

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

**WIGBERTO LUGO-MENDER, as the duly
appointed Trustee in the liquidation of
EURO PACIFIC INTERNATIONAL BANK,
INC.,**

Plaintiff,

v.

**QENTA, INC.; PETER D. SCHIFF; BRENT
DE JONG; ET AL.,**

Defendants.

**EURO PACIFIC FUNDS SCC LTD.; EURO
PACIFIC SECURITIES, INC.; EURO
PACIFIC CARD SERVICES LTD.; AND
GLOBAL CORPORATE STAFFING LTD.**

Parties in Interest.

CIVIL NO.: 25-1501 (PAD)

MOTION TO DISMISS

I. INTRODUCTION

This lawsuit is a baseless and wasteful detour from the Trustee’s actual mandate: to recover and protect the assets of Euro Pacific International Bank (“EPB”) for the benefit of its customers. Defendant Qenta, Inc. (“Qenta”), led by its principal, Defendant Brent de Jong (“De Jong”), is attempting to walk away from its obligations under the Purchase and Assumption Agreement (“PAA”) while retaining control of approximately \$80 million in customer assets. It seeks to return customer-owned gold, silver, and mutual funds at their 2022 valuations, despite their current market value being nearly double, thereby capturing a windfall that rightfully belongs to EPB’s customers.

Instead of pursuing claims in the proper forum, where relief is not only available but was already commenced by Defendant Peter D. Schiff (“Schiff”), the Trustee has chosen to target Mr.

Schiff, EPB's sole shareholder, with meritless allegations under the Commodity Exchange Act ("CEA") and the Racketeer Influenced and Corrupt Organizations Act ("RICO"). These claims are not just legally deficient; they are a distraction that risks squandering time, resources, and customer assets in pursuit of a narrative that is both plainly false and contrary to law.

The Trustee's decision to sue Mr. Schiff, who has consistently advocated for customer recovery, offered to personally fund litigation against Qenta, and urged the Trustee to pursue arbitration against Qenta, is inexplicable. Rather than stepping into Mr. Schiff's shoes and continuing litigation that had already commenced in New York, where a Temporary Restraining Order ("TRO") prohibiting Qenta from moving any customer-owned assets had already been granted, and arbitration was contractually mandated, the Trustee waited two months and then filed a frivolous Civil RICO claim. This maneuver not only ignores the PAA's binding arbitration clause, but also undermines the very recovery efforts the Trustee is supposed to lead.

The Verified Complaint fails on multiple grounds. First, it does not state a claim under the CEA, which provides a narrowly defined private right of action that does not apply to Mr. Schiff's conduct. Second, the Trustee lacks standing to bring a CEA claim, as the alleged harm was suffered by individual customers, not EPB itself. Third, the RICO claim is frivolous: it fails to plead the existence of an enterprise, a pattern of racketeering activity, or fraud with the particularity required under Rule 9(b). Fourth, the Trustee's claims are barred by the mandatory arbitration clause in the PAA, which requires all disputes to be resolved through ICC arbitration in New York. Finally, the Declaratory Judgment Act cannot salvage the Complaint, as it does not create an independent cause of action and the underlying claims are fatally flawed.

This case is not about fraud; it is about a failed transaction and a Trustee unwilling to pursue remedies in the forum best equipped to resolve them. The allegations against Mr. Schiff are not

only unsupported by the record, they are also contradicted by it. Mr. Schiff's efforts to protect customer assets and hold Qenta accountable have been consistent, transparent, and legally sound. The Trustee's attempt to recast those efforts as part of a criminal conspiracy is not just implausible, it is irresponsible. For these reasons, and as further detailed below, the Complaint should be dismissed in its entirety.

II. FACTUAL¹ AND PROCEDURAL BACKGROUND

On January 28, 2016, Euro Pacific Intl. Bank, LTD. filed a petition with the Office of the Commissioner of Financial Institutions of Puerto Rico ("OCIF" by its Spanish acronym) to organize an International Financial Entity (IFE) under the name Euro Pacific Intl. Bank, LLC, as a subsidiary of the parent entity. (*See* Docket No. 1-2, pp. 1-12.) On February 25, 2016, OCIF issued a permit to Euro Pacific Intl. Bank, LLC to organize as an IFE, pursuant to the provisions of Law No. 273-2012. (*Id.*)

On December 14, 2016, Euro Pacific Intl. Bank, LLC notified OCIF that it would not commence operations as a subsidiary of Euro Pacific Intl. Bank, LTD. in the jurisdiction of St. Vincent and the Grenadines. The entity requested that the Permit be transferred entirely to Euro Pacific Intl. Bank, Inc. ("EPB") (*Id.*) On January 4, 2017, OCIF approved the transfer and granted the Permit to Euro Pacific Intl. Bank, Inc., under the same conditions and requirements as the original Permit. (*Id.*) Subsequently, on February 9, 2017, OCIF issued License No. IFE-33 to EPB, authorizing the commencement of operations as an IFE under Law No. 273-2012. (*Id.*)

On June 30, 2022, OCIF issued an Administrative Complaint and Order to Cease and Desist ("Querella y Orden de Cese y Desista" by its Spanish title) against EPB, whose sole shareholder

¹ This section consists of facts alleged in Plaintiffs' Verified Complaint and facts subject to judicial notice. *See* Fed.R.Evid. 201(b)(2) ("The Court may judicially notice a fact that is not subject to dispute because it . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.")

was Peter D. Schiff. (*See Id.*, pp. 1-21.) On August 9, 2022, to avoid litigation on the Cease and Desist, OCIF and EPB entered into a Consent Order for Liquidation and Dissolution (“Consent Order”), under which EPB agreed to surrender its IFE license and voluntarily proceed with the liquidation of its operations. (*See Id.*, pp. 22-33.)

One of the prerequisites for proceeding with this voluntary liquidation was the appointment of Lugo-Mender as Trustee. OCIF appointed him to oversee the liquidation and granted him broad authority to act on behalf of the institution². The Trustee was mandated to, *inter alia*, immediately take possession of all assets, liabilities, books, records, documents, and files belonging to EPB. He assumed the functions of the Board of Directors and was tasked with organizing the affairs of the institution to ensure the prompt completion of its dissolution and liquidation. (*See Id.*, pp. 18-20.) The Trustee was likewise authorized to act on behalf of EPB to dispose of, sell, and liquidate its assets, and to engage in any transactions necessary to complete the institution’s dissolution and liquidation. This included obtaining all required approvals and authorizations from OCIF. (*See Id.*, p. 29.)

The Consent Order also required EPB to submit a Voluntary Liquidation Plan to OCIF within fifteen (15) days of executing the Liquidation Order. The plan had to be approved by both OCIF and the Trustee and align with the policy objectives of Act No. 273-2012, particularly ensuring the protection of client deposits. EPB was responsible for covering all costs associated with the liquidation. Notably, the plan would become effective **only upon written approval by the Trustee and OCIF**. (*See Id.*, p. 26.)³

² Mr. Schiff offered to oversee the liquidation of the bank himself, at no cost to the bank’s estate, but OCIF insisted on appointing Lugo-Mender as Trustee, despite him not having any prior banking experience.

