IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No. 83638

MCGUIRE HOLDINGS LTD.,

Appellant,

v.

BETFRED INT'L HOLDINGS, LTD.,

Respondent.

RESPONDENT'S ANSWERING BRIEF

Appeal from the Eighth Judicial District Court
The Honorable Nancy Allf, District Judge
District Court Case No. A-21-827937-B

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NRAP 26.1 DISCLOSURE

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 judges and justices of this Court may evaluate possible disqualification or recusal.

Respondent Betfred International Holdings, Limited is a company existing under the laws of the United Kingdom and is headquartered in the U.K.

The law firm whose partners or associates have or are expected to appear for Respondents is PISANELLI BICE PLLC.

DATED this 2nd day of May 2022.

PISANELLI BICE PLLC

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ISSUES PRESENTED

(1) **Personal Jurisdiction:** Respondent Betfred International Holdings Limited ("Betfred Int'l") is a United Kingdom ("U.K.") company that consummated a letter of intent ("LOI") with Appellant McGuire Holdings Limited ("McGuire") a Bahaman company concerning a potential Connecticut sportsbook opportunity. The LOI is governed by U.K. law, was negotiated in the U.K., and Betfred Int'l signed it in the U.K. The only contact with Nevada is a single fortuitous meeting between the parties because they were both attending an unrelated gaming expo in Las Vegas. Did the district court correctly conclude that it lacked personal jurisdiction over Betfred Int'l stemming from this single Nevada contact, particularly since the only thing that occurred in Las Vegas was the parties learning that the Connecticut opportunity was being awarded to another?

(2) **Leave to Amend:** When the district court announced its intention to dismiss the case, McGuire orally requested leave to amend, albeit without providing how it could offer additional facts. After all, the parties submitted "exhaustive" evidence, which the court considered, for the motion to dismiss. Did the district court have the discretion to deny McGuire's last-ditch request, particularly where McGuire had already presented its documentation and theory of jurisdiction?

I. INTRODUCTION AND SUMMARY OF ARGUMENT

McGuire summarily misstates its constitutional burden, confuses the time line of events, and offers unsupported conclusions from cases that do not support its position. Contrary to McGuire's wants, the parties single meeting in Las Vegas is hardly of the "quality and nature" sufficient for Nevada courts to exercise personal jurisdiction over a U.K. company based on an LOI negotiated and signed in the U.K., and in fact governed by U.K. law. Indeed, if a single fortuitous meeting occurring in Las Vegas at an annual trade show – where these foreign companies were simply informed of the unsuccessful outcome of a bid on a Connecticut sportsbook opportunity with the Mohegan Tribe – is sufficient for personal jurisdiction, then Nevada would be truly out of step with the Constitution's mandates.

The relevant and pertinent facts were not in dispute before the district court and are not in dispute now. The parties' only contact with Nevada even touching upon the LOI was their fortuitous sidebar at the 2018 Global Gaming Expo ("G2E"), where they simply learned that another party was the successful bidder for the Connecticut opportunity. McGuire never discussed and therefore agrees, that it confirmed that the LOI terminated when its owner subsequently emailed that "[Betfred Int'l] will be a success in USA [I] know, I'm just gutted [I] will not be along to see it." McGuire moreover agrees that following the brief G2E meeting, neither McGuire nor Betfred Int'l continued working together. McGuire likewise

agrees that the Mohegan Sun Connecticut sportsbook operation in fact went to Kambi in March 2019.

All of these undisputed facts confirm that the LOI terminated long before Betfred Int'l incorporated a single American subsidiary. And this was well before those American subsidiaries obtained any gaming licenses in Colorado, Pennsylvania, and Iowa which established a solid book of business stateside. Thereafter, and based on that book of business, its American subsidiary years later incorporated a Nevada subsidiary which entered into a conditional agreement for the opportunity to operate the sportsbook at the Las Vegas Virgin Hotel & Casino.

All of this combines for the simple conclusion that Nevada lacks personal jurisdiction over Betfred Int'l for claims related to the LOI. Betfred Int'l lacks sufficient minimum contacts with Nevada. Betfred Int'l did not purposefully avail itself of the benefits and protections of a Nevada forum. And it would be unreasonable and unjust to force this foreign company to litigate in Nevada against another foreign company, over a contract governed by foreign law.

The district court correctly granted Betfred Int'l's motion to dismiss, denied McGuire jurisdictional discovery, and denied McGuire leave to amend its complaint. McGuire failed to demonstrate to the district court any circumstances in which it could properly plead a cause of action related to the LOI sufficient to hale Betfred Int'l into a Nevada forum. This Court should affirm the district court's decision.

II. STATEMENT OF FACTS AND STATEMENTS OF THE CASE

A. Peter Hutchinson and McGuire Engage with Betfred Int'l.

McGuire commenced this litigation based upon an LOI entered into between McGuire and Betfred Int'l in July 2018.[1] (Joint App. ("JA") 0182 ¶ 1; *see also* JA001-10 (citing to McGuire's First Amended Complaint ("FAC")); JA0041-42 (citing to the LOI).) Betfred Int'l is a subsidiary of the Betfred Group of companies within the U.K. (JA0182 ¶ 2; *see also* JA0035 ¶ 3 (explaining the corporate structure of the Betfred Group of companies).)

Within that Betfred Group of companies are subsidiaries which operate the Betfred-branded high street booking shop in the U.K. and also the Betfred-branded website operated out of Gibraltar, serving primarily the U.K. online gaming market. (JA0183 ¶ 2; JA0035 ¶ 3.) Betfred Int'l is incorporated in the U.K. and its principal place of business is the U.K. (JA0183 ¶ 2; JA0035 ¶ 3.) To that end, Betfred is a well-known sports wagering brand within the U.K. In the last few years, Betfred Int'l has incorporated American subsidiaries and expanded the Betfred Group's business in the United States under the Betfred Sports brand. (JA0038-39 ¶ 4.)

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[1] This Statement of Facts follows from the district court's Findings of Fact and Conclusions of Law; and Judgment contained in its September 16, 2021, Order. (*See* JA0182-88.)

McGuire purports to be a Bahamian company with its principal place of business in Orange County, Florida. (JA0183 ¶ 3.) Before 2018, no one at McGuire had any relationship with Betfred Int'l. (JA0183 ¶ 4; JA0035 ¶ 4.) McGuire – through its owner Peter Hutchinson ("Hutchinson") – initiated contact with a third-party restaurant owner in the U.K. to make a connection with the founder of Betfred Int'l, Fred Done ("Fred"). (JA0183 ¶ 4; JA0035 ¶ 4.) This U.K. restaurant owner told Fred that Hutchinson was seeking contact information for Fred. (JA0183 ¶ 4; JA0035 ¶ 4.) Fred put Stebbings in touch with the restaurant owner who in turn provided Hutchinson's phone number. (JA0183 ¶ 4; JA0035 ¶ 4.)

Hutchinson sought out Betfred Int'l's business by claiming to have a contact with the Mohegan Sun Tribe, and specifically the Mohegan Sun's Connecticut Casino which was, at the time, seeking a sportsbook operator. (JA0183 ¶ 5; JA0035 ¶ 5.) Hutchinson represented that he had a relationship with someone who then had a relationship with a then-member of the Mohegan Tribe's council, Kevin Brown. (JA0183 ¶ 5; JA0035 ¶ 5.) This additional middleman, Sherman Brown (no relation to Kevin Brown) was never disclosed as having any role in McGuire. (JA0035 ¶ 5.)

Hutchinson's 2018 cold-call to the U.K. coincided with the change in American sportsbook gambling laws. In May 2018, the United States Supreme Court determined the Professional and Amateur Sports Protection Act, *see* 28 U.S.C. § 3702 (permitting individual States the authority to ban sports gambling on both

professional and amateur athletic events), was unconstitutional as the law violated the anti-commandeering doctrine. *See Murphy v. Nat'l Collegiate Athletic Ass'n*, 584 U.S. ___, ___, 138 S.Ct. 1461, 1475-82 (2018).

