To Be Argued By:
BRIAN J. LESKE
Time Requested: 30 Minutes

CTQ-2023-00002

STATE OF NEW YORK

ESTER LELCHOOK, AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF DAVID MARTIN LELCHOOK, MICHAEL LELCHOOK, YAEL LELCHOOK, ALEXANDER LELCHOOK, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF DORIS LELCHOOK, MALKA KUMER, CHANA LIBA KUMER, MIRIAM ALMACKIES,

(*Caption continued on inside cover*)

On Questions Certified by the United States Court of Appeals for the Second Circuit (USCOA Docket No. 21-975-cv)

BRIEF FOR DEFENDANT-RESPONDENT

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Plaintiffs-Appellants,

—and—

DORIS LELCHOOK,

Plaintiff,

—against—

FRANSABANK SAL, MIDDLE EAST AFRICA BANK SAL, BLOM BANK SAL, BYBLOS BANK SAL, BANK AUDI SAL, BANK OF BEIRUT SAL, LEBANON AND GULF BANK SAL, BANQUE LIBANO-FRANCAISE SAL, BANK OF BEIRUT AND THE ARAB COUNTRIES SAL, JAMMAL TRUST BANK SAL, JOHN DOES 1-50,

Defendants,

—and—

SOCIÉTÉ GÉNÉRALE DE BANQUE AU LIBAN S.A.L.,

Defendant-Respondent.

CORPORATE DISCLOSURE STATEMENT

In accordance with 22 NYCRR 500.1(f), Defendant Société Générale de Banque au Liban S.A.L. (SGBL) states that it has no parent company; Société Générale S.A. (France) is a publicly held corporation that owns 10% or more of SGBL's stock. SGBL's corporate affiliates are as follows:

Banque Richelieu GCC Limited

Compagnie Financière Richelieu SA

Societe Generale Bank – Cyprus Limited (SGBCy)

SGBL Courtage Assurance S.A.R.L.

SGBL Insurance S.A.L.

SGBL Leasing S.A.L.

Fidus S.A.L.

Centre de Traitement Monétique S.A.L. (CTM)

Banque Richelieu France

Banque Richelieu Monaco

Richelieu Gestion SA

Richelieu Monaco Conseil et Courtage en Assurance

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INTRODUCTION

Although Plaintiffs sue for injuries from terrorist attacks, they do not allege here that Defendant Société Générale de Banque au Liban S.A.L. (SGBL) committed or supported terrorism. Instead, Plaintiffs contend that a different, unrelated entity, Lebanese Canadian Bank (LCB), supported the attacks at issue. And they allege that SGBL is liable as LCB's successor because SGBL acquired LCB's assets and liabilities in a competitive bidding process abroad—a conclusion that SGBL denies but cannot contest at this stage. Nor do Plaintiffs allege that SGBL is subject to personal jurisdiction in New York because of its own conduct. Plaintiffs again point to LCB, claiming that SGBL "inherited" LCB's jurisdictional contacts when it acquired LCB's assets and liabilities. Plaintiffs' jurisdictional theory is limited: Plaintiffs concede that SGBL and LCB did not merge, that they are not alter egos, that LCB's principals do not own SGBL, and that the two entities are not "one and the same" in either form or substance. They thus ask this Court to recognize a new inheritance-based jurisdictional theory that reaches a non-domiciliary not alleged to have taken any actions in or directed at the State, based entirely on the conduct of an unaffiliated entity. The Court should decline to do so.

To begin, Plaintiffs' jurisdictional theory clashes with New York's long-arm statute—a statute Plaintiffs nowhere mention. The statute's

plain text covers non-domiciliaries who take some suit-related action in or directed at the State. And the statute's history confirms that the Legislature was focused on in-state purposeful activity when it passed the statute. Given that text and history, the long-arm statute allows jurisdiction only when an out-of-state defendant has undertaken some sort of purposeful act here. Simply acquiring the assets and liabilities of an unrelated out-of-state entity that is itself subject to jurisdiction, without taking any act in or directed at the State, is not enough.

Granted, the long-arm statute allows forum contacts to be imputed. But it does so in circumscribed situations. As the statute notes, it applies when the defendant, on its own or "through an agent," takes any of the acts the statute specifies. That is all the more reason to read the statute narrowly. The Legislature knew how to address imputation, and it did so carefully. Had the Legislature wished to impute an asset-and-liability seller's contacts to the buyer, it could have done so.

As against all this, Plaintiffs invent an unwritten rule that jurisdiction travels with liabilities. This Court has never held as much. Just the opposite: this Court has taken pains to stress that liability and jurisdiction are distinct concepts, and that a court may consider liability only after determining that it has personal jurisdiction over the defendant. That case law precludes Plaintiffs' proffered rule.

Plaintiffs try to sidestep this Court's case law by citing cases subjecting a successor to jurisdiction based on the predecessor's forum contacts. But those cases fail to help Plaintiffs' cause. They hold that when a successor and predecessor are one and the same—such as when the two entities merge, when they are alter egos, or when there is a corporate reorganization—the successor can be haled into court based on the other entity's forum contacts. Although this Court has not endorsed that rule, the rule makes good sense. Because the entities are the same, one entity's contacts *are* the other's contacts. So courts do not impute one entity's contacts to the other; they treat the two entities as identical. That is not the case in an asset-and-liability sale. When one entity merely sells its assets and liabilities and continues to exist separate from the buyer, as LCB did here, the two entities are different. It follows that their forum contacts are therefore different too.

Plaintiffs then fall back to fairness. Putting aside that broad equitable principles cannot overcome the long-arm statute's text, Plaintiffs' fairness argument fails of its own accord. Plaintiffs surmise that they need their proposed rule because SGBL would otherwise evade any judgment Plaintiffs may win against LCB. But New York law already has tools to address abuses of the corporate form and sham transactions, substantively and jurisdictionally, including veil-piercing and alter ego

theories and fraudulent-transfer claims. Plaintiffs do not proceed on such a theory here, though they could have if the facts showed that LCB or SGBL had abused the corporate form or otherwise sought to evade liability or jurisdiction. Plaintiffs also ignore the mechanisms they have under New York and Lebanese law to enforce a judgment if they can ultimately prove that SGBL assumed liability for the ATA claims underlying that judgment.

Finally, policy considerations support SGBL here. Not only will rejecting Plaintiffs' rule honor the long-arm statute; it will also serve New York's public policy. This State, as a financial and commercial leader, has long offered clear and predictable jurisdictional rules. Such rules are essential to running a business in today's global economy. Plaintiffs' rule would upend that predictability.

Rather than endorse that uncertain rule, this Court should embrace a rule that respects the long-arm statute and the decades of case law interpreting it. It should hold that when a plaintiff's only asserted basis for jurisdiction is that the defendant expressly assumed another entity's liabilities, the defendant is not subject to jurisdiction here.

REQUEST TO REFORMULATE THE QUESTIONS PRESENTED

This Court has the power to "reformulate" a certified question "so that [it] may provide the [certifying court] with a meaningful answer that

may help in determining the outcome of this particular case." *Cordero v. Transamerica Annuity Serv. Corp.*, 39 N.Y.3d 399, 407 (2023). The Court should use that power here to provide an answer that fits the facts presented.

The Second Circuit certified two questions to this Court:

> 1. Under New York law, does an entity that acquires all of another entity's liabilities and assets, but does not merge with that entity, inherit the acquired entity's status for purposes of specific personal jurisdiction?
>
> 2. In what circumstances will the acquiring entity be subject to specific personal jurisdiction in New York?

A.439. In doing so, the Second Circuit "invite[d]" this Court "to expand or modify these questions as it deems appropriate." A.440. This Court should accept that invitation.

To start, the Court should reformulate the first question. Whether personal jurisdiction exists will depend on the precise allegations and legal theory in any given case. In this case, Plaintiffs' theory is narrow. Plaintiffs do not allege that SGBL and LCB merged. *See, e.g.*, A.416 n.5 (Plaintiffs nowhere "alleged or argued that SGBL and LCB completed either a statutory or de facto merger"). Nor do they allege a host of other jurisdictional theories. *See, e.g.*, A.434 n.23 ("there is no allegation of alter ego liability"); A.422 ("Plaintiffs do not allege that SGBL and LCB are 'one and the same'"); A.421 n.11 (the circumstance where "the

predecessor and successor [are] one and the same and the predecessor continue[s] to exist as part of the successor . . . is not relevant here" (cleaned up)). And they "admit . . . that LCB has continued to operate since" SGBL acquired its assets and liabilities and that LCB has no ownership interest in SGBL. A.403.