³ The Trustee suggests the plan was “prepared by Schiff himself”, without acknowledging that both he and OCIF extensively revised and ultimately authorized the plan. Yet another reflection of the dishonesty that plagues the Verified Complaint.

Another integral part of EPB's liquidation, which the Liquidation Plan required be completed in 90 days, was the execution of the Purchase and Assumption Agreement ("PAA"), dated September 30, 2022. Through the PAA, EPB agreed to sell and transfer specific assets and liabilities to Qenta Inc. ("Qenta") and two of its subsidiaries, G-Commerce DMCC, and Responsible Gold Trading DMCC. (*See Id.*, pp. 68-83.) The assets included cash and cash equivalents, precious metals, subsidiary shares, assumed contracts, IT equipment, and EPB's website domain. The liabilities assumed were those owed to "Eligible Customers," as defined in the agreement. The agreement was executed by Mr. Schiff, on behalf of EPB, and by Codefendant Brent de Jong, on behalf of all three purchasing entities.

Notably, the agreement provided for multiple closings. Specifically, Sections 2.2 and 2.3 of the PAA outline the mechanics of the asset and liability transfer from EPB to Qenta (and its subsidiaries). Section 2.2 describes the Initial Closing, which was to occur by September 30, 2022, contingent on regulatory approvals. At this stage, EPB was to transfer all listed assets—excluding any "Uncleared Cash"—including cash, precious metals, subsidiary shares, assumed contracts, records, and the bank's website domain. Qenta would assume the corresponding liabilities for eligible customers, and EPB would relinquish control over its subsidiaries and corporate records.

Section 2.3, on the other hand, provides for an Additional Closing, triggered either by the release of Uncleared Cash from EPB's correspondent banks or upon request by Qenta. This closing would finalize the transfer of any remaining assets and liabilities not included in the initial transaction. EPB and Mr. Schiff were obligated to update the asset schedule and ensure full delivery of these items to Qenta or its designated affiliates.⁴

⁴ Both Mr. Schiff and Qenta agree that this deal never closed for several reasons, including the fact that the regulatory approvals required by Section 2.2 were never obtained.

The liquidation process encountered significant delays, primarily due to complications involving EPB's correspondent bank, Novo Banco, in Portugal. As of November 2023, the Trustee acknowledged in a customer update that the release of funds held at correspondent banks remained a major obstacle.⁵ He stated, "Any distributions to customers will commence once the Plan of Liquidation is filed by the undersigned with the Puerto Rico regulatory agency and approved by the Commissioner."

Further complicating matters, on July 11, 2025, Qenta formally notified the Trustee of its intention to terminate the PAA. In its letter, Qenta emphasized that the transaction never closed and confirmed that it had not assumed any liabilities or obligations of EPB. Qenta also stated that it would cease all activities related to EPB and requested that the Trustee take appropriate steps to protect EPB's assets and customers.

Qenta's attempt to return customer-owned gold at its 2022 valuation, approximately \$20 million, is a central point of contention in this case. The Court may take judicial notice of the fact that, as of 2025, the same gold is worth close to \$50 million, meaning Qenta stands to retain a windfall of roughly \$30 million if allowed to proceed under outdated valuations. This maneuver, which Qenta has framed as a return of assets, is in fact an effort to capture the appreciation in value that rightfully belongs to EPB's customers. Similarly, Qenta previously attempted to retain customer-owned silver valued at \$5 million in 2022, which has since appreciated to over \$11 million. In addition, Qenta offered to sell the mutual funds, pocket the appreciation in value, and return the 2022 valuation of the mutual funds, or approximately \$6 million, to customers, despite those mutual funds having a current valuation of around \$10 million.

⁵ See: <https://epbprliquidation.com/november-15-2023-liquidation-process-update/>

In response to Qenta’s outrageous proposal, Mr. Schiff filed an emergency motion in the U.S. District Court for the District of Puerto Rico seeking to prevent the dissipation of approximately \$80 million in customer assets. Schiff alleged that Qenta had unlawfully retained these assets after terminating the PAA and had attempted to claim half of EPB’s precious metals through a “discount” scheme. He requested a freeze on the assets, a full accounting, and expedited discovery. Although the court denied the motion on procedural grounds—finding that Schiff lacked standing to seek relief against a non-party—the decision left open the possibility for the Trustee to pursue similar remedies. Undeterred, Schiff filed a Verified Petition for a Temporary Restraining Order and Preliminary Injunction in New York state court, where Judge Linda S. Jamieson granted the TRO, finding a likelihood of success on the merits. The case was later removed to federal court, where Judge Kevin Castel affirmed the TRO but ultimately vacated it, citing Schiff’s lack of standing and noting that it was the Trustee who had standing to sue on behalf of EPB.⁶

The claims against Mr. Schiff include violations of the Commodity Exchange Act (“CEA”), 7 U.S.C. § 1 *et seq.*, and the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1964, asserting that he knowingly facilitated the transfer of assets under false pretenses. (*See Id.*)

More specifically, the complaint asserts that Mr. Schiff, as the sole shareholder of EPB, “lent credibility to Qenta’s narrative and knowingly advanced a fraudulent scheme while disregarding his fiduciary duties to the bank’s customers.” Docket No. 1, p.3. The Trustee alleges that on September 1, 2022, EPB submitted a Voluntary Liquidation Plan prepared by Schiff, which outlined the framework for winding down the bank’s operations. (*Id.*, ¶15). A week later, on September 8, 2022, Schiff announced that Qenta would act as the acquiring entity, referencing a

⁶ Mr. Schiff’s litigation against Qenta is extensively discussed in Mr. Schiff’s response to the Trustee’s request for injunctive relief. (*See* Docket No. 14, Section II(B).)

welcome letter signed by Qenta executives, and describing Qenta as the most efficient and transparent option to manage the liquidation process for the benefit of depositors. (*Id.*, ¶17). On September 30, 2022, Schiff, on behalf of EPB, executed the PAA between EPB and Qenta (¶22).

According to the complaint, between September 28 and November 9, 2022, Schiff and Qenta issued various written communications to EPB customers indicating that the migration of accounts and assets was underway. (*Id.*, ¶28). These communications were disseminated through the EPB website, which the pleading states remained under the control of Schiff and/or Qenta (¶28). By December 5, 2022, Qenta publicly acknowledged that the transfers were incomplete, which the complaint characterizes as a reversal of prior updates jointly communicated by Qenta and Schiff. (*Id.*, ¶31). The pleading further contends that Schiff, in his capacity as EPB sole shareholder, facilitated Qenta's assumption of certain responsibilities. (*Id.*, ¶39). Finally, the complaint alleges that Schiff and/or Qenta retained control over certain customer information obtained through EPB subsidiaries, limiting access to that data by the Trustee, customers, and regulators, and thereby complicating the liquidation process overseen by OCIF. (*Id.*, ¶41).

