IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

LEE WARD, JAMES SAUNDERS, and WILLIAM HOLLOWAY, on behalf of themselves and all others similarly situated,	§	
Plaintiffs,	§	
v.	§	**Civil Action No. 4:20-cv-00371-O**
AMERICAN AIRLINES, INC.,	§	
Defendant.	§	

ORDER

Before the Court are Defendant American Airlines, Inc.'s Motion to Dismiss Plaintiffs' First Amended Complaint and Compel Arbitration (ECF No. 41), filed August 13, 2020; Defendant American Airlines, Inc.'s Motion to Stay Discovery (ECF No. 43), filed August 13, 2020; and Plaintiffs' Conditional Motion to Defer Ruling on Defendant's Motion to Compel Arbitration (ECF No. 49), filed August 21, 2020. Having considered the motions, responses, replies, pleadings, appendices, record, and applicable law, the Court **DENIES in part** and **GRANTS in part** American Airlines, Inc.'s Motion to Dismiss Plaintiffs' First Amended Complaint and Compel Arbitration (ECF No. 41); **DENIES AS MOOT** Defendant American Airlines, Inc.'s Motion to Stay Discovery (ECF No. 43); and **DENIES** Plaintiffs' Conditional Motion to Defer Ruling on Defendant's Motion to Compel Arbitration (ECF No. 49).

I. FACTS AND PROCEDURAL HISTORY

On April 22, 2020, Plaintiff Lee Ward ("Ward"), filed this putative nationwide class action against American Airlines, Inc. ("American"). Ward contends American cancelled his flights as part of its response to the COVID-19 virus but has refused to provide him a refund of his ticket

price in violation of its Conditions of Carriage, under which passengers have contractual rights to refunds when a flight has been cancelled, significantly changed, or both, regardless of the reason for the cancellation or delay. Am. Compl. ¶¶ 105-06, ECF No. 37. The Conditions of Carriage provide that if a passenger "decide[s] not to fly because [his or her] flight was delayed or cancelled, we'll refund the remaining ticket value and any optional fees." *Id.* ¶ 106. For "nonrefundable" tickets, the Conditions of Carriage state "[w]e will refund a non-refundable ticket (or the value of the unused segment of your trip) to the original form of payment if . . . [w]e cancel your flight" or "[w]e make a schedule change that results in a change of 61 minutes or more." *Id.* A copy of the relevant portions of American's Conditions of Carriage are attached to the Amended Complaint as Exhibit A. *See* ECF No. 37-1.

On July 15, 2020, Ward, James Saunders ("Saunders"), and William Holloway ("Holloway") (sometimes collectively, the "Named Plaintiffs") filed an Amended Complaint (ECF No. 37), the live pleading. The Named Plaintiffs allege that, as shelter-in-place and travel restrictions expanded and fears regarding the COVID-19 virus mounted, American cancelled tens of thousands of flights, including 55,000 flights in April 2020 alone. Am. Compl. ¶¶ 56-63, ECF No. 37. They allege that as "American announced flight cancellations, it took a variety of steps to make it difficult, if not impossible, for passengers to receive a refund for such flight cancellations, seeking to retain the money it received from passengers, given the severe economic losses it was incurring related to pandemic flight cancellations." *Id.* ¶¶ 64-70.The Named Plaintiffs further contend that in refusing refunds to its passengers, American ran afoul of its own Conditions of Carriage. *See id.*

A. Saunders's Ticket Purchase Through Hotwire.com

Plaintiff Saunders alleges that he purchased tickets with "American and other airlines" to travel on April 9-12, 2020, from Allentown, Pennsylvania, to New Orleans, Louisiana, with a layover in Charlotte, North Carolina. *Id.* ¶ 30. Saunders alleges he purchased his tickets through the online travel agency ("OTA") Hotwire.com. *Id.* He further alleges American cancelled his flights and did not issue a refund, notwithstanding his request. *Id.* ¶ 31.

The Hotwire Terms of Service, to which Saunders agreed when he purchased his airline tickets on Hotwire.com, contain an arbitration agreement which provides in relevant part:

> **DISPUTES[-]ARBITRATION**
>
> Hotwire is committed to customer satisfaction, so if you have a problem or dispute, we will try to resolve your concerns. But if we are unsuccessful, you or we may pursue claims as explained in this section.
>
> To give us an opportunity to resolve informally any disputes between you and us arising out of or relating in any way to the Website, these Terms of Use, our Privacy Policy, any services or products provided, any dealing with our customer service agents, or any representation made by us ("Claims"), you agree to communicate your Claim to Hotwire [. . .]. You agree not to bring suit or to initiate arbitration proceedings until 60 days after the date on which you communicated your Claim to customer support have elapsed. If we are not able to resolve your Claim within 60 days, you may seek relief through arbitration or in small claims court, as set forth below.
>
> You and Hotwire agree that **any and all Claims will be resolved by binding arbitration, rather than in court**, except that you and we may assert Claims on an individual basis in small claims court if they qualify. This includes any Claims you assert against us, our subsidiaries, travel suppliers or any companies offering products or services through us (which are beneficiaries of this arbitration agreement).
>
> ***
>
> **Any and all proceedings to resolve Claims will be conducted only on an individual basis and not in a class, consolidated, or representative action.** The arbitrator will have authority to decide issues as to the scope of this arbitration agreement and the arbitrability of Claims. If for any reason a Claim proceeds in court rather than in arbitration, **you and we each waive any right to a jury trial.**
>
> ***

> The arbitration agreement shall be governed by and enforced in accordance with the Federal Arbitration Act and federal arbitration law. An arbitrator's decision may be confirmed in any court with competent jurisdiction.

American's Supp. App. 96-97, Decl. of David Coon Ex. A-5 (Hotwire's Terms of Use) (emphasis and typography in original), ECF No. 61.[1] Hotwire's Terms of Use also state that they "are governed by the Federal Arbitration Act, federal arbitration law, and the laws of the State of Delaware, without regard to principles of conflicts of law." *Id.* at 29, ECF No. 61.

