UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ROBERT BARTLETT, et al., Plaintiffs, -against- SOCIETE GENERALE DE BANQUE AU LIBAN SAL, et al., Defendants	No. 19-cv-0007 (CBA) (TAM)

REPLY MEMORANDUM OF LAW IN SUPPORT OF BANK OF BEIRUT SAL'S MOTION TO DISMISS THE SECOND AMENDED COMPLAINT

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Pursuant to this Court's orders dated July 6, 2021 and August 2, 2021 ("July 6 and August 2 Orders"), Bank of Beirut's moving brief ("Br.") showed that, as applied to the Court's discussion of Plaintiffs' allegations in its November 25, 2020 Order ("Order"), *Kaplan* and *Honickman* compel dismissal of Plaintiffs' aiding-and-abetting claims against the Bank. In their Opposition ("Opp."), Plaintiffs ignore or otherwise concede the crux of the Bank's showing, *i.e.*, that the SAC does not plausibly plead, as required under *Kaplan* and *Honickman*: (i) *when* the Alleged Migrated Customers became the Bank's customers, *or* (ii) *when* (if ever) the Bank became "aware" that any customers were Hezbollah-affiliated, *or* (iii) any specific transactions performed by the Bank that amounted to "substantial assistance" under the six-prong *Halberstam* standard. Instead, in their abbreviated 4-page response to Bank of Beirut's moving brief, Opp. at 23-27, Plaintiffs deviate from this Court's instruction in its July 6 and August 2 Orders by resorting to arguments that are not tethered to *Kaplan* or *Honickman*—and are meritless in any event.

Plaintiffs Do Not Plead "General Awareness." Under *Kaplan* and *Honickman*, Plaintiffs must plead the Bank's "awareness" of a customer's connection with the principal violator (assumed, only for purposes of this motion, to be Hezbollah), and importantly, must *also* plead the Bank possessed that awareness "before the relevant attacks." Br. at 2. In the Order, however, the Court determined that to satisfy their pleading burden, Plaintiffs relied on allegations showing that the Bank "*would have reason to know* of concerns with" accounts that the Alleged Migrated Customers moved from LCB. Order at *11 (emphasis added); *see also* Br. at 3-5. Under *Kaplan* and *Honickman*, these allegations are insufficient. First, as a matter of law, pleading that the Bank "had reason to know" of a customer's connection with Hezbollah does not rise to the level of pleading the Bank was "aware" of it. Br. at 3 n.6. And second, Plaintiffs fall far short of pleading the temporal component of the awareness element—*i.e.*, that the Bank had the requisite awareness "*before the relevant attacks*"—because Plaintiffs do not plausibly plead *any* of the following: (i) *when* each of the Alleged Migrated Customers opened their accounts at the Bank, *or* (ii) *when* (if

ever) the Bank learned that each of the Customers formerly had an account at LCB, *or* (iii) *when* (if ever) the Bank learned that the Customers' accounts at LCB were among the ones forcibly closed.[1] *Id.* at 2-4, 9. Plaintiffs do not and cannot dispute *any of the foregoing*, but instead raise a number of unavailing points that do not square with *Kaplan*, *Honickman*, or the Order.

First, in an attempt to avoid *Honickman*'s "threshold requirement" that a defendant be aware of its customer's affiliation with the principal violator "*before the relevant attacks*," Br. at 2, Plaintiffs argue that two of the Alleged Migrated Customers already maintained accounts with the Bank before the LCB scandal. Opp. at 20-21, 24-25 (referencing Galaxy Flame Trading and Leaders of Supply & Products). But this argument is not consistent with the SAC or the Court's Order,[2] and in any event, it misses the point—even if it were true, Plaintiffs still would fail to satisfy *Honickman*'s temporal requirement because the SAC fails to plead (i) *when* (if ever) the Bank learned that those two Customers had accounts at LCB, *or* (ii) *when* (if ever) the Bank learned that the Customers' accounts at LCB were among the ones forcibly closed.[3] The SAC does not *otherwise* plead (nor does the Opposition argue) that the Bank was "aware," during the relevant period, that either of these Customers was Hezbollah-affiliated. [4]

