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

10 SABELITA HAWKINS,

11 Plaintiff,

12 v.

13 UNITED STATES OF AMERICA,  
14 et al.,

15 Defendants.

CASE NO. C16-0498JLR

ORDER

16 **I. INTRODUCTION**

17 Before the court is Defendant United States of America's ("the Government")  
18 motion to dismiss for lack of subject matter jurisdiction and for summary  
19 judgment. (Mot. (Dkt. # 81); Reply (Dkt. # 95).) Plaintiff Sabelita Hawkins opposes the  
20 Government's motion. (Resp. (Dkt. # 92).)<sup>1</sup> The court has considered the Government's

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22 <sup>1</sup> Ms. Hawkins filed her brief one day late as a result of "software issues" "beyond her [counsel's] control." (See Sykes Amend. Decl. (Dkt. # 99) ¶¶ 4-5.) The court exercises its

1 motion, the parties' submissions in support of and in opposition to the motion, the  
2 relevant portions of the record, and the applicable law. Being fully advised,<sup>2</sup> the court  
3 GRANTS in part and DENIES in part the Government's motion.

## 4 II. BACKGROUND

5 This matter arises from a psychotic episode that Ms. Hawkins alleges she suffered  
6 as a result of Defendants the Government, the Department of Veterans Affairs, the VA  
7 Puget Sound Healthcare System, and John and Jane Does 1-10's ("Defendants") failure  
8 to adequately treat her mental health symptoms. (*See* Compl. (Dkt. # 1) ¶ 4.5.) On  
9 October 22, 2011, Ms. Hawkins was hospitalized after experiencing a psychotic episode  
10 at work after she was subjected to alleged workplace harassment. (Johnson Reply Decl.  
11 (Dkt. # 96) ¶ 2, Ex. A ("Discovery Responses") at 8-9<sup>3</sup>.) Ms. Hawkins experienced a  
12 second psychotic episode on December 15, 2011. (*Id.* at 11.) During this second  
13 episode, she attacked her mother and was arrested. (*Id.* at 9-10.)

14 Ms. Hawkins was charged with assault in the first and third degrees in connection  
15 with her conduct during the psychotic episodes. (Johnson Mot. Decl. (Dkt. # 82) ¶ 2, Ex.  
16 A at 9, 18.) She initially pleaded not guilty by reason of insanity to both charges. (*Id.* at  
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18 discretion to consider her untimely filing this time. The court warns Ms. Hawkins, however, that  
19 the court will not accept any further late-filed documents in this action.

20 <sup>2</sup> The parties do not request oral argument (*see* Mot. at 1; Resp. at 1), and the court  
concludes that oral argument is not necessary to decide the motion. *See* Local Rules W.D. Wash.  
LCR 7(b)(4).

21 <sup>3</sup> When citing to exhibits, the court refers to the CM/ECF page numbers at the top of the  
22 page.

1 16-19.) As part of a plea agreement, however, the State amended the charges to felony  
2 harassment (domestic violence) in violation of RCW 9A.46.020(1) and (2)(b), and  
3 malicious mischief in the second degree in violation of RCW 9A.48.080(1)(a). (*Id.* at  
4 24-27, 50.) On December 21, 2012, Ms. Hawkins changed her plea from not guilty by  
5 reason of insanity to guilty for both charges. (*Id.*) In 2023, the state court vacated her  
6 convictions from her record under RCW 9.94A.640, which authorizes the court to vacate  
7 a conviction from an offender’s public criminal history record after completion of their  
8 sentence. (*See* 2/7/23 Order (CR Dkt. # 111), *State of Washington v. Isabelita Hawkins*,  
9 No. 11-1-08483-0 (Super. Ct. Wash).)

10 Ms. Hawkins now alleges that Defendants’ failure to treat her mental health  
11 symptoms “caused [her] second psychotic break . . . [and] led to a violent unprovoked  
12 attack against” her mother and her subsequent incarceration. (Discovery Responses at 9.)

