IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING

FLATIRONS BANK, Plaintiff, v. EASTERN POINT TRUST COMPANY, Defendant.	Case No. 25-CV-222-R

ORDER GRANTING DEFENDANT EASTERN POINT TRUST COMPANY'S MOTION TO DISMISS [15]

This case is about actions allegedly taken by entities competing in the business of facilitating Qualified Settlement Funds ("QSF"). [ECF No. 1]. Defendant Eastern Point Trust Company ("EPTC") claims Plaintiff Flatirons Bank stole and infringed upon the coding processes underlying its QSF technology. [ECF No. 15, at 2]. EPTC first filed suit against Flatirons in Virginia state court in April 2025 before voluntarily dismissing the case. *Id.*; [ECF No. 1, at 5]. Flatirons argues no infringement occurred and EPTC attempted to destroy its reputation and business contacts within the industry by knowingly spreading false claims and weaponizing litigation. [ECF No. 1]. Defendant EPTC filed this Motion to Dismiss. [ECF No. 15]. EPTC moves to dismiss Flatirons' Complaint as an improper anticipatory filing, for lack of personal jurisdiction

and for failure to state a claim, and in the alternative, requests the case be stayed until the litigation is resolved in Virginia. *Id*. After careful consideration of the Motion, Response, and Reply the Court grants the Motion to Dismiss.

BACKGROUND

QSFs "are accounts that allow civil defendants to pay settlement proceeds and receive tax deductions." [ECF No. 15, at 14] (citing ECF No. 1, at 4–5); 26 C.F.R § 1.468B-1; *Settlement Funds*, 5 MERTENS LAW OF FED. INCOME TAX'N § 24A:30 ("QSF is a pool of money established by court order which assumes the liability of a defendant, who is dismissed with prejudice, and the fund can settle with the plaintiffs. . . . [D]efendant benefits from an immediate deduction when amounts are paid into the fund."). An account may qualify as a QSF if: (1) it is established pursuant to a court order or governmental authorization, (2) it is subject to the continuing jurisdiction of that governmental authority, (3) it is created to resolve a claim of civil liability, and (4) it is properly created as a trust under the applicable state law, and the funds are properly segregated. 26 C.F.R. § 1.468B-1(c)(1–3); *United States v. Brown*, 348 F.3d 1200, 1207 (10th Cir. 2003).

Flatirons is a Colorado state bank with its principal place of business in Boulder Colorado. [ECF No. 1, at 3]. In 2023, Flatirons opened a division offering QSF escrow products and services. *Id*. at 4. This division is named "Justice Escrow." *Id*. "Flatirons serves as the administrator of, and escrow agent for, the QSFs that it manages through Justice Escrow." *Id*. EPTC is a company incorporated and headquartered in the U.S. Virgin Islands and conducts most of its business in Virginia. *Id*. at 3–4. EPTC's

affiliates are Account Management Services, LLC ("AMS") and Quantum Fintech, LLC ("Quantum"). [ECF No. 1, at 2]. EPTC built, and conducts its business through, its industry leading QSF 360™ platform. [ECF No. 15, at 2].

Flatirons claims, "[f]or many years prior to [] Justice Escrow, EPTC enjoyed having few competitors in the QSF industry and controlled a significant portion of the QSF market." [ECF No. 1, at 5]. Flatirons contends EPTC was threatened by its presence in the market and began a smear campaign targeting Flatirons, its customers, governmental authorities, and business partners. *Id*. at 5–6. A QSF requires a court order or governmental authorization. Although Flatirons has no apparent presence in Wyoming, it engaged the Town of Lovell Wyoming to approve Justice Escrow QSFs as required under the regulations. *Id*. at 6. Flatirons claims EPTC, AMS, and Quantum sent cease-and-desist letters to Lovell, threatening lawsuits and making representations about Justice Escrow's coding being stolen from EPTC. As a result of these pressures, Lovell terminated its contract with Flatirons early and without the required notice. *Id*. at 7.

After this termination, Flatirons attempted to find another governmental authority to review and approve Justice Escrow QSFs. It claims, "[d]uring this break in business without a governmental authority, Flatirons lost out on business opportunities, suffered harm to its reputation in the industry, and incurred costs in establishing a new relationship with another governmental authority." *Id*. at 7. Flatirons eventually enlisted the Town of Glenrock Wyoming to serve as the governmental sponsor to approve Justice Escrow QSFs. *Id*. at 11. However, it claims

EPTC has begun a letter writing campaign targeting Glenrock, again including cease-and-desist letters and threats of litigation. *Id*. Despite these allegations, it appears the business relationship between Flatirons and Glenrock remains intact. *Id*.

Flatirons also claims EPTC interfered with its ability to sponsor the Society of Settlement Planners' Annual Conference held in Texas in February 2025. *Id*. at 7. The Conference refused to accept Flatirons' sponsorship, and Flatirons claims this refusal was a result of EPTC's interference with its reputation in the industry. *Id*. at 8. As stated, EPTC first filed suit against Flatirons in Virginia state court in April 2025 before voluntarily dismissing the case. *Id*. Among other things, EPTC claims Flatirons and other co-conspirators accessed EPTC's digital platform with the intention of unlawfully replicating the program's coding. *See* [ECF No. 15-3]. EPTC claims its "Terms of Use" must be accepted to access its digital presence and Flatirons agreed to these terms—including a choice of law provision—each time it accessed the platform, which is recorded by EPTC's technology. *Id*.

