

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

**REPLY TO PLAINTIFF'S RESPONSE**

**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 Reply to Plaintiff’s Response.

**Introduction**

Once again, Plaintiff has wasted a valuable opportunity to articulate why his Complaint presents a concrete and factually plausible theory. Plaintiff is a sophisticated individual with dozens of years of experience in corporate and banking matters. He regularly boasts about his expertise in social media and internet posts. Yet, Plaintiff’s Response is riddled with speculative assertions, unsupported allegations, and legal misapplications that fail to meet the required pleading standards. See Dkt. No. 44.

To start, the Response makes no reasonable effort to show to this Honorable Court why Plaintiff is entitled to have his day in Court. Said motion is blatantly devoid of any specific reference to the allegations in the Complaint that support Plaintiff's causes of action. Instead, Plaintiff seeks to improperly shift his burden to the Court, essentially asking the Court to comb his Complaint to find factual allegations that may help his case. This is simply unacceptable and, respectfully, a waste of this Honorable Court's time and resources.

Only Plaintiff himself is responsible for bringing forward a case that meets the minimum pleading standards. But his *modus operandi* so far has been to throw a bunch of arguments to the wall to see which one sticks. This is totally unacceptable, and this Court has been extremely patient with Plaintiff and his antics. But enough is enough. As this Court will note from a cursory review of the Response, said motion simply includes general ideas or topics about Plaintiff's bank regulatory history with OCIF and Plaintiff's distorted own views about how that regulatory history unraveled. Fortunately, there is an administrative and regulatory record (which has been incorporated into the Complaint) that clearly debunks Plaintiff's personal and unsupported narrative.

At its core, Plaintiff's case attempts to recast lawful regulatory actions as a politically motivated conspiracy, relying on conjecture rather than substantive legal arguments or factual support. His claims of defamation, conspiracy, and constitutional violations rest on unfounded accusations rather than concrete facts. Plaintiff also seeks extraordinary relief—punitive damages, declaratory judgments, and financial compensation—without establishing a legal or factual basis for such demands. As further outlined below, the legal deficiencies in Plaintiff's claims are fundamental and incurable. Accordingly, dismissal with prejudice is warranted.

## **I. PLAINTIFF’S ASSERTION OF CONSPIRACY AND POLITICAL MOTIVATION**

Plaintiff asserts that OCIF’s actions, allegedly coordinated with the IRS and J5, demonstrate political motivation and an unlawful conspiracy to damage Plaintiff’s reputation and financial interests. He claims the rejection of the \$17.5 million sale was politically motivated and blocked due to external pressures. (Plaintiff’s Response at 2-3, 7, at Dkt. No. 44 (hereinafter “Plaintiff’s Response”)). OCIF and Mrs. Zequeira Díaz maintain that OCIF’s actions were lawful, grounded in its regulatory authority, and were not politically motivated. The claim of a conspiracy lacks factual allegations sufficient to meet the legal threshold for a conspiracy claim.

Plaintiff’s argument is speculative and lacks factual support or legal basis. To sustain a conspiracy claim under 42 U.S.C. § 1985(3), Plaintiff must provide specific factual allegations of an agreement or coordinated action between the parties. Mere suspicion or generalized claims of political motivation are insufficient to meet this standard. The claim that external pressures led to the rejection of the \$17.5 million sale is unsupported by concrete facts in the Amended Complaint. See Dkt. No. 10. Courts require more than vague assertions to establish a conspiracy; a specific factual basis must be provided. See Griffin v. Breckenridge, 403 U.S. 88, 102 (1971).

## **II. CLAIMS OF DEFAMATION FROM THE JUNE 2022 PRESS CONFERENCE**

Plaintiff claims that the public statements made during the June 2022 press conference, which allegedly linked him to financial crimes, were defamatory. (Plaintiff’s Response at 4-5). OCIF and Mrs. Zequeira Díaz argue that the statements made by OCIF in its regulatory capacity are protected by privilege and do not constitute defamation.

