STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Minnesota Break the Bonds Campaign, Bil'in Popular Committee Against the Wall and Settlements, Women Against Military Madness-Middle East Committee, Lucia Wilkes Smith, Margaret Sarfehjooy, Catharine Abbott, Barbara Hill, Polly Mann, Leona Ross, Sylvia Schwarz, Nadim Shamat, Sarah Martin, Robert Kosuth, Mary Eoloff, Nick Eoloff, Vern Simula, Cynthia Arnold, Newland F. Smith, III, Ronnie Barkan, Ofer Neiman, David Nir, Lehee Rothschild, Renen Raz, Dorothy Naor, Gal Lugassi, Boycott From Within and David Boehnke,

Plaintiffs,

vs.

Minnesota State Board of Investment,

Defendant.

Court File No. 62-CV-11-10079
Judge Margaret M. Marrinan

[DEFENDANT'S PROPOSED] FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING DEFENDANT'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT IN ITS ENTIRETY

The above-entitled matter came before the undersigned on March 5, 2012, pursuant to Defendant's motion to dismiss the Complaint in its entirety. Attorneys Jordan Kushner, Esq. and Peter J. Nickitas, Esq. appeared on behalf of Plaintiffs. Assistant Attorney General Kristyn Anderson appeared on behalf of Defendant.

Based upon the arguments of counsel, the files and record herein, and the evidence before the Court, the Court hereby makes the following:

FINDINGS OF FACT

A. The State Board of Investment

1. The State Board of Investment (the "SBI") was created by the Minnesota Constitution, Minn. Const. art. XI, § 8, "for the purpose of administering and directing the investment of all state funds."

2. The SBI's authority also extends to administering and directing the investment of all state pension funds. Minn. Stat. § 11A.02, subd. 2; Minn. Stat. ch. 356A.

B. The SBI's Purchase of Foreign Government Bonds

3. Minnesota Statutes Section 11A.24, entitled "Authorized Investments," contains a specific list of asset classes in which the SBI is authorized to invest. These include common stocks, bonds, short term securities, real estate, private equity, and resource funds. Minn. Stat. § 11A.24, subds. 1-6.

4. In 1988, Section 11A.24 was amended to specifically include "international securities" among the SBI's authorized investments. Minn. Laws 1988, ch. 453, § 8; Minn. Stat. § 11A.24, subd. 6(a)(5).

5. The SBI has invested in Israel government bonds. Compl. ¶ 17.

C. The Plaintiffs

6. Plaintiffs are comprised of four organizations and twenty-three individuals. Compl. ¶¶ 2-13.

7. Plaintiffs allege moral opposition to the SBI's investment in Israel bonds. *See, e.g.*, Compl. ¶¶ 6- 8, 10, 13.

8. Five of the individual Plaintiffs allege that they are beneficiaries of plans with funds invested by the SBI. Compl. ¶¶ 5, 6, 7, 9, 13.

9. Ten of the Plaintiffs are neither fund beneficiaries nor Minnesota citizens. Compl. ¶¶ 3, 4, 11, 12.

D. Plaintiffs' Claims

10. Plaintiffs brought suit on November 29, 2011. The Complaint consists of three counts. Count One seeks a declaratory judgment that the SBI is not authorized to invest in bonds issued by Israel. Counts Two and Three request a declaration that the SBI may not invest in Israel bonds because in doing so the SBI allegedly aids and abets Israel's alleged violation of the Fourth Geneva Convention and exposes the State to tort liability.

11. Defendant brought a Motion to Dismiss all of Plaintiffs' claims with prejudice, based on four arguments: first, that Plaintiffs lack standing to sue; second, that Minnesota Statutes § 11A.24, subd. 6(a)(5) authorizes the SBI to purchase foreign government bonds, including those of Israel; third, that the political question and act of state doctrines render Counts Two and Three non-justiciable; and fourth, that Plaintiffs fail to state a claim of aiding and abetting against the SBI.

CONCLUSIONS OF LAW

A. Motion to Dismiss Standard

12. Minnesota Rule of Civil Procedure 12.02(a) provides for dismissal where the court lacks jurisdiction over the subject matter of a complaint. Subject matter jurisdiction, including plaintiffs' standing, is a question of law for the court to decide. *Id.*; *Shaw v. Bd. of Regents of Univ. of Minn.*, 594 N.W.2d 187, 190 (Minn. Ct. App. 1999), *rev. denied* (Minn. July 28, 1999). "Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." Minn. R. Civ. P. 12.08(c).

