UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ROBERT BARTLETT, *et al.*,

Plaintiffs,

v.

SOCIÉTÉ GÉNÉRALE DE BANQUE AU LIBAN SAL, *et al.*,

Defendants.

Case No. 1:19-cv-00007 (CBA) (TAM)

AMENDED MEMORANDUM OF LAW IN SUPPORT OF JAMMAL TRUST BANK DEFENDANTS' MOTION TO DISMISS IN LIGHT OF RECENT SECOND CIRCUIT AUTHORITY

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The Second Amended Complaint ("SAC") does not satisfy the standards articulated in *Kaplan v. Lebanese Canadian Bank, SAL*, 999 F.3d 842 (2d Cir. 2021), and *Honickman v. BLOM Bank SAL*, –F.4th–, 2021 WL 3197188, at *1 (2d Cir. July 29, 2021), governing JASTA aiding-and-abetting and conspiracy claims as to Defendant Jammal Trust Bank SAL ("JTB").[1] To find the aiding-and-abetting standard met, *Kaplan* looked to specific, non-conclusory allegations that a single Lebanese bank affirmatively acknowledged that its customer was laundering money for Hizbollah and increased its assistance to the customer after learning that it was laundering money for Hizbollah, laundering more than $2.5 million in undisclosed deposits per week. *Id.* at 866. And *Honickman* affirmed dismissal of a JASTA complaint whose allegations of awareness "pale in comparison to the detailed, numerous sources that sufficed in *Kaplan*." 2021 WL 3197188, at *11.

This case is like *Honickman*, not *Kaplan*. The SAC is long on facts concerning Hizbollah and persons and entities affiliated with it (some closely, some less so), but devoid of non-conclusory allegation that any JTB customer's affiliation with Hizbollah was repeatedly announced during the relevant time period, that JTB responded in any way to such announcements, or even that the accounts were of substantial size or that JTB's supposed "services" were material. Instead, the SAC utilizes group pleading to ultimately posit that, because Hizbollah "wields enormous political influence and maintains its own private militia which not only rivals but is militarily superior to the Lebanese army," SAC ¶ 17, virtually any participation in the Lebanese economy or social system amounts to "substantial assistance" to

[1] By order dated August 6, 2021, ECF No. 221, the Court permitted Dr. Muhammad Baasiri, in his capacity as liquidator, to intervene in this action and directed that he be added as a defendant. The term JTB is used to refer to the Jammal Trust Bank Defendants, to wit, both the bank and the liquidator.

"an act of international terrorism." 18 U.S.C. § 2333(d)(2). That view enjoys no support in *Kaplan* or *Honickman*. Accordingly, all claims against JTB should be dismissed.

I. PRELIMINARY STATEMENT

Pursuant to the Court's July 6 and August 2 orders, this brief is limited to addressing the effect of the Second Circuit's decisions in *Kaplan* and *Honickman*. However, it bears noting that the SAC restates claims dismissed in the First Amended Complaint ("FAC"), including Count I alleging primary liability under the Anti-Terrorism Act ("ATA"). *See* SAC ¶¶ 5686-5696. No allegations in the SAC overcome this Court's prior ruling, ECF No. 164 at 14-16, and Count I should be dismissed. Additionally, in order to preserve any and all arguments, JTB states that all arguments it has asserted against the FAC are equally asserted against the SAC, including those pertaining to personal jurisdiction as well as those incorporated from the other Defendants' briefing. *See, e.g.*, ECF Nos. 139, 140. Finally, JTB maintains that the SAC should be dismissed for lack of subject matter jurisdiction, as set forth in the motion to substitute, intervene, or dismiss. *See, e.g.*, ECF No. 182.[2]

II. ARGUMENT

Kaplan and *Honickman* clarify the legal standards governing both aiding-and-abetting and conspiracy liability under JASTA and this clarification signals that dismissal of Plaintiffs' claims under both theories is warranted.

