UNITED STATES OF AMERICA
THE DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

STEPHEN A. WHITLOCK,
DIRECTOR,
OFFICE OF PROFESSIONAL
RESPONSIBILITY,
Complainant,

v.

(b)(3)/26 USC 6103
Respondent

Complaint Number: 2014-00004
Docket Number: 15-IRS-0001

HON. CURTIS E. RENOE
Presiding

ORDER GRANTING, IN-PART, COMPLAINANT'S MOTION FOR SUMMARY ADJUDICATION

PRELIMINARY STATEMENT

On December 21, 2017, the Office of Professional Responsibility (OPR or Complainant) moved for summary adjudication on all eight counts of the Complaint and for the recommended sanction of disbarment from practice before the IRS. See *Complain[an]t's Motion for Summary Adjudication* (*OPR's Motion*). OPR contends that no genuine issues of material fact exist on these counts based on the documentation provided and admissions from Respondent, and that OPR is accordingly entitled to judgment as a matter of law. In opposition, Respondent claims that OPR failed to prove the charges against him and offers various arguments in his defense. For the reasons set forth in detail below, OPR's Motion as to Counts 1, 2, 3, 4, 5, and 8 is, **GRANTED** because there are no genuine issues of material fact requiring a hearing. OPR's Motion as to Counts 6, and 7 as well as the appropriate sanction is **DENIED**. As a result, the

hearing scheduled for March 13, 2018 in Pasadena, California remains necessary and will proceed.

STATEMENT OF LAW

General Provisions and Standard of Proof:

The Secretary of the Treasury has the authority to "regulate the practice of representatives of persons before the Department of the Treasury." 31 U.S.C. § 330(a). The Secretary has the explicit power to disbar an individual from practice for a number of reasons as long as the individual is first provided "notice and opportunity" for hearing before an Administrative Law Judge (ALJ). 31 U.S.C. § 330(b). This proceeding is further governed by the regulations found at Title 31 C.F.R. Part 10, Subpart D.

The OPR Director has the express authority to bring proceedings to suspend or disbar practitioners before the IRS. 31 C.F.R. §10.50(a). A practitioner may be sanctioned for incompetence and disreputable conduct. 31 C.F.R. § 10.51.

Pursuant to 31 C.F.R. § 10.76(b), the standard of proof differs depending on the nature of the sanction. Here, because OPR seeks disbarment, the applicable standard of proof is "clear and convincing." Id. The clear and convincing evidence standard has been defined "as 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, and, as well, as evidence that proves the facts at issue to be highly probable." Jimenez v. Daimler Chrysler Corp., 269 F.3d 439, 450 (4th Cir. 2001) (internal quotation marks, citations omitted); see also Addington v. Texas, 441 U.S. 418 (1979) (explaining clear and convincing evidence is an intermediate standard somewhere between proof by a preponderance of the evidence and proof beyond a reasonable doubt).

Summary Adjudication:

Title 31 C.F.R. § 10.68(b) provides that "[e]ither party may move for a summary adjudication upon all or any part of the legal issues in controversy." The regulations further provide that the ALJ should render a decision on a summary adjudication motion "if the pleadings, depositions, admissions, and any other admissible evidence show that there is no genuine issue of material fact and that a decision may be rendered as a matter of law." 31 C.F.R. § 10.76(a)(2); see also South Florida Water Management Dist. V. Miccosukee Tribe of Indians, 541 U.S. 95, 111 (2004) ("Summary Judgment is appropriate only where there is no genuine issue of material fact.").

In deciding a Motion for Summary Judgment, all doubts will be resolved against the moving party; all evidence will be construed in light most favorable to the non-moving party; and, all reasonable inferences will be drawn in the non-moving party's favor. "[O]n a motion for summary judgment, the nonmoving party's evidence is to be believed and all justifiable inferences are to be drawn in that party's favor." Hunt v. Cromartie, 26 U.S. 541, 552 (1999). (internal quotations and brackets omitted). However, "mere conclusions and unsupported factual allegations are legally insufficient to defeat a Summary Judgment motion." Ellis v. England, 432 F.2d 1321, 1326 (11th Cir. 2005). In other words, "[e]vidence, not contentions, avoids summary judgment." Al-Zubaidy v. TEK Industries, Inc., 406 F.3d 1030, 1036 (8th Cir. 2005).

