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August 27, 2014

VIA ELECTRONIC FILING

Michael E. Gans, Clerk of Court
United States Court of Appeals for the Eighth Circuit
Thomas F. Eagleton Courthouse
111 South 10th Street, Room 24.329
St. Louis, MO 63102

Re: 13-3388 *R. J. Zayed v. Associated Bank, N.A.*: Response to Notice of
Supplemental Authority under Federal Rule of Appellate Procedure 28(j)

Dear Mr. Gans:

Appellant (“the Receiver”) responds to Appellee Associated Bank’s August 26, 2014 Rule 28(j) Statement of Supplemental Authority.

In labeling *Varga v. U.S. Bank National Association*, No. 13-2709 (8th Cir. Aug. 21, 2014), as a “case that is virtually identical to this one,” Associated Bank thoroughly misunderstands both its facts and its holding. This Court affirmed dismissal in *Varga* because the foundational document upon which the plaintiff based his claims did not say what plaintiff alleged it to say. The so-called “collateral agreement” permitted U.S. Bank to receive Petters-sourced funds. This agreement did not mandate retailer-only sourced funds. Yet the Complaint in *Varga* based its entire theory of aiding-and-abetting liability on U.S. Bank’s awareness that Petters (and not retailers) put money into the collateral account. Since this allegation amounted to U.S. Bank’s awareness of something not improper, the Court held it “implausible” that such awareness implied U.S. Bank’s “knowledge” of the primary torts.

Associated Bank cannot rely on this holding, whose rationale is conspicuously missing from its Rule 28(j) Statement. As explained at length throughout the Receiver’s briefing, in our case the Complaint’s well-pleaded allegations explain dozens of facts that not only allege knowledge of primary-tortfeasor wrongdoing, but also permit a reasonable inference of such knowledge. For example (and vastly different from any *Varga* allegation), Associated Bank became aware in February 2009 of the liquidation of Crown Forex, S.A. by Swiss authorities, but still facilitated transfers from Account #1705. Such liquidation obliterated Account #1705’s only ostensibly legitimate purpose. (*See* Appellant Br. 13-15, 33-35, 43). No claim of “inadvertent assistance” is plausible here.

Michael E. Gans, Clerk of Court
August 27, 2014
Page 2 of 2

Associated Bank's new reliance on *Varga* is puzzling. Its Appellee Brief cites the *Varga* district court decision on pages 12, 20 and 35, but never compares its facts with those here.

The district court here solely cited the district court *Varga* decision for its holding that "constructive knowledge" does not establish "knowledge" for Minnesota aiding-and-abetting liability. The *Varga* appellant never challenged that holding. Here, in contrast, the Receiver does challenge it, arguing that constructive knowledge suffices. (*See* Appellant Br. 26-30, Reply 9-12).

Sincerely,



Robert P. Greenspoon
Attorney for Appellant

Cc: Counsel of record via ECF