A. The Court Should Dismiss Count II for Aiding and Abetting

Kaplan and *Honickman* reiterated the "three elements of aiding-and-abetting liability: (1) 'the party whom the defendant aids must perform a wrongful act that causes an injury,' (2) 'the defendant must be generally aware of his role as part of an overall illegal or tortious

[2] JTB recognizes that the Court issued a decision on the motion today. JTB preserves the argument.

activity at the time that he provides the assistance,' and (3) 'the defendant must knowingly and substantially assist the principal violation.'" 999 F.3d at 856 (quoting *Halberstam v. Welch*, 705 F.2d 472, 477 (D.C. Cir. 1983)); *Honickman*, 2021 WL 3197188, at *4 (same).

1. General Awareness

The SAC fails to satisfy the general-awareness element, under which "a plaintiff must plead and prove, inter alia, that the defendant was generally aware of his role as part of an overall illegal or tortious activity." *Kaplan*, 999 F.3d at 863 (cleaned up). *Kaplan* rejected a specific-intent standard for this element, reading "the 'generally' modifier" to contain "a connotation of something less than full, or fully focused, recognition." *Id.* But that does not render the standard toothless. Quite the opposite, *Honickman* reiterated that the law "could not have been clearer" that "aiding and abetting 'requires more than the provision of material support to a designated terrorist organization.'" 2021 WL 3197188, at *8 (quoting *Linde v. Arab Bank, PLC*, 882 F.3d 314, 329 (2d Cir. 2018)). Consequently, in a case like this, where aiding-and-abetting liability is asserted against a bank for allegedly providing services to customers that, in turn, support terrorist organizations, "the complaint must plausibly allege: (1) as a threshold requirement, that [the] Bank was aware of the . . . Customers' connections with [the terrorist organization] before the relevant attacks; and (2) the . . . Customers were so closely intertwined with [the terrorist organization's] violent terrorist activities that one can reasonably infer [that the] Bank was generally aware of its role in unlawful activities from which the attacks were foreseeable while it was providing financial services to the . . . Customers." 2021 WL 3197188, at *10.

Kaplan and *Honickman* also illustrate how this doctrine works in application. *Kaplan* found this element met based on specific, non-conclusory allegations

> that the U.N. reported in 2002 that an LCB customer was engaged in money laundering for Hizbollah; that LCB responded to that

> report by asserting that the report was Israeli propaganda as part of a "war by the Jewish state against Lebanon"; that LCB increased the permissible amount of activity that the U.N. had found constituted money laundering; and that in the following year, LCB began allowing the Five Customers—which Hizbollah repeatedly and publically [sic] said were integral parts of Hizbollah—to conceal their sources of deposited funds totaling nearly half a million dollars per day.

999 F.3d at 866 (quoting the governing complaint).[3] *Kaplan* also looked to non-conclusory allegations that:

> The SAC named the above three entities that Hizbollah is alleged to have identified as integral parts of Hizbollah; the statements were alleged to have been made in a particular time period (i.e., repeatedly in the several years leading to July 12, 2006), and were specific as to the status of the speaker ("senior Hizbollah officials"), the circumstances in which the statements were made ("press conferences and news media interviews"), and the other specific media in which they were made (Hizbollah's own "official websites," its "official television station, Al-Manar," and its "official radio station, Al-Nour").

999 F.3d at 864. The court held that "the allegations, although lacking some details, were not insufficient." *Id.* This verbal formula—"not insufficient" and "lacking some details"—signals that substantially less specific allegations would present a materially different case.

Honickman confirmed this. The Second Circuit reiterated the necessity of "the detailed, numerous sources that sufficed in *Kaplan*" and found the complaint before deficient because its allegations "pale in comparison." 2021 WL 3197188, at *11. The problem in *Honickman* was that the public sources identified as connecting the defendant bank's customers to the terrorist organization were not published before the relevant attacks, they did not connect the customer's to the organization's *violent* terrorism activities (as opposed to non-violent, humanitarian

[3] The analysis in *Kaplan* distinguished the *mens rea* standard pertaining to general awareness from that pertaining to knowing assistance and looked to different allegations in the operative complaint in analyzing each. *See* 999 F.3d at 863-64, 866. *Honickman* altered the analysis, opining that the knowing-assistance element does not require the defendant "to 'know' anything more about [the principal violator's] unlawful activities than what she knew for the general awareness element." 2021 WL 3197188, at *9.

activities), and there were no allegations of specific, continued banking services after any general awareness might be imputed. *Id.* at *10-11.

