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August 26, 2014

By ECF

Clerk of Court
U.S. Court of Appeals for the Eighth Circuit
Thomas F. Eagleton U.S. Courthouse
111 South Tenth Street
St. Louis, MO 63102

Re: Zayed v. Associated Bank, N.A.
No. 13-3388

Dear Clerk of Court:

In accordance with Fed. R. App. P. 28(j), appellee Associated Bank, N.A. calls the Court's attention to a recent decision of this Court that supports Associated Bank's arguments on appeal.

In *Varga v. U.S. Bank National Association*, No. 13-2709 (8th Cir. Aug. 21, 2014), this Court affirmed the dismissal of a complaint in a case that is virtually identical to this one—indeed, the lower court here relied on the lower court's decision in *Varga* in dismissing the claims. The liquidator in *Varga*, like the receiver here, sued a bank that provided banking services to people who turned out to be running a Ponzi scheme, alleging that the bank aided and abetted the fraud. In both cases, the district court dismissed the complaint for failure to plausibly allege under *Twombly* and Fed. R. Civ. P. 9 that the bank had knowledge of the primary wrongdoers' conduct and gave "substantial assistance" to the wrongdoers, as Minnesota law requires for aiding-and-abetting liability.

In *Varga*, this Court affirmed the lower court's decision, holding that the plaintiff failed to plausibly allege that U.S. Bank had knowledge of and substantially assisted the wrongful conduct. (Slip Op. at 6-12.) The Court held that the bank's alleged knowledge of allegedly

suspicious use of the account by the wrongdoers was not sufficient to show that the bank had actual knowledge that they were engaged in misconduct, or that the bank gave “substantial assistance” to their scheme. (*Id.* at 10-11.) The Court reaffirmed that “conduct that inadvertently advances [wrongdoing] does not amount to substantial assistance.” (*Id.* at 10.)

In light of this Court’s affirmance of the lower court’s opinion in *Varga*, the district court’s reliance on that opinion in this case was well founded.

This Court’s decision in *Varga* supports the arguments that Associated Bank made at pages 16-45 of the Brief of Appellee filed on February 12, 2014, that the district court properly dismissed the receiver’s Complaint because he failed to plausibly plead that Associated Bank knew of and substantially assisted the primary wrongdoers’ misconduct.

Sincerely,

s/ Charles F. Webber

Charles F. Webber

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cc (by ECF): All parties registered on the ECF system