B. Holloway's Ticket Purchase Through Expedia.com

Plaintiff Holloway alleges that on March 10, 2020, he purchased tickets for himself and another passenger for one-way flights on April 7, 2020, from Washington, D.C., to Austin, Texas, with a layover in Dallas-Fort Worth. Am. Compl. ¶ 35. Holloway alleges he purchased his tickets through the OTA Expedia.com. *Id.* He further alleges that American cancelled his flights "[p]rior to his departure." *Id.* ¶ 36. Holloway contends American has refused to refund the price of the tickets. *Id.* ¶ 37.

[1] In response to American's Motion to Compel Arbitration, Saunders and Holloway argued that the Court should deny the motion because American's declarant, Lars L. Berg (its counsel), was not the appropriate witness to put Hotwire's and Expedia's Terms of Use before the Court, as he lacked personal knowledge. In reply, American requested that the Court take judicial notice of the Terms of Use under Federal Rule of Evidence 201, as they were retrieved from the Internet Archive's Wayback Machine. On October 16, 2020, the Court issued an Order declining to take judicial notice of the Terms of Use from the Internet Archive because of the dearth of Fifth Circuit case law on the issue and the Internet Archive's inclusion of a disclaimer of reliability. *See* Order, ECF No. 60. Instead, the Court granted American's alternative request for leave to submit a declaration by a qualified affiant. American has filed the Declaration of David Coons, Vice President for Product and Technology at Expedia. American's Supp. App. 2, Decl. of David Coons ("Coons Decl.") ¶ 2, ECF No. 61. Coons attests that Expedia is the parent company of Hotwire, and that he has reviewed the relevant records of Expedia and Hotwire, including their respective Terms of Use, and that he has personal knowledge of both. *Id.*, Coons Decl. ¶¶ 3-4. Coons attaches Expedia's and Hotwire's Terms of Use as Exhibits 4 and 5 to his Declaration, respectively, and states that these terms are the same as those in effect when Holloway and Saunders purchased their tickets, and are the same as those originally attached by American in support of its Motion to Compel Arbitration. *Id.*, Coons Decl. ¶¶ 6-10. Coons also states that Expedia and Hotwire customers are not able to purchase tickets without agreeing to each sites' Terms of Use. *Id.*, Coons Decl. ¶ 8. Saunders and Holloway do not challenge Coons's Declaration.

The Expedia Terms of Use, to which Holloway agreed when he purchased his tickets, provide in pertinent part:

> **DISPUTES**
>
> Expedia is committed to customer satisfaction, so if you have a problem or dispute, we will try to resolve your concerns. But if we are unsuccessful, you may pursue claims as explained in this section.
>
> You agree to give us an opportunity to resolve any disputes or claims relating in any way to the Website, any dealings with our customer service agents, any services or products provided, any representations made by us, or our Privacy Policy ("Claims") by contacting Expedia Customer Support or 1-877-787-7186. If we are not able to resolve your Claims within 60 days, you may seek relief through arbitration or in small claims court, as set forth below.
>
> Any and all claims will be resolved by binding arbitration, rather than in court, except you may assert Claims on an individual basis in small claim court if they qualify. This includes any Claims you assert against us, our subsidiaries, travel suppliers or any companies offering products or services through us (which are beneficiaries of this arbitration agreement).
>
> ***
>
> Arbitrations will be conducted by the American Arbitration Association (AAA) under its rules, including the AAA consumer rules.
>
> ***
>
> These Terms of Use are governed by the Federal Arbitration Act, federal arbitration law, and for reservations made by U.S. residents, the laws of the state in which your billing address is located, without regard to principles of conflicts of law.

American's Supp. App. 69-70, 89, Coons Decl. Ex. A-4 (Expedia's Terms of Use) (typography in original), ECF No. 61. The Court will sometimes refer to Hotwire's Terms of Use and Expedia's Terms of Use collectively as the "OTA Terms of Use"

C. Ward's Ticket Purchase on OneTravel.com

Plaintiff Ward's claims arise from two different roundtrip tickets purchased from OneTravel.com. With respect to the first roundtrip ticket, Ward alleges that on January 14, 2020,

he purchased tickets for travel to occur March 12, 2020, through March 31, 2020. Am. Compl. ¶ 13. He alleges he "was planning to travel to Lima, Peru, from Las Vegas, Nevada, with a layover in Los Angeles, California[,] [and that his] return flight was scheduled from Lima, Peru, to Miami, Florida, and then from Miami, Florida, to Las Vegas, Nevada. *Id.* He alleges on March 12, 2020, he traveled to Lima, Peru as planned, but that on March 27, 2020, OneTravel.com informed him that American and Latam Airlines had cancelled his return flights home, including the segment of his return involving travel on an American flight—the Miami to Las Vegas leg. *Id.* ¶¶ 14-15. Ward alleges that, at his own expense, he booked a return flight home from Peru on different airlines. *Id.* ¶ 19. He contends that American has "refused to refund him for its portion of his cancelled flight [from Miami] back to Las Vegas." *Id.* ¶ 23.

With respect to his second roundtrip purchase, Ward alleges that on February 29, 2020, he purchased four tickets for travel to occur May 30, 2020, through August 3, 2020. *Id.* ¶ 24. He alleges he was planning to travel to Lima, Peru, from Las Vegas, Nevada, with a layover in Los Angeles, California. *Id.* He further alleges his return flight was scheduled from Lima to Los Angeles and then to Las Vegas, and that the "portion of this flight that was booked on American was the Los Angeles to Las Vegas portion of the return leg." *Id.* Ward contends that American and the other airlines involved cancelled his flight and that American has refused to provide him a refund for the Los Angeles to Las Vegas leg of his return. *Id.* ¶¶ 25-27.

The Named Plaintiffs assert claims for breach of contract, violation of state consumer protection acts, unjust enrichment, conversion, and fraudulent misrepresentation because American allegedly refused to refund the costs of their nonrefundable tickets after it cancelled their flights. *Id.* ¶¶ 98-150. In addition, the Named Plaintiffs seek to represent a putative class consisting of all persons who purchased tickets for travel on American flights in the United States

from March 1, 2020, onward, and who were not issued a refund for cancelled or changed flights. *Id.* ¶ 84. Because of the early posture of this case, the Court offers no opinion on the propriety of the putative class.

