No. 22-

In the

Supreme Court of the United States

ASHOT YEGIAZARYAN,

Petitioner,

v.

VITALY SMAGIN, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In *RJR Nabisco*, this Court, applying the presumption against extraterritoriality, held that a civil RICO plaintiff states a cognizable claim under RICO's private right of action only if it alleges a "domestic"—not foreign—injury. 579 U.S. 325, 354 (2016). The Court left unresolved, however, what legal test determines whether an injury is foreign or domestic. *Id*. ("[D]isputes may arise as to whether a particular alleged injury is 'foreign' or 'domestic.' But we need not concern ourselves with that question in this case."). Since *RJR Nabisco*, the Courts of Appeals have divided three ways as to the proper legal test for assessing whether a foreign plaintiff suffers a "domestic" injury to intangible property—such as court judgments, arbitration awards, contract rights, patents, and business reputation or goodwill.

The question presented is:

Does a foreign plaintiff state a cognizable civil RICO claim when it suffers an injury to intangible property, and if so, under what circumstances.

PARTIES TO THE PROCEEDING

Petitioner Ashot Yegiazaryan was a defendant in the district court and an appellee below.

Respondent Vitaly Smagin was the plaintiff in the district court and appellant below.

The other Respondents are the remaining defendants below who are either petitioning this Court separately, or have not sought review. These other defendants are: Compagnie Monegasque de Banque, Alexis Gaston Thielin, Suren Yegiazaryan, Artem Yegiazaryan, Stephan Yegiazaryan, Vitaly Gogokhia, Natalia Dorzortseva, Murielle Jouniaux, Ratnikov Evgeny Nikolaevich, Prestige Trust Company, and H. Edward Ryals.

RELATED PROCEEDINGS

- *Smagin* v. *Compagnie Monegasque de Banque et al.*, No. 20-cv-11236, U.S. District Court for the Central District of California. Judgment entered May 5, 2021.

- *Smagin* v. *Yegiazaryan et al.*, No. 21-55537, U.S. Court of Appeals for the Ninth Circuit. Judgment entered June 10, 2022.

This case is also related to *Compagnie Monegasque de Banque* v. *Smagin et al.*, 22-___, which seeks this Court's review of the same Ninth Circuit opinion at issue in this petition.

There are no other proceedings in state or federal courts, or in this Court, directly related to this case under this Court's Rule 14(b)(1).

TABLE OF CONTENTS

QUESTION PRESENTED i
PARTIES TO THE PROCEEDING ii
RELATED PROCEEDINGS iii
TABLE OF APPENDICES v
TABLE OF AUTHORITIES vi
PETITION FOR A WRIT OF CERTIORARI 1
OPINIONS BELOW 1
JURISDICTION 1
STATUTORY PROVISIONS INVOLVED 1
STATEMENT OF THE CASE 2
  I. Factual Background 2
  II. Procedural History 4
REASONS FOR GRANTING THE PETITION 6
  I. The Courts of Appeals Are Deeply Divided 6
  II. The Question Presented Is Important. 13
  III. This Case Presents An Ideal Vehicle 16
CONCLUSION 17

TABLE OF APPENDICES

Appendix A
Opinion in the United States Court of Appeals for the Ninth Circuit (June 10, 2022) .... App. 1a

Appendix B
Opinion and Order in the United States District Court for the Central District of California (May 5, 2021) .... App. 18a

Appendix C
Order in the United States Court of Appeals for the Ninth Circuit (July 22, 2022) .... App. 32a

TABLE OF AUTHORITIES

Cases

Am. Banana Co. v. *United Fruit Co.*,
213 U.S. 347 (1909) 6

Armada (Sing.) PTE Ltd. v. *Amcol Int'l Corp.*,
885 F.3d 1090 (7th Cir. 2018) 8, 9, 13

Aviles v. *S&P Glob., Inc.*,
380 F. Supp. 3d 221 (S.D.N.Y. 2019) 14

Bascunan v. *Elsaca*,
874 F.3d 806 (2d Cir. 2017) 7

Blodgett v. *Silberma*n,
277 U.S. 1 (1928) 8

Cevdet Aksut Ve Ogullari Koll.Sti v. *Cavusoglu*,
756 F. App'x 119 (3d Cir. 2018) 12

Cortez Byrd Chips, Inc. v. *Bill Harbert Constr. Co.*,
529 U.S. 193 (2000) 13

Humphrey v. *GlaxoSmithKline PLC*,
905 F.3d 694 (3d Cir. 2018) 7, 9, 12, 14

Microsoft Corp. v. *AT & T Corp.*,
550 U.S. 437 (2007) 15

Morrison v. *Nat'l Austl. Bank Ltd.*,
561 U.S. 247, 255 (2010) 6

Mullin v. *Travelers Indem. Co. of Conn*,
541 F.3d 1219 (10th Cir. 2008) 14

Nuevos Destinos, LLC v. *Peck*,
2019 WL 6481441 (D.N.D. Dec. 2, 2019) 14

RJR Nabisco, Inc. v. *European Community*, 579 U.S. 325 (2016) .... *passim*

Sedima, S.P.R.L. v. *Imrex Co., Inc.*, 473 U.S. 479 (1985) 15

Smith v. *United States*, 507 U.S. 197, 204 n.5 (1993) 6

Unigestion Holdings, S.A. v. *UPM Tech., Inc.*, 412 F. Supp. 3d 1273 (D. Or. 2019) 14

WesternGeco LLC v. *ION Geophysical Corp.*, 138 S. Ct. 2129 (2018) 6

Statutes

9 U.S.C. § 201 *et seq.* 3, 13

18 U.S.C. § 1961 *et seq.* .... *passim*

18 U.S.C. § 1962(c) 4

18 U.S.C. § 1964(c) 2, 6

28 U.S.C. § 1254 1

Other Authorities

Aaron D. Simowitz, *Siting Intangibles*, 48 N.Y.U. J. Int'l L. & Pol. 259 (2015) 8, 15

Intangible asset, Black's Law Dictionary (11th ed. 2019) 8

Justin J. Santolli, *Third Circuit Creates Split Regarding Domestic Injury Requirement for a Civil RICO Claim*, N.Y.L.J. (Nov. 2, 2018) 16

Tangible asset, Black's Law Dictionary (11th ed. 2019) 7

William S. Dodge, *Ninth Circuit Deepens Split over Extraterritoriality of Civil RICO*, Transnat'l Litig. Blog (June 20, 2022)..11, 15

Rules

Sup. Ct. R. 10(a) 13

Sup. Ct. R. 14(b)(1).. iii

PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The decision of the Court of Appeals for the Ninth Circuit is reported at 37 F.4th 562 and reproduced at Appendix ("App.") 1a–17a. The decision of the Central District of California is unreported but available at 2021 WL 2124254 and reproduced at App. 18a–31a.

JURISDICTION

The Ninth Circuit filed its published decision on June 10, 2022. App. 2a. That court denied Petitioner's request for rehearing *en banc* on July 22, 2022. App. 32a. This petition is timely, and the Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

This case concerns the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961–1968, which provides a civil cause of action in certain circumstances:

> Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the

> cost of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962. The exception contained in the preceding sentence does not apply to an action against any person that is criminally convicted in connection with the fraud, in which case the statute of limitations shall start to run on the date on which the conviction becomes final.

18 U.S.C. § 1964(c).

STATEMENT OF THE CASE

I. Factual Background

A. The Dispute

Petitioner Ashot Yegiazaryan ("Yegiazaryan") is a former Russian politician and businessperson who, until 2010, lived in Russia. App. 5a. Yegiazaryan fled Russia after the Russian government accused him of fraud. App. 5a. He now resides in Los Angeles. App. 5a. Respondent Vitaly Smagin ("Smagin") is a Russian citizen who has lived, at all relevant times, in Russia. App. 4a.

This case traces back to a dispute between Yegiazaryan and Smagin concerning investments in "Europark," a multi-functional real-estate complex in Moscow. App. 27a. In 2003, Smagin and Yegiazaryan jointly invested in the Europark project, but the joint venture disintegrated a few years later after the parties differed on the use of Europark investment funds

as security for a different project. App. 27a–28a. In 2010, Smagin commenced an arbitration against Yegiazaryan in the London Court of International Arbitration seeking to recover his claimed investment in Europark. App. 5a. Years later, in 2014, a three-arbitrator panel awarded Smagin $84 million (the "London Award"). App. 5a.

That same year, Smagin sought to enforce the London Award against Yegiazaryan through the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958 (the "New York Convention"), see 9 U.S.C. §§ 201–208 (implementing the Convention), by filing suit in the United States District Court for the Central District of California, where Yegiazaryan resides. App. 5a. That court eventually confirmed the London Award and entered judgment against Yegiazaryan for $92 million (the "California Judgment").

About a year later, in May 2015, Yegiazaryan was awarded $198 million in an unrelated arbitration he launched against Suleymon Kerimov, a Russian businessperson (the "Kerimov Award"). App. 6a.

B. The Alleged RICO Scheme

Smagin alleges that, after Yegiazaryan received the Kerimov Award, Yegiazaryan sought to avoid the orders of the Central District of California and to frustrate Smagin's effort to collect on the California Judgment. App. 6a. Smagin claims, for instance, that Yegiazaryan channeled the Kerimov Award through his London attorneys; set up holding entities in foreign locales like Lichtenstein and Nevis to house his recoveries; and colluded with associates to file fraud-

ulent suits against Yegiazaryan in Europe and elsewhere, in order to compete with Smagin's efforts to collect on the California Judgment in the United States. These allegations would form the backbone of this case—Smagin's federal RICO complaint.

