IN THE SUPREME COURT OF THE STATE OF NEVADA

YA-LING HUNG and WEI-HSIANG HUNG, each individually, as surviving heirs, and as Co-Administrators of the Estate of Tung-Tsung Hung and Pi-Ling Lee Hung, Decedents, Appellant, v. Genting Berhad, Genting U.S. Interactive Gaming Inc., Genting Nevada Interactive Gaming LLC, Resorts World Las Vegas LLC, Respondents.	Electronically Filed Jan 24 2022 05:18 p.m. Elizabeth A. Brown Clerk of Supreme Court Supreme Court Case No.: 83197

RESPONDENTS' ANSWERING BRIEF

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CORPORATE DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) that must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Respondent Genting Berhad is a public limited liability company organized under the laws of Malaysia listed on the Malaysian Stock Exchange. There is no publicly held company that owns 10% or more of Genting Berhad's stock.

Respondent Genting U.S. Interactive Gaming Inc. is a Delaware corporation. Genting U.S. Interactive Gaming Inc.'s parent company is Resorts World Inc. Pte Ltd.

Respondent Genting Nevada Interactive Gaming LLC is a Delaware limited liability company. Genting Nevada Interactive Gaming LLC's parent company is Resorts World Inc. Pte Ltd.

Respondent Resorts World Las Vegas LLC is a Delaware limited liability company. Genting Berhad is the parent company of Resorts World Las Vegas LLC.

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The following law firms have represented the Respondents in this litigation:

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Dated this 24th day of January 2022.

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Respondents Genting Berhad, Genting U.S. Interactive Gaming Inc., Genting Nevada Interactive Gaming LLC (collectively, the "Genting Respondents"), and Resorts World Las Vegas LLC ("RWLV"), present their Answering Brief.

ROUTING STATEMENT

This case is presumptively assigned to the Nevada Court of Appeals, as it is an appeal of a judgment in a tort case where said judgment was less than $250,000 in a tort case. NRAP 17(b)(5).

This case should be assigned to the Nevada Court of Appeals. This appeal raises no new legal issues. The District Court dismissed Appellants' claims utilizing well-developed standards for jurisdiction and the propriety of the forum. Given these considerations, this appeal does not raise "as a principal issue a question of first impression" as contemplated by NRAP 17(a)(11). Therefore, assignment to the Nevada Court of Appeals is appropriate.

INTRODUCTION

This case is an action asserted by foreign nationals that have no connection to the State of Nevada. The action is based entirely on alleged conduct that took place outside the State of Nevada. The conduct was supposedly engaged in by foreign entities that were either never named or never properly joined as parties to the underlying case. In short, this case involves a textbook example of forum shopping. Appellants have sought to bring claims against the Respondents based *solely* on the allegation of some ownership overlap with Resorts World Manila. Solely from this purported overlap, Plaintiffs claim the Respondents should be treated as alter egos with *non-parties* who purportedly committed torts and be held liable for the conduct of those non-parties. Faced with such claims, the District Court properly dismissed the Complaint on multiple *alternative* grounds.

On appeal, Appellants challenge only the District Court's finding of a lack of personal jurisdiction over the Genting Respondents and the denial of Appellants' requested leave to amend the complaint. However, the District Court properly determined that neither general nor specific jurisdiction existed as to the Genting Respondents, and the Court properly determined that the proposed Second Amended Complaint did not resolve the pleading deficiencies that could not be cured as a matter of law. As to other bases for dismissing claims against the Genting Respondents, and against RWLV, Appellants have waived any argument that

dismissal was error. However, even if such arguments were not waived, the record establishes that the District Court properly dismissed these claims for *forum non conveniens*, for failure to join a necessary party, and for failure to state a viable claim against RWLV. This Court should affirm the dismissal.

STATEMENT OF THE ISSUES

I. THE DISTRICT COURT PROPERLY DISMISSED THE CLAIMS AGAINST THE GENTING RESPONDENTS FOR LACK OF PERSONAL JURISDICTION, AS THEIR CONTACTS WITH NEVADA WERE DE MINIMIS.

II. THE DISTRICT COURT PROPERLY DETERMINED THAT THE COMPLAINT FAILED TO STATE A VIABLE CLAIM AGAINST RWLV, AS IT ALLEGED NO FACTS SUFFICIENT TO SHOW THE EXISTENCE OF A DUTY OR A BREACH OF THAT DUTY.

III. THE DISTRICT COURT PROPERLY DISMISSED THE COMPLAINT FOR FAILURE TO JOIN RESORTS WORLD MANILA WHERE THE CONDUCT OCCURRED AS A NECESSARY PARTY.

IV. THE DISTRICT COURT PROPERLY DISMISSED THE COMPLAINT FOR FORUM NON CONVENIENS WHERE THE CLAIMS HAVE NO CONNECTION TO NEVADA.

V. THE DISTRICT COURT PROPERLY DENIED LEAVE TO AMEND WHERE THE PROPOSED AMENDED COMPLAINT REMAINED DEFICIENT, SHOWING AMENDMENT WAS FUTILE.

STATEMENT OF THE CASE

This is a wrongful death action asserted by foreign nationals with no connection to the State of Nevada. The alleged misconduct giving rise to Appellants' claims all took place outside the State of Nevada and was purportedly committed by

foreign entities that were never properly joined as parties. 1 Joint Appendix ("JA") 1-90.

Appellants initially filed their complaint for wrongful death and negligence on May 23, 2019. 1 JA 1-90. A week later, they amended it. 1 JA 91-102. This operative Amended Complaint asserted claims against Respondents Genting Berhad, Genting U.S. Interactive Gaming Inc., Genting Nevada Interactive Gaming LLC, and Resorts World Las Vegas LLC. 1 JA 91. The Amended Complaint also asserted claims against Genting Intellectual Property Pte Ltd., Resorts World Inc. Pte Ltd., Resorts World Manila, and Kok Thay Lim. 1 JA 91. Respondents moved to dismiss the Amended Complaint pursuant to NRCP 12(b)(2), 12(b)(5), 12(b)(6), and the doctrine of *forum non conveniens*. 1 JA 126-167. Appellants opposed the dismissal motion and counter moved to amend their complaint. 1 JA 186 - 3 JA 367. In a written order, the District Court granted the motion and dismissed the complaint based on multiple, alternative grounds and denied leave to amend. 3 JA 411-431. This appeal followed.