This case is like *Honickman*, not *Kaplan*. The SAC strives mightily to establish that the Defendants' banking services ultimately supported terrorism, but *Honickman* reiterated that material support is insufficient. 2021 WL 3197188, at *8. Like the complaint in *Honickman*, the SAC has precious little to say on awareness. The SAC alleges that JTB held accounts for Car Escort Services (Offshore) SAL, Spectrum International Investment Holding SAL, Spectrum Investment Group Holding SAL, New All Pharma SARL, Medical Equipments and Drugs International Corporation SAL MEDIC, Musa Muhammad Ahmad, the Islamic Resistance Support Organization ("IRSO"), and Atlas Holding SAL. SAC ¶¶ 1827-36, 536. The SAC does not allege any acknowledgment on the part of JTB, formal or informal, of any public assertion of any tie to Hizbollah linked to any of these persons—let alone an active *increase in assistance* to such persons in response to such information—as was present in *Kaplan*. The SAC does not even contain specific allegations that Hizbollah itself publicly acknowledged affiliation with each of JTB's customers, within "a particular time period," made "repeatedly," by "specific" "speaker[s]" having specific "status," under specific "circumstances," and published by "specific media." *Kaplan*, 999 F.3d at 864.

Instead, the SAC exemplifies the deficiencies of the complaint rejected in *Honickman*. The SAC does not allege that most of JTB's alleged customers—specifically, Car Escort Services (Offshore) SAL, Spectrum International Investment Holding SAL, Spectrum Investment Group Holding SAL, New All Pharma SARL, Medical Equipments and Drugs International Corporation SAL MEDIC, and Musa Muhammad Ahmad—had any public tie to Hizbollah. There is no specific speaker with a specific Hizbollah status at a particular time frame

who repeatedly asserted via specific media a connection between the JTB customer and Hizbollah. Instead, the SAC alleges internal connections between the customers and Hizbollah. *See* SAC ¶¶ 684-685, 1832-33, 1790 888, 892, 1834. But *Honickman* deems such allegations insufficient without non-conclusory allegations that ties between these entities and persons and Hizbollah's violent terrorist activities were "public knowledge during the relevant period." 2021 WL 3197188, at *11.

Indeed, these customers include such persons as "an import/export company," "involved" with certain individuals who, in turn, were associated with Hizbollah, but with no specific involvement with terrorism or laundering (or anything else) identified. SAC ¶ 684 (Car Escort Services); *see also id.* ¶ 685 (similar non-specific or relevant allegations about Spectrum Investment Group Holding SAL and Spectrum International Investment Holding SAL); *id.* ¶ 1832 (sole SAC allegation regarding New All Pharma SARL with no specific allegation of role with terrorism); *id.* ¶¶ 1833, 1790 (same as to Medical Equipments and Drugs International Corporation SAL MEDIC); *id.* ¶¶ 888, 892, 1834 (similar as to Musa Muhammad Ahmad). As *Honickman* explained, there is no reason to impute awareness as ties to terrorism from entities that, at best, "maintained a 'cover' in public" to conceal ties to Hizbollah. 2021 WL 3197188, at *10. Further, the SAC fails to establish the second general-awareness element, that these entities were "closely intertwined with [Hizbollah's] violent terrorist activities." *Id.* at *11 & n.20.

