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) (VMS)

REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF DEFENDANT JAMMAL TRUST BANK SAL'S MOTION TO DISMISS THE AMENDED COMPLAINT

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INTRODUCTION

Defendant Jammal Trust Bank SAL ("JTB" or "the Bank"), submits this reply in support of its Motion to Dismiss. To promote judicial efficiency, JTB incorporates by reference, and does not repeat in full, the statements and arguments made by the other moving Defendants in their Joint Reply in Further Support of Motion to Dismiss ("Joint Reply"). In particular, JTB incorporates the arguments that this Court lacks personal jurisdiction and that the Amended Complaint ("Complaint" or "AC") fails to state a claim upon which relief may be granted. (Joint Reply §§ I-II).

Plaintiffs' Opposition simply restates the general and conclusory claims in the Complaint. It does not identify pleaded facts that plausibly support either personal jurisdiction over JTB or a claim under the Anti-Terrorism Act, as amended by the Justice Against Sponsors of Terrorism Act, 18 U.S.C. § 2333 *et seq.* ("ATA").

ARGUMENT

I. OFAC's Designation of JTB Does not Support Plaintiffs' Allegations

JTB's recent Office of Foreign Assets Control ("OFAC") designation (August 29, 2019) as a "Specially Designated Global Terrorist" ("SDGT") is not an "elephant in the room," Plts. Opp. at 2, but entirely irrelevant to this case. It says nothing about the Bank or its activities during 2003 and 2011, when Plaintiffs' alleged injuries occurred. In addition, OFAC's press release, Plts. Opp. Exhibit A, is not part of the Complaint and, even if it was, contains allegations against JTB no less conclusory than those Plaintiffs advance. In fact, that designation is neither a judicial nor legal judgment, but a policy/political decision. It does not, and cannot, make any of Plaintiffs' inadequate allegations non-conclusory or plausible.

OFAC acted under E.O. 13224, which is based on the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. §§ 1701-1708. IEEPA gives the President virtually plenary

power to freeze or "block" foreign assets as a tool of foreign policy during a national emergency. *See Dames & Moore v. Regan*, 453 U.S. 654, 673 (1981) ("[s]uch orders permit the President to maintain the foreign assets at his disposal for use in negotiating the resolution of a declared national emergency."). "[W]hat constitutes a national emergency is essentially a political question depending upon the felt necessities of a particular political context." Mem. Op. for the Attorney General, 4A U.S. O.L.C. 115, 117, 1979 WL 16623 (Nov. 7, 1979).

E.O. 13224 authorizes discretionary designations by the Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General. *See* E.O. 13244 § 1(a)(iii). Critically, neither IEEPA nor E.O. 13224 prescribe any evidentiary standards or rules governing designations. As noted in a 9/11 Commission Staff Report, "IEEPA allows the freezing of an organization's assets and its designation as an SDGT before any adjudication of culpability by a court. The administrative record needed to justify a designation can include newspaper articles and other hearsay normally deemed too unreliable for a court of law." Nat. Comm'n on Terr. Attacks Upon the United States, Monograph on Terrorist Financing, Staff Report to the Commission 112, *available at* https://govinfo.library.unt.edu/911/staff_statements/911_TerrFin_Monograph.pdf; *see also Holy Land Found. for Relief and Dev. v. Ashcroft*, 333 F.3d 156, 162 (D.C. Cir. 2003) ("[T]he government may decide to designate an entity based on a broad range of evidence, including intelligence data and hearsay.").

