IN THE HIGH COURT
of the
REPUBLIC OF THE MARSHALL ISLANDS

NAVIOS SOUTH AMERICAN LOGISTICS INC., a Republic of the Marshall Islands Corporation, **Plaintiff,** **v.** **CLAUDIO PABLO LOPEZ AND CARLOS AUGUSTO LOPEZ,** **Defendants.**	**CASE NO. 2024-01839** **HCT/CIV/MAJ** **ORDER GRANTING MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION**

Parties/Counsel:
Dennis J. Reeder, counsel for Plaintiff
Arsima A. Muller, counsel for Defendants

On February 27, 2025, this matter came before the Court for a hearing on the Defendants Motion to Dismiss Complaint, Memorandum in Support ("MIS of MTD"), Declaration of Claudio Pablo Lopez with Exhibits 1-3, and Declaration of Carlos Augusto Lopez with Exhibits 1-3 (together the motion, memorandum and declarations are referred to as "MTD"). For the reasons set forth below, the Court GRANTS the Motion to Dismiss Complaint.

I. THE PARTIES AND BACKGROUND

A. The Parties

1. Plaintiff Navios South American Logistics Inc.

Plaintiff Navios South American Logistics Inc., a Republic Marshall Islands non-resident domestic corporation ("NSAL" or "Plaintiff"), is one of the largest infrastructure and logistics

companies in the Hidrovia Region of South America. *See* Complaint ("Complaint" or "Comp.") at ¶ 17. Non-party Navios Maritime Holdings Inc. ("Navios Holdings") beneficially owns approximately 63.8% of NSAL's outstanding common stock. *Id.* The remaining 36.2% of NSAL's common stock is owned by Peers Business Inc., a wholly owned subsidiary of Sinimalec S.A. ("Sinimalec"). *Id.* The defendants, Claudio Pablo Lopez ("Claudio") and Carlos Augusto Lopez ("Carlos") (sometimes together referred to as "Defendants"), collectively own two-thirds of Sinimalec. *Id.* The remaining third of Sinimalec is owned by the estate of the Defendants' deceased brother, Horacio Lopez. *Id.*

Plaintiff NSAL's executive offices are located at Aguada Park Free Zone, Paraguay 2141, Of. 1603 Montevideo, Uruguay. *See* Ex 2 to Claudio Decl. and Ex. 2 to Carlos Decl. (Plaintiff's U.S. Securities & Exchange Commission Registration Statement for the year ending December 31, 2023, hereinafter the "SEC Registration Statement"), at p. 1 and p. 39, Item 4 A. The Plaintiff also maintains offices in Buenos Aires, Argentina, Asuncion, Paraguay, and Columbia, Brazil. *See id.* The Plaintiff conducts business exclusively in the Hidrovia Region of South America ("Hidrovia" is a regional waterways agreement between the countries of Argentina, Uruguay, Paraguay and Brasil). *See id.* The business address for the Plaintiff's directors and executive officers is Aguada Park Free Zone, Paraguay 2141, Ofc. 1603, Montevideo Uruguay. *See id.*, p. 83, Item 6 A. The Plaintiff and its subsidiaries conduct no business in the Republic of the Marshall Islands ("Republic" or "RMI"). *See* Claudio Decl., ¶ 15 and Carlos Decl., ¶ 15. The Plaintiff's own Website and SEC filings confirm that its directors and executive officers are located in Montevideo, Uruguay. *See* Ex. 3 to Claudio Decl. and Ex. 3 to Carlos Decl.

(Plaintiff's Website, https://navioslogistics.com/, posting SEC filings reporting NSAL's executive offices to be in Uruguay).

