UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE ADMINISTRATIVE LAW JUDGE

In the Matter of: DIVYA KHULLAR, Respondent.	Proceeding No. D2021-01 July 24, 2025

Appearances:

Hendrick R. deBoer, Esq.
John D. V. Ferman, Esq.
Associate Solicitors, United States Patent and Trademark Office
For the Government

Divya Khullar, Esq.
Pro Se

Before: Alexander **FERNÁNDEZ-PONS**, United States Administrative Law Judge
United States Department of Housing and Urban Development[1]

INITIAL DECISION AND ORDER

This matter arises from a disciplinary complaint filed by the Director of the Office of Enrollment and Discipline ("OED Director") for the United States Patent and Trademark Office ("USPTO" or "the Office") against patent attorney Divya Khullar ("Respondent") pursuant to 35 U.S.C. § 32 as implemented by 37 C.F.R. part 11. The OED Director seeks to exclude Respondent from practice before the USPTO due to Respondent's alleged violation of multiple provisions of the USPTO Rules of Professional Conduct.

PROCEDURAL HISTORY

On December 23, 2020, the OED Director filed a *Complaint and Notice of Proceeding Under 35 U.S.C. § 32* ("*Complaint*") against Respondent, which was referred to the undersigned for hearing. On December 28, 2020, the Tribunal issued a *Notice of Hearing and Order*. On March 12, 2021, the Tribunal continued the hearing and referred the matter to a settlement judge

[1] Pursuant to an Interagency Agreement in effect beginning March 27, 2013, Administrative Law Judges of the U.S. Department of Housing and Urban Development have been appointed by the U.S. Commerce Secretary and are authorized to hear cases brought by the U.S. Patent and Trademark Office.

at the parties' request. The settlement discussions were unsuccessful. On May 5, 2021, the Tribunal issued a *Second Notice of Hearing and Order* establishing a new hearing date.

On August 12, 2021, the Tribunal issued a ruling authorizing discovery under 37 C.F.R. § 11.52 and granting Respondent's request to continue the hearing due to his recent COVID-19 diagnosis and the need to conduct discovery. On August 23, 2021, the Tribunal issued a *Third Notice of Hearing and Order* rescheduling the hearing based on the parties' stated availability. After Respondent objected to the new hearing date, the Tribunal issued a *Fourth Notice of Hearing and Order* rescheduling the hearing again.

On November 8, 2021, the Tribunal stayed the hearing dates and prehearing deadlines because numerous substantive motions were pending. Discovery was not stayed, and the parties filed several additional motions while the stay order was in effect.

On October 17, 2023, the Tribunal issued a *Second Omnibus Ruling* that, among other things, granted partial summary judgment in the OED Director's favor based on findings rendered against Respondent in Oregon state court, and ordered Respondent to show cause by November 6, 2023, why further summary judgment should not be granted in the OED Director's favor on certain other factual allegations that did not appear to be subject to genuine dispute. On November 7, 2023, the Tribunal granted summary judgment as to the factual allegations referenced in the show cause order.

Meanwhile, the Tribunal had rescheduled the evidentiary hearing to take place in December 2023. The hearing was held on December 5-6, 2023, via videoconference on the Microsoft Teams platform. At the beginning of the hearing, the Tribunal orally denied a continuance request Respondent had filed earlier that morning. The hearing proceeded as scheduled and the Tribunal heard the testimony of witnesses Blanca Doroteo, Diane Sykes, Gerard Taylor, and Respondent, and admitted Government Exhibits 1, 3, 7-12, 14-19, 21, 25, 29, 39, 41, 44-53, 56, and 59-81, Respondent's Exhibits 1-2, and Court Exhibit 1.

On December 8, 2023, the Tribunal issued an order granting the OED Director's unopposed motion to supplement the record with an unredacted copy of pages 4-63 of Government Exhibit 76. The unredacted pages had been produced by Respondent after hearing. The unredacted document was admitted to the record as Joint Exhibit 1. The Tribunal's order also established a deadline for the OED Director to respond to certain motions Respondent had filed with his continuance request in the early morning hours of December 5.

On January 19, 2024, the Tribunal issued a *Ruling on Respondent's Omnibus Motions* memorializing its oral denial of Respondent's continuance request and denying the remaining motions Respondent had filed on December 5, which included a motion for reconsideration of the October 17, 2023 ruling on summary judgment.

On January 22, 2024, the Tribunal issued an order establishing a post-hearing briefing schedule in lieu of closing arguments. The parties filed post-hearing briefs in February 2024 and response briefs in April 2024.

In his response brief, Respondent noted that the Florida Bar was conducting a parallel disciplinary proceeding against him. He asked this Tribunal to consider consolidating the instant proceeding with the Florida disciplinary case and allowing the judge in Florida to determine the appropriate sanction. However, the Tribunal has no authority to grant such a request. Moreover, the judges for the state of Florida lack jurisdiction to determine sanctions for USPTO practitioners under 37 C.F.R. § 11.54 or to otherwise rule on the OED Director's disciplinary complaint. Accordingly, Respondent's request to consolidate is **DENIED**.

The record is now closed, and this matter is ripe for decision.[2]

APPLICABLE LAW

USPTO Disciplinary Proceedings. USPTO has the "exclusive authority to establish qualifications for admitting persons to practice before it, and to suspend or exclude them from practicing before it." Kroll v. Finnerty, 242 F.3d 1359, 1364 (Fed. Cir. 2001); see also Sperry v. Fla. *ex rel.* Fla. Bar, 373 U.S. 379 (1963). This authority flows from 35 U.S.C. § 2(b)(2)(D), which authorizes USPTO to establish regulations governing the conduct of patent attorneys and agents who practice before it, and 35 U.S.C. § 32, which authorizes the USPTO to discipline malfeasant practitioners. The regulations governing the conduct of USPTO practitioners are known as the Rules of Professional Conduct and are codified at 37 C.F.R. §§ 11.101 to 11.901. Before disciplining a practitioner who is accused of violating the Rules of Professional Conduct, USPTO must provide notice and an opportunity for a hearing. 35 U.S.C. § 32. Disciplinary hearings are conducted in accordance with the procedural rules at 37 C.F.R. part 11 and with section 7 of the Administrative Procedure Act, 5 U.S.C. § 556, by an impartial hearing officer appointed by USPTO. See 37 C.F.R. §§ 11.39, 11.44.

Standard and Burden of Proof. The OED Director has the burden of proving any alleged violations by clear and convincing evidence, and the respondent bears the burden of proving any affirmative defenses by clear and convincing evidence. 37 C.F.R. § 11.49. "Clear and convincing" evidence is an intermediate standard of proof, falling somewhere between the "beyond a reasonable doubt" standard governing criminal cases and the "preponderance of the evidence" standard governing most civil cases, and requires evidence of such weight that it "produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established" or "proves the facts at issue to be 'highly probable.'" Jimenez v. DaimlerChrysler Corp., 269 F.3d 439, 450 (4th Cir. 2001); see also Colorado v. New Mexico, 467 U.S. 310, 316 (1984) (requiring evidence sufficient to produce "an abiding conviction" that the factual allegations are "highly probable").

BACKGROUND AND FINDINGS OF FACT

Respondent is an attorney who was first admitted to the Bar in Missouri in September 2011. He registered with USPTO as an attorney in March 2012. During the time periods relevant to this matter, he was licensed to practice in Missouri and Florida, where he owned and

[2] The delay between briefing and the issuance of this ruling was caused by limited government resources and the time taken to consider the parties' respective evidence and positions.

operated his own law firm, Khullar P.A.[3] Respondent was the sole owner and sole licensed attorney of Khullar P.A. between 2016 and 2018. The allegations at issue in this case stem from Respondent's attempts between 2017 and 2018 to expand his Florida law practice to provide immigration legal services in Oregon.

I. Respondent's Immigration Practice in Oregon

In 2016, Respondent met Emmanuel Rosario Gonzalez ("Mr. Rosario"), who ran a marketing company called Florida Help Group. Respondent testified they were introduced by Christian Alexander, the owner of an attorney referral service Respondent had used in the past. Mr. Alexander knew that Respondent, himself an immigrant who came to the U.S. from India as a graduate student, wanted to add an immigration practice to his firm. However, Respondent does not speak or write Spanish. Mr. Alexander recommended Mr. Rosario, a Spanish speaker and Miami resident, as someone who had personal contacts with Spanish-language media channels and could provide Respondent and his firm with Spanish-language marketing and support to help him expand into the immigration field.

Based on this recommendation, Respondent engaged Mr. Rosario to help establish an immigration practice for Khullar P.A. in Oregon. Respondent indicated that Mr. Rosario chose Oregon based on marketing data, and because Mr. Rosario's best friend lived there. Respondent was not licensed to practice law in Oregon. However, members in good standing of any state bar may practice immigration law and represent persons before the U.S. Citizenship and Immigration Services ("USCIS") under 5 U.S.C. § 500(b). Moreover, Respondent hoped to eventually become licensed in Oregon and open a general practice law office there.

Respondent testified that he hired Mr. Rosario as an independent contractor to serve as director of marketing for Khullar P.A., in which capacity Mr. Rosario and his Florida Help Group company would run marketing operations for the firm. Although there is no written contract memorializing the terms of Mr. Rosario's employment, Respondent indicates that Mr. Rosario's job duties included creating Spanish-language advertisements, negotiating advertising contracts, conducting marketing research, providing client outreach, and retaining additional contractors to achieve these goals. During the time period relevant to this case, the "Our Team" page of Khullar P.A.'s website listed Mr. Rosario as "Manager Immigration Services/Miami," and business cards printed under the firm's name identified him as "Director of Operation" at an office in Lake Oswego, Oregon.

From September 2017 to May 2018, Mr. Rosario regularly traveled to Oregon to conduct immigration consultation events on behalf of Khullar P.A.[4] The firm had placed advertisements

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[3] The firm was reorganized into Khullar Law, PLLC sometime after 2018.

[4] Respondent testified that he and Mr. Rosario agreed to conduct two immigration consultation events per month in Oregon beginning in October 2017, and that at least ten events actually occurred between October 2017 and March 2018. Respondent initially testified he was unaware that Mr. Rosario had begun traveling to Oregon in September 2017, but later admitted he may be mistaken. The record contains WhatsApp messages indicating he did, in fact, know that Mr. Rosario was in Oregon in September 2017 conducting business on behalf of Khullar P.A. On September 24, 2017, Mr. Rosario messaged Respondent that Oregon was a "home run" and that he planned to stay an extra day to search for an office space because "a lot of people" seemed uneasy about their lack of a physical

on local Spanish-language TV channels and radio stations inviting potential clients to call an 800 number to make an appointment to discuss immigration legal services provided by Khullar P.A. Callers were directed to the Courtyard Marriott Hotel in Beaverton, Oregon, where they would meet with Mr. Rosario and other Spanish-speaking personnel identified as Khullar P.A. "Case Managers." Respondent himself rarely attended these client meetings or traveled to Oregon, though he sometimes made himself available by video. During the consultation events, Mr. Rosario and other personnel representing Khullar P.A. conducted intake on potential immigration clients; quoted prices for immigration legal services based on a "cheat sheet" supplied by Respondent; collected documents and information from clients; and induced clients to enter into contracts for legal services with Khullar P.A. and pay advance fees for such services. In some cases, these personnel held themselves out to be lawyers, even though Respondent was the firm's only licensed attorney.

Aside from Mr. Rosario, other individuals who worked on behalf of Khullar P.A. in Oregon included Mr. Rosario's brother-in-law Alexander Peña, who was from Miami and had worked for Mr. Rosario in the past; Mr. Rosario's friend Luis Soto, who lives in Oregon; Luis's brother Erick Soto; Erick's wife Carla Soto; and JoeLee Rodriguez. None of these individuals were licensed attorneys, nor were they authorized to represent others in immigration matters before the USCIS or the U.S. Department of Justice.

On November 16, 2017, Mr. Rosario messaged Respondent that he had received a "weird email" from an Oregon man and asked Respondent to read it, stating, "I think you should go with us [to Oregon] this weekend man." The email pertained to a criminal investigation by the Oregon Department of Justice ("ODOJ") involving allegations of unlicensed provision of immigration legal services. Though Respondent called ODOJ and expressed a desire to resolve the issue, ODOJ filed a criminal complaint in Oregon state court the next day (November 17, 2017), naming Khullar P.A., Mr. Rosario, and Mr. Peña as defendants and alleging that non-attorneys working for Khullar P.A. had unlawfully held themselves out to be lawyers.

In November 17, 2017, WhatsApp messages with Respondent, Mr. Rosario noted that their business cards, ads, and contracts all stated they were not attorneys and that he and Mr. Peña had never held themselves out as such—"Believe me." Respondent replied, "I do, but we have to now convince the judge."

According to Respondent, all his personnel swore they had no idea what was going on and denied telling people they were attorneys. Despite the allegations against Mr. Rosario, the imposition of a temporary restraining order in the ODOJ case, and Respondent's addition to the case as a defendant in January 2018, Respondent continued allowing Mr. Rosario to run immigration consultation events for Khullar P.A. in Oregon for approximately six months after the ODOJ filed its complaint. Asked why, Respondent testified that he distrusted the authorities

office. On September 27, Mr. Rosario messaged Respondent that he was "signing the lease for Oregon under Khullar P.A." (Though Respondent testified at hearing that he did not recall whether he gave Mr. Rosario final approval to set up a physical office in Oregon, he had told OED during the disciplinary investigation that he maintained an executive suite in Oregon to allow immigration clients to drop off and pick up documents.) On September 29, Mr. Rosario messaged Respondent that they had signed 16 new clients, and they discussed taking a credit card machine to Oregon to process payments.

on a certain level and that it was not reasonable to "stop hundreds and thousands of dollars' worth of operations" without evidence that ODOJ's allegations were true.

WhatsApp messages show that Respondent still did not physically attend every immigration consultation event in Oregon after the ODOJ filed its complaint, but he tried to make himself available by video. For example, on December 17, 2017, Mr. Rosario messaged that he would FaceTime soon with a new client who wanted to meet Respondent, and Respondent replied: "Please do that with few clients and make note in case we need them as witness." In other messages, Respondent and Mr. Rosario discussed how the ODOJ suit was affecting business and how they would get through it. It is clear from the messages that Mr. Rosario was still in charge of the events in Oregon, and he periodically notified Respondent when to expect funds to come in from recent events.

The WhatsApp messages between Respondent and Mr. Rosario end in early June 2018 without explanation. Respondent testified that, in May 2018, he stopped holding immigration events in Oregon and fired Mr. Rosario after learning that Mr. Rosario was defrauding his firm. Upon investigation, Respondent discovered that Mr. Rosario had been prosecuted by the state of Florida under circumstances similar to his relationship with Respondent. As memorialized in a May 29, 2019, misconduct report, Mr. Rosario had conned a young attorney named Paul Meadows by contracting to conduct marketing for the attorney aimed at potential immigration clients, but routing clients to himself instead so he could take their money while providing them with attorney Meadows' information so they would contact him when Mr. Rosario failed to perform the promised legal services.

Respondent claims that his situation is almost identical to Mr. Meadows' and that he and his firm have been victimized by Mr. Rosario's scam. Respondent alleges, among other things, that Mr. Rosario diverted payments intended for Khullar P.A. to his own company and a company owned by Mr. Rosario's father; cashed checks made out to Khullar P.A. and to government entities for his own personal benefit; secretly created a bank account under Khullar P.A.'s name in order to make and receive payments for clients that were supposed to be Respondent's; set up a post office box to conduct Oregon transactions without Respondent's knowledge; filed notices of appearance using Respondent's name, but not his contact information; and continued conducting business under Khullar P.A.'s name from a new office location even after Respondent had become aware of the scam and fired him. Respondent testified that he filed a lawsuit in Broward County, Florida, to gain access to case files withheld by Mr. Rosario and to seek recourse against Mr. Rosario, Mr. Alexander, and other individuals and entities involved in Mr. Rosario's scheme.

Respondent presented copies of checks purporting to show that Mr. Rosario had added his own name as payee in order to appropriate funds from Khullar P.A. The checks pre-date Respondent's immigration operations in Oregon (all are dated for July 2017), and the clients who signed the checks appear to reside in Florida, not Oregon, based on the addresses listed on the checks. During the hearing, Respondent also mentioned various affidavits from individuals in Florida purportedly defrauded by Mr. Rosario, but the affidavits were not admitted into evidence and seemed unrelated to Respondent's Oregon operations.

II. Respondent's Immigration Clients in Oregon

The following clients' accounts of their interactions with Khullar P.A. are gleaned from the testimony of Blanca Flor Doroteo Mora, from documentary evidence produced by the OED Director,[5] and from the facts deemed established in the Tribunal's November 7, 2023, summary judgment ruling after Respondent failed to challenge the evidence concerning these clients.

Blanca Flor Doroteo Mora ("Ms. Doroteo"). Ms. Doroteo, a non-citizen resident of Oregon, testified that she learned of Khullar P.A. in September 2017 when she saw a Spanish-language advertisement on a local television channel indicating that "they were attorneys for immigration" and could help people obtain legal status, especially DACA (Deferred Action for Childhood Arrivals) recipients. Ms. Doroteo had DACA status and hoped to gain permanent legal status. She called the 800 number provided in the advertisement and scheduled an appointment for September 23, 2017.