Second, Plaintiffs raise allegations and arguments regarding Youssef Tajideen (who was one of the Alleged Migrated Customers), but none of them matter, because none change the effect of *Honickman* on the Court's Order—dismissal is required because even as to him, the SAC does

[1] Plaintiffs do not dispute that the Bank could not have learned of the Lebanese government's findings about the migration of forcibly closed LCB accounts until 2012—*i.e.*, after the last attack at issue in 2011. *See* Br. at 4 & n.7.

[2] *See, e.g.*, SAC ¶ 105 (Galaxy Flame Trading was a "key (Hezbollah / BAC) account [that] migrated to [the Bank] in 2011-2012"), ¶ 1796; *see also* Order at *11 (the Bank "took over" migrated customers' accounts "after" closure at LCB, and citing to paragraphs of First Amended Complaint that refer to all five Alleged Migrated Customers).

[3] Plaintiffs also argue that "the banks' compliance and 'know-you-customer' procedures were a sham" and that "Defendants were willing participants in the BAC's effort to redistribute its assets even after LCB was sanctioned." Opp. at 21 (emphasis omitted). Not only is this argument not tethered to *Kaplan* and *Honickman*, but Plaintiffs do not refute that they have not pleaded facts that Bank of Beirut *knew* (much less *how* the Bank would have known, *see, e.g.*, *supra* at n.1) that the Alleged Migrated Customers had LCB accounts or which subset of LCB's customers were potentially problematic. Br. at 3-4. No inference can be drawn that the Bank's compliance was a "sham" or that it was a "willing participant," and therefore had general awareness, unless the Bank had some way of being "aware of the [c]ustomers connections" before the relevant attacks. *Id.* at 2. Plaintiffs have pleaded no such facts.

[4] Although Galaxy Flame Trading was allegedly a company controlled by the Tajideen family, the SAC and likewise Plaintiffs' Opposition *never assert* that the Bank was ever "aware"—much less aware before the last attack at issue—that Galaxy Flame Trading was controlled by the Tajideens, let alone Hezbollah-affiliated.

not plead when his account was opened at the Bank, or whether the Bank was "aware" of his alleged Hezbollah-affiliation *before the last attack*. Plaintiffs do not explain how these fatal omissions are cured by Plaintiffs' conclusory, group allegation that *all* "Defendants" were aware that the entire Tajideen family (and therefore Youssef Tajideen) were Hezbollah-affiliated. Plaintiffs grasp at straws in attempting to square that allegation with the indisputable fact that the U.S. government classified only *three* Tajideens as SDGTs, whereas the size of the Tajideen family is clearly very large (since in one branch of the family alone, there were 11 adult siblings).[5] Br. at 5-6 & n.9. Plaintiffs also do not dispute that their allegation about "Defendants'" knowledge of the Tajideens being "synonymous with-Hezbollah" is improper group pleading.[6] *Id.* at 5.

Third, Plaintiffs attempt to prop up their allegations by pointing to the allegation in the SAC that "according to published reports, Muhammad Abdullatif Abboud, a branch manager at [the Bank] served as a facilitator and coordinator for Hezbollah inside the bank." SAC ¶ 1800. But as with a number of other points raised in the Opposition, Plaintiffs make no effort to explain what the allegation regarding the Bank's alleged manager has to do with *Kaplan* or *Honickman*, or the effect of those decisions on the Order. In fact, this allegation runs afoul of the temporal requirement in *Honickman*, *see supra* at 1-2, because Plaintiffs do not allege *when* the individual in question was branch manager. Indeed, the SAC does not even assert that he was branch manager at *any* point during the period the attacks at issue took place.[7]

