

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

Peter David Schiff  
*Plaintiff,*

v.

Office of the Commissioner of Financial  
Institutions of Puerto Rico (OCIF),  
Natalia Zequeira Díaz, in her official and  
personal capacities,  
*Defendants.*

CIVIL NO. 3:24-cv-01511 (CVR)

COMPLAINT

TRIAL BY JURY REQUESTED

**DEFENDANTS' MOTION TO DISMISS UNDER FEDERAL RULES OF CIVIL  
PROCEDURE 12(B)(1) AND 12(B)(6)**

**TO THE HONORABLE COURT:**

**COMES NOW** co-defendant Office of the Commissioner of Financial Institutions of Puerto Rico (hereafter “OCIF” by its Spanish name “Oficina del Comisionado de Instituciones Financieras”) and Commissioner Natalia Zequeira Diaz (in her official and personal capacity) (hereinafter “Commissioner Zequeira Díaz” or “Mrs. Zequeira Díaz”), through the undersigned counsel, and respectfully submit this Motion to Dismiss the Complaint filed by Plaintiff Peter D. Schiff, pursuant to Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6), for the reasons stated below.

**I. INTRODUCTION**

Defendants, the Office of the Commissioner of Financial Institutions of Puerto Rico (“OCIF”, for its Spanish acronym) and Commissioner Zequeira Díaz, in her official and personal capacities, respectfully move this Court to dismiss the Complaint filed by Plaintiff Peter D. Schiff with prejudice pursuant to **Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).**

Plaintiff's claims stem from OCIF's lawful regulatory oversight of Euro Pacific International Bank ("EPB"), which culminated in its receivership and liquidation. Despite voluntarily executing a Consent Order that resolved these regulatory matters and explicitly waived all related claims, Plaintiff now seeks to challenge OCIF's actions through unfounded and factually lacking allegations of constitutional violations, conspiracy, and damages exceeding \$49 million. These claims and allegations are legally defective and procedurally barred.

As an agency of Puerto Rico, OCIF is immune from suits under the Eleventh Amendment, and Commissioner Zequeira Díaz enjoys the same protection in her official and personal capacity. Plaintiff's claims are further foreclosed by his express waiver of rights in the Consent Order, which was entered knowingly, voluntarily, and with the benefit of having legal counsel. Additionally, Plaintiff's claims are untimely, as the one-year statute of limitations for actions under 42 U.S.C. §§ 1983, 1985(3), and Bivens has long expired. Even if timely, the Complaint fails to allege sufficient facts to state a plausible claim for relief, relying instead on speculative and conclusory assertions. Also, Bivens claims apply to federal and not state or local actors.

This Court should also decline to entertain Plaintiff's claims under well-established abstention principles. The regulatory actions challenged here fall squarely within Puerto Rico's authority over financial institutions, and federal court intervention would disrupt an essential state function. Plaintiff's excessive and legally barred demand for damages, including punitive relief, further underscores the impropriety of this lawsuit.

For these reasons, Defendants respectfully request that this Honorable Court dismiss Plaintiff's Complaint in its entirety with prejudice and grant any additional relief deemed just and proper.

## II. BACKGROUND/STATEMENT OF FACTS

This case arises from OCIF’s lawful regulatory oversight of EPB, owned and operated by Plaintiff Peter Schiff. OCIF’s actions were undertaken to address longstanding deficiencies in EPB’s financial condition and regulatory compliance, ensuring the protection of depositors and adherence to statutory mandates.

On May 16, 2022, after a detailed review, OCIF declined to approve a proposed \$17.5 million sale of EPB’s stock to Qenta. The decision was based on concerns that the proposed transaction failed to adequately address EPB’s financial deficiencies or ensure compliance with regulatory standards necessary to protect depositors. OCIF had also previously determined that Plaintiff’s offer to inject \$7 million in capital was insufficient to remedy EPB’s longstanding regulatory noncompliance and financial instability. These determinations were consistent with OCIF’s statutory mandate to oversee and safeguard financial institutions operating in Puerto Rico. (See Compl.<sup>1</sup> ¶¶ 3–4; Consent Order ¶¶ 1–2.)

On June 30, 2022, OCIF issued a Complaint and Order to Cease and Desist, formally placing EPB into receivership. As part of this process, OCIF appointed a trustee to manage EPB’s assets and oversee its liquidation in compliance with Puerto Rico’s financial regulatory framework. (Compl. ¶¶ 2, 3; Consent Order<sup>2</sup> ¶¶ 4, 6.)

On August 9, 2022, Plaintiff, acting as EPB’s director and sole shareholder, voluntarily executed a Consent Order for Liquidation and Dissolution. This agreement acknowledged EPB’s financial deficiencies, provided a structured plan for its liquidation, and expressly released OCIF,

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<sup>1</sup> Plaintiff filed the original complaint on November 4, 2024. See Docket 1. On November 7, 2024, plaintiff filed an amended complaint, which was stricken from the record by the Court for not complying with the pleading requirements established in the Federal Rules of Civil Procedure. See Dockets 3 and 7. Later, on November 14, 2024, plaintiff filed another Amended Complaint, which is the operative pleading which controls the current action. See Docket 10. All references to the complaint in this motion are directed at said Amended Complaint (docket 10), which will be referenced going forward as “Compl.” or “Complaint”.

<sup>2</sup> On August 9, 2022, plaintiff, as sole shareholder and officer of EPB, executed a Consent Order on behalf of EPB. See Exhibit 1. Going forward, we will refer to said document as “Consent Order.”

its employees, and its officers, including Commissioner Zequeira Díaz, from any claims related to these proceedings. The Consent Order affirmed that Plaintiff entered into the agreement “freely, knowingly, and voluntarily” and with the advice of legal counsel. (Consent Order ¶¶ 8–10, 18.)

Plaintiff alleges reputational harm stemming from a press conference held on June 30, 2022, during which OCIF announced its regulatory actions regarding EPB. He claims that the press conference contained misleading statements that unfairly implicated him in wrongdoing, causing reputational and financial harm. (Compl. ¶¶ 2, 4, 5.)

