22-381 and 22-383

IN THE

Supreme Court of the United States

ASHOT YEGIAZARYAN, AKA ASHOT EGIAZARYAN,
Petitioner,

v.

VITALY IVANOVICH SMAGIN, *et al.*,
Respondents.

CMB MONACO, FKA COMPAGNIE MONÉGASQUE DE BANQUE,
Petitioner,

v.

VITALY IVANOVICH SMAGIN, *et al.*,
Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

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(For Continuation of Appearances See Inside Cover)

PETITION FOR CERTIORARI FILED OCTOBER 20, 2022
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TABLE OF APPENDICES

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

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[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.

APPENDIX D

Dkt 96 (5/7/2021):

(IN CHAMBERS) NOTICE TO ALL PARTIES AND ORDER by Judge R. Gary Klausner. Based on the dismissal of the case at 76 , the motions filed at 67 , 70 and 82 are denied as moot. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (sw) TEXT ONLY ENTRY (Entered: 05/07/2021)

APPENDIX E

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA –
WESTERN DIVISION

_____

Case No. ____

_____

VITALY IVANOVICH SMAGIN,

Plaintiff,

v.

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

Defendants.

_____

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ATTORNEYS FOR PLAINTIFF
VITALY IVANOVICH SMAGIN

COMPLAINT

[CIVIL RICO LIABILITY]

(Civil RICO Liability under 18 U.S.C. §1962(c), §1962(d), and §1964(c))

DEMAND FOR JURY TRIAL

INTRODUCTION

1. Defendant Ashot Yegiazaryan ("Mr. Yegiazaryan") is a Russian criminal on the Interpol "Red" list, living amongst us in a luxury estate in Beverly Hills as a citizen of California. From Beverly Hills, Mr. Yegiazaryan lords over a criminal empire worth hundreds of millions of dollars; his stock in trade is real estate fraud. He is a master scammer and manipulator who operates behind the scenes and carries out large scale criminal transactions, stealing funds and assets and then using a network of nominees to cover his tracks and to hide and protect the stolen funds. His nominees all of whom know that he is a convicted felon, subject to an international arrest warrant, and a syndicate leader—are a "white collar" army of friends, family members, business associates, lawyers, and bankers.

Key among them is the one-and-only bank that Mr. Yegiazaryan approached that would take his dirty money, Defendant Compagnie Monégasque De Banque ("CMB Bank"), which agreed to hold, hide, and defend his money at all costs and against all comers.

2. CMB Bank and Mr. Yegiazaryan's cast of nominees follow commands just as the minions of a drug lord or war lord would do. They lie, cheat, steal, and break the law for this criminal enterprise, with a common purpose of supporting Mr. Yegiazaryan's schemes and secreting and protecting his ill-gotten gains, which he shares with them for supporting his enterprise. At times, these conspirators even use legal means, legal instruments, and legal proceedings (e.g., trusts, shell companies, offshore enterprises, lawsuits/litigation and overseas bank accounts) for the improper purpose of stealing, hiding and protecting Mr. Yegiazaryan's ill-gotten gains; they do the requested bidding, whatever that may be, including making false claims and bringing litigations directly for the enterprise (or indirectly for its benefit), in court systems around the world with the goal of sowing confusion, creating chaos and causing delay and frustrating the collection and redress efforts of Mr. Yegiazaryan's victims.

3. The chaos and delay they create is not random or haphazard. From his mansion in Beverly Hills, Mr. Yegiazaryan carefully choreographs the actions and events of his nominees. He "pulls the strings" like an international crime boss, and the power of the enterprise is its coordination, international scope, use of seemingly legal means (but for an improper purpose), willingness to stop at nothing to defraud and collect funds and to then work together to protect the fund by whatever means are necessary, legal and illegal. This type of coordinated syndicate conduct is

precisely the type of organized activity that Congress sought to combat when enacting the Racketeer Influenced and Corrupt Organizations Act ("RICO"). Oscar v. University Students Co-Operative Assn., 965 F.2d 783, 786 (9th Cir.1992). Mr. Yegiazaryan and his nominees must be stopped, the RICO statute is the proper tool for doing so, and this action is the proper vehicle for making it happen.

4. Accordingly, and as described more fully herein, Plaintiff Vitaly Ivanovich Smagin files this Civil RICO action to recover more than $90 million (plus legal interest) of which he has been defrauded, denied, and kept from recovering as a result of the enterprise scheme orchestrated by convicted criminal Mr. Yegiazaryan, CMB Bank and their nominees. The enterprise in question involves, at a minimum, material assistance from the following cast of characters: CMB Bank, Mr. Yegiazaryan's family members who have each served as fronts for his fraudulent activities (Suren Yegiazaryan, Artem Yegiazaryan and Stephan Yegiazaryan); a Russian criminal accomplice who has asserted fraudulent and collusive claims to try to encumber, secret, and protect Mr. Yegiazaryan's funds (Vitaly Gogokhia); French, Russian and Luxembourger individuals who have been falsely appointed as trust administrators for the Alpha Trust to interfere with Plaintiff's collection efforts in ways that Mr. Yegiazaryan is barred by court order from doing (Natalia Dozortseva, Murielle Jouniaux, and Alexis Gaston Thielen); a registered agent company (Prestige Trust Company, Ltd.) and its U.S. lawyer agent (H. Edward Ryals) all of whom colluded with the falsely appointed trustees and CMB Bank to fraudulently mislead Courts around the world as to various legal proceedings and dispute between Plaintiff and Mr. Yegiazaryan and thereby hinder Plaintiff's

judgment enforcement; and a purported "financial manager" who is improperly using colluding with Mr. Yegiazaryan concerning Russian bankruptcy to derail and deny Plaintiff's collection efforts (Ratnikov Evgeny Nikolaevich).

5. Plaintiff Smagin has been injured in his inability to collect this massive judgment and interest on the judgment; he has incurred millions of dollars in attorney's fees litigating actions around the world against Mr. Yegiazaryan, CMB and their nominees (including hundreds of thousands of dollars in fees for legal proceedings in the Central District of California). Plaintiff Smagin is entitled to treble damages on these amounts and all other relief as the Court and/or jury may deem just and proper.

PARTIES

6. Plaintiff Vitaly Smagin ("Plaintiff") is an individual Russian citizen and businessman residing at Desenovskoye settlement, Novovatutinsky Prospect, 10, bldg 1 apt. 44, Moscow, Russia. Plaintiff is the successful claimant in the arbitration before the London Court of International Arbitration against Mr. Yegiazaryan (the "Arbitration"). The Arbitration award was confirmed by this Court and, on March 31, 2016, the Court entered a judgment in favor of Plaintiff and against Mr. Yegiazaryan in the amount of $92,503,652 (the "California Judgment"). A true and correct copy of the California Judgment is attached hereto as Exhibit 1.

7. Defendant Ashot Yegiazaryan a/k/a Ashot Egiazaryan ("Mr. Yegiazaryan" or "Ashot Yegiazaryan"), is an individual residing at 655 Endrino Place, Beverly Hills, California 90201. Mr. Yegiazaryan was the respondent in the Arbitration with Plaintiff and is now

a judgment debtor pursuant to this Court's California Judgment as a result of Plaintiff's successful petition to confirm that arbitral award in this Court. Mr. Yegiazaryan was also criminally convicted in Russia in 2018 for his fraud against Plaintiff and is currently living in the United States as a fugitive of Russia.

8. Defendant Suren Yegiazaryan a/k/a Suren Egiazarian ("Suren"), is an individual residing at 1915 Carla Ridge, Beverly Hills, California 90201. Suren is the cousin of Ashot Yegiazaryan. Suren is also the nominal owner of Clear Voice, Inc., a Nevada corporation. Among other things, Suren acts as Mr. Yegiazaryan's "check book." He accesses and holds the ill-gotten funds from the enterprise for Mr. Yegiazaryan to keep Mr. Yegiazaryan at arms-length from the dirty money. On information and belief, he is being compensated by Mr. Yegiazaryan to do these things for the criminal enterprise run by Mr. Yegiazaryan.

9. Defendant Artem Yegiazaryan ("Artem") is an individual residing in Los Angeles, California at 342 Hauser Blvd 429, Los Angeles, CA, 90036. Artem is Ashot Yegiazaryan's brother. Artem was involved in the real estate scam that Mr. Yegiazaryan perpetrated on Plaintiff in Russia. Artem was criminally convicted in 2018 in Russia for his participation as an accomplice in Ashot Yegiazaryan's fraud. On information and belief, he is being paid by Mr. Yegiazaryan to do these things for the criminal enterprise run by Mr. Yegiazaryan.

10. Defendant Stephan Yegiazaryan a/k/a Stephan Egiazaryan ("Stephan") is an individual residing in Moscow, Russia at ul. Leninskiye Gory, 1, apt. 91, Moscow, 119234. Stephan is Ashot Yegiazaryan's son. He has made various misrepresentations in courts in

Liechtenstein to encumber Mr. Yegiazaryan's assets. On information and belief, he is being paid by Mr. Yegiazaryan to do these things for the criminal enterprise run by Mr. Yegiazaryan.

11. Defendant Vitaly Gogokhia ("Gogokhia") is an individual residing in London, the United Kingdom at Flat 212 California Building, Deals Gateway, Lewisham, London, SE13 7SF. He is a longtime nominee of Ashot Yegiazaryan who, among other things, colluded with Mr. Yegiazaryan to create a false and fraudulent "Consent Judgment" in the United Kingdom to compete with Plaintiff Smagin's California Judgment for the funds that Mr. Yegiazaryan fraudulently conveyed into the Alpha Trust. In 2018, Gogokhia was criminally convicted in Russia for his participation as an accomplice in Mr. Yegiazaryan's fraud against Plaintiff. On information and belief, he is being paid by Mr. Yegiazaryan to do these things for the criminal enterprise run by Mr. Yegiazaryan.

12. Defendant Natalia Dozortseva ("Dozortseva") is a Russian individual residing in France at 9 rue des Etables, 06620 Greolieres. With no authority to do so, Mr. Yegiazaryan "appointed" Dozortseva as a trustee for the Alpha Trust. Under this false color of authority, Dozortseva has attempted to intervene in Plaintiff's legal proceedings in Liechtenstein, Nevis and Monaco. She has successfully intervened in Monaco and her actions there have substantially delayed Plaintiff's enforcement efforts in each jurisdiction. On information and belief, she is being paid by Mr. Yegiazaryan to do these things for the criminal syndicate run by Mr. Yegiazaryan.

13. Defendant Murielle Jouniaux ("Jouniaux") is an individual residing in France at 108, Avenue St. Lambert, Nice. Like Dozortseva, Jouniaux was improp-

erly appointed as a trustee for the Alpha Trust and has fraudulently held herself out to be a trustee of the Alpha Trust. She has similarly opposed Plaintiff's legal and proper attempts to enforce his judgment against the Alpha Trust, has attempted to intervene in Plaintiff's legal proceedings in Monaco, substantially delaying Plaintiff's enforcement efforts.

14. Defendant Ratnikov Evgeny Nikolaevich ("Ratnikov") is an individual residing in Russia at Ulitsa Druzhby, 9, apt. 200, town of Lyubertsy, Moscow Region, 140013. Ratnikov has falsely and fraudulently held himself out to be an impartial Russian bankruptcy officer overseeing Plaintiff's bankruptcy filing in Russia. But, on information and belief, under this false color of authority, Ratnikov has colluded with Mr. Yegiazaryan, and Ratnikov has attempted to intervene in Plaintiff's legal proceedings in the United States, Liechtenstein and Monaco for the purpose of delaying Plaintiff's enforcement efforts in each. On information and belief, he is being paid by Mr. Yegiazaryan to do these things for the criminal syndicate run by Mr. Yegiazaryan.

15. Defendant Alexis Gaston Thielen ("Thielen") is an individual residing in Luxembourg at 10, rue Willy Goergen, L-1636 Luxembourg. Thielen has fraudulently held himself out to be the "protector" of the Alpha Trust. Under this false color of authority, Thielen has attempted to remove Plaintiff's lawfully appointed trustees of the Alpha Trust and confirm authority of the fraudulently appointed "trustees" Dozortseva and Jouniaux, substantially delaying Plaintiff's enforcement efforts. On information and belief, Thielen is being paid by Mr. Yegiazaryan to do these things for the criminal enterprise run by Mr. Yegiazaryan.

16. Defendant Compagnie Monégasque De Banque ("CMB Bank") is a private international bank with its principal place of business in Monaco at 23, Avenue de la Costa, 98000, Monaco. CMB Bank has correspondent accounts in the United States and has major clients in California, including Mr. Yegiazaryan, with which it regularly does business and carries out transactions in California. On information and belief, CMB Bank is taking direction from and being paid by Mr. Yegiazaryan to do these things for the criminal syndicate run by Mr. Yegiazaryan, including, but not limited to Mr. Yegiazarian paying CMB Bank's legal fees in the Monaco proceeding brought by Plaintiff and the Alpha Trustees.

17. Defendant Prestige Trust Company, Ltd. ("Prestige") is a Nevis company and the registered agent for non-party Savannah Advisors. Prestige's managing director, Stevyn L. Bartlette, is an individual residing in Florida, at 330 N. Lakeview Dr., Apt. 4211, Tampa, FL, 33618, U.S. At Mr. Yegiazaryan's request, Prestige drafted two fraudulent letters intended for and used by Dozortseva and CMB Bank to perpetrate a fraud on the Monaco Court proceeding where Plaintiff Smagin is trying to recover funds of the Alpha Trust deposited in a CMB Bank account. Prestige is liable for all actions of its employees, officers, and other agents under the doctrine of respondeat superior because (among other things); (1) Prestige benefited from its agents/employees' illegal conduct; (b) the conduct occurred substantially within the time and space limits authorized by the employment; (c) the agents/employees were motivated (wholly or in part) by a purpose to serve Prestige; and (d) the conduct was of the kind that the agents/employees were hired to perform. Further, the conduct is within the scope of the agency/employment in that it is reasonably related

to the kinds of tasks that the agents/employees were employed to perform and reasonably foreseeable in light of Prestige's business and the agents/employees' responsibilities. On information and belief, Prestige is being paid by Mr. Yegiazaryan to do these things for the criminal enterprise run by Mr. Yegiazaryan.

18. Defendant H. Edward Ryals ("Ryals") is an individual residing at 6354 Treeridge Trail, Saint Louis, MO, 63129, U.S. Ryals is an agent and attorney acting on behalf of Prestige, including by sending two fraudulent letters relied on by Dozortseva and CMB Bank to perpetrate this fraud on the court and on Plaintiff Smagin. On information and belief, Ryals is being paid by Mr. Yegiazaryan to do these things for the criminal syndicate run by Mr. Yegiazaryan.

NON-PARTIES

19. The Alpha Trust ("Alpha Trust") is a Liechtenstein trust that was formed by Mr. Yegiazaryan and CTX Treuhand AG in Liechtenstein on May 27, 2015 for the purpose of hiding and secreting away a large arbitration settlement that Mr. Yegiazaryan had received in May 2015 and did not want subject to collection by Plaintiff Smagin. The Alpha Trust was never disclosed to Plaintiff Smagin, and he learned about it by pure chance. The Alpha Trust's funds reside in a bank account of CMB Bank, with the funds held in the name of Savannah Advisors, Inc. (an off-the-shelf entity created simultaneously by Mr. Yegiazaryan's nominees). Mr. Yegiazaryan was initially named as the Alpha Trust's settlor, beneficiary, investment advisor, and "Protector." As the Protector, Mr. Yegiazaryan had unfettered power to dismiss the trustee for any reason at any time and to appoint a new trustee—including even himself and to make decisions concerning management and

dispersion of the funds. Once Plaintiff Smagin learned of the Alpha Trust, he petitioned the Princely Court in Liechtenstein, where the trust had been formed, and the Court stripped Mr. Yegiazaryan of his authority as Protector of the Alpha Trust; the Court also rejected his appointment of trustees (Dozortseva and Jouniaux). The Liechtenstein Court appointed Plaintiff Smagin as Protector, and he appointed Rudolf Schächle and Raphael Näscher as trustees for the Alpha Trust.

20. CTX Treuhand AG ("CTX Treuhand") is a stock corporation organized under the laws of Liechtenstein. CTX Treuhand created the Alpha Trust on behalf of Mr. Yegiazaryan and served as the trustee from the creation of the trust until on or around March 9, 2020, when CTX Treuhand withdrew following the Liechtenstein court's order authorizing Plaintiff to remove CTX Treuhand and appoint his own trustee.

21. Savannah Advisors, Inc. ("Savannah" or "Savannah Advisors") is a Nevis company owned by the Alpha Trust and, thus, beneficially owned by Mr. Yegiazaryan. Savannah Advisors has no assets or operations other than holding the funds of the Alpha Trust that reside in the CMB Bank account.

22. Clear Voice, Inc. ("Clear Voice") is 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, including specifically Plaintiff. As noted above, Suren is the funding source for Mr. Yegiazaryan and his criminal enterprise and on information and belief he funds Mr. Yegiazaryan in whole or in part from this entity.

JURISDICTION AND VENUE

23. This Court has original subject matter jurisdiction pursuant to 18 U.S.C. § 1964(c) and 28 U.S.C. § 1331 because this action arises under the Federal Racketeer Influenced and Corrupt Organizations Act (Federal RICO).

24. This Court has personal jurisdiction over Ashot Yegiazaryan, Suren Yegiazaryan, and Artem Yegiazaryan because they each reside in the state of California. On information and belief, all of Ashot Yegiazaryan's, Suren Yegiazaryan's and Artem Yegiazaryan's acts have been committed in and for and/or directed from California.

25. This Court has personal jurisdiction over Gogokhia, Dozortseva, Jouniaux, Ratnikov, Stephan Yegiazaryan, Thielen, CMB Bank, Prestige, and Ryals because, among other contacts, they participated in the scheme to defraud Plaintiff that was centered in and directed from California, served the central purpose of frustrating enforcement of a California judgment, wrongfully, fraudulently participated directly or indirectly in litigation or legal proceedings in the California, the United Kingdom, Nevis, Liechtenstein, and/or Monaco. As noted, in furtherance of that scheme, Defendants conducted their wrongful activities in California or purposefully directed their fraudulent acts at California in part as relates to Plaintiff Smagin's action centered here relating to enforcement of the California Judgment. CMB Bank has accepted deposits and instructions from individuals within the state of California as relates to the Alpha Trust funds, Mr. Yegiazaryan, and other nominees of Mr. Yegiazaryan and the enterprise. CMB Banks also holds correspondent accounts in the United States and, of course, is a key part of the conspiracy to

hide, protect, and secure the ill-gotten gains of Mr. Yegiazaryan, who directs its actions and pays for its legal actions and defense as relates to CMB Bank's refusal to transfer Alpha Trust funds as ordered by the lawful trustees of the Alpha Trust. This Court also has personal jurisdiction over Defendants pursuant to 18 U.S.C. 1965(b) because in any action brought pursuant to the Federal RICO statute, the district court may summon other parties to that district where the "ends of justice require."

26. Venue is appropriate in the Western Division of the Central District of California pursuant to 28 U.S.C. §1391(b)(2) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred within this judicial district. Specifically, defendants Ashot Yegiazaryan, Suren Yegiazaryan and Artem Yegiazaryan reside in Los Angeles County, California, and the wrongful acts and plans were devised, initiated, and carried out by these Defendants through acts and communications initiated in and directed towards Los Angeles County, California. Venue is further proper in this District pursuant to 18 U.S.C. § 1965(a) because each defendant is found in and/or transacts affairs in this District given each Defendant's participation in the enterprise. Venue is also appropriate in this District pursuant to 28 U.S.C. § 1391(c)(3).

RELATED LEGAL ACTIONS

27. In October 2010, Plaintiff commenced an arbitration proceeding in London, U.K., against Mr. Yegiazaryan and his holding company Kalken Holdings Limited, entitled *Vitaly Ivanovich Smagin,*

Claimant, v. Kalken Holdings Limited[1] *and Ashot Yegiazaryan, Defendants*, LCIA Case No. 101721 (defined above as the "Arbitration"). The Arbitration was conducted during the periods of September 23 through 27, 2013, January 14, 2014, and April 15, 2014. On November 11, 2014, the Arbitration panel duly constituted under the Rules of the London Court of International Arbitration rendered a final award in favor of Plaintiff and against Mr. Yegiazaryan in the total amount of $84,290,064.20 (with interest at the annual rate of eight percent, compounded quarterly, on the amount of $79,142,701.32, from November 11, 2014 until paid) (the "London Award").[2] A true and correct copy of the London Award is attached hereto as Exhibit 2.

28. On December 22, 2014, Plaintiff filed a petition with this Court to confirm the London Award and enter judgment against Ashot Yegiazaryan under the New York Convention. *Vitaly Ivanovich Smagin v. Ashot Yegiazaryan*, Case No. 2:14-cv-09764 R-PLA (C.D. Cal.), filed Dec. 22, 2014 (the "Enforcement Action"). On March 31, 2016, the Court entered a judgment in favor of Plaintiff Smagin and against Mr. Yegiazaryan in the amount of $92,503,652 (defined above as the "California Judgment").

29. On February 24, 2016, the Liechtenstein Princely Court confirmed the London Award under the

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[1] Kalken Holdings Limited, a company existing under the laws of Cyprus and controlled by Mr. Yegiazaryan, was also a respondent in the Arbitration. The London Award was issued jointly and severally as to both respondents, but confirmation was sought in this Court only as to Mr. Yegiazaryan.

[2] The London Award is a foreign arbitral award covered by the New York Convention because the place of arbitration and the place of the award is London, U.K..

New York Convention and attached Mr. Yegiazaryan's beneficial interest in the Alpha Trust to prevent him from receiving a distribution from the Alpha Trust. A true and correct copy of the German original and English translation of the Liechtenstein Princely Court's confirmation of the London Award is attached hereto as Exhibit 3. All appeals have been exhausted, and the London Award is now fully enforceable as a Liechtenstein judgment ("Liechtenstein Judgment").

30. In a subsequent Liechtenstein enforcement action, Plaintiff filed an action to attach a bundle of Mr. Yegiazaryan's rights as Protector of the Alpha Trust, including his right to appoint and dismiss trustees. The Liechtenstein trial court ruled that these rights could be attached by Plaintiff to satisfy the Liechtenstein Judgment. The Liechtenstein Supreme Court and Constitutional Court affirmed this ruling as of October 29, 2019 and all appeals are now exhausted. A true and correct copy of the German original and English translation of the October 29, 2019 Ruling is attached hereto as Exhibit 4.

31. Following this decision, a third enforcement action was filed in Liechtenstein to permit Plaintiff to seize and exercise Mr. Yegiazaryan's rights as Protector and beneficiary of the Alpha Trust. Specifically, Plaintiff sought to appoint new trustees to the Alpha Trust to replace CTX Treuhand, the prior trustee that had been appointed by Mr. Yegiazaryan. On March 2, 2020, the trial court authorized Plaintiff to appoint new trustees and dismiss CTX Treuhand. A true and correct copy of the German original and English translation of the March 2, 2020 Ruling is attached hereto as Exhibit 5. Mr. Yegiazaryan appealed the March 2 decision, but that appeal was rejected by Court of Appeal on September 15, 2020. A true and

correct copy of the German original and English translation of the September 15, 2020 Ruling is attached hereto as Exhibit 6. On October 28, 2020, Mr. Yegiazaryan filed his last remaining appeal to the Liechtenstein Constitutional Court; however, the Liechtenstein Constitutional Court appeal is a limited review of constitutional deprivations (e.g., due process and procedural fairness). A true and correct copy of the German original and English translation of the October 28, 2020 Appeal is attached hereto as Exhibit 7. Mr. Yegiazaryan's appeal brief fails to cite any valid constitutional deprivations of his rights. To the contrary, his appeal is premised on narrow complaints regarding the Court of Appeal's purported failure to rule on Ratnikov's request to intervene in the appeal, and Mr. Yegiazaryan's false assertion that he did not have the opportunity to review the Ratnikov intervention papers before the Court's ruling.

32. On November 23, 2020, however, the Liechtenstein court rejected Ratnikov's request to intervene noting that the Russian proceedings are in the "preliminary debt settlement process, not bankruptcy proceedings" and that "[Ratnikov] is trying, in an unprofessional and superficial way, to call these proceedings the bankruptcy proceedings or the proceedings on bankruptcy." The court further found that despite the "partially biased and incorrectly translated" Russian bankruptcy decision Ratnikov submitted, Ratnikov is a financial manager, not an insolvency officer authorized to make decisions, and that Plaintiff Smagin retains the right to collect his debts and manage his legal proceedings. Accordingly, the Court held that there were no bankruptcy proceedings which might warrant suspensive effect of the Court's rulings and Ratnikov's request was denied. A true and correct copy of the German original and English translation of the

November 23, 2020 Ruling is attached hereto as Exhibit 8.

33. On August 18, 2017, Plaintiff filed an action for fraudulent conveyance with this Court against Mr. Yegiazaryan and CTX Treuhand based on their fraudulent transfer of over $188 million to a Monaco bank account with CMB Bank, held by the Alpha Trust, in order to prevent Plaintiff from recovering the London Award and impending California Judgment. *Vitaly Ivanovich Smagin v. Ashot Yegiazaryan, et al.*, Case No. 2:17-cv-6126, filed Aug. 18, 2017 (the "First Fraudulent Conveyance Action").

34. On March 27, 2020, Plaintiff filed a fraudulent transfer action with this Court against Mr. Yegiazaryan and Suren in relation to Mr. Yegiazaryan's attempt to bring sham proceedings in Nevis, allowing Suren to "prevail" in the enforcement of a false debt against Mr. Yegiazaryan and divert the Alpha Trust funds, thereby precluding Plaintiff's collection from the Alpha Trust. *Vitaly Ivanovich Smagin v. Ashot Yegiazaryan, et al.*, Case No. 2:20-cv-02925-TJH-MAA, filed Mar. 27, 2020 (the "Second Fraudulent Conveyance Action").

35. On July 27, 2020, after the Liechtenstein Court authorized Plaintiff to appoint new trustees to the Alpha Trust to direct payment of the debts, Plaintiff's new trustees through Savannah Advisors, Inc.—now run by new directors who are cooperating with the Plaintiff Smagin's lawfully appointed trustees instead of doing Mr. Yegiazaryan's bidding—commenced an action in Monaco against Defendant CMB Bank for failure to effect the transfer of assets from Savannah's account at CMB Bank to Savannah's account with a Liechtenstein bank (the "Monaco Action").

GENERAL ALLEGATIONS

Mr. Yegiazaryan, Artem Yegiazaryan and Gogokhia Defraud Plaintiff Out of His Investment in the Europark Business Venture in Russia

36. Between 2003 and 2009, Mr. Yegiazaryan perpetrated a fraudulent scheme against Plaintiff to steal his shares (funds) in a joint real estate investment in Moscow called "Europark." Mr. Yegiazaryan initiated the scheme in 2003 when he approached Plaintiff about investing in Europark. Plaintiff and Mr. Yegiazaryan subsequently entered into an agreement for the division of profits in the Europark investment. In 2006, Mr. 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 Plaintiff was not involved). Plaintiff agreed to Mr. Yegiazaryan's proposal based on his assurances that Plaintiff'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, Mr. Yegiazaryan, with the assistance of his brother Artem Yegiazaryan and nominee Vitaly Gogokhia, concocted an elaborate scheme to steal Plaintiff's shares and profits, which they accomplished through a series of fraudulent transactions using offshore nominee companies and nominees to divest Plaintiff of his interests.

37. As a result of this fraud, on October 26, 2010, Plaintiff commenced arbitration proceedings in London, U.K., against Ashot Yegiazaryan for his misappropriation of Plaintiff's real estate investment and subsequent efforts to conceal his misconduct (defined above as the "Arbitration"). On November 11, 2014, the three-arbitrator panel rendered a final award in the Arbitration in favor of Plaintiff and against Mr.

