BEFORE THE UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

In re: Hotel Industry Sex Trafficking Litigation **MDL Docket No. 2928**

DEFENDANT CHOICE HOTELS INTERNATIONAL, INC.'S MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS H.H., M.A., JANE DOE S.W., JANE DOE C.D., V.G., K.B., AND H.G.'S MOTION FOR TRANSFER OF ACTIONS TO THE SOUTHERN DISTRICT OF OHIO (EASTERN DIVISION) PURSUANT TO 28 U.S.C. § 1407 FOR CONSOLIDATED PRETRIAL PROCEEDINGS

INTRODUCTION

The cases Plaintiffs H.H., M.A., Jane Doe S.W., Jane Doe C.D., V.G., K.B., and H.G. ("Movants") seek to have consolidated ("Actions"), contain numerous unique causes of action, and are reliant on the interpretation of various state laws.[1] While the allegations against Choice Hotels International, Inc. ("Choice")[2] generally seek to hold Choice liable for Plaintiffs' alleged trafficking, contrary to the representations of Movant (Doc. 1-1, p. 3; Doc. 1-6, p. 2), Defendant

[1] The majority of the Actions in which Choice is named include diverse claims specific to the States in which they are filed: *Jane Doe 1 v. Red Roof Inns, Inc. et al.*, In the United States District Court for the Northern District of Georgia, Atlanta Division, 1:19-cv-03840-WMR (alleging violations of the Georgia Racketeer Influenced and Corrupt Practices Act O.C.G.A. § 16-14-1 and common negligence); *Jane Doe 2 v. Red Roof Inns, Inc. et al.*, In the United States District Court for the Northern District of Georgia, Atlanta Division, 1:19-cv-03841-WMR (alleging violations of the Georgia Racketeer Influenced and Corrupt Practices Act O.C.G.A. § 16-14-1 and common negligence); *Jane Doe 4 v. Red Roof Inns, Inc. et al.*, In the United States District Court for the Northern District of Georgia, Atlanta Division, 1:19-cv-03845-WMR (alleging violations of the Georgia Racketeer Influenced and Corrupt Practices Act O.C.G.A. § 16-14-1 and common negligence); *S.J., an individual v. Choice Hotels Corporation et al.*, In the United States District Court for the Eastern District of New York, 1;19-cv-06071-BMC (alleging violations under N.Y. Soc. Serv. § 483-bb; and common negligence); *Jane Doe #6 v. Choice Hotels International, Inc. d/b/a Comfort Inn*, In the United States District Court for the Southern District of Texas, Houston Division, 4:19-cv-04993 (alleging violations of the Texas CRPC § 98; common negligence; negligence per se; and gross negligence).

[2] Defendant Choice Hotels International, Inc. has been incorrectly named as Choice Hotels Corporation in *A.B., an individual v. Hilton Worldwide Holdings, Inc. et al.*, In the United States District Court for the District of Oregon, Portland Division, 3:19-cv-01992-IM; as Choice Hotels International, Inc. d/b/a Comfort Inn in *Jane Doe #6 v. Choice Hotels International, Inc. d/b/a Comfort Inn*, In the United States District Court for the Southern District of Texas, Houston Division, 4:19-cv-04993; and as Choice Hotels Corporation d/b/a Econo Lodges of America, Inc. and Choice Hotels International, Inc. d/b/a Econo Lodges of America, Inc. in *S.J., an individual v. Choice Hotels Corporation et al.*, In the United States District Court for the Eastern District of New York, 1;19-cv-06071-BMC.

Choice Hotels International, Inc. ("Choice") is a franchisor and does not own or operate any of the hotels at issue in any of the Actions. The Actions also name other non-franchisor Defendants, including a number of franchisees who do own and operate hotel properties and at least one media company, Craigslist.

Significantly, only two (2) of the Actions Movants seek to consolidate allege that a criminal conviction has already occurred under 18 U.S.C. § 1591, or otherwise. As a result, the vast majority of the Actions must be stayed once an investigation begins. 18 U.S.C. § 1595(b)(2). The result being that while Movants seek to consolidate twenty-five cases now, the real number of cases currently at issue is likely to be far fewer, making consolidation at this early stage premature, at best.

