

No. 23-1259

IN THE
Supreme Court of the United States

BLOM BANK SAL,

Petitioner,

v.

MICHAL HONICKMAN, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SECOND CIRCUIT

JOINT APPENDIX
Volume 1 of 2 (Pages 1a to 256a)

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**APPENDIX A — RESPONDENTS' COMPLAINT
IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NEW YORK, AND
EXHIBITS, FILED JANUARY 1, 2019**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

19-cv-8

MICHAL HONICKMAN FOR THE ESTATE OF
HOWARD GOLDSTEIN, MICHAL HONICKMAN,
EUGENE GOLDSTEIN, LORRAINE GOLDSTEIN,
RICHARD GOLDSTEIN, BARBARA GOLDSTEIN
INGARDIA, MICHAEL GOLDSTEIN, CHANA
FREEDMAN, DAVID GOLDSTEIN, MOSES
STRAUSS, PHILIP STRAUSS, BLUMA STRAUSS,
AHRON STRAUSS, ROISIE ENGELMAN, JOSEPH
STRAUSS, TZVI WEISS, LEIB WEISS, LEIB
WEISS FOR THE ESTATE OF MALKA WEISS,
YITZCHAK WEISS, YERUCHAIM WEISS,
ESTHER DEUTSCH, MATANYA NATHANSEN,
CHANA NATHANSEN, MATANYA NATHANSEN
AND CHANA NATHANSEN FOR THE ESTATE OF
TEHILLA NATHANSEN, YEHUDIT NATHANSEN,
S.N., A MINOR, HEZEKIEL TOPOROWITCH,
PEARL B. TOPOROWITCH, YEHUDA
TOPOROWITCH, DAVID TOPOROWITCH,
SHAINA CHAVA NADEL, BLUMY ROM, RIVKA
POLLACK, RACHEL POTOLSKI, OVADIA
TOPOROWITCH, TEHILLA GREINIMAN,
YISRAEL TOPOROWITCH, YITZCHAK
TOPOROWITCH, HARRY LEONARD BEER,
HARRY LEONARD BEER AS EXECUTOR OF THE
ESTATE OF ALAN BEER, HARRY LEONARD

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BEER AS EXECUTOR OF THE ESTATE OF ANNA BEER, PHYLLIS MAISEL, ESTELLE CAROLL, SARRI ANNE SINGER, JUDITH SINGER, ERIC M. SINGER, ROBERT SINGER, JULIE AVERBACH FOR THE ESTATE OF STEVEN AVERBACH, JULIE AVERBACH, TAMIR AVERBACH, DEVIR AVERBACH, SEAN AVERBACH, ADAM AVERBACH, MAIDA AVERBACH FOR THE ESTATE OF DAVID AVERBACH, MAIDA AVERBACH, MICHAEL AVERBACH, EILEEN SAPADIN, DANIEL ROZENSTEIN, JULIA ROZENSTEIN SCHON, ALEXANDER ROZENSTEIN, ESTHER ROZENSTEIN, JACOB STEINMETZ, DEBORAH STEINMETZ, JACOB STEINMETZ AND DEBORAH STEINMETZ FOR THE ESTATE OF AMICHAH STEINMETZ, NAVA STEINMETZ, ORIT MAYERSON, NETANEL STEINMETZ, ANN COULTER FOR THE ESTATE OF ROBERT L. COULTER, SR., DIANNE COULTER MILLER, ROBERT L. COULTER, JR., DIANNE COULTER MILLER AND ROBERT L. COULTER, JR. FOR THE ESTATE OF JANIS RUTH COULTER, LARRY CARTER AS THE ADMINISTRATOR OF THE ESTATE OF DIANE LESLIE CARTER, LARRY CARTER, SHAUN CHOFFEL, RICHARD BLUTSTEIN AND KATHERINE BAKER FOR THE ESTATE OF BENJAMIN BLUTSTEIN, RICHARD BLUTSTEIN, KATHERINE BAKER, REBEKAH BLUTSTEIN, NEVENKA GRITZ FOR THE ESTATE OF DAVID GRITZ, NEVENKA GRITZ, NEVENKA GRITZ FOR

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THE ESTATE OF NORMAN GRITZ, JACQUELINE CHAMBERS AND LEVANA COHEN AS THE ADMINISTRATORS OF THE ESTATE OF ESTHER BABLAR, JACQUELINE CHAMBERS, LEVANA COHEN, ELI COHEN, SARAH ELYAKIM, JOSEPH COHEN, GRETA GELLER, ILANA DORFMAN, REPHAEL KITSIS AND TOVA GUTTMAN AS THE ADMINISTRATORS OF THE ESTATE OF HANNAH ROGEN, TEMIMA SPETNER, JASON KIRSCHENBAUM, ISABELLE KIRSCHENBAUM, ISABELLE KIRSCHENBAUM FOR THE ESTATE OF MARTIN KIRSCHENBAUM, JOSHUA KIRSCHENBAUM, SHOSHANA BURGETT, DAVID KIRSCHENBAUM, DANIELLE TEITELBAUM, NETANEL MILLER, CHAYA MILLER, ARIE MILLER, AHARON MILLER, SHANI MILLER, ADIYA MILLER, ALTEA STEINHERZ, JONATHAN STEINHERZ, TEMIMA STEINHERZ, JOSEPH GINZBERG, PETER STEINHERZ, LAUREL STEINHERZ, GILA ALUF, YITZHAK ZAHAVY, JULIE ZAHAVY, TZVEE ZAHAVY and BERNICE ZAHAVY,

Plaintiffs,

-against-

BLOM BANK SAL,

Defendant.

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COMPLAINT JURY TRIAL DEMANDED

Filed: January 1, 2019

NATURE OF THE ACTION

1. This is a complaint for damages arising out of the unlawful conduct of BLOM BANK (previously known as “Banque du Liban et D’Outre Mer”) – a Lebanese bank headquartered in Beirut, Lebanon. BLOM BANK aided and abetted the Islamic Resistance Movement (“HAMAS”), a Foreign Terrorist Organization (“FTO”) (as that term is defined in 8 U.S.C. § 1189 of the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”)) by knowingly providing substantial assistance to HAMAS in violation of 18 U.S.C. § 2333(d) of the Anti-Terrorism Act (“ATA”), and is civilly liable under § 2333(d) of the ATA to those American citizens (and their estates, survivors and heirs) who have been killed or injured in their person, property or business by reason of such acts of international terrorism perpetrated by HAMAS.

2. BLOM BANK knowingly – and with awareness of its important role – provided financial services to HAMAS in several related ways set forth below, by maintaining accounts for, and facilitating substantial payments on behalf of, HAMAS’s Lebanese institutions, most notably the Sanabil Association for Relief and Development (“Sanabil”), which was designated by the U.S. Department of the Treasury as a Specially Designated Global Terrorist (“SDGT”) in 2003.

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JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this civil action brought by citizens of the United States who have been killed or injured by reason of acts of international terrorism, and/or their estates, survivors, and heirs pursuant to 28 U.S.C. § 1331 and 18 U.S.C. §§ 2333(a), 2333(d), and 2338.

4. Venue is proper in this district pursuant to 18 U.S.C. § 2334(a) and 28 U.S.C. §§ 1391(b).

5. BLOM BANK is subject to personal jurisdiction in New York pursuant to 18 U.S.C. § 2334(a), N.Y. CPLR § 302, and Fed. R. Civ. P. 4(k)(1)-(2) because it has transacted business during the relevant period and committed tortious acts within the United States during the relevant period by transferring funds through the United States for the benefit of HAMAS.

6. As set forth below, BLOM BANK purposefully used its multiple correspondent bank accounts at U.S. financial institutions, including its accounts at Bank of New York, Citibank NA and American Express Bank Ltd. in New York to provide financial services to HAMAS, including facilitating the transfer of millions of U.S. dollars through the United States on HAMAS's behalf or for HAMAS's benefit.

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THE PARTIES

A. The Plaintiffs

7. The Second Intifada (“al-Quds” or “al-Aqsa Intifada”), which broke out in Israel and the Palestinian Territories in September 2000, was a key turning point in HAMAS’s history.

8. In the initial weeks of the Second Intifada, large demonstrations were organized in several Palestinian cities. On October 12, 2000, a Palestinian mob in Ramallah attacked two off- duty Israeli reservists, lynched them, and celebrated their deaths – with much of the scene captured on camera.

9. Soon thereafter, HAMAS, Palestinian Islamic Jihad (“PIJ”), the Popular Front for the Liberation of Palestine (“PFLP”) and the Palestinian Authority’s ruling faction, Fatah, all launched attacks on Israeli civilian centers, military installations, vehicles, and civilians through suicide bombings, drive-by shootings, and rocket launchings, which resulted in the death and injury of hundreds of individuals, including numerous American citizens.

10. From September 2000 forward, support by the Palestinian public for HAMAS grew steadily.

11. It won elections at Palestinian universities, trade unions, and later in municipal elections.

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12. For approximately the next four years after the outbreak of the violent conflict, HAMAS launched hundreds of terrorist attacks targeting civilians that have resulted in the deaths and injury of hundreds of civilians, including numerous American citizens.

**THE SHOOTING ATTACK ON ROUTE #60 –
JUNE 20, 2003**

13. On June 20, 2003, Ahmad Najjar and Farah Hamad, two HAMAS terrorists, perpetrated a shooting attack on Route #60 near the Yabroud underpass, killing one person and seriously injuring three others.

The Goldstein Family

14. Howard Goldstein was a citizen of the United States and a resident of the State of Israel when he died.

15. He was murdered on June 20, 2003, while driving his car with his parents on Route #60 in Israel.

16. Howard was driving his parents and his wife from Eli to Jerusalem where they had stayed the previous night following the wedding of Howard's son, plaintiff David Goldstein. Howard and his wife and parents were traveling for a weekend in Jerusalem to further celebrate David's wedding (which had taken place the previous night).

17. While Howard was driving, Howard's father, plaintiff Eugene Goldstein, was seated in the front passenger seat and Howard's mother, plaintiff Lorraine

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Goldstein, was seated behind her husband. Howard's wife, plaintiff Michal Goldstein (now Michal Honickman), was seated in the rear seat of the car, on the driver's side, behind Howard.

18. At some point, as Howard was driving, Eugene noticed two individuals on the side of the road near the Yabroud underpass. As the Goldsteins' car approached, the men turned and began rapidly firing their guns at the Goldsteins' vehicle.

19. Howard was struck by at least one bullet and ultimately succumbed to his injuries while driving and slumped over the steering wheel.

20. At some point in time, while Howard was slumped over the steering wheel, Eugene grabbed the steering wheel and maintained control of the car until it crashed and rolled over, approximately eight miles south of where the HAMAS gunmen had opened fire.

21. Plaintiff Michal Honickman, formerly known as Mindy Goldstein, is a citizen of the United States and a resident of the State of Nevada. She is the widow of Howard Goldstein.

22. Plaintiff Michal Honickman brings this action both individually and as the legal representative of the Estate of Howard Goldstein.

23. As a result of the attack, Michal was injured when glass fragments from the vehicle's windows struck her

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body, including her left eye. She also sustained hairline fractures of her ribs, bruising, and physical trauma when the vehicle eventually crashed and rolled over.

24. Michal has sustained severe physical injuries and experienced severe mental anguish and extreme emotional distress having been present during the attack, and witnessed the death of her husband, whom she had to bury and mourn with her children, while her in-laws were hospitalized, all in the context of what had been, prior to that point, a joyous family occasion celebrating her son David's wedding.

25. As a result of Howard's death, plaintiff Michal Honickman experienced emotional pain and suffering, loss of her husband's society, companionship, comfort, advice and counsel, and severe mental anguish and extreme emotional distress.

26. Plaintiff Eugene Goldstein is a citizen of the United States and a resident of the State of Florida. He is the father of Howard Goldstein.

27. Plaintiff Lorraine Goldstein is a citizen of the United States and a resident of the State of Florida. She is the mother of Howard Goldstein.

28. Eugene suffered multiple gunshot wounds in the attack.

29. His shoulder blade was fractured, and his lungs were punctured. Shrapnel was lodged in his lung, liver

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and kidneys. A bullet remains stuck between his heart and his lungs.

30. These injuries, which caused Eugene immense pain, were life threatening. Indeed, it was highly improbable that Eugene would survive them.

31. Eugene's injuries necessitated insertion of a trocar, a metal cylinder used to drain blood from his chest and facilitate insertion of a chest tube to maintain suction and permit healing of the lung. Insertions of a trocar and chest tube are extremely painful.

32. Eugene was unable to see Lorraine for approximately five days after the attack and did not have specific information about her condition. His uncertainty about Lorraine's condition caused him immense anxiety.

33. As a result of the attack, Eugene still has several bullet fragments lodged in his chest. He must undergo an x-ray every three months to monitor their condition.

34. As a result of the attack, Eugene has difficulty falling and remaining asleep. He constantly replays the image of the attack in his mind.

35. He blames himself for taking his wife to attend his grandson's wedding.

36. Lorraine was shot multiple times and severely injured in the attack.

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37. She suffered a bullet fragment injury from a bullet that clipped the tip of her nose and her left upper lip and lodged in her mouth. The fragment necessitated intubation and emergency surgery, during which the fragment was removed from an area less than an inch from the carotid sheath, which contains the carotid artery and the internal jugular vein. Disruption of either of them would have resulted in her death.

38. At one point during her hospital stay, Lorraine was placed on life support.

39. Lorraine's chewing muscles were severely and permanently damaged, and she could not eat solid food for approximately one year.

40. She required physiotherapy that encompassed use of a ratchet-like device designed to force her jaws open. It was very painful.

41. Lorraine still requires physical therapy because the scar tissue in her jaw prevents her from fully opening it. She still suffers from pain and headaches.

42. She requires bridges (partials) because she lost her teeth as a result of the attack, and extensive periodontal and dental work.

43. She was also struck by bullets that entered her body through her left shoulder and right lower neck. The resulting wounds caused her excruciating pain at the time.

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44. She must also deal with the harmful effects of shrapnel that lodged throughout her body, especially in her back. She also suffered a shattered nose and septum as well as various lacerations.

45. Lorraine had difficulty sleeping because she thought about Howard's death.

46. Eugene and Lorraine remained in Jerusalem at Hadassah Hospital for approximately 10 days and were unable to return home when they were discharged from the hospital because the airline did not give Eugene permission to fly due to the poor condition of his lungs.

47. As a result of the attack, plaintiffs Eugene Goldstein and Lorraine Goldstein have sustained severe physical injuries and experienced severe mental anguish and extreme emotional distress.

48. As a result of Howard's death, plaintiffs Eugene Goldstein and Lorraine Goldstein have experienced emotional pain and suffering, loss of their son's society, companionship, comfort, advice and counsel, and severe mental anguish and extreme emotional distress.

49. The Goldstein family in New York received notice of the attack from two cousins, one of whom saw images of the attack on the internet and sent an instant message to the immediate family.

50. The Goldstein family sat in horror as they watched images of the attack on the Cable News Network (CNN)

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shortly after the attack occurred. The video broadcast showed Howard, Eugene and Lorraine being pulled from the wreckage of the car Howard had been driving.

51. Lorraine's face and hair were covered with blood.

52. Plaintiff Richard Goldstein is a citizen of the United States and a resident of the State of New York. He is a son of plaintiffs Eugene Goldstein and Lorraine Goldstein and a brother of Howard Goldstein.

53. After learning of the attack, plaintiff Richard Goldstein telephoned his sister, plaintiff Barbara Goldstein Ingardia, at work and asked her to return home immediately. When she arrived, her extended family was present. They shared the tragic news that their parents and brother had been attacked. Barbara then made plans to fly to Israel to care for her parents.

54. As a result of the attack, plaintiff Richard Goldstein has experienced severe mental anguish and extreme emotional distress caused by the life-threatening injuries to both of his parents.

55. As a result of Howard's death, Richard Goldstein has experienced emotional pain and suffering, loss of his brother's society, companionship, comfort, advice and counsel, and severe mental anguish and extreme emotional distress.

56. Plaintiff Barbara Goldstein Ingardia is a citizen of the United States and a resident of the State of New York.

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She is the daughter of plaintiffs Eugene Goldstein and Lorraine Goldstein and the sister of Howard Goldstein.

57. Barbara left her job and her immediate family behind and traveled to Israel to care for her parents in Israel during their recovery and to mourn the loss of her brother.

58. In addition to grappling with the devastating emotional consequences of her brother's death, she was forced to deal with the uncertainty of her mother's recovery due to her severe injuries and age.

59. Barbara blames herself for encouraging her parents to attend the wedding.

60. As a result of the attack, plaintiff Barbara Goldstein Ingardia has experienced severe mental anguish and extreme emotional distress caused by the life-threatening injuries to both of her parents.

61. As a result of Howard's death, Barbara Goldstein Ingardia has experienced emotional pain and suffering, loss of her brother's society, companionship, comfort, advice and counsel, and severe mental anguish and extreme emotional distress.

62. Plaintiff Michael Goldstein is a citizen of the United States and a resident of the State of Florida. He is a son of plaintiffs Eugene Goldstein and Lorraine Goldstein and a brother of Howard Goldstein.

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63. As a result of the attack, plaintiff Michael Goldstein has experienced severe mental anguish and extreme emotional distress caused by the life-threatening injuries to both of his parents.

64. As a result of Howard's death, Michael Goldstein has experienced emotional pain and suffering, loss of his brother's society, companionship, comfort, advice and counsel, and severe mental anguish and extreme emotional distress.

65. Plaintiff Chana Freedman is a citizen of the United States and a resident of the State of New York. She is the daughter of Howard Goldstein and plaintiff Michal Goldstein.

66. Chana and her husband were eating lunch at a mall in Jerusalem when they learned that her father and grandparents had been involved in what they believed to be an automobile accident.

67. Chana's husband received a telephone call from his father informing the couple to go directly to Hadassah Hospital.

68. When Chana and her husband arrived at Hadassah Hospital, a social worker informed them that Chana's father had died in the terrorist attack.

69. Chana informed her brother, David and his wife, who had just been married, of the attack when they arrived at the hospital.

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70. As a result of Howard's death, plaintiff Chana Freedman has experienced emotional pain and suffering, loss of her father's society, companionship, comfort, advice and counsel, and severe mental anguish and extreme emotional distress.

71. Plaintiff David Goldstein is a citizen of the United States and a resident of the State of Israel. He is the son of Howard Goldstein and plaintiff Michal Goldstein.

72. At the time of the attack, David was at a Jerusalem hotel awaiting his family's arrival for weekend wedding celebrations when he was notified that something had happened to his parents and his grandparents, and that they had been taken to Hadassah Hospital.

73. Upon his arrival at the hospital, David learned that his father had been killed in the attack, and that his mother and grandparents had been injured.

74. Prior to the attack, David frequently spoke to his father, including on the morning of his father's death.

75. As a result of Howard's death, plaintiff David Goldstein has experienced emotional pain and suffering, loss of his father's society, companionship, comfort, advice and counsel, and severe mental anguish and extreme emotional distress.

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**THE JERUSALEM EGGED BUS #2 BOMBING –
AUGUST 19, 2003**

76. On August 19, 2003, Ra'ed Abdul Hamid Misk, a HAMAS suicide bomber, detonated explosives on Egged Bus #2.

77. Twenty-three people were killed and over 130 others were injured in the attack.

The Strauss Family

78. Plaintiff Moses Strauss is a citizen of the United States and a resident of the State of New Jersey.

79. Moses was studying in Israel in 2003 and was planning to return to the United States in April 2004.

80. At around 9:00 pm on August 19, 2003, he boarded Egged Bus #2 in Jerusalem after praying at the Kotel (also known as the “Western Wall” or “Wailing Wall”).

81. Approximately 15 minutes into the bus ride, Moses heard a deafening boom when Misk detonated the explosives on the bus.

82. Moses fell forward as a result of the explosion. His eyeglasses, jacket, hat and cell phone flew off his body.

83. As Moses regained his bearings and realized what had occurred, he witnessed people screaming and crying, and he saw blood and body parts all around him.

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84. His clothes were covered with blood, and his hearing was severely impaired.

85. To exit the bus, Moses stepped over bodies, and in a state of shock made his way toward his apartment. As he reached the corner near his apartment, he saw a friend, and they went into his friend's apartment and telephoned Moses's father, plaintiff Philip Strauss, to tell him Moses had been in an attack, but was alive. After making the telephone call, the friend drove Moses to Hadassah Hospital.

86. As a result of the explosion, Moses's body ached, especially his right ear and hand. After arriving at the hospital, he underwent numerous tests, and doctors removed the shrapnel from his ear and hand.

87. Days after the attack, Moses still experienced agonizing pain in his ear, and his hearing loss did not improve.

88. After the attack, Moses returned to the United States without completing his studies in Israel.

89. Moses was examined by medical specialists in both Israel and the United States. Both physicians confirmed that he would require surgery on his ear.

90. In the winter of 2004, Moses underwent ear surgery in the United States. His ear is still not completely healed, and he has been told that his condition will never improve. An ear specialist continues to monitor his condition.

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91. Moses continues to relive the attack, the images of the attack replaying in his mind daily.

92. As a result of the attack, plaintiff Moses Strauss has sustained severe physical injuries and experienced severe mental anguish and extreme emotional distress.

93. Plaintiff Philip Strauss is a citizen of the United States and a resident of the State of New York. He is the father of plaintiff Moses Strauss.

94. Plaintiff Bluma Strauss is a citizen of the United States and a resident of the State of New York. She is the mother of plaintiff Moses Strauss.

95. After hearing of the attack, Bluma attempted unsuccessfully to reach Moses on his cell phone. When she tried to reach him at his apartment, someone else answered the telephone and said that her son was not there. Bluma grew increasingly concerned.

96. Upon learning that her son was injured in the bombing, Bluma's distress grew.

97. As a result of the attack, plaintiffs Philip Strauss and Bluma Strauss have experienced severe mental anguish and extreme emotional distress.

98. Plaintiff Ahron Strauss is a citizen of the United States and a resident of the State of New Jersey. He is a brother of plaintiff Moses Strauss.

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99. Plaintiff Roisie Engelman is a citizen of the United States and a resident of the State of New Jersey. She is the sister of plaintiff Moses Strauss.

100. Roisie Engelman was on vacation when she received a telephone call advising her that there had been a bombing in Israel. Roisie attempted to contact Moses on his cellular telephone but was unable to reach him. She also telephoned her other brother, Ahron, attempting to locate Moses or her parents.

101. When Roisie finally received the news that Moses had been injured in the bus bombing, she was very concerned and extremely anxious.

102. Plaintiff Joseph Strauss is a citizen of the United States and a resident of the State of New Jersey. He is a brother of plaintiff Moses Strauss.

103. Joseph learned of the attack while watching the news on an airplane. He was aware that the bombing had occurred near the neighborhood where Moses lived. Upon arriving in California, Joseph spoke to his parents and learned of Moses's condition. During the plane flight, Joseph experienced great anxiety because he was uncertain if his brother had been present at the bombing.

104. Ahron Strauss, Roisie Engelman and Joseph Strauss experienced great anxiety after learning of the attack that caused the injuries that Moses sustained.

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105. As a result of the attack, plaintiffs Ahron Strauss, Roisie Engelman and Joseph Strauss have experienced severe mental anguish and extreme emotional distress.

The Weiss Family

106. Plaintiff Tzvi Weiss is a citizen of the United States and a resident of the State of New Jersey.

107. Tzvi was in Israel studying at a rabbinical college in 2003 and was planning to return to the United States on August 21, 2003.

108. On the evening of August 19, 2003, Tzvi boarded Egged Bus #2 in Jerusalem after visiting the Kotel, Judaism's holiest site, to pray. He was on his way to a friend's wedding.

109. As the bus arrived at Shmuel Hanavi Street, he heard a terrible explosion. Everything went black, and he could not hear anything but a deafening ringing in his ears.

110. In the panicked aftermath of the explosion, Tzvi jumped out of a window of the bus and began to run, stumbling over dead bodies and body parts as he fled the scene.

111. Tzvi was covered with blood, and his hand had been cut. His body was shaking from the shock of the experience, and he had a constant terrible ringing in his ears.

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112. Once he got his bearings, Tzvi telephoned one of his brothers, plaintiff Yitzchak Weiss, and waited for him to arrive to accompany him to the hospital.

113. An ambulance transported Tzvi to Bikur Cholim Hospital where he underwent medical tests.

114. Both of his eardrums had been completely torn, and his hearing in his left ear was severely impaired. He continued to experience severe pain in his hand and was unable to bend his fingers.

115. Tzvi decided to return home to the United States to be near his family while he began recovering from the injuries and the effects of having been a victim of a terrorist attack. He returned to the United States the following day and visited an ear specialist within hours of his arrival. He underwent tests and was advised to have surgery on his left ear to attempt to regain some of his hearing loss in that ear. Tzvi obtained a second opinion from another doctor who agreed with the diagnosis.

116. After a number of examinations by the initial physician, and after treatment with antibiotics, Tzvi underwent surgery on his left ear. After the surgery, the incessant ringing in his ears became louder and worse than before.

117. Tzvi also visited another physician for treatment of the severe pain in his hand. He was told the injuries might require surgery.

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118. Tzvi continued to visit doctors on numerous occasions to assess his ears, and underwent many tests, but the agonizing ringing continued. Eventually, it was determined that the surgery on Tzvi's left ear had not been successful. Tzvi suffered numerous panic attacks because of his injuries and the symptoms that continued to affect him.

119. As a result of the injuries that he sustained in the attack, combined with the memories of the attack itself, Tzvi's mental health deteriorated. The suffering that Tzvi has endured as a result of the injuries he sustained in the attack is ongoing and relentless. It has negatively impacted every aspect of his life.

120. Tzvi enrolled in rabbinical college upon his return to the United States, but the injuries and their symptoms prevented him from concentrating on his schoolwork, and he could no longer realize the academic success that he had achieved prior to the attack.

121. As a result of the attack, plaintiff Tzvi Weiss has sustained severe physical injuries and experienced severe mental anguish and extreme emotional distress.

122. Plaintiff Leib Weiss is a citizen of the United States and a resident of the State of New York. He is the father of plaintiff Tzvi Weiss.

123. Malka Weiss was a citizen of the United States and a resident of the State of New York when she died in 2018. She was the mother of plaintiff Tzvi Weiss.

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124. Plaintiff Leib Weiss brings this action both individually and as the legal representative of the Estate of Malka Weiss.

125. Leib Weiss and Malka Weiss experienced great anxiety after learning of the attack that injured Tzvi and observing the suffering that he has endured as a result of his injuries.

126. As a result of the attack, plaintiffs Leib Weiss and Malka Weiss (before her death) have experienced severe mental anguish and extreme emotional distress.

127. Plaintiff Yitzchak Weiss is a citizen of the United States and a resident of the State of Israel. He is a brother of plaintiff Tzvi Weiss.

128. Plaintiff Yeruchaim Weiss is a citizen of the United States and a resident of the State of Israel. He is a brother of plaintiff Tzvi Weiss.

129. Plaintiff Esther Deutsch is a citizen of the United States and a resident of the State of New York. She is the sister of plaintiff Tzvi Weiss.

130. Yitzchak Weiss, Yeruchaim Weiss and Esther Deutsch experienced great anxiety after learning of the attack that injured Tzvi and observing the suffering that he has endured as a result of his injuries.

131. As a result of the attack, plaintiffs Yitzchak Weiss, Yeruchaim Weiss and Esther Deutsch have experienced severe mental anguish and extreme emotional distress.

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The Nathansen/Toporowitch Family

132. Tehilla Nathansen was a citizen of the United States and a resident of the State of Israel when she died.

133. Tehilla was three (3) years old and sitting on her mother's lap when she was murdered in the suicide bomb attack on August 19, 2003.

134. The Nathansen family had boarded the bus at the Kotel in Jerusalem, where they had just completed their prayers.

135. Plaintiff Matanya Nathansen is a citizen and resident of the State of Israel. He is the father of Tehilla Nathansen.

136. Plaintiff Chana Nathansen is a citizen of the United States and a resident of the State of Israel. She is the mother of Tehilla Nathansen.

137. Plaintiffs Matanya Nathansen and Chana Nathansen bring this action individually, on behalf of the Estate of Tehilla Nathansen, and on behalf of their minor daughter, S.N.

138. As a result of the explosion, Matanya suffered fractures in both feet and in his collar bone, and sustained injuries to his lungs, eye and finger. He is now hearing impaired and can no longer walk properly.

139. As a result of the attack, plaintiff Matanya Nathansen has sustained severe physical injuries and

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experienced severe mental anguish and extreme emotional distress from the injuries he sustained, from witnessing and experiencing first-hand the death of his 3-year-old daughter, Tehilla, as well as the severe injuries sustained by his wife and young daughters (all of whom are U.S. citizens).

140. Chana was severely injured in the explosion that killed Tehilla, was taken to Hadassah Hospital, and remained there for 12 days.

141. Although Chana repeatedly asked about Tehilla's whereabouts, she did not learn until the next day that she had been killed. That uncertainty was torture for Chana.

142. Chana's spleen was torn, and her ribs were broken.

143. She had seven ball bearings that caused holes in her chest, leg and arm that had to be removed from her body.

144. She has undergone numerous surgeries.

145. Shrapnel lodged throughout her body, including her eye.

146. Chana's hip was crushed, necessitating a hip replacement. She still experiences pain in that area.

147. Her hearing is impaired, and she suffers from tinnitus.

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148. Chana cannot walk long distances, and she has a limited range of movement.

149. She feels indescribable pain at losing Tehilla and seeing her daughter Yehudit injured and her daughter S.N. severely injured.

150. Chana has undergone psychological counseling.

151. As a result of the attack, plaintiff Chana Nathansen has sustained severe physical injuries and experienced severe mental anguish and extreme emotional distress from the injuries she sustained, from witnessing and experiencing first-hand the death of her 3-year-old daughter, Tehilla, and witnessing the severe injuries sustained by her daughters, plaintiff S.N., a minor, and plaintiff Yehudit Nathansen.

152. Plaintiff Yehudit Nathansen is a citizen of the United States and a resident of the State of Israel. She is a daughter of plaintiffs Chana Nathansen and Matanya Nathansen, and the sister of Tehilla Nathansen and plaintiff S.N.

153. At the time of the explosion, Yehudit was sitting with her aunt, a few seats away from her parents.

154. Yehudit incurred cuts on her neck and waist from the explosion and was treated at Bikur Cholim Hospital in Jerusalem.

155. She hears constant noise in her ears, which makes her tense.

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156. Yehudit suffered nightmares, sadness and guilt and underwent psychological counseling.

157. As a result of the attack, plaintiff Yehudit Nathansen has sustained physical injuries and experienced severe mental anguish and extreme emotional distress due to her own injuries and from witnessing and experiencing first-hand the death of her 3-year-old sister, Tehilla, as well as the severe injuries sustained by her mother, father, and baby sister.

158. Plaintiff S.N., a minor, is a citizen of the United States and a resident of the State of Israel. She is a daughter of plaintiffs Chana Nathansen and Matanya Nathansen, and the sister of Tehilla Nathansen and plaintiff Yehudit Nathansen.

159. S.N. was sitting on Chana's lap at the time of the explosion. She was 5 months old at the time. As a result of the explosion, S.N. sustained burns all over her face, and her eardrums were ruptured.

160. She suffered bilateral lung contusions and a fracture of her left femur and right leg and hip, deep lacerations in her arm that have left permanent scars, and scars on her face and legs.

161. S.N. also had multiple shrapnel and metal pellets lodged in her body, including in her eyes, and a laceration of the bone of her left forearm and in her left wrist. She has pain in her upper left arm.

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162. She is hearing impaired and suffers from tinnitus.

163. She underwent psychological counseling.

164. As a result of the attack, plaintiff S.N. has sustained severe physical injuries and experienced severe mental anguish and extreme emotional distress.

165. Plaintiff Hezekial Toporowitch is a citizen of the United States and a resident of the State of Israel. He is the father of plaintiff Chana Nathansen and the grandfather of the three Nathansen girls.

166. Plaintiff Pearl B. Toporowitch is a citizen of the United States and a resident of the State of Israel. She is the mother of plaintiff Chana Nathansen and the grandmother of the three Nathansen girls.

167. In the middle of the night, Hezekial and Pearl were notified by telephone of the bombing that had killed their granddaughter, Tehilla, and crippled their daughter, Chana. That night they traveled to Jerusalem. Pearl attempted to obtain further details about the condition of her son-in-law and her granddaughters.

168. In the aftermath of the bombing, Chana, Matanya, and their children were transferred to different hospitals thereby complicating the family's efforts to locate them.

169. Hezekial was supposed to travel to the central morgue in Holon to attempt to identify his granddaughter's body but was in too much shock to do so. He was initially

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told to identify the bodies of two granddaughters since S.N. had not yet been identified at the hospital and was thought to be deceased.

170. As a result of the attack, plaintiff Hezekial Toporowitch has experienced severe mental anguish and extreme emotional distress from experiencing the death of his 3-year-old granddaughter, Tehilla, as well as the severe injuries sustained by his daughter, and injuries sustained by his granddaughters and son-in-law.

171. As a result of the attack, plaintiff Pearl B. Toporowitch has experienced severe mental anguish and extreme emotional distress from experiencing the death of her 3-year-old granddaughter, Tehilla, as well as the severe injuries sustained by her daughter, and injuries sustained by her granddaughters and son-in-law.

172. Plaintiff Yehuda Toporowitch is a citizen of the United States and a resident of the State of New Jersey. He is a brother of plaintiff Chana Nathansen and an uncle of the three Nathansen girls.

173. In the middle of the night Yehuda was notified by telephone of the bombing that had killed his niece and crippled his sister.

174. He had been working at a resort when he received the telephone call, and quickly rushed to a nearby television where graphic images of the bombsite were being broadcast by Israeli television.

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175. Yehuda rushed home, traveled with his parents to the Tel Aviv area, and stopped at the home of one of his sisters. He took a taxicab to the central morgue and attempted to identify Tehilla's remains but could not positively identify them because of the nature and extent of Tehilla's injuries.

176. Yehuda then made arrangements for necessary DNA testing, which ultimately confirmed his niece's identity.

177. As a result of the attack, plaintiff Yehuda Toporowitch has experienced severe mental anguish and extreme emotional distress from the death of his 3-year-old niece, Tehilla, and the attempt to identify her remains. He has also experienced severe mental anguish and extreme emotional distress as a result of the severe injuries sustained by his sister and other niece and injuries to his brother-in-law.

178. Plaintiff David Toporowitch is a citizen of the United States and a resident of the State of Israel. He is a brother of plaintiff Chana Nathansen and an uncle of the three Nathansen girls.

179. David was not present when his parents were notified by telephone of the bombing that killed his niece and crippled his sister. Instead, he had to piece together the events by himself after his family had already left for Jerusalem.

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180. Like the rest of his immediate family, David visited his sister and niece in the hospital and experienced the shock and severe mental anguish and extreme emotional distress resulting from the emotional trauma of burying his young niece and dealing with the pain and loss experienced by his sister.

181. As a result of the attack, plaintiff David Toporowitch has experienced severe mental anguish and extreme emotional distress from experiencing the death of his 3-year-old niece, Tehilla, as well as the severe injuries sustained by his sister and other niece.

182. Plaintiff Shaina Chava Nadel is a citizen of the United States and a resident of the State of Israel. She is a sister of plaintiff Chana Nathansen and an aunt of the three Nathansen girls.

183. Like the rest of her immediate family, Shaina visited her sister and niece in the hospital and experienced the shock and mental anguish resulting from the emotional trauma of burying her young niece and dealing with the pain and loss experienced by her sister.

184. As a result of the attack, plaintiff Shaina Chava Nadel has experienced severe mental anguish and extreme emotional distress from experiencing the death of her 3-year-old niece, Tehilla, as well as the severe injuries sustained by her sister and other niece and injuries to her brother-in-law.

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185. Plaintiff Blumy Rom is a citizen of the United States and a resident of the State of Israel. She is a sister of plaintiff Chana Nathansen and an aunt of the three Nathansen girls.

186. Like the rest of her immediate family, Blumy visited her sister and niece in the hospital and experienced the shock and mental distress resulting from the emotional trauma of burying her young niece, Tehilla, and dealing with the pain and loss experienced by her younger sister.

187. As a result of the attack, plaintiff Blumy Rom has experienced severe mental anguish and extreme emotional distress from experiencing the death of her 3-year-old niece, Tehilla, as well as the severe injuries sustained by her sister and other niece and injuries to her brother-in-law.

188. Plaintiff Rivka Pollack is a citizen of the United States and a resident of the State of Israel. She is a sister of plaintiff Chana Nathansen and an aunt of the three Nathansen girls.

189. Like the rest of her immediate family, Rivka visited her sister and niece in the hospital and experienced severe mental anguish and extreme emotional distress from burying her young niece and dealing with the pain and loss experienced by her older sister and injuries to her brother-in-law.

190. She stayed with her baby niece S.N., caring for her during the two weeks that she was hospitalized and

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for two months after her discharge from the hospital. Having to change the dressings on her niece's wounds, care for her various injuries, and take her to doctors, has deeply affected her.

191. As a result of the attack, plaintiff Rivka Pollack has experienced severe mental anguish and extreme emotional distress from experiencing the death of her 3-year-old niece, Tehilla, as well as the severe injuries incurred by her sister, other niece and brother-in-law.

192. Plaintiff Rachel Potolski is a citizen of the United States and a resident of the State of Israel. She is a sister of plaintiff Chana Nathansen and an aunt of the three Nathansen girls.

193. Like the rest of her immediate family, Rachel experienced the shock and mental distress resulting from the emotional trauma of burying her young niece, Tehilla, and dealing with the pain and loss experienced by her younger sister.

194. As a result of the attack, plaintiff Rachel Potolski has experienced severe mental anguish and extreme emotional distress from experiencing the death of her 3-year-old niece, Tehilla, as well as the severe injuries incurred by her sister, other niece and brother-in-law.

195. Plaintiff Ovadia Toporowitch is a citizen of the United States and a resident of the State of Israel. He is a brother of plaintiff Chana Nathansen and an uncle of the three Nathansen girls.

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196. Like the rest of his immediate family, Ovadia experienced the shock and mental distress resulting from the emotional trauma of burying his young niece, Tehilla, and dealing with the pain and loss experienced by his younger sister.

197. As a result of the attack, plaintiff Ovadia Toporowitch has experienced severe mental anguish and extreme emotional distress from experiencing the death of his 3-year-old niece, Tehilla, as well as the severe injuries incurred by his sister, other niece and brother-in-law.

198. Plaintiff Tehilla Greiniman is a citizen of the United States and a resident of the State of Israel. She is a sister of plaintiff Chana Nathansen and an aunt of the three Nathansen girls.

199. Like the rest of her immediate family, Tehilla experienced the shock and mental distress resulting from the emotional trauma of burying her young niece, Tehilla, and dealing with the pain and loss experienced by her younger sister.

