UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AUGUST CABRERA, *et al.*, Plaintiffs, v. BLACK & VEATCH SPECIAL PROJECTS CORPORATION, *et al.*, Defendants.	Case No. 19-cv-03833 (EGS)

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS BY DEFENDANTS G4S AND CENTERRA

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Defendants G4S Holdings International (AG) Limited ("G4S Holdings") and G4S Risk Management Limited ("G4S Risk Management") (collectively, "G4S") and Centerra Group, LLC ("Centerra") respectfully submit this Motion to Dismiss Plaintiffs' Complaint pursuant to Federal Rules of Civil Procedure 12(b)(6), 12(b)(1), and 12(b)(2).

INTRODUCTION AND SUMMARY

In this sprawling action, 384 Plaintiffs bring six identical claims under the Anti-Terrorism Act ("ATA"), 18 U.S.C. § 2333, against 13 companies that operated in Afghanistan between 2006 and 2014. The Complaint recounts armed attacks that tragically resulted in injuries and deaths to 143 individuals between 2009 and 2017. Plaintiffs' novel theory is that "Defendants" directly caused or substantially assisted these armed attacks by making so-called "protection payments" to the Taliban during the war in Afghanistan. According to Plaintiffs, these "protection payments" ensured the Taliban would refrain from attacking their respective business interests and helped finance the attacks.

Most of the Complaint, however, has nothing to do with G4S or Centerra at all. It consists instead of generalized group allegations raised against all "Defendants" in an attempt to bootstrap allegations between Defendants. The only specific allegations against G4S and Centerra in the 1,309-paragraph Complaint can be found in 26 of 30 paragraphs addressing activities performed in Afghanistan by a group of Defendants identified by Plaintiffs as the so-called "ArmorGroup Defendants." Compl. ¶¶ 128–58. Those paragraphs, however, assert no facts whatsoever about "protection payments," and nothing in the Complaint ties any act by G4S or Centerra to the harms suffered by Plaintiffs.

At its core, the Complaint holds G4S and Centerra responsible for more than 100 armed attacks over an 11-year period based merely on the fact that they conducted business in Afghanistan between 2007 and 2008. Moreover, Plaintiffs' Complaint suffers from a fatal flaw as

to both G4S and Centerra: the only contracts about which Plaintiffs make any allegations ***ended nearly one year before any Plaintiff was harmed in this case***, and even then, only at sites located hundreds of miles away—in completely different provinces—from either location. Accordingly, the claims against G4S and Centerra are based on allegations too attenuated in time and distance to sustain Plaintiffs' liability theories.

At most, the Complaint, and the materials relied upon therein, reveal that Centerra and G4S made legitimate payments to various Afghan guards who provided essential security functions for diplomatic and military personnel serving in Afghanistan on behalf of the United States and other international organizations pursuant to five separate contracts. For three of these contracts—including the only alleged G4S contract—the Complaint does not allege a single payment to the Taliban. For the remaining two contracts—the 2007 Shindand Airbase Contract and the 2008 UNOPS Mine Clearance Contract—Plaintiffs plead no facts to show that G4S, Centerra, or any former related companies participated in, caused, or even financed a terrorist attack by the Taliban or any other organization, much less did so knowingly. Instead, Plaintiffs allege only that the former companies, as required by their contracts, hired local Afghans to be security guards between 2007 and 2008, over a year before the first Plaintiff was harmed—and as many as 11 years before the last Plaintiff was harmed.

Plaintiffs' limited allegations about the Shindand Airbase and UNOPS Mine Clearance Contracts are based entirely on a 2010 report by a U.S. Senate Committee from which Plaintiffs selectively quote and liberally mischaracterize (hereinafter, "Senate Report" or "Report"). *See* U.S. S. Comm. on Armed Servs., *Inquiry Into The Role And Oversight Of Private Security Contractors In Afghanistan* (Oct. 26, 2010) ("S. Rep.") (Ex. 1). A full and faithful reading of the Senate Report tells a vastly different story than the tale told by Plaintiffs in their Complaint.

Notably omitted from Plaintiffs' Complaint is the fact that the two original leaders of the former companies' guard forces—Mr. White and Mr. Pink—were recommended to the companies by ***the United States military***. Plaintiffs also gloss over the fact that, upon learning of reports that Pink had possibly become affiliated with the Taliban, the former companies never again did business with Pink and terminated his guards within a week. Most strikingly, the Senate Report never mentions—or even suggests—that payments to these guards were "protection payments" to the Taliban.

In sum, even if every allegation of the Complaint is accepted as true, the Complaint falls woefully short of stating a claim against G4S and Centerra under the ATA and should be dismissed under Rule 12(b)(6). The claims with respect to the 2007 Kabul Embassy Contract, the 2008-2009 PRT Security Contract, and the 2015 British Embassy Contract should be dismissed as they lack any supporting factual basis whatsoever. As a result, G4S Holdings—which is only mentioned in connection with the PRT Security Contract and the British Embassy Contract—should be dismissed from the case entirely. Moreover, actions attributable to G4S's and Centerra's former companies under the Shindand Airbase and UNOPS Mine Clearance Contracts lack any temporal or geographic relation to the alleged attacks. Those alleged actions also were not themselves acts of international terrorism, nor did they aid the terrorist acts of anyone else, such that they could establish primary or secondary ATA liability. Rather, the activities alleged were normal contracting activities—the payment of wages to local guards, as required by the government's contracts, hired to provide legitimate security services—in support of the international mission in Afghanistan.

The Complaint should also be dismissed for two additional reasons. The action should be dismissed as to all Defendants because it implicates a nonjusticiable political question involving

whether the ATA's act-of-war exception applies to the armed conflict in Afghanistan that President Bush deemed a war between nations in 2002. As such, Plaintiffs have failed to establish that this Court has subject-matter jurisdiction over this dispute. Moreover, the Complaint does not establish personal jurisdiction over G4S Holdings or G4S Risk Management, both of which are based in the United Kingdom. Plaintiffs have not shown sufficient contacts between G4S and the United States or established that those contacts have a causal relationship to the injuries alleged in this litigation.

For all of these reasons, the Court should dismiss the Complaint in its entirety against G4S and Centerra with prejudice.

FACTUAL BACKGROUND[1]

Plaintiffs' sparse allegations against G4S and Centerra relate entirely to the performance of two former entities on two contracts that concluded in 2008. And Plaintiffs have alleged no connection between that contract performance and their deaths and injuries.

I. THE SO-CALLED "ARMORGROUP DEFENDANTS"

According to Plaintiffs, ArmorGroup Defendants include four different companies: Environmental Chemical Corporation ("ECC"); G4S Holdings and G4S Risk Management; and Centerra. Compl. ¶¶ 18–21. By lumping these four Defendants into a single defined term, Plaintiffs give the misimpression that these companies are all the same, and the individual actions taken by each company are attributable to the others. That is incorrect.

As the Complaint makes clear, ECC—a privately held Kentucky corporation, headquartered in California—is a ***completely*** different company from G4S and Centerra. *Compare id.* ¶ 19 *with* ¶¶ 18, 20–21. The allegations against ECC, therefore, have nothing to do with G4S

[1] G4S and Centerra accept Plaintiffs' factual allegations as true only for the purposes of this motion and only to the extent they are well-pleaded and not contradicted by materials subject to judicial notice. *See Kaempe v. Myers*, 367 F.3d 958, 963 (D.C. Cir. 2004).

or Centerra. *See id.* ¶¶ 133–36. And, although they are filing a joint brief for purposes of judicial economy, G4S and Centerra are unrelated companies today.

The Complaint identifies three former entities related to G4S and/or Centerra: ArmorGroup North America, Inc. ("AGNA"), ArmorGroup Services Limited, doing business as ArmorGroup Mine Action ("AGMA"), and ArmorGroup International plc ("AGI") (collectively, the "Former Entities"). *Id.* ¶¶ 18, 20–21, 128. According to Plaintiffs, through a series of acquisitions, AGNA ultimately became Centerra, while AGI became G4S Holdings and AGMA became G4S Risk Management. Notably, the present-day company Centerra is not specifically alleged to have done anything at all, while the present-day company G4S is not alleged to have done anything in Afghanistan other than to sign a single contract for security work. *See id.* ¶ 130.

A. The Alleged "ArmorGroup" Contracts

Although Plaintiffs identify eight contracts through which the so-called "ArmorGroup Defendants" allegedly supported terrorist activities, *id.*, only two of those contracts are actually relevant to Plaintiffs' allegations. Indeed, several of the contracts identified by Plaintiffs have nothing to do with Centerra, G4S, or the Former Entities.

Specifically, three of the eight contracts—the 2010 Kunduz Police Contract, the 2011 Kandahar Airfield Contract, and the 2012 Ring Road Contract—involve ECC only. *See id.* ¶¶ 130, 133–36. Neither G4S, Centerra, nor the Former Entities had any involvement in these contracts either as a subcontractor or prime contractor. *See id.* Thus, the allegations against ECC related to these three contracts—including allegations about ECC's alleged affiliation with Arvin Kam—have nothing to do with G4S or Centerra and are entirely irrelevant as to whether Plaintiffs adequately pleaded claims against G4S or Centerra. *See id.*

Of the remaining five contracts, one—the 2015 British Embassy Contract—allegedly involves "G4S Holdings International (AG) Limited and/or G4S Risk Management Limited." *Id.*

¶ 130. This is the only allegation in the entire Complaint about G4S Holdings. Beyond alleging that G4S "signed" this contract, however, the Complaint does not include a single allegation related to the contract, let alone an allegation that protection payments to the Taliban were made under this contract.

The remaining four contracts allegedly involved the Former Entities: (1) the Shindand Airbase Contract (AGNA), (2) the UNOPS Mine Clearance Contract (AGMA), (3) the Kabul Embassy Contract (AGNA), and (4) the PRT Security Contract (AGNA and AGI). *See id.* As to two of these contracts—the Kabul Embassy and PRT Security Contracts—the Complaint contains no allegations of illicit payments to the Taliban. In other words, the ***only*** (minimal) allegations of payments to anyone supposedly affiliated with the Taliban by the Former Entities relate to the Shindand Airbase Contract (performed by AGNA as subcontractor) and the UNOPS Mine Clearance Contract (performed by AGMA as the prime contractor), and those allegations are directly contradicted by the Senate Report.

B. 2007 Shindand Airbase And 2008 UNOPS Mine Clearance Contracts

The Senate Report forms the basis of the Complaint's allegations regarding the Shindand Airbase and UNOPS Mine Clearance Contracts.[2] That Report marked the culmination of a years-long investigation into the hiring of feuding local tribal leaders to provide security services, and their role in a tragic U.S. military strike that resulted in the deaths of Afghan civilians. The Senate Committee reviewed hundreds of thousands of pages of government and contractor documents,

[2] "Public records are subject to judicial notice on a motion to dismiss when referred to in the complaint and integral to the plaintiff's claim." *Owens v. BNP Paribas, S.A.*, 897 F.3d 266, 273 (D.C. Cir. 2018); *see also United States ex rel. Akl v. Va. Hosp. Ctr.-Arlington Health Sys.*, 968 F. Supp. 2d 196, 200 (D.D.C. 2013) ("In determining whether a complaint states a claim, the court may consider . . . matters of which it may take judicial notice, including public documents . . . without converting the motion to dismiss into a motion for summary judgment.").

conducted more than 30 interviews, and received numerous responses to written questions. S. Rep. at i.

The Report, however, never once mentions protection payments or even more generally payments by the Former Entities to the Taliban. Instead, it describes the use of local Afghan guards to provide security services nearly a year before any Plaintiff was injured or killed. Local Afghan guards were merely paid their wages for the guard services they provided. As such, many of the Complaint's allegations actually conflict with the Report's findings.

1. The U.S. Military Directs AGNA To Hire Mr. White And Mr. Pink For The Shindand Airbase Contract

In or around March 2007, the U.S. Air Force contracted with ECC for construction work on the airbase in Herat Province pursuant to the Shindand Airbase Contract. Compl. ¶ 130.a.; S. Rep. at 88. ECC, in turn, subcontracted with AGNA in April 2007 to provide security for the airbase. Compl. ¶ 137; S. Rep. at 8. The subcontract between ECC and AGNA required AGNA to hire locals to staff the security operations. *See* S. Rep. at 8. AGNA performed as ECC's subcontractor on the Shindand Contract through mid-December 2008, at which point the Afghan National Army took full control of airfield security at the airbase. *Id.* at 36.

When ECC entered into its subcontract with AGNA, AGNA initially relied on two influential local tribal leaders—Timor Shah (known as "Mr. White") and Nadir Khan (known as "Mr. Pink")—to provide local guards for the project. Compl. ¶ 137; S. Rep. at 5. Critically, White and Pink were both "referred" to AGNA and ECC ***by the U.S. military***. S. Rep. at 8–9 (ECC testified that "U.S. Military personnel had actually referred him to White and Pink" and that "U.S. Military personnel told him: 'let's throw [White and Pink] a bone and hire some of their people, and kind of take care of them a little bit.'").

Thus, when AGNA hired White and Pink under the U.S. military's direction, it was understood that White, far from being associated with the Taliban, was "cooperating with American forces." S. Rep. at 8 (quotation marks and alteration omitted). Moreover, Pink "was the person that [the U.S. military] felt comfortable with" and the U.S. military's team leader had ensured that the Shindand governor and elders "had no issues" with recommending Pink. *Id.* at 9. The U.S. military—and therefore AGNA—"did not suspect that Pink had Taliban ties or was working against Coalition interests." *Id.* Similarly, AGNA submitted a list of guard personnel's names to the U.S. military for background checks and was "advised that no derogatory information was found on any individual the company proposed to hire at Shindand." *Id.* at 10. Thus, at the U.S. military's direction, ECC and AGNA retained the services of Pink and White, who would, at least for a period of time beginning in June 2007, each provide half of the approximately 30 local guards initially needed for the project. *Id.* at 8, 10.

At some point, however, a rift developed between White and Pink, and on December 12, 2007, Pink murdered White and fled the area. Compl. ¶ 138; S. Rep. at 14–16. AGNA believed that the Mafia-style hit resulted from Pink's desire to obtain "all the share of the work in the airfield." Compl. ¶ 138; S. Rep. at 14. Notably, there is no allegation in the Complaint, nor indication in the Senate Report, that it had anything to do with the Taliban or Taliban relations.

As a result of the murder, AGNA immediately cut ties with Pink, and promptly dismissed Pink's guard force shortly thereafter. *See* S. Rep. at 15–16. Specifically, on January 13, 2008, AGNA first "received reports that 'Pink has ***now*** aligned himself with the Taliban.'" *Id.* at 18 (emphasis added). In response to these reports, "AGNA removed all cell phones from the company's guards . . . as a precautionary measure[.]" *Id.* at 19 (internal quotation marks omitted). Just six days later, on January 19, 2008, AGNA learned "that Pink's men [had] been sending

[sensitive] information to [Pink]." *Id.* AGNA promptly fired all guards hired by Pink. *Id.* In other words, far from supporting the Taliban as Plaintiffs allege, the Senate Report documents that AGNA disassociated itself completely from Pink and his men when it learned that Pink was aligned with the Taliban.