And the SAC makes only a modicum of effort to establish general awareness as to the remaining customers, IRSO and Atlas Holding. This, too, falls short of the mark. As to Atlas Holding, the SAC only goes so far as to make generic assertions, such as that it "makes no effort to conceal the fact that it is owned by the Martyrs Foundation–Lebanon, and the latter publicly advertises the affiliation." SAC ¶ 530. But this lacks any of the specificity emphasized in

Kaplan, fails to identify a time period, and requires following a chain of entities (Atlas Holding to Martyrs Foundation–Lebanon to Hizbollah). *See Honickman*, 2021 WL 3197188, at *10-11 & n.20 (rejecting similar allegations as insufficient for similar deficiencies). And, as in *Honickman*, the SAC fails to identify specific, continued banking services performed after any ties between Atlas Holding and Hizbollah became public. *Honickman*, 2021 WL 3197188, at *11. It also fails to meet the closely intertwined test. *Id.* at *11 & n.20.

As to IRSO, the single allegation of a publicized connection with Hizbollah occurred in 2016, after the relevant attacks. SAC ¶ 104. *Honickman* holds this insufficient. 2021 WL 3197188, at *11 (rejecting reliance on publication made "after the relevant period"). Various alleged media connections between IRSO and Hizbollah fail to identify an affirmative linkage between the two. For example, one entity may maintain the website of another without that affiliation being trumpeted. *See* SAC ¶ 413. Indeed, the one exhibit provided does not even mention Hizbollah. See SAC ¶ 423 & Ex. 2. An MSNBC documentary discussed at length does not even mention IRSO. *Id.* ¶ 427. The remaining allegations comprise recitation of names and affiliations. *See, e.g.*, *id.* ¶¶ 414-15. But there is no non-conclusory allegation that, at the relevant time period, "it was public knowledge that" these associations existed. *Honickman*, 2021 WL 3197188, at *10. Plaintiffs' most specific allegation, that the IRSO held a specific account with JTB, "published . . . on February 21, 1986," SAC ¶ 426, only underscores the pleading deficiency. The allegation directly contradicts the SAC's allegation that IRSO was not founded until 1989, *id.* ¶ 408, and the court "is not obliged to reconcile plaintiff's own pleadings that are contradicted by other matters asserted . . . in drafting the complaint." *Fisk v. Letterman*, 401 F. Supp. 2d 362, 368 (S.D.N.Y. 2005) (collecting cases). Moreover, the allegation does not identify how large the account was, that it was misused to support terrorism, or that JTB continued

servicing that account after having awareness of IRSO's ties to Hizbollah. *Honickman*, 2021 WL 3197188, at *11.[4]

For all of these reasons, the SAC's generalized assertions that JTB "fully understands its role in The System," *id.* ¶ 1836, and the like, *see, e.g.*, *id.* ¶ 289, are precisely the type of "conclusory allegation" that "does not supply facts adequate to show illegality." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007). The SAC merely illustrates that, where Plaintiffs allege a vast "System" encompassing most all of the Lebanese state—from its "political class," to its "various religious and ethnic groups," its "real estate sector," and its "banking sector," *id.* ¶¶ 40-47—Plaintiffs can with relative ease claim some type of associational tie between any Lebanese person and some other person who, in turn, has some type of association with Hizbollah. *Kaplan* does not deem such allegations sufficient.[5] And *Honickman* rejected this type of theory by overtly refusing to conflate an entity's "violent terrorist activities" from its non-violent activities. *Honickman*, 2021 WL 3197188, at *11.

2. Knowing Substantial Support

The SAC also fails the knowing-substantial-support element. *Kaplan* reiterated the alleged "assistance" to terrorism must be "substantial" to trigger JASTA liability. 999 F.3d at 866. And *Kaplan* illustrates what substantial means, accepting as sufficient allegations "that LCB's special treatment of the Customers allowed them to deposit large sums in various

[4] The Court previously relied on IRSO's designation as an SDGT. ECF No. 164 at 20. Subsequent case law has undermined that analysis. The Second Circuit in *Weiss v. Nat'l Westminster Bank*, PLC., 993 F.3d 144 (2d Cir. 2021), deemed this type of designation insufficient. *Compare id.* at 152 (organization called Interpal designated SGDT), *with id.* at 166-67 (declining to permit amendment to add aiding-and-abetting claim because it could not be pleaded that defendants were generally aware that working with Interpal meant a role in terrorism). *Kaplan* deemed this type of designation unnecessary. 999 F.3d at 864.

