Exhibit A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re Approximately $3.5 Billion of Assets on Deposit at the Federal Reserve Bank of New York in the Name of Da Afghanistan Bank	ECF Case Case No. 22-cv-03228

CLASS ACTION COMPLAINT

Plaintiffs The Estate of Christopher Wodenshek, Anne Wodenshek, Sarah Wodenshek, Haley Wodenshek, Mollie Wodenshek, William Wodenshek, and Zachary Wodenshek, by their attorneys Kreindler & Kreindler LLP, Sher Tremonte LLP, and Samuel Issacharoff, Esq., individually and on behalf of others similarly situated, and pursuant to Federal Rule of Civil Procedure 23, allege as follows:

INTRODUCTION

1. Individual plaintiffs The Estate of Christopher Wodenshek, Anne Wodenshek, Sarah Wodenshek, Haley Wodenshek, Mollie Wodenshek, William Wodenshek, and Zachary Wodenshek (together, the "Wodensheks" or "Plaintiffs"), litigants against the Taliban whose claims arise directly out of the September 11, 2001 terrorist attacks (the "9/11 Attacks"), bring this action on behalf of themselves and a class of similarly situated claimants seeking the equitable distribution of approximately $3.5 billion of Taliban assets currently on deposit at the Federal Reserve Bank of New York ("FRBNY") in the name of Da Afghanistan Bank ("DAB").

2. For the past two decades, Plaintiffs and thousands of other victims of the 9/11 Attacks have sought to hold the Taliban accountable for its role in sponsoring and facilitating the deadliest terrorist attack on U.S. soil. Plaintiffs and numerous others obtained liability judgments against the Taliban in 2006; other 9/11 victims obtained judgments against the Taliban years later. However, because the Taliban and its leadership are and have been subject to strict

economic sanctions by the United States and others (including the United Nations Security Council), Plaintiffs and other victims of Taliban-enabled terrorism had little to no hope of identifying any assets that could be used to satisfy their judgments against the Taliban.

3. That changed on February 11, 2022, when President Joseph R. Biden signed Executive Order 14064 (the "Executive Order") concerning approximately $7 billion of assets held in the name of Afghanistan's central bank, DAB. The Executive Order followed a series of unprecedented and unforeseen historic events that resulted in the Taliban's takeover of Afghanistan and all of DAB's assets in August 2021.

4. In recognition of the Taliban's control over DAB and its assets, the Executive Order and its accompanying "Fact Sheet" directed that all DAB assets in the United States be consolidated in a blocked account at the FRBNY.[1] They further directed that half of those assets (approximately $3.5 billion) be preserved for the benefit of U.S. victims of terrorism (the "DAB Assets"), and, through an Office of Foreign Asset Control license, the Administration has facilitated access to the other half (approximately $3.5 billion)[2] to provide humanitarian relief to the people of Afghanistan.

5. The Executive Order sparked an uncoordinated race among those victims to collect from the limited DAB Assets. Claimants rushed to establish (or in any event, to not lose) "priority" under New York State's default judgment enforcement rules. This, in turn, led other

[1] Executive Order 14,064, 87 Fed. Reg. 8391 (2022); White House Fact Sheet, Executive Order to Preserve Certain Afghanistan Central Bank Assets for the People of Afghanistan, (Feb. 11, 2022) (hereinafter, the "Fact Sheet") (emphasis added), https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/11/fact-sheet-executive-order-to-preserve-certain-afghanistan-central-bank-assets-for-the-people-of-afghanistan/.

[2] Unless otherwise noted, the "DAB Assets" are defined as the approximately $3.5 billion in DAB funds that *were not* earmarked for Afghan humanitarian relief and *were* earmarked for U.S. victims of terrorism in the Executive Order.

victims of terrorism to join the race to claim "priority" to the DAB Assets. Consequently, the DAB Assets are now the subject of two writs of execution in the combined amount of approximately $2.2 billion, with briefing on turnover proceedings already under way, and a prejudgment order of attachment in excess of $4.7 billion. Meanwhile, Plaintiffs and hundreds of other victims of the 9/11 Attacks have pending motions to confirm damages awards of billions of dollars against the Taliban.

6. The $3.5 billion in DAB Assets, which constitute the sum total of assets available to satisfy judgments against the Taliban, are insufficient to satisfy the writs of execution and attachment orders to which those assets are currently subject, let alone to satisfy other damages awards against the Taliban that have been or will soon be granted. Adjudication of any individual claim or groups of claims will be dispositive of and will substantially impair the rights of Plaintiffs and thousands of other terrorism victims. Indeed, if individual adjudications proceed under the "first in time is first in right" approach, a small number of claimants will likely take the entire $3.5 billion in DAB Assets for themselves, while Plaintiffs and thousands of other victims will likely recover nothing a profoundly inequitable outcome.

7. The DAB Assets thus constitute a classic limited fund for purposes of Rule 23(b)(1)(B), one in which:

> an adjudication as to one or more members of the class will necessarily be or probably have an adverse practical effect on the interests of other members who should therefore be represented in the lawsuit. This is plainly the case when claims are made by numerous persons against a fund insufficient to satisfy all claims. A class action by or against representative members to settle the validity of the claims as a whole, or in groups, followed by separate proof of the amount of each valid claim and proportionate distribution of the fund meets the problem.[3]

[3] Fed. R. Civ. P. 23(b)(1)(B) Advisory Committee's Notes (1966).

8. Plaintiffs seek to ensure that the DAB Assets are distributed equitably, and to avoid a grossly unjust scenario in which a small handful of claimants obtain tens of millions of dollars each in compensation at the expense of thousands of other victims of Taliban-sponsored or Taliban-supported terrorist attacks who stand to receive nothing. Accordingly, Plaintiffs seek:

a) an immediate order in aid of the Court's jurisdiction enjoining any judgment enforcement proceeding in any court affecting the DAB Assets pending adjudication of Plaintiffs' Class Action Complaint;

b) certification of a mandatory class composed of all persons and/or estates with a compensatory damages claim against the Taliban on file in a U.S. court of record as of April 20, 2022, where such claim arises directly out of an act of terrorism, where the injuries suffered were proximately caused by that act of terrorism, and where the Taliban has been or likely will be adjudged liable for those injuries (the "Class");

c) a declaration that the DAB Assets are available to satisfy the Class members' judgments against the Taliban under Section 201 of the Terrorism Risk Insurance Act, Pub. L. No. 107-297, 116 Stat. 2322 2341 (2002) ("TRIA");

d) the imposition of a constructive trust over the DAB Assets; and

e) distribution of the DAB Assets on an equitable basis to all Class members.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, as the relief Plaintiffs seek includes a declaration of Class members' rights under TRIA, and the rights of the Class members to recover the compensatory damages at issue are defined by the Anti-Terrorism Act, 18 U.S.C. § 2333(a). The Court also has jurisdiction under the Air Transportation Safety and System Stabilization Act of 2001 (the "Air Stabilization Act"), 49

U.S.C. § 40101, Title IV, § 408(b)(3), which grants the Southern District of New York ("S.D.N.Y.") "original and exclusive jurisdiction over all actions brought for any claim . . . resulting from or relating to the terrorist-related aircraft crashes of" the 9/11 Attacks. This Court further has jurisdiction under 12 U.S.C. § 632, which grants federal courts original jurisdiction of all civil suits involving any Federal Reserve Bank.

10. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)(2) and 1391(f)(1) because the property that is the subject of this action is situated in this district, and pursuant to the Air Stabilization Act, which designates the S.D.N.Y. as the exclusive venue for all civil litigation arising out of or related to the 9/11 Attacks.

PARTIES

11. Plaintiff The Estate of Christopher Wodenshek is the successor of Christopher Wodenshek, a U.S. citizen killed in the 9/11 Attacks. One month before the 9/11 Attacks, the Wodenshek family moved from Connecticut to New Jersey so that Christopher, a broker at Cantor Fitzgerald, could shorten his commute and spend more time with his wife and five young children. The morning of September 11, 2001, two days after his eleventh wedding anniversary, Christopher went to work, arriving on the 105th floor of the World Trade Center's North Tower between 7:00 and 7:30 a.m. An hour later, at 8:46 a.m., the hijacked American Airlines Flight 11 slammed into the building between the ninety-third and ninety-ninth floors. Christopher was, along with many others, trapped and killed.

12. Plaintiff Anne Wodenshek is the personal representative of The Estate of Christopher Wodenshek, and his surviving wife. A motion to confirm their compensatory damages awards of $14,738,118 and $12,500,000, respectively, against the Taliban is currently pending in *In re Terrorist Attacks on September 11, 2001*, 03-md-1570 (S.D.N.Y.) (the "9/11 MDL"). To date, Christopher Wodenshek's estate and Anne Wodenshek have received

approximately $55,000 and approximately $48,000, respectively, from the government-funded U.S. Victims of State Sponsored Terrorism program (the "USVSST"), which has so far disbursed approximately $1.6 billion to 10,590 victims of the 9/11 Attacks.

13. Plaintiffs Sarah, Haley, Mollie, William, and Zachary Wodenshek are Christopher Wodenshek's surviving children, who were ages nine, seven, six, four, and two on the day of the 9/11 Attacks. The motion to confirm their compensatory damages awards of $8,500,000 each against the Taliban is currently pending in the 9/11 MDL. To date, they have received approximately $32,000 each from the USVSST.

FACTUAL ALLEGATIONS

THE TALIBAN

14. The Taliban was established by cleric Mullah Mohammad Omar ("Mullah Omar") in 1994, following the Soviet Union's withdrawal from Afghanistan and during the subsequent Afghan civil war. Its original membership largely consisted of mujahedeen fighters, insurgent forces that fought against the Soviet occupation of Afghanistan from 1969 1989. Among these mujahedeen was the Saudi-born Osama Bin Laden, who founded the international terrorist group known as al Qaeda in Afghanistan.

15. By 1996, the Taliban had seized control of much of Afghanistan and established the Islamic Emirate of Afghanistan, with Mullah Omar serving as head of state. The Taliban imposed strict Sharia law in the areas it controlled. That same year, the Taliban welcomed the return of Bin Laden from Sudan, after which he established al Qaeda's base of operations in Afghanistan. Because of its involvement in terrorist activity, discussed in more detail below, the Taliban has been subject to a wide-range of strict sanctions, blocking the organization and its leadership from transacting any business in the United States.

16. At the time the Taliban ruled the Islamic Emirate of Afghanistan, it controlled and directed Afghanistan's central bank, DAB.[4] It continued to do so until late September 2001, when a U.S.-led coalition invaded Afghanistan following the 9/11 Attacks and removed the Taliban from power.

17. After the Taliban's fall, a transitional government was formed under Hamid Karzai and it governed Afghanistan until 2003, when the people of Afghanistan ratified a new constitution and elected a civilian government recognized by the United States and the international community at large the Islamic Republic of Afghanistan. However, the Taliban maintained a constant insurgency for the two decades following its 2001 deposition.

18. In 2020, the United States entered an agreement to withdraw its troops from Afghanistan. Following that withdrawal in the summer of 2021, concluding the U.S. military's two-decade long military presence, the Taliban commenced a major offensive. On August 15, 2021, the Taliban captured the capital of Kabul and Afghanistan's then-leadership abdicated, disbanded and/or fled Afghanistan. Within a brief time, the Taliban gained control of the entire country.

[4] *See* H. DOC. NO. 106-268, at 4 (describing the Departments of State and Justice adding DAB to list of blocked entities under Executive Order 13129 in 1999); Press Release, U.S. Dep't of Treasury, Treasury Signs License Unblocking Frozen Afghan Assets (Jan. 24, 2002), https://home.treasury.gov/news/press-releases/po943 (describing unblocked DAB assets as having been "associated with the Taliban regime").

19. In August 2021, as part of its complete takeover of Afghanistan and all of its state organs, the Taliban took control of DAB, installed senior Taliban leaders as DAB leadership,[5] and caused DAB to implement Taliban edicts.[6]

20. Prior to the Taliban's 2021 takeover of Afghanistan, it had no tangible assets in the United States against which Plaintiffs or any other claimants could have enforced judgments.

THE 1998 U.S. EMBASSY BOMBINGS IN KENYA AND TANZANIA

21. The following allegations are largely drawn from the March 8, 2022 complaint in *Owens v. Taliban*, 22-cv-1949 (S.D.N.Y.) (hereinafter cited as "*Owens* Compl."),[7] and are re-alleged below for purposes of contextualizing a known act of terrorism out of which claims against the Taliban arise.

[5] *See, e.g.*, Ian Talley, et al., *Sactioned Taliban Finance Leader Holds Leadership Post at Afghan Central Bank*, WALL ST. J. (Mar. 11, 2022), https://www.wsj.com/articles/sanctioned-taliban-financier-tapped-to-help-lead-afghan-central-bank-11647003720?mod=newsviewer_click (appointing Noor Ahmad Agha as DAB first deputy governor); Eltaf Najafizada, *Taliban Name Obscure Official as Central Bank Chief with Crisis Looking*, BLOOMBERG (Aug. 23, 2021), https://www.bloomberg.com/news/articles/2021-08-23/taliban-name-obscure-official-central-bank-chief-ascrisis-looms (appointing Haji Mohammed Idris DAB Acting Governor); Da Afghanistan Bank, *DAB Leadership Holds Meeting with the High Ranking Officials of Commercial Banks* (Sept. 11, 2021), https://www.dab.gov.af/dab-leadership-holds-meeting-high-ranking-officials-commercial-banks (announcing Taliban takeover of Da Afghanistan Bank).

[6] *See* James Mackenzie, Mohammad Yunus Yawar, *Afghan Central Bank Moves to Halt Currency Slide As Crisis Deepens*, REUTERS (Dec. 14, 2021), https://finance.yahoo.com/news/afghanistan-central-bank-says-acting-094556696.html (describing Taliban efforts to utilize DAB, among other entities, to stabilize Afghanistan's currency).

[7] *Owens*, 22-cv-1949 (S.D.N.Y. Mar. 9, 2022), ECF 1 (deficiently filed complaint), 7 (re-filed complaint).

22. On August 7, 1998, the eighth anniversary of the United States' deployment of troops to Saudi Arabia, al Qaeda nearly simultaneously detonated bombs at the U.S. Embassies in Nairobi, Kenya and Dar es Salaam, Tanzania.[8]

23. The Nairobi bombing was executed by Jihad Muhammed Ali ("Ali") and Mohammed Rashed Daoud al-Owhali ("al-Owhali").[9]

24. Prior to the bombing, al-Owhali spent time at al Qaeda's camps in Afghanistan, where he was trained in explosives, hijacking, and kidnapping. He personally requested a jihad mission from Bin Laden. Al-Owhali was then sent to fight alongside the Taliban against an American-backed military group. After he distinguished himself in battle with the Taliban, in or about late 1997 or early 1998, he was approached by an al Qaeda leader and offered a mission the bombing of the U.S. Embassy in Nairobi for which he received additional training in Afghanistan.[10]

25. Ali detonated a truck bomb in front of the U.S. Embassy in Nairobi using a gas-enhanced explosive device at 10:30 a.m., killing himself and 213 people, including twelve Americans, and injuring more than 4,000 others.[11]

26. Concurrently, in Dar es Salaam, two al Qaeda members detonated a truck bomb outside the U.S. Embassy. One was killed in the blast. The other, Khalfan Khamis Mohamed, had

[8] *Owens* Compl. ¶ 110.

[9] *Id.* ¶ 111.

[10] *Id.* ¶ 112.

[11] *Id.* ¶ 113.

previously received explosives training in an al Qaeda training camp in Afghanistan. Eleven people were killed, and eighty-five were injured.[12]

27. The U.S. government immediately linked the U.S. Embassy bombings to al Qaeda and the Taliban.[13]

a) On August 20, 1998, President William J. Clinton signed Executive Order 13099, which froze all assets of al Qaeda and Bin Laden in the United States, banned the import of Afghan goods, and prohibited the sale of goods and services to the Taliban.

b) President Clinton ordered airstrikes on terrorist training camps throughout Taliban-controlled territory in Afghanistan. The strikes began on August 20, 1998, and were intended to persuade the Taliban to hand over Bin Laden. The initial strikes killed twenty to thirty people but missed Bin Laden by a few hours.

c) The United States issued a formal warning to the Taliban, vowing to hold it responsible for any attacks on Americans carried out by al Qaeda.

d) U.S. diplomats unsuccessfully attempted to convince the Taliban to surrender Bin Laden. Mullah Omar refused to do so and vowed to protect Bin Laden "at any cost."[14]

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[12] *Id.* ¶ 114.

[13] *Id.* ¶ 115.

[14] *Taliban Vows to Protect Suspect in U.S. Embassy Blasts 'At Any Cost'*, HOUSTON CHRONICLE, Nov. 6, 1998.

e) On October 8, 1999, the U.S. Secretary of State designated al Qaeda as a Foreign Terrorist Organization in accordance with section 219 of the Immigration and Nationality Act, as amended.

THE 9/11 ATTACKS

28. On September 11, 2001, five al Qaeda members hijacked American Airlines Flight 11 carrying ninety-two persons, bound from Boston to Los Angeles, and at approximately 8:46 a.m., crashed the plane into the North Tower of the World Trade Center in New York.

29. On September 11, 2001, five other al Qaeda members hijacked United Airlines Flight 175 carrying sixty-five persons, bound from Boston to Los Angeles, and at approximately 9:02 a.m., crashed the plane into the South Tower of the World Trade Center in New York.

30. On September 11, 2001, five other al Qaeda members hijacked American Airlines Flight 77 carrying sixty-four persons, bound from Virginia to Los Angeles, and at approximately 9:37 a.m., crashed the plane into the Pentagon.

31. On September 11, 2001, four other al Qaeda members hijacked United Airlines Flight 93 carrying forty-five persons, bound from Newark to San Francisco with the intention of crashing the plane into a target in Washington, D.C., such as the White House or the Capitol. At approximately 10:10 a.m., because of the heroic intervention of Flight 93's passengers, the aircraft crashed into a field in Shanksville, Pennsylvania.

32. At approximately 9:50 a.m. and 10:29 a.m., the South and North Towers of the World Trade Center, respectively, collapsed.

33. The hijackings and resulting suicide attacks the 9/11 Attacks were the culmination of a conspiracy among a number of parties, including, among others, al Qaeda, the Kingdom of Saudi Arabia, and the Taliban, to attack the United States and murder U.S. citizens.

LITIGATION AGAINST THE TALIBAN

34. In September 2002, the Wodensheks and certain other victims of the 9/11 Attacks and their families filed a complaint against numerous defendants responsible for the 9/11 Attacks, including the Taliban.[15] The Wodensheks' right to relief is based upon the Taliban's support of al Qaeda and its leader, Bin Laden, perpetrators of the 9/11 Attacks, and the 9/11 Attacks' support network.[16] That complaint was subsequently consolidated and amended several times.[17]

35. This was one of multiple actions commenced in the S.D.N.Y. and in the District of Columbia beginning in 2002, which were eventually consolidated by the Judicial Panel for Multi-District Litigation into the 9/11 MDL.[18]

36. On June 16, 2004, the 9/11 MDL court designated Jim Kreindler of Kreindler & Kreindler LLP, counsel for the Wodensheks, and Ronald Motley, counsel for plaintiffs in *Burnett et al v. Al Baraka Investment and Development Co*., 03-cv-9849 (S.D.N.Y.) (the "*Burnett* Plaintiffs"), as co-chairs of the Plaintiffs' Executive Committee for Personal Injury and Death

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[15] The Wodensheks asserted federal jurisdiction over the Taliban pursuant to, among other things, the Alien Tort Statute (28 U.S.C. § 1350), the Foreign Sovereign Immunities Act (28 U.S.C. § 1605(a)(7) and the Torture Victim Protection Act (28 U.S.C. § 1350 note), and made claims for damages under those provisions as well as under the Anti-Terrorism Act (18 U.S.C. § 2333) and state law for the deaths, injuries, and losses suffered in the 9/11 Attacks.

[16] *See Ashton v. Al Qaeda Islamic Army et al.*, 02-cv-6977 (S.D.N.Y. Sept. 10, 2002), ECF 2 (asserting federal jurisdiction over the Taliban pursuant to, among other things, the Alien Tort Statute (28 U.S.C. § 1350), the Foreign Sovereign Immunities Act (28 U.S.C. § 1605(a)(7)) and the Torture Victim Protection Act (28 U.S.C. § 1350 note), and claiming damages under those provisions as well as under the Anti-Terrorism Act (18 U.S.C. § 2333) and state law for the deaths, injuries, and losses suffered in the 9/11 Attacks).

[17] *See*, *e.g.*, 02-cv-6977 (S.D.N.Y. Mar. 6, 2003), ECF 11; *id*. (Aug. 1, 2003), ECF 32; *id*. (Aug. 13, 2003), ECF 38; *id*. (Sept. 5, 2003), ECF 111; *id*. (Sept. 30, 2005), ECF 465.

[18] *See, e.g.*, *In re Terrorist Attacks*, 03-md-1570 (S.D.N.Y. June 16, 2004), ECF 247 at 12 (consolidating *Ashton v. Al Qaeda*, among other actions, into the 9/11 MDL).

Claims (the "Wrongful Death PEC"), and Elliot Feldman and Sean Carter of Cozen O'Connor P.C. as co-chairs of the Plaintiffs' Executive Committee for Commercial Claims (the "Commercial Claims PEC").[19] The Wrongful Death and Commercial Claims PECs were instructed to work together whenever possible to promote the orderly and efficient administration of the litigation and promote judicial economy.[20]

37. Among counsel named to the Wrongful Death PEC were Dennis Pantazis of Wiggins Childs Pantazis Fisher Goldfarb PLLC and Richard Hailey of Ramey & Hailey,[21] counsel for estates and survivors of forty-seven individuals killed in the 9/11 Attacks in *Havlish v. bin Laden*, 03-cv-9848 (S.D.N.Y.) (the "*Havlish* Plaintiffs"), actions consolidated within the 9/11 MDL.

38. On September 15, 2004, the 9/11 MDL court authorized plaintiffs in *Ashton*, 02-cv-6977 (S.D.N.Y), *Burnett*, 03-cv-9849 (S.D.N.Y.) and *Federal Insurance Co. v. al Qaida*, 03-cv-6978 (S.D.N.Y.) to serve certain foreign defendants, including the Taliban, via appropriately designated media publications.[22] Plaintiffs in *O'Neill v. Al Baraka Investment and Development Co*., 04-cv-1923 (S.D.N.Y.) were subsequently added to this publication service group on October 31, 2004.[23] The Taliban did not respond, and in 2006, the 9/11 MDL court

[19] *In re Terrorist Attacks*, 03-md-1570 (S.D.N.Y. June 16, 2004), ECF 248-2 ¶¶ 4 7.

[20] *See, e.g.*, *id.* (June 16, 2004) ¶ 3.

[21] *Id.* (June 16, 2004) ¶ 6

[22] *In re Terrorist Attacks*, 03-cv-1570 (S.D.N.Y. Sept. 16, 2004), ECF 445.

[23] *In re Terrorist Attacks*, 03-cv-1570 (S.D.N.Y. Oct. 31, 2014), ECF 2908.

granted motions for default liability in favor of the *Ashton, Burnett, O'Neill* and *Federal Insurance* Plaintiffs.[24]

39. Between 2008 and 2011, the *Havlish* Plaintiffs' counsel separately sought default judgments against foreign sovereign defendant Islamic Republic of Iran ("Iran") and other defendants, including a number of non-sovereign defendants such as the Taliban. The *Havlish* Plaintiffs presented no facts or arguments concerning the role of non-sovereign defendant the Taliban in the 9/11 Attacks, as was required in the default judgment effort against sovereign defendant Iran, instead relying entirely on the fact of the Taliban's default. As it had done six years prior for the *Ashton* Plaintiffs and others, the 9/11 MDL court granted default judgments in favor of the *Havlish* Plaintiffs and granted motions for final damages judgments as against certain foreign sovereign Iranian entities and numerous other non-sovereign defendants, including the Taliban.[25]

40. In 2015, the *Ashton*, *Burnett*, *O'Neil* and *Federal* Plaintiffs obtained default judgments against Iran, and the 9/11 MDL court began issuing final damages judgments on a rolling basis, beginning on March 8, 2016.[26] The 9/11 MDL court issued individual damage awards for economic losses in each of those cases, and $2,000,000 for conscious pain and suffering of each of the *Ashton* Plaintiffs' decedents killed in the 9/11 Attacks.[27] The 9/11 MDL

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[24] *See, e.g.*, *In re Terrorist Attacks*, 03-md-1570 (S.D.N.Y. Apr. 27, 2006), ECF 1782, *et seq.*; *id.* (May 12, 2006) ECF 1797 (referring to the individual defendants listed in Exhibit B to the *Ashton* Plaintiffs' motion, including the Taliban). The *Ashton* Plaintiffs' default liability judgment was issued on May 12, 2006, and applies to all claims, plaintiffs and defendants included up to and through the Sixth Amended Complaint. *Id.*

[25] *See In re Terrorist Attacks*, 03-md-1570 (S.D.N.Y. Oct. 3, 2012), ECF 2623.

