UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ROBERT BARTLETT *et al.*,	:	
	:	
Plaintiffs,	:	**Case No. 19-cv-7 (CBA)(TAM)**
	:	
-against-	:	
	:	
SOCIÉTÉ GÉNÉRALE DE BANQUE AU LIBAN SAL *et al.*,	:	
	:	
Defendants.	:	

PLAINTIFFS' MEMORANDUM OF LAW
IN OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS
THE SECOND AMENDED COMPLAINT

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INTRODUCTION

The Second Circuit's recent decisions in *Kaplan v. Lebanese Canadian Bank, SAL*, 999 F.3d 842 (2d Cir. 2021) and *Honickman v. BLOM Bank SAL*, No. 20-575, __F.4th__, 2021 WL 3197188 (2d Cir. July 29, 2021) make it clear that this Court correctly denied Defendants' previous motions to dismiss Plaintiffs' Justice Against Sponsors of Terrorism Act ("JASTA") aiding and abetting and conspiracy claims.[1] *See Bartlett v. Société Générale de Banque au Liban SAL*, No. 19-cv-7 (CBA)(VMS), 2020 WL 7089448 (E.D.N.Y. Nov. 25, 2020) ("MTD Decision" or "Op."). Now Defendants have brought renewed motions to dismiss *predicated on these cases*.

Incredibly, after three opportunities to brief their motions to dismiss, Defendants continue to misstate controlling law on the pleading standards for JASTA claims—including the law of the case established in the Court's prior decision. They also omit many of the Second Amended Complaint's ("SAC") most relevant allegations and mischaracterize and atomize the contents of the SAC they do cite. Although Defendants' first briefs to dismiss the First Amended Complaint ("FAC") took certain rhetorical liberties with the legal standard, that could be excused, at least in part, by incorrect statements of the law in some lower court decisions they cited. But they now continue to misstate the law *and* rehash many of the same erroneous arguments from their first motions even after the Second Circuit clarified the pleading standards in *Kaplan* and *Honickman*.

Defendants' arguments have changed in one key respect, however: in their first motion to dismiss the FAC, filed before *Kaplan* was vacated, Defendants asserted that the allegations in *Kaplan* were **"substantially similar to those here"** and "were insufficient to meet the 'general awareness' element of aiding-and-abetting." Original Joint Opening Brief, ECF No. 139-1 ("Orig.

[1] Pursuant to the Court's July 6, 2021 order, this brief is "limited to addressing the effect of the Second Circuit's decision in Kaplan." Plaintiffs preserve all of their prior arguments pertaining to primary liability ("First Claim for Relief") as well as Société Générale de Banque au Liban SAL's alleged successor liability ("Fourth Claim for Relief").

Joint Br."), at 39 (citing *Kaplan v. Lebanese Canadian Bank, SAL*, 405 F. Supp. 3d 525, 533-36 (S.D.N.Y. 2019)) (emphasis added). They also argued that "Judge Daniels rejected **substantially similar allegations in *Kaplan***, observing that 'although Plaintiffs assert that Defendants processed millions of dollars' worth of wire transfers through the LCB Accounts, Plaintiffs do not plausibly allege that Hezbollah[2] received any of those funds or that Defendant knew or intended that Hezbollah would receive the funds." *Id.* at 42 (quoting 405 F. Supp. 3d at 535) (emphasis added). Likewise, they argued that "courts have applied both *Linde* and *Siegel* to reject allegations of general awareness **substantively identical** to those advanced here." Original Joint Reply Brief, ECF No. 140 ("Orig. Joint Reply"), at 16 (citing *Kaplan*, 405 F. Supp. 3d at 534-35 and *Honickman v. BLOM Bank SAL*, 432 F. Supp. 3d 253, 264-67 (E.D.N.Y. 2020)).

But now, of course, Defendants claim that *Kaplan*'s allegations are very different from those here. *See, e.g.*, Amended Joint Brief, ECF No. 223 ("Am. Joint Br.") at 4-5 (describing allegations here as "similar" to those in *Honickman*, which therefore "pale in comparison" to those in *Kaplan*), 5 n.6 (distinguishing purportedly "critical factors" in *Kaplan* from *Bartlett*). Otherwise, Defendants' arguments have remained largely unchanged. After the Circuit rejected the lower court's *Kaplan* decision on essentially every relevant basis, Defendants largely refused to acknowledge that their prior arguments concerning the pleading standards for JASTA aiding and abetting were incorrect.[3] Instead, they argued that *Kaplan* established that this Court's MTD Decision was erroneous and submitted briefs that flagrantly misrepresented the Circuit's holdings.

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[2] For uniformity, this brief adopts the spelling "Hezbollah" regardless of how the quoted materials spell it.

[3] Defendants did drop untenable arguments from their original briefing that Plaintiffs' claims fail because "an SDGT designation does not satisfy the statute's 'FTO' requirement" and that "none of the Alleged Bank Customers that Plaintiffs claim were somehow connected to Hezbollah was ever itself an FTO." Orig. Joint Br. at 38-39, 40.

Then, after the Second Circuit decided *Honickman*, "agree[ing]" with plaintiffs there that "the [district] court did not apply the proper standard" on any of the elements at issue, 2021 WL 3197188, at *1, further removing even the patina of credibility from Defendants' arguments, Defendants sought a do-over and all filed amended briefs. But even now, Defendants' joint brief *still* makes the same misstatements of law as their original briefing, which are *fundamentally contrary* to both *Kaplan* and *Honickman*—and mischaracterize *this Court's* own MTD Decision.

I. GOVERNING LAW AND LAW OF THE CASE

As stated above and conceded by Defendants, JASTA's aiding and abetting pleading requirements are most clearly explicated in this Circuit in *Kaplan* and *Honickman*. The *Kaplan* plaintiffs alleged in relevant part that the defendant, Lebanese Canadian Bank ("LCB"), aided and abetted a series of rocket attacks that the Foreign Terrorist Organization ("FTO") Hezbollah launched at Israeli targets, causing the plaintiffs' injuries. Specifically, the plaintiffs alleged that LCB "provid[ed] banking services to certain individuals or entities alleged to be part of or closely affiliated with Hezbollah," *Kaplan*, 999 F.3d at 845, and did so "without disclosing their source, thereby circumventing sanctions imposed in order to hinder terrorist activity," *id.* at 866. These services substantially assisted Hezbollah by providing it with access to potentially millions of dollars, foreseeably risking terrorist attacks.

The *Kaplan* lower court dismissed the complaint on three grounds: (1) the plaintiffs failed to plausibly allege that LCB knew its customers were affiliated with Hezbollah; (2) even if LCB knowingly provided financial services to Hezbollah, that knowledge would not meet JASTA's "general awareness" standard; and (3) LCB did not knowingly provide substantial assistance because it did not "knowingly and intentionally support" the rocket attacks or knowingly provide money to Hezbollah itself. 405 F. Supp. 3d at 535-36.

The Second Circuit rejected all three grounds for dismissal. *See Kaplan*, 999 F.3d at 853. First, it held that a complaint may "contain general allegations as to a defendant's knowledge" (that its customers were FTO affiliates)—including relying on the plausible inference that the defendant would be aware of public sources of information without alleging that it "read or was aware of such sources." *Id.* at 864-65.[4] The court further rejected the finding that pre-attack designations were necessary to allege LCB's knowledge of its customers' Hezbollah affiliations, explaining that the lower court "cited no authority for such a prerequisite for knowledge, and we know of none; and it would defy common sense to hold that such knowledge could be gained in no other way." *Id.* at 864. *See also* Op. at *11 ("To be sure, JASTA liability does not turn on whether the defendant had a customer designated as an SDGT.").

