This opinion is nonprecedential except as provided by Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1651
A24-1652

SAF Holdings LLC,
Plaintiff,

vs.

CalPro ADAS Solutions LLC, et al.,
Respondents,

Protagonist Path LLC, et al.,
Defendants,

Repairify, Inc., et al.,
Appellants (A24-1651),

Kinderhook Industries, LLC,
Appellant (A24-1652).

Filed July 7, 2025
Affirmed
Ross, Judge
Concurring in part, dissenting in part, Connolly, Judge

Hennepin County District Court
File No. 27-CV-24-2437

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Considered and decided by Ross, Presiding Judge; Connolly, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

This appeal requires us to decide whether the district court properly held that it could and should exercise personal jurisdiction over three, out-of-state, third-party defendants accused by the primary defendants of tortious conduct and related claims in underlying litigation over the ownership of certain intellectual property. Three third-party defendants appeal, two arguing that a forum-selection clause in a confidential-disclosure agreement between a primary defendant and one of the third-party defendants requires the claims against them to be litigated in Delaware, that neither of two personal-jurisdiction tests support personal jurisdiction in Minnesota, and that the district court should have applied the doctrine of *forum non conveniens* and declined to exercise personal jurisdiction over them. The third appellant argues that neither of the personal-jurisdiction tests support jurisdiction. Because we hold that the district court had personal jurisdiction over the appealing third-party defendants and acted within its discretion by exercising that jurisdiction, we affirm.

FACTS

A look into the parties' intertwined business relationships in the underlying dispute will help frame our personal-jurisdiction discussion. We base this factual summary largely on the allegations in the parties' pleadings.

Four businesses in 2019 formed CalPro Holdings—a Delaware limited liability company with its principal office in Minnesota—"to develop vehicle calibration centers." CalPro Holdings had four original members: Balan Holdings (a Minnesota limited liability company associated with Minnesota resident Todd Balan); Protagonist Path (a Minnesota limited liability company associated with Minnesota resident Tom Jasper); SAF Holdings (a Maryland limited liability company associated with Maryland resident Steve Fairall); and a fourth entity, whose membership in CalPro ended before this lawsuit began. The four managers each entered into consulting agreements with CalPro Holdings to render services as independent contractors, assigning to CalPro Holdings their rights to intellectual property developed during their services to it. Fairall, Balan, and Jasper developed a technological process to extrapolate vehicle-calibration data, and CalPro Holdings applied to patent the process. The record suggests that only Todd Balan was listed as the process inventor.

CalPro Holdings faced solvency issues, so Balan Holdings lent it $40,000, memorialized by a secured promissory note. CalPro Holdings failed to repay the loan on schedule, and in November 2021 two CalPro Holdings members, Balan Holdings and Protagonist Path, voted to dissolve CalPro Holdings and divert its assets to Balan Holdings. Balan Holdings then purported to terminate CalPro Holdings' obligation to repay the loan in exchange for its conveying its intellectual property to CalPro ADAS Solutions LLC (CalPro Solutions), a company that Todd Balan solely owns.

Litigation ensued. SAF Holdings filed a civil complaint against Todd Balan, Balan Holdings, CalPro Solutions, Protagonist Path, and Jasper. The complaint alleged that Todd

Balan and his two companies, CalPro Solutions and Balan Holdings, "engaged in a pattern of self-dealing, fiduciary breaches, and other unlawful conduct contrary to the interests of CalPro Holdings . . . and its members and managers, including SAF Holdings and Steve Fairall." The complaint sought a judgment declaring that CalPro Holdings rather than CalPro Solutions rightfully owned the intellectual property and sought damages against Todd Balan and Balan Holdings for fraud and breach of fiduciary duty.

Todd Balan, CalPro Solutions, and Balan Holdings responded with counterclaims and third-party claims. The third-party complaint identified four third-party defendants: Repairify (a Delaware corporation principally operating in Texas); Cris Hollingsworth (a Washington resident and Repairify's co-CEO); Kinderhook Industries (a limited liability company headquartered in New York whose managing director was Paul Cifelli); and Fairall (a Maryland resident). The third-party complaint alleged that the district court has personal jurisdiction over all the third-party defendants for the same reason, which is that, "among other reasons," they "transact[] business here, and [have] committed acts in and outside of Minnesota that have caused injury here."

The third-party complaint makes various allegations related to Fairall's involvement in CalPro Holdings.[1] It alleges generally that Fairall, Repairify, Hollingsworth, and

[1] The parties filed several documents as confidential in district court, including the third-party complaint, pursuant to a protective order. Court records "are presumed to be open to any member of the public," unless there is a specific exception in the access rules. Minn. R. Pub. Access to Recs. of Jud. Branch 2; *see also* Minn. R. Pub. Access to Recs. of Jud. Branch 4, subd. 1 (identifying certain types of records not available to the public). But materials filed as confidential in the district court generally remain confidential on appeal. Minn. R. Civ. App. P. 112.02, subd. 1. This rule was reorganized effective April 1, 2025, but the substance was not changed in relevant part. We are not precluded "from mentioning

Kinderhook advanced "an abusive and anticompetitive scheme" and engaged in a "pattern of fiduciary breaches[] and other unlawful conduct" that injured the third-party plaintiffs. It also alleges that Fairall "intended to use his interest in CalPro Holdings to undermine the firm for the benefit of Repairify, and its owner, Kinderhook" and that Kinderhook, Repairify, and Hollingsworth aided and abetted Fairall's breaches of his fiduciary and other duties.

The third-party complaint also alleges that, after the patent for the calibration process issued in December 2021, Fairall and Hollingsworth, operating through SAF Holdings, Repairify, and Kinderhook, "planned to destroy the marketability of the intellectual property by making a formal offer to acquire CalPro Solutions and purposefully creating a dispute over the ownership of the intellectual property." It alleges that, to effectuate this scheme, Cifelli and Hollingsworth on behalf of Repairify and Kinderhook sent Balan a letter of intent with an exclusivity provision to express their interest in buying CalPro Solutions. Reparify and CalPro Solutions had previously entered into a confidential-disclosure agreement (CDA). This began a due-diligence process which Kinderhook and Repairify allegedly deliberately drew out to prevent other interested

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the contents" of confidential documents when the information is "necessary and relevant to the particular issues or legal argument being addressed in the proceeding." Minn. R. Pub. Access to Recs. of Jud. Branch 4, subd. 4. Nor are we constrained from disclosing information contained in the publicly filed briefs. *See Coursolle v. EMC Ins. Grp.*, 794 N.W.2d 652, 655 n.1 (Minn. App. 2011) (citing Minn. R. Pub. Access to Recs. of Jud. Branch 4), *rev. denied* (Minn. Apr. 19, 2011). The parties here cite and discuss the contents of confidential documents, and the third-party plaintiffs cite or expressly refer to portions of documents they filed as confidential in district court. We limit our discussion in this opinion to information disclosed in publicly filed documents, including appellate briefs and information relevant and necessary to resolving the issues before us.

persons from obtaining CalPro Solutions' intellectual property. When the exclusivity period ended, Kinderhook and Repairify allegedly negotiated an asset-purchase agreement with CalPro Solutions to block an interested competitor. Repairify and Kinderhook allegedly demanded that Fairall sign an invention-assignment agreement to confirm that CalPro Solutions owned the intellectual property, knowing that Fairall would not sign the agreement. Repairify and Kinderhook then allegedly reneged on the agreement to buy CalPro Solutions in July 2022 because Fairall would not sign the invention-assignment agreement. The complaint also alleged that Fairall disclosed CalPro Holdings' confidential information several times to Repairify, with Repairify giving Fairall "express direction on how to undermine" CalPro Holdings.

