

FILED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SEP 21 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

LORI ANNA MASSEY,

Plaintiff-Appellant,

v.

**MULTICARE HEALTH SYSTEM;
ALLENMORE HOSPITAL,**

Defendants-Appellees.

No. 20-55945

D.C. No.
5:20-cv-01610-AB-KES
Central District of California,
Riverside

ORDER

Before: O'SCANNLAIN, RAWLINSON, and CHRISTEN, Circuit Judges.

A review of the record demonstrates that this court lacks jurisdiction over this appeal because the district court has not issued any orders that are final or appealable. *See* 28 U.S.C. § 1291. Consequently, this appeal is dismissed for lack of jurisdiction.

All pending motions are denied as moot.

DISMISSED.

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. 5:20-cv-01610-AB-KES

ORDER TRANSFERRING ACTION
TO THE U.S. DISTRICT COURT
FOR THE WESTERN DISTRICT
OF WASHINGTON

19 Lori Anna Massey (“Plaintiff”), currently a resident of California but
20 formerly a resident of Washington, filed a pro se complaint alleging that upon
21 visiting the emergency room at Allenmore Hospital in Tacoma, Washington, on
22 April 17, 2010, (1) security guard Richard B. Gomez assaulted her, and (2) Pierce
23 County Sheriff’s Deputy Kimberly D. Klemme used excessive force to arrest her.
24 (Dkt. 1.) She brings claims under 42 U.S.C. § 1983 and tort claims against
25 Allenmore Hospital and its parent company, MultiCare Health Systems. She
26 alleges that any applicable statutes of limitation have been tolled by incapacity. (Id.
27 at 4.)

1 Plaintiff attached records to the complaint showing that she was arrested on
2 April 17, 2010, and charged with assaulting Defendant Gomez. She pled “not
3 guilty” in Tacoma Municipal Court case no. B00236039 on April 19, 2010. (Id. at
4 18.) After a mental health evaluation, on October 12, 2010, the municipal court
5 dismissed the case finding “competency restoration treatment unsuccessful or
6 unlikely to be successful.” (Id. at 20.)

7 The complaint alleges that venue is proper in the Western District of
8 Washington, the judicial district where the city of Tacoma is located.¹ (Id. at 2.)
9 This is consistent with Plaintiff’s allegations that Allenmore Hospital and
10 MultiCare Health Systems are located in Tacoma and Plaintiff was injured in
11 Tacoma. (Id. at 2-4.)

12 Venue is improper in the Central District of California, because no
13 allegations indicate that any of the Defendants reside here, that any events giving
14 rise to Plaintiff’s claims occurred here, or that any Defendants have any contacts
15 with California that would subject them to personal jurisdiction here. See generally
16 28 U.S.C. § 1391(b) (providing that venue for is proper where any defendant
17 resides, where a substantial part of the relevant events occurred, or where any
18 defendant is subject to personal jurisdiction); Goodyear Dunlop Tires Operations v.
19 Brown, 564 U.S. 915, 923 (2011) (to exercise personal jurisdiction over a
20 nonresident defendant, the defendant must have at least “minimum contacts” with
21 the state, such that the exercise of jurisdiction “does not offend traditional notions
22 of fair play and substantial justice”).

23 Transfer of the Plaintiff’s lawsuit to the appropriate judicial district, rather
24 than dismissal, is in the interests of justice. See 28 U.S.C. § 1406(a). Transfer will
25

26 ¹ The Court takes judicial notice that Tacoma is located in Pierce County,
27 Washington, and that Pierce County is in the Western District of Washington. See
28 <https://www.co.pierce.wa.us/>; 28 U.S.C. § 128(b).

1 permit the United States District Court for the Western District of Washington to
2 evaluate Plaintiff's application for a waiver of the filing fee (Dkt. 3), consider
3 Plaintiff's tolling arguments under Washington state law, and screen Plaintiff's
4 claims under 28 U.S.C. § 1915(e).

5 For these reasons, IT IS ORDERED that this action shall be transferred to the
6 United States District Court for the Western District of Washington.

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8 DATED: September 14, 2020

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10 ANDRÉ BIROTTÉ JR.
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UNITED STATES DISTRICT JUDGE

Presented By:

Karen E. Scott
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14 KAREN E. SCOTT
15 United States Magistrate Judge

Received by me 10/28/20
Due in 2 business days.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LORI ANNA MASSEY,

CASE NO. C20-5922JLR

Plaintiff,

ORDER DISMISSING
COMPLAINT

MULTICARE HEALTH SYSTEM,
et al.,

Defendants.

Before the court is Plaintiff Lori Anna Massey's complaint against Defendants MultiCare Health System and Allenmore Hospital. (Compl. (Dkt. # 16).) The court previously granted Ms. Massey's motion to proceed *in forma pauperis*. (Dkt. # 15.) For the reasons below, the court dismisses Ms. Massey's complaint (Dkt. # 16) without prejudice and with leave to amend.

