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United States Court of Appeals
Tenth Circuit

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PUBLISH

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

FLUX DRIVE INC.; FLUX DRIVE LLC; IMPACT ENGINEERING INC.; TRI-TEC MANUFACTURING LLC; PHILIP CORBIN, III,

Plaintiffs - Appellants,

v.

JOHN QIANG RONG; ZYRCON GLOBAL STRATEGIES LLP; LEIGH WANG;

Defendants - Appellees,

and

MICHAEL TROY SPARKS; CMONSENSE DESIGN LLC; LIJUAN ZHAO, a/k/a Lora Zhao,

Defendants.

Nos. 25-1308, 26-1013 & 26-1292

Appeals from the United States District Court
for the District of Colorado
(D.C. No. 1:24-CV-02784-DDD-STV)

Steven J. Miller, The Miller Law Offices, PLC, Jacksonville, Florida, for Plaintiffs-Appellants.

Christopher L. Ottele (Ruth A. Turley with him on the brief), Brownstein Hyatt Farber Schreck, LLP, Denver, Colorado, for Defendants-Appellees.

Before **MATHESON**, **McHUGH**, and **FEDERICO**, Circuit Judges.

McHUGH, Circuit Judge.

Plaintiffs-Appellants appeal the district court's order granting Defendants-Appellees' motion to dismiss for lack of personal jurisdiction and two subsequent orders awarding attorneys' fees.

In the underlying action, Flux Drive, Inc. ("FDI"), Flux Drive, LLC ("FDL"), Impact Engineering, Inc. ("Impact"), Tri-Tec Manufacturing, LLC ("Tri-Tec"), and Philip Corbin III (collectively, "Plaintiffs") allege that various individuals and entities—Defendants Michael Troy Sparks, CMONSense Design LLC ("CMONSense"), John Qiang Rong, Zyrcon Global Strategies, LLP ("Zyrcon"), Leigh Wang, and Lijuan Zhao—conspired to steal their trade secrets and transfer them to a company in China that manufactures unauthorized knockoff products. Plaintiffs sued in the District of Colorado, where Defendant Mr. Sparks is a resident.

Mr. Rong, his wife Ms. Wang, and their limited liability partnership Zyrcon (collectively, "the Rong Defendants"), all Illinois residents, moved to dismiss the Amended Complaint for lack of personal jurisdiction. The district court granted the motion and dismissed the Amended Complaint as to the Rong Defendants. Plaintiffs appealed the interlocutory order dismissing the Rong Defendants in Case No. 25-1308.

The Rong Defendants then moved for attorneys' fees under Colorado's fee-shifting statute, which mandates an award of fees when an action is dismissed for

lack of personal jurisdiction. The district court granted the motion and awarded the full lodestar amount requested by the Rong Defendants. In that same order, the district court sua sponte certified its dismissal order for immediate appeal under Federal Rule of Civil Procedure Rule 54(b) and entered a final judgment dismissing the Rong Defendants and awarding fees. Plaintiffs appealed the fee award in Case No. 26-1013.

The Rong Defendants later moved to supplement the fee award, seeking attorneys' fees that they incurred after they filed their original motion. The district court granted the motion with a slight modification, and Plaintiffs appealed the supplemental fee award in Case No. 26-1292.

Thus, this case involves three separate but consolidated appeals: (1) the appeal of the order of dismissal (Case No. 25-1308); (2) the appeal of the initial fee award (Case No. 26-1013); and (3) the appeal of the supplemental fee award (Case No. 26-1292). Exercising jurisdiction under 28 U.S.C. § 1291, we affirm all three district court orders.

I. BACKGROUND

A. Factual History[1]

Plaintiffs claim that Defendants engaged in a "fraudulent scheme and conspiracy" to steal their trade secrets beginning "on or before March 2020." App.

[1] In reviewing a district court order dismissing a case for lack of jurisdiction, "[t]he allegations in the complaint must be taken as true to the extent they are uncontroverted by the defendant's affidavits." *Rambo v. Am. S. Ins. Co.*, 839 F.2d 1415, 1417 (10th Cir. 1988) (quotation marks omitted). "If the parties present

Vol. I at 35. Some years prior, PRD Technologies, Ltd. ("PRD"), a Chinese company, entered into an agreement with Magnetic Drive Development and Venture LLC ("Magnetic Venture"), a New York limited liability company, to develop "a large power water-cooled adjustable speed drive unit." *Id.* at 36–37. The unit was to be designed by FDI and sold in China, Hong Kong, and Singapore. James Pi served as a principal officer for Magnetic Venture, and Mr. Rong, an engineer by trade, acted as the technical liaison between Magnetic Venture and PRD. Mr. Rong is a limited partner of Zyrcon, an Illinois limited liability partnership; his wife, Ms. Wang, is a general partner of Zyrcon.

In 2018, Mr. Rong attended several meetings at FDI's and Tri-Tec's offices in Washington state, where he was introduced to Plaintiffs and their employees. Plaintiffs claim that Mr. Rong learned which of their employees had access to FDI's and FDL's trade secrets over the course of several months. They further allege that Mr. Rong approached Mr. Sparks, a senior design engineer for FDI and Tri-Tec and the sole managing member of CMONSense, for the purpose of obtaining those trade secrets around January 2020. Mr. Rong then allegedly transmitted a "Master Services Agreement" pursuant to which Mr. Sparks provided Plaintiffs' trade secrets to PRD through Mr. Rong.

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conflicting affidavits, all factual disputes are resolved in the plaintiff's favor, and the plaintiff's prima facie showing is sufficient notwithstanding the contrary presentation by the moving party." *Id.* Accordingly, the facts in this section are drawn from the Amended Complaint and the parties' affidavits.

Plaintiffs assert that Mr. Rong, Ms. Wang, and Zyrcon facilitated the scheme by providing "bridge financing" to Mr. Sparks and acting as intermediaries between him and PRD. To that end, Plaintiffs claim that the Rong Defendants transferred over $20,000 to Mr. Sparks's Colorado bank accounts during the relevant period.

The Rong Defendants tell a different story. In an affidavit, Mr. Rong admits that he met with Mr. Sparks at FDI's offices in Washington state on three occasions. However, he asserts that their interactions all took place during group meetings. And while Mr. Rong did email with Mr. Sparks in 2020, he asserts that he did so only to provide translation services and to facilitate communication between Mr. Sparks and PRD as a favor to his friend, Lincoln Li, from PRD. Mr. Rong denies that he was an agent or employee of PRD, that he received payment from PRD, or that he had authority to negotiate the Master Services Agreement. He also states that he was unaware of whether Mr. Sparks and PRD intended to conceal their relationship.

In a separate affidavit, Ms. Wang states that her only connection to Mr. Sparks was a $23,000 bridge loan that she and Mr. Rong provided to him in March 2020 on account of PRD's delay in wiring him funds. Of that amount, $13,000 came from Mr. Rong and Ms. Wang's personal account and $10,000 came from Zyrcon's account. Mr. Sparks repaid the loan in full less than a month later. Ms. Wang asserts that she had no further contact with Mr. Sparks.

In response, Plaintiffs submitted an affidavit from Mr. Corbin (the president and CEO of FDI and Impact, and a manager-member of FDL), excerpts of deposition testimony from Mr. Sparks and Lawrence Greenman (an employee of Mr. Pi), emails

between Mr. Rong and Mr. Sparks, and a bank statement from Mr. Sparks that reflected the funds transfer. Most of this evidence does not meaningfully contradict the Rong Defendants' claims. However, Mr. Sparks did testify in a deposition that he sent the Master Services Agreement to Mr. Rong because Mr. Rong was "a person that [he] would supposedly report to." *Id.* at 104. Plaintiffs contend that Mr. Sparks's statement conflicts with Mr. Rong's claim that he was not PRD's employee or agent.

B. Procedural History

Plaintiffs sued in the District of Colorado, asserting six claims against the Rong Defendants: (1) fraudulent concealment; (2) misappropriation of trade secrets under the Colorado Uniform Trade Secrets Act ("CUTSA"), Colo. Rev. Stat. §§ 7-74-101 to -110; (3) violation of the Defend Trade Secrets Act ("DTSA"), 18 U.S.C. §§ 1836, *et seq.*; (4) civil conspiracy; (5) unjust enrichment; and (6) conversion. Soon after the lawsuit was filed, the Rong Defendants moved to dismiss the Amended Complaint for lack of personal jurisdiction under Federal Rule of Civil Procedure 12(b)(2). In support, Mr. Rong and Ms. Wang submitted affidavits stating that they are Illinois residents, that Zyrcon is an Illinois limited liability partnership, and that neither they nor Zyrcon have ever been present, owned property, maintained accounts, or conducted business in Colorado. Mr. Rong attested that he only facilitated communication between PRD and Mr. Sparks and never contracted with or worked for either entity. And Ms. Wang declared that her only involvement with Mr. Sparks was providing him the bridge loan on PRD's behalf.

