UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 1:20-cv-20157-WILLIAMS-TORRES

MARLENE CUETO IGLESIAS, an individual,

Plaintiff,

v.

PERNOD RICARD, Public Société Anonyme,

Defendant.
_____/

DEFENDANT PERNOD RICARD S.A.'S MOTION TO DISMISS THE COMPLAINT UNDER FED. R. CIV. P 12(B)(1), 12(B)(2), 12(B)(5) AND 12(B)(6), AND MEMORANDUM OF LAW IN SUPPORT

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INTRODUCTION[1]

Plaintiff Marlene Cueto Iglesias ("Cueto") asserts that in 1963, a set of assets located in Havana, Cuba that were allegedly owned by a Cuban cognac company called Conac Cueto (the "Company" or "Conac Cueto"), was expropriated by the Cuban government. Cueto alleges, without support, that the Company was eventually folded into a state-owned enterprise and its distilled spirits assets were repurposed and made a part of the "Havana Club" rum brand thirty years later in 1993, when Pernod Ricard Public Société Anonyme ("PRSA" or "Pernod") started trading in Cuba with a state-owned entity. Cueto alleges that Pernod has, since then, distributed Havana Club rum, which was "partially derived from Conac Cueto which is confiscated property owned by" her family.

Cueto brings her claims under Title III of the Helms-Burton Act, which provides that anyone who "traffics in property" expropriated by the Cuban Government on or after January 1, 1959, may be liable for money damages in specified amounts to "any United States national who owns the claim to such property." 22 U.S.C. § 6082(a)(1)(A). Under the Act, a person "traffics" in "confiscated" property if that person "knowingly and intentionally" engages in a commercial activity "using or otherwise benefiting from confiscated property," or "causes, directs, participates in, or profits from" trafficking by another person, or otherwise engages in trafficking through another person. *Id.*, §§ 6023(13)(A)(ii)-(iii).

The Complaint should be dismissed under any of four separate and independent provisions of Rule 12 of the Federal Rules of Civil Procedure. *First*, the Court lacks personal jurisdiction over PRSA, a French company headquartered in Paris, on the face of the Complaint and on the declaration being presented simultaneously to the Court. This evidence demonstrates that PRSA does not do business in Florida, is not licensed in Florida, and does not have an office or physical presence in Florida. The Court accordingly lacks general personal jurisdiction over PRSA. PRSA's declarant also explains that PRSA does not manufacture cognac in Cuba, and it does not distribute Havana Club branded rums in Florida or anywhere in the United States, since Cuban-origin spirits cannot be sold in the U.S. pursuant to U.S. embargo regulations. Cueto cannot, consequently, establish specific personal jurisdiction over PRSA. *Don King Prods., Inc. v. Mosley*, 2016 WL 3950930, *3–4 (S.D. Fla. Jan. 27, 2016) (Williams, J.) (dismissing for lack of specific

[1] Unless otherwise noted, all emphasis is added and internal citations and quotations omitted.

jurisdiction where no "connexity" between claim and defendant's contacts with forum).

Second, Cueto failed to properly serve PRSA in accordance with the Hague Convention and the prescribed laws of France for service of process. The notice of service was not addressed, directed to, or served on, a legal representative, the representative's proxy, or a person empowered to accept service of process in accordance with French law.

Third, the Court lacks subject matter jurisdiction because Cueto lacks standing. Cueto's claim that the Cuban government expropriated Conac Cueto's property in Cuba, folded Conac Cueto's described assets into a new company and rebranded its offerings "Havana Club," fails to allege an injury, or even the exacerbation of an injury, that is fairly traceable to PRSA.

Fourth, Cueto has failed to sufficiently or plausibly state a claim under the Helms-Burton Act. That Act is not generally applicable; it has a host of specific elements that must be pled and proved to sustain a claim and which are noticeably absent from the Complaint.

For all of these reasons, the Complaint should be dismissed pursuant to Rule 12(b)(1), 12(b)(2), 12(b)(5), and 12(b)(6).

FACTUAL BACKGROUND

A. Cueto, Cueto's Father, And Cuba's Alleged "Confiscation" Of Conac Cueto

Cueto claims that she is an American citizen who resides in Los Angeles, California. Complaint (ECF 1) ("Compl.) ¶ 1. She alleges that her father, Fernando Tomas Cueto Sanchez, founded a company called Conac Cueto, C.I.A., a maker of "cognac and other spirits" in Havana, Cuba (which she describes as the "Subject Property") "in the early 1950's." *Id*. ¶¶ 13, 15-16.[2] Conac Cueto, Plaintiff alleges, was expropriated in 1963 by the Cuban government. *Id*. ¶ 16. Property taken at that time "included intellectual property, oak barrels, bottles, labels, corks, tasters, meters and other assets the Company used in the production and sale of cognac." *Id*. ¶ 17. Cueto asserts, without support, that she is "the rightful owner of a 100% interest in certain property" of Cognac Cueto. *Id*. ¶ 13. She does not state, however, from whom, how, or when she acquired this interest.

Cueto alleges that following the alleged nationalization of the Company, the Cuban government at some point folded its assets into a state-controlled entity, the "Cuban Government

[2] "Coñac" is the Spanish word for cognac.

Rum Company," supposedly an amalgamation of various Cuban spirit companies. *Id.* ¶ 18. Conac Cueto's purported brands, she asserts, were "eventually rebranded as Havana Club" (at some unspecified date in time), and that Cuba "maintains possession of the Subject Property and has not paid any compensation to Plaintiff for its seizure." *Id.* ¶¶ 18-19. Moreover, Cueto alleges that since 1963, "the communist Cuban Government … [has] used the rights in the Subject Property to produce and sell the Company's product lines and utilize the intellectual property of the Company under the name Havana Club without consent … or compensation[.]" *Id.* ¶ 21.

Thirty years after the alleged expropriation, Cueto states, PRSA "knowingly and intentionally commenced, conducted, promoted and distributed its Havana Club brand and line of products worldwide using the Subject Property … without the authorization of Plaintiff." *Id.* ¶ 24. She further contends that PRSA has "knowingly and intentionally participated in and profited from" the Cuban government's alleged expropriation of Conac Cueto. *Id.* ¶ 25. She fails, however, to allege or provide a reasonable inference that:

- the Havana Club rum products PRSA distributes are the assets purportedly nationalized in 1963;
- that the "barrels, bottles, labels, corks, tasters, meters and other assets" expropriated in 1963 were in use in 1993, when PRSA began distributing Havana Club products, and thereafter;
- that Conac Cueto's wholly unspecified intellectual property – whether trade secrets associated with Conac Cueto's products, trademarks associated with its brand names, logos, or labels, or otherwise – was exploited by the Cuban government after 1963, or after 1993; or
- that Conac Cueto had any rights or property related to non-cognac spirits, or to the name "Havana Club."

Nor does Cueto support her contention that PRSA "knowingly and intentionally" engaged in commercial activities involving assets seized by Castro's government when it allegedly agreed to distribute products with trade names different from Conac Cueto's assets that were purportedly expropriated thirty years before.

