IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LISHAY LAVI, NOACH NEWMAN, ADIN GESS, MAYA PARIZER, NATALIE SANANDAJI, YONI DILLER, HAGAR ALMOG, DAVID BROMBERG, LIOR BAR OR, and ARIEL EIN-GAL, Plaintiffs, -against- UNRWA USA NATIONAL COMMITTEE, INC., Defendant.	Civil Case No. 24-cv-00312 (RGA)

DEFENDANT UNRWA USA NATIONAL COMMITTEE, INC.'s REPLY BRIEF IN SUPPORT OF ITS MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT PURSUANT TO FED. R. CIV. P. 12(b)(6)

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INTRODUCTION

Plaintiffs' opposition is a study in misdirection and distortion. They deflect from their continued failure to plead that UNRWA USA provided a solitary cent of aid to Hamas (let alone furthered the October 7 attacks) by claiming—falsely—that UNRWA USA somehow conceded the point. They persist in pursuing a frivolous money-laundering theory built on falsified premises. They pay lip service to *Twitter*'s requirement that UNRWA USA have "participated in" the October 7 attacks so as "to help make [those attacks] succeed," *Twitter v. Taamneh*, 598 U.S. 471, 496-97 (2023), but they have abandoned any pretense of satisfying that requirement. Instead, they claim that UNRWA USA was somehow indifferent to the possibility that its aid was benefiting Hamas. But not only do Plaintiffs fail to allege that Hamas derived *any* benefit from UNRWA USA's funds, their own pleading shows that UNRWA USA took diversion risks seriously and froze funding until its concerns were allayed. And even if one pretended away those admissions—as Plaintiffs do in opposition—their theory of culpability would fail as a matter of law, since "indifference" to the possibility that one's aid might benefit an FTO has never been deemed sufficient to state an aiding-and-abetting claim.

Plaintiffs distract from their failure to plead "knowing and substantial" assistance—the *sine qua non* of an aiding-and-abetting claim—with a windy and rambling discussion of general awareness. But they don't plead that UNRWA USA's humanitarian donations played any role in Hamas's terrorist activities, without which there is nothing to be generally aware *of*. They claim that, as a 501(c)(3), UNRWA USA was required to know more about UNRWA than the general public, but they fail to grapple with the fact that the United States—which had both the duty and capacity to conduct far more rigorous audits of UNRWA than UNRWA USA—found that

UNRWA was complying with onerous, antiterrorism benchmarks. Plaintiffs' only answer to these points is to recycle the same previously-rejected arguments made in their prior opposition.

Plaintiffs' conspiracy claim fares no better. Having failed to introduce any new facts in support of that already-dismissed claim, their opposition reads like a slapdash motion for reconsideration. But not only do they fail to defend what was pled, they argue themselves out of a claim by conceding that the object of the fictitious conspiracy wasn't the October 7 attacks at all, but the provision of material support to Hamas. Even if that were factually pled (which it isn't), that would not be enough under the ATA.

This summary barely scratches the surface of the FAC's defects—or Plaintiffs' counsel's recurring lapses in candor. Plaintiffs have flouted this Court's ruling by filing an FAC that leaves the Complaint's core defects unaddressed. They have compounded that problem by playing fast and loose with the facts. For these reasons, and the reasons described below, the FAC should be dismissed, with prejudice.

ARGUMENT

I. The FAC and Plaintiffs' Opposition Are Riddled With Misrepresentations

Plaintiffs' willingness to misrepresent the facts—including those contained in their own pleadings—is stunning. They continue to assert (at 11) that UNRWA failed to discipline a Hamas-affiliated union official in Lebanon, even though the FAC's source for that claim shows that UNRWA put the official on administrative leave. MTD Br. 12. They claim (at 16) that UNRWA USA "never paused funding to UNRWA, despite the U.S. Government doing so," even though the FAC itself acknowledges that UNRWA USA paused funding in the spring of 2024. FAC ¶ 229.

And they brazenly assert (at 5) that UNRWA USA "no longer disputes that its aid ultimately went to Hamas," when UNRWA USA's brief repeatedly flagged that very defect. MTD Br. 1, 4, 26, 31.