This decision, coupled with the subsequent decisions by several State legislatures to permit sports gambling within their respective borders, presented sportsbook operators a much larger potential marketplace.

B. The Parties Negotiate and Consummate an LOI From the U.K.

Following the initial phone call, Hutchinson came to the U.K. and he, Stebbings, and another Betfred Int'l executive Craig Reid ("Reid"), met in Manchester. (JA0183 ¶ 6; JA0035-36 ¶ 6.) Following this face-face meeting there were additional calls and emails between all four (Hutchinson, Reid, Sherman Brown, and Stebbings) regarding the Connecticut opportunity, all while Stebbings and Reid were in the U.K.[2] (JA0036 ¶ 6; *see also* JA0081-090 (citing to emails between the parties).)

Between June and July 2018, prior to moving forward on the Connecticut Request for Proposal ("RFP"), Hutchinson asked Stebbings for an LOI or similar

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[2] As the district court found, McGuire never presented any evidence that McGuire ever discussed, let alone assisted Betfred Int'l in obtaining any business from the Mohegan Tribe outside of Connecticut, let alone Nevada. (JA0183 ¶ 9.) As explained below, the reason for that is simple, the Mohegan Tribe did not obtain a Nevada gaming opportunity until September 2019 – long after McGuire and Betfred Int'l parted ways and the LOI had terminated under its own terms.

agreement to facilitate an August 2018 pitch to the Mohegan Sun in Connecticut. (JA0183 ¶ 5; JA0036 ¶ 7.) Stebbings then requested details for an entity that would consummate this potential LOI and it was at that point that Hutchinson interjected McGuire. (JA0183 ¶ 5; JA0036 ¶ 7.)

Betfred Int'l created the LOI in the U.K. and all negotiations by Betfred Int'l occurred in the U.K. (JA0183 ¶ 6; JA0035 ¶ 8.) McGuire – through Hutchinson – traveled to the U.K. to negotiate the LOI. (JA0183 ¶ 6; JA0035 ¶ 8.) As such, the LOI specifies that it is governed by U.K. law and Betfred Int'l consummated the LOI in the U.K. (JA0183 ¶ 6; JA0035 ¶ 9.)

As for the terms the parties memorialized, the LOI noted that it "***summarizes*** their understanding regarding the ***contemplated*** agreement for a share of revenues resulting from [Betfred Int'l]'s ***potential*** appointment to supply a sports betting and wagering service to the US gambling operator Mohegan Sun." (JA0041 ¶ 1.1 (emphasis added).) The "key terms" state that "[McGuire] is ***assisting*** [Betfred Int'l] in the selection process" to provide sportsbook services to the Mohegan Sun Casino in Connecticut. (*Id*. at ¶ 2.2 (emphasis added); *see also* JA0035 ¶ 10-11.)

The LOI further contemplated that after the Mohegan Sun "appoint[ed]" Betfred Int'l for its "Sports Book Service" for the Connecticut Sportsbook, "the parties shall enter into good faith negotiations for a full form agreement." (JA0041 ¶ 3.1.) In exchange for McGuire "assisting [Betfred Int'l] in the selection process"

the parties agreed that McGuire would "receive 10% of the gross revenue" Betfred Int'l received "under the agreement between [Betfred Int'l] and [the] Mohegan Sun for the provision of the Sports Book Service." (JA0041 ¶¶ 2.2; 3.1.)

The parties further memorialized how the LOI would terminate:

> The LOI shall enter into force when it has been signed by both Parties and shall terminate on the earlier of: (i) the date of execution of any full form agreement, and (ii) the date [Betfred Int'l] ceases to proceed with the application referred to; and (iii) the date it is confirmed another party has been appointed as the provider of the Sports Book Service.

(JA0042 ¶ 7.1). And, the parties agreed that "[t]he Parties shall have no claim against each other as a result of termination of the LOI for any reason." (*Id*.)

As Stebbings explained "[a]t no time prior to consummation was there a discussion between Hutchinson and me that any dispute over this agreement would be litigated in the United States, particularly not the State of Nevada." (JA0036 ¶ 9.) Stebbings maintained that "at the time of the LOI's signing," there was no certainty or commitment of any ongoing relationship for Betfred Int'l "with Mohegan Gaming outside of Connecticut." (*Id*. ¶ 10.). During the time McGuire and Betfred Int'l negotiated the terms of the LOI, "Mohegan Gaming did not conduct gaming operations in the State of Nevada." (*Id*. ¶ 11.) "Of note, on July 2, 2018, Mohegan Gaming announced another partnership in New Jersey which conveyed to Betfred Int'l that Mohegan Gaming has never had an intention to deal with only one

sportsbook operator" and "Mohegan gaming has a number of different sports wagering providers at its properties across the country." (*Id.*)

Notably, McGuire's FAC avoided the LOI's negotiations and its terms. (*See* JA0001-10.) Moreover, despite the opportunity to and the reliance on a declaration from Hutchinson in its opposition to Betfred Int'l's Motion to Dismiss, McGuire ***never disputed*** Stebbings's explanations of the terms of the LOI and Betfred Int'l's rationale with properly supported evidence. (*See*, *e.g.*, JA0071-76.)

C. Betfred Int'l Travels to Nevada Only to Learn that its Connecticut bid Failed and the LOI Terminated.

Following the parties consummating the LOI, Betfred Int'l prepared and submitted its bid from within the U.K. to obtain the Mohegan Sun Connecticut sportsbook. (JA0183 ¶ 7; JA0036 ¶ 12.) In August 2018, both Betfred Int'l and McGuire traveled to Connecticut to meet with McGuire's contact Sherman Brown and the Mohegan Sun in order to pitch Betfred Int'l's bid for the Connecticut sportsbook service (the "Connecticut Meeting"). (JA0183 ¶ 8; JA0037 ¶ 13.) After the Connecticut Meeting, McGuire incorrectly predicted – supposedly via Sherman Brown's contacts – that Betfred Int'l would be awarded the Mohegan Sun's Connecticut Sportsbook. (JA0183 ¶ 9; JA0037 ¶ 14.)

But as time passed with no word, Stebbings reached out to Mohegan Gaming's representative, Avi Alroy ("Alroy") about the status of Betfred Int'l's Connecticut proposal. (JA0037 ¶ 15.) Throughout these communications, Alroy remained aloof

and noncommittal citing potential legislative issues pending in Connecticut. (*Id*.) Because the G2E is held annually in Las Vegas, Nevada and is regularly attended by representatives and executives in the gaming industry and Stebbings already had made plans to attend that G2E event, Stebbings requested a meeting with Alroy, both Browns, and Hutchinson regarding the status of the Connecticut opportunity.[3] (*Id*. at ¶ 16.)

Thus, Betfred Int'l did travel to Nevada to attend the October 2018 G2E Conference in Las Vegas. (JA0184 ¶ 10.) It is at G2E where Alroy informed Betfred Int'l and McGuire that the Connecticut opportunity was going to be awarded to another sportsbook operator. (JA0184 ¶ 11; JA0037 ¶ 17.) As a result, both McGuire and Betfred Int'l understood at that meeting that the terms of the LOI ***would never*** be met and the LOI terminated. (JA0184 ¶ 12; JA0038 ¶ 18.).

Hutchinson confirmed this mutual understanding, emailing Stebbings after the G2E meeting:

> I would just like to say what a pleasure it was to meet you guys and spend some quality time with you. [Betfred Int'l is] a highly successful business in Europe and that is something to be hugely proud of.

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[3] Despite McGuire's attempt to create a conflicted fact to be resolved in its favor, the description of the Nevada meeting presented by both Hutchinson and Stebbings shows that both parties were going to Nevada to be at G2E ***and*** the parties decided to schedule a meeting with Alroy. (*Compare* JA0074 ¶ 17, *and* JA0092 (detailing that the parties would meet at the Betfred Int'l "stand" set up at G2E), *with* JA0037 ¶¶ 16.) The meeting at G2E is the very definition of a fortuitous meeting as it was in addition to G2E, not a deliberate, planned trip to Las Vegas for the purpose of engaging with McGuire and Mohegan Gaming regarding the LOI.