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L. DISCUSSION

1 Notwithstanding the payment of any filing fee or portion thereof, a complaint filed
2 by any person proceeding *in forma pauperis* is subject to a mandatory *sua sponte* review
3 and dismissal to the extent that it (1) “is frivolous or malicious,” (2) “fails to state a claim
4 and on which relief may be granted,” or (3) “seeks monetary relief against a defendant who is
5 immune from such relief.” 28 U.S.C. § 1915(e)(2)(B)(i)-(iii); *Calhoun v. Stahl*, 254 F.3d
6 845, 845 (9th Cir. 2001) (stating that 28 U.S.C. § 1915(e)(2)(B) applies to both prisoners
7 and non-prisoners proceeding *in forma pauperis*); *Lopez v. Smith*, 203 F.3d 1122, 1127
8 (9th Cir. 2000) (“[S]ection 1915(e) not only permits but requires a district court to
9 dismiss an *in forma pauperis* complaint that fails to state a claim.”).
10

11 A *pro se* plaintiff's complaint is to be construed liberally, but it must nevertheless
12 contain factual assertions sufficient to support a facially plausible claim for relief.
13 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550
14 U.S. 544, 570 (2007)). A claim for relief is facially plausible when "the plaintiff pleads
15 factual content that allows the court to draw the reasonable inference that the defendant is
16 liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678.

17 Ms. Massey, a citizen of California, alleges that when she went to Allenmore
18 Hospital's emergency room in Tacoma, Washington to receive care, a hospital security
19 guard, a nurse, and a Pierce County Sheriff's deputy "attempted to murder" her,
20 interfered with her rights, assaulted her, and battered her, causing her serious injuries.
21 (Compl. at 2, 4-5.) She alleges that Defendants are liable for their employees' conduct

1 under the doctrine of respondeat superior for “tort claims” and for “professional
2 negligence.” (See Compl. at 6-8.)

3 Ms. Massey’s alleged injuries, however, occurred in April 2010—more than ten
4 years before she filed her complaint. (See Compl. at 4-5.) As a result, the statutes of
5 limitations for her claims have long since expired. *See* RCW 4.16.080(2) (three-year
6 statute of limitations for any action alleging “injury to the person or rights of another”);
7 RCW 4.16.100(1) (two-year statute of limitations for an action alleging assault or assault
8 and battery). Ms. Massey alleges that the statute of limitations does not bar this action
9 because there is no statute of limitation for “serious crimes such as murder, attempted
10 murder, kidnapping, etc.” (Compl. at 4.) She also alleges that the statute of limitations
11 can be “avoided or eliminated altogether” if “serious crimes and/or permanent mental or
12 physical injuries have occurred.” (*Id.*) Criminal statutes of limitations, however, do not
13 apply in this civil case, and Ms. Massey does not explain how her ability to bring a
14 lawsuit was delayed by her injuries. *See Massey v. Thomas*, No. C19-5453RBL, 2019
15 WL 2450891 (W.D. Wash. Jun. 12, 2019) (dismissing, on statute of limitations grounds,
16 claims by Ms. Massey based on conduct that allegedly occurred in 2005).

17 Because Ms. Massey’s complaint fails to state a claim on which relief may be
18 granted, dismissal without prejudice and with leave to amend is appropriate. *See Lopez*,
19 203 F.3d at 1127; *United States v. Corinthian Colleges*, 655 F.3d 984, 995 (9th Cir.
20 2011) (“Dismissal without leave to amend is improper unless it is clear, upon de novo
21 review, that the complaint could not be saved by any amendment.”).

22 //

II. CONCLUSION

Based on the foregoing, the court DISMISSES Ms. Massey's complaint (Dkt. # 16) WITHOUT PREJUDICE. If Ms. Massey chooses to file an amended complaint, she must do so within 21 days of the date of this order.

Dated this 19th day of October, 2020.

James L. Robart
JAMES L. ROBART
United States District Judge

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

10 LORI ANNA MASSEY,

11 Plaintiff,

12 v.

13 MULTICARE HEALTH SYSTEM,
14 et al.,

15 Defendants.

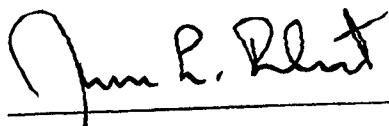
16 CASE NO. C20-5922JLR

17 ORDER DISMISSING CASE

18 On October 19, 2020, the court issued its order dismissing Plaintiff Lori Anna
19 Massey's *pro se* complaint against Defendants MultiCare Health System and Allenmore
20 Hospital without prejudice and with leave to amend. (Order (Dkt. # 17).) The court
21 ordered Ms. Massey to file an amended complaint, if any, within 21 days of the date of its
22 order. (*See id.* at 4.) The November 9, 2020 deadline for Ms. Massey to file an amended
complaint has passed, and Ms. Massey has not filed an amended complaint pursuant to
the court's order. (*See generally* Dkt.) Because Ms. Massey has not filed an amended

1 complaint that cures the deficiencies noted in the court's October 19, 2020 order, the
2 court DISMISSES Ms. Massey's complaint (Dkt. # 16) with prejudice. The clerk is
3 directed to send a copy of this order to Ms. Massey.

4 Dated this 25th day of November, 2020.

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7 JAMES L. ROBART
8 United States District Judge
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LORI ANNA MASSEY,
Plaintiff,

v.

MULTICARE HEALTH SYSTEM, et
al.,

Defendants.

JUDGMENT IN A CIVIL CASE

CASE NO. C20-5922JLR

— **Jury Verdict.** This action came before the court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

X **Decision by Court.** This action came to consideration before the court. The issues have been considered and a decision has been rendered.

THE COURT HAS ORDERED THAT

Because Plaintiff has not filed an amended complaint that cures the deficiencies noted in the court's October 19, 2020 order dismissing her complaint without prejudice and with leave to amend (*see* Dkt. # 17), the court DISMISSES this case with prejudice (*see* Dkt. # 18).

Filed this 25th day of November, 2020.

WILLIAM M. MCCOOL
Clerk of Court

s/ Ashleigh Drecktrah
Deputy Clerk

**Additional material
from this filing is
available in the
Clerk's Office.**