

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

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NATHANIEL FELBER, *et al.* :
 :
 : **Case No. 19-cv-1027 (ABJ)**
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 Plaintiffs, :
 :
 :
 -against- :
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 :
 ISLAMIC REPUBLIC OF IRAN, :
 :
 :
 Defendant. :
-----X

**PLAINTIFFS' PARTIAL PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF
LAW IN SUPPORT OF THEIR MOTION FOR DEFAULT JUDGMENT**

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Plaintiffs, by and through undersigned counsel, hereby submit the following proposed findings of fact and conclusions of law as to the Islamic Republic of Iran's ("Iran" or "Defendant") liability for their injuries and Plaintiffs' damages, except for Nathaniel Felber's, which Plaintiffs will file by October 16, 2020. *See* July 16, 2020 Minute Order. These proposed findings of fact and conclusions of law are based on the sworn declarations provided by Plaintiffs and expert witnesses in support of the entry of a default judgment in this action.

This case arises from the personal injuries Plaintiffs suffered as a result of a December 13, 2018 shooting attack at a bus stop outside of Givat Assaf¹ in the West Bank (the "Givat Assaf Attack") materially supported by Iran and committed by the Islamic Resistance Movement ("HAMAS").

Twenty-one-year-old Nathaniel Felber was shot in the head, losing part of his skull and scalp and leaving him in a vegetative state for months.² After several surgeries and months of rehabilitation, he gained some rudimentary communication abilities, but his May 2020 cranioplasty surgery reversed some of that progress, causing severe seizures lasting for days. His condition will likely never materially improve, and any further seizure could kill him.

I. BACKGROUND

1. On April 12, 2019, Plaintiffs filed their Complaint in this Court seeking, *inter alia*, compensation for the physical and emotional injuries that they sustained as a result of the Givat Assaf Attack. ECF No. 1.

¹ Given differing spellings of words or phrases transliterated from Hebrew or Arabic in the declarations and Complaint, Plaintiffs have adopted one particular spelling for each in this submission for consistency purposes.

² *See* Declaration of Judi Felber, ¶ 24. Nathaniel Felber's medical condition is based on Plaintiffs' current understanding, and will be supplemented in Plaintiffs' upcoming submission as to his damages by a medical expert.

2. On May 21, 2019, Plaintiffs filed with the Court affidavits requesting foreign mailing by certified or registered mail, return receipt requested, of the Summons, Complaint, and notice of suit, along with a translation of each into Persian, upon Iran. ECF No. 9.

3. On May 28, 2019, pursuant to 28 U.S.C. § 1608(a)(3), the Clerk of the Court certified that process was mailed by registered mail, return receipt requested. ECF No. 11.

4. Defendant refused delivery, and on July 23, 2019, the service package was returned to the Court unexecuted. ECF No. 12.

5. Plaintiffs then attempted service of process on Iran via diplomatic channels pursuant to 28 U.S.C. § 1608(a)(4). The same day the service package was returned unexecuted—July 23, 2019—Plaintiffs requested the Clerk of Court assist in transmitting the service documents. ECF No. 13. The Clerk transmitted the service documents to the State Department on July 31, 2019. ECF No. 16. The documents were transmitted to Iran’s Ministry of Foreign Affairs via the Embassy of Switzerland in Tehran on September 23, 2019, under cover of diplomatic note, number 1089-IE, as described in a State Department letter to Ms. Angela D. Caesar, Clerk of Court, dated October 24, 2019, and stamped received October 29, 2019. Service was thereby effective as of September 23, 2019, per 28 U.S.C. § 1608(a)(4). ECF No. 17.

6. Defendant’s Answer was due on November 22, 2019. *Id.* Defendant failed to answer, move, or otherwise respond by that date or subsequently.

7. On January 14, 2020, Plaintiffs requested the Clerk enter a default against Iran, ECF No. 18, which was entered by the Clerk on January 24, 2020. ECF No. 19.

8. In support of the present motion for a default judgment, Plaintiffs proffer sworn declarations from:

- Arie Dan Spitzen, providing his expert opinion that HAMAS committed the Givat Assaf Attack (“Spitzen Decl.”);

- Patrick Clawson, Ph.D., providing his expert opinion that Iran gave significant material support to HAMAS before, during, and immediately after the relevant period for the purpose of encouraging attacks such as the one at issue (“Clawson Decl.”);
- Rael Strous, M.D., providing his expert opinion on emotional injuries sustained by Plaintiffs Judi Felber, Joseph Felber, Daniel Felber, and Adina Felber (the “Family Member Plaintiffs”) as a result of the Givat Assaf Attack (“Strous Decl.”); and
- The Family Member Plaintiffs, setting out their experiences during the aftermath, and the resulting emotional consequences, of the Givat Assaf Attack.

II. FINDINGS OF FACT

A. The December 13, 2018 Givat Assaf Attack

9. On December 13, 2018, Plaintiff Nathaniel Felber, an American citizen who was then serving in the Israeli military, was stationed near a bus stop on Route 60, outside the small town of Givat Assaf, with other Israeli soldiers. *See* Spitzten Decl. ¶ 43.

10. On that day, Asem al-Barghuthi, a HAMAS operative from the West Bank village of Kubar, decided to perpetrate a terrorist attack and become a “*shahid*,” or “martyr.” *Id.* ¶¶ 36, 43, 72 & n.44, 81–82. The morning of December 13, 2018, al-Barghuthi drove to the junction outside the town of Givat Assaf on Route 60, and saw Israeli soldiers and civilians standing at the bus stop. *Id.* ¶ 43. He drove past, completed a U-turn, proceeded back to the bus stop, stopped the car, got out of the car, and opened fire on the Israeli soldiers and civilians from short range with an AK-47 automatic assault rifle. *Id.* ¶¶ 43, 60.

11. Plaintiff Nathaniel Felber was shot in the head, two other Israeli soldiers were killed, and an Israeli civilian was also injured. *Id.* ¶ 43.

12. Al-Barghuthi fled the scene. *Id.*

13. On January 8, 2019, al-Barghuthi was arrested by Israeli security forces. *Id.* ¶¶ 45, 51.

14. Al-Barghuthi was indicted on March 11, 2019, by the State of Israel for three counts of murder and multiple counts of attempted murder. *Id.* ¶ 36 (citing Annex 1 (2019 indictment)).

15. Medics arriving at the scene of the Givat Assaf Attack thought Nathaniel was dead before finding a pulse. Declaration of Judi Felber (“Judi Decl.”), ¶ 12. He was rushed into surgery at Hadassah University Hospital in Jerusalem. *Id.* ¶¶ 14, 17. The family did not know whether Nathaniel would survive, and doctors warned that the next 72 hours would be critical. *Id.* ¶ 16. Nathaniel was in a medically-induced coma, followed by a vegetative state, which he remained in for months. *Id.* ¶ 24.

16. Nathaniel stayed in the ICU for over two months, and was admitted to a rehabilitation center on February 27, 2019, where he still resides currently. *Id.* ¶¶ 15, 25. Nathaniel’s left eye started opening for the first time three months after the Givat Assaf Attack, and he moved the toes of his left foot four months after the attack. *Id.* ¶ 24. A ventilator breathed for him for the first two months, after which he needed his lungs to be suctioned through his tracheostomy tube for an additional four months. *Id.* ¶¶ 17, 25.

17. Surgeons prepared Nathaniel for cranioplasty surgery that had the possibility of improving his neurological function by implanting a “skin expander” under his scalp, which they inflated every week for two months by injecting a saline solution to stretch his skin so that there would be enough skin to cover the new synthetic “skull.” *Id.* ¶ 26. Nathaniel could not communicate but would reach for his scalp expander when it was being injected, indicating that the process was painful. *Id.* ¶ 32. Because of the COVID-19 pandemic, the surgery was pushed off. Finally, Nathaniel was admitted back to Hadassah Hospital on May 10, 2020 for the cranioplasty surgery.

18. At that point, if he were shown two playing cards, he could sometimes indicate which one displayed a higher number—indicating at least some limited level of cognitive function. *Id.* ¶ 26.

19. After the cranioplasty surgery, Nathaniel suffered from seizures for days. The seizures were so bad that he was anesthetized and intubated again. After he was extubated days later, Nathaniel contracted pneumonia and spiked fevers. Previously unknown until then, Nathaniel is sensitive to certain antibiotics, and one of the antibiotics used to treat the pneumonia caused his platelet levels to drop, requiring him to undergo three transfusions. *Id.* ¶ 27.

20. Nathaniel was discharged back to the rehabilitation center on June 17, 2020. *Id.* ¶ 28. Much of the progress he had attained before the cranioplasty has been lost and may not return. He continues to be very weak from his month of seizures and transfusions in the ICU. *Id.* He will always be at risk for seizures and will need to take anti-seizure medications for the rest of his life. Another seizure could cause Nathaniel irreversible brain damage or kill him. *Id.* ¶ 27.

B. Evidence of HAMAS’s Responsibility for the Givat Assaf Attack

1. Mr. Spitzen’s Credentials

21. To establish HAMAS’s responsibility for the Givat Assaf Attack, Plaintiffs submitted the aforementioned sworn declaration from Mr. Spitzen. Mr. Spitzen is an expert in Palestinian terrorist groups, including HAMAS. Among his varied and extensive experience, Mr. Spitzen:

- served in an elite unit of the Israel Defense Forces (“IDF”), including in its Intelligence Unit; established and led the Research Section of the Advisor for Arab Issues in the Military Government in the West Bank (Civil Administration);
- served on the negotiation team for the Oslo Peace Accords;
- served as Department Head for Palestinian Issues in the Administered Territories as the Coordinator of Government Activities in the Territories (“COGAT”), which included writing hundreds of surveys and studies about issues and entities including

HAMAS, encompassing the writing and updating of the fundamental survey regarding HAMAS's civilian infrastructure, known as the *da'wa*; and

- was qualified as an expert witness on HAMAS in ten federal civil terrorism cases in the United States, including in *Linde v. Arab Bank, Plc*, No. 04-cv-2799 (BMC)(PK) (E.D.N.Y.), in which he testified exclusively about HAMAS for 5 days during a 6-week jury trial. Spitzen Decl. ¶¶ 1–6.

22. Mr. Spitzen relied on his education, training, and experience to arrive at his conclusions. He employed a rigorous methodology similar to other experts in the field, and he carefully reviewed key primary and secondary sources, which he cross-checked and critically examined, without simply accepting their contents at face value. *Id.* ¶ 9.

2. HAMAS Generally

23. HAMAS is a Palestinian terrorist organization that was established in December 1987, shortly after the outbreak of the First Intifada (December 1987 to September 1993), by Sheikh Ahmed Yassin and other Palestinian Sunni Islamist militants committed to globalizing jihad and destroying the State of Israel. HAMAS's founders were close to, and ideologically aligned with, the Egyptian Muslim Brotherhood organization. Clawson Decl. ¶ 23.³

24. From its inception, HAMAS perpetrated terrorist attacks in Israel and the Palestinian Territories and was the largest and deadliest Palestinian terrorist group. In the Second Intifada (September 2000 through December 2004) in particular, HAMAS perpetrated scores of high-profile terrorist attacks, frequently via suicide bombings. *Id.* ¶ 24.

25. As a result of the vast number of terrorist attacks that HAMAS perpetrated, and the hundreds of civilians (including American citizens) it killed, the United States designated HAMAS a Specially Designated Terrorist in 1995, a Foreign Terrorist Organization in 1997, and a Specially Designated Global Terrorist in 2001. *Id.* ¶ 25.

³ Dr. Clawson's credentials are provided below in section II.C.1.

26. HAMAS perpetrated its attacks through its operational arm known as the *Izz al-Din al-Qassam Brigades* (“Qassam Brigades”). *Id.* ¶ 26.

3. HAMAS’s Identification of Asem al-Barghuthi as a Qassam Brigades Operative

27. According to Mr. Spitzen, Asem al-Barghuthi was the commander of a HAMAS Qassam Brigades cell responsible for the December 13, 2018 Givat Assaf Attack and a terror attack four days prior, on December 9, 2018, outside the town of Ofra (the “Ofra Attack”). Spitzen Decl. ¶¶ 31, 33–34.

28. In the Ofra Attack, Asem al-Barghuthi and Saleh al-Barghuthi, brother and partner in Asem’s Qassam Brigades cell, perpetrated a drive-by shooting, injuring several civilians and killing a baby. *Id.* ¶¶ 33–34. Asem al-Barghuthi, the cell commander, was the gunman and shooter, and Saleh al-Barghuthi drove the car from which the shooting was carried out. *Id.* ¶ 34.

29. Saleh al-Barghuthi was shot and killed by Israeli security forces on December 12, 2018. *Id.* ¶ 35.

30. On December 13, 2018, HAMAS issued an official claim of responsibility for the Ofra Attack on its Qassam Brigades website. *Id.* ¶ 39. It also publicly described Saleh al-Barghuthi as a *Qassami* martyr (*i.e.*, a Qassam Brigades operative who was killed while carrying out activities in the framework of the organization), emphasizing his “pivotal” role in the attack. *Id.* ¶ 50. Commemorating the Ofra Attack, HAMAS leader and chairman of its political bureau Ismail Haniyeh honored the mourning tent put up by HAMAS in memory of Saleh al-Barghuthi with his presence. *Id.* ¶¶ 47–48.

31. Mr. Spitzen noted that HAMAS emphasized the allegedly critical role of an operative who was already deceased (Saleh) to divert attention from the real commander of the cell (Asem) who remained at large and continued to plan and perpetrate additional attacks. *Id.* ¶¶

51–52. While HAMAS has generally claimed responsibility for the terrorist attacks that it has perpetrated, it has been cautious about claiming responsibility for attacks if withholding an announcement could protect operatives who have not yet been captured or who are in jail but have not yet been sentenced by Israeli courts. *Id.* ¶¶ 21, 23 & n.9.

32. Seeking to avenge his brother’s death, Asem decided to carry out the Givat Assaf Attack, which resulted in serious injuries to Plaintiff Nathaniel Felber. *Id.* ¶¶ 36, 38.

33. In contrast to the Ofra Attack, HAMAS did not initially declare that its operatives committed the Givat Assaf Attack, in line with its organizational policy of giving precedence to the security of its operatives over public relations. Asem al-Barghuthi had gone into hiding after the Ofra Attack until his apprehension on January 8, 2019. *Id.* ¶¶ 21, 23–24, 50–51, 53.

34. HAMAS strongly insinuated its responsibility for the Givat Assaf Attack, however, and over time it became less guarded in its public statements. Key HAMAS websites, including one of its official websites, described the Givat Assaf Attack as one carried out by the “Resistance,” and on the day of al-Barghuthi’s arrest published an announcement describing the Givat Assaf Attack as a bold operation carried out by “the Resistance” and the arrest as prosecution of “the Resistance.” *Id.* ¶¶ 54–55. The use of the words “the Resistance” is an indirect way by which HAMAS informs its target audience that HAMAS is the one responsible for the attack (HAMAS is “the Islamic **Resistance** Movement”). Mr. Spitzen confirmed that although “resistance” has other meanings, its use in the context of an attack committed by a HAMAS operative is intended to have a very specific meaning. *Id.* ¶ 54.

35. Indeed, after Asem al-Barghuthi’s arrest on January 8, 2019, HAMAS issued an announcement identifying him as one of its operatives, calling him “Muqawim” (the resistor). *Id.* ¶ 98. HAMAS identified him as a “Qassami prisoner” (*i.e.*, a prisoner belonging to the Qassam

Brigades) after his sentencing on June 24, 2020 on both the HAMAS official website and the Qassam Brigades' official website. *Id.* ¶¶ 57, 100. On December 13, 2019, the one-year anniversary of the Givat Assaf Attack, the Qassam Brigades' website again emphasized HAMAS's responsibility for the Ofra Attack. *Id.* ¶ 48.

36. These announcements are significant because, since the early 2000s, HAMAS increasingly began using its official websites to issue claims of responsibility for attacks that it perpetrated. *Id.* ¶ 27. The websites frequently contained reprints of the suicide bombers' wills, photographs of the perpetrators, and videos of suicide bombers taken before they were dispatched. *Id.* ¶ 28. Mr. Spitzen pointed out that because the perpetrators are often identified, it was possible to compare HAMAS's claims of responsibility to the results of the investigations performed by the Israel Security Agency and the Israel Police as well as judicial determinations regarding the criminal liability of various alleged operatives. Therefore, in many cases, the overwhelming evidence available made it relatively clear whether a terrorist organization was responsible for a particular attack. *Id.* ¶ 30.

37. On the day that Asem al-Barghuthi's house was demolished by Israel, HAMAS's green flag was raised above its ruins, yet another indicator of his role as a HAMAS operative. *Id.* ¶ 99. In what Mr. Spitzen called "an extremely remarkable gesture," HAMAS leader Haniyeh called al-Barghuthi's mother immediately after the verdict was published to express his and HAMAS's appreciation to Asem al-Barghuthi and the rest of his "holy warrior" family. *Id.* ¶ 57.

4. Asem al-Barghuthi's Family's Longtime HAMAS Connections

38. The al-Barghuthi family had many connections to HAMAS, as outlined by Mr. Spitzen. Asem trained under the guidance of his father, Ummar al-Barghuthi, who was a senior operative in the Qassam Brigades. *Id.* ¶¶ 70 n.43, 77. Ummar al-Barghuthi indoctrinated all of his

sons and trained them to use firearms with the intention of preparing them to join the Qassam Brigades. *Id.* ¶ 78.

39. At a young age, Asem approached his father and told him about his desire to carry out a suicide attack. *Id.* ¶ 72 n.44. Asem's brothers were also indoctrinated into the Qassam Brigades. As described below, ¶45, Asem recruited his brother Saleh al-Barghuthi into his Qassam Brigades cell prior to the Ofra Attack. *Id.* ¶¶ 65, 77. In addition, a third brother, Asef, was convicted in 2005 for undergoing training with weapons under the guidance of his father. *Id.* ¶ 79 n.52. Asem's uncles are also longtime senior HAMAS operatives. *Id.* ¶¶ 77, 107.

5. Asem al-Barghuthi's Prior and Subsequent HAMAS Activities

40. Asem's participation in HAMAS's terror operations did not start with the Ofra Attack. In 2005, when he was 19 years old, Asem al-Barghuthi was arrested and confessed to being a member of HAMAS's Islamic Bloc, a student organization HAMAS uses to recruit terrorist operatives for the Qassam Brigades. *Id.* ¶¶ 60 n.35, 82, 85–86. In January 2007, three months after his release from prison, al-Barghuthi joined a Qassam Brigades terrorist cell whose operatives attempted to kidnap Jews to exchange for Palestinian prisoners in Israeli jails. Al-Barghuthi was arrested and sentenced to over eleven years in prison. *Id.* ¶¶ 60 n.35, 88–89 & n.61, 91, 93.

41. Asem al-Barghuthi was already known to the Palestinian public as a HAMAS operative after his conviction in 2005, *id.* ¶ 141, and after he was released from prison in April 2018, his notoriety grew. *Id.* ¶¶ 94–95. In fact, during a reception following his release from prison in 2018, HAMAS flags were prominently displayed, and al-Barghuthi was recorded giving a speech and confirming that he belonged to HAMAS's Qassam Brigades. *Id.* ¶ 96. When Asem rose to give his speech, he pointed to the HAMAS bandana that was wrapped around his neck and publicly proclaimed: “[I]ndeed, I am a Hamas man.” *Id.* ¶ 97.

42. In the months after his release from prison in April 2018, Asem al-Barghuthi began to establish a new Qassam Brigades terrorist cell. *Id.* ¶ 94. He recruited several HAMAS operatives to the cell, including Jaber Abdu, a previously convicted HAMAS operative who had served two years in prison, *id.* ¶¶ 117 & n.76, 119; Musa al-Khatib, a convicted HAMAS operative previously convicted for, among other crimes, transferring HAMAS funds to terror operatives, *id.* ¶¶ 128–30; Khaled Nuibat, a previously convicted HAMAS operative imprisoned for four years for crimes such as attempting to manufacture rockets, *id.*, ¶¶ 132–34; and Mahdi Abu Rahma, a previously convicted HAMAS operative imprisoned in Israeli jails for two years; *id.*, ¶¶ 135, 137–38.

43. Before the cell could carry out any further attacks, all of these cell participants were charged with joining Asem al-Barghuthi’s terror cell. *Id.* ¶¶ 123–26, 128–31, 138.