> [Betfred Int'l] will be a success in USA [I] know, I'm just gutted [I] will not be along to see it.

(JA0045; *see also* JA0184 ¶ 12 (quoting part of the email in the district court's findings of facts).)

D. Betfred Int'l Incorporates American Subsidiaries in 2019 and 2020.

Because Betfred Int'l continued to have a high level of interest in entering U.S. markets with the change in the law from the *Murphy* decision, Betfred Int'l reflected on the lessons it learned from the failed Connecticut bid. (JA0038 ¶ 21.) Based on that reflection, Betfred Int'l decided to obtain an American contact that could actually facilitate successful sportsbook bids stateside. (*Id.*) Therefore, in June 2019, well after the LOI's termination, Betfred Int'l incorporated an American subsidiary in Nevada, Betfred Sports USA, LLC ("Betfred USA"). (JA0184 ¶ 15; *see also* JA0047-49 (detailing all of Betfred Int'l's American subsidiaries).)

Betfred USA in turn engaged an experienced attorney, Stephen Crystal ("Crystal") as its Business Development Manager to find and pursue gaming opportunities. (JA0038 ¶¶ 21-22.) On behalf of Betfred USA, Crystal did so, and Betfred USA in 2019 and 2020 formed subsidiaries for Arizona, Colorado, Indiana, Iowa, Louisiana, Minnesota, Ohio, Oregon, Pennsylvania, South Dakota, Virginia, and Washington. (JA0184 ¶ 16; JA0047-49.) Since that time and with Crystal's assistance, Betfred USA and its subsidiaries (following the competitive selection

processes) established sports betting facilities in Iowa, Colorado, and Pennsylvania. (JA0184 ¶ 16; JA0038-39 ¶ 22.)

Later and unbeknownst to Betfred Int'l, the Mohegan Tribe was also seeking to expand its footprint across the country and in particular, in Nevada. (JA0039 ¶ 23.) As Betfred USA only learned in late 2019, Mohegan Gaming incorporated MGNV, LLC ("MGNV") a Delaware LLC, and MGNV obtained the rights to manage the Las Vegas Virgin Hotel & Casino's Gaming Operations. (JA0184 ¶ 17; JA0039 ¶¶ 23-24.) In October 2019, MGNV issued invites to Betfred USA and several other sportsbook providers to submit competitive bids through an open selection process to obtain sportsbook operations for the Virgin Hotel & Casino in Las Vegas. (JA0185 ¶ 18; JA0039 ¶ 24.)

In January 2020, Betfred USA formed Betfred Nevada LLC ("Betfred Nevada") as Betfred USA signed a non-disclosure agreement. (JA0185 ¶ 19; JA0039 ¶ 25.) As the successful applicant, Betfred Nevada then entered into a conditional agreement to be the sportsbook operator for the Virgin Hotel & Casino. (JA0185 ¶ 20; JA0039 ¶ 25; *see also* JA0142 (chart detailing these facts).)

As McGuire conceded in its complaint, it did not have anything to do with the Nevada opportunity, as McGuire did not even know about it until it read about Betfred Nevada being chosen in a press release sent to Hutchinson in a text message. (JA0006 ¶ 37 (admitting in its complaint that "Kevin Brown's text message [in July

2020] was ***the first time*** McGuire learned that Betfred [Nevada] would become the sportsbook operator for the Virgin Hotel Casino. . . . " (emphasis added)); JA0015 (citing to the text message).)

E. McGuire Brings Suit Against Betfred Int'l in 2021.

More than two years after telling Betfred Int'l "[y]ou will be a success . . . I'm just gutted I will not be along to see it," McGuire suddenly resurfaced with a lawsuit pretending as though the LOI still existed and was somehow relevant to Betfred Nevada obtaining the Virgin Hotel & Casino sportsbook operation opportunity. (*See* JA0001-10.) Recognizing that McGuire misstated the timeline of events, the LOI's terms, and the complete lack of support McGuire provided in its complaint for personal jurisdiction, Betfred Int'l moved to dismiss McGuire's Complaint. (JA0019-33.)

After full briefing, the district court granted Betfred Int'l's motion to dismiss for lack of personal jurisdiction and recognized that McGuire has made no showing for jurisdictional discovery or for amending its complaint. (JA0180-88.) As the district court found, citing Stebbings uncontroverted declaration, "[t]here is no connection between the LOI and the State of Nevada." (JA0184 ¶ 11; *see also* JA0037 ¶ 16 ("Nevada had nothing to with the LOI or our meeting.").) The district court noted that the get-together at G2E "occurred simply because these parties were all in the same location at the same time" and that following this meeting McGuire

failed to put forth any "evidence in the record that the parties continued working together following the October 2018 G2E meeting." (JA0184 ¶¶ 11-12; JA0006 ¶ 37; *see also* Appellant's Opening Br. ("AOB") at 12 ¶ 37 (same).)

Even if McGuire and Betfred Int'l's understanding in the immediate aftermath of the meeting at G2E that the LOI's purpose would never be performed was somehow confused, in March 2019, the Mohegan Sun publicly announced that it awarded the Connecticut contract to Kambi.[4] (JA0184 ¶ 13; JA0038 ¶ 20; *see* JA0184 ¶ 14 (finding that "Section 7.1 of the LOI provides a termination clause which specifies that the LOI terminates 'the date [Betfred Int'l] ceases to proceed with the application referred to; and . . . the date it is confirmed another party has been appointed as the provider of the Sports Book Service.'" (quoting JA0042 ¶ 7.1)).) Thus, at the latest, March 2019, represents the termination of the LOI. McGuire never disputed this fact before the district court.

Simply put, there is no connection between Nevada and a dispute about a U.K. LOI for a Connecticut proposal which had terminated years prior. The district court recognized that McGuire had failed to set forth evidence sufficient to satisfy its

[4] (*See* JA0038 ¶ 20 (citing to *Kambi to Power Mohegan Sun Sportsbook in Connecticut*, CasinoNewsDaily.com (Mar. 28, 2019, 12:54 PM), https://www.casinonewsdaily.com/2019/03/28/kambi-to-power-mohegan-sun-sportsbook-in-connecticut/.)

burden of showing any prospect for personal jurisdiction over Betfred Int'l. That decision should be affirmed.

III. ARGUMENT

A. The District Court Correctly Decided the Question of Personal Jurisdiction.

This Court reviews the district court's decision granting Betfred Int'l's motion to dismiss de novo. *See Tricarichi v. Cooperative Rabobank, U.A.*, 135 Nev. 87, 91, 440 P.3d 645, 650 (2019); *Dogra v. Liles*, 129 Nev. 932, 936, 314 P.3d 952, 955 (2013). McGuire's factual allegations pleaded in its complaint must be taken as true, although they are not conceded by Betfred Int'l. *See* NRCP 12(b)(2). However, significant relevant and important facts are wholly absent from McGuire's pleadings regarding the LOI. (*See* JA0001-10.)

Therefore, much of the analysis conducted by the district court was focused on whether McGuire should be permitted to conduct jurisdictional discovery and/or afforded leave to amend its pleadings; the district court determined neither were necessary. (*See* JA0175 (explaining that the record before the district court is "exhaustive" and that the district court "considered whether or not the complaint was capable of amendment" and that under the facts presented by the Parties the district court "didn't think it was").)