Designations are not made through the notice and comment process or formal agency adjudication, but are based on OFAC's own *ex parte* process from which there is no appeal.[1] As

[1] A designee's only recourse is to seek OFAC's reconsideration under 31 C.F.R. § 501.807, also entirely within OFAC's discretion, or an APA challenge in District Court subject to a particularly deferential standard. *See Kadi v. Geithner*, 42 F. Supp. 3d 1, 6, 10-11 (D.D.C. 2012) (noting that SDGT determinations based on classified information may be reviewed *ex parte* and in *camera*, and that "'a highly deferential review applies' to examination of an SDGT designation.") (citing *Islamic Am. Relief*

explained in one important study of OFAC's authority, "IEEPA effectively allows the government to shut down an organization without notice or hearing on the basis of classified evidence, and without any judicial review. It provides that if a court does review the government's evidence, it may do so in secret." ACLU, "Blocking Faith, Freezing Charity: Chilling Muslim Charitable Giving in the 'War on Terrorism Financing,'" at 35 (June 2009), *available at* https://www.aclu.org/report/blocking-faith-freezing-charity-chilling-muslim-charitable-giving-war-terrorism-financing.

And contrary to the putative claims in Plaintiffs' Exhibit A, OFAC's official *Federal Register* announcement of JTB's designation simply recites that the Bank was designated "based on OFAC's determination that one or more applicable legal criteria were satisfied," and for "assisting in, sponsoring, or providing financial, material, or technological support for, or financial or other services to or in support of, Hizballah." Notice of OFAC Sanctions Action, 84 Fed. Reg. 46,782-01, at 47,782-83 (Sept. 5, 2019).

In other words, JTB's designation is based on a non-public record that has not been tested by any adversarial process, and that does not officially provide any content other than a bare statement of a legal conclusion. And, as noted, it took place nearly a decade after the events at issue and cannot, in any case, illuminate JTB's actions or state of mind as relevant here. Plaintiffs' "elephant in the room" establishes no more than the fact of OFAC designation itself and adds no non-conclusory allegations that could support their claims.[2]

Agency v. Gonzales, 477 F.3d 728, 732 & 734 (D.C. Cir. 2007) ("[O]ur review—in an area at the intersection of national security, foreign policy, and administrative law—is extremely deferential.")).

[2] SDGT designations have been credited in limited circumstances establishing scienter for certain ATA claims, *see Goldberg v. UBS AG*, 660 F. Supp. 2d 410, 428 (E.D.N.Y. 2009), but even here the designation alone is insufficient to create a triable issue of fact. *See Weiss v. Nat'l Westminster Bank PLC*, 768 F.3d 202, 211 n.9 (2d Cir. 2014). Similarly, courts gave some deference to OFAC designations in *Funnekotter v. Agric. Dev. Bank of Zimbabwe*, No. 13 Civ. 1917 (CM), 2015 WL 3526661 (S.D.N.Y. Jun. 3, 2015) and *In re 650 Fifth Ave.*, No. 08 Civ. 10934 (KBF), 2013 WL 2451067 (S.D.N.Y. Jun. 6,

II. Plaintiffs' Allegations Against JTB Are Insufficient to Support Personal Jurisdiction or to State an ATA Claim

A. *Personal Jurisdiction*

Plaintiffs fail to allege facts establishing a *prima facie* case of personal jurisdiction over JTB. This requires that "the defendant's suit-related conduct must create a substantial connection with the forum," and that connection "must arise out of contacts that the defendant himself creates with the forum." *Waldman v. Palestine Liberation Org.*, 835 F.3d 317, 335 (2d Cir. 2016) (quoting *Walden v. Fiore*, 571 U.S. 277, 284 (2014) (internal quotation marks omitted)). Plaintiffs show no such connection between JTB and this forum.

Plaintiffs attempt to distinguish *Waldman* and rely on *Licci v. Lebanese Canadian Bank, SAL*, 732 F.3d 161 (2d Cir. 2013); but *Licci* does not help them. Specifically, Plaintiffs assert that New York's long arm statute does not require a causal link between JTB's New York business activity and their injuries, but only "a relatedness between the transaction and the legal claim such that the latter is not *completely unmoored* from the former, regardless of the ultimate merits of the claim." Plts' Opp. at p. 38 (quoting *Licci*, 732 F.3d at 168-69) (emphasis added). They also rely on *Licci's* statement that, where New York's long arm statute permits personal jurisdiction, cases where the Due Process Clause does not would be "rare." *Id.* at 170.