Plaintiff further disputes OCIF’s approval of the sale of EPB’s remaining assets to Qenta for \$1.25 million during the liquidation process, asserting that the transaction undervalued the bank’s assets. OCIF approved the sale as part of its statutory mandate to prioritize depositor protection and ensure compliance during liquidation. Said sale (and agreed-upon price) was part of the Liquidation Plan precisely submitted by Plaintiff himself on behalf of EPB and approved by OCIF. (Compl. ¶ 3; Consent Order ¶¶ 5–7; Liquidation Plan,<sup>3</sup> p. 4.)

Although the liquidation process remains ongoing as of this filing, delays have resulted from the complexity of overseeing EPB’s international operations, which involve safeguarding depositor interests and ensuring compliance with applicable financial regulations abroad, including a highly covered freeze of EPB’s assets in a Portugal bank known as Novo Banco. Despite these efforts, Plaintiff filed this lawsuit on November 14, 2024—**over two years after executing the Consent Order**. He asserts various claims under 42 U.S.C. §§ 1983 and 1985(3), and under *Bivens* for constitutional violations, conspiracy, and unlawful seizure of property. Plaintiff also alleges reputational harm and financial losses resulting from OCIF’s actions, its collaboration with other agencies, and purported media leaks. (Compl. ¶¶ 5, 6, 10.)

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<sup>3</sup> On September 9, 2022, plaintiff, as sole shareholder and Director of EPB, executed a Liquidation and Dissolution Plan for Euro Pacific Bank on behalf of EPB. See Exhibit 2. Going forward, we will reference said document as “Liquidation Plan.”

### III. LEGAL STANDARDS

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

Under Federal Rule of Civil Procedure 12(b)(1), a party may move to dismiss a complaint for lack of subject-matter jurisdiction. Courts evaluate Rule 12(b)(1) motions under a standard virtually identical to Rule 12(b)(6). Canóvanas Urban Dev., Inc. v. Mun. of Canóvanas, No. 20-1487 (MDM), 2023 U.S. Dist. LEXIS 57308, at \*1-2 (D.P.R. Mar. 31, 2023) (citing Acosta-Ramírez v. Banco Popular de Puerto Rico, 712 F.3d 14, 20 (1st Cir. 2013)).

A Rule 12(b)(1) motion may assert a facial or factual challenge. Facial challenges evaluate jurisdiction based solely on the complaint’s allegations, while factual challenges allow courts to consider extrinsic evidence, such as affidavits or declarations. Martínez-Rivera v. Puerto Rico, 812 F.3d 69, 74 (1st Cir. 2016). Here, Defendants present both facial and factual challenges, as Plaintiff’s allegations fail to establish jurisdiction, and the attached Consent Order confirms that the claims have been waived.

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

To survive a Rule 12(b)(6) motion, a complaint must allege sufficient factual matter to “state a claim to relief that is plausible on its face.” Bautista Cayman Asset Co. v. Reliance Mfg., Inc., No. 16-1418 (FAB), 2017 WL 243362, at \*2 (D.P.R. 2017) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). This requires more than “labels and conclusions” or a “formulaic recitation of the elements of a cause of action.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

The Court’s review proceeds in two steps. First, it isolates and disregards allegations that merely offer legal labels or restate the elements of a claim. Schatz v. Republican State Leadership Comm., 669 F.3d 50, 55 (1st Cir. 2012). Second, it evaluates whether the well-pleaded, non-conclusory facts, taken as true and viewed in the pleader’s favor, “plausibly narrate a claim for

relief.” *Id.* Speculative, conclusory, or bare assertions are insufficient. Twombly, 550 U.S. at 555-57.

In this case, Plaintiff’s Complaint fails to meet this standard. The allegations consist primarily of conclusory statements and speculative assertions, lacking the factual content necessary to raise any claim “across the line from conceivable to plausible.” *Id.* at 570. Accordingly, dismissal is warranted under Rule 12(b)(6).

#### 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

The Eleventh Amendment bars suits against states and their instrumentalities unless Congress abrogates sovereign immunity through clear legislative action, or the state explicitly waives immunity. See Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 100 (1984); Seminole Tribe of Fla. v. Florida, 517 U.S. 44, 55 (1996). The Commonwealth of Puerto Rico has expressly codified sovereign immunity for the state and its officials. Under P.R. Laws Ann. tit. 32, § 3077, actions undertaken in compliance with statutory authority are immune from suit, even if later deemed invalid. Article 6(a) explicitly protects actions performed in accordance with the law, and Article 6(b) extends immunity to discretionary functions, even in cases of alleged abuse of discretion. *Id.*

Courts apply a two-pronged analysis to determine whether an entity qualifies as an arm of the state entitled to sovereign immunity. See Fresenius Med. Care Cardiovascular Res., Inc. v. P.R. & Caribbean Cardiovascular Ctr. Corp., 322 F.3d 56, 68 (1st Cir. 2003). In the first prong, the Court must examine “how the state has structured the entity.” *Id.* at 65. The court must examine the structural indicators of the entity, which “include how state law characterizes the entity, the

nature of the functions performed by the entity, the entity's overall fiscal relationship to the Commonwealth (as opposed to whether the Commonwealth is liable for any judgment in the particular case at hand), and how much control the state exercises over the operations of the entity.” Grajales v. P.R. Ports Authority, 831 F.3d 11, 18 (1st Cir. 2016) (Citing Fresenius, *supra*). In the second prong, “the “dispositive question concerns the risk that the damages will be paid from the public treasury” and “[t]his analysis focuses on whether the state has legally or practically obligated itself to pay the entity's indebtedness” in the pending action.” Grajales v. P.R. Ports Authority at 18 (citing Fresenius at 65, 68). If the state has obligated itself to pay for the obligation, then the entity may claim sovereign immunity. *Id.*

As to the first prong, OCIF, established under Puerto Rican law by Act 4 of 1985, P.R. Laws Ann. tit. 7, § 2001 *et seq.*, is an instrumentality of the Commonwealth of Puerto Rico and is therefore protected under this doctrine. OCIF is “charged with the main responsibility of controlling and supervising the financial institutions that operate or do business in the Commonwealth of Puerto Rico,” among other statutory functions. P.R. Laws Ann. Tit. 7, § 2003.

