

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Mar 14, 2024

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

MARK COX, individually; ESTATE
OF SUSAN A. COX by and through
Personal Representative Mark Cox;
SUSAN A. COX by and through Mark
Cox,

Plaintiffs,

vs.

GRITMAN MEDICAL CENTER;
GRITMAN MEDICAL CENTER d/b/a/
MOSCOW FAMILY MEDICINE;
PATRICIA N. MARCIANO, M.D.,
TODD BLEDSOE, PA-C, and OTHERS
TBD,

Defendants.

No. 2:23-CV-00031-MKD

ORDER GRANTING DEFENDANT
GRITMAN MEDICAL CENTER'S
MOTION TO DISMISS, GRANTING
DEFENDANTS MARCIANO'S AND
BLEDSOE'S MOTION TO
DISMISS, AND DENYING
PLAINTIFFS' MOTION TO
SUPPLEMENT THE RECORD

ECF Nos. 17, 23, 58

Before the Court are Defendant Gritman's Motion to Dismiss, ECF No. 17,
and Defendant Marciano's Motion to Dismiss, ECF No. 23, in which Defendant
Bledsoe joins, ECF Nos. 47, 57 and Plaintiffs' Motion to Supplement the Record,
ECF No. 58. On June 26, 2023, the Court conducted a hearing. Mary Schultz
appeared on behalf of Plaintiffs. Ann Schroeder and William Schroeder appeared on

1 behalf of Gritman Medical Center and Gritman Medical Center d/b/a/ Moscow
2 Family Medicine (hereinafter, “Gritman”¹). Michele Atkins and Sabrina Marquez
3 appeared on behalf of Marciano. Sean King appeared on behalf of Markus Louvier,
4 counsel of record for Bledsoe.

5 Defendants seek dismissal without prejudice of the claims against them, based
6 on lack of personal jurisdiction and improper venue. ECF No. 17 at 2; ECF No. 23
7 at 2. Additionally, Plaintiffs filed a motion to supplement the record, requesting that
8 the Court consider three exhibits that relate to Gritman’s ownership interest in two
9 Washington-based physician staffing companies in determining the pending motions
10 to dismiss. ECF Nos. 58-59. The Court has reviewed the record, heard from
11 counsel, and is fully informed. For the reasons set forth below, the Court grants
12 Gritman’s Motion to Dismiss, ECF No. 17; grants Marciano’s and Bledsoe’s Motion

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15 ¹ The parties dispute whether Gritman Medical Center does business as Moscow
16 Family Medicine. *See* ECF No. 17 at 1-2, 2 n.1. The Court need not resolve that
17 dispute now. For the purposes of this Order, the Court considers both collectively as
18 “Gritman,” as Plaintiffs do in the Complaint. *See, e.g.*, ECF No. 1 at 3 ¶ 1.10
19 (“Defendants Gritman and Gritman d/b/a/[]Moscow Family Medicine (hereinafter
20 ‘Gritman’ collectively”).

1 to Dismiss, ECF No. 23; and denies Plaintiffs’ Motion to Supplement the Record,
2 ECF No. 58.

3 **BACKGROUND**

4 **A. Procedural History**

5 On February 5, 2023, Plaintiffs filed this action against Defendants, asserting
6 Washington state law claims relating to the death of Susan Cox. ECF No. 1 at 14-16
7 ¶¶ 3.1-3.13. Plaintiffs assert federal subject matter jurisdiction based on diversity.
8 ECF No. 1 at 5-6 ¶ 1.25. Plaintiffs aver that the Washington courts may exercise
9 specific jurisdiction over Defendants “based upon their nexus with the decedent and
10 the relevant events leading to the suffering and death of Susan Cox.” ECF No. 1 at 6
11 ¶ 1.26. Plaintiffs assert that venue is proper in the Eastern District of Washington
12 under 28 U.S.C. § 1391(b)(2) because “a substantial part of the events . . . giving rise
13 to the claim occurred in [the] District.” ECF No. 1 at ¶ 1.27.

14 On April 18, 2023, Gritman moved to dismiss for lack of personal jurisdiction
15 and improper venue, pursuant to Fed. R. Civ. P. 12(b)(2) and (3). ECF No. 17. On
16 April 20, 2023, Marciano moved to dismiss on the same grounds. ECF No. 23.
17 Bledsoe joins in Marciano’s Motion. ECF No. 57. The Court heard argument on
18 June 26, 2023. ECF No. 50. Following the hearing, the Court permitted
19 supplemental briefing. ECF Nos. 52-55.

1 Plaintiffs moved to supplement the record on January 2, 2024. ECF No. 58.
2 The Court denied Plaintiffs' related Motion to Expedite, ECF No. 60. ECF No. 67.
3 Briefing on the Motion to Supplement the Record was complete on January 23,
4 2024. ECF Nos. 65, 68.

5 **B. Factual Summary**

6 Mark and Susan Cox resided in Albion, Washington, in Whitman County.
7 ECF No. 1 at 2 ¶ 1.5. The Complaint alleges that Defendants provided medical care
8 to Ms. Cox from 2016 until her death. ECF No. 1 at 7 ¶¶ 2.5-2.6. The Complaint
9 further alleges that Defendants placed Ms. Cox on "an ongoing prescriptive
10 medication treatment program" and thereby "directed her treatment with prescription
11 medication, in and from Idaho, in and into Whitman County, Washington." ECF
12 No. 1 at 5 ¶ 1.19. These prescriptions were written in Idaho but transmitted to and
13 filled by pharmacies in Pullman, Washington. ECF No. 1 at 5 ¶ 1.20; ECF No. 33 at
14 4 ¶¶ 9-10. These prescriptions included opioid and benzodiazepine medications, and
15 a nonsteroidal anti-inflammatory drug that may affect the metabolism of other
16 medications.² ECF No. 1 at 7-10 ¶ 2.8.

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18 ² The Complaint identifies five prescription medications: hydrocodone-
19 acetaminophen, oxycodone-acetaminophen, diazepam, tramadol, and Celebrex.
20 ECF No. 1 at 7-10 ¶ 2.8.

