UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

THE HILB GROUP, LLC, et. al.	:	
	:	
v.	:	C.A. No. 18-00555-WES
	:	
BARUCH RABINOWITZ	:	

REPORT AND RECOMMENDATION

Lincoln D. Almond, United States Magistrate Judge

Pending before me for a report and recommended disposition (28 U.S.C. § 636(b)(1)(B)) is Defendant's Motion to Dismiss this action pursuant to Rule 12(b)(2), Fed. R. Civ. P., or in the alternative, for an order transferring the case to the Eastern District of New York pursuant to 28 U.S.C. §1404. (ECF Doc. No. 6). Plaintiffs oppose the Motion. (ECF Doc. No. 15). After reviewing the pleadings and arguments of the parties, I recommend that Defendant's Motion be DENIED.

I. Background

The Hilb Group ("THG") is a Delaware limited liability company with its principal place of business in Richmond, Virginia. (ECF Doc. No. 1 at ¶ 1). The Hilb Group-New England ("THG-NE") is a Delaware limited liability company and a subsidiary of THG. THG-NE's principal place of business is Rhode Island, and it maintains an office in Warwick, Rhode Island. Id. at ¶ 2. THG and THG-NE are, among other things, in the property and casualty insurance brokerage and administration business. Id. at ¶ 3. Defendant is a New York resident, and resides in Lawrence, New York. Id. at ¶ 4. Defendant is a former employee of THG-NE. He is a current employee of P&G Insurance Brokers in Brooklyn, New York ("P&G"). Id. at ¶ 5.

THG-NE employs brokers and consultants who, among other things, develop relationships with business owners and individuals to help them identify, select, and administer a range of property and casualty insurance products and programs to meet their needs. Id. at ¶ 9. Defendant began working for another THG subsidiary, The Hilb Group of New York, LLC ("THG-NY"), in August of 2014. Id. at ¶ 14. Before August 2014, Defendant had no experience in the insurance industry and no insurance-related clients. Id. at ¶ 15. In part due to his lack of experience, THG expected that Defendant would need substantial support to develop insurance clients. Id. at ¶ 16. THG's investment in him thus included not only his pay, but also access to its products, services and confidential information. Id. It also included a significant investment of time by other THG professionals to attempt to teach Defendant the brokerage business. Id.

On November 2, 2015, Defendant traveled to Rhode Island to meet with the Managing Director of THG-NE's property and casualty division, Joseph Padula, and to discuss employment with THG-NE. Also present at the meeting were Chad Bjorklund and Cristie Hanaway. Mr. Bjorklund and Ms. Hanaway live and work in Rhode Island and are long-term employees in THG-NE's Warwick office who agreed to provide support to Defendant for a period of time while he learned how to do the job. Mr. Bjorklund and Ms. Hanaway have significant experience inside the healthcare vertical of the property and casualty industry. (ECF Doc. No. 15-1 at ¶ 9). In early 2016, THG decided to move Defendant from THG-NY to THG-NE. (ECF Doc. No. 1 at ¶ 28). As part of the terms of his employment with THG-NE, Defendant agreed to be physically present in the Rhode Island office of THG-NE at least one day per week. Id. at ¶ 30. Despite that assurance, he travelled only roughly six times to THG-NE's offices in Rhode Island after accepting employment with the Company. (ECF Doc. No. 7 at ¶ 19). During this time, Mr. Bjorklund and Ms. Hanaway made Defendant's client presentations, completed his risk analyses and program designs, negotiated

with carriers, prepared his client proposals and effectively communicated insurance and risk management concepts to his clients. (ECF Doc. No. 1 at ¶ 33).

On or around February 25, 2016, and in consideration for and as an express condition of employment with THG-NE, Defendant executed a Confidentiality and Non-Solicitation Agreement ("the Agreement"). Id. at ¶ 18. The Agreement is "construed by and governed in accordance with the laws of the State of Rhode Island without regard to principles of conflicts of law." Id. at ¶ 19. In the Agreement, Defendant agreed to abide by certain confidentiality and non-solicitation and non-interference obligations. Id. Defendant acknowledged, as part of the Agreement, that THG-NE "has a reasonable, necessary and legitimate business interest in protecting its own and the Hilb Companies' Confidential Information, Client Accounts, relationships with Active Prospective Clients, Goodwill and ongoing business, and that the terms and conditions [in the Agreement] are reasonable and necessary to protect these legitimate business interests." Id. at ¶ 22. Defendant further acknowledged, as part of the Agreement, that his breach of his confidentiality and non-solicitation obligations "would result in irreparable harm to the business of [THG-NE] for which money damages alone would not be adequate compensation." Id. at ¶ 23.