2. AGNA Hires Mr. White II

On or around December 13, 2007, shortly after White was killed, his younger brother, Reza Khan (known as "Mr. White II"), assumed White's role on the Shindand Contract. *Id.* at 17. The Complaint fails to allege that White II had Taliban ties—or if he did, that AGNA knew about such ties—when AGNA hired White II. *See* Compl. ¶ 140. To the contrary, according to the Senate Report, AGNA had every reason to believe that White II was not Taliban but rather an Afghan police officer: he wore a police uniform, drove a police car, and was seen with men in police uniforms. S. Rep. at 17–18.

3. AGMA Hires White II For The UNOPS Mine Clearance Contract

AGMA entered into the UNOPS Mine Clearance Contract with the United Nations in early 2008. Like the Shindand Airbase Contract, the UNOPS Mine Clearance Contract required AGMA to hire locals to staff its security forces. AGMA performed on that contract until December 2008. S. Rep. at iv.

Like AGNA, AGMA also retained White II's services. Although the Complaint alleges that AGMA hired White II despite knowing about his Taliban ties, Compl. ¶ 144, the Senate Report contradicts Plaintiffs' allegations, and instead states that AGMA thought White II was a government official. Indeed, the Senate Report offers no indication that AGMA knew about any

of White II's alleged Taliban ties. S. Rep. at 22.[3] Following an in-person meeting with White II, AGMA submitted its bid for the UNOPS Mine Clearance Contract, stating that it planned to subcontract with a "respected tribal elder." *Id.* at 22–23. AGMA Director David McDonnell noted at the time that the United Nations regional mine action staff "will have known [White II]." *Id.* at 23 & 23 n.178.

In July 2008, the Afghan government confiscated White II's weapons and vehicles. *Id.* at 26; *see also* Compl. ¶ 146. While the Complaint attempts to portray this as evidence that AGMA was aware of White II having ties to the Taliban, here again the allegations are contradicted by the Senate Report, which concluded that AGMA understood the seizure to be due to a dispute between an Afghan official and White II regarding their "financial agreement." S. Rep. at 27. The Complaint also attempts to connect a July 28, 2008 news report of the seizure of two caches of weapons in the Shindand region, which Afghan authorities suspected belonged to the Taliban, to White II. Compl. ¶ 146. However, the Senate Report does not connect these caches to White II. And neither the Complaint nor the Senate Report suggests that AGMA knew about this news report. The report is also not referenced in an AGMA consultant's project report covering this period. S. Rep. at 26.

4. The Azizabad Raid

On August 21, 2008, two of Pink's associates informed the U.S. military that White II was planning a Taliban shura at White II's house, at which Mullah Sadeq, a Taliban leader, would be

[3] Although the Complaint further alleges that White II was known to an Army Sergeant to be a Taliban supporter, Compl. ¶ 144, the Complaint fails to allege, and the Senate Report does not indicate, that this military sergeant knew this at the time of the events in question, or that the military shared this information with AGMA in any way. Nor is any such inference reasonable without more. Moreover, the Complaint fails to mention that the Army Sergeant received the information from rival Pink associates who provided intelligence to the U.S. military to take out White II. S. Rep. at 28, 32.

present. S. Rep. at 28; *see also* Compl. ¶ 141. There is no indication in the Complaint or the Senate Report that AGNA or AGMA was aware of this event or White II's alleged association with it. That evening, the U.S. military and Coalition forces raided White II's house to kill or capture Mullah Sadeq. S. Rep. at 29. White II, one AGNA guard, and six AGMA guards were among those killed during the raid, along with several civilians. *Id.* at 30.

According to the Senate Report, even after multiple lengthy and detailed investigations, it is still significantly disputed whether this raid was correctly targeted by the U.S. military at a Taliban meeting or a civilian funeral gathering for White (following his murder by Pink). *Id.* at 31–33. Indeed, it was widely believed that Pink, through his associates, fed the U.S. military false information to orchestrate a raid that would take out his personal rival, White II. *Id.* at 32. The record is also unclear whether Mullah Sadeq was even there, let alone killed, in the attack. Despite this conflicting information, AGNA still took decisive action immediately following the raid, firing all the guards affiliated with White II on August 22, 2008. *Id.* at 33. AGNA completed its subcontract at the Shindand Airbase a few months later in December 2008. *Id.* at 36.

5. AGMA Hires Mr. White III For The UNOPS Mine Clearance Contract

According to the Senate Report, AGMA continued to hire White II's guards for the UNOPS Mine Clearance Contract out of a concern that, if AGMA did not do so, the guards might join forces "***against*** ArmorGroup, the Afghan National Army, and the U.S. forces." *Id.* at 33 (emphasis added). There is no allegation in the Complaint or indication in the Senate Report that any of those guards attended the alleged shura or otherwise had ties to the Taliban. On August 25, 2008, White II's younger brother—Gul Mohammed (known as "Mr. White III")—assumed control over these men. *Id*. There are likewise no allegations in the Complaint and nothing in the Senate Report indicating that White III had any affiliation with the Taliban whatsoever, other than "familial ties"

to White and White II. *See* Compl. ¶ 148. The UNOPS Mine Clearance Contract concluded a few months later in December 2008. S. Rep. at iv.

II. PLAINTIFFS AND THEIR INJURIES

The Complaint was filed by and on behalf of 384 Plaintiffs who were either killed or injured between 2009 and 2017 as a result of the attacks carried out in Afghanistan.[4] Compl. ¶ 1. The Complaint, however, makes no connection between any of these Plaintiffs or their injuries or deaths and the specific allegations against the Former Entities with respect to their performance of the Shindand Airbase and UNOPS Mine Clearance Contracts.

Nor could they. Most importantly, the Former Entities stopped performing on these contracts long before the first Plaintiff was killed or injured. Specifically, AGNA and AGMA completed performance of the Shindand Airbase and UNOPS Mine Clearance Contracts in December 2008. *See* S. Rep. at iv, 5. However, the first Plaintiff death or injury from anywhere in Afghanistan did not occur until ***a year later*** on December 30, 2009. *See* Compl. ¶¶ 472, 1011, 1239. In addition, none of the Plaintiffs were killed or injured anywhere near the Herat Province, where the Former Entities performed the Shindand Airbase and UNOPS Mine Clearance Contracts. Per Plaintiffs' allegations, not a single individual was killed or injured anywhere in that province. As the following table summarizes, ***no individuals are alleged to have been killed or injured in a province where or when G4S, Centerra or its Former Entities were allegedly operating*:**

[4] On February 21, 2020, Plaintiff Michael Davitt voluntarily dismissed. Dkt. No. 57.

Table 1. Location And Time Periods Of Relevant Contract Performance

Alleged Contract	Alleged Period of Contract Performance	Province	# of Individuals Killed or Injured in the Province	# of Individuals Killed or Injured During the Alleged Period of Contract Performance
2007 Shindand Airbase (AGNA)	From March 2007 to December 2008.	Herat	0	0
2008 UN OPS Mine Clearance (AGMA)	From Summer 2008 to December 2008.			0

ARGUMENT

Plaintiffs' Complaint should be dismissed as to G4S and Centerra for at least three reasons. First, Plaintiffs have failed to state a claim under the ATA due to a variety of deficiencies. Second, this Court lacks subject-matter jurisdiction because whether the "act-of-war" exception to ATA liability applies here is a political question. Finally, this Court lacks personal jurisdiction over G4S, foreign entities which allegedly performed non-U.S. contracts in a foreign country.

I. THE COMPLAINT SHOULD BE DISMISSED IN ITS ENTIRETY AS TO G4S AND CENTERRA BECAUSE PLAINTIFFS FAIL TO STATE A CLAIM UNDER THE ATA

To survive a Rule 12(b)(6) motion to dismiss, a plaintiff must plead sufficient facts to state a claim that is "plausible on its face[.]" *Levi v. Brown & Williamson Tobacco Corp.*, 851 F. Supp. 2d 8, 10 (D.D.C. 2012) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). A complaint "must plead factual matter that permits the court to infer more than the mere possibility of misconduct, . . . and a complaint which merely tenders naked assertion[s] devoid of further factual enhancement is . . . unavailing." *Id.* (internal quotation marks omitted). In determining plausibility, a court need

not accept a plaintiff's legal conclusions as true, nor must the court presume the veracity of legal conclusions that are couched as factual allegations. *Id.*

Importantly, a generalized pleading that simply directs allegations against a group of "Defendants"—particularly here, where the five groups of Defendants have no alleged relation—does not satisfy this pleading standard. *See Jiggetts v. District of Columbia*, 319 F.R.D. 408, 417 (D.D.C. 2017) (A "shotgun pleading"—"one in which 'it is virtually impossible to know which allegations of fact are intended to support which claim[s] for relief'—does not comply with the [pleading] standards." (quoting *Kabbaj v. Obama*, 568 F. App'x 875, 879 (11th Cir. 2014)). Indeed, "given the extreme nature of the charge of terrorism, fairness requires *extra-careful scrutiny* of plaintiffs' allegations *as to any particular defendant*, to ensure that he—or it—does indeed have fair notice of what the plaintiffs' claim is and the grounds upon which it rests[.]" *Burnett v. Al Baraka Inv. & Dev. Corp.*, 274 F. Supp. 2d 86, 103–04 (D.D.C. 2003) (emphases added). Moreover, a court need not credit even specific allegations "insofar as they contradict exhibits to the complaint or matters subject to judicial notice." *Kaempe v. Myers*, 367 F.3d 958, 963 (D.C. Cir. 2004).

The few specific allegations against G4S and Centerra fail entirely to state an ATA claim under Rule 12(b)(6). First, Plaintiffs have not raised a single allegation regarding payment to the Taliban by G4S, Centerra, or the Former Entities in connection with the Kabul Embassy Contract, the PRT Security Contract, or the British Embassy Contract. As such, any claims related to those contracts should be summarily dismissed, and Plaintiffs have failed entirely to state a claim against G4S Holdings. Second, with respect to the Shindand Airbase and UNOPS Mine Clearance Contracts, Plaintiffs fail to state a claim for primary ATA liability. Indeed, Plaintiffs have failed to plead any connection between the allegations regarding those contracts and the deaths or injuries

of any Plaintiffs. Plaintiffs have also failed to plead an act of international terrorism, facts showing an intent by G4S or Centerra to commit one, or the elements of the necessary predicate offenses. And third, Plaintiffs have failed to establish secondary ATA liability because they have not sufficiently alleged that G4S, Centerra, or the Former Entities provided substantial assistance to a designated foreign terrorist organization ("FTO"). The Complaint should be dismissed in its entirety for failure to state a claim.[5]

A. Plaintiffs' Claims Regarding G4S Holdings And The Kabul Embassy, PRT Security, And British Embassy Contracts Should Be Dismissed

As an initial matter, any claims related to the Kabul Embassy, PRT Security, and British Embassy Contracts should be summarily dismissed. The Complaint contains no factual allegations supporting these claims. *See United States ex. rel. Thomas v. Siemens AG*, 708 F. Supp. 2d 505, 515 (E.D. Pa. 2010) (dismissing as inadequately pled certain claims to the extent they were based on "seventeen contracts listed as an exhibit to the [complaint]" that contained no specific

[5] Plaintiffs' theory of primary liability, which relies entirely on doing business with individuals allegedly affiliated with a terrorist organization, is also statutorily foreclosed by the Justice Against Sponsors of Terrorism Act ("JASTA"). Pub. L. No. 114-222, 130 Stat. 852 (2016) (codified at 28 U.S.C. § 1605B). Congress amended the ATA with JASTA in 2016 to provide for secondary—*i.e.*, aiding and abetting—liability. In this way, JASTA obviated the need to utilize predicate offenses as a basis for liability and was therefore intended to be victims' sole method of redress for claims where the defendant did not itself commit the international act of terrorism. The practical effect is that plaintiffs pursuing a claim against an organization alleged to have itself committed an international act of terrorism may proceed under primary liability and plaintiffs pursuing a claim against an organization alleged to have only supported an act of international terrorism may proceed under secondary liability. To interpret JASTA's amendment differently would be contrary to the D.C. Circuit's understanding of the ATA and would render the addition of secondary liability superfluous. *See Mercy Hosp., Inc. v. Azar*, 891 F.3d 1062, 1068 (D.C. Cir. 2018); *see also Owens v. BNP Paribas*, 897 F.3d 266, 278 (D.C. Cir. 2018) ("Congressional amendments make substantive changes to existing law"). JASTA, therefore, must have made conduct actionable that was not previously actionable. The D.C. Circuit held as much in *Owens*, 897 F.3d at 277–78. The addition of secondary liability would not be necessary if victims already had an effective vehicle to recover against entities that did not commit the international act of terrorism. As such, Plaintiffs' primary liability claims should be dismissed.

allegations); *cf. Miller v. Holzmann*, No. 95-cv-1231 (RCL), 2007 WL 778568, at *6 (D.D.C. Mar. 6, 2007) (dismissing "claims for relief based on contracts 07 and 29" after finding plaintiff's "guilt by association" allegations inadequate to establish the court's personal jurisdiction). And as a result, G4S Holdings should be dismissed from the case entirely.

1. Plaintiffs Fail To Allege Any Facts Regarding Taliban Payments In Connection With The Kabul Embassy, PRT Security, And British Embassy Contracts

Other than identifying their existence, the Complaint contains no allegations regarding the PRT Security and British Embassy Contracts, much less does it connect G4S, Centerra, or the Former Entities to protection payments under those contracts or otherwise specify a time period of performance. *See* Compl. ¶ 130. These kind of "naked assertion[s] devoid of further factual enhancement" and "unadorned, the-defendant-unlawfully-harmed-me accusation[s]" cannot survive scrutiny. *Levi*, 851 F. Supp. 2d at 10 (internal quotation marks omitted). The Complaint's reference to the Kabul Embassy Contract similarly cannot pass muster. The only allegations related to this contract are based on allegations from two prior lawsuits that had absolutely no bearing on allegations of payments to the Taliban. *See* Compl. ¶¶ 130, 152–53.

Plaintiffs appear to identify these contracts to demonstrate merely that the Former Entities and G4S were present in Afghanistan during the relevant time period. According to Plaintiffs, that makes the Former Entities and G4S liable under the ATA for engaging in the "standard practice" of protection payments. *See id.* ¶ 131. But such a "guilt-by-association" theory, which states no "more than the mere possibility of misconduct," cannot survive a motion to dismiss. *Ridley v. VMT Long Term Care Mgmt., Inc.*, 68 F. Supp. 3d 88, 91 (D.D.C. 2014). Indeed, it would implicate every company that ever operated in Afghanistan.

