No. 20-12407

United States Court of Appeals

for the

Eleventh Circuit

MARIO DEL VALLE; ENRIQUE FALLA; ANGELO POU,

Plaintiffs-Appellants,

CAROLINA FERNANDEZ, et al.,

Plaintiffs,

– v. –

TRIVAGO GMBH, a German Limited Liability Company; BOOKING.COM B.V., a Dutch Limited Liability Company; GRUPO HOTELERO CARIBE; CORPORACION DE COMERCIO Y TURISMO INTERNACIONAL CUBANACAN S.A.; GRUPO DE TURISMO GAVIOTA S.A.; RAUL DOE 1-5; MARIELA ROE 1-5; EXPEDIA, INC., et al.,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA IN CASE NO. 1:19-CV-22619-RNS
ROBERT N. SCOLA, U.S. DISTRICT COURT JUDGE

SUPPLEMENTAL APPENDIX OF DEFENDANTS-APPELLEES BOOKING.COM B.V. AND BOOKING HOLDINGS INC.

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TABLE OF CONTENTS

TAB 1 – Class Action Complaint for Damages
Filed June 24, 2019 ..... SA-1

TAB 1-1 – Civil Cover Sheet SA-23

TAB 46 – Defendants Expedia, Inc., Hotels.com L.P., Hotels.com, GP, LLC, and Orbitz, LLC's Motion to Dismiss for Lack of Personal Jurisdiction, Lack of Subject Matter Jurisdiction, and Failure to State a Claim, and Incorporated Memorandum of Law
Filed March 23, 2020 ..... SA-25

TAB CS – Certificate of Service

TAB 1

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Case No. _____

MARIO DEL VALLE, CAROLINA FERNANDEZ, LUIS FERNANDEZ, MARIO FERNANDEZ, ELENA DEL VALLE ARELLANO, ENRIQUE FALLA, LAUREANO FALLA, MARIO ECHEVARRIA, ESTHER SANCHEZ, CONSUELO CUEVAS, and CARMEN FLORIDO, as individuals and on behalf of all others similarly situated,

Plaintiffs,

v.

TRIVAGO GmbH, a German limited liability company, BOOKING.COM B.V., a Dutch limited liability company, GRUPO HOTELERO GRAN CARIBE, CORPORACIÓN DE COMERCIO Y TURISMO INTERNACIONAL CUBANACÁN S.A., GRUPO DE TURISMO GAVIOTA S.A., RAÚL DOE 1-5, MARIELA ROE 1-5,

Defendants.
_____/

CLASS ACTION COMPLAINT FOR DAMAGES

Luis Del Valle Esnard, one of the original founders of Varadero, in the province of Matanzas, in Cuba, owned several parcels of land, which, on his passing, were distributed to his children. One of those properties, a beach-front parcel (the "Del Valle Parcel") was passed down to his son Mario Del Valle Sr., and later to Del Valle Sr.'s descendants.[1] In the late 1950's, Mario Del Valle Sr. built a beach home on that property for his family. Laureano Falla Sr., together with his father-in-law, Eugenio Crabb, owned the parcel of land next to Luis Del Valle Esnard (the "Falla Parcel"), and like Mr. Del Valle, built a home for his family (and eventually, his descendants)[2] to enjoy as a beach home.

As for the Angulo Cuevas family,[3] for more than 100 years, they owned the entirety of Cayo Coco. Cayo Coco, being uninhabited, was used by the family and others as a recreational area for swimming, fishing, hunting, and for enjoying the many beaches on the island. Over the years, some limited commercial use was made of Cayo Coco, for the production of charcoal, the raising the livestock, and the production of salt.

But like the Del Valle and Falla families, the Angulo Cuevas family's quiet use and enjoyment of their property came to an abrupt end when Fidel Castro seized power and established a communist government in Cuba which confiscated their property and forced much of the families to flee their native country for the United States. In the case of the Del Valle and Falla families, the communist Cuban government ultimately demolished their homes, along with

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[1] Plaintiffs Mario Del Valle, Carolina Fernandez, Luis Fernandez, Mario Fernandez, and Elena del Valle Arellano (the "Del Valle Heirs") are the current heirs to the Del Valle Parcel.
[2] Plaintiffs Enrique Falla and Laureano Falla (the "Falla Heirs") are the current heirs to the Falla Parcel.
[3] Plaintiffs Mario Echevarria, Esther Sanchez, Consuelo Cuevas, and Carmen Florido (the "Angulo Cuevas Heirs") are the current heirs to Cayo Coco who are U.S. nationals, and thus entitled to bring this action.

several other nearby homes, and together with Blue Diamond Hotels & Resorts, Inc.,[4] built a hotel—the Starfish Cuatro Palmas (the "Cuatro Palmas").

In the case of the Angulo Cuevas family, after seizing Cayo Coco from the family the communist Cuban government developed the island, and together with various hotel chains, including Blue Diamond, built a number of resorts. Among those resorts are two operated by Blue Diamond—the Memories Flamenco and the Memories Caribe (the "Cayo Coco Resorts"). The Cuatro Palmas and the Cayo Coco Resorts are offered to visitors directly through Blue Diamond's own websites, including to Florida and other U.S. residents. But travelers, including Florida and other U.S. residents, are also able to book stays at the Cuatro Palmas and the Cayo Coco resorts through online booking providers like Trivago, a subsidiary of Expedia, Inc., as well as Booking.com.[5]

Together, the Cuban government, Blue Diamond, Expedia Entities, and the Booking Entities have exploited and benefitted from the Del Valle, Falla, and Angulo Cuevas families' property for decades without paying them—the rightful owners—any compensation whatever. The Plaintiff Heirs now sue to right the defendants' unlawful trafficking in their property and for just compensation for themselves and persons who are in a similar situation.

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[4] In accordance with 22 U.S.C. § 6082(a)(3), the Del Valle, Falla, and Angulo Cuevas Heirs (collectively, the "Plaintiff Heirs") have given notice to Blue Diamond Hotels & Resorts, Inc. and its corporate parent, Sunwing Travel Group, Inc. (collectively "Blue Diamond") of their intent to add Blue Diamond as a defendant to this lawsuit if they do not promptly compensate the Plaintiff Heirs and the class for the unlawful trafficking of their property.

[5] In accordance with 22 U.S.C. § 6082(a)(3), the Plaintiff Heirs have given notice to Expedia, Inc., together with its affiliates Hotels.com L.P., Hotels.com GP, LLC, Orbitz, LLC, Travelocity.com, LP (collectively, including defendant Trivago, the "Expedia Entities"), as well as Booking Holdings Inc. (together with defendant Booking.com B.V., the "Booking.com Entities"), of their intent to add them as defendants to this lawsuit if they do not promptly compensate the Plaintiff Heirs and the class for the unlawful trafficking of their property.

THE ACTION

1. The Plaintiff Heirs, on behalf of themselves and a class of similarly-situated persons, sue defendants Grupo Hotelero Gran Caribe ("Gran Caribe"), Corporación de Comercio y Turismo Internacional Cubanacán S.A. ("Cubanacán"), Grupo de Turismo Gaviota S.A. ("Gaviota"), Raúl Does 1-5, Mariela Roes 1-5, Trivago GmbH ("Trivago"), and Booking.com B.V. ("Booking.com") under the Cuban Liberty and Democratic Solidarity Act, 22 U.S.C. § 6021, *et seq.* (the "LIBERTAD Act"), for unlawful trafficking in their confiscated property in Cuba.

THE PARTIES

2. Mario Del Valle is a United States citizen and a natural person who resides in Miami, Florida.

3. Carolina Fernandez is a United States citizen and a natural person who resides in Miami, Florida.

4. Luis Fernandez is a United States citizen and a natural person who resides in Miami, Florida.

5. Mario Fernandez is a United States citizen and a natural person who resides in Miami, Florida.

6. Enrique Falla is a United States citizen and a natural person who resides in Miami, Florida.

7. Laureano Falla is a United States citizen and a natural person who resides in Miami, Florida.

8. Elena Del Valle Arellano is a United States citizen and a natural person who resides in Miami, Florida.

9. Mario Echevarria is a United States citizen and a natural person who resides in Miami, Florida.

10. Esther Sanchez is a United States citizen and a natural person who resides in Miami, Florida.

11. Consuelo Cuevas is a United States citizen and a natural person who resides in Miami, Florida.

12. Carmen Florido is a United States citizen and a natural person who resides in Miami, Florida.

13. Defendant Gran Caribe is a "Sociedad Anónima" incorporated in Cuba, with its principal place of business at 7ma. Avenida No. 4210 entre 42 y 44, Miramar, Playa, La Habana, Cuba. Gran Caribe is an agency or instrumentality of the government of Cuba.

14. Defendant Cubanacán is a "Sociedad Anónima" incorporated in Cuba, with its principal place of business at Calle 23 No. 156 entre N y O, Vedado, Plaza de la Revolución, La Habana, Cuba. Cubanacán is an agency or instrumentality of the government of Cuba.

15. Defendant Gaviota is a "Sociedad Anónima" incorporated in Cuba, with its principal place of business at Edificio La Marina, 3er. Piso. Ave del Puerto No. 102 entre Justiz y Obrapía, La Habana, Cuba. Gaviota is an agency or instrumentality of the government of Cuba.

16. Raúl Does 1-5 and Mariela Roes 1-5 are as-yet-unknown members of the Cuban government who, on information and belief, are associated with, and benefit from, the trafficking of confiscated property belonging to the Angulo/Cuevas Heirs and to the class members.

17. Defendant Trivago GmbH, an affiliate of Expedia, Inc., is a German limited liability company headquartered in Düsseldorf, Germany, with offices in New York, New York.

18. Defendant Booking.com B.V. is a Dutch limited liability company based in Amsterdam, the Netherlands, with its principal place of business in Amsterdam. Booking.com B.V. owns and operates Booking.com.

JURISDICTION AND VENUE

19. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 because this action arises under the LIBERTAD Act (22 U.S.C. § 6082) and the amount in controversy exceeds $50,000, excluding interest, costs, and attorneys' fees.

20. This Court has personal jurisdiction over defendants Gran Caribe, Cubanacán, and Gaviota under 28 U.S.C. § 1330 once service is made under 28 U.S.C. § 1608 because Gran Caribe, Cubanacán, and Gaviota are a foreign state as defined by 28 U.S.C. § 1603.

21. The Court has personal jurisdiction over Raúl Does 1-5 and Mariela Roes 1-5 under Fed. R. Civ. P. 4(k).

22. The Court has personal jurisdiction over Trivago and Booking.com under Fla. Stat. §§ 48.193(1)(a)(1) and (6)

23. Venue is proper in this District under 28 U.S.C. § 1391(c)(3) because Gran Caribe, Cubanacán, Gaviota, Raúl Does 1-5 and Mariela Roes 1-5 are not United States residents and because Trivago and Booking.com are deemed to be residents of Florida under 28 U.S.C. §§ 1391(c)(2) and (d).

THE LIBERTAD ACT

24. In 1996, in response to the communist Cuban government's murder of four civilian pilots performing humanitarian work with the Cuban-American group Brothers to the Rescue, Congress enacted the LIBERTAD Act to strengthen sanctions against the communist

Cuban government and deter the exploitation of wrongfully confiscated property in Cuba belonging to U.S. nationals.

25. Title III of the LIBERTAD Act provides U.S. nationals whose property in Cuba had been confiscated by the communist Cuban government with a right of action against those who traffic in that property. 22 U.S.C. §§ 6081-6085.

26. Since the LIBERTAD Act's enactment more than twenty years ago, successive Presidents of the United States suspended the right of action provided by Title III. As of May 2, 2019, the suspension was not renewed. The Plaintiff Heirs and the class members are now permitted to file suit under the LIBERTAD Act.

FACTUAL ALLEGATIONS

A. The Properties

The Varadero Properties

27. Luis Del Valle Esnard, the Del Valle Family's patriarch, was one of the founders of Varadero, and owned several parcels of beachfront property in a prime location in Varadero bordered on the West by Calle 62, the East by Calle 64, the South by a vacant lot running along Avenida Primera, and on the North by the ocean.

28. On the passing of Luis Del Valle Esnard, his property was distributed pursuant to a will to his children, including Mario Del Valle Sr., who received the property which is the subject of this action.

29. In the late 1950's, Mario Del Valle Sr. had a house built on his lot, which had, until that time, remained vacant, for his family to use as a beach home (the "Del Valle Property").

30. Laureano Falla, together with his father-in-law, Eugenio Crabb, owned the parcel of land next to Luis Del Valle Esnard, and like Mr. Del Valle, built a home for his family on that property to enjoy as a beach home (the "Falla Property").