1 On August 15, 2022, Ms. Cox died at home. ECF No. 1 at 12-13 ¶¶ 2.17-
2 2.18; ECF No. 33 at 2 ¶ 2. An autopsy concluded that the cause of death was “the
3 toxic effects of multiple drugs (oxycodone, sertraline, gabapentin, diazepam).” ECF
4 No. 33-1 at 3.

5 *1. Defendant Gritman*

6 Gritman is incorporated and has its principal place of business in Idaho. ECF
7 No. 1 at 2-3 ¶ 1.6; ECF No. 22 at 2 ¶ 2. It pays Idaho taxes. ECF No. 22 at 2 ¶ 2.
8 The medical facilities currently owned and operated by Gritman are located in Idaho.
9 ECF No. 19 at 2 ¶ 4; ECF No. 19-1; ECF No. 51 at 9.

10 Gritman has not owned a clinic in Washington since 2000. ECF No. 22 at 2
11 ¶ 3. In 2012, it registered as a foreign corporation in Washington, but terminated the
12 registration in 2013. ECF No. 22 at 2 ¶ 4; ECF No. 20-1 at 15. Currently, it is not
13 registered as a Washington foreign corporation, is not licensed to operate a hospital
14 in Washington, does not have a registered agent in Washington, and does not pay
15 Washington taxes. ECF No. 22 at 2 ¶ 5.

16 Gritman advertises in Pullman, Washington, in the Lewis and Clark Valley,³
17 and in Idaho, “to make people aware of Gritman and the services Gritman can
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19 ³ The Lewis and Clark Valley encompasses the cities of Lewiston, Idaho, and
20 Clarkston, Washington.

1 provide at its facilities in Idaho.” ECF No. 18 at 2 ¶¶ 2-3. Gritman’s advertising
2 spans various mediums, including billboards, newspapers, radio, cable television,
3 digital media, and social media. ECF No. 18 at 2 ¶ 2.

4 Gritman’s facilities include four clinics in Latah County, Idaho, that it
5 purchased from MFM-PA in 2018.⁴ ECF No. 22 at 3 ¶¶ 9-10. MFM-PA provided
6 Gritman with contracted physician staffing from 2018 until it was dissolved in 2020
7 or 2021. ECF No. 22 at 3-4 ¶¶ 11-12; ECF No. 25 at 2 ¶¶ 3-4. After MFM-PA
8 dissolved, Gritman contracted with MFM-PLLC for similar physician staffing
9 services. ECF No. 22 at 4 ¶ 12; ECF No. 25 at 3 ¶¶ 6-7. Gritman and MFM-PLLC
10 regard these physicians as independent contractors, and not Gritman employees.
11 ECF No. 22 at 3-4 ¶¶ 11-12; ECF No. 25 at 2 ¶ 3, 3 ¶ 7.

12 In addition, Gritman has joined with Pullman Regional Hospital and Whitman
13 Hospital and Medical Clinics to form two companies, Palouse Surgeons, LLC (“PS-

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15 ⁴ Moscow, Idaho, is in Latah County and a short drive from Pullman, Washington.

16 Gritman incorporated “Moscow Family Medicine” into the names of some of its
17 clinics, including “Gritman Moscow Family Medicine Downtown Clinic,” “Gritman
18 Moscow Family Medicine Westside Clinic,” and “Gritman Moscow Family
19 Medicine QuickCare.” ECF No. 22 at 4 ¶ 13. These appear to be the Gritman
20 facilities where Ms. Cox was a patient. ECF No. 33 at 3 ¶ 6.

1 LLC”) and Palouse Specialty Physicians, P.S. (“PSP-PS”). ECF No. 22 at 2-3 ¶¶ 6-
2 8. Both PS-LLC and PSP-PS are Washington companies. ECF No. 22 at 2-3 ¶¶ 7-8.
3 Both have offices in Washington and Idaho. ECF No. 22 at 2-3 ¶¶ 7-8. PS-LLC and
4 PSP-PS provide surgeon and specialty-physician staffing to medical facilities owned
5 by Gritman, Pullman Regional Hospital, and Whitman Hospital and Medical Clinics.
6 ECF No. 22 at 2-3 ¶¶ 7-8. Those surgeons and specialty physicians are considered
7 employees of PS-LLC or PSP-PS, respectively, and independent contractors for the
8 facilities where they work. ECF No. 22 at 2-3 ¶¶ 7-8. There is no indication in the
9 current record that PS-LLC, PSP-PS, or any staff provided by these companies were
10 involved in the incident giving rise to this matter.

11 *2. Defendant Marciano*

12 Patricia Marciano, M.D., is a family medicine physician licensed to practice
13 medicine in Idaho; she has never been licensed to practice medicine in Washington.
14 ECF No. 24 at 2 ¶ 6. She was an Idaho resident throughout the time she treated
15 Ms. Cox. ECF No. 24 at 2 ¶ 3.

16 Marciano states she was directly employed by Moscow Family Medicine,
17 P.A. (“MFM-PA”) from 2014 to 2020, and has been directly employed by Moscow
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1 Family Medicine MFM, PLLC (“MFM-PLL”) ⁵ since 2021. ECF No. 23 at 2-3;
2 ECF No. 24 at 2 ¶ 4. She states she was not a Gritman employee during the period
3 she treated Ms. Cox and has never been employed by a Washington entity. ECF
4 No. 24 at 2 ¶ 7. Ms. Cox became Marciano’s patient in 2016. ECF No. 19 at 3 ¶ 11.
5 In 2018, Gritman bought several clinics from MFM-PA. ECF No. 19 at 3 ¶ 11; ECF
6 No. 51 at 9. After the purchase, Marciano worked for Gritman as an independent
7 contractor at the clinics through a staffing contract between Gritman and MFM-PA,
8 but remained employed by MFM-PA. ECF No. 19 at 3 ¶ 11; ECF No. 24 at 2 ¶ 5.

