

No. 22-\_\_\_\_

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IN THE  
**Supreme Court of the United States**

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CMB MONACO,  
*Petitioner,*  
v.  
VITALY SMAGIN,  
*Respondent.*

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

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**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTION PRESENTED

In *RJR Nabisco, Inc. v. European Community*, 579 U.S. 325 (2016), this Court held that a plaintiff proceeding under the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1961 *et seq.*, must plead and prove a “domestic” injury to maintain a claim in U.S. court. Following *RJR Nabisco*, the courts of appeals have split on the issue of where a foreign plaintiff suffers its injury to its intangible property for purposes of the domestic-injury inquiry. On one hand, the Seventh Circuit correctly holds that the foreign plaintiff suffers its injury abroad. On the other, the court below and Third Circuit have adopted an open-ended balancing test to determine the location of the plaintiff’s injury. Incorrectly applying that standardless test in reference to defendants’ conduct, the Ninth Circuit held below that the plaintiff had suffered a domestic injury, even though he is a foreign resident with no alleged connection to the U.S.

The question presented therefore is:

Whether a foreign plaintiff with no alleged connection to the United States may nevertheless allege a “domestic” injury under *RJR Nabisco* sufficient to maintain a RICO action based only on injury to intangible property.

**PARTIES TO THE PROCEEDING**

Petitioner, defendant-appellant below, is CMB Monaco (formerly known as Compagnie Monégasque de Banque).

Respondent, plaintiff-appellant below, is Vitaly Smagin.

Ashot Yegiazaryan (“Yegiazaryan”), a defendant-appellee below, seeks this Court’s review of the Ninth Circuit opinion at issue in a separate petition for writ of certiorari, 22-\_\_\_\_.

Alexis Gaston Thielen was also a defendant-appellee in the Ninth Circuit,

The remaining defendants are: Suren Yegiazaryan, Artem Yegiazaryan, Stephan Yegiazaryan, Vitaly Gogokhia, Natalia Dorzortseva, Murielle Jouniaux, Ratnikov Evgeny Nikolaevich, Prestige Trust Company, and H. Edward Ryals.

**CORPORATE DISCLOSURE STATEMENT**

Pursuant to Supreme Court Rule 29.6, CMB Monaco hereby states that it is a wholly-owned subsidiary of Mediobanca, S.p.A. No publicly-held entity owns 10% or more of the stock of Mediobanca, S.p.A.

**STATEMENT OF RELATED CASES**

This case arises from the following proceedings:

- *Smagin v. Compagnie Monegasque de Banque, et al.*, No. 2:20-cv-11236-RGK-PLA (C.D. Cal.) (judgment entered May 5, 2021); and
- *Smagin v. Compagnie Monegasque de Banque, et al.*, No. 21-55537 (9th Cir.) (opinion filed June 10, 2022, final rehearing petition denied July 22, 2022).

This case is also related to *Yegiazaryan v. Smagin*, 22-\_\_\_\_, which seeks this Court's review of the same Ninth Circuit opinion at issue in this petition.

There are no other proceedings in state or federal courts, or in this Court, directly related to this case within the meaning of Supreme Court Rule 14.1(b)(iii).

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## **PETITION FOR WRIT OF CERTIORARI**

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

### **OPINIONS BELOW**

The Ninth Circuit's opinion reversing the district court's order of dismissal (App. 3a–19a) is reported at 37 F.4th 562 (9th Cir. 2022). The district court's order dismissing this action (App. 20a–33a) is reported at 2021 WL 2124254 (C.D. Cal. May 5, 2021).

### **JURISDICTION**

The Ninth Circuit issued its opinion on June 10, 2022 (App. 3a) and its order denying rehearing *en banc* on July 22, 2022 (App. 2a). This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

### **STATUTORY PROVISION INVOLVED**

The Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 *et seq.*, provides a civil cause of action in limited circumstances:

Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962. The exception contained in the

preceding sentence does not apply to an action against any person that is criminally convicted in connection with the fraud, in which case the statute of limitations shall start to run on the date on which the conviction becomes final.

18 U.S.C. § 1964(c).

## INTRODUCTION

Eight years ago, in *RJR Nabisco, Inc. v. European Community*, 579 U.S. 325 (2016), this Court considered the application of RICO in suits brought by foreign plaintiffs. While the Court held that certain foreign *conduct* is cognizable under U.S. law, the Court held that, in order to maintain a RICO action in U.S. court, a foreign plaintiff must “allege and prove a *domestic* injury to its business or property.” But, following *RJR Nabisco*, the courts of appeals have split on the issue of whether, and when, a foreign plaintiff has suffered a “domestic injury” sufficient to support a RICO action in U.S. court when the foreign plaintiff’s only claimed injury is to “intangible” property (i.e., intellectual property or, in this case, a court judgment). In the decision below, the Ninth Circuit deepened the pre-existing split between the Third and Seventh Circuits over whether a foreign plaintiff can maintain such an action *at all*, and created a new split over whether a plaintiff may do so only on the basis of alleged interference with the ability to collect a court judgment. Because the RICO domestic-injury test is determinative as to whether the U.S. courts may exercise their judicial power over certain foreign defendants to remedy injuries caused by conduct occurring abroad, this Court should intervene to resolve the division among the circuits.