31. On January 1, 1959, Fidel Castro took power in Cuba and instituted a communist regime. Shortly thereafter, in the early 1960's, the Cuban government confiscated the Del Valle and Falla Properties, as it ultimately did with all privately-owned property on the island.

32. In or around 1991, Blue Diamond developed the Del Valle and Falla Properties, which had since been razed, along with the property on which several other adjoining homes formerly sat, and built the Cuatro Palmas. Since its construction, Blue Diamond has operated, and continues to operate, the property together with Gran Caribe.

33. Vacation packages at the all-inclusive Cuatro Palmas can be reserved directly from Blue Diamond through its website, or through the Expedia and Booking.com Entities, securing those reservations with a credit card. The booking of reservations online through either Blue Diamond or through the Expedia and Booking.com Entities is available to U.S. residents, including Florida residents.

Cayo Coco

34. The Angulo Cuevas family owned the entirety of Cayo Coco, an island off the North Coast of Cuba, near the city of Morón. The island, which spans 370 square kilometers, is bordered by Morón to the South, Cayo Romano to the East, the Atlantic to the North, and Cayo Guillermo to the West. It is connected to the Cuban "mainland" near Morón by a 17-km long causeway, and to the world at large by Jardines del Rey International Airport.

Cayo Coco, when inherited by Julian Cuevas and his wife Isabel Angulo from Isabel's father, was a virgin island, undeveloped and reserved for the family's recreational use for

swimming, fishing, hunting, and for enjoying the many beaches on the island. Over the years, some limited commercial use was made of Cayo Coco, in the form of production of charcoal, the raising the livestock, and the production of salt. No large-scale development of the island was ever undertaken by the Cuevas/Angulo family.

35. On August 16, 1960, the communist Cuban government confiscated Cayo Coco from the Angulo Cuevas family. Shortly thereafter, many of the family members, including the Angulo Cuevas Heirs, fled Cuba to the United States, where they lived ever since.

36. Throughout the decades following the confiscation of Cayo Coco, Gran Caribe, together with Blue Diamond, developed the Cayo Coco Resorts. Vacation packages at the Cayo Coco Resorts can be reserved either directly from Blue Diamond through its website, or through Trivago, securing those reservations with a credit card. The booking of reservations online through either Blue Diamond or through Trivago is available to U.S. residents, including Florida residents.

B. Succession Rights to the Properties

37. As of the time of filing this lawsuit, the Del Valle Heirs are the rightful owners of the Del Valle Property, which is being trafficked by Gran Caribe, Blue Diamond, and the Expedia and Booking.com Entities.

38. As of the time of filing this lawsuit, the Falla Heirs are the rightful owners of the Falla Property, which is being trafficked by Gran Caribe, Blue Diamond, and the Expedia and Booking.com Entities.

39. As of the time of filing this lawsuit, the Angulo/Cuevas Heirs, together with certain non-U.S. national descendants, are the rightful owners of Cayo Coco, which is being trafficked by Gran Caribe, Blue Diamond, and the Expedia and Booking.com Entities.

C. Defendants and the Expedia and Booking.com Entities Have Trafficked the Del Valle and Falla Properties, as well as Cayo Coco, Without Compensating the Del Valle, Falla, or Angulo Cuevas families

40. Neither the communist Cuban government, nor any of the defendants and their accessories, the Expedia and Booking.com Entities, has ever paid—and the Del Valle, Falla, and Angulo Cuevas families have never received—any compensation whatsoever for the trafficking of the Del Valle or Falla Properties or Cayo Coco, respectively.

41. The Plaintiff Heirs were not eligible to file a claim with the Foreign Claims Settlement Commission under Title V of the International Claims Settlement Act of 1949 (22 U.S.C. § 1643 *et seq.*) because they were not U.S. citizens at the time their respective properties were confiscated.

42. Neither the Del Valle and Falla Properties, nor Cayo Coco, have been the subject of a certified claim under Title V of the International Claims Settlement Act of 1949 (22 U.S.C. § 1643 *et seq.*).

D. The Joint Venture

43. Gran Caribe and Blue Diamond operate in a joint venture by which they receive, possess, obtain control of, manage, use, or otherwise acquire or hold an interest in confiscated property and engage in commercial activity involving the use of or otherwise benefitting from confiscated property. Among these properties are the Cuatro Palmas, in Varadero, which sits upon the Del Valle and Falla Properties (among others), and the Cayo Coco Resorts, which sit upon Cayo Coco.

E. The Expedia Entities

44. Expedia, Inc. is the corporate parent company for a number of brands, including Trivago. In fact, Expedia, Inc. lists a total of 21 subsidiaries or affiliates, through which it

maintains more than 200 travel booking sites across more than 70 countries, and through which it offers more than 1 million properties for rent.

https://www.expediagroup.com/about/

45. According to Expedia, Inc.'s most recent 10-K filing, the Expedia Entities "make travel products and services available both on a stand-alone and package basis, primarily through the following business models: the merchant model, the agency model and the advertising model." Expedia, Inc., Annual Report (Form 10-K) (Feb. 14, 2018) at 5.

> Under the merchant model, we facilitate the booking of hotel rooms, airline seats, car rentals and destination services from our travel suppliers and we are the merchant of record for such bookings. The majority of our merchant transactions relate to hotel bookings. Under the agency model, we facilitate travel bookings and act as the agent in the transaction, passing reservations booked by the traveler to the relevant travel provider. We receive commissions or ticketing fees from the travel supplier and/or traveler.
>
> * * *
>
> Under the advertising model, we offer travel and non-travel advertisers access to a potential source of incremental traffic and transactions through our various media and advertising offerings on trivago and our transaction-based websites.

Id. at 5-6.

46. When the Expedia Entities operate under the merchant model, customers "pay [the Expedia Defendants] for merchant hotel transactions prior to departing on their trip, generally when they book the reservation." *Id.* at F-10. As to how the Expedia Entities profit from this model, they "generally contract in advance with lodging providers to obtain access to rooms at negotiated rates" then re-sell the rooms to its customers at a profit. *Id.* at F-11.

47. When the Expedia Entities operate under the agency model, the Expedia Entities "act as the agent in the transaction, passing reservations booked by the traveler to the relevant travel provider" and "receive commissions or ticketing fees from the travel supplier and/or traveler." *Id.* at F-10.

48. The Expedia Entities all provide online booking services for hotels in Cuba, including those operated by Meliá, Blue Diamond, Iberostar, Be Live, Barceló, and others. For example, Expedia.com lists a total of 3,711 properties available for rent throughout Cuba,

including 15 Blue Diamond properties, 3 Iberostar properties, 23 Meliá properties, 3 Be Live properties, and 3 Barceló properties. These properties include the Cuatro Palmas and the Cayo Coco Resorts.

F. The Booking.com Entities

49. Like Expedia Inc., Booking Holdings is the corporate parent company for a number of brands, including Booking.com, Kayak, Priceline, Agoda, Rentalcars.com, and OpenTable. Booking Holdings, Inc., Annual Report (Form 10-K) (Feb. 27, 2019) at 1.

50. According to Booking Holdings, its "business is driving primarily by international results, which consist of the results of Booking.com, agoda, and Rentalcars.com and the international business of KAYAK and OpenTable." *Id.* Booking Holdings clarifies, however, that its characterization of the majority of its business as "international" is "independent of where the consumer resides, where the consumer is physically located while using our services or the location of the travel service provider or restaurant. For example, a reservation made through Booking.com at a hotel in New York for a consumer in the United States is part of our international results." *Id.*

51. The "substantial majority," or 89%, of Booking Holdings' "international"—by Booking Holdings' definition of "international"—business is generated by defendant Booking.com. *Id.*

52. The Booking.com Entities operate under both an agency model and a merchant model:

- Agency revenues are derived from travel-related transactions where we do not receive payments from travelers for the services provided. We invoice the travel service providers for our commissions after travel is completed. Agency revenues consist almost entirely of travel reservation commissions, as well as certain GDS reservation booking fees and certain travel insurance fees.

- Merchant revenues are derived from travel-related transactions where we receive payments from travelers for the service provided, generally at the time of booking. Merchant revenues include travel reservation commissions and transaction net revenues (i.e., the amount charged to travelers less the amount owed to travel service providers) in connection with our merchant reservation services; ancillary fees, including travel insurance-related revenues and certain GDS reservation booking fees; and credit card processing rebates and customer processing fees. Substantially all merchant revenues are for merchant services derived from transactions where travelers book accommodation reservations or rental car reservations from travel service providers.

Id. at 2. Under these models, along with advertising through KAYAK, Booking Holdings had revenues of $14.5 billion. *Id.*

53. "Booking.com is the world's leading brand for booking online accommodation reservations, based on room nights booked, with operations worldwide and headquarters in the Netherlands." *Id.* at 4.

54. Defendant Booking.com provides online booking services for hotels in Cuba, including those operated by Meliá, Blue Diamond, Iberostar, Be Live, Barceló, and others. For example, Booking.com lists a total of 6,500 properties available for rent across Cuba, including 9 Iberostar properties, 19 Meliá properties, 5 Blue Diamond properties, 3 Be Live properties, and 3 Barceló properties. These properties include the Cuatro Palmas and the Cayo Coco Resorts.

CLASS REPRESENTATION ALLEGATIONS

55. Under Fed. R. Civ. P. 23, the Plaintiff Heirs bring this suit and seek class certification of the claim alleged here and a damages judgment against defendants for themselves and on behalf of the class.

56. The class is defined as follows and consists of:

All U.S. nationals (as defined at 22 U.S.C. § 6023(15)) who own property (as defined at 22 U.S.C. § 6023(12)) in Cuba that was expropriated by the government of Cuba prior to March 12, 1996, and has been trafficked by an agency or instrumentality of Cuba together with Blue Diamond, in many instances with the assistance of Expedia or Booking.com Entities, without prior authorization of, or absent compensation to, such

U.S. nationals, where such U.S. national was not eligible to file a claim with the Foreign Claims Settlement Commission under Title V of the International Claims Settlement Act of 1949 (22 U.S.C. § 1643 et seq.), and no certified claim to the property exists.

This class definition excludes (a) the defendants, their officers, directors, management, employees, subsidiaries, and affiliates; and (b) any judges or justices involved in this action and any members of their immediate families.

A. Federal Rule of Civil Procedure 23(a)

57. Fed. R. Civ. P. 23(a) provides for class certification where the representative plaintiffs demonstrate that:

1. the class is so numerous that joinder of all members is impracticable;
2. there are questions of law or fact common to the class;
3. their representative claims or defenses are typical of the claims or defenses of the class; and
4. they will fairly and adequately protect the interests of the class.

(1) Numerosity

58. On information and belief, the class consists of hundreds of persons. Blue Diamond operates at least 18 hotels, resorts, and other tourist attractions in several locations throughout Cuba, rendering individual joinder of each class member impracticable.

(2) Commonality

59. The Plaintiff Heirs and the class have claims that raise common questions of law or fact.

60. This is an action in which the Plaintiff Heirs and the class members assert claims alleging the same theory of recovery, namely, that they are entitled to damages from the defendant for its wrongful trafficking of their property.

61. The Plaintiff Heirs' and class members' claims arise from the same practice or course of conduct: defendant's trafficking of confiscated properties used in the hospitality and tourism industry for its own economic gain.

62. The Plaintiff Heirs' and class members' damages were caused by the same practice or course of conduct: defendants' unlawful trafficking in their property without prior authorization or compensation to the rightful owners.

63. The Plaintiff Heirs' and class members' claims raise common questions of law or fact, including, but not limited to, whether:

a. The communist Cuban government nationalized, expropriated, or seized property without providing the owners with adequate or effective compensation;

b. The confiscation of property occurred before March 12, 1996;

c. Defendants trafficked in that confiscated property; and

d. Defendants knew or had reason to know that the trafficked property had been confiscated.

(3) Typicality

64. The Plaintiff Heirs' claims are typical of class member claims because they are based on the same legal theory, arise from a similar core set of facts, and are not subject to any unique defenses. Members of the class have sustained, and will continue to sustain, damages in the same manner as the Plaintiff Heirs as a result of defendants' conduct.

(4) Adequacy of Representation

65. The Plaintiff Heirs and their counsel will fairly and adequately protect and represent the interest of the class members.

66. The Plaintiff Heirs are members of the class defined above. As representative plaintiffs, they are committed to the active and vigorous prosecution of this action and have

engaged competent counsel experienced in litigation of this nature, who possess the resources and commitment to vigorously prosecute this case to a successful resolution.

