

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
WASHINGTON

Nicole Carby v. City of Kennewick, Mr. Guerro (brother to
Kennewick Chief of Police), Supervisor Benton County Jail, and
Rudy Ruelas

Carby · No. 4:25-CV-05106-TOR · Decided December 16, 2025

SUMMARY

The U.S. District Court for the Eastern District of Washington considers the City of Kennewick’s motion to dismiss Nicole Carby’s pro se complaint asserting constitutional, 42 U.S.C. § 1983, Bivens, and Washington-law claims. The court concludes that the complaint fails to state cognizable claims, that service of process was insufficient and untimely, and that several asserted statutory claims lack adequate factual or legal support. The motion is granted in part, and Carby’s claims against the City of Kennewick are dismissed without prejudice, without leave to amend.

CASE DETAILS

COURT	United States District Court for the Eastern District of Washington
JURISDICTION	U.S. District Court for the Eastern District of Washington
DECIDED	December 16, 2025
DOCKET	4:25-CV-05106-TOR
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiff proceeding pro se brought claims concerning alleged constitutional violations, unlawful detention, failure to provide Miranda warnings, denial of a jury trial, municipal liability under 42 U.S.C. § 1983, and various Washington-law theories. The City of Kennewick moved to dismiss for failure to state a claim, insufficient service of process, failure to plead municipal liability under Monell, and failure to satisfy pre-filing requirements.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts well-pleaded factual allegations as true, construes them in the light most favorable to the nonmoving party, and asks whether the complaint contains sufficient factual matter to state a facially plausible claim. Legal conclusions and conclusory assertions are not accepted as factual allegations. For

	challenged service, the plaintiff bears the burden of establishing proper service.
PRECEDENTIAL VALUE	unpublished
PARTIES	Nicole Carby v. City of Kennewick, Mr. Guerro (brother to Kennewick Chief of Police), Supervisor Benton County Jail, Rudy Ruelas, Current Benton County Jail Supervisor

TOPICS

motions to dismiss

service of process

section 1983

municipal liability

civil procedure

PRACTICE AREAS

civil procedure

civil rights

municipal liability

constitutional law

remedies

QUESTIONS PRESENTED

1. Whether the complaint stated a plausible claim for relief under Rule 12(b)(6), including claims under Bivens, 42 U.S.C. § 1983, the federal Constitution, and Washington law.
2. Whether Carby adequately pleaded municipal liability against the City of Kennewick under § 1983 and Monell.
3. Whether Carby's November 6, 2021 unlawful-detention claim was barred by the applicable statute of limitations.
4. Whether the alleged Miranda, due-process, jury-trial, unlawful-arrest, and Washington-law claims were pleaded with sufficient factual detail and legal support.
5. Whether service by certified or registered mail satisfied Federal Rule of Civil Procedure 4(j)(2) and Washington service requirements, and whether dismissal without prejudice was appropriate.

HOLDINGS

1. The complaint failed to state a claim because it consisted largely of conclusory legal assertions, statutory citations, and generalized allegations that did not identify the specific facts supporting each claim or provide fair notice of the claims against the City.
2. The complaint failed to state a Bivens claim against the City because it did not identify the federal agent or constitutional provision involved, and the City is not a federal agency and does not employ federal agents.
3. Carby failed to state a § 1983 claim against the City because she did not allege facts showing that a municipal policy, custom, failure to train or supervise, or final-policymaker decision directly caused a deprivation of federal rights.
4. The claim based on the November 6, 2021 detention was time-barred because Washington's three-year limitations period expired on November 6, 2024. The claim based on the August 20, 2022 detention was filed before the limitations period expired.

5. The complaint failed to state a § 1983 claim based on the alleged failure to provide Miranda warnings or a telephone call and failed to plead sufficient facts supporting a due-process violation.
6. The jury-trial allegation failed to state a claim because the complaint did not establish that Carby timely requested a jury trial, that she had a jury-trial right in the referenced proceeding, or what specific conduct violated that right; moreover, the identified remedy generally would be vacatur or a new trial rather than damages.
7. Although an unlawful-arrest claim under § 1983 requires an arrest without probable cause or other legal justification, Carby's allegations were insufficiently developed to state a plausible claim against the City.
8. The Washington-law allegations failed because Carby pleaded legal conclusions without sufficient facts, cited statutes that did not create the asserted private claims or whose requirements she did not satisfy, and did not clarify how the City was responsible for allegations concerning other entities or actors.
9. Service by certified or registered mail did not satisfy Federal Rule of Civil Procedure 4(j)(2) or Washington law because Carby did not personally deliver the summons and complaint to the City's chief executive officer or a person authorized under Washington law.
10. The court denied leave to amend because amendment would be futile.
11. The court warned that refiling could create claim-splitting or preclusion issues because Carby's other action appeared to involve similar claims and facts, but it did not adjudicate those issues.