13 She also claims the following losses:

14 Disruption of family life, loss of liberty for one year, loss of past earnings  
15 due to loss of employment related to incarceration[,] [l]oss of earning  
16 potential (due to suspension of nursing license), financial stress due to  
17 approximately \$50,000 in legal fees for both criminal and child custody case,  
18 loss of future employment due to criminal charges of felony harassment and  
19 [f]elony malicious mischief[;]

[S]eparat[i]on from [her] 18-month [old] daughter for a year, . . . and  
20 continuation of depression, insomnia, anxiety, PTSD, and deficiencies in  
21 concentration and memory.

22 (*Id.* at 10, 13.)

Ms. Hawkins now brings suit against Defendants under the Federal Tort Claims  
Act (“FTCA”) on theories of medical malpractice, negligence under the doctrine of *res*

1 *ipsa loquitur*, corporate negligence, and violation of Washington’s Abuse of Vulnerable  
2 Adults Act (“AVAA”), ch. 74.34 RCW. (Compl. ¶¶ 5.1-5.32.)<sup>4</sup>

### 3 III. ANALYSIS

4 The court first addresses the Government’s motion to dismiss, and then addresses  
5 the Government’s motion for summary judgment.

#### 6 A. Motion To Dismiss

7 The Government contends that the Department of Veterans Affairs, the VA Puget  
8 Sound Healthcare System, and the John and Jane Doe Defendants cannot be sued under  
9 the FTCA. It also asserts that Ms. Hawkins’s corporate negligence and AVAA claims are  
10 not cognizable under the FTCA. The court first discusses the applicable legal standard,  
11 then addresses the Government’s arguments in turn.

##### 12 1. Rule 12(b)(1) Legal Standard

13 “Absent a waiver, sovereign immunity shields the Federal Government and its  
14 agencies from suit.” *F.D.I.C. v. Meyer*, 510 U.S. 471, 475 (1994). “If a claim does not  
15 fall squarely within the strict terms of a waiver of sovereign immunity, a district court is  
16 without subject matter jurisdiction.” *Daniel v. United States*, No. C15-5748RJB, 2016  
17 WL 258619, at \*3 (W.D. Wash. Jan. 21, 2016) (citing *Mundy v. United States*, 983 F.2d  
18 950, 952 (9th Cir. 1993)). The FTCA is a limited waiver of sovereign immunity,

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21 <sup>4</sup> As stated in the court’s July 31, 2017 order, the court construes Ms. Hawkins’s  
22 complaint as pleading one claim under the FTCA on multiple theories of liability. (7/31/17  
(Order (Dkt. # 23) at 4 n.3; see Compl. ¶¶ 5.1-5.32.)

1 rendering the United States amenable to liability for certain torts committed by federal  
2 employees. *See* 28 U.S.C. § 1346(b)(1).

3 2. The Court Does Not Have Jurisdiction Over The FTCA Claims Against The  
4 Department Of Veterans Affairs, The VA Puget Sound Healthcare System, And  
The John And Jane Doe Defendants

5 The Government argues that Ms. Hawkins’s FTCA claims against the Department  
6 of Veterans Affairs, the VA Puget Sound Healthcare System, and the John and Jane Doe  
7 Defendants must be dismissed because “they are not proper parties under the FTCA.”  
8 (Mot. at 8.) Ms. Hawkins counters that these claims stand because Defendants are  
9 “[e]mployees of the government” capable of being sued under the FTCA. (Resp. at 3  
10 (citing 28 U.S.C. § 2671) (defining “[e]mployees of the government” to include “officers  
11 or employees of any federal agency” and “persons acting on behalf of a federal agency in  
12 an official capacity”).)

13 The Government is correct that “[t]he United States is the “only proper defendant  
14 in an FTCA action.” *Kennedy v. U.S. Postal Serv.*, 145 F.3d 1077, 1078 (9th Cir. 1998);  
15 *see also Lance v. United States*, 70 F.3d 1093, 1094 (9th Cir. 1995) (same). “The FTCA  
16 is the exclusive remedy for tort actions against a federal agency, and that is so despite the  
17 statutory authority of any agency to . . . be sued in its own name.” *Kennedy*, 145 F.3d at  
18 1078 (citing 28 U.S.C. § 2679(a)). An FTCA claim against the Department of Veterans  
19 Affairs, the VA Puget Sound Healthcare System, and the John and Jane Does “in [their]  
20 own name[s] is not a claim against the United States” and therefore must be dismissed.  
21 *Id.* (affirming dismissal of FTCA claim against the United States Postal Service because  
22 it was “not a claim against the United States.”). *See also Hoot v. United States*, No.

