UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THOMAS SCHANSMAN, individually, as surviving Parent of QUINN LUCAS SCHANSMAN, and as legal guardian on behalf of X.S., a minor, ET AL., Plaintiffs, -against- SBERBANK OF RUSSIA PJSC, ET AL., Defendants.	19 Civ. 2985 (ALC)(GWG) Hon. Andrew L. Carter, Jr. **ORAL ARGUMENT REQUESTED**

VTB BANK PJSC'S MEMORANDUM OF LAW
IN SUPPORT OF ITS MOTION TO DISMISS THE SECOND AMENDED COMPLAINT

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PRELIMINARY STATEMENT

Through this lawsuit, Plaintiffs seek to hold VTB Bank PJSC ("VTB") liable for actions allegedly taken by certain members of the Donetsk People's Republic ("DPR"), an anti-Ukrainian militia group formed in April 2014. Although Plaintiffs have now amended their initial complaint twice, their claims remain jurisdictionally defective and substantively deficient as to VTB.[1]

Plaintiffs bring two causes of action under the Anti-Terrorism Act ("ATA") against Defendants on the grounds that Defendants provided "banking and money transfer services to the DPR and its affiliates." (SAC. ¶ 342.) These allegations arise from the events on July 17, 2014—approximately three months after the DPR's formation—when members of the DPR allegedly fired a missile that hit Malaysia Airlines Flight 17 ("MH17") as it flew over eastern Ukraine. Specifically with respect to VTB, Plaintiffs allege that certain "fundraisers" for the DPR advertised accounts with VTB on their websites and other platforms in order to solicit money. As Plaintiffs recognize, only a subset of these "fundraisers" actually maintained a bank account with VTB, and the accounts that did exist were all located outside of the United States.

That is the extent of the allegations as to VTB. Plaintiffs do *not* (i) identify any transaction where money was wired *to* any of these "fundraising" accounts at VTB; (ii) identify any transaction where money was wired *from* any of these "fundraising" accounts at VTB; or

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[1] VTB does not concede that any of the allegations in the SAC are true. Rather, for the purposes of this motion, VTB argues that Plaintiffs' allegations, even if true, nevertheless warrant dismissal under Federal Rules of Civil Procedure 12(b)(2) and 12(b)(6). *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (holding that, under Rule 12(b)(6), a complaint "must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face," and further holding that a court is "not bound to accept as true a legal conclusion couched as a factual allegation") (internal quotation marks omitted); *Mende v. Milestone Tech., Inc.*, 269 F. Supp. 2d 246, 251 (S.D.N.Y. 2003) (holding that "[c]onclusory allegations are not enough to establish personal jurisdiction" under Rule 12(b)(2)).

(iii) identify how any funds in these accounts are in any way related to the alleged attack on MH17. Accordingly, and for the following reasons, Plaintiffs' claims against VTB fail.

First, the Court lacks personal jurisdiction over VTB, as it is not incorporated, and has no physical presence, in New York (or anywhere else in the United States). Further, as Plaintiffs recognize: (i) the alleged planning and execution of the MH17 attack occurred internationally—not in New York, or anywhere in the United States; (ii) the VTB accounts for the DPR "fundraisers" were located internationally—not in New York, or anywhere in the United States; and (iii) Plaintiffs do not identify any transactions from these VTB accounts that touch New York or any other jurisdiction in the United States. Indeed, Plaintiffs do not identify the existence of any such transactions *at all*.

In an attempt to address this significant deficiency, Plaintiffs allege that VTB maintains certain correspondent accounts in New York. But they do not identify any actual transaction through any of these New York-based accounts for the benefit of any DPR "fundraiser." Rather, Plaintiffs merely allege that certain of these "fundraisers" advertised the correspondent accounts—and presumably hope that the Court will make the inference that a series of subsequent transfers to their accounts must have been routed through New York. This logical leap ignores the various ways that funds—including U.S. dollars—can be cleared and wired to accounts abroad, including through accounts outside of the United States or with institutions other than VTB. More fundamentally, Plaintiffs do not articulate any connection between the funds in these "fundraiser" VTB accounts and the DPR's alleged attack. Thus, even if Plaintiffs were able to identify transfers into these accounts that were routed through New York, there are no allegations indicating how these funds were subsequently used to support the alleged attack on MH17. Such sparse pleading is insufficient to establish personal jurisdiction. Tellingly, the third-party discovery that Plaintiffs

obtained—and that they incorporated into their Second Amended Complaint ("SAC")—did nothing to remedy these bald and unsupported assertions.

Second, and for similar reasons, Plaintiffs do not state an actionable claim under the ATA. Plaintiffs fail to plausibly allege that VTB's conduct amounts to an act of "international terrorism" under 18 U.S.C. § 2333(a), as courts in this Circuit have repeatedly held that the mere provision of financial services is not inherently violent or dangerous to human life. Moreover, Plaintiffs' allegations fail to establish that VTB knew or intended that funds provided to the "fundraisers" would aid the DPR in executing a deadly attack against civilians, as 18 U.S.C. §§ 2339A and 2339C require. Finally, the SAC fails to establish that VTB's conduct was the proximate cause of Plaintiffs' injuries under Second Circuit authority.

Accordingly, and as set forth below, the SAC against VTB must be dismissed.

BACKGROUND

A. VTB's Limited Contacts with the United States and New York

VTB is a Russian banking institution with "offices and branches worldwide." (SAC ¶ 40.) However, VTB does not maintain an office or branch in New York. (Decl. of Andrey S. Puchkov in Support of Defendant VTB Bank (PJSC)'s Motion to Dismiss the SAC ("Puchkov Decl.") ¶ 4.) Plaintiffs allege that VTB "has maintained correspondent bank accounts with JPMorgan Chase Bank, Bank of America, and Citibank, N.A., among other banks in New York City." (SAC ¶ 48(b).) The SAC does not contain any allegations regarding VTB's state of incorporation or principal place of business. In fact, VTB is incorporated, and has its principal place of business, in the Russian Federation. (Puchkov Decl. ¶¶ 2-3.) Plaintiffs allege that VTB operated a subsidiary, VTB Capital, in New York until August 2018, when VTB Capital was sold and renamed Xtellus Capital Partners. (SAC ¶ 42.)