67. There is no hostility of interests between the Plaintiff Heirs and other class members. The Plaintiff Heirs have no claims that are antagonistic to the claims of other class members, and reasonably anticipate no difficulty in the management of this litigation as a class action.

B. Federal Rule of Civil Procedure 23(b)

68. This class action is maintainable under Rule 23(b)(3).

(1) Predominance

69. In this case, common liability issues of law and fact predominate over any hypothetical or potential individualized issues, because the Plaintiff Heirs' and class members' claims arise from a common nucleus of operative fact and share, among other things, the common issues of law and fact set forth above. The predominant common issue in this action is whether defendants knew, or had reason to know, that they trafficked in confiscated property.

(2) Superiority

70. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because it is the most manageable and efficient way to resolve the individual claims of each class member.

71. Specifically, a class action will provide class members with what may be their only economically viable remedy. Moreover, there are no known class members who are interested in individually controlling the prosecution of separate actions. In addition, a class action will concentrate all litigation in one forum, which will conserve judicial and party resources with no unusual manageability problems.

C. National Issues Class under Fed. R. Civ. P. 23(c)(4)

72. In the alternative, the Plaintiff Heirs seek to bring and maintain a national issues class under Fed. R. Civ. P. 23(c)(4).

73. Rule 23(c)(4) provides that an action may be brought or maintained as a class action with respect to particular issues when doing so would materially advance the litigation as a whole.

74. In order to materially advance this litigation, the Plaintiff Heirs bring this action on behalf of themselves and the Class Members to resolve several critical, class-wide issues, including whether:

a. defendants entered into a joint venture or other contractual arrangement that arranged for the use of confiscated property;

b. defendants engaged in a commercial activity using or otherwise benefitting from the use of confiscated property;

c. defendants sold, transferred, managed, used, or acquired an interest in confiscated property; and

d. defendants knew or had reason to know that the property they used or benefitted from was confiscated.

75. The Issues Class is properly brought and should be maintained as a class action under Rule 23(a), satisfying the class action prerequisites of numerosity, commonality, typicality, and adequacy because:

a. Numerosity: Individual joinder of the Issues class members would be wholly impracticable. There are hundreds of persons throughout the United States whose property was confiscated by the communist Cuban government and in which defendants traffic. Thus, the numerosity element for class certification is satisfied;

b. Commonality: Questions of law and fact are common to the Issues class members' claims. As this is an issues class under Rule 23(c)(4), there are, by definition, common questions of law applicable to all class members' claims:

c. Typicality: The Plaintiff Heirs' claims are typical of Issues class members' claims because all the claims arise from the same course of conduct by

defendants, i.e., defendants' trafficking in confiscated property. Therefore, the Plaintiff Heirs' claims are typical of the issues class members' claims;

d. Adequacy: The Plaintiff Heirs will fairly and adequately represent and protect the interests of the Issues class members. The Plaintiff Heirs' interest in vindicating their claims is shared with all Issues class members, and there are no conflicts between the named plaintiffs and putative Issues class members. Further, the Plaintiff Heirs are represented by counsel who are competent and experienced in class action litigation and have no conflicts.

76. This Issues class also is maintainable under Rule 23(b)(3) because common liability issues of law and fact predominate over any hypothetical or potential individualized issues. The Plaintiff Heirs' and issues class members' claims arise from a common nucleus of operative fact and share, among other things, the common issues of law and fact set forth above. The predominant common issue in this action is whether defendants knew, or had reason to know, that they trafficked in confiscated property. A class action is superior to other available methods for the fair and efficient adjudication of this overarching issue, and this litigation, because class treatment affords the most manageable and efficient way to resolve the individual claims of each Issues class member. Class treatment will provide Issues class members with what may be their only economically viable remedy. Moreover, there are no known Issues class members who are interested in individually controlling the prosecution of separate actions. In addition, a class action will concentrate all litigation in one forum, which will conserve judicial and party resources with no unusual manageability problems.

CAUSE OF ACTION

COUNT I
Private Right of Action Under 22 U.S.C. § 6082(a)(1)
Against All Defendants

77. The Plaintiff Heirs incorporate by reference paragraphs 1 to 76 as if fully set forth here.

78. This claim is brought under Title III of the LIBERTAD Act, 22 U.S.C. § 6082.

79. Defendants are "persons" as defined by 22 U.S.C. § 6023(11).

80. The Plaintiff Heirs and the class members had their property confiscated by the communist Cuban government.

81. Defendants Gran Caribe, Cubanacán, and Gaviota, together with Blue Diamond, entered into joint ventures for the purpose of trafficking in confiscated properties for use as hotel or other hospitality venues, including the Cuatro Palmas and the Cayo Coco Resorts, which trafficking continues to this day, in violation of Title III of the LIBERTAD ACT.

82. Defendants Trivago and Booking.com, together with the Expedia and Booking.com Entities also have used or benefitted from the confiscated properties by offering, for economic benefit, reservations at the Cuatro Palmas and Cayo Coco Resorts, which trafficking continues to this day, in violation of Title III of the LIBERTAD ACT.

83. On information and belief, officials of the Cuban government and its defendant instrumentalities, including Raúl Does 1-5 and Mariela Roes 1-5 have, throughout the years, also participated in and profited from trafficking in confiscated properties, including the Del Valle and Falla Properties and Cayo Coco.

84. Defendants Gran Caribe, Cubanacán, Gaviota, Raúl Does 1-5, Mariela Roes 1-5, Trivago, and Booking.com together with Blue Diamond and the Expedia and Booking.com Entities, have conducted this trafficking "without the authorization of any United States national who holds a claim to the property" (22 U.S.C. § 6023(13)) in violation of Title III of the LIBERTAD Act.

85. Accordingly, the Plaintiff Heirs and the class members are entitled to damages to be determined under 22 U.S.C. § 6082(a)(1)(A)(i), along with attorneys' fees and costs under 22 U.S.C. § 6082(a)(1)(A)(ii).

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff Heirs, individually and on behalf of the class members, demand the following relief:

(a) A finding that this action satisfies the prerequisites for maintenance of a class action under Federal Rule of Civil Procedure 23(a) and (b)(3), and a certification of class;

(b) Designation of the Plaintiff Heirs as representatives for the class and their undersigned counsel as class counsel for the class; and

(c) A judgment against defendants that:

i. Awards actual damages in an amount to be determined under 22 U.S.C. § 6082(a)(1)(A)(i);

ii. Awards reasonable attorneys' fees and costs incurred in this action under 22 U.S.C. § 6082(a)(1)(A)(ii);

iii. Awards appropriate post-judgment interest; and

iv. Grants all other relief that the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs demand trial by jury on all issues so triable.

Dated: June 24, 2019

Respectfully submitted,

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By: _____
MANUEL VAZQUEZ
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TAB 1-1

JS 44 (Rev. 06/17) FLSD Revised 06/01/2017

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)* **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

I. (a) PLAINTIFFS MARIO ECHEVARRIA, ESTHER SANCHEZ, CONSUELO CUEVAS, and CARMEN FLORIDO, as individuals and

DEFENDANTS TTRIVAGO GmbH, a German limited liability

(b) County of Residence of First Listed Plaintiff *(EXCEPT IN U.S. PLAINTIFF CASES)*

County of Residence of First Listed Defendant *(IN U.S. PLAINTIFF CASES ONLY)*

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

Rivero Mestre LLP, 2525 Ponce de Leon Blvd., Suite 1000
Miami, FL 33134 305-445-2500

Attorneys *(If Known)*

(d) Check County Where Action Arose: ☑ MIAMI-DADE ☐ MONROE ☐ BROWARD ☐ PALM BEACH ☐ MARTIN ☐ ST. LUCIE ☐ INDIAN RIVER ☐ OKEECHOBEE ☐ HIGHLANDS

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

☐ 1 U.S. Government Plaintiff
☑ 3 Federal Question *(U.S. Government Not a Party)*
☐ 2 U.S. Government Defendant
☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff) (For Diversity Cases Only) and One Box for Defendant)*

	PTF	DEF		PTF	DEF
Citizen of This State	☑ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☑ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions

CONTRACT
☐ 110 Insurance
☐ 120 Marine
☐ 130 Miller Act
☐ 140 Negotiable Instrument
☐ 150 Recovery of Overpayment & Enforcement of Judgment
☐ 151 Medicare Act
☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
☐ 153 Recovery of Overpayment of Veteran's Benefits
☐ 160 Stockholders' Suits
☐ 190 Other Contract
☐ 195 Contract Product Liability
☐ 196 Franchise

REAL PROPERTY
☐ 210 Land Condemnation
☐ 220 Foreclosure
☐ 230 Rent Lease & Ejectment
☐ 240 Torts to Land
☐ 245 Tort Product Liability
☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
☐ 310 Airplane
☐ 315 Airplane Product Liability
☐ 320 Assault, Libel & Slander
☐ 330 Federal Employers' Liability
☐ 340 Marine
☐ 345 Marine Product Liability
☐ 350 Motor Vehicle
☐ 355 Motor Vehicle Product Liability
☐ 360 Other Personal Injury
☐ 362 Personal Injury - Med. Malpractice

PERSONAL INJURY
☐ 365 Personal Injury - Product Liability
☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
☐ 370 Other Fraud
☐ 371 Truth in Lending
☐ 380 Other Personal Property Damage
☐ 385 Property Damage Product Liability

CIVIL RIGHTS
☐ 440 Other Civil Rights
☐ 441 Voting
☐ 442 Employment
☐ 443 Housing/ Accommodations
☐ 445 Amer. w/Disabilities - Employment
☐ 446 Amer. w/Disabilities - Other
☐ 448 Education

PRISONER PETITIONS
Habeas Corpus:
☐ 463 Alien Detainee
☐ 510 Motions to Vacate Sentence
Other:
☐ 530 General
☐ 535 Death Penalty
☐ 540 Mandamus & Other
☐ 550 Civil Rights
☐ 555 Prison Condition
560 Civil Detainee – Conditions of Confinement

FORFEITURE/PENALTY
☐ 625 Drug Related Seizure of Property 21 USC 881
☐ 690 Other

LABOR
☐ 710 Fair Labor Standards Act
☐ 720 Labor/Mgmt. Relations
☐ 740 Railway Labor Act
☐ 751 Family and Medical Leave Act
☐ 790 Other Labor Litigation
☐ 791 Empl. Ret. Inc. Security Act

IMMIGRATION
☐ 462 Naturalization Application
☐ 465 Other Immigration Actions

BANKRUPTCY
☐ 422 Appeal 28 USC 158
☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
☐ 820 Copyrights
☐ 830 Patent
☐ 835 Patent – Abbreviated New Drug Application
☐ 840 Trademark

SOCIAL SECURITY
☐ 861 HIA (1395ff)
☐ 862 Black Lung (923)
☐ 863 DIWC/DIWW (405(g))
☐ 864 SSID Title XVI
☐ 865 RSI (405(g))

FEDERAL TAX SUITS
☐ 870 Taxes (U.S. Plaintiff or Defendant)
☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
☐ 375 False Claims Act
☐ 376 Qui Tam (31 USC 3729 (a))
☐ 400 State Reapportionment
☐ 410 Antitrust
☐ 430 Banks and Banking
☐ 450 Commerce
☐ 460 Deportation
☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 480 Consumer Credit
☐ 490 Cable/Sat TV
☐ 850 Securities/Commodities/ Exchange
☑ 890 Other Statutory Actions
☐ 891 Agricultural Acts
☐ 893 Environmental Matters
☐ 895 Freedom of Information Act
☐ 896 Arbitration
☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☑ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Re-filed (See VI below) ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district *(specify)* ☐ 6 Multidistrict Litigation Transfer ☐ 7 Appeal to District Judge from Magistrate Judgment ☐ 8 Multidistrict Litigation – Direct File ☐ 9 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S)

(See instructions): a) Re-filed Case ☐ YES ☑ NO b) Related Cases ☑ YES ☐ NO

JUDGE: Federico A. Moreno. **DOCKET NUMBER:** 1:19-cv-22529-FAM

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause *(Do not cite jurisdictional statutes unless diversity)*:

LENGTH OF TRIAL via days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

☑ CHECK IF THIS IS A **CLASS ACTION** UNDER F.R.C.P. 23

DEMAND $

CHECK YES only if demanded in complaint:

JURY DEMAND: ☑ Yes ☐ No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

DATE June 24, 2019 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT IFP JUDGE MAG JUDGE

JS 44 (Rev. 06/17) FLSD Revised 06/01/2017

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. **Jurisdiction**. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked. Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. **Nature of Suit**. Nature of Suit. Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: Nature of Suit Code Descriptions.