1 2:22-CV-0280-TOR, 2023 WL 2145494, at \*1 (E.D. Wash. Feb. 21, 2023) (dismissing  
2 FTCA claim against the Department of Veterans Affairs, the Mann-Grandstaff VA  
3 Medical Center, and John and Jane Doe defendants for lack of subject matter  
4 jurisdiction); *Christman v. Dep’t of Air Force*, No. 2:10-CV-00265-GMN, 2011 WL  
5 1103461, at \*3 (D. Nev. Mar. 3, 2011) (dismissing FTCA claim against the Department  
6 of Air Force for lack of subject matter jurisdiction).

7 Ms. Hawkins asserts that the jurisdictional question and the substance of her  
8 FTCA claim “are so intertwined that the question of jurisdiction is dependent on the  
9 resolution of . . . the merits of the action.” (Resp. at 4 (quoting *Sun Valley Gasoline, Inc.*  
10 *v. Ernst Enters., Inc.* 711 F.2d 138, 139 (9th Cir. 1983), and *Augustine v. United States*,  
11 704 F.2d 1074, 1077 (9th Cir. 1983)).) This argument ignores the fundamental principle  
12 that only the United States is a proper defendant in an FTCA action. *Kennedy*, 145 F.3d  
13 at 1078. In any event, in the cases cited by Ms. Hawkins finding such intertwinement,  
14 the courts could not determine whether they had jurisdiction over the action without first  
15 resolving a factual question pertaining to the merits of the plaintiff’s claims. *See, e.g.*,  
16 *Augustine*, 704 F.2d at 1078 (“Whether the court has subject matter jurisdiction here  
17 depends on when Augustine’s claim ‘accrued[.]’”); *Sun Valley*, 711 F.2d at 139  
18 (affirming dismissal for lack of jurisdiction “based on a factual finding” that the parties  
19 were not in a “franchise relationship” as defined in the applicable statute); *Thornhill Pub.*  
20 *Co., Inc. v. General Tel. & Electronics Corp.*, 594 F.2d 730, 735 (9th Cir. 1979) (“the  
21 jurisdictional question . . . is whether defendants’ conduct had a sufficient relationship to  
22 interstate commerce . . . [while] the substantive issue . . . is whether defendants

1 participated in anti-competitive conduct”) (citation omitted). Here, the court need not  
2 resolve any factual questions related to the merits of Ms. Hawkins’s FTCA claim to  
3 determine whether Defendants are properly named in this action. Accordingly, the court  
4 dismisses the Department of Veterans Affairs, the VA Puget Sound Healthcare System,  
5 and the John and Jane Doe Defendants from this action with prejudice.<sup>5</sup>

6 3. Ms. Hawkins’s Corporate Negligence And AVAA Claims Are Not Cognizable  
7 Under The FTCA

8 Ms. Hawkins alleges that the Government is liable for the VA Puget Sound  
9 Healthcare System’s corporate negligence. (See Compl. ¶¶ 5.21-5.26.) The Government  
10 contends that this corporate negligence claim is barred by sovereign immunity. (Mot. at  
11 9.) Ms. Hawkins did not address the substance of the Government’s argument in her  
12 response. (See generally Resp.); *Walsh v. Nev. Dep’t of Human Res.*, 471 F.3d 1033,  
13 1037 (9th Cir. 2006) (where plaintiff’s opposition failed to address arguments in  
14 defendant’s motion to dismiss, plaintiff “effectively abandoned” the claim); *Renato v.*  
15 *Beaulieu*, No. C20-0708RSM, 2022 WL 1607919, at \*11 (W.D. Wash. May 20, 2022)  
16 (accepting plaintiff’s failure to “substantively respond” to defendant’s legal arguments  
17 “as an admission that the motion has merit”); *Kroeger v. Vertex Aerospace LLC*, No. CV

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18 <sup>5</sup> Ms. Hawkins also appears to assert that the court has jurisdiction over these Defendants  
19 because the Ninth Circuit previously reversed the court’s November 30, 2019 order dismissing  
20 Ms. Hawkins’s FTCA claim for lack of subject jurisdiction on the grounds that her claim was  
21 covered by the Federal Employees Compensation Act (“FECA”). (Resp. at 2-3 (citing 11/30/19  
22 Order (Dkt. # 42); Ninth Cir. Op. (Dkt. # 49) at 8.) But the Ninth Circuit’s judgment that Ms.  
Hawkins’s FTCA claim was not covered by FECA and that she is entitled to pursue an FTCA  
claim against *the United States* does not mean that she can pursue an FTCA claim against the  
Department of Veterans Affairs, the VA Puget Sound Healthcare System, and the John and Jane  
Doe Defendants.

