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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MAX FREIDZON,

Plaintiff,

-against-

OAO LUKOIL, LUKOIL NORTH AMERICA, LLC, OAO GAZPROM, JSC GAZPROM NEFT, and GASPROMNEFT-AERO,

Defendants.

14 Civ. 5445 (AT)

MEMORANDUM AND ORDER

ANALISA TORRES, District Judge:

Plaintiff *pro se*, Max Freidzon, brings this action against OAO LUKOIL ("OAO"), LUKOIL North America, LLC ("LNA"), OAO Gazprom ("OAOG"), JSC Gazprom Neft ("JSC"), and Gaspromneft-Aero ("G-AERO") (collectively, "Defendants") for claims arising under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1962(b) and 1962(c), and Russian law. LNA moves to dismiss the complaint on the following grounds: (1) Plaintiff has failed to state a claim upon which relief may be granted; (2) Plaintiff's RICO claims are time-barred; and (3) *forum non conveniens*. For the reasons set forth below, LNA's motion is GRANTED, and this action is DISMISSED on the ground of *forum non conveniens* as to all Defendants.[1]

[1] LNA asserts that, to its knowledge, the remaining Defendants, corporations headquartered in Russia, have not been properly served. Def. Mem. 2, 6, ECF No. 12. Plaintiff does not dispute this assertion but seeks to explain his inability to serve Defendants in Russia, *see* Pl. Mem. 2-3, ECF No. 22, and moves for an order authorizing alternative service, ECF No. 28. Even if the Court were to conclude that Defendants are subject to this Court's jurisdiction and amenable to service, dismissal for *forum non conveniens* would nonetheless be appropriate. *See Sinochem Int'l Co. Ltd. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 431-32 (2007) (holding that a district court need not establish personal jurisdiction or subject matter jurisdiction prior to dismissing on the basis of *forum non conveniens* when jurisdictional inquiries would be more difficult to resolve); *Banco De Serguros Del Estado v. J.P. Morgan Chase & Co.*, 500 F. Supp. 2d 251, 265 n.18 (S.D.N.Y. 2007) ("[E]ven had [non-moving defendants] been served and even in the more unlikely event that the Court had found that it had personal jurisdiction . . . it would still dismiss the case against them on the ground of *forum non conveniens*.").

BACKGROUND[2]

Plaintiff is a citizen of the Russian Federation and the State of Israel. Compl. ¶ 9, ECF No. 1. OAO is a public corporation organized under the laws of Russia and maintains a principal place of business in the Russian Federation. *Id.* ¶ 10. LNA is an indirect, wholly-owned subsidiary of OAO and is headquartered in New York. *Id.* ¶ 11; Rule 7.1 Statement 1, ECF No. 9. OAOG is a public corporation that supplies energy to Russian and foreign customers and exports petroleum products to the United States. Compl. ¶ 12. JSC is a vertically-integrated oil company that is primarily owned by OAOG and engages in the sale and distribution of crude oil and the production and sale of petroleum products. *Id.* ¶ 13. G-AERO is the aviation fuel business operator of JSC that supplies jet fuel to Russian and foreign airlines. *Id.* ¶ 14. OAO, OAOG, JSC, and G-AERO are corporations headquartered in the Russian Federation. Pl. Mem. in Supp. Alternative Service 2; ECF No. 28.

Plaintiff alleges that in 1994 he and a now-deceased business partner, Dmitry Skigin, co-founded SIGMA, a holding company created to pursue shared business interests. Compl. ¶ 16; Pl. Proposed Am. Compl. ¶ 24, ECF No. 20-1. Plaintiff held a 29% interest in SIGMA and Skigin owned the remaining 71%. Compl. ¶ 16. In 1995, Plaintiff and Skigin co-founded SOVEX, an oil distribution company based in the Russian Federation; SIGMA owned 66% of SOVEX's stock. *Id.* ¶ 17.

