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**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

WHITE ROCKS (BVI) HOLDINGS INC., et al., ) Case No. A-24-896359-B

) Dept. No. 16

Plaintiffs,

)

) **HEARING REQUESTED**

vs.

)

) **DEFENDANTS' MOTION TO DISMISS**

DAVID REICHMAN, et al.,

)

) **FOR LACK OF PERSONAL**

) **JURISDICTION AND FORUM NON-**

Defendants,

)

) **CONVENIENS**

GLOBAL TECH INDUSTRIES INC.,

)

)

Nominal Defendant.

)

)

**DEFENDANTS' MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION AND  
FORUM NON- CONVENIENS**



1 Defendants David Reichman, Kathy M. Griffin, Frank Benintendo, Donald Gilbert, and Global  
2 Tech Industries Group, Inc. (hereafter “Defendants”), by and through their counsel of record, Robert A.  
3 Rabbat, Esq. and Teri T. Pham, Esq., of Enenstein Pham Glass & Rabbat LLP, hereby move this Court  
4 to dismiss Plaintiffs WHITE ROCKS (BVI) HOLDINGS INC., et al.’s (hereafter “Plaintiffs”) Claims  
5 against Defendants in their entirety for lack of personal jurisdiction, and forum non conveniens.

6 This motion is based on NRCP 12(b)(2) and 12(b)(5), NRS 13.050, the papers and pleadings on  
7 file in this matter, the attached Memorandum of Points and Authorities, the declarations and evidence  
8 filed concurrently herewith, and such further evidence and argument the Court may choose to consider.

9  
10 Dated: September 16, 2024

**ENENSTEIN PHAM GLASS & RABBAT LLP**

11  
12 By: 

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DATED this 16<sup>th</sup> day of September, 2024.

By: [Signature]

**DEFENDANTS' MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION AND  
FORUM NON CONVENIENS**



1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 As the Court may recall, this is an action brought by 200 plus purported shareholders of a publicly-  
4 traded corporation against four members of its board of directors for alleged self-dealing,  
5 mismanagement and other claims. Although the corporation is registered in Nevada, that is the extent of  
6 its ties to Nevada. None of the defendant board members reside in Nevada. None of the 200 plus  
7 purported shareholders reside in Nevada. The corporation itself does not conduct any business in Nevada  
8 and does not even maintain an office in Nevada. The corporation's principal place of business and office  
9 is in New York. All of the defendants reside in New York or on the east coast. All of the company's  
10 records are in New York or on the east coast. All of the alleged wrongdoing and mismanagement  
11 occurred in New York or on the east coast. For these reasons and as discussed below, Nevada is not the  
12 proper forum for this dispute and the Nevada courts and juries should not be burdened with adjudicating  
13 this dispute, which has virtually no ties to Nevada.

14 **II. FACTUAL BACKGROUND**

15 Nominal defendant Global Tech Industries Group, Inc. ("GTII") is a publicly-traded company,  
16 incorporated in the State of Nevada, with its principal place of business in New York. Defendants David  
17 Reichman, Kathy Griffin, Donald Gilbert and Frank Benintendo are current members of the Board of  
18 Directors of GTII. The named Plaintiffs claim to be purported shareholders of record of GTII.

19 On June 27, 2024, Plaintiffs commenced this action in Nevada, but did not immediately serve it.  
20 On July 2, 2024, Plaintiffs filed a First Amended Complaint, along with an Ex Parte Motion to Appoint  
21 Receiver and Issue a Temporary Restraining Order. Plaintiffs thereafter sent copies of the Ex Parte  
22 Motion to Defendants, but did not formally serve the Summons and Complaint on all Defendants. To  
23 avoid unnecessary delay and piecemeal motions, on August 21, 2024, Defendants agreed to accept  
24 service and thereafter agreed to an extension of time for all Defendants to file a responsive pleading.

25 The First Amended Complaint alleges that each of the Defendant board members engaged in  
26 mismanagement relating to their issuance of shares in the corporation over the last 20 years and failure  
27 to file certain disclosures. Defendants deny each and every material allegation, and further aver for  
28



1 purposes of this Motion that the Court is not the proper forum for adjudication of this dispute, which  
2 should be more properly handled in New York.