200. As a result of the attack, plaintiff Tehilla Greiniman has experienced severe mental anguish and extreme emotional distress from experiencing the death of her 3-year-old niece, Tehilla, as well as the severe injuries incurred by her sister, other niece and brother-in-law.

201. Plaintiff Yisrael Toporowitch is a citizen of the United States and a resident of the State of Israel. He is a brother of plaintiff Chana Nathansen and an uncle of the three Nathansen girls.

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202. Like the rest of his immediate family, Yisrael experienced the shock and mental distress resulting from the emotional trauma of burying his young niece, Tehilla, and dealing with the pain and loss experienced by his younger sister.

203. As a result of the attack, plaintiff Yisrael Toporowitch has experienced severe mental anguish and extreme emotional distress from experiencing the death of his 3-year-old niece, Tehilla, as well as the severe injuries incurred by his sister, other niece and brother-in-law.

204. Plaintiff Yitzchak Toporowitch is a citizen of the United States and a resident of the State of Israel. He is a brother of plaintiff Chana Nathansen and an uncle of the three Nathansen girls.

205. Like the rest of his immediate family, Yitzchak experienced the shock and mental distress resulting from the emotional trauma of burying his young niece, Tehilla, and dealing with the pain and loss experienced by his younger sister.

206. As a result of the attack, plaintiff Yitzchak Toporowitch has experienced severe mental anguish and extreme emotional distress from experiencing the death of his 3-year-old niece, Tehilla, as well as the severe injuries incurred by his sister, other niece and brother-in-law.

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**THE JAFFA ROAD BUS #14A BOMBING –
JUNE 11, 2003**

207. At approximately 5:30 p.m. on June 11, 2003, Abd el-Mu'ati Shabana, a HAMAS suicide bomber dressed as an ultra-Orthodox Jew, boarded Egged Bus #14A at the Mahane Yehuda market. A short while later, as the bus drove down Jaffa Road near the Davidka Square, Shabana detonated his bomb, destroying the bus and killing 17 people and injuring over 100 more, including dozens of bystanders.

The Beer Family

208. Alan Beer was a citizen of the United States when he died.

209. Alan was on the bus returning from a condolence call to his friend's family when Shabana detonated his explosives and killed him.

210. Alan's friend, to whom he had paid the condolence call, learned of the bus bombing and telephoned plaintiff Harry Leonard Beer, Alan's brother, in Cleveland, Ohio. Harry quickly telephoned his sister, plaintiff Phyllis Maisel, whose son happened to have been in the area of the bombing earlier. Harry then telephoned his other sister, plaintiff Estelle Carroll, and informed her of the terrorist attack.

211. After speaking with her brother, Phyllis asked her son to return to the crime scene and identify Alan's

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body. Thereafter, Alan's mother, Anna Beer, Harry Leonard Beer and Estelle Carroll flew to Israel to attend Alan's funeral.

212. Plaintiff Harry Leonard Beer is a citizen of the United States and a resident of the State of Ohio. He is the brother of Alan Beer.

213. Anna Beer was a citizen of the United States and a resident of the State of Ohio when she died in 2016. She was the mother of Alan Beer.

214. Plaintiff Harry Leonard Beer brings this action in his individual capacity, as the executor of the Estate of Alan Beer, and as the executor of the Estate of Anna Beer.

215. As a result of Alan's death, plaintiff Harry Leonard Beer has experienced emotional pain and suffering, loss of his brother's society, companionship, comfort, advice and counsel, and severe mental anguish and extreme emotional distress.

216. Plaintiff Estelle Carroll is a citizen of the United States and a resident of the State of Virginia. She is a sister of Alan Beer.

217. Plaintiff Phyllis Maisel is a citizen of the United States and a resident of the State of Israel. She is a sister of Alan Beer.

218. As a result of Alan's death, plaintiffs Estelle Carroll and Phyllis Maisel have experienced emotional pain and

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suffering, loss of their brother's society, companionship, comfort, advice and counsel, and severe mental anguish and extreme emotional distress.

219. As a result of Alan's death, (before her death) Anna Beer experienced emotional pain and suffering, loss of her youngest child's society, companionship, comfort, advice and counsel, and severe mental anguish and extreme emotional distress.

The Singer Family

220. Plaintiff Sarri Anne Singer is a citizen of the United States and a resident of the State of New Jersey.

221. On June 11, 2003, Sarri boarded Bus #14A in Jerusalem to meet a friend for dinner. The bus was filled with rush hour commuters. Eventually she was able to take a seat near the window.

222. Shortly thereafter, Shabana detonated his bomb only two to three seats away from where Sarri was seated, killing everyone sitting and standing near her and causing the roof of the bus to fall in.

223. When the explosives were detonated, Sarri felt a shockwave across her face.

224. Sarri was struck with shrapnel from the explosion that entered her shoulder and broke her clavicle.

225. After the blast, she was unable to open her left eye, and her right eye was extremely restricted.

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226. Sarri was unable to hear because of a loud ringing in her ears, and her eardrums ruptured.

227. Barely walking, Sarri was taken to an ambulance.

228. She incurred wounds to her face and legs resulting in scarring. She underwent physical therapy and additional surgery.

229. Shrapnel lodged in Sarri's gums, moving her teeth and necessitating dental work.

230. As a result of the attack, plaintiff Sarri Anne Singer has sustained severe physical injuries and experienced severe mental anguish and extreme emotional distress.

231. Plaintiff Judith Singer is a citizen of the United States and a resident of the State of New Jersey. She is the mother of plaintiff Sarri Anne Singer.

232. Judith learned of the attack when her son telephoned her at work.

233. As a result of the attack, plaintiff Judith Singer has experienced severe mental anguish and extreme emotional distress.

234. Plaintiff Eric M. Singer is a citizen of the United States and a resident of the State of New Jersey. He is the brother of plaintiff Sarri Anne Singer.

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235. Eric first learned of the attack when he received an emergency phone call from his father while Eric was having lunch in a restaurant. After speaking with his mother and notifying his office, Eric and his father flew that night to Israel to be with Sarri.

236. As a result of the attack, plaintiff Eric M. Singer has experienced severe mental anguish and extreme emotional distress.

237. Plaintiff Robert Singer is a citizen of the United States and a resident of the State of New Jersey. He is the father of plaintiff Sarri Anne Singer.

238. After learning of the attack, Robert traveled to Israel to be with his daughter.

239. As a result of the attack, plaintiff Robert Singer has experienced severe mental anguish and extreme emotional distress.

**THE COMMUTER BUS #6 BOMBING –
MAY 18, 2003**

240. On May 18, 2003, Basem Takruri, a HAMAS suicide bomber, boarded Bus #6, a commuter bus heading for Jerusalem, and detonated his explosives.

241. Seven people ranging in age from 35 to 68, were killed by the explosion, and 20 others were injured.

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The Averbach Family

242. Steven Averbach was a citizen of the United States and a resident of the State of Israel when he died.

243. Steven died in 2010 as a result of injuries sustained during the suicide bombing that occurred on May 18, 2003. He was 44 years old.

244. At the time of the attack Steven resided near Tel Aviv, Israel. He was a married father of four sons ranging in age from 2 to 13 at the time. Steven and his wife, Julie, were married in 1994 and have two sons together, Sean Averbach and Adam Averbach.

245. Steven's older sons, Tamir and Devir are from a prior marriage.

246. On May 18, 2003, Steven boarded the commuter bus heading for Jerusalem and took a seat facing the back.

247. As the bus pulled away from the stop, it suddenly stopped, and the bus driver allowed another passenger to get on.

248. Steven caught a glimpse of him and saw that he was wearing a heavy coat in warm weather that covered bulges underneath it. He also saw what looked like a trigger mechanism in his right hand.

249. Having worked in the anti-terrorist division in the Israeli Army and the Israeli Police, knowing that

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Israeli buses do not usually pick up passengers after they have begun to leave the station, seeing the tension on the faces of the people on the bus, and taking into account Takruri's aforementioned suspicious characteristics, Steven immediately recognized that a terrorist attack was imminent.

250. Steven grabbed the gun he carried and turned toward Takruri, who detonated the explosives.

251. Steven absorbed a substantial amount of the impact of the explosion and multiple pieces of shrapnel.

252. Steven sustained a critical wound when a ball bearing originally packed together with the bomber's explosives penetrated through the skin and muscles of his neck and lodged between his C3 and C4 vertebrae. The ball bearing lodged in his spinal canal causing severe compression damage to his spinal cord. The object was eventually removed during surgery, but not before it had caused severe damage to his spinal cord that rendered him a quadriplegic.

253. Following surgery, Steve was moved to intensive care where he stayed for five weeks. He almost died there several times because of an extremely high fever and from the blast injury to his lungs. He subsequently underwent numerous operations to his back, groin and gastric intestines. He also had a tracheotomy and had a gastric feeding tube inserted as a result of the damage caused by the tracheotomy.

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254. Steven was forced to return to the Intensive Care Unit at least twice with complications.

255. Steven was paralyzed from his neck down.

256. On more than one occasion, Steven pleaded with his doctors and family members to take him off of life support.

257. He was completely dependent on the 24-hour care provided to him and had no foreseeable hope of recovery.

258. Steven lived in constant pain. He battled depression and took antidepressants.

259. As a result of the attack, Steven Averbach sustained severe physical injuries and experienced severe mental anguish and extreme emotional distress from May 18, 2003 until his death.

260. Plaintiff Julie Averbach is a citizen and resident of the State of Israel. She is the widow of Steven Averbach, and the mother of plaintiffs Sean Averbach and Adam Averbach.

261. Plaintiff Julie Averbach brings this action both individually and as the legal representative of the Estate of Steven Averbach.

262. As a result of the injuries Steven sustained, Julie had to relocate her family to be closer to the rehabilitation center where Steven resided for nearly a year. Steven

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moved home from the rehabilitation center in July 2004 but required continuous 24-hour care. Following the attack, Julie was, in most respects, a single parent and could not enjoy the normal companionship, day- to-day assistance and mutual support that she had previously received from her husband.

263. Julie underwent psychological counseling after the attack.

264. As a result of the suffering that Steven experienced following the attack and his death that resulted from the injuries sustained in the attack, plaintiff Julie Averbach has experienced emotional pain and suffering, loss of her husband's society, companionship, comfort, advice and counsel, and severe mental anguish and extreme emotional distress.

265. Plaintiff Tamir Averbach is a citizen of the United States and a resident of the State of New Jersey. He is a son of Steven Averbach and Steven's first wife.

266. After the attack, Tamir underwent psychological counseling for approximately one year.

267. As a result of the suffering that Steven experienced following the attack and his death that resulted from the injuries sustained in the attack, plaintiff Tamir Averbach has experienced emotional pain and suffering, loss of his father's society, companionship, comfort, advice and counsel, and severe mental anguish and extreme emotional distress.

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268. Plaintiff Devir Averbach is a citizen of the United States and a resident of the State of New Jersey. He is a son of Steven Averbach and Steven's first wife.

269. After the attack, Devir experienced difficulty making friends, his grades declined, he cried, and he felt angry. He also underwent psychological counseling.

270. Tamir and Devir witnessed their father's relentless and painful suffering and repeated surgeries and brushes with death. They remember what it was like before the attack, when he was an able-bodied man.

271. As a result of the suffering that Steven experienced following the attack and his death that resulted from the injuries sustained in the attack, plaintiff Devir Averbach has experienced emotional pain and suffering, loss of his father's society, companionship, comfort, advice and counsel, and severe mental anguish and extreme emotional distress.

272. Plaintiff Sean Averbach is a citizen of the United States and a resident of the State of Israel. He is a son of Steven Averbach and Julie Averbach.

273. As a result of the brutal attack on his father, he has been emotionally traumatized and has lost the sense of protection and safety he once enjoyed from his father. Due to the severity of his father's injuries, ordinary companionship and simple pleasures of traveling with or playing sports with his father were denied to him.

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274. As a result of the suffering that Steven experienced following the attack and his death that resulted from the injuries sustained in the attack, plaintiff Sean Averbach has experienced emotional pain and suffering, loss of his father's society, companionship, comfort, advice and counsel, and severe mental anguish and extreme emotional distress.

275. Plaintiff Adam Averbach is a citizen of the United States and a resident of the State of Israel. He is a son of Steven Averbach and Julie Averbach.

276. As a result of the brutal attack on his father he has been emotionally traumatized and does not remember a time when his father was capable of using his arms and legs. Due to the severity of his father's injuries, ordinary companionship and simple pleasures of walking together, playing sports together, or driving in a car with his father were denied to him.

277. As a result of the suffering that Steven experienced following the attack and his death that resulted from the injuries sustained in the attack, plaintiff Adam Averbach has experienced emotional pain and suffering, loss of his father's society, companionship, comfort, advice and counsel, and severe mental anguish and extreme emotional distress.

278. David Averbach was a United States citizen and resident of the State of New Jersey when he died in 2013. He was the father of Steven Averbach.

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279. Plaintiff Maida Averbach is a citizen of the United States and a resident of the State of New Jersey. She is the mother of Steven Averbach.

280. Plaintiff Maida Averbach brings this action both individually and as the legal representative of the Estate of David Averbach.

281. Maida Averbach and David Averbach had returned home late on May 17, 2003, from a dinner honoring David. Soon thereafter, Maida switched on Fox News and learned that a bus had been bombed in Jerusalem on Sunday morning in Israel. Maida recognized her son's body leaning out of a stretcher on the news footage but decided not to inform her husband until the next morning.

282. After a sleepless night, Maida received a telephone call on Sunday morning at 5:50 a.m. from her daughter-in-law and a social worker from Hadassah Hospital. They explained that Steven had been grievously wounded by the explosion and a ball bearing had lodged between his C3 and C4 vertebrae.

283. As a respected surgeon with many years of experience, David immediately understood the severity of his son's injuries.

284. At the time of the attack, David Averbach and Maida Averbach had partially retired from their jobs so that they could spend more time with Steven and his children.

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285. Following the attack, Steven's constant inability to use his hands and legs, his inevitable battle with depression and the emotional effect it has had on Steven's four children were a constant source of anguish to both of his parents.

286. As a result of the suffering that Steven experienced following the attack and his death that resulted from the injuries sustained in the attack, (before he died) David Averbach experienced emotional pain and suffering, loss of his son's society, companionship, comfort, advice and counsel, and severe mental anguish and extreme emotional distress.

287. Plaintiff Maida Averbach experienced severe mental anguish and extreme emotional distress as a result of the terrorist attack from the moment she saw her son's body on television in the early morning hours of May 18, 2003.

288. As a result of the suffering that Steven experienced following the attack and his death that resulted from the injuries sustained in the attack, plaintiff Maida Averbach has experienced emotional pain and suffering, loss of her son's society, companionship, comfort, advice and counsel, and severe mental anguish and extreme emotional distress.

289. Plaintiff Michael Averbach is a citizen of the United States and a resident of the State of New Jersey. He is the brother of Steven Averbach.

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290. Michael Averbach has always looked up to his brother and admired him. The injuries that his brother sustained, as well as his subsequent death, have been a severe emotional blow to Michael.

291. Since the date of the attack, Michael flew to Israel repeatedly, often at his brother's request, simply to sit by Steven's bedside and talk.

292. As a result of the suffering that Steven experienced following the attack and his death that resulted from the injuries sustained in the attack, plaintiff Michael Averbach has experienced emotional pain and suffering, loss of his brother's society, companionship, comfort, advice and counsel, and severe mental anguish and extreme emotional distress.

293. Plaintiff Eileen Sapadin is a citizen of the United States and a resident of the State of New Jersey. She is the sister of Steven Averbach.

294. Eileen was staying at her parents' home with her husband and three of her four children on the morning her mother received notification of the attack.

295. Eileen has experienced tremendous emotional pain and sadness as a result of the severity of the injuries that Steve sustained as a result of the attack, as well as his subsequent death.

296. After the attack, she suffered from anxiety and depression, had trouble sleeping, and cried every day.

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297. Since the attack, she lost more than thirty pounds and has suffered physical exacerbations of a colitis condition that was in remission prior to the attack that severely injured her brother, and subsequently resulted in his death.

298. As a result of the suffering that Steven experienced following the attack and his death that resulted from the injuries sustained in the attack, plaintiff Eileen Sapadin has experienced emotional pain and suffering, loss of her brother's society, companionship, comfort, advice and counsel, and severe mental anguish and extreme emotional distress.

**THE MIKE'S PLACE BOMBING IN TEL AVIV –
APRIL 30, 2003**

299. On April 30, 2003, Asif Muhammad Hanif, a HAMAS suicide bomber, entered Mike's Place, a popular bar situated on the seashore a few hundred meters from the American Embassy in Tel Aviv, and detonated his explosives,¹ killing three people and injuring more than 50 others.

300. Hanif, 22, was a British citizen who entered Israel through Jordan.

1. There were actually two bombers, both British nationals sent by HAMAS, but the explosive belt on one of the terrorists failed to detonate.

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The Rozenstein Family

301. Plaintiff Daniel Rozenstein is a citizen of the United States and a resident of the State of Florida.

302. Daniel was seated inside the bar and decided to step outside when he crossed paths with Hanif in the entryway just as he detonated his explosives.

303. As a result of the attack, Daniel suffered second degree burns over his entire body.

304. After three days in the hospital, Daniel slipped into a coma that lasted eight days. He was placed on a respirator and other life supports for two weeks. He remained in the hospital for one and a half months, followed by eight months of treatment as an outpatient.

305. As a result of the bombing, he sustained severe hearing loss. He has also suffered a permanent loss of balance, is often dizzy, and frequently experiences black outs.

306. Daniel's right hand no longer functions properly as it is covered in scar tissue. Much of the rest of his body is also covered by scar tissue, including his back.

307. He also suffers from memory loss, nightmares and post-traumatic stress disorder ("PTSD"). He has also sustained a traumatic brain injury ("TBI") and undergone psychological counseling.

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308. As a result of the attack, plaintiff Daniel Rozenstein has sustained severe physical injuries and experienced severe mental anguish and extreme emotional distress.

309. Plaintiff Julia Rozenstein Schon is a citizen of the United States and a resident of the State of Florida. She is the sister of plaintiff Daniel Rozenstein.

310. On the night of the bombing, Julia received a telephone call from the father of Daniel's girlfriend. She was told there had been an attack and that no one was certain of Daniel's condition.

311. When Julia first saw Daniel, she did not recognize him because his body was horribly burned, and his face and ears were swollen beyond recognition. She spent many days in the hospital and was there when her brother slipped into a coma.

312. Julia still suffers nightmares and is traumatized by the attack. Even now, she calls her brother compulsively to be certain that he is not in danger.

313. As a result of the attack, plaintiff Julia Rozenstein Schon has experienced severe mental anguish and extreme emotional distress.

314. Plaintiff Alexander Rozenstein is a citizen of the United States and a resident of the State of Israel. He is the father of plaintiff Daniel Rozenstein.

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315. As a result of the attack, plaintiff Alexander Rozenstein has experienced severe mental anguish and extreme emotional distress.

316. Plaintiff Esther Rozenstein is a citizen of the United States and a resident of the State of Florida. She is the mother of plaintiff Daniel Rozenstein.

317. As a result of the attack, plaintiff Esther Rozenstein has experienced severe mental anguish and extreme emotional distress.

**THE SHOOTING ATTACK ON ROUTE #60 –
JANUARY 29, 2003**

318. On January 29, 2003, Farah Hamad and Yasser Hamad, two HAMAS terrorists, perpetrated a shooting attack on Route #60, seriously injuring one person.

The Steinmetz Family

319. Plaintiff Jacob Steinmetz is a citizen of the United States and a resident of the State of Israel.

320. Plaintiff Deborah Steinmetz is a citizen of the United States and a resident of the State of Israel. She is the wife of plaintiff Jacob Steinmetz.

321. On January 29, 2003, Jacob was driving their car on Route #60. Deborah sat in the front passenger seat of the car. As their car made a turn, two masked men began shooting at the car. The entire driver's side of the car was riddled with bullets.

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322. Two bullets hit Jacob. One shot passed through the car seat and lodged in his leg. The other shot entered his arm and passed through his elbow.

323. After arriving at the hospital and over the next few days, Jacob underwent a number of operations.

324. Four metal spikes were surgically inserted into his bone in order to restrain his arm.

The spikes remained there for three months and severely restricted his arm's mobility. Additional plastic surgeries were performed. Jacob received a skin graft from his leg to cover the opening in his elbow.

325. In 2003, Jacob underwent a complete elbow replacement that included the placement of a large metal hinge.

326. Presently, the use of Jacob's arm is greatly limited.

327. As a result of the attack, plaintiff Jacob Steinmetz has sustained severe physical injuries and experienced severe mental anguish and extreme emotional distress.

328. As a result of being in the car that terrorists targeted, plaintiff Deborah Steinmetz has experienced great anxiety and severe mental anguish and extreme emotional distress.

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329. Amichai Steinmetz was a citizen of the United States when he died. He is the son of plaintiffs Jacob Steinmetz and Deborah Steinmetz.

330. In 2009, Amichai Steinmetz went missing while on a trip to India. In December 2015, an Israeli court declared Amichai Steinmetz dead.

331. Following the attack and prior to his declaration of death in 2015, Amichai Steinmetz experienced severe mental anguish and extreme emotional distress as a result of the attack.

332. Plaintiffs Jacob Steinmetz and Deborah Steinmetz bring this action both individually and on behalf of the Estate of Amichai Steinmetz.

333. Plaintiff Nava Steinmetz is a citizen of the United States and a resident of the State of Israel. She is a daughter of plaintiffs Jacob Steinmetz and Deborah Steinmetz.

334. Plaintiff Orit Mayerson is a citizen of the United States and a resident of the State of Israel. She is a daughter of plaintiffs Jacob Steinmetz and Deborah Steinmetz.

335. Plaintiff Netanel Steinmetz is a citizen of the United States and a resident of the State of Israel. He is the son of plaintiffs Jacob Steinmetz and Deborah Steinmetz.

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336. As a result of the attack, plaintiffs Nava Steinmetz, Orit Mayerson and Netanel Steinmetz have experienced severe mental anguish and extreme emotional distress.

**THE HEBREW UNIVERSITY CAFETERIA
BOMBING – JULY 31, 2002**

337. On the afternoon of July 31, 2002, approximately 100 people were eating lunch in the Frank Sinatra cafeteria on the Hebrew University Mount Scopus campus in Jerusalem. A bomb planted inside the cafeteria exploded, killing nine people, five of them Americans, and injuring as many as 70 others.

338. HAMAS planned and perpetrated the attack.

339. Mohammad Odeh, a HAMAS operative, who worked at Hebrew University as a painter for an Israeli contractor, set off the bomb.

The Coulter Family

340. Janis Ruth Coulter was a citizen of the United States when she died.

341. Janis was in the cafeteria when the bomb exploded, killing her and injuring her friend who was eating lunch with her.

342. Janis was the assistant director of the Hebrew University's Rothenberg International School's Office of Academic Affairs in New York.

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343. She had arrived in Israel just one day before the bombing to accompany a group of 19 American students who were scheduled to attend classes at the university.

344. Robert L. Coulter, Sr. was a citizen of the United States and a resident of the State of Massachusetts when he died in 2018. He was the father of Janis Ruth Coulter.

345. Robert L. Coulter, Sr.'s widow, Ann Coulter, brings this action on behalf of the Estate of Robert Coulter, Sr.

346. Robert L. Coulter, Sr. was watching television news that morning in the United States when he saw a "news flash" about a bombing at Hebrew University. Thinking he saw Janis's head lying in an unsealed body bag, he called his other daughter, plaintiff Dianne Coulter Miller. Dianne called Janis's boss in New York and both Robert L. Coulter, Sr. and his daughter desperately tried to reach Janis on her cell phone without success.

347. Plaintiff Dianne Coulter Miller is a citizen of the United States and a resident of the State of Massachusetts. She is the sister of Janis Ruth Coulter.

348. Plaintiff Robert L. Coulter, Jr. is a citizen of the United States and a resident of the State of Massachusetts. He is the brother of Janis Ruth Coulter.

349. Plaintiffs Dianne Coulter Miller and Robert L. Coulter, Jr. bring actions individually and as the legal representatives of the Estate of Janis Ruth Coulter.

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350. Robert L. Coulter, Jr. had heard about the bombing on the radio on the way to work but did not make the connection with Janis's visit to Israel. His father called him at work about the possibility that Janis was at the cafeteria, whereupon he drove immediately to his father's house.

351. Initially, Janis was identified only through the numbers on her medical alert bracelet. Eventually, the family retrieved Janis's dental records and faxed them to Israel where, later that evening, her death was confirmed.

352. As a result of Janis's death, (before his own death in 2018) plaintiff Robert L. Coulter, Sr. experienced emotional pain and suffering, loss of his daughter's society, companionship, comfort, advice and counsel, and severe mental anguish and extreme emotional distress.

353. As a result of Janis's death, plaintiff Dianne Coulter Miller has experienced emotional pain and suffering, loss of her sister's society, companionship, comfort, advice and counsel, and severe mental anguish and extreme emotional distress.

354. As a result of Janis's death, plaintiff Robert L. Coulter, Jr. has experienced emotional pain and suffering, loss of his sister's society, companionship, comfort, advice and counsel, and severe mental anguish and extreme emotional distress.

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The Carter Family

355. Diane Leslie Carter was a citizen of the United States when she died.

356. She was eating lunch in the cafeteria when the bomb exploded.

357. Diane was killed by the bomb blast.

358. In 1990, Diane had moved to Israel, where she worked as a librarian and archivist in the National Library on the Givat Ram campus of Hebrew University in Jerusalem.

359. Plaintiff Larry Carter is a citizen of the United States and a resident of the State of North Carolina. He is the father of Diane Leslie Carter.

360. Plaintiff Larry Carter brings this action both individually and as the Administrator of the Estate of Diane Leslie Carter.

361. Larry learned of his daughter's death from a journalist who called his home. After conferring with his ex-wife, Diane's mother, Larry was able to confirm that his daughter was, in fact, killed in the bombing.

362. Plaintiff Shaun Choffel is a citizen of the United States and a resident of the State of Virginia. She is the sister of Diane Leslie Carter.

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363. Both Larry and Shaun learned that Diane had been buried in Israel only moments before the funeral was scheduled to begin. Neither of them had the opportunity to say goodbye to Diane.

364. As a result of Diane's death, plaintiff Larry Carter has experienced emotional pain and suffering, loss of his daughter's society, companionship, comfort, advice and counsel, and severe mental anguish and extreme emotional distress.

365. As a result of Diane's death, plaintiff Shaun Choffel has experienced emotional pain and suffering, loss of her sister's society, companionship, comfort, advice and counsel, and severe mental anguish and extreme emotional distress.

The Blutstein Family

366. Benjamin Blutstein was a citizen of the United States when he died.

367. He was killed by the bomb blast.

368. Benjamin had come to Israel for a two-year study program at the Pardes Institute in Jerusalem to become a teacher.

369. Benjamin was scheduled to fly home to visit his family in Pennsylvania the day after he was murdered by HAMAS terrorists. Instead, two days after the attack,

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Benjamin's body was flown home and buried in his parents' hometown of Harrisburg, Pennsylvania.

370. Plaintiff Richard Blutstein is a citizen of the United States and a resident of the State of Pennsylvania. He is the father of Benjamin Blutstein.

371. Plaintiff Katherine Baker is a citizen of the United States and a resident of the State of Pennsylvania. She is the mother of Benjamin Blutstein.

372. Plaintiffs Richard Blutstein and Katherine Baker bring this action both individually and on behalf of the Estate of Benjamin Blutstein.

373. Plaintiff Rebekah Blutstein is a citizen of the United States and a resident of the State of Pennsylvania. She is the sister of Benjamin Blutstein.

374. Richard first heard about the attack while watching Fox News early in the morning. He then called Benjamin's cell phone and heard a recording. Shortly thereafter he contacted friends in Israel to ascertain if Benjamin had been injured in the attack. After a friend made a positive identification, Richard received a call confirming Benjamin's death.

375. Katherine learned that her son had been killed in the attack when she received a call from a representative of the American Embassy. She was too overwhelmed with emotion to call her husband. Richard received the call from a neighbor, who was with Katherine. Katherine

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then composed herself enough to inform her daughter, Rebekah.

376. As a result of Benjamin's death, plaintiff Richard Blutstein has experienced emotional pain and suffering, loss of his son's society, companionship, comfort, advice and counsel, and severe mental anguish and extreme emotional distress.

377. As a result of Benjamin's death, plaintiff Katherine Baker has experienced emotional pain and suffering, loss of her son's society, companionship, comfort, advice and counsel, and severe mental anguish and extreme emotional distress.

378. Although Rebekah's father had informed her about the attack, Rebekah learned that her brother had died when her mother telephoned her.

379. As a result of Benjamin's death, plaintiff Rebekah Blutstein has experienced emotional pain and suffering, loss of her brother's society, companionship, comfort, protection, advice and counsel, and severe mental anguish and extreme emotional distress.

The Gritz Family

380. David Gritz was a citizen of the United States when he died.

381. He was killed by the bomb blast.

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382. He had come to Israel for the first time with the help of a scholarship from the Hartman Institute to study philosophy and write his doctorate.

383. He died after being in Israel for only two weeks.

384. Norman Gritz was a citizen of the United States and a resident of France when he died in 2005. He was the father of David Gritz.

385. Plaintiff Nevenka Gritz is a citizen and resident of France. She is the mother of David Gritz, who was an only child.

386. Plaintiff Nevenka Gritz brings this action individually and on behalf of the Estate of David Gritz and the Estate of Norman Gritz.

387. Nevenka and Norman were in New York on the day their son was murdered. Friends informed them that television reports had indicated that a bombing had taken place at Hebrew University. Nevenka and her husband attempted to reach their son by phone, and then called the Israeli consulate in the hopes of getting more information. Eventually, confirmation came from the Israeli consulate that David's body had been identified.

388. As a result of David's death, (prior to his death) Norman Gritz experienced emotional pain and suffering, loss of his only child's society, companionship, comfort, advice and counsel, and severe mental anguish and extreme emotional distress.

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389. As a result of David's death, plaintiff Nevenka Gritz has experienced emotional pain and suffering, loss of her only child's society, companionship, comfort, advice and counsel, and severe mental anguish and extreme emotional distress.

THE SHEFFIELD CLUB BOMBING – MAY 7, 2002

390. On the night of May 7, 2002, Muhammad Muammar, a HAMAS suicide bomber, entered the third floor of a building in Rishon Letzion's new industrial area that housed the Sheffield Club (social club) and detonated a bomb.

391. Fifteen people were killed in the attack, and more than 50 others were injured.

The Bablar Family

392. Esther Bablar was a citizen of the United States when she died.

393. Although Esther initially survived the attack, she died of her injuries the following morning.

394. Plaintiff Jacqueline Chambers is a citizen of the United States and a resident of the State of Florida. She is a daughter of Esther Bablar.

395. Plaintiff Levana Cohen is a citizen of the United States and a resident of the State of Florida. She is a daughter of Esther Bablar.

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396. Plaintiffs Jacqueline Chambers and Levana Cohen bring actions both individually and on behalf of the Estate of Esther Bablar.

397. Esther had spent the month before the bombing in Florida with her youngest daughter, Levana, who had just given birth to Esther's grandchild. The day before the attack she had been in New York visiting her other daughter, Jacqueline.

398. On the day of the attack, a member of the Bablar family in Israel contacted Esther's sister, Sarah Elyakim, in New York and told her the tragic news. Eventually Esther's daughters were notified, and they quickly made arrangements to fly to Israel with their aunt and uncle.

399. As a result of Esther's death, plaintiff Jacqueline Chambers has experienced emotional pain and suffering, and the loss of her mother's society, companionship, comfort, protection, attention, advice and counsel, and severe mental anguish and extreme emotional distress.

400. As a result of Esther's death, plaintiff Levana Cohen has experienced emotional pain and suffering, and the loss of her mother's society, companionship, comfort, protection, attention, advice and counsel, and severe mental anguish and extreme emotional distress.

401. Plaintiff Eli Cohen is a citizen of the United States and a resident of the State of New York. He is the son of Esther Bablar. He is being represented by his legal guardian, plaintiff Jacqueline Chambers.

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402. As a result of Esther's death, plaintiff Eli Cohen has experienced emotional pain and suffering, and the loss of his mother's society, companionship, comfort, protection, attention, advice and counsel, and severe mental anguish and extreme emotional distress.

403. Plaintiff Sarah Elyakim is a citizen of the United States and a resident of the State of New York. She is the sister of Esther Bablar.

404. As a result of Esther's death, plaintiff Sarah Elyakim has experienced emotional pain and suffering and the loss of her sister's companionship, advice and counsel, and severe mental anguish and extreme emotional distress.

405. Plaintiff Joseph Cohen is a citizen of the United States and a resident of the State of New York. He is the brother of Esther Bablar.

406. As a result of Esther's death, plaintiff Joseph Cohen has experienced emotional pain and suffering and the loss of his sister's companionship, advice and counsel, and severe mental anguish and extreme emotional distress.

**THE PASSOVER MASSACRE AT THE PARK
HOTEL IN NETENAYA – MARCH 27, 2002**

407. On March 27, 2002, Abd al-Baset Odeh, a HAMAS suicide bomber, blew himself up near the dining area within the Park Hotel in Netanya. It was the night

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of the Jewish holiday of Passover, and the hotel dining room was filled with hundreds of people celebrating the Passover Seder with their families and friends.

408. Thirty people were killed, and 140 others were injured.

The Rogen Family

409. Hannah Rogen was a citizen of the United States when she died.

410. Hannah was severely wounded in the attack and died of her wounds six days later, on April 2, 2002.

411. Hannah was a Holocaust survivor who immigrated to the United States after World War II. She was attending the Passover Seder at the invitation of a childhood friend, Yulia Talmi, who was also killed in the attack.

412. Greta Geller is the great niece of Hannah Rogen. She, along with Ilana Dorfman, Rephael Kitsis, and Tova Guttman, bring this action as the court-appointed administrators of the Estate of Hannah Rogen.

**THE BEN YEHUDA STREET BOMBINGS –
DECEMBER 1, 2001**

413. In the late evening of December 1, 2001, Nabil Halabiya and Osama Bahar, two HAMAS suicide bombers, blew themselves up in a pedestrian mall in Jerusalem as part of a coordinated double suicide bombing. A large

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quantity of nails was packed with each of the bombs. Eleven people were killed, and 188 others were injured.

414. After the two suicide bombings, HAMAS terrorists detonated a car bomb near the site of the first two attacks.

The Spetner Family

415. Plaintiff Temima Spetner is a citizen of the United States and a resident of the State of Missouri.

416. On December 1, 2001, Temima was walking down the pedestrian mall in Jerusalem when one of the suicide bombers detonated his explosives approximately 10 yards from where she was standing. Temima was hit by shrapnel on her arms and fingers. While bleeding heavily, and with clothing soaked in blood, Temima began running up the walkway and fell. Someone came to her aid and attempted to stop the bleeding until ambulances arrived at the scene.

417. As a result of the attack, the femoral artery of Temima's right leg was severed. She was transported to the hospital where doctors operated on her to stop the bleeding. The following day it was determined that Temima's intestines had been punctured by shrapnel, and she underwent another operation to repair her intestines and remove most of the shrapnel. Temima remained in the hospital for ten days.

418. There is significant scarring on Temima's thigh and the lower part of her abdomen. She continues

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to experience numbness in her right leg and is highly sensitive to pain in that leg.

419. Temima has also experienced psychological trauma as a result of the attack.

420. As a result of the attack, plaintiff Temima Spetner has sustained severe physical injuries and experienced severe mental anguish and extreme emotional distress.

The Kirschenbaum Family

421. Plaintiff Jason Kirschenbaum is a citizen of the United States and a resident of the State of New York.

422. Jason Kirschenbaum was on Ben Yehuda Street in Jerusalem on December 1, 2001 when the double suicide bombing took place.

423. As a result of the first explosion, Jason was thrown to the ground. As he stood up, the second suicide bomber detonated his explosives and Jason was thrown in another direction.

424. When he got up the second time, he felt numb. Jason saw his left arm dangling back and forth and held it because he thought it might fall off. When he began running up the street for help, he felt a sharp pain in his leg and back.

425. Jason was taken to Shaare Zedek Hospital in Jerusalem where he underwent two operations. Surgeons removed 8 metal bolts from his arm, leg and back.

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426. Jason had to undergo several months of physical therapy for the injuries to his arm, leg and back. He still has scarring where he was branded by the bolts that penetrated his skin.

427. As a result of the attack, plaintiff Jason Kirschenbaum has sustained severe physical injuries and experienced severe mental anguish and extreme emotional distress.

428. Plaintiff Isabelle Kirschenbaum is a citizen of the United States and a resident of the State of New York. She is the mother of plaintiff Jason Kirschenbaum.

429. Martin Kirschenbaum was a citizen of the United States and a resident of the State of New York when he died in 2008. He was the father of plaintiff Jason Kirschenbaum.

430. Plaintiff Isabelle Kirschenbaum brings this action both individually and as the representative of the Estate of Martin Kirschenbaum.

431. Isabelle first learned of the double suicide bombing while watching CNN. After numerous telephone conversations, she ultimately received a telephone call confirming that Jason had been injured in the attack.

432. As a result of the attack, plaintiff Isabelle Kirschenbaum has experienced severe mental anguish and extreme emotional distress.

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433. Martin Kirschenbaum learned of the attack when he and Isabelle Kirschenbaum received the telephone call confirming that Jason had been injured in the attack.

434. As a result of the attack, (before his death) Martin Kirschenbaum experienced severe mental anguish and extreme emotional distress.

435. Plaintiff Joshua Kirschenbaum is a citizen of the United States and a resident of the State of New York. He is a brother of plaintiff Jason Kirschenbaum.

436. Joshua Kirschenbaum was in Tel Aviv at the time of the attack. Martin and Isabelle telephoned Joshua to advise him that his brother Jason had been injured in the attack in Jerusalem. Hours later, he finally located his brother in the emergency room at Shaare Zedek Hospital in Jerusalem.

437. As a result of the attack, plaintiff Joshua Kirschenbaum has experienced severe mental anguish and extreme emotional distress.

438. Plaintiff Shoshana Burgett is a citizen of the United States and a resident of the State of New York. She is a sister of plaintiff Jason Kirschenbaum.

439. As a result of the attack, plaintiff Shoshana Burgett has experienced severe mental anguish and extreme emotional distress.

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440. Plaintiff David Kirschenbaum is a citizen of the United States and a resident of the State of New York. He is a brother of plaintiff Jason Kirschenbaum.

441. As a result of the attack, plaintiff David Kirschenbaum has experienced severe mental anguish and extreme emotional distress.

442. Plaintiff Danielle Teitelbaum is a citizen of the United States and a resident of the State of New Jersey. She is a sister of plaintiff Jason Kirschenbaum.

443. As a result of the attack, plaintiff Danielle Teitelbaum has experienced severe mental anguish and extreme emotional distress.