Second, it confirmed that JASTA, incorporating *Halberstam v. Welch*, 705 F.2d 472 (D.C. Cir. 1983), requires allegations that a defendant "was generally aware of its role in an 'overall illegal activity' from which an 'act of international terrorism' was a *foreseeable risk*," and that "general awareness" is a less demanding standard than actual awareness. *Kaplan*, 999 F.3d at 860, 863-64 (emphasis added). Finally, it held that plaintiffs need only show a bank "knowingly provid[ed] assistance—whether directly … or indirectly—and … that assistance was substantial," *id*. at 866—not that it "knowingly and intentionally supported" terrorist attacks (indeed, such a rule would overwrite the general awareness element). The substantial assistance element only excludes assistance given "innocently or inadvertently …." *Id.* at 864.

In *Honickman*, the Second Circuit confirmed and expanded on its holdings in *Kaplan*. First, it reiterated that aiding and abetting liability applies even when aid goes only indirectly to

[4] *Accord* with this Court's MTD Decision at *10 ("Where Plaintiffs have plausibly alleged widespread public knowledge linking bank customers to a terrorist organization, there is no need to allege that the defendant necessarily read the specific media reports.").

terrorists, rejecting the argument that the defendant must directly aid the person who committed the act of terrorism. *See* 2021 WL 3197188, at *5. Where the bank indirectly provides assistance through a customer alleged to be "affiliated with" an FTO, *id.* at *1, Plaintiffs must show the customer is "closely intertwined" with the FTO's "violent terrorist activities"; however, the customers "do not themselves need to be engaged in ... violent or terrorist acts" (let alone the acts of terrorism that injured the plaintiffs). *Id.* at *8 n.15 (quotation marks omitted).

Second, the Second Circuit reiterated that to satisfy the "general awareness" requirement, "[t]he defendant need not be generally aware of its role in the specific act that caused the plaintiff's injury; instead, it must be generally aware of its role in an overall illegal activity from which the act that caused the plaintiff's injury was *foreseeable*." *Id.* at *5. The court explained that this "is a fact-intensive inquiry." *Id*. at *7 (quotation marks omitted). The court also held that when there are public sources connecting a bank's customers to terrorism or terrorist groups, the plaintiff need not "allege that [the defendant] knew or should have known of the public sources at the pleading stage. Such a requirement at this juncture would be too exacting." *Id*. at *10 (citation omitted).

Third, the Second Circuit clarified the "substantial assistance" element of aiding and abetting. The court reiterated its view from *Kaplan* that assistance must be given "knowingly--and not innocently or inadvertently," and further explained that that does not require a defendant "to 'know' anything more about [its customer's] unlawful activities than what [it] knew for the general awareness element." *Id.* at *9. As the court pointed out, Hamilton, the defendant in *Halberstam*, met the knowing element merely "with knowledge that [her boyfriend Welch] had engaged in illegal acquisition of goods." *Id.* (quotation marks and citation omitted). The court also addressed three of the six *Halberstam* substantial assistance factors, finding that the district court had construed each too narrowly. With respect to "the nature of the act encouraged," the court

explained that this factor is not about whether the defendant itself encouraged terrorist violence; instead, it is about "whether the alleged aid," *e.g.*, facilitating money transfers for its customers, "would be important to the nature of the injury-causing act," *i.e.*, terrorist attacks. *Id.* With respect to the "amount of assistance," the court explained that "Plaintiffs did not need to allege the funds 'actually went to Hamas.'" *Id*. Instead, "[f]actual allegations that permit a reasonable inference that the defendant recognized the money it transferred to its customers would be received by the FTO would suffice." *Id*. "In other words, if a plaintiff plausibly alleges the general awareness element, she does not need to also allege the FTO actually received the funds." *Id*. Finally, with respect to the relationship factor, it held that "a direct relationship between the defendant and the FTO is not required to satisfy this factor." *Id.* at *10.

II. DEFENDANTS WILLFULLY MISSTATE CONTROLLING LAW

Defendants fundamentally misstate the governing standards for general awareness and substantial assistance. Doing so is all the more troubling because they requested leave to file new motions to dismiss following *Kaplan* and then amended briefs following *Honickman*, and yet their arguments are simply repackaged from their *original* motions to dismiss as if the Second Circuit had not just rejected substantively identical arguments.

A. Defendants Consistently Misstate the Law on General Awareness

Notwithstanding the Second Circuit's unambiguous language, Defendants nevertheless assert—in *both* their post-*Kaplan* and post-*Honickman* briefs—that Plaintiffs must allege their awareness of their roles in "acts of international terrorism." In their initial post-*Kaplan* briefs, they argued that "the 'general awareness' prong of *Halberstam* requires plaintiffs to plead that a defendant was generally aware **of its role in an act of international terrorism**." Renewed Joint Brief, ECF No. 209-1 ("Renewed Joint Br."), at 3 (emphasis added). *See also id.* at 8 ("*Halberstam*'s general awareness element is 'awareness that one is playing a role in those

activities,' meaning 'act[s] of international terrorism.'") (quoting *Kaplan*, 999 F.3d at 859). In their post-*Honickman* brief, they again contend "the 'general awareness' prong of *Halberstam* … requires allegations that a bank defendant was generally aware **of its role in acts of international terrorism** 'at the time that it provided banking services' to a customer 'closely intertwined' with such acts."'" Am. Joint Br. at 2 (quoting *Honickman*, 2021 WL 3197188 at *10) (emphasis added).

But this is precisely the standard Defendants previously urged and which the Second Circuit has *explicitly rejected.* Both *Kaplan* and *Honickman* make it clear that a defendant must be "generally aware of its role in an '*overall illegal activity*' from which an '*act of international terrorism*' *was a foreseeable risk*." *Kaplan*, 999 F.3d at 860 (emphasis added). *See also Honickman*, 2021 WL 3197188, at *5 (same). And whereas Defendants have added in their latest brief that Plaintiffs must allege that defendants assisted "customer[s] 'closely intertwined' *with such acts*," Am. Joint Br. at 2 (emphasis added), *Honickman* confirms that "[c]ontrary to BLOM Bank's argument, [its c]ustomers do not themselves need to be 'engaged in ... violent or terrorist acts.'" *Id.* at *8 n.15 (citation omitted).

Defendants' arguments thus echo their original arguments in their first motion to dismiss the FAC, where they argued that(1) "general awareness of a role in illegal activity from which terrorist violence was foreseeable" was the incorrect legal standard and that any supposed awareness of their role in Hezbollah's "fundraising activities" (instead of violence) was insufficient, Orig. Joint Reply at 14-16 (citing the *Kaplan* and *Honickman* district court opinions), and (2) the U.S. designation of their customers in no way implied "that a customer has engaged in violent or life-threatening activities," which engagement they treated as a requirement, Orig. Joint Br. at 10 n.16, Orig. Joint Reply at 13 n.11.

B. Defendants Consistently Misstate the Law on *Halberstam*'s "Substantial Assistance" Knowledge Factor

Defendants also continue to misstate the knowledge element of substantial assistance by misleadingly quoting from *Kaplan* and citing inapposite language in *Honickman*. According to Defendants, "*Halberstam*'s 'substantial assistance' prong requires pleading of specific facts giving rise to an inference that the defendant had 'actual knowledge' that it was assisting the 'principal violation,' *i.e.*, the 'wrongful act that caused injury,' directly or indirectly." Am. Joint Br. at 2 (quoting *Kaplan*, 999 F.3d at 863-64; *Honickman*, 2021 WL 3197188, at *12 n.16).

