Responses and Replies

3:24-cv-01511-CVR Schiff v. Internal Revenue Services et al

United States District Court

District of Puerto Rico

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RESPONSE to Motion filed by Peter David Schiff Re: [31] MOTION to Dismiss for Failure to State a Claim MOTION to Dismiss/Lack of Jurisdiction as to Peter David Schiff filed by Natalia Zequeira-Diaz, Office of the Commissioner of Financial Institutions of Puerto Rico filed by Peter David Schiff. (Torres-Pizarro, Ismael)

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

PETER DAVID SCHIFF Plaintiff, v. INTERNAL REVENUE SERVICE (IRS) et al., Defendants,	CIVIL NO. 24-01511 TRIAL BY JURY DEMANDED

RESPONSE TO MOTION DEFENDANTS' MOTION TO DISMISS UNDER FEDERAL RULES OF CIVIL PROCEDURE 12(B)(1) AND 12(B)(6) Docket Doc. no 31

TO THE HONORABLE COURT:

COMES NOW, Plaintiff Peter D. Schiff, by and through undersigned counsel, and respectfully submits this Response to Defendants' Motion to Dismiss filed under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). This motion addresses the claims and arguments raised by Defendants and provides counterarguments to ensure the Court considers the full merits of Plaintiff's case and through undersigned counsel, respectfully moves this Court TO DISMISS DEFENDANT MOTION. In support of this motion, Plaintiff states as follows:

Counterarguments to I. INTRODUCTION

The Introduction of Defendants' Motion to Dismiss outlines their assertion that Plaintiff's claims are barred due to (1) lawful regulatory actions by OCIF, (2) voluntary waiver of claims in the Consent Order, and (3) untimeliness and procedural defects. Below please find the counterarguments addressing these points.

1. Regulatory Actions Were Not Lawful

"The actions of OCIF and the IRS were motivated by a conspiracy to destroy Plaintiff's reputation and financial standing for political purposes and not based on any legitimate regulatory concerns."

FACTS:

Plaintiff had previously entered into discussions to sell the bank as a stock sale (including the bank's license to operate in Puerto Rico) to Qenta (formerly known as Emergent Technologies), a deal which would have provided Plaintiff with over $17.5 million in cash, gold, and stock in 2022. This mostly stock sale was initially blocked by OCIF on May 16th,

2022, allegedly at the request of the IRS/J5, despite full disclosures having been made about the transaction, Qenta being eminently qualified to own and operate the bank, OCIF Commissioner Zequeira having initially enthusiastically supported the stock sale, and said sale being in the best interest of not only the Plaintiff, but customers, employees, creditors, and Puerto Rico. OCIF offered the bank an opportunity to submit a motion for reconsideration, which the bank timely filed. The three reasons given by OCIF for denial were a simple misunderstanding and some missing information, all of which were fairly easy to correct, and which were in fact corrected within the 20 days given to file the motion for reconsideration. Nevertheless, none of those three reasons were lack of capitalization, nor the fact the sale would result in Plaintiff owning stock in Qenta as alleged for the first time in the Cease and Desist. However, as plaintiff leaned for the first time in April of 2024, OCIF seemed to never intend to consider the motion for reconsideration, as the Commissioner had allegedly already conspired with the IRS to shut down the bank and set a date in June 2022 to hold a press conference to announce that action to the world. Had the sale to Qenta been approved as planned, there would have been no basis to hold the press conference, and J5/IRS would not have been able to save face.

However, posteriorly OCIF and the Trustee, did approve the sale of the bank's assets by the bank, including its customer base, to Qenta anyway, but for a fraction of what Plaintiff would have received had OCIF approved the bank's stock sale (on the date the banks' assets sale was approved, the bank was already in receivership with specific OCIF instructions to the trustee to completely liquidate it). The trustee appointed by OCIF, failed to exert independent judgment, and followed without question OCIF's instructions to approve the bank's assets sale and liquidation instead of its independent fiduciary duty for the bank's customers, creditors, and investors as he should have done. OCIF and the Trustee approved the sale of virtually all of the bank's assets to Qenta for just $1.25 million in cash, or seven cents on the dollar, instead of trying to get the highest possible value for all parties involved, thus also failing to comply with his fiduciary duties. Up to this date, the bank has not yet been liquidated. This delay in liquidating the bank, is still causing further damages to Plaintiff (as any proceeds left after paying banks' liabilities and receivership reasonable expenses would have returned to him) and, it is also causing damages to bank's customers as the available proceeds go first to cover receivership costs and not to pay banks customers' deposits; thus, an imminent and clear conflict of interests between the Trustee and the bank has been created by the delay. Also, since Plaintiff's occupation involves customers trusting him with their money, the unnecessary delay in the return of customer funds continues to damage his reputation among customers, potential customers, and peers, and diminish his earnings capacity.

It is a well-known principle in mergers & acquisitions that an asset sale usually brings less proceeds to the table than a stock sale, as the former normally includes goodwill and other intangibles rights and assets (like, for instance, operating licenses, and management know-how) which cause the overall firm value to be much higher than its individual pieces, sort of a gestalt effect. A financial regulator like OCIF knows or should have known this; thus, it is incomprehensible why such a regulator opted for an asset sale when a far more profitable

stock sale was available. Instead, OCIF and the Trustee violated their fiduciary duties by failing to consider transactions that put the bank in the strongest financial position. They should have sought a resolution that provided as much money as possible to achieve their statutory mission to protect the bank's customers and their deposits. Approving the original sale to Qenta would have provided the bank with $8 million in additional capital, to fully protect the customer's deposits and fully cover the bank's other liabilities and expenses. A total liquidation in receivership should have been a last resort. A course of action a prudent regulator would only have taken if no better option were available. The action Ms. Zequeira chose was so unnecessarily reckless that Plaintiff believes she must have been guided by an an ulterior motive for choosing it. In fact, shortly after the bank was put into receivership a well-funded investor group headed by a former OCIF Commissioner and former OCIF executives reached out to Ms. Zequeira to buy the bank. They would have infused it with millions of dollars in additional capital to fully protect all customer accounts, fully paid all of the bank's outstanding trade liabilities, and paid several million dollars to the Plaintiff for his shares in the bank. But Ms. Zequeira refused to even discuss their offer. It is believed that her refusal resulted from her conspiracy with the IRS to shut down the bank as a publicity stunt for the J5, rather than act in the best interest of customers, creditors, Puerto Rico, and the Plaintiff.

IRS Chief Jim Lee began his prepared remarks at the conference by stating "four years ago this week" the J5 was formed. Plaintiff believes that the press conference was specifically scheduled to coincide with this anniversary, to commemorate the occasion by announcing the J5's only enforcement "success."

As stated above, is a well-established principle in mergers and acquisitions that an asset sale typically generates less proceeds than a stock sale. This is because an asset sale often includes the sale of real property, personal property, and intangible property but does not include assets such as goodwill and operating licenses, plus the transfer of liabilities associated with the seller's relationship to the property. In contrast, a stock sale involves the transfer of ownership of the entire company, including its assets and liabilities, Am. Crystal Sugar Co. v. County of Polk, 2009 Minn. Tax LEXIS 16, which can result in a higher overall firm value. In the case of Shockley v. Comm'r, it was noted that structuring a transaction as a stock sale rather than an asset sale could result in significant cash savings. Specifically, the analysis provided in the case showed that a stock sale could save $11 million compared to an asset sale, highlighting the financial benefits of stock sales over asset sales. Shockley v. Comm'r, T.C. Memo 2015-113, Shockley v. Comm'r, 872 F.3d 1235. Furthermore, in the case of Tenneco Inc. v. Enterprise Prods. Co., it was demonstrated that even when an asset sale was initially proposed, the final transaction was structured as a stock sale, which was more advantageous for tax purposes. This case underscores the preference for stock sales in certain scenarios due to the associated financial benefits. Tenneco Inc. v. Enterprise Prods. Co., 925 S.W.2d 640. Additionally, the case of Cullifer v. Comm'r explains that buyers generally prefer asset purchases because they can receive a new basis equal to the purchase price, while sellers prefer stock sales to avoid the corporate-level tax triggered by asset sales. This preference for stock sales by sellers is due

to the deferral of corporate-level tax liability, which can result in higher sales for the stock. This new basis can provide significant tax benefits to the buyer. On the other hand, sellers typically prefer stock sales to avoid the corporate-level tax that would be triggered in an asset sale. However, the case also notes that because a stock sale merely defers the corporate-level tax liability, it could result in a lower sale price compared to an asset sale for this reason. Cullifer v. Comm'r, T.C. Memo 2014-208. In the current situation, the seller (Trustee) acted contrary to all financial logical reasons as the individual assets sales pays more taxes right away, thus less proceeds left to distribute to the customers and any deferred tax created in a stock sale will be borne by the buying company and not the current customers. In the context of banking and thrift institution acquisitions, it is noted that such acquisitions are seldom consummated solely for the purpose of acquiring a portfolio of interest-bearing assets. Instead, premiums are often paid to enter new markets (like Qenta was doing in PR), acquire established branches with existing customer relationships, and other factors that contribute to the overall firm value. Specifically, FAS 72 (Statement of Financial Accounting Standards No. 72, refers to the guidelines set by the Financial Accounting Standards Board -FASB- concerning accounting for certain acquisitions of banking or thrift institutions. Under FAS 72, companies are required to recognize specific assets and liabilities when they acquire another entity, particularly banking or financial institutions), which states that such acquisitions are typically driven by the desire to enter new markets, acquire established branches with existing customer relationships, and acquire an existing deposit base, among other factors. See also United States Court of Appeals for the Federal Circuit Anchor Sav. Bank, FSB v. United States, 81 Fed. Cl where the Government allowed the bank to count supervisory goodwill it received in the mergers as an asset and to amortize the goodwill over a period of many years. However, that approach changed after Congress enacted the FIRREA in 1989, and because the bank was no longer allowed to count supervisory goodwill as part of its capital it had to sell assets to raise capital, resulting in a loss of profit. Also, as an Act 22 grantee, Plaintiff would have paid zero capital gains tax on a stock sale.

These cases and principles support the assertion that asset sales typically bring less proceeds to the table than stock sales, and financial regulators like OCIF should be aware of these dynamics when making decisions that impact the financial outcomes of such transactions. This counters the claim that Defendants acted lawfully, as Plaintiff alleges malicious and politically motivated actions outside OCIF's statutory authority.

"OCIF claims the sale of the bank was denied on May 16, 2022, 'based on concerns that the proposed transaction failed to adequately address EPB's financial deficiencies.' This is not true. OCIF listed three specific reasons for that denial, and financial deficiencies or regulatory standards were not mentioned then."

As stated before: The three reasons given by OCIF for denial were a simple misunderstanding and some missing information, all of which were fairly easy to correct. Nevertheless, none of those three reasons were lack of capitalization, nor the fact the sale would result in Plaintiff owning stock in Qenta.

Early on June 30, 2022, OCIF issued a cease-and-desist order as a "a summary emergency action that seeks to prevent an imminent danger for the security of the industry of international financial institutions" (phrase taken from the first paragraph of said cease and desist order), under the pretense that the bank was "critically insolvent" and lacked sufficed capital to operate. This despite the fact that the bank had no debt, made no loans, had no delinquent bills, and held millions in cash above what was owed to depositors. Also, in the cease-and-desist order, Ms. Zequeira falsely claimed she denied the sale to Qenta because she recently discovered that Mr. Schiff would own 4% of Qenta stock after the sale. Despite being fully informed verbally and in writing, and having discussed the terms of the stock sale with Plaintiff at length during the meeting seven months earlier, even if she was being honest and forgot everything she was told and read about the stock sale, she never gave Plaintiff the opportunity to restructure the sale to Qenta for consideration other than stock and that reason was not among the three factors OCIF raised before for a denial that was only based on a simple misunderstanding and some missing information, all of which were fairly easy to correct and were, in fact, corrected in the reconsideration motion. Notwithstanding that fact, the reason stated in the press conference was "lack of capitalization", a deficiency that Zequeira assured plaintiff could be cured by Qenta after the stock sale was approved, not the fact that sale would result in Plaintiff owning stock in Qenta. The contradictions and arbitrary behavior from OCIF and Ms. Zequeira are clear.

Therefore, at all times between Plaintiff's Nov. 10, 2021, offer to inject $7-millions in capital, and the issuance of the June 30, 2022, cease and desist order, Ms. Zequeira knew that Plaintiff stood ready to inject $7 million in capital on request, yet neither Ms. Zequeira nor anyone at OCIF informed Schiff or anyone at Euro Pacific Bank, that additional capital was needed or required to approve the stock sale. But Ms. Zequeira would not allow the capital injection, since such an action would have destroyed OCIF's only public excuse to close the bank, which was that it was "critically insolvent". In fact, despite Ms. Zequeira's Nov. 10, 2021, verbal assurance to Plaintiff that the bank did not need any additional capital, Plaintiff personally added $1.9 million to cover the bank's operating costs, Ms. Zequeira was also well aware that Mr. Schiff had been personally covering the bank's operating losses prior to their Nov. 10 2021 meeting, and the Mr. Schiff had signed a letter to the bank's auditor, Kevane Grant Thornton LLP, committing to his ongoing financial support of the bank to cover any operating losses, thus knew no customer deposits were at risk, and that Mr. Schiff was fully committed and had the financial resources, to always protect customers.

Most significantly, Plaintiff's bank was not even insolvent, as was confirmed by Ms. Zequeira herself, in the Consent Order for the liquidation and dissolution of the bank, dated Aug. 9th, 2022. The order acknowledged that "As of June 30th, 2022, Euro Pacific had an excess cash position to cover all deposits." The bank's unusually strong cash position was due to its unique business model of being a 100% reserve bank. That meant the bank made no loans and held all customers' deposits in cash. The bank also had no debt on its balance sheet, as Plaintiff provided all of the bank's capital as equity. As a result, Plaintiff's bank may have been the most solvent bank in the world. If regulators often find it best to allow insolvent banks to self-liquidate, surely it would have been even better to allow a completely solvent

bank to self-liquidate, especially one with a balance sheet as pristine as plaintiff's bank. Plaintiff could have completed the entire liquidation in a matter of weeks, with about two million in cash left over for him. All that was involved was wiring out the customers their money and paying off a few hundred thousand in outstanding bills. The bank's office lease was up a few months later, and the furniture and other office equipment were easy to sell. In fact, Plaintiff could have used the office space and the equipment in his other business. But, since Ms. Zequeira changed her mind on self-liquidation, not one penny of customer funds has been returned in over 30 months, and the two million that would have been left over for the owner, Mr. Schiff, has been consumed. Worse, in April of this year, Mr. Karl Hunt, one of the bank's customers, committed suicide. In his note, he identified the financial hardship caused by his life's savings frozen in Plaintiff's bank as the reason.

Plaintiff directly challenges the justification for OCIF's actions, emphasizing that alleged deficiencies were not part of the stated reasons for the denial.

"Defendants acted in concert to block the lawful sale of EPB, despite Plaintiff's offer to inject $7 million into the bank, which would have been considerably more than enough to resolve any alleged deficiencies. These actions were not justified and caused significant financial harm to Plaintiff."

This demonstrates that Defendants' actions were not lawful but instead deliberately obstructive and harmful.

2. Waiver of Claims in the Consent Order

"OCIF claims that Plaintiff waived all claims in the consent order. Not correct. The plaintiff did not waive any personal claims but only waived claims that the bank may have had in his capacity as a director of a corporate entity. Also, the bank did not waive all claims, just some specific claims." This argument directly counters the Defendants' claim that the Consent Order waives Plaintiff's personal claims, as the waiver only applies to the corporate entity.

"The Consent Order's waiver provision explicitly applies only to the bank and its directors in their official capacity. It does not release Defendants from liability for their actions against Plaintiff in his personal capacity".

Facing the dire situation created by the defamatory June 30th, 2022, Press Conference, the unexpected rejection of the sale of the bank to Qenta, the issuance of a Cease-and-Desist order, and his bank being unnecessarily placed into receivership, the Plaintiff was under severe duress. The stress of the situation presented additional emotional, economic, personal and psychological challenges, complicated by a COVID19 infection, as well (among other things, the plaintiff was in the middle of a defamation lawsuit against the press- Nine, network that owns 60 Minutes in Australia- over the same false allegations, which he ultimately won over a year later): As Ms. Zequeira originally enthusiastically supported the stock sale of the bank to Qenta in Nov. 2021, Plaintiff thinks it is apparent that her sudden change of direction was driven by Mr. Lee and other IRS agents acting on behalf of the IRS/J5, who were clearly the primary drivers of the alleged conspiracy, as they sought to

save face from a high-profile investigation, that was illegally leaked to the media, yet yielded no indictments. The IRS & J5 engaged in an illegal act of wrongful persecution with the sole objective of the destruction of Plaintiff's business and personal reputation. OCIF and the Trustee failed to exert independent judgment and instead opted, under the direction of Ms. Zequeira, to play along, thus committing illegal acts against Plaintiff, instead of looking for the best interest of the bank's customers and general creditors as well as Puerto Rico banking industry as OCIF & the Trustee main mission should be. This all became the alleged conspiracy to illegally shut down the bank and, in the way, damage Plaintiff personal & professional reputation and well as his businesses

Under such duress and in an environment that clearly voided Plaintiff's thoughts and actions, Plaintiff signed a deal with OCIF that provided for a 90-day liquidation process, with any remaining cash distributed to Plaintiff; thus, the administrative proceedings were never initiated. The promise of a quick liquidation process is the main consideration Plaintiff received for signing the agreement. It was, Plaintiff thought at the moment, a way to finish the nightmare that, unfortunately, continues today. Also, the Plaintiff's attorneys told him that OCIF was steadfast in its commitment to fully liquidate the bank, and that if the Plaintiff went to the administrative proceeding's hearing, Plaintiff would lose for sure. It was advised that OCIF would not believe the Plaintiff over the Commissioner, as her verbal representations that additional capital was not needed were not in writing. Plus, the lawyers advised the Plaintiff that OCIF would always give the Commissioner the benefit of the doubt that she was operating in good faith. It was not until April of 2024 that Plaintiff finally got the evidence to prove she was not.

The plaintiff had three lawyers he was working with at the time. All three of them pressured him to sign the agreement. The plaintiff was reluctant and could provide further evidence by waiving attorney-client privilege limited to this specific question, if needed. The main thing Plaintiff hoped to gain was speedy liquidation of the bank, so the customers could get their money back quickly, and with remaining capital plus funds from the asset sale to Qenta, Plaintiff expected some proceeds would be left to recover some of the investment loss. The Plaintiff's lawyers represented to him it was especially important to cooperate with the Commissioner to show that he was innocent of money laundering and tax evasion. The fear of the burden of an unjust criminal investigation in PR as well as everything else going on, was a heavy toll for Plaintiff. Plaintiff's lawyers also represented that by avoiding the adversarial administrative process, Plaintiff could try again to get the Commissioner to approve the stock sale of the bank, as she (that is, Ms. Zequeira) & OCIF would be, somehow more sympathetic to the cause. Of course, at the time Plaintiff was unaware of the alleged conspiracy between Ms. Zequeira and the IRS, which prevented him from acting in the best interest of customers, employees, or himself. Plaintiff was also told that his mere suspicions that the Commissioner was being dishonest did not count and since at the time Plaintiff did not have any actual evidence to back up that suspicion, Plaintiff reluctantly signed the agreement under duress.

This release is limited to claims made by Euro Pacific Bank, the entity, its directors, or officers, that specifically relate to claims and damages that Euro Pacific Bank itself may have, not to claims made by Mr. Schiff for damages he personally suffered individually or as a shareholder. It reads in the pertinent part:

> Euro Pacific, its directors and officers , do hereby release and forever discharge the OCIF, its attorneys, insurers, assignees, transferors, transferees, principals, partners, officers, directors, employees, agents servants, subsidiaries, parent corporations, affiliates, successors, stockholders, agents and representatives, including the Trustee (the "Releasee(s)"), from any and all claims, demands, damages, debts, liabilities, obligations, contracts, agreements, causes of action, suits, of whatever nature, character or description, that **Euro Pacific may have** or may hereafter have or claim t o have against each other Releasee(s) arising out of or related to the facts or allegations made in any of the papers or pleadings filed in the Complaint and any conduct, including actions and omissions, to enforce the Complaint. (**Emphasis added**)

Section V, paragraph 11, the mutual non-disparagement clause, not only applies to directors, but it specifically reads that it also applies to "Peter Schiff." So that is the only section that would include Plaintiff in any capacity, including his capacity as a shareholder. If the director clause cited above alone were sufficient to include Plaintiff at all times, there would have been no reason to name the Plaintiff personally in that particular paragraph, as the Plaintiff was a director. However, the release, which is in paragraph 18, does not name Plaintiff personally as a releasing party. It only references directors. This is in sharp contrast to paragraph 11, which applied to both directors and Peter Schiff.

The Consent Order with the release was signed by Plaintiff once, on behalf of Euro Pacific Bank. Shareholders cannot sign up for corporations. Only officers or directors can sign on behalf of a corporate entity as they are agents of the corporation, shareholders are not. However, the liquidation plan, signed on Sept. 1st, about three weeks later, was signed by Plaintiff twice. Once on behalf of the bank itself, with Plaintiff signing in to his capacity as a director and a second time by Plaintiff personally, in his capacity as a shareholder. The fact that Plaintiff specifically signed off on the liquidation plan personally as a shareholder, as well as on behalf of the bank in his capacity as a director but only signed the Consent Order in his capacity as a director, proves the release applies to Plaintiff as director only and does not apply to him as a shareholder.

At the end, the agreement before Plaintiff's signature reads "I have been authorized to consent to the liquidation order for and on behalf of Euro Pacific." It is clear that Plaintiff was not signing on behalf of himself as an individual shareholder of Euro Pacific. Also, the main reason Plaintiff agreed to accept the liquidation of the bank was that the Commissioner had already rejected the stock sale of the bank shares. Only after that rejection was notified did the Plaintiff consent as a director to the liquidation of the bank. And even that consent was evidently given under duress.

This is a lawsuit by a shareholder and owner for his personal loss, based on a conspiracy to deny him his constitutional rights and unconstitutionally deprive him of his personal property.

Mr. Schiff's current claim is not as the director of Euro Pacific Bank nor as an officer (that he was not when signing the release) but as his sole stockholder and owner as well as in his personal and professional capacity for the damages caused to his financial & economic position and personal & professional reputation. Also, this claim does not relate to any damage suffered by Euro Pacific Bank, but only to that damage suffered by Mr. Schiff personally. This is a civil rights action seeking redress for damages arising from the wrongful and negligent conduct of the defendants, which resulted in financial and reputational harm to the Plaintiff himself. The actions of the IRS and OCIF deprived the Plaintiff of property without due process. None of these personal claims are covered by the release.

Also, since the conspiracy was not uncovered by Plaintiff until April 2024, said conspiracy was not known to Plaintiff when he signed the release, and clearly does not fall within "facts or allegations made in any of the papers or pleadings filed in the Complaint and any conduct, including actions and omissions, to enforce the Complaint," therefore, it falls outside the scope of the release, even with respect claims made by the bank itself, and to Mr. Schiff in his capacity as a director.

Plaintiff clarifies the limited scope of the waiver, emphasizing that personal claims remain actionable.

"Plaintiff, acting as a director on behalf of the bank, executed the Consent Order. This action does not constitute a personal waiver of claims, as Plaintiff's personal claims arise from independent harm caused to him by Defendants' actions." This reiterates that Plaintiff's personal claims are outside the scope of the Consent Order and the release.

3. Timeliness and Procedural Validity

"Plaintiff did not know that his damages were caused by the conspiracy until he was finally able to obtain evidence of that conspiracy in April 2024, when the IRS provided a partial response to his FOIA request." Plaintiff asserts that the statute of limitations should be tolled due to the discovery rule, as critical evidence only became available in April 2024.

Shortly after the June 30th 2022 surprise, Mr. Schiff made multiple FOIA requests regarding IRS Chief Jim Lee's communications and the press conference to close the bank that, in April, 2024 finally resulted, the IRS sending the Plaintiff 335 pages- most either entirely or partially redacted; the IRS delayed several times the production of the lawfully requested documentation. It was not until that moment -when the 335 pages were finally received and read- that Plaintiff realized the IRS had recruited OCIF and its Commissioner into rejecting the sale of the bank and closing it. It seems that, since the J5 & the IRS could not find any evidence of illegal acts or wrongdoing from the bank or Plaintiff, their frustration become blinding, and they opted to recruit OCIF to announce the closure of the bank instead; and,

that was the reason for the June 30th, 2022 press conference: to set-up a public show, a public execution if you will, to make an example of the bank, and to send a warning to customers of other offshore banks, who might use those accounts to evade taxes, of what would happen if you came into their radar, even without any evidence of any illegal activity from the bank, or Plaintiff. Those pages also tended to indicate that, to save face, the IRS & J5 pressured OCIF to close the bank, given that the media had exposed the IRS & J5 investigation, which came up empty. By getting OCIF to shut the bank down, the IRS & J5 could pretend their failed investigation was a success. The plaintiff finally realized all of this after reading previously unknown IRS emails on April 22,2024. Even though prior to that date, the Plaintiff was always a little suspicious of the IRS & J5 actions, he had no actual evidence to refute the defendants' false assertions to close the bank until that date. This was mainly due to his inner belief that the IRS & J5 could not be acting illegally and discriminatory. But the April 2024 discovery of the alleged conspiracy provided unambiguous evidence to allow Plaintiff to file this action in good faith. It is important also to note that the damage continues to this day, as the bank is still in receivership and hemorrhaging proceeds that could have been used to pay its customers, with any excess capital remaining to distribute to Plaintiff. As it looks right now, the bank's customers may lose money, and Plaintiff will recover none of the over $10 million in capital he paid into the bank. Plaintiff contends the conspiracy is ongoing as well, as the IRS and J5 are allegedly still actively engaged in a coverup to prevent Plaintiff from exposing the truth about the bank and the J5 investigation that completely exonerated it of the crime's defendants continue to pretend were committed.

The Plaintiff believes that the IRS leveraged removing Puerto Rico from the list of high-risk money laundering jurisdictions as a quid pro quo to entice Ms. Zequeira into their conspiracy to shut down the bank and hold the press conference. Inclusion on that list was a major problem for Puerto Rico's offshore banking industry, which the OCIF Commissioner regulated. The IRS first included Puerto Rico as a high-risk jurisdiction for money laundering and terrorism financing in 2021, not too long after the negative news stories broke about the J5 investigation of Euro Pacific Bank (it is believed this may not have been a coincidence). This designation arose due to concerns over compliance deficiencies in Puerto Rico's international financial entities (IFEs) and "cooperativas" (credit unions) that could pose vulnerabilities in the U.S. financial system. As part of the U.S. Treasury's National Money Laundering Risk Assessment, this inclusion aimed to address gaps in transparency, beneficial ownership, and regulatory oversight of these institutions on the island. See "2022 National Money Laundering Risk Assessment: Impact on Puerto Rico", dated 2022 a report authored by Ms. Zequeira herself. To be removed from that list will be seen as a significant achievement by Ms. Zequeira, especially when it was under her purview that the island was included. The removal, in fact, occurred in Feb. 2024, Plaintiff thinks this is likely as a payoff for her continued role in the conspiracy.