KEY QUOTATIONS

“a complaint must contain sufficient factual matter, accepted as true, ‘to state a claim to relief that is plausible on its face.’” (at 2)

“a mere listing of statutes coupled with conclusory and generalized assertions, fails to clarify the specific factual allegations supporting each element of her claims.” (at 3)

“a defendant is not served within 90 days after the complaint is filed, the court--on motion or on its own after notice to the plaintiff--must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” (at 11)

“if (a) the party that had to be served personally received actual notice, (b) the defendant would suffer no prejudice from the defect in service, (c) there is a justifiable excuse for the failure to serve properly, and (d) the plaintiff would be severely prejudiced if his complaint were dismissed.” (at 12)

FACTUAL BACKGROUND

Carby alleged that she was unlawfully detained on August 20, 2022, and November 6, 2021, that officials violated her Miranda and due-process rights, and that jail guards and inmates assaulted her, causing serious injuries. She also alleged denial of a jury trial, falsification of documents, election-related whistleblowing, child-trafficking and abuse allegations, and other constitutional and Washington-law violations. Carby served the City by registered or certified mail and asserted that actual notice and substantial compliance made service sufficient.

PROCEDURAL HISTORY

Carby filed the complaint on August 19, 2025. The City of Kennewick moved to dismiss on October 2, 2025; Carby opposed the motion, and the City filed a reply. The court granted the motion in part and dismissed Carby's claims against the City without prejudice, directing entry of judgment of dismissal.

DISPOSITION

dismissed

CASES CITED

- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 545, 555-56, 570 (2007)
- Papasan v. Allain, 478 U.S. 265, 286 (1986)
- Kwan v. SanMedica Int'l, 854 F.3d 1088, 1096 (9th Cir. 2017)
- Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011)
- United States v. United Healthcare Ins. Co., 848 F.3d 1161, 1180 (9th Cir. 2017)
- Depot, Inc. v. Caring for Montanans, Inc., 915 F.3d 643, 652-53 (9th Cir. 2019)
- Interpipe Contracting, Inc. v. Becerra, 898 F.3d 879, 886 (9th Cir. 2018)
- Carlson v. Green, 446 U.S. 14, 18 (1980)
- Horton by Horton v. City of Santa Maria, 915 F.3d 592, 599, 602-03 (9th Cir. 2019)
- Board of County Commissioners v. Brown, 520 U.S. 397, 415 (1997)
- Pearson v. Callahan, 555 U.S. 223, 232 (2009)
- Monell v. Department of Social Services of City of New York, 436 U.S. 658, 694 (1978)
- Wallace v. Kato, 549 U.S. 384, 387, 397 (2007)
- Vega v. Tekoh, Vega v. Tekoh, 597 U.S. 134, 152 (2022)
- Khoja v. Orexigen Therapeutics, Inc., 899 F.3d 988, 998 (9th Cir. 2018)
- Mondor v. United States District Court for the Central District of California, 910 F.2d 585, 587 (9th Cir. 1990)
- Dubner v. City & County of San Francisco, 266 F.3d 959, 964-65 (9th Cir. 2001)
- Bennett v. Hardy, 113 Wash. 2d 912, 921 (1990)
- Carmody v. Trianon Co., 7 Wash. 2d 226, 234 (1941)
- Borzeka v. Heckler, 739 F.2d 444, 447 (9th Cir. 1984)
- Brockmeyer v. May, 383 F.3d 798, 801 (9th Cir. 2004)
- S.J. v. Issaquah School District No. 411, 470 F.3d 1288, 1293 (9th Cir. 2006)
- Benny v. Pipes, 799 F.2d 489, 492 (9th Cir. 1986)
- Reyes v. Fircrest School, No. C11-0778JLR, 2012 WL 3144915, at *2-3 (W.D. Wash. Aug. 1, 2012)
- Meadowdale Neighborhood Committee v. City of Edmonds, 27 Wash. App. 261, 267 (1980)
- Nitardy v. Snohomish County, 105 Wash. 2d 133, 134-35 (1986)

- United States v. 2,164 Watches, More or Less Bearing a Registered Trademark of Guess?, Inc., 366 F.3d 767, 773 (9th Cir. 2004)
- Novak v. United States, 795 F.3d 1012, 1020 (9th Cir. 2015)
- Mendoza v. Amalgamated Transit Union International, 30 F.4th 879, 886 (9th Cir. 2022)
- Adams v. California Department of Health Services, 487 F.3d 684, 688 (9th Cir. 2007)

OPINION

1 FILED IN THE U.S. DISTRICT COURT EASTERN DISTRICT OF WASHINGTON 2 Dec 16,
2025 3 SEAN F. MCAVOY, CLERK 4 5 UNITED STATES DISTRICT COURT EASTERN
DISTRICT OF WASHINGTON 6 7 NICOLE CARBY, NO. 4:25-CV-05106-TOR 8 Plaintiff,
ORDER ON DEFENDANT CITY OF 9 v. KENNEWICK’S MOTION TO DISMISS 10 CITY OF
KENNEWICK, MR. GUERRO (brother to Kennewick 11 Chief of Police), Supervisor Benton
County Jail, and RUDY RUELAS, 12 Current Benton County Jail Supervisor 13 Defendants.

