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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 JOSHUA AH CHAN,

Plaintiff,

9 v.

10 GRUBHUB HOLDINGS INC.,

Defendant.
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12

CASE NO. C23-5744 BHS

ORDER

13 This matter is before the Court on Defendant Grubhub Holdings Inc.’s motion to
14 dismiss Plaintiff Joshua Ah Chan’s public nuisance claim, Dkt. 5. Because this claim is
15 not plausible, Grubhub’s motion is granted.

16 This matter arises from a motor vehicle collision between Chan and Deborah
17 Redford. Dkt. 1-3. ¶ 5. Chan alleges that Redford was entirely at fault for the collision
18 and that he suffered “serious injuries” from it. *Id.* ¶¶ 5–6, 9. Chan claims that, at the time
19 of the collision, Redford was delivering food for Grubhub. *Id.* ¶ 7. He asserts that
20 Redford did not have the automobile insurance required to work as a delivery driver. *Id.* ¶
21 14. Chan contends that Redford “procured the wrong insurance by accident and
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1 GRUBHUB failed to reject it, creating the risk of uninsured drivers on Washington
2 roads.” *Id.* Chan and Redford ultimately settled Redford’s liability for \$99,000. *Id.* ¶ 11.

3 Chan sued Grubhub in Kitsap County Superior County, alleging that Grubhub is
4 liable for Chan’s injuries because of negligence, partnership liability, violating the
5 consumer production act, agency-principal liability, respondeat superior, and public
6 nuisance. Dkt. 1-3, ¶¶ 17–41. Grubhub removed the case to this Court. Dkt. 1.

7 Grubhub contends that Chan’s public nuisance claim is not plausible because “he
8 has not alleged any act or omission on the part of Grubhub that affects an entire
9 community” and the claim does not “arise from interference with the use and enjoyment
10 of his property.” Dkt. 5 at 4.

11 Chan responds that Grubhub created a public nuisance “by encouraging its drivers
12 to travel on streets and highways without liability insurance (or failing to provide liability
13 coverage).” Dkt. 9 at 4. He asserts that this “business model creates risk to the public by
14 placing uninsured delivery drives . . . on the road,” *id.* at 6, “causing the public to suffer
15 uncompensated losses.” *Id.* at 8.

16 Dismissal under Federal Rule of Civil Procedure 12(b)(6) may be based on either
17 the lack of a cognizable legal theory or the absence of sufficient facts alleged under a
18 cognizable legal theory. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir.
19 1988). A plaintiff’s complaint must allege facts to state a claim for relief that is plausible
20 on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A claim has “facial plausibility”
21 when the party seeking relief “pleads factual content that allows the court to draw the
22 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* Although

1 courts must accept as true the complaint’s well-pleaded facts, conclusory allegations of
2 law and unwarranted inferences will not defeat an otherwise proper Rule 12(b)(6) motion
3 to dismiss. *Vasquez v. Los Angeles Cnty.*, 487 F.3d 1246, 1249 (9th Cir. 2007); *Sprewell*
4 *v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). “[A] plaintiff’s obligation to
5 provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and
6 conclusions, and a formulaic recitation of the elements of a cause of action will not do.
7 Factual allegations must be enough to raise a right to relief above the speculative level.”
8 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted). This requires a
9 plaintiff to plead “more than an unadorned, the-defendant-unlawfully-harmed-me
10 accusation.” *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555).

11 “An ordinary private nuisance action requires the plaintiff to show that the
12 defendant’s conduct caused substantial and unreasonable interference with the plaintiff’s
13 property interest.” *Sauk-Suiattle Indian Tribe v. City of Seattle*, 25 Wn. App. 2d 741, 749
14 (2023). “A public nuisance requires either a violation of one of the statutorily enumerated
15 public nuisances in RCW 7.48.140, or for the plaintiff to show that the nuisance activity
16 ‘affects equally the rights of an entire community or neighborhood, although the extent of
17 the damage may be unequal.” *Id.* (quoting *Kitsap County v. Kev, Inc.*, 106 Wn.2d 135,
18 139 (1986); RCW 7.48.130).