In fact, Plaintiffs' sole basis for the District Court to exercise personal jurisdiction over SGBL is that SGBL assumed LCB's liabilities. *See* A.23 (¶ 16). Plaintiffs pressed this theory before the District Court and Second Circuit, *see* A.401, 416 n.5, 417 n.7, 421 n.11, and continue to do so here (Br. 14, 19). And as the Second Circuit held, Plaintiffs have "waived" their request for jurisdictional discovery, A.416 n.6, meaning that they cannot fish for documents in support of new theories.

To embrace the full scope of what Plaintiffs do—and do not—contend, and thus to clarify what is properly presented here, the Court should reformulate the first certified question to read:

> Under New York law, does an entity that expressly assumes all of another entity's liabilities and assets—but does not merge with that entity (either statutorily or de facto), does not merely continue in its operations, does not enter into the transaction fraudulently, and is not an alter ego of that entity—inherit the predecessor entity's status for purposes of

specific personal jurisdiction, where both entities survive the transaction and there is no continuity of ownership?[1]

Whichever way the Court answers that question, it need not reach the second certified question, which asks about circumstances other than SGBL's purchase of assets and assumption of liabilities here. Because the question is "theoretical," rather than "determinative" of the issues in this case, the Court should "decline[]" to answer it. *Yesil v. Reno*, 92 N.Y.2d 455, 457 (1998) (quotation marks omitted).

STATEMENT OF THE CASE

A. Factual background

1. Lebanese Canadian Bank is a corporation organized under the laws of Lebanon and headquartered in Beirut, Lebanon. A.20 (¶ 3). From 1988 to 2011, LCB operated as a Lebanese banking institution with 35 branches throughout Lebanon. A.288; *see The Rise of LCB*, Exec. Mag. (June 1, 2006), https://bit.ly/2FZKYXx.

Beginning in 2008, LCB began to face legal trouble in the United States. That year, Plaintiffs sued LCB, claiming that it had laundered

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[1] In redline format:

Under New York law, does an entity that ~~acquires~~ expressly assumes all of another entity's liabilities and assets—but does not merge with that entity (either statutorily or de facto), does not merely continue in its operations, does not enter into the transaction fraudulently, and is not an alter ego of that entity—inherit the ~~acquired~~ predecessor entity's status for purposes of specific personal jurisdiction, where both entities survive the transaction and there is no continuity of ownership?

money for Hezbollah. *See Licci v. Am. Express Bank Ltd.*, 704 F. Supp. 2d 403 (S.D.N.Y. 2010). Based on that alleged violation, the plaintiffs claimed that LCB had committed an "act of international terrorism" in violation of the Anti-Terrorism Act, 18 U.S.C. § 2333(a). The District Court dismissed Plaintiffs' claims for lack of personal jurisdiction. *See Licci*, 704 F. Supp. 2d at 408.

In 2011, the U.S. Department of the Treasury designated LCB as a financial institution of "primary money laundering concern." A.51 (¶ 117). The Treasury Department, exercising its statutory rulemaking authority, proposed a rule that would bar "all covered financial institutions from establishing, maintaining, administering, or managing a correspondent or payable-through account in the United States for, or on behalf of[,] LCB." A.139; *see also* 31 U.S.C. § 5318A(b) (describing "special measures" that U.S. financial institutions can be ordered to take when transacting with foreign financial institutions designated "primary money laundering concern[s]").

2. In 2011, Lebanon's Central Bank held a competitive sale of LCB's assets and liabilities under Lebanese law.

The highest bidder was Société Générale de Banque au Liban S.A.L., *see* A.139–140, a Lebanese joint stock company incorporated in 1953 and headquartered in Lebanon, A.21 (¶¶ 10–11). SGBL offers a

wide array of banking, insurance, and financial services to individuals and corporations in Lebanon and the region. A.82. It is part of the international network of Société Générale, S.A., *supra* p. i, one of the largest European financial services groups. SGBL agreed to acquire assets and liabilities from LCB for $580 million in cash, subject to the final valuation adjustments, review, and approval of the Central Bank. A.52 (¶ 121); A.140; A.246 (¶ 51).

The SGBL–LCB transaction was governed by a Sale and Purchase Agreement, signed in June 2011. A.21 (¶ 12). SGBL finalized the transaction only after a "rigorous filtering process." A.133 (¶ 5).[2] According to Plaintiffs' allegations about the single substantive page of the Agreement that they attached to their complaint here, SGBL agreed to acquire all of LCB's assets—excluding "questionable accounts," *id.*—and to assume "[LCB's] liabilities . . . to the extent they related to [LCB's] Business." A.22 (¶ 12) (quotation marks omitted); *see* A.61.

The parties also agreed that the purchase price could be adjusted if some of the accounts SGBL originally believed it was acquiring were "questionable." A.133 (¶ 5). To that end, parties agreed that SGBL would

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[2] This account of the process comes in part from an undisputed "sworn claim" filed in *United States v. Lebanese Can. Bank, SAL*, No. 1:11-cv-9186 (S.D.N.Y. Mar. 7, 2013), ECF No. 442. The Court may take judicial notice of such a document. *See, e.g.*, *Long v. State of New York*, 7 N.Y.3d 269, 275 (2006).

place $150 million of the purchase price in escrow, A.140–141, and could recoup some or all of that money if "independent auditors" later concluded that questionable accounts had to be carved out of the acquisition, A.133 (¶ 7).

In September 2011, the Central Council of Lebanon's Central Bank granted its final approval of the transaction. A.140. After the transaction, LCB ceased banking activities. A.140. Still, it undisputedly "continues to exist" as a separate entity from SGBL and has been "defending itself against" ATA claims. A.412; *accord* A.403.

3. Two months after Lebanese banking authorities approved the sale to SGBL, the United States brought a forfeiture action against LCB. A.51 (¶ 117). As part of that action, the United States seized the $150 million that SGBL had deposited in an escrow account. A.247 (¶ 52).

SGBL sought to protect its interest in the seized property. In March 2013, it filed a claim as an "innocent owner" of a portion of the escrow funds, A.134 (¶ 13), citing the fact that its asset-and-liability purchase had been "subject to the review and approval of the central bank of Lebanon," A.142. *See generally* 18 U.S.C. § 983(d)(6)(a) (protecting "innocent owner[s]" from forfeiture of property). The United States, LCB, and SGBL ultimately settled the dispute, agreeing to release a portion of the seized funds to SGBL. *See* A.138–154.

4. In 2012, the Second Circuit considered Plaintiffs' appeal in *Licci*. The Second Circuit could not predict whether this Court would hold that LCB's use of correspondent bank accounts in New York gave rise to personal jurisdiction under New York's long-arm statute, so it certified the question to this Court. *See Licci ex rel. Licci v. Lebanese Can. Bank, SAL*, 673 F.3d 50, 66 (2d Cir. 2012). This Court held that allegations of a "foreign bank's repeated use of a correspondent account in New York" sufficed to "show purposeful availment of New York's" financial system. *Licci v. Lebanese Can. Bank, SAL*, 20 N.Y.3d 327, 339 (2012). Based on that holding, the Second Circuit concluded that LCB was subject to personal jurisdiction in New York. *See Licci ex rel. Licci v. Lebanese Can. Bank, SAL*, 732 F.3d 161, 167–74 (2d Cir. 2013).

The case then returned to the District Court. In 2018, Plaintiffs amended their complaint, under the caption *Kaplan v. Lebanese Can. Bank, SAL*, to add claims under the recently enacted Justice Against Sponsors of Terrorism Act (JASTA), which added aiding-and-abetting and conspiracy liability to the ATA. *See* Pub. L. 114-222 § 4(d), 130 Stat. 852, 854 (2016) (codified at 18 U.S.C. § 2333(d)); *see also* A.414. After several more years of litigation, the only claim still pending against LCB is an aiding-and-abetting claim under JASTA. *See Kaplan v. Lebanese Can. Bank, SAL*, 999 F.3d 842, 867 (2d Cir. 2021). That litigation

continues against LCB, having been consolidated with other ATA cases against LCB. *See* Complaint, *Lelchook v. Lebanese Can. Bank SAL*, No. 1:18-cv-12401 (S.D.N.Y. Dec. 31, 2018), ECF No. 1. As noted, LCB is defending itself in those cases. *See* A.403.

