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April 18, 2022

David J. Smith
Clerk of Court
United States Court of Appeals for the 11th Circuit
56 Forsyth Street, N.W.
Atlanta, GA 30303

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**Response to Appellants' FRAP 28(j) Letter in *Del Valle, et al. v. Expedia Group Inc., et al.*, No. 20-12407**

Dear Mr. Smith,

On behalf of Appellees, we write in response to the April 4, 2022 FRAP 28(j) letter filed by Appellants, which cites a district court order in *Havana Docks Corp. v. Carnival Corp.*, No. 19-CV-21724 (S.D. Fla. March 21, 2022) (the "***Order***"). This court should not consider the Order as pertinent to the instant case (*Del Valle*) for several reasons.

*First*, the Order does not address personal jurisdiction, which is a determinative issue in *Del Valle* and was the basis for dismissal below. (*See* Booking Appellees' Br. 17-44; Expedia Appellees' Br. 12-27.)

*Second*, the Order is not instructive with respect to constitutional standing because the court failed to conduct the historical-analogue analysis required by the Supreme Court in *TransUnion* and by this Court in *Muransky* and *Trichell*. (*See* Appellees' July 12, 2021 Rule 28(j) Notice; Booking Appellees' Br. 52; Expedia Appellees' Br. 28-30.)

*Third*, unlike Appellants, plaintiff Havana Docks holds a *certified* claim (*compare* App. 144, *with* Order 109), which entitles it to a presumption of the claim's ownership and value. *See* 22 U.S.C. § 6082(a)(2). Because Appellants' action is based on *uncertified* claims, Appellants retain the burden to plead and prove ownership and value. Accordingly, the absence of an uncertified claim in *Havana Docks* makes the Order inapposite in *Del Valle*.

*Fourth*, the Order is not instructive on scienter, should the Court reach that issue. (*See* Booking Appellees' Br. 37 n.8; Expedia Appellees' Br. 37-39). The Order improperly limits the scope of the scienter requirement only to one element of a Title III claim: "trafficking." (Order 96-97.) Yet the Act's plain language requires a showing that defendant "knowingly and intentionally" engage in *all* elements of a Title III claim for liability to attach. (*See* 22 U.S.C. § 6023(13); App. 219-20, 247-48.)

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*Finally*, the Order is not instructive on the statute's "lawful travel exception" because it limits the term *necessary* in contradiction to the legislative history. The Order also misconstrues the purpose of the exception, ignoring the OFAC regulations that provide the relevant context. (*See* Booking Appellees' Br. 7, 10-11; *see also* U.S. Amicus Br. 30-36.)

Sincerely,

Michael Duffy

cc: All Counsel of Record via CM/ECF