

## UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

## MOTION INFORMATION STATEMENT

Docket Number(s): 22-965

Caption [use short title] \_\_\_\_\_

Motion for: To designate Appellees; consolidate  
appeals; and permit alternative service.

Set forth below precise, complete statement of relief sought:

To designate Appellees the Federal Reserve  
Bank of New York and Da Afghanistan Bank;  
to consolidate this appeal with 22-975; and  
to permit service of the consolidated appeals  
on Defendant-Appellee the Taliban by  
alternative means.

In re: Approximately \$3.5 Billion

MOVING PARTY: The Estate of Christopher Woden OPPOSING PARTY: N/A

Plaintiff



Defendant



Appellant/Petitioner



Appellee/Respondent

MOVING ATTORNEY: Samuel IssacharoffOPPOSING ATTORNEY: N/A

[name of attorney, with firm, address, phone number and e-mail]

40 Washington Square So.New York, NY 10012(212) 988-6580 / sil3@nyu.eduCourt- Judge/ Agency appealed from: Daniels, SDNY

## Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):



Yes

No (explain): As discussed in the  
motion, there is currently no appellee.

Opposing counsel's position on motion:



Unopposed



Opposed



Don't Know

Does opposing counsel intend to file a response:



Yes



No



Don't Know

Is oral argument on motion requested?



Yes



No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set?



Yes



No If yes, enter date: \_\_\_\_\_

Signature of Moving Attorney:

s/Samuel IssacharoffDate: 6/15/2022Service by: ☒ CM/ECF

Other [Attach proof of service]

## FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has this request for relief been made below?



Yes



No

Has this relief been previously sought in this court?



Yes



No

Requested return date and explanation of emergency: \_\_\_\_\_

**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

*IN RE* TERRORIST ATTACKS ON SEPTEMBER  
11, 2001

On Appeal from the United States  
District Court for the Southern  
District of New York

No. 22-965

*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

On Appeal from the United States  
District Court for the Southern  
District of New York

No. 22-975

**DECLARATION OF SAMUEL ISSACHAROFF IN SUPPORT  
OF PLAINTIFFS-APPELLANTS' MOTION TO DESIGNATE  
APPELLEES, CONSOLIDATE APPEALS, AND FOR  
ALTERNATIVE SERVICE UPON THE TALIBAN**

SAMUEL ISSACHAROFF, pursuant to Title 28, United States Code,  
Section 1746, hereby declares under penalty of perjury:

1. I am an attorney licensed to practice in the State of Texas and am  
admitted to practice before this Court. For purposes of the above-captioned appeals,  
I represent Plaintiffs-Appellants The Estate of Christopher Wodenshek, Anne  
Wodenshek, Sarah Wodenshek, Haley Wodenshek, Mollie Wodenshek, William  
Wodenshek, and Zachary Wodenshek. I respectfully submit this Declaration in

support of Plaintiffs-Appellants' Motion to designate Appellees, to consolidate the appeals, and for alternative service on the Taliban.

### **PRELIMINARY STATEMENT**

2. These appeals concern approximately \$3.5 billion in assets held at the Federal Reserve Bank of New York (the "FRBNY") in the name of Da Afghanistan Bank ("DAB") (the "DAB Assets") that are available to satisfy Plaintiffs-Appellants' and others' judgments against the Taliban. On February 11, 2022, the DAB Assets the only known collectible Taliban assets in the United States were frozen by Executive Order but are insufficient to satisfy existing compensatory damages judgments against the Taliban. Consequently, the funds have become the object of a judgment enforcement race in multiple courts, with thousands of 9/11 and other Taliban-sponsored terrorism victims rushing to claim priority over the DAB Assets.

3. On April 20, 2022, Plaintiffs-Appellants, who possess a liability judgment against the Taliban in *In re Terrorist Attacks on September 11, 2001*, 03-md-1570 (S.D.N.Y) (the "9/11 MDL", and "MDL Court"), sought to consolidate all claims before a single court and to ensure an equitable distribution of the DAB Assets by filing a Rule 23(b)(1)(B) limited fund Class Action Complaint (the "Class Action").