II. Procedural History

A. The District Court

On the basis of these and other allegations, Smagin filed this case in December 2020 in the United States District Court for the Central District of California. App. 7a–8a. Seeking treble damages under RICO's private right of action, the complaint lodged two RICO claims against Petitioner Yegiazaryan and his co-defendants under 18 U.S.C. §§ 1962(c) and (d) At root, Smagin, who continued to reside in Russia, accused Yegiazaryan of subverting Smagin's collection efforts on the California Judgment.

Yegiazaryan moved to dismiss Smagin's RICO complaint, arguing that this Court's decision in *RJR Nabisco, Inc.* v. *European Community*, 579 U.S. 325 (2016), barred Smagin's RICO claims. App. 22a. *RJR Nabisco* indeed held that, in order to overcome the presumption against extraterritoriality, a civil RICO suit must sufficiently allege a domestic, and not a foreign, injury. *Id.* at 354. Yegiazaryan argued that Smagin, as a Russian citizen living in Russia, suffered an injury (if any) that was foreign—not domestic—in nature.

The district court agreed with Yegiazaryan and granted his motion to dismiss. App. 31a. Acknowledging that the Ninth Circuit had not yet clarified what qualified as a "domestic" injury to intangible property,

the district court found that Smagin's injury was, as a legal matter, foreign, not domestic. See App. 27a. ("[T]he Court places great weight on the fact that Smagin is a resident and citizen of Russia and therefore experiences the loss from [his] inability to collect on his judgment in Russia." (alterations and quotation marks omitted)). Concluding that Smagin impermissibly sought an extraterritorial application of RICO's private right of action, the district court dismissed the suit.

B. The Court of Appeals

The Ninth Circuit reversed. App. 4a. Addressing only whether Smagin pleaded a "domestic injury," the court, in an opinion by Judge Graber, recognized that awards and judgments like the California Judgment qualify as intangible property. App. 10a. The panel acknowledged that the circuits had divided over the appropriate legal test to determine whether RICO injuries suffered by foreign plaintiffs to their intangible property are "domestic" or foreign. App. 12a. Expressly parting with its sister circuits, the panel fashioned a multifactor balancing analysis focused on the conduct of the defendant, App. 16a, and, applying that test, concluded that Russian-domiciled Smagin alleged a "domestic" injury because the injurious conduct by Yegiazaryan occurred in or targeted California, App. 10a–11a. Thus, the court held that Smagin could state a RICO claim.

Petitioner then joined a petition for rehearing *en banc*. App. 32a. The court of appeals denied that petition on July 22, 2022.

REASONS FOR GRANTING THE PETITION

I. The Courts of Appeals Are Deeply Divided

The presumption against extraterritoriality reflects the longstanding, "commonsense notion that Congress generally legislates with domestic concerns in mind." *WesternGeco LLC* v. *ION Geophysical Corp.*, 138 S. Ct. 2129, 2136 (2018) (quoting *Smith* v. *United States*, 507 U.S. 197, 204 n.5 (1993)); *Am. Banana Co.* v. *United Fruit Co.*, 213 U.S. 347, 357 (1909) (Holmes, J.) ("All legislation is prima facie territorial."). Designed to avoid "international discord," the presumption limits federal law "to have only domestic application," absent "clearly expressed congressional intent to the contrary." *RJR Nabisco*, 579 U.S. at 335–36 (citing *Morrison* v. *Nat'l Austl. Bank Ltd.*, 561 U.S. 247, 255 (2010)).

In *RJR*, this Court considered whether, and to what extent, RICO's private-cause-of-action provision, 18 U.S.C. § 1964(c), confers on plaintiffs a private right to sue for injuries suffered abroad. *Id.* at 329. Applying the presumption against extraterritoriality, the Court held that a RICO plaintiff states a cognizable claim under RICO only if it suffers a "domestic"—and not a foreign—injury to its person or property. See *id.* at 354. Thus, this Court explained, RICO contains no "clear indication" that Congress intended for private RICO suits to reach abroad, *id.* at 349, so RICO's private right of action encompasses only those claims alleging a "domestic" injury to a plaintiff, *id.* at 354.

Applying that test, the *RJR* Court held that the European Community could not state RICO claims

against an American cigarette maker because it "suffered" its injuries abroad, rendering these injuries foreign, and not domestic. *Id.*; see also *id.* at 333 (itemizing the Community's various injuries as "competitive harm to their state-owned cigarette businesses, lost tax revenue from black-market cigarette sales, harm to European financial institutions, currency instability, and increased law enforcement costs").

The Court in *RJR*, however, expressly left open the question of the proper legal test to apply to determine whether an injury was to be considered foreign or domestic, because in *RJR*, the plaintiffs stipulated that none of their injuries were domestic. See *id.* ("[D]isputes may arise as to whether a particular alleged injury is 'foreign' or 'domestic.' But we need not concern ourselves with that question in this case.").

In grappling with that open question from *RJR*, the Courts of Appeals have treated *tangible* and *intangible* property differently when deciding whether a RICO plaintiff suffers domestic injury. A "tangible asset" is one "that has a physical existence and is capable of being assigned a value." *Tangible asset*, Black's Law Dictionary (11th ed. 2019). As to that, the courts of appeals hold that a foreign plaintiff suffers a domestic injury if it suffers harm to person or property, or other tangible effects, in the United States. See *Bascunan* v. *Elsaca*, 874 F.3d 806 (2d Cir. 2017); *Humphrey* v. *GlaxoSmithKline PLC*, 905 F.3d 694, 702 (3d Cir. 2018) ("[T]here is a general consensus among the courts that have had to apply *RJR Nabisco* that the location of a RICO injury depends on where the plaintiff 'suffered the injury'").

By contrast, the courts of appeals have splintered when evaluating harm to intangible assets—those

that "can be amortized or converted to cash, such as patents, . . . or a right to something, such as services paid for in advance." *Intangible asset*, Black's Law Dictionary (11th ed. 2019); see also *Blodgett* v. *Silberma*n, 277 U.S. 1, 12 (1928) (right to receive money is "a chose in action, and an intangible"). Such assets, by their nature, do not permit identification by physical location. See Aaron D. Simowitz, *Siting Intangibles*, 48 N.Y.U. J. Int'l L. & Pol. 259 (2015). As a result, there is a three-way divide in the courts of appeals as to whether a foreign plaintiff may bring a civil RICO suit based on harm to intangible assets.

A. The Seventh Circuit's Residency Rule

At one vertex of the tripartite divide, the Seventh Circuit has adopted a bright-line rule: when a foreign plaintiff suffers damage to intangible property, that injury occurs at its residency *abroad*, so it cannot sue under RICO. See *Armada (Sing.) PTE Ltd.* v. *Amcol Int'l Corp.*, 885 F.3d 1090, 1091 (7th Cir. 2018).

The plaintiff in *Armada* was a Singaporean shipping company suing an American-based business under RICO for allegedly undermining a foreign arbitration award that the Singaporean company had domesticated as a judgment in several district courts of the United States. *Id.* at 1092. The question was whether the Singaporean shipping company suffered domestic injury through its U.S.-based judgments; it was alleged (as here) that the defendants engaged in racketeering activity to undermine collection on the judgment. *Id.* at 1093.

As Judge Manion, writing for the Seventh Circuit, explained in *Armada*, "[r]egrettably, the Supreme Court did not have occasion to elaborate on what it

meant in *RJR Nabisco* by 'domestic injury.'" *Id.* at 1093. Interpreting what the Seventh Circuit called this Court's "vague hints" in *RJR Nabisco*, the court homed in on where the injury was "suffered." *Id.* at 1093–94 (citing *RJR Nabisco*, 579 U.S. at 349). Adopting a bright-line residency-based test, Judge Manion explained that, because "a party experiences or sustains injuries to its intangible property at its residence," foreign-domiciled plaintiffs necessarily always suffer *foreign* injuries, not domestic injuries, even where the intangible property at issue, such as a judgment, is arguably located in the United States. *Id.* at 1094–95.

B. The Third Circuit's Plaintiff-Centric Balancing

That same year, the Third Circuit expressly split with the Seventh Circuit in *Humphrey* v. *GlaxoSmithKline PLC*, 905 F.3d 694 (3d Cir. 2018), and instead adopted an open-ended, six-factor test.

Humphrey involved Chinese plaintiffs suing American companies under RICO because the defendants supposedly undertook fraudulent and racketeering activities designed to injure the Chinese plaintiffs' intangible business interests—their reputation and goodwill. See *id.* at 697.

In assessing whether this injury qualified as "domestic," the Third Circuit rejected the Seventh Circuit's decision in *Armada* as "[un]helpful [and] [un]persuasive," *id.* at 708–09, and instead fashioned a multifactor test. The Third Circuit thus listed six non-exhaustive factors: "[i] where the injury itself arose; [ii] the location of the plaintiff's residence or

principal place of business; [iii] where any alleged services were provided; [iv] where the plaintiff received or expected to receive the benefits associated with providing such services; [v] where any relevant business agreements were entered into and the laws binding such agreements; [vi] and the location of the activities giving rise to the underlying dispute." *Id*. at 707.