13. Minnesota Rule of Civil Procedure 12.02(e) provides that a complaint may be dismissed "for failure to state a claim upon which relief can be granted." Dismissal of a claim is appropriate where it is clear from the face of the complaint that the claim is legally deficient. *Northern States Power Co. v. Franklin*, 122 N.W.2d 26, 29 (Minn. 1963). Legal conclusions in the complaint are not binding on the court. "A plaintiff must provide more than labels and conclusions." *Bahr v. Capella University*, 788 N.W.2d 76, 80 (Minn. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

B. Standing of the Plaintiffs

14. Plaintiffs must prove that they have the requisite standing to bring this case. Standing exists if (1) a plaintiff has suffered an "injury-in-fact" or (2) the legislature has conferred standing by statute. *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 493 (Minn. 1996) (citing *Sierra Club v. Morton,* 405 U.S. 727, 731-32 (1972)). The necessary injury-in-fact must be both "concrete" and "actual or imminent, not conjectural or hypothetical." *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990) (quotation and citation omitted); *Twin Ports Convalescent, Inc. v. Minnesota State Bd. of Health*, 257 N.W.2d 343, 346 (Minn. 1977).

15. "[M]ere differences of opinion" are not sufficient to establish standing. *St. Louis County Bd. of Educ. v. Borgen*, 257 N.W. 92, 95 (Minn. 1934) (noting that such differences do not present a justiciable controversy); *Conant v. Robbins, Kaplan, Miller & Ciresi, L.L.P.*, 603 N.W.2d 143, 146 (Minn. Ct. App. 1999) (finding no standing and reasoning that plaintiffs' claims were "based only on their disagreement with policy or the exercise of discretion by those responsible for executing the law."). Policy disagreements, no matter how deeply felt, also do not confer standing. *See St. Paul Area Chamber of Commerce v. Marzitelli*, 258 N.W.2d 585, 589-90 (Minn. 1977) (citizen with policy dispute "must take its case to the legislature"). When

even a taxpayer's challenges to state action are "'based primarily on [the taxpayer's] disagreement with policy or the exercise of discretion by those responsible for executing the law,' they are insufficient to confer standing." *Olson v. State*, 742 N.W.2d 681, 685 (Minn. Ct. App. 2007), quoting *Rukavina v. Pawlenty*, 684 N.W.2d 525, 531 (Minn. Ct. App. 2004), *rev. denied* (Minn. Oct. 19, 2004) (finding no taxpayer standing where challenges were based on policy disagreements).

16. Plaintiffs' challenges in this case are based on a policy disagreement with the discretionary decisions made by the Legislature and the SBI. Ultimately, the authority to make social, political and economic policy decisions of the kind Plaintiffs complain about in this case resides with the Legislature and the SBI, not this Court. *See Westling v. County of Mille Lacs*, 581 N.W.2d 815, 822 (Minn. 1998) (noting that "social policy decisions are committed to the legislature"), *cert. denied*, 525 U.S. 1105 (1999). Accordingly, Plaintiffs do not have the requisite standing to bring this case, including taxpayer standing.

17. In addition, the legislature has not conferred standing upon Plaintiffs. Although a plaintiff may have standing if his or her injuries fall within the zone of interests protected by a statutory provision, *see, e.g., Hanson v. Woolston*, 701 N.W.2d 257, 262 (Minn. Ct. App. 2005), Plaintiffs' alleged injury does not fall within the zone of interest of the SBI's enabling legislation. The purpose of Minnesota Statutes Chapters 11A and 356A relates to the economic decisions of the SBI, not international policy interests. As a result, Plaintiffs' claims fail for lack of standing.

C. Count One: The SBI's Investment Authority Under Minn. Stat. § 11A.24

18. Even if Plaintiffs had standing, to prevail on Count One, they must show that the SBI is not authorized to invest in Israel bonds under Minn. Stat. § 11A.24.

1. The Plain Meaning of Minn. Stat. § 11A.24

19. "The touchstone for statutory interpretation is the plain meaning of a statute's language." *ILHC of Eagan, LLC v. County of Dakota*, 693 N.W.2d 412, 419 (Minn. 2005) (citing Minn. Stat. § 645.16). When the words of a statute are clear in their application to a particular case, the plain meaning of the law controls and "shall not be disregarded under the pretext of pursuing the spirit [of the statute]." Minn. Stat. § 645.16. Indeed, the plain language of a statute controls whether or not the reviewing court considers the result to be "reasonable" or "good policy." *Hyatt v. Anoka Police Dep't*, 691 N.W.2d 824, 826-28 (Minn. 2005). When a statute's meaning is plain from its language, "statutory construction is neither necessary nor permitted." *American Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001).