The third-party plaintiffs made the following third-party claims against Repairify, Hollingsworth, or Kinderhook: (1) fraud (against Repairify and Hollingsworth); (2) aiding and abetting fraud (against all); (3) aiding and abetting breach of fiduciary duty (against all); (4) violation of the Minnesota Uniform Trade Secrets Act (MUTSA) (against Repairify); (5) tortious interference with contract (against all); (6) fraudulent concealment (against Kinderhook); (7) tortious interference with prospective business advantage (against all); (8) unjust enrichment (against Repairify and Kinderhook); and (9) inducing and aiding breaches (against Repairify and Kinderhook).

Repairify, Hollingsworth, and Kinderhook moved to dismiss for lack of personal jurisdiction, among other reasons. The district court generally denied the motions to dismiss for lack of personal jurisdiction but granted Kinderhook's motion to dismiss a claim of fraudulent concealment.

Repairify and Hollingsworth filed a notice of appeal challenging the district court's denial of their motions to dismiss, and Kinderhook filed a separate notice of appeal. We consolidated those appeals. The third-party plaintiffs filed a notice of related appeal but then voluntarily dismissed that appeal after we questioned jurisdiction.

DECISION

Repairify, Hollingsworth, and Kinderhook appeal from the district court's order denying their motions to dismiss for lack of personal jurisdiction. Repairify and Hollingsworth raise three arguments. They argue first that the forum-selection clause in the CDA between Repairify and CalPro Solutions requires the litigation to occur in Delaware, not Minnesota. They argue second that their contacts with Minnesota are insufficient to support personal jurisdiction in Minnesota. And they argue third that, under the doctrine of *forum non conveniens*, the district court should have decided against exercising personal jurisdiction over them. Kinderhook argues separately that its contacts with Minnesota are insufficient to support personal jurisdiction. None of the arguments persuades us to reverse.

I

Repairify first contends that the Delaware forum-selection clause in the CDA between Repairify and CalPro Solutions governs the claims asserted in the third-party complaint. The district court considered and rejected this argument. As an initial matter, we question whether the district court's forum-selection-clause determination is immediately appealable. Although orders denying motions to dismiss for lack of personal jurisdiction are immediately appealable, when an order is appealable in part and not appealable in part, an immediate appeal "brings up for review only that part which is appealable." *Stone v. Invitation Homes, Inc.*, 986 N.W.2d 237, 246 (Minn. App. 2023) (quotation omitted), *aff'd*, 4 N.W.3d 489 (Minn. 2024). Our rules of appellate procedure do not expressly permit appeal from a determination that a forum-selection clause does not apply. *See* Minn. R. Civ. App. P. 103.03. And neither party cites any other authority allowing for such an appeal. We see no reason why the forum-selection-clause determination would fit within the "small class" of decisions that are appealable under the collateral-order doctrine. *See Kastner v. Star Trails Ass'n*, 646 N.W.2d 235, 239–40 (Minn. 2002) (quotation omitted). But we may consider issues before us as the interest of justice requires. *See* Minn. R. Civ. App. P. 103.04. The parties have not addressed the appealability of the district court's forum-selection-clause determination, so we conclude that the interests of justice are best served by our addressing the forum-selection issue.

The district court properly rejected Repairify's argument that the CDA's forum-selection clause controls the litigation here. Whether the forum-selection clause applies is a question we review *de novo*, bearing in mind that the party asserting that a forum-selection clause applies bears the burden of proving that it does. *See Alpha Sys. Integration, Inc. v. Silicon Graphics, Inc.*, 646 N.W.2d 904, 907–08 (Minn. App. 2002), *rev. denied* (Minn. Oct. 15, 2002). For the following reasons, we conclude that the district court did not err.

The district court interpreted the CDA's forum-selection clause as not applying to the third-party claims here. We reach the same result. When the language of a contract is clear and unambiguous, we enforce the contract as expressed through its language. *Storms,* *Inc. v. Mathy Constr. Co.*, 883 N.W.2d 772, 776 (Minn. 2016). The CDA's "Governing Law" paragraph, which includes a forum-selection clause, states as follows:

> This CDA and the rights of the parties hereunder shall be governed by and interpreted in accordance with the laws of the State of Delaware, without giving effect to the principles of conflicts of laws. The parties submit and consent to the exclusive jurisdiction of the federal or state courts of Delaware for any claim or action arising from or relating to this CDA.

Because the forum-selection clause governs only those claims or actions "arising from or relating to [the] CDA," it applies here only if the third-party claims arise from or relate to the CDA. Repairify and CalPro Solutions entered into the CDA around the time in 2021 when Balan and Hollingsworth exchanged emails about a potential transaction between the companies. The CDA correspondingly states its narrow purpose, which is to allow Repairify and CalPro Solutions confidentiality in exchanging "Proprietary Information . . . for the sole purpose of the parties evaluating a transaction related to their ADAS (Advanced Driver Assistance System) business," and it clarifies that, in that context, Repairify and CalPro Solutions "[were] relying on this CDA before granting access to Proprietary Information." The unambiguous language of the forum-selection clause therefore specifically applies to disputes arising out of or related to the voluntary disclosures of confidential information between the contracting parties, which either of them exchanged to the other for the "sole purpose" of evaluating the potential business transaction the CDA referenced.

Repairify and Hollingsworth suggest a much broader application, contending that the forum-selection clause applies to any claims that arose out of or relate to the parties' evaluation of their proposed transaction. We agree with the district court, however, in concluding that the claims in the third-party complaint fall outside the scope of the CDA because they have nothing to do with voluntarily disclosed information but with, among other things, information that Repairify allegedly improperly obtained. One of the third-party allegations is that Repairify made a fraudulent misrepresentation to Balan in an October 2021 email when Hollingsworth, on Repairify's behalf, wrongly identified Kinderhook rather than Fairall as a source of information about CalPro Holdings. The third-party complaint also alleges that Repairify's letter of intent to purchase CalPro Solutions furthered a scheme to create a dispute over ownership of CalPro Solutions' intellectual property. It similarly alleges that Repairify falsely represented that it sought to have Fairall sign an invention-assignment agreement. Other allegations include Fairall's failure to disclose his work for Repairify, Fairall's disclosing confidential or secret CalPro Solutions information to a competitor, and Repairify's aiding Fairall's fraud and breaches of fiduciary duties. None of these factual allegations or related legal claims (fraud, aiding and abetting fraud, aiding and abetting various breaches, MUTSA violations, tortious interference with a prospective business advantage, tortious interference with a contract, and unjust enrichment) arose from or relate to the voluntary sharing of proprietary information contemplated by the CDA.