14 BEFORE THE COURT is Defendant City of Kennewick’s Motion to 15 Dismiss (ECF No. 9).
This matter was submitted for consideration without oral 16 argument. The Court has reviewed the
record and files herein and is fully 17 informed.

For the reasons discussed below, Defendant City of Kennewick’s 18 Motion to Dismiss (ECF No.
9) is GRANTED in part. 19 BACKGROUND 20 On August 19, 2025, Plaintiff filed a complaint
alleging violations under the 1 sixth and seventh amendments for her right to a jury trial. ECF No.
1 at 4. 2 Additionally, Plaintiff cites numerous Washington statutes in support of her 3 allegations,
including RCW 9A.28.04, 10.31.100, 42.40, 26.20.030, 26.44, and 4 26.44.010.

ECF No. 1 at 4. Plaintiff asserts that she is a whistleblower concerning 5 alleged fraudulent
elections within the City of Kennewick and Benton County, of 6 which officials in those local
governments were allegedly aware. ECF No. 1 at 4. 7 Additionally, Plaintiff claims she was
illegally detained on November 6, 2021. 8 ECF No. 1 at 5. Plaintiff recognizes this may be outside
the statute of limitations 9 but wanted a pattern to be recognized.

Id. Moreover, Plaintiff claims that she is 10 proceeding pro se because the attorneys she contacted
are conflicted out of 11 representation with either the city, county, or state. ECF No. 1 at 6. 12
Furthermore, Plaintiff claims City of Kennewick violated her Miranda and 13 due process rights
and that they falsified documents. ECF No. 1 at 4-6. Plaintiff 14 asserts that the falsification of
documents led to this “situation” and began fourteen 15 years ago.

Id. Plaintiff states when she was illegally detained that she was not 16 read her Miranda rights,
was not booked, and did not get a phone call. She was in 17 Benton County Jail and assaulted by
the jail guards and a few inmates that left her 18 in the Kadlec emergency room for two days. ECF
No. 1 at 5. This left her with 19 eight severe injuries including a hematoma.

ECF No. 1 at 6. As a result of the 20 illegal detainment, Plaintiff alleges she has PTSD and is receiving mental health 1 treatments. ECF No. 1 at 6. Moreover, Plaintiff was denied a right to a jury trial 2 for her trial that started on February 2, 2025, in Benton County. ECF No. 1 at 3. 3 Also, Plaintiff claims that both municipalities manipulated the State 4 Supreme Court regarding their ruling on prayer in public schools which impacted 5 her and her children.

Id. Plaintiff alleges a Bivens claim against federal officials 6 and a 42 U.S.C. § 1983 claim. ECF No. 1 at 3. Plaintiff was aiming to speak at 7 Benton Franklin Town Hall but she was illegally detained on the same day she had 8 a settlement conference. Id. Plaintiff continues to allege CPS/DCYF for crimes of 9 trafficking children and that many government officials know about it.

ECF No. 1 10 at 7. 11 Plaintiff is open to mediation instead of a jury trial but only if specific things 12 are in writing to pursue federal prosecution. Id. Furthermore, Plaintiff is 13 requesting \$20,000,000 from the city and county for their crimes against her and 14 her children. Id. 15 On October 2, 2025, Defendant City of Kennewick filed a Motion to 16 Dismiss.

ECF No. 9. Defendant asserts that the Complaint should be dismissed for 17 failure to state a claim, insufficient service of process, failure to plead liability 18 under Monell, and failure to satisfy mandatory pre-filing requirements. ECF No. 9. 19 On November 10, 2025, Plaintiff filed a response in opposition of the 20 motion. ECF No. 13.

In her response, Plaintiff argues that she met the 1 requirements under Federal Rule of Civil Procedure Rule 8 and cites authority 2 requiring less stringent requirements for pro se litigants. ECF No. 12 at 2. 3 Plaintiff argues that her complaint is sufficient in facts and legal authority and 4 provides locations, times, and actors. Id. Plaintiff claims that Defendant stating 5 her complaint is incoherent is not supported and only conclusory.

Id. 6 Furthermore, she uses Washington authority to state that her pleadings only need to 7 give fair notice of the claims and grounds. Id. Plaintiff shows that the prefiling 8 requirement cited by Defendant is for claims against the state. ECF No. 12 at 4. 9 Plaintiff recognizes that even though there is a statute for pre-filing requirement 10 against local governments for state tort claims, she states she is alleging her claims 11 are under § 1983.