When she arrived at the given address in Beaverton, Oregon, with her cousin, mother, and brother, she was surprised to find that the appointment was not in an office. Instead, they walked into a hotel and followed signs for "Khullar Immigration" until they reached a table in a hallway manned by two women who requested her social security information and DACA permit, then directed her and her family members to wait in a conference room with tables in each corner and at the front. She estimated there were 70 people in the room.

Ms. Doroteo and her family members waited for five to ten minutes before speaking to a man who introduced himself as Emmanuel Rosario and whom they understood to be an attorney. Ms. Doroteo testified there was another person helping Mr. Rosario who also presented himself as an attorney, but she did not know his name. When she told Mr. Rosario she wanted to discuss permanent legal status, he advised that she would "automatically qualify" for a labor certificate as long as she filled out some paperwork and paid $3,000. He further advised that, by virtue of marital status, her husband would automatically qualify as well, and quoted a fee of $5,000 for both of them. Mr. Rosario told Ms. Doroteo that she would need to pay $500 immediately; meet with his office later to fill out some paperwork, at which time he would explain the process; then go to Mexico for one month to enable her to attain permanent legal status upon her return. He did not explain how she would qualify other than the fact that she had DACA status already.

Ms. Doroteo had misgivings about the meeting because it was in a hotel instead of an office, and because a Catholic Charities attorney whom she had previously consulted had never mentioned anything about an easy way to obtain permanent resident status. She asked Mr. Rosario if she could see his license, meaning his bar license. He showed her a Florida driver's license and a credit card instead.

Ms. Doroteo testified that her entire meeting with Mr. Rosario lasted about 15 to 20 minutes, and she spent about 10 minutes of that time filling out paperwork. She signed an "Immigration Legal Services Contract" with Khullar P.A. and filled out forms providing her

[5] The documentary evidence concerning these clients includes retainer agreements, narratives filed by some of the clients with Oregon state investigators, and the written declarations and statements of four clients.

name and credit card information and authorizing Khullar P.A. to withdraw $500 from her account that day. The paperwork further provided that she would make monthly payments until the $5,000 fee was paid in full.

However, Ms. Doroteo canceled the $500 payment through her online banking application before she left the hotel. She explained that, on top of her other misgivings, when she went back to sit in her chair and wait after speaking to Mr. Rosario, she saw seemingly everyone around her being asked to hand over large amounts of cash on the promise that they would get legal status if they just paid money and traveled to Mexico, which seemed too good to be true. Mr. Rosario never mentioned that Ms. Doroteo's payment had not gone through, and she said he and his associates kept calling her even after she declined to attend a scheduled follow-up appointment.

After speaking to an attorney not affiliated with Khullar P.A., Ms. Doroteo filed an unlawful trade practices complaint against the firm with the ODOJ on October 26, 2017. She later provided a declaration in the ODOJ case against Respondent. She also called a radio station that had aired an advertisement for Khullar P.A. and notified the station that the firm was promoting untrue information. She asserted that she wanted to take action against Khullar P.A. because the firm's representatives were "not real immigration attorneys" and were charging hardworking people large sums of money for things that would never happen, including advising immigrants to go to Mexico as the final step to obtain legal status when in reality "they knew that these people were not going to be able to come back."

As of the hearing date, Ms. Doroteo was still a DACA recipient and had not been able to obtain permanent resident status.

Hilda Becerra. In October 2017, Ms. Becerra attended an appointment with representatives of Khullar P.A. at the Beaverton Courtyard Marriott to receive legal advice concerning her husband's immigration status. She was accompanied by her friend Maria del Refugio Vargas Ramos. In a statement given in the ODOJ case against Respondent, Ms. Becerra said that she spoke to Mr. Rosario at the hotel and was under the impression that he knew more than the other attorneys because the others came to him for advice. After listening to Ms. Becerra's story, without consulting with anyone else, Mr. Rosario told her that her husband would qualify for permanent resident status in 10 months and instructed her to come back the next day and pay $250 to begin the process. However, Catholic Charities had previously advised that her husband was subject to a permanent bar and was not eligible for an extension unless he returned to his country of origin for 10 years. Mr. Rosario further told Ms. Becerra that her sister could receive a visa in 6 months, which also contradicted prior advice from Catholic Charities. Ms. Becerra "did not trust Mr. Rosario because he seemed to have all the answers" and did not pay him for the consultation.

Maria del Refugio Vargas Ramos. After hearing an advertisement on the radio for Khullar P.A., Ms. Ramos attended an appointment in October 2017 at the Beaverton Courtyard Marriott with Ms. Becerra. Ms. Ramos wanted to obtain legal residency status. Mr. Rosario informed her she was eligible for a U visa and could get it within 6 months if she paid $2,500 total, including an advance payment of $500. She paid the $500 advance by check. In a statement given in the ODOJ case, Ms. Ramos asserted that after later determining she could not pay the additional $2,000 or produce the documentary evidence needed, she was told by Khullar P.A. representatives that she should submit the payment anyway. However, she did not pay it. She received no services from Khullar P.A. and was never reimbursed for the $500 advance she had paid.

Hector Pelayo and Cindy Ramirez. After hearing about Khullar P.A.'s immigration consultation events though a radio advertisement, Mr. Pelayo and his wife Ms. Ramirez met with Erick Soto at the Beaverton Courtyard Marriott on December 3, 2017, to seek assistance gaining legal status for Mr. Pelayo. Mr. Pelayo was under the impression that Mr. Soto worked for an attorney in Beaverton. Mr. Soto advised that the first step to gaining legal status would be to submit a FOIA (Freedom of Information Act) request to USCIS. Ms. Ramirez signed an advance payment agreement and an immigration legal services contract with Khullar P.A. and paid $1,500 by debit card, which was the fee quoted by Mr. Soto for the FOIA request.

Neither Respondent nor Khullar P.A. ever submitted a FOIA request to USCIS on Mr. Pelayo's behalf, nor did they refund the $1,500 payment. Ms. Ramirez called Khullar P.A. multiple times after the December 3, 2017, meeting; the one time her call went through, a representative took her name and number, but no one ever called her back. After hearing nothing about his immigration matter for over a year, Mr. Pelayo filed a complaint with the Oregon State Bar in March 2019.

Juan Jose Hernandez. Mr. Hernandez heard about Khullar P.A. through advertisements on a Spanish-language TV channel and on the radio. He called the phone number provided in the ads and a secretary texted him an address. On December 18, 2017, he traveled to the given address and was surprised to find it was the Marriot Hotel in Beaverton. The firm's representatives were sitting at tables in a large room. Mr. Hernandez filled out a form and went to one of the tables when his name was called. There, he met with Mr. Rosario, who produced a business card and asked questions.

Mr. Hernandez was seeking help with his undocumented status and wanted to obtain a driver's license. Without consulting with anyone else, Mr. Rosario advised that Mr. Hernandez would qualify for a humanitarian visa. Mr. Rosario stated that the cost would be $3,500, or $3,000 if Mr. Hernandez paid immediately. He further advised that Mr. Hernandez's girlfriend would also qualify if they got married and that he would give her a discounted fee. Mr. Hernandez executed a contract, paid $500, and signed an authorization for the remaining $2,500 to be taken out of his bank account. He left the meeting with plans to fill out certain forms, then follow up with Mr. Rosario's office in Lake Oswego.

On February 4, 2018, Mr. Hernandez, his girlfriend, and a friend returned to the Marriott seeking more information from Mr. Rosario. Mr. Rosario left to speak to an unknown person. When he returned, he stated he would file a Form I-131, and asked to keep Mr. Hernandez's documents. However, Mr. Hernandez said he would fill out the form himself.

On February 10, 2018, Mr. Hernandez met with two immigration attorneys unaffiliated with Khullar P.A. These attorneys tried but were unable to contact Respondent. Mr. Hernandez never received a refund of the $500 he paid for services that were not provided.

Javier Blanco Palacios and Liliana G. Francisco Flores. On March 4, 2018, Mr. Palacios and Ms. Flores and met with Alex Peña, a representative of Khullar P.A., who offered legal counsel regarding their immigration status. According to a bar complaint they later filed with the OSB, Mr. Peña assured them they had a guaranteed case for a humanitarian visa and was very pushy, insisting they needed to sign up and pay right away. They agreed to pay a discounted price of $6,000, which they paid by credit card that day. They were not given time to read the contract for legal services before signing it.

Mr. Palacios and Ms. Flores had a follow-up meeting scheduled, but when their daughter was helping them fill out forms at home, she ran a web search for Khullar P.A. and discovered an online scam alert for the firm. Upon reviewing the contract her parents had signed, she found that it presented contradicting information. For example, the contract guaranteed the case 100% at one point, but stated elsewhere that Khullar P.A. offers no guarantees in immigration proceedings. The contract also included a "non-attorney" disclosure, despite Mr. Peña having indicated that the advice he gave them was coming from an attorney. Ultimately, Mr. Palacios and Ms. Flores filed a bar complaint and asked for their money back.

Respondent did not file any forms with USCIS on behalf of Mr. Palacios or Ms. Flores. He acknowledged receiving a letter requesting a refund of their $6,000 payment, but testified there is no proof he actually received the funds. The record in this matter contains a copy of the "Contrato de Servicios Juridicos de Inmigracion," or Contract for Immigration Legal Services, that Mr. Palacios and Ms. Flores executed with Khullar P.A. on March 4, 2018, as well as a Credit Card Billing Authorization Form signed by Ms. Flores providing credit card information and authorizing Khullar P.A. to charge $6,000 to the card that same day. The record does not show whether Mr. Palacios and Ms. Flores received a refund of that payment.

III. Oregon Lawsuits Against Respondent

As noted above, on November 17, 2017, the ODOJ filed a complaint in Oregon state court against Khullar P.A., Mr. Rosario, and Mr. Peña. The complaint alleged that the defendants had violated Oregon's Unlawful Trade Practices Act ("UTPA"), OR. REV. STAT. §§ 646.605 to 646.656, by providing unlicensed immigration consulting and related legal services. On January 17, 2018, the ODOJ filed an amended complaint naming additional defendants, including Respondent.

When the Oregon State Bar ("OSB") became aware of Respondent's alleged conduct, it retained Diane Sykes, an attorney in Portland with experience representing Hispanic clients as a public defender and Legal Aid attorney, to pursue civil litigation on behalf of the Bar to make the victims whole. Ms. Sykes filed a complaint on behalf of the OSB on July 24, 2018, against Respondent, Khullar P.A., Mr. Rosario, Mr. Peña, and Eric Soto. The complaint alleged that Respondent had engaged in the unauthorized practice of law, in violation of OR. REV. STAT.

§ 9.160(1), by failing to supervise the activities and conduct of his non-lawyer staff, who had provided unlicensed immigration law services in Oregon.

Ms. Sykes testified that before filing the OSB complaint, she had conducted an investigation that involved interviewing about 34 to 40 victims and collecting supporting documentation. The interviewees were largely Mexican nationals residing in the U.S. who had approached Respondent's law firm seeking immigration relief in the form of adjustment of their legal status. The documents she had reviewed included retainer agreements entered into between the victims and Khullar P.A. on the firm's letterhead, as well as receipts for payments for legal services. The payments were tendered to Khullar P.A. representatives in Oregon, but Ms. Sykes believed that some, if not all, of the money was traceable to Respondent's bank account.

According to Ms. Sykes, her investigation revealed that potential clients who answered Khullar P.A.'s ads for immigration legal services in Oregon had met almost exclusively with unlicensed non-attorneys, some of whom falsely represented themselves to be lawyers. These individuals committed to doing immigration paperwork for the clients and requested large sums of money upfront for services that Khullar P.A. then failed to perform. Ms. Sykes testified she could recall only a few instances where preliminary immigration paperwork may have been filed; for the most part, clients received nothing for the money they paid. By her recollection, the victims collectively paid at least $152,000 for legal work that was never performed.

On January 18, 2019, the Multnomah County Circuit Court entered a default judgment against Respondent in the OSB lawsuit after he failed to appear or file an answer. Respondent asserts that his request for an extension of time to respond to the lawsuit was denied, but Ms. Sykes recalls "that we made a lot of effort to give you an opportunity to respond and that you simply failed to do so." The Circuit Court awarded injunctive relief and restitution for 34 victims in the amount of $152,884. Later, Respondent was also ordered to pay attorneys' fees. Respondent's appeals of the judgment in the OSB case were denied. See Oregon State Bar v. Khullar *et al.*, 309 Or. App. 420, 480 P.3d 941 (Feb. 10, 2021) (Table) (affirming Circuit Court decision without opinion); Oregon State Bar v. Khullar, 368 Or. 138, 485 P.3d 891 (May 6, 2021) (Table) (denying review of appellate court's ruling).

On June 12, 2019, the Multnomah County Circuit Court deemed the facts alleged in the OSB complaint to be constructively admitted and entitled to preclusive effect in the separate ODOJ lawsuit, and rendered partial summary judgment against Respondent and Khullar P.A. in the ODOJ case. On July 11, 2019, the Circuit Court further entered default judgment against Respondent and Khullar P.A. due to their refusal to appear for a deposition required by a court order, Respondent's failure to produce discovery required by a court order, and Khullar P.A.'s failure to appear through Oregon-licensed counsel. The Circuit Court found that each of the defendants had willfully committed 16 violations of the UTPA and ordered them to pay civil penalties and refund money to four victims. Respondent's appeals of the judgment in the ODOJ case were denied. See State *ex rel.* Rosenblum v. Khullar P.A., 308 Or. App. 463 (Dec. 4, 2020) (affirming Circuit Court decision without opinion); State *ex rel.* Rosenblum v. Khullar P.A., 368 Or. 37, 484 P.3d 1072 (Apr. 22, 2021) (Table) (denying review of appellate court's ruling).

Ms. Sykes testified that after judgment was entered against Respondent, he filed a federal lawsuit in Florida against her, an ODOJ attorney, the Attorney General of Oregon, and several state court judges. The lawsuit was dismissed. The Oregon judgments against Respondent were satisfied in May 2023 as a result of garnishment efforts by collections counsel.

IV. OED Investigation

Respondent came to OED's attention in 2019 due to a disciplinary matter in Florida. On March 26, 2019, in The Florida Bar v. Divya Khullar, Case No. SC18-2083, Respondent had been publicly reprimanded for contempt of court for failing to timely respond to official inquiries from the Florida Bar. When OED learned of the reprimand and conducted a search to verify Respondent's identity, the search uncovered information about the lawsuits against Respondent in Oregon, raising further questions about his conduct.

OED staff attorney Gerard Taylor investigated Respondent's conduct in both Florida and Oregon. Between August 2019 and August 2020, Mr. Taylor sent Respondent five requests for information and evidence under 37 C.F.R. § 11.22(f) ("RFIs") posing many detailed questions concerning the lawsuits against Respondent, his Oregon practice, and his use of non-practitioner assistants to provide immigration services. In general, Respondent's responses to the RFIs blamed his legal troubles on Mr. Rosario, whom he claimed to have defrauded his firm and routed client funds and payments for personal gain. Respondent asserted that he had never authorized anyone to provide legal advice on his behalf; he was unaware his associates were presenting themselves as attorneys or providing legal advice; and he was either physically present or available by telephone at all immigration events in Oregon. He claimed to have no files for many purported clients, including the victims named in this decision, and denied they were ever his clients. He told OED he could not afford to ship them his financial records. Regarding the Florida disciplinary matter, he explained he had received a public reprimand because he was overwhelmed and simply failed to respond to a request for information from the Florida Bar.

In addition to obtaining information from Respondent, Mr. Taylor's investigation included gathering documentary evidence such as the OSB file on Respondent and a table listing USCIS matters with Respondent's name on them, which appeared to confirm that Respondent did not file anything with USCIS on behalf of the victims named in this Decision. Mr. Taylor also conducted a phone interview of at least one of the victims named herein.

On December 22, 2020, USPTO issued a Final Order Pursuant to 37 C.F.R. § 11.24 publicly reprimanding Respondent in reciprocity for the discipline imposed by the state of Florida the year before. The next day, the OED Director filed the complaint that initiated the instant disciplinary proceeding concerning Respondent's conduct in Oregon.[6]

[6] Although the OSB successfully accused Respondent of violating Oregon's rules of professional conduct for attorneys, it did not subject him to attorney discipline, as he is not a member of the Bar in that state. Thus, USPTO could not impose reciprocal discipline based on the OSB lawsuit.

PRELIMINARY EVIDENTIARY MATTERS

In Section III of his closing brief, Respondent raises three preliminary evidentiary issues.

First, Respondent argues that it was improper for the Tribunal to preclude him from offering evidence at hearing contesting the violations established on summary judgment. Respondent asserts he should have been permitted to present such evidence because his motion for reconsideration of the summary judgment ruling remained open and pending at the time of the hearing. The ruling in question had been issued seven weeks earlier, on October 17, 2023, yet Respondent waited until the day the evidentiary hearing began to move for reconsideration. Requesting reconsideration on the eve of trial does not create a loophole that would allow full litigation of issues already decided on summary judgment. Moreover, because all the violations at issue in this matter derive from the same common core of facts, much of the testimony and evidence presented at the hearing was, in fact, relevant to the previously established violations, and Respondent was given a fair opportunity to testify as to the underlying facts and what he believes occurred in this case.