While employed by THG-NE, Defendant was supervised by Mr. Padula from Rhode Island. (ECF Doc. No. 15-1 at ¶ 16). Defendant worked exclusively through the Warwick, Rhode Island office to write and service client accounts. Id. at ¶ 17. Defendant's interaction with the Warwick office involved daily phone calls and daily email correspondence. Id. at ¶ 18. Over the course of his employment with THG-NE, Defendant sent over 7,100 emails to his THG-NE coworkers in Rhode Island and received over 6,100 emails from these same coworkers – for a total of over 13,200 emails between Defendant and THG-NE's Rhode Island office. Id. at ¶ 19.

Defendant used THG-NE's administrative support services in Rhode Island on a daily basis, including transmitting or delivering clients' policy applications, proof of insurance documents including insurance binders, certificates of insurance liability, and auto insurance ID cards, and other information to be processed and converted into business . Id. at ¶ 21. All of Defendant's sales and commission reports were generated in Rhode Island, and all of the agency bill premiums from policies sold by Defendant came to the Rhode Island office. Id. at ¶ 22. Defendant's pay was processed in Rhode Island and he was paid from Rhode Island bank accounts. Id. at ¶ 23. THG-NE withheld Rhode Island income tax and Rhode Island short-term disability insurance from Defendant's pay. Id. at ¶ 24. THG-NE also paid Rhode Island state unemployment insurance for Defendant. Id. at ¶ 25. All of Defendant's employee benefits were administered in Rhode Island, including his health insurance with Blue Cross Blue Shield of Rhode Island, his voluntary life insurance, and his 401k account. (ECF Doc. No. 15-1 at ¶ 26).

Defendant represented himself to third parties as working for THG-NE in its Warwick, Rhode Island office. Id. at ¶ 27. His work phone extension was located in Rhode Island and his phone calls and voicemails were received in Rhode Island before being routed to his cell phone. Id. Clients' policy applications listed Defendant's address as "931 Jefferson Boulevard, Warwick, R.I. 02886." Id. at ¶¶ 27-29. And his work emails – including the emails he sent to clients – were signed with his Rhode Island office address. Id. at ¶ 27. All of Defendant's personnel records, including the executed Confidentiality and Non-Solicitation Agreement, are maintained in Rhode Island by THG-NE as part of the Company's business records. In addition, virtually all the documents related to the clients Defendant serviced were created and are maintained in Rhode Island, including client presentations, policy applications, risk analyses and program designs,

documents related to carrier and underwriter negotiations, client proposals, and reams of communications between Defendant's clients and THG-NE employees. Id. at ¶ 30.

The crux of this lawsuit is Plaintiffs' claim that Defendant breached the Agreement when he moved three clients, Sapphire Management Group I ("Sapphire"), Legendary Management, LLC ("Legendary"), and Massapequa Center, LLC ("Massapequa") from THG-NE to P&G. The owner/managers of Sapphire and Legendary had purchased personal insurance policies from Defendant when he was employed by THG-NY. Id. at ¶ 13. The three business entities, however, originated as clients of THG-NE. On March 13, 2018, Defendant resigned his employment with THG-NE. (ECF Doc. No. 1 at ¶ 43). In a letter to Defendant dated March 20, 2018, THG-NE asked that he "[p]lease keep in mind the restrictive covenants of [his] employment agreement, specifically the non-solicitation provision that applies to all client relationships." Id. at ¶ 44. In the weeks following Defendant's resignation, THG-NE received notifications from insurance carriers of multiple Broker of Records (BORs) on additional policies for all three of these clients. All of the BORs were from P&G. Id. at ¶ 46.

Defendant maintains that his clients were friends, family and neighbors, all of whom were "dissatisfied and frustrated by the service provided by the [THG-NE] Rhode Island office." (ECF Doc. No. 7 at ¶ 23). He noted that his clients indicated their "loyalty" was to him and not THG-NE and they "did not want to take the business away from" Defendant. Id. at ¶¶ 21, 23. He states that because of his clients' dissatisfaction he opted to leave THG and join P&G. Id. As a direct result of Defendant's conduct, THG-NE alleges that it has lost over $340,000.00 in annual revenue. (ECF Doc. No. 15-1 at ¶ 34). Mr. Bjorklund and Ms. Hanaway, citizens of Rhode Island, were "co-producers" on the relevant accounts and lost thousands in commission payments as a result of Defendant's conduct.