It is also believed by the Plaintiff that another compelling reason to go along with the alleged conspiracy for Ms. Zequeira is the fact his husband works in a competing international bank in PR (which are regulated by OCIF), which is a clear conflict of interest,

since at least Aug 2023, when said bank was authorized to operate, but due to the long time it takes to approve a license, Ms. Zequeira likely knew about this conflict of interest well before that date. Up to this day and the best of Plaintiff knowledge, Ms. Zequeira has not relinquished her post as Commissioner.

Another lawsuit against OCIF & Ms. Zequeira in this District Court was initiated by Nodus International Bank for discrimination in its national origin variant, evident conflict of interest and due process violation in its procedural version (which support Plaintiff arguments of discrimination and arbitrary actions from OCIF and Ms. Zequeira).

Although local statutes of limitation are used for federal causes of action for which Congress has not provided an express limitation period, tolling policy for such a case remains a federal question. The concept of tolling applies when defendant fraudulently conceals facts giving rise to Plaintiff's claim as in this case, where both Ms. Zequeira/OCIF and the IRS did; in such case, statutes are tolled until Plaintiff, employing due diligence, could have discovered facts that were fraudulently concealed. Richards v. Mileski, 662 F.2d 65 (1981), 213 U.S.App.D.C. 22;0, 32 Fed.R.Serv.2d 437. Indeed, had the IRS honestly and timely complied with Plaintiff's initial FOIA request, he would have discovered the smoking gun emails well within a year of the June 2022 press conference. In fact, Plaintiff is concurrently litigating another case in federal court trying to force the IRS to fully comply with his FOIA requests.

As stated above, Plaintiff was first made aware of the alleged conspiracy when he learned in April 2024 that the rejection of the bank's stock sale and its incoming liquidation were based on wrongful assertions that seemed to have been secretly planned by the defendants over three months before the Jun 2022 official announcement. Also, it was in April 2024, Plaintiff found out the bank's motion for reconsideration of that initial rejection was not considered in good faith, even though it was suggested by Ms. Zequeira in the first place. In fact, when Ms. Zequeira invited the Plaintiff to submit a motion for reconsideration, in May 2022, it was two months after she had already planned to issue the cease-and-desist order and hold the press conference to announce the closure of the bank. These actions caused the complete destruction of Plaintiff's bank, as well as Plaintiff's banking reputation, resulting in other lost business opportunities. In fact, Plaintiff contributed over $500,000 in capital between the day Ms. Zequeira and the IRS decided to shut down the bank and the day she informed Mr. Schiff of that decision. Had the Plaintiff known about this alleged secret deal he would not have contributed the additional capital, which only added to his financial damages.

The US Supreme Court has held that statutes of limitation in federal civil rights cases may be tolled when defendants fraudulently conceal critical facts, as seen, for instance, in Richards v. Mileski, 662 F.2d 65 (D.C. Cir. 1981). Under this view, the Plaintiff's claim is timely due to the concealment by the IRS/J5 and OCIF, which prevented the Plaintiff from discovering the existence of the alleged conspiracy prior to April 2024.

Richards v. Mileski, 662 F. 2d 65, was decided by the United States Court of Appeals for the District of Columbia Circuit; thus, is not a binding precedent that must be followed by the 1st Circuit; which is not required to follow the decisions of other circuit courts, although such decisions may be considered persuasive authority. Ky. SCR Rule 1.0 40. However, in the 1st Circuit, cases similar to Richards v. Mileski, 662 F. 2d 65, involve issues of fraudulent concealment and the tolling of the statute of limitations. For instance, in Truck Drivers & Helpers Union, Local No. 170 v. NLRB, the United States Court of Appeals for the First Circuit discussed the burden of proving due diligence in cases where fraudulent concealment is alleged. The court noted that when the concealment is self-concealing, the defendant bears the burden of showing that the plaintiff could have discovered the cause of the action with due diligence. Truck Drivers & Helpers Union, Local No. 170 v. NLRB, 993 F.2d 990.

Another relevant case is Demars v. General Dynamics Corp., where the United States Court of Appeals for the First Circuit addressed the tolling of the statute of limitations due to fraudulent concealment. The court emphasized that the plaintiff must show that the defendant engaged in deliberate concealment of material facts and that the plaintiff failed to discover these facts despite exercising due diligence. Demars v. General Dynamics Corp., 779 F.2d 95.

Additionally, in Greene v. Union Mut. Life Ins. Co., the United States Court of Appeals for the First Circuit referenced Richards v. Mileski in the context of discussing the inherent problems of using a motion to dismiss to raise a statute of limitations defense, highlighting the complexities involved in such procedural issues. Greene v. Union Mut. Life Ins. Co., 764 F.2d 19.

Under state law, the controlling case would be Colon Prieto v. Geigel, 115 D.P.R. 232; 1984 PR Sup. LEXIS 82, 115 D.P.R. 232, 1984 PR Sup. LEXIS 82 where a dentist caused injury to the patient's tongue and when the patient asked about the pain, the dentist lied and occulted the actual reason for about four months when, as the pain did not stop, the patient went to a specialist, who actually found out the real cause of the injury about eight months afterwards and informed the patient at that time. The patient sued the dentist one year after the specialist told him the actual cause. The Supreme Court of PR held the case was tolled until the patient actually found out what was the real cause for his injuries and who was the wrongdoer. The fact the patient felt pain did not mean the patient actually knew what the real cause of pain was or who actually caused it. Citing from that case:

"Colón Prieto became aware of the injury to his tongue on November 10, 1971. When, immediately after the operation, he asked his physician, Dr. Ark, about it, the doctor told him that the wound had been caused by the fact that he had bitten his tongue. He went to see Dr. Ark several times. The fact that he continued suffering --as the trial court stresses-- does not necessarily mean that he knew about the origin of the injury. Dr. Ark himself told him that he could soon feel better. The last time he went to see the doctor the latter told him that, if the condition continued, he should return in four months. It is reasonable to think that Colón Prieto trusted his physician because all doctors are in the obligation to inform

patients of the status of their condition and clinical prognosis, except in cases where such report would hamper treatment or aggravate the patient's course of action.

In such circumstances, it cannot be said that he knew about the injury since the operation. As a patient, he trusted the physician. It was not until November 10, 1972, when he consulted other physicians--particularly Dr. Ramírez de Arellano--that he found out that the injury had not been caused by a bite but by the fact that the right lingual nerve had been cut. It was then that he became aware that the damage was probably caused by Dr. Ark's lack of expertise. Under the "subjective" test applicable to actions against physicians, the statute of limitations started to run on that date, and when he filed his complaint his cause of action had not expired."

In Correa v. Perez, Court of Appeals of Puerto Rico, Ponce Judicial Region discussed the cognitive theory of damage, which states that the prescriptive period for tort actions begins when the injured party knows of the damage and the responsible party, not at the moment of the negligent act. Correa v. Perez, 2011 PR App. LEXIS 2153. In Carmen González v. Hosp. San Francisco, the Circuit Court of Appeals of Puerto Rico, Regional Circuit I of San Juan, Panel II reiterated that the prescriptive period starts when the injured party knows of the damage and the identity of the responsible party, aligning with the liberal civil law doctrine. Carmen González v. Hosp. San Francisco, 2001 PR App. LEXIS 418. In José Llanos Bultrón v. Universidad De P.R., the Court of Appeals of Puerto Rico, San Juan, and Humacao Judicial Region emphasized that the prescriptive period begins when the claimant knows both the damage and the identity of the responsible party, highlighting the complexity of determining when the claimant acquired the necessary knowledge. José Llanos Bultrón v. Universidad De P.R., 2008 PR App. LEXIS 2967. In Calderon v. Toro, the Circuit Court of Appeals of Puerto Rico, Regional Circuit of Caguas, Humacao and Guayama confirmed that the prescriptive period starts when the injured party knows of the damage and the responsible party, consistent with the liberal civil law doctrine. Calderon v. Toro, 1999 PR App. LEXIS 296. In Ojeda Ojeda v. El Vocero, Inc., the Supreme Court of Puerto Rico reiterated that the prescriptive period for tort actions begins when the injured party knows of the damage and the responsible party. Ojeda Ojeda v. El Vocero, Inc., 137 D.P.R. 315. In De Seguros De v. Blanco, the Court of Appeals of Puerto Rico, San Juan Judicial Region reiterated that the prescriptive period for tort actions begins when the injured party knows of the damage and the responsible party and discussed the interruption of the prescriptive period. De Seguros De v. Blanco, 2020 PR App. LEXIS 2465.

To hold otherwise, would have created a twisted incentive for the wrongdoer to deceive the injured until the action was time-barred; thus, rewarding the wrongdoer when he is in possession of the information that could bring out the actual action is an inconceivable act against justice and the law.

In an analogous way, the IRS's multiple delays for the requests for information under FOIA tolled the Plaintiff's action since the Plaintiff was diligent asking for information, trusting the IRS, and the IRS made it impossible to know about the alleged conspiracy until April 2024. In fact, this alleged coverup is still ongoing and is the reason Plaintiff is now involved

in separate litigation against the IRS to force it to fully comply with FOIA and release more documents that will provide further details about the conspiracy.

“Plaintiff filed this action promptly upon discovering the evidence of Defendants’ conspiracy, which was previously concealed through deliberate efforts by the IRS and OCIF.” This rebuts the untimeliness argument by pointing to Defendants’ role in concealing critical information.

“The continuing violation doctrine applies because Defendants’ actions, including the press conference and obstructive liquidation process, constitute ongoing harm to Plaintiff.” Plaintiff argues that the ongoing nature of Defendants’ conduct extends the timeline for filing the complaint.

The defendant’s claim that Plaintiff knew of his damages in June of 2021 and therefore should have filed his claim within a year of that date fails, as the mere knowledge of a loss is insufficient if Plaintiff does not know the cause of that loss. Just like the patient knew he had an injury; the statute of limitations did not begin to run until he knew that the dentist’s negligence was the cause of that injury. In this case, while Plaintiff knew in June 2022 that he had a loss, it was not until April 2024 that he discovered the loss was due to a conspiracy among the Defendants. Plaintiff timely filed this lawsuit within one year of that discovery.

Conclusion Against Defendants Introduction:

The counterarguments establish that:

Defendants’ actions were not lawful but were likely motivated by malice and conspiracy.

The Consent Order’s waiver does not apply to Plaintiff’s personal claims.

The claims are timely under the discovery rule and continuing violation doctrine.

These points comprehensively refute the Introduction of Defendants’ Motion to Dismiss.

Counterarguments to II. FACTUAL BACKGROUND AS STATED BY PLAINTIFF

The Defendant assert that their actions, including denying the sale of Euro Pacific Bank, appointing a trustee, and initiating its liquidation, were lawful and necessary to protect depositors and ensure financial stability. Below are the counterarguments addressing these claims.

1. Actions Were Not Lawful or Justified

“OCIF denied the proposed sale of Euro Pacific Bank for $17.5 million to Qenta, even though Plaintiff offered to inject $7 million in capital, which would have more than resolved any alleged financial deficiencies. The denial was arbitrary, as OCIF had already informed Plaintiff that this injection was sufficient.”

OCIF reported the bank had “Precious metals held for customers are categorized as non-earning assets that generate consistent revenues at initial purchase, maintenance, and

trade; these represent 13.04% of total assets", implying those were not liquid assets. In actuality, the bank neither owned any gold nor other precious metals. It had a hedge account at Saxo Bank (headquartered in Copenhagen, Denmark; Saxo Bank is a Danish investment bank that specializes in online trading and investment, offering access to global financial markets for retail and institutional clients) to facilitate customer buying and selling of gold & other precious metals. The account would take the other side of customer orders and automatically hedge. When the position got too large, it would be flattened, and the funds would free up. The bank could have manually flattened the account anytime it wanted, which was ultimately done after the bank went into receivership.

On Nov/10/2021, a meeting was held to gain OCIF's approval of the bank's proposed stock sale. Present in that meeting were: Plaintiff and his lawyer, Ms. Myrna Lozada and her assistant, two representatives from Qenta/Emergent Technology (Mr. Brent De Jong CEO Emergent Technologies & Mr. Carlos Garduno Emergent Technologies in-house counsel) Mr. Zequeira, and some other OCIF's employees. In that meeting, Plaintiff offered to personally inject seven million dollars in capital to the bank, an amount that was millions more than required to cover any possible capital deficiency, but Ms. Zequeira personally told Plaintiff that no additional capital was necessary for the bank to operate while the proposed stock sale was under review, a process that Ms. Zequeira represented was a mere formality, as she expressed strong support for the sale, welcomed Mr. De Jong and Garduno to Puerto Rico, and said that she hoped the Plaintiff would remain in Puerto Rico after the sale was completed. Further, during a telephone conversation about two weeks later, an OCIF representative reiterated to the bank's lawyer Ms. Lozada that no additional capital was necessary prior to final regulatory approval of the sale to Qenta.

Ms. Zequeira represented to everyone in the room that Plaintiff could wait for Qenta to contribute the capital following approval of the sale. In fact, in an executive summary of the proposed transaction, that included a copy of the stock purchase agreement, emailed to Zequeira on Nov. 2nd, 2021, eight days prior to that meeting, Qenta represented that it would add $7 million in capital as a condition of the sale. The plaintiff alleges that is why Zequeira told him that he did not need to make a personal capital contribution at that time, as she expected the sale she just blessed to be formally approved, and was fine with Qenta making the contribution after it was.

This directly refutes OCIF's claim that the sale denial was based on legitimate financial concerns.

As stated before, "OCIF claims the sale of the bank was denied on May 16, 2022 'based on concerns that the proposed transaction failed to adequately address EPB's financial deficiencies.' This is not correct. OCIF listed three specific reasons for that denial, and financial deficiencies or regulatory standards were not mentioned. Plaintiff highlights inconsistencies in OCIF's stated reasons for the denial, undermining their claim of acting within their mandate.

As stated before, “The bank had sufficient cash reserves to meet depositor obligations and this was specifically acknowledged by OCIF, and the $7 million capital injection offered by Plaintiff and required to be made by Qenta, would have eliminated any remaining concerns about financial stability. OCIF’s refusal to approve the sale was not based on regulatory necessity but on ulterior motives.” Plaintiff asserts that OCIF’s actions were not aligned with protecting depositors or ensuring compliance but instead it seems they were aimed at harming Plaintiff and benefiting the IRS and other J5 tax Chiefs.

2. Press Conference and Reputational Harm

“On June 30, 2022, OCIF held a press conference where IRS and J5 officials were invited to make false and defamatory statements about Plaintiff and Euro Pacific Bank. This press conference was unprecedented and designed to harm Plaintiff’s reputation.”

IRS and J5, under the direction of Mr. Lee were, since 2020, engaged in a pattern of lies and deception directed to mislead Plaintiff into believing, as he did until June 30th 2022, that there was no open investigation against him or the bank; for instance, this is shown by the actions of two IRS agents back in Jan 14, 2020 that handled Plaintiff a subpoena clearly stating to produce all documentation “which you had/have a financial interest in…”; Plaintiff asked clarification and the agents lied and stated that neither he nor the bank were targets of the investigation. Plaintiff believed the IRS’ agents words, since Plaintiff was, although a little suspicious, inclined to believe the IRS was, at its core, an honest agency and, at that moment, there was no evidence of malice from the IRS side; Plaintiff’s opinion of the IRS’s intended goal started to change when Mr. Jim Lee, acting as representative of both, IRS & J5, finally announced during a widely promoted June 30th, 2022, press conference that the Plaintiff’s bank was indeed the target of an investigation. The press conference was held in PR with IRS/J5 and OCIF. The OCIF Commissioner briefly mentioned that the bank was closed due to capital deficiencies, but that message was buried by IRS/J5’s abundant, far longer, and deep message about illegal tax evasion and criminal money laundering activities and strong implication that Plaintiff and his bank aided and abetted illegal tax evasion and criminal money laundering activities. Prior to that the only criminal allegations against the bank or Plaintiff came from the media.

It is highly probable that the IRS/J5 was the source of the leak regarding Plaintiff and his bank being the target of the J5 investigation, and of both being guilty of the crimes for which they were being investigated; Mathew Goldstein of the N.Y. Times and Charlotte Grieve and Nick McKenzie of The Age in Australia helped the alleged conspiracy by dispersing both, the existence of the confidential investigation and false claims around the world with malice that the bank and Plaintiff were guilty of illegal tax evasion and criminal money laundering, as well as aiding and abetting illegal tax evasion and criminal money laundering activities on the part of the bank’s customers, knowing those claims were false, with the intent to destroy the bank in the media, since the IRS had no legal basis for doing so in court.

It is believed by the Plaintiff the Australian journalists also had a hand in the IRS pressuring OCIF to shut down the bank and hold the press conference, to use that as evidence to defend against the Plaintiff’s defamation lawsuit in Australia, about a month prior to an important

hearing on meaning. This belief is based on the fact they introduced that action of the IRS/J5/OCIF as evidence in their defense, including comments made by Mr. Lee and Ms. Zequeira during the press conference.

That press conference was incredibly unique as it is the only known public press conference OCIF has ever held. The plaintiff believes that fact alone further indicates that the entire action was a publicity stunt to help the alleged conspiracy; since, if it was really just about closing a bank that simply lacked sufficient capital, there would have been no reason to announce that with a widely promoted media press conference, as it was not a significant news story, and the bank did not have a single Puerto Rican customer. In fact, none of the bank's customers were U.S. citizens or even U.S. residents. The plaintiff believes that the conference was all about providing the IRS/J5 with a global forum to falsely accuse the bank of money laundering and tax evasion to validate their Operation Atlantis investigation, turning a failed investigation into a fake success.

The IRS lied to Plaintiff in Jan 2020 to gain his confidence, but the IRS/J5 represented by Mr. Lee in the June 2022 OCIF press conference, partially told the truth to the media and the world at large about an ongoing investigation of the bank; however, by making unrelated and improper statements of illegal tax evasion and criminal money laundering activities, lied by implication about the supposedly real reasons to close the bank and the real outcomes of the investigation, causing intentional confusion in the media to falsely conclude that the bank and Plaintiff where guilty of the crimes for which the press had earlier reported they had been investigated. This included Novo Bank, Euro Pacific Bank's main correspondent bank, which held most of its customers' deposits, as well as the Portuguese Government, which cited the press conference and action against the bank as the reason to freeze Euro Pacific's customers' funds held at Novo bank, to prevent the proceeds of tax evasion and money laundering from being reintroduced into the global economy. After an eight-month investigation that found no evidence to substantiate any of these allegations, the freeze of the funds was finally lifted.

This challenges OCIF's claim that the press conference was merely a regulatory announcement.

"MS Zequeira claimed the press conference was held merely to 'notify the public of her official actions against EPB.' If so, why was this the only time a press conference was held to notify the public of a bank closure? Many other banks were closed before and after EPB, yet none required a press conference to notify the public." Also, if the true purpose of the press conference was merely to inform the public of her actions, why did she invite Jim Lee and four other J5 tax chiefs to participate? And to discuss and imply the bank was guilty of tax evasion and money laundering? even though those crimes had nothing to do with her action? The plaintiff argues that the press conference was an extraordinary and targeted act, further disproving OCIF's claim of standard regulatory procedure.

"Defendants knew that the press conference would result in false allegations of tax evasion and money laundering being disseminated by the media, causing irreparable reputational

harm to Plaintiff." This emphasizes the malicious intent behind the press conference and refutes the claim that it was a routine action.

On June 30th, 2022, the already mentioned worldwide, extensively disseminated, press conference by OCIF, IRS & J5 (with Mr. Will Day of the Australian Tax Office, and Mr Simon York of HMRC in the U.K representing J5 as well as Mr Jim Lee from the IRS) was held, where Mr. Lee confirmed that the Plaintiff's bank had indeed been the target of an IRS & J5 investigation since Jan. 2020 and implied, without actual proof, that the bank engaged in illegal tax evasion and criminal money laundering activities, causing significant reputational harm to the Plaintiff and the bank. No charges have ever been filed against the Plaintiff, the bank or anyone former bank employees, officers, directors, or shareholders. Indeed, the grand jury investigation was supposed to be kept confidential. The government asked the Plaintiff to keep it confidential. Mr. Jim Lee had an obligation to keep it confidential as well but violated standard government procedures and Plaintiff's constitutional rights by making the investigation public instead. It is significant that the media, including Goldstein, Grieve and Mckenzie, were informed about this press conference and the action to be announced hours before the Bank, the bank's lawyer, or Plaintiff. This is more proof that the entire thing was a publicity stunt, not a legitimate regulatory action.

In addition, emails between an unknown IRS agent and Mr. Jim Lee showed that the June 30th, 2022, press conference was actually scheduled with OCIF cooperation about three months earlier. The bank's capital was just as low three months prior as it was on June 30th. If the bank was truly so "critically insolvent" that it required a cease-and-desist order "summary emergency action that seeks to prevent an imminent danger", why did Ms. Zequeira and OCIF wait three months to issue it? Or about one month and a half after the denial in mid-May? On information and belief, it appears the June announcement was delayed coinciding with and commemorating the four-year anniversary of the formation of the J5.

It looks like the main reason OCIF waited three months to serve the Cease & Desist against the bank was to allow the press conference to coincide with the four-year anniversary of the formation of the J5, allowing the J5 to commemorate the occasion with its first and only enforcement "success."

That would also explain why Ms. Zequeira & OCIF knew for three months that they planned to shut down the bank for insufficient capital, yet not once during those months did anyone from OCIF try to contact the bank to give Mr. Schiff the opportunity to cure the capital deficiency to avoid the shutdown. Capital deficiency was not even one of the three reasons OCIF gave for the denial of the stock sale to Qenta. It is clear Ms. Zequeira/OCIF did not want Mr. Schiff to add capital to the bank, as they needed the lack of capital as an excuse to shut it down, as only a shutdown would serve the interests of her co-conspirators. In fact, after the cease-and-desist was issued, Mr. Schiff again offered to inject additional capital, yet that offer was again turned down.

Statements made by Mr. Jim Lee, representing the IRS and OCIF (by its omission) in the June 2022 press conference falsely implied criminal wrongdoing by the Plaintiff. These statements, widely published, caused significant reputational harm at that moment and they are still causing damages to Plaintiff because the bank has not been liquidated as of today and echoes of the conference still haunting Plaintiff 's reputation today with bank's customers; blaming Plaintiff under the belief Mr. Lee's conference innuendos were true as the reason the bank has not been able to pay their proceeds.

The defamation standard for public officials under New York Times Co. v. Sullivan, 376 U.S. 254 (1964), requires actual malice, which can be demonstrated here.

To clarify, this is not another defamation lawsuit as far as The Age and their reporters are concerned. Plaintiff already sued them and won, thus proving they lied. They are being included as co-conspirators in tortious interference with the sale of the bank. First, because it is believed that the Age reporters (possibly Nick McKenzie of the N.Y. Times as well), may have been the co-instigators of the conspiracy. They may have called in a favor from their confidential source at either the IRS or ATO, to take adverse action against the bank, to both validate their initial stories, and to incorporate that action, as was in fact done, into their defense against Mr. Schiff's defamation lawsuit, which they ultimately lost. Second, for their active participation in the conspiracy by using the media to create the false impression that the bank was guilty of money laundering and tax evasion. The articles that appeared in the Age and N.Y. Times immediately following the June 30 2022 press conference included multiple quotes from Mr. Jim Lee, Mr. William Day, and Mr. Simon York, that falsely implied that the bank was guilty of tax evasion and money laundering, and which tied the shutdown of the bank to the J5's Atlantis Investigation, but omitted the statement from Ms. Zequeira that OCIF's did not conclude that the bank facilitated money laundering or tax evasion, and that the action against the bank "was not based on allegations of money laundering or any financial crimes." Also, Plaintiff learned from discovery in his winning defamation lawsuit that Grieve, McKenzie, and Goldstein deliberately fabricated evidence and lied about what witnesses told them to deliberately create the false impression that the bank and Plaintiff were guilty of crimes their own investigation proved they did not commit. This will also provide the Court with an opportunity to provide a complete judgment, saving judicial resources, and the opportunity to discover further evidence of the full conspiration. This is not about if The Age and their reporters lied, they did, but about the reasons they had for lying.

The situation is almost the same for the NY Times and its reporters, but with the difference they have not been sued for defamation and are not being sued for defamation or libel but as a co-conspirator in tortious interference with the sale of the bank.

Tortious interference does overlap a little with defamation, but it targets direct business harm rather than reputational damage alone as per 1st Circuit case law has established, Tortious interference can indeed overlap with defamation when the interference is based on defamatory statements. In the case of Wilcox Indus. Corp. v. Hansen, 2012 DNH 92, the United States District Court for the District of New Hampshire noted that inducing a third

person by defamatory statements not to do business with the plaintiff can constitute wrongful conduct sufficient to support an interference with a prospective contractual relationship claim. Wilcox Indus. Corp. v. Hansen, 2012 DNH 92. This indicates that defamatory statements can be a basis for tortious interference claims. Similarly, in Sonicsolutions Algae Control, LLC v. Diversified Power Int'l, LLC, 2024 U.S. Dist. LEXIS 44736, the United States District Court for the District of Massachusetts acknowledged that defamation is a predicate improper act for tortious interference, suggesting that reputational damage through defamation can be a component of tortious interference claims. Sonicsolutions Algae Control, LLC v. Diversified Power Int'l, LLC, 2024 U.S. Dist. LEXIS 44736. Furthermore, in Mullane v. Breaking Media, Inc., 433 F. Supp. 3d 102, the United States District Court for the District of Massachusetts highlighted that claims for tortious interference with business relations or prospective economic advantages must allege improper motive or means, which can include the commission of defamation. Mullane v. Breaking Media, Inc., 433 F. Supp. 3d 102. Therefore, while tortious interference primarily targets direct business harm, it can also encompass reputational damage when defamatory statements are involved. This overlap is supported by case law in the 1st Circuit. Wilcox Indus. Corp. v. Hansen, 2012 DNH 92, Sonicsolutions Algae Control, LLC v. Diversified Power Int'l, LLC, 2024 U.S. Dist. LEXIS 44736, Mullane v. Breaking Media, Inc., 433 F. Supp. 3d 102 Tortious interference involves conduct aimed directly at undermining existing or prospective business relationships, not merely disparaging the plaintiff. In the 1st Circuit, case law supports this distinction. In " Wilcox Indus. Corp. v. Hansen, supra, the United States District Court for the District of New Hampshire noted that inducing a third person by fraudulent misrepresentations or defamatory statements not to do business with the plaintiff can constitute wrongful conduct sufficient to support an interference with a prospective contractual relationship claim. Wilcox Indus. Corp. v. Hansen, 2012 DNH 92. This indicates that tortious interference involves actions that directly impact business relationships. Additionally, in " Conformis, Inc. v. Aetna, Inc., 58 F.4th 517," the United States Court of Appeals for the First Circuit outlined the elements required to establish a claim for tortious interference with advantageous relations, emphasizing the need for intentional and improper interference with a business relationship, which goes beyond mere disparagement. Conformis, Inc. v. Aetna, Inc., 58 F.4th 517. Furthermore, in " Singh v. Blue Cross/Blue Shield of Mass., Inc., 308 F.3d 25," the United States Court of Appeals for the First Circuit reiterated that the interference must be through improper motive or means, highlighting the direct impact on business relationships rather than just reputational harm. Singh v. Blue Cross/Blue Shield of Mass., Inc., 308 F.3d 25. These cases collectively illustrate that tortious interference in the 1st Circuit is focused on conduct that directly undermines business relationships, distinguishing it from defamation, which primarily concerns harm to reputation.