Flatirons contends this filing came along with EPTC's negative publicity about its claims against Flatirons and the lawsuit. *Id*. at 9. Both parties mention 2025 publications including content about EPTC's claims and intentions related to the litigation. [ECF No. 1, at 10]; [ECF No. 15, at 8]. EPTC uses this point to demonstrate Flatirons' lawsuit was an anticipatory filing, and Flatirons argues this demonstrates EPTC weaponized the media and litigation to create reputational harm. [ECF No. 1, at 10]; [ECF No. 15, at 8].

Flatirons filed the current litigation in the District of Wyoming in September 2025, and EPTC refiled suit in the Eastern District of Virginia in October 2025. [ECF No. 15, at 2]. EPTC's refiled Complaint "asserts thirteen claims, including six for breach of contract, state and federal misappropriation of trade secrets, computer fraud and crime, racketeering, and conspiracy." *Id*. at 10. Flatirons' Complaint brings claims for (1–2) interference with a contract or prospective economic advantage related to Lovell and Glenrock, (3) declaratory judgment stating EPTC's terms and conditions do not create a binding contract and Flatirons did not steal EPTC's coding, (4) trade disparagement and defamation, (5) false advertising, and (6) anti-competitive acts in violation of Wyo. Stat. § 40-4-114. [ECF No. 1, at 11–18].

In its Complaint, Flatirons asserts it "continues to lose business opportunities because of EPTC's baseless and false representations" stating it is compelled to bring this litigation "[i]n the face of EPTC's continuing assault on its character and right to engage in the QSF business." [ECF No. 1, at 11]. EPTC now moves to dismiss Flatirons' Complaint as an improper anticipatory filing, for lack of personal jurisdiction and for failure to state, and in the alternative, requests the case be stayed until the litigation in Virginia is resolved. [ECF No. 15].[1]

[1] EPTC attached the declaration of Samual Kott to its Motion. [ECF No. 15-1, at 1–21]. Flatirons informally objects to the declaration and requests it be stricken. [ECF No. 18, at 4] (objecting to the declaration's consideration based on lack of identification, lack of foundation, and irrelevancy). The Court finds the declaration irrelevant to the current analysis and consideration of the declaration would not change the outcome of this Order.

RELEVANT LAW

I. Motion to Dismiss

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, a party may challenge a complaint for the "failure to state a claim upon which relief can be granted." "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, 'to state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A plaintiff's claim is facially plausible when the court can reasonably infer the defendant's liability from the facts pled. *Id.* Plausibility does not equal probability. *Id*. A plaintiff must show more than a sheer possibility, conceivability, or speculation the defendant acted unlawfully. *Id*.; *Robbins v. Okla.*, 519 F.3d 1242, 1247 (10th Cir. 2008). Labels, legal conclusions, and formulaic recitations of the elements are insufficient to survive a motion to dismiss. *Khalik v. United Air Lines*, 671 F.3d 1188, 1191 (10th Cir. 2012).

"The court's function on a Rule 12(b)(6) motion is not to weigh potential evidence that the parties might present at trial, but to assess whether the plaintiff's complaint alone is legally sufficient to state a claim for which relief may be granted." *Dubbs v. Head Start, Inc.*, 336 F.3d 1194, 1201 (10th Cir. 2003) (citations and quotation marks omitted). In reviewing a Rule 12(b)(6) motion, a court should "accept as true all well-pleaded factual allegations in a complaint in a light most favorable to the plaintiff." *Smith v. United States*, 561 F.3d 1090, 1098 (10th Cir. 2009).

II. Personal Jurisdiction

"Where a federal lawsuit is based on diversity of citizenship, the court's jurisdiction over a nonresident defendant is determined by the law of the forum state." *Eighteen Seventy*, *LP v. Jayson*, 32 F.4th 956, 965 (10th Cir. 2022) (quotations omitted) (quoting *Marcus Food Co. v. DiPanfilo*, 671 F.3d 1159, 1166 (10th Cir. 2011)). "Ordinarily, a plaintiff seeking to establish personal jurisdiction over an out-of-state defendant must show both that the exercise of jurisdiction is sanctioned by the state's long-arm statute and that it comports with the requirements of due process under the Fourteenth Amendment." *Id.* (citing *Emps. Mut. Cas. Co. v. Bartile Roofs*, *Inc.*, 618 F.3d 1153, 1159 (10th Cir. 2010)).

Under Wyoming's long-arm statute: "[a] court of the State of Wyoming may exercise jurisdiction on any basis not inconsistent with the Wyoming or United States Constitutions." WYO. STAT. ANN. § 5-1-107(a); *Goodwin v. Hall*, 957 P.2d 1299, 1301 (Wyo. 1998). The due process clause of the Fourteenth Amendment to the United States Constitution "limits the jurisdiction of state courts over the person of nonresident defendants." *Goodwin*, 957 P.2d at 1301. Due process requires nonresident defendants have "at least minimum contacts with the forum state" so "exercise of jurisdiction does not offend traditional notions of fair play and substantial justice." *Id.* (internal quotations and citations omitted). "To give effect to these principles—and, in doing so, to determine whether these requisite minimum contacts exist—we focus[ ] on the nature and extent of the defendant's relationship to the forum State." *Eighteen Seventy*, *LP*, 32 F.4th at 965 (citations and quotations omitted).