The Miller Family

444. Plaintiff Netanel Miller is a citizen of the United States and a resident of the State of Israel.

445. On the evening of December 1, 2001, Netanel was with friends enjoying ice cream at the pedestrian mall in Jerusalem when one of the HAMAS suicide bombers detonated his explosives a few feet away from him. Netanel had his back to the bomber, and he was thrown to the ground as a result of the explosion.

446. A nut from the bomb lodged in the upper part of Netanel's leg. Other nuts hit him in the back, resulting in burns. His hand and knee were also injured.

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447. Netanel, in shock and unaware of the severity of his injuries, attempted to walk home, limping on his injured leg. After walking approximately 30 feet, Netanel collapsed on the sidewalk. Only then did Netanel become aware of how much he was bleeding from the wounds he had sustained in his leg. His attempts to use pressure to stop the bleeding were unsuccessful.

448. Some people stopped to help him, and Netanel handed them his cellular phone, asking them to call his parents, Arie and Chaya Miller. Netanel spoke to his father, who had been an Army medic. Arie asked Netanel specific questions about his condition and insisted Netanel seek medical help.

449. Ultimately, Netanel was taken to Shaare Zedek Hospital by ambulance. Since Netanel had lost a great deal of blood, he was given a blood transfusion.

450. Arie came to the hospital. Chaya arrived an hour or so later after she found someone to stay with her other children at her home.

451. Netanel was admitted to the hospital and remained there for two days.

452. Netanel endured the pain in his leg for nearly two years.

453. The pain in Netanel's leg became so severe that he had to undergo surgery, and the nut that was still lodged in his leg was finally removed.

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454. It is still painful for Netanel to hike, an activity that he has always enjoyed.

455. Netanel had flashbacks as a result of the attack and underwent psychological counseling.

456. As a result of the attack, plaintiff Netanel Miller has sustained severe physical injuries and experienced severe mental anguish and extreme emotional distress.

457. Plaintiff Chaya Miller is a citizen of the United States and a resident of the State of Israel. She is the mother of plaintiff Netanel Miller.

458. Plaintiff Arie Miller is a citizen and resident of the State of Israel. He is the father of plaintiff Netanel Miller.

459. Upon learning that their son Netanel had been injured in the bombing and knowing he has suffered greatly as a result of those injuries, plaintiffs Chaya Miller and Arie Miller experienced great concern and anxiety.

460. As a result of the attack, plaintiffs Chaya Miller and Arie Miller have experienced severe mental anguish and extreme emotional distress.

461. Plaintiff Aharon Miller is a citizen of the United States and a resident of the State of Israel. He is the brother of plaintiff Netanel Miller.

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462. Plaintiff Shani Miller is a citizen of the United States and a resident of the State of Israel. She is a sister of plaintiff Netanel Miller.

463. Plaintiff Adiya Miller is a citizen of the United States and a resident of the State of Israel. She is a sister of plaintiff Netanel Miller.

464. As a result of the attack, plaintiffs Aharon Miller, Shani Miller, and Adiya Miller have experienced severe mental anguish and extreme emotional distress.

The Steinherz Family

465. Plaintiff Altea Steinherz is a citizen of the United States and a resident of the State of Israel.

466. Plaintiff Jonathan Steinherz is a citizen of the United States and a resident of the State of Israel. He was the husband of plaintiff Altea Steinherz at the time of the attack.

467. On December 1, 2001, Altea Steinherz was nine months pregnant. Altea and Jonathan were at a restaurant in Jerusalem when they heard a bomb explode nearby.

468. Altea wanted to get home to her daughter who was with a babysitter at the time, but she knew that bombings in Israel were frequently followed by a second bomb intended to kill or injure people fleeing from the first bomb.

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469. A short time later Altea and Jonathan heard another bomb explode. Believing the bombing was now over, they began to walk home.

470. While walking in the street, they saw a crazed-looking man run past them. Altea thought that he might have been the bomber and insisted that the couple turn around, away from the direction from which the man had come.

471. As they began to run, Altea fell twice, and she broke her left arm as a result of one of the falls.

472. She experienced severe pain in her arm after the attack and continued to experience pain for many years afterward.

473. Altea was afraid that, as a result of her falls, her pregnancy might have terminated.

474. Until her son, Yitzhak, was born 11 days later, Altea and Jonathan feared for the condition of their unborn child.

475. Altea became less self-confident and more fearful generally. She had sleeping difficulties and underwent psychological counseling.

476. Jonathan felt tremendous anxiety and stress, had significant difficulty sleeping, and underwent psychological counseling.

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477. As a result of the attack, plaintiff Altea Steinherz sustained physical injuries and experienced severe mental anguish and extreme emotional distress.

478. As a result of the attack, plaintiff Jonathan Steinherz experienced severe mental anguish and extreme emotional distress.

479. Plaintiff Temima Steinherz is a citizen of the United States and a resident of the State of Israel. She is the daughter of plaintiffs Altea Steinherz and Jonathan Steinherz.

480. As a result of the attack, plaintiff Temima Steinherz has experienced severe mental anguish and extreme emotional distress.

481. Plaintiff Joseph Ginzberg is a citizen of the United States and a resident of the State of New York. He is the father of plaintiff Altea Steinherz.

482. As a result of the attack, plaintiff Joseph Ginzberg has experienced severe mental anguish and extreme emotional distress.

483. Plaintiff Peter Steinherz is a citizen of the United States and a resident of the State of New York. He is the father of plaintiff Jonathan Steinherz.

484. Plaintiff Laurel Steinherz is a citizen of the United States and a resident of the State of New York. She is the mother of plaintiff Jonathan Steinherz.

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485. As a result of the attack, plaintiffs Peter Steinherz and Laurel Steinherz have experienced severe mental anguish and extreme emotional distress.

**PATT JUNCTION BUS # 32A BOMBING –
JUNE 18, 2002**

486. At approximately 7:50 a.m. on June 18, 2002, Muhamad al-Ghoul, a HAMAS terrorist, boarded Bus #32A in the Gilo neighborhood of Jerusalem. Almost immediately, he detonated the large bomb which he carried in a bag stuffed with ball bearings. The blast destroyed the front half of the bus, packed with people on their way to work and a group of schoolchildren. Nineteen people were killed, and 74 others were injured.

The Aluf Family

487. Boaz Aluf was a citizen of the State of Israel when he died.

488. Plaintiff Gila Aluf is a citizen of the United States and a resident of the State of Israel. She is the widow of Boaz Aluf.

489. On the morning of June 18, 2002, Boaz was going to work in the computer department of Jerusalem's Bank Tefahot and was on Bus #32A when al-Ghoul detonated the bomb.

490. As a result of Boaz's death, plaintiff Gila Aluf has experienced emotional pain and suffering, and the loss of

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her husband's society, companionship, comfort, protection, attention, advice and counsel, and severe mental anguish and extreme emotional distress.

THE ARIEL BOMBING – OCTOBER 27, 2002

491. On October 27, 2002, Muhammad Kazid Faysal al-Bustami, a HAMAS suicide bomber, detonated his explosives at a gas station outside of the West Bank town of Ariel, killing three Israeli soldiers and injuring 15 other people.

The Zahavy Family

492. Plaintiff Yitzhak Zahavy is a citizen of the United States and a resident of the State of Israel.

493. On October 27, 2002, Yitzhak was waiting with his platoon for a transport pickup at a gas station at the entrance to the town of Ariel.

494. Al-Bustami emerged and stood approximately 50 meters from Yitzhak.

495. Three of Yitzhak's fellow soldiers were killed as they (and Yitzhak) unsuccessfully attempted to stop al-Bustami before he detonated his explosives.

496. Yitzhak suffered shrapnel injuries to his leg and was taken to Meir Hospital.

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497. The emotional effects of the attack continue to affect Yitzhak to the present day.

498. As a result of the attack, plaintiff Yitzhak Zahavy has sustained physical injuries and experienced severe mental anguish and extreme emotional distress.

499. Plaintiff Julie Zahavy is a citizen of the United States and a resident of the State of Israel. She is the wife of plaintiff Yitzhak Zahavy.

500. As a result of the attack, plaintiff Julie Zahavy has experienced severe mental anguish and extreme emotional distress.

501. Plaintiff Tzvee Zahavy is a citizen of the United States and a resident of the State of New Jersey. He is the father of plaintiff Yitzhak Zahavy.

502. Plaintiff Bernice Zahavy is a citizen of the United States and a resident of the State of New Jersey. She is the mother of plaintiff Yitzhak Zahavy.

503. As a result of the attack, plaintiffs Tzvee Zahavy and Bernice Zahavy have experienced severe mental anguish and extreme emotional distress.

B. The Defendant

504. Defendant BLOM BANK is a banking corporation organized under the laws of Lebanon and headquartered in Beirut, Lebanon.

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505. BLOM BANK was established in 1951 as Banque du Liban et D'Outre Mer. In 2000, it changed its name to BLOM BANK. By 2016, BLOM BANK was Lebanon's largest bank by market capitalization, with revenue of \$2.35 billion and total assets of \$29.52 billion. It has over 4,000 employees.

506. In 1962, Dr. Naaman Azhari was appointed as General Manager of BLOM BANK S.A.L. In 1971, Dr. Azhari was appointed as Chairman of the bank. Dr. Azhari occupied the two positions until 2007, when he was appointed as Chairman of BLOM BANK Group. His son, Saad Azhari, has subsequently served as Chairman of the Board and General Manager of BLOM BANK. Saad Azhari also serves as the Vice-President of the Association of Banks in Lebanon ("ABL"), a cooperative association of approximately 65 banks in Lebanon.²

507. During the relevant period (1998-2004), BLOM BANK conducted business in the United States and in New York through correspondent bank accounts at Bank of New York, Citibank and American Express Bank.

2. The association includes, *inter alia*, Bank Saderat and al-Bilad Islamic Bank, both of which were designated SDGTs by the U.S. Treasury Department. Although Bank Saderat was designated in 2007, its membership in ABL was not suspended until 2014.

*Appendix A***FACTUAL ALLEGATIONS****I. THE ISLAMIC RESISTANCE MOVEMENT (HAMAS)****A. HAMAS's Founding**

508. Several prominent terrorist organizations operate in Palestinian-controlled territory, most notably the Islamic Resistance Movement (“HAMAS”), a radical Islamist terrorist organization committed to the globalization of Islam through violent “jihad” (holy war).

509. HAMAS³ was established in the Gaza Strip on December 10, 1987, shortly following the outbreak of the First Intifada.⁴ HAMAS announced its founding in an “official” communique on December 14, 1987.

510. It represented the culmination of approximately 15 years of preparation and organization building, led by Ahmed Yassin (also known as “Sheikh Yassin”), the unrivaled leader of what had been the Muslim Brotherhood Movement in the Gaza Strip.⁵

3. HAMAS is an acronym of the Arabic “*Harakat al-Muqawama al-Islamiya*” – Islamic Resistance Movement – but its name also means, in Arabic, enthusiasm, courage, zeal for battle.

4. The term “First Intifada,” as used herein, relates to the violent conflict that broke out in December 1987 between the Palestinians and Israel.

5. The Muslim Brotherhood Movement was established in Egypt in 1928 by Hassan al-Banna, and was dedicated to the goal of fighting Western influences on Muslim society; ensuring the

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511. Although Yassin had been confined to a wheelchair throughout his adult life, he worked unceasingly for the establishment of HAMAS in the Gaza Strip. When HAMAS was established in Yassin's home in 1987, the Islamic Resistance Movement already had a defined ideology and a group of pre-existing institutions in Gaza, such as *Al-Mujama Al-Islami* (the Islamic Center) founded in 1973, *Al-Jam'iya Al-Islamiya* (the Islamic Society) founded in 1976, and the Islamic University of Gaza, that were the flagship institutions of the Brotherhood's civilian social framework – the *da'wa*.⁶

512. On December 10, 1987, after violence broke out in the Jabalia Refugee Camp, Sheikh Yassin invited six of the leaders of the Muslim Brotherhood in Gaza to his home.

513. There the group decided on the establishment of HAMAS, an organization that would combine terror against Israel with the *da'wa* (social welfare activities), through organizations such as *Al-Mujama Al-Islami* and *Al-Jam'iya Al-Islamiya*. The seven participants of that group are considered by HAMAS to be its founding fathers.

adherence of Muslims to Islamic law (Shari'a); and following the rectification of Muslim society, to eventually establish an Islamic state that would expand its rule over the world by means of jihad and a call to join Islam.

6. The word "*da'wa*," whose basic meaning in Arabic is "the call to the believers to shelter beneath the faith – return to the faith," is used herein to refer to "the civilian infrastructure of Hamas."

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514. In an interview reported in the *Filisteen al-Muslima* newspaper in January 1998, Dr. Ibrahim al-Yazuri, one of the original founding fathers of HAMAS, offered a telling description of HAMAS's philosophy regarding charitable giving:

Everyone knows that the Islamic Resistance Movement, HAMAS, is a Palestinian Jihad movement that strives for the liberation of all Palestine, from the (Mediterranean) sea to the river (Jordan), from the north to the south, from the tyrannical Israeli occupation, and this is the main part of its concern. Social work is carried out in support of this aim, and it is considered to be part of the HAMAS movement's strategy . . . The HAMAS movement is concerned about its individuals and its elements, especially those who engage in the blessed jihad against the hateful Israeli occupation, since they are subjected to detention or martyrdom. The movement takes care of their families and their children and provides them with as much material and moral support as it can. This is one of the fundamental truths of Islamic work and thus represents the duties of the Islamic state . . . The movement provides this aid through the support and assistance it gives to the zakat (Islamic alms-giving) committees and the Islamic associations and institutions in the Gaza Strip.

*Appendix A***B. HAMAS Rejected the Oslo Accords**

515. In December 1992, as a result of increased terrorist activity perpetrated by HAMAS, the government of Israel decided to deport over 350 HAMAS operatives to Marj al- Zuhur in Lebanon. The location became a training camp for the operatives, and an incubator of radicalism. This later became known as the “*Marj al-Zuhur* Deportation.”

516. The *Marj al-Zuhur* Deportation was a formative moment in the history of HAMAS, assigning it almost mythical status. It established HAMAS’s status as a leading Palestinian political organization and brought it to prominence in the Arab and international arenas. HAMAS members who were deported to *Marj al-Zuhur* have a special place in the movement’s history, and quickly became the most iconic members of HAMAS and the leadership of the HAMAS *da’wa*.

517. The international community condemned the deportations, and at the end of 1993, the Israeli Supreme Court ultimately determined that the Government of Israel was compelled to accept the return of the *Marj al-Zuhur* deportees.

518. On September 13, 1993, President Clinton hosted the signing ceremony in Washington, D.C. for the so-called “Oslo Accords” presented by Palestine Liberation Organization (“PLO”) Chairman Yasser Arafat and Israeli Prime Minister Yitzhak Rabin and his foreign minister, Shimon Peres.

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519. The Oslo Accords had several significant aspects, including the withdrawal of Israeli forces from parts of the West Bank and Gaza, and the creation of the Palestinian National Authority (“PA”), headed by Arafat. Under the agreement, the newly-formed PA would perform the services previously provided by Israel, including education, health, social welfare, taxation and tourism.

520. The agreement also included Letters of Mutual Recognition, whereby the Israeli government recognized the PLO as the legitimate representative of the Palestinian people, while the PLO recognized Israel’s existence and purportedly renounced terrorism, violence, and the desire for the destruction of Israel.

521. The Oslo Accords were not, however, universally accepted by the Palestinian factions. HAMAS, which historically did not accept the secular PLO as the sole official representative of the Palestinian people, rejected the agreement for its recognition of Israel’s right to exist. The Oslo Accords contradicted HAMAS’s most valued tenet – the destruction of the State of Israel and the creation of an Islamic state in its place.

522. Accordingly, HAMAS pursued a three-pronged strategy in the early 1990s.

523. First, it upgraded its terror apparatus by perfecting its bomb-making skills and improving the capabilities of its military wing, the *Izz al-Din al-Qassam Brigades* (herein, the “Qassam Brigades”).

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524. Second, it intensified its efforts to systematically gain control of pre-existing *zakat*⁷ committees and other religious and social institutions that would ultimately compete with the PA for the “hearts and minds” of the Palestinian public in Gaza, the West Bank and even the Palestinian refugee camps in Jordan and Lebanon.

525. Third, it accelerated the development of its world-wide fundraising network. While HAMAS enjoyed support from wealthy patrons in the Persian Gulf even in its prior incarnation as Sheikh Yassin’s Muslim Brotherhood branch in Gaza, the Oslo Accords galvanized its supporters in Europe, Africa and even the United States.

526. Sanabil Association for Relief and Development, Subul al-Khair and the Islamic Welfare Association (Lebanon) were all *da’wa* institutions in Lebanon tasked by HAMAS to extend HAMAS’s reach into the Palestinian refugee camps where the organization was competing both with its long-time Palestinian nemesis, Fatah, and the growing power and appeal of Hezbollah.

527. HAMAS fundraisers and other operatives located abroad are key members of the HAMAS *da’wa*, closely tied to *da’wa* and Qassam Brigades operatives on the ground in the West Bank and the Gaza Strip, as well as to HAMAS political leaders in Lebanon, Turkey, Qatar and elsewhere in the Middle East.

7. *Zakat* is a form of alms-giving treated in Islam as a religious obligation, second in importance to prayer.

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528. HAMAS's fundraising activities became the subject of public knowledge not long after it was formed. In 1994, *The New York Times* reported:

HAMAS funding of all its activities is estimated by the Israelis at about \$30 million a year. It comes from money collected by associations operating largely abroad but with ties to the international Muslim Brotherhood network. Money is also collected from Islamic and Arab communities in the United States and in Britain, the Netherlands and other Western European locations.

529. Similarly, in 1996, *The New York Times* reported:

Israeli, Palestinian and Western intelligence officials say Jordan is a major conduit for much of the HAMAS budget, estimated at \$70 million a year, nearly all of it for the social service network of mosques, hospitals, schools and other institutions that form the movement's political base in the West Bank and Gaza Strip.

... Jordan, intelligence officials say, is a major path through which money reaches the HAMAS network of mosques and charities. Jordanian intelligence reports indicate that much of the money is coming from the Persian Gulf emirates and Saudi Arabia.

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530. A *Washington Post* article in 2001 reported that, “[a]ccording to [Sheikh] Yassin, [HAMAS] distributes \$2 million to \$3 million in monthly handouts to the relatives of Palestinian suicide bombers; ‘martyrs’ who have been killed by Israelis; and prisoners in Israeli jails.”

531. During this time, emboldened by increased support and intensified zeal, HAMAS broadened its operations from kidnapping and executing people suspected of cooperating with Israel to murdering civilians in Israel. In 1994 alone, HAMAS carried out three separate suicide bombings of buses in Israel, killing 35 people.

C. The U.S. Government Designated Hamas

532. On January 23, 1995, President Clinton issued Executive Order No. 12947 designating HAMAS as a “Specially Designated Terrorist” (“SDT”). President Clinton found that “grave acts of violence committed by foreign terrorists that threaten to disrupt the Middle East peace process constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States.”

533. Executive Order No. 12947 blocks all property and interests in property of the terrorist organizations and persons designated in the Order, including HAMAS. This designation made it illegal for any United States person or entity to engage in any unlicensed transactions or dealings involving the property or interests of HAMAS. HAMAS’s designation as an SDT organization has remained in place since January 24, 1995.

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534. HAMAS continued its terrorist activities, bombing a bus in Jerusalem on February 25, 1996. HAMAS claimed responsibility for the bombing, which killed 26 people and injured 80. Six of the victims were U.S. citizens. That year, under heavy pressure from Israel and the PLO under the leadership of Yasser Arafat, the recently-established Palestinian Authority very publicly took steps against HAMAS as a result of a wave of HAMAS terrorist attacks. Over the coming years, the PA would, from time to time, attempt to take measures against the *zakat* committees and charitable societies run by HAMAS. Closures and arrests, however, were always temporary.

535. On October 8, 1997, by publication in the Federal Register, the United States Secretary of State designated HAMAS as a Foreign Terrorist Organization pursuant to Section 219 of the Immigration and Nationality Act and the AEDPA. As a result of this designation, it became illegal for any person within the United States or subject to its jurisdiction to provide material support or resources to HAMAS.

536. The designation of HAMAS as an FTO has been renewed every two years since 1997.

537. On October 31, 2001, after the September 11, 2001 terrorist attacks on the United States, President Bush issued Executive Order No. 13224, declaring a national emergency with respect to the “grave acts of terrorism . . . and the continuing and immediate threat of further attacks on United States nationals or the United

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States.” Executive Order No. 13224 designated HAMAS as a Specially Designated Global Terrorist (“SDGT”). Executive Order No. 13224 blocked all property and interests in property of the SDGTs, including HAMAS. HAMAS’s designation as an SDGT organization has remained in place since October 31, 2001.

D. HAMAS’s European Fundraising Network

538. Comité de Bienfaisance et de Secours aux Palestiniens (“CBSP”), HAMAS’s primary fundraiser in France, was founded in 1990 and registered there as a non-profit organization.

539. The Israeli government declared CBSP an illegal organization on May 6, 1997 because of its affiliation with HAMAS and the support it gave to HAMAS-affiliated institutions, and subsequently designated it a terrorist organization on January 17, 1998.

540. Interpal, HAMAS’s most important fundraising organization in the United Kingdom, was formally registered as a charity with the U.K. Charity Commission on August 11, 1994 under the name “Palestinian Relief and Development Fund.”

541. As early as 1995, published reports in Israel linked Interpal to HAMAS.

542. The Israeli government declared Interpal an illegal organization on May 6, 1997 because of its affiliation with HAMAS and the support it gave to HAMAS-

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affiliated institutions and subsequently declared it a terrorist organization on January 17, 1998.

543. On August 22, 2003, following the deadly suicide bombing aboard Bus #2 in Jerusalem on August 19, 2003 in which Tehilla Nathansen was killed and multiple members of her family severely injured, the U.S. Treasury Department designated five HAMAS-related institutions and six senior HAMAS leaders as SDGTs.

544. The five HAMAS-related charities that were designated as SDGTs were:

1. Comité de Bienfaisance et de Secours aux Palestiniens (“CBSP”), of France.
2. Association de Secours Palestinien (“ASP”), of Switzerland (an organization affiliated with CBSP).
3. Palestinian Relief and Development Fund, or Interpal, headquartered in the United Kingdom.
4. Palestinian Association in Austria (“PVOE”).
5. Sanabil Association for Relief and Development based in Lebanon.

545. The U.S. Treasury Press Release announcing the designations of these five entities stated:

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The United States government has credible evidence that the following five organizations are part of a web of charities raising funds on behalf of HAMAS and using humanitarians [sic] purposes as a cover for acts that support HAMAS. Funds are generated by, and flow through, these organizations on behalf of HAMAS.

546. According to the U.S. Treasury Department, “Interpal, headquartered in the UK, has been a principal charity utilized to hide the flow of money to HAMAS. Reporting indicates it is the conduit through which money flows to HAMAS from other charities, e.g., the Al Aqsa Foundation (designated under EO 13224 on May 29th) and oversees the activities of other charities. . . . Reporting indicates that Interpal is the fundraising coordinator of HAMAS. This role is of the type that includes supervising activities of charities, developing new charities in targeted areas, instructing how funds should be transferred from one charity to another, and even determining public relations policy.”

547. According to the U.S. Treasury Department, “CBSP and ASP are primary fundraisers for HAMAS in France and Switzerland, respectively. Founded in France in the late 80s/early 90s, CBSP acts in collaboration with more than a dozen humanitarian organizations based in different towns in the West Bank and Gaza and in Palestinian refugee camps in Jordan and Lebanon. ASP, a subsidiary of CBSP, was founded in Switzerland in 1994. The group has collected large amounts of money from

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mosques and Islamic centers, which it then transfers to sub-organizations of HAMAS. Khalid Al-Shuli is the president of CBSP and ASP.”

548. According to the U.S. Treasury Department, “PVOE is controlled by the leader of HAMAS in Austria. The money is targeted to support members of HAMAS and is funneled through other charities in Lebanon, the West Bank and Gaza or other areas of the Middle East in order to ensure the transfer of funds is undetected and reaches its intended recipients. PVOE is part of the HAMAS network of charitable organizations that includes the Al Aqsa Foundation.”

549. The Al-Aqsa Foundation, one of HAMAS’s leading fundraising organizations, had branch offices in Holland, Belgium, Denmark, Sweden, Yemen, South Africa, and Pakistan. It was founded in July 1991 in Germany (Al-Aqsa e.V.), where it was headquartered, and which served as its main branch until at least 2002.

550. On May 6, 1997, Israel outlawed the Al-Aqsa Foundation (including its German headquarters). On January 19, 1998, Israel declared it a terrorist organization.

551. In July 2002, the German government closed the offices of the Al-Aqsa Foundation located in Germany.

552. According to the closure order, “AL-AQSA e.V. advocates, supports and calls for violence as means to achieve political, religious or other goals by awakening

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or at least strengthening the willingness of third parties to use violence as a political, religious or other means.”

553. On May 29, 2003, the U.S. Treasury Department designated all branches of the Al- Aqsa Foundation as an SDGT pursuant to Executive Order 13224.

554. The U.S. Treasury Press Release announcing Al-Aqsa’s designation stated:

Al Aqsa is a critical part of HAMAS’ terrorist support infrastructure. Through its headquarters in Germany and branch offices in the Netherlands, Denmark, Belgium, Sweden, Pakistan, South Africa, Yemen and elsewhere, Al Aqsa funnels money collected for charitable purposes to HAMAS terrorists.

Other nations, including the Netherlands, Germany, Denmark, Britain, Luxembourg and Switzerland, have also taken action against the Al-Aqsa Foundation.

E. HAMAS in the United States – The Holy Land Foundation

555. In October 1993, less than one month after the public signing of the Oslo Accords, approximately 20 members of the so-called “Palestine Committee” in the United States gathered together in Philadelphia, Pennsylvania to discuss how to help HAMAS oppose the Oslo Accords.

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556. The Federal Bureau of Investigation (“FBI”) learned of the Philadelphia meeting and obtained a warrant from the Foreign Intelligence Surveillance Court to monitor the meeting, which lasted approximately three days.

557. During the meeting, the participants discussed the problems that the Oslo Accords presented for those opposed to co-existence with Israel, and attendees were admonished not to mention “HAMAS,” but rather to refer to it as “Samah,” which is HAMAS spelled backwards.

558. Attendees agreed that they must operate under an ostensible banner of apolitical humanitarian exercise in order to continue supporting HAMAS’s vital social recruitment effort by financially supporting institutions, organizations and programs in the West Bank and Gaza aligned with HAMAS.

559. Attendees identified several charitable societies and *zakat* committees as “ours.”

560. The Holy Land Foundation (“HLF”) emerged from the Philadelphia meeting as the preeminent HAMAS fundraising organization in the United States.

561. However, neither the HLF nor the U.S.-based Palestinian Committee worked in isolation on behalf of HAMAS.

562. While HLF was a vital member of HAMAS’s international network of organizations dedicated to

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financing HAMAS's agenda, it also worked in conjunction with organizations in Europe and throughout the world to funnel money to the same closed network of HAMAS-controlled charitable societies and *zakat* committees in the West Bank and Gaza.

563. The HLF had offices in Texas, California, New Jersey and Illinois, and quickly became the crown jewel in HAMAS's global fundraising network. HLF paid for Jamil Hamami, HAMAS's leader in the West Bank, to take at least 6 trips to the United States between September 1990 and November 1991 so that he could appear as a guest speaker at HLF fundraising events. It also paid for another HAMAS leader, Sheikh Mohammad Siam, to travel to the United States and appear at fundraisers. These trips followed a decision by then HAMAS Political Bureau head Mousa Abu Marzook to designate HLF as HAMAS's primary fund-raising entity in the United States.

564. Since 1995, when it first became illegal to provide financial support to HAMAS, HLF provided over \$12,400,000 in funding to HAMAS through various HAMAS-affiliated committees and organizations located in Palestinian-controlled areas and elsewhere. In the year 2000 alone, HLF raised over \$13 million. An FBI investigation "determined that a majority of the funds collected by the [HLF] are used to support HAMAS activities in the Middle East."

565. This is unsurprising given the close familial relationships between HLF officers and known HAMAS

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leaders in the Middle East. Shukri Abu Baker, the CEO of HLF, was the brother of HAMAS leader Jamal Issa. HLF's co-founder, Ghassan Elashi, was related by marriage to Mousa Abu Marzook, while former HLF Chairman Mohammed el-Mezain was Marzook's cousin. HLF member Mufid Abdelqader was a cousin of Khalid Mishal, who would later become HAMAS's external (and supreme) leader. Both Mishal and Marzook were designated SDGTs by the Treasury Department in 2003. Marzook was also designated an SDT in 1995.

566. According to a November 5, 2001 memorandum written by the Assistant Director of the FBI's Counterterrorism Division, Dale Watson (the "2001 FBI Watson Memo"):

[E]vidence strongly suggests that the [HLF] has provided crucial financial support for families of HAMAS suicide bombers, as well as the Palestinians who adhere to the HAMAS movement. It is believed that by providing these annuities to families of HAMAS members, the [HLF] assists HAMAS by providing a constant flow of suicide volunteers and buttresses a terrorist infrastructure heavily reliant on moral support of the Palestinian populace. According to [an informant], in the words of Shukri Abu Baker, [HLF's] mission is to support the families of the martyrs.

567. The U.S. Treasury Department designated HLF as an SDGT on December 4, 2001. In 2004, HLF and

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several of its directors were indicted on criminal charges that HLF was illegally supporting HAMAS.

568. In 2008, a jury found HLF and five of its former directors guilty of transferring more than \$12 million to HAMAS.

569. The convictions were affirmed in 2011 by the U.S. Court of Appeals for the Fifth Circuit.

F. HAMAS in Lebanon

570. Although estimates vary, during the relevant period Palestinian refugees in Lebanon numbered approximately 300,000 and constituted the second-largest Palestinian diaspora community.

571. Since its inception in 1982, Hezbollah has made steady political inroads within this community.

572. For example, Hezbollah has provided residents of the Shatila refugee camp with potable water and supplies diesel for the rundown power generators.

573. However, as a fanatical Shi'a organization, there are intrinsic limits on Hezbollah's ability to co-opt and speak for Palestinian refugees in Lebanon, who are overwhelmingly Sunni.

574. In 1994, HAMAS established Sanabil Association for Relief and Development, with the unofficial goal of competing with Hezbollah's social welfare infrastructure.

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575. Immediately after Israel launched its “Grapes of Wrath” operation in southern Lebanon in 1996 to end rocket attacks on Northern Israel by Hezbollah, Sanabil distributed more than \$100,000 to the inhabitants of the southern regions who had taken refuge in Sidon as part of its initial effort to compete with Hezbollah.

576. In late 1999, the Syrian regime authorized HAMAS’s political bureau in Damascus and Beirut, represented by Mousa Abu Marzook and Khalid Mishal, to take over the Lebanese Muslim Brotherhood’s networks in the Palestinian refugee camps.

577. This provided the Syrian regime a way to further exert control over HAMAS’s leadership outside the Palestinian Territories and served as a means for the Syrian leadership to promote Islamists in Lebanon who were primarily focused on attacking Israel rather than settling internal scores within the fractured Palestinian community.

578. The emerging presence of HAMAS in the Palestinian refugee camps was widely publicized in the Lebanese press, and for Syria, it provided a way to hamper the progress of the even more radical (anti-Shi’a and anti-Syrian) Salafist jihadist groups that were developing in Lebanon.

579. In the Palestinian refugee camps in southern Lebanon, HAMAS and Palestinian Islamic Jihad compete with secular parties for political hegemony and influence. Their main opponent is the biggest PLO faction, Fatah.

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580. Fatah is the largest, oldest and best organized of the political movements and has offices and representatives in most camps in Lebanon, especially in the camps to the south. The organization was, at least during the 1990s, also better funded and therefore able to underwrite social welfare programs, which propelled HAMAS's need to obtain more funding than those of its political rivals.

581. To secure the support of the Palestinian community in Lebanon, HAMAS deliberately focused most of their criticism on the PLO's leaders.

582. HAMAS leaders in Lebanon publicly accused the Palestinian Authority of encouraging refugees to settle permanently in the country and give up their "right of return" to Palestine.

583. In 1998, HAMAS helped create a "Palestinian Ulema League" which was intended as an umbrella group for Palestinian Islamic factions in Lebanon that wanted to challenge what they saw as the PLO's discredited leadership.

584. Thus, during the Camp David peace negotiations of July 2000 that preceded the Second Intifada, the Palestinian Ulema League published *fatwas* (religious edicts) forbidding Palestinians to leave Lebanese territory if a regional settlement was reached that called for Palestinian refugees to emigrate to Europe or elsewhere.

585. Thus, on a smaller scale than it operated in the Palestinian Territories, HAMAS pursued the

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same tactics and goals in Lebanon, using a combination of propaganda, social welfare and cash grants and a commitment to violence to energize and gain the loyalty of the Palestinians of Lebanon.

586. For its part, Lebanon turned a blind eye to HAMAS's activities, including its substantial financial activity in Lebanon.

587. For example, senior HAMAS activist Jamal al-Tawil, who was one of the Movement's most important operatives in the Ramallah area, was arrested by Israel in 2002 and later told his interrogators that he received \$12,000 per month from HAMAS's leadership in Lebanon. Other notorious HAMAS operatives in the Palestinian Territories ranging from Abbas al-Sayed (mastermind of the Park Hotel suicide bombing in Netanya) to Jamal Mansur, one of HAMAS's senior operatives in Nablus to Sheikh Ahmed Yassin himself, received funds transfers from representatives of HAMAS's bureau in Lebanon.

II. BLOM BANK'S HAMAS CUSTOMERS

A. Sanabil Association for Relief and Development – HAMAS's *Da'wa* Headquarters in Lebanon

588. The Sanabil Association for Relief and Development ("Sanabil"), based in Sidon, Lebanon, was HAMAS's *da'wa* headquarters in Lebanon until late 2003. Between 1998 and 2001, it received millions of dollars in support from HAMAS's fundraising network, including designated organizations such as HLF, Interpal, CBSP

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and the Al-Aqsa Foundation, and then channeled those funds to the Palestinian refugee camps in Lebanon to build HAMAS's support within that community.

589. On August 23, 2003, the Lebanese newspaper *Al-Saffir* published a report stating that in August 2001, following an order given by a HAMAS political leader (whose name was not mentioned), Sanabil opened offices in all of the Palestinian refugee camps in Lebanon in order to increase its activity.

590. Sanabil was designated by the U.S. Treasury Department as an SDGT on August 22, 2003 for its affiliation with FTO HAMAS. According to the Treasury Department:

The Sanabil Association for Relief and Development (Sanabil), based in Sidon, Lebanon, receives large quantities of funds raised by major HAMAS-affiliated charities in Europe and the Middle East and, in turn, provides funding to HAMAS. For example, Sanabil has received funding from the Al Aqsa Foundation (designated as an SDGT under EO 13224 in May 2003); the Holy Land Foundation for Relief and Development (designated as an SDGT under EO 13224 in December 2001), and Interpal (designated as an SDGT under EO 13224 as part of this tranche). HAMAS recruits permanent members from the religious and the poor by extending charity to them from organizations such as Sanabil.

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At the request of a HAMAS political leader, Sanabil began opening offices in all of the Palestinian refugee camps in Lebanon in August of 2001 in order to increase the foundation's role inside the camps. After starting by providing basic necessities the charity eventually began asking poor families within the camps to fill out application forms, particularly those who had worked with the Islamic Movement (Al-Haraka al-Islamiyya) and HAMAS. As a result of these efforts, Sanabil has increased its scope of influence within the camps.⁸

591. Unsurprisingly, Sanabil's board members were predominantly well-known HAMAS leaders in Lebanon. For example, HAMAS's current senior leader in Lebanon, Ahmed Muhammad Abd al-Hadi, served on Sanabil's board of trustees (over the years he was also HAMAS's deputy representative and spokesman in Lebanon).

592. Abdallah Atawat served as Sanabil's Deputy Chairman of the Board of Trustees and as a board member of the Welfare Association for Palestinian and Lebanese Families (subsequently designated by the U.S. Treasury Department as an SDGT). Atawat is regarded as one of HAMAS's principal fundraisers in Lebanon.

593. Id Yihya al-Mari was General Manager and Secretary of Sanabil's Board of Trustees. He also served as

8. "U.S. Designates Five Charities Funding Hamas and Six Senior Hamas Leaders as Terrorist Entities," *U.S. Department of the Treasury Press Release*, August 22, 2003.

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coordinator of the Union of Good in Lebanon (subsequently designated by the U.S. Treasury Department as an SDGT), discussed below.

594. Other members of the HAMAS leadership in Lebanon who served as trustees of Sanabil included Mashhur Abd al-Halim, who served as the Palestinian relations representative of HAMAS in Lebanon, and Ziyad Qamr, a HAMAS political official.

595. During the relevant period (1999-2003) Sanabil held account # 12-02-44037- 728529-1 at Defendant BLOM BANK in Sidon, Lebanon.

596. To illustrate, between 1998 and 2001, HLF transferred over \$2 million U.S. dollars through BLOM BANK's correspondent bank accounts in New York to Sanabil's bank account(s) at BLOM BANK in Lebanon.

597. In 2000, HLF transferred over \$1 million through BLOM BANK's correspondent bank accounts in New York to Sanabil's bank account(s) at BLOM BANK in Lebanon.

598. In 2001, HLF transferred over \$350,000 through BLOM BANK's correspondent bank accounts in New York to Sanabil's bank account(s) at BLOM BANK in Lebanon.