Indeed, as this Court reviews that decision, the district court's consideration of evidence outside of the complaint does not turn the motion to dismiss into a

motion for summary judgment. *See Viega GmbH v. Eighth Jud. Dist. Ct.*, 130 Nev. 368, 374, 328 P.3d 1152, 1156 (2014); *see also In re Cay Clubs*, 130 Nev. 920, 936, 340 P.3d 563, 574 (2014) (detailing the parol evidence rule and permitting parties to explain the terms of a contract when terms are ambiguous or silent). And, discovery decisions are left to the discretion of the district court and will not be overturned absent a showing of an abuse of discretion. *See Tricarichi*, 135 Nev. at 89, n.15, 440 P.3d at 654 n.15 (jurisdictional discovery is not warranted where a plaintiff has failed to allege facts that would indicate that Nevada courts might have jurisdiction over a defendant (citing to *Viega GmbH*, 130 Nev. at 382, 328 P.3d at 1160)).

B. Nevada Courts lack Personal Jurisdiction Over Betfred Int'l.

NRCP 12(b)(2) requires this Court to affirm the district court's dismissal of McGuire's complaint because Nevada courts lack personal jurisdiction over Betfred Int'l related to the LOI. *See Ford Motor Comp. v. Montana Eighth Jud. Dist. Ct.*, 592 U.S. ___, ___, 141 S.Ct. 1017, 1024 (2021) ("The Fourteenth Amendment's Due Process Clause limits a state court's power to exercise jurisdiction over a defendant."). "[T]he plaintiff bears the burden of demonstrating that Nevada's long-arm statute grants jurisdiction over the defendant and that the exercise of that jurisdiction comports with the principles of due process." *Tricarichi*, 135 Nev. at 90, 440 P.3d at 649; *see also Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

"In giving content to that formulation, the [United States Supreme] Court has long focused on the nature and extent of the 'defendant's relationship to the forum state.'" *Ford*, 141 S.Ct. at 1024 (quoting *Bristol-Meyers Squibb Co. v. Superior Ct. of Cal.*, 582 U.S. ___, ___, 137 S.Ct. 1773, 1779 (2017)). For the "minimum contacts" analysis, courts must inquire to "'the defendant's suit-related'" contacts that "'the defendant ***himself*** creates with the forum state.'" *Walden v. Fiore*, 571 U.S. 277, 284 (2014) (emphasis in original) (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985)). At its core, the due process inquiry requires that the defendant have "sufficient contacts with the forum such that he or she could reasonably anticipate being haled into court there." *Trump v. Eighth Jud. Dist. Ct.*, 109 Nev. 687, 699, 857 P.2d 740, 748 (1993).

Because McGuire makes no suggestion of general jurisdiction, Betfred Int'l. first addresses McGuire's erroneous suggestion that the meeting at G2E in 2018 is sufficient for specific jurisdiction purposes under a "minimum contacts" and "purposeful availment" theory. Then Betfred Int'l untangles McGuire's confusing and incorrect claims regarding agency and alter ego to show why Nevada courts lack personal jurisdiction over Betfred Int'l through either of these unsupported and specious assertions. Finally, Betfred Int'l concludes by demonstrating how unjust and unreasonable it would be to force it to defend McGuire's fallacious claims in Nevada.

1. Nevada lacks Specific Jurisdiction over Betfred Int'l.

"In order for a state court to exercise jurisdiction, the ***suit*** must aris[e] out of or relat[e] to the defendant's contacts with the forum." *Bristol-Meyers Squibb Co*., 137 S.Ct. at 1781 (emphasis in original) (internal quotation marks omitted); *Trump*, 109 Nev. at 699, 857 P.2d at 748 (explaining that specific jurisdiction is proper only where "the cause of action arises from the defendant's contacts with the forum")

When addressing specific jurisdiction, courts must consider three factors: (1) whether the defendant purposefully availed itself of the privilege of acting in the forum state or purposefully directed its conduct towards the forum state, (2) whether the cause of action arose from or relates to the defendant's purposeful contact or activities in connection with the forum state, such that it is (3) reasonable to exercise personal jurisdiction over the defendant. *See Tricarichi*, 135 Nev. at 91, 440 P.3d at 650. Because McGuire's FAC alleges breach of contract, quantum meruit, or promissory estoppel, this Court must apply purposeful availment analysis as it applies to the LOI. *See Picot v. Weston*, 780 F.3d 1206, 1212 (9th Cir. 2015); *see also O'Connor v. Sandy Lane Hotel Co.*, 496 F.3d 312, 318 n.3 (3d Cir. 2007) (explaining that specific jurisdiction is assessed on a claim-by-claim basis).

a. <u>Betfred Int'l did not purposefully avail itself of Nevada's forum.</u>

Because this litigation arises out of a dispute regarding the LOI, in that context, the Constitution obligates parties that "'reach out beyond one state and

create continuing relationships and obligations with citizens of another state are subject to regulation and sanction in the other State for the consequences of their activities.'" *Burger King*, 471 U.S. at 473 (quoting *Travelers Health Ass'n. v. Virginia*, 339 U.S. 643, 647 (1950)). However, a singular contact with the forum and that contact provides zero indication that suit is foreseeable is a tenuous theory under the Due Process clause and long-established precedent. *Compare McGee v Int'l Life Ins. Co.*, 355 U.S. 220, 222-23 (1957), *with Hanson v. Deckla*, 357 U.S. 235, 253 (1958).

Indeed, "the [United States Supreme] Court has consistently held that . . . foreseeability [of causing an injury in another State] is not a 'sufficient benchmark' for exercising personal jurisdiction." *Burger King*, 471 U.S. at 474 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295 (1980)). "Instead, 'the foreseeability that is critical to the due process analysis . . . is that the defendant's conduct and connection with the forum state are such that he should ***reasonably anticipate*** being haled into court there." *Burger King*, 471 U.S. at 474 (emphasis added) (quoting *World-Wide Volkswagen*, 444 U.S. at 297). "In other words, there must be 'an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum state and is therefore subject to the State's regulation.'" *Bristol-Meyers Squibb*, 137 S.Ct. at 1780 (quoting *Goodyear*, 564 U.S. at 918).

Both with the district court and on appeal, McGuire contends that when Betfred Int'l met with McGuire and the Mohegan Sun at G2E in Las Vegas, that "'single contact'" is sufficient for Nevada to possess personal jurisdiction over Betfred Int'l.[5] (AOB at 23 (emphasis omitted) (quoting *Mirage Casino-Hotel v. Carem*, 762 F.Supp. 286, 288 (D. Nev. 1991))); *see also* JA0059-60).) McGuire asks this Court to evaluate the "'quality of these contacts, and not the quantity'" as this Court analyzes that meeting. (AOB at 23 (quoting *Trump*, 109 Nev. at 699, 857 P.2d at 749); *see also* JA0059-60.)

Betfred Int'l agrees that this Court must look at Betfred Int'l's single contact with the forum through the 2018 meeting at G2E, the quality of that contact, and the law addressing the single-contact theory. Once this Court considers the actual law, it is clear that personal jurisdiction is absent under these facts.

For example, the *Caram* case embraced by McGuire notes that "Defendant admits to coming to Nevada an average of six times per year." 762 F.Supp. at 288. *Caram* relies on two other cases for the proposition that a "single contact" in the

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[5] As detailed below, McGuire's reliance on the incorporation of Nevada-based subsidiaries and Betfred Nevada's contract with the Virgin Hotel & Casino ***after*** the LOI terminated cannot be imputed to Betfred Int'l under the law. *Viega GmbH*, 130 Nev. at 382, 328 P.3d at 1161 ("'The rules governing the establishment of jurisdiction over such a foreign corporation are clear and settled, and it would be inappropriate for us to deviate from them or to create an exception to them because of the problems plaintiffs may have in meeting their somewhat strict standards.'" (quoting *Jazini v. Nissan Motor Co. Ltd.*, 148 F.3d 181, 186 (2d Cir. 1998)).

forum can be sufficient. 762 F.Supp. at 288; *see also Wells Fargo & Co. v. Wells Fargo Exp. Co.*, 556 F.2d 406, 415 (9th Cir. 1977) (concluding that "the loan contract was negotiated and consummated" and agent "traveled to Nevada for that purpose" and "[s]uch a purposeful single contact is clearly sufficient to satisfy the constitutional test"); *Sage Computer Technology v. P-Code Dist. Corp*. 576 F.Supp. 1194, 1197 (D. Nev. 1983) ("Here, the Agreement was negotiated in Nevada, the State's law was specified as controlling in construing it, substantial purchases were made from Nevada . . . via phone calls into the State, and the claims for relief arose from those very purchases.").