OCIF’s statements made during the press conference were part of its regulatory role, and such statements are protected by a qualified privilege. Puerto Rico law confers immunity on OCIF officials acting in good faith within the scope of their regulatory duties, and Plaintiff has not

demonstrated that the Commissioner exceeded or abused that authority. See, P.R. Laws Ann. tit. 7, § 2016. This is consistent with the principles established in Barr v. Matteo, 360 U.S. 564, 574-75, 79 S. Ct. 1335, 1341 (1959), where the U.S. Supreme Court held that government officials are immune from civil liability for actions performed within the scope of their official duties, unless they act with malice or in bad faith. Thus, Statements made by government officials during the course of their official duties, particularly in the context of financial oversight and regulatory actions, are immune from defamation claims.

Plaintiff fails to specifically identify in the Amended Complaint any false statements made during the press conference. To sustain a defamation claim, the Plaintiff must show specific false statements, not mere opinions or unfavorable comments. See Lluberes v. Uncommon Prods., 663 F.3d 6, 13 (1st Cir. 2011). Without identifying a specific false statement, Plaintiff's defamation claim must fail. Further, the qualified immunity provided to regulatory speech bars Plaintiff's defamation claim. See Banco Santander P.R. v. López-Stubbe, 324 F.3d 12, 17 (1st Cir. 2003).

### **III. REQUEST FOR DECLARATORY RELIEF**

Plaintiff seeks a declaratory judgment to correct false statements made at the June 2022 press conference, and to declare the rejection of the \$17.5 million bank sale and the \$7 million capital injection as arbitrary and unconstitutional. (Plaintiff's Response at 6). But there is no ongoing controversy to warrant declaratory relief, as the actions in question were completed, and there is no current dispute.

Plaintiff's request for declaratory relief is unwarranted because there is no continuing violation or live controversy. The actions taken by OCIF—such as the rejection of the \$17.5 million sale—are past events and do not present an active dispute that would justify the need for a declaratory judgment. As established in Steffel v. Thompson, 415 U.S. 452 (1974), declaratory relief is generally not appropriate for past actions that no longer present an ongoing controversy.

There is no current or continuing dispute, and therefore, Plaintiff's request for declaratory relief should be denied.

#### **IV. TIMELINESS AND STATUTE OF LIMITATIONS ARGUMENT**

Plaintiff claims that the discovery rule and the continuing violation doctrine apply, making his suit timely. (Plaintiff's Response at 7-8). Plaintiff's reasoning is flawed, because neither the discovery rule nor the continuing violation doctrine apply to this case.

Plaintiff's claim is time-barred because the statute of limitations began running in June 2022, when OCIF closed Euro Pacific Bank and publicly announced its actions. The discovery rule does not apply because Plaintiff was aware of the facts at that time, and his allegations of harm were well-known to him by June 2022.


Moreover, the continuing violation doctrine<sup>1</sup> does not apply to the discrete regulatory acts in this case. The rejection of the sale and the closure of the bank were discrete, completed events that triggered the statute of limitations. The continuing effects of these actions do not reset the limitations period. See Marrero-Gutierrez v. Molina, 491 F.3d 1, 6 (1st Cir. 2007). Plaintiff's claims are therefore untimely, and the statute of limitations bars his suit.

#### **V. MALICIOUS INTENT AND CONSPIRACY UNDER 42 U.S.C. §§ 1983 AND 1985(3)**

Plaintiff claims that Defendants conspired to violate his constitutional rights under § 1983 and § 1985(3), arguing malicious intent and coordinated actions. (Plaintiff's Response at 9). Yet, Plaintiff's claims under these statutes are insufficiently pled, as there is no evidence or non-conclusory factual allegations of a conspiracy or constitutional violation.

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<sup>1</sup> Plaintiff rests his continued violation doctrine argument on a FOIA request completed in 2024. However, Plaintiff's argument fails because he failed to include any relevant facts related to the result of said FOIA request within the Amended Complaint that would put this Honorable Court in a position to entertain the continued violation doctrine argument.