6. HAMAS Indicators in the Ofra and Givat Assaf Attacks

44. Mr. Spitzen described how the preparation for, and method of, executing the Ofra and Givat Assaf Attacks themselves demonstrated a level of determination, skill, and professionalism typical of HAMAS’s organized terrorist cells, in contrast to the conduct of a “rogue actor or lone wolf.” *Id.* ¶¶ 41–42, 44, 58–62, 65, 70. Prior to serving his second prison term, in 2007, Asem buried, under cement, weapons he would use twelve years later in the Ofra and Givat Assaf Attacks. *Id.* ¶ 60. Furthermore, while serving one of his prison sentences preceding these attacks, he contacted another prisoner who offered to assist him in obtaining weapons to carry out attacks against Israel. *Id.* ¶ 61.

45. Preparations for the Ofra Attack were carefully conducted over a long period of time. A co-conspirator (so as to distance Asem from the preparations) purchased the vehicle used to carry out the attack. Asem recruited his brother, Saleh, as a driver, and Asem scouted the area,

observing that the bus stop in Ofra contained a constant presence of Israeli soldiers and civilians. *Id.* ¶¶ 65, 67, 108.

46. Even with the Givat Assaf Attack, where preparations were expedited as a result of his brother's death, Asem al-Barghuthi's determination, prior planning, training, and professionalism were evident. *Id.* ¶ 66. Al-Barghuthi noticed the concentration of soldiers and civilians at the stop in Givat Assaf and turned his car around to commit an attack there. *Id.* ¶ 67. While fleeing, he abandoned his car (which had become stuck) and a weapon he had stolen from the scene of the attack so as not to hinder his escape, demonstrating a level of professionalism and restraint that are typical of skillful terrorist operatives who belong to established terrorist cells of organizations like HAMAS. *Id.* ¶ 71. The Givat Assaf Attack also demonstrated Asem al-Barghuthi's devotion to HAMAS, as he carried out an attack targeting armed soldiers despite knowing he was wanted by Israeli security forces. Even after the execution of the Givat Assaf Attack, Asem al-Barghuthi continued to plan other terror attacks while recruiting new members to the HAMAS cell he had established. *Id.* ¶ 72.

47. Furthermore, the dates of the Ofra and Givat Assaf Attacks were likely linked to a HAMAS narrative. December 9, the day of the Ofra Attack, is the day the First Intifada erupted and is considered to be the day on which HAMAS's founder and first leader, Sheikh Ahmed Yassin, summoned six leaders of the Muslim Brotherhood movement in the Gaza Strip and decided to establish the organization. HAMAS marks December 14, the day after the Givat Assaf Attack, as the official anniversary of its establishment. Throughout the years, these dates and the days surrounding them have been popular dates for HAMAS terrorist operatives to carry out attacks. According to Mr. Spitz, the choice to carry out the attacks on these specific days "was also made with care." *Id.* ¶ 68.

48. In sum, Mr. Spitzzen concluded in his declaration that the Givat Assaf Attack was planned and executed by Asem al-Barghuthi, a commander of a HAMAS cell and a Qassam Brigades operative; it was the second of two attacks his cell executed, but not the last attack that the cell planned to carry out; among the cell's goals was to murder as many Israelis as possible or to abduct Israelis to use as bargaining chips to gain the release of Palestinian terrorists imprisoned in Israel; and the cell was established in 2018 and operated until the arrest of its members by Israeli security authorities in 2019. *Id.* ¶ 139.

C. Iran's Material Support for HAMAS

1. Dr. Clawson's Credentials

49. To establish that Iran provided substantial material support to HAMAS before and during the relevant period, Plaintiffs submitted the aforementioned declaration from Patrick L. Clawson, Ph.D. Dr. Clawson is an expert on Iran and has extensively studied and researched Iran and its sponsorship of terrorism, its economy, and its politics. Clawson Decl. ¶ 1. He holds a Ph.D. in economics from the New School for Social Research and a B.A. from Oberlin College. He reads and speaks Persian as well as some Hebrew. *Id.* ¶¶ 12–13.

50. Dr. Clawson is the Director of Research at the Washington Institute for Near East Policy (the "Washington Institute"), a think tank and 501(c)(3) organization that studies the Middle East, including domestic and international issues relating to the Iranian government. He has been employed there since 1997 and supervises a staff of about twenty senior researchers who study Middle East politics and terrorism, with a considerable focus on Iran. *Id.* ¶¶ 2–4.

51. Under his supervision, the Washington Institute's researchers have written more than twenty studies about Iran's security apparatus, support for terrorism and terror financing, and political leadership, and U.S. and Western policies to counter Iranian terrorism and terror

financing. Dr. Clawson also regularly briefs and receives briefings from senior U.S. military officials and senior officials of other governments friendly to the United States about the threats from Iran, Iranian support of terrorism, and Iranian strategy regarding terrorism. *Id.* ¶ 4.

52. Dr. Clawson has previously been qualified by federal courts as an expert witness approximately 30 times on issues relating to Iran, including Iran's support for terrorism and its economy, and has given both live and written testimony in various cases brought against Iran for its sponsorship of terrorism. *Id.* ¶ 6. He has also testified before the House International Relations, National Security, and Banking and Financial Services Committees and the Senate Foreign Relations and Banking Committees about Iran, Iranian terrorism, and the use of economic measures to discourage Iran from supporting terrorism. *Id.* ¶ 7.

53. Dr. Clawson has made many presentations and written and edited many books, articles, and journals about Iran and its support of terrorism. *Id.* ¶¶ 8–11.

2. Iran's Provision of Material Support to HAMAS

54. Iran was designated a State Sponsor of Terrorism in 1984 and has been on the State Department's list of State Sponsors of Terrorism since that time. *Id.* ¶ 22. *See Dammarell v. Islamic Republic of Iran*, 404 F. Supp. 2d 261, 273–74 (D.D.C. 2005); *see also* 22 C.F.R. § 126.1(d) (2005); 31 C.F.R. § 596.201 (2005); Determination Pursuant to Section 6(i) of the Export Administration Act of 1979–Iran, 49 Fed. Reg. 2836-02 (Jan. 23, 1984). *See also* U.S. Dep't of State, *State Sponsors of Terrorism* (current), available at <https://www.state.gov/state-sponsors-of-terrorism/>.

55. For over 30 years, Iran has provided funding and training to HAMAS for terrorism operations that targeted United States and Israeli citizens. *Id.* ¶¶ 28–29.

56. Even though Iran’s support for HAMAS has waned at times during that period, Iran has never cut off its support for HAMAS. And at certain times during that period, Iran’s support for HAMAS—including financial and military aid—was very substantial. *Id.* ¶ 30.

57. From approximately 1993 through the late 1990s, Iran provided substantial support to HAMAS, which included military training, millions of dollars, and exhortations to commit terrorist attacks. *Id.* ¶¶ 31, 34.

58. After a short period in which Iran’s and HAMAS’s relationship subsided, it increased again in 2002, and in a July 2003 report, the Israeli government estimated that Iran was providing HAMAS \$3 million a year. *Id.* ¶¶ 35–36.

59. After temporarily cooling thereafter, Iranian support for HAMAS again intensified at the end of 2005, and increased exponentially after HAMAS’s legislative success in 2006. Israel’s Intelligence and Terrorism Information Center, which is closely aligned with the IDF, published a report noting Iran’s pledge of \$250 million to HAMAS in 2006 and 2007. Even though the Egyptian authorities reportedly confiscated some of these funds, large sums of Iranian money flowed into the Gaza Strip earmarked for HAMAS. *Id.* ¶¶ 37–39.

60. Iran’s support for HAMAS increased after HAMAS took complete control of the Gaza Strip in 2007. This included financial support, weapons, and training. In particular, the Islamic Revolutionary Guard Corps-Qods Force (“IRGC-QF”) (Iran’s quasi-military division used to perpetrate terrorist attacks outside of Iran) provided strategic assistance to HAMAS. Then-HAMAS leader Khaled Mashal visited Tehran in 2009 and thanked Iran for its assistance in its military conflict with Israel in 2008, which included mortar shells HAMAS fired that were of Iranian design. *Id.* ¶¶ 40–48.

61. In February 2010, Cyprus seized and searched a ship on which it had found more than 3,000 cases of powder for 120mm and 130mm guns as well as over 800 cases of propellant for 125mm mortars. This materiel was traced to Iran, which led the U.N. Security Council committee responsible for monitoring the Security Council-ordered ban on Iranian arms exports to conclude that Iran had violated the ban. According to Dr. Clawson, there is strong reason to believe that the weapons were headed to the Gaza Strip. *Id.* ¶ 49.

62. Although the Iran-HAMAS relationship weakened in the early part of 2012, the relationship improved during the fighting between HAMAS and Israeli forces in November 2012. In November, the Iranian Parliament's Speaker, Ali Larijani, told reporters, "We proudly say we support the Palestinians, militarily and financially." Khaled Mashal also thanked Iran for "arms and funding." *Id.* ¶ 50.

63. The Iran-HAMAS relationship improved further after the Egyptian military's July 2013 overthrow of the Morsi government that had been close to HAMAS, leaving HAMAS quite dependent on Iranian aid. Their relations were further strengthened in 2014 as HAMAS increased its terror activities against Israel, which included kidnappings and rocket attacks. In November 2013, Iranian Supreme Leader Ali Khamenei stated that Iran aids HAMAS. *Id.* ¶¶ 51–52.

64. In December 2014, a spokesman for HAMAS's Qassam Brigades thanked Iran for supporting HAMAS with money and weapons, such as rockets and anti-tank missiles. *Id.* ¶ 53.

65. In 2015, Iran continued to provide financial support to HAMAS. *Id.* ¶ 55.

66. The relationship between Iran and HAMAS remained close from 2016 through 2018. *Id.* ¶¶ 56–59. In November 2016, senior HAMAS leader Osama Hamdan said "[r]elations between Iran and Hamas are currently undergoing revitalization, and are moving in the right direction," and that Iran would "continue to support the resistance" against Israel. *Id.* ¶ 56.

67. In August 2017, CNBC reported that HAMAS's leader in Gaza, Yehiyeh Sinwar, said HAMAS's relationship with Iran was "excellent, or very excellent," as Iran was "the largest backer financially and militarily" of HAMAS's military wing. Per CNBC's report, Sinwar stressed Iranian aid was for "rebuilding and accumulating" HAMAS's military powers for a larger fight against Israel intended to "liberate Palestine." "Thousands of people work every day to make rockets, (dig) tunnels and train frogmen," Sinwar said. "The relationship with Iran is in this context." *Id.* ¶ 57.

68. Many HAMAS officials visited Tehran in 2017, including an October visit by a delegation led by deputy chief of HAMAS's Political Bureau, Saleh Al-Arouri. Al-Arouri met with Larijani; Admiral Ali Shamkhani, Secretary of Iran's Supreme National Security Council; and Ali Akbar Velayati, advisor to the leader of the Islamic Revolution in Iran. Velayati said: "We are proud of supporting the Palestinian resistance and Hamas Movement. The Iranian leadership and our people will continue to support the resistance led by Hamas and Islamic Jihad." *Id.* ¶ 58.

69. The relationship further improved in 2018, the year of the Ofra and Givat Assaf Attacks. In a May interview to the Iranian-funded *Al Manar* television network, Sinwar praised Iranian support, such as the provision of missiles used to target Beersheva, an Israeli city. Israeli Defence Minister Avigdor Lieberman said in March most of the \$260 million HAMAS invested the year prior in making tunnels and weapons originated in Tehran. *Id.* ¶ 59. And a report by the Israel-based Ynet news site from August 2018, citing Palestinian sources, said Iran's payments to HAMAS at the time amounted to \$70 million per year (as quoted in the *Times of Israel*). *Id.* ¶ 59.

70. In 2018, the *Country Reports on Terrorism*, which is completed by the U.S. Department of State in accordance with a statutory mandate, provided in relevant part: "Iran remains the world's worst state sponsor of terrorism. The regime has spent nearly one billion

dollars per year to support terrorist groups [such as HAMAS] that serve as its proxies and expand its malign influence across the globe.” *Id.* ¶ 27.

71. The relationship between Iran and HAMAS deepened even further in 2019, and Iran has continued to provide support to HAMAS through the present. *Id.* ¶¶ 60-61, 64.

72. As Dr. Clawson concluded, “the Iran-Hamas relationship has continued consistently from 1993 to the present, with Iranian support more pronounced in some periods than others. There is ample evidence that Iran has supplied substantial material support to Hamas, including in the period immediately before, during, and immediately after the December 13, 2018 attack outside of Givat Assaf in the West Bank in which Nathaniel Felber was grievously wounded and two other Israelis were killed.” *Id.* ¶ 64.

73. Moreover, this Court has repeatedly found Iran liable under the FSIA for sponsoring HAMAS attacks. Specifically, this Court has found that Iran is not only a major source of support for HAMAS, both financially and with respect to terrorist training, but also that Iran fully knew of HAMAS’s purposes and objectives and approved of them. *See, e.g., Estate of Hirshfeld v. Islamic Republic of Iran*, 330 F. Supp. 3d 107 (D.D.C. 2018); *Gill v. Islamic Republic of Iran*, 249 F. Supp. 3d 88 (D.D.C. 2017); *Cohen v. Islamic Republic of Iran*, 238 F. Supp. 3d 71 (D.D.C. 2017); *Bodoff v. Islamic Republic of Iran*, 907 F. Supp. 2d 93 (D.D.C. 2012); *Estate of Botvin v. Islamic Republic of Iran*, 873 F. Supp. 2d 232 (D.D.C. 2012); *Stern v. Islamic Republic of Iran*, 271 F. Supp. 2d 286 (D.D.C. 2003); *Weinstein v. Islamic Republic of Iran*, 184 F. Supp. 2d 13 (D.D.C. 2002); and *Eisenfeld v. Islamic Republic of Iran*, 172 F. Supp. 2d 1 (D.D.C. 2000).

D. Family Member Plaintiffs’ Injuries

74. The Family Member Plaintiffs provided sworn declarations regarding the emotional injuries they suffer from as a result of the Givat Assaf Attack.

75. The Family Member Plaintiffs were also evaluated by Dr. Rael Strous regarding the nature and degree of psychiatric conditions as codified by the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (“DSM-5”),⁴ that they suffer from, if any, as a result of the Givat Assaf Attack. Strous Decl. ¶ 5.

1. Dr. Strous’s Credentials

76. Dr. Strous is a Medical Doctor specializing in psychiatry. He is currently the Director of the Department of Psychiatry at the Maayenei Hayeshua Medical Center in Bnei Brak, Israel. He also serves as Full Professor, Department of Psychiatry, at the Sackler Faculty of Medicine at Tel Aviv University and maintains a small private practice in clinical psychiatry. *Id.* ¶ 1.

77. He received his medical degree in 1989 from the University of Witwatersrand in Johannesburg, South Africa. Between 1992 and 1996, Dr. Strous performed his residency in psychiatry at the Albert Einstein College of Medicine in New York City. In 1996, he served as Chief Resident at the Bronx Psychiatric State Hospital. From 1996 through 1998, he performed a clinical research fellowship in psychopharmacology at the Commonwealth Research Center, Massachusetts Mental Health Center, which is affiliated with Harvard Medical School. He served as the director of the inpatient psychiatry department at the Beer Yaakov Mental Health Center from 2003-13, after which he served as the deputy director of the hospital. In 2014, Dr. Strous completed a master’s degree in Health Administration at Ben Gurion University in Israel. *Id.* ¶ 3.

78. Before embarking on his career in psychiatry, Dr. Strous served as an emergency room doctor and as a general physician in pediatrics and trauma. *Id.* ¶ 4.

⁴ American Psychiatric Association (2013). *Diagnostic and Statistical Manual of Mental Disorders* (5th ed.). Arlington, VA: American Psychiatric Publishing.

79. Dr. Strous has approximately 150 peer-reviewed research publications to his name, including several in the field of chronic Post-Traumatic Stress Disorder (“PTSD”). *Id.* ¶ 7. Based on his education, training, and experience, Dr. Strous has provided expert testimony in numerous U.S. federal court cases on behalf of terror victims. *Id.* ¶¶ 8–9.

2. Psychiatric Disorders

80. In order to better understand the psychological evaluations and diagnoses set forth by Dr. Strous below, he has summarized for the Court two types of psychiatric disorders [REDACTED], as follows:

a. Post-Traumatic Stress Disorder (“PTSD”)

81. PTSD is a condition that develops from having been exposed to, or witnessing, life-threatening events. In addition, the traumatic event may be indirect, such as by hearing of a relative or close friend’s experience of a life-threatening event that was violent or accidental. *Id.* ¶ 16.

82. PTSD is characterized by four clusters of symptoms that persist for over a month after the traumatic event occurred. These clusters include symptoms related to intrusion, avoidance, negative alterations in cognitions and mood, and arousal and reactivity. Intrusion relates to recurrent, involuntary, and intrusive distressing memories and/or recurrent distressing dreams of the traumatic event. Avoidance relates to efforts to avoid stimuli, including internal thoughts or external situations, that the PTSD victim associates with the event. Negative alterations in cognitions and mood includes an inability to remember an important aspect of the traumatic event; persistent and exaggerated negative beliefs about oneself, others, or the world; persistent, distorted cognitions about the cause or consequences of the traumatic event; persistent negative emotional state; markedly diminished interest or participation in significant activities; feelings of detachment or estrangement from others; and the persistent inability to experience positive

emotions. Arousal and reactivity includes irritable behavior and angry outbursts with little or no provocation, reckless or self-destructive behavior, hypervigilance, exaggerated startle response, problems with concentration, and sleep disturbance. *Id.*

83. The disturbance causes clinically significant distress or impairment in social, occupational, or other important areas of functioning, and PTSD victims' educational and employment prospects are often diminished. Some have difficulty interacting with others. *Id.* ¶¶ 16, 18.

84. For those who are married or who are able to marry and have children the stress of childrearing will be compounded. The inability to relax and have a good time is extremely common among PTSD patients. *Id.* ¶ 20.

b. Adjustment Disorder

85. Adjustment Disorder is an emotional and behavioral reaction that develops within three months of a life stress. The response is stronger or greater than what would be expected for the type of event that occurred. For a diagnosis of Adjustment Disorder, a person's symptoms must be severe enough to affect his or her work or social life. Symptoms may vary and include agitation, depressed mood, anxious mood, and physical complaints. *Id.* ¶¶ 22.

86. The DSM-5 lists six different types of Adjustment Disorders. [REDACTED]

[REDACTED]:

- With depressed mood. Low mood, tearfulness, or feeling of hopelessness.
- With anxiety. Nervousness, worry, jitteriness, or separation anxiety is predominant.
- With mixed anxiety and depressed mood. A combination of depression and anxiety is predominant. *Id.* ¶ 24.

87. The duration of an individual's Adjustment Disorder can vary. Adjustment Disorders can be acute, where signs and symptoms last six months or less, or persistent (chronic),

where signs and symptoms last more than six months and continue to bother the individual and disrupt their life. *Id.* ¶ 25.

3. Family Member Plaintiffs' Emotional Injuries

a. Judi Felber

88. Judi Felber is a U.S. citizen. She is Nathaniel Felber's mother. *See* Judi Decl. ¶ 1.

89. Judi suggested that her family try living in Israel, and they moved there in 2006. *Id.* ¶¶ 5–6. Having spent her junior year of college in Israel, she felt “at home” there. *Id.* ¶ 3.

90. Judi described Nathaniel as her “most easygoing child,” the one who “never fussed, never fought.” *Id.* ¶ 7. His transition to Israel was seamless: He learned and spoke Hebrew better than anyone else in the Felber family and enjoyed his service in the Army the most. *Id.* ¶¶ 8, 10. Nathaniel often called his mother from his base and came home every other weekend. *Id.* ¶ 10.

91. Judi was working from home as an editor of a medical journal when she learned about the Givat Assaf Attack. She received a call from a cousin about the attack, who knew that Nathaniel was stationed in the area. Judi called Nathaniel, and he did not answer, but Judi was not surprised as soldiers cannot answer their cellphones while on duty. *Id.* ¶¶ 12–13.

92. Four hours later, there was a knock at her door. Three soldiers entered the apartment and informed the Felbers that Nathaniel was injured in the Givat Assaf Attack. The soldiers instructed Judi and her husband to pack a bag and go with them to Hadassah Hospital in Jerusalem, where Nathaniel had been taken. Judi recalls how she “could barely think; my mind was a blur.” She packed a few shirts and a laptop in case she needed to be there for more than a day or two. *Id.* ¶ 14.