B. Procedural background

Plaintiffs filed this lawsuit in the U.S. District Court for the Eastern District of New York in January 2019, eight years after SGBL purchased LCB's assets and liabilities. Plaintiffs alleged ATA claims against eleven Lebanese banks, including a successor-liability claim against SGBL. *See* Complaint ¶¶ 3–5, 951–954, *Lelchook v. Société Générale de Banque au Liban SAL*, No. 1:19-cv-00033 (E.D.N.Y. Jan. 2, 2019), ECF No. 1.

Nearly a year later, Plaintiffs amended their complaint, dropping all claims except those against SGBL. *See* A.19–59. Plaintiffs nowhere allege that SGBL itself violated the ATA. Rather, Plaintiffs proceed solely on the theory that SGBL, by allegedly assuming all of LCB's liabilities, bears "successor liability" for LCB's alleged terrorism-related conduct. A.54–58 (¶¶ 131–154). As for jurisdiction, Plaintiffs cite no act that *SGBL* took in or directed at New York. They claim instead that *LCB* had already been held to be subject to jurisdiction in New York under *Licci*,

and that by "assum[ing] successor liability for LCB's conduct," SGBL also assumed LCB's jurisdictional status. A.23 (¶ 16).

SGBL moved to dismiss the operative complaint for lack of personal jurisdiction, and the District Court granted its motion. The District Court held that Plaintiffs failed to plead "any connection between SGBL and the forum." A.403. In rejecting Plaintiffs' argument that assuming LCB's liabilities subjected SGBL to jurisdiction, the court reasoned that "[j]urisdiction and liability" are "two distinct considerations," and so a potential finding of successor liability against SGBL "does not address whether SGBL is subject to jurisdiction in New York." A.402–403. Although the court recognized that successor jurisdiction may exist in "limited circumstances," A.401, it held that those circumstances did not exist here, since LCB continued to exist separate from SGBL after the sale, rather than being absorbed into SGBL, as in a merger, A.403.

Plaintiffs appealed. The Second Circuit concluded that it could not "predict with confidence" whether this Court would accept Plaintiffs' jurisdictional theory. A.410. In so concluding, the Second Circuit surveyed state and federal decisions in this area of law. It made three threshold assumptions regarding New York jurisdictional law. *First*, the court assumed that New York law would hold that when two entities merge, the combined post-merger entity maintains the jurisdictional

status of the pre-merger entities, since the post-merger entity "is deemed by operation of law to be [both pre-merger entities]." A.429 (quotation marks omitted); *see* A.427–428. *Second*, the court assumed that New York law would apply the same analysis to alter egos, which are also "treated as one entity." A.434 (quotation marks omitted). *Third*, the court assumed that New York law would not impute personal jurisdiction to an asset purchaser. A.427. The court then concluded that the issue raised here fell "in the cloudy middle ground" between mergers and asset sales. A.428. The Second Circuit accordingly certified that question to this Court.

ARGUMENT

An asset-and-liability purchaser does not inherit the seller's jurisdictional status

We begin with the basics. As this Court has long recognized, a court has personal jurisdiction over a party only if it has a "jurisdictional basis" that gives the court "the power . . . to enforce judicial decrees" over that party. *Keane v. Kamin*, 94 N.Y.2d 263, 265 (1999). The only possible "jurisdictional basis" here is the long-arm statute, CPLR 302. *See* A.417 & n.8. The long-arm statute is thus where this Court's inquiry starts.

It should also be where it ends. Nothing in the long-arm statute's plain text so much as hints that a party subjects itself to jurisdiction in

New York by buying all of another entity's liabilities. On the contrary, the long-arm statute requires that a party take some affirmative act within or directed at the State before it can be forced to defend claims here. But an asset-and-liability purchaser does not necessarily act within or toward the State. And SGBL did not do so here. Under the long-arm statute's text, then, SGBL does not qualify for personal jurisdiction.

Statutory history and context only bolster this conclusion. The Legislature passed the long-arm statute in the wake of *International Shoe*. The Legislature therefore focused on hinging jurisdiction on whether a defendant purposefully availed itself of a forum's benefits. SGBL took no such purposeful action here.

Plaintiffs address none of this text and context. Instead, they claim that under established law, jurisdiction travels with liability, and they insist that fairness dictates this result. They are wrong twice over.

Although Plaintiffs claim to cite cases holding that jurisdictional status travels with liability, none of those cases in fact makes that holding. Some of the cases hold that when two entities are identical—such as alter egos or separate entities that survive as a combined entity post-merger—the jurisdictional status of one *is* the jurisdictional status of the other. The other cases base jurisdiction on the buyer's own post-purchase acts. In none of these cases does jurisdictional status travel. Put

differently, these cases do not impute one entity's contacts to another. They merely consider the defendant's own forum contacts—whether those contacts were made by the defendant pre-liability sale under a different name or post-liability sale under its own name. That approach accords with the long-arm statute, which requires courts to assess whether the defendant itself purposefully acted within the State or directed its actions here.

Fairness mandates the same result. New York plaintiffs have avenues to hold entities accountable and subject them to jurisdiction when they abuse the corporate form. New York plaintiffs also have ways to enforce judgments against out-of-state debtors: Whether or not a foreign asset-and-liability purchaser is subject to jurisdiction in New York, a plaintiff may seek to attach that purchaser's in-state assets if the purchaser is indeed liable for a judgment against the predecessor entity. A plaintiff can likewise seek to attach the purchaser's assets under foreign judgment-enforcement regimes. All of those factors should allay any fairness concerns raised by Plaintiffs' cited out-of-state cases, which consider none of these factors. And regardless, those concerns are not grounds to graft an unwritten exception onto New York's long-arm statute.

A. The long-arm statute does not recognize inherited jurisdiction for asset-and-liability purchasers.

In determining "whether a non-domiciliary may be sued in New York," this Court "first determine[s] whether [the] long-arm statute (CPLR 302) confers jurisdiction over it." *LaMarca v. Pak-Mor Mfg. Co.*, 95 N.Y.2d 210, 214 (2000). That is so even when the defendant is alleged to be the successor of an entity subject to jurisdiction here. *Andrew Greenberg, Inc. v. Sir-Tech Software, Inc.* is a case in point. There, the defendants were originally New York corporations subject to general personal jurisdiction here, *see* CPLR 301, and "reincarnated themselves" as Canadian entities. 4 N.Y.3d 185, 191 (2005). Yet the Court did not hold that the predecessor entities' jurisdictional status subjected the defendants to personal jurisdiction. Instead, it looked to the long-arm statute, which it held subjected the successor entities to jurisdiction because they, "in their Canadian corporate capacity, continued to do business in New York." *Id.* (citing CPLR 302(a)(1)).

Here, too, the Court should use the long-arm statute as its lodestar. And because the statute's text and context nowhere suggest that a defendant automatically subjects itself to the jurisdictional status of another entity whose assets and liabilities it purchases, this Court should reject that jurisdictional theory.

1. The first step in interpreting the long-arm statute is its "plain language"—"the best evidence of legislative intent." *Matter of Malta Town Ctr. I, Ltd. v. Town of Malta Bd. of Assessment Review*, 3 N.Y.3d 563, 568 (2004). That language says nothing about successor jurisdiction.

Instead, the statutory text cabins jurisdiction to *the defendant's* conduct. It lets courts exercise personal jurisdiction over a non-domiciliary only for claims "arising out of some in-state event for which the defendant is responsible." David D. Siegel & Patrick M. Connors, *New York Practice* § 84 (Westlaw ed. June 2023 update). To that end, the long-arm statute allows courts to exercise personal jurisdiction over any non-domiciliary who, in connection with the plaintiff's claim, (1) transacts business in New York or contracts anywhere to supply goods or services here; (2) commits a tortious act in New York; (3) commits a tortious act elsewhere that causes injury to person or property within New York; or (4) owns, uses, or possesses any real property within the state. *See* CPLR 302(a). The statute thus grounds jurisdiction on "activity conducted by the defendant within the state." Siegel & Connors, *supra*, § 80.