Starting in 1997, SOVEX's cash flow began to be "captured and controlled" by Sergei Vasiliev and Vladimir Kumarin, reputed members of a St. Petersburg-based criminal

[2] The facts are taken from the complaint, which is presumed to be true for purposes of this motion, documents attached to the complaint, documents referenced in the complaint or integral in its drafting, and other submissions of the parties. *See Aguas Lenders Recovery Grp. LLC v. Suez, S.A.*, 585 F.3d 696, 697 n.1 (2d Cir. 2009). When deciding a motion to dismiss on the ground of *forum non conveniens*, the Court may consider the parties' affidavits, declarations, briefs, and other evidentiary submissions. *See, e.g., Martinez v. Bloomberg*, 740 F.3d 211, 216 (2d Cir. 2014); *Aguas*, 585 F.3d at 697 n.1; *In re Alcon S'holder Litig.*, 719 F. Supp. 2d 263, 266 n.4 (S.D.N.Y. 2010).

organization. *Id.* ¶¶ 27-28. Specifically, Plaintiff claims that Vasiliev and Kumarin used SOVEX to illegally funnel money through various entities, including the Bank of New York, in order to launder profits from Russian criminal activities and avoid Russian tax liability. *Id.* ¶¶ 29-30. Plaintiff alleges that Skigin and Graham Smith, a representative for Horizon International Trading Ltd., an entity which owned the remaining 34% of SOVEX's stock, were complicit in the laundering scheme. *Id.* ¶¶ 18, 19, 31. In 1997, Vasiliev ordered that SOVEX's incorporation documents and corporate seals be removed from the manager's office and altered. *Id.* ¶ 34. Plaintiff alleges that SIGMA's name "disappeared" from the list of founders-shareholders and that in 2002 third parties with no prior ties to SOVEX collectively took a 4% interest in the company, with the remaining shares in SOVEX being undistributed. *Id.* ¶ 35. Plaintiff had no knowledge of the criminal activity or changes to the incorporation documents because his efforts to review the records of SOVEX and SIGMA were continually stymied by excuses. *Id.* ¶¶ 36-37.

Prior to Plaintiff's discovery of the alleged falsification, OAO and JSC agreed to form a new corporation that acquired near-complete ownership of SOVEX in 2007.[3] *Id.* ¶¶ 40-42. Plaintiff argues that the parties did not conduct sufficient due diligence prior to the acquisition. *Id.* ¶ 44. Plaintiff further states that the President of JSC and the Chairman of JSC's Management Committee each knew of Plaintiff's ownership interest in SOVEX but, nonetheless, permitted the acquisition to take place. *Id.* ¶¶ 43-44.

Plaintiff's attempts to gain access to SOVEX's records were met with threats from Smith between 2001 and 2002, with anonymous threatening phone calls when Plaintiff sought access to

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[3] The complaint does not state which "Lukoil" entity or entities directly engaged in the acquisition of SOVEX. *See* Compl. ¶¶ 40-42. Plaintiff contends that since LNA is "vertically-integrated" with the other Lukoil entities, all these entities collectively engaged in the takeover. Pl. Mem. 4. However, the proposed amended complaint states that OAO is the alleged party to this agreement. Pl. Proposed Am. Compl. ¶¶ 16, 56-57.

the records through the Russian courts in 2003, and ultimately with a physical assault from unnamed assailants in December 2003. *Id.* ¶¶ 47-49. Following the assault, Plaintiff fled to Israel where he filed a complaint with the "Russian Prosecutor's office," which initiated an investigation that was abruptly stopped. *Id.* ¶¶ 50-52. Plaintiff received several threatening phone calls after filing the complaint in this action. *Id.* ¶ 53.

In 2012, however, Plaintiff gained access to documents pertaining to SOVEX and, at that point, realized the alleged falsification. *Id.* ¶¶ 38, 54. Plaintiff initiated a legal proceeding with the "the Prosecutor's Office" in 2012. *Id.* ¶ 55. However, a "police investigator" told Plaintiff that Skigin and Smith could not be named in the complaint. *Id.* ¶ 56. These and other efforts undertaken by Plaintiff to vindicate his rights have been met with threats. *Id.* ¶¶ 39, 57-58.

