IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DEBORAH D. PETERSON, Personal Representative of the Estate of James C. Knipple (Dec.), et al., Plaintiffs, v. **THE ISLAMIC REPUBLIC OF IRAN,** et al., Defendants.	Case No. 10-cv-4518-KBF

MEMORANDUM OF LAW IN SUPPORT OF THE MOTION TO INTERVENE

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This motion to intervene is brought by John Relvas, John Kees, and Mark Boyd ("Intervenors") through counsel and pursuant to Fed. R. Civ. P. 24, individually and on behalf of a class pursuant to Rule 23 that includes all persons with an interest in the limited fund as a result of a claim arising from terrorist attacks sponsored by the Islamic Republic of Iran.

I. INTRODUCTION

In the early morning hours of October 23, 1983, 241 servicemembers stationed in Beirut, Lebanon were murdered in their sleep by a suicide bomber sponsored by the government of Iran. In the years, days, and minutes before the attack, those 241 servicemembers—and many other servicemembers who were injured in the attack—ate together, trained together, and worked together in the service of common goals greater than any one of them alone. They were supported in their service by husbands and wives, sons and daughters, and brothers and sisters who sacrificed both their own comfort and years of common memories for the benefit of our country and our world. In a single instant, the lives of the families of those killed were forever altered when their partners and parents were stolen from them. Those families, and the servicemembers who were injured in the attack, were traumatized by wounds both physical and psychological that they must endure even to this day.

Nothing can blot out from history the horrors of October 23, 1983, and nothing can return to the families their loved ones who were lost. But more than 30 years after the Beirut Marine Barracks attack, certain of its survivors, at long last, stand at the precipice of obtaining some measure of justice. Assets seized from the Iranian government will soon be used to compensate some victims of the attack.

For many victims of the Beirut attack, and of other terrorist attacks sponsored by Iran, however, justice remains elusive. Although billions of dollars of Iranian assets have been confiscated, not all of Iran's victims stand to receive compensation. It is exceedingly unlikely

that substantial additional, seizable Iranian assets will be located in the United States. This means that, despite their equal and shared sacrifice, some injured servicemembers and families and other victims stand to receive millions of dollars in compensation, while many others are unlikely to ever receive so much as a penny.

This inequitable arrangement should not—and need not—stand. The present motion is an effort to obtain equal justice for *all* victims of Iran-sponsored terrorist attacks. In an accompanying class action complaint, Intervenors seek certification, under Federal Rule of Civil Procedure 23(b)(1)(B), of a "limited fund" class in order to ensure that each victim is compensated fairly and adequately. Intervenors now move to intervene in the present case on behalf of the class in order to preserve the limited fund, which is comprised of the assets at issue in *Peterson v. Islamic Republic of Iran*, 1:10-cv-0418-KBF (S.D.N.Y.), and *In re 650 Fifth Avenue and Related Properties*, No. 08 Civ. 10934(KBF) (S.D.N.Y.).

II. OVERVIEW OF THE LITIGATION AGAINST IRAN FOR ITS ROLE IN SPONSORING ACTS OF TERRORISM

In 2001, family members of some, but not all, of the 241 deceased servicemembers, as well as several of the survivors injured in the Marine Barracks Bombing, brought two separate suits against Iran in the District Court for the District of Columbia. *Peterson v. Islamic Republic of Iran*, 264 F. Supp. 2d 46, 48 (D.D.C. 2003). The victims' complaints included claims against Iran for wrongful death, battery, assault, and intentional infliction of emotional distress. Although the complaints were properly served, Iran failed to respond, and the plaintiffs moved for a default judgment. *Id*. After a bench trial, the court found that Iran "actively participated in the attack . . . , which was carried out by [Iranian] agents with the assistance of Hezbollah," and was, accordingly, liable for compensatory damages. *Id*. at 61. The court subsequently directed special masters to provide reports recommending the amount of damages owed to each plaintiff.

Id. at 61–62. On September 7, 2007, after reviewing the special masters' reports, the court entered a default judgment for the plaintiffs and against Iran in the total amount of $2,656,944,877. *Peterson v. Islamic Republic of Iran*, 515 F. Supp. 2d 25, 60 (D.D.C. 2007).

After the default judgment was entered against Iran in *Peterson*, many other suits were filed seeking damages on behalf of additional groups of Bombing victims. Some of these groups have obtained judgments against Iran, while others are still in the process of obtaining judgments. *See, e.g*., *Spencer v. Islamic Republic of Iran*, 12-cv-42 (RCL), --- F. Supp. 3d ---, 2014 WL 5141429 (D.D.C. Oct. 14, 2014); *Fain v. Islamic Republic of Iran*, 885 F. Supp. 2d 78 (D.D.C. 2012); *Davis v. Islamic Republic of Iran*, 882 F. Supp. 2d 7 (D.D.C. 2012); *Taylor v. Islamic Republic of Iran*, 881 F. Supp. 2d 19 (D.D.C. 2012); *Brown v. Islamic Republic of Iran*, 872 F. Supp. 2d 37 (D.D.C. 2012); *Anderson v. Islamic Republic of Iran*, 839 F. Supp. 2d 263 (D.D.C. 2012); *Bland v. Islamic Republic of Iran*, 831 F. Supp. 2d 150 (D.D.C. 2011); *Murphy v. Islamic Republic of Iran*, 740 F. Supp. 2d 51 (D.D.C. 2010); *Valore v Islamic Republic of Iran*, 700 F. Supp. 2d 52 (D.D.C. 2010); *O'Brien v. Islamic Republic of Iran*, 853 F. Supp. 2d 44 (D.D.C. 2012). The victims of several other Iran-sponsored terrorist attacks also sued Iran, and some have obtained judgments. *See, e.g*., *Greenbaum v. Islamic Republic of Iran*, 451 F. Supp. 2d 90 (D.D.C. 2006) (entering judgment for the victims of an August 9, 2001 attack by Hamas in Israel); *Estate of Heiser v. Islamic Republic of Iran*, 659 F. Supp. 2d 20 (D.D.C. 2009) (entering judgment for family members and estates of U.S. servicemen killed in a bombing in Saudi Arabia).

In the meantime, beginning in 2008, nearly twenty different groups of victims of Iranian-sponsored terrorist attacks who had obtained judgments against Iran filed suits in the Southern District of New York to obtain writs of attachment, restrain funds, and execute judgments on two

sets of Iranian assets—bank assets held on behalf of the Bank of Markazi (the Central Bank of Iran) and real and other property owned by 650 Fifth Avenue Company—that were located within the district. *See Peterson v. Islamic Republic of Iran*, 10 Civ. 4518(KBF), 2013 WL 1155576, at *1 n.1 (S.D. N.Y. Mar. 13, 2013).[1] On March 13, 2013, this Court ordered the turnover of $1.75 billion of blocked Bank of Markazi assets under both the Terrorism Risk Insurance Act of 2002 and 22 U.S.C. § 8772. *Peterson*, 2013 WL 1155576, at *7–10, 28–29. The Second Circuit affirmed that turnover order on July 9, 2014, *Peterson v. Islamic Republic of Iran*, 758 F.3d 185 (2d Cir. 2014), but the mandate has not issued and the assets subject to that order have not yet been distributed.[2]

[1] Those groups include: (1) *Peterson v. Islamic Republic of Iran*, No. 10 Civ. 451 8(KBF) (S.D.N.Y.); (2) *Greenbaum et al. v. Islamic Republic of Iran, et al*., 02 Civ. 2148 (RCL) (D.D.C); (3) *Acosta, et al. v. Islamic Republic of Iran, et al*., 06 Civ. 745 (RCL) (D.D.C); (4) *Rubin, et al. v. Islamic Republic of Iran*, 01 Civ. 1655 (RCL) (D.D.C); (5) *Estate of Heiser et al. v. Islamic Republic of Iran et al.*, 00 Civ. 2329 and 01 Civ. 2104 (RCL) (D.D.C); (6) *Levin v. Islamic Republic of Ir an*, 05 Civ. 2494 (GK) (D.D.C); (7) *Valore. et al. v. Islamic Republic of Iran, et al.*, 03 Civ. 1959 (RCL) (D.D.C); (8) *Bonk, et al. v. Islamic Republic of Iran et al.*, 08 Civ. 1273(RCL) (D.D.C); (9) *Estate of James Silvia, et al*., 06 Civ. 750 (RCL) (D.D.C); (10) *Estate of Anthony K. Brown, et al. v. Islamic Republic of Iran, et al*., 08 Civ. 531 (RCL) (D.D.C.); (11) *Estate of Stephen B. Bland v. Islamic Republic of Iran, et al*., 05 Civ. 2124 (RCL) (D.D.C); (12) *Judith Abasi Mwila, et al. v. Islamic Republic of Iran, et al.*, 08 Civ. 1377 (JDB) (D.DC.); (13) *James Owens, et al. v. Republic of Sudan, et al.*, 01 Civ. 2244 (JDB) (D.D.C.); (14) *Rizwan Khaliq, et al. v. Republic of Sudan, et al.*, 08 Civ. 1273 (JDB) (D.D.C.); (15) *Beer et al. v. Islamic Republic of Iran et al*., 08 Civ. 1807 (RCL) (D.D.C); (16) *Kirschenbaum et al. v. Islamic Republic of Iran et al*., 03 Civ. 1708 (RCL) (D.D.C); (17) *Arnold et al. v. Islamic Republic of Iran et al.*, 06 Civ. 516 (RCL) (D.D.C); and (18) *Murphy et al. v. Islamic Republic of Iran et al*., 06 Civ. 596 (RCL) (D.D.C).

[2] This Court denied reconsideration of its summary judgment order. The United States Court of Appeals for the Second Circuit affirmed, *Peterson v. Islamic Republic of Iran*, 758 F.3d 185 (2d Cir. 2014), and subsequently denied Bank Markazi's requests for panel rehearing and rehearing *en banc* on September 29, 2014. On October 29, 2014, however, the Second Circuit granted Bank Markazi's motion to stay the mandate. Bank Markazi filed a petition for certiorari with the U.S. Supreme Court on December 29, 2014. Petition for Certiorari, *Bank Markazi v. Deborah D. Peterson*, No. 14-770 (U.S. Dec. 29, 2014). That petition is currently pending. Because the mandate has been stayed, the partial judgment has not become a non-appealable sustained judgment, and the plaintiffs have not applied for an order authorizing distribution of

At around the same time that the victims' suits against the Bank of Markazi assets were proceeding, the U.S. government and the victims were also seeking civil forfeiture of real and other property owned by the 650 Fifth Avenue Company on the basis that 650 Fifth Avenue's partners were agents of the Iranian Government. This Court granted summary judgment to the government and the victims in opinions dated September 16, 2013 and April 18, 2014. *See In re 650 Fifth Ave. & Related Props*., No. 08 Civ. 10934 (KBF), 2014 WL 1516328, at *l–7 (S.D.N.Y. Apr. 18, 2014); *In re 650 Fifth Ave. & Related Props*., No. 08 Civ. 10934 (KBF), 2013 WL 5178677, at *6–16 (S.D.N.Y. Sept. 16, 2013). Those properties have not yet been sold, nor have any assets been distributed, and related litigation over the assets is ongoing.

This series of separate litigations brought on behalf of individuals and groups of victims of the Bombing has led to the current state of affairs: where some of Iran's victims stand to receive significant compensation for their losses, while others will receive nothing.

III. THE LIMITED FUND CLASS ACTION

Intervenors, John Relvas, John Kees, and Mark Boyd, are among the plaintiffs in *Relvas et al. v. Iran*, 1:14-cv-01752 (D.D.C. filed Oct. 20, 2014), a suit against Iran brought by more than 80 wounded American servicemembers, and relatives of servicemembers who were killed or wounded, in the 1983 bombing of the U.S. Marine barracks in Beirut, Lebanon. (Attached as Ex. 1).

In conjunction with their Motion to Intervene, Intervenors have attached a proposed class action complaint ("Class Suit") in this Court against the owners and possessors of Iranian assets that are located in the United States and subject to attachment by the victims of Iran-sponsored

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the funds in the QSF Account, the funds in the QSF Account have not been distributed and transferred to the control of the Peterson Plaintiffs.

terrorist attacks.[3] (Attached as Ex. 2). In the Class Suit, Intervenors seek to represent a class encompassing all of the victims of Iran-sponsored terrorist attacks. Intervenors further seek to establish that the assets that are the subject of *Peterson v. Islamic Republic of Iran*, 1:10-cv-0418-KBF (S.D.N.Y.), and *In re 650 Fifth Avenue and Related Properties*, No. 08 Civ. 10934(KBF) (S.D.N.Y.) constitute a limited fund. Because the total claims of the classmembers far exceed the value of the available Iranian assets, certification of a mandatory limited fund class is necessary and appropriate in order to ensure that all of Iran's victims are able to obtain compensation for their injuries and for the deaths of their loved ones.

A. Equity Mandates the Creation of "Limited Fund" For Iran's Victims

A limited fund class under Rule 23(b)(1)(B) is the only means for managing the *Peterson* and *In re 650 Fifth Avenue* cases equitably and efficiently. Under Rule 23(b)(1)(B), a limited fund class is appropriate when:

> prosecuting separate actions by or against individual class members would create a risk of . . . adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.

Fed. R. Civ. P. 23(b)(1)(B). The Supreme Court has recognized that, "[a]mong the varieties of suit traditionally encompassed by Rule 23(b)(1)(B) are those involving a 'limited fund,' in which numerous individual claims against an insufficient fund would impair the ability of all members of the class to protect their interests." *Williams v. Nat'l Sec. Ins. Co.*, 237 F.R.D. 685, 692 (M.D. Ala. 2006) (citing *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 834 (1999)).

[3] The Defendants include: Bank Markazi a/k/a Central Bank of Iran; Citibank, N.A.; Clearstream Banking, S.A.; Banca UBAE SpA; Alavi Foundation of New York; Assa Corporation; Assa Company Limited; and 650 Fifth Avenue Company.

"Under such circumstances, Rule 23(b)(1)(B) is designed to preserve the limited fund for the entire class against the individual claims of class members, which claims might otherwise exhaust the limited fund and thereby leave subsequent plaintiffs with no remedy." *Cnty. of Suffolk v. Long Island Lighting Co.*, 907 F.2d 1295, 1303 (2d Cir. 1990) (internal quotation marks and citations omitted). Certification of a limited class is used to prevent, as will otherwise have occurred here, an "unseemly race to the courtroom door with monetary prizes for a few winners and worthless judgments for the rest." *Coburn v. 4-R Corp.*, 77 F.R.D. 43, 45 (E.D. Ky. 1977).[4] A limited fund class action accomplishes this goal by "necessarily provid[ing] for mandatory participation by class members because allowing class members to opt out of the class and pursue individual claims would deplete the fund to the detriment of other class members." *Stott*, 277 F.R.D. at 326–27.[5]

Courts have noted that the creation of a "limited fund"—a concept that predates the Federal Rules of Civil Procedure—is mandated by equity when it is plain that the value of the claims to be asserted will exceed the value of the assets available for satisfying those claims. *See Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 836 (1999) ("As the Advisory Committee [on the Federal Rules] recognized in describing *Dickinson* [*v. Burnham*, 197 F.2d 973 (2d Cir. 1952)], equity *required* absent parties to be represented, joinder being impractical, where individual

[4] *See also In re Jackson Lockdown/MCO Case*, 107 F.R.D. 703, 712 (E.D. Mich. 1985) ("Rather than allowing the fund to be exhausted by litigation expenses and to precipitate unjust percentage recoveries to early arriving claimants, a 'non-opt out' settlement allows fair recovery of the limited fund by all claimants . . . . Where a limited fund exists in a particular litigation and the projected number of claims would exceed the amount of that fund, it is both equitable and reasonable that the mere fortuitousness of one party filing before another should not be the deciding factor in determining the availability of recompense.")