4. On April 27, 2022, after relating the Class Action to the 9/11 MDL, the MDL Court summarily dismissed the Class Action *sua sponte* pursuant to an order filed in both the Class Action and the 9/11 MDL. Plaintiffs-Appellants have appealed the dismissal order in the Class Action and have filed an interlocutory appeal of the dismissal order in the 9/11 MDL. Because the dismissal occurred precipitously, however, no other party had appeared in the Class Action and Plaintiffs-Appellants did not have an opportunity to serve the Taliban.

5. Through this motion, Plaintiffs-Appellants respectfully request that the Court (i) designate appropriate Appellees in both appeals; (ii) consolidate the two appeals so that the identical legal and factual issues in both can be simultaneously resolved; and (iii) authorize service of this motion and other documents in the consolidated appeals on the Taliban by the alternate methods approved by the MDL Court.

## **STATEMENT OF FACTS**

### **A. The 9/11 Attacks and Subsequent Litigation**

6. On September 11, 2001, Christopher Wodenshek arrived at his office in the World Trade Center's North Tower. Compl. ¶ 11.<sup>1</sup> An hour later, the hijacked

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<sup>1</sup> Attached to this Motion are: Class Action Complaint, *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-cv-3228 (S.D.N.Y.), ECF No. 1 (Exhibit A), cited herein as "Compl."; April 27, 2022 Order dismissing the Class Action (Exhibit B),

American Airlines Flight 11 slammed into the building, trapping and killing Christopher and many others. *Id.*

7. Approximately one year later, Plaintiffs-Appellants the Wodensheks, and the estates and surviving family members of 841 other victims of the 9/11 attacks (collectively known as the “*Ashton* Plaintiffs”) filed and/or joined in a complaint, *Ashton v. Al Qaeda Islamic Army*, 02-cv-6977, against numerous defendants responsible for the 9/11 attacks, including the Taliban. Compl. ¶ 34. This was one of multiple actions consolidated by the Judicial Panel for Multi-District Litigation into the 9/11 MDL. Compl. ¶ 35.

8. Because of the impracticability of effectuating service on the Taliban, the MDL Court permitted the *Ashton* Plaintiffs and others to serve the Taliban by

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cited herein as “Dismissal Order”; Executive Order 14064 (Exhibit C), cited herein as “Executive Order”; “Fact Sheet” accompanying the Executive Order (Exhibit D), cited herein as “Fact Sheet”; April 25, 2022 letter to Judges Daniels and Netburn (Exhibit E), cited herein as “Apr. 25 Ltr.”; April 21, 2022 Order denying Plaintiffs-Appellants motion for a TRO (Exhibit F), cited herein as “TRO Denial Order”; Transcript of April 26, 2022 9/11 MDL conference (Exhibit G), cited herein as “Apr. 26 Tr.”; April 27 letter to Judges Daniels and Netburn (Exhibit H), cited herein as “Apr. 27 Ltr.”; and Transcript of February 22, 2022 9/11 MDL conference (Exhibit I), cited herein as “Feb. 22 Tr.”; Opinion & Order, *In re Terrorist Attacks*, 03-md-1570 (S.D.N.Y. Apr. 5, 2022), ECF No. 7830 (authorizing alternative service on the Taliban) (Exhibit J), cited herein as “*Havlish/Doe* Alt. Service Order”; Order Granting [*Owens*] Plaintiffs’ *Ex Parte* Motion for an Order Directing Alternative Service and for an Extension of Time to Serve Their Confirmation Motion, *Owens*, 22-cv-1949 (S.D.N.Y. May 2, 2022), ECF. No. 46 (Exhibit K), cited herein as “*Owens* Alt. Service Order.”

media publications. Thereafter, the *Ashton* Plaintiffs and other plaintiff groups in the 9/11 MDL, including a group of commercial insurers (the “*Federal Insurance Plaintiffs*”), were granted default liability judgments against the Taliban in 2006. Compl. ¶ 38.