[26] *In re Terrorist Attacks*, 03-md-1570 (S.D.N.Y. Mar. 8, 2016), ECF 3226.

[27] *In re Terrorist Attacks*, 03-md-1570 (S.D.N.Y. Mar. 8, 2016), ECF 3226.

court next awarded solatium damages under the Anti-Terrorism Act, 18 U.S.C. § 2333, to immediate surviving family members, to include surviving spouses, children, parents, siblings and/or their functional equivalents.[28] The 9/11 MDL court determined those damages values to be $12,500,000 for a spouse; $8,500,000 for a child or parent; and $4,250,000 for a sibling.[29] Despite those substantial judgments, no claimant has recovered close to the full amounts, with nearly all of the families victimized in the 9/11 Attacks receiving no more than 5% of their judgments, and spouses and dependents of decedents generally receiving less than 0.76% of their judgments.[30]

EFFORTS TO COLLECT ON CLAIMS AGAINST THE TALIBAN

41. Nearly contemporaneously with the Taliban's takeover of Afghanistan and the DAB in the summer of 2021, two plaintiff groups obtained and served writs of execution on the FRBNY as to Taliban assets.[31] On September 13, 2021, the *Havlish* Plaintiffs served their writ on the FRBNY in the amount of $7,045,632,402.79.[32] The *Havlish* Plaintiffs did not publicly docket their writ of execution against the Taliban in the 9/11 MDL or otherwise notify other parties to the 9/11 MDL about their plan, despite the fact that two of their attorneys sit on the

[28] *In re Terrorist Attacks*, 03-md-1570 (S.D.N.Y. June 16, 2016), ECF 3300.

[29] *In re Terrorist Attacks*, 03-md-1570 (S.D.N.Y. June 16, 2016), ECF 3300 at 4 (Ex. A).

[30] *See* USVSST Special Master Reports to Congress published August 2017, February 2019 and June 2020, available at http://www.usvsst.com/news.php (last accessed Apr. 18, 2022).

[31] The *Havlish* Plaintiffs are currently represented by, among others, an attorney who, until January 2022, served as special counsel to the National Security Council advising the Biden Administration in connection with legal efforts to resettle Afghan evacuees.

[32] *Havlish*, 03-cv-9848 (S.D.N.Y.), ECF 527 at 1.

Wrongful Death PEC.[33] On September 27, 2021, a group of seven anonymous non-9/11 MDL plaintiffs known as the "*Doe* Plaintiffs" served their writ in the amount of $138,418,741.[34]

42. The U.S. government, through the Department of Justice ("DOJ"), promptly intervened and the *Havlish* and *Doe* courts granted stays of any judicial enforcement of the respective writs of execution.[35] During the pendency of those stays, beginning in December 2021, the *Ashton* Plaintiffs moved for final judgments for damages against Iran's co-tortfeasor, the Taliban, seeking to extend to the Taliban the same damages awards ordered against Iran.[36] The cumulative final damages awards sought in the *Ashton* Plaintiffs' motions cited herein which remain pending as of this filing are nearly $30 billion. Other 9/11 MDL plaintiffs also have pending motions for damages awards.[37]

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[33] The non-*Havlish* Plaintiffs learned of the writ only because DOJ attached the writ as an exhibit to a letter it filed with the 9/11 MDL court after the writ had already been served. *Havlish*, 03-cv-9848 (S.D.N.Y. Sep. 16, 2021), ECF 526, 526-1; *In re Terrorist Attacks*, 03-md-1570 (S.D.N.Y. Sep. 20, 2021), ECF 7120.

[34] *Does v. The Taliban*, 20-mc-740 (S.D.N.Y. Aug. 26, 2021), ECF 15; *id.* (Aug. 30, 2021), ECF 19; *id.* (Sep. 23, 2021), ECF 26; *id.* (Oct. 14, 2021), ECF 30. The *Doe* Plaintiffs are seven anonymous U.S. contractors injured in a 2016 suicide bombing in Afghanistan who obtained a final default judgment against the Taliban in November 2020. *See Doe 1 v. Al-Qaeda*, 4:20-cv-605 (N.D. Tex. Mar. 20, 2020), ECF 1 (complaint); *id.* (Nov. 5, 2020), ECF 22 (final default judgment).

[35] *See Havlish*, 03-cv-09848 (S.D.N.Y. Sep. 20, 2021), ECF 527 at 3; *Does*, 20-cv-740 (S.D.N.Y. Sep. 23, 2021), ECF 26 at 2.

[36] *In re Terrorist Attacks*, 03-md-1570 (S.D.N.Y. Dec. 20, 2021), ECF 7489 91; *id.* (Dec. 31, 2021), ECF 7516 18; *id.* (Jan. 13, 2022), ECF 7594; *id.* (Jan. 28, 2022), ECF 7634.

[37] *See, e.g.*, *Burnett v. Al Baraka Investment & Development Corp, et al*, 03-cv-9849 (S.D.N.Y. Apr. 7 8, 2022), ECF 962 65.

43. The stays of the *Havlish* and *Doe* Plaintiffs' writs were extended pending the filing of a Statement of Interest by the United States, which was ultimately filed on February 11, 2022, the same day President Biden signed the Executive Order.[38]

44. As described in the U.S. Statement of Interest, the Executive Order

> addresses the property and interests in property of Afghanistan's central bank, Da Afghanistan Bank ("DAB"), that are held in the United States by any U.S. financial institution, including the Federal Reserve Bank of New York ("FRBNY"), as of February 11, 2022 . . . . In recognition of the "unusual and extraordinary threat to the national security and foreign policy of the United States" posed by the "widespread humanitarian crisis in Afghanistan," the E.O. blocks the DAB [funds], providing that such assets "may not be transferred, paid, exported, withdrawn, or otherwise dealt in," except as specified by the Executive Order.[39]

In effect, the Executive Order obligated U.S. financial institutions holding DAB funds, including the FRBNY, to transfer those funds to the FRBNY for consolidation in a blocked account.[40] The Executive Order explicitly states that the President signed it in part to benefit all victims of terrorism with claims against the Taliban: "I also understand that various parties, including representatives of victims of terrorism, have asserted legal claims against certain property of DAB or indicated in public court filings an intent to make such claims. This property is blocked under this order."[41]

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[38] *Havlish*, 03-cv-9848 (S.D.N.Y. Feb. 11, 2022), ECF 563; *Does*, 20-cv-740 (S.D.N.Y. Feb. 11, 2022), ECF 49.

[39] *Havlish*, 03-cv-9848 (S.D.N.Y. Feb. 11, 2022), ECF 563 at 1.

[40] Executive Order.

[41] *Id*.

45. In furtherance of this explanation, the Administration issued that same day a "Fact Sheet" concerning the Executive Order, making clear that the DAB Assets are earmarked for "U.S. victims of terrorism":[42]

> Many U.S. victims of terrorism, including relatives of victims who died in the September 11, 2001 terrorist attacks, have brought claims against the Taliban and are pursuing DAB [funds] in federal court. Because some of these plaintiffs currently have writs of execution against the DAB [funds], the court will need to issue a further decision regarding the scope of those writs. Even if funds are transferred for the benefit of the Afghan people, more than $3.5 billion in DAB [funds] would remain in the United States and are subject to ongoing litigation by U.S. victims of terrorism. Plaintiffs will have a full opportunity to have their claims heard in court.[43]

46. Upon the filing of the Statement of Interest, the *Havlish* and *Doe* Plaintiffs requested the stays be lifted. On February 22, 2022, the 9/11 MDL court held a hearing at which counsel for the United States and the *Havlish*, *Doe*, *Ashton, O'Neill*, and *Federal Insurance* Plaintiffs, among others, apprised the court of their respective positions on lifting the stays.[44] Counsel for the *Ashton* Plaintiffs urged the court to exercise its equitable powers to ensure fair treatment of all plaintiffs in the 9/11 MDL.[45]

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[42] The availability of the DAB Assets under Section 201 of TRIA remains unresolved, although it is the subject of briefing in the *Havlish* and *Doe* Plaintiffs' turnover motions. *See Havlish*, 03-cv-9848 (S.D.N.Y. Mar. 20, 2022), ECF 598; *Does*, 20-mc-740 (S.D.N.Y. Mar. 20, 2022), ECF 80. Certain female Afghan leaders have written to the 9/11 MDL court to contend that the DAB Assets "are owned by the State of Afghanistan" rather than the Taliban. *In re Terrorist Attacks*, 03-md-1570 (S.D.N.Y. Mar. 31, 2022), ECF 7823 at 4. Any determination as to the DAB Assets' ownership and availability under Section 201 of TRIA necessarily bear on all Class members as claimants who have or will have compensatory damages judgments against the Taliban.

[43] Fact Sheet (emphasis added).

[44] *Ashton v. Al Qaeda Islamic Army et al.*, 02-cv-6977 (S.D.N.Y. Feb. 22, 2022), ECF 1614.

[45] *See id.* at 27:9 10.

47. Ultimately, the stays were lifted on March 2, 2022,[46] triggering a flurry of activity as disparate plaintiff groups competed for priority over the DAB Assets.

48. On March 20, 2022, the *Havlish* and *Doe* Plaintiffs filed motions for partial turnover as to the DAB Assets in amounts sufficient to satisfy their respective compensatory damages awards of $2,086,386,669 and $138,284,213.26.[47] Oppositions to those turnover motions are due to be filed on April 20, 2022.

49. In addition, yet another group of plaintiffs this time unrelated to the 9/11 Attacks and the 9/11 MDL emerged to claim the remaining DAB Assets. Specifically, on March 8, 2022, more than twenty-three years after al Qaeda's August 7, 1998 bombings of the U.S. embassies in Nairobi, Kenya and Dar es Salaam, Tanzania, individuals allegedly injured or killed in those bombings (or their estates) and their family members (together, the "*Owens* Plaintiffs") filed a complaint, solely against the Taliban, seeking compensatory and punitive damages.[48] As they filed their complaint, the *Owens* Plaintiffs also moved on an emergency basis (citing the *Havlish* and *Doe* Plaintiffs' September 2021 service of writs of execution against the DAB Assets) for a prejudgment order of attachment against the DAB Assets for an amount in excess of $4,669,011,012.21.[49] A stated purpose of this emergency application for attachment was to obtain priority over other plaintiffs with claims against the Taliban.

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[46] *See, e.g.*, *Does*, 20-mc-740 (S.D.N.Y. Mar. 2, 2022), ECF 68.

[47] *In re Terrorist Attacks*, 03-md-1570 (S.D.N.Y. Mar. 20, 2022), ECF 7763 71. As to at least the *Havlish* motion, the actual judgment underlying the writ includes punitive damages, which cannot be recovered under the TRIA, which is the basis for obtaining the DAB Assets, and the interest calculation may be incorrect.

[48] *Owens*, 22-cv-1949 (S.D.N.Y. Mar. 8, 2022), ECF 1 (deficiently filed complaint); *id.* (Mar. 9, 2022), ECF 7 (re-filed complaint).

[49] *Owens*, 22-cv-1949 (S.D.N.Y. Mar. 8, 2022), ECF 4 6.

50. On March 21, 2022, the *Owens* court granted a prejudgment attachment as to $1,373,761,042.95 of the DAB Assets (reflecting the compensatory damages portion of the $4,669,011,012.21 the *Owens* Plaintiffs claim in damages).[50] In a subsequent Opinion and Order, the *Owens* court explicitly recognized that the limited DAB Assets are insufficient to satisfy all deserving victims of terrorism with claims against the Taliban and that New York State's default judgment enforcement rules have incentivized this inequitable "run" on the DAB Assets.

> The unfortunate reality that the numerous victims of acts of terror perpetrated by the Taliban may not collect on judgments is not lost on the Court, and the Court does not seek to engage in gamesmanship over which victims are more deserving to collect on the limited funds available. New York law contemplates that pre-judgment attachment provides priority among creditors.[51]

51. Also on March 22, 2022, counsel for the *Federal Insurance* Plaintiffs in the 9/11 MDL and co-chair of its Commercial Claims PEC, submitted a letter (the "Priority Settlement Letter") apprising the 9/11 MDL court that the *Federal Insurance* Plaintiffs and certain other groups of plaintiffs, including the *Havlish* and *Doe* Plaintiffs (together, the "Settling MDL Plaintiffs"), had "reached agreement in principle" effectively allocating priority among themselves over the DAB Assets subject to attachment by the *Owens* Plaintiffs (the "Priority Settlement").[52]

52. On March 22 and 23, 2022, the *Bauer* Plaintiffs and *Schneider* Plaintiffs voiced objections to the Priority Settlement on the basis that the Priority Settlement is inequitable and

[50] *Owens*, 22-cv-1949 (S.D.N.Y. Mar. 21, 2022), ECF 33.

[51] *Owens*, 22-cv-1949 (S.D.N.Y. Apr. 11, 2022), ECF 38 (emphasis added).

[52] *In re Terrorist Attacks*, 03-md-1570 (S.D.N.Y. Mar. 22, 2022), ECF 7790 at 1.

conflicts with the explicit motivation of the Executive Order to compensate victims of terrorism with claims against the Taliban equitably.[53]

53. Plaintiffs (and many others) declined to participate in the Priority Settlement because, if allowed, it will still result in a highly inequitable distribution of the DAB Assets, such that a relatively small number of claimants will receive an outsized portion of the funds, and most other claimants will receive, if anything, only a tiny fraction of that recovery.[54]

54. On April 6, 2022, the 9/11 MDL court granted the *Federal Insurance* Plaintiffs' motion for a partial final default judgment against the Taliban, for a total award, excluding prejudgment interest, of $9,351,247,965.99 (approximately $3.1 billion of which is for compensatory damages).[55] In granting the motion, the 9/11 MDL court noted that there are more than a dozen motions for default judgment against the Taliban pending on the MDL, including the *Ashton* Plaintiffs' motions which (encompassing the Wodensheks' claims) seek damages in excess of nearly $30 billion.[56] The 9/11 MDL court directed "all plaintiffs to continue to meet and propose strategies for an efficient and fair process to adjudicate pending default judgment

[53] *In re Terrorist Attacks*, 03-md-1570 (S.D.N.Y. Mar. 22, 2022), ECF 7792 at 3 ("It was not, and could never be, the position of the Biden Administration, that some 9/11 family members would receive compensation for their losses for these blocked assets than others do measured merely by the date they received their final judgments."); *id.* (Mar. 23, 2022), ECF 7793 (joining in the Baumeister letter and requesting the appointment of a Special Master to oversee distribution of the DAB Assets).

[54] *See In re Terrorist Attacks*, 03-md-1570 (S.D.N.Y. Mar. 30, 2022), ECF 7810 at 2.

[55] *In re Terrorist Attacks*, 03-md-1570 (S.D.N.Y. Apr. 6, 2022), ECF 7833.

[56] *In re Terrorist Attacks*, 03-md-1570 (S.D.N.Y. Dec. 20, 2021), ECF 7489 91; *id.* (Dec. 31, 2021), ECF 7516 18; *id.* (Jan. 13, 2022), ECF 7594; *id.* (Jan. 28, 2022), ECF 7634.

motions."[57] It also noted that the *Federal Insurance* Plaintiffs "may execute on and enforce the[ir] judgment immediately."[58]

55. Accordingly, the DAB Assets are currently subject to two writs of execution and a prejudgment attachment order. And the *Federal Insurance* Plaintiffs may execute on their damages judgment any day.[59] The dollar amounts contemplated by the writs and attachment order alone exceed the $3.5 billion in DAB Assets, and they concern only a tiny fraction of claimants against the Taliban, to say nothing of the *Federal Insurance*, *Ashton*, and other plaintiffs who have received or expected to soon receive damages awards. Thus, absent the relief sought in this Class Action Complaint, thousands of terror victims with claims against the Taliban who are not members of the *Havlish*, *Doe*, and *Owens* Plaintiffs (or the Settling MDL Plaintiffs, should the *Owens* Plaintiffs be unable to execute) are all but guaranteed to recover either very little or nothing from the DAB Assets.

[57] *In re Terrorist Attacks*, 03-md-1570 (S.D.N.Y. Apr. 6, 2022), ECF 7833.

[58] *In re Terrorist Attacks*, 03-md-1570 (S.D.N.Y. Apr. 6, 2022), ECF 7833.

[59] On April 20, 2022, the 9/11 MDL court affirmed the *Federal Insurance* Plaintiffs' prejudgment interest calculation, enabling their Final Judgment to issue. *See In re Terrorist Attacks*, 03-md-1570 (S.D.N.Y. Apr. 20, 2022), ECF 7888.

Compensatory Damages Exhausting the $3.5 Billion DAB Assets

Arguable Priority	Plaintiffs	Compensatory Damages
1	*Havlish*	$2,086,386,669
2	*Doe*	$138,285,213.26
3	*Owens*	$1,373,761,042.95
TBD	*Federal Insurance*	$3,117,082,655.33
TBD	*Ashton* (including Plaintiffs)	[nearly $30 billion][60]

CLASS ACTION ALLEGATIONS

56. The series of separate lawsuits against the Taliban brought (1) in the 9/11 MDL on behalf of victims of the 9/11 Attacks and their surviving family members, (2) by the *Doe* Plaintiffs , and (3) by the *Owens* Plaintiffs has led to a race among Class members to win priority regarding the DAB Assets. In the absence of this class action, under the default New York state priority rules, family members of forty-seven of the 2,977 individuals killed in the 9/11 Attacks (the *Havlish* Plaintiffs) would be poised to deplete nearly two thirds of the limited DAB Assets. And a small number of other victims (the *Doe* and either the *Owens* Plaintiffs or the Settling MDL Plaintiffs) stand to absorb the remainder. This profoundly inequitable result would leave thousands of victims of the 9/11 Attacks and other terrorism victims with claims on file against the Taliban including those like the Wodensheks who have a liability judgment in hand and a pending motion seeking to confirm almost $70 million in compensatory damages to receive very little or even nothing.

57. To ensure a just and fair distribution of the DAB Assets among all Class members, Plaintiffs bring this action individually and on behalf of all others similarly situated, seeking to

[60] Confirmation of the *Ashton* Plaintiffs' cumulative compensatory damages award is pending.

certify and maintain as a class action pursuant to Rule 23(a) and 23(b)(1)(B) on behalf of the following:

> all persons and/or estates with a compensatory damages claim against the Taliban on file in a U.S. court of record as of April 20, 2022, where such claim arises directly out of an act of terrorism and the injuries suffered were proximately caused by that act of terrorism and the Taliban has been or likely will be adjudged liable for those injuries.

The members of the Class, thousands of victims of the Taliban's terrorism, are so numerous and geographically dispersed that joinder of each is impracticable. As such, Rule 23(a)(1) is satisfied.

58. This case presents questions of law and fact common to the claims of all members of the Class that will require common answers, including whether the DAB Assets are available to satisfy judgments against the Taliban under Section 201 of TRIA, whether Class members' claims exceed the value of the collectable DAB Assets, whether the Court should impose a constructive trust on the DAB Assets, and whether and how the DAB Assets as a limited fund should be equitably distributed among Class members. As such, Rule 23(a)(2) is satisfied.

59. Plaintiffs' claims are typical of the claims of the members of the Class. Like other members of the Class, the Wodensheks are the estate and surviving immediate family members of a victim of terrorism with compensatory damages claims on file against the Taliban arising directly out of the Taliban's facilitation of an act of terrorism. They are among the "U.S. victims of terrorism" who "have brought claims against the Taliban" that are intended as beneficiaries of the Executive Order.[61] Further, they currently hold liability judgments and have pending motions for damages judgments, which the 9/11 MDL court is in the process of adjudicating. And,

[61] Fact Sheet.

accordingly, like all other members of the Class, they have an interest in the DAB Assets. As such, Rule 23(a)(3) is satisfied.

60. Plaintiffs will fairly and adequately protect the interests of the Class as a whole rather than the narrow interests of any single member or group of members of the Class. Indeed, Plaintiffs' desire for fairness and to protect the interests of other similarly situated terrorism victims with respect to the DAB Assets is what motivates this action. Plaintiffs' counsel are experienced in aggregate and mass tort litigation, class actions, and other complex litigation. Counsel from Kreindler & Kreindler LLP have extensive experience representing victims in aviation disaster litigation and they have represented Plaintiffs (and numerous other plaintiffs among the *Ashton* Plaintiffs) in connection with the 9/11 MDL for nearly twenty years. Plaintiffs' counsel also have significant experience in matters involving equitable distributions in federal courts, such as bankruptcy proceedings and SEC receiverships. Indeed, Plaintiffs' counsel includes Samuel Issacharoff, a leading authority in class and other complex litigation who has served, among other roles, as a Reporter for the American Law Institute's *Principles of the Law of Aggregate Litigation*. As such, Rule 23(a)(4) is satisfied.

61. The DAB Assets valued at approximately $3.5 billion have been earmarked for U.S. victims of terrorism pursuant to the Executive Order. The value of compensatory damages awards held (and expected to soon be held) by members of the Class far exceeds this $3.5 billion. The *Havlish* and *Doe* Plaintiffs seek turnover of a combined $2,224,671,882.26, the *Owens* Plaintiffs have obtained an order of attachment as to $1,373,761,042.95, and the *Federal Insurance* Plaintiffs' "may execute on and enforce [their $9,351,247,965.99] judgment immediately."[62] Further, the *Ashton* Plaintiffs' pending motions for final judgment on damages

[62] *In re Terrorist Attacks*, 03-md-1570 (S.D.N.Y. Apr. 6, 2022), ECF 7833 at 3.

alone seek compensatory damages awards of nearly $30 billion, without calculation of prejudgment interest. Even without consideration of other similarly situated Class members, those judgments alone would dissipate the DAB Assets in their entirety. Consequently, the DAB Assets constitute a limited fund to satisfy the claims of all members of the Class.

62. Adjudications concerning this limited fund with respect to individual Class members would, as a practical matter, be dispositive of the interests of the other Class members and would substantially impair or impede their ability to protect their interests. In circumstances such as this, equity requires that a mandatory class be certified to determine the rights of all Class members and the Class falls within the ambit of a Rule 23(b)(1)(B) "limited fund" class. Unless the Class is certified, some members of the Class will be able to collect a disproportionate share of the limited fund relative to their compensatory damages judgments while others with identical rights and interests will receive very little or even nothing. Accordingly, the requirements of Rule 23(b)(1)(B) are satisfied.

COUNT I
INJUNCTIVE AND DECLARATORY RELIEF
PURSUANT TO 28 U.S.C. §§ 2201 AND 2202

63. Plaintiffs repeat and re-allege the allegations contained in the foregoing paragraphs as if fully set forth herein.

64. 28 U.S.C. § 2201 provides in relevant part that "[i]n a case of actual controversy within its jurisdiction . . . any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree. "

65. 28 U.S.C. § 2202 permits "[f]urther necessary or proper relief" to be awarded "based on a declaratory judgment or decree . . . against any adverse party whose rights have been determined by such judgment."

66. The DAB is an instrumentality of the Taliban and the DAB Assets, which have been consolidated in a blocked account at the FRBNY pursuant to the Executive Order, are available to satisfy judgments against the Taliban under Section 201 of TRIA.

67. The DAB Assets are the only known collectible Taliban assets in the United States (or elsewhere). The value of existing judgments against the Taliban, including claims by plaintiffs in the 9/11 MDL and in *Owens*, already far exceeds the value of the DAB Assets. As a result, the DAB Assets are a limited fund pursuant to Rule 23(b)(1)(B).

68. In circumstances in which a limited fund exists, equity requires that absent parties be represented, joinder being impractical, where individual claims to be satisfied from the one asset would, as a practical matter, prejudice the rights of absent claimants against a fund inadequate to pay them all.