Notably, Cueto also fails to allege that her father was a United States national as of the date of enactment of the Helms Burton Act, or that she acquired ownership of the claim before enactment of Title III, or that a U.S. national owned the claim at that point in time, *i.e.*, March 12, 1996.

B. Pernod Ricard, Public Société Anonyme

Importantly, Cueto concedes that "Pernod is a French corporation organized under foreign law," with its "principal place of business" in Paris, France. Compl. ¶ 2. She contradicts herself by claiming that "Defendant resides in this judicial District" and offers no allegations in support of this alleged residence. *Id*. ¶ 6. Instead, Cueto alleges that "through its *subsidiaries*," PRSA "does business in the State of Florida." *Id*. ¶ 2. Cueto alleges further that "Pernod has sufficient minimum contacts with the State of Florida," because "through its agents and subsidiaries [it] distributes a portfolio of liquor products." *Id*. ¶ 3. Cueto claims that "Pernod owns rights in the brand Havana Club, which was partially derived from Conac Cueto." *Id*. ¶ 4.

However, Cueto fails to allege that PRSA itself does business in Florida or, is even licensed to do so. In fact, PRSA has no connection to Florida. *See* Declaration of Antoine Brocas ("Decl.") ¶¶ 5-6, attached as Exhibit 1. PRSA was created in 1975 through the merger of two French anise-based spirits companies: Pernod, which was founded by Henri-Louis Pernod in 1805, and Ricard, founded by Paul Ricard in 1932. *Id*. ¶ 3. It is registered as a *société anonyme* in the French Commercial Register (*Registre du commerce et des sociétés*) for Paris, is organized under the laws of, and has its principal place of business in, France, and its stock trades on the Euronext Paris stock exchange. *Id*. ¶ 4. PRSA's headquarters are located in Paris at 12 place de Etats-Unis, 75783, Paris, France, Cedex 16, and the company's executives and corporate representative authorized to accept service of process maintain their offices at that location. Decl. ¶ 4.

PRSA is not registered to do business in Florida, does not have a registered agent in Florida, and has no physical presence in Florida. *Id*. ¶ 5. Specifically, PRSA does not currently, and to the best of the declarant's knowledge, at no time relevant to the litigation, has it:

a. Had offices, a mailing address, a telephone number, facilities, employees, officers, or directors in Florida.
b. Had any investments or bank accounts in Florida.
c. Owned or leased any real property in Florida.
d. Owned or leased any personal property in Florida.
e. Entered into any contracts in Florida.
f. Been incorporated in or registered to do business in Florida.
g. Held any license or registration in Florida.
h. Purchased insurance in Florida.

i. Purchased equipment, supplies, or raw goods in Florida.

j. Filed any taxes or administrative reports in Florida.

k. Consented to the jurisdiction of any court in Florida.

Id. ¶ 6.

PRSA does not make sales of wine or spirits directly to anyone in Florida, and is not a party to any distribution agreements in the United States. *Id*. ¶ 23. PRSA has never produced any cognac products in Cuba and it does not now, and has never, produced products under the "Conac Cueto" brand or label. *Id*. ¶¶ 9-11. PRSA does not export to or distribute in the U.S. any product of Cuban origin, and is precluded from doing so by the United States trade embargo against Cuba. *Id*. ¶ 12; *see also* 31 C.F.R. § 515.204 (prohibiting the transport, import, or commercial transaction of merchandise that is of Cuban origin, was located in or transported from or through Cuba, or is made or derived, in whole or in part, from materials grown, produced or manufactured in Cuba).

ARGUMENT

I. THE COURT SHOULD DISMISS THE COMPLAINT BECAUSE IT LACKS PERSONAL JURISDICTION OVER PERNOD

This Court lacks personal jurisdiction over PRSA, a foreign corporation, regarding activity and claims alleged to have occurred entirely outside the United States. Where, as here, jurisdiction is "based on a federal question arising under a statute that is silent regarding service of process, Rule 4(e) of the Federal Rules of Civil Procedure directs us to look to the state long-arm statute in order to determine the existence of personal jurisdiction." *Sculptchair, Inc. v. Century Arts, Ltd.*, 94 F.3d 623, 626–27 (11th Cir. 1996). "Since the extent of the long-arm statute is governed by Florida law, federal courts are required to construe it as would the Florida Supreme Court." *Cable/Home Commc'n Corp. v. Network Prods.*, 902 F.2d 829, 856 (11th Cir.1990). That means the long-arm statute should be "strictly construed." *Sculptchair*, 94 F.3d at 627. Under Florida's long-arm statute, a defendant may be subject to personal jurisdiction in two ways: (1) general ("all-purpose") personal jurisdiction if it engages in "substantial and not isolated activity" in Florida, or (2) specific personal jurisdiction over suits that "arise out of" one of the acts specified in the long-arm statute. *Carmouche v. Tamborlee Mgmt., Inc.*, 789 F.3d 1201, 1203–04 (11th Cir. 2015) (citing §§ 48.193(1)(a)&(2), Fla. Stat.); *Daimler AG v. Bauman*, 571 U.S. 117, 121 (2014).

The plaintiff bears the "initial burden of alleging in the complaint sufficient facts to make out a prima facie case of jurisdiction." *United Techs. Corp. v. Mazer*, 556 F.3d 1260, 1274 (11th

Cir. 2009). Vague and conclusory allegations are insufficient. *Snow v. DirecTV, Inc.*, 450 F.3d 1314, 1318 (11th Cir. 2006). However, the analysis is not confined to the Complaint's four corners or the need to take all well-pled factual allegations as true. "Even where a plaintiff establishes a *prima facie* case of jurisdiction, if the "defendant challenges jurisdiction by submitting affidavit evidence in support of its position, the burden traditionally shifts back to the plaintiff to produce evidence supporting jurisdiction." *Mazer*, 556 F.3d at 1274 (considering evidence outside the four corners of the complaint).

Cueto's conclusory allegations regarding PRSA's connection to Florida, unsubstantiated by fact, are insufficient to establish a *prima facie* case of jurisdiction. Regardless, the declaration submitted to the Court by PRSA clearly demonstrates that personal jurisdiction does not exist in this case.[3]

A. Cueto Cannot Establish General Personal Jurisdiction Over Pernod

Cueto's attempt to invoke general personal jurisdiction over PRSA may be defeated in one of two ways: (i) by showing Cueto's jurisdictional allegations fail to make out a *prima facie* case supporting general jurisdiction; or (ii) by showing through evidence that PRSA's contacts with Florida are insufficient to trigger general personal jurisdiction. Here, Cueto's allegations, and PRSA's evidence, show that Cueto fails both tests. A corporation's place of incorporation and principal place of business are "'paradigm all-purpose forums'" and "only in 'exceptional' cases" will a "'a corporation's operations in a forum other than its formal place of incorporation or principal place of business' . . . be 'so substantial and of such a nature as to render the corporation at home in that State.'" *Carmouche*, 789 F.3d at 1204 (quoting *Daimler*, 571 U.S. 139 n.19). As Cueto acknowledges, PRSA is a French corporation organized under French law with its principal place of business in France, and it does not maintain a registered agent in Florida. Compl. ¶ 2.

