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September 30, 2013

Via CM/ECF

John Ley, Clerk of Court
United States Court of Appeals for the 11th Circuit
Elbert P. Tuttle Court of Appeals Building
56 Forsyth Street, NW
Atlanta, Georgia 30303

Re: Citation of Supplemental Authority
Jonathan E. Perlman, Esq., Appellant vs. Bank of America, N.A., Appellee
Consolidated Case Nos. 12-13436-EE and 12-14073-EE

Dear Mr. Ley:

Appellee Bank of America, N.A. submits the following response to Appellant Jonathan E. Perlman's September 13, 2013 letters submitted under Rule 28(j). Neither of the cases Appellant draws to the Court's attention help him.

El Camino Resources Ltd. v. Huntington National Bank, 712 F.3d 917 (6th Cir. 2013), involved the question of whether the bankruptcy court's finding in an avoidance proceeding—that a bank lacked good faith—was relevant to whether the bank had actual knowledge of its customer's fraud. The answer was no. *El Camino* has nothing to do with, nor does it undermine, Bank of America's discussion of FUFTA's mere conduit defense, which applies if the defendant did not control the assets and took part in the transaction in good faith. Appellee's Br. at 33. Contrary to Appellant's assertion, the Bank never argued that good faith and lack of actual knowledge are "one [and] the same." Rather, the Bank pointed out that the district court correctly dismissed Appellant's FUFTA claim because it was clear on the face of the complaint that the Bank was a "mere conduit" of the funds.

In re Sentinel Management Group, Inc., 2013 WL 4505152 (7th Cir. Aug. 26, 2013), involved the issue of equitable subordination, not aiding and abetting a tort. To the extent Appellant attempts to draw an analogy between the two types of claims, *In re Sentinel* does not advance his cause. The question on this appeal is whether the district court erred in dismissing the complaint without leave to amend, not whether Appellant's complaint stated an aiding and abetting claim. Appellant's "actual knowledge" arguments impermissibly rely on his proposed second amended complaint, which he did not even attempt to place before the district court until it was jurisdictionally untimely. Appellee's Br. at 19-23. Thus, Appellant's 28(j) letter amounts to

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another attempt to direct this Court's attention to facts that are not relevant to the issues on appeal.

Very truly yours,

/s/ Kim M. Watterson

Kim M. Watterson, Esq.

KMW:sk

cc: William Barry Blum, Esq., *(service via CM/ECF)*
Carmen D. Contreras-Martinez, Esq., *(service via CM/ECF)*

From: ecf_help@ca11.uscourts.gov
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Subject: 12-13436-X Jonathan Perlman v. Bank of America, NA "Response to Supplemental Authority Filed"
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United States Court of Appeals for the Eleventh Circuit

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The following transaction was filed on 09/30/2013

Case Name: Jonathan Perlman v. Bank of America, NA
Case Number: [12-13436](#)
Document(s): [Document\(s\)](#)

Docket Text:

Response to Supplemental Authority (28J) filed by Appellee Bank of America, NA. Service date: 09/30/2013 email - Attorney for Appellants: Blum, Contreras-Martinez; Attorney for Appellees: Culleiton, Hackett, Watterson. (ECF: Kim Watterson)

Notice will be electronically mailed to:

Dora Faye Kaufman
Kim M. Watterson
William Barry Blum
Carmen D. Contreras-Martinez
Mary J. Hackett

The following document(s) are associated with this transaction:

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