B. VTB's Alleged Provision of Financial Services to Fundraiser Entities

As alleged, the DPR is an organization that "seek[s] to advance an ideological agenda of Russian supremacy by creating a proto-state, Novorossiya,[2] through the control of territory in Ukraine acquired through acts of intimidation and coercion." (SAC ¶ 88.) Plaintiffs broadly allege that VTB and the other Defendants provided financial services to entities that Plaintiffs characterize as "DPR fundraisers" or "fundraising arm[s] of the DPR" and who purportedly sought to support the DPR. (*See, e.g.*, *id.* ¶¶ 4, 56.) Plaintiffs do not allege that VTB directly engaged in or provided any such fundraising. Moreover, Plaintiffs allege that only certain entities had any connection to VTB—namely, the Coordination Center for New Russia (the "Center for New Russia"), Veche Interregional Public Organization ("Veche"), Voice of Sevastopol, Women's Battalion of People's Militia Donbass ("Women's Battalion"), Rospisatel Group, World Crisis, Boris Alexandrovich Rozhin, and Sputnik & Pogrom (collectively, the "Fundraiser Entities").

The Fundraiser Entities can be classified into two groups based on the allegations about their relationship to VTB. The first group is comprised of those Fundraiser Entities that allegedly maintained accounts with VTB. According to Plaintiffs, those Entities allegedly advertised the existence of those accounts, or information about VTB's correspondent accounts in New York, on their respective websites. (*Id.* ¶ 345(a) (Center for New Russia), (c) (Veche), (g) (Voice of Sevastopol),[3] (k) (Women's Battalion).) The second group is comprised of the remaining Fundraiser Entities that did *not* have bank accounts with VTB, but instead merely advertised on their respective websites the VTB bank account information for *another* Fundraiser Entity, or

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[2] As Plaintiffs allege, "Novorossiya (or 'Novorossia') refers both to an aspirational geographical territory . . . as well as a violent extremist political movement," and is associated with "an effort to create a pro-Russia confederated state." (SAC ¶ 4 n.1.)

[3] Although Voice of Sevastopol allegedly had a VTB bank account, Plaintiffs do not claim that Voice of Sevastopol's website advertised this account. (SAC ¶¶ 285, 345(g).)

information about VTB's New York correspondent accounts. (*Id.* ¶ 263 (Rospisatel Group); ¶ 266 (World Crisis); ¶ 297 (Rozhin).)[4]

Notably, Plaintiffs do not allege the existence of *any* transaction with the Fundraiser Entities that was completed through a VTB correspondent account in New York. Rather, they *suggest*—based on the allegation that the Fundraiser Entities referenced the VTB bank accounts and/or VTB correspondent accounts in New York on their respective websites—that funds were routed through VTB's New York correspondent accounts. (*See id.* ¶¶ 61-62, 212, 214, 218-219, 240-242.) In doing so, Plaintiffs ignore the various other ways U.S. dollars may be transferred to a bank account abroad.

Among the Fundraiser Entities, Plaintiffs provide the most detail for Center for New Russia. According to Plaintiffs, the Center for New Russia allegedly maintained an account with VTB that, between June 3 and June 23, 2014, received transfers of 56,011.17 rubles—the equivalent of roughly $704.[5] (SAC ¶ 242.) There are no allegations regarding any connection between the 56,011.17 rubles and New York, and no details concerning when or how this account received this money, or how it was actually used.[6] Plaintiffs also claim that the Center for New

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[4] Plaintiffs also contend that instructions for making transfers to Sputnik & Pogrom were posted on "other websites." (SAC ¶ 313.) These instructions allegedly included a list of "addresses and banking details" and solicited funds for the "help of Novorossia" through transfers utilizing all Defendants, including VTB. (*Id.*) However, the SAC contains no specific allegations detailing any connection between Sputnik & Pogrom and any VTB bank account, let alone any transfer effectuated through VTB for the benefit of Sputnik & Pogrom.

[5] Based on the exchange rate as of November 1, 2020. *See* https://www.bloomberg.com/quote/USDRUB:CUR (last visited November 1, 2020).

[6] Plaintiffs provide even less detail about "Rozhin," an individual who allegedly stated that, as of an unspecified date, 1,500,000 rubles had been "transferred" to Veche and another 2,200,000 rubles were "ready for shipment," allegedly using VTB's services. (SAC ¶ 338.) The SAC contains no allegations concerning the dates of these transfers of rubles, how the rubles were received, how the rubles were used, and whether the transaction(s) occurred through VTB's

Russia allegedly reported that "its account with VTB . . . received '1,673.55' in 'transfers in dollars,' followed by a withdrawal of $1,600 in cash." (*Id.* ¶¶ 61, 243-44.) The SAC, however, fails to identify any transaction that was actually processed through VTB's New York correspondent accounts. Plaintiffs also do not attempt to explain when or how these funds were provided to the DPR, much less what they were actually used for.

Based on these allegations, Plaintiffs claim that VTB provided financial services to the Fundraiser Entities. (*Id.* ¶ 3.) According to Plaintiffs, such financial services facilitated (in some unspecified way) the DPR's alleged attack on MH17 on July 17, 2014. (*Id.* ¶¶ 3, 392-399.)

C. Alleged Involvement of Other Parties

In addition to VTB, Plaintiffs have named as Defendants: Sberbank of Russia PJSC ("Sberbank"), the Western Union Company and Western Union Financial Services, Inc. (together, "Western Union"), and MoneyGram International, Inc. and MoneyGram Payment Systems, Inc. (together, "MoneyGram"). Similar to their allegations against VTB, Plaintiffs allege that these Defendants provided financial services to the Fundraiser Entities, in addition to other fundraisers, including Humanitarian Battalion, Save Donbass, ICORPUS, Essence of Time, People's Militia, and Alexander Zhuchkovsky. (*See, e.g.*, *id.* ¶¶ 189-193, 204-15, 272-79, 283-94, 298-332.) Plaintiffs do not connect VTB to these other fundraisers or allege that any VTB account or correspondent account processed transactions on their behalf.

D. International Response to the DPR

Although Plaintiffs characterize the DPR as a notorious terrorist group whose violent exploits were widely known at the time of its alleged attack on MH17, (*id.* ¶ 88), Plaintiffs do not assert that the DPR or any of the Fundraiser Entities has ever been designated as a Foreign Terrorist

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services. Moreover, the SAC contains no non-conclusory allegations establishing any link between these amounts in rubles and the United States.

Organization by the United States.[7] Furthermore, Plaintiffs acknowledge that the DPR was not placed under sanctions by the U.S. Treasury Department until July 16, 2014—the day immediately before the attack on MH17 and *after* any alleged involvement of VTB relevant to Plaintiffs' claims. (*Id*. ¶ 134.) Although certain alleged DPR leaders had been sanctioned by the U.S. and European Union prior to the MH17 attack, Plaintiffs do not allege that any of the Fundraiser Entities had been sanctioned before the attack. (*Id.* ¶¶ 127, 129, 131, 134.)