Plaintiff's claims under §§ 1983 and 1985(3) must be dismissed because they fail to meet the pleading standards. A conspiracy claim requires specific facts showing an agreement between the parties to violate Plaintiff's right  Plaintiff's speculative allegations of political motivation do not satisfy the state action or class-based animus requirements of §§ 1983 and 1985(3). Speculation of political pressure does not meet the legal standard for conspiracy claims. See Griffin v. Breckenridge, 403 U.S. 88 (1971). Plaintiff's claims lack the necessary factual allegations and should be dismissed under Rule 12(b)(6) for failure to state a claim.

## **VI. DAMAGES CLAIM AND FINANCIAL HARM**

Plaintiff asserts a claim of financial harm, alleging that the undervaluation of the bank and OCIF's actions resulted in over \$49 million in damages, including lost business opportunities and reputational harm. (Plaintiff's Response at 11). However, Plaintiff's claim for damages is speculative and lacks sufficient factual support to substantiate the allegations.

Plaintiff's damages claim is insufficiently developed as it lacks specific factual allegations to support a causal connection between OCIF's actions and the alleged financial harm. Under its enabling act, OCIF is not entrusted with any "valuation" responsibilities regarding the business or assets of its regulated banks. And any liquidation value obtained as part of the liquidation of a bank is covered by that particular regulatory action, which in this case took place after a Consented Order was entered and voluntarily accepted by Plaintiff. Put differently, Plaintiff's purported damages, if any, arose as part of the liquidation process that he accepted.

Under Rule 12(b)(6), a claim must be supported by sufficient factual allegations to make the claim plausible. Plaintiff's vague assertions of harm—without connection the dots between said speculative harm and OCIF's conduct—are insufficient to meet this standard. As the Supreme Court explained in *Twombly* and *Iqbal*, a complaint must provide more than conclusory statements or general allegations. For a claim of financial harm, Plaintiff must provide specific facts to

establish how OCIF's actions caused the alleged losses. The absence of such specifics undermines the plausibility of the claim and makes it legally insufficient. Plaintiff's claim for damages cannot ignore the historical reality of the regulatory actions he accepted and agreed to put in place. Such regulatory history makes unpalausible Plaintiff's theory of recovery in this case, plain and simple. As the Court stated in Ashcroft v. Iqbal, 556 U.S. 662 (2009), a claim must "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Here, Plaintiff fails to provide the required detail to demonstrate the plausibility of his damages claim, and thus, his claim should be dismissed under Rule 12(b)(6) for failure to state a claim.

General allegations of lost opportunities and reputational harm, without concrete facts or evidence of causation, fail to meet the pleading standard required under federal law.

#### **VII. PLAINTIFF MISAPPLIES SOVEREIGN IMMUNITY PRINCIPLES IN LIGHT OF PUERTO RICO'S UNIQUE STATUS**

Plaintiff alleges Puerto Rico's unique status under United States law impacts sovereign immunity claims, citing Puerto Rico v. Sanchez Valle, 579 U.S. 59 (2016). (Plaintiff's Response at 12). OCIF and Mrs. Zequeira Díaz argue that Plaintiff misapplies the standard established in Sanchez Valle inasmuch said case's application is limited to criminal jurisdiction in double jeopardy cases. Moreover, Plaintiff did not sufficiently develop the argument in order to put this Court, and defendants, in a position to analyze and oppose his position.

In Puerto Rico v. Sánchez Valle, *Id.*, the Supreme Court emphasized the unique status of Puerto Rico as a U.S. territory, which impacts the application of sovereign immunity in various contexts. However, this case does not alter the fundamental principles of sovereign immunity, which protect Puerto Rico and its agencies from lawsuits unless there is a clear waiver or congressional abrogation. The cases cited by Plaintiff, such as Ramsey v. Muna, 2015 U.S. Dist. LEXIS 70067, and Zappa v. Cruz, 30 F. Supp. 2d 123, do not create exceptions to these well-

established principles of sovereign immunity. (See Plaintiff's Response at 17-18). The Plaintiff fails to identify any specific waiver of immunity or valid statutory exception that would allow his claims to proceed against OCIF.