In *Honickman* and *Kaplan*, the Second Circuit made clear that the ***precise opposite*** is true. The *Honickman* court held that "the 'principal violation' must be foreseeable from the illegal activity that the defendant assisted; *knowing and substantial assistance to the actual injury-causing act—here, Hamas's attacks—is unnecessary*." 2021 WL 3197188, at *9 (emphasis added). The *Kaplan* court explained that "[t]hat knowledge component 'is designed to avoid' imposing liability on 'innocent, incidental participants,'" rather than those who "knowingly--and not innocently or inadvertently--gave assistance, directly or indirectly…." 999 F.3d at 863-64. The *Honickman* court explained that in *Halberstam*, knowing substantial assistance of murder was shown because "Hamilton assisted Welch with knowledge that he had engaged in illegal acquisition of goods." 2021 WL 3197188, at *9. *See also id.* at *9 n.16 (rejecting BLOM's argument that *Kaplan* requires "actual knowledge" of an "intermediary's connection to the FTO"). Thus, *Halberstam* "did not require Hamilton to 'know' anything more about Welch's unlawful activities than what she knew for the general awareness element." *Id.*[5]

[5] Thus, because a bank's customers "do not themselves need to be 'engaged in ... violent or terrorist acts,'" *Honickman*, 2021 WL 3197188, at *8 n.15 (citation omitted), a defendant bank need not "know anything more about" their unlawful activities than their relationship with an FTO. *Id.* at *9.

Having (again) misstated the legal standard, Defendants erroneously argue that "[t]he SAC does not meet the 'actual knowledge' prong of substantial assistance because it *never* alleges facts or events leading to a plausible inference that *any* Moving Defendant provided financial services to an entity *after* learning ***both*** (1) that the entity was connected to Hezbollah; ***and*** (2) that Hezbollah was using funds from those customers to provide training or other assistance for Attacks committed by militias in Iraq." Am. Joint Br. at 8 (italics in original, bold added). Again, the Second Circuit in *Kaplan* did *not* require any knowledge that funds were used for specific attacks (indeed, LCB's principal customer in *Kaplan*—the Martyrs Foundation—was alleged to support families of suicide bombers, whereas the attacks implicated there involved rockets fired over the Lebanon-Israel border)—only that the assistance not be given innocently or inadvertently. *Kaplan*, 999 F.3d at 864. In *Honickman*, the Second Circuit made it clear that Defendants' customers "do not themselves need to be 'engaged in ... violent or terrorist acts,'" 2021 WL 3197188, at *8 n.15, let alone funding specific terrorist attacks.

Again, Defendants' arguments are not new or responsive to the *Kaplan* or *Honickman* decisions; they are merely recycled and repackaged versions of their prior arguments from their first motion to dismiss the FAC. Originally, Defendants argued that *Halberstam*'s "state of mind" substantial assistance factor required "factual allegations sufficient to plausibly infer that Moving Defendants knew that any of their alleged banking services *were intended to facilitate the Attacks*." Orig. Joint Br. at 42 (emphasis added), and that Plaintiffs were required to plead Defendants "knowingly and intentionally supported Hezbollah in perpetrating the [] attacks." Orig. Joint Reply at 18 (citing *Kaplan*, 405 F. Supp. 3d at 536) (emphasis omitted).[6] While Defendants have dropped

[6] Defendants also argued that "substantial assistance" under *Halberstam* requires encouragement of "the attacks which injured Plaintiffs," citing *Siegel v. N. Am. Holdings, Inc.*, 933 F.3d 217, 225 (2d Cir. 2019) and *Honickman*, 432 F. Supp. 3d at 268. Orig. Joint Reply at 16-17 (emphasis omitted).

the word "intentionally," they still maintain that Plaintiffs must show Defendants knew they were facilitating the attacks that injured Plaintiffs. This is flatly wrong.

C. Defendants Misstate and Ignore This Court's MTD Decision

Not content with continuing to misrepresent controlling law, Defendants also materially mischaracterize this Court's discussion of the Plaintiffs' allegations, asserting that "this Court recognizes [that] only three of the 200-plus alleged customers identified in the SAC (IRSO, Martyrs Foundation, and IKRC) are purported to have been 'closely intertwined' with Hezbollah's acts of terrorism." Am. Joint Br. at 7 (citing Op. at *2). The Court did *not* so state. Instead, after first noting that "Hezbollah operates a commercial apparatus known as the Business Affairs Component ('BAC'), which raises funds for Hezbollah via money laundering and drug trafficking, as well as via ordinary business enterprises," this Court went on to observe that "Hezbollah *also* fundraises and recruits through umbrella organizations such as the Islamic Resistance Support Organization ('IRSO') and the Martyrs Foundation–Lebanon." Op. at *1-2 (emphasis added). *Nowhere* in its decision did the Court find that "only three of the 200-plus alleged customers identified in the SAC" were closely intertwined with Hezbollah's violent terrorist activities.[7]

In reality, ***most*** of the 200-plus alleged customers identified in the SAC belong to the BAC—the fundraising apparatus of Hezbollah's Islamic Jihad Organization ("IJO"), SAC ¶¶ 626-32—its core terror function, *id.*, ¶¶ 7, 372, 394-98. Moreover, the complaint even lists multiple individual customers of specific Defendants involved in the IJO's weapons trafficking business, including, *inter alia*, Muhammad Bazzi, *id.*, ¶¶ 762-65, 1209; Imad Bakri, *id.*, ¶¶ 812-26; Hasan Antar Karaki and Dib Hani Harb, *id.*, ¶¶ 1189-1206; Mustafa Reda Darwish Fawaz, *id.*, ¶¶ 1210-25, and Muhammad Mustafa Nur-al-Din, *id.*, ¶ 1815. Moreover, nearly *all* of the Moving

[7] In any event, the phrase "closely intertwined" first appears in the Second Circuit's *Kaplan* decision.

Defendants' customers acted under the direction of, and served to generate revenue for, the IJO—which is not merely "closely intertwined" with, but at the very *core* of, Hezbollah's violent terrorist activities. As the Treasury Department has noted, Hezbollah's Executive Council "takes advantage of its entities' legitimate and civilian appearance to conceal ***money transfers for Hezbollah's military use***. Although the funding from these Executive Council companies went into Hezbollah's coffers and ***military activities***, Hezbollah hoped that the seemingly legitimate business funds could protect Hezbollah from sanctions." *Id.*, ¶ 528 (emphasis added). To be clear, Hezbollah conceals its money laundering activities from *foreign authorities* and U.S. correspondent banks, not from its Lebanese banking partners who actively assist in that concealment.

Moreover, even if, contrary to hundreds of paragraphs in the SAC, the Martyrs Foundation *had* been one of "only three" customers closely intertwined with Hezbollah's violent terrorist activities, Defendants wholly neglect to mention that multiple Defendants held accounts for the Martyrs Foundation directly, *see, e.g.*, SAC ¶¶ 1519, 1727, 1805, and they further ignore their support for the Foundation's commercial entities, owned by Atlas Holding SAL (established near the time of the Foundation's Specially Designated Global Terrorist ("SDGT") designation in 2007 and operating throughout the remainder of the relevant period) which the Treasury Department has described as "a company controlled by the Martyrs Foundation" having an "*open affiliation* with previously designated Hezbollah entities" whose funding "went into Hezbollah's coffers and military activities." *Id.*, ¶¶ 527-28 (emphasis added). The SAC alleges that Defendants SGBL and Bank Audi maintained accounts for Atlas Holding despite that "open affiliation." *Id.*, ¶ 526. Other Defendants similarly maintained accounts for and provided services to other Martyrs Foundation front companies discussed in detail in the SAC. *Id.*, ¶¶ 534-58.[8]

[8] Apart from the Treasury Department's description of Atlas Holding's "open affiliation" with Hezbollah, it is implausible that Defendants, which professed to have rigorous "Know-Your-Customer" procedures, enhanced due

Furthermore, as this Court correctly noted: "It seems plain that JASTA proscribes knowingly enabling an organization such as IRSO—which was publicly designated by the U.S. government as a key Hezbollah fundraiser for violent terrorist attacks. At least five Defendants are alleged to have had IRSO as a customer." Op. at *9 (complaint citations omitted). Nor is Defendants' (counterintuitive) assertion that maintenance of an account for IRSO before it was designated an SDGT is exculpatory since the IRSO is – by its very name – the "Islamic ***Resistance*** Support Organization" directly implicated in Hezbollah's violence.[9] *See Kaplan*, 999 F.3d at 864 ("it would defy common sense to hold that such knowledge [of affiliation with an FTO] could be gained in no other way.").