STATEMENT OF THE RELEVANT FACTS

I. The Manila Incident

Shortly after midnight on June 2, 2017, an armed individual entered Resorts World Manila, a hotel and casino in Manila, Philippines. 1 JA 92, 94. That individual set fire to furniture in the casino. 1 JA 94. Tsung-Tsung Hung and Pi-Ling Lee Hung

were Taiwanese nationals present at Resorts World Manila at the time of the incident. 1 JA 92, 95. Plaintiffs Ya-Ling Hung and Wei-Hsiang Hung (the "Hungs" or "Appellants") are the surviving heirs and Co-Administrators of their parents' estates. 1 JA 92. During the incident, the Hungs' parents hid in a pantry in the casino to hide from the fire and ultimately died from smoke inhalation. 1 JA 95. Appellants assert claims for wrongful death and negligence based on the torts of third parties that took place in the Philippines. *See, generally,* 1 JA 91-102.

II. The Defendants' Corporate Organization

Genting Berhad is an investment holding and management company organized under the laws of Malaysia, with its principal place of business in Kuala Lumpur, Malaysia. 1 JA 151. Genting Berhad is the holding company of certain publicly listed and unlisted entities, including, among others, Respondent Resorts World Las Vegas LLC. 1 JA 151. Genting Berhad does not, directly or indirectly, hold an ownership or management interest in Resorts World Manila, the location where the actions giving rise to Appellants' claims took place. 1 JA 91-95, 1 JA 151.

Genting U.S. Interactive Gaming Inc. ("Genting US") is a corporation organized under the laws of the State of Delaware and is managed by the officers of Resorts World Inc. Pte Ltd., a holding company, who are all located in either Singapore or Malaysia. 1 JA 152. Although registered with the State of Nevada, Genting US does not do any business in the State of Nevada. 1 JA 152. Genting US

does not regularly conduct any business in the State of Nevada, own any real or personal property in the State, own Resorts World Manila, nor maintain any offices or bank accounts within the State. 1 JA 152.

Genting Nevada Interactive Gaming LLC ("Genting Nevada") is a limited liability company organized under the laws of the State of Delaware. 1 JA 152. Although Genting Nevada holds a license as a manufacturer and distributor issued by the Nevada Gaming Commission and has registered with the Nevada Secretary of State, it has not to date conducted any business, in the State of Nevada or elsewhere. 1 JA 152. Genting Nevada does not own any property in the State of Nevada, nor maintain any offices or bank accounts within the State of Nevada. *Id.* Genting Nevada also does not own Resorts World Manila. 1 JA 153.

Resorts World Las Vegas LLC ("RWLV") is a Delaware limited liability company with its principal place of business in Las Vegas, Nevada. 1 JA 159. RWLV has no ownership or management interest in Resorts World Manila. 1 JA 159.

SUMMARY OF THE ARGUMENT

The Hungs advance claims related to a June 2017 fire started by a non-party at Resorts World Manila, located in Manila, Philippines. Non-party Travellers International Hotel Group, Inc. owns Resorts World Manila. The Hungs did not name the owner of Resorts World Manila as a defendant in the District Court action

nor effectuate service to properly join Resorts World Manila as a party. Rather, the Hungs advance claims against Genting Berhad, Genting US, and Genting Nevada (collectively, the "Genting Respondents") and RWLV, based solely on the allegation that a non-party individual has ownership interests in the Respondents here, and in Travellers International Hotel Group, Inc. Appellants did not–and cannot–allege that the Genting Respondents nor RWLV own or operate Resorts World Manila.

The District Court properly dismissed the Hungs' Amended Complaint, and this Court should affirm that decision. The State of Nevada has no personal jurisdiction over the Genting Respondents, as these entities have insufficient contacts with Nevada to warrant the exercise of general or specific jurisdictions.

The Hungs did not address any of the District Court's multiple alterative bases for dismissal of these claims, or for its dismissal of claims against RWLV, and therefore, any arguments as to the propriety of those rulings have been waived. However, if the Court could properly consider those alternative grounds for dismissal, the record shows that dismissal was proper. The Hungs failed to state a claim against RWLV pursuant to NRCP 12(b)(5), as no conduct by RWLV was alleged; instead, the claims were predicated entirely on the actions of third parties overseas in the Philippines, with a purported overlap in some ownership interests being the sole connection with RWLV. Moreover, as an alternative basis for dismissal of all claims, the District Court properly noted the failure to join a

necessary and indispensable party, Resorts World Manila, by timely serving such an entity, barred any claims from proceeding. Further, the District Court also properly identified yet another alternative basis for dismissal when it dismissed the Amended Complaint pursuant to the *forum non conveniens* doctrine.

Finally, the District Court properly denied leave to amend as futile, because the Proposed Second Amended Complaint proffered by the Hungs failed to remedy these defects.

LEGAL ARGUMENT

I. NEVADA COURTS DO NOT HAVE JURISDICTION OVER THE GENTING RESPONDENTS.

To obtain jurisdiction over a non-resident defendant, a plaintiff must show that: (1) the requirements of the state's long-arm statute have been satisfied, and (2) due process is not offended by the exercise of jurisdiction. *See Trump v. District Court*, 109 Nev. 687, 698, 857 P.2d 740, 747 (1993); *see also Int'l Shoe Co. v. Washington*, 326 U.S. 310 (1945). In Nevada, this determination is one and the same. *See Baker v. Dist. Ct.,* 116 Nev. 527, 531, 999 P.2d 1020, 1023 (2000) ("Nevada's long-arm statute, NRS 14.065, reaches the limits of due process set by the United States Constitution."). The Fourteenth Amendment to the United States Constitution's Due Process Clause requires a nonresident defendant to have "minimum contacts" with the forum state sufficient to ensure that exercising personal jurisdiction over him would not offend "traditional notions of fair play and

substantial justice." *Id.* at 531-32, 999 P.2d at 1023; *see also Int'l Shoe Co. v. Washington,* 326 U.S. 310, 316 (1945).