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[5] Plaintiffs note that the government's vague reference in a designation announcement to certain Tajideen "brothers" could refer to Youssef Tajideen. Opp. at 25. But this is sheer speculation—especially considering that two additional Tajideen brothers were designated soon afterwards, and none have been designated since (*see* Br. at 6 n.9)—and it is hardly a well-pleaded allegation that the Bank, during the relevant period, was actually "aware" that Youssef was Hezbollah-affiliated. Plaintiffs likewise introduce newly-minted, exceedingly strained arguments about a U.N. Report, and supposed connection between Youssef and Nazim Ahmad (Opp. at 25), but do not (and cannot) show that the Bank's "general awareness" is thereby established under *Kaplan* and *Honickman*. *See* Joint Reply at 4-5 & n.6.

[6] In addition, Plaintiffs are silent on the source of the statement that the Tajideens are "synonymous" with Hezbollah. Even if such a source exists, Plaintiffs' silence is fatal under *Kaplan*, which requires at least some detailed allegations about such a source, as the moving brief showed and Plaintiffs do not dispute. Br. at 5-6. In an apparent effort to avoid the effect of *Kaplan*, Plaintiffs' Opposition appears to acknowledge that there was actually no source for the alleged statement that "the Tajideens were . . . synonymous with Hezbollah" of which Defendants were supposedly aware. Rather, Plaintiffs effectively acknowledge this assertion was their own opinion or conclusion drawn from disparate alleged facts scattered throughout the SAC. Opp. at 25 ("the SAC provides many such examples"). Plaintiffs do not plausibly plead Bank of Beirut was "aware" of all those alleged facts, much less reached the conclusion alleged.

[7] There is an independent reason this allegation should be afforded no weight. Plaintiffs preface this allegation with the words "according to published reports," but provide no information about the identity of the sources that allegedly

Fourth, and finally, Plaintiffs also introduce new allegations not reflected in the Order—arguing that the SAC identifies additional customers of the Bank beyond the Alleged Migrated Customers. *See* Opp. at 25-26; *see also* Opp. at 11 n.8, 24 n.17. But the Court did not attach weight to these additional customers as part of its analysis in the Order, *see* Order at *11, and therefore they are not relevant to the task at hand—determining the "effect" of *Kaplan* and *Honickman* "on the Court's Order." *See* July 6 and August 2 Orders. Moreover, *Honickman*'s emphasis on the requirement to plead general awareness "before the relevant attacks" only strengthens the Court's prior decision to discount these allegations because they are missing this temporal component. Br. at 2. Plaintiffs do not plead factual allegations for *any* of these customers that, before the last attack in 2011, the Bank would have been aware of affiliations to Hezbollah based on their designation or otherwise.[8] Further, Plaintiffs do not plead any information regarding *when* they became customers of the Bank, let alone that they became customers *before* the attacks.[9] The Court's analysis in its Order correctly reflects this, and Plaintiffs' attempt to relitigate the relevance of these alleged customers is not sufficient to avoid dismissal.

Plaintiffs Do Not Plead "Substantial Assistance." Bank of Beirut's showing in its moving brief that Plaintiffs fail to plead "substantial assistance"—a showing that Plaintiffs do not meaningfully dispute—is an independent basis for dismissal. Br. at 6-10. Thus, for example, even if Plaintiffs had adequately pleaded the Bank was "aware" that Youssef Tajideen was Hezbollah-affiliated, Plaintiffs' claims against the Bank still would fail, because Plaintiffs do not dispute the

"published" the "reports" at issue, or *when* or *where* the reports were supposedly published. Plaintiffs also provide only a single bare sentence about what the "reports" supposedly said about the Bank. As a matter of law, Plaintiffs' unidentified sources in these circumstances cannot be credited, given the absence of allegations that "are sufficiently particular and detailed to indicate their reliability." *In re Sibanye Gold Ltd. Sec. Litig.*, 2020 WL 6582326, at *16-17 (E.D.N.Y. Nov. 10, 2020); *see also, e.g.*, *In re McKesson HBOC, Inc. Sec. Litig.*, 126 F. Supp. 2d 1248, 1272 (N.D. Cal. 2000) (same).