9. Between 2008 and 2011, forty-seven families of 9/11 victims known as the “*Havlish Plaintiffs*” separately sought default judgments against the Islamic Republic of Iran (a sovereign defendant), the Taliban (which it identified as non-sovereign), and several other defendants. Compl. ¶ 39. The MDL Court granted default judgments in favor of the *Havlish Plaintiffs* and motions for final damages judgments against the Taliban, among others. *Id.* In 2015, the *Ashton*, *Federal Insurance*, and other Plaintiffs obtained default judgments against Iran, and the MDL Court began issuing final damages judgments on a rolling basis. Compl. ¶ 40.

#### **B. The Availability of—and Race for—the DAB Assets**

10. Following the U.S. military’s withdrawal from Afghanistan in the summer of 2021, the Taliban captured the capital of Kabul and, as part of its takeover of all government functions, assumed control of DAB, installed senior Taliban leaders as DAB leadership, and caused DAB to implement Taliban edicts. Compl. ¶ 19. Prior to this, the Taliban had no tangible assets in the United States against which plaintiffs in the 9/11 MDL or any other claimants could have enforced judgments against it. Compl. ¶ 20. But once the Taliban controlled DAB, it also



controlled approximately \$7 billion in DAB Assets, much of which were on deposit at the FRBNY. *See* Compl.

11. On September 13, 2021, the *Havlish* Plaintiffs served a writ on the FRBNY in the amount of approximately \$7 billion. Compl. ¶ 41. On September 27, 2021, a group of seven anonymous plaintiffs then outside the 9/11 MDL and known as the “*Doe* Plaintiffs” served their writ in the amount of approximately \$140 million. *Id.*

12. Beginning in December 2021, the *Ashton* Plaintiffs moved for final damages judgments against the Taliban. Compl. ¶ 42. The cumulative final damages awards sought by the *Ashton* Plaintiffs which remain pending are nearly \$30 billion. *Id.*

13. On February 11, 2022, President Biden signed Executive Order 14064, which obligated U.S. financial institutions holding DAB funds, including the FRBNY, to transfer those funds to the FRBNY for consolidation in a blocked account. Executive Order. The Administration also issued a “Fact Sheet” concerning the Executive Order, making clear that approximately \$3.5 billion of the DAB Assets are earmarked for “U.S. victims of terrorism.” Fact Sheet.

14. On February 16, 2022, the MDL Court accepted the *Doe* Plaintiffs’ action, *Does 1 Through 7 v. The Taliban*, 20-mc-740, as related to the 9/11 MDL. The MDL Court explained that it did so because the *Doe* Plaintiffs possess a

compensatory damages judgment against the Taliban, notwithstanding that the claims did not arise out of the 9/11 attacks. Apr. 25 Ltr. at 1-2.

15. On March 8, 2022, a number of victims allegedly injured or killed in the 1998 bombings of the U.S. Embassies in Nairobi, Kenya, and Dar es Salaam, Tanzania (the “*Owens* Plaintiffs”), initiated a new action against the Taliban. Compl. ¶ 49. To obtain priority over other claimants, the *Owens* Plaintiffs also moved on an emergency basis for a prejudgment order of attachment against the DAB Assets for approximately \$4.7 billion. *Id.*

16. Anticipating complications certain to arise with competing judgment enforcement proceedings against the DAB Assets in the 9/11 MDL and *Owens* courts, the plaintiffs’ executive committees (“PECs”) in the 9/11 MDL requested a stay of the *Owens* Plaintiffs’ attachment motion and for *Owens*’s acceptance by the 9/11 MDL “for consolidated judgment enforcement proceedings.” Apr. 25 Ltr. at 3. The MDL Court denied the PECs’ request the following day. *Id.*

17. 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 approximately \$2 billion and \$140 million. Compl. ¶ 48.

18. On March 21, 2022, the *Owens* court granted the requested prejudgment attachment as to over \$1.3 billion of the DAB Assets. Compl. ¶ 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 race for them. *Id.*

19. 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 approximately \$9.3 billion (approximately \$3.1 billion of which is for compensatory damages). Compl. ¶ 54.

