IN THE SUPREME COURT OF THE STATE OF MONTANA
CASE NO. DA 23-0294

CREATIVE GAME STUDIO, LLC and RICARDO BACH CATER,

Plaintiffs and Appellants,

v.

DANIEL ALVES,

Defendant and Appellee

APPELLEE'S ANSWER BRIEF

On Appeal from the Montana Thirteenth Judicial District, Yellowstone County,
Cause No. DV-22-1211
Hon. Jessica T. Fehr, District Court Judge

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STATEMENT OF ISSUE

Whether the District Court correctly decided that it cannot exercise personal jurisdiction over Brazilian citizen Daniel Alves in a dispute about Alves' alleged business activities in Brazil.

STATEMENT OF CASE

This case is a dispute between Brazilian citizens about their Brazilian business activities. The focus of Creative Games Studio LLC's ("Creative Games") and Ricardo Bach Cater's ("Cater") (collectively "CGS") Complaint is the interactions between Brazilian citizen Daniel Alves ("Alves") and CGS's alleged Brazilian contractors. Those interactions, to the extent they occurred at all, were conducted in Brazil, using Brazilian Portuguese, and using Brazilian Real. CGS claims that, by those alleged interactions, Alves breached the Brazilian Portuguese terms of Creative Games' Acordo Estratégico & Operacional, breached duties allegedly implied into the Acordo Estratégico & Operacional, and committed fraud and deceit. (Dkt. 1 at ¶¶ 26-47).

On February 24, 2023, Alves filed a motion to dismiss. (Dkt. 5).[1] Alves explained that the District Court lacked personal jurisdiction over Alves or, in the

[1] References in the form "Dkt. [Number]" are to the numbered documents in the District Court docket. References in the form "Dkt. [Number]-[Number]" are to the exhibits attached to such documents. For example, "Dkt. 6-2" refers to Exhibit 2 to Dkt. 6.

alternative, should decline to exercise personal jurisdiction under the doctrine of forum non conveniens. (*Id*.) CGS opposed the motion and requested jurisdictional discovery. (Dkt. 9; Dkt. 19). In its May 10, 2023 order the District Court decided that it lacked personal jurisdiction over Alves, implicitly denied CGS's motion for jurisdictional discovery, and granted Alves' motion to dismiss. (Dkt. 21).

CGS appealed the District Court's May 10, 2023 order. (Dkt. 23). On appeal, CGS takes issue with only a portion of that order. (Appellants' Opening Brief at 1). CGS does not, for example, dispute the District Court's decision that Alves lacked sufficient connections to Montana to justify jurisdiction. (*Id*.) CGS also does not dispute the District Court's decision implicitly denying CGS's request for jurisdictional discovery. (*Id*.) The only issue CGS raises on appeal is whether the District Court properly dismissed CGS's complaint, and the only argument CGS renews on appeal is that Alves allegedly consented to Montana courts' jurisdiction. (*Id*.)

STATEMENT OF FACTS

Plaintiff Creative Games is a Montana limited liability company and Plaintiff Cater currently lives in Billings, Montana. (Dkt. 1, Complaint at ¶¶ 1-2, 11). That is where the connections between this matter and Montana end.

Creative Games was created in 2018 by its four members, Cater, Alves, Eurico Neto ("Neto"), and Marcio Assis ("Assis"). (*Id*. at ¶ 10). Alves, Neto, and

Assis are all residents and citizens of Brazil, and Alves has never stepped foot in Montana. (*Id*. at ¶ 11; Dkt. 6-2, Alves Aff. at ¶¶ 11, 17). Alves, Neto, and Assis operate Creative Games in Brazil. Creative Games' employees are all located in Brazil, and Creative Games' business is conducted primarily in Brazilian Portuguese. (Dkt. 6-2 at ¶¶ 8-11). Notably, when the Creative Games members adopted their Acordo Estratégico & Operacional, which CGS describes as Creative Games' "Operating Agreement," they wrote the document in Brazilian Portuguese. (Dkt. 1 at ¶ 12; Dkt. 6-2 at ¶¶ 7-8; *see* Dkt. 6-2-A, Acordo Estratégico & Operacional).

According to the allegations in CGS's Complaint, which Alves disputes:

- Alves' relationship with the other members and with Creative Games began to break down in 2021. (Dkt. 1 at ¶¶ 12-25).
- Around that time, Alves began working remotely from Brazil with competitors of Creative Games that were located in St. Louis, Missouri. (Dkt. 1 at ¶¶ 5-6, 15-16; Dkt. 6-2 at ¶¶ 11, 17).
- Alves began directing an alleged contractor of Creative Games, Paulo Scabeni, who lives and works in Brazil, to create work for competitors of Creative Games that were located in St. Louis, Missouri. (Dkt. 1 at ¶¶ 5-6, 17; Dkt. 6-2 at ¶¶ 12, 14).

- Alves misused Creative Games' funds to pay Scabeni to provide work for Creative Games' competitors. (Dkt. 1 at ¶¶ 17-19, 15-16; Dkt. 6-2 at ¶ 13). All such payments were made, to the extent they were made at all, using Brazilian currency, namely Brazilian Real. (Dkt. 6-2 at ¶ 13).
- "A criminal investigation into Alves' conduct has commenced in Brazil." (Dkt. 1 at ¶ 24).

Based on these allegations and their claim that Alves had breached Creative Games' "Operating Agreement," CGS purported to dissociate Alves as a member and to terminate him as an employee. (Dkt. 1 at ¶¶ 21, 22). On October 24, 2022—just a week after Alves had finished over a year of work developing Creative Games' newest product—CGS wrote to Alves to inform him of the dissociation and termination. (Dkt. 6-2 at ¶ 16; Dkt. 6-2-B, Letter from Sack to Alves). CGS immediately stopped paying Alves for his work and refused to distribute or to provide an accounting for any portion of Alves' equity in CGS. (*See* Dkt. 6-2 at ¶¶ 21-22; Dkt. 6-2-B, Letter from Sack to Alves at 2 (Oct. 24, 2022)).

This was financially devastating for Alves. Prior to his purported dissociation and termination, Alves had invested his life's savings into Creative Games and had relied on Creative Games as his sole source of income. (Dkt. 6-2 at ¶ 21). That income was not much—approximately 5,000 Brazilian Real or about

US$1,000 per month—but Alves relied on the income to support himself and his family. (*Id*.)

Knowing that it had cut Alves off from the few financial resources Alves had (*id*.), CGS attempted to capitalize on the situation. In the very same October 24, 2022 letter in which CGS informed Alves of his dissociation and termination, CGS threatened to pursue Alves with multiple costly legal actions in multiple fora—including "criminal charges and penalties" "in the US" and "in Montana"—if Alves did not immediately sign the "Separation Agreement" that CGS had drafted. (Dkt. 6-2B at 2).