American moves to compel arbitration with respect to Saunders's and Holloway's claims, citing arbitration clauses contained in the terms and conditions of use each agreed to in purchasing an airline ticket via Hotwire and Expedia, respectively. In the alternative to its motion to compel arbitration with respect to Saunders's and Holloway's claims, American moves to dismiss their claims pursuant to Rule 12(b)(6) for failure to state a claim. American moves to dismiss Ward's claims pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. American has filed a separate motion to stay discovery until the Court decides its pending motion, opposed by the Named Plaintiffs.[2]

In response to American's Motion to Dismiss, the Named Plaintiffs have voluntarily withdrawn their claims for violation of state consumer protection acts, unjust enrichment, conversion, and fraudulent misrepresentation. *See* Pls.' Resp. Mot. Dismiss 5, ECF No. 55 ("Plaintiffs withdraw the non-breach of contract counts asserted in the [Amended Complaint].").

[2] In connection with their opposition to the Motion to Compel Arbitration, Plaintiffs request the Court defer ruling on American's Motion to allow for discovery into "issues like contract formation, the relationship between American and Hotwire/Expedia," American's "representations to its customers," "the costs associated with pursuing an individual arbitration," and what American informs customers about booking flights through third-party websites. *See* Mot. Defer Ruling 3-4, ECF No. 49. In support, Plaintiffs cite evidentiary deficiencies in American's appendix supporting its Motion and arguments raised by American for the first time in its reply brief which, Plaintiffs argue, merit limited discovery. As stated previously, the Court declined American's request to take judicial notice of the Internet's Archive and allowed American to file a supplemental declaration by an Expedia or Hotwire declarant with personal knowledge of the Terms of Use at issue, which it did. *See supra* note 1. The only relevant question before the Court is what the OTA's Terms of Use provided at the time Saunders and Holloway agreed to be bound by arbitration. American has cured the evidentiary deficiency and provided sufficient evidence of the OTA's Terms of Use. Further, the Court has not considered any arguments American raises for the first time in its reply brief. As such, the Court will deny Saunders and Holloway's joint request that it defer ruling pending arbitration-related discovery.

Accordingly, the sole remaining claim is for breach of contract. The Court first addresses American's Motion to Compel Arbitration.

II. AMERICAN'S MOTION TO COMPEL ARBITRATION

American moves to compel arbitration of Saunders's and Holloway's breach-of-contract claims against it, relying on the arbitration clauses in the OTA's Terms of Use. In support, American notes that the claims of Saunders and Holloway each relate to tickets that they purchased through Hotwire and Expedia, respectively. According to American, "[i]n the course of purchasing their tickets, Mr. Saunders and Mr. Holloway were required to accept the Hotwire and Expedia terms of use, including provisions requiring individual arbitration of claims brought against travel suppliers like American (who are expressly made beneficiaries of the arbitration agreement)." Def.'s Mot. 4, ECF No. 41.

In response, Saunders and Holloway do not dispute that they purchased their airline tickets through an OTA. *See* Pls.' Opp. 2-3, 5, ECF No. 46; *see also* Am. Compl. ¶¶ 30, 35, ECF No. 37. Neither disputes that by completing his online reservations, he necessarily clicked all required buttons, indicating he consented to OTA's Terms of Use, including the arbitration clauses contained therein. *See* Pls.' Opp. 5, ECF No. 46 ("[T]he Terms of Use are contracts between the customers making the reservation, Plaintiffs Saunders and Holloway, and Hotwire and Expedia respectively."). They admit that the OTA's Terms of Use contain an arbitration clause. *See id.* at 6-7, ECF No. 46.

Saunders and Holloway contend the arbitration clauses in the OTA's Terms of Use do not apply here for two reasons: First, American is not a party to the OTA's Terms of Use and, therefore, cannot enforce the arbitration clauses; and second, because the arbitration clauses cover

disputes only as between the signatories, their respective breach-of-contract claims against American are not within the scope of the arbitration clauses.

A. Legal Standard - Federal Arbitration Act

Section 2 of the Federal Arbitration Act ("FAA") provides, in relevant part, that written agreements to arbitrate controversies arising out of an existing contract "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2 (2018). The statute "leaves no place for the exercise of discretion by a district court, but instead mandates that district courts *shall* direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed." *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985) (emphasis in original) (citing 9 U.S.C. §§ 3-4).

Under the FAA, ordinary principles of state contract law determine whether there is a valid agreement to arbitrate. *See Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 630 (2009) ("Neither [section 2 nor 3 of the FAA] purports to alter background principles of state contract law regarding the scope of agreements (including the question of who is bound by them)."); *see also Jody James Farms, JV v. Altman Grp., Inc.*, 547 S.W.3d 624, 631 (Tex. 2018). Here, although the parties do not offer any choice-of-law analysis, for the reasons stated below (*see infra* II.B), the Court determines that Texas state law governing "the validity, revocability, and enforceability of contracts generally" controls the dispute. *Arthur Andersen*, 556 U.S. at 631.

"Under Texas law, a party can compel arbitration only by establishing: (1) the existence of a valid agreement to arbitrate; and (2) that the claims asserted by the party attempting to compel arbitration are within the scope of the arbitration agreement." *Halliburton Energy Servs., Inc. v. Ironshore Specialty Ins. Co.*, 921 F.3d 522, 530 (5th Cir. 2019) (citations omitted). "Both the existence issue and scope issue are decided by the court." *Id.* (citing Tex. Civ. Prac. & Rem. Code

Ann. § 171.021 (2020); *Howell Crude Oil Co. v. Tana Oil & Gas Corp.*, 860 S.W.2d 634, 639 (Tex. App.—Corpus Christi 1993, no writ)).

On a motion to compel arbitration by an aggrieved party, the court shall decide the issue of arbitrability summarily. 9 U.S.C. § 4. Further, evidence on the motion may be received by the court. *Moses H. Cone Mem. Hosp. v. Mercury Constr. Co.*, 460 U.S. 1, 22 n.26 (1983). A resolution of the arbitrability question, however, "call[s] for an expeditious and summary hearing, with only restricted inquiry into factual issues." *Id.* at 22.