Upon referral from the district court, the magistrate judge recommended granting the motion to dismiss, concluding that even if the Rong Defendants' "limited communications" with Mr. Sparks were sufficient to show minimum contacts with Colorado, Plaintiffs "have not demonstrated that their injuries arose out of the [Rong] Defendants' forum-related activities." App. Vol. III at 13. With respect to the bridge loan, the magistrate judge noted that "Plaintiffs have failed to explain how that loan enabled [Mr.] Sparks (or anyone else) to steal Plaintiffs' trade secrets." *Id.* Next, regarding Mr. Rong's communications with Mr. Sparks, the magistrate judge reasoned that the Amended Complaint's "conclusory assertions fail to explain *factually* how the Master Service[s] Agreement facilitated the theft of Plaintiffs' trade secrets let alone how the [Rong] Defendants' limited communications regarding the Master Service[s] Agreement facilitated that theft." *Id.* (alteration in original). He concluded, "[t]he Complaint's allegations concerning the [Rong] Defendants are so conclusory that the [c]ourt cannot tell what they are supposed to have done, let alone how what they did harmed Plaintiffs." *Id.* Accordingly, the magistrate judge determined that Plaintiffs failed to establish personal jurisdiction over the Rong Defendants and recommended that the motion to dismiss be granted. Although Plaintiffs objected to the recommended disposition, asserting that they had pleaded sufficient facts to establish specific personal jurisdiction, the district court overruled their objections, adopted the recommendation, and dismissed the Rong Defendants from the action on July 11, 2025. Plaintiffs appealed on August 8, 2025.

The Rong Defendants then moved for an award of $114,663.11 in attorneys' fees under Colo. Rev. Stat. § 13-17-201. Plaintiffs opposed the motion, arguing that the requested fees were excessive and that § 13-17-201 did not apply because the claims against the Rong Defendants were predominantly statutory in nature, not tort based. In their reply, the Rong Defendants increased their requested amount to $163,321.40, noting that they expended an additional $48,658.29 in litigating the fee motion.

The magistrate judge recommended granting the motion in the amount originally requested, concluding that § 13-17-201 applied to both common law and statutory torts and that all of Plaintiffs' claims sounded in tort. Turning to the calculation of the award, the magistrate judge "reviewed the affidavit and detailed hourly accounting submitted by the [Rong] Defendants" and concluded that the hours expended and rates charged were reasonable. Appellants' Suppl. App. at 153. He therefore found that the Rong Defendants "adequately established the reasonableness of the $114,663.11 in attorneys' fees sought" and recommended granting in full the Rong Defendants' requested attorneys' fees. *Id.* at 156. The magistrate judge did not address or comment on the additional $48,658.29 in fees mentioned in the Rong Defendants' reply.

Plaintiffs objected on the sole basis that the fee motion was premature because the dismissal order was not yet a final judgment. Acting sua sponte, the district court certified its dismissal order as final under Rule 54(b) and entered an amended final judgment the following day. The district court concluded that these steps mooted

Plaintiffs' objections and adopted the recommendation on December 10, 2025. Plaintiffs appealed on January 9, 2026.

The Rong Defendants next moved to supplement their fee award, seeking an additional $70,828.07 for fees incurred after they had filed their original fee motion. Plaintiffs again argued that § 13-17-201 did not apply. They also claimed that the initial fee award constituted an implicit denial of all other fees, that the requested fees were unreasonable, and that the district court could not award supplemental fees because it did not reserve jurisdiction to do so.

With a slight modification, the magistrate judge recommended granting the supplemental fee motion. He rejected Plaintiffs' arguments that the initial fee award implicitly denied the supplemental fees, noting that the district court had never ruled on those fees. The magistrate judge did, however, exclude the Rong Defendants' requested 2.5% administrative fee, resulting in a recommended supplemental fee award of $68,990.50. The district court adopted the magistrate judge's recommendation over Plaintiffs' objections on July 1, 2026. Notably, the court rejected Plaintiffs' contention that it had implicitly denied the additional fees in its initial award, and it further stated that the applicability of § 13-17-201 had already been resolved with respect to the initial fee award. Plaintiffs appealed on July 22, 2026.

II. DISCUSSION

Our analysis proceeds in three parts that correspond to the three appeals consolidated in this opinion. First, we consider Plaintiffs' challenge in Case No. 25-

1308 to the district court's order dismissing the Rong Defendants. Second, after determining that the district court correctly found that personal jurisdiction was lacking as to the Rong Defendants, we consider Plaintiffs' challenge in Case No. 26-1013 to the initial fee award. We begin by addressing whether the district court properly applied § 13-17-201. Then, concluding that it did, we address whether the amount of the award was justified. Finally, we review the propriety and reasonableness of the supplemental fee award as challenged in Case No. 26-1292. Ultimately, for the reasons we now explain, we affirm all three of the district court's orders.

A. Order of Dismissal: Case No. 25-1308

Plaintiffs appeal the district court's dismissal order, making three principal arguments. First, they assert that they made a prima facie showing that Colorado has specific personal jurisdiction over the Rong Defendants. Second, they claim that the district court's failure to hold an evidentiary hearing on the specific jurisdiction issue warrants reversal. And third, they contend that we should remand the case with instructions for the district court to allow Plaintiffs to amend the Amended Complaint pursuant to Federal Rule of Civil Procedure 15 if we determine that the dismissal order is not a final and appealable order. Because we are unpersuaded by Plaintiffs' arguments, we affirm the dismissal order.[2]

[2] Under the firm waiver rule, "a party who fails to make a timely objection to the magistrate judge's findings and recommendations waives appellate review of both factual and legal questions." *Morales-Fernandez v. INS*, 418 F.3d 1116, 1119 (10th Cir. 2005). Here, although Plaintiffs ostensibly objected to the magistrate judge's

1. Jurisdiction

The district court entered an order on July 11, 2025, granting the Rong Defendants' motion to dismiss for lack of personal jurisdiction under Rule 12(b)(6). Plaintiffs filed a notice of appeal on August 8, 2025, which was premature because the order dismissing the Rong Defendants was not a final appealable order under Rule 54(b). But the district court certified the dismissal of the Rong Defendants as a final judgment on December 11, 2025. Whether or not a party disputes the Rule 54(b) certification itself, it remains "the duty of the federal court to determine the matter sua sponte." *Okla. Tpk. Auth. v. Bruner*, 259 F.3d 1236, 1241 (10th Cir. 2001) (quotation marks omitted).

This court may exercise jurisdiction over "all final decisions of the district courts." 28 U.S.C. § 1291. For purposes of expediency, Rule 54(b) relaxes traditional notions of finality by permitting district courts to "direct entry of a final judgment as to one or more, but fewer than all, claims or parties" upon an express determination that there is no just reason for delay. Fed. R. Civ. P. 54(b). Thus, the rule permits immediate appellate review on specific claims or a subset of the parties before the entire action has concluded. *See Okla. Tpk. Auth.*, 259 F.3d at 1241.

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recommendation, they were required to raise objections "sufficiently specific to focus the district court's attention on the factual and legal issues that are truly in dispute." *United States v. B.N.M.*, 107 F.4th 1152, 1168 (10th Cir. 2024) (quotation marks omitted). Their objections fell far short of that obligation, merely summarizing the facts and gesturing at allegations that look to support jurisdiction.

However, we have previously determined that parties may waive or forfeit application of the firm waiver rule itself. *See Hicks v. Franklin*, 546 F.3d 1279, 1283 n.3 (10th Cir. 2008). The Rong Defendants failed to invoke the firm waiver rule in their briefing. Accordingly, we exercise our discretion to decide Plaintiffs' appeal of the dismissal order on separate grounds.

But a Rule 54(b) order may be entered only "when a district court adheres strictly to the rule's requirement that a court make two express determinations." *Id.* That is, the district court must find "that the order it is certifying is a final order" and "that there is no just reason to delay review of the final order until it has conclusively ruled on all claims presented by the parties to the case." *Id.* The first determination is reviewed de novo, while the second determination is reviewed for abuse of discretion. *See id.*

First, the district court correctly concluded that its dismissal order was "final with respect to Plaintiffs' claims against" the Rong Defendants. Appellants' Suppl. App. at 212. It is readily apparent that a dismissal for lack of personal jurisdiction constitutes a final order as to those dismissed. *See Butler v. Daimler Trucks N.A., LLC*, No. 2:19-CV-2377, 2021 WL 492427, at *2 n.13 (D. Kan. Feb. 10, 2021) (unpublished) (collecting cases). And second, the district court did not abuse its discretion in finding that "[a] Rule 54(b) certification of the[] jurisdictional dismissals efficiently administers justice," particularly given that the issues involved are fairly narrow and distinct from the merits. Appellants' Suppl. App. at 214; *see also Butler*, 2021 WL 492427, at *2 ("Rule 54(b) certification may be appropriate in certain cases where some, but not all, defendants are dismissed for lack of personal jurisdiction and the jurisdictional questions are independent of the merits of the underlying claims, because certification may resolve jurisdictional issues at the outset of the litigation and obviate the need for a second trial." (internal quotation marks omitted)).