These threats were significant. After CGS cut Alves off from his modest income and refused to distribute the savings Alves had put into Creative Games, Alves was barely able to afford to defend himself in Brazil or to pursue CGS to recover his equity in Creative Games. (Dkt. 6-2 at ¶¶ 21-22). Alves was, on the other hand, wholly unable to bear the expense of litigating in a second forum thousands of miles away in Montana. (*Id*.) Alves did not, however, acquiesce to CGS's demands and improper attempts to create leverage. (*See* Dkt. 1; Dkt. 6). After securing pro bono legal representation in Montana and deciding that he could not afford to simply walk away from the time and money he had invested in CGS, Alves refused to sign the Separation Agreement or to release his claims against CGS.

Upon Alves' refusal to sign CGS's proposed Separation Agreement, CGS followed through with its threats to file multiple criminal and civil legal actions in multiple fora. CGS first caused a criminal investigation to be opened in Brazil and then filed its Complaint thousands of miles away in Yellowstone County. (Dkt. 1 at ¶ 24; Dkt. 17-1 at ¶¶ 8-10; Dkt. 17-1-A).

By and through his pro bono attorney, Alves responded to the Complaint by filing his Motion to Dismiss Under Rule 12(b)(2) for Lack of Personal Jurisdiction or to Dismiss for Forum Non Conveniens. (Dkt. 5). Alves explained that he lacked sufficient minimum suit-related connections to Montana for the District Court to exercise jurisdiction in a manner consistent with Alves' due process rights. (Dkt. 6 at 5-12). Alves also explained that, even if the District Court could exercise jurisdiction, it should decline to do so on forum non conveniens grounds because there was no significant connection between Montana and this dispute, the parties, or the witnesses. (*Id*. at 12-14).

CGS opposed Alves' motion. (Dkt. 9). CGS argued that there were sufficient contacts between Montana, the dispute, and Alves to justify personal jurisdiction. (Dkt. 9 at 6-9). CGS further argued that Alves had, in any event, consented to Montana courts' jurisdiction by signing Creative Games' Acordo Estratégico & Operacional. (Dkt. 9 at 5-6). In support of this argument, CGS produced an alleged translation of the Acordo Estratégico & Operacional as an

attachment to a declaration from Plaintiff Cater. (Dkt. 10 at ¶ 6; Dkt. 10-1). Although the alleged translation was dated "November 4, 2022," and Alves had repeatedly requested any translation of the Acordo Estratégico & Operacional, CGS only finally produced the alleged translation once it became necessary to support its jurisdictional argument. (Dkt. 10-1 at 8; *see* Dkt. 6 at 3 n.1).

Following a reply brief from Alves (Dkt. 11), an unauthorized surreply and additional evidence from CGS that the District Court struck from the record (Dkt. 12; Dkt. 13; Dkt. 15; Dkt. 18), and a motion for jurisdictional discovery from CGS (Dkt. 19), the District Court ruled on Alves' motion. In its May 10, 2023 order, the District Court decided that it lacked jurisdiction over Alves and dismissed CGS's complaint. (Dkt. 21). CGS appeals from that order. (Dkt. 23)

STANDARD OF REVIEW

This Court's review of a District Court's decision to dismiss for lack of personal jurisdiction is de novo. *Milky Whey, Inc. v. Dairy Partners, LLC*, 2015 MT 18, ¶ 7, 378 Mont. 75, 342 P.3d 13. As with any Rule 12 motion to dismiss, the Court "construe[s] the complaint in the light most favorable to the plaintiff." *Id*. (internal quotation marks omitted). Unlike with other motions to dismiss, however, the Court may consider "affidavits and other evidence" outside the pleadings without converting a motion to dismiss for lack of personal jurisdiction into a motion for summary judgment. M. R. Civ. P. 12(d); *Groo v. Mont. Eleventh Jud.*

Dist. Ct., 2023 MT 193, ¶ 21, 413 Mont. 415, 537 P.3d 111; Order at 2, *TC Fuel Components, LLC v. Mont. Eleventh Jud. Dist. Ct.*, OP 13-0798 (Mont. Jan. 1, 2014) (copy available in District Court record as Exhibit 1 to Dkt. 6).

The Court is not required to construe such other matters outside the pleadings in the plaintiff's favor. To the contrary, when considering a plaintiff's arguments and evidence concerning an alleged consent to or waiver of personal jurisdiction, the Court should "indulge every reasonable presumption against waiver." *See Emspak v. U.S.*, 349 U.S. 190, 198 (1955) (discussing "fundamental constitutional rights" generally); *see also Fuentes v. Shevin*, 407 U.S. 67, 94 n.31 (1972) ("In the civil area, the Court has said that we do not presume acquiescence in the loss of fundamental rights. Indeed, in the civil no less than the criminal area, courts indulge every reasonable presumption against waiver." (Internal quotation marks and citations omitted)); *Aetna Ins. Co. v. Kennedy to Use of Bogash*, 301 U.S. 389, 393 (1937).

SUMMARY OF THE ARGUMENT

As Alves explained in its briefing to the District Court, as the District Court decided, and as CGS now acknowledges by its silence on appeal, Alves does not have sufficient suit-related connections with Montana to allow Montana courts' exercise of jurisdiction in a manner consistent with Alves' due process rights. (Dkt. 6 at 10-12; Dkt. 21 at 6-9). Alves has never set foot in Montana and this

dispute is about the parties' alleged business activities in Brazil. The only connections between this dispute and Montana are that Plaintiff Cater happens to live in Montana and caused Creative Games to be registered in Montana.

Nevertheless, CGS contends that Montana courts should still exercise personal jurisdiction over Alves in this case. The only argument CGS offers is that Alves waived his personal jurisdiction defenses when Alves allegedly consented to Montana's jurisdiction in Creative Games' Acordo Estratégico & Operacional. (Appellant's Brief at 5-6). The Court should reject this argument and affirm the District Court's order for five reasons. First, CGS and Cater have not offered any competent evidence of the English meaning of the Acordo Estratégico & Operacional or its purported selection of Montana as a forum for this dispute. Second, CGS's and Cater's alleged translation of the Acordo Estratégico & Operacional's purported forum selection clause is ambiguous, equivocal, and insufficient to demonstrate Alves' consent to Montana's jurisdiction. Third, enforcing the alleged, ambiguous forum selection clause against Alves in this case would be unreasonable. Fourth, even if CGS's alleged translation of the Acordo Estratégico & Operacional were an enforceable waiver of personal jurisdiction defenses, that waiver would extend only to a narrow portion of CGS's claims. Finally, even if the alleged translation of the Acordo Estratégico & Operacional could be interpreted as authorizing Montana courts' jurisdiction over Alves, the

District Court's decision to dismiss CGS's Complaint was nevertheless correct under the doctrine of forum non conveniens.

