PUBLIC MATTER—NOT DESIGNATED FOR PUBLICATION

Filed July 18, 2022

STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

In the Matter of	)	SBC-19-O-30707
	)	
ANTHONY PETER RAIMONDO,	)	OPINION
	)	
State Bar No. 200387.	)	
	)	

Our analysis in this case focuses on the importance of following the standard of proof in attorney disciplinary matters. The Special Deputy Trial Counsel (SDTC) must prove culpability by clear and convincing evidence. (Rules Proc. of State Bar, rules 5.103 [evidentiary standard], 2101 & 2201 [SDTC appointment and duties where Office of Chief Trial Counsel recused].) As discussed *post*, we find SDTC failed to meet this high standard of proof. Reasonable doubts must be resolved in a respondent's favor. Doing so in this case leads us to finding no culpability for professional misconduct upon review of the record.

In this disciplinary matter, Anthony Peter Raimondo was charged with seven counts of misconduct related to ascertaining the immigration status of opponents in civil litigation from 2011 to 2013. The SDTC asserted Raimondo committed moral turpitude violations, violated constitutional and statutory law, failed to maintain respect to the courts, and threatened criminal and administrative charges to obtain an advantage in a civil dispute. The hearing judge found no clear and convincing evidence that Raimondo was culpable of the charged misconduct and dismissed the proceeding with prejudice.

SDTC appeals, asserting Raimondo violated others' constitutional rights by offering to assist United States Immigration and Customs Enforcement (ICE) in arresting litigation opponents with the goal of deportation. SDTC argues we should find culpability as charged. Raimondo supports the hearing judge's dismissal.

Upon our independent review of the record (Cal. Rules of Court, rule 9.12), we affirm the hearing judge's finding that no clear and convincing evidence supports culpability as to the charged misconduct. The evidence in the record fails to establish Raimondo violated his ethical duties. Accordingly, we affirm the judge's dismissal of this proceeding with prejudice. (*In the Matter of Kroff* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 838, 843 [dismissal of charges for want of proof after trial on merits is with prejudice].)

I. PROCEDURAL BACKGROUND

On December 16, 2019, SDTC filed a Notice of Disciplinary Charges (NDC). After the hearing judge granted Raimondo's motion to dismiss the NDC without prejudice, SDTC filed the Amended Notice of Disciplinary Charges (ANDC) on April 24, 2020. The ANDC charged Raimondo with failure to support the law, in violation of Business and Professions Code section 6068, subdivision (a)[1] (two counts); moral turpitude, dishonesty, and corruption, in violation of section 6106 (three counts); failure to maintain respect due to the courts, in violation of section 6068, subdivision (b); and threatening criminal and administrative charges to obtain an advantage in a civil dispute, in violation of the former Rules of Professional Conduct, rule 5-100.[2] Raimondo filed a response to the ANDC on June 26, 2020.

On April 5, 2021, the parties filed a Stipulation of Undisputed Facts and Admission of Documents (Stipulation). A four-day trial was held April 27 through 30. The parties filed post-

[1] All further references to sections are to this source, unless otherwise noted.

[2] All further references to rules are to the California Rules of Professional Conduct that were in effect until November 1, 2018, unless otherwise noted.

trial briefs on May 17. In its post-trial brief, for the first time, SDTC moved to amend the ANDC to charge additional misconduct related to two people not named in the ANDC: Luis Masedo and Luis Mendez. (Rules Proc. of State Bar, rule 5.44(C) [amendment to conform to proof of issues raised during trial is permissible, but attorney must have reasonable time to respond and to prepare defense if he objects].) Raimondo objected to the motion.

On August 12, the hearing judge issued his decision, finding no culpability and dismissing the proceeding with prejudice. In the decision, the judge denied SDTC's post-trial motion to amend because SDTC did not specify what violations Raimondo may have committed based on the evidence at trial. Further, SDTC had the evidence to make these allegations before trial and did not include them in the ANDC or move to amend the ANDC at trial. Therefore, Raimondo did not have an opportunity to respond to the allegations. (See *Edwards v. State Bar* (1990) 52 Cal.3d 28, 35 [attorney may not be disciplined for violation not alleged in notice to show cause].) SDTC has not challenged the denial of that motion on review. Accordingly, we do not consider Raimondo's actions in the Masedo and Mendez matters when determining culpability.[3] Additionally, we do not consider these actions in aggravation because SDTC had notice of these acts and failed to properly charge them in the ANDC or at trial. (*Id*. at p. 36 [to be considered in aggravation additional misconduct must be raised through respondent's own testimony, elicited for relevant purpose of inquiring into charged misconduct]; see also *In the Matter of Taylor* (Review Dept. 2012) 5 Cal. State Bar Ct. Rptr. 221, 235, fn. 16 [no aggravation for uncharged misconduct when State Bar failed to charge as misconduct or conform to proof at trial].)

[3] We include the Masedo and Mendez matters in the factual background section because SDTC's arguments on review involve them.

SDTC filed a request for review on September 7, 2021. On February 25, 2022, California Rural Legal Assistance, Inc. (CRLA) filed an application to file an amicus curiae brief. On February 28, Raimondo filed an opposition to CRLA's amicus curiae brief 8and SDTC filed a memorandum in support. On March 4, we granted the application and ordered CRLA's February 28 amicus curiae brief filed. Oral argument was held on May 19.

II. FACTUAL BACKGROUND

The facts are based on the Stipulation, trial testimony, documentary evidence, and the hearing judge's factual findings, which are entitled to great weight. (Rules Proc. of State Bar, rule 5.155(A).) In our recital of the facts, we utilize two principles. First, the hearing judge determined Raimondo's testimony was "extremely credible, honest, forthright, direct, and specific." We are reluctant to deviate from a hearing judge's credibility findings as the judge "had the opportunity to evaluate conflicting statements after observing the demeanor of the witnesses and the character of their testimony." (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1055.) To overturn a judge's finding, one must demonstrate that the finding is not sustained by the record. (*McKnight v. State Bar* (1991) 53 Cal.3d 1025, 1032.) Second, if the evidence leads to differing reasonable interpretations of the facts, we must adopt the inference that misconduct was lacking as SDTC has the burden to prove culpability. (*In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737, 749 [appropriate to resolve reasonable doubts in favor of respondent and reject contrary finding as unsupported by clear and convincing evidence].)

A. General Background

Raimondo was admitted to practice law in California on January 22, 1999. He started his law career at a firm handling criminal cases where the Fresno County Public Defender's Office was unavailable due to conflicts of interest. He was then recruited to work for that office as a deputy public defender. In that role, he was exposed to immigration law and often represented

undocumented immigrants. Presently, Raimondo focuses his practice on labor and employment law. This disciplinary proceeding relates to Raimondo's actions representing agriculture employers in California's Central Valley. CRLA often represented clients who had sued these employers.

CRLA is a nonprofit public benefits corporation that provides legal assistance to eligible low-income clients in rural California. CRLA receives funds from the Legal Services Corporation (LSC) and must comply with certain regulatory mandates. (Legal Services Corporation Act, 42 U.S.C. § 2996 et seq.) Because LSC awards grants to CRLA, LSC has oversight of CRLA relating to the use of the funds.

B. Raimondo's Complaints about CRLA

Raimondo was familiar with CRLA as it represented employees who sued his clients alleging labor violations. (See, e.g., *Arias v. Superior Court* (2009) 46 Cal.4th 969 (*Angelo Dairy* matter).) In 2006, he read a report from LSC's Office of Inspector General (OIG) regarding complaints about CRLA, which alleged CRLA violated restrictions imposed upon LSC grantees such as providing services to undocumented people. Raimondo also believed CRLA was misusing LSC funds it received by representing ineligible clients, including clients without legal immigration status.[4] Additionally, Raimondo thought CRLA was improperly providing counsel for representative classes of individuals contrary to its grant terms. In 2006, Raimondo first complained to LSC that CRLA was violating its grant terms. Raimondo used a complaint

[4] CRLA argued in its amicus curiae brief that Raimondo should not have been permitted to present claims of CRLA misconduct in his defense to the disciplinary charges because the State Bar Court lacks jurisdiction to consider such evidence or make decisions based on it. However, like the hearing judge, we make no decision here as to whether CRLA represented ineligible clients, committed any misconduct, or failed to comply with the LSC Act. The CRLA evidence presented at trial was relevant to Raimondo's intent and motive.

form on the LSC website to alert LSC about these beliefs. He also complained directly to individuals at LSC.

In August 2006, Raimondo wrote to Laurie Tarantowicz, Assistant Inspector General at OIG, regarding CRLA's involvement in representative actions, including the *Angelo Dairy* matter. José Arias filed this action on February 15, 2006, against his employer, which was represented by Raimondo. Raimondo sent two other letters to Tarantowicz complaining that CRLA was violating the LSC grant terms by taking on this representation because he believed the case was a class action under California law.

Between October 2007 and June 2009, Raimondo exchanged numerous emails with Noel Rosengart, Investigative Counsel at OIG. Raimondo complained to Rosengart of CRLA's improper use of grant funds, co-counseling with private counsel who formerly worked at CRLA, and improper class action lawsuits. Raimondo believed CRLA was subsidizing the "business endeavors of former CRLA attorneys," which he believed was an abuse of LSC funds. In October 2009, Rosengart wrote to Raimondo that OIG closed the investigation into his complaints and had not found any violations.

Raimondo later directed his complaints to LSC's Office of Compliance and Enforcement (OCE). In June 2011, Raimondo notified Bertrand Thomas, Program Counsel at OCE, that CRLA was improperly representing Arias in his lawsuit because Arias was without legal immigration status. Raimondo provided Thomas with contact information for Kulwinder Brar of the United States Department of Homeland Security (DHS), whom Raimondo had used to verify Arias's immigration status. In December 2011, Lora Rath, Acting Director of OCE, wrote to Raimondo that Arias was indeed ineligible for representation by CRLA, but CRLA did not know Arias was ineligible when it accepted him as a client. CRLA stopped providing

services to Arias when it learned of his status. OCE closed the investigation related to the Arias's case.