Allegations Deemed Admitted:

Pursuant to 31 C.F.R. § 10.64(b), "[g]eneral denials are not permitted" in an answer. "The respondent must specifically admit or deny each allegation set forth in the complaint, except that the respondent may state that the respondent is without sufficient

information to admit or deny a specific allegation." Id. However, a respondent "may not deny a material allegation in the complaint that the respondent knows to be true, or state that the respondent is without sufficient information to form a belief, when the respondent possesses the required information." Id. Title 31 C.F.R. § 10.64(c) further specifies, "[e]very allegation in the complaint that is not denied in the answer is deemed admitted and will be considered proved; no further evidence in respect of such allegation need be adduced at a hearing."

ANALYSIS

Respondent has raised (b)(3) / 26 USC 6103 and previous allegations that were either "refuted" or otherwise not made part of the Complaint at issue. However, these prior allegations are irrelevant to the instant case. The eight Counts in the Complaint before me are at issue, not previous actions and allegations OPR might have made earlier. Further, OPR has discretion to pursue whatever charges it deems appropriate and has the ability to not pursue others. Such discretionary action has no bearing on the issues actually before me. See Heckler v. Chaney, 470 U.S. 821 (1985) (doctrine of prosecutorial discretion generally applies to administrative regulatory proceedings).

The record demonstrates by clear and convincing evidence that Respondent was engaged to practice before the IRS as defined at 31 C.F.R. § 10.2(a)(4) both as a Certified Public Accountant (CPA) and as an Enrolled Agent. See *Complaint* at ¶ 1. Respondent has not denied or contested this fact and it is therefore deemed admitted pursuant to 31 C.F.R. § 10.64(c). Respondent is therefore subject to the disciplinary authority of the Secretary of the Treasury and of OPR. See 31 U.S.C. § 330.

Counts 1, 2, and 3:

Title 31 C.F.R. § 10.51(a)6) provides that "[w]illfully failing to make a Federal tax return in violation of the Federal tax laws, or willfully evading, attempting to evade, or participating in any way in evading or attempting to evade any assessment or payment of any Federal tax" shall constitute incompetence and disreputable conduct for which a practitioner may be sanctioned. (b)(3)/26 USC 6103

(b)(3) / 26 USC 6103

[redacted] (b)(3) / 26 USC 6103 [redacted] Respondent did not provide any documentation supporting his arguments.

First, I find that Respondent has explicitly admitted to the fact that [redacted] (b)(3) / 26 USC 6103 [redacted]. Therefore, there are no genuine issues of material fact on this issue.

Second, on the issue of whether [redacted] (b)(3) / 26 USC 6103 [redacted]

Respondent's bare claims and unsupported arguments are insufficient to create a general issue of material fact. If Respondent had evidence to demonstrate that [redacted]

[redacted], the time to provide that evidence was in response to the Motion for Summary Adjudication. Respondent did not provide any evidence to support his claims. I therefore find no genuine issue of material fact exists on whether [redacted] However, Respondent provided no evidence and only unsupported arguments to assert genuine issues of material fact exist surrounding this issue.

As such, I find that OPR has demonstrated by clear and convincing evidence that no genuine issues of material fact exist concerning Counts 1, 2, and 3 of the Complaint and is entitled to summary judgment on these counts. OPR's Motion for Summary Adjudication as to these Counts is therefore, **GRANTED**.

Count 4: [redacted]

Count 4 alleges that [redacted]

(b)(3) / 26 USC 6103

Further, Respondent states in his deposition that (b)(3) / 26 USC 6103

.

In his defense, Respondent again argues that (b)(3) / 26 USC 6103

. Further, in his Response to OPR's Motion, Respondent admits that (b)(3) / 26 USC 6103

. Respondent's argument seems to be that (b)(3) / 26 USC 6103

.