Yegiazaryan in the total amount of $84,290,064.20 (defined above as the "London Award").

38. Separately Mr. Yegiazaryan, Artem Yegiazaryan, and Gogokhia were criminally indicted in Russia for their fraud against Plaintiff relating to Europark. Rather than stand trial, Ashot and Artem Yegiazaryan fled to California in 2010, where Ashot Yegiazaryan has been hiding with his cousin Suren in a mansion in Beverley Hills as a fugitive of Russia. Around the same time, Gogokhia fled to the U.K.

39. On May 31, 2018, the Russian criminal court convicted Mr. Yegiazaryan of fraud in absentia and sentenced him to seven years in prison. The Russian court also convicted Artem of fraud in absentia and sentenced him to five years in prison. The Russian court convicted Gogokhia of being an accomplice of Mr. Yegiazaryan in misappropriating Plaintiff's assets, sentencing him to four years in prison in absentia. The court held Artem and Gogokhia accountable because it found that they were part of Mr. Yegiazaryan's criminal enterprise that defrauded Plaintiff of his investment. A true and correct copy of the Russian original and English translation of the Russian Criminal Court Verdict is attached hereto as Exhibit 9. It is incorporated herein by reference as though set forth in full.

Plaintiff Pursues a Petition to Confirm the London Award in California

40. After absconding to the United States, Mr. Yegiazaryan refused to pay the London Award. Four years later, on December 22, 2014, Plaintiff filed the Enforcement Action in this Court to confirm and enforce the London Award under the New York Convention.

41. Plaintiff also sought preliminary injunctive relief in the form of an asset freeze against Mr. Yegiazaryan based on Mr. Yegiazaryan's acknowledged pattern and practice of concealing beneficial ownership of assets by holding them in the name of foreign nominee persons (such as his cousin, Defendant Suren Yegiazaryan, and his brother, Artem Yegiazaryan) or offshore shell companies. Indeed, much of the basis of the London Award rests upon Mr. Yegiazaryan's past acts to conceal and misappropriate assets from Plaintiff Smagin through the use of entities in foreign jurisdictions, including in Cyprus and the British Virgin Islands.

42. In his application for injunctive relief, Plaintiff Smagin advised this Court of one asset in particular that was a likely source of enforcement/satisfaction of the London Award. Namely, Mr. Yegiazaryan was the recipient of a substantial arbitration award in an unrelated arbitration against fellow Russian businessman Suleyman Kerimov (the "Kerimov Award"). At the time Plaintiff discovered the existence of the Kerimov Award, the funds had not yet been paid to Mr. Yegiazaryan, but past experience suggested that once those funds were received, Mr. Yegiazaryan was likely to transfer the proceeds of the Kerimov Award into some nominee relationship or entity in a foreign country in order to avoid his payment obligations to Plaintiff on the London Award.

43. On December 23, 2014, this Court granted Plaintiff Smagin's application for a temporary protective order freezing Mr. Yegiazaryan's assets in California, finding that, "based on [Plaintiff's] previous dealings with [Mr. Yegiazaryan] and on the evidence submitted with the application, the Court finds that [Plaintiff] will suffer great and irreparable injury if issuance of

the orders is delayed until the matter may be heard on notice. Accordingly, the Court will issue a Temporary Protective Order." (Order Granting in Part Plaintiff's Ex Parte Application for Right to Attach Order and Temporary Protective Order ("Temporary Protective Order" or "TRO"), Enforcement Action, ECF 9 at 3.)

44. The Temporary Protective Order provided:

> Respondent Ashot Yegiazaryan, his agents, and/or any person or entity acting under his direction and control shall not take any action to transfer, assign, conceal, diminish, or dissipate any property located in California--in an amount up to $84,290,064.20--that may be used to satisfy the foreign-arbitral award payable to Vitaly Smagin, including specifically and without limitation the amounts received or to be received by Respondent Yegiazaryan, his agents or any person or entity acting under his direction and control in payment or satisfaction of an arbitration award from Suleyman Kerimov, as well as any shares in Endrino Corporation or any other entity. (Temporary Protective Order, Enforcement Action, ECF 9 at 3.)

45. On February 3, 2015, by agreement of the parties, the TRO was converted to a preliminary injunction on the same terms. (Stipulation and Motion for Stay of Proceedings and Preliminary Injunction Preventing Transfer or Dissipation of Assets, Enforcement Action, ECF 23.) This injunction again referred specifically to the Kerimov Award proceeds and again enjoined Mr. Yegiazaryan from any actions to diminish or conceal those proceeds.

Mr. Yegiazaryan Creates a Web of Offshore Entities and a Complex Ownership Structure to Secret the Kerimov Award Settlement Proceeds and Avoid this Court's Reach

46. Unbeknownst to Plaintiff or this Court, on May 26, 2015, Mr. Yegiazaryan received $198 million dollars as settlement of the Kerimov Award. A true and correct copy of the Kerimov Settlement Agreement is attached hereto as Exhibit 10.[3]

47. To conceal the Kerimov Award settlement proceeds from Plaintiff Smagin and to avoid the Court's asset freeze in California, Mr. Yegiazaryan accepted the $198 million settlement through his attorneys in London at the law firm of Gibson, Dunn & Crutcher LLP ("Gibson Dunn"). Although Gibson Dunn was fully aware of Plaintiff's arbitration award and this Court's asset freeze—through its representation of Mr. Yegiazaryan in California on these related matters—it accepted the funds into its client trust account in London while Mr. Yegiazaryan made arrangements to promptly move the funds through some to-be-formed nominee entities and an undisclosed bank account.

[3] The majority of the documents attached as exhibits to this Complaint have been court-filed, produced and/or exchanged in the litigation between Mr. Yegiazaryan and Plaintiff Smagin. Many of the documents that were not obtained directly from Mr. Yegiazaryan were obtained from court frles in foreign jurisdictions, or from Plaintiff Smagin's counsel in those foreign jurisdictions. All are true and correct copies of the original documents. Although some of these documents were originally designated by Mr. Yegiazaryan as "Confidential" or "Attorney's Eyes Only", Mr. Yegiazaryan subsequently agreed to remove those protections to allow their public filing in the prior case.

48. To hide the Kerimov Award funds, Mr. Yegiazaryan resorted to his usual tactics of creating a complex web of offshore entities to conceal the funds, similar to the scheme he, Artem, and Gogokhia originally employed to defraud Plaintiff Smagin of his investment. To accomplish this, Mr. Yegiazaryan deployed CTX Treuhand in Liechtenstein, Defendant CMB Bank in Monaco, and Savannah in Nevis.

49. First, on May 27, 2015, Mr. Yegiazaryan executed a trust instruments establishing the "Alpha Trust," in Liechtenstein. This Trust was established for the sole purpose of holding the proceeds of the Kerimov Award settlement. Using electronic means, Mr. Yegiazaryan transmitted the related documents from California to CTX Treuhand in Liechtenstein. A true and correct copy of the Trust Instrument of the Alpha Trust is attached hereto as Exhibit 11. CTX Treuhand had crafted the Trust Instrument such that Mr. Yegiazaryan would retain complete control over the assets, at the same time, moving the Kerimov Award settlement funds to the Alpha Trust's "possession" in name only. Of course, Mr. Yegiazaryan was named as the Alpha Trust's settlor, beneficiary, investment advisor, and "Protector." As the Protector, he had unfettered power to dismiss the trustee(s) for any reason at any time and to appoint a new trustee(s)—including even himself. While CTX Treuhand was named as the Alpha Trust's initial trustee, Mr. Yegiazaryan retained the power to approve all distributions and other material actions of the Alpha Trust and its trustee.

50. Second, in addition to forming the Alpha Trust, Mr. Yegiazaryan and CTX Treuhand purchased Savannah Advisors, Inc., an off-the-shelf Nevis corporation that had been previously formed and was used

solely to create additional layers of complexity in transactions like this. Savannah Adivsors, which became a wholly-owned entity of the Alpha Trust, was created for the sole purpose of acting as a shell company that would hold the proceeds of the Kerimov Award settlement, creating another layer of entities that Plaintiff Smagin would have to pierce to recover the California Judgment.

51. Finally, Mr. Yegiazaryan and CTX Treuhand enlisted Defendant CMB Bank to establish a bank account in Monaco in the name of Savannah Advisors, which would accept, hold and shelter the fraudulent transfer of the Kerimov Award settlement (the "Monaco Account"). As was the case with the Alpha Trust, Mr. Yegiazaryan retained control over the Monaco Account and CMB Bank granted him signature authority on behalf of Savannah Advisors, even though he was not an officer or director of that entity.[4]

52. On June 5, 2015, Mr. Yegiazaryan, CTX Treuhand and Gibson Dunn transferred $188,146,102.08 of the proceeds from the Kerimov Award settlement from Gibson Dunn's client trust account to the Monaco Account held by Savannah Advisors with CMB Bank. The transfer of funds was performed with the specific intent and for the purpose of hindering, delaying and defrauding Plaintiff Smagin—who was not made aware of any of these machinations—and to prevent him from collecting the London Award and any associated judgment. In return for its services, Gibson

[4] With signatory authority and control over Savannah Advisors, Yegiazaryan has paid tens of millions of dollars to his other creditors out of the Monaco Account (e.g., his lawyers in Liechtenstein and Cyprus, and criminal accomplice Defendant Gogokhia), but has not paid anything to Plaintiff Smagin.

Dunn retained $3 million of the Kerimov Award settlement.

53. As evidence of CMB Bank's complicity in the Yegiazaryan criminal enterprise, at the time that it opened the Monaco Account CMB Bank was fully aware that Mr. Yegiazaryan was a Russian fugitive on the Interpol "Most Wanted" (red) list. CMB Bank's "diligence files" show that it knew Mr. Yegiazaryan was opening the Monaco Account to hide his assets and avoid substantial debts to creditors. These files reflect that CMB Bank knew of Plaintiff's 2010 Europark lawsuit and the $87.5 million claim against Mr. Yegiazaryan. The files also show that CMB Bank was aware that Mr. Yegiazaryan was stripped of his parliamentary immunity by the Russian State Duma shortly after Plaintiff Smagin filed his lawsuit, that Mr. Yegiazaryan was later indicted by a Moscow district court on charges of large scale fraud in 2011, a judgment which also attached Mr. Yegiazaryan's assets to compensate Plaintiff for the $87.5 million that Mr. Yegiazaryan embezzled through Europark, and that Mr. Yegiazaryan had fled to the U.S. to avoid arrest and prosecution. A true and correct copy of relevant documents from CMB Bank's due diligence files is attached hereto as Exhibit 12. Nevertheless, on information and belief, CMB Bank was handsomely paid to join the Mr. Yegiazaryan's criminal enterprise as the "bag man," to wit, the agent that would hold collect and distribute the proceed of Mr. Yegiazaryan's illicit scheme(s). In this regard, CMB Bank did what no other bank that Mr. Yegiazaryan approached would do. It looked the other way, ignoring the criminal acts committed by Mr. Yegiazaryan and took his dirty money because it wanted to profit as part of the enterprise; it received the $188 million into its Monaco branch account. On information and belief, Mr.

Yegiazaryan stood at the time, and stands to this day, as one of CMB Bank's largest and most profitable clients, accounting for approximately 20% of CMB Bank's annual holdings.

54. The formation of the Alpha Trust and Savannah Advisors, and the transfer of assets to the Monaco Account held with CMB Bank to fund these entities, were not done for legitimate commercial purposes. Rather, these seemingly legal events and happenings were in fact done with malice and fraudulent aforethought. They were acts made with the specific intent of hiding stolen assets and funds from victims and creditors of Mr. Yegiazaryan. These acts were done with the goal and purpose of hindering, delaying, or defrauding Plaintiff in violation of, inter alia, California Civil Code section 3439.04(a)(1) and common law fraudulent conveyance.

55. By and before June 5, 2015, Mr. Yegiazaryan, Gibson Dunn, CTX Treuhand, and CMB Bank all knew that Mr. Yegiazaryan owed Plaintiff over $84 million pursuant to the London Award (which amounts have grown over the years to $130 million with interest). Likewise, they were all aware (or should have been aware) that this Court had issued an asset freeze against Mr. Yegiazaryan to prevent him from once again defrauding Plaintiff Smagin by hiding collectible assets/funds (Kerimov Award) that the court had ordered frozen and not to be dispersed. They also knew that it was only a short matter of time before Plaintiff would obtain a judgment against Mr. Yegiazaryan in California confirming the London Award in the Enforcement Action.

This Court Issues a Worldwide Injunction, Confirms the London Award and Enters the California Judgment Against Mr. Yegiazaryan

56. Upon learning of the Kerimov Award settlement, Plaintiff Smagin applied to this Court for a worldwide preliminary injunction restraining Mr. Yegiazaryan from concealing or dissipating the proceeds of the Kerimov Award and settlement. On September 18, 2015, this Court granted Plaintiff's motion for an expanded preliminary injunction accompanied by expedited discovery. The Court stated: "Plaintiff believes on good authority that Defendant Yegiazaryan has secured a $100 million settlement in an unrelated case. Afraid that Defendant Yegiazaryan will attempt to conceal the proceeds of the settlement, Plaintiff asks this Court to issue an expanded preliminary injunction to prevent Yegiazaryan's concealment of assets worldwide." (Preliminary Injunction, Enforcement Action, ECF 31 at 2.) This Court concluded: "The evidence demonstrates that Plaintiff Smagin will suffer irreparable harm if the current injunction is not expanded to encompass Defendant Yegiazaryan's worldwide reach. . . . Plaintiff Smagin has provided this Court with testimony from Defendant Yegiazaryan himself where he admits to using nominees and offshore companies to conceal his assets." (Id.) Accordingly, this Court issued a worldwide injunction enjoining and preventing Yegiazaryan, his agents, and/or any person or entity acting at his direction from transferring, concealing, diminishing or dissipating property in an amount up to $84,290,064.20. This injunction again included and specifically referenced the funds received in satisfaction of the Kerimov Award.

57. Unbeknownst to Plaintiff, by the time he filed the September 2015 application to this Court to

expand the stipulated preliminary injunction to include worldwide assets, Mr. Yegiazaryan had already settled the Kerimov Award and had illegally and improperly taken steps to conceal the proceeds and place them out of reach of Plaintiff Smagin by depositing them in the Alpha Trust with the funds deposited in the CMB Bank account in Monaco, as detailed above.

58. Plaintiff did not learn of these facts until February 9, 2016, when his ex parte application to intervene in Mr. Yegiazaryan's Los Angeles Superior Court divorce proceedings was granted and Plaintiff was given access to documents improperly filed under seal in the divorce court. Review of these divorce court documents disclosed that Mr. Yegiazaryan settled the Kerimov Award while Plaintiff was pursuing enforcement of the London Award in this Court in May 2015. (See Natalia Tsagalova v. Ashot Yegiazaryan, LASC Case No. BD595136.)

59. Plaintiff also learned through a declaration filed by Mr. Yegiazaryan's wife in the divorce proceeding that Mr. Yegiazaryan, Suren and other members of their family had come up with a scheme to hide Ashot's assets in the U.S. by using shell companies owned by Suren and other members of Mr. Yegiazaryan's family. A true and correct copy of the Declaration of Natalia Tsagalova ("Tsagalova Decl.") is attached hereto as Exhibit 13. Specifically, Ms. Tsagalova stated that Mr. Yegiazaryan and Suren were involved in a complex scheme to funnel millions of dollars into the United States through various companies, including specifically Clear Voice, Inc., a company held in Suren's name. She further explained that, as part of this scheme, Mr. Yegiazaryan would transfer his assets into Clear Voice's accounts and, in turn, Clear Voice would write a check to Mr. Yegiazaryan and his wife

every month to pay for the couple's expenses under the guise of a loan. Mr. Yegiazaryan's wife also revealed in her sworn declaration that, in late 2014, Mr. Yegiazaryan sold thirteen of the couple's rental properties in the London area for nearly $17 million and had the proceeds of those sales transferred into the U.S. through Clear Voice's bank accounts.

60. Significantly, Ms. Tsagalova's testimony is corroborated by Mr. Yegiazaryan's own testimony in a separate litigation. (Tsagalova Decl. at ¶ 15, Ex. C.) In a lawsuit involving Ashot Yegiazaryan in the Southern District of New York, *Ashot Egiazaryan v. Peter Zalmayev*, Case No. 11-CV-02670, Mr. Yegiazaryan testified that he transferred $20 million to Suren. (Tsagalova Decl. at ¶ 15, Ex. C.) The federal court in that case noted Ashot's connection to Clear Voice, holding there was "clear evidence that Clear Voice is being used for Ashot's benefit" and that "Clear Voice is being used by Ashot to move money around." (Tsagalova Decl. at ¶ 17, Ex. E.)

61. On March 17, 2016, this Court granted Plaintiff's motion for summary judgment on his petition for confirmation of the London Award. On March 31, 2016, it entered judgment in favor of Plaintiff and against Mr. Yegiazaryan in the amount of $92,503,652, which included interest to the date of judgment (defined above as the "California Judgment"). (*See* Exhibit 1.)

62. The Court also granted a Post-Judgment Injunction on the same terms as before:

> Ashot Yegiazaryan, his agents, and/or any person or entity acting under his direction and control shall not take 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, derived by or held for the benefit of Ashot Yegiazaryan, his agents, nominees, trustees or any person or entity acting under his direction and control, in payment, settlement or satisfaction of an arbitration award obtained in his arbitration with Suleyman Kerimov, without prior order of the Court permitting such a transfer, including specifically the "Kerimov settlement funds" as identified in the Stipulation Re Advance Distribution of Funds executed by Petitioner and Respondent on July 6, 2015 and filed with the Los Angeles Superior Court and any proceeds of or investments made with those funds, including specifically (but not limited to) any funds held by CTX Treuhand AG, Vaduz, Liechtenstein (under Alpha Trust or otherwise, or any other trustee), with Savannah Advisors Inc., c/o Alpenrose Wealth Management (or any other investment manager) and/or in an account at Compagnie Monegasque De Banque or in any other bank or financial institution. (Post-Judgment Injunction, Enforcement Action, ECF 90 at pp. 7-8.)

63. The award and California Judgment are fully due and payable. There are no legal challenges remaining to the substance of the London Award, as Mr. Yegiazaryan's legal challenges have all been rejected. Moreover, while Mr. Yegiazaryan initially appealed this Court's award confirmation and resulting California Judgment to the Ninth Circuit Court of Appeals, he abandoned all legal challenges to the award confirmation.

Mr. Yegiazaryan and CTX Treuhand Attempt to Block Enforcement of the California Judgment Through Legal Action in Liechtenstein

64. In addition to pursuing relief in California, the jurisdiction in which Mr. Yegiazaryan is physically located and living, Plaintiff also commenced an enforcement action in Liechtenstein, the jurisdiction in which the Alpha Trust is located. On February 24, 2016, the Liechtenstein Princely Court confirmed the London Award under the New York Convention and attached Mr. Yegiazaryan's beneficial interest in the Alpha Trust to prevent him from receiving a distribution from the trust (defined above as the "Liechtenstein Judgment"). All appeals have been exhausted, and the London Award is now a fully enforceable as the Liechtenstein Judgment.

65. On September 20, 2017, Plaintiff obtained a Turnover Order from this Court requiring that Mr. Yegiazaryan turn over the assets in the Alpha Trust that are under his control to satisfy the California Judgment. (Order Granting Petitioners' Motion for Turnover of Respondent's Assets, Enforcement Action, ECF 193.) In entering the Turnover Order, the Court found:

> There is no dispute that this Court has jurisdiction over Mr. Yegiazaryan. Nor is there any dispute that Mr. Yegiazaryan has not paid the Judgment. The Award was issued nearly three years ago, and the Judgment is over a year old. The assets of the Alpha Trust remain within Mr. Yegiazaryan's reach. Mr. Yegiazaryan has retained control over the trust and may appoint and dismiss trustees at will and even appoint himself as a trustee. (*Id.* at 1, 3.)

66. Instead of complying, Mr. Yegiazaryan appealed. The Ninth Circuit held that the Turnover Order was premature on the basis that the District Court should wait for a ruling from the Liechtenstein Supreme Court determining Mr. Yegiazaryan's authority over the Alpha Trust in the Liechtenstein Action. Mr. Yegiazaryan's delay tactic worked, but only for a short time. On September 7, 2018, the Liechtenstein Supreme Court ruled in Plaintiff's favor, holding that Mr. Yegiazaryan had unrestricted control and access to the assets held by the Alpha Trust. Accordingly, he could be compelled to turn over the assets of the Alpha Trust to Plaintiff to satisfy his debts.

67. Despite the ruling in the Liechtenstein Action, Mr. Yegiazaryan again refused to pay the California Judgment from the assets of the Alpha Trust. On March 4, 2019, Plaintiff asked a second time for a turnover order directing Mr. Yegiazaryan to turn over the assets he had hidden in Liechtenstein. The Court accepted Mr. Yegiazaryan's argument that he had not exhausted his appellate remedies in Liechtenstein, thus the Court should wait until the Liechtenstein Constitutional Court resolved his limited appeal.

68. On October 29, 2019, the Liechtenstein Constitutional Court rejected Mr. Yegiazaryan's appeal. That order, like the one before it, concluded Mr. Yegiazaryan controlled the assets in the Alpha Trust.[5]

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[5] Specifically, the Court held:

> [Mr. Yegiazaryan]'s position as a protector of the Alpha Trust included partial rights, such as that [Mr. Yegiazaryan] had transferable rights under the trust deed, such as the right to consent as a protector to various rights and actions of the trustee: Termination of the trust by the trustee, to determine the beneficiaries, to delegate all rights of the trustee including its

Defendants Lodge a Coordinated, Multi-Jurisdictional Attack to Encumber the Alpha Trust

69. Recognizing that the Liechtenstein Constitutional Court's ruling marked the end of Mr. Yegiazaryan's frivolous legal maneuvers to obstruct Plaintiff's access to the Alpha Trust, Mr. Yegiazaryan hatched a scheme to block Plaintiff's recovery. This time, Suren and Gogokhia would file fraudulent claims against him in various jurisdictions—claims that Mr. Yegiazaryan would not contest—in order to obtain sham judgments that they would seek to enforce against the Alpha Trust to move the funds out of Plaintiff's reach or, at a minimum, encumber the funds. These fabricated and fraudulent judgments were designed to compete with the Liechtenstein Judgment and the California Judgment and create chaos in the courts there and in Nevis, where part of the attack by Suren and Gogokhia took place. These false judgments caused Plaintiff Smagin to have to file pleadings and present evidence in courts in the U.K., Liechtenstein, Monaco, the U.S. (California), and Nevis and incur hundreds of thousands if not millions of dollars in fees to set the

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> (alleged) discretionary power and to change the provisions of the trust deed. In addition, [Mr. Yegiazaryan] had the sole right to appoint or remove the trustees of the Alpha Trust. In addition, [Mr. Yegiazaryan] even let the trusts of the Alpha Trust (which he controls) act as asset managers of the trust. . . This execution request clearly states the overall rights to be seized, namely those of [Mr. Yegiazaryan]as trustor, protector and beneficiary of the Alpha Trust vis-à-vis the party involved. . . [B]ecause of all of these considerations, [Mr. Yegiazaryan] has been unsuccessful with any of its complaints regarding fundamental rights, so that, according to the assertion, the individual complaint cannot be accepted.

record straight and show these several courts that the so-called judgments of Suren and Gogokhia were a complete sham manufactured for the sole purpose of hindering and delaying Plaintiff Smagin's enforcement.

70. But Mr. Yegiazaryan was far from done with his tactical maneuvers against Plaintiff Smagin. After the attacks/fraudulent judgment efforts of Suren and Gogokhia failed due to active opposition from Plaintiff, Mr. Yegiazaryan first directed Defendants Natalia Dozortseva and Murielle Jouniax (together, the "Trustee Defendants") and later Alexis Gaston Thielen to try and reclaim control of the Alpha Trust, Savannah Advisors, and the Monaco Account for Mr. Yegiazaryan. These Trustee Defendants falsely held themselves out to be legally appointed trustees of the Alpha Trust and sought to intervene in legal proceedings in Nevis and Monaco allegedly protecting the interests of the Trust but in actuality seeking to advance only the interests of Mr. Yegiazaryan and his criminal enterprise. Similarly, Thielen falsely declared himself the Protector of the Alpha Trust. They lied and misrepresented their credentials, the nature of the dispute between Plaintiff, Mr. Yegiazaryan, the Alpha Trust and more, all with the goal of furthering the Yegiazaryan syndicate and denying victims of the syndicate the relief and recourse they are due and owed.

71. Mr. Yegiazaryan also directed Ratnikov to try and block Plaintiff's ability to recover his judgment by fraudulently holding himself out as a Russian insolvency officer and falsely claiming that he has the authority to take over Plaintiff's enforcement action against Mr. Yegiazaryan. He also directed Ratnikov to intervene in a Monaco proceeding under the same fraudulent auspices, which he did, and that

intervention successfully delayed Plaintiff Smagin's ability to gain access to the Alpha Trust funds in Monaco.

72. As part of this coordinated effort: (1) Suren commenced a proceeding against Mr. Yegiazaryan in the Caribbean Island of Nevis for the assets of the Alpha Trust, (2) Gogokhia commenced a legal proceeding against Mr. Yegiazaryan in the United Kingdom for the assets of the Alpha Trust, (3) Dozortseva and Jouniaux sought to seize control of the Alpha Trust by fraudulently holding themselves out as "trustees" to the Courts of Nevis and Monaco, (4) Dozortseva enlisted Ryals and Prestige to sow confusion and give CMB Bank the pretext excuse it needed to refuse to transfer the funds owned by Savannah Advisors and the Alpha Trust, (5) CMB Bank refused to acknowledge Plaintiff's validly appointed trustees of the Alpha Trust and Directors of Savannah or make any transfer of funds of Savannah as requested by them, (6) Stephan commenced an action in Liechtenstein seeking to remove Plaintiff's appointed trustees of the Alpha Trust, (7) Ratnikov, in coordination with Mr. Yegiazaryan, Stephan Yegiazaryan and Dozortseva, has attempted to intervene in the Enforcement Action, Liechtenstein actions and Savannah's action against CMB Bank in Monaco, asserting false claims that he has the right to control Plaintiff's assets, including his interest in the Alpha Trust, and (8) Thielen has fraudulently held himself out as the new "Protector" of the Alpha Trust and directed the removal of Plaintiff's lawfully appointed trustees.

Defendants Execute a Fraudulent Agreement and Defendant Suren Yegiazaryan Files a False Claim Against the Assets of the Alpha Trust in Nevis

73. In an attempt to move their tactics to the Caribbean Island of Nevis and other jurisdictions, Mr. Yegiazaryan, his brother, Artem, and his cousin, Suren, fabricated a handwritten "agreement," purportedly entered into on February 20, 2011. A true and correct copy of the 2011 agreement typewritten in Russian and translated to English is attached hereto as Exhibit 14.

74. Pursuant to the fraudulent and trumped up agreement, Suren supposedly provided Mr. Yegiazaryan with a "personal loan" to pay for legal and living expenses—but in an amount no greater than $20 million—in exchange for one-third of the $180 million Kerimov Award settlement. The agreement also purportedly required Mr. Yegiazaryan to "compensate" Suren for tens of millions of losses caused to Suren by others that were unrelated to Mr. Yegiazaryan.

75. For his part, Artem was purportedly required to "fund necessary legal procedures, as well as to render, if necessary, any other financial support" to Mr. Yegiazaryan also in an amount up to $20 million, including expenses in the amount of €550,000 previously paid by Artem. This "loan" was also in exchange for one-third of the $180 million Kerimov Award settlement and required Mr. Yegiazaryan to "compensate" Artem for losses related to "Sofiyskaya Embankment", another project with which Mr. Yegiazaryan had no involvement.