Nor can that theory be saved by Plaintiffs' "shotgun pleading" of a "potpourri of vague and conclusory allegations that for the most part are not explicitly linked to any specific factual

assertions." *Coakley v. Jaffe*, 49 F. Supp. 2d 615, 625 (S.D.N.Y. 1999), *aff'd* 234 F.3d 1261 (2d Cir. 2000). Of the 1,309 paragraphs in the Complaint, only 26 relate specifically to G4S, Centerra, or the Former Entities. Even the ECC-specific allegations in the "ArmorGroup Defendants" section of the Complaint are irrelevant. *See* Compl. ¶¶ 133–36.

Thus, it is "virtually impossible to know" which of the remaining conclusory allegations are intended to support which claims for relief against which Defendant or for which Plaintiff. *Jiggetts*, 319 F.R.D. at 417. Put simply, Plaintiffs' claims with respect to these contracts cannot be saved by references to all "Defendants." Accordingly, all claims related to the Kabul Embassy, PRT Security, and British Embassy Contracts should be dismissed.

2. Because Claims Related To The British Embassy And PRT Contracts Should Be Dismissed, G4S Holdings Should Be Dismissed From The Case

Because claims related to the British Embassy and PRT Contracts are entirely lacking, Plaintiffs have failed to state any claim whatsoever against G4S Holdings. G4S Holdings is mentioned only in connection with the British Embassy Contract. *See* Compl. ¶ 130.h. In addition to the Complaint's complete failure to make any specific allegations regarding the performance of this contract, the Complaint fails even to definitively assert G4S Holdings was a party to that contract, alleging only that G4S Holdings "***and/or***" G4S Risk Management "signed" the contract. *Id.* (emphasis added). This is wholly inadequate. *See, e.g.*, *Barnes v. AstraZeneca Pharms. L.P.*, 253 F. Supp. 3d 1168, 1171 (N.D. Ga. 2017) (finding that a "fail[ure] to identify specific defendant(s) and thus to give them 'adequate notice of the claims against them and the grounds upon which each claim rests'" requires a dismissal); *cf. Magowan v. Lowery*, 166 F. Supp. 3d 39, 61 n.4 (D.D.C. 2016) (dismissal warranted when "the factual content pled by the plaintiff is inconsistent with the defendant's liability" (emphasis omitted)). Moreover, although the Complaint alleges that G4S Holdings is the "successor" of AGI, Compl. ¶ 20, and that AGI

"obtained" the PRT Security Contract, *id.* ¶ 130, the Complaint fails to allege any wrongdoing by AGI. Indeed, Plaintiffs struggle to find any role for G4S Holdings whatsoever in the alleged ArmorGroup Defendant activity. G4S Holdings should be dismissed.

B. Plaintiffs Fail To State A Claim For Primary Liability (Counts I–IV) Based On The Shindand Airbase And UNOPS Mine Clearance Contracts

Once the empty claims about the Kabul Embassy, PRT Security, and British Embassy Contracts are set aside, it becomes apparent that Counts I through IV of the Complaint against G4S and Centerra rest entirely on allegations related to two contracts, the Shindand Airbase and UNOPS Mine Clearance Contracts.[6] Yet, even the allegations related to these two contracts fail to state a claim for primary liability under the ATA. The Court should dismiss Counts I through IV against G4S and Centerra because they fail to plead that the Former Entities (1) proximately caused Plaintiffs' injuries; (2) committed an act of international terrorism; (3) knowingly committed such an act; or (4) committed any of the alleged predicate offenses.

1. The Former Entities' Alleged Conduct Did Not Proximately Cause Plaintiffs' Injuries

Plaintiffs have failed to plead any connection whatsoever between the Former Entities' alleged conduct under the Shindand Airbase and UNOPS Mine Clearance Contracts and Plaintiffs' injuries. This is fatal to Counts I through IV. At bottom, Plaintiffs do not—and indeed, cannot—allege that the Former Entities had any relationship to the attacks at issue in the Complaint. The

[6] To the extent Plaintiffs rely on other generalized group assertions about all "Defendants" in support of their claims, the Court should disregard such allegations. *See Bates v. Nw. Human Servs., Inc.*, 466 F. Supp. 2d 69, 85 (D.D.C. 2006) (dismissing claim where "the complaint generally treats, and refers to, the defendant corporations as if they were a single, undifferentiated mass" because "[s]uch imprecision makes it difficult, if not impossible, for the Court to parse the complaint in such a way as to understand the specific role each defendant allegedly played"); *see also Toumazou v. Turkish Republic of N. Cyprus*, 71 F. Supp. 3d 7, 21 (D.D.C. 2014) (quoting *Atuahene v. City of Hartford*, 10 Fed. App'x 33, 34 (2d Cir. 2001)) ("[A] plaintiff cannot satisfy the minimum pleading requirements . . . by 'lumping all the defendants together in each claim and providing no factual basis to distinguish their conduct.'").

Former Entities are not alleged to have been present at the time of the attacks. They are not alleged to have participated in the attacks. They are not alleged to have known about the attacks before they occurred. And they are not alleged to have encouraged the attacks.

Instead, Plaintiffs allege that compensation paid to local Afghan guards one or two years before any Plaintiffs were killed or injured in a province where no alleged attacks occurred somehow makes the Former Entities liable for every death or injury thereafter caused by the Taliban anywhere in Afghanistan. But "this is precisely the kind of unlimited, sprawling, and speculative liability that proximate cause forbids." *Zapata v. HSBC Holdings PLC*, 414 F. Supp. 3d 342, 357 (E.D.N.Y. 2019). Indeed, courts have acknowledged that under the ATA, "a defendant's liability cannot . . . go forward to eternity." *Crosby v. Twitter, Inc.*, 921 F.3d 617, 623 (6th Cir. 2019). Were Plaintiffs' allegations enough to support liability under the ATA, "the [C]ourt would be left without an intelligible basis to distinguish between the specific attacks that form the basis of the complaint and . . . horrific and often terroristic violence inflicted upon others." *See Zapata*, 414 F. Supp. 3d at 357.

Plaintiffs' position amounts to a theory of strict liability for any payments for any reason to anyone who ever becomes affiliated with a terrorist organization. But as the D.C. Circuit has explained in an analogous context, if Congress had wanted to establish such strict liability, it would have done so. *Cf. Owens v. BNP Paribas*, 897 F.3d 266, 275–76 (D.C. Cir. 2018) ("If Congress intended that 'any provider of U.S. currency to a state sponsor of terrorism would be strictly liable for injuries subsequently caused by a terrorist organization associated with that state,' it would have done so explicitly."). That it did not makes clear that a plaintiff must meet the ATA's "traditionally rigorous proximate cause requirement" for direct liability. *Shatsky v. PLO*, No. 02-

2280, 2017 WL 2666111, at *7 (D.D.C. June 20, 2017), *vacated on other grounds*, No. 17-7168, 2020 WL 1856490 (D.C. Cir. Apr. 14, 2020).

Plaintiffs have failed to do so here as a matter of law. An ATA plaintiff must allege (1) that the defendant's alleged wrongful conduct was a "***substantial factor***" in causing the plaintiff's injuries and (2) that those injuries were "***reasonably foreseeable***" to the defendant. *Owens*, 897 F.3d at 273 (emphasis added). The plaintiff "must" demonstrate "some direct relation between the injury asserted and the injurious conduct alleged." *Id.* at 273 n.8. The "central question" for proximate cause is "whether the alleged violation led ***directly*** to the plaintiff's injuries." *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 461 (2006) (emphasis added); *see also Linde v. Arab Bank, PLC*, 882 F.3d 314, 330–31 (2d Cir. 2018) (proximate causation inquiry "focuses on the relationship between an alleged act of international terrorism and a plaintiff's injury"). The Complaint fails to allege either element of proximate cause.

a. The Former Entities' Alleged Conduct Was Not A "Substantial Factor" In Causing Plaintiffs' Injuries

Plaintiffs allege that the Former Entities, at most, paid certain individuals who later may have become affiliated with the Taliban. To satisfy the "substantial factor" prong of the proximate cause analysis in terrorist funding cases, however, the D.C. Circuit requires Plaintiffs to allege that funds were actually received by the terrorist organization and used in aid of terrorist attacks. *See Owens*, 897 F.3d at 276 ("In order to satisfy proximate causation under the ATA, Plaintiffs' complaint needs to adequately plead facts alleging that [the defendant] substantially contributed to Plaintiffs' injuries because the funds to Sudan 'actually [were] transferred to al Qaeda . . . ***and aided in' the embassy bombings***." (emphasis added)).

Here, Plaintiffs fail to allege that the Former Entities paid the Taliban at all. First, there are no allegations of direct payments to the Taliban as an organization. The Complaint merely

alleges that the Former Entities paid wages to guards for security services. And the Senate Report makes clear that the security services were contractually required and that the guards did in fact render those services. *See* S. Rep. at 10–11 ("ArmorGroup initially needed approximately 30 guards to meet security demands at the airbase. . . . ArmorGroup paid wages directly to the men performing the security work.").

The only connection alleged between the Former Entities and the Taliban is that these guards were associated with local tribal leaders—*i.e.*, White, White II, White III, and Pink—who Plaintiffs claim became affiliated with the Taliban. But these allegations of Taliban affiliation are wholly insufficient. Although Plaintiffs attempt to tie White to the Taliban, Compl. ¶ 149, the Senate Report clearly contradicts such allegations by stating that White was cooperating with the U.S. forces when AGNA hired him, S. Rep. at 8. Similarly, Plaintiffs include conclusory allegations regarding White III with no specific facts. *See* Compl. ¶ 148; *but see* S. Rep. at 33–36 (discussing White III).

According to the Senate Report, Pink turned to the Taliban at some point after he murdered White on December 12, 2007 and fled to a Taliban-controlled area. Compl. ¶ 138; S. Rep. at 14–16. At that point, however, AGNA's relationship with Pink had ended. *See* S. Rep. at 16 ("Once it became known that Mr. Pink was responsible for the shooting, Pink . . . was not seen again."). When AGNA learned one month later that Pink had apparently flipped to the Taliban, it cut off phone communications between Pink and his men and then fired his men—all within less than a week. *Id.* at 18–19. There is no indication that those men became affiliated with the Taliban, much less were involved in any terrorist activities while they received payments from the Former Entities. *Id.*

Similarly, Plaintiffs fail to plead that White II was Taliban. The Complaint does not allege that White II had Taliban ties when he was employed by the Former Entities. *See* Compl. ¶ 140; *see also* S. Rep. at 31–33. If anything, the Senate Report indicates that White II was not Taliban. One account portrayed him as a member of the Afghan police, while another identified him as a "businessman who owned electronics stores" and "had a 'close working relationship' with the [Afghan National Police]." S. Rep. at 17–18. And, although the Complaint makes much of White II's presence at Azizabad when the U.S. military conducted its raid, according to the Senate Report, it remains significantly disputed whether this raid was correctly targeted by the U.S. military at a Taliban meeting or a civilian funeral gathering for White. *Id.* at 31–33. Indeed, it was widely believed that Pink, through his associates, fed the U.S. military false information to orchestrate a raid that would take out his personal rival, White II. *Id.* at 32.

In short, the Complaint and Senate Report demonstrate that the Former Entities had no financial relationship with the Taliban, much less that their payments to guards were a "substantial factor" in any Taliban attacks on Plaintiffs. Indeed, even if the tribal leaders identified in the Complaint had been affiliated with the Taliban, there is no allegation that wages paid to individual guards actually made it to the Taliban's coffers, let alone that those funds were used to fund attacks alleged to have occurred years later and hundreds of miles away, or that the attacks would not or could not have occurred without such payments. *See Owens*, 897 F.3d at 276 ("Plaintiffs' complaint fails to plausibly allege that any currency processed by BNPP for Sudan was either in fact sent to al Qaeda or necessary for Sudan to fund the embassy bombings."). Plaintiffs have failed to allege that the Former Entities' payments "substantially contributed" to the attacks and, thus for that reason alone, failed to plead proximate cause as a matter of law. *See id.* at 275–76.

b. Plaintiffs' Injuries Were Not "Reasonably Foreseeable"

The Complaint also fails to include any plausible allegations that Plaintiffs' injuries were a "reasonably foreseeable" consequence of the Former Entities' actions. *Id.* at 273; *see also Rothstein v. UBS AG*, 708 F.3d 82, 91 (2d Cir. 2013) (explaining that a plaintiff's injuries must be "reasonably foreseeable or anticipated as a natural consequence" of the defendant's actions (citation omitted)). The foreseeability requirement of proximate cause serves "to preclude liability in situations where the causal link between conduct and result is so attenuated that the consequence is more aptly described as mere fortuity." *Paroline v. United States*, 572 U.S. 434, 445 (2014). That is precisely the case here, as the Senate Report makes clear.

Foremost, the lack of any temporal connection between the guard payments and the attacks rendered those attacks unforeseeable as a matter of law. "[***T***]***he greater the time*** between the payments and the attack, the more attenuated the foreseeability of the attack, and the weaker the likelihood that the support played a significant role in facilitating the attacks." *In re Chiquita Brands Int'l, Inc.*, 284 F. Supp. 3d 1284, 1313 (S.D. Fla. 2018) (emphasis added); *see also In re Terrorist Attacks on Sept. 11, 2001*, 740 F. Supp. 2d 494, 517 (S.D.N.Y. 2010) ("Where . . . there is a ***remoteness in time***, there must be sufficient factual allegations of a connection between the material support provided and the acts of terrorism that caused plaintiffs' injuries, such that a reasonable trier of fact could conclude that it was more likely than not that the support provided by the defendant assisted the terrorists in the commission of the terrorist act." (emphasis added)).

Here, as demonstrated above by Table 1, the Former Entities completed performance of the Shindand Airbase and UNOPS Mine Clearance Contracts in December 2008. *See* S. Rep. at iv, 5; *see also* Compl. ¶ 130. However, the first Plaintiff death or injury did not occur until December 30, 2009—*i.e.*, 12 months ***after*** those contracts were terminated. *See* Compl. ¶¶ 472,

1011, 1239. And most of the attacks alleged in the Complaint occurred many years later. This alone demonstrates that Plaintiffs cannot establish foreseeability.

In addition, this conclusion is bolstered by the fact that the terrorist attacks of which Plaintiffs complain lack any geographical connection between the Former Entities' payments and the attacks. The Former Entities paid guards under the Shindand Airbase and UNOPS Mine Clearance Contracts in the Herat Province. Compl. ¶ 130. However, not a single alleged attack occurred anywhere in that province, let alone near the contract performance sites. *Id. passim*. And there is no allegation that the guard payments were somehow commingled with broader Taliban funds. Thus, not only did the attacks occur at least a year after performance terminated on the Shindand Airbase and UNOPS Mine Clearance Contracts, but also, they occurred in entirely different parts of the country hundreds of miles away:

Figure 1. Cent. Intelligence Agency, Map of Afghanistan

To the extent the lack of a temporal relationship between the payments and the attacks does not make the attacks unforeseeable as a matter of law, the additional lack of a geographical connection plainly does.