This Court's decisions bear out this statutory principle. Four years after the Legislature enacted the long-arm statute, this Court stressed that "[t]he overriding criterion" for asserting jurisdiction over a nonresident defendant is "some act by which the defendant purposefully

avails itself of the privilege of conducting activities within [New York].” *McKee Elec. Co. v. Rauland-Borg Corp.*, 20 N.Y.2d 377, 382 (1967); *accord Ehrenfeld v. Bin Mahfouz*, 9 N.Y.3d 501, 508 (2007). The Court has continued to emphasize this principle: “When a defendant engages in purposeful activity here,” this Court has held, “personal jurisdiction is proper because [the defendant] has invoked the benefits and protections of our laws.” *Ehrenfeld*, 9 N.Y.3d at 508 (cleaned up). Put another way, this Court considers whether a defendant is subject to jurisdiction “in light of *its* contacts with this State.” *LaMarca*, 95 N.Y.2d at 214 (emphasis added).

In short, the long-arm statute’s text—on its face and as this Court has interpreted it—demands that a non-domiciliary take some act in or directed at the State before being haled into court here.

2. The long-arm statute’s history buttresses what the text makes plain. That history shows that the statute represents a careful, deliberate decision to require that defendants take some sort of affirmative act before they can be dragged into a New York court.

The Legislature enacted the long-arm statute in 1963, in the wake of the U.S. Supreme Court’s decision in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945). The Legislature was “guided” by *International Shoe* and other “Supreme Court opinions delineating

proper bases for personal jurisdiction under the Federal Due Process Clause." *Ehrenfeld*, 9 N.Y.3d at 508; *accord Kreutter v. McFadden Oil Corp.*, 71 N.Y.2d 460, 467 (1988). With those decisions in mind, the Legislature drafted a long-arm statute extending jurisdiction over "non-resident defendant[s]" who have "engaged in some purposeful activity in this State in connection with the matter in suit." *Longines-Wittnauer Watch Co. v. Barnes & Reinecke*, 15 N.Y.2d 443, 457 (1965). The Legislature accordingly confined jurisdiction to cases in which "the defendant's activities here were purposeful." *Kreutter*, 71 N.Y.2d at 467.

To be sure, the Legislature did not extend the long-arm statute to "every case where [jurisdiction] is constitutionally permissible." *Id.* at 471. Instead, it limited jurisdiction to the circumstances delineated in the long-arm statute. *See* CPLR 302(a). Still, the Legislature sought to tie personal jurisdiction to the defendant's "acts within the state." Temporary Comm'n on the Cts., Second Preliminary Rep. of the Advisory Comm. on Prac. and Proc. (NY Legis. Doc., 1958, No. 13 at 37); *see George Reiner & Co. v. Schwartz*, 41 N.Y.2d 648, 654 (1977) (explaining that the Legislature sought to base jurisdiction on "purposeful activity in New York").

This Court has relied on that legislative intent in assessing personal jurisdiction. In *Longines-Wittnauer*, for example, the Court held

that by negotiating in New York a contract governed by New York law, the defendant had "purposefully availed itself of the privilege of conducting activities within this State," thereby subjecting itself to jurisdiction under the long-arm statute. 15 N.Y.2d at 458 (cleaned up). In *Parke-Bernet Galleries, Inc. v. Franklyn*, the Court found that the defendant was properly subject to personal jurisdiction under the long-arm statute because the defendant had undertaken "purposeful activity in New York" by transmitting bids by telephone to a New York auction. 26 N.Y.2d 13, 18–19 (1970). And in *Hi Fashion Wigs v. Hammond Advertising*, the Court assessed jurisdiction under the long-arm statute by examining the defendant's "purposeful activity" in New York, and concluded that the defendant was subject to jurisdiction in a contract case because he had accepted the offer to contract by delivering a guarantee to his counterparty in New York City. 32 N.Y.2d 583, 586–87 (1973) (quotation marks omitted).

As these cases highlight, this Court, in the decade after the Legislature passed the long-arm statute, understood the Legislature to have focused on purposeful in-state activity when it passed the long-arm statute. And that is the type of activity Plaintiffs fail to allege here.

3. Plaintiffs do not even try to satisfy the long-arm statute. They nowhere allege that SGBL took a single purposeful act in or directed at

New York.[3] In fact, they base jurisdiction on the acts of another entity: LCB. By Plaintiffs' own allegations, SGBL is subject to jurisdiction only because "*LCB's* conduct rendered *it* subject to personal jurisdiction in the State of New York," and SGBL assumed LCB's "liability." A.23 (¶ 16) (emphases added).[4]

But the long-arm statute does not impute to a buyer the jurisdictional contacts of the seller. Quite the contrary, it limits imputed liability to circumstances when a defendant acts "through an agent." CPLR 302(a); *see*, *e.g.*, *Kreutter*, 71 N.Y.2d at 463. That exception makes sense: an agent's acts are considered the acts of the principal, since an agent "act[s] on the principal's behalf and subject to the principal's control." Restatement (Third) of Agency § 1.01 (2006); *see Parke-Bernet*, 26 N.Y.3d at 18 (imputing to defendant contacts of in-state actor whose "sole function during [the events at issue] was to assist the defendant and

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[3] Any effort by Plaintiffs to argue this "for the first time in [their] reply brief" would come too late to preserve the argument for this Court's review. *People v. Ford*, 69 N.Y.2d 775, 777 (1987).

[4] Plaintiffs argue in a footnote (Br. 24 n.7) that SGBL's appearance as an "innocent owner" in an asset-forfeiture proceeding against LCB in New York renders it amenable to suit on fairness grounds. That argument is unpreserved: as the Second Circuit noted, Plaintiffs raised only an inherited-jurisdiction theory. A.415; *see* A.417 n.7. The argument is also well beyond the scope of the certified questions. *See* A.439; *supra* p. 5. And it is wrong. SGBL expressly stated that its appearance in the asset-forfeiture proceeding "d[id] not constitute consent by . . . SGBL to personal jurisdiction . . . other than for the purpose of enforcing th[e] Stipulation and Order" that SGBL signed there. A.150.

to carry out his instructions"). Not so when a defendant buys all the assets and liabilities of another party. Here, for instance, Plaintiffs do not allege that LCB was acting on SGBL's behalf at any point. *See* A.52 (¶¶ 121–124). And the record confirms that the asset-and-liability sale here was the result of an arm's length sale process conducted by Lebanese banking authorities. *See* A.139–140.

First principles of statutory construction reinforce this point. "[W]here a law expressly describes a particular . . . person to which it shall apply, an irrefutable inference must be drawn that what is omitted or not included was intended to be omitted or excluded." *Matter of Town of Riverhead v. New York State Bd. of Real Prop. Servs.*, 5 N.Y.3d 36, 42–43 (2005) (citing McKinney's Cons. Laws of N.Y., Book 1, Statutes § 240, cmt., at 411–12). Here, by specifying that the acts of a certain third party—"an agent"—should be imputed to a defendant for jurisdictional purposes, the Legislature showed that it intended to exclude other third parties. Adding "a predecessor" to the list of third parties whose actions are imputed to a defendant would improperly "amend [the] statute by adding words that are not there," *American Tr. Ins. Co. v. Sartor*, 3 N.Y.3d 71, 76 (2004), and impermissibly "read into [the] statute a provision which the Legislature did not see fit to enact," *Matter of*

Chemical Specialties Mfrs. Assn. v. Jorling, 85 N.Y.2d 382, 394 (1995) (quotation marks omitted).

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In passing the long-arm statute, the Legislature chose to limit personal jurisdiction to non-domiciliaries who take acts in or directed at New York. The statute's text and history bear this out, and this Court's case law confirms it. Accepting Plaintiffs' contrary position ignores the statute's plain text by imputing to non-domiciliaries acts of entities that are not their agents. This Court should reject that atextual reading.

