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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 MICHAEL BOONE,

11 Plaintiff,

12 v.

13 JOHN ALLABEN, et al.,

14 Defendants.

CASE NO. C21-1562JLR

ORDER GRANTING MOTION
TO DISMISS

15 **I. INTRODUCTION**

16 Before the court is Defendant Carolynne Allaben's motion to dismiss. (Mot. (Dkt.
17 # 11); *see also* Reply (Dkt. # 17).) Plaintiff Michael Boone opposes Ms. Allaben's
18 motion. (Resp. (Dkt. # 16).) The court has considered the motion, all submissions filed
19 in support of and in opposition to the motion, the relevant portions of the record, and the
20 applicable law. Being fully advised,¹ the court GRANTS Ms. Allaben's motion.

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22 ¹ Neither party requests oral argument (*see* Mot. at 1; Resp. at 1), and the court finds oral
argument unnecessary to its disposition of the motion, *see* Local Rules W.D. Wash. LCR 7(b)(4).

II. BACKGROUND

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2 In his bare-bones complaint in this personal injury action, Mr. Boone alleges that
3 on or about July 7, 2019, while intoxicated and walking on Pine Street in Seattle,
4 Washington, he staggered and accidentally touched Ms. Allaben's body. (Compl. (Dkt.
5 # 1-2) ¶ 2.) In response, Ms. Allaben's husband, Defendant John Allaben, pushed Mr.
6 Boone "harshly" and "aggressive[ly]" from behind. (*Id.* ¶ 3.) Mr. Boone alleges that he
7 was thrown to the ground and suffered extensive personal injuries as a result of Mr.
8 Allaben's actions. (*Id.* ¶¶ 3-4.)

9 The Allabens are citizens and residents of Michigan. (C. Allaben Decl. (Dkt.
10 # 12) ¶ 2; J. Allaben Decl. (Dkt. # 13) ¶ 2.) They were visiting Seattle to attend a
11 wedding when the altercation with Mr. Boone took place. (C. Allaben Decl. ¶ 9;
12 J. Allaben Decl. ¶ 9.) The Allabens aver that they have never been employed by a
13 Washington corporation, paid taxes in Washington, or employed another person in
14 Washington. (C. Allaben Decl. ¶¶ 6-7; J. Allaben Decl. ¶¶ 6-7.) They do not own or
15 lease property or maintain bank accounts in Washington. (C. Allaben Decl. ¶ 8;
16 J. Allaben Decl. ¶ 8.) They were married in Michigan, pay Michigan state income taxes,
17 and have only Michigan drivers' licenses. (C. Allaben Decl. ¶¶ 2, 4-5; J. Allaben Decl.
18 ¶¶ 2, 4-5.)

19 Mr. Boone originally filed his complaint in King County Superior Court on
20 November 12, 2021. (*See* Compl. at 1.) In the caption of the complaint, he named Mr.
21 Allaben and Ms. Allaben, "husband and wife and their marital community," as
22 defendants, but he did not include any allegations within his complaint that, if true, would

1 establish a claim against the marital community. (*See generally id.*) On November 18,
2 2021, the Allabens removed the action to this court on the basis of diversity. (Not. of
3 Removal (Dkt. # 1) ¶¶ 3-4.) Ms. Allaben filed the instant motion to dismiss Mr. Boone’s
4 claims against her on December 2, 2021. (*See generally* Mot.) Mr. Allaben has not
5 moved to dismiss. (*See generally* Dkt.)

6 III. ANALYSIS

7 Ms. Allaben brings this motion pursuant to Federal Rules of Civil Procedure
8 12(b)(2) and 12(b)(6). (Mot. at 1.) She asserts that Mr. Boone’s claims against her must
9 be dismissed because the allegations in the complaint do not establish personal
10 jurisdiction and fail to state a claim. (*Id.*) The court addresses the jurisdictional
11 argument first before turning to the sufficiency of the complaint. *See, e.g., Brayton*
12 *Purcell LLP v. Recordon & Recordon*, 575 F.3d 981, 991 (9th Cir. 2009) (“[P]ersonal
13 jurisdiction is a threshold issue . . . and the erroneous exercise of personal jurisdiction
14 deprives all subsequent proceedings of legal effect.”).