Second, Respondent argues that he was denied an opportunity to present exhibit and witness lists. Respondent notes that he filed such lists at the outset of this proceeding. However, those were preliminary lists of potential exhibits and witnesses that the parties were required to exchange shortly after filing their initial pleadings. The Tribunal later established deadlines for the parties to file formal witness and exhibit lists, exhibits, and prehearing statements in advance of the hearing. Respondent missed all of these deadlines. He never filed a prehearing statement, nor did he file a formal witness list, and he did not attempt to call any witnesses at the hearing other than himself. He did not file any hearing exhibits with the Tribunal until after the hearing had begun. The Tribunal admitted two exhibits he offered during cross-examination of a witness, but properly sustained the OED Director's objection to the introduction of other documents as part of Respondent's case-in-chief because Respondent had not filed copies of those documents with the Tribunal.

Finally, Respondent also argues that he was improperly restricted from cross-examining Mr. Taylor regarding an admitted exhibit that, according to Respondent, shows a statute of limitations violation. However, the cross-examination attempted by Respondent was properly excluded as beyond the scope of the witness's direct testimony. Further, prior to hearing, the Tribunal had already conclusively rejected Respondent's statute of limitations argument in the October 17, 2023 *Second Omnibus Ruling*, so the testimony sought would have been immaterial.

For the foregoing reasons, the evidentiary arguments raised by Respondent in Section III of his closing brief are rejected.

DISCUSSION

The *Complaint* consists of one Count alleging that Respondent violated thirteen provisions of the USPTO Rules of Professional Conduct. The Tribunal has already found violations of five provisions on summary judgment. The OED Director now asks the Tribunal to further find that Respondent violated 37 C.F.R. § 11.103 by failing to exercise diligence in his representation of immigration clients in Oregon; 37 C.F.R. § 11.104(a)(2), (a)(3), and (a)(4) and § 11.105(b) by failing to properly communicate with these clients; and 37 C.F.R. § 11.115(d) and § 11.116(d) by failing to refund clients' payments for immigration legal services that he and his firm failed to provide.[7]

Respondent argues that all of the violations stem from his good faith efforts to engage in the lawful practice of immigration law in Oregon. He blames the misconduct on a nefarious scheme perpetrated by Mr. Rosario. He claims he was unaware of the existence of any of the individuals named as victims in this case, and argues there is no evidence he received payments from them. He further argues that the Tribunal should reconsider the violations found on summary judgment now that all the evidence has been presented.

I. Violations Established on Summary Judgment (37 C.F.R. § 11.503(a) and (b), § 11.505, and § 11.804(c) and (d))

Though the Tribunal has already determined on summary judgment that Respondent violated 37 C.F.R. § 11.503(a) and (b), § 11.505, and § 11.804(c) and (d), the violations are summarized and discussed below because the underlying findings are relevant to the determination of sanctions and because Respondent has urged the Tribunal to reconsider them.

Ruling on Summary Judgment. On October 17, 2023, the Tribunal issued a *Second Omnibus Ruling* that, among other things, granted partial summary judgment in the OED Director's favor based on the factual findings rendered by the Multnomah County Circuit Court in the lawsuits pursued by the OSB and ODOJ against Respondent in Oregon state. As discussed above, the state court issued a default judgment against Respondent on December 12, 2018, in the OSB case. The facts established on default judgment in the OSB case were later found to have preclusive effect against Respondent in the separate ODOJ case. In the *Second Omnibus Ruling*, applying Oregon's test for collateral estoppel under 28 U.S.C. § 1738 and principles of full faith and credit, this Tribunal found that the facts established in the OSB case and given preclusive effect in the ODOJ case were also entitled to preclusive effect against Respondent in the instant matter. Applying those facts, the Tribunal found that Respondent had violated five provisions of the USPTO Rules of Professional Conduct.

First, the Tribunal found that Respondent had violated 37 C.F.R. § 11.503(a) and (b), which require a USPTO practitioner to adequately supervise non-practitioner assistants he employs or retains or with whom he associates. The facts established via collateral estoppel showed that Respondent had hired non-attorneys who provided immigration law services for which they were not licensed. He had allowed them to use his firm's name, had advertised their services, and had rented conference space for them in Oregon, yet he himself was rarely present to meet with the Oregon clients. Based on these facts, the Tribunal found that Respondent had violated § 11.503(a) and (b) by failing to properly supervise his non-lawyer employees, by facilitating the misconduct of said employees, and by failing to take steps to ensure their conduct would comport with his professional obligations.

[7] The *Complaint* also alleged a violation of 37 C.F.R. § 11.804(i), which bars "other conduct that adversely reflects on the practitioner's fitness," but the OED Director is no longer pursuing this charge.

The Tribunal further found that Respondent had knowingly assisted his non-lawyer employees' unauthorized practice of law, in violation of 37 C.F.R. § 11.505, by permitting them to use his firm's name (including on business cards, forms, legal service contracts, and receipts), by reserving conference space for them to meet with potential immigration clients in Oregon, and by paying for advertisements for those conferences. Because facilitating the unauthorized practice of law constitutes conduct prejudicial to the administration of justice, in violation of 37 C.F.R. § 11.804(d), the Tribunal also found a violation of that provision.

Finally, the Tribunal also found that Respondent violated 37 C.F.R. § 11.804(c)'s prohibition on dishonest and deceitful conduct because, based on the facts established through collateral estoppel, he knew that his non-lawyer employees were engaging in the unauthorized practice of law, yet he lent his firm's name and backing to their activities and allowed them to collect fees for legal services that were promised but never rendered.

Respondent's Request for Reconsideration. On the morning of December 5, 2023, several hours before the beginning of the evidentiary hearing in this matter, Respondent filed omnibus motions including a request to vacate the October 17, 2023 ruling on summary judgment. The Tribunal denied this request by order dated January 19, 2024. The Tribunal noted that it had already fully addressed and rejected most of Respondent's arguments, including his arguments that the Tribunal should not have relied on documents and judgments from the Oregon court cases and that summary judgment had been granted prematurely.[8] The only new argument Respondent raised in his December 5 filing was that he could not have violated his duties of supervision under § 11.503(a) and (b) because Mr. Rosario was a con artist whom Respondent could not reasonably have been expected to adequately supervise. The Tribunal explained that Respondent remained free to present this argument as a mitigating factor, but found he had not shown he had satisfied his duties of supervising his non-attorney assistants or taking steps to ensure their conduct complied with ethics rules.

Respondent's Renewed Request for Reconsideration. In his closing brief, Respondent argues that, having heard all the evidence, the Tribunal should reconsider and reverse the partial summary judgment ruling. Respondent rehashes prior arguments that proof of allegations via default judgment in the Oregon cases does not translate to clear and convincing evidence in the instant matter, and contends that he has raised significant objections to the Oregon proceedings, including challenges to jurisdiction, standing, due process, and sufficiency of evidence, as well as allegations of bias. However, as explained in prior rulings in this case, this administrative proceeding is not a proper forum for a collateral attack on the Oregon judgments, which are entitled to respect under principles of full faith and credit. As to Respondent's argument that he was given insufficient notice or opportunity to be heard in the Oregon cases, the Tribunal has now heard Ms. Sykes' testimony to the contrary and finds that testimony credible. Moreover, on balance, the evidence presented at hearing tends to support rather than undermine the findings rendered on summary judgment.

[8] Respondent had previously argued that summary judgment was premature because discovery was still pending, but the October 17, 2023 summary judgment ruling had considered and rejected that argument. In the January 19, 2024 ruling, the Tribunal further rejected Respondent's eleventh-hour request for additional time for discovery and affirmatively found that Respondent had already been given sufficient time and opportunity to conduct discovery.

The only fact presented at hearing that raises any question about the summary judgment ruling concerns the "knowing" nature of Respondent's conduct. On summary judgment, the Tribunal found that Respondent engaged in dishonest conduct under § 11.804(c) because he knew that his non-lawyer employees were engaging in unauthorized practice. Respondent has now produced WhatsApp messages indicating he instructed Mr. Rosario to tell clients he was not an attorney, and believed Mr. Rosario was not explicitly presenting himself as an attorney.

However, considering all the circumstances, Respondent knew or should have known that, by hiring others to handle client interactions on his behalf in a language he could not speak with minimal supervision, he was creating the perfect opportunity for Mr. Rosario and his associates to present themselves as attorneys or for clients to receive that mistaken impression. Though Respondent argues that he was bamboozled by Mr. Rosario and could not have anticipated or prevented Mr. Rosario's malfeasance, there is evidence that Respondent had reason to doubt Mr. Rosario's trustworthiness before Mr. Rosario ever traveled to Oregon on behalf of Khullar P.A. Respondent testified that Mr. Rosario took out a loan for more than $60,000 on Respondent's business without authorization; WhatsApp messages show that this occurred in July 2017, at which time Respondent repeatedly accused Mr. Rosario of "fraud," threatened to contact the police, and said he was sticking his own neck out for Mr. Rosario. Yet he allowed Mr. Rosario to begin running immigration operations in Oregon on his behalf just two months later. And even after the ODOJ filed a complaint accusing Mr. Rosario of unauthorized practice, Respondent continued allowing Mr. Rosario and his associates to conduct immigration events on behalf of Khullar P.A. and to solicit payments for legal services that the firm never provided. This conduct was dishonest.

II. 37 C.F.R. § 11.103 (Reasonable Diligence and Promptness)

The USPTO Rules of Professional Conduct require a practitioner to "act with reasonable diligence and promptness in representing a client." 37 C.F.R. § 11.103. A diligent lawyer acts "with commitment and dedication to the interests of the client." *In re* Aquilla, Proceeding No. D2022-27, at 4 (USPTO Jan. 27, 2023) (quoting ABA MODEL RULES OF PROF'L CONDUCT R.1.3 cmt.1 (2018)).[9] What constitutes "reasonable diligence" cannot be determined in a vacuum; the Tribunal must consider what a reasonably prudent and competent practitioner would have done under the circumstances. See Att'y Grievance Comm'n of Md. v. Ruddy, 981 A.2d 637, 651 (2009) (stating that reasonable diligence and promptness "must be examined in the context of the surrounding circumstances"); 37 C.F.R. § 11.1 (defining "reasonable" in context of USPTO Rules as describing "the conduct of a reasonably prudent and competent practitioner").

In this case, the OED Director asserts that at least four clients entered into contracts with Khullar P.A. and/or paid for Respondent and his firm to provide immigration legal services, yet he failed to perform any of those services. The OED Director argues that this neglectful conduct violated § 11.103.

The record supports the OED Director's assertions. Ms. Ramos paid a $500 advance for Respondent to petition for a U visa on her behalf. Mr. Pelayo entered into a contract with

[9] All USPTO disciplinary decisions cited herein are available online at https://foiadocuments.uspto.gov/oed/.

Respondent's firm and paid $1,500 for Respondent to file a FOIA request for him with USCIS. Mr. Hernandez entered into a contract with Respondent's firm and paid a $500 advance for Respondent to pursue a humanitarian visa. And Mr. Palacios and Ms. Flores entered into a contract with Respondent's firm and paid $6,000 upfront for Respondent to pursue a humanitarian visa, as well. But none of these individuals received the services they had requested and paid for. Based on Ms. Sykes' testimony, somewhere between 30 and 40 hopeful immigration clients collectively paid Khullar P.A. at least $152,000 for work that was never performed.

Respondent argues that no evidence or witness has been presented to prove the allegations regarding any individual victims except Ms. Doroteo. But many of these allegations were deemed proven on summary judgment on November 7, 2023, after Respondent failed to challenge the supporting documentary evidence produced by the OED Director. This evidence included retainer agreements, payment authorization forms, OSB and ODOJ complaints, and other statements and declarations given by the victims in the Oregon lawsuits against Respondent. Though the victims did not testify in this case, hearsay is admissible in USPTO disciplinary matters. See 37 C.F.R. § 11.50(a) ("The rules of evidence prevailing in courts of law and equity are not controlling in hearings in disciplinary proceedings."); *In re* Schindler, Proceeding No. D2019-43, at 27 (USPTO Dec. 5, 2023) ("[I]t is long-settled that hearsay is admissible in USPTO disciplinary proceedings."). The record clearly and convincingly shows that Ms. Ramos, Mr. Pelayo, Mr. Hernandez, and Mr. Palacios and Ms. Flores were among a group of victims who contracted for and/or paid for legal services they did not receive.

Respondent contends he had no attorney-client relationship with the purported victims because he did not directly interact with them or consciously agree to represent them. However, the victims interacted with personnel hired by Respondent to meet with and speak to clients on his behalf, and many of them signed retainer agreements on his firm's letterhead and made payments to the firm for immigration legal services. These transactions formed an attorney-client relationship between the victims and Khullar P.A., and Respondent, as owner and sole attorney of the firm, was personally responsible for the representations.

Respondent insists that he was not aware of the existence of the clients named in this case and that there is no proof he directly received funds from any of them. But he has not offered his client files, bank records, or any records of the consultation events in Oregon to corroborate these claims. Moreover, to the extent he knew nothing about clients who were signing retainers and authorizing payments to his firm, this demonstrates lack of diligence on his part. While forgetfulness or a single instance of accidental neglect may not amount to actionable misconduct, an attorney generally "has a duty to maintain awareness of his cases as they wend their way through the [legal] process." *In re* Kroll, Proceeding No. D2014-14, slip op. at 8 (USPTO Apr. 24, 2015). In this case, because Respondent hired representatives to conduct events on his firm's behalf and allowed them to sign up clients and accept payments for legal services in his firm's name, he was responsible for ensuring those services were actually provided. His failure to do so amounts to actionable neglect of client matters. See, e.g., *In re* Martinez, Proceeding No. D2019-37, at 7 (USPTO Feb. 15, 2022) (finding that neglect of client matters is actionable misconduct); Matter of Siccardi, 859 N.Y.S.2d 728, 730 (N.Y. App. Div. 2008) (same); Att'y

Grievance Comm'n v. Sutton, 394 Md. 311, 329-30 (2006) (same). Accordingly, he violated his duty of diligence under § 11.103.

III. 37 C.F.R. § 11.104(a)(2), (a)(3), and (a)(4) and § 11.105(b) (Client Communications)

The USPTO Rules of Professional Conduct set forth certain standards a practitioner must meet when communicating with a client. Among other things, the practitioner must "[r]easonably consult with the client about the means by which the client's objectives are to be accomplished" and "[k]eep the client reasonably informed about the status of the matter." 37 C.F.R. § 11.104(a)(2), (3). Further, a practitioner must "[p]romptly comply with reasonable requests for information from the client." Id. § 11.104(a)(4). A practitioner must also communicate to his client "[t]he scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible," and any changes thereto, "preferably in writing, before or within a reasonable time after commencing the representation, except when the practitioner will charge a regularly represented client on the same basis or rate." Id. § 11.105(b).

The OED Director argues that Respondent violated § 11.104(a)(2) and § 11.105(b) because he was not physically present at some of the immigration law consultation events held by his firm; because, admittedly, he did not speak to many of his clients, such as Ms. Doroteo; and because he relied on assistants to communicate with Spanish-speaking clients his behalf while failing to properly supervise those assistants. According to the OED Director, these facts show that Respondent failed to reasonably consult with clients about their immigration objectives and how to achieve them, and failed to communicate the scope of the representation by explaining the specific services he would provide.

The facts, however, do not clearly and convincingly show that § 11.104(a)(2) and § 11.105(b) were violated. The evidence reflects that Respondent's non-practitioner assistants consulted with clients about the clients' immigration-related objectives, advised courses of action to achieve those objectives, quoted fees for such actions, and provided the clients with written agreements promising to deliver specific legal services in exchange for the designated fees. Thus, through his assistants and written contracts, Respondent did consult with clients as contemplated under § 11.104(a)(2) and convey the scope of his representation and fees as contemplated under § 11.105(b).

Conversely, the record shows Respondent violated § 11.104(a)(3) and (a)(4) by failing to respond to reasonable requests for updates from at least two clients, Mr. Hernandez and Mr. Pelayo, and leaving them uninformed about the status of their matters. Mr. Hernandez met with Respondent's representatives twice to discuss potentially obtaining legal status and a driver's license through pursuit of a humanitarian visa and/or the filing of a Form I-131, but subsequent attempts to follow up with Respondent proved unsuccessful. Mr. Pelayo and his wife, Ms. Ramirez, paid $1,500 for Respondent's firm to submit a FOIA request, purportedly to help Mr. Pelayo obtain legal status, but they could not get in touch with Respondent afterward despite calling his firm multiple times, leading Mr. Pelayo to file a Bar complaint a year later. Respondent's lack of responsiveness to his firm's immigration clients violated his duties under § 11.104(a)(3) and (a)(4) to respond to requests for information and keep clients informed.

IV. 37 C.F.R. § 11.115(d) and § 11.116(d) (Failure to Return Unearned Fees)

The USPTO Rules of Professional Conduct require a practitioner to "take steps to the extent reasonably practicable to protect a client's interests" upon termination of representation. 37 C.F.R. § 11.116(d). Such steps include "surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred." Id. Relatedly, a practitioner must "promptly deliver to [a] client or third person any funds or other property that the client or third person is entitled to receive," along with a full accounting of such property if requested. Id. § 11.115(d).