RULING OF THE COURT

I. Personal Jurisdiction

Personal jurisdiction refers to "[a] court's power to bring a person into its adjudicative process; jurisdiction over a defendant's personal rights." *Personal Jurisdiction*, BLACK'S LAW DICTIONARY (12th ed. 2024). "The Plaintiff bears the burden of establishing personal jurisdiction over the defendant." *OMI Holdings*, *Inc*., *v*. *Royal Ins*. *Co*. *of Canada*, 149 F.3d 1086, 1091 (10th Cir. 1998) (quotations omitted) (quoting *Rambo v. Am. S. Ins. Co*., 839 F.2d 1415, 1417 (10th Cir. 1988)).

"A court may obtain personal jurisdiction over a defendant in three ways: 'consent by the parties, presence in the forum state, [or] actions by the defendant which affect people in the forum state.'" *Christian v. Onem Commc'ns Ltd*., No. 22-CV-00024-NDF, 2023 U.S. Dist. LEXIS 202416, at *3 (D. Wyo. Sep. 20, 2023) (citing *Qwest Commc'ns Int'l*, *Inc. v. Thomas*, 52 F. Supp. 2d 1200, 1204 (D. Colo. 1999)). The Court will begin by addressing (A) general personal jurisdiction then (B) specific personal jurisdiction.

A. General Personal Jurisdiction

"Where a court's exercise of jurisdiction does not directly arise from a defendant's forum-related activities, the court may nonetheless maintain *general* personal jurisdiction over the defendant based on the defendant's general business contacts with the forum state." *OMI Holdings*, *Inc.*, 149 F.3d at 1091 (emphasis in original). "A court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so 'continuous and

systematic' as to render them essentially at home in the forum State." *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014) (citations and quotations omitted).

"Simply because a defendant has a contractual relationship and business dealings with a person or entity in the forum state does not subject him to general jurisdiction there." *Shrader v. Biddinger*, 633 F.3d 1235, 1246–47 (10th Cir. 2011) (citing *Helicopteros Nacionales de Colombia*, *S.A. v. Hall,* 466 U.S. 408, 416–18 (1984), and *Benton v. Cameco Corp*., 375 F.3d 1070, 1073, 1080–81 (10th Cir.2004)). Here, EPTC is incorporated and headquartered in the U.S. Virgin Islands and conducts most of its business in Virginia. [ECF No. 1, at 3–4]. There is no evidence of continuous and systematic contacts between EPTC and the forum. Both parties appear to concede this point as they only address specific personal jurisdiction within their respective arguments. *See* [ECF No. 19, at 18]; [ECF No. 15, at 12 n.4]. As such, the Court turns its attention to specific personal jurisdiction.

B. Specific Personal Jurisdiction

"Specific jurisdiction . . . is premised on something of a *quid pro quo*: in exchange for 'benefitting' from some purposive conduct directed at the forum state, a party is deemed to consent to the exercise of jurisdiction for claims related to those contacts." *Dudnikov v. Chalk & Vermilion Fine Arts*, *Inc.*, 514 F.3d 1063, 1078 (10th Cir. 2008). Under a specific personal jurisdiction analysis, "courts typically make three inquiries: (1) whether the defendant purposefully directed its activities at residents of the forum state; (2) whether the plaintiff's injury arose from those purposefully directed activities; and (3) whether exercising jurisdiction would offend traditional notions of fair play and substantial justice."

Newsome v. Gallacher, 722 F.3d 1257, 1264 (10th Cir. 2013). The Court will address each element as it relates to EPTC.

1. *Purposeful Direction*

"[P]urposeful direction . . . has three requirements: (1) intentional action, (2) express aiming at the forum state, and (3) knowledge that the brunt of the injury would be felt in the forum state." *Id*. at 1268 (citing *Dudnikov*, 514 F.3d at 1072). Here, there are two categories of EPTC's alleged actions potentially serving as a basis for purposeful direction—(1) publications promulgated by EPTC, and (2) EPTC's contractual interference with Lovell and Glenrock.

i. Publications

There are three general categories of defamatory online publications raised by Flatirons. The first involved misrepresentations apparently made to the Society of Settlement Planners Annual Conference in San Antonio, Texas, leading the event coordinators to refuse Flatirons' sponsorship. [ECF No. 1, at 8]. Second, Flatirons alleges EPTC circulated its April 2025 Complaint to generate negative publicity. *Id*. at 9–10. Third, Flatirons points to EPTC's press release after the voluntary dismissal of its lawsuit which set forth the claims against Flatirons and alluded to plans to re-file the litigation. *Id*. at 10.

The Tenth Circuit has adopted the Fourth Circuit's reexamination of a defendant's "purposeful direction" as complicated by the emergence of internet activity:

> [A] State may, consistent with due process, exercise judicial power over a person outside of the State when that person (1) *directs electronic activity into the State*, (2) *with the manifested intent of engaging in business or other interactions within the State*, and (3) that activity creates, in a person within the State, a potential cause of action cognizable in the State's courts.

Shrader, 633 F.3d at 1240 (emphasis in original) (quoting *ALS Scan*, *Inc*. *v*. *Digital Serv*. *Consultants*, *Inc*., 293 F.3d 707, 714 (4th Cir. 2002)). "Under this standard, a person who simply places information on the Internet does not subject himself to jurisdiction in each State into which the electronic signal is transmitted and received." *Id*. at 1240–41 (quoting *ALS Scan*, *Inc.*, 293 F.3d at 714).