Id. Plaintiff claims that service is upheld when the defendant 12 receives actual notice and is not prejudiced. Id. 13 Per LCivR 7(c)(2)(A), Plaintiff's response was due on November 3, 2025. 14 On November 12, 2025, Defendant City of Kennewick filed a reply arguing 15 Plaintiff's claims should be dismissed for failure to follow the rule. ECF No. 14. 16 DISCUSSION 17 A. Failure to State a Claim 18 For a plaintiff to survive a motion to dismiss under Rule 12(b)(6), "a 19 complaint must contain sufficient factual matter, accepted as true, 'to state a claim 20 to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) 1 (quoting *Bell Atl.*

Corp. v. Twombly, 550 U.S. 544, 570 (2007)). This requires 2 more than a simple “formulaic recitation of a cause of action’s elements.” 3 Twombly, 550 U.S. at 545. This also requires facts to support legal conclusions 4 beyond simply stating conclusory legal statements. Iqbal, 556 U.S. at 663; 5 Twombly, 550 U.S. at 555 (citing Papasan v. Allain, 478 U.S. 265, 286 (1986)) 6 (stating that for a motion to dismiss, courts are not obligated to accept alleged legal 7 conclusions as true factual allegations); Kwan v. SanMedica Int’l, 854 F.3d 1088, 8 1096 (9th Cir.

2017) (stating legal conclusions must be supported by factual 9 allegations). Essentially, it must give fair notice to the defendant to allow them to 10 prepare a defense. Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011). 11 However, a court must construe facts in the light most favorable to the 12 opposing party of the motion and a court must take the allegations of the non- 13 moving party as true.

Twombly, 550 U.S. at 556. In addition, a plaintiff must 14 “nudge[] their claims across the line from conceivable to plausible” otherwise 15 plaintiff’s complaint shall be dismissed. Twombly, 550 U.S. at 570. In other 16 words, the “plausibility standard requires more than ‘a sheer possibility that a 17 defendant has acted unlawfully’ but ‘is not akin to a probability standard.’” Kwan 18 v. SanMedica Int’l, 854 F.3d 1088, 1096 (9th Cir.

2017) (quoting Turner v. City & 19 Cnty. of San Francisco, 788 F.3d 1206, 1210 (9th Cir. 2015)). 20 Defendant claims that Plaintiff fails to a state claim. ECF No. 9. Defendant 1 claims that Plaintiff’s pleading is confusing and for both reasons warrants 2 dismissal. ECF No. 9 at 2-5.

The Court agrees. 3 Plaintiff does not allege elements or enough facts to support any one of her 4 claims. Plaintiff alleges some conclusory law statements, legal citations, and 5 elements with some supporting facts.

The Court cannot determine the nature of 6 Plaintiff’s allegations because a mere listing of statutes coupled with conclusory 7 and generalized assertions, fails to clarify the specific factual allegations 8 supporting each element of her claims. United States v. United Healthcare Ins. Co., 9 848 F.3d 1161, 1180 (9th Cir. 2016) (“Broad allegations that include no 10 particularized supporting detail do not suffice.”); Kwan v. SanMedica Int’l, 854 11 F.3d 1088, 1096 (9th Cir.

2017) (stating legal conclusions must be supported by 12 factual allegations). In other words, the Court cannot decipher the events and 13 specific assertions. Nonetheless, Plaintiff essentially does not allege sufficient 14 facts to “support a cognizable legal theory.” Depot, Inc. v. Caring for Montanans, 15 Inc., 915 F.3d 643, 652–53 (9th Cir. 2019) (quoting Interpipe Contracting, Inc. v. 16 Becerra, 898 F.3d 879, 886 (9th Cir.

2018)). This also supports dismissal for 17 failure to state a claim. Depot, Inc., 915 F.3d at 652–53. Even more, the Court 18 cannot determine whether certain claims are federal or state law claims. 19 The Court addresses the claims in turn. Any allegations not expressly 20 admitted or denied are

not addressed because they fail to assert a cognizable legal 1 theory or cause of action against this Defendant, or because such allegations are 2 asserted against other defendants.

3 Plaintiff alleges a Bivens violations but does not allege which specific 4 constitutional violation the claim is alleged under. ECF No. 1 at 3. “Bivens 5 established that the victims of a constitutional violation by a federal agent have a 6 right to recover damages against the official in federal court despite the absence of 7 any statute conferring such a right.” *Carlson v. Green*, 446 U.S. 14, 18 (1980).

8 Plaintiff does not allege the identity of the federal agent who purportedly violated 9 her rights, nor does she specify the constitutional provision under which the 10 alleged violation arises for this Bivens claim.

Moreover, the City of Kennewick is 11 not a federal agency and does not employ federal agents. Accordingly, any claim 12 premised on federal agency action, or the conduct of federal agents is inapplicable 13 and cannot be asserted against the City of Kennewick.

Therefore, Plaintiff fails to 14 state a claim for a Bivens violation. 15 B. 42 U.S.C. § 1983 16 Under 42 U.S.C. § 1983, municipalities may be liable “for constitutional 17 injuries pursuant to (1) an official policy; (2) a pervasive practice or custom; (3) a 18 failure to train, supervise, or discipline; or (4) a decision or act by a final 19 policymaker.” *Horton by Horton v. City of Santa Maria*, 915 F.3d 592, 602–03 20 (9th Cir.