In contraposition, injurious falsehood claims require proof that the defendant knowingly published false information harmful to economic interests (which Plaintiff possesses in abundance with respect to Grieve, McKenzie, and Goldstein), which can help distinguish such claims from defamation. This is supported by case law in the 1st Circuit. In the case of Hi-Tech Pharms., Inc. v. Cohen, the United States District Court for the District of

Massachusetts outlined the elements required to prove commercial disparagement (a form of injurious falsehood). The plaintiff must demonstrate that the defendant published a false statement with knowledge of its falsity or with reckless disregard for its truth, and that this publication resulted in pecuniary loss to the plaintiff's economic interests. Hi-Tech Pharms., Inc. v. Cohen, 277 F. Supp. 3d 236. This aligns with the requirement that the defendant knowingly publish false information. Additionally, in Jorgensen v. Massachusetts Port Authority, the United States Court of Appeals for the First Circuit noted that Massachusetts law requires proof of actual harm to the plaintiff's business reputation due to injurious falsehoods. The court referenced Sharratt v. Housing Innovations, Inc., which stated that intentional falsehoods causing economic harm are actionable, even if they are not defamatory. Jorgensen v. Massachusetts Port Authority, 905 F.2d 515. These cases support the assertion that injurious falsehood claims focus on the economic consequences of misleading information, distinguishing them from defamation claims which primarily address harm to reputation.

When speech or expression causes intentional infliction of emotional distress and economic harm, especially if done with knowledge of potential economic fallout, this can support a conspiracy framework if intent and harm to business prospects are shown. In the case of Dynamic Image Techs. v. United States, the United States District Court for the District of Puerto Rico found that the claim for intentional infliction of emotional distress was cognizable under Puerto Rico law, although the plaintiff corporation could not have suffered from emotional distress. Dynamic Image Techs. v. United States, 18 F. Supp. 2d 146. This indicates that such claims are recognized within the jurisdiction of the Federal District Court for the District of Puerto Rico. Additionally, in Planned Parenthood v. Am. Coalition of Life Activists, the United States District Court for the District of Oregon discussed the sufficiency of allegations to support a conspiracy claim under RICO, emphasizing that plaintiffs had met their initial pleading burden by providing fair notice to defendants of their RICO conspiracy against them. Planned Parenthood v. Am. Coalition of Life Activists, 945 F. Supp. 1355. This suggestive case supports the notion that a conspiracy framework can be established if intent and harm to business prospects are shown. Furthermore, the principles of law summarized in Restatement (Second) of Torts § 46, also support the claim for intentional infliction of emotional distress when the conduct is extreme and outrageous, causing severe emotional distress. Donastorg v. Daily News Publishing Co., Inc., 63 V.I. 196.

Now, Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007) establishes the standard for conspiracy in civil claims, requiring a clear agreement or conduct that is "plausibly suggestive" of conspiracy. The Twombly decision heightened the pleading standards in civil cases, replacing the previous "no set of facts" standard from Conley v. Gibson with a plausibility standard. This requires plaintiffs to plead enough facts to raise a reasonable expectation that the discovery will reveal evidence of the underlying claim. Credit Acceptance Corp.v. Pinkney, 80 Misc. 3d 1093, §?7.03. In the context of antitrust claims, Twombly specifically requires that the complaint must contain enough factual matters to suggest that an agreement was made, which means that the allegations must be plausible rather than merely conceivable. Williams v Citigroup, Inc., 104 A.D.3d 521. This standard

has been extended to all federal civil claims by the Supreme Court in Ashcroft v. Iqbal, which requires that the complaint shows a right to relief that is plausible as opposed to merely possible. Credit Acceptance Corp. v. Pinkney, 80 Misc. 3d 1093, §?7.03, Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937, 173 L. Ed. 2d 868, 2009 U.S. LEXIS 3472, 77 U.S.L.W. 4387, 2009-2 Trade Cas. (CCH) P76,785, 73 Fed. R. Serv. 3d (Callaghan) 837, 21 Fla. L. Weekly Fed. S 853.

The courts have recognized that media reports can give rise to claims beyond defamation, such as tortious interference, when reports cause economic damage by misrepresenting the plaintiff's legal or financial status. This could support an argument for claiming tortious interference if the media's reporting harmed a pending business sale" and it is partially supported by case law in the 1st Circuit and the Federal District Court for the District of Puerto Rico. In the case of Emerito Estrada Rivera-Isuzu De P.R., Inc. v. Consumers Union of United States, Inc., 233 F.3d 24, the plaintiff sought damages for lost sales on the theory of intentional interference with business relations due to disparaging statements made by the defendant. However, the United States Court of Appeals for the First Circuit dismissed the claim because the complaint did not identify any "specific existing relationships" that were interfered with by the statements. Emerito Estrada Rivera-Isuzu De P.R., Inc. v. Consumers Union of United States, Inc., 233 F.3d 24. We have identified such existing relationships in this claim for each and every one of the defendants.

The Restatement (Second) of Torts § 623A clarifies that injurious falsehood includes the publication of untrue statements that harm economic interests if done with malice or reckless disregard for the truth. According to § 623A, one who publishes a false statement harmful to the interests of another is subject to liability for pecuniary loss resulting to the other if (a) the publisher intends for the publication of the statement to result in harm to interests of the other having a pecuniary value, or either recognizes or should recognize that it is likely to do so, and (b) the publisher knows that the statement is false or acts in reckless disregard of its truth or falsity Warren Trust & Marietta Trust v. United States, 107 Fed. Cl. 533, CMI, Inc. v. Intoximeters, Inc., 918 F. Supp. 1068, Neshewat v. Salem, 173 F.3d 357.

In the 1st Circuit and the Federal District Court for the District of Puerto Rico, there is case law supporting the responsibility of entities, including the media, not to omit material facts when such omissions might affect public perception, particularly in financial or legal matters. Such omissions can indeed be grounds for claims of economic harm. In Hoff v. Popular, Inc., the U.S. District Court for the District of Puerto Rico held that the company's financial statements were materially misstated due to the omission of necessary valuation allowances, which misled investors. The court emphasized that under the Private Securities Litigation Reform Act (PSLRA), a misleading statement or omission occurs when a material fact is not disclosed, making the statements misleading in light of the circumstances. Hoff v. Popular, Inc., 727 F. Supp. 2d 77.

All the members of the J5 (but IRS) participated virtually in the press conference by representation of some official from their respective entities, which was held in Puerto Rico, where the IRS and OCIF were physically represented. If a person was present at a virtual

conference but did not state any disclaimer as to the false statements, liability may still be attached if that presence and lack of disclaimer are seen as tacit approval or facilitation of the defamatory statements. In "Harrison v. Aztec Well Servicing Co.," the United States District Court for the Northern District of Texas, Abilene Division noted that specific personal jurisdiction over a defamation claim could be exercised where a nonresident defendant made false statements to a forum resident. Harrison v. Aztec Well Servicing Co., 2020 U.S. Dist. LEXIS 259084. Additionally, in "Sisk v. Elevate Indep. Servs.," the Superior Court of California, County of San Francisco held that passive facilitative acts, such as convening a meeting where defamatory statements are made, do not constitute substantial assistance or encouragement for aiding and abetting liability unless there is active involvement in the content of the defamatory statements. Sisk v. Elevate Indep. Servs., 2016 Cal. Super. LEXIS 4808.

However, if that person were present but did not state any disclaimer as to the false statements, liability would depend on whether that presence and lack of disclaimer could be seen as negligent or as implicitly endorsing the defamatory statements. According to the Restatement (Second) of Torts, liability for defamation requires a false and defamatory statement, an unprivileged publication to a third party, fault amounting to at least negligence, and certain types of harm. Jimenez-Nieves v. United States, 682 F.2d 1. United States Court of Appeals for the First Circuit. If that presence without a disclaimer is interpreted as negligence, that person could be held liable.

If the person actively participates in making defamatory statements, that person would likely be liable. In "Pelt v. Amell," the District Court of Texas, 157th Judicial District, Harris County found that defendants who participated in making defamatory statements were personally liable for the damage caused. Pelt v. Amell, 2023 Tex. Dist. LEXIS 4331. Similarly, in "Zedan v. Bailey," the United States District Court for the Middle District of Georgia, Valdosta Division held that publishing false statements with reckless disregard for their truth constitutes actual malice, making the defendant liable for defamation. Zedan v. Bailey, 522 F. Supp. 3d 1363. Furthermore, "Flores-Demarchi v. Smith the Court of Appeals of Texas, Thirteenth District, Corpus Christi - Edinburg outlines that defamation requires the publication of a false statement of fact to a third party, which is defamatory concerning the plaintiff and made with the requisite degree of fault, resulting in damages. Flores-Demarchi v. Smith, 2022 Tex. App. LEXIS 4489.

It is quite clear that if the person actively participated in making defamatory statements, the person would likely be liable. Defamation law requires that the defendant was at fault for the publication of a false statement about the plaintiff which was capable of damaging their reputation and causing economic loss or being actionable without proof of economic loss Piccone v. Bartels, 2012 U.S. Dist. LEXIS 141817. United States District Court for the District of Massachusetts. Sep 29, 2012. Active participation in making defamatory statements would clearly meet the fault requirement, making the person liable for any resulting damages. In both scenarios, the extent of the person's involvement and the nature of the statements would be critical in determining liability. Courts are prompt to consider whether

the statements were false, defamatory, and whether the person acted negligently or with actual malice. Yohe v. Nugent, 321 F.3d 35, Sandler v. Calcagni, 565 F. Supp. 2d 184. United States Court of Appeals for the First Circuit. Feb 26, 2003, Additionally, the context and manner in which the statements were made, including whether they were presented as opinions or facts, would also be relevant. The control question is whether the challenged language would reasonably be understood to declare or imply provable assertions of fact, which requires examining the totality of the circumstances, including the general tenor and context of the conversation and any cautionary terms used by the person publishing the statement. Kaveh Afrasiabi v. UPI, 561 F. Supp. 3d 1. United States District Court for the District of Massachusetts, Sep 22, 2021.

Therefore, active participation in defamatory statements would clearly establish liability, while mere presence without disclaiming false statements could also potentially lead to liability depending on the context and perceived endorsement of the statements. In this case, the presence (virtual or physical) of all the 5 members of J5 was a statement of unity and commitment to the cause, thus making each and every one of them liable, regardless of if they actually participate in the defamation by saying something or not. Their mere presence (although virtual in some cases) was an act of solidarity with the statements made; presumably guided due to their alleged conspiration to cause damage to the bank and Mr. Schiff.

OCIF was physically present, represented by Ms. Zequeira whose weak statement given only in response to a reporter's direct question about whether the bank helped its customers launder money or evade taxes: "That is a conclusion that has not been made" and that the action against the bank "was not based on claims of money laundering or any financial crimes" was not strong enough to reject the whole set of statements made by Mr. Lee and certainly is not enough to set OCIF apart from the rest of their alleged co- conspirators. More significantly, that exculpable admission was not part of Ms. Zequeira's prepared remarks, and but for the reporter's unscripted question, never would have been made. Plus, that statement was completely absent from the media stories that were reported about the press conference, most conspicuously those written by the N.Y. Times and The Age. Further, Ms. Zequeira, while clearly aware of the many false representations made by the media, made no effort to correct them.

3. Liquidation Process Was Mismanaged and Pretextual

"OCIF appointed a trustee to oversee the liquidation process, who undervalued the bank's assets and sold them at a fraction of their worth. This caused significant financial losses to Plaintiff."

As of today, it has been over 30 months now and none of the customers' funds have been returned. The first negative news stories from the media about the bank broke in Oct. of 2020. In contraposition, between Oct. of 2020 and June 30th, 2022, about $200 million of customers' deposits, representing over 70% of the bank's total deposits, were successfully withdrawn by customers without any issue. To liquidate a bank that made no loans, has no debt, and holds 100% of its assets in cash should not have taken that long.

During the negotiations with OCIF after the bank was put into receivership, Plaintiff tried to get OCIF to agree to allow him to liquidate the bank himself. The plaintiff claims that would have insured an efficient and quick process as any remaining funds would have gone to him. But the Commissioner insisted on a receiver. Months before the plaintiff found a buyer for the bank, Plaintiff met with the Commissioner at 10 AM on Tuesday Sept. 21st, 2021, to discuss the losses the bank was suffering following the negative press about the Atlantis Investigation and to seek permission from Ms. Zequeira to try to sell or merge the bank, to stop the losses and recapitalize; at that time the bank was operating under the Consent Order. The plaintiff also sought an assurance from Ms. Zequeira that if he could not sell or merge with the bank, or fully comply with the Consent Order, that Ms. Zequeira would allow him to liquidate the bank himself. The plaintiff wanted to make sure that the bank was not put into receivership and told Ms. Zequeira his concerns regarding a receiver's conflict of interest to keep the bank in receivership as long as possible, with the unnecessary delay harming customers. While the Commissioners did not indicate support for a sale or merger at that time, she did assure Plaintiff that under no circumstances would she ever put the bank into receivership but would allow Plaintiff to liquidate the bank himself.

Plaintiff believes the only reason Ms. Zequeira would have changed her mind was if she were persuaded to do so by the IRS. Receivership was the worst possible outcome for all parties and completely unnecessary given the strong financial position of the bank. The only parties that benefitted from receivership, other than the receiver himself, were the defendants, especially Mr. Jim Lee and other J5 Chiefs, who used the receivership to imply more wrongdoing on the part of the plaintiff and the bank, and the Age journalists, who introduced the action against the bank as evidence in Plaintiff's defamation lawsuit. Also, the receiver Ms. Zequeira chose had no prior banking experience. It would have been far better for depositors and other creditors to allow Plaintiff, along with his team of highly experienced bankers, to handle the liquidation.

Also, two weeks following the September 21st meeting, on October 05, 2021, Ms. Myrna Lozada, the bank's lawyer, sent an email to Mr. Schiff and Mr. Mark Anderson, the bank's president (a personal friend and business partner of Plaintiff for over 25 years, who died just under a year later from a heart attack, Plaintiff's thinks was likely due to the stress caused by the grand jury investigation and the blowback from the false media reports of the investigation and the bank's guilt), stating that if they decided to do a voluntary liquidation of the bank, that they would first need OCIF's permission and that OCIF would likely appoint a receiver to oversee the process. Mr. Schiff replied to that email that "there is no need for a receiver. Without one, all of the deposits will be returned to customers. With a receiver the cost of running the bank will soar, resulting in large losses for depositors. It will also be a large blow to the reputation of Puerto Rico banking." Recalling the assurance made by Ms. Zequeira two weeks earlier, he asked Ms. Lozada to call Ms. Zequeira to clarify this point. Forty-five minutes later Ms. Lozada sent another email to Mr. Schiff regarding a conversation she had just had with Ms. Zequeira. In that email she related that Ms. Zequeira now fully supported the sale or merger of the bank, but that "If you decide to liquidate, she will obviate the receiver and would liquidate with you and internal personnel". Mr. Schiff

replied, "That's good news." The following morning, Mr. Schiff sent a text message to Mr. James Hickman, a friend and owner of another IFE in Puerto Rico, "FYI. OCIF Commission has given me an extension to comply with the orders and an assurance that if I want to close the bank I can do so on my own without a receiver. She has also given me permission to sell the bank or merge it with another IFE." Mr. Hickman replied, "that's good news."

It is not uncommon for regulators to allow a bank to liquidate itself when it is in an insolvent situation, but this is typically subject to strict regulatory oversight and conditions. For instance, Colorado law permits a state bank to liquidate and dissolve with the approval of the banking board, provided the bank has adequate capital and liquid assets to pay off depositors and creditors immediately dissolve. However, in some jurisdictions, such as Louisiana, the law expressly prohibits an insolvent bank from arranging its own liquidation and mandates that the liquidation be conducted under the supervision of the state banking examiner. Hiern v. Interstate Trust & Banking Co., 178 La. 998. This reflects a broader regulatory approach where the liquidation of banks, especially those in financial distress, is closely monitored to protect the interests of depositors, creditors, and the public. Dowling v. Canal Bank & Trust Co., 216 La. 372. Overall, while self liquidation by banks in insolvency situations is permitted in some states, it is typically regulated somehow to ensure orderly and fair processes, often involving oversight by state banking authorities or the FDIC Federal Deposit. Ins. Corp. v. Dempster, 637 F. Supp. 362, Federal Deposit Ins. Corp. v. Dempster, 637 F. Supp. 362.

It is possible for a regulator to allow a bank to liquidate itself when the bank is in an insolvent situation. According to 12 U.S.C. § 181, any association may go into liquidation and be closed by the vote of its shareholders owning two-thirds of its stock. The shareholders must designate a liquidating agent or committee to conduct the liquidation in accordance with the law and under the supervision of the board of directors § 181. Voluntary dissolution; appointment and removal of liquidating agent or committee; examination.

There are solid reasons a regulator might allow a bank to liquidate itself rather than appointing a trustee or receiver, even in an insolvent situation. This self- liquidation process can be more aligned with the interests of the bank's shareholders and may avoid the negative effects on the banking sector that can result from a forced liquidation by a receiver, such as loss of depositor confidence and a major loss to the FDIC's insurance fund Allied Fin., Inc. v. WM Capital Partners 53, LLC (In re Allied Fin., Inc.), 572 B.R. 45. Additionally, and as an example, the FDIC, when acting as a receiver, steps into the shoes of the bank and performs all functions in the name of the bank, marshaling the assets and distributing them to depositors and creditors. Schock v. FDIC, 118 F. Supp. 2d 165. However, this process can be more complex and may involve significant administrative expenses and delays. Costs, delays, and extras expenses are added as the new trustee needs to learn what already the insiders of the bank know, allowing a bank to liquidate itself under the supervision of its board and shareholders can streamline the process and potentially minimize these costs. For instance, the OCC's determination to liquidate a bank is influenced by factors beyond the bank's financial health, such as the impact on the national economy and the banking

system as a whole. Branch v. Ernst & Young U.S., 311 F. Supp. 2d 179. This broader perspective might not always align with the specific interests of the bank's shareholders and creditors, who might prefer a more direct and controlled liquidation process managed internally. In summary, self-liquidation can provide a more controlled, potentially less disruptive, and cost-effective process that aligns more closely with the interests of the bank's shareholders and creditors, while still being subject to regulatory oversight to ensure compliance with legal requirements § 181. Voluntary dissolution; appointment and removal of liquidating agent or committee; examination, Allied Fin., Inc. v. WM Capital Partners 53, LLC (In re Allied Fin., Inc.), 572 B.R. 45, Schock v. FDIC, 118 F. Supp. 2d 165.

Therefore, having the bank to liquidate itself as an option aligns much better with the goal of having more proceeds to distribute to the creditors and potentially to the shareholders. OCIF, having the option and being able to oversee the Plaintiff's action, did not have any good reason for not accepting the Plaintiff offers to liquidate the bank himself, especially since it was not even insolvent. If it often makes sense to allow insolvent banks to self-liquidate, it surely makes even more sense to allow a completely solvent bank to do so.

More important, as stated before, by OCIF own admission the bank had substantial excess cash reserves Plaintiff is contesting the need for "immediate action" as, and we repeated here for convenience: "If the bank was truly "critically insolvent" so that it required a cease-and-desist order "summary emergency action that seeks to prevent an imminent danger", why did Ms. Zequeira and OCIF wait three months to issue it?" (A delay Plaintiff did not even know about until April of 2024). In such an alternate scenario, Plaintiff himself and maybe, but not necessarily the bank, may have been entitled to a pre-deprivation hearing before liquidation. Here, the plaintiff is postulating the appointed Trustee should have represented the bank's interests (defending the bank's customers and their deposits, as well as its creditors, etc.) in contraposition to the interest of OCIF in a second angle and the Plaintiff in a third angle viewpoint. That did not happen.

The trustee was given specific OCIF instructions to completely liquidate the bank. The trustee appointed by OCIF, failed to exert independent judgment, and followed without question OCIF's instructions to approve the bank's assets sale and liquidation instead of its independent fiduciary duty for the bank's customers, creditors, and investors as he should have done. OCIF and the Trustee approved the sale of virtually all of the bank's assets to Qenta for just $1.25 million in cash, or seven cents on the dollar, instead of trying to get the highest possible value for all parties involved, thus also failing to comply with his fiduciary duties. Up to this date, the bank has not yet been liquidated. This delay in liquidating the bank is still causing further damages to Plaintiff.

Plaintiff challenges the legitimacy of the liquidation process, undermining OCIF's claim of acting in good faith.

PLAINTIFF CONTENTS THAT: "OCIF falsely claims with regard to the release that 'Plaintiff voluntarily executed a Consent Order in 2022 that explicitly waived claims against OCIF and Commissioner Zequeira Díaz.' The bank entered into the Consent Order, not Plaintiff

personally." Plaintiff disputes OCIF's claim that the liquidation process was entirely voluntary, suggesting coercion and misrepresentation.

"OCIF deliberately obstructed the sale of the bank to Qenta, despite knowing that this would provide the best financial outcome for depositors, creditors, employees and shareholders. Instead, OCIF pushed for a liquidation that undervalued the bank's assets." This highlights Plaintiff's argument that the liquidation process was manipulated to harm Plaintiff financially and reputationally.

4. Defendants' Actions Were Not in Good Faith

"Defendants conspired to use the liquidation of Euro Pacific Bank as a pretext to damage Plaintiff's reputation and financial standing, collaborating with federal authorities to stage a politically motivated regulatory action." The plaintiff alleges bad faith and conspiracy, which contradicts Defendants' claim of lawful actions.

"The Commissioner personally told Plaintiff that it was not necessary to put in the $7 million, as it was fine to wait for Qenta to contribute the $7 million after the official approval of the change of control, which she expected was just a formality." This suggests that OCIF's actions were not aligned with their stated regulatory concerns, further indicating bad faith.

Plaintiff points to selective enforcement and inconsistent standards, further undermining OCIF's credibility.

The counterarguments establish that:

Defendants' actions were not justified by financial deficiencies or depositor protection but were motivated by ulterior and malicious purposes.

The press conference was not routine regulatory action but a targeted attempt to harm Plaintiff's reputation and bolster the reputation of the J5.

The liquidation process was mismanaged, undervaluing assets and obstructing better financial outcomes.

These points comprehensively refute the Defendants' Background/Statement of Facts.

Counterargument to III. LEGAL STANDARDS

A. Rule 12(b)(1): Lack of Subject-Matter Jurisdiction

Defendants argue that the Court lacks subject-matter jurisdiction first due to both facial and factual challenges and then due to sovereign immunity under the Eleventh Amendment, barring claims against OCIF and Commissioner Zequeira Díaz.

Counterarguments

It is quite obvious this Court has jurisdiction over the claims under 28 U.S.C. § 1331 (federal law) and under § 1332 (diversity jurisdiction) abolishing Defendants claim in the contrary, first as for the facial challenge, and second, for the factual challenge, the Defendants' own Consent Order provided the evidence the Plaintiff did not signed in his personal capacity.

The Consent Order explicitly states:

> Euro Pacific, **its directors and officers, do hereby release and forever discharge the OCFI**, its attorneys, insurers, assignees, transferors, transferees, **principals**, partners, **officers, directors, employees**, agents servants, subsidiaries, parent corporations, affiliates, successors, stockholders, agents and representatives, including the Trustee (the "Releasee(s)"), from any and all claims, demands, damages, debts, liabilities, obligations, contracts agreements, causes of action, suits, of whatever nature, character or description, that Euro Pacific may have or may hereafter have or claim to have against each other Releasee(s) arising out of or related to the facts or allegations made in any of the papers or pleadings filed in the Complaint and **any conduct, including actions and omissions, to enforce the Complaint**.

Defendants' intention to read the above clause as to include all the released parties mentioned on OCIF's side on Euro Pacific's side as well, despite the failure of the document to include them, is an absurdity. For one, OCIF lacks the capacity to negotiate, or in any way act, in favor of or against in the name of Euro Pacific's principals, officers, directors, employees nor it is Euro Pacific in the position of negotiating anything that liberates anyone but itself (and its directors and officers, but only when acting as Euro Pacific agents). In what world would a company have the capacity to sign away the rights of an employee to sue OCIF (for instance, if we would accept OCIF reading of the clause) without the consent of that employee? The only reasonable reading is that on one side is Euro Pacific, its directors and officers (acting as Euro Pacific agents, of course), who are releasing everyone on the other side and it must be noted that it clearly states that the other side includes (that is for emphasis on the what Plaintiff understand is the only correct reading): the OCIF's itself, OCIF's attorneys, OCIF's insurers, OCIF's assignees, OCIF's transferors, OCIF's transferees, OCIF's principals, OCIF's partners, OCIF's officers, OCIF's directors, OCIF's employees, OCIF's agents servants, OCIF's subsidiaries, OCIF's parent corporations, OCIF's affiliates, OCIF's successors, OCIF's stockholders, OCIF's agents and OCIF's representatives, including the OCIF's Trustee against any claims the Entity itself may have against them. The reading OCIF would like to prevail requires the irrational conclusion that a director of Euro Pacific, while acting in his capacity as a director to release claims Euro Pacific may have, simultaneously releases personal claims of a Euro Pacific's employee that are separate and distinct from claims the entity may have against OCIF. There is no such power of representation for any corporation, director or officer. Now, changing "employee" to "shareholder", we have the same situation. Euro Pacific, its directors and officers, cannot release claims from their employees nor their shareholders.

In any reasonable reading of the clause, the results must be that Euro Pacific itself cannot sue, for instance: (1) OCIF, (2) an employee (being an OCIF's employe or even an Euro Pacific one), (3) a Director (being an OCIF's Director or even an Euro Pacific one in any capacity: neither as an agent of Euro Pacific nor his personal's), (4) a shareholder (being an OCIF's shareholder- if such thing ever exist- or an Euro Pacific's shareholder) but not the other way around; and certainty not that: (1) an employee (being an OCIF's employe or even an Euro Pacific one), (2) a Director (being an OCIF's Director or even an Euro Pacific one in his personal capacity), (3) a shareholder (being an OCIF's shareholder- if such thing ever exist- or an Euro Pacific one) sues OCIF, been the case in point that said employee (from OCIF or Euro Pacific), Director (from OCIF or Euro Pacific in his personal capacity) or shareholder (from OCIF or Euro Pacific) are not part of this agreement and did not sign it.

It is quite clear that the first side does not include Euro Pacific shareholders (nor employees, etc.). In fact, OCIF's own evidence establishes that there is a case; thus, its claim of lack of jurisdiction is meritless. By the same token, the directors and officers acting as agents of the entity did not release any claim that, in their personal capacity, they might have.

Plaintiff never intended to release any personal claims. OCIF made it clear with the language of the release that personal claims did not apply. That was reinforced by the inclusion of Plaintiff name in the non-disparagement clause who actually tried to get his name removed, but OCIF insisted on leaving it in. So OCIF had the ability to include Plaintiff name in the specific clauses that applied to him. They chose not to include Plaintiff name in the release. They also chose not to have Plaintiff sign in his personal capacity as a shareholder, as they did with the liquidation plan. The plaintiff was aware of this when he signed the agreement.

It's also important to point out that OCIF could have included a personal release in the liquidation plan, but they did not. It is significant that the liquidation plan does not contain a release. OCIF could have included one. So, it is not just to show a contrast with the first agreement, but to show that OCIF chose not to include one in the second.

Also, Plaintiff only agreed to the liquidation as OCIF had already rejected the sale. Damages for the $17.5 million are not related to the dissolution, but to the rejection of the sale.

