IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND GREENBELT DIVISION

WISSAM ABDULLATEFF SA'EED AL-QURAISHI, *et al*.,	)	
Plaintiffs,	)	
	)	Civil Action No. 8:08-cv-01696-PJM
v.	)	
ADEL NAKHLA., *et. al*.,	)	
Defendants	)	

PLAINTIFFS' OPPOSITION TO NAKHLA'S MOTION TO DISMISS

Adel Nakhla personally tortured many of the victims. He has confessed to doing so, and his actions were captured in photographs. His "hands-on" role in the torture conspiracy is detailed in the Second Amended Complaint ("SAC"). Nakhla tries to dismiss the action based on the Supreme Court decision in *Bell Atl. Corp. v. Twombly*, 127 S. Ct. 1955, 1964 (2007), arguing that the torture victims' SAC allegation that Nakhla participating in the torture conspiracy are mere conclusions made without any supporting evidence or specificity. This argument lacks any merit whatsoever.[1]

STATEMENT OF FACTS

The SAC alleges that Adel Nakhla conspired with others to torture the innocent Iraqis named as victims in this case. SAC ¶ 1. The SAC alleges the following: Nakhla confessed to

[1] To the extent that Defendant L-3 makes the same arguments, this opposition is equally applicable to L-3's claims. This opposition also incorporates by reference Plaintiff's Opposition to L-3's Motion to Dismiss, filed concurrently.

torturing detainees during the military investigations. SAC ¶¶ 416-417. Nakhla's participation in the conspiracy has been established by photographs and sworn testimony from his co-conspirators. SAC ¶¶ 415 -417.

Nakhla, acting in conspiracy with military personnel, forced prisoners into painful stress positions; stripped them naked; sexually humiliated and assaulted them; deprived them of sleep; subjected them to extreme temperatures; threatened them with dogs; and physically assaulted them. SAC ¶ 419.

Nakhla personally held Mr. Al-Quraishi down while a co-conspirator poured feces on him; personally forced Mr. Al-Quraishi into the showers, and forcibly shaved off all of his hair - including his eyebrows; and personally stripped Mr. Al-Quraishi naked and poured cold water on him. SAC ¶¶ 16-18.

Nakhla and other co-conspirators stripped Mr. Al-Quraishi and other prisoners naked. They placed Mr. Al-Quraishi on the ground, and placed a box on top of him. They then stacked another prisoner on top of the box, and continued to pile prisoners and boxes in alternating rows on top of Mr. Al-Quraishi. SAC ¶ 19.

Mr. Al-Quraishi personally and directly observed L-3 employee Nakhla forcibly holding down a fourteen-year old boy as his co-conspirator raped the boy by placing a toothbrush in his anus. SAC ¶ 20.

Nakla was acting as part of a conspiracy with a common purpose to torture. SAC ¶ ¶ 428, 451, 454. The conspirators took steps to hide the conspiracy, including destroying records,

hinder reporting, and misleading government officials. SAC ¶¶ 434, 445. Nakhla verbally, and by actions, conveyed his willingness to participate in the conspiracy. SAC ¶ ¶ 422, 424. [2]

ARGUMENT

Defendant Nakhla, in addition to joining L-3's motion to dismiss, brings on a separate motion to dismiss, arguing that the SAC lacks sufficient specificity and fails to plead overt acts by Nakhla capable of making him liable to all of the victims. This argument lacks any merit under controlling decisional law.

Plaintiffs have set forth "more than labels and conclusions, and a formulaic recitation" of each cause of action. See L-3 Mem. at 40, quoting *Twombly*, 127 S. Ct. at 1964-65. This Circuit has held that "[w]hile a plaintiff is not charged with pleading facts sufficient to prove her case, as an evidentiary matter, in her complaint, a plaintiff *is* required to allege facts that support a claim for relief." *Bass v. E.I. DuPont de Nemours & Co.*, 324 F.3d 761, 765 (4th Cir. 2003) (emphasis in original). Plaintiffs have done so.

As outlined above in the Statement of Facts, Nakhla has admitted he participated in a conspiracy to torture detainees. His co-conspirators have testified under oath to his participation in the conspiracy. One of the victims in this lawsuit identifies Nakhla as one of those who tortured him.

