UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 19-23994-CIV-ALTONAGA/Goodman

ROBERT M. GLEN,

Plaintiff,

v.

AMERICAN AIRLINES, INC.,

Defendant.

_____/

ORDER

THIS CAUSE came before the Court on Defendant, American Airlines, Inc.'s Motion to Dismiss the Amended Complaint, or, in the Alternative, to Transfer Venue [ECF No. 52], filed on March 27, 2020. Plaintiff, Robert M. Glen, filed a Response [ECF No. 56], to which Defendant filed a Reply [ECF No. 64]. The Court has carefully reviewed the parties' written submissions, the Amended Complaint [ECF No. 47], the record, and applicable law.

I. BACKGROUND

This is an action brought under the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, also known as the Helms-Burton Act (the "Act"). (*See generally* Am. Compl.). The Act provides "any person that . . . traffics in property which was confiscated by the Cuban Government on or after January 1, 1959, shall be liable to any United States national who owns the claim to such property for money damages . . . ." 22 U.S.C. § 6082(a)(1)(A) (alterations added). Plaintiff is an individual residing in Plano, Texas. (*See* Am. Compl. ¶ 15). Defendant is a

corporation chartered in Delaware with its principal place of business in Texas. (*See id.* ¶ 16; Mot. 13).[1]

Plaintiff alleges he is the owner of two properties located in Varadero, Cuba (the "Cuban Properties"). (*See* Am. Compl. ¶¶ 28–31). After January 1, 1959, the Cuban government confiscated the Cuban Properties in connection with the Cuban revolution. (*See id.* ¶ 40). The Cuban Properties are now the site of four beachfront hotels. (*See id.* ¶ 51). According to Plaintiff, Defendant knowingly trafficked in the Cuban Properties through its operation of www.BookAAHotels.com ("Book AA Hotels"), a website through which customers can book hotels at the same time they make flight reservations. (*See id.* ¶¶ 9, 103, 167). This website is a partnership between Defendant and Booking.com, and the two companies share commissions earned through the website. (*See id.* ¶ 106).

Plaintiff alleges venue is proper in the Southern District of Florida under 28 U.S.C. section 1391(b)(1), or alternatively 28 U.S.C. section 1391(b)(2), because Defendant is a resident of the state in which this District is located and a substantial part of the events giving rise to Plaintiff's claim occurred within this District. (*See id.* ¶ 20).

Defendant now moves to dismiss the Amended Complaint on several grounds: Plaintiff lacks Article III standing; the Court lacks personal jurisdiction over Defendant; venue is improper in this District and more convenient elsewhere; Plaintiff does not satisfy the Act's preconditions to suit; and Plaintiff does not adequately plead essential elements of his claim. (*See generally* Mot.). Because a "transfer of venue in this case would obviate the need to reach the [remaining] merits of the [] motion to dismiss," the Court begins — and ends — its analysis with the venue

[1] The Court relies on the pagination generated by the electronic CM/ECF database, which appears in the headers of all court filings.

issue.[2] *C.M.B. Foods, Inc. v. Corral of Middle Ga.*, 396 F. Supp. 2d 1283, 1285 (M.D. Ala. 2005) (alterations added).

II. STANDARD

Venue in a civil action brought in a district court of the United States exists in the following settings:

> (1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located; (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or (3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action.

28 U.S.C. § 1391(b).

A court may transfer a civil action to a different venue "[f]or the convenience of parties and witnesses, in the interest of justice . . . ." 28 U.S.C. § 1404(a) (alterations added); *see also Nalls v. Coleman Low Fed. Inst.*, 440 F. App'x 704, 706 (11th Cir. 2011) (citations omitted). "The standard for transfer under 28 U.S.C. [section] 1404(a) leaves much to the broad discretion of the trial court, and once a trial judge decides that transfer of venue is or is not justified, the ruling can be overturned only for clear abuse of discretion." *Osgood v. Disc. Auto Parts, LLC*, 981 F. Supp. 2d 1259, 1263 (S.D. Fla. 2013) (alteration added; citing *Brown v. Connecticut Gen. Life Ins. Co.*, 934 F.2d 1193, 1197 (11th Cir. 1991)). The movant bears the burden "to establish that another district is a more convenient forum than the plaintiff's chosen forum." *Id.* (citations omitted).