69. All persons and/or estates with a compensatory damages claim against the Taliban on file in a U.S. court of record as of April 20, 2022, where such claim arises directly out of an act of terrorism and the injuries suffered were proximately caused by that act of terrorism and the Taliban has been or likely will be adjudged liable for those injuries have sought or will seek to enforce judgments on said claims. Members of the Class who have not yet obtained judgments against the Taliban, will almost certainly obtain those judgments and seek to enforce them. As a result, all members of the Class have an equitable interest in the DAB Assets.

70. Accordingly, Plaintiffs, on behalf of themselves and all others similarly situated, respectfully request the Court issue an immediate order in aid of the Court's jurisdiction enjoining any judgment enforcement proceeding in any court affecting the DAB Assets pending adjudication of Plaintiffs' Class Action Complaint. Plaintiffs further request that the Court certify the mandatory Class, declare that the DAB Assets are available under TRIA to satisfy Class

members' judgments against the Taliban, establish a constructive trust over the DAB Assets for the benefit of all Class members, and distribute the DAB Assets on an equitable basis to all Class members.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, pray for the following relief:

A. Because this is a national mandatory class action pursuant to Rule 23(b)(1)(B), superseding all litigation concerning the enforcement of judgments against the DAB Assets in state and federal forums, an immediate order in aid of the Court's jurisdiction enjoining any judgment enforcement proceeding in any court affecting the DAB Assets pending adjudication of Plaintiffs' Class Action Complaint;

B. An order certifying the mandatory Class and declaring that the value of the existing and likely future judgments against the Taliban for claims arising directly out of acts of terrorism far exceeds the value of the DAB Assets, and, as a result, the DAB Assets comprise a limited fund pursuant to Rule 23(b)(1)(B);

C. A declaration that the DAB Assets are available under Section 201 of TRIA to satisfy Class members' judgments against the Taliban;

D. A declaration that all members of the Class have an interest in the DAB Assets and such assets constitute, and shall be held as, a constructive trust for the benefit of all Class members;

E. The equitable distribution of the DAB Assets to all members of the Class at a time and in a manner to be determined by the Court; and

F. All other available and appropriate relief.

Dated: April 20, 2022
New York, New York

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Exhibit B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:	ORDER
APPROXIMATELY $3.5 BILLION OF ASSETS ON DEPOSIT AT THE FEDERAL RESERVE BANK OF NEW YORK IN THE NAME OF DA AFGHANISTAN BANK	22 CIV 03228 (GBD) (SN)

This document relates to:

In re Terrorist Attacks on September 11, 2001, No. 03-md-1570 (GBD) (SN)

GEORGE B. DANIELS, United States District Judge:

Plaintiffs The Estate of Christopher Wodenshek, Anne Wodenshek, Sarah Wodenshek, Haley Wodenshek, Mollie Wodenshek, William Wodenshek, and Zachary Wodenshek (the "Wodensheck Plaintiffs") in the MDL captioned action, *Ashton, et al v. Al Qaeda Islamic, et al*, Case No. 02-cv-6977, attempt to bring this separate proposed class action "seeking the equitable distribution" of funds currently deposited "at the Federal Reserve Bank of New York in the name of Da Afghanistan Bank ("DAB")."[1] (Class Action Complaint, ECF No. 1, at ¶ 1.) The Wodensheck Plaintiffs seek a class certification of "all persons and/or estates with compensatory damages claim against the Taliban on file in a U.S. court of record as of April 20, 2022." (Class Action Complaint at ¶ 8.) The complaint also sought an injunction "enjoining any judgment

[1] The Wodensheck Plaintiffs attempted to file the class action as related to *Owens, et al. v. Taliban*, case no. 22-cv-1949, before Judge Valerie E. Caproni instead of filing any application in the MDL captioned action in which they are already Plaintiffs.

enforcement proceeding in any court affecting the DAB Assets pending adjudication of Plaintiffs' Class Action Complaint." (*Id.*) This Complaint is improper and is DISMISSED.[2]

"As part of its general power to administer its docket, a district court may stay or dismiss a suit that is duplicative of another federal court suit." *Sacerdote v. Cammack Larhette Advisors, LLC*, 939 F.3d 498, 504 (2d Cir. 2019). This rule is known "as the rule against duplicative litigation" or "claim splitting." *Id.*; *see also*, *LG Elecs., Inc. v. Wi-Lan USA, Inc.*, 623 F. App'x 568, 570 (2d Cir. 2015) ("Th[e] rule against claim splitting is based on the belief that it is fairer to require a plaintiff to present in one action all of his theories of recovery relating to a transaction, and all of the evidence relating to those theories, than to permit him to prosecute overlapping or repetitive actions in different courts or at different times.") Essentially, a plaintiff cannot bring two of the same suits "that are both still pending," because a plaintiff has "no right to maintain two actions on the same subject in the same court, against the same defendant at the same time." *Sacerdote*, 939 F.3d at 504 (citing *The Haytian Republic*, 154 U.S. 118, 124 (1894)) .

This purported class action complaint was clearly duplicative no matter how the Plaintiffs dress up the claims. The Wodensheck Plaintiffs acknowledge that they are part of the MDL. (Class Action Complaint at ¶ ¶ 11-13.) They are in fact members of the MDL member case *Ashton*, Case No. 02-cv-6977, in which they have obtained liability judgments and have pending proposed final default judgments. (*See* Class Action Complaint at ¶ ¶ 11-13.) Their separate class action complaint is wholly about the "equitable distribution" of the DAB assets, including their damages in the *Ashton* case. The DAB assets are at issue in current turnover proceedings in the MDL. (ECF Nos. 7763, 7767, Case No. 03-md-1570.) The turnover proceedings are consistent with President Biden's executive order and accompanying statement retaining 3.5 billion dollars of DAB Assets

[2] For the same reasons that the Court denied a temporary restraining order in its April 21, 2022 order, Plaintiffs' application for a preliminary injunction is also DENIED.

in the United States subject to ongoing litigation by U.S. victims of terror.[3] Nothing about this proposed class action suit brings new claims that cannot be heard in the related MDL. Since a Plaintiff cannot maintain duplicate actions, the class action complaint is DISMISSED.[4] The Clerk of Court is directed to close the case accordingly.

Dated: APR 27 2022
New York, New York

SO ORDERED.

George B. Daniels

GEORGE B. DANIELS
UNITED STATES DISTRICT JUDGE

[3] *See* Press Release, White House, *FACT SHEET: Executive Order to Preserve Certain Afghanistan Central Bank Assets for the People of Afghanistan* (FEB. 11, 2022), https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/11/fact-sheet-executive-order-to-preserve-certain-afghanistan-central-bank-assets-for-the-people-of-afghanistan/ ("Many U.S. victims of terrorism, including relatives of victims who died in the September 11, 2001 terrorist attacks, have brought claims against the Taliban and are pursuing DAB assets in federal court. Because some of these plaintiffs currently have writs of execution against the DAB assets, the court will need to issue a further decision regarding the scope of those writs. Even if funds are transferred for the benefit of the Afghan people, more than $3.5 billion in DAB assets would remain in the United States and are subject to ongoing litigation by U.S. victims of terrorism. Plaintiffs will have a full opportunity to have their claims heard in court.").

[4] Given that damages in this case raise such highly individualized questions and require individualized proof, class action in this MDL is inappropriate.

Exhibit C

Federal Register
Vol. 87, No. 31
Tuesday, February 15, 2022

Presidential Documents

Title 3—

The President

Executive Order 14064 of February 11, 2022

Protecting Certain Property of Da Afghanistan Bank for the Benefit of the People of Afghanistan

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA), and section 301 of title 3, United States Code,

I, JOSEPH R. BIDEN JR., President of the United States of America, find that the widespread humanitarian crisis in Afghanistan—including the urgent needs of the people of Afghanistan for food security, livelihoods support, water, sanitation, health, hygiene, shelter and settlement assistance, and COVID–19-related assistance, among other basic human needs—and the potential for a deepening economic collapse in Afghanistan constitute an unusual and extraordinary threat to the national security and foreign policy of the United States. I hereby declare a national emergency to deal with that threat. In addition, I find that the preservation of certain property of Da Afghanistan Bank (DAB) held in the United States by United States financial institutions is of the utmost importance to addressing this national emergency and the welfare of the people of Afghanistan. I also understand that various parties, including representatives of victims of terrorism, have asserted legal claims against certain property of DAB or indicated in public court filings an intent to make such claims. This property is blocked under this order.

Accordingly, I hereby order:

Section 1. (a) All property and interests in property of DAB that are held, as of the date of this order, in the United States by any United States financial institution, including the Federal Reserve Bank of New York, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in, except as set forth in subsections (b) and (c) of this section.

(b) United States financial institutions shall promptly transfer the blocked property described in subsection (a) of this section into a consolidated account held at the Federal Reserve Bank of New York.

(c) The prohibitions in subsection (a) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted before the date of this order.

Sec. 2. This order and actions taken pursuant to this order shall apply notwithstanding any previously issued Executive Order to the extent such order blocks, regulates, or otherwise affects the property and interests in property identified in section 1(a) of this order. This order and actions taken pursuant to this order shall supersede any previously issued Executive Order to the extent such order blocks, regulates, or otherwise affects the property and interests in property identified in section 1(a) of this order.

Sec. 3. (a) Any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 4. For the purposes of this order:

(a) the term ''Da Afghanistan Bank'' or ''DAB'' means the Central Bank of Afghanistan;

(b) the term ''entity'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization; and

(c) the term ''person'' means an individual or entity.

Sec. 5. For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds and other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render those measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in this order, there need be no prior notice of the blocking of property and interests in property set forth in section 1(a) of this order.

Sec. 6. The Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General, is authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may, consistent with applicable law, redelegate any of these functions within the Department of the Treasury. All executive departments and agencies of the United States shall take all appropriate measures within their authority to implement this order.

Sec. 7. Nothing in this order shall prohibit transactions for the conduct of the official business of the Federal Government by employees, grantees, and contractors thereof.

Sec. 8. The Secretary of the Treasury, in consultation with the Secretary of State, is authorized to submit recurring and final reports to the Congress on the national emergency declared in this order, consistent with section 401(c) of the NEA (50 U.S.C. 1641(c)) and section 204(c) of IEEPA (50 U.S.C. 1703(c)).

Sec. 9. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
February 11, 2022.

[FR Doc. 2022–03346
Filed 2–14–22; 8:45 am]
Billing code 3395–F2–P

Exhibit D

BRIEFING ROOM

FACT SHEET: President Biden Signs Executive Order Catalyzing America's Clean Energy Economy Through Federal Sustainability

DECEMBER 08, 2021 • STATEMENTS AND RELEASES

U.S. Government Will Lead by Example to Leverage Scale and Procurement Power to Drive Clean, Healthy, and Resilient Operations

Today, President Biden will sign an executive order that demonstrates how the United States will leverage its scale and procurement power to lead by example in tackling the climate crisis. The executive order will reduce emissions across federal operations, invest in American clean energy industries and manufacturing, and create clean, healthy, and resilient communities. The President is building on his whole-of-government effort to tackle the climate crisis in a way that creates well-paying jobs, grows industries, and makes the country more economically competitive.

The President's executive order directs the federal government to use its scale and procurement power to achieve five ambitious goals:

- 100 percent carbon pollution-free electricity (CFE) by 2030, at least half of which will be locally supplied clean energy to meet 24/7 demand;
- 100 percent zero-emission vehicle (ZEV) acquisitions by 2035, including 100 percent zero-emission light-duty vehicle acquisitions by 2027;
- Net-zero emissions from federal procurement no later than 2050, including a Buy Clean policy to promote use of construction materials with lower embodied emissions;
- A net-zero emissions building portfolio by 2045, including a 50 percent emissions reduction by 2032; and
- Net-zero emissions from overall federal operations by 2050, including a 65 percent emissions reduction by 2030.

In addition to the five new commitments that form the pillars of today's executive action, the President also directed the federal government to orient its procurement and operations efforts in line with the following principles and goals:

- Achieving climate resilient infrastructure and operations;
- Building a climate- and sustainability-focused workforce;
- Advancing environmental justice and equity;
- Prioritizing the purchase of sustainable products, such as products without added perfluoroalkyl or polyfluoroalkyl substances (PFAS); and
- Accelerating progress through domestic and international partnerships.

Today's executive action is a part of the President's broader commitment to increasing investments in America's manufacturing industries and workers to build back our country better. By transforming how the federal government builds, buys, and manages its assets and operations, the federal government will support the growth of America's clean energy and clean technology industries, while accelerating America's progress toward achieving a carbon pollution-free electricity sector by 2035.

President Biden's executive order demonstrates how the United States government will lead by example to provide a strong foundation for American businesses to compete and win globally in the clean energy economy while creating well paying, union jobs at home. Today's executive action further reinforces the President's directive to Buy American and ensure that equity and environmental justice are key considerations in federal operations planning and decision making.

The White House also released a detailed description of this plan: *The Federal Sustainability Plan: Catalyzing America's Clean Energy Industries and Creating Jobs Through Federal Sustainability*.

Together, the President's Bipartisan Infrastructure Law, Budget for Fiscal Year 2022, and Build Back Better Act will provide agencies with the funding necessary to achieve the goals of the executive order.

Catalyzing America's Clean Energy Industries and Jobs through Federal Sustainability Executive Order

Through this executive order, the federal government will transform its portfolio of 300,000 buildings, fleet of 600,000 cars and trucks, and annual purchasing power of $650 billion in goods and services to:

1. Transition federal infrastructure to zero-emission vehicles and buildings powered by carbon pollution-free electricity, which will reduce the federal government's greenhouse gas emissions by 65 percent by 2030 and achieve net-zero emissions by 2050.

- Make federal agencies more adaptive and resilient to the impacts of climate change, and increase the sustainability of federal supply chains, achieving net-zero emissions from federal procurement by 2050.

- Mainstream sustainability within the federal workforce, advance equity and environmental justice, and leverage partnerships to accelerate progress.

Transition federal infrastructure to zero-emission vehicles and energy efficient buildings powered by carbon pollution-free electricity:

- **Achieve 100 percent carbon pollution-free electricity use by 2030, including 50 percent on a 24/7 basis.** The federal government will work with utilities, developers, technology firms, financiers and others to purchase electricity produced from resources that generate no carbon emissions, including solar and wind, for all its operations by 2030. Half of the federal government's 100 percent carbon pollution-free annual electricity demand will be procured on a 24/7 basis, meaning that the federal government's real-time demand for electricity will be met with clean energy every hour, every day, and produced within the same regional grid where the electricity is consumed. With the scope and scale of this electricity demand, the federal government expects it will catalyze the development of at least 10 gigawatts of new American clean electricity production by 2030, spurring the creation of new union jobs and moving the country closer to achieving a carbon pollution-free electricity sector by 2035.

- **Transition to 100 percent acquisition of zero-emission vehicles by 2035 for the federal vehicle fleet, including 100 percent light duty vehicle acquisition by 2027.** The federal government will work with American vehicle, battery, and charging equipment manufacturers and installers to transform its fleet into the largest zero-emission vehicle fleet in the Nation, reaching 100 percent zero-emission vehicle acquisitions by 2035. This will accelerate the advancement of America's industrial capacity to supply zero-emission vehicles and electric vehicle batteries and create and sustain good union jobs in manufacturing, engineering, and skilled-trades.

- **Modernize the federal buildings portfolio to reach net-zero emissions by 2045, including a 50 percent reduction in building emissions by 2032**. The federal government will work across existing real property and during new building construction and major renovations to increase water and energy efficiency, reduce waste, electrify systems, and promote sustainable locations for federal facilities to strengthen the vitality and livability of the communities in which federal facilities are located. Additionally, the Biden-Harris Administration will implement the first-ever Federal Building Performance Standard, and will use performance contracting to improve buildings with no up-front costs.

Make federal agencies more adaptive and resilient to the impacts of climate change, and increase the sustainability of federal supply chains, achieving net-zero emissions from federal procurement by 2050.

- **Make federal agencies more adaptive and resilient to the impacts of climate change.** The intensifying impacts of climate change present physical, operational, and financial risks to federal infrastructure, agency missions, and our services to the American people. Agencies will implement the actions identified through their October 7, 2021, Climate Adaptation and Resilience Plans and modernize federal policy, programs, operations, and infrastructure to support climate resilience investment. By taking action now to better manage and mitigate climate risks, we will minimize future disruptions and destruction to federal operations, assets, and programs and ensure the federal government can continue providing critical services to the Nation.

- **Increase the sustainability of federal supply chains, achieving net-zero emissions from federal procurement by 2050.** The companies that supply the federal government are critical partners in achieving our climate goals and growing the economy and American jobs. Cutting emissions from the federal government's procurement also means buying materials with a lower carbon footprint. The federal government will launch a "buy clean" initiative for low-carbon materials and prioritize the purchase of sustainable products, such as products without added perfluoroalkyl or polyfluoroalkyl substances (PFAS). Through these actions, the federal government will provide a large and stable signal to the market for sustainable and low-carbon goods made in America, advancing America's industrial capacity to supply the goods and materials of the future while growing good jobs for American workers.

Mainstream sustainability within the federal workforce, advance equity and environmental justice, and leverage partnerships to accelerate progress.

- **Mainstream sustainability within the federal workforce.** The federal government's 4.2 million employees are critical stakeholders and leaders in the shift to sustainable and resilient operations. The federal government will build capacity through engagement, education, and training so that federal workers are ready to embed sustainability, climate adaptation, and environmental stewardship analysis and action in their jobs as we work to Build Back Better.

- **Advance equity and environmental justice.** The federal government will advance the goals of the Administration's Justice40 Initiative by ensuring that economic equity and environmental justice are key considerations in operations planning and decision making. A federal environmental justice representative will serve on the newly established Chief Sustainability Officer Council. To incorporate equity, agencies will implement this executive order consistent with the President's Executive Order on *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,* which helps ensure that government contracting and procurement opportunities are available on an equal basis.

- Collaboration with leading American unions, businesses, States, Tribes, municipalities, and other countries will accelerate progress and catalyze greater climate action at home and abroad. The federal government will build upon its newly launched Greening Government Initiative, which convenes governments around the world to collaborate on greening government operations. Further, the Administration will launch a Presidential Sustainability Executives Program, placing senior leaders from the private and non-profit sectors to serve across the federal government, bringing innovative perspectives and critical expertise to achieve these ambitious, and imperative, sustainability and climate preparedness goals.

Actions Agencies are Taking to Meet the Goals of the Sustainability Executive Order

Across the federal government, agencies are moving expeditiously to meet the President's call for action and are positioned to meet the ambitious goals of his executive order and Federal Sustainability Plan. Highlights are included below:

100 percent CFE by 2030, including 50 percent on a 24/7 Basis

- In 2022, the **Department of Defense's (DOD)** Edwards Air Force Base in California will add 520 megawatts (MW) of CFE to the grid by completing one of the country's largest solar photovoltaic (PV) array projects and in the process creating more than 1,000 union and other construction jobs.

- In 2022, **DOD's** Pacific Missile Range Facility in Hawaii will complete construction of the nation's largest 100 percent clean energy microgrid. By leveraging a 14-megawatt (MW) solar facility paired with a 70 megawatt-hour (MWh) battery energy storage system sited on the base, the Pacific Missile Range Facility can become self-sufficient for all its electricity needs in the event of a loss of transmission feed from the utility grid.

100 Percent ZEV Acquisitions by 2035, including 100 percent Light-Duty ZEV Acquisitions by 2027

- In 2021, the **Department of the Interior** (DOI) began transitioning its fleet of U.S. Park Police lightweight motorcycles and dirt bikes to 100 percent ZEVs at its Washington, D.C., New York City, and San Francisco locations, with plans to reach a 100 ZEV fleet by 2025.

- In early 2022, the **Department of Homeland Security (DHS)** will begin field testing the Ford Mustang Mach-E ZEV for use in its law enforcement fleet, which currently consists of over 30,000 vehicles.

Net-Zero Emissions Buildings by 2045, including a 50 percent reduction by 2032

- In 2023, the **Department of Transportation will complete its** Volpe Transportation Center project that collapses six buildings into a low-emissions building with rooftop solar PV panels, ZEV charging stations for the federal fleet and employee vehicles, green and cool roof technologies, a rainwater reclamation and reuse system, and a climate-resilient above-grade data center.

- By 2022, the **Department of the Treasury** willhave completed the majority of its energy infrastructure improvements at an Internal Revenue Service Center outside of New York City through a 17-year, $30.9 million energy savings performance contract (ESPC). The ESPC has so far delivered nearly $14 million in capital improvements and $2.2 million in annual utility bill savings. ESPCs allow federal agencies to procure energy savings and facility improvements with no up-front capital costs or special appropriations from Congress.

Net-Zero Emissions Procurement by 2050

- In 2021, **DOD** collected information from its suppliers on their efforts to measure and report greenhouse gas (GHG) emissions. DOD is using this information to develop low-carbon purchasing guidelines that will become part of its standard operating procedures.

- In 2022, the **General Services Administration** (GSA) will require contractors to disclose the embodied carbon of building materials for new building and major modernization contracts. Embodied carbon refers to the greenhouse gas emissions (mostly carbon dioxide) resulting from the mining, harvesting, processing, manufacturing, transportation, and installation of materials.

Net-Zero Emissions from overall Federal Operations by 2050, including a 65 percent reduction by 2030

- By January 2022, **DOD's** Marine Corps Logistics Base Albany in Georgia anticipates achieving net-zero energy status.

Climate Resilient Infrastructure and Operations

- In 2021, more than 20 major federal agencies released plans describing how they will integrate climate-readiness across missions and programs and bolster resilience of Federal assets. For example, the **Department of Housing and Urban Development** (HUD) is collecting building-level data across HUD programs to map existing climate risks to help inform the Department on how to best address climate impacts and protect HUD-assisted assets and their occupants.

- **DOD** is integrating climate change considerations across its strategic guidance and planning documents, including the National Defense Strategy, which will be released in 2022.

Develop a Climate- and Sustainability-Focused Workforce

- The **Department of State** is assessing its climate and sustainability management staffing and training gaps to inform a longer-term plan that will prioritize areas of concern and greatest needs.

- In 2022, the **Department of Labor** will launch a new training course for its senior leadership team on climate change management considerations and environmental justice principals. The Department will also include climate change literacy in new employee orientation material.

Advance Environmental Justice and Equity

- In 2021, **GSA** launched an Environmental Justice and Equity Task Group to identify and propose effective approaches to improve environmental justice and equity in federal

sustainable building processes, enhancing engagement with communities and key partners throughout the building lifecycle.

- In 2021, the **Department of Commerce's** National Oceanic and Atmospheric Administration (NOAA) convened Climate and Equity roundtables across the country to gather feedback to inform how NOAA provides climate services, engages with underserved and vulnerable communities, and strengthens internal processes to respond to expressed needs.

- As outlined in its October 2021 Strategic Framework for Addressing Climate Change, **DHS** is incorporating the need to achieve equity as guiding principle through all lines of effort described in the framework.

Accelerate Progress Through Domestic and International Partnerships

- In 2021, the United States and Canada launched the Greening Government Initiative, a first-of-its-kind initiative that will enable countries to share lessons learned, promote innovation, and accelerate national efforts to green government operations and help meet Paris Agreement commitments. Today, the 39 GGI participating countries are beginning share key organizational features and policies and identify potential areas for collaboration.

- In 2020, the **Department of Veterans Affairs** (VA) New England's Boston Healthcare System partnered with National Grid on a plan to transition its 70-car fleet to ZEVs. Consistent with National Grid's recommendations, VA is working with GSA to procure approximately 25 ZEVs in the 2022 acquisition cycle.

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Exhibit E

SHER TREMONTE LLP

April 25, 2022

BY ECF

The Honorable George B. Daniels
United States District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007

Re: ***In re Terrorist Attacks on September 11, 2001,*** Case No. 03-md-1570 (GBD)(SN)
In re Approximately $3.5 Billion of Assets on Deposit at the Federal Reserve Bank of New York in the Name of Da Afghanistan Bank, Case No. 22-cv-03228 (GBD)

Dear Judge Daniels:

We write on behalf of the Wodensheks ("Class Plaintiffs") concerning the Court's April 21, 2022 Order (the "Order") to (1) address the propriety of Class Plaintiffs' filing of their April 20, 2022 limited fund Rule 23(b)(1)(B) Class Action Complaint (the "Class Complaint" or "Class Action") and their seeking to relate the Class Action to the *Owens* action, and (2) respectfully request that the Court clarify certain aspects of the Order during tomorrow's conference.