1 20-3030-JFW(AGRx), 2020 WL 3546086, at \*8 (C.D. Cal. June 30, 2020) (noting that  
2 failure to respond to an argument put forward in an opening brief constitutes waiver).  
3 Under the FTCA, the Government’s sovereign immunity is waived only “where the  
4 United States, if a private person, would be liable to the claimant in accordance with the  
5 law of the place where the act or omission occurred.” *Jachetta v. United States*, 653 F.3d  
6 898 (9th Cir. 2011) (quoting 28 U.S.C. § 1346(b)(1)). The plain language of the statute  
7 therefore makes clear that the Government may only be sued where an individual  
8 *person*—not corporations or other institutions—would be liable under the applicable state  
9 law. *See Adams v. United States*, 420 F.3d 1049, 1051 (9th Cir. 2005) (holding that  
10 “person” as used in the FTCA “does not include corporations.”); *see also id* at 1054-55  
11 (holding that “‘employee of the government’ as used in 28 U.S.C. § 2671 does not  
12 include corporations.”). Ms. Hawkins has not cited any caselaw extending a hospital’s  
13 liability for corporate negligence to a private person, and the court is not aware of any  
14 such law. *See also Hoot*, 2023 WL 2145494, at \*3 (holding plaintiff’s corporate  
15 negligence claim against hospital is not actionable under the FTCA). Accordingly, the  
16 court agrees with the Government that sovereign immunity bars Ms. Hawkins’s corporate  
17 negligence claim.

18 Ms. Hawkins also seeks to hold Defendants liable under the AVAA. *See* ch. 74.34  
19 RCW. The Government contends that Ms. Hawkins’s AVAA claim suffers from the  
20 same deficiencies as her corporate negligence claim. (Mot. at 9-10.) Ms. Hawkins did  
21 not address the Government’s arguments in her response and thus has abandoned her  
22 AVAA claim. (*See generally* Resp.); *Walsh*, 471 F.3d at 1037. But even if she had

1 responded, dismissal would be warranted. The AVAA was enacted to protect vulnerable  
2 adults from abuse or neglect “while residing in a facility or in the case of a person  
3 residing at home who receives care from a home health, hospice, or home care agency, or  
4 an individual provider.” RCW 74.34.200(1). A private cause of action under the AVAA  
5 is available only if

6 the defendant is or was a corporation, trust, unincorporated association,  
7 partnership, administrator, employee, agent, officer, partner, or director of a  
8 facility, or of a home health, hospice, or home care agency licensed or  
required to be licensed under chapter 70.127 RCW, as now or subsequently  
designated, or an individual provider.

9 *Id.* As relevant here, a “facility” is defined under the statute as an assisted living or  
10 nursing home, rehabilitation center, and other entities licensed by the Washington State  
11 Department of Social and Health Services (“DSHS”). RCW 74.34.020(6), (5). An  
12 “individual provider” is “a person under contract with [DSHS] to provide services in the  
13 [plaintiff’s] home[.]” RCW 74.34.020(10).

14 Ms. Hawkins has not directed the court to any evidence that the VA Puget Sound  
15 Healthcare System is a “facility” within the meaning of the AVAA. (*See generally*  
16 *Resp.*) Consequently, she cannot show that the VA Puget Sound Healthcare System is a  
17 proper defendant under the AVAA. And even if the VA Puget Sound Healthcare System  
18 qualifies as a “facility” under the AVAA, Ms. Hawkins has not shown that her AVAA  
19 claim overcomes the sovereign immunity bar. *See Hoot*, 2023 WL 2145494, at \*3  
20 (“There are insufficient factual allegations showing the VA hospital is a ‘facility’ . . . and  
21 that Congress waived sovereign immunity with respect to this state statute.”).