But *Licci*'s capacious interpretation of the "arising from" prong of New York's long-arm statute predates both *Walden*, 571 U.S. 277, and *Bristol-Myers Squibb Co. v. Sup. Ct. of Calif.*, 137 S. Ct. 1773 (2017), which reiterate that Due Process Clause compliant "specific" jurisdiction is available *only* where there is a causal link between plaintiff's claim and defendant's forum

2013). *Funnekotter* involved the issue whether, as a matter of law, a listed entity was the "alter ego" of a sanctioned government and the court accepted listing as "some evidence" of that status. 2015 WL 3526661, at *17. *In re 650 Fifth Ave.* found that, for the specific statutory purpose of determining if a listed entity's assets were "blocked," OFAC's designation alone was conclusive. 2013 WL 2451067, at *4.

contacts: "[D]efendant's suit-related conduct must create a *substantial connection* with the forum State." *Walden*, 571 U.S. at 284 (emphasis added); *see also Bristol-Meyers*, 137 S. Ct. at 1780. "[R]andom, fortuitous, or attenuated" contacts with third parties in the forum are insufficient. *Walden*, 571 U.S. at 286 (citing *Burger King v. Rudzewicz*, 471 U.S. 462, 475 (1985)). It must be defendant's own in-forum acts that can be fairly characterized as giving rise to plaintiff's claim. *See id.* at 285-86.

Bristol-Myers made this clear, finding a lack of personal jurisdiction in California for claims by non-resident plaintiffs whose alleged injuries were only tangentially related to that company's in-forum activities. 137 S. Ct. at 1778-79. The Court rejected the California Supreme Court's contrary conclusion, based upon the similarity of non-residents' claims to those asserted by California residents. *Id*. It ruled that, to satisfy due process, specific jurisdiction always requires that defendant's in-forum contacts have a causal link with, not a mere relationship to, plaintiff's claims. *Id*. at 1779-80.

There is no such causal link here. Indeed, *Licci*'s constitutional analysis supports JTB, not Plaintiffs. The *Licci* plaintiffs alleged that the Lebanese Central Bank ("LCB") used its New York correspondent account "to wire millions of dollars on behalf of Hizballah." 732 F.3d at 166. The court found specific personal jurisdiction over LCB constitutionally permissible because "the selection and *repeated use* of New York's banking system, as an instrument for accomplishing the alleged wrongs for which the plaintiff seeks redress," constituted purposeful availment. *Id.* at 171 (emphasis added).

Plaintiffs have not alleged a similar course of dealings with New York by JTB, nor do the contacts they do allege show any causal link between those contacts and their injuries. Tellingly, Plaintiffs fail to identify any JTB transaction that passed through New York and can be causally

linked, even tangentially, to their injuries. Indeed, far short of *Licci*'s "repeated" use of New York correspondent accounts, Plaintiffs here allege only two New York transactions for a single JTB customer, Musa Muhammad Ahmad. This individual supposedly received a total of $35,000 in "illicit funds" from entities controlled by another man (Nazim Ahmad), who is allegedly connected to Hezbollah. AC ¶¶ 862, 868, 1800; Plts. Opp. at 40. The Complaint does not say who Musa Muhammad Ahmad is, what relationship (if any) he may have to Hezbollah, and whether the alleged transfers occurred between 2003 and 2011. Nor do Plaintiffs allege facts showing how these transfers had any causal link to Plaintiffs' injuries (by unnamed third-parties), or even that JTB knew, or had reason to know, that Hezbollah might be involved. This is very far from the contacts found sufficient in *Licci* and satisfies neither New York's long arm statute nor the Due Process Clause.