(b)(3) / 26 USC 6103

, and Respondent has not supplied any evidence to demonstrate there are genuine issues of material fact on this issue. OPR's Motion for Summary Adjudication as to Count 4 is therefore **GRANTED**.

Count 5: Failure to Exercise Due Diligence in Representations to IRS

In the Complaint, OPR alleges that Respondent allowed his Certified Public Accountant (CPA) certificate to expire for certain periods of time; specifically, between January 1, 2009 and September 17, 2012 and between January 1, 2013 to at least September 30, 2013. See *Complaint* at ¶¶ 9-14. As such, Respondent was allegedly not entitled to hold himself out as a CPA during these time periods. Id. at ¶¶ 15-16. Similarly, OPR alleges that Respondent failed to timely renew his Enrolled Agent

number for the 2010 through 2013 cycle. As such, Respondent was allegedly not entitled to hold himself out as an Enrolled Agent from January 1, 2010 to January 22, 2013 when he did not possess an active Enrolled Agent status.

Count 5 of the Complaint alleges that on February 8, 2010, June 15, 2010, and January 6, 2013, Respondent filed Form 2848 *Power of Attorney and Declaration of Representative* forms that falsely represented that he was either a duly authorized CPA or Enrolled Agent. Therefore, OPR alleges Respondent failed to exercise due diligence and that these willful misrepresentations constitute disreputable or incompetent conduct.

Respondent argues that even though his Enrolled Agent number was only valid until March 31, 2010, he was able to hold himself out as an Enrolled Agent until the IRS told him that he could not on November 27, 2012. See *Response to OPR's Motion* at p. 13. Further, concerning his CPA certification, Applicant argues that [w]hen a CPA license is not renewed by the expiration date the license is delinquent. This does not mean that a person is not a CPA." Id. at 14. Respondent further states that "[a] delinquent status does not prevent one from holding out as a Certified Public Accountant." Id. at 14-15.

Respondent has admitted, either expressly or through a failure to deny, that his CPA license and Enrolled Agent number expired as alleged in the Complaint. Further, the record clearly demonstrates that on at least three occasions when his CPA license was delinquent or his Enrolled Agent number had not been renewed, Respondent filed a Form 2848 *Power of Attorney* representing that he was either a CPA or an Enrolled Agent. See Exhibit 2 attached to *OPR's Motion*.

Title 31 C.F.R. § 10.6(d)(1) states that "[e]nrolled agents . . . must renew their status with the Internal Revenue Service **to maintain eligibility to practice** before the Internal Revenue Service. Failure to receive notification from the Internal Revenue Service of the renewal requirement will not be justification for the individual's failure to satisfy this requirement." (Emphasis added). That regulation also states that "[a]n individual who has not filed a timely application for renewal . . . will be placed on a roster of inactive enrolled individuals or inactive registered individuals. During this time, the individual will be **ineligible to practice** before the Internal Revenue Service." 31 C.F.R. § 10.6(j)(3) (emphasis added). Further, pursuant to the California Board of Accountancy (CBA), License Renewal Handbook, which is publically available on the CBA website, "[i]f you do not renew your license by the license expiration date, it will be placed in a delinquent status. With a delinquent license **you may not hold out as a CPA or practice public accountancy**." (Emphasis added). See http://www.dca.ca.gov/cba/licensees/handbook.pdf.

OPR proved by clear and convincing evidence that Respondent did not have a valid CPA license or EA status when he filed the Form 2848 *Power of Attorney and Declaration of Representative* forms at issue. There are no genuine issues of material fact on these issues. Respondent's arguments are both legally incorrect and insufficient to create a genuine issue of material fact for hearing. OPR's Motion for Summary Adjudication concerning Count 5 is therefore **GRANTED**.