Raimondo continued to complain to LSC about CRLA. In 2012, he contacted OIG and Thomas with other complaints regarding Arias's lawsuit and other court cases where Raimondo represented the dairy-employers. Specifically, he notified Thomas that he had confirmed Vincente Cajero was without legal immigration status and Miguel Quevedo Flores had voluntarily returned to Mexico, which had caused CRLA to withdraw from representing Flores. Raimondo was frustrated and believed LSC was not doing enough to prevent the violations he perceived CRLA was perpetuating. Thomas told Raimondo that OCE was investigating the claim that Cajero was ineligible for CRLA's representation.

In May 2012, OCE communicated to Raimondo it had determined CRLA had not violated any rules by representing Cajero and Flores. Raimondo then wrote to Rath to complain about the "misuse of taxpayer funds" and CRLA's "ongoing unlawful conduct." Rath responded that OCE had seriously considered Raimondo's complaints, but it was not changing its position. Raimondo responded to Rath, copying Tom Hester, Associate Counsel at OIG, and a congressmember's legal assistant, that he believed OCE had "swept the complaint under the rug."

In 2013, Raimondo continued to complain to Hester about CRLA and OCE's lack of action regarding CRLA's representation of Cajero and Flores. A potential whistleblower at CRLA reached out to Raimondo to discuss her beliefs that CRLA was not following the rules

concerning representation of people without legal immigration status.[5] Raimondo told Hester about the whistleblower. Hester assigned an investigator to Raimondo to address his complaints. Both Hester and Thomas invited Raimondo to provide them with additional information he had to support his claims regarding CRLA.

Raimondo also informed Hester of a California Senate bill that would prohibit an attorney from reporting and threatening to report the immigration status of a claimant. The bill was passed into law as Business and Professions Code section 6103.7, with an effective date of January 1, 2014.[6] Section 6103.7 prohibits attorneys from reporting the suspected immigration status of a party to a federal agency because the party has exercised a right related to his or her employment.[7]

Regarding the bill, Raimondo stated on May 2, 2013:

> I still don't see how this can stop me from verifying lack of status to ICE, and then sharing that information with OIG. [¶] Also, they are missing the fact that I never make threats. The times when I have had litigants deported, I have always simply taken action rather than make any threats. The attorneys find out when their clients are already gone. I don't see how they can stop me from reporting a crime.

[5] The potential whistleblower testified at the trial in this matter. She is an attorney who has known Raimondo for several years and has a professional and personal relationship with him. She believed Raimondo was interested in ensuring CRLA was complying with LSC funding. She said she would not have had a relationship with Raimondo if she had believed he was attempting to have people removed from the United States. She stated she does not associate with people who do not have similar beliefs to hers, especially considering her parents were undocumented and immigration matters are very personal for her.

[6] The misconduct alleged in the ANDC occurred before the effective date of section 6103.7.

[7] The legislative history states the bill was "necessary to *strengthen* the retaliation laws that currently protect all workers . . . ." (Sen. Com. on Labor and Industrial Relations, Analysis of Sen. Bill No. 666 (2013-2014 Reg. Sess.) April 24, 2013, italics added.) The bill provided for attorney discipline if an attorney reports a worker based on immigration status, and provided additional protections in the law to protect workers against retaliation when exercising their employment rights. (*Ibid*.)

The only two litigants who were arrested and removed were Masedo and Mendez, who, as discussed *ante*, were not named in the ANDC. Raimondo testified he lost his temper when he wrote the email to Hester and greatly regretted writing it. At the time, Raimondo was increasingly frustrated with LSC because he believed nothing was happening with his complaints while CRLA continued to violate its grant terms with LSC.[8] Raimondo believed Hester had wanted to hold CRLA accountable and had the ability to do so, but, ultimately, there was no accountability. He stated that when he wrote this email, it was one of his "worst moments."

Hester later wrote that if Arias was not a lawful permanent resident (LPR) or otherwise eligible for CRLA's services, then "that could be a major problem for CRLA." Raimondo offered to verify with ICE whether Arias had adjusted his status. Hester responded that it would be "very helpful" to know Arias's status, but then clarified he was not asking Raimondo to go to ICE about this matter. Hester and Raimondo continued to correspond in 2013 about the Arias litigation and other litigation involving CRLA.

C. Raimondo's Communications with Kulwinder Brar at DHS

Brar was a forensic auditor for DHS who Raimondo came to know through his legal practice. Brar audited employers that were represented by Raimondo and held some authority over him and his clients. The audits of the employers included review of I-9 forms for accuracy to assure employees were legally authorized to work. Brar and Raimondo often corresponded about employment law issues, and Raimondo asked Brar to speak on an immigration panel with him at a conference in Las Vegas. Raimondo testified that if an audit finds that an employer has knowingly violated immigration law, they are potentially subject to substantial fines and criminal

[8] Raimondo testified he was particularly upset about the Flores matter, which is discussed *post*, because Flores's CRLA attorneys knew he resided in Mexico, but continued to represent him in violation of the grant terms—even though Flores also had other non-CRLA counsel—until Raimondo complained to LSC about the situation. Raimondo stated he was frustrated because he believed CRLA was never held accountable.

consequences. At the time of the alleged misconduct in this matter, Brar was the primary forensic auditor for DHS in the San Joaquin Valley, but she was not a part of the agency's Enforcement and Removal Operations (ERO) and had no law enforcement authority.

Raimondo asked Brar to verify the immigration status of employees who had sued his clients. When asking for this information, he told Brar he needed to know immigration status to determine whether CRLA could represent the employees because, if the employees were ineligible for representation, this was a misuse of LSC funds. He communicated to Brar his frustrations with CRLA and his beliefs that CRLA was violating the rules regarding use of the grant funds it received from LSC. He stated that knowing the immigration status of these individuals would aid in the investigation of his CRLA complaints and might aid him in defending the claims against the employers he represented.[9] Raimondo testified that immigration status is not discoverable under case law, which is why he went to Brar seeking this information. He wanted to confirm immigration status with Brar before going to LSC because he did not want to make unfounded claims against CRLA or assert immigration status as an affirmative defense without verification.

Raimondo also told Brar he would assist DHS if there was interest in removing these individuals from the country. Raimondo testified he did this to show cooperation with DHS, which could be helpful to his clients in the case of an audit. He testified that he wanted to remain credible to Brar because it would be important for the auditor to believe an employer is making a good effort to comply with the law. He stated Brar lived in Fresno and knew the realities of the agriculture industry—that many workers are undocumented. He believed it was important for her to know that his clients were doing the best they could in this environment.

[9] Immigration status is relevant to defeating claims for backpay and reinstatement under *Hoffman Plastic Compounds, Inc. v. Nat. Lab. Relations Bd.* (2002) 535 U.S. 137.

D. Cases Where Raimondo Asked Brar to Verify Immigration Status

1. Masedo and Sallaberry Dairy

Masedo sued his former employer, Sallaberry Dairy, which was represented by Raimondo.[10] CRLA represented Masedo. Masedo later broke into the Sallaberry home with a gun. He was chased out of the home and fired the gun, hitting the house. Thereafter, Raimondo filed for a restraining order against Masedo on behalf of the Sallaberrys.

Carlos Marin, an ICE agent at DHS, contacted Raimondo regarding Masedo. Marin was planning to arrest Masedo and asked Raimondo for his assistance in doing so. In April 2011, Marin and Raimondo communicated regarding the restraining order, planning that Marin would serve the restraining order on Masedo. The restraining order was served on Masedo by someone else because Marin was ultimately unable to do it.

Meanwhile, a deposition was scheduled in the Sallaberry Dairy case for the dairy owner's wife on April 28, 2011. Even though he was not being deposed, CRLA attorneys insisted Masedo be present at the deposition, despite the restraining order in place. Raimondo told CRLA he did not want the deposition to proceed and did not want Masedo present as he was concerned for his clients' safety. Raimondo did not alert the CRLA attorneys that he was cooperating with an ICE agent who wanted to arrest Masedo. Masedo attended the deposition. Masedo was not apprehended at the deposition, but was later arrested and removed by ICE. In June 2011, Raimondo passed on information to Marin that Masedo might have returned to California.

[10] As discussed *ante*, Masedo is not named in the ANDC and we do not consider facts concerning Masedo in determining culpability or aggravation. SDTC argues on review that the Masedo evidence shows Raimondo had a practice of trying to get opponents deported.

2. Arias and Angelo Dairy

As mentioned *ante*, Raimondo represented Angelo Dairy in the superior court action Arias filed against it. Arias had worked at Angelo Dairy, which was a small dairy owned by the Angelo family. Arias alleged several employment violations including failure to pay overtime, provide rest and meal periods, maintain time records, provide tools and equipment, and pay all wages due. The complaint was later amended to include a cause of action under the California Private Attorney General Act (PAGA). Arias's complaint also alleged claims on behalf of other current and former employees of Angelo Dairy. Raimondo was successful in getting some claims removed based on the Supreme Court's ruling that Arias needed to comply with the pleading requirements for class actions. (*Arias v. Superior Court*, *supra*, 46 Cal.4th 969 at pp. 977-978.) Under LSC's grant terms, CRLA could not pursue class actions and dropped those claims after the Supreme Court ruling. The PAGA claim remained.

Raimondo's client told him Arias was undocumented and asked whether that was relevant to the lawsuit. Raimondo told him it was not relevant to the case, but Arias's status could mean CRLA would be unable to represent him.[11] Raimondo believed if CRLA could not represent Arias, then a non-CRLA attorney would be brought in. Raimondo believed CRLA was hindering the settlement of Arias's claim in favor of pushing for class-wide relief. He knew that his clients had violated the law and wanted to settle the case, but believed CRLA was demanding an amount of money "[t]hat would wipe the dairy out."[12]

[11] Arias's immigration status was not relevant to any affirmative defenses in the superior court action.

[12] Raimondo testified that he wanted a non-CRLA attorney to negotiate with because he believed CRLA was operating without the normal economic tensions of a private attorney. He stated that because CRLA was federally funded, they were "difficult to reason with."

