UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 1:19-cv-22621-FAM

Mario Echevarría, individually and on behalf of all other similarly situated,

Plaintiff,

v.

Expedia Group, Inc., **Hotels.com L.P.**, **Hotels.com GP, LLC**, **Orbitz, LLC**, **Booking.com B.V.**, and **Booking Holdings, Inc.**,

Defendants.

DEFENDANTS EXPEDIA GROUP, INC., HOTELS.COM L.P., HOTELS.COM GP, LLC, AND ORBITZ, LLC'S ANSWER TO PLAINTIFF'S THIRD AMENDED COMPLAINT

Pursuant to Rule 12 of the Federal Rules of Civil Procedure and the Court's Order Denying Defendants' Motions to Dismiss, defendants Expedia Group, Inc., Hotels.com, L.P., Hotels.com GP, LLC, and Orbitz, LLC (the "Expedia Entities") file this answer to plaintiff Mario Echevarría's Amended Class Action Complaint for Damages (ECF No. 77) (the "Third Amended Complaint").

Answer to first unnumbered paragraph on page 1: The Expedia Entities lack sufficient knowledge or information to form a belief about the truth of the allegations in the first unnumbered paragraph on page 1 of the Third Amended Complaint.

Answer to second unnumbered paragraph on page 1: The Expedia Entities admit that (i) the Iberostar Mojito and Iberostar Colonial[1] (the "Subject Hotels") are located on the island of Cayo Coco; (ii) at one point in time before the complaint was filed, travelers could book reservations at the Subject Hotels through websites operated by certain affiliates of the Expedia Entities; and (iii) neither the Expedia Entities nor its affiliates have sought or obtained Echevarría's consent or paid him any compensation in connection with the Subject Hotels. The Expedia Entities lack sufficient knowledge or information to form a belief about the truth of the allegations in the first sentence of the second unnumbered paragraph on page 1 of the Third Amended Complaint. The Expedia Entities otherwise deny the allegations in the second unnumbered paragraph of the Third Amended Complaint.

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[1] The hotel that Echevarría refers to as the Iberostar Colonial also goes by the name Hotel Colonial Cayo Coco.

THE ACTION

1. The Expedia Entities admit that Echevarría brings this case as a class action under the Cuban Liberty and Democratic Solidarity Act, 22 U.S.C. § 6021, *et seq.* (the "Helms-Burton Act"). The Expedia Entities otherwise deny the allegations in paragraph 1.

THE PARTIES

2. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in the first sentence of paragraph 2. The Expedia Entities deny the allegations in the second sentence of paragraph 2.

3. The Expedia Entities admit that Expedia Group is a Delaware corporation with its principal place of business in Seattle, Washington. The Expedia Entities otherwise deny the allegations in paragraph 3.

4. The Expedia Entities admit that Hotels.com, L.P. is a Texas limited partnership and an indirect subsidiary of Expedia Group, with its principal place of business in Dallas, Texas. The Expedia Entities otherwise deny the allegations in paragraph 4.

5. The Expedia Entities admit that Hotels.com GP, LLC is a Texas limited liability company, the general partner of Hotels.com, L.P., and an indirect subsidiary of Expedia Group. The Expedia Entities further admit that Hotels.com GP, LLC has its principal place of business in Dallas, Texas. The Expedia Entities otherwise deny the allegations in paragraph 5.

6. Admitted.

7. The Expedia Entities lack sufficient knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7.

8. The Expedia Entities lack sufficient knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8.

JURISDICTION AND VENUE

9. Admitted.

10. Denied.

11. Denied.

12. The Expedia Entities admit that Hotels.com, L.P., Hotels.com, GP, LLC, and Orbitz, LLC are non-Florida entities that are registered with the Florida Department of State, Division of Corporations and are registered with the Florida Department of Agriculture and Consumer Services. The Expedia Entities also admit that Hotels.com and other affiliate(s) of the Expedia Entities have in the past sent marketing emails to website users who started but did not complete reservations at hotels in Cuba. The Expedia Entities otherwise deny the allegations in paragraph 12.