B. Choice of Law

The parties do not address choice-of-law issues but assume that Texas law applies. American, without analysis, cites primarily to Fifth Circuit cases applying Texas law, and Saunders and Holloway do not contend otherwise. The Expedia Terms of Use provide that the applicable law is the Federal Arbitration Act, federal arbitration law, and for reservations made by U.S. residents, the laws of the state in which the purchaser's billing address is located. American's Supp. App. 89, Coons Decl. (Expedia's Terms of Use), ECF No. 61. The Amended Complaint alleges Holloway is a resident of the State of Texas. *See* Am. Compl. ¶ 34. Thus, assuming his billing address is in Texas, Texas law and federal arbitration law govern the Expedia Terms of Use. The Hotwire Terms of Use provide that they "are governed by the Federal Arbitration Act, federal arbitration law, and the laws of the State of Delaware, without regard to principles of conflicts of law." *Id.* at 29, Coons Decl. Ex. A-5 (Hotwire's Terms of Use). Thus, Delaware law and federal arbitration law apply to the Hotwire Terms of Use. As the parties fail to provide any argument related to choice of law, the Court has conducted its own research and concludes that Texas and Delaware both apply general principles of contract interpretation to construe arbitration agreements and recognize that a non-signatory may hold a signatory to an arbitration agreement if

it is a third-party beneficiary to the agreement. *See generally Jody James Farms, JV v. Altman Group, Inc.*, 547 S.W.3d 624, 635 (Tex. 2018) ("Like other contracts, arbitration agreements may also be enforced by third-party beneficiaries, so long as the parties to the contract intended to secure a benefit to that third party and entered into the contract directly for the third party's benefit.") (internal quotation marks and citation omitted); *In re NEXT Fin. Grp., Inc.*, 271 S.W.3d 263, 267 (Tex. 2008) (ruling that securities brokerage firm could compel arbitration based on arbitration agreement in application for securities industry registration signed by plaintiff employee because the brokerage firm was "a clearly intended third-party beneficiary"); *NAMA Holdings, LLC v. Related World Mkt. Ctr., LLC*, 922 A.2d 417, 430 (Del. Ch. 2007) (recognizing that a non-signatory to a contract can be bound by an arbitration clause when traditional principles of contract law "equitably confer upon that party signatory status with regard to the underlying agreement [under] principles includ[ing] a third-party beneficiary theory").

One state's law does not appear more favorable than the other, and no meaningful distinction exists, nor do the parties assert this is the case. A choice, therefore, need not be made between the laws of Texas and Delaware, as no actual conflict is asserted. *Jacked Up, LLC v. Sara Lee Corp.*, 854 F.3d 797, 813 (5th Cir. 2017) (citation omitted). The Court, therefore, will apply Texas law, as well as federal arbitration law, to interpret the arbitration clauses in the OTA's Terms of Use.

C. Analysis

As previously explained, American maintains that Saunders and Holloway each agreed to arbitrate his breach-of-contract claims when he accepted the OTA's Terms of Use. American contends that, although it is a non-signatory to the Terms of Use, it may nevertheless invoke arbitration and bind Saunders and Holloway to their agreements to arbitrate under the express

terms of the arbitration clauses. In the alternative, American argues Saunders and Holloway should each be required to arbitrate his claims because, while not a signatory, it is a third-party beneficiary of the OTA's Terms of Use.

In opposition, Saunders and Holloway contend the arbitration clauses to which they agreed do not apply here for two reasons: First, American is not a party to the OTA's Terms of Use and, therefore, cannot enforce the arbitration clauses; and second, their respective breach-of-contract claims are not within the scope of the arbitration clauses.

For the reasons that follow, the Court agrees with American and finds that the arbitration clauses are enforceable here. Although American is not a party to the OTA's Terms of Use, under the plain language of the Terms of Use, it is a third-party beneficiary entitled to enforce the arbitration clauses with signatories Saunders and Holloway. Further, the Court concludes that Saunders's and Holloway's breach-of-contract claims against American are within the scope of the arbitration clauses in the OTA's Terms of Use.

1. Was There an Agreement to Arbitrate?

Whether Saunders and Holloway have agreed, or are otherwise bound, to arbitrate is a threshold question for the Court. "A party seeking to compel arbitration must first show that a valid arbitration agreement exists between the parties, a determination governed by traditional state contract principles." *Halliburton Energy Servs.*, 921 F.3d at 530 (quoting *Jody James Farms*, 547 S.W.3d at 631). "Under these principles, the court must determine whether an arbitration agreement exists based on the parties' intent as expressed in the terms of the contract." *Id.* (citing *Chrysler Ins. Co. v. Greenspoint Dodge of Hous., Inc.*, 297 S.W.3d 248, 252 (Tex. 2009)).

While "the strong federal policy favoring arbitration applies to the scope of an arbitration agreement, 'the policy does not apply to the initial determination whether there is a valid agreement

to arbitrate.'" *Auto Parts Mfg. Mississippi, Inc. v. King Const. of Houston, L.L.C.*, 782 F.3d 186, 196-97 (5th Cir. 2015) (quoting *Banc One Acceptance Corp. v. Hill*, 367 F.3d 426, 429 (5th Cir. 2004)). The Court first decides whether there was a valid agreement to arbitrate between the parties.

a. American is not a Party to the Terms of Use

Under the OTA's Terms of Use, Saunders and Hotwire have agreed to arbitrate certain disputes, and Holloway and Expedia have agreed to arbitrate certain disputes. It is undisputed that American is not a signatory to either agreement. The Court, therefore, rejects American's argument that under the plain language of the arbitration clauses, it may "invoke the arbitration agreement and that Plaintiffs are required to arbitrate their claims against American." Def.'s Mot. 14, ECF No. 41. The OTA's Terms of Use are contracts between the customer making the reservation and the OTA servicer—not American. As correctly argued by Saunders and Holloway with reference to the plain language of the agreements,

> While the pronoun "you" refers to Hotwire and Expedia's customers, the other pronouns used throughout the Terms of Use refer only to Hotwire and Expedia. Hotwire and Expedia, as the drafters of the contract, specifically defined the terms, "we," "us," and "our" to refer to Hotwire and Expedia, and their subsidiaries and corporate affiliates. Again, American is not included within the scope of the terms "you," "we," "us," or "our" as the definitions confirm[.]