### 3 **III. LEGAL ARGUMENT**

#### 4 **A. Standard for Dismissal**

5 “Personal jurisdiction must exist for each claim asserted against a defendant.” (*Action Embroidery*  
6 *Corp. v. Atl. Embroidery, Inc.* (9th Cir. 2004) 368 F.3d 1174, 1190.) “When a challenge to personal  
7 jurisdiction is made, the plaintiff has the burden of introducing competent evidence of essential facts  
8 which establish a prima facie showing that personal jurisdiction exists.” (*Abbott-Interfast v. District*  
9 *Court* (1991) 107 Nev. 871, 873, 821 P.2d 1043, 1044; see also *Levinson v. District Court* (1987) 103  
10 Nev. 404, 406, 742 P.2d 1024, 1025; *Davis v. District Court* (1981) 97 Nev. 332, 337, 629 P.2d 1209,  
11 1213; *Fulbright & Jaworski v. Eighth Jud. Dist. Ct.* (2015) 131 Nev. 30, 35).

12 “The plaintiff must produce some evidence in support of all facts necessary for a finding of  
13 personal jurisdiction, and the burden of proof never shifts to the party challenging jurisdiction.” (*Trump*  
14 *v. District Court* (Nev. 1993) 109 Nev. 687, 692-93 (emphasis added), citing *A.I. Trade Finance, Inc. v.*  
15 *Petra Bank* (2nd Cir. 1993) 989 F.2d 76, 80; *United Elec. Workers v. 163 Pleasant Street Corp.* (1st Cir.  
16 1993) 987 F.2d 39, 43-44; *Conti v. Pneumatic Products Corp.* (6th Cir. 1992) 977 F.2d 978, 987; *Boit v.*  
17 *Gar-Tec Products, Inc.* (1st Cir. 1992) 967 F.2d 671, 675; *Gould v. P.T. Krakatau Steel* (8th Cir. 1992)  
18 957 F.2d 573, 575, cert. denied, \_\_\_ U.S. \_\_\_ (1992) 113 S.Ct. 304.) “In so doing, the plaintiff must  
19 satisfy the requirements of Nevada’s long-arm statute and show that jurisdiction does not offend  
20 principles of due process.” (*Trump*, 109 Nev. at 692-93.) “Due process requirements are satisfied if the  
21 nonresident defendants’ contacts are sufficient to obtain either (1) general jurisdiction, or (2) specific  
22 personal jurisdiction and it is reasonable to subject the nonresident defendants to suit [in the forum state].”  
23 (*Viega GmbH v. Eighth Jud. Dist. Ct.* (2014) 130 Nev. 368, 375.)

#### 24 **B. Plaintiffs cannot establish this Court has personal jurisdiction over Defendants**

##### 25 **1. Plaintiffs cannot establish general jurisdiction over Defendants**

26 “A court may exercise general jurisdiction over a foreign [defendant] when its contacts with the  
27 forum state are so ‘continuous and systematic’ as to render it essentially at home in the forum State.”  
28 (*Viega*, 130 Nev. at 375, 328 P.3d at 1156-57 (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*



(2011) 564 U.S. 915, 919; see also *Arbella v. Eighth Jud. Dist. Ct.* (2006) 122 Nev. 509, 513, 134 P.3d 710, 712 (“general personal jurisdiction exists when the defendant’s forum state activities are so ‘substantial’ or ‘continuous and systematic’ that it is considered present in that forum and thus subject to suit there, even though the suit’s claims are unrelated to that forum.”).)

To determine whether a non-resident defendant’s contacts are sufficiently substantial, continuous, and systematic, courts generally analyze whether the contacts render it at home in Nevada. (*Fulbright*, 131 Nev. at 37.) The standard for general jurisdiction “is an exacting standard, as it should be, because a finding of general jurisdiction permits a defendant to be hauled into court in the forum state to answer for any of its activities anywhere in the world.” (*Schwarzenegger v. Fred Martin Motor Co.* (9th Cir. 2004) 374 F.3d 797, 801.)