We are not persuaded otherwise by Hollingsworth and Repairify's reliance on our decision in *Alpha Systems*, 646 N.W.2d at 907–09. Unlike the forum-selection clause we considered in that case, which was set in a reseller contract that broadly "created and defined the parties' entire business relationship by authorizing appellant to resell [the respondent's] products," *id.*, here the clause exists in a disclosure agreement designed to achieve the narrow, "sole purpose" of retaining the confidentiality of information exchanged between the parties concerning "a [single] transaction related to their ADAS . . . business." More closely analogous circumstances existed in the Ninth Circuit's decision in *Orange, S.A. v. U.S. Dist. Ct.* (*In re Orange, S.A.*), 818 F.3d 956 (9th Cir. 2016). That case similarly concerned a forum-selection clause within a nondisclosure agreement that governed "[a]ny . . . dispute, controversy, claim or question arising out of or relating to [that] Agreement." *Orange*, 818 F.3d at 959, 962. The Ninth Circuit concluded that the clause did not apply to the disputed claims (breach of contract, trade-secret theft, and unfair competition, among other claims) because resolving those claims did not require a court "to interpret, let alone reference, the NDA." *Id.* at 962. Likewise here, the claims against the third-party defendants do not at all depend on the CDA.

The district court correctly held that the CDA's Delaware forum-selection clause does not prevent litigation in Minnesota.

II

All appellants argue that the district court erroneously determined that they are subject to personal jurisdiction in Minnesota. Whether personal jurisdiction exists is a question of law that we review *de novo*. *Griffis v. Luban*, 646 N.W.2d 527, 531 (Minn. 2002). Our review supports the district court's decision.

Evidentiary Value of the Pleadings and Affidavits

Kinderhook raises the threshold issue of whether we base our jurisdictional analysis on any conclusory allegations in the third-party plaintiffs' pleadings, including affidavits.

When a defendant challenges personal jurisdiction, the burden rests on the plaintiff to establish that the defendant had sufficient contacts with the forum state. *Juelich v. Yamazaki Mazak Optonics Corp.*, 682 N.W.2d 565, 569–70 (Minn. 2004). Although we generally accept as true any allegations in a plaintiff's complaint and supporting affidavits, when a defendant supports its motion to dismiss with a jurisdiction-contesting factual affidavit, like Kinderhook did, the plaintiffs may not rely on general statements to make a *prima facie* jurisdictional showing but instead must allege specific evidence showing personal jurisdiction. *Rilley v. MoneyMutual, LLC*, 884 N.W.2d 321, 326, 334–35 (Minn. 2016). And in this case, the third-party plaintiffs responded with evidence addressing the jurisdictional challenge.

First, Balan confronted Kinderhook's assertion that the third-party complaint was merely conclusory in alleging that Kinderhook and Repairify falsely represented that they made a bona fide effort to have Fairall sign the invention-assignment agreement. Balan supported this claim in affidavit testimony that Kinderhook and Repairify demanded that Fairall sign the agreement while they knew he would not because they told him not to. This statement, accepted as true, is enough to support the third-party plaintiffs' allegation. And second, Balan's affidavit expressly responds to Kinderhook's assertion that the pleadings only allege in conclusory fashion that Cifelli and Kinderhook were the main decision-makers regarding the alleged scheme.

We need not address Kinderhook's contention that Balan's statements regarding Cifelli's "family home" in Minnesota are conclusory. The statements are irrelevant, as the third-party plaintiffs do not base their jurisdictional arguments on the location of Cifelli's family home and we do not base our decision on them.

Personal Jurisdiction

We begin with the principles underlying personal jurisdiction. Minnesota's long-arm statute—Minnesota Statutes section 543.19 (2024)—allows a Minnesota court to exercise personal jurisdiction over "any foreign corporation or any nonresident individual" when that corporation or individual "commits any act in Minnesota causing injury or property damage" or, subject to certain exceptions, "commits any act outside Minnesota causing injury or property damage in Minnesota." This provision is expansive, "extend[ing] the personal jurisdiction of Minnesota courts as far as the Due Process Clause of the federal constitution allows." *Valspar Corp. v. Lukken Color Corp.*, 495 N.W.2d 408, 410–11 (Minn. 1992). Due process allows jurisdiction over a nonpresent defendant who has "minimum contacts" with Minnesota "such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quotation omitted). A defendant's contacts with a forum state are sufficient to support establishing personal jurisdiction when the defendant "'purposefully avails itself' of the privileges, benefits, and protections of the forum state, such that the defendant 'should reasonably anticipate being haled into court there.'" *Rilley*, 884 N.W.2d at 327 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474–75 (1985)). These contacts are therefore insufficient if they are merely random, fortuitous, or attenuated. *Burger King*, 471 U.S. at 475. And although a defendant need not be physically present in the forum state to be subject to personal jurisdiction, the defendant must have contacts with the forum state itself and not simply with a person residing there. *Young v. Maciora*, 940 N.W.2d 509, 515 (Minn. App. 2020) (first citing *Burger King*, 471 U.S. at 476; and then citing *Walden v. Fiore*, 571 U.S. 277, 285–86 (2014)), *rev. denied* (Minn. May 19, 2020). We add that in close cases we resolve doubts in favor of exercising jurisdiction. *Hardrives, Inc. v. City of LaCrosse*, 240 N.W.2d 814, 818 (Minn. 1976).

Of the two types of personal jurisdiction, general and specific, only specific jurisdiction is at issue here. *See Gopher Mats, LLC v. Kalesnikoff Lumber Co.*, 16 N.W.3d 807, 818 (Minn. App. 2025), *rev. denied* (Minn. May 13, 2025). Specific jurisdiction may exist when the "contacts with the forum state are limited, yet connected with the plaintiff's claim such that the claim arises out of or relates to the . . . contacts with the forum." *Id.* (quotation omitted). Two tests guide our personal-jurisdiction analysis. Where (as here) a plaintiff alleges that a nonresident defendant committed intentional torts outside Minnesota, a court may use the "*Calder* effects" test, which we describe below. *See Griffis*, 646 N.W.2d at 532–35 (citing *Calder v. Jones*, 465 U.S. 783 (1984)). Courts may also use a five-factor test, also described below. *Juelich*, 682 N.W.2d at 570. When to apply the *Calder* test and the five-factor test is unsettled in Minnesota, *see Young*, 940 N.W.2d at 515 n.3, but we conclude that appellants are subject to personal jurisdiction in Minnesota under both tests.

1. *Calder* Test – Repairify and Hollingsworth

Repairify and Hollingsworth contend that they are not subject to personal jurisdiction under the *Calder* test. The test requires a plaintiff to prove three things:

> (1) the defendant committed an intentional tort; (2) the plaintiff felt the brunt of the harm caused by that tort in the forum such that the forum state was the focal point of the plaintiff's injury; and (3) the defendant expressly aimed the tortious conduct at the forum such that the forum state was the focal point of the tortious activity.

Griffis, 646 N.W.2d at 534. The supreme court has cautioned against applying the test too broadly and has observed that "something more than mere effects in the forum state is required" for a defendant to be subject to personal jurisdiction. *Id.* at 534–35. We conclude that under the *Calder* test, Repairify and Hollingsworth are subject to personal jurisdiction.

Repairify and Hollingsworth do not directly challenge the first or second factor, so the dispute hangs on the third—whether Repairify and Hollingsworth expressly focused their alleged tortious conduct at Minnesota. *Id.* at 534. The record establishes that they did. Hollingsworth emailed Balan, a Minnesota resident, in October 2021 about Repairify's interest in a transaction related to CalPro Holdings, a Minnesota-based company, and allegedly falsely represented that Kinderhook was the source of confidential information related to CalPro Holdings. Balan supported this allegation with his affidavit, an email exhibit, and a text-message exhibit, filed as confidential. We have reviewed the messages and are satisfied that they provide minimal support for the allegation of tortious conduct directed at Minnesota.