The Class Action

Class Plaintiffs' sole goal in filing the Class Action was to ensure that a single court has jurisdiction over the entire $3.5 billion in Da Afghanistan Bank funds (the "DAB Assets") and to establish a clear mechanism for that court to provide for an equitable distribution of the funds to all victims of Taliban terrorism. Class Plaintiffs requested a temporary restraining order and a preliminary injunction to protect the DAB Assets from dissipation prior to adjudication of the Class Complaint. To understand why a limited fund class action is necessary, and to explain why Class Plaintiffs sought to relate the Class Action to the *Owens* action, we provide a brief summary of the DAB Assets' recent but complex history.

On February 11, 2022, President Biden issued an extraordinary Executive Order unexpectedly announcing that the availability of $3.5 billion of the DAB Assets to satisfy terrorism claims should be adjudicated by the courts. Shortly thereafter, the *Havlish* Plaintiffs moved to lift the stays on judicial enforcement of the execution of their and the *Doe* Plaintiffs' August 2021 writs of execution. Five days later, on February 16, the Court accepted *Does 1 through 7 v. The Taliban* as related to the MDL, notwithstanding that the underlying claims do not arise out of the 9/11 Attacks. The Court explained it did so

because the *Doe* Plaintiffs possess a compensatory damages judgment against the Taliban.[1] That same day, "157 U.S. Government employees killed or injured in the August 7, 1998, Al Qaeda bombings of the U.S. Embassies in Nairobi, Kenya and Dar-es-Salaam, Tanzania, their family members, and the personal representatives of their estates" (the "*Amduso* Intervenors") moved to intervene in the 9/11 MDL and the *Doe* action "for the purpose of defending an interest in" the DAB Assets (the "Amduso Motion").[2]

On February 22, 2022, Magistrate Judge Netburn presided over a hearing at which counsel for the United States and the *Havlish*, *Doe*, *Ashton*, *O'Neill*, and *Federal Insurance* Plaintiffs, among others, apprised the court of their respective positions on lifting the stays.[3] Counsel for the *Ashton* Plaintiffs urged the Court to exercise its equitable powers to ensure fair treatment of all 9/11 MDL plaintiffs.[4] Judge Netburn, however, expressed skepticism even as to the *Ashton* Plaintiffs' standing[5] "to challenge the procedural mechanism by which the *Havlish* and *Doe* [P]laintiffs seek to proceed on their execution"[6] because the *Ashton* Plaintiffs (and others) did not yet have liquidated damages judgments.[7] Judge Netburn also suggested that she was likely bound to apply New York's standard priority rules though their application would result in grossly inequitable treatment amongst 9/11 families.[8] Later that day, the Court issued an Opinion and Order denying the Amduso Motion,[9] reasoning that because the *Amduso* Intervenors had neither a judgment against the Taliban nor an attachment of the DAB Assets, "they ha[d] no interest in [the 9/11 MDL]."[10]

Shortly thereafter, on March 8, 2022, plaintiffs in the *Owens* action individuals allegedly injured or killed in the same U.S. Embassy bombings of which the *Amduso* Intervenors were victims filed a complaint seeking to extend compensatory damages claims they previously obtained against others to the Taliban, along with an emergency

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[1] *Does 1 through 7 v. The Taliban*, 20 mc 740 (S.D.N.Y. Feb. 16, 2022), ECF 54.

[2] *In re Terrorist Attacks on September 11, 2001*, 03 md 1570 (S.D.N.Y. Feb. 16, 2022), ECF 7676 2.

[3] *Ashton v. Al Qaeda Islamic Army et al.*, 02 cv 6977 (S.D.N.Y.), Feb. 22, 2022 Hr'g Tr.

[4] *Ashton v. Al Qaeda Islamic Army et al.*, 02 cv 6977 (S.D.N.Y.), Feb. 22, 2022 Hr'g Tr. at 27:9 10.

[5] And, by extension, the standing of any 9/11 MDL plaintiffs with pending motions for confirmation of damages awards.

[6] *Ashton v. Al Qaeda Islamic Army et al.*, 02 cv 6977 (S.D.N.Y.), Feb. 22, 2022 Hr'g Tr. at 24:20 23; 25:17 26:2.

[7] The first *Ashton* motion for such damages on behalf of 580 estates and survivors of 9/11 victims in the same amounts as previously awarded to them against co defendant Iran have been pending before this Court since December 20, 2021.*In re Terrorist Attacks*, 03 md 1570 (S.D.N.Y. Dec. 20, 2021), ECF 7489 *et seq.*

[8] *See Ashton v. Al Qaeda Islamic Army et al.*, 02 cv 6977 (S.D.N.Y.), Feb. 22, 2022 Hr'g Tr. at 27:17 28:5.

[9] *In re Terrorist Attacks*, 03 md 1570 (S.D.N.Y. Feb. 22, 2022), ECF 7696; *Doe*, 20 mc 740 (S.D.N.Y. Feb. 22, 2022), ECF 60.

[10] *In re Terrorist Attacks*, 03 md 1570 (S.D.N.Y. Feb. 22, 2022), ECF 7696; *Doe*, 20 mc 740 (S.D.N.Y. Feb. 22, 2022), ECF 60.

motion seeking prejudgment attachment against the DAB Assets.[11] That action was assigned to Judge Caproni the following day.

Anticipating complications all but certain to arise with judgment enforcement proceedings against the DAB Assets occurring contemporaneously in two different courts, the Wrongful Death and Commercial Claims PECs including counsel for Class Plaintiffs filed a letter motion in the MDL and *Owens* action requesting a stay of the *Owens* Plaintiffs' attachment motion and for *Owens*'s acceptance by the MDL "for consolidated judgment enforcement proceedings against the Taliban" so that such proceedings could "continue in a coordinated fashion."[12] Judge Netburn denied the PECs' request the following day, distinguishing the MDL's acceptance of the *Doe* action from its rejection of the *Owens* action on the grounds that, although the *Owens* Plaintiffs had moved for an order of attachment against the same DAB Assets subject to then-stayed writs of execution possessed by the *Doe* and *Havlish* Plaintiffs, the *Owens* Plaintiffs had neither a judgment against the Taliban nor an attachment order, so the *Owens* action was too "legally and factually distinct" for there to be "efficiencies . . . gained through their consolidation."[13]

Such distinctions became irrelevant, however, when Judge Caproni granted the *Owens* Plaintiffs' motion for prejudgment attachment as to approximately $1.3 billion of the $3.5 billion in DAB Assets.[14] In a subsequent Opinion and Order strictly applying New York rules, Judge Caproni reasoned that the only question was "whether [the *Owens*] Plaintiffs have proven a need to secure" those DAB Assets not already subject to the *Doe* and *Havlish* Plaintiffs' writs.[15] Judge Caproni acknowledged that "establishing priority over other creditors is clearly a motivating factor behind Plaintiffs' motion," referring to the *Doe* and *Havlish* Plaintiffs, but concluded that because the statutory grounds for prejudgment attachment are met, the court was compelled to grant the relief.[16] A day prior, on March 20, 2022, the *Havlish* and *Doe* Plaintiffs moved for partial turnover of the DAB Assets in the combined amount of approximately $2.22 billion.[17]

Accordingly, since March 21, 2022, if strict priority rules are applied, the DAB Assets have been spoken for in their entirety. And, notwithstanding the PECs' and others' efforts to bring the *Doe*, *Havlish*, and *Owens* Plaintiffs together into a single proceeding, judgment enforcement efforts as to the DAB Assets continue across both the 9/11 MDL

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[11] *Owens v. Taliban*, 22 cv 1949 (S.D.N.Y. Mar. 8, 2022), ECF 1, 4 6; *id.* (Mar. 9, 2022), ECF 7 (refiled complaint).

[12] *In re Terrorist Attacks*, 03 md 1570 (S.D.N.Y. Mar. 14, 2022), ECF 7751.

[13] *In re Terrorist Attacks*, 03 md 1570 (S.D.N.Y. Mar. 15, 2022), ECF 7754. Judge Netburn's decision was also strongly informed by interbranch comity concerns and the need to unencumber certain DAB assets subject to attachment in the MDL and *Doe* actions, issues not implicated by the *Owens* action. *Id.* at 2 3.

[14] *Owens*, 22 cv 1949 (S.D.N.Y. Mar. 21, 2022), ECF 33.

[15] *Owens*, 22 cv 1949 (S.D.N.Y. Apr. 11, 2022), ECF 38 at 11 12.

[16] *Owens*, 22 cv 1949 (S.D.N.Y. Apr. 11, 2022), ECF 38 at 12 (emphasis added).

[17] *In re Terrorist Attacks*, 03 md 1570 (S.D.N.Y. Mar. 20, 2022), ECF 7763 71.

and *Owens* action. Further, in the course of these proceedings, both this Court and the *Owens* court suggested that they are bound by ordinary New York priority rules. Consequently, Class Plaintiffs reasonably believe that a limited fund class action, which gives a single court jurisdiction over all DAB Assets and requires their equitable distribution, is the proper, and indeed, necessary, mechanism for ensuring fair treatment of all victims of Taliban terrorism not just in this MDL but in the *Owens* action too.[18] State priority rules did not contemplate and have no application to the extraordinary situation here. Victims of mass terror attacks suffering common losses (the deaths of their loved ones) and holding common liability judgments should not be denied their right to a fair share of a limited fund (should the DAB Assets be available to satisfy judgments against the Taliban) based on the sequence in which damages judgments are issued by an MDL court.[19]

As for relating the Class Action to *Owens* rather than the MDL, the *Owens* court recently imposed a judicial restraint on approximately one-third of the DAB Assets. Class Plaintiffs certainly do not intend to undermine either court's jurisdiction; rather, Class Plaintiffs simply seek to have all issues related to the limited DAB Assets adjudicated by a single court. Further, Class Plaintiffs were entirely transparent and immediately alerted both courts to the Class Action's filing.[20]

Request for Clarification

Lastly, Class Plaintiffs respectfully request that during tomorrow's conference, the Court clarify the following issues related to the Order:

1. The Order denies Plaintiffs' request for a temporary restraining order, but does not specifically address the request for a preliminary injunction. Is it the Court's intent that the Order also deny Plaintiffs' request for a preliminary injunction pursuant to the All Writs Act?

2. The Order states, "Any claims arising out of the MDL, and arguably related to the distribution of the DAB assets, shall be heard in the pending turnover proceedings within the context of the MDL." Is it the intent of the Court that the Order summarily dismisses the Class Complaint?

3. How does the Court propose to use the turnover proceedings (rather than the Class Action) to adjudicate all claims related to the distribution of the

[18] Class Plaintiffs' equity concerns are not limited to the MDL. It would be profoundly inequitable should the *Owens* Plaintiffs receive $1.3 billion of the DAB Assets while thousands of terror victims with claims against the Taliban who are not members of the *Havlish* and *Doe* Plaintiffs are all but certain to recover either very little or nothing from the DAB Assets.

[19] If strict priority rules apply, the Court has already determined which party is next in line by granting *Federal Insurance* Plaintiffs' motion for partial final default judgment against the Taliban. *See In re Terrorist Attacks*, 03 md 1570 (S.D.N.Y. Apr. 6, 2022), ECF 7833.

[20] *In re Terrorist Attacks*, 03 md 1570 (S.D.N.Y. Apr. 20, 2022), ECF 7892 (attaching Complaint); *Owens*, 22 cv 1949 (S.D.N.Y. Apr. 20, 2022), ECF 39 (same).

DAB Assets given that *Owens* is not part of the MDL and given that more than one-third of the DAB Assets are subject to attachment by the *Owens* court?

Respectfully submitted,

KREINDLER LLP */s/ Megan Benett* Megan Benett	SHER TREMONTE LLP */s/ Theresa Trzaskoma* Theresa Trzaskoma

cc: Judge Valerie E. Caproni (by ECF in *Owens*)

Exhibit F

Case 1:22-cv-03228-GBD Document 13 Filed 04/21/22 Page 77 of 178

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:

TERRORIST ATTACKS ON SEPTEMBER 11, 2001

ORDER

03 MDL 1570 (GBD) (SN)

This document relates to:

In re Approximately $3.5 Billion of Assets on Deposit at the Federal Reserve Bank of New York in the Name of Da Afghanistan Bank, No. 22-cv-03228 (GBD) (SN)

GEORGE B. DANIELS, United States District Judge:

Certain Plaintiffs in the above captioned multidistrict litigation have attempted to obtain relief outside of the MDL. Plaintiffs The Estate of Christopher Wodenshek, Anne Wodenshek, Sarah Wodenshek, Haley Wodenshek, Mollie Wodenshek, William Wodenshek, and Zachary Wodenshek (the "Wodensheck Plaintiffs") are part of the MDL member case *Ashton*, Case No. 02-cv-6977. They have recently filed a separate class action complaint in *In re Approximately $3.5 Billion of Assets on Deposit at the Federal Reserve Bank of New York in the Name of Da Afghanistan Bank*, No. 22-cv-03228 (GBD) (SN). (ECF No. 1, Case No. 22-cv-03228.) In that separate action, the Wodensheck Plaintiffs sought a class certification of "all persons and/or estates with a compensatory damages claim against the Taliban on file in a U.S. court of record as of April 20, 2022," an injunction "enjoining any judgment enforcement proceeding in any court affecting the DAB Assets pending adjudication of Plaintiffs' Class Action Complaint," and the equitable distribution of assets currently on deposit at the Federal Reserve Bank of New York ("FRBNY") in the name of Da Afghanistan Bank ("DAB"). (ECF No. 1 at ¶¶ 1, 8, 57, 70.) The DAB assets are at issue in current turnover proceedings in the MDL. (ECF Nos. 7763, 7767, Case No. 03-md-1570.)

Filing this separate complaint, while acknowledging that the Wodensheck Plaintiffs have pending proceedings in the MDL, is wholly inappropriate. The Wodensheck Plaintiffs request that their class action lawsuit be related to *Owens v. Taliban*, Case No. 22-cv-1949 was denied by Judge Valerie Caproni, and instead the case has been reassigned as related to the MDL. Any claims arising out of the MDL, and arguably related to the distribution of the DAB assets, shall be heard in the pending turnover proceedings within the context of the MDL.

The Wodensheck Plaintiffs also seek a temporary restraining order to "to enjoin all judgment enforcement proceedings in any court affecting the DAB Assets pending adjudication of Plaintiffs' Class Action Complaint." (ECF No. 6, Case No. 22-cv-03228.) "[A] party seeking a temporary restraining order…'must demonstrate that it will suffer irreparable harm absent injunctive relief and either (1) that it is likely to succeed on the merits of the action, or (2) that there are sufficiently serious questions going to the merits to make them a fair ground for litigation, provided that the balance of hardships tips decidedly in favor of the moving party.'" *Pers. v. United States*, No. 19 CIV. 154 (LGS), 2019 WL 258095, at *1 (S.D.N.Y. Jan. 18, 2019) (quoting *Prospect Park Ass'n v. Delaney*, No. 18 Civ. 4852, 2018 WL 3542860, at *2 (S.D.N.Y. July 23, 2018)). The Wodensheck Plaintiffs fail to come close to meeting this burden. Therefore, the request for a temporary restraining order is hereby DENIED.

The Court will hold a conference with the parties on April 26, 2022 at 11:00 AM to inform all interested parties regarding the process for addressing the outstanding issues presently before the Court.

Dated: April 21, 2021
New York, New York

SO ORDERED.

George B. Daniels

GEORGE B. DANIELS
United States District Judge

Exhibit G

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

In re Approximately $3.5 Billion of Assets on Deposit at the Federal Reserve Bank of New York in the Name of Da Afghanistan Bank

22 Civ. 3228 (GBD)(SN)

Conference

----------x

New York, N.Y.
April 26, 2022
11:00 a.m.

Before:

HON. GEORGE B. DANIELS,

District Judge

-and-

HON. SARAH NETBURN,

U.S. Magistrate Judge

APPEARANCES

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John Does 1 through 7
BY: JOHN THORNTON

(Case called)

JUDGE DANIELS: All right.

Ladies and gentlemen, first, the purpose of this proceeding is so that everyone can get a clear understanding, from your perspective and from our perspective, of how we're proceeding with regard to these funds. My intent is to resolve whatever issues need to be resolved in the current turnover proceedings. Anyone who believes they have any interest, who are a part of the MDL or not part of the MDL, in these funds, if they're not already here in this proceeding, should seek to intervene, because this is where we're going to decide this issue.

I've spoken with Judge Caproni. We are in agreement that we will be moving forward, and it is not likely that any other proceeding will interfere or address the issues that we intend to address in the turnover proceedings prior to our moving forward.

We have a schedule. The most recent letters asked about adjusting the schedule. I'll let Judge Netburn address those issues, but I want to make something really clear. There is no other proceeding that anyone in this room can initiate that will be appropriate to address the issues that we're going to address in the turnover proceeding.

I'll be more direct about this. The filing that was made before Judge Caproni of a separate complaint by plaintiffs

who are already plaintiffs within another case in which they're seeking to obtain funds in support of judgments here is wholly inappropriate. We can address that further, but I do not intend to spend any more of the Court's time or the lawyers' time addressing those issues. As far as I'm concerned, that case will not interfere.

I will give the lawyers in that case an opportunity to consider immediately whether they wish to, within the next 24 hours, move to dismiss that case without prejudice. If that is not done, if that's not a decision that is made by the lawyers in that case, then I will act independently on that case and dismiss that case on its merits. I'll give you 24 hours to decide what to do. It is inappropriate to file a duplicative case that seeks to enforce the same rights based on the same set of facts and to enforce a judgment in a litigation in which the parties have been engaged for years. It is clearly not appropriate for a class action, a putative class action.

The fact is that's one of the reasons why we're all here in an MDL, because presumptively, this is not appropriate for a class action. These are individual claims, and I do not intend to prejudice any party. In the turnover proceeding, we intend to resolve certain specific issues. And I can tell you -- I have my notes here -- one, we're going to first resolve whether or not these subject funds are available to satisfy judgments against the Taliban. That's the first

question to be resolved.

Second, which plaintiffs may recover and obtain money from those funds if those funds are, in fact, legally available to satisfy judgments?

And then discuss and determine what is an equitable distribution of those funds given the number of plaintiffs that are outstanding.

I can tell you right now my inclination is not that an equitable distribution is first come first served. My understanding is it will be resolved one of three ways. If the plaintiffs cannot agree, this Court will independently determine whether these funds are available and what is the appropriate distribution of those funds.

If there is a suggestion by the parties, that the parties agree upon -- and my understanding is that pretty much everyone has agreed to some form of distribution, other than the Ashton plaintiffs -- and again, my reaction to the filing of a separate case before another judge to try to obtain those funds is inappropriate not only because there's a case already pending here -- and that's filed to be related to a case that isn't even part of the MDL and isn't even a 9/11 case -- but also, as a class, the relief that the parties sought in that case advantages no one but themselves. So to say that there is somehow a reasonable representative plaintiff for all the other plaintiffs, quite frankly, from what I've read, I don't know

any other plaintiff in this room who agrees with it.

This was what I consider to be a totally inappropriate attempt to simply advantage one set of plaintiffs. There's no legal basis to do so. There's no legal basis to file a separate complaint, given there's already litigation here, and there's no legal basis to attempt to make that into a class action to represent a class of plaintiffs. We have approximately 10,000 plaintiffs here, and I see no advantage to any of the particularly 9,000 of these plaintiffs who already have judgments or are in the process of obtaining judgments.

Now, I've spoken with Judge Caproni. We all know what the status is of the case that's before her.

One, it is not a 9/11 case.

Two, the plaintiffs don't have a judgment.

Three, the plaintiffs haven't even served in that case.

So that case is not likely to advance in any way that would interfere with the schedule that we anticipate in efficiently and effectively moving forward with to resolve the turnover proceeding.

Judge Caproni and I have been in contact, and we're going to keep in contact with an understanding that if some action needs to be taken in that case that might influence what's going on here, we will discuss it before it happens. But it is not likely that even in a general scenario -- there's

no need for any further orders to prevent that from happening. That case not only is not ripe for this determination of the issues that the second case was attempting to join, there are even questions about whether or not that in and of itself is a viable case.

So everybody should understand that we will be proceeding as we intended to proceed. We will decide those issues in this litigation. I do not anticipate that it will be decided anywhere else, and I am going to indicate right now that no further filings of new complaints in any other court that address the claims raised in this case and before this Court are to be filed without leave of this Court. All right?

I want to make that clear to everybody. Most of the concerns that the parties have raised in their letters and in their actions are concerns that both Magistrate Judge Netburn and I have already discussed, have already factored in, have already considered, and we intend to move forward in order to make a determination as to if and how these funds are to be distributed.

As I say, my intent is to concentrate, to the extent possible, on what would be an equitable distribution of those funds if those funds are available. It is not, as I say, first come first served. If the parties have a suggestion, which is unanimous or which is the majority of the parties, the vast majority, we are willing to consider that.

I don't want to go too far ahead of myself, but I'm even willing to consider, if it's appropriate, appointing a special master to help the parties agree on a proposal that we can consider and determine whether or not it's a reasonable distribution of those funds if those funds are legally appropriate to disburse to the plaintiffs in this case.

So I want to make it real clear there should be no more strategic filings in order to advantage any particular plaintiff. Quite frankly, if I have to make an equitable determination about who gets what, one of the things I may end up factoring in is which parties have been obstructionist with regard to the process and whether or not they should be treated on the same footing with the other plaintiffs.

Let me be blunt about it. The lawyers here are not crabs in a barrel. All right? You're all plaintiffs with the same type of claim and similar interests, but the determination of who is to recover, how much is to be recovered, and where that recovery should come from are individual decisions, for the most part, that have to be made. And we are in the process. We would be probably a good 25 hours ahead of where we are today if we didn't have to deal with this kind of issue in this case and we could continue to concentrate on moving along with the determination of damage awards and final judgments for the parties.

That's my initial statement.

If someone wants to be heard, if you have any questions about that, let me hear it now, because this isn't rocket science that we're dealing with. We're moving forward efficiently, and to the extent that you have a concern that your interests are not being adequately considered, you can let me know.

Yes, Ms. Benett.

MS. BENETT: Megan Benett on behalf of the Ashton plaintiffs and the Wodenshek plaintiffs.

First, I'd like to thank the Court for having us appear in person for this conference and for stating your concerns as to equitable treatment and not sort of having this as a first-come-first-served process.

I do want to be clear we are the people who filed the class complaint. I understand the Court's frustration. I hear what the Court is saying about that. I want to clarify a couple of points.

First of all, the Ashton plaintiffs are not a small minority. We represent 800-some families, 25 percent of the victims killed in the 9/11 attacks. The reason that you see that we haven't joined into what has been described as the framework agreement is that because it is our understanding that that framework agreement would put the families of the Havlish plaintiffs in a position of receiving somewhere north of 80 percent of their judgments, the value of their judgments;

the insurance companies receiving less than 20 percent of the value of their judgments; and the rest of the 2,900-some families receiving something on the order of 1 or maybe 2 percent of the value of their judgments.

JUDGE DANIELS: Well, since it has not been laid out for me or Judge Netburn exactly what that agreement entails, I have not factored any of that in a determination at this point as to whether these funds are available for recovery and how these funds should be distributed.

MS. BENETT: I understand, and that obviously, both in this case and the Owens case, is the major threshold question. And when we had the initial conference in February, I think we had expected that the order, the decision-making would take those dispositive threshold questions first and then the thornier distribution questions as sort of a second-order problem. It appeared to us, based on the schedule in the turnover proceedings, that there was going to be a determination regarding distribution perhaps simultaneous with the question of whether those assets would be available at all.

To be clear, the 23(b)(1)(B) complaint would not advantage the Ashton plaintiffs over anybody else. In fact, the class definition was defined specifically in a way to include everybody who has a claim against those assets and would allow for transparent -- because to the Court's comment about the terms of this framework agreement, we haven't been

presented with a formal term sheet at all either. So my description to the Court is driven, in part, by the fact that this is somewhat opaque and that the 23(b)(1)(B) class complaint seemed to us the most transparent, equitable and judicially overseen vehicle to consider the distribution, should the Court get to the distribution stage.

It also, and I understand that the Court -- I understand the hostility to the vehicle, but it did, to our mind, also provide the Court with a way to take jurisdiction over the entirety of those $3.5 billion in assets. And I hear the Court's representation regarding the Owens case. The fact is that the April 11 decision from Judge Caproni granted an order of attachment and stated that the Owens plaintiffs would have priority.