The Court finds the existence of the publications pled are inadequate to serve as a basis for exercising specific personal jurisdiction. EPTC claims any reputational harm allegedly suffered by Flatirons was not centered in Wyoming because its public comments were not expressly aimed at Wyoming, and the industry conference for the Society of Settlement Planners Annual Conference occurred in Texas. [ECF No. 15, at 14]. Flatirons does not raise the publications as a basis for personal jurisdiction within its pleadings and, in doing so, appears to concede the inadequacy of this basis. *See* [ECF No. 18, at 19]. Because EPTC's manifested intention of directing the digital publications within the forum has not been demonstrated the Court finds these publications insufficient to establish purposeful direction.

ii. Business Interference

Flatirons primarily asserts EPTC's communications with Lovell and Glenrock constitute purposeful direction. Flatirons states EPTC:

- specifically targeted Wyoming municipalities, including Lovell and Glenrock, with cease-and-desist letters and litigation threats concerning Flatirons and Justice Escrow, Compl. ¶¶ 24–27, 30–33, 59–61, 70, 80;
- "interfered with Flatirons' governmental authority in Wyoming by making outlandish and unsupported allegations regarding Flatirons," including "patently false statements that Flatirons had engaged in espionage and theft," *Id*. ¶ 25;

- pressured Lovell into "ceas[ing] doing business with Flatirons" and terminating the Lovell Contract, *Id*. ¶¶ 34–37, 63–73; and
- is "actively and aggressively interfering with Flatirons' business relationship with Glenrock," including threats to sue Glenrock *and its counsel* unless Glenrock "ceases doing business with Flatirons," *Id*. ¶¶ 59–61, 74–83, 122–129.

[ECF No. 18, at 19] (alterations in original).

Flatirons maintains, "EPTC intentionally engaged in this wrongful conduct and expressly aimed its salacious and unlawful campaign against Flatirons at Wyoming governmental entities. . . . Thus, the Complaint establishes that EPTC purposefully directed its wrongful conduct at the State of Wyoming for the sole purpose of harming Flatirons." *Id*. EPTC states the cease-and-desist letters do not constitute purposeful direction because it was simply tracking down the extent of Flatirons' intellectual property theft. [ECF No. 15, at 13].

Because there is no indication the communications were unintentional, the Court begins by acknowledging EPTC's communications with Wyoming municipalities through the cease-and-desist letters may satisfy the element of intentional action. Thus, this analysis will center around the requirements of (1) express aiming and (2) knowledge that the brunt of the injury would be felt in the forum state—both requiring the forum to be the focal point of the defendant's intentional actions. *See Newsome*, 722 F.3d at 1268; *Eighteen Seventy*, *LP*, 32 F.4th at 972 ("[W]e have centered the express aiming analysis on whether the defendant's allegedly tortious conduct was . . . directed at the forum state—not . . . on whether the defendant's wrongful conduct was . . . directed at the interests of plaintiffs who . . . have significant connections to the forum state.").

Both parties independently cite a primary case to support their positions. Flatirons relies on *Hutton & Hutton Law Firm, LLC v. Girardi & Keese*, 96 F. Supp. 3d 1208 (D. Kan. 2015) to support finding specific personal jurisdiction over a defendant who sent defamatory letters to clients located in the forum state. [ECF No. 18, at 19]. Within the case, the parties created a joint representation fee sharing agreement. *Hutton & Hutton Law Firm, LLC*, 96 F. Supp. 3d at 1214. The plaintiff argued the defendant was subject to specific personal jurisdiction in the forum because the defendant purposefully directed business activities into the forum state. *Id*. at 1219. The court held the defendant was subject to personal jurisdiction in the forum because it contracted with the plaintiff within the forum where the plaintiff was a resident, and the contract involved the defendant's routine interaction with the forum under the contract. *Id*.

EPTC relies on *C5 Med. Werks, LLC v. CeramTec GMBH*, 937 F.3d 1319 (10th Cir. 2019). This case involved an alleged trademark infringement where the defendant undertook enforcement activity entirely outside the relevant forum. *Id*. at 1324. There, the plaintiff argued the effects of the enforcement actions were meant to be felt in the forum where plaintiff resided, and concluded this fact created specific personal jurisdiction. The Court held "[b]ecause [plaintiff's] products are manufactured in [the forum], the 'brunt of the harm' to [plaintiff's] 'bottom line and reputation' occurred in the [the forum]. . . . But merely interacting with a plaintiff 'known to bear a strong connection to the forum state' is not enough to establish jurisdiction." *Id*. (alterations added) (quoting *Rockwood Select Asset Fund XI (6)-1, LLC v. Devine, Millimet & Branch*, 750 F.3d 1178, 1180 (10th Cir. 2014)).

The Court finds both cases create useful contrast. In both cases, the plaintiffs had an undeniable connection to the forum. Beginning with *Hutton*, the plaintiff entity was formed within the forum, conducted its business there, and entered the contract with the defendant within the forum. *Hutton & Hutton Law Firm*, *LLC*, 96 F. Supp. 3d at 1213–14. Similarly, in *C5 Med. Werks*, although the defendant did not have the requisite jurisdictional contacts with the forum, the plaintiff entity was formed in the forum, operated its business there, and the court acknowledged the brunt of the economic and reputational harm to plaintiff occurred within the forum. *C5 Med. Werks*, *LLC*, 937 F.3d at 1324. As a threshold matter, no such undeniable connection between Flatirons and the State of Wyoming exists.