Finally, regardless of these temporal and geographic gaps, it was not foreseeable that payments to guards associated with White, White II, White III, or Pink would be used to fund terrorist attacks by the Taliban. According to the Senate Report, the U.S. military recommended to AGNA that it hire Pink and White, so there was every reason to believe that those individuals—and, more importantly, the guards who were actually performing the work and receiving wages

from AGNA—were not affiliated with the Taliban. *See* S. Rep. at 8–9. As discussed above, White was never connected to the Taliban, *see* Compl. ¶¶ 137–39; S. Rep. at 8, and AGNA had ceased any direct relationship with Pink by the time he became affiliated with the Taliban, *see* S. Rep. at 16. Moreover, as soon as AGNA learned that Pink had become affiliated with the Taliban, it terminated its relationship with his men. *Id.* at 19.

Likewise, Plaintiffs fail to establish that any terrorist attacks were foreseeable from the Former Entities' business relationship with White II or White III. White II was known as a respected tribal leader, *id.* at 22–23, and the Former Entities reasonably believed that he was an Afghan National Police Commander because he wore a police uniform, drove a police car, and was seen with men in police uniforms. *Id.* at 17, 22. And regardless of the circumstances of White II's death, there is no allegation that the Former Entities knew of the shura or any supposed Taliban connections before the Azizabad raid. *Id.* at 33. As for White III, there are no allegations in the Complaint or other indications in the Senate Report that he was Taliban.

For all of these reasons, Counts I to IV should be dismissed for a lack of proximate cause.

2. Plaintiffs Have Not Sufficiently Alleged That The Former Entities Committed An Act Of International Terrorism Under The ATA

In addition to their failure to sufficiently plead proximate causation, Plaintiffs have also failed to plead that the Former Entities committed an act of international terrorism. The ATA defines an "act of international terrorism" as:

> (A) Activities which are violent acts or acts dangerous to human life which are crimes in the United States or another State;
>
> (B) Activities which appear to be intended to:
>
> (i) Intimidate or coerce a civilian population;
>
> (ii) Influence the policy of a government by intimidation or coercion; or
>
> (iii) Affect the conduct of a government by mass destruction, assassination, or kidnapping; and

> (C) Activities which occur primarily outside the U.S. or transcend national boundaries in terms of the means by which they are accomplished.

18 U.S.C. § 2331(1). Here, Plaintiffs have failed as a matter of law to plead sufficient facts showing that the Former Entities' activities were either "violent" or "dangerous to human life," *id.* § 2331(1)(A); or "appear[ed] to be intended to intimidate or coerce a population[,] influence the policy of a government through intimidation or coercion[,] or affect a government's conduct through mass destruction, assassination or kidnapping," *id.* § 2331(B).[7]

The Complaint (and Senate Report) in fact shows the opposite: the services provided by the Former Entities were, by definition, designed to ***increase and enhance*** the safety and security of diplomatic and military personnel stationed in Afghanistan during wartime. And those services were provided for financial gain pursuant to government contracts. Thus, even if the Former Entities had knowingly hired individuals affiliated with the Taliban to provide security services (an allegation contradicted by the Senate Report)—such a business transaction would still not state a claim under the ATA.

Courts have repeatedly rejected claims that doing business with an individual or company that may be affiliated with a terrorist organization constitutes an activity that is "violent" or "dangerous to human life" and intended to "intimidate or coerce." *See Linde*, 882 F.3d at 327–28 (providing "routine financial services" to members of terrorist organizations does not "compel a finding that as a matter of law, the services were violent or life-endangering acts that appeared intended to intimidate or coerce civilians or to influence or affect governments"); *Kemper v. Deutsche Bank AG*, 911 F.3d 383, 390 (7th Cir. 2018) (bank's facilitation of Iran's transactions,

[7] Plaintiffs have also failed to show that the Former Entities' activities constituted a crime in the United States. The discussion of how each count fails to plead the elements of the respective offenses is in Argument Section I.B.4 below.

which financed terrorist attacks on Americans, did "not appear intended to intimidate or coerce any civilian population or government"); *O'Sullivan v. Deutsche Bank AG*, No. 17-cv-8709, 2019 WL 1409446, at *7–8 (S.D.N.Y. 2019) (bank's financial services to companies "with connections to terrorist organizations" to avoid U.S. sanctions did not satisfy § 2331(1)'s requirement that defendant's acts be "dangerous to human life" and intended to coerce or intimidate); *Stutts v. De Dietrich Grp.*, No. 3-cv-4058, 2006 WL 1867060, at *1–2 (E.D.N.Y. June 30, 2006) (issuing letters of credit to companies that supplied chemicals to Saddam Hussein's regime in Iraq was not dangerous to human life and did not appear to be designed to coerce civilians or government entities).

Instead, courts have rightly recognized that such business transactions are "motivated by economics, not by a desire to 'intimidate or coerce.'" *Kemper*, 911 F.3d at 390; *see also Freeman v. HSBC Holdings PLC*, 413 F. Supp. 3d 67, 90–92 (E.D.N.Y. 2019) (plaintiffs failed to allege the elements of § 2331(1) because (1) they could not identify a direct connection between the financial services and the terrorist organization, and (2) defendants appear to have been "purely motivated by the opportunity to make money"); *Zapata*, 414 F. Supp. 3d at 358–59 ("[W]hile the court must draw all inferences in [plaintiffs'] favor in deciding this motion, it is not required to disregard 'alternative explanations so obvious that they render the plaintiff's inferences unreasonable.' . . . And Plaintiffs' complaint unmistakably sets forth such a plausible alternative explanation for HSBC's conduct: greed . . . . In other words, to an objective observer, HSBC's conduct appeared to be 'motivated by economics[.]'").[8]

[8] Plaintiffs rely on one case, *Wultz v. Islamic Republic of Iran*, to support their claim that such conduct constitutes a violation of the ATA. 755 F. Supp. 2d 1, 44 (D.D.C. 2010); Compl. ¶ 1264. However, in that case, which was decided before JASTA, the plaintiffs alleged that a defendant bank was specifically warned by officials from two governments that a terrorist organization was making money transfers "for the purpose of carrying out terrorist attacks" and that the transfers

Here, Plaintiffs have not alleged any facts showing that the Former Entities' activities were intended for anything other than performance of their contracts. Nothing about providing wages to Afghan guards was violent or dangerous to human life, or appeared intended to intimidate or coerce a civilian population or influence or affect a government through mass destruction, assassination, or kidnapping. Indeed, even if the Former Entities had made protection payments to the Taliban—and there are no facts pled in the Complaint or contained in the Senate Report to support this naked assertion—that ***still*** "would not lead an objective observer to conclude Defendants intended to achieve any one of the results listed in § 2331(1)(B)." *Stansell v. BGP, Inc.*, No. 8:09-CV-2501-T-30AEP, 2011 WL 1296881, at *9 (M.D. Fla. Mar. 31, 2011) (payment of protection money to the FARC to allow defendants to conduct oil exploration did not sufficiently allege acts dangerous to human life or terrorist intent). As a matter of law, therefore, the Complaint fails to plead that the Former Entities committed an "act of international terrorism," and Plaintiffs' primary liability claims fail also for this reason.

3. Plaintiffs Do Not Adequately Plead That The Former Entities Knowingly Committed A Terrorist Act

In addition to failing to adequately plead proximate cause or that the Former Entities committed acts of international terrorism, Plaintiffs also fail to sufficiently allege that the Former Entities knowingly committed a terrorist act. Specifically, the Complaint asserts that the Former Entities knew or recklessly disregarded whether their payments would benefit the Taliban. *See* Compl. ¶¶ 128–58. As discussed further below, the individual counts in this case require a higher

"enhanced [the terrorists'] ability to plan, prepare for[,] and carry out such attacks[.]" *Wultz*, 755 F. Supp. 2d at 51. The bank, however, "ignored this demand and continued to carry out further [terrorist organization] Transfers." *Id.* Based on these facts, the Court concluded that the plaintiffs plausibly alleged the bank's terrorist intent because it did more than merely provide funds to a terrorist organization; it ***knew*** that its assistance was being used to carry out terrorist attacks, and it continued to provide that assistance anyway. *Id.* at 53.

intent level because they plead criminal offenses with specific intent requirements. Nevertheless, Plaintiffs have failed to plead facts that would make even a showing of recklessness plausible, much less meet any of the higher intent standards.

Recklessness is "equivalent to . . . wantonness," which "approaches the degree of moral blame attached to intentional harm, since the defendant deliberately inflicts a highly unreasonable risk of harm upon others in conscious disregard of it." *Boim v. Holy Land Found. ("Boim III")*, 549 F.3d 685, 693 (7th Cir. 2008) (citations and quotations omitted); *see also Owens v. BNP Paribas, S.A.*, 235 F. Supp. 3d 85, 90 (D.D.C. 2017) ("[T]he statute requires . . . something more than mere negligence, in light of the treble damages provision."). In the ATA context, recklessness requires a plaintiff to make "a connection . . . between the defendant's mental state and the potential for harm to American nationals." *Gill v. Arab Bank, PLC*, 893 F. Supp. 2d 474, 506 (E.D.N.Y. 2012). In other words, the defendant must have known "that there was a ***substantial*** probability that Americans would be injured as a result of its support of the terrorist organization, but [] did not care." *Id.* at 506 (emphasis added); Trial Tr., at 32*,* ECF No. 879, *Sokolow v. PLO*, No. 1:04-cv-00397 (S.D.N.Y. Mar. 4, 2015) (instructing the jury that plaintiffs must prove that "the defendants were aware of the ***high probability*** of the fact in question" and "that the defendants consciously and deliberately avoided learning of that fact" (emphasis added)).

Plaintiffs fail to meet this high burden here. Hiring and paying wages to individuals for legitimate services does not rise to the level of "deliberately indifferent" conduct. In *Hussein v. Dahabshiil Transfer Services Ltd.*, the court held that the families of two U.S. citizens killed in Somalia by al-Shabaab failed to state a claim against two money-transfer businesses in Somalia. 230 F. Supp. 3d 167, 171 (S.D.N.Y. 2017). The court rejected the plaintiffs' allegations that the defendants directly supported al-Shabaab's terrorist causes "through financial contributions and

by hiring individuals associated with terrorist groups," because the court could not infer from these facts that the defendants "were aware of, or deliberately indifferent to, transfers of money to al-Shabaab[.]" *Id.* The court stated:

> [The complaint] does not allege any instance in which any of the Defendants transferred money to al-Shabaab while on notice of the customer's or transferee's terrorist affiliations or under other suspicious circumstances that would raise 'red flags.' The four transfers identified . . . were not sent to recipients who were publicly identified as associated with al-Shabaab[.]

Id. at 177; *see also Abecassis v. Wyatt,* 704 F. Supp. 2d 623, 656–66 (S.D. Tex. 2010) (plaintiffs who alleged that defendant companies had illegally purchased oil from Iraq—and that the funds were used by Iraq's government to finance terrorism—had failed to sufficiently plead scienter under the ATA).

This case is analogous to *Hussein*. Plaintiffs have not alleged any facts showing that the Former Entities paid wages to guards ***knowing*** (1) that those guards were Taliban members, and (2) that those wages would be used to fund attacks on U.S. nationals. *See* 230 F. Supp. 3d at 177. Moreover, Plaintiffs fail to allege any facts which would have put the Former Entities on notice of a substantial or high probability that its wages would be used to fund terrorist attacks on U.S. nationals. *See Gill*, 893 F. Supp. 2d at 506. Thus, Plaintiffs have failed to allege that the Former Entities, by paying wages to Afghan guards, acted recklessly, let alone with knowledge or intent.

At worst, the alleged facts here put the Former Entities on notice that they were providing wages to individuals affiliated with feuding warlords. Even these facts, however, fail to show the intent necessary under the ATA. As explained above, the Complaint is devoid of any allegations regarding White's ties to terrorism. *See* Compl. ¶ 149; S. Rep. at 8. The Complaint merely alleges that (1) in June of 2007, White and his men were hired to work on the Shindand Airbase Contract, Compl. ¶ 137; S. Rep. at 11; and (2) on December 12, 2007, White was murdered by Pink, Compl.

¶ 138. On these facts alone, the Former Entities could not have possibly known, or even recklessly disregarded, that wages paid to White and his guards would lead to terrorist attacks on U.S. victims.

As to Pink, Plaintiffs rely on two facts from the Senate Report: (1) Pink murdered White, and (2) after White's death, Pink went into hiding and allegedly joined the Taliban. *Id.* However, for several reasons, these facts are not enough to establish that the Former Entities knew he was affiliated with the Taliban or were reckless about doing business with Pink or guards associated with him.

First, Pink (and White) were recommended to AGNA in 2007 by their client: ***the United States military***. *See* S. Rep. at 8–9. This fact alone ought to dispel any notion that the Former Entities intentionally or recklessly engaged in a terrorist act by paying them contractually mandated wages approved and authorized by the United States government. Second, there is no allegation that the Former Entities worked with Pink after he went into hiding. *See id.* at 16 ("Pink . . . was not seen again."). Third, once the Former Entities learned of Pink's alleged association with the Taliban, they promptly addressed the risk and disassociated with the guards recruited by Pink. According to the Senate Report, the Former Entities learned of reports linking Pink to the Taliban on January 13, 2008—over a month after White's death. *Id.* at 16–17. Within a few days, the Former Entities had "removed all cell phones from the company's local guards" as a "precautionary measure." *Id.* at 19. And by January 19, 2008, just six days after discovering that Pink was affiliated with the Taliban, the Former Entities had terminated all of Pink's guards. *Id.* In short, nothing alleged in the Complaint would have reasonably put the Former Entities on notice that Pink might be affiliated with the Taliban while he was employed by the Former Entities.

Much like Pink, Plaintiffs' allegations regarding White II also did not place the Former Entities on notice of potential terrorist activity. Plaintiffs allege that White II offered to assume

White's role after his death, and that the Former Entities knew or should have known about White II's alleged ties to the Taliban at that time. *See* Compl. ¶¶ 140–41. The Senate Report, however, leads a reasonable observer to reach the opposite conclusion: White II did not have terrorist ties. He wore a police uniform, drove a police car, and was seen with men in police uniforms. S. Rep. at 17, 22. Additionally, when White II was hired, the Former Entities knew that Pink killed White II's brother and that Pink joined the Taliban. Therefore, it defies logic for the Former Entities to conclude that White II—Pink's enemy—was part of the same organization. This Court is under no obligation to accept as true Plaintiffs' factual allegations related to White II's ties to the Taliban, when other facts in the Senate Report directly contradict those allegations. *See Kaempe*, 367 F.3d at 963.