Here, Plaintiffs’ claims are unrelated to the forum and no Defendants have contacts with Nevada that are so continuous and systematic as to render them at home in Nevada, and warrant general jurisdiction over them. Each of the individual defendants are non-residents with little or no contact with Nevada. (See Declarations of David Reichman, Kathy Griffin, Frank Benintendo, and Donald Gilbert.) GTII has no offices or employees in Nevada, does not conduct business in Nevada, and does not own or maintain any property in Nevada. (See Griffin Decl. paras. 5, 6, 7.) Defendants have no independent contacts with Nevada.

As such, general jurisdiction cannot be established over Defendants.

## **2. Plaintiffs cannot establish specific jurisdiction over Defendants**

“Unlike general jurisdiction, specific jurisdiction is proper only where ‘the cause of action arises from the defendant’s contacts with the forum.’” (*Dogra v. Liles* (2013) 129 Nev. 932, 937, 314 P.3d 952, 955 (citing *Trump*, 109 Nev. at 699).) In order to exercise specific personal jurisdiction over a non-resident defendant:

“The defendant must purposefully avail himself of the privilege of acting in the forum state or of causing important consequences in that state. The cause of action must arise from the consequences in the forum state of the defendant’s activities, and 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* (2012) 128 Nev. 454, 458, 282 P.3d 751, 755 (quoting *Jarstad v. Nat’l Farmers Union Prop. & Cas. Co.* (1976) 92 Nev. 380, 387, 552 P.2d 49, 53).)



1 Courts apply a “purposeful direction” analysis, rather than a purposeful availment analysis, to  
2 claims sounding in tort. (*Tricarichi v. Coop. Rabobank, U.A.* (2019) 135 Nev. 87, 91–92, 440 P.3d 645,  
3 650 (citing *Picot v. Weston* (9th Cir. 2015) 780 F.3d 1206, 1213-14 (“specific personal jurisdiction in  
4 tort actions should focus on conduct the defendant purposefully directs at the forum state”).)

5 Parties who “reach out beyond one state and create continuing relationships and obligations with  
6 citizens of another state” purposefully avail themselves to the personal jurisdiction of the courts in that  
7 state. (*Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462, 473, 105 S.Ct. 2174, 85 L.Ed.2d 528.) Such  
8 contacts must be “significant” and “substantial,” and not “random,” “fortuitous,” or “attenuated.”  
9 (*Munley v. Second Judicial Dist. Court* (1988) 104 Nev. 492, 495–96, 761 P.2d 414, 416.) The quality  
10 of the contacts, not the quantity, is the touchstone of personal jurisdiction analysis. (*Trump*, 109 Nev. at  
11 700, 857 P.2d at 749; see also *Walden v. Fiore* (2014) 571 U.S. 277 (concluding that causing an “injury  
12 to a forum resident is not a sufficient connection to the forum,” and “the plaintiff cannot be the only link  
13 between the defendant and the forum”).) “The mere unilateral activity of those who claim some  
14 relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State.”  
15 (See *Dogra v. Liles* (2013) 129 Nev. 932, 937, 314 P.3d 952, 955 (citing *World–Wide Volkswagen Corp.*  
16 *v. Woodson* (1980) 444 U.S. 286, 298).)

17 Notably, the mere act of allegedly contracting with a Nevada resident “is not enough to establish  
18 specific personal jurisdiction, even if the contract is partially performed in Nevada.” (*Affinity Network*  
19 (Nev. Oct. 31, 2013) No. 60355, 2013 WL 7155071, at \*2 (unpublished) (citing *S & D Trading Academy,*  
20 *LLC v. AAFIS, Inc.* (S.D. Texas 2007) 494 F.Supp.2d 558, 565). In *Affinity Network*, the Nevada Supreme  
21 Court affirmed the district court’s dismissal of claims against a foreign debt negotiating company and its  
22 employees for lack of personal jurisdiction because the defendants’ acts “only would have involved  
23 sending money into Nevada,” which did not establish the requisite “substantial connection” with the  
24 forum. (*Id.* at \*3; see also *Basic Food Indus., Inc. v. Eighth Judicial Dist. Court* (1978) 94 Nev. 114, 575  
25 P.2d 934, 936 (holding that the mere signing of a guaranty in another state by itself does not subject the  
26 guarantor to personal jurisdiction even though the guarantee caused effects inside the state); *Gray & Co.*  
27 *v. Firstenberg Mach. Co, Inc.* (9th Cir. 1990) 913 F.2d 758, 760 (the fact that a non-resident enters the  
28



forum state to execute or perform a contract with a resident does not per se establish “minimum contacts.”).