Moreover, centralization is not appropriate because there are not common questions of fact. 28 U.S.C. § 1407(a). Because Movants seek to combine cases pending against such a diverse group of Defendants into a single MDL, these cases would become more difficult to litigate than not. The Actions allege few, if any, meaningful common facts to justify consolidation for the purposes of pre-trial discovery. Each action involves different Plaintiffs, different alleged traffickers, different hotel owners, different time periods, different franchisors, and unique factual circumstances. Plaintiffs will need to prove their claims against Defendants using completely different documents and witnesses. Many of the cases also make claims under specific state laws. *See e.g.*, fn. 1, *supra*. Even as to those few cases where the only claims made relate to the Trafficking Victims Protection Reauthorization Act ("TVPRA"), factual and legal issues related to alleged scienter are unique to each Defendant and factual issues related to alleged "force, threats of force, fraud, or coercion" and any alleged "commercial sex act" are unique to each Plaintiff. Further, the factual circumstances which pertain to "participation in a venture" and "benefits" will

be different in each case. State law will need to be analyzed, especially as pertaining to the alleged "participation" of the franchisors, such as Choice. These numerous factual and legal idiosyncrasies overwhelm any common issues or efficiencies (if any) afforded by consolidation.

Should an MDL become necessary, of the very limited cases which have currently been filed, the Northern District of Georgia is a more preferable forum because it is positioned to serve the convenience of the parties and promote the efficient adjudication of these actions. It is centrally located and easily accessible for the parties and their attorneys. The Southern District of Ohio, which Movants proposed as their first choice, does not have a comparative advantage on any relevant factor. Movants' representations with respect to the status of the litigation currently in the Southern District of Ohio is overstated.

Centralization is appropriate only where it "is necessary in order to eliminate duplicative discovery, prevent inconsistent pretrial rulings, and conserve the resources of the parties, their counsel and the judiciary." *In re: Helicopter Crash Near Weaverville, Cal., on Aug. 5, 2008*, 626 F. Supp. 2d 1355, 1356 (J.P.M.L. 2009). Further, "'centralization under Section 1407 should be the last solution after considered review of all other options.'" *In re: Six Flags Fair and Accurate Credit Transactions Act (FACTA) Litig.*, 2018 WL 671913, at *1 (J.P.M.L. Feb. 1, 2018) (citation omitted). Movants bear the burden of demonstrating that centralization is appropriate. *See, e.g., In re: Fout & Wuerdeman Litig.*, 657 F. Supp. 2d 1371, 1371 (J.P.M.L. 2009). Where only a few actions are involved, that burden is "heavier." *In re: Dometic Corp. Gas Absorption Refrigerator Prod. Liab. Litig.*, 285 F. Supp. 3d 1358, 1359 (J.P.M.L. 2018). The Actions as currently proposed are divergent factually and legally and are premature for consideration, at best. Movants have failed to carry their burden to demonstrate that the actions are appropriate for centralization at this

time. As such, Defendant Choice respectfully asks the Panel to deny Movants' Section 1407 Motion without prejudice.

ARGUMENT

A. Movants' Motion should be denied because it is premature.

The TVPRA requires that any civil litigation shall be stayed pending the final outcome of any investigation or prosecution of a criminal action arising out of the same facts. 18 U.S.C. § 1595(b)(2); *Lunkes v. Yannai*, 882 F. Supp. 2d 545, 548–49 (S.D.N.Y. 2012) ("For purposes of the TVPRA, a 'criminal action' includes investigation and prosecution and is pending until final adjudication in the trial court."). The contemplated stay is mandatory and cannot be averted under the statute. 18 U.S.C. § 1595(b)(2) ("*shall be stayed*…") (emphasis added).