V. **Origin**. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Refiled (3) Attach copy of Order for Dismissal of Previous case. Also complete VI.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

Remanded from Appellate Court. (8) Check this box if remanded from Appellate Court.

VI. **Related/Refiled Cases**. This section of the JS 44 is used to reference related pending cases or re-filed cases. Insert the docket numbers and the corresponding judges name for such cases.

VII. **Cause of Action**. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity**. Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VIII. **Requested in Complaint**. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Date and Attorney Signature. Date and sign the civil cover sheet.

TAB 46

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 19-cv-22619-RNS

Mario Del Valle, Enrique Falla, and **Angelo Pou**, as individuals and on behalf of all others similarly situated,

Plaintiffs,

v.

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

Defendants.

DEFENDANTS EXPEDIA, INC., HOTELS.COM L.P., HOTELS.COM GP, LLC, AND ORBITZ, LLC'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION, LACK OF SUBJECT MATTER JURISDICTION, AND FAILURE TO STATE A CLAIM, AND INCORPORATED MEMORANDUM OF LAW

4824-8338-6551

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

INTRODUCTION 1

BACKGROUND 2

A. The Helms-Burton Act 2

B. Procedural History 3

C. Plaintiffs' Current Allegations 3

D. The Expedia Entities 5

ARGUMENT & AUTHORITIES 6

A. Lack of Personal Jurisdiction 6

1. Plaintiffs fail to allege a prima facie case of general jurisdiction. 7

2. Plaintiffs fail to allege a prima facie case of specific jurisdiction. 8

B. Lack of Subject Matter Jurisdiction – No Standing 10

C. Failure to State a Claim 12

1. Plaintiffs fail to plead an actionable ownership interest under Title III. 12

2. Plaintiffs fail to adequately plead trafficking. 14

3. The Properties do not constitute "property" under the Act. 17

CONCLUSION 18

REQUEST FOR HEARING 18

TABLE OF AUTHORITIES

Cases

Access for the Disabled v. First Subway, LLC.,
No. 10-61131-CIV, 2010 WL 11596384 (S.D. Fla. Oct. 4, 2010) 11

Ashcroft v. Iqbal,
556 U.S. 662 (2009) 12, 13

Bell Atl. Corp. v. Twombly,
550 U.S. 544 (2007) 12

Benjamin v. CitiMortgage, Inc.,
No. 0:12-cv-62291-FAM, 2013 WL 1891284 (S.D. Fla. May 6, 2013) 14

Black Diamond Land Mgmt. LLC v. Twin Pines Coal Inc.,
707 F. App'x 576 (11th Cir. 2017) 13

BNSF Ry. Co. v. Tyrrell,
137 S. Ct. 1549 (2017).....8

Bochese v. Town of Ponce Inlet,
405 F.3d 964 (11th Cir. 2005) 10, 11

Borislow v. Canaccord Genuity Group Inc.,
No. 9:14-cv-80134-KLR, 2014 WL 12580259 (S.D. Fla. June 27, 2014).....6

Camreta v. Greene,
131 S. Ct. 2020 (2011).....15

Carmouche v. Tamborlee Mgmt., Inc.,
789 F.3d 1201 (11th Cir. 2015) 7

Daimler AG v. Bauman, 571 U.S. 117 (2014).....7

Empresa Cubana Exportadora de Alimentos y Productos Varios v. U.S. Dept. of Treasury,
606 F. Supp. 2d 59 (D.D.C. 2009).....16

Fast SRL v. Direct Connection Travel LLC,
No. 1:17-cv-20900, 2018 WL 7822711 (S.D. Fla. Aug. 3, 2018)..... 7, 9

Fish v. Kobach,
840 F.3d 710 (10th Cir. 2016) 16

Gables Ins. Recovery v. United Healthcare Ins. Co.,
39 F. Supp. 3d 1377 (S.D. Fla. 2013) 15

Garcia- Bengochea v. Carnival Corp.,
No. 1:19-cv-21725, 2019 WL 4015576, at *3–4 (S.D. Fla. Aug. 26, 2019) 15

Gonzalez v. Amazon.com, Inc.,
No. 1:19-cv-23988-RNS, 2020 WL 1169125 (S.D. Fla. Mar. 11, 2020) 2, 12, 13, 14, 15

Havana Docks Corp. v. Carnival Corp.,
No. 1:19-cv-21724-BB, (S.D. Fla. Aug. 28, 2019) 15

Hollywood Mobile Estates Ltd. v. Seminole Tribe of Florida,
641 F.3d 1259 (11th Cir. 2011) 11

In re Takata Airbag Products Liab. Litig.,
396 F. Supp. 3d 1101 (S.D. Fla. 2019) 6

Jones v. Bock,
549 U.S. 199 (2007) 16

Kawa Orthodontics, LLP v. Sec'y, U.S. Dept. of the Treasury,
773 F.3d 243 (11th Cir. 2014) 11, 12

Lemoine v. Wong,
No. 0:17-cv-60099-UU, 2017 WL 5127592 (S.D. Fla. Mar. 29, 2017) 9

Lujan v. Defs. of Wildlife,
504 U.S. 555 (1992 10

Madara v. Hall,
916 F.2d 1510 (11th Cir. 1990) 6, 10

McCulloch v. Maryland,
17 U.S. 316 (1819) 17

McCullough v. Royal Caribbean Cruises, Ltd.,
268 F. Supp. 3d 1336 (S.D. Fla. 2017) 7

Michel v. NYP Holdings, Inc.,
816 F.3d 686 (11th Cir. 2016) 14

Monroe v. CitiMortgage, Inc.,
No. 8:07-cv-0066-SCB-TGW, 2007 WL 1560194 (M.D. Fla. May 29, 2007) 15

Nat. Resources Def. Council, Inc. v. Thomas,
838 F.2d 1224 (D.C. Cir. 1988) 17

Oldfield v. Pueblo De Bahia Lora, S.A.,
558 F.3d 1210 (11th Cir. 2009) 10

Oxford Asset Mgmt., Ltd. v. Jaharis,
297 F.3d 1182 (11th Cir. 2002) 12, 13

Prunty v. Arnold & Itkin LLP,
753 F. App'x 731 (11th Cir. 2018) 9

Quiller v. Barclays American/Credit, Inc.,
727 F.2d 1067 (11th Cir. 1984) 16

R.W. v. Georgia Dept. of Educ.,
353 F. App'x 422 (11th Cir. 2009) 11

Region 8 Forest Service Timber Purchasers Council v. Alcock,
993 F.2d 800 (11th Cir. 1993) 10

RG Golf Ware-house, Inc. v. Golf Warehouse, Inc.,
362 F. Supp. 3d 1226 (M.D. Fla. 2019) 9

RJR Nabisco, Inc. v. United States,
955 F.2d 1457 (11th Cir. 1992) 17

Schaffer v. Weast,
546 U.S. 49 (2005) 15

Sculptchair, Inc. v. Century Arts, Ltd.,
94 F.3d 623 (11th Cir. 1996) 6

Serra-Cruz v. Carnival Corp.,
400 F. Supp. 3d 1354 (S.D. Fla. 2019) 8

Slaihem v. Sea Tow Bahamas Ltd.,
148 F. Supp. 2d 1343 (S.D. Fla. 2001) 6

Snow v. DirecTV, Inc.,
450 F.3d 1314 (11th Cir. 2006) 6, 9

Spokeo, Inc. v. Robins,
136 S. Ct. 1540 (2016) 10

Storms v. Haugland Energy Grp., LLC,
No. 9:18-cv-80334, 2018 WL 4347603 (S.D. Fla. Aug. 17, 2018) 9

Swann v. Sec'y, Georgia,
668 F.3d 1285 (11th Cir. 2012) 11, 12

Thomas v. George, Hartz, Lundeen, Fulmer, Johnstone, King, & Stevens, P.A.,
525 F.3d 1107 (11th Cir. 2008) 15

U.S. v. $304,050.00 in U.S. Currency,
No. 2:12-cv-138-FTM-29, 2012 WL 4953126 (M.D. Fla. Oct. 17, 2012) 13

United Techs. Corp. v. Mazer,
556 F.3d 1260, 1274 (11th Cir. 2009 6

Waite v. All Acquisition Corp.,
901 F.3d 1307 (11th Cir. 2018) 8, 10

Waite v. Union Carbide Corp.,
139 S. Ct. 1384 (2019) 8

Walden v. Fiore,
571 U.S. 277 (2014) 6

Waldman v. Palestine Liberation Org.,
835 F.3d 317 (2d Cir. 2016) 7

Wehunt v. Ledbetter,
875 F.2d 1558 (11th Cir. 1989) 11, 12

Statutes

22 U.S.C. § 6021 ..... 1, 15

22 U.S.C. § 6023(12)(B) 2, 17

22 U.S.C. § 6023(13)(A) 2, 14

22 U.S.C. § 6023(13)(A)(ii) 14

22 U.S.C. § 6023(13)(B) 3, 14

22 U.S.C. § 6023(13)(B)(iii) 14

22 U.S.C. § 6082(a) 2

22 U.S.C. § 6085(c) 3

31 C.F.R. § 515 16

31 C.F.R. § 515.560(a) 16

31 C.F.R. § 515.572(a) 16

31 C.F.R. § 515.582 15

FLA. STAT. § 48.193(1)(a) 9

FLA. STAT. § 48.193(1)(a)(1) 7, 8, 9

FLA. STAT. § 48.193(1)(a)(6) 7, 8, 9

FLA. STAT. § 48.193(2) 7

Other Authorities

BLACK'S LAW DICTIONARY (11th ed. 2014) 16

H.R. REP. NO. 104-468, at 44 (1996) (Conf. Rep.) 17

MERRIAM-WEBSTER.COM 16

Rules

Rule 12(b)(1) 2, 10, 18

Rule 12(b)(2) 1, 7, 10, 18

Rule 12(b)(6) 2, 12, 18

INTRODUCTION

Plaintiffs Mario Del Valle ("Del Valle"), Enrique Falla ("Falla") and Angelo Pou ("Pou" and, together with Del Valle and Falla, "Plaintiffs") claim that, in 1959, the Cuban government confiscated a *finca*, which Plaintiffs refer to as the "Muniz Property." Plaintiffs further allege that, in the early 1960's, the Cuban government confiscated two beachfront homes in Varadero, Cuba, which Plaintiffs refer to as the "Del Valle Property" and the "Falla Property" (together with the Muniz Property, the "Properties"). According to Plaintiffs, the Cuban government demolished the homes on the Del Valle Property and the Falla Property, along with several other nearby homes, and together with Blue Diamond Hotels & Resorts, Inc. ("Blue Diamond"), built a hotel—the Starfish Cuatro Palmas (the "Cuatro Palmas"). Plaintiffs further allege that, after seizing the Muniz Property, the Cuban government, together with Blue Diamond, developed the Memories Jibacoa Resort (the "Memories Jibacoa" and, together with the Cuatro Palmas, the "Resorts"). Decades after the Cuban government allegedly confiscated the Properties, certain subsidiaries of Defendant Expedia, Inc. ("Expedia Group")[1] began to offer travelers the ability to secure reservations at the Resorts through web-based systems consistent with general and specific licenses issued by the United States government for offering travel-related services to Cuba.

Claiming to be "rightful owners of [a] claim to" the Del Valle Property, the Falla Property and the Muniz Property, Del Valle, Falla and Pou, respectively, now sue Expedia Group, Hotels.com L.P., Hotels.com GP, LLC, and Orbitz, LLC (collectively, the "Expedia Entities"), along with Booking.com B.V. and Booking Holdings Inc. (collectively, the "Booking Entities"), in a putative class action for "trafficking" in confiscated property under Title III of the Cuban Liberty and Democratic Solidarity Act, 22 U.S.C. § 6021 *et. seq.* ("Helms-Burton Act" or "Act"). Plaintiffs seek damages from the Expedia Entities equal to three times the value of the Properties, plus attorneys' fees and costs. Plaintiffs' suit fails, however, and must be dismissed for three independent reasons:

First, the Expedia Entities are not subject to personal jurisdiction in Florida. The only allegations in the operative complaint related to the Expedia Entities' purported contacts with Florida are conclusory. Indeed, the only factual allegations that even attempt to connect the Expedia Entities to Florida are that (1) reservations at the Resorts are offered to Florida residents—like all other U.S. residents—through online booking providers like Expedia Group and (2) the Expedia Entities solicit and accept reservations from Florida residents—like all other U.S. residents. Those allegations cannot establish personal jurisdiction. Plaintiffs have therefore failed to meet their burden to plead a prima facie case for personal jurisdiction, and this case should be dismissed under Rule 12(b)(2).