20. In light of the various writs of execution and the prejudgment attachment, if the DAB Assets were to be distributed by order of priority under New York’s default judgment enforcement rules, which certain plaintiffs claim is required, the entirety of the DAB Assets would go to a small group of plaintiffs, leaving thousands of other similarly situated victims of the Taliban either to receive a fraction of the recovery or, potentially, nothing.<sup>2</sup>

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<sup>2</sup> Separately, and unbeknownst to Plaintiffs-Appellants or, apparently, the MDL Court and its plaintiffs, other 9/11 victims whose claims are not part of the 9/11 MDL have also moved for turnover of nearly \$60 million in DAB Assets before Judge Kaplan in *Smith v. The Islamic Emirate of Afghanistan*, 01-cv-10132 (the “*Smith* Plaintiffs”). On February 23, 2022, the *Smith* Plaintiffs served on the FRBNY their writ of execution, issued in connection with their July 14, 2003 judgment against the Islamic Emirate of Afghanistan. *See Smith*, 01-cv-10132 (S.D.N.Y. Mar. 16, 2022), ECF No. 41. On May 18, 2022, the *Smith* Plaintiffs moved for turnover of the DAB Assets, *id.* (May 18, 2022), ECF Nos. 61-65, which only then alerted Plaintiffs-Appellants to these parallel judgment enforcement efforts. Most recently,

### C. The Limited Fund Class Action

21. On April 20, 2022, Plaintiffs-Appellants filed the Class Action seeking, among other things, the imposition of a constructive trust over the DAB Assets, certification of a Rule 23(b)(1)(B) class composed of victims of Taliban-sponsored terrorism with claims on file against the Taliban, and an equitable distribution of the DAB Assets to the proposed class members. Contemporaneously, Plaintiffs-Appellants sought a TRO and preliminary injunction pursuant to the All Writs Act prohibiting any dissipation of the DAB Assets pending adjudication of their class claims.<sup>3</sup> At the time of filing, Plaintiffs-Appellants provided notice to all known claimants (and thus potential class members) by filing letters in the various proceedings with the Class Action Complaint attached.

22. Plaintiffs-Appellants sought relief through Rule 23(b)(1)(B) because the DAB Assets are a finite fund representing the entirety of assets available to satisfy judgments against the Taliban (given the extensive sanctions regimes under which it has operated for decades and continues to operate), yet these limited funds are insufficient to satisfy all such judgments. In addition, judgment enforcement efforts by one claimant would necessarily prejudice the rights of other claimants,

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on June 10, 2022, *Smith* was accepted as a member case of the 9/11 MDL. *Smith*, 01-cv-10132 (S.D.N.Y. June 10, 2022), ECF No. 72.

<sup>3</sup> *In re Approx. \$3.5 Billion*, 22-cv-3228 (S.D.N.Y. Apr. 20, 2022), ECF Nos. 6-9.

and that for there to be an equitable distribution of the DAB Assets, all terrorism claims against the Taliban need to be consolidated under a single court.

23. The Class Action was deemed related to the 9/11 MDL. One day later, the MDL Court denied Plaintiffs-Appellants' TRO application and stated that "[a]ny 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." TRO Denial Order at 2. The MDL Court chastised Plaintiffs-Appellants, stating that the "separate complaint" filed by Plaintiffs-Appellants, who had "pending proceedings in the MDL," was "wholly inappropriate." *Id.*

24. Shortly thereafter, during an April 26, 2022 conference, the MDL Court stated that it intended to pursue an "equitable distribution" of the DAB Assets, not the "first come first served" approach advocated by the *Havlish* and *Doe* Plaintiffs. Apr. 26 Tr. at 5:8-9. The MDL Court did not, however, explain how such an equitable distribution would be possible given that nearly a third of the DAB Assets are subject to the *Owens* prejudgment attachment and did not identify a legal framework for distribution not subject to New York's priority rules.

25. Nevertheless, continuing to characterize the Class Action seeking equitable distribution as "inappropriate,"<sup>4</sup> the MDL Court directed Plaintiffs-

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<sup>4</sup> The MDL Court misconstrued the Class Action as an attempt to "obtain" the DAB Assets and "advantage[] no one but themselves," but this is not so. Apr. 26 Tr.