Finally, Defendants misstate the law of the case set forth in this Court's opinion by insisting Plaintiffs failed to allege that Hezbollah, rather than its Iraqi proxies, committed the attacks; in fact, they (tellingly) raise this on *nearly every page* of their ten-page joint brief, often multiple times per page. Defendants misleadingly suggest this Court only found that "the SAC alleges (at most)" that Hezbollah played lesser roles than committing the attacks. Am. Joint Br. at 4-5 (citing Op. at *8). In reality, this Court examined the issue at length and held that "Plaintiffs have satisfied this first requirement by detailing Hezbollah's involvement in the Attacks, and how Plaintiffs' injuries resulted from those Attacks." Op. at *8. That is the law of the case, and *Kaplan* and *Honickman* do nothing to disturb it.

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diligence on customers and transactions, and transaction monitoring, would have failed to notice that Atlas Holding and its subsidiaries were openly registered as belonging to the Martyrs Foundation and its senior Hezbollah operatives. *See*, *e.g.*, SAC ¶¶ 154, 170, 187-90, 202, 214-16, 229, 240-41, 253-55, 267, 299. Yet the SAC identified six Defendants that maintained accounts for these Martyrs Foundation companies for years after the Foundation was designated. *Id.*, ¶ 536 (SGBL, Bank Audi, JTB, Lebanon & Gulf, Byblos, Bank of Beirut).

[9] Hezbollah's parliamentary bloc in the Lebanese parliament is named the "Loyalty to the Resistance." SAC ¶ 369. Moreover, Hezbollah routinely, openly, and publicly refers to itself as the "resistance." *See, e.g.*, *id.*, ¶¶ 362, 427, 515, 601, 622-35, 1590.

Defendants are entitled to make colorable arguments, but they are not entitled to misstate unambiguous controlling law or mischaracterize this Court's prior decision.

III. DEFENDANTS MISCHARACTERIZE THE FACTUAL ALLEGATIONS

A. Defendants Mischaracterize the Factual and Legal Significance of U.S. Designations

Defendants argue that the fact each bank (aside from Bank of Beirut) held accounts for Hezbollah entities designated as SDGTs during the relevant period is entirely meaningless absent evidence they did not close those accounts once their customers were designated. In reality, the SAC is replete with allegations of Defendants' willingness to provide services for Hezbollah entities after U.S. designations, and to take on the Hezbollah accounts jettisoned from LCB in 2011-2012. This is not to say in-period designations are a *necessary* allegation—the *Kaplan* plaintiffs satisfied the "general awareness" element even though *none* of LCB's customers were designated before the attacks,[10] and the Second Circuit found any such requirement would "defy common sense." 999 F.3d at 864. This Court came to the same conclusion. Op. at *11. *See also Linde v. Arab Bank, PLC*, 97 F. Supp. 3d 287, 314 (E.D.N.Y. 2015) (calling the defense "myopic").

And just as the *Kaplan* plaintiffs successfully relied on *other* public sources to plead LCB's knowledge, this Court further found that the complaint "describe[s] at length the widespread knowledge that certain Bank Customers were Hezbollah affiliates, including the publication of such information in contemporaneous mass media." Op. at *10. *Kaplan* and *Honickman* vindicate this analysis; yet Defendants use their renewed motions to dismiss to ignore this Court's finding and restate their previously rejected arguments that the banks' 19 customers designated as SDGTs

[10] Here, of course, "Defendants concede that 'the Amended Complaint identifies 19 Alleged Bank Customers that were designated as providing material support to Hezbollah at some point in time before the last Attack.' Each Defendant except Bank of Beirut SAL … had at least one customer who was an SDGT during the relevant period." Op. at *9 (citation omitted).

during the relevant time period "cannot be the sole basis for inferring that a Moving Defendant had 'general awareness' that it was involved in illegal or tortious activity." Am. Joint Br. at 4.

But the combination of contemporaneous U.S. designations, criminal prosecutions, media reports, and massive money laundering activity (including minimally hundreds of millions of dollars in bulk cash) is a more than sufficient basis on which to plausibly infer that Defendants were "generally aware" that they were involved in illegal activities. Moreover, *Kaplan* also noted the "U.N. reported in 2002 that an LCB customer was engaged in money laundering for Hezbollah" and the defendant's willingness to continue doing business with that "Hezbollah-linked money laundering gang." 999 F.3d at 849, 866. The "gang" in question was the Ahmad clan, SAC ¶¶ 890, 912, led by prominent BAC facilitator Nazim Ahmad (mentioned 109 times in the SAC), and all of the Defendants but Bank of Beirut and the Arab Countries ("BBAC") are alleged to have helped them launder millions of dollars through the United States *after* the U.N. report was issued. *Id.*, ¶¶ 887-88, 891. Four Defendants held accounts for Nazim Ahmad himself, and all but BBAC provided account services to at least one person or entity in the Ahmad network. *Id.*, ¶¶ 891-965. Numerous Ahmad network individuals and entities belonging to that "Hezbollah-linked money laundering gang" also migrated from LCB to other Defendants in 2011-2012. *Id.*, ¶ 105.[11] In designating Ahmad an SDGT, the Treasury Department described how "Hezbollah utilizes Ahmad and his companies to launder substantial amounts of money bound for the terrorist group" and how Ahmad "maintains ties to several U.S.-designated Hezbollah financiers and associates, including Kassim Tajideen and Mohammad Bazzi … Adham Tabaja [and Hassan] Nasrallah and Hezbollah's representative to Iran, Abdallah Safi-al-Din." *Id.*, ¶¶ 898-99.

[11] These factual averments include, *e.g.*, Nazim Ahmad's personal accounts (SGBL, BLOM, Bank Audi); Saleh Ali Assi (Fransabank, MEAB) who the Treasury Department found "delivered [revenues] to Lebanon via bulk cash transfers or laundered through Nazim Ahmad's diamond businesses," SAC ¶ 783; Ali Musa Nachar (Byblos Bank) who worked with Nazim Ahmad at Blue Star Diamonds (SDGT) and G & S Diamond FZE, *id.*, ¶¶ 918, 1047-48.

Defendants nevertheless again argue that "it is not plausible to infer that any Moving Defendant provided (or continued to provide) bank services to an entity *after* it was designated as an SDGT in the absence of *any* supporting factual evidence in the SAC's 5,735 paragraphs." Am. Joint Br. at 6. On the contrary, it is more than plausible. For example, multiple Defendants maintained accounts for Atlas Holding and its subsidiaries that were, in the Treasury Department's words, "openly affiliated" with the Martyrs Foundation after the latter was designated, and multiple Defendants continued to service Hezbollah's designated narcotics traffickers after they were designated. *See, e.g.*, ¶¶ 1130-35. But it is also irrelevant—as stated above, the Second Circuit in *Kaplan* held that the requirement that a bank's customers be "designated by the United States" before the attacks at issue in order to allege that a bank "knew, or should have known" that its customers were affiliated with Hezbollah "would defy common sense." 999 F.3d at 864. Indeed, as this Court previously held, "Plaintiffs substantiate these assertions with specific factual averments supporting the inference that Defendants were generally aware of these customers' nefarious activities and that, by providing them access to financial services, they had assumed a role in Hezbollah's terrorist attacks. Specifically, Plaintiffs assert general awareness based on certain Bank Customers' designation as SDGTs and Bank Customers' open and notorious affiliation with Hezbollah (including through public media reports)." Op. at *9.[12]

Finally, Defendants argue that even though the SAC alleges that each Defendant (except Bank of Beirut) provided financial services to one or more SDGTs affiliated with Hezbollah during the relevant period, none of them were designated for their support "to Iraqi militias" and because

[12] Although this Court held that Plaintiffs plausibly pleaded that Defendants "assumed a role in Hezbollah's terrorist attacks," Op. at *9, 11, *Kaplan* and *Honickman* clarify that this was not required. Rather, although the Court's finding clearly satisfies the legal standard, Plaintiffs need only have pleaded that Defendants were generally aware while they were providing banking services to the identified Hezbollah entities and individuals that they were playing a role in unlawful activities from which Hezbollah's attacks were a foreseeable risk. *Kaplan*, 999 F.3d at 860-61.

the SAC does not state precisely "when those services were provided," they "cannot generate a valid inference of 'general awareness.'" Am. Joint Br. at 3-4. This argument is simply recycled from Defendants' prior briefs (Orig. Joint Br. at 40, Orig. Joint Reply at 13) and was squarely addressed and rejected by this Court. *See* Op. at *15 ("Given the specificity that is in the complaint, including temporal specificity, the paucity of specific allegations concerning when individual wire transfers occurred is a matter for discovery and, if appropriate, summary judgment."). Moreover, the Circuit explained that these allegations must be viewed in the broader context of "Hezbollah's policy and practice of engaging in terrorist raids--and repeatedly publicizing that policy and practice--from the time of its founding in 1982 through and beyond July 12, 2006, i.e., a more than 15-year-long campaign of terrorist attacks against civilians," and the Defendants' "banking services that permitted the laundering of money" for Hezbollah. *Kaplan*, 999 F.3d at 865.

