

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

MIGUEL ANGEL CORBACHO DAUDINOT.

Plaintiff,

CASE NO. 1:13-cv-22589-KMV

v.

YASIEL PUIG VALDES a/k/a YASIEL PUIG  
and MARITZA VALDES GONZALEZ.Defendants.  

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**PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION TO  
DISMISS COMPLAINT FOR FAILURE TO STATE A CLAIM**

Plaintiff, MIGUEL ANGEL CORBACHO DAUDINOT, through counsel, files this Response to Defendant's Motion to Dismiss his Amended Complaint and in support thereof states:

1. Plaintiff originally filed a complaint [DE 1] under the Torture Victim Protection Act ("TVPA") against the Defendants in the instant case on July 18, 2013, and subsequently filed his First Amended Complaint [DE 10] on September 12, 2013, in response to Defendants' Motion to Dismiss [DE 7].

2. Defendants filed a Motion to Dismiss Plaintiff's First Amended Complaint [DE 11], which alleged, *inter alia*, that the TVPA does not apply extraterritorially, that the Complaint's allegations did not satisfy the TVPA's statutory definition of torture, and that the Complaint's allegations failed to state a claim for Secondary Liability under the TVPA.

3. During the oral argument held on December 2, 2013, the Court focused on the pleading requirements for secondary liability under the TVPA, intimating to both parties that at least at the pleading stage, Plaintiff's allegations of torture likely met the standard of torture established by the TVPA, and noting that the ruling in *Kiobel v. Royal Dutch Petroleum Co.*, 133 S. Ct. 1659 (2013) dealt with the Alien Tort Statute, not the TVPA, and that the solitary ruling out of the Texas court in *Murillo v. Bain*, 2013 WL 1718915 (S.D. Tex. 2013) was not binding on any other courts.

4. In this court's Order [DE 23], the court stated that 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', and that 'such vague and conclusory allegations of conspiracy with the Cuban government are insufficient because they do not raise the right to relief... above the speculative level'".

5. In order to "address the pleading deficiencies that the Court has identified", the Court granted the Plaintiff leave to file a Second Amended Complaint, instructing the Defendants that if they choose to file a Motion to Dismiss the Second Amended Complaint, not to re-file or re-submit those arguments made to the Court during previous motions, since those motions will be considered.

6. Despite the court's directive not to re-submit previous arguments, Defendants filed a Motion to Dismiss [DE 28] which once again alleges that the Complaint's allegations failed to state a claim for Secondary Liability under the TVPA, that the TVPA does not apply extraterritorially, that the Complaint's allegations did not satisfy the TVPA's statutory definition of torture.

7. As directed by the Court, the Plaintiff shall rely on the arguments he propounded in his Response in Opposition to Defendant's Motion to Dismiss [DE 12], his Sur-Reply in Opposition to Defendant's Reply [DE 20], his oral argument on December 2, 2013 and the arguments advocated in this Response.

### ARGUMENT

When considering a Rule 12(b)(6) motion to dismiss for failure to state a claim, the court construes the complaint in the light most favorable to the plaintiff and accepts all well-pled facts alleged by in the complaint as true. *Sinaltrainal v. Coca-Cola Co.*, 578 F.3d 1252, 1260 (11<sup>th</sup> Cir. 2009). The Supreme Court held in *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009) that "to survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'"<sup>1</sup> *Id.* (quoting *Twombly*, 550 U.S. at 570, 127 S.Ct. 1955). And the court in *Twombly* stated that factual allegations in a

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<sup>1</sup> The court in *Iqbal* held that while Rule 8 of the Federal Rules of Civil procedure does not require detailed factual allegations, it does demand "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Iqbal*, 129 S.Ct. at 1949

complaint do not need to be detailed but, “must be enough to raise a right to relief about the speculative level on the assumption that all the allegations in the complaint are true (even if doubtful in fact).” *Twombly*, 550 U.S. at 555.<sup>2</sup> See also *Mamani v. Berzain*, 654 F.3d 1148, at \*3 (11<sup>th</sup> Cir. 2011). The inference of liability reached in the complaint need not be the *only* reasonable conclusion drawn by the facts alleged in the complaint, but may be one of many reasonable readings established by the Plaintiff when viewed in the light most favorable to the Plaintiff. *Aldana v. Del Monte Fresh Produce, N.A., Inc.*, 416 F.3d 1242, 1249 (11<sup>th</sup> Cir., 2005)

In reference to the elements required for a TVPA claim, the undisputed facts are as follows: Plaintiff is an individual, who is suing Defendants in a civil action, for torture he suffered due to the actions of Defendants, who were acting under actual or apparent authority, or color of law.<sup>3</sup> The state action requirement of the TVPA is satisfied by the fact that the individuals subjecting Plaintiffs to torture are the prison guards and officers of the Cuban government.

In order to hold Defendants liable for conspiracy, Plaintiff needs to plead that (1) two or more persons agreed to commit a wrongful act, (2) [Defendant] joined the conspiracy knowing of at least *one of the goals* of the conspiracy and intending to help accomplish it, and (3) one or more of the violations was committed by someone who was a member of the conspiracy and acted in furtherance of the conspiracy. *Cabello v. Fernandez-Larios*, 402 F.3d 1148, 1159 (11<sup>th</sup> Cir. 2005). See *Chiquita* 211 WL 2169873.

