was that he did not want the State Court case against Anthony Capital (Colorado) to be considered by the Utah regulators; indeed, he told Utah regulators, "Anthony Capital, LLC Utah is different from Anthony Capital, LLC Colorado. *Colorado has no jurisdiction over a UT entity that was created after the case in Colorado was settled*." DX 35 at 2 (emphasis added).

Next, the Forms ADV submitted for Epic to the Commission contain multiple inaccuracies and omissions. The first Form ADV submitted for Epic claimed that Epic was eligible to register with the Commission as an internet adviser, when the firm did not have an operational, interactive website and Anthony did not intend to provide his advisory services exclusively through that website. Indeed, when Anthony was served with a subpoena in these proceedings that required him to produce all documents "related to Epic Capital Wealth Advisors, LLC's eligibility to register as an internet adviser under rule 203A-2(e)," DX 50 at 1-2, he provided no records at all about Epic's internet advisor eligibility, DX 41 at 1. Although Anthony claimed in his testimony that he was developing a website with a company called "Wright," his failure to produce a single responsive document, combined with his immediate switch of Epic's registration to the 120-day exemption based on a phone call with the SEC, must

be interpreted as showing he had no plan to operate Epic in the way he represented on Division Exhibit 1.

In addition, the Parts 2A and 2B to the Form ADV that Anthony submitted for Epic, DX 34, include misleading and incomplete information. Specifically, in Item 9 of the form, Anthony described his "disciplinary information" and added a lengthy defense to the State Court Case where he wrote: "Anthony, however, recorded the mediation hearing, and presented a transcript that clearly shows that this promise was made by the Commissioner, and that the settlement was done under false pretenses and should be voided." DX 34 at *13. This was false, because Anthony has conceded he never spoke with the Commissioner or CDS representatives during the mediation. T. 268:15-24. And, in Part 2B, Anthony listed his "Professional Certifications" as including Certified Financial Planner, when that designation had been "suspended because of the action of the State of Colorado." T. 559:13-16. Anthony's inclusion of "currently renewing" the Certified Financial Planner as of September 2024 misleads recipients because "renewal" suggests an eligibility for the certification that Anthony knew since 2022 was in question.

3. Anthony Failed to Appreciate or Abide by State Laws and Rules by Surreptitiously Recording Mediation Proceedings and Publishing Confidential Materials.

Anthony testified he regularly audio records other people without their knowledge so he would have the conversation for his "protection," including his conversations with individuals at Harbor City, which is based in Florida, and the mediation session with Judge Frick. Anthony's haphazard and uncanny use of surreptitious recording without considering the consequences or restriction suggests decision-making that is ill-suited to being a fiduciary.

Under Florida law, the consent of both parties to a conversation is required for the lawful interception of a phone call: "It is lawful under this section and ss. 934.04-934.09 for a person to

intercept a wire, oral, or electronic communication when all of the parties to the communication have given prior consent to such interception." Fla. Stat. Ann. § 934.03(2)(d). Anthony testified that individuals at Harbor City were not advised of his recording, T. 188:5-7, and thus they clearly did not consent to these recordings.

With respect to the mediation, Anthony surreptitiously recorded his portion of the mediation meeting with Judge Frick, without advising or obtaining her consent, and then attempted to use that surreptitious recording as evidence in his case. Setting aside that the effort indicates a lack of respect toward a third-party mediator and retired member of the bench, Anthony's attempts to use the information have run afoul of Colorado law, namely Colo. Rev. Stat. Ann. § 13-22-307(2), which the State Court plainly explained: "Due to the confidentiality provisions in section C.R.S. § 13-22-307, the Court is unable to receive any mediation communication or information provided to the mediator in confidence. The section expresses a clear intent to prohibit the disclosure of mediation communication, unless both parties consent or an exception applies. Neither of which are present here." DX 17 at 7 n.1. Despite this admonition, Anthony attempted to use that same recording at the Hearing. T. 527:18.

Anthony's procurement and handling of presumably confidential and sensitive information, and his willingness to use it when he believes it would benefit him, notwithstanding legal or other restrictions on the use of such information, evidences an impaired ability to adhere to legal requirements. *See*, *e.g.*, *In the Matter of Robert D. Boose*, Release No. 15, 1991 WL 292044 at * (Feb. 11, 1991) ("This evidence indicates it is highly unlikely that Mr. Boose can conduct himself in compliance with the law.").

4. Anthony's Conduct Toward Private Fund Investors Exhibited Poor Judgment and Reasoning Concerning Disclosure of Negative Information.