Thereafter, in June 2011, Raimondo contacted Brar to confirm Arias's immigration status.[13] On June 13, Raimondo sent Arias's attorneys a notice of deposition for Arias's appearance on June 24. Between June 13 and 16, Raimondo continued to discuss Arias's immigration status with Brar. He asked Brar for an update as depositions were scheduled and he "would like to prevent these attorneys from providing any further services at the taxpayers' expense." Brar responded that she was still researching Arias's status. Raimondo thanked her for her assistance and reiterated that, if Arias was in the country illegally, he could notify OIG that LSC funds were being misused.

Raimondo then obtained Arias's driver's license number from his client, which he provided to Brar. He also informed Brar that Arias would be at a deposition "next week." He stated, "If there is an interest in apprehending [Arias], please let me know so that we can make the necessary arrangements." Raimondo testified that he made this offer because he wanted Brar "to feel that [he] was cooperative in their mission," and that he was not just "using her" for his own purposes. He made this offer based on his past experience with Masedo, where he stated Brar forwarded Masedo's information to ERO without his knowledge. Raimondo testified that he believed Brar might do this again and he wanted her to know that if he had "stumbled across somebody who was a priority to them," like Masedo, who had a criminal conviction, then DHS could expect his full cooperation. However, he stated he "knew full well when I wrote this that there was zero possibility that [ERO] would have any interest in [Arias]" due to ICE's removal priorities.

[13] Raimondo testified that he was familiar with ICE's enforcement priorities relating to removing those without legal immigration statuses. Raimondo believed Arias was not a priority for removal by ICE because Arias did not have a criminal conviction or other circumstances that would fit ICE's known removal priorities.

On June 16, 2011, Brar informed Raimondo that Arias was without legal status. Raimondo asked Brar to let ERO know "they can expect our full cooperation and assistance." He also asked for Brar's permission to share Arias's status with OIG, and Brar approved.

Raimondo immediately complained to LSC regarding CRLA's representation of Arias. LSC alerted CRLA that Raimondo had been in contact with DHS and had learned Arias was without legal immigration status. Raimondo testified that he was surprised that LSC alerted Arias's attorneys that he had been talking to DHS. He did not tell the CRLA attorneys that he had contacted DHS because he was concerned that could be perceived as a threat, which he knew was against his ethical obligations.

On June 22, Arias's attorneys told Raimondo that Arias was not available for the scheduled deposition. They were worried Arias would be arrested at the deposition.[14] However, Arias was not a high priority for removal by ICE and Raimondo never informed ERO of the date, time, or place of the scheduled deposition.[15] Raimondo did not seek to compel Arias's attendance and did not reschedule the deposition. The CRLA attorneys substituted out of the

[14] Arias did not testify in these proceedings. However, two of his attorneys did. The hearing judge found they credibly stated that Arias was fearful about deportation after learning that his immigration status was discussed with DHS in connection with the *Angelo Dairy* matter.

[15] Michael Meuter, one of Arias's attorneys in the superior court case, initially testified that he learned Raimondo had told immigration authorities of the date, time, and place of the deposition. When pressed on the details of how Meuter knew this, he said it was based on his recollection of Raimondo's emails with Brar, but he was actually not sure the date and time were in the emails. He explained that given the "tenor" of the emails, he believed immigration authorities knew the date, time, and place of the deposition. This is not supported by the record in this proceeding. Raimondo's emails with Brar only refer to a deposition "next week" and do not give a specific date with no mention of a time or location. This is also corroborated by Christopher Ho's trial testimony. Ho represented Arias in the federal action against Raimondo discussed *post*. He testified that in the emails with Brar, Raimondo did not provide the date, time, and place of the deposition to her.

case after they learned Arias was ineligible for their representation.[16] The CRLA Foundation, a separate organization, later represented Arias. On July 11, 2011, the parties, including Arias, participated in a court-supervised settlement conference. No evidence indicates Raimondo contacted immigration authorities to alert them to the settlement conference. The parties reached a settlement of the case, which was approved by the court.[17] Arias was not removed from the country.

3. Cajero, Flores, and Hillview Dairy

Cajero and Flores sued Hillview Dairy Farm in Fresno County Superior Court. (*Cajero & Flores v. Hillview Dairy Farm et al.* (Super. Ct. Fresno County, No. 11CECG00134).) The plaintiffs were represented by both CRLA and non-CRLA attorneys; Hillview Dairy Farm was represented by Raimondo. When Flores lost his job at the dairy, he moved back with his family to Mexico. In November 2011, Raimondo attempted to schedule a deposition in Fresno, California, but CRLA told Raimondo that Flores would be unable to attend a deposition in Fresno. CRLA offered to do Flores's deposition remotely by video conference or in person in Mexico.

One of the partners of the dairy, Scott Toste, testified at trial in this matter. He stated Raimondo asked him for information on Cajero and Flores so Raimondo could verify their immigration statuses to determine if they were eligible for CRLA representation. Toste stated

[16] This fact contradicts SDTC's statement in its opening brief that Raimondo failed to have CRLA taken off cases against his clients. The same is also true based on CRLA's withdrawal in the Flores litigation, discussed *post.*

[17] Meuter testified that the settlement was significantly less than what they had previously valued the case. However, Aria's attorney, Julia Montgomery, submitted a declaration to the court that the settlement was "fair, reasonable, adequate and in the interests of [Arias] and the current and former employees of [Angelo Dairy]."

Raimondo never discussed the possibility of attempting to have Cajero and Flores removed because that was "never [their] objective."[18]

On November 2, 2011, Raimondo emailed Brar asking if the LPR cards for Cajero and Flores were valid. On November 23, Raimondo emailed Brar asking for an update on Cajero and Flores and if ERO was interested in them. He stated, "I need to take action in my cases, but if [ERO] is interested, I will hold off so that they can arrange for the necessary arrests. Of course, I will be pleased to cooperate and assist in any way I can to ensure that any arrests are accomplished efficiently and safely." Brar responded she had passed on the information to an ERO agent.

On December 6, 2011, Raimondo filed a motion to disqualify CRLA as counsel for Flores due to his immigration status. CRLA demanded Raimondo withdraw the motion because the courts do not have jurisdiction to make determinations related to CRLA eligibility. Notwithstanding CRLA's demands, it substituted out as counsel for Flores and the motion was not heard.[19] Hillview Dairy Farm eventually settled with Cajero and Flores. Nothing in the record indicates that Cajero, Flores, or their attorneys knew Raimondo had contacted immigration authorities.

[18] Toste also testified that Raimondo explained to him that a CRLA attorney might be harder to negotiate with because CRLA attorneys had funding for their representation regardless of the outcome of the case, as opposed to a private attorney who would have to make practical decisions related to the cost of representation in determining how to negotiate a potential settlement.

[19] Raimondo did not file further motions in his cases asking the court to disqualify CRLA. Mark Freedman, an attorney at LSC, testified that, under the law, courts are not involved in determining eligibility for LSC grant funds. Freedman stated that complaints regarding eligibility should be made to LSC, which Raimondo did.

4. Mendez, Ramirez, and Boschma Dairy

Luis Mendez and Jesus Ramirez filed union grievances against Boschma Dairy, which was represented by Raimondo.[20] In October 2011, Raimondo emailed Brar requesting Ramirez's immigration status. He added, "As always, if [ERO] is interested in this person, I would be pleased to assist them."

Raimondo also provided Mendez's information to Brar, and Brar gave this information to an ICE agent. In arguing against their claims, Raimondo asserted Mendez and Ramirez could not prevail in their labor dispute due to the remedies sought given each man's immigration status. In a letter to the arbitrator, Raimondo advised that the arbitration should not move forward because Mendez was not entitled to backpay or reinstatement, his requested relief.[21] Raimondo also asked Mendez's attorney to cancel the arbitration due to Mendez's immigration status. The arbitration went forward. After participating in arbitration at Raimondo's office on June 18, 2012, ICE arrested Mendez in the parking lot.[22] Thereafter, Ramirez's arbitration took

[20] Ramirez is named in the ANDC, but Mendez is not. SDTC mentioned Mendez in his opening statement at trial, but did not mention Mendez in the ANDC or properly amend the charges at trial. As discussed *ante*, we do not consider Raimondo's actions related to Mendez in determining culpability or aggravation.

[21] Raimondo told the arbitrator that Mendez secured employment at the dairy by submitting a permanent resident alien card to complete the I-9 process, which the dairy believed to be valid.

[22] Raimondo testified he believed Mendez was a priority for ICE because he had a prior criminal conviction and was ordered removed at the end of his sentence. He believed Mendez would be unable to have legal status after the conviction and would not have legally been able to work in the United States, and Raimondo wanted to use this as an affirmative defense. In addition to the claim that the Mendez matter shows Raimondo had a practice of trying to get opponents deported, SDTC argues on review that the Mendez arrest caused harm in the dairy worker community—fear of bringing labor claims, which could be attributed to Raimondo's actions. As discussed *ante*, we do not consider facts regarding Mendez in determining culpability or aggravation.

place, but Ramirez participated by video. Correspondence between the union attorneys indicates they were not planning to pursue the case due to Ramirez's immigration status. [23]

5. Zepeda and Ochoa

Two additional employees were named in the ANDC: Martin Nilo Zepeda and Andrea Ochoa. Both had filed wrongful termination claims against employers represented by Raimondo and both were seeking backpay and reinstatement; therefore, immigration status was relevant to an affirmative defense. Ochoa was represented by CRLA; Zepeda was not. In January 2013, Raimondo requested the immigration status of Zepeda from Brar. Raimondo stated he was "willing to help if he meets the standards for removal." The case eventually settled. Zepeda was not removed.

In April 2013, Raimondo emailed Brar requesting Ochoa's immigration status, stating she was "represented by a taxpayer funded agency." He added, "If [ERO] is interested in her, we would be pleased to assist." Raimondo did not receive any information from Brar about Ochoa's status. He did not pursue the matter further with Brar. After the request regarding Ochoa, Raimondo testified that he stopped making these types of inquiries to Brar in general. At this point, he was aware Arias wanted to sue him individually and he believed the Senate bill was likely to pass, which could discipline attorneys who reported immigration status of a party in a civil action. Nothing in the record indicates that Zepeda, Ochoa, or their attorneys knew Raimondo had contacted immigration authorities.