599. The table below provides some sense of the magnitude of the payments:

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3/1/2000	\$47,095.00	HOLYLAND FOUNDA- TION GEN- ERAL	SANABIL AS- SOCIATION FOR RELIEF AND DEVEL- OPMENT SIDON LEBA- NON
3/21/2000	\$90,174.00	HOLYLAND FOUNDA- TION GEN- ERAL	SANABIL AS- SOCIATION FOR RELIEF AND DEVEL- OPMENT SIDON LEBA- NON
4/5/2000	\$48,811.00	HOLYLAND FOUNDA- TION	SANABIL AS- SOCIATION FOR RELIEF AND DEVEL- OPMENT
		GENERAL	SIDON LEBA- NON
5/26/2000	\$29,054.00	HOLYLAND FOUNDA- TION GEN- ERAL	SANABIL AS- SOCIATION FOR RELIEF AND DEVEL- OPMENT SIDON LEBA- NON

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7/7/2000	\$24,319.00	HOLYLAND FOUNDA- TION GEN- ERAL	SANABIL AS- SOCIATION FOR RELIEF AND DEVEL- OPMENT SIDON LEBA- NON
7/28/2000	\$11,072.00	HOLYLAND FOUNDA- TION GEN- ERAL	SANABIL AS- SOCIATION FOR RELIEF AND DEVEL- OPMENT SIDON LEBA- NON
9/18/2000	\$58,349.00	HOLYLAND FOUNDA- TION GEN- ERAL	SANABIL AS- SOCIATION FOR RELIEF AND DEVEL- OPMENT SIDON LEBA- NON
10/25/2000	\$20,000.00	HOLYLAND FOUNDA- TION GEN- ERAL	SANABIL AS- SOCIATION FOR RELIEF AND DEVEL- OPMENT SIDON LEBA- NON

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Appendix A

11/8/2000	\$20,567.00	HOLYLAND FOUNDA- TION GEN- ERAL	SANABIL AS- SOCIATI ON FOR RELIEF AND DEVEL- OPMENT SIDON LEBA- NON
11/14/2000	\$20,000.00	HOLYLAND FOUNDA- TION GEN- ERAL	SANABIL AS- SOCIATION FOR RELIEF AND DEVEL- OPMENT SIDON LEBA- NON
11/20/2000	\$50,000.00	HOLYLAND FOUNDA- TION GEN- ERAL	SANABIL AS- SOCIATION FOR RELIEF AND DEVEL- OPMENT SIDON LEBA- NON
12/7/2000	\$50,000.00	HOLYLAND FOUNDA- TION GEN- ERAL	SANABIL AS- SOCIATION FOR RELIEF AND DEVEL- OPMENT SIDON LEBA- NON

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12/22/2000	\$123,000.00	HOLYLAND FOUNDA- TION GEN- ERAL	SANABIL AS- SOCIATION FOR RELIEF AND DEVEL- OPMENT SIDON LEBA- NON
12/26/2000	\$12,000.00	HOLYLAND FOUNDA- TION GEN- ERAL	SANABIL AS- SOCIATION FOR RELIEF AND DEVEL- OPMENT SIDON LEBA- NON
1/16/2001	\$41,082.00	HOLYLAND FOUNDA- TION GEN- ERAL	SANABIL AS- SOCIATION FOR RELIEF AND DEVEL- OPMENT SIDON LEBA- NON
2/2/2001	\$33,500.00	HOLYLAND FOUNDA- TION GEN- ERAL	SANABIL AS- SOCIATION FOR RELIEF AND DEVEL- OPMENT SIDON LEBA- NON

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3/8/2001	\$110,691.00	HOLYLAND FOUNDA- TION GEN- ERAL	SANABIL AS- SOCIATION FOR RELIEF AND DEVEL- OPMENT SIDON LEBA- NON
4/4/2001	\$31,619.00	HOLYLAND FOUNDA- TION GEN- ERAL	SANABIL AS- SOCIATION FOR RELIEF AND DEVEL- OPMENT SIDON LEBA- NON
4/23/2001	\$4,139.00	HOLYLAND FOUNDA- TION GEN- ERAL	SANABIL AS- SOCIATION FOR RELIEF AND DEVEL- OPMENT SIDON LEBA- NON
5/9/2001	\$31,225.00	HOLYLAND FOUNDA- TION GEN- ERAL	SANABIL AS- SOCIATION FOR RELIEF AND DEVEL- OPMENT SIDON LEBA- NON

Appendix A

6/14/2001	\$32,871.00	HOLYLAND FOUNDA- TION GEN- ERAL	SANABIL AS- SOCIATION FOR RELIEF AND DEVEL- OPMENT SIDON LEBA- NON
9/7/2001	\$30,285.00	HOLYLAND FOUNDA- TION GEN- ERAL	SANABIL AS- SOCIATION FOR RELIEF AND DEVEL- OPMENT SIDON LEBA- NON

600. For example, on October 22, 1999, HLF transferred \$40,000 to Sanabil's account # 12-02-44037-728529-1 at Defendant BLOM BANK using BLOM BANK's correspondent account at Bank of New York. *See Exhibit A.*

601. On October 25, 2000, HLF transferred \$20,000 to Sanabil's account # 12-02- 44037-728529-1 at Defendant BLOM BANK using BLOM BANK's correspondent account at Citibank. *See Exhibit B.*

602. On October 19, 2000, HLF transferred \$31,254 to Sanabil's account # 12-02- 44037-728529-1 at Defendant BLOM BANK using BLOM BANK's correspondent account at Northern Trust International Banking and American Express Bank in New York. *See Exhibit C.*

Appendix A

603. As described below, KindHearts succeeded to HLF's fundraising for HAMAS after HLF was designated in December 2001. KindHearts sent an additional \$250,000 to Sanabil's accounts between July 2002 and July 2003. Even after HLF's designation and the public outcry about its support for HAMAS, BLOM BANK continued to maintain Sanabil's account # 12-02-44037-728529-1 and process U.S. dollar-denominated transfers for KindHearts into the same account into which it had deposited HLF's funds.

604. The Al-Aqsa Foundation transferred *at least* \$50,000 into Sanabil's accounts at

Defendant BLOM BANK between April – May 2003, using BLOM BANK's correspondent account at the Bank of New York. *See Exhibit D.*

605. Significantly, the second Al-Aqsa Foundation transfer in **Exhibit D** was sent to BLOM BANK even though Al-Aqsa Foundation had been designated by the U.S. Treasury on May 23, 2003.

606. Between 1999 and 2003, Defendant BLOM BANK also processed fund transfers through its New York correspondent banks for CBSP and Interpal in amounts estimated to exceed \$1 million.

607. During this time period Sanabil served as Interpal's "official" representative in Lebanon.

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608. The U.S. government identified Sanabil as an unindicted co-conspirator in the HLF prosecution, calling it a “part of the Global HAMAS financing mechanism.”

609. In 2003, following a ruling from the Lebanese judiciary, the Sanabil organization center in the town of Sidon closed. Its closure – attributed to its links to HAMAS – was reported in the Lebanese press.

610. For example, an August 27, 2004 article in *The Daily Star* in Lebanon reported that Sanabil “had sponsored 1,200 Palestinian families and spent around \$800,000 on orphans and \$55,000 on needy patients[.]” The same article reported that “[f]rom 1997-2000, Al-Sanabil’s annual budget grew to \$700,000, according to Al-Sanabil’s former officials.”

611. Records seized from HLF show that Sanabil regularly distributed small sums in cash from its accounts to hundreds (if not thousands) of individual dependents in the Palestinian refugee camps under the categories of “Orphan Sponsorships,” “Student Sponsorships,” “Needy Sponsorships” and “Family Sponsorships.”

612. The beneficiaries were provided “membership ID numbers” and paid small amounts individually in a manner of an old-style political machine, buying loyalty in periodic stipends of \$40-50 per quarter.

613. Defendant BLOM BANK therefore not only facilitated large infusions of funds from prominent HAMAS fundraising organizations around the world; it

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also facilitated thousands of small cash disbursements that helped HAMAS purchase support in its target areas.

614. After Sanabil closed, a Non-Governmental Organization called KindHearts began working secretly and independently in the camps in Lebanon, attempting to maintain a public distance from HAMAS to avoid drawing attention to its affiliation with the terrorist organization. According to the U.S. Treasury Department:

Between July and December 2002, KindHearts sent more than \$100,000 USD to the Lebanon-based SDGT Sanabil, according to information available to the U.S. Financial investigation revealed that between February 2003 and July 2003, KindHearts transferred over \$150,000 USD to Sanabil. KindHearts deposited the funds into the same account used by HLF when it was providing funds to the HAMAS-affiliated Sanabil, according to FBI analysis.

615. Just as KindHearts stepped into the shoes of Sanabil in Sidon when Sanabil closed in 2003, KindHearts took over HLF's fundraising for HAMAS after HLF was designated in December 2001. KindHearts was founded in January 2002 and incorporated as a non-profit in Toledo, Ohio. Mohammed El-Mezain, HAMAS's leader in the United States, was brought in as a fundraising specialist. El-Mezain had previously worked as a fundraiser for HLF.

616. Omar Shahin was the Arizona representative of HLF and later of KindHearts.

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617. Once incorporated as a charitable organization, KindHearts quickly raised \$2.9 million in 2002, \$3.9 million in 2003, and \$5 million in 2004. According to the Treasury Department, during a September 2003 fundraising event, Osama Hamdan, HAMAS leader in Lebanon at the time, called a KindHearts official to thank him for KindHeart's support. During the fundraiser, one of the speakers urged support for HAMAS and Hezbollah.

618. According to the U.S. Department of the Treasury, KindHearts sent \$250,000 to Sanabil between July 2002 and July 2003.

619. KindHeart's assets were frozen by the Treasury Department on February 19, 2006.

620. KindHearts board chair Dr. Hatem Elhady told the *Toledo Blade*, that "[w]e did not just give money. We gave it for specific projects, and we saw the results, and we have the receipts."

B. Subul Al-Khair

621. Subul al-Khair is a small HAMAS institution founded in Beirut, Lebanon in 1998.

622. Subul al-Khair was identified as an unindicted co-conspirator in HLF's criminal trial.

623. Defendant BLOM BANK maintained an account for Subul al-Khair at its Rawsheh branch in Beirut (Account No. 0227534) and deposited multiple transfers sent by HLF to Subul al-Khair.

Appendix A

624. Ostensibly, Subul al-Khair functioned much like Sanabil, but was more focused on HAMAS supporters in the Beirut area.

625. Records seized from HLF show that HLF sent Subul al-Khair over \$500,000 between 1999 and 2001.

626. Subul al-Khair regularly distributed small sums in cash from its accounts to individual under the categories of “Orphan Sponsorships” and “Student Sponsorships.”

627. The beneficiaries were provided “membership ID numbers” and paid small amounts individually in a manner of an old-style political machine, buying loyalty in periodic stipends of \$30-40 per quarter.

628. Defendant BLOM BANK therefore not only facilitated large infusions of funds from prominent HAMAS fundraising organizations through Subul al-Khair; it also facilitated vast numbers of small cash disbursements that helped HAMAS purchase support in its target areas.

C. “Union Of Good”

629. The Union of Good (also known as the Charity Coalition or *I'tilaf Al-Khayr* in Arabic) was established in October 2000, at the beginning of the Second Intifada, as the umbrella organization for HAMAS’s global fundraising activity.

630. Comprising more than 50 separate organizations – several of which have been designated SDGTs by the

Appendix A

U.S. Treasury Department, including Interpal and CBSP (two major HAMAS fundraising organizations in Europe) – the Union of Good originally began as a limited 101-day fundraising drive for emergency aid at the outset of what was later called the Second Intifada, chaired by Sheikh Yusuf al-Qaradawi, the Muslim Brotherhood’s spiritual leader. According to Al-Qaradawi, “[t]he martyr operations [sic] is the greatest of all sorts of Jihad in the Cause of Allah.”

631. Sheikh al- Qaradawi issued a Muslim religious edict (*fatwa*) that gave HAMAS and other terrorist groups religious approval authorizing suicide bombing attacks (including by women) against Israel.

632. In a July 7, 2004 interview for BBC’s “Newsnight,” al-Qaradawi, referring to the suicide attacks, said: “I consider this type of martyrdom operation as an evidence of God’s justice.”

633. The 101-day fundraising drive was so successful that the Union of Good was converted into a permanent institution. It quickly became the preeminent Muslim Brotherhood fundraising mechanism in the world, raising tens of millions of dollars for HAMAS.

634. On February 25, 2002, the Union of Good was designated by Israel in an order of the Minister of Defense of the State of Israel, based on its being “part of the Hamas organization or supporting it and strengthening its infrastructure.”

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635. The Union of Good was designated by the U.S. Treasury Department as an SDGT on November 12, 2008. According to the Treasury Department:

Union of Good acts as a broker for HAMAS by facilitating financial transfers between a web of charitable organizations—including several organizations previously designated under E.O. 13224 for providing support to HAMAS—and HAMAS-controlled organizations in the West Bank and Gaza. The primary purpose of this activity is to strengthen HAMAS' political and military position in the West Bank and Gaza, including by: (i) diverting charitable donations to support HAMAS members and the families of terrorist operatives; and (ii) dispensing social welfare and other charitable services on behalf of HAMAS.

Funds raised by the Union of Good affiliates have been transferred to HAMAS-managed organizations in the West Bank and Gaza. In addition to providing cover for HAMAS financial transfers, some of the funds transferred by the Union of Good have compensated HAMAS terrorists by providing payments to the families of suicide bombers. One of them, the Al-Salah Society, previously identified as a key support node for HAMAS, was designated in August 2007 under E.O. 13224. The Society employed a number of members of the HAMAS military wing and supported HAMAS- affiliated combatants during the first Intifada.

Appendix A

636. Significantly, Al-Qaradawi is neither an obscure or shadowy figure. On the contrary, he had his own weekly long-running television program on Al-Jazeera and has very publicly issued an Islamic religious edict (*fatwa*) authorizing suicide bombing attacks against Israel.

637. In fact, on April 14, 2002, al-Qaradawi appeared on Al-Jazeera extolling “jihad and martyrdom” against Israelis and denouncing the U.S. designation of HAMAS and other terrorist organizations.

638. HAMAS often relies on Al-Qaradawi’s legal rulings in matters of current import and often turns to him to obtain legal rulings, which are published from time to time in HAMAS’s official newspapers (such as *Filastin al-Muslima*).

639. HAMAS leaders have also served openly in the Union of Good’s executive leadership. For example, the Secretary General of the Union of Good, Essam Salih Mustafa Yussuf, also acted as the Vice-Chairman of Interpal while serving on the HAMAS executive committee under then-HAMAS leader Khalid Mishal.

640. The Union of Good maintained account no. 349647 at one of Defendant BLOM BANK’s branches located on the prestigious Verdun Street in Beirut.

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Appendix A

CLAIM FOR RELIEF

**CIVIL LIABILITY UNDER 18 U.S.C. § 2333(d) FOR
AIDING AND ABETTING HAMAS, A DESIGNATED
FOREIGN TERRORIST ORGANIZATION**

641. Plaintiffs repeat and re-allege every allegation of the foregoing paragraphs as if fully set forth herein.

642. Plaintiffs were all injured by acts of international terrorism as defined by 18 U.S.C. § 2331 that were committed, planned and authorized by HAMAS, a designated FTO at the time each act of terrorism described occurred.

643. BLOM BANK provided substantial assistance to HAMAS by transferring significant sums of money to HAMAS and its operatives and maintaining bank accounts for its key institutions in Lebanon.

644. BLOM BANK was fully aware of HAMAS's conduct, including its campaign of suicide bombings and other terrorist acts.

491. BLOM BANK understood the value and importance to HAMAS of its own role in facilitating large transfers of funds, including the cross-border transfer of U.S. dollars, from donors and co-conspirators around the world to Lebanon and making those funds easily available to HAMAS.

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645. Plaintiffs allege that BLOM BANK knowingly aided and abetted HAMAS within the meaning of 18 U.S.C. § 2333(d) and within the legal framework of *Halberstam v. Welch*, 705 F.2d 472 (D.C. Cir. 1983), which Congress has found to provide “civil litigants with the broadest possible basis” for relief against those “that have provided material support, directly or indirectly, to foreign organizations or persons that engage in terrorist activities against the United States.” *See* Justice Against Sponsors of Terrorism Act (“JASTA”), §2b.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray that this Court:

- (a) Accept jurisdiction over this action;
- (b) Enter judgment against Defendant and in favor of plaintiffs for compensatory damages in amounts to be determined at trial;
- (c) Enter judgment against Defendant and in favor of plaintiffs for treble damages pursuant to 18 U.S.C. § 2333(a);
- (d) Enter judgment against Defendant and in favor of plaintiffs for any and all costs sustained in connection with the prosecution of this action, including attorneys’ fees, pursuant to 18 U.S.C. § 2333(a); and
- (e) Grant such other and further relief as justice requires.

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Appendix A

PLAINTIFFS DEMAND A TRIAL BY JURY ON ALL
ISSUES SO TRIABLE.

Dated: January 1, 2019

By: /s/ Gerard Filitti
OSEN LLC
Gerard Filitti, Esq.
Michael Radine, Esq.
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TURNER & ASSOCIATES, P.A.
C.Tab Turner, Esq.
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Appendix A

KOHN, SWIFT & GRAF, P.C.

Steven M. Steingard, Esq.

Stephen H. Schwartz, Esq.

Neil L. Glazer, Esq.

1600 Market Street, Suite 2500

Philadelphia, PA 19103

Telephone (215) 238-1700

Attorneys for Plaintiffs

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Appendix A

EXHIBIT A

CONTROL REPORT 10/22/99 23:27:16.47
SEQ NUM: 991022501190 CREATED: 10/22/99
13:44:42.38
ASSOCIATED SEQ NUM:
SOURCE SEQ NUM OR NAME:
CONTROL FLAGS: 107220 000400041000 000000 000000
MESSAGE SOURCE:
ASSOCIATED CATALOG: FWOFF.: 9910221710415600
10/22/99 17:10:41.58
REPEAT CODE:
LAST OPERATOR: SR1257SARAI RESENDIZ
SEND DATE: 10/22/99
WIRE SERVICE: FW
DIRECTION: OUT
CURRENT MODE: NORMAL
CURRENT QUEUE:
APPLICATION ID: FIN
FUNCTION CODE: FEDWIRE - OUT
SERVICE COMPLETE: 040010 0D00000
REVIEW RELEASE CODES:
00 - 51 - NON-REPT CALLBACK 2ND PIN REQD.
PROCESS/NORMALLY/MOHAMMAD Wafa YAIS
01 - 63 - POSSIBLE OFAC VIOLATION.
NO OFRC MATCH
EXCEPTION CODE: 00000
EXCEPTION ACTION: 00000
HOME ABA: 111000514
CORRESPONDENT ABA: 021000018
CORRESPONDENT ENDPOINT ID: IRUTUS3N
CORRESPONDENT COUNTRY: US

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Appendix A

COVERING BANK ENDPOINT ID:
HOME SWIFT TID: BONEUS44AXXX
SWIFT MESSAGE TYPE: 100
SWIFT MESSAGE PRIORITY: 02
CORRESPONDENT SWIFT ADDRESS: IRUTUS3N
INBOUND SWIFT MOR: BONEUS44AXXX
SWIFT OR TELEX MIR: XXX
CORRESPONDENT TELEX ID:
CORRESPONDENT ANSWERBACK:
OUTBOUND TEST NEEDED FLAG:
TEXT TYPE: FORMATTED
RBU: 00
DEBIT ACCOUNT NUMBER: 0001070001258
DEBIT ACCOUNT TYPE: 00
DEBIT ACCOUNT STATUS: ON FILE
CREDIT ACCOUNT NUMBER: 0003210151001
CREDIT ACCOUNT TYPE: GL
CREDIT ACCOUNT STATUS: ON FILE
DEBIT AMOUNT IN FXC: 40,000.0000
DEBIT AMOUNT IN MOMT CURR: 40,000.00
CREDIT AMOUNT IN FXC: 40,000.0000
CREDIT AMOUNT IN HOME CURR: 40,000.0000
MESSAGE AMOUNT: 40,000.0000
DOLLAR AMOUNT: 40,000.00
EXCHANGE RATE: 1,000000000 A
CONTRACT CODE:
VALUE DATE: 10/22/99
DEBIT DATE: 10/22/99
CURRENCY: USD
COMMISSION FLAG:
COMMISSION CHARGE: .00
SCISSORED SEGMENT COUNT: 00

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Appendix A

PRINT REPORT ID: COMMLOG
PRINT SPOOLER LOC: INTLD
TESTCODE ID:
INBOUND TESTING STATUS:
TESTCODE DATE: 10/22/99
TESTCODE CURRENCY TESTED: USD
TESTCODE AMOUNT: 40,000
AUTHENTICATION STATUS:
INBOUND MESSAGE AUTH RESULT:
CALCULATED AUTH RESULT:
RECEIPT ACK/NAK STATUS:
RECEIPT ACK/NAK COMMKEY:
DELIVERY ACK/NAK STATUS:
DELIVERY ACK/NAK COMMKEY:

TIMESTAMP	OPERATOR	INITS	PROCESS
10/22/99 13:44	1975E BUSTAITA	SX736	\EUEAG ES

CREATED BY THE FUNDS TRANSFER
OPERATOR.

10/22/99 13:54	SM2013 WILLIAMS	SX657	\EICE SH
----------------	-----------------	-------	-------------

APPROVAL REQUEST SENT FROM ORF
TO EDSPLANO.

10/22/99 13:55		S0DIA	\EICE
----------------	--	-------	-------

APPROVAL REQUEST APPROVED BY
EDSPLANO

10/22/99 16:07	SR8257SARAI	S2050	\EICE RESENDIZ SR
----------------	-------------	-------	----------------------

REVIEWED BY THE REVIEW/RELEASE
OPERATOR.

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Appendix A

10/22/99 17:10 SR8257SARAI S2050 \EICE
RESENDIZ SR

REVIEWED AND APPROVED BY THE
REVIEW/RELEASE OPERATOR.

10/22/99 17:10 SMCPA
DOMESTIC TRANSACTION CREATED.

10/22/99 17:10 SMCPA
QUEUED TO THE DOMESTIC
OUTBOUND FORMATTER.

10/22/99 17:10 SF11A
TRANSMITTED TO FED USING
REFNUM/OMSN 002103/2103 AT 17:10

CALLER (SRC):

HAISSAM MAHMOUD

ORIGINATOR (ORG):

/0001070001258

HOLYLAND FOUNDATION GENERAL

P O BOX 832390

RICHARDSON, TX 75083

RECEIVING BANK (RCV):

OPTION: A SW ADDR: IRUTUS3N

BANK OF NEW YORK

NEW YORK, NY

BENEFICIARY'S BANK (BBK): OPTION: O

BANQUE DU LIBAN ET D'OUTRE-MER

SIDON BRANCH LEBANON

BENEFICIARY (BNF): OPTION: D

ACCT: /12-02-44037-728529-1

SANABIL ASSOCIATION FOR RELIEF AND

DEVELOPMENT

CHARGES TO (CHG):

BEN

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Appendix A

EXHIBIT B

CONTROL REPORT 10/25/00 23:05:23.67
SEQ NUM: 001025501454 CREATED: 10/25/00
15:23:46.80
ASSOCIATED SEQ NUM:
SOURCE SEQ NUM OR NAME:
CONTROL FLAGS: 107224 000400 041000 000000 000000
MESSAGE SOURCE:
ASSOCIATED CATALOG: FWOFF 0010251605308700
10/25/00 16:05:30.87
REPEAT CODE:
LAST OPERATOR: 1975A BURROUGH
SEND DATE: 10/25/00
WIRE SERVICE: FW
DIRECTION: OUT
CURRENT MODE: NORMAL
CURRENT QUEUE:
APPLICATION ID: FIN
FUNCTION CODE: FEDWIRE – OUT
SERVICE COMPLETE: 040010 000000
REVIEW RELEASE CODES:
00 – 51 – NON-REPT CALLBACK 2ND PIN REQD.
 PROCESSED/NORMALLY/MOHAMMAD WAFAYAIS
EXCEPTION CODE: 00000
EXCEPTION ACTION: 00000
HOME ABA: 111000614
CORRESPONDENT ABA: 021000089
CORRESPONDENT ENDPOINT ID: CITIUS33
CORRESPONDENT COUNTRY: US
COVERING BANK ENDPOINT ID:
HOME SWIFT TID: BONEUS44AXXX

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Appendix A

SWIFT MESSAGE TYPE: 100
SWIFT MESSAGE PRIORITY: 02
CORRESPONDENT SWIFT ADDRESS: CITIUS33
INBOUND SWIFT MOR: BONEUS44AXXX
SWIFT OR TELEX MIR: XXX
CORRESPONDENT TELEX ID:
CORRESPONDENT ANSWERBACK:
OUTBOUND TEST NEEDED FLAG:
TEXT TYPE: FORMATTED
RBU: 00
DEBIT ACCOUNT NUMBER: 0001070001258
DEBIT ACCOUNT TYPE: 00
DEBIT ACCOUNT STATUS: ON FILE
CREDIT ACCOUNT NUMBER: 0003210151001
CREDIT ACCOUNT TYPE: GL
CREDIT ACCOUNT STATUS: ON FILE
DEBIT AMOUNT IN FXC: 20,000.0000
DEBIT AMOUNT IN HOME CURR: 20,000.00
CREDIT AMOUNT IN FXC: 20,000.0000
CREDIT AMOUNT IN HOME CURR: 20,000.00
MESSAGE AMOUNT: 20,000.0000
DOLLAR AMOUNT: 20,000.00
EXCHANGE RATE: 1,000000000 A
CONTRACT CODE:
VALUE DATE: 10/25/00
DEBIT DATE: 10/25/00
CURRENCY: USD
COMMISSION FLAG:
COMMISSION CHARGE: .00
SCISSORED SEGMENT COUNT: 00
PRINT REPORT ID: COMMLOG
PRINT SPOOLER LOC: INTLD

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Appendix A

TESTCODE ID:
INBOUND TESTING STATUS:
TESTCODE DATE: 10/25/00
TESTCODE CURRENCY TESTED: USD
TESTCODE AMOUNT: 20,000
AUTHENTICATION STATUS:
INBOUND MESSAGE AUTH RESULT:
CALCULATED AUTH RESULT:
RECEIPT ACK/NAK STATUS:
RECEIPT ACK/NAK COMMKEY:
DELIVERY ACK/NAK STATUS:
DELIVERY ACK/NAK COMMKEY:

TIMESTAMP OPERATOR INITS PROCESS
10/25/00 15:23 1975W JONES WJ SX201 \EUEA7
CREATED BY THE FUNDS TRANSFER
OPERATOR.
10/25/00 15:44 1975A MASON AM SY351 \EUEA6
APPROVAL REQUEST SENT FROM ORF
TO EDSPLANO.
10/25/00 15:45 SDDIA
APPROVAL REQUEST APPROVED BY
EDSPLANO
10/25/00 16:05 1975A BURROUGH SX132 \EUEA6
AEB
REVIEWED AND APPROVED BY THE
REVIEW/RELEASE OPERATOR.
10/25/00 16:05 SMCPA
DOMESTIC TRANSACTION CREATED.

132a

Appendix A

10/25/00 16:05 SMCPA
QUEUED TO THE DOMESTIC OUTBOUND
FORMATTER.
10/25/00 16:05 SF11A
TRANSMITTED TO FED USING REFNUM/
OMSN 001585/1585 AT 16:05

CALLER (SRC):
HAISSAM MAHMOUD
ORIGINATOR (ORG):
/0001070001258
HOLYLAND FOUNDATION GENERAL
P O BOX 832390
RICHARDSON, TX 75083
RECEIVING BANK (RCV):
OPTION: A SW ADDR: CITIUS33
CITIBANK N.A.
NEW YORK, NY
BENEFICIARY'S BANK (BBK): OPTION: D
BANQUE DU LIBAN ET DOUTRE MER
SIDON LEBANON
BENEFICIARY (BNF): OPTION: D
ACCT: /12 02 44037 728529 1
SANABIL ASSOCIATION FOR RELIEF AND
DEVELOPMENT
CHARGES TO (CHG):
BEN

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Appendix A

EXHIBIT C

CONTROL REPORT 10/19/00 22:26:52.58
SEQ NUM: 001019500772 CREATED: 10/19/00
11:52:11.20
ASSOCIATED SEQ NUM: 001019500919
SOURCE SEQ NUM OR NAME:
CONTROL FLAGS: 105636 040000 041000 000000
000000
MESSAGE SOURCE:
ASSOCIATED COMMLOG: SWOF 0010191242571700
10/19/00 12:42:57.17
REPEAT CODE:
LAST OPERATOR: 1975A BURROUGH
SEND DATE: 10/19/00
WIRE SERVICE: SW
DIRECTION: OUT
CURRENT MODE: NORMAL
CURRENT QUEUE:
APPLICATION ID: FIN
FUNCTION CODE: FUNDS TRANSFER – OUT
SERVICE COMPLETE: 072100 000000
REVIEW RELEASE CODES:
00 – 51 – NON-REPT CALLBACK 2ND PIN REQD.
PROCESSED/NORMALLY/MOHAMMAD WAFAYAIS
01 – 63 – POSSIBLE OFAC VIOLATION.
 NO OFAC MATCH
EXCEPTION CODE: 00000
EXCEPTION ACTION: 00000
HOME ABA: 111000614
CORRESPONDENT ABA:
CORRESPONDENT ENDPOINT ID: AEIBUS33

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Appendix A

CORRESPONDENT COUNTRY: US
COVERING BANK ENDPOINT ID: CHORUS33
HOME SWIFT TID: BONEUS44AXXX
SWIFT MESSAGE TYPE: 100
SWIFT MESSAGE PRIORITY: 02
CORRESPONDENT SWIFT ADDRESS: AEIBUS33
INBOUND SWIFT MOR: BONEUS44AXXX
SWIFT OR TELEX
MIR: 001019BONEUS44AXXX3314968259
CORRESPONDENT TELEX ID:
CORRESPONDENT ANSWERBACK:
OUTBOUND TEST NEEDED FLAG:
TEXT TYPE: FORMATTED
RBU: 00
DEBIT ACCOUNT NUMBER: 0001070001258
DEBIT ACCOUNT TYPE: 00
DEBIT ACCOUNT STATUS: ON FILE
CREDIT ACCOUNT NUMBER: 0003210151001
CREDIT ACCOUNT TYPE: GL
CREDIT ACCOUNT STATUS: ON FILE
DEBIT AMOUNT IN FXC: 31,254.0000
DEBIT AMOUNT IN HOME CURR: 31,254.00
CREDIT AMOUNT IN FXC: 31,254.0000
CREDIT AMOUNT IN HOME CURR: 31,254.00
MESSAGE AMOUNT: 31,254,0000
DOLLAR AMOUNT: 31,254.00
EXCHANGE RATE: 1,000000000 A
CONTRACT CODE:
VALUE DATE: 10/20/00
DEBIT DATE: 10/19/00
CURRENCY: USD
COMMISSION FLAG:

135a

Appendix A

COMMISSION CHARGE: .00
SCISSORED SEGMENT COUNT: 00
PRINT REPORT ID: COMMLOG
PRINT SPOOLER LOC: INTLD
TESTCODE ID:
INBOUND TESTING STATUS:
TESTCODE DATE: 10/19/00
TESTCODE CURRENCY TESTED: USD
TESTCODE AMOUNT: 31,254
AUTHENTICATION STATUS:
INBOUND MESSAGE AUTH RESULT:
CALCULATED AUTH RESULT:
RECEIPT ACK/NAK STATUS: ACKED
RECEIPT ACK/NAK COMMKEY: SWIV
0010191243029900 10/19/00 12:43:02.99
DELIVERY ACK/NAK STATUS:
DELIVERY ACK/NAK COMMKEY:

TIMESTAMP OPERATOR INITS PROCESS
10/19/00 11:52 271975G PEREZ SX836 \EUE86
GP
CREATED BY THE FUNDS TRANSFER
OPERATOR.
10/19/00 12:41 1975A MASON AM SX708 \EUEA6
APPROVAL REQUEST SENT FROM ORF
TO EDSPLANO.
10/19/00 12:41 SDDIA
APPROVAL REQUEST APPROVED BY
EDSPLANO
10/19/00 12:42 1975A BURROUGH SX762 \EUEA6
AEB

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REVIEWED AND APPROVED BY THE
REVIEW/RELEASE OPERATOR.

10/19/00 12:42 SMCPA
QUEUED TO THE S.W.I.F.T. INTERFACE
FOR TRANSMISSION.

10/19/00 12:42 SMCPA
TRANSMITTED TO S.W.I.F.T. USING
SESSION/ISN: 3314/968259

10/19/00 12:43 SMCPA
POSITIVE RECEIPT ACKNOWLEDGEMENT
MESSAGE RECEIVED.

10/19/00 12:43 SMCPA
COVER MESSAGE CREATED.

10/19/00 12:43 SMCPA
DOMESTIC TRANSACTION CREATED.

10/19/00 12:43 SPRIA
FULL COMMLOG REPORT ROUTED TO
PRINTER AT LOCATION INTLD

CALLER (SRC):
HAISSAM MAHMOUD

ORIGINATOR (ORG):
/0001070001258
HOLYLAND FOUNDATION GENERAL
P O BOX 832390
RICHARDSON, TX 75083

SENDER'S CORRESPONDENT BANK (SCB):
OPTION A SW ADDR: CNORUS33
NORTHERN TRUST INTERNATIONAL
BANKING
CORPORATION, THE
NEW YORK, NY

137a

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RECEIVING BANK (RCV):

OPTION: A SW ADDR: AEIBUS33
AMERICAN EXPRESS BANK, LTD.
NEW YORK, NY

BENEFICIARY'S BANK (BBK): OPTION: D

ACCT: /699280
BAQUE DU LIBAN ET DOUTRE MER
SIDON LEBANON

BENEFICIARY (BNF): OPTION: D

ACCT: /12 02 44037 728529 1

SANABIL ASSOCIATION FOR RELIEF AND
DEVELOPMENT

CHARGES TO (CHG):

BEN

ORIGINAL BENEFICIARY'S BANK (OBK):

OPTION: D

BAQUE DU LIBAN ET DOUTRE MER
SIDON LEBANON

138a

Appendix A

EXHIBIT D

UTLANDSBETALNING

Uppdragsglvare

AL-AQSA SPANNMÅL STIFTELSE

EL-YOUSEF K

NOBELVÄGEN 79

214 33 MALMÖ

FÖRENINGSSPARBANKEN AB (publ)

Datum Telefon

2003-04-28 040-24 24 90

Uppdragsglvarens person-/org-nr

00846006-9522

Handiöggaro

CLERN SUSANNE

Betalningen avzer

HELP CONCERNING ORPHAN CHILDREN

Kontor

SÖDERVÄRN

Typ av betalning

Normal

Id nummer

200733

Utiändakt belopp

17 000,00

Valutaalag

USD

Kura

8,2850

Pris

SEK 125,00

Motvärde SEK

140 845,00

Utlandsk

kostnad

Uttag kontonr

8214-9 974.125.088-1

Belopp

140 970,00

Motvärde Euro

Kura

139a

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Riksbankskod

510

Betalningsmottagarens bank

BLOM BANK S.A.L AGENCY SAIDA
ACCOUNT NO USD 8033217235
WITH BANK OF NEW YORK-NY
SWIFT BLOMLBBX

Landkod

LB

Arbltrage-handläggare

Betalningsmottagare

SANABIL ASSOCIATION FOR
RELIEF & DEVELOPMENT
P.O.BOX 431

Betalningsmottagarens kontonummer

012-02(300)0728529-1-4(44037)

**For uppglfternas riktighet ansvarar, och, i
förekommande fall, uttaget belopp kvitteras:**

Uppdragsglvarens

AL-AQSA SPANNMÅL STIFTELSE
EL-YOUSEF K
NOBELVÄGEN 79
214 33 MALMÖ

Uppdragsglvarens person-/org-nr

00846006-9522

Handiöggaro

WIRENSTEDT ULRICA

Telefon

040-24 24 90

140a

Appendix A

Kantor
SÖDERVÄRN

Belopp	Valutaslag	Kurs	Pris
36 036,04	USD	7,7700	SEK 125,00

Motvärde SEK	Mottagande banks kostnad	Uttag kontonr		Belopp
280 000,00		8214-9 974.125.088-1	SEK	280 125,00

Motvärde Euro Kura

Betalningsmottagare
SANABIL ASSOCIATION FOR RELEIF &
DEVELOPMENT
P.O. BOX 431

Betalningsmottagarens kontonummer
012-02(300)0728529-1-4(44037)

Betalningamottagarena bank
BLOM BANK S.A.L. AGENCY SAIDA
ACCOUNT NO USD 8033217235
WITH BANK OF NEW YORK-NY
SWIFT BLOMLBBX

Meddelande till betalningamottagaren
HELP CONCERNING ORPHAN CHILDREN
HEUMAN

Landkod
LB

Betalningskod
510

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**Nivill betala USD 36 036,04 till SANABIL ASSOCIATION
FOR kononummer 012-02(300)0728529-1-4(44037) I
bank BLOM BANK S.A.L. AGENCY SAIDA.**

**Beloppet SEK 280 125,00 dras från konto 8214-9
974.125.088-1.**

Jag/vi har också tagit del av Allmänna villkor för
Uclandsbetalning.

**För uppgifternas riktighet ansvarar, och, I
förekommande fall, uttaget belopp kvitteras:**

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**APPENDIX B — PETITIONER'S PRE-MOTION
LETTER, FILED MAY 3, 2019**

Dechert LLP

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May 3, 2019

VIA FEDEX AND ECF

Honorable Kiyo A. Matsumoto
United States District Judge
United States District Court for the Eastern District
of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Honickman, et al. v. BLOM Bank SAL*,
No. 1:19-cv-00008-KAM-SMG

Dear Judge Matsumoto:

Pursuant to Section IV.B.1 of the Court's Chambers Practices and the Stipulation and Proposed Order entered on February 8, 2019, I write to request a pre-motion conference to address a dispositive motion. The Complaint

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in this civil action pleads a single aiding and abetting count against Defendant BLOM Bank SAL (“BLOM”) under the civil liability provisions of the Antiterrorism Act (“ATA”), as amended by the Justice Against Sponsors of Terrorism Act (“JASTA”), 18 U.S.C. § 2333(a) & (d). Because the allegations against BLOM are facially inadequate, BLOM should be permitted to move to dismiss the Complaint.

BLOM is one of the oldest banks in Lebanon. Opened in Beirut in 1951, BLOM has no operations in the United States. Its offices in 12 countries serve the niche market of Lebanese and Arab expatriates and business people in Europe and act as trusted local full-service banks in the Middle East. Plaintiffs allege that they (or their family members) were injured by a series of violent attacks committed in Israel by alleged agents of the Islamic Resistance Movement (“Hammas”) in 2001–2003.¹ Plaintiffs allege that BLOM provided routine banking services to charitable organizations that, by Plaintiffs’ own admission, engaged in actual charitable work. These charities were later linked to Hammas.

1. Over the years, Plaintiffs have brought multiple lawsuits against other defendants allegedly responsible for their injuries. *See, e.g., Kirschenbaum, et al. v. Islamic Republic of Iran*, No. 03-cv-01708 (D.D.C.); *Sokolow, et al. v. Palestine Liberation Organization, et al.*, No. 04-cv-00397 (S.D.N.Y.); *Linde, et al., v. Arab Bank, PLC*, No. 04-cv-2799 (E.D.N.Y.); *Wolf, et al. v. Credit Lyonnais, S.A.*, No. 07-cv-00914 (E.D.N.Y.); *Applebaum, et al. v. National Westminster Bank, PLC*, No. 07-cv-00916 (E.D.N.Y.); *Beer, et al. v. ASSA Corporation*, No. 13-cv-01848 (S.D.N.Y.); *Averbach, et al. v. Cairo Amman Bank*, No. 19-cv-00004 (S.D.N.Y.); *Spetner, et al. v. Palestine Investment Bank*, No. 19-cv-00005 (E.D.N.Y.); *Singer, et al. v. Bank of Palestine*, No. 19-cv-00006 (E.D.N.Y.).