It may well be that that is not ultimately the case, but given that posture, I think we were not unreasonable to be concerned that there was an ongoing race to the bank. The 23(b)(1)(B) complaint is not unusual as a sort of settlement vehicle. It is specifically designed when there is a limited fund. It is not a question about determination of liability on an individual basis, but it's basically an equitable vehicle that is similar to a bankruptcy proceeding or reverse interpleader. And so the point about filing was simply to provide a vehicle that would treat all of the victims of Taliban-sponsored terrorism in the fairest, most equitable and

most transparent basis.

It was not meant to advantage one family. It was not meant to advantage one law firm. To the contrary; we have consistently, throughout this process, been voicing our concerns about any distribution proceeding that would treat one family who suffered similar, if not identical, losses differently from another family who suffered those same losses.

I believe that everybody, all of the 9/11 families feel that way. I know that in statements to the press, that the lawyers for the Havlish group and Ms. Havlish herself stated that they care about fair treatment here. The 23(b)(1)(B) limited class fund, to our mind, given the competing claims in the Owens case -- and to be clear, the Owens plaintiffs would also be able to participate in a limited class fund. This was not meant to exclude the non-9/11 community. It was meant to be as welcoming as possible to everybody who can establish that they have liability claims against the Taliban and that they've suffered injuries proximately caused by the Taliban's support of mass terrorist attacks.

I don't know if the Court wants to hear anything more about that.

JUDGE DANIELS: No, I don't, because I understand your position and I understand what you attempted to do, but I think it's totally inappropriate in this case.

I'll just give you one example. There's absolutely no reason why that complaint should have been filed before Judge Caproni rather than filed here, and I don't know that there's any party here who is going to say that your filing that, particularly as a class action, somehow advantaged them. It was an attempt to advantage you and disadvantage everyone else. As I say, unless the parties want to spend some more time briefing it and litigating it, I have determined that it is inappropriate and it is appropriate for dismissal. It does not add anything to this litigation, and it does not address any issues that are not being addressed in this litigation. That should settle the issue.

I will give you 24 hours to decide whether or not you want to move to dismiss this case, without prejudice, and if you make such an application within the next 24 hours, I will grant that application. If you do not make such an application, I will move forward to dismiss the case on its merits, because it has no utility. It has absolutely no utility.

Now, if it was motivated out of fear, I understand that; that's what you're basically saying to me. But I can assure you that the process we have in place, the communications that are almost daily at this point that Magistrate Judge Netburn and I have on this issue and the communications that I am now having directly with Judge

Caproni, having the same conversations we're having here about what's going on over there and what's going on over here and whether or not cases belong over here and whether or not anybody can pick and choose and judge shop where they want to file their next claim, that clearly is to be resolved in this MDL litigation.

So the fact is you should let me know whether you want to step aside and focus on the turnover proceeding. If the Owens plaintiffs want to come in and they think they've got an interest and they want to participate in the turnover proceeding, they can. But we intend to move forward and resolve this issues expeditiously, step by step, giving everyone an opportunity to be heard. There's no reason to believe that there's any concern that these issues are going to be resolved somewhere else before they're resolved here.

You made your calculation that this was the way that you wanted to proceed, by filing a separate lawsuit related to Owens. But I want to make clear to you and to everybody else who might want to consider doing the same thing, it's not going to happen. What you will do is not put yourself at the front of the line; you will end up putting yourself at the back of the line by taking those kind of actions.

You know we have a forum to resolve these issues. That is the only forum that exists to resolve these issues currently. If that changes, then we can address it. But I

don't anticipate it's going to change, and I don't anticipate that Judge Caproni is going to take any action in that infant case to interfere with a determination that all of you are going to have an opportunity to participate in and will be resolved here and resolved with the availability and the distribution of those funds, if those funds are available to distribute to the parties.

I don't want to spend a whole lot more time on this, unless you want to spend a lot more of your time on this.

MS. BENETT: No. I just want to correct a couple of things.

First of all, to be clear, the class complaint -- and I hear the Court on that, but I want to make clear it would not have advantaged the Ashton plaintiffs. We would not have been driving the process the way the Havlish attorneys suggested in their filing yesterday. It would have been a judicially overseen process.

JUDGE DANIELS: Well, who would it have advantaged then?

MS. BENETT: All of the families who are victims.

JUDGE DANIELS: Why? They're perfectly satisfied to have this issue resolved in a turnover proceeding.

MS. BENETT: No, no. That's not true. It's not all of the 9/11 families who are perfectly happy to have it satisfied in the turnover proceeding, and it's and it's not all

of the victims of Taliban-sponsored terrorism.

JUDGE DANIELS: Who else are you referring to other than yourself?

MS. BENETT: All of the embassy bombing victims, and to be clear --

JUDGE DANIELS: Who else are you referring to, other than your client?

MS. BENETT: The 25 percent of the 9/11 families that we represent.

JUDGE DANIELS: I'm sorry. I have not received any communication from any other lawyers saying that they are in agreement with what you did.

MS. BENETT: They aren't. They made a different, tactical decision. They wanted to enter into an agreement to hedge their bets and guarantee some modest economic recovery for their clients at a grossly disproportionate value vis-à-vis the insurance companies and the families of a smaller number of victims. That was a different decision.

We made a decision to file this because we thought it wasn't right to disadvantage 2,900 --

JUDGE DANIELS: It should have been filed here. That's my first point. It should have been filed here. You don't get to file it in Wyoming.

MS. BENETT: I hear you.

JUDGE DANIELS: We're in the middle of an MDL that's

been going on for years and involves thousands, as you say, of plaintiffs who have a similar interest in these funds. That is not the appropriate way to proceed. It's not even the efficient way to proceed. It's the inefficient way to proceed, given the fact we are engaged in turnover proceedings.

MS. BENETT: I hear you on that point, and I know the Court recognizes this, but I do want to just state on the record we filed with -- in connection with marking it related to Owens for one reason, which is that that was the only case that had a judicial restraint on the funds. It's an *in rem* proceeding against $3.5 billion. We sent a copy. As the Court knows, we sent a copy of our filings. We filed them the same time in the MDL, and I recognize that this was not how the Court would have --

JUDGE DANIELS: Well, look --

MS. BENETT: But we did not try to hide it. We provided and we trusted --

JUDGE DANIELS: If you don't want to participate here and you want to go sit over there, maybe I'll consider that. But you know that's not what you want to do.

MS. BENETT: We want all of the claims to the $3.5 billion to be consolidated in front of a single court.

JUDGE DANIELS: And that's this Court.

MS. BENETT: And that's fine.

JUDGE DANIELS: There's no reason to believe that

that's supposed to be Judge Caproni.

MS. BENETT: But we only believed that because Judge Caproni had issued the April 11 order restraining the assets and because in connection with the previous effort to have the Owens case brought into the MDL, both courts rejected that. So we gave both courts the complaint. Certainly, in retrospect, I wish that we had marked it as related to both. I'm not sure if that's even an option on the form, now that I'm thinking about it.

JUDGE DANIELS: No, it's not. It would have been an inappropriate option.

MS. BENETT: We gave both courts, we intended to give both courts notice and trust the courts to decide which venue was proper. But the point was always that the 3.5 billion should be adjudicated by a single court, including all those threshold questions that are going to be dispositive of whether this money is available to satisfy any judgments in the first place.

So the filing of the class complaint was meant to, A, have all the adjudications regarding those assets from a single court; and two, as I said, and I -- you know, I hear the Court's response to this. But it was truly because we were concerned about a process that was going to so grossly disproportionately treat 9/11 family members in a way that our -- and I speak to our clients all the time. I know the

same is true even for clients represented by firms that reached a different decision, that the distribution as proposed in the, initially in the turnover proceedings was so deeply troubling to our family members that we did not believe that we could participate in the framework agreement that would have put, you know, treated one person's life as worth 2 percent of the others'.

JUDGE DANIELS: As I usually say, that was a hallway debate that you had with the others. That was not an issue that this Court raised. That is not an issue that this Court adopted. This Court isn't even aware of what the agreement is. The appropriate place to resolve those issues and understand how we were ultimately going to proceed is in this forum, in this courtroom.

MS. BENETT: And I think that that's -- and to the extent that we can do so with judicial oversight and in a transparent manner, that will provide real comfort to the family members. Before the Court's order on Thursday, we had intended to file something noting that we were -- you know, given that the framework agreement had been discussed in papers but without terms, we did intend, before our attention turned to the hearing this morning, to ask the Court to perhaps explore what the terms of that framework agreement looked like, because like I said, our position has been all along that every single family member, all 2,977 families, should be treated

fairly and equitably; that the agreement, as we understood it, would not only fail to do so but would fail to do so in a very dramatic fashion; that the 23(b)(1)(B) class complaint was a vehicle that could take into consideration certain concerns that parties have raised previously of those who have not participated in the USVSST fund, which has made, to be clear, very modest payments to some of the 9/11 family members, that their decision not to participate in that fund could be taken into consideration when fashioning any distribution should the assets be available through the class complaint -- through the limited class fund, rather.

JUDGE DANIELS: And you all have the opportunity to raise those issues before this Court.

JUDGE NETBURN: Right. I think the thing that's most frustrating here is you could say a lot about this MDL, but you could not say that we haven't given everybody an opportunity to be heard. We allow everybody to speak up. We want every family to participate, and filing this class action before Judge Caproni feels like an end run around that process. And that feels inappropriate. I understand that you represent a quarter of the families, but the vehicle that you chose to do this feels completely like you're trying to slot out everybody else when you have never been denied an opportunity to be heard.

I think there's lots of questions about your class

complaint, as evidenced by this conference, as to whether or not you would be adequate counsel, given the opposition so many people have; whether or not your claims are typical; whether or not you can prove that class is a superior method over the MDL. All of those things are very serious questions in my mind and point to a not-well-thought-out choice. And as a result, we have all spent, as Judge Daniels said, dozens and dozens of hours focusing on this charade instead of focusing on the real issue.

So if you want to be heard on what you think is an appropriate distribution, should the Court determine that those funds are available, you will have that opportunity to be heard. But going about it this way leaves a very off taste in our mouths, and it doesn't feel like it's being done in the interest of the class. It feels like it's being done in the interest of your clients because your clients feel like they're not going to get what you think is appropriate. And I'd like to hear about this, but not through this vehicle.

MS. BENETT: Understood.

Just to be clear, Judge, at the February 22 conference, there was the *sua sponte* questions about how anybody without a liquidated damages judgment would have standing to participate in a turnover proceeding as a sort of the threshold matter, and it was at that point that we became concerned. And I hear what the Court is saying about the time

and effort spent thinking about an equitable process here. And again, it's obviously very reassuring to the family members; I'm sure all of them, not just those we represent. But we did have concerns that there would be -- we didn't know how it was going to unfold.

The class complaint was -- and I, again, hear the Court. I can say it was not meant to be an end run at all. To the contrary, and it's not meant to be outside of the MDL. It is a limited class fund that could be available for purposes of resolving claims to the DAB assets within the MDL. It's not -- there are no sort of -- there are no liability questions. I mean depending on how -- and again, the way the class was crafted was meant to be as fair and reasonable as possible given the nature of the claims already asserted by various parties against the Taliban and against the DAB assets.

I don't know that it's worth answering the Court's questions or addressing the Courts' complaints. I will say it's certainly not meant to be a charade. It was meant to be a vehicle that would -- you know, we thought that the Court might welcome as a method for this distribution, given also what the Court said at the February 22 conference about being sort of bound by New York State priority rules and the same -- Judge Caproni echoing the same at the March conference of the Owens hearing.

And the fact is that the Rule 23(b)(1)(B) limited

class fund would actually take jurisdiction over all of the assets and would provide a way for the Court to not have to worry about the built-in inequity of the priority rules in a case like this, where you have a mass terror attack or several terrorist attacks with sort of predetermined damages, judgments issued against the co-joint tortfeasor, would allow the Court a means by which to address this equitably without having to be concerned with the New York State priority rules, which I think it's fair to say certainly didn't contemplate this particular situation but also don't seem to have fair application in an MDL, where the use of those priority rules would sort of force the Court into the position of choosing, you know, one person, one identically situated person over another.

I don't know if it's --

JUDGE DANIELS: Those are tough choices, but this Court is prepared to make those choices. OK? And it's not up to you to make those choices, to reframe it to your advantage. Those issues will have to be addressed. We will address every one of those issues after giving everyone a full opportunity to give their input. Neither you nor any individual lawyer in this room has the ability or the right to define that for this Court or for the rest of these plaintiffs.

All of these plaintiffs have the same interest that you have in making sure that their clients get as much satisfaction of their outstanding damages as you do. That's to

be decided in the same room at the same time for all of the plaintiffs, not to be decided in a separate courtroom, in a separate litigation, while we're trying to figure out what you're doing across the hall.

MS. BENETT: I hear you, and I know I've said this already. I just want to be clear. The proposal that we put forward -- first of all, this Court could oversee a limited fund.

JUDGE DANIELS: You didn't bring it to this Court. You didn't give us any indication --

MS. BENETT: I understand.

JUDGE DANIELS: -- that that was the case. You gave us the opposite indication.

MS. BENETT: My point is that this Court, of course, could take jurisdiction over that if it chose to, but I just want to clarify that it would not advantage the family members we represent over somebody else. To the contrary, it is currently the only, the only vehicle, procedural vehicle we see that would not do that.

JUDGE DANIELS: Thank you.

MS. BENETT: I'm sorry. I just wanted to clarify that the proposed limited class fund would not, in fact, advantage -- well, that's not -- it would advantage -- it would be more advantageous to the 2,930 non-Havlish family members than strict application of New York priority rules, but it

would not be more advantageous to the family members we represent vis-à-vis all of the other family members of those killed and injured in Taliban-sponsored terrorist attacks.

I understand, and I've heard both of the judges express your displeasure and believe that this was gamesmanship. I want to be clear. We filed this in order to treat every family that was a victim of a Taliban-sponsored terrorist attack on an equal and fair basis, not to advantage our clients, not to advantage certain family members over others and not to advantage us. In fact, a limited class fund would be overseen by the Court. It would not be overseen by the lawyers.

This was not a question about class counsel fees. This was about making sure there was a vehicle, given what we had heard at the two prior hearings, in the Owens case and this case, about the Court's feeling bound by New York State priority rules and given what the contours of this framework agreement, which I understand neither I nor the Court know the specifics of, but I am fairly confident would not have treated family members on a fair and equitable basis.

JUDGE NETBURN: I think Judge Daniels and I both don't want to get too far along on the merits of this class complaint, but to the extent what I'm hearing is that you think filing a class action would obviate the need or the obligation of the Court to consider New York priority rules, why do you

think that? Wouldn't there still be an application of priority at least within the class complaint, or you think that just disappears then and there wouldn't be subclasses, for instance?

MS. BENETT: Do you mind if I -- my cocounsel, Ms. Trzaskoma, who has more familiarity with this process, can tell you why. But there could be an equitable way to treat people based on, for example, what category you fall into. But I do not believe that New York State priority rules would have any application in the -- that basically the $3.5 billion goes into a judicially supervised equitable trust, and then it is for the Court to decide without application.

The only reason New York State priority rules are at issue here is because of Federal Rule of Civil Procedure 69, which says that in the execution of judgments, the Court should look to the law of the state where it's situated. Under a Rule 23(b)(1)(B) limited class complaint posture, however, you're not looking at the execution of judgments. You're looking at the people who have claims. However the Court would define the class, you're looking at people who fall into that class who have claims against that fund. That's why it's an *in rem* proceeding.

I think in the letter last night, one of the parties had said they don't even know who the defendants are, but that's because it's an *in rem* proceeding against these assets themselves, and so New York State priority rules don't come

into play because you're not looking at execution of judgments.

JUDGE DANIELS: All right. Did you want to be heard further on that?

I don't want to spend a lot of time debating backwards. I understand your position. After we have this discussion, as far as I'm concerned, as I always say, we start this litigation anew. I'm not holding this against the parties at this point, but I expect you to conform your conduct in the future consistent with the way this MDL is established and the issues that are supposed to be decided in this MDL. That filing before Judge Caproni is inconsistent with that for a number of reasons that we just discussed.

So as long as you understand and everyone else understands -- this is not just for you; it's for anyone else's benefit who thinks, OK, this is a way that I'm supposed to change the issues that are before the Court and have them decided in the way you want them decided. That is not the way we're going to proceed. Due warning to everyone is that you will do nothing but disadvantage your clients by this kind of conduct in the future rather than advancing the possibility of an equitable distribution of these funds if these funds are, in fact, available.

Yes.

MS. TRZASKOMA: Yes, your Honor.

JUDGE NETBURN: Could you just state your appearance

for the court reporter.

MS. TRZASKOMA: Yes. Apologies.

Theresa Trzaskoma from Sher Tremonte on behalf of the Ashton plaintiffs and the class plaintiffs.

I don't want to tread on ground that Ms. Benett already covered, but I do want to explain what the relief was, is, that we are seeking in the 23(b)(1)(B) class.

This is with the reverse interpleader. It doesn't advantage anyone to be the class plaintiffs. It is seeking an equitable distribution of all the assets, including those that are subject to the attachment order that Judge Caproni issued in Owens.

Prior to our filing of that class action, it appeared -- perhaps we were reading tea leaves, but there were comments on the record in both this MDL and by Judge Caproni that strict priority rules were going to apply, and that is not appropriate in these circumstances.

A Rule 23(b)(1)(B) class action cuts through all of that. It allows the Court to do equity, which is what I hear the Court wants to do. It allows a single court, currently this MDL Court, to take control and jurisdiction over the $3.5 billion and then to determine what is an equitable distribution based on whatever factors all of the individual plaintiffs' lawyers want to make arguments to the Court. It is not controlled by class plaintiffs. It is solely in the Court's

discretion.

And that's the vehicle we brought to -- I realize we brought it to Judge Caproni, which you've made clear was the wrong court. But it was not intended to circumvent anything. It was intended to provide a mechanism for, a procedural mechanism for dealing with New York priority rules, which were never intended to meet this extraordinary circumstance.

Rule 23 makes the New York priority rules irrelevant. It takes us into an equitable process, where New York priority rules don't even have to be considered. It preempts New York priority rules.

So it can argue the right mechanism for this very extraordinary situation.

JUDGE DANIELS: All right.

Before I turn to Magistrate Judge Netburn with regard to -- I know there were some questions and requests about the process and the dates of what things are due -- did anyone else want to be heard before we moved into that?

MR. KREINDLER: Good morning, your Honor.

Very quickly -- jim Kreindler -- and I'm not saying anything about the class action or the specifics, but I did want to just make one comment, your Honor, because we have been together wrestling with this case for 15 years. And even before that, it's a long history, starting with the 1996 effective death penalty and Antiterrorism Act that was

spearheaded by then Senator Biden and Senator Kennedy. And from that time on, when it comes to the states who are sponsors or involved with terror, whether it's Libya or Saudi Arabia or Iran, speaking personally, I have one principle in mind. And that is everyone -- every victim -- should be treated equally. And as your Honors both know, while it took 20 years, ultimately, we got $10 million per death for 270 people from Libya in the Pan Am 103 bombing. And that's been my approach, and from the day or two after 9/11, it's something I've expressed to the clients.

And your Honor is quite right when you identified the fear we have that this approach, equal treatment for everyone, which has been something important to me for these 25, 30 years, might be jeopardized by this, you know, race to file first or obtain writs or judgments first. And while I know it's taken a lot of time, speaking personally, I'm glad we're together, because at least personally, I feel that this commitment that I think we all share is a common theme, and we can achieve it not just with this fund but when we reach the promised land at the end of the case.

So I just wanted to thank your Honors for your time and, at least speaking personally, I am reassured that whatever misconceptions were there we've taken care of, and we're on track to do something good and right.

So thank you.

JUDGE DANIELS: Thank you, Mr. Kreindler.

Does anyone else want to be heard?

MR. CARTER: Your Honor, very briefly. Sean Carter from Cozen O'Connor, your Honor.

There's been a fair amount of discussion today about the framework agreement, and I just want to provide a brief perspective on that for the Court.

There are many of us who recognized that there was a pool of funds here that was unprotected and subject to potential attack from parties outside of the MDL. And at the same time, we recognized the complexity of the issues facing this Court in trying to deal with the turnover issues, including because the procedural posture of claims on behalf of the various plaintiffs, differed wildly, from people who had actual judgments, who had moved for monetary judgments years, ago to people who had only recently filed claims the.

Within all of those issues, many of us sought to reach a range of compromises in that achieving a good result -- perhaps not a perfect result, but a good result -- would also have streamlined this entire process for the Court. So when there's conversations here about what equity demands, what is equitable and what's fair, I think part of the consideration for the rest of us was achieving a good result that simplified issues for the MDL Court and allowing the entire case to go forward.

That's all, your Honor.

JUDGE DANIELS: Yes.

MR. BAUMEISTER: Good morning. I'll be brief also.

JUDGE DANIELS: Put your appearance on the record.

MR. BAUMEISTER: Mich Baumeister, representing the Bauer plaintiffs.

I certainly am responding to Mr. Carter, and while he talks about this was an efficient way, I can tell the Court that my clients -- some of them are listening on the phone today -- were told by other clients that the Havlish plaintiffs would get 1.7 billion, his client would get 500 million. They were the deal people that would take it, and if you didn't agree to sign on, even though you didn't know what you would get as a client, even though you didn't know if there would be money, especially even Owens, if you didn't do it, at the end of the day you would get zero.

Some of my clients have been threatened. I received a letter threatening me, Do the deal. It wasn't about efficiency. It was about lining their pockets and disadvantaging the families.

So that's all I wanted to say.

JUDGE DANIELS: Well, the question of what is an equitable distribution, if that question is to be answered, will be answered by this Court. If all of the plaintiffs have a suggestion or some of the plaintiffs have a suggestion or

some third party has a suggestion for the plaintiffs, the ultimate decision lies with the Court. So I urge you to agree, to the extent that you can agree, on what is, if you can, a joint position. If you cannot, those issues, the disputes between the parties with regard to what is an appropriate recovery for each plaintiff is an individual decision that has to be made by this Court. All right?

Anyone else?

Yes, sir.

MR. SCHUTTY: Thank you, your Honor. John Schutty. I represent a subset of the Ashton plaintiffs.

Your Honor, I want to thank you for your reassuring words. I can advise you that my clients have lived in fear since February 22 when the New York State priority rules were emphasized at that conference, and it was a growing fear among the 9/11 families that the Havlish plaintiffs at that time would take the lion's share of the $3-1/2 billion. So I want to thank your Honor for clarifying that the Court's intent is to make an equitable distribution.

As you may know, I filed a letter, a motion requesting permission to contest the judgment that was entered in favor of the Havlish plaintiffs because that judgment was entered in 2012 based on common law, and under the common law of the state of New York, for example, many of those plaintiffs would not recover money. Many of them would not get solatium damages.

So I'd like the opportunity to address that issue with the Court.

And in addition, I just want to tell your Honor that I think the suggestion that a special master here would help to get together with the plaintiffs' attorneys to ensure an equitable distribution is something that should be thoroughly considered. Both judges sitting on the bench today worked so hard for us, and this issue seems to be a subset of what's going on overall in the litigation. So I just would like you to consider fairness and equity and remove some of the fear of some of the family members.

Thank you.

JUDGE NETBURN: I'll just note that I've received your letter application. I haven't acted on it. We will shortly.

Anyone else want to be heard?

JUDGE DANIELS: Ms. Benett.

MS. BENETT: Just briefly.

JUDGE NETBURN: Sure.

MS. BENETT: Sorry. One final suggestion from us.

I heard Judge Daniels on the 24 hours with respect to our pending class complaint. I'd ask if the Court might let us provide a short letter explanation of how that particular vehicle could work in a proceeding like this, specifically thinking of this now in light of Mr. Schutty's concerns raised in his letter and in his statements, that there is

JUDGE DANIELS: I have no interest in pursuing that option.

MS. BENETT: OK. I was going to offer the opportunity to explain a little bit of the procedural aspects of it.

JUDGE DANIELS: There's nothing that you can say that would convince me that rather than proceed in this MDL under this turnover order, that the alternative would be that we adopt the complaint that you have filed.

MS. BENETT: I hear you, Judge. Thank you.

JUDGE NETBURN: All right. I'm going to turn down the heat a little bit and talk about briefing schedules.

