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**ATTORNEYS FOR DEFENDANT A.W.A.R.E., INC.,**  
**ON BEHALF OF CASTLE PINES GROUP HOME**

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF MONTANA**  
**HELENA DIVISION**

\* \* \* \* \*

|                                  |   |                                   |
|----------------------------------|---|-----------------------------------|
| <b>AMBER J. WILLIAMS,</b>        | ) | <b>CV 20-00023-H-DLC-JTJ</b>      |
|                                  | ) |                                   |
| Plaintiff,                       | ) | <b>DEFENDANT A.W.A.R.E.,</b>      |
| vs.                              | ) | <b>INC.'S BRIEF IN SUPPORT OF</b> |
|                                  | ) | <b>MOTION FOR MORE</b>            |
| <b>CANDICE OSTERMAN, et al.,</b> | ) | <b>DEFINITE STATEMENT</b>         |
|                                  | ) |                                   |
| Defendants.                      | ) |                                   |

\* \* \* \* \*

Defendant Castle Pines Group Home, owned and operated by A.W.A.R.E., Inc. (collectively referred to as "AWARE"), respectfully submits this brief in support of its Fed. R. Civ. P. 12(e) motion for a more definite statement. Plaintiff's Complaint is ambiguous such that AWARE cannot

ascertain the nature of the claims being asserted against it. A more definite statement is necessary to allow AWARE to formulate a response.

## **BACKGROUND**

Plaintiff asserts a host of claims against a number of Defendants. As explained by this Court, Plaintiff's claims include that she has been "deprived of her civil rights by tortious intervention of her parent/child relationships, enslavement by a government entity, terrorism by a government entity, interference of civil and constitutional rights, violations of parenting rights, robbery by a government entity, and parental alienation." (Or. and Findings and Recommendations of U.S. Magistrate Judge, Doc. 7 at 3 (Jul 14, 2020) [hereinafter cited as "Doc. 7"] (citing Compl., Doc. 2 at 13).) Plaintiff alleges that "all defendants in this claim aided Ms. Candice Osterman, CPS in all of these violations against my self [sic]." (Doc. 2 at 13.) Plaintiff may also be asserting other claims under state common law, such as defamation, negligence, and failure to protect, but it is unclear because these possible claims are listed in the "injuries" section of the Complaint. (Doc. 2 at 37.) While Plaintiff alleges that her son, N.R., "was raped by an older male child (J.P.)," when he resided at Castle Pines Group

home, (Doc. 2 at 25; *accord id.* at 22), Plaintiff does not connect this alleged wrongful conduct to a particular claim or legal theory, or assert how this conduct gives rise to liability for AWARE under the claims asserted in the Complaint, (*see* Doc. 2 at 25, ¶ 14).

### LEGAL STANDARD

A defendant may move for a more definite statement of a complaint if it is “so vague or ambiguous that the [defendant] cannot reasonably prepare a response.” Fed. R. Civ. P. 12(e). A more definite statement is not warranted if the complaint is sufficiently understandable to give the defendant a basis to frame responsive pleadings. *Lema v. Comfort Inn*, No. 1:10-cv-00362-SMS, 2012 U.S. Dist. LEXIS 82885, at \*2 (E.D. Cal. June 13, 2012). On the other hand, “[g]ranted a motion for a more definite statement is perhaps best applied when an ambiguous allegation leaves uncertain the nature of the claim or the party against whom it is asserted.” *Abrams v. Corwin*, No. CV 14-236-M-DLC, 2015 U.S. Dist. LEXIS 184930, at \*7 (D. Mont. Jan. 12, 2015) (quoting *Lema* at \*2).

For example, in *McHenry v. Renne*, 84 F.3d 1172, 1175 (9<sup>th</sup> Cir. 1996), the Court explained that while the complaint provided allegations of fact to

support the claim that defendants had deprived plaintiffs of their constitutional rights, the complaint failed to notify the individual defendants of the allegations with which they were charged. In granting the defendants' motion for a more definite statement, the Court held "[g]iven the number and diversity of named defendants and the breadth of the allegations, claims which vaguely refer to 'defendants' or 'other responsible authorities' will not suffice." *Id.* Whether to grant a Rule 12(e) motion for a more definite statement lies within the discretion of the district court. *C.B. v. Sonora Sch. Dist.*, 691 F. Supp. 2d 1123, 1130 (E.D. Cal. 2009) (citing Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1377 (2d ed.)).