Training the focus of its analysis "primarily upon where the effects of the predicate acts were experienced," the Third Circuit held that the lodestar of the inquiry is where the *plaintiff* suffers the effect of the injurious activity. *Id*. at 706 ("[A] focus upon where the alleged injuries were felt best guides our inquiry."). Indeed, the Third Circuit expressly rejected the argument that a court could simply look to the "injurious conduct"—i.e., the activities of the defendant—in assessing whether an injury is "domestic." *Id*. at 711 (rejecting argument that a plaintiff "could allege a domestic injury under RICO by [i] simply pointing to injurious conduct intended to produce effects in the United States" or by "[ii] emphasiz[ing] the nature of the defendant's conduct").

C. The Ninth Circuit's Defendant-Centric Balancing

Deepening this divide still, the Ninth Circuit forged yet a third test in its decision below. That court adopted a multifactor framework similar in certain respects to the Third Circuit's test—but critically, it departed from the Third Circuit by focusing its multifactor inquiry on the *defendants*' injurious conduct rather than on where the plaintiff suffered injury.

At the outset, the Ninth Circuit expressly split with the Seventh Circuit, and declined to adopt that court's residency-focused test. App. 12a ("We part ways, however, with the Seventh Circuit, which has adopted a rigid, residency-based test for domestic injuries involving intangible property."); see also William S. Dodge, *Ninth Circuit Deepens Split over Extraterritoriality of Civil RICO*, Transnat'l Litig. Blog (June 20, 2022) (noting split), <tinyurl.com/dodgearticle>.

Next, having departed from the Seventh Circuit's bright-line test, the Ninth Circuit adopted a multifactor framework similar in some respects to the Third Circuit's test. Indeed, it claimed to endorse the Third Circuit's "context-specific inquiry." App. 16a; see also App. 12a ("Our decision is also consistent with the approach[] taken by the . . . Third Circuit[] after *RJR Nabisco*."). In fact, however, the Ninth Circuit broke from the Third Circuit and deepened the split; the Ninth Circuit's test trains on the defendants' conduct, while the Third Circuit focuses on the plaintiff.

In the decision below, the Ninth Circuit explained, Smagin's injury was "domestic" because (i) "much" of the defendants' alleged misconduct "occurred in" or "targeted" California, App. 10a–11a; and (ii) Smagin's rights under the California Judgment "exist only in California," such that California is the only jurisdiction where Smagin could "execut[e] against or obtain discovery from Ashot," App. 10a. As Judge Graber explained, the Ninth Circuit's decision was "bolstered by the fact that *much of the conduct [by Yegiazaryan]* underlying the alleged injury . . . *occurred in, or was targeted at, California*"—thus decisively parting with the Third Circuit's analysis. *Compare* App. 10a (emphasis

added) *with Humphrey*, 905 F.3d at 702 ("[T]he location of a RICO injury depends on where the plaintiff 'suffered the injury'—*not where the injurious conduct took place*." (emphasis added)).

D. The Difference Between The Three Tests Is Outcome Determinative

The difference in focus between the Ninth Circuit's defendant-centric multifactor balancing test, the Third Circuit's plaintiff-centric multifactor balancing test, and the Seventh Circuit's residency-based test has proved to be outcome determinative.

In *Cevdet Aksut Ve Ogullari Koll.Sti* v. *Cavusoglu*, 756 F. App'x 119 (3d Cir. 2018), the Third Circuit, applying *Humphrey,* held that alleged harm to a foreign plaintiff's domestic judgment—i.e., the same facts as present here—constituted a *foreign*, not domestic, injury, under RICO. The Third Circuit, applying its plaintiff-focused balancing analysis, concluded that, because the Turkish plaintiff in *Cevdet* lived abroad and had no U.S. presence, it felt the "loss from its inability to collect on its judgment" at its home in Turkey. *Cevdet*, 756 F. App'x at 124. As a result, the injury was treated as foreign, not domestic, and so the Third Circuit dismissed the suit.

Yet that same suit would survive in the Ninth Circuit, as it did below. Just like the Third Circuit in *Cevdet*, this case concerns a foreign-domiciled plaintiff bringing RICO claims in United States court for injuries to a domestic judgment. See App. 4a. But unlike the Third Circuit, the Ninth Circuit below allowed the suit to proceed, finding that Smagin's injury was "do-

mestic" because of the conduct of Yegiazaryan, the defendant below. App. 10a. Thus, had Yegiazaryan lived in Philadelphia instead of Los Angeles, or been sued there, the outcome would have been reversed.

Similarly, under the Seventh Circuit's decision in *Armada*, if Yegiazaryan had fled to Chicago instead of Los Angeles, or been sued in the Northern District of Illinois, Smagin's RICO case would have been dismissed on the basis of Smagin's Russian residence. See 885 F.3d at 1093.

II. The Question Presented Is Important

The divide among the Circuits as to whether a cognizable RICO claim is pleaded when a foreign plaintiff suffers injury to intangible rights is a question of exceptional importance. See Sup. Ct. R. 10(a). Not only does the question implicate both how arbitral awards and judgments are enforced in the United States, but it also has broader implications for civil RICO suits concerning all sorts of intangible assets.

A. There are thousands of arbitrations launched each year across the world.[1] Many of these foreign-rendered awards are or can be confirmed in the United States under the New York Convention. See 9 U.S.C. §§ 201–208 (implementing the Convention). Domesticating these foreign arbitration awards as judgments in federal court is a straightforward and common practice. See *Cortez Byrd Chips, Inc.* v. *Bill Harbert Constr. Co.*, 529 U.S. 193, 202 (2000) (noting the "lib-

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[1] See Markus Altenkirch & Elias Klodt, *Arbitration Statistics* 2020, Glob. Arb. News (Oct. 12, 2021) <https://tinyurl.com/arbitrationstatistics>.

eral choice of venue for actions to confirm awards subject to the" New York Convention). These foreign-awarded judgments belonging to foreign plaintiffs may now be enforced through the civil RICO statute in the Ninth Circuit and, depending on the application of its six-factor test, in the Third Circuit as well.

B. More still, lower courts have signaled that RICO allows recovery for harm to a bevy of other intangible rights—beyond judgments—making it vital that this Court clarify when, if ever, an injury to intangible property is sufficiently "domestic" to be actionable under RICO.

On this front, for instance, district courts and courts of appeals have said that plaintiffs can state a RICO claim for injuries to intangible business interests such as lost profits, reputation damage, and anti-competitive harm. See, e.g., *Unigestion Holdings, S.A.* v. *UPM Tech., Inc.*, 412 F. Supp. 3d 1273, 1291 (D. Or. 2019) (RICO case predicated on injury to intangible interests, including "lost profits"); *Humphrey*, 905 F.3d at 702 (reputation and goodwill); *Gov't of Bermuda* v. *Lahey Clinic, Inc.*, No. 17-cv-10242, 2018 WL 1243954, at *5 & n.5 (D. Mass. Mar. 8, 2018) ("competitive injury"). Courts have also stated that shareholders can state RICO claims when their investments "suffer[] a drop in value." See *Aviles* v. *S&P Glob., Inc.*, 380 F. Supp. 3d 221, 267 (S.D.N.Y. 2019). Indeed, "bank-account funds" can also be considered intangible property, opening the door for RICO suits alleging losses in U.S. bank accounts. See *Nuevos Destinos, LLC* v. *Peck*, No. 19-cv-00045, 2019 WL 6481441, at *19 (D.N.D. Dec. 2, 2019) (citing *Mullin* v. *Travelers Indem. Co. of Conn*, 541 F.3d 1219, 1223–24 (10th Cir. 2008)). So too for patents, intellectual

property, and a host of other assets. Simowitz, *Siting Intangibles*, *supra*, at 259, 303 (patents, intellectual property, "[d]ebts" and "LLC interests," among other interests, constitute intangible rights).

C. Arming foreign plaintiffs who have domesticated judgments or some other intangible rights here with a civil RICO remedy end-runs this Court's interpretation of the RICO statute. This Court did not mince words in *RJR Nabisco*: civil RICO "does not allow recovery for foreign injuries." 579 U.S. at 354. That is for good reason. Civil RICO, with its treble damages, fee-shifting provisions, and joint-and-several-liability coverage, has, over time "evolve[ed] into something quite different from the original conception of its enactors." *Sedima, S.P.R.L.* v. *Imrex Co., Inc.*, 473 U.S. 479, 500 (1985). Permitting widespread access to civil RICO actions for intangible assets controlled by foreign parties would turn on its head the notion that "United States law governs domestically but does not rule the world." *Microsoft Corp.* v. *AT & T Corp.*, 550 U.S. 437, 454 (2007).

Under the Ninth Circuit's decision below, however, *any* foreign plaintiff with a claim that its intangible rights are located here—including *any* foreign-rendered arbitration award that can be domesticated into a judgment here—can train RICO's treble-damages provision on any activity, even foreign activity, that supposedly disrupts collection efforts or impairs its intangible rights. See Dodge, *supra* ("The Ninth Circuit's decision in *Smagin* is important not just for what it says about the extraterritoriality of civil RICO but also because it establishes civil RICO as a potential tool to protect the enforceability of U.S. judgments, and even foreign arbitration awards.").

Making matters worse, the divide among the courts of appeals encourages these foreign civil RICO plaintiffs to engage in rank forum-shopping. See Justin J. Santolli, *Third Circuit Creates Split Regarding Domestic Injury Requirement for a Civil RICO Claim*, N.Y.L.J. (Nov. 2, 2018), <https://tinyurl.com/santolliarticle> ("The current absence of a uniform standard in evaluating whether an injury to intangible property satisfies the domestic injury requirement" may "encourage civil RICO plaintiffs to engage in forum shopping."). Particularly where (as here) multinational banking companies operate across the country, foreign plaintiffs can simply select the jurisdiction most likely to sustain its claim.