II. Standard of Review

It is well established that the burden rests with the plaintiff to make a prima facie showing to withstand a challenge to personal jurisdiction. Barrett v. Lombardi, 239 F.3d 23, 26 (1st Cir. 2001) (citing Rodriguez v. Fullerton Tires Corp., 115 F.3d 81, 83-84 (1st Cir. 1997)). See also, Daynard v. Ness, Motley, Loadholt, Richardson & Poole, P.A., 290 F.3d 42, 50 (1st Cir. 2002). In assessing the plaintiff's prima facie case, the Court must accept as true the "plaintiff's (properly documented) evidentiary proffers" and construe them "in the light most congenial to the plaintiff's jurisdictional claim." See Mass. Sch. of Law at Andover, Inc. v. Am. Bar Ass'n, 142 F.3d 26, 34, 51 (1st Cir. 1998). See also Trio Realty, Inc. v. Eldorado Homes, Inc., 350 F. Supp. 2d 322, 325 (D.P.R. 2004) (citing Ticketmaster-New York, Inc. v. Alioto, 26 F.3d 201, 203 (1st Cir. 1994)) (the court "draw[s] the facts from the pleadings and the parties' supplementary filings, including affidavits, taking facts affirmatively alleged by plaintiff as true and construing disputed facts in the light most hospitable to plaintiff."). In setting forth the prima facie case, the plaintiff is required to bring to light credible evidence and "cannot rest upon mere averments, but must adduce competent evidence of specific facts." Barrett, 239 F.3d at 26 (citing Foster-Miller, Inc. v. Babcock & Wilcox Canada, 46 F.3d 138, 145 (1st Cir. 1995)).

III. Personal Jurisdiction

The Due Process Clause of the Fourteenth Amendment requires that an out-of-state defendant "have certain minimum contacts with [the forum] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945). The District Court may exercise two types of personal jurisdiction over defendants: general and specific jurisdiction. Astro-Med, Inc. v. Nihon Kohden Am., Inc., 591 F.3d 1, 9 (1st Cir. 2009). General jurisdiction broadly subjects the defendant to suit

in the forum on all matters, including those unrelated to the defendant's contacts with the forum. BlueTarp Fin., Inc. v. Matrix Constr. Co., 709 F.3d 72, 79 (1st Cir. 2013); Cossaboon v. Me. Med. Ctr., 600 F.3d 25, 31 (1st Cir. 2010). Specific jurisdiction, by contrast, depends on "an affiliatio[n] between the forum and the underlying controversy." Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915 (2011). For a federal court sitting in diversity to exercise specific jurisdiction, Rhode Island's long-arm statute, R.I. Gen. Laws § 9-5-33(a), must authorize it. BlueTarp Fin., Inc., 709 F.3d at 79; Astro-Med, Inc., 591 F.3d at 8. The Rhode Island long-arm statute is coextensive with the permissible reach of the Due Process Clause. Id.

The initial inquiry is whether the Court has general or specific jurisdiction. Plaintiffs exclusively contend that there is specific jurisdiction over Defendant. Thus, the Court need not consider if general jurisdiction exists as to Defendant. The Supreme Court has held that where plaintiff's claim "arises out of" or is "directly related to" defendant's contacts with the forum state, a court exercises "specific jurisdiction" over the defendant. Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414, n.8 (1984).

In the analysis of specific jurisdiction, the court applies two general rules. First, the forum in which the Federal District Court sits must have a long-arm statute that grants jurisdiction over the defendant. See Barrett, 239 F.3d at 26. Second, "the plaintiff must...show sufficient minimum contacts such that 'the exercise of jurisdiction pursuant to that statute comports with the strictures of the Constitution.'" LaVallee v. Parrot-Ice Drink Prod. of Am., Inc., 193 F. Supp. 2d 296, 302 (D. Mass. 2002) (quoting Pritzker v. Yari, 42 F.3d 53, 60 (1st Cir. 1994)). Rhode Island's long-arm statute, R.I. Gen. Laws § 9-5-33, authorizes a court to exercise jurisdiction over non-resident defendants to the fullest extent permitted by the United States Constitution. See Donatelli v. Nat'l Hockey League, 893 F.2d 459, 461 (1st Cir. 1990); see also Morel ex rel. Moorehead v. Estate of

Davidson, 148 F. Supp. 2d 161 (D.R.I. 2001). Accordingly, the Court need only decide whether the assertion of personal jurisdiction over Defendants comports with due process principles.