Of the twenty-five Actions Movants propose for consolidation, only two (2) have made allegations regarding criminal convictions.[3] As to the remaining cases, presumably investigations and prosecutions will occur once Plaintiffs factual allegations are known to law enforcement, if they have not begun already. In fact, a number of the Actions reference multiple traffickers related to each case, thereby expanding any resultant investigation and subsequent prosecution during which the cases shall be stayed. Accordingly, consolidation as currently contemplated by Movants is extremely premature given the likelihood that the vast majority of currently pending cases will

[3] Only one (1) of the Actions currently pending against Defendant Choice Hotels International, Inc. includes a specific allegation that a criminal prosecution has already taken took place. *M.A. v. Wyndham Hotels & Resorts, Inc. et al.*, In the United States District Court for the Southern District of Ohio, Eastern Division, 2:10-cv-00849-ALM-EPD ("In the fall of 2017, M.A.'s trafficker was sentenced to prison and a term of supervision upon release from incarceration"). *See e.g.*, U.S. v. Lorenzo M. White, 2:17-cr-21, Transcript of Sentencing Proceedings, attached hereto as Exhibit "A". One other Action (in which Choice is not named) also makes a such an allegation. *M.L. v. Craigslist, Inc., et al.*, in the United States District Court for the Southern District of Ohio, Eastern Division, 2:19-cv-05384-GCS-CMV ("In a criminal prosecution, there were at least five separate advertisements that prosecutors pointed to as evidence that the trafficker posted M.L. on Craigslist for commercial sex acts").

be stayed in the immediate future rendering any advantages to discovery consolidation moot, if not prohibitive.

Furthermore, while Movants contend there are currently more than 1,500 potential cases, (Doc. 1-1, p. 1), this Panel has previously held "that the mere possibility of additional actions does not justify centralization." *In re: Camp Lejeune, N. Carolina, Water Contamination Litig. (No. II)*, 396 F. Supp. 3d 1368, 1369–70 (J.P.M.L. 2019) (citing *In re: Intuitive Surgical, Inc., Da Vinci Robotic Surgical Sys. Prods. Liab. Litig.*, 883 F. Supp. 2d 1339, 1340 (J.P.M.L. 2012)). The small number of current Actions, especially when taking into account the likelihood that the vast majority of them will be mandatorily stayed in the near future, strongly weighs against the need for (or benefits of) any consolidation in the near term.

B. The Actions do not share common issues of fact for centralization.

Centralization is not appropriate under Section 1407 because the Actions do not share common questions of fact. Centralization is not appropriate where individual fact issues predominate. *See In re: Narconon Drug Rehab. Mktg., Sales Practices & Prods. Liab. Litig.*, 84 F. Supp. 3d 1367, 1368 (J.P.M.L. 2015). Even where there is "general factual overlap among the actions" the proponent of centralization must show that "shared factual questions are sufficiently complex or numerous to justify centralization." *In re: Facebook Use of Name And Likeness Litig.*, MDL No. 2288, 2011 WL 4684354, at *1 (J.P.M.L. Oct. 6, 2011) (denying transfer). Movants do not make that showing here.

Here, individualized questions of fact overwhelmingly predominate. The Actions involve different Plaintiffs, different alleged traffickers, different locations, different owners / operators (sometimes also franchisees), different franchisors, different franchise agreements, different brand standards, different conduct, different franchisee employees, different potential witnesses, and

other types of Defendants altogether (i.e., Craigslist). Each Action turns on different factual questions and challenges specific to the facts, agreements, and conduct at issue in that individual Action. *See In re: Credit Card Payment Prot. Plan Mktg. & Sales Practices Litig*., 753 F. Supp. 2d 1375, 1376 (J.P.M.L. 2010) (finding cases involving "different defendants," "different products, marketing, cardholder agreements, and customer claim administration [ ] do not involve similarly uniform conduct sufficient to justify centralization"); *In re: Mortg. Lender Force-Placed Ins. Litig.*, 895 F. Supp. 2d 1352, 1353–54 (J.P.M.L. 2012) (concluding cases involving "not only different defendants but different [agreements], different alleged abuses, and different mortgage loan documents" did not allege "conduct" that was "sufficiently uniform to justify industry-wide centralization"); *In re: Mortg. Indus. Home Affordable Modification Program (HAMP) Contract Litig.*, 867 F. Supp. 2d 1338 (J.P.M.L. 2012) (the "involvement of many different non-overlapping defendants" made the likelihood of common questions of fact unlikely).