This, in substance, is the full extent of the allegations leveled against Mr. Schiff, and they are not only facially deficient but, in several instances, demonstrably false. For example, the so-called "joint statements" allegedly issued between September and November 2022 are publicly accessible through the bank's website⁷, of which the Court may take judicial notice. None of these

⁷See: <https://europacbank.com/support/bank-liquidation-update-20220902/>

<https://europacbank.com/support/bank-liquidation-update-20220902/>

<https://europacbank.com/support/bank-liquidation-update-20220916/>

<https://europacbank.com/support/bank-liquidation-update-20220928/>

<https://europacbank.com/support/bank-liquidation-update-20220930/>

statements were authored by Mr. Schiff; rather, the plain language of these notices reflects they were issued by Euro Pacific International Bank and/or Qenta.

The allegations that Mr. Schiff withheld information from the Trustee are demonstrably false. Under the Consent Order and Liquidation Plan, the Trustee had full control over all of the bank's systems and records. Mr. Schiff retained copies of certain records that OCIF required him to keep in his personal possession for three years, in accordance with the Liquidation Plan. At all times, Mr. Schiff reasonably assumed the Trustee had complete access to the original records. It was only around the time Qenta terminated the agreement that Mr. Schiff learned the Trustee claimed to be missing records. Surprised by this, Mr. Schiff immediately emailed the Trustee, offering to share any customer information he had. Importantly, Mr. Schiff never had access to the bank's systems, even before the Trustee assumed control, as he was a shareholder and director, not an officer or employee. The records in his possession were static copies generated by bank staff under the Receiver's direction. Despite Mr. Schiff's outreach, the Trustee never responded to his email and instead filed this lawsuit, alleging, among other things, that Mr. Schiff had deprived him of essential bank information. More importantly, the Trustee is fully aware that Mr. Schiff never conspired with Qenta or participated in any fraudulent scheme related to EPB. The inclusion of his name in this lawsuit is therefore both baseless and improper. These allegations fail to state any

<https://europacbank.com/support/bank-liquidation-update-20221008/>

<https://europacbank.com/support/bank-liquidation-update-20221017/>

<https://europacbank.com/support/bank-liquidation-update-20221021/>

<https://europacbank.com/support/migration-update-20221101/>

https://europacbank.com/support/migration-liquidation-update_20221205/

plausible claim for relief under RICO, or any other theory of liability, and this action must be dismissed in its entirety.

III. STANDARD OF REVIEW

An evaluation of a motion to dismiss under Rule 12(b)(6) requires the court to “accept as true ‘all well-pleaded factual averments and indulg[e] all reasonable inferences in the [plaintiffs’] favor.’” *Doyle v. Hasbro, Inc.*, 103 F.3d 186, 190 (1st Cir. 1996) (quoting *Aulson v. Blanchard*, 83 F.3d 1, 3 (1st Cir. 1996)). Dismissal under Rule 12(b)(6) is appropriate only if the facts alleged, taken as true, do not establish a basis for recovery. *Aulson*, 83 F.3d at 3. In order to survive a motion to dismiss, plaintiffs must “set forth factual allegations, either direct or inferential, respecting each material element necessary to sustain recovery under some actionable legal theory.” *Gooley v. Mobil Oil Corp.*, 851 F.2d 513, 515 (1st Cir. 1988). Although all inferences must be made in the plaintiff’s favor, the court is not required to accept “bald assertions, unsupportable conclusions, periphrastic circumlocutions, and the like.” *Aulson*, 83 F.3d at 3.

The Supreme Court decision in *Bell Atlantic v. Twombly*, 550 U.S. 544, 555 (2007), further refines this standard by requiring that a complaint must “provide the grounds of his entitlement [with] more than labels and conclusions.” Accordingly, in order to avoid dismissal, the plaintiff must provide the grounds upon which his claim rests through factual allegations sufficient ‘to raise a right to relief above the speculative level.’” *Torres v. Bella Vista Hosp., Inc.*, 523 F. Supp. 2d 123, 133 (D.P.R. 2007) (quoting *Twombly*, 550 U.S. at 555, 570) (citation omitted). Although *Twombly* was initially decided in the antitrust context, the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662, 684 (2009), clarified that this standard applies universally across all civil actions.

To further assess the sufficiency of the complaint, a two-pronged analysis is applied. Under the two-step “plausibility” standard established by *Twombly*, the Court in considering a motion to dismiss must first “accept as true all of the allegations contained in a complaint [.]” discarding

legal conclusions, conclusory statements and factually threadbare recitals of the elements of a cause of action. *Ashcroft*, at 678. The Court “need not accept as true legal conclusions from the complaint or ‘naked assertion[s]’ devoid of ‘further factual enhancement.’” *Maldonado v. Fontanes*, 568 F.3d 263, 266 (1st Cir. 2009) (quoting *Iqbal*, at 678). Under the second step of the inquiry, the Court must determine whether, based upon all assertions that were not discarded under the first step of the inquiry, the complaint “states a plausible claim for relief.” *Iqbal*, at 679. Thus, “[i]n order to survive a motion to dismiss, [a] plaintiff must allege sufficient facts to show that he has a plausible entitlement to relief.” *Sanchez v. Pereira-Castillo*, 590 F.3d 31, 41(1st Cir. 2009). “[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but has not ‘show[n]’ ‘that the pleader is entitled to relief.’” *Iqbal*, at 679 (quoting Fed. R. Civ. P. 8(a)(2)). Furthermore, such inferences must be at least as plausible as any “obvious alternative explanation.” *Id.* at 685 (citing *Twombly*, 550 U.S. at 567).

Furthermore, when the complaint alleges claims of fraud, as in this case, they are subject to the heightened pleading requirements of Fed. R. Civ. P. 9(b). *See Doyle v. Hasbro, Inc.*, 103 F.3d 186, 194 (1st Cir. 1996). Federal Rule of Civil Procedure 9(b), requires that “[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake.” Ultimately, to state a claim for fraud or misrepresentation, the pleader “must state the **who, what, where, and when** of the allegedly misleading representation with particularity.” *Ezell v. Lexington Ins. Co.*, 926 F.3d 48, 51 (1st Cir. 2019) (emphasis ours). One of the main purposes of the rule is to apprise the defendant of fraudulent claims and of the acts that form the basis for the claim. *Hayduk v. Lanna*, 775 F.2d 441, 443 (1st Cir. 1985). Where, as here, “fraud lies at the core of the action, [Rule 9(b)] does not permit a complainant to file suit first, and subsequently to search for a

cause of action.” *Lopez v. Bulova Watch Co., Inc.*, 582 F.Supp. 755, 766 (D.R.I.1984) (citations omitted)(emphasis ours).