Thus, because the district court's July 11, 2025, order was properly certified as final, Plaintiffs' premature notice of appeal has ripened and is now properly before this

court under 28 U.S.C. § 1291. *See Lewis v. B.F. Goodrich Co.*, 850 F.2d 641, 645 (10th Cir. 1988) ("[When an] appellant obtains a [Rule] 54(b) certification after the notice of appeal was filed, we will deem the notice of appeal to ripen as of the date of certification and will accept the jurisdiction . . . ."); *see also B. Willis, C.P.A., Inc. v. BNSF Ry. Corp.*, 531 F.3d 1282, 1295 (10th Cir. 2008) ("The district court's final decision . . . ripened [the appellant's] prematurely filed notice of appeal.").

2. Standard of Review and Legal Background

When a district court finds personal jurisdiction "wanting on the basis of the complaint and affidavits, our review of the district court's dismissal is de novo, taking as true all well-pled (that is, plausible, non-conclusory, and non-speculative . . .) facts alleged in plaintiffs' complaint." *Dudnikov v. Chalk & Vermilion Fine Arts, Inc.*, 514 F.3d 1063, 1070 (10th Cir. 2008) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 554–56 (2007)). Similarly, any factual disputes in the parties' affidavits must be resolved in the plaintiff's favor. *See FDIC v. Oaklawn Apartments*, 959 F.2d 170, 174 (10th Cir. 1992).

Crucially, the plaintiff bears the burden of establishing personal jurisdiction over the defendant. *See OMI Holdings v. Royal Ins. Co. of Can.*, 149 F.3d 1086, 1091 (10th Cir. 1998). However, this burden is a light one at the preliminary stages of litigation. *See Wenz v. Memery Crystal*, 55 F.3d 1503, 1505 (10th Cir. 1995). When an evidentiary hearing has not been held, the plaintiff need only present competent proof in the form of affidavits and other written materials that, if true, would make a prima facie case that jurisdiction is proper. *See id.*

In deciding "whether a federal court has personal jurisdiction over a defendant, the court must determine (1) whether the applicable statute potentially confers jurisdiction by authorizing service of process on the defendant and (2) whether the exercise of jurisdiction comports with due process." *Trujillo v. Williams*, 465 F.3d 1210, 1217 (10th Cir. 2006) (internal quotation marks omitted). The DTSA does not provide for nationwide service of process that would confer personal jurisdiction over all Defendants in the present case. *See* 18 U.S.C. § 1836; *see also Mission Measurement Corp. v. Blackbaud, Inc.*, 287 F. Supp. 3d 691, 706 (N.D. Ill. 2017). Thus, "[Federal Rule of Civil Procedure] 4(k)(1)(A) commands the district court (and us) to apply the law of the state in which the district court sits." *Dudnikov*, 514 F.3d at 1070; Fed. R. Civ. P. 4(k)(1)(A).

In Colorado, personal jurisdiction is governed by the state long-arm statute, Colo. Rev. Stat. § 13-1-124(1), which was intended to extend the jurisdiction of Colorado courts to the fullest extent permitted by the Due Process Clause of the Fourteenth Amendment. *See Archangel Diamond Corp. v. Lukoil*, 123 P.3d 1187, 1193 (Colo. 2005). As a result, "the first, statutory, inquiry effectively collapses into the second, constitutional, analysis." *Dudnikov*, 514 F.3d at 1070.

"[T]o exercise jurisdiction in harmony with due process, defendants must have 'minimum contacts' with the forum state, such that having to defend a lawsuit there would not 'offend traditional notions of fair play and substantial justice.'" *Id.* (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). Adequate minimum contacts to establish specific personal jurisdiction exist where (1) "the

defendant has purposefully directed its activities toward the forum jurisdiction" and (2) "the underlying action is based upon activities that arise out of or relate to the defendant's contacts with the forum."[3] *Trujillo*, 465 F.3d at 1218 (quotation marks omitted).

To determine whether purposeful direction exists "[i]n the tort context, we often ask whether the nonresident defendant purposefully directed its activities at the forum state." *Dudnikov*, 514 F.3d at 1071 (internal quotation marks omitted). Purposeful direction is found where there is "an intentional action . . . expressly aimed at the forum state . . . with . . . knowledge that the brunt of the injury would be felt in the forum state." *Id.* at 1072. A defendant's "'random, fortuitous, or attenuated' contacts" are insufficient for jurisdiction. *Anzures v. Flagship Rest. Grp.*, 819 F.3d 1277, 1280 (10th Cir. 2016) (quoting *Walden v. Fiore*, 571 U.S. 277, 286 (2014)).

With respect to the requirement that the plaintiff's injuries arise out of the defendant's forum-related activities, we look to whether "the defendant's *suit-related* conduct . . . create[s] a substantial connection with the forum [s]tate." *Id.* (quoting

[3] Minimum contacts may also be established by a showing of general jurisdiction based on a nonresident "defendant's 'continuous and systematic' general business contacts with the forum state." *Trujillo v. Williams*, 465 F.3d 1210, 1218 n.7 (10th Cir. 2006) (quoting *Helicopteros Nacionales v. Hall*, 466 U.S. 408, 415 (1984)). Plaintiffs do not argue on appeal that the Rong Defendants are subject to general personal jurisdiction, nor does anything in the Amended Complaint indicate that the Rong Defendants were engaged in systematic and continuous activity in Colorado. We therefore consider only whether Plaintiffs have made a prima facie showing of specific personal jurisdiction.

Walden, 571 U.S. at 284). "[T]he relationship between a defendant and the forum [s]tate 'must arise out of contacts that "the defendant *himself*" creates with the forum [s]tate,' and those contacts must be 'with the forum [s]tate itself, not the defendant's contacts with persons who reside there,' such as a plaintiff." *Id.* (quoting *Walden*, 571 U.S. at 285). This requirement ensures that "an adequate connection exists between the forum and the underlying controversy." *Dental Dynamics, LLC v. Jolly Dental Grp., LLC*, 946 F.3d 1223, 1229 (10th Cir. 2020). Ultimately, "[d]ue process requires that a defendant be haled into court in a forum [s]tate based on his own affiliation with the [s]tate, not based on the 'random, fortuitous, or attenuated' contacts he makes by interacting with other persons affiliated with the [s]tate." *Anzures*, 819 F.3d at 1280–81 (quoting *Walden*, 571 U.S. at 286).

After the plaintiff establishes a prima facie case of specific personal jurisdiction, the defendant may defeat that case by making a "compelling case" that other considerations render jurisdiction unreasonable. *OMI Holdings*, 149 F.3d at 1091 (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1985)). Specifically, any exercise of "personal jurisdiction . . . must always be consonant with traditional notions of fair play and substantial justice." *Dudnikov*, 514 F.3d at 1071 (citing *Int'l Shoe*, 326 U.S. at 316). Thus, the relevant question is "whether a district court's exercise of personal jurisdiction over a defendant with minimum contacts is 'reasonable' in light of the circumstances surrounding the case." *OMI Holdings*, 149 F.3d at 1091.

3. Minimum Contacts

As discussed, the minimum contacts necessary to support specific personal jurisdiction requires both that the defendant purposefully directed activities toward the state and that the relevant injury arose out of those activities. As we now explain, Plaintiffs have made a threshold showing to satisfy the first requirement. But they have failed to allege that the injuries of which they complain arose out of those purposeful contacts.

a. Purposeful direction

Plaintiffs identify two discrete contacts between the Rong Defendants and Colorado that they contend are sufficient to establish purposeful direction: (1) Mr. Rong acted in a "supervision and liaison role" over Mr. Sparks's "misappropriation activities conducted in Colorado"; and (2) the Rong Defendants transferred $23,000 to Mr. Sparks's Colorado bank account "to fund a high-power CAD workstation and software, which [Mr.] Sparks purchased within four days and used from Colorado to misappropriate Plaintiffs' trade secrets." Appellants' Br. at 12.

Plaintiffs contend that they produced sufficient evidence to show purposeful direction based on these two contacts and argue that the district court erred by discounting the evidence they produced. *Id.* at 13. In support of their contention that Mr. Rong played a supervisory role to Mr. Sparks, Plaintiffs point to the following record evidence:

- Sworn declarations of [Mr.] Corbin describing [Mr.] Rong's ongoing technical and supervisory role.