Courts engage in a two-pronged analysis to determine whether a case should be transferred

[2] While "it is common to resolve challenges to personal jurisdiction" before addressing venue, "it is not required that courts do so" and "[c]ourts may instead address venue applications at the threshold . . . ." *Everlast World's Boxing Headquarters Corp. v. Ringside, Inc.*, 928 F. Supp. 2d 735, 741 (S.D.N.Y. 2013) (alterations added; internal quotation marks and citation omitted); *see also id.* at 741–42 (noting instances where it is "sensible" and "prudentially appropriate" to address venue applications before reaching a challenge to personal jurisdiction (internal quotation marks and citations omitted)).

to another district under section 1404(a). *See Hight v. U.S. Dep't of Homeland Sec.*, 391 F. Supp. 3d 1178, 1183 (S.D. Fla. 2019). First, a court must determine whether the action could have been brought in the other venue. *See id.* Second, the court must assess whether "convenience and the interest of justice require transfer." *Id.* (internal quotation marks and citation omitted).

In determining whether convenience and the interest of justice require transfer, the court "must weigh various factors . . . ." *Windmere Corp. v. Remington Prods., Inc.*, 617 F. Supp. 8, 10 (S.D. Fla. 1985) (alteration added; citation omitted). These private and public interest factors include:

> (1) the convenience of the witnesses; (2) the location of relevant documents and the relative ease of access to sources of proof; (3) the convenience of the parties; (4) the locus of operative facts; (5) the availability of process to compel the attendance of unwilling witnesses; (6) the relative means of the parties; (7) a forum's familiarity with the governing law; (8) the weight accorded a plaintiff's choice of forum; and (9) trial efficiency and the interests of justice, based on the totality of the circumstances.

Manuel v. Convergys Corp., 430 F.3d 1132, 1135 n.1 (11th Cir. 2005) (citation omitted).

III. DISCUSSION

Regarding venue, Defendant argues the Court should transfer this case to the Northern District of Texas for the convenience of the parties and in the interest of justice because Defendant's principal place of business is there; Plaintiff resides nearby in Plano, Texas; any relevant witnesses, documents, or data in the United States are likely located in Texas; and Plaintiff's choice of forum is entitled to little, if any, weight because no party is based in Florida and no operative fact arose in Florida. (*See* Mot. 16–17). Alternatively, Defendant requests the Court transfer the case to the District of Delaware because Defendant is incorporated in Delaware and subject to jurisdiction there, and Plaintiff has filed a related suit in Delaware against different defendants alleging trafficking under the Act regarding the same hotels at issue in this case. (*See*

id. 17 n.1). Plaintiff argues the private and public interest factors weigh against transfer. (*See* Resp. 26–29). For the following reasons, the Court finds transfer to the Northern District of Texas is warranted.

A. The Action Could Have Been Brought in the Northern District of Texas

An action could have been brought in a transferee district "if that district has subject matter jurisdiction over the action, venue is proper, and the parties are amenable to service of process in the transferee forum." *Hight*, 391 F. Supp. 3d at 1183–84 (internal quotation marks and citations omitted). Notably, Plaintiff does not dispute this case could have originally been brought in the Northern District of Texas. (*See* Resp. 25–29). Because this action was brought under the Act, the Northern District of Texas has subject matter jurisdiction under 28 U.S.C. section 1331. Venue is proper in the Northern District of Texas because Defendant's principal place of business is there. (*See* Mot. 17). Finally, as Texas residents, the parties are amenable to service of process in the Northern District of Texas. (*See id.*). This first prong being satisfied, the Court next examines the factors under the second prong.

B. Transfer Would Serve the Convenience of the Parties and the Interests of Justice

1. The Convenience of the Witnesses and Availability of Compulsory Process

Defendant argues the Northern District of Texas would be more convenient for witnesses because the "relevant" witnesses are in Texas. (Mot. 17). According to Plaintiff, while Defendant's employees may reside in Texas, "this District is a more convenient forum for non-party witnesses," that is, for "seventeen South Florida Book AA Hotels users who reserved rooms at the [Cuban Properties]." (Resp. 27 (alteration added)). Defendant insists any potential need for customer testimony would be limited and does not outweigh the convenience of other witnesses. (*See* Reply 14). The Court agrees with Defendant.

"When weighing the convenience of the witnesses, a court does not merely tally the number of witnesses who reside in the current forum in comparison to the number located in the proposed transferee forum. Instead, the court must qualitatively evaluate the materiality of the testimony that the witness may provide." *Gonzalez v. Pirelli Tire, LLC*, No. 07-80453-Civ, 2008 WL 516847, at *2 (S.D. Fla. Feb. 22, 2008) (internal quotation marks and citations omitted). Plaintiff alleges Defendant violated the Act when Defendant "knowingly trafficked in the [Cuban] Properties by engaging in commercial activity using or otherwise benefiting from confiscated property, including by facilitating the booking of guestrooms at the [Cuban Properties] through Book AA Hotels[.]" (Am. Compl. ¶ 167 (alterations added)). Plaintiff further alleges Defendant "controls Book AA Hotels" (*id.* ¶ 105) and "conducted such trafficking without [Plaintiff's] authorization" (*id.* ¶ 169 (alteration added)).