“It is a basic premise of our legal system that, in general, ‘United States law governs domestically but does not rule the world.’” *RJR Nabisco Inc. v. European Community*, 579 U.S. 325, 335 (2016) (quoting *Microsoft Corp. v. AT&T Corp.*, 550 U.S. 437, 454 (2007)). And for good reason: applying U.S. law abroad risks “international discord” that the political branches, not the courts, are best equipped to weigh. *Id.*; see also *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108, 116 (2013) (“The presumption against extraterritorial application helps ensure that the Judiciary does not erroneously adopt an interpretation of U.S. law that carries foreign policy consequences not clearly intended by the political branches.”). Courts are to apply a presumption against extraterritoriality, under which U.S. law applies outside the nation’s borders if, and only if, Congress has given a “clear, affirmative indication” that a law applies extraterritorially. *RJR Nabisco*, 579 U.S. at 337.

In *RJR Nabisco Inc v. European Community*, this Court applied that presumption against extraterritoriality to the civil RICO statute, 18 U.S.C. §§ 1962 and 1964(c). First, the Court held that RICO’s “substantive prohibitions” “apply to” certain “foreign conduct,” such that a plaintiff can maintain a RICO claim based on specific predicate misconduct occurring abroad. 579 U.S. at 338. But, the Court limited the statute’s international scope, holding that a RICO plaintiff “must allege and prove a *domestic* injury to its business or property.” *Id.* at 346; see also *id.* at 354 (“RICO . . . does not allow recovery for foreign injuries”). Accordingly, *RJR Nabisco* holds that a RICO plaintiff can sue to vindicate injuries caused by

a scheme operating overseas, but only if that foreign misconduct caused harm in the U.S.

Because the *RJR Nabisco* plaintiffs specifically disclaimed any harm in the U.S., the Court did not need to address what constitutes a “domestic injury.” *Id.* at 354. Instead, the court left questions of application to another day, predicting that “[t]he 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’.” *Id.*

In this case, a Russian plaintiff (Smagin) sought and won an arbitration award in London against a Russian defendant (Ashot Yegiazaryan) to remedy losses suffered in a failed Russian real-estate investment scheme (the investment, a development called “Europark,” collapsed in 2009). After the defendant in that arbitration (Yegiazaryan) relocated to the U.S., Smagin confirmed that award in the U.S. District Court for the Central District of California and, simultaneously, in the Liechtenstein Princely Court of Justice (where Yegiazaryan allegedly holds assets). For years afterward, Smagin pursued collection efforts in Liechtenstein.

Smagin then brought this RICO action, alleging that Yegiazaryan and others had impaired his ability to collect the funds awarded in the arbitration judgment and memorialized by the Central District of California’s confirmation order. Although Smagin does not allege any personal connection to the U.S., and in spite of the parallel foreign enforcement proceeding, the Ninth Circuit held that Smagin’s injury was “domestic” under *RJR Nabisco*. On that basis, the Court held, Smagin might maintain a RICO claim for treble damages against not just Yegiazaryan but also CMB Monaco, a foreign bank located in Monaco that is only involved in this case because it accepted a deposit of

funds into a bank account opened by a trust that Smagin alleges includes Yegiazaryan's proceeds from a different arbitration award.

In doing so, the Ninth Circuit deepened an existing circuit split and created a new one.

First, the Ninth Circuit added to the division among the circuits over the test to be applied to determine whether an injury to intangible property is domestic at all. On the one hand, the Seventh Circuit applies an administrable, bright-line rule, while on the other, the Third Circuit and Ninth Circuit (in the decision below) have adopted a far more nebulous, totality-of-the-circumstances test to evaluate whether a plaintiff felt its injury in the U.S. or abroad.

What's more, the Ninth Circuit created a *new* split as to the cognizability of RICO claims based on alleged interference with court judgments. The Third and Seventh Circuits, applying their distinct methodologies, agree that a plaintiff suffers the interference with its court judgment at its residence (which, for foreign plaintiffs, is abroad). The Ninth Circuit, however, departs from that consensus, holding that a foreign plaintiff suffers the same injury to a court judgment within the U.S.

Finally, even if the Ninth Circuit adopted the correct general test when it adopted a multi-factor open inquiry over a clean, administrable test, the Ninth Circuit's application of its own rule contravenes *RJR Nabisco* itself by focusing on the defendant's conduct, not the place where the plaintiff felt any effects.