The OED Director argues that Respondent violated the foregoing rules by failing to issue refunds to clients, including Ms. Ramos, Mr. Pelayo and Ms. Ramirez, and Mr. Hernandez, who paid hundreds or thousands of dollars in advance for immigration legal services that Respondent and his firm failed to provide.

Clear and convincing evidence supports these allegations. Ms. Ramos paid a $500 advance for a U visa; she later notified Khullar P.A. that she could not obtain the necessary supporting documentation, yet the firm never refunded her advance payment. Mr. Pelayo and Ms. Ramirez paid a $1,500 advance for Khullar P.A. to file a FOIA request, but no FOIA request was ever filed, and they were unable to get in touch with Respondent or obtain a refund despite repeatedly calling his firm. Likewise, after obtaining new counsel, Mr. Hernandez was unable to contact Respondent or obtain a refund of the $500 advance he had paid for services that Khullar P.A. never provided. By failing to return unearned advance fees to his clients, Respondent failed to promptly deliver funds to which they were entitled, in violation of § 11.115(d), and failed to protect his clients' interests upon termination of representation, in violation of § 11.116(d).

SANCTIONS

The OED Director asks the Tribunal to sanction Respondent by entering an order excluding him from practice before the Office. Respondent suggests that a sanction is not warranted, and raises various arguments in mitigation.

In determining sanctions against USPTO practitioner, the Tribunal must consider the following four factors: (1) whether the practitioner has violated a duty owed to a client, the public, the legal system, or the profession; (2) whether the practitioner acted intentionally, knowingly, or negligently; (3) the amount of the actual or potential injury caused by the misconduct; and (4) the existence of any aggravating or mitigating factors. 37 C.F.R. § 11.54(b). The Tribunal often looks to the American Bar Association's Standards for Imposing Lawyer Sanctions ("ABA Standards") for guidance when determining the proper length and severity of a sanction, and when determining whether aggravating or mitigating factors exist. See *In re* Chae, Proceeding No. D2013-01, at 4 (USPTO Oct. 21, 2013).

1. Violation of Duties Owed

Respondent's misconduct violated several duties he owed to his clients. First, he violated the duties he owed his clients under 37 C.F.R. § 11.503 to adequately supervise non-practitioner assistants who would be interacting with the clients. By failing to ensure that clients received legal services for which they had contracted and paid, Respondent breached his duty of diligence under 37 C.F.R. § 11.103. Respondent also violated duties owed under 37 C.F.R. § 11.104(a)(3) and (a)(4) to keep his clients reasonably informed of the status of their matters and promptly answer their reasonable requests for information. In addition, by failing to return unearned fees, Respondent violated his duty under 37 C.F.R. § 11.115(d) to promptly deliver funds to which his clients were entitled and his duty under 37 C.F.R. § 11.116(d) to protect clients' interests after termination of a representation.

Respondent violated duties owed to the public when he facilitated the unauthorized practice of law and dishonestly allowed his firm's non-practitioner assistants to continue collecting money from clients without delivering anything of value in exchange. As explained by Ms. Sykes at hearing, immigrants, particularly the low-income workers victimized by Respondent's firm, are a vulnerable population. Respondent allowed others to use his firm's name to prey upon this vulnerable population, undermining public confidence in the judicial system and creating a risk of harm to the public.

Finally, by engaging in dishonest conduct and conduct prejudicial to the administration of justice, Respondent also violated his duties to uphold the integrity of the legal system and the legal profession. See *In re* Walpert, Proceeding No. D2018-07, at 22 (USPTO June 14, 2019) (noting general duty of honesty and integrity borne by attorneys as officers of the court and representatives of the judicial system). He further violated duties owed to the legal system and profession by facilitating the unauthorized practice of law, which poses a serious threat to the integrity of the profession and to the effective administration of justice. See United States v. Johnson, 327 F.3d 554, 560 (7th Cir. 2003); *In re* Piccone, Proceeding No. D2015-06, at 28 (USPTO May 25, 2017) (noting that attorneys, as officers of the court, are expected to aid in the prevention of unauthorized practice).

2. Culpability of Conduct

Respondent's conduct was both negligent and knowing. Negligence is "the failure to take reasonable care." *In re* Flindt, Proceeding No. D2016-04, at 52 (USPTO Aug. 4, 2017). Respondent acted negligently when he failed to diligently perform services for which his firm had been retained; failed to adequately supervise non-practitioner assistants he had hired to conduct legal consultation events on his firm's behalf in Oregon; and failed to adequately communicate with his clients by neglecting to answer their calls and respond to follow-up inquiries after they met with non-practitioner assistants.

Respondent acted knowingly in facilitating his non-lawyer assistants' unauthorized practice of law and in failing to return fees the assistants had charged even though his firm failed to perform the promised legal services. Respondent asserts that he lacked knowledge of Mr. Rosario's history of fraudulent conduct, could not have anticipated Mr. Rosario's wrongdoing, and was himself a victim of Mr. Rosario's fraudulent scheme in this case, demonstrating vulnerability rather than culpability. There is evidence that Respondent did not realize Mr. Rosario was expressly presenting himself as an attorney, and had instructed Mr. Rosario not to do so. At hearing, Respondent suggested he was blindsided by Mr. Rosario's duplicity, stating:

"I had been to [Mr. Rosario's] church, saw this man being loved by thousands of people, been to his house, two kids, a very religious family. I – in my dreams I could not imagine that he would be doing certain things."

However, as discussed above, Respondent failed to heed potent warning signs, such as when Mr. Rosario took out a loan on Respondent's bank account without permission, leading Respondent to accuse him of criminal activity in July 2017, and when the ODOJ filed a criminal complaint against Mr. Rosario in November 2017. Further, Respondent knew or should have known that, by facilitating consultation events during which non-attorneys would discuss available forms of immigration relief, retain clients, and solicit fees for legal services, all while the only licensed attorney associated with the operation was in another state, he was setting the stage for unauthorized practice to occur. At best, Respondent acted unwisely and showed poor judgment. Considering all the circumstances, he knew or should have known that he was placing his clients, and his own law license, at risk.

3. Actual or Potential Injury

Respondent's misconduct in this case caused actual injury to clients. Vulnerable clients were misled into believing that they were receiving legal advice from licensed professionals, and in some cases that they were guaranteed to obtain immigration relief. They made advance payments to Respondent's firm, in some cases in significant amounts, but received nothing in return, and some of them did not get their money back.

4. Aggravating and Mitigating Factors

The Tribunal often looks to the ABA's Standards for Imposing Lawyer Sanctions ("ABA Standards") when determining whether aggravating or mitigating factors exist. A review of the record and the parties' arguments reveals several aggravating and mitigating factors here.

First, Respondent has a prior disciplinary history: he was publicly reprimanded by the USPTO Director and the Supreme Court of Florida in the recent past. A prior disciplinary history is an aggravating factor. See ABA Standards § 9.22(a). The prior offenses appear to stem from the facts at issue in this case, though, which somewhat lessens the impact.

Another aggravating factor is a dishonest or selfish motive. See ABA Standards § 9.22(b). Respondent's motive was selfish, in that he ignored warning signs about Mr. Rosario's character and incautiously relied on non-attorneys to consult with clients while providing minimal supervision, with the goal of pecuniary gain.

Respondent engaged in a pattern of misconduct that resulted in multiple offenses, both of which are aggravating factors. See ABA Standards § 9.22(c), (d). For many months, he failed to properly supervise non-lawyer employees, facilitated their misconduct, and neglected to ensure that his firm was providing the legal services promised to its immigration clients, leading to eleven violations of the USPTO Rules of Professional Conduct impacting numerous clients.

The OED Director cites "bad faith obstruction of the disciplinary proceeding" and refusal to acknowledge the wrongful nature of the conduct as additional aggravating factors in this case. See ABA Standards § 9.22(e), (g). It is true that Respondent has dragged his feet at times during this proceeding and has ignored, overlooked, or failed to obey certain orders and instructions. For the most part, he has also refused to admit engaging in wrongful conduct, though his response brief states that, based on parallel disciplinary proceedings ongoing in Florida, he now acknowledges he failed to meet reasonable standards for supervising his non-attorney staff. These are aggravating factors, tempered by the Tribunal's recognition of Respondent's right to defend himself against the charges of misconduct.

A final aggravating factor is the vulnerability of the victims in this case. See ABA Standards § 9.22(h). As indicated above, the immigrant population targeted by Respondent's firm consisted mainly of low-wage workers at risk of deportation who hoped for an attorney to help them attain legal status. But instead of helping them achieve this objective, Respondent's firm took their money and failed to render any services in return.

On the other hand, Respondent's relative inexperience in the practice of law conferred a degree of vulnerability to him, as well, that helped lead to the misconduct. Respondent engaged Mr. Rosario to conduct marketing and client outreach for his firm because Respondent had only been out of law school for a few years, and Khullar P.A. was his first foray into solo practice. The risks of associating with Mr. Rosario may have been more apparent to a more experienced attorney. Inexperience is a mitigating factor in this matter. See ABA Standards § 9.32(f).

Other slight mitigating factors include the delay in this disciplinary proceeding and the imposition of other penalties or sanctions against Respondent. See ABA Standards § 9.32(j), (k). The conduct at issue took place years ago, and the disciplinary process has been protracted. In the intervening time, Respondent has paid penalties and restitution as a result of the two lawsuits in Oregon that relate to this matter, and the Florida Bar has initiated a parallel disciplinary proceeding.

Finally, at hearing, Respondent expressed remorse for harming innocent people. This is a mitigating factor, see ABA Standards § 9.32(*l*), although it would have been more meaningful had he shown more regard for the individual victims.

5. Conclusion

The Tribunal has considered the entire record, the arguments of the parties, and the factors set forth in 37 C.F.R. § 11.54(b), including aggravating and mitigating factors. Respondent violated duties he owed to his clients, the public, the legal system, and the legal profession. He engaged in a pattern of misconduct that caused actual harm to vulnerable clients who paid legal fees for services that were never provided. His conduct was negligent and knowing, and he acted with a selfish pecuniary motive. But he was relatively inexperienced in the practice of law at the time the misconduct occurred, and was misled to a degree by Mr. Rosario, whom the Supreme Court of Florida has described as a "consummate conman."

The OED Director argues that exclusion from practice is the appropriate sanction given the risk Respondent poses to the public and the need for deterrence. Exclusion is the most severe sanction available. On the other end of the spectrum, the Supreme Court of Florida merely admonished attorney Paul Meadows for "minor misconduct" after Mr. Meadows became embroiled in a similar situation with Mr. Rosario. Unlike Respondent, though, Mr. Meadows had no knowledge that Mr. Rosario was speaking to clients on his own, and upon learning of Mr. Rosario's fraudulent activities, attorney Meadows promptly reported him to the Florida Bar and took remedial action, including setting up a temporary office in Tampa where he could more easily identify and meet with impacted clients. Respondent's conduct warrants a more severe sanction than Mr. Meadows', but a less severe sanction than exclusion in light of the mitigating factors considered. The Tribunal finds that an eighteen-month suspension is appropriate.

ORDER

For the reasons set forth above, Respondent shall be **SUSPENDED** from practice before the U.S. Patent and Trademark Office in patent, trademark, and other non-patent matters for a period of not less than eighteen (18) months.[10]

So **ORDERED**,

Alexander Fernández-Pons
United States Administrative Law Judge

Notice of Appeal Rights: Within fourteen (14) days of the date of this initial decision, either party may appeal to the USPTO Director by filing a notice of appeal. 37 C.F.R. § 11.55(a). In the absence of an appeal, this decision will become the final decision of the USPTO Director pursuant to 37 C.F.R. § 11.54(d).

[10] Respondent is directed to 37 C.F.R. § 11.58, which sets forth Respondent's duties while suspended. Respondent shall remain suspended from the practice of patent, trademark, and non-patent law before the USPTO until the OED Director grants a petition reinstating Respondent pursuant to 37 C.F.R. § 11.60(c).

CERTIFICATE OF SERVICE

I hereby certify that copies of the **INITIAL DECISION AND ORDER**, issued by Alexander Fernandez-Pons, Administrative Law Judge, in D2021-01, were sent to the following parties on this 24th day of July 2025, in the manner indicated:

Cinthia Matos

Cinthia Matos, Docket Clerk
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UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE ADMINISTRATIVE LAW JUDGE

In the Matter of: DIVYA KHULLAR, Respondent.	Proceeding No. D2021-01 October 17, 2023

SECOND OMNIBUS RULING

This matter arises from a disciplinary complaint ("*Complaint*") filed by the Director of the Office of Enrollment and Discipline ("OED Director") for the U.S. Patent and Trademark Office ("USPTO" or "the Office") against Divya Khullar ("Respondent") pursuant to 35 U.S.C. § 32 as implemented by 37 C.F.R. part 11.

Respondent, a patent attorney admitted to the bar in Florida and Missouri, owns a Florida-based legal practice called Khullar P.A. The *Complaint*'s central allegation is that Respondent failed to adequately supervise certain non-practitioner assistants he hired to help expand Khullar P.A.'s immigration law practice. The *Complaint* alleges, among other things, that these non-practitioner assistants accepted money from prospective clients in Oregon for legal services that were never rendered. In relation to these allegations, Respondent has been subject to two default judgments in Oregon state court, including a default judgment in a lawsuit brought by the Oregon State Bar involving allegations of unauthorized practice. Respondent denies engaging in unauthorized practice and alleges that he, himself, is a victim of his non-practitioner assistants' wrongdoing.

The following filings are currently before the Court and will be addressed in this omnibus Ruling: (1) Respondent's October 26, 2021 *Omnibus Emergency Motions: Motion for Rehearing on Ruling on Respondent's Supplemental Discovery Motion–To Allow Highly Relevant Discovery; Motion for Clarification; Motion for Continuance Due to Delayed Discovery Order; and Motion to Strike All Claims as to Hilda Becerra* ("*First Omnibus Emergency Motions*") and the OED Director's response in opposition; (2) Respondent's November 5, 2021 *Motion to Extend Time Deadline for the Filing of Dispositive Motions and Motion for Summary Judgment* ("*Motion for Summary Judgment*") and the OED Director's two filings in opposition; (3) the OED Director's November 5, 2021 *Motion for Partial Summary Judgment* and Respondent's response in opposition; (4) Respondent's December 2, 2021 *Omnibus Emergency Motions: Request for Leave to File Respondent's Verified Motions, Motion to Dismiss with Prejudice Based on Fraud, Fraud Upon the Court, and Abuse of Process, and Motion to Abate These Proceedings Until Such Time [as] This Court Has Ruled on the Above Motions* ("*Second Omnibus Emergency Motions*") and the OED Director's response in opposition; and (5) the OED

Director's December 10, 2021 *Request for Leave to Renew Motion for Sanctions* ("*Renewed Motion for Sanctions*"), to which Respondent has not filed a response.

PROCEDURAL HISTORY

The *Complaint* in this matter was filed on December 23, 2020. On December 28, 2020, the Court issued a *Notice of Hearing and Order* establishing a hearing date and various prehearing deadlines. On March 12, 2021, the Court continued the hearing, stayed the proceedings, and referred the matter to a settlement judge at the parties' request. The settlement discussions were unsuccessful. On May 5, 2021, the Court issued a *Second Notice of Hearing and Order* establishing a new hearing date.

On August 12, 2021, the Court issued an *Omnibus Ruling on Parties' Discovery Motions, Respondent's Motion for Relief from Prior Order, and Respondent's Continuance Request* ("*Omnibus Ruling*"). Among other things, the *Omnibus Ruling* opened discovery under 37 C.F.R. § 11.52 (2020) and granted Respondent's request to continue the hearing in light of his recent COVID-19 diagnosis and the need to conduct discovery. The Court ordered the parties to confer and provide notice of their preferred timeframes to reschedule the hearing.

On August 23, 2021, the Court issued a *Third Notice of Hearing and Order* rescheduling the hearing based on the parties' stated availability. On August 27, 2021, after Respondent objected to the hearing date, the Court issued a *Fourth Notice of Hearing and Order* rescheduling the hearing again. This time, the hearing was set to begin on December 6, 2021.

On October 1, 2021, the OED Director filed a *Motion to Compel Responses to the OED Director's Discovery Requests and for Appropriate Sanctions* alleging Respondent was not cooperating in discovery. On November 12, 2021, the Court issued a *Ruling on Respondent's Emergency Motion to Strike and OED Director's Motion to Compel* that, among other things, ordered Respondent to fully respond to discovery.[1] The Court declined to sanction Respondent for discovery violations at that time, but stated that it would entertain a renewed motion for sanctions if Respondent failed to comply with the order to compel.

Meanwhile, on October 26, 2021, Respondent had filed his *First Omnibus Emergency Motions*. On November 5, 2021, Respondent filed his *Motion for Summary Judgment* and the OED Director filed his *Motion for Partial Summary Judgment*.

On November 8, 2021, in light of the pending motions, the Court issued an order staying the hearing and directing the parties to refrain from submitting further filings absent the Court's permission.

Notwithstanding that order, on December 2, 2021, Respondent filed his *Second Omnibus Emergency Motions*. On December 10, 2021, the OED Director filed his *Renewed Motion for*

[1] The November 12, 2021 ruling also denied as baseless an *Emergency Motion to Strike USPTO's Discovery Requests, Motion for Protective Order, and Emergency Motion for Enlargement of Time* that Respondent had filed in an attempt to avoid responding to discovery.

