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

AMBER J. WILLIAMS, Plaintiff, vs. CANDICE OSTERMAN, et al., Defendants.	CV 20-00023-H-DLC-JTJ ORDER

Plaintiff Amber Williams filed a Complaint (Doc. 2) alleging Defendants violated her constitutional when they interfered with her custody of her four minor children. By Order dated July 14, 2020, the Court determined that Defendants Osterman, McVey, Jake Westerhold, AYA Youth Dynamics Group Home and their staff members Chris and Kevin; Probation Officer Deanna Lougee; Acadia Montana Group Home Facility and its therapist Jennifer Hedke and staff member Heather C.; Castle Pines Group Home; and Terry Murray must respond to the Complaint and requested waiver of service of summons. (Doc. 7.)

Defendant Terry Murray filed an Answer to Plaintiff's Complaint (Doc. 21), and Defendants Castle Pines Group Home, owned and operated by A.W.A.R.E., Inc. ("AWARE"), Kids Behavioral Health of Montana d/b/a Acadia Montana ("Acadia Montana"), and Jennifer Hedke filed Motions for More Definite Statement pursuant to 12(e). (Docs. 19, 22.) No other Defendant has appeared in

this action.

I. Motions for More Definite Statement

Plaintiff did not file a response brief to either motion for a more definite statement within the fourteen-day time period provided in Local Rule 7.1(d)(1)(B)(ii). Accordingly, the motions will be granted, and Plaintiff must file an amended complaint. Plaintiff is advised that once she files an amended complaint, it replaces the original complaint, and the original complaint no longer serves a function in the case. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). Plaintiff may not, however, change the nature of this suit by adding new, unrelated claims in her amended complaint.[1]

Any amended complaint must 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

[1]A plaintiff may properly assert multiple claims against a single defendant. Fed. Rule Civ. P. 18. In addition, a plaintiff may join multiple defendants in one action where "any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions and occurrences" and "any question of law or fact common to all defendants will arise in the action." Fed. R. Civ. P. 20(a)(2). Unrelated claims against different defendants must be pursued in separate lawsuits. *See George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007). This rule is intended "not only to prevent the sort of morass [a multiple claim, multiple defendant] suit produce[s], but also to ensure that prisoners pay the required filing fees -- for the Prison Litigation Reform Act limits to 3 the number of frivolous suits or appeals that any prisoner may file without prepayment of the required fees. 28 U.S.C. § 1915(g)." *George*, 507 F.3d at 607.

violation of Plaintiff's rights; (5) when the alleged actions took place; and (6) what injury Plaintiff suffered because of that defendant's conduct. *Rizzo v. Goode*, 423 U.S. 362, 371-72, 377 (1976).

Plaintiff must repeat this process for each defendant. Conclusory statements are not enough, nor are declarations that all defendants violated some law or statute. Instead, Plaintiff must provide specific factual allegations for each element of each of her claims and must state with specificity to which defendants each of her claims apply. If Plaintiff fails to affirmatively link the conduct of a defendant with an injury suffered, the allegation against that defendant will be dismissed for failure to state a claim.

A. Individual Defendants

In describing the acts and/or omissions of individual defendants, Plaintiff is advised that Section 1983 imposes individual liability upon state actors only when their personal conduct violates a plaintiff's constitutional rights. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691-94 (1978). This can be established in two ways.

First, an individual can be held liable for his or her own personal acts that directly cause an injury. A person deprives another of a constitutional right, "within the meaning of § 1983, 'if he does an affirmative act, participates in another's affirmative act, or omits to perform an act which he is legally required to do that causes the deprivation of which complaint is made.'" *Preschooler II v.*

Clark Cnty. Sch. Bd. of Trs., 479 F.3d 1175, 1183 (9th Cir. 2007) (*quoting Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978)). Liability may be imposed on an individual defendant under Section 1983 if the plaintiff can show that the defendant's actions both actually and proximately caused the deprivation of a federally protected right. *Lemire v. Cal. Dept. of Corr. & Rehab.*, 726 F.3d 1062, 1085 (9th Cir. 2013). A plaintiff must present factual allegations against each individual defendant alleged to have violated her constitutional rights sufficient to state a plausible claim for relief and place each individual defendant on notice of the claim against them. *Iqbal*, 556 U.S. at 678-79; *Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009). The allegations must link the actions or omissions of each named defendant to a violation of her rights. *Iqbal*, 556 U.S. at 676-77; *Ewing v. City of Stockton*, 588 F.3d 1218, 1235 (9th Cir. 2009).