2. Defendants Claudio Pablo Lopez and Carlos Augusto Lopez

Defendant Claudio is a resident of Paraguay. *See* Declaration of Claudio Pablo Lopez ("Claudio Decl.") at ¶ 5. Claudio has never lived in the Republic. *Id.* at ¶ 7. He owns no real estate and no financial accounts in the Republic. *Id.* at ¶¶ 8-9. He has never traveled to the Republic. *Id.* at ¶ 11. In 2008, Claudio was employed by NSAL pursuant to a written Employment Agreement to serve as Chief Executive Officer and was appointed Vice-President of the Board, in a non-executive capacity. *Id.* at ¶ 1. The Plaintiff terminated Claudio's employment, without cause, in August 2024. *Id.* Claudio's Employment Agreement was subject to the laws of Uruguay. *See* Ex. 1 to Claudio Decl., at p. 8. Other than noting that Plaintiff is a RMI company, there is no other mention of the RMI in Claudio's Employment Agreement. *Id.*

Defendant Carlos Augusto Lopez ("Carlos") is a resident of Paraguay. *See* Declaration of Carlos Augusto Lopez ("Carlos Decl.") at ¶ 5. Carlos has never lived in the Republic. *Id.* at ¶ 7. He owns no real estate and no financial accounts in the Republic. *Id.* at ¶¶ 8-9. He has never even traveled to the Republic. *Id.* at ¶ 11. In 2008, Carlos was employed by the Plaintiff pursuant to a written Employment Agreement to serve as Chief Commercial Officer (Shipping Division) and appointed to serve as a Director, in a non-executive capacity. *Id.* at ¶ 1. Carlos resigned from his employment with Plaintiff in 2022. *Id.* Carlos' Employment Agreement was subject to the laws of Uruguay. *See* Ex. 1 to Carlos Decl., at p. 8. Other than noting that the Plaintiff is a RMI company, there is no other mention of the RMI in Carlos' Employment Agreement. *Id.*

B. Procedural Background

On November 27, 2024, NSAL filed its Summons and Complaint ("Complaint" or "Compl.") in this action against the Defendants alleging the following causes of action: (a) Breach of Fiduciary Duty of Loyalty (Compl. ¶¶ 148-152); (b) Breach of Fiduciary Duty of Good Faith (*Id.* ¶¶ 153-157); (c) Fraud (*Id.* ¶¶ 158-165); (d) Conversion (*Id.* ¶¶ 166-173); (e) Civil Conspiracy (*Id.* ¶¶ 174-179); (f) Unjust Enrichment (*Id.* ¶¶ 180-182); and (g) Declaratory Judgment (*Id.* ¶¶ 183-185). In this regard, NSAL requests relief in the form of damages, a declaratory judgment, and costs and disbursements, including attorneys' fees.

On December 12, 2024, NSAL commenced efforts to serve the Summons and Complaint on the Defendants under the Hague Convention for service.[1] The NSAL asserts that Hague Convention service of process in South America could take several months.[2] In parallel with its Hague Convention service efforts, NSAL's counsel on December 13, 2024, contacted the Defendants' counsel in Uruguay and asked if the Defendants would accept or waive service; however, NSAL received no response.[3]

In the Complaint, NSAL asserts that the Court has personal jurisdiction over the Defendants under the Judiciary Act, 27 MIRC Ch. 2, §§ 251(1)(h), 251(1)(i), and 251(1)(n). *Id.* ¶ 2. Additionally, NSAL asserts that personal jurisdiction over the Defendants — each of whom were directors of a corporation organized under RMI law, NSAL, who are sued in their capacity as such — comports with due process, RMI law, Delaware law, and a logical allocation of

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[1]See Plaintiff's Submission in Response to January 14, 2025 order . . . , at pp. 4-5.

[2]*Id.*

[3]*Id.*

judicial resources. Citing *Frontline, Ltd. v. DHT Holdings, Inc.*, HCT CN 2017-092, June 17, 2017 Order at 14-15.

Although the Summons and Complaint have yet to be served upon the Defendants, on January 3, 2025, the Defendants filed the following two motions: (a) Defendants' MTD; and (b) Defendants' Emergency Motion to Confirm Stay of Discovery and for Temporary Restraining Order and Memorandum in Support of Motion ("MIS of TRO") filed on January 3, 2025 (together, "TRO Motion").