These allegations (which must be taken as true, *Ibarra v. United States*, 120 F.3d 472, 474 (4th Cir. 1997)), suffice to plead Nakhla' participation in a civil conspiracy. The Fourth Circuit Court of Appeals has stated that "[a] conspiracy claim does not require an express

[2] The SAC pleads the facts known to date based upon, among other sources, (1) military investigative reports by Generals Taguba, Fay and Jones, (2) sworn testimony about Nakhla's participation in the conspiracy elicited from his co-conspirators during their court martials, and (3) photographic evidence of Nakhla participating in the conspiracy.

agreement; proof of a tacit understanding suffices." *Tysons Toyota, Inc. v. Globe Life Insurance Co.*, 1994 U.S. App. LEXIS 36692, *15 (4th Cir. Dec. 29, 1994) (citing *Halberstam v. Welch*, 705 F.2d 472, 481 (D.C. Cir. 1983)). Similarly, in Maryland, all that is required is "unity of purpose or a common design and understanding, or a meeting of the minds in an unlawful arrangement." *AP Links, LLC v. Global Golf, Inc.*, 2008 U.S. Dist. LEXIS 70870 at *14 (D. Md. Sept. 2, 2008). *See also Twombly*, 127 S. Ct. at 1965 ("Asking for plausible grounds to infer an agreement does not impose a probability requirement at the pleading stage; it simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence of illegal agreement."). *See also Mackey v. Compass Marketing, Inc*., 892 A.2d 479, 485 (Md. 2007).

As summarized above in the Statement of Facts, the SAC identifies Nakhla as the person who tortured Mr. Al-Quraishi, and pleads a litany of overt acts by Nakhla made in furtherance of the common scheme to torture. Among other heinous acts, Nakhla held down a 14-year old boy as his co-conspirator raped him. When proven at trial, these acts will establish the victims' claims against Nakhla and his co-conspirators. *See Tysons Toyota v. Globe Life Ins. Co.*, 1994 U.S. App. LEXIS 36692 (4th Cir. Dec. 29, 1994) (error to dismiss claims alleging facts sufficient to support conspiracy liability); *Scinto v. Preston*, 170 Fed. Appx. 834, 836 (4th Cir. 2006); *Barrueto v. Larios*, 205 F. Supp. 2d 1325, 1331-1333 (S.D. Fla. 2002).[3]

There is no need for the victims to plead each and every overt act by each and every conspirator. *Yates v. Hagerstown Lodge*, 878 F. Supp. 788, 803 (D.Md. 1995) ("[Plaintiff] need not plead an overt act against each defendant since a single act by one conspirator may sustain a

[3] The SAC also establishes liability for aiding and abetting, which requires only that Nakhla knowingly and substantially assist someone in the commission of a wrongful act that hurt one of the plaintiffs. *Halberstam*, 705 F.2d at 477. Forcibly holding a young boy down while another person rapes him with a toothbrush satisfies that standard.

conspiracy claim"); *see also Waller v. Butkovich*, 584 F.Supp. 909 (D.C.N.C. 1984) ("An overt act need not be pleaded against each defendant, because a single overt act by just one of the conspirators is enough to sustain a conspiracy claim even on the merits").

None of the decisional law cited by Nakhla supports that premise. In *Major v. Plumbers Local Union No*. 5, 370 F. Supp. 2d 118, 129 (D.D.C. 2005), the Court dismissed the complaint because it failed to plead facts necessary to support the discrimination claim. In *Miller v. Pacific Shore Funding*, 224 F.Supp.2d 977 (D.Md.2002), *Herlihy v. Ply-Gem Industries, Inc.*, 752 F.Supp. 1282 (D.Md., 1990) and *Dash v. Firstplus Home Loan Trust*, 248 F.Supp.2d 489 (M.D.N.C. 2003), the Court dismissed the complaints because plaintiffs lacked injury sufficient to confer standing.

Nakhla also lacks any legal support for his argument that he should not be held liable for any acts that occurred after he departed Iraq. *Nakhla Mem. at 7-8.* All co-conspirators do not have to be physically joined at the hip. *See, e.g.*, *Price v. Henkel*, 216 U.S. 488, 493 (1910) (no need for physical presence at the formation of the conspiracy). Nakhla never took any affirmative action to withdraw from the conspiracy; so he remains liable for all of its acts. *United States v. West*, 877 F.2d 281, 289 (4th Cir. 1989) (conspirator must affirmatively act to defeat or disavow the purposes of the conspiracy); *United States v. Walker*, 796 F.2d 43, 49 (4th Cir. 1986) (mere cessation of conduct insufficient for withdrawal); *United States v. U.S. Gypsum Corp.*, 38 U.S. 422, 464-65 (1978) (withdrawal had to be established by either affirmative notice to every other member of the conspiracy or by disclosure of the illegal enterprise to law enforcement officials); *United States v. Boyd*, 1992 U.S. App. LEXIS 19155 at *2-3 (4th Cir. Aug. 13, 1992).

CONCLUSION

Nakhla's motion to dismiss lacks any merit whatsoever. For all the foregoing reasons, this Court should deny Nakhla's motion to dismiss.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 2d day of January, 2009, I caused the foregoing Opposition to Motion to Dismiss to be emailed and sent via regular mail, postage prepaid, to the following:

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