III. This Case Presents An Ideal Vehicle

The question presented is squarely implicated here and is case-dispositive.

First, the issue was exhaustively developed below. The trial court's dismissal, and the Ninth Circuit's reversal and reinstatement of the case, both focused solely on the issue presented, with no alternative or secondary holdings. See App. 22a; App. 17a ("We hold only that Plaintiff's well-pleaded allegations include a domestic injury.").

Second, Yegiazaryan, the Petitioner here, is a California resident and jurisdiction over his person is not subject to dispute. Russian-based Smagin alleges that it was Yegiazaryan's foreign and domestic actions that impaired his collection effort. App. 6a. This Petition thus cleanly implicates whether civil RICO applies to U.S.-based persons who are accused of interfering with a foreign plaintiff's intangible rights.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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October 20, 2022

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 21-55537
D.C. No. 2:20-cv-11236-RGK-PLA

VITALY IVANOVICH SMAGIN,

Plaintiff-Appellant,

v.

ASHOT YEGIAZARYAN, aka Ashot Egiazaryan, an individual; COMPAGNIE MONÉGASQUE DE BANQUE, aka CMB Bank; NATALIA DOZORTSEVA, an individual; ARTEM EGIAZARYAN, an individual; VITALY GOGOKHIA, an individual; MURIELLE JOUNIAUX, an individual; RATNIKOV EVGENY NIKOLAEVICH, an individual; PRESTIGE TRUST COMPANY, LTD.; H. EDWARD RYALS, an individual; ALEXIS GASTON THIELEN, an individual; STEPHAN YEGIAZARYAN, aka Stephan Egiazarian, an individual; SUREN YEGIAZARYAN, aka Suren Egiazaryian, an individual,

Defendants-Appellees.

Appeal from the United States District Court
for the Central District of California
R. Gary Klausner, District Judge, Presiding

OPINION

Argued and Submitted April 6, 2022
Pasadena, California

Filed June 10, 2022

Before: Mary M. Schroeder and Susan P. Graber, Circuit Judges, and Stephen M. McNamee,[*] District Judge.

Opinion by Judge Graber

SUMMARY[**]

RICO

The panel reversed the district court's dismissal, for lack of statutory standing, of a civil action under the Racketeer Influenced and Corrupt Organizations Act and remanded for further proceedings.

Plaintiff Vitaly Smagin, a Russian citizen who resides in Russia, filed a civil RICO suit against Ashot Yegiazaryan, a Russian citizen who resides in California, and eleven other defendants. After securing a foreign arbitration award against Ashot, Smagin obtained a judgment from a United States district court confirming the award and giving Smagin the rights to execute on that judgment in California and to pursue discovery. Smagin alleged that defendants engaged in illegal activity, in violation of RICO, to thwart the execution of that California judgment.

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[*] The Honorable Stephen M. McNamee, United States District Judge for the District of Arizona, sitting by designation.

[**] This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

Consistent with the Second and Third Circuits, but disagreeing with the Seventh Circuit's residency-based test for domestic injuries involving intangible property, the panel held that the alleged injuries to a judgment obtained by Smagin from a United States district court in California were domestic injuries to property such that Smagin had statutory standing under RICO. The panel concluded that, for purposes of standing under RICO, the California judgment existed as property in California because the rights that it provided to Smagin existed only in California. In addition, much of the conduct underlying the alleged injury occurred in, or was targeted at, California.

COUNSEL

Alexander D. Burch (argued), Baker & McKenzie LLP, Houston, Texas; Barry J. Thompson, Baker & McKenzie LLP, Los Angeles, California; Nicholas O. Kennedy, Baker & McKenzie LLP, Dallas, Texas; for Plaintiff-Appellant.

Michael C. Tu (argued) and Peter J. Brody, Cooley LLP, Santa Monica, California, for Defendant-Appellee Compagnie Monégasque de Banque.

David J. Stein (argued), Masuda Funai Eifert & Mitchell Ltd., Chicago, Illinois; Asa Markel, Masuda Funai Eifert & Mitchell Ltd., Torrance, California; for Defendant-Appellee Alexis Gaston Thielen.

Ashot Yegiazaryan (argued), Beverly Hills, California, pro se Defendant-Appellee.

OPINION

GRABER, Circuit Judge:

Plaintiff Vitaly Smagin, a Russian citizen who resides in Russia, filed a civil suit under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961–68, against Defendant Ashot Yegiazaryan ("Ashot"), a Russian citizen who resides in California, and eleven other defendants.[1] After securing a foreign arbitration award against Ashot, Plaintiff obtained a judgment from a United States district court confirming the award and giving Plaintiff the rights to execute on that judgment in California and to pursue discovery. Plaintiff alleges that Defendants engaged in illegal activity, in violation of RICO, to thwart the execution of that California judgment. On appeal, we are asked to decide whether the alleged injuries to a judgment obtained by Plaintiff from a United States district court in California are domestic injuries such that Plaintiff has statutory standing under RICO. We conclude that Plaintiff alleges a domestic injury, reverse the district court's dismissal of the complaint, and remand for further proceedings.

BACKGROUND

Plaintiff's allegations span decades and continents. As alleged, the chief architect of Plaintiff's woes is Defendant Ashot Yegiazaryan. Between 2003 and

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[1] Plaintiff asserts that the alleged RICO enterprise comprised (1) Compagnie Monegasque De Banque ("CMB Bank"); (2) Ashot Yegiazaryan; (3) Suren Yegiazaryan; (4) Artem Yegiazaryan; (5) Stephan Yegiazaryan; (6) Natalia Dozortseva; (8) Murielle Jouniaux; (9) Alexis Gaston Thielen; (10) Ratnikov Evgeny Nikolaevich; (11) H. Edward Ryals; and (12) Prestige Trust Company, Ltd. For simplicity, we will refer to Defendant Ashot Yegiazaryan as Ashot.

2009, Ashot and others used a series of fraudulent transactions to steal Plaintiff's shares in a joint real estate investment in Moscow, Russia. In 2010, Russian authorities criminally indicted Defendants Ashot and Artem Yegiazaryan in Russia for that fraud. The pair fled to California. They now live in Beverly Hills, in a home owned by Ashot's cousin, Defendant Suren Yegiazaryan.

Also in 2010, Plaintiff commenced arbitration proceedings in London, U.K., against Ashot for his alleged fraudulent actions and for his attempts to conceal the fraud. In November 2014, the arbitration panel rendered a final award in Plaintiff's favor and against Ashot in the amount of $84 million ("London Award").

Plaintiff then filed an enforcement action in the Central District of California to confirm and enforce the London Award against Ashot. In December 2014, a district judge confirmed the London Award and entered a judgment against Ashot under Federal Rule of Civil Procedure 58 ("California Judgment"). The district judge entered the California Judgment pursuant to the New York Convention, also known as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The Federal Arbitration Act provides that the New York Convention is enforceable in the United States and that federal district courts have original jurisdiction of actions falling under the Convention. 9 U.S.C. §§ 201–209; *China Nat'l Metal Prods. Imp./Exp. Co. v. Apex Digit., Inc.*, 379 F.3d 796, 799 (9th Cir. 2004).

On December 23, 2014, the district court entered a temporary protective order freezing Ashot's assets in California. That order specifically referenced assets that Ashot may receive in the future, related to an arbitration dispute between Ashot and Suleymon

Kerimov. In February 2015, that temporary order was converted into a preliminary injunction with the same terms.

In May 2015, Ashot settled the arbitration dispute against Suleymon Kerimov for $198 Million ("Kerimov Award"). Plaintiff alleges in this action that, in order to avoid using these funds to pay the London Award, which also would satisfy the California Judgment, Ashot "create[d] a web of offshore entities and a complex ownership structure to secret the Kerimov Award settlement proceeds and avoid [the district] court's reach."

Many of the alleged components of Ashot's scheme occurred outside the United States. For example, Plaintiff alleges that Ashot received the Kerimov Award through his attorneys in London; established a trust in Lichtenstein to hold proceeds from the Kerimov Award ("the Alpha Trust"); purchased a business incorporated in Nevis to create additional layers of complexity; established a bank account in Monaco with Defendant CMB Bank for that Nevis corporation; and then moved the funds from the Alpha Trust to that bank account.

But Plaintiff also alleges numerous RICO activities involving domestic entities and property in the United States. For example, Plaintiff alleges that, as a part of keeping the settlement proceeds out of the California district court's reach, Ashot, with the help of others, developed a scheme to hide assets in the United States by using shell companies owned by Suren and other members of the Yegiazaryan family. The shell companies included Clear Voices, Inc., a Nevada company "created by Suren Yegiazaryan, but controlled by Ashot Yegiazaryan, for the purpose of sheltering Ashot Yegiazaryan's U.S. assets from his creditors."

Plaintiff also alleges that Ashot schemed to have associates file fraudulent claims against him in foreign jurisdictions so that they could obtain sham judgments that were designed to compete with the California Judgment. On April 1, 2020, the district court issued an order stating that Ashot, Defendant Suren Yegiazaryan, and others acting on behalf of Ashot "must immediately cease all actions in Nevis or any other jurisdiction that would prevent, hinder, or delay [Plaintiff's] ability to collect on the assets of the Alpha Trust pursuant to the current and forthcoming orders of the Liechtenstein Court or this Court." On July 9, 2020, the district court issued another order that prohibited Ashot from making further modifications to the Alpha Trust or to the administration of the bank account opened with CMB Bank without first obtaining court approval. On September 16, 2020, the district court found Ashot in contempt for violating the previous two orders.