76. Per the agreement, both Suren and Artem were required to "take part in hearings in the court and render other feasible assistance to [Mr. Yegiazaryan]."

77. Just days after Plaintiff's victory in the Liechtenstein Constitutional Court in October 2019, Suren filed a sham action in the Eastern Caribbean Supreme Court (St. Christopher and Nevis) claiming that he was entitled to $180 million based on the fabricated 2011 agreement with Mr. Yegiazaryan (the "Nevis Action"). A true and correct copy of Suren's November 5, 2019 Nevis Claim filing is attached hereto as Exhibit 15. Significantly, neither Mr. Yegiazaryan nor Suren ever disclosed this purported agreement to Plaintiff prior to the Liechtenstein ruling, nor had Suren or Artem ever tried to enforce the alleged agreement against Mr. Yegiazaryan. That is because the agreement is a post-hoc sham concocted to encumber the Alpha Trust. The "funds" Suren and Artem purportedly provided to Mr. Yegiazaryan were not theirs to begin with, but were funneled from Mr. Yegiazaryan through his companies and surrogates for use by him and his syndicate.

78. When Plaintiff learned of this baseless Nevis Action, he brought a motion to clarify the Post-Judgment Injunction ("Motion to Clarify") in the Enforcement Action, requesting that this Court clarify the scope of the Post-Judgment Injunction and its application to the coordinated effort between Mr. Yegiazaryan, Artem, and Suren to encumber the Alpha Trust. In their Oppositions to the Motion to Clarify, Mr. Yegiazaryan and Suren fraudulently misrepresented to the Court and Plaintiff that they were not working together in Nevis and that Mr. Yegiazaryan was opposing the Nevis Action. But that claim was demonstrably false.

79. In January 2020, Suren filed an application for default judgment, which was set for hearing on March 9, 2020. Although Mr. Yegiazaryan represented to this

Court that he was opposing the Nevis Action, Mr. Yegiazaryan did not contest Suren's request for default judgment and instead allowed the Nevis Court to enter a $180 million judgment against him. In addition, Defendants intentionally misrepresented the status of the Nevis Action and concealed these facts from both Plaintiff and the Court as part of a calculated effort to circumvent this Court's order and move the funds out of the Alpha Trust before Plaintiff could reach the assets. Indeed, on April 3, 2020, Suren took his fraudulently obtained default judgment in the Nevis Action to the Monaco Courts and sought a freeze of the Monaco Account held with Defendant CMB Bank.

Defendant Vitaly Gogokhia's Files a Fraudulent Claim Against the Assets of the Alpha Trust in the United Kingdom

80. At the same time that Suren was pursuing fabricated claims in Nevis, Defendant Vitaly Gogokhia, a long-time nominee and convicted accomplice of Mr. Yegiazaryan, was pursuing another sham lawsuit against Mr. Yegiazaryan in the U.K. Like Suren's bogus Nevis Action, Gogokhia's claim was based on a fabricated "agreement" with Mr. Yegiazaryan, but this time Mr. Yegiazaryan and Gogokhia did not even bother to forge a written document and instead claimed they had an "oral" agreement to compensate Gogokhia for his purported investments in Mr. Yegiazaryan's real estate projects through payments from the Alpha Trust—despite the fact that Mr. Yegiazaryan had already paid Gogokhia $5 million from the Alpha Trust. As was the case with Suren's Nevis Action, Mr. Yegiazaryan did nothing to oppose Gogokhia's claim. Instead, in October 2019 Mr. Yegiazaryan and Mr. Gogokhia entered a *stipulated*

judgment of £149 million in favor of Gogokhia—an amount that, after conversion, would equal approximately $180 million, roughly corresponding with the amount of funds in the Alpha Trust.

81. On December 9, 2019, Gogokhia sought to enforce his U.K. stipulated judgment in Nevis "against" Mr. Yegiazaryan. On March 13, 2020, Gogokhia filed an ex parte application in Nevis seeking a freeze of Savannah Advisor's assets held in Monaco bank accounts, *i.e.*, the Alpha Trust funds. A true and correct copy of Gogokhia's March 13, 2020 Freezing Order Affidavit is attached hereto as Exhibit 16. According to Gogokhia's pleadings, Mr. Yegiazaryan did not object to his action to confirm the stipulated judgment in Nevis or freeze the Alpha Trust assets in Nevis against Savannah Advisors and in Monaco against the Alpha Trust. Gogokhia further instructed Defendant CMB Bank that it was not to release any of the funds of the Monaco Account to Plaintiff. CMB Bank complied.

82. Plaintiff Smagin is not aware of any actions brought by Artem to enforce the purported agreement against the Alpha Trust to date; however, despite the Clarifying Order, Artem still has not disavowed the agreement, and thus an action by Artem in a foreign jurisdiction similar to that brought by Suren in Nevis is possible and could be brought at any time.

Defendants Natalia Dozortseva and Murielle Jouniaux Attempt to Seize Control of Savannah Advisors and the Alpha Trust Funds to Block Plaintiff's Efforts to Transfer the Funds to a Liechtenstein-Based Bank

83. On March 2, 2020, the Princely Court of Liechtenstein issued an order awarding Plaintiff the power to remove CTX Treuhand as the trustee of the

Alpha Trust and to appoint his own trustees. The order also authorized Plaintiff to demand distribution from the Alpha Trust in satisfaction of the Liechtenstein Judgment. Following this order, Plaintiff nominated two trustees to the Alpha Trust: Rudolf Schächle and Raphael Näscher. Mr. Yegiazaryan appealed the March 2nd decision, but his appeal was rejected by the Court of Appeal on September 15, 2020. The only remaining appeal available to Mr. Yegiazaryan was a limited appeal focusing on constitutional deprivations (e.g., due process and procedural fairness) to the Liechtenstein Constitutional Court.

84. On March 30 and 31, 2020—in direct disregard of the Liechtenstein court's multiple orders eliminating Mr. Yegiazaryan's authority over the Alpha Trust, and without any authority whatsoever to do so—Mr. Yegiazaryan purported to "appoint" Artur Airapetov and Defendant Natalia Dozortseva as trustees of the Alpha Trust by executing two "Instruments of Appointment of Additional Trustees"; he also attempted to add his children (including Defendant Stephan Yegiazaryan) as beneficiaries of the Alpha Trust. True and correct copies of the March 30 and 31, 2020 Appointments of Additional Trustee are attached respectively hereto as Exhibit 17 and Exhibit 18 respectively. The Instruments of Appointment were signed by Mr. Yegiazaryan and apparently sent to his false-trustee counterparts in France and Russia, where the false trustees signed the documents. On April 16, 2020, Mr. Yegiazaryan removed Mr. Airapetov due to health reasons and replaced him with Defendant Murielle Jouniaux as an additional "appointed" trustee of the Alpha Trust. A true and correct copy of the April 16, 2020 Appointment of Additional Trustee is attached hereto as Exhibit 19. Dozortseva (together with Jouniaux, the "Trustee

Defendants") thereafter filed claims in Nevis seeking to seize control of Savannah Advisors and prevent Plaintiff from accessing the Alpha Trust assets in the Monaco Account. In so doing, they radically misrepresented the dispute between Mr. Yegiazaryan and Plaintiff Smagin, the state of legal affairs as between them, the status and purpose of the relevant entities, and mischaracterized the legal instruments involved.

85. Significantly, on April 27, 2020, the Liechtenstein Office of Justice removed Dozortseva and Airapetov from the Liechtenstein Public Registry following a finding that Mr. Yegiazaryan lacked the authority to appoint them. As it turns out, Defendant Jouniaux was never even registered in the Liechtenstein Public Registry as a trustee of the Alpha Trust. Notwithstanding that removal, the Trustee Defendants continue to hold themselves out as trustees of the Alpha Trust in Nevis, Liechtenstein and Monaco. Moreover, despite knowing that the Trustee Defendants are not authorized appointees of the Alpha Trust, CMB Bank continued to feign ignorance, take spurious legal positions, and wrongfully withhold the Monaco Account funds from the rightful Trustees of the Alpha Trust, as part of Defendants' scheme to defraud, hide, and withhold critical funds from Mr. Yegiazaryan's victims, falsely claiming that it must do so based on the Trustee Defendants' obviously fabricated claims. Following this removal, on July 27, 2020, the Liechtenstein Princely Court commenced an investigation into Dozortseva on the basis that she was "suspected of having committed an offence according to sec. 228 par. 1 of the Penal Code" in connection with her conduct with regard to the Alpha Trust. Mr. Yegiazaryan and several of his other accomplices are similarly under criminal investigation in Liechtenstein.

86. On July 20, 2020, Dozortseva filed an ex parte application in the Nevis Court seeking an order (1) appointing herself as a director of Savannah Advisors, (2) restraining Savannah Advisors' exercise of authority over its assets and administration without her written consent, and (3) permitting her to intervene in an action between Savannah Advisors and its registered agent in Nevis, Prestige Trust Company, LTD.

87. On July 3, 2020, Dozortseva's counsel sent a letter to CMB Bank instructing it to disregard the instructions of Plaintiff Smagin's appointed trustees Schächle and Näscher and not to transfer any Alpha Trust funds held in the Monaco Account.

88. On August 5, 2020, knowing the falsehood of Dozortseva's appointment, in its Defense and Counterclaims filed in Monaco, CMB Bank relied on Dozortseva's July letter as the basis of its refusal to transfer of Alpha Trust funds held in the Monaco Account. A true and correct copy of the French original and English translation of CMB Bank's Defense and Counterclaims is attached hereto as Exhibit 20.

Dozortseva Deploys Prestige and Ryals to Impede Savannah Advisors and Block the Lawful Transfer of Alpha Trust Funds from CMB Bank

89. On July 2, 2020, Prestige sent a letter, executed by H. Edward Ryals, to CMB Bank. The July 2, 2020 letter stated that Ryals "[understood] there was a legal dispute over" the Alpha Trust funds held by Savannah Advisors and had "been directed to ask that we place a hold on the change of directors until the court solves the dispute between the parties." A true and correct copy of July 2, 2020 Letter is attached hereto as Exhibit 21. On information and belief, this letter was

sent as a deliberate falsehood and was sent as part of Mr. Yegiazaryan's scheme to defraud the court, delay the legal proceedings, and further the goals and purpose of the Yegiazaryan syndicate.

90. Also on July 2, 2020, Stevyn Bartlette, managing director of Prestige, emailed Walkers Global, counsel to Savannah Advisors, stating that he had received "alarming news" that Dozortseva and Mr. Yegiazaryan were requesting to be added as directors of Savannah Advisors, and asked, "Who are these people?" A true and correct copy of July 2, 2020 Email is attached hereto as Exhibit 22.

91. On July 15, 2020, a second letter, also executed by Ryals and sent on behalf of Prestige, was sent to CMB Bank. This letter stated: "It is our position that the underlying litigation in Liechtenstein and Nevis should decide who are the officers and directors of Savannah Advisors, Inc. It is our view that the Certificate of Incumbency appointing directors on the 31st of March 2020 should not be used for the purpose of bank signatory accounts in the name of the company until the courts in Liechtenstein and Nevis have ruled on the issue." A true and correct copy of July 15, 2020 Letter is attached hereto as Exhibit 23. On information and belief, this letter was sent as a deliberate falsehood and was sent as part of Mr. Yegiazaryan's scheme to defraud the court, delay the legal proceedings, and further the goals and purpose of the Yegiazaryan syndicate.

92. A declaration filed by Dozortseva in Nevis and a series of communications attached to Dozortseva's filings in Nevis—true and correct copies of which are attached hereto as Exhibit 24 and Exhibit 25, respectively—demonstrate that the July 2, 2020 and July 15, 2020 letters were procured through the efforts

of Dozortseva and her counsel, and, on information and belief, they were sent at the request of the Yegiazaryan syndicate for its benefit:

a. On May 15, 2020, counsel for Dozortseva sent a letter to Prestige, asserting that "after the dismissal of CTX by Mr. Smagin, [Mr. Yegiazaryan] was entitled to appoint new trustees" and that "the appointment of Mr. Schachle and Mr. Nascher by Mr. Smagin is not valid in our opinion[.]" The letter further states that for these reasons, Prestige must "refrain from any actions with regard to the assets, shares and management of Savannah without explicit consent of our client[.]"

b. On July 1, 2020, Dozortseva contacted Kevin Wessell of General Corporate Services, Inc., whom she believed was a representative of Prestige, and requested to speak to him about Prestige. Sometime shortly thereafter, Dozortseva had a conference call with Mr. Wessel in which she informed him that Savannah Advisors' directors were not properly appointed. (See Exhibit 22.)

c. On July 2, 2020, Dozortseva sent an email to Mr. Wessell, Mr. Bartlette, and Dozortseva's counsel in Nevis, Monaco, and Liechtenstein, in which she thanked Mr. Wessell for the conference call and his affirmation that Prestige is "a firm that always complies with the law and would never assist the fraudulent party." Dozortseva also stated that she intends to file an ex parte application in Nevis and requested that Mr. Wessell send her the "exact names of current shareholders of Savannah Advisors Inc." to bring before Nevis court.

d. On July 2, 2020, Mr. Wessell sent an email to Mr. Bartlette, Dozortseva, and an unknown party at trustcontact15@gmail.com appearing to attach the trustee appointments of Jouniaux and Dozortseva and stating: "Here is the very request to urgently add the new directors to Savannah Advisors."

e. On July 15, 2020 (the same date reflected on the second letter sent by Ryals), Ryals sent an email to Dozortseva: "As discussed, please find attached the correspondence that we discussed."

93. On July 21, 2020, Walkers Global sent a letter to Prestige, informing it that CMB Bank notified Savannah Advisors that it received the July 2, 2020 from Ryals and that, as a result of the letter, CMB Bank placed a freeze on Savannah Advisors' account holding the Alpha Trust funds. Walkers also reminded Prestige of its duties as an agent of Savannah Advisors and demanded that Prestige execute a letter to CMB Bank correcting the false information contained in the July 2, 2020 letter. A true and correct copy of July 21, 2020 Letter is attached hereto as Exhibit 26.

94. On July 28, 2020, Mr. Bartlette emailed Savannah Advisors, informing it that Prestige does not take responsibility for the false letter:

> As indicated, we have nothing to do with the letter submitted to the bank and we would not take any responsibility for that. Also, the contents of that letter would suggest that the bank did not act professional as a bank should. How can someone just submit a letter like this with no supporting documents, and the bank accepts that? We would not take responsibility for the bank taking such decision.

95. Mr. Bartlette agreed to draft a correction letter explaining that the July 2, 2020 letter to CMB Bank was fraudulent, but informed Savannah Advisors that there would be a "fee" for this correction. A true and correct copy of July 28, 2020 Email is attached hereto as Exhibit 27.

96. Despite Prestige's agreement to provide a corrective letter, Dozortseva and her counsel continued to put pressure on Ryals. On August 4, 2020, Dozortseva's attorney, Natasha Grey, requested that Ryals "issue fresh correspondence" detailing Dozortseva's understanding that Ryals "would have issued some documentation prior to Nevis court proceedings being filed – namely, a fresh directors register and certificate of incumbency, that the named directors (JGT Treuuntemehmen reg. and Silvio Vogt) has no powers to act on behalf of Savannah Advisors Inc., and that both of these documents cannot be relied on by any party."

97. On August 4, 2020, Mr. Ryals responded to Ms. Grey's email: "This will confirm that I wrote and executed the July 15, 2020 letter that is attached to your email. I am also aware that there is ongoing litigation in several jurisdictions." A true and correct copy of August 4, 2020 Email is attached hereto as Exhibit 28.

<u>The Court Finds that Mr. Yegiazaryan, Suren, Artem, Gogokhia and Mr. Yegiazaryan's Trustees Were Acting in Concert to Prevent, Hinder or Delay Plaintiff's Judgment</u>

98. On April 1, 2020, this Court issued its order on Plaintiff's Motion to Clarify the scope of the Court's post-judgment injunction (the "Clarifying Order"). (Enforcement Action, ECF 245.) The Court found that

Mr. Yegiazaryan, Artem, Suren, and Gogokhia were acting in concert and must cease their actions to prevent, hinder and delay Plaintiff's ability to collect on the assets of the Alpha Trust:

> Mr. Yegiazaryan, his cousin Suren Yegiazaryan, his brother Artem Yegiazaryan, Vitaly Gogokhia, the trustees of the Alpha Trust and any others acting on behalf of Mr. Yegiazaryan, directly or indirectly, including but not limited to attorneys or nominees for each of these parties must immediately cease all actions in Nevis or any other jurisdiction that would prevent, hinder, or delay Mr. Smagin'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.
>
> To the extent any such enforcement actions have already begun, they must be immediately stopped and any funds held by or on behalf of Suren Yegiazaryan or Judgment Debtor Yegiazaryan must be immediately returned to the Monaco Bank Account of Savannah Advisors, or any other location, from which they came. (Clarifying Order, Enforcement Action, ECF 245 at 8.)

99. Based on Defendants' ongoing violations of the Post-Judgment Injunction, on July 9, 2020 this Court issued another order imposing additional restrictions on Defendants:

> The Court . . . prohibits Defendant, or his trustees, associates, attorneys or agents, from making or attempting to make any further modifications to the Alpha Trust, including

> but not limited to the addition or substitution of trustees or beneficiaries, without first obtaining this Court's approval. It likewise prohibits Defendant from making any attempt to alter or amend the administration of either the company Savannah Advisors or the Monaco bank account, or from taking any further actions with respect to those entities, without this Court's approval. To the extent that any such acts are in progress, they must be stopped.

The Court Finds Mr. Yegiazaryan in Contempt of Court

100. As a result of Dozortseva's attempt to intervene in Nevis, on September 16, 2020, this Court found Mr. Yegiazaryan in contempt of the July 9 and April 1 Orders ("Contempt Order"). (Enforcement Action, ECF 315.) Pursuant to the Contempt Order, Mr. Yegiazaryan was required to order Dozortseva to withdraw her application and related filings seeking to intervene Nevis "or elsewhere seeking relief related to the Alpha Trust and/or Savannah Advisors." (ECF 315 at 6.) In the event Dozortseva failed to comply, Mr. Yegiazaryan was required to remove her as a trustee. Failure to provide the Court with proof of compliance within seven days would result in the issuance of sanctions in the amount of $2,000 a day.

101. Following the Contempt Order, Dozortseva refused to withdraw her action in Nevis and, in violation of the order, Mr. Yegiazaryan did not remove Dozortseva. Instead, on September 23, 2020, Mr. Yegiazaryan falsely claimed that he was too ill to sign a document removing her. (Enforcement Action, ECF 320.) In an attempt to bolster this story, on September 29, 2020, Mr. Yegiazaryan submitted to the Court a

falsified or altered "doctor's note" from Dr. Julia Sverdlova of Medistar, Inc. purporting to support of his claims of illness. (Enforcement Action, ECF 326-1, 326-2.)

102. Believing that the "doctor's note" was forged, on October 7, 2020, Plaintiff served Mr. Yegiazaryan with notice that Plaintiff would be taking the deposition of Dr. Sverdlova and requesting that she produce documents relating to her purported treatment of Mr. Yegiazaryan's alleged medical emergency pursuant to a deposition subpoena. Plaintiff believes that Mr. Yegiazaryan, upon receiving notice of the subpoena, knowingly used intimidation, threats, or corrupt persuasion to influence Dr. Sverdlova, a witness residing in California, to avoid service of the subpoena with the intent to delay or prevent her from providing documentary and testimonial evidence in connection with the Enforcement Action. Sverdlova now claims she has a medical condition that prevents her from being deposed.

103. Despite apparently no longer suffering from any purported medical emergencies, Mr. Yegiazaryan still has not removed Dozortseva as a "trustee" of the Alpha Trust. Dozortseva has continued to interfere with the proceedings in Nevis and Monaco along with Ratnikov.

Mr. Yegiazaryan Purports to Appoint Thielen as "Protector" of the Alpha Trust

104. Although Mr. Yegiazaryan represented to the Court on September 23, 2020 that he was too ill to execute a document removing Dozortseva as a trustee, that very same day he executed a Notice of Transfer of Powers of the Alpha Trust purporting to appoint Defendant Alexis Gaston Thielen as Protector of the

Alpha Trust, despite having no authority whatsoever to do so. Thus, not only were his representations to the Court regarding his inability to sign documents removing Dozortseva demonstrably false, but, even in the face of contempt sanctions, he has continued to further his scheme to hinder, delay and defraud Plaintiff. A true and correct copy of the September 23, 2020 Notice of Transfer of Powers of the Alpha Trust Instrument is attached hereto as Exhibit 29.

105. On October 28, 2020, Defendant Thielen executed an Instrument of Removal, purporting to remove the Trustees Schächle and Näscher for failing to "act unanimously" with Dozortseva and Jouniaux. A true and correct copy of the Instrument of Removal is attached hereto as Exhibit 30.

CMB Bank Knowingly Perpetuates Defendants' Fraud

106. On July 3, 2020, Plaintiff's legally appointed directors of Savannah Advisors directed CMB Bank to transfer the assets of the Alpha Trust from the Monaco Account at CMB Bank to a Liechtenstein account of Savannah Advisors. Rather than complying with the request, CMB Bank schemed with Mr. Yegiazaryan to hinder, delay or defraud Plaintiff in the collection of and execution on his $92 million judgment. This makes sense, of course, because CMB Bank was selected by Mr. Yegiazaryan precisely for its willingness to defy fair and reasonable banking practices, to collaborate with Mr. Yegiazaryan to further his criminal syndicate, and to benefit financially by participating in his fraudulent schemes and hiding of assets and funds.

107. In furtherance of Defendants' scheme, CMB Bank refused to make any transfer of funds to Liechtenstein on the basis that Suren, Gogokhia and Dozortseva also had claims pending against the

Monaco Account's assets. CMB Bank was fully aware that these claims were false and fraudulent, as evidenced by the numerous notifications of such provided to CMB Bank, including orders from several courts (including this court). However, for pretextual purposes, CMB Bank relied on the bogus claims of Mr. Yegiazaryan and his nominees to refuse to release the funds, and that forced Trustees Schächle and Näscher to order the Directors of Savannah to commence the Monaco Action against CMB Bank.

108. All of CMB Bank's actions (among others) evidence its notice and knowledge that its receipt of the Kerimov Award proceeds and its subsequent retention of those funds for the benefit of Mr. Yegiazaryan and the syndicate were fraudulent. Despite having this knowledge, CMB Bank created the Monaco Account and accepted payment from Mr. Yegiazaryan and Gibson Dunn in an effort to obstruct Plaintiff's ability to reach the funds in satisfaction of the London Award and the subsequent California Judgment. It continues to follow Mr. Yegiazaryan's instructions, and those of his nominees, by exchanging full information and documents with Mr. Yegiazaryan, Dozortseva and others on their behalf, and refusing to release the funds to Savannah Advisors with absolutely no basis and based on claims that it knows to be false and fraudulent. Indeed, CMB Bank refuses to send even simple account statements to the legally appointed directors of Savannah Advisors, but still sends these statements to CTX Treuhand, the former directors, despite the fact that CTX Treuhand has confirmed in writing that Schächle and Näscher were the new directors of Savannah Advisors.

Defendant Stephan Yegiazaryan Asserts a Fraudulent Claim to Remove Plaintiff's Appointed Trustees in Liechtenstein

109. On August 5, 2020, well after the Court ordered Suren and Gogokhia to cease their actions, Stephan Yegiazaryan—Ashot Yegiazaryan's son and purported discretionary beneficiary of the Alpha Trust—filed a fraudulent "Report" in the Princely Court of Justice in Liechtenstein seeking to remove Trustees Schächle and Näscher as trustees of the Alpha Trust and prohibit them from transferring any of the assets from the Monaco Account. A true and correct copy of the German original and English translation of the August 5, 2020 Report is attached hereto as Exhibit 31. Stephan's Report was filed in furtherance of Defendants' scheme to hinder, delay or defraud Mr. Yegiazaryan's creditors.

110. On August 24, 2020, the Liechtenstein Court rejected Stephan's requests and ordered him to reimburse Plaintiff and Trustees Schächle and Näscher for their costs of litigation. A true and correct copy of the German original and English translation of the August 24, 2020 Ruling is attached hereto as Exhibit 32.

Defendant Ratnikov Evgeny Nikolaevich Injects Himself into the Enforcement Action, Liechtenstein Action and Monaco Action

111. On August 20, 2020, the Arbitrazh [State Commercial] Court of Moscow ("Moscow Commercial Court") commenced a debt restructuring process against Plaintiff and appointed Ratnikov as financial manager of the proceedings (Case No. A40-17597/20-4-36 Ф). The approximately $15 million in debts at issue in the proceedings—primarily outstanding loans

granted to Plaintiff to fund attorneys' fees during the LCIA litigation—arose out Plaintiff decades years-long effort to recover on the London Award and resulting California and Liechtenstein judgments and to protect the Alpha Trust funds against attacks from Mr. Yegiazaryan and his associates.

112. The debt restructuring phase of Russian bankruptcy proceedings is the first phase of a two-stage proceeding. During this stage, Plaintiff is not declared bankrupt and Ratnikov is not entitled to dispose of Plaintiff's assets or take over legal proceedings or Judgments Plaintiff Smagin is bringing or pursuing.

113. On information and belief, Ratnikov is colluding with Mr. Yegiazaryan to try to reduce or nullify his debt and judgments to Plaintiff Smagin. They are conspiring together by sharing information and working in tandem together for the improper purpose of delaying and hindering Plaintiff's enforcement efforts. On September 7, 2020, Ratnikov, in collusion with Mr. Yegiazaryan, sent a "notification" letter to CMB Bank ("Notification Letter") requesting that CMB Bank prevent any transfer of the Alpha Trust funds by Plaintiff, on his behalf, or in his favor and "impose a ban on the disposal of the funds of the Alpha Trust" by Plaintiff. The question must be asked, why would Ratnikov, a supposed financial manager who claims to be trying to deal with debt of Plaintiff Smagin that is estimated at $15 million try to stop or block Smagin from recovering over $100 million in funds from the Alpha Trust, an amount that could easily cover the debt he is supposedly addressing? The answer is that Ratnikov is not a bona fide, impartial financial manager. Rather, he is an agent of Mr. Yegiazaryan's enterprise working to impede Plaintiff Smagin's debt collection. A true and correct copy of the French

original and English translation of the Notification Letter of Ratnikov to CMB, which were attached to Dozortseva's Nevis Filing, is attached hereto as Exhibit 33. As evidence of Ratnikov's collusion with the Yegiazaryan syndicate, on September 7, 2020, Ratnikov emailed his Liechtenstein intervention papers to Mr. Yegiazaryan's counsel in advance of his submission to the Liechtenstein courts. A true and correct copy of the September 7, 2020 Ratnikov Email is attached hereto as Exhibit 34.

114. In addition, Ratnikov is over-stating his credentials to delay and excuse critical court proceedings that Plaintiff Smagin is pursuing to recover the Liechtenstein Judgment and California Judgment. For example, on September 8, 2020, counsel for Ratnikov informed the Court in the Enforcement Action via email that Ratnikov intended to intervene in the action to supplant Plaintiff in the case and assume his rights to recover on the California Judgment. Ratnikov's counsel also falsely claimed that Ratnikov is an insolvency offer and that Plaintiff had been deemed bankrupt by the Russian courts. Less than twenty minutes later, counsel sent a follow-up email acknowledging that the bankruptcy proceedings are in the early stages, but still asserted that "a claim to declare Mr. Smagin insolvent has been found to be justified." A true and correct copy of the September 8, 2020 Ratnikov Emails is attached hereto as Exhibit 35.

115. On September 11, 2020, Ratnikov filed a Request for Interruption in the Liechtenstein courts to replace Plaintiff in Plaintiff's pending action to enforce the Liechtenstein Judgment against the Alpha Trust.