Nor are there any facts suggesting the Former Entities did business with White II after alleged notice that he might be Taliban. Although the Complaint alleges that AGMA was aware that White II's weapons had been confiscated, *see* Compl. ¶ 146, the Senate Report makes clear that this confiscation was due to a "financial disagreement" between White II and the Afghan Ministry of Defense—not any connection to the Taliban, *see* S. Rep. at 26–27. The only fact, if true, which even arguably could have provided the Former Entities with notice of White II's ties to the Taliban is his presence during the Azizabad raid in August 2008. Compl. ¶ 142. However, White II was killed during the raid. *Id.* And, as the Senate Report acknowledges, there are contradictory conclusions on whether this raid even involved the Taliban. S. Rep. at 6 n.29, 32.[9]

[9] Although Plaintiffs allege that the Former Entities made a $1,000 discretionary payment to White II's family after White II's death, Compl. ¶ 143, this fact, alone, could not have possibly put the Former Entities on notice that the payments would be used to fund terrorist attacks on U.S. nationals. Plaintiffs have not alleged in any way that White II's family was associated with or supported the Taliban. *Cf. Sokolow*, 60 F. Supp. 3d 509, 517 n.11 (S.D.N.Y. 2014) ("A showing of support—even post-attack financial support to the families of terrorists—is not sufficient to demonstrate that Defendants were somehow responsible for the attacks.").

Finally, with respect to White III, the Complaint is again utterly lacking. Indeed, the allegations about White III are less than three paragraphs and focus entirely on his familial connections (*i.e.*, that he is the brother of White II). *See* Compl. ¶¶ 147–49. There are no facts even suggesting that he was a violent, feuding warlord—much less a member of the Taliban.

Plaintiffs, at various points, rely on the U.S. government's knowledge to deflect from their threadbare allegations. For example, Plaintiffs allege that "U.S. military personnel stationed nearby considered Mr. Pink to be a 'mid-level Taliban manager.'" *Id.* ¶ 137. Likewise, Plaintiffs state, "[a]ccording to an Army Sergeant operating in the area, Mr. White II 'was a supporter of Taliban operations' and would 'help the Taliban with money.'" *Id.* ¶ 144. Such allegations are not only insufficient to assess the Former Entities' knowledge, but they are also irrelevant to the knowledge inquiry. The U.S. government is not a defendant in this action, and its knowledge cannot be (and is not pleaded to have been) imputed onto the Former Entities.

In sum, Plaintiffs fail to allege that the Former Entities had any reason to believe that its wage payments would fund terrorist attacks on U.S. nationals (let alone that they in fact did). Accordingly, Plaintiffs have failed to establish primary ATA liability for this additional reason.

4. Each One Of The Counts Suffers From Its Own Deficiencies

Plaintiffs must also sufficiently plead that the Former Entities' alleged activities underlying their primary liability claims constitute crimes in the United States. They have failed entirely to do so. In Counts I and III, Plaintiffs fail to meet the knowledge requirement in 18 U.S.C. § 2339A and 18 U.S.C. § 2339C. For Count II, Plaintiffs fail to allege that the Former Entities knew their Afghan guards were agents of the Haqqani Network—a designated FTO—or that the Haqqani Network would be the ultimate beneficiary of the guards' wages. And in Count IV, Plaintiffs fail to allege a violation of 50 U.S.C. § 1705. Plaintiffs' primary liability claims should be dismissed for these additional reasons.

a. Counts I and III: Plaintiffs Fail To Allege That The Former Entities Knew Or Intended That Their Funds Would Be Used To Carry Out Terrorism

With respect to Counts I and III, Plaintiffs insufficiently plead the requisite *mens rea—i.e.*, knowledge. Count I alleges that Defendants violated the ATA by providing material support or resources for terrorist activities by the Taliban and Haqqani Network, in violation of 18 U.S.C. § 2339A.[10] Count III likewise alleges that Defendants violated the ATA by making payments to the Taliban that financed the Taliban's terrorist attacks, in violation of § 2339C. Under both provisions, the provider of material support or the provider/collector of funds must ***know*** (or in the case of Section 2339A, must either ***know*** or ***intend***) that his or her assistance will be used in preparation for or to carry out terrorism. *Id.* at §§ 2339A, 2339C; *United States v. Mehanna*, 735 F.3d 32, 43 (1st Cir. 2013); *Owens*, 235 F. Supp. 3d at 98. This effectively destroys strict liability or liability for negligent conduct. *Linde v. Arab Bank PLC*, 384 F. Supp. 2d 571, 586 n. 9 (E.D.N.Y. 2005) (observing that § 2339A and § 2339C "require knowledge or intent that the resources given to terrorists are to be used in the commission of terrorist acts").

Plaintiffs fail to demonstrate knowledge by the Former Entities under either provision. As an initial matter, Plaintiffs fail to allege that the Former Entities provided material support to the individuals actually responsible for the terrorist attacks. Plaintiffs only allege that the Former Entities paid Afghan security guards who worked on security contracts at least a year before any one Plaintiff was killed or injured. And Plaintiffs also fail to allege that the Former Entities knew or intended that the guard payments would be used to carry out the eleven alleged underlying crimes. Indeed, since Plaintiffs failed even to establish that the Former Entities acted recklessly, they certainly cannot meet the higher knowledge and intent requirements under § 2339A or §

[10] Here, Plaintiffs list eleven underlying terrorist offenses that they claim were committed by the Taliban. *See* Compl. ¶ 1264.

2339C. *See Hussein*, 230 F. Supp. 3d at 171 ("Because the material support statutes require the same (or a greater) showing of *mens rea* than does Section 2333(a), a plausible allegation of a violation of the material support provisions establishes both 'unlawful action' and scienter for purposes of Section 2333(a)."). Counts I and III should be dismissed for this additional reason.

b. Count II: Plaintiffs Fail To Allege That The Former Entities Knew Their Guards Were Agents Of Or Working To The Benefit Of An FTO

Section 2339B makes it a crime to "provide[] material support or resources" to an FTO or an organization engaged in terrorism or terrorist activity. 18 U.S.C. § 2339B(a)(1). Count II alleges that Defendants provided material support to the Haqqani Network— "a designated FTO" and a group which "engaged in acts of terrorism against the United States." Compl. ¶ 1271. Although § 2339B does not require specific knowledge or intent to further or support terrorism, where defendants are accused of providing funds to a recipient that is ***not*** formally designated as an FTO, plaintiffs must allege sufficient facts to show either "(1) defendants knew [the other entity] was acting as an agent of [the alleged FTO]; or (2) that defendants knew the ultimate beneficiaries of the [funds] would be [the alleged FTO]." *See Owens*, 235 F. Supp. 3d at 98–99 ("Notwithstanding repeated conclusory statements in the complaint that defendants 'conspired' with Sudan to provide financial services to al Qaeda, and that defendants knew the money they processed for Sudan would end up with al Qaeda, plaintiffs have failed to satisfy these statutory requirements for intent by pleading specific, non-conclusory factual allegations.").

Here, Plaintiffs have utterly failed to allege any facts demonstrating that the Former Entities knew that the ultimate beneficiary of their guard payments was the Haqqani Network, or that its guards were acting as agents of the Haqqani Network. Most important, the Senate Report on which Plaintiffs so heavily rely ***fails to mention the Haqqani Network altogether***. And, the sections of the Complaint where Plaintiffs discuss the Former Entities' actions also do not mention

the Haqqani Network. Compl. ¶¶ 137–58. For example, Plaintiffs' characterization of the Azizabad raid in August of 2008, which, according to Plaintiffs, involved White II, makes no mention of the Haqqani Network. *Id.* ¶¶ 141–42. Indeed, the Haqqani Network was not even designated as an FTO until September 7, 2012, *id.* ¶ 1271, over four years ***after*** the Former Entities stopped performing on the Shindand Airbase and UNOPS Mine Clearance Contracts.

At most, the Complaint alleges that the Former Entities paid some members of the Taliban. The Taliban, however, are ***not*** an FTO. *See* Bureau of Counterterrorism, *Foreign Terrorist Organizations*, U.S. Dep't of State (Last visited Apr. 29, 2020) ("State Dep't FTO List"), https://www.state.gov/foreign-terrorist-organizations/.

To compensate for that blatant deficiency, Plaintiffs raise general allegations regarding the historical association between the Taliban and the Haqqani Network. *See, e.g.*, Compl. ¶¶ 287–306. Knowledge of this complex history, however, cannot simply be imputed onto the Former Entities. The Complaint fails to include a single specific allegation that the Former Entities knew, at the time that they were paying the wages, that they were ultimately funding the Haqqani Network. Moreover, even if a portion of the guards' wages was ultimately conveyed to the Taliban, the Taliban and the Haqqani Network are distinct entities with distinct goals. *See Weiss v. Nat'l Westminster Bank PLC*, 453 F. Supp. 2d 609, 623 (E.D.N.Y. 2006) ("Merely providing financial support and supporting the terrorist objective of an FTO does not suffice to show that an organization is so dominated and controlled so as to have lost its independent identity."). Even the Executive Branch acknowledges this separateness, as it has categorized the organizations differently. *See* State Dep't FTO List.[11] Thus, merely demonstrating some general "connection"

[11] The State Department list is properly subject to judicial notice as it is a public document that is publicly available, and the content of the list is not subject to a reasonable dispute. *See Citizens for Responsibility & Ethics in Wash. v. Trump*, 924 F.3d 602, 607 (D.C. Cir. 2019).

between the Taliban and the Haqqani Network does not demonstrate the requisite level of coordination to state a claim under § 2339B. Count II should be dismissed for this reason as well.

c. Count IV: Plaintiffs Fail To Allege An IEEPA Violation

Finally, Count IV fails for several reasons. In that count, Plaintiffs allege that the Former Entities willfully violated, attempted to violate, conspired to violate, or caused a violation of regulations issued pursuant to the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. § 1705(a) & (c). Such regulations prohibit U.S. persons from "transfer[ing], pa[ying], export[ing], withdraw[ing] or otherwise deal[ing] in" property within the United States or that comes within the United States if that property belongs to a Specially Designated Global Terrorist ("SDGT"). 31 C.F.R. § 594.201.[12] Moreover, the regulations prohibit U.S. persons "[from] engag[ing] in any transaction or dealing in property of . . . [SDGTs]." 31 C.F.R. § 594.204. The latter provision expressly prohibits U.S. persons from "making [] any contribution or provision of funds, goods, or services by, to, or for the benefit of [SDGTs]." *Id.*

Therefore, to state a claim, a plaintiff must allege sufficient facts as to each element of the crime: (1) the defendants are U.S. persons; (2) who dealt in property in the U.S. and belonging to a SDGT; (3) who knew or had reason to know that the funds they provided were intended for the SDGT; (4) who also knew that these actions were prohibited by the law; and (5) knowing these things, the defendants did one or more of the following: (a) tried to evade or avoid the requirements of the law, *see* 31 C.F.R. § 560.203, (b) attempted to engage in conduct that would violate the law, *see* 50 U.S.C. § 1705(b); (c) succeeded in violating the law, *see id.*; or (d) aided or abetted another person in doing one of the foregoing, *see* 18 U.S.C. § 2. *United States v. Quinn*, 401 F. Supp. 2d 80, 104 (D.D.C. 2005).

[12] As Plaintiffs allege, "[o]n July 2, 2002, the United States designated the Taliban as an SDGT under Executive Order 13224." Compl. ¶ 1284.

Plaintiffs fail to satisfy several of these elements. As a threshold matter, IEEPA would not reach the alleged conduct of G4S because G4S Holdings and G4S Risk Management are foreign entities. *See* Compl. ¶¶ 20–21. Nor do any of the allegations against G4S, Centerra, or the Former Entities involve any "property" of the Taliban, much less any property that was ever in the U.S. 31 C.F.R. §§ 594.201, 594.204. For these reasons alone, Count IV's allegations are deficient.

Moreover, the Complaint fails to allege that the Former Entities violated IEEPA, as the Complaint contains no facts demonstrating that the Former Entities knew the wages were prohibited or that it was intentionally violating a "known legal duty." As to the knowledge element, a "'willful' act is one undertaken with a 'bad purpose.'" *Bryan v. United States,* 524 U.S. 184, 191 (1998). Said otherwise, to establish a willful crime, one "must prove that the defendant acted with knowledge that his conduct was unlawful." *Id.* at 191–92 (internal citations and quotations omitted). And in a context involving "highly technical statutes that present[ ] the danger of ensnaring individuals engaged in apparently innocent conduct," *id.* at 194—such as IEEPA—willfulness requires proof that the defendant acted with the "specific intent to violate a known legal duty[.]" *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 58 n. 9 (2007); *United States v. Quinn*, 403 F. Supp. 2d 57, 60 (D.D.C. 2005) (explaining that the "IEEPA's criminal provision 'demands proof that a defendant acted with knowledge of the illegality of his actions'" or in other words the "voluntary, intentional violation of a known legal duty").

Plaintiffs fail to allege that the Former Entities violated IEEPA. *See Quinn*, 403 F. Supp. at 60. In fact, just the opposite is true: the Former Entities not only had a contractual duty to hire locals to staff the security operations, *see* S. Rep. at 8, but also were instructed by the U.S. military to hire ***specific*** locals, *id.* at 8–9. Regardless, IEEPA and its regulations are highly technical statutes that include a wide range of designations, licensing requirements, and associated

prohibitions. Plaintiffs fail to plead any of these requirements, and conclusory allegations that the Former Entities "willfully" violated IEEPA simply will not suffice. Count IV should also be dismissed for this additional reason.

C. Plaintiffs Fail To State A Claim For Secondary Liability (Counts V-VI) Based On The Shindand Airbase And UNOPS Contracts

The allegations related to the Shindand Airbase and UNOPS Mine Clearance Contracts also fail to state a claim for secondary ATA liability. To state a claim for secondary liability under 18 U.S.C. § 2333(d), Plaintiffs must allege that (1) an act of international terrorism was "committed, planned, or authorized" by an FTO; (2) the Former Entities assisted "the person who committed" that act; and (3) that assistance to the FTO was "substantial." *See* 18 U.S.C. § 2333(d)(2); *Halberstam v. Welch*, 705 F.2d 472, 477 (D.D.C. 1983). Plaintiffs fail to plausibly allege any of these three elements. The Court should, therefore, dismiss Counts V and VI.[13]

1. Plaintiffs Fail To Allege That The Attacks Were "Committed, Planned, Or Authorized" By An FTO

First and foremost, Plaintiffs have not sufficiently pled secondary liability because they have failed to allege that an FTO "committed, planned, or authorized" the attacks. 18 U.S.C. § 2333(d)(2). Here, Plaintiffs allege that the Former Entities made so-called "protection payments" to White, Pink, White II, and White III, who then "funneled [those payments] up" to "***the Taliban***" to carry out terrorist attacks against . . . Plaintiffs." Compl. ¶ 150. These allegations are fatal to Plaintiffs' secondary liability claims, as the Taliban has ***never*** been designated as an FTO. *See* State Dep't FTO List.

[13] As to Count VI, G4S and Centerra also incorporate by reference Defendant DAI Global LLC's argument as to the Racketeer Influenced and Corrupt Organizations Act. *See* DAI's Memo. In Supp. of Mot. Dismiss at 36–38; *see also* Fed. R. Civ. P. 10(c).