Due process requirements are satisfied if the nonresident defendant's contacts are sufficient to obtain either (1) general jurisdiction, or (2) specific personal jurisdiction, and it is reasonable to subject the nonresident defendants to suit in the forum state. *Viega GmbH v. Eighth Judicial Dist. Court*, 130 Nev. 368, 375, 328 P.3d 1152, 1156 (2014) (internal citations omitted).

In this posture, this Court reviews the District Court's jurisdictional order *de novo*, *Consipio Holding, BV v. Carlberg*, 128 Nev. 454, 457, 282 P.3d 751, 754 (2012), and resolves factual disputes for the non-moving party—here the Hungs. Nonetheless, "the burden of proof never shifts to the party challenging jurisdiction." *Trump,* 109 Nev. at 692, 857 P.2d at 744. Nevada courts cannot exercise either general or specific personal jurisdiction over any of the Genting Respondents under these circumstances and due process requires affirming the dismissal.

A. THIS COURT CANNOT EXERCISE GENERAL JURISDICTION OVER THE GENTING RESPONDENTS AS THEY ARE NOT "AT HOME" IN THE STATE OF NEVADA.

The District Court properly found that it could not exercise general jurisdiction over any of the Genting Respondents. 3 JA 418-421. While general jurisdiction "allows a plaintiff to assert claims against that defendant unrelated to the forum, a district court may exercise general jurisdiction only when the defendant's

contacts with the forum state are so "continuous and systematic as to render [it] essentially at home in the forum State." *Viega GmbH*, 130 Nev. at 375-376, 328 P.3d at 1156-57 (citing *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)).

However, "only a limited set of affiliations with a forum will render a defendant amenable to general jurisdiction there." *Daimler AG v. Bauman,* 571 U.S. 117, 137 (2014). Typically, such affiliations include either incorporation in that state or having its principal place of business there. *Id.* Even doing a substantial amount of business in a state, cannot, by itself, provide a basis for general jurisdiction; instead, the defendant must be "at home" in the state. *Id*. at 137-38; *accord Viega GmbH*, 130 Nev. at 377, 328 P.3d at 1158.

Nor is it sufficient to establish general jurisdiction for the entity to register with a state to conduct business or to appoint a registered agent. *Freeman v. Second Judicial Dist. Ct.*, 116 Nev. 550, 558, 1 P.3d 963, 968 (2000) (finding that appointment of a registered agent by a non-resident company does not "in itself subject a non-resident" to personal jurisdiction, requiring the court to conduct a minimum-contacts analysis).

Moreover, a court must measure contacts with the forum state prior to the filing of the complaint to determine whether exercising jurisdiction over the defendant comports with due process. *Delphix Corp. v. Embarcadero Techs., Inc.*,

749 F. App'x 502, 505-06 (9th Cir. 2018) (citing 4 Fed. Prac. & Proc. Civ. § 1067.5) (emphasis added).[1] As the *Delphix* court succinctly explained, "a general jurisdiction inquiry should consider all of a defendant's conduct with the forum state *prior to the filing of the lawsuit*, rather than those contacts that are related to the particular cause of action the plaintiff asserts." *Id.* (emphasis added); *see also Brown*, 814 F.3d at 628 n. 8 (quoting *Metro. Life Ins. Co. v. Robertson-Ceco Corp.*, 84 F.3d 560, 569-70 (2d Cir. 1996) (noting that when conducting a general jurisdiction inquiry the court "should examine a defendant's contacts with the forum state over a period that is reasonable under the circumstances—up to and including the date the suit was filed.").

[1]This authority contradicts the Hungs' legally unsupported arguments. The mere fact that non-party Lim obtained a gaming license after this lawsuit was filed does not confer Nevada courts with general jurisdiction over him or any other party to which he may have some relationship. Appellants' Opening Brief ("AOB") at 18-19. Even though Nevada has a strong incentive to supervise gaming licensees, as Appellants contend, such an interest does not confer *general jurisdiction* for any and all purposes on Nevada courts over every person who obtains a license in this State. By contrast, specific personal jurisdiction comports with due process where "the defendant's suit-related conduct" creates "a substantial connection with the forum state[,]" such that exercising jurisdiction may be appropriate for a specific claim or claims where the license bears some relationship to the claim at issue in the case. *Walden*, 571 U.S. at 284. Here, the license obtained by a non-party to this appeal after the filing of the Hungs' action bears no relationship to the claims asserted by the Hungs, which arise from conduct that transpired across the world in the Philippines years prior.

Here, Appellants failed to allege facts showing that Genting Berhad, Genting US, and Genting Nevada were "at home" in the State of Nevada. As the District Court recognized, none of these "Genting Defendants" are "incorporated in or hold their principal places of business in Nevada" or otherwise direct their actions from the State of Nevada. The District Court further recognized that, despite Appellants' unsupported contentions to the contrary, none of the Genting Respondents own any property or maintain offices or places of business in the State of Nevada. 3 JA 420. The Genting Respondents presented evidence to show that their contacts with Nevada were *de minimis*, which evidence was unrefuted by Appellants. 1 JA 150 - 154.

Furthermore, the Court must look to the contacts of each individual defendant to determine if jurisdiction over each defendant is warranted under a general jurisdiction theory. *Three Rivers Provider Network, Inc. v. Med. Cost Containment Prof'ls, LLC*, No. 2:18-CV-135 JCM-GWF, 2018 U.S. Dist. LEXIS 126618 at *5, 2018 WL 3620491 at *5 (D. Nev. July 30, 2018). "Affiliation with a corporation located in Nevada does not automatically support a court's exercise of general jurisdiction over a defendant in Nevada." *Id.* The District Court found that the Hungs failed to plead facts sufficient to support an alter ego theory that would allow RWLV's contacts with the State of Nevada to be attributed to any of the Genting Respondents. 3 JA 421.