2019). This requires the plaintiff showing that there was “deliberate 1 action attributable to the municipality [that] directly caused a deprivation of federal 2 rights.” *Horton*, 915 F.3d at 603 (quoting *Bd. of Cty. Comm'rs v. Brown*, 520 U.S. 3 397, 415 (1997)). Additionally, if a plaintiff brings § 1983 claims against an 4 individual officer, it must exhibit two things. “(1) a federal right has been violated 5 and (2) the right was clearly established at the time of the violation.” *Horton*, 915 6 F.3d at 599 (quoting *Pearson v. Callahan*, 555 U.S. 223, 232 (2009)).

However, 7 they are not liable under respondeat superior. *Id.* at 603. Specifically, “a local 8 government may not be sued under § 1983 for an injury inflicted solely by its 9 employees or agents. *Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 10 658, 694 (1978). 11 Defendant claims that Plaintiff’s claim cannot survive under *Monell*. ECF 12 No. 9 at 5; *Monell*, 436 U.S. at 694.

If Plaintiff is alleging respondeat superior, 13 then Defendant is correct because § 1983 bars that ability. Moreover, as required 14 under § 1983, Plaintiff alleges failure to train and suggests a custom or municipal 15 policy but does not actually allege one. ECF No. 1 at 3. Plaintiff does not provide 16 facts about these injuries or who specifically is responsible for them.

The same 17 deficiencies exist with respect to any § 1983 claims Plaintiff purports to assert. 18 Plaintiff does not meet the element requirements to plead under § 1983. Therefore, 19 Plaintiff fails to state claim for any claims under § 1983. Regardless, Plaintiff fails 20 to state a claim for additional reasons. 1 First, section 1983 claims “looks to the law of the State in which the cause 2 of action arose” to determine the statute of limitations length.

Wallace v. Kato, 3 549 U.S. 384, 387 (2007). Specifically, the state’s statute of limitations for 4 personal injury torts. Id. (citations omitted). Washington’s personal injury tort 5 statute of limitations is within three years. RCW 4.16.080. Additionally, for false 6 arrests, it “begins to run at the time the claimant becomes detained pursuant to 7 legal process.” Wallace, 549 U.S. at 397.

8 Plaintiff alleges illegal detainment occurred on August 20, 2022, and 9 November 6, 2021. ECF No. 1 at 5. The August 20, 2022, allegation statute of 10 limitations expired on August 20, 2025. Plaintiff filed this claim on August 19, 11 2025.

Therefore, this particular allegation is not barred by the statute of 12 limitations. However, Plaintiff’s November 6, 2021, claim is barred because the 13 statute of limitations for that claim expired on November 6, 2024. 14 Plaintiff alleges Miranda rights and due process violations for not being able 15 to speak to her attorney and not receiving a phone call.

ECF No. 1 at 4-5. 16 However, the remedy for these violations is not applicable in a civil action under § 17 1983. ECF No. 1 at 4. In other words, “a violation of Miranda is not itself a 18 violation of the Fifth Amendment and” Miranda does not “confer a right to sue 19 under § 1983.” Vega v. Tekoh, 597 U.S. 134, 152 (2022). Plaintiff cannot sue 20 under § 1983 because Miranda does not confer that right.

Vega v. Tekoh, 597 U.S. 1 134, 152 (2022). Simply, not being read your Miranda rights does not 2 automatically constitute a violation. 3 Regardless, Plaintiff does not state facts about when she asked for an 4 attorney, asked for a phone call, who denied these requests, or any other details. 5 Additionally, the Court does not recognize sufficient facts or elements for any due 6 process violations either.

The complaint does not give fair notice to Defendant, as 7 it is unclear what actions or omissions allegedly gave rise to the asserted 8 violations. For these reasons, these allegations fail to state a claim. 9 Plaintiff claims that she was denied a jury trial. ECF No. 1 at 4. Plaintiff 10 references her case but when considering the sufficiency of a complaint for a 11 motion to dismiss, the Court generally cannot consider anything outside the 12 pleadings.

Khoja v. Orexigen Therapeutics, Inc., 899 F.3d 988, 998 (9th Cir. 13 2018) (stating “district courts may not consider material outside the pleadings 14 when assessing the sufficiency of a complaint under Rule 12(b)(6) of the Federal 15 Rules of Civil Procedure.”) (citation omitted). Again, it is

unclear the specifics of 16 this legal conclusion. There is no indication that she timely asked for a jury trial or 17 that she did have that right in the first place.

A legal conclusion is not enough to 18 survive dismissal. 19 It is also unclear if Plaintiff aims to allege this as a § 1983 claim. 20 Furthermore, the remedy for a violation of a right to jury trial is usually vacating 1 the order denying the party's request for jury trial or vacating the judgment to 2 allow for a new trial. See *Mondor v. U.S. Dist. Ct. for Cent.*

Dist. of California, 3 910 F.2d 585, 587 (9th Cir. 1990). However, Plaintiff requests damages instead. 4 ECF No. 1 at 5. For these reasons, Plaintiff fails to state a claim upon which relief 5 may be granted. 6 Under § 1983, to make a claim for an unlawful arrest as a violation of the 7 Fourth Amendment, the arrest must be without probable cause or another 8 justification.