20. Subdivision 1 of Section 11A.24 states that the SBI "shall have the authority to purchase, sell, lend or exchange the following securities for funds or accounts specifically made subject to this section. . . ." Minn. Stat. § 11A.24, subd. 1. The statute then sets forth a number of permissible investments, including "other investments" set forth in Subdivision 6, which reads as follows:

> **Other investments.** (a) In addition to the investments authorized in subdivisions 1 to 5, and subject to the provisions in paragraph (b), the state board may invest funds in:
>
> *******
>
> (5) international securities.

Minn. Stat. § 11A.24, subd. 6 (a)(5).

21. "International securities" unambiguously includes foreign government bonds, including those of Israel. The word "international" is used to mean something other than U.S. domestic securities. *See, e.g., Webster's Ninth New Collegiate Dictionary*, p. 632 (1988) (defining "international" to mean "reaching beyond national boundaries"). The phrase

"international securities" as used in Minn. Stat. § 11A.24, subd. 6(a)(5) also is not limited to securities of a particular country.

22. The term "securities" plainly includes bonds. Subdivision 1 of Section 11A.24 refers to the "securities" described in subdivisions 2 to 6, which specifically include "bonds, notes, bills mortgages, and other evidences of indebtedness," *see* subd. 2, and "bonds, notes, [and] debentures," *see* subd. 3. Several other Minnesota statutes similarly use the term "security" to include bonds. *See, e.g.,* Minn. Stat. §§ 50.14, subd. 2(c) ("authorized securities" includes "bonds or other interest bearing securities"); 51A.35 (authorizing associations to invest in "securities" including "bonds"); 80A.41(30) (Minnesota Securities Act definition of "security" includes "bonds"); 126C.72, subd. 4 (bonds issued by commissioner of management and budget deemed "authorized securities"); 136D.281, subd. 7 (intermediate school board bonds deemed "tax-exempt securities"). The federal Securities and Exchange Act of 1934 also defines "security" to include bonds. *See* 15 U.S.C. § 78C(a)(10).

23. Additionally, Minn. Stat. § 645.08 requires that statutory words and phrases be given their "common" usage. Minn. Stat. § 645.08(1). "Securities" is commonly understood in the industry to include government bonds. *See* Definition of "Security," *InvestorWords*, http://www.investorwords.com/4446/security (defining "security" to mean "[a]n investment instrument, other than an insurance policy or fixed annuity, issued by a corporation, government, or other organization which offers evidence of debt or equity."); Black's Law Dictionary 1476 (9th ed. 2009) (defining "security" to include "[a]n instrument that evidences . . . the holder's creditor relationship with a firm or government (e.g., a bond). . .").

24. The plain and ordinary meaning of Minn. Stat. § 11A.24, subd. 6 (a)(5) authorizes the SBI to invest in foreign government bonds, including those of Israel.

25. Even if the statute was ambiguous, courts should defer to the construction given the statute by the agency which administers the law. *Krumm v. R.A. Nadeau Co.,* 276 N.W.2d 641, 644 (Minn. 1979) (stating it is an established principle that "[w]hen the meaning of a statute is doubtful, courts should give great weight to a construction placed upon it by the department charged with its administration"); Minn. Stat. § 645.16(8). This judicial deference is "rooted in the separation of powers doctrine." *In re Minnesota Power*, 807 N.W.2d 484, 488 (Minn. Ct. App. 2011), *rev. granted* (Minn. Feb. 14, 2012) (finding that "'judicial deference, rooted in the separation of powers doctrine, is extended to an agency decision-maker in the interpretation of statutes that the agency is charged with administering and enforcing.'") (citations omitted). The Court defers to the SBI's construction that it is authorized to invest in bonds of foreign governments, including those of Israel.