1           Accordingly, the court concludes that Ms. Hawkins’s corporate negligence and  
2 AVAA claims must be dismissed.

3 **B.     Motion For Summary Judgment**

4           The Government moves for summary judgment in its favor on Ms. Hawkins’s *res*  
5 *ipsa loquitur*<sup>6</sup> theory of negligence. (Mot. at 11.) It also contends that her medical  
6 malpractice claim is, as a matter of law, barred by collateral estoppel. (*See id.* at 13-17.)  
7 The court first discusses the applicable legal standard, followed by an analysis of the  
8 Government’s claims.

9           1. Summary Judgment Legal Standard

10           Summary judgment is appropriate if the evidence shows “that there is no genuine  
11 dispute as to any material fact and the movant is entitled to judgment as a matter of law.”  
12 Fed. R. Civ. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A fact  
13 is “material” if it might affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*,  
14 477 U.S. 242, 248 (1986). A factual dispute is “‘genuine’ only if there is sufficient  
15 evidence for a reasonable fact finder to find for” the nonmoving party. *Far Out Prods.,*  
16 *Inc. v. Oskar*, 247 F.3d 986, 992 (9th Cir. 2001) (citing *Anderson*, 477 U.S. at 248-49).  
17 The court must “view[] the evidence in the light most favorable to the nonmoving party.”  
18 *Kaelin v. Globe Comm’ns Corp.*, 162 F.3d 1036, 1039 (9th Cir. 1998).

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20           \_\_\_\_\_  
21           <sup>6</sup> The Government contends that Ms. Hawkins incorrectly “asserted *res ipsa loquitur* as a  
22 separate cause of action” rather than as a “theory of proof.” (Mot. at 11.) For purposes of  
resolving the Government’s motion, the court construes Ms. Hawkins’s “Count II *Res Ipsa*  
*Loquit[ur]/Inference Of Negligence*” claim as pleading a “theory of proof” for her negligence  
claims. (Compl. ¶¶ 5.8-5.20.)

1           The moving party bears the initial burden of showing there is no genuine dispute  
2 of material fact and that it is entitled to prevail as a matter of law. *Celotex*, 477 U.S. at  
3 323. The burden then shifts to the nonmoving party to identify specific facts from which  
4 a factfinder could reasonably find in the nonmoving party’s favor. *Id.* at 324; *Anderson*,  
5 477 U.S. at 250. To defeat a summary judgment motion, the nonmoving party “must  
6 present significant probative evidence tending to support its claim or defense.” *Intel*  
7 *Corp. v. Hartford Accident & Indem. Co.*, 952 F.2d 1551, 1558 (9th Cir. 1991). The  
8 court must take the nonmoving party’s evidence as true and draw all justifiable inferences  
9 in its favor. *Anderson*, 477 U.S. at 255.

10           2. Ms. Hawkins Cannot Show That Res Ipsa Loquitur Applies In This Case

11           The doctrine of *res ipsa loquitur* “is a tool of circumstantial evidence” that  
12 “provides a permissive inference” of negligence by the defendant. *Wells v. Nespelem*  
13 *Valley Elec. Coop., Inc.*, 462 P.3d 855, 859 (Wash. Ct. App. 2010).<sup>7</sup> Under Washington  
14 law, the doctrine applies when the plaintiff shows that:

15           (1) the accident or occurrence producing the injury is of a kind which  
16 ordinarily does not happen in the absence of someone’s negligence, (2) the  
17 injuries are caused by an agency or instrumentality within the exclusive  
18 control of the defendant, and (3) the injury-causing accident or occurrence is  
19 not due to any voluntary action or contribution on the part of the plaintiff.

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20           <sup>7</sup> The court cites to Washington state law in assessing Ms. Hawkins’s *res ipsa loquitur*  
21 claim because the Ninth Circuit has stated that “the doctrine of *res ipsa loquitur* sufficiently  
22 affects the outcome of the litigation to require the federal courts to follow state law.” *United Air*  
*Lines, Inc. v. Wiener*, 335 F.2d 379, 391 (9th Cir. 1964). *See also Fairbanks v. J.C. Penney*  
*Corp., Inc.*, 2009 WL 2473498, at \*2 (W.D. Wash. Aug. 7, 2009) (applying Washington state  
law to resolve *res ipsa loquitur* issue).