The crux of Plaintiff's claim is that Defendant knowingly trafficked in the Cuban Properties through its operation of Book AA Hotels. The claim and its defense require witnesses with knowledge of Defendant's creation and operation of Book AA Hotels, including the partnership with Booking.com and the extent to which Defendant actually controls the website, and Defendant's knowledge (or lack thereof) of the properties offered for reservation on the website. Defendant explains that "[a]ll . . . employees who manage [Defendant's] relationship with Booking[.com] and the Book AA Hotels website work in Texas. . . . Records related to the website are in Texas. And witnesses who can testify about those records are in Texas." (Reply 13 (alterations added)). These Texas-based employees are the witnesses who are crucial to Plaintiff's case and will likely account for most of the testimony obtained in discovery and presented at trial. *See, e.g.*, *Cellularvision Tech. & Telecomms., L.P. v. Alltel Corp.*, 508 F. Supp. 2d 1186, 1191

(S.D. Fla. 2007) (considering the convenience of "witnesses that will be knowledgeable" about central issues in the case).

Nevertheless, Plaintiff insists the testimony of his 17 non-party witnesses "will establish the contours and details of [Defendant's] trafficking." (Resp. 27 (alteration added)). But these 17 non-party witnesses are simply customers who allegedly booked their reservations at the Cuban Properties through Book AA Hotels. (*See id.*). These witnesses cannot speak to Defendant's knowledge of its alleged trafficking or to its operation of Book AA Hotels and relationship with Booking.com. As Defendant points out, whether these customers booked reservations at the Cuban Properties through Book AA Hotels is a fact that can be established by Defendant's and Booking.com's records. (*See* Reply 14). Moreover, to the extent customer testimony is required to show this fact, one customer would suffice — while 17 would likely be cumulative. Assuming Plaintiff establishes that Defendant violated the Act, damages are set by statute and would not depend on the number of customers who booked reservations through Book AA Hotels. *See* 22 U.S.C. § 6082(a)(1)(A).

For the same reasons, compulsory process is not much of a concern in this case. Plaintiff's non-party witnesses likely would not be required to testify because Defendant's records would establish the fact that these customers booked through Book AA Hotels. To the extent customer testimony is required, the Court is confident at least one of the 17 identified customers would be willing to testify. Indeed, Plaintiff has not indicated these non-party witnesses are unwilling to testify nor that his case would be prejudiced through the presentation of the witnesses' testimony via deposition on this limited issue. *See Trafalgar Capital Specialized Inv. Fund (In Liquidation) v. Hartman*, 878 F. Supp. 2d 1274, 1287 (S.D. Fla. 2012) ("It is one thing to identify where the Court's subpoena power ends, and it is quite another to establish the impact that this lack of

jurisdiction will have on a particular action."). Accordingly, the Northern District of Texas's lack of compulsory process over Plaintiff's non-party witnesses is due little weight.

Simply put, the witnesses crucial to Plaintiff's claim, and whose testimony will account for most of testimony at trial, are in Texas. Therefore, this factor weighs heavily in favor of transfer.

2. The Location of Relevant Documents and the Ease of Access to Proof

Defendant argues any relevant documents "or data in the United States" would be located in Texas "where [Defendant] is headquartered and Plaintiff resides." (Mot. 17 (alteration added)). Plaintiff points out the undersigned has previously noted "[p]roducing documents and other files for litigation . . . is not usually a burdensome ordeal due to technological advancements . . . ." (Resp. 27 (third alteration added; internal quotation marks omitted; quoting *Wi-Lan USA, Inc. v. Alcatel-Lucent USA Inc.*, No. 12-23568-Civ, 2013 WL 358385, at *4 (S.D. Fla. Jan. 29, 2013))). While true, the Court has also acknowledged that if any original documents are needed at trial or in depositions, it is more convenient to have those documents located in the same district. *See Thermal Techs., Inc. v. Dade Serv. Corp.*, 282 F. Supp. 2d 1373, 1377–78 (S.D. Fla. 2003). Therefore, this factor weighs slightly in favor of transfer.