13. Denied.

a. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 13(a) concerning defendant Booking Holdings Inc. The Expedia Entities otherwise deny the allegations in paragraph 13(a).

b. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 13(b).

c. Denied.

d. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 13(d) as they relate to defendants Booking.com B.V. and Booking Holdings Inc. (the "Booking Entities"). The Expedia Entities otherwise deny the allegations in paragraph 13(d).

e. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 13(e) as they relate to the Booking Entities. The Expedia Entities otherwise deny the allegations in paragraph 13(e).

f. The Expedia Entities admit that Hotels.com LP and Hotels.com GP, LLC have been registered to do business in Florida with the Florida Division of Corporations since 2007 and that Orbitz, LLC has been registered to do business in Florida with the Florida Division of Corporations since 2016. The Expedia Entities otherwise deny the allegations in paragraph 13(f).

g. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 13(g).

h. The Expedia Entities admit that Hotels.com L.P. and Orbitz, LLC are registered with the Florida Department of Agriculture and Consumer Services. The Expedia Entities otherwise deny the allegations in paragraph 13(h).

i. The Expedia Entities admit that the parts of paragraph 13(i) in quotation marks accurately quote parts of an article posted by the Florida Chamber of Commerce. The Expedia Entities otherwise deny the allegations in paragraph 13(i).

j. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 13(j).

k. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 13(k).

l. Denied.

14. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 14—including subparagraphs (a) and (b)—as they relate to the Booking Entities. The Expedia Entities otherwise deny the allegations in paragraph 14

15. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 15 as they relate to the Booking Entities. The Expedia Entities admit that Hotels.com and other affiliate(s) of the Expedia Entities have in the past sent market-

ing emails to website users who started but did not complete reservations at hotels in Cuba. The Expedia Entities otherwise deny the allegations in paragraph 15.

16. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 16 as they relate to the Booking Entities. The Expedia Entities admit that Hotels.com and Orbitz have sent correspondence to persons with Florida addresses. The Expedia Entities otherwise deny the allegations in paragraph 16.

17. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 17 as they relate to the Booking Entities. The Expedia Entities admit that Expedia Media Solutions—which is a division of any entity not named as a defendant in this case—offers marketing solutions that can target based on geographic locations. The Expedia Entities otherwise deny the allegations in paragraph 17.

18. The Expedia Entities admit that Expedia Local Expert—which is a business operated by an entity not named as a defendant in this lawsuit—at one point was the largest guest service provider in Orlando, with more than 100 concierge desk locations. The Expedia Entities also admit that Expedia Local Expert previously partnered with AdOnTheBox. The Expedia Entities otherwise deny the allegations in paragraph 18.

19. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 19.

20. Denied.

21. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 21 as they relate to the Booking Entities. The Expedia Entities admit that hotels.com, orbitz.com, and other website(s) operated by other affiliates of the Expedia Entities are fully accessible in Florida, allow all visitors (including those located in Florida) to search for hotels and filter results in a variety of ways, including by hotel name, hotel brand, and geographic location. The Expedia Entities admit that travelers can book accommodations at certain hotels in Cuba if they complete the required certification. The Expedia Entities otherwise deny the allegations in paragraph 21.

22. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 22 as they relate to the Booking Entities. The Expedia Entities admit that hotels.com, orbitz.com, and other website(s) operated by other affiliates of the Expedia Entities allow all visitors (including those located in Florida) to search for hotels and filter results in a variety of ways, including by available date and price. The Expedia Entities admit that travelers can book accommodations at certain hotels in Cuba using certain credit cards if the travelers complete the required certification. The Expedia Entities also admit that Hotels.com and other affiliate(s) of the Expedia Entities have in the past sent marketing emails to website users who started

but did not complete reservations at hotels in Cuba. The Expedia Entities otherwise deny the allegations in paragraph 22.

23. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 23 as they relate to the Booking Entities. The Expedia Entities admit that Hotels.com, Orbitz, and other affiliate(s) of the Expedia Entities have engaged in search optimization efforts and that Hotels.com has in the past has in the past sent marketing emails to website users who started but did not complete reservations at hotels in Cuba. The Expedia Entities otherwise deny the allegations in paragraph 23.

24. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 24 as they relate to the Booking Entities. The Expedia Entities admit that travelers with billing zip codes and/or IP addresses associated with Florida booked reservations at the Subject Hotels through hotels.com and/or orbitz.com, and that Hotels.com and Orbitz received revenue from those bookings. The Expedia Entities otherwise deny the allegations in paragraph 24.

25. The Expedia Entities admit that Hotels.com and Orbitz received revenue for each reservation for which the stay was actually completed. Otherwise denied.

26. The Expedia Entities deny that venue is proper under 28 U.S.C. § 1391(b)(2). Because the Expedia Entities are no longer disputing personal jurisdiction in this Court, the Expedia Entities admit that venue is proper under 28 U.S.C. § 1391(b)(3).

THE LIBERTAD ACT

27. The Expedia Entities admit that the Helms-Burton Act was enacted on March 12, 1996. The Expedia Entities also admit that the second sentence of paragraph 27 accurately (though selectively) quotes from 22 U.S.C. § 6022(6). The Expedia Entities otherwise deny the allegations in paragraph 27.