Plaintiff commenced this action on July 18, 2014, asserting two RICO claims and claims under Russian law for violations of minority shareholder rights, unjust enrichment, fraud, and conversion. *Id.* ¶¶ 59-96. This Court referred the case to the Honorable Ronald L. Ellis for general pretrial purposes. ECF No. 5. On August 29, 2014, LNA filed a motion to dismiss the complaint. ECF No. 11. Shortly thereafter, Plaintiff filed a motion to amend the complaint, ECF No. 20, and ten days later filed his opposition to LNA's motion, ECF No. 22. Judge Ellis then suspended submissions on the motion to dismiss pending his resolution of the motion to amend. ECF No. 24. In an order dated November 14, 2014, Judge Ellis determined "that serious issues have been raised" as to the viability of the complaint and the proposed amended complaint, and denied the motion to amend without prejudice to renewal following this Court's decision on the motion to dismiss. ECF No. 26.

DISCUSSION

I. Legal Standard

"[A] federal court has leeway to choose among threshold grounds for denying audience to a case on the merits." *Sinochem Int'l Co. Ltd. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 431 (2007) (quoting *Ruhgras AG v. Marathon Oil Co.*, 526 U.S. 574, 585 (1999) (internal quotation marks omitted)). The Supreme Court has recognized *forum non conveniens* among those "threshold grounds" upon which a court may resolve a case without first addressing subject matter jurisdiction. *Id.* at 432. "[*F*]*orum non conveniens* is a discretionary device permitting a court in rare instances to dismiss a claim even if the court is a permissible venue with proper jurisdiction over the claim." *Wiwa v. Royal Dutch Petroleum Co.*, 226 F.3d 88, 100 (2d Cir. 2000) (internal quotation marks omitted). "The central purpose of a *forum non conveniens* inquiry is to determine where trial will be most convenient and will serve the ends of justice." *R. Maganlal & Co. v. M.G. Chem. Co., Inc.*, 942 F.2d 164, 167 (2d Cir. 1991). The Supreme Court has "emphasized that each case turns on its facts" and has "repeatedly rejected the use of *per se* rules in applying the doctrine." *Am. Dredging Co. v. Miller*, 510 U.S. 443, 455 (1994) (internal quotation marks and alteration omitted).

The Second Circuit has established a three-step framework to guide district courts in exercising their discretion in a *forum non conveniens* inquiry. *See Norex Petroleum Ltd. v. Access Indus., Inc.*, 416 F.3d 146, 153 (2d Cir. 2005) (citing *Iragorri v. United Techs. Corp.*, 274 F.3d 65, 73 (2d Cir. 2001) (en banc)). First, the district court considers "the degree of deference properly accorded the plaintiff's choice of forum." *Id.* at 153. Second, the district court evaluates whether "the alternative forum proposed by the defendants is adequate to adjudicate the parties' dispute." *Id.* Third, the district court "balances the private and public interests implicated in the choice of forum." *Id.* "The decision to dismiss a case on *forum non conveniens*

grounds lies wholly within the broad discretion of the district court and may be overturned only when . . . that discretion has been *clearly abused*." *Iragorri*, 274 F.3d at 72 (internal quotation marks omitted).

Forum non conveniens motions may be decided on the basis of affidavits or declarations without requiring the parties to engage in extensive discovery. *Martinez v. Bloomberg LP*, 740 F.3d 211, 216 (2d Cir. 2014).

II. Deference to Plaintiff's Choice of Forum

Generally, "a plaintiff's choice of forum is entitled to greater deference when the plaintiff has chosen the home forum." *Piper Aircraft*, 454 U.S. at 255. However, the Second Circuit has recognized that "the degree of deference to be given to a plaintiff's choice of forum moves on a sliding scale depending on several relevant considerations." *Iragorri*, 274 F.3d at 71. Specifically,

> the greater the plaintiff's or the lawsuit's bona fide connection to the United States and to the forum of choice and the more it appears that considerations of convenience favor the conduct of the lawsuit in the United States, the more difficult it will be for the defendant to gain dismissal for *forum non conveniens*. . . . On the other hand, the more it appears that the plaintiff's choice of a U.S. forum was motivated by forum-shopping reasons—such as attempts to win a tactical advantage resulting from local laws that favor the plaintiff's case, the habitual generosity of juries in the United States or in the forum district, the plaintiff's popularity or the defendant's unpopularity in the region, or the inconvenience and expense to the defendant resulting from litigation in that forum—the less deference the plaintiff's choice commands and, consequently, the easier it becomes for the defendant to succeed on a *forum non conveniens* motion by showing that convenience would be better served by litigating in another country's courts.