EPTC acted intentionally by contacting Lovell and Glenrock through cease-and-desist letters to compel discontinuation of their business relationships with Flatirons. What remains unclear is whether EPTC acted with the intention, the knowledge, or the reality, any injury would be felt in the forum. Both parties acknowledge Flatirons is a Colorado state bank with no physical presence in Wyoming. Flatirons focuses on its loss of a contractual relationship with Lovell and the strain on its relationship with Glenrock as injuries concretely occurring within the forum. However, as a Colorado business with no physical presence in Wyoming, it appears to the Court any such injury to Flatirons' business would be felt in Colorado—not Wyoming.

"In assessing the question of 'purposeful direction,' *Calder* stressed the fact that the [] defendants 'knew that the brunt of th[e] injury would be felt' in the forum state." *Dudnikov*, 514 F.3d at 1077 (quoting *Calder*, 465 U.S. at 789–90); *cf. Keeton v. Hustler*

Magazine, 465 U.S. 770, 780 (1984) (finding jurisdiction proper in a libel action although "the bulk of the harm done to petitioner occurred outside" the relevant forum). In *Dudnikov*, the Court also examined *Bancroft & Masters, Inc. v. Augusta Nat. Inc*., 223 F.3d 1082, 1087 (9th Cir. 2000), *holding modified by Yahoo! Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme*, 433 F.3d 1199 (9th Cir. 2006).

In *Bancroft*, the defendant sent a letter from Georgia to Virginia asserting a trademark violation. The plaintiff was unable to retain its domain name without a declaratory judgment it was not infringing on the defendant's trademarks. *Newsome*, 722 F.3d at 1268–69 (citing *Bancroft*, 223 F.3d at 1084–88). "Although the Georgia entity's letter 'was formally sent to Virginia rather than California,' it satisfied the 'express aiming' requirement because its 'purpose was specifically to target a known California business.'" *Id*. at 1269 (citing *Dudnikov*, 514 F.3d at 1076, and *Bancroft*, 223 F.3d at 1087–88).

Overall, to demonstrate express aiming and knowledge the brunt of the injury will be felt in the forum, there must be a showing the forum was the focal point of the defendant's actions. *See Newsome*, 722 F.3d at 1268. The present analysis is the inverse of *Bancroft*: there the letter causing interference with the plaintiff's business was sent to Georgia but, because it targeted a California business, purposeful direction toward the California forum was satisfied. *Bancroft*, 223 F.3d at 1087–88. Here, Flatirons claims EPTC has targeted its business contacts and threatened litigation through letters instructing Wyoming municipalities to cease business with Flatirons based on claims of criminal activity. [ECF No. 1, at 1–2].

However, EPTC's alleged actions causing interference with Flatirons' business were directed at Wyoming municipalities but meant to target Flatirons—a Colorado company with no apparent contacts Wyoming aside from its contracts with Wyoming municipalities for Justice Escrow. *Eighteen Seventy*, *LP*, 32 F.4th at 974 ("It bears underscoring that a central factor in our express aiming analysis in *Newsome* was not simply that the company had its headquarters in Oklahoma; instead, it was the fact that the company *exclusively* operated its business activities related to the Canadian parent in Oklahoma.") (emphasis added) (citing *Newsome*, 722 F.3d at 1262–63).

As a result, the Court finds Flatirons has not established EPTC expressly aimed its conduct at the forum with the knowledge, or the reality, the brunt of Flatirons' injury would be felt in the forum. *See Rockwood Select Asset Fund XI (6)-1*, *LLC*, 750 F.3d at 1180 ("*Walden* teaches that personal jurisdiction cannot be based on interaction with a plaintiff known to bear a strong connection to the forum state.") (citing *Walden v. Fiore*, 134 S. Ct. 1115, at 1122–26 (2014)).

2. Injury Arising Out of Defendant's Purposeful Direction

The specific jurisdiction inquiry next details "the plaintiff's injuries must 'arise out of' defendant's forum-related activities." *Dudnikov*, 514 F.3d at 1071 (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985)). The defendant's forum-related activities must have actually and proximately created the circumstances underlying plaintiff's lawsuit. *See id.* at 1078. Here, two of Flatirons' six claims directly relate to EPTC's communications with Lovell and Glenrock. [ECF No. 1, at 11–13]. Flatirons' other claims more broadly implicate allegations of EPTC's negative publicity about Justice Escrow. *Id.*

at 13–18. Because EPTC's communications with Wyoming municipalities only factor into the economic and reputational harm claimed by Flatirons, the Court finds this is an insufficient showing to demonstrate Flatirons' injuries arose out of EPTC's forum related activities.

Although the Court has found sufficient minimum contacts do not exist between EPTC and Wyoming, for the sake of comprehensiveness, the Court next addresses the constitutional factors considered when determining personal jurisdiction. *OMI Holdings*, *Inc*., 149 F.3d at 1091 ("[I]f the defendant's actions create sufficient minimum contacts, we must *then* consider whether the exercise of personal jurisdiction over the defendant offends 'traditional notions of fair play and substantial justice.'") (emphasis added) (citation omitted). "'[T]he weaker the plaintiff's showing on [minimum contacts], the less a defendant need show in terms of unreasonableness to defeat jurisdiction.'" *Id*. at 1092 (alteration in original) (quoting *Ticketmaster–New York*, *Inc. v. Alioto*, 26 F.3d 201, 210 (1st Cir.1994)).