[5] *See also In re Am. Family Enterps.*, 256 B.R. 377, 416 (D. NJ. 2000) (declining to permit opt-outs); *In re Jackson Lockdown/MC Cases*, 107 F.R.D. 703, 709 (E.D. Mich. 1985) ("The 'limited fund' docrine has been applied or endorsed by many courts as the basis for mandatory certification").

claims to be satisfied from the one asset would, as a practical matter, prejudice the rights of absent claimants against a fund inadequate to pay them all." (emphasis added));[6] *Price v. Price*, 118 W. Va. 48 (1936) ("It is even said that no rule of equity appeals more to the conscience of a chancellor than that requiring an insufficient fund to be apportioned ratably among all its claimants. So it may be taken as settled that equity will assume jurisdiction when necessary to prevent unequal distribution of a limited fund." (internal citations omitted)); *Hallett v. Hallett*, 2 Paige 15, 21 (N.Y. 1829) ("[I]f by the answer of the defendant [in a creditors' or legatees' suit] it appears there will be a deficiency of assets so that all the creditors cannot be paid in full, or that there must be an abatement of the complainant's legacy, the court will make a decree for the general administration of the estate, and a distribution of the same among the several parties entitled thereto, agreeable to equity"); Pomeroy, *Equity Jurisprudence* § 407 (4th ed. 1918) ("[I]f the fund is not sufficient to discharge all claims upon it in full . . . equity will incline to regard all the demands as standing upon an equal footing, and will decree a pro rata distribution or payment").

B. The Claims of Iran's Victims Far Exceed the Value of Iran's Available Assets

The total claims of the classmembers far exceed the value of the available assets. At the time this motion was filed, courts have awarded judgments against Iran totaling $9,992,896,885.04 to the victims of the Beirut Marine Barracks Bombing alone.

By contrast, in the more than thirty years since the Marine Barracks Bombing, and after much effort by various counsel, the U.S. government and the victims of the Marine barracks attack and of other terrorist attack sponsored by Iran have only been able to locate two sets of

[6] *Id*. at 837 ("[I]n equity, legatee and creditor bills against the assets of a decedent's estate had to be brought on behalf of all similarly situated claimants where it was clear from the pleadings that the available portion of the estate could not satisfy the aggregate claims against it.").

attachable Iranian assets that they may use to satisfy their judgments. The first of these is $1.75 billion in cash proceeds of Iranian government bonds that had been held in New York by Citibank, N.A. in an omnibus account for Clearstream Banking, S.A. *See Peterson v. Islamic Republic of Iran*, 758 F.3d 185, 188 (2d Cir. 2014).[7] A second source of assets for the limited fund are assets formerly held by the 650 Fifth Avenue Company and its partners, the Alavi Foundation and Assa Corporation. *See generally In re 650 Fifth Ave.*, No. 08 CIV. 10934 KBF, 2014 WL 1516328 (S.D.N.Y. Apr. 18, 2014) (holding that Alavi Foundation and Assa Corporation are organs of the Iranian government). Among these assets, by far the most valuable is the 650 Fifth Avenue property, worth an estimated $500 to $700 million. Matt Chaban & Daniel Beekman, *A HIGH SEIZE: Feds Win OK to Take Fifth Ave. Tower Tied to Iran $*, N.Y. Daily News (Sept. 16, 2013).

It is unlikely that substantial additional, seizable Iranian assets are present in the United States. Although the Iranian government possesses substantial assets within its own borders, Iran's control over its own legal system renders those assets useless as a means for satisfying the class's claims. Accordingly, those assets do not affect the "limited" nature of the fund. *Cf. In re Black Farmers Discrimination Litig.*, 856 F. Supp. 2d 1, 18 (D.D.C. 2011) (rejecting the argument that funds allocated by the U.S. government to satisfy class claims could not constitute a limited fund because "the government is that unique defendant which has the legal authority to define the extent of its own liability").

C. The Claims of Iran's Victims Far Exceed the Value of Iran's Available Assets

[7] "Clearstream maintain[ed] this account [for] . . . Banca UBAE S.p.A., an Italian bank whose customer, in turn, is Bank Markazi." *Id.* at 188.

This Court can adopt a plan for distributing the Iranian assets that balances the interests of victims with preexisting judgments in receiving, without delay, their distribution of the Iranian assets with the interests that other victims have in securing just compensation from Iran.

For instance, as soon as the funds are capable of distribution, this Court could immediately turn over to those classmembers who have already obtained judgments a portion of the funds equivalent to their estimated percentage of the overall class claims. This estimate could be based on: (1) government records and other publicly available information concerning the identities of Iran's victims; (2) public records showing the judgments already obtained by the victims of Iran-sponsored attacks; and (3) previously articulated damages formula adopted in prior suits by the victims of Iran-sponsored terrorism. By distributing these funds to claimants with preexisting judgments at the soonest practicable date, the plan would avoid prejudicing those claimants who have already waited far too long to obtain justice from those responsible for the Beirut tragedy.

After a class is certified, class counsel could provide notice to the remaining members of the class who have not yet obtained judgments, informing them of the class certification and the availability of the limited fund, and requiring them to indicate to class counsel by a court-approved deadline of their intention to seek judgments so that they may be eligible to receive a distribution from the limited fund. *See* Rule 23(c)(2)(A) (providing that, "[f]or any class certified under Rule 23(b)(1) or (b)(2), the court may direct appropriate notice to the class"). After the class notice deadline has passed, and the remaining classmembers have obtained judgments, the balance of the fund could be distributed on a pro rata basis to the remaining class members. If the fund balance is sufficient, the original claimants with preexisting judgments

might receive a second distribution such that all members of the class have received distributions on an actual pro rata basis.

IV. INTERVENORS' MOTION TO INTERVENE SHOULD BE GRANTED

A. Intervenors Should Be Permitted to Intervene as of Right in this Litigation

In order to protect the limited fund on behalf of all members of the class, Intervenors seek to intervene as of right as plaintiffs in this action. If their intervention motion is granted, Intervenors will move to distribute the funds in a manner that is consistent with the distribution plan proposed herein and subsequently filed class certification motion.

A request to intervene as of right under Rule 24(a)(2) must be granted when an applicant: "(1) files a timely motion; (2) asserts an interest relating to the property or transaction that is the subject of the action; (3) is so situated that without intervention the disposition of the action may, as a practical matter, impair or impede its ability to protect its interest; and (4) has an interest not adequately represented by the other parties." *United States v. Pitney Bowes, Inc.*, 25 F.3d 66, 70 (2d Cir. 1994).

"Motions to intervene are highly fact-specific and tend to resist comparison to prior cases." *Floyd v. City of New York*, 302 F.R.D. 69, 83 (S.D.N.Y. 2014), *aff'd in part, appeal dismissed in part*, 770 F.3d 1051 (2d Cir. 2014) (citing *Bay Casino, LLC v. M/V Royal Empress*, 199 F.R.D. 464, 466 (E.D.N.Y. 1999)). In deciding whether an applicant possesses a right to intervene, "courts are guided by practical and equitable considerations in an effort to balance 'efficiently administrating legal disputes by resolving all related issues in one lawsuit, on the one hand, and keeping a single lawsuit from becoming unnecessarily complex, unwieldy or prolonged, on the other hand.'" *Floyd*, 302 F.R.D. at 83 (quoting *Pitney Bowes*, 25 F.3d at 69).

In this case, those equitable considerations counsel strongly in favor of granting Intervenors's request to intervene as of right.

1. Intervenors Have a Substantial Interest in the Distribution of the Funds Subject to this Litigation and that Interest Would Be Impaired Were Their Intervention Motion Denied

"The right of intervention conferred by Rule 24 implements the basic jurisprudential assumption that the interest of justice is best served when all parties with a real stake in a controversy are afforded an opportunity to be heard." *Hodgson v. United Mine Workers of Am.*, 473 F.2d 118, 130 (D.C. Cir. 1972). An applicant possesses an interest sufficient to intervene by right if that interest is "direct, substantial, and legally protectable." *Bridgeport Guardians, Inc. v. Delmonte*, 602 F.3d 469, 473 (2d Cir. 2010) (internal quotation marks and citation omitted). Nevertheless, Rule 24's "interest test is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *Cnty. of Fresno v. Andrus*, 622 F.2d 436, 438 (9th Cir. 1980) (internal quotation marks and citation omitted). Accordingly, an applicant's interest in intervention is sufficient, for instance, "when the intervenor claims an identifiable interest in funds that are the subject of litigation." 7C Charles Alan Wright *et al.*, *Federal Practice & Procedure* § 1908.1 (3d ed. 2014). Rule 24's impairment requirement is similarly based on "the practical disadvantage suffered, and does not require the would-be intervenor to go so far as to show that res judicata *principles* would affect any later suit they might bring." *Allco Fin. Ltd. v. Etsy*, 300 F.R.D. 83, 87 (D. Conn. 2014) (internal quotation marks and citation omitted).[8]

[8] "In *Restor–A–Dent Dental Lab., Inc.*, [725 F.2d 871, 874 (2d Cir. 1984),] the [Second Circuit] concluded that the 1966 amendments to Fed. R. Civ. P. 24(a) were intended to expand the right to intervene beyond those situations where the proposed intervenor 'is or may be bound by a judgment in the action' or where the 'applicant is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof.'" *Commack Self-Serv. Kosher Meats, Inc. v. Rubin*, 170 F.R.D. 93, 100 (E.D.N.Y. 1996) (quoting

Intervenors have a direct, substantial, and legally protectable interest in the bank assets held on behalf of Bank Markazi, the Central Bank of Iran. Intervenors consist of American servicemembers who were wounded in the 1983 Beirut Marine Barracks attack and the families and estates of servicemembers who were killed or wounded. Intervenors are among a group of plaintiffs asserting damages claims against Iran under § 1605A of the Foreign Sovereign Immunities Act ("FSIA"). Once a default judgment is entered, Intervenors will register, record, and execute that judgment and will be in a position to move in this court for turnover of the restrained assets under the FSIA, 28 U.S.C. §§ 1603, 1605A, 1606, 1610, and the Terrorism Risk Insurance Act of 2002 ("TRIA"), Pub. L. No. 107–297, 116 Stat. 2322 § 201(a) (2002). Additionally, as discussed above, Intervenors seek to file a limited fund class action suit on behalf of themselves and all other similarly situated individuals. The bank assets held on behalf of the Bank of Markazi are one of two sets of asset pools that constitute the limited fund identified in the class action suit.

Although Intervenors have not yet obtained a judgment on their individual claims against Iran, courts recognize that applicants asserting an interest in assets arising out of claims in pending litigation have a sufficient interest to justify intervention in a separate suit involving the distribution of those assets. In *Mountain Top Condo. Ass'n v. Dave Stabbert Master Builder, Inc.*, 72 F.3d 361, 366 (3d Cir. 1995), for instance, the Third Circuit held that condominium owners possessed a sufficient interest to justify intervention in their condominium association's suit against construction contractors after the association deposited the remainder of hurricane damage insurance proceeds in a court registry in return for the release of a construction lien. The

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original Fed. R. Civ. P. 24(a)(2) and (3)). After the 1966 amendments, an applicant need only show that she "would be substantially affected in a practical sense by the determination made in an action." Fed. R. Civ. P. 24 advisory committee's note, 1966 Amendment, Federal Civil Judicial Procedure and Rules, at 104.

owners had filed a separate suit against the association for improperly managing the distribution of the same insurance proceeds that the association had deposited in the *Mountain Top Condo* court's registry. The owners sought to intervene in *Mountain Top Condo* to protect against the risk that the association would settle that suit by paying the contractors the entirety of the insurance proceeds, thereby preventing the owners from satisfying a potential favorable judgment in their suit against the association. The Third Circuit explained that, despite the fact that the owners had not yet obtained a judgment in their suit against the association, "an intervenor's interest in a specific fund is sufficient to entitle intervention in a case affecting that fund." *Id*. at 366.[9]

As in *Mountain Top Condo*, Intervenors have filed a separate suit—their action in the District Court for the District of Columbia—asserting an interest in the very same funds that are at issue in the suit in which they now seek to intervene. This court should adopt the logic of the Third Circuit and find that Intervenors possess a sufficient interest to intervene as of right.

[9] *See also Purnell v. City of Akron*, 925 F.2d 941, 945–48 (6th Cir. 1991) (holding that the alleged children of a man killed by police had a sufficient interest to intervene in a survival action asserting excessive force claims even though paternity had not yet been determined by the probate court); *Sun Const. Co. v. Torix Gen. Contractors, LLC*, No. 07-CV-01355-LTB, 2007 WL 4178505, at *4 (D. Colo. Nov. 26, 2007) ("When an intervenor and a party both have an interest in the same limited source of funds, this sufficiently shows competing interests such that intervention of right should be allowed."); *In re Discovery Zone Sec. Litig.*, 181 F.R.D. 582, 594 (N.D. Ill. 1998) (holding that there was a right to intervene when necessary to protect the intervenor's "pro rata interest in . . . insurance and settlement funds" if those funds are "the only means of satisfying any settlement or judgment"); *SEC v. Navin*, 166 F.R.D. 435 (N.D. Cal. 1995) (holding that corporate investors had a right to intervene in a securities fraud suit brought by the SEC where the investors stood to lose most of their investment if the receiver liquidated the assets); *cf. Blount-Hill v. Ohio*, 244 F.R.D. 399, 402 (S.D. Ohio 2005), *aff'd sub nom. Blount-Hill v. Bd. of Educ. of Ohio*, 195 F. App'x 482 (6th Cir. 2006) (holding that a management firm had a right to intervene in a suit challenging the constitutionality of a state's method for funding community schools where the firm's sole funding source was derived from contracts with community schools).

Moreover, Intervenors' interest in the limited funds would be significantly impaired were their intervention motion denied. As discussed above, the total value of the claims against Iran arising from its role in the Marine Barracks Bombing far exceeds the value of the available collectible assets. At the time this motion was filed, courts have awarded nearly $10 billion in judgments against Iran to the victims of the Bombing alone. By contrast, in the more than thirty years since the Bombing, and after much effort by various counsel, Iran's victims have only been able to locate two sets of attachable Iranian assets that they may use to satisfy their judgments. The value of those assets—the Bank of Markazi funds at issue in this case and the assets formerly held by the 650 Fifth Avenue Company and its partners, the Alavi Foundation and Assa Corporation—are unlikely to exceed $3 billion in the aggregate. Accordingly, denying Intervenors' motion, and distributing Iran's assets in their absence, would impair their ability both to maintain their D.D.C. suit and to achieve redress—through any mechanism—for the injuries they and their loved ones suffered at the hands of Iran. *See Peterson v. Islamic Republic of Iran*, 290 F.R.D. 54, 57 (S.D.N.Y. 2013) ("[I]t is undisputed that disposition of this action in the absence of Intervenors would harm their interests, and that the existing plaintiffs do not adequately represent those interests—in fact, plaintiffs wish to seize the same set of assets.").[10]

Intervenors have shown that Rule 24(a)'s impairment prong is satisfied.

2. Intervenors' Interests Are Not Adequately Represented by the Existing Parties

Although the burden to demonstrate the inadequacy of representation of interests is on the intervenor, that burden is minimal and not onerous. *Hoblock v. Albany Cnty. Bd. of*

[10] Intervenors' "standing," as distinct from Rule 24's interest requirement, is irrelevant to the issue of whether they possess a right to intervene. "[A] party seeking to intervene need not possess the standing necessary to initiate a lawsuit." *Purnell v. City of Akron*, 925 F.2d 941, 948 (6th Cir. 1991); *see also Brennan*, 579 F.2d at 190 (holding that because the existence of a case or controversy had been established between the original plaintiff and defendant, there was no need to impose a standing requirement on the would-be intervenor).

Elections, 233 F.R.D. 95, 99 (N.D.N.Y. 2005); *see also U.S. Postal Serv. v. Brennan*, 579 F.2d 188, 191 (2d Cir. 1978). In determining whether a proposed intervenor's interest is being adequately represented by existing parties, courts in this Circuit often look to whether there is evidence of "(1) collusion; (2) adversity of interest; (3) possible nonfeasance; or (4) incompetence." *Dorsett v. Cnty. of Nassau*, 283 F.R.D. 85, 93 (E.D.N.Y. 2012) (internal quotation marks and citation omitted); *see also British Airways Bd. v. Port Auth. of N.Y. & N.J.*, 71 F.R.D. 583, 585 (S.D.N.Y. 1976).