1. Cueto fails to establish a prima facie case of general jurisdiction

Florida's long-arm statute provides for general jurisdiction over "[a] defendant who is engaged in substantial and not isolated activity within this state, whether such activity is wholly

[3] It is unclear whether Cueto's assertion of the Court's jurisdiction over PRSA, a foreign corporation, is based upon general or specific jurisdiction. There is no allegation that this action arises from any conduct by PRSA in or directed to Florida, *i.e.*, specific jurisdiction. Out of an abundance of caution, PRSA addresses both possible grounds for personal jurisdiction, neither of which is properly exercised here.

interstate, intrastate, or otherwise . . . whether or not the claim arises from that activity." Fla. Stat. § 48.193(2). Because this provision "extends to the limits on personal jurisdiction imposed by the Due Process Clause," the Court "need only determine whether the district court's exercise of jurisdiction . . . would exceed constitutional bounds." *Carmouche*, 789 F.3d at 1204.

The due process inquiry investigates: (1) whether the defendant has sufficient "minimum contacts" with Florida; and (2) whether exercising jurisdiction over the defendant is consistent with notions of fair play and substantial justice. *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). Due process ensures that a defendant only is "haled into court in a forum State ***based on his own affiliation with the State,*** not based on the 'random, fortuitous, or attenuated' contacts he makes by interacting with other persons affiliated with the State." *Walden v. Fiore*, 571 U.S. 277, 286 (2014). The Supreme Court has clarified that "only a limited set of affiliations with a forum will render a defendant amenable to all-purpose jurisdiction" and the exercise of general jurisdiction over a foreign corporation is constitutional only where the "corporation's 'affiliations with the state are so 'continuous and systematic' as to render [it] essentially at home in the forum state,'" and *not* simply where its in-forum contacts are said to be "continuous and systematic." *Daimler*, 571 U.S. at 137, 139. In particular, "[t]he plaintiff cannot be the only link between the defendant and the forum." *Walden*, 571 U.S. at 277.

Without any factual support, Cueto contends that PRSA "does business" in Florida "through its subsidiaries" by "distribut[ing] a portfolio of liquor products including Absolut Vodka, Jameson Irish Whiskey and others." Compl. ¶¶ 2, 3. Nothing in the Complaint distinguishes PRSA's relationship and conduct vis-à-vis "its subsidiaries" from the typical foreign parent/domestic child relationship, which as set forth below does *not* trigger personal jurisdiction over the parent without more. Such "vague and overgeneralized assertions that give no indication as to the extent, duration, or frequency of contacts," as here, "are insufficient to support general jurisdiction." *Robey v. JPMorgan Chase Bank, N.A.*, 343 F. Supp. 3d 1304, 1319 (S.D. Fla. 2018); *see also Leon v. Cont'l AG*, 301 F. Supp. 3d 1203, 1215 (S.D. Fla. 2017) (Williams, J.) (no *prima facie* case of general jurisdiction where complaint alleged, "without substantiating facts," that defendants "conduct substantial business in this District").

Taking the allegations about PRSA doing business with its U.S. subsidiaries as true, in any event, would not aid Cueto. As an initial matter, merely "doing business" in a forum state does not constitute the "exceptional" case that would subject a foreign company to all-purpose

jurisdiction. Indeed, the *Daimler* Court rejected as "unacceptably grasping" the notion that a corporation is subject to general jurisdiction in every state in which it "engages in a substantial, continuous, and systematic course of business." 571 U.S. at 138.[4]

Likewise, as noted, the mere fact that a foreign parent has a U.S. subsidiary in the forum does not render the parent amenable to general personal jurisdiction. "Generally, a foreign parent corporation is not subject to the jurisdiction of a forum state merely because a subsidiary is doing business there." *Consol. Dev. Corp. v. Sherritt, Inc.*, 216 F.3d 1286, 1293 (11th Cir. 2000). Cueto has failed to allege any facts establishing its U.S.-based subsidiaries are agents of PRSA or that their corporate structures are a mere formality such that their Florida contacts (whatever those may be) could be attributed to PRSA. *iRenew Bio Energy Sols., LLC v. Harvest Direct, LLC*, 2012 WL 13019197, at *1 (S.D. Fla. July 10, 2012); *see also Daimler*, 571 U.S. at 136 (even assuming subsidiary is at home in foreign state and its contacts are imputable to defendant, "there would still be no basis to subject" defendant to general jurisdiction because its "slim contacts with the State hardly render it at home there"). Cueto fails to meet her burden of establishing even a *prima facie* case of general personal jurisdiction.[5]

2. Cueto Cannot Overcome The Evidence Confirming That The Court Lacks General Personal Jurisdiction Over Pernod

Even assuming Cueto had set forth a *prima facie* case of jurisdiction (which she did not), PRSA's declaration would eviscerate that showing. Since *Daimler*, the Eleventh Circuit has made clear that general jurisdiction is only appropriate over nonresident corporate defendants if "the corporation's activities in the forum closely approximate the activities that ordinarily characterize

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[4] *See also BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1559 (2017) ("[I]n-state business, we clarified in *Daimler* and *Goodyear*, does not suffice to permit the assertion of general jurisdiction over claims . . . that are unrelated to any activity occurring in [the forum state]."); *Goodyear Dunlap Tires Operations, S.A. v. Brown*, 564 U.S. 915, 927 (2011) ("[a] corporation's continuous activity of some sorts within a state . . . is not enough to support the demand that the corporation be amenable to suits unrelated to that activity" and "[f]low of a manufacturer's products into the forum" does not warrant general jurisdiction); *Waite v. All Acquisition Corp.*, 901 F.3d 1307, 1318 (11th Cir. 2018) (declining to exercise general jurisdiction where "[a]t most, [defendant's] activities show that it conducted significant business in Florida").

[5] The exercise of personal jurisdiction over a foreign corporation for acts occurring outside of the United States is even more problematic given concerns regarding international comity. *See Daimler*, 571 U.S. at 140–42 (courts should heed principles of comity and avoid expansive views of general jurisdiction).

a corporation's place of incorporation or principal place of business." *Carmouche*, 789 F.3d at 1205. The evidence shows PRSA's activities do not come close. It lacks a physical presence in Florida, and has not: had offices, a mailing address, bank accounts or investments, or real or personal property, entered into any contracts, been registered to do business, held any license or registration, purchased insurance, purchased equipment or supplies, filed taxes, or consented to jurisdiction in Florida. Decl. ¶ 6. PRSA sells no wine or spirits to anyone in Florida, including Havana Club rum; its products are distributed in the United States and Florida through distribution agreements with independent distributors, and PRSA is not a party to any distribution agreements in the U.S. Decl. ¶ 23.