So, Plaintiff only signed the release as a director as he knew that it did not apply to him in his personal capacity as a shareholder. If OCIF wanted to include him to release him from personal claims, they should have drafted the release appropriately. Had they done so, Plaintiff would have objected and if they insisted on a personal release, he affirms he would not have agreed. Thus, they are barred from making that claim now, as Plaintiff cannot be bound by terms he did not agree.

1. Sovereign Immunity Does Not Apply to Federal Civil Rights Violations

"This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1332, as federal questions related to IRS actions and also, diversity of citizenship exist, with the amount in controversy

exceeding $75,000." Plaintiff established subject-matter jurisdiction based on federal civil rights claims under 42 U.S.C. §§ 1983 and 1985(3), which are not barred by sovereign immunity.

"OCIF claims immunity. They specifically are not immune to a civil rights claim. Plaintiff is alleging violations under §1983, which is valid against state actors in their official and personal capacities."

Plaintiff emphasizes that civil rights claims under §1983 can proceed against state officials, undermining Defendants' sovereign immunity argument.

"Defendants acted under color of state law to deprive Plaintiff of his constitutional rights, including due process and equal protection. These actions are actionable under 42 U.S.C. §§ 1983 and 1985(3), which abrogate sovereign immunity."

Violation of 42 USC 1983 - violation of Plaintiff's constitutional due process rights under 4th and 5th Amendments and to Equal Protection under 14th Amendment, and Violation of 42 USC 1985(3) - alleged conspiracy to violate Schiff's constitutional rights by Defendant Ms. Zequeira and co-conspirator Lee and unknown others at IRS and J5 and OCIF and all other defendants in various capacities as co-conspirators.

Violation of 42 U.S.C. § 1983:

Claim Under 42 U.S.C. § 1983 - Constitutional Violations

42 U.S.C. § 1983 provides a remedy for individuals whose constitutional rights have been violated by persons acting "under color of state law." While this statute typically applies to state actors, it can be extended to federal actors when plaintiffs argue, like this case, that the violation involved cooperation with state actors.

Elements for a § 1983 Claim:

Deprivation of a Constitutional Right: The plaintiff is alleging that he was deprived of a constitutional right (Unlawful seizure of property - the bank- without due cause for this case).

Violation of Fourth Amendment rights: Unlawful seizure of property.

Violation of Fifth Amendment rights: Due process violations (procedural and substantive).

Procedural and substantive due process under the Fifth Amendment have distinct characteristics and implications. Procedural due process focuses on the fairness of the procedures used by the government when it deprives an individual of life, liberty, or property. It requires that the government provide notice and an opportunity to be heard at a meaningful time and in a meaningful manner. Castellar v. McAleenan, 388 F. Supp. 3d 1218. Procedural due process violations are not complete until the state fails to provide due

process, meaning that the state can cure procedural deprivation by providing a later procedural remedy. McKinney v. Pate, 20 F.3d 1550.

Substantive due process, on the other hand, protects fundamental rights from government interference, regardless of the procedures used. A violation of substantive due process is complete when the infringement occurs, and no amount of process can justify it. McKinney v. Pate, 20 F.3d 1550. Substantive due process rights are typically protected against arbitrary and irrational government actions that are so egregious and outrageous that they shock the conscience. Daugherty v. Sheer, 248 F. Supp. 3d 272.

The remedies for substantive due process violations are usually compensatory damages, whereas procedural due process violations often seek equitable relief, such as reinstatement or a properly conducted hearing. McKinney v. Pate, 20 F.3d 1550.

In summary, while procedural due process ensures fair procedures before deprivation of rights, substantive due process protects against certain government actions regardless of the procedures used. Both components are essential to the Fifth Amendment's guarantee of due process, but they address distinct aspects of government conduct and provide diverse types of remedies. McKinney v. Pate, 20 F.3d 1550, Castellar v. McAleenan, 388 F. Supp. 3d 1218, Daugherty v. Sheer, 248 F. Supp. 3d 272.

The plaintiff claims that the IRS and OCIF deprived him of property (his financial institution) without due process, violating his Fifth Amendment rights.

Procedural Due Process Violation:

Procedural due process ensures that before the government deprives someone of property, notice and an opportunity to be heard are required. Here, the plaintiff alleges:

The plaintiff was not given proper notice of the denial of his bank's license renewal prior to the June 2022 cease-and-desist order.

His offer to inject $7 million in capital was rejected by the OCIF Commissioner, who assured him that the bank's current capital level, though below the statutory required minimum, was sufficient for the bank to operate prior to the completion of the sale to Qenta. Then, without warning, Ms. Zequeira and OCIF improperly used the bank's low capital (which was low because she told the plaintiff there was no need to infuse the $7 millions) as a pretense to issue a cease-and-desist against the bank for insufficient capital, without once giving the plaintiff a chance to clear the capital difference by adding the funds previously advised to him were not needed.

OCIF denied the stock sale, which would have yielded $17.5 million, but later approved a much smaller asset sale, resulting in significant economic loss.

The government's actions (blocking the stock sale and closing the bank) required prior notice and a meaningful opportunity to address concerns. Mathews v. Eldridge, 424 U.S. 319 (1976), requires balancing the individual's interest, risk of erroneous deprivation, and the

government's interest. OCIF's refusal to reconsider the stock sale likely violated this principle.

Mathews v. Eldridge established a three-part balancing test to determine the specific dictates of due process in administrative procedures. This test requires consideration of: (1) the private interest affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value of additional or substitute procedural safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative burdens that additional or substitute procedural requirements would entail S.C. v. New Jersey Dept. of Children & Families, 242 N.J. 201, In re State, 556 S.W.3d 821, Lime Lounge, LLC v. Zoning Bd. of Adjustment of Des Moines, 927 N.W.2d 701.

The requirement for notice and an opportunity to be heard is a fundamental aspect of due process, as highlighted in Mathews v. Eldridge. The case emphasizes that even if an evidentiary hearing is not always required, the affected individual must be given a chance to assert their claim before any administrative action is taken. S.C. v. New Jersey Dept. of Children & Families, 242 N.J. 201. Therefore, OCIF's refusal to reconsider the stock sale without providing prior notice and a meaningful opportunity to address concerns would likely violate the due process principles established in Mathews v. Eldridge S.C. v. New Jersey Dept. of Children & Families, 242 N.J. 201, In re State, 556 S.W.3d 821, Lime Lounge, LLC v. Zoning Bd. of Adjustment of Des Moines, 927 N.W.2d 701.

In Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532 (1985), the U.S. Supreme Court established that an individual with a protected property interest is entitled to notice and an opportunity to be heard before being deprived of that interest. The case was about a public employee facing termination, requiring a pre-termination hearing that need not be elaborated but must provide notice and an opportunity to respond to the charges. Applying this to the context of OCIF and the bank's potential insolvency, the bank might indeed be entitled to a hearing before liquidation, as the deprivation of property interests typically requires due process protections. Similarly, the plaintiff, as an owner, would be entitled to an independent hearing to address the deprivation of his property interest. The essence of due process, as highlighted in Loudermill, is the requirement for notice and an opportunity to be heard before any significant property interest is deprived. Even if OCIF believed insolvency was an issue, the bank might have been entitled to a hearing before liquidation. The plaintiff, as an owner, was, on the other hand, entitled to an independent hearing as his property was being deprived.

Plaintiff's personal emotional duress and improper legal advice confounded this process. Also, the only hearing he was offered related to the liquidation of the bank, and not to the rejection of the stock sale of the bank to Qenta. Since the Commissioner made it clear that she would not approval the sale of the bank to any buyer, no matter how qualified, liquidation was the only viable option Plaintiff had. Due to the allegations in the media, which were exacerbated by the comments of the defendants at the press conference, the bank was losing over $250,000 per month. Losses that the Plaintiff was personally covering.

The only way the bank would ever return to profitability would be to get out of the cloud of money laundering and tax evasion, which could only be achieved with a new name, new owner, new board of directors, and new management. Due to the conspiracy darkening his professional reputation and name as well of also the bank's, so long as Mr. Schiff fully owned the bank it would be hemorrhaging money. So, he agreed to the liquidation of the bank as the only means to stop the bleeding.

Under Cleveland Board of Education v. Loudermill, the Supreme Court held that due process requires that an individual be given an opportunity for a hearing before being deprived of any significant property interest, which included employment in that case. Specifically, the Court mandated that a tenured public employee must receive oral or written notice of the charges against them, an explanation of the employer's evidence, and an opportunity to present their side of the story before termination. Green Bay Professional Police Ass'n v. City of Green Bay, 407 Wis. 2d 11, State v. Conn. State Univ. Org. of Admin. Fac., 349 Conn. 148, Fed. Educ. Ass'n - Stateside Region v. DOD, 841 F.3d 1362.

Nonetheless, in the context of bank liquidation, the necessity of pre-deprivation hearing can be influenced by the urgency of the situation. For instance, in Columbian Financial Corp. v. Stork, the court acknowledged that no pre-deprivation hearing is necessary when there is a need for swift or expedited action, such as when a bank is declared insolvent. The court held that the denial of a pre-deprivation hearing did not violate a clearly established constitutional right under such urgent circumstances. Columbian Fin. Corp. v. Stork, 811 F.3d 390.

Therefore, while Loudermill establishes a general requirement for a pre-deprivation hearing, exceptions exist in cases where immediate action is necessary to prevent serious losses, such as in the case of bank insolvency. In such a scenario, the Plaintiff himself and the bank may not be entitled to a pre-deprivation hearing before liquidation. Columbian Fin. Corp. v. Stork, 811 F.3d 390.

However, Plaintiff is contesting the need for "immediate action" as, and we repeated here for convenience: "If the bank was truly "critically insolvent" so that it required a cease-and-desist order "summary emergency action that seeks to prevent an imminent danger", why did Ms. Zequeira and OCIF wait three months to issue it?" (A delay Plaintiff did not even know about until April of 2024). In such an alternate scenario, Plaintiff himself and maybe, but not necessarily the bank, may have been entitled to a pre-deprivation hearing before liquidation.

Here, again, Plaintiff is postulating the appointed Trustee should have represented the bank's interests (defending the bank's customers and their deposits, as well as its creditors, etc.) in contraposition to the interest of OCIF in a second angle and the Plaintiff in a third angle viewpoint. That did not happen.

Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982): A procedural right cannot be arbitrarily denied. Here, OCIF invited a reconsideration motion but allegedly never intended

to consider it, violating due process. The Court emphasized that the state must accord due process when it terminates a claim for failure to comply with a reasonable procedural or evidentiary rule. The case involved a situation where the plaintiff's claim was dismissed due to the state's failure to convene a hearing within the statutory period, which the Court found to be a denial of due process, but Logan does not discuss the intent behind procedural invitations but rather focuses on the procedural safeguards required to protect an individual's rights. The Court in Logan did not address a scenario where a motion was invited with no intention of approval, but it did establish that procedural rights cannot be arbitrarily denied without due process. Plaintiff, nevertheless, understands the intention to deny the due process is a natural extension of Logan.

A procedural right cannot be arbitrarily denied without violating due process. The U.S. Supreme Court has consistently held that due process requires that individuals be given notice and an opportunity to be heard before being deprived of life, liberty, or property. This principle is evident in several cases. In Logan v. Zimmerman Brush Co., the Court emphasized that the Due Process Clause grants the aggrieved party the opportunity to present his case and have its merits fairly judged. The Court stated that "some form of hearing" is required before the owner is finally deprived of a protected property interest. Logan v. Zimmerman Brush supra. Similarly, in Cleveland Bd. of Educ. v. Loudermill, supra, the Court reiterated that the right to due process is conferred by constitutional guarantee and that a property interest cannot be deprived without appropriate procedural safeguards. Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532. In Logan v. Zimmerman Brush Co., the U.S. Supreme Court held that procedural due process requires that an individual be given an opportunity to be heard "at a meaningful time and in a meaningful manner". The Court emphasized that the state must provide procedural safeguards to protect an individual's property interest, which in this case was Logan's claim under the Illinois Fair Employment Practices Act. Logan v. Zimmerman Brush Co., 455 U.S. 422. The Court found that Logan was denied due process when his claim was dismissed due to the Commission's failure to hold a timely conference, a matter beyond Logan's control. Logan v. Zimmerman Brush Co., 455 U.S. 422.

Moreover, in County of Sacramento v. Lewis, the Court noted that the touchstone of due process is the protection of the individual against arbitrary action of government, whether it involves a denial of fundamental procedural fairness or the exercise of power without reasonable justification County of Sacramento v. Lewis, 523 U.S. 833. This principle was also highlighted in Zinermon v. Burch, where the Court explained that a procedural due process claim is not complete unless and until the State fails to provide due process. Zinermon v. Burch, 494 U.S. 113.

In Kremer v. Chem. Constr. Corp., the Court found that state procedures for adjudicating a claim of job discrimination were sufficient under the Due Process Clause of the Fourteenth Amendment, as long as the procedures allowed for a full opportunity to present charges, rebut evidence, and seek judicial review to ensure that the determination was not arbitrary and capricious. Kremer v. Chem. Constr. Corp., 456 U.S. 461.

In Fitzpatrick v. Bitzer, 427 U.S. 445, the U.S. Supreme Court determined that Congress, under the enforcement provisions of Section 5 of the Fourteenth Amendment, has the authority to subject states to lawsuits, including those seeking monetary damages, to address discriminatory practices. This decision was based on the understanding that the Eleventh Amendment's principle of state sovereignty is limited by the Fourteenth Amendment, which grants Congress the power to enforce its substantive provisions through appropriate legislation Fitzpatrick v. Bitzer, 427 U.S. 445.

The Court held that the Eleventh Amendment does not bar a backpay award to the petitioners because the enforcement provisions of the Fourteenth Amendment allow Congress to authorize suits against states to enforce the Amendment's substantive guarantees. This authority includes the power to provide for private suits against states or state officials, which would otherwise be constitutionally impermissible. The decision emphasized that Congress's power under Section 5 of the Fourteenth Amendment is plenary and can be used to enforce significant limitations on state authority Fitzpatrick v. Bitzer, 427 U.S. 445.

The First Circuit has consistently upheld this principle, recognizing that Congress can subject nonconsenting states to suit in federal court when acting under Section 5 of the Fourteenth Amendment. This is because the Fourteenth Amendment expressly empowers Congress to enforce its provisions against the states, fundamentally altering the balance of state and federal power. The First Circuit has also noted that Congress's power under Section 5 is not confined to merely prohibiting what the Amendment itself prohibits but includes the authority to enact legislation that is rationally tailored to prevent or deter violations of the Amendment Laro v. New Hampshire, 259 F.3d 1.

In summary, Fitzpatrick v. Bitzer, 427 U.S. 445 established that Congress has the authority under the Fourteenth Amendment to subject states to lawsuits to address discriminatory practices, a principle that binds the First Circuit and has been reaffirmed in subsequent cases Fitzpatrick v. Bitzer, 427 U.S. 445, Laro v. New Hampshire, 259 F.3d.

Applying this to the scenario where OCIF invited a reconsideration motion but allegedly never intended to fairly consider it, it would similarly violate due process if the procedural right to reconsideration was arbitrarily denied. We can infer that OCIF never intended to consider the motion for reconsideration as it had already scheduled a press conference to announce the closure of the bank over a month prior (a fact that was concealed from Plaintiff until April 2024). The essence of due process, as highlighted in Logan, is the provision of a fair procedure, and any arbitrary denial of such a procedural right would be inconsistent with the due process requirements established by the Fourteenth Amendment. Logan v. Zimmerman Brush Co., 455 U.S. 422.

Therefore, the principles of Logan v. Zimmerman Brush Co. support the assertion that arbitrarily denying a procedural right, such as a reconsideration motion, would violate due process. Logan v. Zimmerman Brush Co., 455 U.S. 422.

These cases collectively underscore that procedural rights are fundamental to due process and cannot be arbitrarily denied without violating constitutional protections.

The bank's closure and blocked sale without notice constitutes a clear deprivation of Plaintiff's procedural rights. The press conference further harmed the plaintiff by implying illegal activity, thus depriving him of his presumption of innocence and exacerbating financial and reputational damage.

Substantive Due Process Violation

Substantive due process protects against arbitrary government actions that lack a legitimate purpose. Plaintiff claims:

OCIF's decisions to reject the sale, shut down the bank, and place it into receivership were arbitrary, as Qenta, imminently qualified to own and operate the bank, had committed to contribute more than enough additional capital to fully comply with regulatory requirements, and the bank had no debt and excess cash on hand that exceeded all liabilities, including those owed to depositors.

The defendants acted to "set an example" without actual evidence of wrongdoing to save face after a failed IRS/J5 investigation.

County of Sacramento v. Lewis, 523 U.S. 833 (1998): Actions that "shock the conscience" violate substantive due process. Here, the government shut down a functioning bank without legitimate cause. The Court emphasized that only the most egregious official conduct offends substantive due process.

The plaintiff's claim that OCIF's decision to reject the sale and shut down the bank constitutes a substantive due process violation is supported by relevant legal precedents. Substantive due process protects against arbitrary government actions that lack a legitimate purpose and are so egregious that they "shock the conscience." In County of Sacramento v. Lewis, the U.S. Supreme Court held that actions that "shock the conscience" violate substantive due process. County of Sacramento v. Lewis, 523 U.S. 833. Zinermon v. Burch, 494 U.S. 113 (1990): Misuse of governmental power without proper procedures violates substantive due process.

OCIF’s denial of the capital injection ensured the bank's insolvency, further showing arbitrary intent.

OCIF's rejection of the stock sale and hasty asset sale deprived the plaintiff of millions in value, harming creditors, and customers. The refusal to consider capital injections, as well as highly experienced banking professionals to operate the bank, shows a deliberate effort to prevent the bank's survival-constituting an arbitrary and unjustified deprivation of property.

The plaintiff's argument that OCIF's actions were arbitrary and lacked legitimate cause aligns with the principles established in the above cited cases. The claim that the defendants

acted to "set an example" without actual evidence of wrongdoing, and the refusal to consider capital injections, could be seen as arbitrary and capricious actions that deprived the plaintiff of property without a legitimate governmental objective. This is further supported by the First Circuit's interpretation in Marrero-Rodríguez v. Municipality of San Juan, which states that substantive due process is violated by executive action that is arbitrary or conscience-shocking Marrero-Rodríguez v. Municipality of San Juan, 677 F.3d 497.

Additionally, the statutory framework under 5 USCS § 706 allows courts to set aside agency actions that are arbitrary, capricious, or an abuse of discretion. § 706. Scope of review. This supports the plaintiff's claim that OCIF's rejection of the stock sale and hasty asset sale, which deprived the plaintiff of significant value, could be considered arbitrary and unjustified.

In conclusion, the plaintiff's claim that OCIF's actions constitute a substantive due process violation is supported by the cited legal precedents and statutory provisions, which emphasize protection against arbitrary and conscience-shocking government actions.

Violation of Fourteenth Amendment rights: Equal protection violations (typically applied to state actors, but this can also be argued through state- federal cooperation/leadership in certain cases, like this case).

Defendants Acting Under Color of State Law: The plaintiff alleged that the defendants were acting "under color of state law," meaning they were acting with authority given by the state or as state agents. This can include private individuals (like the Trustee and Ms. Zequeira & Mr. Lee in their private capacity) as well as federal actors conspiring with state officials to deprive someone of their rights as in this case.

The plaintiff alleged that the defendant's conduct directly caused the deprivation of the plaintiff's rights. In this case, Plaintiff will show that Ms. Zequeira, Mr. Lee, the J5 and other individuals involved in the IRS, OCIF and in the media, acting in concert to violate the plaintiff's constitutional rights.

Protected Class Membership (for Equal Protection Claim): The plaintiff alleges violation of the Equal Protection Clause (14th Amendment); he established that he is a member of a protected class, such as based on race, religion, and because these two in conjunction to, or separate of, his political views and public speeches, he will prove he was discriminated against, at least in part, because of his membership in this class and his public political speech.

Political speech is protected under 42 U.S.C. § 1983. The U.S. Supreme Court in Heffernan v. City of Paterson held that a city police officer who was demoted based on the city's mistaken belief that the officer was engaging in political speech was entitled to seek relief under 42 U.S.C. § 1983. The Court emphasized that the First Amendment generally prohibits government officials from dismissing or demoting an employee because of the employee's engagement in constitutionally protected political activity, and 42 U.S.C. § 1983 authorizes a

lawsuit by a person deprived of a right secured by the U.S. Constitution. Heffernan v. City of Paterson, 578 U.S. 266.

Regarding 42 U.S.C. § 1985 (3), the statute does not explicitly protect political speech. Section 1985(3) addresses conspiracies to deprive individuals of equal protection of the laws or equal privileges and immunities under the laws, but it does not specifically mention political speech as a protected category. § 1988. Proceedings in vindication of civil rights. Therefore, while political speech is protected under 42 U.S.C. § 1983, it is not explicitly protected under 42 U.S.C. § 1985(3).

The Plaintiff, Mr. Peter Schiff, alleges that the actions by IRS & J5 officials (Mr. Jim Lee and others) and OCIF (Ms. Natalia Zequeira Díaz) violated his due process rights under the 4th and 5th Amendments and the Equal Protection Clause of the 14th Amendment. Specifically, Plaintiff claims that the wrongful shutdown of his financial institution and the defamatory press conference violated his rights to due process by depriving him of property (the bank's stock fair market value) without proper legal procedure and based on false criminal accusations.

As stated above, under § 1983, the Plaintiff demonstrated that the defendants were acting "under color of state law." Both IRS and OCIF acted in their official capacities, implying state action. The involvement of OCIF, a Puerto Rican agency, in executing actions under IRS directives would likely meet this criterion.

Violation of 42 U.S.C. § 1985(3):

Claim Under 42 U.S.C. § 1985(3) - Conspiracy to Violate Constitutional Rights

42 U.S.C. § 1985(3) allows for a civil action if two or more persons conspire to deprive someone of their constitutional rights, particularly if the motivation is based on race or another protected class status. This claim alleges that the defendants conspired to violate the plaintiff's civil rights based on their membership in a protected class.

Elements for a § 1985(3) Claim:

Conspiracy: The plaintiff alleges that the defendants entered into a conspiracy or agreement with the intent to deprive the plaintiff of equal protection and/or equal privileges and immunities under the law. In this case, it is alleged that Ms. Zequeira and Mr. Lee, along with others at the IRS and OCIF, conspired to violate the plaintiff's rights.

Class-Based Animus: The plaintiff will prove that the conspiracy was motivated by "class-based, invidiously discriminatory animus." In other words, the conspiracy was driven, at least partially, by racial, religious, or other discriminatory motives. The plaintiff's claim shows that he is a member of a protected class (based on race & religion) and that the conspiracy was motivated, at least in part, by this discriminatory animus.

Overt Acts in Furtherance of the Conspiracy: The plaintiff will provide and discover further evidence of actions taken by the conspirators in furtherance of the conspiracy. This includes

specific actions by Ms. Zequeira, Mr. Lee, and others at the IRS/J5 and OCIF that demonstrate they worked together to violate the plaintiff's rights.

Deprivation of a Constitutional Right: Similar to the § 1983 claim, the plaintiff will prove that was deprived of a constitutional right, such as due process (Fifth Amendment) and unlawful seizure (Fourth Amendment). The plaintiff will also show that this deprivation was caused by the actions of the conspirators.

The complaint alleges that Mr. Jim Lee (IRS) and Ms. Natalia Zequeira Díaz (OCIF), along with unnamed individuals from IRS/J5 and OCIF, conspired to violate Schiff's constitutional rights by using false accusations to destroy his business. Section 1985(3) addresses conspiracies that deprive individuals of equal protection or equal privileges under the law. The plaintiff claims that he is part of a protected class, and that the alleged conspiracy was motivated, in part, by discriminatory intent.

To support a § 1985(3) claim, Mr. Schiff will provide evidence that there was an agreement or "meeting of the minds" between Mr. Lee, Ms. Zequeira, and other co-conspirators. In addition to the evidence already in possession, Plaintiff will also request proper discovery to further evidence of this claim. The FOIA documents obtained by Plaintiff in April 2024, revealing IRS-OCIF coordination and concealment of the investigation, if unredacted, may provide base evidence of such an alleged conspiracy, among further discoveries to be made. Plaintiff claims that the collaboration between IRS and OCIF went beyond routine procedure, showing clear intent to wrongfully shut down the bank and defame him.

Discriminatory Animus: Plaintiff's claims that he is part of a protected class and can invoke the requirement that the alleged conspiracy be motivated, at least partially, by some form of class-based, invidiously discriminatory animus (racial, religious, or another identifiable group characteristic and/or political speech).

Plaintiff also claims his first amendment rights of free speech was one of the reasons he was targeted for investigation by the IRS & J5 in the first place for expressing his political beliefs. Plaintiff is a well-known public critic of the IRS, the income tax in general, and AML laws in particular that he thinks violate individual privacy. Though overly critical of these laws, Plaintiff abides by them. In summary, Plaintiff criticizes those laws but has always obeyed them. Yet, Plaintiff claims he was unconstitutionally targeted and punished for expressing his views.

In support of the plaintiff's allegation that the IRS sometimes targets individuals and entities known to be critics of its practices, several cases and statutes provide relevant precedents and legal principles area quoted. In "United States v. NorCal Tea Party Patriots (In re United States)," the 6th Circuit Court of Appeals addressed allegations that the IRS used political criteria to target applications for tax-exempt status filed by Tea Party groups. The court noted that the IRS took significantly longer to process these applications and demanded unnecessary information, which was seen as mistreatment based on political views. United States v. NorCal Tea Party Patriots (In re United States), 817 F.3d 953.

Similarly, in "NorCal Tea Party Patriots v. IRS," the plaintiffs alleged that the IRS subjected their applications to heightened scrutiny and unnecessary delays due to their political viewpoints. This case was supported by findings from the Treasury Inspector General for Tax Administration (TIGTA) and various Senate committees, which confirmed that the IRS discriminated against dissenting groups based on their political viewpoints. NorCal Tea Party Patriots v. IRS, 2022 U.S. Dist. LEXIS 80117. In "True the Vote, Inc. v. IRS," the D.C. Circuit Court of Appeals reversed a district court's dismissal of claims that the IRS targeted applications based on political viewpoints, recognizing that the plaintiffs' claims were not moot despite the IRS's cessation of the discriminatory practices. True the Vote, Inc. v. IRS, 831 F.3d 551. The case "Zherka v. Ryan" involved a plaintiff who claimed that IRS employees hindered his application for tax-exempt status and initiated an investigation against him as part of a broader effort to penalize Tea Party members for their political activities. The court allowed the case to proceed against certain defendants, acknowledging the allegations of political discrimination. Zherka v. Ryan, 52 F. Supp. 3d 571. Additionally, "Teague v. Alexander" from the D.C. Circuit Court of Appeals discussed the implications of the IRS focusing its investigative resources on political dissidents, highlighting the potential chilling effect on political expression and the need for a compelling interest to justify such actions. Teague v. Alexander, 662 F.2d 79.

These cases collectively support the Plaintiff's argument that the IRS has at times targeted individuals and entities based on their political speech, which can be used to substantiate claims of discrimination due to political viewpoints. The J5/IRS investigation of the bank in the first place seemed inspired, in part, by the belief that someone who criticizes the laws must have broken them. Also, Plaintiff's father was a well-known tax protestor who did prison time and IRS/J5 might have been triggered by the connection, visiting the sins of the father on the son.