B. Defendants Mischaracterize the SAC's Allegations Concerning "Public Sources of Information" and the Second Circuit's Analysis of Those Types of Knowledge Allegations

Defendants argue that this Court's finding that "[i]n addition to certain Bank Customers' SDGT designations, other reporting and events publicly connected the Bank Customers to Hezbollah," Op. at *2, should not be credited because the (non-exhaustive) examples set forth in the Court's decision are deficient. Of course, the SAC list numerous other notice events (apart from 19 U.S. designations),[13] but it is instructive to take a closer look at three examples Defendants

[13] *See, e.g.*, 2002 United Nations Security Council report identifying the Ahmad and Nassour clans as Conflict Diamond traffickers associated with Hezbollah, SAC, ¶¶ 832-33, 912, 924, 963; 2002 *Daily Star* article on the Wounded Association and its affiliation with Hezbollah, *id.*, ¶ 604; April 2003 report by the British NGO "Global Witness" tying the Bakri family to Hezbollah, *id.*, ¶ 821; Adham Tabaja's business partner, Attallah Jamil Shaito (registered as a partner in several Tabaja companies), ran for a seat in a Hezbollah-supported list in the Lebanese elections of 2004, *id.*, ¶ 663; Hezbollah-affiliated charities aired commercials on *Al-Manar* television as of late 2005, *id.*, ¶ 610; IRSO aired commercials on *Al-Manar* television prior to its 2006 designation, *id.*, ¶ 425; public campaign to support Hezbollah was announced on June 16, 2007, asking donors to contribute the money into a Hezbollah-owned bank account at MEAB Bank, *id.*, ¶ 1591; various media reports identifying the Martyrs Foundation's affiliation with Hezbollah, *id.*, ¶ 1864 n.134.

object to as failing to connect "the alleged customer to illegal or tortious acts *at the time* a Moving Defendant allegedly provided it with banking services." Am. Joint Br. at 4-5 (emphasis original).

First, Defendants deem an *NBC News* report about Hezbollah soliciting funds on television to an account at Banque Libano Française ("BLF") inadequate because the report also included BLF's self-serving assertion that the account was unimportant and that they had now closed it. *Id.* at 4. Yet, even if the Court *accepted at face value* that BLF closed the identified Hezbollah account in the face of adverse publicity from *NBC News*, given BLF's purported "know-your-customer" internal procedures, SAC ¶¶ 251-55, that would hardly exonerate the bank for previously *maintaining* an account for Hezbollah that was advertised publicly on *Lebanese* television during the relevant time period.

Second, Defendants dispute that when U.S. law enforcement contacted Bank Audi by serving a seizure warrant on its correspondent bank to freeze the account of convicted Hezbollah counterfeiter and arms trafficker Dib Hani Harb, its correspondent banks were notified that Harb had been charged with providing material support to Hezbollah. "In fact," Defendants note, "the warrant was silent about the reason for the seizure." But Exhibit B (ECF No. 209-4) attached by Defendants constitutes a *single* communication to *one* of Bank Audi's correspondent banks. And the only facts that document "proves" are that the SAC (1) properly alleged that Bank Audi held an account for a Hezbollah arms dealer and counterfeiter during the relevant period; (2) accurately identified the arms dealer's account number; (3) accurately stated that U.S. law enforcement attempted to seize the assets of the account through Bank Audi's correspondent account; and (4) properly alleged that Bank Audi was notified of same, also during the relevant period.

Third, Defendants argue that reports that Israeli jets bombed the offices of Fransabank and MEAB in 2006 "did not link those events to any particular bank customer" and the "SAC does not

allege that MEAB continued to service that unnamed account after the public solicitation or the bombing." Am. Joint Br. at 5. Setting aside the obvious fact that there can be no stronger inference that a bank is assisting a terrorist organization on a profound scale than being *targeted by an airstrike* or the equally obvious inference that the Israeli Air Force would not have risked its pilots to strike banks in Lebanon over a single bank account, the event is part of a larger context in which MEAB's long-time chairman and controlling shareholder, Kassem Hejeij, was a senior BAC leader (and was later designated an SDGT, SAC ¶ 1588) and Fransabank worked closely with him, *id.*, ¶ 1536, as well as other senior BAC leaders, *id.*, ¶¶ 1526-35, 1537-45. The SAC also alleges that Fransabank maintained accounts for three of Hezbollah's flagship organizations: IRSO, Martyrs Foundation, and Wounded Association. *Id.*, ¶ 1519. Thus, the 2006 airstrikes provide a more than "plausible inference" that Fransabank and MEAB were deeply involved with Hezbollah.

Lastly, Defendants also erroneously assert that *Kaplan* and *Honickman* require that the SAC identify "public sources" that could support a plausible inference that they had "actual knowledge" that Hezbollah was using its banking services to "assist Iraqi militias" or "assisting Iraqi militias' terrorist acts." Am. Joint Br. at 9. Once again, this requirement is wholly invented by Defendants. And, as also noted above, a bank's customers "do not themselves need to be 'engaged in ... violent or terrorist acts'" for aiding and abetting liability to be plausibly pleaded, nor does a defendant have to specifically intend the harm that causes a plaintiff's injury.

As this Court rightly noted:

> Plaintiffs have not alleged an isolated provision of financial services to Hezbollah. Rather, they allege a wide-ranging, years-long, knowing scheme of coordination in which Defendants acted as Hezbollah's core financial service-providers. Plaintiffs allege that despite Hezbollah's purportedly multifaceted nature, it remains singularly dedicated to religiously inspired terrorist attacks, (Am. Compl. ¶ 354); any suggestion that Hezbollah's core bankers would be unaware of their role in those attacks by providing it banking services necessary to funding those attacks is highly dubious.

Op. at *11. This completely accords with the Second Circuit's emphasis in *Kaplan* on reviewing a complaint's allegation in its entirety, rather than in isolation, and in context, noting Hezbollah's very public and long-standing commitment to violence and terrorism. 999 F.3d at 865. *Kaplan* goes on to observe that "it is against this background that we must evaluate LCB's provision to Hezbollah affiliates, beginning no later than 2003, of banking services that permitted the laundering of money--nearly half a million dollars or dollar equivalents per day--in violation of regulatory restrictions meant to hinder the ability of FTOs to carry out terrorist attacks." *Id.*

C. Defendants Mischaracterize the Factual and Legal Significance of Defendants' Internal Bank Policies and Banking Regulations

According to their joint brief, "none of the Moving Defendants is alleged to have 'violated banking regulations' or to have 'disregarded its own internal policies' in serving their alleged customers, critical factors in the ruling that general awareness had been adequately pled in *Kaplan*." Am. Joint Br. at 5 n.6. They go on to claim that "[t]he SAC belies any such an inference [of awareness] because it alleges that most Moving Defendants maintained compliance departments to track, among other things, SDGT designations. This would have been a self-defeating exercise if those Moving Defendants habitually ignored what they tracked." *Id.* at 6.