This case epitomizes the confusion and disparate results that have arisen in the wake of *RJR Nabisco* and which will continue to multiply without this Court's intervention. This Court's guidance is neces-



sary to clarify the operation of the domestic-injury test – a test that is in many cases dispositive of, among other things, a plaintiff’s ability to hale foreign defendants (including, like CMB Monaco, banks with little if any connection to the actual alleged wrongdoing) into court in the U.S. and of a plaintiff’s ability to access searching RICO discovery and the statute’s powerful treble-damages, joint-and-several liability remedial scheme. The Court should provide uniformity on the important issues this case presents.

## **STATEMENT OF THE CASE**

### **A. The Relevant Parties.**

Plaintiff-Respondent Vitaly Smagin (“Smagin”) is a Russian citizen who has lived, at all relevant times, in Russia. (App. 38a ¶ 6.)

Defendant Ashot Yegiazaryan (“Yegiazaryan”) is a Russian businessman who, until 2010, lived in Russia. (*Id.* at 38a ¶ 7.) He now resides in Beverly Hills, California. (*Id.*)

Petitioner CMB Monaco is a private bank incorporated in the principality of Monaco, with no officers, employees, or presence in the United States. (*Id.* at 42a ¶ 16.)

### **B. The Events Preceding This Litigation.**

1. This case began as a dispute between Smagin and defendant-appellee Ashot Yegiazaryan over a failed real estate investment in Russia called “Europark.” (*Id.* at 51a ¶ 36.) In 2010, Smagin instituted an arbitration proceeding in London, alleging that Yegiazaryan engaged in a pattern of fraud and other wrongdoing. (*Id.* ¶ 37.) In 2014, the London-seated panel found in

Smagin's favor, awarding Smagin approximately \$85 million in damages (the "London Award"). (*Id.*)

2. Smagin then instituted enforcement proceedings in Liechtenstein (where Smagin alleges that Yegiazaryan holds assets in the Alpha Trust) and California. (*Id.* at 52a ¶ 40 (California); *id.* at 64a ¶ 64 (Liechtenstein).) The U.S. District Court for the Central District of California (Real, J.) entered an order confirming Smagin's London Award on March 31, 2016. (*Id.* at 62a ¶ 61.) The parties refer to the order confirming Smagin's foreign arbitral award as the "California Judgment." (*Id.*) The Liechtenstein Princely Court of Justice also confirmed Smagin's arbitration award on February 24, 2016. (*Id.* at 64a ¶ 64.)

3. Meanwhile, before the entry of the California Judgment, Yegiazaryan caused a Liechtenstein-registered trust, Alpha Trust, to deposit approximately \$198 million into a bank account at CMB Monaco through a company registered in Nevis ("Savannah Advisors"). (*Id.* at 56a-57a ¶¶ 49-52.) This \$198 million allegedly represents the proceeds from a separate arbitration that Yegiazaryan won in London in 2015. (*Id.* at 55a ¶¶ 45-46.)

4. After that transfer, the entry of the California Judgment, and the entry of the Liechtenstein order confirming his arbitration award, Smagin filed a suit in Liechtenstein to attach Yegiazaryan's assets in the Alpha Trust. (*Id.* at 48a ¶ 30.) Then, after attaching those assets, Smagin alleges that he won a Liechtenstein court order allowing him to "appoint new trustees to the Alpha Trust" – in essence, to take over the trust and control the disposition of its assets. (*Id.* ¶ 31.) Smagin alleges that, by a variety of means, Yegiazaryan has interfered with these collection efforts. (*Id.* at 66a-83a ¶¶ 69-105.)

5. Smagin contends that CMB Monaco participated in this interference. But, his allegations are limited. As noted above, Smagin alleges that CMB received a deposit of \$198 million from the Alpha Trust, and that those funds represented the proceeds of a different arbitration award. (*Id.* at 56a-57a ¶¶ 49-52.) Smagin then alleges that both he and Yegiazaryan presented CMB Monaco with instructions regarding the funds it is holding. (*Id.* at 83a ¶ 106 (Smagin’s instructions); *id.* at 75a ¶¶ 87, 89 (Yegiazaryan’s instructions).) Smagin alleges that CMB aided the RICO scheme because, when presented with these contrary instructions, it did not immediately recognize his claim and reject Yegiazaryan’s. (*Id.* at 83a-84a ¶¶ 107-08.) Instead, CMB Monaco sought relief in the nature of an interpleader – it held the funds in trust and sought an order from a Mongasque court directing their proper disposition. (App. 107a.) The Monegasque court held that such sequestration was “necessary” and a proper course of action. (App. 116a-117a.)