Second, an individual can be held liable in his or her individual capacity under a theory of supervisory liability. Section 1983 will not impose liability on supervising officers under a respondeat superior theory of liability. *Monell*, 436 U.S. at 691-94. That is, a defendant cannot be held liable just because they supervise other employees. Instead, supervising officers can be held liable under Section 1983 "only if they play an affirmative part in the alleged deprivation of constitutional rights." *King v. Atiyeh*, 814 F.2d 565, 568 (9th Cir. 1987)(*overruled on other grounds by Lacey v. Maricopa County*, 693 F.3d 896 (9th Cir. 2012)).

"A defendant may be held liable as a supervisor under § 1983 if there exists either (1) his or her personal involvement in the constitutional deprivation, or (2) a sufficient causal connection between the supervisor's wrongful conduct and the constitutional violation." *Starr v. Baca*, 652 F.3d 1202, 1207 (9th Cir. 2011); *see also Henry A. v. Willden*, 678 F.3d 991, 1003-04 (9th Cir. 2012). To impose liability under Section 1983 against a supervisor, a plaintiff must establish that the supervisor's prior knowledge of unconstitutional conduct committed by subordinates that that would give the supervisor notice of the need for changes. *Howell v. Earl*, 2014 WL 2594235 (D. Mont. 2014) (*citing Starr*, 652 F.3d at 1208; *Dougherty v. City of Covina*, 654 F.3d 892, 900-01 (9th Cir. 2011)); *see also Larez v. City of Los Angeles*, 946 F.2d 630, 646 (9th Cir. 1991), *Watkins v. City of Oakland*, 145 F.3d 1087, 1093-94 (9th Cir. 1997), and *Blankenhorn v. City of Orange*, 485 F.3d 463 (9th Cir. 2007).

A supervisor may also be liable if there is evidence of "a policy so deficient that the policy itself is a repudiation of constitutional rights and is the moving force of the constitutional violation." *Redman v. County of San Diego*, 942 F.2d 1435, 1446 (9th Cir. 1991) (en banc), *abrogated on other grounds by Farmer v. Brennan*, 511 U.S. 825 (1994). It is insufficient for a plaintiff only to allege that supervisors knew about a constitutional violation and that they generally created policies and procedures that led to the violation, without alleging "a specific policy" or "a

specific event" implemented or instigated by them that led to the constitutional violations. *Hydrick v. Hunter*, 669 F.3d 937, 942 (9th Cir. 2012) (emphasis in original).

A supervisor may be liable: (1) for setting in motion a series of acts by others, or knowingly refusing to terminate a series of acts by others, which they knew or reasonably should have known would cause others to inflict constitutional injury; (2) for culpable action or inaction in training, supervision, or control of subordinates; (3) for acquiescence in the constitutional deprivation by subordinates; or (4) for conduct that shows a reckless or callous indifference to the rights of others. *Larez*, 946 F.2d at 646. Allegations against supervisors that resemble "bald" and "conclusory" allegations will be dismissed. *Hydrick v. Hunter*, 669 F.3d 937 (9th Cir. 2012). Plaintiff must allege "sufficient facts to plausibly establish the defendant's 'knowledge of' and 'acquiescence in' the unconstitutional conduct of his subordinates." *Hydrick*, 669 F.3d at 942 (*citing Starr*, 652 F.3d at 1206-07). Plaintiff has not set forth sufficient factual allegations to affirmatively link the conduct of a defendant with an injury suffered.

B. Entity Defendants

In *Monell v. Dept. of Social Services of City of New York*, the United States Supreme Court, announced the following standard governing the liability of a municipality under 42 U.S.C. § 1983:

> [A] local government may not be sued under § 1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983.