Movants' attempted recitation of "common questions" demonstrates their fundamental misunderstanding with respect to franchising generally. Doc. 1-1, p. 9. It also demonstrates further why each Action is fundamentally unique and why any attempt at consolidation would only make litigating these cases more complex and time consuming. For example, Choice does not own or operate any "properties" at issue in any of the Actions. As a result, the individual franchisees (the actual owners / operators) and the specific contractual agreements / alleged actions at issue will be different in each case. Therefore, when Movants claim that one common issue relates to knowledge about what allegedly occurred "on their premises" such an inquiry will necessarily involve a different premises owner, operating under a potentially different franchise agreement, or a different brand altogether. *Id*.

Even with respect to the TVPRA claims, factual and legal issues related to alleged scienter, "force, threats of force, fraud, or coercion," "commercial sex act," "participation in a venture," and "benefits" will be unique and different in each case. This is especially pertinent regarding the alleged involvement of franchisors who do not own or operate the properties at issue in the Actions, such as Choice. Certain Defendants in the Actions, including Choice, are franchisors. Choice, as a franchisor, does not own or operate the hotels at issue in the Actions. Choice does not employee those working at the hotels. Franchisors do generally adopt brand standards such that their trademarked brands are marketed and operated in a uniform manner. These types of brand standard have been held insufficient to establish an employment relationship because franchisees maintain autonomy as managers and employers. *See, e.g.*, *Salazar v. McDonald's Corp.*, No. 17-15673, 2019 WL 6743495, at *4 (9th Cir. Oct. 1, 2019) (requirement that franchisee pay fees to franchisor and franchisor requirements that franchisees must meet certain standards were insufficient to create joint employer liability, even when franchisor could have prevented wage and hour violations and trained restaurant managers); *In re: Domino's Pizza Inc.*, 16-CV-2492-AJN-KNF, 2018 WL 4757944, at *4 (S.D.N.Y. Sept. 30, 2018) (plaintiffs were unable to point to a single case in which a franchisor was held liable as a joint employer); *Singh v. 7-Eleven, Inc.*, No. C-05-04534-RMW, 2007 WL 715488, at *6 (N. D Cal. Mar. 8, 2007); *Bricker v. R & A Pizza, Inc.*, 804 F. Supp. 2d 615, 621 (S.D. Ohio 2011) ("a franchisor is not the employer of employees of the franchisee").

Further, brand standards have been held insufficient to impart liability as to franchisors for actions taken (or not taken) by the franchisees, because franchisees own and operate the hotels. *See, e.g.*, *Andrews v. Marriott Int'l, Inc.*, No. 11C-4831 (Tenn. Cir. Ct. Jan. 29, 2016) (Marriott, as a mere franchisor, did not control the hotel and was therefore not responsible for any security

concerns); *Starks v. Choice Hotels Int'l.*, 887 N.E.2d 1244, 1246 (Ohio. Ct. App. 2007) (holding that Choice had no right to control its franchisee, and therefore, was not liable to a hotel patron for the franchisee's alleged actions). Doing so would be incompatible with the obligations imposed by franchisors under the trademark laws and the very definition of franchised business found in multiple state and federal statutes governing franchising. 15 U.S.C. § 1051, *et seq.*

In each of the Actions, the individual hotels at issue are in most instances completely different from one other and are owned and operated by different franchisees. Further, simply because the same franchisor is named in multiple cases, does not mean the same brand is even at issue. Each case will therefore necessarily involve separate agreements and potentially different brand standards altogether.

The existence of numerous franchisee defendants (both those named and yet to be named) factually distinguishes these cases from a typical "products liability" case as Movants claim. Doc. 1-1, p. 10. Plaintiffs in these cases must do more than simply demonstrate they purchased or used a specific product as would happen in a products liability case. The individual proof required in these Actions in order to prove the existence of a violation of 18 U.S.C. § 1591 (not to mention under the individual state law claims) will be a highly individualized and time-consuming inquiry – one that cannot practically be expedited by consolidation. In order to warrant transfer, "common questions of fact [must] predominate over individual questions of fact present in each action." *In re: Asbestos Sch. Prod. Liab. Litig.*, 606 F. Supp. 713, 714 (J.P.M.L. 1985). That is simply not the case here. *See In re: Honey Prod. Mktg. & Sales Practices Litig.*, 883 F. Supp. 2d 1333 (J.P.M.L. 2012) (consolidation denied where claims were "subject to different legal challenges by the defendants").