That reality precludes a finding of general jurisdiction in this circuit, where numerous cases have found personal jurisdiction constitutionally prohibited despite far more significant and systematic contacts than are alleged, or can be shown, here. *See, e.g.*, *Waite*, 901 F.3d at 1318 (contacts, including that defendant had a distributor and customers in Florida, built a manufacturing plant and was registered to do business in Florida, and maintained a registered agent in the state, were insufficient to make defendant "at home" in Florida); *Carmouche*, 789 F.3d at 1204 (excursion operator's connections, including Florida "bank account," two "Florida addresses," insurance purchased "from Florida companies," a "financing statement" filed with the Florida Secretary of State, joining a Florida-based non-profit trade organization, and consent to the Southern District of Florida's jurisdiction for lawsuits arising out of its agreements with cruise line not "'so substantial'" as to make this one of those "'exceptional'" cases); *Schulman v. Inst. for Shipboard Educ.*, 624 F. App'x 1002, 1005 (11th Cir. 2015) (agreements with dealers, marketing efforts, and trade show attendance in Florida insufficient); *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 411, 418 (1984) (CEO's trip to Houston to negotiate services contract, acceptance of checks drawn from Texas bank, and Texas-based purchases and training insufficient to confer jurisdiction).

Indeed, the only connection PRSA has to the United States is its U.S.-based subsidiaries. That is not enough. *Daimler* teaches that even assuming a U.S. subsidiary is "at home" in the forum state, general jurisdiction is constitutionally prohibited where the parent has so few contacts with the forum state. 571 U.S. at 136. The real test is whether the "subsidiary's presence in the state is primarily for the purpose of carrying on its own business[;]" where the subsidiary "has preserved some semblance of independence from the parent, jurisdiction over the parent may not

be acquired on the basis of the local activities of the subsidiary." *Sherritt*, 216 F.3d at 1293.

PRSA and its subsidiaries pass that test easily. PRSA's declaration shows that its Florida-based indirect subsidiaries are independent of it. Decl. ¶¶ 15-20. For example, PRSA and the only operating Florida-based affiliate have separate and distinct boards of directors, which meet at different times and in different locations and maintains their own minutes; and have separate and distinct officers.[6] The Florida-based subsidiary, Pernod Ricard Travel Retail LLC, is operationally and financially independent of PRSA, including independent day-to-day operations, pricing and marketing practices, books and records for financial and tax reporting purposes, and bank accounts. *Id*. None of the subsidiaries are authorized to act as agents for PRSA. *Id*. ¶ 21.

These record facts prevent Cueto from meeting her burden in the event the Court's inquiry goes beyond its examination of Cueto's *prima facie* case. *Compare Sherritt*, 216 F.3d at 1294 (subsidiary's activities not imputed to parent where child "has its own officers and boards of directors, determines its own pricing and market practices, has its own bank accounts and offices, and employees") and *Abramson v. Walt Disney Co.*, 132 F. App'x 273, 276 (11th Cir. 2005) (no jurisdiction over parent where subsidiaries were "each responsible for their own day-to-day activities and finances, maintained separate books, records, and accounts from [defendant], and were not authorized to act as an agent for [defendant]"), *with Meier ex rel. Meier v. Sun Int'l Hotels, Ltd.*, 288 F.3d 1264, 1272–74 (11th Cir. 2002) (general jurisdiction established through Florida subsidiaries, which "act as accounting, advertising, and booking departments" for defendants), and *Barriere v. Juluca*, 2014 WL 652831, at *8-9 (S.D. Fla. Feb. 19, 2014) (unrebutted allegations of agency relationship with co-defendants sufficed to establish general personal jurisdiction). As demonstrated above, PRSA is not "at home" in Florida and is not subject to general jurisdiction in this District.

B. Cueto Cannot Establish Specific Personal Jurisdiction Over Pernod

A plaintiff may establish "specific personal jurisdiction" over a foreign defendant based on "contacts with Florida," but "only as those contacts related to the plaintiff's cause of action." *Wolf v. Celebrity Cruises, Inc.*, 683 F. App'x 786, 793 (11th Cir. 2017). The Florida long-arm statute allows jurisdiction "for any cause of action *arising from*" certain enumerated acts, including "carrying on a business," "having an office or agency," "[c]omitting a tortious act," injuring

[6] A second Florida-based indirect subsidiary is non-operational. Decl. ¶ 15(b).

"persons or property," or "[b]reaching a contract" in Florida. § 48.193(1)(a) (emphasis added). "For a State to exercise jurisdiction consistent with due process, the defendant's suit-related conduct must create a substantial connection with the forum State." *Walden*, 571 U.S. at 284.[7]

To determine whether the claims arise out of a defendant's contacts with the forum, courts "look to the affiliation between the forum and the underlying controversy," and focus on whether any of the acts annotated in the long-arm statute took place "in the forum State." *Waite*, 901 F.3d at 1314. Cueto has not alleged that PRSA engaged in any Title III-related activity in Florida recognized in this state's long-arm statute, nor does she allege that it directed any such activity at Florida. That defeats specific jurisdiction without more. *See Rautenberg v. Falz*, 193 So. 3d 924, 930 (Fla. 2d DCA 2016) (where complaint fails to meet "prong one" by failing to allege defendant committed a tortious act in Florida, the court "need not reach the issue of whether [defendant] has sufficient contacts …to satisfy due process concerns").

Cueto's only allegation that could remotely address specific jurisdiction is her bald assertion that *venue* is proper because "a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this judicial District." Compl. ¶ 6. But Cueto fails to allege that ***any*** relevant conduct or activity took place in Florida, let alone in "this judicial District." Nor does she – or can she – make any factual averments that would subject PRSA to specific personal jurisdiction based on activity by a U.S.-based subsidiary. Cueto alleges that PRSA's subsidiaries distribute "Absolut Vodka, Jameson Irish Whiskey and others," *id*. ¶ 3, but does not allege that any of these products made and sold by different affiliates are related to Conac Cueto or Havana Club rum. *Id*. ¶ 3. She also does not (and cannot) allege that Havana Club rum is distributed in Florida, or that any PRSA affiliates have engaged in "trafficking" directed at Florida. Cueto has failed to establish a *prima facie* case of specific jurisdiction.

Moreover, as set forth above, PRSA does not maintain an office or own real property, is not licensed or registered to do business, has not entered into any contracts, does not directly sell its products, and has not consented to jurisdiction in Florida. Decl. ¶ 6. PRSA does not sell or

[7] This inquiry asks whether (1) plaintiff established her claims "'arise out of or relate to' at least one of the defendant's contacts with the forum"; (2) plaintiff demonstrated that the defendant "'purposefully availed' itself of the privilege of conducting activities within the forum state"; and (3) defendant made "a compelling case that the exercise of jurisdiction would violate traditional notions of fair play and substantial justice." *Waite*, 901 F.3d at 1313.

distribute any products of Cuban origin (including Havana Club rum) in Florida or elsewhere in the United States. Decl. ¶ 12; *see Don King Prods.*, 2016 WL 3950930, at *3-4 (dismissing for lack of specific jurisdiction where no "connexity" between claim and defendant's contacts with forum). As further shown above, Cueto cannot rely on the activities of PRSA's subsidiaries in Florida to support specific personal jurisdiction. *Supra*, pp. 9-10. Accordingly, even if Cueto had sufficiently pled that PRSA has engaged in an act enumerated in Florida's long-arm statute, she can never satisfy the additional requirements of showing the instant claim arises from such actions, or that specific personal jurisdiction could be invoked consistent with due process.