Nor can Plaintiffs' general allegations about the Taliban's connections to FTOs compensate for this glaring pleading deficiency. As an initial matter, the only FTOs alleged in the Complaint—al Qaeda and the Haqqani Network—have no alleged connection to the Former Entities' performance of the Shindand Airbase and UNOPS Mine Clearance Contracts. That is, the Complaint contains no allegations that either organization was involved with Pink, White, White II, or White III, and the Senate Report never even mentions them. Thus, there is not even an alleged connection between the Former Entities' payments to guards and an FTO. As explained above, Plaintiffs at most make general allegations of loose ties and/or similarities between the various entities. Courts, however, demand more than such tenuous connections to state a claim under the ATA. *See Crosby*, 921 F.3d at 625–26 (rejecting the plaintiffs' attempt to create "a tenuous connection" between the attacker and the FTO in order to fulfill this element). The Court should demand no less here.

Moreover, the Haqqani Network was not designated as an FTO until ***September 2012***. Compl. ¶ 288. In order to state a claim for secondary liability, Plaintiffs must allege that the Former Entities aided and abetted the commission of a terrorist attack that was "committed, planned, or authorized by an organization that had been designated as an [FTO] . . . ***as of the date on*** which such an act of international terrorism was committed, planned, or authorized." 18 U.S.C. § 2333(d)(2) (emphasis added). Plaintiffs cannot make this showing, as the Former Entities stopped performing on the Shindand Airbase and UNOPS Mine Clearance Contracts in December 2008. S. Rep. at iv, 5. As a result, any payments that the Former Entities allegedly made would have been made roughly four years ***before*** the Haqqani Network was even designated as an FTO. Thus, for the same reasons Plaintiffs cannot rely upon alleged payments to the Taliban to establish

secondary liability, they cannot rely upon alleged payments to the Haqqani Network either. Without any viable connection to an FTO, Counts V and VI should be dismissed.

2. Plaintiffs Fail To Allege That The Former Entities Assisted The Person Who Committed The Act Of Terrorism

Counts V and VI should also be dismissed because Plaintiffs fail to allege that the Former Entities aided or abetted ***the specific*** "***person who committed such an act of international terrorism***." 18 U.S.C. § 2333(d)(2) (emphasis added); *Strauss v. Crédit Lyonnais, S.A.*, Nos. 06-cv-702, 07-cv-914, 2017 WL 4480755, at *4 (E.D.N.Y. Sept. 30, 2017) ("By the plain language of the statute, § 2333(d) does not create liability against a person who aids and abets or conspires with the person who merely authorized (***rather than committed***) the terrorist act[.]" (emphasis added)). White and White II were killed more than a year ***before*** any of the attacks that killed or injured Plaintiffs. Compl. ¶¶ 138, 147, 148; *see also* Table I. Pink fled and "was not seen again" following White's death in December 2007, S. Rep. at 16, and he did not commit the attacks that injured or killed Plaintiffs, *see* Compl. ¶¶ 138, 140, 344–1261. Similarly, White III is not alleged to have committed any of the attacks that caused Plaintiffs' injuries or deaths.

Plaintiffs' secondary liability claims should therefore be dismissed for this reason as well. *See, e.g.*, *Linde*, 882 F.3d at 329 (emphasis in original) ("[A]iding and abetting an *act* of international terrorism requires more than the provision of material support to a designated terrorist *organization*"); *Taamneh v. Twitter, Inc.*, 343 F. Supp. 3d 904, 916 (N.D. Cal. 2018) ("Congress chose to refer to aiding/abetting or conspiring with a person who committed 'an act of international terrorism,' not aiding and abetting or conspiring with a foreign terrorist organization."); *Crosby v. Twitter, Inc.*, 303 F. Supp. 3d 564, 571, 573 (E.D. Mich. 2018), *aff'd* 921 F.3d 617 (6th Cir. 2019) (stating that plaintiffs "have not alleged any facts that plausibly suggest that any of the defendants

[alleged secondary tortfeasors] 'aided or abetted' the person (Mateen) who committed the night club attack").

3. Plaintiffs Fail To Allege That The Former Entities Substantially Assisted An FTO

For the same general reasons that Plaintiffs have failed to allege proximate causation for primary liability, they have failed to establish substantial assistance for secondary liability. *See Linde*, 882 F.3d at 331 (recognizing that some evidence bears on both proximate causation and substantial assistance). Even if the Former Entities had made payments to an FTO (they did not), Plaintiffs' secondary liability claims still fail because Plaintiffs have not alleged that any such payments "substantially assisted" the FTO "in an international act of terrorism." 18 U.S.C. § 2333(d)(2). Substantial assistance "requires more than the provision of material support"; Plaintiffs must allege that the Former Entities "assum[ed] a 'role' in terrorist activities." *Linde*, 882 F.3d at 329 (quoting *Halberstam*, 705 F.2d at 477). Plaintiffs fail entirely to do so.

The so-called *Halberstam* factors inform "how much encouragement or assistance is substantial enough" to qualify as "substantial assistance": (1) the nature of the acts encouraged, (2) the amount of assistance given by defendant, (3) defendant's presence or absence at the time of the tort, (4) defendant's relation to the principal, (5) defendant's state of mind, and (6) the period of defendant's assistance. *Halberstam*, 705 F.2d at 483–84. Each factor weighs in favor of dismissal.

The Nature of the Acts Encouraged. This factor addresses whether Plaintiffs plausibly allege encouragement of the ***specific*** terrorist attacks at issue. *See, e.g.*, *Siegel v. HSBC N. Am. Holdings, Inc.*, 933 F.3d 217, 225 (2d Cir. 2019) ("The plaintiffs here have not plausibly alleged that HSBC encouraged the heinous November 9 Attacks or provided any funds to AQI."); *Averbach v. Cairo Amman Bank*, No. 19-CV-0004-GHW-KHP, 2020 WL 486860, at *16

(S.D.N.Y. Jan. 21, 2020) ("There is no allegation that CAB encouraged the Attacks or any of Hamas's terrorist activities."); *Honickman for Estate of Goldstein v. BLOM Bank SAL*, No. 19-cv-9 (KAM) (SMG), 2020 WL 224552, at *11 (E.D.N.Y. Jan. 14, 2020) ("Plaintiffs have not plausibly alleged that BLOM encouraged the attacks which injured Plaintiffs or knowingly provided any funds to Hamas for its violent activities."); *Kaplan v. Lebanese Canadian Bank, SAL*, 405 F. Supp. 3d 525, 536 (S.D.N.Y. 2019) ("Plaintiffs do not advance any factual, non-conclusory allegations that Defendant knowingly and intentionally supported Hizbollah in perpetrating the rocket attacks.").

As explained above, Plaintiffs have not alleged any facts to show that the Former Entities encouraged the specific attacks alleged in the Complaint. None of the individuals with whom the Former Entities did business are alleged to have been involved in the terrorist attacks at issue. Indeed, several of the individuals to whom the Former Entities allegedly made payments (White, Pink and White II) were killed, went into hiding, or were apprehended by the Afghan government[14] at least a year ***before*** the first terrorist attack identified in the Complaint. *See supra* pp. 12–13. At most, Plaintiffs have alleged the Former Entities paid wages to guards hired under the Shindand Airbase and UNOPS Mine Clearance Contracts many months and, in some cases, several years before Plaintiffs were injured or killed. Plaintiffs fail to satisfy this factor.

The Amount of Assistance Given by Defendant. To show that "the amount of assistance given by defendant" favors a finding of "substantial assistance," Plaintiffs must sufficiently allege that the funds paid were actually received by an FTO and that the Former Entities knew or intended that an FTO would receive the funds. *See, e.g.*, *Siegel*, 933 F.3d at 225 ("[P]laintiffs did allege

[14] The Senate Report states that the Afghan government arrested Pink in September 2008 for spreading false information to the Coalition forces that led to the mass civilian casualty in the Azizabad raid. S. Rep. at 32.

that HSBC provided hundreds of millions of dollars to ARB, but they did not advance any non-conclusory allegation that AQI received any of those funds or that HSBC knew or intended that AQI would receive the funds."); *Kaplan*, 405 F. Supp. 3d at 536 ("[A]lthough Plaintiffs assert that Defendant processed millions of dollars' worth of wire transfers through the LCB Accounts, Plaintiffs do not plausibly allege that Hizbollah received any of those funds or that Defendant knew or intended that Hizbollah would receive the funds."). Here, Plaintiffs have not alleged that any of the wages were received by the Taliban, let alone an FTO. Nor is there any allegation that the Former Entities knew or intended that an FTO would receive the funds. To the contrary, the Senate Report shows that once the Former Entities discovered that one of the Afghans, Pink, had become affiliated with the Taliban, they promptly disassociated themselves with him and terminated the guards he recruited. *See supra* pp. 9–10. Plaintiffs fail to satisfy this factor as well.

Defendant's Presence or Absence at the Time of the Tort. A defendant's physical absence from the scene of the terrorist attack weighs against a finding of substantial assistance. *See Halberstam*, 705 F.2d at 484. Such is the case here. Simply put, Plaintiffs have not alleged that the Former Entities were anywhere near the attacks, let alone physically present when they happened. Even if "presence" were interpreted broadly, as explained above, the attacks were distant in time and place from the Former Entities' alleged assistance. *See supra* pp. 12–13, 23–26; *see also, e.g. Siegel,* 933 F.3d at 225 ("[A]s the plaintiffs themselves allege, HSBC was not 'present' at the time of the November 9 Attacks. Indeed, HSBC had ceased transacting any business with ARB ten months prior."). This factor weighs heavily against Plaintiffs' claims.

Defendant's Relation to the Principal. Plaintiffs must plausibly allege that the Former Entities had a ***direct*** connection to an FTO for this factor to weigh in their favor. *See, e.g.*, *Siegel*, 933 F.3d at 225 (determining that plaintiffs had not plausibly alleged that defendant bank had a

relationship with the terrorist organization where plaintiffs only alleged the bank provided services to a Saudi bank with terrorist group ties). Because Plaintiffs cannot even connect the Former Entities to the Taliban, let alone an FTO, such as al-Qaeda or the Haqqani Network, they fail to satisfy this factor as well.

Defendant's State of Mind. Plaintiffs must also adequately plead that the Former Entities ***knowingly*** assisted an FTO. *See, e.g., id.* ("[O]n the fifth factor—defendant's state of mind—the plaintiffs do not plausibly allege that HSBC knowingly assumed a role in AQI's terrorist activities or otherwise knowingly or intentionally supported AQI."). Here, however, the allegations do not even reach a "speculative possibility" that the Former Entities "might have known about a nexus between the [guards] and [the Taliban]." *Honickman*, 2020 WL 224552, at *11. That is, Plaintiffs cannot show that the Former Entities "knowingly assumed a role in [the Taliban's] terrorist activities or otherwise knowingly or intentionally supported [the Taliban]." *Siegel*, 933 F.3d at 225; *see also supra* pp. 29–40. To the contrary, the Former Entities hired Pink and White at the U.S. military's behest. *See* S. Rep. at 8. And when AGNA learned of reports linking Pink to the Taliban, the company promptly disassociated itself with Pink and his guards. *See id.* at 19. Plaintiffs also fail to satisfy this factor.[15]

[15] Another element of an aiding-and-abetting claim that Plaintiffs "must plausibly allege" is "that the defendant was 'aware that, by assisting the principal, it is itself assuming a role in terrorist activities.'" *Siegel*, 933 F.3d at 224 (citation omitted); *accord Linde*, 882 F.3d at 329 ("[A]iding and abetting an act of international terrorism requires more than the provision of material support to a designated terrorist organization;" it requires the defendant's awareness that "it is assuming a role in terrorist activities."). As discussed above, Plaintiffs have failed to adequately allege that the Former Entities played a role in any terrorist activities, so it is not plausible that the Former Entities could be aware of any such role. *See Siegel*, 933 F.3d at 224–25 (absent "any plausible, factual, non-conclusory allegations that HSBC knew or intended that those funds would be sent to [al-Qaeda] or to any other terrorist organizations," the plaintiffs' claim for secondary liability was foreclosed); *Averbach*, 2020 WL 486860, at *2, 12–13 (media sources and reports showing customers were affiliated with terrorist organizations were insufficient to establish bank's general awareness).

The Period of Defendant's Assistance. "The length of time an alleged aider-abettor has been involved with a tortfeasor almost certainly affects the quality and extent of their relationship and probably influences the amount of aid provided as well." *Halberstam*, 705 F.2d at 484. Here, there are no facts to allege that the Former Entities were involved with anyone during the period when torts were committed—all of the individuals were hired and paid a year (if not years) before any of the alleged terrorist attacks occurred. Moreover, the Former Entities' involvement with Pink and White II ended as soon as their alleged Taliban affiliations became known. At most, the Senate Report shows that the Former Entities paid guards recruited by Pink for six days after learning that he had become affiliated with the Taliban, and none of those guards are even alleged to be tortfeasors. S. Rep. at 19. In short, Plaintiffs have not alleged any assistance to a tortfeasor, much less one that lasted for any period of time during which an attack occurred. Counts V and VI should be dismissed for this reason as well.

II. THE COMPLAINT SHOULD ALSO BE DISMISSED IN ITS ENTIRETY BECAUSE WHETHER THE ACT-OF-WAR EXCEPTION APPLIES HERE RAISES A NONJUSTICIABLE POLITICAL QUESTION

In addition to failing to state a claim, Plaintiffs have also failed to establish subject-matter jurisdiction. Because Rule 12(b)(1) concerns a court's ability to hear a particular claim, "the court must scrutinize the plaintiff's allegations more closely when considering a motion to dismiss pursuant to Rule 12(b)(1) than it would under a motion to dismiss pursuant to Rule 12(b)(6)." *Johnson v. Paragon Sys., Inc.*, 305 F. Supp. 3d 139, 143–44 (D.D.C. 2018) (quoting *Schmidt v. U.S. Capital Police Bd.*, 826 F. Supp. 2d 59, 65 (D.D.C. 2011)). Plaintiffs ultimately bear the burden of establishing that the Court has jurisdiction. *Id.* at 143. They have failed to do so here.

Plaintiffs cannot state a claim under the ATA if they were injured "by reason of an act of war." 18 U.S.C. § 2336(a). The ATA defines an act of war as "any act occurring in the course of (A) declared war; (B) armed conflict, whether or not war has been declared, between two or more

nations; ***or*** (C) armed conflict between military forces of any origin." *Id.* § 2331(4) (emphasis added). Whether subsection (B) applies raises a nonjusticiable political question that deprives this Court of subject-matter jurisdiction.

The war against the Taliban in Afghanistan began as an international armed conflict—*i.e.*, an "armed conflict . . . between two or more nations." *Id.* § 2331(4)(B). In 2002, President Bush determined that "the relevant conflicts [in Afghanistan] are international in scope . . . ." *See* Mem. of President George W. Bush (Feb. 7, 2002), https://www.pegc.us/archive/White_House/bush_memo_20020207_ed.pdf. And even Plaintiffs themselves allege that "[o]n October 7, 2001, the United States initiated Operation Enduring Freedom and ***invaded Afghanistan***." Compl. ¶ 38 (emphasis added). According to Plaintiffs, "[t]he operation's purpose was to ***depose the Taliban regime*** . . . ," *id.* (emphasis added), which, prior to the invasion, "ruled Afghanistan ***as its de-facto government***," *id.* ¶ 36 (emphasis added); *see also id.* ¶¶ 290, 294 (both referring to "the Taliban government").