To be clear, the SAC alleges that *all* Defendants violated "banking regulations" and "internal policies," just as LCB did in *Kaplan*.[14] The SAC alleged that Defendants laundered hundreds of millions of dollars in bulk cash, *see, e.g.,* SAC ¶¶ 5, 9, 87, 1096-98, 1108, 1129, and the Ahmad clan's African money laundering empire implicates all but one Defendant, *see, e.g., id.*, ¶¶ 783 (Treasury Department noting Saleh Assi's role in laundering bulk cash for Nazim Ahmad), 886 (Ahmad's movement of Conflict Diamonds and bulk cash), 898 (Treasury

[14] LCB is also a defendant in this case but has not responded to the service of the SAC. Accordingly, the Clerk of the Court entered the default of LCB on July 7, 2021. *See* ECF No. 203.

Department finding that Ahmad laundered bulk cash). Moreover, as noted above, the movements in and out of the accounts of many of the BAC's operatives and companies exhibited textbook signs of "a giant money-laundering operation with Hezbollah smack in the middle" using "repeated deposits of vast amounts of cash, huge wire transfers broken into smaller transactions and transfers between companies in such wildly incongruous lines of business that they made sense only as fronts to camouflage the true origin of the funds." *Id.*, ¶¶ 97, 102.

The Second Circuit found that allegations "that banking regulations require banks to know their customers" were some of the "other relevant nonconclusory allegations" (Defendants misleadingly add the word "critical," Am. Joint Br. at 5 n.6) that it reviewed in "consider[ing] all of the complaint's allegations." 999 F.3d at 865. Here, this Court noted that the FAC "details each Defendants' anti-money laundering and counter-financing of terrorism procedures, which would give the banks reason to know when a customer had been designated an SDGT." Op. at *9. Thus, as Defendants correctly observe, "*Kaplan* reminds us that courts must use 'common sense' in determining which inferences may be drawn on a motion to dismiss." Am. Joint Br. at 6-7. No common sense reading of the SAC supports the inference that Defendants were innocent, law-abiding institutions that happened to unwittingly maintain a few stray Hezbollah accounts.

D. Defendants Mischaracterize the Significance of Hezbollah Accounts Migrating from LCB

Defendants (and particularly Bank of Beirut) attempt to discount allegations that Defendants took on "blacklisted" account balances from LCB after those accounts were forcibly closed due to their association with Hezbollah. Defendants repeatedly argue that because the balances all migrated in 2011-2012, these transfers occurred too late to qualify as substantial assistance to Hezbollah during the relevant time period. But apart from the fact that Defendants *already* maintained accounts for many of these leading BAC entities and individuals during the

relevant period (hence, *e.g.*, the *balance* transfers, *see* SAC ¶¶ 742, 794, 832 n.77, 917, 915 n.90, 950, 973, 1009, 1017, 1029, *etc.*), this Court properly took this detailed allegation into account, together with many others, as "depict[ing] Defendants as essential financial enablers of Hezbollah's known front organizations." Op. at *12. Moreover, Defendants' deliberate and knowing onboarding of these Hezbollah BAC accounts (and their account balances) establishes the plausible inferences that (1) the banks' compliance and "know-you-customer" procedures were a sham (at least as they pertained to Hezbollah) intended to deflect scrutiny from their illegal activities, and (2) Defendants were willing participants in the BAC's effort to redistribute its assets *even after LCB was sanctioned by the U.S. Treasury Department and effectively forced to liquidate*—further suggesting that Defendants were determined to continue actively working with component parts of the BAC network (including entities designated by the United States).

IV. ADDITIONAL FACTUAL ALLEGATIONS RELEVANT TO DEFENDANTS' RENEWED MOTIONS TO DIMSISS

Consistent with their prior briefs, Defendants seek to cherry-pick allegations from the SAC and declare them insufficient, thereby ignoring the central guiding principle the Second Circuit expounded in *Kaplan*:

> [W]e must consider the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice. The proper question is whether there is a permissible relevant inference from "*all* of the facts alleged, taken collectively," not whether an inference is permissible based on "any individual allegation, scrutinized in isolation."

999 F.3d at 854 (citations omitted, emphasis in original).

Here, the SAC lays out in detail the Ponzi scheme at the very heart of the Lebanese banking system that has very publicly unraveled in the 32 months since this case was filed. It makes clear that Defendants have been willing participants "in a marriage of convenience" with "Hezbollah

and the country's criminal organizations" and that Defendants relied on gaining "steady streams of U.S. bank notes [from Hezbollah] that helped to maintain the structural Ponzi scheme that sustains Lebanon's sovereign debt." SAC ¶ 83. Thus, unlike either *Kaplan* or *Honickman*, this case does not involve allegations of a bank knowingly maintaining a few (albeit significant) accounts for an FTO.[15] Rather, it alleges that Defendants have all worked cooperatively with Hezbollah *for decades* and helped launder billions of dollars on behalf of its various commercial and "charitable" networks, much of it deposited in bulk cash and/or using foreign exchange houses that convert massive sums of cash from Hezbollah's narcotics, arms, and conflict diamond trafficking operations into dollar-denominated bank accounts with access to the U.S. financial system.

The SAC lists specific Hezbollah operatives and companies, account numbers and transactions during the relevant period, provides examples of how specific funds transfers flowed through the international financial system, and even identified numerous Hezbollah SDGTs with accounts at Defendant banks *before* they were designated by the U.S. government. These accounts exhibited "classic signs of money laundering," *id.*, ¶ 1403, including "repeated deposits of vast amounts of cash, huge wire transfers broken into smaller transactions and transfers between companies in such wildly incongruous lines of business that they made sense only as fronts to camouflage the true origin of the funds." *Id.*, ¶ 97. Moreover, Defendants provided services to prominent Hezbollah leaders like Adham Tabaja, co-head of the BAC and its public face. *See, e.g.*, SAC ¶¶ 643-52. The SAC also alleges that Defendants maintained unofficial liaison officers tasked with coordinating Hezbollah's business activities, *id.*, ¶¶ 1325, 5717, and even named specific officers or employees at 12 of the banks. *See id.*, ¶¶ 167, 1588-89 (MEAB), 1546 (Fransabank),

[15] Much (but far from all) of LCB's illegal conduct occurred after 2006 and was therefore not directly relevant to the specific claims in that case.

1578 (BLOM), 1659 (Byblos), 1724 (Lebanon and Gulf), 1777 (BLF), 1800 (Bank of Beirut), 1804 (BBAC), 1826, 1835 (JTB), 1839, 1841 (Fenicia), 1357, 1364-65 (LCB), 1448-50 (SGBL).

It is thus telling that despite this Court's discussion of the IJO's BAC and allegations that "Defendants provide Hezbollah access to the Lebanese economy by helping to convert large, dollarized cash deposits into Lebanese pounds, including through exchange houses known to be affiliated with Hezbollah," Op. at *12, none of the following words appear in the Joint and Bank of Beirut briefs summarizing the SAC's 5,735 paragraphs (only the first appears in JTB's):

- The System (appears 80 times in the SAC)
- Bulk Cash (appears 43 times)
- Business Affairs Component/BAC (more than 150 times)
- Exchange Houses (50 times)
- Narcotics Trafficking (54 times)
- Arms/Weapons Trafficking (14 times)
- Conflict Diamonds (50 times).

That is because applying "common sense" to the SAC's allegations "in determining which inferences may be drawn" and reviewing those allegations as a whole rather than in isolation leads ineluctably to the conclusion that Defendants were all engaged in a long-standing, massive criminal enterprise profiting from and assisting Hezbollah, particularly its IJO and related terror-supporting apparatus elements like the IRSO and Martyrs Foundation, and that acts of terrorism were a foreseeable, if not inevitable, risk of that enterprise.