Pls.' Opp. 7, ECF No. 46. "Because American is not included in the definition of 'we' or 'you,' it is not a party[,] and so American cannot invoke arbitration under the Terms of Use." *Id.*

Accordingly, as American is not a signatory to the OTA's Terms of Use, it may not directly invoke the arbitration clauses to compel arbitration of the instant dispute.

b. American is a Third-Party Beneficiary to the Terms of Use

In the case of a non-signatory seeking to compel arbitration, the Fifth Circuit, applying Texas law, recently stated

> The parties' intent controls even when a non-signatory to the arbitration agreement seeks to enforce it. Non-signatories sometimes try to enforce an arbitration agreement against a signatory, who will often respond by arguing that the arbitration agreement exists only between the signatories. When parties dispute whether a "non-signatory can compel arbitration pursuant to an arbitration clause," their dispute "questions the existence of a valid arbitration clause between specific parties and is therefore a gateway matter for the court to decide."

Halliburton Energy Servs., 921 F.3d at 530 (quoting *In re Rubiola*, 334 S.W.3d 220, 224 (Tex. 2011)); *see also In re Weekley Homes, L.P.*, 180 S.W.3d 127, 130 (Tex. 2005); *Sherer v. Green Tree Servicing LLC*, 548 F.3d 379, 381 (5th Cir. 2008).

Although arbitration agreements apply to non-signatories "only in rare circumstances," the question of "[w]ho is actually bound by an arbitration agreement is [ultimately] a function of the intent of the parties, as expressed in the terms of the agreement." *Id.* at 530-31 (quoting *Bridas S.A.P.I.C. v. Gov't of Turkm.*, 345 F.3d 347, 355, 358 (5th Cir. 2003)). Courts addressing whether a non-signatory can enforce an arbitration agreement are guided by "'traditional principles' of state law," which "allow a contract to be enforced by or against nonparties to the contract through assumption, piercing the corporate veil, alter ego, incorporation by reference, third-party beneficiary theories, waiver and estoppel." *Id.* at 531 (quoting *Arthur Andersen*, 556 U.S. at 631); *see also In re Kellogg Brown & Root, Inc.*, 166 S.W.3d 732, 738 (Tex. 2005) ("[U]nder certain circumstances, principles of contract law and agency may bind a non-signatory to an arbitration agreement.").

American contends that, even though it is a non-signatory, it may enforce arbitration against Saunders and Holloway because it is a third-party beneficiary of the OTA's Terms of Use. For the reasons that follow, the Court agrees that American is an intended third-party beneficiary of the OTA's Terms of Use and, thus, may compel arbitration to the extent the claims asserted fall within the scope of the arbitration clauses.

"To determine whether the third-party beneficiary doctrine applies, this Court looks to the parties' intentions at the time the contract was executed." *JP Morgan Chase & Co. v. Conegie*, 492 F.3d 596, 600 (5th Cir. 2007) (quoting *Bridas*, 345 F.3d at 362). "Although there is a presumption that parties are contracting only for themselves, it may be rebutted 'if the intent to make someone a third-party beneficiary is clearly written or evidenced in the contract.'" *Id.* (quoting *Bridas*, 345 F.3d at 362); *see also Sherer*, 548 F.3d at 382 n.2 (noting that the "third-party beneficiary" rationale is a distinct theory on which a non-signatory may invoke an arbitration agreement even when its terms do not expressly state whether a signatory may be compelled to arbitrate with a non-signatory).

Here, the parties' intent to make American a beneficiary of the contract is clearly written in the arbitration clauses and Terms of Use more generally. Expedia's Terms of Use unequivocally provide "[A]ny Claims you assert against . . . [our] travel suppliers or any companies offering products or services through us (which are beneficiaries of this arbitration agreement)" must be "resolved by binding arbitration." American's Supp. App. 69-70, Coons Decl. Ex. A-4 (Expedia's Terms of Use) (typography in original), ECF No. 61. Hotwire's Terms of Use are nearly identical:

> You and Hotwire agree that any and all Claims will be resolved by binding arbitration, rather than in court, except that you and we may assert Claims on an individual basis in small claims court if they qualify. *This includes any Claims you assert* against us, *our subsidiaries, travel suppliers or any companies offering products or services through us (which are beneficiaries of this arbitration agreement).*

Id. at 96-97, Coons Decl. Ex. A-5 (Hotwire's Terms of Use) (emphasis added and typography in original), ECF No. 61.

Saunders relies on the definitions in the Hotwire's Terms of Use of "you" as Saunders and "we" as Hotwire—to allow only Saunders and Hotwire to arbitrate. Likewise, Holloway relies on the definitions in the Expedia's Terms of Use of "you" as Holloway and "we" as Expedia—to

allow only Holloway and Expedia to arbitrate. This reading is too narrow. First, the clauses themselves are not framed exclusively. More importantly, the remainder of the OTA's Terms of Use undercut this narrow interpretation. Following the purportedly limiting language, the Terms of Use broadly provide "[A]ny Claims you assert against . . . [our] travel suppliers or any companies offering products or services through us (which are beneficiaries of this arbitration agreement)" must be "resolved by binding arbitration." American's Supp. App. 69-70, Coons Decl. Ex. A-4 (Expedia's Terms of Use) (typography in original), ECF No. 61; *Id.* at 96-97, Coons Decl. Ex. A-5 (Hotwire's Terms of Use) (emphasis added and typography in original), ECF No. 61.

Stated differently, although brief excerpts from the OTA's Terms of Use defining the parties can be narrowly read to support Saunders's and Holloway's interpretation, when read as a whole, the Terms of Use clearly evince an intent to allow American, a travel supplier, to compel arbitration as a third-party beneficiary. Further, the Terms of Use clarify that American is a "travel supplier." *See, e.g.*, American's Supp. App. 98, Coons Decl. Ex. A-5, ECF No. 61 (referring to "Airlines and other travel suppliers") (Hotwire); *id.* at 72, Coons Decl. Ex. A-4, ECF No. 61 (same) (Expedia).

The Court concludes that the OTA's Terms of Use, read as a whole, evince a clear intent by the parties to make American, as a travel supplier, a third-party beneficiary of the agreements. Accordingly, American may invoke the arbitration clauses to compel arbitration by signatories Saunders and Holloway.