## ARGUMENT

A more definite statement of Plaintiff's Complaint is warranted because AWARE cannot ascertain the nature of the claims or determine which claims are asserted against it. As a result, AWARE cannot sufficiently formulate its response.

It is unclear what actions by AWARE form the basis of Plaintiff's constitutional claims. While not specifically stated in the Complaint, Plaintiff's allegations related to constitutional violations can only be

interpreted as a claim asserted under 42 U.S.C. § 1983. (*See* Doc. 7 at 6 (analyzing Plaintiff's claims against foster parent defendants under § 1983).) As explained by this Court, one of the requirements for § 1983 liability is that the defendant is acting "under color of state law." (*Id.* (quoting *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9<sup>th</sup> Cir. 1991); *Gibson v. United States*, 781 F.2d 1334, 1338 (9<sup>th</sup> Cir. 1986)).) Therefore, a plaintiff generally cannot sue a private actor under § 1983. (*See id.* (citing *Florer v. Congregation Pidyon Shevuyim, N.A.*, 639 F.3d 916, 922 (9<sup>th</sup> Cir. 2011) (noting that courts "start with the presumption that conduct by private actors is not state action")).) Worth noting here is that neither state regulation, monetary support from the state, nor funding of a private entity's activities is enough to establish that a private entity acted under color of state law. *Letisha A. by Murphy v. Morgan*, 855 F.Supp. 943, 948 (N.D. Ill. 1994) (citing *Blum v. Yaretsky*, 457 U.S. 991, 1011 (1982))

Given that AWARE is a private entity, more detailed allegations are needed regarding Plaintiff's claims against AWARE. Plaintiff alleges her son was sexually assaulted by one of the residents at the Castle Pines Group Home, but it is not clear whether this is the alleged conduct that forms the

basis of Plaintiff's claim that AWARE violated her constitutional rights. This ambiguity is compounded by the fact that AWARE is not a state actor. *See Kolppa v. Harper, et al.*, 2002 ML 99, 2002 Mont. Dist. LEXIS 2079 (holding that AWARE's actions were not "carried out under the 'color of state law' for which § 1983 was intended") (relying on *Letisha*, 855 F. Supp. at 947). Plaintiff's conclusory allegation that "all defendants aided" Osterman does not cure this defect because it does not clarify how this alleged conduct results in constitutional liability for AWARE, a private actor. (*See* Doc. 2 at 13.)

AWARE also cannot formulate a response because it is unclear whether Plaintiff is asserting state common law claims against AWARE, such as negligence. On one hand, AWARE could assume Plaintiff is not asserting a negligence claim because she did not include it in the "claims" section of the Complaint. On the other hand, AWARE could just as easily assume Plaintiff is asserting a negligence claim and included it in the wrong section of the Complaint form. While AWARE recognizes that a document filed *pro se* is to be liberally construed, *Erickson v. Pardu*, 552 U.S. 89, 94 (2007), AWARE should not have to base its response on assumptions or make

connections for Plaintiff in order to formulate a response. *See Sonora Sch. Dist.*, 691 F.Supp. 2d at 1130 (quoting *Federal Practice and Procedure*, § 1376 (“pleading must not be so vague or ambiguous that the opposing party cannot respond, even with a simple denial, in good faith or without prejudice to himself”). As a result, a more definite statement is warranted.

### CONCLUSION

AWARE cannot formulate a response to Plaintiff’s complaint because it cannot ascertain the nature of the claims or which claims are asserted against it. As a result, AWARE is entitled to a more definite statement pursuant to Fed. R. Civ. P. 12(e).

DATED this 11<sup>th</sup> day of September, 2020.

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**CERTIFICATE OF SERVICE L.R.5.2(b)**

I hereby certify that, on 11<sup>th</sup> day of September, 2020 the forgoing **DEFENDANT A.W.A.R.E., INC.'S BRIEF IN SUPPORT OF MOTION FOR MORE DEFINITE STATEMENT** was served upon the following persons by the following means:

|              |                            |
|--------------|----------------------------|
| <u>1</u>     | CM/ECF                     |
| _____        | Hand Delivery              |
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| _____        | Fax                        |
| _____        | E-Mail                     |

1. Clerk, U.S. District Court
2. Amber J. Williams  
P.O. Box 6871  
Helena, MT 59604
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/s/ Lori Caplis  
Lori Caplis



## CERTIFICATE OF COMPLIANCE

This is to certify that the foregoing brief, excluding the caption, certificate of service and compliance, contains 1,172 words.

DATED this 11<sup>th</sup> day of September, 2020.

**CHRISTENSEN & PREZEAU, PLLP**

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