93. Nathaniel stayed at Hadassah Hospital from December 13, 2018 until February 27, 2019. For all but the last few days, he was in the ICU. *Id.* ¶ 15. Judi moved into a hotel on the

hospital's campus, where she and her family lived for over two months until Nathaniel was discharged to a rehabilitation center. *Id.* ¶ 18.

94. Judi described seeing Nathaniel after his surgery as “very traumatic.” His head was swollen, and he was attached to IVs, tubes, head drains, and a ventilator. Machines beeped constantly. *Id.* ¶ 17. Doctors called the first 72 hours after the attack “critical”; no one knew if Nathaniel would survive. *Id.* ¶ 16.

95. Judi explained that in the hospital, a day “feels like an eon.” *Id.* ¶ 19. Even when Nathaniel was in the ICU for less than a week, the Hadassah Hospital social workers considered Judi a veteran. *Id.*

96. The ICU permitted visiting hours four times a day, and Judi was there for almost every single time slot. *Id.* ¶ 23. Judi spent her days speaking to Nathaniel, having heard that coma patients might be able to hear. *Id.* ¶ 22. She and her daughter moved Nathaniel's limbs to keep them flexible while he lay prone on his hospital bed. She played music for Nathaniel. *Id.* ¶ 23. At night, Judi did not sleep, and when she did, she had nightmares. She received a prescription for sleeping pills, but her daughter's fiancé told her not to take them because they were not good for people. Sometimes, when the sleeplessness became unbearable, she would take a quarter of a pill. *Id.* ¶ 20.

97. Judi went on walks along the road that circles the hospital campus but frequently stopped to sit on the ground because she was crying so hard. *Id.* ¶ 21.

98. Judi tracked any and all progress by Nathaniel and posted it on a blog she started so that she would not have to explain Nathaniel's condition “over and over again.” When Nathaniel's left eye started opening for the first time three months after the Givat Assaf Attack,

she posted about it. When Nathaniel moved the toes on his left foot four months after the attack, she was happy to announce it. *Id.* ¶ 24.

99. Over a month after the Givat Assaf Attack, physical therapists moved Nathaniel to a chair for a short time to change his position and help ease his breathing. However, Nathaniel was still in a vegetative state at the time and had been strapped into the chair. *Id.*

100. Nathaniel was discharged from Hadassah Hospital and admitted to a rehabilitation facility at Tel Hashomer Hospital on February 27, 2019. *Id.* ¶ 25; Strous Decl., Ex. B at 4. He resides there presently and is still weak from the recent seizures and multiple rounds of blood transfusions caused by his May 2020 cranioplasty surgery. Judi Decl. ¶ 27. Judi explained that “[a]ll the work we did to get him to where he was before the cranioplasty appears to be lost for now,” and thus, “I don’t feel as hopeful now.” *Id.* ¶¶ 27–28.

101. Judi continues to spend her days with Nathaniel [REDACTED]. She and her husband stay in a hotel near the rehabilitation center every weekend and Jewish holiday. *Id.* ¶ 29. In the year and a half since Nathaniel’s attack, she has spent only three weekends at home. Strous Decl., Ex. B at 4. [REDACTED] Judi is also overwhelmed by the paperwork associated with Nathaniel’s care: “There are medical records, insurance forms, and countless other documents I need to collect or complete.” Judi Decl. ¶ 37. She is overwhelmed by the decisions that need to be made, stating: “Are there other therapies I should be looking into for Nathaniel? There are so many different kinds of wheelchairs; which one is the best for Nathaniel? What kind of shower do we need for Nathaniel, and what’s the best chair or bath bed for him?” *Id.* She describes her “whole new world of disabled living” as one that “we have no idea how to navigate, and which we never wanted to join.” *Id.*

102. [REDACTED]

[REDACTED]

[REDACTED] Her family unit has also changed; Judi described how it is hard for her to see “Nathaniel’s relationship with his siblings completely altered and diminished.” *Id.* ¶ 33. Judi’s daughter was married a year after Nathaniel’s attack, and Judi admits that she “couldn’t be as involved as I wanted to be.” *Id.*

103. Judi described how she neglects herself now. Strous Decl., Ex. B at 6. “I’m no longer Judi,” she stated. She described her life now as “mother of injured Nathaniel.” Judi Decl. ¶ 30. She has stopped running, a hobby she used to enjoy, [REDACTED] [REDACTED] “Taking care of Nathaniel is my number one priority, and it leaves little time for anything else.” *Id.* ¶ 36.

104. Judi misses the Nathaniel she could talk to before the Givat Assaf Attack. She described his smile, the advice he would give her, and how they were “good friends.” *Id.* ¶ 32. Now, she does not know what he feels or if he feels anything at all: “He’s silent. He doesn’t move much.” *Id.* Judi recalled telling Nathaniel (her youngest child) that he would always be her baby, but laments that the truth now is even worse: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

105. Judi plans to move Nathaniel out of the rehabilitation center at the end of September, a prospect she finds “sad, scary, and stressful.” *Id.* ¶¶ 35–36. She will miss the support of the staff and other parents, as well as the other patients who “make up Nathaniel’s social life.” *Id.* ¶ 36. She remains focused on Nathaniel’s progress, no matter how minimal: “I look for whether

Nathaniel is able to hold his head up for a little while longer, or how many seconds he can sit before losing control and toppling over.” *Id.* ¶ 34. She realizes that Nathaniel will probably never walk and he may never talk. She knows that Nathaniel will never go to college, hold a job, get married, or have children. Judi testified: “The dreams we had for Nathaniel are gone.” *Id.* ¶ 38.

106. Dr. Strous reviewed a report prepared by Judi’s treating clinical psychologist and met with Judi and performed his own evaluation of her on July 9, 2020. Strous Decl. ¶ 12 and Ex. B at 5. He noted her report of recurring memories of being informed that Nathaniel had been shot as well as the first few days when she was not sure Nathaniel would survive. Strous Decl., Ex. B at 5. He also noted her recurring nightmares, tactics of avoidance, persistent negative emotional state, diminished interest in social activities, feelings of distancing from others, and problems with concentration. *Id.* at 5–6. [REDACTED]

[REDACTED]

107. [REDACTED]

b. Joseph Felber

108. Joseph Felber is a U.S. citizen. He is Nathaniel Felber’s father. *See* Declaration of Joseph Felber (“Joseph Decl.”), ¶ 1.

109. Joseph recalled starting December 13, 2018 on a high, as his daughter, Adina, had gotten engaged a week prior and he was planning to celebrate the following day. *Id.* ¶¶ 10–11. He went to the supermarket to purchase supplies for the celebration and returned home to work “in a great mood.” *Id.* ¶ 11. Judi told Joseph what she heard about the Givat Assaf Attack, and Joseph tried to reach Nathaniel, to no avail. Although Joseph knew that soldiers cannot always use their phones while on duty, he worried. He searched online for news of the attack, and saw reports that two male soldiers had been killed and an injured female civilian was taken to the hospital. He then went back to work (which he did from home). *Id.* ¶ 12.

110. Joseph heard a tapping sound, and realized it was the front door. *Id.* ¶ 13. Upon seeing the soldiers, Joseph screamed. He closed his eyes. He willed time to stand still. *Id.* ¶ 14.

111. The soldiers delivered the news about Nathaniel having been injured in the Givat Assaf Attack, and Joseph and Judi went with them to the hospital. *Id.* ¶¶ 15–16. “Horrible thoughts” ran through Joseph’s head during the ride, which took over an hour. He thought back to the reports he had read about the two dead male soldiers and injured female civilian. He had not seen any report about an injured male soldier. He wondered whether Nathaniel was actually dead, and the Army was just waiting for them to arrive at the hospital to tell them. *Id.* ¶ 16.

112. Joseph recalled that he “couldn’t think straight.” *Id.* ¶ 19. When they arrived at the hospital, he saw an elderly religious man standing on the sidewalk and wondered if he was a rabbi sent to tell them that Nathaniel was dead: “[M]y mind was just flooded with less-than-completely-rational thoughts.” *Id.*

113. Joseph and Judi were escorted to a conference room, where one of Nathaniel’s surgeons gave them the details of his injuries. Joseph did not want to hear the details. He wanted to know what kind of recovery he could expect, but it was far too early for any such predictions.

Id. ¶ 20. They were then escorted to see Nathaniel, an experience Joseph described as “awful, just awful.” According to Joseph, Nathaniel’s head was swollen and wrapped in bandages, with drains attached. “He looked completely different, and yet he was recognizable as Nathaniel.” *Id.* ¶ 21. Neighbors started to visit the Felber family at the hospital, but Joseph felt overwhelmed and wanted to escape. He left to the room in the attached hotel. He lived in the hotel room for two and a half months, until Nathaniel was discharged to the rehabilitation center. *Id.* ¶ 22.

114. Joseph called the first week after Nathaniel’s attack “the worst week of my life.” *Id.* ¶ 24. He could not stop thinking “horrible thoughts” about Nathaniel. *Id.* Joseph was “intensely sad,” and started kayaking, a former hobby, as a distraction. He recalled becoming so emotionally overwhelmed at times that he would freeze in his kayak. He noticed that someone was always designated to keep a close eye on him. *Id.* ¶ 26.

115. Joseph described how his life now is not “normal,” as he thinks about Nathaniel constantly. He feels as if he is treated as someone with special needs. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

116. Joseph explained that it causes him “anguish” to hear discussions of long-term care his son “might” need. “I say ‘might’ because it hurts to say ‘will.’” *Id.* ¶ 32. Joseph would excuse himself from meetings with doctors when they started talking about Nathaniel’s poor prognosis. On one occasion, Nathaniel was also in the room, and Joseph wheeled him out as well. “I told

Nathaniel that those people’s comments were not justified. I explained to him that he has made so much progress and that so many people around the world are still praying for him.” *Id.* ¶ 33.

117. Joseph admits that it is “difficult” for him to maintain positive thoughts. *Id.* ¶ 32.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] According to Joseph, his sadness stems from comparing his current situation to what it could have been. [REDACTED]

[REDACTED]

118. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

119. [REDACTED]

c. Daniel Felber

120. Daniel Felber is a U.S. citizen. He is Nathaniel Felber’s older brother. *See* Declaration of Daniel Felber (“Daniel Decl.”), ¶ 1.

121. Daniel remembered bonding with his siblings after they moved to Israel in 2006. The three of them would explore their new neighborhood while walking their dog. Even after they all settled into their new lives in Israel, Daniel and Nathaniel would continue to walk their dog together every Friday night. *Id.* ¶¶ 3–4. The brothers would also ride their bicycles together and, as they grew older, traded Army stories from their service. *Id.* ¶¶ 5–6.

122. Daniel was making social plans and studying on December 13, 2018 when he received a message from his father to call home. Daniel called his father, who told him that Nathaniel had been injured. Having served in the Army previously, Daniel knew that soldiers are frequently injured during training exercises and figured that Nathaniel had broken a bone. *Id.* ¶ 8.

123. Daniel’s parents initially planned on picking him up on their way to the hospital but subsequently called back and told him to meet them there. Daniel remembered that his mother sounded hysterical, and he could not understand why she was so upset over a broken bone. *Id.* ¶ 9. It was not until Daniel’s parents arrived at the hospital after him, both crying, that he realized something was “very wrong.” He recalled: “I had never seen them like that before.” *Id.* ¶ 11. His parents relayed what the soldiers who had come to their apartment had told them about Nathaniel’s

condition, which Daniel understood to mean “mortal.” Daniel thought his brother was dying, and they were at the hospital to say goodbye. *Id.* ¶¶ 11–12.

124. Daniel described how he and his parents were given minimal information regarding Nathaniel’s injuries. He knew that his brother had been shot in the head and that the bullet had gone through his brain. What he wanted to know was whether his brother would wake up and talk, but the doctors told him they had no answers. *Id.* ¶ 14. Daniel was escorted to see Nathaniel, which he described as “a terrible sight.” *Id.* ¶ 15. Daniel likened the hospital to a “Shiva house,” a house of mourning. *Id.* ¶ 22.

125. Daniel lived with his parents and sister in the hotel attached to Nathaniel’s hospital until Nathaniel was discharged to the rehabilitation center two and a half months later. *Id.* He took a month off from work and focused on researching Nathaniel’s injury, Googling terms like “bullet,” “brain,” and “recovery.” He read every article he could find about former U.S. Representative Gabby Giffords’ shooting and recovery. *Id.* ¶¶ 16, 19. He shared his findings with Nathaniel’s doctors, but they would not give him any clear answers. *Id.* ¶ 17. Daniel continued to search for answers, asking a neighborhood doctor if Nathaniel would ever be able to hold any type of job. The doctor said no, and Daniel began to realize how limited Nathaniel’s recovery would be. *Id.* ¶ 18.

126. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] He stopped biking. [REDACTED]

[REDACTED]

127. [REDACTED]

128. Daniel wonders if Nathaniel recognizes him. *Id.* ¶ 22. He fears that Nathaniel’s progress will not improve any further than it has— [REDACTED]

[REDACTED] Daniel explained that “This isn’t how brothers are supposed to be. We’re supposed to be rough with each other, to bike together. I want us to do things together as we once did.” *Id.* ¶ 25. Though Nathaniel is alive, Daniel knows, “I’ve lost my kid brother.” *Id.* ¶ 27.

129. [REDACTED]

130. [REDACTED]

[REDACTED]

[REDACTED]

131. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

d. Adina Felber

132. Adina Felber is a U.S. citizen. She is Nathaniel Felber’s older sister. *See* Declaration of Adina Felber (“Adina Decl.”), ¶ 1.

133. Adina recalled that Nathaniel was happy in Israel: “He made friends from the beginning, which was no surprise. He was always having fun and had lots of energy.” *Id.* ¶ 3.

134. Even though Nathaniel adjusted to Israel quickly, Adina described that he still understood that she did not. *Id.* Adina remembered acting out at her family members at times because she was so upset, but Nathaniel was kind to her. She described specifically how the two of them shared a computer, but Nathaniel let her use it more often because he understood she needed it as an outlet. *Id.* ¶ 4. He also helped her make friends, walking their dog with her by a park where girls Adina’s age might be spending time. If the girls started talking to Adina, Nathaniel would continue walking the dog so that she could stay and socialize. *Id.* ¶ 5.

135. Adina ultimately started to enjoy living in Israel and returned her brother’s kindness. When Nathaniel was drafted to the Army, Adina took him shopping and helped him buy

the things he needed. She also gave him some of her old Army gear that she thought would be useful to him. *Id.* ¶¶ 6–7.

136. On December 13, 2018, Adina, then a flight attendant for El Al Airlines, recalled boarding a 12-hour flight from Hong Kong back to Israel. *Id.* ¶¶ 8, 11. She knows now that the Givat Assaf Attack on Nathaniel had already occurred, but at the time, the Army had ordered her plane to shut off its in-flight WiFi so she would not learn about it until she landed. *Id.* ¶ 11.

137. One message came through before the Army’s order, however. Adina recalled taking a break during the flight and seeing a WhatsApp message from her cousin asking if Nathaniel was okay, as something had happened near his base. *Id.* ¶¶ 11–12. Adina remembered that she did not give the message much thought and took a quick nap in the crew rest. She woke up feeling “very anxious,” however, and started crying. She focused on her work, but “could not shake the feeling.” *Id.* ¶ 12.

138. The plane’s in-flight manager approached Adina and led her to the captain’s crew rest at the front of the plane. Adina recalled her reading a statement that the Army had transmitted that included “your brother was shot in the head.” Adina started “wailing.” The in-flight manager told Adina she had to calm down so she could read the rest of the statement, and Adina did not fully understand all of the Hebrew phrases. She thought her brother had died, but understood he was still alive when the captain told her Nathaniel was in surgery. *Id.* ¶ 14.

139. Adina described how, when the plane door opened, her fiancé stood outside. *Id.* ¶ 15. She started crying so hysterically she could not move, and he picked her up and moved her out of the way so that the other passengers could pass. The thought that steadied her was that she had to get to Nathaniel quickly in case he did not survive the surgery. *Id.* ¶ 16.

140. Adina recalled that she did not recognize her brother in the ICU because he was so swollen. She wondered if it was really him but concluded that the doctors would not have lied to her. *Id.* ¶ 20. Adina tried to speak to her brother, but her words came out as cries. She spent the next few hours trying to rest on a chair in a doctor’s office in the ICU but ended up going into Nathaniel’s room every few minutes to check on him. *Id.* ¶ 21.

141. Adina wanted to hear details about the Givat Assaf Attack and Nathaniel’s injuries, but her parents did not have much information, and the nurses responded that the doctors would talk to them. *Id.* ¶¶ 22–23. Finally, on Sunday, three days after Nathaniel was admitted, doctors explained his injuries to the Felber family. “It was awful,” recalled Adina. “For an hour, they talked about what possible outcomes we could expect ‘if’ Nathaniel survived, and ‘if’ he woke up from his coma.” *Id.* ¶ 25. Adina remembered that her mother could not stop crying. *Id.* ¶ 26.

142. Adina described the first months as “exhausting.” She exercised Nathaniel’s limbs with her mother during all the available visiting hours, while “still reeling from the trauma of seeing Nathaniel in his condition.” *Id.* ¶¶ 28–29. She began to experience severe stomach pain, which she never had before. She could not eat, and lost a significant amount of weight. *Id.* ¶¶ 29–30; Strous Decl., Ex. D at 4. There were times she could not get out of bed because she was incapacitated by the stomach pain. Adina Decl. ¶ 29.

143. Adina cancelled her engagement party, which was supposed to be one week after the Givat Assaf Attack, but her mother encouraged her to plan her wedding. *Id.* ¶ 32. Adina described how that planning “was nothing like what it would have been otherwise.” *Id.* ¶ 33. She had little free time and limited options. Her mother was not able to help much. *Id.* Adina was certain of one thing: Nathaniel would be at her wedding. If he could not travel, she would get

married in his ICU room. *Id.* ¶ 34. When she hired her photographer, she warned him that a portion of Nathaniel’s skull was missing, and to be prepared for what he looked like. *Id.* ¶ 35.

144. Nathaniel was able to attend Adina’s November 25, 2019 wedding, his body strapped to a wheelchair and with two attendants, but he grew tired and was transported back to the rehabilitation center before Adina could dance with him. *Id.* ¶¶ 36–38.

145.

[REDACTED]

[REDACTED] Her goal is to become an occupational therapist, [REDACTED]

[REDACTED]

146.

[REDACTED]

147. [REDACTED]

[REDACTED] During Nathaniel’s recent admission to the ICU for his cranioplasty surgery and subsequent complications, Adina’s stomach hurt the entire time. *Id.* ¶ 48.

148. Adina hopes that Nathaniel will get stronger, but she realizes “that he won’t get much better than he is today.” *Id.* ¶ 49. He likely will not ever be able to speak, which pains Adina the most: “Of all of Nathaniel’s many, permanent limitations, my not being able to communicate with him is the worst, and I realize that I may have to live with that for the rest of our lives.” *Id.* ¶¶ 50, 52.

149. [REDACTED]

[REDACTED]

150. [REDACTED]

[REDACTED]

151. [REDACTED]

[REDACTED]

III. CONCLUSIONS OF LAW: LIABILITY

A. Legal Standard for FSIA Default Judgment

152. Plaintiffs are required to establish their claims “by evidence satisfactory to the court,” 28 U.S.C. § 1608(e), a standard which may be satisfied “through uncontroverted factual allegations, which are supported by . . . documentary and affidavit evidence.” *Valore v. Islamic Republic of Iran*, 700 F. Supp. 2d 52, 59 (D.D.C. 2010) (citations and quotations omitted). “This ‘satisfactory to the court’ standard is identical to the standard for entry of default judgments against the United States in Federal Rule of Civil Procedure 55(e),” and “[i]n evaluating the plaintiffs’ proof, the court may accept as true the plaintiffs’ uncontroverted evidence.” *Campuzano v. Islamic Republic of Iran*, 281 F. Supp. 2d 258, 268 (D.D.C. 2003) (citation, footnote, and quotations omitted). The D.C. Circuit emphasized:

While both § 1608(e) and Rule 55(d) give an unresponsive sovereign some protection against an unfounded default judgment, neither provision relieves the sovereign from the duty to defend cases. Moreover, § 1608(e) does not require the court to demand more or different evidence than it would ordinarily receive; indeed, the quantum and quality of evidence that might satisfy a court can be less than that normally required.

Owens v. Islamic Republic of Iran, 864 F.3d 751, 785 (D.C. Cir. 2017) (citations and quotations omitted), *vac’d on other grounds sub nom. Opati v. Republic of Sudan*, 140 S. Ct. 1601 (2020).

