

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 13-22589-CIV-WILLIAMS

MIGUEL ANGEL
CORBACHO DAUDINOT,

Plaintiff,

vs.

YASIEL PUIG VALDES, *et al.*,

Defendants.

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ORDER

THIS MATTER is before the Court on Defendants' Motion to Dismiss First Amended Complaint (DE 11). The Court heard oral argument on the Motion on December 2, 2013.

To survive a Rule 12(b)(6) motion to dismiss, a plaintiff must plead sufficient facts to state a claim that is "plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The Court's consideration is limited to the allegations in the complaint. See *GSW, Inc. v. Long Cnty.*, 999 F.2d 1508, 1510 (11th Cir. 1993). All factual allegations are accepted as true and all reasonable inferences are drawn in the plaintiff's favor. See *Speaker v. U.S. Dept. of Health & Human Servs. Ctrs. for Disease Control & Prevention*, 623 F.3d 1371, 1379 (11th Cir. 2010); *Roberts v. Fla. Power & Light Co.*, 146 F.3d 1305, 1307 (11th Cir. 1998). While a plaintiff need not provide "detailed factual allegations," a plaintiff's complaint must provide "more than labels and conclusions." *Twombly*, 550 U.S. at 555

(internal citations and quotations omitted). “[A] formulaic recitation of the elements of a cause of action will not do.” *Id.* Rule 12(b)(6) does not allow dismissal of a complaint because the court anticipates “actual proof of those facts is improbable;” however, the “[f]actual allegations must be enough to raise a right to relief above the speculative level.” *Watts v. Fla. Int’l Univ.*, 495 F.3d 1289 (11th Cir. 2007) (quoting *Twombly*, 550 U.S. at 545).

As the Court stated at oral argument, the allegations of conspiracy liability in the First Amended Complaint (DE 10) are not sufficient to support Plaintiff’s claim under the Torture Victim Protection Act (TVPA). To plead conspiracy liability under the TVPA, Plaintiff must allege sufficient facts to support an inference that: (1) Defendants and the Cuban government agreed to commit a violation of recognized international law—that is, torture; (2) Defendants entered into the agreement with the intent or purpose of facilitating the commission of the violation; and (3) the Cuban government committed the violation. See *In re Chiquita Brands Int’l, Inc. Alien Tort Statute and Shareholder Derivative Litigation*, 792 F. Supp. 2d 1301, 1344 (S.D. Fla. 2011) (citations omitted).

In the First Amended Complaint, Plaintiff alleges only that “Defendants had entered into a conspiracy and a joint plan with the Cuban government to effectuate a variety of purposes that were of mutual benefit to Defendants and the Cuban Government.” (DE 10, 1st Am. Compl. ¶ 213). Such vague and conclusory allegations of conspiracy with the Cuban government are insufficient, because they do not raise the right to relief for a violation of the TVPA above the speculative level. See *Sinaltrainal v. Coca-Cola Co.*, 578 F.3d 1252, 1270 (11th Cir. 2009), *abrogated on other grounds by Mohamed v. Palestinian Authority*, 132 S. Ct. 1702 (2012).

Accordingly, pursuant to the discussions held at oral argument and the representations made at that time, the Court grants Plaintiff leave to file a Second Amended Complaint to address the pleading deficiencies the Court has identified. Plaintiff shall file any Second Amended Complaint by January 13, 2014.

If Defendants choose to file a Motion to Dismiss the Second Amended Complaint, Defendants need not re-file or re-submit those arguments already made to the Court; previous motions will be considered. However, Defendants may file a supplement regarding any additional allegations made by Plaintiff. The supplement is not to exceed five pages in length and should focus only on the issues identified in this Order. Plaintiff is likewise limited to five pages in its Response, and Defendants are limited to three pages in their Reply.

DONE AND ORDERED in chambers in Miami, Florida, this 19th day of December, 2013.


KATHLEEN M. WILLIAMS
UNITED STATES DISTRICT JUDGE