1. On appeal, the Hungs make several factually or legally unsupported general jurisdiction arguments.

The Hungs' limited general jurisdiction arguments do not entitle them to reversal of the District Court's well-reasoned decision. The Hungs argue that a non-party to this appeal, "Defendant Lim,"[2] subjected the Genting Respondents to Nevada's general personal jurisdiction by his personal actions that they contend include pursuing "the development and opening of a gaming property in Clark County, Nevada[.]" AOB at 9 (citing 2 JA 273-82). But the cited Clark County land records do not reveal any contacts, or even reference, to any of the Genting Respondents. 2 JA 273-82. Instead, they show the acquisition of certain land by RWLV, a contact that Appellants fail to argue, and cannot argue, is a contact of any of the Genting Respondents. AOB at 9. Appellants' conclusory allegation is unsupported by the record. 2 JA 273-82.

Similarly, Appellants unsupported contention that the Genting Respondents somehow "own the Resorts World brand, including Resorts World Las Vegas and Resorts World Manila[,]" *see* AOB at 11, is wholly unsupported by any citation to the record, contrary to the requirements of this Court's rules. NRAP 28(e). Nor do

[2] Appellants named Kok Thay Lim as a defendant in their First Amended Complaint. 1 JA 91-92. However, despite obtaining two extensions of time to serve him, Appellants never served him to join him as a party to these proceedings. 1 JA 110, 1 JA 114, 3 JA 396. Instead, Appellants let the extended service time lapse and Kok Thay Lim is not a party to the underlying proceeding or this appeal. 3 JA 396.

Appellants cite any law that would support the contention that ownership of a "brand" would constitute ownership of an entity using that "brand." They also cite no law to support their contention. *See Maresca v. State,* 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).

Appellants' other factual contentions concerning conduct of individuals and entities other than the Genting Respondents is likewise of no moment, as they do not constitute contacts of any of the Genting Respondents. *Id*. AOB at 10-11. Further, Appellants' citation to a litany of third-party websites, Wikipedia pages, and news articles regarding entities other than the Genting Respondents is likewise of no support for finding "minimum contacts" of any of the Genting Respondents sufficient to make them "at home" in the State of Nevada. *Id.*; 3 JA 283-293, 335-340. Simply put, these are not contacts of the Genting Respondents and the District Court was correct in refusing to exercise general jurisdiction over the Genting Respondents based on these unsupported allegations.

2. The Hungs' conclusory alter ego allegations do not establish general jurisdiction over the Genting Respondents.

The Amended Complaint included conclusory allegations asserting that all of the Respondents are alter egos. Appellants' allegations were not supported by any facts or evidence and they cannot and do not save the Hungs' misplaced arguments.

It is only "[i]n narrow circumstances [that] federal courts will find that a corporation is the alter ego of another by 'pierc[ing] the corporate veil'" and then "attribute a subsidiary's [contacts] . . . to its parent company for jurisdictional purposes." *Corcoran v. CVS Health Corporation,* 169 F. Supp. 3d 970, 983 (N.D. Cal. 2016) (internal citations omitted). In order to rely upon such allegations to support a claim for jurisdiction, courts require a *prima facie* showing that the alleged alter ego is (1) "influenced and governed by the person asserted to be the alter ego;" (2) that there exists "such a unity of interest and ownership that one is inseparable from the other;" and (3) that the facts pled support a finding "that adherence to the corporate fiction of a separate entity would, under the circumstances, sanction fraud or promote injustice." *Polaris Indus. Corp. v. Kaplan,* 103 Nev. 598, 601, 747 P.2d 884, 886 (1987) (internal citations omitted); *see also Corcoran*, 169 F. Supp. 3d at 983 (quoting *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1073 (9th Cir. 2015)); *accord Neilson v. Union Bank of Cal, N.A.*, 290 F. Supp. 2d 1101, 1116 (C.D. Cal. 2003). As courts have explained, the first part of the analysis "requires a showing that the parent controls the subsidiary to such a degree as to render the latter the mere instrumentality of the former." *Corcoran*, 169 F. Supp. 3d at 983.

Here, the Amended Complaint falls woefully short. The Hungs' pleading only contains a reference to the elements of establishing alter ego liability along with the legal conclusion that "[d]iscovery will therefore show . . . the alter ego nature of

Defendants' corporate structure . . . . " 1 JA 93 at ¶15. Due process requires more than reliance on conclusory statements.

On appeal, the Hungs argue that a non-party, Kok Thay Lim, personally directs and exercises control over RWLV and other entities with "Genting" or "Resorts World" in their name. AOB at 9 (citing 3 JA 334). The "evidence" relied upon by Appellants for this conclusion is nothing more than a homemade flow chart apparently created by Appellants that is itself unsupported by any evidence.[3] 3 JA 334. The District Court considered this manufactured document as well as the Declaration of Wong Yee Fun, Chief Financial Officer of Genting Berhad, and Genting Berhad's Group Corporate Structure chart filed with Malaysian authorities in connection with its annual filings in rejecting the Hungs' self-serving and unsupported allegation of an alter ego relationship between the Genting Respondents and other third parties. 2 JA 162-67.

Although RWLV is a wholly owned, unlisted subsidiary of Genting Berhad, such a relationship is not enough to confer general jurisdiction over any of the Genting Respondents. As this Court has long held, a subsidiary's contacts do not

[3]Moreover, through this homemade evidence, Appellants actually *concede* the lack of a *unity* of ownership between Respondents and Resort Worlds Manila, because this flow charts contends that other non-parties jointly own and operate Resort World Manila. 3 JA 334 (stating that "Resort World Manila is owned and operated by Travellers International Hotel Group, which is a joint venture between Alliance Global Group and Genting Hong Kong," and identifying Alliance Global Group as a "Filipino based holding company.").

confer general jurisdiction over a parent company. *Viega GmbH,* 130 Nev. at 375-377, 328 P.3d at 1157-1158. Rather, due process demands facts showing the control of the non-resident defendants over the resident defendant or factors that, if true, would show a "fraud or injustice" by recognizing corporate separateness. *Id.* at 383, 328 P.3d at 1162. The Amended Complaint does not clear this high bar.

