

1 HONORABLE RONALD B. LEIGHTON

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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 HECTOR L RESSY,

10 Plaintiff,

11 v.

12 JOHN DOE, et al.,

13 Defendant.

CASE NO. C14-5693 RBL

ORDER GRANTING MOTION TO
DISMISS

[DKT. #12]

14 THIS MATTER is before the Court on Defendants' Motion to Dismiss [Dkt. #12]
15 Plaintiff Ressay's Amended Complaint as barred by the 3 year limitations period applicable to his
16 negligence and §1983 claims against them. Ressay concedes that the 3 year period applies, but
17 disagrees on the math.

18 The incident which forms the basis for Ressay's claims occurred on September 4, 2011.
19 Ressay claims (but has not demonstrated) he filed a state law pre-claim notice for his tort claims
20 against the County on September 2, 2014. He filed his initial complaint (and an application to
21 proceed *in forma pauperis*) in this Court the same day. Once Ressay's IFP application was
22 finalized, it was denied, because he had named only eight "John Doe" defendants. He filed an
23 amended complaint on November 12, 2014, naming the County and several individuals. The
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1 defendants claim that the amended complaint does not “relate back” to the date of the initial
2 complaint because naming a “John Doe” rather than an actual entity or person is not the sort of
3 “mistake in identification” that would permit relation back.

4 Ressay claims that his negligence claim is timely because the state law pre-claim notice
5 statute tolls the limitations period for the 60 day notice period, plus five additional days. He also
6 asks the court to follow what he claims is “more persuasive” Third Circuit authority permitting
7 relation back even where only a John Doe is named, if the Plaintiff was “mistaken” about the
8 defendant’s identity.

9 Ressay’s negligence claim is time barred. 65 days from September 2, 2014 is November
10 5. Even if Ressay is entitled to not count the weekend days of November 1 and 2 in the 60 day
11 calculation, and November 8 and 9 in the subsequent 5 day calculation, his amended complaint
12 had to be filed no later than Monday, November 10, to be timely. It was not. The negligence
13 claim is time-barred and is DISMISSED.

14 Ressay’s §1983 claims are also untimely. As the Defendants persuasively argue, the better
15 rule is that Ressay must show not only that the defendants had notice of his claim, but that they
16 would have been named but for a mistake, and they knew it:

17 Where a plaintiff wants to change the name of a party, in order to relate his
18 amendment back to the date on which he filed his original complaint, the plaintiff
19 must show that: (1) the claim against a newly added defendant(s) arose out of the
20 conduct set forth (or attempted to be set forth) in the original complaint; (2) the newly
21 added defendant(s) received notice of the action within 120 days of its institution in
22 such a manner as not to be prejudiced by defending against its merits, and (3) the
23 newly identified defendants knew or should have known that the action would have
24 been brought against them, but for a mistake concerning his or her identity.

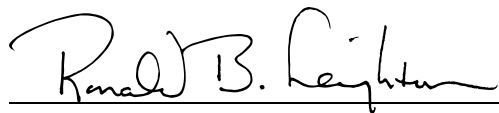
22 [Dkt. #12 at 6 (*citing Butler v. Nat’l Cmty. Renaissance of Cal.*, 766 F.3d 1191, 1202 (9th
23 Cir.2014).]. Ressay cannot establish any of these elements. He has not shown that the County and
24 the individual defendants had notice, at all, and he did not even obtain summonses for them until

1 April of this year. He has not filed any proof of service on any Defendant. And, most
2 importantly, Ressay cannot show that any defendant knew or should have known that, but for
3 Ressay's mistake in naming them in the original case, they would have been named. Ressay's
4 amended complaint does not relate back to the date of his initial filing.

5 Ressay's claims are time-barred as a matter of law and the Defendants' Motion to Dismiss
6 them is GRANTED. The complaint is DISMISSED with prejudice. If Ressay appeals, his *in*
7 *forma pauperis* status shall continue on appeal.

8 IT IS SO ORDERED.

9 Dated this 11th day of June, 2016.

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11 RONALD B. LEIGHTON
12 UNITED STATES DISTRICT JUDGE
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