Plaintiffs allege that DPR and its leaders' activities were "widely reported on and discussed by" various media, multilateral entities, and human rights organizations. (*Id.* ¶¶ 104-27, 164-174, 356, 374). Notably, except for one article—dated nearly one year *after* the attack on MH17—Plaintiffs do not allege that any of the media reports cited in the SAC reference the Fundraiser Entities.[8] (*Id.* ¶¶ 171-73.)

E. Plaintiffs Do Not Allege Any Additional Facts Against VTB Despite Conducting Certain Third-Party Discovery

After serving subpoenas on two third-party banks, Bank of America Corporation and the Bank of New York Mellon, in May 2020, Plaintiffs asked this Court to consider certain evidence it received in response. However, based on the Plaintiffs' allegations, nothing in that discovery indicated any link between VTB and New York. Accordingly, Plaintiffs' SAC contained only two substantive additions—neither of which strengthened their jurisdictional allegations as to VTB:

- "Defendants VTB Bank and Sberbank continued their deliberate and recurring use of U.S. correspondent accounts in New York, New York to provide funds to the DPR after the European Union and the United States Treasury Department

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[7] Under the ATA, a "Foreign Terrorist Organization" is designated by the U.S. Secretary of State pursuant to 8 U.S.C. § 1189.

[8] Plaintiffs claim that an April 2014 article in the *Kyiv Post* "references statements from both Defendants Sberbank and VTB Bank that confirm their actual knowledge of the investigation initiated by Ukrainian authorities into their support for the DPR." (SAC ¶¶ 167-70, n.27; ¶ 366.) That article, however, does not reference either the DPR or any Fundraiser Entity—nor does it mention any notification to VTB of any accusations or charges by Ukrainian authorities.

> sanctioned the DPR's leadership, and even after the United States Government sanctioned both Defendants VTB Bank and Sberbank in an effort to stem the flow of financial support to the DPR and its affiliates." (*Id.* ¶ 138.)

- "The DPR leaders' solicitations for U.S. dollar donations through their Sberbank account were successful. By means of example, just prior to the murder of Quinn, Sberbank used its correspondent bank accounts in this District to process two transfers on June 9 and July 2, 2014, from individuals in Maryland and New Jersey. [Footnote 32: 'These donors adhered closely to the DPR's direction in some of its advertising for donors to cite charitable purposes, as described in Paragraph 291, *infra*.'] These transactions utilized and were made possible by Defendant Sberbank's deliberate and intentional use of correspondent bank accounts in this District, in this instance Defendant Sberbank's correspondent accounts at Bank of America and Bank of New York Mellon." (*Id.* ¶ 191.)

None of these allegations articulate any new facts as to VTB; rather, they just state the same conclusory assertions that are insufficient to establish personal jurisdiction or to state a claim. Plaintiffs do not add any transactional detail showing a connection between VTB and New York correspondence accounts. Instead, they generally allege (as they did in their First Amended Complaint) that VTB made "deliberate and recurring use" of New York correspondent accounts. (*Compare id.* ¶ 138, *with id.* ¶¶ 27, 48, 60.) Similarly, Plaintiffs repeat their allegation that the European Union and the U.S. Treasury Department sanctioned certain DPR leaders—but do nothing more to explain how VTB could or should have known that any alleged counterparties were associated with these individuals. (*Id.* ¶¶ 94, 127, 131-34, 137; *see infra* Section II.B.) Again, Plaintiffs repeat their allegation that the U.S. Government sanctioned both VTB and Sberbank.[9] (*Id.* ¶¶ 135-36.) Finally, Paragraph 191 lacks any allegation as to VTB. (*Id.* ¶ 191.)

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[9] Plaintiffs allege the U.S. Government's sanction against VTB was "in an effort to stem the flow of financial support to the DPR and its affiliates." (SAC ¶ 138.) However, the press release Plaintiffs appear to reference states the alleged sanction is "to further increase financial pressure on the Russian government." (*See id.* ¶ 135; Decl. of Christopher Harris in Support of Defendant VTB Bank (PJSC)'s Motion to Dismiss the SAC ("Harris Decl."), Ex. A.) The press release does not state that VTB provided financial support to the DPR or the Fundraiser Entities. (Harris Decl., Ex. A). In addition, Plaintiffs stated earlier in the SAC that the sanction against VTB was announced on July 29, 2014, *after* the MH17 attack. (*See* SAC ¶ 135.)

ARGUMENT

I. THE COURT LACKS PERSONAL JURISDICTION OVER VTB

Plaintiffs have not alleged sufficient facts to support a finding of personal jurisdiction over VTB, and the SAC should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(2). "It is fundamental that a court must acquire personal jurisdiction over a defendant before it can render a judgment against that defendant." *Aybar v. Aybar*, 93 N.Y.S.3d 159, 163 (N.Y. App. Div. 2019). "Federal courts must satisfy three primary requirements to lawfully exercise personal jurisdiction over an entity: (1) the entity must have been properly served, (2) the court must have a statutory basis for exercising personal jurisdiction, and (3) the exercise of personal jurisdiction must comport with constitutional due process." *Gucci Am., Inc. v. Weixing Li*, 135 F. Supp. 3d 87, 93 (S.D.N.Y. 2015). For the reasons described below, Plaintiffs fail to demonstrate a statutory basis for exercising personal jurisdiction, or how doing so would comport with due process.

"Personal jurisdiction falls into two main categories: specific jurisdiction and general jurisdiction." *Amelius v. Grand Imperial LLC*, 64 N.Y.S.3d 855, 865-66 (Sup. Ct. N.Y. Cty. 2017). "A court may assert general personal jurisdiction over a foreign defendant to hear any and all claims against that defendant only when the defendant's affiliations with the State in which suit is brought 'are so constant and pervasive as to render [it] essentially at home in the forum State.'" *Waldman v. PLO*, 835 F.3d 317, 331 (2d Cir. 2016) (quoting *Daimler AG v. Bauman*, 571 U.S. 117, 122 (2014) (internal quotation marks omitted)). Specific jurisdiction "depends on an affiliation between the forum and the underlying controversy, principally, activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation." *Id.* (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)). A plaintiff bears the burden of establishing jurisdiction over a defendant by a preponderance of the evidence. *See Koehler v. Bank of Bermuda Ltd.*, 101 F.3d 863, 865 (2d Cir. 1996).

The Court lacks jurisdiction over VTB under either a theory of general or specific personal jurisdiction. General jurisdiction does not exist because VTB is not domiciled in New York, nor are its ties to the state "so constant and pervasive as to render [it] essentially at home" in New York. *Daimler*, 571 U.S. at 122, 137 (alteration in original) (internal quotation marks omitted). Specific jurisdiction does not exist because Plaintiffs fail to show that VTB transacted business in New York, as required under C.P.L.R. § 302(a)(1), or the existence of a sufficient nexus between VTB's alleged conduct in New York and Plaintiffs' injury. Further, subjecting VTB to the jurisdiction of New York courts would be inconsistent with due process.