B. THIS COURT NEED NOT CONSIDER SPECIFIC PERSONAL JURISDICTION—AND IT DOES NOT EXIST IN ANY EVENT.

In the alternative, Respondents moved to dismiss the Amended Complaint based on a lack of specific personal jurisdiction before the District Court. 3 JA 401. The Hungs did not oppose the motion to dismiss to this extent, nor could they. 3 JA 401. The District Court then granted the motion as unopposed to this extent. 3 JA 401. But, to avoid ambiguity, the District Court also found in the alternative that it could not exercise specific jurisdiction over any of the Genting Respondents in any event as all alleged conduct underlying the Hungs' claims took place in Manila, Philippines, rather than in the State of Nevada. 3 JA 401.

1. The Hungs waived the specific jurisdiction issue.

This Court should sustain the District Court's specific jurisdiction findings. On appeal, the Hungs do not attack the District Court's specific jurisdiction ruling. *See generally* AOB. "Issues not raised in an appellant's opening brief are deemed waived." *See Bongiovi v. Sullivan*, 122 Nev. 556, 570 n. 5, 138 P.3d 433, 444 n. 5 (2006); *see also* NRAP 28(a)(8). Because the Hungs must present relevant authority

and cogent argument on appeal, the Hungs waived a challenge to the District Court's finding of a lack of specific personal jurisdiction over the Genting Respondents. *See Maresca*, 103 Nev. 669, 748 P.2d at 6.

2. Even if Appellants had not waived the issue, the District Court properly declined to exercise specific personal jurisdiction over any of the Genting Respondents.

In any event, the District Court could not exercise specific personal jurisdiction over any of the Genting Respondents. Nevada courts use a three-prong test to determine whether it is appropriate to exercise specific jurisdiction over a defendant:

> [1] [t]he defendant must purposefully avail himself of the privilege of acting in the forum state or of causing important consequences in that state. [2] The cause of action must arise from the consequences in the forum state of the defendant's activities, and [3] those activities, or the consequences thereof, must have a substantial enough connection with the forum state to make the exercise of jurisdiction over the defendant reasonable.

Consipio Holding, BV v. Carlberg, 128 Nev. 454, 458, 282 P.3d 751, 755 (2012) (internal quotation marks omitted); *see also Viega GmbH*, 130 Nev. at 375, 328 P.3d at 1157. In short, a defendant's suit-related conduct must create a substantial connection with the forum state to vest jurisdiction, so that the suit arises "out of contacts that the 'defendant *himself*' creates with the forum State." *Walden v. Fiore*, 571 U.S. 277, 282-84 (2014).

The United States Supreme Court has recognized this analysis centers on "the relationship among the defendant, the forum, and the litigation." *Walden v. Fiore*, 571 U.S. 277, 282-84 (2014) (internal citations omitted). *Id.* In other words, the suit must arise out of the defendant's own contacts with the forum state, not someone else's contacts. *Id.* at 284. The high court has "consistently rejected attempts to satisfy the defendant-focused 'minimum contacts' inquiry by demonstrating contacts between the plaintiff (or third parties) and the forum State." *Id.* Instead, the "minimum contacts" analysis looks to the defendant's contacts with the forum state itself, not the defendant's contacts with persons who reside there. *Id.* at 285.

As other Nevada courts have recognized, mere affiliation with a resident defendant does not confer specific jurisdiction over foreign defendants. *See Southport Lane Equity II, LLC v. Downey*, 177 F. Supp.3d 1286 (D. Nev. 2016). In *Southport Lane*, a shareholder brought claims against a corporation's directors and officers, including non-resident corporate officers and directors. *Id.* at 1268. The *Southport Lane* court later dismissed the claims against the non-resident director and officer defendants upon their motion. 177 F.Supp.3d at 1296. It recognized that "a mere connection between a defendant and a plaintiff that has contacts with the forum state or that has been injured in the state is insufficient for personal jurisdiction under the Due Process Clause." *Id.* As a result, the court found that due process prevented it from "[s]ubjecting the directors or officers of a corporation to jurisdiction" where

"the directors or officers ha[d] no personal contacts whatsoever with the forum state . . . ." *Id.* Ultimately, "what matters most in this analysis is not the corporation's own contacts with Nevada but the *individual Defendants' contacts with the State*." *Id.* (emphasis added).

In this case, Nevada courts cannot exercise specific jurisdiction over the Genting Respondents: The Genting Respondents have no significant connection to Nevada. 1 JA 150-54. The Hungs have not attempted, and cannot so establish, that the Genting Respondents engaged in any specific "suit-related conduct" in Nevada that would create a substantial connection between them and Nevada to warrant exercise of specific jurisdiction over them. *See generally* 1 JA 91-102. Each claim arises solely from the June 2017 event in Manila, Philippines. 1 JA 94 at ¶¶ 22-25. There are no substantive factual allegations relating to or taking place in Nevada underlying any of the Hungs' claims.

Further, courts presume that "[c]orporate entities are [ ] separate, and thus, indicia of mere ownership are not alone sufficient to subject a parent company to jurisdiction based on its subsidiary's contacts." *Viega GmbH*, 130 Nev. at 378, 328 P.3d at 1158 (collecting cases). RWLV, the only Nevada defendant, is a third party to this Philippine dispute absent clear and substantial allegations tying these defendants together. There are none. This is especially so because none of the claims transpired in the State of Nevada at all. These facts cannot be materially

distinguished from *Southport Lane* and the outcome is the same.

This Court should sustain the District Court's non-exercise of specific jurisdiction if it declines to consider this issue waived.