### **C. This Litigation.**

#### **1. Proceedings In The District Court.**

1. On December 11, 2020, Smagin commenced this action in the Central District of California, naming Yegiazaryan and eleven other defendants, including CMB Monaco. (App. 34a.) Smagin asserts that after the California Judgment was entered, defendants resisted Smagin’s efforts to collect the proceeds of his arbitration award. (*See supra* at 6-8.) Smagin therefore contends that defendants have impaired the value of his California Judgment, which memorializes his London arbitration win. (App. 96a ¶ 136.) Notwithstanding that he is a Russian citizen who lives in Moscow, and who alleges no connection to the United

States other than his prior litigation, Smagin contends that he is entitled to avail himself of U.S. substantive law and a federal forum to recover treble damages under the RICO statute – not just against a U.S.-based defendant, but against CMB Monaco (despite the bank’s tangential-at-best connection to the alleged wrongdoing).<sup>1</sup>

2. Defendants moved to dismiss. On May 5, 2021, the district court entered an order dismissing the entire action. (*Id.* at 20a.) Specifically, the district court determined that Smagin had not alleged an injury to his “domestic” property, in the form of his intangible California Judgment, and thus could not “establish standing to pursue a RICO claim” in U.S. court. (App. 24a-31a.) In so holding, the district court acknowledged that the courts of appeals had split on the analytical framework to be applied in analyzing whether a claimed injury to intangible property is “domestic” for RICO purposes, but held that under either the Seventh Circuit’s straightforward test or the Third Circuit’s multifarious test, Smagin suffered his injury in Russia, not the United States. (*Id.*) Smagin timely appealed.

## **2. Appellate Proceedings.**

The Ninth Circuit panel reversed, determining that Smagin’s claimed injury to his intangible property was “domestic” for RICO purposes. (*Id.* at 3a.) The Ninth Circuit panel acknowledged that, in so holding, it had deepened the circuit split existing between the Seventh Circuit and Third Circuit. (*Id.* at 14a-18a.) The panel purported to apply the Third Circuit’s test (though it rejected the factors listed by the Third

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<sup>1</sup> CMB Monaco denies Smagin’s allegations.

Circuit as not “relevant”), and explicitly rejected the Seventh Circuit’s bright-line rule. (*Id.*)

Specifically, the Court held 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 specific complaint.” (*Id.* at 18a.) While the Court did not provide a list of factors to be considered in undertaking this analysis, it focused its analysis on *Smagin’s* conduct, explaining that because *Smagin* “desires to exercise the rights conferred by the California Judgment” in California, and because “much of the conduct underlying the alleged injury . . . occurred in, or was targeted at,” California, *Smagin’s* intangible property should be considered to exist in the state for RICO purposes. (*Id.* at 12a.) Thus, because the court held that *Smagin’s* property-in-suit existed in California, it concluded that “the alleged harm to [*Smagin’s*] rights under the California Judgment constitutes a domestic injury.” (*Id.* at 13a.)

The Ninth Circuit denied the petitions for rehearing *en banc*. (*Id.* at 2a.) This petition follows.

**REASONS FOR GRANTING THE WRIT****I. The Decision Below Deepens An Existing Circuit Split And Creates A New One On A Case-Dispositive Issue.**

In *RJR Nabisco*, this Court held that a RICO plaintiff must plead and prove a “domestic” injury, but reserved decision as to whether, and under what circumstances, a foreign plaintiff has suffered such a harm. Following that decision, the Courts of Appeals have fractured over whether, and under what circumstances, a foreign plaintiff can allege the necessary domestic injury when its only injury is to intangible property. The opinion below deepens the existing division by taking the wrong side of the existing split *and* by creating a new one.

First, the federal circuit courts have divided on whether a foreign plaintiff can *ever* suffer a domestic injury to its intangible property sufficient to support a RICO claim. On the one hand, the Seventh Circuit has correctly adopted a bright line rule: because a party feels the alleged injury to its intangible property at its residence, a foreign plaintiff can never use that injury alone as a basis for a RICO claim. The Third Circuit, on the other hand, has rejected that rule in favor of a multifarious balancing test, holding that a foreign plaintiff may, in some case-specific circumstances, base a RICO claim on an injury to its intangible property. In the decision below, the Ninth Circuit endorsed and adopted the Third Circuit’s open-ended test, deepening the existing division in the circuits such that this Court’s review is warranted.

Second, and, underscoring the disagreement among the circuits in the wake of *RJR Nabisco*, the Ninth Circuit created a new circuit split – with both the

Third and Seventh Circuits – on the question of *where* a foreign plaintiff suffers the injury arising out of an impaired court judgment. Both the Third and Seventh Circuits – applying their different tests – have held that a foreign plaintiff feels the injury resulting from interference with a court judgment in its favor at the foreign plaintiff’s residence abroad. However, the Ninth Circuit, while purporting to apply the same test as the Third Circuit, reached the exact opposite conclusion, holding that a foreign plaintiff feels the interference with a court judgment in its favor domestically.