Count 6: Failure to Exercise Due Diligence in Representations to Clients

As set forth above, Respondent was not an authorized CPA or Enrolled Agent during 2012. OPR alleges that during 2012, Respondent used a "Fee Agreement form"

for clients which indicated that he was a CPA and Enrolled Agent. See *Complaint* at ¶¶ 52-68; see also *OPR's Motion* at pp. 11-12. This Fee Agreement form authorized Respondent to receive fees for, among other things, tax consulting, tax accounting, and tax preparation, as well as clients' tax refunds. Id. OPR provides evidence that at least four taxpayers signed this Fee Agreement form during 2012. See Exhibit 5 attached to *OPR's Motion*. Further, OPR alleged that Respondent used this Fee Agreement form for more than 150 clients during 2012. See Complaint at ¶ 61. Respondent did not deny this allegation. That allegation is therefore deemed admitted pursuant to 31 C.F.R. § 10.64(c). OPR argues that Respondent's use of this form, which represented that he was a CPA and Enrolled Agent, was false and misleading with an intent to deceive clients and procure employment.

Respondent argues that his representations on the Fee Agreement form that he was a CPA and Enrolled Agent was not false or misleading because he was justified in holding himself out as those things during the time period. Further, he argues that they were not false and misleading representations because they were not made with an intent to deceive a client or prospective client to procure employment. See *Answer* at ¶ 92; see also *Response to OPR's Motion* at p.15.

There is no dispute that Respondent used the Fee Agreement forms at issue with his clients. There is similarly no genuine issue of material fact that Respondent's CPA license and Enrolled Agent number were not valid during 2012. However, there is insufficient evidence showing that Respondent was intending to deceive clients or prospective clients to procure employment. While the extent of Respondent's conduct representing individuals before the IRS cautions against finding such conduct non-

intentional, in summary adjudication I must interpret the evidence in the light most favorable to the non-moving party. As such, OPR has not demonstrated the absence of material facts surrounding Count 6. Therefore, OPR's Motion for Summary Adjudication concerning Count 6 of the Complaint is **DENIED**.

Count 7: Preparing Tax Returns without a Current or Valid PTIN

OPR's Complaint alleges that Respondent did not have a valid Preparer Tax Identification Number (PTIN) for tax year 2013. See *Complaint* at ¶ 71. The Complaint further alleges that between January 1, 2013 and December 31, 2013, Respondent prepared and signed at least 56 Federal individual income tax returns in violation of 31 C.F.R. § 10.51(a). Id. at ¶ 72. In support of its Motion, OPR submitted a two-page summary indicating that 56 income tax returns were prepared in 2013 under Respondent's expired PTIN number. See Exhibit 6 attached to *OPR's Motion*.

In opposition, Respondent claims that he did not need a PTIN because he did not file tax returns in 2013. See *Answer* at ¶¶ 96-104. Further, Respondent argues that the evidence provided does not actually demonstrate that he prepared or signed the tax returns. See *Response to OPR's Motion* at pp. 16-18. I agree.

OPR's evidence demonstrates that there were 56 tax returns filed under Respondent's expired PTIN during 2013. OPR's evidence further demonstrates that 52 of those were refund returns and 46 were for Earned Income Credit (EIC). The evidence does not demonstrate that Respondent substantially (or otherwise) prepared these tax returns or that he signed them. Further, Respondent's deposition testimony, which OPR relies on, does not clearly indicate an admission that he prepared or signed the refund returns at issue in 2013.

In Summary Adjudication, I have to make reasonable inferences in favor of the non-moving party. In this specific instance, I cannot infer from OPR's evidence that Respondent either signed or prepared any of the relevant refund returns without more documentary evidence or testimony demonstrating the actual filings at issue. Furthermore, a question arises about whether Respondent did any such work for compensation, which appears might be a requirement for holding a PTIN under the IRS's own guidance on when a PTIN is required. See https://www.irs.gov/tax-professionals/frequently-asked-questions-do-i-need-a-ptin. As such, I find that there are genuine issues of material fact surrounding this Count requiring a hearing. OPR's Motion for Summary Adjudication as to Count 7 of the Complaint is therefore **DENIED**.