Here, Defendants have in no way purposely directed or availed themselves to the Nevada forum. Defendants have no substantial activities in Nevada, and no continuing relationships and obligations with Nevada. (See Declarations of David Reichman, Kathy Griffin, Frank Benintendo, and Donald Gilbert.) Plaintiffs cannot establish personal jurisdiction over Defendants.

**3. Even if the Court were to find that Defendants have sufficient minimum contacts with Nevada the exercise of jurisdiction in this matter would be unreasonable**

The United States Supreme Court has stated that questions involving personal jurisdiction mandate an inquiry into whether it is “reasonable...to require [the defendant] to defend the particular suit which is brought there.” (*Trump*, 109 Nev. at 700, citing *World-Wide Volkswagen Corp.* (1980) 444 US 286, 292, quoting *International Shoe Co. v. Washington* (1945) 326 US 310, 317.)

Factors relevant to this inquiry are: (1) the interstate judicial system’s interest in obtaining the most efficient resolution of controversies; (2) the forum state’s interest in adjudicating the dispute; (3) the plaintiff’s interest in obtaining convenient and effective relief; and (4) the interest of the several states in furthering substantive social policies. (*Trump*, 109 Nev. at 701, citing *World-Wide Volkswagen Corp.* (1980) 444 US 286, 292.)

Jurisdictional rules may not be employed in such a way as to make litigation “so gravely difficult and inconvenient” that a party unfairly is at a “severe disadvantage” in comparison to his opponent. (*Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462, 478.)

Here, there can be no doubt it would certainly be a significant burden on these Defendants to litigate this matter in Nevada. None of the Defendants are physically present in Nevada, are not domiciled Nevada, do not travel to Nevada, and have no other connections or contacts with Nevada. In addition, many of the Defendants are elderly, with most in their late 70s or 80s. Forcing these defendants to litigate in Nevada would create an insurmountable burden on Defendants, serving only to harass and frustrate Defendants’ ability to defend this action.

Defendants recognize that Nevada has an interest in providing an effective means of redress for its residents. (*Trump*, 109 Nev. at 701, citing *Levinson v. Second Judicial Dist. Ct.* (1987) 103 Nev. 404,



408.) However, Nevada is neither the most convenient, effective, or efficient forum. GTII's offices are located in New York. GTII has no presence in Nevada and conducts no business there. None of the Defendants are located in Nevada or have any contacts with Nevada outside the present litigation. All evidence, documents, and witnesses are located in New York or on the east coast.

Adjudicating, and thereafter enforcing, this matter in Nevada is not an efficient or effective use of the parties' or this Court's resources. Indeed, other than the corporate registration in Nevada, there is zero relationship with Nevada. The corporation does not conduct business in Nevada. None of the Defendants reside or do business in Nevada. None of the Plaintiffs are citizens of Nevada. (See Declarations of David Reichman, Kathy Griffin, Frank Benintendo, and Donald Gilbert.) This matter should be litigated in New York, or a more convenient forum for all parties, the witnesses, and where the evidence is more readily available, as discussed further below.

Forcing Defendants to litigate this matter in Nevada creates such grave difficulty and inconvenience that it places Defendants at a severe disadvantage, making litigation unreasonable. This matter should therefore be dismissed.

**IV. IN THE EVENT THIS COURT FINDS PERSONAL JURISDICTION CAN BE ESTABLISHED OVER DEFENDANTS, THIS ACTION SHOULD BE DISMISSED UNDER THE DOCTRINE OF FORUM NON CONVENIENS**

"The doctrine of forum non conveniens is statutorily embodied in NRS 13.050. NRS 13.050(2)(c) states that "[t]he court may, on motion, change the place of trial...[w]hen the convenience of the witnesses and the ends of justice would be promoted by the change." (*Mountain View Recreation, Inc. v. Imperial Commercial Cooking Equip. Co.* (2013) 305 P.3d 881, 884-885, citing *Cariaga v. Eighth Judicial Dist. Court* (1988) 104 Nev. 544, 547.)