[5] Several other allegations in the SAC are drawn from the Treasury Department's 2020 designation of an SDGT in 2019, *see e.g.,* SAC ¶¶ 1826, but this Court has rightly afforded the designation a "relative insignificance . . . given its occurring years after the Attacks" in question. ECF No. 164 at 6 n.1. References to even *later* SDGT designations, *see, e.g.*, *id.* ¶ 527, fare even worse.

accounts at different LCB branches—totaling more than $2.5 million dollars a week—without disclosing their source, thereby circumventing sanctions imposed in order to hinder terrorist activity." 999 F.3d at 866. This was, *Kaplan* found, "qualitatively and quantitatively substantial." *Id.*

The SAC contains no non-conclusory allegation matching, or even roughly approximating, that type of substantial support, either quantitatively or qualitatively. Nearly all the relevant allegations state only that JTB "maintained accounts for, and provided financial services to," the given customer, or something similar (or even less specific). SAC ¶ 685; *see also, e.g.*, *id.* ¶¶ 8, 426, 686, 770, 772, 892. These allegations do not indicate, quantitatively, how large the accounts are or, qualitatively, what use they served in supporting terrorism. Indeed, Plaintiffs' most specific allegation, that the IRSO held a specific account with JTB, "published . . . on February 21, 1986," SAC ¶ 426, only underscores the pleading deficiency. For one thing, the allegation directly contradicts the SAC's allegation that IRSO was not founded until 1989, *id.* ¶ 408. The court "is not obliged to reconcile plaintiff's own pleadings that are contradicted by other matters asserted . . . in drafting the complaint." *Fisk*, 401 F. Supp. 2d at 368 (collecting cases). Moreover, the allegation does not identify how large the account was or that it was misused to support violent terrorism activities, which were indispensable factors in *Kaplan*.

B. The Court Should Dismiss Count III for Conspiracy

Kaplan also clarifies the law governing Plaintiffs' Count III for conspiracy, holding "that to be liable for conspiracy a defendant would have to be shown to have conspired *with the principal*." 999 F.3d at 855 (emphasis added). Thus, as contrasted with aiding-and-abetting claims, which may "reach persons who aid and abet international terrorism directly or

indirectly," *id.* (quotation marks omitted), conspiracy claims only reach an agreement directly "with the person who committed such an act of international terrorism." 18 U.S.C. § 2333(d)(2). At several junctures, *Kaplan* emphasized this distinction. *See* 999 F.3d at 855-856. Moreover, *Kaplan* treated allegations that certain of the defendant's banking customers had a "connection with Hizbollah," 999 F.3d at 864, as an *indirect* claim, not a direct claim to which conspiracy liability may attach.

Kaplan forecloses Count III. JTB is not alleged to have provided services to any person who carried out any attack on any Plaintiff. Plaintiffs previously asserted that all Defendants (indiscriminately identified) "agreed to work with Hizbollah," ECF No. 142 at 45, but that is not true, and the discussion comes with no citation. As discussed, JTB's allegedly nefarious ties are with banking customers like Car Escort Services, Spectrum Investment Group Holding SAL, and Spectrum International Investment Holding SAL. Those persons are not alleged to have attacked Plaintiffs. Plaintiffs contended that "Hizbollah and its IJO *are* participants in The System." *Id.* at 46. But that is no substitute for allegations that JTB conspired with those persons. *Kaplan*'s extensive discussion of the possibility of indirect liability in aiding-and-abetting claims posits a legally-significant difference between indirect and direct participation in an act of terrorism. Mere involvement in a "System"—which is alleged to be more or less coextensive with Lebanese political and civil society—does not meet the statutory standard, as interpreted by *Kaplan*.

III. CONCLUSION

All Counts against JTB should be dismissed.

Dated: August 6, 2021

Respectfully submitted,

By: */s/ David B. Rivkin, Jr.*

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