3. The Convenience of the Parties

Defendant asserts the Northern District of Texas would be more convenient for both parties because its principal place of business is there and Plaintiff resides nearby in Plano, Texas. (*See* Mot. 17). Plaintiff is silent as to any potential inconvenience to himself, arguing solely that Defendant would suffer no inconvenience by litigating here because "[Defendant] regularly litigates in this District[.]" (Resp. 27 (alterations added)). The Court is unpersuaded that because Defendant may routinely litigate in this District — presumably cases arising out of its operation of flights at Miami International Airport — it will not suffer unnecessary inconvenience in this

case arising out of its alleged operation of Book AA Hotels. To the contrary, as discussed, all of Defendant's employees responsible for Book AA Hotels are in Texas. As both parties are at home in Texas, this factor weighs heavily in favor of transfer.[3]

4. The Locus of Operative Facts

Defendant argues the locus of operative facts is in Texas because "Plaintiff's claim is based on a hotel-booking website accessible from anywhere in the world" and Defendant's employees who operate the website and manage the relationship with Booking.com are in Texas. (Reply 13; *see also* Mot. 17). Plaintiff asserts these facts are "irrelevant" because Defendant "engag[ed] in transactions with South Florida residents," and "there is a direct link between [Defendant's] flights from Miami to Cuba" and over half of the reservations through Book AA Hotels at the Cuban Properties. (Resp. 27 (alterations added)). The Court finds the locus of operative facts to be in Texas.

As described, the crux of Plaintiff's claim is that Defendant knowingly trafficked in the Cuban Properties through its operation of Book AA Hotels — a website accessible nationwide. If true, this would have taken place at Defendant's headquarters in Texas, where Defendant's employees responsible for Book AA Hotels are located. The fact that Florida residents are among the customers who booked reservations at the Cuban Properties through Book AA Hotels does not transform Florida into the locus of operative facts of Defendant's alleged trafficking. *See Game*

[3] Plaintiff stresses Defendant is defending a separate action under the Act in this District and has not moved to transfer. (*See* Resp. 27). According to Plaintiff, this shows Defendant is not inconvenienced by litigating in this District. (*See id.*). Unlike here, however, the plaintiff in that case resides in Miami, Florida — *i.e.*, in this District. (*See* Complaint for Damages [ECF No. 1] ¶ 2, *Lopez Regueiro v. America Airlines, Inc.*, No. 19-23965-JEM (S.D. Fla.)). This is one of many potential reasons why Defendant may have chosen not to move to transfer in that case. *See In re Ricoh Corp.*, 870 F.2d 570, 573 (11th Cir. 1989) ("The federal courts traditionally have accorded a plaintiff's choice of forum considerable deference." (citations omitted)); *cf. Intellectual Ventures I, LLC v. Motorola Mobility, LLC*, No. 13-61358-Civ, 2014 WL 129279, at *4 (S.D. Fla. Jan. 14, 2014) (noting that while "not discounted completely" "a non-resident plaintiff's choice of forum is generally accorded less weight" (quotation marks and citation omitted)).

Controller Tech. LLC v. Sony Computer Entm't Am. LLC, 994 F. Supp. 2d 1268, 1275 (S.D. Fla. 2014) (explaining the mere "sale of an accused product offered nationwide does not give rise to a substantial interest in any single venue" (internal quotation marks omitted; quoting *In re Acer America Corp.*, 626 F.3d 1252, 1256 (Fed. Cir. 2010))).

Likewise, the fact Defendant operates flights from Miami to Cuba — even if for passengers traveling to the Cuban Properties — does not transform Florida into the locus of operative facts of Defendant's alleged trafficking. Plaintiff does not allege the operation of these flights constitutes Defendant's alleged trafficking. Rather, he alleges the operation of a website accessible nationwide — Book AA Hotels — constitutes Defendant's trafficking. This website was allegedly created (in partnership with Booking.com) and is managed by Defendant's employees in Texas.

Thus, this factor weighs in favor of transfer. *See, e.g.*, *Cellularvision Tech.*, 508 F. Supp. 2d at 1192 ("Even though some of [the] [d]efendants' accused infringement activities are occurring in Florida, the activities of the [d]efendants in Florida are directed from Arkansas. Overall, it appears that the connection to Arkansas is stronger[.]" (alterations added)).

5. The Relative Means of the Parties

Defendant argues this factor is irrelevant because "both parties reside in the same state." (Reply 14). Plaintiff asserts he "is an individual" and Defendant "is a Fortune 500 company;" thus, "[t]here is no reason to doubt that [Defendant] can adequately defend this action in this District[.]" (Resp. 28 (alterations added)).