[1] In March 2018, the Delaware corporation named as a defendant changed its name to Expedia Group, Inc.

Second, even if the Expedia Entities were subject to personal jurisdiction in Florida, this Court lacks subject matter jurisdiction over this case because Plaintiffs lack standing to sue under Article III of the Constitution. Plaintiffs lack constitutional standing because they fail to clearly allege facts showing that they have suffered an injury-in-fact, much less one that is causally connected to the Expedia Entities' offering reservations at the Resorts. As a result, this case must be dismissed under Rule 12(b)(1).

Third, even absent these twin jurisdictional defects, Plaintiffs' complaint should be dismissed under Rule 12(b)(6) because it fails to state a claim upon which relief can be granted. Plaintiffs' complaint fails in the same two independent respects as the complaint in *Gonzalez v. Amazon.com, Inc.*, No. 1:19-cv-23988-RNS, 2020 WL 1169125 (S.D. Fla. Mar. 11, 2020): Plaintiffs have not sufficiently alleged that they own an actionable ownership interest in the Properties, or that the Expedia Entities knowingly and intentionally engaged in activity related to confiscated property when they offered reservations at the Resorts, *see id.* at *2. But that is not all. Plaintiffs' claims are also barred by two of the Act's definitional exemptions: the lawful-travel clause in the Act's definition of *traffics*, and the residential-use provision in the Act's definition of *property*.

BACKGROUND

A. The Helms-Burton Act

Congress passed the Helms-Burton Act in 1996. Title III of the Act—subject to certain limitations and definitions—grants U.S. nationals who "own[ ] the claim" to "property" confiscated by the Cuban government the right to sue and recover damages from any person who "traffics" in that property. 22 U.S.C. § 6082(a). The Act's definition of *traffics* covers an expansive range of conduct that includes not only transferring or holding an interest in confiscated property, but also "engag[ing] in a commercial activity using or otherwise benefiting from confiscated property" and "caus[ing], direct[ing], participat[ing] in, or profit[ing] from" conduct that otherwise constitutes trafficking. *Id.* § 6023(13)(A).

However, such conduct constitutes trafficking only if done "knowingly and intentionally." *Id.* Indeed, the scienter requirement is just one of many limitations that Congress included in the Act to limit its expansive scope and unprecedented extraterritorial application. Those limitations include:

- Limiting actions based on property confiscated before the Act's enactment date, March 12, 1996, to U.S. nationals who already owned a claim to that property as of that date. *Id.* § 6082(a)(4)(B).
- Excluding, with limited exceptions, real property used for residential purposes from the Act's definition of *property*, and thereby barring Title III actions based on claims to such real property. *Id.* § 6023(12)(B).

- Excluding from the definition of *traffics* four categories of desirous conduct, including transactions and uses of property incident and necessary to lawful travel to Cuba. *Id.* § 6023(13)(B).

In addition to these and other specific limitations, the Act also empowers the President to suspend the right of action in Title III for successive six-month periods. *Id.* § 6085(c). Immediately after the Act became effective on March 12, 1996, President Clinton suspended Title III's right of action and renewed the suspension during the remainder of his presidency. Presidents Bush and Obama did the same, as did President Trump for a time. But in 2019—more than twenty years after the Act's passage—the suspension of Title III was permitted to expire.

B. Procedural History

On June 24, 2019, Del Valle and Falla, along with nine other named plaintiffs, filed this case as a putative class action against multiple defendants, including Booking.com B.V. (*See* Class Action Compl., ECF No. 1.) A week later, Del Valle and Falla, along with Mario Echeverria, filed a corrected complaint. (*See* Corr. Compl., ECF No. 5.) Eight of the original plaintiffs did not join that corrected complaint. (*See id.*) None of the Expedia Entities were named as Defendants in the original complaint or the corrected complaint. (*See* Class Action Compl.; Corr. Compl.) On January 17, 2020—more than six months after Del Valle and Falla filed their corrected complaint—they filed an amended complaint, in which they dropped five of the previously named defendants and added the Expedia Entities and Booking Holdings Inc. as defendants for the first time. (*See* Am. Compl., ECF No. 15). That amended complaint no longer included Echevarria as a named plaintiff but added a new plaintiff, Pou, and identified the Muniz Property for the first time. (*See id.*).

C. Plaintiffs' Current Allegations

In the current complaint, Plaintiffs allege that Del Valle, Falla, and Pou respectively, is each "one of the current heirs" to the Del Valle Parcel, the Falla Parcel, and the Muniz Property (*id.* at 2 nn. 1–3; *see id.* ¶ 22) and "rightful owners of the claim to" the Del Valle Property, the Falla Property and the Muniz Property (*id.* ¶¶ 28–30). Specifically, Plaintiffs allege as follows:

With respect to the Del Valle Property, Plaintiffs allege that Luis Del Valle Esnard "owned several parcels of beachfront property" in Varadero bordered on the west by Calle 62, on the east by Calle 64, on the south by a vacant lot running along Avenida Primera, and on the north by the ocean. (*Id.* ¶ 15.) On the passing of Luis Del Valle Esnard, "his property was distributed pursuant to a will to his children, including his son Mario Del Valle Sr." (*Id.* ¶ 16.) A beach-front parcel, which Plaintiffs term the "Del Valle Parcel," was passed down to Mario Del Valle Sr., and later to Del Valle Sr.'s "descendants." (*Id.* at 2.) In the late 1950s, Mario Del Valle Sr. built a "beach home" on that property "for his family." (*Id.* ¶ 17.) Plaintiffs refer to that property as the "Del Valle Property" (*id.*) without explaining the difference between the Del Valle *Parcel* and the Del Valle *Property*. Plaintiffs

declare Del Valle the "Del Valle Heir" and claim that he is "one of the current heirs to the Del Valle Parcel." (*Id.* at 2 n.1.) Plaintiffs further allege that, since its confiscation, and as of the time of filing this lawsuit, the Del Valle Family, and subsequently the Del Valle Heir, have been rightful owners of the claim to the Del Valle Property. (*Id.* ¶ 28.)

Although Plaintiffs allege that the Del Valle Parcel was passed down to Mario Del Valle Sr. "and later to Del Valle Sr.'s descendants," the complaint includes no factual allegations regarding inheritance of the Del Valle *Property* (as opposed to the Del Valle *Parcel*) nor does it include any factual allegations regarding Del Valle's relationship to Mario Del Valle Sr., how or when Del Valle became a "rightful owner" of a claim to the Del Valle Property, the nature or extent of that claim, or when or how Del Valle allegedly became "one of the current heirs" to the Del Valle Property. In addition, Plaintiffs do not allege that Del Valle is a part of the "Del Valle Family"—an undefined term—or a "descendant[]" of Mario Del Valle Sr. Finally, Plaintiffs do not allege when Del Valle became a United States citizen or whether Mario Del Valle Sr. was a United States citizen.

With respect to the Falla Property, Plaintiffs allege that Laureano Falla, together with his father-in-law, Eugenio Crabb, owned the parcel of land next to Luis Del Valle Esnard, which Plaintiffs initially term the "Falla Parcel." (*Id.* at 2.) Plaintiffs allege that Falla Sr. and Crabb, like Luis Del Valle Esnard, "built a home for his family" on that parcel. *Id.* Plaintiffs refer to that property as the "Falla Property" (*id.* ¶ 18), without explaining the difference (if any) between the Falla *Parcel* and the Falla *Property*. Like with Del Valle, Plaintiffs declare Falla the "Falla Heir" and claim that he is "one of the current heirs to the Falla Parcel." (*Id.* at 2 n.2.) Plaintiffs further allege that, since its confiscation, and as of the time of filing this lawsuit, the Falla Family, and subsequently the Falla Heir, have been rightful owners of the claim to the Falla Property. (*Id.* ¶ 29.)

Similar to their allegations regarding Del Valle, although Plaintiffs allege that Falla's "descendants" "enjoy[ed]" the beach home on the Falla Parcel (*id.* at 2), the complaint includes no allegations regarding inheritance of the Falla Parcel or the Falla Property, nor does it include any allegations regarding Falla's relationship to Laureano Falla Sr., how or when Falla became a "rightful owner" of a claim to the Falla Property, the nature or extent of that claim, or when or how Falla allegedly became "one of the current heirs" to the Falla Property. In addition, Plaintiffs do not explain whether Falla is a part of the "Falla Family"—an undefined term—or a "descendant[]" of Laureano Falla Sr. Finally, Plaintiffs do not allege when Falla became a United States citizen or whether Laureano Falla was a United States citizen.

With respect to the Muniz Property, Plaintiffs allege that, in 1910, Marcelino Muniz and an unnamed business partner purchased a *finca*, consisting of over two thousand acres of land in Canasi, Matanzas, Provice, Cuba, bordered on the north by Arroyo Bermejo Beach, which they named "La Matilde." (*Id.* ¶¶ 22–23.) Plaintiffs refer to that property as the "Muniz Property." (*Id.* ¶ 22.) Plaintiffs allege that, on the passing of Marcelino Muniz y Rodriguez in 1957, his property was dis-

tributed to his only daughter Carmen Muniz and, upon her passing, the property was inherited by her three children, including Pou. (*Id.* ¶ 24.) Like with Del Valle and Falla, Plaintiffs declare Pou the "Muniz Heir" and claim that he is "one of the current heirs to La Matilde." (*id.* at 2 n.3.) Plaintiffs further allege that, since its confiscation, and as of the time of filing this lawsuit, the Muniz Family, and subsequently the Muniz Heir, have been rightful owners of the claim to the Muniz Property. (*Id.* ¶ 30.) Although the complaint alleges that Pou, and his two siblings, inherited the Muniz Property from their mother (*id.* ¶ 24), it does not state when their mother died or identify the nature and extent of Pou's purported claim. In addition, Plaintiffs do not allege when Pou became a United States citizen or whether his mother was a United States citizen.

Plaintiffs allege that the Cuban government confiscated the Muniz Property in 1959 and the Del Valle and Falla Properties in the early 1960s. (*Id.* ¶¶ 19, 25.) According to Plaintiffs, in the decades following the alleged confiscation of the Properties, the Cuban government, together with Blue Diamond, developed the Resorts. (*Id.* ¶¶ 20, 26.) Plaintiffs allege that the Cuban government demolished the homes on the Del Valle Property and the Falla Property, along with several other nearby homes, and then in 1991, together with Blue Diamond, built the Cuatro Palmas. (*Id.* ¶ 20.) As for the Muniz Property, Plaintiffs allege that throughout the decades following its confiscation, the Cuban government, together with Blue Diamond, developed the Memories Jibacoa. (*Id.* ¶ 26.) Plaintiffs fail to allege that either of the Resorts are actually located on the Properties.

In addition to bringing individual claims, Plaintiffs purport to bring a class action on behalf of "U.S. nationals…who own property…in Cuba that was expropriated by the government of Cuba prior to March 12, 1996, and has been trafficked by an agency or instrumentality of Cuba together with Blue Diamond, in many cases with the assistance of the Expedia Entities and the Booking Entities…." (*Id.* ¶ 46.)

D. The Expedia Entities

Expedia Group is a Delaware corporation with its principal place of business in Washington. (*Id.* ¶ 5.) Plaintiffs allege that the other Expedia Entities are affiliates of Expedia Group. (*Id.* ¶¶ 6–8.) As Plaintiffs allege, none of the Expedia Entities is organized or has its principal place of business in Florida. (*Id.*) Plaintiffs describe Expedia Group as the corporate parent company for a number of brands that, together, maintain numerous "travel booking sites" that "offer[] more than 1 million properties for rent." (*Id.* ¶ 34.)

Plaintiffs allege that "the Expedia and Booking Entities…solicit and accept reservations from U.S. residents, including Florida residents," and that "vacation packages at [the Resorts] could be reserved directly from the Expedia and Booking.com Entities." (*Id.* ¶¶ 21, 27.) Plaintiffs assert that the Expedia Entities "have used or benefitted from the confiscated properties" and therefore

"traffick[ed]" in the Properties under Title III, by "offering, for economic benefit, reservations at the [Resorts]." (*Id.* ¶ 71.)