Plaintiffs also cling to their money-laundering theory even after its core premises were exposed as falsehoods. As a preliminary matter, the factual invalidity of the supposed money-laundering scheme is a moot point, since *UNRWA USA* isn't alleged to have known anything about it. Furthermore, their entire theory rests on a single premise: that dollars are unusable in Gaza. That premise supplies the only support (i) for the claim that UNRWA staff were "forced" to convert their salaries and (ii) for the inference that some unlawful motive lurked behind UNRWA's decision to pay its staff in dollars. But as Plaintiffs are well-aware, that premise is entirely false: dollars are not merely legal tender in Gaza, they are the *preferred* currency of savings because they retain their value. MTD Br. 15. Plaintiffs offer no substantive response to these facts. Their lone rejoinder—"[r]egardless, UNRWA pays its employees in the less popular currency," Opp. 15—dodges the point entirely. The dollar's comparative stability provides an obvious, legitimate explanation for UNRWA's choice to pay staff in that currency. And the audit report says that the dollar is the second-most widely *used*, not second-most desirable currency—a different concept altogether.[1] The notion that Gazan staff would pay fees to offload a universally accepted, stable currency in exchange for a more volatile alternative is not just implausible—it defies basic economics and common sense.

Plaintiffs then double down on their false claim that the 2018 audit report warned UNRWA that Hamas was benefiting from "leakage" on the currency exchange market. Their response to being called out on that distortion is, remarkably, to block-quote a passage that mentions neither

[1] Public buses are more widely used than limos, but few would call the former more "desirable" and fewer still would pay a premium to swap their limo for a bus ticket.

Hamas nor moneychangers, and which merely observes that "leakage" risks from *cash-benefit assistance* (not salary payments) are "perceived high"—not that they are in fact high. Opp. 15; MTD Br. 15. In other words, their answer to having falsely claimed that the audit report supports their theory is to quote a part of the audit report that in no way supports their theory.

II. The FAC Fails to State an ATA Aiding-and-Abetting Claim

A. The FAC Fails to Plead General Awareness

i. Failure to Allege UNRWA USA Played a "Role" in Hamas's Terrorist Activities

To establish general awareness, Plaintiffs must first plead that UNRWA USA played a "role" in Hamas's terrorist activities—otherwise there is nothing to be aware *of*. By definition, UNRWA USA cannot have played a "role" in those activities if none of its aid reached Hamas. Plaintiffs do not dispute these principles. Nor do they bother alleging that any of UNRWA USA's assistance—all of which was earmarked for humanitarian projects—flowed to Hamas. Instead, they pretend that this requirement does not apply to them.

Plaintiffs cite *Honickman*'s holding that a plaintiff needn't "also allege the FTO actually received the funds" if she "plausibly alleges the general awareness element." *Honickman v. BLOM Bank SAL*, 6 F.4th 487, 500 (2d Cir. 2021). But courts have uniformly held that, where the intermediary is legitimate, allegations of actual receipt are a *precondition* for alleging general awareness. MTD Br. 25 (citing cases). *Honickman*—which involved intermediaries whose sole purpose was funneling funds to FTOs, 6 F.4th at 491-93—did not implicate that rule, much less disturb the longstanding presumption that funds to legitimate entities are spent on lawful ends.

Plaintiffs cite no contrary authority and their attempts to distinguish UNRWA USA's cases fall flat. They repeatedly invoke *Jan v. People Media Project*, 783 F. Supp. 3d 1300 (W.D. Wash. 2025); *see* Opp. 23, 24, 34, but *Jan* involved direct salary payments to a Gaza-based employee

whom the defendant knew to be a Hamas spokesman holding an Israeli hostage. UNRWA USA, by contrast, is not alleged to have paid any UNRWA staff salaries, much less paid the salary of Hamas operatives it knew to be engaged in ongoing acts of terrorism. They attempt (at 21) to distinguish *Keren Kayemeth LeIsrael-Jewish Nat'l Fund v. Educ. For a Just Peace in the Middle E.*, 66 F.4th 1007 (D.C. Cir. 2023), on the grounds that the defendant there funneled money to a "host of different organizations" a "minority [of which] were infected by Hamas," while UNRWA USA exclusively funds UNRWA. That is a meaningless distinction: the operative presumption—that funds given to a legitimate grantee are spent on lawful ends—doesn't hinge on the breadth of the charity's grantee portfolio. Nor do Plaintiffs articulate any reason why that presumption wouldn't apply across the board to UNRWA's donors. They don't allege that a meaningful proportion of UNRWA's global operations—which encompass shelter, medical care, education, and other life-saving humanitarian services—furthers Hamas's "violent or life-endangering activities." *Linde v. Arab Bank, PLC*, 882 F.3d 314, 329 (2d Cir. 2018). Their strongest claim is that a small minority (12%) of UNRWA's workforce is affiliated with an FTO.[2] FAC ¶ 258. Even if that allegation were credited as true (which it cannot be),[3] it would mean that the vast majority