Third, even if the Ninth Circuit chose the correct side of the split in the decision below (and it did not), the panel’s analysis contravenes *RJR Nabisco*. There, the Court instructed subsequent tribunals to focus on the location where the *plaintiff* felt the underlying injury in evaluating whether an injury is “domestic.” In this case, however, the Ninth Circuit keyed its analysis of the plaintiff’s injury on the location of the *defendant* and the *defendant’s conduct*. This Court should intervene to confirm that *RJR Nabisco* is plaintiff-focused before other courts replicate the Ninth Circuit’s mistake.

This Court’s review is needed, both as to the threshold question of whether a foreign plaintiff can ever bring a RICO claim in U.S. court based on an injury to intangible property and, if so, as to the subsidiary question of when, and under what circumstances, a foreign plaintiff might do so.

#### **A. The Decision Below Deepens An Existing Circuit Split.**

After *RJR Nabisco*, the federal circuit courts have explicitly divided as to whether a foreign plaintiff may

bring a RICO claim in the United States on the basis of a claimed injury to intangible property. The decision below acknowledged and deepened that split.

The first court to consider whether a foreign plaintiff can allege a domestic RICO injury on the harm to intangible property was the Seventh Circuit in *Armada (Singapore) PTE Limited v. Amcol International Group*, 885 F.3d 1090 (7th Cir. 2018). The Seventh Circuit held that a foreign plaintiff cannot make such allegations – because, it reasoned, “a party experiences or sustains injuries to its intangible property at its residence,” a foreign plaintiff’s injury to its intangible property necessarily occurs abroad, and is therefore not cognizable under *RJR Nabisco*. *Id.* at 1094-95.

The next court to take up the question, the Third Circuit, rejected the Seventh Circuit’s bright-line approach. *Humphrey v. GlaxoSmithKline PLC*, 905 F.3d 694, 709 (3d Cir. 2018). Instead, the Third Circuit held that the analysis of “[w]hether an alleged injury to an intangible interest was suffered domestically is a particularly fact-sensitive question requiring consideration of multiple factors,” and set out a non-exhaustive list of considerations to be applied by future courts. *Id.* at 707. However, because the only connection to the U.S. that the plaintiff alleged was “lost prospective business opportunities,” the court concluded that the Beijing-resident plaintiffs suffered their injury-in-suit abroad. *Id.* at 706.

The decision below deepened this existing inter-circuit disagreement. Like the Third Circuit, the panel below explicitly rejected the Seventh Circuit’s bright-line rule as “rigid,” opting instead for a wide-ranging analysis of considerations including the “purpose to be served” by the property, the location of



the defendant, and “the fact that much of the conduct underlying injury also occurred in, or was targeted at, California” that permit that, under some circumstances, a foreign plaintiff may bring a RICO claim in the U.S. on the basis of an injury to intangible property. (App. 12a, 14a (quoting *Off. Depot Inc. v Zuccarini*, 596 F.3d 696, 702 (9th Cir. 2010))). While the panel did not apply the same considerations as the *Humphrey* court – and indeed rejected them as inapposite – the panel claimed that its test was “consistent” with the Third Circuit’s. (App. 14a.) Accordingly, by rejecting the Seventh Circuit’s straightforward test, applying a new permutation of multifarious test instead, and by permitting Smagin’s claims to go forward, the panel expanded the existing circuit split.

This Court’s review is warranted to resolve this conflict among the circuits.

**B. The Decision Below Creates A New, Three-Way Circuit Split On The Application of *RJR Nabisco* To Cases Based On Injury To Court Judgments.**

As explained above, the Third and Seventh Circuits have taken diametrically-opposed approaches as to the cognizability of RICO claims brought by foreign plaintiffs based on injuries to intangible property. But, despite their different analytical methodologies, the courts agree that when a foreign plaintiff’s RICO claim is based on defendants’ interference with his ability to collect a U.S. court judgment, the foreign plaintiff “suffer[s]” that injury abroad under *RJR Nabisco*.

In the decision below, the Ninth Circuit drew the exact opposite conclusion, creating a new circuit split

by reaching the opposite result, concluding that Smagin felt the injury occasioned by the alleged impairment of his ability to collect his judgment in California. Because three circuits have considered the same facts and produced three different results, this Court should intervene.

***Armada*: Seventh Circuit rule, no domestic injury.** In *Armada*, the plaintiff – a Singapore-based shipping company – won a foreign arbitration award, domesticated that award in the U.S., and then brought a RICO claim alleging that defendants worked together to thwart collection on the domesticated judgment. 885 F.3d at 1092. Applying its bright line rule, the Seventh Circuit held that the plaintiff's injury (in the form of impairment to its judgment) was felt abroad and dismissed for want of a domestic injury. *Id.* at 1094-95.