By the TRO Motion, defendants Claudio Pablo Lopez and Carlos Augusto Lopez sought an order restraining plaintiff Navios South American Logistics Inc. ("NSAL") from proceeding with related actions in New York: (i) New York State Attachment Action; and (ii) New York Federal Discovery Action (as defined in "Plaintiff's Submission Regarding New York Proceedings . . ." filed on January 10, 2025). In its Order Denying TRO Motion, issued on January 20, 2025, the Court denied the TRO Motion for the failure to establish immediate and irreparable harm.

In their MTD, the Defendants argue that the Court lacks personal jurisdiction over them. They assert that the Complaint does not allege that they own property in the Republic of the Marshall Island ("Republic" or "RMI") or have committee acts in the Republic or site other facts that justify the Court's exercise of jurisdiction over them. Additionally, the Defendants assert 27 MIRC§§ 251(1)(h), 251(1)(i), and 251(1)(n) do not apply to them. *See* MIS of MTD at 1 and 5-10.

On January 24, 2025, NSAL filed Plaintiff's Opposition to Defendants' Motion to Dismiss Complaint ("Opposition" or "Opp."). In its Opposition, NSAL argues as follows: (i)

that the Defendants have waived any objections to personal jurisdiction (Opp. at 6-10); (ii) that the Defendants have consented to personal jurisdiction (Opp. at 10-12); and (iii) that the RMI long-arm statue confers jurisdiction under 251(1)(n) over the Defendants and the exercise of jurisdiction is consistent with due process (Opp. at 12-17).

On January 31, 2025, the Defendants filed Defendants' Reply Memorandum in Further Support of Motion to Dismiss Complaint with the Declaration of Dr. Mariela Ruanoval and Exhibit 1-5 (together "Reply"). In their Reply, the Defendants argue as follows: (i) that the Defendants did not waive personal jurisdiction defenses by moving to stay discovery (Reply at 4-7); (ii) NSAL's reliance on *Forntline* is misguided, as is its reliance on arguments made by Sphinx Investment Corporation in HCT CNs 2024-00357 and -01276 (Reply at 7-8); (iii) the RMI's long-arm statute does not confer personal jurisdiction over the Defendants (Reply at 8-9); and (iv) the exercising jurisdiction over the Defendants would be inconsistent with due process (Reply 9-10).

II. LEGAL STANDARDS AND APPLICATION

As noted above, in its Opposition plaintiff NSAL alleges that the Defendants (i) waived the personal jurisdiction defenses, (ii) consented to personal jurisdiction over them, and (iii) are subjection to the Court jurisdiction under the RMI long-arm statute and that the exercise personal jurisdiction over the Defendants is consistent with due process. (Opp. at 12-17). In their Reply, the Defendants deny that same.

A. Did the Defendants Waive Personal Jurisdiction Defenses?

1. Legal Standard re Waiver of Personal Jurisdiction Defense

The Defendants brought their MTD under MIRCP Rules 7(b) and 12(b)(2). *See* MTD at 1. Regarding the waiver of a Rule 12(b)(2) motion to dismiss, MIRCP 12(h)(1), in relevant part, provides that "[a] party waives any defense listed in Rule 12(b)(2) to (5) by: (A) omitting it from a motion in the circumstances described in Rule 12(g)(2); or (B) failing to . . . (i) make it by motion under this rule." In turn, Rule 12(g)(2), in relevant part, provides that "a party that makes a motion under this rule [Rule 12] must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion."