Thus, despite Plaintiffs' effort to confuse through voluminous irrelevant facts, they have failed to identify a single transaction that JTB "deliberately chose to process" through New York that caused their injuries. *Licci*, 732 F.3d at 171. They allege, at most, a "'random, isolated, or fortuitous'" transaction with a third party (correspondent bank), not a purposeful act aimed at causing injury in New York. *Id.* (quoting *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984)); *see also Walden*, 571 U.S. at 286.

Plaintiffs' alleged "System" cannot fill this void. It is described as nothing but an amorphous network of various criminal enterprises, *see* AC ¶¶ 41-46, ¶¶ 82-86, supposedly predating Hezbollah and serving to ensure that Lebanon's institutions and elites "are all heavily invested (literally and figuratively) in [Hezbollah's] financial success and continued ability to acquire, invest and launder billions of U.S. dollars." *Id.* at ¶¶ 84-86. But, even if the System is something more than a convenient label for the social, political, and economic institutions of a

country burdened for decades by civil war and foreign intervention, Plaintiffs do not allege when and how JTB agreed to participate therein. It does not even appear in Plaintiffs' list of jurisdictional allegations supposedly involving the System. *See* Plts. Opp. at 41-42. In light of Plaintiffs' allegations that the System is pervasive, it is incumbent on them to plead facts to make plausible their claim that JTB knowingly used its U.S. correspondent accounts in a way that caused their injuries, foreclosing the far more plausible inference that JTB was simply acting as an ordinary Lebanese financial institution.

Thus, Plaintiffs' allegations are insufficient to carry their burden of establishing personal jurisdiction under either the Due Process Clause or New York's long-arm statute and *Walden*, *Bristol-Myers*, and *Licci* require dismissal of Plaintiffs' claims for lack of personal jurisdiction. *See also Freeman v. HSBC Holdings PLC*, No. 14-CV-6601 (PKC)(CLP), 2019 WL 4452364, at *7 (E.D.N.Y. Sept. 16, 2019) (mere allegations of maintaining accounts and processing transactions for terrorist groups overseas insufficient for personal jurisdiction in New York).

Finally, jurisdictional discovery is not appropriate because Plaintiffs fail even to allege "specific, non-conclusory facts that, if further developed, could demonstrate substantial state contacts." *Viko v. World Vision, Inc.*, No. 2:08-CV-221, 2009 WL 2230919, at *16 (D.Vt. July 24, 2009) (cited by *Leon v. Shmukler*, 992 F. Supp. 2d 179, 195 (E.D.N.Y. 2014)).

B. *Plaintiffs Fail to Allege Facts Supporting ATA Liability*

1. Plaintiffs Have Not Alleged JTB Primary Liability

Plaintiffs allege only that JTB provided financial services to various groups and individuals with some supposed connection to Hezbollah, which is plainly insufficient to state an ATA claim. *See Linde v. Arab Bank, PLC*, 882 F.3d 314, 327 (2d Cir. 2018) (simply providing "routine financial services to members and associates of terrorist organizations" is insufficient to establish an ATA claim); *In re Terrorist Attacks on Sept. 11, 2001*, 714 F.3d 118, 124 (2d Cir.

2013) (allegations that defendants provided "routine banking services to organizations and individuals said to be affiliated with" terrorist group insufficient to establish required causation under ATA).[3]

Indeed, a close examination of Plaintiffs' allegations reveals the implausibility of their claims. Specifically, Plaintiffs allege only that JTB maintained accounts for the following customers: (1) Car Escort Services (Offshore) SAL, AC ¶¶ 1796; (2) New All Pharma SARL, AC ¶ 1798; (3) Medical Equipment and Drugs International Corp. SAL ("MEDIC"), AC ¶ 1799; (4) Musa Muhammad Ahmad, ¶ 1800; (5) Spectrum International Investment Holding SAL and Spectrum Investment Group Holding SAL, AC ¶ 1797; (6) Mercury Development Group (Holding) SAL (for which JTB allegedly held a mortgage on property in Beirut), AC ¶ 990; and (7) The Islamic Resistance Support Organization ("IRSO"), AC ¶¶ 400, 420, 1793.