[2] Even that 12% must be put in context. As explained in the first motion to dismiss, D.I. 22 at 8, Hamas is also a political organization and the de facto governing authority that runs Gaza's ministries. The 12% thus includes bureaucrats, street sweepers, and paper-pushers, not just Hamas fighters.

[3] Plaintiffs rely on Israel's allegations to plead this claim; but the presumption of truth on a Rule 12(b)(6) motion has never been accorded to unproven, third-party accusations parroted in a complaint. *Siegel v. HSBC N. Am. Holdings, Inc.*, 933 F.3d 217, 224 (2d Cir. 2019) (public reports showing that intermediary was "believed by some to have links" to terrorism insufficient to establish general awareness); *see also Collins v. City of New York*, 923 F. Supp. 2d 462, 479 (E.D.N.Y. 2013) (plaintiff's reference to a "litany of other police-misconduct cases" insufficient to plausibly allege *Monell* liability because they involved "unproven allegations" rather "than evidence of misconduct"); *Xian Ming Wu v. City of New Bedford*, 2013 WL 4858473, at *2 (D. Mass. Sept. 11, 2013) (plaintiff cannot plead notice based on existence of other "unproven complaints"); *In re Nexus 6P Prods. Liab. Litig.*, 293 F. Supp. 3d 888, 909 (N.D. Cal. 2018)

of UNRWA employees—almost 90%—have no such affiliation. *See Obligations of Israel in relation to the Presence and Activities of the United Nations, Other International Organisations and Third States in and in relation to the Occupied Palestinian Territory*, Advisory Opinion, ¶ 118, 2025 I.C.J. ___ (Oct. 22, 2025) (finding that "Israel has not substantiated its allegations that a significant part of UNRWA employees "are members of Hamas . . . or other terrorist factions").[4]

Plaintiffs' treatment of *Bernhardt v. Islamic Republic of Iran and Owens v. BNP Paribas, S.A.*, 897 F.3d 266 (D.C. Cir. 2018), fully backfires. They argue that *Bernhardt* is distinguishable because Congress authorized the Treasury Department to issue licenses allowing dealings with state sponsors of terror. The same principle applies here: the Treasury Department has used its congressionally delegated authority, 50 U.S.C. § 1704, to issue general licenses allowing both UN agencies and NGOs to provide humanitarian aid in Gaza, even where that aid incidentally benefits an FTO. *See* 31 C.F.R. § 594.520, 594.521, 597.516, 597.517, 594.519, 597.515.[5] Plaintiffs' invocation of Congress's finding that "'money earmarked for peaceful activities donated directly to a terrorist organization furthers the organization's violent ends enough to justify a prohibition on all financial support for such an organization,'" Opp. 22 (quoting *Bernhardt*, 897 F.3d at 276), is also wholly misplaced since UNRWA USA isn't alleged to have "donated directly" to Hamas.[6]

(customer complaints "merely establish the fact that some consumers were complaining," not that the defendant had actual knowledge of defect).

[4] *Available at* https://www.icj-cij.org/sites/default/files/case-related/196/196-20251022-adv-01-00-en.pdf.

[5] *See also* OFAC, "Guidance for the Provision of Humanitarian Assistance to the Palestinian People" (Nov. 14, 2023), *available at* https://perma.cc/7CPF-MP76.