153. The § 1608(e) standard is met “when the plaintiff shows her claim has some factual basis, even if she might not have prevailed in a contested proceeding.” *Id.* (citation and quotations omitted). The D.C. Circuit in *Owens* observed: “This lenient standard is particularly appropriate for a FSIA terrorism case, for which firsthand evidence and eyewitness testimony is difficult or impossible to obtain from an absent and likely hostile sovereign.” *Id.*

154. In step with the relaxed burden of proof under § 1608(e), “the district court also has an unusual degree of discretion over evidentiary rulings in a FSIA case against a defaulting state sponsor of terrorism,” and appellate courts “have allowed plaintiffs to prove their claims using evidence that might not be admissible in a trial.” *Owens*, 864 F.3d at 785 (“courts have the authority—indeed, we think, the obligation—to adjust evidentiary requirements to differing situations’ and admitting affidavits in a FSIA default proceeding”) (quoting *Han Kim v. Democratic People’s Republic of Korea*, 774 F.3d 1044, 1048–51 (D.C. Cir. 2014)).

155. To that end, plaintiffs in FSIA cases often rely on expert testimony rather than primary evidence. Courts in this District “[r]ecogniz[e] that expert testimony is not only entirely proper, but often sufficient, and even indispensable in ‘terrorism cases... because firsthand evidence of terrorist activities is difficult, if not impossible to obtain.’” *Fritz v. Islamic Republic of Iran*, 320 F. Supp. 3d 48, 57 (D.D.C. 2018) (citing *Owens*, 864 F.3d at 787–88). Plaintiffs have done so here. Experts, in turn, may rely on evidence that might not otherwise be admissible in forming their opinions. *See* Fed. R. Evid. 703 (“If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted.”). In fact, “in the terrorism context, experts’ reliance on hearsay evidence is often critical.” *Flanagan v. Islamic Republic of Iran*, 190 F. Supp. 3d 138, 175 (D.D.C. 2016).

156. Plaintiffs here have provided uncontested, relevant, and highly probative evidence, testimony, and witnesses establishing Iran’s liability for their injuries. Defendant Iran has not appeared in this action in order to dispute any of Plaintiffs’ claims or evidence.

B. Subject Matter Jurisdiction

157. The Foreign Sovereign Immunities Act establishes a broad rule that foreign states are immune from suits for money damages in United States courts. *See* 28 U.S.C. § 1604. The

statute also sets out certain exceptions to the rule for limited categories of cases. Thus, the FSIA provides the sole basis for asserting jurisdiction over foreign states. *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 434 (1989).

158. The “state-sponsored terrorism” exception, set forth at 28 U.S.C. § 1605A, removed a foreign state’s immunity where plaintiffs seek damages against the foreign state for personal injury or death caused by “an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources [as defined in Section 2339A of Title 18] for such an act if such act or provision of material support or resources is engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency.” 28 U.S.C. § 1605A(a)(1). *See also Heiser v. Islamic Republic of Iran*, 466 F. Supp. 2d 229, 254 (D.D.C. 2006).

159. The FSIA adopts the definition of “material support or resources” provided in 18 U.S.C. § 2339A. *See* 28 U.S.C. § 1605A(h)(3). That section broadly defines “material support or resources” as:

[A]ny property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (1 or more individuals who may be or include oneself), and transportation, except medicine or religious materials[.]

18 U.S.C. § 2339A(b)(1).

160. The “act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources” must be “engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency.” 28 U.S.C. § 1605A(a)(1). The material support alleged herein was provided by Iran and its agents, including the IRGC-QF. *See Karcher v. Islamic Republic of Iran*, 396 F. Supp. 3d 12, 55 (D.D.C.

2019) (“material support or resources for prohibited actions that are provided through the Qods Force do satisfy the requirements of Section 1605A(a)(1).”).

161. Plaintiffs must establish that Iran’s material support or resources were the “proximate cause” of their personal injuries, which requires showing “some reasonable connection between the act or omission of the defendant and the damage which the plaintiff has suffered.” *Id.* at 54–55 (quoting *Owens*, 864 F.3d at 794).

162. Proximate cause in the material support for terrorism context requires showing that “1) ‘the defendant’s actions [were] a “substantial factor” in the sequence of events that led to the plaintiff’s injury,’ and 2) ‘the plaintiff’s injury [was] “reasonably foreseeable or anticipated as a natural consequence” of the defendant’s conduct.’” *Id.* at 55 (quoting *Owens*, 864 F.3d at 794). Under this test, plaintiffs need not show that the material support was “*directly* traceable to a particular terrorist act,” only that it “went to the terrorist organization that perpetrated the act, and that the support was a proximate cause of the terrorist act.” *Id.* (citation and quotations omitted).

163. The FSIA incorporates the definitions of “torture” and “extrajudicial killing” set forth in the Torture Victims Protection Act (“TVPA”). *See* 28 U.S.C. § 1605A(h)(7) (citing 28 U.S.C. § 1350 note). *See also Han Kim*, 774 F.3d at 1045. The TVPA defines “extrajudicial killing” as “a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples,” and not otherwise “lawfully carried out under the authority of a foreign nation” under international law. *Gill*, 249 F. Supp. 3d at 97 (quoting 28 U.S.C. § 1350 note).

164. The immunity exception applies even if all of the plaintiffs survived the attack, as here, so long as the attack constituted an *attempted* extrajudicial killing. *See Gill*, 249 F. Supp. 3d at 99 (holding that a terrorist group’s “attempted extrajudicial killing of the plaintiff constitutes an

extrajudicial killing under the terrorism exception”). *See also Schertzman Cohen v. Islamic Republic of Iran*, No. 17-cv-1214 (JEB), 2019 WL 3037868, at *3 (D.D.C. July 11, 2019) (“this district’s prior rulings hold that the FSIA terrorism exception encompasses *attempted* extrajudicial killings”). Moreover, where a killing of a *non-plaintiff* has occurred, as in the Givat Assaf Attack, “[i]t is not necessary ... for one of the plaintiffs [themselves] to have died in the attack in order for the state-sponsor-of-terrorism exception to apply.” *Gill*, 249 F. Supp. 3d at 99 (quoting *Cohen*, 238 F. Supp. 3d at 81). *See also Karcher*, 396 F. Supp. 3d at 58 (same).

165. Section 1605A also conditions subject matter jurisdiction on fulfilling three additional requirements: “The court shall hear a claim under this section if” (1) “the foreign state was designated as a state sponsor of terrorism at the time the” terrorist attack at issue occurred and “remains so designated when the claim is filed,” (2) “the claimant or the victim was, at the time [the terrorist attack] occurred[,] a national of the United States,” and, if the attack occurred in the foreign state, (3) the foreign state was afforded the opportunity to arbitrate the claim. 28 U.S.C. § 1605A(a)(2)(A).

166. Plaintiffs here have met all of these requirements. The Givat Assaf Attack including an extrajudicial killing, and an attempted extrajudicial killing of Nathaniel Felber. Iran provided massive amounts of material support in the form of funds and training to HAMAS, which material support substantially and foreseeably caused the Givat Assaf Attack. Iran was designated a State Sponsor of Terrorism at the time and remains one currently. *See supra* ¶ 54.

167. Finally, the “victim,” Nathaniel Felber, was a U.S. citizen “at the time of the attack.” *See* Judi Decl. ¶ 1 (“Nathaniel was born in Maryland and is a U.S. citizen. I am a U.S. citizen and a plaintiff in this action.”). *See also Akins v. Islamic Republic of Iran*, 332 F. Supp. 3d

1, 33 (D.D.C. 2018) (“[T]he plaintiffs have averred in sworn declarations that they were United States citizens at the time of the attack.... Thus, the second element is firmly established.”).

168. Moreover, all of the Family Member Plaintiffs have averred to their own U.S. citizenship, as necessary under 28 U.S.C. § 1605A(c). *See supra* at ¶¶ 88, 108, 120, 132.

C. Service of Process and Personal Jurisdiction

169. Personal jurisdiction exists over a non-immune sovereign if service of process has been made under section 1608 of the FSIA. *See* 28 U.S.C. § 1330(b); *Stern*, 271 F. Supp. 2d at 298; Fed. R. Civ. P. 4(j)(1). The requirements for serving a foreign state are listed in 28 U.S.C. § 1608(a). That section provides four methods, 28 U.S.C. § 1608(a)(1)–(4), which must be attempted in order, to the extent possible. *See Barot v. Embassy of the Republic of Zambia*, 785 F.3d 26, 27 (D.C. Cir. 2015).

170. In suits against Iran, the first two methods—service through a special arrangement with Iran or through an international convention—are inapplicable. *See Karcher*, 396 F. Supp. 3d at 15 (“Neither special arrangements with Iran nor an international convention signed by Iran was available to facilitate service under Section 1608(a)(1) or (a)(2), so Plaintiffs were permitted to avail themselves of Section 1608(a)(3).”).

171. As set forth above, ¶¶ 2–5, Plaintiffs here therefore first attempted serving process on Iran by mail pursuant to 28 U.S.C. § 1608(a)(3) and when that method failed, attempted service through diplomatic means pursuant to 28 U.S.C. § 1608(a)(4), which succeeded. Accordingly, this Court has *in personam* jurisdiction over Defendant.

D. Theories of Liability

172. The FSIA’s private right of action includes claims for “economic damages, solatium, pain and suffering, and punitive damages.” 28 U.S.C. § 1605A(c). However, Plaintiffs must provide *theories* of tort liability, as required for § 1605A claims. *See, e.g., Schertzman Cohen*,

2019 WL 3037868, at *5 (“Although § 1605A provides a private right of action, it requires plaintiffs ‘to prove a theory of liability.’”) (quoting *Valore*, 700 F. Supp. 2d at 73). Courts in this District in reviewing theories of liability in FSIA claims, “‘rely on well-established principles of law, such as those found in Restatement (Second) of Torts,’ to determine liability under the FSIA.” *Id.* (citing *In re Islamic Republic of Iran Terrorism Litig.*, 659 F. Supp. 2d 31, 61 (D.D.C. 2009)). *See also Bettis v. Islamic Republic of Iran*, 315 F.3d 325, 333 (D.C. Cir. 2003) (“using Restatement ‘as a proxy for state common law’ in determining FSIA liability”).

173. Plaintiffs present below two theories of tort liability:

- a. Solatium (for the Family Member Plaintiffs, *see* First Claim for Relief); and
- b. Battery (for Nathaniel Felber, *see* Second Claim for Relief).

These theories are each discussed below.

1. Solatium

174. The FSIA cause of action provides a solatium claim for a victim’s immediate family members. *See* 28 U.S.C. § 1605A(c). Aside from the family restriction, the solatium claim operates as an Intentional Infliction of Emotional Distress (“IIED”) claim. *Valore*, 700 F. Supp. 2d at 85 (“Under the FSIA, a solatium claim is indistinguishable from an IIED claim.”).

175. As explained in *Heiser*, terrorist attacks meet the “extreme and outrageous” test for intentional infliction of emotional distress in the Restatement (Second):

Terrorism, unique among the types of tortious activities in both its extreme methods and aims, passes this test easily. As the *Stethem* court wrote, “All acts of terrorism are by their very definition extreme and outrageous and intended to cause the highest degree of emotional distress, literally, terror, in their targeted audience: The more extreme and outrageous, the greater the resulting distress.” Indeed, as this Court put it, the “intent to create maximum emotional impact,” particularly on third parties, is terrorism’s *raison d’etre*.

Estate of Heiser v. Islamic Republic of Iran, 659 F. Supp. 2d 20, 27 (D.D.C. 2009) (quoting *Stethem v. Islamic Republic of Iran*, 201 F. Supp. 2d 78, 89 (D.D.C. 2002) and *Eisenfeld*, 172 F. Supp. 2d at 9).

176. In the solatium context, the IIED claim is satisfied even if family members are not present at the attack:

[T]he Restatement’s caveat “suggests that ... [i]f the defendants’ conduct is sufficiently outrageous and intended to inflict severe emotional harm upon a person which is not present, no essential reason of logic or policy prevents liability.” As this Court has noted, “[t]errorism, unique among the types of tortious activities in both its extreme methods and aims, passes this test easily.” One therefore need not be present at the time of a terrorist attack upon a third person to recover for severe emotional injuries suffered as a result.

Murphy v. Islamic Republic of Iran, 740 F. Supp. 2d 51, 75–76 (D.D.C. 2010) (quoting *Heiser*, 659 F. Supp. 2d at 27). *See also Valencia v. Islamic Republic of Iran*, 774 F. Supp. 2d 1, 14 (D.D.C. 2010) (“[T]he function of the presence requirement—to ensure that a plaintiff actually suffered a high degree of emotional distress—is, in state-sponsored terrorism cases, fulfilled by the horrific and terrifying nature of terrorism itself”).

177. The terrorist attack at issue here—the deliberate shooting of Israeli soldiers and civilians at a bus stop with an AK-47 automatic assault rifle—is extreme and outrageous. As further detailed herein, each Family Member Plaintiff provided evidence that he or she suffered substantial emotional distress as a result of the Givat Assaf Attack.

2. Battery

178. “[B]attery liability arises when [defendants] acted ‘[(1)] intending to cause a harmful or offensive contact with, or an imminent apprehension of such a contact by, those attacked and (2) a harmful contact with those attacked directly or indirectly resulted.’” *Schertzman Cohen*, 2019 WL 3037868, at *5 (quoting *Wultz v. Islamic Republic of Iran*, 864 F. Supp. 2d 24,

36 (D.D.C. 2012)). As stated above, in the Givat Assaf Attack, Iran both intended to cause, and its conduct did result in, harmful contact with Nathaniel Felber.

E. Iran’s Vicarious Liability for the Torts Committed by HAMAS

179. Iran (at a minimum) engaged in the “provision of material support and resources” to HAMAS, which carried out the Givat Assaf Attack that caused Plaintiffs’ personal injuries. 28 U.S.C. § 1605A(a)(1). The acts of another may render a party liable under § 1605A “under theories of vicarious liability, such as conspiracy, aiding and abetting and inducement.” *Haim v. Islamic Republic of Iran*, 425 F. Supp. 2d 56, 69 (D.D.C. 2006).

180. Civil conspiracy is recognized under District of Columbia law as a basis for the imposition of vicarious liability for civil torts. It exists when the following elements are present: (1) an agreement between two or more persons or entities (2) to participate in an unlawful act or in an otherwise lawful act in an unlawful manner and (3) an injury caused by an unlawful overt act performed by one of the parties to the agreement (4) pursuant to, and in furtherance of, the common scheme. *Griva v. Davison*, 637 A.2d 830, 848 (D.C. 1994) (citing *Halberstam v. Welch*, 705 F.2d 472, 477 (D.C. Cir. 1983)).

181. It is axiomatic that the “agreement” element “may be inferred from conduct.” *Bodoff v. Islamic Republic of Iran*, 424 F. Supp. 2d 74, 84 (D.D.C. 2006) (citing *Weishapl v. Sowers*, 771 A.2d 1014, 1023 (D.C. 2001)). *See also Haim*, 425 F. Supp. 2d at 69.

182. As this Court has previously held, “sufficient evidence [exists] for the Court to conclude that Iran’s support of Hamas through ‘funding and training for terrorism activities that targeted United States and Israeli citizens,’ constituted an agreement to commit terrorist acts” and “established the elements of a civil conspiracy between Iran and Hamas, and thus has provided a basis of Iran’s vicarious liability.” *Gill*, 249 F. Supp. 3d at 101 (citing plaintiff Mati Gill’s experts, including Dr. Patrick Clawson).

183. As in *Gill*, the Declaration of Dr. Patrick Clawson here shows that Iran and HAMAS acted in concert because they agreed to commit terrorist attacks to promote Iran’s brand of revolutionary Islamic ideology and to further the goal of destroying the State of Israel and killing Israeli and United States citizens. Such agreement may also be inferred from the substantial financial support and training that Iran provided to HAMAS. *See supra* ¶¶ 55–72. The very “[s]ponsorship of terrorist activities inherently involves a conspiracy to commit terrorist acts.” *Bodoff*, 424 F. Supp. 2d at 84 (quoting *Flatow v. Islamic Republic of Iran*, 999 F. Supp. 1, 27 (D.D.C. 1998)).

184. Iran provided the material support to HAMAS through its officials and its agents. For example, as Plaintiffs showed, Iran’s provision of material support included financial support, weapons, and training, and the IRGC-QF provided strategic assistance to HAMAS. *See supra* ¶ 60. The Islamic Revolutionary Guard Corps (“IRGC”), and its Qods Force directorate, is an agent of Iran: “The Court is satisfied that the Qods Force is at least an agent of Iran, if not a part of the government such that individuals working for it would be officials or employees of Iran.” *Karcher*, 396 F. Supp. 3d at 55.

185. Plaintiffs have also established based on evidence submitted to this Court, most notably the Declaration of Arie Dan Spitz, that a HAMAS operative and commander committed the Givat Assaf Attack, which resulted in Plaintiffs’ injuries. Dr. Clawson’s Declaration also demonstrates that the torts alleged by Plaintiffs were carried out in furtherance of the scheme between Iran and HAMAS. For these reasons, each of the four elements of civil conspiracy is established under District of Columbia law, with regard to Iran and HAMAS. *See Gill*, 249 F. Supp. 3d at 101.

186. Iran is also liable for aiding and abetting the Givat Assaf Attack. *See* 18 U.S.C. § 2 (a), (b). *See also Halberstam*, 705 F.2d at 481–86.⁵ The D.C. Circuit in *Halberstam* described the elements of civil aiding and abetting as follows: “(1) the party whom the defendant aids must perform a wrongful act that causes an injury; (2) the defendant must be generally aware of his role as part of an overall illegal or tortious activity at the time that he provides the assistance; (3) the defendant must knowingly and substantially assist the principal violation.” *Id.* at 477. Plaintiffs’ evidence establishes each of these elements here.

187. *First*, Plaintiffs showed that the party that Iran aided—HAMAS—performed a wrongful act (the terrorist attack at issue) that injured Plaintiffs. *See* Spitzzen Decl. ¶¶ 53–57.

188. *Second*, Iran was not only generally aware of its role in HAMAS’s tortious activity at the time it provided HAMAS material support, it gave that assistance specifically to encourage acts of terrorism such as the one at issue. *See* Clawson Decl. ¶¶ 28–62.

189. *Third*, Iran knowingly and substantially assisted the terrorist attack at issue, by providing millions of dollars, weaponry, and other support for HAMAS with the specific intent of causing terrorist attacks in Israel. *See id.*

IV. CONCLUSIONS OF LAW: DAMAGES⁶

190. To obtain damages against a defendant in an FSIA action, the plaintiff must prove that the consequences of the defendant’s conduct were “‘reasonably certain’ (i.e., more likely than

⁵ Where courts have analyzed Iran’s vicarious liability for terrorist attacks in Israel under § 1605A, some have noted that these theories may apply, but need not be analyzed because of the applicability of conspiracy liability. *Gill*, 249 F. Supp. 3d at 101 n.6 (“Because the Court concludes that Iran is vicariously liable under a theory of civil conspiracy, it need not address these alternative theories.”); *Bodoff*, 424 F. Supp. 2d at 84 (same); *Acosta v. Islamic Republic of Iran*, 574 F. Supp. 2d 15, 26 (D.D.C. 2008) (same).

⁶ Plaintiffs note that damages in the FSIA context operate according to a *sui generis* set of principles, such as conforming to certain damage frameworks or limiting awards as a matter of law. *See, e.g., Roth v. Syrian Arab Republic*, No. 14-cv-01946-RCL, 2018 WL 4680270, at *15 (D.D.C. Sept. 28, 2018) (acknowledging a “standardized approach” in FSIA cases). These principles do not necessarily reflect the kind of presentation of evidence that would occur or the measure of damages likely determined by a jury following a full trial.

not) to occur, and must prove the amount of damages by a ‘reasonable estimate’ consistent with this [Circuit]’s application of the American rule on damages.” *Salazar v. Islamic Republic of Iran*, 370 F. Supp. 2d 105, 115–16 (D.D.C. 2005) (quoting *Hill v. Republic of Iraq*, 328 F.3d 680, 681 (D.C. Cir. 2003) (quotations omitted)). Because there have been many cases in this District in which individuals have been injured in terrorist attacks, this Court is not writing on a proverbial “clean slate” in fashioning a damages remedy in this case. To the contrary, this Court is guided by remedial approaches and formulas utilized in similar cases. *See Prevatt v. Islamic Republic of Iran*, 421 F. Supp. 2d 152, 160–61 (D.D.C. 2006); *Haim*, 425 F. Supp. 2d at 71. These remedial approaches and formulas are inevitably imperfect and likely understate the damages that would be assessed against the defendant in most cases, if it contested these actions. However, as set forth below, Plaintiffs have attempted to conform the evidence of their injuries to the preexisting approaches and formulas previously fashioned by judges in this District.