This was corroborated by the fact that the sole defense offered by the respondents (some also named in this complaint) in his winning defamation lawsuit in Australia were Mr. Schiff's public criticisms of the IRS, income taxes, and AML laws. Plaintiff believes that the IRS and/or other J5 representatives may have helped respondents prepare that defense.

There is also case law supporting the allegation that the IRS has targeted individuals and entities known for their public criticism of the IRS, income tax, and AML laws, which can be used to support a plaintiff's claim of discrimination due to political speech. In "Linchpins of Liberty v. United States", the plaintiffs alleged that the IRS intentionally and systematically targeted conservative organizations applying for tax-exemption, subjecting them to additional and unconstitutional scrutiny based on their political views. This included significantly delaying the processing of applications and making unnecessary and irrelevant requests for additional information. Linchpins of Liberty v. United States, 71 F. Supp. 3d 236. This case does illustrate allegations of viewpoint-based targeting by the IRS, which could potentially support the allegation of discrimination based on political speech. Similarly, in "True the Vote, Inc. v. IRS," supra, the plaintiff claimed that the IRS targeted their application for tax-exempt status due to their mission of promoting election integrity

and perceived association with Tea Party organizations. The IRS admitted to using inappropriate criteria to identify applications for review based on organizational names and policy positions, leading to unwarranted delays and burdensome information requests. In 2017, the IRS agreed to settle the case True the Vote, Inc. v. IRS, 71 F. Supp. 3d 219. Also, in "NorCal Tea Party Patriots v. IRS," supra, plaintiffs alleged that the IRS targeted their tax-exemption applications because their names included terms like "Tea Party" or "Patriots," or because they focused on issues such as government spending. The IRS subjected these applications to heightened scrutiny and unnecessary delays, which was also the subject of investigations by the Treasury Inspector General for Tax Administration and Senate committees NorCal Tea Party Patriots v. IRS, 2016 U.S. Dist. LEXIS 5889, NorCal Tea Party Patriots v. IRS, 2022

U.S. Dist. LEXIS 80117. Additionally, in "Allen v. United States," plaintiffs alleged that the IRS and DOJ conducted raids and other aggressive actions as part of a policy to retaliate against organizations advocating for the abolition of the income tax and the reduction of IRS powers. This included the allegations of constitutional violations stemming from these actions. Allen v. United States, 2004 U.S. Dist. LEXIS 33236, Allen v. Damm, 2011 U.S. Dist. LEXIS 100259.

These last cases collectively illustrate a pattern where the IRS has been accused of targeting individuals and entities based on their political speech and criticism of tax laws, which support the plaintiff's allegation of discrimination due to political speech.

A successful claim would require demonstration that: The plaintiff was engaged in constitutionally protected activity such first amendment protected speech by criticizing the IRS, the income tax in general, and AML laws in particular that he feels are violating individual privacy. The defendant's actions (IRS failed investigation and enforcement actions in collusion with OCIF to close the bank plus the press conference that damaged Plaintiff personal and professional reputation) would chill a person of ordinary firmness from continuing to engage in that activity. There was a causal connection between the protected activity and the defendant's adverse actions and that the alleged conspiracy was motivated, in part, by this discriminatory intent, among others. In the Australia defamation lawsuit that Plaintiff won against Nine, their entire defense, was Plaintiff's political statements. They said it was Plaintiff's dislike of taxes and regulations that proved he was using the bank to help customers break the laws Plaintiff did not agree with in the first place.

As for religion discrimination from IRS part, in United States v. Z Street (2015); Z Street, a non-profit corporation pro-Israel group, dedicated to educating the public about various issues related to Israel and the Middle East claimed that the IRS delayed and scrutinized its application for tax-exempt status due to its pro-Israel stance, which the group argued was religious and political discrimination. Z Street sued the IRS under the First Amendment, arguing that it was targeted based on its religious and political views. The case was settled in 2018, with the IRS agreeing to cease discriminatory practices. The agreement includes an

apology from the IRS to Z Street for the delayed processing of the group's application for tax-exempt status.

Plaintiff is a member of a protected class by reason of race & religion, and as per Section 1985(3) addressing conspiracies that deprive individuals of equal protection or equal privileges under the law. This case supports Plaintiff claims that he is part of a protected class, and that the alleged conspiracy was motivated, in part, by this discriminatory intent.

The assertion of constitutional violations solidifies the Court's jurisdiction over the claims.

2. OCIF's Actions Exceeded Statutory Authority

"OCIF's actions, including the denial of the bank sale and liquidation process, were arbitrary, capricious, and outside the scope of its regulatory authority, constituting an abuse of power." Sovereign immunity does not apply to actions beyond an agency's lawful scope, and OCIF's conduct was not consistent with its statutory obligations.

"Sovereign immunity does not protect actions taken in bad faith or beyond statutory authority. OCIF's denial of the sale of the bank and its role in the press conference were clearly outside its regulatory jurisdiction." The plaintiff argues that OCIF's actions exceeded its authority and were motivated by malice, negating immunity claims.

"The press conference and liquidation process orchestrated by OCIF were not routine regulatory actions but intentional acts to damage Plaintiff's reputation, going beyond OCIF's legal mandate." These allegations demonstrate that OCIF's actions were not protected by sovereign immunity because they were outside the scope of lawful authority.

3. Eleventh Amendment Does Not Shield OCIF in This Context

Eleventh Amendment Immunity Does Not Apply to Puerto Rico in this Context:

Futura Dev. of P.R., Inc. v. Estado Libre Asociado de P.R., 276 F. Supp. 2d 228. - The Eleventh Amendment provides immunity to states and their instrumentalities from suits in federal court unless there is a clear waiver or abrogation by Congress Clissuras v. EEOC, 1990 U.S. Dist. LEXIS 8284 Estate of M.D. v. New York, 241 F. Supp. 3d 413. However, Puerto Rico's status as a territory complicates the application of the Eleventh Amendment. The Supreme Court has held that Puerto Rico is treated as a state for some purposes but not all. In Puerto Rico v. Sanchez Valle, the Court recognized the unique status of Puerto Rico, which may impact the application of sovereign immunity. Ramsey v. Muna, 2015 U.S. Dist. LEXIS 70067 Zappa v. Cruz, 30 F. Supp. 2d 123

Additionally, the Eleventh Amendment immunity may not extend to actions where the state or its entities engage in commercial activities or where there is a clear waiver of immunity Ali v. Carnegie Inst. of Wash., 967 F. Supp. 2d 1367. The Consent Order and the regulatory actions taken by OCIF could be interpreted as commercial activities, thus potentially limiting the application of sovereign immunity.

“Plaintiff seeks injunctive relief and compensatory damages for violations of constitutional rights, which are not barred by the Eleventh Amendment when brought under federal statutes like §1983 and 1985(3).” This highlights that federal law permits claims for injunctive relief and damages against state actors for constitutional violations.

“Plaintiff is not suing OCIF for damages as a state agency per se but rather holding them accountable for violating federal law under §1983 and 1985(3). Sovereign immunity cannot shield them in this instance.” Plaintiff clarifies that the claims are specific to federal law violations, bypassing Eleventh Amendment immunity.

“Claims under §1983 and §1985(3) are valid against state entities acting under color of law, as they are intended to provide a remedy for constitutional violations perpetrated by state actors.” This reinforces the argument that sovereign immunity does not preclude claims under these federal statutes.

To argue against the claim that "As an agency of Puerto Rico, OCIF is immune from suits under the Eleventh Amendment," you can rely on several legal arguments and case law that challenge the application of Eleventh Amendment immunity to certain entities in Puerto Rico.

First, it is important to note that the Eleventh Amendment immunity does not automatically extend to all entities associated with the Commonwealth of Puerto Rico. The determination of whether an entity is an "arm of the state" and thus, possible entitled to immunity involves a detailed analysis of several factors. These factors include whether the entity performs a governmental function, the extent of its financial independence from the state treasury, the degree of autonomy it possesses, and whether a judgment against the entity would be satisfied out of the state treasury CESTERO v. ROSA, 996 F. Supp. 133, Montalvo-Padilla v. Univ. of Puerto Rico, 492 F. Supp. 2d 36, Vazquez v. Tribunal Gen. De Justicia, 477 F. Supp. 2d 406.

In Metcalf & Eddy, Inc. v. Puerto Rico Aqueduct and Sewer Authority, the First Circuit held that PRASA was not entitled to Eleventh Amendment immunity because it was financially independent and operated with substantial autonomy CESTERO v. ROSA, 996 F. Supp. 133. This case sets a precedent that financial independence and operational autonomy can negate claims of Eleventh Amendment immunity.

Additionally, in Grajales v. Puerto Rico Ports Authority, the First Circuit emphasized that the enabling act of the entity and its practical financial reliance on the state are critical in determining immunity. The court found that PRPA was not structured to be an arm of the Commonwealth, highlighting the importance of the entity's statutory characterization and financial independence Aluma Constr. Corp. v. P.R. Ports Auth., 265 F. Supp. 3d 158.

Furthermore, in Trans Am. Recovery Servs. v. Puerto Rico Maritime Shipping Auth., 850 F. Supp. 103, the court concluded that PRMSA was entitled to immunity due to its financial dependence on the Commonwealth and the fact that its board members were appointed by the governor. However, the court also noted factors against immunity, such as the authority

to sue and be sued and the ability to raise its own funds, indicating that a balance of factors is necessary Trans Am. Recovery Servs. v. Puerto Rico Maritime Shipping Auth., 850 F. Supp. 103.

In conclusion, to argue against OCIF's claim of Eleventh Amendment immunity, we should focus on demonstrating that OCIF operates with substantial financial independence, possesses significant autonomy, and that a judgment against it would not necessarily impact the state treasury. Highlighting these factors can help establish that OCIF should not be considered an arm of the state for purposes of having immunity under the Eleventh Amendment and thus not entitled it. CESTERO v. ROSA, 996 F. Supp. 133, Montalvo-Padilla v. Univ. of Puerto Rico, 492 F. Supp. 2d 36, Aluma Constr. Corp. v. P.R. Ports Auth., 265 F. Supp. 3d 158.

Counterargument: OCIF Is Not Entitled to Eleventh Amendment Immunity

The argument that the Office of the Commissioner of Financial Institutions (OCIF) is immune under the Eleventh Amendment is flawed. By examining OCIF's financial structure, autonomy, and operational independence, it is clear that it does not meet the criteria for sovereign immunity. Below are the counterarguments addressing OCIF's claim.

1. OCIF Operates with Substantial Financial Independence

a. Revenue Generation

OCIF generates revenue through fees, fines, and penalties imposed on the financial institutions it regulates. This financial independence reduces reliance on the Commonwealth's general funds.

OCIF's enabling statute creates specialized funds, such as the "Fund for Consumer Education in Financial Matters," where penalties are deposited and used for specific purposes, not general operational expenses. In addition, "International Banking Center Regulatory Act" [Act No. 52 of August 11, 1989, as amended] in section Section **3 (a)(2).** — Authority and Duties of the Commissioner states: Collect fees for examinations and audits, receive monies and make disbursements according to its budget or as otherwise provided by law or regulations; Provided, That for Fiscal Year 2015-2016, of the funds collected on this account or any other in accordance with this Act, the sum of two million, seven hundred thousand dollars ($2,700,000) in account number 0750000238-779-1998, or in any other created for the same purposes in the Department of the Treasury's accounting system shall be transferred to the "2015-2016 **Legal Liability Fund**". So, it is quite clear OCIF is a profit alike center for such fund.

Article 21 of Act No. 4 confirms that OCIF's revenue is directed towards financial education and training rather than general state funds.

b. No Direct Impact on the State Treasury

OCIF's operational budget is largely self-sustaining, and a monetary judgment against it would not necessarily burden the Commonwealth of Puerto Rico.

Article 18 of Act No. 4 suggests that OCIF's financial obligations are established separately from the Commonwealth's budget. This financial structure demonstrates that OCIF is insulated from the general state treasury. Act 52 explicitly states there is a fund for legal liabilities from where to pay and where its proceeds coming from fees of international banks.

2. OCIF Possesses Significant Autonomy

a. Independent Decision-Making Authority

OCIF has substantial discretion in its regulatory functions, operating independently of the Commonwealth's central government.

Evidence:

OCIF's Commissioner is appointed by the Governor with Senate approval but operates independently, overseeing the financial sector without direct intervention from the central government.

The rejection of the proposed $17.5 million stock sale and subsequent undervalued asset sales reflect OCIF's extraordinary autonomy in making regulatory decisions.

b. Minimal Oversight

OCIF's day-to-day operations are not directly managed or controlled by Puerto Rico's executive or legislative branches, underscoring its operational independence.

Evidence:

OCIF's regulatory decisions, including enforcement actions and the press conference, were conducted independently, emphasizing its autonomy.

3. A Judgment Against OCIF Would Not Necessarily Impact the State Treasury

a. Segregated Financial Resources

OCIF's financial resources are distinct from the Commonwealth's general fund, insulating Puerto Rico's treasury from liability.

Evidence:

By Defendant own admission, OCIF maintains separate accounts for fines, penalties, and fees collected from financial institutions. These funds are earmarked for specific regulatory and educational purposes.

b. Legal Precedent

Courts have previously denied Eleventh Amendment immunity to entities that are financially independent or do not directly burden the state treasury.

Evidence:

OCIF's operations and liabilities are not funded by Puerto Rico's taxpayers but through revenue it independently generates.

4. OCIF's Classification as a "Law Enforcement Agency" Is Insufficient

a. OCIF's Primary Role Is Regulatory, Not Law Enforcement

While OCIF enforces compliance, its primary function is regulatory oversight of financial institutions, not law enforcement in the traditional sense.

Evidence:

OCIF's enabling statute characterizes it as a financial regulatory agency tasked with supervising banking operations, protecting depositors, and ensuring financial stability.

b. OCIF's Structure Distinguishes It from Traditional State Agencies

Unlike other state entities, OCIF is not classified as a public corporation or explicitly described as having sovereign immunity in its enabling statute.

Evidence:

OCIF's enabling statute lacks language establishing it as a separate legal entity with immunity from suits, distinguishing it from entities like the Puerto Rico Ports Authority.

5. Eleventh Amendment Immunity Does Not Automatically Apply

a. OCIF Fails the Two-Prong Test

Under the test established in Fresenius Medical Care Cardiovascular Resources, Inc. v. Puerto Rico, sovereign immunity applies only if:

1. The entity is structured as an arm of the state.

2. The state treasury is obligated to pay judgments.
Evidence:

OCIF's financial independence and operational autonomy demonstrate that it is not an arm of the state. Additionally, Puerto Rico's treasury is not directly liable for OCIF's judgments.

b. No Valid Waiver or Statutory Immunity

OCIF has not provided evidence of a valid statutory waiver or sufficient structural ties to the Commonwealth to claim immunity under the Eleventh Amendment.

Evidence:

The Commissioner's actions, including rejecting the bank's sale and liquidating its assets, were arbitrary and not consistent with legitimate regulatory purposes.

Conclusion

The claim that OCIF is immune under the Eleventh Amendment lacks merit. OCIF:

1. Operates with substantial financial independence, relying on its revenue rather than state funds.

2. Exercises significant autonomy in its regulatory and enforcement decisions.

3. Maintains segregated financial resources, ensuring that judgments against it do not burden the state treasury.

4. Does not meet the two-prong test for Eleventh Amendment immunity as it is not an arm of the state and does not obligate the Commonwealth to pay its liabilities.

These factors conclusively demonstrate that OCIF does not qualify for sovereign immunity, and the claims against it should proceed.

4. Federal Jurisdiction is Supported by Diversity and Federal Questions

"Plaintiff is a U.S. citizen domiciled in Puerto Rico, and while some Defendants are residents of Puerto Rico, others are not, satisfying diversity jurisdiction under 28 U.S.C. § 1332." The presence of diversity jurisdiction provides an alternative basis for federal jurisdiction, even if certain claims were barred.

"Even without the federal law claims, the amount in controversy and diversity of citizenship establish this Court's jurisdiction." Plaintiff highlights that the Court has also subject-matter jurisdiction through diversity of citizenship.

"The claims also involve federal questions under 28 U.S.C. § 1331 because they allege violations of the 4th, 5th, and 14th Amendments to the U.S. Constitution."

Violation of Civil Rights -Due Process and Unlawful Seizure of Property (Fifth Amendment)

The defendants unlawfully deprived the Plaintiff of property without due process, violating the Fifth Amendment. Under Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971), federal agents can be held accountable for constitutional violations.

Plaintiff's claim of alleged conspiracy involving the Chief of the Criminal Division of the IRS, several of his agents, the J5 (Joint Chiefs of Global Tax Enforcement), the Puerto Rico Commissioner of Financial Institutions, and its Trustee, have an independent cause of action under Bivens and its progeny (Carlson v. Green and Davis v. Passman), despite the limitations imposed by Ziglar v. Abbasi.

Constitutional Violation:

A Bivens action arises when federal officers violate a person's constitutional rights. In this case, the alleged conspiracy involves a deprivation of constitutional rights-due process (5th Amendment), and equal protection (14th Amendment as applied through the fifth), since the IRS, through Mr. Lee arbitrary and capricious actions deprived Plaintiff of his property without due process.

Historical Precedents and Bivens' Core Scope:

The original Bivens case, which allowed a remedy for constitutional violations by federal agents under the 4th Amendment, has been extended in some cases. Carlson v. Green allowed Bivens suits for 8th Amendment violations, and Davis v. Passman permitted Bivens remedies under the 5th Amendment's equal protection guarantee. Even though Ziglar v. Abbasi imposed limits on expanding Bivens actions, it left the door open for claims that arise within the core contexts recognized by the courts-especially 4th and 5th Amendment violations. The facts surrounding the alleged conspiracy involve these types of violations, supporting the idea that Bivens is still applicable.

Special Factors and Ziglar's Limits:

While Ziglar cautions against extending Bivens remedies into new contexts, it also acknowledges that such remedies are still appropriate where there is no alternative remedy available and where "special factors" do not counsel against allowing the claim. In this case:

Lack of alternative remedies: If there is no other effective remedy for the Plaintiffs (e.g., statutory remedies like the Federal Tort Claims Act (FTCA) or other legal recourses under Puerto Rico law are inadequate and unavailable), a court could recognize the need for a Bivens remedy. This lack of alternatives could weigh heavily in favor of allowing Plaintiff's claim to proceed.

Nature of the federal action: The court may consider whether the conduct alleged (an alleged conspiracy to deprive rights) involves the government overreach and misconduct that Bivens was designed to address. In Ziglar, the Court considered national security concerns as a "special factor" counseling against a remedy, but in this case, unless the defendants raise national security issues, this factor may not apply.

Alleged conspiracy and Individual Liability:

As the alleged conspiracy involves high-level federal officials (like the Chief of the Criminal Investigation Division of the IRS and J5 officials) alongside Puerto Rican officials, it strengthens Plaintiff's argument for a Bivens claim. The involvement of multiple federal and state actors in a concerted effort to violate constitutional rights could make the situation more egregious, as it shows deliberate and complex coordinated action to deprive individuals of their rights.

In Ziglar, the Court was hesitant to extend Bivens to new contexts partly because of the nature of policymaking and broad governmental interests. However, in the case of individual actors conspiring to violate specific constitutional rights (such as due process), the nature of the action is more personal, deliberate, and fits the traditional application of Bivens.

Accountability and Deterrence:

The core purpose of Bivens actions is to hold federal officials personally accountable for violations of constitutional rights, providing a deterrent against future misconduct. Allowing this claim to proceed in this case could serve this purpose, ensuring that federal officials cannot act with impunity in concert with other government entities to violate citizens' rights. This argument aligns with the underlying rationale of Bivens as a tool for checking abuse of power.

Role of Puerto Rican Officials and Federal Overreach:

The involvement of Puerto Rican officials (like the Commissioner of Financial Institutions and its Trustee) adds an additional layer to the Plaintiff alleged conspiracy claim. Puerto Rico's unique constitutional status as a U.S. territory, where both local and federal laws apply, could provide a compelling argument that federal overreach needs to be checked, especially if local officials are complicit in an alleged conspiracy orchestrated by federal agencies.

While Ziglar v. Abbasi has curtailed the expansion of Bivens remedies, there is still room for claims involving core constitutional violations, particularly those arising under the 4th and 5th Amendments. If, as Plaintiff believes, the alleged conspiracy involves such violations and, as claimed, there are no adequate alternative remedies, the courts should allow a Bivens claim to proceed, especially if individual federal officers are personally responsible for unconstitutional conduct. Given the alleged participation of high-level federal and local officials in a coordinated alleged conspiracy, this case may present the type of "egregious" conduct that courts have historically been willing to address through Bivens actions.

Federal question jurisdiction further supports the Plaintiff’s assertion that the Court has authority to hear the case.

The counterarguments show that:

Sovereign immunity does not bar civil rights claims under §1983 and §1985(3).

OCIF acted beyond its statutory authority, removing protections under the Eleventh Amendment.

Federal jurisdiction is independently supported by diversity of citizenship and federal question jurisdiction.

These arguments, supported by the case law and statutes, comprehensively refute the Defendants' claim of lack of subject-matter jurisdiction.

Counterargument to III. LEGAL STANDARDS

B. Rule 12(b)(6): Failure to State a Claim

Defendants argue that Plaintiff's complaint fails to allege sufficient factual matter to state a plausible claim for relief under Federal Rule of Civil Procedure 12(b)(6). Below are the counterarguments.

Counterarguments

1. The Complaint Contains Sufficient Facts to State a Plausible Claim
"The Defendants conspired to deprive Plaintiff of his property and reputation by intentionally blocking a lawful sale of the bank and orchestrating a defamatory press conference, which caused irreparable harm." This outlines specific, actionable allegations of conspiracy and harm, meeting the pleading standard under Ashcroft v. Iqbal and Bell Atlantic Corp. v. Twombly.

"Defendants repeatedly allege that Plaintiff has no factual basis for his claims, but the record shows the opposite. OCIF rejected a $17.5 million sale without sufficient justification, despite acknowledging that the bank had enough funds to cover depositor liabilities". Plaintiff provides factual support for his claim that Defendants acted improperly, which is sufficient to survive a Rule 12(b)(6) motion.

"Defendants' actions, including the denial of the sale and the liquidation process, were intentionally designed to harm Plaintiff and were not based on legitimate regulatory concerns." The plaintiff explicitly ties Defendants' actions to malicious intent, which supports the plausibility of the claims.

2. Claims of Conspiracy and Malice Are Supported by Facts
"OCIF worked with IRS and J5 officials to stage a press conference that falsely implicated Plaintiff in criminal activities, damaging his reputation globally."

This detailed allegation of coordination among Defendants supports the conspiracy claims.

"The press conference was not a standard regulatory action. It was carefully coordinated with the media and federal agencies to maximize reputational damage, as evidenced by the timing and content of the statements made." Plaintiff points to the unusual nature of the press conference as evidence of Defendants' intent to harm, adding plausibility to the conspiracy claims.

"Defendants' press conference included statements that were demonstrably false, such as implying that Plaintiff was involved in money laundering, despite having no evidence to support this claim." False statements made at the press conference are a factual basis for Plaintiff's claims of defamation and conspiracy.

3. Claims Under §1983 and §1985(3) Are Adequately Pled

"Plaintiff claims violations of his due process and equal protection rights under 42 U.S.C. §§ 1983 and 1985(3), as Defendants acted under color of state law to deprive him of his property without just compensation."

Plaintiff alleges constitutional violations supported by specific actions taken by Defendants as stated supra.

"OCIF alleges the claim did not adequately plead a conspiracy, but the evidence of coordination between OCIF, the IRS, and J5 is undeniable. The timing of actions and public statements show intent and a common goal to harm the Plaintiff personally."

In addition, in this case, both Mr. Simon York and Mr. Will Day made statements at the press conference implying the bank was guilty of facilitating tax evasion and money laundering and repeated those statements in public on multiple occasions following the press conference. It is also likely that they, along with the other J5 Chiefs, were involved in the conspiracy to get Ms. Zequeira to block the sale and liquidate the bank, long before their virtually participation at the press conference linking OCIF's action to their investigation.

Less than three months after the Press Conference, on September 22, 2022, the Australian Trial Court issued a 47-page judgment, in the case of Peter Schiff vs. Nine Network Australia, The Age Company, Nicholas McKenzie, Charlette Grieve, and Joel Tozar, finding all five defendants liable for seven false and defamatory statements, published and publicly stated about Mr. Schiff regarding the same or similar false and misleading statements made by Mr. Lee and two other J5 Chiefs during at the Press conference, while Ms. Zequeira stood by in approval.

As further persuasive arguments that the court should find jurisdictions for all the defendants in this case, for the Commonwealth of Puerto Rico' Penal Code Article 244. - Conspiracy. (33 L.P.R.A. § 5334) is clear that the Commonwealth of PR would have personal jurisdiction over all the defendants if the conspiracy is true, and so this Court:

> A conspiracy is an agreement or arrangement between two or more persons to commit a crime and have formulated precise plans regarding the participation of each person, the time and place of the events.
>
> When the agreement has as its purpose the commission of a less serious crime, it will be a less serious crime.
>
> If the agreement is to commit a serious crime, it will be punished with imprisonment for a fixed term of three (3) years.
>
> No agreement, except to commit a serious crime against any person, or to commit the crime of setting fire to or climbing a building, constitutes conspiracy unless some act is concurred to carry it out by one or more of the conspirators.

(e) A penalty with aggravating circumstances will be imposed when one of the conspirators was a public order official and took advantage of his position to commit the crime.

Furthermore, Article 3. - Scope of application of the criminal law. (33 L.P.R.A. § 5003)

The criminal law of Puerto Rico applies to crimes committed or attempted within the territorial extension of the Commonwealth of Puerto Rico.

The territorial extension is understood to be the land, sea, and air space subject to the jurisdiction of the Commonwealth of Puerto Rico.

Notwithstanding the foregoing, the criminal law of Puerto Rico applies outside the territorial extension of the Commonwealth of Puerto Rico in any of the following cases:

(a) Crimes whose result has occurred outside of Puerto Rico when part of the typical action or omission is carried out within its territorial extension.

(b) Crimes whose result has occurred in Puerto Rico when part of the typical action or omission has occurred outside of its territorial extension.

(iii) (c) Crimes committed or attempted by a public official or employee or a person serving in his or her service when the conduct constitutes a violation of the functions or duties inherent to his or her position or assignment.

(d) Crimes of genocide or crimes against humanity, as defined in this Code.

(e) Crimes that may be prosecuted in Puerto Rico, in accordance with treaties or agreements ratified by the United States of America.

Also, Article 87. - Statute of Limitations. (33 L.P.R.A. § 5132)

The statute of limitations for criminal prosecution shall be:

(a) Within five (5) years, for serious crimes, and for serious crimes classified in the special law.

(b) Within one year, for less serious crimes, except those arising from violations of the tax laws and any less serious crime committed by public officials or employees in the performance of their duties, which shall be subject to a statute of limitations of five (5) years.

(c) The crimes of concealment and conspiracy shall be subject to a statute of limitations of ten (10) years, when committed in relation to the crime of murder.

(d) Within ten (10) years, for the crimes of homicide.

(e) Within twenty (20) years, for the crimes of sexual assault, incest, and lewd acts

The provisions of paragraphs (a) and (b) of this Article do not apply to special laws, whose crimes have a statute of limitations period greater than that proposed here.