- [Mr.] Sparks' deposition testimony that he was told he would "report to" [Mr.] Rong.
- Contemporaneous emails between [Mr.] Corbin and [Mr.] Rong addressing design details, schedules, testing, and production.
- Independent corroboration by non-party Larry Greenman identifying [Mr.] Rong as an engineering decision-maker.

Reply Br. at 2 (citations omitted). And in support of their contention that the Rong Defendants wired money to Mr. Sparks to facilitate his theft of Plaintiffs' trade secrets, Plaintiffs point to bank records showing that $23,000 was wired to Mr. Sparks's account from the Rong Defendants. Plaintiffs argue that the district court "ignored the pleaded context and causal chain alleged here and prematurely rejected [the] specific sworn facts that must be credited at this stage" of the litigation. Appellants' Br. at 12–13.

For their part, the Rong Defendants contend that neither of the alleged interactions between themselves and Mr. Sparks constitutes purposeful availment. Instead, they argue that the emails to Mr. Sparks and the wiring of funds were "[s]hort-lived, non-commercial favors," as opposed to "jurisdictionally significant" activities that created a "contractual tie, duty, or performance obligation in Colorado." Appellees' Br. at 16–17. They further contest Plaintiffs' characterization of the record evidence regarding both Mr. Rong's role as a supervisor and the description of the alleged bridge loan to Mr. Sparks. They argue that the portions of the record cited by Plaintiffs do not support their descriptions of the Rong Defendants' contacts with Colorado. In particular, they make the following points:

- The emails that Plaintiffs cite show only . . . Mr. Rong's facilitation of the [Master Services Agreement]'s execution, not Mr. Sparks 'reporting to' him.

- [Mr.] Corbin's declaration stating that Mr. Rong had technical knowledge has no bearing on the existence of a supervisory relationship.

- A non-party referring to Mr. Rong as "Dr. Rong," but admitting to being unsure "[e]xactly what Dr. Rong's role in all of this was" has no bearing on the existence of a supervisory relationship.

- Defendant Sparks's deposition comment that "[Mr.] Rong was supposed to be a person that I would supposedly report to" similarly fails. The statement is doubly qualified by "supposed" rendering it speculative and unsupported by firsthand knowledge. Plaintiffs cannot infer jurisdiction from a conclusory allegation of a single deponent about a hypothetical relationship that never existed.

Id. at 18–19 (citations omitted). With respect to the bridge loan paid to Mr. Sparks, the Rong Defendants assert that they "neither directed the funds to Colorado commerce nor sought any Colorado-based benefit, and they exercised no control and had no knowledge of their use." *Id.* at 16.

The Rong Defendants' alleged contacts satisfy the first part of our minimum contacts inquiry. That is, Plaintiffs have adequately established that the Rong Defendants purposefully directed their activities toward Colorado. At this early stage of the litigation, we must take the well pleaded allegations as true, but only "to the extent they are uncontroverted by the defendant's affidavits." *Wenz*, 55 F.3d at 1505 (quotation marks omitted). Thus, we cannot credit bare allegations in the Amended Complaint to the extent they are controverted by the Rong Defendants' affidavits. *See id.* However, "[i]f the parties present conflicting affidavits, all factual disputes must be resolved in the plaintiff's favor." *Id.*

Here, Plaintiffs did produce some evidence showing that the Rong Defendants directed activities at the forum state. Specifically, Mr. Rong repeatedly sent email communications to Mr. Sparks, who he knew resided in Colorado. In a deposition, Mr. Sparks stated that Mr. Rong "was supposed to be a person that [he] would supposedly report to" in his role at PRD. App. Vol. I at 104. Although this statement is somewhat equivocal, it is enough at this stage to support the existence of a supervisory relationship between Mr. Sparks and Mr. Rong. Further, because Mr. Sparks had personal knowledge of his involvement in the relationship and negotiations with PRD, he was not merely speculating on the existence of the relationship. And although he qualified his answer with "supposed to be" and "supposedly," *id.*, "that equivocation goes to the weight of the testimony," which is a question for the jury, *see Hafen v. Howell*, 121 F.4th 1191, 1207 (10th Cir. 2024). Finally, it is undisputed that the Rong Defendants wired $23,000 to Mr. Sparks's Colorado bank account.

To be sure, none of this evidence shows a continuous relationship between the Rong Defendants and the forum state, but "[s]o long as it creates a 'substantial connection' with the forum, even a single act can support jurisdiction." *Burger King*, 471 U.S. at 475 n.18 (quoting *McGee v. Int'l Life Ins. Co.*, 355 U.S. 220, 223 (1957)); *see also Rambo v. Am. S. Ins. Co.*, 839 F.2d 1415, 1418 (10th Cir. 1988) ("In proper circumstances, even a single letter or telephone call to the forum state may meet due process standards.").

b. Arising out of

Plaintiffs, however, have not satisfied the second part of the specific personal jurisdiction inquiry. Although they have identified sufficient contacts to establish purposeful direction, they have not shown that their injuries arose out of or related to the Rong Defendants' forum-related activities.

Plaintiffs first allege that Mr. Rong, acting as an agent for PRD, aided Mr. Sparks's theft of their trade secrets by providing him with the Master Services Agreement. But they fail to explain *how* Mr. Rong's communication with Mr. Sparks facilitated the alleged theft. *See Newsome v. Gallacher*, 722 F.3d 1257, 1271 (10th Cir. 2013) ("The import of the 'arising out of' analysis is whether the plaintiff can establish that the claimed injury resulted from the defendant's forum-related activities."). Likewise, they fail to identify any part of the Master Services Agreement that enabled the alleged misappropriations. *See id.* The Master Services Agreement is an independent contractor agreement between PRD and Mr. Sparks in which Mr. Sparks agreed to perform certain design and development work for PRD in exchange for compensation. It makes no mention of Plaintiffs, Plaintiffs' technologies, or Mr. Rong. Thus, as the magistrate judge observed, "[i]t is entirely unclear from the Complaint how the Master Services Agreement enabled [Mr.] Sparks to misappropriate Plaintiffs' trade secrets." App. Vol. III at 3 n.3.

To be sure, Plaintiffs attempt to contradict Mr. Rong's claim that his role was merely that of a translator. Specifically, they cite Mr. Corbin's declaration which asserts that, beginning in August 2018, Mr. Rong "was directly involved as a liaison

on all technical matters for the project between [P]laintiffs and the ultimate customer," and that he "either generated, or received, or was copied" on all technical communications. App. Vol. I at 88. In a separate declaration, Mr. Corbin also contends that Mr. Rong's intention was to enable Mr. Sparks "to secretly work for PRD," and that he operated as more of "a[n] authorized technical representative and agent" than "a simple Chinese translator." App. Vol. II at 9, 11. And as previously mentioned, Mr. Sparks previously identified Mr. Rong as "a person that [he] would supposedly report to." App. Vol. I at 104.

But we need not decide whether this evidence actually contradicts Mr. Rong's declaration. *See Wenz*, 55 F.3d at 1505. Even after crediting it in full, the evidence shows, at most, that Mr. Rong was knowledgeable about the project, communicated with Mr. Sparks about the Master Services Agreement, and acted on PRD's behalf. Although that bears on Mr. Rong's alleged relationships with Mr. Sparks and PRD, it fails to inform our present inquiry—namely, whether the alleged contacts gave rise to Plaintiffs' injuries. Nothing in Mr. Corbin's declarations or Mr. Sparks's testimony explains how the Master Services Agreement, or Mr. Rong's role in transmitting it, enabled Mr. Sparks to misappropriate Plaintiffs' trade secrets. And while Plaintiffs' allegation that Mr. Rong worked for PRD in secret suggests a degree of concealment, it does not establish the much broader inference that Mr. Rong's work caused the alleged theft. *See Newsome*, 722 F.3d at 1271. And although Mr. Rong's alleged status as technical liaison, agent, or supervisor may describe his "relationship with a

plaintiff or third party," such a relationship, "standing alone, is an insufficient basis for jurisdiction." *Walden*, 571 U.S. at 286.

The same problems pertain to the bridge loan. Plaintiffs have not pointed to any record evidence supporting their assertion on appeal that the $23,000 the Rong Defendants transferred to Mr. Sparks went toward the workstation and software that he used to misappropriate their trade secrets from his Colorado office. Nor have they identified any evidence showing that the Rong Defendants knew how Mr. Sparks would use the money or exercised control over its use—a crucial component of their present claim that the transfer caused their injuries. *See Newsome*, 722 F.3d at 1271 (making clear that the plaintiffs' injuries must arise from the defendants' forum-related activities); *OMI Holdings*, 149 F.3d at 1091 (same). And they failed to make any such allegation in the Amended Complaint, alleging only that the Rong Defendants "provid[ed] bridge financing to aid and abet . . . unlawful secretive concealed activity" without further explanation. App. Vol. I at 38. That conclusory allegation is insufficient to establish the required connection between the loan and Plaintiffs' injuries.[4] *See Dudnikov*, 514 F.3d at 1070.