Repairify and Hollingsworth also contacted Balan by sending him their letter of intent stating Repairify's interest in buying CalPro Solutions. According to the third-party complaint, this letter, along with Repairify and Kinderhook's false representation that they made a bona fide effort to have Fairall sign the invention-assignment agreement, was allegedly part of a plan that included blocking a competitor from using CalPro Solutions' intellectual property and destroying the marketability of the intellectual property by fabricating a dispute over its ownership. This letter too constituted tortious conduct directed at Minnesota.

Balan's affidavit testimony also asserts that Repairify and Hollingsworth knew that he was located in Minnesota and that CalPro Holdings, CalPro Solutions, and Balan Holdings were all Minnesota-based companies. He submitted emails, also as confidential documents, and we have reviewed them and conclude that, for jurisdictional purposes, they support his claim.

The third-party complaint includes general allegations that reinforce our conclusion that Repairify and Hollingsworth directed their tortious conduct at Minnesota. The complaint alleges that Repairify provided Fairall with "express direction" on how to undermine CalPro Holdings and that Repairify and Hollingsworth and Kinderhook aided Fairall's tortious conduct with respect to CalPro Holdings. We have reviewed confidential text messages between Hollingsworth and Fairall and are satisfied that they support these allegations, again for the purpose of deciding jurisdiction.

Repairify and Hollingsworth fail to convince us to reach a different conclusion by relying on *Griffis*, a case in which the supreme court concluded that defamatory statements posted to a publicly accessible, online forum did not establish that Minnesota was the focal point of the defendant's tortious conduct. 646 N.W.2d at 535–37. Our situation differs materially, as Repairify and Hollingsworth's contacts were not made to a generally accessible public forum and were instead aimed at the Minnesota recipients directly by email, allegedly to defraud Minnesota-based companies. *Griffis* is inapposite.

Repairify and Hollingsworth are subject to personal jurisdiction in Minnesota under the *Calder* test. For the following reasons, so is Kinderhook.

2. *Calder* Test – Kinderhook

We are not persuaded by Kinderhook's argument that the third prong of the *Calder* test does not support personal jurisdiction. The pleadings, exhibits, and affidavits establish that Kinderhook was closely involved in the alleged scheme against Balan, CalPro Holdings, and CalPro Solutions. Parts of the letter of intent necessarily imply that Kinderhook participated in sending the letter. The letter states that Kinderhook's managing director must approve a resulting transaction and that Kinderhook and Repairify "have discussed this Proposal and both have approved Buyer to proceed with negotiations with respect to a Transaction." The letter offers, "If you have any questions about this Proposal, please contact Paul Cifelli at Kinderhook or Cris Hollingsworth at Repairify," and it identifies Cifelli's position at Kinderhook, his telephone number, and his email address. The letter concludes, "Repairify and Kinderhook would like to thank you for the opportunity to pursue the Transaction."[2] The letter implies that Kinderhook participated in its substance. We recognize that a "plaintiff cannot be the only link between the defendant

[2] The version of the letter that Cifelli submitted does not contain the page that indicates that Kinderhook's approval is required or that provides Cifelli's contact information. Balan's declaration notes this and includes allegedly omitted pages. Kinderhook addresses the discrepancy by describing Balan's version as "what [Balan] says was the most recent version of the draft agreement." We will assume for our review that Balan's version is the complete letter.

and the forum." *Walden*, 571 U.S. at 285. It is instead the defendant's conduct that must create the necessary connection with the forum state. *Id.* Kinderhook's alleged participation in a scheme to destroy the marketability of the intellectual property of a Minnesota-based company by contacting a Minnesota resident and fabricating a dispute over the property's ownership establishes not just contact with a resident but instead the necessary connection with Minnesota.

Balan also alleges that around the time he received the letter of intent he communicated directly with Cifelli and that Cifelli oversaw the transaction-related negotiations and provided direction to Hollingsworth. He supports this allegation with confidentially submitted emails that we have reviewed. Cifelli personally responded to several of Balan's emails, and we understand Cifelli's responses to indicate that he had, at a minimum, assumed a supervising role in the attempted acquisition of CalPro Solutions. We conclude for the purpose of assessing jurisdiction that the emails support Balan's allegation.

Balan finally alleges that Cifelli had a separate in-person contact with him in Minnesota. Balan's affidavit states that he and Cifelli "discussed . . . CalPro's technology" during a breakfast meeting in Wayzata. Balan attached to his affidavit text messages that support the conclusion that he and Cifelli indeed met for breakfast in Wayzata on a specified date in August 2021. Cifelli seemingly disagrees with Balan's characterization of the meeting, stating in his own affidavit that he does not recall any meeting in Minnesota related to acquiring CalPro Solutions. Kinderhook also argues that the alleged meeting took place before what Balan described as the "relevant time period" for the potential business transaction. But we accept Balan's allegations supported by specific evidence as true at this stage in the proceedings. And we are unconvinced that the timing of the meeting—about two months before Hollingsworth broached the topic of a business transaction via email—makes the alleged contact irrelevant. Kinderhook's close involvement in the alleged scheme to create a dispute over CalPro Solutions' intellectual property sufficiently establishes that it is subject to personal jurisdiction under the *Calder* test.

Five-Factor Personal-Jurisdiction Test

Repairify, Hollingsworth, and Kinderhook also argue that they are not subject to personal jurisdiction under the five-factor personal-jurisdiction test. The five factors are (1) the quantity of the defendant's contacts with Minnesota, (2) the nature and quality of those contacts, (3) the connection between those contacts and the cause of action, (4) the interest of Minnesota in providing a forum, and (5) the convenience of the parties. *Juelich*, 682 N.W.2d at 570. The first three factors are the primary ones, and the last two factors are secondary. *Marquette Nat'l Bank of Minneapolis v. Norris*, 270 N.W.2d 290, 295 (Minn. 1978). We are satisfied that each factor supports personal jurisdiction.

1. Quantity of Contacts

Repairify and Hollingsworth argue that the quantity of their contacts is insufficient to support personal jurisdiction. But there were at least three direct contacts between Repairify and Hollingsworth and Balan. First is Hollingsworth's October 2021 email to Balan on Repairify's behalf expressing interest in a potential transaction. Emails to a plaintiff may constitute sufficient contacts. *Rilley*, 884 N.W.2d at 331–32, 337. And the third-party complaint alleges that, before Hollingsworth sent the email, "Repairify had expressed interest in CalPro Holdings on multiple occasions." The letter of intent constitutes the second direct contact. The third is the asset-purchase agreement that Repairify and Kinderhook allegedly negotiated to extend their exclusivity period with CalPro Solutions and block a competitor's use of CalPro Solutions' intellectual property. And although the third-party plaintiffs allege further contacts in the third-party complaint, these specific alleged contacts are enough to support personal jurisdiction over Repairify and Hollingsworth.