Intervenors' interests are not adequately represented by the existing parties to the suit. The existing parties seek to further their individual interests in recovery. Given the limited funds available, those efforts necessarily come at the expense of other victims of the Iran-sponsored terrorism. By contrast, Intervenors are pursuing a fair and equitable distribution of Iranian assets that ensures that all of Iran's victims are compensated for their injuries. This court should conclude that because an "adversity of interests" exists between Intervenors and the existing parties, Intervenors have adequately demonstrated that they are not adequately represented in this litigation.

3. The Motion to Intervene is Timely

Although an intervention as of right is generally mandatory if its requirements are satisfied, "the determination of the timeliness of a motion to intervene is within the discretion of the district court." *Farmland Dairies v. Comm'r of the N.Y. State Dep't of Agric. & Mkts.*, 847 F.2d 1038, 1043–44 (2d Cir. 1988); *see also In re Holocaust Victim Assets Litig.*, 225 F.3d 191, 198 (2d Cir. 2000) ("A district court has broad discretion in assessing the timeliness of a motion to intervene, which defies precise definition." (internal quotation marks and citation omitted)). The timeliness requirement "is flexible," *United States v. Yonkers Bd. of Educ.*, 801 F.2d 593, 594–95 (2d Cir. 1986), and should be determined "from all the circumstances," *Pitney Bowes*, 25

F.3d at 70. Accordingly, a district court "must not consider merely the length of time the litigation or proceeding has been pending." *Yonkers Bd. of Educ.*, 801 F.2d at 594–95; *see also Cook v. Bates*, 92 F.R.D. 119, 122 (S.D.N.Y. 1981) ("While an application for intervention of right must be 'timely' . . . . [, i]n the absence of prejudice to the opposing party, even significant tardiness will not foreclose intervention."). "Since in situations in which intervention as of right the would-be intervenor may be seriously harmed if intervention is denied, courts should be reluctant to dismiss such a request for intervention as untimely, even though they might deny the request if the intervention were merely permissive." Wright *et al.*, 7C Fed. Prac. & Proc. Civ. at § 1916.

To assist trial courts in determining the timeliness of a motion to intervene, the Second Circuit has developed the following four nonexclusive factors that courts should consider: "(1) how long the applicant had notice of the interest before [he] made the motion to intervene; (2) prejudice to existing parties resulting from any delay; (3) prejudice to the applicant if the motion is denied; and (4) any unusual circumstances militating for or against a finding of timeliness." *D'Amato v. Deutsche Bank*, 236 F.3d 78, 84 (2d Cir. 2001) (internal quotation marks and citation omitted). Of these four factors, "the most significant criterion in determining timeliness is whether the delay in moving for intervention has prejudiced any of the existing parties." *Hartford Fire Ins. Co. v. Mitlof*, 193 F.R.D. 154, 160 (S.D.N.Y. 2000) (internal quotation marks and citation omitted).

a. The Denial of Intervenors' Motion Would Substantially Prejudice them by Permanently Barring Intervenors from Recovering Against Iran for their Injuries and the Deaths of Their Loves Ones

Intervenors would suffer substantial prejudice if their motion to intervene is denied. As discussed above, the total value of the actual and potential claims against Iran for its participation

in and support for acts of terrorism far exceeds the value of collectible Iranian assets, and it is unlikely that additional collectible Iranian assets will become available in the future. Accordingly, if this Court were to deny Intervenors' motion to intervene, this Court would likely forever deny justice to many victims of Iranian terrorism.

b. Granting Intervenors' Motion Would Not Prejudice the Existing Parties

In contrast to the substantial prejudice that Intervenors would suffer if their motion to intervene were denied, if the motion to intervene is granted, any prejudice to the existing parties would be minimal. As addressed above, Intervenors seek, in their class action suit, to distribute the Iranian funds based on the actual and estimated pro rata shares of the classmembers' claims using a process that seeks to minimize conflicts between and prejudice to the classmembers. Under this proposal, this Court could ensure that as soon as the funds at issue in this suit are capable of distribution, a portion of those funds (equivalent to their estimated percentage of the overall class claims) would be turned over immediately to those classmembers who have already obtained judgments. By distributing these funds to claimants with preexisting judgments at the soonest practicable date, this plan avoids prejudicing those claimants.

c. Unusual Circumstances Present in This Case Counsel Granting Intervenors' Motion to Intervene

The strength of the equities at issue here constitutes an unusual circumstance that weighs strongly in favor of granting Intervenors' motion to intervene as of right. *See Dow Jones & Co. v. U.S. Dep't of Justice*, 161 F.R.D. 247, 253 (S.D.N.Y. 1995) (holding that "unusual circumstances" justified granting a motion by a widow to intervene as of right in a Freedom of Information Act case seeking to compel disclosure of her husband's suicide note due to the amount of pain that such a disclosure would cause their family). Denying the motion to

intervene is likely tantamount to permanently denying many of Iran's victims compensation for injuries to themselves and for injuries to and deaths of their loved ones. Moreover, granting the motion to intervene serves an important public policy function by signaling that, in cases like this one, compensation should be allocated equitably to terrorism victims and should not be determined by a race to the courthouse.

d. The Amount of Time that Has Passed Since This Suit Was Filed Is Not an Adequate Basis For Denying Intervention

The amount of prejudice that Intervenors would suffer if their motion to intervene were denied, and the strength of the equities at issue, is sufficient to overcome any delay that might weigh against granting the motion to intervene. Although intervention after liability has been adjudged is generally disfavored, *see Farmland Dairies*, 847 F.2d at 1044,[11] there is no absolute legal bar to post-judgment intervention, *see Spirt v. Teachers Ins. & Annuity Ass'n*, 93 F.R.D. 627, 637 (S.D.N.Y.), a*ff'd in part, rev'd in part on other grounds*, 691 F.2d 1054 (2d Cir. 1982), *vacated on other grounds*, 463 U.S. 1223 (1983) ("[I]t is beyond peradventure that post-judgment intervention motions are, in certain circumstances 'timely'").

Indeed, numerous courts, including in this Circuit, have granted post-judgment motions to intervene as of right when the other relevant factors weighed in favor of intervention. *See, e.g.*, *Atl. Mut. Ins. Co. v. Nw. Airlines, Inc.*, 24 F.3d 958, 960 (7th Cir. 1994) ("We may assume that settlement of litigation by the original parties is not conclusive if a third party possessing an interest in 'the property or transaction which is the subject of the action' has been excluded from the negotiations. Intervention permits such an entity to prevent the original litigants from bargaining away its interests. If they beat the intervenor to the punch, the court may annul the settlement in order to give all interested persons adequate opportunity to participate in the

[11] *See also Yonkers Bd. of Educ.*, 801 F.2d at 596; *Floyd*, 302 F.R.D. at 84.

negotiations and proceedings."); *Fleming v. Citizens for Albemarle, Inc*., 577 F.2d 236, 238 (4th Cir. 1978) (holding that an "effort at intervention [by two citizen groups] in the circumstances was not precluded . . . because their motion was not made until after a final decree had been entered," where property owners feared that planned community would endanger the purity and potability of reservoir water); *Hurd v. Illinois Bell Tel. Co*., 234 F.2d 942, 944 (7th Cir. 1956) ("[A]lthough intervention after judgment is not to be lightly permitted[,] this cause is so fraught with elements of possible prejudice to petitioner and other pensioners similarly situated, that we, in the exercise of a sound discretion[,] conclude that our order permitting petitioner to intervene should be allowed to stand."); *Cuthill v. Ortman-Miller Mach. Co*., 216 F.2d 336, 338 (7th Cir. 1954) (permitting a stockholder's post-judgment motion to intervene where a corporation's officials and its counsel knew that the corporation owed the employee nothing and wrongfully failed to defend his suit, the corporation deliberately concealed its valid defense from the trial court, and, as a result of collusion with an employee, a fraudulent judgment was entered and corporate funds deposited with the court to satisfy it); *Pellegrino v. Nesbit*, 203 F.2d 463, 465 (9th Cir. 1953) ("Intervention should be allowed even after a final judgment where it is necessary to preserve some right which cannot otherwise be protected."); *United States v. Hooker Chems. & Plastics Corp*., 540 F. Supp. 1067, 1082 (W.D.N.Y. 1982) (noting that the court granted a motion to intervene "filed within two months after [a] consent decree was lodged with the court" in order for the intervenor "to contest the validity of the consent decree, to challenge the settlement, and to present the citizens' objection to the consent decree").

Indeed, in *McDonald v. E. J. Lavino Co*., 430 F.2d 1065, 1074 (5th Cir. 1970), the Fifth Circuit cautioned that "the requirement of timeliness is [not] a tool of retribution which can be used to punish a would-be intervenor for allowing time to pass before moving to intervene" and

that the intervention device must have the "accommodating flexibility" necessary for it to be "employed to regulate intervention in the interest of justice." At issue in *McDonald* was an insurance company's motion to intervene, after a judgment was entered but before the funds at issue in the suit were distributed, in order to protect its subrogation interest in those funds. In reversing the district court's denial of the intervention motion, the Fifth Circuit explained that a court should focus *not* on the extent to which a proposed intervenor delayed in filing a motion but on "whether any existing party to the litigation will be harmed or prejudiced by the proposed intervenor's delay in moving to intervene." *Id*. at 1073. The Fifth Circuit went so far as to say that prejudice "may well be the only significant consideration when the proposed intervenor seeks intervention of right." *Id*.; *see also Meyer v. Macmillan Pub. Co*., 85 F.R.D. 149, 150–51 (S.D.N.Y. 1980) (permitting intervention by the EEOC in a sex-discrimination suit, even though it did not seek to intervene until five years after the original complaint was filed with that agency and a year and a half after the federal complaint was filed, because the defendant failed to show any prejudice to its position resulting from the delay).

The Second Circuit's decision in *In re Holocaust Victim Assets Litigation* is not to the contrary. 225 F.3d at 199. In that case, the Second Circuit denied a motion to intervene as of right after a settlement agreement was reached between a class of Holocaust victims and a group of Swiss banks over, among other things, the banks' complicity in the Nazi expropriation of Jewish assets immediately before and during the Holocaust. *Id*. at 198–99. In contrast, in this case, the plan for distributing funds is not based on a settlement agreement between the existing plaintiffs and Bank of Markazi. Accordingly, there is no risk that granting intervention here would diminish the existing plaintiffs' chances of recovery. Moreover, in the *Holocaust Victim* case, both the district court and the Second Circuit emphasized that the group seeking

intervention would not be prejudiced by a denial of their motion because they "remain[ed] free to file a separate action." *Id*. at 199. Here, however, Intervenors would unquestionably be prejudiced by a denial of their motion to intervene because the funds available to satisfy their claims against Iran are limited and would be entirely depleted if distributed under the current arrangement.[12]

Moreover, the Second Circuit has stated that the requirements for intervention of right "must be examined in the context of the statutory scheme under which the underlying litigation is being pursued." *Pitney Bowes*, 25 F.3d at 72. Among Congress's primary goals in creating the terrorism exception to the FSIA was to provide an avenue for the victims of state-sponsored terrorism to obtain relief in the form of damages from terrorist states. *See* H.R. Rep. No. 104-383, at 62 (1995) (explaining that the growth of state-sponsors of terror justified "allowing suits in the federal courts against countries responsible for terrorist acts where Americans and/or their loved ones suffer injury or death at the hands of the terrorist states" and that the terrorism exception to the FSIA would "give American citizens an important economic and financial

[12] *Pitney Bowes*, is distinguishable on identical grounds. 25 F.3d at 72–73 (denying a motion to intervene as of right in an environmental lawsuit by a holder of a mortgage on property located within a Superfund site, in part, because permitting intervention would "jeopardize[e] a settlement agreement" and, additionally, due to the mortgage holder's failure to sufficiently show that it would be prejudiced absent intervention); *see also D'Amato*, 236 F.3d at 84; *Farmland Dairies*, 847 F.2d at 1044 (both denying intervention on similar grounds).

Nor is there great risk that granting Intervenors' motion to intervene would jeopardize the ability of the Court and the existing parties to reach a final resolution of the distribution of the funds by encouraging "waves" of additional intervenors. *Yonkers Bd. of Educ*., 801 F.2d at 596. As discussed above, Intervenors have filed a limited fund class action in which they seek to represent *all* of the victims Iran-sponsored terrorism. As a result, Intervenors' motion to intervene does not implicate the Court's previously stated concern about opening up the floodgates to additional intervenors. *See Peterson*, 290 F.R.D. 54 at 59 (cautioning that its decision granting a motion to intervene "should not give undue encouragement to other nonparty judgment creditors").

weapon against these outlaw states"). Granting Intervenors' intervention motion furthers that goal by permitting all of Iran's victims, rather than just a fortunate few, to obtain compensation.

Finally, punishing Intervenors for delay would be particularly inappropriate here. Intervenors were not aware until very recently about the pending litigation against Iran for its sponsorship of terrorist attacks and never received any notice from the military or any court about the ongoing litigation. Indeed, even today, it is likely that many of Iran's other victims continue to be in the dark about the possibility of obtaining justice from Iran.

Accordingly, Intervenors' motion to intervene as of right should be granted.

B. Permissive Intervention

Even if this court denies Intervenors' motion to intervene as of right under Rule 24(a), it should grant their request for permissive intervention pursuant to Rule 24(b). Permissive intervention may be granted when an intervenor "has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b). In analyzing Rule 24(b)(1), "the words claim or defense are not to be read in a technical sense, but only require some interest on the part of the applicant." *Dow Jones*, 161 F.R.D. at 254. A district court has "broad discretion" in deciding whether to grant permissive intervention. *N.Y. News, Inc. v. Kheel*, 972 F.2d 482, 487 (2d Cir. 1992). "The principal guide in deciding whether to grant permissive intervention is 'whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.'" *Pitney Bowes*, 25 F.3d at 73 (quoting former Fed. R. Civ. P. 24(b)(2)).

Permissive intervention is warranted here because Intervenors seek to execute judgments against the same funds, arising out of the same events, and based on the same claims as the existing plaintiffs. Moreover, as previously explained, Intervenors' intervention motion is

timely. Accordingly, if this court denies Intervenors' request to intervene as of right, it should nonetheless grant their request for permissive intervention.

V. CONCLUSION

For the reasons stated above, this Court should grant Intervenors' motion to intervene.

March 11, 2015

Respectfully submitted,

BY: /s/ Douglas J. McNamara

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CERTIFICATE OF SERVICE

I hereby certify that on March 11, 2015, I electronically filed the foregoing with the Clerk of the Court using the ECF system, which in turn sent notice to all counsel of record who are registered with that system.