***Cevdet*: Third/Ninth Circuit test, no domestic injury.** In *Cevdet Aksut Ve Ogullari Koll.Sti v. Cavusoglu*, the plaintiff – a produce supplier based in Turkey – obtained a judgment against Cavusoglu in a U.S. court. 756 F. App'x 119, 123 (3d Cir. 2018). When Cavusoglu did not pay, the plaintiff brought a RICO claim accusing the defendants of taking steps to “shiel[d] Cavusoglu's assets from collection,” impairing the underlying judgment. *Id.* at 123-124. “[A]pplying the *Humphrey* factors,” the Third Circuit held that Cevdet “experiences the loss from its inability to collect on its judgment in Turkey” because it is based there. *Id.* at 124. The court therefore affirmed the dismissal of Cevdet's RICO claim for want of a domestic injury. Thus, while *Cevdet* did not apply the Seventh Circuit's test, it reached the same conclusion: a foreign plaintiff feels the injury caused by on the impaired collection of court judgment abroad.

**Smagin: Third/Ninth Circuit test, domestic injury.** In this case, the plaintiff – an individual living in Russia – won a foreign arbitration award, domesticated that award in the U.S., and then brought a RICO claim alleging that defendants worked together to make it difficult for him to collect on the domesticated judgment. (App. 96a ¶ 136.) Applying a multi-factor test that was purportedly “consistent with” *Humphrey*, the panel reached the opposite conclusion from *Cevdet* (and *Armada*), holding that the claimed injury was **domestic** and that plaintiff’s RICO claim could proceed. (*Id.* at 14a, 19a.)

The three-way division among the circuits is untenable; the Court should intervene.

## **II. The Decision Below Is Wrong.**

### **A. The Seventh Circuit’s Bright Line Approach Is Superior To The Open Standard Adopted By The Third And Ninth Circuits.**

Presented with a choice between two tests – the Seventh Circuit’s clean, predictable rule or the Third Circuit’s freeform examination of the facts and circumstances of each particular case, the panel below incorrectly chose the latter, anointing the open-ended *Humphrey* test as the new majority rule. That was error, and this Court should correct it.

Unlike the open-ended Third and Ninth Circuit standard, the Seventh Circuit’s test is predictable and administrable, thereby allowing potential defendants to understand the legal ramifications of their conduct *before* it occurs. *Cf. Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 136 (2014) (“Finally, experience has shown that the *Conte Bros.*

approach, like other open-ended balancing tests, can yield unpredictable and at times arbitrary results.”). And, the Seventh Circuit’s *Armada* rule is consistent with the Ninth Circuit’s existing case law, developed in cases involving personal jurisdiction, holding that a plaintiff suffers harm to intangible property (often intellectual property) at its residence. *See, e.g., Hydentra HLP Int’l Ltd. v. Sagan Ltd.*, 783 F. App’x 663, 665 (9th Cir. 2019) (copyright infringement injury felt at principal place of business); *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1079 (9th Cir. 2011) (“We have repeatedly held that a corporation incurs economic loss . . . in the forum of its principal place of business.”); *see also Fidrych v. Marriott Int’l, Inc.*, 952 F.3d 124, 143 (4th Cir. 2020) (where plaintiff was “a South Carolina residen[t], the effects of [plaintiff’s] injury are felt in South Carolina,” even though plaintiff was injured during a stay at a hotel in Milan, Italy); *Dakota Indus. Inc. v. Dakota Sportswear, Inc.*, 946 F.2d 1384, 1388-89 (8th Cir. 1991) (in “trademark infringement action,” court had jurisdiction because plaintiff “has its principal place of business in the forum state and thus suffered the economic injury there).

**B. Even If The Ninth Circuit Selected The Right Analytical Framework, Its Conduct-Focused Analysis Is Irreconcilable With *RJR Nabisco*.**

What’s more, even assuming that the Ninth Circuit made the right choice when it selected the standard-less *Humphrey* inquiry over the *Armada* test, and even if the panel below correctly concluded that the evaluation of the locus of a defendant’s injury “is a context-specific inquiry that turns largely on the particular facts alleged in a complaint,” this Court’s review is warranted because the Ninth Circuit’s

application of its multi-factor test is at war with *RJR Nabisco*. (App. 18a.)

Although the *RJR Nabisco* Court had no call to give extensive guidance as to how to figure out whether an injury is foreign or domestic, the case is clear that the touchstone of the domestic-injury analysis is where the injury-in-suit was “suffered.” 579 U.S. at 349 (“Nothing in § 1964(c) provides a clear indication that Congress intended to create a private right of action for injuries suffered outside of the United States.”); *see also id.* at 351 (considering “whether the court has authority to recognize a cause of action under U.S. law for injury suffered overseas” (cleaned up)).