ARGUMENT

1. There is no competent evidence of the alleged forum selection clause CGS relies upon.

Montana Courts' exercise of personal jurisdiction over a defendant is limited by the Due Process Clause of the Fourteenth Amendment of the United States Constitution and the "traditional notions of fair play and substantial justice embodied in the due process clause." *DeLeon v. BNSF Railway Co.*, 2018 MT 219, ¶ 10, 392 Mont. 446, 426 P.3d 1; *Milky Whey*, ¶ 18. These rules "principally protect the liberty of the nonresident defendant—not the convenience of plaintiffs or third parties." *Tackett v. Duncan*, 2014 MT 253, ¶ 32, 376 Mont. 348, 334 P.3d 920 (quoting *Walden v. Fiore*, 571 U.S. 277, 284 (2014)). Accordingly, the plaintiff has the burden of proving that Montana courts' exercise of personal jurisdiction is appropriate. *E.g., Ford Motor Co. v. Mont. Eighteenth Jud. Dist. Ct.*, 2019 MT 115, ¶ 12, 395 Mont. 478, 443 P.3d 407; *Buckles v. Continental Resources, Inc.*, 2017 MT 235, ¶ 28, 388 Mont. 517, 402 P.3d 1213.

This initially means that "[a] plaintiff seeking the exercise of personal jurisdiction over a nonresident defendant" must "alleg[e] in the complaint sufficient facts to make out a prima facie case of jurisdiction." *Diamond Crystal*

Brands, Inc. v. Food Movers Int'l, Inc., 593 F.3d 1249, 1257 (11th Cir. 2010). But "[w]here, as here, the defendant challenges jurisdiction by submitting affidavit evidence in support of its position, the burden traditionally shifts back to the plaintiff to produce evidence supporting jurisdiction." *Id.*; *see also Metcalfe v. Renaissance Marine, Inc.*, 566 F.3d 324, 330-31 (3d Cir. 2009); *AMA Multimedia, LLC v. Wanat*, 970 F.3d 1201, 1207 (9th Cir. 2020). In order to carry this burden, "the plaintiff is required to substantiate the jurisdictional allegations in the complaint by affidavits or other competent proof." *Diamond Crystal Brands, Inc.*, 593 F.3d at 1257 (emphasis added); *see AMA Multimedia*, 970 F.3d at 1207; *Metcalfe Renaissance Marine*, 566 F.3d at 330-31.

The quantum of evidence necessary for the plaintiff to carry this burden depends on whether the District Court allows jurisdictional discovery or orders a hearing. *In re Boon Glob. Ltd.*, 923 F.3d 643, 650 (9th Cir. 2019); *see Buckles*, ¶ 28. Where, as here, no jurisdictional discovery or hearing is conducted, the plaintiff is required to provide "affidavits or other competent evidence" establishing a "prima facie showing of jurisdictional facts." *In re Boon Glob. Ltd.*, 923 F.3d at 650; *AMA Multimedia*, 970 F.3d at 1207; *Diamond Crystal Brands, Inc.*, 593 F.3d at 1257; *Metcalfe Renaissance Marine*, 566 F.3d at 330-31. Although a "prima facie showing" is a relatively low hurdle, "the standard is not toothless." *AMA Multimedia*, 970 F.3d at 1207. A plaintiff "cannot simply rest on

the bare allegations of its complaint." *Id*. "Uncontroverted allegations in the complaint" may be taken as true, but with respect to disputed issues of fact or matters outside the complaint, a plaintiff must provide "competent evidence" of the relevant jurisdictional facts. *Id*.; *Diamond Crystal Brands, Inc.*, 593 F.3d at 1257; *Metcalfe Renaissance Marine*, 566 F.3d at 330-31.

This means that the plaintiff cannot rest on mere allegation, hearsay, or other inadmissible evidence. As this Court has explained, "competent evidence" is evidence that is "relevant and admissible." *Mayer v. Bd. of Psychologists*, 2014 MT 85, ¶ 27, 374 Mont. 364, 321 P.3d 819; *Gourneau v. Hamill*, 2013 MT 300, ¶¶ 20-22, 372 Mont. 182, 311 P.3d 760. It is, for example, "improper for a court to consider hearsay statements" or other inadmissible evidence "when ruling on a motion to dismiss" for lack of "personal jurisdiction." *Beydoun v. Wataniya Restaurants Holding, Q.S.C.*, 768 F.3d 499, 506 (6th Cir. 2014). This rule against relying on hearsay or other inadmissible evidence is especially important with respect to a defendant's alleged consent and waiver of personal jurisdiction defenses because a defendant's consent to personal jurisdiction must be "clear[], unambiguous[] and unequivocal[]," and because courts should "indulge every reasonable presumption against waiver." *Milanovich v. Schnibben*, 2007 MT 128, ¶ 11, 337 Mont. 334, 160 P.3d 562; *DeLeon*, ¶ 11; *Emspak*, 349 U.S. at 198; *Fuentes*, 407 U.S. at 94 n.31; *Aetna Ins. Co.*, 301 U.S. at 393.

Nevertheless, to rely on inadmissible hearsay statements as evidence of consent and waiver is precisely what CGS asks the Court to do in this case. CGS predicates its arguments that Alves consented to Montana courts' jurisdiction on the alleged English meaning of the terms of the Acordo Estratégico & Operacional. (Appellant's Brief at 5-6, 9-16). In particular, CGS alleges that Section 14.h. of the Acordo Estratégico & Operacional can be translated to show Alves' consent to Montana courts' personal jurisdiction. (*Id*. at 9-16). This is not an argument or alleged fact pled in CGS's complaint and, instead, is one that CGS attempted to develop in its briefing on Alves' Motion to dismiss. (Dkt. 9 at 5-6; Dkt. 10-1; Dkt. 1). As explained in detail below, this argument is not supported by the language in CGS's alleged translation. As threshold matter, however, there is no competent evidence of the English meaning of the Acordo Estratégico & Operacional, because CGS has failed to authenticate and lay proper foundation for the translation.

The requirements for admitting translations of documents are well-established. Before a translation may be admitted as evidence, the offering party must authenticate the original document, call as an expert witness "the person who translated it" or "who vouches for the translation's accuracy," establish "that person's expertise in both languages and in the process of translation," and then

authenticate the translation through that person's testimony. M. R. Evid. 604, 702, 901(a); 5 Jones on Evidence §§ 38:1.50, 62:15, 62:16, 62:17 (7th ed. 2019).