The plaintiff rebuts the claim of insufficient conspiracy allegations by highlighting the coordination between Defendants.

“Defendants’ actions were motivated by malice and targeted Plaintiff as an individual, violating his rights under the 4th, 5th, and 14th Amendments.”

This is a civil rights action seeking redress for damages arising from the wrongful and negligent conduct of the defendants, which resulted in financial and reputational harm to the Plaintiff. The actions of the IRS and OCIF deprived the Plaintiff of property without due process, in violation of the 4th, 5th, and 14th Amendments. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1332, as federal questions related to IRS actions and also, diversity of citizenship exist, with the amount in controversy exceeding $75,000. The Plaintiff claims violations of 42 U.S.C. §§ 1983 and 1985(3) due to alleged conspiracy between the defendants: a) violation of 42 USC 1983 - violation of Plaintiff's constitutional due process rights under 4th and 5th Amendments and to Equal Protection under 14th Amendment, and b) violation of 42 USC 1985(3) - alleged conspiracy to violate Plaintiff's constitutional rights by Defendant Ms. Zequeira and co-conspirator Mr. Lee and unknown others at IRS/J5 and OCIF. The plaintiff is a member of a protected class. The action has an independent claim under Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971) for violation of his Civil Rights -Due Process and Unlawful Seizure of Property (Fifth Amendment).

These allegations connect Defendants’ actions to constitutional violations, which satisfy the legal requirements for claims under §1983 and §1985(3).

4. Plaintiff’s Damages Are Specific and Not Speculative

“Plaintiff suffered reputational harm, financial losses exceeding $49 million, and emotional distress due to Defendants’ actions.”

These damages are specific and tied directly to the Defendants’ conduct, meeting the requirements for a plausible claim.

“Defendants allege claim damages are speculative, but the blocked $17.5 million sale and subsequent undervalued liquidation directly resulted from their actions, causing tangible financial harm.”

The plaintiff provides evidence of specific financial losses, countering Defendants’ claim of speculative damages.

"The financial harm caused by Defendants' refusal to approve the sale of the bank is clearly quantifiable, as it directly resulted in the undervaluation of the bank's assets during liquidation."

Plaintiff ties the financial harm to Defendants' specific actions, satisfying the requirement to plead damages with specificity.

5. Malicious Intent Precludes Dismissal at This Stage

"Defendants acted with deliberate intent to harm Plaintiff's reputation and financial standing, as demonstrated by their refusal to approve a viable sale and their defamatory statements at the press conference." The allegation of malicious intent precludes dismissal, as intent is a question of fact that requires discovery.

Plaintiff also further claims to have evidence that, "The Commissioner admitted in communications with the Plaintiff that her actions were designed to create the appearance of wrongdoing, which supports Plaintiff claims of malicious intent."

Plaintiff provides factual support for his claim that Defendants acted maliciously.

"Defendants' coordinated efforts to obstruct the bank sale and tarnish Plaintiff's reputation were motivated by personal and political gain, as evidenced by their statements and actions." These allegations reinforce the claim that Defendants acted with malice, making dismissal inappropriate.

The counterarguments demonstrate that:

The complaint provides sufficient factual allegations to meet the plausibility standard under Rule 12(b)(6).

Claims of conspiracy, constitutional violations, and specific damages are adequately pled.

Defendants' malicious intent and coordinated actions require further fact-finding, precluding dismissal.

These points comprehensively refute the Defendants' claim of failure to state a claim.

Counterarguments to IV. ARGUMENTS IN SUPPORT OF DISMISSAL

A. Sovereign Immunity Bars Claims Against OCIF and Commissioner Zequeira Díaz in Her Official and Personal Capacity

1. OCIF is a Law Enforcement Agency to Which Sovereign Immunity Applies

Defendants argue that OCIF is entitled to sovereign immunity as a state agency under the Eleventh Amendment. Below are counterarguments.

1. Sovereign Immunity Does Not Apply to Federal Civil Rights Violations
"Plaintiff brings this action under 42 U.S.C. §§ 1983 and 1985(3), alleging that Defendants acted under color of state law to deprive him of his constitutional rights, including due process and equal protection under the law."

This establishes that Plaintiff's claims fall under federal statutes that abrogate sovereign immunity for constitutional violations.

"OCIF claims immunity, but they are not immune to civil rights claims. Sovereign immunity does not shield state agencies or officials from liability for violations of federal constitutional rights under §1983."

Plaintiff directly refutes OCIF's assertion of sovereign immunity by highlighting the statutory exceptions under federal law.

"Defendants' actions violated federal statutes and constitutional provisions, including the 4th, 5th, and 14th Amendments, making them actionable under §1983 and §1985(3). Sovereign immunity does not extend to such violations."

This reinforces that constitutional violations remove sovereign immunity protections.

2. OCIF's Actions Exceeded Its Statutory Authority
"OCIF's decision to deny the sale of Euro Pacific Bank and initiate liquidation proceedings was arbitrary, capricious, and outside the scope of its regulatory authority, constituting an abuse of power."

Plaintiff alleges that OCIF acted beyond its statutory mandate, which disqualifies it from sovereign immunity protections.

"Sovereign immunity does not protect actions taken in bad faith or outside statutory authority. OCIF blocked the bank sale for reasons unrelated to depositor protection, exceeding their legal mandate."

Plaintiff asserts that OCIF's actions were not lawful exercises of regulatory authority, making sovereign immunity inapplicable.

"OCIF's refusal to approve the sale of the bank and its orchestration of the press conference were actions taken beyond its statutory authority, as they were motivated by malice and aimed at damaging Plaintiff's reputation."

These actions exceed the legitimate scope of OCIF's authority, precluding the application of sovereign immunity.

3. Sovereign Immunity Does Not Protect OCIF in the Context of Equitable Relief
"Plaintiff seeks declaratory and injunctive relief to remedy the ongoing violations of his constitutional rights, which are not barred by sovereign immunity under Ex parte Young."

This highlights that sovereign immunity does not apply when the Plaintiff seeks prospective equitable relief against state officials for constitutional violations.

"Even if OCIF claims immunity, it cannot shield them from an injunction or other equitable remedies related to ongoing constitutional violations." Plaintiff emphasizes the exception for prospective equitable relief, which is well established in federal law.

"Plaintiff's request for injunctive relief to rectify ongoing harm caused by OCIF's unconstitutional actions is valid under Ex parte Young, as sovereign immunity does not bar such claims." This aligns with established precedent allowing injunctive relief against state agencies.

4. Bad Faith and Malice Remove Sovereign Immunity Protections

"Defendants acted in concert to harm Plaintiff's reputation and financial standing, orchestrating actions that were malicious and pretextual rather than legitimate regulatory enforcement."

Bad faith and malice eliminate the protections typically afforded by sovereign immunity.

"OCIF's decision-making was clearly driven by bad faith. The Commissioner herself admitted that the press conference was intended to make the agency, and its federal partners look good at Plaintiff's expense."

Plaintiff provides evidence of bad faith intent, removing any sovereign immunity shield.

"The malicious intent behind OCIF's actions, including their coordination with federal agencies to harm Plaintiff's reputation, makes sovereign immunity inapplicable."

These allegations reinforce that Defendants' conduct does not qualify for immunity protections.

5. Eleventh Amendment Immunity Does Not Extend to Federal Claims Against State Officials

"Plaintiff's claims against Commissioner Zequeira Díaz in her personal capacity and under §1983 and §1985(3) for constitutional violations are not barred by sovereign immunity."

Claims against individual officials in their personal capacity for federal violations fall outside the scope of sovereign immunity.

"Suing the Commissioner in her personal capacity under §1983 is perfectly valid. Sovereign immunity does not extend to individuals acting under color of state law." Plaintiff emphasizes the validity of personal-capacity claims under federal law.

"Commissioner Zequeira Díaz's actions, taken under color of state law, violated Plaintiff's federal constitutional rights and are actionable under §1983 and §1985(3)." This

underscores that personal-capacity claims are legally permissible and not shielded by sovereign immunity.

The counterarguments establish that:

Federal civil rights claim under §1983 and §1985(3) abrogate sovereign immunity.

OCIF acted outside its statutory authority, making immunity inapplicable.

Claims for equitable relief and personal-capacity lawsuits are not barred by sovereign immunity.

Evidence of bad faith and malice further removes sovereign immunity protections.

These points comprehensively refute Defendants' claim that OCIF is protected by sovereign immunity.

Counterargument to IV. ARGUMENTS IN SUPPORT OF DISMISSAL

A. Sovereign Immunity Bars Claims Against OCIF and Commissioner Zequeira Díaz in Her Official and Personal Capacity

2. Commissioner Zequeira Díaz Is Protected in Her Official Capacity

Defendants argue that Commissioner Zequeira Díaz is protected by sovereign immunity in her official capacity, barring claims against her. Below are the counterarguments.

1. Sovereign Immunity Does Not Apply to Claims for Injunctive Relief

"Plaintiff seeks declaratory and injunctive relief to address ongoing violations of his constitutional rights. Sovereign immunity does not apply to claims seeking prospective relief to halt unconstitutional conduct." This highlights the established exception under Ex parte Young, which permits injunctive relief against state officials acting in their official capacity to remedy constitutional violations.

"Even if Commissioner Zequeira Díaz claims immunity, she is not protected from claims seeking to stop her ongoing unconstitutional actions. Prospective injunctive relief is specifically allowed in federal courts for this purpose." Plaintiff emphasizes that sovereign immunity does not bar requests for prospective relief to prevent further harm.

"Plaintiff's request for injunctive relief to halt ongoing harm caused by Commissioner Zequeira Díaz's actions falls within the exception to sovereign immunity established by Ex parte Young." This legal principle ensures that Plaintiff's claims for injunctive relief are not barred.

2. Commissioner Zequeira Díaz's Actions Exceeded the Scope of Her Official Duties

"Commissioner Zequeira Díaz acted beyond her statutory authority by refusing to approve the sale of Euro Pacific Bank and orchestrating a press conference to defame Plaintiff, actions that were not aligned with her official duties." Actions taken outside the scope of lawful authority are not protected by sovereign immunity.

“The Commissioner’s refusal to approve the sale of the bank was arbitrary and not based on legitimate regulatory concerns. Her actions, including the press conference, were personal and intended to harm Plaintiff’ reputation.”

Plaintiff argues that the Commissioner acted outside her official duties, removing the protection of sovereign immunity.

“The Commissioner’s role in blocking the sale and initiating the liquidation process was not a legitimate exercise of regulatory authority but a targeted attack on Plaintiff’s reputation and financial standing.”

These allegations indicate that the Commissioner’s actions were not within the bounds of her official capacity.

3. Claims Under Federal Law Abrogate Sovereign Immunity

“Defendants, including Commissioner Zequeira Díaz, acted under color of state law to deprive Plaintiff of his constitutional rights, making their actions actionable under 42 U.S.C. §§ 1983 and 1985(3).”

Federal civil rights claims under §1983 and §1985(3) override sovereign immunity for officials acting in their official capacity.

“Suing the Commissioner in her official capacity for violations of Plaintiff constitutional rights under §1983 is entirely valid. Sovereign immunity does not apply to these claims.”

Plaintiff directly challenges the application of sovereign immunity, asserting the validity of federal claims.

“Plaintiff’s claims arise under federal statutes that abrogate sovereign immunity, including §1983 and §1985(3), which explicitly allow suits against state officials for constitutional violations.”

This reinforces the argument that federal claims are not barred by sovereign immunity.

4. Commissioner Zequeira Díaz Acted with Malice and Bad Faith

“Commissioner Zequeira Díaz acted with deliberate intent to harm Plaintiff, as demonstrated by her decision to hold a defamatory press conference and block a lawful sale of the bank.

Bad faith actions by a state official negate sovereign immunity protections.

“The Commissioner’s actions were driven by personal and political motives, as evidenced by her collaboration with J5 and the IRS to orchestrate a public spectacle at Plaintiff expense. The plaintiff provided evidence of malice, further disqualifying the Commissioner from immunity protections.

"The malicious nature of the Commissioner's actions, including her coordination with federal agencies to defame Plaintiff, demonstrates that she was not acting in good faith or within her official capacity."

These allegations further undermine the claim that her actions were protected by sovereign immunity.

5. Eleventh Amendment Protections Do Not Extend to Personal-Capacity Claims

"Plaintiff also brings claims against Commissioner Zequeira Díaz in her personal capacity, alleging that her actions violated his constitutional rights. Sovereign immunity does not extend to personal-capacity lawsuits."

This ensures that claims against the Commissioner personally are not barred.

"The Commissioner's personal involvement in orchestrating the press conference and obstructing the bank sale makes her personally liable for the harm caused, irrespective of her official role."

Plaintiff underscores the legitimacy of personal-capacity claims under federal law.

"Plaintiff's claims against Commissioner Zequeira Díaz in her personal capacity for constitutional violations are valid and not subject to sovereign immunity."

This reiterates the distinction between personal-capacity claims and sovereign immunity.

The counterarguments demonstrate that:

Claims for injunctive relief fall under the Ex parte Young exception and are not barred.

Commissioner Zequeira Díaz acted beyond her statutory authority and in bad faith, negating sovereign immunity protections.

Federal claims under §1983 and §1985(3) abrogate sovereign immunity for constitutional violations.

Personal-capacity claims are not subject to Eleventh Amendment immunity.

These points comprehensively refute the claim that Commissioner Zequeira Díaz is protected in her official capacity by sovereign immunity, with supporting evidence from all three documents.

COUNTERARGUMENT TO DISMISSAL OF CLAIMS AGAINST COMMISSIONER ZEQUEIRA DÍAZ IN HER PERSONAL CAPACITY

The assertion that claims against Commissioner Natalia Zequeira Díaz in her personal capacity must be dismissed under the doctrine of qualified immunity is flawed. The plaintiff has alleged facts sufficient to demonstrate that the Commissioner acted outside her lawful

authority, in bad faith, and with malicious intent, thus negating the application of immunity defenses. The following arguments counter the dismissal motion.

1. The Waiver in the Consent Order Does Not Apply to Personal Claims

The plaintiff explicitly did not waive personal claims against the Commissioner. The Consent Order waives claims only in the capacity of the bank (Euro Pacific Bank), not the plaintiff personally.

The plaintiff signed the Consent Order as a director of Euro Pacific Bank, and the release is limited to claims related to the bank's losses. He did not sign in his individual capacity and the release does not apply to his personal losses. This is evidenced by the plaintiff's separate actions when signing the Liquidation Plan, where he signed both as a director and as a shareholder. The absence of dual signatures in the Consent Order, in addition to the plain language of the release, shows that personal claims were not waived.

The Plaintiff emphasizes that he retained personal claims as a shareholder, and the language of the Consent Order does not explicitly waive individual rights.

2. Commissioner Zequeira Díaz Acted Outside Her Statutory Authority

The Commissioner's actions, including the rejection of the bank's sale and the facilitation of defamatory press conferences, were beyond her regulatory duties and motivated by malicious intent to harm the plaintiff personally.

The Commissioner rejected a fully funded $7 million capital injection and a $17.5 million sale of the bank to Qenta, even though these measures would have stabilized the bank. Her refusal, despite prior assurances that final approval of the sale was a formality, demonstrates arbitrary and capricious behavior inconsistent with her statutory mandate.

The Commissioner's decision to approve an undervalued asset sale for $1.25 million after initiating receivership further reflects improper motives, as it directly caused financial harm to the plaintiff.

3. Bad Faith and Malice Negate Qualified Immunity

Qualified immunity does not apply when an official acts in bad faith or violates clearly established constitutional rights.

The plaintiff alleges that the Commissioner collaborated with federal and international agencies (IRS and J5) to orchestrate the bank's closure and harm the plaintiff's reputation. This includes holding a press conference where misleading statements imply tax evasion and money laundering were made.

The press conference was unprecedented and unnecessary for a bank closure. Other banks were closed without public announcements, indicating a targeted effort to harm the plaintiff.

Discovery obtained in April 2024 revealed evidence of a conspiracy between the Commissioner and IRS agents, supporting the plaintiff's claims of coordinated misconduct.

4. Material Facts Support Conspiracy Allegations

The plaintiff has sufficiently alleged facts indicating a conspiracy, which requires further exploration through discovery.

The Commissioner invited federal and international regulators to a press conference, where defamatory statements were made against the plaintiff. Her failure to correct these false statements implicates her in the conspiracy.

The decision to reject the $17.5 million sale of the bank, despite the buyer's full compliance, and to subsequently approve a significantly undervalued asset sale to the same buyer, tends to demonstrate collusion with other defendants to harm the plaintiff financially.

5. Qualified Immunity Does Not Shield Violations of Constitutional Rights

The Commissioner violated the plaintiff's constitutional rights under the Fourth and Fifth Amendments, as well as due process guarantees.

The Commissioner's actions led to an unlawful seizure of property by rejecting legitimate attempts to save the bank and forcing it into receivership under false pretenses.

The plaintiff's procedural due process rights were violated when the Commissioner refused to consider his capital injection and misrepresented the reasons for the regulatory actions.

6. Discovery Is Necessary to Fully Establish the Conspiracy

Allegations of conspiracy require discovery to uncover further evidence.

The plaintiff discovered the conspiracy in April 2024 after years of obstructed efforts to obtain information through FOIA requests. This delay was caused by the defendants' concealment of critical evidence, warranting a trial to uncover the full extent of the conspiracy.

The plaintiff has named additional co-conspirators, including IRS agents and international regulators, whose actions were coordinated with the Commissioner.

7. Claims Are Timely Under the Continuing Violation Doctrine

The conspiracy is ongoing, and the statute of limitations is extended due to continuous wrongful acts.

The plaintiff alleges that the conspiracy, including the obstruction of liquidation proceedings and the dissemination of defamatory statements, continues to cause harm.

The claims against Commissioner Zequeira Díaz in her personal capacity must not be dismissed. The plaintiff has presented detailed factual allegations demonstrating that the Commissioner acted outside her lawful authority, in bad faith, and with malicious intent. These actions violate clearly established constitutional rights, negating qualified immunity.

Furthermore, the Consent Order does not waive personal claims, and the conspiracy allegations require discovery to uncover additional evidence and conspirators. The claim was timely filed within one year of Plaintiff finally discovering previously unknown evidence of a conspiracy that he initially sought to uncover with a FOIA request filed within 90 days of the June 2022 press conference and 40 days after signing the Consent Order. Therefore, dismissal at this stage is premature and unjustified.

Counterargument addressing III. LEGAL STANDARDS, B. Plaintiff Waived Claims Through a Consent Agreement

COUNTERARGUMENT TO CLAIMS WAIVER THROUGH THE CONSENT AGREEMENT

The assertion that the plaintiff waived all claims through the Consent Agreement is unfounded and fails to withstand scrutiny for the following reasons.

1. The Consent Order Does Not Waive Personal Claims

The Consent Order explicitly pertains to Euro Pacific Bank and its directors in their official capacity. It does not extend to claims brought by the plaintiff in his personal capacity.

The plaintiff signed the Consent Order only as a director of Euro Pacific Bank and not in his personal capacity. The plaintiff emphasizes that the language of the Consent Order does not include shareholders or individuals personally. In contrast, the Liquidation Plan required separate signatures as both a director and shareholder, highlighting this distinction.

The waiver language in the Consent Order specifies that it applies to claims by Euro Pacific Bank and its officers, not individual shareholders or personal claims. The omission of personal claims is critical, as no explicit waiver of the plaintiff's individual rights exists.

The Consent Order, drafted by OCIF, also includes a mutual non-disparagement clause, that pertains not only to directors of Euro Pacific Bank, but to Peter Schiff personally. The need to also include Peter Schiff personally in such clauses, despite a clause already including directors, proves that OCIF recognized that binding directors alone was not enough to also bind Peter Schiff in his individual capacity.

2. Claims of Duress and Coercion in Signing the Consent Order

The Consent Order was signed under duress and coercive conditions, which invalidate any purported waiver of claims.

The plaintiff alleges that he was pressured into signing the Consent Order because OCIF refused to approve reasonable measures, such as the $7 million capital injection or the $17.5 million stock sale, leaving no viable alternatives to liquidation.

The Commissioner falsely or unintentionally assured the plaintiff that the sale to Qenta was a "formality" and then reversed her position. This bait-and-switch tactic, intentionally or not, created undue pressure to accept the terms of the Consent Order.

The plaintiff addresses a duress situation in the complaint, since OCIF's actions left him no practical choice but to sign the Consent Order. This refutes the defendants' argument that the waiver was "voluntary."

Despite all of that, Plaintiff was still reluctant to agree to the liquidation, but was persuaded to do so by his three attorneys, who also told him that the Commissioner might reconsider a sale after the agreement was signed. Those attorneys also had no knowledge of the alleged conspiracy between Zequeira and the IRS which made any sale impossible.

3. Limited Scope of the Consent Order

The Consent Order applies only to regulatory actions concerning Euro Pacific Bank's liquidation and does not extend to the broader allegations of conspiracy, reputational harm, and constitutional violations raised in the lawsuit.

The Consent Order was narrowly tailored to address the liquidation of the bank, including the surrender of its license and compliance with Puerto Rico's regulatory framework. It does not encompass claims related to the conspiracy to damage the plaintiff's reputation or the unlawful seizure of his property.

The plaintiff's allegations of a conspiracy involving OCIF, IRS, and J5 officials extend beyond the bank's liquidation. These claims involve personal harm to the plaintiff that occurred before and after the execution of the Consent Order and are therefore not covered by its terms.

4. Misrepresentation and Bad Faith by OCIF

OCIF acted in bad faith by misrepresenting its intentions and creating conditions that forced the plaintiff into signing the Consent Order.

The Commissioner initially supported the sale of the bank to Qenta but later reversed her decision under pressure from IRS/J5 agents. This reversal was arbitrary and motivated by improper considerations, not regulatory concerns.

The press conference held by OCIF, in collaboration with IRS/J5 officials, falsely implied that the plaintiff and the bank were involved in criminal activities. This defamatory action undermined the plaintiff's ability to negotiate alternatives and coerced him into accepting the terms of the Consent Order

5. Discovery Reveals Evidence of Conspiracy Beyond the Consent Order

The plaintiff discovered additional evidence in April 2024 that supports his claims of a conspiracy involving OCIF and other defendants. This new evidence justifies reconsideration of the Consent Order's terms.

The plaintiff obtained documents through a Freedom of Information Act (FOIA) request that reveal IRS and OCIF collaboration in orchestrating the press conference and regulatory actions against Euro Pacific Bank. This evidence demonstrates that the Consent Order was

part of a broader scheme to harm the plaintiff personally. That evidence also tends to show for the first time that the motion for reconsideration was never actually considered, and that OCIF requested it in bad faith, as it had already agreed to reject the sale and hold a press conference with the IRS and J5 to announce the closure of the bank instead.

6. Waiver of Claims Does Not Apply to Constitutional Violations

Constitutional claims under 42 U.S.C. §§ 1983 and 1985 cannot be waived through a Consent Order, particularly when the alleged violations involve bad faith and abuse of power by public officials.

The plaintiff alleges violations of due process, unlawful seizure, and conspiracy to violate civil rights, which are not subject to waiver under a regulatory Consent Order. These claims are independent of the bank's regulatory compliance and liquidation.

The Eleventh Amendment and related immunity provisions do not shield public officials from personal liability for constitutional violations.

7. The Continuing Violation Doctrine Extends Claims Beyond the Consent Order

The conspiracy and harm caused by the defendants are ongoing, and the statute of limitations is tolled by their continuous wrongful actions.

The plaintiff alleges that OCIF's failure to complete the liquidation process, ongoing reputational harm, coverup of the conspiracy, and refusal to address the bank's financial situation constitute continuing violations. These extend beyond the scope and timeframe of the Consent Order.

The argument that the plaintiff waived all claims through the Consent Order is invalid. The plaintiff has demonstrated that:

The waiver in the Consent Order does not apply to personal claims.

The Consent Order was signed under duress and coercion.

Claims of conspiracy, defamation, and constitutional violations fall outside the scope of the Consent Order.

OCIF acted in bad faith and misrepresented its intentions, invalidating the alleged waiver.

Discovery of new evidence further supports the plaintiff's claims.

Based on these arguments, the Court should reject the motion to dismiss claims based on the purported waiver in the Consent Order.

Counterargument Against: III. LEGAL STANDARDS C. Statute of Limitations Bars Claims Under §§ 1983, 1985(3), and Bivens

The claim that the plaintiff's case is barred by the statute of limitations under §§ 1983, 1985(3), and Bivens is inaccurate and mischaracterizes the facts and the law. The following counterarguments demonstrate why the statute of limitations should not bar the claims.

1. The Discovery Rule Extends the Statute of Limitations
The statute of limitations begins when the plaintiff discovers the cause of the harm and the responsible parties, not when the harm initially occurs. In this case, the plaintiff discovered evidence of the conspiracy in April 2024, which is well within the limitations period for filing the complaint.

The plaintiff explains that critical evidence revealing the conspiracy—FOIA disclosures from the IRS—was only made available in April 2024. This evidence was essential to linking the plaintiff's harm to a coordinated conspiracy involving OCIF and other defendants.

The plaintiff could not have filed the claims earlier because the defendants actively concealed the conspiracy, delaying the discovery of critical facts. This justifies tolling the limitations period under the discovery rule.

2. The Continuing Violation Doctrine Applies
The plaintiff alleges a series of ongoing wrongful acts and a continuing conspiracy, extending the limitations period.

The conspiracy involved coordinated actions by OCIF, Commissioner Zequeira Díaz, IRS officials, and J5 members. These acts included the rejection of the bank's sale, the dissemination of defamatory statements at the June 2022 press conference, and the ongoing refusal to correct these falsehoods.

The ongoing nature of the conspiracy is evident from the plaintiff's continued inability to liquidate the bank, the reputational damage caused by the press conference, and the defendants' coordinated obstruction of justice. These actions constitute a continuing violation, resetting the limitations clock with each new act.

3. Equitable Tolling is Warranted
The defendants' active concealment of evidence and obstruction of the plaintiff's efforts to uncover the conspiracy justify equitable tolling of the statute of limitations.

The plaintiff alleges that the IRS and OCIF deliberately delayed responses to FOIA requests and other information-seeking efforts, preventing the plaintiff from gathering sufficient evidence to file a good-faith claim earlier.

The defendants' actions, such as falsely attributing financial deficiencies to justify regulatory actions, actively misled the plaintiff and hindered his ability to connect his damages to the conspiracy.

4. The Conspiracy's Final Act Occurred Within the Limitations Period

The last overt act of the conspiracy, necessary to establish a § 1985(3) claim, occurred within the limitations period, bringing the entire conspiracy into the actionable timeframe.

The plaintiff points to the continued dissemination of false statements and the refusal to approve the bank's liquidation under reasonable terms as ongoing acts of the conspiracy. These acts continued to harm the plaintiff's reputation and financial interests up to and beyond April 2024.

The IRS and OCIF's active role in obstructing the discovery of evidence until April 2024 confirms that the conspiracy was ongoing, and its final act occurred within the actionable period.

5. Distinction Between Knowledge of Harm and Knowledge of Conspiracy

The plaintiff knew of the harm caused by the press conference in 2022 but did not know that it resulted from a conspiracy involving OCIF and IRS officials until April 2024. This distinction is critical in determining when the statute of limitations begins.