I understand that there's an issue related to the various amici that have filed briefs. I'm going to set a deadline of this Friday, which is April 29, for any other amici who wishes to be heard to file their leave application. I think at this point we have about five, and we will be generous in allowing appropriate amici to be heard if they wish.

So April 29 will be the deadline for any potential other amici, who might be listening in or here in the courtroom, to file any leave application. And I know that the Havlish creditors had proposed a more extensive briefing schedule. The Court really wants to move on this, as I imagine everybody else does. So my proposal is that any opposition that the Havlish and Doe creditors wish to file or a response be set at May 13.

Any objection to that schedule?

All right. Hearing none, the deadline -- we'll issue an order today. Just to put it out on the record, the deadline for any amici who wish to file an amicus brief will be April 29, and anyone who wishes to respond to those amicis, the merits of their briefs, will be due May 13.

All right. Anything further from anyone?

JUDGE DANIELS: All right. We're working hard. We encourage your assistance and your input. It makes a big difference, particularly -- and it's interesting that by the time we read the letters that you've sent us, we've already discussed half the issues that are in your letters, so it gives me some comfort that we're approaching this in the appropriate way and we'll be able to expeditiously make some decisions about this.

Obviously, the Court is not in a position to give any plaintiff a guarantee that they will recover these funds or any funds and the extent to which they will recover. But I guarantee you that our main goal is to make sure that all plaintiffs can recover as much of the available funds as possible in an equitable way.

Now, whether or not we face other legal hurdles with regard to priority or with regard to other issues that might affect that, we will confront them and we will address them. But it is our intent, to the extent, consistent with the law as

we can apply it, to make sure that all plaintiffs get some degree of satisfaction. Obviously, no plaintiff in any case can be made whole. Nobody can bring back a deceased relative. Nobody can undo the damage that has been done, but we are focused on figuring out, and we continue to focus on figuring out, what actual funds might be available, what actual funds could be distributed, and what is a reasonable and equitable way to distribute those funds.

We still seek your guidance on that. We'll give further consideration as we go through the turnover proceedings as to whether or not we should initiate at this point a process, if the parties agree they would like a special master to look at those issues, but I can guarantee you that we will give you a full opportunity to be heard, as we have given you a full opportunity to be heard, on these issues -- the issues of the availability of funds and the issue of who is entitled to some of those funds and what would be the appropriate way to distribute available funds, not just the funds at issue here but any funds.

We know we're setting a framework for any other funds that might be available in the future and the parties will seek a distribution of those funds. So be assured that any concerns that you have about certain issues, the appropriate way to address them is to bring them to the attention of this Court and to have the other side -- anyone who disagrees with your

position -- be able to weigh in in this proceeding, in this MDL proceeding. And we will fairly and, hopefully, efficiently move forward and give you some assurance that although we give no one any guarantees that you will be satisfied with the ultimate result, we can give you assurance that you will all be heard. Your positions will be considered, and we will make the best decision that we can.

My position is always this -- that the best decisions aren't made by smart people. They're made by informed people. Give us the information that you think is compelling, and we will factor it in. When we make mistakes, we usually say, Oh, if I'd only known X. Right?

So keep us informed. To the extent that you genuinely want to assist us, we encourage you to do so. To the extent that you just want to simply advantage your own client, we are deciding these cases on their merits, not on any other basis. So keep that in mind.

I think it was important for us to meet here. If there are other issues that this raises or that come up, bring them to our attention right away. As I say, despite everything else that we're doing, literally we're in contact almost on a daily basis at this point with regard to these issues so we can move forward efficiently and give you a result that maybe not everyone will be total satisfied with, but hopefully a result that you can understand, that is a reasoned judgment,

consistent with the law, as to how you should participate in distribution of funds and what the relationship is between the plaintiffs.

My final reminder is you are all plaintiffs. Your clients are all victims. OK? That's what should be driving everyone here. That's what drives us as we're addressing these issues. Right now, everyone before this Court is on an equal footing, and everyone should consider when you make your arguments whether those arguments support everyone's position or whether those arguments simply support your position or whether those arguments disadvantage some at the expense of others, because that's the first evaluation that I'll have with regard to your conduct, your applications, and your filings.

Remember, this is the forum that we're going to resolve these issues. That's the bottom line of this proceeding. We're going to resolve it here, not before Judge Caproni, not before some other judge in this court, not in some other duplicative proceeding that is to address the same issues that we are already addressing here. Regardless of what any party believes, it is a more efficient, effective and advantageous way for us to proceed.

We've laid out the process and we're going to stick with that process, and as far as I'm concerned, that process is working. It will hopefully, and I'm confident it will, give us the best result that we could possibly reach on behalf of the

plaintiffs and victims that have the true interest in this litigation.

Thank you very much.

Let's move forward, and we will proceed efficiently. If there are any other issues that need to be addressed with regard to any of these claims -- of liability or damages -- obviously, my position is they should be raised with this Court on notice to all the other parties, either jointly or having an opportunity to disagree.

Thank you all very much. And we will continue.

(Adjourned)

Exhibit H

SHER TREMONTE LLP

April 27, 2022

BY ECF

The Honorable George B. Daniels
United States District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007

The Honorable Sarah Netburn
United States Magistrate Judge
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: ***In re Terrorist Attacks on September 11, 2001,*** Case No. 03-md-1570 (GBD)(SN)
In re Approximately $3.5 Billion of Assets on Deposit at the Federal Reserve Bank of New York in the Name of Da Afghanistan Bank, Case No. 22-cv-03228 (GBD)

Dear Judge Daniels and Judge Netburn:

We appreciate the Court holding a conference yesterday and are greatly heartened by the Court's clear statements regarding an equitable distribution of the limited fund of DAB Assets. We are also mindful of the Court's concerns stated during the conference and repeat that our sole goal is to ensure that our clients and every victim of Taliban-sponsored terrorism are treated fairly and equitably. We welcome the Court's suggestion about possible appointment of a Special Master to help the parties work toward a global, equitable distribution paradigm.

Notwithstanding the encouraging statements at yesterday's conference, we remain troubled that the *Havlish*, *Doe*, *Federal Insurance*, and *Owens* plaintiffs believe, despite CPLR 5240, that they are entitled to "absolute priority" under New York law and have never stated otherwise. We are similarly troubled that both this Court and the *Owens* court previously indicated that New York's priority rules might apply even in these extraordinary circumstances involving the limited fund established to benefit victims of Taliban-sponsored terrorism pursuant to President Biden's Executive Order.

Indeed, judicial statements suggesting that distribution could be based on priority, rather than on equity, drove many 9/11 families to accede to a highly inequitable Framework Agreement. That Agreement proposed to give the 47 *Havlish* plaintiffs tens of millions of dollars each and insurance companies hundreds of millions of dollars, while

leaving the vast majority of 9/11 families with a minuscule fraction of the limited fund. A process based in equity under Rule 23 and not in the context of turnover proceedings governed by New York's priority rules would, unquestionably, result in a better outcome for not only the *Ashton* families, but those in the *Burnett* and *O'Neill* cases as well. It is still unclear, however, whether concerns about an inequitable priority distribution have been put to rest. At yesterday's conference, this Court initially stated, correctly, that a "first come first served" priority approach should not be applied, yet later commented that despite its intention to do equity, we may "face other legal hurdles with regard to priority." Apr. 26, 2022 Conf. Tr. 7, 36.

We take the Court's admonitions seriously and do not wish to continue to provoke the Court's ire; however, in light of these concerns, without (1) a ruling from this Court that the New York's ordinary priority rules will not apply in the turnover proceedings; (2) a ruling that the *Owens* plaintiffs will be brought into the MDL; and (3) agreement from the *Havlish*, *Doe*, *Federal Insurance*, and *Owens* plaintiffs not to contest an equitable distribution, we cannot withdraw the Class Action Complaint or our motion for a preliminary injunction. We remain convinced that adjudicating a limited fund class action in the context of this MDL as an *in rem* proceeding is the only procedural mechanism that gives this Court jurisdiction over the entirety of the DAB Assets themselves, consolidating any claims to those funds before this Court, and mandates an equitable distribution.[1]

Respectfully submitted,

KREINDLER & KREINDLER LLP */s/ Megan Benett* Megan Benett	SHER TREMONTE LLP */s/ Theresa Trzaskoma* Theresa Trzaskoma

[1] It is not at all uncommon for a class action to arise out of an MDL. *See* Elizabeth J. Cabraser & Samuel Issacharoff, *The Participatory Class Action*, 92 N.Y.U. L. REV. 846, 850 (2017) ("Increasingly, class actions are organized out of the centralizing function of MDL practice."). Nor is it unusual to propose a class action where most class members are represented by individual counsel. *See id*. 860 ("In short, at least some absent class members in an MDL-based class action already have separate, independent counsel and have individually asserted their own claims.").

Exhibit I

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: TERRORIST ATTACKS ON SEPTEMBER 11, 2001	03 MDL 1570 (GBD)
HAVLISH, *et al.*, Plaintiffs, v. BIN LADEN, *et al.*, Defendants.	03 Civ. 9848 (GBD)
JOHN DOES 1 through 7, Plaintiffs, v. THE TALIBAN, *et al.*, Defendants.	20 Misc. 740 (GBD)
	Remote Conference
	New York, N.Y.
	February 22, 2022
	9:30 a.m.

Before:

HON. SARAH NETBURN,

Magistrate Judge

APPEARANCES

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KELLOGG HANSEN TODD FIGEL & FREDERICK PLLC
Attorneys for Kingdom of Saudi Arabia
BY: GREGORY G. RAPAWY

WHITE & CASE, LLP
Attorneys for Republic of the Sudan
BY: CHRISTOPHER M. CURRAN
NICOLE ERB
CLAIRE A. DeLELLE

Also Present:
Joseph Borson, Department of Justice - Civil Division

(Case called)

THE COURT: Good morning, everybody. This is Judge Netburn. I think we are ready to begin.

This case is alternatively captioned In Re: Terrorists Attacks on September 11, 03 MD 1570; in addition, today's conference relates to Havlish v. bin Laden, 03 Civ. 9848; and John Does 1 through 7 v. the Taliban, 20 Misc. 740.

I'm going to identify the parties that I believe are here. I know we have a number of lawyers on the line. I'm going to ask that only the lawyers who anticipate speaking identify themselves when their case is called so we can have those appearances made. If somebody who does not initially state an appearance wishes to be heard later, we can have you state your appearance at that time. But for these purposes, I think I will just hear from the people who intend to speak.

So I will begin with a representative for the plaintiffs for the John Does 1 through 7 parties.

MR THORNTON: Good morning, your Honor. John Thornton on behalf of John Does 1 through 7, and my partner and associate are on the call also.

THE COURT: Thank you.

And on behalf of Havlish plaintiffs.

MR. WOLOSKY: Good morning, your Honor. This is Lee Wolosky, from Jenner & Block, for the Havlish plaintiffs. My partner Doug Mitchell is on the line, as well.

THE COURT: Thank you.

Let me hear, who do we have on behalf of the United States?

MS. VARGAS: Good morning, your Honor. This is Jeanette Vargas from the U.S. Attorney's office on behalf of the United States. Also on the line is Joseph Borson, from the United States Department of Justice.

THE COURT: Thank you.

And on behalf of the Federal Insurance plaintiffs?

MR. CARTER: Good morning, your Honor. Sean Carter from Cozen O'Connor.

THE COURT: Thank you.

And on behalf of Burnett plaintiffs?

MS. FLOWERS: Good morning, your Honor. It's Jodi Flowers on behalf of the Burnett plaintiffs, and also with me is my partner Don Migliori.

THE COURT: Thank you.

On behalf of O'Neill plaintiffs?

MR. GOLDMAN: Good morning, your Honor. This is Jerry Goldman on behalf of the O'Neill plaintiffs. I have my partner Bruce Strong on the line, and I have others listening. Thank you.

THE COURT: Thank you.

And on behalf of Ashton plaintiffs?

MS. BENETT: Good morning, your Honor. This is Megan

Benett for the Ashton plaintiffs. We have Michael Tremonte, of Sher Tremonte, who will be putting in a notice of appearance this morning. He and I will be the two people who will be speaking on behalf of Ashton.

THE COURT: Thank you.

Any other plaintiff groups that I haven't identified who intend to speak this morning? All right.

And I think we may have some representatives of defendants, though I don't know that they are going to be participating.

Do we have a lawyer on the phone on behalf of the Kingdom of Saudi Arabia?

MR. RAPAWY: Yes, your Honor. This is Gregory Rapawy of Kellogg Hansen. I do not anticipate speaking this morning, but I am on the line.

THE COURT: Okay. Thank you. And on behalf of the Republic of the Sudan?

MS. ERB: Good morning, your Honor. This is Nicole Erb. I'm joined by Chris Curran and Claire DeLelle. And likewise, we do not intend to speak this morning.

THE COURT: Thank you. And any other defendant groups who are on the line who would like to state their appearance?

Okay. Hearing none, I will assume that is our set of lawyers.

I understand we also have a line open for the public

and the press. I will remind everybody who is listening in that this is a court proceeding. Any recording or rebroadcasting of today's proceeding is strictly prohibited.

We have a court reporter on the line. To facilitate that person's job, we want to make sure that we are not speaking over one another — everybody will have an opportunity to be heard — that people are speaking slowly, and that you state your name each and every time you speak so that the court reporter knows to whom to attribute all statements.

Okay. I believe we have two primary matters on our agenda today.

First, we have the writs of execution against the assets held at the Federal Reserve Bank of New York. The government has said that these writs need to be addressed to facilitate the implementation of the President's foreign policy, so we will begin by talking about whether there is an efficient way to achieve that goal without having to resolve all of the questions surrounding the entitlements to those funds.

And second, there are currently stays on the writs of execution targeting the Afghanistan bank funds, so we will address that and, more broadly, how we want to move the litigation on these funds forward.

So let me begin with the first item, and probably I will address my comments in the first instance to Ms. Vargas.

So according to the government's statement of interest, the Havlish and Doe writs are currently standing in the way of implementing the division of the DAB funds that are currently held at the Federal Reserve, and the government has requested that these issues be dealt with in advance of all other issues. This will allow the executive branch to carry out its foreign policy providence and, as it represents to us, apparently the funds are needed to address a major Afghanistan humanitarian crisis.

And so I would like to begin the crisis about thinking about the best way that we can get out of the government's way so that it can execute its foreign policy.

My understanding is that the Havlish and Doe writs may be satisfied with far less than the $7 billion that are currently being held in the Federal Reserve. So given this, is it the government's view that modifying the Havlish and Doe writs to attach a smaller sum, which I understand would be likely something less than the $3.5 billion, would permit the transactions that are contemplated by President Biden's February 11 executive order and the OFAC license that he also issued on that same day?

Ms. Vargas, let me begin with you.

MS. VARGAS: Yes, your Honor. Thank you.

The government does believe that that would be satisfactory. What we are looking for is an order entered

expeditiously clarifying that the Doe and Havlish writs are null and void and have no effect as to the 3.5 billion in licensed assets but that those writs can remain in effect to the extent permissible by law as to all other assets pending further order of this Court.

As your Honor has observed, the Doe writ is for approximately 138 million. The Havlish writ is nominally in the amount of approximately $6.8 billion; but, as set forth in our statement of interest, TRIA permits attachment only to the extent of compensatory damages. The Havlish plaintiffs do not disagree with this position; and, therefore, the unlicensed funds that will remain in the account of the Federal Reserve Bank of New York after the 3.5 billion in licensed funds are removed will be more than sufficient to satisfy both the Doe and Havlish writs combined when the Havlish writ is appropriately modified to reflect compensatory damages only.

And alternatively, as set forth at length in the government's statement of interest, the licensed funds are not subject to attachment under TRIA as a matter of law as the licensed funds are not blocked assets within the meaning of the statute.

But for our purposes, what we need is an order simply stating that the writs are null and void and have no effect as to the 3.5 in licensed assets. And we understand that the Doe and Havlish plaintiffs do not object to this requested relief.

THE COURT: Terrific. That was going to be my next question.

And so that would be, just so I am clear, the proposal is simply an order that would effect those writs. They don't need to file new writs of execution, is that correct?

MS. VARGAS: That's correct from the government's perspective. What we require, under paragraph 5 of our license, the license states that the Federal Reserve Bank must comply with any applicable orders, rulings, writs, or other judicial process of the United States federal courts, which is why this is at issue. Therefore, we need an order that will allow the Fed to have confidence that these writs do not prevent any transfer of the licensed funds.

THE COURT: Okay. And if we issue that order expeditiously, is that all that the government needs at this time for it to carry out its foreign policy agenda?

MS. VARGAS: At this present time, that's correct, your Honor.

THE COURT: Okay. Thank you.

Let me turn now to John Thornton on behalf of the Doe plaintiffs and then to Mr. Wolosky on behalf of the Havlish plaintiffs to confirm that both parties are in agreement that the best way to proceed, and on your consent, is to issue an order indicating that the licensed funds are unavailable for the attachment of the writ.

Let me turn to Mr. Thornton first.

MR THORNTON: Thank you, your Honor.

From the way that was described, we would not object to that approach, you know, obviously with the understanding that our writ is not null and void; it's just that our writ doesn't reach those $3 1/2 billion that are licensed.

THE COURT: Thank you.

Mr. Wolosky?

MR. WOLOSKY: Your Honor, we have no objection; but, similarly, we believe that, as a matter of law, the Havlish writ that was served in August or September currently does not encompass the funds that the government wishes to move as a result of the actions, both the blocking and the licensing actions that the executive branch took on February 11. So certainly, to the extent that the Court wishes to enter an order making that clear with respect to the 3.5, the Havlish plaintiffs have no objection.

Your Honor has authority under New York CPLR Section 5240 to modify writs, if your Honor wishes to, to provide assurance to the government by means of clarification with respect to the funds that it wishes to move.

Again, we certainly don't think that an order -- we would not agree that an order nullifying a writ would be appropriate; but certainly modifying the writ, if the Court and the government thinks it is necessary to make clear that the

writ -- the Havlish writ does not encumber the 3.5 billion that the government wishes to move and which has now been licensed, we have no objection to that.

THE COURT: Okay. Thank you.

Does any other party wish to be heard exclusively on the question about how to act with respect to President Biden's executive order and the OFAC license in connection with the funds in the Federal Reserve?

Okay. I don't know that this has ever happened, but hearing nobody from any of the plaintiffs' executive committees, I think we can move forward on that issue.

So I'm going to direct Ms. Vargas, if you can work with the lawyers for the Doe and Havlish plaintiffs on preparing an order for my signature, obviously the sooner you get it to me, the sooner I will sign it and the funds will be made available to the executive. So I will just be on the lookout for that draft order. If you can get it to me as soon as possible, I will sign it.

MS. VARGAS: Thank you, your Honor. We will work on it and get it to you very shortly.

MS. BENETT: Your Honor, this is Megan Benett on behalf of the Ashton plaintiffs.

I just wanted to make sure I understood that, at least on our behalf, there is no objection, of course, to rendering the Havlish and Doe writs null and void with respect to the

licensed assets, and we would of course agree that that should move expeditiously.

To the extent that an order would address anything concerning those writs and the modification, for example, of the Havlish writ, I think that that would be something we would want to be heard on. But, again, I don't think that's necessary in the context of moving forward with rendering the writs null and void with respect to the licensed assets.

THE COURT: I'm not sure exactly what it is you are referring to, Ms. Benett. What precisely do you wish to be heard on with respect to the Havlish writ?

MS. BENETT: Well, to the --

THE COURT: I know you want to be heard on the issue of stay, but on issue of the writ itself.

MS. BENETT: As we raised in the letter to the Court that we submitted, we don't necessarily agree with Mr. Wolosky's position that the Court has the authority to modify the writ under Article 52 of the New York CPLR. That's one of the issues that we think would warrant some further briefing and that we believe we have an interest in presenting our position on that to the Court.

MR. TREMONTE: Your Honor, this is Michael Tremonte, on behalf also of the Ashton plaintiffs.

I just wonder if it is helpful to formulate this precisely to see if in fact we are all in agreement.

It sounds as though the government and everyone else shares the view that, with respect to the licensed funds, that is to say, the portion of the DAB assets authorized by the OFAC license to be transferred for the benefit of the Afghan people, it sounds like we all agree that as a matter of law those funds, the licensed funds, are not subject to attachment in this litigation. And I think if that alone is the basis for the Court's order directing the release of those funds so that the administration can fulfill its foreign policy objectives, I don't think there is any controversy here at all as to this piece.

THE COURT: Okay. I really hope there is no hold-up here. So I am going to direct that Ms. Vargas communicate with the Havlish and Doe plaintiffs, as they are the only ones who currently have writs attached to those funds as far as I am aware, and to submit something on the -- a proposed order on the MDL docket as soon as you can. I will wait 24 hours to sign that order. If anybody wishes to be heard with respect to that order, you can file it within that 24-hour window. But I will sign that order, assuming it is otherwise appropriate, within 24 hours after the 24-hour window expires. And certainly to the extent you can let me know before 24 hours that there is no objection, we will go ahead and get that up.

All right. Thank you. Let's move forward on the next phase, which is in connection with these writs of execution.

They have been stayed. Both the Havlish and the Doe plaintiffs have requested that we lift those stays. And so the next question is how we should proceed with respect to those writs and briefing on the issue with respect to entitlement to any of the DAB funds.

So let me first hear from the Havlish plaintiffs on how they think the most efficient way is for us to proceed at this point.

MR. WOLOSKY: Thank you, your Honor. This is Lee Wolosky for the Havlish plaintiffs.

The position of the Havlish creditors is that the Court should lift the stay of enforcement in order to allow these proceedings to move forward in accordance with normally applicable procedures under New York law which assure that no MDL party will be prejudiced.

This matter is certainly unique in many respects, but what we are asking for is not. We are asking the Court to move forward with the next procedural step that parties holding writs of execution must take in order to keep enforcement of those writs.

The stay was put in place to permit the government to file its statement of interest. That has now happened. The government does not oppose the lifting of the stay consistent with the views expressed in its statement of interest. And once the stay is lifted, all parties will have, as the

White House said in its February 11 statement when it blocked the funds at issue, "a full opportunity to have their claims heard in U.S. courts."

Other MDL parties oppose lifting the stay but, as my partner Doug Mitchell will explain in a moment, lifting the stay will afford them a full opportunity to have their claims heard by the Court. Significantly, the Havlish creditors have no objection to their participation in the briefing following the filing of the Havlish and Doe's motions for turnover.

I'm going to turn it over to my partner Doug Mitchell, who will address with greater specificity the procedures that we envision will govern in the event that the Court lifts the stay.

THE COURT: Thank you.

MR. MITCHELL: Your Honor, this is Doug Mitchell, and I will be brief.

But as Mr. Wolosky noted, under Federal Rule of Civil Procedure 69(a), New York law applies to the resolution of and the litigation of issues relating to judgment enforcement proceedings subject to any application of TRIA in the context of those judgment enforcement proceedings.

If we look at CPLR 5225 and/or 5227, both of those enforcement procedures contemplate filing a special proceeding to litigate claims relating to assets of a debtor that are held in the hands of a garnishee such as the New York Federal

Reserve Bank. Those provisions also specifically reference another section, 5239, which allows claims by adverse parties to raise their claims and to litigate their interest with respect to those assets; and then it also provides the Court with a framework for resolving those differing competing claims and making final determinations about the disposition of the assets that are subject to the writs filed by the Havlish plaintiffs and the Doe plaintiffs. And, consequently, your Honor, we think that the New York law that has been in place for quite some time governing the litigation of issues involved with enforcing judgments against assets held by garnishees will provide the Court and the parties with a full and fair opportunity to be heard on any and all issues that will be involved in this enforcement proceeding. We also think that the methodology to get that opportunity or to start that process requires lifting the stay so that that process can be implemented and the parties can move forward within that framework.

THE COURT: How quickly after we lift the stay would you anticipate filing your application?

MR. WOLOSKY: Your Honor, Lee Wolosky again.

We would propose filing our motion for turnover two weeks from today, March 8.

THE COURT: Okay. And then just so I understand your position, once you file your motion for turnover, interested

parties would be permitted to then participate either as an interpleader or otherwise, is that correct?

MR. WOLOSKY: Lee Wolosky again, your Honor.

That is correct. We do not oppose any MDL parties participating in the briefing. And obviously other motion practice that is underway with respect to the finalization of money damage awards would proceed unobstructed and concurrently.

THE COURT: Thank you.