Dubner v. City & Cnty. of San Francisco, 266 F.3d 959, 964 (9th Cir. 9 2001). This can be proven by stating that there was not a valid arrest warrant when 10 the arrest occurred. *Id.* at 965. The plaintiff must prove that there was not 11 probable cause. *Id.* Then the burden shifts to the defendant. *Id.* Plaintiff states 12 the arrest was illegal, and there was not probable cause or a warrant.

ECF No. 1 at 13 4. 14 C. Washington Claims 15 Under the Washington Constitution, an unlawful arrest claim or 16 unreasonable search and seizure violation is similar. RCW 10.31.100. Plaintiff 17 does not allege enough details regarding this claim. It is a legal conclusion without 18 sufficient facts. There must be enough sufficient facts to push these allegations to 19 plausible.

Twombly, 550 U.S. at 570. Moreover, there is not enough specification 20 to put Defendant on notice of the issue. *Starr v. Baca*, 652 F.3d 1202, 1216 (9th 1 Cir. 2011) (stating the claims must give fair notice to the defendant to allow them 2 to prepare a defense or respond accordingly). Plaintiff alleges that the incident 3 occurred twice but does not clarify whether one or both incidents occurred at her 4 residence on the specified date, whether the same individual was involved, or 5 whether the incidents arose under the same charges.

Therefore, these facts do not 6 support a claim. 7 Furthermore, Plaintiff alleges a claim under RCW 9A.28.04, however, that is 8 not a statute. The Court assumes Plaintiff meant to allege a claim of criminal 9 conspiracy under RCW 9A.28.040, however, this is under the Washington 10 Criminal Code. While some statutes under the Criminal Code create a private right 11 of action for damages, this must be explicitly stated or implied by passing the 12 Bennet test.

Bennett v. Hardy, 113 Wash. 2d 912, 921 (1990). Plaintiff has not 13 alleged the elements of these crimes beyond legal conclusions or addressed 14 whether this Court can consider these claims at all. 15 For similar reasons, RCW 26.20.030, 26.44, and 26.44.010 fails to state a 16 claim because Plaintiff alleges legal conclusions and insufficient facts. These 17 statutes include abuse and neglect statutes regarding children.

RCW 26.20.030; 18 26.44,.010. Plaintiff alleges crimes against children by the Mormon Church, but 19 this is not in the control of Defendant City of Kennewick. ECF No. 1 at 5. 20 Furthermore, Plaintiff alleges trafficking of children by CPS/DCYF, but it is 1 unclear if Plaintiff is trying to lodge these claims against Defendant City of 2 Kennewick or is generally making irrelevant allegations against a defendant not in 3 this case.

ECF No. 1 at 5. In other words, it is unclear how this defendant is 4 responsible for these allegations. For these reasons, these allegations fail to state a 5 claim upon which relief may be granted. 6 Plaintiff cites RCW 42.40 as one of her claims. ECF No. 1 at 4. Plaintiff 7 alleges she is a whistleblower for fraudulent elections in the City of Kennewick 8 and Benton County.

ECF No. 3 at 4. This alleged chapter is Washington's State 9 Employee Whistleblower Protection. RCW 42.40.010-910. However, this 10 requires Plaintiff to be some form of a state employee, and a whistleblower as 11 defined under RCW 42.40.020. RCW 42.40.020(2), (10)(a).

However, Plaintiff 12 has not alleged any facts for either of these requirements. ECF No. 1. 13 Defendant states that Plaintiff did not adhere to the filing requirements for 14 negligence against a municipal entity or personnel under RCW 4.92.100. ECF No. 15 9 at 4-5. This statute is for claims against the state of Washington; however, RCW 16 4.96.020 is similar and is for tort claims against a municipal entity or personnel.

17 RCW 4.96.020 requires Plaintiff to present all claims against the local entity to the 18 agent by delivering a standard claim form, to them either in person or by mail, with 19 return receipt requested. RCW 4.96.020(2). An action must not be commenced 20 against any local government entity, officer, employee, or volunteer until sixty 1 days after presentment of the claims.

RCW 4.96.020(4). As of now, Plaintiff does 2 not provide any attachments or facts that this was presented to the agent, as 3 required under RCW 4.96.020(2). RCW 4.96.020(2). Plaintiff sent her summons 4 by registered mail, but this is not the standard claim form as described in RCW 5 4.96.020. ECF Nos. 4; 11. 6 Plaintiff alleges guards assaulted her and that she received specific injuries 7 and was left in the emergency room.