[6] The finding is irrelevant for a second reason: Congress was explaining why prosecutors bringing a material support charge under 18 U.S.C. § 2339B needn't establish that the support aided the FTO's terrorist operations. General awareness under the ATA's civil aiding-and-abetting provision, however, always requires that showing. *See Ofisi v. BNP Paribas, S.A.*, 77 F.4th 667, 675 (D.C. Cir. 2023) ("Aiding and abetting requires more than the provision of material support to a terrorist organization."); *accord Linde*, 882 F.3d at 329 (2d Cir. 2018); *Siegel v. HSBC N. Am. Holdings, Inc.*, 933 F.3d 217, 224 (2d Cir. 2019).

Unable to defend their claim, Plaintiffs swing at straw men. They insist (at 7) they cannot be expected "to detail at the pleading stage the amount and entire life cycle of every penny in order to plead intermediary liability." No one said they did—only that they must plausibly allege that at least some portion of UNRWA USA's funds were used to further Hamas's terrorist activities. Then, effectively conceding this is a fishing expedition, they complain they cannot allege facts supporting the inference that Hamas benefited from UNRWA USA's funding without discovery. But Plaintiffs are not entitled to discovery to cure a deficient pleading. *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009) (Rule 8 "does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions").

Even entertaining the counterfactual that UNRWA USA's aid reached Hamas, Plaintiffs' claim would still fail because they never allege that any such expenditures played a role in Hamas's terrorist activities in a manner that foreseeably led to October 7. They observe that UNRWA met with FTO officials, but they never connect those meetings to UNRWA's external funding, nor do they allege that those meetings contributed to the FTO's terrorist activities. They also have no answer to the fact that (i) these meetings took place in the open; (ii) they were entirely legal under U.S. sanctions law; and (iii) the United States knew about them, yet continued funding UNRWA at all times relevant to Plaintiffs' claims. MTD Br. 13-14, n.16. They assert that staff payments foreseeably led to October 7, but they never explain how: they don't allege that UNRWA knew that *any* staff planned to participate in the attacks (let alone their identities), nor do they contend with the fact that UNRWA immediately terminated the accused participants. They claim UNRWA built facilities that militants tunneled beneath or hid weapons within, but they ignore the FAC's concessions that UNRWA investigated, exposed, and—critically—used its resources to thwart these acts. These concessions are fatal: not only do they invert Plaintiffs' narrative that Hamas and

UNRWA worked "hand-in-hand," they make it at least as plausible that financial contributions to UNRWA would have played a role in *undermining* Hamas's terrorist operations.

ii. Failure to Allege Awareness Prior to October 7

Even if the Court overlooked all the aforementioned defects in the FAC, the claim would still fail because Plaintiffs cannot allege awareness before the October 7 attacks. As explained, a vast majority of the allegations of Hamas infiltration only came to light after the attacks, and this Court has already held that the *post*-October 7 revelations cannot be used to establish general awareness. August 8 Memorandum Opinion ("Opinion") 7-8 (D.I. 50); MTD Br. 28-29.

Plaintiffs' principal answer—that UNRWA USA should have known about Hamas's infiltration because UNRWA and UNRWA USA are "one and the same," Opp. 7-8—is asinine. To begin, the FAC doesn't allege that the two entities are actually the same, but that their shared branding and messaging creates "the perception" of sameness. FAC ¶ 56. In *reality*, UNRWA is an international humanitarian agency, operating under the auspices of the UN General Assembly, with 13,000 employees in Gaza alone; UNRWA USA is a US-based private charity, with no international presence, whose gifts accounted for less than a third of 1% of UNRWA's operating budget. MTD Br. 32, n.8; First MTD Reply 3, n.3.

Plaintiffs also make a series of claims about UNRWA USA's due diligence obligations as a 501(c)(3), all of which are either wrong, irrelevant, or both. Their claim (at 8) that UNRWA USA was "legally required to . . . conduct diligence on Hamas to ensure funds are used only for legitimate purposes" is pure fiction: UNRWA USA is not alleged to have given a cent to Hamas, nor is there any law requiring an NGO to audit FTOs that might siphon a lawful, charitable contribution. They vaguely gesture at UNRWA USA's duties under various IRS and Department of Treasury regulations, but they don't spell out those duties, don't cite any laws requiring an NGO

to field audit its grantees' operations (because none exist), don't allege that UNRWA USA failed to comply with its duties under these regulations, and don't allege that any amount of due diligence would have uncovered non-public information about UNRWA's operations.