2. Scope of the Claims Under the Terms of Use

The next question is whether the disputes in question fall within the scope of the arbitration clauses contained in the OTA's Terms of Use. "After proving that a valid arbitration agreement

exists, the party seeking to compel arbitration must show that the dispute falls within the scope of the agreement." *Halliburton Energy Servs.*, 921 F.3d at 531. This question—which can include a question about who decides arbitrability—is one of contract interpretation. *See Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 626, (1985). "As a contract interpretation issue, a court can only determine arbitrability by looking to the arbitration clause itself." *Halliburton Energy Servs.*, 921 F.3d at 531 (citing *Louis Dreyfus Negoce S.A. v. Blystad Shipping & Trading Inc.*, 252 F.3d 218, 225 (2d Cir. 2001)) ("[A] court must determine whether . . . the language of the clause, taken as a whole, evidences the parties' intent to have arbitration serve as the primary recourse for disputes connected to the agreement containing the clause . . . .").

"If the trial court finds that a valid agreement to arbitrate exists and that the claims asserted fall within that agreement, it is required to compel arbitration." *Id.* (citations omitted). If, on the other hand, the trial court determines that there is no arbitration agreement between the parties or that no dispute between them falls within the scope of the binding arbitration agreement, the court must deny the motion to compel arbitration with prejudice. *Id.* at 531-32.

Saunders and Holloway seek to limit the definition of "Claims" covered by the OTA's Terms of Use only to "disputes between Plaintiffs and Hotwire or Expedia[.]" Pls.' Opp. 13, ECF No. 46. The Court rejects this argument as unsupported by the plain language of the arbitration clauses. The arbitration clauses expressly apply to "any Claims you assert against us, our subsidiaries, *travel suppliers or any companies offering products or services through us (which are beneficiaries of this arbitration agreement)*." *See* American's Supp. App. 69-70, Coons Decl. Ex. A-4 (Expedia's Terms of Use) (emphasis added and typography in original), ECF No. 61; *Id.* at 96-97, Coons Decl. Ex. A-5 (Hotwire's Terms of Use) (emphasis added and typography in original), ECF No. 61. The term "Claims" thus encompasses issues that "aris[e] out of or relat[e]

in any way to the Website, the[] Terms of Use, [or] *any services or products provided*," whether claims are brought against Expedia or Hotwire, or instead one of its travel suppliers. *See id.*

The Court agrees with American that, based on the plain language of the OTA's Terms of Use, Saunders's and Holloway's breach-of-contract claims are within the scope of the arbitration clauses. Saunders and Holloway purchased tickets via the OTA's websites, respectively, and they seek a refund for those purchases. It is through Saunders's and Holloway's agreement to the Terms of Use that each expressly committed to abide by American's Conditions of Carriage. *See* American's Supp. App. 98, Coons Decl. Ex. A-5, ECF No. 61 ("In particular, if you have purchased an airfare, please ensure you read the full terms and conditions of carriage issued by the Supplier . . . You agree to abide by the terms of use of purchase imposed by any supplier with whom you elect to deal.") (Hotwire); *id.* at 72, Coons Decl. Ex. A-4, ECF No. 61 (same) (Expedia). Accordingly, the Court concludes that Saunders's and Holloway's breach-of-contract claims against American fall within the scope of the OTA's Terms of Use.[3]

3. Other Considerations

Further, as Saunders and Holloway have not argued that any legal constraints external to the OTA's Terms of Use or the Conditions of Carriage each entered into with American foreclose the arbitration of this dispute, the Court need not address this issue. Even were it to reach this issue, the Court finds that that no legal constraint external to the above-referenced agreements forecloses arbitration of this dispute.

[3] Further, as previously explained "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." *Safer*, 422 F.3d at 294. Thus, "a valid agreement to arbitrate applies unless it can be said with positive assurance that [the] arbitration clause is not susceptible of an interpretation which would cover the dispute at issue." *Motorola*, 297 F.3d at 392 (citation omitted). Here, the plain language of the arbitration clauses extends to claims against travel suppliers.

The Court also rejects Saunders's and Holloway's final argument that the Condition of Carriage and federal law override the OTA's Terms of Use. *See* Pls.' Opp. 14-17, ECF No. 46. The Court does not find that American is seeking to enlarge the substantive provisions of its Conditions of Carriage by moving to compel arbitration. The issue presented is limited to the forum in which Saunders and Holloway may bring their respective claims. Further, Saunders and Holloway do not point to any conflict between the Conditions of Carriage and their agreements to arbitrate. The Court also notes that in purchasing tickets from Hotwire and Expedia, Saunders and Holloway also agreed to be bound by "additional" terms of a travel supplier's conditions of carriage. American's Supp. App. 98, Coons Decl. Ex. A-5 (Hotwire's Terms of Use), ECF No. 61; *id.* at 72, Coons Dec. Ex. A-4 (Expedia's Terms of Use), ECF No. 61.

Accordingly, the Court finds (A) that American has proved by a preponderance of the evidence that Saunders and Holloway agreed to arbitrate the breach-of-contract claims they are asserting in this lawsuit against American and (B) that the claims fall within the ambit of the arbitration clauses. Thus, the Court will grant Defendant's Motion to Compel Arbitration (ECF No. 41).[4]

Further, as all of Saunders's and Holloway's claims against American are arbitrable, the Court determines that dismissal of these claims is appropriate. Section 3 of the FAA, 9 U.S.C. §§ 1-16, provides for a stay pending arbitration, but the Fifth Circuit has held that, when all claims are subject to arbitration, the district court, in its discretion, may dismiss the action with prejudice. *Alford v. Dean Witter Reynolds, Inc.*, 975 F.2d 1161, 1164 (5th Cir. 1992) (citations omitted). The

[4] In the alternative to American's Motion to Compel Arbitration with respect to Saunders's and Hollway's claims, American moves to dismiss their claims under Rule 12(b)(6). Because the Court has granted American's Motion to Compel Arbitration, it need not consider its alternative motion to dismiss these claims.

court in *Alford* reasoned that dismissal, rather than a stay, was appropriate when "[a]ny post-arbitration remedies sought by the parties will not entail renewed consideration and adjudication of the merits of the controversy but would be circumscribed to a judicial review of the arbitrator's award in the limited manner prescribed by law." *Id.* (citation and internal quotations marks omitted).