Repairify and Hollingsworth seek a different result, suggesting that these communications are like the "hundreds of phone calls and emails" and the "scattered communication via emails and phone calls" that federal courts have found insufficient to create a connection between the defendant and the forum state. *See Pederson v. Frost*, 951 F.3d 977, 980 (8th Cir. 2020); *Paisley Park Enters., Inc. v. Boxill*, 361 F. Supp. 3d 869, 877 (D. Minn. 2019). But what differentiates those cases, which are not binding on this court, is that the alleged communications here were sent directly to Balan for the purpose of furthering an alleged fraudulent scheme against Minnesota-based companies.

Kinderhook similarly argues that it had too few contacts with Minnesota to support personal jurisdiction. But Kinderhook's contacts overlap many of Repairify's and Hollingsworth's contacts, which are quantitatively sufficient. The first contact is the letter of intent, and, although Kinderhook was not a named party to the letter, its substance indicates that Kinderhook and Cifelli were involved in its creation. The second contact is Cifelli's emails with Balan suggesting that Cifelli played a decision-making role in the attempted acquisition of CalPro Solutions. The third contact is the Wayzata breakfast meeting between Cifelli and Balan, where they allegedly discussed CalPro technology. In sum, Kinderhook's close involvement with Repairify and Hollingsworth's allegedly tortious conduct directed at Minnesota, coupled with the meeting between Cifelli and Balan, tips the quantity-of-contacts factor in favor of personal jurisdiction over Kinderhook.

2. Nature and Quality of the Contacts

Repairify and Hollingsworth argue that the nature and quality of their contacts does not support personal jurisdiction. We find support in *Kopperud v. Agers*, 312 N.W.2d 443 (Minn. 1981). There the supreme court held that personal jurisdiction was proper over a defendant accused of obtaining company loans in exchange for promissory notes that fraudulently stated they were adequately backed by real-estate mortgages. *Kopperud*, 312 N.W.2d at 444–46. The *Kopperud* court reasoned that, although the defendant's activities occurred in another state, he was "instrumental in setting in motion the fraudulent scheme and in keeping it going" because he met with a person whom he knew was selling notes and mortgages in Minnesota, discussed with him how to sell investments, was personally involved in determining the amounts of the mortgages and in drafting mortgage and promissory-note documents, and corresponded with two Minnesota attorneys. *Id.* at 445. And while we acknowledge that, unlike in *Kopperud*, it does not appear that Repairify, Hollingsworth, or Kinderhook sought a commercial benefit in Minnesota, *see id.*, the Minnesota contacts we have discussed here similarly show that they were instrumental in starting and perpetuating an allegedly fraudulent scheme.

Repairify and Hollingsworth maintain that the nature-and-quality factor weighs against personal jurisdiction because they were not the "aggressors" in the bid to buy the CalPro companies. We have held that when a Minnesota party is the aggressor in a transaction, a nonresident party might not be subject to personal jurisdiction. *TRWL Fin. Establishment v. Select Int'l, Inc.*, 527 N.W.2d 573, 574, 577 (Minn. App. 1995). But the allegations as presented sufficiently support the proposition that Repairify, Hollingsworth, and Kinderhook were the aggressors.

Repairify and Hollingsworth essentially argue that emails between Balan and Hollingsworth, which started in September 2020 with Balan's email to Hollingsworth about an NDA and continued through Hollingsworth's October 2021 email asking Balan about a transaction related to CalPro Holdings, were part of a single, continuous set of business inquiries. They contend that this makes them non-aggressors in the potential transaction. The argument is not convincing. The history and content of the emails between Hollingsworth and Balan supports the theory that Repairify shut down negotiations in February 2021 only to begin new ones in October 2021. We have thoroughly reviewed Hollingsworth's confidentially submitted, February 18, 2021 email to Balan, Fairall, and others. The email reveals that Hollingsworth and Repairify terminated negotiations related to CalPro technology. It was not until about eight months later, in October 2021 and in a separate email thread, that Hollingsworth started negotiating anew for a "potential acquisition transaction." It is true that the emails that followed Hollingsworth's October 2021 email seem to have been sent in the same thread as the September 2020 emails between Balan and Hollingsworth. But the record establishes that Hollingsworth terminated negotiations and then started different negotiations. And although Cifelli allegedly met with Balan in August 2021, the record does not clearly indicate that Balan initiated that meeting. Repairify and Hollingsworth were the aggressors in the proposed transaction.

Repairify argues that, even if Hollingsworth's October email began a new transaction, this "mere inquiry" is not enough to establish personal jurisdiction. It is true that "[m]ere inquiry by a prospective buyer or seller does not make the inquirer the aggressor in the transaction" and that "to be the aggressor, it must be the dominant party in pursuing the transaction." *Id.* at 577. We concluded in *TRWL* that personal jurisdiction was lacking where the out-of-state corporation did not initiate contact, did not advertise in a way intended to reach the Minnesota corporation, and did not "actively pursue" the Minnesota corporation's business. *Id.* at 577, 578. But our circumstances are different. Repairify shut down negotiations in February 2021 and then again initiated contact with Balan in October 2021 by emailing Balan directly, actively pursuing a transaction.

Repairify also argues that its contacts were merely with a person who happened to reside in Minnesota, not with Minnesota itself, such that Balan's location in Minnesota played only a random, fortuitous, or attenuated role in the contacts. This too is not convincing. Repairify aimed its contacts at Minnesota when, several times, it contacted Balan, a Minnesota resident and manager and owner of Minnesota-based companies, as part of an allegedly fraudulent scheme aimed at both Balan and Minnesota. Hollingsworth and Repairify's conduct and contacts with Minnesota created the necessary connection here. *See Walden*, 571 U.S. at 285. The nature and quality of Repairify's and Hollingsworth's contacts support personal jurisdiction.

Kinderhook separately offers four principal arguments related to the nature and quality of its contacts. Kinderhook first contends that "Minnesota's respect for corporate formalities would preclude attributing to Kinderhook for jurisdictional purposes the potential acquisition of CalPro by Repairify." But as evidenced by Kinderhook's close involvement with the letter of intent, Balan's emails with Cifelli, and the alleged in-person meeting between Balan and Cifelli, Repairify and Kinderhook acted together for the purposes of Balan's allegations.

Kinderhook next suggests that its failure to enter into a contract with Balan or CalPro Solutions weighs against personal jurisdiction and that, even if it had entered into a contract, the contractual relationship would not have been sufficiently wide-ranging to support personal jurisdiction. But again here, the question is not whether the parties reached an agreement but whether the contacts were enough to support personal jurisdiction. We hold that they were.

Kinderhook argues third that the real dispute centers on CalPro Solutions' intellectual property and that nothing ties the intellectual property to Minnesota. According to Kinderhook, there is no reason to think that control of the intellectual property would affect Minnesota "in any way other than the self-interest of a Minnesota resident." But Kinderhook directed its allegedly fraudulent contacts at a Minnesota resident managing and owning Minnesota-based companies. Even when a defendant has limited contacts with the state, his being "instrumental" in an alleged fraudulent scheme may establish personal jurisdiction. *Kopperud*, 312 N.W.2d at 445–46. Kinderhook was instrumental in the alleged scheme.

Kinderhook points last to the fact that the March 2022 letter of intent provided that it was to be governed by Delaware law and that the proposed purchase agreement set jurisdiction in Delaware. These proposals do not bear on the issue of whether the contacts were sufficient to establish personal jurisdiction in Minnesota. The nature and quality of Kinderhook's contacts weigh in favor of personal jurisdiction.