Of these, only Car Escort Services (allegedly owned by three Hezbollah members), Spectrum International/Spectrum Investment (allegedly controlled by Hezbollah "financiers"), and the IRSO (allegedly an "umbrella organization" used by Hezbollah to collect and disperse funds to support terrorism), involve SDGTs. Moreover, the Complaint fails to reveal the critical fact that the first two of these designations occurred in 2016 and 2018, five to seven years after the 2003-2011 attacks that form the basis of Plaintiffs' claims.[4] These allegations are, therefore, irrelevant to this case. With respect to the IRSO, the Complaint alleges only that it "owned" an account at JTB in 1986, AC ¶¶ 420, 1794, three years before it asserts the IRSO was established. AC ¶ 402. It alleges no facts supporting a plausible inference that JTB either provided, or

[3] Plaintiffs would distinguish *In re Terrorist Attacks* by claiming that the Complaint "*does* allege that Defendants provided money directly to Hezbollah," Plts Opp. at 62, but cannot cite such an allegation.

[4] *See* Press Release, U.S. Dep't of Treasury, May 17, 2018, *available at* https://home.treasury.gov/news/press-releases/sm0388 (announcing designation of Car Escort Services SAL Off Shore and Muhammed Ibrahim Bazzi); Press Release, U.S. Dep't of Treasury, Jan. 7, 2016, *available at* https://www.treasury.gov/press-center/press-releases/Pages/jl0317.aspx (announcing designation of Ali Youssef Charara and Spectrum Investment Group Holding SAL).

intended to provide, services that led directly to their injuries, were "a substantial factor in the sequence of responsible causation," and that those injuries were foreseeable. *See Rothstein v. UBS AG*, 708 F.3d 82, 91 (2d Cir. 2013) (quoting *Lerner v. Fleet Bank, N.A.*, 318 F.3d 113, 123 (2d Cir.), *cert. denied*, 540 U.S. 1012 (2003)).

Plaintiffs' other allegations fare no better. They do not allege when the accounts were in use, leading to pure speculation whether these even existed during the relevant 2003-2011 time period. Similarly, Plaintiffs' conclusory allegation that JTB provided additional "vital financial services," *see* AC ¶¶ 1793-1801, to these customers is unsupported by facts indicating what these services were, how and to what purpose they were provided, what, if any, transactions were involved, and how they may have caused Plaintiffs' injuries.

For example, there are no allegations showing on what basis New All Pharma was supposed to be part of a Hezbollah "network of pharmaceutical companies," AC ¶ 1798, and the only connection claimed for MEDIC is that it is "owned by Atlas Holding SAL—i.e., Martyrs Foundation-Lebanon." AC ¶ 1799. No claim is made as to when the account was opened and in use, or whether MEDIC itself existed during the relevant time period. With respect to the Mercury Development mortgage, there are no facts alleged showing when this loan was made, that JTB had any knowledge of the alleged Hezbollah connections of those who partially own or control the company, and how it supposedly caused Plaintiffs' injuries. AC ¶ 990. The Complaint provides no information regarding Musa Muhammad Ahmad, the one customer for whom a transaction is alleged. *See*, *supra*, p. 6. And, even if he did receive funds from businesses allegedly connected to Hezbollah, there are no allegations showing how these funds were "illicit," only Plaintiffs' conclusory assertion to that effect, or that the transaction caused their injuries. AC ¶¶ 868, 1800.