For the foregoing reasons, the Court lacks general and specific personal jurisdiction over PRSA and the Complaint should be dismissed under Rule 12(b)(2).

II. DISMISSAL IS PROPER BECAUSE PERNOD WAS NOT PROPERLY SERVED WITH PROCESS

Rule 4(h)(2) of the Federal Rules of Civil Procedure governs service of process on a foreign corporation "not within any judicial district of the United States." The rule provides that the corporation may be served "in any manner prescribed by Rule 4(f) for serving an individual, except personal delivery under (f)(2)(C)(i)." Fed. R. Civ. P. 4(h)(2). Rule 4(f) permits service of an individual in a foreign country "by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention...," or "as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction." Fed. R. Civ. P. 4(f)(1) and (f)(2)(A). Rule 12(b)(5) provides for dismissal of an action where service of process is insufficient.

Compliance with the Hague Convention service procedures is mandatory where the law of the forum state indicates that effective service requires transmittal of the complaint abroad. *See Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 698-700 (1988). Since PRSA is a French corporation with no direct presence, officers, agents, or directors in Florida, Cueto was required to serve PRSA in conformity with the Hague Convention and "as prescribed by the foreign country's law for service in that country." Rule 4(f)((2)(A); *see also Hickey v. Celebrity Cruises, Inc.*, 2015 WL 13776760, *3 (S.D. Fla. Feb. 2, 2015) (service on corporation in foreign country must be accomplished in accordance with the foreign country's law for service).

Service effected outside the United States on a foreign corporation demands proper service under the constraints of the foreign domiciliary's law, unless that law is inconsistent with

requirements of the Hague Convention. *Perfumer's Workshop, Ltd. v. Roure-Bertrand du Pont, Inc.*, 737 F. Supp. 785, 789 (S.D.N.Y. 1990). To that effect, Article 19 of the Hague Convention provides that "[t]o the extent that the internal law of a contracting State permits methods of transmission, other than those provided for in the preceding articles, of documents coming from abroad, for service within its territory, the present Convention shall not affect such provisions." T.I.A. S. No. 6638, 1969 WL 97765 (U.S. Treaty) (Nov. 15, 1965). France and the United States are participants and signatories of the Hague Convention. In France, service can be made via the French Central Authority or by a *huissier de justice*, as provided by the *Nouveau Code de Procédure Civile* (Code of Civil Procedure) ("N.C.P.C.") Art. 54 & 55 (Fr.); *see also Perfumer's*, 737 F. Supp. at 789 ("French law requires that service be made by the applicable central authority designated by the French government, or, alternatively, by an authorized bailiff or huissier"); *Merial, Inc. v. Ceva Santé Animale, S.A.*, 2016 WL 320141, *2 (M.D. Ga. Jan. 26, 2016) (in France, service must be made through an authorized French bailiff or huissier de justice).

Cueto employed the services of a *huissier de justice* to carry out service on PRSA, but the *huissier's* service failed to strictly conform with the requirements of the French code of civil procedure for service.[8] Title XVII, Chapter II of the N.C.P.C. sets forth the required form of process through the *huissier*. Specifically, Article 654 provides that service of process must be personal, and that service on a corporate entity is deemed personal where the process is delivered to its legal representative, to the latter's proxy, or to any person empowered for this purpose. *See* ECF 11-8.

There is nothing in the record to demonstrate that the process server attempted service upon a "legal representative, to the latter's proxy, or to any other person empowered for this purpose" as required by French law. *See* N.C.P.C. Article 654. In fact, non-compliance with Article 654 is apparent from the return of service filed with the Court. ECF 11. The "Service of Process" form completed by the *huissier* in this action states simply that the "Circumstances making impossible the service in person" are that the "[r]ecipient is absent," and "[t]he person present confirms the address but refuses to accept the complaint." *See* ECF 11-6. It is clear, however, from the "Service of Process" and the "Service and Delivery of a Foreign Document," that service was not directed

[8] Cueto, in doubt over the validity of service of process on PRSA, filed an Amended Motion to Deem Defendant Served. *See* ECF 11. Before PRSA had an opportunity to respond to the motion, the Court deemed PRSA served. ECF 13.

to a proper "recipient." *See* ECF 11-6 at 1-2. These documents confirm that the service papers neither name a specific individual nor was service directed to a title or position (such as Chief Executive Officer, President, or other officer) who is authorized to accept service of process for PRSA. *See* ECF 11-6 at 2 (notice addressed to "S.A. PERNOD RICARD").

In fact, the process server simply left the service form with an employee at the welcome desk at PRSA's headquarters in Paris, France. Decl. ¶ 7. The individual at the welcome desk is not a legal representative of PRSA, nor is the employee an individual authorized to accept service of process for PRSA. *Id*. Consequently, the employee's "refus[al]" to accept service of process (ECF 11-6) was not improper. Because the employee at the welcome desk is not one of the persons enumerated in Article 654, Cueto's attempted service of PRSA through an individual who is neither a legal representative nor a person empowered to accept service for the company, was improper and rendered service insufficient. Reference to the legal representative in a service form is a required formality under the terms of Articles 54, 648 and 654 of the French Code of Civil Procedure, and failure to comply with this requirement constitutes defective service that results in the invalidity of the service where, as here, the defendant will be prejudiced by the improper service.

Proper service of process is indispensable under the present circumstances. The Helms-Burton Act has been a source of great friction between the United States and the European Union. Indeed, soon after its enactment, on November 22, 1996, the Council of Ministers of the European Union adopted Council Regulation No. 2271/96 ("Regulation 2271"). Regulation 2271 prohibits compliance by individuals or companies of the European Union with certain specified laws, including the Helms-Burton Act, or with orders based on those laws. Article 5 of Regulation 2271 expressly provides that "No [legal person incorporated within the European Union] shall comply, whether directly or through a subsidiary or other intermediary person, actively or by deliberate omission, with any requirement or prohibition, including requests of foreign court, based on or resulting, directly or indirectly, from the laws specified in the Annex or from actions based thereon or resulting therefrom." European Union: Council Regulation (EC) No. 2271/96, 36 I.L.M.125, 128, 1997 WL 79502 (Jan. 1997). Individuals and companies subject to the jurisdiction of any Member State of the European Union may be subject to sanctions if they are found to have breached Regulation 2271. Given the sensitivity of these claims within the European Union, the recent advent of Title III claims, and potential liability to European Union Member State

companies who are perceived to voluntarily submit to the jurisdiction of a foreign court in an action brought under the Helms-Burton Act, strict adherence to proper service of process is particularly warranted.