Mr. Thornton, on behalf of the John Doe plaintiffs, anything that you want to add to that proposal or are you in agreement with what the Havlish creditors are proposing?

MR THORNTON: Your Honor, we are basically in agreement with what they are proposing and the schedule. We just see this as a situation, a very straightforward situation, where we have a writ that I believe we have had since September and that the stay was initiated in order for the government to give its statement of interest. It's done that. The government doesn't oppose the matter moving forward, so we think the matter should move forward. We are fine with March 8. We think we can file our turnover motion by March 8.

As far as the booty thing and who gets to say anything about the briefing, our feeling is that there are only two parties in this matter that have valid writs of execution against the funds at issue and that those two parties — us and

the Havlish creditors and writ holders — have some common questions of fact that we will both address in our motions, and that, in the normal course, people that don't share those commonalities don't have -- you know, aren't allowed to come in and brief concerning them.

We are concerned about, and we filed a motion, as you know, a letter motion, concerning the fact that we are in the MDL with the rest of the September 11th plaintiffs who don't have judgments, even, against the same parties, let alone writs of execution, and we are concerned that the process not get slowed down from what the normal process would be under the prosecution of a writ under New York law.

THE COURT: Thank you. Understood.

All right. Let me turn to the members of the plaintiffs' executive committee. I believe that there are lawyers who wish to be heard.

Why don't I just begin, Mr. Carter, do you wish to be heard?

MR. CARTER: Yes, your Honor. Thank you.

From my perspective, as one of the long-serving chairs of the plaintiffs' executive committee, I think I come at this with an eye towards the overarching case management issues that some of the other counsel may not be as sensitized to, and also mindful of the other issues that are going to require the Court's attention in the very near term, including our motion

under Rule 54(b) based on the decisions in *Kaplan* and *Honickman*.

It seems to us that one of the obvious challenges in this moment is that recent developments have prompted numerous plaintiffs' groups to file applications seeking, in effect, to be placed on equal footing with the Havlish and Doe plaintiffs in this context. And part of the difficulty with that is that the procedural status and degree of advancement of those plaintiffs' claims against the Taliban varies quite significantly.

On the one hand of the spectrum, we have the Havlish and Doe plaintiffs who have secured monetary judgments again the Taliban and served writs of execution. You then have certain plaintiffs in the federal action who secured liability judgments against the Taliban in 2006 and filed proofs to obtain a monetary award as to the Taliban in 2007, which the Court has addressed in other contexts, but not as to the Taliban. You have other plaintiffs who likewise received liability --

THE COURT: Mr. Carter? Sorry.

MR. CARTER: Yes.

THE COURT: Mr. Carter, can you speak a little more slowly?

MR. CARTER: Yes, sure.

You then have other plaintiffs who likewise received

liability default judgments in 2006 and have moved more recently in the past few months for monetary awards as to the Taliban. There are then additional plaintiffs who were added to complaints in which the Taliban was named as a defendant, but not until after the 2006 liability defaults were entered, who are now seeking both liability and monetary judgments. And beyond that, there are plaintiffs who are, in one way or another, taking action now to validate claims against the Taliban in the first instance.

And so as a practical matter, it seems to me that it will be very difficult for the Court to harmonize the procedural status of the claims of all of those different groups. And it also seems clear that plaintiffs who took earlier action will have good reason to argue that they would be prejudiced by having their rights deferred while less advanced claims catch up.

And even beyond that, any attempt to achieve this sort of equal footing result would require the Court to undertake what appears to be a very expansive scope of work in a very short period of time, and I think some of the comments you heard from other counsel about the set of activities that will be set in motion by the commencement of the turnover proceeding underscore that.

So at least from my perspective, all of those considerations call out for a concerted effort on the part of

the plaintiffs who have presented applications to the Court on this front to sit down in earnest to try to work out a framework that would obviate the need for the Court to address competing priority and allocation arguments, and that would in turn obviate the need for the Court to decide all of the pending judgment applications under whatever approach the Court might ultimately find most appropriate.

And again, an agreement on that front would then allow the parties and the Court to focus the remaining briefing on the scope and application of Section 201 of the Terrorism Risk Insurance Act, and that can be quite focused if the plaintiffs are all on the same page. It does seem to me that those conversations are likely to be more fruitful if they are occurring before briefing begins in earnest on the turnover proceedings. That could happen very soon. But it does strike us that it would be beneficial for the Court to urge the parties to sit down with one another and try and work out some agreements on this framework.

THE COURT: Thank you, Mr. Carter. I agree with a lot of what you said. I also don't see how, even if the Court were able to undertake the Herculean task of addressing all of the pending or anticipated motions with respect to claims against the Taliban, those claims would ever even be on equal footing with the Doe and Havlish plaintiffs, given that they have secured judgments and filed their writs. It would seem to me,

under firm circuit law, that they would be a priority for any claim.

And so that to me is yet another reason why having a fire drill with respect to the outstanding and anticipated motions seems to be time not well spent. So I appreciate your suggestion that coming up with a way to focus the Court's attention on the issues that are most important and would address the parties' realistic needs is the best way to proceed. So thank you for those comments.

MR. CARTER: Certainly, your Honor.

THE COURT: I know Ms. Benett said she wanted to be heard, so I will turn to Ms. Benett or Mr. Tremonte.

MS. BENETT: Thank you, your Honor. I think I will defer to Mr. Tremonte on this.

MR. TREMONTE: Thank you, your Honor. It is Michael Tremonte.

I think we are largely in agreement with Mr. Carter's suggestion, I think on the understanding that the stay would remain in place while the parties are conferring towards the goal that Mr. Carter articulated. We do believe that the stay should remain in place at this juncture. The touchstone, of course, is that we want all the 9/11 families to be treated fairly and so, consistent with that important goal, any proposal, you know, would need to be, at least in the short term, against the backdrop of the stay remaining in place.

If the Court is inclined to instruct the parties to meet and confer, as Mr. Carter suggested, I think we would likely be in agreement with that. Alternatively, another procedure that would be consistent with ensuring fairness to all of the 9/11 families would be to address the pending motions for final damages judgments, to schedule briefing on the threshold questions of attachability of the remaining blocked assets under TRIA, and we think at the same time to schedule briefing on the question of the appropriate proceeding for enforcing the judgments. And that, of course, is a potentially very consequential set of issues as to enforcement and, again, it is one with respect to which the interested parties, the full range of interested parties should be heard, and there is clear authority for that, in our view, under the CPLR.

THE COURT: Can I interrupt you for a second?

MR. TREMONTE: Yes.

THE COURT: What is the authority? Your clients, as I understand it, have no judgments against these entities for which you could attach to the funds. So what standing does your client have, do you have to challenge the procedural mechanism by which the Havlish and Doe plaintiffs seek to proceed on their execution? I understand that you might have a right to, whether it is sort of interplead or otherwise join the turnover proceeding, but why do you have a say on how they

proceed as a procedural matter?

MR. TREMONTE: Yes, your Honor.

So in addition to the interpleader rights, which we agree that we clearly have, we think that we are also interested persons within the meaning of CPLR 5240, and that is a provision that affords the Court very broad powers upon the motion of an interested party or, frankly, on the Court's own initiative within the clear language of the provision to modify, limit, and condition the use of any enforcement procedure. And so we think at a minimum that provision affords us standing to be heard and to brief the issues in connection with the appropriate procedure, especially in connection with such a unique set of circumstances as this one, where ensuring fairness to the 9/11 families, to all of them, not just a very small minority, is of paramount importance. So that is the --

THE COURT: Understood. I don't think it needs to be said, but obviously I also am interested in fairness. I still don't understand how you would be, under the law, an interested party other than speculatively because your clients have no judgment and some motions have been filed, some motions are anticipated. Who know when those will actually be addressed. But the interest that you hold at this point is essentially speculative until you have a judgment. I understand that you have an interest generally because your interest is in providing fairness and equity to all of the 9/11 families, but

I'm not sure as a legal proposition that you have an interest as the law understands it.

MR. TREMONTE: Your Honor, so here is where I think it is so important to keep the stay in place at least long enough to brief this and related issues. The potential prejudice to the overwhelming majority of 9/11 families of having no opportunity to be heard on precisely this issue would be overwhelming, and so we think at a minimum the appropriate next step for the Court to take is to, with the stay remaining in place, to afford an opportunity to arguably interested parties to brief that very issue. It's a complicated issue. There is not a lot of precedent on it, although what precedent there is clearly affords the Court very broad equitable powers. And we would argue that this situation is a very strong candidate for the exercise of those equitable powers because of the interests at stake and because of the fortuity of the situation we find ourselves in as a result of a foreign policy decision that nobody could have really accurately predicted in terms of its temporal current.

So for those reasons, among others, we think really what is appropriate here is keep the stay in place and let us brief that very issue in addition to the threshold questions, which are federal law questions, of the attachability of the blocked assets.

THE COURT: If we were to enter judgment tomorrow on

behalf of your clients as against the Taliban, hypothetically speaking, so that you had the third judgment that you could execute against the DAB funds, are you aware of any law that would allow you to jump over the Doe and Havlish plaintiffs? Doesn't their priority mean that, no matter what, they get to go first?

MR. TREMONTE: That is a critical threshold question that is inextricable from the fairness question and, in our view, from the equities questions. Our position is that all 9/11 families should be on an equal footing. And again --

THE COURT: I understand that's your position, but are you aware of any law? I understand that that's your desire, your goal, the objective here. But are you aware of any law that would allow a third-in-line judgment holder to jump judgment holder one and two?

MR. TREMONTE: Certain --

THE COURT: My understanding of Second Circuit law, and I am looking at *CSX Transportation v. Island Rail Terminal*, I'm not aware of any law that would allow judgment holder number three, which there is none at this point, but were there to become one, I'm not aware of any law that would allow that judgment holder to jump in line in order to get priority. And so I want to make sure -- I understand the goal and the objective of fairness and equity, but I want to make sure that we are acting in a way that is consistent with the law and it

seems to me unfair to the Doe and Havlish judgment holders to hold up their execution if, under all circumstances of the law, they are first in line. What is the authority to prejudice them in your client's interest when they are going to be third in line or farther in line than Doe and Havlish?

MR. TREMONTE: So, your Honor, I think there are potentially multiple sources of legal authority here that could potentially come into play, although I want to emphasize again, in terms of the prejudice analysis, it would be, I think, inarguably, much more prejudicial to the majority of 9/11 families that if they are in fact interested persons within the meaning of 5240 and if, moreover, it is an appropriate exercise of the Court's equitable powers under that provision of the CPLR to adjust the enforcement mechanisms here, then it is overwhelmingly prejudicial to them to not even afford them an opportunity to brief whether or not they qualify under the statute as such.

And then, in addition to that, there are also potentially issues with, you know, defects or infirmities to the writs that also would need to be briefed. So I think there are multiple potential sources of legal authority, beginning with 5240; and, on top of that, there is the prejudice analysis which argues very, very strongly in favor of a brief continuance of the stay to afford the parties an opportunity to brief the relevant procedures.

THE COURT: Why would you be addressing any --

MR. TREMONTE: And there are multiple cases --

THE COURT: Why would you be addressing any --

MR. TREMONTE: I'm sorry, your Honor.

THE COURT: Why would you be addressing any defect of the writ on this particular mechanism, meaning wouldn't that be something that you would address once the stay is lifted?

MR. TREMONTE: Right. I think if we are briefing the question of the Court's authority to modify enforcement procedures to ensure fairness, it would make sense, in our view, to simultaneously brief issues going to defects in the infirmities in the writs of execution that would also impact priority.

But, again, to be very, very clear, we are not looking to jump ahead. We are looking to be on equal footing. And I think there is legal authority for us to argue that it is within the Court's power to put in place procedures to effectuate that under these circumstances.

THE COURT: Okay. Any other counsel for one of the plaintiffs' groups wish to be heard.

MS. FLOWERS: Your Honor, this is Jodi Flowers. I just wanted to offer a citation for you for your question previously. That would be *Plymouth Ventures Partners II L.P. v. GRT Source, LLC*. It is Court of Appeals of New York, December 16, 2021. It doesn't have a number yet. N.E.3d 2021

Westlaw number 59268932021. It discusses Section 5240's -- the Court's power under 5240, and I suggest that it might be a place for the Court to look, quoting, "where the Court needs to avoid expense, embarrassment, disadvantage, or other prejudice to parties or courts," the Court can look at it, inseparable powers, the precise question that we are talking about.

And I have to take issue with the statement by I believe it was counsel for the Doe plaintiffs that there are only two interests at issue here. I think we have been clear that we believe there are more. For Burnett, for example, we do have default judgments against the Taliban and have had them since 2006 on behalf of 5,000 plaintiffs, over 5,000 plaintiffs, 5,182 plaintiffs. And these are also people who have their damages liquidated as against Iran. So like with other procedures before this Court, it is not a heavy stretch to say that a joint tortfeasor can be held liable for those same damages.

So I appreciate and sympathize with the amount of papers that came in as a result of these developments, but a lot of this work has already been done by this Court, a lot of hard work on determining the damages; and I believe that if we had the benefit of a little bit of time, we could address those fully and come up with a procedure that's not onerous to this Court and doesn't derail the proceedings.

You know, I'm not going to repeat the arguments in our

papers, I would simply just say that we are very concerned that lifting the stay could create a rush to judgments. I would like to believe Mr. Wolosky that no MDL party will be prejudiced, but absent the ability to brief these threshold issues before we are so off to the races I think will prejudice at least my plaintiffs.

THE COURT: Thank you.

Would Mr. Thornton or Mr. Wolosky or Mr. Mitchell wish to be heard in response?

MR. WOLOSKY: It is Lee Wolosky. Just briefly, your Honor.

Again, just to situate us, all we are here today asking the Court to do is to lift the stay. Obviously no money is going anywhere. All issues that have been raised on this conference can and should be briefed.

And also, if it gives the Court assurance, you know, we are happy to continue to meet and confer with the other parties, as we have been, as we move forward.

Thank you, your Honor.

THE COURT: Thank you. All right. Does anybody else wish to be heard?

MR THORNTON: Your Honor, John Thornton on behalf of the Doe plaintiffs.

I didn't hear anything that had any foundation in law for authority that would stop or that, you know, could be used

to prevent just the normal prosecution of our writ. And I also didn't hear anything that I thought made any practical sense, and so we would oppose it. We think that it would prejudice our plaintiffs, our clients' rights, and so we don't see any reason not to simply allow us to move forward on the writs, as the government thinks we should, and we don't see any reason to tie our ability to do that to an unrelated, factually unrelated group of plaintiffs.

Thank you.

THE COURT: Thank you. I think that's a good point. The Doe judgments, I believe, are a little more than $100 million, and with $3.5 billion assets that are available, I think there is a fair question whether or not they should be treated, at a minimum, on a separate track. And so I would like everybody to be thinking about whether or not the Doe plaintiffs, who are not part of the 9/11 case otherwise, only by virtue of these funds, whether or not there is any objection to lifting the stay for execution with respect to their judgment.

So here is what I would like. First and foremost, I will turn back to Ms. Vargas, I would like you to get me a proposed order so that the executive carry out its foreign policy objectives as quickly as possible. As I have indicated, I will give the parties 24 hours from the filing of that proposed order to file any objections or raise any issues, and

at the 24-hour expiration, assuming there is no reason not to, I will go ahead and sign that proposed order.

So Ms. Vargas, you can also notify your point of contact at the Department of State that that's going to be the procedure so that they are starting to get themselves organized with respect to those assets.

MS. VARGAS: Thank you, your Honor.

THE COURT: Thank you.

With respect to the lifting of the stay, I'm going to hold off on lifting it today to give the parties an opportunity to be heard. I am hoping I'm not going to get full-blown memoranda of law. I think letter briefs should be adequate to raise the issues, and I will direct that those are filed by next Monday, which I believe is the 28th of February.

I assume the Havlish and Doe parties would like to be heard in opposition to that. I know that you are interested in moving this as quickly as possible, so I will assume that you will get your opposition submissions in soon thereafter, but I will give you the -- I don't know how long these briefs are going to be or how much time you will need to oppose them, so we will defer to the Doe and Havlish plaintiffs. If you can just let me know when you anticipate filing your objections to those briefs and then we will take all of that under advisement.

Separately I would like, as Mr. Carter raised, to have

the parties speak about a proposal for the turnover proceedings if and when the stay is lifted, and so I will ask for a proposal from the parties on how that should be borne out as well, and I will direct that that be filed next Wednesday, which I believe is March 2. I don't have my calendar in front of me, but I think that's right. Yes. March 2. If you can file a letter application with the Court with a proposal, having had a meet-and-confer with both the Doe and Havlish judgment holders as well as the relevant members of the plaintiffs' executive committee and any other interested plaintiffs as to how we would proceed assuming the stay is lifted, and we will take all of that under advisement.

I think that addresses all of the issues that I wanted to cover today. Anything further from the -- oh, and if I can ask, as well, with respect to the letter that's filed on March 2, if the parties can specifically address this issue in connection with the Doe plaintiffs, given that they are not 9/11 plaintiffs and their judgment is relatively small in connection with the funds available. So I would also like to hear whether or not there is any objection to allowing that application to proceed at a quicker pace or on a separate track so that those plaintiffs who are really just being brought in to the morass of the MDL can execute their judgment.

All right. With that, let me turn to the Havlish and the Doe judgment holders. Anything further you would like to

discuss today?

MR. WOLOSKY: Lee Wolosky. No, your Honor, for Havlish.

MR THORNTON: John Thornton. No, your Honor, for the Doe plaintiffs.

THE COURT: Great. Thank you.

Ms. Vargas, anything further from the government?

MS. VARGAS: Not at this time, your Honor.

THE COURT: Okay. And anything further from any of the other plaintiffs' counsel who have spoken today?

A VOICE: No, your Honor.

A VOICE: No, your Honor.

A VOICE: No, your Honor.

THE COURT: All right. Thank you very much. Ms. Vargas, I will look out for your proposed order. I hope everybody remains healthy and safe.

We are adjourned. Thank you.

COUNSEL: Thank you.

oOo

Exhibit J

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

In re:

TERRORIST ATTACKS ON SEPTEMBER 11, 2001

----------X

03-MD-01570 (GBD)(SN)

OPINION & ORDER

SARAH NETBURN, United States Magistrate Judge:

This document relates to:

Havlish, et al. v. Bin Laden, et al., No. 03-cv-9848
John Does 1 through 7 v. The Taliban et al., No. 20-mc-740

Plaintiffs in Havlish, et al. v. Bin Laden, et al., No. 03-cv-9848 ("Havlish"), and John Does 1 through 7 v. The Taliban et al., No. 20-mc-740 ("Doe"), move this Court to authorize alternative service on the Taliban. ECF Nos. 7779, 7815 (Doe), 7783 (Havlish).[1] The Havlish Plaintiffs also move for supplemental service on Da Afghanistan Bank ("DAB"). These motions are granted in part. Alternative and supplemental service on the Taliban and DAB shall be carried out in accordance with this Opinion and Order.

BACKGROUND

The Court assumes familiarity with the history of this multidistrict litigation. It discusses only those elements germane to the parties' motion for alternative service. The Havlish Plaintiffs secured a final judgment against the Taliban on October 16, 2012. ECF No. 2624. A large portion of that judgment remains unsatisfied. The Doe Plaintiffs obtained a 2020 judgment against the Taliban in the Northern District of Texas and registered it in this District. Doe, No.

[1] Unless otherwise noted, all "ECF No." citations are to the docket of In Re Terrorist Attacks on September 11, 2001, 03-md-1570.

20-mc-740, ECF No. 1. That judgment remains unsatisfied as well. Both parties allege that DAB is an agent or instrumentality of the Taliban. Based on this, they have filed turnover motions targeting DAB assets currently held in the Federal Reserve Bank of New York. ECF Nos. 7763, 7764 (Havlish), 7767, 7769 (Doe). In support of those turnover motions, the Havlish Plaintiffs move for leave to serve the Taliban by substitute service as provided for by court order. They also seek leave to conduct additional supplemental service as provided for by court order on DAB. The Doe Plaintiffs initially sought leave for supplemental service as well. ECF No. 7779. Then, however, they filed a supplemental letter indicating that they attempted to serve the Taliban using Twitter. They request that the Court authorize this method of service *nunc pro tunc*. ECF No. 7815.

DISCUSSION

Because both the Havlish and Doe Plaintiffs' motions are governed by the same framework, the Court considers them together, addressing divergences in their positions as appropriate.

I. Alternative Service on the Taliban by Publication and Social Media is Proper

The Havlish and Doe Plaintiffs may serve the Taliban by publication and social media under Federal Rule of Civil Procedure 4(f)(3). The procedure for executing judgments is governed by Federal Rule of Civil Procedure 69. This provides that execution "must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies." Fed. R. Civ. P. 69(a)(1).

Under New York's procedures "[n]otice of the [execution] proceeding shall . . . be served upon the judgment debtor in the same manner as a summons or by registered or certified mail, return receipt requested." CPLR § 5225(b); see also Off-White, LLC v. Alins, No. 19-cv-9593

(AT), 2021 WL 4710785, at *6 (S.D.N.Y. Oct. 8, 2021) (internal citation omitted). ("[A]ny post-judgment relief available to Plaintiff is ruled by state law. . . In New York, the applicable procedure is found in N.Y. C.P.L.R. §§ 5222 and 5225.") The notice procedure for a summons is set out by Federal Rule of Civil Procedure 4. See, e.g., Hausler v. JP Morgan Chase Bank, N.A., 141 F. Supp. 3d 248, 252 (S.D.N.Y. 2015) (using Federal Rule of Civil Procedure 4 as the framework for evaluating the adequacy of notice to an impleaded third party).

The Doe Plaintiffs suggest that because this is a *quasi in rem* proceeding, Federal Rule of Civil Procedure 4 is inapposite. ECF No. 7815 at 2. Rule 4(n), however, provides procedures for *quasi in rem* actions. Where jurisdiction over property in an action is authorized by federal statue, Rule 4(n)(1) requires that "[n]otice to claimants of the property . . . be given as provided in the statute or by serving a summons under this rule." Alternatively, Rule 4(n)(2) provides that jurisdiction over property may sometimes be acquired under state law using state law procedures. New York's procedures require notice in the same manner as a summons, which is governed by Rule 4.

Federal Rule of Civil Procedure 4(h) sets out the summons procedure for corporate entities. Under this Rule, when such an entity cannot be served in a judicial district of the United States, they may be served in the manner provided for in Rule 4(f). Fed. R. Civ. P. 4(h)(2). Rule 4(f) offers three options for service:

> (1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;
>
> (2) if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:
>
> (A) as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction;

(B) as the foreign authority directs in response to a letter rogatory or letter of request; or

(C) unless prohibited by the foreign country's law, by:

…

(ii) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or

(3) by other means not prohibited by international agreement, as the court orders.

Fed. R. Civ. P. 4(f).[2]

Only the last option is viable. Afghanistan is not part of any relevant international convention on the service of documents. See ECF No. 7784 at 7. As the U.S. Government has noted in other filings in this case, Afghanistan currently has no government recognized by the United States that could aid in the methods of service provided for by Rule 4(f)(2). ECF No. 7661 at 34. Certified mail services are not operating there. See ECF Nos. 7781 at ¶ 3 (Doe declaration indicating that mail service to Afghanistan was broadly unavailable), 7785 at ¶ 3 (Havlish declaration indicating the same). As the other methods of service are not viable, Rule 4(f)(3) provides the proper framework. See, e.g., Smith v. Islamic Emirate of Afghanistan, No. 01-cv-10132 (HB), 2001 WL 1658211, at *2 (S.D.N.Y. Dec. 26, 2001) (authorizing alternative services where "the other methods set forth in FRCP(f)(2), would be futile . . . .")

