

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-00007 (CBA) (TAM)

**JOINT REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF MOVING
DEFENDANTS' MOTION TO DISMISS THE SECOND AMENDED COMPLAINT**

Plaintiffs' Opposition Memorandum ("Pls.' Opp.") does not identify any allegations that cure the SAC's core defect: the SAC does not allege that any Moving Defendant conspired with the "person who committed" the Attacks (*i.e.*, Iraqi militias), or aided and abetted the "principal violation" (*i.e.*, terrorist attacks by Iraqi militias). Plaintiffs' bogus contentions that they need show only a conspiracy with Hezbollah, or the aiding and abetting of Hezbollah's terrorist acts, do not help them because their claims fail even under that erroneous reading of JASTA.

The SAC does not allege that any Moving Defendant conspired with Iraqi militias or Hezbollah to commit an act of international terrorism. JASTA creates a conspiracy cause of action against a defendant "who conspires *with the person who committed* such an act of international terrorism." 18 U.S.C. § 2333(d)(2) (emphasis added).¹ Implicitly conceding that the SAC does not allege a conspiracy with Iraqi militias, Plaintiffs pretend that this Court has held that Hezbollah "committed" the Attacks. Pls.' Opp. at 29–30. But this Court did not rule upon Plaintiffs' conspiracy claim, Op. at *16 n.16, and has held only that the Attacks were "committed, planned *or* authorized by Hezbollah," *id.* at *8 (emphasis added), a separate JASTA prerequisite that applies to both conspiracy and aiding-and-abetting claims. The Court's ruling that Hezbollah had "involvement in the Attacks," *id.*, does not meet the specific—and narrower—requirement that Hezbollah *committed* them. The SAC's own allegations establish that the Attacks were committed by Iraqi militias, not by Hezbollah.²

Nor does the SAC allege an actionable conspiracy with Hezbollah, for Plaintiffs claim that Moving Defendants agreed only "to launder money and fund Hezbollah," not that Hezbollah would commit terrorist attacks. Pls.' Opp. at 30; *see* SAC ¶¶ 1546, 1578, 1659, 1777, 1800,

¹ Plaintiffs rely upon *United States v. Bicaksiz*, 194 F.3d 390, 399 (2d Cir. 1999) to contend that this requirement is satisfied by an agreement with a co-conspirator or third-party. Opp. at 30 n.20. But the "murder for hire" statute at issue in *Bicaksiz*, 18 U.S.C. § 1958, like the general criminal conspiracy statute, 18 U.S.C. § 371, does not require a conspiracy "with the person who committed" the principal violation, as JASTA does. JASTA's more specific text precludes reliance on *Bicaksiz*'s "indirect" conspiracy theory.

² *See, e.g.*, SAC ¶¶ 2088, 2103, 2111, 2126, 2132, 2142, 2148, 2160, 2170, 2179, 2200, 2212, 2222, 2234, 2240, 2248-49, 2256-57, 2265, 2271, 2280, 2290, 2295, 2304, 2320, 2329, 2335, 2346, 2356, 2366, 2379, 2385. The SAC's bare conclusion that Hezbollah "agents" perpetrated the Attacks is not supported by *factual* allegations.

1804, 1841 (alleging some Moving Defendant employees facilitated money laundering for Hezbollah “inside” their banks). The former is not actionable under JASTA. *See* ECF No. 139-1 at 47–48; ECF No. 140 at 22–23; *see also Gonzalez v. Google LLC*, 2 F.4th 871, 907 (9th Cir. 2021) (sharing revenues with ISIS does not state JASTA conspiracy); *O’Sullivan v. Deutsche Bank AG*, No. 17 CV 8709-LTS-GWG, 2020 WL 906153, at *6 (S.D.N.Y. Feb. 25, 2020) (facilitating transactions for state sponsor of terrorism does not state JASTA conspiracy).