Plaintiff further alleges that, in an attempt to avoid following the district court's orders, Ashot submitted to the district court in California a doctor's note that Plaintiff believed to be forged. Plaintiff alleges that, when Plaintiff attempted to depose the California doctor who wrote the note, Ashot used "intimidation, threats, or corrupt persuasion" to influence the doctor to avoid service of the subpoena so as to prevent her from providing evidence to the district court.

On December 11, 2020, Plaintiff filed his complaint in this case. The complaint contains two claims against all Defendants: (1) a substantive RICO claim of participating in a criminal enterprise in violation of 18 U.S.C. § 1962(c) and (2) a RICO conspiracy claim of conspiring to participate in a criminal enterprise in violation of 18 U.S.C. § 1962(d). Plaintiff alleges that

Defendants' illegal conduct has harmed his property, namely, the California Judgment, through the delay and loss of opportunity to execute on the judgment. On May 5, 2021, the district court dismissed the complaint on the ground that Plaintiff "fail[ed] to adequately plead a domestic injury in support of his two RICO claims."

Plaintiff timely appeals.

STANDARD OF REVIEW

We review de novo a district court's dismissal of a complaint for failure to plead statutory standing. *Cetacean Cmty. v. Bush*, 386 F.3d 1169, 1173 (9th Cir. 2004). We accept as true all well-pleaded facts in the complaint and draw all reasonable inferences in Plaintiff's favor. *Brown v. Elec. Arts, Inc.*, 724 F.3d 1235, 1247–48 (9th Cir. 2013).

DISCUSSION

RICO provides a private right of action for persons pursuing civil remedies. Specifically, "[a]ny person injured in his business or property by reason of a violation of section 1962 of this chapter may sue [] in any appropriate United States district court . . . ." 18 U.S.C. § 1964(c). To have statutory standing, "a civil RICO plaintiff must show: (1) that his alleged harm qualifies as injury to his business or property; and (2) that his harm was by reason of the RICO violation, which requires the plaintiff to establish proximate causation." *Just Film, Inc. v. Buono*, 847 F.3d 1108, 1118–19 (9th Cir. 2017) (quoting *Canyon Cnty. v. Syngenta Seeds, Inc.,* 519 F.3d 969, 972 (9th Cir. 2008)) (internal quotation marks omitted).

In *RJR Nabisco, Inc. v. Eur. Cmty.*, 579 U.S. 325, 346 (2016), the Supreme Court held that there is an additional standing requirement for the alleged harm

to business or property. The Court explained that, although RICO may have some extraterritorial effects, the statute's private right of action does not overcome the presumption against extraterritoriality. "A private RICO plaintiff therefore must allege and prove a *domestic* injury to its business or property." *Id.* The Court offered no further explanation of what constitutes a domestic injury. *See id.* at 354 ("The application of this rule in any given case will not always be self-evident, as disputes may arise as to whether a particular alleged injury is 'foreign' or 'domestic.' But we need not concern ourselves with that question in this case.").

"A judgment is property . . . ." *Kingvision Pay-Per-View Ltd. v. Lake Alice Bar*, 168 F.3d 347, 352 (9th Cir. 1999). It provides legal rights to a judgment creditor, including the right to have the judgment enforced by a writ of execution in a manner that "accord[s] with the procedure of the state where the court is located" and the right to "obtain discovery from any person—including the judgment debtor—as provided in these rules or by the procedure of the state where the court is located." Fed. R. Civ. P. 69(a); *see also* JUDGMENT CREDITOR, Black's Law Dictionary (11th ed. 2019) ("A person having a legal right to enforce execution of a judgment for a specific sum of money."); Restatement (Second) of Judgments § 18 cmt. c (1982) ("A judgment for the plaintiff awarding him a sum of money creates a debt in that amount in his favor. He may maintain proceedings by way of execution for enforcement of the judgment.").

The nature of a domestic judgment is unaffected by the fact that it confirms a foreign arbitration award. Once a foreign arbitration award is confirmed by a federal district court under the New York Convention,

"the judgment has the same force and effect of a judgment in a civil action and may be enforced by the means available to enforce any other judgment." *Ministry of Def. & Support for the Armed Forces of the Islamic Republic of Iran v. Cubic Def. Sys., Inc.*, 665 F.3d 1091, 1094 n.1 (9th Cir. 2011).

The key question, then, is *where* the California Judgment exists as property. We have previously concluded that "the location of intangible property varies depending on the purpose to be served" by that property. *See Off. Depot Inc. v. Zuccarini*, 596 F.3d 696, 702 (9th Cir. 2010) (noting that "attaching a situs to intangible property is necessarily a legal fiction; therefore, the selection of a situs for intangibles must be context-specific, embodying a common-sense appraisal of the requirements of justice and convenience in particular conditions." (internal quotation marks omitted)).

We conclude that, for purposes of standing under RICO, the California Judgment exists as property in California. The rights that the California Judgment provides to Plaintiff exist only in California, the place where he can obtain a writ of execution against or obtain discovery from Ashot. Indeed, Plaintiff obtained the judgment in California precisely because Ashot resides in California, and that is where Plaintiff desires to exercise the rights conferred by the California Judgment. It would make no sense to conclude that the California Judgment exists as property in Russia, because the judgment grants no rights whatsoever to Plaintiff in Russia.

Our conclusion is bolstered by the fact that much of the conduct underlying the alleged injury also occurred in, or was targeted at, California. As noted, Plaintiff alleges that Defendants corruptly and illegally prevented him from executing the judgment by, among

other things, filing false documents in the California court; intimidating a witness who resides in California; and directing, from California, a scheme to funnel millions of dollars into the United States through various companies, including a U.S.-based company that Ashot effectively controlled. Plaintiff also alleges that Ashot had associates file fraudulent claims against him in various jurisdictions in order to obtain sham judgments that were designed to compete with the California Judgment. Those alleged illegal acts were designed to subvert Plaintiff's rights that are executable in California. Accordingly, the alleged harm to Plaintiff's rights under the California Judgment constitutes a domestic injury.

Our conclusion comports with our prior case law. We have discussed domestic injuries under RICO only once in the years since the Supreme Court issued *RJR Nabisco*. In *City of Almaty v. Khrapunov*, 956 F.3d 1129, 1130–31 (9th Cir. 2020), the plaintiff, a city in Kazakhstan, alleged that the defendants, citizens of Kazakhstan who resided in California, violated RICO by rigging auctions of public properties in Kazakhstan and then laundering money into property in the United States. The plaintiff asserted that its alleged domestic injury was the city's voluntary expenditure of funds to track down the stolen property, which was now in the United States. *Id.* at 1132. We concluded that this alleged injury was not an independent harm, but "a mere downstream effect of the Khrapunovs' initial theft." *Id.* at 1133. Because the voluntary expenditure of funds was only a consequential damage of the initial theft suffered in Kazakhstan, it was not causally connected to the predicate act of money laundering. *Id.* at 1134. We held that, accordingly, the plaintiff had "fail[ed] to state a cognizable injury at all." *Id.* Importantly, we noted that the plaintiff was

not left without recourse in the United States: The city could "obtain[] a legal judgment anywhere in the world against Defendants," and then it "could bring that judgment to the United States and execute it against any of Defendants' assets for the full amount of the money owed." *Id.* at 1133.

Here, Plaintiff has done exactly what we suggested the plaintiff could do in *City of Almaty*—he obtained a legal judgment and brought it to the United States to execute it against the Defendants' assets. In so doing, Plaintiff obtained domestic property in the United States—a judgment issued by a United States district court, conferring rights that Plaintiff can exercise in California. Plaintiff now alleges that Defendants engaged in RICO-violating activity (much of it in the United States) that harmed that property. Accordingly, Plaintiff has alleged an injury that is both cognizable and domestic.

Our decision is also consistent with the approaches taken by the Second and Third Circuits after *RJR Nabisco*. We part ways, however, with the Seventh Circuit, which has adopted a rigid, residency-based test for domestic injuries involving intangible property.

In *Bascuñán v. Elsaca*, 874 F.3d 806, 809 (2d Cir. 2017), a citizen and resident of Chile brought a civil RICO action against another citizen and resident of Chile. The plaintiff alleged that the defendant had fraudulently stolen $64 million from the plaintiff through four separate schemes. *Id.* at 811. The district court dismissed the case because the plaintiff had failed to allege a domestic injury. *Id.* at 813. Because the plaintiff resided in Chile, the district court reasoned, any economic loss he suffered had occurred in Chile. *Id.* at 814. The Second Circuit reversed the dismissal, concluding that the plaintiff had alleged a

domestic injury.[2] The court reasoned that "us[ing] bank accounts located within the United States to facilitate or conceal the theft of property located outside of the United States, on its own, does not establish that a civil RICO plaintiff has suffered a domestic injury." *Id.* at 824. But when a plaintiff alleges that a defendant misappropriated "tangible property located in the United States . . . even if the owner of the property resides abroad," the plaintiff has alleged a domestic injury. *Id.* at 824–25.[3]

The Second Circuit limited its holding to tangible property, leaving for another day the question of when an injury to intangible property is domestic. *Id.* at 814 ("At a minimum, when a foreign plaintiff maintains tangible property in the United States, the misappropriation of that property constitutes a domestic injury."). But here, as in *Bascuñán*, Plaintiff's allegations go beyond Defendants' use of the United States' financial system to hide property located outside the United States. Although Plaintiff alleges, among other things, that Defendants hid assets by moving them through

[2] The *Bascuñán* court concluded that there were four distinct RICO schemes alleged in the complaint and that two of those schemes, as pleaded by the plaintiff, involved a domestic injury. *Bascuñán*, 874 F.3d at 811, 824. Nevertheless, it reversed the district court's dismissal of the complaint in its entirety because the district court had "erred in dismissing Bascuñán's Amended Complaint on the grounds that he alleged *only* foreign injuries." *Id.* at 824 (emphasis added).