9 Marciano states that she handled all medical care, healthcare visits, treatment
10 recommendations, prescriptions, and related communications with Ms. Cox in or
11 from Idaho. ECF No. 24 at 2-3 ¶ 8.

12 *3. Defendant Bledsoe*

13 Todd Bledsoe was a certified physician assistant (PA-C) licensed in Idaho at
14 the time of his retirement in 2018. ECF No. 48 at 2 ¶ 2. The last time he provided
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16 ⁵ MFM-PLL “is a physician-owned medical practice group was organized under
17 the laws of, incorporated in, and headquartered in the State of Idaho.” ECF No. 25
18 at 2 ¶ 5. MFM-PLL contracts with Gritman and other Idaho medical clinics to
19 provide physician staffing. ECF No. 25 at 3 ¶ 6. MFM-PLL does not own or
20 operate the clinics where it provides contracted staffing. ECF No. 25 at 3 ¶ 8.

1 medical care in Washington was in 2010. ECF No. 48 at 3 ¶ 7. From 2010 to 2015,
2 he worked for “Moscow Medical”⁶ in Moscow, Idaho, which has no affiliation with
3 Gritman or the “Moscow Family Medicine” entities.⁷ ECF No. 48 at 2 ¶ 6. From
4 2015 to 2016, he worked for a hospital in Grangeville, Idaho. ECF No. 48 at 2 ¶ 5.
5 Finally, from 2016 until 2018, he worked for the Idaho Department of Corrections.
6 ECF No. 48 at 2 ¶ 4. He has not been employed by Gritman or a Gritman-affiliated
7 entity since 2007. ECF No. 48 at 3 ¶ 10.

8 The parties dispute whether Bledsoe, is connected to Gritman for the purposes
9 of this case—Plaintiffs allege in the Complaint that Bledsoe worked for Gritman
10 during the relevant time period. ECF No. 1 at 4 ¶ 1.15. Bledsoe states he worked
11 for Moscow Medical, an entity that is not affiliated with Gritman, when he last
12 treated Susan Cox. ECF No. 48 at 2 ¶ 6, 3 ¶¶ 8-9. Gritman concurs with Bledsoe.
13 ECF No. 19 at 3 ¶ 13.

16 ⁶ Gritman’s filings refer to this entity as “Moscow Medical Clinic” and confirm that
17 this entity is not affiliated with Gritman. ECF No. 19 at 3 ¶ 13.

18 ⁷ It is unclear whether Bledsoe’s reference to “Moscow Family Medicine” is directed
19 at MFM-PA, MFM-PLLC, Gritman’s similarly named facilities, or some other entity
20 entirely.

1 Bledsoe asserts that all medical care he provided Ms. Cox after 2010 would
2 have taken place solely in Idaho.⁸ ECF No. 48 at 3-4 ¶¶ 12. He handled all
3 healthcare visits, treatment recommendations, prescriptions, and communications
4 with Ms. Cox after 2010 in or from Idaho. ECF No. 48 at 3-4 ¶¶ 12.

5 **PLAINTIFFS' MOTION TO SUPPLEMENT THE RECORD**

6 Plaintiffs seek to supplement the record with three exhibits that relate to PS-
7 LLC and PSP-PS, the Washington staffing companies in which Gritman holds an
8 ownership share. ECF No. 58 at 2. Plaintiffs do not authenticate the proposed

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⁸ Bledsoe states he “may” have treated Ms. Cox during his time at Palouse Medical
11 in Washington, before he left that facility in 2010. ECF No. 48 at 3 ¶¶ 7, 9.

12 Plaintiffs suggest this means “Defendants’ prescription treatment may date back to
13 the year 2010.” ECF No. 56 at 3. However, Bledsoe’s counsel noted at the motion
14 hearing that Bledsoe lacked access to any relevant medical records at the time he
15 completed his declaration, so his representations were made solely from memory.
16 ECF No. 51 at 7. Plaintiffs provide pharmacy records dating back to 2013 that
17 reflect Bledsoe wrote prescriptions for Ms. Cox in May, June, and July 2015. ECF
18 No. 56 at 2-3 (citing ECF No. 55-1 at 14-15). In sum, there is no specific allegation
19 or indication that Bledsoe saw Ms. Cox in Washington or before 2010, beyond
20 Bledsoe’s statement that he “may” have done so.

1 exhibits, beyond providing an affidavit from counsel stating that they are true and
2 correct copies of the purported documents, nor do Plaintiffs explain why these
3 materials were not provided earlier. ECF No. 58; ECF No. 59 at 2. Gritman
4 opposes, contending that the proposed exhibits are immaterial, unauthenticated, and
5 inadmissible. ECF No. 65 at 3-5. Gritman also argues that the Court's
6 consideration of material outside the pleadings would convert these Motions to
7 Dismiss into motions for summary judgment, under Fed. R. Civ. P. 12(d). ECF No.
8 65 at 3. Marciano joins in Gritman's opposition. ECF No. 66.

9 Rule 12(d) applies to motions brought under Rule 12(b)(6) or Rule 12(c).
10 See Fed. R. Civ. P. 12(d); 5C Wright & Miller, Fed. Prac. & Proc. Civ. § 1366 (3d
11 ed. Feb. 2024) ("Since a motion for summary judgment is designed to test the merits
12 or the viability of the claim, the defenses enumerated in Rule 12(b)(1) through Rule
13 12(b)(5) and Rule 12(b)(7) generally are not proper subjects for motions for
14 summary judgment.") (citing related cases in footnote 7). The Court may consider
15 matters outside the pleadings in relation to a Fed. R. Civ. P. 12(b)(2) or 12(b)(3)
16 motion. *Murphy v. Schneider National, Inc.*, 362 F.3d 1133, 1137 (9th Cir. 2004)
17 (Fed. R. Civ. P. 12(b)(3) motion); *Doe v. Unocal Corp.*, 248 F.3d 915, 911 (9th Cir.
18 2001) (Fed. R. Civ. P. 12(b)(2) motion), *overruled on other grounds by Williams v.*
19 *Yamaha Motor Co.*, 851 F.3d 1015, 1024 (9th Cir. 2017); *Data Disc, Inc. v. Sys.*
20 *Tech. Assocs., Inc.*, 557 F.2d 1280, 1284-86 (9th Cir. 1977).