Id. at 72 (citations omitted).

The Second Circuit has made clear that there is "no rigid rule of decision protecting U.S. citizen or resident plaintiffs from dismissal for *forum non conveniens*." *Id.* at 74 (internal

quotation marks omitted). Indeed, "courts have held that the deference to an American citizen or resident plaintiff's choice of forum is significantly diminished where the lawsuit arises from business that the plaintiff conducted abroad." *RIGroup LLC v. Trefonisco Mgmt. Ltd.*, 949 F. Supp. 2d 546, 552 (S.D.N.Y. 2013), *aff'd*, 559 F. App'x 58 (2d Cir. 2014) (summary order); *accord Carey v. Bayerische Hypo-Und Vereinsbank AG*, 370 F.3d 234, 238-39 (2d Cir. 2004) (affirming *forum non conveniens* dismissal of suit brought by American plaintiff for injuries arising from a foreign business transaction because the plaintiff "sought out the relationship that resulted in the suit" and it would be "reasonable to expect that disputes over the terms of the transactions or their performance would be resolved in [the foreign venue]"). Similarly, "a foreign petitioner's choice of a United States forum receives less deference." *In re Arbitration between Monegasque De Reassurances S.A.M. v. Nak Naftogaz of Ukraine*, 311 F.3d 488, 498 (2d Cir. 2002).

Looking at the totality of the circumstances, the Court concludes that only minimal deference should be afforded to Plaintiff's choice of forum. First, Plaintiff is foreign citizen, which generally entitles his choice of forum to less deference. *See id.* at 498; *Iragorri*, 274 F.3d at 72. Even if Plaintiff now resides in the United States,[4] it does not follow that his choice of forum is entitled to greater deference. As set forth in his complaint, Plaintiff's claims relate to: (1) Plaintiff's ownership interests in Russian corporations acquired when Plaintiff resided in Russia; (2) business transactions that were conducted in Russia; (3) business relationships formed in Russia; (4) legal entities incorporated under Russian law; (5) an allegedly fraudulent scheme orchestrated by Russians to divest Plaintiff, a citizen and resident of Russia at the time,

[4] Plaintiff states that he is a citizen of the Russian Federation and Israel, Compl. ¶ 9, but does not specify where he currently resides. Plaintiff lists two separate United States addresses on forms filed with the court, *see* Pl. Letter dated Oct. 7, 2014, ECF No. 19, indicating that he may reside in the United States.

of ownership in Russian stock; and (6) four corporate defendants headquartered in Russia and one American corporate defendant that is an independent, wholly-owned subsidiary of one of the Russian corporate defendants.

Thus, the operative facts exclusively relate to Plaintiff's business interests in Russia and have little or no relationship to the Southern District of New York. When confronted with analogous facts, courts in this Circuit have generally not afforded much deference to a plaintiff's choice of forum notwithstanding his or her domestic citizenship or residence. *Carey*, 370 F.3d at 238-39 (affirming *forum non conveniens* dismissal of suit brought by an American plaintiff against a German banking institution that was related to the plaintiff's business transactions in Germany); *In re Alcon S'holder Litig.*, 719 F. Supp. 2d at 269-71 (granting motion to dismiss for *forum non conveniens* when plaintiff's claims arose from Swiss investment and business transactions); *RIGroup LLC*, 949 F. Supp. 2d at 552-53 (granting motion to dismiss for *forum non conveniens* in favor of a Russian forum when American citizen plaintiff's claims related entirely to business activities pursued in Russia through an American holding company); *Base Metal Trading SA v. Russian Aluminum*, 253 F. Supp. 2d 681, 696 (S.D.N.Y. 2003) (granting motion to dismiss for *forum non conveniens* in favor of a Russian forum and noting that "[when] an American plaintiff chooses to invest in a foreign country and then complains of fraudulent acts occurring primarily in that country, the plaintiff's ability to rely upon citizenship as a talisman against forum non conveniens dismissal is diminished." (quoting *Sussman v. Bank of Israel,* 801 F. Supp. 1068, 1073 (S.D.N.Y. 1992) (internal quotation marks omitted))), *aff'd*, 98 F. App'x 47 (2d Cir. 2004) (summary order). Indeed, connection to an American forum is remote when the dispute relates to deliberate foreign business activities undertaken by one

residing abroad.[5] *See Carey*, 370 F.3d at 238 (discussing the voluntariness of plaintiff's business transactions and plaintiffs residence in the presumptive alternative forum at the time the business transactions were performed).