Throughout Anthony's testimony, a recurring pattern emerged that suggested he consciously withheld from, or selectively disclosed information to, certain investors in his Private Funds, did not appreciate conflicts of interest between himself as fund manager and the funds, and acted repeatedly in a way that suggested he was prioritizing his financial interests over the funds' interests.

One clear example of this concerned the $602,000 loan that the Income Fund Two made to the Promissory Note Fund, some or all of which was then lost to the fraud at Midtown Resources. T. 173:6-173:19. While Anthony had written a letter to Promissory Note Fund investors to inform them that their principal was lost, where he told of a "complete loss because of fraud due to Midtown Resources . . . being deemed a Ponzi scheme for the Securities and Exchange Commission," T. 172:23-173:5, 177:5-13, he failed to share the same information with Income Fund Two investors. This was based on a decision Anthony made that he could still meet the estimated 60% rate of return over the life of the investment, but that conclusion did not justify withholding information about an investment loss (especially one involving a fraud where the investors might have other legal recourse).

In another example again involving the Promissory Note Fund, Anthony described his decision to classify his Life Settlement Funds as "small or medium-sized" businesses so that Promissory Note Fund money could be sent to Life Settlement Funds. In so doing, Anthony thus apparently decided it was in Promissory Note Fund's best interest to invest in other funds also run by Anthony *and* to classify those funds as akin to small businesses (when he of course was aware that he was the only "employee" and the funds were not traditional small businesses). For an investor in the Promissory Note Fund, which was touted as making "merchant cash advance" investments, T. 164:15-165:10; DX 23 at 92:17-22, 134:18-22; RX 3 at 61, they could

reasonably have questioned how these Life Settlement Funds fit a "merchant-cash-advance" investment thesis, especially since life-settlements do not involve collecting on accounts receivable nor constitute short-term return investments (as the Promissory Note Fund had a two-year investment period). T. 164:16-166:4. Thus, whether the fund documents gave Anthony technical discretion to do this, his explanation of the reasoning suggest that he had to search for justifications to make such investments outside of merchant-cash-advance.

Yet another questionable disclosure issue arose with the Bond Fund and Anthony learning about the SEC investigation of Harbor City. During the Hearing, Anthony testified that he had received a call from SEC investigators in March 2021 about Harbor City wherein he was informed that the SEC was conducting a non-public investigation of Harbor City. T. 188:25-189:15. From the conversation, Anthony concluded the SEC was investigating Harbor City and also that "they wanted to investigate me to see if I was complicit with the fraud that they were accusing Harbor City of." T. 189:11-15. That the principal recipient of $5 million from the Bond Fund was under federal investigation *and* that Anthony himself may have been viewed by regulators as complicit was likely material to Bond Fund investors. *See*, *e.g.*, *Freschi v. Grand Coal Venture*, 767 F.2d 1041, 1048 (2d Cir. 1985) ("Any reasonable investor would be interested in knowing that the SEC was concerned about possible fraud in connection with a securities offering which the offeror himself described as 'basically similar' to the one under consideration for investment."); *Heller v. Goldin Restructuring Fund, L.P.*, 590 F. Supp. 2d 603, 614, 617-18 (S.D.N.Y. 2008) ("Further, the cautionary language in the Solicitation Documents in no way addresses Defendants' other allegedly fraudulent misrepresentations and omissions, such as . . . the failure to disclose the Securities and Exchange Commission's investigation of Harrison. . . ."). But, as conceded at the Hearing, Anthony did not tell his investors in the Bond Fund any of

this information. T. 201:8-23. Instead, Anthony testified, within "ten seconds" of the call with the SEC concluding, Anthony contacted the principal of Harbor City J.P. Maroney about the call. T. 191:2-8. In addition, the interaction with the SEC also revealed that Anthony was upset with the SEC about not getting a "heads up back in August" about the non-public investigation, T. 199:5-10, which indicates that Anthony (despite years of experience in the industry) fails to appreciate the role of the SEC or the proper handling of sensitive investigation information.