None of these cases apply to the facts here: the LOI was originally created by Betfred Int'l in the U.K and all negotiations by Betfred Int'l occurred via phone and email with Betfred Int'l in the U.K. (JA0183 ¶ 6; JA0036 ¶ 8.) McGuire – through Hutchinson – traveled to the U.K. to negotiate the LOI. (JA0183 ¶ 6; JA0036 ¶ 8.) The parties agreed that the LOI would be governed by U.K. law, and Betfred Int'l consummated the LOI while in the U.K. (JA0183 ¶ 6; JA0036 ¶ 9.) The only contact with Nevada was the single fortuitous 2018 G2E meeting — after the LOI was formed and after the bid was made in Connecticut — where the parties briefly met while they each attended G2E and learned that Betfred Int'l's bid was not chosen. (JA0038 ¶¶ 18-20; JA0074 ¶ 19; JA0184 ¶¶ 11-13.)

McGuire understood that the LOI terminated as a result. Hutchinson's own, unrebutted email admits what happened. *See* JA0045 ("You will be a success in USA [I] know, I'm just gutted I will not be along to see it."). And that reality was never contradicted before the district court. *See* JA0050-68 (never addressing Hutchinson's email in McGuire's opposition); JA0071-76 (never addressing his email in Hutchinson's own declaration); *see generally* AOB (again failing to provide any rebuttal or explanation on appeal regarding the Hutchinson email acknowledging the LOI's termination).)

The fallacy of McGuire's "single contact" theory is exposed through reviewing the plainly inapposite United States Supreme Court precedent which established the theory. *See*, *e.g.*, *McGee*, 355 U.S. at 223. *McGee* involved a contract dispute over payments of life insurance to a beneficiary in which the contacts with California were sufficient because the policy "was delivered in California, the premiums were mailed from there and the insured was a resident of that State when he died. It cannot be denied that California has a manifest interest in providing the effective means of redress for its residents when their insurers refuse to pay claims." *Id*.; *see* Russel Weintraub, *A Map out of the Personal Jurisdiction Labrynth*, 28 U.C. Davis L. Rev. 531, 535 (1995) (explaining that *McGee* represents the "highwater mark for personal jurisdiction" and that just "a year later, in *Hanson v. Deckla*, the tide began to ebb" (citation omitted)).

As the *Hanson* Court explained, the sufficiency of "unilateral activity" in the forum by a defendant "will vary with the ***quality and nature*** of the defendant's activity, but it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the ***benefits and protections*** of its law." 357 U.S. at 253 (emphasis added).

At no point in time prior to or during the 2018 Las Vegas G2E conference did Betfred Int'l derive a "benefit" from Nevada nor did it seek this State's "protections" related to the LOI that form the basis of McGuire's claims. *Id.*; *see also Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984) (explaining that it is insufficient for a plaintiff to point to "random," "fortuitous," or "attenuated" contacts of the defendant). The meeting between the parties at G2E served as the termination of – not the beginning of – Betfred Int'l's pursuit of the Mohegan Sun's Connecticut sportsbook and simultaneously served as the termination of its relationship with McGuire. (*See* JA0045.) *Cf. Wells Fargo & Co.*, 556 F.2d at 415; *Sage*, 576 F.Supp. at 1197. McGuire's arguments run astray of the law because accepting McGuire's argument would require this Court to conclude that Betfred Int'l should have foreseen injury to McGuire through the 2018 G2E meeting and this meeting alone would force Betfred Int'l to defend itself in Nevada. *See Burger King*, 471 U.S. at

474 ("[F]oreseeability [of causing an injury in another State] is not a sufficient benchmark." (internal quotation marks omitted)).

As McGuire's FAC makes clear, that one Nevada meeting has nothing to do with the claims it asserts; McGuire simply proposes to tie wholly unconnected events to the LOI in a desperate attempt to extract a massive bounty from Betfred Int'l despite never assisting Betfred Nevada (a distinct US gaming licensee) regarding the Virgin Hotel & Casino sportsbook opportunity. (*See* JA0001-10.). Simply put, the "quality and nature" of Betfred Int'l's brief Nevada contact and the claims McGuire alleges in its FAC are insufficient under the Constitution. *See Hanson*, 357 U.S. at 253. The district court rightly rejected McGuire's "single contact" contention.

b. McGuire's agency and alter ego theories lack support under these facts and under Nevada law.

McGuire's efforts to hale a foreign corporation into Nevada through the acts of a subsidiary company are equally untenable. As this Court has explained, "corporate entities are presumed separate, and thus, the mere existence of a relationship between a company and its subsidiaries is not sufficient to establish personal jurisdiction over the parent on the basis of the subsidiaries' minimum contacts with the forum." *Viega GmbH*, 130 Nev. at 375, 318 P.3d at 1157. Furthermore, a "[s]ubsidiaries' contacts have been imputed to parent companies only under narrow exceptions to this general rule, including the 'alter ego' theory, and at least in cases of specific jurisdiction, the 'agency' theory." *Id*.

i. McGuire's FAC failed to include any facts alleging alter ego and its FAC likewise fails the particularity pleading requirements for fraud under NRCP 9.

"The alter ego theory allows plaintiffs to pierce the corporate veil to impute a subsidiaries' contacts to the parent company by showing that the subsidiary and the parent are one and the same." *Viega GmbH*, 130 Nev. at 375, 328 P.3d at 1157 (relying on *Goodyear*, 564 U.S. at 930-31). As this Court noted, "[t]he rationale behind this theory is that the alter ego subsidiary is the same entity as its parent, and thus, the jurisdictional contacts of the subsidiary are also jurisdictional contacts of the parent." *Id*.

But alter ego for personal jurisdiction purposes requires a showing of (1) "such unity of interest and ownership" between the parent and subsidiary "that the separate personalities of the two entities no longer exist" and (2) that the failure to disregard" the separate entities "would result in fraud or injustice." *Ranza v. Nike Inc.*, 193 F.3d 1059, 1073 (9th Cir. 2015).

McGuire presented no facts of any alter ego in its complaint.[6] (JA0001-15.) Even setting aside the presumption of corporate separateness that Nevada law

[6] Despite claiming on appeal that Betfred Int'l "should not permitted to hide behind the corporate fictions it intentionally formed to avoid personal jurisdiction in Nevada and its obligations under the" LOI, (AOB 32) McGuire's pleadings are devoid of any of this purported fraud in creating the American subsidiaries and none of the subsidiaries are actually named parties. (*See* JA0001-15.) Therefore, McGuire failed in its notice obligations and NRCP 9 cannot be satisfied. *See W. States Constr. Inc. v. Michoff*, 108 Nev. 931, 936, 840 P.2d 1220, 1223 (1992)

requires and McGuire ignores, McGuire presented zero evidence to the district court of any irregular, improper or illegal control by Betfred Int'l. (*See* JA0158-75.) McGuire's suggestion of alter ego is facially specious and lacks any evidence, let alone substantial evidence to conclude the district court's finding of fact constitute an abuse of discretion. As the district court noted, "McGuire's arguments regarding agency and alter ego are rejected because it would require the Court to ***speculate*** with regard to the Nevada subsidiary entities and other non-parties to the litigation." (JA0185 ¶ 1(c) (emphasis added).) *See also Univ. & Cmty. Coll. Sys. of Nevada v. Nevadans for Sound Gov't*, 120 Nev. 712, 721, 100 P.3d 179, 187 (2004).