[3] After reversal and remand, the plaintiffs in *Bascuñán* filed a second amended complaint, the district court dismissed the second amended complaint, and the plaintiffs appealed. *Bascuñán v. Elsaca* (*Bascuñán II*), 927 F.3d 108 (2d Cir. 2019). The Second Circuit again reversed the district court's dismissal, concluding that, with one exception, "each of the injuries alleged in the [second amended complaint] . . . calls for a domestic application of civil RICO." *Id.* at 120.

shell companies in the United States, his central allegation is that those predicate acts injured his right to seek property in California from a California resident under the California Judgment. Accordingly, we see no conflict between our holding and that of *Bascuñán.*

In *Humphrey v. GlaxoSmithKline PLC*, 905 F.3d 694, 696 (3d Cir. 2018), the plaintiffs, who resided in China and owned a business in China, filed RICO claims against a multinational company with offices in the United States and England. They alleged that the defendants had "engaged in widespread bribery in China in order to obtain improper commercial advantages" and that the defendants' corrupt dealing in China eventually led to the plaintiffs' being imprisoned by Chinese authorities. *Id.* at 696–97. The district court dismissed the RICO claims because the plaintiffs failed to allege a domestic injury: "Plaintiffs' business was in China, their only offices were in China, no work was done outside of China, Plaintiffs resided in China, and . . . any destruction of Plaintiffs' business occurred while Plaintiffs were imprisoned in China by Chinese authorities." *Id.* at 697–98.

The Third Circuit affirmed, adopting a "standard that is not susceptible to mechanical application" and by which "few answers will be written in black or white." *Id*. at 707–08 (internal quotation marks omitted). The inquiry would "ordinarily include consideration of multiple factors that vary from case to case." *Id.* at 701.

> Whether an alleged injury to an intangible interest was suffered domestically is a particularly fact-sensitive question requiring consideration of multiple factors. These include, but are not limited to, where the injury itself arose; the location of the plaintiff's

> residence or principal place of business; where any alleged services were provided; where the plaintiff received or expected to receive the benefits associated with providing such services; where any relevant business agreements were entered into and the laws binding such agreements; and the location of the activities giving rise to the underlying dispute.

Id. at 707. In addition to noting that its list of factors is not exhaustive, the Third Circuit explained that "the applicable factors depend on the plaintiff's allegations; no one factor is presumptively dispositive." *Id.*

In adopting its standard, the Third Circuit explicitly rejected a rigid, residency-based rule developed by the Seventh Circuit. *See id.* at 708–09 ("Although the ease with which [the Seventh Circuit's] bright-line rule can be applied gives it some surface appeal, we resist the temptation to adopt it as the law of this circuit.") In *Armada (Sing.) PTE Ltd. v. Amcol Int'l Corp.*, 885 F.3d 1090, 1091 (7th Cir. 2018), a Singaporean shipping company brought RICO claims against defendants who resided in Illinois and India. As in this case, the plaintiff alleged that the defendants had attempted to thwart a judgment issued by a United States district court that confirmed a foreign arbitration award. *Id.* at 1092. The Seventh Circuit affirmed the district court's dismissal of the case after concluding that the plaintiff had failed to allege a domestic injury. *Id.* at 1095. It distinguished *Bascuñán* on the ground that a judgment, unlike the assets at issue in *Bascuñán*, is "intangible property." *Id.* at 1094. The Seventh Circuit then concluded that "a party experiences or sustains injuries to its intangible property at its residence." *Id.* Because the plaintiff was a foreign corporation, any

injury to its intangible property, even if that property is a judgment issued by a United States district court, is a foreign injury. *Id.* at 1095.

We agree with the Third Circuit that the Seventh Circuit's residency test does not align with *RJR Nabisco*. The *Armada* test strays from the Supreme Court's decision in two ways. First, the test makes the location of the *plaintiff* dispositive, when the Supreme Court stated that it is the location of the *injury* that is relevant to standing. *RJR Nabisco*, 579 U.S. at 346. Second, the Seventh Circuit's test effectively truncates the standing requirement set forth in *RJR Nabisco* if the harm is to intangible property. Rather than asking whether a plaintiff alleges "a domestic injury to its business *or property*," as the Supreme Court described, *id.* (emphasis omitted and added), the Seventh Circuit requires that a plaintiff allege a domestic injury to its business only, with the location of that business defined by the plaintiff's residence.

We also agree with the Third Circuit that determining whether a plaintiff has alleged a domestic injury is a context-specific inquiry that turns largely on the particular facts alleged in a complaint. Even though few, if any, of the listed factors in *Humphrey* are relevant here, as this case does not concern corrupt dealings between competitors, we see no conflict between the Third Circuit's ruling in *Humphrey* and our conclusion that Plaintiff has alleged a domestic injury.

Finally, we note that, in holding that Plaintiff alleges a domestic injury, we express no view on the merits of Plaintiff's claims. Nor do we assess whether the district court has jurisdiction over all parties in the action or whether Plaintiff has sufficiently alleged proximate causation for each Defendant, *Just Film,*

Inc., 847 F.3d at 1118–19. We hold only that Plaintiff's well-pleaded allegations include a domestic injury.

REVERSED AND REMANDED for further proceedings.

APPENDIX B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. 2:20-cv-11236-RGK-PLA

Date May 5, 2021

Title Vitaly *Ivanovich Smagin v Compagnie Monegasque De Banque et al*

Present: The Honorable R. GARY KLAUSNER, UNITED STATES DISTRICT JUDGE

Sharon L. William
Deputy Clerk

Not Reported
Court Reporter / Recorder

N/A
Tape No.

Attorneys Present for Plaintiff: Not Present

Attorneys Present for Defendants: Not Present

Proceedings: (IN CHAMBERS) Order Re: Defendant Ashot Yegiazaryan's Motion to Dismiss [DE 76]

I. INTRODUCTION

On December 22, 2020, Vitaly Ivanovich Smagin ("Smagin") filed a Complaint against twelve defendants: (1) Compagnie Monegasque De Banque ("CMB Bank"); (2) Ashot Yegiazaryan ("Yegiazaryan"); (3) Suren Yegiazaryan; (4) Artem Egiazaryan; (5) Stephan Yegiazaryan; (6) Vitaly Gogokhia; (7) Natalia Dozortseva ("Dozortseva"); (8) Murielle Jouniaux ("Jouniaux"); (9) Alexis Gaston Thielen ("Thielen");

(10) Ratnikov Evgeny Nikolaevich; (11) H. Edward Ryals, and; (12) Prestige Trust Company, Ltd. (collectively, "Defendants").

Smagin asserts two claims against all twelve Defendants—one for violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1962(c), the other for civil RICO conspiracy under 18 U.S.C. § 1962(D).

Presently before the Court is Yegiazaryan's Motion to Dismiss. ("Motion"). For the reasons that follow, the Court GRANTS the Motion.

II. FACTUAL BACKGROUND

Smagin's Complaint alleges the following:

In November 2014, Smagin won an arbitral award in London ("the London Award") against Yegiazaryan for Yegiazaryan's misappropriation of Smagin's real estate investment and subsequent efforts to conceal that misconduct. In December 2014, Smagin filed an action in the Central District of California to confirm and enforce the London Award under the New York Convention. The Court confirmed the arbitration award, and on March 31, 2016, entered judgment in favor of Smagin and against Yegiazaryan in the amount of $92,503,652 ("the California Judgment"). That action, though closed, is assigned to the undersigned. *See Vitaly Ivanovich Smagin v. Ashot Yegiazaryan,* Case No. 2:14-cv-09764-RGK (PLA) (the "Enforcement Action").

Yegiazaryan is a Russian criminal who absconded to the United States in 2010 and has been living as a fugitive in Beverly Hills ever since. He is also on the Interpol "Red" list. After Smagin obtained the London Award against Yegiazaryan in 2014, Yegiazaryan

began taking steps to hide his assets from Smagin. Specifically, unbeknownst to Smagin, Yegiazaryan received a $198 million settlement in 2015 (the "Kerimov Award"). To conceal the Kerimov Award, with the help of Defendant CMB Bank, Yegiazaryan hid the money in an offshore bank account in Monaco held under the name of one of his shell companies—he then further encumbered the assets by placing them in a Liechtenstein trust (the "Alpha Trust").