"Service under Rule 4(f)(3) is proper as long as it (1) is not prohibited by international agreement; and (2) comports with constitutional notions of due process." Washington State Inv. Bd. v. Odebrecht S.A., No. 17-cv-8118 (PGG), 2018 WL 6253877, at *4 (S.D.N.Y. Sept. 21, 2018) (quoting Stream SICAV v. Wang, 989 F. Supp. 2d 264, 278 (S.D.N.Y. 2013)) (internal quotations omitted). "Service by substitute . . . comports with due process by being 'reasonably

[2] For foreign corporations, Federal Rule of Civil Procedure 4(h)(2) prohibits the use of personal service.

calculated, under the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" Bozza v. Love, No. 15-cv-3271 (LGS), 2015 WL 4039849, at *2 (S.D.N.Y. July 1, 2015) (quoting S.E.C. v. Tome, 833 F.2d 1086, 1093 (2d Cir.1987)).[3]

So long as substitute service achieves these goals, "[a] court is 'afforded wide discretion in ordering service of process under Rule 4(f)(3).'" S.E.C. v. Anticevic, No. 05-cv-6991 (KMW), 2009 WL 361739, at *3 (S.D.N.Y. Feb. 13, 2009) (quoting BP Prods. N. Am., Inc. v. Dagra, 236 F.R.D. 270, 271 (E.D.Va.2006)). Thus, for example, service by publishing notice in a prominent international financial journal for four successive weeks was deemed sufficient where the defendant already had actual knowledge of the suit against him. Tome, 833 F.2d at 1093 (2d Cir. 1987). Similarly, in Anticevic, service by publication in three newspapers likely to be read by the defendant, combined with the defendant's actual knowledge of the suit was deemed sufficient. 2009 WL 361739, at *4. Service on the Taliban was permitted in this case by publication in the *International Herald Tribune*, *USA Today*, and an Arabic language newspaper circulated in the Middle East, supplemented by a posting on a website. In re Terrorist Attacks on Sept. 11, 2001, No. 03-md-1570 (GBD)(SN) (Dec. 10, 2003), ECF No. 445.

Courts have also permitted the use of social media and email as an alternative means of service. See, e.g., F.T.C. v. PCCare247 Inc., No. 12-cv-7189 (PAE), 2013 WL 841037, at *6

[3] In normal circumstances, "courts in the Southern District of New York 'generally impose two additional threshold requirements before authorizing service under Rule 4(f)(3): (1) a showing that the plaintiff has reasonably attempted to effectuate service on the defendant, and (2) a showing that the circumstances are such that the court's intervention is necessary.'" Hardin v. Tron Found., No. 20-cv-2804 (VSB), 2020 WL 5236941, at *2 (S.D.N.Y. Sept. 1, 2020) (quoting Devi v. Rajapaska, No. 11-cv-6634, 2012 WL 309605, at *1 (S.D.N.Y. Jan. 31, 2012)). These are sound prudential considerations, but, as S.E.C. v. Anticevic, makes clear, they are discretionary. No. 05-cv-6991 (KMW), 2009 WL 361739, at *4 (S.D.N.Y. Feb. 13, 2009). Because attempting service under Rules 4(f)(1) and (2) would be futile, the Court declines to invoke these discretionary factors.

(S.D.N.Y. Mar. 7, 2013) (authorizing service by Facebook and email); Hardin v. Tron Found., No. 20-cv-2804 (VSB), 2020 WL 5236941, at *2 (S.D.N.Y. Sept. 1, 2020) (authorizing service by email and LinkedIn). This manner of service is reasonable where the defendants already have actual knowledge of the suit. See, e.g., PCCare247 Inc., 2013 WL 841037, at *5 (determining that service by social media and email was particularly appropriate where the defendants have actual knowledge of the lawsuit).

Service by social media and email, without additional means, however, is generally authorized only after a showing of some additional factor. In the case of email, for example, a party may be expected to show that the target for service is likely to receive the communication. Thus, in Philip Morris USA Inc. v. Veles Ltd., email and fax service was authorized after the plaintiffs showed that "defendants conduct business extensively, if not exclusively, through their Internet websites and correspond regularly with customers via email." No. 06-cv-2988 (GBD), 2007 WL 725412, at *3 (S.D.N.Y. Mar. 12, 2007). Alternatively, a party may show that they are resorting to email and social media service after other methods have been attempted and proven unsuccessful. See, e,g., Sirius XM Radio Inc. v. Aura Multimedia Corp., 339 F.R.D. 592, 593 (S.D.N.Y. 2021) (email service authorized after "numerous attempts" at service failed), In re Bystolic Antitrust Litig., No. 20-cv-5735 (LJL), 2021 WL 4296647, at *1 (S.D.N.Y. Sept. 20, 2021) (authorizing service by email after service under the Hague Convention failed); Day v. Slothower, No. 21-cv-1188 (PAE), 2021 WL 6427556, at *1 (S.D.N.Y. Apr. 27, 2021) (authorizing service by email after service by mail failed). For social media in particular, courts in this District have treated such service as a "backstop" for other methods, not a standalone option. Kesten v. Broad. Music, Inc., No. 20-cv-8909 (LJL), 2021 WL 1740806, at *2 (S.D.N.Y. Mar. 3, 2021) (collecting cases).

While the Doe and Havlish Plaintiffs agree that alternative service is proper, they disagree on the means. The Havlish Plaintiffs propose substitute service by two means. First, in accordance with New York's procedure for service by publication under CPLR § 316, they propose to publish notice of this action for four consecutive weeks in three publications: *Al Quds Al-Arabi,* the *Financial Times*, and *The New York Times*. ECF No. 7786 at 1. The content and timing of this notice will follow the requirements of CPLR § 316 and include publication of the relevant motion papers in that advertisement. ECF No. 7784 at 10. Second, they propose to serve the Taliban by Twitter through communications to accounts associated with Taliban First Deputy Prime Minister Abudllah Azzam, purportedly tweeting as @Abdullah_azzam7, Taliban politician spokesman Mohammad Naeem, purportedly tweeting as @IeaOffice, and any other Twitter accounts associated with the Taliban. ECF No. 7786 at 2.

The Doe Plaintiffs ask the Court to determine *nunc pro tunc* that they have achieved service on the Taliban through tweets directed to five Twitter accounts purportedly run by senior Taliban officials. ECF No. 7815. They assert that service under CPLR § 316 would be unnecessarily expensive and time-consuming. ECF No. 7780 at 6.

In determining the proper service method, the Court accounts for the fact that the Taliban has actual notice of this case. Its representatives have repeatedly issued press statements demonstrating that they are aware that the DAB Funds in this case are currently being held and targeted in this litigation. ECF Nos. 7785-6, 7785-7, 7785-8 (copies of *The New York Times*, *The Washington Post*, and *Associated Press* articles in which high-ranking Taliban representatives discuss this case and the freezing of funds held by DAB).

Given the Taliban's actual notice, service by publication is appropriate. The Court is not aware of any international agreement that would foreclose this option and indeed, has permitted

service by publication on the Taliban in this case previously. See In re Terrorist Attacks on Sept. 11, 2001, No. 03-md-1570, ECF No. 445.

The Doe Plaintiffs' proposal for retroactive service is denied for two reasons. First, courts in this District have generally found that Rule 4 does not permit *nunc pro tunc* service. See, e.g., In re Coudert Bros. LLP, No. 16-cv-8237 (KMK), 2017 WL 1944162, at *13 (S.D.N.Y. May 10, 2017) ("[A]lternative service under Rule 4(f)(3) is available only where ordered by the court . . . the Court cannot, after the fact, provide such authorization."); see also Integr8 Fuels, Inc. v. OW Bunker Panama SA, No. 16-cv-4073 (VSB), 2017 WL 11455309, at *3 (S.D.N.Y. Feb. 2, 2017) (collecting cases). Two circuit courts have also ruled that *nunc pro tunc* alternative service under Rule 4(f)(3) is not permissible. See Brockmeyer v. May, 383 F.3d 798, 806 (9th Cir. 2004), De Gazelle Grp., Inc. v. Tamaz Trading Establishment, 817 F.3d 747, 750 (11th Cir. 2016). The Court finds those opinions compelling.

Second, even assuming that *nunc pro tunc* service was allowed, notice by Twitter alone, in the absence of any prior efforts at service, and without sufficient factual support does not comport with the requirements of due process. The Doe Plaintiffs have not provided evidence that the Taliban engages with people using Twitter, as opposed to just posting announcements or otherwise using it solely to send, but not receive messages. There is no evidence that Twitter has been used to communicate with the Taliban or serve process on them successfully before. Finally, service by Twitter would be the Doe Plaintiffs' first, and if the Court granted their request, only means of serving notice. They have proffered no case in which a court has authorized the use of a social media service as the exclusive means of attempting service. Thus, the Court does not find that service by Twitter alone is "reasonably calculated" to afford the Taliban notice of this action. Bozza, 2015 WL 4039849, at *2.

The Court, though, is sensitive to the Doe Plaintiffs' concerns about the cost and expense associated with running a substantial ad in multiple papers for four weeks. As both the Doe and Havlish Plaintiffs are involved in the same multidistrict litigation, requiring both parties to post separate announcements of their suits in the papers and by Twitter will be expensive, duplicative, and unnecessary.

Accordingly, the Doe and Havlish Plaintiffs shall serve the Taliban by publication in the following manner. They shall publish notice in *Al Quds Al-Arabi*[4] and *The New York Times*.[5] These notices shall run once a week for at least four weeks. That notice shall conform to the requirements of CPLR § 316. As an alternative to publishing the full motion papers, however, the parties may, at their choosing, include an electronic address such as a URL or a QR code that directs the reader to easily accessible online versions of those papers. The notice must still, per CPLR § 316, include "a brief statement of the nature of the action and the relief sought." Finally, the Doe and Havlish Plaintiffs may, at their option, run a single notice together, so long as the statement covers the nature of both of their actions and provides either both of their papers or the electronic means to see their papers as described above.

In addition, as a supplement to these publications, the parties shall serve the Taliban by communications to the Twitter accounts of Taliban First Deputy Prime Minister Abudllah Azzam (@Abdullah_azzam7) and Taliban political spokesman Mohammad Naeem (@IeaOffice), or to any other Twitter accounts reported to belong to Taliban spokespersons.

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[4] Al Quds Al-Arabi has been used to achieve service on the Taliban and other groups in prior terrorism cases. See, e.g., Smith v. Islamic Emirate of Afghanistan, No. 01-cv-10132 (HB), 2001 WL 1658211, at *3 (S.D.N.Y. Dec. 26, 2001); Mwani v. bin Laden, 417 F.3d 1, 5 (D.C. Cir. 2005).

[5] This is one less newspaper than the Havlish Plaintiffs requested. If, out of an abundance of caution, they wish to publish in additional papers, they may, but that is not required to satisfy the notice authorized by the Court.

While the Doe Plaintiffs have already made certain Twitter communications to Taliban accounts, ECF No. 7815 at 1, they shall make further communications in accordance with the terms of this Order.

II. Supplemental Service on Da Afghanistan Bank By Publication, Email, Social Media and Personal Service Is Authorized

The Havlish and Doe Plaintiffs report that they completed service on DAB through personal service on Dr. Shah Mehrabi. They assert that this satisfies the requirements for service imposed by Rule 4, CPLR §§ 2552 and 2557, and Section 1608(b)(2) of the Foreign Sovereign Immunities Act (FSIA), in the event that the FSIA applies to DAB as an agent or instrumentality of a foreign state. ECF No. 7784 at 10 11, 13 15. Without conceding any argument as to the proper status of DAB, the Havlish Plaintiffs ask for authorization to supplement this service by publication, email, social media, and personal service on DAB in Afghanistan. The Doe Plaintiffs do not seek any further service on DAB and believe the Court need not authorize further service. ECF No. 7780 at 7.

The question of DAB's status is being briefed as part of the Havlish and Doe Plaintiffs' turnover motions. See, e.g., ECF No. 7764 at 23 30. This Opinion and Order does not address DAB's status and there is no need to do so because the procedures for supplemental service are, for practical purposes, identical regardless of whether service on DAB must be authorized under the Rule 4 procedures for a foreign entity or the 28 U.S.C. § 1608(b) procedures for service on the instrumentality of a foreign sovereign.

As discussed, the procedure for service on foreign entities is contained at Federal Rule of Civil Procedure 4(h), which is applicable even in a *quasi in rem* proceeding. Where the entity is an agency or instrumentality of a foreign state, however, Rule 4(j) provides that service must be

carried out under the FSIA's procedures at 28 U.S.C. § 1608 ("§ 1608"). Section 1608(b) provides that service may be made on an agency or instrumentality of a foreign state:

> (1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the agency or instrumentality; or
>
> (2) if no special arrangement exists, by delivery of a copy of the summons and complaint either to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process in the United States; or in accordance with an applicable international convention on service of judicial documents; or
>
> (3) if service cannot be made under paragraphs (1) or (2), and if reasonably calculated to give actual notice, by delivery of a copy of the summons and complaint, together with a translation of each into the official language of the foreign state
>
> (A) as directed by an authority of the foreign state or political subdivision in response to a letter rogatory or request or
>
> (B) by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the agency or instrumentality to be served, or
>
> (C) as directed by order of the court consistent with the law of the place where service is to be made.

Thus, unlike the procedures of Rule 4, where "[s]ervice of process under Rule 4(f)(3) is neither a last resort nor extraordinary relief," KPN B.V. v. Corcyra D.O.O., No. 08-cv-1549 (JGK), 2009 WL 690119, at *1 (S.D.N.Y. Mar. 16, 2009) (internal citation and quotations omitted), the § 1608(b) options are in descending order of preference. Service must be unavailable under § 1608(b)(1) to attempt service under § 1608(b)(2), and both must be unavailable to attempt service under § 1608(b)(3).

Despite this, court-ordered service on DAB remains the only viable mechanism, whether under the auspices of Rule 4(f) or § 1608(b)(3)(C). Starting with Rule 4(f), Afghanistan is not, as discussed, part of any relevant convention. It has no certified mail services or recognized government. That makes service on DAB under Rules 4(f)(1) and Rule 4(f)(2) futile and leaves only court-ordered means under Rule 4(f)(3). Turning to § 1608(b), there is no special agreement

between the Havlish Plaintiffs and DAB for service, ECF No. 7784 at 16, and Afghanistan lacks either certified mail or a recognized government that could aid in the execution of letters rogatory. That makes service under § 1608(b)(1), § 1608(b)(3)(A), and § 1608(b)(3)(B) futile. As noted, the Havlish Plaintiffs have already attempted service on Dr. Mehrabi pursuant to § 1608(b)(2). If, and the Court issues no opinion on the question, that service was not effective, that would leave § 1608(b)(3)(C), authorizing service as directed by court order. In short, regardless of whether service on DAB is properly executed under Rule 4(f) or § 1608(b)(3)(C), service as directed by court order is the only viable option.

Service by court order under § 1608(b)(3)(C) is not the norm, likely owing to the relative ease by which one may satisfy § 1608(b)(3) using § 1608(b)(3)(B)'s method of service by registered mail as directed by the clerk of the court. See, e.g., Est. of Hartwick v. Islamic Republic of Iran, No. 18-cv-1612 (CKK), 2021 WL 6805391, at *8 (D.D.C. Oct. 1, 2021) (service on Iranian instrumentalities by certified mail was proper); Hawkeye Gold, L.L.C. v. China Nat'l Materials Indus. Imp. & Exp. Corp., No. 16-cv-00355 (JAJ)(SBJ), 2020 WL 11028006, at *3 (S.D. Iowa Oct. 22, 2020) (permitting service on Chinese instrumentalities using the same method).

Indeed, service on instrumentalities under § 1608(b)(3)(C) appears to occur only when notice must be achieved despite a near-total breakdown in a country's services. In Janvey v. Libyan Inv. Auth., for example, the Court authorized service on Libyan government instrumentalities where "[t]he ongoing strife in Libya apparently has rendered communicating with the Libyan Defendants and other Libyan authorities via mail or courier impossible." No. 11-cv-1177-N, 2011 WL 13299660, at *6 (N.D. Tex. June 16, 2011). Similarly, in Harris Corp. v. Nat'l Iranian Radio & Television, the Court of Appeals for the Eleventh Circuit accepted, albeit

with reservation, service on Iranian instrumentalities using a combination of Telex, registered mail, and delivery of papers to the instrumentalities' law firm. 691 F.2d 1344, 1352 n.15 (11th Cir. 1982).

Afghanistan is facing such a breakdown. The Court is thus left to order a suitable means "reasonably calculated to give actual notice, by delivery of a copy of the summons and complaint, together with a translation of each into the official language of the foreign state . . . ." § 1608(b)(3). Because both this statute and the standard for Rule 4(f)(3) require that service be "reasonably calculated" to provide notice, Bozza, 2015 WL 4039849, at *2, comparable methods of service would be viable under each. Furthermore, Janvey, 2011 WL 13299660, at *6, and Harris Corp., 691 F.2d 1352 n.15, countenanced an array of service methods (*e.g.*, email, fax, Telex) comparable to the email and social media methods permitted by Rule 4(f)(3). This further confirms that comparable methods are permissible under § 1608(b)(3) and Rule 4. Thus, notwithstanding the Doe Plaintiffs' dissent, if the Havlish Plaintiffs wish, out of an abundance of caution, to alert DAB to this action through additional forms of notice, there is no reason not to permit them to do so.

Additionally, in setting the method of service, the Court notes that DAB has actual notice of this suit. It has publicly commented on the fact that its assets are frozen by an Executive Order. ECF No. 7785-11 at 3 (DAB press release opposing the blocking of DAB assets). That Executive Order acknowledges that DAB assets are being targeted in litigation. ECF No. 7661-1.

Taking this into account, the Court authorizes supplemental service on DAB by the following methods:

1. **Publication**: notice shall be published in *Al Quds Al-Arabi* and *The New York Times*.[6] These notices shall run once a week for four weeks and shall conform to the requirements of CPLR § 316.
2. **Email**: notice and supporting papers shall be emailed to info@dab.gov.af, a general-purpose email address listed on DAB's website, https://dab.gov.af/.
3. **Twitter**: notice shall be provided by Twitter communication to @AFGCentralbank, the Twitter account to which DAB's website is linked.
4. **Personal Service**: per the Havlish Plaintiffs' request, the Court authorizes personal service on DAB at its offices in Ibni-Sina Watt, Kabul, Afghanistan. Given the precarious security situation in Afghanistan, personal service on DAB appears neither viable nor advisable. See ECF No. 7781-5 at 1 (U.S. State Department Travel Advisory warning that "the risk of kidnapping or violence against U.S. citizens in Afghanistan is high . . . .") If it can be safely carried out, however, the Court will not deny the Havlish Plaintiffs the opportunity to supplement their service by this method. Any failure to achieve personal service on DAB will not negatively affect the validity of service on DAB.

Per § 1608(b)(3), notice shall be accompanied by a translation of the relevant documents "into the official language of the foreign state. . . ." § 1608(b)(3). This requirement may be impractical because Afghanistan may not have an official language. Recognizing that "substantial compliance" is the touchstone for effective service under § 1608(b), the Court authorizes the Havlish Plaintiffs to satisfy this requirement by providing a translation in any language spoken by a substantial percentage of Afghanistan's population. Trans Commodities,

[6] In conformity with service on the Taliban, the Court orders one less newspaper than the Havlish Plaintiffs requested. If, out of an abundance of caution, they wish to publish in additional papers, they may, but that is not required to satisfy the notice authorized by the Court.

Inc. v. Kazakstan Trading House, No. 96-cv-9782 (BSJ), 1997 WL 811474, at *4 n.7 (S.D.N.Y. May 28, 1997) ("In considering service under section 1608(b), courts apply a substantial compliance test, not the strict compliance test applicable under section 1608(a).")

Finally, in the absence of a recognized Afghan government to promulgate laws, it does not appear that this method of service will offend any law that could be applied to these circumstances. Should the Doe Plaintiffs wish to supplement their service on DAB, they may do so by the same mechanisms without further application to the Court. As discussed, however, the Court will not authorize other methods of service *nunc pro tunc*.[7]

CONCLUSION

The Court grants in part the Doe and Havlish Plaintiffs' motion for alternative service on the Taliban and the Havlish Plaintiffs' motion for supplemental service on Da Afghanistan Bank. The Doe Plaintiffs' motion for *nunc pro tunc* approval of their service is denied. The Doe and Havlish Plaintiffs shall serve the Taliban according to the procedures set out in Section I of this Opinion and Order. The Havlish Plaintiffs shall conduct supplemental service on Da Afghanistan Bank according to the procedures set out in Section II of this Opinion and Order. Should the Doe Plaintiffs wish to supplement their service on DAB, they may do so by the same mechanisms without further application to the Court.

[7] While the Doe Plaintiffs did not move for supplemental service on DAB, and do not seek further supplemental service on DAB presently, they note that they may seek such supplemental service in the future. ECF No. 7780 at 7.

The Clerk of the Court is respectfully directed to terminate the motions at ECF Nos. 7779 and 7783, as well as ECF No. 85 in Doe, No. 20-mc-740, and ECF No. 605 in Havlish, No. 03-cv-9848.

SO ORDERED.

Dated: April 5, 2022
New York, New York

SARAH NETBURN
United States Magistrate Judge

Exhibit K

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JAMES OWENS, et al.

Plaintiffs,

v.

TALIBAN a/k/a ISLAMIC EMIRATE OF AFGHANISTAN

Defendant.

Civil Action No. 22-1949

~~[PROPOSED]~~ ORDER GRANTING PLAINTIFFS' *EX PARTE* MOTION FOR AN ORDER DIRECTING ALTERNATIVE SERVICE AND FOR AN EXTENSION OF TIME TO SERVE THEIR CONFIRMATION MOTION

This matter is before the Court on Plaintiffs' *Ex Parte* Motion for an Order Directing Alternative Service and for an Extension of Time to Serve Their Confirmation Motion. Upon consideration of the motion, all the papers submitted, and the relevant authorities, the Court makes the following findings:

WHEREAS, because of the difficulties that Plaintiffs have had in attempting to effectuate service of process and the need for immediate relief, Plaintiffs have "good and sufficient reasons" for proceeding *ex parte* under Local Civil Rule 6.1.

WHEREAS Plaintiffs have unsuccessfully attempted to effectuate service of process via FedEx and DHL, and have demonstrated that service via Twitter, email, or publication is appropriate under Federal Rule of Civil Procedure 4(f)(3).

WHEREAS Plaintiffs have demonstrated under Federal Rules of Civil Procedure 6 and 64 and New York Civil Practice Law and Rules ("CPLR") § 2004 that they are entitled to an extension of time to serve the confirmation motion required by CPLR § 6211(b).

IT IS HEREBY ORDERED THAT Plaintiffs' *Ex Parte* Motion for an Order Directing Alternative Service and for an Extension of Time to Serve Their Confirmation Motion is GRANTED.

IT IS FURTHER ORDERED THAT Plaintiffs are AUTHORIZED under Federal Rule of Civil Procedure 4(f)(3) to serve the complaint and summons, as well as the confirmation motion and supporting materials under CPLR § 6211, upon the Taliban through the following means:

1. Via Twitter, through communication to the Twitter accounts of Abdullah Azzam (@Abdullah_azzam7), secretary to Taliban acting first deputy prime minister Abdul Ghani Baradar; Mohammed Naeem (@IeaOffice), a Taliban political spokesman; Abdul Qahar Balkhi (@QaharBalkhi), a spokesman for the Taliban's Ministry of Foreign Affairs; Zabiullah Mujahid (@Zabehulah_M33), a Taliban spokesman; Qari Yousaf Ahmadi (@QyAhmadi21), a Taliban spokesman; and Suhail Shaheen (@suhailshaheen1), the Taliban's permanent representative-designee to the United Nations, and

2. By publishing a weekly notice for four consecutive weeks, according to the manner provided in CPLR Rule 316, in *Al Quds Al-Arabi* and *The New York Times*, which must provide a URL to a website with easily accessible online versions of the materials required to be served;

IT IS FURTHER ORDERED THAT Plaintiffs are AUTHORIZED under Federal Rule of Civil Procedure 4(f)(3) to serve the confirmation motion and supporting materials under CPLR § 6211, upon Da Afghanistan Bank ("DAB") through the following means:

1. Via Twitter, through communication to @AFGCentralbank, the Twitter account to which DAB's website is linked; and

2. Via email to DAB's official email account, info@dab.gov.af, which is posted on the official website of DAB, www.dab.gov.af; and

3. By publishing a weekly notice for four consecutive weeks, according to the manner provided in CPLR 316, in *Al Quds Al-Arabi* and *The New York Times*, which must provide a URL to a website with easily accessible online versions of the materials required to be served.

IT IS FURTHER ORDERED THAT Plaintiffs' deadline to serve the confirmation order

and the supporting materials shall be extended 60 days from the issuance of this order.

IT IS FURTHER ORDERED THAT the service via Twitter and email as directed above be completed by Monday, May 2, 2022, and the service via publication be completed within 60 days of the issuance of this order.

SO ORDERED.

DATED: May 2, 2022

Hon. Valerie E. Caproni
United States District Court for the
Southern District of New York