Even ignoring its lack of evidence, the law McGuire claims support its arguments are wholly inapposite. (*See* AOB 29-32 (relying on *Iconlab, Inc. v. Bausch Health Companies, Inc.*, 828 F. App'x. 363, 364 (9th Cir. 2020); *NML Capital Ltd. v. Republic of Argentina*, 2015 WL 1186548 at * 11 (D. Nev. Mar. 16, 2015).) In *Iconlab*, the Ninth Circuit explained, that even though the parent company "approved their large purchases, financed their activity, issued collective media releases, and submitted consolidated earnings reports . . .[t]he district court

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(reasoning that a complaint "must set forth sufficient facts . . . so that the defending party has adequate notice of the nature of the claim and relief sought"); *see also Swartz v. KPMG LLP*, 476 F.3d 756, 765-65 (9th Cir. 2007) (discussing the federal counterpart to NRCP 9(b) and reasoning that "Rule 9(b) does not allow a complaint to merely lump multiple defendants together but requires plaintiffs to differentiate their allegations when suing more than one defendant and inform each defendant separately of the allegations surrounding his alleged participation in the fraud").

was correct that none of these allegations show [the parent's] day-to-day involvement in its subsidiaries governance." *Inconlab*, 828 Fed. App'x at 364-65 (citing *Ranza*, 793 F.3d at 1073). The Ninth Circuit reasoned "these activities reflect routine operations between a parent and its subsidiary" and that Inconlab failed to show "that injustice would result here from 'recognition of the corporate form.'" *Id*.; (quoting *Tomaselli v. Transamerica Ins. Co.*, 31 Cal.Rptr.2d 433, 443 (Cal. Ct. App. 1994) (finding "inadequate capitalization, comingling of assets, [and the] disregard of corporate formalities" can satisfy this standard)).

Although *NML Capital* involved a court concluding alter ego personal jurisdiction present, the facts there are very different to McGuire's FAC. *See NML Captial*, 2015 WL 1186548, at *11. That litigation is the result of the massive Panama Papers fraud and money laundering scheme.[7] There the district court explained that the Nevada subsidiary created "on the shelf corporations that are ready to go in less than 24 hours" and that when the foreign parent corporation was instructed by a client to purchase a corporation, the Nevada subsidiary handled all of the processing with the Nevada Secretary of State." *Id*. at *13. Moreover, the parent corporation website advertised the services of the Nevada subsidiary on the

[7] (*See* JA0149 (citing to Luke Harding, *Panama Papers Investigation Wins Pulitzer Prize*, TheGuardian.com (Apr. 11, 2017, 6:39 PM EDT), https://www.theguardian.com/world/2017apr/11/panama-papers-investigation-wins-pulitzer-prize).)

parent's website. *Id*. The district court went on to hold that "[m]aintaining the fiction of M.F. Corporate Services' corporate separateness would result in fraud or injustice because it would shield reasonable suspicion of fraud and money laundering related to the judgment debtor's assets from further investigation." *Id*. at *14 (citing to *Viega GmbH*, 130 Nev. at 375, 328 P.3d at 1157).

McGuire's FAC is a far cry from this money-laundering and fraud that was detailed in *NML Capital* while the facts here comport with the Ninth Circuit's analysis in *Iconlab*. Nothing in McGuire's pleadings, in its opposition, or even in its Brief to this Court is sufficient for this Court to conclude that Betfred Int'l exerts "pervasive control over the subsidiary" and its "day-to-day operations." *Ranza*, 793 F.3d at 1073. Nor has McGuire alleged sufficient facts for this Court to conclude that injustice would result from recognition of the corporate from. *See Viega Gmbh*, 130 Nev. at 375, 328 P.3d at 1157 (relying on *Tomaselli*, 31 Cal.Rptr. 2d at 443). McGuire ***failed to even name*** Betfred USA or Betfred Nevada as defendants in this case. (*See* JA0001-10.) Nor could it. Its entire case is predicated upon the LOI executed with Betfred Int'l in the U.K., long before these American companies ever came into existence. (JA0047-49.)

McGuire alleges no facts whatsoever that these U.S.-based gaming companies – who are subject to extensive gaming regulation – are in any way the alter ego of Betfred Int'l so as to subject this foreign corporation to personal jurisdiction over a

dispute of an LOI governed by U.K. law. Once again, the district court correctly rejected McGuire's unsupported contentions.

ii. McGuire's agency theory asks this Court to move from the plausible to the conspiratorial while providing zero evidence of agency.

McGuire's next argument for personal jurisdiction – agency – is equally without merit. "Unlike with the alter ego theory, the corporate identity of the parent company is preserved under the agency theory; the parent nevertheless 'is held for the acts of the [subsidiary] agent' because the subsidiary was acting on the parent's behalf.'" *Viega GmbH*, 130 Nev. at 376, 328 P.3d at 1157 (quoting *F. Hoffman-LaRoche, Ltd. v. Superior Ct.*, 30 Cal.Rptr.3d 407, 418 (Cal. Ct. App. 2005)).

Here, McGuire points to Betfred USA's website, as well as the similarity of board members between Betfred Int'l, Betfred USA, and Betfred Nevada, coupled with the similarity of the sportsbook services that are provided by the parent and subsidiary corporations.[8] (AOB 26-29.) Yet, these are the exact same flawed arguments levied in *Viega GmbH*, where this Court explained that when a plaintiff asserts "such a broad agency relationship between a parent company and its

[8] McGuire again relies on the inapposite *NML Capital* case for support in its agency theory of specific personal jurisdiction. (AOB 26-28). The only other case McGuire cites to for support is the extremely conclusory – a two paragraph decision – where this Court denied a writ of prohibition because this Court's "*de novo* review of the evidence presented to the district court and concluded the district reached the correct result" with actually presenting the evidence or analyzing the law in the decision. *Hosp. Corp. of Am. v. Second Jud. Dist. Ct.*, 112 Nev. 1159, 1160, 924 P.2d 725, 725 (1996).

subsidiary, the control at issue must not only be of a degree 'more pervasive than . . . common features' of ownership" but the plaintiff must show that "the parent has 'moved beyond the establishment of general policy and direction for the subsidiary and in effect taken over performance of the subsidiary's day-to-day operations in carrying out that policy.'" *Id*. (quoting *F. Hoffman-LaRoche*, 30 Cal.Rptr.3d at 418-19). Again, McGuire's FAC never even included Betfred USA nor Betfred Nevada as defendants. (*See* JA0001-10.) McGuire's opposition and its arguments on appeal fail to meet this exacting standard – and it is clear that McGuire will never be able to meet that standard even if the district had granted leave to amend.

McGuire additionally confuses its lack of substance when it asserts that Betfred Int'l (1) "admittedly created these Nevada subsidiaries solely to further Betfred's business opportunities and to obtain the Mohegan Sportsbook Services", (2) "[b]ut for the subsidiaries existence, Betfred would be performing these functions in Nevada itself", and (3) "[t]he fact that the subsidiaries did not exist at the time of the [LOI] only supports McGuire's position, as it shows they were intentionally created to obtain the Mohegan Sportsbook Services in an effort to avoid Betfred [Int'l's] obligations under the" LOI. (AOB at 27 (emphasis omitted).)

McGuire's theory requires this Court to make several logic-defying leaps to conclude that (1) Betfred Int'l severed its ties with McGuire in 2018, (2) created

several U.S. subsidiaries, and (3) obtained gaming licenses in three other states with other entities, all while being omniscient that the Mohegan Sun would eventually obtain the Virgin Hotel & Casino gambling operation, and that Betfred Int'l used its omniscience to then cut McGuire out of the LOI. (*Cf.* AOB at 27.) Simply put, McGuire resorts to fanciful conspiracy theories that are supported by nothing.

Instead of entertaining unsupported rhetoric, this Court should recognize that Betfred Int'l knew the LOI terminated in October 2018 (or at the latest March 2019 when Kambi obtained the Connecticut sportsbook). Thereafter, Betfred Int'l formed its U.S. based subsidiary Betfred USA in June 2019, and its subsidiaries obtained other contracts across the country to build a book of business. After the Mohegan Sun obtained the Virgin Hotel & Casino gaming operation, it invited Betfred USA to submit a competitive bid on its sportsbook, and only when that bid promised a contract for Betfred USA, did it form Betfred Nevada, and Betfred Nevada in fact earned a contract for the Virgin Hotel & Casino sportsbook. (*See* JA0185 ¶ 1(c).). Indeed, just as McGuire's Hutchinson predicted, the Betfred group would likely be successful in the U.S. but it would have nothing to do with McGuire. (*See* JA0045).