Further, the Hearing adduced that much of the entire thesis underlying the Life Settlement Funds and their claimed Roth-IRA-conversion features was based on withholding or selectively disclosing information (from/to the IRS). Specifically, the "secret sauce" of what Anthony touted was revealed to be nothing more than reporting asset valuations to the IRS that were substantially below the price that the Life Settlement Funds had paid for the investments. T. 113:1-5, 115:10-17. Anthony apparently recommended to or assisted his investors in doing this notwithstanding his own testimony that the life-settlement policies "aren't available at a wholesale rate," T. 658:14-18, which indicates that using the "wholesale price" as a fair market value may have been dubious because there would *not* have been life-settlement seller's willing to accept that lower price (as best exemplified by the fact that the Life Settlement Funds did not themselves pay that lower price). *See* "Value," Black's Law Dictionary (12th ed. 2024), *available at* Westlaw ("fair market value (18c) The price that a seller is willing to accept and a buyer is willing to pay on the open market and in an arm's-length transaction; the point at which supply and demand intersect."). And Anthony also did not appear to acknowledge that those commission and fee payments that increased the wholesale price to the actual retail price for life-settlement investments separately presented a conflict-of-interest between his funds and himself (as fund manager who may have an incentive to buy policies that had the highest commission

payments to Anthony), nor did it appear that Anthony's own witness/former investor Brett Flickner was ever advised that Anthony's commission payments would have influenced what that final retail price for a life-settlement investment. T. 657:4-10.

The Hearing thus presented not an isolated instance of Anthony making questionable disclosures but an apparent pattern of doing so with the common thread that it was always to his financial or reputation advantage not to be more fulsome with information.

C. Anthony Has Shown No Remorse for Past Conduct, Baselessly Continues to Speculate that Third Parties Are Conspiring to Harm Him, and Expressed an Intent to Commit Future Securities Law Violations, If Necessary, at Epic.

Anthony's testimony and conduct at the Hearing revealed that Epic, if its registration is granted, would be operated, and its compliance overseen, by an owner who has seemingly undertaken no rehabilitation or experienced any remorse for his prior conduct. Indeed, 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.

In considering the *Steadman* factors that pertain more directly to Anthony's present state-of-mind, rehabilitation and likely future conduct, the Division respectfully urges the Court to begin with a candid assessment of Anthony's credibility. As the trier-of-fact here, the Court is in the best position to assess the value and weight of Anthony's testimony, *Morisch v. United States*, 653 F.3d 522, 528–29 (7th Cir. 2011), and in particular the value (if any) of his oft-repeated accusations against the State of Colorado and others. In that regard, the Division urges Your Honor to reflect on whether Anthony appeared candid, frank, and forthright, as opposed to evasive, hostile, and non-responsive in his presentation. The Division respectfully submits the record established the latter – that Anthony, particularly when it came to providing testimony on matters he presently assessed would be harmful to his case, was less than fully credible. *See*

Sartor v. Ark. Nat. Gas Corp., 321 U.S. 620, 628 (1944) ("There are many things sometimes in the conduct of a witness upon the stand, and sometimes in the mode in which his answers are drawn from him through the questioning of counsel . . .").

Anthony's demeanor and manner during his testimony was repeatedly hostile, confrontational, or evasive. When asked questions 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 omitted facts, and was repeatedly impeached. *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 investor in Bond Fund) *with* DX 23 at 32:9-17 (describing 12 or 13 unaccredited investors in Bond Fund). A clear example of Anthony's less than fulsome credibility was his superficial attempt to claim that Judge Frick had been aware of Anthony's recording of the mediation, a tale he had to quickly abandon under predictable follow-up questioning. T. 274:15-25 ("Q. So your memory is that when your phone records, it just like flashes constantly, is that what you're saying? A. . . . I did not tell the mediator that I was recording the conversation.").

In addition, Anthony's repeated invocations of perceived misconduct or crimes having been committed against him by Colorado authorities reveals nothing more than the most basic and transparent refusal to accept responsibility for or reform problematic past conduct. *See*, *e.g.*, *SEC v. Gordon*, 822 F. Supp. 2d 1144, 1162 (N.D. Okla. 2011) ("Finally, Gordon has not recognized the wrongfulness of his conduct and he has given no assurance that he will refrain from future violations of federal securities laws."); *In the Matter of Robert D. Boose*, 1991 WL 292044 at *3 ("Mr. Boose's presentation is of little relevance in determining the public interest issue because the main thrust of his evidence is that his 'kangaroo style' conviction was in error and that he did not commit the crime of conspiracy to commit securities fraud for which he was convicted after a jury verdict."). As the Court heard, Anthony testified to a supposed conspiracy or conspiracies against him by, at least, the (1) Colorado Attorney General's Office, T. 414:19-415:2 ("because the Attorney General of Colorado would be in jail for fraud"); (2) CDS investigators, T. 397:12-400:3 ("It goes back to Joseph Burtness, the investigator. . . And then hopefully it will initiate some criminal lawsuits for my investors that will now start going after the Attorney General of Colorado and these prosecutions and these lifelong bureaucrats for this