Thus, the Complaint is notable for its lack of factual support even attempting to tie JTB to Plaintiffs' injuries. It alleges no facts from which the Court could plausibly infer that the Bank's "services" to any of these customers met the statutory definition of "international terrorism," 18 U.S.C. § 2331(1), that they led directly to Plaintiffs' injuries, "were a substantial factor in the sequence of responsible causation" of those injuries, or that those injuries were "reasonably foreseeable or anticipated as a natural consequence" of those services. *See O'Sullivan v. Deutsche Bank AG*, No. 17 cv 8709-LTS-CWG, 2019 WL 1409446 at *5 (S.D.N.Y. Mar. 28, 2019) (quoting *Rothstein*, 708 F.3d 82 at). Plaintiffs' general, conclusory statements about JTB's alleged activities, pure speculation about its knowledge, and references to the "System" are no substitute for "well-pleaded facts" that "permit the court to infer more than the mere possibility of misconduct" required by *Twombly* and *Iqbal*. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009); *accord Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 557 (2007). Plaintiffs have not successfully pleaded primary ATA liability.

Plaintiffs' reliance on *Weiss*, 768 F.3d at 209 and *Boim v. Holy Land Found. for Relief and Dev.*, 549 F.3d 685 (7th Cir. 2008) is misplaced. *Weiss* held only that a defendant must know "it was providing material support to" an individual or group "engaged in terrorist activity" to plead scienter for a material support claim under 18 U.S.C. § 2339B(a)(1). 768 F.3d at 206, 208. And, in that case, there were specific transactions and instances alleged showing Bank personnel knew a customer was supporting Hamas. *Id.* at 205, 212. Plaintiffs here have not plausibly alleged that JTB knew that any of its customers were, at the time the services were provided, engaged in terrorist activities.

Boim simply concluded that direct and knowing donations of money to Hamas could support an ATA material support claim. *Linde*, 882 F.3d at 327 (also reaffirming that "providing

routine financial services to members and associates of terrorist organizations is not" comparable to giving a child a loaded gun (*Boim*'s analogy) and that offering such services "does not necessarily establish causation." (quoting *In re Terrorist Attacks*, 714 F.3d at 124)). There are no such allegations here.

2. Plaintiffs' Theories of "Secondary" Liability Also Fail

Aiding and abetting liability requires "more than the provision of material support to a designated terrorist *organization*." *Linde*, 882 F.3d at 329. "[T]he secondary actor [must] be 'aware' that, by assisting the principal, it is itself assuming a 'role' in terrorist activities." *Id.* And, plaintiffs must allege that this assistance proximately cause their harm. Despite Plaintiffs' contrary assertions, *see* Plts. Opp. at 51-52, their allegations do not approach the specific facts in *Linde*, which included evidence showing that the defendant bank had processed millions of dollars in transfers on behalf of specific "charities known to funnel money to Hamas," and "some [of the] bank transfers were explicitly identified as payments for suicide bombings." *Id.* at 321.

Most recently, the court dismissed an ATA complaint for failure to state a claim in *Honickman v. Blom Bank SAL*, No. 19-cv-00008 (KAM) (SMG), 2020 WL 224552 (E.D.N.Y. Jan. 14, 2020), a case on all fours with this one. The *Honickman* complaint contained conclusory allegations that the defendant bank aided and abetted Hamas by offering banking services to three customers allegedly connected to Hamas. *See id*. at *11-12. As in this case, Plaintiffs relied on claims that the relevant bank customers were part of a generalized "civil infrastructure," the "da'wa," that Hamas supposedly used "to compete for other organizations for support in the areas in which it operates." *Id.* at *2.

The court dismissed the complaint because plaintiffs had failed to allege non-conclusory and plausible facts showing that the bank was "aware that, by assisting the principal, it is itself assuming a role in terrorist activities." *Id.* at *7 (quoting *Linde*, 882 F.3d at 329). It specifically

noted that "[t]his is a higher mens rea than that sufficient to establish material support in violation of the ATA." *Id.* (citing *Linde*, 882 F.3d at 329-30). And, as in this case, it was a standard the *Honickman* plaintiffs failed to meet.

