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6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

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8 SUSAN SWARTWOOD, et al.,

9 Plaintiffs,

v.

10 FRAZIER EQUIPMENT, LLC, an
Arizona corporation, LAWRENCE K.
11 SLOAN and JANE DOE SLOAN,
individually and as a marital community,
12 HIGH-LITE RIDES, INC., a South
Carolina corporation,

13 Defendants.
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CASE NO. C17-5971 BHS

ORDER GRANTING
DEFENDANT'S SECOND
MOTION TO DISMISS FOR LACK
OF PERSONAL JURISDICTION

15 This matter comes before the Court on Defendants Frazier Equipment, LLC
16 ("Frazier"), Lawrence K. Sloan ("Sloan"), and Jane Doe Sloan's (collectively
17 "Defendants") second motion to dismiss for lack of personal jurisdiction. Dkt. 104. The
18 Court has considered the pleadings filed in support of and in opposition to the motion and
19 the remainder of the file and hereby grants the motion for the reasons stated herein.
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I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

On May 18, 2017, Plaintiffs Susan Swartwood, Crystal Groth, and minor M.G.S. (“Plaintiffs”), attended Defendant Fun-Tastic Shows, Inc.’s (“Fun-Tastic”) Rhododendron Festival in Port Townsend, Washington. Dkt. 98, ¶¶ 3.23–3.24. Plaintiffs were riding together in one of the gondolas on the festival’s Ferris wheel when one of the metallic locks attached to the gondola “ca[ught] on the [ride’s] super-structure and eject[ed] the Plaintiffs.” *Id.* ¶ 3.27. Plaintiffs all fell from the gondola and were injured. *Id.* ¶ 3.30.

Plaintiffs allege that in 2010, Sloan as an agent of Frazier modified the Ferris wheel by adding the metallic locks to the doors of each passenger gondola. *Id.* ¶ 3.21. Frazier owned the Ferris wheel and sold it to Fun-Tastic in a transaction between Steven Broetsky of Frazier and Ronald Burback (“Burback”) of Fun-Tastic, who is a Washington resident. *Id.*¹ Plaintiffs also allege that “when sold to Fun-Tastic, [the Ferris wheel] was intended to be used in Washington State.” *Id.* ¶ 3.16

On November 6, 2017, Plaintiffs filed a complaint against Fun-Tastic in the Jefferson County Superior Court for the State of Washington. Dkt. 1-1. On November 21, 2017, Fun-Tastic removed the matter to this Court. Dkt. 1. On April 23, 2018, Plaintiffs amended their complaint to add Defendant High-Lite Rides, Inc. Dkt. 15. On October 16, 2019, Plaintiffs settled their claims against Fun-Tastic. Dkt. 76. On November 4, 2019,

¹ Defendants explain (and Plaintiffs do not dispute) that Steven Broetsky is the managing member of Frazier and Burback is the president of Fun-Tastic. Dkt. 104 at 3.

1 Plaintiffs amended their complaint to add Defendants and allege claims for negligence
2 and product liability against Frazier. Dkt. 81, ¶¶ 5.1–5.2.

3 On December 3, 2019, Defendants moved to dismiss Plaintiffs’ claims for lack of
4 personal jurisdiction. Dkt. 90. On February 10, 2020, the Court granted the motion to
5 dismiss but granted Plaintiffs leave to amend. Dkt. 97. On February 19, 2020, Plaintiffs
6 filed a third amended complaint (“TAC”). Dkt. 98.

7 On March 3, 2020, Defendants filed a second motion to dismiss for lack of
8 personal jurisdiction. Dkt. 104. On March 17, 2020, Plaintiffs responded. Dkt. 105. On
9 March 26, 2020, Defendants replied. Dkt. 106.

10 **II. DISCUSSION**

11 **A. Standard**

12 To determine whether it has jurisdiction over a defendant, a federal court applies
13 the law of the state in which it sits, as long as that law is consistent with federal due
14 process. *Daimler AG v. Bauman*, 571 U.S. 117, 126 (2014). Washington grants courts the
15 maximum jurisdictional reach permitted by due process. *Easter v. Am. W. Fin.*, 381 F.3d
16 948, 960 (9th Cir. 2004). Due process is satisfied when subjecting the entity to the court’s
17 power does not “offend ‘traditional notions of fair play and substantial justice.’”
18 *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984) (quoting
19 *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). “[T]raditional notions of fair
20 play and substantial justice” require that a defendant have minimum contacts with the
21 forum state before it may be haled into a court in that forum. *Int’l Shoe*, 326 U.S. at 316
22 (1945). The extent of those contacts can result in either general or specific personal

1 jurisdiction over the defendant. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564
2 U.S. 915, 919 (2011).

3 **B. Analysis**

4 **1. General Jurisdiction**

5 The Court previously found no basis to conclude it has general jurisdiction over
6 the Defendants, Dkt. 97 at 4, and similarly finds that the allegations in the TAC do not
7 allege a basis for general jurisdiction.