Although Plaintiff contends that connection to the forum is established based on his allegation that money associated with the fraudulent scheme was laundered through the Bank of New York, this fact is inconsequential. Plaintiff's RICO claims and claims under Russian law all relate to conduct perpetrated in Russia, and the viability of Plaintiff's claims does not depend on where money derived from the scheme was channeled. Indeed, this fact does not show a connection to this forum that would make adjudication here either more relevant or convenient. *See Banco De Serguros Del Estado v. J.P. Morgan Chase & Co.*, 500 F. Supp. 2d 251, 261 (S.D.N.Y. 2007) (dismissing fraud and civil conspiracy suit for *forum non conveniens* and declining to apply greater deference based on allegation that defendants utilized money wires and bank accounts in New York to implement alleged fraud primarily perpetrated in Uruguay).

In sum, there is no bona-fide connection to this forum, and as discussed in the balancing analysis below, convenience considerations do not warrant the application of any greater deference. Accordingly, the Court affords little deference to Plaintiff's choice of forum.

III. Adequacy of the Alternative Forum

In order to succeed on a motion to dismiss for *forum non conveniens*, the ultimate burden is on the movant to show that an adequate alternate forum exists. *Wiwa*, 226 F.3d at 100; *Abdullahi v. Pfizer, Inc.*, 562 F.3d 163, 189 (2d Cir. 2009). A forum will "usually be adequate so long as it permits litigation of the subject matter of the dispute, provides adequate procedural

[5] The Court also notes that more than half of Plaintiff's claims arise under Russian law, a fact that further supports not applying greater deference. *See Varnelo v. Eastwind Transp.*, 02 Civ. 2084, 2003 WL 230741, at *27 (S.D.N.Y. Feb. 3, 2003) ("[T]he likelihood that foreign law will apply weighs against retention of the action." (internal citations omitted)).

safeguards and the remedy available in the alternative forum is not so inadequate as to amount to no remedy at all." *DiRienzo v. Philip Servs. Corp.*, 232 F.3d 49, 57 (2d Cir. 2000), *vacated and superseded on reh'g on other grounds*, 294 F.3d 21 (2d Cir. 2000). Once the movant has met this burden, "[a]bsent a showing of inadequacy by a plaintiff, 'considerations of comity preclude a court from adversely judging the quality of a foreign justice system.'" *Abdullahi*, 562 F.3d at 189 (2d Cir. 2009) (quoting *PT United Can Co. v. Crown Cork & Seal Co.*, 138 F.3d 65, 73 (2d Cir. 1998)). "[T]he fact that the law of the foreign forum differs from American law should ordinarily not be given conclusive or even substantial weight, in assessing the adequacy of the forum." *Capital Currency Exch., N.V. v. Nat'l Westminster Bank PLC*, 155 F.3d 603, 609 (2d Cir. 1998) (citations and internal quotation marks omitted). In addition, "the fact that a plaintiff might recover less in an alternate forum does not render that forum inadequate." *Figueiredo Ferraz E Engenharia de Projeto Ltda. v. Republic of Peru*, 665 F.3d 384, 391 (2d Cir. 2011) (citation omitted).