ARGUMENT & AUTHORITIES

A. Lack of Personal Jurisdiction

Determining whether non-resident defendants, such as the Expedia Entities, are subject to personal jurisdiction is a threshold issue that a court must decide before any other matter. *Madara v. Hall*, 916 F.2d 1510, 1513–14 (11th Cir. 1990) ("The court should have addressed the personal jurisdiction question first."). The analysis has two parts. *Id.* First, the Court determines whether Florida's long-arm statute provides a basis for personal jurisdiction. *Slaihem v. Sea Tow Bahamas Ltd.*, 148 F. Supp. 2d 1343, 1349 (S.D. Fla. 2001) (citing *Sculptchair, Inc. v. Century Arts, Ltd.*, 94 F.3d 623, 626 (11th Cir. 1996)). Second, if the long-arm statute is satisfied, then the Court determines whether the exercise of personal jurisdiction comports with due process. *Id.* "Only if both prongs of the analysis are satisfied may a federal or state court exercise personal jurisdiction over a nonresident defendant." *Madara*, 916 F.2d at 1514.

The Supreme Court has recognized two types of personal jurisdiction: specific and general. General personal jurisdiction—or "all purpose" jurisdiction—"permits a court to assert jurisdiction over a defendant based on a forum connection unrelated to the underlying suit." *Walden v. Fiore*, 571 U.S. 277, 284 n.6 (2014). Specific personal jurisdiction—or "case-linked" jurisdiction—"depends on an affiliation between the forum and the underlying controversy (i.e., an activity or occurrence that takes place in the forum State and is therefore subject to the State's regulation)." *Id.* (internal quotation marks and alterations omitted); *accord Madara*, 916 F.2d at 1516 n.7 ("Specific personal jurisdiction is founded on a party's contacts with the forum state that are related to the cause of action.").

Plaintiffs bear the 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). Conclusory allegations are insufficient to make out a prima facie case of personal jurisdiction. *In re Takata Airbag Products Liab. Litig.*, 396 F. Supp. 3d 1101, 1142 (S.D. Fla. 2019) ("[C]ourts in the Eleventh Circuit have repeatedly declined to exercise specific jurisdiction over a nonresident defendant on the basis of generalized and conclusory allegations…." (citing *Snow v. DirecTV, Inc.*, 450 F.3d 1314, 1320 (11th Cir. 2006))). If the complaint lacks "properly pleaded facts" establishing a prima facie case, "a defendant wishing to properly challenge such a legally insufficient assertion of jurisdiction need not do anything more than file a simple (unsupported) motion" without affidavits or other materials. *Borislow v. Canaccord Genuity Group Inc.*, No. 9:14-cv-80134-KLR, 2014 WL 12580259, at *5 (S.D. Fla. June 27, 2014) (internal quotations omitted).

Here, Plaintiffs have failed to plead sufficient facts to make out a prima facie case of personal jurisdiction because they make only conclusory allegations about jurisdiction. They allege that the

Expedia Entities "maintain and carry on continuous and systematic contacts with Florida, regularly transact business within Florida, regularly avail themselves of the benefits of their presence in Florida, and caused injury within Florida by committing acts outside of Florida while engaging in solicitation within Florida." (Am. Compl. ¶ 12.) Despite these broad conclusory allegations, the only **facts** that Plaintiffs allege about Florida are that (i) they—the plaintiffs—live there, (ii) the Expedia Entities solicit and accept reservations from U.S. residents, including Florida residents, and (iii) reservations at the Resorts are offered to U.S. residents, including Florida residents, through online booking providers like Expedia Group. (*Id.* at 3, ¶¶ 2–4, 21, 27.) These allegations fail to establish a prima facie case of either general or specific jurisdiction, and Plaintiffs' complaint should be dismissed under Rule 12(b)(2).

1. Plaintiffs fail to allege a prima facie case of general jurisdiction.

Plaintiffs do not even cite the general-jurisdiction provision of Florida's long-arm statute—which applies to defendants who engage in "substantial and not isolated activity" within Florida, FLA. STAT. § 48.193(2)—much less allege facts satisfying that provision. *See Fast SRL v. Direct Connection Travel LLC*, No. 1:17-cv-20900, 2018 WL 7822711, at *3 (S.D. Fla. Aug. 3, 2018) (identifying § 48.193(2) as the long-arm statute's general-jurisdiction provision). Rather, Plaintiffs rely only on provisions of the long-arm statute dealing with specific jurisdiction. (Am. Compl. ¶ 12 (citing FLA. STAT. §§ 48.193(1)(a)(1), (1)(a)(6)); *see Fast SRL*, 2018 WL 7822711, at *3. For that reason alone, Plaintiffs fail to make a prima facie case of general jurisdiction.

Plaintiffs' allegations also cannot satisfy the due process requirements for general jurisdiction. A court may exercise general jurisdiction over a corporation only when the corporation's "affiliations with the State are so continuous and systematic as to render [it] essentially at home in the forum State." *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014) (internal quotations omitted). Thus, "only a limited set of affiliations with a forum will render a defendant amenable to [general] jurisdiction there." *Id.* at 137. For a corporation, the "paradigm all-purpose forums" for general jurisdiction are the corporation's "place of incorporation and principal place of business." *Id.* It is only "in an exceptional case" that "a corporation's operations in a forum other than its formal place of incorporation or principal place of business may be so substantial and of such a nature as to render the corporation at home in that State." *Id.* at 139 n.19. To satisfy that narrow exception, a defendant's activities in the forum state must "closely approximate the activities that ordinarily characterize a corporation's place of incorporation or principal place of business." *Carmouche v. Tamborlee Mgmt., Inc.*, 789 F.3d 1201, 1205 (11th Cir. 2015). The same standard for general jurisdiction applies to non-corporate entities. *Waldman v. Palestine Liberation Org.*, 835 F.3d 317, 332 (2d Cir. 2016) (describing the *Daimler* test as applicable to "entities"); *McCullough v. Royal Caribbean Cruises, Ltd.*, 268 F. Supp. 3d 1336, 1344 (S.D. Fla. 2017) (applying the *Daimler* standard to a limited liability company).

Neither of the "paradigm all-purpose forums" support general jurisdiction in Florida because, as Plaintiffs allege, Expedia Group is a Delaware corporation with its principal place of business in Washington (Am. Compl. ¶ 5), Hotels.com LP is a Texas limited partnership with headquarters in Texas (*id.* ¶ 6), Hotels.com GP, LLC is a Texas limited liability company with headquarters in Washington (*id.* ¶ 7), and Orbitz, LLC is a Delaware limited liability company with its headquarters in Illinois (*id.* ¶ 8). And Plaintiffs fail to allege any facts establishing that the Expedia Entities carry on operations in Florida that so closely approximate their place of incorporation or principal place of business as to render them "at home" in Florida. The only factual allegations purporting to connect the Expedia Entities' operations to Florida is that the Expedia Entities offer, solicit and accept reservations from Florida residents (like all other U.S. residents). But both the Supreme Court and the Eleventh Circuit have held that in-state business, standing alone, is insufficient to establish personal jurisdiction. *See Waite v. All Acquisition Corp.*, 901 F.3d 1307, 1314 (11th Cir. 2018) (explaining that "even substantial, continuous, and systematic business is insufficient to make a company at home in the state" (internal quotation marks omitted)), *cert. denied sub nom. Waite v. Union Carbide Corp.*, 139 S. Ct. 1384 (2019); *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1559 (2017) (explaining that "in-state business…does not suffice to permit the assertion of general jurisdiction over claims…that are unrelated to any activity occurring in [that state]").

2. Plaintiffs fail to allege a prima facie case of specific jurisdiction.

Plaintiffs' allegations also cannot make out a prima facie case of specific jurisdiction under either Florida's long-arm statute or the Due Process Clause.

a. Plaintiffs' allegations fail to satisfy the long-arm statute.

"Florida's long-arm statute is to be strictly construed." *Serra-Cruz v. Carnival Corp.*, 400 F. Supp. 3d 1354, 1358 (S.D. Fla. 2019). Plaintiffs rely on two specific-jurisdiction provisions in Florida's long-arm statute—§ 48.193(1)(a)(1) and § 48.193(1)(a)(6)—that provide for personal jurisdiction over a nonresident corporation "for any cause of action arising from" (1) "[o]perating, conducting, engaging in, or carrying on a business…in [Florida] or having an office or agency in [Florida]" and (6) "[c]ausing injury to persons or property within [Florida] arising out of an act or omission by the defendant outside [Florida], if, at or about the time of the injury…defendant was engaged in solicitation or service activities within [Florida]." FLA. STAT. §§ 48.193(1)(a)(1), (1)(a)(6). Plaintiffs have not alleged facts creating jurisdiction under either of those provisions.

First, the Expedia Entities' alleged conduct does not fit within either of the long-arm provisions Plaintiffs cite. For starters, Plaintiffs do not allege any facts showing that the Expedia Entities are "operating, conducting, engaging in, or carrying on a business" in Florida. FLA. STAT. § 48.193(1)(a)(1). The only connections between the Expedia Entities and Florida alleged in the amended complaint are that the Resorts are offered to visitors, including Florida and U.S. residents,

through online booking providers like Expedia Group (Am. Compl. 3), and the "[t]he Expedia Entities…solicit and accept reservations from U.S. residents, including Florida residents" (*id.* ¶¶ 21, 27). But this is not enough because "it is well settled that…maintaining a website accessible in Florida…is insufficient to satisfy Section 48.193(1)(a)(1)." *Storms v. Haugland Energy Grp., LLC*, No. 9:18-cv-80334, 2018 WL 4347603, at *8 (S.D. Fla. Aug. 17, 2018) (internal quotation marks omitted), *report and recommendation adopted*, No. 9:18-cv-80334-BB, 2018 WL 4347604 (S.D. Fla. Sept. 4, 2018); *accord RG Golf Ware-house, Inc. v. Golf Warehouse, Inc.*, 362 F. Supp. 3d 1226, 1236 (M.D. Fla. 2019) ("[A]lthough Defendant operates an interactive website that is accessed daily by potential and actual Florida customers, the Court finds that only amounts to doing business as if in Florida, which is insufficient under the plain text of [Section 48.193(1)(a)(1)]." (internal quotation marks and alterations omitted)); *Lemoine v. Wong*, No. 0:17-cv-60099-UU, 2017 WL 5127592, at *4 (S.D. Fla. Mar. 29, 2017) ("[A] website accessible in Florida, standing alone, is insufficient to satisfy Section 48.193(1)(a)(1).").

Nor have Plaintiffs alleged conduct that fits within § 48.196(1)(a)(6). Personal jurisdiction under § 48.196(1)(a)(6) "applies only when a defendant's out of state actions cause personal injury or damage to physical property in the State of Florida." *Snow*, 450 F.3d at 1318. Plaintiffs do not allege any personal injury or damage to real property in Florida, so personal jurisdiction does not attach under § 48.196(1)(a)(6). *See id.*; *see also Prunty v. Arnold & Itkin LLP*, 753 F. App'x 731, 735-36 (11th Cir. 2018) ("[J]urisdiction is not proper under § 48.193(1)(a)(6) because [plaintiff] has alleged only economic injuries.").

Second, Plaintiffs' allegations fail to satisfy the long-arm statute because their cause of action does not "arise out of" the Expedia Entities' purportedly offering, soliciting, and accepting reservations from Florida residents. The long-arm provisions on which Plaintiffs rely apply only when the plaintiff's cause of action arises from the defendant's Florida contact. FLA. STAT. § 48.193(1)(a) ("A person…submits…herself…to the jurisdiction of the courts of this state for any cause of action **arising from** any of the following acts…" (emphasis added)). This requires "a nexus between the alleged causes of action" and the defendant's alleged conduct. *Fast SRL v. Direct Connection Travel LLC*, No. 1:17-cv-20900-JEM, 2018 WL 7822711, at *5 (S.D. Fla. Aug. 3, 2018). Plaintiffs base their Title III cause of action on the allegation that the Expedia Entities trafficked "by offering, for economic benefit, reservations at the [Resorts]." (Am. Compl. ¶ 71.) Assuming *arguendo* that merely offering reservations at the Resorts constitutes trafficking under Title III, the fact that residents of Florida (like residents of every other state) could make such reservations is hardly essential to Plaintiffs' cause of action. Indeed, the location of potential travelers does not affect the merits of Plaintiffs' cause of action at all and therefore cannot support specific jurisdiction under the Florida long-arm statute.

b. Plaintiffs' allegations fail to satisfy due process.

Plaintiffs also fail to show a prima facie case for specific jurisdiction under the Due Process Clause. For the exercise of specific jurisdiction to comport with due process, "the defendant's contacts with the forum must relate to the plaintiff's cause of action or have given rise to it." *Oldfield v. Pueblo De Bahia Lora, S.A.*, 558 F.3d 1210, 1220 (11th Cir. 2009); *Madara*, 916 F.2d at 1516. A cause of action "arises out of or relates to" a defendant's activity in a state "only if the activity is a 'but-for' cause of the tort." *Waite*, 901 F.3d at 1314 (alterations omitted). As just explained, Plaintiffs' theory of liability rests merely on the fact that the Expedia Entities offered reservations for the Resorts. That Florida residents are among those that the Expedia Entities allegedly offer, solicit, and accept reservations from is not a but-for cause of Plaintiffs' cause of action; indeed, the residency of travelers has nothing to do with the Expedia Entities' alleged liability at all.