"NRS 13.050 allows a court, upon a party's motion, to move the trial's location when doing so would be convenient for the witnesses and promote the ends of justice." (*Borger v. Polaris Indus., No. 81764*, at \*1-2 [Nev. Mar. 16, 2022] citing *Provincial Gov't of Marinduque v. Placer Dome, Inc.* (2015) 131 Nev. 296, 300-301.)

When deciding a motion to dismiss for forum non conveniens, a court must first determine the level of deference owed to the plaintiff's forum choice. Next, a district court must determine whether an



adequate alternative forum exists. Finally, if an adequate alternative forum does exist, the court must then weigh public and private interest factors to determine if dismissal is warranted. (See *Provincial Government of Marinduque v. Placer Dome, Inc.* (2015) 131 Nev. 296.)

In addition to these factors, a district court should also consider whether failure to apply the doctrine of forum non conveniens would subject defendants to harassment, oppression, vexatiousness, or inconvenience. (*Provincial Government of Marinduque v. Placer Dome, Inc.* (2015) 131 Nev. 296, 305.)

#### **A. Level of Deference Owed**

Generally, a plaintiff's choice of forum is entitled to great deference, but a foreign plaintiff's choice of forum is entitled to less deference. (*Provincial Government of Marinduque v. Placer Dome, Inc.* (2015) 131 Nev. 296, 301.)

A sister-state-resident plaintiff should be treated as "foreign" for the purposes of a forum non-conveniens analysis and thus be afforded less deference in her choice of forum, unless she proves that Nevada is a convenient forum by showing bona fide connections to Nevada. (*Pepper v. C.R. England* (2023) 139 Nev. Adv. Op. 11, 528 P.3d 587, 591.)

Here, none of the Plaintiffs are residents of Nevada. (See Griffin Decl. para. 11.) Accordingly, these foreign Plaintiffs' choice of Nevada forum is entitled to less deference.

#### **B. Whether an adequate alternative forum exists**

An alternative forum is adequate for the purposes of forum non conveniens analysis if the defendant is amenable to process in the other jurisdiction, and the alternative forum provides the plaintiff with some remedy for his wrong. (*Provincial Government of Marinduque v. Placer Dome, Inc.* (2015) 131 Nev. 296, 306.)

Here, there is an adequate alternative forum. Defendants are amenable to process in New York, or some other more convenient forum. Adjudication in New York or an alternative forum will not hinder Plaintiffs' ability to seek redress.

#### **C. Public and Private interest factors**

##### **1. The public interest factors weigh in favor of dismissal**

Relevant public interest factors considered by the court in ruling on a motion to dismiss based on forum non conveniens include: (1) the local interest in the case; (2) the district court's familiarity with



1 applicable law; (3) the burdens on local courts and jurors; (4) court congestion; and (5) the costs of  
2 resolving a dispute unrelated to plaintiffs' chosen forum. (*Provincial Government of Marinduque v.*  
3 *Placer Dome, Inc.* (2015) 131 Nev. 296, 302.)

4 Here, the public interest factors weigh in favor of New York as the appropriate forum. As  
5 discussed above, other than the corporate registration in Nevada, there is zero relationship with Nevada.  
6 The corporation does not conduct business in Nevada. None of the Defendants reside or do business in  
7 Nevada. None of the 200 plus Plaintiffs are citizens of Nevada. (See Declarations of David Reichman,  
8 Kathy Griffin, Frank Benintendo, and Donald Gilbert.) The issues in this case concern the activities of  
9 GTII and its Board of Directors, particularly, their public filings, none of which took place in Nevada.  
10 Those filings are governed by the Securities Exchange Act of 1934. The burdens on the already  
11 overburdened Nevada courts and local jurors to adjudicate a dispute involving hundreds of parties which  
12 has virtually nothing to do with Nevada would be tremendous. New York is better situated and equipped  
13 to handle litigation of this nature, and there is significantly less burden on the parties, witnesses, and the  
14 court by adjudicating this matter there in light of the location of the parties, documents, evidence, and  
15 witnesses relevant to this matter.