OCIF serves as Puerto Rico’s principal financial regulatory agency and functions as a law enforcement body. Its statutory purpose includes overseeing financial institutions, enforcing compliance with financial laws, and protecting depositors from institutional risks. See P.R. Laws Ann. tit. 7, § 2003. The law explicitly describes OCIF as an “agency of public law and order,” tasked with policing the financial sector to maintain stability and safeguard public trust. *Id.* These duties are inherently governmental and underscore OCIF’s status as part of the Commonwealth of Puerto Rico or as an arm of the state. OCIF’s operations are tied directly to the Commonwealth. Its principal decision-maker, the Commissioner, is appointed by the Governor of Puerto Rico with the consent of the Puerto Rico Senate. See P.R. Laws Ann. tit. 7, § 2005. The Commissioner

responds directly to the Governor. *Id.* Moreover, the Commissioner, as well as all its personnel, operate within a statutory framework that explicitly grants immunity to employees acting in good faith. See P.R. Laws Ann. tit. 7, § 2016. Said framework states as follows:

Limitation of personnel liability

No member, official, functionary or employee of the Board or **the Commissioner**, or official, functionary or employee in the Office of the Commissioner, **shall be liable in a civil suit for damages**, for any act or omission in good faith, in the performance of the duties of his office.

*Id.* (Emphasis ours.)

These provisions demonstrate Puerto Rico's intent to shield OCIF, the Commissioner, and OCIF's employees from liability.

It is important to note and distinguish that, contrary to other entities in Puerto Rico, OCIF is not described as a public corporation or that its legal existence is separate or apart from the Government of Puerto Rico. See, for example, Grajales v. P.R. Ports Auth., 831 F.3d 11, 22 (1st Cir. 2016) ("The language of PRPA's enabling act differs in some ways from the language in the enabling acts in Fresenius and Pastrana-Torres. The Act describes PRPA as "a government instrumentality and public corporation with a legal existence and personality separate and apart from those of the Government and any officials thereof." P.R. Laws Ann. tit. 23 § 333(b) (emphasis added).") OCIF's enabling act, on the other hand, does not describe it as a separate and apart entity with its own legal existence; nor does it establish that it can sue or be sued in court. To the contrary, it is a legal entity within the Commonwealth's control and responds directly to the Commonwealth's highest officer, the Governor of Puerto Rico.

On the other hand, in terms of the ability to generate its own revenues, OCIF is authorized to charge for certain services and impose fines. See Article 10(a)(19)(A) and Article 20 of Act No. 4, P.R. Laws Ann. Tit. 7, § 2010 and 2020. However, Article 21 of Act No. 4, P.R. Laws Ann. tit.



7, § 2021, creates a special fund called “Fund for Consumer Education in Financial Matters and Training of the Personnel of the Office of the Commissioner of Financial Institutions”. Said fund was created “in order to provide financial assistance geared toward the education of the general public in financial matters and to train the personnel of the Office of the Commissioner of Financial Institutions for the purposes provided herein.” *Id.*

Article 21(c) of its enabling act specifically provides that all penalties imposed by OCIF for violations of the enabling act and regulations are to be deposited in said fund and used for the purposes the fund was created. *Id.* As to the fees, they are to be deposited into the Fund for the Investigation and Examination of Financial Institutions and gaming casinos or “shared with other supervisory agencies of financial institutions or with other organizations affiliated to or representing one or more supervisory agencies...” See Article 10(a)(19)(A) and (B), P.R. Laws Ann. Tit. 7, § 2010. As such, the income generated by OCIF is directed by law to be used for other entities or priorities, and not for OCIF’s general operational expenses.

As to the second prong, OCIF’s funding and financial liabilities are inextricably linked to the Commonwealth’s budget, meaning any monetary judgment would effectively burden the state. As established in Article 18 of its enabling act, OCIF’s operational funds must be established in the annual Joint Resolution approved by the Puerto Rico Legislature where the Commonwealth of Puerto Rico’s budget is established. See P.R. Laws Ann. tit. 7, § 2018. As such, any monetary judgment against OCIF is a monetary judgment against the Commonwealth of Puerto Rico. There is no doubt that OCIF’s budget is established and approved by the Commonwealth and, as such, the state has “legally...obligated itself to pay the [OCIF’s] indebtedness” in any pending legal action. Grajales v. P.R. Ports Authority *supra* at 18.

The Commonwealth has structured OCIF to be cloaked with (or at the very least share) its sovereignty. The result of the analysis of both prongs can only lead to one conclusion: OCIF is the Commonwealth or, alternatively, an arm of the Commonwealth. In both cases, it enjoys immunity from the claims asserted in the Complaint. Consequently, the Eleventh Amendment immunity applies, and the Complaint should be dismissed.

## 2. Commissioner Zequeira Díaz Is Protected in Her Official Capacity

Claims against Commissioner Zequeira Díaz in her official capacity are also barred by sovereign immunity. A suit against a state official in their official capacity is equivalent to a suit against the state itself, and thus, sovereign immunity applies. See Kentucky v. Graham, 473 U.S. 159, 165–66 (1985).

Plaintiff challenges the Commissioner’s discretionary actions, including rejecting a stock sale, initiating the liquidation of Euro Pacific Bank (“EPB”), and participating in a press conference to notify the public of her official actions against EPB. See Compl. ¶¶ 2-5. These actions, far from arbitrary, were integral to OCIF’s regulatory duties. The Commissioner was acting squarely within her statutory authority to protect depositors, enforce financial compliance, and ensure institutional stability. See P.R. Laws Ann. tit. 7, §§ 2003, 2005.