Sanctions. On December 13, 2021, the Court issued an order accepting those motions for consideration and setting deadlines to respond, which have now passed.[2]

RESPONDENT'S FIRST AND SECOND OMNIBUS EMERGENCY MOTIONS

Respondent's *First* and *Second Omnibus Emergency Motions* include the following outstanding motions: (1) a motion to dismiss this proceeding; (2) a motion for reconsideration, in part, of a discovery ruling issued by the Court on October 20, 2021; and (3) a motion to strike all claims as to Hilda Becerra.[3] All three motions will be denied, for the reasons discussed below.

I. Motion to Dismiss

In his December 2, 2021 *Second Omnibus Emergency Motions*, Respondent argues that this matter should be dismissed due to fraud and abuse of process because the OED Director has made false representations and concealed evidence regarding the statute of limitations, which Respondent has cited as an affirmative defense in this matter.

Background. The applicable statute of limitations requires USPTO disciplinary proceedings to be commenced "no later than … 1 year after the date on which the misconduct forming the basis for the proceeding is made known to an officer or employee of the Office as prescribed in [USPTO's] regulations." 35 U.S.C. § 32. USPTO's regulations specify that this occurs when "the OED Director receives a grievance," see 37 C.F.R. § 11.34(d); Piccone v. USPTO, 791 F. App'x 932, 935 (Fed. Cir. 2019), which is defined as "a written submission from any source received by the OED Director that presents possible grounds for discipline of a specified practitioner," 37 C.F.R. § 11.1.

In this case, the OED Director has consistently maintained that the statute of limitations began running on July 23, 2019, because that is the date on which he first received information about Respondent's alleged misconduct. During the disciplinary investigation that led to the filing of the *Complaint*, the parties executed five tolling agreements expressly stating that the OED Director had initiated the investigation based on information received on July 23, 2019. The tolling agreements evinced a common understanding that the one-year deadline for the OED Director to file a disciplinary complaint would be extended by a total of 165 days, from July 23, 2020, to January 4, 2021. Consistent with this understanding, the OED Director filed the *Complaint* on December 23, 2020.

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[2] The delay between briefing and the issuance of this ruling was caused by limited government resources, the time taken to consider the parties' respective evidence and positions, and the impact of the COVID-19 pandemic, which necessitated closure and reopening of the Court's physical office during the pendency of this case and disrupted some of the Court's operations and workflow.

[3] At the time of filing, the *First Omnibus Emergency Motions* also included a "motion for clarification" seeking to shorten the deadline for the OED Director to respond to discovery, as well as a motion for continuance. Since then, the hearing has been continued and the deadline for the OED Director to respond to discovery has expired. Accordingly, the motion for clarification and motion for continuance are **DENIED** as moot. The *Second Omnibus Emergency Motions* included motions to accept that filing for consideration and to abate proceedings pending ruling thereon. Those two motions need not be addressed here because the Court already ruled on them in its December 13, 2021 *Order Accepting Motions for Consideration, Setting Deadline to Respond, and Denying Motion to Abate*.

Respondent's statute of limitations defense centers on his claimed belief that the OED Director received information about Respondent's alleged misconduct earlier than July 23, 2019. Initially, Respondent provided no evidence to support this belief, but suggested that the OED Director knew or should have known of the misconduct earlier because the Oregon State Bar had filed a related complaint against Respondent in Oregon state court in November 2017.

In a July 9, 2021 *Ruling on Motion to Strike Affirmative Defenses*, the Court rejected that argument, explaining there was no legal basis to charge the OED Director with constructive knowledge of the Oregon lawsuit. See Piccone, 791 F. App'x at 935-36 (rejecting similar constructive knowledge argument). The Court found that the July 23, 2019 date provided by the OED Director seemed plausible and that there was no indication OED had received information about Respondent's alleged misconduct at an earlier date. Accordingly, the Court struck Respondent's statute of limitations defense. However, the Court remarked in a footnote that "[i]f any evidence surfaces suggesting otherwise, Respondent may revive" the defense.

Respondent subsequently challenged the July 9 ruling, claiming that newly discovered evidence raised questions as to when OED had first received information about the alleged misconduct. In its August 12, 2021 *Omnibus Ruling*, the Court found that this "new" evidence was actually available before the July 9 ruling was issued, and would not have changed the outcome, anyway. Therefore, the Court declined to disturb the July 9 ruling. But the Court made clear that Respondent was entitled to seek discovery pertaining to the statute of limitations, subject to his submission of a revised motion to authorize discovery that complied with the requirements of 37 C.F.R. § 11.52 (2020).

On September 3, 2021, Respondent filed a *Supplemental Motion to Allow Discovery in Response to Court Order of August 12, 2021*. On October 20, 2021, the Court issued a *Ruling on Respondent's Supplemental Discovery Motion and Respondent's Objection to Virtual Proceedings* which authorized most of Respondent's proposed discovery requests, including those relating to the statute of limitations. The OED Director responded to Respondent's discovery requests on November 5, 2021.

In his *Second Omnibus Emergency Motions*, Respondent now argues that the OED Director's discovery responses are evasive and incomplete and show that the OED Director is concealing exculpatory evidence concerning the statute of limitations. Respondent maintains that the new discovery disclosures support his longstanding insistence that the OED Director learned of Respondent's alleged misconduct earlier than the claimed date of July 23, 2019. Respondent concludes that the Court should dismiss the entire proceeding for fraud on the Court and abuse of process because the OED Director has been untruthful about when he first learned of the alleged misconduct. The OED Director filed a December 23, 2021 *Opposition to Respondent's Omnibus Emergency Motions* arguing that Respondent's motion to dismiss is procedurally deficient and lacks merit.

Pertinent Legal Principles. A court has the inherent power to dismiss an action "when a party deceives [the] court or abuses the process at a level that is utterly inconsistent with the orderly administration of justice or undermines the integrity of the process." Projects Mgmt. v. Dyncorp Int'l LLC, 734 F.3d 366, 373 (4th Cir. 2013) (quoting United States v. Shaffer Equip.

Co., 11 F.3d 450, 462 (4th Cir. 1993)); see Salgam v. Advanced Software Sys., No. 1:18-cv-00029, 2020 U.S. Dist. LEXIS 205360, at *10-11 (E.D. Va. July 2, 2020) (discussing court's inherent authority to impose sanctions for fraud), aff'd, 2023 U.S. App. LEXIS 20986 (4th Cir. Aug. 11, 2023). However, because dismissal is the most extreme sanction for such misconduct, dismissal orders must be entered only "with the greatest caution" after consideration of numerous factors, such as the availability of lesser sanctions. See Shaffer Equip, 11 F.3d at 462-63 (vacating dismissal order and remanding for imposition of less severe sanction, short of outright dismissal).

Discussion. In support of his argument that the OED Director has been untruthful about the date he first learned of Respondent's alleged misconduct, Respondent cites the OED Director's interrogatory responses, which Respondent characterizes as evasive and incomplete, and three other documents. Two of those documents contain spreadsheets of American Bar Association ("ABA") data analyzed by an OED employee; together, these documents suggest OED first obtained information about Respondent from the ABA on or about June 25, 2019. The third document appears to show that someone accessed information about Respondent from an Oregon state court on July 17, 2019. Thus, according to Respondent, the statute of limitations began to run earlier than the July 23, 2019 date claimed by the OED Director.[4]

The OED Director argues, first, that a motion to dismiss based on the statute of limitations must be analyzed as a Rule 12(b)(6) motion to dismiss for failure to state a claim, see Fed. R. Civ. Pro. 12(b)(6), and that it is improper for Respondent to rely on materials outside the pleadings to support such a motion. However, Respondent's motion is more properly characterized as a motion to dismiss based on fraud, not based on the statute of limitations. Accordingly, the Court declines to treat it as a Rule 12(b)(6) motion and does not consider itself barred from considering materials outside the pleadings, which have been submitted by both parties here.

The OED Director also argues that Respondent's motion to dismiss should be denied because Respondent failed to confer with opposing counsel before filing it, thereby violating both the meet-and-confer requirement of 37 C.F.R. § 11.43 and the Court's November 12, 2021 *Ruling on Respondent's Emergency Motion to Strike and OED Director's Motion to Compel*, in which the Court ordered Respondent not to file any further motions in this matter without first complying with 37 C.F.R. § 11.43. The Court declines to summarily deny Respondent's motion on this basis, as summary denial is a harsh remedy that would not resolve the substantive issues raised in the motion to dismiss. However, **Respondent is hereby warned that, from this date forward, any failure on his part to comply with 37 C.F.R. § 11.43 before filing a motion in this matter may result in summary denial of said motion**.

[4] Respondent also argues that the privilege log accompanying the OED Director's discovery responses fails to comply with Rule 26(b)(5)(A) of the Federal Rules of Civil Procedure and raises questions warranting *in camera* inspection. However, the Federal Rules are not binding here, and even if they were, Respondent fails to explain how the privilege log violates them. The log simply shows that the reason the OED Director redacted two documents produced during discovery was to avoid violating the Privacy Act (see 5 U.S.C. § 552a) and USPTO's own regulations. Moreover, it appears that the redacted information would not be relevant to this matter. Accordingly, Respondent's arguments concerning the privilege log are rejected as meritless.

Turning to the substance of Respondent's motion to dismiss, the OED Director denies making any misrepresentations or concealing information concerning the statute of limitations. The OED Director sets forth the following timeline to establish—as clearly explained in his interrogatory responses, and fully supported by the documents he produced in discovery—that the statute of limitations began running on July 23, 2019:

On or about June 25, 2019, an OED program analyst downloaded data from the ABA's National Lawyer Regulatory Data Bank containing more than a thousand names of individuals disciplined by state bars. Respondent's name was listed because he had been publicly reprimanded by the Florida Bar in March 2019. The program analyst cross-referenced OED data and compiled a spreadsheet listing disciplined individuals whose names matched those of USPTO practitioners. On June 26, 2019, the program analyst emailed her data to OED Paralegal Hannah Robinson. Ms. Robinson reviewed the data on July 23, 2019, and confirmed that the disciplined Florida attorney identified in the National Lawyer Regulatory Data Bank as "Divya Khullar" and the practitioner identified in OED's registry as "Divya Khullar" were one and the same person—Respondent.

That same day, July 23, 2019, while searching Google for Respondent's contact information, Ms. Robinson unexpectedly discovered the Oregon State Bar lawsuit against Respondent. Later that day, she sent her findings to the OED Director in the form of a memorandum. The next day, OED launched a disciplinary investigation. Ultimately, the OED Director filed two disciplinary complaints against Respondent, including the *Complaint* that initiated the instant proceeding, which relates to the Oregon State Bar lawsuit, and an earlier complaint filed June 22, 2020, seeking reciprocal discipline based on the Florida reprimand.

The information and documents produced by the OED Director establishing the foregoing timeline of events are not incomplete or evasive. Respondent fails to identify a shred of evidence to support his dogged insistence that the OED Director is lying or hiding information about the statute of limitations.

Respondent suggests that the limitations period began in June 2019, when OED retrieved his name from the databank of disciplined attorneys. However, Respondent's name appeared in the databank in connection with his disciplinary infraction in Florida. The alleged misconduct forming the basis for *this* proceeding occurred in Oregon. OED did not learn of the events in Oregon until Ms. Robinson stumbled on the relevant information during a July 23, 2019 Google search, so the statute of limitations could not have begun running any earlier than that date. <u>See</u> 35 U.S.C. § 32. Moreover, the regulatory condition that actually triggered the running of the statute was the OED Director's receipt of a written grievance presenting possible grounds to discipline Respondent. <u>See</u> 37 C.F.R. §§ 11.34(d), 11.1; <u>Piccone</u>, 791 F. App'x at 935. This also did not occur until July 23, 2019, when Ms. Robinson prepared and forwarded her memorandum to the OED Director.

There may be a case where it would be appropriate to impute an OED employee's knowledge to the OED Director for purposes of determining when he should have initiated a disciplinary proceeding, but this is not such a case. Even after an OED employee found the name "Divya Khullar" in the databank of disciplined attorneys, OED could not reasonably have taken action against Respondent until confirming that the person named in the databank was, in fact, Respondent. Confirming his identity was not only reasonable, but necessary, as Respondent had failed to notify OED that he had been disciplined in another jurisdiction despite being required to do so under 37 C.F.R. § 11.24(a). And OED confirmed Respondent's identity within a reasonable amount of time (less than a month). The attachments to Ms. Robinson's memo to the OED Director verify that she pulled data about Respondent on July 23, 2019, and there is no evidence that anyone at OED knew of the Oregon misconduct earlier than that date.

Respondent points out that the OED Director has produced a Register of Actions for the Oregon State Bar lawsuit which appears to have been accessed from the Oregon court's e-filing system on July 17, 2019. According to Respondent, this suggests that OED knew of the Oregon lawsuit before July 23. But OED did not itself access the Oregon court's files or add the July 17 date stamp. Rather, the record shows that an OED employee received the Register of Actions in December 2019 in a packet of documents he had requested from the Oregon State Bar. The Register of Actions was included as an attachment to another document Respondent himself had filed in the Oregon lawsuit on July 17, 2019, "strongly suggest[ing] that it was Respondent or his counsel who simultaneously caused the July 17, 2019 date to be emblazoned" on the Register of Actions. Thus, it is disingenuous, at best, for Respondent to claim the date stamp on that document is relevant to the statute of limitations.[5]

In sum, Respondent has put forward no evidence to suggest that the statute of limitations was not satisfied in this matter or that the OED Director has concealed facts relevant to this issue. There is no indication the OED Director has engaged in dishonest conduct, much less fraud that would warrant dismissal of this proceeding. Accordingly, Respondent's motion to dismiss is meritless and must be denied.

II. <u>Motion for Reconsideration of Discovery Ruling</u>

In his October 26, 2021 *First Omnibus Emergency Motions*, Respondent seeks reconsideration of the Court's decision under 37 C.F.R. § 11.52 not to authorize one of his proposed requests for production ("RFPs") in this matter, proposed RFP 4(i).

The *Complaint* in this matter involves allegations that, among other things, Respondent failed to adequately supervise non-practitioner assistants he hired who took money from prospective clients for immigration law services that were never provided. Respondent's Proposed RFP 4(i) would have required the OED Director to produce, for each of eight individuals named in the *Complaint* as victims of the alleged misconduct, "[a]ll documents related to any immigration matter of the individual," including copies of documents submitted to government agencies relating to said immigration matters. Respondent also proposed to issue subpoenas *duces tecum* to each of the eight individuals requiring them to produce the same documents. The Court rejected these proposals in its October 20, 2021 *Ruling on Respondent's Supplemental Discovery Motion and Respondent's Objection to Virtual Proceedings*, finding RFP 4(i) to be overbroad and not tied to a specific material issue raised in the pleadings.

[5] The OED Director argues that this disingenuous claim made by Respondent, along with several other misleading assertions he makes in his motion to dismiss, warrant denial of the motion because they suggest Respondent filed it for an improper purpose. The Court does not reach this argument, as the motion lacks substantive merit.

In urging the Court to reconsider that finding, Respondent now claims that RFP 4(i) is his most important discovery request because, without the materials sought, he has no proof that the eight alleged victims actually paid for any services, nor proof of who received the payments. However, RFP 4(i) is not narrowly tailored to seek the answers to those questions. Instead, this request would require production of "[*a*]*ll* documents related to *any* immigration matter of" each victim (emphasis added). This request is overbroad. Accordingly, Respondent's motion for reconsideration will be denied.

III. Motion to Strike Claims as to Hilda Becerra

In his October 26, 2021 *First Omnibus Emergency Motions*, Respondent asks the Court to strike all claims as to Hilda Becerra, who is named in the *Complaint* as a prospective client of Respondent's law firm who was allegedly victimized by his misconduct. Respondent argues that the claims should be stricken because the OED Director has withheld Ms. Becerra's mailing address and contact information, preventing Respondent from issuing a subpoena to her.

In his November 5, 2021 *Opposition to Respondent's Omnibus Emergency Motions*, the OED Director denies withholding Ms. Becerra's contact information and states that he simply does not have current contact information for her. He further notes that proof of the claims relating to Ms. Becerra exists in the form of a declaration that was signed by Ms. Becerra under penalty of perjury, which has been produced to Respondent.

Respondent provides no legal authority to support his argument that his own inability to get in touch with a witness warrants striking any claims in the *Complaint*. As previously explained by the Court in the August 12, 2021 *Omnibus Ruling*, hearsay is admissible and the Confrontation Clause does not apply in this administrative proceeding. Thus, even if Ms. Becerra can no longer be located, the OED Director may offer her declaration as evidence. Accordingly, Respondent's motion to strike claims will be denied.

MOTIONS FOR SUMMARY JUDGMENT

Each party filed a motion for summary judgment on November 5, 2021. Respondent's motion also includes a request to extend the deadline for submission of dispositive motions or to allow him to renew his motion at a later date if it is denied. The parties opposed each other's motions through responses filed on November 15, 2021.