/s/ *Douglas J. McNamara*

Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN RELVAS; **ESTATE OF RUI RELVAS; ESTATE OF JOAO RELVAS; ANTONIO RELVAS**; **JOSEFINA RELVAS,** Individually and as Representative of the Estate of Rui Relvas and the Estate of Joao Relvas; **SAMUEL F. SPEARING**; **ESTATE OF JOHN SPEARING; LOIS SPEARING**; **RICHARD M. SPEARING**, Individually and as Representative of the Estate of John Spearing; **ESTATE OF CHARLES R. RAY**; **ESTATE OF LUCIAN E. RAY, JR.**; **AKIKO RAY**, Individually and as Representative of the Estate of Charles R. Ray; **ESTATE OF JUNE L. RAY**; **DOROTHY WAGNER**, Individually and as Representative of the Estate of Lucian E. Ray, Jr. and the Estate of June L. Ray; **ESTATE OF FREDDIE HALTIWANGER**; **ESTATE OF MARY M. HALTIWANGER**; **ESTATE OF FREDDIE L. HALTIWANGER**; **SHIRLEY MITCHELL**, Individually and as Representative of the Estate of Freddie Haltiwanger, the Estate of Freddie L. Haltiwanger, and the Estate of Mary M. Haltiwanger; **ESTATE OF MARION KEES**; **ESTATE OF MARIAN KEES**; **ESTATE OF HARVEY KEES**; **JOHN L. KEES**, Individually and as Representative of the Estate of Marion Kees, Estate of Marian Kees, and Estate of Harvey Kees; **ESTATE OF LYNDON HUE**; **ESTATE OF ELAINE HUE**; **ESTATE OF JARRETT HUE**; **WILTON HUE JR.**; **DONNA MYERS**; **MYRA HAYNES**; **BRETT HUE**; **TINA HAMILTON**; **JILL STOLTZ**, Individually and as Representative of the Estate of Elaine Hue and the Estate of Jarrett Hue; **WILTON HUE**, Individually and as Representative of the Estate of Lyndon Hue; **ESTATE OF MARCUS COLEMAN**; **ESTATE OF KENNETH COLEMAN**; **ESTATE OF DOROTHY COLEMAN**; **MARSHA TURNER**; **MICHAEL COLEMAN**,

Civil Action No. 1:14-cv-01752-RCL

Judge: Royce C. Lamberth

Individually and as Representative of the Estate of Marcus Coleman, Estate of Kenneth Coleman, and Estate of Dorothy Coleman; **SHERYL WESTERVELT**; **ESTATE OF DAVID BOUSUM**; **ESTATE OF JOANNA BOUSUM**; **GERALD BOUSUM**, Individually and as Representative of the Estate of David Bousum and the Estate of Joanna Bousum; **ESTATE OF KEVIN CUSTARD**; **MICHAEL ALLEN CUSTARD**; **ESTATE OF LORRAINE ENGSTROM**; **YVONNE CUSTARD**; **TERRI REA**; **CHYRISSE SHERMOCK**, Individually and as Representative of the Estate of Kevin Custard and the Estate of Lorraine Engstrom; **ESTATE OF RICHARD BARRETT**; **ESTATE OF JAMES BARRETT**; **JAMES A. BARRETT, JR.**; **SUE BARRETT**; **STEPHANIE BARRETT ELKINS**, Individually and as Representative of the Estates of Richard Barrett and James Barrett; **WILLIAM FAULK**; **BRADLEY GROSS**; **MARK BOYD; ANNETTE BOYD**; **TIMOTHY WHITFIELD**; **JEFF WHITFIELD**; **GARY WHITFIELD**; **NEIL WHITFIELD**; **JIMMY WHITFIELD**; **MARIANNE SCHAFFER**; **SCOTT SMITH**; **JEFFREY KULP; LEO MORA**; **DARRELL SILER**; **CARIE MCCORMACK**; **BENJAMIN FOSS; PATSY FOSS**; **BRUCE COCHRAN**; **JOHN IJAMES**; **ROSS MORRISON**; **BRIAN ZEBROWSKI**; **EDWARD MCCARRON, JR.**; **TIMOTHY J. KUEHNE**; **GREG SIMMONS**; **AL DUNCAN; ESTATE OF CLEMON ALEXANDER; ROCHELLE ALEXANDER**, Individually and as Representative of the Estate of Clemon Alexander; **CLARENCE ALEXANDER**; **MIJANOU ALEXANDER**; **CYNTHIA ALEXANDER SCHWARTZ**; **ESTATE OF WINFRED B. ALEXANDER**; **MURIEL KWEYAMA**. Individually and as Representative of the Estate of Winfred B. Alexander; **CHARLES DALLACHIE**; and **GERALD SHANLEY,**

Plaintiffs,

v.

THE ISLAMIC REPUBLIC OF IRAN
Ministry of Foreign Affairs
Khomeini Avenue
United Nations Street
Tehran, Iran

AND

THE IRANIAN MINISTRY OF INFORMATION AND SECURITY
Pasdaran Avenue
Golestan Yekom
Tehran, Iran,

Defendants.

FIRST AMENDED COMPLAINT

COME NOW Plaintiffs in the above-styled action file this First Amended Complaint against Defendants the Islamic Republic of Iran and the Iranian Ministry of Information and Security, showing as follows:

I. INTRODUCTION

1. This action is brought by Plaintiffs, John Relvas, *et al*., through counsel, against the Islamic Republic of Iran and the Iranian Ministry of Information and Security for orchestrating the October 23, 1983 suicide bombing of the U.S. Marine barracks in Beirut, Lebanon. The bombing, which killed 241 American servicemembers and injured numerous others, was the deadliest state-sponsored terrorist attack against American citizens prior to September 11, 2001. Plaintiffs are American servicemembers who were wounded in the attack and the families and estates of servicemembers who were killed or wounded.

2. Although billions of dollars of Iranian assets have been confiscated, not all victims of the attack stand to receive compensation. It is unlikely that substantial additional, seizable Iranian assets will be located in the United States. This means that, despite their common sacrifice, some injured servicemembers and families stand to receive millions of dollars in compensation, while many others are unlikely to receive any.

II. JURISDICTION AND VENUE

3. This Court exercises both subject matter jurisdiction and personal jurisdiction over the Islamic Republic of Iran ("Iran") and the Iranian Ministry of Information and Security ("MOIS") (collectively, "Defendants") in accordance with the Foreign Sovereign Immunities Act ("FSIA").

4. The FSIA grants U.S. district courts "original jurisdiction without regard to amount in controversy of any nonjury civil action against a foreign state . . . as to any claim for relief in personam with respect to which the foreign state is not entitled to immunity." 28 U.S.C. § 1330. Iran is a foreign state and MOIS is an agency or instrumentality of a foreign state under 28 U.S.C. § 1603(b). Plaintiffs seek relief against Defendants in personam through a nonjury civil action.

5. Defendants are not immune from the jurisdiction of U.S. courts because, pursuant to 28 U.S.C. § 1605A(a)(1), Plaintiffs seek money damages against Defendants for committing acts of extrajudicial killing, and providing material support for such acts, which were engaged in by Defendants' officials, employees, and agents while acting within the scope of their office, employment, or agency.

6. Because the acts complained of occurred in Lebanon, Plaintiffs need not afford Defendants "a reasonable opportunity to arbitrate the claim in accordance with the accepted international rules of arbitration," pursuant to 28 U.S.C. § 1605A(a)(2)(A)(iii).

7. Venue in this Court is proper in accordance with the provisions of 28 U.S.C. § 1391(f)(4), which provides, in pertinent part, that a civil action against a foreign state may be brought in the United States District Court for the District of Columbia.

III. THE PARTIES

8. The named Plaintiffs in this action consist entirely of members of the United States Marine Corps, the United States Navy, and the United States Army; their heirs at law and legatees; and their immediate family members, all of whom are qualified as claimants in accordance with 28 U.S.C. § 1605A(a)(ii), who suffered physical and/or emotional injuries as a result of the terrorist attack upon the United States Marine Corps, Battalion 1/8, Headquarters Building of the 24th Marine Amphibious Unit in Beirut, Lebanon on October 23, 1983. Members of the United States Marine Corps were assigned to the 24th Amphibious Unit. Members of the United States Navy and United States Army were present at the site of the occurrence in support of the 24th Amphibious Unit, either on a regularly assigned basis or temporarily, including on October 23, 1983.

9. Defendant Iran is a foreign state which was, as a result of the acts hereinafter complained of, and is to the present, designated as a state sponsor of terrorism in 49 FED. REG. 2836, Jan 23, 1984, pursuant to Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. app. 2405(j)).

10. Defendant MOIS is an agency of Defendant Iran whose activities included, at all times relevant to this action, the promotion of terrorist acts directed against the armed forces of

the United States and United States citizens, by and through material support to various terrorist organizations including the Lebanese terrorist organization known as "Hezbollah." In addition, a member of the Iranian Revolutionary Guard was utilized to drive the truck which crashed into the Marine barracks in Beirut, Lebanon on October 23, 1983 and detonated, inflicting personal injury and the death of 241 American servicemembers.

IV. STATEMENT OF FACTS

11. The Republic of Lebanon is a mountainous country bordered by Israel, Syria, and the eastern shore of the Mediterranean Sea. At the time of the 1983 bombing of the Marine barracks, and still today, Lebanon was inhabited by members of a diverse set of religious faiths, including Maronite and Greek Orthodox Christians, Sunni and Shia Muslims, and others.

12. Lebanon did not participate militarily in the 1967 and 1973 Arab-Israeli wars. By 1973, however, approximately one out of every ten persons living in Lebanon was a Palestinian refugee, many of whom supported the efforts of the Palestine Liberation Organization ("PLO") against Israel. Some of these refugees engaged in guerilla warfare and terrorist activity against Israel from bases established in southern Lebanon. Beginning in 1968, Israel engaged in reprisals against these Palestinian strongholds. In 1975, civil war broke out in Lebanon between, on the one hand, Lebanese Muslims and Palestinian refugees, who generally supported the PLO, and on the other, Lebanese Christians, who did not support the PLO. The war lasted for fifteen years, during which approximately twenty thousand Lebanese were killed and many others wounded.

13. In 1979, the Shah of Iran was deposed, and the nation of Iran was transformed into an Islamic theocracy, led by the Ayatollah Ruhollah Khomeini. The new government quickly adopted a constitution committing itself to "provid[ing] the necessary basis for ensuring

the continuation of the Revolution at home and abroad." Toward that end, between 1983 and 1988, the government of Iran spent approximately $50 to $150 million to finance terrorist organizations in the Near East, including in the war-torn republic of Lebanon.

14. In 1982, Israel invaded Lebanon in an effort to drive the PLO out of the southern portion of the country.

15. Following this invasion, the Iranian government sought to radicalize the Lebanese Shi'ite community. Iran encouraged the creation of an organization called "Hezbollah," with the goal of furthering the transformation of Lebanon into an Islamic theocracy modeled after Iran. In 1982 and 1983, Hezbollah was reliant on and strictly controlled by Iran, which provided the group with orders, military training, weapons and other supplies, and financial support.

16. The primary agency through which the Iranian government both established and exercised operational control over Hezbollah was MOIS. MOIS acted as a conduit for Iran's provision of funds to Hezbollah, provided the group with explosives, and, at all times relevant to the events described in this complaint, exercised operational control over the group. In doing so, MOIS acted with the express approval of Iranian government leaders.

17. In late 1982, with the backing of the United Nations, a multinational peacekeeping coalition, consisting of American, British, French, and Italian soldiers, arrived in the Lebanese capital of Beirut. In May 1983, the 24th Marine Amphibious Unit of the U.S. Marines (the "24th MAU") arrived in Lebanon as part of this coalition.

18. The members of the 24th MAU were non-combatants operating under peacetime rules of engagement. The rules of engagement issued to the 24th MAU made clear that it did not possess combatant or police powers. The soldiers of the 24th MAU were ordered not to carry weapons with live rounds in their chambers and were permitted to use live rounds only if directly

ordered to do so by a commissioned officer or if they found themselves in a situation requiring the immediate use of deadly force for purposes of self-defense. "The members of the 24th MAU were more restricted in their use of force than an ordinary U.S. citizen walking down a street in Washington, D.C." *Peterson v. Islamic Republic of Iran*, 264 F. Supp. 2d 46, 50 (D.D.C. 2003).

19. On or around September 26, 1983, MOIS sent a message to the Iranian ambassador to Syria, directing him to instruct terrorist forces in Lebanon to initiate attacks against the multinational coalition and "to take a spectacular action against the United States Marines."

20. The Iranian ambassador subsequently contacted a member of the Iranian Revolutionary Guard ("IRG"), and instructed him to instigate the Marine barracks bombing. IRG members in Lebanon organized a meeting with Hezbollah leaders, at which they formed a plan to carry out attacks against the American and French barracks in Lebanon.

21. A 19-ton truck was disguised so that it would resemble a water delivery truck that routinely arrived at the Beirut International Airport, which was located near the U.S. Marine barracks in Beirut. The truck was modified so that it could transport a gas-enhanced explosive device.

22. The truck was determined by Iranian military engineers to have an appropriate size and weight to crash through a barbed wire emplacement, fit between two sandbagged sentry posts, penetrate an iron fence gate, climb over a sewer pipe obstruction, move through a sandbag inner barrier into a passenger entry hallway, and enter the center lobby of the Marine barracks building. Iranian military engineers further determined that an explosion from this position would have sufficient force to collapse the Marine barracks structure.

23. On the morning of October 23, 1983, members of Hezbollah ambushed the real water delivery truck before it arrived at the barracks. The fake water delivery truck then set out for the barracks, driven by Ismalal Ascari, an Iranian citizen and IRG member.

24. At approximately 6:25 a.m. Beirut time, the truck drove past the Marine barracks. As the truck circled in the large parking lot behind the barracks, it increased its speed. The truck then crashed through a barbed wire barrier and a wall of sandbags, and entered the barracks. When the truck reached the center of the barracks, the bomb in the truck detonated.

25. The resulting explosion was the largest non-nuclear explosion that had ever been detonated, equivalent to 15,000 to 21,000 pounds of TNT. It ripped locked doors from their doorjambs, shredded trees located 370 feet away, and shattered all of the windows at an air traffic control tower, located over half a mile away, at the Beirut International Airport.

26. Most significantly, the four-story Marine barracks in which the bomb detonated was completely destroyed.

27. 241 servicemembers were killed, and many others were severely injured. For many of the victims, death was not instantaneous, and they were forced to endure extreme pain and suffering and economic losses.

28. The death certificates issued for the victims of the attack listed the cause of death as "terrorist attack." The death certificates did not represent that the victims were killed in action.

29. Hezbollah lacked the capacity to carry out the attack on the Marine barracks, which required careful and sophisticated planning, without Iranian material and technical support and direction.

30. At the time of the bombing, the explosive used, bulk-form pentaerythritol tetranitrate ("PETN"), was not commercially available and was produced only by state-sponsored manufacturers for military purposes. Bulk-form PETN was manufactured in Iran, but not in Lebanon.

31. The attack on the Marine barracks was expressly approved by Iranian leaders, including Iran's Supreme Leader Ayatollah Khomeini and Iran's prime minister. Given their positions of authority, their official acts are tantamount to acts by the government of Iran.

V. INDIVIDUAL ALLEGATIONS

32. On October 23, 1983, when the explosive device described above was detonated, **Rui Relvas**, a member of the United States Marine Corps, and a resident of and citizen of the United States, suffered fatal injuries.

33. Decedent, Rui Relvas, from the time of injury to his death thereafter, suffered extreme bodily pain and suffering as a result of the actions described above which were undertaken by the agents of Defendants.

34. As a direct and proximate result of the willful, wrongful and intentional acts of Hezbollah members, whose acts were funded and directed by the Islamic Republic of Iran through its agency, the Iranian Ministry of Information and Security, Plaintiffs, **Josefina and Joao Relvas**, the parents of the Rui Relvas, and **Antonio and John Relvas**, the brothers of the Decedent, endured extreme mental anguish and pain and suffering and economic losses, and suffered emotional injury and loss.

35. On October 23, 1983, when the explosive device described above was detonated, **John Spearing**, a member of the United States Marine Corps, and a resident of and citizen of the United States, suffered fatal injuries.

36. Decedent, John Spearing, from the time of injury to his death thereafter, suffered extreme bodily pain and suffering as a result of the actions described above which were undertaken by the agents of Defendants.

37. As a direct and proximate result of the willful, wrongful and intentional acts of Hezbollah members, whose acts were funded and directed by the Islamic Republic of Iran through its agency, the Iranian Ministry of Information and Security, Plaintiffs **Richard M. Spearing and Samuel F. Spearing**, the brothers of the Decedent, and **Lois Spearing,** the mother of the Decedent, endured extreme mental anguish and pain and suffering and economic losses, and suffered emotional injury and loss.

38. On October 23, 1983, when the explosive device described above was detonated, **Freddie Haltiwanger**, a member of the United States Marine Corps, and a resident of and citizen of the United States, suffered fatal injuries.