They falsely claim that "***nobody in the world has a greater duty to know more*** about the way UNRWA operates than UNRWA USA" because it is the largest private donor to UNRWA. Opp. 20 (bold and italics in original). No amount of emphasis can make that contrivance true. To start, UNRWA has dozens of private donors, including Save the Children and the World Diabetes Foundation, D.I. 64-26, and Plaintiffs offer zero support for the proposition that a charity's due diligence obligation is linked to the size of its grantee portfolio. Second, the U.S. Government had vastly greater due diligence obligations and auditing capacity over UNRWA's operations. By law, U.S. funds could not be released without a GAO certification that UNRWA satisfied a host of antiterrorism conditions; and the UNRWA-US Framework Agreement created elaborate monitoring mechanisms that allowed the State Department to "monitor[] UNRWA on an ongoing basis in a number of ways, including by actively participating in" meetings with UNRWA staff, "analyzing UNRWA's regular reports and updates," and "undertaking field visits." D.I. 64-32 at 4; MTD Br. 16-17. No law imposed comparable duties on—or granted comparable tools to—UNRWA USA.

The U.S. Government's repeated certifications that UNRWA met those antiterrorism benchmarks independently defeat Plaintiffs' claim. As this Court has already recognized, UNRWA USA cannot plausibly be charged with knowledge of aiding Hamas when the United States—which contributed far more and exercised far greater oversight—found UNRWA in compliance. Opinion 11-12. Plaintiffs have no real answer to this inconvenient fact, other than to recycle the meritless arguments they made in the prior motion to dismiss practice. They again fault UNRWA

USA for not filing an "affidavit" attesting that it tracked GAO certifications, but their own pleadings render that unnecessary. The FAC alleges UNRWA USA's awareness of the UN Watch reports that reference the GAO process, FAC ¶ 226, and the press release cited in the FAC confirms UNRWA USA's awareness that UNRWA was required to vet staff and share staff lists with Israel. MTD Br. 5. The documents incorporated in the FAC thus confirm that UNRWA USA knew that UNRWA was already subject to intense U.S. scrutiny. Plaintiffs argue (at 18) that reliance on those certifications was improper because the United States is exempted from the ATA. That argument (which this Court has already rejected, Opinion 12, n.6) makes no sense. The Government scrutinized UNRWA not because it feared ATA liability, but because Section 301(c) and federal appropriations law mandated such scrutiny. And the Government's immunity doesn't change the fact that UNRWA USA couldn't have suspected its contributions were aiding terrorism when the Government vouched for UNRWA's compliance with antiterrorism safeguards that far exceeded the ATA requirements. Nor is there merit to Plaintiffs' claim (at 19) that the Executive "preserves discretion" to fund UNRWA "without regard for antiterrorism financing laws." The Executive had no authority to defy the conditions Congress attached to UNRWA funding.

Plaintiffs' final argument—that if UNRWA USA took its cues from U.S. Government funding decisions before October 7, it should have frozen its own contributions when the U.S. Government did the same in January 2024—is clever by half. The ATA requires general awareness *before* the attack; UNRWA USA's funding practices months later, after Gaza descended into a full-blown humanitarian crisis, are legally irrelevant.[7]

[7] UNRWA USA has also never claimed to blindly follow US funding practices. As set forth in the motion to dismiss, its decision to resume its donations to UNRWA coincided with decisions by every major US ally (save Israel) to do the same, as well as statements by the Biden Administration calling for more support for UNRWA's operations. MTD Br. 6, 19-21.

B. The FAC Fails to Plead "Knowing and Substantial" Assistance to the October 7 Attacks

To state a claim, Plaintiffs must plausibly allege that UNRWA USA "consciously and culpably participated" in the October 7 attacks so as "to help make [those attacks] succeed." *Twitter*, 598 U.S. at 496-97. Plaintiffs come nowhere close to satisfying any dimension of this test.