[23] A letter stated, "From everything you've told me about Mr. Ramirez, his medical condition, and his immigration status, I do not think Arbitrator Marshall could really order the Dairy to pay any remedy."

E. Federal Suit against Raimondo

On May 8, 2013, Arias filed a civil action against the Angelos and Raimondo in the United States District Court for the Eastern District of California (No. 2:13-cv-00904), alleging intentional infliction of emotional distress and retaliation in violation of the Fair Labor Standards Act (FLSA) (29 U.S.C. § 201 et seq.).[24] Arias alleged violations of section 215(a)(3) of the FLSA, which prohibits retaliation against an employee for filing a complaint or instituting a proceeding concerning rights protected by the FLSA.

On June 5, 2013, Raimondo filed a motion to dismiss under rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief could be granted. The district court granted Raimondo's motion and dismissed Arias's action. Arias was granted leave to amend; he filed an amended complaint on July 10, 2014. Raimondo again filed a motion to dismiss under rule 12(b)(6), asserting he did not qualify as an employer under the FLSA. The district court again granted the motion and dismissed Arias's action for failure to state a claim. Arias appealed. The United States Court of Appeals for the Ninth Circuit determined that an employer's attorney may be held liable for retaliation under the FLSA, and, therefore, the case could proceed against Raimondo.[25] (*Arias v. Raimondo* (9th Cir. 2017) 860 F.3d 1185.) Accordingly, the case was remanded to the district court for further proceedings. Raimondo and Arias later settled the claims at mediation and the case was dismissed.

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[24] Arias settled with the Angelos in October 2013, and they were dismissed from the suit. Arias was represented by CRLA attorneys in this action. Raimondo testified that at some point Arias had obtained a visa and, therefore, could be represented by CRLA.

[25] The Ninth Circuit's opinion was the first case to decide that an employer's attorney may be subject to suit for retaliation under the FLSA. The Sixth Circuit declined to follow *Arias* and held that an employer's attorney could not be sued for FLSA retaliation. (*Diaz v. Longcore* (6th Cir. 2018) 751 F. App'x 755, 755-759.) We cite *Diaz* to show the different interpretations of the FLSA in the federal courts. (See *Pacific Shore Funding v. Lozo* (2006) 138 Cal.App.4th 1342, 1352, fn. 6 [unpublished federal opinions citable as persuasive, not precedential, authority].)

III. DISCUSSION

A. Burden of Proof in Disciplinary Proceedings

As stated *ante*, SDTC has the burden of proving culpability by clear and convincing evidence. (Rules Proc. of State Bar, rule 5.103.) The clear and convincing evidence standard "demands a degree of certainty greater than that involved with the preponderance standard, but less than what is required by the standard of proof beyond a reasonable doubt." (*Conservatorship of O.B.* (2020) 9 Cal.5th 989, 998.) Considering all the evidence presented, culpability must be established by facts that are "highly probable" to be true. (*Ibid*.) The evidence must be "so clear as to leave no substantial doubt" and "sufficiently strong to command the unhesitating assent of every reasonable mind." (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552.) This higher standard is used "in recognition of the gravity of the loss when an attorney's professional license is revoked . . . ." (*Arden v. State Bar* (1987) 43 Cal.3d 713, 725.)

Related to the clear and convincing standard is the equally crucial requirement that any reasonable doubts resulting from the evidence are resolved in favor of the respondent. (*Himmel v. State Bar* (1971) 4 Cal.3d 786, 793-794.) Evidence leading to differing reasonable interpretations of facts must lead us to adopt the inference of no culpability. (*In the Matter of DeMassa*, *supra*, 1 Cal. State Bar Ct. Rptr. at p. 749.)[26]

[26] We disagree with the dissent's suggestion that *In re Glass* (2014) 58 Cal.4th 500 may allow us to not resolve reasonable doubts in favor of an attorney when the misconduct is serious. *Glass*, a case regarding the admission of an applicant to the bar, has never been interpreted this way. To do so would negate long-standing attorney discipline jurisprudence and precedent in this state. (See *Golden v. State Bar* (1931) 213 Cal. 237, 247.) Further, Raimondo has been admitted since 1999 without any record of prior discipline. Therefore, there is no reason for us to believe that negative character inferences should be favored as he has a long record of practicing without misconduct. Unlike Glass, Raimondo has not admitted to any prior lapses in ethical judgments. Therefore, we must resolve reasonable doubts in Raimondo's favor. (*In the Matter of Respondent H* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 234, 240, and cases cited.)

B. SDTC Failed to Prove by Clear and Convincing Evidence that Raimondo Intended to Retaliate

The ANDC alleges largely the same set of facts in support of seven different ethical violations concerning six plaintiffs (Arias, Cajero, Flores, Ramirez, Zepeda, and Ochoa), who had filed claims against employers Raimondo represented. Central to each of those allegations is the claim by SDTC that Raimondo contacted ICE to retaliate against Arias and others for initiating proceedings against his clients. However, the hearing judge concluded SDTC failed to establish Raimondo had an illegal or retaliatory purpose in seeking the immigration statuses for these individuals. Rather, the judge concluded that Raimondo asked Brar about opposing litigants' legal statuses to determine if any affirmative defenses were available to his clients and/or to expose CRLA's potential misuse of LSC funds by representing ineligible clients in order to remove CRLA as attorney. The judge's finding is supported by the record, including Raimondo's credible testimony, his history since 2006 of reporting possible misuse of funds by CRLA, and the fact he did not compel Arias's attendance at the cancelled deposition or alert immigration authorities about the settlement conference.[27]

On review, SDTC asserts that the "sole" conduct at issue in this matter is Raimondo's effort to have Arias and five other plaintiffs arrested and deported from the United States. SDTC does not offer clear and convincing evidence to support this assertion in light of the hearing judge's findings, which are supported by the evidence. SDTC also asserts that the "heart" of its case against Raimondo is based on his offers to assist ICE in getting Arias and others arrested

[27] We note Raimondo attempted to prevent Masedo and Mendez from attending the proceedings connected to their arrests.

and deported.[28] SDTC contends the hearing judge "glossed over" Raimondo's efforts at deportation. However, the judge specifically found that Raimondo communicated with Brar to get information on his opponents, not to actively try to get them removed from the United States, but to show cooperation if the government determined further action was warranted.[29] Raimondo was forthright in admitting he asked Brar for the status of these opponents, but he never admitted he was trying to get them removed. While one could infer that Raimondo's offers in his emails to Brar to assist ERO show an intent to get opponents removed,[30] other reasonable interpretations exist here and are supported by the record. It is reasonable to interpret his emails to Brar as an attempt to remain in Brar's good graces when she had authority over the employers Raimondo represented. Notably, his intent is also corroborated by Raimondo's understanding of ICE's priorities for removal, testimony from a client that removal was not an objective that was discussed, and testimony from the potential whistleblower that Raimondo was concerned with CRLA funding compliance, not removal of undocumented immigrants. Additionally, Raimondo actually took the information he learned from Brar to LSC, which evidences his intention to hold CRLA accountable.

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[28] The ANDC alleged that Raimondo engaged in a "conspiracy and scheme" to retaliate against Arias and others. However, in the opening brief on review, SDTC states Raimondo was not charged with conspiracy. At oral argument, SDTC stated there was no conspiracy here, and characterized the misconduct as a "scheme" of going to ICE and asking Brar in auditing if ERO needed assistance to remove litigation opponents.

[29] Chronologically, Raimondo's involvement with ICE in the Masedo matter happened before any of the misconduct charged in the ANDC. We note Raimondo cooperated with ICE agent Marin at Marin's request.

[30] We agree the May 2, 2013 email to Hester, where Raimondo stated he has "had litigants deported," supports this inference urged by SDTC. However, this is the only specific evidence that supports SDTC's inference. Raimondo credibly testified that he wrote this email to Hester at OIG in a time of frustration when he lost his temper. He expressed great remorse for the email. Additionally, the only evidence presented of litigants being removed was with Masedo and Mendez, who both had criminal convictions, and, again, are not pleaded in the ANDC.

We reject SDTC's argument that Raimondo had no legitimate reason to inquire about Arias's status because he was not seeking backpay or reinstatement. This ignores the other reason Raimondo inquired about Arias—to determine whether he qualified for CRLA representation. This appears to have been a valid inquiry, given CRLA's decision to end its representation of Arias and later Flores. Case law requires that reasonable doubts must be resolved in Raimondo's favor.[31] SDTC has failed to demonstrate why the hearing judge's findings should be overturned regarding Raimondo's intent in communicating with immigration authorities. (*McKnight v. State Bar*, *supra*, 53 Cal.3d at p. 1032 [must demonstrate finding is not supported by the record in order to overturn].)

C. Count One: Failure to Support the Constitutions of California and the United States (§ 6068, subd. (a))

Count one of the ANDC alleged Raimondo engaged in a "conspiracy and scheme" to abuse his power as an attorney to retaliate against Arias and others for exercising their right to access to the courts.[32] The ANDC alleged Raimondo conspired with ICE to take Arias into custody at a scheduled deposition in the superior court case against Raimondo's client, Angelo

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[31] We disagree with the dissent that *In the Matter of DeMassa*, *supra*, 1 Cal. State Bar Ct. Rptr. 737 allows for us to overturn the hearing judge's credibility finding here. In *DeMassa*, a referee found DeMassa not credible on certain issues, but we found that respondent's explanation was plausible. Citing *Davidson v. State Bar* (17 Cal.3d 570, 574), we held, "Where the respondent's version is plausible in the context of the entire record, *even when controverted*, it supports a reasonable inference of lack of misconduct." (*In the Matter of DeMassa*, *supra*, 1 Cal. State Bar Ct. Rptr. at p. 749, italics added.) Like DeMassa, we find that Raimondo's explanations, even though controverted, are plausible when viewed in the context of the entire record. Therefore, we cannot find his testimony "inherently incredible," and, as such, it supports a "reasonable inference of lack of misconduct." (*Ibid*.) The dissent also cites *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266 as an example of overturning a hearing judge's credibility finding. However, in *Harney*, we gave "deference to the credibility findings of the hearing judge," and made a change as to culpability based on legal analysis that Harney's experience and superior expertise made it unreasonable for him to believe that he did not have to disclose the application of MICRA limitations to the court. (*Id*. at p. 280.) We relied on the hearing judge's credibility finding to determine that Harney was culpable of gross negligence rather than intentional dishonesty.