As previously discussed, the Commonwealth of Puerto Rico has expressly codified sovereign immunity for the state **and its officials**. Under P.R. Laws Ann. tit. 32, § 3077, actions undertaken in compliance with statutory authority are immune from suit, even if later deemed invalid. Article 6(a) explicitly protects actions performed in accordance with the law, and Article 6(b) extends immunity to discretionary functions, even in cases of alleged abuse of discretion. *Id.* The Commissioner’s actions related to EPB fall within these protections. The rejection of EPB’s proposed stock sale and subsequent liquidation, as well as her participation in the press conference

to announce to the public her regulatory actions, clearly fall under these provisions, as OCIF acted to address the bank's severe financial deficiencies and protect depositors.

Moreover, as previously mentioned, Section 16 of Act No. 4 has a very specific limitation of liability to OCIF's personnel, including the Commissioner. As per said provision, the Commissioner shall not "be liable in a civil suit for damages, for any act or omission in good faith, in the performance of the duties of his office." P.R. Laws Ann. stat. 7, § 2016. All actions taken by the Commissioner, as alleged in the Complaint, stem from her duties as the head of OCIF and are directly related to the acts taken by her to appoint a receiver and liquidate EPB. As such, Commissioner Zequeira Díaz is expressly immune from any tort action filed against her, like the action filed by plaintiff.

Plaintiff also fails to identify any valid waiver of immunity. Claims under 42 U.S.C. §§ 1983 and 1985(3) do not abrogate Eleventh Amendment immunity. See Quern v. Jordan, 440 U.S. 332, 345 (1979). Nor has Puerto Rico consented to such claims. Critically, Plaintiff's Complaint fails to allege any facts that would overcome sovereign immunity. As argued below, the Consent Order explicitly released OCIF and its officials from liability, a release Plaintiff signed knowingly and voluntarily, further underscoring the lack of jurisdiction over these claims. (Consent Order ¶¶ 8, 18).

As such, the Complaint against Commissioner Zequeira Díaz in her official capacity must be dismissed.

### **3. Claims against Commissioner Zequeira Díaz in her personal capacity must also be dismissed.**

Claims against Commissioner Zequeira Díaz in her personal capacity also fail under the doctrine of qualified immunity. Public officials are shielded from liability for discretionary actions

unless their conduct violates clearly established statutory or constitutional rights of which a reasonable person would have known. See Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982).

Plaintiff's allegations, including the rejection of a stock sale and initiation of liquidation proceedings for Euro Pacific Bank, as well as public statements made during the press conference in connection therewith, fall squarely within Commissioner Zequeira Díaz' statutory duties as the head of OCIF. See Compl. ¶ 5. These actions were discretionary and undertaken to protect depositors and ensure compliance with financial regulations. See 7 L.P.R.A. §§ 2003, 2005. Plaintiff alleges no specific facts showing that the Commissioner acted outside her authority or in violation of clearly established law. See Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (noting that conclusory allegations are insufficient to overcome qualified immunity).

Plaintiff's reliance on vague accusations of conspiracy and wrongdoing, without specific factual support, further undermines his claims. Courts have consistently held that allegations of conspiracy must be supported by material facts detailing how the conspiracy was formed and executed. See Rosado v. Sabat, 204 F. Supp. 2d 252, 267 (D.P.R. 2002); Slotnick v. Staviskey, 560 F.2d 31, 33 (1st Cir. 1977). Here, the complaint contains no such facts. Assertions of "media leaks" and reputational harm lack the factual specificity necessary to state a plausible claim. Moreover, Plaintiff alleges that the leaked information came from IRS/J5 agents. Nowhere in paragraph 4, of the factual allegations section in the Complaint is Mrs. Zequeira Díaz or OCIF mentioned. See Compl., p. 4.

In sum, the Eleventh Amendment bars all claim against OCIF and Commissioner Zequeira in her official capacity, while qualified immunity shields her from personal liability. Plaintiff's allegations fail to meet the pleading standards under Iqbal and Twombly, and the complaint does

not plausibly allege any violation of clearly established rights. Accordingly, the Court should dismiss the complaint in its entirety.

The Eleventh Amendment and Puerto Rico’s statutory immunity categorically bars these claims. Accordingly, the Court lacks subject-matter jurisdiction, and dismissal is warranted.

**B. Plaintiff Waived Claims Through a Consent Agreement**

Plaintiff’s Complaint must be dismissed because he knowingly and voluntarily executed a Consent Order on August 9, 2022, which explicitly waived and released all claims against OCIF and Commissioner Zequeira Díaz. This waiver unambiguously bars Plaintiff from asserting claims related to the investigation, regulatory actions, and liquidation of EPB.

Plaintiff alleges that OCIF representatives, in coordination with other defendants, “announced the investigation into the bank” at a press conference held on June 30, 2022, allegedly misrepresenting the nature of the investigation. (Complaint ¶ 2). He further alleges that OCIF blocked his proposed \$17.5 million stock sale to Qenta and instead approved an asset sale for \$1.25 million after the bank entered receivership, resulting in financial loss. (Id. at ¶ 3). Additionally, Plaintiff claims that OCIF’s appointed Trustee has not completed the liquidation process, prolonging harm to his reputation and financial interests. (Id. at ¶¶ 3, 5).

However, these allegations omit critical facts. On June 30, 2022, OCIF filed a Complaint and Order to Cease and Desist against EPB, initiating a receivership and appointing a trustee to oversee the liquidation process. (Consent Order ¶ 1). Subsequently, Plaintiff, as the bank’s director and sole shareholder, voluntarily entered into a Consent Order for Liquidation and Dissolution, acknowledging EPB’s financial deficiencies and agreeing to the liquidation. (Id. at ¶¶ 2, 6, 18).

The Consent Order explicitly states:

**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 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.

See Consent Order, p. 10, ¶18.