116. On September 14, 2020, Ratnikov filed a Motion to Intervene in the Enforcement Action.

(Intervention Motion, Enforcement Action, ECF 312.) Ratnikov argued that intervention was necessary to "monitor" and "consent to" Plaintiff's transactions, despite the fact that there are no transactions before the Court or pending in the Enforcement Action. Ratnikov also claimed that he may be required to sell Plaintiff's rights under the London Award, even though he admitted he had no such authority at this time.

117. On September 18, 2020, Dozortseva attached Ratnikov's Notification Letter to a filing she made in Nevis. On information and belief, Mr. Yegiazaryan put the Ratnikov Notification Letter in Dozortseva's hands as part of his coordination of the enterprise efforts to thwart Plaintiff Smagin.

118. On September 24, 2020, in a filing in the Monaco Action, CMB Bank cited Ratnikov's Notification Letter as a reason why it should not turn over the Alpha Trust funds to Savannah.

119. In a further effort coordinated by Mr. Yegiazaryan, on September 30, 2020, Ratnikov appeared with Dozortseva in the Monaco Action seeking to intervene in that case and urging the Court to freeze the assets of the Alpha Trust so that Plaintiff could not reach them.

120. On October 5, 2020, Ratnikov filed a declaration in the Monaco Action seeking to intervene on these bases. A true and correct copy of French original and English translation of Ratnikov's October 5, 2020 Monaco Action Declaration is attached hereto as Exhibit 36.

121. On October 15, 2020, Ratnikov's counsel sent a letter to Trustees Schächle and Näsche Rudolf stating that, at this stage in the bankruptcy proceedings,

Ratnikov "is obliged to control the assets of [Plaintiff] and his (intended) asset dispositions." Ratnikov's counsel further informed the Trustees that the transfer of the Alpha Trust assets from Monaco to Liechtenstein is "illegal" and threatened the Trustees—claiming they will be "held accountable" if such transfers are made. A true and correct copy of the German original and English translation of the Trustee Letter is attached hereto as Exhibit 37.

122. It is apparent from his filings and appearances that Ratnikov is privy to nonpublic information regarding the litigation between Mr. Yegiazaryan and Plaintiff and relating to the Alpha Trust and that he came about these documents and this information from Mr. Yegiazaryan. Notably, the dockets in Liechtenstein and Monaco are not open to the public, and therefore Ratnikov must have been informed of those proceedings by a party to the proceedings or someone with knowledge thereof. On information and belief, it was through Mr. Yegiazaryan. Further, in the Monaco Action, Ratnikov produced copies of the London Award and the Liechtenstein Court's March 2, 2020 ruling, which were not publicly filed and are not in Plaintiff's possession. These documents could only have been provided to Ratnikov by Mr. Yegiazaryan.

123. On October 7, 2020, Ratnikov's counsel emailed a letter to Plaintiff Smagin's counsel stating that he was aware that Mr. Yegiazaryan had deposited $12,000 in contempt sanctions in a client trust account with Plaintiff's counsel. Again, this information was not public and the only way Ratnikov could have obtained it is from Mr. Yegiazaryan or his counsel. A true and correct copy of the October 7th Letter is attached hereto as Exhibit 38.

124. On October 15, 2020, Ratnikov's counsel sent an additional letter to counsel for Plaintiff Smagin claiming that Plaintiff's counsel could not continue to represent him and asserting, without any basis, that Mr. Yegiazaryan was now subject to Russian bankruptcy proceedings that prevented Plaintiff from recovering from Mr. Yegiazaryan. A true and correct copy of the October 15th Letter is attached hereto as Exhibit 39. However, there is no legitimate basis for this claim and, what is more, Ratnikov's position directly contradicts his assertion that he is a purported insolvency officer acting for the benefit of Plaintiff's creditors in Russia. Indeed, as noted above, if he was acting in the interest of such creditors, he would do everything in his power to assist Plaintiff in recovering the judgment from Mr. Yegiazaryan to pay those creditors, not obstruct Plaintiff's ability to enforce his judgment. This is, of course, because he is not a legitimate agent of the Russian court as he holds himself out to be, but rather is yet another agent in Mr. Yegiazaryan's army of nominees; Ratnikov is supporting the fraudulent scheme and takes instructions from Mr. Yegiazaryan and acts for the benefit of Mr. Yegiazaryan's enterprise.

125. On November 9, 2020, this Court denied Ratnikov's motion to intervene for failure to comply with Chapter 15 of the Bankruptcy Code. (Enforcement Action, ECF 346.)

126. All of Ratnikov's conduct—including fraudulently holding himself out as the insolvency officer for Plaintiff Smagin, making misrepresentations to this Court about the status of the bankruptcy proceedings in Russia and his role in such proceedings, attempting to intervene in Plaintiff's Enforcement Action, Liechtenstein court proceedings and the Monaco Action

and misrepresentations to Plaintiff—was done with the intent to further Defendants' scheme to hinder, delay and defraud Plaintiff and this Court.

FIRST CLAIM FOR RELIEF

(Federal Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962(c) — Against all Defendants)

127. Plaintiff realleges and incorporates herein by reference each and every allegation set forth in paragraphs 1 through 144, inclusive, as set forth above.

128. Ashot Yegiazaryan, Suren, Artem, Gogokhia, Stephan, Dozortseva, Jouniaux, Ratnikov, Thielen, CMB Bank, Prestige, and Ryals are each a "person," within the meaning of 18 U.S.C. §§ 1961(3) because each Defendant is capable of holding, and does hold, "a legal or beneficial interest in property."

129. Defendants' conduct constitutes a "pattern" of racketeering activity under 18 U.S.C. § 1961(5) because their activities include at least two acts of racketeering activities in the past 10 years, including, but not limited to, the following acts:

f. Ashot Yegiazaryan fraudulently created the Alpha Trust and Savannah Advisors by executing instruments in California that he transmitted to CTX Truehand in Liechtenstein using transmissions in interstate or foreign commerce.

g. Suren Yegiazaryan initiated a fraudulent lawsuit in Nevis against Ashot Yegiazaryan and Savannah from California based on forged documents in Eastern Caribbean Supreme Court (St. Christopher and Nevis) using transmissions in interstate or foreign commerce.

h. Ashot Yegiazaryan intentionally filed documents with this Court in the Enforcement Action containing material misrepresentations and false statements, including, for example, that Mr. Yegiazaryan was contesting the Nevis Action, to deceive the Court using transmissions in interstate or foreign commerce.

i. Suren Yegiazaryan submitted his fraudulently obtained default judgment in the Nevis Action to the Monaco Courts and sought a freeze of Monaco Account held with Defendant CMB Bank using transmissions in interstate or foreign commerce.

j. Ashot Yegiazaryan and Gogokhia entered a fraudulent stipulated judgment against Mr. Yegiazaryan and in favor of Gogokhia in the United Kingdom using transmissions in interstate or foreign commerce, on which they subsequently sought to enforce that stipulated judgment against Savannah through a sham lawsuit in Nevis.

k. Vitaly Gogokhia filed a fraudulent ex parte application in Nevis seeking a freeze of Savannah Advisor's assets held in Monaco bank accounts, i.e., the Alpha Trust funds using transmissions in interstate or foreign commerce. Vitaly Gogokhia further instructed Defendant CMB Bank that it was not to release any of the funds of the Monaco Account to Plaintiff.

l. Ashot Yegiazaryan fraudulently appointed Defendant Trustees and Thielen to "administer" the Alpha Trust using transmissions in interstate or foreign commerce.

m. Defendant Trustees and Ashot Yegiazaryan procured fraudulent letters from Ryals and Prestige to hinder Savannah Advisors' efforts to transfer the Alpha Trust funds from its account with CMB Bank in Monaco using transmissions in interstate or foreign commerce.

n. Ashot Yegiazaryan submitted forged or altered documents to this Court in the form of a letter from Dr. Julia Sverdlova in an attempt to deceive the Court with regard to his failure to comply with the Court's Contempt Order using transmissions in interstate or foreign commerce.

o. Ashot Yegiazaryan knowingly used intimidation, threats, or corrupt persuasion to influence Dr. Sverdlova, a witness residing in California, to avoid service of the subpoena with the intent to delay or prevent her from providing documentary and testimonial evidence in connection with the Enforcement Action.

p. Ratnikov intervened in Monaco, Liechtenstein, and this Court, using transmissions in interstate or foreign commerce, fraudulently holding himself out as a Russian insolvency officer and falsely claiming that he has the authority to take over Plaintiff's enforcement action against Mr. Yegiazaryan.

q. Defendant Trustees intervened in Monaco using transmissions in interstate or foreign commerce to confuse the court and support CMB Banks efforts to deny Savannah Advisors to exercise its control over its funds held therein.

130. Savannah Advisors is a legal entity and constitute the "enterprise," within the meaning of 18 U.S.C. §§ 1961(4) & 1962(c). At all relevant times,

Ashot Yegiazaryan, Suren, Artem, Gogokhia, Stephan, Dozortseva, Jouniaux, Thielen, Prestige and Ryals conducted, participated in, engaged in, and operated and managed (directly or indirectly) the affairs of Savannah Advisors through a pattern of racketeering activity within the meaning of 18 U.S.C. §§ 1961(1), 1961(5) and 1962(c).

131. In the alternative to Paragraph 130, Ashot Yegiazaryan, Suren, Artem Gogokhia, Stephan, Dozortseva, Jouniaux, Ratnikov, Thielen, CMB Bank, Prestige, and Ryals (or any subset thereof) constituted an "enterprise" within the meaning of 18 U.S.C. §§1961(4) and 1962(c), in that they were "a group of individuals associated in fact" for the common purpose of intentionally and willfully defrauding Plaintiff and this Court through a scheme to fraudulently file claims and actions in multiple jurisdictions to encumber the assets of the Alpha Trust and prevent Plaintiff from recovering his judgment.

132. All Defendants agreed to and did conduct and participate in the conduct of the enterprise's affairs through a pattern of racketeering activity for the unlawful purpose of intentionally defrauding Plaintiff.

133. Defendants' racketeering acts consisted of, but are not limited to, multiple acts of wire fraud, including submitting fraudulent documents through interstate or foreign commerce to create the Alpha Trust and Savannah Advisors, fraudulently "appoint" Defendant Trustees and Thielen to positions of authority over the Alpha Trust, and direct Defendants to pursue sham litigations in various jurisdictions. Additionally, Defendants have engaged in witness tampering and obstruction of justice and made numerous false statements of facts and law in courts of various jurisdictions as outlined above. All of Defendants

acts were committed for the unlawful purpose of intentionally defrauding Plaintiff and furthering the interests of the enterprise. As explained in detail above, the Defendants coordinated their activities, shared critical information and documents that support their enterprise, and acted in concert to further the interests of the enterprise.

134. All of the acts of racketeering described herein were related so as to establish a pattern of racketeering activity, within the meaning of 18 U.S.C. §1962(c), in that their common purpose was to further the interests of Mr. Yegiazaryan and his real estate fraud schemes, plus hide funds and assets of the enterprise, and deny and defraud their victims, including Plaintiff Smagin of money and property. They further sought to place Mr. Yegiazaryan's assets and funds beyond the reach of Plaintiff Smagin and this Court; their common result and goal was to defraud Plaintiff of money and property and/or to place Mr. Yegiazaryan's assets beyond the reach of Plaintiff and this Court; Mr. Yegiazaryan, Suren, Artem, Gogokhia, Stephan, Dozortseva, Jouniaux, Ratnikov, Thielen, CMB Bank, Prestige, and Ryals, through their employees, members, or agents, directly or indirectly, participated in the acts and employed the same or similar methods of commission; Plaintiff was the victim of the acts of racketeering; and/or the acts of racketeering were otherwise interrelated by distinguishing characteristics and were not isolated events.

135. To the extent Ashot Yegiazaryan, Suren, Artem, Gogokhia, Stephan, Dozortseva, Jouniaux, Ratnikov, Thielen, CMB Bank, Prestige, and Ryals have suspended their acts of racketeering against Plaintiff, they have only done so because of legal action taken by Plaintiff, including this Court's post-

judgment injunction entered against Mr. Yegiazaryan and his agents and nominees. The ongoing nature of Defendants' pattern of racketeering is not obviated by this fortuitous interruption.

136. As a direct and proximate result of, and by reason of, the activities of Ashot Yegiazaryan, Suren, Artem, Gogokhia, Stephan, Dozortseva, Jouniaux, Ratnikov, Thielen, CMB Bank, Prestige, and Ryals and their conduct in violation of 18 U.S.C. §1962(c), Plaintiff was injured in his business or property, within the meaning of 18 U.S.C. §1964(c). Among other things, Plaintiff suffered damages and injury to his property, including specifically damage to his California Judgment, including without limitation in the form of decreased value of the assets to be levied upon caused by Defendants' delay and interference; damages from Defendants' fraudulent transfers; delay and loss in the use, enjoyment, benefits, profits, revenues, interest and interests and delay and loss of opportunity to execute on and recover against the property fraudulently transferred and/or encumbered resulting from the delay and interference; damage caused by waste, loss, plunder, and devaluation of the assets committed by Mr. Yegiazaryan during the delay and interference; damages in the form of attorney fees and costs resulting from the interference, including attorney fees incurred in California, U.K., Russia, Nevis, Monaco and Liechtenstein and costs incurred in addressing the fraudulent conduct in litigation; and all other damages, injuries, and harms caused by the fraudulent transfers and interference. Plaintiff is, therefore, entitled to recover threefold the damages he sustained together with the cost of the suit, reasonable attorneys' fees and reasonable experts' fees.

137. WHEREFORE Plaintiff demands judgment against Ashot Yegiazaryan, Suren, Artem, Gogokhia, Stephan, Dozortseva, Jouniaux, Ratnikov, Thielen, CMB Bank, Prestige and Ryals jointly and severally, for the following: Treble damages pursuant to 18 U.S.C. §1964(c); Attorney fees and costs pursuant to 18 U.S.C. §1964(c); and such other and further relief as this Court may deem just and proper.

SECOND CLAIM FOR RELIEF

(Civil RICO Conspiracy—18 U.S.C. § 1962(D) — All Defendants)

138. Plaintiff realleges and incorporates herein by reference each and every allegation set forth in paragraphs 1 through 144, inclusive, as set forth above.

139. As alleged in Count I, one or more of the following individuals violated 18 U.S.C. § 1962(c): Ashot Yegiazaryan, Suren, Artem, Gogokhia, Stephan, Dozortseva, Jouniaux, Ratnikov, Thielen, CMB Bank, Prestige and Ryals. Any person(s) who is found to have violated 18 U.S.C. § 1962(c) is hereafter referred to as the "Operator / Manager" for the remainder of this Count.

140. Ashot Yegiazaryan, Suren, Artem, Gogokhia, Stephan, Dozortseva, Jouniaux, Ratnikov, Thielen, CMB Bank, Prestige, and/or Ryals conspired with the Operator(s)/Manager(s) to conduct or participate, directly or indirectly, in the conduct of the affairs of the enterprises, defined supra, through a pattern of racketeering activity in violation of 18 U.S.C. § 1962(d).

141. In particular, Ashot Yegiazaryan, Suren, Artem, Gogokhia, Stephan, Dozortseva, Jouniaux, Ratnikov, Thielen, CMB Bank, Prestige, and/or Ryals

intended to or agreed to further an endeavor of the Operator(s)/Manager(s) which, if completed, would satisfy all of the elements of a substantive RICO criminal offense (18 U.S.C. § 1962(c)) and adopted the goal of furthering or facilitating the criminal endeavor. Defendants' conduct includes, but is not limited to:

r. Defendants Suren, Gogokhia, Stephan, Trustee Defendants, and Ratnikov agreed to file fraudulent claims or fraudulently intervene in court cases in various jurisdiction to hinder, delay or prevent Plaintiff from enforcing his judgment;

s. Trustee Defendants and Defendant Thielen agreed to fraudulently misrepresent their authority over the Alpha Trust and use such false color of authority to obstruct Plaintiff's access to the trust assets in order to hinder, delay or prevent him from enforcing his judgment;

t. Defendant Ryals and Defendant Prestige agreed to procure fraudulent letters for the purposes of hindering Plaintiff's access to the Alpha Trust funds held in CMB Bank in Monaco; and

u. Defendant CMB Bank agreed to create and maintain the Monaco Account as a vehicle to secrete Mr. Yegiazaryan's assets and shield the funds from Plaintiff's enforcement actions.

142. Plaintiff was injured by Ashot Yegiazaryan, Suren, Artem, Gogokhia, Stephan, Dozortseva, Jouniaux Ratnikov, Thielen, CMB Bank, Prestige, and/or Ryals' overt acts that are acts of racketeering or otherwise unlawful under the RICO statute, which included (among other acts) acts of wire fraud, witness

tampering and obstruction of justice committed through the enterprises alleged in Count I.

143. As a direct and proximate result of, and by reason of, the activities of Ashot Yegiazaryan, Suren, Artem, Gogokhia, Stephan, Dozortseva, Jouniaux, Ratnikov, Thielen, CMB Bank, Prestige, and/or Ryals and their conduct in violation of 18 U.S.C. §1962(d), Plaintiff was injured in his business or property, within the meaning of 18 U.S.C. §1964(c). Among other things, Plaintiff suffered damages, i.e., damages for the fraudulent transfers; decreased value of the assets to be levied upon caused by the delay and interference; delay and loss in the use, enjoyment, benefits, profits, revenues, interest and interests and delay and loss of opportunity to execute on and recover against the property fraudulently transferred and/or encumbered resulting from the delay and interference; damage caused by waste, loss, plunder, and devaluation of the assets committed by Mr. Yegiazaryan during the delay and interference; attorney fees and costs resulting from the interference, including attorney fees and costs incurred in setting aside the fraudulent actions; all other damages, injuries, and harms caused by the fraudulent actions and interference. Plaintiff is therefore, entitled to recover threefold the damages he sustained together with the cost of the suit, reasonable attorneys' fees and reasonable experts' fees.

PRAYER FOR RELIEF

144. WHEREFORE Plaintiffs demand judgment against Ashot Yegiazaryan, Suren, Artem, Gogokhia, Stephan, Dozortseva, Jouniaux, Ratnikov, Thielen, CMB Bank, Prestige, and Ryals jointly and severally, for the following:

a. all actual damages suffered as a result of this fraudulent scheme, in an amount no less than $130 million, which amount grows daily due to the applicable interest;

b. Costs and attorneys' fees he has incurred dealing with bogus and trumped up litigations, disputes and claims in numerous legal forums around the world;

c. treble damages pursuant to 18 U.S.C. §1964(c);

d. attorney fees and costs pursuant to 18 U.S.C. §1964(c);

e. pre-and post-judgment interest;

f. and such other and further relief as this Court may deem just and proper.

Dated: December 10, 2020

BAKER & MCKENZIE LLP

By: /s/ Nicholas O. Kennedy
Nicholas O. Kennedy
Attorneys for Plaintiff
VITALY IVANOVICH SMAGIN

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff Smagin demands trial by jury in this action of all issues so triable.

Dated: December 10, 2020

BAKER & MCKENZIE LLP

By: /s/ Nicholas O. Kennedy
Nicholas O. Kennedy
Attorneys for Plaintiff
VITALY IVANOVICH SMAGIN

APPENDIX F

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

Case No. 14-cv-09764-R (PLAx)

VITALY IVANOVICH SMAGIN,

Petitioner,

v.

ASHOT YEGIAZARYAN, a.k.a. Ashot Egiazaryan,

Respondent.

JUDGMENT

[Fed.R.Civ.P. 58; Local Rule 58-1]

Courtroom: 8, 2nd Floor

Before: The Hon. Manuel L. Real

The Court, having considered the evidence presented in support of and in opposition to Petitioner Vitaly Ivanovich Smagin's Motion for Summary Judgment ("Motion"), and having granted said Motion in full by Order Granting Petitioner's Motion for Summary Judgment, dated March 17, 2016 (Dkt. No.

56),(a true and correct copy of the Order is attached hereto as **Exhibit 1)**;

JUDGMENT IS HEREBY ENTERED, pursuant to Rule 58, Federal Rules of Civil Procedure, in favor of Petitioner Vitaly Ivanovich Smagin and against Respondent Ashot Yegiazaryan, a.k.a. Ashot Egiazaryan, on all claims contained in the Petition to Confirm Foreign Arbitration Award filed herein on December 22, 2014, as follows:

1. The London Award is confirmed in its entirety;

2. **JUDGMENT IS HEREBY ENTERED** in favor of Petitioner Vitaly Ivanovich Smagin and against Respondent Ashot Yegiazaryan, a.k.a. Ashot Egiazaryan, as follows:

A. **$72,243,000** as compensation for losses suffered by Petitioner Smagin;

B. Pre-award interest on the $72,243,000 at an annual simple rate of 7%, in the amount of **$6,899,701.32**;

C. Arbitration legal fees of **$4,959,416.88**; and arbitration costs of **$187,946**;

D. Post-award interest on the $72,243,000 in damages and $6,899,701.32 in pre-award interest at an annual quarterly compounded rate of 8%, which amount

of interest totals **$8,213,587.83** through February 8, 2016.

E. The total of the above-referenced amounts (A through D) as of February 8, 2016 is **$92,503,652.**

F. Respondent Ashot Yegiazaryan, a.k.a. Ashot Egiazaryan shall pay reasonable attorney fees incurred by Mr. Smagin for the confirmation motion in an amount to be hereinafter submitted and approved by the Court, such amount to be referenced in an amended judgment.

IT IS SO ADJUDGED.

Dated: March 31, 2016

/s/
The Honorable Manuel L. Real
United States District Judge

APPENDIX G

LONDON COURT OF
INTERNATIONAL ARBITRATION

CASE NO. 101721

between

VITALY IVANOVICH SMAGIN

Claimant

and

KALKEN HOLDINGS LIMITED

First Respondent

ASHOT YEGIAZARYAN

Second Respondent

FINAL AWARD

11 November 2014

BEFORE THE ARBITRAL TRIBUNAL
Mr. Michael Lee
Mr. Per Runeland
Prof. Dr. Kaj Hobér, Chair

[TABLES INTENTIONALLY OMITTED]

I. PROCEDURAL HISTORY

1. Claimant in this arbitration is Vitaly Ivanovich Smagin (hereinafter "**Mr. Smagin**" or "**Claimant**"). Mr. Smagin, a Russian citizen, is a businessman involved in the real-estate market. He is domiciled at Krasnoproletarskaya st., h. 9, 127006, Moscow, Russia. Mr. Smagin is represented in this arbitration by Mr. James Hargrove, Dr. Stuart Dutson, Mr. Neil Newing and Ms. Judith Mulholland of Eversheds LLP, One Wood Street, London EC2V 7WS, United Kingdom.

2. First Respondent is Kalken Holdings Limited (hereinafter "**Kalken**" or "**First Respondent**"), a company existing under the laws of Cyprus, registered under Company No. 167709 and with its address at 15 Agiou Pavlou Street, LEDRA House, Agios Andreas 1105, Nicosia, Cyprus. Kalken is represented in this arbitration by Mr. Barry Leon, Mr. R. Aaron Rubinoff, Mr. Daniel Taylor and Mr. John Siwiec of Perley-Robertson, Hill & McDougall LLP, 1400 - 340 Albert Street, Ottawa, Canada KIR 0A5.

3. Second Respondent is Ashot Yegiazaryan (hereinafter "**Mr. Yegiazaryan**" or "**Second Respondent**"). Mr. Yegiazaryan is a Russian national domiciled at 655 Endrino Place, Beverly Hills, California 90201, United States of America. Mr. Yegiazaryan is represented in this arbitration by Mr. Cyrus Benson, Mr. Laurence Shore and Mr.

Doug Watson of Gibson, Dunn & Crutcher LLP, Telephone House, 2-4 Temple Avenue, London, EC4Y 0HB, United Kingdom. Mr. Yegiazaryan is also represented by Mr. Drew Holiner of Monckton Chambers, 1&2 Raymond Buildings, Gray's Inn, London WC1R 5NR, United Kingdom.

4. By a Request for Arbitration dated 26 October 2010, Claimant requested arbitration against Respondents pursuant to Article 1 of the LCIA Rules.

5. In the Request for Arbitration, Claimant relied on the arbitration clauses of two agreements: (a) article 12.2 of a shareholders' agreement dated 26 December 2006 between Claimant, First Respondent and Mr. Dimitry Garkusha ("**the Shareholders' Agreement**") and (b) article 9.2 of an escrow agreement dated 13 November 2007 between Claimant, First Respondent, Mr. Garkusha and Deutsche Bank AG ("**the Escrow Agreement**"). These clauses are identical and provide the following:

> "[12].2 Arbitration. In the case of any dispute, difference, controversy or claim arising out of this Agreement, including any question regarding its existence, validity or termination (a "Dispute") the Parties shall attempt to resolve such Dispute amicably.

> [12].2.1 If the Parties are unable to SO amicably resolve the Dispute, then upon the written request of either Party such Dispute shall be referred to and finally resolved by arbitration under the rules of LCIA.
>
> [12].2.2 Unless the Parties agree otherwise, the place of arbitration shall be London, England, and the language of the arbitration shall be English.
>
> [...]"

6. The agreements provide that English law is to govern them.

7. On 29 December 2010, First Respondent and Second Respondent submitted their respective responses.

8. On 19 March 2011, pursuant to Articles 5.4 and 5.5 of the LCIA Rules, the LCIA Court appointed Mr. Michael Lee, Mr. Per Runeland and Professor Kaj Hobér to be the Arbitral Tribunal in this arbitration, with Professor Hobér presiding.

9. Claimant filed his Statement of Claim on 24 August 2011. It was supplemented on 28 October 2011 by pleadings on quantum.

10. On 8 September 2011, Second Respondent filed an Objection to Jurisdiction alleging that Claimant had repudiated any existing arbitration agreement by submitting a claim for compensation in Russian criminal proceedings against Second Respondent.

11. On 28 October 2011, Claimant filed a Response to Second Respondent's Objection to Jurisdiction. Claimant submitted an expert opinion on Russian law by Professor Larisa N. Maslennikova. On the same day, Claimant submitted his pleadings on quantum.

12. On 14 December 2011, Second Respondent filed his Reply to Claimant's Response. Second Respondent also submitted an expert report by Ms. Galina A. Krylova.

13. On 6 January 2012, Claimant filed a Rejoinder to the Reply and a supplementary opinion by Professor Maslennikova.

14. On 13 January 2012, the Arbitral Tribunal heard the parties' submissions on jurisdiction at a hearing in London. Professor Maslennikova and Ms. Krylova were both made available for cross-examination at the hearing. Second Respondent put questions to Professor Maslennikova.

15. First Respondent has not challenged the jurisdiction of the Arbitral Tribunal.

16. On 14 February 2012, the Arbitral Tribunal rendered its award on jurisdiction. The Arbitral Tribunal denied Second Respondent's request that the Arbitral Tribunal dismiss Claimant's claim for lack of jurisdiction. It also rejected Second Respondent's request for an order directing Claimant to discontinue the claim put forward within the Russian criminal proceedings.

17. On 30 March 2012, Second Respondent submitted his Statement of Defence and Request for Proposed Consent Order. The same day, First Respondent filed its Statement of Defence and Response to the Second Respondent's request for a Proposed Consent Award.

18. On 30 April 2012, Claimant sent a letter to the Arbitral Tribunal stating that he could not accept the consent award suggested by Second Respondent.

19. On 13 June 2012, Claimant submitted his request for production of documents to the Arbitral Tribunal. This request included Claimant's request, Second Respondent's objections of 7 June 2012 and Claimant's comments on Second Respondent's objection of 12 June 2012.

20. On 26 June 2012, the Arbitral Tribunal ruled on Claimant's first request for production of documents.

21. On 16 July 2012, Claimant sent a letter to the Arbitral Tribunal indicating that he might submit a request for an interim order provided that Respondents did not take certain action.