Again, McGuire's arguments "merely show the amount of control in a typical parent-subsidiary relationship and thus are insufficient to demonstrate agency." *Viega GmbH*, 130 Nev. at 380, 328 P.3d at 1160. McGuire presented no basis for personal jurisdiction over a U.K. company on any "agency" theory.

c. It is not reasonable to hale Betfred Int'l into Nevada simply because of technological advances

But McGuire's failures to present case law to support personal jurisdiction does not end there. McGuire makes the conclusory assertion that "[o]nce the plaintiff demonstrates the defendant purposefully availed itself of the forum's benefits, the exercise of jurisdiction is presumptively reasonable." (AOB at 32 (citing *Trump*, 109 Nev. at 700-01, 857 P.2d at 749).) McGuire also points to "this era of internet, email, and video-conferencing" to supposedly dispel Betfred Int'l's legitimate and tremendous burden of litigating this U.K. contract dispute in Nevada. (AOB at 35.)

As thoroughly shown above, McGuire failed to meet, or even show, the necessary minimum contacts or purposeful availment to Nevada by Betfred Int'l for any Nevada court to assert personal jurisdiction; thus, the burden does not shift to Betfred Int'l. *See Trump*, 109 Nev. at 700-01, 857 P.2d at 749. While there are a variety of factors to consider under the reasonableness prong, the United States Supreme Court has been explicit that "'the primary concern is the burden on the defendant.'" *Bristol-Meyers Squibb*, 137 S.Ct. at 1780 (quoting *Kulko v. Cali. Superior Ct.*, 436 U.S. 84, 93 (1978)).

Furthermore, the decades-old decision analyzing the burdens of a foreign corporation litigating in a forum in which the forum in question possesses no interest (*i.e.*, the contract is neither governed by Nevada law and neither party is a Nevada

citizen) should produce significant reticence for this Court. *See*, *e.g.*, *Asahi Metal Industry Co., Ltd. v. Superior Ct. of Cali.*, 480 U.S. 102, 114 (1987) ("The unique burdens placed upon one who must defend oneself in a foreign legal system should have ***significant weight*** in assessing the reasonableness of stretching the long arm of personal jurisdiction over national borders." (emphasis added); *id*. at 115 ("Because the plaintiff is not a California resident, California's legitimate interests in the dispute have considerably diminished. . . . ").

Recall, that this a basic contract dispute governed by U.K. law, between a U.K. and Bahaman Company, with a U.K. choice-of-law provision.[9] (*See* JA0041-42.) Nevada Courts have no interest in resolving this dispute for a Bahaman company with a principal place of business in Florida and Betfred Int'l being forced to litigate this matter here would be overly burdensome because – and the parties

[9] McGuire correctly notes the district court's scrivener's error regarding the LOI's choice of law, rather than a forum selection clause. (AOB 32-37; *see also* JA0185 (incorrectly finding that the LOI "included a forum selection clause".) We know this is a scrivener's error because if the LOI truly contained a forum-selection clause, that would have ended the analysis completely and the district court would not have endeavored to document Betfred Int'l's singular contact with Nevada so meticulously. (*See* JA0182-86.) Additionally, this minor mistake does nothing to alter the district court's otherwise detailed factual findings and clear application of the pertinent personal jurisdiction precedents enunciated by this Court and the United States Supreme Court such that this Court need not reverse, and remand. *See Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010) (explaining that this Court will affirm a district court's order if the district court reached the correct result, even if for the wrong reason).

agree – Betfred Int'l only has a "single contact" with Nevada related to the LOI. (AOB at 23.) *see also Asahi*, 480 U.S. at 116 ("Considering the international context, the heavy burden on the alien defendant, and the slight interests of the plaintiff and the forum states, the exercise of personal jurisdiction . . . would be unreasonable and unfair."). McGuire has a sufficient forum – the U.K. – and this Court should direct them to that courthouse to litigate this matter.

McGuire – attempting to again shift the burden to Betfred Int'l – claims that Betfred Int'l "did not identify any conflict of law that would make it unreasonable for a Nevada court to resolve this dispute." (AOB at 34.) The difference between litigating this dispute in the United States as opposed to the U.K. is foundational – the American Rule of attorney's costs and fees is well-established as opposed to the English Rule. *See Thomas v. City of N. Las Vegas*, 122 Nev. 82, 91, 127 P.3d 1057, 1063 (2006). It would constitute a matter of first impression in Nevada whether a contractual choice-of-law provision selecting U.K. law is sufficient to create a fee shifting arrangement under a contract such that the English Rule applies.[10] It cannot be reasonable and just for Betfred Int'l to litigate here in Nevada and be required to

[10] *Compare RLS Assoc., LLC v. United Bank of Kuwait PLC*, 464 F.Supp.2d 206 (S.D.N.Y. 2006) (concluding the English Rule of fees and costs applies under New York substantive law), *with Deutcshe Bank Trust Co. v. American General Life Ins. Co.*, 2016 WL 5719783, at *14 (S.D.N.Y. Sept. 30, 2016) (concluding the English Rule of fees and costs does not apply under New York substantive law).

establish new Nevada law while defending against McGuire's specious claims on this terminated LOI with only a single Nevada contact.

C. The District Court Correctly Found Jurisdictional Discovery was Unnecessary Because the Evidence Submitted was "Exhaustive."

Nevada law requires plaintiffs to put forth more than conclusory allegations in a complaint for this Court to conclude a district court abused its discretion when it denied jurisdictional discovery. *See Viega GmbH*, 130 Nev. at 382, 328 P.3d at 1160 (explaining that jurisdictional discovery is not warranted where plaintiffs fail to allege facts that would indicate that Nevada courts might have jurisdiction over defendants); s*ee also Tricarichi*, 135 Nev. at 98 n.15, 440 P.3d at 654 n.15.

This is the requirement for jurisdictional discovery across the country. *See*, *e.g.*, *Dever v. Hentzen Coatings, Inc.*, 380 F.3d 1070, 1074 (8th Cir. 2004) ("'When a plaintiff offers only speculation or conclusory assertions about contacts with a forum state, a court is within its discretion in denying jurisdictional discovery.'" (quoting *Carefirst of Maryland, Inc. v. Carefirst Pregnancy Ctrs., Inc.*, 334 F.3d 390, 402 (4th Cir. 2003)); *Regenexx, LLC v. Regenex Health LLC*, 446 F.Supp.3d 469, 467 n.2 (S.D. Iowa, 2020) ("A plaintiff is not entitled to jurisdictional discovery when he or she fails to rebut the defendants' assertions against jurisdiction and offers only conclusory allegations to support its claim that personal jurisdiction exists.").

There is no additional discovery needed for the 2018 G2E meeting as Betfred Int'l already furnished it and McGuire never rebutted it. Moreover, as for agency

and alter ego, McGuire's claims are based on generic and general facts that merely indicate "the amount of control ***typical in a parent-subsidiary relationship***." *Viega GmbH*, 130 Nev. at 380, 328 P.3d at 1160 (emphasis added). As McGuire has failed to allege any actual facts that would indicate a Nevada court possesses jurisdiction, there is no basis for this Court to conclude the district court abused its discretion in denying jurisdictional discovery. *See Club Vista Fin. Servs., LLC v. Eighth Jud. Dist. Ct.*, 128 Nev. 224, 228, 276 P.3d 246, 249 (2012); *see also Ellis v. Fortunate Seas, Ltd.*, 175 F.R.D. 308, 312 (S.D. Ind. 1997) (citing cases and holding "[i]t is reasonable for a court . . . to expect the plaintiff to show a colorable basis for jurisdiction before subjecting the defendant intrusive and burdensome discovery.")