[4] To be sure, the Rule 12(b)(2) analysis is distinct from the Rule 12(b)(6) analysis. *See Newsome v. Gallacher*, 722 F.3d 1257, 1270–71 (10th Cir. 2013) (citing *Smith v. Sperling*, 354 U.S. 91, 94–95 (1957)). But we are empowered to take as true only Plaintiffs' well-pleaded facts—that is, their plausible, non-conclusory, and non-speculative allegations. *Dudnikov v. Chalk & Vermilion Fine Arts, Inc.*, 514 F.3d 1063, 1070 (10th Cir. 2008) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 554–56 (2007)). Thus, we do not consider conclusory allegations unsupported by factual assertions.

During oral argument, Plaintiffs emphasized that we may consider facts beyond the pleadings in reviewing a district court's dismissal for lack of personal jurisdiction. Plaintiffs are correct. *See Oaklawn Apartments*, 959 F.2d at 174 (noting that "a motion to dismiss for lack of jurisdiction" may be "decided on the basis of affidavits and other written materials" (quotation marks omitted)). Thus, we have considered Mr. Corbin's declarations and Mr. Sparks's deposition testimony. But our ability to consider such evidence does not absolve Plaintiffs of their broader obligation to establish "an adequate link between the forum [s]tate and the claims at issue" in the Amended Complaint. *XMission, L.C. v. Fluent LLC*, 955 F.3d 833, 840 (10th Cir. 2020). While Plaintiffs are permitted to provide extrinsic facts to bolster their jurisdictional arguments, they cannot do so to alter the claims they have pleaded. Here, the extrinsic evidence upon which Plaintiffs rely goes to Mr. Rong's role and relationships, not to how his alleged contacts caused their injuries. Those contacts, untethered to any apparent harms, cannot support Plaintiffs' conclusory and speculative allegations, regardless of the facts that we are permitted to consider on appeal. *See Dudnikov*, 514 F.3d at 1070.

In short, even accepting that Plaintiffs have identified sufficient purposeful contacts between the Rong Defendants and Colorado, they have not connected those contacts to the alleged misappropriation of their trade secrets. Recall that specific jurisdiction requires both contact directed to the forum state and injury arising out of those contacts. *See Shrader v. Biddinger*, 633 F.3d 1235, 1239 (10th Cir. 2011). Here, Plaintiffs have not established that their injuries arose out of or are otherwise

related to the Rong Defendants' forum-related activities. Accordingly, the district court correctly concluded that it lacked personal jurisdiction over them.[5]

4. Evidentiary Hearing

Plaintiffs next argue that the district court abused its discretion in failing to hold an evidentiary hearing before granting the motion to dismiss. Although Plaintiffs concede that a district court may resolve a Rule 12(b)(2) motion without a hearing, they assert that doing so here was prejudicial. The Rong Defendants counter that Plaintiffs cannot meet their burden of establishing actual prejudice.

As an initial matter, the Rong Defendants contend Plaintiffs have forfeited this issue by failing to raise it with the district court. It is true that, ordinarily, arguments not raised before the district court are forfeited. *See Richison v. Ernest Grp., Inc.*, 634 F.3d 1123, 1128 (10th Cir. 2011) (citing *United States v. Olano*, 507 U.S. 725, 731 (1993)). But "when the district court explicitly considers and resolves an issue of law on the merits," the forfeiture rule does not apply. *Tesone v. Empire Mktg. Strategies*, 942 F.3d 979, 991 (10th Cir. 2019). Here, the Rong Defendants requested an evidentiary hearing, and the district court explicitly concluded that a hearing would not materially assist in resolving the motion. We could therefore review Plaintiffs' argument even though they did not present it to the district court. We do not do so, however, because Plaintiffs have waived their argument by inadequate briefing.

[5] Because we conclude that Plaintiffs have failed to establish a prima facie case, we need not assess whether the "traditional notions of fair play and substantial justice" would make the exercise of personal jurisdiction unreasonable. *Dudnikov*, 514 F.3d at 1071 (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)).

An opening brief must contain the "appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies; and . . . for each issue, a concise statement of the applicable standard of review." Fed. R. App. P. 28(a)(8). Thus, we often decline to consider "issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, in the opening brief." *United States v. Clay*, 148 F.4th 1181, 1201 (10th Cir. 2025) (internal quotation marks omitted); *see also United States v. Woodmore*, 135 F.4th 861, 877 (10th Cir. 2025).

Here, Plaintiffs' opening brief does not adequately develop an argument as to the impropriety of the district court's refusal to hold a hearing. Plaintiffs spend just two bullet-point paragraphs advancing this argument.[6] In those two paragraphs, Plaintiffs baldly claim that the district court erroneously discounted their "sworn specifics" as conclusory and "relied on competing declarations." Appellants' Br. at

[6] In their reply, Plaintiffs assert that "[w]here jurisdictional facts are disputed by affidavits and depositions, and a hearing is requested, it is an abuse of discretion to resolve those disputes on the papers." Reply Br. at 7. In support, Plaintiffs cite without explanation two inapposite cases in which we reviewed the district courts' denials of motions for jurisdictional discovery. *See Dutcher v. Matheson*, 840 F.3d 1183, 1195 (10th Cir. 2016); *Breakthrough Mgmt. Grp., Inc. v. Chukchansi Gold Casino & Resort*, 629 F.3d 1173, 1189 (10th Cir. 2010).

Because this argument was raised for the first time in Plaintiffs' reply, it is waived. *See Star Fuel Marts, LLC v. Sam's E., Inc.*, 362 F.3d 639, 647 (10th Cir. 2004). But even if it were not waived, we would deny the argument as meritless. Our case law makes clear that a district court may resolve a Rule 12(b)(2) motion without an evidentiary hearing even where the jurisdictional facts are disputed; in that situation, the court merely resolves the factual disputes in the plaintiff's favor. *See OMI Holdings v. Royal Ins. Co. of Can.*, 149 F.3d 1086, 1091 (10th Cir. 1998); *Wenz v. Memery Crystal*, 55 F.3d 1503, 1505 (10th Cir. 1995). The district court did that here.

15. But Plaintiffs do not identify any record evidence or well-pleaded allegations that the district court failed to credit in its analysis, nor do they identify any legal error made by the court. Plaintiffs' "cursory statements, without supporting analysis and case law, fail to constitute the kind of briefing that is necessary to avoid application of the forfeiture doctrine." *See Bronson v. Swensen*, 500 F.3d 1099, 1105 (10th Cir. 2007).

Even if we consider the merits of their claim, Plaintiffs have failed to show how they were harmed by the trial court's decision not to hold a hearing before dismissing the Amended Complaint. Specifically, Plaintiffs identify no facts that, if proved in an evidentiary hearing, would have established personal jurisdiction. *Cf. Dutcher v. Matheson*, 840 F.3d 1183, 1195 (10th Cir. 2016) ("It is not enough for the plaintiffs to show that denial of discovery deprived them of discovering some fact; they must show that they were prejudiced by the absence of that fact."). This is particularly problematic given Plaintiffs would have been subjected to a higher burden of proof if the district court had held an evidentiary hearing. *See Oaklawn Apartments*, 959 F.2d at 174 ("[W]hen the district court holds a pretrial evidentiary hearing to resolve factual disputes relating to jurisdictional questions, the plaintiff has the burden to prove facts supporting jurisdiction by a preponderance of the evidence."). Even at the lower threshold that governs at this stage of the proceedings, Plaintiffs have failed to come forward with any evidence they could have introduced at an evidentiary hearing that might have affected the district court's decision on

specific personal jurisdiction over the Rong Defendants. Accordingly, we reject this challenge to the district court's ruling on the motion to dismiss.

5. Leave to Amend

In their appeal of the dismissal order, Plaintiffs last contend that we should remand this case with instructions for the district court to permit them to amend the Amended Complaint under Rule 15. But Plaintiffs' request is expressly contingent on us concluding that the district court's dismissal order was not a final and appealable order under Rule 54(b). As discussed, the district court's Rule 54(b) certification of the order caused the notice of appeal to ripen as of the date of certification, thereby conferring jurisdiction on this court. *See Lewis*, 850 F.2d at 645. Because the district court entered a Rule 54(b) certification, Plaintiffs' requested relief is no longer available and is denied as moot. *See Phelps v. Hamilton*, 122 F.3d 885, 891 (10th Cir. 1997) ("Generally an appeal should be dismissed as moot when events occur that prevent the appellate court from granting any effective relief." (quotation marks omitted)).