LNA argues that Russia provides an adequate alternative forum for these proceedings. Def. Mem. 13; Def. Reply 5, ECF No. 27. Plaintiff neither contends that Defendants are not amenable to suit in Russia nor argues that the Russian courts would lack subject matter jurisdiction over the dispute. *See* Pl. Mem. 6-7. Indeed, as corporations headquartered in the Russian Federation, OAO, OAOG, JSC, and G-AERO would be subject to the jurisdiction of the Russian courts. *See RIGroup LLC,* 949 F. Supp. 2d at 554 (finding in a factually analogous case that Russian commercial courts would exercise jurisdiction over Russian and Cypriot individual and corporate defendants). Although LNA is an American corporate entity that would not necessarily be subject to the jurisdiction of the Russian courts, LNA has indicated that Russia provides an adequate alternate forum, *see* Def. Mem. 13; Def. Reply 5, which suggests its

amenability to suit there. The Court, nonetheless, shall place protective conditions on dismissal of the complaint.[6]

In addition, a Russian forum would permit litigation of the issues in this case. First, Plaintiff's claims arising under Russian law for violations of minority shareholder rights, unjust enrichment, fraud, and conversion would plainly fall within the subject matter jurisdiction and expertise of a Russian tribunal. Second, although Russian law may not provide a direct analogue to RICO actions, "the availability of an adequate alternative forum does not depend on the existence of the identical cause of action in the other forum nor on identical remedies." *Norex*, 416 F.3d at 158 (internal quotation marks omitted); *accord PT United*, 138 F.3d at 74 (collecting cases) (holding that "the nonexistence of a RICO statute [in the alternative forum] does not, by itself, preclude the use of [the alternative forum]"). Indeed, courts have found that claims under Russian law, including several of those asserted by Plaintiff in this action, provide adequate relief for conduct encompassed by the civil RICO statute. *See, e.g.*, *RIGroup LLC*, 949 F. Supp. 2d at 554 (finding that claims under Russian law provide adequate relief for injuries related to corporate raiding and fraud); *Norex Petroleum Ltd. v. Access Indus., Inc.*, 304 F. Supp. 2d 570, 577-78 (S.D.N.Y. 2004) (finding Russia to be an adequate alternative forum in RICO corporate raiding case because claims for fraud and civil conspiracy under Russian law provide adequate relief), *vacated and remanded on other grounds*, 416 F.3d 146 (2d Cir. 2005); *Base Metal*, 253 F. Supp. 2d at 701 (finding Russia to be an adequate alternative forum in RICO corporate raiding suit because Russian law provides several civil and criminal legal avenues through which plaintiff could seek relief).

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[6] Conditional *forum non conveniens* dismissals are typical in the Second Circuit. *See Bank of Credit & Commerce Int'l (Overseas) Ltd. v. State Bank of Pakistan*, 273 F.3d 241, 247-48 (2d Cir. 2001); *Blanco v. Banco Industrial de Venezuela, SA*, 997 F.2d 974, 984 (2d Cir. 1993) (collecting cases) ("[F]orum non conveniens dismissals are often appropriately conditioned to protect the party opposing dismissal."); *Calavo Growers of California v. Generali Belgium*, 632 F.2d 963, 968 (2d Cir. 1980).

Although Plaintiff does not challenge Defendants' amenability to suit or the Russian courts' subject matter jurisdiction over the conduct at issue, Plaintiff contends that Russia is not an adequate alternate forum because the United States is "the only forum in which [he] can receive a fair trial and an adequate remedy for sustained injury." Pl. Mem 7. As noted above, Russian law provides a sufficient remedy for Plaintiff's alleged grievances. In addition, although Plaintiff has made generalized complaints about the fairness of the Russian judicial system and has offered unsubstantiated allegations about the risk of threat he faces should he pursue legal action in Russia, courts in the Second Circuit have consistently found these and similar arguments unavailing. *See, e.g.*, *Blanco v. Banco Industrial de Venezuela, SA*, 997 F.2d 974, 982 (2d Cir. 1993) (affirming district court holding that Venezuela was an adequate alternate forum despite plaintiff's affidavit evidence of systemic corruption, delay, expense, political influence, and bias, and noting that "it is not the business of our courts to assume the responsibility for supervising the integrity of the judicial system of another sovereign nation"); *RIGroup LLC*, 949 F. Supp. 2d at 555 (collecting cases) (granting motion to dismiss for *forum non conveniens* in corporate looting suit and holding that Russia was an adequate alternate forum despite plaintiff's conclusory and unsupported allegations of judicial corruption, intimidation, and bias); *Base Metal*, 253 F. Supp. 2d at 706 (granting, in a RICO case, motion to dismiss for *forum non conveniens* and holding that Russia was an adequate forum despite allegations of corporate raiding and corruption).