I. Pertinent Legal Principles

Standard and Burden of Proof. In USPTO disciplinary proceedings, "the OED Director shall have the burden of proving the violation by clear and convincing evidence," while the "respondent shall have the burden of proving any affirmative defense by clear and convincing evidence." 37 C.F.R. § 11.49. "Clear and convincing" evidence is an intermediate standard of proof, falling somewhere between the "beyond a reasonable doubt" standard governing criminal cases and the "preponderance of the evidence" standard governing most civil cases, which requires evidence of such weight that it "produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established" or "proves the facts at issue to be 'highly probable.'" Jimenez v. DaimlerChrysler Corp., 269 F.3d 439, 450 (4th Cir. 2001); see also Colorado v. New Mexico, 467 U.S. 310, 316 (1984) (requiring evidence sufficient to produce "an abiding conviction" that the factual allegations are "highly probable").

Summary Judgment. Motions for summary judgment are governed by Rule 56(a) of the Federal Rules of Civil Procedure. See Fed. R. Civ. P. 56(a) (as applied to this proceeding by 37 C.F.R. § 11.43). Under Rule 56(a), a court may grant summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Id. Thus, summary judgment is available only where the moving party demonstrates "lack of a genuine, triable issue of material fact" and where "under the governing law, there can be but one reasonable conclusion as to the outcome." Celotex Corp. v. Catrett, 477 U.S. 317, 327 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986). An issue is "genuine" only if the evidence is such that a reasonable fact finder could rule in favor of either party. Anderson, 477 U.S. at 248. A fact is "material" only if it is capable of affecting the outcome of the case under governing law. Id.

On summary judgment, the court must view the evidence in the light most favorable to the party opposing judgment. Tolan v. Cotton, 572 U.S. 650, 657 (2014); United States v. Diebold, Inc., 369 U.S. 654, 655 (1962). Summary judgment is not available where material facts, "though undisputed, are susceptible to divergent inferences." Tao v. Freeh, 27 F.3d 635, 637 (D.C. Cir. 1994); see Adickes v. S.H. Kress & Co., 398 U.S. 144, 158-59 (1970) (requiring consideration of "reasonable inferences" that can be drawn from the facts). However, summary judgment may be appropriate against a party who has failed to make a sufficient showing on an essential element as to which he has the burden of proof. Celotex, 477 U.S. at 322-23.

II. Respondent's *Motion for Summary Judgment*

Respondent's *Motion for Summary Judgment* asks the Court to grant summary judgment in his favor on grounds that the *Complaint* is unsupported. In the alternative, Respondent asks the Court to extend the deadline for submission of dispositive motions or to allow him to file a renewed motion for summary judgment after completing discovery. Respondent's requests are addressed in turn below.

Request for Summary Judgment. Respondent's argument for summary judgment is unsupported by any evidence and misconstrues the relevant legal standard. Respondent argues he is entitled to summary judgment because, as of the deadline for the parties to submit dispositive motions, the OED Director had not yet developed a full evidentiary record to establish the claims in the *Complaint*. Respondent correctly points out that the OED Director bears the ultimate burden of proof in this matter. However, a burden-bearing party is not required to prove all its claims before hearing, and can avoid an unfavorable summary judgment simply by showing that material facts remain in dispute. See Fed. R. Civ. Pro. 56(a). It is the party moving for summary judgment who bears the burden of showing that the material facts are undisputed and that these undisputed facts entitle him to judgment as a matter of law. Id.;

Celotex, 477 U.S. at 327. Here, Respondent has not identified any facts he believes to be undisputed, much less explained how the undisputed facts warrant judgment in his favor.

Moreover, as asserted by the OED Director in his November 15, 2021 *Opposition to Respondent's Motion for Summary Judgment* ("*Opposition*"), Respondent fails to acknowledge the substantial evidence the OED Director has already produced to support the *Complaint*, much of which has been available to Respondent since at least the parties' initial exchange of documents at the outset of this proceeding. In his *Opposition*, the OED Director offers an 80-paragraph "Statement of Material Facts in Favor of the OED Director," supported by citations to documentary evidence,[6] that completely belies Respondent's purported belief that no evidence supports the *Complaint*. Further, as discussed in greater detail below, in his own *Motion for Partial Summary Judgment*, the OED Director has offered clear and convincing evidence that he is entitled to judgment against Respondent on five violations based on the doctrine of collateral estoppel. Thus, Respondent's request for summary judgment is baseless and must be denied.

Further, the Court agrees with the OED Director that, based on the actual evidence presented in this matter and Respondent's failure to adduce any contrary evidence, the facts alleged in paragraphs 28 to 68 of the "Statement of Material Facts in Favor of the OED Director" in the OED Director's *Opposition* do not appear to be genuinely disputed. Under Rule 56(f) of the Federal Rules of Civil Procedure—which do not govern this proceeding, but provide useful guidance in some circumstances—a court may, after giving "notice and a reasonable time to respond," grant summary judgment for a nonmovant or consider summary judgment on its own after identifying material facts that may not be genuinely in dispute. See Fed. R. Civ. Pro. 56(f)(1), (3). Accordingly, as reflected in the Order at the end of this ruling, Respondent will be given 21 days to show cause why the Court should not grant summary judgment in the OED Director's favor on the facts alleged in the above-referenced paragraphs.

Extension/Renewal Request. Turning to the second component of Respondent's *Motion for Summary Judgment*, the Court will deny his request to be given an opportunity to renew the motion or an extension of time to file another dispositive motion. As discussed above, his argument in favor of summary judgment is baseless. He has previously filed numerous other baseless motions that have delayed this proceeding and wasted the Court's time and resources. Given his history of filing meritless motions, he has not explained why he should be given a second bite at the apple, at risk of further delaying the proceedings, simply for the sake of allowing him to try to rehabilitate arguments that appear beyond salvage. Thus, he has not shown good cause for the Court to allow him to renew his motion for summary judgment.

As for Respondent's request that the Court simply extend the deadline so he can file a new motion at a later date, Respondent also has not shown good cause to allow this. Respondent argues he should be given more time because the OED Director did not respond to discovery until November 5, 2021, the day motions for summary judgment were due, and Respondent was still awaiting subpoena responses from the ABA and other witnesses at that time. This argument is unpersuasive for several reasons.

[6] The OED Director submitted 14 exhibits in support of his November 5, 2021 *Motion for Partial Summary Judgment*, and appended 19 more exhibits to his *Opposition* to further support the additional facts alleged therein.

First, it is untimely. Although Respondent did not request an extension until the day he filed his motion (which was technically late-filed, as it was transmitted several hours after close of business on the November 5 deadline), the record shows he had known since the month before that the OED Director would not be providing discovery responses until after November 5. Also, the subpoenas Respondent himself had prepared did not request a response until November 10. Considering these factors, Respondent should have requested an extension of time earlier.

Second, Respondent's failure to timely obtain the materials he requested through subpoenas appears to be his own fault. The ABA objected to the subpoenas he served because, among other things, they were not signed or issued by the clerk of the appropriate United States District Court or by an attorney authorized to practice in that court. Instead, Respondent apparently signed and issued the subpoenas himself, despite his lack of authority to practice in the pertinent jurisdiction, thereby rendering the subpoenas invalid under Rule 45(a)(3) of the Federal Rules of Civil Procedure. Respondent's other subpoenas addressed to individual witnesses suffer from similar serious defects, including exceeding the scope of discovery authorized by this Court under 37 C.F.R. § 11.52, and there is no proof Respondent actually served them on the witnesses.

Third, and importantly, Respondent has not explained how any of the information he is seeking through discovery would support a motion for summary judgment. Because he has not proffered any nexus between the outstanding discovery requests and the argument(s) he hopes to raise on summary judgment, he has not shown that the outstanding discovery requests justify extending the deadline. Accordingly, his extension request will be denied.

III. OED Director's *Motion for Partial Summary Judgment*

The OED Director's *Motion for Partial Summary Judgment* seeks summary judgment on five of the thirteen violations alleged in the *Complaint*. Specifically, the OED Director seeks judgment on subparagraphs 77(h)-(*l*) of the *Complaint*, which allege violations of 37 C.F.R. §§ 11.503(a)-(b) (failure to adequately supervise non-practitioner assistants), 11.505 (unauthorized practice), 11.804(c) (conduct involving dishonesty, deceit, fraud, or misrepresentation), and 11.804(d) (conduct prejudicial to the administration of justice). The OED Director asserts that he is entitled to judgment on these violations based on two prior judgments issued against Respondent in Oregon. He argues the Oregon courts' findings should be given preclusive effect against Respondent under the doctrine of offensive collateral estoppel. Respondent opposes the *Motion for Partial Summary Judgment*, arguing that the motion is premature and disputing that the Oregon courts' findings are entitled to preclusive effect in this case.

After consideration of the *Motion for Partial Summary Judgment* and Respondent's arguments in opposition, the Court will grant summary judgment in the OED Director's favor, for the following reasons.

A. Respondent has not shown that consideration of the motion is premature.

As a threshold matter, Respondent argues that consideration of the OED Director's motion is premature under Rule 56(d) of the Federal Rules of Civil Procedure, as discovery was still pending at the time Respondent filed his response to the motion,[7] and that consideration of the motion at this juncture would be prejudicial.

Under Rule 56(d), a court may deny or defer consideration of a motion for summary judgment if the nonmovant "shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition." Fed. R. Civ. Pro. 56(d). Thus, incomplete discovery can warrant a denial or deferral of summary judgment where the nonmoving party has not yet had a reasonable opportunity to discover information essential to his opposition. See McCray v. Md. DOT, 741 F.3d 480, 483-84 (4th Cir. 2014). However, Rule 56(d) relief is not available where the nonmovant fails to "identify any specific information that would create a genuine dispute of material fact." Gordon v. CIGNA Corp., 890 F.3d 463, 478 (4th Cir. 2018); see, e.g., McClure v. Ports, 914 F.3d 866, 875 (4th Cir. 2019) (stating that court need not allow discovery under Rule 56(d) unless the nonmovant "identifies material, disputed facts").

Here, Respondent has not identified any specific information he is seeking to discover that would raise a genuine dispute of fact material to the *Motion for Partial Summary Judgment* or his opposition thereto. He states that further discovery is needed concerning the statute of limitations. However, as discussed *supra*, Respondent has already conducted discovery on this issue, which has produced nothing to warrant further inquiry. In fact, for the reasons discussed at length above, the documents and interrogatory responses provided by the OED Director affirmatively establish that the OED Director filed the *Complaint* within the limitations period and that Respondent's statute of limitations defense lacks merit.

Other than the statute of limitations, Respondent has not identified any particular issue on which he anticipates discovering information material to his opposition to the *Motion for Partial Summary Judgment*. Respondent vaguely asserts that relevant discovery remains pending and that the Court should allow time for further discovery on "other defenses that have been raised." This is not specific enough to support a Rule 56(d) argument. See Dufau v. Price, 703 F. App'x 164, 167 (4th Cir. 2017) ("[A] blanket assertion that discovery would be beneficial does not fulfill the requirement that a Rule 56(d) motion identify which facts are relevant to opposing a motion for summary judgment."). Accordingly, Respondent has not established any reason to deny or defer consideration of the *Motion for Partial Summary Judgment* under Rule 56(d), and the Court rejects his request to do so.

B. Collateral estoppel is applicable against Respondent in this matter.

[7] As of November 15, 2021, when Respondent filed his opposition, the OED Director had responded to Respondent's discovery requests, but the ABA had objected and refused to respond to Respondent's subpoenas, and Respondent claimed not to have received any responses to his subpoenas to individual witnesses. As discussed above, Respondent's problems timely obtaining subpoenaed materials appear self-inflicted.

The OED Director contends that, under the doctrine of offensive collateral estoppel, preclusive effect should be given to the judicial factual findings rendered against Respondent in two cases litigated against him by the Oregon State Bar ("OSB") and the Oregon Department of Justice ("ODOJ"). Respondent disagrees, arguing, among other things, that he is in the process of challenging the Oregon state judgments on Constitutional grounds, and that the issues at stake in the instant proceeding differ from those previously decided and have not yet been "actually litigated" such that collateral estoppel can apply.[8]

Background. On July 24, 2018, the OSB filed a complaint in Oregon state court against Respondent; his practice, Khullar P.A.; and three non-lawyer employees of Khullar P.A. The complaint alleged that Respondent had engaged in the unauthorized practice of law, in violation of OR. REV. STAT. § 9.160(1), by failing to supervise the activities and conduct of his non-lawyer staff, who had provided unlicensed immigration law services in Oregon. After finding Respondent to be in default, the Multnomah County Circuit Court issued a monetary judgment against him on December 12, 2018, as well as a permanent injunction prohibiting him from engaging in the unauthorized practice of immigration law in Oregon.

Meanwhile, the ODOJ had filed complaints against Khullar P.A., Respondent, and several other individuals arising out of the same facts as the OSB case and alleging violations of Oregon's Unlawful Trade Practices Act ("UTPA"), OR. REV. STAT. §§ 646.605 to 646.656. On June 12, 2019, the Multnomah County Circuit Court deemed the facts alleged in the OSB complaint to be constructively admitted and entitled to preclusive effect in the ODOJ case, and rendered partial summary judgment against Respondent. On July 11, 2019, Respondent was further subjected to default judgment in the ODOJ case due to his failure to obey a court order to sit for a deposition and failure to comply with a discovery order.

Legal Principles. Collateral estoppel, also known as issue preclusion, "precludes a party from relitigating an issue actually decided in a prior case and necessary to the judgment." Lucky Brand Dungarees, Inc. v. Marcel Fashions Grp., Inc., 140 S. Ct. 1589, 1594, 590 U.S. __ (2020). When invoked as an offense, collateral estoppel seeks "to estop a defendant from relitigating the issues which the defendant previously litigated and lost against another plaintiff." Parklane Hosiery Co. v. Shore, 439 U.S. 322, 329 (1979).

Under Oregon law,[9] a party may be collaterally estopped from relitigating an issue of ultimate fact decided in a prior proceeding if five requirements are met:

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[8] Respondent also argues that it is improper for the OED Director to rely on documents from other court proceedings when such documents have not been judicially noticed by this Court in accordance with Rule 201 of the Federal Rules of Evidence. However, the Federal Rules of Evidence are not controlling in USPTO disciplinary proceedings. See 37 C.F.R. § 11.50(a). Moreover, the OED Director has submitted copies of the documents in question as exhibits to his motion for summary judgment, obviating the need for judicial notice to be taken, and Respondent has not challenged their authenticity or raised any other valid objection to them.

[9] The Court is obliged to follow Oregon law pursuant to 28 U.S.C. § 1738, the federal Full Faith and Credit statute. Under the statute, federal courts must give the same preclusive effect to a state court judgment as would the courts of the state rendering the judgment. See Migra v. Warren City Sch. Dist. Bd. of Educ., 465 U.S. 75, 80-81 (1984) ("Congress has specifically required all federal courts to give preclusive effect to state-court judgments whenever the courts of the State from which the judgments emerged would do so."); *In re* Laczko, Proceeding No. D2013-08,

(1) The issue in the two proceedings is identical;
(2) The issue was actually litigated and was essential to a final decision on the merits in the prior proceeding;
(3) The party sought to be precluded had a full and fair opportunity to be heard on that issue;
(4) The party sought to be precluded was a party or was in privity with a party to the prior proceeding; and
(5) The prior proceeding was the type of proceeding to which preclusive effect is given.

Nelson v. Emerald People's Util. Dist., 862 P.2d 1293, 1296-97 (Or. 1993).

Discussion. As to the first element—identity of issues—the OED Director seeks to estop Respondent from relitigating the truth of certain facts that were deemed admitted in both the OSB and ODOJ cases. As noted by the OED Director, the salient factual issues resolved in those cases concerned whether Respondent used unlicensed and unqualified staff to deliver legal advice on immigration issues for fees, failed to supervise said staff, failed to provide services or communicate with clients, and failed to return unearned fees. The same facts are relevant here. The OED Director lists the Oregon courts' prior factual findings almost verbatim and asks this Court to enter the same findings. Thus, the issues the OED Director seeks to preclude Respondent from relitigating are identical to the factual issues resolved in the prior cases.[10]

Regarding the second element, the issues in question were resolved via default judgment in the OSB case, and the findings from that case were subsequently deemed to have preclusive effect against Respondent in the ODOJ case. Respondent argues that the issues were not "actually litigated" because they were decided by default judgment. However, as demonstrated by the ruling in the ODOJ case, Oregon courts apply preclusive effect to default judgments, deeming the issues essential to such judgments to have been "actually litigated" for purposes of collateral estoppel. See Gwynn v.Wilhelm, 360 P.2d 312, 313 (Or. 1961) ("The doctrine of *res judicata*, including collateral estoppel, as to matters essential to the judgment, applies to judgments by default."); Sturgis v. Asset Acceptance, LLC, No. 3:15-cv-00122-AC, 2016 U.S. Dist. LEXIS 5907, at *10 (D. Or. Jan. 19, 2016) ("[C]ourts in Oregon apply issue preclusion … where the first case ended in a default judgment and the defendant did not appear in court or otherwise take advantage of the opportunity to 'actually litigate' the issues at stake."); see also *In*

Order Granting Partial Summary Judgment at 2 n.2 (USPTO Jan. 16, 2014) (published as attachment to ALJ's February 4, 2014 decision).