II. THE HUNGS FAILED TO STATE A CLAIM AGAINST RWLV.

As with the issue of specific jurisdiction, the Hungs have waived any argument regarding the dismissal based on failure to state a claim, as they did not address this basis for dismissal in their Opening Brief. *See Bongiovi v. Sullivan*, *supra*. But should this Court consider this issue, the dismissal should be affirmed. The events of this case took place entirely in the Philippines, and no facts showing any conduct by RWLV were alleged. *See generally* 1 JA 91-102.[4]

When a plaintiff fails to "state a claim upon which relief can be granted," the Court must dismiss the claim upon motion under NRCP 12(b)(5). In this posture, this Court reviews the decision *de novo* and accepts factual allegations as true, "but the allegations must be legally sufficient to constitute the elements of the claims asserted." *Sanchez v. Wal-Mart Stores, Inc.*, 125 Nev. 818, 823, 221 P.3d 1276, 1280 (2009) (internal citation omitted). "To survive dismissal, a complaint must contain some 'set of facts, which, if true, would entitle the plaintiff to relief." *In re*

[4]The same analysis set forth herein would apply to the other Genting Respondents if such claims were not dismissed based on the lack of personal jurisdiction. Just as the shortcoming as to RWLV, the Hungs do not allege *any* facts that any of the Genting Respondents engaged in any of the conduct in the Philippines giving rise to their claims in the Amended Complaint. 1 JA 91-102.

Amerco Derivative Litig., 127 Nev. 196, 211, 252 P.3d 681, 692 (2011) (internal citation omitted).

Here, the Hungs allege that unspecified "Defendants" injured them but include RWLV within the term "Defendants" based *solely* on the conclusory, unsupported allegation that the Genting Respondents purportedly own both Resorts World Manila and RWLV. The Hungs failed to plead any factual allegations necessary to support an alter ego theory. 1 JA 91-102. *See Polaris Industrial Corp. v. Kaplan*, 103 Nev. 598, 601-02, 747 P.2d 884, 886-87 (1987) (describing the requirement to establish an alter ego claim). The Amended Complaint's conclusory "alter ego" allegations fail to attach liability to RWLV. Again, to support an alter ego theory of liability, the Hungs were required to plead facts that could demonstrate a "unity of interest and ownership" and facts supporting that "treating the corporations as separate entities would result in injustice." *Viega GmbH,* 130 Nev. at 383, 328 P.3d at 1162 (Pickering, J. concurring) (citing *Am. Tel. & Tel. Co. v. Compagnie Bruxelles Lambert,* 94 F.3d 586, 591 (9th Cir. 1996)). The Hungs failed to meet this standard.

As such, the Hungs failed to state a claim against RWLV based on the conduct of other foreign parties which wholly relate to an unfortunate incident in the Philippines—not Las Vegas. 1 JA 91-102. The Hungs have not presented a prima facie case of wrongful death or negligence against RWLV because they have not

alleged any facts from which it may be inferred that RWLV had a duty to the Hungs' parents, or that such duty was breached. *Id.*

This Court should affirm the District Court's NRCP 12(b)(5) dismissal of all claims against RWLV.

III. THE HUNGS NEGLECTED TO JOIN A NECESSARY AND INDISPENSABLE PARTY.

The District Court alternatively found that the Hungs neglected to join a necessary and indispensable party pursuant to NRCP 12(b)(6), which likewise justified dismissal of the Amended Complaint. 3 JA 424-23.

A. The Hungs waived this issue in the District Court, and again on appeal.

Although Respondents raised this issue in their Motion to Dismiss, the Hungs did not oppose the motion to dismiss on this ground. Accordingly, the Hungs waived any right to contest the issue. *Old Aztec Mine, Inc. v. Brown,* 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) ("A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.") (internal citations omitted). On appeal, the Hungs did not address this ground for dismissal in their opening brief. Thus, this issue is not properly before the Court. *See Bongiovi v. Sullivan*, *supra*. Accordingly, affirmance is required.

B. The Hungs failed to properly join Resorts World Manila by failing to effectuate service despite being given multiple extensions to do so.

A party *must* be joined as a necessary and indispensable party under NRCP 19(a) if (1) complete relief cannot be accorded in his absence, (2) he claims an interest in the subject of the action, or (3) adjudication in the individual's absence potentially subjects parties to double, multiple or otherwise inconsistent obligations. The failure to join a necessary and indispensable party warrants dismissal under NRCP 12(b)(6). *Humphries v. Eighth Judicial Dist. Court of State*, 129 Nev. 788, 792, 312 P.3d 484, 487 (2013) (reviewing failure to join de novo). NRCP 19 ensures that "all persons materially interested in the subject matter of the suit [are] made parties so that there is a complete decree to bind them all." *Olsen Family Tr. v. District Court*, 110 Nev. 548, 553, 874 P.2d 778, 781 (1994). For this reason, this Court held that the failure to join a necessary party to a case was "fatal to the district court's judgment." *Id*. at 554; 874 P.2d at 782.

There is no reasonable dispute that Resorts World Manila, the entity where all the alleged conduct underlying the Hungs' claims took place, is a necessary and indispensable party. However, the Hungs failed to bring this party into the litigation by effectuating service on it. The Hungs obtained two separate extensions of time to serve Resorts World Manila, 1 JA 110, 114, yet still failed to serve Resorts World Manila in this action prior to the expiration of the deadline or to otherwise seek another extension of time to effectuate service. Months went by after this deadline

lapsed before the Genting Respondents and RWLV served their Motion to Dismiss. 1 JA 114 ("The deadline for Plaintiffs to effectuate service in this case shall be extended to September 16, 2020."); *compare* 1 JA 126 (motion to dismiss filed February 5, 2021). Without joining the entity that owns and operates the resort at the very heart of this litigation raises insurmountable hurdles to the action and potentially exposes RWLV, the Genting Respondents, and even Resorts World Manila to conflicting and multiple liabilities absence affirmance of the District Court's dismissal. As Resorts World Manila is a necessary and indispensable party, the Court should affirm on this alternative basis as well.