Because service was not properly effected, this Court lacks jurisdiction over PRSA. *See, e.g., Pardazi v. Cullman Med. Ctr.*, 896 F.2d 1313, 1317 (11th Cir. 1990) ("Service of process is a jurisdictional requirement: a court lacks jurisdiction over the person of a defendant when that defendant has not been served.").[9]

III. THE COURT SHOULD DISMISS THE COMPLAINT BECAUSE IT LACKS SUBJECT MATTER JURISDICTION OVER THE ACTION

The issue of standing goes to the Court's subject matter jurisdiction, which is limited by Article III of the Constitution to the adjudication of actual "cases" and "controversies." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559 (1992). At an "irreducible constitutional minimum," standing doctrine requires a plaintiff to make the following three showings:

i. the plaintiff must have suffered an "'injury in fact'—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not 'conjectural' or 'hypothetical[;]'"

ii. there must be a causal connection between the injury and the conduct complained of—the injury has to be "fairly ... trace[able] to the challenged action of the defendant, and not ... th[e] result [of] the independent action of some third party not before the court[;]" and

iii. it must be "'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.'"

Lujan, 504 U.S. at 560–61; *see also Socialist Workers Party v. Leahy*, 145 F.3d 1240, 1244–45 (11th Cir. 1998) (quoting and applying this framework). It is Cueto's burden to establish her standing to sue. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 103-04 (1998). Here, even accepting as true the allegations of the Complaint for purposes of a motion to dismiss, her showing falls short on the second, "causation" prong.

Cueto identifies her injury as an uncompensated taking, specifically that the "Cuban Government seized ownership and control of the Subject Property since 1963 … without consent

[9] Formal service of process is required notwithstanding actual notice of an action by a defendant. *Int'l Designs Corp., LLC v. Qingdao SeaForest Hair Prods. Co., Ltd.*, 2018 WL 2364297, *4 n.2 (S.D. Fla. Jan. 4, 2018) citing *De Gazelle Grp., Inc. v. Tamaz Trading Establishment*, 817 F.3d 747 (11th Cir. 2016).

from or compensation paid to Plaintiff, a U.S. citizen." Compl. ¶ 21; *id.* at ¶19 (the "Cuban Government maintains possession of the Subject Property and has not paid any compensation to Plaintiff for its seizure"). Cueto traces that injury, the uncompensated seizure of property, to Cuba's government exclusively. *Id.* ¶¶ 16, 18 ("the communist Cuban Government confiscated the Subject Property"); ¶ 18 ("In 1963, the communist government of Cuba gathered all Company assets and took them to the rum company of the Cuban government"); ¶ 20 (the "communist Cuban Government expropriated … the Subject Property").

That injury allegedly continues today solely because the Cuban government has not returned the property or paid fair compensation for it. *Id.* ¶ 19 (the "communist Cuban Government maintains possession of the Subject Property"); ¶ 20 ("Subject Property has not been returned and adequate and effective compensation has not been provided,"); ¶ 29 ("property, market segment and intellectual properties that were seized have not been returned and compensation has not been paid."). Cueto does not allege that PRSA was aware of or complicit in the taking, or that it is now, or has ever been, empowered to cause the return of the property, or to direct the Cuban government to pay compensation to a Cuban national at the time of the alleged expropriation. Nor does it allege that but for PRSA's alleged activities with Cuba, that the property would have been returned, or compensation paid.

Cueto's allegations regarding PRSA begin 30 years after the 1963 expropriation, when in or around 1993, Pernod "distributed its Havana Club brand and line of products worldwide using the Subject Property by using the assets and intellectual property of the Subject Property without the authorization of Plaintiff." Compl. ¶ 24. Cueto further alleges that PRSA "participated in and profited from the communist Cuban Government's possession of the Subject Property without the authorization of Plaintiff." *Id.* ¶ 25.

Critically, Cueto does not assert that if PRSA never entered into business with Corporación Cuba Ron S.A., that Cueto would have received compensation for the alleged Conac Cueto property, or the return of such property. Such a contention, in any event, would have no basis. It is clear, then, that PRSA's commercial activities with Corporación Cuba Ron S.A thirty years after the alleged taking – with an entirely different product and brand name – could not have ***caused*** the injury about which Cueto complains.

That means Cueto lacks standing. As the Supreme Court has explained, "a federal court acts only to redress injury that fairly can be traced to the challenged action of the defendant, and

not injury that results from the independent action of some third party not before the court." *Simon* v. *E. Ky. Welfare Rights Org.*, 426 U.S. 26, 41–42 (1976). Stated plainly, the "causation element [of standing] requires that a proper defendant be sued." *Common Cause v. Biden*, 748 F.3d 1280, 1284-1285 (D.C. Cir. 2014). Thus in *Socialist Workers Party*, for example, the Eleventh Circuit found no case or controversy where two minor political parties sued a class of 67 country supervisors of elections for a declaration invalidating a state statute, where the county supervisors had no authority to enforce the statute, and were thus the wrong defendants. 145 F.3d at 1248.

Here, Cueto cannot "fairly trace" her alleged injury to PRSA, as there is no "causal connection" between her injury and the conduct she asserts offends the law. *See Lujan*, 504 U.S. at 560; *Kawa Orthodontics, LLP v. Sec'y, U.S. Dep't of the Treasury*, 773 F.3d 243, 247 (11th Cir. 2014) ("To establish causation, [plaintiff] must demonstrate its alleged injury is fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court."). Nothing in the Complaint connects the injury that began in 1963 to PRSA's entirely unrelated distribution activities on a different product and different brand beginning in 1993. *See, generally*, Compl. ¶¶ 13-26. There are no allegations in the Complaint that PRSA trades in Conac Cueto products, benefits from Conac Cueto's intellectual property (*i.e.*, that PRSA used any Conac Cueto formulations or other assets in the manufacturing of Havana Club rum), or that the Cueto family had any rights in the rum products PRSA produces in Cuba (and does not sell in the U.S.).

That Helms Burton creates a *cause of action* against those who "traffic" in expropriated property does not mean that the *standing* of holders of alleged rightful claims under that statute follows. Congress is not authorized to eliminate minimum standing requirements. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547-48 (2016) (separation of powers doctrine does not allow Congress to "erase Article III's standing requirements by statutorily granting the right to sue to a plaintiff who would not otherwise have standing"). Accordingly, the Complaint should be dismissed for lack of constitutional standing.

IV. THE COMPLAINT FAILS TO STATE A CLAIM UNDER HELMS-BURTON FOR WHICH RELIEF CAN BE GRANTED

Cueto fails to plausibly plead (or plead at all) three necessary elements of a Helms-Burton Act claim:

(i) that a U.S. national held a claim to the alleged "confiscated property" at the date of Helms-

Burton's enactment, as this Court recently confirmed she must, *see Gonzalez v. Amazon.com, Inc.*, 2020 WL 1169125 (S.D. Fla. Mar. 11, 2020) (to state a claim, "a United States citizen must already own the claim to the confiscated property on March 12, 1996 when the Act was passed");

(ii) that she, as the party bringing the action, acquired ownership of the claim before March 12, 1996, *see* 22 U.S.C. § 6082(a)(4)(B) (For "property confiscated before March 12, 1996, a United States national may not bring an action under this section on a claim to the confiscated property unless such national acquires ownership of the claim before March 12, 1996."); and

(iii) that PRSA knowingly and intentionally "trafficked" in the property in which she "owns the claim," *see* 22 U.S. 6023(13)(A)(i) (a person "traffics" in confiscated property if he "(i) … distributes … ***confiscated property***").