As the MIRCP 12 mirrors the respective United States Federal Rules of Civil Procedure counterparts, RMI courts look to United States cases for interpretation of such rules. *See Kabua v. M/V Mell Springwood, et al.*, H. Ct. Civ. No. 2015-200, Order (Jun. 20, 2016) ("*Springwood* Order"), at p 12. Regarding the waiver of the Rule 12 personal jurisdiction defense by seeking in junction relief, the United States Supreme Court has held as follows:

> "'Because the requirement of personal jurisdiction represents first of all an individual right, it can, like other such rights, be waived." *Insurance Corp. of Ireland, Ltd., et al. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 703, 102 S.Ct. 2099, 72 L.Ed.2d 492 (1982). Moreover, the 'actions of the defendant may amount to a legal submission to the jurisdiction of the court, whether voluntary or not.' *Id.* at 704–705, 102 S.Ct. 2099. In particular, where a party seeks affirmative relief from a court, it normally submits itself to the jurisdiction of the court with respect to the adjudication of claims arising from the same subject matter. *Adam v. Saenger*, 303 U.S. 59, 58 S.Ct. 454, 82 L.Ed. 649 (1938).
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> Because there 'exists a strong policy to conserve judicial time and resources,' we have held that 'preliminary matters such as . . . personal jurisdiction . . . should be raised and disposed of before the court considers the merits or quasi-merits of a controversy.' *Wyrough & Loser, Inc. v. Pelmor Labs., Inc.*, 376 F.2d 543, 547 (3d Cir.1967). Accordingly, in *Wyrough* we held that a

> defendant who participates in the adjudication of the plaintiff's application for a preliminary injunction without securing a determination of his challenge to the court's personal jurisdiction over him submits himself to the jurisdiction of the court unless it is not reasonably feasible to first secure that determination. *See id.* This is true even where the defendant raises his personal jurisdiction defense at the earliest point required by the Federal Rules. *See id.*

2. Application of the Legal Standard re Waiver

In its Opposition, NSAL argues, among other things, that the Defendants waived any objections to personal jurisdiction by filing discovery related motions, include the following: (i) the TRO Motion; (ii) the oral request during the January 10, 2025 hearing on the TRO Motion for a preliminary injunction; and (iii) a January 25, 2025 Motion for Clarification (together, the "Discovery Motions"). *See* Opp. at 6. In support of this argument, NSAL cites *Salinero v. Johnson & Johnson, Inc.*, 2019 WL 2410076, at *5 (S.D. Fla. June 7, 2019) for the proposition that "denying motion to dismiss based on alleged lack of personal jurisdiction where defendant asserted jurisdiction defense in initial filing but then generated and participated in extensive litigation activity, including court appearances and discovery-related motions."

However, a close reading of *Salinero* indicates that the defendant did not file its personal jurisdiction defense motion until *after* months of extensive discovery, management conferences, stipulated protective orders, status reports, a motion for a physical examination, and four discovery hearings. The Defendants in the present case did not engage in extensive discovery action prior to filing their MTD. Instead, in their TRO Motion sought the Defendants only sought to stop NSAL from engaging in discovery in New York state court and federal court prior to an MIRCP Rule 26(f) conference in this case. Such action is "defensive and reactionary in

nature and thus did not constitute a wavier of personal jurisdiction." *See Id.* at *4 citing *Contour Prods., Inc. v. Albecker*, No. 08-60575-CIV, 2009 WL 10646653, at *5 (S.D. Fla. June 2, 2009).

Further, NSAL argues that "Court after court has held that defendants, as here, who assert jurisdictional objections but still seek a court's *affirmative relief* — including equitable relief — waive their objections and, through their litigation conduct, subject themselves to jurisdiction." Opp. at 7 citing *Bel–Ray Co., Inc. v. Chemrite (Pty) Ltd.*, 181 F.3d 435, 443 (3d Cir. 1999) and other cases. In *Bel–Ray Co., Inc.*, the defendants sought affirmative relief, a summary judgment on their counter-claim to enforce arbitration, three months after their first appearance. *Bel–Ray Co., Inc.*, however, is distinguishable from the present case. In the case before this Court, the Defendants are not seeking enforcement of arbitration under a counter-claim. They are only seeking to delay discovery pending a Rule 26(f) discovery conference. Neither are the Defendants seeking affirmative relief in the form of confirmation of an arbitration award, to see how the wind is blowing, to superintend the discovery process, or otherwise, as noted in other cases cited by the Plaintiff.