A. Due Process Considerations

Where specific jurisdiction is asserted, the First Circuit has developed a three-prong test for analyzing the due process considerations for the existence of specific personal jurisdiction: First, the claim underlying the litigation must directly arise out of, or relate to, the defendant's forum-state activities. Second, the defendant's in-state contacts must represent a purposeful availment of the privilege of conducting activities in the forum state, thereby invoking the benefits and protections of that state's laws and making the defendant's involuntary presence before the state's courts foreseeable. Third, the exercise of jurisdiction must, in light of the "Gestalt factors," be reasonable. United Elec. Radio and Mach. Workers of Am. v. 163 Pleasant St. Corp., 960 F.2d 1080, 1089 (1st Cir. 1992). In order for a court to exercise specific personal jurisdiction, all three factors – relatedness, purposefulness and reasonableness – must be satisfied.

1. Relatedness

The first prong of the due process test is a consideration of relatedness. To meet the relatedness requirement of specific personal jurisdiction, "the claim underlying the litigation must directly arise out of, or relate to, the defendant's forum-state activities." United Elec., 960 F.2d at 1089. Relatedness is intended to be a "flexible, relaxed standard." Sawtelle v. Farrell, 70 F.3d 1381, 1389 (1st Cir. 1995) (citing Pritzker, 42 F.3d at 61). In a contract case, relatedness is established if the defendant's contacts with the forum "were instrumental either in the formation of the contract or in its breach." Phillips Exeter Acad. v. Howard Phillips Fund, Inc., 196 F.3d 284, 289 (1st Cir. 1999).

In the present case, Defendant travelled to Rhode Island to interview for the job in THG-NE's Rhode Island office, and as a condition of the employment, he agreed to travel to Rhode Island regularly. Further, by way of his business card and the signature line on emails he sent, he represented to third parties that his office was based in Warwick. He also regularly interacted with THG-NE employees via telephone calls and email. Additionally, the Agreement was formed, at least on THG-NE's end, in Rhode Island and the alleged breach of the Agreement impacts Plaintiffs and their employees in Rhode Island. Although Defendant lives in New York and works from his home, the core allegations in the Complaint arise out of, and relate to, his Rhode Island activities. Accordingly, the relatedness prong is satisfied.

2. Purposeful Availment

The second prong of the due process test considers whether a defendant has "engaged in any purposeful activity related to the forum that would make the exercise of jurisdiction fair, just, or reasonable." Sawtelle, 70 F.3d at 1391 (quoting Rush v. Savchuk, 444 U.S. 320, 329 (1980)). Two factors are considered in the purposeful availment analysis: voluntariness and foreseeability. See Ticketmaster, 26 F.3d at 207. The requirement "depends upon the extent to which the defendants voluntarily took action that made it foreseeable they might be required to defend themselves in court in [the forum state]." PFIP, LLC v. Planet Fitness Enter., Inc., No. CIV.04-250-JD, 2004 WL 2538489, at *7 (D.N.H. Nov. 10, 2004) (citing Jet Wine & Spirits, Inc. v. Bacardi & Co., 298 F.3d 1, 11 (1st Cir. 2002)). The issue of foreseeability "ensures that a defendant will not be haled into a jurisdiction solely as a result of 'random,' 'fortuitous,' or 'attenuated' contacts, or of the 'unilateral activity of another party or a third person.'" Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475 (1985). There must be evidence of "a voluntary decision by the defendant to inject [itself] into the

local economy as a market participant." Microfibres, Inc. v. McDevitt-Askew, 20 F. Supp. 2d 316, 321 (D.R.I. 1998).