CGS failed to meet these requirements with respect to its alleged translation of the Acordo Estratégico & Operacional. CGS failed to provide any competent evidence of the authenticity of the translation, of the alleged expert qualifications of the translator or person vouching for the translation, or of the accuracy of the translation. (*See* Dkt. 10 at ¶ 6; Dkt. 10-1; Dkt. 15 at ¶ 5). Instead, CGS merely provided a declaration from Plaintiff Cater and attached the alleged translation of the Acordo Estratégico & Operacional as an exhibit. (*Id*.). This is insufficient for several reasons.

First, Cater apparently attempted to vouch for the accuracy of the translation in his declaration when he alleged that the translation was "true and correct." (Dkt. 10 at ¶ 5). Cater, however, failed to establish that he is qualified to offer that kind of expert opinion. M. R. Evid. 604, 702, 901(a); 5 Jones on Evidence §§ 38:1.50, 62:15, 62:16, 62:17 (7th ed. 2019). Cater did not, for example, even allege that he is fluent in English, fluent in Brazilian Portuguese, or able to translate between the two. (Dkt. 10; Dkt. 15). He did not identify any knowledge or experience translating legal documents or any other reason that he may be qualified to offer an opinion about the English meaning of the Acordo Estratégico & Operacional. (Dkt. 10; Dkt. 15).

Second, both Cater's quotation of the translation and the alleged translation he attaches to his declaration are nothing more than hearsay testimony from Cater. As Cater's declaration and the attached translation make clear, Cater did not create the translation. (Dkt. 15 at ¶ 5; *see* Dkt. 10 at ¶ 6; Dkt. 10-1 at 1). Instead, according to Cater, the translation was prepared by someone named "Leonardo Pinto Andrade de Abreu." (Dkt. 15 at ¶ 5). At most, the translation is the out-of-court statement of Mr. Abreu, and Cater's quotation of the translation is mere hearsay testimony. M. R. Evid. 801(c).

Third, the alleged translation does not qualify for any exception that would render it admissible despite its status as hearsay. *See* M. R. Evid. 803 & 804. There are not, for example, any "circumstantial guarantees of trustworthiness" that might allow the hearsay translation to be admitted as evidence. M. R. Evid. 803(24). To the contrary, the alleged translation and the circumstances of its production demonstrate that the translation should be received cautiously and with skepticism. Most notably, there are grammatical errors and ambiguities appearing on the face of the translation and it is unclear whether the errors are mistranslations, appear in the Portuguese version of the Acordo Estratégico & Operacional, or would cause ambiguities in the Portuguese version of the Acordo Estratégico & Operacional. (*See*, *e.g.*, Dkt. 10-1 at §§ 12.a.ii & 14.h; *see also* Argument *infra* § 2). Additionally, the trustworthiness of the translation is clouded

by CGS's repeated refusal to produce the translation to Alves, the lack of any allegation about the translation in CGS's Complaint, and CGS's decision to finally produce the self-serving translation only once it became useful to opposing Alves' motion. (*See* Dkt. 1; Dkt. 6 at 3 n.1).

Finally, even if the translation were admissible despite its status as hearsay, and even if there were some admissible, non-hearsay statement from Mr. Abreu that vouched for the accuracy of the translation, CGS failed to establish that Mr. Abreu is qualified to offer an opinion about the translation. (Dkt. 15 at ¶ 5; *see* Dkt. 10 at ¶ 6; Dkt. 10-1 at 1). CGS has offered no competent evidence about Mr. Abreu's qualifications, fluency in English, fluency in Brazilian Portuguese, or his ability to translate legal documents from Brazilian Portuguese to English. (Dkt. 15 at ¶ 5; *see* Dkt. 10 at ¶ 6; Dkt. 10-1 at 1).

Tellingly, when Alves identified these reasons that the District Court should not rely on the alleged translation of the Acordo Estratégico & Operacional, CGS submitted an unauthorized surreply and a new affidavit from Cater. (Dkt. 11 at 3-5; Dkt. 12; Dkt. 13: Dkt. 15). The District Court struck the surreply. (Dkt. 18). Even if were not struck, however, the surreply would have been insufficient to cure the foundational and authenticity problems with the alleged translation. The only additional evidence CGS sought to offer regarding the translation in that surreply were Cater's hearsay statements about an alleged CV of Mr. Abreu. (Dkt. 13 at ¶

5; Dkt. 13-B; Dkt. 15 at ¶ 5; Dkt. 15-B). Cater attached the CV to his declaration, but he did not allege that the CV was a true and accurate reflection of Mr. Abreu's qualifications. (*Id*.) Indeed, he likely lacked personal knowledge sufficient to make that kind of statement. M. R. Evid. 602. Likewise, neither Cater nor CGS offered any statement from Mr. Abreu, whether in the CV or otherwise, about Mr. Abreu's alleged qualifications in Brazilian Portuguese. (*Id*.)

CGS ultimately offered no competent evidence whatsoever about the accuracy or authenticity of the translation. CGS has, therefore, offered no competent evidence of Alves' alleged consent to Montana courts' personal jurisdiction and has failed to carry its burden of proof.

2. CGS's purported translation of the Acordo Estratégico & Operacional does not include any clear, unequivocal, and unambiguous waiver of personal jurisdiction.

"A defendant may . . . consent to personal jurisdiction by signing a contract containing a forum-selection clause." *DeLeon*, ¶ 12. However, for a forum selection clause to constitute an effective waiver of due process rights and personal jurisdiction defenses, it must be "deliberately and understandingly made," and must "clearly, unequivocally and unambiguously express a waiver of personal jurisdiction." *Milanovich*, ¶ 11; *see also DeLeon*, ¶ 11 ("[T]he inquiry turns on" whether "the facts and circumstances of the case and the nature and terms of the

waiver" demonstrate that "the defendant knowingly waived its constitutional due process protections.").

"[J]urisdiction is . . . the power of the court to hear and adjudicate the claim before it." *In re B.F.*, 2004 MT 61, ¶ 18, 320 Mont. 261, 87 P.3d 427. Personal jurisdiction, in particular, is the "court's ability to exercise that [adjudicatory] power over particular individuals." *Id*. Therefore, an alleged contractual waiver of personal jurisdiction will not be effective unless the waiver "clearly, unequivocally and unambiguously express[es]" the defendant's consent to "the power of the court to hear and adjudicate the claim before it." *Id*. (emphasis added); *Milanovich*, ¶ 11.

CGS argues that Alves waived personal jurisdiction by signing the Acordo Estratégico & Operacional. In relevant part, CGS contends that the Acordo Estratégico & Operacional's forum selection clause reads:

> [T]he courts of Montana are elected to settle any disputes related to [this Agreement], with the exception of any other, however privileged it may be.