ECF No. 1 at 6. However, Plaintiff states in 8 her reply that she is not alleging state tort claims. ECF No. 12 at 3. However, 9 assault is a civil tort claim. *Carmody v. Trianon Co.*, 7 Wash. 2d 226, 234 (1941) 10 (assault and battery cause physical injuries that can result in an award of damages 11 from a civil case). So, Plaintiff either abandons this claim in her reply or must 12 comply with the state pre-filing procedures under RCW 4.96.020.

13 Similarly, Plaintiff alleges Defendant falsified documents, but it is a legal 14 conclusion. ECF No. 1 at 6. Plaintiff does not support this claim with facts about 15 any details or elements for this claim. Additionally, Plaintiff alleges claims about 16 a "mask mandate" but it is unclear what legal authority provides a claim for this 17 assertion. ECF No. 1 at 5.

18 The Court cannot establish the “plausibility” requirement because the Court 19 cannot decipher necessary specifics to consider the complaint. Twombly, 550 U.S. 20 at 570 (a plaintiff must “nudge[] their claims across the line from conceivable to 1 plausible”). Plaintiff asserts many legal conclusions without sufficient facts to 2 determine that these claims are plausible.

For these reasons, Plaintiff fails to state 3 a claim and Plaintiff’s claim against Defendant City of Kennewick are dismissed. 4 D. Insufficient Service of Process 5 Federal Rule of Civil Procedure Rule 4 provides the requirements to serve 6 proper service. FED. R. CIV. P. 4. This rule is flexible and should be liberally 7 construed. *Borzeka v. Heckler*, 739 F.2d 444, 447 (9th Cir.

1984) (citation 8 omitted). Rule 4(j)(2) explains the requirements to properly serve process to a 9 state government organization, a state or municipal corporation. FED. R. CIV. P. 10 4(j)(2). Under this rule, to properly serve process, the person must either: “(A) 11 deliver[] a copy of the summons and of the complaint to its chief executive officer; 12 or (B) serv[e] a copy of each in the manner prescribed by that state's law for 13 serving a summons or like process on such a defendant.” FED.

R. CIV. P. 4(j)(2). 14 Under Washington State law, service is proper against a town or incorporated city 15 in the State of Washington if the summons is served “to the mayor, city manager, 16 or, during normal office hours, to the mayor's or city manager's designated agent or 17 the city clerk thereof. RCW 4.28.080(2). When service is challenged, then 18 Plaintiff has the burden to establish that service was proper.

Brockmeyer v. May, 19 383 F.3d 798, 801 (9th Cir. 2004). 20 1 Defendant claims Plaintiff insufficiently serviced process. ECF No. 9 at 6. 2 On August 29, 2025, Plaintiff filed a summons returned executed for both 3 Defendants for registered mail. ECF No. 4.

On November 10, Plaintiff filed a 4 proof of service for both Defendants. ECF No. 11. This proof of service states 5 that the mail was returned with receipt and that both Defendants signed it on 6 August 25, 2025. ECF No. 11.

However, the receipt of the mail is not attached to 7 the proof of service, nor does it specify exactly who received the mail. ECF No. 8 11. 9 Plaintiff failed to properly serve process. Plaintiff did not deliver a copy of 10 the summons or complaint to the chief executive officer of City of Kennewick. 11 Plaintiff also did not properly serve summons or the complaint under Washington 12 law.

Plaintiff did not personally serve summons to any of the potentially required 13 people listed in the statute. Instead, Plaintiff used certified mail to serve process. 14 ECF Nos. 4; 11. This does not comply with the Federal or Washington rules and 15 therefore, is insufficient service. 16 Under Rule 4(m), when “a defendant is not served within 90 days after the 17 complaint is filed, the

court--on motion or on its own after notice to the plaintiff-- 18 must dismiss the action without prejudice against that defendant or order that 19 service be made within a specified time.” FED.

R. CIV. P. 4(m). When service is 20 insufficient, “the district court has discretion to dismiss an action or to quash 1 service.” S.J. v. Issaquah Sch. Dist. No. 411, 470 F.3d 1288, 1293 (9th Cir. 2006). 2 However, if a plaintiff shows good cause for the failure, then the Court must 3 extend the time for service. FED. R. CIV. P. 4(m). 4 Plaintiff’s Complaint was filed on August 19, 2025.

ECF No. 1. That is 119 5 days from the date of filing to today, December 16, 2025. Plaintiff states they 6 served process but does not provide reasons for this failure. ECF No. 12 at 3. 7 Plaintiff requests additional time but did not provide good cause for the failure 8 beyond stating it is sufficient. ECF No. 12 at 3-4.

Therefore, good cause was not 9 shown. 10 However, Plaintiff does use the rule of substantial compliance and actual 11 notice to request the Court to recognize substantial compliance of service. ECF 12 No. 12 at 3-4. Plaintiff cites Benny v. Pipes, 799 F.2d 489, 492 (9th Cir. 1986). 13 Id. While substantial compliance is the rule for sufficient notice, there is an 14 exception to sufficient notice.