#### **VIII. PLAINTIFF'S REQUEST FOR PUNITIVE DAMAGES**

Plaintiff claims that punitive damages are appropriate due to Defendants' malicious conduct, including rejecting viable solutions and making defamatory statements. (Plaintiff's Response at 19). OCIF and Mrs. Zequeira Díaz contend that punitive damages are unavailable against Puerto Rico agencies under sovereign immunity.

Punitive damages are barred by sovereign immunity. Puerto Rico agencies, including OCIF, are immune from such damages, and Plaintiff fails to provide any legal basis to circumvent this rule. The Supreme Court has consistently held that punitive damages cannot be awarded against state actors in their official capacities unless there is clear evidence of unconstitutional conduct. Since Plaintiff has failed to meet this standard, his request for punitive damages should be denied. See City of Newport v. Fact Concerts, Inc., 453 U.S. 247, 271 (1981).

#### **IX. PLAINTIFF'S NEW DURESS THEORY ALSO FAILS**

Plaintiff argues that his signature on the Consent Order was obtained under duress, claiming that he was coerced into signing the agreement and that he did not voluntarily waive his rights. (Plaintiff's Response at 17-18). Plaintiff's claim of duress is unfounded and not included in the Amended Complaint. Duress requires a showing of unlawful coercion or threats that deprived the party of free will. Plaintiff fails to demonstrate any such coercion or duress. The Consent Order was entered voluntarily, with legal counsel, and Plaintiff waited nearly two years before challenging it, further undermining any duress claim.

Plaintiff's allegation of duress is meritless. Duress, as defined by law, requires a showing of unlawful coercion or threats that force a party to act against their will. Plaintiff has not provided



any such factual allegation in the Amended Complaint. Courts have routinely rejected duress claims where the party had legal counsel and entered into an agreement voluntarily, as was the case here. See Ortiz-Santiago v. Naranjo Rivera, 906 F.3d 99, 106 (1st Cir. 2018). Moreover, Plaintiff's failure to challenge the Consent Order for nearly two years after its execution further weakens his claim of duress. Plaintiff's arguments in this regard do not meet the legal standard for duress and must be disregarded.

Finally, the inclusion of new allegations in an opposition to a motion to dismiss is unwarranted. As such, the new allegations of duress should be dismissed. See Aldabe v. Cornell Univ., 296 F. Supp. 3d 367, 377 (D. Mass. 2017) ("His opposition to the motion to dismiss included new allegations... That new information does not cure the defects of plaintiff's amended complaint and does not help him state a claim upon which relief can be granted. Instead, it consists of speculation and conclusory statements. Plaintiff's complaint will be dismissed in its entirety, with prejudice.").

## **X. CONCLUSION**

For the reasons set forth above, Plaintiff's claims lack legal merit and fail to meet the requisite pleading standards. His assertions of conspiracy, political motivation, and malicious intent are speculative and unsupported by factual allegations sufficient to sustain a claim under §§ 1983 and 1985(3). His defamation claim is barred by qualified privilege, and his request for declaratory relief is unwarranted due to the absence of an ongoing controversy. Additionally, Plaintiff's claims are untimely, and his arguments regarding duress and sovereign immunity misapply established legal principles.

Furthermore, Plaintiff's damages claims are speculative and lack the specificity required to survive a motion to dismiss. Similarly, his demand for punitive damages is barred by sovereign

immunity, and his attempt to introduce new allegations in opposition to the motion to dismiss is procedurally improper.

Accordingly, Defendants respectfully request that this Honorable Court GRANT their Motion to Dismiss in its entirety and dismiss all claims against OCIF and Commissioner Zequeira Díaz, in her official and personal capacities, with prejudice. Defendants also request that this Court award costs and attorney's fees for having to defend against legally insufficient claims.

**WHEREFORE**, for the foregoing reasons, Co-Defendants OCIF and Commissioner Zequeira Díaz very respectfully request that this Honorable Court GRANT the 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 26<sup>th</sup> day of February 2025.

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