2. *Ejusdem Generis* and *Expressio Unius*

26. Plaintiffs argue, relying on two cannons of construction, that because Subdivision 2 of Section 11A.24 references Canadian government bonds, that "international securities" as used in Subdivision 6 cannot include government bonds beyond those authorized by Subdivision 2. The cannons of construction cited by Plaintiffs apply only if a statute is ambiguous. *Winters v. City of Duluth*, 84 N.W. 788, 789 (Minn. 1901) (holding that *ejusdem generis* "can be used only as an aid in ascertaining the legislative intent, and when that is apparent from the statute itself the rule has no application."); *Lefto v. Hoggsbreath Enters., Inc.*, 567 N.W.2d 746, 749 (Minn. Ct. App. 1997) (refusing to resort to use of *ejusdem generis* where statute was unambiguous), *aff'd*, 581 N.W.2d 855, 856 (Minn. 1998). *See also Walser Auto Sales, Inc. v. City Of Richfield,* 635 N.W.2d 391, 397, n. 1 (Minn. Ct. App. 2001), *aff'd*, 644 N.W.2d 425 (Minn. 2002) ("*expressio unius*" "is only used where it is first determined that the

language is ambiguous"). Subdivision 6(a)(5) plainly authorizes the purchase of foreign government bonds beyond those authorized by Subdivision 2. Therefore, the cannons of construction do not apply.

27. The cannons of construction referred to by Plaintiffs also conflict with the plain language of the statute. Subdivision 6 states that "international securities" are authorized "*[i]n addition to* the investments authorized in *subdivisions 1 to 5*." (Emphasis added.) Thus, Plaintiffs' argument violates the cannon of construction that "[e]very law should be construed, if possible, to give effect to all its provisions," Minn. Stat. § 645.16. *See also State v. Caldwell*, 803 N.W.2d 373, 383 (Minn. 2011) (inference that mention of one term excludes another "is only justified when the language of the statute supports such an inference").

28. Plaintiffs' contention also renders Subdivision 6(a)(5) superfluous. For example, Subdivision 5 of Section 11A.24 addresses investment in U.S. and Canadian corporate stock. If "international securities" cannot include any type of security addressed in the supposedly more specific provisions of Section 11A.24, then the SBI also could not invest in the stock of foreign corporations other than the stock of Canadian domiciled corporations. Under Plaintiffs' reasoning, the SBI therefore could not invest in non-Canadian foreign corporate or government securities, rendering Subdivision 6(a)(5) meaningless.

29. In order to give effect to Subdivision 6(a)(5), it must mean that the SBI is authorized to invest in government bonds, corporate stocks, and other securities different from and in addition to those authorized by Minn. Stat. § 11A.24, subds. 2-5, and subd. 6(a)(1)-(4). *See, e.g., Westerlund v. Kettle River Co.*, 162 N.W. 680, 682 (Minn. 1917) (rejecting use of *ejusdem generis*, and stating that "[t]he general purpose of a statute, as disclosed by the provisions thereof, taken as a whole, often requires that the final general clause, inserted with a

view of bringing within its scope matters not specifically mentioned, should not be restricted in meaning by the preceding specifications."); *State v. Caldwell*, 803 N.W.2d at 383 (stating that use of "*expressio unius*" "is not justified when the omitted term is encompassed by the enumerated terms").

30. Finally, the cannon of *ejusdem generis* does not apply where "the general provision shall be enacted at a later session and it shall be the manifest intention of the legislature that such a general provision shall prevail." Minn. Stat. § 645.26, subd. 1. Here, Subdivision 6(a)(5) was added in 1988, after Subdivisions 2-5 and after the provisions in Subdivision 6(a)(1)-(4). *See* Minn. Laws 1980, ch. 607, art. 14 § 22; Minn. Laws 1988, ch. 453, § 8.

31. Since the SBI is authorized to invest in foreign government bonds, including those of Israel, the Court grants Defendant's motion to dismiss Count One of Plaintiffs' Complaint.

D. Counts Two and Three: The SBI's Investment In Israel Bonds

32. Counts Two and Three of the Complaint argue that the SBI's investment in Israel bonds is unreasonable and violates the "prudent person" standard, because the SBI is allegedly aiding and abetting an alleged violation of the Fourth Geneva Convention, and the State would be liable in tort for its purchase of Israel bonds.