3. Connection Between Contacts and Cause of Action

Repairify and Hollingsworth argue that there is not an adequate connection between the cause of action and the contacts alleged here because neither its negotiations about a potential business transaction nor the statements from Hollingsworth to Fairall were "the mechanism by which Repairify provided express direction to Fairall on the execution of certain fraudulent misrepresentations and omissions." Because this portion of Repairify's brief includes quotes and citations to paragraphs in the third-party complaint's fraud and aiding-and-abetting-fraud counts, we understand Repairify's argument here to be attacking personal jurisdiction as to those counts. The argument fails. The fraud count alleges that Hollingsworth's October 2021 email fraudulently identified Kinderhook as the source of information concerning CalPro Holdings. Although the fraud count also identifies other bases for fraud, including misrepresentations about Fairall's independence, which derived from Hollingsworth's communications with Fairall, the email contact alone is sufficiently connected with the cause of action. And the aiding-and-abetting-fraud count alleges that the third-party defendants aided in the plan for Fairall to decline to sign the invention-assignment agreement, which was allegedly part of the scheme that the letter of intent helped further. The causes of action here are connected to Repairify and Hollingsworth's contacts.

Kinderhook argues too that this factor is less important than the first two factors. The argument does not matter since the first two factors favor personal jurisdiction.

4. Minnesota's Interest and Convenience of the Parties

Repairify and Hollingsworth's argument on the final two factors seems to be essentially that they are less important than the first three factors. This is true. *See Marquette*, 270 N.W.2d at 295 (describing these as "secondary factors"). But Minnesota has an "obvious interest" in providing a forum where Minnesotans were allegedly defrauded. *Kopperud*, 312 N.W.2d at 445. The allegations of tortious activity against a Minnesota resident and Minnesota-based companies mean that this factor weighs in favor of personal jurisdiction. And as the district court pointed out, the commonality of facts between the allegations in the complaint and third-party complaint suggests that it would be more convenient to litigate all the claims in the same forum. These secondary factors weigh in favor of personal jurisdiction over Repairify and Hollingsworth, and for the same reasons, they favor personal jurisdiction over Kinderhook.

In sum, all five factors support personal jurisdiction over Repairify, Hollingsworth, and Kinderhook. And the *Calder* test does too. The district court correctly concluded that it had personal jurisdiction over Repairify, Hollingsworth, and Kinderhook.

III

Repairify and Hollingsworth argue that the district court may decline under *forum non conveniens* to exercise jurisdiction. Under the doctrine of *forum non conveniens*, a district court with jurisdiction over the subject matter and the parties may decline to exercise jurisdiction "when another forum would be more convenient for the parties, the witnesses, and the court." *Paulownia Plantations de Pan. Corp. v. Rajamannan*, 793 N.W.2d 128, 133 (Minn. 2009). The third-party plaintiffs contend that it is improper for this court even to review a denial of a motion to dismiss based on *forum non conveniens*. We agree that the district court's determination is not immediately reviewable and decline to review it.

Neither the appellate procedural rules nor any authority we are aware of expressly allows for immediate appeal from a district court decision declining to relinquish jurisdiction based on *forum non conveniens*. *See* Minn. R. Civ. App. P. 103.03. Although it is not binding on this court, we observe that federal case law supports the conclusion that the decision is not immediately appealable. The Supreme Court has concluded that, for the purposes of the federal jurisdictional statute permitting appeals from "final decisions" of federal district courts, 28 U.S.C. § 1291 (2018), a denial of a motion to dismiss based on *forum non conveniens* is not immediately appealable as of right. *Van Cauwenberghe v. Biard*, 486 U.S. 517, 529 (1988). Minnesota's appellate rules analogously permit appeals to be taken from "final judgment[s]." Minn. R. Civ. App. P. 103.03(a). And Minnesota has adopted the collateral-order doctrine, which the Supreme Court considered and rejected as a basis for reviewing the district court's decision in *Van Cauwenberghe*. *Kastner*, 646 N.W.2d at 239–40; *Van Cauwenberghe*, 486 U.S. at 527.

We recognize that in *Rykoff-Sexton, Inc. v. Am. Appraisal Assocs., Inc.*, 469 N.W.2d 88, 89, 91 (Minn. 1991), and *C.H. Robinson Worldwide, Inc. v. FLS Transp., Inc.*, 772 N.W.2d 528, 533, 538–39 (Minn. App. 2009), *rev. denied* (Minn. Nov. 24, 2009), the supreme court and this court addressed *forum non conveniens* in appeals taken from denied motions to dismiss for lack of personal jurisdiction. But neither *Rykoff-Sexton* nor *C.H. Robinson Worldwide* addressed whether the district court's *forum non conveniens* determination was immediately reviewable. And "our rendering a decision resolving a case in which jurisdiction was never challenged does not establish precedent for jurisdiction." *Tipka v. Lincoln Int'l Charter Sch.*, 864 N.W.2d 371, 375 (Minn. App. 2015). In contrast to the forum-selection issue we have elected to address, the third-party plaintiffs expressly challenge our jurisdiction to address the *forum non conveniens* issue, and Repairify and Hollingsworth do not argue, nor are we persuaded, that the issue should be addressed in the interests of justice.

Affirmed.

CONNOLLY, Judge (concurring in part, dissenting in part)

I concur with the majority's opinion as it relates to appellant Repairify, Inc. and appellant Cris Hollingsworth, but I respectfully dissent as to the majority's conclusion that Minnesota has personal jurisdiction over appellant Kinderhook Industries, LLC (Kinderhook). The complaint alleges that Kinderhook engaged in a scheme with the co-defendants to destroy the marketability of certain intellectual property. Because Kinderhook's contacts with Minnesota are few in number and do not demonstrate that Kinderhook purposefully availed itself of Minnesota law, I do not believe that Minnesota can assert personal jurisdiction over it. Accordingly, I would reverse the district court's denial of Kinderhook's motion to dismiss the complaint for lack of jurisdiction.

CalPro Holdings, LLC was a Delaware company headquartered in Minnesota that developed vehicle-calibration centers. CalPro Holdings' members included, among others, respondent Balan Holdings, LLC and plaintiff SAF Holdings, LLC. CalPro Holdings later dissolved and conveyed its intellectual property to respondent CalPro ADAS Solutions, LLC (CalPro Solutions) in exchange for forgiveness of a loan lent by Balan Holdings. Respondent Todd Balan, a Minnesota resident, managed Balan Holdings and owned CalPro Solutions, both of which are Minnesota companies.[1]

A dispute arose among the parties concerning who owned the intellectual property. SAF sought a declaratory judgment that CalPro Holdings is the rightful owner of the intellectual property. As relevant here, SAF named respondents, among others, as

[1] We refer to Todd Balan, Balan Holdings, and CalPro Holdings collectively as respondents.

defendants. Respondents initiated a third-party complaint against Kinderhook; Repairify; Repairify's president, Cris Hollingsworth; and SAF's former owner, Steven Fairall (collectively, the third-party defendants). Respondents alleged that the third-party defendants participated in a scheme to deprive them of the intellectual property.

Kinderhook is an investment-management firm located in New York. Kinderhook invested in Repairify Holdings, which "indirectly owns 100.0% of Repairify," a Texas automotive repair and maintenance company. Kinderhook does not have a direct ownership interest in Repairify. Kinderhook is not authorized to do business in Minnesota, it does not own or lease property here, and none of its members reside here. Fairall sold all his membership units in SAF to Repairify. According to the complaint, Fairall allegedly disclosed CalPro Holdings' confidential information to Repairify, and Repairify directed Fairall on how to undermine CalPro Holdings.