3. Fair Play and Substantial Justice

"If a defendant's actions have created sufficient 'minimum contacts,' we must still go on to consider 'whether the exercise of personal jurisdiction over the defendant offends traditional notions of fair play and substantial justice.'" *Rusakiewicz v. Lowe*, 556 F.3d 1095, 1102 (10th Cir. 2009) (quoting *OMI Holdings*, *Inc.*, 149 F.3d at 1091). If a court finds a defendant has the required minimum contacts with the forum, the defendant must then "present a compelling case that the presence of some other considerations would

render jurisdiction unreasonable." *Burger King Corp.*, 471 U.S. at 477. The factors courts consider under this analysis include:

> (1) the burden on the defendant, (2) the forum state's interest in resolving the dispute, (3) the plaintiff's interest in receiving convenient and effective relief, (4) the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and (5) the shared interest of the several states in furthering fundamental substantive social policies.

OMI Holdings, *Inc*., 149 F.3d at 1095; *see Intercon*, *Inc*. *v*. *Bell Atl*. *Sol.*, *Inc*., 205 F.3d 1244, 1249 (10th Cir. 2000). The Court will address each factor successively.

i. Burden on the Defendant

Flatirons argues "EPTC is a sophisticated trust-services provider" operating "nationally in the QSF market." [ECF No. 18, at 20] (citing ECF No. 1, at ¶¶ 6–8, 20–22). Flatirons appears to conclude EPTC has the means and resources to litigate in Wyoming because it is a sophisticated entity with a strong presence in the market. *See id*. EPTC claims "it is burdensome for a U.S. Virgin Island company with its servers housed and maintained in Viriginia to litigate this matter in the distant forum of Wyoming." [ECF No. 15, at 15]. The burden on EPTC weighs against exercising personal jurisdiction. EPTC is a company incorporated and headquartered in the U.S. Virgin Islands and conducts most of its business in Virginia. [ECF No. 1, at 3–4]. EPTC would be forced to travel to Wyoming to litigate the case. Accordingly, the Court finds this factor weighs in EPTC's favor.

ii. Forum State's Interest

Flatirons asserts "Wyoming has a strong interest in providing a forum for disputes involving interference with contracts and business relations entered into and performed by

its municipalities, as well as alleged violations of its antitrust/public-policy statute." [ECF No. 18, at 20] (citing ECF No. 1, at ¶¶ 14, 19, 28–37, 59–61, 119–31). EPTC counters, "While Wyoming likely has a general interest to curb unfair business practices, it is difficult to see how it has a specific interest in regulating the same between an out-of-state plaintiff and out-of-state defendant, especially where the focal point is EPTC's statements to the public at large." [ECF No. 15, at 15].

"States have an important interest in providing a forum in which their residents can seek redress for injuries caused by out-of-state actors. . . . Although less compelling, a state may also have an interest in adjudicating a dispute between two non-residents where the defendant's conduct affects forum residents." *OMI Holdings*, *Inc*., 149 F.3d at 1096. EPTC's conduct "affects forum residents" only insofar as it has impacted Lovell's and Glenrock's contracts to approve Justice Escrow QSFs. As indicated, a total of three of Flatirons' claims specifically address its contracts with the Wyoming municipalities or are brought under Wyoming law. [ECF No. 1]. To complicate this consideration, Flatirons seeks a declaratory judgment related to the legal enforceability of EPTC's Terms of Use which includes a choice of law provision naming Virginia as the relevant forum. With these facts in mind, the Court finds this factor weighs against exercising personal jurisdiction over EPTC.

iii. Plaintiff's Interest

"The third step in our reasonableness inquiry hinges on whether the Plaintiff may receive convenient and effective relief in another forum." *OMI Holdings*, *Inc*., 149 F.3d at 1097. Flatirons contends it "chose Wyoming as its forum because the key relationships at

issue with Lovell and Glenrock are here, and because the challenged conduct occurred here. . . . Forcing Flatirons to chase EPTC to Virginia to vindicate Wyoming-centered harms would significantly undermine Flatirons' interest in convenient and effective relief." [ECF No. 18, at 20] (citing ECF No. 1, at ¶¶ 14, 28–37, 59–61). On this point, EPTC asserts Flatirons may receive more efficient relief in other forums, including the Eastern District of Virginia. [ECF No. 15, at 15].

The Court finds Plaintiff may receive effective relief in another forum. As indicated, Plaintiff's claims directly involving Wyoming municipalities make up a small percentage of the overall claims it asserts against EPTC. [ECF No. 1]. Neither party has a genuine presence in Wyoming, and the only contacts Flatirons maintains with Wyoming is its remaining contract with Glenrock relating to authorizing QSFs. As mentioned above, Flatirons requests declaratory judgments about the enforceability of EPTC's Terms of Use and about its alleged intellectual property theft. From EPTC's pleadings, it appears the information relevant to their arguments on these claims are contained within their Virginia servers. [ECF No. 15, at 2]. As a result, the Court holds this factor weighs in favor of EPTC.

iv. Efficient Resolution

Flatirons next argues "[l]itigating the claims in the Complaint where the municipalities, evidence, and witnesses are located promotes judicial efficiency." [ECF No. 18, at 20]. EPTC contends litigating in Virginia would create the most efficient forum "because most witnesses and evidence related to the validity of the underlying declaratory judgement claims are located there." [ECF No. 15, at 16]. EPTC also points to litigation in the Eastern District of Michigan acknowledging the validity of its browser wrap forum

selection clause and claims acting in accordance with the clause would further judicial efficiency by preventing duplicative litigation. *Id*. (citing *Pitt*, *McGehee*, *Palmer*, *Bonmani & Rivers*, *P.C. v. E. Point Tr. Co*., No. 23-CV-10166, 2023 WL 7924705 (E.D. Mich. Nov. 16, 2023)). In line with the previous analysis, the Court finds witnesses and evidence related to the validity of Flatirons declaratory judgment claims exist outside of Wyoming. Consequently, this factor weighs against exercising personal jurisdiction.