This waiver was executed voluntarily, with Plaintiff attesting that he was “duly authorized by Euro Pacific to execute the same” and entered the agreement “freely, knowingly, and voluntarily” under the advice of legal counsel. (Id. at ¶¶ 4, 6). These admissions bar Plaintiff from revisiting claims related to OCIF’s regulatory actions, including the bank’s liquidation. Tellingly, the Complaint is completely silent on this issue and does not include any allegations of duress, undue influence or any other matter calling into question Plaintiff’s informed decision to execute the Consent Order on behalf of EPB and in his personal capacity. This is particularly relevant in a case where, as here, Plaintiff is a sophisticated businessman and banker, who fully understands the legal implications of his acts.

The waiver is enforceable under Puerto Rico law, which recognizes settlement agreements as contracts that possess the full force of law between parties. (See P.R. Laws Ann. tit. 31, § 2994; Berkan v. Mead Johnson Nutrition P.R., Inc., 204 D.P.R. 183, 205 (2020)). A settlement agreement, such as the Consent Order, constitutes *res judicata* when it resolves a disputed or uncertain legal relationship. (Negrón Vélez v. ACT, 196 D.P.R. 489, 507 (2016)).

Furthermore, the Liquidation Plan prepared and filed by Plaintiff and approved by OCIF explicitly included the sale of EPB’s assets to Qenta for \$1.25 million. (Consent Order ¶¶ 4, 18). Plaintiff agreed to these terms, and the sale was conducted in compliance with the Consent Order,

further negating his current claims. Plaintiff's lack of respect for the agreements and compromises designed, prepared and agreed by none other than himself should not go unnoticed. This change of heart is totally uncalled for and represents a last-ditch effort to fend off a regulatory proceeding that was stipulated and is well underway.

At this juncture, Plaintiff cannot evade the binding effect of the Consent Order. Each claim asserted in the Complaint—including the alleged due process violations (Count I), conspiracy to violate civil rights (Count II), and unlawful seizure of property (Count III)—is directly related to actions addressed and resolved by the Consent Order. These claims have been unequivocally waived.

The explicit terms of the Consent Order and Plaintiff's knowing waiver leave no room for these claims to proceed. As such, the Court should dismiss the Complaint in its entirety, with prejudice.

**C. Statute of Limitations Bars Claims Under §§ 1983, 1985(3), and Bivens Since They are Subject to a One-Year Limitations Period**

Plaintiff's claims under 42 U.S.C. §§ 1983, 1985(3), and the implied cause of action recognized in Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971), are unequivocally time-barred under the applicable strict one-year statute of limitations for personal injury actions. Courts in the First Circuit consistently enforce this limitations period with rigor, and no exception applies here.

Plaintiff alleges that the press conference, denial of the bank stock sale, and the execution of the Consent Order caused him financial harm, reputational damage, and constitutional violations. However, the timeline of these events demonstrates that the statute of limitations has lapsed by a wide margin. This Circuit has already determined that Puerto Rico's one-year statute of limitations for personal injury actions governs these claims (Rodríguez-García v. Municipality

of Caguas, 354 F.3d 91, 96 (1st Cir. 2004); Pagán-González v. Moreno, 919 F.3d 582, 589 (1st Cir. 2019)), and accrual occurs when the plaintiff knows or has reason to know of the injury and the responsible parties (Acevedo-Pérez v. United States, 768 F.3d 51, 56 (1st Cir. 2014)).

Claims under § 1983, § 1985(3), and *Bivens* have a statute of limitations of one (1) year. See Acevedo-Pérez v. United States, *supra* at 56 (1st Cir. 2014) (“However, it is well-established that § 1983 claims borrow the forum state's statute of limitations...In Puerto Rico, the applicable limitations period is one year.”); Huertas-Gonzalez v. Univ. of P.R., 520 F. Supp. 2d 304, 313 (DPR 2007) (“Therefore, since the applicable statute of limitations for Plaintiff's claims under §§...1985 (3)...in this District is one year, Plaintiff's claims under the aforementioned sections and Amendments are time barred.”); Pagán-González v. Moreno, *supra* at p. 589 (“State law determines the statute of limitations for a federal civil rights cause of action, see Barrett ex rel. Estate of Barrett v. United States, 462 F.3d 28, 38 (1st Cir. 2006), and it is undisputed that Puerto Rico's one-year limitations period for personal injury actions applies here, see Roman v. Townsend, 224 F.3d 24, 29 (1st Cir. 2000) (noting "the settled proposition" that plaintiffs' *Bivens* claim was subject to Puerto Rico's one-year limitations period).).

### **Key Timeline and Events:**

- June 30, 2022: the press conference, broadly disseminated locally and abroad, took place. Compl., p. 4 ¶ 2.
- August 9, 2022: Plaintiff signed the Consent Order, explicitly acknowledging regulatory actions and waiving claims. See Exhibit 1.
- November 14, 2024: Plaintiff filed suit, more than two (2) years after becoming aware of his claims. See Docket 1.

This **two-year delay** is dispositive. Plaintiff knew of his alleged injuries no later than August 9, 2022, when he signed the Consent Order, which explicitly referenced OCIF’s regulatory actions. Plaintiff also had knowledge of the June 30, 2022 press conference, which was a public



event, vastly featured in local and international media outlets. His Complaint, filed on November 14, 2024, more than two (2) years after said events, is therefore untimely and should be dismissed.

**Equitable Tolling and Continuing Violation Doctrines Do Not Apply**

Plaintiff attempts to salvage his claims by asserting that he “discovered” a conspiracy in April 2024 through IRS documents. However, this does not toll or reset the limitations period. The First Circuit has repeatedly held that the statute begins to run when a plaintiff knows or has reason to know of the harm and its cause, not when they learn additional details or discover new evidence (Rodríguez-García, 354 F.3d at 96–97; Benitez-Pons v. Puerto Rico, 136 F.3d 54, 59 (1st Cir. 1998)). Here, Plaintiff had actual knowledge of the alleged injuries as early as June 2022, when the press conference occurred, and certainly by August 2022, when he executed the Consent Order.