A. Cueto Has Failed To Allege That A U.S. National Held A Claim To The Expropriated Property At The Date Of Helms-Burton's Enactment

Cueto's Complaint suffers the identical infirmity as did a Complaint construed and dismissed by this Court earlier this month, on March 11, 2020. In *Gonzalez v. Amazon.com, Inc.*, 2020 WL 1169125 (S.D. Fla. Mar. 11, 2020), the Court examined a Title III claim filed against Amazon.com and another firm for allegedly "trafficking" in property seized by the Cuban government in 1964. Judge Scola observed that the Plaintiff "did not allege that a United States citizen owned the claim on March 12, 1996." *Id.* at *2. Under Helms-Burton, however, "[i]n the case of property confiscated before March 12, 1996, a United States national may not bring an action under [the Act] ... unless such national acquires ownership of the claim before March 12, 1996." *Id.* (quoting 22 U.S.C. § 6082(a)(4)(B)). "In other words, a United States citizen must already own the claim to the confiscated property on March 12, 1996 when the Act was passed." *Id.* As the plaintiff did not satisfy the Act's timing requirement, the Complaint was dismissed.

Likewise, here, Cueto alleges that the property was seized from her father in 1963. She alleges that she herself is an American citizen. But she does not allege when she acquired ownership of the purported claim. Nor does she allege that her father was an American citizen, and if so, when he became one. Finally, and critically, she does not allege that an American citizen – whether herself, her father, or another – owned the claim to the allegedly expropriated property upon Helms-Burton's enactment on March 12, 1996. She therefore falls short in precisely the

same manner Mr. Gonzalez did. *See id.* at * 2 ("the Complaint lacks allegations regarding when Gonzalez inherited the claim from his grandfather, when Gonzalez became a United States citizen, if Gonzalez's grandfather was a United States citizen, and, if so, when Gonzalez's grandfather became a citizen.").

As the statutory language is clear and unambiguous, the Court's inquiry is complete. *Harris v. Garner*, 216 F.3d 970, 976 (11th Cir. 2000) (en banc) ("When the import of the words Congress has used is clear, as it is here, we need not resort to legislative history, and we certainly should not do so to undermine the plain meaning of the statutory language.") (collecting cases). But it bears emphasis, as Judge Scola noted, that the statutory cut-off was put in place for a specific purpose: "to prevent foreigners from 'relocat[ing] to the United States for the purpose of using this remedy.'" *Gonzalez*, 2020 WL 1169125, at *2 (quoting Conference Report at H1660, 1996 WL 90487). Congress resolved this concern by making Helms-Burton applicable "only" to "claim owners who are already United States citizens at the time the Act was passed." *Id.*

The field of potential claims was closed, not opened, on March 12, 1996. Because Cueto has not alleged with supporting facts that her claim was owned by a U.S. national as of that date, her Complaint should be dismissed. *Gonzalez*, 2020 WL 1169125, at *2 ("Without these allegations, Gonzalez has not sufficiently alleged that he has an actionable ownership interest in the confiscated property.").

B. Cueto Fails To Allege That She Acquired Her Claim Before March 12, 1996

Setting aside the requirement that a Helms-Burton claim must have been owned by a U.S. national as of the date of enactment, Cueto's Complaint fails because she does not allege that she, the Plaintiff, acquired ownership of the claim before the date of enactment. As noted, Helms-Burton provides that for pre-1996 expropriations, a claimant "may not bring an action under this section on a claim to the confiscated property unless such national acquires ownership of the claim before March 12, 1996." 22 U.S.C. § 6082(a)(4)(B). Cueto does not allege when, how, or from whom she came to own a claim in Conac Cueto property in Cuba. She says only that in the 1950's her father founded a company, Conac Cueto, C.I.A, that was expropriated by the Cuban government in 1963, and that she is "the rightful owner" of that "interest." Compl. ¶¶ 13, 15, 16. Title III does not deal in ownership interests in properties within the territorial jurisdiction of the Republic of Cuba. It deals only in "claims" relating to such properties. To the extent it is fair to infer that Cueto inherited a claim from her father (though there are other possibilities), that still

does not resolve the issue of whether Cueto acquired ownership of the claim before, or after, March 12, 1996. Because Cueto has failed to plead a key element of her claim, it may not go forward.[10]

C. Cueto Has Failed To Allege That Pernod Knowingly Trafficked In Property In Which She Allegedly Has A Claim

1. Cueto Makes No Plausible Allegations That Pernod Transacts In Property Allegedly Expropriated From Her Family

Cueto alleges that the Castro regime seized her father's interests in Cognac Cueto, a manufacturer of "cognac and other spirits," in 1963. Compl. ¶ 16. She alleges that those assets and interests were folded into a Cuba-controlled company which distributed products under the brand name "Havana Club." *Id*. ¶ 18. She alleges that PRSA entered into a venture in 1993 to "promote[] and distribute[]" the "Havana Club brand and line of products worldwide" by "using the assets and intellectual property of the Subject Property without the authorization of Plaintiff." *Id*. ¶ 24.

An essential but missing link in the factual chain precludes Cueto from stating a claim. The Court might be able to credit the allegations (had supportive facts been pled) that in 1963 the Cuban government expropriated Conac Cueto assets, and folded it into a state-owned enterprise. It might also credit the allegation that in 1993 PRSA began distributing Havana Club products acquired from an affiliate or successor to the Cuban Government Rum Company.[11] But the Court ***should not*** infer from those allegations that the Havana Club rum products PRSA distributes are the same products that Conac Cueto manufactured, are produced using Conac Cueto property, or otherwise relate in any way to the Conac Cueto company. Cueto's claim that Havana Club rum is "partially derived from Conac Cueto" (Compl. ¶ 4) or manufactured using Conac Cueto assets is wholly speculative and contrary to established historical facts, since Havana Club has always existed as a rum brand since its establishment in the 1930's. Cueto herself concedes that the

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[10] Again, where the date cut-off is clear and unambiguous, the Court's inquiry is complete. *Harris*, 216 F.3d at 976. But it is worth noting that limiting claims to those that vested in the owner pre-enactment was important to Congress as fully supported by the plain-meaning construction. Helms-Burton's drafters explained that subsection 4(B) was enacted to ensure that "in the case of property confiscated before the date of enactment of this Act, the U.S. national had to have owned the claim to the property before the date of enactment in order to bring an action under this section." H.R. REP. 104-202(I), 40, 1996 U.S.C.C.A.N. 527, 545, 1995 WL 442501 (Mar. 1, 1996).

[11] Cueto assumes, without any factual support, that the Cuban Government Rum Company and the company with whom PRSA actually trades, are related.