A. Solatium Damages

191. This Court has established a framework for solatium claims (often attributed to *Heiser*, 466 F. Supp. 2d at 269), depending on whether the victim was killed, physically injured, or only emotionally injured, and the relationship of the claimant to the victim.

192. For instance, relatives of victims who were killed typically receive the following awards: “claims brought by spouses, parents, and siblings ... \$8 million, \$5 million, and \$2.5 million each, respectively.” *Valore*, 700 F. Supp. 2d at 85 (citing *Heiser*, 466 F. Supp. 2d at 269). Relatives of surviving, but physically injured victims typically receive the following awards: “\$4 million for spouses, \$2.5 million for parents, and \$1.25 million for siblings.” *Id.*

193. The Court may depart upward or downward from the solatium framework given the relevant circumstances such as, *inter alia*, “circumstances surrounding the terrorist attack which made the suffering particularly more acute or agonizing.” *Oveissi v. Islamic Republic of*

Iran, 768 F. Supp. 2d 16, 26–27 (D.D.C. 2011). “The Court, however, must also remain mindful of the general equitable principle that claims for pain and suffering ‘should be compared to awards in similar cases.’” *Id.* at 30 (quoting *Brewer v. Islamic Republic of Iran*, 664 F. Supp. 2d 43, 55 (D.D.C. 2009)). For instance, in *Oveissi*, the Court awarded a murder victim’s grandchild a \$7.5 million solatium award, a 50% upward departure from the *Heiser* scale amount of \$5 million for parents or children of victims. *Id.*

194. So long as Iran’s conduct proximately caused the circumstances warranting the upward departure, Iran is liable for that departure. The proximate cause requirement is not a high one, as it “normally serves to ‘eliminate[] the bizarre.’” *Spencer v. Islamic Republic of Iran*, 71 F. Supp. 3d 23, 29 (D.D.C. 2014) (quoting *Kilburn v. Socialist People’s Libyan Arab Jamahiriya*, 376 F.3d 1123, 1128 (D.C. Cir. 2004)). Thus, in *Spencer*, this Court upward departed from the usual \$2.5 million award for the parent of an injured victim—a U.S. Marine injured in the 1983 barracks bombing—to \$3.5 million where the Marines initially (and erroneously) told the parents their son had died. *Id.* at 29. The Court held that “[i]n the chaos and confusion of the period after the attack, it was foreseeable that military officials tasked with responding to it might misidentify the dead and cause further emotional hardship to those intimately affected by the attack.” *Id.* at 30.

195. Given the horrendous injury Nathaniel suffered, robbing him of not only his personality, but even his most basic functions, the Family Member Plaintiffs are entitled to upward departures. In cases where the victims suffered significant brain damage, but less than Nathaniel’s, this Court upward departed 40% from the usual \$2.5 million solatium award to \$3.5 million for the parent of the victims, and 20% from the usual \$1.25 million to \$1.5 million for a sibling of one of the victims. *Haim*, 425 F. Supp. 2d at 75–76, *Blais v. Islamic Republic of Iran*, 459 F. Supp. 2d 40, 60 (D.D.C. 2006).

196. This Court in *Haim* found that in the ten years since the attack in that case occurred, the direct victim had “settled into a relatively stable physical and mental condition which likely would endure for the rest of [his life].” *Haim*, 425 F. Supp. 2d at 59, 73. The victim, nineteen years old at the time of the attack, was on a bus that was bombed. *Id.* at 59–60. The victim’s brain was “seriously damaged” and, like Nathaniel, it was unclear whether he would survive his initial surgery. *Id.* at 62. The *Haim* victim also underwent a cranioplasty surgery, and suffered a post-operative seizure. *Id.* at 63. After several weeks in the hospital, a “few days” of which he spent in the ICU, the victim moved back into his father’s house, and over the course of the following year, visited the hospital regularly for follow-up evaluations and treatments. *Id.* at 63, 74.

197. But a year and a half after the attack, the victim was able to return to school on a part-time basis. With accommodations, he was able to complete high school, sit for college entrance exams, and enroll in some college classes, although it was “highly unlikely that he will ever obtain a job or live independently.” *Id.* at 66.

198. Like here, the victim’s father “effectively put his own life on hold in order to care for his son.” *Id.* at 67. He lived at a hotel near the hospital during the four weeks his son was admitted. *Id.* at 63. And like here, he described how he suffered extreme emotional distress due to the uncertainty of his son’s condition and the sheer trauma of seeing his son in a bloodied and pained state, as well as treatments culminating in a less complete recovery than was previously anticipated. *Id.* at 67. Recognizing the extent of his suffering, while “influenced . . . by the fortunate fact that Seth remains alive,” this Court awarded the victim’s father \$3.5 million. *Id.* at 76.

199. This Court also awarded a 20% upward departure to the victim’s brother, 15 years old at the time of the attack. Tr. 5:22-6:1, *Haim*, No. 02-cv-1811 (RCL) (D.D.C. Jan. 3, 2006), ECF No. 24-4, *Haim*, 425 F. Supp. 2d at 76. He accompanied his father to the hospital where they

witnessed the victim “covered in blood and screaming.” *Id.* at 62. He lived with his father in the hotel near the hospital for the four weeks the victim was admitted. *Id.* at 63. He described suffering mental anguish in the days following the attack, as well as emotional distress at the after-effects; his relationship with his brother changed dramatically—he no longer felt that they could talk or enjoy activities together, and it was difficult for him to see his brother as dependent and inactive, when before the attack, he had been the opposite. The victim’s brother also felt that his relationship with his father changed as a result of the attack. *Id.* at 67.

200. Relying on *Haim*’s solatium analysis, this Court in *Blais* also awarded the mother and stepfather of the victim in that case an upward departure to \$3.5 million. 459 F. Supp. 2d at 60. The victim, a 26-year-old U.S. Air Force service member, was injured in the 1996 Khobar Towers bombing in Saudi Arabia. *Id.* at 46–48. He was hospitalized for approximately four months. *Id.* at 50. He was initially in a coma and then a vegetative state for about five weeks. After receiving rehabilitation care for months (and other therapies for years following), he had “made remarkable progress.” *Id.* at 50. He was able to read and write, but both were very labored and slow, given ongoing problems with speech, balance, coordination, and tolerance for frustration and impulse control, as well as moderate cognitive impairment. *Id.* at 50–51.

201. Like here, the parents committed themselves to his care. The victim’s mother “hardly left his side” for the ten years since his attack, functioning as his “primary caretaker and constant nurse.” Both parents grieve for the “vibrant and promising young man he had been before.” *Id.* at 52.

The Felber Family Members

202. Nathaniel Felber’s condition is far worse than the tragic conditions of the victims in *Haim* and *Blais*. Unlike the family members in those cases, Nathaniel Felber cannot speak to

his parents, or substantially communicate at all. And although Plaintiffs will provide a more complete description of Nathaniel’s injuries by October 16, 2020, his prognosis appears dire:

[REDACTED]

[REDACTED] He will likely never walk, and he may never talk. *Id.* ¶ 38. His progress now is limited to how many seconds he can hold his head up by himself or sit before losing control and toppling over. *Id.* ¶ 34.

203. “The dreams we had for Nathaniel are gone,” according to Judi. *Id.* ¶ 38. Joseph insists on avoiding conversations about Nathaniel’s poor long-term prospects, [REDACTED] [REDACTED] Joseph Decl. ¶ 32, Strous Decl., Ex. C at 3, 5. [REDACTED]

[REDACTED]

204. Nathaniel’s siblings also experience extreme suffering. They each lived in the hotel for two and a half months until Nathaniel was discharged. Adina Decl. ¶ 32, Daniel Decl. ¶ 22. They each took time off from work (Adina, three months; Daniel, one month) and struggled upon returning. Adina Decl. ¶ 43, Daniel Decl. ¶ 19.

205. [REDACTED] [REDACTED] [REDACTED] She [REDACTED] [REDACTED] has dealt with recurring stomach pains that restricted

her movement and appetite. Adina Decl. ¶¶ 29–30, 48. She worries her brother’s condition will not improve, and that she has lost her ability to communicate with him or even understand how he is feeling. *Id.* ¶¶ 49–51. “Of all of Nathaniel’s many, permanent limitations, my not being able to communicate with him is the worst, and I realize that I may have to live with that for the rest of our lives.” *Id.* ¶ 52.

206. [REDACTED]

[REDACTED] “I’ve lost my kid brother. I can’t joke around with him about the things we have in common, like our Army service or stories about our childhood. Something funny will happen and I want to tell Nathaniel, but not this Nathaniel.” Daniel Decl. ¶ 27. [REDACTED]

207. Nathaniel Felber’s case represents a relatively unique and appalling circumstance. The victim of the attack is not deceased but his condition is severe even by the tragic standards of most terrorism cases.

208. In addition to the Family Member Plaintiffs having little by way of normal interaction with Nathaniel, they live with the knowledge that he will likely succumb to his injuries at some point in time and that the cause of death will almost certainly remain the HAMAS attack of December 13, 2018. “When death results from terrorism, the fact of death and the cause of death

can become inextricably intertwined, thus interfering with the prospects for anguish to diminish over time.” *Flatow*, 999 F. Supp. at 31.

209. Moreover, whether stricken with pneumonia or seizures or some other complication resulting from his injury, the Family Member Plaintiffs contend with ongoing episodes in which they fear for Nathaniel’s life.

210. Thus, by mechanical operation of law, the damages he and his close family are likely to be awarded will be diminished because he did not die at the scene of the attack, but survived only to face recurring, life-threatening setbacks and the very real risk that future complications brought about by his condition could claim his life at any time.

211. Although there remains hope that his medical condition will stabilize and potentially improve, that outcome is far from certain, and, in view of his medical history, the anticipated future effects Nathaniel’s likely death as a result of the attack will have on the Family Member Plaintiffs is properly before this Court. Just as in cases where the victim died immediately after the attack, “the [solatium] calculation should be based upon the anticipated duration of the injury...” *Id. See also Gill*, 249 F. Supp. 3d at 103 (noting that assessing injuries includes not just the “pain immediately following the injury,” but the anticipated “lifelong effects” of injuries).

212. Without attempting to minimize the fact that Nathaniel Felber is in fact alive and has *some* prospect for (relative) improvement, the Family Member Plaintiffs face circumstances that may be even more horrific than the circumstances of some families whose loved ones were killed at the scene of a terrorist attack because they witness both his ongoing suffering and continually live with the fact that one more seizure could cause even further brain damage or end his life.

213. Recognizing that within the strictures of existing case law, family members of victims of terrorist attacks who survive almost uniformly receive less compensation (regardless of the severity of injury) than family members of victims of decedents, Plaintiffs respectfully request the following solatium awards for the Felber family members:

- Judi Felber: \$4.5 million
- Joseph Felber: \$4.5 million
- Adina Felber: \$2.25 million
- Daniel Felber: \$2.25 million.

B. Prejudgment Interest

214. Plaintiffs request prejudgment interest for their claims. *See* Complaint, ¶¶ 100–01, ECF No. 1 (presenting a claim for prejudgment interest). “It is within this Court’s discretion to award plaintiffs prejudgment interest from the date of the bombing ... until the date of final judgment.” *Pugh v. Socialist People’s Libyan Arab Jamahiriya*, 530 F. Supp. 2d 216, 263 (D.D.C. 2008). *See also Buonocore v. Great Socialist People’s Libyan Arab Jamahiriya*, No. 06-cv-727 (JMF), 2013 WL 351546, at *31 (D.D.C. Jan. 29, 2013) (“The decision to award prejudgment interest, as well as how to compute that interest, rests within the discretion of the court, subject to equitable considerations.”).

215. Courts reviewing requests for prejudgment interest as part of the terrorism exception claims have come to differing results. As the *Pugh* court explained, “courts in this Circuit have awarded prejudgment interest in cases where plaintiffs were delayed in recovering compensation for their injuries—including, specifically, where such injuries were the result of targeted attacks perpetrated by foreign defendants.” *Pugh*, 530 F. Supp. 2d at 263 (relying on *Oldham v. Korean Air Lines Co.*, 127 F.3d 43, 54 (D.C. Cir. 1997) and *Forman v. Korean Air*

Lines Co., 84 F.3d 446, 450 (D.C. Cir. 1996)). See also *Ben-Rafael v. Islamic Republic of Iran*, 540 F. Supp. 2d 39, 59 (D.D.C. 2008) (same).

216. As the *Buonocore* court explained, “[p]rejudgment interest is . . . necessary to fully compensate the victims for the injuries they sustained as a result of [the state sponsor of terrorism’s] material support of the [terrorist group]. Such awards compensate the victims for any delay due to litigation, and prevent [the state sponsor of terrorism] from profiting from its terrorist attacks.” 2013 WL 351546, at *31. As this Court explained in *Mwila v. Islamic Republic of Iran*, “[p]rejudgment interest is appropriate on the whole award, including pain and suffering and solatium,” but not economic loss (not claimed here). 33 F. Supp. 3d 36, 46 (D.D.C. 2014) (citations omitted).

217. Plaintiffs acknowledge that other courts, while recognizing that a prejudgment interest award is within a court’s discretion, have “calculate[d their] direct-injury and solatium awards to be fully compensatory,” and thus “an award of prejudgment interest no longer has the intended compensatory purpose and should be denied.” *Schertzman Cohen*, 2019 WL 3037868, at *10 (citing *Wyatt v. Syrian Arab Republic*, 908 F. Supp. 2d 216, 232 (D.D.C. 2012), *aff’d*, 554 F. App’x 16 (D.C. Cir. 2014)). The *Schertzman Cohen* court noted that this reasoning is particularly true where the injuries are “psychological and thus ongoing, and the compensation assumes suffering beyond the timeframe of the incident itself.” *Id.*

218. In this case, Plaintiffs respectfully request that the Court award them prejudgment interest on their psychological injuries (solatium). Plaintiffs’ suffering and likely difficulties in recovering any judgment they may receive are exacerbated by delays due to litigation and Iran’s refusal to participate in cases or pay judgments against it. Particularly as prejudgment interest in

this case will not be a major component of the claimed damages, awarding it is not unreasonable, and Iran should not benefit in any way from its intransigence.

219. In the FSIA context, “the D.C. Circuit has approved an award of prejudgment interest ‘at the prime rate for each year between the accident and the entry of judgment.’” *Mwila*, 33 F. Supp. 3d at 47 (quoting *Forman*, 84 F.3d at 450). *Mwila* calculated prejudgment interest by adding the annual prime rate (multiplied by \$1.00), as published on the Federal Reserve website, *id.* at 47 n.8, for each year from the attack to the issuance of the judgment (inclusive), and then multiplied that figure by the relevant portions of the award, *id.* at 47 n.7. For the year the judgment is issued, the Federal Reserve will not have yet posted the annual prime rate, “so the Court will conservatively estimate that rate to be ... the rate for the previous six years.” *Id.* at 47 n.8. Should the Court decide to award prejudgment interest here, Plaintiffs respectfully request leave to propose calculations of that amount when the Court issues a judgment (if in Plaintiffs’ favor).

C. Punitive Damages

220. The private right of action in the terrorism exception explicitly includes “punitive damages.” 28 U.S.C. § 1605A(c).

221. Punitive damages “are awarded not to compensate the victims, but to ‘punish outrageous behavior and deter such outrageous conduct in the future.’” *Braun v. Islamic Republic of Iran*, 228 F. Supp. 3d 64, 86 (D.D.C. 2017) (quoting *Kim v. Democratic People’s Republic of Korea*, 87 F. Supp. 3d 286, 290 (D.D.C. 2015)). *See also Oveissi v. Islamic Republic of Iran*, 879 F. Supp. 2d 44, 56 (D.D.C. 2012). This Court has credited expert opinion that “the Iranians have shown themselves to be sensitive to punitive damages levied against them”; lesser awards could “be read by Iranian government officials as indicating a significant weakening of U.S. pressure on Iran to end its support for terrorism against Americans,” whereas “substantial punitive damages

. . . would be read by Iranian officials as indicating that U.S. policy remains firmly opposed to Iranian support for terrorism against Americans.” *Flanagan v. Islamic Republic of Iran*, 87 F. Supp. 3d 93, 122 (D.D.C. 2015) (quoting the expert report Dr. Clawson submitted in that case).

222. As this Court has repeatedly found, “[p]unitive damages are warranted where ‘defendants supported, protected, harbored, aided, abetted, enabled, sponsored, conspired with, and subsidized a known terrorist organization whose modus operandi included the targeting, brutalization, and murder of American citizens and others.’” *Braun*, 228 F. Supp. 3d at 86 (quoting *Baker v. Socialist People’s Libyan Arab Jamahiriya*, 775 F. Supp. 2d 48, 85 (D.D.C. 2011)). Specifically, this Court has found that Iran’s “conduct in supporting Hamas justifies the imposition of punitive damages here.” *Id.* See also *Gill*, 249 F. Supp. 3d at 105 (relying on *Braun* to reach the same conclusion).

223. Courts have used different models in calculating punitive damages in terrorism exception cases. For instance, in *Flanagan*, the Court explained:

In calculating an award of punitive damages under section 1605A of the FSIA, courts evaluate four factors: (1) the character of the defendant’s act, (2) the nature and extent of harm to the plaintiffs that defendants caused or intended to cause, (3) the need for deterrence, and (4) the wealth of the defendants. Courts have found these factors to be satisfied when a defendant has provided material support to a terrorist organization in carrying out an act of terrorism.

Flanagan, 87 F. Supp. 3d at 119 (citation, footnote, and quotations omitted).

224. Two frequent models include (1) “multiplying the defendant state’s annual expenditures on terrorism (the multiplicand) by a factor usually ranging from three to five (the multiplier)” and (2) “impos[ing] a fixed \$300 million punitive award.” *Id.* at 122–23.

225. Courts have also used other methods, such as in *Gill*. *Gill* also involved a shooting attack, but no deaths occurred and “the only resulting injuries were the injuries sustained by the plaintiff.” Thus, the Court “utilize[d] a multiplicand in the same amount as the compensatory

damages awarded—\$7.5 million” and used a multiplier of three. *Gill*, 249 F. Supp. 3d at 105–06 (citations and quotations omitted).

226. As in *Gill*, the attack here involved a terrorist indiscriminately firing an automatic weapon at people. However, here multiple deaths occurred, and Plaintiff Nathaniel Felber was grievously injured (far more than Mr. Gill). Therefore, if the Court were to use the *Gill* framework, Plaintiffs recommend using a multiplier of five, rather than three, in calculating punitive damages after determining all of Plaintiffs’ compensatory damages.

V. CONCLUSION

227. Based on the foregoing, Plaintiffs respectfully request that the Court find Iran liable for all of the Plaintiffs’ injuries and award damages to the Family Member Plaintiffs in the following amounts:

- Judi Felber: \$4.5 million
- Joseph Felber: \$4.5 million
- Daniel Felber: \$2.25 million
- Adina Felber: \$2.25 million.

228. Plaintiffs also respectfully request that the Court award Plaintiffs prejudgment interest and punitive damages in amounts to be determined upon determining Nathaniel Felber’s damages.