The continuing violation doctrine is similarly unavailing. The doctrine applies to ongoing, systemic acts rather than discrete events. A press conference, a regulatory denial, and the execution of a Consent Order are discrete actions that do not extend the limitations period (Ayala-Sepúlveda v. Municipality of San Germán, 671 F.3d 24, 31 (1st Cir. 2012)). No alleged act occurred after August 2022 that could serve as a basis to invoke the doctrine.

Moreover, Plaintiff has not alleged any extraordinary circumstances to justify equitable tolling. Courts strictly apply this doctrine, requiring evidence that a defendant actively prevented a plaintiff from timely filing (Zapata v. Puerto Rico, 999 F.3d 10, 15 (1st Cir. 2021); McDonough v. Smith, 139 S. Ct. 2149, 2155 (2019)). Plaintiff’s claim of delayed discovery due to alleged difficulty in obtaining IRS documents does not meet this high threshold, as he had knowledge of his injuries and the purported “responsible” parties at least two (2) years before 2024.

The District of Puerto Rico has consistently dismissed untimely civil rights claims. In Huertas-González v. Univ. of P.R., *supra* at 313, the court emphasized that the one-year limitations

period begins to run when the plaintiff is aware of the injury and its likely cause. Similarly, in Brauchitsch-Monedero v. P.R. Elec. Power Auth., 786 F. Supp. 2d 470, 479 (D.P.R. 2011), claims filed beyond the one-year limitations period were summarily dismissed.

The same principles apply to Plaintiff's claims. He knew of the alleged injuries, including reputational harm and financial loss, no later than August 2022. His attempt to frame subsequent document discovery as a tolling mechanism is unsupported by the applicable law. As the First Circuit clarified in Vistamar, Inc. v. Fagundo-Fagundo, 430 F.3d 66, 70 (1st Cir. 2005), the statute does not reset when additional evidence becomes available.

Also, the allegations included in the complaint are conclusory statements that do not include any fact to plausibly support the contention that an alleged conspiracy existed. Plaintiff's failure to comply with the minimum pleading requirements in a complaint does not allow for his claims to continue at this juncture.

*Ergo*, Plaintiff's claims are time-barred by Puerto Rico's one-year statute of limitations, and no exception applies. The alleged injuries occurred in 2022, yet Plaintiff waited over two (2) years to file suit. This Court should dismiss all claims under §§ 1983, 1985(3), and *Bivens* with prejudice.

#### **D. Plaintiff Lacks Standing to Bring Claims**

Plaintiff lacks standing to pursue the claims asserted in this action. To establish standing under Article III of the Constitution, a plaintiff must demonstrate: (1) an injury in fact that is concrete and particularized; (2) a causal connection between the injury and the conduct complained of; and (3) a likelihood that the injury will be redressed by a favorable decision. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992).

First, Plaintiff's alleged injuries, including reputational harm and lost business opportunities, are speculative and lack the concreteness required to constitute an injury in fact. The

Supreme Court has emphasized that an injury must be “actual or imminent, not conjectural or hypothetical.” *Id.* at 560. Plaintiff’s assertions of potential reputational damage and unspecified lost opportunities fail to meet this standard, as they are neither concrete nor particularized.

Second, Plaintiff fails to establish a causal connection between the alleged injuries and the actions of OCIF and Commissioner Zequeira Díaz. The causation element requires that the injury be “fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court.” *Id.* (internal quotation marks omitted). Here, any reputational harm or lost opportunities appear to stem from actions taken by independent entities, such as the media outlets that featured EPB’s regulatory troubles, thereby breaking the causal chain necessary to satisfy this requirement. Immediately after announcing to the public OCIF’s enforcement actions, OCIF granted Plaintiff and EPB the necessary due process, which allowed them to contest OCIF’s decision. After fully assessing the key issues at hand, Plaintiff, however, elected to enter into a Consent Order, fully advised of the legal consequences of such a decision. The media coverage of said public events is totally foreign to OCIF and completely outside of its regulatory purview. There is simply no connective tissue between OCIF, a law enforcement agency, and the media outlets discussing EPB’s and Plaintiff’s legal predicament.

Third, Plaintiff has not demonstrated that the Court can redress the purported injuries through the relief sought. Redressability requires that it be “likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.” *Id.* at 561 (internal quotation marks omitted). Given that the alleged harms are speculative and result from actions of third parties beyond the Court’s control, it is unlikely that a favorable judicial decision would redress Plaintiff’s injuries. Worse yet, the allegations against these third parties raise thorny issues of the right to free speech, under the First Amendment to the United States Constitution.

In summary, Plaintiff has not satisfied the constitutional requirements for standing, as the alleged injuries are speculative, lack direct causation attributable to OCIF or Commissioner Zequeira Díaz, and are not redressable by this Court. Accordingly, the claims should be dismissed for lack of standing.

**E. Failure to State a Claim Under 42 U.S.C. §§ 1983 and 1985(3)**

Plaintiff's claims under 42 U.S.C. §§ 1983 and 1985(3) are fundamentally flawed and must be dismissed. Section 1983 provides a remedy against any "person" who, under color of state law, deprives another of constitutional rights. However, OCIF, as a governmental entity, does not qualify as a "person" under § 1983. The Supreme Court has established that neither states nor their agencies are "persons" subject to suit under § 1983. See Will v. Mich. Dep't of State Police, 491 U.S. 58, 71 (1989). Therefore, Plaintiff's § 1983 claim against OCIF is legally untenable.

Even if OCIF were subject to suit under § 1983, which it is not, Plaintiff's complaint lacks the requisite specificity to state a viable claim. To succeed under § 1983, a plaintiff must allege specific facts demonstrating the deprivation of a constitutional right by a person acting under color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988). Plaintiff's allegations are predominantly conclusory, failing to identify any specific actions by OCIF that resulted in a constitutional deprivation. Such vague assertions are insufficient to withstand a motion to dismiss. See Ashcroft v. Iqbal, *supra* at 678.