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Under the ATA's basic framework and the standards of *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), Plaintiffs have not stated a claim. Nowhere in the Complaint do Plaintiffs allege sufficient facts to demonstrate that BLOM was aware that it was playing any role in alleged terrorist activities, that BLOM knowingly or substantially assisted the acts that resulted in Plaintiffs' injuries, or that BLOM's routine banking services directly assisted the operatives who caused those injuries. And, at the very least, a number of individual Plaintiffs should be dismissed because they lack standing or otherwise fail to plead a claim under the ATA. The specific grounds for the proposed motion are as follows:

1. Plaintiffs do not plead sufficient facts tending to demonstrate that BLOM was aware it played any role in the alleged terrorist activities. Under the Second Circuit's decision in *Linde v. Arab Bank, PLC*, 882 F.3d 314 (2d Cir. 2018), the mere provision of routine banking services to a terrorist entity does not render a bank liable under an aiding and abetting theory. Instead, "[a]iding and abetting requires the secondary actor to be 'aware' that, by assisting the principal, it is itself assuming a 'role' in terrorist activities." *Linde*, 882 F.3d at 329 (quoting *Halberstam v. Welch*, 705 F.2d 472, 477 (D.C. Cir. 1983)). As one recent decision in this District explained: "Evidence that Defendant knowingly provided banking services to a terrorist organization, without more, is insufficient to satisfy JASTA's scienter requirement." *Weiss v. Nat'l Westminster Bank PLC*, No. 05-cv-4622-DLI-RML, 2019 WL 1441118, at *11 (E.D.N.Y. Mar. 31, 2019); see also *O'Sullivan v. Deutsche Bank AG*, No. 17-cv-8709-LTS-

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GWG, 2019 WL 1409446, at *10 (S.D.N.Y. Mar. 28, 2019) (dismissing for failure to state a claim where complaint failed to allege facts showing that Defendants knew that financial services were “destined” to aid organization responsible for the attacks). Here, the Complaint alleges nothing more than that BLOM provided routine banking services to organizations that later were revealed to be connected to Hamas. But none of the allegations, if true, would establish that BLOM was aware of that connection at the time it provided those banking services or, more importantly, that BLOM was aware that the banking services it provided to those customers were connected to alleged terrorist activities. Even if BLOM did have reason to believe that its customers were in some way affiliated with Hamas, that awareness alone would not subject BLOM to aiding and abetting liability because Plaintiffs have not alleged facts demonstrating that the bank had any sense that its routine banking services might be playing a role in terrorism.

2. Plaintiffs do not plead sufficient facts tending to demonstrate that BLOM knowingly provided substantial assistance to the wrongful acts that caused their injuries. In addition to the requirement that an aider and abettor be generally aware that it is assuming a role in terrorist activities, JASTA requires that a defendant “knowingly provid[e] substantial assistance [to] . . . the person who committed such an act of international terrorism.” *Linde*, 882 F.3d at 320 (quoting 18 U.S.C. § 2333(d)(2)). Here, again, the Complaint is legally deficient: Plaintiffs do not plead that BLOM knowingly assisted the alleged terrorist activities or that it assisted those activities in a substantial fashion. The case law sets forth

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six factors relevant to determining whether an alleged act can satisfy the substantial assistance requirement of JASTA: “(1) the nature of the act encouraged, (2) the amount of assistance given by defendant, (3) defendant’s presence or absence at the time of the tort, (4) defendant’s relation to the principal, (5) defendant’s state of mind, and (6) the period of defendant’s assistance.” *Linde*, 882 F.3d at 330. These factors cut decisively against a finding of substantial assistance. The “nature of the act” at issue is the alleged provision of routine banking services to organizations that purported to be legitimate charities (and that did in fact do charitable work) before the U.S. government designated them as Specially Designated Global Terrorists (“SDGTs”) and BLOM’s subsequent closing of their accounts. Plaintiffs make no effort even to try to quantify the “amount of assistance” that BLOM is alleged to have provided, indirectly through charitable organizations, to the alleged terrorist activities. BLOM’s alleged “relation to” the attacks was attenuated, at best. BLOM is not alleged to have been present at any of the attacks. And Plaintiffs have not alleged any facts suggesting that BLOM in any way encouraged or supported alleged terrorism.

3. Plaintiffs do not plead sufficient facts tending to demonstrate that BLOM’s routine banking services directly assisted the acts that caused Plaintiffs’ injuries.

In addition, under the plain text of the ATA, as amended by JASTA, a defendant is liable only if it *directly* aided and abetted the “*person*” who committed the relevant “*act* of international terrorism.” 18 U.S.C. § 2333(d)(2). But Plaintiffs do not allege that any BLOM account holder committed the attacks that caused their harms. Instead,

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Plaintiffs have alleged that BLOM provided routine banking services to charitable organizations that then aided and abetted alleged terrorist activities. But JASTA does not impose liability for aiding and abetting an alleged aider and abettor. *Siegel v. HSBC Bank USA, N.A.*, No. 17-cv-6593-DLC, 2018 WL 3611967, at *4 (S.D.N.Y. July 27, 2018), *appeal docketed* No. 18-2540 (2d Cir. Aug. 27, 2018). Moreover, Plaintiffs' allegations come nowhere close to establishing any causal relationship between BLOM's provision of routine banking services and the attacks that caused Plaintiffs' injuries.

4. Additionally and alternatively, certain individual Plaintiffs' claims require dismissal. A number of Plaintiffs are ineligible to sue under the ATA because they are not "national[s] of the United States." 18 U.S.C. § 2333(a); *see* Compl. ¶¶ 135, 260, 385, 458 (Plaintiffs are nationals of Israel and France). In addition, others have not alleged injuries that were proximately caused by an act of terrorism or fairly traceable to BLOM's alleged actions, as required to establish a claim and Article III standing. *See* Compl. ¶¶ 465–85 (describing injuries arising from slip-and-fall).

We will be prepared to address these issues at a pre-motion conference. The parties have agreed to the following briefing schedule: BLOM's moving papers to be served on June 3, 2019; opposition papers to be served on July 8, 2019; and reply papers to be served on July 29, 2019.

Respectfully,

/s/ Linda C. Goldstein
Linda C. Goldstein

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**APPENDIX C — RESPONDENTS' PRE-MOTION
LETTER, FILED MAY 8, 2019**

OSEN LLC
ATTORNEYS AT LAW
WWW.OSENLAW.COM

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T. 201.265.6400 F. 201.265.0303

1441 BROADWAY, SUITE 6022, NEW YORK, NY 10018
T.212.354.0111

May 8, 2019

VIA FEDEX AND ECF

Honorable Kiyo A. Matsumoto
United States District Judge
United States District Court, Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Honickman, et al. v. BLOM Bank SAL*,
No. 1:19-cv-00008-KAM-SMG

Dear Judge Matsumoto:

Plaintiffs respectfully write in response to Defendant's
May 3, 2019 letter.

The Complaint alleges sufficient facts to satisfy 18
U.S.C. §2333(d) as enacted by Congress through the
Justice Against Sponsors of Terrorism Act ("JASTA"),

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which expressly found that *Halberstam v. Welch*, 705 F.2d 472 (D.C. Cir. 1983) “provides the proper legal framework for how such liability should function in the context of Chapter 113B of title 18, United States Code.” Eighteen U.S.C. §2333 (note), §2(a)(5). The Court of Appeals followed this directive in *Linde v. Arab Bank, PLC*, 882 F.3d 314, 329 (2d Cir. 2018) (“we are mindful that Congress, in enacting JASTA, instructed that the ‘proper legal framework for how [aiding and abetting] liability should function’ under the ATA is that identified in *Halberstam*”).

Linde then restated and applied *Halberstam*’s elements (as Congress required):

- (1) the party whom the defendant aids must perform a wrongful act that causes an injury;
- (2) the defendant must be generally aware of his role as part of an overall illegal or tortious activity at the time he provides the assistance; and
- (3) the defendant must knowingly and substantially assist the principal violation.

Id. (quoting *Halberstam*, 705 F.2d at 487). Plaintiffs’ allegations satisfy all three elements.

*Appendix C***Wrongful Act**

The Complaint identifies the terrorist attacks HAMAS committed, planned and authorized that killed and injured Plaintiffs and their representatives. *See* Complaint ¶¶13, 76, 207, 240, 299, 318, 337-39, 390, 407, 413-14, 486, 491.

General Awareness

Halberstam held that “[t]he district court’s conclusions that Hamilton *knew about* and acted to support *Welch’s illicit enterprise* [not the murder] establish that Hamilton had a general awareness of her *role in a continuing criminal enterprise*. The second element is thus satisfied.” 705 F.2d at 488 (emphasis added). *Linde* interpreted *Halberstam* to require “aware[ness]” that by assisting the principal, defendant was “assuming a ‘role’ in terrorist activities.” *Id.* at 329. It expressly rejected any requirement that this necessitates proof of specific intent “*to participate* in a criminal scheme as ‘something that [defendant] wishes to bring about and seek by his action to make it succeed.’” *Id.* (emphasis added). Nor did *Linde* require awareness of the specific acts at issue. *Id.* In fact, *Halberstam* held that plaintiff did not even have to prove that “Hamilton knew specifically that Welch was committing burglaries,” as long as she knew he was involved “in some type of personal property crime at night—whether as a fence, burglar, or armed robber made no difference—because violence and killing is a foreseeable risk in any of these enterprises.” 705 F.2d at 488.

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BLOM disregards this straightforward legal standard, arguing that “[e]ven if BLOM did have reason to believe that its customers were in some way affiliated with Hamas, that awareness alone would not subject BLOM to aiding and abetting liability because Plaintiffs have not alleged facts demonstrating that the bank had any sense that its routine banking services might be playing a role in terrorism.” Letter at 2. The Complaint, however, specifies that senior HAMAS leader Ahmed Muhammad Abd al-Hadi served on the board of BLOM’s customer, Sanabil Association for Relief and Development (“Sanabil”) together with HAMAS’s chief fundraiser in Lebanon, Abdallah Atawat. Complaint ¶¶591-592. Exhibit D to the Complaint even provides *evidence* of funds transfers made by the HAMAS fundraising organization Al Aqsa Foundation to Sanabil’s account at BLOM—*after* Al Aqsa was designated a terrorist by the United States.

Substantial Assistance

The parties agree that the factors a court must consider in determining whether a defendant has provided “substantial assistance” to a primary tortfeasor (in this case HAMAS) are:

- (1) the nature of the act encouraged;
- (2) the amount of assistance given by defendant;
- (3) defendant’s presence or absence at the time of the tort;

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- (4) defendant's relation to the principal;
- (5) defendant's state of mind; and
- (6) the period of defendant's assistance.

Linde at 329, 330. As set forth below, the Complaint plausibly alleges that BLOM provided substantial assistance to HAMAS.

The nature of the act encouraged. “[T]he nature of the act involved dictates what aid might matter, *i.e.*, be substantial.” *Halberstam*, 705 F.2d at 484. *Halberstam* found that the “long-running burglary enterprise [was] heavily dependent” on laundering the goods, *id.* at 488, which was assisted by defendant Hamilton who served as her boyfriend’s “banker, bookkeeper, recordkeeper, and secretary,” *id.* at 487. Moreover, “[u]nder the ‘nature of the act’ criterion, a court might also apply a proportionality test to particularly bad or opprobrious acts, *i.e.*, a defendant’s responsibility for the same amount of assistance increases with the blameworthiness of the tortious act or the seriousness of the foreseeable consequences.” *Id.*, at 484 n.13. Thus, *Halberstam* found that “[a]lthough Hamilton’s own acts were neutral standing alone, they must be evaluated in the context of the enterprise they aided, *i.e.*, a five-year-long burglary campaign against private homes.” *Id.* at 488. Here, even assuming *arguendo* that Defendant’s banking activities were “neutral standing alone,” they must be evaluated in the context of the “blameworthiness” of the horrific acts HAMAS perpetrated and the “seriousness” of the foreseeable consequences of providing

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substantial, contemporaneous support to that terrorist organization.¹

The amount of the assistance. “The *amount* [*and kind*] of *assistance* given the wrongdoer is also a significant factor” *Halberstam*, 705 F.2d at 484. Money is the lifeblood of terrorism, and as in *Halberstam*, “integral” to its operation. *Id.* Further, the amount of assistance is “influence[d]” by the duration of the assistance provided.” *Id.* (emphasis omitted). Thus, in *Halberstam*, “although the *amount of assistance* [chiefly money laundering and tax preparation] Hamilton gave Welch [her burglar boyfriend] may not have been overwhelming as to any given burglary in the five-year life of this criminal operation, it added up over time to an essential part of the pattern.” *Id.* at 488. Here, Defendant allegedly provided HAMAS significant amounts of support continually for years in the midst of an ongoing terror campaign during the Second Intifada. *See, e.g.*, Complaint ¶1599—table listing payments from the Holy Land Foundation (convicted HAMAS fundraiser). *See also*, Complaint ¶¶600-606.

Presence at the time of the tort. In *Halberstam*, “Hamilton was admittedly not *present at the time* of the

1. The Executive Branch has found, and the Supreme Court has agreed, that “[m]aterial support’ is a valuable resource by definition.” *Holder*, 561 U.S. 1, 30 (2010). “[I]t is highly likely that any material support to these organizations will ultimately inure to the benefit of their criminal, terrorist functions—regardless of whether such support was ostensibly intended to support non-violent, non-terrorist activities.” *Id.* at 33 (quoting government affidavit setting out the Executive Branch’s view, to which the Court deferred).

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murder or even at the time of any burglary,” but “the success of the tortious enterprise clearly required expeditious and unsuspecting disposal of the goods, and Hamilton’s role in that side of the business was substantial.” *Id.* at 488. Here, BLOM was also not “present at the scene,” but HAMAS’s terror campaign required significant funding and the U.S. Government has determined that Defendant’s (SDGT) customers played a significant role in fueling HAMAS, conduct BLOM facilitated. Complaint ¶¶590, 635.

Relationship to the principal. BLOM served as a willing banker for two primary HAMAS fundraisers in Lebanon, Sanabil and the Union of Good.² By soliciting funds for HAMAS, these organizations engaged in what are defined as “terrorist activities” by the Immigration and Nationality Act, incorporated into §2339B(a)(1). The relationship was intimate, because a banker must know and communicate with its customers, approve transfers in and out of customers’ accounts, and apply regulatory requirements to such transfers. The Complaint amply alleges the continuing nature of the relationship BLOM maintained with these notorious HAMAS institutions.

Defendant’s state of mind. *Halberstam* emphasized that Hamilton’s assistance was knowing, long-term, and continuous, not some “passing fancy or impetuous act.” 705 F.2d at 488. BLOM’s alleged assistance to Sanabil and the Union of Good was likewise knowing, long-term, and continuous, reflecting its intentional, deliberate decision to

2. It also allegedly provided services to a third, less prominent HAMAS fundraiser, Subul al-Khair.

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render that assistance. Complaint ¶¶596, 603, 621-28, 629-40. *Halberstam* also held that “[t]he particularly offensive nature of an underlying offense might also factor in this criterion. 705 F.2d at 484 n.13. Nothing is more offensive than mass killings and maiming of innocent civilians, including children.

Duration of assistance. *Halberstam* added this “important” factor to those delineated in the Restatement (Second) of Torts §876 (1979) because it “almost certainly affects the quality and extent of their relationship and probably influences the amount of aid provided as well; additionally, it may afford evidence of the defendant’s state of mind.” *Id.* at 484. In *Halberstam*, this factor “strongly influenced [the court’s] weighing of Hamilton’s assistance. It affected [the court’s] sense of how Hamilton perceived her role and of the value of her assistance to Welch.” *Id.* Plaintiffs have alleged that BLOM assisted HAMAS for *years*, even after Sanabil was designated. BLOM’s conduct was continuous, extensive, and critical to the success of HAMAS’s terror campaign.

We will be prepared to address the relevant issues at the pre-motion conference.

Respectfully submitted,

/s/ _____
Gary M. Osen

**APPENDIX D — DOCKET ENTRY,
FILED MAY 15, 2019**

05/15/2019

MINUTE ENTRY and SCHEDULING ORDER for Telephone Conference held before Judge Kiyoo A. Matsumoto on 5/15/2019. Appearances for Plaintiffs: Gary M. Osen, Esq.; Ari Ungar, Esq.; and Steven M. Steingard, Esq. Appearances for Defendant: Linda C. Goldstein, Esq.; Michael H. McGinley, Esq.; Selby P. Brown, Esq.; and Justin M. Romeo, Esq. The parties discussed Defendant's proposed motion to dismiss. The Court offered Plaintiffs an opportunity to amend their complaint 1 to add additional information in response to the arguments raised by Defendant. Plaintiffs declined to do so and represented that they would not be seeking to amend their Complaint in this regard. The Court then set the following schedule for the parties: (1) by **May 22, 2019**, Plaintiffs will advise Defendant as to which Plaintiffs' claims they will voluntarily dismiss; (2) by **June 3, 2019**, Defendant will serve, but not file, its motion on Plaintiffs; (3) by **July 8, 2019**, Plaintiffs will serve, but not file, their opposition on Defendant; and (4) by **July 29, 2019**, Defendant will serve, but not file, its reply on Plaintiffs. Once the motion is fully briefed, the parties shall then both file their motion papers via ECF in chronological order and send two physical courtesy copies of all motion papers to chambers. The Court also reminds all parties to enter appearances as necessary for any attorney who intends to submit briefing or appear before the Court in any future proceedings. (Court Reporter Stacy Mace.) Ordered by Judge Kiyoo A. Matsumoto on 5/15/2019. (Ammari, Kamil) (Entered: 05/15/2019)

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**APPENDIX E — MOTION TO ADJOURN,
FILED JUNE 5, 2019**

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LINDA C. GOLDSTEIN

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June 5, 2019

VIA ECF

Honorable Steven M. Gold
United States Magistrate Judge
United States District Court for the Eastern District
of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Honickman, et al. v. BLOM Bank SAL*,
No. 1:19-cv-00008-KAM-SMG – Motion for
Adjournment of Initial Conference

Dear Judge Gold:

Pursuant to Section 1.D of the Court's Individual Practices,
Defendant respectfully moves, with Plaintiffs' consent, for
an adjournment *sine die* of the initial conference, which

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has been rescheduled for June 21, 2019 at 4:30 p.m. (Re-Scheduling Order dated May 23, 2019).

Defendant requests the adjournment in light of the motion to dismiss that Defendant served (but did not file) on June 3, 2019. Plaintiffs' response to the motion is due on July 8, 2019, and Defendant's reply is due on July 29, 2019. (Minute Entry dated May 15, 2019). Defendant believes there is no need for the parties to exchange any discovery during the pendency of the motion and therefore requests that the initial conference be rescheduled only in the event that Defendant's motion is denied. Plaintiffs agree that it makes sense for the parties to postpone their exchange of initial discovery during the pendency of the motion to dismiss and join in this request for an adjournment of the scheduled conference.

Plaintiffs further advise us (and, by means of this letter, the Court) that they nonetheless anticipate the need to seek leave, during the pendency of the motion, to serve preservation subpoenas pursuant to Federal Rule of Civil Procedure 45 on certain non-parties to whom they have sent (or intend to send) litigation hold letters. Defendant reserves the right to object to such a request.

No party has previously requested an extension or adjournment of the initial conference, and all parties join in requesting this adjournment.

Respectfully,

/s/ Linda C. Goldstein
Linda C. Goldstein

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**APPENDIX F — PETITIONER’S MEMORANDUM
OF LAW IN SUPPORT OF ITS MOTION TO
DISMISS, DATED JUNE 3, 2019**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

1:19-cv-00008-KAM-SMG

MICHAL HONICKMAN FOR THE ESTATE OF
HOWARD GOLDSTEIN, *et al.*,

Plaintiffs,

- against -

BLOM BANK SAL,

Defendant.

**MEMORANDUM OF LAW IN SUPPORT
OF DEFENDANT’S MOTION TO
DISMISS THE COMPLAINT**

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[TABLES INTENTIONALLY OMITTED]

PRELIMINARY STATEMENT

Since the tragic terrorist attacks in Israel in 2001 to 2003, Plaintiffs have brought multiple lawsuits seeking money damages against Iran, Syria, the Palestine Liberation Organization, and several financial institutions. This latest suit, filed as an extension of the statute of limitations was about to expire, is asserted under the Anti-terrorism Act (“ATA”) against BLOM Bank SAL (“BLOM”), one of the oldest banks in Lebanon. The Complaint’s elaborate descriptions of the alleged history of the Islamic Resistance Movement (“ Hamas”) and the incidents that led to Plaintiffs’ unfortunate injuries are most striking for what they do *not* say: anything connecting BLOM to those incidents or to Hamas. The only allegations against BLOM are that it maintained bank accounts for three charitable organizations, two of which were *later* sanctioned by the U.S. Treasury Department *after* all of the acts resulting in Plaintiffs’ injuries. Only a

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handful of the Complaint's 645 paragraphs even mention BLOM.

Nowhere does the Complaint plead facts that would establish that those charities were involved in any terrorist activities, or that BLOM was aware of such involvement, let alone that BLOM knowingly and substantially assisted those persons who allegedly committed the terrorist acts. That failure is fatal because Plaintiffs' sole claim against BLOM is for secondary liability, specifically aiding and abetting liability, under the 2016 Justice Against Sponsors of Terrorism Act ("JASTA"). *See* 18 U.S.C. § 2333(d)(2). To successfully plead such a claim, a plaintiff must plausibly allege facts showing that the defendant knowingly provided substantial assistance to the perpetrator of the relevant act of terrorism and that, when doing so, the defendant was generally aware that it was assuming a role in violent or life-threatening acts. *Linde v. Arab Bank, PLC*, 882 F.3d 314, 329–30 (2d Cir. 2018).

The allegations in the Complaint do not come close to meeting that demanding standard. Ostensibly, Plaintiffs claim that BLOM aided and abetted Hamas, without actually linking BLOM to Hamas or to any violent or life-threatening activities. Plaintiffs try to forge that link by conflating the three charities that are alleged to have been BLOM's customers with Hamas and the terrorists who committed the attacks at issue. But the facts alleged in the Complaint do not plausibly establish that the charities that allegedly received banking services from BLOM were involved in violent activities, much less that BLOM was aware of such involvement and knowingly and

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substantially assisted it. Because JASTA requires them to plead much more, the Court should dismiss the Complaint.

BACKGROUND**I. Statutory Background: Anti-terrorism Act and the Justice Against Sponsors of Terrorism Act**

Plaintiffs' sole claim for relief is an aiding and abetting claim under the ATA. Congress originally enacted the ATA in 1992 to hold terrorists accountable for their actions by providing a federal cause of action—a “primary liability” ATA claim—to any U.S. national “injured in his or her person, property, or business by reason of an act of international terrorism.” 18 U.S.C. § 2333(a). Congress crafted the statute to require proof that the defendant engaged in “international terrorism” and that the defendant’s wrongful acts caused the plaintiff’s injuries. 18 U.S.C. § 2331(1); *Linde*, 882 F.3d at 331; *Rothstein v. UBS AG*, 708 F.3d 82, 95 (2d Cir. 2013). The statute defines an “act of international terrorism” to require, among other things, that the defendants acted in a way that was “dangerous to human life” and with an objectively terroristic intent. 18 U.S.C. § 2331(1). The Complaint does not assert a primary liability claim against BLOM.

In 2016, Congress enacted JASTA, which amends the ATA to add secondary liability in the form of aiding and abetting and conspiracy claims.¹ Secondary liability

1. The Complaint does not assert a conspiracy claim under JASTA. Compl. ¶¶ 641–45.

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claims under the ATA can be pled only through JASTA's amendments and only under a narrow set of circumstances. *See Rothstein*, 708 F.3d at 97 (concluding, prior to JASTA, that the ATA did not include an aiding and abetting claim). The relevant provision provides:

In an action under subsection (a) for an injury arising from an act of international terrorism committed, planned, or authorized by an organization that had been designated as a foreign terrorist organization under section 219 of the Immigration and Nationality Act (8 U.S.C. 1189), as of the date on which such act of international terrorism was committed, planned, or authorized, liability may be asserted as to any person who aids and abets, by knowingly providing substantial assistance, or who conspires with the person who committed such an act of international terrorism.

18 U.S.C. § 2333(d)(2).

Through this language, Congress imposed three important limitations on aiding and abetting liability. **First**, unlike primary liability, secondary liability is available only where the plaintiff's injuries were caused by an act of international terrorism that was "committed, planned, or authorized by an organization that has been designated as a foreign terrorist organization." 18 U.S.C. § 2333(d)(2). A "foreign terrorist organization" ("Foreign Terrorist Organization" or "FTO") is an organization that has been formally designated by the Secretary of State upon finding, among other things, that the organization

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engages in terrorism or “retains the capability and intent to engage in terrorism.” 8 U.S.C. § 1189(a)(1), (d)(4). That designation is different from other terrorism-related designations issued by the Treasury Department, other U.S. government agencies, and other countries.²

Second, JASTA requires that the defendant must have “knowingly provid[ed] substantial assistance” to “the person who committed” the “act of international terrorism.” 18 U.S.C. § 2333(d)(2). In the context of a bank defendant such as BLOM, this means the allegations must show the defendant “was ‘*generally aware*’ that [by providing financial services] it was thereby *playing a ‘role*’ in [the terrorists’] *violent or life-endangering activities.*” *Linde*, 882 F.3d at 329 (quoting *Halberstam v. Welch*, 705 F.2d 472, 477 (D.C. Cir. 1983)) (emphasis added). This scienter requirement demands “more than the provision of material support to a designated terrorist organization,” because the criminal material support provisions of the ATA have a different scienter standard, “which requires only knowledge of an organization’s

2. An entity’s mere association with a Foreign Terrorist Organization does not convert it into a Foreign Terrorist Organization. In fact, numerous procedural steps accompany the Foreign Terrorist Organization designation. The Secretary of State must notify certain congressional leaders prior to designation and publish the designation in the Federal Register. 8 U.S.C. § 1189(a)(2). A designated entity has the opportunity to challenge the designation following publication of the designation in the Federal Register. 8 U.S.C. § 1189(c)(1). Additionally, a designation can be amended or modified if the Secretary of State finds that the FTO has merged with another organization. 8 U.S.C. § 1189(b)(1).

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connection to terrorism, not intent to further its terrorist activities or awareness that one is playing a role in those activities.” *Id.* at 329–30 (referring to 18 U.S.C. § 2339B); *see also Strauss v. Credit Lyonnais, S.A.*, No. 06-cv-702 (DLI) (RML), 2019 WL 1492902, *11 (E.D.N.Y. Mar. 31, 2019), *appeal filed*, No. 19-1285 (2d Cir. Apr. 26, 2019) (denying request to add an ATA aiding and abetting claim as futile because the plaintiffs had satisfied the scienter requirement for providing material support, but not the higher scienter requirement of aiding and abetting).

Third, because JASTA requires assistance to “the person who committed” the terrorist act, a defendant cannot be liable for aiding and abetting another putative aider-and-abettor or for acts that only indirectly assisted the perpetrator of an act of international terrorism. *See Siegel v. HSBC Bank USA, N.A.*, No. 17-cv-6593 (DLC), 2018 WL 3611967, *4 (S.D.N.Y. July 27, 2018), *appeal filed*, No. 17-2540 (2d Cir. December 7, 2018). This statutory provision requires a direct connection between the defendant and the person or FTO that committed the attack. *Crosby v. Twitter, Inc.*, 921 F.3d 617, 626–27, n.6 (6th Cir. 2019); *Siegel*, 2018 WL 3611967 at *4.

In addition, as explained by the Second Circuit in *Linde*, JASTA states that the D.C. Circuit’s decision in *Halberstam v. Welch*, 705 F.2d 472 (D.C. Cir. 1983), should provide the legal framework for aiding and abetting liability under § 2333(d)(2). *See* 882 F.3d at 329 (citing 18 U.S.C. § 2333 Statutory Note (Findings and Purpose § 5)). *Halberstam*’s aiding and abetting framework has three elements: (1) “the party whom the defendant aids

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must perform a wrongful act that causes an injury,” (2) “the defendant must be generally aware of his role as part of an overall illegal or tortious activity at the time that he provides the assistance,” and (3) “the defendant must knowingly and substantially assist the principal violation.” 705 F.2d at 487–88. And six factors are relevant to determining “how much encouragement or assistance is substantial enough” to satisfy the third element: “(1) the nature of the act encouraged, (2) the amount of assistance given by defendant, (3) defendant’s presence or absence at the time of the tort, (4) defendant’s relation to the principal, (5) defendant’s state of mind, and (6) the period of defendant’s assistance.” *Linde*, 882 F.3d at 329 (citing *Halberstam*, 705 F.2d at 483–84).

Thus, under JASTA’s statutory text and the Second Circuit’s precedents, Plaintiffs’ aiding and abetting claim can survive this Motion to Dismiss only if the Complaint plausibly alleges that BLOM was “generally aware” that, by providing financial services to the three alleged customers, it was playing a direct “role” in a Foreign Terrorist Organization’s violent or life-endangering activities that caused Plaintiffs’ injuries, and that BLOM knowingly and substantially assisted the person who committed those terrorist activities. *Linde*, 882 F.3d at 329.

II. Statement of Facts

Plaintiffs in this case are individuals and their family members who were injured by twelve violent attacks in Israel between 2001 and 2003 that allegedly were

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perpetrated by individuals associated with Hamas. *E.g.*, Compl. ¶¶ 3, 642. Listed chronologically, these attacks were on Ben Yehuda Street in Jerusalem (Dec. 1, 2001), at the Park Hotel in Netenaya (March 27, 2002), at Sheffield Club near Tel Aviv (May 7, 2002), on the Patt Junction Bus #32A in Jerusalem (June 18, 2002), at Hebrew University in Jerusalem (July 31, 2002), in Ariel, a town on the West Bank (Oct. 27, 2002), on Route 60 in the West Bank (Jan. 29, 2003 and June 20, 2003), at Mike's Place in Tel Aviv (April 30, 2003), on Commuter Bus #6 heading to Jerusalem (May 18, 2003), in Jerusalem on Jaffa Road Bus #14A (June 11, 2003), and in Jerusalem on Egged Bus #2 (Aug. 19, 2003) (individually, an "Attack" or collectively, "the Attacks"). *Id.* ¶¶ 13, 76, 207, 240, 299, 318, 337, 390, 407, 413, 486, 491.

In the more than fifteen years since the most recent of these Attacks, Plaintiffs have brought multiple lawsuits against other defendants allegedly responsible for their injuries, including the Islamic Republic of Iran, the Palestine Liberation Organization and numerous European and Middle Eastern banks.³ Just hours before

3. See, e.g., *Kirschenbaum, et al. v. Islamic Repub. of Iran*, No. 03-cv-01708 (D.D.C.); *Sokolow, et al. v. Palestine Liberation Org., et al.*, No. 04-cv-00397 (S.D.N.Y.); *Linde, et al., v. Arab Bank, PLC*, No. 04-cv-02799 (E.D.N.Y.); *Wolf, et al. v. Credit Lyonnais, S.A.*, No. 07-cv-00914 (E.D.N.Y.); *Applebaum, et al. v. Nat'l Westminster Bank, PLC*, No. 07-cv-00916 (E.D.N.Y.); *Beer, et al. v. ASSA Corp.*, No. 13-cv-01848 (S.D.N.Y.); *Singer, et al. v. Bank of Palestine*, No. 19-cv-00006 (E.D.N.Y.).

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the statute of limitations⁴ on their ATA claims was set to expire on January 2, 2019, Plaintiffs filed six more suits against BLOM and five other financial institutions in another attempt to recover for their tragic injuries.⁵

But BLOM, the sole defendant in this case, does not support or assist terrorism. On the contrary, BLOM is one of the oldest banks in Lebanon and has itself been the target of a violent terrorist act.⁶ Opened in Beirut in 1951, BLOM is actively present in 12 countries, serving the niche market of Lebanese and Arab expatriates and business people in Europe, but has no operations in the United States or in Israel, where all of the alleged Attacks occurred.⁷ Plaintiffs do not allege BLOM

4. A savings clause in the National Defense Authorization Act for Fiscal Year 2013 extended the ordinary ten-year statute of limitations to January 2, 2019. Pub. L. No. 112- 239, § 1251(c), 126 Stat. 1632, 2017–18 (Jan. 2, 2013).

5. The five other cases are: *Averbach, et al. v. Cairo Amman Bank*, No. 19-cv-00004 (S.D.N.Y.); *Miller, et al. v. Credit Lyonnais, S.A. et al*, No. 19-cv-00002 (E.D.N.Y.); *Miller, et al. v. National Westminster Bank, PLC*, 19-cv-00001 (E.D.N.Y.); *Singer, et al. v. Bank of Palestine*, No. 19-cv-00006 (E.D.N.Y.); *Spetner, et al. v. Palestine Investment Bank*, No. 19-cv-00005 (E.D.N.Y.).

6. *Blom Bank Was Target of Beirut Blast, Interior Minister Says*, Bloomberg News (June 12, 2016) <https://www.bloomberg.com/news/articles/2016-06-12/blom-bank-was-target-of-beirut-s-blast-interior-minister-says>.

7. Overview, BLOM Bank Sal, (last accessed May 31, 2019) <https://www.blombank.com/english/profile/overview>; History of The Bank, BLOM Bank Sal, (last accessed May 31, 2019), <https://www.blombank.com/english/profile/history-of-the-bank>.

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provided any financial services directly to Hamas, much less that BLOM provided Hamas with funds, weapons, or ammunition. Instead, Plaintiffs' theory of liability is that BLOM provided routine banking services to three charitable organizations that allegedly supported Hamas's non-violent activities in Lebanon. Rather than plead facts concerning *any* direct connection between BLOM and Hamas, Plaintiffs have larded their Complaint with allegations about the Attacks, Hamas, and its allegedly affiliated charities, devoting fewer than 5 percent of the Complaint's 645 paragraphs to any discussion of BLOM.⁸

At the heart of Plaintiffs' theory are BLOM's alleged accounts for three charitable organizations: Subul Al-Khair, Union of Good, and the Sanabil Association for Relief and Development ("Sanabil") (collectively, the "Alleged Account Holders"). Compl. ¶¶ 595, 623, 640. But Plaintiffs do not contend that any of the Alleged Account Holders committed *any* terrorist attacks or violent acts, let alone the Attacks at issue. Rather, Plaintiffs allege that these organizations performed charitable work in "Palestinian refugee camps in Lebanon" or "in the Beirut area." *Id.* ¶¶ 588, 624. In particular, Plaintiffs allege that Sanabil offered charity to the poor by "regularly distribut[ing] small sums in cash from its accounts to hundreds (if not thousands) of individual dependents in the Palestinian refugee camps under the categories of 'Orphan Sponsorships,' 'Student Sponsorships,' 'Needy Sponsorships,' and 'Family Sponsorships.'" *Id.* ¶ 611.

8. Compl. ¶¶ 1, 2, 5, 6, 504–07, 595–606, 613, 623, 628, 640, 643–645.

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Plaintiffs allege Subul al-Khair likewise distributed scholarships to orphans and students, and that it “functioned much like Sanabil,” but in the city of Beirut. *Id.* ¶¶ 624, 626. These subsistence donations are alleged to have “purchase[d] support” for Hamas in these areas, where Hamas allegedly competed with Hezbollah’s “social welfare infrastructure.” *Id.* ¶¶ 570–74, 613, 629.

Plaintiffs’ allegations do not plausibly suggest that BLOM knew of the Alleged Account Holders’ alleged affiliations with Hamas during the relevant time period, *i.e.*, before the Attacks. *E.g.*, Compl. ¶ 491. Rather, the Complaint alleges that, after the Attacks in this case, the United States Treasury Department designated Sanabil and Union of Good as Specially Designated Global Terrorists (“SDGTs”), which is different from an FTO.⁹ Compl. ¶¶ 590, 635. Plaintiffs do not—and cannot—allege the United States ever designated Subul Al-Khair as an SDGT or FTO. In addition, Plaintiffs point to the alleged involvement of Hamas leadership in the charities, Compl.

9. The SDGT designation is a function of Executive Order 13224, which covers, among other things, foreign persons who “assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of . . . acts of terrorism” or “designated persons.” 31 C.F.R. §§ 594.310, 594.201(a); Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten To Commit, or Support Terrorism, 66 FR 49079, Exec. Order No. 13224 (Sept. 23, 2001) (“EO 13224”). Notably, SDGT designations are made by U.S. Treasury Department pursuant to Exec. Order 13224, and operate wholly separately from the statutory-based liability scheme at issue here. *See* Exec. Order 13224 (Sept. 23, 2001), *as amended* 67 FR 44751, Exec. Order 13268 (July 2, 2002).

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¶¶ 591–594, 639, but do not plausibly allege any facts suggesting that BLOM knew of that involvement or that BLOM knew that the customers were in any way involved in violent terrorist acts. In fact, the Complaint itself concedes that Hamas engaged in many non-violent “social welfare activities.” *E.g.*, Compl. ¶¶ 513, 524, 526. Moreover, all of Plaintiffs’ other allegations about the Alleged Account Holders’ purported connections to Hamas either do not establish that those purported connections existed during the relevant period (*i.e.*, before the Attacks) or do not show that BLOM would have been aware of such alleged connections before the Attacks. *See, e.g.*, Compl. ¶ 589 (allegation about Sanabil based on a newspaper article published after the Attacks); *id.* ¶¶ 625–27 (allegations about Subul Al-Khair based on documents seized from another organization at an unknown time). Indeed, the Complaint says nothing about when Union of Good allegedly maintained an account at BLOM. *Id.* ¶ 640.

Plaintiffs try to pad their allegations about the Alleged Account Holders by lumping them with *other* organizations that allegedly transferred funds *to* the Alleged Account Holders. Specifically, Plaintiffs invoke Interpal, the Al-Aqsa Foundation (“Al-Aqsa”), the Holy Land Foundation (“HLF”), the Comité de Bienfaisance et de Secours aux Palestiniens (“CBSP”), and KindHearts (collectively, “Non-Account Holders”), none of which is alleged to be a BLOM customer. *E.g.*, Compl. ¶ 588. The factual allegations regarding these *Non-Account Holders* do not plausibly establish that BLOM was generally aware that any of the *Alleged Account Holders* was engaged in violent activities. Wholly apart from Plaintiffs’ improper

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conflation of designation as an SDGT with the conduct of terrorist activity, the United States is not alleged to have ever designated KindHearts—a U.S. organization—as an SDGT.¹⁰ With one exception, none of the other Non-Account Holders was designated as a supporter of Hamas until either (a) *after* the last transfer to an Alleged Account Holder that BLOM is alleged to have processed, *see* Compl. ¶¶ 567, 569, 599 (transfers from HLF pre-date its December 1, 2001 designation); or (b) *after* all of the Attacks alleged in the Complaint, *see id.* ¶ 544, ¶ 76 (Aug. 22, 2003 designations of Interpal and CBSP post-date the last of the Attacks on Aug. 19, 2003). And that one exception—a single transfer made by Al-Aqsa to Sanabil on May 30, 2003, one day after the United States Treasury Department designated Al-Aqsa as an SDGT on May 29, 2003¹¹—on its face refutes any alleged connection to terrorism. Compl. Ex. D; *id.* ¶ 4. Far from suggesting that Sanabil might be engaged in any violent acts, this transfer, made through a U.S. bank (Bank of New York) was expressly for “HELP CONCERNING ORPHAN CHILDREN.” Ex. D.¹²

10. The United States is alleged to have frozen KindHeart’s assets in 2006, several years *after* the Attacks in this case. Compl. ¶ 619.