The First Circuit has interpreted Rule 9(b) to require “specification of the time, place, and content of an alleged false representation.” *Greebel v. FTP Software, Inc.*, 194 F.3d 185, 193 (1st Cir. 1999)(quoting *McGinty v. Beranger Volkswagen, Inc.*, 633 F.2d 226, 228 (1st Cir.1980)). Moreover, “[e]ven where allegations are based on information and belief, supporting facts on which the belief is founded must be set forth in the complaint. This holds true even when the fraud relates to matters peculiarly within the knowledge of the opposing party.” *Hayduk*, 775 F.2d at 444.

This heightened pleading requirement holds particularly true in the case of RICO claims, as the First Circuit has reiterated “that RICO pleadings of mail and wire fraud must satisfy the particularity requirements of Rule 9(b).” *Ahmed v. Rosenblatt*, 118 F.3d 886, 889 (1st Cir. 1997) (citing *Feinstein v. Resolution Trust Corp.*, 942 F.2d 34, 42 (1st Cir. 1991)). *See also MCDP Phoenix Servs. PTE Ltd. v. First Fin. Int’l Bank, Inc.*, Civil No. 21-1534 (JAG), 2023 WL 2652644, at*3 (D.P.R. Mar. 27, 2023) (“Due to the exceptional nature of the statute, complaints that allege a RICO claim must comply with uniquely stringent pleading standards to survive a motion to dismiss.”); *Latin Am. Music Co. v. Disco Hit Productions*, Civil 02-1788 (ADC), 2006 WL 8449986, at 15 (D.P.R. June 19, 2006) (where RICO complaint is based on predicate acts of wire fraud, “the pleadings must meet both the heightened scrutiny applied to RICO claims and the Rule 9(b) particularity requirement.”).

IV. ARGUMENT

A. *The Trustee fails to state a claim under the CEA.*

1. Mr. Schiff is not a proper defendant.

The Verified Complaint entirely lacks any legal basis for proceeding against Mr. Schiff under the Commodity Exchange Act (“CEA”), 7 U.S.C. § 1 *et seq.* The statute provides a limited and narrowly defined private right of action under 7 U.S.C. § 25(a)(1), applying only to four circumstances, and each is explicitly transactional in nature. Specifically:

1. where the defendant provided trading advice for a fee (§ 25(a)(1)(A));
2. where the plaintiff made a contract of sale of a commodity for future delivery, option, or swap through the defendant (§ 25(a)(1)(B));
3. where the plaintiff placed an order for an option not traded on a registered entity, a commodity pool interest, or a swap (§ 25(a)(1)(C));
4. where the defendant engaged in manipulation or use of a manipulative device in connection with a contract or swap (§ 25(a)(1)(D)).

The Trustee neither alleges nor can plausibly allege that Mr. Schiff engaged in any conduct falling within the four narrowly defined categories under 7 U.S.C. § 25(a)(1). These categories—providing trading advice for a fee, executing or facilitating futures, options, swaps, or commodity pool transactions, placing certain non-exchange-traded orders, or engaging in price manipulation—are specific, exclusive, and not subject to judicial expansion. Courts have consistently rejected efforts to stretch the CEA to cover factual scenarios outside these statutory bounds. *See Braman v. CME Group, Inc.*, 149 F. Supp. 3d 874 (N.D. Ill. 2015).

The Verified Complaint fails to allege that Mr. Schiff provided trading advice for compensation, executed or facilitated any regulated commodity transactions, or engaged in any form of price manipulation or use of manipulative devices. Mr. Schiff is not a registered entity or member of a registered futures association, and none of the statutory predicates for a private right of action under the CEA are met. Instead, the Complaint focuses on alleged misconduct involving custodial transfers of physical gold and silver, transactions that are not regulated under the CEA.

Applying the CEA to such transfers, particularly in a liquidation context, is legally unsupported and impermissible, as it falls entirely outside the statute’s scope.

2. The Trustee does not have standing to sue under the CEA.

Even assuming *arguendo* that the Complaint stated a valid claim under the CEA, the Trustee lacks standing to assert it. To state a claim under the CEA, a plaintiff must plausibly allege that the defendant took an action that had a negative impact on the plaintiff’s position and that the plaintiff was personally harmed by the defendant’s fraudulent trading activity: “Because the CEA ultimately makes offending parties ‘liable for actual damages,’ 7 U.S.C. § 25(a)(1), CEA plaintiffs must establish that they were personally harmed by the defendant’s fraudulent trading activity. Thus, to state a claim for relief under the CEA, a plaintiff must plausibly plead that the defendant ‘t[ook] an action that had an impact on the [plaintiff’s] position,’ and that ‘that impact [was] negative.’” *Gamma Traders – I LLC v. Merrill Lynch Commodities, Inc.*, 41 F.4th 71, 77–78 (2d Cir. 2022) (internal citations omitted).; *Harry v. Total Gas & Power N. Am., Inc.*, 889 F.3d 104, 109–112 (2d Cir. 2018). The Complaint fails to meet this standard with respect to Mr. Schiff.

The Trustee does not allege that EPB itself was harmed by Mr. Schiff’s conduct. Instead, the Complaint repeatedly asserts that the alleged injury was suffered by EPB’s “opt-in” customers, whose assets were transferred to Qenta outside the OCIF-supervised liquidation process. The Trustee, acting in his fiduciary capacity for EPB, cannot assert claims on behalf of third-party customers, the proper plaintiffs under the CEA.

“The doctrine of standing addresses whether a particular plaintiff has ‘such a personal stake in the outcome of [a] controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination.’” *Nulankeyutmonen Nkihtaqmikon v. Impson*, 503 F.3d 18, 26 (1st Cir.2007) (quoting *Baker v. Carr*, 369 U.S. 186, 204, 82 S.Ct. 691, 7 L.Ed.2d 663 (1962)). To establish standing, a plaintiff must

show (1) that she or he suffered an injury that is “concrete and particularized” and “actual or imminent, not conjectural or hypothetical”; (2) that there is a causal connection between the injury and the challenged action; and (3) that it is likely that the injury will be redressed by a favorable decision. *Lujan*, 504 U.S. at 560–61, 112 S.Ct. 2130 (internal quotation marks and citations omitted).

Here, the Trustee fails to satisfy these requirements. He does not allege a concrete injury to EPB itself, nor does he show that any such injury is traceable to Mr. Schiff’s conduct. Moreover, the relief sought (damages and asset recovery) would not redress any injury to the Trustee or EPB, but rather to individual customers who are not parties to this action and would be the proper plaintiffs under CEA.

Additionally, prudential standing principles bar the claim. The Trustee asserts the legal rights of third parties (the opt-in customers), alleges a generalized grievance not particular to himself, and claims an injury outside the zone of interests protected by the CEA. *See Valley Forge Christian Coll. v. Americans United*, 454 U.S. 464, 474–75 (1982); *Warth v. Seldin*, 422 U.S. 490, 498–99 (1975).