To that effect, Plaintiff alleges that the defendants deprived him of "due process by blocking the bank sale and misrepresenting the nature of the investigation, thereby causing financial harm and reputational damage". Compl. P. 4, ¶ 5). Plaintiff's allegations do not point to any action that is contrary to OCIF's laws and regulations. Moreover, Plaintiff does not state how the process followed by the OCIF violated his constitutional rights. Plaintiff's allegations are so vague that he failed to allege what were the "faulty" procedures followed by the OCIF or,

alternatively, how OCIF failed to follow any other applicable procedures in violation of his constitutional rights. Simply put, Plaintiff has not put this Court in a position to effectively analyze the statutory provisions enacted by the Commonwealth and OCIF, how said provisions were applied to EPB and how said application was a constitutional violation that affected Plaintiff's due process. The Amended Complaint is completely silent as to the administrative proceedings followed by OCIF and any details of the alleged constitutional injury suffered by the Plaintiff. Said silence is unavailing and insufficient to state a claim in his favor.

Regarding the § 1985(3) claim, Plaintiff's allegations fare no better. Section 1985(3) addresses conspiracies to deprive individuals of equal protection or equal privileges and immunities under the law. A valid claim under this section requires: (1) a conspiracy; (2) a conspiratorial purpose to deprive a person or class of persons of equal protection of the laws; (3) an overt act in furtherance of the conspiracy; and (4) an injury to person or property, or a deprivation of a constitutionally protected right. See Griffin v. Breckenridge, 403 U.S. 88, 102-03 (1971). Crucially, the conspiracy must be motivated by "some racial, or perhaps otherwise class-based, invidiously discriminatory animus." *Id.* at 102.

Plaintiff's complaint fails to meet these stringent requirements. The allegations of conspiracy are wholly conclusory, lacking any factual support to suggest an agreement or concerted action among the defendants. See Bell Atl. Corp. v. Twombly, *supra* at 557. Moreover, Plaintiff does not assert membership in a protected class, nor does he provide any indication of discriminatory animus driving the alleged conspiracy. Without such allegations, the § 1985(3) claim cannot stand. See Bray v. Alexandria Women's Health Clinic, 506 U.S. 263, 268-69 (1993). Like with the § 1983 claim, the Amended Complaint is equally silent as to the alleged conspiracy.

It fails to name the alleged conspirators, the detailed facts (even if generally described) of the conspiracy and how those facts or actions deprived the Plaintiff of a constitutional protected right.

In conclusion, Plaintiff's claims under 42 U.S.C. §§ 1983 and 1985(3) are legally deficient due to OCIF's status as a non-person under § 1983, the lack of specific factual allegations supporting either claim, and the absence of any indication of discriminatory animus shields OCIF from such suits. Accordingly, these claims must be dismissed with prejudice.

**F. The *Bivens* Doctrine Does Not Apply**

Plaintiff's reliance on Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971), is fundamentally misplaced. *Bivens* provides a remedy for constitutional violations perpetrated by **federal officials** in specific contexts, but it is intentionally narrow in scope. Neither OCIF nor Commissioner Zequeira Díaz are federal actors, and Plaintiff's allegations fail to meet the stringent criteria for a *Bivens* remedy.

As established in Ziglar v. Abbasi, 582 U.S. 120, 134-35 (2017), and reaffirmed in Hernandez v. Mesa, 589 U.S. 93 (2020), *Bivens* applies solely to **federal officers** acting in their individual capacities. OCIF is a regulatory body established under Puerto Rico law, and Commissioner Zequeira Díaz acted in her official capacity pursuant to Puerto Rico's statutory framework. These actions are quintessentially **state** actions. Plaintiff's claim that OCIF acted in concert with federal agencies like the IRS does not transform OCIF into a federal actor, as cooperation between state and federal authorities does not suffice to establish such a designation. See Pagán-González v. Moreno, 919 F.3d 582, 590 (1st Cir. 2019) ("Cooperation with federal authorities does not convert a state official into a federal actor."); Cruzado-Laureano v. U.S. Attorney's Off. for the Dist. of P.R., 2023 U.S. Dist. LEXIS 109043, at \*10 (D.P.R. 2023).

Moreover, the Supreme Court has consistently declined to extend *Bivens* beyond its original contexts involving unlawful searches under the Fourth Amendment, gender discrimination

under the Fifth Amendment, and cruel and unusual punishment under the Eighth Amendment. The regulatory actions challenged here, involving OCIF's statutory duties, bear no resemblance to these narrowly defined circumstances. In cases like Hernandez, the Court emphasized judicial restraint, particularly when Congress has not authorized a remedy, stating that extending Bivens to new contexts is disfavored. Similarly, in Minnecci v. Pollard, 565 U.S. 118, 126 (2012), the Court reiterated that alternative remedies under state law are sufficient to preclude Bivens liability.

The availability of alternative remedies is critical here. Plaintiff had access to robust legal avenues under Puerto Rico law, including judicial review of OCIF's actions and administrative oversight mechanisms. These remedies provide ample recourse for addressing the claims raised. Additionally, Plaintiff voluntarily executed a Consent Order in 2022 that explicitly waived claims against OCIF and its officials, underscoring the adequacy of the existing legal framework and foreclosing his constitutional claims under any theory.

Federalism principles also weigh heavily against Plaintiff's attempt to invoke *Bivens* in this context. Expanding *Bivens* to encompass regulatory entities like OCIF would disrupt Puerto Rico's sovereign authority over its international financial institutions or offshore banking, undermining the regulatory framework established to ensure financial stability and sound operation of an important aspect of Puerto Rico's public policy to position itself as a worldwide leader in this segment of the economy. The Supreme Court has consistently cautioned against federal intrusion into state or territorial regulatory domains absent explicit congressional authorization. See Ziglar, 582 U.S. at 137; Hernandez, 140 S. Ct. at 744.