Accordingly, as the Third Circuit recognized in *Humphrey*, “there is a general consensus among the courts that have had to apply *RJR Nabisco* that the location of a RICO injury depends on where the plaintiff ‘suffered the injury’—not where the injurious conduct took place.” 905 F.3d at 702 & n.50. Similarly, in *Bascuñán v. Elsaca*, a case involving tangible property, the Second Circuit held that a foreign plaintiff’s claimed injury was domestic only to the extent that his property was actually located in the U.S., and rejected the argument that “acts of *the defendant*” were sufficient to create a domestic injury to “relevant property [that] always remained abroad.” 874 F.3d 806, 819 (2d Cir. 2017); *see also* William S. Dodge, *The New Presumption Against Extraterritoriality*, 133 Harv. L. Rev. 1582, 1631 (2020) (noting that before *Morrison*, “the presumption against extraterritoriality turned exclusively on where the conduct occurred,” but “*Morrison* broke the link between the presumption and conduct by recognizing that the focus of congressional concern could be on something other than conduct . . . in *RJR Nabisco*, the ‘domestic injury’”).

The decision below, however, upends that injury-focused analysis. As the Ninth Circuit explained, its determination that Smagin’s injury arose in the United States was “bolstered by the fact that much of the conduct underlying the alleged injury also occurred in, or was targeted at, California.” (App. 12a.) The court’s analysis then focused entirely on defendant Yegiazaryan’s alleged conduct – as it had to, because Smagin alleges no personal connection to the U.S. *Id.* (alleging, for example, that “Defendants . . . file[d] false documents in the California court,” “intimidate[ed] a witness who resides in California,” and “direct[ed], from California, a scheme” to control money held abroad).

The Ninth Circuit’s focus on the underlying conduct cannot be squared with *RJR Nabisco*’s directive to focus on the *plaintiff*’s harm. Nor can it be reconciled with common sense. Consider a straightforward example (albeit one involving tangible injury): imagine that Person A throws a baseball north across the U.S.-Canada border, where it hits Person B. Person B plainly “suffered” their injury in Canada, even though the underlying wrongful conduct occurred in the U.S. *See* Restatement (Second) of Torts § 147 (1979), cmt. e, *Injuries to Tangible Things* (“When conduct and injury occur in different states . . . the local law of the state where the injury occurred to the tangible thing will usually be applied . . . when the conduct and the resulting injury to the thing occur in different states.”). The Ninth Circuit’s rule, though, would hold that Person B suffered his injury in the U.S., because the wrongful conduct occurred here. This cannot be the law.

Nevertheless, without this Court’s guidance, the error below is likely to be replicated by future courts faced with RICO claims brought by foreign defendants. This Court should intervene, at a minimum to

confirm that the domestic injury is plaintiff-focused, and that a plaintiff cannot allege a “domestic” injury based on a defendants’ wrongdoing.

**C. The Decision Below Substantially Expands RICO’s Extraterritorial Application.**

The presumption against extraterritoriality is, as this Court has explained in *RJR Nabisco*, motivated both by the “commonsense notion that Congress generally legislates with domestic concerns in mind” and prudential considerations of the “international discord that can result when U.S. law is applied to conduct in foreign countries.” 579 U.S. at 335-36 (quoting *Smith v. United States*, 507 U.S. 197, 204 n.5 (1993)). And, in light of the Supreme Court’s holding that the presumption against extraterritoriality is rebutted with respect to certain RICO predicate offenses occurring abroad – and the concomitant conclusion that such foreign conduct can form the basis of a RICO claim – the domestic injury requirement is all that stands in the way of U.S. substantive law “rul[ing] the world.” *Microsoft Corp. v. AT&T Corp.*, 550 U.S. 437, 454 (2007).

The decision below, however, has the practical effect of eviscerating the domestic-injury requirement as a meaningful check on the extraterritorial application of RICO. Under various federal and state statutes, the owner of a foreign judgment or arbitral award may “domesticate” that judgment in the U.S. for enforcement purposes. It is, in the mine run of cases, trivially easy to do so – for example, to confirm a foreign arbitral award, a foreign plaintiff must simply show that a foreign award exists, and a defendant may only raise a handful of “limited exceptions” to enforcement. *Esso Exp. & Prod. Nigeria Ltd. v. Nigerian Nat’l*

*Petroleum Corp.*, 40 F.4th 56, 62-63 (2d Cir. 2022); see also *Cortez Byrd Chips, Inc. v. Bill Harbert Constr. Co.*, 529 U.S. 193, 202 (2000) (noting the “liberal choice of venue for actions to confirm awards subject to the” New York Convention). Accordingly, where (as here) any defendant against whom the foreign award may be confirmed is present in the United States, then a foreign plaintiff with no connection to the United States can generate domestic property – and thus a potential RICO claim – with a single court filing.

### **III. This Case Is An Ideal Vehicle To Resolve A Question Of Exceptional Importance.**

The question presented in this case is of paramount importance. Civil RICO is an expansive, remedial tool that, according to courts and commentators, has grown far beyond its original scope. See, e.g., *Sedima, S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479, 500 (1985) (“We nonetheless recognize that, in its private civil version, RICO is evolving into something quite different from the original conception of its enactors.”); see also, generally, Randy D. Gordon, *RICO Had A Birthday! A Fifty-Year Retrospective of Questions Answered and Open*, 105 Marq. U. L. Rev. 131 (2021); see also, e.g., 116 Cong. Rec. 35155, 35204 (Rep. Abner Mikva) (predicting, before the passage of RICO, that “whatever its motives to begin with, we will end up with cases involving all kinds of things not intended to be covered, and a potpourri of language by which you can parade all kinds of horrible examples of overreach”).