fraud that they've perpetuated, because it will not go through. Truth will be served. "); (3) the Receiver and his counsel (whom Anthony called the "henchman"), T. 41:10; (4) Anthony's own attorney; and (5) the mediator, T. 269:16-19 ("Judge Frick came in. I think she was in cahoots with my attorney, Otto Hilbert."). Anthony made these incredible allegations without being able to offer a shred of evidence in support, nor to even explain the motive that these numerous people—whom Anthony had no history or dealings with prior, *e.g.*, T. 556:20-557:14, 558:20-559:9— would have to harm him. Notably, prior behavior like this has been cited when imposing an administrative sanction: "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.'" *In the Matter of Meyer Blinder*, 1995 WL 75233 at *3.

Even when Anthony was given an opportunity at the end of the Division's questioning to explain how Epic would handle disclosures in the future differently than he did at Anthony Capital, or whether he would be more fulsome in his acknowledgment of potential investment risks to clients, Anthony ultimately refused to concede his practices would change. For example, when asked how Anthony would handle a circumstance where Epic lost its eligibility to register with the Commission because its assets under management fell below the $100 million threshold and could *potentially* face problems registering in Utah (where it operates), Anthony denied the premise of the question. T. 604:16-605:18 ("No, I think that's an unnecessary hypothetical to put in there. . ."). He also refused to acknowledge an apparent requirement that Utah regulators had warned him of in October 2024 that his own investment adviser *representative* registration may be denied by the State of Utah, which could prevent him from working on behalf of Epic even if the firm itself were registered, T. 605:19-607:8. While the question to him was simply about whether he would disclose that possible regulatory risk to potential investors, Anthony

volunteered elaborate, deceitful workarounds, including, if needed, "transfer[ing] ownership to my wife or my child or someone else that I know I can trust" to create, in effect, a nominee owner of Epic. That answer suggested Anthony's future plans concerning Epic could include deceiving either investors or regulators (or both) that Epic has an owner or is controlled by a person (Anthony's wife or child or trusted third-party) that it is not—conduct that itself could be a violation of the securities laws. *See, e.g.*, *SEC v. Brown*, 740 F. Supp. 2d 148, 162–63 (D.D.C. 2010) ("The Complaint alleges that Defendant Brown concealed Prince's 'role and involvement in the company'. . .").

D. There is a Substantial Risk to Registering a Firm Whose Principal and Only Officer and Employee Appears Unable to Obtain State Registrations.

As the Division forecast in its Pre-Hearing Brief, the public interest is not generally served in providing the imprimatur of SEC registration for an investment adviser whose principal and only employee appears unable to be registered in any state. There is a substantial public-interest concern that if Epic *does* obtain an SEC registration but is thereafter *not* able to obtain $100 million in assets or otherwise become eligible within four months, it will face a circumstance where the firm will then have no jurisdiction where it can readily register. This concern would be continuing if Epic's business changed during the period of the 10-year Colorado injunction (*e.g.*, if, in 2028, Epic's assets under management fell to $50 million).

Because Anthony as the sole owner and controller would be "associated with" Epic, *see* 15 U.S.C. § 80b-2(17), it is the firm that is burdened by Anthony's prior conduct. Thus, even under Anthony's "rainmaker" scenario (where he is not technically an IAR of Epic), T. 606:10-18, he likely would face the same response from the Utah regulators that he received when tried to register Anthony Capital there—*his* Colorado injunction will be the *firm's* problem. In addition, as the only employee of Epic when it would become registered, Utah regulators have

indicated he may still need to register as an IAR in that state, which may be denied. *See* DX 37 at 2 ("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 . . . .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."). *See also* "Federal vs. State Regulation," *at* https://securities.utah.gov/licenses/utah-licensing-guide ("Also, federal covered advisers must still license any IA Rep with a place of business in Utah or more than five clients in Utah.") (last visited June 23, 2025). In short, Epic's business and immediate operation will still be impacted by the effects of State Court Case, even if approval is given by the Commission.

The clearly foreseeable circumstance where Epic, even if registered, may be unable to obtain necessary state investment adviser (if its assets deplete) or (for Anthony) IAR registrations should reasonably be disclosed to potential Epic clients and, for present purposes, Epic should also have a plan to deal with potential licensure gap. Indeed, until Anthony resolves his issues with state authorities, or serves out the length of his bars, there appears to be a substantial risk that Epic's investors could face a scenario where the firm could be in operation and managing client funds without *any* federal- or (realistic) state-registration options. It is certainly not in the public interest to grant Epic's application and expose its future clients to this very real risk.