Dated: August 3, 2020

Respectfully submitted,

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UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

-----X
NATHANIEL FELBER, *et al.* :
 : **Case No. 19-cv-1027 (ABJ)**
 :
 Plaintiffs, :
 :
 -against- :
 :
 ISLAMIC REPUBLIC OF IRAN, :
 :
 Defendant. :
-----X

**PLAINTIFFS' PARTIAL PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF
LAW REGARDING NATHANIEL FELBER'S DAMAGES IN FURTHER SUPPORT OF
THEIR MOTION FOR DEFAULT JUDGMENT**

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Plaintiffs, by and through undersigned counsel, hereby submit the following Proposed Findings of Fact and Conclusions of Law as to Nathaniel Felber's damages. *See* July 16, 2020 Minute Order. Plaintiffs submitted Proposed Findings of Facts and Conclusions of Law as to the Islamic Republic of Iran's liability for their injuries, and damages for Nathaniel's family members, on August 3, 2020 ("First PFFCL"), ECF Nos. 26, 29, and incorporate the same herein.¹

In support of their motion for default judgment, Plaintiffs proffer four additional sworn declarations from:

- Eli Reichenthal, M.D., Plaintiffs' neurosurgical consultant, providing his expert opinion on the nature and scope of Nathaniel Felber's traumatic brain injury ("TBI") ("Reichenthal Decl.").
- Harold Weingarden, M.D., a consultant to the Head Trauma Rehabilitation Department at Chaim Sheba Medical Center at Tel HaShomer, Ramat Gan, Israel ("Sheba Medical Center") ("Weingarden Decl.").
- Adi Gidali, DPT, PT, the Physical Therapy Supervisor of the Complex Traumatic Brain Injury Outpatient Department at Sheba Medical Center ("Gidali Decl.").
- Judi Felber, Nathaniel Felber's mother, describing Nathaniel's recent COVID-19 diagnosis ("Supp. Judi Decl.").

DR. ELI REICHENTHAL

Dr. Reichenthal is a Medical Doctor trained in neurological surgery both in Israel and the United States. Reichenthal Decl., ¶ 1. He is certified to practice medicine in Florida, Maine, and New York, *id.*, and has been a board-certified neurosurgeon in Israel since 1976. *Id.*, ¶ 2. Dr. Reichenthal is currently self-employed as a neurosurgical consultant and serves as an adjunct professor of neurosurgery in the Department of Neurosurgery at Stony Brook University Medical Center, New York. *Id.*, ¶ 7. From 1988-2004, he served as professor in, and chairman of, the

¹ All capitalized, undefined terms herein have the meanings assigned to them in the First PFFCL.

Department of Neurosurgery at Soroka Medical Center and Ben-Gurion University of the Negev in Beer Sheva, Israel. *Id.*, ¶ 3. During his tenure, his department treated numerous neurotrauma cases, including gunshot injuries to the brain. *Id.* Between 1994-2000, he was chairman of all surgical departments at Soroka Medical Center. *Id.*, ¶¶ 3-4. Between 2003-2005, he served as the president of the Israeli Neurosurgical Society, and he continues to be a member of various professional U.S. and Israeli neurological societies. *Id.*, ¶¶ 5-6.

DR. HAROLD WEINGARDEN

Dr. Weingarden is a Medical Doctor specializing in Physical Medicine and Rehabilitation. Weingarden Decl., ¶ 1. He received specialty certification by the American Board of Physical Medicine and Rehabilitation in 1978. *Id.*, ¶ 2. Dr. Weingarden has been a Senior Staff Physician in the Department of Neurological Rehabilitation at Sheba Medical Center since 1993. *Id.*, ¶ 4. From 1977-1991, he was in private practice as a member of the Rehabilitation Medical Group of Santa Barbara, in Santa Barbara, California, and he served as a director of various services at the Rehabilitation Institute at Santa Barbara. *Id.*, ¶ 3. After moving to Israel in 1991, he joined the Sheba Medical Center as a Senior Staff Physician in 1993, and between 2001-2017, also served as the Director of the Day Rehabilitation Hospital in the Department of Neurological Rehabilitation. *Id.*, ¶ 4. Nathaniel was admitted to Sheba Medical Center on February 27, 2019 and discharged on September 14, 2020 due to his positive COVID-19 test.² *Id.*, ¶ 18; Supp. Judi Decl., ¶¶ 4, 7. Dr. Weingarden visited Nathaniel while he was in the neurosurgical intensive care unit (“ICU”) in

² As further described in Section I(H)(ii) below, Nathaniel tested positive for COVID-19 on September 12, 2020. In addition, the Government of Israel announced a country-wide lockdown effective September 18, 2020, which is now in effect until at least October 14, 2020. Nathaniel’s family and doctors hope that after Israel’s lockdown is lifted and Nathaniel recovers from COVID-19, he will be able to return to Sheba Medical Center for outpatient therapy. Supp. Judi Decl., ¶¶ 4-5, 7, 9-10.

Hadassah University Hospital, and also during the course of Nathaniel's hospitalization at Sheba Medical Center. Weingarden Decl., ¶ 7.

DR. ADI GIDALI

Dr. Gidali is a Doctor of Physical Therapy with extensive experience treating and rehabilitating patients who have suffered TBIs ranging from mild to severe from a variety of types of trauma, including gunshot wounds, motor vehicle accidents, blunt injuries, and blast injuries. Gidali Decl., ¶ 1. She has been the Physical Therapy Supervisor of the Complex Traumatic Brain Injury Outpatient Department at Sheba Medical Center since September 2014. *Id.*, ¶ 4. She was Nathaniel's physical therapist from February 27, 2019 until his early discharge on September 14, 2020. *Id.*, ¶ 5.

I. FINDINGS OF FACT

A. The Givat Assaf Attack

1. As set forth in the First PFFCL, Nathaniel was grievously injured in a terrorist attack outside of Givat Assaf in the West Bank that was committed by HAMAS operative Asem al-Barghuthi on December 13, 2018. First PFFCL, ¶¶ 9-10.

2. Nathaniel, 21 at the time, was shot in the head. *Id.*, ¶ 11; Reichenthal Decl., ¶¶ 24, 26; Weingarden Decl., ¶ 9; Gidali Decl., ¶ 7.

B. Nathaniel Felber's Initial Examination at Hadassah University Hospital

3. Medics arriving at the scene of the Givat Assaf Attack thought Nathaniel was dead before finding a pulse. Judi Decl., ¶ 12. He was transferred to the Department of Neurosurgery at Hadassah University Hospital and intubated en route. Reichenthal Decl., ¶ 28; Weingarden Decl., ¶ 9; Gidali Decl., ¶ 9.

4. Dr. Reichenthal explained that the standard of care for any patient suspected of TBI includes serial neurologic examinations, which are often performed by trauma responders at the scene, in the emergency department, and in the acute and critical care units. One of these examinations is the pupillary examination. Nonreactive pupils are often associated with severe increases in intracranial pressure (“ICP”) and/or severe brain damage. Reichenthal Decl., ¶ 29.

5. Patients are also assigned a score on the Glasgow Coma Scale (“GCS”), the current benchmark to assign a TBI rating based on assessment at the time of the injury. The GCS measures a patient’s functioning in three areas at the time of the injury: (1) verbal response, (2) eye opening, and (3) motor response. The patient’s total GCS score indicates the severity of his TBI, with lower scores representing more severe injury. A GCS score of 13 or higher correlates with a mild brain injury, 9 to 12 a moderate brain injury, and 8 or less a severe brain injury. *Id.*, ¶ 30.

6. On arrival at the emergency room, Nathaniel was found to be in deep coma. *Id.*, ¶ 31. He was assigned a GCS score of 3, **the lowest possible score**. *Id.*; Weingarden Decl., ¶ 9; Gidali Decl., ¶ 10. His pupils were non-reactive to light and his left pupil was enlarged. Reichenthal Decl., ¶ 31; Weingarden Decl., ¶ 9; Gidali Decl., ¶ 10. These pupillary responses are typically considered signs of severe brain damage and have been strongly associated with poor outcomes. Reichenthal Decl., ¶ 31. Nathaniel’s corneal and gag reflexes were found to be present, indicating that Nathaniel may not have experienced brainstem death, or, colloquially, was not “brain dead.” *Id.*

7. Nathaniel’s initial CT scan reflected a severe open head wound and right frontal fracture from the bullet’s entry point extending past his right eye socket to the right frontal sinus behind his eye. *Id.*, ¶ 32; Weingarden Decl., ¶ 10. Nathaniel also presented with an open fracture and missing skull at the left parietal region of his skull, where the bullet exited, with extruding

brain tissue. This fracture extended into the left mastoid bone and middle ear. Reichenthal Decl., ¶ 32; Weingarden Decl., ¶ 10. In addition, both frontal sides of Nathaniel's skull exhibited depressed, comminuted fractures (*i.e.*, bones broken in more than one area, displacing inward to the brain), and shrapnel from Nathaniel's skull was also identified surrounding his left eye socket subcutaneously. Reichenthal Decl., ¶ 33; Weingarden Decl., ¶ 10. Bleeding was identified between every layer of membrane surrounding Nathaniel's brain. Reichenthal Decl., ¶¶ 34-35 and Figure 2; Weingarden Decl., ¶ 10.

8. Dr. Reichenthal reviewed the CT scans of Nathaniel's skull and opined that the bullet likely entered slightly right of the midline of Nathaniel's frontal bone and brain lobe in his forehead region. Reichenthal Decl., ¶ 32 and Figure 1. It apparently then traveled left, passing through Nathaniel's left frontal lobe, and exited through the left parietal bone on the side of his skull. *Id.* As the bullet traveled, it introduced multiple metallic fragments from the left frontal region of Nathaniel's brain through the right region. *Id.*, ¶ 33; Weingarden Decl., ¶ 10.

C. Nathaniel Felber's Initial Surgery at Hadassah University Hospital

9. Nathaniel was taken to the operating room immediately following the completion of the CT scan. He was administered Mannitol (an agent that reduces brain swelling) and Keppra (an anti-epileptic medication) and was operated upon by a combined team of surgeons including plastic surgeons and neurosurgeons. Reichenthal Decl., ¶¶ 31, 36; Weingarden Decl., ¶ 11.

10. Nathaniel underwent debridement (cleaning) of the wound, during which parts of fractured bone and necrotic tissue were removed under irrigation with saline. Reichenthal Decl., ¶ 37; Weingarden Decl., ¶ 11; Gidali Decl., ¶ 12. During surgery, Nathaniel bled extensively and required a transfusion of eight units of blood, eight units of fresh frozen plasma, and five units of platelets. Reichenthal Decl., ¶ 37; Weingarden Decl., ¶ 12.

11. Surgeons placed an ICP monitor on the left side of Nathaniel's skull to measure the pressure in his skull. Reichenthal Decl., ¶ 37; Weingarden Decl., ¶ 11; Gidali Decl., ¶ 12. They covered Nathaniel's bullet entry wound using remnants from existing tissue and muscle. Reichenthal Decl., ¶ 37. To close the bullet's larger exit wound, surgeons placed a skin graft partly taken from Nathaniel's lower leg over it. *Id.*; Weingarden Decl., ¶ 11; Gidali Decl., ¶ 12. Surgeons placed a nasogastric ("NG") tube into his stomach through his nose for nutrition. Reichenthal Decl., ¶ 37.

D. Nathaniel Felber's Stay in Hadassah University Hospital's ICU

12. Following this surgery, Nathaniel was transferred to the surgical ICU and continued to be anesthetized in a drug-induced coma and mechanically ventilated. Reichenthal Decl., ¶ 38; Weingarden Decl., ¶ 13. He remained in the ICU for two months until his discharge to the neurosurgery ward on February 18, 2019, Weingarden Decl., ¶ 16, followed by his subsequent discharge to the Sheba Medical Center on February 27, 2019. Reichenthal Decl., ¶ 46; Weingarden Decl., ¶ 18.

13. Scant progress was noted during Nathaniel's months in the ICU. He displayed motor response to localized pain, improving his GCS score to 8, though still within the range for severe TBI. Reichenthal Decl., ¶¶ 30, 39. He opened his right eye spontaneously (on his own, without external influence) in late December 2018 and his left eye in February 2019. *Id.*, ¶ 39.

14. Nathaniel's time in the ICU was marked by repeated infection, necessitating rounds of antibiotics and drains placed in his skull to relieve pressure, and removal of necrotic and infected brain tissue. Reichenthal Decl., ¶ 39; Weingarden Decl., ¶ 14 (development of pneumonia in late December 2018 requiring antibiotics); Reichenthal Decl., ¶¶ 41-42; Weingarden Decl., ¶ 15; Gidali Decl., ¶ 13 (swelling at the operative site and fever evidencing necrotic and bacteria-infected

cerebrospinal fluid, necessitating drain placement and antibiotics on December 31, 2018); Reichenthal Decl., ¶¶ 44-45; Weingarden Decl., ¶ 16 (fluid leakage from bullet exit wound identified on January 25, 2019 evidencing fungal infection necessitating drain and antifungal medication); Reichenthal Decl., ¶ 45 (identification of abscess on Nathaniel's brain identified on February 11, 2019 requiring needle drainage); Weingarden Decl., ¶ 17 (fever in mid-February 2019 necessitating antibiotics).

15. The repeated infections prevented Nathaniel's bullet exit wound from healing. Reichenthal Decl., ¶ 44. Surgeons attempted a surgical revision on January 28, 2019 by removing the necrotic tissue and infected-appearing areas of the wound and rotating the skin flap covering Nathaniel's exposed brain. *Id.*; Weingarden Decl., ¶ 16; Gidali Decl., ¶ 13.

16. Surgeons in the ICU also prepared Nathaniel for his long-term hospitalization. On December 25, 2018, Nathaniel underwent a tracheostomy to replace the intra-tracheal tube inserted through his mouth with a tube placed directly into his windpipe, because prolonged ventilation was required. Reichenthal Decl., ¶ 40; Weingarden Decl., ¶ 14. On the same day, surgeons implanted an inferior vena cava filter to prevent life-threatening pulmonary emboli from forming in Nathaniel's motionless extremities. Reichenthal Decl., ¶ 40; Weingarden Decl., ¶ 14; Gidali Decl., ¶ 13. A peripherally inserted central catheter ("PICC") line was placed to deliver medications and other treatments directly to the large central veins near Nathaniel's heart. (A PICC line is recommended if the patient's treatment plan requires frequent needle sticks for medicine or blood draws.) Reichenthal Decl., ¶ 46; Weingarden Decl., ¶ 15; Gidali Decl., ¶ 16. Nathaniel's NG tube for nutrition was replaced with a percutaneous endoscopic gastrostomy ("PEG") tube on January 15, 2019 that was placed directly through his abdominal wall and into his stomach for

nutrition, bypassing the mouth and esophagus. Reichenthal Decl., ¶ 43; Weingarden Decl., ¶ 15; Gidali Decl., ¶ 13.

E. Nathaniel Felber's Cognitive State at Hadassah University Hospital

17. As stated above, Nathaniel was in a deep coma upon arrival at Hadassah University Hospital. Reichenthal Decl., ¶ 31; Weingarden Decl., ¶ 9; Gidali Decl., ¶ 10. Dr. Reichenthal explained that a coma is a prolonged state of unconsciousness, during which a person is unresponsive to his environment and cannot be awakened by any stimulation, including pain. Reichenthal Decl., ¶ 21. The coma may be caused when an injury damages specific parts of the brain, preventing the nervous system from sending normal signals to the body. *Id.* A coma can also be medically-induced. Surgeons aim to reduce the metabolic rate of brain tissue, as well as the cerebral blood flow, which relieves ICP. The goal is that, with the swelling relieved, the pressure decreases and some or all brain damage may be averted. A person in a medically-induced coma will regain consciousness once surgeons cease administering the medication inducing the coma, but a person with a severe TBI may not. *Id.*

18. Patients may then transition from a coma to a vegetative state, during which they are awake but show no outward signs of awareness. In other words, patients may exhibit complex reflexes, including eye movements, yawning, and involuntary movements to noxious stimuli, but show no outward indications of awareness of self or environment. *Id.*, ¶ 22. Nathaniel was in a coma, and then a vegetative state, for over seven months after the Givat Assaf Attack. *Id.*, ¶ 47.

F. Nathaniel Felber's Inpatient Rehabilitation at Sheba Medical Center

19. Nathaniel was still in this vegetative state when he was admitted to Sheba Medical Center on February 27, 2019 with his PEG feeding tube, a tracheal tube to deliver oxygen and to

suction out his lungs, and the PICC. He had no control over his bowel or bladder functions. Weingarden Decl., ¶ 18; Gidali Decl., ¶¶ 15-16.

20. Nathaniel's rehabilitation program at Sheba Medical Center included physical, occupational, and speech therapy. Weingarden Decl., ¶ 21. His mobility out of bed was limited to being passively seated in a supportive reclining wheelchair, and he displayed no spontaneous movement for months. *Id.*, ¶¶ 18, 21. Nathaniel's TBI manifested in abnormal posturing—he held his right arm and leg straight out, while flexing and clenching his left extremities. His muscles displayed hypertonicity (tightness) and spasticity (exaggerated stiffness and tendon jerks), both of which are caused by disrupted signals from the brain. Gidali Decl., ¶ 17.

21. Nathaniel was started on Ritalin on June 11, 2019 as a stimulant to increase his level of alertness, Weingarden Decl., ¶ 23, and was assessed to have progressed to a minimally conscious state in July 2019. Reichenthal Decl., ¶ 47. This state, unlike a vegetative state, is characterized by some evidence of awareness of self and/or the environment. *Id.*, ¶ 23. Nathaniel's motions were at first limited to spontaneous left-hand and -leg movements and reflexive right-hand movements; he then started to put his fingers in his mouth and eyes, not realizing that he could harm himself. Gidali Dec., ¶ 19.

22. During the summer of 2019, Nathaniel's Ritalin dosage was increased, resulting in improvement in his level of alertness for part of the day. Weingarden Decl., ¶ 25. Nathaniel showed better eye contact, would follow simple directions, and could answer (non-verbally) most biographical questions correctly (*i.e.*, if presented in a yes-no manner). *Id.* When certain words were spoken to him, he was able to correctly choose antonyms and select a named person in family photos. *Id.*

23. Because of concern that Ritalin was causing Nathaniel increased spasticity, the dosage was lowered and later discontinued, and he was started on amantadine, used to treat fatigue in patients with multiple sclerosis by increasing the amounts of dopamine in the body. *Id.*, ¶ 28. However, after a month, doctors decided that Nathaniel was more alert with Ritalin, and he was restarted on that medication on November 19, 2019. *Id.*, ¶ 29.

24. On March 26, 2020, a year after Nathaniel was admitted to Sheba Medical Center, he drew a circle on request in occupational therapy. *Id.*, ¶ 33. The next month, in April 2020, Nathaniel became more consistent in using finger gestures as well as using head motions for “yes” and “no.” *Id.* If handed a playing card, he could place it on another card displaying the same color or number. *Id.*; Gidali Decl., ¶ 32. Nathaniel’s physical therapy notes from that month reflect that he progressed to showing purposeful movements of his right shoulder and right lower leg. Weingarden Decl., ¶ 33. He also displayed spontaneous isolated movements of his left arm and was able to hold his head up for 20 seconds on request. *Id.*

25. On May 5, 2020, Nathaniel was able to practice playing several notes on a keyboard. *Id.*, ¶ 35.

26. Nathaniel’s speech therapy focused on reviving his swallowing reflex. *Id.*, ¶¶ 23, 25, 29. On March 26, 2020, Nathaniel was noted for the first time to have exhibited a swallow reflex response to taste stimulation. *Id.*, ¶ 33. A month later, on April 30, 2020, he was noted to have improved spontaneous swallowing of saliva with less drooling. *Id.*, ¶ 34. However, Nathaniel made no progress in lip movement or ability to blow out a candle, and still has not spoken since the Givat Assaf Attack. *Id.*, ¶¶ 25, 50; Reichenthal Decl., ¶ 52; Gidali Decl., ¶ 28.

27. Nathaniel was weaned off his tracheal tube as of June 25, 2019. The stoma (opening) failed to heal independently and had to be closed surgically almost a year later, on March

15, 2020. Weingarden Decl., ¶¶ 20, 32. His bullet exit wound continued to resist healing due to infection, and he returned to Hadassah University Hospital multiple times for reevaluation, wound debridement, and antibiotics. *Id.*, ¶ 24 (June 18, 2019 readmission to Hadassah University Hospital), *id.*, ¶ 27; Gidali Decl., ¶ 18 (October 7, 2019 readmission to Hadassah University Hospital).

G. Nathaniel Felber’s Readmission to Hadassah University Hospital for Cranioplasty

28. Nathaniel was still in a minimally conscious state when surgeons started preparing him for cranioplasty surgery on December 9, 2019 by implanting a “skin expander” under his scalp. Weingarden Decl., ¶ 31. They inflated this expander every week for two months by injecting a saline solution to stretch his skin so that there would be enough skin to cover the new synthetic “skull” that surgeons planned on fitting over the existing bone defect. *Id.*, ¶ 31; Judi Decl., ¶ 26. The purpose of the surgery was to reduce the atmospheric pressure on Nathaniel’s brain caused by this skull defect. Reichenthal Decl., ¶ 48. That pressure causes the brain to shift from the side of the defect to the other side, causing headaches and other brain dysfunctions, including cognitive defects. *Id.*

29. Nathaniel could not communicate verbally but would reach for his scalp expander when it was being injected, indicating that the process was painful. Judi Decl., ¶ 32. In response to the pain, Nathaniel also exhibited increased spasticity and heart rate, and a low-grade fever. Weingarden Decl., ¶ 31.