A. VTB Is Not Subject to General Jurisdiction in New York

A New York court may exercise general jurisdiction over a defendant in only two circumstances: (i) where the defendant is domiciled in the state, *see* C.P.L.R. § 301, or (ii) in an "exceptional" case, where a foreign corporate defendant's contacts with New York are so extensive as to support general jurisdiction notwithstanding domicile elsewhere. *See IMAX Corp. v. Essel Grp.*, 62 N.Y.S.3d 107, 109 (N.Y. App. Div. 2017) (citing *Daimler*, 571 U.S. at 760-61).

Plaintiffs do not allege that VTB is subject to jurisdiction in New York based on domicile—*i.e.*, its state of incorporation or principal place of business. Nor can they, as VTB is incorporated, and has its principal place of business, in the Russian Federation. (Puchkov Decl. ¶¶ 2-3.) *See also Magdalena v. Lins*, 999 N.Y.S.2d 44, 45 (N.Y. App Div. 2014) ("Among other things, there is no basis for general jurisdiction pursuant to C.P.L.R. § 301, since Glendun is not incorporated in New York and does not have its principal place of business in New York."). Furthermore, Plaintiffs have not established that this is the "exceptional case" where—even though VTB is not domiciled in New York—its "affiliations with the State are so 'continuous and systematic' as to render [it] essentially at home in [New York]." *Daimler*, 571 U.S. at 138-39 & n.19.

Plaintiffs appear to suggest that VTB is subject to jurisdiction in this Court because: (i) it "maintain[s] offices through [its] subsidiaries in Manhattan, New York," and (ii) VTB "deliberately and repeatedly routed U.S. dollar-denominated transactions . . . through correspondent accounts located in Manhattan, New York." (SAC ¶ 27.) Neither allegation, however, is sufficient to give rise to general jurisdiction.

First, allegations regarding the presence of a subsidiary in New York do not trigger general jurisdiction over the parent. *See Brown v. Showtime Networks, Inc.*, No. 18 Civ. 11078 (CM)(JLC), 2019 WL 3798044, at *6 (S.D.N.Y. Aug. 2, 2019) ("[T]he existence of BBC's New York subsidiary (BBC Studios) does not mean that general jurisdiction can be exercised over the parent corporation."); *Ingenito v. Riri USA, Inc.*, 89 F. Supp. 3d 462, 474-75 (E.D.N.Y. 2015) (declining to exercise general jurisdiction where plaintiff asserted merely that parent maintained a "presence" in New York through wholly-owned subsidiary). Plaintiffs allege that VTB's subsidiary was sold and renamed Xtellus Capital Partners in or around August 2018. (SAC ¶ 42.) If a subsidiary does not trigger general jurisdiction over the parent, neither does a subsidiary that was later sold.

Second, allegations regarding the use of correspondent accounts in New York cannot support a theory of general jurisdiction. *See In re Terrorist Attacks on September 11, 2001*, 714 F.3d 659, 680-81 (2d Cir. 2013) (holding that "the alleged use of correspondent bank accounts . . . are insufficient to support the exercise of general personal jurisdiction").[10] Without any

[10] Plaintiffs also allege that VTB has availed itself of the courts of New York. (SAC ¶ 44.) Under Second Circuit authority, such allegations are irrelevant for the purpose of establishing general jurisdiction in this matter: "A party's consent to jurisdiction in one case, however, extends to that case alone. It in no way opens that party up to other lawsuits in the same jurisdiction in which consent was given, where the party does not consent and no other jurisdictional basis is available." *Klinghoffer v. S.N.C. Achille Laura Ed Altri-Gestione Motonave Achille Lauro in Admministrazione Straordinaria*, 937 F.2d 44, 50 n.5 (2d Cir. 1991).

allegations of "extensive" contacts with New York, Plaintiffs cannot demonstrate the existence of general personal jurisdiction over VTB.

B. VTB Is Not Subject to Specific Jurisdiction in New York

Plaintiffs' allegations are similarly insufficient to warrant the exercise of specific jurisdiction under New York law. C.P.L.R. § 302(a)(1) permits a court to exercise personal jurisdiction over a foreign defendant who "transacts any business with the state or contracts anywhere to supply goods or services in the state." To establish personal jurisdiction under this section, the allegations must be sufficient to satisfy two requirements: (1) the defendant must have transacted business within New York, and (2) the claim asserted must arise from that business activity. *See Sole Resort, S.A. de C.V. v. Allure Resorts Mgmt, LLC*, 450 F.3d 100, 103 (2d Cir. 2006). Plaintiffs do not satisfy either requirement.

1. The SAC Fails to Show that VTB Transacted Business in New York

Plaintiffs fail to allege sufficient facts to warrant a finding that VTB "transacted business within New York." To satisfy this prong of C.P.L.R. § 302(a), Plaintiffs must allege "purposeful" activities within the state. *See Paterno v. Laster Spine Inst.*, 24 N.Y.3d 370, 376 (2014) ("More than limited contacts are required for purposeful activities sufficient to establish that the non-domiciliary transacted business in New York."). Even then, "jurisdiction will not extend to cover defendants with nothing more than petty contacts to the state." *Sills v. Ronald Reagan Presidential Found., Inc.*, No. 09 Civ. 1188 (GEL), 2009 WL 1490852, at *6 (S.D.N.Y. May 27, 2009).

In particular, the mere existence of correspondent banking accounts in New York is not sufficient to establish that VTB transacted business in New York. *See Societe d'Assurance de l'Est SPRL v. Citigroup Inc.*, No. 10 Civ. 4754 (JGK), 2011 WL 4056306, at *7 (S.D.N.Y. Sept. 13, 2011) ("[M]erely maintaining correspondent bank accounts in New York is not sufficient to establish personal jurisdiction."). Rather, Plaintiffs must allege sufficient repeated transactions

through the correspondent account so as to render VTB's availment of New York "purposeful." *See Cmty. Fin. Grp., Inc. v. Stanbic Bank Ltd.*, No. 14 Civ. 5216 (DLC), 2015 WL 4164763, at *2, *4-5 (S.D.N.Y. July 10, 2015) (dismissing complaint for lack of personal jurisdiction where plaintiff identified just one transfer of funds through a New York-based correspondent account).