The same reasoning applies here because all of Saunders's and Holloway's claims against American are subject to arbitration. As a result, retaining jurisdiction over these claims serves no purpose, as the parties' post-arbitration remedies will be limited to judicial review of the arbitrator's award based on the grounds set forth in the FAA. *See id.*

With respect to Ward's breach-of-contract claims, the Court concludes that no stay is required. In a case involving arbitrable and nonarbitrable claims, courts consider the similarity of operative facts between such claims; the inseparability of the claims; and the potential effect of litigation on the arbitration in determining whether a stay of nonarbitrable claims should be granted under section 3 of the FAA. *See Waste Mgmt., Inc. v. Residuos Industriales Multiquim, S.A. de C.V.*, 372 F.3d 339, 344-45 (5th Cir. 2004); *Harvey v. Joyce*, 199 F.3d 790, 795-96 (5th Cir. 2000). Ward's breach-of-contract claim against American is wholly separate from the claims of Saunders and Holloway. Proceeding with Ward's claim has no possible adverse effect on the arbitration proceeding and, therefore, will in no way thwart federal policy in favor of arbitration.

III. AMERICAN'S MOTION TO DISMISS WARD'S CLAIMS

American moves to dismiss Ward's claims pursuant to Federal Rule of Civil Procedure 12(b)(6). In the Amended Complaint, Ward asserted claims for breach of contract, violation of state consumer protection acts, unjust enrichment, conversion, and fraudulent misrepresentation, alleging that American refused to refund the costs of his nonrefundable tickets after it cancelled

his flights. Am. Compl. ¶¶ 98-150, ECF No. 37. In response to American's Motion to Dismiss, Ward has voluntarily withdrawn his claims for violation of state consumer protection acts, unjust enrichment, conversion, and fraudulent misrepresentation. *See* Pls.' Resp. Mot. Dismiss 5, ECF No. 55 ("Plaintiffs withdraw the non-breach of contract counts asserted in the [Amended Complaint]."). As such, the sole issue presented is whether Ward has stated a plausible claim that American breached the terms of its Conditions of Carriage.

A. Federal Rule of Civil Procedure 12(b)(6)

Federal Rule of Civil Procedure 8(a) requires a claim for relief to contain "a short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. P. 8(a)(2). Rule 8 does not require detailed factual allegations, but "it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). If a plaintiff fails to satisfy Rule 8(a), the defendant may file a motion to dismiss the plaintiff's claims under Federal Rule of Civil Procedure 12(b)(6) for "failure to state a claim upon which relief may be granted." Fed. R. Civ. P. 12(b)(6).

To defeat a motion to dismiss pursuant to Rule 12(b)(6), a plaintiff must plead "enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570. "A claim has facial plausibility when the plaintiff pleads 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 663 (citing *Twombly*, 550 U.S. at 556). "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* (quoting *Twombly*, 550 U.S. at 556). "Where a complaint pleads facts that are 'merely

consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.'" *Id.* (quoting *Twombly*, 550 U.S. at 557).

In reviewing a Rule 12(b)(6) motion, the Court must accept all well-pleaded facts in the complaint as true and view them in the light most favorable to the plaintiff. *Sonnier v. State Farm Mut. Auto. Ins. Co.*, 509 F.3d 673, 675 (5th Cir. 2007). The Court is not bound to accept legal conclusions as true, and only a complaint that states a plausible claim for relief survives a motion to dismiss. *Iqbal*, 556 U.S. at 678-79. When there are well-pleaded factual allegations, the Court assumes their veracity and then determines whether they plausibly give rise to an entitlement to relief. *Id.*

"Generally, a court ruling on a 12(b)(6) motion may rely on the complaint, its proper attachments, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." *Randall D. Wolcott, M.D., P.A. v. Sebelius*, 635 F.3d 757, 763 (5th Cir. 2011) (citations omitted); *see also Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007). A court may also consider documents that a defendant attaches to a motion to dismiss if they are referred to in the plaintiff's complaint and are central to the plaintiff's claims. *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498-99 (5th Cir. 2000).

B. Analysis

Ward bases his breach of contract claim on American's alleged breach of the Conditions of Carriage. Texas law applies per the Conditions of Carriage. *See* Am. Compl. Ex. A (Conditions of Carriage), ECF No. 37-1 at 3 of 26 ("Texas law applies to this contract."). Under Texas law, the elements of a breach of contract action are: "(1) the existence of a valid contract; (2) performance or tender of performance; (3) breach by the defendant; and (4) damages resulting from the breach." *Garza v. Bank of Am., N.A.*, No. 4:14-cv-553-O, 2014 WL 5315088, at *2 (N.D.

Tex. Oct. 17, 2014) (O'Connor, J.) (applying Texas law). Assuming the truth of Ward's well-pleaded allegations, the Court concludes the Amended Complaint contains sufficient allegations satisfying these four elements and Federal Rule of Civil Procedure 8. *See* Am. Compl. ¶¶ 12-38, 99-120, ECF No. 37.

In its Motion to Dismiss, American does not challenge whether Ward has adequately pleaded the elements of a claim for breach of contract under Texas law. Instead, American contends (1) that Ward's breach-of-contract claim is preempted by the Airline Deregulation Act ("ADA") because he seeks to impose an obligation to provide a refund that extends beyond any obligation that American voluntarily assumed; and (2) that certain documents American attaches to its motion to dismiss, and which it urges the Court to consider, require the Court to dismiss Ward's breach-of-contract claim. For the reasons that follow, the Court will deny American's motion to dismiss.

First, the Court concludes that the ADA does not preempt Ward's breach-of-contract claim. Ward is seeking to enforce a voluntary agreement entered into by American. The Supreme Court has explained, the "basis for a contract action is the parties' agreement." *Am. Airlines v. Wolens*, 513 U.S. 219, 233 (1995). Notably, "the ADA permits state-law-based court adjudication of routine breach-of-contract claims." *Id.* at 232. While the ADA "stops States from imposing their own substantive standards with respect to rates, routes, or services," it serves as no bar to "affording relief to a party who claims and proves that an airline dishonored a term the airline itself stipulated." *Id.* at 232-33. "This distinction between what the State dictates and what the airline itself undertakes confines courts, in breach-of-contract actions, to the parties' bargain, with no enlargement or enhancement based on state laws or policies external to the agreement." *Id.* at 233; *see also Trujillo v. Am. Airlines*, 938 F. Supp. 392, 394 (N.D. Tex. 1995) ("State causes of action

are available to enforce bargains for services into which an airline voluntarily entered[.]"), *aff'd*, 98 F.3d 1338 (5th Cir. 1996) (per curiam) (unpublished table decision).