The plaintiff states that while he was aware of reputational and financial harm as early as June 2022, he lacked the factual basis to connect these damages to a conspiracy until receiving IRS disclosures in April 2024. This delay was due to the defendants' deliberate concealment of evidence. In fact, the attorneys that Plaintiff was working with at the time advised him that he lacked sufficient evidence to file a lawsuit and to use FOIA to try to uncover some. They told him that suspicion alone was not enough to file a claim in good faith.

6. Claims Are Not Time-Barred Under the Bivens Doctrine

The defendants incorrectly apply the one-year statute of limitations to Bivens claims, failing to account for the discovery of new facts and the ongoing nature of the harm.

The plaintiff asserts that the harm resulting from the conspiracy, including reputational damage and financial loss, is ongoing and continues to accrue. The timing of the FOIA disclosures directly impacts the viability of the Bivens claim, as it provided the first evidence of federal actors' involvement.

7. Mischaracterization of the Complaint's Timeline

The defendants inaccurately claim that the limitations period began when the Consent Order was signed in August 2022, disregarding the plaintiff's allegations of subsequent wrongful acts.

The plaintiff highlights that the press conference, rejection of the bank sale, and denial of liquidation options were not isolated events but part of a broader, ongoing conspiracy. The limitations period for these actions cannot begin until the conspiracy is fully discovered, which occurred in April 2024

The claim that the plaintiff's case is barred by the statute of limitations is without merit for the following reasons:

The discovery rule delays the limitations period until April 2024, when the plaintiff uncovered evidence of the conspiracy.

The continuing violation doctrine applies, as the conspiracy involved ongoing acts of harm.

Equitable tolling is warranted due to the defendants' active concealment of evidence.

The conspiracy's final act occurred within the limitations period.

The distinction between knowledge of harm and knowledge of conspiracy is critical in applying the statute of limitations.

The ongoing harm supports the timeliness of Bivens claims.

The timeline presented by the defendants mischaracterizes the facts and omits critical allegations.

Based on these arguments, the statute of limitations does not bar the plaintiff's claims, and the motion to dismiss on these grounds should be denied.

Counterargument Against: III. LEGAL STANDARDS C. Statute of Limitations Bars Claims Under §§ 1983, 1985(3), and Bivens – Equitable Tolling and Continuing Violation Doctrines Do Not Apply

This counterargument challenges the assertion that the statute of limitations bars claims under §§ 1983, 1985(3), and Bivens and that equitable tolling and the continuing violation doctrines are inapplicable. The plaintiff's claims are timely and justified under established legal doctrines.

1. Discovery Rule and Delayed Awareness of the Conspiracy

The statute of limitations began in April 2024, when the plaintiff first discovered evidence of conspiracy, not when the harm initially occurred.

The plaintiff obtained critical evidence through IRS FOIA disclosures in April 2024, which revealed a coordinated conspiracy involving OCIF, the IRS, and J5 officials. This was the first time the plaintiff could connect the harm to the defendants' actions.

The plaintiff explains that prior to this disclosure, he lacked sufficient evidence to file a good-faith claim. This delay was caused by the defendants' deliberate efforts to conceal the conspiracy, including misrepresentations and withholding information.

2. Continuing Violation Doctrine Applies

The continuing violation doctrine applies because the conspiracy and harm are ongoing, with acts of misconduct occurring beyond the initial events in 2022.

The plaintiff alleges a pattern of ongoing misconduct, including the refusal to approve the $7 million capital injection and $17.5 million sale, the defamatory press conference in June 2022, and the obstruction of the bank's liquidation. These actions are part of a continuous scheme to harm the plaintiff.

The plaintiff continues to experience reputational harm and financial losses due to the defendants' failure to rectify false public statements and deliberate delays in liquidation proceedings. These ongoing acts qualify as a continuing violation, extending the limitations period.

3. Equitable Tolling is Warranted

Equitable tolling applies because the defendants actively concealed critical evidence and misled the plaintiff, preventing timely discovery of the conspiracy.

The plaintiff faced significant delays in obtaining key evidence due to the IRS's refusal to promptly respond to FOIA requests. The plaintiff asserts that the IRS and OCIF intentionally obstructed access to information, preventing earlier filing of claims.

The defendants' public narrative—falsely attributing regulatory actions to financial deficiencies—misled the plaintiff and the public, further concealing the true reasons behind the bank's liquidation. These actions justify tolling the limitations period.

4. Misrepresentation and Concealment of Evidence

The defendants' active misrepresentation and concealment of key facts delayed the plaintiff's ability to pursue his claims, warranting equitable tolling.

The Commissioner falsely or unintentionally assured the plaintiff that the $17.5 million sale to Qenta was a "formality" and then reversed her position. This misrepresentation misled the plaintiff into believing regulatory actions were legitimate rather than part of a conspiracy.

The defendants orchestrated a press conference to imply criminal wrongdoing by the plaintiff and the bank. The press conference, held in collaboration with IRS and J5 officials, was intended to damage the plaintiff's reputation and obscure the true motivations behind OCIF's actions.

5. Conspiracy's Final Act Occurred Within the Limitations Period

The last overt act of the conspiracy occurred within the limitations period, bringing all prior acts within the actionable timeframe.

The plaintiff discovered the conspiracy in April 2024 when the IRS disclosed documents linking federal and local regulatory agencies to the conspiracy. This marks the final overt act that made the conspiracy discoverable, resetting the limitations period.

The defendants' refusal to approve reasonable liquidation measures, such as the $7 million capital injection, and their ongoing obstruction of the bank's operations constitute continuous acts of the conspiracy.

6. Separate Acts of Harm Extend the Timeline

Each act of harm caused by the defendants represents a new violation that extends the limitations period.

The plaintiff cites the press conference as a distinct act of defamation, unrelated to prior regulatory decisions. The continuing harm caused by the defendants' public statements further supports the applicability of the continuing violation doctrine.

The plaintiff continues to suffer financial and reputational harm due to the defendants' refusal to rectify false claims made at the press conference. These ongoing consequences are directly linked to the defendants' misconduct.

7. Statutory Framework and Context Support Claims

Constitutional claims under §§ 1983, 1985(3), and Bivens cannot be barred by a statute of limitations when the plaintiff demonstrates delayed discovery and ongoing harm.

The plaintiff's allegations involve violations of due process, unlawful seizure of property, and conspiracy to violate civil rights. These claims are distinct from the regulatory actions addressed in the Consent Order and are therefore subject to separate limitations considerations.

The plaintiff's claims are not barred by the statute of limitations under §§ 1983, 1985(3), and Bivens for the following reasons:

The discovery rule delays the limitations period until April 2024, when the conspiracy was first uncovered.

The continuing violation doctrine applies, as the conspiracy involved ongoing acts of harm.

Equitable tolling is warranted due to the defendants' active concealment and misrepresentation of key facts.

The conspiracy's final act, the disclosure of IRS documents, occurred within the actionable period.

Each act of harm, including the defamatory press conference, extends the timeline for filing claims.

These arguments clearly demonstrate that the statute of limitations does not bar the plaintiff's claims, and the motion to dismiss on these grounds should be denied.

Comprehensive Counterargument Against: III. LEGAL STANDARDS C. Statute of Limitations Bars Claims Under §§ 1983, 1985(3), and Bivens – Equitable Tolling and Continuing Violation Doctrines Do Not Apply

This counterargument demonstrates that the plaintiff's claims under §§ 1983, 1985(3), and Bivens are not barred by the one-year statute of limitations.

1. Discovery Rule Applies: Claims Accrued When the Conspiracy Was Revealed
The statute of limitations begins when the plaintiff discovers, or reasonably should have discovered, the injury and the identities of the parties responsible. The plaintiff did not learn of the conspiracy until April 2024.

The plaintiff received key evidence through IRS FOIA disclosures in April 2024. These disclosures revealed a conspiracy involving the defendants, including OCIF and IRS officials, that coordinated actions to damage the plaintiff's reputation and obstruct his business operations.

Prior to April 2024, the plaintiff lacked sufficient information to connect the harm he suffered—such as reputational damage, financial losses, and regulatory decisions—to a coordinated effort involving OCIF and its collaborators. The defendants' deliberate concealment of evidence prevented earlier discovery.

2. The Continuing Violation Doctrine Extends the Limitations Period
The continuing violation doctrine applies when a series of wrongful acts collectively constitute a single, ongoing harm. The conspiracy's acts continued well beyond the initial press conference and liquidation actions in 2022.

The conspiracy included multiple actions, such as rejecting the $17.5 million bank sale, holding a defamatory press conference in June 2022, obstructing the liquidation process, and delaying the plaintiff's access to critical records. These acts form part of an ongoing conspiracy to harm the plaintiff.

Ongoing reputational damage and financial harm caused by the defendants' defamatory statements and obstructive actions extend the limitations period, as the harm is continuous.

3. Equitable Tolling Is Warranted Due to Concealment by Defendants
Equitable tolling applies when defendants actively conceal evidence of their wrongful conduct, preventing the plaintiff from filing claims within the limitations period.

The plaintiff alleges that OCIF and IRS officials concealed the existence of the conspiracy by misrepresenting regulatory actions as legitimate enforcement measures, thereby misleading the plaintiff and the public.

The defendants obstructed access to critical evidence by delaying FOIA responses and concealing their coordination during the press conference and liquidation proceedings. These actions directly justify equitable tolling.

4. The Final Act of the Conspiracy Occurred Within the Limitations Period

The last overt act of the conspiracy occurred within the actionable period, resetting the limitations clock for all related acts.

The plaintiff asserts that the IRS FOIA disclosures in April 2024 revealed the conspiracy's ongoing nature, marking a critical overt act that brings prior related acts within the actionable period.

Continued harm caused by false and defamatory statements—statements that have yet to be corrected by OCIF or the IRS—represents an ongoing violation.

5. Distinction Between Knowledge of Harm and Knowledge of Conspiracy

The statute of limitations does not begin to run until the plaintiff has knowledge of both the harm and its cause. The plaintiff knew of reputational harm in 2022 but did not know it resulted from a coordinated conspiracy until April 2024.

The plaintiff explains that while he was aware of reputational harm following the June 2022 press conference, he did not have evidence linking this harm to a conspiracy involving OCIF, IRS, and J5 officials. This link was only discovered through FOIA disclosures in 2024.

6. Federal Precedent Supports Application of Equitable Tolling

Federal precedent allows for equitable tolling when a plaintiff demonstrates that the defendants actively concealed their actions, and that the plaintiff acted diligently upon discovery.

The plaintiff acted promptly after receiving the FOIA disclosures in April 2024 by filing his amended complaints. His diligence in pursuing evidence, despite defendants' obstruction, supports equitable tolling.

7. Claims Under §§ 1983 and 1985(3) Extend to Ongoing Constitutional Violations

Claims under §§ 1983 and 1985(3) are actionable for ongoing violations of constitutional rights, including due process violations and conspiracies.

The plaintiff alleges violations of due process rights, unlawful seizure of property, and conspiracy to harm his reputation and financial interests. These claims involve ongoing harm and a continuous pattern of misconduct by the defendants.

The conspiracy's objectives were to harm the plaintiff personally and professionally, including his ability to liquidate his assets and clear his name. This ongoing harm places the claims within the actionable period.

8. Legal Errors in Defendants' Statute of Limitations Analysis

The defendants incorrectly assume that the statute of limitations began when the Consent Order was signed in August 2022, ignoring the discovery rule, equitable tolling, and the continuing violation doctrine.

The plaintiff demonstrates that the conspiracy's full extent was not discoverable until 2024 due to the defendants' active concealment. The limitations analysis presented by the defendants fails to account for this delayed discovery and the ongoing nature of the harm.

The claim that the statute of limitations bars the plaintiff's claims under §§ 1983, 1985(3), and Bivens is unfounded for the following reasons:

The discovery rule delays the limitations period until April 2024, when the conspiracy was first revealed.

The continuing violation doctrine applies because the harm is ongoing.

Equitable tolling is warranted due to defendants' concealment of evidence.

The conspiracy's final act occurred within the actionable period.

The distinction between harm and its cause delays the limitations period.

Federal precedent supports the application of equitable tolling.

Constitutional claims under §§ 1983 and 1985(3) remain actionable for ongoing violations.

Based on these arguments, the motion to dismiss under the statute of limitations grounds should be denied. The plaintiff has demonstrated valid grounds for proceeding with his claims, and further discovery is necessary to explore the full extent of the alleged conspiracy.

Comprehensive Counterargument Against: III. LEGAL STANDARDS D. Plaintiff Lacks Standing to Bring Claims

This counterargument challenges the assertion that the plaintiff lacks standing to bring claims. The plaintiff has adequately demonstrated standing by showing a concrete injury-in-fact, causation, and redressability, as required under Article III of the U.S. Constitution.

1. The Plaintiff Has Suffered a Concrete and Particularized Injury

The plaintiff has alleged direct personal harm, including reputational damage, financial losses, and violations of constitutional rights, all of which establish an injury-in-fact.

The plaintiff claims significant reputational harm resulting from the defamatory press conference held by OCIF and J5 officials, where baseless allegations of tax evasion and financial impropriety were disseminated. These statements were directly targeted at the plaintiff and caused immediate harm to his personal and professional reputation.

Financial harm resulted from the wrongful rejection of the $17.5 million sale of Euro Pacific Bank and the undervalued sale of assets for $1.25 million, which caused the plaintiff direct economic losses. These decisions directly impacted on the plaintiff as a shareholder and director.

2. Causation: The Defendants' Actions Directly Caused the Harm

The plaintiff's harm was directly caused by the actions of OCIF, Commissioner Zequeira Díaz, and collaborating federal and international agencies.

The defendants' actions, including the unjustified liquidation of the bank, the defamatory press conference, and the rejection of reasonable capital injections and sale proposals, were the proximate causes of the plaintiff's reputational and financial injuries.

The plaintiff specifically alleges that Commissioner Zequeira Díaz's conduct in rejecting the sale and orchestrating the press conference was malicious, arbitrary, and aimed at harming him personally.

3. Redressability: The Court Can Provide Relief

The harm alleged by the plaintiff is redressable through injunctive relief, monetary damages, and declaratory judgments.

The plaintiff seeks damages for reputational and financial harm, which can be quantified and awarded by the court. Additionally, declaratory relief can address the false statements made during the press conference and correct the record.

Injunctive relief is also appropriate to prevent ongoing harm caused by the defendants' continued refusal to approve reasonable liquidation measures.

4. Plaintiff's Individual Capacity Distinct from Bank's Claims

The plaintiff brings claims in his personal capacity, distinct from claims that may belong to the bank or its creditors.

The plaintiff emphasizes that his claims arise from direct personal harm, including reputational damage and financial losses, rather than harm to Euro Pacific Bank. The rejection of the bank's sale and the defamatory statements were directed at him individually, not solely at the institution.

The Consent Order signed by the plaintiff as a director does not waive his personal claims, as it explicitly applies only to the bank's claims and its regulatory compliance.

5. The Plaintiff Has Standing as a Shareholder

The plaintiff has standing to challenge actions that directly harmed his interests and property as a shareholder of Euro Pacific Bank.

The plaintiff alleges that the undervaluation of the bank's assets during the liquidation process caused him financial harm as a shareholder. The rejection of the $17.5 million sale further impacted on the plaintiff's financial stake in the bank.

As a shareholder, the plaintiff was directly affected by OCIF's arbitrary and capricious regulatory decisions, including the rejection of capital injections and the initiation of liquidation proceedings. These actions were aimed at harming the plaintiff's professional reputation.

6. The Plaintiff's Constitutional Claims Confer Standing

The plaintiff's claims under §§ 1983 and 1985(3) allege violations of constitutional rights, which independently confer standing.

The plaintiff alleges violations of his due process rights under the Fifth Amendment and unlawful seizure of property, both of which directly harmed him. These constitutional violations are personal to the plaintiff and confer standing.

The conspiracy alleged under §§ 1983 and § 1985(3) targeted the plaintiff personally, causing reputational harm and financial losses that are redressable by the court.

7. Defendants Mischaracterize the Plaintiff's Standing

The defendants incorrectly argue that the plaintiff's claims are derivative of the bank's claims, ignoring the direct personal harm alleged by the plaintiff.

The plaintiff clearly distinguishes between harm to the bank and harm to himself personally. The press conference, in particular, targeted the plaintiff by name, causing harm independent of the bank's regulatory issues.

The defendants' argument conflicts with the plaintiff's role as a director with his personal rights, ignoring the fact that the plaintiff retained personal claims even after signing the Consent Order. Had OCIF asked him to sign that waiver in his personal capacity, as it did with the Liquidation and Dissolution plan a month later, he would have refused to sign.

8. Federal Courts Have Recognized Standing in Similar Cases

Courts have upheld standing in cases where individual plaintiffs allege personal harm resulting from regulatory actions and conspiracies.

The plaintiff's claims align with established precedent that individuals can pursue claims for reputational damage, constitutional violations, and financial harm caused by government misconduct. The specific targeting of the plaintiff through defamatory statements and arbitrary regulatory actions strengthens his standing.

The plaintiff has clearly demonstrated standing to bring claims under §§ 1983, 1985(3), and Bivens based on:

Direct personal harm, including reputational and financial injury.

Causation directly linking the harm to the defendants' actions.

Redressability through monetary damages, injunctive relief, and declaratory relief.

Distinction between his personal claims and those of Euro Pacific Bank.

Constitutional violations that independently confer standing.

The defendants' argument that the plaintiff lacks standing is unfounded and should be rejected. The plaintiff's allegations satisfy all requirements for standing under Article III, and the motion to dismiss on these grounds should be denied.

Comprehensive Counterargument Against: III. LEGAL STANDARDS E. Failure to State a Claim Under 42 U.S.C. §§ 1983 and 1985(3)

This counterargument demonstrates that the plaintiff has adequately stated claims under 42 U.S.C. §§ 1983 and 1985(3) by alleging constitutional violations, actionable conspiracies, and sufficient facts to survive a motion to dismiss.

1. Claims Under § 1983: Constitutional Violations Are Sufficiently Alleged

a. Violation of Procedural Due Process

The plaintiff has adequately pleaded to deprivation of property without due process under the Fifth and Fourteenth Amendments.

The plaintiff alleges that Commissioner Zequeira Díaz and OCIF arbitrarily rejected the $17.5 million sale of Euro Pacific Bank to Qenta and a $7 million capital injection. These actions violated procedural due process as they lacked a legitimate regulatory basis and were motivated by malicious intent.

The arbitrary liquidation of the bank and undervalued sale of its assets for $1.25 million further demonstrate a denial of procedural due process. The decisions were made without providing adequate notice, opportunity to be heard, or transparent reasoning.

b. Violation of Substantive Due Process

The actions of OCIF and Commissioner Zequeira Díaz were so arbitrary and egregious as to violate substantive due process.

The plaintiff asserts that OCIF acted beyond its statutory authority by rejecting reasonable solutions to stabilize the bank, including the proposed sale to Qenta or to another highly qualified buyer who reached out to OCIF shortly after the bank was placed into receivership. These actions were not rationally related to any legitimate government interest and were motivated by a desire to harm the plaintiff personally.

The orchestrated press conference, where OCIF and IRS officials made false and defamatory statements linking the plaintiff to financial crimes, was a further violation of substantive due process as it served no legitimate regulatory purpose.

2. Claims Under § 1985(3): Conspiracy to Violate Civil Rights

a. Existence of a Conspiracy

The plaintiff has sufficiently alleged a conspiracy among OCIF, Commissioner Zequeira Díaz, IRS officials, and J5 members to deprive him of constitutional rights.

The plaintiff outlines coordinated actions by these parties, including the rejection of the bank's sale, dissemination of false information at the June 2022 press conference, and to the media and the public following the press conference, and obstruction of the liquidation process. These actions demonstrate a shared goal to harm the plaintiff's reputation and financial interests.

The IRS FOIA disclosures in April 2024 revealed communications and coordinated efforts among the defendants, solidifying the conspiracy allegations.

b. Class-Based Discriminatory Animus

The plaintiff alleges that the conspiracy was motivated by discriminatory animus against him as a director of a foreign financial institution and a public figure and possible racist elements.

The defendants' actions were targeted at the plaintiff due to his role in operating Euro Pacific Bank, a foreign entity, and their intent to discredit him in the financial community. The coordinated press conference amplified this animus by publicly associating him with criminal activity without evidence. Also, the fact that his customers have been unnecessarily deprived of their deposits for over 30 months harms his reputation and earning capacity in the financial services industry, where trust is of paramount importance.

c. Overt Acts in Furtherance of the Conspiracy

The plaintiff has detailed overt acts committed by the defendants in furtherance of the conspiracy.

The press conference in June 2022, organized by OCIF and IRS/J5 officials, was a clear overt act aimed at tarnishing the plaintiff's reputation. The defendants knowingly made false statements suggesting criminal activity by the plaintiff and his bank.

The refusal to approve the $17.5 million sale to Qenta, despite it being a viable solution, was another overt act that directly harmed the plaintiff as the bank's sole shareholder. This decision was made with the knowledge that it would force the undervalued liquidation of the bank.

3. The Defendants' Arguments Mischaracterize the Plaintiff's Allegations

a. Specificity of Allegations

The plaintiff's allegations are sufficiently specific to state claims under §§ 1983 and 1985(3).

The plaintiff provides detailed accounts of the defendants' actions, including dates, events, and specific individuals involved. These allegations meet the pleading standards required under Rule 12(b)(6).

b. Plausibility of the Conspiracy

The conspiracy allegations are plausible based on the coordinated actions of the defendants.

The plaintiff highlights the timing and coordination of the press conference, the rejection of reasonable alternatives to save the bank, and the obstruction of liquidation proceedings as evidence of a deliberate and unified conspiracy.

4. Claims Meet All Requirements of § 1983 and § 1985(3)

a. State Action Requirement Under § 1983 and § 1985(3)

The plaintiff has sufficiently alleged that OCIF and Commissioner Zequeira Díaz acted under color of state law in violating his constitutional rights.

OCIF and Commissioner Zequeira Díaz's regulatory decisions and public statements were made in their official capacities, fulfilling the state action requirement.

b. Intentional Deprivation of Rights

The plaintiff alleges intentional actions aimed at depriving him of due process and equal protection under the law.

The press conference and regulatory decisions were deliberately designed to harm the plaintiff personally, going beyond legitimate regulatory authority.

The plaintiff has adequately stated claims under 42 U.S.C. §§ 1983 and 1985(3) by alleging:

Specific constitutional violations, including due process and equal protection.

A detailed and plausible conspiracy involving OCIF, IRS officials, and others.

Class-based animus targeting the plaintiff as a foreign bank director and public figure and possible racist elements.

Overt acts in furtherance of the conspiracy, such as the defamatory press conference and arbitrary regulatory actions.

The defendants' argument that the plaintiff failed to state a claim is unfounded. The plaintiff's allegations are specific, plausible, and actionable under the legal standards for §§ 1983 and 1985(3). Therefore, the motion to dismiss on these grounds should be denied.

Comprehensive Counterargument Against: III. LEGAL STANDARDS F. The Bivens Doctrine Does Not Apply

The argument that the Bivens doctrine does not apply to the plaintiff's claims is unfounded. The plaintiff has sufficiently alleged constitutional violations that fall within the scope of Bivens. This counterargument addresses why the doctrine applies and refutes the assertion that the claims are precluded.

1. Bivens Applies to Violations of Clearly Established Constitutional Rights

a. Violations of Due Process and Fourth Amendment Rights

The plaintiff alleges violations of constitutional rights, including procedural and substantive due process under the Fifth Amendment and unlawful seizure of property under the Fourth Amendment. These claims are within the scope of Bivens.

The plaintiff asserts that OCIF and Commissioner Zequeira Díaz arbitrarily rejected the $17.5 million bank sale and the $7 million capital injection. These actions deprived the plaintiff of his property and financial interest without due process.

The defendants' actions, including their role in initiating and facilitating the undervalued liquidation of Euro Pacific Bank, effectively constituted an unlawful seizure of the plaintiff's financial assets.

b. The Press Conference as a Deprivation of Liberty

The public dissemination of defamatory statements at the press conference by OCIF and federal officials deprived the plaintiff of his liberty interest in his reputation and ability to conduct business.

The June 2022 press conference, where false accusations of tax evasion and financial crimes were made, caused reputational harm and stigmatized the plaintiff in violation of the Fifth Amendment. These allegations were made without providing an opportunity to rebut or contest the claims.

2. Bivens Is Not Categorically Barred in Regulatory Contexts

a. No Special Factors Preclude Bivens Claims

The defendants fail to demonstrate the existence of "special factors" that preclude the application of Bivens in this case.

The plaintiff alleges direct personal harm from the actions of federal agents and OCIF officials. These damages, including reputational damage and financial losses, are distinct from any broader regulatory concerns.

The Supreme Court has upheld Bivens claims for constitutional violations involving federal agents and state agents collaborating with federal authorities when there are no alternative remedies available, as is the case here.

b. Lack of Alternative Remedies

The plaintiff has no alternative remedies to redress the constitutional violations he suffered, making Bivens the appropriate vehicle for his claims.

The regulatory framework under which OCIF and federal agencies operate does not provide a mechanism for the plaintiff to seek redress for personal constitutional violations. The lack of administrative remedies supports the applicability of Bivens.

The defendants' suggestion that the Consent Order waives the plaintiff's claims is unfounded, as it explicitly applies only to claims by Euro Pacific Bank and not the plaintiff's personal constitutional claims.

3. The Plaintiff's Claims Involve Individual Federal Officers

a. Claims Against Individual Federal Officers Are Actionable

Bivens specifically provides a cause of action against individual federal officers who violate constitutional rights.

The plaintiff alleges that federal officials, including members of the IRS, acted in coordination with OCIF to orchestrate the press conference and harm the plaintiff personally. These actions fall squarely within the scope of Bivens.

The defendants' involvement in rejecting the $17.5 million sale and facilitating the undervalued liquidation demonstrates a coordinated effort by individual federal officers to harm the plaintiff, making them subject to Bivens liability. (b. Claims Do Not Challenge Broad Regulatory Actions

The plaintiff's claims are not a challenge to general regulatory actions but focus on specific constitutional violations by individual actors.

The rejection of the bank's sale and the defamatory statements made at the press conference targeted the plaintiff personally. These actions were beyond the scope of legitimate regulatory enforcement and are actionable under Bivens.

4. The Defendants' Arguments Mischaracterize Bivens Doctrine

a. Bivens Is Applicable to Reputational Harm and Financial Loss

The defendants incorrectly argue that reputational harm and financial losses are insufficient to support a Bivens claim. However, these harms directly result from constitutional violations.

The plaintiff's reputational harm, caused by the false and defamatory statements at the press conference, directly impacts his liberty and property interests under the Fifth Amendment. This is actionable under Bivens.

b. Federal Officials Acted Outside Their Authority

The plaintiff alleges that the federal officials involved acted beyond their authority, undermining the defendants' argument that their actions were shielded by regulatory authority.

The FOIA disclosures obtained by the plaintiff in April 2024 reveal coordination between federal officials and OCIF to harm the plaintiff. His current FOIA lawsuit against the IRS has already resulted in additional evidence of coordination and far more evidence is expected to be uncovered in discovery in this lawsuit. These actions exceed the officials' statutory authority and support the application of Bivens.

5. Bivens Applies in Absence of Adequate Remedies

a. Claims Are Distinct from Regulatory Decisions

The plaintiff's claims involve personal harm resulting from unconstitutional actions, not general challenges to regulatory decisions.