1 | *Hoot*, 2023 WL 2145494, at \*2-3 (quoting *Pacheco v. Ames*, 69 P.3d 324, 327 (Wash.  
2 | 2003)). The Government argues that the *res ipsa loquitur* doctrine does not apply to Ms.  
3 | Hawkins’s case because she cannot establish (1) that her psychotic episodes are “injuries  
4 | [] of a kind” that cannot happen in the absence of negligence; (2) that the VA Puget  
5 | Sound Healthcare System had “exclusive control [over] an instrument that caused her  
6 | injuries;” or (3) that her injuries were not caused by her own intentional actions. (*Id.* at  
7 | 12-13; *id.* (citing Johnson Mot. Decl., Ex. A at 28-49 (Ms. Hawkins’s guilty plea)).  
8 | Because Ms. Hawkins neither addressed the Government’s arguments in her response,  
9 | nor provided any evidence supporting the application of *res ipsa loquitur*, the court  
10 | concludes that she has abandoned this theory of negligence. (*See generally* Resp.);  
11 | *Walsh*, 471 F.3d at 1037. Accordingly, the court grants the Government’s motion for  
12 | summary judgment on Ms. Hawkins’s *res ipsa loquitur* claim.

13 | 3. The Government Has Not Shown That It Is Entitled To Judgment As A Matter Of  
14 | Law On Ms. Hawkins’s Medical Malpractice Claim

15 | The Government asserts that Ms. Hawkins’s medical malpractice claim is barred  
16 | by collateral estoppel; Ms. Hawkins disagrees. (Mot. at 13; Resp. at 9.) The doctrine of  
17 | collateral estoppel (or issue preclusion) “prevents a party from relitigating an issue  
18 | decided in a previous action[.]” *Kendall v. Visa U.S.A., Inc.*, 518 F.3d 1042, 1050 (9th  
19 | Cir. 2008); *see also Janjua v. Neufeld*, 933 F.3d 1061, 1065 (9th Cir. 2019) (“Issue  
20 | preclusion . . . bars the relitigation of issues actually adjudicated in previous litigation.”).  
21 | A party is “estopped,” or precluded, from raising a previously litigated issue in a  
22 | subsequent action if

1 (1) the issue at stake was identical in both proceedings; (2) the issue was  
2 actually litigated and decided in the prior proceedings; (3) there was a full  
and fair opportunity to litigate the issue; and (4) the issue was necessary to  
3 decide the merits.

4 *Janjua*, 933 F.3d at 1065 (citations omitted)).

5 To establish a medical malpractice claim under Washington law, a plaintiff must  
6 prove “duty, breach, injury, and proximate cause.” *Mohr v. Grantham*, 262 P.3d 490,  
7 493 (Wash. 2011) (citing RCW 7.70.040). For the “proximate cause” element, Ms.  
8 Hawkins must show that Defendants’ negligence was both the legal cause and the “cause  
9 in fact” of her injury. *See Martini v. Post*, 313 P.3d 473, 479 (Wash. Ct. App. 2013). To  
10 prove cause in fact, she must show “that the harm suffered would not have occurred but  
11 for” Defendants’ alleged negligent actions. *Id.* “Direct evidence or precise knowledge of  
12 how an [injury] occurred is not required; circumstantial evidence is sufficient.” *Id.*  
13 Proximate cause is typically a fact question reserved for the jury unless “reasonable  
14 minds could not differ.” *Meyers v. Ferndale School Dist.*, 481 P.3d 1084, 1089 (Wash.  
15 2021).

16 The Government argues that Ms. Hawkins is unable, as a matter of law, to prove  
17 that her injuries were proximately caused by medical malpractice because she pleaded  
18 guilty to the charged crimes in her criminal case. (Mot. at 13; Reply at 4 (citing Johnson  
19 Mot. Decl., Ex. A at 39, 50).) Specifically, the Government asserts that by pleading that  
20 she “knowingly and without lawful authority” threatened to cause her mother bodily  
21 injury (Johnson Mot. Decl., Ex. A at 39), she effectively “admitt[ed] . . . that she was not  
22 insane.” (Mot. at 14). As a result, according to the Government, Ms. Hawkins “cannot

1 | now argue that [Defendants’] negligence [] caused her to commit” that act. (Reply at 2;  
2 | *see also id.* at 5; Mot. at 14.)