Appellants to withdraw the Class Action within twenty-four hours, or else have the MDL Court dismiss it. *Id.* at 4:7-12, 13:8-11. The MDL Court further threatened that should Plaintiffs-Appellants persist with the Class Action, it would be held against them: “[O]ne 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.” *Id.* at 8:10-13; *see also* 14:20-22 (threatening to move Plaintiffs-Appellants to “the back of the line” if they did not withdraw the Class Action).

26. On April 27, 2022, Plaintiffs-Appellants advised the MDL Court that they would not withdraw the Class Action and explained that they continued to believe that a limited fund class action was both appropriate and offered the best procedural mechanism for obtaining jurisdiction over the entirety of the DAB Assets, consolidating all claims to those funds in a single court, and achieving an equitable distribution. *See generally* Apr. 27 Ltr.

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at 5:23. As was made clear, “the Complaint involves a ‘participatory class action,’ one arising out of existing litigations and involving Class members who are individually represented by their own counsel”; it seeks not to advantage anyone but instead to bring about an equitable distribution overseen by the court. *In re Approximately \$3.5 Billion*, 22-cv-3228 (S.D.N.Y. Apr. 20, 2022), ECF No. 7, at 4; *accord* Apr. 26 Tr. at 28:8-12 (Counsel for the *Ashton* Plaintiffs: “It doesn’t advantage anyone to be the class plaintiffs. [The Class Action] is seeking an equitable distribution of all the assets, including those that are subject to the attachment order that Judge Caproni issued in *Owens*.”).

#### **D. The MDL Court's Decision**

27. On April 27, 2022, a week after filing and prior to any activity in the Class Action (including service on the FRBNY, the Taliban, or DAB), the MDL Court dismissed the Class Action *sua sponte*. *See generally* Dismissal Order. Noting that Plaintiffs-Appellants “are part of the [9/11] MDL” and “have obtained liability judgments and have pending proposed final default judgments,” and further noting that “[t]he DAB [A]ssets are at issue in current turnover proceedings in the MDL,” the MDL Court ruled the Class Action was “clearly duplicative[.]” Dismissal Order at 2.

28. That same day, Plaintiffs-Appellants filed a notice of appeal of the Dismissal Order in the Class Action and an interlocutory appeal of the Dismissal Order in the 9/11 MDL, pursuant to 28 U.S.C. § 1292(a)(1).

### **ARGUMENT**

#### **I. The Court Should Designate Appellees in the Appeals**

29. Upon the filing of the Notices of Appeal discussed above, this Court docketed case number 22-975 (the “9/11 MDL Appeal”), and 22-965 (the “Class Action Appeal,” and, together, the “Appeals”).

30. The Class Action sought a “participatory class action,” one arising out of existing litigations (the 9/11 MDL) and involving class members individually represented by their own counsel from the 9/11 MDL. *See* Elizabeth J. Cabraser &

Samuel Issacharoff, *The Participatory Class Action*, 92 N.Y.U. L. Rev. 846 (2017). Thus, the Class Action sought to (a) determine the availability of the DAB Assets to satisfy compensatory damages claims against the Taliban and (b) assuming they are available, bring about their equitable distribution exclusive of New York State's default first-come, first-served judgment creditor rules.

31. In filing the Class Action, Plaintiffs-Appellants did not list a defendant on the district court docket because the Class Action is an *in rem* proceeding seeking an equitable distribution of the DAB Assets, and it brings no claims against an individual defendant. Such *in rem* proceedings are not unorthodox. For example, civil forfeiture actions are *in rem* proceedings in which the property is the defendant and any person claiming an interest in the property is a claimant. When such cases are appealed from the district court, certain claimants may be designated as Appellants or Appellees in this Court, as the circumstances warrant. *E.g.*, *In re 650 Fifth Ave. & Related Properties*, 830 F.3d 66 (2d Cir. 2016) (involving many of the same claimants as the Appeals here).

32. In order to provide notice to all likely claimants and the custodian of the DAB Assets, Plaintiffs-Appellants filed a letter in both the 9/11 MDL and *Owens* case attaching the Class Action Complaint and also provided the same to the FRBNY, as custodian of the DAB Assets, via Federal Express.