39. Decedent, Freddie Haltiwanger, from the time of injury to his death thereafter, suffered extreme bodily pain and suffering as a result of the actions described above which were undertaken by the agents of Defendants.

40. As a direct and proximate result of the willful, wrongful and intentional acts of Hezbollah members, whose acts were funded and directed by the Islamic Republic of Iran through its agency, the Iranian Ministry of Information and Security, Plaintiff **Shirley Mitchell**, the sister of the Decedent, and **Mary M. and Freddie L. Haltiwanger**, the parents of the Decedent, endured extreme mental anguish and pain and suffering and economic losses, and suffered emotional injury and loss.

41. On October 23, 1983, when the explosive device described above was detonated, **Marion Kees**, a member of the United States Navy, and a resident of and citizen of the United

States, suffered fatal injuries.

42. Decedent, **Marion Kees**, from the time of injury to his death thereafter, suffered extreme bodily pain and suffering as a result of the actions described above which were undertaken by the agents of Defendants.

43. As a direct and proximate result of the willful, wrongful and intentional acts of Hezbollah members, whose acts were funded and directed by the Islamic Republic of Iran through its agency, the Iranian Ministry of Information and Security, Plaintiff **John L. Kees**, the son of the Decedent, **Marian Kees**, the mother of the Decedent, and **Harvey Kees**, the father of the Decedent, endured extreme mental anguish and pain and suffering and economic losses, and suffered emotional injury and loss.

44. On October 23, 1983, when the explosive device described above was detonated, **Lyndon Hue**, a member of the United States Marine Corps, and a resident of and citizen of the United States, suffered fatal injuries.

45. Decedent, Lyndon Hue, from the time of injury to his death thereafter, suffered extreme bodily pain and suffering as a result of the actions described above which were undertaken by the agents of Defendants.

46. As a direct and proximate result of the willful, wrongful and intentional acts of Hezbollah members, whose acts were funded and directed by the Islamic Republic of Iran through its agency, the Iranian Ministry of Information and Security, Plaintiffs **Wilton Hue** and **Elaine Hue**, the parents of the Decedent, **Wilton Hue, Jr., Jill Stoltz, Donna Myers, Myra Haynes, Brett Hue**, **Tina Hamilton, and Jarrett Hue** the siblings of Decedent, endured extreme mental anguish and pain and suffering and economic losses, and suffered emotional injury and loss.

47. On October 23, 1983, when the explosive device described above was detonated, **Marcus Coleman**, a member of the United States Army, and a resident of and citizen of the United States, suffered fatal injuries.

48. Decedent, Marcus Coleman, from the time of injury to his death thereafter, suffered extreme bodily pain and suffering as a result of the actions described above which were undertaken by the agents of Defendants.

49. As a direct and proximate result of the willful, wrongful and intentional acts of Hezbollah members, whose acts were funded and directed by the Islamic Republic of Iran through its agency, the Iranian Ministry of Information and Security, **Kenneth Coleman** and **Dorothy Coleman**, the parents of the Decedent, and **Michael Coleman** and **Marsha Turner**, the siblings of the Decedent, endured extreme mental anguish and pain and suffering and economic losses, and suffered emotional injury and loss.

50. On October 23, 1983, when the explosive device described above was detonated, **David Bousum**, a member of the United States Marine Corps, and a resident of and citizen of the United States, suffered fatal injuries.

51. Decedent, David Bousum, from the time of injury to his death thereafter, suffered extreme bodily pain and suffering as a result of the actions described above which were undertaken by the agents of Defendants.

52. As a direct and proximate result of the willful, wrongful and intentional acts of Hezbollah members, whose acts were funded and directed by the Islamic Republic of Iran through its agency, the Iranian Ministry of Information and Security, **Gerald and Joanna Bousum**, the parents of the Decedent, and **Sheryl Westervelt**, the sister of the Decedent, endured extreme mental anguish and pain and suffering and economic losses, and suffered

emotional injury and loss.

53. On October 23, 1983, when the explosive device described above was detonated, **Charles R. Ray**, a member of the United States Marine Corps, and a resident of and citizen of the United States, suffered fatal injuries.

54. Decedent, Charles R. Ray, from the time of injury to his death thereafter, suffered extreme bodily pain and suffering as a result of the actions described above which were undertaken by the agents of Defendants.

55. As a direct and proximate result of the willful, wrongful and intentional acts of Hezbollah members, whose acts were funded and directed by the Islamic Republic of Iran through its agency, the Iranian Ministry of Information and Security, **Akiko Ray**, the spouse of the Decedent, **Dorothy Wagner**, the sister of the Decedent, and **June L. Ray** and **Lucian E. Ray, Jr**., the parents of the Decedent, endured extreme mental anguish and pain and suffering and economic losses, and suffered emotional injury and loss.

56. On October 23, 1983, when the explosive device described above was detonated, **Kevin Custard**, a member of the United States Marine Corps, and a resident of and citizen of the United States, suffered fatal injuries.

57. Decedent, Kevin Custard, from the time of injury to his death thereafter, suffered extreme bodily pain and suffering as a result of the actions described above which were undertaken by the agents of Defendants.

58. As a direct and proximate result of the willful, wrongful and intentional acts of Hezbollah members, whose acts were funded and directed by the Islamic Republic of Iran through its agency, the Iranian Ministry of Information and Security, **Michael Allen Custard**, the brother of the Decedent, **Terri Rea** and **Yvonne Custard**, the sisters of the Decedent,

Lorraine Engstrom, the mother of Decedent, and **Chyrisse Shermock**, the sister of Decedent, endured extreme mental anguish and pain and suffering and economic losses, and suffered emotional injury and loss.

59. On October 23, 1983, when the explosive device described above was detonated, **Richard Barrett**, a member of the United States Marine Corps, and a resident of and citizen of the United States, suffered fatal injuries.

60. Decedent, Richard Barrett, from the time of injury to his death thereafter, suffered extreme bodily pain and suffering as a result of the actions described above which were undertaken by the agents of Defendants.

61. As a direct and proximate result of the willful, wrongful and intentional acts of Hezbollah members, whose acts were funded and directed by the Islamic Republic of Iran through its agency, the Iranian Ministry of Information and Security, **James A. Barrett, Jr**., the brother of Decedent, **James Barrett**, the father of Decedent, and **Sue Barrett** and **Stephanie Barrett Elkins**, the sisters of Decedent, endured extreme mental anguish and pain and suffering and economic losses, and suffered emotional injury and loss.

62. On October 23, 1983, when the explosive device described above was detonated, **James Faulk**, a member of the United States Navy, and a resident of and citizen of the United States, suffered fatal injuries.

63. As a direct and proximate result of the willful, wrongful and intentional acts of Hezbollah members, whose acts were funded and directed by the Islamic Republic of Iran through its agency, the Iranian Ministry of Information and Security, **William Faulk**, brother of James Faulk, endured extreme mental anguish and pain and suffering and economic losses, and suffered emotional injury and loss.

64. On October 23, 1983 members of Hezbollah by use of an explosive device as above described, willfully, violently and forcefully battered and did violence to the body of Plaintiff, **Bradley Gross**, inflicting injuries upon him resulting in pain and suffering and economic losses.

65. The members of Hezbollah, as above alleged, intentionally and willfully placed the Plaintiff, Bradley Gross, in fear and apprehension of harm as a direct result of their actions.

66. As a direct and proximate result of the willful, wrongful and intentional acts of Hezbollah members, whose acts were funded and directed by the Islamic Republic of Iran through its agency, the Iranian Ministry of Information and Security, Plaintiff, Bradley Gross, endured extreme mental anguish and pain and suffering and economic losses, suffered the loss of the company of his family and friends, and was subjected to injury, pain, discomfort and inconvenience.

67. On October 23, 1983 members of Hezbollah by use of an explosive device as above described, willfully, violently and forcefully battered and did violence to the body of Plaintiff, **Mark Boyd**, inflicting injuries upon him resulting in pain and suffering and economic losses.

68. The members of Hezbollah, as above alleged, intentionally and willfully placed the Plaintiff, Mark Boyd, in fear and apprehension of harm as a direct result of their actions.

69. As a direct and proximate result of the willful, wrongful and intentional acts of Hezbollah members, whose acts were funded and directed by the Islamic Republic of Iran through its agency, the Iranian Ministry of Information and Security, Plaintiff, Mark Boyd, endured extreme mental anguish and pain and suffering and economic losses, suffered the loss of the company of his family and friends, and was subjected to injury, pain, discomfort and

inconvenience.

70. As a direct and proximate result of the willful, wrongful and intentional acts of Hezbollah members, whose acts were funded and directed by the Islamic Republic of Iran through its agency, the Iranian Ministry of Information and Security, the Plaintiff **Annette Boyd**, Mark Boyd's mother, endured extreme mental anguish and pain and suffering, and suffered emotional injury and loss.

71. On October 23, 1983 members of Hezbollah by use of an explosive device as above described, willfully, violently and forcefully battered and did violence to the body of Plaintiff, **Timothy Whitfield**, inflicting injuries upon him resulting in pain and suffering and economic losses.

72. The members of Hezbollah, as above alleged, intentionally and willfully placed the Plaintiff, Timothy Whitfield, in fear and apprehension of harm as a direct result of their actions.

73. As a direct and proximate result of the willful, wrongful and intentional acts of Hezbollah members, whose acts were funded and directed by the Islamic Republic of Iran through its agency, the Iranian Ministry of Information and Security, Plaintiff, Timothy Whitfield, endured extreme mental anguish and pain and suffering and economic losses, suffered the loss of the company of his family and friends, and was subjected to injury, pain, discomfort and inconvenience.

74. As a direct and proximate result of the willful, wrongful and intentional acts of Hezbollah members, whose acts were funded and directed by the Islamic Republic of Iran through its agency, the Iranian Ministry of Information and Security, Plaintiffs **Jeff Whitfield**, Timothy Whitfield's brother, **Gary Whitfield**, Timothy Whitfield's brother, **Neil Whitfield**,

Timothy Whitfield's brother, **Jimmy Whitfield**, Timothy Whitfield's brother, and **Marianne Schaffer**, Timothy Whitfield's sister, endured extreme mental anguish and pain and suffering and economic losses, and suffered emotional injury and loss.

75. On October 23, 1983 members of Hezbollah by use of an explosive device as above described, willfully, violently and forcefully battered and did violence to the body of Plaintiff, **Scott Smith**, inflicting injuries upon him resulting in pain and suffering and economic losses.

76. The members of Hezbollah, as above alleged, intentionally and willfully placed the Plaintiff, Scott Smith, in fear and apprehension of harm as a direct result of their actions.

77. As a direct and proximate result of the willful, wrongful and intentional acts of Hezbollah members, whose acts were funded and directed by the Islamic Republic of Iran through its agency, the Iranian Ministry of Information and Security, Plaintiff, Scott Smith, endured extreme mental anguish and pain and suffering and economic losses, suffered the loss of the company of his family and friends, and was subjected to injury, pain, discomfort and inconvenience

78. On October 23, 1983 members of Hezbollah by use of an explosive device as above described, willfully, violently and forcefully battered and did violence to the body of Plaintiff, **Jeffrey Kulp**, inflicting injuries upon him resulting in pain and suffering and economic losses.

79. The members of Hezbollah, as above alleged, intentionally and willfully placed the Plaintiff, Jeffrey Kulp, in fear and apprehension of harm as a direct result of their actions.

80. As a direct and proximate result of the willful, wrongful and intentional acts of Hezbollah members, whose acts were funded and directed by the Islamic Republic of Iran

through its agency, the Iranian Ministry of Information and Security, Plaintiff, Jeffrey Kulp, endured extreme mental anguish and pain and suffering and economic losses, suffered the loss of the company of his family and friends, and was subjected to injury, pain, discomfort and inconvenience.

81. On October 23, 1983 members of Hezbollah by use of an explosive device as above described, willfully, violently and forcefully battered and did violence to the body of Plaintiff, **Leo Mora**, inflicting injuries upon him resulting in pain and suffering and economic losses.

82. The members of Hezbollah, as above alleged, intentionally and willfully placed the Plaintiff, Leo Mora, in fear and apprehension of harm as a direct result of their actions.

83. As a direct and proximate result of the willful, wrongful and intentional acts of Hezbollah members, whose acts were funded and directed by the Islamic Republic of Iran through its agency, the Iranian Ministry of Information and Security, Plaintiff, Leo Mora, endured extreme mental anguish and pain and suffering and economic losses, suffered the loss of the company of his family and friends, and was subjected to injury, pain, discomfort and inconvenience.

84. On October 23, 1983 members of Hezbollah by use of an explosive device as above described, willfully, violently and forcefully battered and did violence to the body of Plaintiff, **Darrell Siler**, inflicting injuries upon him resulting in pain and suffering and economic losses.

85. The members of Hezbollah, as above alleged, intentionally and willfully placed the Plaintiff, Darrell Siler, in fear and apprehension of harm as a direct result of their actions.

86. As a direct and proximate result of the willful, wrongful and intentional acts of

Hezbollah members, whose acts were funded and directed by the Islamic Republic of Iran through its agency, the Iranian Ministry of Information and Security, Plaintiff, Darrell Siler, endured extreme mental anguish and pain and suffering and economic losses, suffered the loss of the company of his family and friends, and was subjected to injury, pain, discomfort and inconvenience.

87. As a direct and proximate result of the willful, wrongful and intentional acts of Hezbollah members, whose acts were funded and directed by the Islamic Republic of Iran through its agency, the Iranian Ministry of Information and Security, the Plaintiff **Carie McCormack**, Darrell Siler's wife, endured extreme mental anguish and pain and suffering, and suffered emotional injury and loss.

88. On October 23, 1983 members of Hezbollah by use of an explosive device as above described, willfully, violently and forcefully battered and did violence to the body of Plaintiff, **Benjamin Foss**, inflicting injuries upon him resulting in pain and suffering and economic losses.

89. The members of Hezbollah, as above alleged, intentionally and willfully placed the Plaintiff, Benjamin Foss, in fear and apprehension of harm as a direct result of their actions.

90. As a direct and proximate result of the willful, wrongful and intentional acts of Hezbollah members, whose acts were funded and directed by the Islamic Republic of Iran through its agency, the Iranian Ministry of Information and Security, Plaintiff, Benjamin Foss, endured extreme mental anguish and pain and suffering and economic losses, suffered the loss of the company of his family and friends, and was subjected to injury, pain, discomfort and inconvenience.

91. As a direct and proximate result of the willful, wrongful and intentional acts of

Hezbollah members, whose acts were funded and directed by the Islamic Republic of Iran through its agency, the Iranian Ministry of Information and Security, the Plaintiff **Patsy Foss**, Benjamin Foss' mother, endured extreme mental anguish and pain and suffering and economic losses, and suffered emotional injury and loss.

92. On October 23, 1983 members of Hezbollah by use of an explosive device as above described, willfully, violently and forcefully battered and did violence to the body of Plaintiff, **Bruce Cochran**, inflicting injuries upon him resulting in pain and suffering and economic losses.

93. The members of Hezbollah, as above alleged, intentionally and willfully placed the Plaintiff, Bruce Cochran, in fear and apprehension of harm as a direct result of their actions.

94. As a direct and proximate result of the willful, wrongful and intentional acts of Hezbollah members, whose acts were funded and directed by the Islamic Republic of Iran through its agency, the Iranian Ministry of Information and Security, Plaintiff, Bruce Cochran, endured extreme mental anguish and pain and suffering and economic losses, suffered the loss of the company of his family and friends, and was subjected to injury, pain, discomfort and inconvenience.

95. On October 23, 1983 members of Hezbollah by use of an explosive device as above described, willfully, violently and forcefully battered and did violence to the body of Plaintiff, **John Ijames**, inflicting injuries upon him resulting in pain and suffering and economic losses.

96. The members of Hezbollah, as above alleged, intentionally and willfully placed the Plaintiff, John Ijames, in fear and apprehension of harm as a direct result of their actions.