As a result, the act-of-war exception, 18 U.S.C. § 2331(B), applies here unless the nature of the conflict changed after 2002. But no President made that determination with respect to the relevant time period. That is, no President determined whether the war in Afghanistan changed from an "armed conflict . . . between two or more nations" when Plaintiffs were killed or injured. And that question is a non-justiciable political question.

A non-justiciable political question exists where the issue involves:

> [1] a textually demonstrable constitutional commitment of the issue to a coordinate political department; or [2] a lack of judicially discoverable and manageable standards for resolving it; or [3] the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or [4] the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or [5] an unusual need for unquestioning adherence to a political decision already made; or [6] the

> potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Baker v. Carr, 369 U.S. 186, 217 (1962). "To find a political question, [the court] need only conclude that one [of these] factor[s] is present, not all." *Schneider v. Kissinger*, 412 F.3d 190, 194 (D.C. Cir. 2005).

Several of these factors weigh in favor of dismissal. Foremost, the status of the war in Afghanistan must be determined by the Executive. Absent a declaration of war from Congress, the President possesses the sole power as Commander-in-Chief to recognize the existence of an armed conflict. *The Prize Cases*, 67 U.S. (2 Black) 635, 670 (1862) ("Whether the President in fulfilling his duties, as Commander-in-Chief, in suppressing an insurrection, has met with such armed hostile resistance, and a civil war of such alarming proportions as will compel him to accord to them the character of belligerents, is a question to be decided *by him*, and this Court must be governed by the decisions and acts of the political department of the Government to which this power was entrusted."); *Al-Bihani v. Obama*, 590 F.3d 866, 874 (D.C. Cir. 2010) ("The determination of when hostilities have ceased is a political decision, and we defer to the Executive's opinion on the matter, at least in the absence of an authoritative congressional declaration purporting to terminate the war."); *accord. Al-Alwi v. Trump*, 901 F.3d 294, 300 (D.C. Cir. 2018), *cert. denied*, 139 S. Ct. 1893 (2019). The President also has the sole power to define the nature of an armed conflict. *See The Prize Cases*, 67 U.S. (2 Black) at 670 (declining to contradict President Lincoln's proclamation that a state of war existed by deciding whether the Civil War was an "insurrection" or a "war"); *see also Hamdan v. Rumsfeld*, 415 F.3d 33, 41–42 (D.C. Cir. 2005) ("[T]he President's decision to treat our conflict with the Taliban separately from our conflict with al Qaeda is the sort of political-military decision constitutionally committed to him."), *rev'd on other grounds*, 548 U.S. 557, 628–29 (2006).

The President holds these powers because the determination regarding the status of an armed conflict is of paramount importance to a variety of issues that go to the heart of the President's ability to conduct war as Commander-in-Chief. For example, the rules for detaining enemy combatants turn on the nature of the armed conflict. *See Hamdan*, 548 U.S. at 628–29 (holding that because the President found that al-Qaeda was not a "High Contracting Party," Common Article 3 of the Geneva Convention applied). Similarly, determining the status of an armed conflict implicates the President's "exclusive" "power to recognize foreign nations and governments." *Zivotofsky ex rel. Zivotofsky v. Kerry*, 135 S. Ct. 2076, 2086 (2015). Put differently, it is critical that the Executive, and only the Executive, determine the status of an armed conflict at any given time because the decision has wide-ranging ramifications for his or her powers as Commander-in-Chief.

Here, the war in Afghanistan began as an international conflict, as determined by President Bush in 2002. No President thereafter determined whether the war was still an international conflict when Plaintiffs were killed or injured. And the absence of an international conflict is the only way that the act-of-war exception would not apply in this case.

This Court should not—indeed, cannot—now make that determination. Doing so would infringe upon the constitutional powers of the Executive. *See Baker*, 369 U.S. at 217; *see also Zivotofsky*, 135 S. Ct. at 2086; *The Prize Cases*, 67 U.S. (2 Black) at 670. It would also "express[] lack of the respect due [to the President]," and open the door for "multifarious pronouncements" in an area where the Nation should speak with one voice. *Baker*, 369 U.S. at 217; *see also Zivotofsky*, 135 S. Ct. at 2086 (in foreign policy matters, the Nation's voice "must be the President's"). Indeed, even the Supreme Court has so far avoided deciding the nature of the war in Afghanistan. In *Hamdan*, for example, the Supreme Court disagreed with the President's ***legal***

conclusion that Common Article 3 did not apply to al-Qaeda fighters, but not with the President's finding that al-Qaeda was not a "High Contracting Party." 548 U.S. at 629.[16] The act-of-war determination is nonjusticiable in this case, and thus the entire case should be dismissed for lack of subject-matter jurisdiction for this reason alone.[17]

III. THE COMPLAINT SHOULD BE DISMISSED IN ITS ENTIRETY AS TO G4S BECAUSE THE COURT LACKS PERSONAL JURISDICTION

This Court also lacks personal jurisdiction as to G4S. Under Rule 12(b)(2), "[a] plaintiff bears the burden of establishing a factual basis for personal jurisdiction over the defendant(s)." *Williams v. ROMARM*, 187 F. Supp. 3d 63, 70 (D.D.C. 2013). "'A plaintiff must plead specific facts providing a basis for personal jurisdiction,' and a plaintiff cannot rely on merely conclusory allegations." *Akhmetshin v. Browder*, 407 F. Supp. 3d 11, 18–19 (D.D.C. 2019) (citation omitted). "'Conclusory statements' or a 'bare allegation of conspiracy or agency' do not satisfy this burden." *Livnat v. Palestinian Auth.*, 851 F.3d 45, 57 (D.C. Cir. 2017) (citations omitted). The Court "need not accept inferences drawn by plaintiffs if such inferences are unsupported by the facts." *Id.*

Plaintiffs allege that the Court has personal jurisdiction over Defendants under "Federal Rule of Civil Procedure 4(k)(1)(C) and/or 4(k)(2), and 18 U.S.C. § 2334(a)." Compl. ¶ 32. As an initial matter, Rule 4(k)(1)(C), which provides for personal jurisdiction "authorized by a federal

[16] The Fourth Circuit in *United States v. Hamidullin*, 888 F.3d 62, 70 (4th Cir. 2018), ventured outside its proper treaty-interpreting role to find that the war against the Taliban in Afghanistan was a non-international armed conflict by 2009. However, it relied on Red Cross commentaries—not a statement from the Executive—and in the context of conflicting record evidence and ever-shifting positions taken by the government. *Id.* at 79–80, 90–91 (King, J., dissenting) ("[T]hese circumstances demand a clear statement from the Executive Branch."). That decision, of course, is not binding on this Court.

[17] Defendant Black & Veatch Special Projects Corporation ("BVSPC") seeks dismissal based on the act of war exception for failure to state a claim. To the extent this Court does not dismiss for lack of subject matter jurisdiction as requested herein, it should dismiss under Rule 12(b)(6) for the reasons outlined by BVSPC, which G4S and Centerra hereby incorporate.

statute," is inapplicable to U.K.-based G4S. The only federal statute cited by Plaintiffs is § 2334, which identifies certain circumstances in which a party may consent to personal jurisdiction. *See* 18 U.S.C. § 2334(e). But Plaintiffs do not even cite the relevant subsection (*i.e.*, subsection (e)). And Plaintiffs do not allege that any of those circumstances are applicable here, let alone that they occurred or that G4S has consented to personal jurisdiction.

Plaintiffs are thus left to rely on Rule 4(k)(2). That rule "allows a district court to acquire jurisdiction over a foreign defendant which has insufficient contacts with any single state but has 'contacts with the United States as a whole.'" *Nuevos Destinos, LLC v. Peck*, No. 15-CV-1846, 2019 WL 78780, at *5 (D.D.C. Jan. 2, 2019) (citations omitted). Plaintiffs, however, must still demonstrate that the exercise of jurisdiction is consistent with constitutional due process. *See id.* To that end, Plaintiffs "must plead facts sufficient to establish this Court's personal jurisdiction over a defendant in one of two forms: 'general or all-purpose jurisdiction, and specific or case-linked jurisdiction.'" *Williams*, 187 F. Supp. 3d at 70. "Although a nonresident's physical presence within the territorial jurisdiction of the court is not required [to establish personal jurisdiction], the nonresident generally must have certain minimum contacts . . . such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Walden v. Fiore*, 571 U.S. 277, 283 (2014) (internal quotation marks and citations omitted).

Plaintiffs here have failed to establish either general or specific personal jurisdiction with respect to G4S. And to understand why, it is important to highlight exactly what Plaintiffs are alleging with respect to G4S. That is, Plaintiffs allege that G4S is London-based. Compl. ¶¶ 20–21. The only contract in the Complaint directly involving G4S—the British Embassy Contract—is with the U.K. government and is being performed in Afghanistan. *Id.* ¶ 130.h. The remaining contracts connected to G4S are those that were performed by AGMA or AGI—*i.e.*, the UNOPS

Mine Clearance and PRT Security Contracts—which Plaintiffs allege were former G4S entities that were incorporated abroad. *Id.* ¶¶ 20–21. Both contracts were with international organizations and performed in Afghanistan. *Id.* ¶ 130.c–.d.[18] In other words, Plaintiffs' case against G4S is about U.K. corporations performing international contracts in Afghanistan. It is not about the United States, and Plaintiffs cannot plead any facts sufficient to support the exercise of personal jurisdiction over G4S.

A. The Court Lacks General Personal Jurisdiction Over G4S

General personal jurisdiction is plainly lacking with respect to G4S. To establish general jurisdiction, "a plaintiff must demonstrate that a defendant's contacts with the forum state are 'so constant and pervasive as to render [it] essentially at home in the forum State.'" *Akhmetshin*, 407 F. Supp. 3d at 26 (quoting *Daimler AG v. Bauman*, 571 U.S. 117, 122 (2014)). For a corporation, the "paradigm bases for general jurisdiction" are its "place of incorporation and principal place of business." *Daimler*, 571 U.S. at 122 (alterations omitted). Here, the Complaint alleges that G4S Holdings and G4S Risk Management are both incorporated in the United Kingdom and have their principal places of business in London, England. *See* Compl. ¶¶ 20–21. General personal jurisdiction is thus absent.

B. The Court Lacks Specific Personal Jurisdiction Over G4S

Plaintiffs have also failed to allege facts sufficient to support specific personal jurisdiction over G4S. To establish specific jurisdiction, "plaintiffs must show that each individual defendant purposefully directed his or her activities at the United States; the plaintiffs' injuries 'must proximately result from actions by the defendant *himself* that create a substantial connection with

[18] The contracts performed by AGNA—the Shindand Airbase and Kabul Embassy Contracts—are connected only to Centerra. Compl. ¶¶ 18, 130.a–.b. However, both of those contracts were also performed in Afghanistan.

the forum State.'" *Nuevos Destinos*, 2019 WL 78780, at *8 (emphasis in original). The "jurisdictional inquiry focuses on the relationship among the defendant, the forum, and the litigation." *Walden*, 571 U.S. at 287. As such, the "plaintiff must allege specific acts connecting [the] defendant with the forum," *Akhmetshin*, 407 F. Supp. 3d at 18 (quoting *Second Amendment Found. v. U.S. Conf. of Mayors*, 274 F.3d 521, 524 (D.C. Cir. 2001)), as well as "show some sort of causal relationship between a defendant's U.S. contacts and the episode in suit," *Triple Up Ltd. v. Youku Tudou Inc.*, 235 F. Supp. 3d 15, 27 (D.D.C. 2017), *aff'd*, No. 17-7033, 2018 WL 4440459 (D.C. Cir. July 17, 2018). *See also Nuevos Destinos*, 2019 WL 78780, at *8 (noting the requirement for proximate causation); *Williams*, 187 F. Supp. 3d at 70 (requiring allegations that a defendant has "purposefully directed" his activities at the forum and "the litigation results from alleged injuries that 'arise out of or relate to' those activities'"); *Alkanani v. Aegis Def. Servs., LLC*, 976 F. Supp. 2d 13, 22 (D.D.C. 2014) (explaining that claims must "arise from" contacts). G4S should be dismissed from this case because specific allegations connecting G4S to the United States and this litigation are lacking.

1. Plaintiffs Fail To Allege Sufficient Contacts Between G4S And The United States

First and foremost, the Complaint fails entirely to connect G4S to the United States. *See* Compl. ¶¶ 20–21, 128–30, 154–58. That is, the Complaint alleges only that (1) actions taken by "Defendants" or "ArmorGroup Defendants" generally are attributable to G4S, *id.* ¶¶ 47–83, 109–10, 128–31, 139–44, 149–58; (2) G4S obtained and/or performed U.S.-government contracts, *id.* ¶ 130; or (3) G4S utilized AGNA as a "shell company" or relied on AGNA to bid for and perform U.S.-government contracts, *id.* ¶¶ 128–29, 155, 157. None of these allegations is sufficient to support the exercise of specific personal jurisdiction.

a. Group Allegations Against "Defendants" Or "ArmorGroup Defendants" Cannot Establish Personal Jurisdiction

Plaintiffs' generalized pleading does not satisfy their burden to demonstrate personal jurisdiction with respect to ***each G4S Defendant***. *See Nuevos Destinos*, 2019 WL 78780, at *8 (rejecting argument that defendants are subject to personal jurisdiction based on other defendants' actions). Instead, personal jurisdiction must be based on the specific relationship between G4S and the United States. *See Walden*, 571 U.S. at 286 (citations omitted); *Rush v. Savchuk*, 444 U.S. 320, 332 (1980) (explaining that due process requirements "must be met as to each defendant over whom a state court exercises jurisdiction"); *Head v. Las Vegas Sands, LLC*, 298 F. Supp. 3d 963, 973 (S.D. Tex. 2018) ("[A] plaintiff must submit evidence supporting personal jurisdiction over each defendant, and cannot simply lump them all altogether." (footnote omitted)). As explained above, Plaintiffs' Complaint is a quintessential "shotgun pleading," *Jiggetts*, 319 F.R.D. at 417, and Plaintiffs cannot assert personal jurisdiction over G4S by lumping them with ***eleven*** other Defendants, or a subset of those Defendants, most of which are entirely unrelated to G4S.