The third-party complaint asserted claims against Kinderhook for aiding and abetting fraud, aiding and abetting breach of fiduciary duty, tortious interference with contract, fraudulent concealment, tortious interference with prospective business advantage, and unjust enrichment.[2] Kinderhook moved the district court to dismiss the third-party complaint for lack of personal jurisdiction over it. The district court denied the motion for all but one claim against Kinderhook that involved fraudulent concealment.

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[2] As the majority discusses in footnote 1, the parties filed several documents confidentially in the district court. And like the majority, I discuss only information disclosed by the parties in publicly filed documents or information that is "relevant to the particular issues or legal argument being addressed in the proceeding." Minn. R. Pub. Access to Recs. of Jud. Branch 4, subd. 4.

Kinderhook contends that the district court erred by concluding that Minnesota can exercise specific personal jurisdiction over it. I agree. Whether personal jurisdiction exists is a question of law reviewed de novo. *Rilley v. MoneyMutual, LLC*, 884 N.W.2d 321, 326 (Minn. 2016). "After a defendant challenges a court's exercise of personal jurisdiction, the plaintiff must make a prima facie showing that personal jurisdiction is proper." *Bandemer v. Ford Motor Co.*, 931 N.W.2d 744, 749 (Minn. 2019), *aff'd sub nom. Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351 (2021). When reviewing a motion to dismiss for lack of personal jurisdiction, we accept the factual allegations in the complaint and supporting affidavits as true. *Rilley*, 884 N.W.2d at 326. If a defendant's motion to dismiss is supported by affidavits that deny the facts alleged, a plaintiff "cannot rely on general statements" to make a prima facie showing of personal jurisdiction, "rather, specific evidence must be alleged." *Id.* at 334.

Minnesota's long-arm statute permits Minnesota courts to assert personal jurisdiction over defendants to the full extent of federal due process. *Juelich v. Yamazaki Mazak Optonics Corp.*, 682 N.W.2d 565, 570 (Minn. 2004); *see* Minn. Stat. § 543.19 (2024). Accordingly, we may apply federal law to determine whether personal jurisdiction exists. *See Rilley*, 884 N.W.2d at 327.

"The Due Process Clause of the Fourteenth Amendment limits the ability of a state to exercise its coercive power by asserting jurisdiction over non-resident defendants." *Bandemer*, 931 N.W.2d at 749 (citing *Bristol-Myers Squibb Co. v. Superior Court of California*, 582 U.S. 255, 261 (2017)). It requires that a defendant have "minimum contacts" with the forum state so that the exercise of personal jurisdiction "does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quotation omitted). A nonresident defendant has sufficient minimum contacts with the forum state if the defendant "'purposefully avails itself' of the privileges, benefits, and protections of the forum state, such that the defendant 'should reasonably anticipate being haled into court there.'" *Bandemer*, 931 N.W.2d at 749-50 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474-75 (1985)).

The minimum-contacts requirement may be established based on general or specific jurisdiction. *Domtar, Inc. v. Niagara Fire Ins. Co.*, 533 N.W.2d 25, 30 (Minn. 1995). General personal jurisdiction exists when a nonresident defendant's contacts "are so substantial and are of such a nature that the state may assert jurisdiction over the defendant even for causes of action unrelated to the defendant's contacts with the forum state." *Id.* "Specific personal jurisdiction exists when the defendant's contacts with the forum state are limited, yet connected with the plaintiff's claim such that the claim arises out of or relates to the defendant's contacts with the forum." *Id.*

We apply a five-factor test to determine if minimum contacts exist: "(1) the quantity of contacts with the forum state; (2) the nature and quality of those contacts; (3) the connection of the cause of action with these contacts; (4) the interest of the state providing a forum; and (5) the convenience of the parties." *Juelich*, 682 N.W.2d at 570. "The first three factors determine whether minimum contacts exist and the last two factors determine whether the exercise of jurisdiction is reasonable according to traditional notions of fair play and substantial justice." *Id.*

In reaching its conclusion, the district court also relied on the *Calder* effects test to conclude that Kinderhook has sufficient minimum contacts. *See Calder v. Jones*, 465 U.S. 783 (1984). To satisfy personal jurisdiction under the *Calder* test, a plaintiff must show that

> (1) the defendant committed an intentional tort; (2) the plaintiff felt the brunt of the harm caused by that tort in the forum such that the forum state was the focal point of the plaintiff's injury; and (3) the defendant expressly aimed the tortious conduct at the forum such that the forum state was the focal point of the tortious activity.

Griffis v. Luban, 646 N.W.2d 527, 534 (Minn. 2002). To satisfy the third prong, the plaintiff must show that "the defendant knew that the plaintiff would suffer the brunt of the harm caused by the tortious conduct in the forum, and point to specific activity indicating that the defendant expressly aimed its tortious conduct at the forum." *Id.* at 535 (quotation omitted).

Kinderhook contends that the district court improperly analyzed the complaint under the third prong of the *Calder* test.[3] The district court concluded that Kinderhook's actions satisfy the *Calder* test because the complaint alleged that Kinderhook "made false statements directed to Minnesota when [it] falsely represented that [it] had made a bona fide effort to obtain Fairall's signature on the invention assignment agreement." The district court reasoned that Kinderhook was "familiar with CalPro [Solutions] and its

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[3] Kinderhook does not dispute that the first and second prongs are satisfied. Indeed, the complaint alleges that Kinderhook aided and abetted fraud and tortious interference of a contract, among other tort claims. And there is no dispute that Todd Balan is a Minnesota resident who would have felt any harm caused by these torts in Minnesota.

officers and thus was aware that the allegedly false statements [it was] making, or directing Fairall and SAF to make, were being directed into Minnesota and would be felt in Minnesota."

I believe that respondents have not satisfied the third-prong of the *Calder* test. Respondents have not pointed to specific evidence that Kinderhook expressly aimed its alleged activity at Minnesota. The third-party complaint asserts that, in furtherance of a plan to destroy the marketability of intellectual property, Paul Cifelli, the managing director of Kinderhook, and Hollingsworth sent Todd Balan a letter of intent on behalf of Repairify and Kinderhook to formally express their interest in acquiring CalPro Solutions. But Kinderhook was not a party to the letter of intent, nor did it sign the letter. Accepting the third-party complaint's allegations as true, the alleged actions would be felt by CalPro Solutions, a Minnesota company, and Todd Balan, a Minnesota resident. These mere allegations that false statements were made to a Minnesota company and a Minnesota resident in furtherance of an attempted acquisition of such company are insufficient to demonstrate that Kinderhook targeted Minnesota. *See Griffis*, 646 N.W.2d at 536 (concluding that the mere fact that the defendant knew that the plaintiff resided in another state is not sufficient to extend personal jurisdiction over the defendant because that knowledge "does not demonstrate targeting" the other state); *see also Johnson v. Arden*, 614 F.3d 785, 797 (8th Cir. 2010) (analyzing the application of the *Calder* test and concluding that "mere effects in the forum state are insufficient to confer personal jurisdiction").