B. Attorneys' Fees: Case No. 26-1013

Plaintiffs' second consolidated appeal challenges the initial award of attorneys' fees to the Rong Defendants. Plaintiffs first assert that the district court erred as a matter of law in awarding mandatory fees under § 13-17-201. Second, they claim that the district court abused its discretion in awarding the full amount requested by the Rong

Defendants. After first addressing our jurisdiction and the relevant legal standard, we reject each of Plaintiffs' arguments and affirm the fee award.

1. Jurisdiction

Before reaching the propriety of the fee award, we first address whether the district court's order awarding attorneys' fees is appealable under 28 U.S.C. § 1291. Specifically, we must determine whether the district court's Rule 54(b) certification of the dismissal order also rendered the subsequent fee award final, notwithstanding that Plaintiffs' claims against other defendants remain pending in the district court.

We have not yet had occasion to decide whether a fee award entered after a Rule 54(b) certification constitutes a final order while other claims remain pending. The Third Circuit, however, has answered this question in the affirmative. In *Johnson v. Orr*, 897 F.2d 128, 130–31 (3d Cir. 1990), the court explained that a Rule 54(b) certification reflects the district court's determination that a judgment should immediately become final, and this counsels in favor of treating the judgment's collateral consequences—including fee awards—as similarly final.

That rationale is compelling. An award of attorneys' fees is generally collateral to the merits judgment. *See Yost v. Stout*, 607 F.3d 1239, 1243 (10th Cir. 2010). It would be anomalous to treat a collateral fee award flowing from an underlying merits judgment as non-final solely because other claims remain pending when the merits judgment itself has been certified as final and appealable. *See Johnson*, 897 F.2d at 131. We therefore conclude that the continued proceedings

against other defendants do not deprive us of jurisdiction over the Rong Defendants' fee award, which is unrelated to the remaining claims.

The order granting the fee award must, however, independently satisfy § 1291's requirements. We have said that an order awarding attorneys' fees is final only after a specific fee amount is determined. *See Phelps v. Washburn Univ. of Topeka*, 807 F.2d 153, 154 (10th Cir. 1986).

Here, the district court entered an order awarding the Rong Defendants fees in the amount of $114,663.11. Thus, the order is final, and we may properly exercise jurisdiction to review it.

2. Legal Standard

When we exercise "jurisdiction over pendent state claims, we must apply the substantive law of the forum state . . . just as we would if our jurisdiction rested on diversity of citizenship." *Jones v. Denv. Post Corp.*, 203 F.3d 748, 757 (10th Cir. 2000) (alterations in original) (quotation marks omitted). And "[i]n the Tenth Circuit, attorney fee statutes are considered substantive." *Id.* Thus, the district court "properly consulted" Colorado's fee shifting statute, Colo. Rev. Stat. § 13-17-201, in considering the Rong Defendants' motion for attorneys' fees. *Id.*

Section 13-17-201(1) provides that "[i]n all actions brought as a result of . . . an injury to person or property occasioned by the tort of any other persons, where any such action is dismissed on motion of the defendant prior to trial under rule 12(b) of the Colorado rules of civil procedure," the defendant shall be awarded "judgment for his reasonable attorney fees in defending the action." Despite the statute explicitly applying

only to dismissals under the Colorado rules, we have previously recognized that § 13-17-201(1) "applies in federal cases just as it would apply in state cases." *Weidner v. Doe*, No. 25-1101, 2026 WL 972841, at *3 (10th Cir. Apr. 10, 2026) (unpublished);[7] *see also Jones*, 203 F.3d at 757 (holding that the district court properly awarded a defendant fees under § 13-17-201 following the court's dismissal of the plaintiff's claims "pursuant to a 12(b) motion").

As a general matter, "[w]e review the decision to award attorney fees, and the amount awarded, for abuse of discretion." *Xlear, Inc. v. Focus Nutrition, LLC*, 893 F.3d 1227, 1233 (10th Cir. 2018) (alterations in original) (quotation marks omitted). "A district court abuses its discretion if it commits legal error, relies on clearly erroneous factual findings, or issues a ruling without any rational evidentiary basis." *Id.* But despite this overarching abuse of discretion standard, "[w]e review the statutory interpretation or legal analysis that formed the basis of the award de novo." *Id.* (alterations in original) (quotation marks omitted). And even though Plaintiffs' "appeal involves the review of an award of attorneys' fees under state law, the standard of review under which we review an award of fees is a procedural matter controlled by federal precedent." *Id.*

3. Entitlement to Fees

In suggesting that the district court erred as a matter of law in awarding attorneys' fees, Plaintiffs assert that § 13-17-201 does not apply because their claims are

[7] We cite unpublished cases for their persuasive value only and do not treat them as binding authority. *See United States v. Ellis*, 23 F.4th 1228, 1238 n.6 (10th Cir. 2022).

predominantly statutory.[8] When a plaintiff pleads both tort and non-tort claims, Colorado courts look to "whether the essence of the action was one in tort, in order to ascertain if" the fee-shifting statute applies. *Castro v. Lintz*, 338 P.3d 1063, 1068 (Colo. App. 2014). If the action primarily sounds in tort, the statute applies notwithstanding the non-tort claims. *See US Fax L. Ctr., Inc. v. Henry Schein, Inc.*, 205 P.3d 512, 517–18 (Colo. App. 2009).

Applying this test, Plaintiffs contend that their action is not grounded in tort because their CUTSA and DTSA claims "are the heart of the [C]omplaint." Appellants' Suppl. Br. at 12. Thus, they contend that the "essence" of the action is statutory. *Id.* at 13. But Plaintiffs conflate the source of the legal duties with the nature of the action. Section 13-17-201 does not distinguish between common law tort duties and statutory tort duties. *See US Fax L. Ctr.*, 205 P.3d at 517 ("Nothing in the plain language [of

[8] While Plaintiffs raised this argument to the magistrate judge, they did not raise it to the district judge in their objections. Nevertheless, the Rong Defendants have not invoked our firm waiver rule. Accordingly, we consider the merits of this argument. *See Hicks*, 546 F.3d at 1283 n.3.

Plaintiffs also argue in their opening appellate brief that § 13-17-201: (1) does not apply to claims for purely economic damages, (2) is displaced by the fee provision in the CUTSA, and (3) is preempted by the DTSA. But at no point did Plaintiffs raise any of these arguments to the magistrate judge or the district court. Nor did they argue for plain error review before this court on any of these theories. In instances where "an appellant fails to preserve an issue and also fails to make a plain-error argument on appeal, we ordinarily deem the issue waived (rather than merely forfeited) and decline to review the issue at all—for plain error or otherwise." *United States v. McBride*, 94 F.4th 1036, 1044 (10th Cir. 2024) (quotation marks omitted); *see also Richison v. Ernest Grp., Inc.*, 634 F.3d 1123, 1131 (10th Cir. 2011) ("[T]he failure to argue for plain error and its application on appeal[ ]surely marks the end of the road for an argument for reversal not first presented to the district court."). The Rong Defendants advanced this position in their response, asserting that these three theories have been waived. We agree and do not consider any of these arguments further.

§ 13-17-201] limits the application of the statute to 'state torts' as opposed to . . . a 'federal statutory tort.'"); *see also Sticky.io, Inc. v. Martingale Software, LLC*, No. 21-CV-00664, 2022 WL 1061911, at *1 (D. Colo. Apr. 8, 2022) (explaining that § 13-17-201 applies to both state torts and federal statutory torts).[9]

Plaintiffs also fail to identify any authority suggesting that claims brought under trade secret statutes such as CUTSA and DTSA are not tort claims. On the contrary, courts have consistently recognized that misappropriation claims sound in tort, even when asserted via statute. *See, e.g.*, *DeGette v. Mine Co. Rest., Inc.*, 751 F.2d 1143, 1144–45 (10th Cir. 1985) (recognizing "theft of a trade secret" in violation of state statute as a tort); *Sticky.io*, 2022 WL 1061911, at *1 ("Misappropriation, interference with business relationships, and fraud are torts, notwithstanding [p]laintiff's reliance on federal statutes for two of his claims."); *Multimedia Games, Inc. v. WLGC Acquisition Corp.*, 214 F. Supp. 2d 1131, 1142 (N.D. Okla. 2001) ("The claim of misappropriation of trade secrets and confidential information essentially sound[s] in tort.").

Therefore, the district court correctly determined that this action predominantly sounds in tort such that § 13-17-201 applies.

4. Reasonableness of Fees

Plaintiffs next argue that, even if a fee award was appropriate under § 13-17-201, the district court abused its discretion in awarding the full amount

[9] Plaintiffs take issue with the district court's reliance on non-binding authority, but they cite no authority—binding or otherwise—to support their contrary characterization of CUTSA and DTSA claims.

requested by the Rong Defendants. When determining the reasonableness of a fee request, the district court must "begin by calculating the so-called 'lodestar amount' of a fee, and a claimant is entitled to the presumption that this lodestar amount reflects a 'reasonable' fee." *Robinson v. City of Edmond*, 160 F.3d 1275, 1281 (10th Cir. 1998). The lodestar amount "is the product of the number of attorney hours 'reasonably expended' and a 'reasonable hourly rate.'" *Id.* As the fee applicants, the Rong Defendants "bear[] the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates." *Case v. Unified Sch. Dist. No. 233*, 157 F.3d 1243, 1249 (10th Cir. 1998) (quotation marks omitted).