General allegations against the "ArmorGroup Defendants" are likewise insufficient to support the exercise of personal jurisdiction over G4S. With respect to the "ArmorGroup Defendants," Plaintiffs at most describe payments to "Taliban cut-outs" in Afghanistan during the performance of contracts in Afghanistan. Compl. ¶¶ 82, 131, 139–44, 149–58. Beyond that, Plaintiffs allege that ArmorGroup Defendants had access to a U.S.-based subscription data service (Strategic Forecasting, Inc.), *id.* ¶¶ 109–10. But access to a website or subscription service is insufficient to demonstrate minimum contacts with the United States. *See Triple Up Ltd.*, 235 F. Supp. 3d at 23 ("[I]t is clear that the 'mere accessibility of the defendants' websites' in the forum cannot by itself 'establish[] the necessary 'minimum contacts.'" (citations omitted)). Further, as

detailed below, Plaintiffs' conclusory allegations regarding U.S.-government contracts are contradicted by Plaintiffs' specific allegations regarding G4S. *See infra* pp. 57–58.

Nor have Plaintiffs sufficiently pled that G4S's conduct "targeted the United States." Compl. ¶ 158. This conclusory allegation against all of the ArmorGroup Defendants is plainly lacking, as it merely recites Plaintiffs' "theory of specific jurisdiction" without any supporting factual allegations. *Livnat*, 851 F.3d at 57. Indeed, Plaintiffs have even failed to demonstrate a link between G4S's payments and the Taliban, *see supra* pp. 18–40, let alone that G4S made payments to target the United States. *See, e.g.*, *Livnat*, 851 F.3d at 57 (rejecting the inferential personal-jurisdiction argument that terrorist attacks in Israel that harmed U.S. citizens were intended to influence U.S. policies); *Shatsky*, 2020 WL 1856490, at *16 (rejecting personal jurisdiction on the basis of targeting, because plaintiffs "do not identify any evidence in the record connecting" the attack to the alleged campaign(citations omitted)); *Estate of Klieman by & through Kesner v. Palestinian Auth.*, 923 F.3d 1115, 1123–24 (D.C. Cir. 2019) (same and citing *Livnat*, 851 F.3d at 56-57), *vacated on other grounds* No. 19-741 (U.S. Apr. 27, 2020)[19]; *Williams*, 187 F. Supp. 3d at 71 ("[T]he only allegations regarding the District of Columbia involve criminal conduct by others . . . . Such facts are far from 'purposeful availment' and are more akin to [] 'random, fortuitous, tenuous and accidental contacts.'" (citations omitted)); *cf. In re Terrorist Attacks on Sept. 11, 2001*, 538 F.3d 71, 94–95 (2d Cir. 2008), *abrogated on other grounds by Samantar v. Yousuf*, 560 U.S. 305 (2010) (finding that even if defendants "were reckless in

[19] The Supreme Court recently vacated and remanded the D.C. Circuit's opinion for the sole purpose of considering Klieman's claims in light of the Promoting Security and Justice for Victims of Terrorism Act of 2019, Pub. L. No. 116-94, div. J, tit. IX, § 903, 133 Stat. 3082, which amended, in pertinent part, the consent to personal jurisdiction provision of the ATA contained in 18 U.S.C. § 2334(e). G4S relies on *Klieman* solely for its analysis of specific personal jurisdiction, which is not altered by the recent Order.

monitoring how their donations were spent, or could and did foresee that recipients of their donations would attack targets in the United States, that would be insufficient to ground the exercise of personal jurisdiction" (citations omitted)).

b. Plaintiffs' Have Failed To Allege Facts Supporting The Claim That G4S Obtained And/Or Performed Any U.S.-Government Contracts

Plaintiffs have also failed to allege with specificity that G4S obtained or performed on any U.S.-government contracts. The three contracts which G4S—or its alleged foreign Former Entities, AGMA or AGI—allegedly performed are not U.S.-government contracts. Compl. ¶ 130. Indeed, as should be clear from the titles assigned by Plaintiffs, the UNOPS Mine Clearance Contract was a contract issued by the United Nations Office for Project Services, and the British Embassy Contract was a contract issued by the U.K. government.[20] With respect to the PRT Security Contract, Plaintiffs do not even allege what government or entity issued that contract. Plaintiffs have therefore failed to provide any facts supporting the general assertion that G4S obtained U.S.-government contracts. And such "simple, unsubstantiated assertions lacking in any concrete evidence" are not enough to establish personal jurisdiction. *See, e.g.*, *Oceanic Expl. Co. v. ConocoPhillips, Inc.*, No. 04-CV-332, 2006 WL 2711527, at *14 (D.D.C. Sept. 21, 2006) (listing cases in support); *cf. Akhmetshin*, 407 F. Supp. 3d at 21–22 (listing cases in support).

[20] At best, Plaintiffs allege that G4S Risk Management "relied on contacts with the United States to perform under its UNOPS contract." Compl. ¶ 157. Plaintiffs, however, provide no facts to support this conclusory assertion, and certainly no facts that specifically connect G4S Risk Management to the United States.

c. Plaintiffs' Allegations That G4S Made Contacts With The United States Via AGNA Fail As A Matter Of Law

Plaintiffs also cannot support a theory of personal jurisdiction based on their conclusory allegations that G4S Holdings utilized AGNA as a "shell company," Compl. ¶ 129, or that G4S Risk Management "relied on" AGNA personnel to perform under its UNOPS Mine Clearance Contract, *id.* ¶ 157.[21]

First, Plaintiffs cannot support an "alter ego" theory of personal jurisdiction against G4S Holdings. *See id*. ¶¶ 129, 155. Generally, "a corporation is treated as a separate and distinct juridical entity, independent of its owner." *Alkanani*, 976 F. Supp. 2d at 8 (citation omitted). However, "courts will impute personal jurisdiction under an alter ego theory in cases where the parent company 'so dominated the [subsidiary] corporation as to negate its separate personality.'" *Oceanic Expl.*, 2006 WL 2711527, at *13 (citation omitted). To demonstrate the requisite unity of interest and ownership, courts consider the following factors:

> [W]hether parent and subsidiary have common business departments; whether the parent finances the subsidiary; whether the parent incorporated the subsidiary; whether the subsidiary is inadequately capitalized; whether parent and subsidiary file consolidated financial statements and tax returns; whether they have a joint accounting and payroll system; whether the subsidiary is operated as a mere division of the parent; whether the subsidiary depends on the parent for

[21] This Motion does not address whether the Court may exercise personal jurisdiction over AGNA. However, based on the allegations in the Complaint, Plaintiffs have likely failed to establish personal jurisdiction over AGNA as well. Personal jurisdiction pursuant to Rule 4(k)(2) is not applicable because there are other federal courts that would have jurisdiction over AGNA. Compl. ¶¶ 18, 154 (Florida, Delaware, or Virginia); *see also Nuevos Destinos*, 2019 WL 78780, at *5 (rejecting personal jurisdiction over defendants who were "subject to jurisdiction in other states"). Were the Court to attempt to exercise personal jurisdiction pursuant to Rule 4(k)(1)(A), Plaintiffs have also failed to allege facts sufficient to demonstrate that AGNA's conduct falls within the reach of the D.C. long-arm statute, D.C. Code § 13-423. Specifically, Plaintiffs have failed to allege facts to overcome the government-contracts exception to personal jurisdiction that applies to cases brought in the District of Columbia. *See Alkanani*, 976 F. Supp. 2d at 25 ("Under the government contacts exception, a nonresident's entry into the District of Columbia for 'the purpose of contacting federal governmental agencies cannot serve as a basis for personal jurisdiction.'" (citations omitted)).

> substantially all of its business; whether the subsidiary's obligations are assumed to be those of the parent; whether the subsidiary's property is used by the parent as its own; and whether the subsidiary is operated exclusively in the interest of the parent.

Id. (citations omitted). Further, as this Court has made clear, "it is not relevant that the parent ultimately benefitted from the activities of the subsidiary or that the subsidiary's supervisors reported to the parent." *Id.* (citation omitted).

Plaintiffs have not alleged any such facts to support their allegation that AGNA functioned as a "shell company" for G4S Holdings. Plaintiffs have only offered the broad and conclusory allegations that G4S Holdings was "involved in and supervised" AGNA's contract performance, such that G4S Holdings "exercised control over, and was jointly responsible for" AGNA's conduct and that G4S benefitted from the relationship.[22] Compl. ¶ 129; *see id.* ¶ 155 (alleging that G4S Holdings "cooperated extensively" with AGNA and "closely supervised" and "involved itself in implementing AGNA's contracts"). Indeed, they have not even identified the AGNA contracts to which they are referring.

Such "unsubstantiated, conclusory statements" are plainly insufficient to justify the assertion of an alter-ego theory of personal jurisdiction. *Oceanic Expl.*, 2006 WL 2711527, at *13 (rejecting assertion of personal jurisdiction based on allegation that defendants' subsidiaries "are financed by the parent, are operated in the interest of the parent, and are mere divisions of the

[22] Even if the Court were to find that these allegations are sufficiently specific, which it should not, such claims are not entitled to the presumption of truth as they are mere quotations from another complaint. *See* Compl. ¶¶ 129 n.161, 155 n.205. At this stage of the proceedings, the Court can only take judicial notice that a complaint was filed in another case; it cannot take judicial notice of the truth of those allegations. *See Glob. Network Commc'ns, Inc. v. City of N.Y.,* 458 F.3d 150, 157 (2d Cir. 2006) ("A court may take judicial notice of a document filed in another court not for the truth of the matters asserted in the other litigation, but rather to establish the fact of such litigation and related filings."); *In re DDAVP Indirect Purchaser Antitrust Litig.*, 903 F. Supp. 2d 198, 208–09 (S.D.N.Y. 2012) (listing cases in support); *see also Murphy v. Islamic Republic of Iran*, 740 F. Supp. 2d 51, 58 (D.D.C. 2010).

parent" (footnote omitted)); *see, e.g.*, *Clay v. Blue Hackle N. Am., LLC*, 907 F. Supp. 2d 85, 89 (D.D.C. 2012) (rejecting alter-ego theory of personal jurisdiction over government-contract group based on "threadbare assertions" that defendants "conduct business together as different elements of the same common enterprise"). As the Court held in *Oceanic Exploration*, such allegations fail to provide "sufficient information as to the nature of the relationship" between parent and subsidiary, and the "paucity of individualized evidence" as to that alleged relationship precludes the Court from exercising personal jurisdiction. *Oceanic Exploration*, 2006 WL 2711527, at *13.

Plaintiffs' allegations regarding G4S Risk Management fare no better. Compl. ¶ 157. "'Conclusory statements' or a 'bare allegation of conspiracy or agency'" are insufficient to establish personal jurisdiction. *Livnat*, 851 F.3d at 57; *Second Amendment Found.*, 274 F.3d at 524. Here, Plaintiffs allege that G4S Risk Management "relied on" cooperation with its "American affiliate" (AGNA), Compl. ¶ 157, but they fail to allege specific facts demonstrating "cooperation" between the two entities, as required for the exercise of personal jurisdiction. *See Dickson Marine Inc. v. Panalpina, Inc.*, 179 F.3d 331, 339 (5th Cir. 1999) (rejecting argument that foreign entity was subject to personal jurisdiction based on acts of "an intermediary"); *Clay*, 907 F. Supp. 2d at 89 (rejecting exercise of personal jurisdiction based solely on allegations that affiliates "conduct business together as different elements of the same common enterprise").

At most, Plaintiffs allege that AGNA recommended White II and brokered "critical meetings" related to G4S Risk Management's retention of White II. Plaintiffs, however, do not allege that any of these recommendations or meetings took place in the United States or were in anyway related to the United States. It cannot be that taking the alleged recommendations of, or attending a meeting allegedly arranged by, a U.S. company operating abroad is sufficient to justify the exercise of personal jurisdiction over a defendant. *See Cockrum v. Donald J. Trump for*

President, Inc., 319 F. Supp. 3d 158, 179 (D.D.C. 2018) (rejecting argument that the Court should assume that two meetings held in the United States—in contrast to the zero meetings alleged in this case—related to plaintiffs' claims). Plaintiffs, therefore, fail to allege any specific contacts between G4S and the United States that are sufficient for the exercise of personal jurisdiction.

2. Plaintiffs Have Further Failed To Establish A Nexus Between G4S's U.S. Contacts And This Litigation

Even if Plaintiffs had alleged sufficient contacts between G4S and the United States (which they have not), Plaintiffs have failed to demonstrate that those contacts have a "causal relationship" to Plaintiffs' alleged injuries at issue in this litigation. *Triple Up Ltd.*, 235 F. Supp. 3d at 27. "[T]he 'litigation' element requires tangible allegations relating the attack[s] that [allegedly harmed Plaintiffs] to defendants' contacts with the forum." *Estate of Klieman*, 923 F.3d at 1124 (citation omitted). Where the defendant's relevant, suit-related conduct is not substantially connected to the forum, "specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the [forum]." *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1781 (2017). In an ATA claim, "[t]he relevant 'suit-related conduct' by the defendants [is] the conduct that could have subjected them to liability under the ATA." *Waldman v. PLO*, 835 F.3d 317, 335 (2d Cir. 2016) (quoting *Walden*, 571 U.S. at 284), *vacated on other grounds*, No. 19-764 (U.S. Apr. 27, 2020).

Here, Plaintiffs allege that payments by G4S or the Former Entities took place in Afghanistan. Compl. ¶¶ 129–30, 155–58. Plaintiffs do not allege that they interacted with, or made any payments to, the Taliban anywhere outside of Afghanistan. Thus, there is no connection between G4S's or the Former Entities' alleged U.S. contacts (minimal as they are) and the conduct that Plaintiffs allege subjects G4S to liability. *See Alkanani*, 976 F. Supp. 2d at 27.

Further, G4S's alleged contract-based contacts to the United States are not related to Plaintiffs' tort injuries under the ATA. Indeed, it is black-letter law that "an injury sounding in tort does not 'arise from' a contract for services for the purpose of specific jurisdiction." *Id.* (listing cases in support); *Okolie v. Future Servs. Gen. Trading & Contracting Co., W.L.L.*, 102 F. Supp. 3d 172, 177 (D.D.C. 2015) (same). Here, that G4S provided security services in Afghanistan pursuant to international contracts, and that over the next twelve years Plaintiffs were harmed in Afghanistan, simply "does not establish the necessary relationship between the Contract and claim for personal jurisdiction as a matter of law." *Alkanani,* 976 F. Supp. 2d at 27; *see Okolie*, 102 F. Supp. 3d at 177 (rejecting personal jurisdiction over negligence claims for a vehicle accident that occurred in Kuwait). "The critical test is whether the nonresident's conduct and connection with the forum state are such that he or she should reasonably anticipate being haled into court there." *Okolie*, 102 F. Supp. 3d at 177 (citation omitted). G4S could not have anticipated being haled into a U.S. court in connection with attacks that occurred in Afghanistan, based solely on its performance of international contracts related to the provision of security services more than ten years prior. For this additional reason, personal jurisdiction as to G4S is lacking.

CONCLUSION

For the foregoing reasons, all of Plaintiffs' claims against G4S and Centerra should be dismissed with prejudice.

April 29, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2020, the foregoing was filed electronically on the CM/ECF system for the United States District Court for the District of Columbia and thereby distributed to all counsel of record.

/s/ Stephen J. Obermeier
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