15 A. Personal Jurisdiction

16 A motion to dismiss for lack of personal jurisdiction is governed by Federal Rule
17 of Civil Procedure 12(b)(2). *See* Fed. R. Civ. P. 12(b)(2). “[T]he plaintiff bears the
18 burden of establishing that jurisdiction is proper.” *Boschetto v. Hansing*, 539 F.3d 1011,
19 1015 (9th Cir. 2008). “The court may consider evidence presented in affidavits to assist
20 it in its determination and may order discovery on the jurisdictional issues.” *Doe v.*
21 *Unocal Corp.*, 248 F.3d 915, 922 (9th Cir. 2001). If the court decides the motion without
22 conducting an evidentiary hearing, “the plaintiff need make only a prima facie showing

1 of jurisdictional facts to withstand the motion to dismiss.” *Id.* (quoting *Ballard v.*
2 *Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995)). Although a plaintiff cannot simply rest on
3 the bare allegations of the complaint, the court must accept uncontroverted allegations in
4 the complaint as true, and conflicts between parties over statements in affidavits must be
5 resolved in the plaintiff’s favor. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d
6 797, 800 (9th Cir. 2004); *Boschetto*, 539 F.3d at 1015 (citations omitted).

7 Where no applicable federal statute addresses the issue, a court’s personal
8 jurisdiction analysis begins with the “long-arm” statute of the state in which the court
9 sits. *Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co.*, 284 F.3d 1114,
10 1123 (9th Cir. 2002). Under Washington’s long-arm statute, a court in Washington may
11 exercise specific personal jurisdiction² over a nonresident defendant when the
12 defendant’s limited contacts give rise to the cause of action. RCW 4.28.185; *Gorden v.*
13 *Lloyd Ward & Assocs., P.C.*, 323 P.3d 1074, 1081-82 (Wash. Ct. App. 2014).

14 Washington’s long-arm statute provides, in relevant part:

15 (1) Any person, whether or not a citizen or resident of this state, who in
16 person or through an agent does any of the acts in this section enumerated,
17 thereby submits said person, and, if an individual, his or her personal
representative, to the jurisdiction of the courts of this state as to any cause of
action arising from the doing of any of said acts:

18 (a) The transaction of any business within this state;

19 (b) The commission of a tortious act within this state.

20
21 ² Ms. Allaben does not contend that the court has general jurisdiction over her, and Mr.
22 Boone has not alleged that she has “substantial” or “continuous and systematic” contacts with
Washington required to establish general jurisdiction. *See Bancroft & Masters, Inc. v. Augusta*
Nat’l, Inc., 223 F.3d 1082, 1086 (9th Cir. 2000); (*see generally* Compl.; Resp.).

1 RCW 4.28.185. In addition, the following elements must be satisfied to meet due process
2 requirements:

3 (1) The nonresident defendant or foreign corporation must purposefully do
4 some act or consummate some transaction in the forum state;

5 (2) the cause of action must arise from, or be connected with, such act or
6 transaction; and

7 (3) the assumption of jurisdiction by the forum state must not offend
8 traditional notions of fair play and substantial justice, consideration being
9 given to the quality, nature, and extent of the activity in the forum state, the
10 relative convenience of the parties, the benefits and protection of the laws of
11 the forum state afforded the respective parties, and the basic equities of the
12 situation.

13 *Shute v. Carnival Cruise Lines*, 783 P.2d 78, 80 (Wash. 1989); *Bancroft & Masters*, 223
14 F.3d at 1086.

15 Here, Mr. Boone has not established this court's specific personal jurisdiction over
16 Ms. Allaben because he makes no allegation that his claims arise from business she
17 conducted or a tortious act she committed in Washington as required by the state's
18 long-arm statute. *See* RCW 4.28.185(1)(b). Nor has he shown that Ms. Allaben
19 purposefully committed some act from which his personal injury claim arises as required
20 by due process. *See Shute*, 783 P.2d at 80. To the contrary, he alleges only that *he*
21 touched *her*. (Compl. ¶ 2.) The court finds that this allegation, without more, is not
22 sufficient to establish the court's personal jurisdiction over Ms. Allaben.