[32] As mentioned *ante*, SDTC stated at oral argument that there was no "conspiracy."

Dairy. Also listed in count one were allegations Raimondo had a "pattern and practice" of conspiring with ICE to get other litigation opponents deported including Cajero, Flores, Ramirez, Zepeda, and Ochoa. The ANDC alleged Raimondo's conduct was unethical because he deprived these people of their constitutionally guaranteed rights by working with ICE to arrest and remove these individuals from the United States. The ANDC alleged Raimondo acted with the intent to infringe on these individuals' constitutional rights to access the courts, specifically the First Amendment and Fourteenth Amendment to the United States Constitution and article I of the California Constitution.

Section 6068, subdivision (a), provides that an attorney has a duty to support the constitutions and laws of the United States and California. Attorneys may be disciplined for violating law that is not otherwise disciplinable under the State Bar Act. (*In the Matter of Lilley* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 476, 487.) The hearing judge determined that the constitutional provisions, listed in the ANDC, "unquestionably establish the federal and state constitutional rights of Arias and the other litigants to access to the courts, [however], they do not establish any specific constitutional duty owed by [Raimondo] to the claimants."[33]

The hearing judge found SDTC failed to establish that Arias and the other litigants had an absolute constitutional right to physically appear in their civil lawsuits.[34] In addition, the judge

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[33] See, e.g., *Plyler v. Doe* (1982) 457 U.S. 202, 210 (aliens who are unlawfully in the country are guaranteed due process under the Constitution); *Payne v. Sup. Ct.* (1976) 17 Cal.3d 908 (prisoner defending civil suit has rights under both federal and state constitutional law to access to the courts).

[34] We agree with the hearing judge's analysis of this issue in the decision. As discussed in greater detail *post*, SDTC's expert, Professor Amanda Tyler, did not provide sufficient support for her opinion that an individual has an absolute constitutional right to be physically present at a civil trial. SDTC cites to no law holding that a plaintiff in a civil case has an absolute right to physically appear. In addition, the judge agreed with Raimondo that if an individual did have a constitutional right to be physically present at trial, then immigration judges would not be able to order the removal of a noncitizen if the noncitizen was a plaintiff in a pending case. Raimondo again argued this point on review, which we find persuasive.

found no evidence of a conspiracy because there was no agreement to commit an unlawful act.[35] The judge also found Raimondo's testimony credible that he did not intend to interfere with Arias's or any other claimant's right to present a meritorious claim. Finally, the judge determined Raimondo believed in good faith he was legally permitted to inquire about the immigration statuses of his opponents with the goal of developing affirmative defenses and/or acquiring evidence in support of his complaints against CRLA. (See *In the Matter of Respondent P* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622 [mistake of law made in good faith may be defense to § 6068, subd. (a), violation].) The judge dismissed count one with prejudice as there was no clear and convincing evidence that Raimondo violated section 6068, subdivision (a).

On review, SDTC argues that Professor Tyler's testimony provides clear and convincing evidence Raimondo violated section 6068, subdivision (a), by violating United States and California constitutional law. Professor Tyler testified that all persons, regardless of immigration status, have a right to due process and equal protection. Citing *Zadvydas v. Davis* (2001) 533 U.S. 678 and *Boumediene v. Bush* (2008) 553 U.S. 723, she stated that aliens have a right to access the courts, which she stated mainly comes from the right to due process. Professor Tyler theorized that, in order to satisfy due process, a plaintiff needs to be able to meaningfully participate, which means being present in court. However, she failed to provide case law specifically supporting this theory. Professor Tyler stated that *Jaffe v. Lilienthal* (1894) 101 Cal. 175 held that the right of access to courts includes the right to be personally present at every stage of a trial. We agree with Raimondo that the holding of *Jaffe* is not so broad given the narrow issue decided in the case. The court there held that a continuance should have been granted in the case because the plaintiff was ill and his attorney did not have the information

[35] SDTC does not challenge this point on review.

needed to pursue the case. The court's holding cannot reasonably be extended so that every plaintiff in every situation has a right to be personally present in the court, especially when contradictory precedent exists. (See, e.g., *Faucher v. Lopez* (1969) 411 F.2d 992, 996 ["no constitutional right of a litigant to be personally present during the trial of a civil proceeding"]; *Kulas v. Flores* (2001) 255 F.3d 780, 786 [judge properly exercised discretion by removing pro se plaintiff from the courtroom during civil trial], citing *Fillippon v. Albion Vein Slate Co.* (1919) 250 U.S. 76 [parties in civil trial have right to be present in person *or by counsel*].)

Raimondo argues there is no case law requiring a litigant to be physically present in court to meet due process requirements. We agree to the extent SDTC failed to establish that such a constitutional right exists. In addition, no evidence showed that Arias or others were actually prevented from accessing the courts. Even if Arias had been deported, it was not shown that he would be unable to pursue his claims from outside the United States. We note he presented not one, but two civil claims, in which he received settlements. Indeed, Flores participated in the litigation of his claim while residing in Mexico. SDTC failed to meet the high degree of certainty required under the clear and convincing evidence standard. Therefore, we cannot find that a constitutional violation was established here. Accordingly, we affirm the dismissal of count one with prejudice. (*In the Matter of Kroff*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 843.)

D. Count Two: Moral Turpitude, Dishonesty, and Corruption (§ 6106)

Similar to count one, count two of the ANDC alleged Raimondo "conspired with and enlisted agents of the federal government" to have Arias and others deported so as to prevent them from exercising their right of access to the courts. The ANDC alleged Raimondo disclosed private, personal information of Arias and others—information that he had "only as a lawyer"—to retaliate against them. Count two also alleged Raimondo "admitted and bragged" that it was his "pattern and practice" to disclose this information in order to have people deported and

removed from the United States. Count two ultimately charges that Raimondo's actions involved moral turpitude, dishonesty, and corruption in violation of section 6106. That section provides, in part, that the commission of any act involving, moral turpitude, dishonesty, or corruption constitutes cause for suspension or disbarment.

The hearing judge found no culpability under count two and dismissed it with prejudice. He determined SDTC failed to establish Raimondo made any misrepresentations or engaged in a corrupt scheme. In addition, the judge found Raimondo had a sincere and honest belief his actions were ethical and appropriate. (*In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1, 10-11 [honest and sincere belief in justifiability of actions may preclude moral turpitude finding].) Further, the judge found no violation of clearly established law. Rather, the judge stated that the evidence supported Raimondo's claim that his intentions in inquiring into opponents' immigration statuses was to support his complaints against CLRA and/or to develop affirmative defenses. The record is clear that Raimondo did not threaten the opponents or their attorneys. (Cf. *Lindenbaum v. State Bar* (1945) 26 Cal.2d 565 [moral turpitude where attorney made direct threats to force payment of legal fees and when threats were unsuccessful, reported clients to immigration authorities].) When he learned about a California Senate bill that would prohibit such behavior, he stopped asking Brar about the legal status of his opponents, despite disagreeing with the bill's propriety. The judge found this demonstrated Raimondo was aware of and appreciated his duties under the law.

On review, SDTC argues Raimondo is culpable under section 6106, characterizing Raimondo's actions as using illegitimate means to achieve a legitimate end. SDTC alleges it was dishonest for Raimondo to use depositions and an arbitration to "secretly" arrange for the

"capture and deportation" of Arias and Flores.[36] SDTC alleges this evidences a moral turpitude violation because Raimondo concealed the true purpose of the depositions and arbitration, disregarding the right of access to the courts and constituting abuse of the judicial process. SDTC argues the depositions and arbitration were legitimate proceedings that were used to set up federal agents to deport opposing litigants. Essentially, SDTC bases culpability on the theory Raimondo acted with an improper intent. This argument ignores that Raimondo did not compel Arias's appearance after the deposition was cancelled and that Raimondo did not use the settlement conference as an opportunity to deport Arias. Further, there is no evidence of an in-person deposition or arbitration in the Flores matter, as Flores resided in Mexico.

In assessing whether moral turpitude is involved in a matter, the hearing judge is in the best position to determine issues of a respondent's intent, state of mind, good faith, and reasonable beliefs and actions. (*In the Matter of Respondent H*, *supra*, 2 Cal. State Bar Ct. Rptr. at p. 241.) Here, the judge determined Raimondo's intent did not involve moral turpitude as Raimondo acted to discern whether CRLA was disqualified from representing his opponents and/or to determine any affirmative defenses. To successfully challenge this finding, SDTC "must demonstrate that the findings are not sustained by convincing proof and to a reasonable certainty. [Citation.] Merely repeating conflicts in the evidence does not satisfy this burden. [Citation.]" (*McKnight v. State Bar*, *supra*, 53 Cal.3d at p. 1032, citing *Kelly v. State Bar* (1988) 45 Cal.3d 649, 655-656.)

SDTC views the evidence as showing a nefarious intent, that Raimondo desired to have opponents deported. However, as detailed *ante*, reasonable inferences must be resolved in Raimondo's favor, and it was reasonable for the hearing judge to infer that Raimondo's goal was

[36] SDTC included Masedo and Mendez in this argument. However, as discussed *ante*, we do not consider Raimondo's actions related to these individuals for determining culpability or aggravation.

not to have opponents deported based on Raimondo's credible testimony. (*In the Matter of DeMassa*, *supra*, 1 Cal. State Bar Ct. Rptr. at p. 749 [reasonable doubts resolved in favor of respondent].) Raimondo did not compel Arias's appearance at a deposition. He also attempted to preclude Masedo from attending a scheduled deposition, or seek his arrest or removal at the settlement conference, and he tried to stop the Mendez arbitration. He informed Brar that he was asking for immigration statuses in order to ascertain whether CRLA was misusing public funds. The judge's finding regarding Raimondo's intent is supported by the record and SDTC has failed to show that the hearing judge's finding should be disturbed. We affirm the dismissal of count two with prejudice. (*In the Matter of Kroff*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 843.)