B. Plaintiffs' extra-textual arguments for imposing inherited jurisdiction fail.

Rather than offer any rationale under the long-arm statute to impose jurisdiction on SGBL, Plaintiffs urge the Court to craft its own rule. They say that under settled case law, jurisdiction travels with liability. And they claim that yoking jurisdiction to liability promotes fairness. Yet neither rationale supports fashioning a rule divorced from any showing of purposeful conduct in or directed at the State.

1. Jurisdiction does not travel with liabilities.

From its earliest cases interpreting the long-arm statute, this Court has stressed that jurisdiction and liability are "separate and distinct problems" and that "the rules formulated to govern their resolution

embody different concepts." *Longines-Wittnauer*, 15 N.Y.2d at 463; *see* Siegel & Connors, *supra*, § 92 ("[T]he jurisdictional and merits questions, no matter how similar, are separate."). In other words, the Court has explained, "the question of 'liability' has "nothing to do with the problem of 'jurisdiction,'" *Longines-Wittnauer*, 15 N.Y.2d at 466 n.16, and liability "is to be considered only after it is decided, on the basis of [CPLR] 302, that the defendant is subject to the in personam jurisdiction of our courts," *id.* at 460.

Over the decades since *Longines-Wittnauer*, the Court has continued to treat jurisdiction and liability as separate concepts. Take *Kreutter*. There, the Court declined to adopt the "fiduciary shield doctrine," under which a court cannot subject an individual to jurisdiction based on acts the individual took "on behalf of his corporate employer." 71 N.Y.2d at 468. In so holding, the Court rejected the defendant's argument that the jurisdictional rule should follow the rule for substantive liability—that an individual ordinarily will not be "substantively liable" for acts taken as "a corporate agent." *Id.* at 469. Citing *Longines-Wittnauer*, the Court held that the defendant's "substantive liability" argument was "not relevant" to jurisdiction, because a court may consider "[l]iability . . . only after" it determines it has personal jurisdiction over the defendant. *Id.*

Plaintiffs seek to blur that line between liability and jurisdiction. They note the four circumstances in which a corporation is subject to successor liability: (1) assumption of tort liability, (2) consolidation or merger, (3) mere continuation by the successor of the predecessor's business, and (4) fraudulent transfer. Br. 14; *see Schumacher v. Richards Shear Co.*, 59 N.Y.2d 239, 245 (1983). They then claim that for categories (2)–(4), courts have held that the successor inherits the predecessor's jurisdictional status. But they are wrong. The cases finding jurisdiction are ones where the successor and predecessor entities were identical or where the successor undertook an independent act satisfying the long-arm statute. Neither scenario was one in which one entity "inherited" another's jurisdictional status. And neither scenario applies here.

a. Most of the cases Plaintiffs cite are in categories (2) and (3). Those cases turn on the fact that when a successor combines with the predecessor entity, the two "are one and the same," and so the jurisdictional contacts of the predecessor entity *are* the jurisdictional contacts of the surviving entity, making jurisdiction proper. *Abbacor, Inc. v. Miller*, 2001 WL 1006051, at *4 (S.D.N.Y. Aug. 31, 2001) (quotation marks omitted); *see, e.g.*, *Societe Generale v. Florida Health Sciences Ctr., Inc.*, 2003 WL 22852656, at *4 (S.D.N.Y. Dec. 1, 2003) (observing that personal jurisdiction would be proper "if the predecessor and successor

[were] one and the same" (cleaned up)). And though this Court has yet to bless that rationale, it squares with the long-arm statute. It subjects an entity to jurisdiction here based on the entity's own forum contacts.

For much the same reason, courts have based a successor's jurisdictional status on the predecessor's forum contacts in other situations where the successor lives on as the predecessor—which ceases to exist—such as when the entities de facto merge and when the successor acts as a "mere continuation" of the predecessor. Courts subjecting the successor to jurisdiction reason that the successor is the same as its predecessor and thus shares its jurisdictional contacts. As Plaintiffs concede, de facto merger occurs when the successor "effectively takes over" the predecessor. Br. 24 (quoting *Fitzgerald v. Fahnestock & Co.*, 286 A.D.2d 573, 575 (1st Dep't 2001)). And mere continuation exists when the successor corporation "survives" and continues to exist as the predecessor, while "the predecessor corporation [is] extinguished." *Schumacher*, 59 N.Y.2d at 245.

So although, as Plaintiffs note (Br. 23–25), successors in de facto merger and mere-continuation cases do assume the liabilities of their predecessors, the salient jurisdictional point is that they are the same entity as their (now-extinct) predecessor. As with ordinary mergers, the predecessor's forum contacts and the successor's forum contacts may be

considered one and the same. That fact distinguishes Plaintiffs' cases from this one, since LCB continues to exist as a separate entity from SGBL—an entity that LCB does not own in any way. And that fact reconciles the de facto merger and mere-continuation cases with the long-arm statute. The bottom line is that when the predecessor and successor are the same, their jurisdictional contacts are the same too. But when, as here, Plaintiffs have conceded that the entities are distinct, then the entities' jurisdictional contacts are also distinct.

Plaintiffs try (Br. 22) to distill a contrary rule from a passage in *U.S. Bank N.A. v. Bank of America N.A.*, 916 F.3d 143 (2d Cir. 2019). But that passage—which the Second Circuit has since called "dicta," A.427—cannot bear the weight Plaintiffs place on it. In the passage, the Second Circuit explained that in a merger, unlike in an asset sale, the successor entity assumes "all the liabilities of the acquired companies." *U.S. Bank*, 916 F.3d at 156 (quotation marks omitted). Yet that is not the point on which the Second Circuit grounded its rationale. Rather, the Second Circuit reasoned that the merged entity is subject to jurisdiction because the "successor by merger is deemed by operation of law to be *both* the surviving corporation and the absorbed corporation." *Id.* (emphasis added). *U.S. Bank*'s logic thus turns on the same point as the other merger cases: that when the successor entity and the surviving entity are

one and the same, "the surviving entity" is "subject to jurisdiction in [the forum]" if the predecessor's "[forum]-directed actions . . . would have made [the predecessor] subject to" suit there. *Id.*

Nor do Plaintiffs fare any better in pointing out (Br. 29–30) that courts may subject a corporation to jurisdiction based on its alter ego's forum contacts. The reason courts do so is that "the two [corporations] do not exist as separate entities but are one and the same for purposes of jurisdiction." *KPFF Inv., Inc. v. BASF Metals Ltd. (In re Platinum & Palladium Antitrust Litig.)*, 61 F.4th 242, 274 (2d Cir. 2023) (quotation marks omitted). Plaintiffs' own cited cases recognize as much. *See Transfield ER Cape Ltd. v. Industrial Carriers, Inc.*, 571 F.3d 221, 224 (2d Cir. 2009) ("[I]n general, alter egos are treated as one entity for jurisdictional purposes." (quotation marks omitted)), *cited at* App. Br. 30. So courts subject an entity to jurisdiction based on its alter ego's forum contacts not because they are imputing on entity's contacts to the other, but because they are acknowledging that the two entities are identical.

Yet that is not the case here. As the Second Circuit ruled, Plaintiffs have abandoned any argument that SGBL is LCB's alter ego or a merged entity, and have instead conceded that "both [entities] continue to exist after the transfer of liabilities." A.434 n.23; *see* A.416 n.5. Because SGBL

and LCB are not one and the same, Plaintiffs' cited cases do not support imputing one's forum contacts to the other.

b. The other cases Plaintiffs cite (Br. 25) are in category (4), fraudulent transfer—a theory on which Plaintiffs do not proceed here. Those cases have nothing to do with inherited jurisdiction. Instead, those cases subjected the receiving corporation to jurisdiction because the receiving corporation, by partaking in a fraudulent transfer, "participat[ed] in tortious conduct within New York." *Ed Moore Adv. Agency v. I.H.R., Inc.*, 114 A.D.2d 484, 486 (2d Dep't 1985) (citing CPLR 302(a)(2)); *accord Corpuel v. Galasso*, 268 A.D.2d 202, 202 (1st Dep't 2000). The cases thus turn on the defendant's own forum contacts—not on any inherited or imputed contacts. They have no bearing on the question here.

c. Taken together, Plaintiffs' cases from categories (2)–(4) support the idea that the long-arm statute remains the touchstone for successor liability. They show that a successor will be liable either because the predecessor that had the forum contacts survives in the successor entity or because the successor took some independent, purposeful act to satisfy the long-arm statute.