E. There is a Public Interest in According Comity to State Authorities and Prior Adjudications.

The Advisers Act sets up a concurrent jurisdiction between the Commission and state governments with respect to adviser registration. Section 80b-3(a) of Title 15 clearly delineates

the State and Federal responsibilities for registration, and the Commission's rules reinforce and amplify this cooperative division of responsibilities. *See* 17 C.F.R. § 275.203A-1. Moreover, the Advisers Act separately authorizes the Commission to consider a revocation of an adviser's registration where "any court of competent jurisdiction" has enjoined that adviser (or associate person), 15 U.S.C. § 80b-3(e)(4), or "a State securities commission" enters prohibitory order, 15 U.S.C. § 80b-3(e)(9). These provisions thus recognize that the Commission may seek to sanction an adviser based on prior *state* adjudications (among other authorities), and by their nature imply that some deference and accord to those state adjudications is required.

Moreover, the principals of comity and finality are important public-interest considerations when federal tribunals are called to review state court actions, *e.g., Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 431 (1982) ("The notion 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); *see also In the Matter of Robert D. Boose*, 1991 WL 292044 at *3 ("Mr. Boose's presentation focused on the issue of his guilt in the criminal case. That issue is settled.").

Anthony's testimony revealed that at least three states have informed him that he, at present or in the recent past, was advised he is not welcome to be an investment adviser within Colorado, Utah, and California. The State of Utah, in particular, flagged some of the same

troubling issues that the Division has presented here about Anthony's candor and applications, *see* DX 36, including that he applied for licenses for entities that did not even exist and that he omitted substantially material facts. As played out at the Hearing, these state regulators likely saw the same risks in approving Anthony that emerged at the Hearing – that he cannot be trusted to candid, that he does not appear to have been fulsome in disclosing adverse events, both related to his investments and disciplinary history, and that that same disciplinary history could pose risk to investors in the future.

And, while Anthony repeatedly attempted to relitigate or reopen the merits of a State Court Case, Your Honor repeatedly recognized and informed Anthony that the Hearing was not the appropriate venue for that. The evidence put forward by the Division on the State Court Case, including the details that Anthony had counsel of his choosing throughout and that he and his attorneys vigorously contested the orders about which he now complains, showed that that Anthony received due process and there are detailed opinions from multiple judges in Colorado explaining why Anthony's positions were wrong. Anthony's continued protests against the State Court Case are not based on evidence, but on grievance, and stem from the understandable, but legally meritless, frustration that he and his attorneys' arguments were rejected by courts throughout the State Court Case, including when he was preliminarily enjoined, had the Receiver appointed, and was unable to get out of the settlement he signed. But simply losing a case is not a basis for another court, nor the Commission, to take up the invitation of the losing party to redo it, or reinvestigate it, or ignore it entirely, all of which seem to be Anthony's positions.

The State of Colorado was and remains the appropriate venue for Anthony to attempt to resolve any complaints or grievances he has with the State Court Case or personnel (including his own attorneys) who were involved in it. And while Epic had nothing to do with the Colorado

State Court Case—indeed, the firm was not even incorporated until after the case began—Anthony testified that he told investors he wanted apply to the Commission and use Epic as a vehicle for "the truth" (in his mind) "to be told." T. 398:19-24. But when Anthony was asked about whether it might be safer for Epic's future clients if he resolved his issues with the State of Colorado before he took their money, he said "No," T. 415:9-11, and again made clear that, at bottom, his request to register Epic is less about the bona fides of Epic and more about changing the now-written history of Anthony Capital (the firm that bore his name and that he actually wants to be the registered adviser). But if Anthony wishes to be the "true fiduciary" he claims, he needs to first change the minds of the multiple states who have raised concerns about, or outright prohibited, him from being an advisor within their borders. And until he does, the Commission should not be the registrar of last resort for someone who multiple states refuse to register, and for whom the record demonstrates that registration would not be in the public interest.

IV. CONCLUSION

The approval of Epic's investment adviser application, for now and the foreseeable future, would substantially contravene the public interest. For the reasons set forth above, the Division respectfully requests that the Court find that denial of Epic's registration would be in the interest of the investing and general public.

Respectfully submitted this 23rd day of June, 2025.

/s/ James P. McDonald
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served on the following on June 23, 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