Plaintiffs fail to identify *any* specific transaction that was routed through VTB's New York correspondent accounts, let alone "deliberate[] and repeated[]" transactions. Instead, Plaintiffs merely claim that the Fundraiser Entities advertised certain VTB bank accounts and/or certain correspondent accounts and ask the Court to infer that VTB actually "deliberately and repeatedly effectuate[d]" U.S.-dollar transactions on their behalf. (SAC ¶ 48; *see also id.* ¶ 138 ("VTB Bank and Sberbank continued their deliberate and recurring use of U.S. correspondent accounts in New York, New York to provide funds to the DPR . . . .").) Such conclusory assertions are insufficient to establish specific jurisdiction. *See Cmty. Fin. Grp., Inc.*, 2015 WL 4164763, at *2 (holding that "a plaintiff may not rely on conclusory statements without any supporting facts").

Indeed, Plaintiffs' allegations require precisely the kind of "speculative leap" that the court rejected in *Tamam v. Fransabank Sal*, 677 F. Supp. 2d 720, 727 (S.D.N.Y. 2010).[11] In that case, the plaintiffs argued that the defendants were subject to personal jurisdiction because of dollar-clearing wire transfers through correspondent banks in New York. *Id.* at 726. Although the defendant banks maintained accounts for, and provided services to, parties associated with Hizbullah, there were "no allegations that any money from these accounts was exchanged for U.S.

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[11] Elsewhere, Plaintiffs advance allegations that lump several Defendants together and fail to differentiate any relevant conduct or delineate specific transactions. (*See, e.g.*, SAC ¶ 178 (alleging that fundraisers advertised their account numbers with Sberbank and VTB), 341 (alleging that Center for New Russia received transfers to accounts with VTB and Sberbank and via Western Union).) Such generalized allegations are insufficient to permit a court to find specific jurisdiction over VTB. *See Tamam*, 677 F. Supp. 2d at 725-27.

dollars through a correspondent bank in New York." *Id.* at 727. Rather, the plaintiffs argued that personal jurisdiction existed based on the defendant banks' maintenance of correspondent bank accounts in New York, and because third parties must use those accounts to exchange currency for dollars in order to support Hizbullah. *Id.* at 725, 727.

The *Tamam* Court declined to make such a speculative leap, holding that it "need not draw argumentative inferences in the plaintiff's favor." *Id.* at 725 (internal quotation marks omitted). Significantly, the *Tamam* Court identified the "missing link" and the "*only* factual predicate on which this Court could potentially base its jurisdiction"—*i.e.*, "the actual transfer of money through New York." *Id.* at 727 (emphasis added). As the court recognized, "U.S. dollars are easily obtained through correspondent banks worldwide." *Id*. at 733. Accordingly, the Court determined that exercising jurisdiction was not proper. *Id.* at 725, 727. Here, the same "link" is missing—namely, any allegation that VTB actually processed any relevant transactions in New York. Without such allegations, and with nothing more than allegations that VTB maintained correspondent accounts in New York, Plaintiffs are unable to establish the existence of specific personal jurisdiction over VTB.

2. Plaintiffs' Claims Do Not Arise from Any Transactions Within New York

Plaintiffs also fail to allege sufficient facts to satisfy the second prong of C.P.L.R. § 302(a): a connection between VTB's alleged business activity in New York and the claims asserted. Under Section 302(a), "plaintiffs must allege a 'direct' and 'substantial' connection between those [New York correspondent] bank accounts and the wrongful conduct that forms the basis of their cause of action." *Societe d'Assurance*, 2011 WL 4056306, at *7. A connection that is "merely coincidental" is insufficient to support jurisdiction. *See Johnson v. Ward*, 4 N.Y.3d 516, 520 (2005). Again, Plaintiffs must articulate such allegations with specificity. *See Sikhs for Justice v. Nath*, 893 F. Supp. 2d 598, 622-23 (S.D.N.Y. 2012) (holding that "[c]onclusory allegations are not

enough to establish personal jurisdiction and the allegations must be well-pled" (internal quotation marks omitted)).

Plaintiffs fail to satisfy this standard. At most, they allege that (i) between June 23 and July 27, 2014, the Center for New Russia advertised the account number of a VTB correspondent bank in New York, and (ii) between the same dates, the same entity reported that "its account with VTB . . . received '1,673.55' in 'transfers in dollars,' followed by a withdrawal of $1,600 in cash." (SAC ¶¶ 242-44.) Even if Plaintiffs had alleged that this "1,673.55" in "transfers in dollars" occurred in New York—which they do not—they fail to allege that this transfer was subsequently used to finance the MH17 attack. Indeed, they make no allegation about the use of this $1,673.55 whatsoever. (*Compare id.* ¶ 243, *with* ¶¶ 242, 244.) Plaintiffs' attenuated theory thus relies entirely on a connection between VTB's correspondent accounts in New York and the attack on MH17 that is not just "merely coincidental," but entirely conclusory. *See Johnson*, 4 N.Y.3d at 520 (holding that long-arm jurisdiction under § 302(a)(1) was improper where relationship between claim and New York transaction was "merely coincidental"); *Tamam*, 677 F. Supp. 2d at 729 ("[A] defendant may not be subject to personal jurisdiction under CPLR § 302(a)(1) simply because [its] contact with New York was a link in a chain of events giving rise to a cause of action" (alteration in original) (internal quotation marks omitted)). Plaintiffs' new allegation against VTB is similarly conclusory. (*See* SAC ¶ 138.)

C. Due Process Does Not Permit the Exercise of Personal Jurisdiction over VTB

Even if the SAC satisfied New York statutory requirements, exercising jurisdiction would not comport with due process. To assess due process, courts analyze two components: (i) the "minimum contacts" test and (ii) the "reasonableness" inquiry. *See Bank Brussels Lambert v. Fiddler Gonzalez & Rodriguez*, 305 F.3d 120, 127 (2d Cir. 2002). A court must first analyze the "minimum contacts" prong and determine "whether the defendant has sufficient contacts with the

forum state to justify the court's exercise of personal jurisdiction." *Metro. Life Ins. Co. v. Robertson-Ceco Corp.*, 84 F.3d 560, 567 (2d Cir. 1996). A court must then determine whether "the assertion of personal jurisdiction comports with traditional notions of fair play and substantial justice—that is, whether it is reasonable under the circumstances of the particular case." *Id.* at 568 (internal quotation marks omitted). "The import of the 'reasonableness' inquiry varies inversely with the strength of the 'minimum contacts' showing—a strong (or weak) showing by the plaintiff on 'minimum contacts' reduces (or increases) the weight given to 'reasonableness.'" *Bank Brussels Lambert*, 305 F.3d at 129 (quoting *Metro. Life*, 84 F.3d at 568-69).

First, Plaintiffs' allegations are inadequate under the minimum contacts test. "Determining whether an entity has sufficient 'minimum contacts' with a forum turns on whether the entity '"purposefully directed" [its] activities at . . . the forum and [whether] the litigation results from alleged injuries that "arise out of or relate to" those activities.'" *Gucci*, 135 F. Supp. 3d at 96 (alterations in original) (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985)).