IV. THE DISTRICT COURT PROPERLY DISMISSED THE CASE BASED UPON *FORUM NON CONVENIENS*.

On top of its other rulings, the District Court alternatively found that the doctrine of *forum non conveniens* prevented it from exercising jurisdiction over this dispute. 3 JA 425-27. To these ends, the District Court gave no deference to the Hungs' forum choice given their lack of Nevada connection. 3 JA 426. The District Court also discerned that an adequate alternative forum existed—the Philippines. 3 JA 426. Finally, the District Court weighed the public and private interest factors and found them to warrant dismissal under these facts. 3 AA 427. This Court should affirm.

This Court reviews a *forum non conveniens* dismissal for abuse of discretion. *Provincial Gov't of Marinduque v. Placer Dome, Inc.*, 131 Nev. 296, 300, 350 P.3d

392, 396 (2015). The doctrine of *forum non conveniens* permits a trial court to decline to exercise jurisdiction in a case where litigation in a foreign forum would be more convenient for the parties. *Lueck v. Sundstrand Corp.*, 236 F.3d 1137 (9th Cir. 2001) (citing *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 504 (1947)).

In Nevada, a district court must undertake a three-step analysis before declining jurisdiction. First, a district court "must first determine the level of deference owed to the plaintiff's forum choice." *Provincial Gov't of Marinduque*, 131 Nev. at 300, 350 P.3d at 396 (citing *Pollux Holding Ltd. v. Chase Manhattan Bank*, 329 F.3d 64, 70 (2d Cir. 2003)). Second, a district court must determine "whether an adequate alternative forum exists." *Id.* at 301, 350 P.3d at 396. Finally, "[i]f an adequate alternative forum does exist, the court must then weigh public and private interest factors to determine whether dismissal is warranted." *Id.* This Court cautioned that district courts should only order *forum non conveniens* dismissal when "extraordinary circumstances" weigh strongly in favor of a different forum. *Id.* But this Court then noted that a complex personal jurisdiction dispute may so heavily weigh. *Id.* at 304, 350 P.3d at 398.[5]

[5]The United States Supreme Court held that federal district courts may properly take up the issue of *forum non conveniens* without first deciding the issue of personal jurisdiction. *Sinochem Int'l Co. Ltd. v. Malaysia Int'l Shipping Corp.,* 549 U.S. 422, 425, 436 (2007); *Marinduque*, 350 P.3d at 397-98 (relying on *Sinochem)*. Thus, this Court may affirm without determining personal jurisdiction.

A. This Court owes less deference to the Hungs' choice of forum.

Courts ordinarily defer to a plaintiff's forum choice. *Provincial Gov't of Marinduque*, 131 Nev. at 301, 350 P.3d at 396. But "a foreign plaintiff's choice of a United States forum is entitled to less deference." *Id.* Generally speaking, "a foreign plaintiff's choice will be entitled to substantial deference only where the case has [1] bona fide connections to [Nevada] and [2] convenience favors the chosen forum." *Id*.

The Hungs and this case have no bona fide connection to Nevada as a matter of law. In *Provincial Government of Marinduque*, the defendant was alleged to have engaged in environmental torts in Marinduque, a province of the Philippines. The plaintiff chose Nevada as a forum, based on subsidiaries of the defendants owning mining operations in this state, and relying, as do the Hungs here, on an alter ego theory. *Id.* This Court plainly concluded that this litigation-driven connection was "not the type of bona fide connection[s] that justif[y] giving a foreign plaintiff's forum choice substantial deference." *Id*.

No connection to Nevada, other than the claimed overlap of ownership between the Respondents here and Resort World Manila, is alleged. Indeed, here, there is even less connection with Nevada than was alleged in *Provincial Gov't,* where it was at least suggested that some Marinduque residents impacted by the torts might now reside in Nevada. The Hungs do not allege that they, or their decedents,

were residents of Nevada, or that any event relevant to their claim actually occurred in Nevada.

Given the absence of connection, the parties cannot conveniently litigate the Resorts World Manila tragedy in Las Vegas, Nevada. The parties would have to obtain evidence, procure witnesses, and collect documents from the Philippines. And non-parties to the litigation would control much, if not all, of the evidence needed to litigate. If so, the parties to this litigation would likely spend wasteful amounts trying to enforce third-party discovery, requiring navigation of the Philippine judicial system. The merits demand a Philippine forum.

In sum, the Hungs cannot demonstrate that they or this case have a bona fide connection to Nevada or that Nevada litigation would be convenient. Without these showings, this Court should give the Hungs' choice of forum little-to-no deference. This factor weighs in favor of dismissal for *forum non conveniens*.

B. The Philippines can adequately resolve this dispute.

The U.S. Supreme Court has held that an "alternative forum ordinarily exists when the defendant is amenable to service of process in the foreign forum." *Lueck*, 236 F.3d at 1143 (citing *Piper Aircraft Co. v. Reyno,* 454 U.S. 235, 254 n.22 (1981)). Courts generally only find forums inadequate in "rare circumstances . . . where the remedy provided by the alternative forum . . . is so clearly inadequate or unsatisfactory, that it is no remedy at all . . . ." *Id.* (internal citations omitted). The

District Court did not find the Hungs' claims that they were prevented from pursuing claims in elsewhere convincing, and this is not surprising. The Hungs' "reports" about "corruption" consist entirely of a news report that asserts that a percentage of Philippine businesspersons would "pay cash to win business" and a clipping from an Internet site vaguely discussing corruption "ratings," seemingly connected to the "war on drugs." 3 JA 341-344. Neither makes any reference to concerns over corruption in the civil courts. *Id.* Nor do reports that no criminal proceedings were pursued against Resort World Manila or its employees, *see* 3 APP. 345-351, suggest that civil justice is not available.

The District Court properly found that the Hungs could pursue their claims against Resorts World Manila, in Manila.