1 Defendants have raised Rule 12(b)(2) (lack of personal jurisdiction) and Rule
2 12(b)(3) (improper venue) in the pending motions, so the Court may consider
3 matters outside the pleadings.

4 However, these exhibits are not materially relevant under the current briefing.
5 In its initial filings, Gritman acknowledged its ownership shares in PS-LLC and
6 PSP-PS and stated that these companies are Washington entities. ECF No. 17 at 3-4;
7 ECF No. 22 at 2-3 ¶¶ 7-8. Plaintiffs could have raised arguments relating to these
8 ownership shares in their response or supplemental briefing, but they did not. As a
9 result, Plaintiffs did not provide legal authority supporting their contention that these
10 ownership shares are relevant to the jurisdictional inquiry. Whether jurisdiction over
11 a defendant is justified by a related entity's contacts with the forum is not a
12 straightforward issue. *See, e.g., In re Boon Global, Ltd.*, 923 F.3d 643, 650 (9th Cir.
13 2019); *Williams v. Yamaha Motor Co.*, 851 F.3d 1015, 1021 (9th Cir. 2017); *Ranza*
14 *v. Nike, Inc.*, 793 F.3d 1059, 1073 (9th Cir. 2015); 4A Wright & Miller, Fed. Prac. &
15 Proc. Civ. § 1069.4 (4th ed. Apr. 2023). Where Plaintiffs raise this issue belatedly
16 and without proper briefing, they ask the Court to presume that jurisdiction over
17 Gritman would be legally justified by Gritman's relationship to PS-LLC and PSP-
18 PS. The Court declines to do so.

19 Accordingly, the Court denies Plaintiffs' Motion to Supplement. The Court
20 discusses Gritman's ownership shares in PS-LLC and PSP-PS below to the sole

1 extent that these shares were addressed in the initial and supplemental briefing.

2 **DEFENDANTS' MOTIONS TO DISMISS**

3 Defendants contend that the Court may not exercise personal jurisdiction over
4 them and that venue is improper in this district.

5 **A. Legal Standard**

6 A defendant may move for dismissal based on a lack of personal jurisdiction
7 or improper venue pursuant to Fed. R. Civ. P. 12(b)(2) or (b)(3), respectively.

8 It is the plaintiff's burden to establish that personal jurisdiction is proper.
9 *Herbal Brands, Inc. v. Photoplaza, Inc.*, 72 F.4th 1085, 1090 (9th Cir. 2023) (citing
10 *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1223 (9th Cir. 2011)).

11 "When a defendant's motion to dismiss on jurisdictional grounds rests only on
12 written materials rather than on testimony at an evidentiary hearing, 'the plaintiff
13 need only make a prima facie showing of jurisdictional facts.'" *Id.* (quoting
14 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004)).
15 "The plaintiff cannot 'simply rest on the bare allegations of its complaint,' but
16 uncontroverted allegations in the complaint must be taken as true." *Mavrix Photo*,
17 647 F.3d at 1223 (quoting *Schwarzenegger*, 374 F.3d at 800).

18 Similarly, it is the plaintiff's burden to show that venue is proper. *Esters v.*
19 *Vanguard Clinical, Inc.*, No. 23-CV-820, 2023 WL 6930640, at *2 (S.D. Cal. Oct.
20 18, 2023) (citing *Piedmont Label Co. v. Sun Garden Packing Co.*, 598 F.2d 491, 496

1 (9th Cir. 1979)). “[T]he allegations in the complaint need not be accepted as true[,]
2 and the Court may consider evidence outside the pleadings.” *Id.* (quoting *eBay Inc.*
3 *v. Digit. Point Sols., Inc.*, 608 F. Supp. 2d 1156, 1161 (N.D. Cal. 2009)) (quotation
4 marks omitted).

5 **B. Personal Jurisdiction**

6 Defendants argue that a Washington court may not exercise personal
7 jurisdiction over them, as Idaho residents, in a case based on medical treatment
8 rendered in Idaho. ECF No. 17 at 2; ECF No. 23 at 2-3, 11.

9 “Two authorities govern a federal court’s exercise of personal jurisdiction
10 over a defendant: the Fourteenth Amendment’s Due Process Clause and the long
11 arm statute of the state in which the district court sits.” *Briskin v. Shopify, Inc.*, 87
12 F.4th 404, 411 (9th Cir. 2023) (citations omitted).

13 *1. Long-Arm Statute*

14 Defendants contend that the Washington courts have rejected personal
15 jurisdiction over a nonresident medical provider for alleged malpractice committed
16 outside Washington where the plaintiff’s injury manifested in Washington. ECF No.
17 17 at 16-17; ECF No. 23 at 10-11.

18 Indeed, the Washington Supreme Court has held that the Washington courts
19 lack personal jurisdiction over nonresident physicians sued for medical malpractice
20 for medical services rendered in another state. *Swank v. Valley Christian Sch.*, 398

1 P.3d 1108, 1123 (Wash. 2017) (“*Swank II*”); *Lewis ex rel. Lewis v. Bours*, 835 P.2d
2 221, 225 (Wash. 1992). Both cases involved similar facts: a patient received
3 medical care in a neighboring state, then suffered an injury in Washington allegedly
4 caused by that medical care. *Lewis*, 835 P.2d at 222; *Swank II*, 398 P.3d at 1113-14.

5 In *Lewis*, the plaintiff, a Washington resident, received prenatal care and gave
6 birth at defendant physician’s Oregon clinic. *Lewis*, 835 P.2d at 222. The defendant
7 discharged the plaintiff and infant child and instructed her to take the child to a
8 doctor once they returned home to Washington. *Id.* The child stopped breathing on
9 the drive home, after the plaintiff crossed back into Washington. *Id.* The plaintiff
10 sued the defendant physician in Washington, alleging he had committed a tort in
11 Washington because her child’s injury manifested in Washington. *Id.* at 222-23.

