

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**

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

LORI ANNA MASSEY,  
Plaintiff,  
v.  
MULTICARE HEALTH SYSTEM,  
et al.,  
Defendants.

Case No. 5:20-cv-01610-AB-KES  
ORDER TRANSFERRING ACTION  
TO THE U.S. DISTRICT COURT  
FOR THE WESTERN DISTRICT  
OF WASHINGTON

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

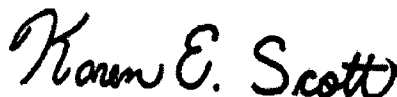
5 For these reasons, IT IS ORDERED that this action shall be transferred to the  
6 United States District Court for the Western District of Washington.

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8 DATED: September 14, 2020



ANDRÉ BIROTTE JR.  
UNITED STATES DISTRICT JUDGE

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11 Presented By:



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14 KAREN E. SCOTT  
15 United States Magistrate Judge  
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Received by me 10/28/20  
Due in 2 business days

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

LORI ANNA MASSEY,

Plaintiff,

v.

MULTICARE HEALTH SYSTEM,  
et al.,

Defendants.

CASE NO. C20-5922JLR

ORDER DISMISSING  
COMPLAINT

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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## I. DISCUSSION

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

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

Ms. Massey, a citizen of California, alleges that when she went to Allenmore Hospital’s emergency room in Tacoma, Washington to receive care, a hospital security guard, a nurse, and a Pierce County Sheriff’s deputy “attempted to murder” her, interfered with her rights, assaulted her, and battered her, causing her serious injuries. (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).

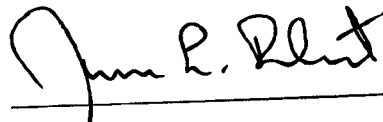
17 Because Ms. Massey’s complaint fails to state a claim on which relief may be  
18 granted, dismissal without prejudice and with leave to amend is appropriate. *See Lopez*,  
19 203 F.3d at 1127; *United States v. Corinthian Colleges*, 655 F.3d 984, 995 (9th Cir.  
20 2011) (“Dismissal without leave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

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## 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  
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.

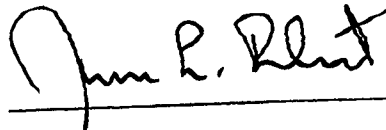
CASE NO. C20-5922JLR

ORDER DISMISSING CASE

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