97. As a direct and proximate result of the willful, wrongful and intentional acts of

Hezbollah members, whose acts were funded and directed by the Islamic Republic of Iran through its agency, the Iranian Ministry of Information and Security, Plaintiff, John Ijames, endured extreme mental anguish and pain and suffering and economic losses, suffered the loss of the company of his family and friends, and was subjected to injury, pain, discomfort and inconvenience.

98. On October 23, 1983 members of Hezbollah by use of an explosive device as above described, willfully, violently and forcefully battered and did violence to the body of Plaintiff, **Ross Morrison**, inflicting injuries upon him resulting in pain and suffering and economic losses.

99. The members of Hezbollah, as above alleged, intentionally and willfully placed the Plaintiff, Ross Morrison, in fear and apprehension of harm as a direct result of their actions.

100. As a direct and proximate result of the willful, wrongful and intentional acts of Hezbollah members, whose acts were funded and directed by the Islamic Republic of Iran through its agency, the Iranian Ministry of Information and Security, Plaintiff, Ross Morrison, endured extreme mental anguish and pain and suffering and economic losses, suffered the loss of the company of his family and friends, and was subjected to injury, pain, discomfort and inconvenience.

101. On October 23, 1983 members of Hezbollah by use of an explosive device as above described, willfully, violently and forcefully battered and did violence to the body of Plaintiff, **Brian Zebrowski**, inflicting injuries upon him resulting in pain and suffering and economic losses.

102. The members of Hezbollah, as above alleged, intentionally and willfully placed the Plaintiff, Brian Zebrowski, in fear and apprehension of harm as a direct result of their

actions.

103. As a direct and proximate result of the willful, wrongful and intentional acts of Hezbollah members, whose acts were funded and directed by the Islamic Republic of Iran through its agency, the Iranian Ministry of Information and Security, Plaintiff, Brian Zebrowski, endured extreme mental anguish and pain and suffering and economic losses, suffered the loss of the company of his family and friends, and was subjected to injury, pain, discomfort and inconvenience.

104. On October 23, 1983 members of Hezbollah by use of an explosive device as above described, willfully, violently and forcefully battered and did violence to the body of Plaintiff, **Edward McCarron, Jr.**, inflicting injuries upon him resulting in pain and suffering and economic losses.

105. The members of Hezbollah, as above alleged, intentionally and willfully placed the Plaintiff, Edward McCarron, Jr., in fear and apprehension of harm as a direct result of their actions.

106. As a direct and proximate result of the willful, wrongful and intentional acts of Hezbollah members, whose acts were funded and directed by the Islamic Republic of Iran through its agency, the Iranian Ministry of Information and Security, Plaintiff, Edward McCarron, Jr., endured extreme mental anguish and pain and suffering and economic losses, suffered the loss of the company of his family and friends, and was subjected to injury, pain, discomfort and inconvenience.

107. On October 23, 1983 members of Hezbollah by use of an explosive device as above described, willfully, violently and forcefully battered and did violence to the body of Plaintiff, **Timothy Kuehne**, inflicting injuries upon him resulting in pain and suffering and

economic losses.

108. The members of Hezbollah, as above alleged, intentionally and willfully placed the Plaintiff, Timothy Kuehne, in fear and apprehension of harm as a direct result of their actions.

109. As a direct and proximate result of the willful, wrongful and intentional acts of Hezbollah members, whose acts were funded and directed by the Islamic Republic of Iran through its agency, the Iranian Ministry of Information and Security, Plaintiff, Timothy Kuehne, endured extreme mental anguish and pain and suffering and economic losses, suffered the loss of the company of his family and friends, and was subjected to injury, pain, discomfort and inconvenience.

110. On October 23, 1983 members of Hezbollah by use of an explosive device as above described, willfully, violently and forcefully battered and did violence to the body of Plaintiff, **Greg Simmons**, inflicting injuries upon him resulting in pain and suffering and economic losses.

111. The members of Hezbollah, as above alleged, intentionally and willfully placed the Plaintiff, Greg Simmons, in fear and apprehension of harm as a direct result of their actions.

112. As a direct and proximate result of the willful, wrongful and intentional acts of Hezbollah members, whose acts were funded and directed by the Islamic Republic of Iran through its agency, the Iranian Ministry of Information and Security, Plaintiff, Greg Simmons, endured extreme mental anguish and pain and suffering and economic losses, suffered the loss of the company of his family and friends, and was subjected to injury, pain, discomfort and inconvenience.

113. On October 23, 1983 members of Hezbollah by use of an explosive device as

above described, willfully, violently and forcefully battered and did violence to the body of Plaintiff, **Al Duncan**, inflicting injuries upon him resulting in pain and suffering and economic losses.

114. The members of Hezbollah, as above alleged, intentionally and willfully placed the Plaintiff, Al Duncan, in fear and apprehension of harm as a direct result of their actions.

115. As a direct and proximate result of the willful, wrongful and intentional acts of Hezbollah members, whose acts were funded and directed by the Islamic Republic of Iran through its agency, the Iranian Ministry of Information and Security, Plaintiff, Al Duncan, endured extreme mental anguish and pain and suffering and economic losses, suffered the loss of the company of his family and friends, and was subjected to injury, pain, discomfort and inconvenience.

116. On October 23, 1983 members of Hezbollah by use of an explosive device as above described, **Clemon Alexander**, a member of the United States Marine Corps, and a resident of and citizen of the United States, suffered fatal injuries.

117. Decedent, Clemon Alexander, from the time of injury to his death thereafter, suffered extreme bodily pain and suffering as a result of the actions described above which were undertaken by the agents of Defendants.

118. As a direct and proximate result of the willful, wrongful and intentional acts of Hezbollah members, whose acts were funded and directed by the Islamic Republic of Iran through its agency, the Iranian Ministry of Information and Security, Plaintiffs, **Rochelle Alexander**, the mother of the Decedent, **Clarence Alexander, Winfred B. Alexander**, the brothers of the Decedent, **Muriel Kweyama, Mijanou Alexander, and Cynthia Alexander Schwartz**, the sisters of the Decedent, endured extreme mental anguish and pain and suffering

and economic losses, and suffered emotional injury and loss.

119. On October 23, 1983 members of Hezbollah by use of an explosive device as above described, willfully, violently and forcefully battered and did violence to the body of Plaintiff, **Charles Dallachie**, inflicting injuries upon him resulting in pain and suffering and economic losses.

120. The members of Hezbollah, as above alleged, intentionally and willfully placed the Plaintiff, Charles Dallachie, in fear and apprehension of harm as a direct result of their actions.

121. As a direct and proximate result of the willful, wrongful and intentional acts of Hezbollah members, whose acts were funded and directed by the Islamic Republic of Iran through its agency, the Iranian Ministry of Information and Security, Plaintiff, Charles Dallachie, endured extreme mental anguish and pain and suffering and economic losses, suffered the loss of the company of his family and friends, and was subjected to injury, pain, discomfort and inconvenience.

122. On October 23, 1983 members of Hezbollah by use of an explosive device as above described, willfully, violently and forcefully battered and did violence to the body of Plaintiff, **Gerald Shanley**, inflicting injuries upon him resulting in pain and suffering and economic losses.

123. The members of Hezbollah, as above alleged, intentionally and willfully placed the Plaintiff, Gerald Shanley, in fear and apprehension of harm as a direct result of their actions.

124. As a direct and proximate result of the willful, wrongful and intentional acts of Hezbollah members, whose acts were funded and directed by the Islamic Republic of Iran through its agency, the Iranian Ministry of Information and Security, Plaintiff, Gerald Shanley,

endured extreme mental anguish and pain and suffering and economic losses, suffered the loss of the company of his family and friends, and was subjected to injury, pain, discomfort and inconvenience.

VI. CLAIMS

COUNT I
Wrongful Death
Pursuant to 28 U.S.C. § 1605A

125. When the October 23, 1983 Beruit attack occurred, Rui Relvas,* John Spearing, Charles R. Ray, Freddie Haltiwanger, Marion Kees, Lyndon Hue, Marcus Coleman, David Bousum, Kevin Custard, Richard Barrett, and Clemon Alexander suffered fatal injuries.

126. The deaths of these soldiers were caused by a willful and deliberate act of extra-judicial killing perpetrated by Defendants.

127. Defendants, through their agents, financed the attack, planned the attack and rendered material support to the activities of Hezbollah that resulted in the deaths of the aforementioned servicemembers. Those agents were at all times acting within the scope of their agency and acted on the direction of Defendants, the Islamic Republic of Iran and the Iranian Ministry of Information and Security.

128. Wherefore, the respective representatives of these soldiers' estates demand judgment, jointly and severally, against Defendants, The Islamic Republic of Iran and the Iranian Ministry of Information and Security, in an amount in excess of TWENTY MILLION DOLLARS ($20,000,000.00).

* Those Plaintiffs who are described herein as suing on behalf of estates, and who are not yet qualified as the legal representatives of those estates, intend to initiate the process required to become so qualified as soon as is practicable. The Plaintiffs will file an amended complaint as necessary.

COUNT II
Survival Claim
Pursuant to 28 U.S.C. § 1605A

129. Decedents Rui Relvas, John Spearing, Charles R. Ray, Freddie Haltiwanger, Marion Kees, Lyndon Hue, Marcus Coleman, David Bousum, Kevin Custard, Richard Barrett, and Clemon Alexander, from the time of injury to their deaths thereafter, suffered extreme bodily pain and suffering as a result of the actions described above which were undertaken by the agents of Defendants.

130. Wherefore, the aforementioned individuals, and their representatives, demand judgment against Defendants, the Islamic Republic of Iran and the Iranian Ministry of Information and Security, jointly and severally, for each in an amount in excess of TWENTY MILLION DOLLARS ($20,000,000.00).

COUNT III
Intentional Infliction of Emotional Distress
By Immediate Relatives of Deceased Victims
Pursuant to 28 U.S.C. § 1605A

131. As a direct and proximate result of the willful, wrongful and intentional acts of Hezbollah members, whose acts were funded and directed by the Islamic Republic of Iran through its agency, the Iranian Ministry of Information and Security, Plaintiffs Josefina and Joao Relvas, as the parents of the Rui Relvas; Plaintiffs Antonio and John Relvas, as the brothers of Rui Relvas; Plaintiffs Richard M. Spearing and Samuel F. Spearing, as the brothers of John Spearing; Plaintiff Lois Spearing, as the mother of John Spearing; Plaintiff Shirley Mitchell, as the sister of Freddie Haltiwanger; Plaintiffs Mary M. Haltiwanger and Freddie L. Haltiwanger, as the parents of Freddie Haltiwanger; Plaintiff John L. Kees, as the son of Marion Kees; Plaintiffs Marian Kees and Harvey Kees, as the parents of Marion Kees; Plaintiffs Wilton Hue and Elaine Hue, as the parents of Lyndon Hue; Wilton Hue, Jr., Jill Stoltz, Donna Myers, Myra Haynes,

Tina Hamilton, Jarrett Hue, and Brett Hue, as the siblings of Lyndon Hue; Plaintiffs Kenneth Coleman and Dorothy Coleman, as the parents of Marcus Coleman; Plaintiffs Michael Coleman and Marsha Turner, as the siblings of Marcus Coleman; Plaintiffs Gerald and Joanna Bousum, as the parents of David Bousum; Plaintiff Sheryl Westervelt, as the sister of David Bousum; Plaintiff Dorothy Wagner, as the sister of Charles R. Ray; Plaintiffs June L. Ray and Lucian E. Ray, Jr., as the parents of Charles R. Ray; Plaintiffs Terri Rea and Yvonne Custard, as the sisters of Kevin Custard; Plaintiff Lorraine Engstrom, as the mother of Kevin Custard; Plaintiff Michael Allen Custard, as the brother of Kevin Custard; Plaintiff Chyrisse Shermock, as the sister of Kevin Custard; Plaintiff James A. Barrett, Jr., as the brother of Richard Barrett; Plaintiff James Barrett, as the father of Richard Barrett; Plaintiffs Sue Barrett and Stephanie Barrett Elkins, as the sisters of Richard Barrett; and Plaintiff William Faulk, as the brother of James Faulk, Plaintiffs Mijanou Alexander, Cynthia Alexander Schwartz, and Muriel Kweyama, as the sisters of Clemon Alexander; Plaintiffs Rochelle Alexander, as the mother of Clemon Alexander; and Plaintiffs Winfred B. Alexander and Clarence Alexander, as the brothers of Clemon Alexander have endured extreme mental anguish and pain and suffering and economic losses, and suffered emotional injury and loss.

132. Wherefore, the aforementioned individuals demand judgment against Defendants, the Islamic Republic of Iran and the Iranian Ministry of Information and Security, jointly and severally, for each in an amount in excess of TWENTY MILLION DOLLARS ($20,000,000.00).

COUNT IV
Battery
Pursuant to 28 U.S.C. § 1605A

133. By use of an explosive device as described above, members of Hezbollah,

willfully, violently and forcefully battered and did violence to the bodies of Plaintiffs Bradley Gross, Mark Boyd, Timothy Whitfield, Scott Smith, Jeffrey Kulp, Leo Mora, Darrell Siler, Benjamin Foss, Bruce Cochran, John Ijames, Ross Morrison, Brian Zebrowski, Edward McCarron, Jr., Timothy Kuehne, Greg Simmons, Al Duncan, Charles Dallachie, and Gerald Shanley inflicting injuries upon them resulting in pain and suffering and economic losses.

134. The willful, wrongful and intentional acts of Hezbollah were funded and directed by the Islamic Republic of Iran through its agent, the Iranian Ministry of Information and Security, and constituted a battery upon the aforementioned individuals..

135. Wherefore, the aforementioned individuals demand judgment against Defendants, the Islamic Republic of Iran and the Iranian Ministry of Information and Security, jointly and severally, for each in an amount in excess of TWENTY MILLION DOLLARS ($20,000,000.00).

COUNT V
Assault
Pursuant to 28 U.S.C. § 1605A

136. The members of Hezbollah, as above alleged, intentionally and willfully placed Plaintiffs Bradley Gross, Mark Boyd, Timothy Whitfield, Scott Smith, Jeffrey Kulp, Leo Mora, Darrell Siler, Benjamin Foss, Bruce Cochran, John Ijames, Ross Morrison, Brian Zebrowski, Edward McCarron, Jr., Timothy Kuehne, Greg Simmons, Al Duncan, Charles Dallachie, and Gerald Shanley , in fear and apprehension of harm as a direct result of their actions.

137. The willful, wrongful and intentional acts of Hezbollah members were funded by and directed by the Islamic Republic of Iran through its agency, the Iranian Ministry of Information and Security, and the aforementioned Plaintiffs were injured in that they endured extreme mental anguish, injury, and pain and suffering and economic losses.

138. Wherefore, the aforementioned individuals demand judgment against Defendants, the Islamic Republic of Iran and the Iranian Ministry of Information and Security, jointly and severally, for each in an amount in excess of TWENTY MILLION DOLLARS ($20,000,000.00).

COUNT VI
Intentional Infliction of Emotional Distress
By Surviving Victims
Pursuant to 28 U.S.C. § 1605A

139. As a direct and proximate result of the willful, wrongful and intentional acts of Hezbollah members, whose acts were funded and directed by the Islamic Republic of Iran through its agency, the Iranian Ministry of Information and Security, Plaintiffs Bradley Gross, Mark Boyd, Timothy Whitfield, Scott Smith, Jeffrey Kulp, Leo Mora, Darrell Siler, Benjamin Foss, Bruce Cochran, John Ijames, Ross Morrison, Brian Zebrowski, Edward McCarron, Jr., Timothy Kuehne, Greg Simmons, Al Duncan, Charles Dallachie, and Gerald Shanley endured extreme mental anguish and pain and suffering and economic losses, suffered the loss of the company of their family and friends, and was subjected to injury, pain, discomfort and inconvenience.