To find aiding and abetting liability, Plaintiff must plead that (1) Cuba committed an international-law violation (in this case prolonged arbitrary detention and/or torture), (2) Defendants acted with the purpose or intent to *assist* in that violation, and (3) Defendants’ assistance substantially contributed to Cuba’s commission of the violation. See *Cabello* 402 F.3d and *Chiquita* 211 WL 2169873.

The facts presented in the Second Amended Complaint are more than unadorned accusations. A signed affidavit from an eyewitness, Yunior Despaigne, was incorporated as part

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<sup>2</sup> A complaint should only be dismissed if “it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim would entitle him to relief” *Aldana v. Del Monte Fresh Produce, N.A., Inc.*, 416 F.3d 1242, 1246 (11<sup>th</sup> Cir., 2005)(quoting *Jones v. Am. Gen. Life & Accident Ins. Co.*, 370 F.3d 1065, 1069(11<sup>th</sup> Cir. 2004))

<sup>3</sup> The Torture Victims Protection Act, 28 U.S.C. §1350(2)(a) establishes that “an individual who, under actual or apparent authority, or color of law, of any foreign nation subjects an individual to torture, shall, in a civil action, be liable for damages to that individual.”

of the Complaint as Exhibit D The undisputed facts, as presented and accepted as true in the Second Amended Complaint, are as follows:

- Puig joined the conspiracy to incarcerate and torture individuals in September or October 2009, after he was sanctioned from playing baseball after he was caught attempting to leave Cuba.
- After he was sanctioned, he met with Higinio Vélez (“Velez”), the Cuban government’s commissioner of baseball, an extremely high ranking official, who told Puig that if Puig worked with the state security to accuse people of Human Trafficking, he would guaranteed that Puig would get back on the national team and the National Series team. Puig met with Vélez four or five times.
- Puig accepted Vélez’s offer and accused at least six individuals, including Plaintiff, whose names were provided in the Complaint as Ivan Hernandez Concepcion, Paulito, Odalys Diaz Gonzalez, Armando Muñis, and Alexander Orozco Noa, of Human Trafficking.
- Puig admitted to Despaigne that he was working with the Cuban government to accuse people of Human Trafficking in order to get back on the team.
- Puig admitted to Despaigne the he knew that Human Trafficking was a political crime and that the reason he was accusing people of Human Trafficking was because it was very serious and it was the only crime that State Security cared about.
- Puig stated that the more people he accused of Human Trafficking, the better it was be for him.
- Puig admitted to Despaigne that he knew that the people he accused were being beaten, and held in solitary confinement for days without food and water, and that their lives were being threatened, but that he intended to testify against them anyway.
- Puig openly demonstrated disregard for the torture suffered by those he sent to jail by stating that the persons he accused “probably” wouldn’t be killed because “guards hardly ever beat prisoners to death anymore.”
- Puig openly admitted to Despaigne that he was an informant to the government, and he boasted of the number of people he had sent to prison.
- Puig was rewarded for his participation with Cuban state security by being offered lavish gifts, such as a week’s stay in a lavish mansion that was fully stocked with food and alcohol.
- After accusing several people of Human Trafficking, Puig was readmitted into the Cuban baseball team.
- Puig and his mother, Valdez, worked with INDER government officials, named ROBERTO MARTINEZ AROCHE (“Aroche”), Deputy Director of the Provincial Sports in Cienfuegos, and LIVAN ANGARICA GONZALEZ (“Gonzalez”), the coach of Cuban national Series baseball team of Cienfuegos, as well as members of the Cuban state security, such as YASSER BRITO MOYA, to accuse Plaintiff and Alexander Orozco Noa of Human Trafficking.
- Puig and His mother signed declarations against Plaintiff and Alexander Orozco Noa of Human Trafficking (Exhibits A and B, respectively).
- Puig singled out Plaintiff in a photograph for State Security (Exhibit E)
- Puig and his mother testified against Plaintiff and Alexander Orozco Noa in trials accusing them of Human Trafficking.

- The Cuban trial against Plaintiff occurred after many months of torture in prison, where the torture of the Plaintiff was apparent to Defendants, who testified against him in court.

The allegations presented by Plaintiff in his Complaint do more than assert generalized allegations of collusion between Cuban authorities and the Defendants. The Plaintiff provides the date when the conspiracy began, the dates on which the Valdes and Puig accused the Plaintiff of offering to smuggle Puig out of Cuba, Puig's admission that he knew that the severity of the treatment the individuals he accused were receiving in prison, Puig's admission of working with the state security to secure his position on the baseball team, the dates that Defendants appeared in court and the testimonies that they provided on those dates, the actions that Valdes and Puig took in furtherance of the conspiracy or to aid and abet the Cuban government in its wrongful acts, the Defendants' own words and signed accusations, along with the names of several state actors from the DCSE, the coach for the National Team, and the court system. In addition, Plaintiffs have provided a harrowing, comprehensive and disturbing account of the acts committed against them in the Cuban prison by the authorities and its lasting effects on them.

Respectfully Submitted,

*s/Kenia Bravo*

Kenia Bravo, Esq., FBN 68296

#### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of this document was filed in federal court using CM/ECF on March 7, 2014.

*s/Kenia Bravo*

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