[10] Respondent suggests that the issues differ in that the OED Director's *Complaint* describes the alleged wrongdoing in terms of Respondent's conduct with respect to eight individuals, and so the OED Director cannot prevail without proving misconduct specifically related to the handling of one or more of those individuals' legal matters, which the facts from the OSB and ODOJ cases do not establish. This argument is rejected. The ultimate question in this case is whether Respondent violated the USPTO Rules of Professional Conduct cited in the *Complaint*. Although the *Complaint* raises allegations pertaining to specific victim witnesses, the OED Director need not rely on those allegations if the charged violations are established independently through other evidence, such as via prior judicial findings that are entitled to preclusive effect and that establish the necessary elements of the offense.

Respondent also argues that collateral estoppel is inapplicable because the ODOJ complaint was brought "for violations of the [UTPA], which were not identical to the issues in OSB case, and are certainly not identical to the USPTO allegations." Respondent's argument appears to invoke the legal standard for *claim* preclusion (merger and bar), which requires the prior suit to arise out of the same cause of action as the subsequent suit in order for a claim to be precluded; however, as explained above, this case involves *issue* preclusion (collateral estoppel), which confers preclusive effect to essential issues decided in the prior case, regardless of whether the subsequent case arises out of the same cause of action. See Lucky Brand Dungarees, 140 S. Ct. at 1594-95.

re Laczko, Proceeding No. D2013-08, slip op. at 11 (USPTO December 1, 2014) (Final Order) (finding that, where respondent was afforded opportunity to contest prior state court matter, "the fact that the matter was resolved as a default judgment does not preclude a finding that the facts and issues therein were fully and fairly litigated" for purposes of collateral estoppel in subsequent USPTO disciplinary case).[11]

In cases where an issue was resolved via default judgment, analysis of the second element of the collateral estoppel test "should focus on whether the issue was 'essential to the [first] judgment.'" Sturgis v. Asset Acceptance, 2016 U.S. Dist. LEXIS 5907, at *10 (citing Gwynn v. Wilhelm). As relevant here, the facts resolved on default judgment in the OSB matter were essential to that judgment. Briefly, these facts included: that Respondent hired non-lawyer employees who provided unlicensed immigration law services to consumers during conferences at a Marriott in Beaverton, Oregon; that Respondent knowingly facilitated this conduct by permitting the employees to use his firm's name, reserving conference space for them at the Marriott, and purchasing radio and television ads for the conferences; that Respondent was rarely physically present and did not meet with clients despite being the only party involved who was a licensed attorney; that Respondent failed to properly supervise his employees, whom he knew to be engaging in the unauthorized practice of law; and that Respondent allowed his employees to collect large sums of money from clients for legal services which were not actually provided. These facts were essential to the judgment in the OSB case because they established that Respondent had engaged in the misconduct alleged by the OSB, namely, using unlicensed individuals to deliver legal advice for fees without proper supervision, which amounted to unauthorized practice, and refusing to refund unearned fees, which justified issuance of a monetary judgment against Respondent. Accordingly, the second element of the test for collateral estoppel is satisfied.

The third element, a full and fair opportunity to be heard, has also been satisfied. Although both the OSB and ODOJ cases ended in default judgment, Respondent actively participated in both matters. In the OSB case, he was served with the complaint and had ample opportunity to present a defense, but failed to do so. After entry of default judgment, he briefed, filed, and argued a motion to set aside the judgment, but failed to establish the necessary cause. He also briefed, filed, and argued motions in the ODOJ case, but the court ultimately struck his answer and rendered default judgment against him due to his refusal to sit for a court-ordered deposition and noncompliance with discovery. Respondent appealed both judgments, but in both cases, the Oregon Court of Appeals affirmed without comment and the Oregon Supreme Court denied review. See Oregon State Bar v. Khullar, 480 P.3d 941 (Or. Ct. App. 2021), *review denied*, 485 P.3d 891 (Or.); State *ex rel.* Rosenblum v. Khullar P.A., 479 P.3d 286 (Or. Ct. App. 2021), *review denied*, 484 P.3d 1072 (Or.). Thus, Respondent was afforded a full and fair opportunity to be heard.

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[11] Respondent cites State Farm Fire & Casualty Co. v. Reuter, 700 P.2d 236 (Or. 1985), for the proposition that Gwynn v. Wilhelm no longer controls and that collateral estoppel no longer applies to default judgments in Oregon. This reliance is misplaced. The State Farm decision does not mention default judgments, and applies preclusive effect only to an issue that was fully litigated with "as vigorous and effective a defense as possible" in the prior proceeding. 700 P.2d at 243 n.10. Gwynn v. Wilhelm's holding as to default judgments is still good law in Oregon. See, e.g., Grandmontagne v. Hogan, 321 Or. Ct. App. 837, 848 (2022); Chase v. Gordon, Aylworth & Tami, P.C., No. 3:18-cv-568-AC, 2019 U.S. Dist. LEXIS 176310, at *21 (D. Or. Oct. 10, 2019).

Respondent has admitted and the record shows that he was a party to the Oregon state proceedings, satisfying the fourth element of Oregon's collateral estoppel requirements.

Lastly, the fifth element is also satisfied because the prior proceedings took place in Oregon's Multnomah County Circuit Court. Both matters concluded with judgments that have been affirmed on appeal and are now final. Final judgments rendered by a circuit court are the type to which preclusive effect is given in Oregon.

Respondent argues that the OSB and ODOJ judgments are void *ab initio* because they were obtained in violation of his constitutional rights, as set forth in a civil rights suit he filed in federal court in Florida challenging the Oregon decisions. However, on March 15, 2022, the United States District Court for the Southern District of Florida dismissed the suit as against the OSB and the state of Oregon based on lack of jurisdiction and the Rooker-Feldman doctrine, see Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923), which precludes federal adjudication of a claim that "amounts to nothing more than an impermissible collateral attack on prior state court decisions." Khullar v. Rosario, No. 21-62007-CIV-SINGHAL, 2022 U.S. Dist. LEXIS 97116, at *1-2 (S.D. Fl. Mar. 15, 2022) (dismissing OSB as defendant); id., 2022 U.S. Dist. LEXIS 97118 (dismissing state of Oregon as defendant). The District Court concluded that Respondent was attempting to mount an impermissible collateral attack on the Oregon judgments, or, at best, "to relitigate issues inextricably intertwined with these Oregon state court judgments," which is also impermissible. See id., 2022 U.S. Dist. LEXIS 97116, at *2 (citing Cooper v. Ramos, 704 F.3d 772, 778-79 (9th Cir. 2012)).

The five elements of Oregon's collateral estoppel requirements are met. Respondent has not identified any reason not to apply collateral estoppel in this matter. Accordingly, the facts resolved on default judgment in the OSB case and recited in the June 12, 2019 summary judgment order in the ODOJ case are entitled to preclusive effect.

C. The facts listed herein are established via collateral estoppel.

The Multnomah County Circuit Court deemed the following facts established via collateral estoppel as of 2019, and this Court hereby adopts them as established against Respondent in the instant matter:

1. Khullar P.A. is a Florida corporation owned and operated by Respondent.

2. Respondent is an attorney authorized to practice law in Florida and Missouri and is the managing partner of Khullar P.A.

3. Emmanuel Rosario Gonzales ("Rosario") is a resident of Miami, Florida, and an agent and employee of Khullar P.A. and Respondent. Rosario is not a licensed attorney in any state or, on information and belief, an immigration consultant authorized by federal law to represent persons before the United States Citizenship and Immigration Services ("USCIS") or the United States Department of Justice ("USDOJ") pursuant to OR. REV. STAT. § 9.280(3).

4. Alexander Peña ("Peña") is a resident of Miami, Florida and an agent and employee of Khullar P.A. and Respondent. Peña is not a licensed attorney in any state or, on information and belief, an immigration consultant authorized by federal law to represent persons before USCIS or USDOJ pursuant to OR. REV. STAT. § 9.280(3).

5. From at least March 2017 and through May 2018, Khullar P.A. and Respondent advertised immigration legal services to Oregon residents via Spanish radio and television. In these advertisements, Khullar P.A. and Respondent represented that clients would meet "face-to-face" with an immigration specialist or immigration attorney for a free consultation about potential immigration relief. Consumers who contacted the number listed in these advertisements were directed to appear for a consult on a Saturday or Sunday at a Marriott in Beaverton, Oregon.

6. From at least September 2017 and through May 2018, Rosario, Peña, and other employees and agents of Khullar P.A. and Respondent reserved conference rooms at the Beaverton Marriott on Saturdays and Sundays to meet with consumers who responded to advertisements for legal assistance on immigration matters.

7. On arrival at these seminars, individuals and families seeking immigration legal services were directed by signs to "Immigration Attorneys" and steered to a worker who made inquiries and completed an intake questionnaire. On information and belief, Respondent, the principal of Khullar P.A., is the only individual involved in this scheme who was authorized to practice law, was rarely physically present to supervise his staff, and did not meet individually with clients to review their immigration matters.

8. From approximately September 2017 to May 2018, consumers and would-be clients met with non-lawyers Rosario and Peña, who solicited personal information, advised clients about eligibility for work visas and humanitarian relief, and described the steps needed to process immigration cases. Rosario and Peña further explained the terms of legal representation with Khullar P.A., executed retainer agreements, negotiated sums for legal services, and pressured clients to pay thousands of dollars upfront, claiming that if these consumers delayed, the immigration relief might no longer be available. In some instances, the non-lawyers and unlicensed staff represented themselves to be attorneys.

9. During these meetings with prospective clients, non-lawyers Rosario and Peña represented that they were agents of and affiliated with Khullar P.A. and Respondent; provided business cards, forms, legal services contracts, and receipts under Khullar P.A.'s letterhead; and communicated, implicitly or explicitly, to clients that their legal advice was given on behalf of Khullar P.A. and Respondent.

10. Khullar P.A. and Respondent knowingly permitted unlicensed staff to use the Khullar P.A. firm name, paid for television and radio ads, and reserved conference space at the Beaverton Marriott to facilitate and engage in the unauthorized practice of law.

11. Khullar P.A. and Respondent did not supervise or monitor the conduct of their non-lawyer and unlicensed staff.

12. Many individuals who entered into legal services contracts with Khullar P.A. subsequently requested an accounting and reimbursement of their deposits for legal services after they received no follow-up on their legal matters and/or discovered that Khullar P.A. and its associates were under investigation for defrauding other clients seeking immigration-related services. Respondent and his co-defendants in the OSB case have retained these sums, have failed to provide an accounting of their services, and, based on information and belief, have not performed the legal work in exchange for the sums retained.

13. In some instances, Respondent and his co-defendants in the OSB case issued reimbursement checks to clients that were rejected for non-sufficient funds ("NSF"). Some victims sustained bank charges due to the bank's processing of these NSF checks.

14. In violation of OR. REV. STAT. § 9.160(1), Respondent and his co-defendants engaged in the unauthorized practice of law, as follows:

    a. Rosario and Peña provided legal advice to would-be clients and clients of Khullar P.A. and Respondent regarding immigration relief, described the steps for processing an immigration case, conducted intakes, explained the terms of legal representation, executed retainer agreements, negotiated sums for legal services, pressured would-be clients to pay thousands of dollars upfront, and, in some instances, represented themselves to be attorneys when they were not;
    b. Khullar P.A. and Respondent failed to supervise the activities and conduct of non-attorneys Rosario and Peña and other staff, and facilitated and directed those activities and conduct, despite knowing that they were engaging in the unauthorized practice of law with respect to immigration matters; and
    c. Khullar P.A. and Respondent permitted their non-attorney staff to collect large sums of money from clients, failed to provide legal services agreed upon in legal services contracts, denied clients' requests for an accounting of time spent on their legal matters, and either refused to refund deposits for the unused portion of legal services or issued clients an NSF check for those sums.

15. Based on information and belief, Rosario and Peña were not recognized under federal law as authorized immigration consultants who are qualified to represent persons before the USCIS or USDOJ.

16. Rosario and Peña engaged in business and acted in the capacities of immigration consultants in the state of Oregon without authorization to do so pursuant to OR. REV. STAT. § 9.280(1).

17. In violation of OR. REV. STAT. § 9.160(1), Rosario and Peña engaged in the unauthorized practice of law by operating in the state of Oregon as unlicensed immigration consultants because they were not supervised by an attorney who is an active member of the Oregon

State Bar nor are they accredited immigration consultants pursuant to OR. REV. STAT. § 9.280(3).[12]

D. The undisputed facts establish that Respondent violated the USPTO Rules of Professional Conduct.

As noted above, the OED Director seeks summary judgment on his claims that Respondent violated 37 C.F.R. § 11.503(a) and (b), 37 C.F.R. § 11.505, and 37 C.F.R. § 11.804(c), and 37 C.F.R. § 11.804(d). These claims are discussed in turn below.

37 C.F.R. § 11.503(a) and (b). Section 11.503 requires a USPTO practitioner to adequately supervise any non-practitioner assistants he employs or retains or with whom he associates. Specifically, Section 11.503(a) provides that a practitioner who possesses managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the conduct of non-practitioner assistants is compatible with the practitioner's professional obligations. Section 11.503(b) similarly provides that a practitioner with direct supervisory authority over non-practitioner assistants shall make reasonable efforts to ensure that the assistants' conduct is compatible with the practitioner's professional obligations.

In this case, Respondent employed non-attorneys, including Rosario and Peña, to provide immigration law services under his firm's name in Oregon. Respondent had managerial and direct supervisory authority over these non-practitioner assistants, as he was the sole principal and managing partner of Khullar P.A. As the only member of the firm licensed to practice law, he had a duty to make reasonable efforts to ensure his non-practitioner employees would conduct themselves in a manner that comported with Respondent's professional obligations as an attorney. Yet their conduct fell far short of these standards. Among other things, Respondent's employees performed immigration law services for which they were not licensed, improperly held themselves out as attorneys at times, and collected and retained fees for legal services that were promised but not delivered.

Respondent failed to properly supervise his non-lawyer employees. He was rarely physically present at the immigration conferences in Oregon and did not meet with clients himself, even though he was the only licensed attorney in the firm. Further, to the extent he did involve himself in his employees' activities, he knowingly facilitated their misconduct by allowing them to use his firm's name, renting conference space for them, and advertising for the conferences. Respondent has presented no evidence that he implemented measures or made efforts to ensure his non-practitioner assistants' conduct would comport with his professional obligations. Clear and convincing evidence therefore establishes that he violated 37 C.F.R. § 11.503(a) and (b).

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[12] The OSB complaint also alleged, and the Multnomah County Circuit Court deemed admitted in the ODOJ case, that Respondent and his co-defendants "knowingly acted in concert to engage in the unauthorized practice of law with the express and implied agency of each other," but the OED Director does not include this allegation in his list of facts to be established via collateral estoppel.

37 C.F.R. § 11.505. Section 11.505 of the USPTO Rules of Professional Conduct states that a practitioner "shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so."

The Multnomah County Circuit Court has already found that Respondent's non-lawyer employees, including Rosario and Peña, engaged in unauthorized practice in violation of Oregon law. These employees provided immigration law services to clients, including by giving legal advice and negotiating and executing contracts for legal services, even though they were not lawyers and were not licensed to provide immigration consultation services in Oregon. In some cases, the employees falsely held themselves out to be attorneys.

Respondent knowingly assisted his non-lawyer employees' unauthorized practice by permitting them to use his firm's name (including on business cards, forms, legal service contracts, and receipts), by reserving conference space for them to meet with potential immigration clients in a Marriott in Beaverton, and by paying for radio and television ads for the conferences they conducted. Accordingly, clear and convincing evidence shows that Respondent violated 37 C.F.R. § 11.505 by assisting others, including Rosario and Peña, in practicing law in the state of Oregon in violation of the regulation of the legal profession in that jurisdiction.

37 C.F.R. § 11.804(c). Section 11.804(c) prohibits a practitioner from engaging in "conduct involving dishonesty, fraud, deceit or misrepresentation." Dishonest conduct is characterized by a lack of truth, honesty, straightforwardness, or trustworthiness. _*In re*_ _Lane_, Proceeding No. D2013-07, slip op. at 14 (USPTO Mar. 11, 2014) (citing Merriam-Webster definition); _see also_ _*In re*_ _Shorter_, 570 A.2d 760, 767-68 (D.C. 1990). "Deceit" encompasses "dishonest behavior" and "behavior that is meant to fool or trick someone." _*In re*_ _Lane_, _supra_, slip op. at 14 (citing Merriam-Webster definition).

In this case, Respondent organized and facilitated immigration consultation conferences wherein individuals he had hired would meet with potential immigration clients, provide legal advice, and offer legal services for fees, in some cases falsely holding themselves out as lawyers, when in fact they were not attorneys and were not even licensed to serve as immigration consultants under Oregon law. Respondent knew that his employees were engaging in this unauthorized practice, yet he lent his firm's name and backing to their activities and allowed them to collect fees for legal services that were promised but never rendered. This conduct was dishonest and deceitful, in violation of 37 C.F.R. § 11.804(c).

37 C.F.R. § 11.804(d). Section 11.804(d) prohibits USPTO practitioners from engaging in conduct that is "prejudicial to the administration of justice." Generally, an attorney is considered to have engaged in such conduct when his behavior negatively impacts the public's perception of the courts or legal profession or undermines public confidence in the efficacy of the legal system. _See_ _Att'y Grievance Comm'n v. Rand_, 981 A.2d 1234, 1242 (Md. 2009); _*In re*_ _Pasquine_, Proceeding No. D2019-39, slip op. at 18 (USPTO Aug. 13, 2021). In this case, Respondent engaged in such conduct by facilitating and assisting in the unauthorized practice of immigration law in the state of Oregon.