E. Count Three: Failure to Support the Laws of the United States (§ 6068, subd. (a))

The ANDC alleged in count three that Raimondo violated section 215(a)(3) of the FLSA (29 U.S.C. § 215(a)(3)) by retaliating against Arias and others, which constitutes a violation of section 6068, subdivision (a). Section 215(a)(3) of the FLSA prohibits any person from discriminating against an employee "because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter . . . ."

The hearing judge found there was no clear and convincing evidence Raimondo violated section 215(a)(3) of the FLSA and dismissed count three with prejudice. First, the judge noted that the Ninth Circuit's decision in *Arias v. Raimondo*, *supra*, 860 F.3d 1185 was the first appellate case to hold that a retaliation claim may be made under the FLSA against an attorney for actions related to representing an employer. Therefore, at the time of Raimondo's alleged misconduct, there was no clear precedent that section 215(a)(3) of the FLSA would apply to him.[37] Accordingly, the judge found Raimondo's mistake of law and good faith belief would

[37] As noted, *ante*, in an unpublished opinion, the Sixth Circuit came to the opposite conclusion of the Ninth Circuit in deciding that an attorney could not be sued for FLSA retaliation. (*Diaz v. Longcore*, *supra*, 751 F. App'x 755.)

preclude a finding of a section 6068, subdivision (a), violation. Second, the judge found the evidence did not clearly establish that Raimondo violated the FLSA as the Ninth Circuit's decision involved a motion to dismiss for failure to state a claim, where the allegations against Raimondo were assumed to be true. Discovery had not been completed and Raimondo had not been given the opportunity to present a defense.[38] The judge determined SDTC did not sufficiently establish Raimondo had a retaliatory motive or intent that would constitute an FLSA violation. Credible evidence was presented that Raimondo acted with a justifiable reason which did not involve retaliation—he believed CRLA was improperly bringing class action claims and representing ineligible clients.

On review, SDTC argues that unrebutted testimony from its expert, David Borgen, established Raimondo violated the FLSA when he "engaged in prohibited retaliatory conduct by scheming with federal agents to have [Arias] deported." In addition, SDTC argues Raimondo violated the FLSA by reporting others, besides Arias, to ICE so that they would be arrested and deported, in retaliation for their claims against his clients.

Borgen testified as an expert as to what constitutes unlawful retaliation under the FLSA. Without citing the case name, Borgen testified about a federal case in California that held there was a cause of action for retaliation when an employer caused the deportation of an undocumented worker.[39] Borgen stated that Raimondo took an adverse action against Arias by reporting him to immigration authorities and advising them when and where they could

[38] Thus, SDTC's presentation of the Ninth Circuit's opinion as facts found is wholly unsupported.

[39] In *Singh v. Jutla & C.D. & R's Oil, Inc.* (N.D. Cal. 2002) 214 F.Supp.2d 1056, the court held that an FLSA retaliation claim could be made against an employer who reported an undocumented worker to Immigration and Naturalization Services (INS) after the employee filed a claim with the California Labor Commissioner. The employer had threatened to report the employee to INS unless the claim was dropped. INS later arrested and detained the employee.

apprehend Arias for deportation.[40] He testified that Raimondo's actions were retaliatory as they were done to dissuade people from making claims under the FLSA. However, he also stated that once a prima facie case has been made that an adverse action has occurred, "[t]he burden then shifts to the defendant to offer a non-retaliatory reason for his or her actions." Borgen stated that it would be up to the trier of fact to determine if the proffered non-retaliatory reason was simply a pretext to hide the apparent retaliatory motive.

The hearing judge found Borgen's testimony to be of limited value because he oversimplified the FLSA, was apparently not provided with information concerning Raimondo's non-retaliatory reasons for contacting ICE, and relied heavily on *Arias v. Raimondo*, *supra*, 860 F.3d 1185, which made no findings of fact and was decided before discovery was completed. In addition, the judge noted that Borgen had not dealt with a case in which an FLSA claim was brought against an employer's attorney.

We agree with the hearing judge. We had a different record and additional evidence to consider than the Ninth Circuit had in *Arias v. Raimondo*, *supra*, 860 F.3d 1185, where the decision was a ruling on a rule 12(b)(6) motion under the Federal Rules of Civil Procedure. In the Ninth Circuit, Raimondo did not have the opportunity to present evidence that he had a non-retaliatory reason for contacting ICE. Here, he had the opportunity to explain and temper the evidence that the Ninth Circuit considered. We disagree with the dissent's assertion that the Ninth Circuit's evaluation and commentary in *Arias v. Raimondo*, *supra*, 860 F.3d 1185 is "particularly relevant" here. A court does not make findings of fact in ruling on a rule 12(b)(6) motion. Rather, it takes all allegations of fact as true. (*Navarro v. Block* (9th Cir. 2001) 250 F.3d 729, 732; see also *Republican Party of N.C. v. Martin* (4th Cir. 1992) 980 F.2d 943, 952 ["A motion to dismiss under Rule 12(b)(6) tests the sufficiency of a complaint; importantly,

[40] As established previously, this never occurred.

it does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses"].) The Ninth Circuit commented on only some of the evidence that was presented here, which is an important distinction between the two proceedings. Here, the hearing judge found that Raimondo credibly testified he had a non-retaliatory purpose for contacting ICE. This finding is supported by the record. Therefore, we find SDTC has failed to establish by clear and convincing evidence that Raimondo violated the FLSA. Accordingly, we affirm the dismissal of count three with prejudice. (*In the Matter of Kroff*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 843.)

F. Count Four: Failure to Maintain Respect Due to the Court and Judicial Officers (§ 6068, subd. (b))

Count four of the ANDC alleged Raimondo violated section 6068, subdivision (b), in relation to Arias's and Flores's depositions. The ANDC charged that Raimondo used the depositions as part of a "conspiracy and scheme to have them arrested and deported from the United States to prevent them from pursuing their guaranteed right to access courts." Section 6068, subdivision (b), provides that it is the duty of an attorney to "maintain the respect due to the courts of justice and judicial officers." The hearing judge found no culpability under count four as SDTC failed to establish that Raimondo abused the discovery process or showed a lack of respect for the court and/or court process. In addition, the judge found that no decisional law exists that would establish a section 6068, subdivision (b), violation for the facts as charged in count four.

On review, SDTC argues the depositions were "court-sanctioned ancillary proceedings, with court-approved processes" and Raimondo deceptively misused depositions, attempting to have Arias, Flores, and Masedo deported to "derail claims against his clients."[41] Citing *In the*

[41] As discussed *ante,* Raimondo in fact tried to prevent Masedo from attending the deposition and we do not consider Raimondo's actions concerning Masedo in determining culpability or aggravation.

Matter of Harney, *supra*, 3 Cal. State Bar Ct. Rptr. 266, SDTC asserts Raimondo's actions amount to a non-disclosure, which abuses the court process. This argument was soundly rejected by the hearing judge as the facts of *Harney* are not analogous to the facts here. Further, the judge found that Raimondo scheduled the depositions for legitimate purposes, not to have opponents deported. This finding is supported by the record.

In addition, once Arias's attorneys cancelled the deposition, Raimondo did not compel his appearance or reschedule the deposition. Regarding an in-person deposition for Flores, it never took place as he resided in Mexico and, like Arias's deposition, no evidence suggests a specific time and place of the deposition was provided to immigration authorities. SDTC failed to establish a section 6068, subdivision (b), violation and we affirm the dismissal of count four with prejudice. (*In the Matter of Kroff*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 843.)

G. Count Five: Moral Turpitude, Dishonesty, and Corruption (§ 6106)

The charges in count five relate to the alleged FLSA violation discussed in count three. Count five alleged Raimondo's violation of section 215(a)(3) of the FLSA involved moral turpitude because Raimondo engaged in a "conspiracy and scheme" to have Arias, and others with FLSA protection, deported. The hearing judge dismissed count five as SDTC did not prove by clear and convincing evidence that Raimondo violated federal law or committed an act involving moral turpitude.

On review, SDTC makes similar arguments for count five as he did for count two (moral turpitude for constitutional violations), asserting Raimondo used illegitimate means to achieve legitimate ends. SDTC argues Raimondo "engaged in the ultimate act of retaliation" by giving DHS Arias's personal information and "forcing" Arias to appear at a deposition to have him removed from the United States, with no regard for what might happen to Arias or the impact on his family.

Similar to count two, we find SDTC has failed to successfully challenge the hearing judge's finding that Raimondo had legitimate reasons for giving opponents' information to DHS. In addition, the record shows Raimondo never "forced" Arias to appear at a deposition. When Arias's attorney's canceled, Raimondo did not reschedule. Raimondo also testified he did not intend that Arias would be deported and it was "almost inconceivable" there was a chance Arias would be deported given Arias was a low priority for ICE. An FLSA violation was not established and there is no clear and convincing evidence Raimondo acted with moral turpitude. Accordingly, we affirm the dismissal of count five with prejudice. (*In the Matter of Kroff*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 843.)

H. Count Six: Moral Turpitude, Dishonesty, and Corruption (§ 6106)

Count six alleged Raimondo violated section 6106 when he "willfully and intentionally engaged in a scheme calculated to thwart objective justice, harass legitimate claimants, impede the administration of justice, and take advantage of vulnerable individuals without justification." The hearing judge found no culpability under count six. The evidence showed Raimondo believed he could investigate opponents' immigration status and had a legitimate reason for doing so. He was honest with Brar about why he wanted the information. He was aware CRLA had been investigated in the past and he believed he could contribute to the effort to hold CRLA accountable. He asserts that his efforts to hold CRLA accountable were not a veiled attempt to have litigants removed. Raimondo also believed it was lawful to cooperate with law enforcement as necessary and when requested. Raimondo never made any threats or told opponents or CRLA that he had provided information to DHS.