After reviewing the time record submissions, the district court "must then ensure that the winning attorneys have exercised 'billing judgment'" by winnowing out unreasonable hours. *Id.* at 1250; *see also Robinson*, 160 F.3d at 1281. In assessing reasonableness, the district court should consider "facts such as the complexity of the case, the number of reasonable strategies pursued, and the responses necessitated by the maneuvering of the other side." *Case*, 157 F.3d at 1250 (quotation marks omitted). The district court may "reduc[e] the reasonable number of hours if the attorney's time records are 'sloppy and imprecise' and fail to document adequately how he or she utilized large blocks of time." *Id.* It is also permitted to "reduce the reasonable hours awarded if the number of [compensable hours] claimed by counsel include[s] hours that were unnecessary, irrelevant and duplicative." *Id.* (alterations in original) (internal quotation marks omitted). But notably, "[t]here is no

requirement . . . that district courts identify and justify each disallowed hour." *Id.* (alterations in original) (quotation marks omitted).

Here, the magistrate judge carefully reviewed the Rong Defendants' submissions. He considered, among other things, that defense counsel tracked time to the tenth of an hour, did not engage in block billing, reduced hours where appropriate, and faced additional work because Plaintiffs amended their pleading. As a result, the magistrate judge determined defense counsel expended a reasonable number of hours. He likewise determined that defense counsel's hourly rates were reasonable based on a review of prevailing market rates in the Colorado community for attorneys with comparable experience. In sum, the magistrate judge concluded that the Rong Defendants had adequately established the reasonableness of their $114,663.11 fee request. The district court agreed, adopting the recommendation and awarding the full amount.

On appeal, Plaintiffs challenge the reasonableness of the fee award on multiple grounds. They contend that defense counsel: (1) engaged in serial billing across multiple motions; (2) billed partner time for ministerial tasks; and (3) should have billed fewer hours due to their reliance on artificial intelligence ("AI") and other online research tools.[10]

[10] Plaintiffs also argue that defense counsel charged "vague 'admin' percentages without detail." Appellants' Suppl. Br. at 14. But they did not raise this argument before the district court, it was never passed on by the district court, and Plaintiffs do not argue plain error on appeal. Accordingly, that argument is waived. *See McBride*, 94 F.4th at 1044; *Richison*, 634 F.3d at 1131.

On their first argument, Plaintiffs fail to identify any specific instance of serial billing. And contrary to their suggestion, the magistrate judge did not simply accept the Rong Defendants' fee request at face value. Rather, he reviewed the affidavit and accounting submissions provided by defense counsel and determined that counsel had not engaged in block or double billing. Plaintiffs' generalized assertion that the fee award was based on an excessive number of hours is simply "an insufficient basis upon which to disturb the district court's lodestar fee determination, to which we must defer absent the demonstration of an abuse of discretion." *Anchondo v. Anderson, Crenshaw & Assocs., LLC*, 616 F.3d 1098, 1103 (10th Cir. 2010).

On their second argument, Plaintiffs again fail to identify any specific billing entries that were improperly billed as partner time. To the extent Plaintiffs challenge the time spent conferring with Mr. Sparks—a pro se Defendant—about the scheduling order, they cite no authority establishing that such work is inherently noncompensable. And to the extent they suggest that a less experienced attorney should have been responsible for that task, Plaintiffs cite no "authority holding that an experienced attorney must work for free whenever the task at hand might not call for the full measure of his expertise." *Anchondo*, 616 F.3d at 1104.

On their third argument, Plaintiffs identify no evidence that counsel's use of AI resulted in excessive billing. It is possible that a law firm's use of AI and other online research tools may "reduce[] the number of hours required" for research and thereby lower the lodestar amount. *See Arbor Hill Concerned Citizens Neighborhood Ass'n v. Cnty. of Albany*, 369 F.3d 91, 98 (2d Cir. 2004) (recognizing that online research services

may reduce the hours required for manual research, thus lowering the lodestar amount). As the magistrate judge explained, however, ethical rules require counsel to verify the cases cited and to ensure that all arguments are grounded in legal authority. *See* Appellants' Suppl. App. at 154; *see also Amarsingh v. Frontier Airlines, Inc.*, No. 24-1391, 2026 WL 352016, *5–8 (10th Cir. 2026) (imposing sanctions on a pro se attorney who used a generative AI tool to research and draft her appellate brief without verifying whether the cited cases actually existed); *Wadsworth v. Walmart Inc.*, 348 F.R.D. 489, 495 (D. Wyo. 2025) (finding that attorneys violated Rule 11 by submitting court filings with AI hallucinations); *Coomer v. Lindell*, No. 22-CV-01129, 2025 WL 1865282, at *3 (D. Colo. July 7, 2025) ("Courts across the country—both within the [Tenth Circuit] and outside of it—recognize that Rule 11 applies to the use of artificial intelligence."). Thus, even assuming that AI and other research tools might make attorneys more efficient in the long run—and, in some circumstances, might thereby reduce the hours necessary to litigate a case—Plaintiffs have not shown that defense counsel's use of AI rendered the hours that they actually expended unreasonable.

The magistrate judge reviewed counsel's billing records, concluded that they showed proper billing judgment, and found the hours expended to be reasonable. That conclusion, coupled with the court's unchallenged determination that the rates charged were reasonable, provided an adequate basis for an appropriate fee award. Plaintiffs have failed to demonstrate that the district court abused its discretion in approving the fees. We therefore affirm the district court's order granting the Rong Defendants' motion for attorneys' fees in full.

C. Supplemental Attorneys' Fees: Case No. 26-1292

Finally, Plaintiffs appeal the award of supplemental attorneys' fees to the Rong Defendants, again claiming that the district court committed reversible error. Initially, Plaintiffs argue that the district court should have denied the motion because § 13-17-201 is not applicable to their claims. However, we have already determined that § 13-17-201 applies. *See supra* Part II.B.3. As a result, we see no need to reconsider the issue here. In addition, Plaintiffs raise three distinct arguments as to why reversal of the supplemental fee award is warranted. First, they assert that the fees implicated in the supplemental motion were implicitly denied by the district court in its ruling on the initial fee motion. Second, they claim that § 13-17-201 does not authorize fees generated by collateral fee litigation. And third, they contend that the supplemental fees were unreasonable. After addressing jurisdiction and the proper standard of review, we reject each of Plaintiffs' arguments and affirm the supplemental fee award.

1. Jurisdiction

Plaintiffs contend that the district court lacked jurisdiction to supplement the initial fee award because the latter is a "final, enforceable judgment as to that claim—not a placeholder subject to supplementation at will." Appellants' Second Suppl. Br. at 21. They claim that "[t]here is no procedural mechanism under the Federal Rules for the prevailing party on a fee motion to 'supplement' a sum-certain final judgment with additional fees simply by filing a new motion." *Id.* In seeming contradiction to this position, Plaintiffs acknowledge that Federal Rule of Civil Procedure 54(d)(2)(B)(i) allows for subsequent attorneys' fee awards, but they assert that the Rong Defendants'

motion to supplement was untimely because it was not filed within fourteen days of the initial fee award.

To begin, Plaintiffs cite no legal authority, nor have we found any, to suggest that the grant of an initial award of attorneys' fees in sum certain revokes jurisdiction for the court to address a supplemental motion for attorneys' fees collateral to the same final judgment, or that a district court must somehow reserve jurisdiction to address future supplemental fee motions. Indeed, courts regularly entertain motions for supplemental attorneys' fees after the initial motion has been granted and fees awarded. *See, e.g.*, *Glass v. Pfeffer*, 849 F.2d 1261, 1266 & n.3 (10th Cir. 1988) (affirming the grant of a supplemental attorneys' fees award for collateral fee-related litigation after an initial attorneys' fee award had already been entered); *Stroup v. United Airlines, Inc*., No. 15-CV-01389, 2019 WL 8359214, at *1 (D. Colo. Sep. 5, 2019) (considering a plaintiff's supplemental motion for attorneys' fees under Rule 54(d) after the court had already awarded the plaintiff attorneys' fees); *see also Hutchinson v. Beckworth*, 474 F. App'x 736, 737–39 (10th Cir. 2012) (unpublished) (holding that the district court erred in ruling that it lacked jurisdiction to grant the defendants' supplemental motion for attorneys' fees, which was filed while the plaintiffs' appeal from the district court's earlier award of attorneys' fees and other sanctions was pending). We therefore reject this argument because Plaintiffs have failed to show that the district court lacked jurisdiction to consider their supplemental fee motion.