The Trustee’s statutory authority under the OCIF liquidation order does not extend to asserting federal commodity fraud claims on behalf of individual customers who opted in with Qenta, especially where the assets were transferred outside the liquidation framework. The Trustee fails to allege a concrete injury to EPB, and the relief sought would benefit third-party customers, not the estate. The Complaint does not satisfy the constitutional requirements of injury, causation, and redressability, nor does it overcome prudential limits on standing. The Trustee cannot assert federal commodity claims on behalf of customers outside the liquidation framework. Count I should be dismissed for lack of standing.

B. The Trustee's Verified Complaint fails to state a claim under RICO.

The civil-suit provision of the RICO statute grants the right to sue to “[a]ny person injured in his business or property by reason of a violation of” the substantive provisions of the statute. 18 U.S.C. § 1964(c). “Civil RICO is an unusually potent weapon—the **litigation equivalent of a thermonuclear device**. The very pendency of a RICO suit can be stigmatizing, and its consummation can be costly.” *Miranda v. Ponce Fed. Bank*, 948 F.2d 41, 44 (1st Cir. 1991) (Emphasis ours.) Accordingly, “courts should strive to flush out frivolous RICO allegations at an early stage of the litigation.” *Figueroa Ruiz v. Alegria*, 896 F.2d 645, 650 (1st Cir. 1990). More specifically, RICO claims “must be particularly scrutinized because of the relative ease with which a plaintiff may mold a RICO pattern from allegations that, upon closer scrutiny, do not support it.” *Efron v. Embassy Suites (Puerto Rico), Inc.*, 223 F.3d 12, 20 (1st Cir. 2000). “[I]n cases alleging civil RICO violations, particular care is required to balance the liberality of the Civil Rules with the necessity of preventing abusive or vexatious treatment of defendants.” *Miranda, Id.*

To state a civil RICO claim under 18 U.S.C. § 1962(c), a plaintiff must allege four elements: (1) conduct; (2) of an enterprise; (3) through a pattern; (4) of racketeering activity. *Lerner v. Colman*, 26 F.4th 71, 77 (1st Cir. 2022) (citing *Sedima, S.P.R.L. v. Imrex Co.*, 472 U.S. 479, 496, 105 S.Ct. 2787, 86 L.Ed.2d 384 (1985)). “Racketeering activity” is defined to include a variety of predicate offenses, including wire fraud. 18 U.S.C. § 1961(1). The civil-suit provision of the RICO statute grants the right to sue to “[a]ny person injured in his business or property by reason of a violation of” the substantive provisions of the statute. *Id.* § 1964(c).

The complaint’s RICO allegations against Mr. Schiff fall squarely within the type of frivolous pleading that courts have consistently cautioned against. The Verified Complaint consists of broad assertions that he, together with Qenta and its principal Brent de Jong, purportedly agreed to a scheme to acquire control of EPB customer assets through false representations and then

misappropriate those assets. (*See* Docket No. 1, ¶¶ 77–78). Yet the Trustee fails to identify a single material misrepresentation attributable to any defendant/co-conspirator, much less one specifically attributed to Mr. Schiff. The pleading merely references the PAA and a series of “coordinated actions,” including customer communications and the alleged transfer and disappearance of assets, as supposed evidence of this agreement. (*Id.*, ¶ 79.) The Verified Complaint, however, does not allege that these coordinated activities or communications amounted to criminal conduct or were otherwise dishonest. Instead, it asserts, without factual support, that each defendant agreed the alleged conspirators would commit predicate acts of wire fraud and financial institution fraud, and that they used interstate wire communications to issue false statements and obtain assets under false pretenses. (*Id.*, ¶¶ 80–81). It will come as no surprise that the Trustee fails to identify a single instance of this so-called fraud. Finally, it summarily claims that the plaintiff suffered injury to business or property “by reason of” this alleged RICO conspiracy. (*Id.*, ¶ 82). As will be demonstrated below, the Trustee’s RICO theory is plainly meritless: he fails to plead the existence of a cognizable enterprise, fails to allege a pattern of racketeering activity, fails to plead fraud with the particularity Rule 9(b) requires, and, ultimately, fails to state a viable RICO conspiracy claim.

1. The Trustee fails to plead the existence of an enterprise.

RICO makes it unlawful “for any person employed by or associated with any enterprise” to “conduct ... such enterprise's affairs through a pattern of racketeering activity.” 18 U.S.C. § 1962(c). “[T]o establish liability under § 1962(c) one must allege and prove the existence of two distinct entities: (1) a ‘person’; and (2) an ‘enterprise’ that is not simply the same ‘person’ referred to by a different name.” *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158, 161, 121 S.Ct. 2087, 150 L.Ed.2d 198 (2001). Enterprises under RICO include “any union or group of individuals associated in fact although not a legal entity.” *United States v. Turkette*, 452 U.S. 576, 578 n.2, 101

S.Ct. 2524, 69 L.Ed.2d 246 (1981). These so-called association-in-fact enterprises may be “proved by evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit.” *Turkette*, 452 U.S. at 583, 101 S.Ct. 2524. The group, however, must have “[1] a purpose, [2] relationships among those associated with the enterprise, and [3] longevity sufficient to permit these associates to pursue the enterprise's purpose.” *Boyle v. United States*, 556 U.S. 938, 946, 129 S.Ct. 2237, 173 L.Ed.2d 1265 (2009).

As to [1] — “purpose” — the group must share the “common purpose of engaging in a course of conduct.” *Id.* As to [2] — “relationship” — there must also be evidence of “interpersonal relationships” calculated to effect that purpose, *i.e.*, evidence that the group members came together to advance “a certain object” or “engag[e] in a course of conduct.” *Id.* (quotation marks omitted). And as to [3] — “longevity” — the group must associate based on its shared purpose for a “sufficient duration to permit an association to ‘participate’ in [the enterprise's affairs] through ‘a pattern of racketeering activity,’ ” *Id.*, though “nothing in RICO exempts an enterprise whose associates engage in spurts of activity punctuated by periods of quiescence,” *Id.* at 948, 129 S.Ct. 2237. Also, and importantly, because RICO's plain terms “encompass ‘any ... group of individuals associated in fact,’ ... the definition has a wide reach,” meaning “the very concept of an association in fact is expansive.” *Id.* at 944, 129 S.Ct. 2237 (emphasis in original).

The Verified Complaint fails to allege the existence of any distinct “enterprise” within the meaning of § 1962(c). Here, the pleading does not identify any independent enterprise, let alone one separate from the alleged “persons,” *i.e.*, the defendants. Instead, the complaint collapses the purported “enterprise” into the actors it accuses of wrongdoing, vaguely asserting that Mr. Schiff, Qenta, and Mr. de Jong “entered into an agreement” and thereafter engaged in “coordinated actions.” Docket No. 1, ¶¶ 77–79. These threadbare allegations do not describe a structured or

continuing unit with a shared illicit purpose, defined roles, or operational longevity. At most, they depict ordinary business communications surrounding a contractual transaction, the PAA and the liquidation, not the existence of an association-in-fact enterprise distinct from the defendants themselves.