(Dkt. 10 at ¶ 6; Dkt. 10-1 at § 14.h). CGS argues that this language demonstrates Alves' consent to Montana courts' jurisdiction and Alves' waiver of his jurisdictional defenses. This is incorrect. The above language does not "clearly, unequivocally and unambiguously" choose Montana courts to "adjudicate" any dispute. *Milanovich*, ¶ 11; *In Re. B.F.*, ¶ 18.

Beginning with the first clause of CGS's purported translation, the translation states that the courts of Montana are elected to "settle" any disputes related to the Acordo Estratégico & Operacional. This choice of the term "settle" is significant. A settlement, of course, is a voluntary resolution of a dispute. Disputes can only be "settled" voluntarily by the parties. *E.g.*, Black's Law Dictionary 158 (10th ed. 2014) (defining "settlement" as "[a]n agreement ending a dispute or lawsuit" and defining "judicial settlement" as "[t]he settlement of a civil case with the help of a judge who is not assigned to adjudicate the dispute" (emphasis added)). Courts do not settle disputes, nor is exercise of jurisdiction consistent with the concept of "settlement." Instead, courts exercise jurisdiction and resolve disputes in a coercive, adjudicatory manner. Nothing about a Court's resolution of a dispute is of the same character as a voluntary "settlement."

This is not a mere semantic difference, especially considering that three of the four members that allegedly signed the Acordo Estratégico & Operacional are Brazilian citizens and residents and likely have little to no experience with the differences between Brazil's and Montana's courts and procedures. They may very well have expected a Montana court to facilitate a voluntary "settlement" procedure rather than to adjudicate this dispute. *See* Black's Law Dictionary 158 (10th ed. 2014) (defining "judicial settlement"). Again, for a jurisdictional waiver to be effective, the waiver must demonstrate that the defendant "knowingly,"

"deliberately," "understandingly," "clearly, unequivocally and unambiguously" consented to "power of the court to hear and adjudicate the claim before it." *Milanovich*, ¶ 11; *DeLeon*, ¶ 11; *In Re. B.F.*, ¶ 18. Election of Montana courts to "settle" disputes, on the other hand, demonstrates CGS's and Alves' misunderstanding of or inappropriate expectations regarding the Montana judicial system. Election of Montana courts to "settle" disputes does not demonstrate any consent to the type of adjudicated, non-voluntary resolution of this dispute that submission to Montana courts' personal jurisdiction would represent.[2]

The lack of any deliberate, understanding decision to submit to Montana's personal jurisdiction is underscored by the ambiguity of the second clause of CGS's purported translation.[3] Even if the first clause could initially be read as an unambiguous submission of disputes to Montana courts, it is clearly modified in some way by the following underlined language: "[T]he courts of Montana are elected to settle any dispute related to [this Agreement], with the exception of any

[2] This issue and the distinction between the term "settle" and a term like "adjudicate" or "resolve" underscores the importance of competent evidence of any translation. Without evidence of the alleged translator's qualifications and testimony from the translator about the alleged translation, it is unclear whether the translator understands the legal meaning of "settle" or whether a different word would have been a more appropriate translation.

[3] This ambiguity is likely the reason the second clause is completely omitted from every quotation of the purported translation in CGS's opening brief. (Appellants' Opening Brief at 4, 12).

other, however privileged it may be." (Dkt. 10-1 at § 14.h (emphasis added)). The meaning of this underlined language and how it is intended to modify the first clause is unclear. If the underlined language did not exist or if the language read something like "to the exclusion of any other" or "without exception for any other," it could perhaps be read as nominating Montana courts as the exclusive forum for "settling" disputes. The Court cannot, however, read the language out of the purported translation. The Court must, instead, give effect to the language. *E.g.*, Mont. Code Ann. § 1-4-101; *Boyne USA, Inc. v. Lone Moose Meadows, LLC*, 2010 MT 133, ¶ 17, 356 Mont. 408, 235 P.3d 1269.

As written, the language is obviously meant to limit the first clause somehow, but the limitation is nonsensical. The phrase "with the exception of" is typically used to identify something that is not included in the preceding rule, group, or list that it is modifying. For example, if the phrase read "with the exception of Brazilian courts, which may also settle disputes," the phrase would make sense. It would identify "Brazilian courts" as an exception to the initial election of Montana courts. It seems, therefore, that in the actual language used by the alleged translation, "any other" is meant to be the exception to the election of Montana courts.

Arguably, this means that any court other than Montana can and should "settle any disputes related to [the Agreement]." (Dkt. 10-1 at § 14.h). Ultimately,

however, the language is simply unclear, ambiguous, and equivocal about whether and to what extent Montana courts are chosen to "settle" the parties' disputes. The purported translation of the Acordo Estratégico & Operacional is, therefore, unenforceable as a waiver of personal jurisdiction. *Milanovich*, ¶ 11.

3. Even if the Acordo Estratégico & Operacional included an unambiguous waiver of personal jurisdiction, enforcement of that waiver against Alves would be unreasonable.

Waivers of personal jurisdiction that are clear, ambiguous, unequivocal, and deliberately made are nevertheless unenforceable if they are "unreasonable under the circumstances." *Milanovich*, ¶ 11 (quoting *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 10 (1972)). One circumstance in which a waiver of personal jurisdiction is considered "unreasonable and unenforceable" is if "the chosen forum is seriously inconvenient for the trial of the action." *M/S Bremen*, 407 U.S. 16-18. Generally, to establish such "serious inconvenience" and to render a waiver of personal jurisdiction unenforceable, the defendant must show that personal jurisdiction would "make litigation 'so gravely difficult and inconvenient' that a party" would be put "at a 'severe disadvantage' in comparison to his opponent." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 478 (1985) (quoting *M/S Bremen*, 407 U.S. at 18). However, a lesser showing may be acceptable and the inconvenience of the forum may be given "greater weight" when, as in this case, the parties' alleged waiver of personal jurisdiction amounts to an agreement to

"resolve their essentially local disputes in a remote alien forum." *See M/S Bremen*, 407 U.S. at 17.

Here, even if there was competent evidence that the Acordo Estratégico & Operacional unequivocally and effectively identifies Montana as the appropriate forum for CGS's claims—again, there is not—enforcement of the Acordo Estratégico & Operacional as a personal jurisdiction waiver would be unreasonable. Montana is a "seriously inconvenient" forum for the litigation and trial of this matter. *M/S Bremen*, 407 U.S. at 18. Litigating in Montana would impose such a serious burden on Alves that he would "for all practical purposes be deprived of his day in court." *Id*.