Here, for the same reasons that Plaintiffs fail to show VTB's purposeful availment for purposes of transacting business under C.P.L.R. § 302(a)(1), they also fail to demonstrate how VTB "purposefully directed" its activities at New York in a manner that is connected to Plaintiffs' injuries. Indeed, the only alleged action by VTB is the maintenance of correspondent accounts. This is not sufficient to establish VTB's minimum contacts with New York. *See Tamam*, 677 F. Supp. 2d at 731-32 ("The mere maintenance of a correspondent account in New York no more establishes minimum contacts with the United States than it does provide a basis for the exercise of long-arm jurisdiction.").

Second, exercising personal jurisdiction over VTB would be unreasonable. Courts consider five factors in evaluating reasonableness: "(1) the burden that the exercise of jurisdiction

will impose on the defendant; (2) the interests of the forum state in adjudicating the case; (3) the plaintiff's interest in obtaining convenient and effective relief; (4) the interstate judicial system's interest in obtaining the most efficient resolution of the controversy; and (5) the shared interest of the state in furthering substantive social policies." *Id.* at 731 (quoting *Bank Brussels Lambert*, 305 F.3d at 129).

All five of these factors weigh in favor of a finding that exercising jurisdiction over VTB would be unreasonable. *With respect to the first factor*, subjecting VTB, a Russian-owned and operated bank without a branch office in New York, to jurisdiction in New York would be unduly burdensome. *With respect to the second and third factors*, New York has no unique interest in adjudicating claims against VTB, as Plaintiffs are citizens of, and domiciled in, the Netherlands, VTB is incorporated and primarily doing business in Russia, and the alleged attack and resulting injuries happened outside the United States. (*See* SAC ¶¶ 28-31, 75; Puchkov Decl. ¶¶ 2-3.) Were the mere maintenance of correspondent accounts a sufficient and reasonable basis for establishing personal jurisdiction, "this Court, located in one of the world's largest and busiest financial centers, would be burdened with countless international financial disputes having no real, substantive link to New York." *See Lan Assocs. XVIII, L.P. v. Bank of Nova Scotia*, No. 96 Civ. 1022 (JFK), 1997 WL 458753, at *6 (S.D.N.Y. Aug. 11, 1997) (finding that New York had "virtually no link to this action" where "[n]one of the parties is a citizen of New York, and no events occurred here other than an alleged wire transfer of funds").

With respect to the fourth factor, the assertion of personal jurisdiction here would not further the interstate judicial system's interest in obtaining the most efficient resolution of the controversy. *See Tamam*, 677 F. Supp. 2d at 733 (holding that the United States "has little to no interest in this litigation," where defendants were not incorporated in the United States, bank

accounts at issue were based in Lebanon, underlying attacks took place in the Middle East, and the "only real link to this country arises because of its currency"). Further, given that the nexus of VTB's operations is in the Russian Federation, and in light of the international scope of Plaintiffs' allegations, many of the witnesses and much of the evidence will be located abroad. And finally, *with respect to the fifth factor*, the assertion of jurisdiction in a case with such a barebones connection to the United States does not further substantive social policies among nations. As the Supreme Court has cautioned, "[g]reat care and reserve should be exercised when extending our notions of personal jurisdiction into the international field." *Asahi Metal Indus. Co. v. Superior Court of Cal., Solano Cty.*, 480 U.S. 102, 115 (1987).

II. THE SAC DOES NOT STATE A CLAIM AGAINST VTB

The SAC should also be dismissed as to VTB pursuant to Rule 12(b)(6) for failure to state a claim. "Liability under the ATA has three formal elements: 'unlawful action, the requisite mental state, and causation.'" *Hussein v. Dahabshiil Transfer Servs. Ltd.*, 230 F. Supp. 3d 167, 170-71 (S.D.N.Y. 2017) (quoting *Sokolow v. PLO*, 60 F. Supp. 3d 509, 514 (S.D.N.Y. 2014)). Plaintiffs have failed to satisfy any of the three requirements. First, Plaintiffs' claims that VTB provided financial services to the Fundraiser Entities do not adequately allege the existence of unlawful action—defined as an "act of international terrorism" under §§ 2333(a) and 2331(1). Second, even assuming funds were transferred to the Fundraiser Entities through VTB's services—which, as explained above, Plaintiffs have failed to show—Plaintiffs do not adequately allege that VTB had the necessary state of mind under §§ 2339A or 2339C. Third, the allegations fail to satisfy the ATA's demanding proximate causation standard, as articulated by the Second Circuit in *Rothstein v. UBS AG*, 708 F.3d 82, 91, 97 (2d Cir. 2013).

In addition to the arguments set forth below, VTB joins and incorporates by reference: (i) Western Union's and MoneyGram's joint legal arguments that Defendants' acts were not acts

of "international terrorism" within the meaning of the ATA; (ii) Western Union's and MoneyGram's joint legal arguments, and Sberbank's legal arguments, that Plaintiffs fail to plead that Defendants acted with the knowledge or intent necessary to establish a predicate violation under 18 U.S.C. §§ 2339A or 2339C; (iii) Western Union's and MoneyGram's joint legal arguments that Plaintiffs fail to plead the required causal link between Defendants' alleged conduct and Plaintiffs' harm; and (iv) Western Union's and MoneyGram's joint legal arguments that Plaintiffs' claims are barred by the ATA's "act of war" exception.[12]

A. The SAC Does Not Adequately Allege VTB's Participation in an Act of "International Terrorism"

The allegations do not establish that VTB's alleged conduct constitutes an act of "international terrorism" under the ATA. The ATA's civil remedy provision provides a cause of action to a United States national "injured in his or her person, property, or business by reason of an act of international terrorism." 18 U.S.C. § 2333(a). "International terrorism" is defined in relevant part as activities that "involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States." 18 U.S.C. § 2331(1)(A).

The SAC fails to allege any conduct by VTB that would satisfy this definition. Indeed, courts in this district have held that the provision of banking services is not "dangerous to human life" because it is "not [an] inherently violent or dangerous" activity. *O'Sullivan v. Deutsche Bank AG*, No. 17 Civ. 8709 (LTS) (GWG), 2019 WL 1409446, at *8 (S.D.N.Y. Mar. 28, 2019); *see also Kaplan v. Lebanese Canadian Bank*, No. 08 Civ. 7253 (GBD), 2019 WL 4869617, at *4 (S.D.N.Y. Sept. 20, 2019) (holding that "the provision of financial services does not, in itself, equate to

[12] VTB does not incorporate any descriptions of the factual allegations contained in Sberbank's, Western Union's, or MoneyGram's respective memoranda of law in support of their motions to dismiss.

international terrorism" and dismissing complaint asserting claims under ATA due to plaintiffs' failure to plausibly allege that defendant's actions involved violence or endangered human life). In *O'Sullivan*, the Court held that, where the defendants allegedly provided banking services to various entities connected to terrorist organizations—but not the terrorist organizations themselves—the asserted connection between the defendants' alleged act and the terrorist attacks at issue was too "attenuated" to find that the defendants were involved in an act of international terrorism. 2019 WL 1409446, at *8.