Plaintiffs in the Actions bring claims akin to fraud, in that they depend on facts specific to each individual plaintiff and each individual defendant. *See In re: Narconon Drug Rehab. Mktg*, 84 F. Supp. 3d at 1368 (individual factual issues predominate in fraud actions, such as the specific representations to each plaintiff and varying injuries allegedly suffered by each plaintiff). Centralization is not appropriate for cases against multiple unrelated defendants when "significant localized intervening causation issues are expected to be at play." *In re: Yellow Brass Plumbing Component Prods. Liab. Litig.*, 844 F. Supp. 2d 1377, 1379 (J.P.M.L. 2012) ("localized intervening causation issues" included "the applicable standards according to which the fittings were made, the thickness of the product, manufacturing conditions, proper installation/training, local water quality, compliance with local building codes, etc."); *In re: Children's Pers. Care Prods. Liab. Litig.*, 655 F. Supp. 2d 1365, 1366 (J.P.M.L. 2009) (no centralization with "ten different baby products" even though they all contained the same problematic contaminants).

C. Given the lack of uniformity between cases, duplicative discovery and inconsistent pretrial orders are unlikely.

Not only do the proposed transfer cases lack commonality of facts, there is also an absence of party continuity. Though § 1407 does not require complete uniformity of parties, the lack of such consistency heavily undercuts concerns of duplicative discovery or inconsistent pretrial rulings. *See In re: Provident Sec. Litig.*, 715 F. Supp. 2d 1356, 1357 (J.P.M.L. 2010).

While most Plaintiffs have sued multiple Defendants, not one Defendant has been sued in every case. Even the select group of franchisor Defendants that have been sued in multiple districts face litigation arising at different hotel locations, with largely different franchise owners, involving different brands, different franchise agreements, and different alleged traffickers. Further, in the few cases where the franchisees have not yet been named, they are certain to be added as necessary parties because they are the owners and operators of the individual properties at issue. Therefore,

even cases involving 'repeat' franchisor Defendants do not share completely identical groups of Defendants.

Consequently, there is seldom party commonality between cases in the same district, and absolutely no commonality between cases proceeding in different districts. *See In re: Proton-Pump Inhibitor Prods. Liab. Litig.*, 273 F. Supp. 3d 1360, 1362 (J.P.M.L. 2017) (declining to transfer despite certain shared factual issues where discovery in the actions was "almost certain to be defendant-specific"); *In re: Cordarone (Amiodarone Hydrochloride) Mktg., Sales Practices & Prods. Liab. Litig.*, 190 F. Supp. 3d 1346, 1347 (J.P.M.L. 2016) ("The variance in named defendants virtually ensures that a significant amount of the discovery will be defendant-specific…"); *In re: Tropicana Orange Juice Mktg. & Sales Practices Litig.*, 867 F. Supp. 2d 1341, 1342 (J.P.M.L. 2012) (declining to transfer where "[s]eparate discovery would be necessary as to each defendant's products and processes"); *In re: Mortg. Indus. Home Affordable Modification Program (HAMP) Contract Litig.*, 867 F. Supp. 2d at 1338–39 (no centralization where different non-overlapping defendants because "any factual questions shared by [the] actions [were not] sufficiently complex or numerous"); *In re: Fla., P.R., & U.S. V.I. 2016 & 2017 Hurricane Seasons Flood Claims Litig.*, 325 F. Supp. 3d 1367, 1368 (J.P.M.L. 2018) (no centralization despite "superficial factual commonality" because each case "involves a different property, different insureds, different witnesses, different proofs of loss, and different damages").

In light of the differences, fears of duplicative discovery and inconsistent pretrial rulings are misplaced, as most cases involve unique parties and peculiar underlying facts.[4] *See In re:*

[4] Defendant Choice recognizes that there are multiple cases involving similar parties and hotel location pending in the Northern District of Georgia. However, these shared facts cannot carry the general burden of commonality, nor would it create significant duplicative discovery. Furthermore, inconsistent pretrial rulings would not be an issue, as all cases in the Northern District of Georgia are currently proceeding under Judge William Ray.