On review, SDTC asserts Raimondo is culpable under count six because he attempted to have Arias and others deported in order "to gain the ultimate advantage" at trial. However, for the reasons stated *ante* throughout this opinion, SDTC failed to present sufficient evidence that

would establish Raimondo had improper intent given that there exists a reasonable and justifiable interpretation of Raimondo's actions. Likewise, the dissent's argument, that the hearing judge's credibility findings regarding Raimondo's intent are untenable, is, in our view, unpersuasive.

The evidence offered by SDTC does not meet our evidentiary standards for culpability as we have substantial doubts that Raimondo's actions were done with a corrupt purpose. While the May 2, 2013 email does suggest a motive for having opponents removed, it was one email sent in frustration and the larger part of the evidence confirms Raimondo's argument that his intent was to determine whether CRLA was representing eligible clients and to ascertain affirmative defenses. Further, he never harassed claimants or impeded the legal process. He knew that removal from the United States would not result in an automatic end to any case, especially since the Flores matter was litigated while Flores was in Mexico. Also, Raimondo was aware of ICE priorities and did not believe Arias would have been removed. Further, he credibly testified he did not intend to have him removed. He had valid reasons to contact DHS that did not involve arrest and removal. We understand SDTC's concerns for vulnerable undocumented workers and the decision to investigate Raimondo for misconduct. However, the overall record presented at trial here does not meet our high evidentiary standard to prove culpability. Raimondo presented credible evidence and plausible justifications for his actions. We affirm the dismissal of count six with prejudice. (*In the Matter of Kroff*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 843.)

I. Count Seven: Threatening Criminal and Administrative Charges to Obtain an Advantage in a Civil Dispute (Rule 5-100)

Count seven of the ANDC alleged Raimondo disclosed private information of employees who had brought claims against his clients to ICE in order to retaliate against them and have them removed from the United States. Count seven alleged this "scheme" and Raimondo's tactics were publicly known, which amounted to an improper threat under rule 5-100.

Rule 5-100 provides, "A member shall not threaten to present criminal, administrative, or disciplinary charges to obtain an advantage in a civil dispute." (See *In the Matter of Rodriguez* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 480 [misconduct where attorney sent direct threat to opposing counsel that he would go to the district attorney if civil case did not settle].)

The hearing judge found no misconduct because Raimondo never threatened to present criminal, administrative, or disciplinary charges. Rather, he directly contacted Brar to confirm the immigration status of Arias and others. Raimondo never disclosed this to opposing attorneys or the employees.

On review, SDTC argues Raimondo's "scheme" caused Arias to abandon his suit and settle his claims for less than they were worth. SDTC also asserts Raimondo's "deposition/deportation tactic" became known in the dairy community, which was a "threat" to others pursuing legitimate claims and is disciplinable. No specific evidence was introduced explaining how Arias's settlement was undervalued, and Arias's attorney in the state lawsuit declared to the court that the settlement was fair and reasonable. In addition, we cannot find culpability under rule 5-100 based on SDTC's tenuous argument that Raimondo's actions harmed the dairy community. SDTC did not present evidence of a specific threat. Further, there was no trial testimony concerning the representation of Flores, Zepeda, or Ochoa and no evidence they or Cajero or Ramirez ever learned that Raimondo had contacted immigration authorities. SDTC has failed to establish by clear and convincing evidence any violation of rule 5-100. Accordingly, we affirm the dismissal of count seven with prejudice. (*In the Matter of Kroff*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 843.)

IV. CONCLUSION

As Anthony Peter Raimondo is not culpable of the charges alleged in the ANDC, we affirm the hearing judge's dismissal of this case with prejudice. Raimondo may move for reimbursement of costs in accordance with Business and Professions Code section 6086.10, subdivision (d), and rule 5.131 of the Rules of Procedure of the State Bar.

McGILL, Acting P. J.

I CONCUR:

STOVITZ, J.[*]

DISSENTING OPINION OF HONN, J.:

Respectfully, I dissent. As is explained more fully *post*, the majority's opinion rests upon a thin and, in my view, untenable, credibility finding by the hearing judge. Given the serious misconduct alleged and proven at trial, I believe that our primary task of protecting the public compels us to disregard the hearing judge's credibility finding and recommend to the Supreme Court that Raimondo is culpable of moral turpitude.

Relevant Facts

The general facts are set forth in the majority's opinion. Aside from the above-mentioned credibility finding, I agree with most of the majority's described facts.

Raimondo represented dairies in the Central Valley of California with respect to employment related issues, including wage-hour compliance. One such dairy was Angelo Dairy, a small, family-owned dairy in San Joaquin County. Angelo Dairy was involved in a dispute with José Arnulfo Arias regarding employment issues. Arias was being represented by CRLA, and, as noted in the majority opinion, Raimondo strongly felt that CRLA was violating the law

[*] Retired Presiding Judge of the State Bar Court, serving as Review Judge Pro Tem by appointment of the California Supreme Court.

by representing undocumented persons. As such, Raimondo began to contact ICE and related agencies to discuss his status. Raimondo claims that his goal was not to deport Arias:

> "So I never even considered the possibility of getting Mr. Arias removed, A, because I felt like it was an impossibility, and, B, it wouldn't have done anything for me anyway, because it never would have been completed before the trial."

However, the facts show a different story. A brief summary of the facts relevant to this dissenting opinion is contained in a district court complaint filed by Arias who sued Raimondo and his client for violations of workplace laws. The matter was appealed after a successful motion to dismiss under rule 12(b)(6) of the Federal Rules of Civil Procedure—*Arias v. Raimondo* (9th Cir. 2017) 860 F.3d 1185 (9th Circuit Opinion).

The 9th Circuit Opinion and Raimondo's E-mails

The author of the opinion, Judge Stephen S. Trott, and the other two members of the panel, Judges Kim McLane Wardlaw and Ronald M. Gould, used the allegations of the complaint to set forth the operative facts.[42] The court quoted the following numbered paragraphs from the complaint in the district court case, under their caption "The Plot Thickens":

> "On June 1, 2011, ten weeks before the state court trial, the Angelos' attorney, Anthony Raimondo, set in motion an underhanded plan to derail Arias's lawsuit. Raimondo's plan involved enlisting the services of U.S. Immigration and Customs Enforcement ("ICE") to take Arias into custody at a scheduled deposition and then to remove him from the United States. A second part of Raimondo's plan was to block Arias's California Rural Legal Assistance attorney from representing him. This double barrel plan was captured in email messages back and forth between Raimondo, Joe Angelo, and ICE's forensic auditor Kulwinder Brar. Arias quoted these revealing exchanges in his current complaint:
>
> > "23. On June 1, 2011, Defendant RAIMONDO emailed Immigration and Custom Enforcement ("ICE") Forensic Auditor Kulwinder Brar, an employee of the U.S. Department of Homeland Security. In this email, Defendant RAIMONDO supplied Brar with information about Plaintiff's identity, and asked Brar to '[l]et me know if there is anything that you can do . . . .'

[42] The panel was not called upon to decide the merits, but to determine if the complaint stated a cause of action. However, given that the quoted allegations accurately reflected what was eventually presented as evidence in the disciplinary hearing in this case, the Ninth Circuit's evaluation of the case and its commentary is particularly relevant.

"24. On the same day, June 1, 2011, all parties to the 2006 Lawsuit attended a mediation in Stockton, California. The mediation was unsuccessful.

"25. On June 14, 2011, Defendant RAIMONDO sent Joe Angelo a text message stating, 'Immigration is trying to verify Arias [sic] status—let me know if you have any more info on him.' Joe Angelo responded by providing Defendant RAIMONDO with Plaintiff's driver's license number . . . .

"26. On June 15, 2011, Defendant RAIMONDO emailed to ICE Auditor Brar the information Joe Angelo had provided. In doing so, Defendant RAIMONDO stated, 'I hope this helps. [Plaintiff] will be attending a deposition next week. If there is an interest in apprehending him, please let me know so that we can make the necessary arrangements . . . .'

"27. On June 16, 2011, ICE Auditor Brar responded to Defendant RAIMONDO's email of June 1, 2011, stating that '[b]ased on our records he [Plaintiff] has no legal status. We will be forwarding this information to ERO [Enforcement and Removal Operations] and your contact information if they want to proceed with this matter . . . .'

"28. Defendant RAIMONDO replied to ICE Auditor Brar, asking her to '[p]lease let ERO know that they can expect our full cooperation and assistance', and to 'let me know if there is anything I can do to be of assistance to you.' Brar responded, 'No problem and we will get your contact information as soon as contact is made.'

"Arias's current complaint also alleged the impact of Raimondo's actions on him and his case, and Raimondo's pattern and practice of similar conduct in other cases:

"29. Plaintiff became aware on June 22, 2011 that Defendant had provided information concerning Plaintiff to the immigration authorities. Fearing that he would be deported and separated from his family, Plaintiff suffered anxiety, mental anguish, and other emotional distress from Defendant's retaliatory action.

"30. On July 11, 2011, one month before trial, the parties participated in a settlement conference. In lieu of proceeding to trial on the wage and hour claims comprised within the 2006 Lawsuit, Plaintiff entered into a settlement and release of those claims, due in substantial part to the threat of deportation created by Defendant's communications with ICE.

"31. On information and belief, Defendant RAIMONDO's actions against Plaintiff are reflective of and consistent with his pattern and practice of retaliating against employees who assert their workplace rights. In fact, Defendant RAIMONDO has stated in a declaration filed in a court action that

> it is his practice to investigate the immigration status of plaintiffs who have brought legal claims against his clients . . . .
>
> "32. On at least five additional occasions, and consistent with his pattern and practice, Defendant RAIMONDO has contacted ICE with respect to employees who have asserted their workplace rights against employers whom Defendant RAIMONDO has represented, and has offered his assistance to ICE in apprehending those employees . . . .
>
> "33. On May 2, 2013, Defendant RAIMONDO confirmed the above pattern and practice in an email he sent to Thomas Hester of the Office of Inspector General at the Legal Services Corporation, in which he stated, '*The time when I have had litigants deported, I have always simply taken action rather than make any threats. The attorneys find out when their clients are already gone.*'" (*Arias v. Raimondo*, *supra*, 860 F.3d at pp. 1187-1188, original italics.)