v. Furthering Substantive Social Policies

"The fifth factor we consider is the interests of the several states, in addition to the forum state, in advancing fundamental substantive social policies. Our analysis of this factor focuses on whether the exercise of personal jurisdiction by [the forum] affects the substantive social policy interests of other states or foreign nations." *OMI Holdings*, *Inc*., 149 F.3d at 1097 (alteration added) (citation omitted). Flatirons concludes exercising "specific personal jurisdiction over EPTC does not conflict with any other state's substantive policies and, in fact, promotes Wyoming's interest in resolving claims arising from conduct occurring within the state." [ECF No. 18, at 20] (citing ECF No. 1, at ¶ 120). The Court concludes this factor weighs in favor of the Plaintiff as it relates to Plaintiff's claims specifically about contractual interference with Lovell and Glenrock and its claim for anti-competitive acts brought under Wyoming law. Overall, the Court finds there are neither minimum contacts nor appropriate due process considerations to warrant the exercise of personal jurisdiction over EPTC.

II. Petition Clause

While the case is adequately dismissed based on a lack of personal jurisdiction, the Court turns to the parties' claims surrounding *Noerr-Pennington* and Petition Clause immunities to demonstrate additional support for the dismissal. "The First Amendment protects 'the right of the people . . . to petition the Government for a redress of grievances.'" *CSMN Invs., Ltd. Liab. Co. v. Cordillera Metro. Dist.*, 956 F.3d 1276, 1282 (10th Cir. 2020) (quoting U.S. CONST. AMEND. I); *see generally E. R. R. Presidents Conf. v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 129 (1961). "In this circuit, this immunity extends beyond antitrust situations. . . . But we refer to it as Petition Clause immunity, reserving the name, *Noerr-Pennington*, for antitrust cases." *CSMN Invs., Ltd. Liab. Co.*, 956 F.3d at 1283 (citing *Cardtoons, L.C. v. Major League Baseball Players Ass'n*, 208 F.3d 885, 889–90 (10th Cir. 2000) (en banc)).

"There may be situations in which a publicity campaign, ostensibly directed toward influencing governmental action, is a *mere sham* to cover what is actually nothing more than an attempt to interfere directly with the business relationships of a competitor." *Id.* (emphasis in original) (quoting *Noerr*, 365 U.S. at 144). This so called "sham-petitioning" is an exception to the immunity provided under the Petition Clause. *Id.*; *Prof'l Real Estate Inv'rs, Inc. v. Columbia Pictures Indus.*, 508 U.S. 49, 51 (1993).

"EPTC asserts immunity from liability for its communications with governmental entities under the *Noerr-Pennington* and Petition Clause doctrines." [ECF No. 15, at 12–13]. Flatirons maintains EPTC engaged in "a coordinated, bad-faith campaign of knowing falsehoods, threats, and sham legal posturing aimed at municipalities, industry groups, and

the marketplace." [ECF No. 18, at 3]. Flatirons concludes, "[u]nder controlling Tenth Circuit authority, allegations that a defendant abused governmental processes and engaged in sham petitioning preclude dismissal on immunity grounds." *Id*. The Court finds under the current pleadings, EPTC's petitions are immune under the Petition Clause. The Court will address (A) the parties' professional responsibility before turning to the (B) sham petition analysis.

A. Professional Responsibility

"The role of a lawyer as an officer court predates the Constitution . . . . It is [] first [a] loyalty to serve the client's interest but always within—never outside—the law, thus placing a heavy personal and individual responsibility on the lawyer." *In re Griffiths*, 413 U.S. 717, 732 (1973) (alterations added). Multiple problems within Flatirons' assertions indicate there has been a departure from this professional responsibility. Flatirons states "in *CSMN Invs*., *LLC v. Cordillera Metro Dist*., the court reversed dismissal where defendants allegedly used governmental mechanisms to further anticompetitive objectives. 956 F.3d 1276, 1285–87." [ECF No. 18, at 16]. But, as EPTC correctly notes, *CSMN Investments* affirmed the district court and held the underlying conduct was objectively reasonable and therefore immunized by the Petition Clause. *CSMN Invs*., *LLC*, 956 F.3d at 1290; [ECF No. 19, at 6].

Flatirons also relies on *Scott v. Hern* to support the alleged inapplicability of petitioning immunity. [ECF No. 18, at 16] (citing 216 F.3d 897, 914–15 (10th Cir. 2000)). In relaying the holding of the case, it states, "[t]he court recognized that the 'sham exception' and allegations of improper purpose require a fact-intensive inquiry not suitable

for resolution on the pleadings where the complaint alleges misuse of governmental processes." *Id*. at 17 (citing *Scott*, 216 F.3d at 914–15). The Court finds no mention of the sham exception and no holding resembling Flatirons' assertion. Because the court made no comment as to a sham exception, the court likewise did not include any commentary on the proper assessment, or timing of, resolving sham exception allegations as asserted. *See Scott*, 216 F.3d at 914–15.