E. _Conclusion_

The undisputed material facts, including the findings of fact adopted by the Multnomah County Circuit Court in the OSB and ODOJ cases, which are entitled to preclusive effect in the instant proceeding under the doctrine of offensive collateral estoppel, establish that Respondent violated the USPTO Rules of Professional Conduct as described above. Accordingly, the OED Director is entitled to summary judgment on his claims under 37 C.F.R. §§ 11.503(a) and (b), 11.505, and 11.804(c) and (d).

OED DIRECTOR'S RENEWED MOTION FOR SANCTIONS

On December 10, 2021, the OED Director filed a *Renewed Motion for Sanctions* asking the Court to sanction Respondent for his failure to supplement deficient discovery responses. Respondent has not filed any response to the motion.

I. Procedural Background

On March 3, 2021, the OED Director filed a *Motion to Authorize Discovery* pursuant to 37 C.F.R. § 11.52 (2020) seeking permission to propound 20 interrogatories, 12 requests for production, and 22 requests for admission upon Respondent in this matter. Respondent did not file any objection or opposition to the motion. The Court withheld ruling on the motion while the case was referred to a Settlement Judge for settlement negotiations. On August 12, 2021, after the settlement discussions had failed, the Court issued an *Omnibus Ruling* that, among other things, authorized the OED Director's proposed discovery requests with some edits and deletions.

On August 13, 2021, the OED Director propounded discovery upon Respondent as authorized by the *Omnibus Ruling*. Respondent responded to the OED Director's discovery requests on September 8, 2021.

On September 10, 2021, the OED Director sent Respondent a letter identifying numerous discovery responses that the OED Director believed to be incomplete, inadequate, and/or nonresponsive. The OED Director asked Respondent to supplement his discovery responses by September 17, 2021. After requesting and receiving extensions of time from opposing counsel, Respondent represented that he would submit supplemental responses on September 25, 2021. However, he did not produce the responses by that date. Instead, on September 27, 2021, he filed an "emergency motion" asking the Court to strike the OED Director's original March 3, 2021 motion to authorize discovery and shield Respondent from further discovery.

On October 1, 2021, the OED Director filed a *Motion to Compel Responses to OED Director's Requests and for Appropriate Sanctions*, which Respondent opposed.

On November 12, 2021, the Court issued a *Ruling on Respondent's Emergency Motion to Strike and OED Director's Motion to Compel* ordering Respondent to supplement his discovery responses on or before November 22, 2021. The Court expressly warned that it would entertain a renewed motion for sanctions if Respondent did not comply.

On November 22, 2021, near the close of business, Respondent contacted counsel for the OED Director claiming that he had just realized his supplemental responses were due that day and that he would be out of the office on vacation and without access to documents until November 30, 2021. Respondent then requested an extension until December 3, 2021, to provide the responses. Counsel for the OED Director spontaneously offered to extend the deadline to December 6, 2021. However, Respondent did not submit responses by that date. As of the date of the *Renewed Motion for Sanctions*, Respondent had not submitted supplemental responses or contacted opposing counsel to proffer any explanation for his failure to do so.

II. Pertinent Legal Principles

In USPTO disciplinary proceedings, written discovery is governed by 37 C.F.R. § 11.52. This regulation allows the Court to authorize interrogatories, requests for production, and requests for admission upon a motion demonstrating the reasonableness and relevance of each request. See 37 C.F.R. § 11.52(a), (d) (2020). If the party answering the discovery fails to respond to a request or provides an "evasive and incomplete" response, the party seeking the discovery may file a motion to compel an answer or production. See Fed. R. Civ. Pro. 37(a)(3)(B), (a)(4) (as applied by 37 C.F.R. § 11.43, which permits the parties in USPTO disciplinary proceedings to file motions "including all prehearing motions commonly filed under the Federal Rules of Civil Procedure").

USPTO's regulations do not specifically provide for sanctions for failure to cooperate in discovery. Under the Federal Rules of Civil Procedure, which are not binding but provide helpful guidance, a court may sanction a party who fails to comply with a discovery order by, among other things, "directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action" or "prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters into evidence." See Fed. R. Civ. Pro. 37(b)(2).

III. Discussion

Respondent has known since receiving opposing counsel's September 10, 2021 deficiency letter that the OED Director considers his discovery responses to be incomplete and deficient. Due to Respondent's failure to timely address the deficiencies set forth in that letter, the OED Director has filed a motion to compel and for sanctions, and this Court has ordered Respondent to provide the supplemental discovery responses requested by the OED Director. In the order to compel, the Court pointedly warned Respondent that he may be subject to sanctions if he failed to comply.

Despite having ample opportunity to respond to the OED Director's deficiency letter, and despite being ordered by the Court to correct his deficient discovery responses, Respondent has not done so. Instead, he has filed dilatory "emergency" motions while repeatedly reneging on promises to produce supplemental discovery on certain dates. The OED Director's ability to obtain relevant, authorized discovery has been hampered by Respondent's lack of cooperation. Accordingly, sanctions are warranted.

The OED Director asks the Court to sanction Respondent by (a) precluding him from offering any testimony or documentary evidence at the hearing that would have been responsive to one of the inadequately answered discovery requests, (b) drawing an adverse inference that Respondent failed to adequately respond to the discovery requests because his responses (and responsive documents) would have supported a violation of one or more of the USPTO Rules of Professional Conduct charged in the *Complaint*, (c) deeming the OED Director's requests for admission to be admitted, and (d) imposing any other relief that the Court deems just and proper.

At this time, the Court declines to draw adverse inferences on the merits of the case based on Respondent's failure to timely correct his deficient discovery responses. However, the Court agrees that Respondent should be precluded from offering testimony or documentary evidence that would have been responsive to the inadequately answered discovery requests, unless he can demonstrate that he produced the information in question to opposing counsel before the *Renewed Motion for Sanctions* was filed. And the Court also agrees that the inadequately answered requests for admission should be deemed admitted. These sanctions are reflected in the Order below.

ORDER

For the reasons discussed above:

All outstanding portions of Respondent's *First* and *Second Omnibus Emergency Motions*, including his motion to dismiss this proceeding, his motion for partial reconsideration of the Court's November 12, 2021 discovery ruling, and his motion to strike all claims as to Hilda Becerra, are hereby **DENIED**.

Respondent's *Motion for Summary Judgment*, including his request for the Court to extend the time to file dispositive motions or allow him to renew his motion for summary judgment, is hereby **DENIED**.

Respondent is **ORDERED TO SHOW CAUSE** on or before November 6, 2023, why the Court should not grant summary judgment in the OED Director's favor on the facts alleged in paragraphs 28 to 68 of the "Statement of Material Facts in Favor of the OED Director" on pages 8-14 of the OED Director's November 15, 2021 *Opposition to Respondent's Motion for Summary Judgment*. The OED Director may file a reply to Respondent's position in this regard on or before November 20, 2023.

For the reasons discussed in the body of this decision, the Court concludes that no material facts remain in dispute regarding the OED Director's allegations that Respondent violated 37 C.F.R. §§ 11.503(a), 11.503(b), 11.505, 11.804(c), and 11.804(d) as discussed above, and, based on the undisputed facts, the OED Director is entitled to judgment as a matter of law under those provisions. Accordingly, the OED Director's *Motion for Partial Summary Judgment* is hereby **GRANTED**.

The OED Director's *Renewed Motion for Sanctions* is hereby **GRANTED** and the following sanctions are imposed:

1. Because Respondent has failed to provide complete and adequate responses to Interrogatories 1-6, 9-13, and 16-19, Requests for Production 1-3, 5-8, and 10, or Requests for Admission 5, 7, 10, 12-13, and 22, he shall be precluded from offering testimony or documentary evidence at the hearing that would have been responsive to any of the aforementioned discovery requests, unless he can show that he produced such responsive information or documentary evidence to opposing counsel prior to the date of the *Renewed Motion for Sanctions*.

2. Because Respondent has failed to provide complete and adequate responses to Requests for Admission 5, 7, 10, 12-13, and 22, those requests shall be deemed admitted.

A separate order will be issued shortly establishing a new hearing date.

So **ORDERED**,

ALEXANDER FERNANDEZ-PONS

Digitally signed by: ALEXANDER FERNANDEZ-PONS
DN: CN = ALEXANDER FERNANDEZ-PONS C = US O = U.S. Government OU = Department of Housing and Urban Development, Office of the Secretary
Date: 2023.10.17 10:45:14 -04'00'

Alexander Fernández-Pons
United States Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **SECOND OMNIBUS RULING**, issued by Alexander Fernandez-Pons, Administrative Law Judge, in D2021-01, were sent to the following parties on this 17th day of October 2023, in the manner indicated:

For Cinthia Matos, Docket Clerk
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UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE ADMINISTRATIVE LAW JUDGE

In the Matter of: DIVYA KHULLAR, Respondent.	Proceeding No. D2021-01 November 7, 2023

ORDER GRANTING PARTIAL SUMMARY JUDGMENT AND STRIKING MOTION

This matter arises from a disciplinary complaint filed by the Director of the Office of Enrollment and Discipline ("OED Director") for the U.S. Patent and Trademark Office ("USPTO") against Divya Khullar ("Respondent") pursuant to 35 U.S.C. § 32 as implemented by 37 C.F.R. part 11.

Currently before the Court is Respondent's November 6, 2023, motion titled *Omnibus Response to October 17, 2023, Second Omnibus Ruling*[,] *Motion for Summary Judgment Based on Laches*[,] *Motion to Strike Partial Summary Judgment for Due Process Violation*[,] *Motion to Appoint Special Magistrate to Oversee Discovery Related to Statute of Limitation Violation* (hereinafter "*Motion*").

I. Procedural Background

This matter was recently released from a lengthy stay via the Court's issuance of two orders. First, on October 17, 2023, the Court issued a *Second Omnibus Ruling* that, among other things, denied Respondent's motion to dismiss based on his unfounded allegations that the OED Director had made false representations concerning the statute of limitations; granted partial summary judgment in the OED Director's favor based on findings rendered against Respondent in two prior judgments in Oregon state court; ordered Respondent to show cause by Monday, November 6, 2023, why summary judgment should not be granted against him as to certain other factual allegations; and warned Respondent that failure to comply with 37 C.F.R. § 11.43 before filing future motions may result in summary denial of such motions. Following issuance of the *Second Omnibus Ruling*, on October 19, 2023, the Court issued a *Fifth Notice of Hearing and Order* scheduling a hearing to take place via videoconference on December 5-7, 2023.

On Friday, November 3, 2023, Respondent submitted a *Notice of Unavailability* asking the Court to temporarily suspend this proceeding on grounds that he "will be unavailable from Thursday, November 02, 2023, through Friday, December 8, 2022, attending to family medical emergency and will be out of the country." Because Respondent provided no evidence to corroborate his asserted need for a suspension of proceedings, the Court denied his request.

II. Respondent's Current Motion

On November 6, 2023, Respondent filed his *Motion*, which consists of a 27-page response to the *Second Omnibus Ruling* accompanied by several exhibits.

In his *Motion*, Respondent suggests that a special magistrate should be appointed to oversee further discovery relating to the statute of limitations, despite the fact that Respondent has already conducted discovery on this issue and the Court has rejected his statute of limitations defense.[1]

Respondent further argues that the partial summary judgment rendered against him in the *Second Omnibus Ruling* should be stricken because, according to Respondent, the two Oregon rulings upon which the summary judgment is based—both of which were affirmed on appeal by the Oregon Court of Appeals and the Oregon Supreme Court, and which the United States District Court declined to disturb after Respondent mounted a failed collateral attack against them via a civil rights suit he filed in the Southern District of Florida—are deficient, even though this Court already deemed the judgments to be valid final rulings and explained at length why certain factual findings therein are entitled to preclusive effect under the doctrine of collateral estoppel.

Respondent further asks the Court to render summary judgment in his favor and dismiss this matter under the doctrine of laches based on the OED Director's "inactivity" for the past two years while this matter was stayed, although laches is unavailable in cases such as this one where a statute of limitations governs, see 35 U.S.C. § 32, and is properly predicated on a showing of inexcusable delay in instituting suit, not on a court-ordered delay occurring in a suit that was timely instituted.

In addition to the requests described above, Respondent's *Motion* raises other arguments that are unintelligible and/or completely unsupported. For example, he raises a claim of "extrinsic fraud" based on the fact that a woman he deposed in a Florida disciplinary proceeding overestimated his height; Respondent appears to be implying that the witness misidentified him, but to what effect here, he does not explain. Another example is Respondent's claim that the Court's imposition of deadlines in this matter coincides with his "pre-notified absence"—although Respondent has yet to produce documentation of any preexisting or emergency obligations that would prevent him from meeting deadlines in this case, much less that this Court had notice of such obligations—and that the Court's imposition of deadlines that are inconvenient to Respondent helps show that the Oregon State Bar, the USPTO, and the Florida Bar are engaged in "a collaborative effort to undermine" him.

[1] On page 12 of the *Second Omnibus Ruling*, the Court noted, "Respondent has already conducted discovery on this issue, which has produced nothing to warrant further inquiry. In fact, for the reasons discussed at length above, the documents and interrogatory responses provided by the OED Director affirmatively establish that the OED Director filed the *Complaint* within the limitations period and that Respondent's statute of limitations defense lacks merit."

III. Discussion

Respondent's *Motion* does not respond to the portion of the October 16, 2023, *Second Omnibus Ruling* that ordered him to show cause why summary judgment should not be granted against him as to certain facts alleged by the OED Director. Specifically, the *Second Omnibus Ruling* stated that, "based on the actual evidence presented in this matter and Respondent's failure to adduce any contrary evidence, the facts alleged in paragraphs 28 to 68 of the 'Statement of Material Facts in Favor of the OED Director' on pages 8-14 of the OED Director's [November 15, 2021 *Opposition to Respondent's Motion for Summary Judgment*] do not appear to be genuinely disputed," and ordered Respondent to show cause on or before November 6, 2023, why the Court should not grant summary judgment in the OED Director's favor on those facts. Because Respondent has failed to respond to the show cause order, the Court will grant summary judgment against him as to the cited facts.

Moreover, Respondent's *Motion* does not include a statement that, before filing it, he conferred with opposing counsel in a good faith effort to resolve the issues raised in the *Motion* and to determine whether the *Motion* was opposed. Such a statement is required under 37 C.F.R. § 11.43, as explained by the Court in past orders issued on August 12, 2021, and November 12, 2021, and reiterated in the recent *Second Omnibus Ruling*. Specifically, on page 5 of the *Second Omnibus Ruling*, after noting Respondent's repeated failures to comply with the meet-and-confer requirement of § 11.43, the Court stated: "**Respondent is hereby warned that, from this date forward, any failure on his part to comply with 37 C.F.R. § 11.43 before filing a motion in this matter may result in summary denial of said motion**" (emphasis in original).

Respondent references the meet-and-confer requirement of § 11.43 twice in his *Motion*—once when he complains that the Court should warn the OED Director to comply with § 11.43 in the same manner that Respondent has been so warned. Respondent is clearly aware of the meet-and-confer requirement of § 11.43. Yet once again, he has failed to comply with that basic procedural requirement, even after repeatedly being warned of the potential consequences for such failure. Accordingly, Respondent's *Motion* is stricken due to his persistent disregard of basic filing requirements.

Although the *Motion* is stricken on procedural grounds, the Court notes that the substance of the *Motion*, as described above, sought reconsideration of prior rulings on spurious grounds. Respondent is advised not to file future motions seeking to set aside or obtain reconsideration of the Court's rulings absent new law or facts that would support such a request.

The Court further notes that, while it is open to considering requests to move deadlines or hearing dates, any such request must be supported by documentation corroborating the movant's need for the dates and deadlines in question to be moved, such as documentation establishing a preexisting scheduling conflict or an emergency situation.

ORDER

For the reasons discussed above, summary judgment is hereby **GRANTED** in the OED Director's favor on the facts alleged in paragraphs 28 to 68 of the "Statement of Material Facts in Favor of the OED Director" on pages 8-14 of the OED Director's November 15, 2021, *Opposition to Respondent's Motion for Summary Judgment*.

Respondent's November 6, 2023, *Omnibus Response to October 17, 2023, Second Omnibus Ruling*[,] *Motion for Summary Judgment Based on Laches*[,] *Motion to Strike Partial Summary Judgment for Due Process Violation*[,] *Motion to Appoint Special Magistrate to Oversee Discovery Related to Statute of Limitation Violation* is hereby **STRICKEN** for failure to comply with 37 C.F.R. § 11.43.

So **ORDERED**,

ALEXANDER FERNANDEZ -PONS

Digitally signed by: ALEXANDER FERNANDEZ-PONS
DN: CN = ALEXANDER FERNANDEZ-PONS C = US O = U. S. Government OU = Department of Housing and Urban Development, Office of the Secretary
Date: 2023.11.07 15:34:43 -05'00'

Alexander Fernández-Pons
United States Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **ORDER GRANTING PARTIAL SUMMARY JUDGMENT AND STRIKING MOTION**, issued by Alexander Fernandez-Pons, Administrative Law Judge, in D2021-01, were sent to the following parties on this 7th day of November 2023, in the manner indicated:

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