C. Public and private interest factors weigh towards affirmance.

Courts do not disturb a forum choice unless the "private interest" and the "public interest" factors strongly favor trial in a foreign country, such as the case here. *Lueck*, 236 F.3d at 1145 (citing *Gulf Oil*, 330 U.S. at 509). In other words, courts weigh the "balance of conveniences" to determine whether "the chosen forum would be unnecessarily burdensome for the defendant or the court . . . ." *Id.*

1. The public interest factors mandate dismissal under *forum non conveniens.*

Public interest factors include "the local interest in the case, the district court's familiarity with applicable law, the burdens on local courts and jurors, court

congestion, and the costs of resolving a dispute unrelated to the plaintiff's chosen forum." *Provincial Gov't of Marinduque*, 131 Nev. at 302, 350 P.3d at 397 (citing *Lueck*, 236 F.3d at 1147). This Court has confirmed that complicated cases and unfamiliarity with "the laws of the Philippines governing the [ ] claims . . . ." may appropriately weigh toward dismissal. *Id.*

The public interest factors weigh towards dismissal. Like in *Provincial Government of Marinduque*, the law of the Philippines will govern these claims given that the events occurred in the Philippines. *Compare id.*, *with GMC v. Eighth Judicial Dist. Court of Nev.*, 122 Nev. 466, 474, 134 P.3d 111, 116 (2006) (holding generally that the law of the place of the wrong governs in tort actions). And Nevada has no public interest in resolving a dispute between the Hungs and Resorts World Manila, non-residents, regarding a complex tragedy that occurred far away from Nevada. This lack of public interest heavily supports *forum non conveniens* dismissal. Nevada residents have no direct or indirect interest in this dispute. This litigation only burdens the State of Nevada, its taxpayers, and the massively backlogged Eighth Judicial District Court. *See* ADKT 0555, Administrative Order: 21-06 ("Due to the Covid-19 pandemic, the Eighth Judicial District Court is experiencing a significant backlog and delay in the disposition of civil trials.").

These factors weigh more heavily towards dismissal given the dispute over personal jurisdiction. This genuine dispute over personal jurisdiction in and of itself

is properly considered as part of the *forum non conveniens* public interest analysis and supports dismissal. *Provincial Gov't of Marinduque*, 131 Nev. at 303, 350 P.3d at 397 (citing *Sinochem*, 549 U.S. at 435-36). Indeed, if this Court reversed, "resolving the preliminary issue of personal jurisdiction alone would likely entail extensive discovery, briefing, and multiple court hearings . . . . " *Id.* (internal citations and quotation marks omitted).

2. The private interest factors weigh towards affirmance.

Private interest factors "may include the location of a defendant corporation, access to proof, the availability of compulsory process for unwilling witnesses, the cost of obtaining testimony from willing witnesses, and the enforceability of a judgment." *Provincial Gov't of Marinduque*, 131 Nev. at 304, 350 P.3d at 398 (citing *Lueck*, 236 F.3d at 1145).

The private interest factors also weigh heavily in favor of dismissal here. No proper parties or essential witnesses reside in the Nevada; indeed, none of them reside anywhere in the United States. 1 JA 93-94. Pursuing this litigation in Las Vegas would require witnesses to incur massive travel burdens, including likely days of travel—each way—at extreme expense. In addition, other proof would be more readily available in Manila, where this tragedy occurred. The parties would also incur massive expenses learning how to serve process in the Philippines or obtain discovery under Philippine law: a more rote and easier task for Philippine counsel.

In light of all of these factors, this Court should affirm the District Court's alternative *forum non conveniens* dismissal.

V. THE DISTRICT COURT PROPERLY DENIED LEAVE TO AMEND THE FUTILE COMPLAINT.

Finally, the District Court correctly denied the Hungs' countermotion to amend their complaint as futile—given its extensive and layered findings. 3 JA 428. This Court reviews a denial of leave to amend for an abuse of discretion. *Connell v. Carl's Air Conditioning*, 97 Nev. 436, 634 P.2d 673 (1981).

NRCP 15(a)(2) provides that after 21 days, "a party may amend its pleading only with the opposing party's written consent or the court's leave." Although leave should be "freely given," *id.*, a trial judge may, in a proper case, deny a motion to amend. *Kantor v. Kantor*, 116 Nev. 886, 891, 8 P.3d 825, 828 (2000). If leave was automatic, no leave would be required. *Id.* But leave need not be given to amend a futile complaint. *See, e.g., Halcrow, Inc. v. Eighth Jud. Dist. Ct.*, 129 Nev. 394, 398, 302 P.3d 1148, 1152 (2013) (subsequent history omitted); *Allum v. Valley Bank of Nevada*, 109 Nev. 280, 287, 849 P.2d 297, 303 (1993) ("It is not abuse of discretion to deny leave to amend when any proposed amendment would be futile.").

The Hungs' proposed Second Amended Complaint is futile. It fails to allege any new facts to support jurisdiction over any of the Genting Respondents, any tortious conduct by RWLV, or any factual alter ego liability allegations. 3 JA 352-367. The Hungs' proposed Second Amended Complaint continues to improperly

group plead: failing to clarify which defendant allegedly engaged in what act. 3 JA 352-367. The Hungs still rest on the same conclusory allegations and recitation of legal elements, rather than the pleading of facts to support their claims and theories. 3 JA 352-367. These are the same deficiencies in the Amended Complaint and the claims set forth therein are still faulty and unsustainable against either the Genting Respondents or RWLV as a matter of law. And finally, no amendment can ever make Nevada a convenient forum for litigating this foreign dispute.

This Court should affirm as allowing amendment would needlessly prolong this matter and the resolution of this case.

CONCLUSION

For the foregoing reasons, this Court should affirm the District Court's order.

Respectfully submitted this 24th day of January 2022.

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CERTIFICATE OF COMPLIANCE WITH NRAP 28 AND 32

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using MS Word 2003 in Times New Roman 14. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 7920 words.

Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 24th day of January 2022.

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CERTIFICATE OF SERVICE

This is to certify that on January 24, 2022, a true and correct copy of the foregoing ***Respondents' Answering Brief*** was served by via this Court's e-filing system, on counsel of record for all parties to the action below in this matter, as follows:

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An employee of Greenberg Traurig, LLP