After learning of the Alpha Trust in 2016, Smagin commenced parallel legal proceedings against Yegiazaryan in Liechtenstein, where the Alpha Trust was formed. Smagin also secured a Post-Judgment Injunction in the Enforcement Action barring Yegiazaryan and others acting at his direction or under his control from taking "any action to transfer, assign, conceal, diminish, encumber, hypothecate, dissipate or in any way dispose of any proceeds, in an amount up to and including $115,629,565," including the funds held in the Alpha Trust. Finally, in 2019, after pursuing the authority to take control of the Alpha Trust through the Liechtenstein Court so that Smagin could transfer the assets to himself, Yegiazaryan and the other Defendants hatched a scheme to block Smagin's recovery from the Alpha Trust. First, Yegiazaryan began directing his cohorts—Defendants Suren Yegiazaryan, Vitaly Gogokhia and Stephan Yegiazaryan—to file fraudulent claims against him in various jurisdictions, which he would not oppose, in an attempt to encumber Yegiazaryan's assets to block Smagin's recovery. Defendants initiated these sham claims in various jurisdictions beginning in October 2019 continuing through August 2020.

Next, despite a March 2, 2020 order from the Princely Court of Liechtenstein granting Smagin

authority to appoint new trustees to the Alpha Trust, Yegiazaryan executed fraudulent instruments purporting to "appoint" two of his cohorts as trustees: Defendants Dozortseva and Jouniaux. These new purported trustees took legal action in Nevis to seize control of the Alpha Trust. Starting in July 2020, Defendants Yegiazaryan, Dozortseva, and Jouniaux began coordinating with Defendants CMB Bank, Prestige, and H. Edward Ryals to block any transfer of Yegiazaryan's assets to Smagin. In September 2020, Yegiazaryan, having no authority to do so, also appointed Defendant Thielen as a purported "Protector" of the Alpha Trust to further support the fraudulent acts of the purported trustees.

On December 11, 2020, Smagin filed his Complaint in this action.

III. JUDICIAL STANDARD

Under Rule 12(b)(6), a party may move to dismiss for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). "To survive a motion to dismiss, a complaint must contain suffrcient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp v. Twombly,* 550 U.S. 544, 570 (2007)). A claim is plausible if the plaintiff alleges enough facts to draw a reasonable inference that the defendant is liable. *Iqbal,* 556 U.S. at 678. A plaintiff need not provide detailed factual allegations, but must provide more than mere legal conclusions. *Twombly,* 550 U.S. at 555. "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal,* 556 U.S. at 678.

When ruling on a Rule 12(b)(6) motion, the Court must accept well-pled factual allegations in the complaint as true and construe them in the light most favorable to the non-moving party. *See Autotel v. Nev. Bell. Tel. Co.,* 697 F.3d 846, 850 (9th Cir. 2012). Dismissal "is appropriate only where the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory." *Mendiondo v. Centinela Hosp. Med. Ctr.,* 521 F.3d 1097, 1104 (9th Cir. 2008).

IV. DISCUSSION

RICO provides a private cause of action for "[a]ny person injured in his business or property by reason of a violation of [18 U.S.C. § 1962]. 18 U.S.C. § 1964(c). The elements of a civil RICO claim are "(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity (known as 'predicate acts') (5) causing injury to plaintiffs business or property." *United Broth. of Carpenters and Joiners of Am. v. Building and Const. Trades Dept., AFL-CIO,* 770 F.3d 834, 837 (9th Cir. 2014). Congress established a civil RICO cause of action "to combat organized crime, not to provide a federal cause of action and treble damages to every tort plaintiff." *Oscar v. Univ. Students Co-op. Ass'n,* 965 F .2d 783, 786 (9th Cir. 1992), *abrogated on other grounds by Diaz v. Gates,* 420 F.3d 897 (9th Cir. 2005).

Yegiazaryan moves to dismiss Smagin's Complaint on several grounds, including statute of limitations, failure to allege a predicate act, and failure to allege a domestic injury. Because the Court determines that Smagin has failed to allege a domestic injury, and therefore lacks standing to pursue his RICO claims, the Court does not reach Yegiazaryan's other arguments.

To establish standing to pursue a civil RICO claim, a plaintiff must show: "(1) that his alleged harm

qualifies as injury to his business or property; and (2) that his harm was by reason of the RICO violation, which requires the plaintiff to establish proximate causation." *Just Film, Inc. v. Buono,* 847 F.3d 1108, 1118-19 (9th Cir. 2017) (quoting *Canyon CO). v. Syngenta Seeds, Inc.,* 519 F.3d 969, 972 (9th Cir. 2008)). The injury to the business or property must be domestic, as civil RICO does not allow recovery for foreign injuries. *RJR Nabisco, Inc. v. European Cmty.,* 136 S. Ct. 2090, 2111 (2016). Neither the Supreme Court nor the Ninth Circuit has defined the term "domestic injury" with specificity. *See City of Almaty v. Khrapunov,* 956 F.3d 1129, 1132 (9th Cir. 2020) ("The Ninth Circuit has not yet addressed the question of how to determine whether an injury is domestic or foreign after *RJR Nabisco,* and we need not do so today."). But several other courts have addressed the issue.

Courts have found that an alleged RICO injury may not "be deemed 'domestic' or 'foreign' purely by reference to the location of the predicate acts that purportedly caused it." *City of Almaty v. Khrapunov,* No. 14-CV-3650-FMO (CWX), 2018 WL 6074544, at *6 (C.D. Cal. Sept. 27, 2018), (quoting *City of Almaty, Kazakhstan v. Ablyazov,* 226 F.Supp.3d 272, 281 (S.D. N.Y. 2016)), *aff'd,* 956 F.3d 1129 (9th Cir. 2020). Rather, there is "a general consensus among the courts that . . the location of a RICO injury depends on where the plaintiff 'suffered the injury'—not where the injurious conduct took *place." Humphrey* v. *GlaxoSmithKline PLC,* 905 F.3d 694, 702 (3d Cir. 2018).

If the alleged injury is to tangible property, the Second Circuit and other courts have held that the injury "is generally a domestic injury only if the property was physically located in the United States[.]" *Bascuñán v. Elsaca,* 874 F.3d 806, 819 (2d Cir. 2017);

see also, e.g., City of Almaty, 2018 WL 6074544, at *5–*7 (citing *Bascuñán* with approval in finding the plaintiff failed to allege a domestic injury where the plaintiff's property was converted abroad). Under this approach, the location of the injury is determined by the location of the injured tangible property.

If, on the other hand, the alleged injury is to intangible property, courts generally "look to the nature of the injury to determine where it occurred." *See Unigestion Holdings, S.A. v. UPM Tech., Inc.,* 412 F. Supp. 3d 1273, 1291 (D. Or. 2019). Whether a RICO plaintiff may recover for injuries to intangible property remains an open question in the Ninth Circuit. *See Harmoni Intl Spice, Inc. v. Hume,* 914 F.3d 648, 653 (9th Cir. 2019) ("The issue" of whether "RICO precludes recovery for harm to intangible property interests" "remains open for the district court to take up on remand."). The Third and Seventh Circuits, however, have held that a RICO plaintiff may recover for an injury to intangible property interests and have established competing standards to determine whether such an injury is foreign or domestic. The Seventh Circuit applies a bright line rule: "a party experiences or sustains injuries to its intangible property at its residence[.]" *Armada (Singapore) PTE Ltd. v. Amcol Int'l Corp.,* 885 F.3d 1090, 1094 (7th Cir. 2018). The Third Circuit rejects this bright line rule and instead applies "a fact-intensive inquiry that will ordinarily include consideration of multiple factors that vary from case to case." *Humphrey,* 905 F.3d at 701.

Here, Smagin alleges that: (1) "Harm to [] Smagin's California Judgment constitutes a domestic injury[,]" and (2) "Smagin's legal fees and expenses incurred in the United States as a result of the [Defendants'] scheme to obstruct him from collecting his judgment

constitute a domestic injury." (Pl.'s Opp. to Yegiazaryan's Mot. to Dismiss at 12-13, ECF No. 90). The Court addresses these alleged injuries in turn to determine whether they are foreign or domestic.

A. Harm to Smagin's California Judgment

First, Smagin alleges that harm to the California Judgment that Smagin won in the Enforcement Action constitutes a domestic injury to his property. "A judgment is property[,]" *Kingvision Pay-PerView Ltd. v. Lake Alice Bar,* 168 F.3d 347, 352 (9th Cir. 1999), but lacks physical existence and is therefore an intangible asset. *Armada,* 885 F.3d at 1094. In the absence of controlling Ninth Circuit case law on the matter, the Court looks to both the Third Circuit and Seventh Circuit tests to determine whether the alleged harm to Smagin's California Judgment constitutes a domestic injury.

1. *Smagin Fails to Allege a Domestic Injury Under the* Armada *Test*

Under the test established by the Seventh Circuit in *Armada,* "a party experiences or sustains injuries to its intangible property at its residence[.]" 885 F.3d at 1094. Because Smagin is a citizen of Russia residing in Moscow, Smagin experiences the alleged injury to his California Judgment in Moscow, Russia. Accordingly, under the *Armada* test, Smagin's alleged injury is foreign, not domestic.

2. *Smagin Fails to Allege a Domestic Injury Under the* Humphrey *Test*

In *Humphrey,* the Third Circuit prescribed a more case specific, "fact-intensive inquiry" that "ordinarily include[s] consideration of multiple factors[.]" 905 F.3d at 701. These factors include,

> but are not limited to, where the injury itself arose; the location of the plaintiffs residence or principal place of business; where any alleged services were provided; where the plaintiff received or expected to receive the benefits associated with providing such services; where any relevant business agreements were entered into and the laws binding such agreements; and the location of the activities giving rise to the underlying dispute.