Nor does the Complaint plead facts satisfying any of the three elements identified in *Boyle*. It fails to allege a *purpose* beyond the conclusory assertion that the defendants sought to “acquire control of EPB customer assets”; a claim entirely derivative of the contractual liquidation process overseen by the Trustee and approved by OCIF. It fails to allege any *relationships* among the supposed members beyond the PAA, a standard commercial agreement that, by definition, presupposes arms-length dealings rather than conspiratorial coordination. And it fails to allege *longevity*, offering no facts suggesting that Mr. Schiff and Qenta operated as a continuing unit or shared any ongoing enterprise beyond the limited scope of the liquidation. Without a defined structure, continuing organization, or distinct purpose, the Trustee’s allegations do not approach the threshold of an “enterprise” under RICO. On their face, they describe nothing more than a contractual relationship falsely couched as a criminal association, precisely the kind of pleading courts have rejected as insufficient under § 1962(c).

2. The Trustee fails to plead a pattern of racketeering activity.

The “pattern” element requires a plaintiff to show at least two predicate acts of “racketeering activity,” which is defined to include violations of specified federal laws, including wire fraud and financial institution fraud. *See* 18 U.S.C. § 1961(1). Although showing two predicate acts is the only statutory requirement, this is not sufficient to prove a “pattern”—the plaintiff also must demonstrate that the “predicates are related, *and* that they amount to or pose a threat of continued criminal activity.” *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 239,

109 S.Ct. 2893, 106 L.Ed.2d 195 (1989). Under the “amount[ing] to” approach, “[a] party alleging a RICO violation may demonstrate continuity ... by proving a series of related predicates extending over a substantial period of time.” *H.J.*, 492 U.S. at 242, 109 S.Ct. 2893. Because RICO was intended by Congress to apply only to enduring criminal conduct, “[p]redicate acts extending over a few weeks or months ... do not satisfy this requirement.” *Id.* Under the “threat” approach, however, even where the predicate acts occur in a narrow time frame and suit is brought before the pattern has taken definitive shape, the requirement can still be satisfied by ... a showing that “the racketeering acts themselves include a specific threat of repetition extending indefinitely into the future [or] ... are part of an ongoing entity's regular way of doing business.” *Id.*

To satisfy the continuity requirement, “a plaintiff in a RICO action must allege either an open-ended pattern of racketeering activity (i.e., past criminal conduct coupled with a threat of future criminal conduct) or a closed-ended pattern of racketeering activity (i.e., past criminal conduct extending over a substantial period of time).” *GICC Capital Corp. v. Tech. Fin. Group, Inc.*, 67 F.3d 463, 466 (2d Cir.1995) (internal quotation marks omitted). “To satisfy open-ended continuity, the plaintiff need not show that the predicates extended over a substantial period of time but must show that there was a threat of continuing criminal activity beyond the period during which the predicate acts were performed.” *First Cap. Asset Mgmt., Inc. v. Satinwood, Inc.*, 385 F.3d 159, 180 (2d Cir. 2004). Finally, courts, including the First Circuit, have suggested that RICO claims premised on mail or wire fraud **must be particularly scrutinized because of the relative ease with which a plaintiff may mold a RICO pattern from allegations that, upon closer scrutiny, do not support it.** *Efron*, 223 F.3d at 20–21 (citing *Schultz v. Rhode Island Hosp. Trust Nat’l Bank, N.A.*, 94 F.3d 721, 732 (1st Cir.1996); *Roeder v. Alpha Indus., Inc.*, 814 F.2d 22, 31 (1st Cir.1987))(Emphasis ours.)

The Trustee's RICO claim independently fails because the Verified Complaint does not allege a "pattern of racketeering activity." Although it vaguely invokes "wire fraud" and "financial institution fraud," the Verified Complaint identifies no specific predicate acts, no misrepresentations by Mr. Schiff, and no conduct that could plausibly constitute a criminal offense under federal law. The allegations, even taken at face value, describe at most a series of business communications and transactions associated with Euro Pacific Bank's liquidation process—activities spanning roughly three years but interrupted for approximately eighteen months while the liquidation was paused due to issues involving the bank's correspondent, Novo Banco. The Verified Complaint does not allege **any** racketeering activity, much less a pattern.

The intermittent and episodic conduct described in the Verified Complaint, bookended by long periods of regulatory inaction, cannot satisfy *H.J. Inc.*'s "closed-ended continuity" requirement, which demands a series of related predicates extending over a *substantial and continuous* period. *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 242 (1989). There is no allegation of sustained criminal activity, of any repeated or cyclical misconduct, or of continuing behavior before or after the liquidation process. Rather, the Trustee's own allegations confirm that the supposed "scheme" was confined to a single, time-limited business event, an administrative wind-down subject to regulatory oversight.

Nor does the Complaint satisfy the "open-ended" continuity requirement. Nothing in the pleading suggests any ongoing threat of criminal conduct or continuing enterprise beyond the temporary liquidation period. To the contrary, the allegations describe a one-time process that, by design, would conclude upon the completion of the liquidation. Once the transfer of assets and related communications cease, the alleged activity necessarily ends with it. The Trustee does not, and cannot, allege that Mr. Schiff or any of the other defendants engaged in similar conduct before,

during the Novo Banco-related pause, or thereafter. Far from depicting the “enduring criminal conduct” Congress intended RICO to reach, the Complaint merely re-casts a paused, regulator-driven liquidation as a criminal conspiracy. The Verified Complaint’s RICO claims must be dismissed.

3. The Trustee fails to plead fraud with particularity.

“RICO pleadings of mail and wire fraud must satisfy the particularity requirements of Rule 9(b).” *Ahmed v. Rosenblatt*, 118 F.3d 886, 889 (1st Cir. 1997) (citing *Feinstein v. Resolution Trust Corp.*, 942 F.2d 34, 42 (1st Cir. 1991)). *See also MCDP Phoenix Servs. PTE Ltd. v. First Fin. Int’l Bank, Inc.*, Civil No. 21-1534 (JAG), 2023 WL 2652644, at*3 (D.P.R. Mar. 27, 2023) (“Due to the exceptional nature of the statute, complaints that allege a RICO claim must comply with uniquely stringent pleading standards to survive a motion to dismiss.”); *Latin Am. Music Co. v. Disco Hit Productions*, Civil 02-1788 (ADC), 2006 WL 8449986, at 15 (D.P.R. June 19, 2006) (where RICO complaint is based on predicate acts of wire fraud, “the pleadings must meet both the heightened scrutiny applied to RICO claims and the Rule 9(b) particularity requirement.”). In the RICO context, “Rule 9(b) calls for the complaint to ‘specify the statements it claims were false or misleading, give particulars as to the respect in which plaintiffs contend the statements were fraudulent, state when and where the statements were made, and identify those responsible for the statements.’ ... The plaintiffs must also ‘identify the purpose of the mailing within the defendant’s fraudulent scheme.’” *Alejandro-Martinez v. Ortiz-Vazquez*, Civil No. 10- 1541(CCC), 2011 WL 4807714, at *3 (D.P.R. Oct. 11, 2011) (cleaned up). *See Puerto Rico Medical Emergency Group, Inc. v. Iglesia Episcopal Puertorriqueña, Inc.*, 118 F. Supp.3d 447, 457 (D.P.R. 2015) (dismissing RICO claim which failed to allege the “specific dates” of the mails and wires, the “specific persons” who sent them and the “places from which or to where the invoices were sent.”).