The present case is more analogous to the court's decision in *Murphy v. Cach, LLC*, 230 So. 3d 599, 601 (Fla. Dist. Ct. App. 2017), where the court "reject[ed] Appellee's argument that Appellant waived her objection to personal jurisdiction based upon her filing a motion to dismiss and a contemporaneously filed motion for protective order." The Defendants' TRO Motion cannot be said to have given NSAL a reasonable expectation that they were seeking to defend on the merits. *Mobile Anesthesiologists Chicago, LLC v. Anesthesia Associates of Houston Metroplex*, 623 F.3d 440, 442-443 (7th Cir.2010). Nor does seeking a stay waive an objection to personal jurisdiction. *See* cases cited in the Defendants' Reply at 6. Additionally, having

counsel observe a Zoom hearing without participating or being viewed cannot be said to waive an objection to personal jurisdiction. Members of the public, including the parties' attorneys, have the right to observe court proceedings.

Finally, by way of context, the Court takes judicial notice from its email records and files: (i) that the Defendants' counsel transmitted the MTD to the Court at 2:57 p.m. on January 3, 2025; (ii) that the Defendants' counsel transmitted the TRO Motion to the Court 3:03 p.m. on January 3, 2025; (iii) that the MTD appears in the Court's file before the TRO Motion; and (iv) that the MTD and the TRO Motion were the first motions filed by the Defendants. Moreover, in the TRO Motion, the Defendants expressly stated: "By submitting this Motion, Defendants do not waive, and expressly preserve, their objections and defenses based on the Court's lack of jurisdiction over them." TRO Motion at 2.

B. Did the Defendants Consent to Personal Jurisdiction over Them?

In its Opposition, NSAL asserts that the Defendants consented to the Court's exercise of personal jurisdiction over them by operation of law and by implied agreement. *See* Opp. at 2 and 10-12 citing the Court's decision in *Frontline, Ltd. v. DHT Holdings, Inc.*, HCT CN 2017-092, Order Denying Motion for Preliminary Injunction (June 7, 2017) ("Frontline Order") at 15 (citing *Sternberg v. O'Neil*, 550 A.2d 1105, 1127 (Del. 1988) ("[I]ndividual nonresident defendants who are directors of the Delaware corporation . . . are subject to personal jurisdiction in Delaware courts.") and 10 Del.C. § 3114 (a "nonresident . . . who . . . accepts election or appointment as a director . . . of a corporation organized under the laws of this State . . . shall, by such acceptance or by such service, be deemed thereby to have consented to" jurisdiction)).

However, later in *Frontline* this Court abandoned its earlier decision as the RMI has not

adopted a similar consent statue even though the RMI may be a logical jurisdiction to try a breach of duty against directors of RMI corporations.[4] With respect to adopting the law of Delaware and other states of the United Stated, Section 13 of the Business Corporations Act 1990, 52 MIRC Chp. 1 ("BCA"), provides as follows:

> This Act shall be applied and construed to make the laws of the Republic, with respect to the subject matter hereof, uniform with the laws of the State of Delaware and other states of the United States of America *with substantially similar legislative provisions*. Insofar as it does not conflict with any other provision of this Act, the *non-statutory law of the State of Delaware and of those other states of the United States of America with substantially similar legislative provisions* is hereby declared to be and is hereby adopted as the law of the Republic, provided however, that this section shall not apply to resident domestic corporations. (Emphasis added.)

Hence, since the BCA does not contain a director consistent statute similar to 10 Del.C. § 3114, the statutory and non-statutory law of Delaware does not provide a basis for concluding that the Defendants have consented to this Court's jurisdiction over them. Moreover, unlike in *Frontline* by the Defendants have not manifested their consent to this Court's jurisdiction by failing to file a timely objection. *Frontline* at 15.