Count 8: Charging an Unconscionable Fee

OPR's Complaint alleges that on or about June 15, 2010, Respondent filed a Form 2848, *Power of Attorney and Declaration of Representative*, on behalf of Taxpayer A. See *Complaint* at ¶ 77. OPR further alleges that [redacted]. Id. at 78. Respondent charged Taxpayer A the following fees: 1) $6,500 for data entry and records review; 2) $2,500 for Amended Federal and State Income Tax Returns for 2007; 3) $2,500 for Amended Federal and State Income Tax Returns for 2008; and, 4) $150,000 for Forensic Tax Records Reconstruction. See *Answer* at ¶ 114; see also *Complaint* at ¶ 79. Respondent prepared a Form 1040X, *Amended U.S. Individual Tax Return* on behalf of Taxpayer A for tax years 2007 and 2008. See *Complaint* at ¶¶ 83-86. [redacted]. Id. at ¶¶ 81-2. The amended tax returns prepared by Respondent resulted in a refund to Taxpayer

A in the amount of $103,283 for tax year 2007 and $68,424 for tax year 2008. Id. at ¶¶ 83-6. As a result of the amended returns, the total refund for Taxpayer A was $171,707. Respondent's fees in connection with Taxpayer A's tax liability for tax years 2007 and 2008 totaled $161,500. Id. at ¶ 87.[1] Respondent has admitted to these facts either explicitly or by failing to deny them pursuant to 31 C.F.R. § 10.64(c).

Title 31 C.F.R. § 10.27(a) sets forth that "[a] practitioner may not charge an unconscionable fee in connection with any matter before the Internal Revenue Service." Title 31 C.F.R. § 10.27(c)(2) defines "matter before the Internal Revenue Service" to include,

> tax planning and advice, preparing or filing or assisting in preparing or filing returns or claims for refund or credit, and all matters connected with a presentation to the Internal Revenue Service or any of its officers or employees relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by the internal Revenue Service. Such presentations include, but are not limited to, preparing and filing documents, corresponding and communicating with the Internal Revenue Service, rendering written advice with respect to any entity, transaction, plan or arrangement, and representing a client at conferences, hearings, and meetings.

Respondent argues that "the Department of Treasury has no authority to regulate my fees concerning forensic services." See *Answer* at ¶ 108; see also *Response to OPR's Motion* at pp. 18-19. Respondent states that because the 31 C.F.R. 10.27 does not specifically mention "forensic accounting services" there is no jurisdiction. Id. Respondent further argues that because he was "never paid for the amended tax preparation, nor the forensic tax records reconstruction" he cannot be considered to have

[1] Taxpayer A never paid Respondent for the Amended Tax Return Preparation or the Forensic Tax Records Reconstruction and Respondent, therefore, never actually filed the Amended Tax Returns. See *Answer* at ¶ 109; *Response to OPR's Motion* at p. 19; see also Exhibit 8 attached to *OPR's Motion* at p. 98.

charged an unconscionable fee in connection with a matter before the IRS. See *Response to OPR's Motion* at p. 19.

There are no genuine issues of material fact concerning the amount or nature of Respondent's fees in connection with Taxpayer A's tax liability for tax years 2007 and 2008. The issues, therefore, are legal questions: 1) is Respondent's fee for "forensic accounting services" included in "a matter before the IRS?"; and, 2) if so, is it unconscionable? I find the answer to both these issues is yes.

The record clearly demonstrates that all of Respondent's services in connection with this matter surrounded the preparation of amended tax returns. When describing the work he did, Respondent states that he reviewed and examined several thousand documents and determined that Taxpayer A's initial tax returns had been improperly prepared. See *Response to OPR's Motion* at p. 21. Based on his initial assessment he sought confirmation from the IRS and received additional documents for review. Based on all this information, he prepared the amended tax returns. Id. During his deposition, Respondent stated, "all I had to do was go and prepare amended returns and document it and prepare the taxes as such." See Exhibit 8 attached to *OPR's Motion* at p. 105. Further, he stated that he reviewed Taxpayer A's financial documents and printed "journals of financial statements that would substantiate the preparation of a 1040X." Id. at p. 104. Respondent described the preparation of these journals as forensic tax accounting. Id. at p. 103. Finally, Respondent described these records as an integral and essential part of preparing the amended tax returns. Id. at pp. 112-113.