This is a dispute between Brazilians about Brazilian business activities, Brazilian contractors, and Brazilian assets. Alves' only connections with Montana are that Creative Games happened to be registered in Montana because Cater happened to live there. (Doc. 1 at ¶¶ 1-2; Doc. 6-2, Alves Aff. at ¶¶ 17-20). Creative Games' registration in Montana and Cater's resident in Montana are merely coincidental and had no effect on Creative Games' or Alves' business. (Doc. 6-2, Alves Aff. at ¶¶ 19-20). Creative Games could have been registered anywhere in the United States and Cater could have lived anywhere in the United States as far as Alves was concerned. (*Id*.) Alves' dealings with Creative Games

and Cater would not have changed no matter where Cater lived or where Creative Games was registered. (*Id*.)

Ultimately, each of Creative Games' members other than Cater are citizens of Brazil, their business began in Brazil, and they conducted Creative Games' business from Brazil using Brazilian Portuguese and Brazilian employees and contractors. (*Id*. at ¶¶ 8-15). In fact, all of the allegedly actionable payments Alves made were made, to the extent that they were made at all, in Brazilian Real to contractors located in Brazil. (*Id*. at ¶ 13; Doc. 1 at ¶¶ 5-6, 17).

Likewise, the allegations giving rise to the present dispute occurred, to the extent they occurred at all, in Brazil and not in Montana, and the evidence relevant to this case will primarily be located in Brazil and not in Montana. (*See* Doc. 1 at ¶¶ 8-25; Doc. 6-2, Alves Aff. at ¶¶ 3, 5-15, 20). For example, Paulo Scabeni, the alleged CGS contractor that CGS claims Alves paid with CGS funds to create work for CGS's competitors, is located in Brazil and performed all of his work for CGS and Alves in Brazil. (Doc. 6-2, Alves Aff. at ¶¶ 12, 14). All payments to Scabeni were made in Brazilian Real. (*Id*. at ¶¶ 13-14). And Scabeni's communications and any contracts with Alves were made in Brazil and written in Brazilian Portuguese, just like CGS's Acordo Estratégico & Operacional. (*Id*. at ¶ 15). Tellingly, CGS caused a criminal investigation to be instituted against Alves in Brazil, and not in Montana. (Dkt. 1 at ¶ 24; Dkt. 17-1-1, Alves Aff. ¶¶ 8-10).

CGS's allegations are, therefore, about a dispute "essentially local" to Brazil. *M/S Bremen*, 407 U.S. at 17. To the extent the alleged forum selection clause in the Acordo Estratégico & Operacional could be read as an agreement to submit this dispute to Montana courts, it amounts to an agreement to resolve the dispute "in a remote alien forum" that would be "seriously inconvenient" for Alves. *M/S Bremen*, 407 U.S. at 17.

The burden of litigating this Brazilian dispute in Montana would be significant for any Brazilian defendant. If Alves were subject to Montana courts' jurisdiction, Alves would be forced to litigate thousands of miles from where he lives and in a state he has never set foot in. (Dkt. 6-2 at ¶¶ 3, 9-11, 17). Because all documents relevant to this case are in Brazilian Portuguese and, with the exception of Plaintiff Cater, all relevant witnesses are located in Brazil, Alves would be forced to retain translators to translate virtually every discoverable document and virtually all relevant testimony. (Dkt. 6-2 at ¶¶ 6-15, 20).

This already undue and unfair burden of litigating in Montana has only been compounded by CGS's actions. When CGS wrongfully dissociated and terminated Alves without distributing any of Alves' equity in CGS, CGS cut Alves off from his life savings and his only source of income. (Dkt. 6-2 at ¶¶ 21-22). Even before he was dissociated and terminated, Alves' income was not large—approximately US$1,000 per month and well-below the Montana poverty line. (*Id*. at ¶¶ 21-22).

Without a consistent income going forward, it will be virtually impossible for Alves to find the resources to defend against the criminal investigation in Brazil, let alone to simultaneously defend himself thousands of miles away in Montana. (*Id*. at ¶ 22).

CGS understands that Alves does not have significant financial resources and that it financially crippled Alves by unilaterally and suddenly terminating him. (Dkt. 6-2, Alves Aff. at ¶ 21). Especially considering the threats CGS made in its October 24, 2022 letter, CGS's decisions to file its complaint in Montana, to pursue a criminal investigation in Brazil, and to make Alves proceed in two different forums in two different countries seem designed specifically to exploit Alves' financial situation and thereby to leverage Alves into an unfair and unfavorable settlement. (*See* Dkt. 6-2, Alves Aff. at ¶¶ 21-22; Dkt. 6-2-B, Letter from Sack to Alves at 2 (Oct. 24, 2022)).

Crowley Fleck PLLP's limited scope pro bono representation of Alves in this matter has allowed Alves to proceed this far without acceding to CGS's unfair demands. (Dkt. 6-2 at ¶¶ 21-23). However, the scope of that representation may not extend past this appeal, and, in any event, pro bono representation only mitigates without eliminating the undue financial pressures of litigating in Montana. It would not eliminate the costs of obtaining translations, conducting

discovery of documents and witnesses located in Brazil, or litigating thousands of miles from Alves' home. (*See* Dkt. 6-2 at ¶¶ 3, 6-15, 20).

As a practical and financial matter, it would be virtually impossible for Alves to proceed with a defense in Montana. Because Alves "for all practical purposes [would] be deprived of his day in court" if forced to litigate this Brazilian dispute in Montana, any purported forum selection clause in the Acordo Estratégico & Operacional is unreasonable and unenforceable. *M/S Bremen*, 407 U.S. at 18.

4. Even if the Acordo Estratégico & Operacional included an enforceable waiver of personal jurisdiction, the waiver would apply only to a narrow subset of CGS's claims.

If a party makes a clear, unambiguous, and unequivocal waiver of personal jurisdiction, that waiver is only effective as to the particular disputes and claims within the scope of that waiver. Critically, when parties "sign[] a contract containing a forum-selection clause" they only "thereby agree to a particular court's jurisdiction regarding any disputes arising from that contract." *DeLeon*, ¶ 12 (emphasis added). In other words, a "defendant controls a specific waiver of its due process rights: it either waives its right to object to personal jurisdiction in *one* proceeding by not timely raising the issue"—something that has not occurred here, considering Alves' timely and unequivocal objection to personal jurisdiction

in this case—"or it consents to the court's jurisdiction over disputes arising from *one* contract." *Id*. at ¶ 13 (underlining added and italics in original).