33. Two longstanding legal doctrines preclude courts from adjudicating cases of the kind now before the Court. The political question doctrine precludes claims which are impossible to decide "'without an initial policy determination of a kind clearly for non-judicial discretion.'" *Alperin v. Vatican Bank*, 410 F.3d 532, 561 (9th Cir. 2005), *cert. denied*, 546 U.S. 1137 (2006) (quoting *Baker v. Carr*, 369 U.S. 186, 217 (1962)) (holding that unjust enrichment

claim against bank for profits derived from conduct of foreign government was non-justiciable political question, and stating that "[i]t is not our place to speak for the U.S. Government by declaring that a foreign government is at fault for [its conduct] during World War II. Any such policy condemning [a foreign government] must first emanate from the political branches."). The political question doctrine "is based upon respect for the pronouncements of coordinate branches of government that are better equipped and properly intended to consider issues of a distinctly political nature." *Doe I v. State of Israel*, 400 F. Supp.2d 86, 111 (D.D.C. 2005).

34. The act of state doctrine is a rule of law that "prevents a U.S. court 'from deciding a case when the outcome turns upon the legality or illegality (whether as a matter of United States, foreign, or international law) of official action by a foreign sovereign performed within its own territory.'" *Malewicz v. City of Amsterdam*, 517 F. Supp.2d 322, 336-7 (D.D.C. 2007) (citations omitted). The act of state doctrine bars claims in which the relief sought would require a court in the United States to declare invalid a foreign sovereign's official acts. *W.S. Kirkpatrick & Co., Inc. v. Envtl. Tectonics Corp., Int'l*, 493 U.S. 400, 404-406 (1990). *See also, e.g., Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 423 (1964) (act of state doctrine reflects "the strong sense of the Judicial Branch that its engagement in the task of passing on the validity of foreign acts of state may hinder" the conduct of foreign affairs); *Oetjen v. Central Leather Co.*, 246 U.S. 297, 302-304 (1918) (stating that act of state doctrine is premised on policy of international comity and amicable relations between governments, foreclosing adjudication of legality of acts of foreign states).

35. The political question and act of state doctrines preclude the Court from adjudicating this matter since it would require the Court to determine whether a foreign sovereign's acts have violated the Fourth Geneva Convention. *See, e.g., Corrie v. Caterpillar,*

Inc., 503 F.3d 974, 984 (9th Cir. 2007) (deciding political question doctrine precluded claim against Caterpillar for allegedly aiding and abetting Israel); *Corrie v. Caterpillar, Inc.*, 403 F. Supp.2d 1019, 1032 (W.D. Wash. 2005), *aff'd*, 503 F.3d 974 (9th Cir. 2007) (finding act of state doctrine barred claim that Caterpillar allegedly aided and abetted Israel, and stating that "[t]his lawsuit challenges the official acts of an existing government in a region where diplomacy is delicate and U.S. interests are great."). *See also Doe I*, 400 F. Supp.2d at 111-114 (finding claims which would require court to determine that Israeli settlement activity was illegal or tortious were non-justiciable under both political question and act of state doctrines, stating that such a determination "is a foreign relations determination to be made by the Executive or Legislative Branches," and that "[t]he actions challenged by plaintiffs are classic acts of state.").

36. Plaintiffs argue that the Court should presume that Israel has violated the Fourth Geneva Convention simply based on the allegations in their Complaint. Such a presumption is unfounded. Plaintiffs' allegations are in the nature of legal conclusions or conclusory assertions which are not deemed to be true for purposes of this Motion. *See Bahr v. Capella University*, 788 N.W.2d 76, 80 (Minn. 2010), citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (stating that legal conclusions in the complaint are not binding on the court, and the plaintiff "must provide more than labels and conclusions"). Plaintiffs have also failed to show that any alleged action of an international organization is enforceable by this Court. *See, e.g., Medellin v. Texas*, 552 U.S. 491, 511, 518 (2008) (rejecting notion that International Court of Justice interpretations or decisions were intended to be enforceable by American courts); *Diggs v. Richardson*, 555 F.2d 848, 850-51 (D.C. Cir. 1976) (finding U.N. Security Council resolution did not confer rights enforceable in American courts); *Smith v. Socialist People's Libyan Arab*

Jamahiriya, 886 F. Supp. 306, 311-12 (E.D.N.Y. 1995) (finding U.N. Security Council resolution did not create private right of action).