The viability of **all** of the Trustee’s claims against Mr. Schiff require the Court to find that

the defendants defrauded EPB’s customers. Federal Rule of Civil Procedure 9(b) provides that “[i]n all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity.” Fed. R. Civ. P. 9(b). One of the main purposes of the rule is to apprise the defendant of fraudulent claims and of the acts that form the basis for the claim. *Hayduk v. Lanna*, 775 F.2d 441, 443 (1st Cir. 1985). Where, as here, “**fraud lies at the core of the action**, [Rule 9(b) does not permit a complainant to file suit first, and subsequently to search for a cause of action.” *Lopez v. Bulova Watch Co., Inc.*, 582 F.Supp. 755, 766 (D.R.I.1984) (citations omitted)(emphasis ours).

The First Circuit has interpreted Rule 9(b) to require “specification of the time, place, and content of an alleged false representation.” *Greebel v. FTP Software, Inc.*, 194 F.3d 185, 193 (1st Cir. 1999)(quoting *McGinty v. Beranger Volkswagen, Inc.*, 633 F.2d 226, 228 (1st Cir.1980)). Moreover, “[e]ven where allegations are based on information and belief, supporting facts on which the belief is founded must be set forth in the complaint. And this holds true even when the fraud relates to matters peculiarly within the knowledge of the opposing party.” *Hayduk*, 775 F.2d at 444. Finally, and perhaps most importantly, rule 9(b)’s requirements apply to both general claims of fraud and also to “**associated claims**,” such as Plaintiff’s, “**where the core allegations effectively charge fraud**.” *Mulder v. Kohl’s Dep’t Stores, Inc.*, 865 F.3d 17, 21–22 (1st Cir. 2017)(quoting *North Am. Catholic Educ. Programming Found., Inc. v. Cardinale*, 567 F.3d 8, 15 (1st Cir. 2009))(emphasis ours).

Merriam-Webster’s dictionary defines fraud as the “intentional perversion of truth in order to induce another to part with something of value or to surrender a legal right.”⁸ Black’s Law

⁸ *Fraud*, Merriam-Webster Dictionary (2024), <https://www.merriam-webster.com/dictionary/fraud#word-history>.

Dictionary similarly defines fraud as “some deceitful practice or willful device, resorted to with intent to deprive another of his right, or in some manner to do him an injury.”⁹

The Verified Complaint utterly fails to plead fraud with particularity. The Trustee claims Mr. Schiff conspired with Qenta to commit fraud on EPB’s customers, yet nowhere in the Complaint does he identify a single misrepresentation of fact made by Mr. Schiff, or by anyone else, prior to the critical moment when customers were deciding whether to continue with Qenta or opt out. That moment is the only plausible window in which fraudulent inducement could have occurred, as it was the point at which customers were asked to make a financial decision. If fraud had occurred, it would have been through misrepresentations designed to influence the choice to opt-in to banking with Qenta thereby putting more assets in the hands of the alleged conspirators.

The only alleged misrepresentations attributed to Mr. Schiff appear in Paragraph 84 of the Trustee’s declaration. (*See* Docket No. 1-1, ¶84.) These statements, which the Trustee characterizes as “misrepresentations,” are not deceptive in nature. Rather, they are calls to action aimed at assisting customers in recovering their property. For example:

- “The APA never closed and as such He agreed with the termination.”
- “Silver and metals pertain to the bank, not to Qenta.”
- “The Trustee bears fiduciary responsibility for mutual fund holdings transferred to Qenta.”
- “The Trustee has the silver, with a written authorization from him this can be transferred to customers. As such instructed customers to request that the silver be transferred to Schiff Gold.”
- “Opt-In customers should write the trustee via email to get their claims paid as He has all the information on their accounts.”

⁹ *Fraud*, Black’s Law Dictionary, Free (2nd ed., 2024), <https://thelawdictionary.org/fraud/>.

“In order to prove fraud under Puerto Rico law, a plaintiff must establish: (1) that a false representation was made; (2) that the plaintiff reasonably and foreseeably relied thereon; (3) that the plaintiff was injured by his reliance; and (4) that the defendant intended to defraud the plaintiff.” *Microsoft Corp. v. Computer Warehouse*, 83 F. Supp. 2d 256, 262 (D.P.R. 2000) (citing *Wadsworth, Inc. v. Schwarz–Nin*, 951 F.Supp. 314, 323 (D.P.R.1996)).

The statements cited by the Trustee do not meet this standard. First, they are not factual assertions but rather legal interpretations concerning the roles and responsibilities of the Trustee, Qenta, and the customers following the termination of the Purchase and Sale Agreement. Second, they are not designed to induce detrimental reliance or to solicit money or property from EPB clients, an essential element of fraud. Third, there is no indication of scienter. Mr. Schiff’s statements reflect an effort to advocate for EPB’s clients by encouraging them to pressure the Trustee to pursue claims against Qenta. If Mr. Schiff were part of a conspiracy to defraud, it would be illogical for him to direct victims to act against his alleged co-conspirators. Fourth, the Trustee concedes that these statements were made after Qenta had terminated the Purchase and Sale Agreement. At that time, Mr. Schiff was actively litigating against Qenta to recover EPB’s assets. It defies logic to suggest that Mr. Schiff was simultaneously conspiring with Qenta while suing them to claw back customer funds. Finally, the Trustee does not allege that any EPB customer reasonably and foreseeably relied on these statements, nor that Mr. Schiff made them with fraudulent intent.

In short, the Verified Complaint does not allege fraud. The Trustee’s attempt to recast routine business communications and post-liquidation correspondence as “wire fraud” is baseless. Not a single statement attributed to Mr. Schiff satisfies even the threshold requirements of Rule 9(b): the complaint identifies no false representation, no fraudulent intent, no victim reliance, and

no resulting deprivation of property. The absence of any particularized allegation of time, place, or content of a false representation is fatal to this action. The Court should dismiss it with prejudice.

4. The RICO Conspiracy claim fails.

The Trustee's claims under § 1962(d), alleging that Defendants conspired to violate §1962(c), must be dismissed because those claims are dependent on stating a claim under § 1962(c). Thus, his failure to state a claim under § 1962(c) dooms his conspiracy claims. *See Efron*, 223 F.3d at 21 ("If the pleadings do not state a substantive RICO claim upon which relief may be granted, then the conspiracy claim also fails.") (citations omitted). *See also Lerner v. Colman*, 485 F. Supp.3d 319, 332 (D. Mass. 2020) ("This count is dependent on the existence of another viable RICO claim."); *Caro-Bonet v. Lotus Mgmt. LLC*, No. CV 15-2106, 2018 WL 3629917, at *6 (D.P.R. July 27, 2018).