Here, the alleged waiver of Alves' right to object to personal jurisdiction is in an alleged contract—the Acordo Estratégico & Operacional. Even if enforceable, Alves' alleged waiver is limited only to disputes arising from or related to the Acordo Estratégico & Operacional. This conclusion is compelled as a matter of law by this Court's holding in *DeLeon*, which limits any contractual waiver to "disputes arising from" the contract containing the waiver. *DeLeon*, ¶ 12-13. This conclusion is also compelled by the plain language of the alleged translation of the Acordo Estratégico & Operacional, which limits the purported waiver to disputes "related to" the Acordo Estratégico & Operacional. (Dkt. 10-1 at § 14.h).

A significant focus of CGS's argument on appeal is the difference between the terms "related to" or "arising from," but that distinction is immaterial.[4] (Appellant's Opening Brief at 12-16). To the extent the Acordo Estratégico & Operacional includes the Brazilian Portuguese equivalent of either of those terms

[4] CGS's discussion is also entirely academic considering that there is no competent evidence that the Acordo Estratégico & Operacional includes the Brazilian Portuguese equivalent of either of those terms. CGS's discussion of those terms merely underscores the importance of a competent translation prepared by a qualified expert who understands the difference between the terms "related to" and "arising out of."

and to the extent there is any significant difference between the scope of the terms, it makes no difference to the analysis of this case whether one or the other term is applied. For the sake of this argument on appeal, therefore, Alves analyzes the scope of the alleged waiver in the Acordo Estratégico & Operacional using the same definitions offered by CGS.[5] Even doing so, the scope of the alleged waiver does not extend to all of CGS's claims in this matter.

CGS contends that whether a tort claim "relates to" a contract "depends on whether resolution of those claims relates to interpretation of the contract." (Appellants' Opening Brief at 14 (quoting Order, *Yankeecub, LLC v. Fendley*, No. CV-21-42-BU-BMM, 2021 WL 3603053 at *3 (D. Mont. Aug. 12, 2021))). CGS further contends that if resolution of a claim "relates in some way to the rights and duties enumerated in the contract," then the claim "relates to" the contract. (Appellants' Opening Brief at 15 (quoting *Manila Indus. v. Ondova Ltd. Co.*, 334

[5] To be clear, CGS only uses the definitions Alves offers of "related to" and "arising under." Alves does not adopt or concede CGS's analysis of *Peeler v. Rocky Mt. Log Homes Can., Inc.* or of CGS's decision to rely on caselaw interpreting arbitration provisions. The Court should not analogize to its decisions involving interpretation of arbitration provisions because the standards for enforcing arbitration provisions and waivers of personal jurisdiction are significantly different. Notably, waivers of personal jurisdiction must be narrowly applied and strictly construed. *See DeLeon*, ¶¶ 12-13; *Emspak*, 349 U.S. at 198; *Fuentes*, 407 U.S. at 94 n.31. Arbitration clauses, on the other hand, are interpreted in favor of arbitration, consistent with Montana law's "presumption of arbitrability." *E.g.*, *Tedesco v. Home Savings Bancorp., Inc.*, 2017 MT 304, ¶¶ 27, 41, 389 Mont. 468, 407 P.3d 289 (doubts are "resolved in favor of arbitration").

Fed. Appx. 821, 823 (9th Cir. 2009) (unpublished, memorandum opinion))). Under these definitions, CGS's claims in this matter are not limited to disputes "related to" the Acordo Estratégico & Operacional.

As the District Court correctly decided, the thrust of CGS's Complaint is the allegedly tortious conduct of Alves. (Dkt. 21 at 6). Specifically, CGS charges Alves of committing "malfeasance, fraud, and conspiracy" in his "employment with CGS," of "fraudulently misusing CGS funds" to hire a Brazilian contractor and to produce work for another company, and of "demonstrat[ing] inappropriate behavior" to the employees of CGS. (Dkt. 1 at ¶¶ 8, 14-20, 24). In addition to alleging breaches of the Acordo Estratégico & Operacional, CGS alleges claims for constructive fraud and deceit. (Dkt. 1 at ¶¶ 36-47).

Applying CGS's definitions, CGS's claims for constructive fraud and deceit are not "disputes related to" the Acordo Estratégico & Operacional. The fraud and deceit claims neither "relate[] to interpretation of the" Acordo Estratégico & Operacional nor "relate[] in some way to the rights and duties enumerated in the" Acordo Estratégico & Operacional. (Appellants' Opening Brief at 14-15). As CGS acknowledges in its complaint, CGS's constructive fraud and deceit claims will be controlled by the applicable substantive laws and not any particular terms of the Acordo Estratégico & Operacional. (Dkt. 1 at ¶¶ 36-47). CGS alleges that "the circumstances," rather than any term of the Acordo Estratégico &

Operacional, gave rise to duties that Alves allegedly owed to CGS. (Dkt. 1 at ¶ 38). Those alleged duties, according to CGS, include the same duties "[e]ach person owes" to any other person, independent of any contract or agreement like the Acordo Estratégico & Operacional. (Dkt. 1 at ¶ 37). In sum, CGS's fraud and deceit claims are not dependent upon, controlled by, or "related to" the Acordo Estratégico & Operacional.

Thus, even if CGS's alleged translation were enforceable as a waiver of jurisdiction, it would not extend to CGS's tort claims for deceit and constructive fraud. The District Court's order dismissing those claims should be affirmed.

5. Even if the District Court could have exercised personal jurisdiction over Alves, its decision to dismiss CGS's complaint was correct under the doctrine of forum non conveniens.

"Forum non conveniens is a common law doctrine that allows a court to resist imposition upon its jurisdiction even when jurisdiction is authorized by the letter of a general venue statute. Under this doctrine, a court may decline jurisdiction and dismiss a cause when it believes that the action may be more appropriately and justly tried elsewhere." *San Diego Gas & Elec. Co. v. Gilbert*, 2014 MT 191, ¶ 22, 375 Mont. 517, 329 P.3d 1264. The analysis under the "forum non conveniens" doctrine is similar to the above analysis regarding whether a waiver of personal jurisdiction is "inconvenient" and therefore "unreasonable." (*See* Argument *supra* § 3). The focuses of the two analyses are, however,

significantly different. While the reasonableness of a waiver focuses on the convenience of the chosen forum to the defendant, the focuses of the forum non conveniens doctrine are the "convenience of witnesses," conservation of "time and judicial resources," the burden on "Montana jurors" and the Montana judiciary, and the "ends of justice." *Harrington v. Energy West, Inc.*, 2017 MT 141, ¶ 27, 387 Mont. 497, 396 P.3d 114.[6]

These different focuses and the factors relevant to a forum non conveniens analysis are highlighted by this Court's decisions in *San Diego Gas* and *Harrington*. In *San Diego Gas*, the Court reversed a district court's decision to