Plaintiff's allegations that OCIF and Commissioner Zequeira Díaz acted in concert with the IRS during "Operation Atlantis" to deprive him of property and due process are speculative and lack factual specificity. Cooperation between state and federal actors, standing alone, does not

satisfy the criteria for *Bivens* liability. Plaintiff is simply stretching the facts to give the unsupported impression that a single press conference where separate and distinct regulators share information about their individual initiatives against one entity qualifies as an “act in concert”. But the Complaint is completely devoid of any specific factual allegations to construct such a narrative. Furthermore, the Consent Order voluntarily signed by Plaintiff acknowledged OCIF’s regulatory authority and included a clear waiver of claims, further invalidating Plaintiff’s position.

For these reasons, Plaintiff’s claims under *Bivens* are legally deficient and should be dismissed. Neither OCIF nor Commissioner Zequeira Díaz fall within the narrow purview of *Bivens*, and the regulatory actions at issue do not justify an expansion of the doctrine. The Court should dismiss these claims with prejudice.

**G. Abstention Doctrines Warrant Dismissal**

Federal courts have long recognized the principle of abstention in cases where the exercise of jurisdiction would disrupt ongoing state regulatory efforts or improperly encroach upon matters of significant state interest. Under the doctrines articulated in Younger v. Harris, 401 U.S. 37 (1971), and Burford v. Sun Oil Co., 319 U.S. 315 (1943), this Court should abstain from exercising jurisdiction in this matter. The circumstances of the present case, rooted in Puerto Rico’s oversight and regulation of its offshore financial institutions, align squarely with the justifications underlying abstention.

The Younger doctrine requires federal courts to abstain from interfering in ongoing state proceedings that are judicial in nature, involve important state interests, and provide an adequate opportunity for the aggrieved party to raise constitutional claims. In this case, Puerto Rico’s regulatory process for the liquidation of financial institutions like EPB constitutes an ongoing state proceeding imbued with significant public policy concerns. OCIF, pursuant to its statutory



authority, has taken comprehensive measures to oversee the liquidation and ensure the protection of depositors and the stability of the financial sector. If Plaintiff has any valid concerns about the performance of EPB's receiver, he should raise those concerns in due course before OCIF. Federal intervention in this regulatory framework would constitute undue interference in a matter that has been appropriately entrusted to the state.

Additionally, under the Burford abstention doctrine, federal courts should defer to state processes where adjudication of a dispute would disrupt a state's effort to establish and enforce coherent policies on matters of substantial public concern. Puerto Rico has created a specialized framework to regulate its offshore financial institutions, including Acts No. 4 and No. 52, which empower OCIF to supervise the operations, liquidation, and dissolution of international banking entities. See Act No. 4 of 1985, P.R. Laws Ann. tit. 7, §§ 2001 *et seq.*; Act No. 52 of 1989, P.R. Laws Ann. tit. 7, §§ 232 *et seq.* This framework was invoked in OCIF's issuance of the Consent Order, which included provisions for the voluntary liquidation of EPB and the appointment of a trustee to oversee its affairs. Federal adjudication of Plaintiff's claims would risk destabilizing the structured liquidation process, undermining Puerto Rico's ability to enforce its financial regulations effectively.

The Consent Order signed by Plaintiff further reinforces the appropriateness of abstention. By voluntarily entering into the Consent Order, Plaintiff explicitly waived claims against OCIF and its officials arising from the bank's liquidation. See Consent Order, ¶ 18. This agreement underscores Plaintiff's recognition of OCIF's authority and the legitimacy of the state regulatory process. Any challenge to OCIF's actions, now couched in constitutional terms, seeks to relitigate matters resolved through a binding administrative process, which courts have consistently recognized as final and enforceable. See Velazquez-Ortiz v. Vázquez-García, 443 F. Supp. 2d 283,

286 (D.P.R. 2006) (noting that settlement agreements, including administrative settlements, carry res judicata effect).

The principles of abstention also apply with particular force when state regulatory bodies are executing complex functions requiring specialized knowledge. See Burford, 319 U.S. at 332–34. In overseeing EPB’s liquidation, OCIF acted within its statutory mandate to ensure financial stability and protect the interests of depositors. The Consent Order reflects a carefully crafted regulatory solution to address EPB’s deficiencies and ensure an orderly resolution of its affairs. Any federal intrusion at this stage would undermine OCIF’s ability to administer its regulatory functions effectively and could create inconsistencies in the application of Puerto Rico’s financial oversight laws.

Moreover, Plaintiff’s allegations, while couched in constitutional language, fail to present any claims that necessitate federal court intervention. The Complaint centers on OCIF’s execution of its regulatory duties, including the issuance of the Consent Order, the appointment of a trustee, and the oversight of EPB’s liquidation. These actions were taken pursuant to Puerto Rico’s established legal framework and are precisely the type of state functions that federal courts are ill-suited to second-guess. See Conservation Law Found., Inc. v. Exxon Mobil Corp., 3 F.4th 61, 70 (1st Cir. 2021) (noting that abstention promotes uniformity and defers to agencies with expertise in specialized regulatory matters).

In conclusion, the doctrines of Younger and Burford abstention underscore the importance of federal deference to state regulatory processes, particularly where, as here, the state has created a comprehensive framework for managing complex matters of public concern and the process is still ongoing. The Court should dismiss Plaintiff’s claims to avoid interference in Puerto Rico’s ongoing regulatory efforts and to uphold the principles of federalism that underlie these abstention

doctrines. Plaintiff's attempt to relitigate issues settled by the Consent Order only serves to highlight the inappropriateness of federal court intervention. Accordingly, dismissal is warranted.

**V. RELIEF REQUESTED**

**WHEREFORE**, for the foregoing reasons, Co-Defendants OCIF and Commissioner Zequeira Díaz very respectfully request that this Honorable Court GRANT this Motion to Dismiss in its entirety and dismiss all claims against OCIF and Commissioner Zequeira Díaz, in her official and personal capacity, **with prejudice**. Also, it is requested that this Honorable Court award co-defendants OCIF and Commissioner Zequeira Díaz costs and attorney's fees.

**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 Guaynabo, Puerto Rico, this 15<sup>th</sup> day of January 2025.

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