The district court further relied on two cases in making its conclusions. In *Hek, LLC v. Votum Enterprises*, *LLC*, No. 21-CV-1380, 2022 WL 329682, at *5 (D. Minn. Feb. 3, 2022), the court determined that the complaint sufficiently alleged that two defendants "knowingly made false statements" and that the defendants connected themselves to Minnesota because the alleged fraud "would enable them to reap benefits of selling products in Minnesota." And in *Source One Enterprises, LLC v. CDC Acquisition Corp.*, No. Civ. 02-4925, 2003 WL 21263578, at *3 (D. Minn. May 29, 2003), the court held that it could exercise personal jurisdiction over a nonresident defendant who billed and shipped products to the plaintiffs, who were located in Duluth, Minnesota. These cases are easily distinguishable. Kinderhook did not ship any products into Minnesota from which it would reap the benefits. The only benefit it would receive from any potential business dealings between Repairify and CalPro Solutions would be its investments in Repairify Holdings, which is not a Minnesota company.

Turning next to the five-factor analysis, I conclude that the analysis weighs in favor of Minnesota not having personal jurisdiction over Kinderhook. Again, the five factors are: "(1) the quantity of contacts with the forum state; (2) the nature and quality of those contacts; (3) the connection of the cause of action with these contacts; (4) the interest of the state providing a forum; and (5) the convenience of the parties." *Juelich*, 682 N.W.2d at 570.

Kinderhook has few contacts with Minnesota. The first contact is the letter of intent, in which Kinderhook was merely mentioned. Respondents also assert that Cifelli assisted the negotiations of the letter of intent, and as evidence of these contacts, Todd Balan provided various emails sent between him and Cifelli and emails between Todd Balan and Hollingsworth on which Cifelli was carbon-copied. Email contacts constitute contacts with the forum state, but we still evaluate the quantity, nature, and quality of those contacts to determine whether they establish a "substantial connection" between the forum and the defendant. *Rilley*, 884 N.W.2d at 332. The second contact involves a purchase agreement for Repairify's acquisition of CalPro Solutions, which was not signed by Repairify. The proposed purchase agreement required that copies be sent to Kinderhook. Finally, according to Todd Balan's affidavit, Cifelli and Todd Balan had, at some point, a breakfast meeting in Minnesota where they allegedly discussed CalPro Solutions' technology. In response, Cifelli denied discussing CalPro Solutions at the meeting and states the meeting occurred in August 2021, prior to the relevant time period giving rise to the third-party claims.

Kinderhook next argues that the contacts it had with Minnesota did not demonstrate that it purposefully availed itself of the benefits and protections of Minnesota law. When reviewing the nature and quality of the contacts, we attempt to "ascertain whether the nonresidents purposefully availed themselves of the benefits and protections of Minnesota law." *Dent-Air, Inc. v. Beech Mountain Air Serv., Inc.*, 332 N.W.2d 904, 907 (Minn. 1983) (quotation omitted). We look to the nonresident's "contacts with the forum [s]tate itself, not the [nonresident's] contacts with persons who reside there." *Walden v. Fiore*, 571 U.S. 277, 285 (2014). And "it is the defendant's conduct that must form the necessary connection with the forum [s]tate" for Minnesota to exercise personal jurisdiction. *Id.*

The letter of intent was never signed by Kinderhook. Respondents make conclusory assertions that emails were exchanged between the parties concerning the letter, and upon review of the emails that were submitted as specific evidence, it appears that Cifelli was carbon-copied on many of the emails and did not respond, or Todd Balan initiated the emails with Cifelli. *See Rilley*, 884 N.W.2d at 334 (stating that the nonmoving party of a motion to dismiss "cannot rely on general statements for a prima facie showing of personal jurisdiction—rather, specific evidence must be alleged"). A defendant being copied on emails or being mentioned in a letter hardly constitutes conduct taken by the defendant. *See Walden*, 571 U.S. at 285 (noting that "it is the defendant's conduct that must form the necessary connection with the forum [s]tate"). Additionally, the proposed purchase agreement for Repairify's acquisition of CalPro Solutions did not make Kinderhook a party and was never signed by Kinderhook. Respondents make additional conclusory statements that Kinderhook and Repairify made a false statement concerning their efforts to have Fairall sign an invention assignment agreement, which would solidify CalPro Solutions' retainment of the intellectual property. Finally, Todd Balan makes a conclusory allegation that he and Cifelli had a breakfast meeting in Wayzata and discussed the CalPro entities. Cifelli denied discussing the CalPro entities at this meeting and Todd Balan provided no further details concerning the meeting.

Even accepting these allegations as true, the only alleged contact with Minnesota in connection with these negotiations was that Cifelli emailed Todd Balan, a Minnesota resident, and that Cifelli met with Todd Balan one time in Minnesota. Without more, these contacts do not demonstrate that Kinderhook purposefully availed itself of Minnesota law.

See Dent-Air, 332 N.W.2d at 908 (concluding that "[m]ere inquiry by a prospective buyer or seller, without more, will not sustain jurisdiction"); *see also Snap Fitness, Inc. v. Marshall*, No. A19-1415, 2020 WL 1983226, at *6 (Minn. App. 2020) (concluding that an out-of-state competitor who hired a Minnesota resident away from a Minnesota employer could not be subject to personal jurisdiction in Minnesota based on evidence that the competitor's subsidiaries directed contacts at Minnesota).

Respondents argue that the facts alleged establish that Kinderhook directed its fraudulent scheme at Minnesota, relying on *Kopperud v. Agers*, 312 N.W.2d 443 (Minn. 1981). In *Kopperud*, a defendant allegedly "committed tortious fraud in Minnesota by failing to disclose that the mortgaged real estate was inadequate security for the notes when he had special knowledge of that fact." 312 N.W.2d at 445. The supreme court concluded that although the defendant's activities occurred in another state, "they were directed toward attaining a commercial benefit in Minnesota," and therefore he "purposefully availed himself of this state to carry out a scheme to defraud investors." *Id.*

The allegations in *Kopperud* are distinguishable from this case because respondents have not identified how Kinderhook's contacts with Minnesota were directed at attaining a commercial benefit in Minnesota. Respondents' complaint makes conclusory allegations concerning the letter of intent and the purchase agreement. Even if the purchase agreement was signed, which it was not, the fact that a nonresident entered into a contract and transacted business with a Minnesota company is insufficient, by itself, to subject the nonresident to personal jurisdiction. *See Husky Constr., Inc. v. Gestion G. Thibault, Inc.*, 983 N.W.2d 101, 109 (Minn. App. 2022), *rev. denied* (Minn. Mar. 14, 2023). Accordingly, contacts concerning business transactions that Kinderhook was involved in merely by its investments in Repairify do not confer personal jurisdiction on Kinderhook.

Because I conclude that the first and second factors weigh in favor of Minnesota not retaining personal jurisdiction over Kinderhook, a discussion of the remaining factors is unnecessary. *See Welsh v. Takekawa Iron Works Co.*, 529 N.W.2d 471, 475 (Minn. App. 1995) (concluding that where neither the quantity nor quality of contacts established that the defendant purposefully availed itself of the forum state, personal jurisdiction did not exist).

In sum, Kinderhook's minimal contacts that involve unsigned documents, or documents to which it was not a party, are not sufficient to establish specific personal jurisdiction in Minnesota. If Minnesota can assert jurisdiction under these facts, there is no limit to its jurisdiction. Accordingly, I dissent in part.