First, Plaintiffs don't allege that UNRWA USA "participated" in the attacks in any sense of the word. Again, they don't allege that a single cent of UNRWA USA's funds was spent on anything other than humanitarian projects like orphan support or clean drinking water. MTD Br. 4. Plaintiffs don't claim that such outlays "help[e]d [Hamas] to complete [the October 7 attacks'] *commission*," *Twitter*, 598 U.S. at 501 (emphasis in original), nor do they articulate any nexus—attenuated or otherwise—between UNRWA USA's assistance and those attacks. They assert *ipse dixit* (at 27) that giving millions of dollars to an entity that employs terrorists satisfies *Twitter*'s "concrete nexus" requirement. But they conspicuously fail to allege that UNRWA USA's contributions went to pay the salaries of anyone who participated in October 7, or otherwise "contributed towards [the] success of" those attacks. *United States v. Delgado*, 972 F.3d 63, 67 (2d Cir. 2020).

Plaintiffs' argument that a "close nexus" between the aid and the October 7 attack isn't required because UNRWA USA's assistance to UNRWA was "systematic" fails for the same reason. Opp. 27-28 (citing *Halberstam*, 705 F.2d at 487 and *Twitter,* 598 U.S. at 496). *Twitter* held that the "close nexus" requirement may be relaxed where a defendant "systemically and pervasively assisted" the *FTO* in *its* "illicit enterprise." *Twitter*, 598 U.S. at 473, 501. Plaintiffs, however, don't allege any assistance whatsoever to Hamas, much less the sort of systematic and pervasive assistance that *Twitter* contemplated. *See* Opinion 13-14 (rejecting same argument). And this case could hardly be further removed from *Halberstam*, where the defendant purposefully and

directly provided a burglar with bookkeeping services that were "indisputably important" and "essential" to the burglar's ability to launder the proceeds of his thefts. *Halberstam v. Welch*, 705 F.2d 472, 488 (D.C. Cir. 1983).

Second, Plaintiffs make no effort to show how they satisfy *Twitter*'s intent requirement. They irrelevantly recite the general awareness standard (at 25-26), but as *Twitter* explained, "knowing and substantial assistance" is a separate element of aiding and abetting that requires an additional scienter showing—namely, that the defendant provided aid "with the intent of facilitating" the attack that injured plaintiffs. 598 U.S. at 490, 503-04. Like the Complaint, the FAC doesn't allege any facts showing an intent to facilitate the October 7 attacks. Plaintiffs' actual theory—that UNRWA USA was merely indifferent to the ties between UNRWA and Hamas—is legally insufficient and factually bankrupt. Courts have uniformly held that indifference is insufficient to state a claim under the ATA. *See* MTD Br. 23 (collecting cases); *see also Weiss v. Nat'l Westminster Bank PLC*, 381 F. Supp. 3d 223, 239 (E.D.N.Y. 2019) ("[M]erely provid[ing] services to [a terrorist-affiliated charity] for ostensibly charitable purposes [] does not satisfy the intent required by [the ATA for a terrorist act]"). And even that legally deficient theory is unsupported by the FAC's factual allegations. Plaintiffs ask this Court to assume indifference from the fact that UNRWA USA continued funding UNRWA after the agency was accused of being compromised by Hamas. But Plaintiffs ignore the obvious alternative explanation: that UNRWA USA increased its support to further UNRWA's humanitarian mission. *George v. Rehiel*, 738 F.3d 562, 586 (3d Cir. 2013) ("courts may infer from the factual allegations in the complaint obvious alternative explanations which suggest lawful conduct rather than the unlawful conduct the plaintiff would ask the court to infer"). Plaintiffs also have no answer to the fact that their own allegations—*i.e.*, UNRWA USA's funding freeze and its press release condemning October 7—

undercut the inference that UNRWA USA was apathetic to the possibility that Hamas might derive a benefit from its aid. MTD Br. 6, 34.

The theory of culpability here, then, is a far feebler version of the one rejected in *Twitter*. In that case, the Court upheld the dismissal of the ATA claims even though the defendants knew that ISIS was benefiting from their platforms and failed to take corrective action. *Twitter*, 598 U.S. at 481, 503. Here, by contrast, there is no allegation that Hamas was benefiting from UNRWA USA's aid at all, much less that UNRWA USA knew it was conferring a benefit.