Because Plaintiffs have not alleged facts creating personal jurisdiction (whether general or specific) under either the Florida long-arm statute or the Due Process Clause, the Court should dismiss this case for lack of personal jurisdiction under Rule 12(b)(2). *See Borislow*, 2014 WL 12580259, at *5.

B. Lack of Subject Matter Jurisdiction – No Standing

The Court should also dismiss this case under Rule 12(b)(1) because Plaintiffs lack standing under Article III of the United States Constitution ("Article III"). *Region 8 Forest Service Timber Purchasers Council v. Alcock*, 993 F.2d 800, 807 n.8 (11th Cir. 1993) ("Because a motion to dismiss for lack of standing is one attacking the district court's subject matter jurisdiction, it is brought pursuant to Rule 12(b)(1)."). "Standing is a threshold jurisdictional question which must be addressed prior to and independent of the merits of a party's claims." *Bochese v. Town of Ponce Inlet*, 405 F.3d 964, 974 (11th Cir. 2005) (quotations and alterations omitted). Because Article III standing is a constitutional limitation on the jurisdiction of federal courts, "Congress cannot erase Article III's standing requirements by statutorily granting the right to sue to a plaintiff who would not otherwise have standing." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547–48 (2016).

The plaintiff bears the burden of meeting the "irreducible constitutional minimum" of standing under Article III by establishing three elements. *Lujan v. Defs. of Wildlife*, 504 U.S. 555 (1992). First, the plaintiff must establish that he suffered an "injury in fact." *Id.* Second, "there must be a causal connection between the injury and the conduct complained of." *Id.* Third, "it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Id.* at 561 (internal quotations omitted). The plaintiff, as the party invoking federal jurisdiction, bears the burden of establishing these elements. *Spokeo*, 136 S. Ct. at 1547. At the pleadings stage, this requires the plaintiff to "clearly…allege facts demonstrating each element." *Id.* (internal quotation marks omitted). Conclusory allegations are insufficient. *R.W. v. Georgia Dept. of Educ.*, 353

F. App'x 422, 423 (11th Cir. 2009) (affirming dismissal when the plaintiff's standing allegations "were wholly conclusory and supported by no facts"); *Access for the Disabled v. First Subway, LLC.*, No. 10-61131-CIV, 2010 WL 11596384, at *2 (S.D. Fla. Oct. 4, 2010) (explaining that the plaintiff's "conclusory allegation" of injury was "insufficient to establish the required element of injury-in-fact that is needed to demonstrate standing"). "If the plaintiff fails to meet its burden, [the] court lacks the power to create jurisdiction by embellishing a deficient allegation…." *Bochese*, 405 F.3d at 976.

Plaintiffs fail to allege facts demonstrating the first or second elements of standing. As to the first, injury-in-fact, a plaintiff must allege facts showing "an invasion of a legally protected interest that is sufficiently concrete and particularized rather than abstract and indefinite." *Kawa Orthodontics, LLP v. Sec'y, U.S. Dept. of the Treasury*, 773 F.3d 243, 246 (11th Cir. 2014). Here, the Plaintiffs' claims stem from the Cuban government's alleged confiscation of the Properties. (Am. Compl. ¶ 70.) Although that confiscation may constitute a concrete and particularized injury to individuals from whom the property was confiscated, Plaintiffs fail to plead facts demonstrating that they own any right to that property. Plaintiffs assert that they are "rightful owners of [a] claim to" the Properties. (*Id.* ¶¶ 28-30.) But that is a conclusion, not a factual allegation. Plaintiffs do not allege any facts showing that they own any right to the Properties today, much less when they were confiscated. Indeed, Plaintiffs do not even allege that Del Valle or Falla are "descendants" of the alleged owners of the Properties. Instead, the complaint gives them a different moniker—the "Del Valle Heir" and the "Falla Heir—and states that they are "one of the current heirs to" the Del Valle Parcel and the Falla Parcel. (*Id.* at 2 nn. 1-2.) That too is a conclusion, and an ambiguous one because the complaint offers no explanation of what it means to be an "heir" to the Del Valle Parcel or the Falla Parcel. Plaintiffs' conclusory allegations fail to meet a plaintiff's burden to clearly allege facts demonstrating an injury in fact.

Even if confiscation of the Properties could constitute a concrete injury to Plaintiffs, Plaintiffs also fail to satisfy the second, causation element of constitutional standing. To satisfy that element, a plaintiff must allege facts demonstrating a "nexus" or "causal connection" between the plaintiff's injury and the defendant's conduct. *Hollywood Mobile Estates Ltd. v. Seminole Tribe of Florida*, 641 F.3d 1259, 1265 (11th Cir. 2011); *Wehunt v. Ledbetter*, 875 F.2d 1558, 1566–67 (11th Cir. 1989). That is, the plaintiff must show that "[his] 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.'" *Kawa Orthodontics*, 773 F.3d at 247 (quoting *Lujan*, 504 U.S. at 560). Thus, a plaintiff lacks standing when an "independent source" caused the plaintiff to suffer injury. *See, e.g.*, *Swann v. Sec'y, Georgia*, 668 F.3d 1285, 1288 (11th Cir. 2012).

Here, Plaintiffs fails to allege any "causal connection" between the Expedia Entities' challenged conduct and a concrete injury. To the extent that Plaintiffs allege any injury, it is that the Plaintiffs' families "had their property confiscated by the communist Cuban government." (Am.

Compl. ¶ 70.) But Plaintiffs fail to allege a "causal connection" between the Expedia Entities' challenged conduct—i.e., "offering, for economic benefit, reservations at the [Resorts]" (*id.* ¶ 71)—and that alleged injury. In other words, the Expedia Entities "played no role" in bringing about Plaintiffs' alleged injury. *Kawa*, 773 F.3d at 247. That alleged injury occurred at least fifty years **before** the Expedia Entities' alleged conduct (and almost forty years before Expedia Group came into existence) and was caused by the Cuban government. After all, Plaintiffs do not offer any allegations suggesting that the Properties would not remain confiscated or that they would otherwise be in a different position if the Expedia Entities had not "offer[ed], for economic benefit, reservations at the [Resorts]." Because Plaintiffs' claimed injury was "directly caused by a third party who is not a party to the lawsuit," *Wehunt*, 875 F.2d at 1567, and would have occurred "regardless of" the Expedia Entities' challenged conduct, *Swann*, 668 F.3d at 1289, Plaintiffs lack standing to bring this action against the Expedia Entities.

C. Failure to State a Claim

Pursuant to this Court's decision in *Gonzalez*, Plaintiffs' complaint should be dismissed for failure to state a claim. Under Rule 12(b)(6), a complaint should be dismissed unless it "contain[s] sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted). "[A] plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "Factual allegations must be enough to raise a right to relief above the speculative level," *id.*, meaning that a plaintiff must "plead[] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged," *Iqbal*, 556 U.S. at 678. And while the Court must accept a plaintiff's well-pleaded facts as true, it need not accept "conclusory allegations, unwarranted deductions of fact[]," *Oxford Asset Mgmt., Ltd. v. Jaharis*, 297 F.3d 1182, 1188 (11th Cir. 2002), or "legal conclusion[s] couched as…factual allegation[s]," *Twombly*, 550 U.S. at 555 (quotation omitted).

Here, Plaintiffs fail to state a Title III claim that is plausible on its face because they fail to plead facts showing that (1) they own an actionable claim to the Properties and (2) the Expedia Entities trafficked in the Properties. As in *Gonzalez*, Plaintiffs have not sufficiently alleged that they have an actionable ownership interest in the respective Properties or that the Expedia Entities knowingly and intentionally trafficked in the Properties. 2020 WL 1169125 (S.D. Fla.), at *2. The complaint should also be dismissed for two additional reasons not presented in *Gonzalez*.

1. Plaintiffs fail to plead an actionable ownership interest under Title III.

To have a cause of action under Title III, one must own a claim to property confiscated by the Cuban government. 22 U.S.C. § 6082(a)(1)(A). Further, where, as here, the property in question

was allegedly confiscated before March 12, 1996 (the Act's enactment date), Congress limited the Title III cause of action to U.S. nationals who already owned their claim to the property as of the enactment date. *Id.* § 6082(a)(4)(B). Here, Plaintiffs fail to adequate allege that either requirement is met.

First, Plaintiffs fail to adequately allege that they own claims to the respective Properties. Although Plaintiffs describe themselves as "one of the current heirs" to the Del Valle Parcel, the Falla Parcel, and the Muniz Parcel (Am. Compl. 2 nn.1–3), and baldly assert that they are "rightful owners of the claim to" the Del Valle Property, the Falla Property, and the Muniz Property (*id.* ¶¶ 28–30), these are mere conclusory allegations. *See Iqbal*, 556 U.S. at 678; *Oxford Asset Mgmt.*, 297 F.3d at 1188. Plaintiffs' complaint contains no **factual** allegations from which one could draw a reasonable inference that Plaintiffs own a claim to any of the Properties. *See Black Diamond Land Mgmt. LLC v. Twin Pines Coal Inc.*, 707 F. App'x 576, 580 (11th Cir. 2017) (holding that the plaintiff failed to adequately allege that it owned certain timber and mineral rights because, beyond a conclusion of ownership, "the Complaint contains no factual support for the allegation that the resources at issue are actually owned by Plaintiff"); *see also U.S. v. $304,050.00 in U.S. Currency*, No. 2:12-cv-138-FTM-29, 2012 WL 4953126, at *2 (M.D. Fla. Oct. 17, 2012) ("Claimant's assertion that he is 'the True and Rightful owner of' the property is a conclusory allegation and is not entitled to the presumption of truthfulness.").

Second, even if Plaintiffs had alleged facts demonstrating that they own claims to the respective Properties, Plaintiffs' complaint still fails to state a cause of action under Title III because it does not allege that a United States citizen owned the claims to the Properties on March 12, 1996. *See Gonzalez v. Amazon.com, Inc.*, No. 1:19-cv-22619-RNS, 2020 WL 1169125, at *2 (S.D. Fla. Jan. 17, 2020). Under Title III, "[i]n the case of property confiscated before March 12, 1996, a United States national may not bring an action…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). Thus, for property allegedly confiscated before March 12, 1996, "a United States citizen must already own the claim to the confiscated property on March 12, 1996 when the Act was passed." *Gonzalez*, 2020 WL 1169125, at *2.

Here, because Plaintiffs allege that the Cuban government confiscated the Properties well before the Act's March 12, 1996 enactment date (Am. Compl. ¶¶ 19, 25), they must also allege facts demonstrating ownership in compliance with § 6082(a)(4)(B). *Id.* Plaintiffs fail to do so. Just like the plaintiff in *Gonzalez*, Plaintiffs do not allege when they allegedly inherited their claims, when they became United States citizens, whether their relatives from whom they inherited their claims were United States citizens and, if so, when those relatives became citizens. *Id.* And, as in *Gonzalez*, without these allegations, Plaintiffs fail to allege that they have an actionable ownership interest in the Properties. *Id.*

2. Plaintiffs fail to adequately plead trafficking.

Plaintiffs fall equally short in pleading trafficking. The Act's definition of *traffics* has two parts. Subparagraph (A) describes three types of activities related to confiscated property that, if done knowingly and intentionally, constitute trafficking. 22 U.S.C. § 6023(13)(A). Subparagraph (B) then lists four categories of conduct that **do not** constitute trafficking. *Id.* § 6023(13)(B). Among the conduct that specifically does not constitute trafficking is "transactions and uses of property incident to lawful travel to Cuba, to the extent that such transactions and uses of property are necessary to the conduct of such travel." *Id.* § 6023(13)(B)(iii) (hereinafter the "Lawful Travel Clause"). Plaintiffs' allegations fail under both parts of the definition.

a. Plaintiffs fail to adequately allege that the Expedia Entities acted knowingly and intentionally.