V. BANK OF BEIRUT'S ARGUMENTS ARE MERITLESS

Bank of Beirut's post-*Honickman* brief raises no legal or factual issues that were not available to it in its prior motion to dismiss. Instead, like the other Defendants, its initial *post-Kaplan* brief misstated the legal standard on substantial assistance, asserting that:

> Under *Kaplan*, then, Plaintiffs must plead plausible, factual, non-conclusory allegations that Bank of Beirut had "actual knowledge" that it was providing assistance to customers who were intermediaries of Hezbollah **and was thereby**

> **indirectly assisting Shia militias in the commission of the terrorist acts that injured Plaintiffs**.

Renewed BoB Br. at 2-3 (emphasis added). In its amended brief, Bank of Beirut more accurately approximates the correct legal standard, yet nevertheless adopts the arguments in the Amended Joint Brief. *See* Amended Bank of Beirut Brief, ECF No. 224 ("Amended BoB Br."), at 2-3 & n.4.

As discussed above and as Bank of Beirut tacitly concedes, *Kaplan* affirms that "a defendant may be liable for aiding and abetting an act of terrorism if it was generally aware of its role in an 'overall illegal activity' from which an 'act of international terrorism' was a foreseeable risk." 999 F.3d at 860. Likewise, *Honickman* confirms that "[f]oreseeability is thus central to the *Halberstam* framework, and as a result, to JASTA aiding-and-abetting liability." *Honickman*, 2021 WL 3197188, at *6. Thus, the sole question is whether Bank of Beirut was generally aware that it was playing a role in Hezbollah's illegal activity from which acts of international terrorism—not specific attacks in Iraq—were a foreseeable risk.[16]

In its post-*Honickman* brief, Bank of Beirut also argued that the SAC's allegations fail to satisfy the scienter factor for substantial assistance because its alleged conduct was limited to taking on accounts in 2011-2012 from five individuals and entities who had accounts at LCB that were "forcibly closed," and who, sometime "after" that, reopened those accounts at Bank of Beirut. Am. BoB Br. at 3.[17] Apart from completely ignoring the strong inference to be drawn from its

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[16] The bank argues that pleading the "special treatment" LCB provided its customers in *Kaplan* is required under JASTA. Am. BoB Br. at 7. Defendants here provided extensive money laundering services for Hezbollah, but there is no such *requirement*. Hamilton's acts were "neutral standing alone," 705 F.2d at 488, and the Second Circuit in *Honickman* found that "facilitating the transfer of millions of dollars" alone may satisfy substantial assistance. 2021 WL 3197188, at *9. *See also Kaplan*, 999 F.3d at 858 (noting the "routine transaction" statement in *Linde* "was made in the context" of a primary liability claim where "the defendant itself committed an act of international terrorism").

[17] Bank of Beirut appears to suggest that allegations set forth in the SAC but not mentioned in the Court's MTD decision are somehow irrelevant in assessing its conduct. It also argues that Plaintiffs "do not plead any factual allegations that Bank of Beirut made any wire transfers or performed any other transactions for any of the Alleged Migrated Customers." *Id.* at 6. But the SAC specifically alleges that the LCB account *balances* migrated to Defendants, including Bank of Beirut. *See, e.g.,* SAC ¶¶ 742, 1065. *By definition*, that involves financial transactions.

willingness to continue doing business with Hezbollah-affiliated accountholders forced to transfer their balances from LCB, Bank of Beirut also fails to acknowledge that it *already* had an account for the Tajideen clan front company—Leaders of Supply & Products (Offshore) SAL, *see* SAC ¶ 740—which it lists on the first page of its brief as one of the "Alleged Migrated Customers." Am. BoB Br. at 1. The balance in the LCB account migrated to another Defendant. *See* SAC ¶ 739.

Bank of Beirut also asserts that the financial services it provided to Youssef Tajideen are of no moment because Plaintiffs did not explain how "Defendants knew the entire Tajideen family was 'synonymous with Hezbollah.'" Am. BoB Br. at 6.[18] But the SAC provides many such examples. The U.S. Treasury designation of Kassim Tajideen in 2009 noted that "Tajideen **and his brothers** run cover companies for Hezbollah in Africa." SAC ¶ 706 (emphasis added). The SAC also notes that Ali Muhammad Tajideen (designated an SDGT in 2010) was a "Hezbollah commander," a "major player in Jihad al-Bina," which was designated in 2007, and part of the Tajideen' Hezbollah real estate empire. *Id.*, ¶¶ 710-11, 714, 717. Likewise, his brother Youssef was listed as co-founder, general manager, board member or shareholder of multiple Tajideen companies with his (designated) brothers as well as Nazim Ahmad's "Hezbollah-linked money laundering gang," previously identified in the 2002 U.N. report described in *Kaplan*. 999 F.3d at 849. SAC ¶¶ 718, 752, 832.

More significantly, the SAC also identifies Bank of Beirut's role in Hezbollah's bulk cash money laundering through the Halawi Exchange (designated in a § 311 Action as a "financial institution[] of primary money laundering concern" in 2013 and "known to have laundered profits

[18] Bank of Beirut argues again that because the Treasury Department only designated three of 11 Tajideen children, the bank could not have had "general awareness" (pre-*Honickman*, it used the term "actual knowledge") that Youssef Tajideen was Hezbollah-affiliated. *Id.* at 6, n.9. But it is self-evident that the Treasury Department does not designate every Hezbollah operative for many reasons, including, but not limited to: prioritizing designation targets, monitoring rather than disrupting certain networks, protecting sources and methods, and many other considerations having nothing to do with whether an individual is a "known" terrorist operative.

from drug trafficking and cocaine-related money laundering networks for a leading Hezbollah official and narcotics trafficker," *id.*, ¶¶ 1164, 1792-94, 1797-99), and Bank of Beirut's related role in The System. *Id.*, ¶¶ 1800-02. No bank that maintained an active relationship with a narcotics trafficking concern like Halawi Exchange and processed massive sums of bulk cash over an extended period of time can plausibly pretend to be an innocent party that just happened to have another half dozen or more Hezbollah customers.

The Bank of Beirut amended brief also fails to address its money laundering services for Nazim Ahmad (SDGT) before 2005 via an account it maintained for Hijazi Trading Establishment. SAC ¶ 1791. It also fails to mention its accounts for (1) Mustafa Reda Darwish Fawaz (SDGT), noted Hezbollah arms dealer, *id.*, ¶ 1786; (2) Compu House, the Hezbollah-controlled importer, founded and majority owned by Sultan Khalifa As'ad, *id.*, ¶¶ 677-78 (SDGT and founder of Hezbollah's Jihad al-Bina, designated an SDGT in 2007, *id.*, ¶¶ 430, 440); (3) Trust Compass Insurance, a company controlled by the network belonging to long-time co-head of Hezbollah's BAC, Adham Tabaja, *id.*, ¶¶ 654-66, 660, 1598, 1788; and (4) Interafrica Trading Company, the Ahmad network front company also associated with Jihad Qansu (SDGT), *id.*, ¶¶ 1052-54.

All of the foregoing fits into the larger pattern of The System – through which Bank of Beirut and the other Defendants enriched themselves by disregarding their own internal compliance procedures and ignoring terrorism sanctions by allowing Hezbollah front companies, arms dealers, and exchange houses to make "repeated deposits of vast amounts of cash," and launder funds for companies in "such wildly incongruous lines of business that they made sense only as fronts to camouflage the true origin of the funds." SAC ¶ 97.

Finally, the SAC describes a general pattern by which Defendants unofficially designated employees as liaison officers to Hezbollah. In the case of Bank of Beirut, the SAC specified that a

specific branch manager of the bank "served as a facilitator and coordinator for Hezbollah inside the bank." *Id.*, ¶ 1800. In a footnote to its brief, the bank describes the allegation as "vacuous" because "it does not even say that Abboud was a branch manager during the relevant period. It also does not include allegations of what assistance Abboud provided or that such assistance was substantial." Amended BoB Br. at 10 n.14. But even assuming, *arguendo*, that the specific Bank of Beirut branch manager identified first "served as a facilitator and coordinator for Hezbollah inside the bank" *last week*, that would still provide a powerful inference that the bank knowingly coordinates with, and supports, Hezbollah, which, coupled with all of the other allegations in the SAC, paint a compelling picture of active collusion between Bank of Beirut and Hezbollah, from which terrorist attacks were a highly foreseeable risk.