1. McGuire failed to properly support its claims regarding the 2018 Nevada Meeting.

McGuire criticizes the district court for supposedly rejecting its counsel's contention – made at oral argument – that the parties supposedly discussed the prospects of Nevada business at the 2018 G2E meeting. But Nevada law does not require the district court to blindly comply with a naked contention of counsel but instead only mandates "accept[ing] ***properly supported proffers*** as true." *Tricarichi*, 135 Nev. at 91, 440 P.3d at 650 (emphasis added) (citing *Viega GmbH*, 130 Nev. at 374, 328 P.3d at 1156). McGuire's Complaint, McGuire's Opposition, Hutchinson's Declaration, and McGuire's Brief to this Court do not supply properly supported proffers regarding discussions at the 2018 G2E meeting about future Mohegan Tribe

sportsbook opportunities in Nevada. (*See*, *e.g.*, JA0006 ¶ 33; JA0055 ¶ 22; JA0072 ¶ 12; AOB at 23.)

This assertion was nothing but a self-serving last minute assertion by McGuire's counsel at oral argument which was contradicted by everything in the record, as Betfred Int'l explained:

> there was an assertion [just] made about Las Vegas being discussed at this 2018 meeting, but you'll notice [Hutchinson] actually doesn't say that. And you know why [Hutchinson] doesn't say that in his declaration, Your Honor? It's because it was an impossibility because the tribe didn't even acquire, didn't even form its entity to acquire the gaming operations at the Virgin until 2019
>
> So that is a nice sleight-of-hand by plaintiff but that's exactly what it is. So just simply saying, well there was a discussion that maybe there would be other opportunities elsewhere, it certainly didn't have anything to do with Nevada in 2018.

(*See* JA0171:5-16.)

The district court considered these arguments and agreed with Betfred Int'l that counsel's assertion was not properly supported. (JA0183 ¶ 9 ("[T]here is no evidence in the record that McGuire ever assisted Betfred Int'l or even discussed assisting Betfred Int'l in obtaining any business in Nevada.").) *See also Regenexx*, 446 F.Supp.3d at 467 n.2 ("[N]oting that the plaintiff did not provide any documentary evidence that provides any inference or additional contacts that the defendant might have with the forum state. . . . Plaintiff is not entitled to jurisdictional discovery." (cleaned up)).

2. The district court did not abuse its discretion by evaluating the intertwined merits and jurisdictional questions.

As for the district court evaluating whether the LOI terminated in October 2018 or in March 2019, McGuire claims "[t]he district court blundered by resolving a factual dispute rather than personal jurisdiction." (AOB 25.) Yet, there was no blunder here by the district court. It is McGuire who simply disregards the English language in the LOI when making its jurisdictional arguments.

The Ninth Circuit Court of Appeals addressed when it is proper for a district court to analyze intertwined and enmeshed jurisdictional and merits questions long ago. *See Data Disc., Inc. v. Systems Tech. Assoc., Inc.*, 557 F.2d 1280, 1285 n.2 (9th Cir. 1977). That Court explained that only after a plaintiff has provided sufficient prima facia evidence – a situation wholly absent here – can a plaintiff avoid a motion to dismiss. *See id*. But even if McGuire had overcome this hurdle it would

> not necessarily mean that [it] may then go to trial on the merits. If the pleadings and other submitted materials raise issues of credibility or disputed questions of fact with regard to jurisdiction, the district court has the discretion to take evidence at a preliminary hearing in order to resolve the contested issues.

Id. The Ninth Circuit explained that "[w]here the jurisdictional facts are intertwined with the merits, a decision on the jurisdictional issues is dependent on a decision of the merits. In such a case, the district court could determine its jurisdiction in a plenary pretrial proceeding." *Id*. at 1285 n.2 (citing to *Land v. Dollar*, 330 U.S. 731, 735 (1947) ("[A]lthough as a general rule the District Court would have authority to

consider questions of jurisdiction on the basis of affidavits as well as the pleadings, this is the type of case where the question of jurisdiction is dependent on [a] decision of the merits." (footnote omitted)). McGuire's arguments challenging the resolution on the merits are therefore contrary to law and as discussed above, belied by the properly supported facts put forth by Betfred Int'l. (*See* JA0035-39 (Stebbings' Declaration); JA0041-42 (LOI); JA0044-45 (Hutchinson termination email).)

More importantly than the foundation laid by Betfred Int'l with its exhibits, McGuire never rebutted Hutchinson's email before the district court or on appeal. (*See*, *e.g.*, JA0050-68 (never addressing Hutchinson's email in McGuire's opposition); JA0071-76 (never addressing his email in Hutchinson's own declaration); *see generally* AOB (again failing to provide any rebuttal or explanation on appeal regarding the Hutchinson email).) Thus, there can be no dispute over the fact that Hutchinson's email confirmed the LOI terminated and McGuire's assistance to Betfred Int'l ceased.

D. The District Court Properly Dismissed this Case With Prejudice.

Finally, McGuire erroneously avers the district court resolved this matter on the merits. (*See* AOB 38-40.) McGuire confuses the issues here – the dismissal was one for personal jurisdiction, not the merits. If McGuire chooses to refile this matter in the U.K. where a competent court with jurisdiction can resolve this matter, it may still do so. Of course, McGuire will face the consequences under U.K. law for

having advanced a baseless claim under an LOI it admitted terminated in its own emails back in 2018. But here, the district court did nothing but resolve the issue of personal jurisdiction over Betfred Int'l.

For instance, NRCP 41(b) details that when an involuntary dismissal is granted, "a dismissal under Rule 41(b) and any dismissal not under this rule—***except*** one for lack of jurisdiction, improper venue, or failure to join party under Rule 19—operates as an adjudication on the merits." (Emphasis added); *see also* NRCP 41(e)(6) ("A dismissal under Rule 41(e) is a bar to another action upon the same claim for relief against the same defendants ***unless*** the court provides otherwise in its order dismissing the action." (emphasis added)).

This of course comports with the district court's order which it

> conclude[d] that McGuire will never be capable of pleading any facts necessary to hale Betfred Int'l into a Nevada courthouse over the LOI, this Court denies McGuire's request for leave to amend its complaint and likewise dismisses this case with prejudice.

(JA0185:9-12.) The district court's order does nothing more than protect both Betfred Int'l and other Nevada courthouses from being required to resolve another amended complaint in the event McGuire sought to judge shop in Nevada by refiling here.

Moreover, this Court recently evaluated NRCP 41(b) in the context of determining whether or not a voluntary dismissal with prejudice was an adjudication on the merits such that it created a prevailing party status for the purposes of

awarding fees and costs. *See 145 East Harmon II Trust v. Residences at MGM Grand*, 136 Nev. 115, 118-20, 460 P.3d 455, 458-59 (2020). There this Court concluded that the voluntary dismissal with prejudice was on the merits due to the circumstances of that case while cautioning "[t]his rule is not absolute" and that future courts looking at dismissals "should consider the reason[s]" for the dismissal. *Id*. at 120, 460 P.3d at 460. In other words, the context of the dismissal matters when determining whether an adjudication on the merits occurred.

This Court need not deviate from the district court's order because the context is clear, this dismissal was one for personal jurisdiction.

IV. CONCLUSION.

The district court's decision should be affirmed.

DATED this 2nd day of May 2022.

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CERTIFICATE OF COMPLIANCE

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 Office Word 2007 in size 14 font in Times New Roman.

I further certify that I have read this brief and it 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 approximately 9,978 words.

Finally, I hereby certify that 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 that every assertion in this brief regarding matters in the record to be supported by appropriate references to the record on appeal. 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 2nd day of May 2022.

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I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 2nd day of May, 2022, I electronically filed and served by electronic mail a true and correct copy of the above and foregoing **RESPONDENT'S ANSWERING BRIEF** to all parties on the Court's Master Service List.

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