To plead trafficking, Plaintiffs must allege facts giving rise to a reasonable inference that the Expedia Entities "knowingly and intentionally" engaged in one of the three categories of conduct related to confiscated property described in subparagraph (A) of the Act's definition. *See* 22 U.S.C. § 6023(13)(A); *Gonzalez*, 2020 WL 1169125 (S.D.Fla.), at *2; *see also Michel v. NYP Holdings, Inc.*, 816 F.3d 686, 702 (11th Cir. 2016) ("*Iqbal* itself directly held that malice and other degrees of intent are subject to the plausibility pleading standard."). Plaintiffs' theory appears to be that the Expedia Entities "engage[d] in a commercial activity…benefiting from confiscated property," 22 U.S.C. § 6023(13)(A)(ii), by "offering, for economic benefit, reservations at the [Resorts]" (Am. Compl. ¶ 71). Yet, like the plaintiff in *Gonzalez*, Plaintiffs do not allege that the Expedia Entities "knew the property was confiscated by the Cuban government nor that it was owned by a United States citizen." *Gonzalez*, 2020 WL 1169125, at *2. Indeed, Plaintiffs fail to include even conclusory allegations that the Expedia Entities satisfy Title III's scienter requirement; the complaint does not even include the words *knowingly* or *intentionally*. Under this Court's precedent, then, Plaintiffs' claims should be dismissed.

b. The Lawful Travel Clause bars Plaintiffs' claims.

Under the Lawful Travel Clause, trafficking excludes "transactions and uses of property incident to lawful travel to Cuba, to the extent that such transactions and uses of property are necessary to the conduct of such travel." 22 U.S.C. § 6023(13)(B)(iii). Because the Lawful Travel Clause is part of the definition of *traffics*, and trafficking is an essential element of a Title III claim, Plaintiffs must plead facts showing that the Expedia Entities' actions fall outside the Lawful Travel Clause. *See, e.g.*, *Benjamin v. CitiMortgage, Inc.*, No. 0:12-cv-62291-FAM, 2013 WL 1891284, at *3 (S.D. Fla. May 6, 2013) (dismissing FDCPA claim where plaintiff failed to allege that defendant bank did not fall within exception to definition of "debt collector"); *Monroe v. CitiMortgage, Inc.*, No. 8:07-cv-0066-

SCB-TGW, 2007 WL 1560194 at *2 (M.D. Fla. May 29, 2007) (same). Plaintiffs have not even attempted to do so. For that reason alone, they fail to adequately allege trafficking.

To be sure, two judges in this district declined to dismiss claims against a cruise ship company based on the plaintiffs' failure to allege conduct outside the Lawful Travel Clause, concluding that the clause is an affirmative defense as to which the defendant bears the burden of proof. *See Garcia-Bengochea v. Carnival Corp.*, No. 1:19-cv-21725, 2019 WL 4015576, at *3–4 (S.D. Fla. Aug. 26, 2019) (King, J.); *Havana Docks Corp. v. Carnival Corp.*, No. 1:19-cv-21724-BB, slip op. at 7–8 (S.D. Fla. Aug. 28, 2019), ECF No. 47 (Bloom, J.). As explained below, the Expedia Entities respectfully disagree with those rulings and their underlying analyses, which this Court is not bound by and should not follow. *See Gables Ins. Recovery v. United Healthcare Ins. Co.*, 39 F. Supp. 3d 1377, 1383, n.5 (S.D. Fla. 2013) (citing *Camreta v. Greene*, 131 S. Ct. 2020, 2033 n. 7 (2011)).

Nor does this Court's decision in *Gonzalez* suggest that the Lawful Travel Clause is an affirmative defense. In *Gonzalez*, a defendant argued that it could not be liable for trafficking under Title III because 31 C.F.R. § 515.582 permitted its conduct. The Court concluded that the plaintiff "need not refute every basis on which the Court could ultimately decide that the Defendants' conduct was lawful" but, instead, it was the defendant's burden to "establish that its conduct constituted lawful licensed activity and is thus exempt from liability under the Helms-Burton Act." *Gonzalez*, 2020 WL 1169125, at *3. Here, by contrast, the Expedia Entities are not arguing that a regulation or statute "negates [their] liability." *Id.* Instead, the Expedia Entities are arguing that, under Title III's definition, their alleged conduct cannot constitute trafficking. The statutory construction of the Helms-Burton Act makes clear that Congress intended the Lawful Travel Clause to be an element of the civil remedy—not an affirmative defense.

"The touchstone for determining the burden of proof under a statutory cause of action is the statute itself." *Thomas v. George, Hartz, Lundeen, Fulmer, Johnstone, King, & Stevens, P.A.*, 525 F.3d 1107, 1110 (11th Cir. 2008) (citing *Schaffer v. Weast*, 546 U.S. 49, 56 (2005)). "When a statute is silent as to who bears the burden of proof, we resort to 'the ordinary default rule that plaintiffs bear the risk of failing to prove their claims.'" *Id.* (quoting *Schaffer*, 546 U.S. at 56). This default rule does not apply, however, to special exceptions to a statute's prohibitions or "general norms." *Id.* at 1112–13. Although "Congress is adept at drafting general norms that provide for exceptions, and frequently does so," *id.*, it did not do so with the Lawful Travel Clause.

Had Congress intended to place the burden of proof for the Lawful Travel Clause on defendants, it could have written it as an exception to Title III's liability-creating provision (*i.e.*, its "general norm"), § 6082(a)(1)(A), by putting it in that same section. Indeed, the statutory language shows that § 6082 is precisely where any such exceptions would appear. 22 U.S.C. § 6082(a)(1)(A) (beginning with, "Except as otherwise provided in **this section**…." (emphasis added)). But Congress included the Lawful Travel Clause in the Act's definition of *traffics*, which is not in Title III at

all, much less in its liability-creating section. By doing so, Congress indicated its intent to make the Lawful Travel Clause part of the plaintiff's claim, not an affirmative defense. The Court should therefore dismiss Plaintiffs' claim for failing to even attempt to allege that the Expedia Entities' conduct falls outside the clause.

In any event, even if Congress had made the Lawful Travel Clause an affirmative defense, the clause still bars Plaintiffs' claim because it is apparent on the face of the complaint that defendants' alleged conduct fits squarely within the clause. *See Quiller v. Barclays American/Credit, Inc.*, 727 F.2d 1067, 1069 (11th Cir. 1984) ("[A] complaint may be dismissed under Rule 12(b)(6) when its own allegations indicate the existence of an affirmative defense, so long as the defense clearly appears on the face of the complaint."), *aff'd and reinstated on reh'g*, 764 F.2d 1400 (11th Cir. 1985) (en banc); *cf. Jones v. Bock*, 549 U.S. 199, 215 (2007) ("If the allegations…show that relief is barred by the applicable statute of limitations, the complaint is subject to dismissal for failure to state a claim.").

To start, there can be no dispute that U.S. residents may lawfully travel to Cuba. *See* 31 C.F.R. § 515.560(a) (authorizing U.S. persons to travel to Cuba for a variety of reasons, including family visits, official government business, professional research, religious activities, and public performances, among others). Indeed, federal regulations authorize the Expedia Entities, by general license, to provide travel-related services to those U.S. persons lawfully traveling to Cuba. 31 C.F.R. § 515.572(a) ("Persons subject to U.S. jurisdiction are authorized to provide travel services in connection with travel-related transactions involving Cuba authorized pursuant to this part"); *see Empresa Cubana Exportadora de Alimentos y Productos Varios v. U.S. Dept. of Treasury*, 606 F. Supp. 2d 59, 64 (D.D.C. 2009) (the "general license" contained in the CACR, 31 C.F.R. 515, subpart E, "broadly authorizes entire classes of transactions").[2]

Nor can there be any question that offering hotel lodging in Cuba is both "incident to" and "necessary to the conduct of" such lawful travel. *Incident to* means simply "relating to." *Incident*, MERRIAM-WEBSTER.COM, https://www.merriam-webster.com/dictionary/incident (last visited Jan. 29, 2020); *see also Incident to Employment*, BLACK'S LAW DICTIONARY (11th ed. 2014) (defining incident to employment as "[a] risk that is related to or connected with a worker's job duties" (emphasis added)). The term *necessary* has consistently been construed broadly to mean "useful" or "convenient." *See, e.g.*, *Fish v. Kobach*, 840 F.3d 710, 734 (10th Cir. 2016) ("[C]ourts also have frequently interpreted

[2] It comes as no surprise that Plaintiffs do not even attempt to allege that any reservations at the Resorts were secured through the Expedia Entities' websites were not incident to lawful travel. This is likely because, consistent with the terms and conditions of various OFAC general and specific licenses, the Expedia Entities obtain from all travelers—not just U.S. residents—making reservations for travel to Cuba on its platform a certification that such travel is made in accordance with one of the authorized purposes of travel under the CACR. As such, reservations made on, through, or with any platform operated or offered by the Expedia Entities for Cuba are incident to lawful travel.

'necessary' to mean something less than absolute necessity…."); *Nat. Resources Def. Council, Inc. v. Thomas*, 838 F.2d 1224, 1236 (D.C. Cir. 1988) (same); *see also McCulloch v. Maryland*, 17 U.S. 316, 413 (1819) (holding that "necessary" in the Necessary and Proper Clause does not require strict essentiality, but rather requires means that are "convenient, or useful, or essential" to the purpose in question).

Even if there was any doubt about the broad meaning of those terms, the Act's legislative history eliminates it. The congressional conference committee report—which, "next to the statute itself [] is the most persuasive evidence of congressional intent" and "deserve[s] great deference by courts," *RJR Nabisco, Inc. v. United States*, 955 F.2d 1457, 1462 (11th Cir. 1992)—paraphrased the clause as "remov[ing] any liability for…any activities **related to** lawful travel to Cuba." H.R. REP. NO. 104-468, at 44 (1996) (Conf. Rep.), *reprinted in* 1996 U.S.C.C.A.N. 558, 559, 1996 WL 97265 (emphasis added). Congress itself thus interpreted "incident to" and "necessary" as meaning nothing more than "related to."

Hotel lodging in Cuba is undeniably related to the conduct of lawful travel to Cuba. Indeed, lawful travel to Cuba would be largely impossible without it. Regardless of whether the Lawful Travel Clause is an element of a plaintiff's Title III cause of action or an affirmative defense, it bars Plaintiffs' claim here, and the amended complaint should be dismissed.

3. The Properties do not constitute "property" under the Act.

Finally, Title III grants a cause of action only to U.S. nationals who own a claim to confiscated "property." 22 U.S.C. § 6082(a)(1)(A). The Act's definition of *property* expressly does not include "property used for residential purposes unless, as of March 12, 1996," (i) the claim to the property is certified under the International Claims Settlement Act of 1949 or (ii) the property is occupied by a Cuban government or political-party official. 22 U.S.C. § 6023(12)(B). Plaintiffs fail to allege that the Del Valle Property or the Falla Property were used for anything other than "residential purposes" either at the time they were allegedly confiscated or when the Act was enacted. Indeed, Plaintiffs' description of both the Del Valle Property and the Falla Property as "beach **home[s]**" (Am. Compl. ¶¶ 17-18), allows no inference other than that they were used for residential purposes by Mario Del Valle Sr. and Luis Del Valle Esnard. And nothing in the amended complaint suggests that the homes were used for any other purpose before the Cuatro Palmas was developed. Therefore, the Del Valle "Property" and Falla "Property" are not "property" under the Act unless, as of March 12, 1996, they were the subject of a certified claim or were occupied by a Cuban official. 22 U.S.C. § 6023(12)(B). Plaintiffs fail to plead either circumstance—in fact, they specifically allege that the Properties are **not** the subject of a certified claim. (Am. Compl. ¶ 33.) Plaintiffs have therefore failed to plead that they own a claim to "property" under the Act.

CONCLUSION

The Court should dismiss this case under Rule 12(b)(2) because Plaintiffs fail to allege facts making out a prima facie case for personal jurisdiction. Barring that, the Court should dismiss this case under Rule 12(b)(1) for lack of subject matter jurisdiction because Plaintiffs do not have constitutional standing. And even absent these twin jurisdictional defects, the Court should still dismiss this case under Rule 12(b)(6) because Plaintiffs' amended complaint fails to state a plausible claim under Title III.

REQUEST FOR HEARING

The Expedia Entities respectfully submit that oral argument will be necessary to adequately argue the merits of the instant motion. Although this Court has issued binding precedent relating to the Helms-Burton Act, that precedent, and the limited non-binding case law construing the Helms-Burton Act, does not deal with personal jurisdiction or standing. The Expedia Entities estimate that one hour would be required for the oral argument.

Dated: March 23, 2020

Respectfully submitted,

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TAB CS

CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2020, two copies of the appendix were dispatched for delivery to the Clerk's Office of the United States Court of Appeals for the Eleventh Circuit by third-party commercial carrier for overnight delivery at the following address:

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On this same date, a copy of the appendix was served on all counsel of record via CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronic Notices of Electronic Filing.

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