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

PLAINTIFF'S REPLY TO DEFENDANTS' REPLY TO RESPONSE (DOC 57)

INTRODUCTION

COMES NOW, Plaintiff Peter D. Schiff, by and through undersigned counsel, submits this Reply to Defendants' Reply (Doc 57) in response to Plaintiff's Response to the Motion to Dismiss. Defendants' attempt to frame their regulatory actions as lawful while ignoring the procedural and constitutional violations alleged in the Amended Complaint (Doc 10). This Reply addresses Defendants' misstatements regarding sovereign immunity, statute of limitations, waiver of claims, conspiracy, and financial harm, and further highlights the necessity for discovery.

I. PLAINTIFF MEETS THE PLEADING STANDARD; EVIDENCE IS FOR DISCOVERY

Defendants wrongly argue that Plaintiff must provide full evidentiary proof at the pleading stage. However, under Federal Rule of Civil Procedure 8(a), Plaintiff only needs to present a 'short and plain statement of the claim' sufficient to provide notice to Defendants. Courts must assume the allegations are true for the purpose of a motion to dismiss. Discovery is the appropriate phase for evidence-gathering, and Defendants' insistence on pretrial proof contradicts established legal principles. Conley v. Gibson, 355 U.S. 41, 47-48, (1957).

II. PLAINTIFF SUFFICIENTLY PLEADS A CONSPIRACY UNDER 42 U.S.C. § 1985(3).

Defendants claim that Plaintiff has failed to demonstrate a conspiracy between OCIF, the IRS, and the J5 tax enforcement group. However, the Amended Complaint (Doc 10) details email correspondence

between OCIF and federal agencies coordinating actions against Plaintiff's bank. "Plaintiff Allegations: **Defendants conspired** to infringe Plaintiff's rights **through coordinated actions** intended to damage his business and reputation, **as evidenced by the press conference and media leaks**. Plaintiff alleges that IRS officials, including former Chief of Criminal Investigations Jim Lee, conspired with OCIF to close his bank, Euro Pacific International Bank, through **a campaign of false accusations and regulatory maneuvers**." These allegations, taken as true, meet the standard for a conspiracy claim under 42 U.S.C. § 1985(3). By stating "conspiracy claim requires specific facts showing an agreement between the parties to violate Plaintiff's rights", the Defendants are, in fact, making our case.

Defendants' states "there is no evidence or non-conclusory factual allegations of a conspiracy or constitutional violation". There is no evidence because we are not at the trail phase…yet. As for factual allegations: it was specifically stated in the amended complaint that "**Plaintiff alleges that IRS/J5 agents leaked confidential investigation information to the media**" …. "**The plaintiff finally found out about the alleged conspiration between the defendants in April of 2024 after receiving the information from the IRS**." In fact, those heavily redacted emails provide amble evidence to contradict Defendant's repeated claims that OCIF acted independently. They confirm that OCIF's actions were the result of inappropriate and perhaps illegal negotiations with the IRS that began over three months prior to the June 30th C&D. They further evidence that but for those negotiations OCIF would have approved the sale of the bank, and that the negotiated action against the bank was primarily taken to serve the interest of the IRS's J5 partners, especially the ATO in Australia, and not Puerto Rican banking regulations or the interest of Euro Pacific Bank's customers. None of these facts were known to Plaintiff until he finally discovered those emails in April of 2024, when after a year and a half delay, the IRS finally produced them.

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Later it states: "Count I: Violation of Due Process (42 U.S.C. § 1983) Against: IRS, Jim Lee, Natalia Zequeira Díaz, OCIF and other unnamed IRS and OCIF agents **Allegations**: **Defendants deprived Plaintiff of property without due process** by blocking the bank sale and misrepresenting the nature of the investigation, thereby causing financial harm and reputational damage." Defendants are wasting precious court' s time and resources with this motion.

III. DEFENDANTS' PUBLIC STATEMENTS WERE DEFAMATORY AND NOT PROTECTED

Defendants claim that OCIF's statements at the June 2022 press conference are protected by qualified privilege. However, government officials lose privilege when making knowingly false statements or acting with malice. Emails and internal communications contradict OCIF's public claims, establishing that the Commissioner's statements were knowingly false and defamatory.

IV. SOVEREIGN IMMUNITY DOES NOT BAR THIS ACTION

Defendants argue that OCIF is protected by sovereign immunity. However, under Ex parte Young 209 U.S. 123 (1908), state officials are not immune when they act outside their lawful authority or violate constitutional rights. OCIF's actions in blocking the bank's sale and participating in a defamatory press conference exceed lawful regulatory authority and are actionable under 42 U.S.C. § 1983. Defendant alleges "OCIF's statements made during the press conference were part of its regulatory role" and that the Plaintiff "*have not demonstrated* that the Commissioner exceeded or abused that authority". A~~a~~t this stage, plaintiffs are not required to prove/demonstrated anything but to provide enough information to notify defendants there is a claim against them and the basis of such claims. Plaintiff has unbelievably shocking news for the Defendants: Proving the case is what the trial is designed for.

Defendants states "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" but before saying that, Defendant actually agreed with Plaintiff when quoting 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.* We thank the Defendants for supporting our side.

As for the Defendant's argument "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"; again, Plaintiff is just stating the basic defense allegations,

which is what is required at this phase of the case. The basic defense is that Sanchez's implication of limited sovereign immunity claims for the Commonwealth of Puerto Rico extends well beyond only criminal cases but to civil ones as well. The plaintiff will need more than just ten pages to cover that basic allegation. Plaintiff welcomes the opportunity to do so, at discovery and the trial or even further beyond.