C. Does RMI Long-Arm Statue Confer Personal Jurisdiction over the Defendants and is the Exercise of such Jurisdiction Consistent with Due Process?

1. Is the RMI Long-Arm Statute Applicable?

In its Complaint and Opposition, NSAL asserts that the Court has personal jurisdiction over the Defendants under the Judiciary Act, 27 MIRC Ch. 2 ("Judiciary Act"), §§ 251(1)(h), 251(1)(i), and 251(1)(n). Compl. ¶ 2; Opp. at 12-14 (referring only to Section 251(1)(n)).

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[4] *See* Reply, Exhibit B at 127-129 and 142-143.

a. *Section 251(1)(h)*

Section 251(1)(h) confers upon this Court jurisdiction over any person who "enters into an express or implied contract with a *resident of the Republic*, which is to be performed wholly or partly, by either party, within the territorial limits of the Republic." (emphasis added). However, the evidence and argument presented by NSAL is not sufficient to establish that the Defendants entered into a contract with a resident of the Republic or that any contract the Defendants entered into with NSAL was to be performed wholly or partly in the territorial limits of the Republic.

Instead, the parties' evidence and argument established the opposite. First, NSAL is not a resident of the Republic. It is a non-resident corporation created under the BSA. *See* Compl., §17. Second, the Defendants did not agree to perform any contract within the territorial limits of the Republic, and the Complaint fails to allege any facts stating otherwise. The Defendants were each subject to an Employment Agreement that was governed by Uruguayan law. *See* Ex. 1 to Claudio Decl., at p. 8; Ex. 1 to Carlos Decl., at p. 8. At all times relevant herein, the Defendants' activities and the performance of their duties pursuant to their respective Employment Agreements took place in Latin America, and had no connection to the Republic. *See* Claudio Decl., ¶ 18; Carlos Decl., ¶ 18. Under these circumstances, Section 251(1)(h) does not confer this Court with jurisdiction over the Defendants.

b. *Section 251(1)(i)*

Section 251(1)(i) confers upon this Court jurisdiction over any person who "acts *within the territorial limits* of the Republic as director, manager, trustee or other officer of a corporation organized under the laws of the Republic." (emphasis added). However, as noted above with

respect to Section 251(1)(h), the evidence and argument presented by NSAL was not sufficient to establish that the Defendants acted with the territorial limits of the Republic as a director, manager, trustee, or other officer of a corporation organized under the law of the Republic. Instead, the Complaint alleges that the Defendants forged invoices and falsified accounting records to conceal improper payments to the Defendants and their family members in Buenos Aires. *See* Compl., ¶ 4. The employees and the bank that were allegedly involved were located in Paraguay. *See* Compl., ¶ 30-31.

c. *Section 251(1)(n)*

Section 251(1)(n) confers upon this Court jurisdiction over any person who "commits an intentional act, which is *aimed at the Republic* and causes harm, the brunt of which is suffered and the person who commits the act knows is likely to be suffered by a *resident of the Republic*, in the Republic." (emphasis added).[5] However, the argument and evidence presented by NSAL is not sufficient to establish that the Defendants' alleged fraudulent acts were aimed at the Republic and causes harm, the brunt of which is likely to be suffered and is suffered by a resident of the Republic. Instead, the alleged fraudulent acts were suffered by NSAL a non-resident RMI corporation operating out of Hidrovia Region of South America.[6] *See* Compl. ¶ 17.

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[5]Section 251(1)(n) reflects the United States Supreme's decision in *Calder v. Jones*, 465 U.S. 783, 788-789 (1984), where the Supreme Court held that it was proper for a California court to exercise jurisdiction over two Florida newspapermen in a libel action. The case involved Shirley Jones, a professional entertainer, who claimed she was libeled in an article written and edited by the petitioners in Florida. The article was published in a national magazine with significant circulation in California. The Court concluded that the California court had jurisdiction because the petitioners' intentional conduct in Florida was calculated to cause injury to Jones in California, making California the focal point of both the story and the harm suffered.