This rule gives context to *Semenetz v. Sherling & Walden, Inc.*, 21 A.D.3d 1138 (3d Dep't 2005), *aff'd on other grounds*, 7 N.Y.3d 194

(2006), one of the only Appellate Division cases to touch on the question presented in this appeal. There, the Third Department explained that "exceptions to the successor liability rule deal with the concept of tort liability, not jurisdiction," and so "do not and cannot confer . . . jurisdiction over the successor in the first instance." *Id.* at 1139. Still, the court observed, "in certain circumstances a successor corporation may inherit its predecessor's jurisdictional status." *Id.* at 1140 (quotation marks omitted). In support, the court cited two cases that ground liability on the successor's existence *as the predecessor*: *Schenin v. Micro Copper Corp.*, in which the court recognized that a statutory merger could create successor jurisdiction, 272 F. Supp. 523, 526 (S.D.N.Y. 1967), and *Abbacor*, in which the court held that a corporation could be subject to its alter ego's jurisdictional contacts, 2001 WL 1006051, at *3. The court also cited two cases in which courts observed that a successor can be subject to jurisdiction based on its own post-transaction forum contacts: *Florida Health Sciences*, in which the court recognized that a corporation that affirmatively adopts contracts with New York forum-selection clauses subjects itself to jurisdiction here, 2003 WL 22852656, at *4, and *Applied Hydro-Pneumatics v. Bauer Manufacturing*, in which the court held that a successor was subject to jurisdiction because it made the "voluntary

election" to "ratif[y]" contracts with a New York nexus. 68 A.D.2d 42, 46 (2d Dep't 1979).

Semenetz thus reinforces the idea an asset-and-liability purchaser "may be subject to liability for the torts of its predecessor in any forum having in personam jurisdiction *over the successor*," 21 A.D.3d at 1140 (emphasis added), unless the two entities as one and the same, such as when they merge or are each other's alter ego. That is not the case here.

2. Plaintiffs cannot rewrite the long-arm statute in the name of fairness.

a. Plaintiffs seek to avoid the long-arm statute by arguing (Br. 32) that their rule would ward off the "serious abuse" that may "arise[] whenever a foreign corporation has acquired all of the assets and liabilities of one subject to jurisdiction here." Plaintiffs' fairness theory rests on their surmise (Br. 33) that, unless subject to jurisdiction here, asset-and-liability purchasers could buy a "seller's business at a discount without having to answer for the accompanying debts and liabilities."

But Plaintiffs' theory stumbles out of the gate. This is not a case involving a one-sided transaction that left the seller a hollowed-out shell. LCB undisputedly received $580 million in cash in exchange for the assets SGBL acquired. A.140; A.246 (¶ 51). Plaintiffs' extreme example (Br. 33) of "a buyer [that] acquire[s] a seller's business without paying any cash at all" is thus a world apart from this case.

Regardless, this Court cannot "rewrite" the long-arm statute to serve "public policy." *People v. Jelke*, 308 N.Y. 56, 66 (1954). And that is what it would have to do to find for Plaintiffs here. *See supra* p. 17–24. If Plaintiffs believe that the long-arm statute creates bad outcomes, they are free to lobby the Legislature—the branch responsible for crafting "[f]undamental policy choices" by "balancing . . . differing interests." *People v. Francis*, 30 N.Y.3d 737, 751 (2018) (quotation marks omitted).

Nor is it clear that the Legislature even needs to enact a fix, for the law already provides one. The "abuse" that Plaintiffs claim is that entities will abuse the corporate form by selling off their liabilities to escape a judgment. When an entity "pervert[s]" the "corporate form" this way, courts can pierce the corporate veil, including by treating two entities as alter egos of each other. *TNS Holdings, Inc. v. MKI Sec. Corp.*, 92 N.Y.2d 335, 340 (1998). In that case, courts will regard the seller and buyer as identical entities for jurisdictional purposes. *See, e.g.*, *KPFF*, 61 F.4th at 274. Courts can also undo transactions intended "to hinder, delay or defraud any creditor." Debtor and Creditor Law § 273. With the transaction unwound, the plaintiff can proceed against the seller, which was presumably subject to jurisdiction. Here, though, the facts do not support such a theory, as Plaintiffs' decision not to proceed on any such theory confirms. *See* A.434 n.23. This Court should not amend the long-

arm statute to save Plaintiffs from their own litigation choices or to address a hypothetical fact pattern.

In any case, Plaintiffs' policy arguments miss the mark. Contrary to what Plaintiffs say (Br. 32), a buyer that agrees to assume the seller's liability for a legal claim must answer for that claim. Indeed, courts in this State recognize that a successor will be liable for a judgment obtained against its predecessor. *See, e.g.*, *Matter of Arben Corp. v. Durastone, LLC*, 186 A.D.3d 599, 600 (2d Dep't 2020) (recognizing that creditor could enforce judgment against "successor in interest" but declining to find that respondent was such a successor); *Matter of Goldman v. Chapman*, 44 A.D.3d 938, 939–40 (2d Dep't 2007) (same). There is thus every reason to believe that if Plaintiffs obtained a judgment against LCB and could prove that SGBL in fact assumed that liability (an allegation that must be taken as true at this stage in proceedings, *see* A.411 n.1), SGBL would have to answer for that judgment. That is distinct from the question whether SGBL can be forced to defend itself in a New York court on ATA claims—ones that LCB is already defending—in a lawsuit that could last a decade or more and cost tens of millions of dollars.[5]

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[5] *See, e.g.*, *In re Terrorist Attacks on Sept. 11, 2001*, 2023 WL 2430381, at *2 (S.D.N.Y. Mar. 9, 2023) (noting that the parties completed merits discovery "[i]n the intervening

Plaintiffs try to play up the equities by asserting (Br. 34) that they should not "have to chase SGBL to Lebanon" to enforce any judgment. It is not clear, however, that they would have to do so. New York has procedures governing the enforcement of money judgments and orders directing the payment of money. *See* CPLR 5225(b), 5227. And it would not need jurisdiction over SGBL to use those procedures: if the court has personal jurisdiction over that third party, then it may not matter that the debtor is a non-domiciliary. *See, e.g.*, *Motorola v. Standard Bank*, 24 N.Y.3d 149, 161 (2014); *Koehler v. Bank of Bermuda Ltd.*, 12 N.Y.3d 533, 541 (2009). At bottom, if Plaintiffs can secure a judgment against LCB and also show that SGBL assumed the liabilities underlying that judgment, Plaintiffs might have recourse against any SGBL assets in New York.

Yet even if Plaintiffs had to go to Lebanon, they could do so. Lebanon allows creditors to enforce foreign judgments by obtaining an "exequatur"—an enforcement order—"from a Lebanese court." 2 George W. Thompson, *Transnational Contracts* § 46:52 (Westlaw ed. Oct. 2023 update). While the application for an exequatur is pending, Lebanese

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thirteen years" since the court's denial of defendant's motion to dismiss); *Shatsky v. Palestine Liberation Org.*, 955 F.3d 1016, 1023 (D.C. Cir. 2020) (stating that the complaint had been filed more than seventeen years earlier and that the case had "wended its way through district court for fifteen years").

courts may grant temporary "measures" to help conserve the property. *Id.* So again, if Plaintiffs can prove that SGBL assumed the liabilities underlying a judgment against LCB, they could seek to enforce that judgment against SGBL in Lebanon.

Plaintiffs nowhere address this judgment-enforcement regime. They suggest instead that Lebanon would be an inadequate forum, based on case law holding that a plaintiff could not reasonably be expected to sue a Lebanese defendant in Lebanon for allegedly aiding Hezbollah. Br. 34–35 (citing *Bartlett v. Société Générale de Banque au Liban SAL*, 2021 WL 3706909, at *10 (E.D.N.Y. Aug. 6, 2021), *vacated on other grounds sub nom. Bartlett v. Baasiri*, 81 F.4th 28 (2d Cir. 2023)). Plaintiffs, however, would not be suing anyone in Lebanon for allegedly aiding Hezbollah. They would be enforcing a judgment already obtained and would be doing so based on a contractual assumption of liabilities—not based on any wrongdoing by SGBL, *see supra* p. 12. And Lebanese courts, which U.S. courts have consistently found to provide an "adequate alternative forum" for commercial claims even in the face of allegations of corruption and favoritism,[6] would simply apply their judgment-enforcement laws.