The SAC does not allege that any Moving Defendant aided and abetted acts of international terrorism by Iraqi militias. The first element of a JASTA aiding-and-abetting claim requires Plaintiffs to plead that “the party whom the defendant aids must perform a wrongful act that causes an injury.” *Honickman v. BLOM Bank SAL*, 6 F.4th 487, 495 (2d Cir. 2021) (quoting *Halberstam v. Welch*, 705 F.2d 472, 477 (D.C. Cir. 1983)). As the Second Circuit explained in *Honickman*, this element “is satisfied when the party whom the defendant directly or indirectly aided performed the injury-causing act.” *Id.* In this case, since the parties who “performed the injury-causing act” are Iraqi militias, the assessment of *Halberstam*’s “general awareness” and “substantial assistance” elements must be performed with respect to terrorist acts by Iraqi militias, not terrorist acts by Hezbollah.

The SAC does not come close to alleging that the Moving Defendants aided and abetted Iraqi militias. Plaintiffs do not point to any allegation in the SAC identifying (i) a public source (ii) published at the relevant time that (iii) links Hezbollah or the alleged customers to acts of international terrorism by Iraqi militias, as required to show both “general awareness” of a role in the Iraqi militias’ acts and “actual knowledge” that a Moving Defendant indirectly assisted such acts. As a result, the SAC offers no basis to conclude that “the act that caused the plaintiff’s injury was *foreseeable*,” as required by both *Honickman*, 6 F.4th at 496 (emphasis in original), and *Kaplan v. Lebanese Canadian Bank, SAL*, 999 F.3d 842, 860 (2d Cir. 2021). Plaintiffs’ insistence that they need not allege Moving Defendants’ awareness of roles in “specific attacks,”

Pls.’ Opp. at 9, is futile because the SAC does not provide a basis to foresee that *any* attack by an Iraqi militia might result from providing financial services to alleged customers in Lebanon.

The SAC does not allege that any Moving Defendant aided and abetted acts of international terrorism by Hezbollah. Even if Hezbollah properly could be considered the perpetrator of the principal violation under *Halberstam*, the SAC would still fail to state an aiding-and-abetting claim against any Moving Defendant. Most critically, the SAC does not allege that any Moving Defendant was “generally aware” of a customer’s alleged link to Hezbollah at the time banking services were provided to it, as *Honickman* requires. Plaintiffs expressly concede that the SAC identifies only some “SDGTs with accounts at Defendant banks *before* they were designated.”³ Pls.’ Opp at 22. Without any factual support, Plaintiffs urge that it is “plausible” to infer that the Moving Defendants continued to maintain such accounts *after* designation because some of them allegedly maintained accounts for entities that were “‘openly affiliated’ with the Martyrs’ Foundation after the latter was designated” as an SDGT.⁴ *Id.* at 15. But a customer’s purported link to an SDGT is not enough to create an inference that the customer is linked to an FTO such as Hezbollah. The Second Circuit rejected the “commutative property” ploy of linking a customer to an FTO by virtue of its connection to an SDGT that raises funds for an FTO when it was advanced by the *Honickman* plaintiffs. There, the court held that “[w]ithout any further allegations, a defendant-bank’s transfers of funds from non-customers associated with an FTO to the defendant’s customers does not compel an inference that the defendant knew of its customers’ connections to that FTO.” *Honickman*, 6 F.4th at 502 n.20. If a customer’s receipt of funds from an SDGT is not enough to generate an inference of the

³ Notably, *none* of the customers purportedly involved in Hezbollah’s “weapons trafficking business,” Pls.’ Opp at 10, was designated as an SDGT before the last Attack; only one was designated afterwards. *See* SAC ¶ 761.

⁴ The sole example given, at SAC ¶¶ 1130–35, is of an account that allegedly migrated from LCB to BLOM on an undetermined date. Plaintiffs also contend that certain Moving Defendants “continued to service Hezbollah’s designated narcotics traffickers after they were designated.” Pls.’ Opp. at 15 (citing SAC ¶¶ 1130–35). But those designations were for narcotics trafficking, not for supporting FTOs, and do not link the alleged customers to Hezbollah. *See* U.S. Treas. Counter-narcotics Designations (Jan. 26, 2011), available at <https://bit.ly/38yTz0r>, and accompanying U.S. Treas. Press Release (Jan. 26, 2011), available at <https://bit.ly/3gZtD2N>.

customer's connection to an FTO, then *a fortiori*, the commercial affiliations identified by Plaintiffs are insufficient as well.

Plaintiffs' other self-selected "notice events," Pls.' Opp. at 16, do not shore up their case for general awareness.

