

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

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

MIGUEL ANGEL CORBACHO
DAUDINOT

Plaintiff,

v.

YASIEL PUIG VALDES a/k/a
YASIEL PUIG and MARITZA
VALDES GONZALEZ,

Defendants.
_____ /

**DEFENDANTS' REPLY MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS SECOND AMENDED COMPLAINT**

Defendants, Yasiel Puig and Maritza Valdes Gonzalez, pursuant to the Court's order dated December 20, 2013 ("Order") [DE 23], submit this reply memorandum in support of their motion to dismiss the second amended complaint [DE 28].

Argument

Plaintiffs' response to defendants' motion to dismiss [DE 31] fails to address the fundamental legal issue articulated by the Court at the December 2, 2013 hearing on defendants' previous motion to dismiss and in its subsequent Order – namely, that in order to state a claim for secondary liability under the Torture Victims Protection Act ("TVPA"), plaintiff must allege with factual particularity that defendants entered into an agreement with the Cuban government to torture plaintiff. (Order at 2.) See also *In re*

Chiquita Brands Int'l Alien Tort Statute and Shareholder Deriv. Litig., 792 F. Supp. 2d 1301, 1344 (S.D. Fla. 2011).

Despite plaintiff now being on the third iteration of his complaint, he still does not allege with factual specificity that defendants entered into an agreement with the Cuban government to torture plaintiff. Unable to point to any such allegations in his latest complaint, plaintiff's response in opposition to defendants' motion to dismiss simply rehashes his lengthy – and ultimately irrelevant – allegations about a supposed conspiracy in which defendants agreed with the Cuban government to testify against plaintiff and others for engaging in human trafficking.¹ [DE 31 at 4.]

In so doing, plaintiff ignores what the Court required of him, (see Order at 2), and, in effect, asks the Court to speculate that defendants must have agreed to plaintiff's torture at the hands of the Cuban government when they agreed to testify against plaintiff. That does not suffice. *Watts v. Fla. Int'l Univ.*, 495 F.3d 1289 (11th Cir. 2007), quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 545 (2007) (“factual allegations must be enough to raise a right to relief above the speculative level”). As the Court noted, 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. (Order at 2.) See *Sinaltrainal v. Coca-Cola Co.*,

¹ Because this matter is before the Court on a motion to dismiss, the second amended complaint's well-pled allegations must be accepted as true. That said, it bears underscoring that defendants testified truthfully in Cuba about plaintiff's human trafficking activities and that this lawsuit is nothing more than a cynical effort by plaintiff to exploit the fact that defendants, having defected from Cuba, are in no position to ask the Cuban government (defendants' supposed co-conspirators) for details about the investigation, prosecution and incarceration of plaintiff.

578 F.3d 1252, 1270 (11th Cir. 2009), *abrogated on other grounds by Mohamed v. Palestinian Authority*, 132 S. Ct. 1702 (2012).

Conclusion

For these reasons, and for the reasons set forth in defendants' motion to dismiss plaintiff's first amended complaint [DE 11] and defendants' motion to dismiss plaintiff's second amended complaint [DE 28], plaintiff's second amended complaint must be dismissed, with prejudice.

Respectfully submitted,

SANTINI LAW

1001 Brickell Bay Drive, Suite 2650

Miami, Florida 33131

Tel: (305) 372-7307

Fax: (305) 372-7308

ssantini@santinilawfirm.com

By: /s/ Sean R. Santini

Sean R. Santini

Florida Bar No. 832898

CERTIFICATE OF SERVICE

I hereby certify that on March 13, 2014, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Sean R. Santini
Sean R. Santini

SERVICE LIST

Kenia Bravo

avelinogonzalez2@bellsouth.net

Avelino J. Gonzalez, P.A.

6780 Coral Way

Miami, FL 33155

Avelino Jose Gonzalez

avelinogonzalez@bellsouth.net

Avelino J. Gonzalez, P.A.

6780 Coral Way

Miami, FL 33155