22. On 23 July 2012, Claimant submitted an application for an interim order. The Second Respondent objected to the request on 30 July 2012. Both parties submitted briefs and documentation in support of their respective positions.

23. On 31 July 2012, Claimant sent a letter to the Arbitral Tribunal claiming that Second Respondent had failed to comply with the Tribunal's decision on production of documents dated 26 June 2012 and requesting that the Arbitral Tribunal order Respondents to conduct further searches and hand over certain documents.

24. On 2 August 2012, Second Respondent objected to Claimant's request stating that an adequate search had been conducted and that all responsive documents which are in Second Respondent's possession, custody and control had been disclosed.

25. On the same day, 2 August 2012, Claimant sent a letter to the Arbitral Tribunal addressing Second Respondent's letter of 30 July regarding the request for an interim order.

26. On 6 August 2012, Claimant sent a letter to the Arbitral Tribunal addressing Second Respondent's letter of 2 August 2012.

27. On 9 August 2012, Second Respondent sent an email objecting to Claimant's request for an interim order.

28. On 13 August 2012, Claimant sent an email addressing Second Respondent's objections to Claimant's request for an interim order.

29. On 23 August 2012, the Arbitral Tribunal denied Claimant's order for an interim order.

30. On 7 September 2012, the Arbitral Tribunal issued Procedural Order No. 6 denying Claimant's request for further orders in relation to Respondents alleged failure to abide by the Arbitral Tribunal's order regarding the production of documents. The Arbitral Tribunal also noted that if it became clear that documents which should have been produced remained undisclosed, the Arbitral Tribunal would draw adverse inferences based on such fact.

31. On 7 September 2012, Claimant submitted his Statement of Reply.

32. On 21 December 2012, Claimant sent a letter to the Arbitral Tribunal stating that First Respondent had failed to comply with the Arbitral Tribunal's decision regarding production of documents.

33. On 11 February 2013, Claimant submitted an expert report of Irina Novikova.

34. On 25 March 2013, First Respondent and Second Respondent filed their Rejoinders.

35. On 19 April 2013, Second Respondent filed his evidence on quantum including an expert report of Mr. Hall of Smith & Williamson.

36. On 5 June 2013, Claimant submitted its Sur-Rejoinder accompanied by an expert reports of Dr. Giles and Mr. Grigoriev.

37. On 12 June 2013, Claimant submitted further written evidence.

38. On 17 June 2013, Claimant submitted the Second Expert Report of Ms. Irina Novikova and a supplemental report of Cushman & Wakefield.

39. On 19 June 2013, First Respondent submitted its comments on Claimant's Sur-Rejoinder.

40. On 21 June 2013, Claimant submitted further documents, an addendum to Dr. Giles's report and witness statements.

41. On 25 June 2013, the parties filed their Skeleton Arguments.

42. On 28 June 2013, the Tribunal issued Procedural Order No. 7. Due to difficulties for certain witnesses to obtain visas, the hearing scheduled for 1–5 July 2013 was cancelled by Procedural Order No. 8 issued on 29 June 2013.

43. On 11 July 2013, the Tribunal issued Procedural Order No. 9 deciding that the hearing would take place on 23–27 September 2013.

44. On 19 August 2013, Second Respondent informed the Tribunal that Mr Lesnovich could not attend the hearing due to an injury.

45. On 3 September 2013, Claimant submitted additional evidence.

46. On 12 September 2013, Second Respondent commented on Claimant's submission of 3 September 2013.

47. On 18 and 19 September 2013, Claimant commented on Second Respondent's letter of 12 September 2013.

48. On 20 September 2013, Claimant filed comments on Second Respondent's Skeleton Argument.

49. On 20 September 2013, the Tribunal issued Procedural Order No. 10 deciding that the documents submitted by Claimant on 3 September 2013 were admissible and that an additional hearing would take place on 14 January 2014.

50. A hearing was held in London on 23-27 September 2013.

51. On 18 October and 18 December 2013, Claimant submitted additional evidence.

52. On 24 December 2013, Claimant filed a supplementary report of his quantum expert Ms Irina Novikova.

53. On 13 January 2014, Second Respondent submitted materials for the presentation of his hand writing expert, Mr Lesnovich.

54. On 13 January 2014, Claimant sent several emails with comments on Second Respondent's submission of the same date. Second Respondent replied to Claimant's emails the same day.

55. On 14 January 2014, a hearing was held in London.

56. On 28 January 2014, Claimant's hand writing expert submitted a supplemental report.

57. On 11 February 2014, Second Respondent's hand writing expert filed a supplemental report.

58. On 28 February 2014, Claimant submitted additional evidence.

59. On 7 March 2014, Second Respondent submitted comments on Claimant's letter of 28 February 2014. Claimant addressed Second Respondent's letter in his reply dated 28 March 2014.

60. On 4 April 2014, all parties submitted their post-hearing briefs.

61. On 11 April 2014, Claimant and Second Respondent filed a list of issues that they agreed the Tribunal would need to address.

62. On 14 April 2014, Claimant submitted a letter concerning a correction of his post hearing brief and a separate letter addressing an issue in Second Respondent's post hearing brief.

63. On 15 April 2014 a final hearing was held to discuss issues that the parties had agreed that the Arbitral Tribunal needed to determine.

64. On 9 May 2014, Claimant filed its submission regarding the calculation of interest.

65. On 4 June 2014, Second Respondent submitted its comments on Claimants submission regarding interest and his schedule of costs requesting USD 1,807,130.60. On the same day, Claimant submitted his schedule of costs.[1] First Respondent submitted its schedule of cost asking for USD 827,066.30.

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1. Total Eversheds' fees: GBP 3,087,340.55, total Eversheds' disbursements: GBP 245,451.30, total PricewaterhouseCoopers fees and disbursements (incl. 18% VAT): USD 642,745, total Cushman & Wakefield fees and disbursements (incl. 18% VAT): USD 253,727.11, total fees and disbursements of Ms. Maslennikova: RUB 765,000, total fees and disbursements of Mr. Grigoriev: RUB 1,350,000, total LCIA/Tribunal fees: GBP 204,000, total other disbursements incurred directly by Claimant: GBP 7,410.72 and RUB 1,830,000.

66. On 19 June 2014, Second Respondent submitted comments on Claimant's schedule of costs. On the same day, Claimant submitted his comments on Second Respondent's schedule of costs.

67. On 23 June 2014, First Respondent submitted its comments on Claimant's schedule of costs.

II. FACTUAL BACKGROUND

68. What follows is a brief summary of certain key facts relevant to this dispute, some of which are disputed, without prejudice to the full factual record in the arbitration.

69. In early 2000, Claimant started to develop Europark, a retail complex in Moscow, together with two business partners. The complex was developed through a company called LLC Centurion Alliance ("**Centurion**"). In 2002, Claimant's business partners at that time wished to withdraw. Claimant came into contact with Ashot Yegiazaryan (Second Respondent) and Mr. Garkusha who were interested in investing in Europark.

70. On 29 August 2003, Claimant, Mr. Garkusha and a group of four Russian companies (which Claimant argues were controlled by Second Respondent) concluded an agreement (the

"**2003 Agreement**").[2] Among other things, this agreement is said to have regulated how profits from Europark/Centurion were to be divided. The 2003 Agreement does not include an arbitration clause.

71. Following the 2003 Agreement, the board of directors of Centurion was changed. The parties to the agreement co-operated well. Europark was completed in May 2005 and, following an unsuccessful start, re-opened in January 2006.

72. Claimant states that Second Respondent approached him in 2006 with a request that Europark be used as security for a loan that Second Respondent was trying to obtain from Deutsche Bank for the purposes of financing the refurbishment of a hotel in Moscow (Hotel Moscow).

73. Claimant asserts that Second Respondent assured him that the value of the deal in relation to the Moscow Hotel was substantial and that there was no actual risk that the loan agreement with Deutsche Bank would be breached. Claimant agreed that the shares in Centurion could be used as security for the loan from Deutsche Bank.

74. In order to achieve this, on instructions from Deutsche Bank, the ownership structure of

2. The 2003 Agreement, Exhibit C-132.

Europark was altered. The ownership of Centurion was transferred to a company named Doralin Trading & Investments ("**Doralin**"), a Cyprus company, which in turn was owned by a company named Tufts Invest & Trade Inc ("**Tufts**"), a British Virgin Islands company. The shareholders of Tufts were First Respondent (which Claimant alleges is controlled by Second Respondent) with a 73% holding, Claimant with a 20% holding and Mr. Garkusha with a 7% holding, thus reflecting their shareholding in Centurion.

75. Claimant argues that Second Respondent used First Respondent as a way to circumvent limitations imposed on Second Respondent as a member of the Russian Duma. This has been disputed by Second Respondent.

76. On 26 December 2006, Claimant, Mr. Garkusha and First Respondent entered into the Shareholders' Agreement regarding Tufts. The Shareholders' Agreement included an arbitration clause.[3]

77. According to Claimant, the Shareholders' Agreement aimed to safeguard and protect Claimant's interest in Europark if the loan was not repaid within a year, as promised by Second Respondent. Furthermore, to provide Claimant with security, it was agreed that First

3. The Shareholders' Agreement, Article 12.2 (Exhibit C-80).

Respondent's shareholding in Tufts was to be placed in escrow with Deutsche Bank by way of the Escrow Agreement signed by the shareholders in Tufts and the bank.[4] If Second Respondent failed to repay the loan used for Hotel Moscow, Claimant would have a right to the shares in escrow. The Escrow Agreement also included an arbitration clause.

78. According to Claimant, the Shareholders' Agreement and the Escrow Agreement ensured that Claimant would receive the Tufts shares held in escrow, that Claimant had the right to sell those shares (and the shares in Centurion and/or Europark) to repay the loan to Deutsche Bank and recover his investment. Claimant asserts that any excess following such a sale would be paid to First Respondent which also stood the risk of any shortfall and, if the sale of the shares in escrow would not be sufficient to repay the loan and Claimant's investment, Second Respondent would be required to compensate Claimant for the discrepancy.

79. Claimant has stated that, soon after the signing of the Shareholders' Agreement and the Escrow Agreement, he became aware of the fact that First Respondent had not delivered the shares in Tufts into escrow. Claimant has also stated that repeatedly over the following years he was

4. The Escrow Agreement (Exhibit C-81).

promised by Second Respondent that Claimant's interest in Europark was safe. Furthermore, Claimant contends that he and Second Respondent, by, in particular, making various promises and representations entered into a collateral agreement whereby Second Respondent assumed the obligation to protect and preserve Claimant's interest in Europark by ensuring that (a) Claimant could obtain a transfer of the shares in Tufts, and (b) that the ownership structure of Europark would remain intact, i.e. that Tufts would remain the owner of Europark. Respondents dispute that there was an obligation, implied or otherwise, to maintain the ownership structure of Europark.

80. In 2008, the loan to Deutsche Bank had not been repaid and the shares in Tufts had not been placed into escrow. After raising his concerns, Claimant asserts that he and Second Respondent entered into a partnership agreement on 3 March 2008 (the "**2008 Agreement**"). Second Respondent has argued that the 2008 Agreement is not binding and that his signature on the document submitted by Claimant is a forgery. According to Claimant, since Second Respondent could not repay the loan at that time, Claimant agreed to continue to provide Europark (through the shareholding in Tufts) as security for the loan in return for the increase of Claimant's shareholding in Tufts to 50%.

81. The 2008 Agreement has an arbitration clause– Article 2.10-which reads as follows:

> "If Partner 2 [Second Respondent] fails to perform his obligations set forth in clauses 2.1-2.4, Partner 1 [Claimant] will seek to enforce his rights under the Shareholder's Agreement by filing a claim against Partner 2 with the London Court of International Arbitration and require, among other things, enforcement of Clause 9.1.5 of the Shareholders' Agreement, limitation of restrictions on use of his property (shares in TUFTS, MTC, Europark), and indemnification for losses."[5]

82. In addition to arguing that his signature on the 2008 Agreement was forged, and that the agreement never became valid, or effective, Second Respondent has contended that, in any event, the 2008 Agreement does not state that Second Respondent has agreed to arbitration relating to the Shareholders' Agreement and the Escrow Agreement.

83. The shares in Tufts were never transferred in to an escrow account.

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5. The 2008 Agreement, Article 2.10 (Exhibit C 134).

84. On 20 November 2009, the articles of association of Tufts were amended so as to allow the removal of a director by a simple majority vote. Previously the articles required a 75% majority. Claimant was removed as director of Tufts and replaced by MPH Law Services.

85. In early 2010, Tufts transferred its shareholding in Doralin to companies called Investments Limited and Famulatus Limited. Claimant argues that, as a consequence of this transfer, he lost his interest in and control of Europark. Claimant still owns the shares in Tufts.

III. SUMMARY OF THE PARTIES' POSITIONS

86. Claimant's case is primarily based on four agreements: the 2003 Agreement, the Shareholders' Agreement, the Escrow Agreement and the 2008 Agreement. The following summarises in brief the arguments and the parties' respective positions in relation to these agreements, and to the question of quantum which are fully set out in the parties' submissions.

A. The 2003 Agreement

87. *Claimant* has argued that the 2003 Agreement entitles him to payments based on Europark's/ Centurion's financial performance and ensures him an appointment as chairman of the board of directors of Centurion. Claimant also contends that

he is entitled to an annual payment corresponding to 20% calculated on the basis of Centurion's EBIT (earnings before interest and tax).

88. As regards jurisdiction, Claimant asserts that First Respondent agreed to arbitrate disputes under the 2003 Agreement when entering into the Shareholders' Agreement and Escrow Agreement. Claimant argues that Second Respondent was in control of the four companies (CJSC Centurion Alliance which included CJSC Titul, LLC Milea, CISC Trading House Unicomimpex and LLC Merhkav) which were parties to the 2003 Agreement. Moreover, Claimant asserts that Second Respondent became bound, and is now bound, by the 2003 Agreement and the arbitration clause in the Shareholders' Agreement by having signed the 2008 Agreement (see Sections B and C below).

89. Claimant asserts that Respondents actively participated in the misappropriation of Claimant's interest in Europark and failed to pay Claimant in accordance with the 2003 Agreement. Claimant's arguments in relation to these alleged breaches are addressed below.

90. *Both Respondents* have argued that they were not parties to the 2003 Agreement and, therefore, are not bound by it. Consequently, they submit, the Tribunal has no jurisdiction over Respondents.

91. *Second Respondent* has argued that, even if he were bound by the 2003 Agreement, and the Tribunal had jurisdiction, all rights and obligations under that agreement were eliminated by the Shareholders' Agreement since Article 13.3 states that the Shareholders' Agreement and the Escrow Agreement supersede any prior agreement and that any prior agreement shall be of no continuing effect. Furthermore, Second Respondent claims that, even in the absence of Article 13.3, the scope of the Shareholders' Agreement and the Escrow Agreement is limited and does not concern distribution of profits which is what Claimant in essence is asking for under the 2003 Agreement.

B. The Shareholders' Agreement and the Escrow Agreement

92. *Claimant* submits that the Shareholders' Agreement and the Escrow Agreement (i) required that First Respondent (on behalf of Second Respondent) deposit the shares in Tufts into an escrow account held by Deutsche Bank, (ii) obligated Respondents to keep safe, protect and preserve at all times Claimant's shareholding interest, and (iii) granted Claimant the right to require that the shares in Tufts held by First Respondent be transferred to him by Deutsche Bank if the encumbrances created by the mortgage over Europark and the pledge of shares in Doralin were not removed by 13 December 2008. In addition, Claimant

argues that by implication the Respondents were obliged under both the Shareholders' Agreement and the Escrow Agreement to ensure that the ownership structure of Centurion and Europark be maintained. Without Europark as an asset, the shares in Tufts would have no value. Claimant also asserts that Second Respondent repeatedly assured him that his interest in Europark was protected. Claimant has argued that First and Second Respondent are jointly and severally liable. According to Claimant, First Respondent was Second Respondent's agent and both Respondents are liable since First Respondent did not solely act as an agent, but also had a material role as the legal owner of the shares in Tufts.

93. As regards jurisdiction, Claimant contends that both Respondents are bound by the Shareholders' Agreement and the Escrow Agreement. First Respondent is bound as it signed the agreements. Second Respondent is bound since (i) First Respondent acted as his agent, (ii) it was the parties' intention that Second Respondent be party to the Shareholders' Agreement and the Escrow Agreement, and (iii) the 2008 Agreement confirms that Second Respondent is a party to the Shareholders' Agreement and the Escrow Agreement. Claimant also argues that the parties to the Shareholders' Agreement and Escrow Agreement agreed to submit any dispute under the 2003 Agreement to the LCIA dispute resolution mechanism included in the first mentioned agreements.

94. Claimant has addressed the objections raised by the Respondents – summarized below–in the following way.

95. Claimant argues that the Shareholders' Agreement and the Escrow Agreement were not abandoned as First Respondent alleges. According to Claimant, First Respondent has failed to establish that the parties agreed to abandon the agreements, expressly or by implication, which is a requirement under English law.

96. Claimant states that First Respondent's claim that the escrow account was not opened is wrong. The escrow account was indeed opened as stated in the Escrow Agreement, which Deutsche Bank signed. Moreover, Claimant asserts that First Respondent's suggestion that it has no liability since the current directors of First Respondent have no knowledge of any previous dealings of the company is irrelevant.

97. Claimant also argues that First Respondent's allegation to the effect that, as an agent, it cannot be held liable for its principal is an incorrect interpretation of the English law of agency.

98. *First Respondent* has stated that, on 10 November 2010, First Respondent's original director resigned and that the registered address changed. In connection with this change, First Respondent lost all its files. It has therefore had to rely on the

documents and facts presented by Claimant in this case.

99. First Respondent has argued that, according to Claimant's own position, it is an agent which never acted for its own account, independently for its own interests. Under English law, an agent acting on behalf of a disclosed principal cannot itself be liable to a third party. Any agreement entered into is binding on the principal, and only the principal can be sued or liable under such contracts. Since Claimant argues that First Respondent is an agent, Claimant has no claim against First Respondent.

100. Furthermore, First Respondent argues that its current administration played no role in the alleged appropriation of Claimant's interest in Europark and can therefore have no liability. The transfer of shares in Doralin was performed by Tufts and not First Respondent. First Respondent also argues that there was no implied obligation to maintain the ownership structure of Europark. In any event, First Respondent did not play any role in the sale of shares in Doralin and was never in a position to transfer the Tufts shares into escrow due to Claimant's failure to open the escrow account.

101. First Respondent has also asserted that it did not owe Claimant a fiduciary duty and that, in any event, Claimant has failed to substantiate his

claim that First Respondent played any role, or dishonestly assisted Second Respondent, in any appropriation of Claimant's interest in Europark, or breach of Second Respondent's alleged duties.

102. Finally, First Respondent contends that the Shareholders' Agreement and the Escrow Agreement were abandoned and that the parties have no further obligations under them. Given the short timelines provided under these agreements (13 months), First Respondent claims that the relatively long period of delay and inactivity has resulted in the abandonment of the agreements.

103. *Second Respondent* has argued that the Tribunal lacks jurisdiction since he is not a party to either the Shareholders' Agreement or the Escrow Agreement. According to Second Respondent, there is no legal justification under English law to pierce First Respondent's corporate veil. Second Respondent has never been a beneficial owner of shares in First Respondent. Consequently, even if the corporate veil could be pierced and First Respondent could be viewed as the agent of its controlling shareholder, Second Respondent would not be liable.

104. Furthermore, continues Second Respondent, there is no merit to Claimant's suggestion that the parties' "common intent" was to bind Second Respondent to the Shareholders' Agreement and the Escrow Agreement. Even if there were some

kind of "common intent" such legal concept is alien to English law. Even if such concept had existed, Claimant willingly, and with full knowledge of the corporate structure and ownership of First Respondent, entered into the Shareholders' Agreement and the Escrow Agreement.

105. Second Respondent also argues that the Shareholders' Agreement is inconsistent with Claimant's claim that Second Respondent be liable for First Respondent's obligations under the agreement. This argument is based on the definition of the terms "Party" and "Parties" (which contains no reference to Second Respondent) in the Shareholders' Agreement and on Article 10.3.3 of the same agreement which warrants that none of the Tufts shares, Doralin shares, Centurion shares, nor Europark itself are pledged, under arrest, or under management, nor encumbered with other rights of third persons. Second Respondent claims that it has no right as a third party to the Shareholders' Agreement to bring a claim against any party to the agreement. Consequently, no party to the Shareholders' Agreement is able to bring a claim against Second Respondent under the same agreement.

106. Concerning Claimant's argument that First Respondent entered into the Shareholders' Agreement and the Escrow Agreement as an agent for Second Respondent, Second Respondent emphasises that there is no agency agreement

of any kind between Respondents. Moreover, First Respondent as a separate legal entity with obligations, liabilities and rights cannot act as an agent for its (alleged) controlling shareholder.

107. As regards the argument that Second Respondent, in his capacity as a member of the Russian State Duma, was precluded by Russian law from being a party to the Shareholders' Agreement and the Escrow Agreement, Second Respondent asserts that the issue is irrelevant and that the law does not in any event prevent Second Respondent from taking or holding interests in private enterprises, or exercising shareholder rights.

C. The 2008 Agreement

108. *Claimant* has argued that the 2008 Agreement sets forth (i) an obligation to ensure that the ownership structure of Centurion and Europark be maintained, ii) an obligation to keep safe and preserve at all times Claimant's shareholding interest, (iii) an obligation to abide by the terms of the Shareholders' Agreement and the Escrow Agreement, (iv) an obligation to arrange for the shares in First Respondent to be transferred into escrow in accordance with the Shareholders' Agreement, the Escrow Agreement and the 2008 Agreement, (v) a guarantee that the documents relating to Tufts and Doralin could only be executed by Claimant and Second Respondent jointly and (vi) an obligation to credit to Claimant

his profit entitlement under the 2003 Agreement. In addition, Claimant asserts that Second Respondent has fiduciary obligations in relation to all agreements and the parties' relationship of mutual trust and confidence. Claimant also contends that he and Second Respondent have a joint undertaking to develop Europark. This gives rise to a fiduciary obligation of loyalty. By the 2008 Agreement, Claimant also increased his shareholding in Europark to 50%.

109. As regards jurisdiction, Claimant contends that, by signing the 2008 Agreement, Second Respondent agreed to accept the arbitration provision in the Shareholders' Agreement (Article 2.10 of the 2008 Agreement). According to Claimant, the condition for the Tribunal's jurisdiction set out in Article 2.10 in the 2008 Agreement is fulfilled. Moreover, according to Claimant, Second Respondent's application for an anti-suit injunction constituted a waiver of any objection to the Tribunal's jurisdiction.

110. Claimant argues that First Respondent and Second Respondent breached their obligations under the Shareholders' Agreement, the Escrow Agreement and the 2008 Agreement, and staged an intricate plot to misappropriate Claimant's interest in Europark, by:

    (i) Not paying Claimant the profit-related payments from the 2003 Agreement;

(ii) Not transferring the shares in Tufts into the escrow account as agreed;

(iii) Not removing the encumbrances over the pledged shares;

(iv) Unilaterally changing the ownership structure of Europark by effectuating a transfer of the Centurion shares from Doralin to two other Cypriot nominee companies;

(v) Amending the articles of association of Tufts and by passing resolutions, which were instigated by Second Respondent, in order that Tufts could transfer its shares in Doralin to other companies; and

(vi) Second Respondent entering into a deal with Tashir to take control of Centurion and Europark, to the complete exclusion of Claimant.

111. Claimant has addressed the objections put forward by Respondents in the following way.

112. Claimant did not act in bad faith when dismissing the suggestion of a consent award as suggested by Second Respondent, since the proposal was not enforceable. It was unacceptable to Claimant.

113. Claimant argues that Second Respondent's allegation that his signature was forged is without any merit and the burden of proof falls on Second Respondent. Claimant has filed an expert opinion of Ms. Mymrikova in support of the claim that Second Respondent's signature is authentic.

114. According to Claimant, Second Respondent's objection that the 2008 Agreement is not binding since it was never performed is without merit. A number of core obligations contained in the 2008 Agreement were performed, including (i) the appointment of Claimant and Second Respondent as directors of Tufts, (ii) the issue to them of a joint general power of attorney to represent the interests of Tufts and Doralin, (iii) the revocation of the power of attorney granted to Mr Garkusha, and (iv) the termination of the appointment of the company secretary of Tufts.

115. Claimant disagrees with Second Respondent's argument that the 2008 Agreement was a letter of intent or similar and not an enforceable agreement. According to Claimant, the fact that certain details in the 2008 Agreement were left blank does not prevent it from being legally binding.

116. *First Respondent's* objections have been described in sections 86 and B above.

117. *Second Respondent* has argued that his signature on the 2008 Agreement was forged. In support of this claim, Second Respondent has filed an expert opinion by Mr. Gus Lesnevich concluding that the signature is a forgery. According to Second Respondent, the correspondence from the lawyers at Herbert Smith in connection with the alleged conclusion of the 2008 Agreement also proves that no final agreement was reached between the parties. The 2008 Agreement is thus not binding and the Tribunal has no jurisdiction.

118. Furthermore, Second Respondent asserts that the 2008 Agreement, even if it were not a forgery, was never performed, it never became valid or effective and, even if it had been effective, it provides no basis for the Tribunal's jurisdiction.

119. Second Respondent claims that the 2008 Agreement was a letter of intent, or an agreement in principle, neither of which is enforceable under English law. Further, several key issues were not agreed in the 2008 Agreement. It is therefore not enforceable.

120. Second Respondent argues that the 2008 Agreement was never concluded and that none of the obligations in the agreement was ever performed by either party. According to Second Respondent, the fact that the contract was never performed is evidence that it was never intended to be binding.

121. Second Respondent contends that, even if the 2008 Agreement were enforceable, the arbitration agreement linking a breach of a specific article in the 2008 Agreement to the right to invoke an arbitration provision in a separate agreement to which Second Respondent is not a party is not binding. According to Second Respondent, even if the Tribunal were to find that the 2008 Agreement was signed, binding and enforceable, it provides no basis for jurisdiction over Second Respondent. Article 2.10 of the 2008 Agreement on which Claimant relies deals with establishing a new escrow agreement. The time period by which this was supposed to have been done is left blank in the agreement and therefore cannot be breached. Second Respondent has not breached Article 2.10 of the 2008 Agreement. The necessary requirement to trigger the arbitration clause has therefore not been satisfied.

122. Finally, Second Respondent has stated that a party to a contract who has not fulfilled his own obligations cannot demand performance of the other party's obligations or payment from the other party.

123. Second Respondent denies that its conduct in this arbitration constitutes a waiver of the right to object to the Tribunal's jurisdiction. A waiver would have required that Second Respondent clearly and without any ambiguity expressed his intent to concede the point. Second Respondent

has not given such a waiver and has acted in accordance with the LCIA Rules which state that any jurisdictional objection should be raised no later than in the Statement of Defence. The argument that Second Respondent's request for an anti-suit injunction constitutes a waiver (despite the expressed reservation in respect of jurisdiction) lacks merit.

D. Quantum

124. Claimant claims compensation for (i) his interest in Centurion and Europark and (ii) his alleged right to profits generated by Europark under the 2003 Agreement. Claimant and Second Respondent have submitted expert reports regarding the calculation of Claimant's alleged loss.

125. Several issues regarding the calculation of damages are disputed, including (i) what is the appropriate "yield" to be applied to the valuation of Europark, (ii) should disposal costs be deducted from the valuation, (iii) should the value of Centurion be calculated on the basis of a "Fire Sale" scenario or a "Foreclosure" scenario or on some other basis, (iv) should there be an adjustment of the valuation for corporate income tax, (v) on what basis should the net operating income of Europark be calculated, and (vi) should the valuation of Centurion be adjusted for Mr. Smagin's alleged entitlement to profit.