12 Pursuant to RCW 4.28.185(1)(b), the Washington courts may exercise
13 jurisdiction over a defendant who commits a tortious act within Washington. *Id.* at
14 223. At the time *Lewis* was decided, Washington courts considered an in-state
15 injury to be “an inseparable part of the tortious act” such that the tort “is deemed to
16 have occurred in [Washington] for purposes of the long-arm statute.” *Id.* (citations
17 and quotation marks omitted). However, the *Lewis* court disagreed and carved out
18 an exception to that rule for malpractice actions. *Id.* at 225. The court noted that the
19 plaintiff “unilaterally sought out [the] defendant’s professional services in Oregon
20 and traveled to Oregon to receive them.” *Id.* “All care, negligent and/or otherwise,

1 was rendered in Oregon.” *Id.* The defendant was not involved in any care the child
2 received in Washington nor in the child’s subsequent medical care in Oregon. *Id.*
3 The court held that “in the case of professional malpractice, a tort is not committed
4 in Washington if the alleged act of malpractice was committed out-of-state[,] even
5 though the injuries may manifest themselves in Washington.” *Id.* Accordingly, the
6 court held that the Washington courts could not exercise personal jurisdiction over
7 the defendant under RCW 4.28.185. *Id.*

8 In *Swank II*, a student patient and his family were Idaho residents, although he
9 attended high school in Spokane Valley, Washington. *Swank II*, 398 P.3d at 1113.
10 The student sustained a head injury while playing football, and his mother took him
11 to his long-time primary care physician, in Coeur d’Alene, Idaho. *Id.*

12 The doctor was previously licensed to practice medicine in Washington but
13 had been solely licensed in Idaho for several years when he treated the student.
14 *Swank v. Valley Christian Sch.*, 374 P.3d 245, 250 (Wash. Ct. App. 2016) (“*Swank*
15 *I*”), *aff’d in part, rev’d in part by Swank II*, 398 P.3d 1108. A small percentage of
16 his patients were Washington residents, and he sometimes sent prescriptions to
17 Washington pharmacies. *Id.* He began treating the Swank family shortly after
18 joining a practice group incorporated in Idaho. *Id.* All treatment he provided to the
19 student took place in Idaho. *Id.*

20 The doctor recommended limiting the student’s sports activities for several

1 days and prescribed ibuprofen. *Swank II*, 398 P.3d at 1113. Later, the student’s
2 mother called the doctor’s office, reporting that the student’s symptoms had resolved
3 and asking the doctor to sign a release allowing the student to return to football
4 practice, as required by a new Washington law. *Id.* The doctor signed the requested
5 release, which the student’s parents picked up in Idaho and took to his school in
6 Spokane Valley, Washington. *Id.* The following day, the student played in a
7 football game, where his condition visibly and dramatically deteriorated, and he
8 eventually died two days later. *Id.* at 1113-14.

9 The student’s parents sued the doctor, alleging negligence and violations of
10 the Washington law that required a physician’s release form. *Id.* at 1114. Citing
11 *Lewis*, the Washington Supreme Court held that the Washington courts lacked
12 personal jurisdiction over the doctor because “[a]ll relevant actions that [he] took
13 occurred in Idaho.” *Id.* at 1123. The court specifically declined to distinguish *Lewis*
14 on the basis that the doctor “released [the student] to play football in Washington,
15 for a Washington school, and pursuant to Washington law.” *Id.* at 1123. The court
16 explained that the goal of the *Lewis* line of cases was to “ensur[e] that medical
17 services are fully available to all people” by avoiding situations where “doctors were
18 worried about having to defend malpractice suits in distant states.”⁹ *Id.* at 1122

19 _____
20 ⁹ This concern is illustrated by Defendants’ cited case, *Greco v. Northwell Health*,

1 (citing *Grange Ins. Ass'n v. State*, 757 P.2d 933, 939 (Wash. 1988)) (quotation
2 marks omitted). The Washington courts have also reasoned that “the rendition of
3 services is more personal in nature than is the sale of goods, such that the location
4 where the services are performed is of greater jurisdictional importance than is the
5 location where a product is bought.” *Id.* (citing *Grange Ins.*, 757 P.2d at 939)
6 (quotation marks omitted).

7 Plaintiffs attempt to distinguish *Lewis* and *Swank II*, arguing that the
8 defendants in those cases never acted within Washington, while Defendants here
9 “were continuously ordering Washington pharmacists in Washington to deliver
10 drugs to Washington residents as *part* of their health care plan.” ECF No. 34 at 24-
11 25 (emphasis in original). Plaintiffs overstate Defendants’ role in where these
12 prescriptions went—as discussed below, the current record indicates it was
13 Ms. Cox’s sole choice where to fill her prescriptions, whether in Washington, Idaho,
14 or somewhere else. Plaintiffs provide no legal authority showing that the
15 Washington courts distinguish between the type of medical care provided in *Swank*

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17 _____
18 *Inc.*, No. 21-CV-188, 2022 WL 533047 (E.D. Wash. Feb. 22, 2022). In *Greco*, the
19 defendant’s only demonstrated contact with Washington was that the plaintiff
20 happened to return home to Washington after receiving 6 consecutive days of
medical care at the defendant’s New York facilities. *Id.* at *1, *4.