Id. at 707. Upon consideration of the factors relevant to this case, the Court concludes that under the *Humphrey* test, Smagin's alleged injury is a foreign injury.

First, although Smagin asserts that "Defendants here engaged in a scheme to thwart . . . Smagin's recovery from the Alpha Trust, thus injuring his property and rights in California[,]" the Court finds that "the injury itself arose" in Russia. Smagin's California Judgement enforces a London Arbitration Award which Smagin won due to Yegiazaryan's breach of various agreements in Russia. Thus, to the extent Smagin is now injured by Yegiazaryan's failure to satisfy the California Judgment, such injury is a consequential effect of Smagin's foreign injury, which arose out of Yegiazaryan's breach of various agreements in Russia. *See City of Almaty v. Khrapunov,* 956 F.3d 1129, 1132-33 (9th Cir. 2020) (plaintiff's injury resulting from voluntary expenditures in the United States to track down stolen property was "merely a consequential effect" of the conversion of plaintiffs property, which occurred in Kazakhstan).

Second, and most significant, Smagin is a resident and citizen of Moscow, Russia. Applying the *Humphrey* test in another RICO case in which a foreign plaintiff

argued that non-payment of a United States judgement amounted to a domestic injury, the Third Circuit held that the plaintiff's injury was not domestic. *Cevdet Aksut Ve Ogullari Koll.Sti v. Cavusoglu,* 756 F. App'x 119, 124 (3d Cir. 2018) ("Although [plaintiff] has a judgment against [defendant] under United States law, [plaintiff] is a Turkish company with its principal place of business in Turkey, and [plaintiff] experiences the loss from its inability to collect on its judgment in Turkey."). Applying the *Humphrey* test, the *Cevdet* court relied almost exclusively on the plaintiff's residency in Turkey in determining that the plaintiff's injury was not a domestic injury. *id.* Though the Court here considers all of the relevant *Humphrey* factors, the Court places great weight on the fact that Smagin is a resident and citizen of Russia and therefore "experiences the loss from [his] inability to collect on [his] judgment in [Russia]." *See id.*

Finally, the Court considers "where any relevant business agreements were entered into and the laws binding such agreements[,] and the location of the activities giving rise to the underlying dispute." *Humphrey,* 905 F.3d at 707. As noted above, Smagin's California Judgement enforces a London Arbitration Award which Smagin won due to Yegiazaryan's breach of various agreements in Russia. Namely, Smagin alleges that he and Yegiazaryan entered into an agreement for the division of profits in a joint real estate investment in Moscow called "Europark." (Compl. ¶ 36). Smagin further alleges that

> [i]n 2006, [Defendant] Yegiazaryan proposed that Europark be used as security for a Deutsche Bank loan to finance the refurbishment of a Moscow hotel (a project in which [Smagin] was not involved). [Smagin] agreed

> to [Defendant] Yegiazaryan's proposal based on his assurances that [Smagin]'s interests would be protected and on a series of shareholder and escrow agreements the parties executed guaranteeing the same. Instead of making good on any of these agreements or assurances, [Defendant] Yegiazaryan . . . concocted an elaborate scheme to steal [Smagin]'s shares and profits[.]

(*Id.*) Thus, Smagin and Yegiazaryan's alleged business agreements were entered into in Russia and concerned a joint real estate investment in Moscow and the refurbishment of a Moscow hotel. The Court therefore find that these factors weigh heavily in favor of a finding that Smagin's alleged injury to his intangible property is a foreign injury.

In his Opposition, Smagin relies on *Tatung Co., Ltd. v. Shy Tze Hsu,* 217 F. Supp. 3d 1138 (C.D. Cal. 2016). There, the court held that a foreign RICO plaintiff adequately pled a domestic injury to its property interest in an arbitration award that was enforceable in California. *Id.* at 1156. Even if *Tatung* were binding authority, the facts in *Tatung* are materially distinguishable from the facts of this case. The corporate plaintiff in *Tatung* "maintain[ed] a 'hub' in the" U.S.; "[i]n the course of doing business, [the] [p]laintiff extended credit and delivered goods to its creditor in the [U.S.;]" when the "[p]laintiff was not paid by its creditor, it pursued arbitration in the [U.S.] pursuant to a binding arbitration agreement that required arbitration . . . in Los Angeles, California[;]" "[t]he arbitration demand was delivered to the creditor at their California address[;]" the plaintiff "received an arbitration award enforceable in California[;]" the "award was then confirmed by the state court of

California[;]" but the plaintiff "was never able to collect the award or the judgment because, it alleges, its creditor and many others engaged in a RICO conspiracy to render the creditor an empty shell." *Id.* at 1155-56.

The *Tatung* plaintiff's maintenance of a hub in the United States, the plaintiff's delivery of goods and extension of credit to its creditor in the United States, and the mandatory arbitration clause that required arbitration in Los Angeles established a level of connection between the plaintiff, the United States, and the plaintiff's injury that is missing from the present case. Notwithstanding the fact that Yegiazaryan fled to California and Smagin therefore brought an action to enforce the London Arbitration Award in California, he fails to allege facts to support the fiction that Smagin, though in Russia, suffered an injury in the United States.

In summary, because all of the relevant *Humphrey* factors weigh in favor of finding that Smagin's alleged injury to his California Judgment is a foreign injury, the Court concludes that Smagin has failed to allege a domestic injury to his property interest in the California Judgement.

B. Harm in the Form of Leal Fees Incurred in the Enforcement Action

Second, Smagin argues that he suffered a domestic injury in the form of legal fees incurred in the course of litigating the Enforcement Action in California. The Court is not persuaded.

Some courts have found that incurring legal fees may establish a RICO injury where a plaintiff incurred fees in prior litigation and the fees were proximately caused by conduct that would qualify as a RICO

predicate act. *See, e.g., Handeen v. Lemaire,* 112 F.3d 1339, 1354 (8th. Cir. 1997) (holding that prior legal expense "qualifies as an injury to business or property that was proximately caused by a predicate act"); *Stochastic Decisions, Inc. v. DiDomenico,* 995 F.2d 1158, 1167 (2d Cir. 1993) ("[L]egal fees may constitute RICO damages when they are proximately caused by a RICO violation.").

Smagin, relying on *Harmon! International Spice, Inc. v. Wenxuan Bai,* No. 2:16-CV-00614-AB (ASX, 2019 WL 4194306 (C.D. Cal. July 2, 2019), argues that he "has incurred significant legal fees in the United States as a result of the [Defendants'] conduct, and has thus suffered a domestic injury." (Pl.'s Opp. to Yegiazaryan's Mot. to Dismiss at 13).

In *Harmoni,* a foreign corporate plaintiff sued its business competitors alleging that the competitors had initiated sham requests for an administrative review of the plaintiff's business with the Department of Commerce, in violation of RICO. The plaintiff had incurred significant expenses defending itself during the course of the ensuing administrative review process. *Id.* at *2. The court concluded that the plaintiff had pled a domestic injury for purposes of RICO because the legal fees and expenses that the plaintiff incurred in defending the administrative review process were "paid to counsel in the United States *out of* bank accounts located in the United States." *Id.* at *7 (emphasis in original).

Smagin's reliance on *Harmoni* is misplaced. Unlike in *Harmoni,* where the foreign plaintiff incurred legal fees defending itself in a process that was initiated by the defendants' sham requests for an administrative review, here, Smagin alleges that he incurred legal fees prosecuting an action that he himself initiated.

Moreover, the *Harmoni* court found that the plaintiff had alleged a domestic injury based on the fact that the plaintiff had paid its lawyers *"out of bank* accounts located in the United States." While the Court seriously doubts that a civil RICO plaintiff can satisfy *RJR Nabisco's* domestic injury requirement by simply opening a U.S. bank account and paying U.S. lawyers out of that account, the Court need not address that question because Smagin has not alleged that he paid his lawyers *out of* bank accounts in the United States. Thus, even if the Court were to follow *Harmoni,* Smagin has not pleaded a domestic injury because he has not alleged an injury to any property located in the United States. *See Bascuñán,* 874 F.3d at 819 ("[A]n injury to tangible property is generally a domestic injury only if the property was physically located in the United States . . . .").

V. CONCLUSION

In accordance with the foregoing, the Court GRANTS Yegiazaryan's Motion to Dismiss. Because Smagin fails to adequately plead a domestic injury in support of his two RICO claims, Smagin lacks standing to sustain his claims. Accordingly, Smagin's claims are dismissed as to all defendants.

IT IS SO ORDERED.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

[Filed: July 22, 2022]

No. 21-55537

D.C. No. 2:20-cv-11236-RGK-PLA
Central District of California, Los Angeles

VITALY IVANOVICH SMAGIN,

Plaintiff-Appellant,

v.

ASHOT YEGIAZARYAN,
aka Ashot Egiazaryan, an individual; *et al.*,

Defendants-Appellees.

ORDER

Before: SCHROEDER and GRABER, Circuit Judges, and McNAMEE,* District Judge.

The panel judges have recommended to deny Appellees Compagnie Monegasque De Banque's, Ashot Yegiazaryan's, and Alexis Gaston Thielens' petitions for rehearing en banc.

The full court has been advised of Appellees' petitions for rehearing en banc, and no judge of the court has requested a vote on them.

Appellees' petitions for rehearing en banc, Docket Nos. 67, 68, and 69, are DENIED.

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* The Honorable Stephen M. McNamee, United States District Judge for the District of Arizona, sitting by designation.