126. *Claimant* argues that he suffered losses as a result of Respondent's breaches since the breaches resulted in Claimant losing his interest in Centurion and Europark and since he has never obtained his entitlement to the profits generated by Europark. In support of his calculation of damages, Claimant has filed expert reports by Irina Novikova of Price Waterhouse Coopers and by Cushman & Wakefield.

127. Claimant has presented alternative damage calculation scenarios: (i) a sale pursuant to Claimant's best efforts, (ii) a sale based on a "fire sale" scenario, and (iii) a sale based on a scenario where Claimant still owned 20% of Centurion and did not sell it (the "Continuous Holding Scenario"). Claimant has used the net asset valuation method which includes a valuation of the Europark complex and Centurion. Based on this method, Claimant contends that the value of his 20% shareholding in Centurion is (i) USD 72,243,000 on the basis of a Continuous Holding Scenario calculation, or (ii) USD 71,545,000 on the basis of a best efforts sale scenario.

128. Claimant has also calculated the alleged profit entitlement under the 2003 Agreement. According to Claimant, Respondents are obligated to pay 20% calculated on the basis of Centurions EBIT (earnings before interest and tax) from their own funds, not from Centurion's reserves. Claimant asserts that the loss Centurion made in 2005

should not be deducted from this claim and that the total profit entitlement amounts to USD 27,294,000.

129. In summary, Claimant argues that the total loss should be calculated as follows:

(a) loss on the basis of a Continuous Holding Scenario calculation of USD 72,243,000, plus profit entitlement of USD 27,294,000, resulting in a total loss of USD 99,537,000; or

(b) loss on the basis of a best efforts sale scenario of USD 71,545,000, plus profit entitlement of USD 27,294,000, resulting in a total loss of USD 98,839,000.

130. Claimant disagrees with Second Respondent's allegation that there is no causation between the alleged breach by not transferring the shares in Tufts to an escrow account and any alleged damage caused since Claimant still owns 20% of the shares in Tufts (i.e. no damage has been suffered). Claimant argues that the 20% holding in Tufts is worthless after Tufts lost its only asset, i.e. Europark.

131. Claimant argues that Second Respondent's allegation to the effect that he cannot, on any theory, have caused more than half of the alleged loss since Mastero only received half of the shares

in Doralin, and since the transfer to Famulatus only occurred after First Respondent was controlled by Tashir, is misconceived. According to Claimant, the transfer was carried out by First Respondent, but instigated by Second Respondent; moreover the direct ownership of Famulatus is irrelevant to this issue.

132. Claimant requests that interest should be awarded from 30 June 2013 until the date of the Tribunal's award. The applicable interest rate is the average annual deposit interest rate as found on the Central Bank of Russia's website. Claimant also requests post-award interest at the rate of 8%.

133. *Second Respondent* argues that Claimant's calculation of damages is excessive and that there is no causation between the alleged breach and Claimant's alleged loss. To support its position, Second Respondent has filed expert reports by Mr. Hall of Smith & Williamson.

134. As regards the valuation of the shares in Tufts, Second Respondent has argued (i) that none of the alleged loss was caused by the alleged wrongdoing, (ii) that Claimant has overestimated the damage, (iii) that he cannot on any theory have caused more than half of the alleged losses and (iv) that Claimant's conduct amounts to contributory negligence.

135. Second Respondent points out that Claimant has the burden of proving that the alleged breach caused his loss. According to Second Respondent, Claimant's alleged loss has no connection to whether shares in Tufts were transferred into escrow since Deutsche Bank did not accelerate or seek to foreclose on its security for the loan for which the shares were used as security. Second Respondent emphasises that Claimant still owns 20% of the shares in Tufts and that the alleged breaches of the Shareholders' Agreement and the Escrow Agreement have no connection to the transfer of Europark to Mastero and Famulatus, which is the basis for Claimant's loss. As described above, it is Second Respondent's position that there was no implied obligation to maintain the corporate structure of Europark.

136. Second Respondent claims that Claimant has overestimated his loss and that the actual loss is in the range of USD 29.1 to USD 43.9 million assuming a 10% yield and USD 21.7 to USD 32.3 million assuming a 14% yield.

137. Second Respondent has argued that when the second transfer of Doralin shares was made by Tufts in April 2010 (50%of the shares), Second Respondent, on Claimant's case, had no interest in First Respondent or Tufts, whether direct, indirect, or otherwise. Thus, it cannot be liable for half of the alleged loss.

138. Second Respondent has objected to Claimant's argument that pre-award interest should be awarded from 30 June 2013 and argued that this date has been arbitrarily selected and has no basis in principle.

III. PRAYERS FOR RELIEF

139. Claimant has asked for the following relief:

(i) Damages to compensate Mr. Smagin for the loss of his interest in Europark through his shareholding in Centurion, as set out in the quantum section above (i.e. either USD 72,243,000 on the basis of a Continuous Holding Scenario and USD71,545,000 on the basis of a best efforts sale scenario);

(ii) Damages to compensate Mr. Smagin for his entitlement to the profit payment amounting to USD 27,294,000;

(iii) Interest (annual Russian deposit interest rates, currently 7.86%) on all sums awarded from 1 July 2013 to the date of the Award;

(iv) Post-award interest of 8% on all amounts awarded; and

(v) All costs and expenses incurred in connection with the preparation and conduct of this proceeding, to include Mr. Smagin's costs of this arbitration (including the fees and expenses of the LCIA and of the Tribunal), and all legal fees and costs (including those of legal counsel, witnesses, and experts), together with interest thereon. The legal fees and expenses amount to GBP 3,101,990.05 (not including the fees and expenses of the LCIA and of the Tribunal).

140. First Respondent has raised the following prayers for relief, asking that:

(i) All claims advanced by Claimant with respect to Kalken be dismissed; and that

(ii) Kalken be awarded against the Claimant all of its costs and expenses incurred in relation to defending this Arbitration totalling USD 827,066.30, including the fees and expenses of the LCIA and of the Tribunal, with interest.

141. Second Respondent has asked that the Arbitral Tribunal

(a) Declare that there is no jurisdiction over him and dismiss the Claimant's claims against him in their entirety;

(b) In the alternative,

1. dismiss the Claimant's "profits" claim for lack of jurisdiction; and

2. stay this proceeding with respect to the Claimant's remaining claims in the Russian court;

(c) In the further alternative, issue an order directing that the Claimant apply to lift the injunction in the Russian criminal proceedings to allow the transfer or sale of the Centurion shares to ensure an equitable distribution;

(d) Reimburse the Second Respondent's arbitration costs, including attorneys' fees with USD 1,807,130.60; and

(e) Any other relief that the Tribunal may deem appropriate.

V. REASONS

142. The parties have relied on a multitude of facts, arguments and evidence. The Tribunal has reviewed, analysed and considered all of them. In the following, the Tribunal presents the reasons which it has found necessary to rule on the prayers for relief presented to the Tribunal.

143. By ruling on the prayers for relief, the Tribunal has also dealt with the issues identified in the list of issues agreed between Claimant and Second Respondent, and submitted to the Tribunal on 11 April 2014.

A. Jurisdiction

A.1 Introduction

144. Both Respondents have raised jurisdictional objections, also subsequent to the Tribunal's Award on Jurisdiction dated 14 February 2012. In that award the Tribunal did not accept Second Respondents' argument that Claimant had repudiated the arbitration agreement by initiating criminal proceedings in Russia and by asking for compensation within the framework of those proceedings. In that award the Tribunal also denied a request from Second Respondent for an anti-suit injunction.

145. Claimant now argues that Second Respondent has waived the right to raise jurisdictional objections. In Claimant's view this is a consequence of the fact that Second Respondent applied for a final, mandatory anti-suit injunction thus relying on an arbitration agreement. As mentioned above, this application was denied by the Tribunal in its Award of 14 February 2012. Claimant also contends that Second Respondent is now precluded from denying that he is a party to the arbitration agreement,

because Second Respondent repeatedly told Claimant that he would perform the Shareholders Agreement and the Escrow Agreement.

146. Second Respondent submits that he has not waived his right to raise jurisdictional objections. This is because he expressly and repeatedly reserved his right to challenge the jurisdiction of the Tribunal. Second Respondent also relies on Article 23.2 of the LCIA Rules which states that a jurisdictional objection must be made not later than in the Statement of Defence. Second Respondent refers to his Statement of Defence and Request for Proposed Consent Award dated 30 March 2012 where jurisdictional objections were made.

147. For the reasons articulated and explained by Second Respondent, the Tribunal finds that he is not precluded from now raising jurisdictional objections. The Tribunal will thus proceed to try the jurisdictional objections raised by Second Respondent, as well as those raised by First Respondent. In so doing, the Tribunal is mindful of the doctrine of separability and its consequences, and refers to Article 23.1 of the LCIA Rules.

148. In their pleadings the parties have generally presented arguments relating to the existence, validity and applicability of the agreements without distinguishing between the arbitration agreement in question and the relevant commercial contracts. While it is generally accepted that the arbitration

agreement is to be viewed and treated as separate from the commercial contract in which it is included, it is also accepted that the same factual circumstances may be relevant with respect to both agreements, but without automatically leading to the same legal consequences. This may be so, for example, because different legal rules may apply to arbitration agreements and commercial contracts.

149. In the following the Tribunal will focus on those facts and arguments which may be relevant when determining the existence, validity and applicability of any arbitration agreement.

A.2 Jurisdiction with respect to First Respondent

150. The 2003 Agreement was not signed by First Respondent. It does not include any arbitration clause. These undisputed facts are sufficient for the tribunal to conclude that it does not have jurisdiction over First Respondent based on the 2003 Agreement.

151. By contrast, both the Shareholders Agreement and the Escrow Agreement have been signed by First Respondent. Both agreements have arbitration clauses referring to arbitration under the rules of LCIA. This leads to the *prima facie* conclusion that First Respondent is bound by these arbitration clauses.

152. Even though First Respondent has not objected to the jurisdiction of the Tribunal, it has argued that it only acted as an agent for Second Respondent and never for its own account in relation to the breaches alleged by Claimant. This is a central theme of the parties as far as the merits of the dispute are concerned. As far as the arbitration agreement is concerned, First Respondent has not been able to establish to the satisfaction of the Tribunal that the arbitration agreements in, respectively, the Shareholders Agreement and the Escrow Agreement, were entered into only for and on behalf of First Respondent. Consequently, the Tribunal finds that it has jurisdiction over First Respondent on the basis of the arbitration clauses in the afore-mentioned agreements.

153. First Respondent has also raised the argument that the Shareholders Agreement and the Escrow Agreement were abandoned and that therefore the parties have no further obligations under them. This argument was advanced primarily with respect to the merits, and is discussed below. Even if it were correct as far as the merits are concerned, this would not automatically affect the arbitration clauses in the above-mentioned agreements. Those agreements were entered into in 2006. The Request for Arbitration was filed on 26 October 2010. Even though an arbitration agreement could perhaps, *arguendo,* be abandoned under English law, the Tribunal holds that a period of four years is too short to bring about such a result, unless

it is established that this was the intention of the parties to the arbitration agreement in question. In the circumstances, First Respondent has not been able to show that this was the intention of the parties to the Shareholders Agreement and the Escrow Agreement. In other words, First Respondent remains bound by the arbitration clauses in the afore-mentioned agreements.

154. It follows from the foregoing that it is not necessary for the Tribunal to rule on the effect of the 2008 Agreement on the Tribunal's jurisdiction over First Respondent. The Tribunal notes, however, that, while First Respondent is referred to in the Preamble of the 2008 Agreement, First Respondent has not signed this agreement.

A.3 Jurisdiction with respect to Second Respondent

A.3.1 Introduction

155. In asserting that the Tribunal has jurisdiction with respect to the claims raised by Claimant in this arbitration, Claimant is relying on the 2003 Agreement, the Shareholders Agreement, the Escrow Agreement as well as the 2008 Agreement. Many of the arguments presented by Claimant and Second Respondent with respect to jurisdiction seem to focus primarily on the validity and applicability, in general, of the afore-mentioned agreements, and not specifically on purported

arbitration agreements entered into between the parties. In the following, the Tribunal will consider the arguments put forward by Claimant and Second Respondent in so far as they are relevant to the validity and applicability of any arbitration agreement only, as it must do pursuant to the doctrine of separability.

156. At the outset the Tribunal notes that the 2003 Agreement, entered into between Claimant and Mr. Garkusha, does not have an arbitration clause. Claimant has argued, however, that it and Second Respondent have subsequently agreed that disputes under the 2003 Agreement are to be resolved under the arbitration rules of the LCLA. Claimant has also argued that the 2008 Agreement gives the Tribunal jurisdiction over Second Respondents' alleged breaches not only of that agreement, but of also over the alleged breaches of the Shareholders Agreement, the Escrow Agreement, as well as over alleged breaches of what it refers to as "the collateral agreements", which in its view includes agreements, oral or otherwise, to the effect that disputes under the 2003 Agreement were to be settled by arbitration under the LCIA arbitration rules.

157. Against the background of this alleged overarching effect of the 2008 Agreement, the Tribunal will first address this agreement with a view to determining whether, and to what extent, if any, the 2008 Agreement gives the Tribunal

jurisdiction to consider Claimant's claims against Second Respondent.

158. In so far as jurisdiction is concerned, Second Respondent has raised three objections with respect to the 2008 Agreement. *First,* Second Respondent says that he has not signed the 2008 Agreement; his signature on that document is a forgery. *Secondly,* Second Respondent argues that the 2008 Agreement was an unenforceable agreement in principle. *Thirdly,* Second Respondent says that even if signed, binding and enforceable, the 2008 Agreement provides no basis for jurisdiction because the purported arbitration clause does not cover the claims raised by the Claimant.

The Tribunal will deal with these objections seriatim.

A.3.2. Has the 2008 Agreement been signed by Second Respondent?

159. Second Respondent has argued that the signature on the 2008 Agreement is not his signature. It is a forged signature. In support of this allegation, Second Respondent has relied on the expert opinion of Dr. Gus Lesnevich. His conclusion is that the signature on the 2008 Agreement, which purports to be the signature of Second Respondent, is not a genuine signature.

160. Claimant relies, *inter alia,* on the expert report and testimony of Dr. Audrey Giles.

161. Neither Mr. Lesnevich nor Dr. Giles have had access to the original 2008 Agreement, but have analysed copies thereof. Due to the absence of the original for examination, Dr. Giles concluded that she was unable to determine if the signature on the 2008 Agreement was genuine, or a simulation of a genuine signature of Second Respondent.

162. In support of his position that the signature is genuine, Claimant has relied also on other expert reports. In particular he has referred to a report prepared by Ms. Ekaterina Mymrikova in the context of the criminal proceedings in Russia. According to her report, she had access to the original of the 2008 Agreement, as well as to more than 20 original comparison samples of Second Respondent's signature. Based on her analysis, Ms. Mymrikova concluded that the signature on the 2008 Agreement is Second Respondent's genuine signature.

163. In the view of the Tribunal, Ms. Mymrikova's report is strong evidence that the Second Respondent's signature on the 2008 Agreement is genuine.

In addition, in his written statement Claimant has explained and described how the agreement was discussed by him and Second Respondent, and eventually signed. Claimant has also relied on the witness statements of Messrs. Garkusha, Zhigulin and Ageev, which in the opinion of the Tribunal to a certain extent, at least indirectly, support

Claimant's contention that the 2008 Agreement was signed by Second Respondent. In contrast, Second Respondent has not submitted any witness evidence to support his assertion that he did not sign the agreement. Nor has Second Respondent himself appeared as a witness in the arbitration, or submitted a written statement.

164. On the basis of the evidence before it, the Tribunal finds that Second Respondent has not been able to prove that the signature on the 2008 Agreement is not genuine. The burden of proof for an allegation of forgery must lie with the part making the allegation. Second Respondent has not met that burden of proof. The Tribunal will thus proceed on the basis that the signature on the 2008 Agreement is Second Respondent's genuine signature.

A.3.3 Is the 2008 Agreement binding and enforceable?

165. Second Respondent has taken the view that even if he had signed the 2008 Agreement, it never became binding and enforceable. It was simply a pre-contract document to serve as a guideline for future negotiations. None of the key obligations set out in the agreement was performed. In this context Second Respondent refers to Articles 2.1, 2.2, 2.4, 2.6, 2.7 and 2.8, as well as to Articles 4.4, 4.5 and 5 of the 2008 Agreement.

166. Claimant, on the other hand, takes the view that the 2008 Agreement became binding, was enforceable and was in fact performed, albeit partially.

167. The arguments of both Claimant and Second Respondent with respect to this issue have focused on the substantive aspects of the 2008 Agreement, and not on the arbitration clause in it. The arguments thus form part of the merits of the dispute.

168. It follows from the doctrine of separability that the arguments so presented are not automatically relevant for, or applicable to, the questions of the validity and interpretation of a purported arbitration agreement. Article 2.10 of the 2008 Agreement sets forth an arbitration clause which refers to the "London Court of International Arbitration". Neither Second Respondent nor Claimant has referred to, let alone discussed, Article 2.10 when presenting their arguments with respect to the binding nature and enforceability of the 2008 Agreement.

169. In the view of the Tribunal, the fact that Second Respondent has signed the 2008 Agreement—with an arbitration clause—means that he is also bound by the arbitration clause. There is nothing in the arbitration clause, nor in English law which makes the clause unenforceable. The arbitration agreement is thus binding and enforceable.

The scope of application of the arbitration clause will be addressed in section A.3.4, below.

A.3.4. Does the arbitration clause in the 2008 Agreement cover the claims raised by Claimant?

170. Article 2.10—the arbitration clause—of the 2008 Agreement reads:

> "If Partner 2 fails to perform his obligations set forth in clauses 2.1-2.4, Partner 1 will seek to enforce his rights under the Shareholder's Agreement by filing a claim against Partner 2 with the London Court of International Arbitration and require among other things, enforcement of Clause 9.1.5 of the Shareholders' Agreement, limitations of restrictions on use of his property (shares in TUFTS, MTC, Europark), and indemnification for losses".

171. The Second Respondent has taken the view that Article 2.10 gives Claimant a conditional right to arbitration. It is only if the obligations referred to in that article have not been performed that Claimant can initiate arbitration, in the view of Second Respondent. Since Second Respondent has not failed to perform any obligation, he continues,

Claimant has no right to arbitration. The Tribunal therefore lacks jurisdiction.

172. The Tribunal disagrees with this interpretation of the arbitration clause.

Even though the language of Article 2.10 is somewhat unorthodox, the ultimate meaning of it is traditional and clear: if Claimant alleges that Second Respondent has failed to perform certain obligations, such disputes are to be referred to arbitration. *Whether* Second Respondent has in fact failed to perform the obligation in question, as well as the legal consequences thereof, is to be determined in the arbitration.

173. To establish the scope of application of the arbitration clause, it is necessary to determine to what rights and obligations Article 2.10 refers. The article refers to the obligations of Second Respondent "set forth in clauses 2.1-2.4". These clauses read:

> 2.1 Partners (shareholders designated by them) will enter into an amendment agreement to the TUFTS Shareholders' Agreement, no number, dated December 26, 2006, which shall govern the revenue distribution procedure of CJSC CA.

2.2 In connection with a default and termination of the Escrow Agreement, no number, dated November 13, 2007 the Parties will enter into a similar escrow agreement whereunder Deutsche Bank AG will act as an escrow agent, and will procure for its performance by all parties and when entering into such agreement they will remove all inconsistencies that existed before. Partner 2 (shareholders designated by him) will also execute and deliver to Deutsche Bank AG instruments of transfer with respect to all TUFTS shares owned (controlled) by him.

2.3 The constituent documents of Blidensol, Doralin and TUFTS will need to be amended to provide that any document of any of such companies shall be considered to be duly executed and having legal force only upon its execution by two authorized persons, namely Partner 1 and Partner 2.

2.4 Partner 2 will appoint the General Director of CJSC CA, and Partner 1 will appoint Chief Accountant and control the Financial Director (any other senior finance positions)

[handwritten comment indicates a change of the sentence "Partner 1 will appoint Chief Accountant and control the Financial Director" to "Partner 1 will appoint and control Chief. Accountant and Financial Director". The word "control" is crossed-out in manuscript]. [Further handwritten comment: illegible]

Article 2.10 then goes on to refer to Claimants "rights under the Shareholders' Agreement."

174. The Tribunal finds that the language of Article 2.10 and of Articles 2.1-2.4 as well as of the Shareholders' Agreement, to which reference is made, is broad enough to give the Tribunal jurisdiction over the claims raised by Claimant, insofar as they are based on the Shareholders' Agreement, the Escrow Agreement and the 2008 Agreement.

175. By contrast, however, there is no reference in Article 2.10 to the 2003 Agreement, nor to any rights and obligations flowing from that agreement. The Tribunal therefore finds that Article 2.10 does not give it jurisdiction to try claims based on the 2003 Agreement. Nor has Claimant been able to convince the Tribunal that Second Respondent and Claimant have otherwise agreed that disputes arising out of, or in connection with, the 2003 Agreement are to be resolved by this arbitration.

Consequently, the Tribunal lacks jurisdiction to try claims based on the 2003 Agreement and Claimant's request for relief concerning profit payments in the amount of USD 27,294,000 must be dismissed.

176. It follows from the foregoing, that it is not necessary for the Tribunal to deal with the Shareholders' Agreement and the Escrow Agreement from a jurisdictional perspective.

B. Merits

B.1 Second Respondent

B.1.1. Introduction

177. In support of his prayers for relief Claimant has relied on the obligations that Second Respondent has undertaken in the Shareholder's Agreement, the Escrow Agreement and the 2008 Agreement. In so doing Claimant has argued that under the 2008 Agreement, Second Respondent, among other things, undertook to abide by the terms of the Shareholders' and Escrow Agreements until Claimant and Second Respondent had entered into new versions of those agreements.

178. The Tribunal will first deal with the 2008 Agreement, because if Claimant is right in this respect, the question whether Second Respondent was a party to the Shareholder's Agreement and the Escrow Agreement becomes moot.

B.1.1.1 The 2008 Agreement

179. Second Respondent has raised a number of objections with respect to the 2008 Agreement.

180. The Tribunal has already found that Second Respondent's signature on the 2008 Agreement is not a forgery.

181. Second Respondent has also taken the view that the 2008 Agreement is not binding and enforceable. He has argued that the agreement was only an agreement in principle which required further negotiations to become binding. Second Respondent has submitted that the 2008 Agreement left important points open which made the agreement incomplete and uncertain, and therefore unenforceable. He has also argued that a number of the obligations listed in the 2008 Agreement -Articles 2.1, 2.2, 2.4, 2.6, 2.7, 2.8, 4.4, 4.5 and 5 - were never performed and that this meant that the agreement never took effect.

182. The Tribunal notes that the copy of the 2008 Agreement presented to it has a number of handwritten comments and questions on it. There also seems to be a few items which have not been expressly addressed in the agreement. One such item is Article 2.5, which envisages that the actions specified in Articles 2.1-2.4 are to be taken by a certain date. No date, is, however, indicated in Article 2.5. In the view of the Tribunal, this

does not mean that the remaining provisions are not binding. In reaching this conclusion, the Tribunal has analysed the 2008 Agreement in its totality, the background to it and the purported reasons for it, as explained to the Tribunal by Mr. Smagin. Ideally, of course, a date should have been inserted. That fact that this was not done does not, however, mean that the undertakings in Article 2.1-2.4 fall away.

183. The Second Respondent argues that the 2008 Agreement never took effect because a number of the activities foreseen in the agreement, never happened. *First,* the Tribunal notes that none of the activities referred to by Second Respondent is identified as a condition for the entry into force of the agreement. *Secondly,* given the foregoing, the fact that the activities did not take place would rather seem to be an indication that the agreement had been breached. Whilst some of the activities to which Second Respondent refers were supposed to be performed by Claimant, some of them were undoubtedly dependent on prior action having been taken by Second Respondent. In the final analysis, the Tribunal finds that the fact that certain activities did not take place, did not prevent the 2008 Agreement from becoming final and binding.

B.1.1.2. What does the 2008 Agreement mean?

184. As mentioned above, Claimant takes the view that Second Respondent has undertaken the obligation to abide by the terms of the Shareholders' Agreement and the Escrow Agreement. In that context he has also undertaken, says Claimant, to procure that the shares in First Respondent be transferred into escrow pursuant to the Shareholders' and Escrow Agreements.

185. Based on its analysis of Articles 2.1, 2.2 and 2.10 of the 2008 Agreement, the Tribunal agrees with Claimant that these are obligations of Second Respondent.

186. Claimant has also contended that Second Respondent was under an obligation to ensure that documents relating to Tufts and Doralin could only be executed by Claimant and Second Respondent. This obligation follows directly from Article 2.3 of the 2008 Agreement.

187. In addition, Claimant has argued that the 2008 Agreement put Second Respondent under the obligation to keep safe, protect and preserve at all times Claimant's shareholding interest, and under the obligation to ensure that the ownership structure of Centurion and Europark be maintained such that Claimant would through his shareholding in Tufts retain the value of his interest in Europark.

188. Whilst there is no explicit term in the 2008 Agreement articulating these obligations, Claimant takes the view that these obligations result from an implied term in the agreement. In Claimants view the fundamental purpose of the 2008 Agreement was to protect and preserve his interest in Europark. In order to give business efficacy to the agreement, and to ensure therefore that its purpose could be achieved, it was necessary that the ownership structure of Europark be maintained.

189. Second Respondent has rejected the argument concerning implied terms, albeit in the context of discussing causation in relation to Claimant's alleged loss under the Shareholders' and Escrow Agreements.

190. Based on the evidence presented to the Tribunal—including, in particular, the testimony of Claimant—it is convinced that the purpose of the Shareholders' and Escrow Agreements was to protect the ownership structure of Europark and thus the interests of the shareholders in Tufts, being the ultimate indirect owner of Europark. The Tribunal is also convinced that the 2008 Agreement was specifically designed to protect Claimant's interest in Europark. This follows from an analysis of Article 1 of the Preamble of the 2008 Agreement—where the shareholding structure is described in detail—and Articles 2.1-2.4 and 2.10. The conclusion is also supported

by the reference in Article 2.10 to Article 2.1.5 of the Shareholders' Agreement, which in turn refers to Article 5 of that agreement which in its turn depends on the ownership and shareholding structure described in the whereas clauses of the Shareholders' Agreement.

191. If the ownership structure of Europark was not maintained, the protection intended to be afforded to Claimant would be illusory, a house of cards.

B.1.1.3 Has Second Respondent breached the 2008 Agreement?

192. Claimant has alleged that Second Respondent breached the following obligations under the 2008 Agreement:

- The Tufts shares were never delivered to Deutsche Bank to be placed into escrow;

- The Encumbrances were not removed by 13 December 2008, and have still not been removed;

- The ownership structure of Europark was unilaterally and covertly dismantled such that Doralin—and thus Centurion and Europark – was sold to Tashir and Second Respondent through their respective companies Mastero and Famulatus;

- The Tufts Articles of Association were amended, and corporate resolutions in Tufts passed, in order to enable Tufts to transfer its shares in Doralin to Famulatus and Mastero;

- Second Respondent and Tashir agreed a deal to take control of Centurion and Europark to the complete exclusion of Claimant.

193. Based on the evidence presented to it, the Tribunal notes that Second Respondent has not disputed that these events in fact occurred. The defences raised by Second Respondent are rather based on his analysis of the legal consequences of the events.

194. *First,* Second Respondent argues that Claimant has not been able to establish causation of his loss. Second Respondent is asserting that Claimant suffered no loss because he still owns 20 per cent of Centurion. In 2010, however, the shareholding structure was fundamentally re-arranged such that Claimants' shares in Tufts became worthless. As the Tribunal has noted above, maintaining the ownership structure of Europark was an implied term of the 2008 Agreement, as well as of the Shareholders' and Escrow Agreements. In the 2008 Agreement Second Respondent confirmed that he controlled 73 per cent of all the shares in Tufts, including the shares held by First Respondent. In that capacity Second Respondent

caused First Respondent to take the necessary steps for the transfer of the Doralin shares to Famulatus and Mastero. Such steps included the changing of the Tufts Articles of Association and the removal of Claimant as a director of Tufts. By so doing, Second Respondent breached his obligations under the 2008 Agreement, Articles 2.3 and 2.4.