1 *II* and the type of medical care Defendants provided to Ms. Cox. The doctor in
2 *Swank II* also sent prescriptions to Washington pharmacies, and his medical facility
3 worked with Washington laboratories and accepted Washington insurance. *See*
4 *Swank I*, 374 P.3d at 250. The *Swank II* court did not consider these to be “relevant
5 actions” in the tort underlying the plaintiff’s claim. *Swank II*, 398 P.3d at 1123. Nor
6 was it enough that the doctor had signed a release form, knowing it would be taken
7 to a Washington school, to satisfy a requirement of Washington law. *Id.*

8 Plaintiffs cite *Cabbage v. Merchant*, 744 F.2d 665, 667 (9th Cir. 1984), which
9 addressed whether a California court had personal jurisdiction over Arizonan
10 defendants, and two Illinois court cases addressing venue challenges, *Tipton by*
11 *Stevens v. Estate of Cusick*, 651 N.E.2d 635, 637 (Ill. App. Ct. 1995) and *Braun v.*
12 *Apside Medical*, 175 N.E.3d 255, 263 (Ill. App. Ct. 2020), to argue that the
13 circumstances here are distinguishable from *Swank II*. ECF No. 54 at 2-8. The
14 question before the Court is whether Washington’s long-arm statute permits the
15 exercise of personal jurisdiction over Defendants notwithstanding the specific
16 exception for medical malpractice claims that the Washington courts recognized in
17 *Lewis* and *Swank II*. *Cabbage*, *Tipton*, and *Braun* do not address, and cannot
18 override, the Washington Supreme Court’s interpretation of Washington’s long-arm
19 statute.

20 The Court is unpersuaded that *Lewis* and *Swank II* are distinguishable from

1 this case and, therefore, that the Washington long-arm statute does not authorize the
2 Court to exercise personal jurisdiction over Defendants in this case.

3 2. *Due Process Analysis*

4 Defendants also argue that due process prohibits the exercise of personal
5 jurisdiction in this case. ECF No. 17 at 11-15; ECF No. 23 at 5-11.

6 “Due process permits a court to exercise personal jurisdiction over a
7 defendant only when ‘the defendant has sufficient minimum contacts with the forum
8 state such that the maintenance of the suit does not offend traditional notions of fair
9 play and substantial justice.’” *Briskin*, 87 F.4th at 411 (quoting *Impossible Foods*
10 *Inc. v. Impossible X LLC*, 80 F.4th 1079, 1086 (9th Cir. 2023)). “Personal
11 jurisdiction comes in two varieties: general and specific.” *Id.* “General jurisdiction
12 ‘extends to any and all claims brought against a defendant,’ but it is appropriate only
13 ‘when a defendant is essentially at home in the State.’” *Id.* (quoting *Ford Motor Co.*
14 *v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351, 358 (2021)). Conversely, a court may
15 have “specific jurisdiction” over a nonresident defendant, “but only as to a narrower
16 class of claims” provided that certain conditions are met. *Id.* (citing *Ford Motor*
17 *Co.*, 592 U.S. at 359 (quotation marks omitted).

18 Gritman argues that its facilities are located in, and its medical services
19 occurred, solely within Idaho and that it does not have contacts with Washington
20 sufficient to permit a Washington court to exercise general or specific jurisdiction

1 over it in this case. ECF No. 17 at 11-15. Marciano argues that she is an Idaho
2 resident who lacks contacts with Washington, therefore a Washington court cannot
3 exercise general or specific jurisdiction over her. ECF No. 23 at 7-11. Similarly,
4 Bledsoe states he has not resided in Washington since 1998 and has not provided
5 medical care in Washington since 2010. ECF No. 48 at 2 ¶ 3, 3 ¶ 7.

6 Plaintiffs disagree, arguing primarily that the prescriptions Defendants sent to
7 Washington pharmacies, and Gritman's connections to Washington entities, suffice
8 to establish either general or specific jurisdiction. ECF No. 34 at 5-25.

9 In the Complaint, Plaintiffs only asserted specific jurisdiction, not general
10 jurisdiction. ECF No. 1 at 6 ¶ 1.26. Plaintiffs now claim in there is also sufficient
11 basis for general jurisdiction. ECF No. 34 at 5. Under Fed. R. Civ. P. 8(a)(1), “[a]
12 pleading that states a claim for relief must contain: . . . a short and plain statement of
13 the grounds for the court's jurisdiction. . . .” Defendants do not argue that Plaintiffs
14 have insufficiently stated a claim for relief under the requirements of Rule 8(a)(1).
15 On the contrary, Defendants raise (and argue against) general jurisdiction in their
16 Motions. ECF No. 17 at 11; ECF No. 23 at 7. The Court will consider the general
17 jurisdiction issue given there is no indication that Defendants have been prejudiced
18 by Plaintiffs' omission, and Plaintiffs could otherwise amend the Complaint or refile
19 the case to include a “general jurisdiction” basis.

1 i. General Jurisdiction

2 Defendants assert that the Court may not exercise general jurisdiction over
3 them because they are not Washington residents and lack sufficiently continuous and
4 systematic contacts with Washington. ECF No. 17 at 11-12; ECF No. 23 at 7-8.

5 “A court has general jurisdiction over a defendant only when the defendant’s
6 contacts with the forum state are so ‘continuous and systematic as to render [them]
7 essentially at home in the forum State.’” *LNS Enters. LLC v. Cont'l Motors, Inc.*, 22
8 F.4th 852, 859 (9th Cir. 2022) (alteration in original) (quoting *Daimler AG v.*
9 *Bauman*, 571 U.S. 117, 127 (2014)). “[O]nly a limited set of affiliations with a
10 forum will render a defendant amenable to all-purpose [general] jurisdiction there.”
11 *Daimler*, 571 U.S. at 137. “For an individual, the paradigm forum for the exercise
12 of general jurisdiction is the individual’s domicile; for a corporation,” it is the place
13 of incorporation and principal place of business. *Goodyear Dunlop Tires*
14 *Operations, S.A., v. Brown*, 564 U.S. 915, 924 (2011) (citation omitted).

15 The Supreme Court has noted there may be other forums, besides the place of
16 incorporation and principal place of business, where a corporation could be subject
17 to general jurisdiction. *See Daimler*, 571 U.S. at 137-38 (discussing *Goodyear*, 564
18 U.S. at 924). However, the Court squarely rejected that a corporation could be
19 subject to general jurisdiction “in every state in which [it] engages in a substantial,
20 continuous, and systematic course of business.” *Id.* (quotation marks and citation

1 omitted). The Court also rejected the contention that a foreign corporation could be
2 subjected to general jurisdiction “whenever they have an in-state subsidiary or
3 affiliate.” *Id.* at 135-36.