8 **2. Specific Jurisdiction**

9 Specific jurisdiction permits a district court to exercise jurisdiction over a
10 nonresident defendant for conduct that “create[s] a substantial connection with the forum
11 State.” *Walden v. Fiore*, 134 S. Ct. 1115, 1121 (2014). To prove that specific jurisdiction
12 exists in a tort-based action, a plaintiff must demonstrate that: (1) a defendant
13 purposefully directed its activities at the forum state, (2) the lawsuit arises out of or
14 relates to the defendant’s forum-related activities, and (3) the exercise of jurisdiction is
15 reasonable. *Picot v. Weston*, 780 F.3d 1206, 1211 (9th Cir. 2015). The plaintiff bears the
16 burden to satisfy the first two prongs of the test, and jurisdiction fails if they are not
17 established. *Morrill v. Scott Financial Co.*, 873 F.3d 1136, 1142 (9th Cir. 2017) (citing
18 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004)). A
19 defendant purposefully directs its conduct toward a forum state when its actions are
20 intended to have an effect within the state. *Schwarzenegger*, 374 F.3d at 803. This occurs
21 in a tort-based action if the defendant: “(1) commit[s] an intentional act, (2) expressly
22 aimed at the forum state, (3) causing harm that the defendant knows is likely to be

1 suffered in the forum state.” *Morrill*, 873 F.3d at 1142. In deciding specific jurisdiction,
2 the Court must “look[] to the defendant’s contacts with the forum State itself, not the
3 defendant’s contacts with persons who reside there.” *Walden*, 571 U.S. at 285.

4 The Court previously found Plaintiffs failed to establish the first necessary
5 element, purposeful direction, when they alleged that it was foreseeable to Frazier that its
6 product would end up in Washington based on Fun-Tastic’s relationship with
7 Washington. Dkt. 97 at 6. The Court found Plaintiffs had failed to establish that either the
8 sale or the gate modification was expressly aimed at Washington. *Id.* at 7 (citing *Morill*,
9 873 F.3d at 1142).

10 In their TAC, Plaintiffs provide additional allegations about Fun-Tastic’s business
11 relationship with Washington State. Plaintiffs describe Fun-Tastic’s business licensing
12 and reporting obligations to Washington as well as its history of substantial operations
13 and substantial employment of Washington residents, information it alleges was “readily
14 available to the public including Defendant Frazier.” Dkt. 98, ¶¶ 3.1–3.1.13, 3.12.
15 Plaintiffs also detail the extent of Fun-Tastic’s carnival operations in Washington
16 including at the Washington State Fair. *See, e.g., id.* ¶¶ 3.2–3.36.

17 Additionally, Plaintiffs allege that both Frazier and Fun-Tastic have “been
18 publicized in [Carnival] magazine prior to the sale of the Ferris wheel in question,” and
19 as noted, allege that Burback, a Washington resident, was a party to the sale of the Ferris
20 wheel. *Id.* ¶¶ 3.4, 3.21.

21 Plaintiffs emphasize that their claim should be analyzed under the tort-based
22 “purposeful direction” standard. Dkt. 105 at 4. They argue that the public evidence Fun-

1 Tastic operated in Washington demonstrates “that the moving Defendants were aware
2 they were transacting with a company that had regular, consistent and ongoing business
3 in Washington state for nearly a half-century.” *Id.* at 5. They also argue that “it was
4 understood the Ferris wheel itself was sold for the specific business purpose of operating
5 in Washington.” *Id.*

6 Plaintiffs’ additional allegations provide additional support for the argument that it
7 was foreseeable to Defendants that the Ferris Wheel would be used in Washington.
8 However, they do not change the Court’s conclusion that these allegations are insufficient
9 to support a finding that Defendants expressly aimed tortious action at Washington when
10 Frazier sold the Ferris wheel to Fun-Tastic. Plaintiffs do not allege that Frazier sought
11 Fun-Tastic out as a buyer for the Ferris wheel or advertised the Ferris wheel for sale in
12 Washington. While Burback purchased the Ferris wheel and is a Washington resident, the
13 record shows that Burback traveled to Phoenix, Arizona to see the Ferris wheel after
14 learning that it was for sale through a third party who dealt in used amusement rides and
15 purchased it on that trip. *See* Dkt. 95-1, Deposition of Ronald Burback, at 10, 27.² It is
16 insufficient “to rely on a defendant’s ‘random, fortuitous, or attenuated contacts’ [with
17 the forum] or on the ‘unilateral activity’ of a plaintiff” to find specific jurisdiction.
18 *Walden*, 571 U.S. at 286 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. at 475). The
19 contacts Plaintiffs describe with Washington are the unilateral activities of Fun-Tastic,
20 not contacts Frazier purposefully directed at Washington. Therefore, finding that

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22 ² Deposition transcript page numbering.

1 Plaintiffs have failed to establish purposeful direction, an essential element of specific
2 jurisdiction, *Morrill*, 873 F.3d at 1142, the Court grants the motion to dismiss for lack of
3 personal jurisdiction.

4 **C. Leave to Amend**

5 “The trial court’s discretion to deny [leave to amend] is particularly broad where,
6 as here, a plaintiff previously has been granted leave to amend.” *Griggs v. Pace Am.*
7 *Grp., Inc.*, 170 F.3d 877, 879 (9th Cir. 1999). Plaintiffs do not request leave to amend. As
8 the Court previously granted leave to amend and the amended complaint does not correct
9 the identified deficiencies, the Court dismisses Plaintiffs’ claims against the specified
10 Defendants with prejudice.

11 **III. ORDER**

12 Therefore, it is hereby **ORDERED** that Defendants’ motion to dismiss for lack of
13 personal jurisdiction, Dkt. 104, is **GRANTED**.

14 The Clerk shall terminate Frazier, Lawrence K. Sloan, and Jane Doe Sloan from
15 this action.

16 Dated this 28th day of May, 2020.

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19 BENJAMIN H. SETTLE
20 United States District Judge
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