28. The Expedia Entities admit that the effective date of Title III of the Helms-Burton Act was August 1, 1996. The Expedia Entities otherwise deny the allegations in paragraph 28.

29. Denied.

FACTUAL ALLEGATIONS

30. Admitted.

31. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 31.

32. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 32.

33. Admitted.

34. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 34.

35. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 35.

36. The Expedia Entities admit that, at one point in time before the complaint was filed, travelers could book reservations at the Subject Hotels through websites operated by Hotels.com, Orbitz and certain other affiliates of the Expedia Entities. The Expedia Entities lack knowledge or information to form a belief as to the truth of the allegations in paragraph 36 with respect to the Booking Entities. The Expedia Entities otherwise deny the allegations in paragraph 36.

37. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 37.

38. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 38.

39. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 39.

40. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 40.

41. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 41.

42. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 42.

43. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 43.

44. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 44.

45. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 45.

46. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 46.

47. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 47.

48. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 48.

49. The Expedia Entities admit that paragraph 49 accurately (though selectively) quotes 22 U.S.C. § 6023(13)(A).The Expedia Entities otherwise deny the allegations in paragraph 49.

50. Denied.

51. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 51 as they relate to the Booking Entities. The Expedia Entities admit that they received the letters attached as Exhibit Q to the complaint on August 7, 2019. The Expedia Entities otherwise deny the allegations in paragraph 51.

52. Denied.

53. The Expedia Entities admit that neither the Expedia Entities nor their affiliates have sought or obtained consent from Echevarría in connection with the Subject Hotels. The Expedia Entities lack knowledge or information to form a belief as to the truth of the allegations in paragraph 53 with respect to the Cuban government or the Booking Entities. The Expedia Entities otherwise deny the allegations in paragraph 53.

54. The Expedia Entities admit that neither the Expedia Entities nor their affiliates have paid Echevarría any compensation in connection with the Subject Hotels. The Expedia Entities lack knowledge or information to form a belief as to the truth of the allegations in paragraph 54 with respect to the Cuban government or the Booking Entities. The Expedia Entities otherwise deny the allegations in paragraph 54.

55. Denied.

56. Denied.

57. Denied.

58. Denied.

59. The Expedia Entities admit that Expedia Group, Inc. is the corporate parent company of other entities that operate numerous travel brands and websites with more than one million bookable accommodations. Otherwise denied.

60. The Expedia Entities admit that the parts of paragraph 60 in quotation marks and block text accurately quote parts of Expedia Group's Form 10-K for the year ended December 31, 2018. The Expedia Entities otherwise deny the allegations in paragraph 60.

61. The Expedia Entities admit that, at one point in time before the complaint was filed, travelers could book reservations at the Subject Hotels through websites operated by Hotels.com, Orbitz and certain other affiliates of the Expedia Entities. The Expedia Entities lack knowledge or information to form a belief as to the truth of the allegations in paragraph 36 with respect to the Booking Entities. The Expedia Entities otherwise deny the allegations in paragraph 36.

62. The Expedia Entities admit that travelers can book accommodations at certain hotels in Cuba through hotels.com, orbitz.com, and other website(s) operated by other affiliates of the Expedia Entities if the travelers complete the required certification. The Expedia Entities otherwise deny the allegations in paragraph 62.

63. Denied.

64. Denied.

65. Denied.

66. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 66.

67. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 67.

68. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 68.

69. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 69.

70. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 70.

71. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 71.

72. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 72.

73. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 73.

74. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 74.

75. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 75.

76. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 76.

77. The Expedia Entities admit that, according to Echevarría, his claim relates to the defendants' purported advertising, solicitations, and sales of rooms at the Subject Hotels. The Expedia Entities otherwise deny the allegations in paragraph 77.

78. Denied.

79. Denied.

80. Denied.

81. The Expedia Entities admit that neither the Expedia Entities nor their affiliates have sought or obtained consent from Echevarría in connection with the Subject Hotels or paid him any compensation in connection with the Subject Hotels. The Expedia Entities otherwise lack sufficient knowledge or information to form a belief as to whether Echevarría is receiving no benefit from his purported interest in the Cuevas Property. The Expedia Entities otherwise deny the allegations in paragraph 81.

82. Denied.

CLASS REPRESENTATION ALLEGATIONS

83. Paragraph 83 does not include any allegations that require a response.

84. Paragraph 84 does not include any allegations that require a response.

85. Denied.

86. Denied.

87. Denied.

88. Denied.

89. Denied.

90. Denied.

91. Denied.

92. Denied.

93. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 93.

94. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 94.

95. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 95.

96. Denied.

97. Denied.

98. Denied.

99. The Expedia Entities deny the allegations in the first and third sentences of paragraph 99. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in the second sentence of paragraph 99.

100. Paragraph 100 does not include any allegations that require a response.

101. Paragraph 101 does not include any allegations that require a response.

102. Paragraph 102 does not include any allegations that require a response.

103. Denied.

104. Denied.

CAUSE OF ACTION

105. Paragraph 105 does not include any allegations that require a response.

106. The Expedia Entities admit that Echevarría brings this action under Title III of the Helms-Burton Act, 22 U.S.C. § 6082. The Expedia Entities otherwise deny the allegations in paragraph 106.

107. Admitted.

108. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 108.

109. The Expedia Entities lack sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 109.

110. Denied.

111. The Expedia Entities admit that neither the Expedia Entities nor their affiliates have sought or obtained consent from Echevarría in connection with the Subject Hotels. The Expedia Entities otherwise deny the allegations in paragraph 111.

112. Denied.

113. Denied.

114. The Expedia Entities admit that the suspension of the right to bring an action under Title III, 22 U.S.C. § 6085 has expired. The Expedia Entities otherwise deny the allegations in paragraph 114.

PLAINTIFF'S PRAYER FOR RELIEF

The Expedia Entities deny the allegations in Echevarría's Prayer for Relief.

PLAINTIFF'S JURY DEMAND

The Expedia Entities deny that Echevarría has a right to a jury trial and reserves the right to move to strike Echevarría's demand for a jury trial.

AFFIRMATIVE AND OTHER DEFENSES

Pursuant to Rule 8(c) of the Federal Rules of Civil Procedure, the Expedia Entities affirmatively state the following defenses. By listing a defense or issue below, the Expedia Entities do not admit that they bear the burden of proof on the issue or defense, and reserve its right to contend that Echevarría bears the burden of proof on the issue.

1. Echevarría's action is barred because Echevarría did not acquire ownership of the claims to the property at issue before March 12, 1996. See 22 U.S.C. 6082(a)(4)(B).

2. Echevarría's action is barred because the alleged transactions and uses of the property at issue were incident to lawful travel to Cuba and necessary to the conduct of such travel. See 22 U.S.C. § 6023(13)(B)(iii).

3. Echevarría's action is barred by the Due Process Clause of the Fifth Amendment because Echevarría is seeking to hold the Expedia Entities liable for conduct that was authorized by OFAC, U.S. Department of Treasury, under the Cuban Assets Control Regulations ("CACR"), 31 CFR Part 515.

4. The damages that Echevarría seeks to recover are unconstitutional because they are wholly disproportionate, grossly excessive, and bear no relationship to any conduct and dealings that the Expedia Entities had with respect to the property at issue.

5. Echevarría's claim for damages is barred because Echevarría is seeking to recover from other entities the same damages, arising from the same property and facts, that it is seeking to recover from the Expedia Entities. In the alternative, any recovery or compensation that Echevarría receives from other sources must be set off against any recovery that it receives from the Expedia Entities.

6. Echevarría's action is barred for failure to state a claim upon which relief can be granted.

7. Echevarría's action is barred because it is premised on conduct undertaken by a foreign government and outside the United States.

8. Echevarría's action is barred by the act of state doctrine, which must be applied here because it has constitutional underpinnings.

9. Echevarría's action is barred in whole or in part by the applicable statute of repose. See 22 U.S.C. § 6084.

10. Echevarría's action is barred in whole or in part by Article II of the U.S. Constitution to the extent that Echevarría's claim seeks to impose liability for foreign policy decisions made by the Executive Branch.

11. Echevarría's action is barred in whole or in part by the Eighth Amendment.

12. Echevarría's action is barred because the Helms-Burton Act is unconstitutionally vague.

13. Echevarría's action is barred by the doctrine of unclean hands.

14. Echevarría's suit is barred due to lack of standing and a failure to present a justiciable case or controversy, in that Echevarría has not suffered an injury-in-fact that is fairly traceable to conduct by the Expedia Entities.

15. Echevarría's suit is barred in whole or in part by the First Amendment.

PRAYER

For these reasons, the Expedia Entities ask the Court to enter judgment that Echevarría take nothing, dismiss Echevarría's suit with prejudice, assess costs against Echevarría, and award the Expedia Entities all other relief the Court deems appropriate.

Dated: August 28, 2023

Respectfully submitted,

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