Here, at most, Plaintiffs allege that the Center for New Russia's bank account with VTB received $1,673.55 and 56,011.17 rubles (less than $2,400 total). (SAC ¶¶ 242, 244.) Plaintiffs do not claim that the Center for New Russia was responsible for the alleged attack, nor do they describe how the funds purportedly received were used to perpetrate the attack. Where, as here, the relationship between the alleged services provided and the purported terrorist attack is "so attenuated," Plaintiffs have failed to plead that VTB engaged in an act of international terrorism. *See O'Sullivan*, 2019 WL 1409446, at *2, *8.

B. The SAC Does Not Adequately Allege VTB Acted with Knowledge or Intent

Plaintiffs allege that VTB's alleged actions constitute violations of 18 U.S.C. §§ 2339A and 2339C, which penalize the provision of "material support" to terrorists, and the provision or collection of funds for certain enumerated violations, respectively. *See* 18 U.S.C. §§ 2339A (articulating the prohibition against "material support" of terrorist groups), 2339C (providing or collecting funds). Both provisions require a defendant to "intend[]" or "know[]" that the material support or financing provided will be used for terror attacks. *See* 18 U.S.C. § 2339A (penalizing provision of material support "knowing or intending" that such support will be used in preparing or carrying out enumerated violations); 18 U.S.C. § 2339C (penalizing provision or collection of funds with the intention that such funds be used, or with the knowledge that such funds are to be

used, to carry out specified violations); *see also Ahmad v. Christian Friends of Israeli Communities*, No. 13 Civ. 3376 (JMF), 2014 WL 1796322, at *3 (S.D.N.Y. May 5, 2014), *aff'd*, 600 F. App'x 800 (S.D.N.Y. 2015) (holding that § 2339C requires a showing that defendant "intended or kn[ew] that such funds would be used to carry out terrorist attacks"). Indeed, "the material support statutes . . . require the same (or a greater) showing of mens rea than does Section 2333(a)." *See Hussein*, 230 F. Supp. 3d at 171.

Plaintiffs allege that VTB knew or should have known that any alleged involvement with the Fundraiser Entities would result in assistance to the DPR because: the DPR and its leaders' activities were "widely reported on and discussed by" various media, multilateral entities, and human rights organizations, (SAC ¶¶ 104-27, 164-174); international governments made statements against the DPR, (*id.* ¶¶ 127-39, 168-70); and the Fundraiser Entities' websites were allegedly accessible online, (*id.* ¶¶ 149-58).

None of these allegations, however, provide a plausible basis supporting an inference that VTB knew—or had reason to know—that any funds allegedly transferred through its services would support a terrorist attack. First, many of the sources referenced in the SAC do not actually mention the Fundraiser Entities. They therefore provide no basis for concluding that VTB knew, or should have known, that these entities were affiliated with the DPR. (*See, e.g.*, SAC ¶¶ 105-12, 164-70 (media reports); ¶¶ 120-26 (governmental and intergovernmental organizations' reports); ¶¶ 94, 127-135, 137 (government sanctions)).[13] Second, various sources cited by Plaintiffs, including the U.S. Treasury Department's sanction against VTB, are dated *after* the MH17 attack, and thus demonstrate little about VTB's knowledge prior to the attack. (*See, e.g.*, *id.* ¶¶ 94, 101,

[13] Plaintiffs also reference U.S. State Department travel warnings about Ukraine, (SAC ¶¶ 139, 408), but do not allege that VTB was aware of the travel warnings, nor do they articulate any reason why VTB—a financial institution based in Russia—would be aware of them.

135, 137, 171-74, 197, 298, 365). Third, Plaintiffs do not advance any well-plead allegations that show VTB was or should have been aware of the various websites allegedly linked to the DPR, or that money transferred to the Fundraiser Entities would (allegedly) be channeled to fund the attack on MH17. *See, e.g.*, *Kaplan*, 2019 WL 4869617, at *6 (holding that plaintiffs failed to plead that defendant bank knew or should have known of connection between account holder and Hizbollah, despite websites, press releases, and other public sources evidencing connection, where plaintiff failed to plausibly allege that defendant "read or was aware of such sources").

Nor do any of Plaintiffs other scattershot allegations suffice to show knowledge. For example, notwithstanding alleged criticism of the DPR by certain governments, Plaintiffs notably do not allege that the United States has ever designated the DPR or *any* Fundraiser Entity as a Foreign Terrorist Organization. And, as Plaintiffs concede, the Treasury Department did not impose sanctions on the DPR until *the day before* the attack (and well after any transfers that could have facilitated the attack). (*Id.* ¶ 134.) Moreover, Plaintiffs' naked allegation that VTB operated a subsidiary in Ukraine until 2018 does nothing to support an inference that VTB had criminal-level knowledge or intent regarding the DPR. (*Id.* ¶ 142.) Finally, while Plaintiffs claim that VTB violated statutes and regulations concerning "know your customer" and due diligence requirements, (*id.* ¶ 379), allegations of laxity in enforcing compliance obligations with respect to a financial services company do not state a claim for willful blindness or reckless indifference amounting to knowledge or intent to support terrorist acts.[14] *See Hussein*, 230 F. Supp. 3d at 171.

[14] Moreover, "in the absence of any allegations that a bank has ties to a terrorist organization, or that it knew or had reason to believe that the monies it was processing through the bank would be used to carry out terrorist attacks on civilian targets, noncompliance with banking laws and industry standards will not alone render a bank liable for the violent attacks committed by a terrorist organization who benefitted, in some general, nondescript manner, from the monies passing through the bank during the performance of routine banking services." *In re Terrorist Attacks on September 11, 2001*, 718 F. Supp. 2d 456, 489 (S.D.N.Y. 2010). Plaintiffs do not

Thus, the SAC fails to sufficiently allege the state of mind necessary to establish that VTB violated 18 U.S.C. §§ 2339A or 2339C.