1. Plaintiffs double down on their distortion of an *NBC News* report about an alleged account at BLF, which (as noted in the report) BLF had already closed, by contending that BLF had "previously maintain[ed]" the account even though it was linked to Hezbollah "on Lebanese television during the relevant time period." Pls.' Opp. at 17. In fact, the article states that BLF was *not* mentioned in the television ad, and that the ad had aired only in the "last week" before *NBC News* reported the account's closure. ECF No. 209-03 at 3, 5.

2. Confronted with direct proof that the SAC falsely alleges that a seizure warrant served upon a correspondent bank of Bank Audi "expressly state[d]" that a Bank Audi customer had been charged with providing material support to Hezbollah, SAC ¶ 1206, Plaintiffs now contend that the warrant "proves" that "Bank Audi held an account for a Hezbollah arms dealer." Pls.' Opp. at 17. In fact, the warrant says nothing about Hezbollah. ECF No. 209-04.

3. While Plaintiffs assert that Israeli airstrikes on MEAB and Fransabank allow an inference that those banks "assist[ed] a terrorist organization," Pls.' Opp. at 18, they do not claim the airstrikes show that any customer named in the SAC was publicly linked to Hezbollah.⁵

4. The SAC does not allege that any Moving Defendant would have reason to be aware that Hezbollah was mentioned in a 2002 U.N. Security Council report⁶ on the exploitation of natural resources in the Congo (SAC ¶ 832) or a 2003 report on African diamond trading issued

⁵ The allegation that Fransabank provided undefined banking services—which are not alleged to be related to Hezbollah or any other illicit activity—to MEAB's former chair, SAC ¶ 1536, does not support "general awareness" as he was not publicly linked to Hezbollah until 2015. SAC ¶ 167. Nor is it alleged that a "fundraising appeal" preceding the airstrike resulted in the transfer of funds to MEAB, or MEAB's transfer of funds to Hezbollah.

⁶ The lengthy report mentions Hezbollah only once. Final Rep. of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of the Congo (2002), ¶ 34, U.N. Doc. S/2002/1146 (Oct. 16, 2002).

by a British NGO (SAC ¶ 821). *See* Pls.’ Opp. at 16 n.13. The SAC does not allege that either reference was publicized by the media. *Honickman* distinguishes between such “publicly available” information and “public sources such as media articles.” 6 F.4th at 502 n.18. “General awareness” cannot be founded upon “publicly available” information because it “requires the implausible inference that the defendant was aware of those facts before the news media.” *Id.*

5. Plaintiffs’ unfounded claims about migrated LCB accounts are refuted in Bank of Beirut’s reply brief, which is incorporated by reference.

The other so-called “notice events” cited by Plaintiffs are even weaker. Plaintiffs urge that IRSO’s connection to Hezbollah was discernible because IRSO “aired commercials on *Al-Manar* television,” but this fact is meaningless unless *Al-Manar* aired commercials exclusively for Hezbollah affiliates, which Plaintiffs do not contend. Pls.’ Opp. at 16 n.13. Their observation that a “business partner” of one alleged customer “ran for a seat in a Hezbollah-supported list in the Lebanese elections of 2004,” *id.*, both (i) assumes that Moving Defendants were aware of the identity of their customers’ “business partners,” and (ii) improperly relies upon the commutative theory of linkage to an FTO that the Second Circuit rejected in *Honickman*. The only “public source” identified by Plaintiffs is a 2002 article describing the work of the Wounded Association. *Id.* Notwithstanding its “open” affiliation with Hezbollah, the Wounded Association has *never* been designated as an SDGT and the SAC does not allege that it was “closely intertwined” with Hezbollah’s terrorist activities. As in *Honickman*, “there is a meaningful difference between the alleged functions of” charities such as the Wounded Association and “those of the customers in *Kaplan*.” *Honickman*, 6 F.4 at 503 n.21.

Honickman shows that the SAC’s “strongest” allegations, Op. at *1, fail to state a JASTA aiding-and-abetting claim. Plaintiffs’ 30-page brief eschews the specific and individualized *mens rea* pleading required by JASTA in favor of a generalized (and legally improper) theory of guilt by association. All claims against the Moving Defendants should be dismissed.

Respectfully submitted,

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