[8] SAC ¶ 1107 (Halawi Exchange was not designated a foreign financial institution of primary money laundering concern until 2013), ¶¶ 1210, 1217 (Mustafa Fawaz was not arrested until 2013, nor designated until 2015), ¶¶ 672, 677 (the majority shareholder of Compu House SARL was not designated until 2020), ¶¶ 640, 654 (Adham Tabaja, who was allegedly affiliated with Trust Compass Insurance, was not designated until 2015), ¶¶ 1053, 1303 (the auditor of Interafrica Trading Company was not designated until 2018), ¶¶ 548, 1790 (Medical Equipments and Drugs International Corporation SAL was not established until 2013).

[9] SAC ¶¶ 1785-88, 1790, 1792-94.

Bank's showing that Plaintiffs do not plead a single specific transaction performed for Youssef Tajideen after his account was allegedly transferred, much less that the Bank gave him "substantial" assistance before the last attack on November 14, 2011. Nor do Plaintiffs show that under *Kaplan* and *Honickman*, a plaintiff can adequately plead "substantial assistance" by simply alleging (as the SAC does with all the Alleged Migrated Customers, including Youssef Tajideen) that the bank *opened* accounts for customers that gave them *access* to routine banking services, but not alleging *what* services (if any) were actually provided,[10] and whether they were during the relevant period before the last attack at issue.[11] If substantial assistance could be pleaded in this manner, it would strip all meaning from *Kaplan*'s careful delineation between, and emphasis on, the "qualitative" and "quantitative" aspects of substantial assistance. *See* Br. at 6-7.

Plaintiffs also offer no response to (i) the Bank's showing as to how *Kaplan* construed the six *Halberstam* factors, including *Kaplan*'s emphasis on the durational dimension of those factors (Br. at 9), or (ii) the Bank's showing that under *Kaplan*, at least five of six *Halberstam* factors cut against Plaintiffs. *Id.* at 9-10.

CONCLUSION

Bank of Beirut respectfully requests that the Court dismiss with prejudice all Plaintiffs' aiding-and-abetting claims against the Bank. In the alternative, the Court should dismiss the aiding-and-abetting claims against Bank of Beirut of all Plaintiffs whose claims arise from injuries that occurred between January 12, 2004 and September 1, 2010.

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[10] Plaintiffs do not dispute that the SAC alleges no specific transaction performed by the Bank for Youssef Tajideen or any other Alleged Migrated Customer after their accounts allegedly "migrated" from LCB. Plaintiffs do not allege any other specific transaction performed by the Bank for any other Bank customers, except for one solitary transaction. SAC ¶ 1791. The Bank showed that, for several reasons, this one alleged transaction does not plead substantial assistance. Br. at 8 & n.12. Plaintiffs do not refute that showing; but wrongly suggest the Bank did not make it. Opp. at 25.

[11] Plaintiffs also make the new argument, which has no connection to the holdings of either *Kaplan* or *Honickman*, that the alleged migration of accounts from LCB to the Bank is not simply the opening of an account but is a "financial transaction[]" because the "account *balances* migrated." Opp. at 24 n.17 (emphasis in original). But the SAC nowhere alleges *when* any such transfers took place (and/or whether it was before the last attack at issue). *See supra* at 2. Moreover, Plaintiffs do not cite a solitary case holding that a bank's receipt of a transferred balance (of an unstated amount) from a customer's account at one bank (*e.g.*, LCB) to the *same* customer's account at the receiving bank (*e.g.*, Bank of Beirut) can constitute "substantial assistance" by the receiving bank to a principal violator. *See* Br. at 6.

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Respectfully submitted,

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