C. The SAC Does Not Adequately Allege Proximate Causation

Finally, Plaintiffs' allegations are not sufficient under the ATA's demanding proximate causation standard. To establish proximate causation under the ATA, Plaintiffs must plausibly allege that VTB's acts were a substantial factor in the sequence of events that led to Plaintiffs' injuries, and that Plaintiffs' injuries were reasonably foreseeable or anticipated as a natural consequence of VTB's conduct. *See Rothstein*, 708 F.3d at 91; *see also O'Sullivan*, 2019 WL 1409446, at *5. The claim should be dismissed where plaintiffs "rel[y] solely on indirect allegations of causation." *See O'Sullivan*, 2019 WL 1409446, at *5.

Here, as in *Rothstein*, VTB is not alleged to have participated in the alleged attack on MH17, nor do Plaintiffs allege that VTB provided services directly to the perpetrators of the MH17 attack. 708 F.3d at 97. Absent such allegations, Plaintiffs cannot satisfy the ATA's proximate causation requirement. *See O'Sullivan*, 2019 WL 1409446, at *5 (dismissing ATA claim brought against financial institutions where plaintiffs' theory required several "link[s] to the causal chain" between defendants' financial services and plaintiffs' injuries).

Plaintiffs attempt to collapse the links in the causal chain between VTB's alleged conduct and the MH17 attack by alleging that "[c]ollectively, the DPR's leaders, members, entities, financial supporters, and fundraisers constitute the DPR." (*See, e.g.,* SAC ¶ 8.) Thus, whereas Plaintiffs' initial Complaint identified the Fundraiser Entities as separate from the DPR, Plaintiffs now summarily allege that the Fundraiser Entities *are* the DPR. But Plaintiffs do not, and cannot, allege that the Fundraiser Entities directly engaged in the alleged violent "terrorist activities." (*See*

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advance any non-conclusory allegations that VTB knew that funds allegedly transferred through its services to the Fundraiser Entities would be used to perpetrate attacks on civilians.

id. ¶¶ 7, 9.) Indeed, Plaintiffs' cannot articulate any causal connection between VTB's alleged conduct and the alleged injuries at all.

First, as in *O'Sullivan* and *Kaplan*, Plaintiffs proffer no non-conclusory allegations that the alleged transactions that VTB processed were subsequently provided to those who engaged in the MH17 attack. *See O'Sullivan*, 2019 WL 1409446, at *5 (holding that plaintiffs failed to plausibly allege proximate causation in part because plaintiffs only made conclusory allegations that the transactions the defendants processed were transferred to groups that "actually perpetrated the attacks against [p]laintiffs"); *see also Kaplan*, 2019 WL 4869617, at *4 (holding that plaintiffs failed to plausibly allege proximate causation in part due to absence of any "factual, non-conclusory allegations" that any funds transferred through defendant's accounts were in fact sent to and used by Hizbollah to perpetrate attacks). *Second*, Plaintiffs do not advance allegations sufficient to show that the Fundraiser Entities would have been unable to support the DPR in carrying out the attack without VTB's alleged assistance. *See O'Sullivan,* 2019 WL 1409446, at *5 (holding that plaintiffs failed to plausibly allege proximate causation in part because they did not show that the recipients of defendants' services would have been "unable to assist [the groups that actually attacked the plaintiffs] in carrying out the attacks without [d]efendants' assistance"); *see also Rothstein*, 708 F.3d at 97 (holding that plaintiffs failed to plead proximate causation where plaintiffs did not sufficiently allege that "Iran would have been unable to fund the attacks by Hizbollah and Hamas" without the funds provided by the defendant). Plaintiffs have merely identified transactions involving Center for New Russia's VTB accounts in the amounts of $1,673.55[15] and 56,011.17 rubles. But they fail to allege how—or even if—these specific funds

[15] Plaintiffs claim that the Center for New Russia's financial report for June 23 to July 27 shows transfers of U.S. dollar-denominated funds to the DPR. (SAC ¶¶ 61, 244.) This claim is inadequate for at least two reasons. First, Plaintiffs do not identify any connection between the

were transferred to the DPR, let alone whether any such transfers were connected to the alleged attack on MH17.[16] (SAC ¶¶ 242-44.)

III. THE SAC SHOULD BE DISMISSED WITH PREJUDICE

Plaintiffs have had three chances to plead. (*See* Dkts. 1, 104, 156.) Plaintiffs have seen two sets of Motions to Dismiss, one of which was fully briefed, where they observed the flaws they needed to amend. (*See* Dkts. 92, 94, 98, 102, 110, 112, 115, 118, 122, 124-27.) Yet, Plaintiffs have failed to allege facts sufficient to establish that VTB should be subject to suit in New York and have failed to state a claim. The jurisdictional discovery Plaintiffs did receive did not bolster their position. Thus, the SAC should be dismissed under Federal Rules of Civil Procedure 12(b)(2) or, in the alternative, 12(b)(6) with prejudice as to VTB.[17]

CONCLUSION

For each of the foregoing reasons, the SAC should be dismissed with prejudice as to VTB.

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alleged transfer and any VTB account or service. Second, the date of the transaction is not stated and, given the period covered by the financial report, there is nothing to suggest that the alleged transaction took place prior to the attack on MH17.

[16] Nor do Plaintiffs satisfy the separate and independent requirement that the injuries were "reasonably foreseeable" or "anticipated as a natural consequence" of VTB's alleged actions. *Rothstein*, 708 F.3d at 91. Although Plaintiffs need not show that the exact dollars transferred through VTB were "used to purchase the bullet that struck the plaintiff," a plaintiff must still show "a proximate causal relationship to the plaintiff's injury." *Gill* v. *Arab Bank, PLC*, 893 F. Supp. 2d 542, 556 (E.D.N.Y. 2012). Plaintiffs have failed to do so. According to Plaintiffs, prior to July 17, 2014, the DPR had "exhibited a pattern and practice of attacking and intimidating civilians" only in eastern Ukraine. (SAC ¶ 100.) Plaintiffs do not identify a single instance in which the DPR attacked or intimidated civilians outside of Ukraine. Accordingly, they have failed to articulate any facts plausibly suggesting that it was foreseeable that VTB's alleged conduct would fund an act of terrorism of the type that occurred on July 17, 2014.

[17] *See, e.g.*, *In re Nokia Oyj (Nokia Corp.) Sec. Litig.*, 423 F. Supp. 2d 364, 409-10 (S.D.N.Y. 2006) (denying leave to amend where further amendment "would only include more of the same conclusory allegations"); *Bright-Asante v. Wagner*, No. 15-CV-9110 (ALC), 2017 WL 6948359, at *10-11 (S.D.N.Y. Dec. 1, 2017) (Carter, J.) (declining to grant leave to amend, explaining, "[w]here Plaintiff does not even request leave to amend, a district court may decline to grant leave to amend *sua sponte* . . . especially . . . where Plaintiff has already had an opportunity to amend his complaint, and is represented by counsel").

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