33. The MDL Court dismissed the Class Action *sua sponte* one week after it had been filed, before issues of service could be resolved, and before Plaintiffs-Appellants could move to certify a class or undertake any action that would have prompted the appearance of parties with interests in the DAB Assets, including DAB. Accordingly, no defendant or claimant appeared in the district court before the Class Action was dismissed, and without a defendant on the district court docket for the Class Action, no Appellee could be named when filing the Appeals.

34. Between May 27, 2022 and June 9, 2022, Plaintiffs-Appellants had multiple contacts with this Court's Clerk's Office to determine a way to designate Appellees and progress the Appeals. In a June 6, 2022 letter to the Clerk of Court, Plaintiffs-Appellants proposed that the Taliban be designated an Appellee in the 22-975 matter.<sup>5</sup>

35. Because defendants *are* listed on the district court docket for the 9/11 MDL and the Appeals concern the enforcement of judgments against Defendant the Taliban in the 9/11 MDL, the Taliban is an appropriate Appellee in 22-975, and Plaintiffs-Appellants respectfully request that the Taliban be so designated.

36. The FRBNY was provided with the Class Action Complaint the day of its filing, as well as copies of the Notices of Appeal for both Appeals, but, as

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<sup>5</sup> See generally 22-975 (2d Cir. June 6, 2022), ECF No. 35.

mentioned above, the Class Action was dismissed before service was effected on either the FRBNY or DAB. Accordingly, Plaintiffs-Appellants further request that the FRBNY and DAB be listed as an Appellees in the Class Action Appeal.

## **II. The Court Should Consolidate the Appeals**

37. With Defendant-Appellee the Taliban in the 9/11 MDL and Appellee the FRBNY so designated in the 9/11 MDL and Class Action Appeals, respectively, Plaintiffs-Appellants respectfully request pursuant to Federal Rule of Appellate Procedure 3(b)(2) that the Court consolidate the Appeals.

38. Both Appeals arise out of the exact same ruling filed in related proceedings. Both Appeals present the same legal question concerning whether the Class Action is duplicative of the 9/11 MDL. Insofar as non-parties (for example, DAB and/or plaintiff groups in the 9/11 MDL and *Owens* actions) are likely to intervene, they are likely to do so in both Appeals for purposes of settling various parties' interests in the DAB Assets.

39. Consolidating the Appeals for briefing and argument would spare the parties needless duplication of effort and streamline the Court's consideration of the issues. Accordingly, the Court should grant the motion for consolidation of the 9/11 MDL Appeal and the Class Action Appeal.

### III. The Court Should Authorize Alternative Service on the Taliban and DAB

40. Finally, to effect service of this motion in adherence to Fed. R. App. Proc. 25(c), Plaintiffs-Appellants respectfully request permission to serve Defendant-Appellee the Taliban and Appellee DAB with this motion via alternative means, namely by publication and social media. Both the MDL and *Owens* Courts have recently approved alternative service on the Taliban and DAB in connection with the turnover and prejudgment attachment proceedings.<sup>6</sup>

41. Defendant-Appellee the Taliban is a designated terrorist entity without a known address. In 2005, the *Ashton* Plaintiffs, of which Plaintiffs-Appellants the Wodensheks are members, were authorized by the 9/11 MDL Court to effect service of their motion seeking a default liability judgment against Defendant-Appellant the Taliban by publication.<sup>7</sup> More recently, the MDL Court held that “the Taliban has actual notice of [the 9/11 MDL]. Its representatives have repeatedly issued press statements demonstrating that they are aware that the DAB [Assets] in this case are currently being held and targeted in this litigation.” *Havlish/Doe* Alt. Service Order at 7 (collecting filings reflecting “copies of *The New York Times*, *The Washington*

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<sup>6</sup> *In re Terrorist Attacks*, 03-md-1570 (S.D.N.Y. Apr. 5, 2022), ECF No. 7830; *Owens*, 22-cv-1949 (S.D.N.Y. May 2, 2022), ECF No. 46.

<sup>7</sup> *In re Terrorist Attacks*, 03-md-1570 (S.D.N.Y. Apr. 27, 2006), ECF No. 1782-7 (providing proof of service via publication in *USA Today*, the *International Herald Tribune*, and *Al-Quds Al-Arabi* over four consecutive weeks).

