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of Montana d/b/a Acadia Montana and
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

AMBER J. WILLIAMS,

Plaintiff,

v.

CANDICE OSTERMAN, et al.,

Defendants.

Cause No. CV 20-00023-H-DLC-JTJ

DEFENDANTS KIDS BEHAVIORAL
HEALTH OF MONTANA d/b/a
ACADIA MONTANA AND JENNIFER
HEDKE'S BRIEF IN SUPPORT
MOTION TO DISMISS PURSUANT TO
FED. R. CIV. P. 12(e) AND 4(m)

Defendants Kids Behavioral Health of Montana d/b/a Acadia Montana ("Acadia") and Jennifer Hedke ("Ms. Hedke") file this brief in support of their Motion to Dismiss Pursuant to Federal Rules of Civil Procedure 12(e) and 4(m).

On October 9, 2020, Acadia and Ms. Hedke filed their Motion for More Definite Statement Pursuant to Fed. R. Civ. P. 12(e) and Brief in Support of Motion. Docs. 22-23. The basis for the motion, in part, was that the Complaint was unclear as to the claims or

causes of action Plaintiff seeks to maintain and which specific causes of action are alleged against each specific Defendant. Doc. 23.

Plaintiff failed to timely respond to Defendants' motion and, therefore, Acadia and Ms. Hedke filed their reply brief on November 2, 2020, requesting that the Motion for More Definite Statement be granted. Doc. 27.

On November 2, 2020, the Court issued its Order, granting Defendant AWARE's and Defendants Acadia and Ms. Hedke's motions for more definite statements. Doc. 28. The Court ordered that Plaintiff file an Amended Complaint on or before November 16, 2020. Doc. 28 at 9. The Court further ordered that the Amended Complaint "consist of short, plain statements telling the Court: (1) the rights Plaintiff believes were violated; (2) the name of the defendant(s) who allegedly violated the rights; (3) exactly what each defendant did or failed to do; (4) how the action or inaction of that defendant is connected to the violation of Plaintiff's rights; (5) when the alleged actions took place; and (6) what injury Plaintiff suffered because of that defendant's conduct." Doc. 28 at 2-3 (citation omitted). Additionally, the Court ordered that Plaintiff "either request service of process by the United States Marshal, provide proof of service, or show good cause for the failure to serve" all unserved Defendants on or before November 16, 2020. Doc. 27 at 9-10; *see also* Doc. 30 (Order clarifying that Defendant Heather C. should be included with the list of unserved Defendants and stating that Plaintiff also had until November 16, 2020 to show cause why Defendant Karen Galvin should not be recommended for dismissal).

On November 13, 2020, Plaintiff filed a number of documents, none of which

consisted of an Amended Complaint, proof of service of the unserved Defendants, or good cause for not recommending Karen Galvin for dismissal. *See* Docs. 31-35. It has now been well over a week since the deadline has passed for Plaintiff to submit the documents ordered by the Court, yet Plaintiff has failed to comply.

In its Order, the Court warned that “[p]ursuant to Rule 12(e) of the Federal Rules of Civil Procedure, Plaintiff is advised that if she fails to timely comply with this Order, the Court will recommend that all claims against Defendants AWARE, Acadia Montana, and Ms. Hedke be dismissed” and that failure to take actions to serve the unserved Defendants “will result in a recommendation that these Defendants be dismissed under Rule 4(m) of the Federal Rules of Civil Procedure.” Doc. 28 at 9-10.

While Defendants appreciate that the Court offers leniency to *pro se* litigants, if Plaintiff simply chooses to ignore the rules of procedure and Orders from this Court, dismissal is appropriate. *See, e.g., Leischner v. Bank of Am. Corp.*, No. CV 17-49-BLG-TJC, 2017 U.S. Dist. LEXIS 195308, at *8 (D. Mont Nov. 28, 2017); *Bear Don’t Walk v. Charette*, No. CV 17-79-BLG-SPW-TJC, 2018 U.S. Dist. LEXIS 10842, at *8-9 (D. Mont. Jan. 4, 2018). Plaintiff was given ample time to respond to Defendants’ motions and to comply with the Court’s Orders offering her explicit instructions on how to maintain her case. She has failed to accomplish any of the tasks necessary to pursue her case against Defendants.

Thus, pursuant to this Court’s Orders and pursuant to Rule 12(e) and Rule 4(m), Acadia and Ms. Hedke respectfully request that all claims against Defendants Acadia

Montana and Ms. Hedke be dismissed and that Heather C. and Karen Galvin also be dismissed.

DATED this 24th day of November, 2020.

/s/ Elizabeth L. Hausbeck
Attorneys for Defendants Kids Behavioral Health
of Montana d/b/a Acadia Montana and
Jennifer Hedke

CERTIFICATE OF SERVICE

I hereby certify that on November 24, 2020, a copy of the foregoing document was served on the following persons by the following means:

_____ Hand Delivery
_____1_____ Mail
_____ Overnight Delivery Service
_____ Fax (include fax number in address)
_____ E-Mail (include email in address)

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