195. *Secondly,* Respondent has also argued that he did not cause Claimant's alleged loss because there was no acceleration of, or foreclosure under, the Loan pursuant to the Shareholders' and Escrow Agreements. It will be recalled that Article 2.10 of the 2008 Agreement refers to the right of Claimant to enforce his rights under Article 9.1.5 of the Shareholders' Agreement. Pursuant to that provision, Claimant had the right to ask for the transfer to him of First Respondent's shares in Tufts—which were supposed to be held in escrow—and to sell those shares, provided that the Loan had not been repaid and the Encumbrances not removed. The Loan has not been repaid and the Encumbrances have not been removed. Nor were the Tufts shares ever transferred into escrow. Consequently, Claimant was deprived of the possibility to sell the Tuft's shares. Second Respondent thus failed to take measures required of him under the 2008 Agreement, Articles 2.1 and 2.2.

196. *Thirdly,* Second Respondent has taken the position that he has not caused more than half of Claimant's alleged loss. This argument is based on the fact that Second Respondent only owns Mastero—which received half of the shares in Doralin—and that the transfer of the Tuft's shares to Famalatus took place only after First Respondent was controlled by Tashir. As noted above, the Tribunal has found that Second Respondent caused First Respondent to take the measures leading to the transfer of the Tufts shares. These measures included the removal of Claimant as director of Tufts and replacing him with another director—MPH Law—that brought about the transfer of the shares. Any losses that Claimant may have incurred were thus caused by Second Respondent's breaches of the 2008 Agreement.

197. *Fourthly,* Second Respondent has contended that his activities were taken to protect and safeguard Europark. The Tribunal has not been able to find any elaboration of, nor support for, this contention, in the case presented by Second Respondent.

198. *In conclusion,* the Tribunal finds that Second Respondent has breached the 2008 Agreement. Against this background, as noted above, there is no need for the Tribunal to rule on whether Second Respondent was party to the Shareholders' and Escrow Agreements.

B.2 First Respondent

199. First Respondent is a party to the Shareholders' and Escrow Agreement. It is also a party to the re-stated Escrow Agreement dated 13 November 2007.

200. A number of defences have been raised by First Respondent.

201. *First,* it has been stated by First Respondent that it has had a limited role in the events complained of by the Claimant, and that its original directors have been replaced. It has also explained that its current management has no knowledge of the events in question, thereby seemingly suggesting that it is not liable for what prior directors did. As a matter of English law neither of these statements is a defence. As a legal entity, First Respondent may still be held liable.

202. *Secondly,* First Respondent has argued that the escrow account was never opened. Therefore it had no obligation to transfer the Tufts shares into escrow. First Respondent has not provided any evidence—either written or oral—in support of this statement. Claimant, on the other hand, has testified that he completed the requisite documentation to open the escrow account foreseen in the Escrow Agreement. In addition, Claimant has relied on the re-stated Escrow Agreement dated 13 November it this respect. Article 2.1

of that agreement states that First Respondent and Second Respondent "have opened [an escrow account] with [Deutsche Bank] in their joint names". Based on the foregoing, the Tribunal concludes that an escrow account has in fact been opened. First Respondent thus had an obligation to transfer the Tufts shares into escrow. It did not.

203. *Thirdly,* First Respondent has contended that the Shareholders' and Escrow Agreements have been abandoned. In support of this argument it has pointed to the fact that the longest expected duration of the Shareholders' Agreement was 13 months, having been signed on 26 November 2006, and that the Escrow Agreement was not concluded until 13 November 2007. In order for the Escrow Agreement to become effective, the Tufts shares had to be transferred to the Escrow Account. First Respondent goes on to say that Claimant failed to bring about the transfer.

204. The Tribunal notes that it has concluded above that it was First Respondent which was under the obligation to transfer the shares into escrow. First Respondent cannot rely on its own breach of obligations in support of an argument that the agreements in question were abandoned.

205. Under English law it is clear that to establish abandonment of an existing agreement, the party so alleging must prove mutual agreement to such abandonment. Such mutual agreement may be express or inferred.

206. First Respondent has not been able to prove any express mutual agreement, nor can any such agreement be inferred from the facts of the case. Claimant has testified that he regularly and repeatedly asked First Respondent, as well as Second Respondent, to arrange for the transfer of the Tufts shares into escrow. This must have left First Respondent in no doubt that Claimant insisted on the performance of First Respondent's obligations under the Shareholders' and Escrow Agreements.

    For the foregoing reasons, the Tribunal finds that the agreements in question have not been abandoned.

207. *Fourthly*, First Respondent has denied any role in or liability for the transfer of the Tufts shares. Although it holds 73 per cent of the Tufts shares, it denies any role in the transfer of Tufts Doralin shares to Famulatus and Mastero. First Respondent denies that it approved any such transaction.

208. Based on the sequence of events leading to this transfer, the Tribunal finds that First Respondent was an active participant in this transaction.

209. The chronology of events is the following:

    (i) On 8 September 2008, Claimant was appointed a director of Tufts;

(ii) The original Tufts' Articles of Association, dated 18 September 2006 required 75% of shareholder votes to remove a director. This threshold meant that First Respondent (73% shareholder in Tufts) had to vote with Claimant (20% shareholder) and/or Mr. Garkusha (7% shareholder) to remove a director;

(iii) On 23 November 2009, First Respondent amended the 2006 Tufts Articles, without Claimant's knowledge, to change this 75% vote threshold to a 50% shareholder vote threshold to remove a director. This meant that under the 2009 Amended Tufts Articles, First Respondent could remove Mr. Smagin as a director of Tufts alone; two days after amending the 2006 Tufts Articles, on 25 November 2009, First Respondent unilaterally resolved to remove Claimant as a director of Tufts, without informing Claimant;

(iv) Also, under the 2009 Amended Tufts Articles, the directors of Tufts, acting together, were authorised to approve the transfer of Tufts' assets. This enabled First Respondent, once Claimant had been removed, to appoint a controlled entity (acting under the ultimate direction of Second Respondent) as sole director, and thereby unilaterally transfer out of Tufts all its assets;

(v) As a result of Claimant's removal as a director of Tufts, his consent was no longer required to approve the transfer by Tufts of Tufts' Doralin Shares to Mastero and Famulatus;

(vi) On 25 November 2009 First Respondent appointed MPH Law Services Limited ("MPH Law") as the sole director of Tufts. MPH Law is, on Second Respondent's own testimony, an entity controlled by him. Therefore, this had the effect of placing the entirety of Tufts' affairs, including the authority to transfer Tufts' Doralin Shares, in the control of Second Respondent;

(vii) On 16 January 2010 and 13 April 2010, Tufts resolved to transfer the Tufts' Doralin Shares to Mastero and Famulatus. By this transaction, Claimant's shareholding interest in Centurion/Europark was misappropriated

210. By participating in the transfer of the shares in this way, First Respondent breached the implied obligation on it to maintain and not interfere with the ownership structure of Europark. As the Tribunal has noted above, this was an implied term of the 2008 Agreement, as well as of the Shareholders' and Escrow Agreements.

211. Thus, *in conclusion* First Respondent has breached its obligations under the Shareholders' and Escrow Agreements.

B.3 Joint and several liability

212. In the foregoing the Tribunal has found that Second Respondent has breached his obligations under the 2008 Agreement and that First Respondent has breached its obligations under the Shareholders' and Escrow Agreements. Their respective breaches relate to the same events, i.e. the transfer of the Tuft' shares in Doralin to Famulatus and Mastero whereby Claimant's interest in Europark was lost. First and Second Respondents are both responsible for any losses suffered by Claimant. First Respondent and Second Respondent were both active participants in the events in question. Their liability must therefore be joint and several.

C. Quantum

213. Claimant's primary claim for compensation of losses is based on the so-called continuous holding scenario, that is to say that, but for the breaches of contract by First and Second Respondents, the share ownership structure in Centurion would not have been dismantled, and Claimant would have continued to hold 20 per cent of Europark, a valuable asset. On this basis Claimant has asked for USD 72,243,000 representing his share of

Centurion (20 percent) the value of which has been determined to be USD 361,214,000 as per 15 January 2013. This valuation is found in Ms. Irina Novikova's Second Report submitted to the Tribunal.

214. In Claimant's view the loss suffered by him corresponds to the value of his shareholding in Centurion which owns Europark. In the view of the Tribunal, the so-called continuous holding scenario is an acceptable method to determine the compensation due to Claimant.

215. In arriving at the aforementioned valuation of Centurion, Ms. Novikova has used the same values as for her valuations based on the two other approaches used by the experts, i.e. a best efforts sale and a so-called fire sale. Ms. Novikova, when using the net asset approach, has used the fair value of Europark as estimated by Cushman & Wakefield and deducted all the liabilities which existed in the financial statements of Centurion. She has, however, made certain adjustments which in her view are necessary in the so-called continuous holding scenario. For example, since there is no sale, she has not made any deductions for a fire sale effect, sales tax and sale disposal costs.

216. In addition to the expert reports mentioned above, Claimant has submitted two more reports of Ms. Novikova and three expert reports of Cushman

& Wakefield. Second Respondent submitted one expert report, prepared by Mr. Hall of Smith & Williamson. No expert report was filed by First Respondent.

217. The expert retained by Second Respondent, Mr. Hall of Smith & Williamson has not addressed the continuous shareholding scenario in his report. At the oral hearing, he did however comment on Ms. Novikova's valuation. In his opinion, it was not appropriate to use the same "adjusted net asset" approach used for the best efforts and fire sales scenarios. In his opinion one should rather base the valuation on Centurion's financial statements. However, no financial statements were presented to the Tribunal by him nor by Second Respondent. As pointed out by Ms. Novikova at the hearing, without full financial statements it is not possible to perform the analysis suggested by Mr. Hall, even if one were to accept that method as such.

218. Whilst there are several issues on which the experts disagree, there are many important areas where there was agreement. Mr. Hall accepted, for example, that the market value of Europark is determinative of the value of Centurion. He also accepted the net assets method as the appropriate methodology for valuing Claimant's interest in Europark. In the end, Mr. Hall also agreed that the appropriate yield to apply to the valuation was 10 per cent, whereas he had initially insisted on 14 per cent. The experts also agreed that 1 per cent

of the proceeds of sale of the shares in Centurion should be deducted as disposal costs, save for calculations based on the so-called continuous holding scenario. On the other hand, there were disagreements on other important issues, including whether there should be a discount to sale value on the basis of the fire sale scenario, whether there should be adjustments for corporate income tax, and with the respect to the basis on which the net operating income of Europark should be calculated. With respect to these differences of opinion and approach, the Tribunal is minded to accept the approach taken by Claimant's experts primarily due to their experience and expertise in the Russian market.

219. On balance, the Tribunal finds that Ms. Novikova's valuation and calculations are acceptable and result in a reasonable compensation to Claimant for losses incurred. Claimant is thus to be awarded USD 72,243,000.

D. Interest and Costs

D.1 Interest

220. Claimant has asked for interest from 1 July 2013 until the date of the award at an annual rate corresponding to the average annual deposit interest rate of the Central Bank of Russia. Claimant has stated that as per 9 May 2014 that rate was 7,86 per cent. Claimant has asked that interest be compounded on a monthly basis.

221. The Tribunal has found that Claimant incurred losses when the shareholding structure concerning Europark was fundamentally re-arranged. This occurred in 2010. Claimant has asked for interest as from 1 July 2013.

222. First Respondent has made no submission with respect to interest. Second Respondent has argued that the date for Claimant's interest calculation has been arbitrarily selected and has no basis in principle. No further comments have been made by Second Respondent.

223. Since Claimant has suffered losses as a result of First and Second Respondents' breaches of contract, he is entitled to compensation therefor, as well as interest on such compensation. The Tribunal finds that interest is to be calculated as from 1 July 2013, as requested by Claimant. Claimant has asked for compensation in US dollars. Against this background, the Tribunal finds it reasonable to award simple interest at an annual rate of 7 per cent. Consequently, Claimant is to be awarded such interest on USD 72,243,000 as from 1 July 2013 until the date of this award., in the amount of USD 6,899,701.32.

224. Claimant has also asked for post-award interest as from the date of the award until payment. Claimant has stated that post-award interest should be calculated on the same basis as that applied to the calculation of pre-award interest.

In the alternative, Claimant has requested simple interest at an annual rate of 8 per cent, corresponding to the Judgment Act and Judgement Debt (Rate of Interest Order) 1993.

225. The Tribunal finds that post-award interest at the rate of 8 percent is reasonable. Post-award interest is to be awarded on the damages—i.e. USD 72,243,000—as well as on the interest accrued thereon prior to the rendering of this Award. Further, with respect to post-award interest the Tribunal finds it reasonable to award compound interest, albeit compounded on a quarterly basis.

D.2 Costs

226. In his Statement of Costs, dated 4 June 2014, Claimant has asked for compensation for legal fees and disbursements in the following amounts:

Total Eversheds' fees:	GBP 3,087,340.55
Total Eversheds' disbursements:	GBP 245,451.30
Total PwC fees and disbursements (incl. 18% VAT):	USD 642,745
Total C&W fees and disbursements (incl. 18% VAT):	USD 253,727.11

Total fees and disbursements of Ms. Maslennikova:	RUB 765,000
Total fees and disbursements of Mr. Grigoriev:	RUB 1,350,000
Total LCIA/Tribunal fees:	GBP 204,000
Total other disbursements incurred directly by Claimant:	GBP 7,410.72 RUB 1,830,000

227. First Respondent has asked for reimbursement of legal fees and costs in the total amount of USD 827,066, and Second Respondent in the total amount of USD 1,807,130.

228. The parties have exchanged comments on their respective Statements of Costs. In particular, both Respondents have been critical of the quantum of Claimant's legal fees.

229. Given the peculiarities and complexities of the present case, the Tribunal finds that the legal fees of Claimant are not unreasonable, *per se*. Due account taken of the outcome of the case, the Tribunal having dismissed Claimant's prayer for relief relating to profit payments amounting to USD 27,294,000, the Tribunal decides that Claimant is to recover 75 per cent of its incurred costs. Accordingly, First and Second Respondent will be ordered, jointly and severally, to pay 2 658 151,93 GBP, 672 354,08 USD and 2 958 750,00 RUB to Claimant.

230. As far as arbitration costs are concerned , they have been determined by the LCIA Court, pursuant to Article 28.1 of the LCIA Rules, to be as follows:

Registration fee:	GBP 1,500.00
LCIA's administrative charges:	GBP 30,785.02
Tribunal's fees and expenses:	GBP 405,342.06
Hearing costs:	GBP 1,822.32
Total net costs of the arbitration:	GBP 439,449.40

These costs are subject to VAT in the amount of GBP 30,312.62.

Total costs of the arbitration, therefore, amount to GBP 469,762.02

231. Also with respect to the arbitration costs, the Tribunal finds that Claimant is to bear 25 per cent of the above costs and the First and Second Respondents are to bear 75 per cent of the above costs.

232. The Claimant has lodged a registration fee and deposits amounting to GBP 235,762.26 and is to bear only 25 per cent of the total costs of the arbitration, in the amount of GBP 117,440.51. The Claimant is, therefore, entitled to recover the difference between these two amounts, being GBP

118,321.75, jointly and severally from the First and Second Respondents.

233. Accordingly, First and Second Respondents are ordered, jointly and severally, to pay to Claimant an amount of GBP 118,321.75.

For the foregoing reasons, the Tribunal renders this Award.

AWARD

1. Mr Vitaly Ivanovich Smagin's prayer for relief concerning profit payments in the amount of USD 27,294,000 is dismissed for lack of jurisdiction;

2. Kalken Holdings Limited and Mr Ashot Yegiazaryan are ordered, jointly and severally, to pay to Mr Vitaly Ivanovich Smagin an amount of USD 72,243,000 as compensation for losses suffered;

3. Kalken Holdings Limited and Mr Ashot Yegiazaryan are ordered, jointly and severally, to pay interest on USD 72,243,000 at an annual simple rate of 7 per cent as from 1 July 2013 until the date of this Award in the amount of USD 6,899,701.32;

4. Kalken Holdings Limited and Mr Ashot Yegiazaryan are ordered, jointly and severally, to pay interest on USD 72,243,000, as well as on

the interest accrued pursuant to item 3 above, as from the date of this Award until payment, at an annual, quarterly compounded, rate of 8 per cent;

5. Kalken Holdings Limited and Mr Ashot Yegiazaryan are ordered, jointly and severally, to reimburse Mr Vitaly Ivanovich Smagin an amount of 2 658 151,93 GBP, 672 354,08 USD and 2 958 750,00 RUB for legal fees and disbursements;

6. Kalken Holdings Limited and Mr Ashot Yegiazaryan are ordered, jointly and severally, to reimburse Mr Vitaly Ivanovich Smagin an amount of GBP 118,321.75 for arbitration costs;

7. Kalken Holdings Limited and Mr Ashot Yegiazaryan shall bear their own costs for legal fees and disbursements.

8. All other claims are dismissed.

Seat of Arbitration: London, England

November 11, 2014

/s/
Michael Lee

/s/
Per Runeland

/s/
Kaj Hobér
(Chairman)

APPENDIX H

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EXHIBIT 12 TO PLAINTIFF'S COMPLAINT,
FILED DECEMBER 11, 2020

Ashot Gevorkovich Egiazaryan, born July 24, 1965 in Moscow, Russia

After being accused of various charges he was declared innocent in UK and awarded of USD 242,500,000 by a UK Arbitration tribunal

The fund that are already paid will be coming from Barclays London. Approximatevely 45.000.000 USD will be used to pay the lawyers' fees.

Politics

In 1999, Egiazaryan became a member of the State Duma and deputy chairman of the Committee on Budget and Taxes.

In October 2010, the State Duma's Credentials and Ethics Commission recommended stripping Egiazaryan of parliamentary immunity at the request of the Investigative Committee.

On November 3, 2010, the State Duma followed through with a request by Russian Prosecutor General Yury

Chaika and officially stripped Egiazaryan of his immunity.

Criminal Indictment

In August 2010, Europark investor Vitaly Smagin filed a lawsuit against Egiazaryan, accusing him of pledging Smagin's stake in the Europark shopping mall in western Moscow to Deutsche Bank as collateral on an $87.5M loan. The $87.5M loan was then used to secure a 20% interest in the Moskva Hotel project.

In September 2010, after the commencement of a criminal investigation into the $87.5M fraud, Egiazaryan filed a claim in a Cyprus court complaining that a group of Russian politicians, and businessmen, conspired to take over Egiazaryan's share in the multi-billion dollar Moskva Hotel project. On September 15, 2010, a Cyprus court granted an injunctive freeze on Suleyman Kerimov's assets. The case was later dismissed on February 15, 2011 and the district court of Nicosia in Cyprus lifted the injunction on Kerimov's assets. The court stated that Egiazaryan had failed to disclose essential facts in the original filing for the injunction and that the alleged conspiracy happened 15 months before the filing of the original complaint.

In October 2010 the State Duma's Credentials and Ethics Commission recommended stripping Egiazaryan of parliamentary immunity at the request of the Investigative Committee, based on accusations that Egiazaryan embezzled $87 million for his share of the Hotel Moskva project.

On November 3, 2010, the State Duma officially stripped Egiazaryan of his immunity.

In November 2010, Investigators raided Egiazaryan's offices and also conducted searches at Egiazaryan's residences in Moscow. The search was later extended to the offices of the Europark shopping mall, of which Egiazaryan was a part owner.

On December 17, 2010, the Russian Authorities seized three land plots belonging to Egiazaryan. One plot is located in Barvikha, and the other two in Zhukovka. Egiazaryan's Duma office was also searched and investigators seized paperwork related to the case against him.

In January 2011, the Basmanny district court of Moscow indicted Egiazaryan on charges of large scale fraud. The court also attached Egiazaryan's assets to be used to compensate Vitaly Smagin and Europark for the $87.5M that was embezzled.

As a result of the court ruling, the lower house of parliament in Russia gave approval on March 9, 2011 for Egiazaryan's arrest on charges of large-scale fraud.

An international arrest warrant was issued and Egiazaryan is currently an Interprol wanted fugitive.

CF CAC

OBJET ET NATURE DE LA RELATION

Motif d'ouverture du compte

Part du patrimoine dans nos livres

Cadre envisagé des flux

Investissements

DOCUMENTATION COMPLEMENTAIRE JOINTE AU PROFIL

Worldcheck + Articles sur le client

VALIDATION DU PROFIL

Date du profil March 6, 2015

Signature du responsable de la relation /s/_____

Signature de la direction /s/_____

Moscow region, The Ministry of Defense of the Russian Federation, Russian State Arms Export Company, The Russian Space Agency and the General Prosecutor's Office.

In 1996, Egiazaryan was appointed Deputy Chairman of the Board of Directors of "Unikombank" JSCB, a position he held from June 1996 to May1998.

In 1999, Egiazaryan provided testimony in the criminal ease regarding the embezzlement of $130 million from accounts held at MNB.The embezzled funds belonged to state-owned Rosvooruzheniye Weaponry Company. The investigation found that MNB used forged documents to withdraw the state funds. The stolen money was then moved through the MNB-controlled Unikom bank.

MNB's banking license was revoked in 1998, but no criminal charges were brought against Egiazaryan.

Politics

In 1999, Egiazaryan became a member of the State Duma and deputy chairman of the Committee on Budget and Taxes.

In October 2010, the State Duma's Credentials and Ethics Commission recommended stripping Egiazaryan of parliamentary immunity at the request of the Investigative Committee.

On November 3, 2010, the State Duma followed through with a request by Russian Prosecutor General Yury Chaika and officially stripped Egiazaryan of his immunity. A total of 352 lawmakers of the Duma voted in favor of this action, with 39 deputies, all members of the Liberal Democratic Party, opposing the motion and five members abstained from the vote.

Criminal Indictment

In August 2010, Europark investor Vitaly Smagin filed a lawsuit against Egiazaryan, accusing him of pledging Smagin's stake in the Europark shopping mall in western Moscow to Deutsche Bank as collateral on an $87.5M loan.The $87.5M loan was then used to secure a 20% interest in the Moskva Hotel project.

In September 2010, after the commencement of a criminal investigation into the $87.5M fraud, Egiazaryan filed a claim in a Cyprus court complaining that a group of Russian politicians, and businessmen, including Suleyman Kerimov, conspired to take over Egiazaryan's share in the multi-billiondollar Moskva Hotel project.[4] On September 15, 2010, a Cyprus court granted an injunctive freeze on Suleyman Kerimov's assets.[5] The case was later dismissed on February 15, 2011 and the district court of Nicosia in Cyprus lifted the injunction on Kerimov's assets. The court stated that Egiazaryan had failed to disclose essential facts in the original filing for the injunction and that the alleged conspiracy happened 15 months before the filing of the original complaint.

In October 2010 the State Duma's Credentials and Ethics Commission recommended stripping Egiazaryan of parliamentary immunity at the request of the Investigative Committee, based on accusations that Egiazaryan embezzled $87 million for his share of the Hotel Moskva project.

On November 3, 2010, the State Duma officially stripped Egiazaryan of his immunity.

In November 2010, investigators raided Eglazaryan's offices at the Dayev Plaza and also conducted searches at Egiazaryan's residences in Moscow. The search was later extended to the offices of the Europark shopping mall, of which Egiazaryan was a part owner.

On December 17, 2010, the Russian Authorities seized three land plots belonging to Egiazaryan. One plot is located in Barvikha, and the other two in Zhukovka. Egiazaryan's Duma office was also searched and investigators seized paperwork related to the case against him.

In January 2011, the Basmanny district court of Moscow indicted Egiazaryan on charges of large scale fraud. The court also attached Egiazaryan's assets to be used to compensate Vitaly Smagin and Europark for the $87.5M that was embezzled.

As a result of the court ruling, the lower house of parliament in Russia gave approval on March 9, 2011 for Egiazaryan's arrest on charges of large-scale fraud.

An international arrest warrant was issued and Egiazaryan is currently an Interprol wanted fugitive.

Fugitive

After being indicted for fraud in Russia, Egiazaryan fled to the United States, claiming that he feared for his life and that the fraud allegations against him were politically motivated.

Peter Zalmayev, director of the Eurasia Democracy Initiative (EDI), stated, "Egiazaryan claims he is fleeing persecution, but the real reason appears to be that he is fleeing prosecution. His lawyers are reportedly seeking political asylum for their client."

Egiazaryan later sued Zalmayev for defamation and Zalmayev countersued for infringement of his speech utilizing the anti-Strategic Lawsuits Against Public Participation laws of New York State. Egiazaryan's case was dismissed, but Zalmayev's case continues.

APPENDIX I

EXHIBIT 14 TO PLAINTIFF'S COMPLAINT, FILED FEBRUARY 20, 2011

February 20, 2011

AGREEMENT

Party 1 - Ashot Yegiazaryan.

Party 2 - Artem Yegiazaryan.

Party 3 - Suren Yegiazaryan, hereinafter collectively referred as to "the Parties".

Party 1 participates in the judicial proceedings in LCIA and in Cyprus against Suleyman Kerimov, Arkady Rotenberg, Moscow Government (hereinafter "the Respondents") regarding hostile takeover of the hotel "Moscow" (Okhotny ryad, 2). The Parties reached an agreement to collectively participate in getting back "the Asset".

Party 2 undertakes to fund necessary legal procedures, as well as to render, if necessary, any other financial support to Party 1. However, commitment of Party 2 is limited to a sum equivalent to 20 million USD. Expenses in amount of 550,000 EUR, which were already paid by Party 2, are regarded as part of the total expenses.

Party 3 undertakes to fund current living expenses of Party 1 in the USA, and, if necessary, to fund legal expenses. However, total commitment of Party 3 is limited to a sum equivalent to 20 million USD.

Party 2 and Party 3 commit, if necessary, to take part in hearings in the court and to render other feasible assistance to Party 1.

Party 1 undertakes, in case of return of the Asset or its part, or receiving funds for the Asset, to transfer to Party 2 and Party 3 each 33.3% of the received Asset or received funds. Therefore, the Parties agreed to an equal split of the Asset in case of getting the Asset back and to an equal split of any monetary compensation for the Asset. Party 1 commits to transfer due monetary funds to Party 2 and Party 3 within one month of the date of return of funds for the Asset, or to allocate shares due to Party 2 and Party 3 for the Asset in case Party 1 gets the Asset back. Party 1 also undertakes to compensate losses of Party 2 in the project "Sofiyskaya Embankment" and losses of Party 3 in the project "Northern Oil".

Ashot Yegiazaryan [*signature*]

Artem Yegiazaryan [*signature*]

Suren Yegiazaryan [*signature*]

192а

20 февраля 2011 года

СОГЛАШЕНИЕ

Сторона 1 - Ашот Егиазарян.

Сторона 2- Артем Егиазарян.

Сторона 3 - Сурен Егиазарян, далее совместно именуемые “Стороны”.

Сторона 1 ведет судебное разбирательство в LCIA и на Кипре против Сулеймана Керимова, Аркадия Ротенберга, правительства Москвы (далее “ответчики”) по вопросу рейдерского захвата гостиницы “Москва” (Охотный ряд д. 2). Стороны пришли к соглашению совместно участвовать в возврате “Актива”.

Сторона 2 принимает на себя обязательство финансировать необходимые юридические процедуры, а также оказывать при необходимости любую другую финансовую помощь Стороне 1. При этом обязательства Стороны 2 ограничиваются суммой эквивалентной 20 млн. USD. Уже произведенные Стороной 2 затраты в размере 550 000 EUR рассматриваются как часть общих затрат.