Civil RICO also arms plaintiffs – rightly or wrongly – with a powerful set of levers to force settlement. First, RICO allows a plaintiff to threaten “punitive damages and attorneys’ fees,” *Limestone Development Corp. v. Village of Lemont, Ill.*, 520 F.3d 797, 803 (7th Cir.



2008) (Posner, J.), along with treble damages, 18 U.S.C. § 1964(c), and joint-and-several liability, *see Allstate Ins. Co. v. Nazarov*, 2015 WL 5774459, at \*18 (E.D.N.Y. Sept. 30, 2015) (collecting cases allowing joint-and-several liability). These “potential cost[s]” multiply the downside of RICO litigation, far beyond the merits of the claims. *Limestone*, 520 F.3d at 803.

Second, RICO cases are complex, “big” cases, with substantial discovery costs. *Limestone*, 520 F.3d at 803 (“RICO cases, like antitrust cases, are ‘big’ cases and the defendant should not be put to the expense of big-case discovery on the basis of a threadbare claim.”); *see also In re HomeAdvisor, Inc. Litig.*, 2019 WL 12473434, at \*6 (D. Colo. Dec. 16, 2019) (“RICO case[s] are complex cases likely to be more than usually costly.”).

Taken together, the cost and risk associated with RICO litigation place enormous pressure on defendants to settle even meritless claims. Courts have recognized as much – as the Southern District of New York recently put it, the addition of a RICO claim is “a common *in terrorem* litigation tactic.” *Zhang v. Lo*, 2020 WL 2133163, at \*1 (S.D.N.Y. May 5, 2022); *see also, e.g., Sedima*, 473 U.S. at 504 (Marshall, J., dissenting) (“Then the defendant, facing a tremendous financial exposure in addition to being labeled a ‘racketeer,’ will have a strong interest in settling the dispute.”); *Limestone*, 520 F.3d at 803 (noting the “*in terrorem* effect” of the “potential costs” of RICO litigation (cleaned up)); *Pelletier v. Zweifel*, 921 F.2d 1465, 1522 (11th Cir. 1991) (“When used improperly, as in this case [the civil RICO provisions] allow a complainant to shake down his opponent and, given the expense of defending a RICO charge, to extort a settlement.”). Accordingly, the RICO domestic injury

inquiry (like other RICO pleading rules) is of tremendous importance to defendants as their last clear chance to avoid crushing settlement pressure untethered to the merits of a case.

This case presents an ideal opportunity for this Court to clarify the law on this important question. The question presented is purely legal. The district court and Ninth Circuit considered it in the context of a motion to dismiss, where Smagin's allegations must be taken as true. And, the question is case-dispositive: if this Court overturns the Ninth Circuit's ruling, this dispute will end, whereas without this Court's intervention, this litigation will continue as to at least some defendants.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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October 20, 2022

## **APPENDIX**

1a

**APPENDIX A**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

[Filed: Aug. 2, 2022]

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No. 21-55537

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

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VITALY IVANOVICH SMAGIN,

*Plaintiff-Appellant,*

v.

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

*Defendants-Appellees.*

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**ORDER**

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

“Defendant-Appellee CMB Monaco’s Motion to Stay  
the Mandate,” Docket No. 71, is GRANTED.

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

2a

**APPENDIX B**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

[Filed: July 22, 2022]

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No. 21-55537

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

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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.

3a

**APPENDIX C**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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No. 21-55537

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

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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 YEGIAZARYAN, 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.*

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

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OPINION

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4a

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

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SUMMARY\*\*

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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.

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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.

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## 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.<sup>1</sup> 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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<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

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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<sup>2</sup> 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).

<sup>3</sup> 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*,

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*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 D**

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 sufficient 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 judgment 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. Shu 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 *Harmoni 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.

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**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

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COMPLAINT

[CIVIL RICO LIABILITY]

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

DEMAND FOR JURY TRIAL

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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*<sup>1</sup> 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”).<sup>2</sup> 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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<sup>1</sup> 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.

<sup>2</sup> 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 ALLEGATIONSMr. 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.<sup>3</sup>

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.

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<sup>3</sup> 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 files 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 Advisors, 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.<sup>4</sup>

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

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<sup>4</sup> 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.<sup>5</sup>

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<sup>5</sup> 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 letter 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.

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

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 Φ). 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:

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- 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

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**APPENDIX F**

**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;



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**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 Schächle 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 Schächle and Mr. Raphael Näscher 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 Liechtenstein 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:**

- On the admissibility of the voluntary interventions:

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.

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

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 a motion 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 SCHÄCHLE 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

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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