## 16 **2. The private interest factors weigh in favor of New York**

17 Relevant private interest factors considered by the court in ruling on a motion to dismiss based  
18 on forum non conveniens include: (1) the location of a defendant corporation; (2) access to proof; (3) the  
19 availability of compulsory process of unwilling witnesses; (4) the cost of obtaining testimony from  
20 willing witnesses; and (5) the enforceability of a judgment. (*Provincial Government of Marinduque v.*  
21 *Placer Dome, Inc.* (2015) 131 Nev. 296, 304.)

22 The private interest factors here also weigh in favor of dismissal of this action. GTII's principal  
23 place of business and office is located in New York. All of the individual defendants are located in New  
24 York or on the East Coast. Defendant David Reichman, who is the primary target of Plaintiffs'  
25 allegations, is located in New York. Defendant Kathy Griffin is located in Massachusetts. Defendant  
26 Frank Benintendo is located in New Jersey. Defendant Donald Gilbert is located in New York. All  
27 documents, witnesses, and other evidence are located in New York or on the east coast. (See Declarations  
28 of David Reichman, Kathy Griffin, Frank Benintendo, and Donald Gilbert.) Witnesses will have to travel



1 to Nevada in order to testify, necessitating overnight travel for many. The cost of obtaining testimony  
2 from willing witnesses is far greater in Nevada than it would be in New York. Further, the enforceability  
3 of a judgment entered into in New York would be easier to enforce than one entered into in Nevada. GTII  
4 is located in New York, and Defendants all have ties to New York. Defendants do not have ties or contacts  
5 with Nevada which will make enforcement more difficult.

6 **3. Defendants will face harassment, oppression, vexatiousness, and inconvenience**  
7 **absent dismissal**

8 Here, it is clear that Defendants face harassment, oppression, vexatiousness, and inconvenience  
9 by being forced to defend this lawsuit in Nevada. GTII has its principal place of business in New York.  
10 GTII in fact does no business in Nevada. All documents and evidence relevant to this matter are also  
11 located in New York or on the east coast. Likewise, all witnesses are located in New York or located on  
12 the east coast.

13 Defendants are all on located on the east coast. Each Defendant has no contacts with Nevada  
14 outside the present litigation.

15 Additionally, these defendants are elderly. David Reichman is 80 years old, Kathy Griffin is 70  
16 years old, Frank Benintendo is 77 years old, and Donald Gilbert is 88 years old. Traveling to Nevada to  
17 defend this matter, as well as coordinating the relevant witnesses and documents necessary to litigate,  
18 will serve only to harass and oppress defendants, and does not serve the interests of justice.

19 Here, it is clear that requiring Defendants to litigate this matter in Nevada serves only to subject  
20 them to harassment and oppression. Plaintiffs seek only to thwart Defendants' ability to adequately  
21 defend themselves by forcing litigation to take place in a far-off, distant forum. This matter should be  
22 dismissed in favor of a more convenient forum in New York.

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1 **V. CONCLUSION**

2 For the foregoing reasons, Defendants respectfully request that this Court dismiss this action as  
3 it relates to Defendants because this Court lacks personal jurisdiction over it. In the alternative, this action  
4 should be dismissed under the doctrine of forum non conveniens.

5  
6 DATED this 16<sup>th</sup> day of September 2024

7  
8 **ENENSTEIN PHAM GLASS & RABBAT LLP**

9  
10 By:  \_\_\_\_\_

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22 *Tech Industries Group, Inc.*



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**CERTIFICATE OF SERVICE**

Pursuant to Nev.R.Civ.P. 5(b), I hereby certify that on September 16, 2024, I served a true and correct copy of the foregoing **DEFENDANTS' MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION AND FORUM NON CONVENIENS** electronically via the court's e-filing system Odyssey eFileNV, including the following interested parties named below:

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