37. Plaintiffs' reliance on the assertion that they have alleged *jus cogens* violations is also misplaced. This same argument was rejected by the court in *Doe I.* 400 F. Supp.2d at 114 ("The fact that plaintiffs have alleged *jus cogens* violations does not change things. Within our territorial borders, the law of the United States is paramount, under which the law of nations does not preempt the act of state doctrine even if the conduct at issue allegedly violates international law."). A determination of such alleged violations "would offend notions of international comity and sovereignty." *Id. See also Corrie v. Caterpillar, Inc.*, 403 F. Supp.2d at 1032 (finding act of state doctrine precluded aiding and abetting claims based on allegations that Israel's official policy violated international law). Plaintiffs' citation to *Sarei v. Rio Tinto*, ___F.3d ___, 2011 WL 5041927 (9th Cir. Oct. 25, 2011), *pet. for cert. filed*, 80 BNA USLW 3335 (Nov 23, 2011), is inapposite. There, the court found that the case did not involve the potential for interference in the conduct of foreign affairs or international comity since the foreign government at issue had sent a letter to the court urging it to hear the lawsuit. *Id.* at *16. Here, the potential for interference in the conduct of foreign affairs and international comity preclude jurisdiction on Counts Two and Three of the Complaint.

E. Aiding and Abetting Allegations

38. Even if Counts Two and Three were justiciable, to state a valid claim for aiding and abetting alleged Fourth Geneva Convention violations, "a claimant must show that the defendant provided substantial assistance with the purpose of facilitating the alleged offenses." *Presbyterian Church of Sudan v. Talisman Energy, Inc.*, 582 F.3d 244, 247 (2nd Cir. 2009), *cert. denied*, 131 S. Ct. 79 & 131 S. Ct. 122 (2010). In other words, it must be shown that the SBI

acted with the purpose of assisting international law violations, and that it has the right and ability to control the country's alleged conduct. *Id.* at 261, 263.

39. Since the SBI is merely a purchaser of bonds, it lacks the requisite purpose to aid and abet any alleged international law violations, as a matter of law. *See, e.g., Corrie v. Caterpillar, Inc.*, 403 F. Supp.2d at 1024, 1027 (finding that as a matter of law, a seller lacks specific intent necessary to aid and abet actions of buyer). Plaintiffs' allegations of the SBI's intent to aid and abet international law violations are not plausible, and the Court is not bound by these conclusory assertions. *See Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 1951-2 (2009) (holding that to survive motion to dismiss, complaint must allege facts sufficient to plausibly suggest defendant's state of mind, and holding that court is not bound by conclusory assertions of knowledge or intent).

40. Regardless of Plaintiffs' allegations of intent, the SBI's conduct in merely purchasing government bonds cannot impose aiding and abetting liability as a matter of law. *See, e.g., Talisman*, 582 F.3d at 264 (dismissing claim that corporation aided and abetted violations of international law by simply doing business with Sudan, and stating that any other conclusion would allow "private parties to impose embargos or international sanctions through civil actions in United States courts. Such measures are not the province of private parties but are, instead, properly reserved to governments and multinational organizations."); *Doe v. Nestle*, 748 F. Supp.2d 1057, 1096 (C.D. Ca. 2010) ("[A] plaintiff must allege something more than ordinary commercial transactions in order to state a claim for aiding and abetting human rights violations."); *Rothstein v. UBS AG*, 647 F. Supp.2d 292 (S.D. N.Y. 2009) (granting motion to dismiss claim against international bank that bank's funds indirectly facilitated international law violation, and reasoning that bank loans were not significant source of funds to government, and

the money could be used for multiple legitimate uses); *In re South African Apartheid Litig.*, 617 F. Supp.2d 228, 257-258, 269 (S.D. N.Y. 2009) (dismissing aiding and abetting claims and stating that "[i]t is (or should be) undisputed that simply doing business with a state or individual" is insufficient to create aiding and abetting liability); *Corrie v. Caterpillar, Inc.*, 403 F. Supp.2d at 1023-24 ("Plaintiffs' claim of aiding and abetting fails because where a seller merely acts as a seller, he cannot be an aider and abettor. . . .").

41. Counts Two and Three of the Complaint are not justiciable, and even if they were, they fail to state a claim upon which relief can be granted.

Based on the foregoing Findings of Fact and Conclusions of Law, the Court hereby issues the following:

ORDER

1. Defendant's motion to dismiss the Complaint is granted; and

2. Plaintiffs' Complaint is hereby dismissed in its entirety, with prejudice.

3. For the same reasons that Defendant's motion to dismiss the Complaint is granted, Plaintiffs' motion for summary judgment on Count One is denied.

Let Judgment be entered accordingly.

Dated: _____ BY THE COURT:

_____
MARGARET M. MARRINAN
Judge of District Court

AG: #2971012-v1