Mortg. Indus. Home Affordable Modification Program (HAMP) Contract Litig., 867 F. Supp. 2d 1338. As such, consolidation will not serve to assist orderly progression of the litigation that Movants suggest. *See In re: Plumbing Fixture Cases*, 298 F. Supp. 484, 493 (J.P.M.L. 1968).

D. Transfer under § 1407 is inappropriate in light of preferable alternatives.

"The panel has often stated that centralization under Section 1407 'should be the last solution after considered review of all other options.'" *In re: Gerber Probiotic Prods. Mktg. and Sales Practice Litig.*, 899 F. Supp. 2d 1378, 1379 (J.P.M.L. 2012) (quoting *In re: Best Buy Co., Inc., California Song-Beverly Credit Card Act Litig.*, 804 F. Supp. 2d 1376, 1378 (J.P.M.L. 2011)). Nor is "[c]entralization a cure-all for every group of complicated cases," with voluntary coordination and cooperation among the parties and judges being a preferable alternative to centralization. *In re: Uponor, Inc., F1960 Plumbing Fittings Prods. Liab. Litig.*, 895 F. Supp. 2d 1346, 1348-49 (J.P.M.L. 2012). Factors weighing in favor of utilizing alternatives to transfer include the number and complexity of the pending cases, the ability of the parties to work together and achieve informal cooperation, the extent to which the same counsel represent numerous parties, and the relative age of each action. *See e.g., In re: California Wine Inorganic Arsenic Levels Prod. Liab. Litig.*, 109 F. Supp. 3d 1362, 1363 (J.P.M.L. 2015).

Applying the foregoing, it is clear that alternatives are preferable to consolidation in this instance. While Movants argue that this and related litigation will ultimately result in "a thousand cases or more," the cases pending at this time are far fewer. Said cases are also largely grouped in a few select districts, with six (6) cases pending in the Southern District of Ohio and five (5) pending in the Northern District of Georgia. The limited number of cases and pending districts makes informal cooperation readily achievable. *See In re: Emergency Helicopter Air Ambulance Rate Litig.*, 273 F. Supp. 3d 1365, 1367 (J.P.M.L. 2017); *In re: Eli Lilly & Co. (Cephalexin*

Monohydrate) Patent Litig., 446 F. Supp. 242, 244 (J.P.M.L. 1978) (holding that "consultation and cooperation among the three concerned district courts, if deemed appropriate by those courts, coupled with the cooperation of the parties, would be sufficient to minimize the possibility of conflicting pretrial rulings").

The nature of the parties involved in each action further advances consolidation alternatives as the most appropriate scheme. As detailed at length *supra*, Plaintiffs are distinct as to each action and necessarily bring unique facts and backgrounds to each case. Plaintiffs also indicated that they have already organized to a large extent under lead counsel. As such, there is little need for formal consolidation. *See e.g., In re: California Wine Inorganic Arsenic Levels Prod. Liab. Litig.*, 109 F. Supp. 3d at 1363.

Defendants, meanwhile, are comprised largely of parties unique to each hotel location and alleged instance. At most, there are a number of franchisor Defendants who are involved in more than one action. However, consolidation is not required to address such a limited scope of duplicative discovery. *See id.* ("Notices of deposition can be filed in all related actions; the parties can stipulate that, where appropriate, discovery taken in one action can be used in both actions; or the involved courts may direct the parties to coordinate their pretrial activities."). Given the foregoing, alternatives to consolidation are clearly appropriate compared to transfer under § 1407. *See In re: Sorin 3T Heater-Cooler Sys. Prod. Liab. Litig. (No. II)*, 289 F. Supp. 3d 1335, 1337 (J.P.M.L. 2018) (ordering consolidation only after a clear "demonstration that information coordination at this juncture is *no longer* feasible") (emphasis added).

E. If this Panel establishes an MDL, relevant factors weigh in favor of a transfer to the Northern District of Georgia.

These Actions are premature for consolidation, at best. Nonetheless, should they be consolidated now, the Northern District of Georgia would be the best forum currently available.