4 A few years later, the Supreme Court reiterated that “in-state business . . .
5 does not suffice to permit the assertion of general jurisdiction over claims . . . that
6 are unrelated to any activity occurring in” the forum state. *BNSF Ry. Co. v. Tyrrell*,
7 581 U.S. 402, 414 (2017). In *BNSF*, the defendant had “over 2,000 miles of railroad
8 track and more than 2,000 employees” in the forum state, but even that amount of
9 in-state business failed to render the defendant “essentially at home” there. *Id.*

10 The record indicates that Marciano and Bledsoe are domiciled in Idaho. ECF
11 No. 24 at 2 ¶¶ 3, 6; ECF No. 48 at 2 ¶¶ 2-3. Gritman is incorporated and has a
12 principal place of business in Idaho and has not operated facilities in Washington
13 since approximately 2000. ECF No. 22 at 2 ¶¶ 2-3; ECF No. 20-1 at 2; ECF No. 19
14 at 2 ¶ 4. An out-of-state corporation is not subject to jurisdiction simply because it
15 has an in-state subsidiary or affiliate, thus, Gritman’s ownership shares in PSP-PS
16 and PS-LLC do not suffice to establish general jurisdiction in Washington. *See*
17 *Daimler*, 571 U.S. at 135-36.

18 At most, Plaintiffs have argued that Gritman advertises in Washington and
19 that Gritman providers send prescriptions to Washington pharmacies. These in-state
20 activities are far less substantial than the 2,000 miles of railroad track and the 2,000

1 employees that were found insufficient in *BNSF*. See *BNSF Ry. Co.*, 581 U.S. at
2 414. The Court finds that Plaintiffs have failed to establish a proper basis for the
3 Court to exercise general jurisdiction over Defendants.

4 ii. Specific Jurisdiction

5 Defendants further argue that they lack sufficient contacts with Washington to
6 permit the Court to exercise specific jurisdiction over them in this case. ECF No. 17
7 at 12-15; ECF No. 23 at 8-11.

8 “For specific jurisdiction to exist over a non-resident defendant, three
9 conditions must be met.” *Briskin*, 87 F.4th at 411.

10 First, “the defendant must either ‘purposefully direct his
11 activities’ toward the forum or ‘purposefully avail himself
12 of the privileges of conducting activities in the forum’”;
13 second, “the claim must be one which arises out of or
relates to the defendant’s forum-related activities”; and
third, “the exercise of jurisdiction must comport with fair
play and substantial justice, i.e.,] it must be reasonable.”

14 *Id.* (quoting *Axiom Foods, Inc. v. Acerchem Int’l, Inc.*, 874 F.3d 1064, 1068 (9th Cir.
15 2017)) (alteration omitted). “The plaintiff bears the burden on the first two prongs.”

16 *Id.* at 412 (citing *Ayla, LLC v. Alya Skin Pty. Ltd.*, 11 F.4th 972, 979 (9th Cir.
17 2021)). If the plaintiff carries this burden, “then the defendant ‘must come forward
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1 with a compelling case that the exercise of jurisdiction would not be reasonable.”

2 *Id.* (quoting *Ayla*, 11 F.4th at 979).

3 “Purposeful availment” and “purposeful direction” are distinct concepts,
4 though not separated by a “hard-and-fast rule.” *Davis v. Cranfield Aerospace Sols.,*
5 *Ltd.*, 71 F.4th 1154, 1162 (9th Cir. 2023). “Purposeful availment” is established if
6 the defendant’s “entire course of dealing with the forum state” indicates that it
7 “deliberately reached out beyond [its] home—by, for example, exploiting a market
8 in the forum State or entering a contractual relationship centered there.” *Davis*, 71
9 F.4th at 1163 (citations and quotation marks omitted) (alteration in original).

10 “Purposeful direction” is established if the defendant allegedly “(1) committed an
11 intentional act, (2) expressly aimed at the forum state, (3) causing harm that the
12 defendant knows is likely to be suffered in the forum state.” *Id.* at 1162-63 (citation
13 omitted). But overall, a defendant’s contacts with the forum state “must be the
14 defendant’s own choice and not ‘random, isolated, or fortuitous.’” *Ford Motor Co.*,
15 592 U.S. at 359 (citing *Keeton v. Hustler Mag., Inc.*, 465 U.S. 770, 774 (1984)).

16 Plaintiffs argue that Defendants are subject to specific jurisdiction in
17 Washington because they transmitted prescriptions to Washington pharmacies. ECF
18 No. 34 at 4, 9-12. Plaintiffs provide no authority supporting their contention that a
19 provider’s transmission of a prescription to an out-of-state pharmacy, at the patient’s
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1 request, suffices to show purposeful direction or purposeful availment.¹⁰ At most,
2 Plaintiffs liken it to computer hacking, which is not a persuasive analogy. *See* ECF
3 No. 34 at 22-23.

4 Moreover, the record indicates that the fact Ms. Cox’s prescriptions were
5 filled in Washington was not based on Defendants’ own choices, but instead, based
6 on the “fortuitous” circumstance that Ms. Cox chose to fill her prescriptions in
7 Pullman, Washington. *See Ford Motor Co.*, 592 U.S. at 359. Plaintiffs do not
8 contend that Gritman, Marciano, or Bledsoe required Ms. Cox to fill her
9 prescriptions at Washington pharmacies. Defendants state that where its patients’
10 prescriptions are filled is “the patient’s choice, even if the pharmacy is located
11 outside of Idaho.” ECF No. 19 at 2 ¶ 9; ECF No. 51 at 17. Gritman has provided
12 medical records reflecting instances where Ms. Cox requested that her prescription
13 be sent to a particular Washington pharmacy or printed for her to pick up in person
14 in Idaho. ECF No. 42 at 6-9, 11-12, 15-16. Plaintiffs argue that “we don’t know
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16 ¹⁰ An analogous case cited in the briefing is *Wright v. Yackley*, 459 F.2d 287 (9th
17 Cir. 1972). *See* ECF No. 46 at 5; ECF No. 54 at 6. In *Wright*, the Ninth Circuit held
18 that a physician’s mailing of prescriptions into Idaho from South Dakota did *not*
19 suffice to permit an Idaho court to exercise personal jurisdiction over the physician.
20 *Wright*, 459 F.2d at 288-91.