11. One paragraph of the Complaint erroneously asserts that Al-Aqsa was designated on May 23, 2003. Compl. ¶ 605. As correctly alleged elsewhere in the Complaint, the designation was on May 29, 2003. Compl. ¶ 554.

12. A certified translation of Exhibit D is annexed to the Declaration of Selby Brown.

*Appendix F***ARGUMENT**

In considering a motion under Rule 12(b)(6), the Court accepts all properly pled allegations in a complaint as true and draws all reasonable inferences in the non-moving parties' favor. A complaint cannot survive a motion to dismiss unless it contains sufficient factual matter "to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A complaint must "contain either direct or inferential allegations respecting all the material elements necessary to sustain recovery under some viable legal theory." *Id.* at 562 (quoting *Car Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101, 1106 (7th Cir. 1984)). "A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 555). When conducting this analysis, "courts 'are not bound to accept as true a legal conclusion couched as a factual allegation.'" *Twombly*, 550 U.S. at 555 (quoting *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). "Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Iqbal*, 556 U.S. at 678, (quoting *Twombly*, 550 U.S. at 557) (alteration in original). Rather, a claim must be "plausible on its face," meaning that the plaintiff must plead sufficient factual allegations to "allow[] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (quoting *Twombly*, 550 U.S. at 570).

These universally applicable standards are all the more important in this case, which threatens to impose massive liability and treble damages on BLOM, who, even

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under the most generous reading of Plaintiffs' allegations, gave *no* assistance to the terrorists who harmed them, much less knowing and substantial assistance. Critically, Plaintiffs have come nowhere near sufficiently pleading the *Halberstam* elements. They have failed to show BLOM knew that it was playing any role in violent terrorist activities or that BLOM knowingly or substantially assisted the acts that resulted in Plaintiffs' injuries. At most, Plaintiffs have alleged that BLOM performed routine, arms-length banking services for three customers, none of whom was the perpetrator of the Attacks or was directly linked to the Attacks. Such allegations are not enough to establish the required elements of an ATA aiding and abetting claim under JASTA.

I. Plaintiffs Do Not Plead Sufficient Facts to Plausibly Allege That BLOM Was Aware It Played Any Role in Terrorist Activities.

Courts have repeatedly emphasized that a JASTA aiding and abetting claim requires a general awareness that the defendant was itself assuming a *role* in the relevant terrorist activities. *Linde*, 882 F.3d at 329–30; *Strauss*, 2019 WL 1492902 at *4.¹³ “Thus, although a defendant

13. See also *Weiss v. Nat'l Westminster Bank PLC*, Nos. 05-cv-4622 (DLI) (RML), 07-cv-916 (DLI) (RML), 2019 WL 1441118, *4 (E.D.N.Y. Mar. 31, 2019), *appeal filed sub nom. Appelbaum v. Nat'l Westminster Bank, PLC*, No. 19-1159 (2d Cir. Apr. 26, 2019) (“The Second Circuit has explained that, ‘[a]iding and abetting requires the secondary actor to be aware that, by assisting the principal, it is itself assuming a role in terrorist activities.’” (quoting *Linde*, 882 F.3d at 319)); *O’Sullivan v. Deutsche Bank AG*, No. 17 cv 9709-LTS-GWG, 2019 WL 1409446, *10 (S.D.N.Y.

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need not know of or intend to bring about the *specific* attacks at issue, the Complaint must allege plausibly that, in providing financial services, [the defendant] w[as] ‘generally aware’ [it] w[as] playing a ‘role’ in an FTO’s violent or life-endangering activities.” *O’Sullivan*, 2019 WL 1409446 at *10. And the defendant must have known it was assuming a role in the terrorist activity “*at the time* [it] provide[d] the assistance.” *Halberstam*, 705 F.2d at 477.

Merely providing services to a Foreign Terrorist Organization, even if those services rise to the level of “material support” as defined by 18 U.S.C. § 2339B, does not itself meet the scienter requirement. *Linde*, 882 F.3d at 329–30. For example, in both *Strauss* and *Weiss*—which addressed nearly all of the same Attacks, claims, and Plaintiffs as this case¹⁴—the courts concluded that

Mar. 28, 2019) (“In the ATA context, aiding and abetting liability ‘requires the secondary actor to be aware that, by assisting the principal, it is itself assuming a role in terrorist activities.’” (quoting *Linde*, 882 F.3d at 319)); *Taamneh v. Twitter, Inc.*, 343 F. Supp. 3d 904, 917 (N.D. Cal. 2018), *appeal filed*, No. 18-17192 (9th Cir. Nov. 13, 2018) (“[T]he plaintiff must show that the defendant intended to further the organization’s terrorist activities or at least was ‘generally aware’ that, through its actions, the defendant ‘was thereby playing a ‘role’ in [the organization’s] violent or life-endangering activities.’” (quoting *Linde*, 882 F.3d at 329)).

14. The operative complaints in the *Strauss* and *Weiss* decisions included all but one of the Attacks and families at issue here. *Strauss v. Credit Lyonnais, S.A.*, 06-cv-702, ECF No. 408 ¶¶ 5–99, 160–309, 364–440, 452–56, 465–517, 658–62 (E.D.N.Y. June 17, 2016) (Fifth Amended Compl.); *Weiss v. Nat’l Westminster Bank PLC*, 05-cv-4622, ECF No. 345 ¶¶ 5–102, 163–316, 371–446, 458–61, 503–555, 570–74 (E.D.N.Y. June 16, 2016) (Sixth Amended Compl.).

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plaintiffs could not satisfy this requirement based on arguments that the defendants had knowingly provided banking services to designated FTOs. *Strauss*, 2019 WL 1492902 at *8, *11; *Weiss*, 2019 WL 1441118 at *8, *11. The courts explained that “[e]vidence that [a] Defendant knowingly provided banking services to a terrorist organization, without more, is insufficient to satisfy JASTA’s scienter requirement.” *Strauss*, 2019 WL 1492902 at *11; *accord Weiss*, 2019 WL 1441118 at *11. Similarly, in *Taamneh*, allegations that defendant social media companies knew that ISIS (a designated Foreign Terrorist Organization) had used their platforms to recruit members, raise funds, and spread propaganda were insufficient to satisfy JASTA’s scienter requirement. 343 F. Supp. at 917.

Plaintiffs’ allegations here are far weaker than those in *Strauss*, *Weiss*, and *Taamneh*, and thus even more obviously fail to meet JASTA’s scienter requirement. Plaintiffs have not adequately alleged that BLOM *knew* it was providing material support to a Foreign Terrorist Organization, let alone any other facts that could establish a plausible scienter showing. Plaintiffs do not allege that *any* of the Alleged Account Holders were *ever* designated as a Foreign Terrorist Organization. And while Plaintiffs allege that two Alleged Account Holders were designated as SDGTs *after* the Attacks, Compl. ¶¶ 590, 635, that did not make them a Foreign Terrorist Organization, let alone at the relevant time period. As demonstrated by the Complaint’s own quotation from the Treasury Department’s designation of Sanabil as an SDGT, the SDGT label may be applied to organizations that provide nonviolent support to FTOs by means of charitable

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contributions. Compl. ¶ 590; EO 13224 (providing that organizations can be designated as SDGTs if they “provide financial, material, or technological support for, or financial or other services to or in support of” designated persons). Indeed, it is not even clear that the *post hoc* designations of Sanabil and Union of Good as SDGTs for providing “material support” to an FTO would be an adequate basis for imposing aiding and abetting liability *on them* under the ATA. *See Linde*, 882 F.3d 329 (“[A]iding and abetting an *act* of international terrorism requires more than the provision of material support to a designated terrorist *organization*.”). *A fortiori*, it is insufficient to impose aiding and abetting liability on BLOM, their alleged banker.

Nor do Plaintiffs otherwise show that BLOM played any role in terrorist activities—let alone that it was aware of any such role. Instead, Plaintiffs allege that two Alleged Account Holders received funds from Non-Account Holders who were themselves not designated as supporters of Hamas until *after* those transactions occurred. Compl. ¶¶ 596, 599, 603, 604, 606, 623 (alleging transfers from HLF, Interpal, CBSP, Al-Aqsa, and KindHearts to Sanabil and Subul al-Khair). But even those Non-Account Holders were not Foreign Terrorist Organizations, and in any event, Plaintiffs’ allegations utterly fail to show how BLOM could have *known* that those entities supported a terrorist organization at the time of the alleged transfers. Nor do the allegations approach establishing that BLOM was aware that its provision of routine banking services played any role in terrorism. In short, as demonstrated by the discussion

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of each of the Alleged Account Holders below, Plaintiffs have wholly failed to allege that BLOM “knew that the financial services it provided to [the Alleged Account Holders] would in turn be given to [terrorists] to carry out terrorist attacks.” *Siegel*, 2018 WL 3611967 at *4.

A. Plaintiffs’ Allegations About the Alleged Subul al-Khair Account Do Not Create a Plausible Inference that BLOM Knowingly Played Any Role in Terrorist Activities.

On its own terms, Plaintiffs’ Complaint plainly undermines any suggestion that BLOM knowingly played any role in terrorist activities by allegedly providing banking services to Subul al-Khair, which was engaged in charitable and political activities, not violent ones. Plaintiffs allege that Subul al-Khair paid “small sums in cash” that were designated for “Orphan Sponsorships’ and ‘Student Sponsorships.’” Compl. ¶¶ 626–27. But providing social services to orphans and students in a war-torn area could not alert BLOM that Subul al-Khair might be engaged in violent terrorist activities; these funds concededly were used for “buying loyalty,” in what the Complaint describes as “a manner of an old-style political machine.” *Id.* ¶ 627. Crucially, this alleged influence peddling is not purported to have had any actual connection to the Attacks or to the operatives who inflicted Plaintiffs’ injuries, none of whom is alleged to have received “small sums in cash” from Subul al-Khair or even to have lived in Lebanon. Thus, these allegations do not reveal any connection between *Subul al-Khair* and “violent or life-endangering activities,” meaning BLOM

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could not possibly have known that by providing banking services to Subul al-Khair, it was assuming a “role” in any such (non-existent) activities. *Linde*, 882 F.3d at 229 (quoting *Halberstam*, 705 F.2d at 477).

Nothing in the Complaint plausibly alleges even that BLOM would have known that Subul al-Khair was allegedly assisting Hamas through non-violent means. Plaintiffs do not and cannot claim that the United States has ever designated Subul al-Khair as any type of terrorist entity. *See* Compl. ¶¶ 621–28. Nor can Plaintiffs hope to show that BLOM knowingly played a role in the Attacks by alleging that Subul al-Khair received funds from the Non-Account Holders. While Plaintiffs claim that BLOM “deposited multiple transfers” from HLF to Subul al-Khair, HLF was not itself accused of engaging in violence. *Id.* ¶ 623. Significantly, the Complaint does not specify *when* those alleged transfers took place, except to allege generally that “HLF sent Subul al-Khair over \$500,000 between 1999 and 2001.” *Id.* ¶ 625.¹⁵ Plaintiffs’ other allegations, however, make it clear that the purported connections between HLF and Hamas would not have been publicly available until *after* these alleged transfers. For example, the U.S. did not designate HLF as an SDGT until the end of 2001, and the prosecution of HLF did not begin until 2004. *Id.* ¶¶ 567, 622. And even if Subul al-Khair assisted HLF (which itself was not accused of any violent acts), that does not remotely suggest that BLOM

15. The Complaint does not allege which of these transfers was processed by BLOM.

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played any role in assisting terrorist activities—let alone that BLOM was aware that it was playing any such role.

B. Plaintiffs’ Allegations About the Alleged Sanabil Account Do Not Create a Plausible Inference that BLOM Knowingly Played Any Role in Terrorist Activities.

Plaintiffs’ allegations about Sanabil likewise fail to create any plausible inference that Sanabil was involved in violent activities or that BLOM played any role in terrorism. Here, again, the Complaint affirmatively refutes Plaintiffs’ legal theory: the Complaint characterizes Sanabil’s activities as charitable and political, not violent. *E.g.*, Compl. ¶ 590. The Complaint concedes that Sanabil was a *da’wa* institution, meaning part of the civilian social framework. *Id.* ¶¶ 511, 526. Sanabil was purportedly tasked with channeling funds to “Palestinian refugee camps in Lebanon to build HAMAS’s support within that community,” opening offices in refugee camps, asking poor families to fill out membership forms, and distributing small sums of cash to individuals in refugee camps “under the categories of ‘Orphan Sponsorships,’ ‘Student Scholarships,’ ‘Needy Sponsorships’ and ‘Family Sponsorships.’” *Id.* ¶¶ 526, 588, 589, 590, 611.

Sanabil’s later designation by the United States as an SDGT does not establish that Sanabil engaged in violent activity. *Id.* ¶ 590. Rather, it shows only that Sanabil was believed to have provided material support to Hamas, *id.*, which (under *Linde*) would be insufficient to establish ATA aiding and abetting liability for Sanabil. 882 F.3d at 329.

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Plaintiffs' other allegations about Sanabil are even less relevant to the question of whether BLOM was aware that it was playing a role in violent terrorism (which it was not). Indeed, they are woefully insufficient to establish liability—even for Sanabil—under JASTA's aiding and abetting provision. *See Linde*, 882 F.3d at 329–30:

- The Complaint claims that “Sanabil’s board members were predominantly well-known HAMAS leaders in Lebanon,” without saying what roles those board members allegedly played in Hamas leadership or when they assumed those roles. *See* Compl. ¶¶ 591–94. Plaintiffs’ efforts to assign guilt by association are undermined by the Complaint’s concessions that Hamas does engage in non-violent activities. *E.g.*, Compl. ¶¶ 513, 524, 526.
- The Complaint claims that Sanabil’s office in Sidon (some 30 miles south of Beirut) closed at some point in 2003 “following a ruling from the Lebanese judiciary.” *Id.* ¶ 609. But the Complaint does not allege any details about the purported ruling or why BLOM should have been aware of it at the relevant time. Indeed, the sole Lebanese press report cited in the Complaint that discusses the ruling was published on August 27, 2004—*i.e.*, one year *after* the last of the Attacks—attributes the ruling to the Ministry of the Interior, and characterizes it as a licensing issue. *Id.* ¶ 610; *see Closure of US terror-designated charity shatters many lives*, The Daily Star Lebanon, (August 27, 2004), <http://www.dailystar.com.lb/News/Lebanon-News/2004/Aug->

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27/2799-closure-of-us-terror-designated-charity-shatters-many-lives.ashx.

- Plaintiffs contend that Sanabil paid Palestinian families and followed orders from Hamas political leaders. Compl. ¶¶ 589, 610. But these general accusations—allegedly made public only *after* the last Attack in this case—do not link Sanabil to any terrorist act, much less to any of the Attacks.

The Complaint attempts to distract from these shortcomings by highlighting Sanabil’s alleged connections to the Non-Account Holders. *Id.* ¶¶ 596–607, 618, 623, 625. But these allegations do not raise an inference that BLOM was “generally aware” it was playing a role in terrorist activities before the Attacks. The last of the alleged transfers from HLF to Sanabil was made on September 7, 2001, three months *before* HLF was designated as an SDGT.¹⁶ *Id.* ¶¶ 567, 599. Interpal and CBSP were not designated as SDGTs until *after* the last of the Attacks. The sole transfer made by Al-Aqsa to Sanabil after Al-Aqsa was designated as an SDGT was earmarked for “HELP CONCERNING ORPHAN CHILDREN,” not for any violent activity. *Id.* Ex. D at 2. And, other than these *post hoc* designations, the Complaint provides no basis to infer that BLOM knew that the Non-Account Holders

16. Especially given that HLF had offices in the United States, the timing of this designation substantially undermines Plaintiffs’ attempt to imply that BLOM might have known of HLF’s association with Hamas earlier. After all, even the United States government was not yet confident enough of a link to take action against HLF.

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allegedly sending funds to Sanabil had any connection to a Foreign Terrorist Organization.¹⁷ *See, e.g.*, Compl. ¶¶ 596, 603, 606. Processing routine transfers to an Alleged Account Holder—which itself is not alleged to have engaged in any violent activity—could not possibly amount to “a ‘role’ in Hamas’s violent or life-endangering activities.” *Linde*, 882 F.3d at 329.

C. Plaintiffs’ Allegations About the Alleged Union of Good Account Do Not Create a Plausible Inference That BLOM Knowingly Played Any Role in Terrorist Activities.

Plaintiffs’ allegations regarding the Union of Good do not even attempt to satisfy *any* element of JASTA’s requirements. The Complaint’s sole allegation purporting

17. *See, e.g.*, Compl. ¶¶ 555–64, 566 (reviewing information about HLF obtained through FBI investigations but not stating when such information became public); *id.* ¶ 565 (discussing that some Hamas leaders were brothers, cousins, or related by marriage to HLF officers); *id.* ¶¶ 541–42 (discussing Israel’s conclusions that Interpal and CBSP were linked with Hamas prior to the U.S. designation without explaining how BLOM would have known of Israel’s conduct given that it did not have offices there); *id.* ¶ 546 (claiming that Interpal was designed to “hide the flow of money to HAMAS” (emphasis added)); *id.* ¶¶ 550–52 (alleging Israel and Germany took steps against Al-Aqsa prior to the U.S. designation, but not explaining how BLOM could have known about these steps given that it did not have offices in either country); *id.* ¶ 614 (alleging KindHearts worked “secretly and independently . . . , attempting to maintain a public distance from HAMAS to avoid drawing attention to its affiliation with the terrorist organization”).

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to connect BLOM to Union of Good is that “[t]he Union of Good maintained account no. 349647 at one of Defendant BLOM BANK’s branches located on the prestigious Verdun Street in Beirut.” Compl. ¶ 640. But Plaintiffs do not say *when* Union of Good created this account, how long it was maintained, or whether there were any transactions in it. As a result, Plaintiffs’ allegations regarding Union of Good are meaningless because it is impossible to know whether this account was maintained or used before or after the relevant time period in this case. See *In re Elevator Antitrust Litig.*, 502 F.3d 47 (2d Cir. 2007) (“Without an adequate allegation of facts linking transactions in Europe to transactions and effects here, plaintiffs’ conclusory allegations do not ‘nudge[their] claims across the line from conceivable to plausible.’” (quoting *Twombly*, 550 U.S. at 570) (alterations in original)). Thus, there can be no serious contention that BLOM assumed a “role” in terrorist activities by providing financial services to Union of Good, let alone that it was “generally aware” that it was assuming such a “role.” *Linde*, 882 F.3d at 329.

* * *

In sum, the Complaint alleges that BLOM provided arms-length, routine banking services to organizations that were later revealed to have some non-violent connection to Hamas. None of the allegations, if true, would plausibly establish that BLOM was “‘generally aware’ that, in providing financial services, [it] was thereby playing a ‘role’ in an FTO’s violent or life-endangering activities.” *O’Sullivan*, 2019 WL 1409446 at

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*10 (quoting *Linde*, 882 F.3d at 329). On that basis alone, the Complaint should be dismissed.

II. Plaintiffs Do Not Plead Sufficient Facts Tending to Demonstrate That BLOM Knowingly Provided Substantial Assistance to the Wrongful Acts That Caused Their Injuries.

The Complaint also fails to plead facts demonstrating that BLOM knowingly provided substantial assistance to the principal violations that caused Plaintiffs' injuries. To properly plead an aiding and abetting claim, Plaintiffs must prove that a defendant "knowingly provid[ed] substantial assistance" to the primary tortfeasor. 18 U.S.C. § 2333(d); *see also Halberstam*, 705 F.2d at 477 (requiring that "the defendant must knowingly and substantially assist the principal violation"). As already established above, Plaintiffs cannot show that any assistance provided by BLOM was "knowing" because Plaintiffs have not alleged facts showing that BLOM *knew* that any of the Alleged Account Holders were involved with terrorism at the relevant times. And, even setting that aside, Plaintiffs have failed to establish that BLOM's processing of financial transactions was "substantial assistance." Under *Linde* and *Halberstam*, courts must weigh multiple factors to determine whether the assistance provided by a defendant was "substantial": "(1) the nature of the act encouraged, (2) the amount of assistance given by defendant, (3) defendant's presence or absence at the time of the tort, (4) defendant's relation to the principal, (5) defendant's state of mind, and (6) the period of defendant's assistance." *Linde*, 882 F.3d at 329; *accord Halberstam*,

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705 F.2d at 483–84; *see also* Restatement (Second) of Torts § 876 (1979). Each of those factors cuts decisively against any such finding in this case.

Routine nature of the banking activities. The nature of the relevant acts strongly weighs against finding substantial assistance. This element is aimed at determining “what aid might matter, *i.e.*, be substantial.” *Halberstam*, 705 F.2d at 484. The acts allegedly encouraged here were the Attacks against Plaintiffs in Israel. Given the violent nature of those Attacks, BLOM’s alleged support—the limited and unwitting provision of basic financial services to charity organizations providing social services to Palestinian refugees in Lebanon—is hardly the type of support that “might matter.” *Id.* Indeed, on this element, this case is not at all like *Halberstam*, where the act assisted was a burglary enterprise that was “heavily dependent on aid in transforming large quantities of stolen goods into ‘legitimate’ wealth” and where the defendant’s “assistance was indisputably important to this laundering function.” *Id.* at 488. BLOM’s alleged assistance was exponentially more attenuated and not even remotely connected to the Attacks at issue. Notably, Plaintiffs do not allege BLOM *donated* money to the Alleged Account Holders, nor do they allege that BLOM’s banking services directly supported any terrorist actions. Rather, BLOM is alleged to have provided routine, passive banking services through which one set of ostensibly charitable organizations donated money to *other* ostensibly charitable organizations that in turn provided social services to refugees who are not alleged to have had any role in the Attacks that caused Plaintiffs’

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injuries. Such unwitting and indirect (non)assistance cannot reasonably be considered “indisputably important” to the Attacks at issue here, nor is there any indication that those Attacks would have been any less likely to occur without BLOM’s banking services. *Halberstam*, 705 F.2d at 488.

Limited amount of alleged assistance. The amount and kind of assistance also weighs in BLOM’s favor. The alleged assistance here includes routine banking services, in arms-length transactions, to organizations that purported to be legitimate charities at the time of the relevant transactions. Indeed, the alleged assistance here is far less than the alleged assistance in *Taamneh*, where social media companies were said to have allowed ISIS to use their platforms to recruit, raise funds, and spread propaganda. 343 F. Supp. 3d at 917–18. The *Taamneh* court rejected the argument that the alleged assistance there was substantial given that “the relationship between Defendants and ISIS [w]as an arms’-length one—a market relationship at best. Rather than providing targeted support . . . Defendants provided routine services generally available to members of the public.” *Id.* Here, the alleged assistance is similarly arms-length but significantly less direct.

Indeed, Plaintiffs’ own conduct reveals the insignificance of BLOM’s alleged assistance. Plaintiffs began bringing claims based on these Attacks in 2003. *See, e.g., supra* note 3. But it was not until fifteen years later, in the hours before the extension of the limitations period expired, that Plaintiffs levied any claim against

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BLOM. In the meantime, they have filed numerous suits targeting actors with far more substantial connections to the Attacks or Hamas's violent activities. *See, e.g., Kirschenbaum v. Islamic Repub. of Iran*, No. 1:03-cv-01708, ECF No. 4 ¶ 22 (D.D.C. Aug. 11, 2003) (Complaint) (“Plaintiff Jason Kirschenbaum’s injuries were caused by a willful and deliberate act of Hamas, acting under the sponsorship and/or direction, and with material support and resources of the Defendants Iran and [the Iranian Ministry of Information and Security].”); *Sokolow v. Palestine Liberation Org.*, No. 04-cv-00397, ECF No. 1 ¶¶ 54–55 (S.D.N.Y. Jan. 16, 2004) (Complaint) (“At all times relevant hereto, defendants [the Palestine Liberation Organization] and [the Palestinian Authority] planned and carried out terrorist attacks against civilians[defendants] knowingly aided, abetted, funded, and provided a wide range of weapons and other substantial material support and resources to one another for the execution of actions of international terrorism”); *Little v. Arab Bank, PLC*, No. 04-cv-05449, ECF No. 1 ¶ 350 (E.D.N.Y. Dec. 15, 2004) (Complaint) (“Defendant Arab Bank knowingly and willfully administers this comprehensive terrorist insurance scheme by distributing the benefits in accordance with lists of ‘martyrs’ and others eligible for ‘coverage.’”).¹⁸

18. *See also Beer v. Islamic Repub. of Iran*, No. 1:06-cv-00473, ECF No. 1 ¶ 13 (D.D.C. March 14, 2006) (Complaint) (“Defendants Iran and [the Iranian Ministry of Information and Security] routinely, knowingly and by explicit or implied agreement with Hamas provided material support and substantial assistance to it and its cadre of suicide bombers, thereby conspiring in and aiding and abetting the bus bombing campaign.”); *Miller v. Arab Bank*,

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Not present at the Attacks. The presence factor most obviously weighs against substantial assistance. Plaintiffs do not suggest that BLOM (headquartered in Beirut and with no presence or operations in Israel) was present at any of the Attacks in Israel—or even that it knew or should have known that any violence would come from its conduct.

No relation to the alleged attackers. Likewise, even under Plaintiffs’ telling, BLOM’s “relation to” the terrorist organization or individual terrorists who were responsible for the Attacks was severely attenuated, at best. Taking Plaintiffs’ non-conclusory allegations in the most generous light, BLOM is alleged to have had a business relationship with charitable organizations that later were determined to have provided social services in refugee camps where Hamas allegedly sought to recruit new members. *E.g.*, Compl. ¶¶ 588, 626. Such twice-removed allegations fail to sufficiently “allege any direct relationship” between the defendants and “the terrorist organizations that were responsible for the [relevant] attack[s].” *See Siegel*, 2018 WL 3611967 at *4. Moreover, there are no allegations that any of the Alleged Account Holders, much less BLOM, held a position of authority over the individuals who perpetrated the Attacks or was part of a concerted activity to assist them. *See Halberstam*, 705 F.2d at 484.

PLC, No. 1:18-cv-02192, ECF No. 1 ¶ 243 (E.D.N.Y. April 13, 2018) (Complaint) (“Arab Bank also processed wire transfers totaling more than \$100,000 for Abbas al-Sayyed, who was described as ‘the individual who confessed responsibility for the Park Hotel bombing in 2002.’”).

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No intent to encourage terrorism. Finally, Plaintiffs have not alleged facts suggesting that BLOM in any way encouraged Hamas' terrorist acts or provided moral support for the Attacks. As detailed above, it is not even adequately alleged that BLOM *knew* that the Alleged Account Holders were affiliated with Hamas at all.

In the end, considering the *Halberstam* factors separately and together, Plaintiffs' allegations fall woefully short of plausibly implying that "the financial services [BLOM] provided [to its accountholders] substantially assisted terrorist organizations in carrying out" the Attacks. *Siegel*, 2018 WL 3611967 at *4.

III. Plaintiffs Do Not Plead Sufficient Facts Tending to Demonstrate That BLOM's Routine Banking Services Directly Assisted the Actors Who Caused Plaintiffs' Injuries.

Under JASTA, a defendant is liable for aiding and abetting only if it *directly* aided and abetted the "person" who committed the relevant "act of international terrorism." 18 U.S.C. § 2333(d)(2).¹⁹ Indeed, *Halberstam* requires that "the party whom the defendant aids must perform a wrongful act that causes an injury," 705 F.2d at 487, because aiding and abetting liability is concerned with the relationship between the alleged aider and abettor and the principal violator, not the alleged aider and

19. "Person" is defined to include "any individual or entity capable of holding a legal or beneficial interest in property." 18 U.S.C. § 2331(3).

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abettor and other alleged aiders and abettors. *Siegel*, 2018 WL 3611967 at *4. For example, in *Siegel*, the plaintiffs asserted an aiding and abetting claim against HSBC and its affiliates based on a terrorist attack perpetrated by al-Qaeda and al-Qaeda in Iraq (the “al-Qaeda Attack”). *Id.* at *1. The plaintiffs claimed that HSBC and its affiliates had served as correspondent banks to Al Rajhi Bank, which was directly connected to the al-Qaeda Attack because purchases and expenses directly related to the al-Qaeda Attack were underwritten through funds that moved through Al Rajhi Bank. *Id.* at *2. But the aiding and abetting claim was dismissed because the plaintiffs had failed to “allege any direct relationship with the terrorist organizations” responsible for the al-Qaeda Attack, instead alleging only “HSBC’s direct relationship with another financial institution.” *Id.* at *4.

So too here. Plaintiffs’ allegations come nowhere close to establishing a “direct relationship” between BLOM and the persons who caused Plaintiffs’ injuries. *Id.* Plaintiffs allege that the Attacks at issue were committed by 15 individual terrorist operatives (collectively, “the Attackers”). Compl. ¶¶ 13, 76, 207, 240, 299, 318, 339, 390, 407, 413, 486, 491; *see also id.* ¶ 414 (not identifying the individuals who detonated a car bomb near the Ben Yehuda Street bombings). But nothing in the Complaint could be construed as showing that BLOM directly aided and abetted—or even actually knew of—any one of the actual Attackers. In fact, the Attackers’ individual names do not appear anywhere in the Complaint except in the allegations describing the Plaintiffs.

*Appendix F***IV. Additionally and Alternatively, Certain Individual Plaintiffs' Claims Require Dismissal.**

At the very least, a number of individual plaintiffs' claims must be dismissed, either because any damages they suffered were not proximately caused by an act of international terrorism, or because they are brought by someone who is not a United States national, and hence not eligible to seek damages under the ATA except as a survivor of a United States national.

A. The Steinherz Family's Injuries Were Not Proximately Caused by an Act of Terrorism.

The Steinherz family's allegations fail to establish that any of their injuries were proximately caused by the Attack on Ben Yehuda Street, to which they attribute their injuries. *See* Compl. ¶¶ 413–414, 465–85. Thus, their claims must be dismissed. ATA aiding and abetting liability requires a showing that the relevant terrorist incident was the proximate cause of plaintiffs' injuries. *See Halberstam*, 705 F.2d at 487 (requiring that “the party whom the defendant aids must perform a wrongful act that causes an injury”).²⁰ Accordingly, the alleged terrorist act must be a “*substantial factor in the sequence of responsible causation*” and the plaintiff's “injury [must be] reasonably foreseeable or anticipated

20. *See also Rothstein v. UBS AG*, 708 F.3d 82, 94–95 (2d Cir. 2013) (holding that primary liability ATA claims require the defendant to have proximately caused the plaintiff's injury); 18 U.S.C. § 2333(d) (providing aiding and abetting claims must arise from a primary liability claim).

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as a natural consequence of the attack.” *Rothstein*, 708 F.3d at 91 (emphasis added); *accord Crosby*, 921 F.3d at 624. Causation is not sufficiently pleaded if an intervening event breaks the chain of causation. *Id.* at 92.

Here, Altea and Jonathan Steinherz do not allege they were at the Ben Yehuda Street bomb site, but rather, at a “nearby” restaurant. Compl. ¶ 467. They plead they sustained their injuries while running from “a crazed-looking man” they saw *after* the bombing was over and *after* they concluded it was safe to go outside. *Id.* ¶¶ 470–74. The “crazed-looking man” running down the street, who Altea merely “thought” might have been a bomber, is easily “an intervening cause” that broke the chain of causation. *Rothstein*, 708 F.3d at 92. The Steinherz’s injuries are properly characterized as being among “ripples of harm” that “flow far beyond the defendant’s misconduct,” lacking the requisite “substantial[], direct[], and foresabl[e]” relationship with the terrorist Attack necessary to maintain the Steinherz family’s aiding and abetting claims. *Crosby*, 921 F.3d at 624–25 (quoting *Fields v. Twitter, Inc.*, 881 F.3d 739, 749 (9th Cir. 2018)); *see generally Palsgraf v. Long Is. R. R. Co.*, 248 N.Y. 339 (1928) (Cardozo, J.). The alleged injuries of the remaining Steinherz family members are derivative of Altea and Jonathan’s injuries, so their claims fail as well. Compl. ¶¶ 479–85.

*Appendix F***B. Plaintiff Matanya Nathensen Is Ineligible to Sue for His Own Personal Injuries Because He Is Not a United States National.**

Under the ATA’s plain text, non-United States nationals have standing under the ATA only if they are “survivors[] or heirs” of a United States national killed in a terrorist attack. 18 U.S.C. § 2333(a); *see also* 18 U.S.C. § 2333(d)(2) (tying the availability of an aiding and abetting claim to “an action arising under” the primary liability provision). Because living people “ha[ve] no survivors or heirs,” a plaintiff can be a “survivor” or an “heir” only if her relative perished as a result of the relevant terrorist attack. *Miller v. Arab Bank, PLC*, No. 18-cv- 2192 (BMC), 2019 WL 1115027 at *4 (E.D.N.Y. Mar. 11, 2019); *Morris v. Khadr*, 415 F.Supp.2d 1323, 1337–38 (D. Utah 2006). The Complaint alleges injuries Plaintiff Matanya Nathensen personally sustained as a result of an Attack, injuries he sustained by virtue of injuries to his surviving family members, and injuries he sustained as the result of the loss of his daughter, Tehilla Nathansen. Compl. ¶ 139. But Matanya Nathensen is not a United States national. *Id.* at ¶ 135. Thus, to the extent he seeks to bring a claim based on any injuries other than those sustained as a result of his daughter’s tragic death, he lacks standing to do so.

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CONCLUSION

For the foregoing reasons, Defendant respectfully ask the Court to dismiss Plaintiffs' Complaint in its entirety. Because Plaintiffs "declined" the Court's invitation to amend their complaint "in response to the arguments raised by Defendant" in its pre-motion conference letter, making clear that they have no additional facts that could improve their Complaint, that dismissal should be with prejudice.²¹

Dated: New York, New York
June 3, 2019

DECHERT LLP

By: /s/ Linda G. Goldstein
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21. ECF Minute Entry and Scheduling Order (May 15, 2019).

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**APPENDIX G — RESPONDENTS’
MEMORANDUM OF LAW IN OPPOSITION TO
MOTION TO DISMISS, DATED JULY 8, 2019**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

No. 19-cv-00008-KAM-SMG

MICHAL HONICKMAN FOR THE
ESTATE OF HOWARD GOLDSTEIN, *et al.*,

Plaintiffs,

-against-

BLOM BANK SAL,

Defendant.

**PLAINTIFFS’ MEMORANDUM OF LAW IN
OPPOSITION TO DEFENDANT BLOM BANK
SAL’S MOTION TO DISMISS THE COMPLAINT**

[TABLES INTENTIONALLY OMITTED]

INTRODUCTION

Plaintiffs are (a) United States citizens injured in terrorist attacks (the “Attacks”) committed in Israel between 2000 and 2003, and their family members, and (b) the family members and estates of U.S. citizens

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killed in the Attacks. The Complaint alleges the Attacks were perpetrated by the designated Foreign Terrorist Organization (“FTO”) HAMAS during a period of near-daily terrorism commonly referred to as the “Second Intifada.” In order to carry out this multi-year terror campaign against innocent civilians, HAMAS required a steady infusion of U.S. dollars, which it obtained largely via a network of fundraising institutions (self-described “charities”), including its European fundraising network. A significant portion of that money flowed through HAMAS’s networks in Lebanon, where it maintained a significant and well-known presence. Defendant BLOM Bank Sal (“BLOM”) was HAMAS’s banker in Lebanon, and it directed millions of dollars from HAMAS fundraising institutions abroad to the terrorist organization.

Plaintiffs therefore allege that BLOM is responsible for aiding and abetting HAMAS in committing the Attacks under 18 U.S.C. § 2333(d), added to the Anti-Terrorism Act (“ATA”) in 2016 through the Justice Against Sponsors of Terrorism Act (“JASTA”). As BLOM points out, Plaintiffs here (and other similarly situated plaintiffs) have sued other financial institutions and entities for their respective roles in causing most of the Attacks. However, BLOM omits that courts and juries have consistently found as triable or proven facts that (1) those financial institutions knew or were deliberately indifferent to the fact that they held accounts for HAMAS fundraisers designated as Specially Designated Global Terrorists (“SDGTs”) (and that they knew that even *before* those institutions were so designated), (2) the support those financial institutions provided to HAMAS proximately caused those plaintiffs’

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injuries, and (3) such conduct raises cognizable JASTA claims (most recently in *Miller* and *Lelchook*, see *infra* at 10-11).

In the face of the detailed pleadings and this prior precedent, BLOM's arguments consist of a series of alternative fallback positions: its customers were SDGTs, not FTOs, and therefore BLOM did not support HAMAS itself, BLOM's Mem. of Law ("Def. Mem.") at 8-9, 13-14; even if BLOM was aiding and abetting HAMAS, the support it provided only went to HAMAS's "charitable" purposes, *id.* at 14-16; even if BLOM knowingly aided and abetted HAMAS and HAMAS used the funding it received from BLOM for violent purposes, that support did not constitute a substantial and foreseeable cause of HAMAS's terrorist attacks on Plaintiffs, *id.* at 9- 10, 21; even if BLOM's customers were alter-egos or controlled by HAMAS, BLOM did not know that at the relevant time, *id.* at 14-15; and finally, even if BLOM knew it was aiding and abetting HAMAS and providing it substantial assistance that foreseeably caused HAMAS's terrorist attacks on Plaintiffs, § 2333(d) requires that BLOM specifically aid and abet "the person" who committed the Attacks, and BLOM therefore cannot be held liable because the Complaint does not allege it aided and abetted the individual terrorist responsible for the Attacks, *id.* at 25. These arguments mix factual assertions and preferred evidentiary inferences that are—at best—appropriate for resolution by summary judgment or trial, with legal assertions that are incorrect. Faced with controlling caselaw and relevant jury findings that strongly suggest that Plaintiffs have adequately pled claims under § 2333(d)

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and that the Complaint's assertions are questions of fact, not law, BLOM relies on inapposite or out-of-circuit cases (that misstate or are at odds with the governing law in this Circuit), and urges the Court to draw unreasonable inferences from the evidence.

STATEMENT OF FACTS

HAMAS is a terrorist organization committed to—according to its official charter—the establishment of an Islamic, Palestinian state in the entire territory of Israel through violent “jihad” (holy war). Compl. ¶ 508. At its founding, HAMAS was led by Ahmed Yassin (or “Sheikh Yassin”). *Id.* ¶ 510. In the early 1990s, HAMAS sought to disrupt peace efforts between Israel and the Palestinians by: (1) upgrading its terror apparatus by perfecting its bomb-making skills and improving the capabilities of its military wing; (2) intensifying its efforts to systematically gain control of pre-existing “charitable” and other religious and social institutions to form HAMAS’s *da’wa* network¹ to win the “hearts and minds” of the Palestinian public in Gaza, the West Bank and the Palestinian refugee camps in Jordan and Lebanon; and (3) accelerating the development of its world-wide fundraising network. *Id.* ¶¶ 522-25.