See John G. Heyburn II, *A View from the Panel: Part of the Solution*, 82 TUL. L. REV. 2225, 2241 (2008) ("Ultimately, the Panel's goal is to pair an experienced, knowledgeable, motivated, and available judge in a convenient location with a particular group of cases."). This Panel's guiding lights for selection of a transferee court are "the convenience of parties and witnesses" and promotion of "the just and efficient conduct of such actions." 28 U.S.C. § 1407. The Northern District of Georgia best satisfies both objectives.

Consolidation in a geographically proximal court should be considered insofar as it serves to "conserve the resources of the parties, their counsel, and the judiciary." *See In re: Marriott Int'l, Inc., Customer Data Sec. Breach Litig.*, 363 F. Supp. 3d 1372, 1374 (J.P.M.L. 2019). In contrast to cases involving a single defendant, event, product, or transaction, where there is a common geographical locus to the evidence or discovery, in these Actions, there is no such common location. There is no clear geographical connection to the litigation, further underscoring the fact that there is no commonality of facts here. However, should such a decision be made at this juncture, the Northern District of Georgia is better suited to handle the transferred cases. Because Movants claim more than 1,500 cases eventually will be filed, the location of the currently named parties is virtually numerically meaningless to all *potential* plaintiffs and defendants. *In re: Library Editions of Children's Books*, 297 F. Supp. 385, 386 (J.P.M.L. 1968).

While the Southern District of Ohio seated in Columbus, Ohio (the venue advocated by Plaintiffs), may be located near the center of the eastern half of the United States, the ability for the parties and their counsel to reach the forum quickly and inexpensively is a challenge. This is particularly significant when being compared to a major travel hub such as Atlanta, which no doubt meets the true standard – whether the selected forum will "serve the ***convenience*** of the parties and

witnesses [and] promote the just and ***efficient*** conduct of the litigation."[5] *See In re: Louisiana-Pac. Corp. Trimboard Siding Mktg., Sales Practices & Prod. Liab. Litig.*, 867 F. Supp. 2d 1346 (J.P.M.L. 2012) (emphasis added). Such consideration is especially critical when such a small number of the potential cases referenced by Movants in their Motion have been filed and therefore the scope of the potential parties and their locations cannot be fairly evaluated.

Experience as to the cases to be transferred is only a benefit insofar as the accepting judge has sufficient time to devote to the combined transferee cases. *See e.g., In re: Set-Top Cable Television Box Antitrust Litig.*, 589 F. Supp. 2d 1379, 1380 (J.P.M.L. 2008); *In re: Toyota Motor Corp. Unintended Acceleration Mktg., Sales Practices, Prod. Liab. Litig.*, 704 F. Supp. 2d 1379, 1382 (J.P.M.L. 2010) ("The ability and willingness of even the most experienced judges to devote the necessary time to a complex MDL is always a factor in our assignments."). The parties are currently scheduled for a hearing one day each month in the Northern District of Georgia and already have participated before the court in two separate multi-hour hearings.

In contrast, the parties have yet to appear before the court in the Southern District of Ohio, aside from discovery related arguments before the Magistrate Judge. Because Plaintiffs have appealed each of the Magistrate Judge's discovery orders, there has been no final protective order entered. In Northern District of Georgia, a Final Protective Order has been entered and numerous answers and motions to dismiss are on file. As such, the cases in the Northern District of Georgia are in many ways more advanced than those pending in the Southern District of Ohio. At best, the cases are similarly situated in terms of timing. Further, because of the number of cases Movants contend have yet to be filed, it is likely another location (such as the Southern District of Texas

[5] AIRPORTS COUNCIL INTERNATIONAL, *Preliminary world airport traffic rankings released* (March 13, 2019), https://aci.aero/news/2019/03/13/preliminary-world-airport-traffic-rankings-released.

where a Texas Multi-District Litigation Panel is handling similar cases) will become more convenient should an MDL become either feasible or necessary in the future.

CONCLUSION

Based on all of the foregoing, Choice respectfully requests that the Panel deny Movants' request for centralization at this time. In the alternative, Choice requests that if the cases are centralized, they be transferred to the Northern District of Georgia.

/s/ Sara M. Turner

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