[6]The Hidrovia region of South America includes Argentina, Bolivia, Brazil, Paraguay, and Uruguay.

2. Would Exercising Personal Jurisdiction over the Defendants be Consistent with Due Process?

a. *Legal Standard for the Exercise of Personal Jurisdiction of a Non-Resident Defendant*

Even if Section 251 of the Judiciary Act conferred long-arm jurisdiction over the Defendants (which it does not), the exercise of such jurisdiction must be consistent with due process. *See Samsung Ltd.*, SCT. CN 2018-02, Order Denying Motion for Injunction Pending Appeal (May 28, 2018) at 6. To establish that the exercise of personal jurisdiction over non-resident defendants (such as the Defendants) is consistent with due process, the defendants must have "minimum contacts" with the forum. Courts have interpreted "minimum contacts" to mean that (i) a defendant "has performed some act or consummated some transaction within the forum or otherwise purposefully availed himself of the privileges of conducting activities in the forum," (ii) "the claim arises out of or results from the defendant's forum-related activities," and (iii) "the exercise of jurisdiction is reasonable." *Pebble Beach Co.*, 453 F.3d at 1154-1155. "The plaintiff bears the burden of satisfying the first two prongs of the test. If the plaintiff fails to satisfy either of these prongs, personal jurisdiction is not established in the forum state. If the plaintiff succeeds in satisfying both of the first two prongs, the burden then shifts to the defendant to 'present a compelling case' that the exercise of jurisdiction would not be reasonable." *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (C.A.9 (Cal.), 2004) (*citing Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476–78, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985)).

b. *Application of Due Process Standard to the Defendants*

In its Opposition, plaintiff NSAL argues that the Defendants' contacts with the Republic "far exceed the minimum required to comport with traditional notions of fair play and substantial justice." Opp. at 14, (internal citation omitted). In particular, the Defendants served as directors and officers of NSAL (*id.* at 15-16) and defendant Claudio Lopez owns an NYA Corp., a RMI corporation, which owns a New York limited liability company, which in turn own "a lavish, multi-million dollar residential condominium on New York's fabled 57th Street." *Id.* at 16-17.

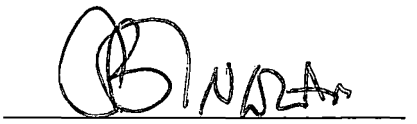
However, as noted earlier, merely being a director or officer of NSAL does not establish consent to the Court jurisdiction. This is true even if under the BCA and NSAL's bylaws the Defendants as directors are afforded "broad indemnification, subject to certain conduct standards, as well as valuable exculpation from certain forms of liability." *Id.* at 16.

Additionally, as the Defendants pointed out in their Reply, the United States Supreme Court has held in *Shaffer v. Heitner*, 433 U.S. 186 (1977) that the non-resident director and officer defendants had not apply accepting positions as directors and officers availed themselves of the benefits of Delaware law such that an exercise of jurisdiction over them would be consistent with due process. *Id.* at 215-16. At the time *Shaffer* was decided, Delaware, like the RMI, did not have a director-consent statute in place. *See* 10 Del.C. § 3114. Hence, even if this Court has long-arm jurisdiction over the Defendants in Section 251(1) of the Judiciary Act, NSAL has not established that the exercise of such jurisdiction would meet the due process "minimum contacts" standard.

III. CONCLUSION

For the following reasons, the Court grants the Defendants Motion to Dismiss Complaint. The Defendants have not waived their objection to personal jurisdiction. The Defendants have not consented to the Court exercising personal jurisdiction over them. The Defendants are not subject to the Court's jurisdiction under Section 251(1) of the Judiciary Act. Finally, the Defendants' contacts with the Republic are not sufficient to meet the due process "minimum contacts" standard.

So ordered and entered.



Carl B. Ingram
Chief Justice, High Court
Date: March 11, 2025