1 what occurred here . . . if it was the patient’s choice” where to fill their prescriptions.
2 ECF No. 51 at 24. But the undisputed evidence in the record indicates that it was
3 Ms. Cox’s own choice where her prescriptions were sent.

4 In sum, the fact that prescriptions written by Marciano and Bledsoe, or
5 Gritman providers, were filled in Washington does not suffice to constitute
6 purposeful avilment or direction by Gritman, Marciano, or Bledsoe. The specific
7 jurisdiction analysis fails at the first prong of the due process inquiry.

8 **C. Personal Jurisdiction vs. Conflict of Laws**

9 The Court briefly notes that Defendants have raised a conflict-of-laws issue—
10 which state’s substantive law governs in this case—to argue against the Court’s
11 exercise of personal jurisdiction. *See, e.g.*, ECF No. 17 at 8-9; ECF No. 51 at 14-15.
12 Personal jurisdiction and conflict of laws are distinct issues.¹¹ *See, e.g., Phillips*

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14 ¹¹ To clarify this distinction, personal jurisdiction is sometimes characterized as
15 adjudicative jurisdiction, *i.e.*, “the power of a state to *try* a particular action in its
16 courts,” while conflict of laws is characterized as legislative jurisdiction, *i.e.*, “the
17 power of a state to *apply* its laws to any given set of facts.” *Adventure Commc’ns,*
18 *Inc. v. Ky. Registry of Election Fin.*, 191 F.3d 429, 435 (4th Cir. 1999) (emphases in
19 original) (citation and quotation marks omitted); *see also Hartford Fire Ins. Co. v.*
20 *California*, 509 U.S. 764, 813-14, 820 (1993) (Scalia, J., dissenting).

1 *Petroleum Co. v. Shutts*, 472 U.S. 797, 823 (1985) (finding no defect in the forum
2 state’s exercise of personal jurisdiction but holding that the forum state could not
3 apply its own substantive law to all claims of the plaintiff class). Whether Idaho or
4 Washington’s substantive law governs Plaintiffs’ claims is an issue that must be
5 decided by a court with proper jurisdiction, applying the conflict-of-laws rules
6 applicable in that state. *See Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487,
7 496-97 (1941); *Nguyen v. Barnes & Noble Inc.*, 763 F.3d 1171, 1175 (9th Cir. 2014)
8 (holding that a federal court sitting in diversity must apply the conflict-of-laws rules
9 of the state in which it sits).

10 **D. Jurisdictional Discovery**

11 Plaintiffs alternatively request that the Court permit jurisdictional discovery.
12 ECF No. 34 at 25-27. “Jurisdictional discovery should ordinarily be granted where
13 pertinent facts bearing on the question of jurisdiction are controverted or where a
14 more satisfactory showing of the facts is necessary.” *LNS Enters.*, 22 F.4th at 864
15 (quotation marks and citation omitted). “But a mere hunch that discovery might
16 yield jurisdictionally relevant facts, or bare allegations in the face of specific denials,
17 are insufficient reasons for a court to grant jurisdictional discovery.” *Yamashita v.*
18 *LG Chem, Ltd.*, 62 F.4th 496, 507 (9th Cir. 2023) (quoting *LNS Enters.*, 22 F.4th at
19 864-65) (quotation marks omitted).

1 The parties do not dispute the facts most critical to determining personal
2 jurisdiction over Defendants—that they are Idaho residents and that their relevant
3 contacts with Washington were limited to prescriptions and communications that
4 crossed into Washington.¹² Plaintiffs have not demonstrated how jurisdictional
5 discovery might yield jurisdictionally relevant facts beyond their mere hunch that
6 such facts may exist. *See Yamashita*, 62 F.4th at 507. Therefore, the Court denies
7 Plaintiffs’ request for jurisdictional discovery.

8 **CONCLUSION**

9 For the above reasons, Plaintiffs have failed to establish a proper basis for the
10 Court to exercise personal jurisdiction over Gritman, Marciano, or Bledsoe in this
11 case. The Court need not reach Defendants’ venue arguments.

12 Accordingly, **IT IS HEREBY ORDERED:**

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¹² The Court does not give weight to Plaintiffs’ arguments that Defendants (1) are
15 constructively licensed to provide health care in Washington or (2) effectively
16 deliver controlled substances into Washington. *See* ECF No. 34 at 15-21; ECF
17 No. 54 at 7-11. Plaintiffs cite no authority showing that Washington recognizes
18 such constructive licenses or considers an out-of-state physician to have delivered
19 controlled substances into Washington simply because their patient fills a controlled-
20 substance prescription in Washington.

1 1. Plaintiffs’ Motion to Supplement the Record, **ECF No. 58**, is **DENIED**.

2 2. Defendant Gritman’s Motion to Dismiss, **ECF No. 17**, is **GRANTED**.

3 3. Defendant Marciano’s Motion to Dismiss, **ECF No. 23**, which
4 Defendant Bledsoe has joined, is **GRANTED**.

5 4. This case is **DISMISSED without prejudice**.

6 **IT IS SO ORDERED.** The Clerk’s Office is directed to file this Order,
7 provide copies to counsel, enter judgment of dismissal without prejudice, and
8 **CLOSE the file.**

9 DATED March 14, 2024.

10 *s/Mary K. Dimke*
11 MARY K. DIMKE
 UNITED STATES DISTRICT JUDGE