The *Honickman* court also relied on *Siegel v. HSBC N. Am. Holdings, Inc.*, 933 F.3d 217 (2d Cir. 2019) and *Kaplan v. Lebanese Canadian Bank, SAL*, 405 F. Supp. 3d 525 (E.D.N.Y 2019), which are especially apposite here. *Siegel* dismissed ATA claims, based on the provision of banking services to a Saudi bank ("ARB") allegedly linked to al-Qaeda in Iraq ("AQI"), against HSBC and other financial institutions. 933 F.3d at 222. Plaintiffs alleged HSBC engaged in numerous transactions with ARB and participated in a "scheme" to allow that bank to transfer millions of dollars through the United States to AQI and other terrorist groups. *Id.* at 221. They claimed that, by helping ARB to move these funds undetected through the U.S. system, HSBC had substantially assisted in the terrorist attacks that caused their injuries. *Id.*

Applying the *Halberstam v. Welch*, 705 F.2d 472 (D.C. Cir. 1983) analysis, *Siegel* reasoned that plaintiffs did not allege that "most or even many, of ARB's banking activities are linked to terrorists," or "offer any non-conclusory allegations that HSBC provided banking services for any transactions relating to the" relevant attacks. *Id.* at 224. In particular, plaintiffs "fail to advance any plausible, factual, non-conclusory allegations that HSBC knew or intended that those funds would be sent to AQI or to any other terrorist organization." *Id.* at 224-25.

Similarly, in *Kaplan* plaintiffs alleged that the bank aided and abetted Hezbollah by maintaining accounts for its leaders and subordinate entities, but offered no non-conclusory allegations that the bank "was aware that, by providing financial services to the subordinate

entities, it was playing a role in violent or life-threatening acts intended to intimidate or coerce civilians or affect a government." 405 F. Supp. 3d at 535.[5]

As in *Siegel* and *Kaplan*, Plaintiffs have not alleged facts showing that JTB encouraged attacks against Americans in Iraq, or knowingly "provided banking services for any transactions relating" to the attacks on U.S. personnel in Iraq, let alone "assumed a role" in Hezbollah's terrorist activities. *Siegel*, 933 F.3d at 222. Plaintiffs' conclusory claim that the Defendants here are "alleged to have knowingly provided substantial assistance directly to Hezbollah," Plts. Opp. at 53, is manifestly insufficient under any reading of *Iqbal* and *Twombly*.

Neither do Plaintiffs' allegations support the causation required for a substantial assistance finding. They do not even attempt to plead facts showing that JTB's claimed actions were either a "substantial factor" in the chain of causation leading to Plaintiffs' injuries, or that these injuries were reasonably foreseeable or a natural consequence of the banking services allegedly provided by JTB in this case. *See Freeman*, 2019 WL 4452364 at *10 (citing *Rothstein*, 708 F.3d at 91.

Neither *Miller v. Arab Bank, PLC*, 372 F. Supp. 3d 33 (E.D.N.Y. 2019) nor *Lelchook v. Iran*, 393 F. Supp. 3d 261 (E.D.N.Y. 2019) support Plaintiffs. *See* Plts. Opp. at 49. As *Honickman* explained, *Miller* involved detailed allegations that the bank intentionally "'administered a terrorist insurance scheme' for Hamas . . . and cited causes of death [as terrorists] identified on lists that the bank received as part of the alleged scheme." 2020 WL 224552, at *9. The *Lelchook* court entered a default based on plausible allegations that the

[5] As the *Honickman* court noted, the allegations in *Kaplan* were far more fulsome than in that case, and involved millions of dollars in transactions and accounts for Hezbollah leaders. *Id.* at *9, *12. Plaintiffs' only response to *Kaplan* is that it was wrongly decided. Plts. Opp. at 57.

"defendant bank knowingly and substantially supported Hizbollah's operations." *Id.* No allegations here support such findings against JTB.

3. Conspiracy

Plaintiffs also fail to allege facts showing JTB's participation in an ATA conspiracy, which at a minimum requires an agreement "to commit an act of international terrorism," "'an unlawful overt act performed by one of the parties to the agreement,'" and that the "'act was done pursuant to and in furtherance of the common scheme.'" *O'Sullivan*, 2019 WL 1409446, at *9 (quoting *Halberstam*, 705 F.2d at 477).