Based upon Respondent's admissions and statements, I find that Respondent's fee for forensic tax records reconstruction is included in "a matter before the IRS" pursuant

to 31 C.F.R. 10.27(c)(2). The record demonstrates that everything Respondent did was in connection with preparing amended tax returns. The record is devoid of any evidence showing that Respondent conducted forensic tax reconstruction for an unrelated matter other than Taxpayer A's amended tax returns. On the contrary, the clear and convincing evidence shows that Respondent's services and actions directly concerned preparing amended tax returns. As such, Respondent's services and fees are subject to the prohibition of unconscionable fees in 31 C.F.R. § 10.27.

The term "unconscionable" is not further defined in § 10.27.[2] Black's Law Dictionary defines the term as "extreme unfairness" and "showing no regard for conscience; affronting the sense of justice, decency, or reasonableness." See *Black's Law Dictionary* 1526 (7th ed. (1999)). Here, Respondent has charged a client a fee of $161,500 for two amended tax returns that would have resulted in a return of $171,707, i.e., a fee encompassing approximately 94% of a significant return amount. Respondent's fee that nearly encompasses the entirety of the return satisfies any reasonable definition of unconscionability.

The clear and convincing evidence in the record demonstrates that Respondent has charged an unconscionable fee in connection with a matter before the Internal Revenue Service in violation of 31 C.F.R. § 10.27. The fact that Respondent might have not actually received the amount he charged his client is irrelevant to whether he "charged" the unconscionable fee, as the regulation does not speak of "receiving" any

[2] C.f., Sutton v. Fin. Recovery Servs., Inc., 121 F. Supp. 3d 309, 315 (E.D.N.Y. 2015) (noting that the Fair Debt Collection Practices Act (FDCPA) does not contain a definition of "unconscionable," but lists non-exhaustive examples of such practices to provide a framework for interpreting the term in the FDCPA context). Section 10.27 contains no such list or aid in interpreting the term and thus the undefined term must be considered in its plain meaning as generally understood. See United States v. Mohrbacher, 182 F.3d 1041, 1048 (9th Cir. 1999).

such fee but merely of charging it. There are no genuine issues of material fact surrounding this issue that require a hearing and OPR is entitled to a decision on this issue as a matter of law. OPR's Motion for Summary Adjudication as to Count 8 of the Complaint is therefore **GRANTED**.

Sanction:

OPR argues that disbarment is warranted in this case because of Respondent's serious misconduct. OPR states that "[t]he issue in a disbarment proceeding is essentially whether the practitioner in question is fit to practice." See *OPR's Motion* at p. 30, citing Harary v. Blumenthal, 555 F.2d 1113, 1116 (2d Cir. 1977). OPR alleges that Respondent's behavior, [redacted], and making numerous false or misleading statements to the IRS, demonstrate that he does not have the fitness to practice before the IRS. Id. at pp. 31-3. OPR further argues that Respondent's lack of remorse is an aggravating factor warranting disbarment from practice before the IRS. Id. at pp. 33-4. As such, OPR contends that the proposed sanction should be given deference and that I should disbar Respondent through summary adjudication. I disagree.

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Although, I have found six of the eight Counts proved, I cannot determine that no genuine issue of material fact surrounding the appropriate sanction exists or that OPR is entitled to a decision disbarring Respondent as a matter of law. Title 31 C.F.R. § 10.50 provides that "[t]he Secretary of the Treasury, or delegate, after notice and an opportunity for a proceeding, may censure, suspend, or disbar any practitioner from practice before the Internal Revenue Service if the practitioner is shown to be incompetent or disreputable (within the meaning of § 10.51). . . ." Further, "[t]he sanctions imposed by this section shall take into account all relevant facts and circumstances." Id.

