

**In the United States Court of Federal Claims**

No. 07-685 C  
(Filed March 26, 2008)

BARUCH VEGA, )  
Plaintiff, )  
v. )  
THE UNITED STATES, )  
Defendant. )

**ORDER**

In this informer compensation case defendant has filed a Motion to Dismiss pursuant to RCFC 12(b)(1) and 12(b)(6). The motion questions concerning the statutory basis for plaintiff’s informer claims and relies on the lack of specific allegations in the Complaint concerning any event supporting entitlement to compensation occurring within the applicable statute of limitations time period.

Plaintiff’s Response to Defendant’s Motion to Dismiss asserts that customs events, within the scope of informer compensation covered by 19 U.S.C. § 1691, occurred but no facts are pleaded. Plaintiff’s allegations are not required to be detailed, but they must raise a right to relief above the speculative level to avoid dismissal. *See Bell Atl. Corp. v. Twombly*, \_\_ U.S. \_\_, 127 S. Ct. 1955, 1964-65 (2007); *McZeal v. Sprint Nextel Corp.*, 501 F.3d 1354, 1356 (Fed. Cir. 2007); *In re Elevator Antitrust Litigation*, 502 F.3d 47, 50-51 (2<sup>nd</sup> Cir. 2007); *May v. United States*, 80 Fed. Cl. 442, 445 (2008).

Plaintiff seeks leave to file an Amended Complaint to address the asserted pleading deficiencies defendant sets forth in its Motion to Dismiss and Reply. A Motion to Dismiss is not a “responsive pleading” within the meaning of the RCFC 15(a). *Cuyahoga Metro. Housing Auth. v. United States*, 57 Fed. Cl. 751, 780 (2003). Thus, leave is not required to file an Amended Complaint.

Accordingly, it is concluded that plaintiff has an opportunity to amend his Complaint before Defendant’s Motion to Dismiss is resolved. An Amended

Complaint will serve to clarify the basis (or bases) for the claims asserted. It is **ORDERED**:

(1) Plaintiff shall file his Amended Complaint on or before **April 18, 2008**;

(2) Within 14 days after service of plaintiff's Amended Complaint, defendant shall file any Supplement to its Motion to Dismiss to address the Amended Complaint or, alternatively, file a responsive pleading;

(3) Should defendant file a Supplement to its Motion to Dismiss, a response and a reply shall be filed in accord with RCFC 7.2.

s/ James F. Merow

James F. Merow

Senior Judge