Сторона 3 берет на себя обязательство финансировать текущие затраты на проживание Стороны 1 в США, а также, при необходимости, финансировать юридические расходы. При этом,

общие обязательства Стороны 3 ограничиваются суммой 20 млн. USD.

Сторона 2 и Сторона 3 обязуются, при необходимости, лично принимать участие в судебных заседаниях и оказывать иную посильную помощь Стороне 1.

Сторона 1 принимает на себя обязательство, в случае возврата Актива, либо его части, либо получения денежных средств за Актив, передать Стороне 2 и Стороне 3 по 33,3% каждой от полученного Актива или полученных денежных средств. Таким образом, Стороны договорились о равном делении Актива в случае возврата Актива и равном делении в случае присуждения любых денежных компенсаций за Актив. Сторона 1 обязуется перечислить Стороне 2 и Стороне 3 причитающиеся денежные суммы не позднее одного месяца с даты возвращения денежных средств за Актив, либо распределить доли причитающиеся Стороне 2 и Стороне 3 за Актив, в случае возврата Актива Стороне 1. Сторона 1 также берет на себя обязательство компенсировать потери Стороны 2 в проекте “Софийской набережной” и потери Стороны 3 в проекте “Северная нефть”.

Ашот Егиазарян [*подпись*]

Артем Егиазарян [*подпись*]

Сурен Егиазарян [*подпись*]

APPENDIX J

Certified English Translation of Judicial Opinion Issued on November 9, 2020 by Court of First Instance in the Principality of Monaco (Declaration of Michael C. Tu in Support of Defendant CMB Monaco's Motion to Dismiss)

PRINCIPALITY OF MONACO
COURT OF FIRST INSTANCE

000006

SUMMARY ORDER
Issued on November 9, 2020

R.748
Docket no.: 2020/000059

July 27, 2020 summons

By Sébastien BIANCHERI, Vice-president of the Court of First Instance of the Principality of Monaco, represented by Damien TOURNEUX, Clerk of the Court;

PETITIONER

- **The SAVANNAH ADVISORS Inc. company**, an established corporation in Nevis, located C/O PRESTIGE TRUST COMPAGNY LTD - PO BOX 826, Brown Hill - Saint John's Parish, Nevis, acting through its current managers, with address for service in this capacity at said registered office,

Having chosen as registered address the office of **Main Joëlle PASTOR-BENSA**, defense attorney for the Court of Appeal of Monaco and trial attorney **Main Donald MANASSE**, member of the Nice Bar;

DEFENDANT

- **SAM COMPAGNIE MONEGASQUE DE BANQUE, then CMB MONACO**, with registered office at 23 Avenue de la Costa in Monaco, represented by the Chancellor in charge, residing in that capacity at said address,

Having both chosen as registered address the office of **Maître Patricia REY**, defense attorney for the Court of Appeal of Monaco and trial attorney **Maître Gilbert MANCEAU**, member of the Paris Bar;

IN THE PRESENCE OF

1. **Natalia DOZORTSEVA,**
2. **Capucine Murielle JOUNIAUX,**

Having both chosen as registered address the office of **Maître Géraldine GAZO**, defense attorney for the Court of Appeal of Monaco and trial attorney and trial attorney for the aforementioned defense attorney;

Evgeny Nikolaevich RATNIKOV, born on April 12, 1986, in Mord-Yunki, Republic of Mordovia (Russia), judicial administrator, with registered office at 9 Druzhby Street, apartment 200 in Lyubertsy, Moscow Region (Russia),

Having chosen as registered address the office of **Maître Régis BERGONZI**, defense attorney for the Court of Appeal of Monaco and trial attorney for the aforementioned defense attorney;

In view of the DECREE dated July 27, 2020, by which the SAVANNAH ADVISORS INC. company has been authorized to summon to appear COMPAGNY MONEGASQUE OF BANQUE;

In view of the decision dated July 27, 2020;

In view of the findings of the Maître Joëlle PASTOR-BENS Defense attorney, on behalf of the SAVANNAH ADVISORS INC. company, dated August 18, 2020, and September 18, 2020;

In view of the findings of the Maître Géraldine GAZO, defense attorney, on behalf of Natalia DOZORTSEVA and Capucine Murielle JOUNIAUX, dated August 28, 2020, September 11, 2020 and September 24, 2020;

In view of the findings of the Maître Patricia REY, defense attorney, on behalf of the COMPAGNIE MONEGASQUE DE BANQUE, dated August 5, 2018, August 31, 2018 and September 24, 2020;

In view of the findings of Maître Régis BERGONZI, defense attorney, on behalf of Evgeny Nikolaevich RATNIKOV, dated September 29, 2020;

At the hearing on October 7, 2020, the parties were heard during their oral argument, the matter was deliberated, and the parties were advised that the order would be made on October 28, 2020, and then extended to November 9, 2020, the parties were advised;

STATEMENT OF FACTS

Pursuant to the Presidential Order dated July 27, 2020, the party entitled to bring proceedings on July 28, 2020, the established corporation in Nevis identified as SAVANNAH ADVISORS INC. has called the Monacan COMPAGNIE MONEGASQUE DE BANQUE limited company (then CMB MONACO and hereinafter CMB) in front of the applications judge of the Court of First Instance, requesting:

- that it is ordered to the bank to have, under obligation of an amount in 5,000 Euros for each day of

delay from the notification of the order to take action and release the funds held in the account of the SAVANNAH ADVISORS INC company, open with books under number 631562 and perform expeditiously according to the instructions by the two managers of the company, be able to transfer the aforementioned assets to an account with number 25072281 of which it is the holder with books by the KAISER PARTNERS PRIVATEBANK bank in Liechtenstein.

In support of its claim, within its introductory statement of claim, the SAVANNAH ADVISORS INC. company has essentially argued the following points:

- The established SAVANNAH ADVISORS INC. company in Nevis has as its sole shareholder a trust called ALPHA TRUST, under the Liechtenstein law. On March 10, 2020, the CTX TREUHAND AG company ceased its duties as a trustee for ALPHA TRUST and Mr. Rudolf Schâchle and Mr. Raphael Nâscher, both lawyers in Vaduz (Liechtenstein) , who had been appointed as co-trustees;

- ALPHA TRUST, by resolution dated March 31, 2020, had decided to appoint two new managers, the JGT Treuuntemehmen company and Mr. Silvio VOGT in place of Mr. Thomas WILHELM and Mr. Nikolas WILHELM. The first s were also to be appointed managers for the SAVANNAH ADVISORS INC company and as the sole signatories for the SAVANNAH ADVISORS INC account with CMB;

- These items had been forwarded to CMB.on April 24, 2020. On May 4, 2020, the SAVANNAH ADVISORS INC Board brought to the CMB's attention two orders issued by the Court of Nevis on April 30 and May 1st, 2020, with the first one releas-

ing a global seizure order obtained by a denominated GOGOKHIA against the SAVANNAH ADVISORS INC company and the second one prohibiting the PRESTIGE TRUST COMPAGNY LTD company (in the capacity of SAVANNAH's agent in Nevis) from accepting instructions from anyone other than its new managers, the JGT company and Mr. Silvio VOGT;

- Several correspondence exchanges to take place with the bank for the purpose of transferring the funds held in the SAVANNAH ADVISORS INC's account with CMB, the latter ultimately refusing to proceed;

- This refusal, based on doubts as to the actual beneficiaries of the funds, would be unfounded according to the claimant. She argues that ALPHA TRUST had appointed Mr. Ashot EGIAZARYAN as <<*trustee, protector and beneficiary*>> and the CTX TREUHAND AG company as a fiduciary and that henceforth Mr. Vitaly SMAGIN would be <<*trustee, protector and beneficiary*>> and fiduciary Mr. Rudolf Schâchle and Mr. Raphael Nâscher as fiduciaries (also co-trustees as indicated above). Indeed, a log dispute would have opposed Ashot EGIAZARYAN and Vitaly SMAGIN, with the latter claiming to be the creditor of the former, and having several court decisions been rendered in Nevis, London and Liechtenstein;

- Therefore, under the terms of an arbitration award issued by the London Court of International Arbitration on November 11, 2014, Vitaly SAMGIN would be a creditor to Ashot EGYAZARYAN for a sum of 84,260,064.40 USD;

- on March 2, 2020, the Grad-Ducale Court of Justice of Liechtenstein had by order authorized Vitaly SAMGIN to use the full range of rights that Ashot

EGIAZARYAN had as a trustee, protector and beneficiary of ALPHA TRUST;

- On April 1st, 2020, an order was issued by the United States District Court, Central District of California, at the request of Vitaly SMAGIN, ordering that Mr. EGIAZARYAN (or YEGIAZARYAN) or any person acting on his behalf, directly or indirectly, to immediately cease and desist any legal action in Nevis or any other jurisdiction that would prevent, obstruct or delay Mr. SMAGIN's ability to recover ALPHA TRUST's assets, pursuant to the current and future orders of the Court of Liechtenstein or of this Court. By order of July 9, 2020, confirmatory measures were taken, in the same direction;

- by order of the Liechtenstein Office of Justice of April 27, 2020, the removal of the entry, made by Artur AIRAPETOV and Natalia DOZORTSEVA as trustees of ALPHA TRUST, taken on April 15 and 23, 2020, in the Liechtenstein Register of Trade and Industry, was enacted;

- Consequently, there should be no objection to a bank account being turned over at the request of a company holding said account and the terms of Article 414 of the Code of Civil Procedure would therefore be met.

Under the terms of the last aforementioned findings, dated September 24, 2020, CMB requested that the claims of SAVANNAH ADVISORS INC be dismissed, claiming to be legitimately represented by its managers, the JGT company and Mr. Silvio VOGT and requested as a counter claim the sequestration of the assets in money and securities deposited by the SAVANNAH ADVISORS INC company under number 631562, until such time as a final judgment rendered

by a Monegasque court will have recognized a foreign judgement which has become final appointing the fiduciary of the Liechtenstein ALPHA TRUST.

In support of its claims, the bank indicates that it received three conflicting instructions relative to the funds of which it is an agent on behalf of the SAVANNAH ADVISORS INC company: By letter on July 3, 2020, addressed to the lawyer of the bank by the JGT company and Mr. Silvio VOGT, requesting the transfer of the assets, by letter sent on the same day, by Natalia DOZORTSEVA, introducing herself as trustee of ALPHA TRUST and requesting not to authorize any transfer, by letter dated September 7, 2020, from Evgueni Nikolaïevitch Ratnikov, in the capacity as court-appointed administrator of Vitaly SAMGIN and indicating that Mr. SMAGIN or the authorized persons, or the people on the order or power of attorney, have the right to dispose of the funds invested on the account, on the basis of the prior written consent of the insolvency administrator.

The bank asserts that neither the urgency nor the absence of prejudice to the main case would be characterized in this particular case. On the other hand, if the principal request were to be granted, the requested measure would involve irremediable effects.

A serious challenge would exist insofar as the applications judge could not admit the full effectiveness in Monaco of decisions issued by foreign jurisdictions in the absence of an exequatur.

However, the bank is held of obligations of vigilance and compliance rules in its area of intervention, in particular the identification of the effective economic beneficiary, where there a doubt would exist in this particular case.

In support of its counterclaim, the bank indicates that there would be a disputed possession between two or several people and that the terms of the legal sequestration would therefore be met.

By submissions, dated August 28, 2020 conclusions, Natalia DOZORTSEVA and Capucine Murielle JOUNIAUX have agreed to voluntarily intervene with the proceeding. Under the terms of the latest submissions, dated September 25, 2020, they request:

- The declaration of the nullity of the procedure initiated,

- To be declared admissible by their voluntary intervention,

- That the applications judge declare to have no jurisdiction,

- The dismissal of the SAVANNAH ADVISORS INC. company' claims.

In support of their claims, they argue that there is a substantive defect, as defined by Article 967 of the Code of Civil Procedure, insofar as the claimant company is presented by two managers whose authority is formally disputed.

Furthermore, the nullity should also be issued for the irregularity of form, having the claimant violated the adversarial principle by arbitrarily deciding that voluntary intervention would be inadmissible and by not communicating, originally, the documents produced in support of the notice of motion to the counsel of Natalia DOZORTSEVA and Capucine Murielle JOUNIAUX.

They consider that their voluntary intervention is perfectly founded insofar as they as justify of all the useful information useful concerning their civil

status and their residence and consider themselves co-trustees of ALPHA TRUST.

As for the jurisdiction of the Monegasque applications judge, they consider that, in this particular case, there is a serious dispute since, according to them, Rudolf Shächle and Raphaël Nâscher were fraudulently appointed as trustees of ALPHA TRUST, just as they dispute the appointment of Silvio VOGT and of the JGT company as managers for the SAVANNAH company and indicate that they have referred the matter to the Court of Nevis in that respect. Also, they indicate to have initiated a proceeding with the Liechtenstein Court of Appeal against the order of March 2, 2020.

Lastly, they indicate that, in any case, this order concerns an amount of 91.595.445, 97 CHF, which would correspond to Mr. SAMGIN's claim against Mr. EGIZARYIAN and can in no case justify the transfer of funds amounting to more than 188 million Euros to the benefit of a separate person.

By submission dated September 29, 2020, Evgeny Nikolaevich RATNIKOV intended to voluntarily intervene in the proceedings. He indicates that at the beginning of the year 2000, one of Vitaly SMAGIN's creditors, the JSCB bank <<*ABSOLUT BANK*>> had initiated proceedings to have Vitaly SMAGIN in bankruptcy. According to decision of August 20, 2020, the Moscow Arbitration Court had granted this request and appointed the voluntary intervenor in the capacity of court-appointed administrator. This decision was final to date.

The administrator indicated to have adopted and endorsed the CMB's findings in the present proceedings.

By final submissions dated September 21, 2020, the SAVANNAH ADVISORS INC company maintained its initial demands and requested:

- To declare Natalia DOZORTSEVA and Capucine JOUNIAUX inadmissible in their voluntary intervention,

- To declare CMB inadmissible in its counterclaim.

The claimant considers that the voluntary intervenors invoke rights and capacities of which they do not have to block the free use of its funds by the SAVANNAH company. A serious doubt exists as to the addresses which they indicate as being theirs in France.

It adds that the bank would not have any interest nor no capacity to request the introduction of a sequestration measure for the funds over which it does not have any right.

The operating method which would consist of making the movement of capital subordinate to the exequatur of a foreign decision could not be retained, under penalty of allowing any third claiming without justification to act as a legal representative of an entity to improperly freeze sums, which would contravene the fluidity of the exchanges and legal security expected of a bank.

Furthermore, the SAVANNAH ADVISORS INC company adds that it is submitting foreign decisions to the current applications judge, without misunderstanding their legal scope, with which it does not claim that they would constitute normative elements, but on the contrary that it would be necessary to analyze them as factual, objective and extrinsic elements relating to the existence of facts, even in the absence of the enforceability recognized Monaco.

The urgency would be characterized by the very refusal of the bank which is an only agent of the funds and which wrongly invokes obligations relating to money laundering (while at the same time it does not form any relative argument concerning a possible statement of suspicion). In addition, the freezing of the funds prevents it from paying its service providers and it would at risk of insolvency.

There is no serious dispute in this particular case, since on one hand the bank account in Liechtenstein to which it is proposed to transfer the funds is open in the name of the SAVANNAH ADVISORS INC company, and on the other hand, even beyond the decisions by the foreign courts, it would be advisable to refer to the Liechstenstein trade and industry register to determine who the managers of ALPHA TRUST are, with this document presenting an apostille pursuant to La Hague Convention of October 5, 1961, with which both the Principality of Monaco and Liechtenstein have complied.

Lastly, with regard to the voluntary intervention by Evgeny Nikolaevich RATNIKOV, the SAVANNAH ADVISORS INC company indicates that the Russian judgement of August 20, 2020, submitted to the proceedings, is not a judgement of bankruptcy, but as such but a decision solely relating to a restructuring of Vitaly SMAGIN's debt toward the BCA bank - Absolut Bank.

WHEREUPON:

- <u>On the admissibility of the voluntary interventions</u>:

Evgeny Nikolaevich RATNIKOV, submits to the proceedings, accompanied by a translation of a qualified interpreter, a decision of the Moscow Arbitration Court of August 20, 2020, opening proceedings for the

restructuring of Vitaly SMAGIN's debt and appointing the intervenor with the function of his financial administrator. Insofar as Vitaly SMAGIN, although not a party to the present proceeding, is named by the parties as a key player in the management of ALPHA TRUST, which holds the capital of the SAVANNAH ADVISORS INC company, the voluntary intervention by Evgeny Nikolaevich RATNIKOV, not disputed by the parties, must be allowed because it justifies of an interest pursuant to Article 383 of the Code of Civil Procedure.

Regarding the voluntary intervention by Natalia DOZORTSEVA and Capucine Murielle JOUNIAUX, asserting to be co-trustee of ALPHA TRUST, it must be noted that the determination of the trustees is a crucial question which is part of the dispute between the two original parties of this proceeding, namely the SAVANNAH ADVISORS INC company and CMB. Insofar as to the intervenors, not only they do not restrict themselves to plead their alleged standing, but they also report various legal proceedings in this respect, although they have not had their rights established, it is obvious that they have an interest to intervene in this proceeding pursuant to Article 383 of the Code of Civil Procedure.

In addition, the question of their address in France is raised by the SAVANNAH ADVISORS INC company, not as an element in support of a nullity of form based on Article 136 of the Code of Civil Procedure, but in support of a plea of inadmissibility. However, the scope of the application of Article 278-1 of the Code of Civil Procedure solely relates to the lack of the right to act, which is analyzed not within the initiative of the case in court, but in terms of the interest to voluntarily intervene as indicated above, considered sufficient.

Consequently, voluntary intervention by Natalia DOZORTSEVA and Capucine Murielle JOUNIAUX will be accepted.

- On the nullity of the procedure invoked by Natalia DOZORTSEVA and Capucine Murielle JOUNIAUX:

Insofar as Natalia DOZORTSEVA and Capucine Murielle JOUNIAUX are legitimately accepted for their voluntary intervention, it is advisable to analyze at this stage the grounds of nullity which they propose.

On the substantive nullity based on Article 967 of the Code of Civil Procedure, being the lack of authority by a party appearing in the proceeding as representative of a legal entity, at this stage still, the applications judge, interim relief judge, can only note that there is a dispute in progress, not so much on the fact that TRUST ALPHA holds the capital of the SAVANNAH ADVISORS INC. company, the only party to the proceedings, but on the trustees and managers of TRUST ALPHA.

In the state of this dispute, only unsupported indications or parties merely proceeding by way of assertions could be sanctioned by a finding of substantive nullity. This is not the case in point, as the documents produced in the dispute over the appointment of Silvio VOGT and JGT as managers for SAVANNAH and ALPHA TRUST sufficiently demonstrate the existence of a serious possibility that they constitute validly appointed governing and enforcement bodies. is therefore no reason to declare a substantive nullity.

With regard to the second ground of nullity based on the lack of compliance with the adversarial principle that the voluntary intervenors expressly base on nullity of form, the provisions of Article 265 of the

Code of Civil Procedure should be applied. In this respect, if the SAVANNAH ADVISORS INC company initially refused to communicate the document produced in support of its claims to Natalia DOZORTSEVA and Capucine Murielle JOUNIAUX, it is because they had not validly formalized their voluntary intervention by way of submissions. Once those were formalized, the SAVANNAH company abusively considered, without a judge having decided the question and without having the power to do so, that this intervention was inadmissible in having deduced that it did not have to communicate its documents. However, despite an undue delay in this respect, all the documents were finally communicated during the pre-trial phase, with the time elapsed having the effect of delaying the examination of the SAVANNAH ADVISORS INC company's own request. There therefore no grievance within the meaning of the text caused to the damage of Natalia DOZORTSEVA and Nasturtium Murielle JOUNIAUX, so that, on this count also there is no reason for a nullity.

- <u>On the request to exclude from the dispute the documents numbered 54 to 57 produced in the proceeding by the claimant</u>:

At the hearing, the voluntary intervenors requested the dismissal from the proceeding of the numbered parts 54 with 57 produced by the SAVANNAH ADVISORS INC company, as they were produced outside from the set procedural schedule.

A procedural timetable had been set providing for final submissions by the claimant's counsel by September 18, 2020, and the four exhibits at issue are documents are foreign court decisions, communicated to the parties subsequently from September 29 to October 6, 2020: Order issued by the United States

District Court, Central District of California, dated September 16, 2020, Order of September 18, 2020, by the Judge of the Supreme Court of the Eastern Caribbean, Nevis Circuit, rejecting amotion filed by Natalia DOZORTSEVA, third party service of a writ of guarantee in Liechtenstein by which the SAVANNAH company invites CMB to join in litigation with Rudolph SCHÂCHLE and Raphaël NÂSCHER and finally a very recent decision of the Court of Appeal of Liechtenstein on September 15, 2020, confirming the order of March 2, 2020, and its translation.

It should be noted that in view of the nature of the dispute, which is based on many foreign decisions and the absence of new elements which would be unknown to the voluntary intervenors, there is no reason in the present circumstances to remove these documents from the proceedings, while reserving the possibility, if the rights of Natalia DOZORTSEVA and Capucine Murielle JOUNIAUX were allowed, to postpone the case to receive their observations.

- On the main claim by SAVANNAH ADVISORS INC.:

Pursuant to Article 414 of the Code of Civil Procedure, in the event of an urgency, and in all matters for which there is no specific procedure of summary procedure, the president of the court of first instance may order, in summary proceedings, all the measures that do not prejudice the main issue.

In this case, the measure requested by the SAVANNAH ADVISORS INC company is that an injunction be given to the bank of which it is a customer, CMB, to move funds of which it is owner to a bank account, open to its name, in Liechtenstein.

The urgency referred to in the aforementioned text could be characterized by the pressing need to preserve the right of ownership guaranteed by Article 24 of the Constitution, in particular in this case, the freedom to determine the allocation of the funds, especially since as the requested transfer does not constitute an act of disposal.

However, the Monegasque bank is now required to determine with precision the effective beneficiaries of foreign establishments and especially in this case when the owner of the client company (the SAVANNAH ADVISORS INC company with registered office in Nevis) is itself a foreign establishment (ALPHA TRUST with registered office in Liechtenstein).

Various obligations ensue for the bank, pursuant to Articles 21 and subsequent of Decree no. 1.362 of August 3, 2009, relating to the fight against money laundering, the financing of terrorism and corruption, as amended on these points by Decree no. 1.462 of June 28, 2018 and pursuant to Article 13 of the Sovereign Order no. 2.318 of August 3, 2009, as amended.

In this respect, there is no question whatsoever, as this claimant wrongly indicates, of a statement of suspicion, but of the obligations of compliance on the part of the banking establishment.

Thus, the bank must not rely solely on the examination and content of a trade directory to fulfil its obligations of vigilance, but it must develop a risk-based approach (Article 22 paragraph 3 of the aforementioned law). If this vigilance is required when entering into a relationship, it must also be applied during the contractual relationship. The bank that fails to comply may be subject to administrative

sanctions as described in Articles 65 and subsequent of aforementioned law.

In application of these principles, the determination of the effective economic beneficiary of a trust is therefore necessary on the part of the bank, and particularly when, as in this case, it receives conflicting orders.

In this case, on March 2, 2020, a court decision in Liechtenstein (Order dated March 2, 2020) authorizes Vitaly SMAGIN to use all the rights available to Ashot EGIAZAYAN as trustee, protector and beneficiary of ALPHA TRUST.

Such a decision and the resulting acts of execution have, in the first place, a full effect in Monaco, but only insofar as they concern measures affecting the status and capacity of the legal person (allowing new managers in particular to intervene before foreign jurisdictions). This principle of automatic effect recognized by Monegasque private international law, in particular within Article 13 of Law no. 1.448 of June 28, 2017, relating to the Code of Private International Law, however, finds a limit on acts of enforcement, for which the effects of foreign decisions in Monaco are subject to exequatur, under the terms and forms provided by Articles 15 and 18 of that said law.

A movement of funds to a foreign account, even if it is an account opened by the SAVANNAH ADVISORS INC company, constitutes unquestionably such an act of execution.

As a result, the combination of the bank's compliance obligations and the need for an exequatur to ensure that the actual economic beneficiary (by himself or through an intermediary) performs acts of execution on the funds of the SAVANNAH ADVISORS

INC company in Monaco constitute a prejudice in the main proceeding, which prohibits the granting of the injunction requested by the claimant.

- On the counterclaim for sequestration of the disputed funds:

This request was originally submitted by CMB, but it should be noted that it has been taken up by Evgeny Nikolaevich RATNIKOV in his own capacity.

In this respect, the voluntary intervenor presents himself as the financial administrator of Vitaly SMAGIN, alleged economic beneficiary of ALPHA TRUST, under a decision of the Moscow Arbitration Court of August 20, 2020.

As a body of bankruptcy proceedings or similar proceeding, in accordance with the principle of universality of bankruptcy or related procedures, it may validly formulate a request for a receiver which does not prejudice the main proceedings, but which preserves the rights of the parties.

The conditions of Article 1800 2nd of the Civil Code being met, since the ownership of the sums, is the subject of litigation, not the displays of interposed legal persons, between two or more persons, it is appropriate to order the sequestration of the funds and assets held by the SAVANNAH ADVISORS INC company with CMB under the terms set forth in the plan.

With respect to costs:

The SAVANNAH ADVISORS INC company, which is unsuccessful in the proceedings, will be ordered to pay costs.

FOR THESE REASONS,

In the main proceedings, we refer the parties back to provide for themselves as they see fit, all their rights being reserved on the merits, but as an interim, as a provisional and urgent measure of summary judgment:

We receive Evgeny Nikolaevich RATNIKOV in his voluntary intervention;

We receive Natalia DOZORTSEVA and Capucine Murielle JOUNIAUX in their voluntary intervention;

We reject the exceptions of nullity presented by Natalia DOZORTSEVA and Capucine Murielle JOUNIAUX;

We dismiss from the proceedings the documents produced by the SAVANNAH AD IVORS INC company under the numbers 54 to 57;

There are no grounds for summary judgment on the claims of the SAVANNAH ADVISORS INC company;

We order sequestration of the assets in cash and securities deposited by the SAVANNAH ADVISORS INC company with the COMPAGNIE MONEGASQUE DE BANQUE, now CMB MONACO, on account number 631562, until a final court decision is rendered by the Monegasque courts recognizing a foreign court decision designating the appointing of the fiduciary of the trust under Liechtenstein law for ALPHA TRUST, or until it is otherwise ordered by a court, or by agreement of the parties;

Constitutions of the COMPAGNIE MONEGASQUE DE BANQUE, now CMB MONACO as judicial receiver;

We reject the remainder of the parties' requests;

We order the SAVANNAH ADVISORS INC company to pay the costs with distraction to the benefit

of Maîtres Régis BERGONZI, Patricia REY and Geraldine GAZO, defense attorneys, each insofar as they are concerned;

We order that these costs will be provisionally liquidated by the Chief Clerk, in accordance with the applicable tariff;

And having signed with our Clerk.

/s/ [Illegible] /s/ [Illegible]

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STATE of NEW YORK
COUNTY of NEW YORK

ss:

CERTIFICATE OF ACCURACY

I, Rita Pavone, declare under penalty of perjury that I have competent knowledge of the languages being translated, French to English, and truthfully and correctly translated the document --- "Ordonnance de référé 09.11.20"---, to the best of my knowledge in accordance with Fed. R. Evid. 901.

/s/ RPavonePHD
Rita Pavone, PhD, MPhil, CCMS, MA

Dated: 03/26/2021

/s/ Heather Cameron
Heather Cameron
Senior Projects Manager
Consortra Translations

Sworn to and signed before ME
This 26th day of March, 2021.

/s/ James G. Mamera
Notary Public

James G. Mamera
Notary Public - State of New York
No. 01MA6157195
Qualified in New York County
My Commission Expires Dec. 4, 2022