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[6] *See, e.g.*, *du Quenoy v. American Univ. of Beirut*, 2019 WL 4735371, at *7–8 (S.D.N.Y. Sept. 27, 2019) (finding Lebanon to be adequate alternative forum despite

b. While Plaintiffs contend (Br. 37–38) that they will face a greater discovery burden in their case against LCB unless they can sue SGBL in New York, that policy argument has nothing to do with jurisdiction. As noted above (p. 33), this Court cannot revise the long-arm statute to curb Plaintiffs' concerns.

Plaintiffs' policy concerns are misplaced at any rate. SGBL need not be subject to jurisdiction in this case for Plaintiffs to get the discovery they seek. Plaintiffs say otherwise (Br. 37) because LCB claims to have transferred its account and transaction records to SGBL and failed to retain copies. Even if this claim—which Plaintiffs raise for the first time here—were true, it is unclear whether LCB's transfer of records makes any practical difference. As Plaintiffs concede, those records are likely "protected by Lebanese bank secrecy." *Id.* So either Lebanese law will preclude discovery—as it would regardless of who the defendant was—or Plaintiffs may seek to obtain the documents through alternative means, such as letters rogatory to non-parties. *See Lovati v. Petroleos De Venezuela, S.A.*, 2022 WL 1416646, at *1 (S.D.N.Y. May 5, 2022) (granting motion to issue letters rogatory to obtain non-party discovery

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allegations that defendant "enjoys significant prominence and political clout in Lebanon" and that Hezbollah's "strength" had "increased"), *aff'd*, 828 F. App'x 769 (2d Cir. 2020); *Elghossain v. Bank Audi S.A.L.*, 2023 WL 6390160, at *15 (S.D.N.Y. Sept. 29, 2023); *Daou v. BLC Bank, S.A.L.*, 2021 WL 1338772, at *4 (S.D.N.Y. Apr. 9, 2021).

from overseas financial institutions). That would be true even if SGBL were a party. Indeed, in *Bartlett v. Société Générale de Banque au Liban SAL*, the court has authorized letters rogatory to help the plaintiffs obtain the defendants' bank records, which were protected by Lebanese bank secrecy. 2023 WL 2734641, at *15 (E.D.N.Y. Mar. 31, 2023).

Besides, if LCB should have retained copies and did not, then Plaintiffs could seek recourse against LCB to make up for their inability to gain the documents in question. *See, e.g.*, *Green v. McClendon*, 262 F.R.D. 284, 288 (S.D.N.Y. 2009). SGBL has no dog in that fight.

The upshot is that this Court cannot amend the long-arm statute just to make discovery easy for Plaintiffs. And Plaintiffs already have tools to get the documents they want—or to get judicial relief if they can prove spoliation. They do not need jurisdiction over SGBL too.

c. Plaintiffs cite a handful of other cases to claim (Br. 30) that the "great weight" of authority supports their position, but those cases are either distinguishable or incompatible with New York law.

To begin with, many of the cases are ones in which the successor and the predecessor are one and the same. As Plaintiffs concede (Br. 31 n.8), "[s]ome of these cases involve mergers." Others are ones in which the successor is the predecessor's alter ego or its mere continuation. *See, e.g.*, *Select Creations, Inc. v. Paliafito Am., Inc.*, 852 F. Supp. 740, 771–

72 (E.D. Wis. 1994) (mere-continuation exception applied); *Synergy Ins. Co. v. Unique Personnel Consultants, Inc.*, 2017 WL 5474058, at *2 (W.D.N.C. Nov. 14, 2017) (merger, mere-continuation, and alter ego exceptions applied). In those cases, the successor corporation became "the corporate embodiment" of the predecessor. *Simmers v. Am. Cyanamid Corp.*, 576 A.2d 376, 386 (Pa. Super. Ct. 1990). And as explained above (p. 28), that rationale does not apply here.

Nor do the fairness concerns underpinning these cases. In *City of Richmond v. Madison Management Group, Inc.*, for instance, the Fourth Circuit held that successor jurisdiction was needed to prevent "[e]very corporation who puts out a lousy product" from "avoid[ing] all consequences of it by just reforming in some other jurisdiction." 918 F.2d 438, 455 (4th Cir. 1990).[7] That is not the case here. As Plaintiffs concede (Br. 21), their theory is that LCB "receive[d] less than the full value of the assets it sold because [SGBL] [wa]s assuming liabilities as well." And, as here, the seller may still be defending lawsuits for its wrongdoing. *See*

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[7] *See also Simmers*, 576 A.2d at 390–91 (characterizing successor jurisdiction as appropriate because "[a] successor which through a merger, consolidation or de facto merger is the corporate embodiment of its predecessor must not be permitted to immunize itself in a specific jurisdiction from the liabilities of its predecessor"); *Jeffrey v. Rapid Am. Corp.*, 448 Mich. 178, 195 (1995) (declaring that "corporations should be prevented from using organizational changes to avoid jurisdiction in states where they have previously done business"); *Synergy,* 2017 WL 5474058, at *1 (quoting *Madison Management* for proposition that "[a]ny other ruling would allow corporations to immunize themselves by formalistically changing their titles").

supra p. 12. So by receiving less money and having to defend itself, the seller necessarily does not "avoid all consequences" of any wrongdoing. *Madison Mgt.*, 918 F.2d at 455. Neither does the buyer, which will have assumed the liability and thus be on the hook for it. *See Schumacher*, 59 N.Y.2d at 245. All that means is that the buyer has agreed to take on the seller's liability. But whether the buyer is liable is a distinct question from whether the buyer is subject to jurisdiction. *See Kreutter*, 71 N.Y.2d at 468; *Longines-Wittnauer*, 15 N.Y.2d at 463, 466 n.16. This Court should therefore reject, as inconsistent with its case law, out-of-jurisdiction cases holding otherwise by tethering jurisdiction to liability.

For that reason, this Court should decline to follow the North Carolina Supreme Court's recent decision in *State of North Carolina ex rel. Stein v. E.I. du Pont de Nemours & Co.*, 382 N.C. 549 (2022). The court there, in a case Plaintiffs fail to cite but that we bring to the Court's attention in the interest of candor, held that jurisdiction should travel with liabilities so that sellers could not "avoid" the consequences of its actions by evading jurisdiction through a sale. *Id.* at 557–58 (quotation marks omitted). The court justified its approach as "fair" because the buyer would "have notice of the liabilities of its predecessor in a given jurisdiction." *Id.* at 559 (quotation marks omitted). In other words, the court reasoned, a buyer will have "knowledge of its predecessor's

presence within the forum," and so could foresee being sued there. *Id.* at 558 (quotation marks omitted).

Yet that reasoning departs from New York law. Even if knowledge of the seller's contacts is enough for jurisdiction in North Carolina—whose long-arm statute gives its courts "the full jurisdictional powers permissible under federal due process," *id.* at 556 (quotation marks omitted)[8]—it is not enough here. New York's long-arm statute requires more than mere "foreseeability"; it requires "purposeful affiliation" with the State. *Martinez v. Am. Std.*, 91 A.D.2d 652, 653 (2d Dep't 1982), *aff'd on op. below*, 60 N.Y.2d 873 (1983); *see supra* p. 15. So while a buyer could foresee where the seller might get sued, the long-arm statute would still require purposeful activity.