Plaintiffs claim that the "Complaint sets forth in detail how Defendants each agreed to work with Hezbollah" but again offer no citation. Plts. Opp. at 45. In fact, the Complaint does not allege facts showing that JTB agreed to work with Hezbollah, or that it worked with Hezbollah. Plaintiffs attempt to paper over these fundamental deficiencies with reference to the "System," but, the ATA requires that plaintiffs allege facts establishing that JTB "*directly* conspired with Hezbollah," not merely that Lebanon's business environment is dominated by a societal criminal network. *Freeman*, 2019 WL 445364 at *21. But, even if the System exists, the Complaint does not allege that JTB agreed to participate, beyond claims that it maintained accounts for various entities and individuals allegedly involved with Hezbollah and its proxies. Plaintiffs' claim that "Defendants all knowingly agreed to participate in The System and the criminal conspiracy it entails," AC ¶ 12, is a poster-child for the type of conclusory claims rejected by *Iqbal* and *Twombly*.[6]

[6] The same is true of Plaintiffs' allegation that JTB "purposefully and deliberately used its New York correspondent banks to 'clear' U.S. dollar-denominated transactions on Hezbollah's behalf on an ongoing and recurring basis . . . ." AC ¶ 289. The alleged "facts" on which this "agreement" and "substantial assistance" are based, even if accepted as true, amount to no more than that: (1) JTB engages in banking transactions, AC, ¶ 279; (2) a 2003 JTB Money Laundering Abatement Procedures Guide found "indicia" of money laundering, AC ¶ 284; (3) JTB maintains correspondent accounts in New York, AC ¶¶ 285,

Moreover, as in *Freeman* and *O'Sullivan*, JTB is not alleged to have provided banking services to Hezbollah itself, or any other entity responsible for Plaintiffs' injuries. Its alleged activities, limited and sporadic, are "so far removed from the acts of terrorism that injured Plaintiffs" that no "common goal of committing an act of international terrorism" can be inferred, and even if JTB knew about the "System," this does not demonstrate any agreement to participate. *O'Sullivan*, 2019 WL 1409446, at *9.

Plaintiffs' claim that *O'Sullivan* is inconsistent with Congress's purpose to give civil plaintiffs a broad basis of relief is misplaced. Plts. Opp. at 46-47. The *O'Sullivan* Court did not manufacture a "specific intent" requirement, but applied the statute's plain language, which creates liability only where the defendant has conspired "with the person who committed such an act of international terrorism." 18 U.S.C. § 2333(d)(2). *O'Sullivan* correctly interpreted this to require that "a defendant must have conspired to commit an act of international terrorism[,]" not merely assisted a terrorist organization. *O'Sullivan*, 2019 WL 1409446 at *9. Even if this were inconsistent with Congress's purpose, the plain meaning prevails. *Cf. Linde*, 882 F.3d at 326 (legislative history of JASTA "cannot alter [the] plain text").[7]

CONCLUSION

For all of the above reasons, including those in the incorporated Joint Reply, Defendant Jammal Trust Bank's Motion to Dismiss should be granted.

Dated: January 31, 2020

Respectfully submitted,

By: */s/ David B. Rivkin, Jr.*
David B. Rivkin, Jr.
Mark W. DeLaquil

288; and (4) JTB processed a single transfer of $35,000 in "illicit" funds to one of its customers from entities allegedly controlled by a man connected to Hezbollah, AC ¶¶ 862, 868, 1800.

[7] Neither does *Cain v. Twitter Inc.*, No. 17-cv-02506-JD, 2018 WL 4657275 (N.D. Cal. Sept. 24, 2018) support Plaintiffs. There, the court dismissed an ATA claim where Twitter's "terms of service" was asserted as the agreement. Here, Plaintiffs have not alleged facts supporting even so much as a terms of service agreement.

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