140. Wherefore, the aforementioned individuals demand judgment against Defendants, the Islamic Republic of Iran and the Iranian Ministry of Information and Security, jointly and severally, for each in an amount in excess of TWENTY MILLION DOLLARS ($20,000,000.00).

COUNT VII
Intentional Infliction of Emotional Distress
By Immediate Relatives of Surviving Victims
Pursuant to 28 U.S.C. § 1605A

141. As a direct and proximate result of the willful, wrongful and intentional acts of

Hezbollah members, whose acts were funded and directed by the Islamic Republic of Iran through its agency, the Iranian Ministry of Information and Security, Plaintiff Annette Boyd as Mark Boyd's mother; Plaintiffs Jeff Whitfield, Gary Whitfield, Neil Whitfield, Jimmy Whitfield, and Marianne Schaffer, as Timothy Whitfield's siblings; Plaintiff Carie McCormack, as Darrell Siler's wife; and Plaintiff Patsy Foss, as Benjamin Foss' mother have endured extreme mental anguish and pain and suffering, and suffered emotional injury and loss.

142. Wherefore, the aforementioned individuals demand judgment against Defendants, the Islamic Republic of Iran and the Iranian Ministry of Information and Security, jointly and severally, for each in an amount in excess of TWENTY MILLION DOLLARS ($20,000,000.00).

VIII. REQUEST FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

a) For an award of appropriate compensatory damages under 28 U.S.C. § 1605A;

b) For an award of punitive damages under 28 U.S.C. § 1605A in an amount sufficient to punish and/or deter similar conduct;

c) For reasonable attorney's fees and costs;

d) For prejudgment and postjudgment interest; and

e) For all other available and appropriate relief.

March 6, 2015

Respectfully submitted,

BY: /s/ R. Joseph Barton

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Attorneys for the Plaintiffs

Exhibit 2

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

DEBORAH D. PETERSON, Personal Representative of the Estate of James C. Knipple (Dec.), *et al.*, Plaintiffs, v. **THE ISLAMIC REPUBLIC OF IRAN, BANK MARKAZI** a/k/a **CENTRAL BANK OF IRAN, BANCA UBAE SpA, CITIBANK, N.A.**, and **CLEARSTREAM BANKING, S.A.**, Defendants. **JOHN RELVAS**, **JOHN KEES**, and **MARK BOYD**, Individually And Behalf Of Others Similarly Situated, **Intervenors**	Case No.: 1:10-cv-04518-KBF **CLASS ACTION COMPLAINT**

CLASS ACTION COMPLAINT IN INTERVENTION

Intervenors John Relvas, John Kees, and Mark Boyd ("Intervenors"), individually and on behalf of others similarly situated, and pursuant to Federal Rule of Civil Procedure 23, allege as follows:

INTRODUCTION

1. Intervenors are American servicemembers who were wounded and the families and estates of servicemembers who were killed or wounded in the October 23, 1983 suicide bombing of the U.S. Marine barracks in Beirut, Lebanon orchestrated by the Islamic Republic of Iran and the

Iranian Ministry of Information and Security. The bombing, which killed 241 American servicemembers and injured numerous others, was the deadliest state-sponsored terrorist attack against American citizens prior to September 11, 2001.

2. The Complaint in Intervention is an effort to obtain equal justice for the victims of terrorist attacks sponsored by Iran. It seeks certification, under Rule 23(b)(1)(B), of a "limited fund" class comprised of all of Iran's victims in order to ensure that each victim is compensated fairly and adequately.

3. Although billions of dollars of Iranian assets are subject to attachment, not all victims of Iran-sponsored terrorism stand to receive compensation. It is unlikely that substantial additional, seizable Iranian assets will be located in the United States. This means that, despite their common sacrifice, some injured U.S. servicemembers and families, and other victims of terrorism, stand to receive millions of dollars in compensation, while many others are unlikely to ever receive any.

4. The attachable Iranian assets are the subject of two existing lawsuits pending in the Southern District of New York. This Complaint seeks to place these assets in a limited fund for the benefit of all of Iran's victims, instead of limiting those assets to a fortunate few.

5. Toward this end, Intervenors bring this action, through counsel, against Bank Markazi a/k/a Central Bank of Iran; Citibank, N.A.; Clearstream Banking, S.A.; and Banca UBAE SpA, who on information and belief, are the actual or beneficial owners or possessors of assets that are or may be subject to attachment by the victims of acts of terrorism sponsored by the Islamic Republic of Iran.

JURISDICTION AND VENUE

6. This Court has subject-matter jurisdiction over the claims set forth in this Complaint in Intervention pursuant to 28 U.S.C. § 1332(d). This Court also has subject-matter jurisdiction pursuant to 28 U.S.C. § 1331 because the underlying action arises under the laws and treaties of the United States, including the Foreign Sovereign Immunities Act of 1976, 28 U.S.C § 1601 *et seq*. (the "FSIA"); the Terrorism Risk Insurance Act of 2002, Pub. L. No. 107-297, 116 Stat. 2322 (2002) ("TRIA"); the Declaratory Judgment Act, 28 U.S.C. §§ 2201, et seq.; and 28 U.S.C. § 1963, and the Complaint in Intervention asserts claims that form a part of the same case or controversy under Article III of the United States Constitution in accordance with 28 U.S.C. § 1367.

7. Upon information and belief, venue of this proceeding is properly set in this judicial district pursuant to 28 U.S.C. § 1391(f)(1), which provides, in pertinent part, that a civil action against a foreign state may be brought in any judicial district in which a substantial part of property that is the subject of the action is situated. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because the underlying action seeks to enforce a judgment that has been registered in this judicial district, because the property that is the subject of the Complaint in Intervention is located in this district, and because a substantial part of the events or omissions giving rise to the claims asserted in the Complaint in Intervention occurred in this district.

THE PARTIES

8. Intervenor John Relvas was 22 years old in 1983 when his younger brother, Rui Relvas, a member of the United States Marine Corps, and a resident and citizen of the United States, was murdered in the Iran-sponsored bombing of the U.S. Marine Barracks in Beirut. John Relvas, who was himself a U.S. Marine at the time, was required to identify his brother's remains, which consisted of dog tags, a portion of Rui's spinal column, two legs, and a bag of fingers.

Growing up, John and Rui were inseparable and would go fishing and biking, and would work on cars. Rui's death was hard on John, who still thinks about his younger brother every day. After the bombing, John became depressed and angry and wanted to avenge his brother's death. As a Marine himself, John believes that all of the Marine Corps members, and their families, who were affected by the attacks deserve the opportunity to obtain justice from the perpetrators of the 1983 Marine barracks attack. John did not become aware of the pending litigation until recently, and was not informed by the military or courts about the availability of compensation from Iran.

9. Intervenor John Kees was 11 years old when his father, Marion Kees, a member of the United States Marine Corps, and a resident and citizen of the United States, was murdered in the Iran-sponsored bombing of the U.S. Marine Barracks in Beirut. John holds on to memories of tossing a football with his father before he was killed, and of his father, who was in the Marine's medical field service, bringing him to work. This greatly influence John, who followed in his father's footsteps by becoming a nurse. John struggled growing up without a father and went to counseling for depression when he was younger. John did not become aware of the pending litigation until recently, and was not informed by the military or courts about the availability of compensation from Iran.

10. Intervenor Mark Boyd a 19 years old serving in the United States Marine Corps in Beirut when the Barracks there were bombed. The force of the explosion knocked him backward. Immediately after the bombing, Mark drove survivors away from the bombing site. He recognized the corpses of several close friends. Mark was subsequently diagnosed with post-traumatic stress disorder. He believes that his experience during the Bombing negatively affected his first marriage, which ended in divorce.

11. Intervenors have asserted claims against Iran in the United States District Court for the District of Columbia but have not yet obtained judgments.

12. Upon information and belief, Defendant Citibank, N.A ("Citibank") is a national banking association organized and existing under the laws of the United States of America with its main office (as set forth in its Articles of Association) in the County and State of New York.

13. Upon information and belief, Clearstream Banking, S.A. ("Clearstream") is, and at all times relevant hereto was, a Luxembourg corporation that is both a bank and international securities settlement system with its principal place of business in Luxembourg.

14. Upon information and belief, Defendant Bank Markazi a/k/a Central Bank of Iran is, and at all times relevant hereto was, the central bank of Iran. Bank Markazi is an agency or instrumentality of Iran.

15. Upon information and belief, Defendant Banca UBAE SpA ("UBAE") is, and at all times relevant hereto was, a joint stock company and a bank organized and existing under the laws of the country of Italy with its principal place of business in Italy.

IRANIAN SPONSORSHIP OF TERRORISM

16. For over thirty years, Iran has been sponsoring terrorist organizations including Hezbollah to wage war against the United States and Israel and their citizens and military servicemembers.

17. On January 19, 1984, the Secretary of State designated the Islamic Republic as a state sponsor of terrorism, and has done so every year since, pursuant to § 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. § 2405(j); § 620A of the Foreign Assistance Act of 1961, 22 U.S.C. § 2371; and § 40(d) of the Arms Export Control Act, 22 U.S.C. § 2780(d).

18. Iran has repeatedly been found liable under the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1330 and 1602–11, for deaths and injuries caused by its activities as a state sponsor of international terrorism, particularly in connection with acts perpetrated by the paramilitary terrorist organization sponsored by Iran known as "Hizballah" or "Hezbollah," the Party of God. Iran's involvement in international terrorism has been documented in a long line of court decisions in both this Court and the United States District Court for the District of Columbia.

19. Since the time Iran was designated by the State Department as a state sponsor of terrorism, a large body of evidence has been collected and analyzed which shows conclusively that Iran views terrorism as an instrument of state policy, like diplomacy or military power—a tool to be used to further political objectives. The evidence shows that Iran has, over the years, directly carried out assassinations, bombings and other terrorist acts against its enemies, and that Iran has also carried out such terrorist acts through its terrorist proxy, Hezbollah.

20. To carry out its policy of terrorism and support for terrorist groups, Iran has created and used government organizations including intelligence ministries, the military, and various types of quasi-governmental companies and entities which are directly answerable to, and receive instructions from, the Islamic regime in power in Iran.

THE 1983 BEIRUT MARINE BARRACKS ATTACK

21. The Intervenors are among the plaintiffs in *Relvas et al. v. Iran ("Relvas")*, 1:14-cv-01752 (D.D.C. filed Oct. 20, 2014), a suit against Iran brought by more than 80 wounded American servicemembers, and relatives of servicemembers who were killed or wounded, in the 1983 bombing of the U.S. Marine barracks in Beirut, Lebanon.

22. As the Intervenors allege in their First Amended Complaint in *Relvas*, in 1979, after the Shah of Iran was deposed, the nation of Iran was transformed into an Islamic theocracy, led by

the Ayatollah Ruhollah Khomeini. The new government quickly adopted a constitution committing itself to "provid[ing] the necessary basis for ensuring the continuation of the Revolution at home and abroad." Toward that end, between 1983 and 1988, the government of Iran spent approximately $50 to $150 million to finance terrorist organizations in the Near East, including in the war-torn republic of Lebanon.

23. Iran encouraged the creation of an organization called "Hezbollah," with the goal of furthering the transformation of Lebanon into an Islamic theocracy modeled after Iran. In 1982 and 1983, Hezbollah was reliant on and strictly controlled by Iran, which provided the group with orders, military training, weapons and other supplies, and financial support.

24. In late 1982, with the backing of the United Nations, a multinational peacekeeping coalition, consisting of American, British, French, and Italian soldiers, arrived in the Lebanese capital of Beirut. In May 1983, the 24th Marine Amphibious Unit of the U.S. Marines (the "24th MAU") arrived in Lebanon as part of this coalition.

25. On or around September 26, 1983, Iran sent a message to the Iranian ambassador to Syria, directing him to instruct terrorist forces in Lebanon to initiate attacks against the multinational coalition and "to take a spectacular action against the United States Marines."

26. The Iranian ambassador subsequently contacted a member of the Iranian Revolutionary Guard ("IRG"), and instructed him to instigate the Marine barracks bombing. IRG members in Lebanon organized a meeting with Hezbollah leaders, at which they formed a plan to carry out attacks against the American and French barracks in Lebanon.

27. A 19-ton truck was disguised so that it would resemble a water delivery truck that routinely arrived at the Beirut International Airport, which was located near the U.S. Marine

barracks in Beirut. The truck was modified so that it could transport a gas-enhanced explosive device.

28. The truck was determined by Iranian military engineers to have an appropriate size and weight to crash through a barbed wire emplacement, fit between two sandbagged sentry posts, penetrate an iron fence gate, climb over a sewer pipe obstruction, move through a sandbag inner barrier into a passenger entry hallway, and enter the center lobby of the Marine barracks building. Iranian military engineers further determined that an explosion from this position would have sufficient force to collapse the Marine barracks structure.

29. On the morning of October 23, 1983, members of Hezbollah ambushed the real water delivery truck before it arrived at the barracks. The fake water delivery truck then set out for the barracks, driven by Ismalal Ascari, an Iranian citizen and IRG member.

30. At approximately 6:25 a.m. Beirut time, the truck drove past the Marine barracks. As the truck circled in the large parking lot behind the barracks, it increased its speed. The truck then crashed through a barbed wire barrier and a wall of sandbags, and entered the barracks. When the truck reached the center of the barracks, the bomb in the truck detonated.

31. The resulting explosion was the largest non-nuclear explosion that had ever been detonated, equivalent to 15,000 to 21,000 pounds of TNT. It ripped locked doors from their doorjambs, shredded trees located 370 feet away, and shattered all of the windows at an air traffic control tower, located over half a mile away, at the Beirut International Airport.

32. Most significantly, the four-story Marine barracks in which the bomb detonated was completely destroyed.

33. 241 servicemembers were killed, and many others were severely injured. For many of the victims, death was not instantaneous, and they were forced to endure extreme pain and suffering and economic losses.

34. In 2001, family members of some—but not all—of the 241 deceased servicemen, as well as several of the survivors injured in the Marine barracks bombing, brought two separate suits against Iran in the United States District Court for the District of Columbia. *See Peterson v. Islamic Republic of Iran*, 264 F. Supp. 2d 46, 48 (D.D.C. 2003).

35. Although the complaint was properly served, Iran failed to respond, and the plaintiffs moved for a default judgment.

36. After a bench trial, the D.C. Court found that Iran "actively participated in the attack . . . , which was carried out by [Iranian] agents with the assistance of Hezbollah," and was, accordingly, liable for compensatory damages. The D.C. Court subsequently directed special masters to provide reports recommending the amount of damages owed to each plaintiff. On September 7, 2007, after reviewing the special masters' reports, the D.C. Court entered a default judgment for the plaintiffs and against Iran in the total amount of $2,656,944,877. *Peterson v. Islamic Republic of Iran*, 515 F. Supp. 2d 25, 60 (D.D.C. 2007).

37. After the default judgment was entered against Iran in *Peterson*, many other suits were filed seeking damages on behalf of additional groups of Marine barracks bombing victims. Some of these groups obtained judgments against Iran, while others are still in the process of obtaining judgments. *See, e.g.*, *See Spencer v. Islamic Republic of Iran*, 12-cv-42, --- F. Supp. 3d ---, 2014 WL 5141429 (D.D.C. Oct. 14, 2014); *Fain v. Islamic Republic of Iran*, 885 F. Supp. 2d 78 (D.D.C. 2012); *Davis v. Islamic Republic of Iran*, 882 F. Supp. 2d 7 (D.D.C. 2012); *Taylor v. Islamic Republic of Iran*, 881 F. Supp. 2d 19 (D.D.C. 2012); *Brown v. Islamic Republic of Iran*, 872

F. Supp. 2d 37 (D.D.C. 2012); *Anderson v. Islamic Republic of Iran*, 839 F. Supp. 2d 263 (D.D.C. 2012); *Bland v. Islamic Republic of Iran*, 831 F. Supp. 2d 150 (D.D.C. 2011); *Murphy v. Islamic Republic of Iran*, 740 F. Supp. 2d 51 (D.D.C. 2010); *Valore v Islamic Republic of Iran*, 700 F. Supp. 2d 52 (D.D.C. 2010); *O'Brien v. Islamic Republic of Iran*, 853 F. Supp. 2d 44 (D.D.C. 2012).