C. This case should be dismissed because the PAA has a mandatory arbitration clause.

The Federal Arbitration Act ("FAA") provides that a "written provision in ... a contract ... to settle by arbitration a controversy thereafter arising out of such contract ... shall be valid, irrevocable, and enforceable." 9 U.S.C. § 2. Thus, courts must "treat arbitration as 'a matter of contract' and enforce agreements to arbitrate 'according to their terms.'" *Air-Con, Inc. v. Daikin Applied Latin America, LLC*, 21 F.4th 168, 174 (1st Cir. 2021) (quoting *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 139 S. Ct. 524, 529, 202 L.Ed.2d 480 (2019)). "The party seeking to compel arbitration bears the burden of demonstrating 'that a valid agreement to arbitrate exists, that the movant is entitled to invoke the arbitration clause, [and] that the other party is bound by that clause.'" *Air-Con, Inc.*, 21 F.4th at 174 (quoting *Soto-Fonalledas v. Ritz-Carlton San Juan Hotel Spa & Casino*, 640 F.3d 471, 474 (1st Cir. 2011)). "[S]ection 4 [of the FAA] ... commands that district courts ordinarily apply the summary-judgment standard" in adjudicating a motion to

compel arbitration. *Rodríguez-Rivera v. Allscripts Healthcare Solutions, Inc.*, 43 F.4th 150, 168 (1st Cir. 2022). Accordingly, district courts must review the record in the light most favorable to the non-moving party and draw all reasonable inferences in that party's favor. *See Air-Con, Inc.*, 21 F.4th at 175.

Section 8.7 of the PAA provides in unambiguous terms that “[a]ll disputes arising out of or in connection with this Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce,” with proceedings to be held in English and seated in New York, New York. This language is as broad and mandatory as it gets: any dispute “arising out of or in connection with” the Agreement must be arbitrated. The present action plainly “arises out of” and is “in connection with” the PAA. Every allegation against the defendants stems from the negotiation, execution, and performance of that contract. The Trustee cannot simultaneously invoke the PAA as the factual foundation for his claims while denying the arbitration clause that governs disputes under it.

Moreover, the Trustee’s argument at the recent injunction hearing, that he is not a party to the PAA, is legally and factually untenable. The PAA expressly identifies “Euro Pacific International Bank, Inc.” as the Seller, with Peter Schiff signing as its Chairman and Sole Shareholder. As EPB’s duly appointed liquidator, the Trustee steps directly into the Bank’s shoes, vested with full authority to act on its behalf.¹⁰ Because EPB was a signatory to the PAA, the Trustee, as its statutory successor, is bound by the same dispute-resolution obligations. Indeed, the Trustee himself repeatedly asserts authority to recover EPB’s assets and enforce its claims—authority that necessarily derives from the very contract whose arbitration clause he seeks to evade. One cannot accept the benefits of the PAA while repudiating its arbitration provision.

¹⁰ Mr. Schiff is also authorized to act on the bank’s behalf.

What makes the Trustee's actions all the more egregious is that Mr. Schiff had already invoked the proper forum under Section 8.7. Immediately after Qenta terminated the PAA and unlawfully withheld approximately \$80 million in customer assets, Mr. Schiff pursued emergency relief first in this District and then, within eight days of denial, in New York Supreme Court under a "Verified Petition for Temporary Restraining Order and Preliminary Injunction in Aid of Arbitration." (*See* Docket No. 14, Exhibit 1). That petition, brought squarely within the arbitral framework mandated by Section 8.7, resulted in the issuance of a TRO that was later affirmed by Judge Kevin Castel of the Southern District of New York. (*See* Docket No. 14, Exhibits 2 and 3.) The only reason the injunction was vacated was procedural: Mr. Schiff, as a shareholder, lacked standing to act on EPB's behalf as the bank was under the control of a trustee who was not a party to the action. (*See Id.*) This was a very obvious invitation to the Trustee, who undisputedly possesses that standing, to take up the very same cause in the proper forum. In other words, the groundwork was laid, the venue was confirmed, and the pathway to relief under the arbitration clause was wide open.

Rather than following the efficient and jurisdictionally proper course that Mr. Schiff repeatedly urged, namely, stepping into Mr. Schiff's shoes to pursue the claims against Qenta, the Trustee chose to abandon that path entirely. Mr. Schiff even offered to personally fund the litigation to avoid burdening the bank's estate with legal expenses. Despite these efforts, the Trustee waited two months, during which Mr. Schiff continued to advocate for being designated to act on the bank's behalf so he could return to federal court in New York with proper standing. Instead of accepting this practical and cost-effective solution, the Trustee opted to file one of the most onerous and disfavored causes of action in federal civil litigation: a Civil RICO claim.

The Trustee embarked on a sprawling, baseless conspiracy theory that defies both logic and law. It is not only inefficient but absurd for the Trustee to reject the contractual mechanism designed to precisely resolve these disputes, particularly when Mr. Schiff had demonstrated its effectiveness. The Trustee had the opportunity to continue litigation in the correct forum, armed with an existing record and a pending arbitration framework, yet instead chose to rebrand the liquidation as a racketeering enterprise. That choice underscores the frivolous nature of this proceeding and further confirms why Section 8.7's arbitration clause must be enforced.

In short, this case is precisely the type of dispute §8.7 was designed to remove from court. The Trustee's allegations concern the negotiation, performance, and aftermath of the PAA, squarely within the clause's "arising out of or in connection with" language. Both Mr. Schiff and the Trustee, as EPB's legal successor, are bound by that clause. This Court lacks jurisdiction to adjudicate these claims; they must instead be referred to ICC arbitration in New York as mandated by §8.7.

D. The Trustee's Claim under the Declaratory Judgment Act must be dismissed.

The Declaratory Judgment Act permits a federal court to declare the rights of parties "[i]n a case of actual controversy within its jurisdiction" as a form of remedy without creating an independent cause of action. 28 U.S.C. § 2201. "The Act does not itself confer subject matter jurisdiction, but, rather, makes available an added anodyne for disputes that come within the federal courts' jurisdiction on some other basis." *Ernst & Young v. Depositors Econ. Prot. Corp.*, 45 F.3d 530, 534 (1st Cir.1995). Accordingly, because the Verified Complaint fails to state any cognizable claim against the defendants, the Trustee's claims under the Declaratory Judgment Act must be dismissed.

WHEREFORE, Defendant Peter D. Schiff respectfully requests the Court dismiss the

above-captioned complaint for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6).

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 15th day of October 2025.

CERTIFICATE OF SERVICE: It is hereby certified that, on this same date, the instant document was electronically filed with the Clerk of the Court using the CM/ECF system which will automatically send notice of such filing to all attorneys of record.

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