In 1994, HAMAS established BLOM’s customer the Sanabil Association for Relief and Development

1. The word “*da’wa*,” whose basic meaning in Arabic is “the call to the believers to shelter beneath the faith—return to the faith,” is used herein to refer to HAMAS’s civilian infrastructure.

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(“Sanabil”) in Lebanon. *Id.* ¶ 574. It also co-opted and used Subul al-Khair and the Islamic Welfare Association (Lebanon)—two similar *da’wa* institutions in Lebanon—to extend its reach into the Palestinian refugee camps where it was competing both with its long-time Palestinian nemesis, Fatah, and the growing power and appeal of Hezbollah. *Id.* ¶¶ 526, 576-585.

HAMAS’s Fundraising Apparatus

HAMAS’s fundraising activities became public knowledge soon after it was formed. In 1994, *The New York Times* reported:

HAMAS funding of all its activities is estimated by the Israelis at about \$30 million a year. It comes from money collected by associations operating largely abroad but with ties to the international Muslim Brotherhood network. Money is also collected from Islamic and Arab communities in the United States and . . . Western European locations.

Id. ¶ 528. A 2001 *Washington Post* article reported that, “[a]ccording to [Sheikh] Yassin, [HAMAS] distributes \$2 million to \$3 million in monthly handouts to the relatives of Palestinian suicide bombers; ‘martyrs’ who have been killed by Israelis; and prisoners in Israeli jails.” *Id.* ¶ 530. Immediately after Israel launched its operation in southern Lebanon in 1996 to end Hezbollah’s rocket attacks on Northern Israel, Sanabil distributed more than \$100,000 to the inhabitants of the southern regions

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of Lebanon. *Id.* ¶ 575. Over time, Lebanon also became an important conduit for HAMAS funding of its operatives in the Palestinian Territories. *Id.* ¶ 587.

The outbreak of the Second Intifada in September 2000 was a key turning point in HAMAS's history. *Id.* ¶ 7. During the conflict, HAMAS launched hundreds of terrorist attacks targeting civilians that resulted in the deaths and injury of hundreds of civilians, including numerous American citizens. *Id.* ¶ 12. Also, during that period, the U.S. Treasury Department designated (as SDGTs) several HAMAS fundraising organizations that purported to be "charities," including Holy Land Foundation ("HLF") on December 4, 2001,² *id.* ¶¶ 567, 603, and Al-Aqsa Foundation on May 29, 2003, *id.* ¶ 553. On August 22, 2003, Treasury designated the Comité de Bienfaisance et de Secours aux Palestiniens ("CBSP"), of France, the Palestinian Relief and Development Fund, or Interpal, headquartered in the United Kingdom, and Sanabil (along with others) as "part of a web of charities raising funds on behalf of HAMAS and using humanitarians [sic] purposes as a cover for acts that support HAMAS." *Id.* ¶¶ 543-45.

2. As set forth in greater detail in the Complaint, HLF was a U.S.-based HAMAS fundraising entity that (in addition to five of its former directors) was convicted for transferring more than \$12 million to HAMAS through various HAMAS-controlled committees and organizations located in Palestinian-controlled areas and Lebanon *after* HAMAS was designated. The convictions were upheld by the Fifth Circuit. *Id.* ¶¶ 560-69.

*Appendix G***Defendant BLOM Bank Customer: Sanabil**

BLOM's accountholder Sanabil was HAMAS's *da'wa* headquarters in Lebanon until late 2003. *Id.* ¶ 588. As Treasury explained in designating it on August 22, 2003:

[Sanabil] receives large quantities of funds raised by major HAMAS-affiliated charities in Europe and the Middle East and, in turn, provides funding to HAMAS. For example, Sanabil has received funding from the Al Aqsa Foundation (designated as an SDGT under EO 13224 in May 2003); the Holy Land Foundation for Relief and Development (designated as an SDGT under EO 13224 in December 2001), and Interpal (designated as an SDGT under EO 13224 as part of this tranche). HAMAS recruits permanent members from the religious and the poor by extending charity to them from organizations such as Sanabil.

At the request of a HAMAS political leader, Sanabil began opening offices in all of the Palestinian refugee camps in Lebanon in August of 2001 in order to increase the foundation's role inside the camps. After starting by providing basic necessities the charity eventually began asking poor families within the camps to fill out application forms, particularly those who had worked with the Islamic Movement (Al-Haraka al-Islamiyya) and HAMAS. As a result of these efforts, Sanabil has increased its scope of influence within the camps.

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Id. ¶ 590. In fact, between 1998 and 2001, Sanabil received millions of dollars in support from HAMAS’s fundraising network and channeled those funds to the Palestinian refugee camps in Lebanon to build HAMAS’s support within that community. *Id.* ¶¶ 596, 610-12.

Sanabil’s board members were predominantly well-known HAMAS leaders in Lebanon. For example, Sanabil board member Ahmed Muhammad Abd al-Hadi was HAMAS’s deputy representative and spokesman in Lebanon (and is currently HAMAS’s senior leader in Lebanon). *Id.* ¶ 591. Abdallah Atawat, one of HAMAS’s principal fundraisers in Lebanon, served as Sanabil’s Deputy Chairman of the board of trustees and as a board member of the Welfare Association for Palestinian and Lebanese Families (subsequently designated an SDGT). *Id.* ¶ 592. Other members of HAMAS’s leadership in Lebanon who served as trustees of Sanabil included Mashhur Abd al-Halim, who served as HAMAS’s Palestinian relations representative in Lebanon, and Ziyad Qamr, a HAMAS political official. *Id.* ¶ 594.

During the relevant period, Sanabil held account no. 12-02-44037-728529-1 with BLOM. *Id.* ¶ 595. Between 1998 and 2001, HLF transferred over \$2 million (U.S.) through BLOM’s correspondent bank accounts in New York to Sanabil’s BLOM account(s) in Lebanon. *Id.* ¶¶ 596-602.³

3. BLOM asserts that “Plaintiffs’ own conduct reveals the insignificance of BLOM’s alleged assistance,” because the millions of dollars it transferred to HAMAS occurred 15 years ago but Plaintiffs did not sue BLOM earlier. Def. Mem. at 22. BLOM’s logic is unclear, but this cause of action was brought subsequent to and under JASTA’s 2016 enactment.

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After HLF's December 2001 designation, its successor organization KindHearts sent an additional \$250,000 to Sanabil's accounts between July 2002 and July 2003. *Id.* ¶ 603. Between 1999 and 2003, BLOM also processed fund transfers through its New York correspondent banks from CBSP and Interpal to Sanabil in amounts estimated to exceed \$1 million. *Id.* ¶ 606. During this time period, Sanabil served as Interpal's "official" representative in Lebanon, and the U.S. government identified Sanabil as an unindicted co-conspirator in the HLF prosecution, calling it a "part of the Global HAMAS financing mechanism." *Id.* ¶¶ 607-08.

Records seized from HLF show that Sanabil regularly distributed small sums in cash from its accounts to hundreds (if not thousands) of individual dependents in the Palestinian refugee camps under the categories of "Orphan Sponsorships," "Student Sponsorships," "Needy Sponsorships" and "Family Sponsorships." *Id.* ¶ 611. The beneficiaries were provided "membership ID numbers" and were paid small amounts individually in the manner of an old-style political machine, buying loyalty in periodic stipends of \$40-\$50 per quarter. *Id.* ¶ 612. BLOM facilitated these "sponsorships," providing the mechanism through which HAMAS was able to purchase support in its target areas.

Defendant BLOM Bank Customer: Subul al-Khair

Subul al-Khair is a small HAMAS institution founded in Beirut, Lebanon in 1998 that was identified as an unindicted co-conspirator in HLF's criminal trial. *Id.*

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¶¶ 621-22. BLOM maintained an account for Subul al-Khair at its Rawsheh branch in Beirut (no. 0227534) and deposited multiple transfers HLF sent to Subul al-Khair. *Id.* ¶ 623. Ostensibly, Subul al-Khair functioned in much the same way Sanabil did but was geographically focused on HAMAS supporters in the Beirut area. Records seized from HLF show that HLF sent Subul al-Khair over \$500,000 between 1999 and 2001. *Id.* ¶¶ 624-25.

Defendant BLOM Bank Customer: Union of Good

The Union of Good was established in October 2000 as the umbrella organization for HAMAS's global fundraising activity. *Id.* ¶ 629. It began as a 101-day fundraising drive for emergency aid at the outset of the Second Intifada, chaired by Sheikh Yusuf al-Qaradawi, the Muslim Brotherhood's spiritual leader and famous television personality in the Arab world. *Id.* ¶¶ 630-32; 636-38.⁴ According to Al-Qaradawi, "martyr operations"—that is, suicide attacks—are "the greatest of all sorts of Jihad in the Cause of Allah." *Id.* ¶ 630. In sum, the Union of Good and its senior leadership were not clandestine, but open, well-known and prominent supporters of HAMAS and proponents of terror attacks on Israeli civilians.

On February 25, 2002, the Union of Good was designated by Israel as being "part of the Hamas organization or supporting it and strengthening its infrastructure." *Id.* ¶ 634. Treasury designated the Union of Good as an SDGT on November 12, 2008, finding:

4. The Muslim Brotherhood Movement was established in Egypt in 1928 by Hassan al-Banna and was dedicated to fighting Western influences on Muslim society. *Id.* ¶ 510 n.5.

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Union of Good acts as a broker for HAMAS by facilitating financial transfers between a web of charitable organizations—including several organizations previously designated under E.O. 13224 for providing support to HAMAS—and HAMAS-controlled organizations in the West Bank and Gaza. The primary purpose of this activity is to strengthen HAMAS' political and military position in the West Bank and Gaza, including by: (i) diverting charitable donations to support HAMAS members and the families of terrorist operatives; and (ii) dispensing social welfare and other charitable services on behalf of HAMAS.

Funds raised by the Union of Good affiliates have been transferred to HAMAS- managed organizations in the West Bank and Gaza. In addition to providing cover for HAMAS financial transfers, some of the funds transferred by the Union of Good have compensated HAMAS terrorists by providing payments to the families of suicide bombers. One of them, the Al-Salah Society, previously identified as a key support node for HAMAS, was designated in August 2007 under E.O. 13224. The Society employed a number of members of the HAMAS military wing and supported HAMAS-affiliated combatants during the first Intifada.

Id. ¶ 635.

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As with Sanabil, HAMAS leaders have also served openly in the Union of Good's executive leadership. For example, the Secretary General of the Union of Good, Essam Salih Mustafa Yussuf, also acted as Interpal's Vice-Chairman while serving on HAMAS's executive committee under then-HAMAS leader Khalid Mishal. *Id.* ¶ 639. The Union of Good maintained account no. 349647 at one of BLOM's branches in Beirut. *Id.* ¶ 640.⁵

ARGUMENT**I. PLAINTIFFS HAVE PLAUSIBLY STATED A CLAIM UNDER JASTA, § 2333(d).****A. *Halberstam* Provides the Proper Legal Framework for Civil Liability Under 18 U.S.C. § 2333(d)(2).**

JASTA established that plaintiffs may assert statutory secondary liability for acts of international terrorism committed, planned, or authorized by a designated FTO against “any person who aids and abets, by knowingly providing substantial assistance, or who conspires with the person who committed such an act of international terrorism.” 18 U.S.C. § 2333(d)(2). The JASTA amendment

5. Without the benefit of discovery, Plaintiffs cannot assess the size and scope of the Union of Good's account activity at BLOM. However, given BLOM's well-documented support for HAMAS's other fundraising institutions and the importance of the Union of Good to HAMAS's fundraising network, it is not only plausible but likely that discovery will reveal that the account at BLOM was significant to HAMAS.

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was explicitly added to *expand* the relief already available to civil litigants under 18 U.S.C. § 2333(a):

The purpose of this Act is to provide civil litigants with the broadest possible basis, consistent with the Constitution of the United States, to seek relief against persons, entities, and foreign countries, wherever acting and wherever they may be found, that have provided material support, directly or indirectly, to foreign organizations or persons that engage in terrorist activities against the United States.

JASTA, § 2(b). *Accord Linde v. Arab Bank, PLC*, 882 F.3d 314, 328 (2d Cir. 2018) (describing JASTA as an “expansion” of the ATA).

JASTA directs courts to interpret aiding and abetting liability pursuant to *Halberstam v. Welch*, 705 F.2d 472 (D.C. Cir. 1983) (an appellate case reviewing a full trial record, not a motion to dismiss). *See also Linde*, 882 F.3d at 329 (same). In *Halberstam*, the defendant, Linda Hamilton, was found civilly liable for aiding and abetting the murder of Michael Halberstam by her boyfriend, Bernard Welch, during a botched burglary. *See id.* at 474 (“[Ms. Hamilton is] civilly liable, as a joint venturer . . . for the killing of Michael Halberstam”). However, Hamilton, who assisted what she claimed was her boyfriend’s antiques business, did not know about the murder—or even the burglary:

It was not necessary that Hamilton knew specifically that Welch was committing

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burglaries. Rather, when she assisted him, it was enough that she knew he was involved in some type of personal property crime at night—whether as a fence, burglar, or armed robber made no difference—because violence and killing is a foreseeable risk in any of these enterprises.

Id. at 488.

The *Halberstam* court set forth “the elements of traditional tort theory that permit holding a nonparticipant in a burglary that led to murder civilly responsible for the economic consequences of so terrible an injury.” 705 F.2d at 489. They are:

- (1) the party the defendant aids must perform a wrongful act that causes an injury;
- (2) the defendant must be generally aware of his role as part of an overall illegal or tortious activity at the time he provides the assistance; and
- (3) the defendant must knowingly and substantially assist the principal violation.

705 F.2d at 477. Plaintiffs have plausibly alleged each of these elements.⁶

6. Plaintiffs have plausibly alleged, and BLOM has not disputed, that HAMAS is an FTO and committed the Attacks.

*Appendix G***B. Plaintiffs Have Sufficiently Alleged That BLOM Was Generally Aware of Its Role in HAMAS's Overall Illegal and Tortious Activity.****1. The Scienter Required for Civil Liability Under 18 U.S.C. § 2333(d)(2).**

Hamilton acted as her boyfriend's "banker, bookkeeper, recordkeeper, and secretary," and denied knowing of the criminal nature of his "evening forays." *Id.* at 486, 488. Notwithstanding that her actions were "neutral standing alone," the court found that "it defies credulity that Hamilton did not know that something illegal was afoot." *Id.* at 486. Thus, the court concluded that because she "knew about and acted to support Welch's illicit enterprise," she "had a general awareness of her role in a continuing criminal enterprise." *Id.* at 488. Because the killing was "a natural and foreseeable consequence of the activity Hamilton helped Welch to undertake," and because her services substantially assisted the burglary resulting in murder, she was liable as an aider and abettor of the murder. *Id.*

Linde, following *Halberstam*, held that in the terrorism context, a bank can be found liable for aiding and abetting a terrorist organization if it was generally aware of "a 'role' in terrorist activities" performed by that organization. 882 F.3d at 329. Plaintiffs need *not* show "specific intent," "intent to participate in a criminal

See Compl. ¶¶ 535-36 (designation of HAMAS during relevant period), 13, 76, 207, 240, 299, 318, 337-38, 390, 407, 413-14, 486, 491 (alleging that HAMAS committed the Attacks).

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scheme as ‘something that he wishes to bring about and seek by his action to make it succeed,’” or that the bank “knew of the specific attacks at issue when it provided financial services for Hamas.” *Id.* Two recent JASTA decisions from this District relating to terror financing echoed *Linde*’s holdings. *See* *Lelchhook v. Islamic Republic of Iran*, No. 16-CV-07078, 2019 WL 2647998, *4 (E.D.N.Y. June 27, 2019) (finding Iranian Bank Saderat liable for aiding and abetting Iranian terror attacks); *Miller v. Arab Bank, PLC*, 372 F. Supp. 3d 33, 47 (E.D.N.Y. 2019) (denying motion to dismiss claims that Jordanian Arab Bank aided and abetted HAMAS terror attacks). Neither court required a showing (or pleading) that the specific funds provided by the defendant be earmarked for terrorist attacks or traceable to such attacks.

Contrary to BLOM’s assertion, “terrorist activities” in *Linde* does not refer to terrorist *attacks*, just as the “overall illegal or tortious activity” in *Halberstam* was “personal property crimes at night,” *not* murder. *See, e.g. Weiss v. Nat’l Westminster Bank PLC*, 768 F.3d 202, 208- 09 (2d Cir. 2014) (holding that, under § 2339B of the ATA, “engaging in terrorist activities” includes “solicit[ing] funds for Hamas”). Thus, as in *Halberstam* and *Linde*, Plaintiffs must plausibly allege that BLOM was “generally aware of [its] role” in “terrorist activities,” from which terrorist *attacks* were a natural and foreseeable consequence. An equivalent formulation of the general awareness requirement articulated in *Halberstam* in this case would be:

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Defendant (Secondary Tortfeasor)	Form of Sub- stantial Assis- tance	Principal Tortfeasor	Illicit Scheme of Which Defen- dant Must Be General- ly Aware	Fore- seeable Result- ing Tort
Ms. Hamilton	Banking, Book- keeping	Welch	Property crimes at night	Murder
BLOM Bank	Banking, financial services	HAMAS	Terrorist activities (including soliciting, collecting and trans- ferring funds on behalf of an FTO)	Ter- rorist attacks

Plaintiffs here alleged that BLOM was generally aware of its role in terrorist activities. As the Second Circuit appellate and district courts have found, terrorist attacks are a “natural and foreseeable consequence” of soliciting and transferring funds for FTOs. In fact, Plaintiffs here, in another action, already raised as a triable issue that their injuries were “reasonably *foreseeable* . . . as a *natural consequence*” of U.K. bank National Westminster Plc’s (“NatWest”) role in transferring

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Interpal's funds to HAMAS-controlled "charities." *Weiss v. Nat'l Westminster Bank PLC*, 278 F. Supp. 3d 636, 640 (E.D.N.Y. 2017) (quoting *Lerner v. Fleet Bank, N.A.*, 318 F.3d 113, 123 (2d Cir. 2003)) (emphasis added). *See also Strauss v. Crédit Lyonnais, S.A.*, 925 F. Supp. 2d 414, 432 (E.D.N.Y. 2013) (finding the same for French bank Crédit Lyonnais's support for CBSP).

BLOM argues that "[m]erely providing services to a Foreign Terrorist Organization, even if those services rise to the level of 'material support' as defined by 18 U.S.C. § 2339B, does not itself meet the scienter requirement." Def. Mem. at 12. Defendant cites *Linde*, but *Linde* held only that Arab Bank's knowing provision of financial services to HAMAS did not, *as a matter of law*, satisfy the *Halberstam* elements where the jury was never instructed on them (JASTA was enacted two years after the *Linde* trial was held). Citing the Supreme Court in *Holder v. Humanitarian Law Project*, 561 U.S. 1, 16-17 (2010), *Linde* noted that a defendant could in certain circumstances violate § 2339B, "which requires only knowledge of the organization's connection to terrorism," without "awareness that one is playing a role in those activities." *Id.* at 329-30.⁷ In sum, *Linde* provides a basis

7. *Holder* provides an example. There, plaintiffs challenged the constitutionality of § 2339B as applied to "(1) train[ing] members of [the] PKK on how to use humanitarian and international law to peacefully resolve disputes"; (2) "engag[ing] in political advocacy on behalf of Kurds who live in Turkey"; and (3) "teach[ing] PKK members how to petition various representative bodies such as the United Nations for relief." 561 U.S. at 14-15 (citation omitted). A defendant might knowingly supply this kind of material support

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for a defendant to argue *at trial* that even if it knowingly provided material support to an FTO, it was – under the circumstances of that case – unaware of its role in the FTO’s “role in a continuing criminal enterprise.”

In support of its argument, BLOM cites an inapposite case rooted in *negligence* that sought to hold HSBC Bank USA liable for *negligently* providing financial services to *another* bank which was reputed to have links to “financing organizations associated with terrorism.” *Siegel v. HSBC Bank USA, N.A.*, No. 17-cv-6593 (DLC), 2018 WL 3611967, at *2, *4 (S.D.N.Y. July 27, 2018). BLOM also cites two out-of-circuit cases brought under the ATA against Twitter and other social media providers whose language analyzing JASTA at least facially conflicts with *Linde: Taamneh v. Twitter, Inc.*, 343 F. Supp. 3d 904, 916 (N.D. Cal. 2018) and *Crosby v. Twitter, Inc.*, 303 F. Supp. 3d 564, 580 (E.D. Mich. 2018), *aff’d*, 921 F.3d 617 (6th Cir. 2019). Whereas *Linde* held that JASTA did *not* require allegations that the defendant knew of the “specific attacks at issue” and does not require Plaintiffs to prove BLOM’s “intent to participate in a criminal scheme,” the cases BLOM relies upon did. Lastly, BLOM relies upon the recent dismissals of the *Strauss* case against Crédit Lyonnais and the *Weiss* case against NatWest. Each of these cases is addressed below.

to an FTO without being generally aware of its role in terrorist activities (and without foreseeing such terrorist activities as a natural consequence of such support).

*Appendix G***a. *Siegel***

In *Siegel*, plaintiffs were injured in three suicide bombings in Jordan perpetrated by Al Qaeda and Al Qaeda in Iraq (“AQI”) in 2005. They sued HSBC and its U.S. subsidiary (“HBUS”) under the ATA for failing “to take reasonable steps to ensure that HBUS was not dealing with banks that may have links to or that facilitate terrorist financing. HBUS opened U.S. correspondent accounts for high risk affiliates without conducting due diligence, thereby facilitating transactions that hindered U.S. efforts to stop terrorists.” *Siegel*, 2018 WL 3611967, at *1. Plaintiffs there claimed that HBUS provided correspondent banking services to Al Rajhi Bank (“ARB”), knowing “that ARB was associated with terrorist financing and that ARB provided accounts to clients linked with terrorism.” *Id.*

Finding that the plaintiffs had failed to adequately plead their § 2333(d) claims, the court noted that the complaint:

does not allege any direct relationship with the terrorist organizations that were responsible for the November 9 Attack. It describes instead HSBC’s direct relationship with another financial institution, ARB. It is ARB that is alleged to have provided banking services to the terrorist organizations. It accuses the defendants of *adopting slipshod banking practices, and operating with inadequate anti-money laundering controls*, but it does

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not adequately allege that the defendants were aiding the terrorist organizations that performed the November 9 Attack. For instance, it does not adequately allege that the defendants were even generally aware that the financial services they provided ARB were directly assisting those terrorist organizations, or even that the financial services they provided ARB substantially assisted the terrorist organizations in carrying out the November 9 Attack.

Id. at *4 (emphasis added).

Siegel correctly held that negligence is insufficient to satisfy “general awareness” under § 2333(d), but its concluding language is sufficiently imprecise as to invite BLOM’s reliance here:

Even if the TAC alleged that services the defendants provided to ARB directly supported AQI and al-Qaeda, which it does not, that would be insufficient. The TAC does not allege that the defendants were generally aware that they were playing a role in the November 9 Attack. As the Second Circuit has noted, “aiding and abetting an *act* of international terrorism requires more than the provision of material support to a designated terrorist *organization*.”

Id. at *5 (quoting *Linde*, 882 F.3d at 329).

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Had the plaintiffs adequately alleged that ARB *knowingly* supported AQI and Al Qaeda, that would have been sufficient at least at the pleading stage to also allege ARB's (not the HSBC defendants') general awareness of its role in those terrorist groups' illicit scheme. The court's focus was understandably on the general awareness of the HSBC defendants, but to the extent its language can plausibly be interpreted to suggest that *Linde* required (at trial) a showing that a defendant had awareness of its role in a specific terrorist attack, that formulation is incorrect. Just as the defendant in *Halberstam* was unaware of the murder that gave rise to her liability, the Second Circuit in *Linde* explicitly stated that plaintiffs need *not* show that a bank "knew of the specific attacks at issue when it provided financial services for Hamas." 882 F.3d at 329.

b. Crosby

In *Crosby*, plaintiffs were victims and family members of deceased victims of the mass shooting at the Pulse Night Club in Orlando, Florida perpetrated by Omar Mateen on June 12, 2016. They sued Twitter, Google and Facebook, which allegedly provided social media platforms used by the FTO Islamic State of Iraq and Syria ("ISIS"), alleging that these platforms allowed Mateen to hear ISIS's messages via the Internet and become radicalized, thereby triggering their liability for the shooting. Because those plaintiffs appear not to have alleged that ISIS knew anything about the attack before it occurred and apparently conceded that Mateen never had contact with any agent or entity directly connected to ISIS, the district court focused on the defendants'

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general awareness of their role in aiding and abetting Mateen rather than their alleged assistance to ISIS. 303 F. Supp. 3d at 573. The Sixth Circuit affirmed, finding that the plaintiffs failed to adequately allege proximate cause. 921 F.3d 617, 625 (“Plaintiffs’ only allegation that connects Mateen and Defendants is that, at some point before the Pulse Night Club shooting, Mateen viewed online content from ISIS and became ‘self-radicalized.’”). It also found that the plaintiffs failed to satisfy § 2333(d)’s standing requirement because there were no plausible allegations that ISIS “committed, planned, or authorized” the Pulse Night Club attack. *Id.* at 626. The facts of that case are self-evidently divergent from those here, where HAMAS is alleged to have committed the Attacks, aided directly by BLOM. *See supra* at 10 n.6.

c. *Taamneh*

In *Taamneh*, American relatives of a Jordanian national killed in a terrorist attack in Istanbul sued Twitter, Google (as owner of YouTube), and Facebook, for providing material support to and aiding and abetting ISIS, because they “refused to actively monitor [their] online social media networks” and “generally only reviewed ISIS’s use of [their] services in response to third party complaints. In some instances, even after being alerted, Defendants found that ISIS did not violate their policies and allowed the ISIS-affiliated accounts to remain active.” 343 F. Supp. 3d at 907 (internal citations omitted). The plaintiffs also claimed that the terrorist who perpetrated the attack was “radicalized by ISIS’s use of social media.” *Id.*

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Setting aside that these allegations raise a very different issue with respect to proximate cause, *Taamneh* required allegations that the defendant directly aid and abet the individual terrorist and the attack itself, quoting the *Crosby* district court's requirement of allegations that defendants "aided or abetted the person (Mateen) who committed *the night club attack*," *id.* at 916 (quoting *Crosby*, 303 F. Supp. 3d at 573), and *Siegel's* requirement that defendants "were generally aware that they were playing a role *in the November 9 Attack*," *id.* (quoting *Siegel*, 2018 WL 3611967, at *5). It further stated that "requiring secondary liability to be connected with a specific crime would be consistent with the common law's understanding of aiding and abetting," which included, *inter alia*, "that the accused had the specific intent to facilitate the commission of a crime by another, [and] that the accused had the requisite intent to commit the underlying substantive offense." *Id.* (quoting *United States v. Hernandez-Orellana*, 539 F.3d 994, 1006-07 (9th Cir. 2008), a *criminal case*). These findings conflict with *Linde*, which specifically held that general awareness does not require knowledge of specific attackers or attacks or "the specific intent demanded for criminal aiding and abetting culpability." 992 F.3d at 329. Thus, *Taamneh* facially conflicts with both *Halberstam* and *Linde*.

d. *Weiss and Strauss*

Finally, BLOM relies on the recent dismissals of *Weiss* and *Strauss*, two cases where the district court found, on a trial-ready record, that two European banks could not have been generally aware of their respective roles in their

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designated SDGT customers' and HAMAS's continuing criminal enterprise because the customers had "ostensibly charitable purposes" and the plaintiffs failed to either (a) trace the banks' assistance either to HAMAS's specific attacks on the plaintiffs or (b) establish that the HAMAS-controlled institutions that received the assistance *themselves* perpetrated or otherwise participated in the attacks giving rise to the plaintiffs' claims. See *Strauss v. Crédit Lyonnais, S.A.*, No. 06-cv-702(DLI) (RML), 2019 WL 1492902, *6-7 (E.D.N.Y. Mar. 31, 2019) (requiring a showing that "funds transferred by CBSP through Defendant accounts were used to perpetrate the 15 attacks" at issue, or that transfers were "meant to involve a violent act or an act dangerous to human life," or evidence that "the 13 Charities participated in, planned, trained the perpetrators of, requested that someone carry out, or were the cause of the attacks giving rise to Plaintiffs' claims."); *Weiss v. Nat'l Westminster Bank PLC*, No. 05-cv-4622 (DLI)(RML), 2019 WL 1441118, at *6 (E.D.N.Y. Mar. 31, 2019) (same). These decisions were erroneous, and the "tracing requirement" they articulate is mistaken. As this District Court previously observed:

Common sense requires a conclusion that Congress did not intend to limit recovery to those plaintiffs who could show that the *very dollars* sent to a terrorist organization were used to purchase the implements of violence that caused harm to the plaintiff. Such a burden would render the statute powerless to stop the flow of money to international terrorists, and would be incompatible with the legislative

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history of the ATA. *See, e.g.*, S.Rep. No. 102-342 at 22. (“Noting that Congress intended to impose ‘liability at any point along the causal chain of terrorism.’”).

Goldberg v. UBS AG, 660 F. Supp. 2d 410, 429 (E.D.N.Y. 2009). JASTA’s stated purpose was to *expand* ATA liability further. *See Linde*, 882 F.3d at 328 (describing JASTA as an “expansion” of the ATA). *Weiss* and *Strauss* are under appeal; but in any event, they are the product of a full evidentiary record and were not dismissed at the pleading stage.

2. The Complaint Plausibly Alleges That BLOM Was Generally Aware of Its Role in HAMAS’s Terrorist Activities.

As in *Halberstam* and *Linde*, Plaintiffs must allege that BLOM was “generally aware of [its] role” in “terrorist activities,” from which terrorist *attacks* were a natural and foreseeable consequence. Although courts are expected to be “lenient in allowing scienter issues. . . . to survive motions to dismiss,” *In re DDAVP Direct Purchaser Antitrust Litig.*, 585 F.3d 677, 693 (2d Cir. 2009) (internal quotation marks and citation omitted), *see also Weiss*, 768 F.3d 202 at 211 (same), the Complaint sets forth many specific allegations that provide a strong inference of BLOM’s awareness of its role in HAMAS’s fundraising activities, including the central fact that it held accounts for *three* HAMAS institutions during the relevant period: Sanabil, an SDGT; Subul al- Khair; and the Union of Good, also an SDGT. As Ian Fleming famously wrote: “Once is

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happenstance. Twice is coincidence. Three times is enemy action.” *Goldfinger*, Ch. 14 (1959). Here, the Complaint sets forth allegations whose most plausible inference is that BLOM was generally aware of its role in assisting HAMAS and its criminal scheme:

- HAMAS maintained a substantial presence in Lebanon, Compl. ¶¶ 570-87;
- Sanabil’s board members “were predominantly well-known HAMAS leaders in Lebanon,” *id.* ¶¶ 591-94;
- Sanabil’s BLOM account received large sums of incoming transfers from HAMAS fundraising organizations outside of Lebanon, *id.* ¶¶ 596-607;⁸
- Sanabil’s BLOM account received large sums of incoming transfers from HLF, which was prominently designated an SDGT on December 4, 2001 (following the September 11, 2001 attacks and U.S. efforts to disrupt international terrorism financing), *id.* ¶¶ 596-602;

8. Israel designated several of these HAMAS donor organizations *before* and during the relevant period, *id.* ¶ 539 (Israel declared CBSP an illegal organization on May 6, 1997 and designated it a terrorist organization on January 17, 1998), *id.* ¶¶ 541-42 (published reports in Israel linked Interpal to HAMAS as early as 1995; Israel declared Interpal an illegal organization on May 6, 1997 and designated it a terrorist organization on January 17, 1998), *id.* ¶¶ 550-52 (Israel declared the Al-Aqsa Foundation an illegal organization on May 6, 1997 and designated it a terrorist organization on January 19, 1998).

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- Sanabil’s BLOM account received funds transfers from the Al-Aqsa Foundation even *after* it was designated an SDGT on May 29, 2003, *id.* ¶ 605 (Exhibit D to the Complaint);⁹
- Sanabil used its BLOM account to regularly distribute small sums *in cash* from its accounts to hundreds (if not thousands) of HAMAS supporters in the nearby Lebanese refugee camps, *id.* ¶¶ 611-13;
- Prior to its SDGT designation, HLF also transferred over \$500,000 to another HAMAS institution in Beirut known as Subul al-Khair, which also held an account at BLOM Bank, *id.* ¶¶ 621-28;
- BLOM maintained an account in Beirut for the Union of Good, the prominent fundraising umbrella for HAMAS which was designated by Israel in 2002 for being “part of the Hamas organization or supporting it and strengthening its infrastructure,” *id.* ¶ 634;
- The public face of the Union of Good since its inception was Sheikh Yusuf al-Qaradawi, the

9. The U.S. designation explicitly stated that “Al Aqsa funnels money collected for charitable purposes to Hamas *terrorists*,” ¶ 554 (emphasis added), and that the “Al Aqsa Foundation is the 18th financier of terror disguised as a charitable organization designated by the Treasury Department.” See May 29, 2003 Treasury Press Release, *available at* <https://www.treasury.gov/press-center/press-releases/Pages/js439.aspx>.

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Muslim Brotherhood's spiritual leader, *id.* ¶¶ 630-32. Al-Qaradawi is one of the most recognizable personalities and leaders in the Muslim world and a prominent proponent of *jihad* against Israel, *id.* ¶¶ 636-38; and

- “HAMAS leaders have also served openly in the Union of Good’s executive leadership,” *id.* ¶ 639.¹⁰

BLOM argues that because its three identified customers were not *themselves* designated FTOs it is not liable, an argument that courts have repeatedly rejected. *See, e.g., Weiss v. Nat’l Westminster Bank PLC*, 453 F. Supp. 2d 609, 622-23 (E.D.N.Y. 2006) (“ordinary principles of agency law” determine whether an FTO’s status as such extends to “juridically separate agents subject to its control”) (internal citations omitted); *Boim v. Holy Land Found. for Relief & Dev.*, 549 F.3d 685, 701-02 (7th Cir. 2008) (*en banc*) (“*Boim III*”) (holding that providers of material support cannot “escape liability because terrorists and their supporters launder donations

10. BLOM argues Plaintiffs failed, in their Complaint, to state their roles or when they assumed those roles. The Union of Good leaders in the Palestinian Territories during the relevant period were all HAMAS leaders. The U.S. Department of the Treasury designation cited in the Complaint, ¶ 635, notes that: “The leadership of Hamas created the Union of Good in late-2000, shortly after the start of the second Intifada, in order to facilitate the transfer of funds to Hamas” and goes on to state that “[t]he Union of Good’s executive leadership and board of directors includes Hamas leaders, Specially Designated Global Terrorists (SDGTs), and other terrorist supporters.” *See* <https://www.treasury.gov/press-center/press-releases/Pages/hp1267.aspx>.

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through a chain of intermediate organizations. [T]o set the knowledge and causal requirement higher than we have done in this opinion would be to invite money laundering, the proliferation of affiliated organizations, and two-track terrorism (killing plus welfare).”).

In the alternative, BLOM argues that it believed these organizations’ claims that they conducted “charitable and political activities, not violent ones.” Def. Mem. at 15. For instance, BLOM argues, incredibly, that it could not have known that the money it moved for Al-Aqsa *after* it was designated an SDGT for being a “critical part of HAMAS’ terrorist support infrastructure,” Compl. ¶ 554 (emphasis added), was terrorism-related because it was “earmarked for ‘HELP CONCERNING ORPHAN CHILDREN.’” Def. Mem. at 18.

Putting to the side the fact that terrorist fundraisers often claim they serve “charitable purposes,”¹¹ the Complaint notes that, from its inception in 2000, the Union of Good was closely identified with its famous chairman, Sheikh al-Qaradawi – known throughout the Muslim world for his public advocacy of *jihad* (including suicide

11. See, e.g., *United States v. El-Mezain*, 664 F.3d 467, 485 (5th Cir. 2011) *as revised* (Dec. 27, 2011) (“HLF held itself out to be the largest Muslim charity in the United States, ostensibly with the mission of providing humanitarian assistance to needy Palestinians living in the Israeli-occupied territory of the West Bank and Gaza. The Government charged that in reality HLF’s mission was to act as a fundraising arm for Hamas, also known as the Islamic Resistance Movement, and to assist Hamas’s social wing in support of Hamas’s goal to secure a Palestinian Islamic state in what is now Israel.”).

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bombings) against Israel. Compl. ¶¶ 630-32; 636-38.¹² The Complaint also details the vast sums BLOM deposited for Sanabil that originated with HLF. *Id.* ¶¶ 595-602. It further notes that Sanabil’s “charitable” activities consisted of withdrawing large sums of cash from its account at BLOM and distributing it in target areas to purchase support for HAMAS. *Id.* ¶¶ 610-13.

Moreover, as the U.S. government actions against Sanabil, HLF, Al-Aqsa Foundation and the Union of Good all make clear, HAMAS uses “humanitarian[] purposes as a cover for acts that support HAMAS. Funds are generated by, and flow through, these organizations on behalf of HAMAS.” *Id.* ¶ 545. *See also id.* ¶ 566 (“evidence strongly suggests that the [HLF] has provided crucial financial support for families of HAMAS suicide bombers, as well as the Palestinians who adhere to the HAMAS movement); ¶ 554 (“Al Aqsa is a critical part of HAMAS’ terrorist support infrastructure.”); ¶ 635 (“Union of Good acts as a broker for HAMAS. . . . The primary purpose

12. In *Linde*, the trial court “admitted a video of Khaled Mash’al, a Hamas leader, and Sheik Yousef Al-Qaradawi speaking at a conference in which they discussed raising money for Hamas, supporting suicide bombings, and joking about how they were both terrorists. The video’s primary relevance was to show the connection between the Union of Good, the charity led by Al-Qaradawi, and Hamas. Nevertheless, to the extent the truth of certain statements in the video was relevant—most notably statements that the Union of Good had raised tens of millions of dollars to support Hamas and the Intifada—the penal interests implicated were clear: Membership in Hamas and raising money for Hamas are crimes under United States and Israeli law.” 97 F. Supp. 3d 287, 343 (E.D.N.Y. 2015).

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of this activity is to strengthen HAMAS' political and military position in the West Bank and Gaza, including by: (i) diverting charitable donations to support HAMAS members and the families of terrorist operatives; and (ii) dispensing social welfare and other charitable services on behalf of HAMAS.”).