Accordingly, the Court finds that Russia provides an adequate alternative forum for adjudication of this dispute.

IV. Balance of Private and Public Interests

"The [*forum non conveniens*] standards concern both private and public interests." *Figueiredo*, 665 F.3d at 389 (citing *Am. Dredging*, 510 U.S. at 448). "The first set of factors considered are the private interest factors—the convenience of the litigants." *Iragorri*, 274 F.3d at 73. These include "the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; possibility of view of premises, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive." *Id.* at 73-74 (citation and internal quotation marks omitted). "[T]he court is necessarily engaged in a comparison between the hardships defendant would suffer through the retention of jurisdiction and the hardships the plaintiff would suffer as the result of dismissal and the obligation to bring suit in another country." *Id.* at 74.

The Supreme Court has explained that public interest factors must also be weighed in deciding whether dismissal for *forum non conveniens* is appropriate:

> Administrative difficulties follow for courts when litigation is piled up in congested centers instead of being handled at its origin. Jury duty is a burden that ought not to be imposed upon the people of a community which has no relation to the litigation. In cases which touch the affairs of many persons, there is reason for holding the trial in their view and reach rather than in remote parts of the country where they can learn of it by report only. There is a local interest in having localized controversies decided at home. There is an appropriateness, too, in having the trial of a diversity case in a forum that is at home with the state law that must govern the case, rather than having a court in some other forum untangle problems in conflict of laws, and in law foreign to itself.

Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508-09 (1947).

The Court finds that the private interest factors tilt heavily in favor of the alternative forum. As noted above, the conduct at issue occurred almost exclusively in Russia. Thus, most,

if not all, of the relevant documentary evidence to be assembled is in Russia. *See* Def. Mem. 13. Much of this evidence falls beyond this Court's power to compel, including records in the possession of governmental bodies of the Russian Federation and records in the possession of other foreign third parties. *See Pavlov v. Bank of New York Co.*, 135 F. Supp. 2d 426, 436 (S.D.N.Y. 2001) (finding that the court had "no ability to compel the production of documents . . . from Russia"), *vacated on other grounds*, 25 F. App'x 70 (2d Cir. 2002) (summary order); *Niv v. Hilton Hotels Corp.*, 710 F. Supp. 2d, 328, 342 (S.D.N.Y. 2008) (holding that a court's inability to compel relevant evidence "weighs in favor of dismissal"), *aff'd*, 358 F. App'x 282 (2d Cir. 2009) (summary order). In addition, as evidenced by the documents attached to the complaint, *see* Compl. Exs. A-C, most, if not all, of the relevant documents are likely in Russian and would require translation. *See Acosta v. JPMorgan Chase & Co.*, 05 Civ. 977, 2006 WL 229196, at *8 (S.D.N.Y. Jan. 30, 2006) (reviewing cases regarding impact of language barrier on private interest inquiry and noting that the burdens associated with foreign language document translation is appropriately considered in the analysis because it affects the ease and costs of adjudication); *Base Metal*, 253 F. Supp. 2d at 712 ("The need for extensive document translation supports a finding that this forum is inconvenient."). Accordingly, the access to proof factor favors dismissal.

The location and availability of putative witnesses also favor dismissal. Non-party witnesses have not yet been identified. However, because this case concerns a fraudulent scheme perpetrated in Russia, Russian corporate entities, and Russian stock holdings, it is reasonable to conclude that most, if not all, of the putative non-party witnesses are Russians. *See* Compl. ¶¶ 16-55; Def. Mem. 13. Accordingly, many prospective witnesses would fall beyond the reach of this Court's subpoena power. *See, e.g.*, *RIGroup LLC*, 949 F. Supp. 2d at 557

(noting in analogous corporate raiding case that the court lacked the power to compel testimony from non-party Russian witnesses); *Base Metal*, 253 F. Supp. 2d at 710-11 (noting that the allegations placed likely witnesses in Russia and that the court lacked power to compel the appearance of these foreign, third-party witnesses). In addition, travel costs for witnesses from Russia would be significant. *See* Def. Mem. 13; *Norex*, 304 F. Supp. 2d at 583 ("Because the core allegations are based on Russian events, however, the availability of witnesses and the cost for them to attend trial tips at least somewhat in favor of the Russian forum."). A Russian tribunal, however, would not only likely have the authority to compel the appearance of these putative witnesses but also would be able to do so with less inconvenience to the witnesses. *See* Def. Mem. 13. Therefore, the availability of compulsory process and cost of attendance factors also favor dismissal.