V. PLAINTIFF'S CLAIMS ARE TIMELY UNDER THE DISCOVERY RULE

Defendants claim the statute of limitations bars Plaintiff's claims. However, the discovery rule applies because Plaintiff did not obtain crucial evidence of the conspiracy until April 2024 through a FOIA request, deliberate covered up as the IRS refused (and still refuses) to comply with FOIA laws. The cover up prevented, and it is still preventing today, Plaintiff from discovering all the evidence of the illegal conspiracy. The delay in discovery was caused by Defendants' active concealment of their misconduct, tolling the statute of limitations. Plaintiff discussed at large the legal reasons quoting Richards v. Mileski 662 F.2d 65 (D.C. Cir. 1981). and Colón Prieto v. Geigel 115 D.P.R. 232; (1984), which establish that the statute of limitations is suspended when officials conceal wrongful conduct. Plaintiff is also rejecting the Defendants' argument that he should have filed within a year of the June 2022 press conference, asserting that while he was aware of financial harm, as Plaintiff was unaware of the full scope of the conspiracy until April 2024. Dismissing the case at this stage will provide bad actors with a perverse incentive to hide information.

The bank is still in receivership, customer funds have not been returned, and the liquidation has not been completed. The deal Plaintiff signed called for the entire process to be completed in 90 days. It has now been almost three years and there is no end in sight. Plaintiff is alleging that they have intentionally sabotaged the liquidation, and that has continued to harm him, both financially and reputationally. There is an active and lively dispute that continues until today.

VI. THE CONSENT ORDER DOES NOT WAIVE PLAINTIFF'S PERSONAL CLAIMS

Defendants argue that Plaintiff waived all claims in the Consent Order. However, as outlined in Doc 44, the release only applies to claims by the bank itself, not Plaintiff's personal claims as a

shareholder and owner. Defendants focus on duress while ignoring this stronger argument, which alone refutes their position. Plaintiff duress defense is just the "icing~~e~~ on the cake"; even if this defense were to be dismissed, the case should continue as the Plaintiff did not waive his personal claims (as owner and stockholder) but only those of the bank (in his capacity as director but not as an official of the bank, as he was a director only, and not an officer or an employee.) A bank's director does not have the legal authority to release independent claims of a shareholder, even if the director is also a shareholder. OCIF knows this, which is why the Liquidation and Dissolution Plan executed on September 1st, 2022 was signed twice. Once by Peter Schiff as a director of Euro Pacific bank, and a second time by Peter Schiff, in his personal capacity as a shareholder of Euro Pacific Bank. Had the Defendant asked Plaintiff to sign the Consent Order executed on Aug. 8th in his personal capacity as a shareholder, or had the release itself had any language that included personal claims, he would have refused to sign it.

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VII. PLAINTIFF ADEQUATELY PLEADS DAMAGES AND REQUESTS DECLARATORY RELIEF

Plaintiff has detailed over $49 million in damages, including lost business opportunities and reputational harm. Defendants' argument that damages are speculative ignores well-established principles that allow for reasonable estimates of financial loss. Also, Defendant's claims that Plaintiff fails to connect the dots between OCIF's conduct and his speculative harm or that there is only a causal connection between OCIF's actions and the alleged financial harm, are absurd on their face. There was a valid offer to pay Plaintiff $17.5 million for his bank shares. Plaintiff has alleged that but for the illegal conspiracy among the defendants, Ms. Zequeira would have approved that sale. There is nothing speculative about a $17.5 million loss that Plaintiff did, in fact suffer. There is also a clear connection between defendant's inappropriate decision to reject that sale of the bank and the $17.5 million loss Plaintiff suffered as a direct result of that rejection. Plaintiff also seeks declaratory relief to correct false public statements made by OCIF, IRS & J5 officials.

Defendant states "that "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." Based on that statement, no case will ever make it to court, as all cases must be based *on past*

events. The fact that the Plaintiff is requesting relief and the bank is still in liquidation, thus damages continue~~s~~ to accrue, is a clear indication there is an active and lively dispute.

Defendants claim that "Under its enabling act, OCIF is not entrusted with any "valuation" responsibilities regarding the business or assets of its regulated banks." If that were true, then OCIF was not allowed to reject the stock sale of the bank, but they did. We again profusely thank the Defendants for providing a new defense for our case.

Plaintiff states that "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.'" However, in a nutshell, Plaintiff claimed: Defendants unlawfully seized Plaintiff's property without just cause or due process, violating his Fourth and Fifth Amendment rights, amounting to an illegal seizure of his assets." This should suffice when viewed from Conley v. Gibson's angle, supra.

Defendants' states "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.*" Plaintiff has already discussed his position regarding the lack of immunity from Defendants; and, at this point, Plaintiff is not sure if there is a need to change the Defendants' place from Defendants to co-Plaintiffs as that last sentence is precisely what Plaintiff is arguing since day one.

VIII. DEFENDANTS MISREPRESENT PLAINTIFF'S DURESS CLAIM

Defendants allege that Plaintiff's duress argument is 'new' (Doc 57), but this is incorrect, and was likely raised as a strawman to avoid having to deal with Plaintiff's stronger argument that the release does not apply to his personal claims as a shareholder. Duress was explicitly raised in the original Complaint (Doc 1). However, duress is irrelevant to Plaintiff's personal claims, as the release does not cover his individual damages. Defendants' attempt to ignore this last argument demonstrates the weakness of their position; his claims as owner and stockbroker remain solid.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Honorable Court deny Defendants' Motion to Dismiss, allow discovery to proceed, and grant any further relief that this Court deems just and proper.

s/Ismael Torres-Pizarro

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