There are more grounds for distinction still. The North Carolina Supreme Court reasoned that a liability purchaser, simply by buying liabilities with knowledge of the seller's operations, "in effect consents" consents to be sued wherever the seller could be sued. *du Pont*, 382 N.C. at 559 (quoting *Simmers* 576 A.2d at 590); *see* App. Br. 39–40 (relying on *Simmers*). But this Court requires more for consent. As this Court

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[8] *See also, e.g.*, *Williams v. Bowman Livestock Equip. Co.*, 927 F.2d 1128, 1131 (10th Cir. 1991) ("Oklahoma's long arm statute is coextensive with the constitutional limitations imposed by the Due Process Clause."), *cited at* App. Br. 30; *68th St. Site Work Group v. Airgas, Inc.*, 2021 WL 4255030, at *4 (D. Md. Sept. 16, 2021) (same for Maryland's long-arm statute), *cited at* App. Br. 31.

recently explained, courts do not lightly infer that a defendant consented to jurisdiction. *See Aybar v. Aybar*, 37 N.Y.3d 274, 283 (2021). In *Aybar*, the Court concluded that defendant agreed only to designate an in-state agent for service of process; it did not agree to be sued here. *See id.* The same result should follow here. Plaintiffs have never alleged that SGBL agreed to be sued anywhere LCB could be sued; Plaintiffs allege only that SGBL agreed to assume LCB's liabilities.[9]

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Madison Management, *du Pont*, and similar cases did not consider these New York–specific arguments. Because they arose under different long-arm regimes, they did not assess whether general fairness principles should trump the plain text of New York's long-arm statute—as the Court would have to do here to rule for Plaintiffs. Those cases also never evaluated whether the judgment-enforcement regimes Plaintiffs have available to them here would allay any fairness concerns. In short,

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[9] Plaintiffs try (Br. 39) to stretch their "consent" argument by analogizing the SGBL–LCB transaction to one in which a successor "assume[s] a contractual obligation containing a forum selection clause." This argument is unpreserved. Plaintiffs proceed only on an "inherited jurisdiction" theory, not on a consent theory. *See supra* p. 22 n.4. Even if preserved, the argument would not change the outcome here. In forum-selection-clause cases, the buyer "voluntar[ily] adopt[s]" a "term[] of the contract" that obligates it to litigate in the forum. *Florida Health Sciences*, 2003 WL 22852656, at *4. Here, in contrast, all that SGBL allegedly adopted were LCB's liabilities. Again, liability and jurisdiction are "distinct." *Longines-Wittnauer*, 15 N.Y.2d at 463; *see supra* p. 25. So a party does not assume forum contacts just by assuming liabilities.

those cases considered different statutes, different arguments, and different facts. This Court should decline to follow them.

d. While Plaintiffs make arguments rooted in fairness and foreseeability, they ignore the unfairness of their own position to SGBL. Plaintiffs' only remaining claims against LCB are secondary-liability claims under JASTA, which was enacted in 2016, *see* 130 Stat. at 854—five years after SGBL agreed to assume LCB's liabilities. SGBL thus had no reason to foresee those claims when it contracted with LCB.

In fact, not only were those claims unforeseen when SGBL contracted with LCB—they were unforeseeable. Plaintiffs seek to impose JASTA liability on LCB (and, derivatively, SGBL) for conduct that occurred a decade before JASTA was passed. *See* A.19–20 (¶ 1). Plaintiffs have not even tried to explain why it would be fair to suppose that SGBL, when contracting with LCB, would have foreseen that SGBL would be sued for LCB's conduct, nearly a decade later, under a statute that Congress had not yet enacted. The only viable ATA claim LCB faced at that time was for direct liability, and that claim no longer stands. *See Kaplan*, 999 F.3d at 853. And though Plaintiffs had asserted pre-JASTA aiding-and-abetting claims against LCB, those claims were untenable: before SGBL closed its deal with LCB, courts had rejected aiding-and-abetting claims under the ATA. *See, e.g.*, *Boim v. Holy Land Found. for*

Relief & Dev., 549 F.3d 685, 689–90 (7th Cir. 2008) (en banc). "JASTA's passage confirms that . . . the [pre-JASTA] version . . . did not provide for [aiding-and-abetting] liability." *Owens v. BNP Paribas, S.A.*, 897 F.3d 266, 278 (D.C. Cir. 2018).

For all of Plaintiffs' lip-service to fairness, it is *their* theory that would force a party to defend against claims it could not have even foreseen when it assumed the liabilities in question. This Court should reject it.

C. Plaintiffs' proposed rule would undermine settled expectations of businesses in the world's financial center.

1. Because New York is the "preeminent commercial and financial nerve center of the Nation and the World," this Court hesitates before fashioning rules whose "consequences" would threaten the State's place in "global financial affairs." *Motorola*, 24 N.Y.3d at 163 (quotation marks omitted). Plaintiffs' proposed rule here would pose such a threat.

Imputing an asset-and-liability seller's forum contacts to the buyer would make transacting less predictable, more unstable, and costlier. Plaintiffs say that the buyer would be subject to personal jurisdiction on any claim for which it is ultimately liable if the seller would have been subject to jurisdiction in the forum. Taken to its logical endpoint, this means that even if a plaintiff sued the seller a decade—or even more—

after the sale, on a claim about which the buyer had no inkling, the buyer would still be subject to personal jurisdiction. This scenario is hardly farfetched. The ATA's limitations period, for instance, is ten years and provides for tolling. *See* 18 U.S.C. § 2335(a)–(b). Under Plaintiffs' rule, an asset-and-liability purchaser would be assuming not just liabilities, but also the obligation to defend lawsuits far and wide, with the potential for significant expense.

The result will be expensive. To guard themselves against this risk, buyers may pay less or demand that sellers indemnify them for litigation costs. All of that makes transacting pricier and thus less attractive. New York, as a "national and international leader in commerce," *Deutsche Bank Natl. Trust Co. v. Barclays Bank PLC*, 34 N.Y.3d 327, 331 (2019), should avoid a rule that unnecessarily drives up transaction costs and decreases the "predictability" of "[s]imple jurisdictional rules" that "corporations making business and investment decisions" find "valuable," *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010).

2. Plaintiffs, for their part, offer no persuasive counterargument.

First, they contend (Br. 39) that their rule would serve New York's values by preventing the "serious abuse" that would happen if an asset-and-liability buyer could evade the liability it agreed to assume. But they are just reprising their fairness argument, which ignores existing tools

to target the abuse they identify, conflates jurisdiction and liability, and fails to account for a judgment creditor's ability to enforce a judgment against an out-of-state judgment debtor. *See supra* p. 32–44.

Second, Plaintiffs claim that their rule serves "New York's interest in monitoring banks and banking activity to ensure that its system is not used as an instrument in support of terrorism, money laundering, or other nefarious ends." Br. 40 (quotation marks omitted). Plaintiffs' rule, however, has nothing to do with that interest. New York can monitor banking activity by providing a forum for suits against the parties that allegedly use New York's financial system to commit wrongdoing—just as it is doing in the ATA case against LCB. *See supra* p. 12. Plaintiffs do not explain why New York should also exercise jurisdiction over SGBL—which is not alleged to have committed any wrongdoing, or even directed or engaged in activity, in New York. *See* A.54–58 (¶¶ 131–154). Plaintiffs seem to realize as much, asserting (Br. 40) that regardless of how the suit against LCB turns out, "LCB's assets are now effectively immunized from its victims." Again, though, Plaintiffs are wrong. They have means, under New York and, if necessary, Lebanese law, to collect on any judgment they may obtain against LCB.

Finally, Plaintiffs argue (Br. 40–41) that their rule makes commercial sense because a buyer can simply assume fewer assets in a

sale if it does not want to be subject to personal jurisdiction for claims related to those assets. Yet that argument fails to address the reality that buyers will not know in advance everywhere that a seller may be sued and be subjected to jurisdiction. Even on the remote chance that a buyer could predict those facts with certainty, doing so would require even more due diligence than buyers already conduct, ratcheting up transaction costs. *See, e.g.*, *Syncora Guar. Inc. v. Alinda Capital Partners LLC*, 2013 N.Y. Slip Op. 31489(U), *19 n.1 (Sup. Ct. N.Y. County 2013) (recognizing that additional due diligence "would increase transaction costs"). And it would require gerrymandering asset-and-liability deals to comport with the diligence findings, adding even more friction to the transaction. So Plaintiffs' proposed solution merely makes transactions costlier. That is no solution at all.

CONCLUSION

The Court should reformulate the certified question as proposed above, answer it in the negative, and decline to reach the second certified question. In the alternative, the Court should answer the first certified question in the negative and decline to reach the second certified question.

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CERTIFICATE OF COMPLIANCE

Pursuant to Uniform Practice Rules of the Court of Appeals (22 NYCRR) § 500.13(c)(1), the foregoing brief was prepared on a computer (on a word-processing program). A proportionally spaced, serif typeface was used, as follows:

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