Mr. Boone argues two bases for the court's jurisdiction over Ms. Allaben, neither
of which is persuasive. First, he argues that "the series of events that resulted in [Mr.]
Allaben's pushing of [Mr.] Boone started with Mr. Boone's unintentional touching of

1 [Ms.] Allaben’s body and ended with significant personal injuries to Mr. Boone.” (Resp.
2 at 2.) Thus, “[Ms.] Allaben’s presence was the precipitating trigger that causes Mr.
3 Allaben to attack Mr. Boone” and “[w]ithout her presence, there would be no tort claim
4 or any legal action.” (*Id.* at 3-4.) Mr. Boone does not, however, cite any authority to
5 support his argument that Ms. Allaben’s mere presence on Pine Street on July 7, 2019,
6 when Mr. Boone staggered into her, is sufficient to meet statutory and due process
7 requirements for personal jurisdiction. (*See generally id.*)

8 Second, Mr. Boone argues that the court has personal jurisdiction over Ms.
9 Allaben because the Allabens’ marital community is liable for Mr. Allaben’s actions.
10 (Resp. at 3-4.) As Ms. Allaben points out, however, she and Mr. Allaben are married in
11 Michigan, which is not a community property state. (Mot. at 7-8); *see Gen Ads LLC v.*
12 *Breitbart*, 435 F. Supp. 2d 1116, 1121 n.2 (W.D. Wash. 2006) (noting that because the
13 defendants were married in California, California law governed the question of whether
14 the marital community was bound by the actions of one spouse); *see also In re Harajli*,
15 469 B.R. 274, 279-80 (Bankr. E.D. Mich. 2012) (noting that Michigan has not been a
16 community property state since 1948). As a result, Mr. Boone cannot sue Ms. Allaben
17 solely to ensure access to community property because no such property exists. *See*
18 *Powell v. Am. President Lines, LTD*, No. C08-1606MJP, 2009 WL 367209, at *1 (W.D.
19 Wash. Feb. 10, 2009) (granting summary judgment to defendant’s spouse where the
20 parties were married in Massachusetts, a non-community property state). The court
21 agrees with Ms. Allaben that, absent some allegation that she was part of a marital
22 community domiciled in Washington, she is not liable for any alleged torts of her spouse

1 and personal jurisdiction cannot attach on that basis. (Mot. at 11); *see also Powell*, 2009
2 WL 367209, at *1. Accordingly, the court GRANTS Ms. Allaben’s motion to dismiss for
3 lack of personal jurisdiction and DISMISSES Mr. Boone’s claims against her without
4 prejudice and with leave to amend to allege facts, if any, that would establish jurisdiction.

5 **B. Sufficiency of the Complaint**

6 Even if the court had personal jurisdiction over Ms. Allaben, the court would
7 nevertheless grant her motion to dismiss because Mr. Boone has not sufficiently pleaded
8 a claim against her. Federal Rule of Civil Procedure 12(b)(6) provides for dismissal
9 when a complaint “fail[s] to state a claim upon which relief can be granted.” Fed. R. Civ.
10 P. 12(b)(6). The court construes the complaint in the light most favorable to the
11 nonmoving party. *Livid Holdings Ltd. v. Salomon Smith Barney, Inc.*, 416 F.3d 940, 946
12 (9th Cir. 2005). “To survive a motion to dismiss, a complaint must contain sufficient
13 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’”
14 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S.
15 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual
16 content that allows the court to draw the reasonable inference that the defendant is liable
17 for the misconduct alleged.” *Id.*

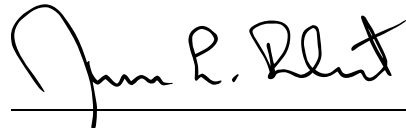
18 As discussed above, Mr. Boone has not alleged any conduct by Ms. Allaben that
19 would give rise to a tort claim against her individually, nor has he alleged facts that
20 would support a finding that she is liable for the torts of her husband under Michigan law.
21 (*See generally* Compl.) Thus, the court finds that Mr. Boone has not plausibly alleged a
22 claim for relief against Ms. Allaben as required by Rule 12(b)(6). The court GRANTS

1 Ms. Allaben's motion to dismiss for failure to state a claim and DISMISSES Mr. Boone's
2 claim against her without prejudice and with leave to amend.

3 **IV. CONCLUSION**

4 For the foregoing reasons, the court GRANTS Ms. Allaben's motion to dismiss
5 (Dkt. # 15) and DISMISSES Mr. Boone's claims against her without prejudice and with
6 leave to amend. Mr. Boone shall file his amended complaint, if any, within 21 days of
7 the filing date of this order.

8 Dated this 22nd day of December, 2021.

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11 JAMES L. ROBART
12 United States District Judge
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