UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ROBERT BARTLETT, *et al.*,

Plaintiffs,

v.

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

Defendants.

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

REPLY MEMORANDUM IN SUPPORT OF DEFENDANT JAMMAL TRUST BANK'S MOTION TO DISMISS IN LIGHT OF RECENT SECOND CIRCUIT AUTHORITY

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Plaintiffs' prolific use of bold and italic typeface in their brief ("Opp.") cannot cure the failure of the Second Amended Complaint ("SAC") to establish aiding-and-abetting or conspiracy liability under *Kaplan v. Lebanese Canadian Bank, SAL*, 999 F.3d 842 (2d Cir. 2021), and *Honickman v. BLOM Bank SAL*, 6 F.4th 487 (2d Cir. 2021). JTB's motion should be granted.

I. ARGUMENT

A. Aiding-and-Abetting

Plaintiffs concede (at 27) that JTB's brief "correctly states the applicable legal standard" governing Count II, but they fail to confront it. There are two elements for the general-awareness prong in a case like this: "the complaint must plausibly allege: (1) as a threshold requirement, that [the] Bank was aware of the . . . Customers' connections with [Hizbollah] before the relevant attacks; and (2) the . . . Customers were so closely intertwined with [Hizbollah's] violent terrorist activities that one can reasonably infer [the] Bank was generally aware of its role in unlawful activities from which the attacks were foreseeable while it was providing financial services to the . . . Customers." *Honickman*, 6 F.4th at 501 (citing *Kaplan*, 999 F.3d at 860). Plaintiffs do not address either element or compare their allegations to those found sufficient in *Kaplan* and those found insufficient in *Honickman*. Indeed, one would never guess from their brief that the complaint in *Honickman* was dismissed. Instead, Plaintiffs point unpersuasively to three general categories of allegations concerning JTB.

JTB's SDGT Designation. Plaintiffs rely predominantly on JTB's designation as an SDGT, but JTB did not (as Plaintiffs claim) "studiously avoid addressing its own designation as an SDGT." Opp. 27. A footnote was more than sufficient to address the designation because the Court already decided the issue in JTB's favor, ECF No. 164 at 6 n.1, as JTB explained (at 8 n.5). Yet Plaintiffs ignore this holding, even while their brief repeatedly invokes the law-of-the-case

doctrine, *see, e.g.*, Opp. 1, 3, 12, 29-30. Besides, the Court was correct in affording the designation "relative insignificance . . . given its occurring years after the Attacks." ECF No. 164 at 6 n.1. *Honickman* confirmed that a complaint must allege a bank's awareness of customers' "connections with [Hizbollah] *before* the relevant attacks." 6 F.4th at 501 (emphasis added). Timing is all-important. *See also id.* at 502 (rejecting allegations against defendant because, e.g., they did not involve "public knowledge during the relevant time period" and occurred "after the relevant time period"). A 2019 designation does not establish general awareness in 2004 or 2011.

Plaintiffs quote the OFAC press release's reference to "deep coordination" involving JTB dating "back to at least the mid-2000s." Opp. 28 (quoting SAC ¶ 1826) (emphasis omitted). But the Court knew that the first time it ruled on this question, *see* ECF No. 142-2, and the complaint "does not supply facts" to support this conclusory assertion. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007). OFAC's press release does not substantiate its conclusion about JTB with sufficient factual content or identify the time periods covered by the content it does provide. Nor need it have done so. As JTB has explained (ECF No. 135 at 1-2), OFAC is subject to no judicially manageable standards in designating SDGTs, which is a political matter, not a legal matter. Plaintiffs cannot evade the *Twombly/Iqbal* pleading standard through a government document that does not satisfy that standard. Plaintiffs (at 27) draw a false analogy to *Kaplan*'s reliance on a "verified amended complaint filed by the United States in a civil forfeiture action," *Kaplan*, 999 F.3d at 848, which satisfied the governing pleading standard, *see id.* at 866. Not so here.

Other Designations. Plaintiffs rely on SDGT designations of two alleged JTB customers, Atlas Holding and IRSO, but these lack significance. Plaintiffs misconstrue *Weiss v. National Westminster Bank, PLC.*, 993 F.3d 144 (2d Cir. 2021), which rejected allegations against a bank (called NatWest) despite its services to an SDGT (called Interpal), because the proposed amended

complaint did not establish knowledge on the part of NatWest of any "terroristic purpose" on the part of Interpal. *Id.* at 166-67. Plaintiffs inaccurately respond that *Weiss* "only not[ed] that the bank's customer [Interpal] was *eventually* designated," Opp. 29, but Interpal was designated in "August 2003," the attacks occurred "in 2001-2004," and NatWest served Interpal at relevant times. 993 F.3d at 151-52. Yet the Second Circuit affirmed denial of leave to amend on futility grounds. *Id.* at 166-67. The designation was plainly insufficient. And, even if *Weiss* had involved an entity that "was *eventually* designated," that equally covers Atlas Holding, which was designated in 2020.