Taking into account all relevant facts and circumstances, including reasonable inferences in favor of Respondent, I find that there is a genuine issue of material fact as to whether the appropriate sanction is disbarment. No law directs that Respondent's conduct requires me to issue an order of disbarment or prescribing such a sanction for certain conduct. Further record development and testimony is required to make this determination in light of all the relevant facts and circumstances at issue. As such, OPR's Motion for Summary Adjudication concerning the proposed sanction is **DENIED**.

CONCLUSIONS

1. Respondent was engaged in practice before the IRS as defined at 31 C.F.R. § 10.2(a)(4) and is therefore subject to the disciplinary authority of the Secretary of the Treasury.

2. For the above-stated reasons, there are no genuine issues of material fact concerning Count 1 of the Complaint. Pursuant to 31 C.F.R. § 10.76(a)(2), Count 1 is therefore **PROVED** by clear and convincing evidence. OPR's Motion for Summary Adjudication of Count 1 is **GRANTED**.

3. For the above-stated reasons, there are no genuine issues of material fact concerning Count 2 of the Complaint. Pursuant to 31 C.F.R. § 10.76(a)(2), Count 2 is therefore **PROVED** by clear and convincing evidence. OPR's Motion for Summary Adjudication of Count 2 is **GRANTED**.

4. For the above-stated reasons, there are no genuine issues of material fact concerning Count 3 of the Complaint. Pursuant to 31 C.F.R. § 10.76(a)(2), Count 3 is therefore **PROVED** by clear and convincing evidence. OPR's Motion for Summary Adjudication for Count 3 is **GRANTED**.

5. For the above-stated reasons, there are no genuine issues of material fact concerning Count 4 of the Complaint. Pursuant to 31 C.F.R. § 10.76(a)(2), Count 4 is therefore **PROVED** by clear and convincing evidence. OPR's Motion for Summary Adjudication for Count 4 is **GRANTED**.

6. For the above-stated reasons, there are no genuine issues of material fact concerning Count 5 of the Complaint. Pursuant to 31 C.F.R. § 10.76(a)(2), Count 5 is therefore **PROVED** by clear and convincing evidence. OPR's Motion for Summary Adjudication for Count 5 is **GRANTED**.

7. For the above-stated reasons, genuine issues of material fact exist concerning Count 6 of the Complaint. Pursuant to 31 C.F.R. § 10.76(a)(2), Count 6 is therefore **NOT PROVED** by clear and convincing evidence. OPR's Motion for Summary Adjudication for Count 6 is **DENIED**.

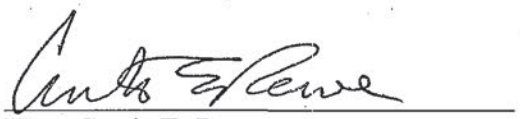
8. For the above-stated reasons, genuine issues of material fact exist concerning Count 7 of the Complaint. Pursuant to 31 C.F.R. § 10.76(a)(2), Count 7 is therefore **NOT PROVED** by clear and convincing evidence. OPR's Motion for Summary Adjudication for Count 7 is **DENIED**.

9. For the above-stated reasons, there are no genuine issues of material fact concerning Count 8 of the Complaint. Pursuant to 31 C.F.R. § 10.76(a)(2), Count 8 is therefore **PROVED** by clear and convincing evidence. OPR's Motion for Summary Adjudication for Count 8 is **GRANTED**.

10. For the above-stated reasons, Complainant's Motion for Summary Adjudication concerning the proposed sanction of disbarment is **DENIED**.

The parties are reminded that compliance with the Scheduling Order issued on February 26, 2018 is expected and that the respective witness and exhibit lists must be filed by March 2, 2018, with responses, if any, to such filings submitted no later than March 7, 2018.

SO ORDERED.



Hon. Curtis E. Renoe
Administrative Law Judge

Dated: February 28, 2017 at Alameda CA

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing **ORDER GRANTING, IN-PART, COMPLAINANT'S MOTION FOR SUMMARY ADJUDICATION** (Docket 15-IRS-0001) upon the following parties and entities in this proceeding as indicated in the manner described below:

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Done and dated: February 28, 2108
Alameda, California.

/s/ Cindy J. Melendres
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Hon. Curtis E. Renoe