The plaintiff alleges that the defendants' actions were targeted at him personally and unrelated to legitimate regulatory enforcement, making Bivens the appropriate remedy.

b. Courts Have Recognized Bivens in Similar Contexts

The plaintiff's claims align with established precedent for applying Bivens to federal officials' unconstitutional actions.

The plaintiff cites cases where courts have allowed Bivens claims in situations involving personal harm caused by federal officials' unconstitutional actions, further supporting his position.

The argument that the Bivens doctrine does not apply is flawed. The plaintiff has sufficiently alleged:

Violations of constitutional rights under the Fourth and Fifth Amendments.

Specific actions by federal officials that go beyond legitimate regulatory authority.

A lack of alternative remedies, necessitating the application of Bivens.

Personal harm, including reputational damage and financial losses, directly resulting from unconstitutional actions.

These claims fall within the scope of Bivens and should not be dismissed. The defendants' argument that Bivens is inapplicable is unfounded and should be rejected. The plaintiff has adequately pleaded actionable claims under this doctrine.

Comprehensive Counterargument Against: III. LEGAL STANDARDS G. Abstention Doctrines Warrant Dismissal

The assertion that abstention doctrines warrant dismissal of the plaintiff's claims is misplaced. Abstention doctrines, including Younger, Colorado River, and Burford, do not apply to the plaintiff's claims. The plaintiff's case involves violations of federal constitutional rights and a conspiracy that extends beyond the scope of local regulatory concerns. This counterargument refutes the defendants' position.

1. Abstention Doctrines Are Inapplicable to Federal Constitutional Claims

a. Younger Abstention Does Not Apply

Younger abstention applies only in cases where federal intervention would interfere with ongoing state judicial or administrative proceedings. The plaintiff's case does not involve ongoing state proceedings related to the claims raised.

The plaintiff's claims center on violations of federal constitutional rights, including due process, equal protection, and unlawful seizure. These claims are independent of any ongoing state regulatory actions.

The plaintiff alleges that the defendants' actions, including the rejection of the $17.5 million sale and the defamatory press conference, were part of a conspiracy to harm him personally, not legitimate state regulatory proceedings.

b. Colorado River Abstention Is Unwarranted

Colorado River abstention applies only in exceptional circumstances where parallel state proceedings exist, and judicial economy is at stake. No parallel state proceedings address the plaintiff's federal claims.

The plaintiff's federal claims, including those under 42 U.S.C. §§ 1983 and 1985(3), are distinct from any state-level regulatory issues involving Euro Pacific Bank. There is no pending state court action addressing the constitutional violations alleged.

Federal courts have a duty to adjudicate constitutional claims, and there is no evidence of duplicative litigation or conflicting jurisdiction in this case.

c. Burford Abstention Does Not Apply

Burford abstention is appropriate only when a federal case disrupts complex state administrative processes or involves issues of substantial state interest. The plaintiff's case does not interfere with any ongoing state regulatory scheme.

The plaintiff alleges targeted actions by OCIF and federal officials that were beyond the scope of legitimate state regulatory authority. These actions include rejecting reasonable solutions to stabilize the bank and orchestrating a defamatory press conference. These claims are not tied to the validity or administration of Puerto Rico's banking regulations.

The defendants' actions were not regulatory but conspiratorial, motivated by a desire to harm the plaintiff and bolster the reputation of the J5, rather than enforce state banking laws.

2. Federal Jurisdiction Is Necessary to Adjudicate Constitutional Violations

a. Federal Courts Have a Duty to Hear Federal Claims

The plaintiff's case involves federal constitutional rights that federal courts are uniquely positioned to adjudicate. Abstention doctrines do not bar such cases.

The plaintiff alleges violations of his due process and equal protection rights under the Fifth and Fourteenth Amendments, as well as unlawful seizure under the Fourth Amendment. These claims fall squarely within federal jurisdiction.

Federal courts have consistently held that abstention doctrines should not be invoked to avoid adjudicating federal constitutional claims, especially when no adequate state remedies exist.

b. No Adequate State Remedies Exist

The plaintiff has no adequate state remedy for the constitutional violations he alleges, making federal intervention necessary.

The regulatory process in Puerto Rico does not provide mechanisms for the plaintiff to address personal constitutional claims, such as those arising from the defamatory press conference or the conspiracy to block the bank's sale.

The plaintiff's efforts to seek redress through state or administrative channels were obstructed by the defendants, who acted in bad faith and outside the scope of their regulatory authority.

3. Defendants' Actions Extend Beyond State Regulatory Authority

a. The Conspiracy Was Not a Legitimate Regulatory Action

The plaintiff's claims involve targeted actions against him personally, not legitimate state regulatory enforcement, removing them from the scope of abstention doctrines.

The rejection of the $17.5 million sale and the press conference orchestrated with federal officials were not regulatory acts but overt efforts to harm the plaintiff's reputation and financial interests. These acts exceeded the defendants' authority and were not part of any ongoing state process.

The plaintiff first obtained FOIA disclosures in April 2024 that revealed coordination between OCIF and federal officials to discredit the plaintiff, further demonstrating that the actions were not tied to legitimate state interests

4. No Exceptional Circumstances Warrant Abstention

a. The Federal Case Does Not Interfere with State Interests

The plaintiff's case does not seek to invalidate or interfere with Puerto Rico's banking regulations, negating any need for abstention.

The plaintiff's claims focus on personal constitutional violations and do not challenge the validity of Puerto Rico's regulatory framework. The case does not require the court to interpret or disrupt complex state administrative processes.

b. Judicial Economy Does Not Support Abstention

Abstention is not justified because there are no parallel state proceedings, and federal adjudication will not duplicate or undermine state judicial efforts.

The plaintiff's claims are independent of any ongoing state action and do not involve duplicative litigation. Federal courts are the proper forum to adjudicate the alleged federal constitutional violations.

The defendants' argument that abstention doctrines warrant dismissal of the plaintiff's claims is flawed for the following reasons:

Younger abstention is inapplicable because there are no ongoing state proceedings that overlap with the plaintiff's federal constitutional claims.

Colorado River abstention does not apply because there are no parallel state actions.

Burford abstention is unwarranted because the plaintiff's claims do not disrupt complex state regulatory schemes or implicate substantial state interests.

Federal jurisdiction is necessary to address the plaintiff's constitutional claims, as no adequate state remedies exist.

The defendants' actions extended beyond legitimate regulatory authority and were aimed at harming the plaintiff personally.

Based on these arguments, the motion to dismiss under abstention doctrines should be denied. The plaintiff's claims are properly within the jurisdiction of the federal court and should proceed to adjudication.

Comprehensive Counterargument Against: V. RELIEF REQUESTED

This section addresses the defendants' argument that the plaintiff is not entitled to the relief requested. The plaintiff has demonstrated the necessity and appropriateness of the relief sought based on the constitutional violations, conspiracy allegations, and damages caused by the defendants' actions.

1. The Plaintiff Has Demonstrated Entitlement to Declaratory and Injunctive Relief

a. Necessity of Declaratory Relief

Declaratory relief is warranted to establish the defendants' wrongful actions and prevent future harm.

The plaintiff seeks declaratory relief to correct the false narrative established at the June 2022 press conference. The defamatory statements made by OCIF, federal and foreign officials continue to harm the plaintiff's reputation and must be addressed through a formal declaration of their falsity.

A declaration that the rejection of the $17.5 million sale and $7 million capital injection was arbitrary and unconstitutional would clarify the violations of the plaintiff's due process rights and ensure transparency.

b. Necessity of Injunctive Relief

Injunctive relief is essential to prevent ongoing harm and to rectify the consequences of the defendants' actions.

The plaintiff requests an injunction to compel the correction of defamatory statements made during the press conference and to prevent further dissemination of false information. These steps are necessary to mitigate ongoing reputational harm.

An injunction to revisit the bank's liquidation process and evaluate the $17.5 million sale proposal would remedy the financial harm caused by the defendants' arbitrary decisions.

2. The Plaintiff's Claims Support Monetary Damages

a. Compensatory Damages for Reputational and Financial Harm

The plaintiff has sufficiently demonstrated that the defendants' actions caused measurable reputational and financial harm, justifying compensatory damage.

The plaintiff alleges significant financial losses resulting from the undervalued sale of Euro Pacific Bank's assets for $1.25 million instead of the $17.5 million proposed sale. This directly impacted on the plaintiff's financial interest as a shareholder.

The defamatory press conference irreparably harmed the plaintiff's reputation within the financial community, justifying compensation for reputational damage.

b. Punitive Damages for Malicious and Willful Conduct

The defendants' actions were malicious, willful, and motivated by personal animus, warranting punitive damages.

The plaintiff alleges that Commissioner Zequeira Díaz and federal officials intentionally rejected viable solutions for the bank's stability to further their conspiracy against him. These actions were not legitimate regulatory decisions but deliberate attempts to harm the plaintiff.

The coordination between OCIF, IRS, and J5 to hold a press conference with false statements about the plaintiff's involvement in financial crimes demonstrates malice and justifies punitive damages.

3. The Defendants' Arguments Misrepresent the Basis for Relief

a. Defendants Mischaracterize the Nature of the Plaintiff's Claims

The defendants wrongly assert that the plaintiff's claims are speculative or derivative of the bank's claims. The plaintiff's claims are personal and substantiated.

The plaintiff clearly distinguishes between harm suffered by Euro Pacific Bank and harm suffered personally, including reputational damage and financial losses as a shareholder.

The defendants' rejection of the sale and dissemination of defamatory statements targeted the plaintiff individually, not merely the bank.

b. Relief Sought Is Proportional to the Harm

The relief requested by the plaintiff is proportional to the constitutional violations and damages caused by the defendants.

The plaintiff's request for injunctive relief, including the correction of false statements, directly addresses ongoing harm and seeks to prevent future violations.

The monetary damages sought are based on concrete financial losses and reputational harm, as detailed in the complaint

4. Federal Courts Have Broad Discretion to Grant Relief

a. Declaratory and Injunctive Relief Are Well-Within the Court's Authority

Federal courts have the authority to grant declaratory and injunctive relief to redress constitutional violations.

The plaintiff's claims involve violations of federal constitutional rights, which federal courts are empowered to remedy through declaratory and injunctive relief.

b. Monetary Damages Are Consistent with Established Precedent

The plaintiff's request for compensatory and punitive damages aligns with federal precedent for claims involving constitutional violations and intentional misconduct.

Courts routinely award monetary damages in cases involving reputational harm, financial losses, and conspiracy to violate constitutional rights, as alleged in this case.

The plaintiff's requests for declaratory relief, injunctive relief, compensatory damages, and punitive damages are supported by the following:

The necessity of correcting defamatory statements and preventing future harm through declaratory and injunctive relief.

The demonstrable financial and reputational harm caused by the defendants, justifying compensatory damages.

The malicious and willful nature of the defendants' actions, warranting punitive damages.

Federal courts' authority to address constitutional violations and provide proportional remedies.

The Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is "a short and plain statement of the claim" that will give the defendant fair notice of what the plaintiffs claim is and the grounds upon which it rests.... Such simplified "notice pleading" is made possible by the liberal opportunity for discovery and the other pretrial procedures established by the Rules to disclose more precisely the basis of both claim and defense and to define more narrowly the disputed facts and issues. Conley v. Gibson, 355 U.S. 41, 47-48, (1957). This is especially true in complex cases like this one.

RELIEF REQUESTED

The defendants' argument that the relief requested is unwarranted is flawed. The plaintiff's claims are well-pleaded, and the requested relief is appropriate to redress the harm caused by the defendants' actions. The motion to dismiss the requested relief should be denied.

WHEREFORE, Plaintiff respectfully requests that this Court DENY Defendants' Motion to Dismiss and allow this case to proceed to a full hearing on the merits.

WHEREFORE, for the foregoing reasons, Plaintiff Mr. Schiff, today January 24, 2025, very respectfully requests that this Honorable Court DISMISS the Defendant Motion in its entirety and allow the process to continue.

RESPECTFULLY SUBMITTED.

WE CERTIFY that on this date, we electronically file the foregoing with the Clerk of the Court using the CM/ECF system which will send notice to all attorneys of record. Parties may access this filing through the Court's system.

In San Juan, Puerto Rico, this 29th day of January 2025.

Counsel for the Plaintiff:

s/Ismael Torres-Pizarro

Ismael Torres-Pizarro. PhD, PE, Esq. USDC (Bar Number) 231302
Domingo Cruz 642 Villa Prades, San Juan PR 00924 Telephone: (787)315-5636
Email: ismaeltorres2002@yahoo.com

APPENDIX I

Euro Pacific Bank

Liquidation and Dissolution Plan for Euro Pacific Bank

I. Introduction

On June 30th, 2022, the Office of the Commissioner of Financial Institutions ("OCFI") issued a Complaint and Order to Cease and Desist and Order Appointing a Trustee against Euro Pacific Bank ("EPB") for lack of compliance with the renewal process; for lack of compliance with the minimum capital required under Article 2(g) of Act 273-2012 and lack of compliance with a Consent Order dated October 28, 2021. OCFI appointed Wigberto Lugo-Mender, Esq. as trustee ("Trustee").

On August 9, 2022, EPB and the OCFI entered a Consent Order for Liquidation and Dissolution of International Financial Entity ("Consent Order") (marked as Exhibit A) to dispose of the administrative proceedings initiated by OCFI against EPB. Section IV(2)(d) of the Order requires EPB to submit a Voluntary Liquidation Plan ("Plan") for OCFI's consideration within 15 days of the execution of the Order. In compliance with that provision of the Order, EPB hereby submits its Plan for an orderly liquidation of the bank. The following is EPB's plan to fully liquidate the bank, surrender its banking license and tax decree, and carry out the dissolution of the corporate entity that owns the bank in the most efficient and inexpensive way possible. All of this will be done in coordination with, and subject to the approval of, the Trustee and OCFI.

II. Preliminary Steps

Immediately upon execution of this Plan, the Trustee will reach out to Novo Bank and Mizuho Bank, to notify them of the liquidation process, and secure their cooperation with the same. EBP has already reached out to FirstBank and secured its agreement to continue offering banking services to EPB for the duration of the liquidation process. With the added cooperation of Novo Bank and Mizuho Bank, these steps will follow.

The Consent Order dated August 9th, 2022 (hereinafter, "Effective Date"), is hereby incorporated, and marked as **Exhibit A** to this Plan in its entirety. EPB shall be obligated to fully comply with its terms. Pursuant to Section IV (3), the closing of operations, transfers and withdrawal of funds is subject the following:

(i) This Voluntary Liquidation Plan shall become effective on the date of the approval of the Plan by the affirmative written consent of EPB, the Trustee, and OCFI.

(ii) The Liquidation Period shall not exceed ninety (90) days from the Effective Date.

Web
info@europacbank.com
www.europacbank.com

Phone
+1-888-527-4041
+1-787-305-3663

Address
53 Palmeras St. 10th Floor
San Juan, 00901, Puerto Rico

(iii) EPB may only maintain its business operations for the sole purpose of completing the operating tasks geared to the effective and adequate implementation of this Liquidation Order, marshalling, winding up its business and affairs, and preserving the value of its assets.

(iv) At the date of the Effective Date, EPB shall provide the Trustee with a list of all accounts, including inactive accounts.

(v) Within five (5) business days of the Effective Date, EPB shall mail a notice to its Creditors, at their address shown on EPB's records, that EPB is undergoing Voluntary Liquidation and, thus, the deposits held at EPB will be transferred or paid accordingly.

(vi) This Voluntary Liquidation Plan shall provide that all deposit accounts held in EPB shall be transferred to an assuming institution that will make all monies available to clients immediately after the transfer, *provided, however*, that prior to a transfer of deposits to an assuming institution EPB shall provide adequate notice and a thirty-day window to Depositors that are Non-Related Parties to withdraw their deposits in cash.

(vii) EPB, as a corporate entity, shall be terminated within ten (10) business days after this Voluntary Liquidation Plan is terminated, by submitting all required documents to the Department of State.

(viii) The assuming institution to which EPB client accounts are transferred may resume banking operations in any foreign jurisdiction other than Puerto Rico, subject to strict compliance with all statutory and/or regulatory requirements governing their business operations in the corresponding jurisdiction.

(ix) At the execution of the last payment obligation, EPB business locations and international banking operations in Puerto Rico will be closed permanently and irrevocably.

Liabilities and Payment to Creditors

During the Liquidation Period, the Trustee shall cause EPB to pay, discharge, or otherwise provide for the payment or discharge of, all liabilities and obligations of EPB, pursuant to the steps listed in the Consent Order at Section IV(4)(A)-(B). EPB will provide written notice to all its Depositors and Creditors in accordance with Section IV(4)(A) and subsection (v) above. The notice shall state the procedure for withdrawing and/or transferring funds and the procedures after the allotted time for withdrawing and/or transferring funds has elapsed. The notice shall also include the Trustee's official email address to receive claims and inquiries.

III. Additional Steps Towards Liquidation

1) Creation and Funding of Cash Reserve Account

Immediately upon the execution of this Voluntary Liquidation Plan, EPB will establish and fund a Cash Reserve Account with sufficient funds in cash or readily available funds to pay all deposits and the Trustee's reasonable administrative expenses. EPB understands that the Trustee shall certify whether the Cash Reserve Account satisfies the requirements set forth herein.

EPB will fund the Cash Reserve Account using the following monies:

a) $500,000.00 that it will receive immediately upon the execution of this plan from Qenta, Inc. as described below;

b) $200,000.00 that it will receive from OCFI after payment of fine;

c) $400,000.00 that it will receive immediately from selling its proprietary position in the bank's mutual funds immediately upon the execution of this Voluntary Liquidation Plan; and

d) $2,153,831.30 (as of 08/23/22) that it will receive immediately in cash from the bank's selling of its proprietary gold and precious metals immediately upon the execution of this Voluntary Liquidation Plan.

In total, EPB's Cash Reserve Account will have $3,253,831.30 in available reserve funds to cover all deposits and the Trustee's reasonable administrative expenses. EPB will establish this Cash Reserve Account in the same operating account it currently has at FirstBank immediately upon the execution of this Voluntary Liquidation Plan and will not be required to open a separate account.

2) Sale of Assets (Section IV (5))

EPB notes that the steps that will follow from the sale of the assets as specified herein will follow only as to the Depositor accounts that do not notify EPB within thirty (30) days of receiving EPB's notice under Section IV (4)(A) of the Consent Order that they wish to transfer their deposits to a financial institution of their choosing or cash out. Once EPB has covered all the deposits that wish to either withdraw and/or transfer their funds to a financial institution of their choosing, it will then transfer the remaining funds (for which no such notice is received from Depositor) to the assuming institution, as follows.

a. __G-Commerce DMCC

G-Commerce DMCC, a wholly owned subsidiary of Qenta, Inc., has agreed to assume/buy all the bank's deposit obligations of both cash and precious metals. G-Commerce DMCC is incorporated under the laws of Dubai, UAE. It is licensed, regulated, and required to maintain global best practices for Know Your Customer ("KYC") and Anti Money Laundering ("AML") compliance. Once both cash and precious metals deposits are transferred to G-Commerce DMCC, EPB customers will have immediate access to their funds, and will be able to make and receive third-party payments in multiple currencies, including U.S. dollars, which they are not currently able to do at EBP. As such, the bank respectfully posits that this represents a big improvement for customers.[1]

b. Qenta, Inc.

Qenta, Inc. ("Qenta") incorporated under the laws of Delaware, has agreed to buy all issued and outstanding shares of the following wholly owned EPB subsidiaries that are all incorporated outside of Puerto Rico, including Euro Pacific Funds SCC Ltd., Euro Pacific Securities Inc., Euro Pacific Card Services Ltd., and Global Corporate Staffing, Ltd. Qenta has already received the required approvals from regulators in the British Virgin Islands for the transfer of control.[2] For the subsidiaries located in St. Vincent and the Grenadines, and the one located in the U.K., no government approval for the change of control is necessary.[3] Qenta has also agreed to assume the following contractional obligations of EPB: Neteller (e-money pay safe transfer service), HedgeGuard (portfolio management system), and Temenos (core banking system). In addition, Qenta will cover the $250,000.00 cost to renew the Temenos Contract at the end of September, if the transfer of accounts has not been completed by that date.

Once these agreements are executed, the money will be payable to EPB in two installments, $500,000.00 as soon as the plan is approved by OCIF and the Receiver, and $750,000.00 thirty (30) days following that approval. EPB has included this purchase offer as an Exhibit 3 to this liquidation plan for OCIF's review and consideration. The sale of EPB's assets to Qenta and G-Commerce DMCC assures that there will be enough funds available to pay off all the bank's

[1] As required by Section IV, Paragraph 4(A) and (B) of the liquidation order, before transferring any customer funds, EPB will send out emails to all its customers giving them all pertinent information about G-Commerce DMCC and informing them that if they do not want their accounts transferred to this buyer, they have thirty (30) days to provide wiring instructions to an alternate bank or financial account with the same beneficial owner as their EPB account, and their funds will be wired to those accounts. Deposits that are not in U.S. dollar, or deposits in currencies the bank cannot transact in, will have to be converted to a currency which the bank can wire out. Any accounts that remain after the thirty (30) day period expires will be transferred to G-Commerce DMCC, along with appropriate bank records relating to those customers, as specified in the liquidation order.

[2] See Exhibit 1.

[3] See Exhibit 2.

remaining obligations once bank operations are suspended. As of today, those obligations, not including the $300,000.00 fine owed to OCFI pursuant to Section IV (8) of the Order and the Deposits, amount to approximately $500,000.00.

3) Suspension of Banking Operations and Surrender of License and Tax Decree

EPB ceased operations on June 30th, 2022, and the Trustee took possession of the Corporation. The Corporation ceased conducting any business activity, except for the purposes of winding up its business and affairs, marshalling and preserving the value of its assets, and distributing the Corporation's assets in accordance with the provision of this Plan and through the appointed Trustee. Upon proper return or transfer of client funds in conformity with this Plan, and upon the successful transfer of EPB's subsidiaries, EPB shall deliver the original license to OCFI. Likewise, EPB shall coordinate with Department of Commercial Development to deliver its Tax Decree.

4) Assignment of Commercial Lease

Aside from Deposits and other Obligations, the sole remaining creditor will be EPB's landlord in San Juan, Puerto Rico. EPB has already advised the landlord to attempt to secure a new tenant to replace the bank and it is also engaged in efforts to secure a potential tenant. There are four months remaining on the lease. The total rent obligation is $115,000.00. If a replacement tenant cannot be found within the ninety (90) days allowed for liquidation, EPB will assign the lease to Mr. Peter Schiff's asset management company for its use, or sublease part or all the space to third parties. The office furniture, phones, computers, among other equipment will be sold, to whoever leases the office, or to retain it, if Mr. Schiff's company assumes the lease.

5) Preservation of Bank Records

After the customer records are transferred to G-Commerce and Qenta, G-Commerce and Qenta will become the custodians of the records as agreed upon in writing. Pursuant to Puerto Rico Corporate Law, EPB will keep and preserve accounting books and customer records (for those that are not transferred to G-Commerce and Qenta) at a secure location for at least three (3) years. Pursuant to Article 7.14 of Puerto Rico's General Corporations Act, EPB will maintain said records in or through any means of storage of information or method, so long as the files maintained can be converted into clearly legible paper within a reasonable time. EPB understands that it shall convert any record so maintained at the request of any person with the right to examine them, in accordance with the corresponding provisions of Puerto Rico law.

6) Remaining Assets

EPB understands and recognizes that, pursuant to Section IV(4)(B)(6) no distribution of assets of EPB shall be made to the Shareholder, Mr. Peter Schiff, until all Deposits are either paid in cash or transferred to the assuming depository institution. Once all Deposits are covered, and upon execution of steps 1 through 4 of this Voluntary Liquidation Plan, the remaining assets of the EPB will be distributed to Mr. Schiff.

7) Dissolution of Corporation

The Corporation shall be terminated as reasonably practicable after all Depositors and Liabilities have been paid (i.e., the "Termination Date").

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IV. Miscellaneous Provisions

Taxes. The Corporation shall file a request for an administrative determination or ruling with the Department of the Treasury of Puerto Rico confirming that the liquidation of the Corporation is not subject to Puerto Rico taxation pursuant to the Act and the Puerto Rico General Corporation Law of 2009 (the "PRGCL"), the Internal Revenue Code for the New Puerto Rico, as amended (the "Code"), and the Corporation's Articles of Incorporation and By-Laws.

Indemnification. The Corporation and the Shareholder, joint and severally, shall continue to indemnify its officers, directors, employees, agents and the Trustee in accordance with its certificate of incorporation, bylaws, and contractual arrangements as therein or elsewhere provided, the Corporation's existing directors' and officers' liability insurance policy and applicable law, and such indemnification shall apply to acts or omissions of such persons in connection with the implementation of this Plan and the winding up of the affairs of the Corporation. The Shareholder is authorized to obtain and maintain insurance as may be necessary to cover the Corporation's indemnification obligations.

Further Assurances. EPB's Board shall take such further action, prior to, at, and after the final Liquidation Distribution, as may be necessary or desirable and proper based on the advice of the Administrator to consummate the transactions contemplated by this Plan.

Governing Law. This Plan shall be governed and construed in accordance with the laws of the Commonwealth of Puerto Rico.

Severability. Any provision of this Plan that is declared invalid or unenforceable by a court of competent jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof. The headings or titles of the sections of this Plan are used for purposes of reference and they should not affect the construction, interpretation, validity and/or enforceability of this Plan.

Modifications and Headings. This Plan can only be modified with the express written consent of OCFI and the Corporation. The headings in this Plan are inserted for convenience only and are not intended to affect the meaning or interpretation of this Plan or its individual terms.

[SIGNATURE PAGE IN NEXT PAGE]

IN WITNESS WHEREOF, the Corporation and the Shareholder hereto have caused this Plan to be approved and executed by their duly authorized officers as September 1, 2022.

Euro Pacific Bank
The "Corporation"

By: _____
Name: Peter Schiff
Title: Director

Peter Schiff
The "Shareholder"

By: _____
Name: Peter Schiff
Title:

Accepted by:

TRUSTEE APPOINTED BY **THE OFFICE OF THE COMMISSIONER OF FINANCIAL INSTITUTIONS**

By: _____
Name: Wigberto Lugo Mender
Title: Trustee

Dated: 9/6/2022

OFFICE OF THE COMMISSIONER OF FINANCIAL INSTITUTIONS

By: _____
Name: Natalia I. Zequeira Días
Title: Commissioner

Dated: 9/6/2022

Exhibit A
Consent Order

Exhibit B
Related Parties

APPENDIX II

SWORN DECLARATION

I, PETER SCHIFF, previously sworn, and petitioner in this matter, married and of legal age and resident of Dorado Puerto Rico, declare under oath that:

1. My name and personal circumstances are as stated above.

2. I am the plaintiff in the present case.

3. All the statements made in the response and its appendices, if any, to Defendants' motion to Dismiss are the truth to the best of my knowledge.

4. Each and every one of the facts set forth in this preceding petition are also true to my personal knowledge.

In Dorado, Puerto Rico, on 24 of January 2025.

Affidavit No. 2106

SWORN AND SUBSCRIBED before me by Peter David Schiff, who is of legal age, resident and neighbor of Dorado Puerto Rico, whom I know personally, or identify through ELA Drivers lic. 6919377 in Dorado, Puerto Rico, today 24 of January of 2025.

[Notary or Court Clerk]

RECIBO

4U23-01831326

Sello

12/19/2024

$5.00

Sello de Asistencia Legal

BERRIOS SUAREZ

Notario