Havana Club brand was owned by a different entity. Compl. ¶ 18 ("Jose Arechabala, S.A.…was the original owner of [the] Havana Club brand").

The permissible pleading standard has its limits. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). On a motion to dismiss, factual allegations are "taken as true," but "unwarranted deductions of fact" and "legal conclusion[s] couched as a factual allegation" are not. *Aldana v. Del Monte Fresh Produce, N.A., Inc.*, 416 F.3d 1242, 1248 (11th Cir. 2005); *see also Iqbal*, 556 U.S. at 678 (complaint may not rest on "naked assertion[s]" devoid of "further factual enhancement."). When the plaintiff relies on inference, not fact, in support of a required claim element, the plaintiff must show the inference requested "is more plausible" than a competing inference that would excuse the defendant from liability. *See Jacobs v. Tempur-Pedic Int'l, Inc.*, 626 F.3d 1327, 1342–43 (11th Cir. 2010) (where defendant's conduct could be the product of either an illicit agreement or of independent, rational pricing strategy, plaintiff "had the burden to present allegations showing why it is ***more plausible*** that" defendants "would enter into an illegal price-fixing agreement … to reach the same result realized by purely rational profit-maximizing behavior");

The inference embedded in Cueto's recitation is that the property allegedly seized from Conac Cueto is the same property being traded since 1993 by PRSA, or was at least derived from such property. Without that inference, Cueto cannot plausibly allege that PRSA qualifies as a "person ... that traffics in property that was confiscated by the Cuban Government," as Helms-Burton requires. 22 U.S.C. § 6082(a)(1)(A); *Havana Docks Corp. v. Norwegian Cruise Line Holdings, Ltd.*, 2020 WL 70988, at *3 (S.D. Fla. Jan. 7, 2020) ("for example, if the interest at issue is a leasehold, following the plain language of the statute, a person would have to traffic in the leasehold in order for that person to be liable to the owner of the claim to the leasehold"). Likewise, the statutory definition of "trafficking" requires a finding that the "confiscated" property is the same property bought or sold by the defendant. *See* 22 U.S. 6023(A)(i) (a person "traffics" in confiscated property if he "(i) sells, transfers, distributes … or otherwise disposes of ***confiscated property***, or purchases, leases, receives…or otherwise acquires or holds an interest in ***confiscated property***"). As this Court recently explained, "[o]wnership of a claim to a confiscated property interest does not entitle Plaintiff to recover for trafficking in other property interests." *Havana Docks*, 2020 WL 70988, at *3.

Here, the "confiscated property" allegedly consisted of "[t]he Conac Cueto product line

[which] included Conac Cueto Extra Viejo, Conac Cueto Anejo V.S., Conac Cueto Extra Dry, Champagne Conac Cueto, Aguardiente Cueto and others," and assets used to make those products. Compl. ¶¶ 16-17. Cueto fails to allege a logical connection between Conac Cueto and Havana Club rum. In fact, Havana Club is a rum brand with no plausible connection to Conac Cueto property whatsoever. Nor is there any logical, much less factual, support for Cueto's claim that PRSA manufactures cognac products – in Cuba or anywhere – using Conac Cueto assets. On this record, accordingly, an inference that Cueto has plausibly pled a threshold element of her Complaint is unfounded and would require the Court to credit "unwarranted deductions of fact." *Aldana*, 416 F.3d at 1248; *Am. Dental Ass'n v. Cigna Corp.*, 605 F.3d 1283, 1290 (11th Cir. 2010) (*Twombly's* plausibility standard requires more than the "mere possibility of misconduct"); *Iqbal*, 556 U.S. at 678 (distinguishing between factual assertions suggesting liability is "conceivable" versus those permitting conclusion that liability is "plausible").

2. Cueto Makes No Plausible Allegations That Pernod "Knowingly And Intentionally" Transacted In Any "Confiscated" Property

Under the Act, "a person 'traffics' in confiscated property if that person ***knowingly and intentionally*** ... engages in a commercial activity using or otherwise benefiting from confiscated property." 22 U.S.C. § 6023(13)(A)(ii). In reviewing this provision recently, this Court flagged a statement from Helms-Burton drafter Representative Benjamin Gilman, who explained, "the only companies that will run afoul of this new law are those that are knowingly and intentionally trafficking in the stolen property of U.S. citizens." *Gonzalez*, 2020 WL 1169125 at *2 (quoting 142 Cong. Rec. H1724-04, at H1737 (Mar. 6, 1996)). The Complaint's allegations regarding PRSA's mental state are sparse and boilerplate. It alleges that "[u]pon information and belief, beginning on or about 1993 and continuing to today, the Defendants knowingly and intentionally commenced, conducted, promoted and distributed" Havana Club products "using the Subject Property." Compl. ¶ 24; *id.* ¶ 25 ("Defendants also knowingly and intentionally participated in … the communist Cuban Government's possession of the Subject Property"). But the allegations of the Complaint offer no reason to believe that PRSA even knew that Conac Cueto existed.

Such allegations do not satisfy *Twombly and Iqbal.* In *Gonzalez,* Judge Scola observed that the "Complaint offers only conclusory allegations that the Defendants knowingly and intentionally trafficked in confiscated property," specifically that "the Defendants 'knowingly and intentionally commenced, conducted, and promoted the sale of marabu charcoal produced on the

Subject Property' and that they "knowingly and intentionally participated in and profited from the communist Cuban Government's possession of the Subject Property." *Gonzalez*, 2020 WL 1169125 at *2. Such allegations are "conclusory and, without any other allegations demonstrating the Defendants' knowledge, are legally insufficient to state a claim." *Id.* (citing *Twombly* and *Ruiz v. Experian Information Solutions, Inc.*, 2017 WL 1378242, at *2 (S.D. Fla. Apr. 14, 2017). Nothing in such spare and generalized statements in Cueto's Complaint permits an inference that PRSA, more than 30 years after the alleged expropriation of Conac Cueto and its assets, "knowingly and intentionally" traded in property allegedly expropriated by the Cuban government.

Because Cueto has not established that a U.S. national held a claim to the allegedly expropriated property as of the enactment of Helms Burton, that she acquired ownership of the claim before March 12, 1996, or that PRSA knowingly and intentionally "trafficked in the Subject Property," her Title III claim fails as a matter of law.

CONCLUSION

For all of these reasons, the Complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b)(1), 12(b)(2), 12(b)(5), and 12(b)(6).

REQUEST FOR HEARING

PRSA, pursuant to S.D. Fla. L.R. 7.1(b)(2), respectfully requests a hearing on its Motion to Dismiss the Complaint. Since its enactment in March 1996, Title III of the Helms-Burton Act had been suspended by every presidential administration. On April 17, 2019, the current administration announced the decision to cease suspension of Title III, thereby allowing claims to be brought under that provision. Title III claims are both novel and complex, and PRSA believes oral argument may assist the Court in its determination of jurisdiction, standing, and the intricacies of Title III. PRSA estimates that a hearing would last approximately 1-2 hours.

Dated: March 24, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of March, 2020, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will provide service on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ *Irma Reboso Solares*