*Post*, and *Associated Press* articles in which high-ranking Taliban representatives discuss this case and the freezing of funds held by DAB”). And the MDL Court has repeatedly approved service of process by publication upon the Taliban.<sup>8</sup>

42. Similarly, although the *Havlish* Plaintiffs have served their turnover papers on Dr. Shah Mehrabi, a professor of economics at Montgomery College in Maryland and a member of DAB’s Supreme Council, they likewise sought and were granted permission to serve DAB by alternative means. *See Havlish/Doe Alt. Service Order* at 10-15. Like the Taliban, DAB has actual notice of this action. “It has commented on the fact that its assets are frozen by an Executive Order. *Id.* at 13 (citing *In re Terrorist Attacks*, 03-md-1570 (S.D.N.Y. Mar. 21, 2022), ECF No. 7785-11).

43. Both the MDL Court and *Owens* court have permitted plaintiffs to effect service upon the Taliban and DAB in connection with their respective turnover and prejudgment attachment proceedings in the following ways:

- i. By publishing notice in *Al Quds Al-Arabi* and *The New York Times* “once a week for at least four weeks” with either full motion papers or “an electronic address such as a URL or QR code that directs

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<sup>8</sup> *See id.* (Mar. 21, 2022), ECF No. 7784 (collecting orders in the 9/11 MDL authorizing service upon the Taliban by publication).

the reader to easily accessible online versions of those papers.”

*Havlish/Doe* Alt. Service Order at 9; *Owens* Alt. Service Order at 2.

ii. By communications to the Twitter accounts of “Taliban First Deputy Prime Minister Abdullah Azzam (@Abdullah\_azzam7) and Taliban political spokesman Mohammad Naeem (@IeaOffice), or to any other Twitter accounts reported to belong to Taliban spokespersons.” *Havlish/Doe* Alt. Service Order at 9.<sup>9</sup> And for DAB, by communications to the Twitter account to which the DAB’s website is linked (@AFGcentralbank). *Havlish/Doe* Alt. Service Order at 14; *Owens* Alt. Service Order at 2.

iii. With respect to DAB, by email to the account posted on DAB’s official website ([info@dab.gov.af](mailto:info@dab.gov.af)). *Havlish/Doe* Alt. Service Order at 14; *Owens* Alt. Service Order at 2.

44. Plaintiffs-Appellants are prepared to effect service of these and any future motion papers on Defendant-Appellee the Taliban and Appellee DAB by

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<sup>9</sup> The *Owens* Plaintiffs were likewise ordered to direct service to the above-referenced Taliban representatives’ Twitter accounts, as well as those of “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.” *Owens* Alt. Service Order at 2.

these same methods publication (including the use of a website hosting motion papers), social media, and email. Accordingly, they respectfully request the Court to grant their motion to serve Defendant-Appellee the Taliban and Appellee DAB by alternative means.



## CONCLUSION

45. For the foregoing reasons, Plaintiffs-Appellants the Wodensheks respectfully request that the Court: (1) designate the Taliban as an Appellee in 9/11 MDL Appeal and designate the FRBNY and DAB as an Appellees in the Class Action Appeal; (2) consolidate the 9/11 MDL and Class Action Appeals; and (3) authorize Plaintiffs-Appellants to effectuate service on the Taliban and DAB by publication, social media, and email.

Dated: June 15, 2022  
New York, New York

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**Certification of Compliance with Federal Rule of Appellate Procedure 27**

- (1) This document complies with the word limit of Fed. R. App. P. 27(d)(2)(A) because, excluding the part of the document exempted by Fed. R. App. P. 27(a)(2)(B):

This document contains 4,186 words.

- (2) This document complies with the typeface requirements of Fed. R. App. P. 27(d)(1)(E) typeface and type style requirements (those of Fed. R. App. P. 32(a)(5) and 32(a)(6)):

This document has been prepared in proportionally spaced typeface using Microsoft Word in size 14 Times New Roman font.

/s/ Samuel Issacharoff  
Attorney for: Plaintiffs-Appellants  
Dated: June 15, 2022