[6] Whether to decline jurisdiction under the doctrine of forum non conveniens is a matter of "wide discretion" for the District Court. *Harrington*, ¶ 27. Although Alves presented its forum non conveniens arguments to the District Court, the District Court did not *expressly* reach the argument because it correctly decided that it lacked personal jurisdiction over Alves under the due process clause. (*See* Dkt. 21 at 10). The District Court did, however, make all of the necessary factual conclusions to support dismissal under forum non conveniens. (Dkt. 21 at 8-9). As part of its analysis of the unfairness of exercising jurisdiction over Alves, the District Court decided that exercise of jurisdiction would be unfair, unduly burdensome to witnesses, jurors, and the Montana judiciary. (*Id*.) The District Court, therefore, considered forum non conveniens without expressly using the term "forum non conveniens." (*Id*.) There is, therefore, a sufficient record on appeal for this Court to consider and apply the doctrine of forum non conveniens. (*Id*.; *compare Harrington v. Energy West Inc.*, 2015 MT 244, ¶¶ 28, 30, 380 Mont. 298, 356 P.3d 441). Judicial economy is best served by affirming the District Court's correct result, even if it was "based on a wrong or unspecified reason." *E.g., North Star Dev., LLC v. Mont. Pub. Serv. Comm'n*, 2022 MT 103, ¶ 17, 408 Mont. 498, 510 P.3d 1232; *Nelson v. State*, 2008 MT 336, ¶ 34, 346 Mont. 206, 195 P.3d 293.

exercise jurisdiction over a Delaware company that was involved in a contract dispute with a California company. *San Diego Gas*, ¶¶ 2, 4-5. The contracts at issue concerned renewable energy credits and electricity generated in Montana, and the California company filed simultaneous suits about the contracts in California and Montana. *Id*. Applying the doctrine of forum non conveniens, the Court reasoned that California was a better forum than Montana because (a) litigating in Montana presented a "strong possibility of inconsistent results" with simultaneous proceedings in California, (b) "litigating duplicate actions in separate forums would constitute a substantial waste of time and judicial resources," (c) "all of the parties' fact witnesses were Californians," and (d) litigating in California would be the most "prudent" option. *Id*. at ¶¶ 24-25.

This Court reached a similar decision in *Harrington*. That case involved termination of an Ohio resident's employment. *Harrington*, ¶¶ 3-4. Before his termination, the Ohio resident was employed in Ohio for a Montana corporation or its Ohio parent company. *Id*. This Court determined that Ohio was a superior forum to Montana because (a) "Ohio law governs," (b) the dispute concerned employment of the plaintiff in Ohio, (c) the persons responsible for terminating plaintiff's employment "reside in Ohio," (d) relevant records related to such termination were "largely if not exclusively located in Ohio," and (e) most of the relevant witnesses were in Ohio. *Id*. at ¶¶ 25, 29. Ultimately, the Court decided

that the "center of gravity" of the case was Ohio and affirmed the district court's decision to dismiss the case. *Id*. As the district court in that case explained, "Montana jurors should not be burdened with a case based on Ohio law and conduct that occurred in Ohio." *Id*.

The Court should affirm the District Court's decision not to exercise jurisdiction over Alves in this case for the very same reasons that exercise of jurisdiction was inappropriate in *San Diego* and *Harrington*. The "center of gravity" of Plaintiffs' claims is not in Montana. It is in Brazil. As in *San Diego Gas*, this case presents a risk of inconsistent judgments in light of the criminal investigation pending in Brazil. (*See* Dkt. 1 at ¶ 24; Dkt. 6-2-B; Dkt. 17 at ¶¶ 8-10). As in *San Diego* and in *Harrington*, most if not all of the relevant items of evidence and necessary witnesses in this case are located beyond Montana courts' subpoena power, in Brazil. (*See* Doc. 1 at ¶¶ 8-25; Doc. 6-2, Alves Aff. at ¶ 3, 5, 9-10, 12). As in *Harrington*, this case concerns actions that Alves allegedly took outside Montana, in Brazil. (*See* Doc. 1 at ¶¶ 8-25; Doc. 6-2, Alves Aff. at ¶¶ 9-11). It concerns actions and communications that Alves allegedly made with other Brazilians, and it turns on contracts created in Brazil using Brazilian Portuguese. (*See* Doc. 1 at ¶¶ 8-25; Doc. 6-2, Alves Aff. at ¶¶ 5-15). Likewise, CGS's purported translation of the Acordo Estratégico & Operacional indicates that the Acordo Estratégico & Operacional was made "under the terms of Article 118 of

the Brazilian Corporation Law," rather than under any law of Montana. (Dkt. 10-1 at p. 1). As in *Harrington*, therefore, this case will require application of Brazilian law and a Brazilian court will be a "superior forum" to apply that law.

Ultimately, the only connection that Montana has to this case is that the plaintiffs happen to live in Montana, which is a wholly insufficient reason for this Court to exercise jurisdiction. *Walden v. Fiore*, 571 U.S. 277, 284-85 (2014) ("the plaintiff cannot be the only link between the defendant and the forum"). The judicial time and expense involved with resolving this matter will not serve the people or State of Montana, which have no connection to this matter. As in *Harrington*, any limited connection between Montana and the plaintiffs of this case is insufficient to justify charging Montana courts and jurors with the burden of attempting to resolve this case. As in *Harrington*, a Brazilian court with direct control over the parties, witnesses, and evidence at issue; with an understanding of the language of the operative documents and evidence; and with familiarity with Article 118 of the Brazilian Corporation Law will be able to much more efficiently decide this case. *Harrington* ¶¶ 25-29. Litigating in Montana would unnecessarily burden Montana's judicial resources.

The only goal that litigating in Montana will accomplish is CGS's goal of taking advantage of Alves' financially crippling circumstances and using the burden of litigating in Montana courts as leverage to obtain the type of unfair

settlement it proposed when it wrongfully dissociated Alves. Montana courts should not acquiesce to being used as leverage in this dispute that is "essentially local" to Brazil. *M/S Bremen*, 407 U.S. at 17. The District Court was correct to dismiss CGS's complaint.

CONCLUSION

For the foregoing reasons, the Court should affirm the District Court's order dismissing CGS's complaint. The District Court correctly determined that it lacks personal jurisdiction over Alves in this matter and exercise of jurisdiction is inappropriate under the doctrine of forum non conveniens.

DATED this 13th day of December, 2023.

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CERTIFICATE OF COMPLIANCE

Pursuant to M. R. App. P. 11(4)(e), I certify that Appelle's Answer Brief is typed in 14-point Times New Roman Font, a proportionally-spaced typeface, and contains 8,035 words, as calculated by Microsoft Office Word.

/s/ Griffin B. Stevens
Griffin B. Stevens

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served upon the following by the means designated below, this 13th day of December, 2023.

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I, Griffin Brooks Stevens, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 12-13-2023:

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