The court of appeals reversed the district court and found that the allegations properly stated a cause of action against Raimondo as the attorney for the dairy.[43]

All of the quoted emails from Arias's complaint were received as evidence in the trial. Despite claiming that he had "never even considered the possibility of getting Mr. Arias removed," in fact, Raimondo repeatedly contacted immigration authorities offering to help in deporting Arias.[44]

As noted in the allegations at paragraph 32 of Arias's complaint, and as borne out by the evidence in the disciplinary trial, Raimondo had a plan and practice of contacting ICE or related agencies in seeking to "remove" litigants in his other clients' cases. Those other matters are

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[43] The matter was remanded to the district court for further proceedings. It was settled before trial.

[44] Raimondo's motive was clear: the dairy he represented was having financial problems and was likely to lose the lawsuit. Raimondo acknowledged this fact at the trial:

> "[The dairy's] compliance on labor regulations and the Labor Code was an absolute disaster . . . . There were no time records. As much as you could have in a wage-and-hour case, it was an absolute dead-bang loser of a case for them. [¶] . . . [¶] I mean, I can't imagine a scenario where [Angelo Dairy] would not lose at trial . . . . They were dead in the water on this case at trial, and by this point, the federal regulations had changed, and now CRLA could ask for attorney's fees . . . ."

described in the majority's opinion, and the operative language in each of the cases is recited below. The pattern of misconduct becomes evident.

Raimondo's Pattern and Practice

The Arias case was not an isolated example of Raimondo's misconduct. It was just one of many with strikingly similar methods of operation. Emails in the record involving other employees are quoted below.

- After giving ICE Ramirez' Social Security number and date of birth he stated*: "[I]f Removal is interested in this person, I would be pleased to assist them."*
- *"I just wanted to check . . . removal's interest in the individuals we have discussed. I need to take action in my cases, but if removal is interested, I will hold off so that they can arrange for the necessary arrests. Of course, I will be pleased to cooperate and assist in any way I can to ensure that any arrests are accomplished efficiently and safely."*
- *"Are you able to verify his status? Is removal interested in taking action against him?"*
- *"Please let me know if there is anything further that you need from me."*
- *"This is what we know about the guy I was talking about. Please let me know his status, and we are willing to help if he meets the standards for removal."*
- *"I have another person . . . where I have reason to believe that she is undocumented. Can you check this out for me? If removal is interested in her, we would be pleased to assist."*

In at least one case, the matter involving Mr. Mendez, Raimondo was successful in deporting a plaintiff that had sued his client. Based on information Raimondo provided to the authorities, Mr. Mendez was apprehended while in the parking lot at Raimondo's office immediately after an arbitration hearing at that office. While walking out with his union representative, ICE agents in a van drove into the parking lot, and blocked Mendez from getting to his vehicle that contained his daughter and granddaughter. He was immediately taken to a detention center and then deported. Notably, in this case, Mr. Mendez was *not* represented by CRLA, but by a private attorney.

The Hearing Judge's Credibility Findings

As reported in the majority opinion, the hearing judge found Raimondo's testimony "extremely credible, honest, forthright, direct, and specific." Of course, the majority opinion is correct in acknowledging the special role credibility findings at trial serve in evaluating cases on review. We are properly reluctant to deviate from an *appropriate* credibility finding, since, as the majority correctly points out, the trial judge "had the opportunity to evaluate conflicting statements after observing the demeanor of the witnesses and the character of their testimony." (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1055.) As such, we normally give great weight to the findings of the hearing judge as to matters of credibility.

Among Raimondo's assertions that the hearing judge found credible was that the multiple statements made, and emails sent by Raimondo reflected a personal commitment to prevent the waste of taxpayer money by government funded agencies providing litigation defense to undocumented persons. I have no reason to disagree. Certainly, Raimondo's advocacy of this cause was proper and allowable. Confronting the agencies who he felt were violating the law was his right.

But why, then, were almost all assertions of a CRLA suspected violation, which were repeatedly made to ICE, DHS, and related agencies, accompanied by an offer to assist in the "removal" (i.e., deportation) of undocumented persons against whom he had litigation? Removal certainly was not a necessary action integral to his goal of avoiding the waste of taxpayer money.

Raimondo's answer to this question, which was believed by the hearing judge and honored by the majority as a "credibility finding," was that he did so solely for the purpose of showing cooperation and loyalty with ICE and DHS and to help his clients in the event they were ever audited by these agencies. He testified that he wanted to remain credible to Brar by

showing that his client was making a good effort to comply with the law. He offered no other rationale for seeking their deportation. But he did provide clarity for the real reason for his actions, when he stated, "*The times when I have had litigants deported, I have always simply taken action rather than make any threats. The attorneys find out when their clients are already gone.*"

The Hearing Judge's Credibility Finding Was Based on Insufficient Evidence and Was Inherently Improbable Given the Extensive Documentary Evidence in the Record

As appellate judges, we are not bound to credibility findings that strain credulity. In fact, there are situations where the law does not require appellate courts to accept credibility findings at face value. In one case, our court has chosen to disregard credibility findings where the trier of fact found that two witnesses were not credible. The Review Department disagreed with the hearing judge's finding:

> "Credibility findings by the finder of fact are to be accorded great weight by us and we should be reluctant to deviate from them. [Citations.] *Nonetheless, the findings must be supported by the record. On our independent review of the record, we find insufficient evidence to support the challenged findings and we decline to adopt them.*" (*In the Matter of DeMassa* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 737, 748, italics added.)

Similarly, *In the Matter of Harney* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 266, 280, we overturned the hearing judge's credibility finding that the respondent held an honest but unreasonable belief that MICRA limitations on fees in medical cases did not apply to his case. On review we concluded that, while credibility findings are entitled to great weight, under the facts of the case and given the respondent's superior knowledge of MICRA issues, we found his failure to reveal the limitations "was not reasonable under the circumstances and misled both the court and his client on a material matter to the detriment of his client and for respondent's own gain." Courts will also disregard a credibility finding if the finding is inherently improbable (see *Consolidated Irrigation Dist. v. City of Selma* (2012) 204 Cal.App.4th 187, 201) or if

supplemented by the Review Department's own findings interpreting documentary evidence. (*In the Matter of Respondent F* (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17.)

Inferences Should Not be Drawn in Favor of Raimondo

The majority also asserts that all reasonable doubts or conflicting inferences should be found in favor of Raimondo. I disagree, considering the serious misconduct that has occurred in this matter. In a different procedural setting than the present case, the Supreme Court gave us guidance that may assist in evaluating cases such as this. In *In re Glass* (2014) 58 Cal.4th 500, the court stated the following when evaluating the inferences to draw, in that case, to find moral fitness:

> "The Review Department majority believed it was reasonable to draw all inferences in favor of Glass . . . . Although an applicant ordinarily receives the benefit of the doubt as to 'conflicting equally reasonable inferences' concerning moral fitness [citation], the State Bar Court majority failed to recognize that this rule does not materially assist applicants who have engaged in serious misconduct. This is because '[w]here serious or criminal misconduct is involved, positive inferences about the applicant's moral character are more difficult to draw, and negative character inferences are stronger and *more reasonable.*'" (*Id*. at p. 521, original italics.)

Clearly, a moral character admission case has many features different from the present matter. But we ought to heed the Supreme Court's finding that in evaluating inferences, we should consider the seriousness of the underlying misconduct.

Raimondo developed the rationalization that he was entitled to seek to, and sometimes successfully deport his opponents, so he could help his clients show loyalty and cooperation to ICE and DHS and so he could remain credible to Brar. He should not receive any positive inferences as the majority suggests—neither of these explanations warrants the abandonment of an attorney's ethical duties.

Conclusion

The majority opinion rests on a hearing judge's finding that Raimondo was credible when he gave the reasons for contacting ICE and DHS—promoting loyalty, cooperation, and building trust. The majority appears to feel compelled to respect that finding, despite its fragile connection to reality and the contradictory written evidence. In my opinion, the only reasonable way this pattern of misconduct can be viewed is as an improper litigation tactic. Raimondo sought to eliminate his opposition by removal in order to win his case. If we strip away this manufactured defense, we are left with a lawyer using his privileged status as an officer of the court to commit very serious misconduct.

Was his misconduct serious? We know it was. The Fair Labor Standards Act (FLSA), 29 U.S.C. section 201 et seq., has long recognized this behavior as a violation of its anti-retaliation rules. (*Contreras v. Corinthian Vigor Ins. Brokerage, Inc.* (N.D.Cal. 1998) 25 F.Supp.2d 1053, 1058-1059; *Singh v. Jutla & C.D. & R's Oil, Inc.* (N.D.Cal. 2002) 214 F.Supp.2d 1056, 1059.)

Further, after the acts set forth in the Amended Notice of Disciplinary Charges occurred, the California Legislature enacted Business and Professions Code, section 6103.7, a law that formally recognized this conduct as grounds for discipline. As the majority opinion acknowledges in a footnote:

> "The legislative history states the bill was 'necessary to *strengthen* the retaliation laws that currently protect all workers . . . ." (Sen. Com. on Labor and Industrial Relations, Analysis of Sen. Bill No. 666 (2013-2014 Reg. Sess.) April 24, 2013, italics added.) The bill provided for attorney discipline if an attorney reports a worker based on immigration status, and provided additional protections in the law to protect workers against retaliation when exercising their employment rights. (*Ibid*.)"

(See also *In the Matter of Rubin* (Review Dept. 2021) 5 Cal. State Bar Ct. Rptr. 797.)

The violations of the FLSA were properly plead in the Amended Notice of Disciplinary Charges and were proven as a violation of Business and Professions Code section 6068, subdivision (a). And the actions of Raimondo in seeking to deport the plaintiffs in his lawsuits constitute acts of moral turpitude under section 6106.

Raimondo's misconduct is as serious as it is transparent. The credibility finding that allowed that misconduct to stand should be disregarded. I would find that the hearing judge's and the majority's blanket dismissals were inappropriate. Raimondo has committed several acts of moral turpitude and I would recommend he be disciplined with at least three months' actual suspension.