Finally, because interest in Russian stock is in dispute, enforcement of an American judgment in Russia would likely pose difficulties. *See RIGroup LLC*, 949 F. Supp. 2d at 557-58 (concluding, in a factually similar case, that Russian law provides Russian commercial courts with exclusive jurisdiction over certain issues and that Russian courts may likely decline to enforce foreign judgments touching on these issues). Thus, there is concern that continued adjudication in this forum may be inefficacious. In sum, the Court concludes that the private interest considerations support dismissal.

The public interest factors also favor an alternative forum. Again, this dispute relates to alleged misconduct perpetrated in Russia involving Russian business entities and stock. Thus, the "local interest factor" plainly falls in favor of Russian adjudication of the issues. *See id.* at 558 ("Given that the dispute in this case concerns alleged misconduct in Russia, involving a Russian business engaged in real estate investment and development in Russia, there is little

question that the 'local interest' factor strongly favors a Russian forum."); *Norex*, 304 F. Supp. 2d at 581 ("The central premise upon which all of plaintiff's allegations of actionable harm rest is the allegation that defendants have gained control of Russian entities and Russian company assets improperly, through frauds and violence carried out in Russia and involving Russian persons and institutions. This is clearly a matter that is principally of Russian concern . . . ."). Because the local interest factor favors Russian adjudication, the New York jury pool would be unfairly burdened by having to decide these issues. *See Base Metal*, 253 F. Supp. 2d at 712 ("All of the principle events in this case transpired in Russia and the action's connection to the Southern District of New York is far too attenuated to justify asking the citizens of this district to resolve the parties' dispute."). Moreover, four of the six claims asserted by Plaintiff require the application of Russian law and a conflict of law inquiry would likely lead to the application of Russian law in settling subsidiary legal issues associated with Plaintiff's RICO claims. Although this Court is capable of applying foreign law, a Russian court would undoubtedly be more competent. *See id.* (finding that notwithstanding a court's competence in applying foreign law, the foreign law factor will favor dismissal when extensive application of foreign law would be required). Finally, the Southern District of New York is among the busiest in the country. Even if the Russian court system is similarly congested, those courts' greater command of Russian law would make them more efficient at the task of resolving these issues. Accordingly, the Court concludes that the public interest factors favor dismissal.

Given the slight deference afforded to Plaintiff's choice of forum, the availability of an adequate alternative forum, and the balance of implicated interests weighing heavily in favor of dismissal, the Court concludes that the matter should be dismissed on the ground of *forum non conveniens*.

CONCLUSION

For the reasons set forth above, LNA's motion to dismiss for *forum non conveniens* is GRANTED, provided, however, that Plaintiff may make a motion to reinstate the complaint if, within nine months of the date of this order, Plaintiff pursues legal relief in Russia with respect to the allegations in the complaint and:

(1) LNA does not agree to: (a) waive, within twenty days after request, any statute-of-limitations defense that has arisen since the date this action was filed; (b) consent to the jurisdiction of the Russian court or other tribunal with subject matter jurisdiction over this dispute; and (c) accept service of process; or

(2) all possible alternative Russian fora decline to exercise subject matter jurisdiction over the allegations in the complaint; or

(3) the Russian court or other tribunal exercising subject matter jurisdiction finds that it lacks personal jurisdiction over the non-served Defendants or declines to reach the merits of the action based on a statute-of-limitations defense that has accrued since the time this action was filed.

LNA shall submit a letter to the Court by April 8, 2015 indicating whether LNA agrees to the conditions set forth in subparagraph (1).

The Court does not reach the additional grounds for dismissal cited by LNA.

The Clerk of Court is directed to terminate the motion at ECF No. 11 and to close the case.

SO ORDERED.

Dated: March 12, 2015
New York, New York

ANALISA TORRES
United States District Judge