VI. JAMMAL TRUST BANK'S ARGUMENTS ARE MERITLESS

In stark contrast to the other Defendants, Jammal Trust Bank's revised brief more correctly states the applicable legal standard, Amended JTB Brief ("Am. JTB Br."), at 3 (citing *Honickman*, 2021 WL 3197188, at *10), but then proceeds to studiously avoid addressing its own designation as an SDGT, arguing that "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 Hezbollah. *Kaplan* does not deem such allegations sufficient." Am. JTB Br. at 8. In a footnote to that assertion, JTB obliquely notes that "[s]everal other allegations in the SAC are drawn from the Treasury Department's 2020 designation **of an SDGT** in 2019." *Id.* at 8 n.5 (citing SAC ¶ 1826) (emphasis added). The unnamed "SDGT" turns out to be *JTB itself*.

According to JTB, its SDGT designation has no probative value because it occurred in 2019, but as the Second Circuit observed in *Kaplan*, later publications may nevertheless contain relevant information about events that occurred prior to publication. 999 F.3d at 866 (crediting the 2011 U.S. Verified Complaint incorporated by reference into the complaint, as supported by "its

allegations as to LCB conduct prior to 2006"). Here, JTB's SDGT designation states that JTB customers "clearly identified themselves to Jammal Trust as senior members of the terrorist group": "**Such a scheme is representative of the deep coordination between Hezbollah and Jammal Trust, which dates back to at least the mid-2000s and which spans many of the bank's branches in Lebanon.**" SAC ¶ 1826 (emphasis added). Likewise, when the Treasury Department designated Atlas Holding, the Martyrs Foundation's corporate holding company, in 2020, it found that "Atlas Holding … along with several of its subsidiaries banked freely at Jammal Trust Bank despite their open affiliation with previously designated Hezbollah entities. In fact, Jammal Trust Bank facilitated hundreds of millions of dollars in transactions through the Lebanese financial system on behalf of Atlas Holding and its subsidiaries." *Id.*, ¶ 527. The SAC notes that from its establishment in 2006, Atlas Holding was openly registered in Lebanon as a subsidiary of the Martyrs Foundation and lists its prominent, registered Hezbollah board members. *Id.*, ¶¶ 529-33. JTB argues that these allegations lack specificity and fail to meet the "closely intertwined" test, Am. JTB Br. at 7, despite the Treasury Department's finding that Atlas Holding's revenues "went into Hezbollah's coffers and military activities." SAC ¶ 528.

Like the other Defendants, JTB also ignores the fact that the SAC alleges its customers were part of the IJO's BAC, preferring to use euphemisms such as persons with "some type of association with Hezbollah" or "associated with Hezbollah, but with no specific involvement with terrorism or laundering." Am. JTB Br. at 6, 8. But they are BAC operatives—in fact, most of the listed customers are SDGTs.[19]

[19] JTB also highlights a passage in *Kaplan* describing the 2002 U.N. Report that identified the Ahmad clan as a criminal syndicate associated with Hezbollah, *id.* at 3-4, but then fails to acknowledge that its own customer, Musa Muhammad Ahmad, was part of that same "Hezbollah-linked money laundering gang." SAC ¶¶ 888, 892, 1834.

JTB also dismisses the allegations that it was aware it was providing services to the IRSO because "the single allegation of a publicized connection with Hezbollah occurred in 2016, after the relevant attacks." Am. JTB Br. at 7 (citing SAC ¶ 104 (which does not discuss IRSO)). Again, because the organization's name and stated purpose is to support the *resistance*, JTB is reduced to arguing that Hezbollah's IRSO website, its advertising on Hezbollah's television station and its donation form openly offering prospective donors the opportunity to earmark funds toward different types of terrorist activities, "fail to identify an affirmative linkage between" the IRSO and Hezbollah. *Id*.

Finally, JTB argues that this Court erroneously relied upon IRSO's SDGT designation because another Second Circuit decision, *Weiss v. Nat'l Westminster Bank Plc*, 993 F.3d 144 (2021), "deemed this type of designation insufficient" and "*Kaplan* deemed this type of designation unnecessary." Am. JTB Br. at 8 n.4. *Weiss* held no such thing, only noting that the bank's customer was *eventually* designated. 993 F.3d at 152. JTB's mischaracterization of *Kaplan* is even more audacious—as noted above, *Kaplan* did not discount the significance of U.S. terrorism designations; it rejected the proposition that such designations were a "prerequisite for knowledge." 999 F.3d at 864.

VII. NEITHER *KAPLAN* NOR *HONICKMAN* INVOLVES ANALYSIS OF JASTA CONSPIRACY CLAIMS, AND THE SAC PROPERLY PLEADS CONSPIRACY AS TO ALL DEFENDANTS

The Second Circuit in *Kaplan* did not address JASTA conspiracy claims, which were not at issue in that appeal. It did restate the boilerplate distinction between aiding and abetting and conspiracy described in *Halberstam*, 999 F.3d at 856, and noted, as Defendants argue, the requirement that defendants "'conspire[d] *with*' the principal" who "committed" the relevant acts of international terrorism, Am. Joint Br. at 1 (citing *Kaplan*, 999 F.3d at 855). While certainly true, it does not help Defendants, given the law of the case holding that Plaintiffs have sufficiently

pleaded "Hezbollah's involvement in the Attacks, and how Plaintiffs' injuries resulted from those Attacks." Op. at *8.[20] So too, Plaintiffs have plausibly alleged that Defendants' involvement in a long-standing scheme ***with Hezbollah*** to launder money and fund Hezbollah and its IJO. Indeed, Plaintiffs also alleged that "[t]he emplacement of one or more Hezbollah liaison coordinators *within* each Defendant was a key feature of the conspiracy between Defendants and Hezbollah and ensured that the IJO's requirements would be met notwithstanding U.S. counter-terrorism measures (including U.S. SDGT designations)." SAC ¶ 1325. *See supra* at 22-23 (listing liaison allegations).

The court in *Halberstam* found it sufficient to impose liability where "Hamilton agreed to participate in an unlawful course of action and [] Welch's murder of Halberstam was a reasonably foreseeable consequence of the scheme," 705 F.2d at 487; here, Hezbollah's attacks on Americans serving in Iraq were "a reasonably foreseeable consequence" of Defendants' agreement to participate in an unlawful course of action that funded the IJO. Nothing more is required.

CONCLUSION

The Second Circuit's decisions in *Kaplan* and *Honickman* vindicate this Court's decision denying Defendants' prior motions to dismiss and provide even stronger grounds to deny their renewed motions to dismiss the SAC's aiding-and-abetting and conspiracy claims.

[20] One can conspire "with" a principal through another conspirator, or even "through a non-conspiring intermediary." *United States v. Bicaksiz*, 194 F.3d 390, 399 (2d Cir. 1999).

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Respectfully submitted,

By /s/ Gary M. Osen

OSEN LLC
Gary M. Osen, Esq.
Michael J. Radine, Esq.
Ari Ungar, Esq.
2 University Plaza, Suite 402
Hackensack, NJ 07601
(201) 265-6400

TURNER & ASSOCIATES, P.A.
Tab Turner, Esq.
(admitted pro hac vice)
4705 Somers Avenue, Suite 100
North Little Rock, AR 72116
(501) 791-2277

MOTLEY RICE, LLC
Michael Elsner, Esq.
28 Bridgeside Boulevard, P.O. Box 1792
Mount Pleasant, South Carolina 29465
(843) 216-9000

Attorneys for Plaintiffs