Plaintiffs here present ample evidence that Defendant intentionally sought to conduct business in Rhode Island. As discussed above, he not only interviewed for his job in Rhode Island and agreed to travel to Rhode Island as a condition of his employment, but he also frequently corresponded with THG-NE employees in Rhode Island by e-mail and telephone. Some of these communications were initiated by Defendant; others were initiated by THG-NE employees; all were voluntary. See Ticketmaster-New York, 26 F.3d at 208 ("when the source takes the initiative and causes foreseeable injury, jurisdiction may lie"). Further, Defendant's name and Rhode Island telephone numbers were listed on his THG-NE emails. In Brian Jackson & Co. v. Eximias Pharm. Corp., 248 F. Supp. 2d 31, 35-37 (D.R.I. 2003), this Court noted that "[i]n this progressively globalized economic era of Internet and electronic business communication, it is increasingly common for businesses to employ individuals, such as [Defendant], at remote or off-site locations...." Like the defendant in that case, Defendant's conduct was voluntary and intentional, and, given the totality of the facts presented, it was foreseeable that he would be subject to jurisdiction in this District. The Eximias Court noted that, "[c]ourts in this and other circuits have recognized (increasingly so in recent years) that Internet-based contacts, such as e-mail communications, particularly when coupled with other more traditional contacts, offer compelling grounds for the assertion of personal jurisdiction over a non-resident defendant." (citations omitted). This observation by the Eximias Court squarely fits the facts presented here, since Defendant had strong contacts with Rhode Island via the Agreement, his email and phone use, and his reliance upon support from the Rhode Island office, in addition to a handful of in-person visits to the Rhode Island office for business purposes. Accordingly, the purposeful availment prong is satisfied.

3. Gestalt Factors

The third prong of the test involves a determination of whether or not the Court's exercise of jurisdiction over Defendant is reasonable. United Elec., 960 F.2d at 1089. In making this determination, the Court considers the so-called Gestalt factors. See, e.g., World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 292 (1980). Although the first two prongs of the analysis have been satisfied, this Court still must consider whether Rhode Island's assertion of jurisdiction is fair and reasonable under these circumstances. "[G]auging fairness requires an assessment of reasonableness for, in certain circumstances, unreasonableness can trump a minimally sufficient showing of relatedness and purposefulness." Ticketmaster-New York, 26 F.3d at 210. "[T]he reasonableness prong of the due process inquiry evokes a sliding scale." Id. That is, "the weaker the plaintiff's showing on the first two prongs (relatedness and purposeful availment), the less a defendant need show in terms of unreasonableness to defeat jurisdiction. The reverse is equally true: an especially strong showing of reasonableness may serve to fortify a borderline showing of relatedness and purposefulness." Id.

The Gestalt factors include: (1) the defendant's burden of appearing [in the forum state]; (2) the forum state's interest in adjudicating the dispute; (3) the plaintiff's interest in obtaining convenient and effective relief; (4) the judicial system's interest in obtaining the most effective resolution of the controversy; and (5) the common interests of all sovereigns in promoting substantive social policies. Ticketmaster-New York, 26 F.3d at 209 (citing Burger King, 471 U.S. at 477). While the plaintiff has the burden of showing relatedness and purposeful availment, the defendant has the burden of showing that jurisdiction is unreasonable. Id. at p. 206.

In the present case, "[t]he parties have identified few burdens, interests, or inefficiencies that cut strongly in favor of or against jurisdiction." C.W. Downer & Co. v. Bioriginal Food & Sci.

Corp., 771 F.3d 59, 70 (1st Cir. 2014). The first factor to consider is Defendant's burden of appearance in Rhode Island. Defendant, a citizen of New York, would be required to travel to Rhode Island if this Court maintains jurisdiction over him. "[M]ounting an out-of-state defense most always means added trouble and cost," BlueTarp Fin., 709 F.3d at 83, and modern travel "creates no especially ponderous burden for business travelers," Pritzker, 42 F.3d at 64. For the burden to be such that it would affect the personal jurisdiction analysis, Defendant must show that it is "special or unusual." BlueTarp Fin., 709 F.3d at 83 (quoting Hannon v. Beard, 524 F.3d 275, 285 (1st Cir. 2008)) (internal quotation marks omitted). Defendant has failed to show that the burden in this case would be in any way "special or unusual." He simply maintains that the burden is greater on him because he has limited means to defend himself. As discussed, Defendant agreed to appear in Rhode Island on a weekly basis when he accepted employment. Therefore, Defendant's argument that it would be burdensome to require him to appear in Rhode Island hardly weighs in his favor.