3 | Ms. Hawkins’s medical malpractice claim, however, is broader than the  
4 | Government asserts and encompasses not only injuries resulting from her incarceration  
5 | but also the second psychotic episode itself. Indeed, she contends that Defendants’  
6 | negligence “set [her] up to fail and . . . caused [the] second psychotic break[,]” which  
7 | “led to” the attack against her mother, and caused her subsequent incarceration and her  
8 | injuries flowing from that incarceration, such as loss of employment and earning  
9 | potential, separation from her child, and ongoing emotional distress. (Resp. at 10;  
10 | Discovery Responses at 9-11, 13.) Thus, according to Ms. Hawkins, her asserted losses  
11 | all stem from Defendants’ “failure to properly treat” her mental health symptoms. (Resp.  
12 | at 10.) Ms. Hawkins asserts that her guilty plea does not estop her from proving  
13 | causation in her medical malpractice claim because the state court vacated her guilty plea  
14 | and her convictions from her record under RCW 9.94A.640. (Resp. at 7-8; *see* 2/7/23  
15 | Order (CR Dkt. # 111).) Ms. Hawkins therefore contends that a dispute of material fact  
16 | exists as to whether Defendants’ negligence caused her injuries. (Resp. at 10.)

17 | The court agrees with Ms. Hawkins. According to the Government, Ms. Hawkins  
18 | cannot now show that Defendants’ negligence caused her injuries because her guilty plea  
19 | somehow negates the undisputed fact that Ms. Hawkins was in a state of psychosis when  
20 | she attacked her mother. (Reply at 2; *see* Mot. at 4-5 (acknowledging Ms. Hawkins  
21 | assaulted her mother while she was in psychosis).) But in drawing all reasonable  
22 | inferences in favor of Ms. Hawkins, *Wolfe*, 392 F.3d at 362, the court concludes that the

1 Government has not demonstrated as a matter of law that Ms. Hawkins's second  
2 psychotic episode, her criminal acts, and the injuries she sustained as a result of those  
3 acts, were not consequences of Defendants' negligence in the first instance. Accordingly,  
4 the court denies the Government's motion for summary judgment with respect to Ms.  
5 Hawkins's medical malpractice claim.<sup>8</sup>

#### 6 IV. CONCLUSION

7 For the foregoing reasons, the court GRANTS in part and DENIES in part the  
8 Government's motion to dismiss and motion for summary judgment (Dkt. # 81).

9 Specifically:

10 (1) The Government's motion with respect to Count I (Professional Negligence) of  
11 Ms. Hawkins's complaint is DENIED;

12 (2) The Government's motion with respect to Counts II, III, and IV of Ms. Hawkins's  
13 complaint is GRANTED. Counts II, III, and IV of Ms. Hawkins's complaint are  
14 DISMISSED with prejudice; and

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16 //

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19 \_\_\_\_\_  
20 <sup>8</sup> The Government relies on *Gardner v. United States*, 443 F. App'x 70 (6th Cir. 2011),  
21 for the proposition that Ms. Hawkins's guilty plea establishes, as a matter of law, that she was  
22 sane when she attacked her mother. (Mot. at 13-14.) The court is not persuaded by this  
unpublished, out-of-circuit case. In any event, the *Gardner* court recognized that it was possible  
that a guilty plea might not foreclose the plaintiff's ability to raise issues regarding his mental  
state in a subsequent civil action. *Gardner*, 443 F. App'x at 76; *see also id.* at 77-78 (declining  
to decide the collateral estoppel question and instead affirming the district court's dismissal of  
the suit on public policy grounds).

1 (3) The Department of Veterans Affairs, the VA Puget Sound Healthcare System, and  
2 the John and Jane Doe Defendants are DISMISSED from this action with  
3 prejudice.

4 Dated this 19th day of December, 2024.

5   
6 JAMES L. ROBART  
7 United States District Judge  
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