3. The Factors Halberstam Identified Support an Inference of General Awareness.

Plaintiffs' allegations also support the factors that *Halberstam* identified as supporting an inference of general awareness: duration and substantiality of support, “unusual” assistance, and offensiveness of the act assisted.

First, the duration and substantiality of assistance are factors bearing on the accessory defendant's general awareness of its role. 705 F.2d at 484, 488 (“the *duration of the assistance* . . . affected our sense of how Hamilton perceived her role”). See also *In re Temporomandibular Joint (TMJ) Implants Prod. Liab. Litig.*, 113 F.3d 1484, 1495 (8th Cir. 1997) (“[T]he stronger the evidence of substantial assistance, the less evidence of general awareness is required.”). BLOM assisted HAMAS for many years, encompassing the entire relevant period, including *after* its customers and its customers' counterparties were designated by the Israeli and United States governments for supporting terrorism.

Second, while the assistance itself need not be “nefarious” (Hamilton's services in *Halberstam* were in fact “neutral standing alone”), performing them “in

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an unusual way under unusual circumstances for a long period of time,” is relevant to the accessorial defendant’s state of mind. 705 F.2d at 482, 487-88. BLOM insists *ten times* in its brief that the services it provided to HAMAS were “routine.” But knowingly providing banking services to an FTO is not “routine”: “[G]iven plaintiff’s allegations regarding the knowing and intentional nature of the Bank’s activities there is nothing ‘routine’ about the services the Bank is alleged to provide.” *Weiss*, 453 F. Supp. 2d at 625 (quoting *Linde v. Arab Bank*, 384 F. Supp. 2d 571, 587-88 (E.D.N.Y. 2005)). Moreover, the allegations here identify Sanabil as (a) a “charity” HAMAS established (b) that received millions of dollars in international donations (c) primarily from organizations designated by Israel, the United States and, in one case, European governments as well, that (d) distributed these funds in the form of small, cash payments. None of the foregoing can fairly be described as “routine.” In any event, as the Second Circuit explained, whether “financial services to Hamas should not be viewed as routine raises questions of fact for a jury to decide.” *Linde*, 882 F.3d at 327.

Third, Halberstam emphasized that “[t]he particularly offensive nature of an underlying offense might also factor in . . . the ‘state of mind’ of the defendant.” 705 F.2d at 484 n.13 (including “the seriousness of the foreseeable consequences”). Terror financing and the resulting terrorist attacks are almost uniquely offensive. Therefore, when a defendant is aware of a risk that it is assisting an FTO (in this case through designated customers), applying *Halberstam’s* “proportionality test to particularly bad or opprobrious acts,” is particularly important. *Id.* The issue is for a jury to weigh.

*Appendix G***C. Plaintiffs Plausibly Allege That BLOM Provided Substantial Assistance to HAMAS.**

Plaintiffs have plausibly alleged that BLOM “knowingly provid[ed] substantial assistance” to HAMAS during the relevant period. §2333(d)(2).¹³ *Halberstam* identified six factors to assess substantiality: (1) the nature of the act encouraged, (2) the amount of assistance given by defendant, (3) defendant’s presence or absence at the time of the tort, (4) defendant’s relation to the principal, (5) defendant’s state of mind, and (6) the period of defendant’s assistance. *Halberstam*, 705 F.2d at 483-84. The Second Circuit explained that “[d]isputed facts pertinent to these factors and the weight to assign such factors” are factual issues for the trier of fact and not matters that can be determined as a matter of law. *Linde*, 882 F.3d at 330.

The Nature of the Act Assisted. The nature of the act involved “dictates what aid might matter, *i.e.*, be substantial.” *Halberstam*, 705 F.2d at 484. Just as Hamilton’s services were “indisputably important to th[e] laundering function” of her boyfriend’s burglary enterprise, *id.* at 488, so too BLOM’s financial services were vital to HAMAS’s terror financing. As the Complaint makes clear, HAMAS directed millions of dollars that it collected internationally (including in the United

13. Although the “substantiality inquiry for causation is not identical to the substantiality inquiry for aiding and abetting,” *Linde*, 882 F.3d at 330, the provision of financial services on behalf of Interpal and CBSP already withstood summary judgment in *Weiss*, 768 F.3d at 212, and *Strauss*, 925 F. Supp. 2d at 434, and a challenge to the jury verdict in *Linde*, 97 F. Supp. 3d at 334.

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States) through the U.S. financial system and was able to seamlessly transfer it to its operatives in Lebanon, where, with BLOM's assistance, those wire transfers were converted into cash and distributed to HAMAS constituents in Lebanon.

Halberstam found that “[a]lthough Hamilton’s own acts were neutral standing alone, they must be evaluated in the context of the enterprise they aided, *i.e.*, a five-year-long burglary campaign against private homes.” *Id.* at 488. Here, BLOM’s facilitation of millions of dollars in international fundraising for HAMAS and conversion of those funds into cash for HAMAS to dispense to its supporters must be evaluated in the context of the enterprise they aided: HAMAS’s terror financing and the foreseeable consequences of providing substantial, contemporaneous support to that terrorist organization.

Although BLOM asserts that it did not “donate[] money to the Alleged Account Holders,” Def. Mem. at 21, JASTA requires no such allegation. *See Linde*, 882 F.3d at 327 (holding that a jury must decide whether “providing routine financial services”—or whether those services should even be “viewed as routine”—qualifies as acts of international terrorism). Financial services of the kind BLOM provided to HAMAS are crucial to moving large sums of money across borders, which is why 18 U.S.C. § 2339A(b)(1) explicitly criminalized “financial services” as a form of material support. JASTA’s statutory purpose is to provide victims of terrorism a remedy against those who “have knowingly or recklessly provided material support or resources, directly or *indirectly*, to the persons

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or organizations responsible for their injuries.” JASTA § 7 (emphasis added). *See also id.* § 6 (“directly or indirectly”). The Complaint alleges in detail *direct* material support BLOM provided to HAMAS and even attaches examples of that support.

Amount of Assistance. The millions of dollars BLOM transferred to HAMAS-controlled charities, Compl. ¶¶ 6, 588, 596-606, 614, 618, 625, were “integral” to HAMAS’s terrorist operations. *Halberstam*, 705 F.2d at 484. Further, the amount of assistance is “influence[d]” by the duration of the assistance provided.” *Id.* at 488 (emphasis omitted). The *Halberstam* court noted that “although the amount of assistance Hamilton gave Welch may not have been overwhelming as to any given burglary in the five-year life of this criminal operation, it added up over time to an essential part of the pattern.” *Id.* BLOM allegedly provided HAMAS those millions of dollars over several years during the Second Intifada. *See, e.g.*, Compl. ¶ 599.

Presence at the time of the tort. In *Halberstam*, “Hamilton was admittedly not *present at the time* of the murder or even at the time of any burglary,” but “the success of the tortious enterprise clearly required expeditious and unsuspecting disposal of the goods, and Hamilton’s role in that side of the business was substantial.” *Id.* at 488. BLOM was also not “present at the scene” of HAMAS’s terror attacks, but the U.S. government designations of HLF and the Al-Aqsa Foundation, as well as the designations of BLOM’s customers, Sanabil and the Union of Good, strongly suggest that HAMAS’s “tortious enterprise” substantially depended on the funds raised and distributed with BLOM’s assistance.

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State of Mind. The *Halberstam* court held that “evidence as to the *state of mind* of the defendant may also be relevant to evaluating liability.” 705 F.2d at 484. Specifically, the court found that both knowing assistance and continuous participation evidence “a deliberate long-term intention to participate in an ongoing illicit enterprise,” as opposed to a “passing fancy or impetuous act.” 705 F.2d at 488. BLOM’s knowing provision of financial services to HAMAS customers throughout the Second Intifada was no “passing fancy.” *See* Compl. ¶¶ 595, 623, 640.

BLOM, on the other hand, argues that “a defendant is liable for aiding and abetting only if it *directly* aided and abetted the ‘*person*’ who committed the relevant ‘*act* of international terrorism.” Def. Mem. at 24. BLOM then points out that Plaintiffs did not allege a “direct relationship between BLOM” and the “15 individual terrorists operatives” who carried out the attacks (or even name them). *Id.* at 25. Section 2333(d)(1), however, contains no such requirement or any textual basis for the argument. Setting aside JASTA’s stated statutory purpose to provide victims of terrorism a remedy against those who “have knowingly or recklessly provided material support or resources, directly or *indirectly*, to the persons or organizations responsible for their injuries,” JASTA § 7 (emphasis added), § 2333(d)’s text explicitly defines the word “person” as having “the meaning given the term in section 1 of title 1.” That definition “include[s] corporations, companies, associations, firms, partnerships, societies, and joint stock companies, *as well as individuals*,” 1 U.S.C. § 1 (emphasis added). If § 2333(d) only applies to

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aiding and abetting individual terrorists, § 1's definition is superfluous. Moreover, no one has ever been physically attacked by a corporation or joint stock company. Hence, the Second Circuit in *Linde* did not dismiss plaintiffs' § 2333(d) claims against Arab Bank due to insufficient evidence that the defendant aided and abetted each suicide bomber. 882 F.3d at 331.

Further, BLOM's view would require tracing its transactions on behalf of the HAMAS-controlled institutions directly to each attack. This argument has been repeatedly rejected, as any support to an FTO supports the terrorist attacks it commits: "Congress and the Executive . . . have concluded that . . . designated foreign terrorist organizations 'are so tainted by their criminal conduct that any contribution to such an organization facilitates that conduct.'" *Holder*, 561 U.S. at 38 (quoting 18 U.S.C. § 2339B note). The Supreme Court has explained why that is the case:

Money is fungible, and when foreign terrorist organizations that have a dual structure raise funds, they highlight the civilian and humanitarian ends to which such moneys could be put. But there is reason to believe that foreign terrorist organizations do not maintain legitimate financial firewalls between those funds raised for civil, nonviolent activities, and those ultimately used to support violent, terrorist operations. Thus, funds raised ostensibly for charitable purposes have in the

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past been redirected by some terrorist groups to fund the purchase of arms and explosives.

Id. at 31 (internal citations omitted) (relying on Executive and Congressional findings that are entitled to “deference” and “significant weight”). *Id.* at 33, 36.

Other district court decisions in this Circuit have agreed. *See, e.g., Gill v. Arab Bank, PLC*, 893 F. Supp. 2d 474, 507 (E.D.N.Y. 2012) (“A contribution, if not used directly, arguably would be used indirectly by substituting it for money in Hamas’ treasury; money transferred by Hamas’ political wing in place of the donation could be used to buy bullets.”); *Linde v. Arab Bank, PLC*, 97 F. Supp. 3d 287, 323 (E.D.N.Y. 2015), *vac’d on other grounds*, 882 F.3d 314 (2d Cir. 2018) (adopting Judge Gershon’s prior ruling that “rejected defendant’s argument that plaintiffs were required to trace specific dollars to specific terrorist attacks”). Moreover, *Linde* and *Boim III* involved material support for related HAMAS “charities” (and, in *Linde*, the same attacks), but did not articulate any requirement that these HAMAS-controlled institutions *themselves* specifically participated in the attacks at issue. In *Boim III*, the Seventh Circuit held *en banc* that “if you give money to an organization that you know to be engaged in terrorism, the fact that you earmark it for the organization’s non-terrorist activities does not get you off the liability hook,” both because money is fungible and because “Hamas’s social welfare activities reinforce its terrorist activities.” 549 F.3d at 698. *See also Weiss*, 278 F. Supp. 3d at 643 (same).

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Finally, BLOM's reliance on *Siegel* and *Crosby* is again misplaced. The Second Circuit first addressed allegations against al-Rajhi Bank brought under § 2333(a) in *In re Terrorist Attacks on September 11, 2011* (“*Al Rajhi*”), 714 F.3d 118, 124 (2d Cir. 2013) (allegations that bank maintained accounts for an Al Qaeda fundraising organization (later designated an SDGT) insufficient to plead proximate cause where organization itself was not alleged to be an alter ego of Al Qaeda and complaint did not contain any specific allegation that defendant's account for organization were used to transmit funds to Al Qaeda). In *Siegel*, the plaintiffs pled a causal relationship at least one *further* step removed from the allegations in *Al Rajhi*, seeking to hold one of Al Rajhi's U.S. correspondent banks (HBUS) liable under the ATA for negligently maintaining an account for Al Rajhi Bank itself on the theory that Al Rajhi had been credibly accused of supporting terrorist organizations and, nevertheless, HBUS provided it with correspondent banking services. Setting aside the fact that the ATA does not recognize claims predicated on negligence, *Siegel's* allegations stand in stark contrast to those set forth in the Complaint here, which explicitly alleges that BLOM knowingly transferred funds from HAMAS fundraisers to its own customers (at least one of which – Sanabil – is alleged to have been a HAMAS alter ego), which *exclusively* provided funding to HAMAS. Compl. ¶¶ 588, 623-24, 635-40.

BLOM's reliance on *Crosby* fares no better. As detailed above, in *Crosby*, the plaintiffs failed to allege that the terrorist who injured them had any pre-existing connection to ISIS, the terrorist group using defendant

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Twitter's social media platform. Here, the sufficiency of Plaintiffs' allegations setting forth HAMAS's responsibility for the Attacks is not disputed, the relationship between BLOM's customers and HAMAS has been detailed by the U.S. government in multiple official designations and criminal prosecutions, and bank records establishing BLOM's financial services on behalf of multiple HAMAS fundraising SDGTs are attached as exhibits to the Complaint.

II. BLOM'S CHALLENGES TO SPECIFIC PLAINTIFFS' STANDING ARE MERITLESS.

A. The Steinherz Family's Injuries Were a Reasonably Foreseeable Consequence of Their Attack.

BLOM contends that the claims of Plaintiffs Altea and Jonathan Steinherz and their family members should be dismissed, characterizing the circumstances of their physical and emotional injuries as "easily an intervening cause that broke the chain of causation." Def. Mem. at 26 (internal citations omitted).¹⁴ On the contrary, these injuries, suffered when Ms. Steinherz was nine months pregnant and attempting to flee with her husband from the site of the December 1, 2001 Ben Yehuda Street bombings (a coordinated double-suicide bombing and car bombing at a pedestrian mall), Compl. ¶¶ 413-14, 465-85, were "reasonably foreseeable consequence[s]" of the

14. In their May 3, 2019 letter to the Court requesting a pre-motion conference, BLOM referred to the circumstances of the Steinherzs' injuries as a "slip-and-fall." ECF No. 20 at 3.

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attack. *Halberstam*, 705 F.2d at 487. The facts in *Crosby*, cited by BLOM in support of its argument, prompted the court there to comment that “a butterfly in China is not the proximate cause of New York storms,” and hold that a public social media platform used by ISIS was not liable for an attack perpetrated by a lone gunman with no connection to ISIS that watched ISIS content. 921 F.3d 617, 623, 624-25. But the Steinherzs’ injuries were sustained while fleeing from nearby suicide bombings and a coordinated car bomb designed to target first responders.¹⁵ They and every other person in the vicinity, whether they were killed or injured in the blast or simply witnessed the carnage, were within the zone of intended and foreseeable harm. *See, e.g., In re Farm Family Casualty Ins. Co. (Trapani)*, 753 N.Y.S.2d 198, 200 (N.Y. App. Div. 2003) (permitting individual injured during a fall she incurred while running away from sparks raining down on her from a powerline that was struck by a vehicle to recover from the vehicle owner’s motorist insurance policy). Not only were the three coordinated bombings not “so remote in either time or space from [Plaintiffs’] injuries,” *id.*, their very purpose was to sow fear and panic not only in bystanders in or near the blast zone but also in the wider public as well. Thus, the Steinherz family’s claims should not be dismissed.

15. BLOM states that the Steinherz plaintiffs “do not allege they were at the Ben Yehuda Street bomb site, but rather, at a ‘nearby’ restaurant.” Def. Mem. at 26. Ben Yehuda Street is an outdoor pedestrian mall. Victims situated at the “bomb sites” did not survive the blasts. The Steinherz family members were among the hundreds of patrons walking, shopping or dining in the targeted area.

*Appendix G***B. Plaintiff Matanya Nathansen Has Standing to Bring Claims on Behalf of His Murdered Three-Year-Old Daughter.**

As the Plaintiffs apprised this Court in their letter dated May 22, 2019, ECF No. 26, they are not voluntarily dismissing the claims of Plaintiff Matanya Nathansen, the father of Tehilla Nathansen, a three-year old U.S. citizen murdered in a suicide bombing on August 19, 2003 while sitting on her mother's lap aboard a bus. Compl. ¶¶ 76-77, 132-39. Mr. Nathansen indisputably has standing to bring an action under § 2333(a). BLOM therefore appears to be challenging his right to pursue a higher measure of damages predicated on the totality of the circumstances of the attack, which include his own physical injuries and the serious injuries sustained by his wife and surviving daughters. In reviewing solatium claims in Foreign Sovereign Immunity Act ("FSIA") Terrorism Exception cases, courts have taken a holistic approach:

Solatium, as an award for "injury to feelings," is difficult to articulate in mathematical or numerical terms. A court's job in a solatium case is to account for various facts and circumstances, and to use those factors to arrive at an appropriate numerical expression of total pain and grief—encapsulated in the solatium award.

Oveissi v. Islamic Republic of Iran, 768 F. Supp. 2d 16, 25 (D.D.C. 2011) (citations omitted). In *Thuneibat v. Syrian Arab Republic*, 167 F. Supp. 3d 22, 51-52 (D.D.C.

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2016), one of the family member plaintiffs recovered for witnessing the *aftermath* of an attack, not the attack itself: “She was not in the ballroom where the suicide bomber detonated his bomb belt, but stood right outside where she witnessed her uncle die in front of her,” and “she saw her own daughter carried out of the ballroom into an ambulance and multiple dead and injured bodies of many of her relatives in attendance at the family wedding.” *Id.* In sum, whatever basis BLOM may assert to later seek to exclude certain evidence at trial, its objections at the motion to dismiss stage to the Complaint’s description of Mr. Nathansen’s injuries are misplaced.

CONCLUSION

For the reasons set forth herein, BLOM Bank’s motion to dismiss should be denied in its entirety.

Dated: July 8, 2019
Hackensack, NJ

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**APPENDIX H — REPLY MEMORANDUM OF
LAW IN FURTHER SUPPORT OF MOTION TO
DISMISS, DATED JULY 30, 2019**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

No. 1:19-cv-00008-KAM-SMG

MICHAL HONICKMAN, *et al.*,

Plaintiffs,

– against –

BLOM BANK SAL,

Defendant.

July 30, 2019

**REPLY MEMORANDUM IN
FURTHER SUPPORT OF DEFENDANT'S
MOTION TO DISMISS THE COMPLAINT**

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[TABLES INTENTIONALLY OMITTED]

Plaintiffs’ response to BLOM’s motion to dismiss (“Pls.’ Br.”) confirms two critical deficiencies in their Complaint: it does not plausibly allege that BLOM was generally aware that it was playing a role in any violent or life-endangering activities; and it does not plausibly allege that BLOM knowingly provided substantial assistance to anyone connected to the Attacks in this case.¹ As explained in BLOM’s opening brief, the plain text of JASTA and the Second Circuit’s decision in *Linde v. Arab Bank, PLC*, 882 F.3d 314 (2d Cir. 2018) preclude Plaintiffs’ claims. And Plaintiffs’ response to BLOM’s motion does not remotely suggest otherwise. Instead, they invite this Court to apply a *mens rea* standard that the Second Circuit has explicitly *rejected*, rely on misleading snippets from pre-JASTA precedents, and complain that recent decisions supporting BLOM’s motion are “erroneous.” Pls.’ Br. at 17. Their

1. Capitalized terms not defined here are defined in BLOM’s opening brief (“BLOM Br.”).

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baseless plea for discovery does not cure these defects. Their Complaint should be dismissed with prejudice.

I. The Complaint Fails to Plausibly Satisfy JASTA’s *Mens Rea* Requirement.

Plaintiffs have failed to plausibly allege facts that would satisfy JASTA’s *mens rea* standard. To state a claim under JASTA, Plaintiffs must plausibly allege that “in providing [financial] services, the bank was ‘generally aware’ that it was thereby playing a ‘role’ in Hamas’s violent or life-endangering activities.” *Linde*, 882 F.3d at 329–30; *see also id.* at 330 (defendant must be generally aware it was “playing a role in violent or life-endangering acts whose apparent intent was to intimidate or coerce civilians or to affect a government”). But Plaintiffs’ allegations could not plausibly support a finding that BLOM knew it was playing a role in *any* violent or life-endangering activities. At most, Plaintiffs urge that BLOM had “awareness of its role in HAMAS’s fundraising activities,” without alleging that BLOM’s alleged customers committed any violent or life-threatening acts or that BLOM was aware of such acts. Pls.’ Br. at 18. To the contrary, Plaintiffs’ opposition concedes that the Alleged Account Holders were at most part of Hamas’ “*da’wa*” civil structure. Pls.’ Br. at 3.

Instead of complying with the legal standard articulated by the Second Circuit in *Linde*, Plaintiffs misstate it. Their brief repeatedly omits *Linde*’s references to “violent or life-endangering activities,” even when quoting the immediately surrounding language. *E.g.*, Pls.’ Br. at 10–13, 17. Then, relying on cases decided before

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JASTA was enacted, Plaintiffs insist that the statute demands only that a defendant participate in activities carrying a foreseeable risk that terrorist activities might result. *E.g.*, Pls.' Br. at 11 (citing *Weiss v. Nat'l Westminster Bank PLC*, 768 F.3d 202, 208–09 (2d Cir. 2014); *Strauss v. Credit Lyonnais, S.A.*, 925 F. Supp. 2d 414, 432 (E.D.N.Y. 2013)). As a result, Plaintiffs incorrectly seek to replace JASTA's *mens rea* requirement with the lower standard required for material support claims. Pls.' Br. at 11.

But *Linde* forecloses that sleight of hand. The *Linde* plaintiffs had brought primary liability claims under the ATA, which required them to prove that they were injured “by reason of an act of international terrorism.” *Linde*, 882 F.3d at 320; 18 U.S.C. § 2333(a). An act qualifies as “international terrorism” only if it “involve[s] violence or endanger[s] human life.” *Linde*, 882 F.3d at 326. The *Linde* trial court incorrectly instructed the jury that if the defendant had provided material support to an FTO, that finding “necessarily proved the bank’s commission of an act of international terrorism.” *Id.* at 325. On appeal, the Second Circuit held that this instruction was wrong because the “provision of material support to a terrorist organization does not invariably equate to an act of international terrorism.” *Id.* at 326.

In doing so, the Second Circuit rejected the theory proffered by Plaintiffs here. The *Linde* plaintiffs, represented by the same counsel, had argued that the incorrect instruction was harmless because the “post-trial enactment of JASTA . . . eliminate[d] the need to prove that Arab Bank’s own actions involved violence or danger

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and appeared intended to intimidate or coerce civilians or to influence or affect governments.” *Id.* at 328. The Second Circuit disagreed, holding instead that to be liable under JASTA, a defendant must be “generally aware” it was “playing a ‘role’ in [an FTO’s] violent or life endangering activities.” *Id.* at 329.²

The “two recent JASTA decisions . . . related to terror financing” cited by Plaintiffs confirm that the “violent or life endangering activities” requirement is central to *Linde*’s holding. Pls.’ Br. at 10. In *Lelchhook v. Islamic Republic of Iran*, No. 16-cv-07078, 2019 WL 2647998, at *4 (E.D.N.Y. June 27, 2019), the Court held that JASTA’s *mens rea* standard requires that a defendant bank be “‘generally aware’ that it was playing a ‘role’ in Hezbollah’s violent or life-endangering activities.” And, in *Miller v. Arab Bank, PLC*, 372 F. Supp. 3d 33, 47 (E.D.N.Y. 2019), the Court held that to satisfy JASTA, a defendant “must have been ‘generally aware that it was thereby playing a role in Hamas’s violent or life-endangering activities.’” As explained in BLOM’s opening brief, even accepting

2. Indeed, the court held that the *Linde* jury’s finding that Arab Bank “provided material support in the form of financial services to *what it knew* was a designated terrorist organization” was legally insufficient to establish a JASTA aiding and abetting claim. *Id.* (emphasis added). As detailed in BLOM’s opening brief, Plaintiffs have not plausibly alleged that BLOM knew it was providing financial services to a designated terrorist organization. BLOM Br. at 13–20. Thus, as acknowledged by the fact that they have not alleged a primary violation of the ATA against BLOM, Plaintiffs’ allegations here do not even rise to the level of establishing material support.

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Plaintiffs' allegations as true, they cannot support a plausible inference that BLOM played a role in Hamas's *violent or life-endangering activities*, let alone that BLOM *knew* it was playing such a role. BLOM Br. at 16–19.

Nor can Plaintiffs' invocation of JASTA's stated "purpose" in its legislative history cure the deficiencies in their Complaint. Pls.' Br. at 8–9. Rather, the legislative evolution of JASTA supports the importance of the statute's *mens rea* standard. JASTA's statement of purpose was originally drafted in 2009. S. 2390, 111th Cong. § 2 (as introduced in Senate, Dec. 23, 2009). It was not materially modified in the seven years before the statute was enacted in 2016. By contrast, Congressional debate during that period resulted in significant tightening of the *mens rea* element. In 2009, JASTA's proposed *mens rea* element required only that a "person or entity . . . aided, abetted, *provided material support* or resources . . . to . . . the person or persons who committed such an act of international terrorism." S. 2390, 111th Cong. § 5(d) (emphasis added). A later version of the bill struck the "material support" language. S. 1535, 113th Cong. § 4 (as introduced in Senate, Sept. 19, 2013). And finally, to get the votes needed to pass JASTA in the House, the Senate heightened the *mens rea* standard for aiding and abetting by requiring that a Defendant must "knowingly provid[e] substantial assistance."³ Plaintiffs cannot rely

3. See Statement of Sen. Cornyn, Exec. Business Meeting, S. Comm. on the Judiciary, Jan. 28, 2016 (explaining that an amendment modifying the aiding and abetting standard was made "in order to gain consensus for [the] legislation") *video available at* <https://bit.ly/2XVyJW1> (beginning at 50:55); S. 2040, 114th

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upon general “purpose” language to undermine JASTA’s explicit *mens rea* requirement—especially when that requirement was added in order to obtain the votes needed to enact the statute.

II. The Complaint Fails to Allege that BLOM Knowingly Provided Substantial Assistance Either to HAMAS or to the Individual Attackers.

Plaintiffs’ allegations fail to create a plausible inference that Hamas was a BLOM customer or that BLOM provided any assistance to any person or entity directly involved with the Attacks. In fact, Plaintiffs’ insistence that the allegations in this case resemble the facts in *Halberstam v. Welch*, 705 F.2d 472 (D.C. Cir. 1983), reveals only how far short the Complaint falls from alleging the elements of knowledge and substantial assistance.

Cong., Manager’s Amendment SIL16008(adopted by S. Comm. on the Judiciary, Jan. 28, 2016), Redline *available at* <https://bit.ly/2YaHt62>; *compare* S. 2040, 114th Cong. § 4 (as introduced in Senate, Sept. 16, 2015) (“liability may be asserted as to any person who aided, abetted, or conspired with the person who committed such an act of international terrorism”), *with* S. 2040, 114th Cong. § 4 (as reported by S. Comm. on the Judiciary, Feb. 3, 2016) (“liability may be asserted as to any person who aids and abets, *by knowingly providing substantial assistance. . . .*”) (emphasis added); S. 2040, 114th Cong. § 4 (as enacted on Sept. 12, 2016) (same).

*Appendix H***A. The Complaint Fails to Establish a Direct Link Between BLOM and Hamas.**

To establish an aiding and abetting claim, Plaintiffs must establish that BLOM knowingly aided and abetted the “person” who committed the Attacks, which in this case means either Hamas or the individual Attackers.⁴ 18 U.S.C. § 2333(d)(2); *Halberstam*, 705 F.2d at 489. As explained in BLOM’s opening brief, Plaintiffs have not alleged facts that plausibly come close to satisfying that requirement. Despite Plaintiffs’ conclusory labeling of BLOM as “HAMAS’s banker,” Pls.’ Br. at 1, Plaintiffs identify only three Alleged Account Holders, none of which was Hamas or any other FTO. Compl. ¶¶ 588, 623, 640.

Plaintiffs have not plausibly alleged that the Alleged Account Holders were agents or aliases of Hamas, let alone that BLOM knew that they were during the relevant time period. To establish an agency or alias relationship, plaintiffs must allege that one organization “so dominates and controls” a separate juridical entity “that the latter can no longer be considered meaningfully independent from the former.” *Weiss v. Nat’l Westminster Bank PLC*, 453 F. Supp. 2d 609, 623 (E.D.N.Y. 2006). In making that determination, courts consider, among other things, “whether the organizations share leadership, whether they comingle finances, publications, offices and

4. Plaintiffs erect a strawman when they contend that BLOM is arguing for a “traceability” requirement. Pls.’ Br. at 26. BLOM has done no such thing. Under JASTA, Plaintiffs must show that BLOM aided and abetted the “person” who carried out the Attacks, which the Complaint does not do with respect to either Hamas or the Attackers.

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personnel, and whether one operates as a division of the other.” *Id.* “Merely providing financial support” or even “supporting the terrorist objective of an FTO” will “not suffice to show that an organization is so dominated and controlled so as to have lost its independent identity.” *Id.* Rather, Plaintiffs must plausibly allege that the supposed alias was either “controlled by” or “run on behalf of” the terrorist organization. *Id.* Moreover, because Plaintiffs are required to show that BLOM “knowingly” provided substantial assistance, Plaintiffs must also plausibly allege that BLOM *knew of* the Alleged Account Holders’ purported relationship with Hamas. *See Linde*, 882 F.3d at 329.

Plaintiffs’ allegations fall far short of that standard. The Complaint does not allege that *any* of the Alleged Account Holders comingled finances, publications, offices, or personnel with Hamas during the relevant time period. Plaintiffs’ barebones allegations that BLOM knew of shared leadership between Hamas and Sanabil or Union of Good depends upon (i) their SDGT designations, which did not occur until *after* all of the Attacks in this case, (ii) the designation of Union of Good by Israel, a country in which BLOM does not operate, or (iii) the conclusory assertion that, at some unspecified time, it was supposedly “well-known” that certain Sanabil board members were also Hamas leaders. Pls.’ Br. at 18–19; Compl. ¶¶ 590–91, 634–35.

Plaintiffs’ efforts to conflate the Alleged Account Holders with Hamas by pointing to transfers from Non-Account Holders designated as SDGTs is equally unavailing. Pls.’ Br. at 18–21. Those designations were

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either made after the last of the Attacks, or (with respect to HLF) no transfers are alleged to have been made after the designation. BLOM Br. at 18–19. And Plaintiffs’ reliance upon a single transfer to Alleged Account Holder Sanabil from Non-Account Holder Al-Aqsa one day after Al-Aqsa was designated as an SDGT, Pls.’ Br. at 18, 20, ignores that the alleged transfer (i) originated from a Swedish bank, (ii) was cleared through Bank of New York, and (iii) was earmarked for “HELP CONCERNING ORPHAN CHILDREN.” Compl. Ex. D; Brown Decl. Ex. 1. Plaintiffs proffer no facts explaining why BLOM should have assigned a nefarious meaning to that statement, especially since they concede that Sanabil *did* distribute cash to orphans in refugee camps in Lebanon. Pls.’ Br. at 20–21; Compl. ¶ 611. None of these allegations, taken alone or collectively, can show that BLOM knowingly provided substantial assistance to Hamas’s violent activities before the Attacks.

B. The Facts in *Halberstam* Are Not Analogous to Plaintiffs’ Allegations.

Plaintiffs’ efforts to analogize their case to the facts in *Halberstam* prove only how different the two cases are. In *Halberstam*, the court concluded Linda Hamilton knowingly provided substantial assistance to her live-in romantic partner’s burglary enterprise. 705 F.2d at 472. The finding that Hamilton possessed the required knowledge of the criminal enterprise was based on her knowledge of her partner’s “pattern of unaccompanied evening jaunts over five years, his boxes of booty” kept in their shared basement, “the smelting of gold and silver” in their shared home, “the sudden influx of great wealth”

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from which Hamilton directly benefited, “the filtering of all transactions” related to the sale of stolen goods “through Hamilton *except* the payout for [the acquisition of] goods,” and “Hamilton’s collusive and unsubstantiated treatment of income and deductions on her tax forms.” *Id.* at 486 (emphasis in original). Based on those facts, the court concluded that Hamilton provided “invaluable service to the enterprise as banker, bookkeeper, recordkeeper, and secretary,” and that “[s]he performed these services in an unusual way under unusual circumstances for a long period of time.” *Id.* at 487.

Plaintiffs’ allegations are nothing like the facts of *Halberstam*. Pls.’ Br. 21–25. For example, Plaintiffs try to compare Hamilton’s provision of assistance “in an unusual way under unusual circumstances” to BLOM’s routine processing of incoming bank transfers to the Alleged Account Holders (who were not then designated as SDGTs). Pls.’ Br. at 22. But all the Complaint shows is that BLOM processed routine financial transactions from one organization it had no reason to believe was affiliated with Hamas to another organization it had no reason to believe was affiliated with Hamas. Plaintiffs’ allegations are not like the unusual assistance allegations in *Miller*, in which the court found that Arab Bank was administering an “Insurance Scheme for individuals whose cause of death included ‘Martyr Operation.’” 372 F. Supp. 3d at 47. Elsewhere, Plaintiffs claim that BLOM’s purported provision of financial services to the Alleged Account Holders was as “integral” to HAMAS’s terrorist operations as Hamilton’s assistance to the burglary enterprise. Pls.’ Br. at 24. But BLOM’s degree of assistance—processing wire transfers to organizations

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it had no reason to think were involved in violent acts of terrorism (and which were not FTOs)—does not remotely approach the type of assistance provided by Hamilton in *Halberstam*.

III. The Complaint's JASTA Claim Is Insufficient as a Matter of Law.

To survive a motion to dismiss, Plaintiffs' Complaint must contain allegations sufficient to “nudge[] their claims across the line from conceivable to plausible,” meaning “allegations plausibly suggesting (not merely consistent with)” satisfaction of JASTA's elements. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007). Faced with a mountain of law showing that their Complaint falls short of this standard, Plaintiffs attempt to distinguish those cases by urging that they were decided with the benefit of a full record or by claiming that fact disputes are for a jury to weigh. At one point, Plaintiffs even go so far as to imply that a court may never resolve the substantial assistance inquiry as a matter of law, relying on a deceptively incomplete quote from *Linde*, from which Plaintiffs omit the Court's explanation that the element could not be resolved “from the record in th[at] case.” Pls.' Br. at 23; *Linde*, 882 F.3d at 328.

Plaintiffs' misdirection is transparent. Whether a case was decided with the benefit of a full trial record does not alter the rule of law that emerges from the case. And, at this stage, there are no disputes of fact. As it must, BLOM has “assum[ed] that all the allegations in the complaint are true (even if doubtful in fact).” *Twombly*, 550 U.S. at 555. If anything, this procedural posture should *help* Plaintiffs,

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as BLOM cannot introduce evidence to rebut their allegations. Nonetheless, Plaintiffs impermissibly ask the Court to overlook their inadequate allegations and let them fish for support in discovery. For example, Plaintiffs ask the Court to forgive their failure to allege any connection between BLOM and Union of Good—other than an account number untethered to transactions or time—because they have not yet had the “benefit of discovery.” Pls.’ Br. at 8 n.5. But that request rings particularly hollow given the Complaint’s lists of transactions with the other Alleged Account Holders, which presumably were drawn from the discovery Plaintiffs have already obtained in their many other ATA actions.

In reality, courts have not hesitated to dismiss JASTA claims where, as here, plaintiffs have not met their burden to establish a plausible theory of liability. *See, e.g., O’Sullivan v. Deutsche Bank AG*, No. 17-cv-8709, 2019 WL 1409446, at * 10 (S.D.N.Y. Mar. 28, 2019) (granting motion to dismiss JASTA claims); *Siegel v. HSBC Bank USA, N.A.*, No. 17-cv-6593, 2018 WL 3611967, at **4–5 (S.D.N.Y. July 27), *appeal filed*, No. 18-2540 (2d Cir. Aug. 27, 2018) (same); *see Weiss v. Nat’l Westminster Bank, PLC*, 381 F. Supp. 3d 223, 238–39 (E.D.N.Y.) (concluding that amending complaint to add JASTA claims would be futile based on summary judgment standard), *appeal filed sub nom., Appelbaum v. Nat’l Westminster Bank, PLC*, No. 19-1159 (2d Cir. Apr. 16, 2019); *Strauss v. Credit Lyonnais, S.A.*, 379 F. Supp. 3d 148, 162 (E.D.N.Y.) (same), *appeal filed*, No. 19-1285 (2d Cir. Apr. 26, 2019).

Moreover, Plaintiffs’ Complaint stands in stark contrast to the cases declining to dismiss JASTA

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claims. For instance, in *Miller v. Arab Bank, PLC*, the plaintiffs alleged that Arab Bank processed payments as part of an insurance scheme for families of “martyrs.” 372 F. Supp. 3d at 47–48. And in *Lelchook v. Islamic Republic of Iran*, this Court entered a default judgment against an unrepresented defendant where the complaint specifically alleged that the financial accounts at issue were “controlled by Hezbollah.” 2019 WL 2647998 at ** 1, 6. No such allegations have been made in this case.

IV. Even Setting Aside the Complaint’s General Failure to Allege a JASTA Claim, Certain Individual Plaintiffs’ Claims Are Insufficient.

Nor has Plaintiffs’ brief undermined the shortcomings in the allegations of the Steinherz plaintiffs or Matanya Nathensen. Even if the Court were to credit Plaintiffs’ impermissible efforts to rely upon allegations not in the Complaint, Pls.’ Br. at 29 n.15, Plaintiffs contend that the Steinherzes’ injuries were sustained *after* the Attack, *after* they believed they were safe, *after* they were on their way home, and *because* they saw a “crazed-looking man” who is not alleged to have been an Attacker. Compl. ¶¶ 468–70. Plaintiffs provide no authority explaining how such facts can satisfy the proximate cause requirement, instead directing the Court to a case not involving an intervening actor or event, which occurred both physically and temporally close to the relevant accident. *In re Farm Family Cas. Ins. Co. (Trapani)*, 753 N.Y.S.2d 198, 200 (3d Dep’t 2003). With regard to Matanya Nathensen, because he is not a United States citizen, he has standing to bring a claim based only on the damages he sustained as a result of his citizen daughter’s tragic death and not other damages

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he may have sustained in the Attack. *See* Compl. ¶¶ 138–39 (describing Mr. Nathensen’s physical injuries); *see Miller*, 372 F. Supp. 3d at 41; *Morris v. Khadr*, 415 F. Supp. 2d 1323, 1337–38 (D. Utah 2006).

CONCLUSION

For the foregoing reasons and for those stated in BLOM’s opening memorandum of law, BLOM respectfully requests that the Court dismiss the Complaint with prejudice.

Dated: New York, New York
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