Although the Court does not doubt Defendant could afford to litigate in this District, Plaintiff fails to address Defendant's point. Plaintiff does not explain how the financial means of the parties is relevant to transferring this case to the parties' home state. For example, Plaintiff does not suggest he lacks the means to litigate in his home state of Texas or that he would be put

at a resource disadvantage by doing so. Accordingly, this factor is neutral. *See Osgood*, 981 F. Supp. 2d at 1266 ("This is not a case where [the] [d]efendant is simply looking to shift the inconvenience onto the [p]laintiff who lacks the means or ability to cope with it." (alterations added)).

6. The Forum's Familiarity with the Governing Law

Defendant contends "federal courts in Texas have as much familiarity with federal law and ability to engage in statutory analysis as federal courts in Florida[.]" (Reply 13 (alteration added)). Plaintiff states this District "has more actions under the Act before it than any other, and jurisprudence under the Act is more developed in this District than any other[.]" (Resp. 28 (alteration added)).

Regardless of how many actions under the Act may be pending in this District, the Court agrees with Defendant. This action is governed by federal law and the application of the Act. The Court is confident federal courts in this District and the Northern District of Texas are equally capable of applying the governing law. Thus, this factor is neutral. *See, e.g.*, *Carucel Invs., L.P. v. Novatel Wireless, Inc.*, 157 F. Supp. 3d 1219, 1229 (S.D. Fla. 2016) (finding "no problems related to the governing law [were] raised by [] transfer" where the action was "governed by federal law" (alterations added)).

7. Weight Accorded a Plaintiff's Choice of Forum

Plaintiff is correct that ordinarily "[a] plaintiff's choice of forum should not be disturbed unless it is clearly outweighed by other considerations." *Game Controller Tech.*, 994 F. Supp. 2d at 1276 (alteration added; internal quotation marks omitted; quoting *Robinson v. Giarmarco & Bill, P.C.*, 74 F.3d 253, 260 (11th Cir. 1996)). Yet "where the operative facts underlying the cause of action did not occur within the forum chosen by the plaintiff, the choice of forum is entitled to

less consideration." *Id.* (internal quotation marks and citation omitted). As explained, the operative facts underlying Defendant's alleged trafficking — its creation and operation of Book AA Hotels — occurred and takes place in Texas, not Florida. Moreover, neither Plaintiff nor his alleged Cuban Properties have any connection to Florida. Therefore, the Court finds Plaintiff's chosen forum is due no weight.

8. Trial Efficiency and the Interests of Justice

Defendant asserts "there is no legitimate reason that a trial in Florida would be more efficient than in Texas, where the parties are located and [its] relevant [] employees reside." (Reply 13 (alterations added)). Plaintiff argues the median time to trial is shorter in this District (15.2 months) than in the Northern District of Texas (26.3 months). (*See* Resp. 29). Assuming Plaintiff's statistics are accurate, this does not outweigh the inefficiency and burden of having the Texas-based parties and Texas-based witnesses travel from Texas to Florida with their Texas-based documents to adjudicate their Texas-based claim. Accordingly, this factor weighs in favor of transfer. *See Carucel Invs.*, 157 F. Supp. 3d at 1229 (transferring venue where the "center of the alleged [action], [residence of the] related parties, and the community with the most interest in this matter is simply not the Southern District of Florida" (alterations added; citations omitted)).

C. Balancing the Section 1404(a) Factors

Ultimately, no factor weighs in favor of retention and several factors weigh in favor of transfer, particularly the convenience of the parties and witnesses. Therefore, transfer of this action to the Northern District of Texas is warranted.

D. The District of Delaware is Not a More Convenient Forum

Plaintiff requests the Court consider transferring to the District of Delaware instead of the Northern District of Texas if it is going to transfer this action, because "this action could be

coordinated with [Plaintiff's] two other [] actions" brought under the Act. (Resp. 29 (alterations added)). Besides Defendant being incorporated in Delaware, this case has no connection to Delaware. Plaintiff's two other Delaware actions are brought against different defendants. (*See* Mot. 17 n.1). For the parties and witnesses in *this* case, the Court finds the Northern District of Texas is the most convenient venue.

IV. CONCLUSION

For the foregoing reasons, it is

ORDERED AND ADJUDGED that Defendant's Motion to Dismiss the Amended Complaint, or, in the Alternative, to Transfer Venue **[ECF No. 52]** is **GRANTED** in part. The Clerk is instructed to transfer this case to the United States District Court for the Northern District of Texas and mark this case as **CLOSED** in this District.

DONE AND ORDERED in Miami, Florida, this 13th day of May, 2020.

CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

cc: counsel of record