Plaintiffs also confuse *Kaplan*'s treatment of SDGT designations. True, *Kaplan* deemed an SDGT designation not to be a "prerequisite for knowledge," 999 F.3d at 864, but JTB never argued otherwise. (JTB argued that "*Kaplan* deemed this type of designation unnecessary." Mot. 8 n.4.) Plaintiffs' trickery (*e.g.*, at 29) in suggesting *Kaplan* went further and deemed an SDGT designation the basis for general awareness is the opposite of *Kaplan*'s assertion that "it would defy common sense to hold that such knowledge could be gained in no *other* way." 999 F.3d at 864 (emphasis added). That means by evidence aside from an SGDT designation. *Kaplan* then looked to allegations of publicity surrounding affiliations of the customers of the defendant bank with Hizbollah. *Id. Honickman* confirmed that it was "the detailed, numerous sources [of publicity] that sufficed in *Kaplan*." 6 F.4th at 502. The SGDT designations did not move the needle.

Other Sources. Plaintiffs' vague allegations attempting to establish "that [the] Bank was aware of the . . . Customers' connections with [Hizbollah] before the relevant attacks" fail to meet *Kaplan*'s independent requirement of allegations that "the . . . Customers were so closely intertwined with [Hizbollah's] violent terrorist activities that one can reasonably infer [the] Bank was generally aware of its role in unlawful activities." *Honickman*, 6 F.4th at 501. For example,

Plaintiffs' discussion of "the IJO's BAC," Opp. 28, suffers from this deficiency. Plaintiffs strive to establish that "***most*** of the 200-plus alleged customers identified in the SAC [for all Defendants] belong to the BAC—the fundraising apparatus of Hezbollah's Islamic Jihad Organization." Opp. 10. But that is not the threshold question. It, rather, is whether "the public sources cited in the complaint . . . plausibly support an inference that [JTB] had the requisite general awareness at the time that it provided banking services to" the eight customers identified as JTB's in the complaint. *Honickman*, 6 F.4th at 501. Plaintiffs neither acknowledge nor meet this standard.

Plaintiffs' allegations concerning Atlas Holding and IRSO fail for similar reasons. A single 2016 public tie between IRSO and Hezbollah, SAC ¶ 407, falls short under *Honickman* and *Kaplan*, which signal that the gold pleading standard is "statements" by the FTO "in a particular time period" from a "specific" "speaker" within the FTO under specific "circumstances" and through "specific media." *Kaplan*, 999 F.3d at 864. Plaintiffs cite nothing like that. What they do cite is inaccurate and insufficient. The SAC does not allege "Hezbollah's IRSO website," Opp. 29, but rather that "IRSO . . . maintains the website www.moqawama.org, one of Hezbollah's official media organs," SAC ¶ 413—leaving IRSO's role ambiguous (is it publicized broadly that IRSO maintains the site?). The SAC does not allege IRSO's "advertising on Hezbollah's television station," Opp. 29, but rather that "Hezbollah used its television station . . . to raise money through the IRSO in support of Hezbollah's terror campaign . . . ," SAC ¶ 425—which is hardly comprehensible (what does it mean for Hizbollah to raise money on its own station to support its own terror campaign "*through* the IRSO"?). Plaintiffs cite the SAC paragraphs 529-32 for the proposition that "Atlas Holding was openly registered in Lebanon as a subsidiary of the Martyrs Foundation and lists its prominent, registered Hezbollah board members." Opp. 28. But those paragraphs do not say this. SAC ¶¶ 529-32. They do not allege an "openly registered" subsidiary or what that

means, and the only reference to publicity is that the Martyrs Foundation-Lebanon "publicly advertises the affiliation" with Atlas Holding. SAC ¶ 530. That "pale[s] in comparison to the detailed, numerous sources that sufficed in *Kaplan*." *Honickman*, 6 F.4th at 502. Plaintiffs are therefore reduced to the theory that banking with an entity having the word "resistance" in its title is aiding-and-abetting terrorism *per se*. They have no authority for that odd rule.

Knowing Substantial Support. Plaintiffs have no response to JTB's argument (at 8-9), that the SAC fails to allege "substantial support," such as how large the accounts of the eight alleged Hizbollah-related customers were or, qualitatively, what use they served.

B. Conspiracy

Plaintiff's contention that "*Kaplan* did not address JASTA conspiracy claims" (Opp. 29) is wrong. In fact, Kaplan contrasted at length such claims with aiding-and-abetting claims. *See* 999 F.3d at 855-56. This was not a "boilerplate" recitation of the conspiracy standard, Opp. 29, but rather a key component of the *ratio decidendi* essential to *Kaplan*'s holding that aiding-and-abetting claims may be made "directly or indirectly," *id.* at 855 (citation omitted), whereas conspiracy must be "with the principal," *id.* (quotation marks and citation omitted). Plaintiffs' effort to recast conspiracy as embracing indirect claims, Opp. 30 & n.20, fails under *Kaplan*. It also conflates conspiracy through an intermediary—such as by communicating through a chain of persons—with conspiracy merely by aiding a person who, in turn, aids a terrorist organization. The SAC does not allege an intermediary relationship. And Plaintiffs' invocation of the law-of-the-case doctrine falls flat, when the Court previously declined to rule on Plaintiffs' conspiracy claim. *See* ECF No. 32 at 16.

II. CONCLUSION

All Counts against JTB should be dismissed.

Dated: August 9, 2021

Respectfully submitted,

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

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