436 U.S. 658, 694, 98 S.Ct. 2018, 56 L.Ed.2d 611. *Monell* involved a municipal corporation, but every circuit to consider the issue has extended the holding to private companies acting under color of state law. *See Robinson v. City of San Bernardino Police Dept.*, 992 F.Supp. 1198, 1204 (C.D. Cal 1998) (*citing Street v. Corrections Corp. of America*, 102 F.3d 810, 817–18 (6th Cir. 1996)); *Harvey v. Harvey*, 949 F.2d 1127, 1129–30 (11th Cir. 1992); *Rojas v. Alexander's Dep't Store, Inc.*, 924 F.2d 406, 408 (2nd Cir. 1990); *Lux v. Hansen*, 886 F.2d 1064, 1067 (8th Cir. 1989); *Iskander v. Village of Forest Park*, 690 F.2d 126, 128 (7th Cir. 1982); *Powell v. Shopco Laurel Co.*, 678 F.2d 504, 506 (4th Cir. 1982).

As such, the liabilities of the entities named as Defendants in this matter may not be predicated upon a respondeat superior theory of liability. *Monell*, 436 U.S. at 694, 98 S.Ct. 2018. That is, Plaintiff cannot state a federal claim for relief against the entity Defendants just because one of their employees may have violated her federal constitutional rights. "Under *Monell*, municipalities are subject to damages under § 1983 in three situations: when the plaintiff was injured pursuant to an expressly adopted official policy, a long-standing practice or custom, or the decision of a final policymaker." *Ellins v. City of Sierra Madre*,

710 F.3d 1049, 1066 (9th Cir. 2013) (quotations omitted). In the third situation, a municipality can be liable for a single act or decision so long as the person making the decision has "final policymaking authority." *Christie v. Iopa*, 176 F.3d 1231, 1235 (9th Cir. 1999).

II. Unserved Defendants

Defendants Candice Osterman, Emily McVey, Jake Westerhold, AYA Youth Dynamics Group Home and their staff members Chris and Kevin, and Probation Officer Deanna Lougee have not waived service of summons or otherwise appeared in this action and Plaintiff has not requested service of process by the United States Marshal. *See* Fed.R.Civ.P. 4(c)(3) ("At the plaintiff's request, the court may order that service be made by a United States marshal or deputy marshal or by a person specially appointed by the court. The court must so order if the plaintiff is authorized to proceed in forma pauperis under 28 U.S.C. § 1915 ...."); *Boudette v. Barnette*, 923 F.2d 754, 757 (9th Cir. 1991) ("An [in forma pauperis] plaintiff must request that the marshal serve his complaint before the marshal will be responsible for such service. [The in forma pauperis plaintiff] did not request service by the marshal and so remained responsible for timely service."). Under Rule 4(m) of the Federal Rules of Civil Procedure,

> If 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. But if the plaintiff shows

> good cause for the failure, the court must extend the time for service for an appropriate period.

Accordingly, Plaintiff will be required to either request service of process by the United States Marshal, provide proof of service, or show good cause for the failure to serve these Defendants. A failure to comply with this Order will result in a recommendation that these Defendants be dismissed under Rule 4(m) of the Federal Rules of Civil Procedure.

Based upon the foregoing, the Court issues the following:

ORDER

1. Defendant AWARE's Motion for a More Definite Statement Pursuant to Fed.R.Civ.P. 12(e) (Doc. 19) and Defendants Acadia Montana and Hedke's Motion for More Definite Statement pursuant to 12(e) (Doc. 22) are GRANTED.

Plaintiff must file an Amended Complaint on or before **November 16, 2020** and provide a more definite statement showing she is entitled to relief from Defendants in accordance with the defects Defendants pointed out in their briefs in support of their motions. Pursuant 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.

2. On or before **November 16, 2020**, Plaintiff must either request service of process by the United States Marshal, provide proof of service, or show good cause

for the failure to serve these Defendants. A failure to timely comply with this Order will result in a recommendation that these Defendants be dismissed under Rule 4(m) of the Federal Rules of Civil Procedure.

3. At all times during the pendency of this action, Plaintiff must immediately advise the Court and opposing counsel of any change of address and its effective date. Failure to file a Notice of Change of Address may result in the dismissal of the action for failure to prosecute pursuant to Fed.R.Civ.P. 41(b).

DATED this 2nd day of November, 2020.

John Johnston
United States Magistrate Judge