19 Chan argues that Grubhub is liable for creating a public nuisance in violation of
20 RCW 7.48.140(4), which provides:
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22

1 It is a public nuisance:

2 . . .

3 (4) To *obstruct* or *encroach upon* public highway, private ways,
4 streets, alleys, commons, landing places, and ways to burying places or to
5 unlawfully *obstruct* or *impede* the flow of municipal transit vehicles as
6 defined in RCW 46.04.355 or passenger traffic, access to municipal transit
7 vehicles or stations as defined in *RCW 9.91.025(2)(a), or *otherwise*
8 *interfere* with the provision or use of public transportation services, or
9 *obstruct* or *impede* a municipal transit driver, operator, or supervisor in the
10 performance of that individual's duties.

11 (Emphasis added).

12 Chan contends that Grubhub's failure "to verify Ms. Redford's lack of commercial
13 insurance coverage" "is an obstruction to the use of roads, as the lack of insurance can
14 interfere with the use of roads/highways by having an accident deprive a motorist of their
15 property without any insurance coverage to cover the loss." Dkt. 9 at 6.

16 The Court disagrees. RCW 7.48.140(4) plainly defines as public nuisance the
17 *physical* obstruction, encroachment, impediment, or interference with public roads or
18 transportation. Redford's lack of commercial insurance did not physically prevent Chan
19 from using public roads. Indeed, Chan was using a public road when Redford collided
20 with him. Chan accordingly fails to plausibly claim that Grubhub violated RCW
21 7.48.140(4).

22 Nor has Chan asserted any other plausible theory to support a public nuisance
claim. The Washington Supreme Court "has limited nuisances to actions that interfere in
the use and enjoyment of property or threaten public health and safety." *Animal Legal*
Def. Fund v. Olympic Game Farm, Inc., 1 Wn.3d 925, 933 (2023). "Nearly all of the
conduct the legislature has named a public nuisance relates to adverse impact on public

1 land . . . , interference in use and enjoyment of property, or threats to public health and
2 safety.” *Id.* at 932–33. In the “few cases” that the Washington Supreme Court has
3 “expanded [its] nuisance analysis to interference in public property,” the court has “relied
4 specifically on legislative enumerations of nuisance, and long-standing nuisances
5 recognized by [the] court, rather than the analysis of interference in private property.” *Id.*
6 at 931–32.

7 As Grubhub correctly asserts, “none of [Chan’s] allegations describe community
8 interference with property rights, and the allegations do not fit into one of the enumerated
9 public nuisance scenarios under RCW 7.48.140.” Dkt. 10 at 4. Chan does not cite any
10 authority classifying the challenged conduct—a company’s failure to ensure that its
11 delivery drivers are properly insured—as a public nuisance.

12 Grubhub also persuasively contends that this claim is nothing more than a
13 negligence claim cloaked as a nuisance claim. *See* Dkt. 5 at 4 (citing *Atherton Condo.*
14 *Apartment-Owners Ass’n Bd. of Directors v. Blume Dev. Co.*, 115 Wn.2d 506, 527
15 (1990)). “In Washington, a ‘negligence claim presented in the garb of nuisance’ need not
16 be considered apart from the negligence claim.” *Atherton Condo.*, 115 Wn.2d at 527
17 (quoting *Hostetler v. Ward*, 41 Wn. App. 343, 360 (1985)). “In those situations where the
18 alleged nuisance is the result of the defendant’s alleged negligent conduct, rules of
19 negligence are applied.” *Atherton Condo.*, 115 Wn.2d at 527.

20 For these reasons, it is hereby **ORDERED** that Grubhub’s motion to dismiss
21 Chan’s public nuisance claim, Dkt. 5, **GRANTED**. This claim is **DISMISSED with**
22 **prejudice**.

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Dated this 21st day of March, 2024.



BENJAMIN H. SETTLE
United States District Judge