As Ward correctly argues, here, "multiple sections of the Conditions of Carriage confirm the basis for his allegations regarding American's alleged breach." Pls.' Opp. 6, ECF No. 46. For example, irrespective of ticket types, American notes that "[i]f you decide not to fly because your flight was delayed or cancelled, we'll refund the remaining ticket value and any optional fees." Am. Compl. ¶ 106, ECF No. 37. Even for "nonrefundable" tickets, American explicitly states "[w]e will refund a non-refundable ticket (or the value of the unused segment of your trip) to the original form of payment if . . . [w]e cancel your flight" or "[w]e make a schedule change that results in a change of 61 minutes or more." *Id.*

Accepting all well-pleaded allegations as true, the Court concludes Ward's breach-of-contract claim is not preempted. *See, e.g.*, *Abdel-Karim v. EgyptAir Airlines*, 116 F. Supp. 3d 389, 404 (S.D.N.Y. 2015), *aff'd sub nom. Abdel-Karim v. Egyptair Holding Co.*, 649 F. App'x 5 (2d Cir. 2016) (rejecting preemption argument where "in arguing the merits of his claim, the plaintiff relies mainly upon the parties' agreed-upon terms in the Conditions of Carriage").

The remainder of American's arguments supporting dismissal hinge on documents that the Court declines to consider at the motion-to-dismiss stage, including so-called "ticket records" and an Interline Agreement. In deciding American's motion to dismiss, this Court will consider only the pleadings and "documents attached to or incorporated into the complaint and matters of which judicial notice may be taken." *United States ex rel. Willard v. Humana Health Plan of Tex. Inc.*, 336 F.3d 375, 379 (5th Cir. 2003) (citing *Lovelace v. Software Spectrum Inc.*, 78 F.3d 1015, 1017-18 (5th Cir. 1996)). "[D]ocuments that a defendant attaches to a motion to dismiss are considered part of the pleadings if they are referred to in the plaintiff's complaint and are central to her claim."

Ray v. U.S. Dep't of Homeland Sec., No. H–07–2967, 2008 WL 3263550, at *5 (S.D. Tex. Aug.7, 2008) (citations and internal punctuation omitted). The documents which American attaches to its motion to dismiss are neither referred to in the Amended Complaint nor central to Ward's claim. As such, the Court will not consider them.[5]

When documents outside the pleadings have been submitted in connection with a motion to dismiss and discovery would be appropriate to resolve the issues raised in that motion, it is appropriate to allow discovery before converting the motion into one for summary judgment. *See Benchmark Elecs., Inc. v. J.M. Huber Corp.*, 343 F.3d 719, 725 (5th Cir. 2003) ("[T]he district court erred by treating Huber's motion for judgment on the pleadings as a motion for summary judgment without providing Benchmark an opportunity to conduct discovery."), *modified on denial of rehearing on other grounds*, 355 F.3d 356 (5th Cir. 2003). This Court declines to consider materials outside the pleadings and does not convert American's motion to dismiss into a motion for summary judgment.

For these reasons, the Court will deny American's Motion to Dismiss Ward's breach-of-contract claim under Federal Rule of Civil Procedure 12(b)(6).

IV. CONCLUSION

[5] In addition, the materials American submits in support of its Motion to Dismiss will not be admitted or considered because, as correctly noted by Ward, they have not been properly authenticated. Lars Berg's affidavit is not based on his personal knowledge but, rather, solely based on his role as an attorney for American. Therefore, it is inadmissible. *See, e.g., Snapt, Inc. v. Ellipse Communications, Inc.*, 2010 WL 11542004, at *4 (N.D. Tex. Sept. 28, 2010) (O'Connor, J.) (finding inadmissible proffered facts that were not based on personal knowledge). Because Berg lacks personal knowledge regarding the internal airline documents that American attaches to its motion to dismiss, these items are inadmissible and cannot be considered by the Court. Further, the Court rejects American's request, first raised in its reply brief, that it take judicial notice of these materials if it concludes Berg has no personal knowledge of internal airline documents. *See Channel (H) Inc. v. Cquentia Series, LLC*, No. 4:17-cv-00916-O, 2018 WL 10561906, at *2 (N.D. Tex. Jan. 29, 2018) (O'Connor, J.) ("This Court follows a practice 'of declining to consider arguments raised for the first time in a reply brief.'") (quoting *Springs Indus., Inc. v. Am. Motorists Ins. Co.*, 137 F.R.D. 238, 239 (N.D. Tex. 1991)).

Based on the foregoing, the Court **GRANTS in part** and **DENIES in part** American Airlines, Inc.'s Motion to Dismiss Plaintiff's First Amended Complaint and Compel Arbitration (ECF No. 41). Specifically, the Court **GRANTS** the Motion to Compel Arbitration of Plaintiffs Saunders's and Holloway's breach-of-contract claims. Accordingly, Plaintiffs Saunders and Holloway and Defendant American **shall** arbitrate all claims and disputes between them in accordance with the arbitration provisions in the OTA's Terms of Use, and all claims brought by Saunders and Holloway against American are **dismissed with prejudice**. The Court **DENIES** American's Motion to Dismiss Ward's breach-of-contract claims pursuant to Federal Rule of Civil Procedure 12(b)(6), and **DENIES as moot** American's Motion to Dismiss Ward's claims for violation of state consumer protection acts, unjust enrichment, conversion, and fraudulent misrepresentation, which claims are **dismissed without prejudice**. Finally, the Court **DENIES as moot** Defendant American Airlines, Inc.'s Motion to Stay Discovery (ECF No. 43), and **DENIES** Plaintiffs' Conditional Motion to Defer Ruling on Defendant's Motion to Compel Arbitration (ECF No. 49). Ward's breach-of-contract claims may proceed.

SO ORDERED on this **2nd day** of **November, 2020.**

Reed O'Connor
UNITED STATES DISTRICT JUDGE