38. In the meantime, the victims of several other Iran-sponsored terrorist attacks have also sued Iran, and some have obtained judgments. *See, e.g.*, *Greenbaum v. Islamic Republic of Iran*, 451 F. Supp. 2d 90 (D.D.C. 2006) (entering judgment for the victims of an August 9, 2001 attack by Hamas in Israel); *Estate of Heiser v. Islamic Republic of Iran*, 659 F. Supp. 2d 20 (D.D.C. 2009) (entering judgment for family members and estates of U.S. servicemen killed in a bombing in Saudi Arabia).

39. Unfortunately, because Iran's available assets in the United States are limited, the groups of victims have been competing to obtain a portion of those assets to satisfy their judgments.

THE *PETERSON V. ISLAMIC REPUBLIC OF IRAN* LITIGATION IN THIS DISTRICT

40. In June 2010, several victims of Iran-sponsored terrorism (the "Peterson Plaintiffs") commenced in this Court *Peterson v. Islamic Republic of Iran*, 1:10-cv-0418-KBF (S.D.N.Y.), against Bank Markazi, UBAE, Clearstream, and Citibank for turnover of certain restrained assets under the TRIA.

41. Bank Markazi held $1.75 billion in security entitlements in foreign government and supranational bonds at Banca UBAE S.p.A. UBAE, in turn, held corresponding security entitlements in an account with another intermediary, Clearstream Banking, S.A. Clearstream held corresponding security entitlements in an omnibus account at Citibank, N.A., in New York.

42. These assets are currently located in a "blocked," interest-bearing suspense account at Citibank and are subject to restraints and orders affirming the restraints entered in this action.

43. Bank Markazi moved to dismiss the claims in *Peterson*, and the Peterson Plaintiffs moved for summary judgment. Bank Markazi argued that the security entitlements Citibank held for Clearstream were not "assets of" Bank Markazi under the TRIA, and that the assets were entitled to central bank immunity under FSIA § 1611(b). Bank Markazi also invoked the Treaty of Amity between the United States and Iran.

44. On February 28, 2013, this Court denied Bank Markazi's motion to dismiss and granted summary judgment to the Peterson Plaintiffs. *Peterson v. Islamic Republic of Iran*, 10 CIV. 4518(KBF), 2013 WL 1155576 (S.D.N.Y. Mar. 13, 2013).

45. On July 9, 2013, this Court entered an order directing the turnover of the blocked assets, dismissing Citibank with prejudice, and discharging Citibank from liability ("Turnover Order"). Paragraph 5 of the Turnover Order provides:

> Within thirty days after this Partial Judgment becomes a "Non-Appealable Sustained Judgment" . . . the Plaintiffs shall apply to the Court for an order authorizing the distribution of the funds in the [Qualified Settlement Fund ("QSF")] Account in accordance with the terms of the Plaintiffs' agreement concerning the distribution of those funds.

46. This Court denied reconsideration of its summary judgment order. The United States Court of Appeals for the Second Circuit affirmed, *Peterson v. Islamic Republic of Iran*, 758 F.3d 185 (2d Cir. 2014), and subsequently denied Bank Markazi's requests for panel rehearing and rehearing *en banc* on September 29, 2014. On October 29, 2014, however, the Second Circuit granted Bank Markazi's motion to stay the mandate.

47. Bank Markazi filed a petition for certiorari with the U.S. Supreme Court on December 29, 2014. Petition for Certiorari, *Bank Markazi v. Deborah D. Peterson*, No. 14-770 (U.S. Dec. 29, 2014). That petition is currently pending.

48. Because the mandate has been stayed, the partial judgment has not become a non-appealable sustained judgment, and the plaintiffs have not applied for an order authorizing distribution of the funds in the QSF Account, the funds in the QSF Account have not been distributed and transferred to the control of the Peterson Plaintiffs.

IN RE 650 FIFTH AVENUE AND RELATED PROPERTIES **LITIGATION IN THIS DISTRICT**

49. Iran is, and has been since 1978, the owner of real property located at 650 Fifth Avenue, New York, New York ("650 Fifth Avenue Building"). This property was originally built by the last Shah of Iran following his establishment of the Pahlavi Foundation, a non-profit corporation organized under the laws of the State of New York in 1978 to pursue charitable interests on behalf of Iran in the United States. At this time, the United States and Iran enjoyed normal diplomatic relations. The 650 Fifth Avenue Building was constructed with approximately $42 million in funds from the Central Bank of Iran which were loaned to Bank Melli Iran and, in turn, to the Pahlavi Foundation.

50. Since the 1979 Islamic Revolution, Iran has owned, managed, and received rents from the 650 Fifth Avenue Building while disguising its ownership interest through entities formed in New York, New York and the Bailiwick of Jersey, which is the largest of the Channel Islands. These entities, named as Defendants herein, worked at the direction of the Supreme Leader of Iran, its government, and state-owned institutions such as Bank Melli Iran.

51. In addition to Iran's ownership of the 650 Fifth Avenue Building, the Islamic Republic also holds real property in Queens, New York; Houston, Texas; Carmichael, California; and Rockville, Maryland. These parcels of real property, including the 650 Fifth Avenue Building, are referred to collectively as the "Iranian Properties."

52. The Islamic Republic also maintains bank accounts in the United States that are or were associated with the ownership and operation of the Iranian Properties, and the services provided to Iran from these entities operating within the United States.

53. On December 17, 2008, the U.S. Attorney for the Southern District of New York commenced an *in rem* forfeiture proceeding in this Court seeking forfeiture of "[a]ll right, title and interest of Assa Corporation, Assa Company Limited, and Bank Melli Iran in 650 Fifth Avenue Company, including but not limited to the real property and appurtenances located at 650 Fifth Avenue, New York, New York." In addition, the United States sought forfeiture of funds from four bank accounts. The United States alleged that Assa Corporation and Assa Company Limited were controlled by Iran's Bank Melli and were shell companies intended to mask Iran's involvement in these entities.

54. A subsequent complaint added the assets of the Alavi Foundation as subject to forfeiture and listed eight parcels of real property and nine bank accounts for which the United States was seeking all right, title, and interest. The property subject to the suit includes the following:

a) All right, title, and interest in the real property and appurtenances located at 650 Fifth Avenue, New York, New York, with all improvements and attachments thereon, and all property traceable thereto;

b) All right, title, and interest in the real property and appurtenances located at 650 Fifth Avenue, New York, New York, with all improvements and attachments thereon;

c) All right, title, and interest in the real property and appurtenances located at 2313 South Voss Road, Houston, Texas 77057, with all improvements and attachments thereon;

d) All right, title, and interest in the real property and appurtenances located at 55-11 Queens Boulevard, Queens, New York 11377, Block 1325 Lots 1, 6, 7 and 8, with all improvements and attachments thereon;

e) All right, title, and interest in the real property and appurtenances located at 4836 Marconi Avenue, Carmichael, California 95608 with all improvements and attachments thereon;

f) All right, title, and interest in the real property and appurtenances located at 4204 Aldie Road, Catharpin, Virginia 20143-1133, with all improvements and attachments thereon;

g) All right, title, and interest in the real property and appurtenances located at 7917 Montrose Road, Rockville, Maryland 20854, with all improvements and attachments thereon;

h) All right, title, and interest in the real property and appurtenances located at 8100 Jeb Stuart Road, Rockville, Maryland 20854, with all improvements and attachments thereon;

i) All funds formerly on deposit in account number 78429712 at Citibank, N.A., New York, New York;

j) All funds formerly on deposit in account number 8881654552 at Citibank, N.A., New York, New York;

k) All funds formerly on deposit in account number 2724409590 at JPMorgan Chase Bank, N.A., Baton Rouge, Louisiana;

l) All funds formerly on deposit in account number 725700280 at JPMorgan Chase Bank, N.A., Baton Rouge, Louisiana;

m) All funds on deposit at JPMorgan Chase Bank, N.A., in account number 230484468, held in the name of 650 Fifth Avenue Company, and all funds traceable thereto;

n) All funds on deposit at JPMorgan Chase Bank, N.A., in account number 230484476, held in the name of 650 Fifth Avenue Company, and all funds traceable thereto;

o) All funds on deposit at Sterling National Bank in account number 3802032201, held in the name of the Alavi Foundation, and all funds traceable thereto;

p) All funds on deposit at Sterling National Bank in account number 3802032216, held in the name of the Alavi Foundation, and all funds traceable thereto; and,

q) All funds on deposit at Sterling National Bank in account number 3852524414, held in the name of the Alavi Foundation, and all funds traceable thereto.

55. Various groups of victims of Iran-sponsored terrorist attacks filed suits seeking to satisfy judgments from the Iranian Properties. Those suits were consolidated with the *650 Fifth Avenue* suit.

56. The Court granted summary judgment to the government and the victims in opinions dated September 16, 2013 and April 18, 2014. *See In re 650 Fifth Ave. & Related Props*., No. 08 Civ. 10934(KBF), 2014 WL 1516328 (S.D.N.Y. Apr. 18, 2014); *In re 650 Fifth Ave. & Related Props*., No. 08 Civ. 10934(KBF), 2013 WL 5178677 (S.D.N.Y. Sept. 16, 2013).

57. The Iranian Properties have not yet been sold, nor have any assets been distributed, and related litigation over the assets is ongoing.

CLASS ACTION ALLEGATIONS

58. The series of separate lawsuits brought on behalf of individual and groups of victims of Iran-sponsored terrorist attacks has led to the current state of affairs, where some victims are to receive compensation for their losses, while other victims stand to receive nothing.

59. In order to ensure that the assets at issue in the *Peterson* and *650 Fifth Avenue* suits are distributed fairly to all of Iran's victims, Intervenors bring this action individually and on behalf of all others similarly situated pursuant to Federal Rule of Civil Procedure 23(b)(1)(B).

60. Intervenors bring this Complaint and seek to certify and maintain as a class action pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(1)(B) on behalf of the following.

> All persons who have filed claims against the Islamic Republic of Iran pursuant to 28 U.S.C. §§ 1605(a)(7) or 1605A by a date to be determined by the court and who obtain a judgment on those claims, provided such claims arise from an act for which Iran was previously adjudged liable under 28 U.S.C. §§ 1605(a)(7) or 1605A.

61. The members of the Class, which is anticipated to comprise more than one thousand individuals, are so numerous and geographically dispersed that joinder of each is impracticable. As such, Rule 23(a)(1) is satisfied.

62. This case present questions of law and fact common to the claims of all members of the Class, that will require common answers, including whether the Class members' claims exceed the value of the collectable Iranian assets and whether and how the assets that are at issue in this suit should be distributed to the victims of Iran-sponsored terrorist attacks. As such, Rule 23(a)(2) is satisfied.

63. The claims of each of the Class Representatives are typical of the claims of the members of the Class. Like other members of the Class, the Class Representatives have filed or have claims against the Islamic Republic of Iran pursuant to 28 U.S.C. §§ 1605(a)(7) or 1605A and

either have obtained or will obtain default judgments against the Islamic Republic of Iran. As such, Rule 23(a)(3) is satisfied.

64. The Intervenors will fairly and adequately protect the interests of the Class as a whole, rather than the narrow interests of any single member or group of members of the Class. Intervenors have also retained counsel, who will vigorously pursue the claims of, and adequately protect the interests of, the entire Class. Intervenors' counsel are not only experienced class action attorneys, but have retained counsel who have significant experience representing classes certified under Rule 23(b)(1). As such, Rule 23(a)(4) is satisfied.

65. There are limited Iranian assets located in the United States. The value of the claims by members of the Class far exceeds the value of those assets. As a result, the assets in the *Peterson* and *650 Fifth Avenue* suits constitute a limited fund to satisfy the judgments of all members of the Class. In such a circumstance, equity requires that a mandatory class be certified to determine the rights of all persons with an interest in the fund.

66. Adjudications concerning this fund with respect to individual Class members would, as a practical matter, be dispositive of the interests of the other members not parties to the individual adjudications and would substantially impair or impede their ability to protect their interests. Unless the Class is certified, some members of the Class will be able to collect a disproportionate share of the fund relative to their judgment while others with identical rights and interests will receive nothing. Accordingly, the requirements of Rule 23(b)(1)(B) are satisfied.

COUNT I
Declaratory Judgment
Pursuant to 28 U.S.C. § 2201

67. Plaintiff repeats and re-alleges the allegations contained in the forgoing paragraphs as if fully set forth herein.

68. 28 U.S.C. § 2201 provides in relevant part that "[i]n a case of actual controversy within its jurisdiction . . . any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree . . . ."

69. 28 U.S.C. § 2202 permits "[f]urther necessary or proper relief" to be awarded "based on a declaratory judgment or decree . . . against any adverse party whose rights have been determined by such judgment."

70. The assets at issue in the *Peterson* and *650 Fifth Avenue* suits are the only known collectible Iranian assets in the United States; in fact, the assets at issue in the *Peterson* and *650 Fifth Avenue* suits are likely the only collectible Iranian assets in the United States.

71. The Class value of the existing judgments by Iran's victims far exceeds the value of the assets at issue in the *Peterson* and *650 Fifth Avenue* suits; as a result, the assets in the *Peterson* and *650 Fifth Avenue* suits comprise a limited fund pursuant to Federal Rule of Civil Procedure 23(b)(1)(B).

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

73. Since 1984, all persons who have filed claims against the Islamic Republic of Iran pursuant to 28 U.S.C. §§ 1605(a)(7) or 1605A have obtained default judgments against the Islamic Republic of Iran. Members of the Class who not yet obtained default judgments, but have filed claims will almost certainly obtain default judgments. As a result, all members of the Class have an equitable interest in the value of the assets at issue in the *Peterson* and *650 Fifth Avenue* suits.

74. Accordingly, Plaintiffs and the Class are entitled to an order that: (a) the distribution of the assets at issue in the *Peterson* and *650 Fifth Avenue* suits be stayed until all members of the Class have been provided notice concerning the existence of the fund and their rights to fund assets and all members of the Class are afforded sufficient time to obtain judgments against Iran under 28 U.S.C. § 1605A in order to permit them to assert claims against the fund and (b) after such time expires, the assets in the *Peterson* and *650 Fifth Avenue* suits be distributed on a fair and proportionate basis to all members of the Class.

PRAYER FOR RELIEF

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

A. An order determining that the assets at issue in the *Peterson* and *650 Fifth Avenue* suits are the only known collectible Iranian assets in the United States and the only likely assets that any person who has now or will obtain a judgment against the Islamic Republic of Iran pursuant to 28 U.S.C. §§ 1605(a)(7) or 1605A could use to satisfy their respective judgments;

B. A declaration that the value of the existing and likely future judgments against the Islamic Republic of Iran pursuant to 28 U.S.C. §§ 1605(a)(7) or 1605A by Iran's victims far exceeds the value of the assets at issue in the *Peterson* and *650 Fifth Avenue* suits, and as a result, the assets in the *Peterson* and *650 Fifth Avenue* suits comprise a limited fund pursuant to Federal Rule of Civil Procedure 23(b)(1)(B);

C. An order determining that none of the assets in the *Peterson* and *650 Fifth Avenue* suits will be distributed until after every class member is notified of his or her rights to assert a claim and obtain a judgment that may be satisfied by this limited fund;

D. A determination that all members of the Class have an interest in the assets at issue in the *Peterson* and *650 Fifth Avenue* suits and such assets constitute and shall be held as a constructive trust held for the benefit of all members of the Class until the Court authorizes distribution;

E. A determination that once the time has expired for members of the Class to obtain judgments, the assets at issue in the *Peterson* and *650 Fifth Avenue* suits will be equitably apportioned among all members of the Class on pro rata basis based on the size of their judgments; and

F. All other available and appropriate relief.

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Respectfully submitted,

BY: /s/ Douglas J. McNamara

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