The second consideration is the interest of the forum. The Supreme Court has explained, "[a] State generally has a manifest interest in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors." Burger King, 471 U.S. at 473 (internal citations omitted). Therefore, the second consideration also weighs in favor of Plaintiffs. The third factor to consider is that of Plaintiffs' convenience. "Courts regularly cede some deference to the plaintiff's choice of forum." Baskin-Robbins Franchising LLC v. Alpenrose Dairy, Inc., 825 F.3d 28, 41 (1st Cir. 2016). THG-NE is a company located in Rhode Island, and it would plainly be more convenient for it to resolve the matter in Rhode Island. Accordingly, the third consideration weighs in favor of Plaintiffs. Next, this Court considers the fourth factor – the effect on the administration of justice. In the present case, the "interest of the judicial system in the effective administration of justice does not appear to cut in either direction." Ticketmaster-N.Y., 26 F.3d at 211. This factor is "self-

evidently a wash." Baskin-Robbins, 825 F.3d at 41 ("Even though Massachusetts courts can effectively administer justice in this dispute, they have no corner on the market.") (internal citations omitted). Finally, the last Gestalt factor is that of pertinent policy arguments. It is true that New York "has a legitimate stake in providing its citizens with a convenient forum for adjudicating disputes." Baskin-Robbins, 825 F.3d at 41. However, this factor does not tip the scales that have already been heavily weighed towards this Court's exercise of jurisdiction over Defendant. Overall, an analysis of the Gestalt factors do not show that a finding of personal jurisdiction over the Defendant within Rhode Island "would be so unfair or unreasonable as to raise constitutional concerns." Baskin-Robbins, 825 F.3d at 41. Accordingly, Plaintiffs have established that this Court has specific personal jurisdiction over Defendant.

IV. Venue

Next, the Court considers Defendant's alternative Motion that the Court transfer venue to the Eastern District of New York pursuant to 28 U.S.C. § 1404(a). Under § 1404(a) a district court may transfer any civil action "to any other district where it may have been brought for the convenience of parties and witnesses, in the interest of justice." Coady v. Ashcraft & Gerel, 223 F.3d 1, 11 (1st Cir. 2000) (quoting 28 U.S.C. § 1404(a)). For the reasons discussed herein, the Court finds Defendant's arguments unpersuasive.

In Stewart Org., Inc. v. Ricoh Co., the Supreme Court noted that §1404(a) is "intended to place discretion in the district court to adjudicate motions for transfer according to an individualized, case-by-case consideration of convenience and fairness." 487 U.S. 22, 29 (1988) (citations omitted). Defendant bears the burden of demonstrating that transfer is appropriate, and there is a "strong presumption in favor of the plaintiff's choice of forum." Coady, 223 F.3d at 11.

In the present matter, Defendant focuses on the cost to him because he resides and works in New York, and the potential that nonparty witnesses would not appear in Rhode Island. (ECF Doc. No. 6-1 at p. 13, ECF Doc. No. 16 at p. 11). In response, Plaintiffs argue that Defendant has not met his heavy burden of persuading the Court to transfer this case. Plaintiffs note, for example, that Defendant's arguments are very general and do not name any specific nonparty witnesses, or identify the topics of their testimony. (ECF Doc. No. 15 at pp. 19-20). Moreover, as previously noted, Plaintiffs point out that "[i]nconvenience to the defendant is not sufficient to grant § 1404(a) relief, where the transfer would merely shift the inconvenience to the other party. 'Section 1404(a) provides for transfer to a more convenient forum, not to a forum likely to prove equally convenient or inconvenient.'" Brian Jackson, 248 F. Supp. 2d at 38 (internal citations omitted). Accordingly, Defendant has failed to meet his burden in seeking to establish that the matter should be transferred to the Eastern District of New York for convenience and fairness. See Astro-Med, 591 F.3d at 8.

V. Conclusion

For the foregoing reasons, I recommend that Defendant's Motion to Dismiss for Lack of Personal Jurisdiction or to Transfer Venue (ECF Doc. No. 6) be DENIED.

Any objection to this Report and Recommendation must be specific and must be filed with the Clerk of the Court within fourteen days of its receipt. See Fed. R. Civ. P. 72(b); LR Cv 72. Failure to file specific objections in a timely manner constitutes waiver of the right to review by the District Court and the right to appeal the District Court's decision. See United States v. Valencia-Copete, 792 F.2d 4, 6 (1st Cir. 1986); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1st Cir. 1980).

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
June 13, 2019