Since Plaintiffs have failed to satisfy the *Twitter* standard, the Court needn't bother with the six *Halberstam* factors. Even so, that test yields the same result. As Plaintiffs note (at 24), the first factor (nature of the act assisted) asks whether the assistance was "important" to Hamas's ability to carry out terrorist attacks. But Plaintiffs don't allege that UNRWA USA's donations to orphans or clean drinking water fit that bill. Plaintiffs contend (at 24) that "[e]ven one regular payment to one Hamas member" may satisfy the second factor (amount and kind of assistance). But Plaintiffs don't articulate how an unknowing salary payment to a Hamas member facilitated October 7, nor do they allege that *UNRWA USA* made any such payments. MTD Br. 27. With respect to the third factor (relationship with the FTO), Plaintiffs argue that "UNRWA USA fills UNRWA's coffers" and that UNRWA, in turn, pays Hamas salaries. But, again, Plaintiffs don't allege that any UNRWA USA funds were spent for those purposes, and courts have resoundingly rejected aiding-and-abetting claims based on fungibility theories. MTD Br. 26, n.34. The remaining factors tilt decisively against Plaintiffs for reasons already explained.

III. The FAC Fails to Plead an ATA Conspiracy

Plaintiffs argue themselves out of a claim by conceding (at 30) that "the object of the conspiracy was to provide material support to Hamas, . . . not the October 7 terror attacks." In the

ATA context, however, the object of the conspiracy must be the commission of an act of international terrorism. *See, e.g., O'Sullivan v. Deutsche Bank AG*, 2019 WL 1409446, at *9 (S.D.N.Y. Mar. 28, 2019) (ATA conspiracy claim required that the parties "share[] the common goal of committing an act of international terrorism"); *Bernhardt v. Islamic Republic of Iran*, 2020 WL 6743066, at *7 (D.D.C. Nov. 16, 2020), *aff'd* 47 F.4th 856 (D.C. Cir. 2022); *Cain v. Twitter Inc*., 2018 WL 4657275, at *3 (N.D. Cal. Sept. 24, 2018).[8]

The conspiracy claim fails for a separate reason: the FAC fails to plead any new facts showing any agreement between UNRWA USA and Hamas. Opinion 15-16. None of Plaintiffs' arguments in opposition warrant reconsideration of the Court's order dismissing the claim on this ground. The ATA limits conspiracy liability to one "who conspires *with* the person who committed [the] act of international terrorism." 18 U.S.C. § 2333(d)(2) (emphasis added). The plain text of the statute requires the defendant to have directly interacted with the group that caused a plaintiff's injuries. *See also Twitter*, 598 U.S. at 489-90 (conspiracy requires an "agreement with the primary wrongdoer to commit wrongful acts"); *Halberstam*, 705 F.2d at 481 (to infer existence of a conspiracy "courts must initially look to see if the alleged joint tortfeasors are . . . in contact with one another."). The FAC, however, does not allege that UNRWA USA had any contact whatsoever with Hamas, nor does it plead any other facts from which an agreement can be inferred.

IV. The FAC Fails to Plead an ATS Claim

Plaintiffs waste a lot of ink answering arguments that were never made, but fail to address any of the defects identified in the motion to dismiss—namely, the total absence of any allegation

[8] These cases were cited in the initial motion to dismiss papers (First MTD Br. 29 (D.I. 22); First MTD Reply 6-7 (D.I. 34)), the arguments of which were incorporated by reference in UNRWA USA's brief. MTD Br. 35.

that UNRWA USA's aid had a "substantial effect" on the terrorist attacks that injured Plaintiffs or that UNRWA USA purposefully (or even knowingly) aided those attacks.

Only two points in Plaintiffs' otherwise irrelevant opposition merit even the briefest of responses. First, Plaintiffs assert, without any elaboration, that UNRWA USA somehow aided Hamas in keeping hostages after October 7. But the FAC doesn't offer an iota of factual support for this scurrilous claim. Second, Plaintiffs' suggestion (at 33) that UNRWA USA board members "obtained a direct benefit" from Hamas's terrorist operations because they "share [Hamas's] strong hatred of Israel" is an empty rhetorical flourish without any grounding in the FAC. Plaintiffs' resort to venom when the facts and law run dry is the clearest measure of their case's frivolousness.

CONCLUSION

For these reasons, and for those set forth in the Motion to Dismiss, Plaintiffs' claims should be dismissed with prejudice.

Dated: December 5, 2025

Respectfully submitted,

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