30. Because of the COVID-19 pandemic, the surgery was postponed several times. Judi Decl., ¶ 26. Finally, Nathaniel was admitted back to Hadassah University Hospital on May 10, 2020 for the cranioplasty surgery on May 13, 2020. *Id.*; Weingarden Decl., ¶ 36; Reichenthal Decl., ¶ 48; Gidali Decl., ¶ 20.

31. Nathaniel was extubated after the surgery, following which his left pupil enlarged and did not respond to light. Reichenthal Decl., ¶ 48. Nathaniel exhibited a seizure on the right side of his brain. *Id.*; Weingarden Decl., ¶ 36; Gidali Decl., ¶ 20. The seizures continued relentlessly despite the administration of anti-seizure medications. Reichenthal Decl., ¶ 49; Weingarden Decl., ¶ 36. Nathaniel was reintubated and placed in a drug-induced coma. Reichenthal Decl., ¶ 49; Weingarden Decl., ¶ 36.

32. Almost a week after the May 13, 2020 surgery, the seizures were brought under control and Nathaniel was extubated on May 19, 2020. Reichenthal Decl., ¶ 49; Weingarden Decl., ¶ 36. After being extubated, Nathaniel contracted pneumonia, and was administered Tazocin, a Penicillin antibiotic. Reichenthal Decl., ¶ 50; Weingarden Decl., ¶ 36. Previously unknown to doctors and Nathaniel's family, he is allergic to Penicillin, and reacted with an episode of thrombocytopenia, *i.e.*, abnormally low levels of platelets. He received three blood transfusions. Reichenthal Decl., ¶ 50; Weingarden Decl., ¶ 36; Gidali Decl., ¶ 20.

33. Nathaniel was readmitted to Sheba Medical Center on June 17, 2020, almost a month after he was admitted for his cranioplasty surgery. Reichenthal Decl., ¶ 51; Weingarden Decl., ¶ 38; Gidali Decl., ¶ 21. Dr. Gidali described Nathaniel as having “exhibited a decline in functional, motor, and cognitive status, presenting with decreased endurance, initiation, speed of movement, strength, mobility, sensation, visual tracking, communication, and more.” Gidali Decl., ¶ 21. Nathaniel's mother declared as follows:

All the work we did to get him to where he was before the cranioplasty appears to be lost for now. He's so weak from his terrible month in the ICU full of seizures and transfusions. I look for small improvements – he can swallow a little better, he can move his right side a little more – but he has regressed, and some of the advances he had made may be lost forever.

Judi Decl., ¶ 28.

H. Nathaniel Felber's Current Status (Including Recent COVID-19 Diagnosis)

34. As described below, Nathaniel has regained some, but not all, of the progress he achieved prior to his cranioplasty. Gidali Decl., ¶¶ 23-24. However, Nathaniel's inability to return to Sheba Medical Center for his daily therapies due to his positive COVID-19 diagnosis and Israel's country-wide lockdown will likely cause a regression in his advances to date. He is in danger of losing the skills he has worked very hard to achieve. *Id.*, ¶ 41.

i. Nathaniel Felber's Present Functional Status

35. Nathaniel is totally dependent on others for PEG tube feedings and fluids, bathing, hygiene, management of urination and bowel movements, transfers in bathroom and to shower, grooming, upper and lower body dressing, bed to chair transfers, car transfers, wheelchair mobility, community mobility, and bed mobility. Weingarden Decl., ¶ 44; Reichenthal Decl., ¶ 60; Gidali Decl., ¶ 37. He does not have a consistent effective swallow function and does not have control of his saliva. Weingarden Decl., ¶ 45; Reichenthal Decl., ¶ 52. When alert (generally during the hours of the day that he is not napping or taking a rest break, as described in the following paragraph), Nathaniel is able to respond to simple questions with gestures for yes/no with a fair level of consistency. Weingarden Decl., ¶ 46. When his level of alertness is decreased, his responses are not present or reliable. *Id.* He is unable to vocalize or use a communication device to ask for assistance, and he is unable to read or write. *Id.* His status in specific areas is as follows:

36. **Cognition:** Nathaniel's state is currently emergent from minimal consciousness, and he exhibits a depressed level of alertness. Gidali Decl., ¶ 31; Reichenthal Decl., ¶ 52; Weingarden Decl., ¶ 47. This state was achieved during the late summer of 2020. Gidali Decl., ¶ 31; Reichenthal Decl., ¶ 61. Dr. Reichenthal explained that patients are considered to be in a state of emergence from minimal consciousness when they exhibit some functional communication (*e.g.*, follow instructions) and functional object use (*e.g.*, use a spoon). Reichenthal Decl., ¶ 23.

37. According to Dr. Gidali, prior to his COVID-19 infection, Nathaniel was mostly alert while awake, and his awake/sleep schedule was as follows: He would wake up at about 7:00 a.m. and nap between 1:30/2:00 p.m. and 4:00/6:00 p.m. He would go to sleep for the night at about 8:00 p.m. In addition to his midday nap, Nathaniel required frequent breaks from his therapy. Gidali Decl., ¶ 31. While awake and not taking such a break, Nathaniel was oriented to place, year, person, and time of day approximately 75% of the time when presented with two options. *Id.* He was able to match cards by color and numbers when presented with two options. *Id.*; Weingarden Decl., ¶ 39. He exhibited decreased processing speed, speed of movement, working memory, and problem solving, and is currently receiving medication for impaired attention. Gidali Decl., ¶ 31. He was unable to initiate purposeful movements without assistance or prompting. *Id.* He was occasionally able to follow simple one-step commands with visual, tactile, and verbal cues. For example, if an iPad was placed in front of Nathaniel with an application open, he required assistance and repetitive prompting to follow the simple command of pressing on the song to which the therapist is pointing. *Id.*

38. Nathaniel's COVID-19 infection has altered his cognitive status. He is not following his previous schedule and is not often alert. *Id.*

39. **Bed Mobility:** Prior to Nathaniel's cranioplasty, he was able to roll to his left and right with use of the bed rail, supervision, and minimal verbal and visual cues for technique and hand placement. Following his readmission after the surgery, Nathaniel is no longer able to roll. *Id.*, ¶ 23; Weingarden Decl., ¶ 40.

40. **Transfers:** Prior to Nathaniel's cranioplasty, he was able to perform sit-to-stand transfers with moderate assistance with bilateral upper extremity support. He was also able to transfer from the wheelchair to the bed (to right and left) with moderate to minimal assistance and

use of his hand. Since his readmission, Nathaniel is no longer able to perform transfers from wheelchair to bed or supine to sitting without moderate to maximal assistance. Gidali Decl., ¶ 24; Weingarden Decl., ¶ 40.

41. **Ambulation**: Nathaniel is able to ambulate (walk), for therapeutic purposes only, short distances of 15 meters with bilateral long-leg braces and a forearm walker with maximal assistance of two physical therapists. Stair negotiation is not possible. Gidali Decl., ¶ 25.

42. **Balance**: Nathaniel requires “contact guarding” (where the assistance is limited to one or two hands on the patient’s body to help steady him) or minimal assistance for static sitting balance while sitting unsupported at the edge of his bed, and demonstrates the ability to sit with close supervision for up to 30-60 seconds. *Id.*, ¶ 26. Nathaniel requires minimal assistance for dynamic sitting balance and reaching outside his base of support with activities such as weight shifting and reaching required for everyday functional activities. Nathaniel requires moderate assistance while standing, using upper extremity support with a forearm support walker. Gidali Decl., ¶ 26 and Figure 1.

43. **Endurance**: Nathaniel is able to participate in standing activities (while supported) for 5-7 minutes at a time, and to participate in seated or supine activities for 20-25 minutes, though requiring a rest break to do so. Nathaniel can tolerate positioning in a standing frame that supports him fully (called a “stander”) for 1 hour. Gidali Decl., ¶ 27.

44. **Communication**: Nathaniel has not spoken since the Givat Assaf Attack. Weingarden Decl., ¶ 50; Gidali Decl., ¶ 28. He also has inconsistent movement of his lips and mouth. Weingarden Decl., ¶ 50. He likely has an apraxia speech disorder, caused by damage to the parts of the brain which control speech. *Id.*; Reichenthal Decl., ¶ 52. It is unlikely that he will be able to develop functional speech, even in a matter of years. Weingarden Decl., ¶ 50; Gidali

Decl., ¶ 39. He cannot communicate his needs or wishes without being asked yes/no questions. Gidali Decl., ¶ 28. He is able to nod his head or press a button on the computer screen to indicate yes or no, but he is not consistently accurate. *Id.* If presented with 2-3 options of objects or prompting of questions he can choose the correct answer 75% of the time. *Id.*

45. Nathaniel is currently unable to exhibit happiness or sadness via facial and bodily expressions, *i.e.*, smiling, laughing, or crying. *Id.*; Weingarden Decl., ¶ 39; Reichenthal Decl., ¶ 53. His mother reports that he “seems” sad at times, but an outside witness observing Nathaniel would not necessarily pick up on any change in his affect which would indicate sadness. Gidali Decl., ¶ 28. Nathaniel exhibits pain via grimacing and an up-and-down movement of his left leg while moving his trunk forward and backward. *Id.*; Weingarden Decl., ¶ 39; Reichenthal Dec., ¶ 53. Additionally, Nathaniel is able to pull away from painful stimuli. For example, when a therapist is stretching Nathaniel’s leg, he will move his leg away from the therapist if the stretching is painful. Gidali Decl., ¶ 28. On isolated occasions when he is in significant pain, tears have been present. *Id.* Nathaniel responds and reacts very well to music; he is calmer when music is playing, and occasionally able to tap to the beat. *Id.*

46. **Strength:** Nathaniel has demonstrated limited shoulder and elbow movement on the right side of his body at 50% of the range. Gidali Decl., ¶ 29. These movements are un-isolated and slow. *Id.* No movement in the right wrist or hand has been noted. *Id.* Nathaniel has active, albeit weak, movement on his left side. *Id.*; Reichenthal Decl., ¶ 53. Testing indicates that his movements are against gravity, but not against resistance. Gidali Decl., ¶ 29. His head control when sitting in the “tilt” wheelchair (a wheelchair with a reclining supportive back used to redistribute weight and pressure when a person spends most of his time in a wheelchair, in order to avoid tissue compression and pressure ulcers, Gidali Decl., ¶ 37) continues to improve, although

he fatigues easily. Weingarden Decl., ¶ 47. Nathaniel responds to his mother reminding him to hold his head up. *Id.*

47. **Range of Motion:** Range of motion (“ROM”) refers to the extent of movement of a joint, measured in degrees of a circle. Nathaniel’s ROM is intact, *i.e.*, his limbs can be moved in circles. Gidali Decl., ¶ 30.

48. **Coordination:** Nathaniel’s fine motor and gross coordination are impaired, requiring motor, visual, and verbal assistance and increased time to complete motor tasks. Gidali Decl., ¶ 32. Prior to his recent COVID-19 diagnosis, he could pick up a card from a table and place it in a previously designated location, and could build towers using 2-3 blocks. *Id.* He could bring a spoon to his mouth, but without consistency. *Id.* Even prior to his recent COVID-19 diagnosis, he was unable to grasp the armrest of his wheelchair or the bedside rail needed for rolling in bed or transferring to the chair. *Id.*

49. **Swallowing/Eating:** Nathaniel is currently fed via a PEG tube. *Id.*, ¶ 33. Prior to his recent COVID-19 diagnosis, his speech therapy included encouraging eating partial spoonfuls of soft foods like applesauce, jam, and pudding. *Id.* Nathaniel cannot ingest liquids for risk of aspiration (*i.e.*, breathing liquids into the airway). *Id.* Nathaniel’s swallow function is still inconsistent, and his spontaneous swallow of saliva is intermittent. Weingarden Decl., ¶ 41.

50. **Walking:** Dr. Weingarden opines that “Nathaniel will continue to be wheelchair-bound.” *Id.*, ¶ 51. He currently requires a tilt wheelchair. *Id.* Dr. Gidali explained that the reason that walking is not “currently relevant” is because Nathaniel is unable to perform transfers or standing without moderate to maximal assistance, and also cannot roll: “Therefore, the functional treatment goals for now will be focused on improving bed mobility, transfers, and standing.” Gidali Decl., ¶ 34.

51. **Bodily Function Control:** Nathaniel wakes up before he urinates, and he has expressed on a few occasions to his caregivers and family that he needs to have a bowel or bladder movement by moving his body. Currently, however, he wears a diaper and is dependent on caregivers for cleanup. *Id.*, ¶ 35.

52. **Vision:** Nathaniel's eye movements are impaired: his left eye is abducted (the pupil is shifted away from the nose), and his right eye has motion from left lateral gaze to midline (*i.e.*, can look from the left to forward). Weingarden Decl., ¶ 47. According to Dr. Gidali, Nathaniel's eyesight acuity (sharpness and clarity) might be intact, but what he is seeing may not be "translated" to him by his brain due to his TBI. Gidali Decl., ¶ 36. Because Nathaniel cannot explain what he sees, it is difficult to measure his vision. *Id.*

ii. Nathaniel Felber's Recent COVID-19 Diagnosis

53. Threatening Nathaniel's progress to date is not only his decreased strength due to the seizures, but also his diagnosis of COVID-19 on September 12, 2020. *Id.*, ¶ 41; Supp. Judi Decl., ¶ 4. That diagnosis prevents Nathaniel from being able to resume his rehabilitative therapy for the foreseeable future. Gidali Decl., ¶ 41; Supp. Judi Decl., ¶ 10.

54. After his diagnosis, Nathaniel had to be transported to an unfurnished apartment (not specially equipped for the handicapped) on September 14, 2020, Supp. Judi Decl., ¶¶ 5, 7, prior to his tentatively-scheduled discharge from Sheba Medical Center in October 2020. *Id.*, ¶ 3. In addition, the Government of Israel announced a country-wide lockdown effective September 18, 2020 which has now been extended until at least October 14, 2020. *Id.*, ¶ 9. Nathaniel will stay in his apartment during that period and cannot return to Sheba Medical Center for any of his therapies until he recovers and the lockdown is lifted. *Id.*, ¶¶ 10-11.

55. Nathaniel's apartment is currently equipped with a temporary hospital bed that his family made emergency arrangements to rent while in quarantine themselves due to their exposure to Nathaniel. They also coordinated delivery of sheets, blankets, pillows, diapers, a refrigerator, medications, and other necessities. *Id.*, ¶ 5.

56. Nathaniel's PEG pump was not delivered until a day after he was transported to the apartment, requiring his caretaker to rig a temporary device that dripped nutrition into his PEG tube. *Id.*, ¶ 7. (Two of Nathaniel's caretakers from Sheba Medical Center offered to quarantine with him, but as Nathaniel was being loaded into an ambulance for transport to the apartment, one decided he would not in fact do so. Nathaniel is therefore dependent on one caretaker for his 24-hour care until his parents can hire a second caretaker. *Id.*, ¶ 6.) A shower chair was also not delivered until the evening of September 15, 2020, so when Nathaniel spiked a high fever that morning, his caretaker could not place him under cool water to reduce his temperature. *Id.*, ¶ 7. While deciding whether to take Nathaniel to the emergency room, Nathaniel's caretaker administered a fever reducer, and his temperature decreased to an above normal, although not dangerous, level. *Id.*

57. Nathaniel's fever continued to spike for a week and a half, and he started to cough. His caregiver continued to administer fever reducers and cold compresses, which kept the fever from reaching dangerous levels. A doctor brought an oxygen tank, which Nathaniel needed, and administered antibiotics used to treat COVID-19 pneumonia. Nathaniel's fever broke on September 25, 2020, but he continued to cough. *Id.*, ¶ 8.

58. As of this filing, Nathaniel remains in his apartment. He is very weak, and his doctor has ordered a full set of blood tests. His family is currently awaiting the results. *Id.*, ¶ 12.

I. Nathaniel Felber's Prognosis

i. Requirements for Living

59. As stated above, Judi and Joseph Felber rented an apartment for Nathaniel pending his tentatively scheduled discharge from Sheba Medical Center in October 2020, but it does not yet have the equipment Nathaniel needs, nor has it been rendered handicapped-accessible. *Id.*, ¶ 5. While in quarantine themselves, they made emergency arrangements to rent a few provisional items for Nathaniel. *Id.* Nathaniel's PEG pump has been delivered, as well as a shower chair. *Id.*, ¶ 7.

60. Because of the country-wide lockdown, Nathaniel's parents are unsure of whether and when they will be able to coordinate purchase and deliveries of the medical equipment Nathaniel still needs. *Id.*, ¶ 9. Nathaniel requires a Hoyer lift, necessary when a person needs 90-100% assistance to get into and out of bed, for transfers. A pad fits under the person's body in the bed and connects with chains to the Hoyer lift frame. A hydraulic pump is used to lift the person off the bed surface. Gidali Decl., ¶ 37 and Figure 2. Nathaniel also needs a more advanced medical bed than the one his family is currently renting, bathroom equipment for toileting and showering, a stander, a tilt wheelchair, a wheelchair tabletop, a mattress and cushion for the bed and chair to prevent pressure ulcers, and additional medical equipment and furniture to be able to provide for Nathaniel's day-to-day needs. Gidali Decl., ¶ 37; Weingarden Decl., ¶ 54; Reichenthal Decl., ¶ 60. His apartment must be rendered handicap-accessible, including widening doorways and installing handrails on the walls and a shower chair. Gidali Decl., ¶ 37; Weingarden Decl., ¶ 54; Reichenthal Decl., ¶ 60.

61. Nathaniel will need 24-hour nursing assistance, and observation day and night. Reichenthal Decl., ¶ 60. He will likely need two caregivers for showers for the remainder of his

life. Weingarden Decl., ¶ 55. He will also need access to a vehicle that can transport him in his wheelchair. *Id.* This is particularly important because Nathaniel will likely travel routinely to a rehabilitation center for the long-term future. *Id.*, ¶¶ 53, 55; Gidali Decl., ¶ 40. He will also require additional interventions including follow-up CT scans, swallowing exams, and regular laboratory studies and potential intervention for spasticity. Weingarden Decl., ¶ 53; Gidali Decl., ¶ 40. He will require, and benefit socially, cognitively, physically, and emotionally from, recreational activities which allow for improved quality of life. Such activities may include equestrian therapy, hydrotherapy, and pet therapy. Gidali Decl., ¶ 40.

ii. Future Goals

62. Nathaniel's short-term goals are focused on improving his mobility and decreasing the burden of care on his caregivers. *Id.*, ¶ 38. Special attention is paid to improving:

- bed mobility with minimal assistance to supervision;
- transferring to standing and transferring from the wheelchair with minimal assistance of a caregiver;
- sitting balance to allow Nathaniel to be able to sit without support for extended periods of time;
- standing balance with assistance to improve endurance and strength; and
- mobility and strength of upper and lower extremities.

Id.

63. Goals for Nathaniel also include improved head control and sitting in a standard non-tilt wheelchair, although he will still need a reclining wheelchair for times when he is fatigued. Weingarden Decl., ¶¶ 40, 51.

64. While Nathaniel will most likely need to continue to receive nutrition by means of the PEG in the foreseeable future, it is possible that he may at some point be able to intake nutrition

orally. *Id.*, ¶ 49. Further speech therapy goals in this regard include improving mouth opening for spoon usage, consistent swallow, and reduced drooling. *Id.*, ¶ 41.