Plaintiffs' argument that the motion to supplement was untimely under Rule 54 also fails. Rule 54(d) provides that claims for attorneys' fees must be filed within

fourteen days after the entry of the relevant judgment. *See* Fed. R. Civ. P. 54(d)(2)(B)(i). Under Federal Rule of Civil Procedure 6(a)(1)(C), a deadline that falls on the date of a legal holiday is extended to the end of the next business day. *See id.* at 6(a)(1). Here, the district court entered an amended final judgment on December 11, 2025,[11] granting the Rong Defendants' motion for attorneys' fees and awarding the Rong Defendants $114,663.11. Fourteen days after the date of entry of the final judgment was December 25, 2025, a legal holiday. *See id.* at 6(a)(6)(A). Thus, the deadline was extended until the end of the next day, December 26, 2025. The Rong Defendants filed their motion seeking supplemental attorneys' fees on December 26, 2025. Accordingly, their motion was timely, *see id.* 54(d)(2)(B)(i), and the district court had jurisdiction to consider it.

2. Standard of Review

Plaintiffs argue that the district court erred by applying a clearly erroneous or contrary to law standard of review, rather than a de novo standard of review, when addressing their argument that § 13-17-201 does not apply to their claims. We agree. Indeed, the district court was required to make a de novo determination on *every* portion of the magistrate judge's recommendation to which Plaintiffs properly objected. *See id.* at 54(d)(2)(D) ("[T]he court may refer . . . a motion for attorney's fees to a magistrate judge under *Rule 72(b)* as if it were a dispositive pretrial matter." (emphasis added)); *see also*

[11] Although the district court's order awarding the fees was issued on December 10, 2025, "[j]udgment is entered when the district court files a separate document in accordance with Rule 58 of the Federal Rules of Civil Procedure." *Newmont U.S.A. Ltd. v. Ins. Co. of N. Am.*, 615 F.3d 1268, 1277 (10th Cir. 2010).

id. at 72(b)(3) ("The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to.").

The district court failed to do so, instead assuming that the more deferential standard contemplated by Federal Rule of Civil Procedure 72(a) applied. Thus, insofar as the district court applied the clearly erroneous or contrary to law standard of review to Plaintiffs' properly preserved objections—including not only their challenges concerning the applicability of § 13-17-201, but also their broader challenges to the propriety of the supplemental fee award—it committed error. But, for the reasons discussed below, that error does not warrant reversal.

As to Plaintiffs' renewed challenge to the applicability of § 13-17-201, the district court independently relied on the law of the case doctrine and explained that its prior determination would govern absent a showing that the ruling was clearly erroneous and would result in manifest injustice. *See Bishop v. Smith*, 760 F.3d 1070, 1082, 1086 (10th Cir. 2014) (explaining that "[u]nder the law of the case doctrine, when a court rules on an issue of law, the ruling should continue to govern the same issues in subsequent stages in the same case" unless certain exceptions apply, including that "the prior ruling was clearly erroneous and would, if followed, create a manifest injustice" (internal quotation marks omitted)). Plaintiffs do not contest that independent basis for the district court's ruling in their opening brief, and they do not meaningfully explain why the law of the

case doctrine does not apply. We therefore deem the challenge waived on account of Plaintiffs' inadequate briefing.[12] *See Clay*, 148 F.4th at 1201.

And as to Plaintiffs' remaining challenges, they have failed to demonstrate that the district court's reliance on a more deferential standard of review affected the resolution of their properly preserved objections.[13] The district court expressly held that its conclusion would be the same under de novo review. And our following examination of Plaintiffs' remaining arguments—that the supplemental fees were implicitly denied, the fee shifting statute does not authorize fees for collateral fee litigation and non-frivolous appeals, and the supplemental fees were unreasonable—confirms that they are meritless. *See infra* Part II.C.3–5. Given that fact, we conclude that the district court's error was harmless and decline to remand. *See Quint v. Vail Resorts, Inc.*, 89 F.4th 803, 807 (10th Cir. 2023).

3. Preclusion

Plaintiffs argue that the district court erred in entertaining the Rong Defendants' supplemental fee motion because the additional fees were requested in connection with their initial fee motion and were implicitly denied when the district court adopted the magistrate judge's recommendation. Plaintiffs note that the Rong Defendants requested an additional $48,658.29 in their reply to the initial fee motion

[12] We have also already explained why this challenge would fail under de novo review. *See supra* Part II.B.3.

[13] While the district court did decline to consider several of Plaintiffs' arguments, it properly did so given that they were raised for the first time in Plaintiffs' objections. *See Marshall v. Chater*, 75 F.3d 1421, 1426 (10th Cir. 1996) ("Issues raised for the first time in objections to the magistrate judge's recommendation are deemed waived.").

for work performed between July 1 and August 29, 2025, but the magistrate judge did not award those fees in his recommendation, which was adopted by the district court. Therefore, Plaintiffs contend that the district court denied the additional fees, precluding the Rong Defendants from seeking them now.

Although the Rong Defendants' reply to the magistrate judge referenced additional fees incurred after the motion for the initial fees was filed, the magistrate judge repeatedly characterized the amount sought as $114,663.11. In the report and recommendation adopted by the district court, the magistrate judge does not discuss the additional fees requested in the Rong Defendants' reply, instead ruling only on the amount requested in the original motion. And in response to Plaintiffs' objections, the Rong Defendants expressly stated that they would file a separate supplemental motion for fees incurred after June 30, 2025.

More crucially, the district court actually considered and rejected Plaintiffs' characterization of its decision. The court explained that it had not considered the fees referenced in the reply because, under the District of Colorado's Local Civil Rule 7.1(d), motions must be filed separately and may not be included within a response or reply. Thus, because the district court never adjudicated the additional fees, it was not precluded from considering them at a later time. *See Baker ex rel. Thomas v. Gen. Motors Corp.*, 522 U.S. 222, 233 n.5 (1998) (explaining that issue preclusion bars relitigating issues "actually litigated and resolved by a valid final judgment").

4. Collateral Fee Litigation

Plaintiffs next argue that even if § 13-17-201 applies, it does not authorize the recovery of fees incurred in collateral fee proceedings. Relatedly, they argue that § 13-17-201 does not authorize the recovery of fees incurred while defending non-frivolous appeals. However, Plaintiffs waived these arguments by failing to raise them before the district court. In opposing the supplemental fee motion, Plaintiffs argued only that the district court was precluded from awarding the supplemental fees, that the fee shifting statute did not apply to the underlying action, and that the requested supplemental fees were unreasonable. They did not argue that § 13-17-201 bars the recovery of fees incurred in collateral fee litigation or in related appeals. Because Plaintiffs did not raise this argument before the district court, the district court did not pass on it, and they do not argue plain error on appeal, the argument is waived. *See United States v. McBride*, 94 F.4th 1036, 1044 (10th Cir. 2024); *Richison*, 634 F.3d at 1131.

In any event, Plaintiffs identify no authority supporting their interpretation of § 13-17-201. On the contrary, Colorado courts have held that the statute permits recovery of fees incurred in obtaining or defending an award of fees. *See, e.g.*, *Dubray v. Intertribal Bison Coop*., 192 P.3d 604, 608 (Colo. App. 2008) (holding that defendants were entitled to an award of appellate attorneys' fees under § 13-17-201 "[b]ecause they were successful in defending [the plaintiff's] appeal" of their initial attorneys' fee award). Therefore, Plaintiffs have failed to show that the

district court abused its discretion in awarding fees incurred in the fee litigation and the related appeal.

5. Reasonableness of Fees

Plaintiffs finally argue that the district court failed to consider whether the hours billed and the rates charged were reasonable given the nature of the post-judgment work. Specifically, they contend that the work involved—responding to objections and motions and preparing the supplemental fee motion—did not warrant billing partner rates.

This argument is also waived. Although Plaintiffs challenged the reasonableness of the fees on several other grounds, they never argued to the magistrate judge that the supplemental fees were unreasonable because of the nature of the post-judgment work itself. And their brief allusion to this possible argument in their objections to the magistrate judge's recommendation came too late to preserve it for review. *See Marshall v. Chater*, 75 F.3d 1421, 1426 (10th Cir. 1996) ("Issues raised for the first time in objections to the magistrate judge's recommendation are deemed waived."). The argument would also fail on the merits, as Plaintiffs cite no authority indicating that an experienced attorney must forgo compensation for work that does not demand the full extent of his or her expertise. *See Anchondo*, 616 F.3d at 1104.

III. CONCLUSION

For the reasons explained, we AFFIRM in full the district court's order dismissing the Rong Defendants and its subsequent orders awarding attorneys' fees.