The Court cautions the attorneys to thoughtfully consider their professional responsibilities. Under the Wyoming Rules of Professional Conduct, Federal Rule of Civil Procedure 11, and the local rules, "[a]ttorneys shall at all times exercise professional integrity, candor, diligence and utmost respect to the legal system, judiciary, litigants and other attorneys." U.S.D.L.R. 84.1(a)(1). "That this is often unenforceable, [and] that departures from it remain undetected . . . renders it no less important to a profession that is increasingly crucial." *In re Griffiths*, 413 U.S. at 732 (alteration added). Pleadings containing blatant misstatements of law are unacceptable—not only hampering judicial efficiency but also casting doubt on the pleading attorneys' diligence and candor to the court.

B. Sham Petition Analysis

CSMN Investments adopted a two-step sham-petitioning test which asks: (1) is the petitioning objectively reasonable and, only if it is not, (2) what is the subjective intent between the petitioning? *CSMN Invs*., *LLC*, 956 F.3d at 1284 (citing *Prof'l Real Estate Inv'rs*, *Inc*. *v*. *Columbia Pictures Indus*., 508 U.S. 49, 51 (1993)). Flatirons asserts "EPTC's sole purpose in harassing Lovell and Glenrock, Flatirons' business partners, was to

interfere with and stifle Flatirons' QSF business to EPTC's direct financial benefit." [ECF No. 18, at 17]. It alleges, "[t]he Complaint makes clear that EPTC's communications were not aimed at influencing public policy, but rather at undermining a competitor and diverting customers." *Id*. EPTC argues Flatirons fails to include any allegations related to the objective reasonableness of EPTC's letters to the municipalities and this omission decides the test in its favor. [ECF No. 19, at 5].

The Court finds EPTC's communications with the municipalities have not been shown to be objectively baseless and therefore fail the sham petition test and are immune under the Petition Clause. While Flatirons includes allegations EPTC's contacts with Lovell and Glenrock were shams, Flatirons also includes numerous acknowledgements of EPTC's claims that its QSF coding technology was stolen and infringed. *See*, *e.g.*, [ECF No. 18, at 17]; [ECF No. 1, at ¶¶ 45–47, 57, 90–92]. Flatirons' Complaint and Response allege EPTC's *subjective* intent for contacting Lovell and Glenrock—to interfere with and stifle Flatirons' QSF business—but do not contain any express allegations about EPTC's *objective* intent. *See* [ECF No. 18, at 16–18]. But, because Flatirons acknowledges EPTC's claims of infringement and theft, the Complaint and Response demonstrate an objectively reasonable basis for EPTC's communications with the municipalities.

Put differently, considering EPTC's allegations of theft and infringement it was objectively reasonable it contacted Lovell and Glenrock to terminate their contracts with Flatirons. *See Cardtoons*, *L.C.*, 208 F.3d 885, 887 (10th Cir. 2000) ("'We adopt the legal and policy rationales that have informed other circuits' extension of *Noerr-Pennington* immunity to prelitigation threats, and hold that whether or not they are consummated, such

threats enjoy the same level of protection from liability as litigation itself.'") (quoting *Cardtoons, L.C. v. Major League Baseball Players Ass'n*, 182 F.3d 1132 (10th Cir.1999) ("Cardtoons IV")).

The second step of the sham petitioning test looks at the subjective intent of the petitioning party only if there is no objectively reasonable basis for the governmental contact. Flatirons included no allegations adequately refuting the *objective* reasonableness of EPTC's actions, and as a result, the Court has no need to examine the subjective intent of EPTC as pled. *See CSMN Invs., LLC*, 956 F.3d at 1290. The Court is required to accept all of Flatirons' well-pled factual allegations as true at this stage of the litigation. *Smith*, 561 F.3d at 1098. Because Flatirons' allegations go only toward the inapplicable second prong of the test, the Court finds EPTC's petitioning was not a sham based on the allegations pled and the demonstration of an objectively reasonable basis. The Court finds EPTC's communications with Wyoming municipalities immune under the *Noerr-Pennington* and Petition Clause doctrines and thus doubly insufficient to support personal jurisdiction.

III. Leave to Amend

Pleading in the alternative, Flatirons requests it be granted leave to amend if the Court finds any pleading defects. [ECF No. 18, at 1]. "We have long held that bare requests for leave to amend do not rise to the status of a motion and do not put the issue before the district court." *Brooks v. Mentor Worldwide LLC*, 985 F.3d 1272, 1283 (10th Cir. 2021); *Calderon v. Kan. Dep't of Soc. & Rehab. Servs.*, 181 F.3d 1180, 1186 (10th Cir. 1999) ("A court need not grant leave to amend when a party fails to file a formal motion."); *Glenn v.*

First Nat. Bank in Grand Junction, 868 F.2d 368, 371 (10th Cir. 1989) ("A naked request for leave to amend asked for as alternative relief when a party has the unexercised right to amend is not sufficient.").

Here, Flatirons requested leave to amend the Complaint as alternative relief without filing a formal motion. [ECF No. 18]. Flatirons correctly notes, "[t]he Tenth Circuit follows a liberal amendment policy and disfavors dismissal with prejudice at the first pleading challenge unless the amendment would be futile." [ECF No. 18, at 24–25] (citations omitted). The Court finds because Plaintiff failed to fully exercise this right, the request to amend is denied, but the Complaint is dismissed without prejudice.

CONCLUSION

NOW, THEREFORE, IT IS ORDERED Defendants' Motion to Dismiss [ECF No. 15] is hereby **GRANTED**.

THEREFORE, IT IS FURTHER ORDERED Flatirons' Complaint is dismissed without prejudice.

Dated this 27th day of January, 2026.

Kelly H. Rankin
United States District Judge