65. Nathaniel will likely not be able to achieve verbal communication. *Id.*, ¶ 50; Gidali Decl., ¶ 39; Reichenthal Decl., ¶ 52. His care will focus on the goal of improving cognitively enough to allow consistent and consequent (*i.e.*, productive) non-verbal communication, Gidali Decl., ¶ 39, as well as consistent and accurate responses in identifying objects, pictures of people, words, and numbers. Weingarden Decl., ¶ 41. It is not yet determinable whether he will be able to utilize communicative assistive devices such as a communication tablet. Gidali Decl., ¶ 39.

iii. Future Complications and Life Expectancy

66. Drs. Reichenthal and Weingarden estimated a shortened life expectancy for Nathaniel. Reichenthal Decl., ¶ 62 (12 years); Weingarden Decl., ¶ 56 (31 years). These estimates do not account for the possibility of further irreversible decline due to Nathaniel's COVID-19 diagnosis. Weingarden Decl., ¶ 56. They also do not account for death by life-threatening medical complications already experienced by Nathaniel such as pneumonia and infection, or further seizures. Reichenthal Decl., ¶ 62. Nathaniel's brain injury additionally predisposes him to neurodegenerative diseases associated with TBI which have their own shortened mortality rates, such as Parkinson's disease and Alzheimer's disease. *Id.*

II. CONCLUSIONS OF LAW: DAMAGES

67. Courts awarding compensatory damages for pain and suffering are "guided ... by prior decisions awarding damages for pain and suffering." *Haim v. Islamic Republic of Iran*, 425 F. Supp. 2d 56, 71 (D.D.C. 2006). Courts specifically endeavor to "ensure that individuals with similar injuries receive similar awards." *Valore v. Islamic Republic of Iran*, 700 F. Supp. 2d 52,

84 (D.D.C. 2010) (citing *Peterson v. Islamic Republic of Iran*, 515 F. Supp. 2d 25, 54 (D.D.C. 2007)).

68. Nathaniel Felber’s injuries are significantly more severe than those implicated in the four cases the Court in this District has set forth as exemplars of serious TBIs:

- *Mousa v. Islamic Republic of Iran*, 238 F. Supp. 2d 1, 12-13 (D.D.C. 2001) (awarding survivor of bus bombing with cranial fracture \$12 million);
- *Campuzano v. Islamic Republic of Iran*, 281 F. Supp. 2d 258, 263, 274 (D.D.C. 2003) (awarding survivor of pedestrian mall bombing who suffered a massive skull fracture leaking cerebral spinal fluid \$17 million);
- *Haim*, 425 F. Supp. 2d at 62, 75 (awarding survivor of bus bombing with large right occipital lobe brain hematoma caused by broken skull bones and shrapnel \$11 million); and
- *Blais v. Islamic Republic of Iran*, 459 F. Supp. 2d 40, 50, 58-59 (D.D.C. 2006) (awarding pilot in the U.S. Air Force with diagnosis of severe axonal brain injury, anoxic brain injury, and organic encephalopathy as a result of the Khobar Towers bombing \$20 million).

69. As each of these decisions was issued, starting with *Mousa* in 2001, this Court has compared them to each other in assessing TBI-related damages. For instance, in *Haim*, the Court awarded Mr. Haim the lowest amount of damages among the four cases (\$11 million) after concluding that while both he and Ms. Mousa “suffer from vision impairments, inability to concentrate, coordination problems, a range of symptoms caused by severe PTSD, and disfiguring scarring ... [t]here is some indication that Seth [Haim]’s injuries are not as severe as Ms. Mousa’s.” *Haim*, 425 F. Supp. 2d at 74. Specifically, the Court noted that Ms. Mousa (awarded \$12 million) “was completely blind in one eye, whereas Seth has retained some, albeit limited, vision.” *Id.* In addition, “[u]nlike Seth, Ms. Mousa was unable to walk for some time after the attack and remained in more extensive treatment after discharge from the hospital than Seth. ... Ms. Mousa also suffered more prominent and severe disfigurement from scarring.” *Id.* (citation omitted).

70. The Court in *Haim* also compared the extent of Mr. Haim’s injuries to those of Ms. Campuzano’s, finding that Ms. Campuzano (awarded \$17 million) was more severely injured than both Mr. Haim and Ms. Mousa:

As previously noted, Ms. Campuzano was hospitalized for 50% longer than Ms. Mousa. ... While [Ms. Campuzano’s] brain injury was similar to Seth’s, she suffered in addition multiple wounds and severe burns. She has impaired vision, no ability to taste and smell, and her left eardrum and upper sinus cavity were destroyed. Like Ms. Mousa, Ms. Campuzano suffered “startling” disfigurement. Her psychological injuries also prevent her from engaging in healthy human relationships or pursuing former professional and personal interests. These factors indicate that Ms. Campuzano was more severely injured than both Seth and Ms. Mousa.

Id. at 74-75 (citations omitted).

71. The Court in *Campuzano* similarly concluded that while “Ms. Campuzano’s severe burns, skull injuries, scarring, permanent vision and hearing impairments, and PTSD symptoms are similar to those of Ms. Mousa,” “Ms. Campuzano’s pain and suffering is more severe in that Ms. Campuzano’s injuries are slightly more serious and she was hospitalized for two weeks longer than Ms. Mousa.” *Campuzano*, 281 F. Supp. 2d at 274.

72. The Court in *Blais*, the last of these four cases to be decided, conducted the same analysis: “Applying the considerations set forth in the *Haim*, *Mousa*, and *Campuzano* cases,” the Court found that “Mr. Blais was severely injured by the tragic attack on the Khobar Towers,” and awarded him \$20 million in pain and mental anguish damages. *Blais*, 459 F. Supp. 2d at 59.

73. In doing so, the Court in *Blais* grouped the four cases together in the category of “an attack where the victim survives, and where no captivity occurred.” *Id.* at 59. *See also id.* (characterizing the plaintiffs in the preceding cases as displaying “similar injuries”). The Court concluded that in this category, it must assess the relative “severity of the pain immediately following the injury, the length of hospitalization, and the extent of the impairment that will remain with the victim for the rest of his or her life.” *Id.* (citing *Haim*, 425 F. Supp. 2d at 73).

As stated above and demonstrated below, Nathaniel’s injuries are even more severe than the injuries described in these four cases.

A. Severity of the Pain Immediately Following the Injury

74. Nathaniel feels, and can display reactions to, pain—even to the point of tears. Weingarden Decl., ¶¶ 16, 30, 31, 39; Gidali Decl., ¶ 28; Reichenthal Decl., ¶ 53. However, because Nathaniel cannot speak, read, or write, he cannot testify on his own behalf regarding the extent of his pain as the plaintiffs in the four preceding cases were able to do.

B. Duration of Hospitalization and Subsequent Treatment

75. Nathaniel’s hospitalization substantially exceeds that of the other four plaintiffs, and his (required) future treatment will in all likelihood exceed theirs as well.

76. Among the plaintiffs in the four preceding cases, Mr. Blais was hospitalized for four months, the longest period. After discharge, he received intensive outpatient rehabilitation care for six months. At the time of the decision 10 years after the attack, Mr. Blais continued to receive medical treatment, rehabilitation, and therapies. *See Blais*, 459 F. Supp. 2d at 50.

77. Ms. Campuzano was hospitalized for the second-longest period. She was an inpatient for six weeks, and then received outpatient treatment for vision and hearing for an unspecified period, and reconstructive surgery. *See Campuzano*, 281 F. Supp. 2d at 263.

78. Ms. Mousa was hospitalized for four weeks. She had a home attendant for an additional two weeks, and then attended physical rehabilitation sessions three times a week for six weeks and had weekly blood tests to address clotting issues for a year, and thereafter semi-annual blood tests. *See Mousa*, 238 F. Supp. 2d at 4-6.

79. With respect to Mr. Haim, “While the record in this case fails to specify the number of days for which Seth was hospitalized, it appears to have been fewer than the four weeks Ms.

Mousa initially spent.” *Haim*, 425 F. Supp. 2d at 74. Mr. Haim then continued to visit the hospital regularly for follow-up evaluations and treatments for the following year. *See id.* at 63.

80. Nathaniel was hospitalized for **21 months** before his early discharge due to his COVID-19 diagnosis. Reichenthal Decl., ¶¶ 27-28, 46; Supp. Judi Decl., ¶¶ 3-5, 7. He will continue to require 24-hour nursing assistance, and observation day and night. Reichenthal Decl., ¶ 60. When Nathaniel hopefully recovers from COVID-19 and Israel ends its country-wide lockdown, he will also receive daily therapy on an outpatient basis at Sheba Medical Center. Supp. Judi Decl., ¶¶ 10-11. He will continue outpatient rehabilitation at least 3-5 times per week for the long-term future. Weingarden Decl., ¶ 55; Gidali Decl., ¶ 40. He will also require additional medical interventions and therapeutic recreational activities. Weingarden Decl., ¶ 53; Gidali Decl., ¶ 40.

C. Extent of Impairment That Will Remain with the Victim for the Rest of His or Her Life

81. Nathaniel’s enduring impairments far exceed those of the preceding four plaintiffs.

82. The permanent impairments of Mr. Blais, who was adjudged to have the most severe injuries of the plaintiffs in the four preceding cases, include:

- diminished motor skills;
- problems with speech;
- lack of coordination;
- profoundly impaired and unstable ambulation;
- moderate right leg weakness;
- impaired short-term memory;
- emotional injuries;
- “labored and slow” writing and reading; and
- optic nerves that showed signs of significant atrophy.

Blais, 459 F. Supp. 2d at 50-51, 59.

83. Nathaniel’s impairments are *markedly* more severe than Mr. Blais’s.

- His pre-COVID 19 gross motor skills were limited to transferring from wheelchair to bed, and supine to sitting, with moderate to maximal assistance, Gidali Decl., ¶ 24, and occasionally holding his head up for 20 seconds on request. Weingarden Decl., ¶ 33. His fine motor skills were limited to picking up a card from a table and placing it in a previously designated location, and building towers using 2-3 blocks. Gidali Decl., ¶ 32. He could bring a spoon to his mouth, but without consistency, *id.*;
- He is entirely unable to speak, Weingarden Decl., ¶ 50; Gidali Decl., ¶¶ 28, 39; Reichenthal Decl., ¶ 52, and cannot control his saliva or swallowing function, Weingarden Decl., ¶¶ 41, 45; Reichenthal Decl., ¶ 52;
- Apart from the extremely limited motor skills described above, he lacks any coordination, Gidali Decl., ¶ 32;
- His ambulation, limited to 15 meters, is for therapeutic purposes only, and is dependent on special braces, a forearm walker, and physical assistance by two caregivers, *id.*, ¶ 25;
- He appears capable only of limited and slow movements of his right shoulder and elbow, and weak movement on his left side, *id.*, ¶ 29;
- He has severely impaired cognitive functions, *id.*, ¶ 31; Reichenthal Decl., ¶ 52; Weingarden Decl., ¶ 47;
- He clearly experiences pain. Judi Decl., ¶ 32; Weingarden Decl., ¶¶ 31, 39; Gidali Decl., ¶ 28; Reichenthal Decl., ¶ 53;³
- He cannot read or write. *Id.*, ¶ 46; and
- His eye movements are impaired, and his eyesight cannot be measured because of his cognitive inability to explain what he sees. *Id.*, ¶ 47; Gidali Decl., ¶ 36.

³ The four preceding TBI cases discuss the impact of the plaintiffs’ emotional injuries, generally diagnosed as depression and post-traumatic stress disorder, on their lives. For instance, PTSD “impair[ed] the ability of [Mr. Haim and Ms. Mousa] to develop and maintain relationships,” *Haim*, 425 F. Supp. 2d at 74, and prevented Ms. Campuzano from “resum[ing] full-time employment” or venturing from her neighborhood for more than a few hours, *Campuzano*, 281 F. Supp. 2d at 264. These effects also include changes in personality, *Haim*, 425 F. Supp. 2d at 66; *Campuzano*, 281 F. Supp. 2d at 263, suicide attempts, *Blais*, 459 F. Supp. 2d at 50, and increased risk of “physical consequences” and shortened life-span, *Mousa*, 238 F. Supp. 2d at 9. Here, the TBI Nathaniel sustained renders him unable to express his emotional state outwardly. Gidali Decl., ¶ 28; Weingarden Decl., ¶ 39; Reichenthal Decl., ¶ 53. However, the practical effects of his injuries are in some ways more severe than the effects of PTSD described in the previous four TBI cases—Nathaniel cannot maintain meaningful relationships *at all*, cannot control his swallowing function let alone hold a job of any kind, and cannot move from his bed to a wheelchair let alone leave his home independently. Gidali Decl., ¶¶ 24, 28; Weingarden Decl., ¶¶ 40-41, 45; Reichenthal Decl., ¶ 52. His expected life-span is *drastically* shortened and his personality almost entirely reduced—though, when conscious, he can be oriented to place, time, and person to some degree. Reichenthal Decl., ¶ 62; Weingarden Decl., ¶ 56; Gidali Decl., ¶ 31.

84. Moreover, Nathaniel will be totally dependent on others for:
- PEG tube feedings and fluids (with the possibility that he may be able to intake nutrition orally at some point);
 - bathing;
 - hygiene;
 - management of urination and bowel movements;
 - transfers in bathroom and to shower;
 - grooming;
 - upper and lower body dressing;
 - bed to chair transfers;
 - car transfers;
 - wheelchair mobility;
 - community mobility; and
 - bed mobility.

Weingarden Decl., ¶¶ 44, 49, 55; Reichenthal Decl., ¶ 60; Gidali Decl., ¶ 37. As stated above, he cannot read or write, and will likely never be able to speak or walk. Weingarden Decl., ¶¶ 46, 50, 51; Gidali Decl., ¶¶ 28, 34, 39; Reichenthal Decl., ¶ 52.

85. The other three plaintiffs' impairments are all less serious than Mr. Blais's, and even more remote from what Nathaniel will endure for his lifetime.

86. Ms. Campuzano's permanent impairments include cataracts and impaired vision, loss of ability to taste and smell, loss of hearing in one ear, cosmetic disfigurement, and psychological injuries. *See Campuzano*, 281 F. Supp. 2d at 263.

87. Ms. Mousa's permanent impairments include total loss of unaided hearing, blindness in her left eye, which has also shrunk and sunken into an aesthetic disfigurement, nerve damage around her eyes and the left side of her mouth, scarring from burns and lacerations, impairment of breathing caused by lung blast injury, damage to the tendons in her right hand causing chronic pain in that hand and arm, impaired balance and walking, problems with

concentration and short-term memory, psychological injuries, and fatigue. *See Mousa*, 238 F. Supp. 2d at 6-10, 12.

88. Mr. Haim's permanent impairments include left-sided visual loss, decreased coordination, loss of visual memory and spatial recognition preventing him from remembering how to travel short distances and recognizing peers, family, and friends, frequent and severe headaches, a constantly dilated left pupil preventing him from viewing a computer monitor or television screen for prolonged periods of time, tender scarring, spine weakness, right occipital lobe deficits, limited concentration and reading impairments—"the major factors behind his slow pace in his university studies"—psychological injuries, and constant discomfort on the right side of his head. *See Haim*, 425 F. Supp. 2d at 63-66.

89. The Court in *Haim* observed that "[b]y the time the cases were adjudged, those plaintiffs, like Seth, had settled into a relatively stable physical and mental condition which likely would endure for the rest of their lives." *Id.* at 73. Similarly, Dr. Reichenthal's expert opinion is that "Nathaniel's current neurological condition, 21 months after injury, appears to be permanent. I conclude, with a high degree of medical certainty, that his severe 100% neurological disability, which is a result of the injuries sustained in the shooting, will persist." Reichenthal Decl., ¶ 63.

90. The progress made by the plaintiffs in the four aforementioned cases is manifestly better than what is realistically hoped for Nathaniel. Nathaniel will likely not be able to walk, compared to Mr. Blais and Ms. Mousa, who progressed to walking, albeit with difficulty, after their injuries temporarily prevented them from doing so. Weingarden Decl., ¶ 51; Gidali Decl., ¶ 34. *Contra Blais*, 459 F. Supp. 2d at 50; *Mousa*, 238 F. Supp. 2d at 6. Nathaniel's fatigue prevents him from sitting in a standard, as opposed to a tilt, wheelchair, or participating in seated or supine activities for more than 20-25 minutes (including a rest break). Weingarden Dec., ¶ 51; Gidali

Decl., ¶ 27. Comparatively, Ms. Campuzano's and Ms. Mousa's fatigue prevent them from working and socializing at the same level they had before their attacks. *See Campuzano*, 281 F. Supp. 2d at 264; *Mousa*, 238 F. Supp. 2d at 9. Nathaniel's family has been made aware that he will never be able to work any type of job, no matter how menial. Daniel Decl., ¶ 18. Ms. Campuzano and Mr. Haim have been able to attend schooling (even at the university level) and work, albeit with difficulty. *See Campuzano*, 281 F. Supp. 2d at 264; *Haim*, 425 F. Supp. 2d at 66. Mr. Blais, adjudged to be the most severely injured of the four preceding plaintiffs, was forecasted as "unlikely" to be able to "live a fully independent life again" or "hold meaningful gainful employment for any extended period"; he was, however, able to speak, read, write, and walk (again, with difficulty). *See Blais*, 459 F. Supp. 2d at 50-51.

91. Indeed, the medical goals for Nathaniel demonstrate the enduring severity of his condition. As described above, Nathaniel's medical providers hope he will be able to improve his mobility so as to decrease the burden of care on the 24-hour caregivers he will need indefinitely. Gidali Decl., ¶ 38; Reichenthal Decl., ¶ 60; Weingarden Decl., ¶ 54. Because he may never be able to speak, Nathaniel's medical providers aspire to implement a consistent form of nonverbal communication, while acknowledging that it is unclear whether he might be able to use communicative assistive devices such as a communication tablet. Gidali Decl., ¶¶ 28, 39; Reichenthal Decl., ¶ 52; Weingarden Decl., ¶ 50. It is possible that Nathaniel may at some point in the future be able to intake nutrition orally. Weingarden Decl. ¶ 49.

92. Nathaniel's dire prognosis is due to the type of TBI he suffered, and the weapon which caused it. Dr. Reichenthal explained that his "perforating" TBI, *i.e.*, where the bullet enters and exits the skull, "is the most devastating of all penetrating traumatic brain injuries and is associated with even higher mortality. For those who do survive, there is a high probability for

permanent neurologic dysfunction.” Reichenthal Decl., ¶ 56. This type of perforating TBI is “the result of high-velocity projectiles fired at close range.” *Id.* Furthermore, when such projectile exceeds 700 meters per second, such as the projectile of the AK-47 rifle used in this case (which has a muzzle velocity of 715 meters per second), its wounding capacity is significantly increased, resulting in more severe brain damage. *Id.*, ¶ 57. Not only do such high-velocity projectiles produce more bone fragmentation, they also impart energy waves which independently damage the brain. *Id.*, ¶¶ 57-58.

93. According to Dr. Reichenthal, “[m]ost patients with such high-speed projectile injuries who survive the initial event tend to recover consciousness, but to a very limited extent—depending on how long the vegetative and minimally conscious states have lasted.” *Id.*, ¶ 61.

94. As compared to Mr. Blais, who received a GCS score of 8 upon admission to the hospital, and who was in a coma, followed by a vegetative state for five weeks altogether, *see Blais*, 459 F. Supp. 2d at 49-50, **Nathaniel received the lowest possible GCS score of 3**, was in a coma followed by a vegetative state for approximately *seven months*, and then a minimally conscious state for over a year until about August 2020, at which point he progressed to a state of some emergence. Reichenthal Decl., ¶¶ 31, 47, 52, 61. (There is no indication that any of the other three preceding plaintiffs were unconscious for more than a few days. *See Haim*, 425 F. Supp. 2d at 63 (“Seth was heavily sedated and unconscious for several days following the attack.”); *Mousa*, 238 F. Supp. 2d at 5 (describing how “Ms. Mousa was not conscious and was not responsive to the paramedics’ instructions,” followed by her “first memories in the hospital were of lying in her hospital bed,” followed by her transfer to the ICU); *Campuzano*, 281 F. Supp. 2d at 263 (describing Ms. Campuzano as “completely disoriented” upon her arrival to the emergency room)).

95. Nathaniel's prolonged vegetative state therefore places him in a much narrower category of patients who may eventually recover the ability to communicate and comprehend than Mr. Blais, who endured a much shorter vegetative state.

III. CONCLUSION

96. Although the plaintiffs in the four preceding cases suffered profoundly tragic injuries, they are (with limitations) able to walk, talk, feed themselves, and read and write. Some hold jobs, socialize, and attend school. Nathaniel cannot, and likely will never be able to, do any of those things.

97. Indeed, Plaintiffs' survey of FSIA cases reveals no case in which a plaintiff suffered a TBI as severe as Nathaniel.

98. Nathaniel Felber's injuries and prognosis therefore warrant a significant increase from the highest damages award in that series of cases, \$20 million.

99. Plaintiffs respectfully request that the Court award Nathaniel a 50% increase of the damages awarded to Mr. Blais: \$30 million.

100. Plaintiffs also respectfully request that the Court award punitive damages and prejudgment interest as proposed in the First PFFCL. First PFFCL, ¶¶ 218-26.

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Respectfully submitted,

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