Dismissal is not warranted “if (a) the party that had 15 to be served personally received actual notice, (b) the defendant would suffer no 16 prejudice from the defect in service, (c) there is a justifiable excuse for the failure 17 to serve properly, and (d) the plaintiff would be severely prejudiced if his 18 complaint were dismissed.” Borzeka v. Heckler, 739 F.2d 444, 447 (9th Cir.

19 1984). Plaintiff has not provided a justifiable excuse for the failure to properly 20 effect service, offering only the conclusory assertion that she did so and 1 substantially complied. ECF No. 9 at 3-4. 2 Regardless, Plaintiff must still prove that she substantially complied with 3 Rule 4 even if there is actual notice. Specifically, under Rule 4(j)(2), service by 4 certified mail is not sufficient.

Reyes v. Fircrest Sch., No. C11-0778JLR, 2012 5 WL 3144915, at *3 (W.D. Wash. Aug. 1, 2012) (“certified mail is not sufficient 6 under either prong of Rule 4(j)(2)”). While in Reyes, the requisite Washington 7 state law was for service upon the Attorney General, the similarity shows that 8 certified mail is not proper under RCW 4.28.080. Id. Furthermore, Reyes 9 recognizes that another Washington District Court case recognized that the 10 reasoning in Borzeka for adopting strict compliance for service upon the United 11 States is applicable to service upon local governments.

Reyes v. Fircrest Sch., No. 12 C11-0778JLR, 2012 WL 3144915, at *2 (W.D. Wash. Aug. 1, 2012); Borzeka v. 13 Heckler, 739 F.2d 444, (9th Cir. 1984). 14 Even more, under Washington case law, the appellate court held that strict 15 compliance with service requirements against local

governments or municipalities 16 is the applicable rule. *Meadowdale Neighborhood Comm. v. City of Edmonds*, 27 17 Wash. App.

261, 267 (1980) (“The foregoing authorities illustrate that in actions 18 involving municipalities, strict compliance with the statutory requirements of 19 service of process is a prerequisite to the court's acquiring jurisdiction over a 20 city.”).

The Washington Supreme Court reiterated this when stating the 1 importance of the legislature to name a specific person to receive the summons and 2 complaint for that requisite government body. *Nitardy v. Snohomish Cnty.*, 105 3 Wash. 2d 133, 134–35 (1986). Process is insufficient and this further supports 4 dismissal.

However, dismissal for untimely service must be a dismissal without 5 prejudice. *United States v. 2,164 Watches, More or Less Bearing a Registered 6 Trademark of Guess?, Inc.*, 366 F.3d 767, 773 (9th Cir. 2004) (citation omitted). 7 The Court does not grant leave to amend because Plaintiff cannot amend her 8 complaint to allege facts to fix insufficient process or create private rights of 9 actions under some of these claims.

Additionally, Plaintiff is lodging complaints 10 against Defendant City of Kennewick when it appears some of these claims cannot 11 be lodged against this defendant because they cannot possibly be liable or the 12 cause of some of these allegations.

However, Plaintiff did not make it clear what 13 claims are against which defendants. In other words, amendment to allege specific 14 facts would be futile. *Novak v. United States*, 795 F.3d 1012, 1020 (9th Cir. 2015) 15 (“Futility alone can justify a court's refusal to grant leave to amend.”). 16 E. Claim-splitting 17 Plaintiffs “generally have no right to maintain two separate actions involving 18 the same subject matter at the same time in the same court and against the same 19 defendant.” *Mendoza v. Amalgamated Transit Union Int'l*, 30 F.4th 879, 886 (9th Cir.

2022) (quoting *Adams v. California Dep't of Health Servs.*, 487 F.3d 684, 688 (9th Cir. 2007)) (overturned for other reasons) (internal quotation omitted). To 2 || determine whether claim splitting is present, the court considers “if the second suit involves (1) the same causes of action as the first; and (2) the same parties or their 4|| privies.” *Mendoza v. Amalgamated Transit Union Int'l*, 30 F.4th 879, 886 (9th Cir.

2022) (citation omitted). 6 The Court recognizes the defendants in both of Plaintiff's cases (this case 7\| and 4:25-CV-05105-TOR) have a few different defendants, however, Plaintiff 8 || appears to allege many similar claims and facts. If Plaintiff decides to refile, the Court realizes this may create issues of claim splitting or preclusion. 10}} **ACCORDINGLY, IT IS HEREBY ORDERED:** 11 Defendant's Motion to Dismiss (ECF No. 9) is GRANTED in part.

12 Plaintiff's claims against Defendant City of Kennewick are DISMISSED 13 without prejudice.
14 The District Court Executive is directed to enter this Order, enter judgment of dismissal, and
furnish copies to counsel. 16 DATED December 16, 2025. <> United States District Judge 19 20
ORDER ON DEFENDANT CITY OF KENNEWICK'S MOTION TO

Retrieved from lawtools.ai · <https://lawtools.ai/cases/federal/united-states-district-court-for-the-eastern-district-of-was/2025/nicole-carby-v-city-of-kennewick-mr-guerro-brother-to-17rjik4d>